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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal from Georgetown County
Honorable Larry B. Hyman, Jr., Circuit Court Judge

THE STATE, Petitioner,

v.

RANDY COLLINS, Respondent.

Opinion No. 5861 (S.C. Ct. App. Filed September 8, 2021)
(S.C. Ct. App. Appellate Case No. 2018-002056)

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VOLUME II OF II

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Q All right. And, and that is an irregular burn pattern; correct?
A Yes, sir. Basically in laymen's terms it's just not a straight line like, like a cut or anything like that. It, it just kind of goes in a different pattern.
Q Okay.
A As -- and it's mostly related to when there's something poured because the way it burns it's going to burn the outside first because it's burning away the vapors and then it's going to work its way into the middle which creates the, the irregular shaped burn pattern.
Q Okay. Very good. All right. And --
THE COURT: Is that sufficient, Mr. Wilson, or do you need that particular photograph?
MR. WILSON, JR.: It's another photo, Judge.
A That's a good one there.
THE COURT: Can you show it with that one?
Q Is that a good one to explain, sir?
A Yes, sir. That's a good one.
Q Okay. All right. Now, explain how that would work and how that particular picture with that burn pattern you see --
A Yes, sir.
Q -- is that a pattern that is created from not pouring or pouring?
A That would be a pattern of pouring in my opinion.

Q Okay. Explain to the jury how that's a pattern of pouring.
A So as, as I was saying before, if, if I pour something it's not going to be in a direct line. It's going to be going side -- there's initially there may not be as much volume poured out at first as there are towards the back. So on, on this pattern here it's kind of over toward -- in between cone three and four. You can see where the pattern kind of -- it, it deviates kind of going around. So that's indicative of somebody taking something and pouring it because typically in my experience people pour they pour side to side or pour in a straight line. Well, on that it looks like they're pouring from that corner and coming out towards a, a way of egress, which is a way of getting out of the room.
Q Okay. So and let me follow you, in your expert opinion someone was actually in that room pouring that accelerant on the floor?
A I don't know any other way it would get there.
Q Okay. All right. Now, you said -- you testified earlier that the doors were locked to this actual building; right?
A Yes, sir.
Q So whoever actually poured the accelerant inside either had a key or locked the door on their way out?
A Correct.
Q Okay.

A Or a window or -- yeah.
Q All right. And just to be sure I understand what you're saying, just to be sure, you said that in your expert opinion that the heaters that were found inside of the place did not cause the fire?
A No.
Q Okay. And that would be the kerosene heaters that you found?
A Yes, sir.
Q Okay. But they did not cause the fire?
A No, sir.
Q Now, did you collect any evidence whatsoever that would connect Randy Collins during your investigation to this particular crime?
A No, sir.
Q I have no further questions, Judge.
THE COURT: Anything further?
MS. RICHARDSON: No, Your Honor.
THE COURT: Very well. Thank you. You, you may step down. Thank you for your testimony.
A Please.
THE COURT: Is, is he released or, or is he needed further in these proceedings?
MS. RICHARDSON: Your Honor, he can, he can be released.
THE COURT: Mr. Wilson?

MR. WILSON, JR.: Your Honor, no objection, Judge.

THE COURT: Okay. He's going home now.

A It's a long ways.

MS. RICHARDSON: Well, I think he may stick around anyway.

THE COURT: Okay. You're released from your subpoena. Okay. Thank you very much. Okay.

It is a little after 5:00 o'clock. I am going to -- and we have covered quite a few witnesses today, and I appreciate your efforts. So we're going to adjourn for today. We'll be back in the morning at 9:30 or ask the jury be here at 9:30. You lawyers be here about 7:30. I'll be here about 8:30, and I want to be sure you're here by nine. So, at any rate, let's, let's, let's try to be here by nine just in case. Okay.

MR. WILSON, JR.: Yes, sir.

THE COURT: So we can talk before the jury comes. If you would take the jury to the jury room and, and allow them to collect their, their property and show them the way out. Thank you, and again, please no, no extracurricular research or anything on the internet or smartphones or don't discuss it with anyone.

(Whereupon, the following takes place outside the presence of the jury.)

THE COURT: Just as a housekeeping measure, Ms.

Richardson, I noted that this witness actually testified without objection to the results of lab reports being heavy distillates. Do you intend then to call chain of witness on the samples taken and the lab technicians that did it?

MS. RICHARDSON: Your Honor, at this point I would just call the -- of course, Agent Hardee helped collect it. So we'd do that, and then the chemist is coming, but I had not intended on calling everybody in the chain, just the handlers.

THE COURT: Okay.

MS. RICHARDSON: But I think his --

THE COURT: All right. I, I just wondered because Mr. Wilson was here and, and there doesn't seem to be any question that this was a kerosene type liquid. I just wondered if, if that's going -- if you're even going to do that, but it's your case. We'll do whatever you want to do.

MR. WILSON, JR.: Judge, I'm not going to contest the chain of custody on the kerosene or whatever they found. That's not -- we have no issue with that at all.

THE COURT: Okay.

MR. WILSON, JR.: No.

THE COURT: All right. So, so that should help you somewhat. Okay. And then I would imagine that you're going to go into the toxicology, your, your --

MS. RICHARDSON: Yes, Your Honor.

THE COURT: -- your autopsy experts.

MS. RICHARDSON: A little later, a little later, Your Honor. We do have, of course, the matter of Agent Hardee and Officer Garret's --

THE COURT: Okay.

MS. RICHARDSON: -- investigation, interrogation and --

THE COURT: All right. Okay.

MS. RICHARDSON: -- and statements and then that issue will come up then regarding --

THE COURT: Of course, you do it any way you want it. It's, it's just for my information where, where we're going and what I can expect.

THE COURT: So I believe the issue that we'd need to take up --

THE COURT: Okay.

MS. RICHARDSON: -- pretty soon tomorrow probably is the issue regarding -- that in these statements regarding the prior fires.

MR. WILSON, JR.: And Your Honor, that will be the -- I'm sorry, Judge.

THE COURT: Okay. Let, let me, let, let me say this, I'm stopping at five. I want you guys to work. I would like for in the morning you'd be able to specifically tell me, Mr. Wilson, what matters in the video statement you have not been able to reach an agreement with, with Ms. Richardson concerning redaction. Okay.

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

THE COURT: And I'd like to take that up about 9:00 o'clock in the morning.

MR. WILSON, JR.: Yes, sir.

THE COURT: And let's, let's, let's go ahead and discuss that early on, but I, please, I want you to, to -- I -- I'm sure you probably have had some conversation, but I'd like to know what we're talking about as far as redaction, Lyle issues, I guess is what we would call them, prior bad acts, that sort of thing.

MR. WILSON, JR.: Yes, sir.

THE COURT: Probative value versus unfair prejudice. That's where I want to go. Okay.

MR. WILSON, JR.: Yes, Your Honor. Judge, I have one issue that I'd like to take up with the Court. Yesterday Your Honor said that if I got the brother here for my client that Your Honor would consider allowing him out on bond. He showed up, Judge. I don't know if I can -- I apologize, if I can go into it, Your Honor.

THE COURT: Go ahead.

MR. WILSON, JR.: He showed up for every appearance at my office. He's shown up for every appointment at the doctor's office. He's shown up here to court. He is here, obviously, to, to litigate this matter. He does have some, I think, medical issues. He'd be better off getting his medicine at

home and all that good stuff. However, his brother is here, Judge, right here. He signed --

THE COURT: Well, Mr. Wilson, it, it looks like we're going to be going into next week anyway and because of the situation we have with the courthouse over the weekend and a holiday coming up, we're looking at four or five days --

MR. WILSON, JR.: Yes, sir.

THE COURT: -- I'm, I'm not inclined to release him. The, the rule requires his incarceration once the trial starts, and I think that that would be appropriate in this matter. I just don't want him out there for four days, and I am cognizant of the fact that, and I'm not suggesting that your client had anything to do with it, but there was a Codefendant witness who is no longer with us in this matter, and that gives me great concern. So I'm not inclined to release him.

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

THE COURT: All right. Thank you.

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

(Adjourned for day.)

(Whereupon, the following takes place in the presence of the jury.)

THE COURT: All right. We have all our jurors as well as our alternates. Ms. Richardson, you may proceed.

MR. STEPHENS: The State calls Tricia Hood.

WHEREUPON, Tricia Rowell is called to the stand, duly sworn by the clerk and testified as follows:

THE CLERK: Would you please spell your name for the Court?

MS. ROWELL: T-R-I-C-I-A, R-O-W-E-L-L is the last name.

THE CLERK: Okay. And if you'd please have a seat.

DIRECT EXAMINATION

BY MR. STEPHENS:

Q Ms. Hood, where do you work?

A AT&T.

Q And what do you do at AT&T?

A I am a retail sales manager.

Q How long have you been with AT&T?

A Three years.

MR. STEPHENS: If I may approach the witness, Your Honor.

THE COURT: Certainly.

BY MR. STEPHENS:

Q Ms. Hood, do you recognize this document?

A Yes.

Q Can you please tell the Court what it is?

A Call records.
Q Okay. Would you take a look at it? Tell me --
A Subscriber information. Uh-huh.
Q Okay.
MR. STEPHENS: At this time I'd like to mark this as Exhibit 23, State's 23 for identification. I would actually like to move this into --
THE COURT: Show it.
MR. WILSON, JR.: Without objection, Your Honor.
THE COURT: Without objection. It's admitted.
(State's Exhibit Number 23 [Call Records] admitted into evidence and appropriately marked.)
BY MR. STEPHENS:
Q Ms. Hood, if you would, take a look at this. I'm going to ask you some questions on it. Ms. Hood, was AT&T served with a search warrant --
A Yes.
Q -- for these records for the phone number -- I apologize. Hold on one second -- 843-461-5398, that phone number belonging to a Marissa Cohen?
A Yes.
Q Okay. Can you please take a look at that document and tell me -- I'm on page one of -- it's labeled mobility usage with cell location?
A Yes.

Q And describe to me, if you would, what these columns are, starting with the, I believe that, that is short for connection date?
A Yes. It's the date and time the call was actually connected.
Q Okay. And you can just move through each column.
A Sure. Seizure time --
Q Okay.
A -- is the number of minutes and seconds it took from the time the send button was pressed till the time the call was connected to the network. The originating number is the target number appears in this field, the call is an outgoing call and then call is the -- is in the terminating field. Terminating number, if the target number appears in this field the caller, the incoming call and the call number is the originating number.
Q Stop right there, Ms. Hood. So the originating number, you, you moved through that kind of quickly. What is that?
A It is the call that is outgoing and the call is connected to the terminating number.
Q Okay. And then I apologize. You can keep going forward with the elapsed time?
A Elapsed time is the number of minutes and seconds of the call between the connection time and the end of the call, also known as call duration and does not include seizure time.

Q Okay. The next column?
A Number dialed. This column represents a number that was actually dialed by the calling party or the voicemail access number if the call was forwarded to voicemail. The IMEI is the International Mobile Equipment Identification Number. The IMSI is International Mobile Subscriber Identity Number.
Q Now, that number, that would be the same for every call originating for this phone; is that correct?
A Can you repeat the question?
Q The, the IMSI number, that identification number, any call that leaves this phone would have that same identification number?
A It's reflecting the SIM card. So --
Q All right. You can move forward to the next column.
A The description, this field uses two key characters that describes the parties involved, a short description suffix keyword that describes what is known about the call was handled. Outbound calls will always be described as DIR. M indicates the presence of the AT&T mobility number. Little M indicates the presence of the -- another wireless carrier number. The number two will always be shown in the middle of the two characters and, and is used in the lieu of to. For example, M20 means AT&T mobile to a non-mobile phone number. This report will not show routing by the receiving side of an outbound call. The tables -- I have a table that can

translate those as well.
Q Okay. And so, so I understand that, that basically just tells you this phone's calling another phone and tells you whether or not that phone's in the same network?
A Yes.
Q Is that correct? Okay. And then these kind of coordinate looking numbers over here, what is that?
A That is where the call was made. The -- that's the latitude and longitude of the cell tower.
Q Okay. All right. Now, you mentioned in the third column, I believe, it is connection time. Is that time in universal time or is that a Eastern Standard Time?
A That is local time.
Q The local time. So if it was made here in Georgetown, South Carolina, or Georgetown County, it would be in Eastern Standard Time; is that correct?
A Yes.
Q Okay. All right. Was AT&T also served with a search warrant for phone number 843-617-7814 for the phone -- phone belonging to a James Miller?
A Yes.
MR. STEPHENS: If I may approach the witness, Your Honor.
THE COURT: Certainly.
BY MR. STEPHENS:
Q Can you identify this document?

A Yes. Those are also call records.
Q Okay. Belonging to what phone number?
A 843-617-7814.
Q Thank you.
MR. STEPHENS: Your Honor, at this time I would move to introduce these into evidence as State's Exhibit 24.
MR. WILSON, JR.: Without objection, Your Honor.
THE COURT: Without objection. They're admitted.
(State's Exhibit Number 24 [Call Records] admitted into evidence and appropriately marked.)
BY MR. STEPHENS:
Q Are the columns on this essentially the same as the records we just looked at?
A Yes.
Q And the time is in local time?
A Yes.
Q Okay. No further questions for this witness. Ms. Hood, if you would please answer any questions defense counsel has for you.

CROSS EXAMINATION

BY MR. WILSON, JR.:
Q Good morning, ma'am.
A Good morning.
Q Just briefly, when AT&T gets a subscriber they basically sign a contract with you guys; is that right?

A No.
Q All right. How do they become a subscriber from AT&T?
A There's two different ways. You can come in as a prepaid customer where we don't run credit or you can -- we -- you have the option to run your credit for a postpaid account, but AT&T doesn't have contracts anymore.
Q All right. No contracts anymore. I'm getting old. I'm sorry. I apologize.
A Yeah.
Q All right. Well, when someone comes in to get a phone, say if I came in to get a phone --
A Uh-huh.
Q -- now, I can give you my name but I can give the phone to somebody else; can't I?
A Yes.
Q All right. So nobody else -- AT&T wouldn't have any information about who has the phone, when they have it, who's talking on the phone, that kind of stuff; would they?
A Huh-uh.
Q Okay. Thank you so much. No further questions.
THE COURT: Anything further?
MR. STEPHENS: Nothing further from the State, Your Honor. Can Ms. Hood be excused from her subpoena?
THE COURT: Was it Ms. Hood or Ms. Rood?
A It's Hood-Rowell. I'm married.

THE COURT: Hood-Rowell?
A I go by Hood at AT&T. Rowell is my married name.
THE COURT: Okay. Very well.
A Yes, sir.
THE COURT: Any objection?
MR. WILSON, JR.: Without objection, Your Honor.
THE COURT: You're excused from your subpoena.
A Thank you.
MR. STEPHENS: Ms. Hood, if you would please give those exhibits to the court reporter.
MS. RICHARDSON: The State calls Agent Scott Hardee.
WHEREUPON, Scott Hardee is called to the stand, duly sworn by the clerk and testified as follows.
THE CLERK: Thank you. Please have a seat.

DIRECT EXAMINATION

BY MS. RICHARDSON:
Q Agent Hardee, could you tell us where you were employed in March of 2014?
A I was employed with the South Carolina Law Enforcement Division, which is more commonly known as SLED.
Q And what was your position there?
A In that year I was an arson investigator.
Q And how long were you with the arson unit?
A From 2013 until 2018.
Q And what's your law enforcement experience prior to that?

A I started law enforcement in the year 2000 with the City of Florence Police Department. Then in 2008 I resigned from the Florence Police Department and was offered a position with the South Carolina, South Carolina Law Enforcement Division. Then when I first started I was a field agent, which pretty much is an investigator for a geographical area in South Carolina, and I was assigned to the Pee Dee Region which included the 12 counties surrounding Florence County. Then six months later, because I had experience with crime scene investigations, I was asked to transfer to the crime scene unit, and I worked the crime scene unit with SLED from the latter part of 2008 until I was transferred to the arson unit in 2013.

Q And what is your educational background?

A I have a bachelor of science degree in psychology from Francis Marion University.

Q And what sort of specialized training have you received?

A Well, I went through the South Carolina Police Academy in May and June of 2000. Then every year we had to go through an in-service program where we're kept up to date with current legals, domestic violence and stuff like that. I attended several classes also, elder abuse, things that would help me in patrol and later on in investigations. When I was assigned to the crime scene unit one year later at the City of Florence, I started taking specific classes geared towards

crime scene investigation, photography, ID technician where you use different chemical processes and powders and stuff like that to be able to lift fingerprints or collect blood evidence, went through all of that. Then I went to a school resource officer. I was a school resource officer for approximately six months before I applied to SLED at the alternative school in Florence, South Carolina. When I went to SLED I went through a field training program with a seasoned SLED agent to teach me investigations the way SLED conducted their investigations. When that was completed, I was released onto my own and -- but with -- under the supervision of a lieutenant and a captain, the chain of command. I was assigned cases to investigate. I would investigate those and bring them to resolution. Then when I was assigned to crime scene, I -- we'll -- we're always on call status. Whenever you're in law enforcement you're always subject to callouts. So with crime scene, however, you responded -- you had like a week rotation, and during that time you were teamed up with another SLED agent and we would respond from our home if we were called to -- at the request of a local agency that needed crime scene. When I got there, I'd respond to any sort of crime, whether it was murder, criminal sexual conduct, robberies, anything of that nature. I also received training while I was there, and I was also assigned a veteran crime scene investigator to work under

until I passed certain tests that SLED, SLED's forensics lab required you pass before you could be released on your own and complete your own investigations and issue the paperwork that went along with your investigation. We -- so I attended certain classes, again, like tire and footwear, blood spatter, forensic archaeology, clandestine gravesite, that kind of stuff. Then I worked there for about five years and when Chief Keel returned to SLED after his time with the Department of Public Safety he decided that SLED's crime scene units need to live in Columbia. I lived in Florence because at the time I was told I could respond statewide from where I lived, and he said anyone that wants to remain in crime scene would have to move to Columbia. If you didn't, then you could transfer wherever you wanted to. I liked the arson unit. You still did your crime scene. You still worked the scene, but you also investigated the crime itself, and so I asked to be transferred to arson, and on April 1st, 2013, I was -- my transfer was complete, and then I started the whole training process over again. I was, I was placed with a field training agent. I responded to all calls during my training program, worked fire after fire after fire, same thing I did with crime scene.

Q All right. Let me interrupt you there.

A I'm sorry. Yes, ma'am.

Q So when you were in the fire scene or the arson

investigation, about how many fire scenes have you investigated?

A I checked this morning and it shows 166 that I actually investigated to resolution.

Q Okay. And, and that's while you were with SLED?

A Yes, ma'am.

Q Okay. And do you -- are you a member of professional organizations regarding arson and fire investigation and do you have any certifications?

A Yes, ma'am. I do. I have a certification as a certified fire and explosion investigator through NAFI which is the National Association of Fire Investigators. It is an accredited test. Then I also am a certified vehicle fire investigator all through -- also through NAFI, and I'm a member of NAFI as well.

MS. RICHARDSON: Your Honor, at this time I would offer Agent Hardee as an expert in the area of fire scene investigation and origin and cause detection.

MR. WILSON, JR.: No objection in that area, Judge.

THE COURT: All right. I find that he is so qualified.

Ladies and gentlemen of the jury, you will remember on yesterday when we qualified an expert in another field I explained to you that an expert may give an opinion, whereas a layperson could not, and also may give his reasons for that and you would accept it or reject it based on the weight that

you decided that it would deserve. The same rule would apply to this witness' testimony and any opinions that he may give. Ms. Richardson.

BY MS. RICHARDSON:

Q So on April 29, 2014, in your capacity in the arson unit at SLED, did you get a call to respond to a fire at 10 James in Andrews?

A I'm going to have to correct you. My report is reflecting March 29, not April.

Q I'm sorry, March 29th.

A Yes, ma'am. On March 29th I was requested to respond to a fatal fire in the town -- well, in Andrews, Georgetown County.

Q Okay. And what time did you arrive?

A I arrived at 5:44 a.m.

Q Okay. And what was the scene when you got there?

A There were people walking around. There was fire department there. There was police, a police presence was also there. I saw a single-wide trailer, mobile home with a -- an addition built above and behind it. It was dark, pouring down rain, and we -- and then there's obviously from just a gross examination before I even entered the scene there was a section of the mobile home that had been burned away.

Q And you were in court yesterday when we showed all the photos at the crime scene?

A Yes, ma'am.

Q Okay. And did you actually take those photos?
A Yes, ma'am. I took probably the vast majority of them, but I remember that my lieutenant who was also on scene, Lieutenant Craig Collier at the time, he also took some photos as well.
Q Okay. And again, those were the photos that we showed -- entered yesterday and that Agent Wright went through?
A Yes, ma'am.
Q Okay.
A Yes, ma'am.
Q And just briefly because I know we went over all this yesterday, did you -- you also went through the scene and collected evidence?
A Yes, ma'am. I did.
Q Okay. Let me show you -- okay. I'm going to try to run through this pretty fast. It's just -- gets a little technical.
A That's perfectly all right. I'm used to technical.
Q All right. Let me show you what's been marked as State's Exhibits or State's Exhibit 25. Can you tell me what that is?
A This is an arson can that or an evidence collection can that SLED used, the SLED arson unit used to collect fire debris and samples that we wanted to have tested at our laboratory in Columbia.
Q Okay. And I know we went over this yesterday, but number

one corresponds with cone one that we saw in the pictures yesterday?

A Yes, ma'am.

Q Okay. And State's 26, same thing?

A Same thing. Only difference would be the time that it was collected, the sample number and where it was collected from.

Q Okay. And what sample is that?

A This is sample number two of six.

Q Okay. And 27 and 28, start with State's 27.

A Okay. 27, the same thing, evidence collection can, item -- sample number three of six, fire debris in a separate collection site.

Q Okay. 28?

A Again, the same, sample number four of six and a separate time from when it was collected from the others.

Q Okay. State's 29?

A Sample 29, I mean, excuse me, State's 29 is sample number five of six and, again, it was a separate time when it was collected.

Q And State's 30?

A Glass vial, not an evidence can in this case, and it shows sample number six of six.

Q Okay.

A There you go, ma'am.

Q All right. So when you -- and we saw pictures yesterday, When you collected it from the scene you put it in these canisters?
A Yes, ma'am.
Q And they were sealed at that time?
A Yes, ma'am. I got in the habit of not only sealing the top of the can, but I also placed evidence tamper tape over it -- that was from my time in crime scene -- to show that after I sealed it and initialed and left tape it was not messed with again until it got into the laboratory into their custody.
Q And that's the initials that we see on the top?
A Yes, ma'am.
Q Okay. So once you sealed these cans and put the tape on it and all of that, did you alter or do anything with the contents?
A No, ma'am. Not at all.
Q Did you take precautions not to cross contaminate the samples?
A Always. Yes, ma'am.
Q Did you take precautions to make sure foreign material was not introduced?
A Right. Nothing except for what was collected from that actual collection site at the scene. Once it was in the can I took every precaution not to allow anything else to be contaminated with it.

Q Okay. And after these were all sealed, what did you do with them?
A I -- well, I'll refer back. They were placed inside my assigned SLED vehicle, and then we, let's see here.
Q Did you take them somewhere?
A I did, and I'm going to give you -- on March 31st because the incident happened on a Saturday morning, the lab was closed on that Sunday, which would've been March 30th, March 31st would've been the next working day for the SLED lab, and so on the 31st I submitted them to the SLED forensic services laboratory and received a lab number, and after that it left my custody and was in the custody of the laboratory.
Q Okay. And that's located in Columbia?
A Yes, ma'am.
Q Okay. And explain to us just briefly how the SLED lab works and how evidence is turned over to SLED.
A At the time you would have a login area. You would enter the lab and it didn't matter if I was a SLED agent or if I was a Georgetown County Sheriff's Office deputy or whatever. You're assigned -- you're put on a list. So I would go there, go to the front desk. Say, "Hey, I've got evidence that I'd like to submit." They would take my name and time and stuff and then they would advise me when the next available login technician was there or available. I would then go back, go to their little desk area, their little cubicle, and they

would take the evidence from me, and most of the time I would already have it pre-logged, which is something I can do on a secured website, and that's just paperwork, getting everything done so when I get there all they have to do is scan a barcode. They'll take the evidence. They'll box it up, and then they'll -- they assign it to the actual lab within the SLED laboratory because they have like DNA, fingerprints, in this case trace, trace evidence, and then the trace evidence department would take it from there and it would go into their custody from the login.

Q Okay. So basically, you leave it sealed. You take it there. You give it to them. They log it in. They give it a lab number and you don't touch it or see it again?

A Nope. No, ma'am.

Q And before you did that you didn't alter it or mess with it in any way?

A No, ma'am.

Q Make any changes to it. Okay. And move these out of your way.

A Okay.

Q All right. So now to get back to the morning of the fire, we -- I'm not going to have you go through all the photographs. We did that yesterday with Agent Wright, but did you do -- did you have any contact with the deceased victim?

A With the victim, yes, ma'am. The way I work a scene, if

there's a victim involved or victims, my first priority is to photograph around the victim, photograph the victim so that we can go ahead and get him removed. In this case it was a him, get him removed from the scene so that the family can be a little bit more at ease that he's still not there, but also so that the deputy coroner can start his process of the, of the victim, to schedule the autopsy, to get them ready to go to autopsy and all of that, and that's -- that was my involvement, and we photograph the victim looking for signs of trauma. We photograph the front, the back, and if we see anything that stands out as far as injuries go, we take closer photos of those areas and so that they can be documented properly. Once that's complete and we're confident that we've documented the victim, which in itself is another scene, the victim is a scene, a crime scene itself, we, we release the body to the coroner and then the coroner does whatever he needs to do after that.

Q And while you were on scene, you also had you said Lieutenant Collier with SLED?

A Lieutenant Collier arrived shortly after I did and then Agent Wright arrived because me living in Florence I was way closer than Lieutenant Collier and way, way closer than Agent Wright who lived way off in the state.

Q Okay. And yesterday we learned that SLED is an assisting agency?

A Yes, ma'am.
Q So you were assisting Georgetown County Sheriff's Office?
A Yes, ma'am. We -- I was -- I received a call from OD which stands for officer of the day. They're like our central dispatch, and they, they called me or they called the duty officer and I can't remember if I was a duty officer at the time, but I received a call to call them, and I got the dispatcher, and they said that I was being requested to respond to a fire scene in the Town of Andrews for a fatal fire, and I put on my uniform and get dressed or that's putting on my uniform and then go out the door and make sure I've got all my gear ready and then I drive to Andrews and then I start seeing what they need me for.
Q Okay. So at the time you were doing your evidence collection, photographs, taking things to SLED, Georgetown County was also investigating?
A Yes. In this case really there's -- when we're requested there's four reasons for a request. Like Agent Wright touched on yesterday, we could just be a shovel, they need manpower. The second would be they just need us for an origin and cause report, that they have the manpower and the training necessary to conduct a full investigation and they just want us to decide what caused the fire if we're able to. Then the fourth is to assist, which is what I did in this case. I assisted Investigator Melvyn Garrett with the Georgetown County

Sheriff's Office, and then the final, which is the most involved for us, we take over the entire investigation. You might have an agency that has a police chief and a deputy or an officer and that's it, and then I'll take over the entire investigation, get the warrants and everything.

Q Okay. And so you were assisting and the lead investigator from Georgetown County was Melvyn Garrett, Investigator Garrett?

A Yes, ma'am.

Q Okay. And so you were sort of working hand-in-hand with him?

A Yes, ma'am.

Q Okay. And he was doing a lot of the legwork and interviews and that sort of thing in Georgetown County and in Andrews?

A Yes, ma'am.

Q All right. And as part of your role of assisting, did you get information from him regarding what the homeowner or the -- or Ms. Cohen actually kind of indicated started the fire?

A Yes, ma'am. She indicated that she believed it was electrical.

Q She, and she had relayed to Mr. Garrett or Investigator Garrett who relayed to you that there was some sort of electrical concern with the mobile home; is that right?

A Yes, ma'am.
Q And so that's the initial information that you had?
A Yes, ma'am.
Q Okay. And then you and Investigator Garrett sort of worked together to flush out that information?
A Yes, ma'am. We did.
Q And was there some reports initially when you spoke with the first responders that gave you concern about this maybe not being accidental?
A I like to go into a scene -- there's what you have -- call expectation bias, and that's where you get a preconceived notion of what caused the fire and then that can be problematic if you're trying to look for another cause because you may already have in your mind that, well, this is the cause, you're going to probably not intentionally maybe forget or discount other stuff. So I try to go into a scene with no information so that I can come to the conclusions on my own.
Q Okay. But when you get there, you're talking to the first responders and that sort of thing?
A Yes.
Q So for instance, it was odd that a child was home alone at that time of night?
A Yes, ma'am. That was odd.
Q Okay. So that -- okay. And did you receive any information regarding demeanor and that sort of thing that

also sort of got the curiosity up of those on scene?
A Yes, ma'am. It was reported that the mother wasn't showing much emotion, and so of course, that's a red flag and but then I also chalk it up to the point that people react differently to trauma. So but everybody was reporting that the mother was acting not like she just lost a 12-year-old child.
Q Okay. So after you collected the evidence and turned it over to your SLED laboratory, did you stay in contact with Investigator Garrett about the interviews and the things he, he was doing?
A Yes, ma'am, daily. If I wasn't in Georgetown County I was on the phone with him seeing what he needed from us and just that's part of the whole assisting another agency. We make ourself available to them.
Q And so were you advised about a tip that Officer Garrett had received?
A Yes, ma'am. He told me that -- let's see, that basically he received information that from an anonymous source that the --

MR. WILSON, JR.: Objection, Judge. Your Honor, this is third-party information and it's --

THE COURT: I understand. I understand.

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

THE COURT: Let's let the jury go out for a moment before

we discuss it. Okay.

(Whereupon, the following takes place outside the presence of the jury.)

THE COURT: Obviously, you're about to object to this as being hearsay.

MR. WILSON, JR.: Yeah. Judge, it's hearsay. It's rank hearsay.

THE COURT: Okay. Okay. Let's see if it meets an exception.

MR. WILSON, JR.: Yes, sir.

THE COURT: Now, tell me exactly what the response would be that you're looking for, Ms. -- I, I know he's -- I, I think I've heard enough to say that there was an anonymous tip from Officer Garrett. I have no problem with that because that's not offered for the truth of any matter asserted because you don't know what the tip was, but I want to know what -- if I remember clearly, and maybe this is not what he was going to say or where you were going, but if I remember some of our prior motions there was a tip that either the Defendant or James Miller was involved; is that right?

MS. RICHARDSON: There was a, there was a tip that the insured or that Marissa Cohen had insurance on the property and had combined with the Defendant and Benjamin Brown.

THE COURT: And how is that an exception to the hearsay rule?

MS. RICHARDSON: And Your Honor, I'm not offering it for the truth of the matter asserted, but offering it to show the next steps that were taken in the investigation --

THE COURT: And --

MS. RICHARDSON: -- and that's how they got the information to check with the insurance.

THE COURT: And could you not do that simply by saying, "We received a tip, and as a result of that tip, this is what we discovered or this is what we inquired into and this is what we discovered"? I mean, couldn't we do it that way? I mean, I really have a problem where we have someone saying -- an anonymous source saying the two Codefendants were involved in this thing and had insurance and were conspiring to collect insurance. That's taking it a little far; don't you think?

MS. RICHARDSON: I can limit it at this point just to say based on the information what steps did they take.

THE COURT: And they followed up and they made an independent discovery. Mr. Wilson, I don't see any problem with that.

MR. WILSON, JR.: I don't have a problem with that, Judge.

THE COURT: Okay. All right. Let's take a real quick break, okay, while the jury's out.

OFF THE RECORD

(On the record. The following takes place outside the presence of the jury.)

THE COURT: All right. The jury, please.

(Whereupon, the following takes place in the presence of the jury.)

THE COURT: All right. We have all our jurors and alternates. Ms. Richardson, you may continue.

MS. RICHARDSON: Thank you, Your Honor

BY MS. RICHARDSON:

Q And I think we are at the point that, and don't tell me what the tip was --

A I won't.

Q -- but you were advised that Officer Garrett had received an anonymous tip?

A Yes, ma'am.

Q And based on that tip, what did you do?

A Based on that tip I sent an arson immunity letter to a -- to the insured, to the insurance company that the renter of that property, she took out a contents policy, and part of our investigation is to find out as much as we can about the insurance. So I submitted an arson immunity letter to the insurance company, which gives them the right to provide me with all the insurance information about that policy.

Q Okay. And when did you do that?

A The -- let's see. Bear with me for one minute, please.

I'll get the exact date. I don't want to tell you wrong. I don't have the date on the actual arson immunity letter, but it would have been after, obviously after the fire, within days after the fire.

Q Okay. And tell us what the -- what that arson immunity letter is.

A It's basically a letter that advises the insurance company that as part of the investigation we are going to require them to provide us with policyholder information, pertinent policy information and any application for search -- such policy, the policy premium payment records, history of the premium payment records, material related to and/or the development from the investigation of the loss, including the insured's statements, inventory, the proof of loss and reports generated by private investigators, if any. Basically, it would be their entire investigative file for that loss.

Q Okay. And so you were able to get the information that Jennifer Dinkins with the insurance company gave us earlier this week?

A Yes, ma'am. Yes, ma'am.

Q About Ms. Cohen taking out a $25,000 policy?

A Yes, ma'am.

Q Shortly before the fire?

A Yes, ma'am.

Q And making one premium payment?

A Yes, ma'am.
Q Okay. And did you also receive information back regarding what SLED found with those cans?
A Yes, ma'am. I did.
Q And what was that?
A The --
Q Just briefly.
A Okay. Briefly.
Q That were there accelerants found?
A Yes, ma'am. In some of the items there were accelerants found.
Q Okay. And did you also receive information as to whether the -- what the cause of death for the child was?
A The pathologist ruled it as a homicide.
Q Okay. And but no other trauma? It was smoke inhalation; is that right?
A It was -- yes, ma'am, inhalation of products of combustion.
Q Okay. So based on that information did you at that time get cell phone information for Ms. Cohen?
A Yes, ma'am. I did.
Q Okay. And again, she'd given statements initially that had her phone number?
A Yes, ma'am.
Q To Mr. Garrett or Investigator Garrett had her phone

number from the statements and interviews?
A I believe so.
Q Okay. And so let me show you what has been marked as State's Exhibit Number or what's been introduced as State's Exhibit Number 23. Is that -- are those those records?
A Yes, ma'am.
Q Okay. And those were from the period you requested was from February 1st till April 11th?
A Yes, ma'am.
Q Is that right, of 2014? And did you also obtain cell phone records for James Miller and Randy Collins?
A Yes, ma'am. I did.
Q Okay. And those have already also been introduced as State's 24, AT&T records for James Miller, and State's 20, T-Mobile records for Randy Collins?
A Yes, ma'am.
Q Okay. So you got three sets of phone records?
A Yes, ma'am.
Q All right. And all for the same period of time, about two months, a little over two months?
A Yes, ma'am.
Q Okay. And did you dig through those records and analyze them?
A Yes, ma'am. I looked through them.
Q Okay. And what did you find?

A I found that Marissa -- excuse me, Marissa Cohen and Randy Collins had -- their numbers had been in contact with each other. However, James Miller's number was not in contact with Marissa Cohen's phone.

Q Okay. So did you provide a summary of that information in your report?

A Yes, ma'am. I did.

Q Okay. And did I also ask you to pull out the dates of the fire and highlight that information?

A Yes, ma'am.

Q Now, let me show you what's been marked, is being marked, I'm sorry, as State's Exhibit Number 32 for identification. All right. And tell us what that is.

A Those are excerpts from the phone -- the complete phone records that I got for those dates involved, and I had highlighted the days where the two numbers were in contact with one another.

Q Okay. And this is specifically from March 28th through March 29th?

A Yes, ma'am.

Q Okay. And these are just the records for Marissa Cohen and Randy Collins?

A Yes, ma'am.

Q Because there was none between Marissa and James?

A That's correct.

Q Okay. All right. And I know no one can see the details of this but just to -- so you have two months of records. Prior to these days, the 28th and 29th, how much contact in February and, and most of the month of March was there between Marissa Cohen's phone and Randy Collins' phone?

A Repeat the dates you're asking me for again. I was looking them up.

Q Was there any contact in the month of February?

A No, ma'am. Oh, correct. Let me make a correction. Cohen and Collins were in contact on February the 8th, 2014 at 4:46 p.m.

Q Okay. Anymore in February?

A No, ma'am.

Q So one contact in the month of February?

A Yes, ma'am.

Q Okay. And what about in the month of March?

A Contact was again initiated on March 28th, 2014, at 12:11 p.m., 3:27 p.m. and 9:07 p.m. on that date.

Q Okay. And that's the day before the fire?

A Yes, ma'am.

Q So we've got one, two, three calls the day before the fire?

A Correct.

Q Okay. And then the morning of the fire?

A Contact was initiated again on March 29th, 2014 at 2:50

a.m., 3:01 a.m. and 3:24 a.m.
Q And so that's three calls before you even got there; right?
A Yes, ma'am.
Q Okay. And then what about after that for the rest of the month of March into April 11?
A The final contact was on March 31st, 2014 at 10:59 a.m.
Q Okay. And did you also at some point learn that Mr. Collins had some additional phones?
A Yes, ma'am.
Q Okay. And did you seize those phones?
A Yes, ma'am.
Q Okay. And did you receive anything of value from them for this case?
A Hold on one second. No, ma'am. Not really, not that I remember, and without actually reviewing the cell dump I wouldn't.
Q But you didn't notice any -- notice anything?
A I didn't notice anything that I would have listed in my report.
Q Okay. And based on all of that and Investigator Garrett's investigation, did you -- what did you do with the two additional cell phones?
A Well, actually, after I got the warrants I -- for the two cell phones, the -- I handed them over, let's see.

Q You didn't seize them. Andrews did that; that's right?
A No. Yeah. I'm sorry.
Q Okay.
A Yeah. Andrews Police Officer Oliver Nesmith served the warrants on Collins and obtained the two cell phones.
Q Okay. All right. And so, tell me about what you and -- you did on June 4th of 2014?
A On June 4th I met with Investigator Garrett at the Andrews Police Department City Hall. They're all connected, and I had custody of the cell phones, and we were going to return them to Randy Collins.
Q Okay. And he had already done some additional interviews and that sort of thing?
A Yes, ma'am.
Q He had already interviewed or gotten a statement from Randy Collins?
A Yes, ma'am.
Q From James Miller?
A Yes, ma'am.
Q And from several other people in the community?
A Yes, ma'am.
Q Okay. Including the lady we heard from earlier with the kerosene receipt?
A Yes, ma'am.
Q Okay. All right. And so you and Investigator Garrett

were at the Andrews Police Department and Town Hall; is that right?
A Yes, ma'am.
Q Okay. And tell me what you're -- what you were doing?
A We were standing outside. Randy Collins drove up or rode up. I believe he was brought there, and we got out. We started talking to him. We asked him if he wanted to answer some questions, be interviewed by us, and he agreed. We found a room inside. It was actually the council chambers for the town hall. We went in there, and we advised him of his rights, and we started talking to him.
Q Okay. And you and Officer Garrett went there with the hope of talking to him; is that right?
A Oh, yes, ma'am. Yes, ma'am.
Q Okay. And once he got into the room and he agreed to talk with you?
A Yes, ma'am. He did.
Q Okay. And how did he appear? How was his demeanor?
A He seemed fine. I asked him, and he, he seemed fine. He said he would talk to us. He said he hadn't gotten a lot of sleep and he ate last night, the night before a burger or something, and that was pretty much it.
Q Okay. Did you handcuff him?
A Oh, no, ma'am. No.
Q Okay. Did you threaten him to make him go in and talk

with you?
A No, ma'am. I did not.
Q Did you promise him anything?
A No, ma'am.
Q Okay. And did he know what you were talking with him about?
A Yes, ma'am. We told him.
Q Okay. And he -- you advised him that you were talking with him about the fire?
A Yes, ma'am.
Q Okay. And he had already been talked to one time by Investigator Garrett; is that right?
A Yes, ma'am.
Q Okay. And did he appear to be under the influence of anything?
A No, ma'am.
Q And did he appear to be clearheaded?
A Yes, ma'am.
Q And did you offer him anything to drink?
A Yes, ma'am. We actually offered him -- we gave him a can, a can of Sprite, 12 ounce can of Sprite.
Q Okay. And did he ask for anything else as far as food or drink?
A To use the bathroom, a couple of smoke breaks, but at that time, no.

Q Okay. Let me show you what was previously marked for identification as State's Exhibit Number Two. Tell me what that is.
A This is the -- a SLED form, and it's actually numerized [sic] on the bottom. It's our -- the form that we use when we're advising someone of their rights, and it also includes their waiver of rights.
Q Okay. And specifically, whose waiver of rights is this?
A This is Mr. Collins.
Q And when is it date -- what date and time?
A It was dated June 4th, 2014. The time is 10:20 a.m.
Q And how is that form administered or those rights administered to, to Mr. Collins?
A I always read the rights to people, and as you can probably tell I like to talk. So I read the rights to people and then I'll have them initial between next to each right and then at the bottom of their rights after they initial it says, "Do you understand these rights," and I'll ask them to write yes or no. In this case he indicated yes, and then the next -- very next line is, "Do you wish to talk to us at this time," and again, he indicated yes by writing the word yes.
Q Okay. And then is it signed?
A Yes, ma'am. It's signed by him and then it's witnessed by Investigator Garrett as well as myself.
Q And you were present, read those rights to Mr. Collins

and had him initial and sign if he agreed to talk with you?
A Yes, ma'am.
Q And he did agree?
A He did agree.
Q Okay. And these are the standard Miranda rights that we hear on TV, you have the right to remain silent?
A Uh, yeah. Pretty much standard.
Q All right. And have you made any -- this is actually the original form?
A Yes, ma'am.
Q Have you made any alterations, changes or additions to it?
A No, ma'am. Not at all.
Q Your -- and this is how it was when you got it from him?
A Yes, ma'am.
Q All right.
MS. RICHARDSON: At this time the State would offer State's Exhibit Number Two into evidence.
MR. WILSON, JR.: Your Honor, just subject to previous.
THE COURT: All right. Noted and admitted.
(State's Exhibit Number Two [Miranda Form] admitted into evidence and appropriately marked.)
BY MS. RICHARDSON:
Q Now, you said you had secured a room in the county council portion of the building?

A Yes, ma'am.
Q Okay. And who was in the room?
A Myself, Investigator Garrett and Mr. Collins.
Q Okay. And again, was he restrained in any way?
A No, ma'am.
Q And after you went over the rights, did you use any sort of apparatus to record what was going on?
A Yes, ma'am. I had a little Kodak camcorder that recorded onto an SD card, and the room itself was not set up to record interviews, and so I got mine so that it could be memorialized on, on video as well as statements later on.
Q Okay. At that time what was SLED's policy and procedure regarding witness and suspect's statements?
A SLED really didn't like to record video, audio statements at the time. We would leave it up to the local departments that we worked with. If they had an interview room that was set up to record they would, but a disclaimer to that policy was that if a prosecutorial authority wanted it memorialized then we would, and we didn't have a prosecutorial authority because, I mean, it wasn't -- at that time we were just talking to him, trying to find out what his involvement, if there was any, and so but I took it upon myself to record the video or the best I could.
Q Okay. Now, did SLED -- had you been issued any equipment for that purpose from SLED?

A No, ma'am. No, ma'am. It was my personal camera, video camera.
Q All right. Now, tell me what you -- what kind of camera you had again?
A It was like a Kodak Playsport. It looks like a cell phone, and it was waterproof. I bought it because I was wanting to -- when my children and I go to the beach and my wife we wanted to go to -- I wanted to be able to get something that wouldn't get messed up, and it could go in the water. It could go in the pool. It was waterproof for like a few -- 10 feet or something, and, and so that's why I got it. It was just something cheap.
Q Okay. And what kind of power did it use?
A Almost like one of those little point and shoot camera batteries, the little squared ones.
Q Okay. So not individual like AA or AAA or anything like that?
A No, ma'am.
Q But actually a battery pack issued for that camera?
A Yes, ma'am. It was --
Q And how would you recharge it?
A You would have to turn the camera off and plug in a micro, like a little micro USB plug and then plug the camera into the wall outlet.
Q Okay. And if it was plugged in were you still able to

record?
A Not that I remember. It was, like I said, it was cheap and kind of funky.
Q Okay. And did you have any extra batteries?
A I believe I had one battery, one extra battery at the time.
Q Okay. And did -- so you used that camera to record?
A Yes, ma'am.
Q Okay. Now, did you hide it in your pocket?
A Oh, no, ma'am. It was in front of me. The way we were set up you had Mr. Collins across from me. I was -- and so he would have been like on that side of here. I was right here. The camera was between us.
Q Okay. So clearly visible?
A Yes, ma'am. It was, it was on the table.
Q Okay. All right. And so at what point did you begin recording?
A Shortly after he was advised of his rights.
Q Okay. And so then you and Officer Garrett began asking him questions?
A Yes, ma'am.
Q And at some point what happened with the camera?
A The battery died and I didn't realize it at the time, and so I had to take that battery out and then put in the spare battery so that we could continue recording.

Q And was that about an hour and a half into it?
A Give or take minutes.
Q Okay. And how long was he there altogether?
A Roughly three hours I believe. When I -- he signed the waiver at 10:20 and I believe at the end of the video it showed about 1:50 p.m.
Q Okay. And then did you take any breaks during that?
A Several bathroom breaks. He and Mr., Mr. Collins and Investigator Garrett both smoked. There were smoke breaks. That was it.
Q And during this interview did he at any time indicated -- indicate that he no longer wanted to be questioned?
A No, ma'am. He did not say, "I'm done answering your questions."
Q And did you threaten him in any way?
A No, ma'am. That's not in my nature.
Q Okay. And did you deprive him of food or drink or restroom breaks or anything like that?
A No, ma'am. It was my point to make sure he was comfortable.
Q And did you have any concerns that maybe something was wrong or that he was under the influence or didn't understand what was going on?
A No, ma'am.
Q And you were able to carry on a conversation with him?

A Yes, ma'am.
Q And when you, when you interview someone, is it your first step to try to get them to tell you their side or what they remember?
A Yes, ma'am. Well, the first step is always just to get to know them better to make them feel comfortable, and then we go into what they call an interview process where it's not accusatory. You're basically just trying to get information from them about obviously a certain topic.
Q Okay. And then you ask him to give you the information?
A Yes, ma'am.
Q Or lock himself into his side of the story?
A Exactly.
Q Okay. And then what's the next part?
A Usually by the time we have a witness that we're wanting to interview, we already have some background information, and so that helps us to know whether or not he's being less than truthful, and there were certain things that Mr. Collins said that were less than truthful to the information that we had available to us, and so we questioned him about those inconsistencies.
Q Okay. And at that time you had -- you already had the phone records?
A Yes, ma'am.
Q You already had the kerosene receipt?

A Yes, ma'am.
Q You already had the insurance information?
A Yes, ma'am.
Q And you already knew that accelerants were used?
A Yes, ma'am.
Q You already knew it wasn't an electrical situation like Ms. Cohen had initially said?
A Yes, ma'am.
Q And you already knew the results of several interviews that Investigator Garrett had done --
A Yes, ma'am.
Q -- in the community? Okay. And so when he initially gave you the information did he initially admit to any involvement or knowledge?
A No, ma'am. He said he had nothing to do with it.
Q And did he tell you where he was?
A He said that he was at a, a local gathering place, Carnell's Bar with his cousin or nephew, Mr. Miller.
Q James Miller?
A James Miller.
Q Okay. So he initially told you he was with Mr. Miller?
A Yes, ma'am.
Q And then did you ask him if he had had any contact with Ms. Cohen?
A Yes, ma'am.

Q And what did he tell you?
A He said no.
Q Then at some point did you confront him with what you knew differently?
A Yes, ma'am.
Q And then did he change his story in that regard?
A Yes, ma'am, and he became more agitated.
Q And then he did admit to some contact with her?
A Yes, ma'am. He did.
Q Now, right about the time you got to this point, that's when the camera turned off?
A Unfortunately, yes.
Q Okay. Once the, the tape was on, was there anything that changed or anything that you did or Investigator Garrett did to threaten, coerce, promise him to make the statements?
A No, ma'am. Again, as I stated earlier, that's not, that's not in my nature. I'm not trying to put someone in jail just to put somebody in jail. I want to make sure -- and I'm not going to coerce or force them into doing something like that.
Q Okay. Then once you realized it was off it was turned back on?
A Yes, ma'am. And changed the battery.
Q And then I believe there's another point where you may have paused it to go -- for him to go to the restroom; is that

right?
A Yes, ma'am.
Q And when he went to the restroom, was he allowed to do that on his own?
A Sure. Yeah. Now, let me -- now, one of us may have gone to the bathroom as well, but not for the purpose of making sure he came back or kept an eye on him or anything like that. We went because we had to go, also.
Q And basically, what did he, he end up telling you?
A He told us that Marissa Cohen asked him to burn the trailer down and she would pay him $5000.
Q And did he say who else was involved?
A James Miller.
Q And did he indicate if he had actually done that?
A He indicated that he went with James Miller to that location and he put all the blame as far as starting the fire onto James Miller.
Q But admitted that he was there.
A Admitted he was there.
Q And after the interview was over, did you take him into custody?
A No, ma'am. We -- during the interview we told him that he was going to go home that day no matter what he told us and he went home.
Q And then he was subsequently arrested?

A Yes. We got warrants for his arrest and he turned himself in.
Q Okay. And based on the information he provided, you also got warrants for James Miller?
A We got warrants for James Miller as well as Marissa Cohen.
Q All right.
MS. RICHARDSON: Your Honor, I'm not sure if I did it yet, but I wanted to go ahead and offer State's 32 into evidence.
MR. WILSON, JR.: Without objection, Your Honor.
THE COURT: Very well. It's admitted.
(State's Exhibit Number 32 [Poster - Phone Records] admitted into evidence and appropriately marked.)
BY MS. RICHARDSON:
Q And I'm going to show you what's been marked as State's Exhibit Number Three. Do you recognize that?
A This is the copy of the, the DVDs that I made of the interview from that camera, video camera.
Q Okay. And are these complete copies of what was recorded?
A Yes, ma'am.
Q And you had to split it up on three disks?
A Yeah. It was a rather large file, much larger. I had to record it onto an SD card, held a lot more information on the

SD card then it did on the DVDs when I burned them.
Q Now, on these DVDs is that everything that was recorded?
A Yes, ma'am. It's everything that was recorded onto that SD card.
Q Okay. And did you change it or alter it in any way?
A Only when I had to split it up onto the three DVDs.
Q And did you purposely turn off the camera or avoid recording parts of the interview?
A No, ma'am. I did not.
Q I have no further questions. Answer any questions Mr. Wilson may have for you.
A Yes, ma'am.
THE COURT: Are those identified and in?
MS. RICHARDSON: They are. They're not -- Your Honor, based on your previous rulings we're going to have to --
THE COURT: Okay. All right.
MS. RICHARDSON: -- we'll go put it on a better format for the jury.
THE COURT: Excellent. Okay. Mr. Wilson.
MR. WILSON, JR.: May it please the Court, Your Honor.

CROSS EXAMINATION

BY MR. WILSON, JR.:
Q Good morning, Agent, how you doing this morning?
A I'm doing well. How are you?
Q Doing well. Normally I don't use the podium but I'm

going to need it today.
A Apparently.
Q Let's talk about a couple of things. Okay.
A Okay.
Q The phone records.
A Yes, ma'am -- sir. I'm sorry. I'm used to saying ma'am.
Q That's okay. That's all right. See I've been called worse.
A Me, too.
Q I've been called worse. Let me ask you about the phone records. The phone records that you all actually found from Randy Collins phone, correct, you all got the dump from the two cell phones; correct?
A Yes, ma'am -- sir.
Q That's okay. That's all right. We're switching. I understand. That's all right. You've got the two cell phones from him; correct?
A Correct.
Q By way of warrant?
A Yes, sir.
Q Okay. And then you all went through those cell phones.
A Yes, sir.
Q Okay. And a dump, just so the jury understands, explain what a dump is to the jury.
A With my experience it is everything that is contained on

that phone's memory, text messages, photographs, music, anything that was on that cell phone. There's technology that I have no information about that can dump everything to another hard drive so that we can get a copy of it.

Q Okay. Very well. And there was nothing found on those cell phones; correct?

A No, sir.

Q Of evidentiary value --

A Perfect. Yeah.

Q -- in this matter. Okay. And then on the cell phone where you got the actual subscriber information, all right --

A Yes, sir.

Q -- all right, and just so I'm correct, this is the 843-461 -- excuse me, 843-461-5398 number?

A Yes, sir. I believe so.

Q Okay. All right. And on this particular phone record on page --

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

BY MR. WILSON, JR.:

Q Do you have the records up there with you?

A I believe I do.

Q Okay. Will you turn to page I believe it is 71 for me.

A Hold on.

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

A I'm having to look through several of them. You said the 5398.
Q Yeah. I believe that's it. Yeah.
A Okay. And you said page 70 --
Q 71. Okay. All right. Do you have that page?
A I do, sir.
Q Okay. Now, let me ask you this, when you all do an investigation into this matter and you're looking at the records for phones, you're looking at not just the numbers. You're also looking at the times that the numbers were called; right?
A Correct. We --
Q Okay.
A Yeah, date, time all that.
Q All right. Will you tell me, and you said earlier under oath, what times those phone numbers were called Randy Collins, what time Marissa Cohen called Randy Collins.
A Okay. Yes.
Q All right. What time do you say?
A Oh, I'm sorry.
Q That's okay.
A Let's see. Refresh my memory. Randy Collins' number is 5398?
Q Yes, sir. Yes, sir.
A Okay. And I believe Marissa Cohen's was 5314?

Q That's correct.
A All right. Let's see here.
Q And if, if I could expedite I can help you out if you want me to.
A Please. That would help.
Q Under oath I think you testified 12:11 on the 28th; right?
A Correct.
Q Okay. 3:27 p.m. on the 28th; right?
A Correct.
Q And then 9:07 p.m.; correct?
A Correct.
Q What time was the fire?
A The fire was reported in at like 1:30.
Q 1:30?
A Around 1:30.
Q Around 1:30. Let me ask you a question, Marissa Cohen on her phone made calls. Do you have her records up there with you?
A Her records? Yes. I believe I do.
Q All right. Marissa Cohen made phone calls, excuse me, phone calls at one something in the morning; do you recall that? There were two numbers she called. One she called at --
THE COURT: What, what day, Mr. Wilson?

MR. WILSON, JR.: I apologize. This is the 29th, Judge --

THE COURT: Okay.

MR. WILSON, JR.: -- in the early morning hours.

A 29th. Okay. Hold on.

Q And I misspoke, actually, the records I think you were looking at were Marissa Cohen's?

A Okay.

Q I apologize.

A It's easy to confuse them.

Q I'm sorry. That's my bad. That's my bad.

A So go back to the time you want me to look at.

Q That's right. At one -- I want you to look at on 3-29-14 at 1:02 a.m. in the morning and then at 1:03 a.m. in the morning.

A Okay. I'm looking at those right now.

Q Okay. And tell the jury what numbers were dialed.

A Okay. Let's see the originating number was 843-6 -- 461-5398, and it dialed, if I'm reading this correctly, 843-325-4668.

Q During your investigation did you all pull records for that number?

A Well, I'd have to go back and look at all my search warrants first.

Q Well, let me ask you this, Marissa Cohen's number is, and

I apologize, I misspoke earlier, just to correct this for the jury, that's Marissa Cohen's number calling somebody else; correct?

A Yes.

Q Okay. That number and I need to know this, this is important for the jury because you say -- you testified earlier that the fire occurred around 1:30?

A Okay.

Q So what I want to know is did you investigate who that number belonged to? Do you know?

A Hold on one second.

Q Yes, sir.

A I did not obtain a search warrant for that number, so no, I did not.

Q Would you be surprised if I told you that number was an AT&T number?

A I will take your word for it.

Q Okay. All right.

A I'm not surprised.

Q And you still don't have any idea who that number was at all, period?

A No, sir.

Q Okay. All right. Now, let me talk to you about the actual interview that counsel was talking to you about, and she asked you whether or not you all made promises to Randy

Collins?
A Correct.
Q You said no under oath earlier?
A Correct.
Q That's not exactly true; is it?
A Yeah. I mean, we didn't make him any promises except for that he would go home that afternoon.
Q Did you all not promise Randy Collins that if he gave you all a statement that you all were going to talk to the prosecutor for him?
A Well, yes, but I mean, that's part of what we normally do. We -- if someone assists us in an investigation we do talk to the prosecutor or the solicitor in this case.
Q Completely understand that. I'm only asking if you promised him that.
A We said we would talk. We didn't say we'd promise we'd would talk. So it's a matter of semantics.
Q Well, let me ask you this then, you said that you all never threatened Randy Collins; correct?
A Correct.
Q Didn't you all tell him he was going to go away for a long time?
A As part of the crime, yes.
Q Okay. Well, let me ask you this, did you tell Randy Collins in this interview that it was either him or Marissa?

A Yes.
Q You all told him you wanted Marissa; correct?
A Correct.
Q A number of times; correct?
A Correct.
Q Okay. You have a degree in psychology; right?
A Yes, sir.
Q Okay. And where did you get your degree from?
A Francis Marion University.
Q Now, and you -- I know you're a seasoned officer, seasoned agent for a long time; correct?
A Correct.
Q You've done a lot of interrogations?
A Correct.
Q Okay. And a lot of fire investigations?
A Correct.
Q There's something called the breaking point; right?
A Correct.
Q Okay. And in psychology and in confessions a breaking point is when someone just can't take it anymore; right?
A Correct. They have exhausted all defenses.
Q Okay. All right. So in this case when you were talking with Randy Collins he made a previous statement where he said, "I was not there, I did not do it"; right?
A Correct.

Q And you all knew at the time that he couldn't read or write because Mr. -- excuse me, Investigator Garrett, when he first talked to him, had to write a statement for him; didn't he?
A Correct. But my understanding he can read.
Q All I'm asking you is the first statement that he gave had to be written for him; correct?
A Correct.
Q He didn't write that statement; did he?
A No. He wrote -- Investigator Garrett -- I wasn't there.
Q I understand.
A But Investigator Garrett wrote it for him.
Q Okay. And when he gets into the actual interview room, you all are talking to him, and he tells you that he has had a stroke; right?
A Correct.
Q Okay. So -- and let me ask you this, your impression, you talked about it earlier, you said that he seemed fine and he was even keel or at least proverbially even keel.
A Right.
Q When he presented to you guys at that particular location, the city hall, there's a police station connected to that or a jailhouse; right?
A I don't believe it has an actual cell, but it is a police department.

Q Okay. All right. So when he comes up you guys are waiting for him outside?
A Yes, sir.
Q All right. Now, when he actually presents himself to you guys there he's not coming there to talk to you all; is he?
A No. Not at all. No.
Q No. He didn't know you all were going to be there?
A No.
Q Okay. The reason that he came down was to retrieve the two cells phones which they promised to give him; right?
A Yes, sir.
Q Okay. All right. So he didn't come down there expecting to have a conversation with two investigators?
A No.
Q All right. So when he gets there, the reason he came was because Nesmith, Officer Nesmith, who he's known for a long time said he was going to give him his cell phones back; right?
A Correct.
Q All right. Now, Officer Nesmith had possession of those cell phones; correct?
A No. I did.
Q You had possession of the cell phones?
A I took custody of them so that I could get the cell dumped.

Q Okay.
A I took them from their evidence. Brenda Lambert signed them out to me and then -- so I still had possession of those cell phones when Mr. Collins was there.
Q So why didn't you all then if you had the cell phones why not just meet him in Georgetown? Why go to Andrews?
A Andrews was closer and Mr. Nesmith was able to get him together so that we could speak with him.
Q Mr. Nesmith was willing to get him to go there to speak with you all?
A Correct.
Q So in essence you all tricked him to get down there?
A Correct.
Q Okay. Fair enough. All right. So he gets into the interview room with you guys; right?
A The council chambers, yes.
Q Okay.
A For the town.
Q All right.
A It wasn't set up as an interview room.
Q Okay. I apologize. You all get into the conference room?
A Right.
Q Okay. How big is this conference room?
A It's -- can't give you exact measurements, but I would

say it was from that wall right there probably to her desk and probably from here to about where the partition is right there. It was a regular size room with a conference room table, and if I remember correctly, it had sections that the council members could sit at.

Q Very well. In the room, and just so I'm correct, and I'm going to just kind of -- Randy Collins is sitting this way; correct, and if you're sitting -- you'd be sitting to his left?

A Where's your orientation?

Q I'm against the wall. I'm Randy Collins.

A Oh, you're Randy Collins.

Q I'm sitting in the room.

A Okay. Yes. He would have been there, and I would have been directly across from him.

Q Okay. And then Investigator Garrett was where?

A He was to the right of -- from where you're sitting he was to the right.

Q Okay. All right. And where was the door? In relation to where Randy Collins was, Randy Collins got his back to the wall, where's the door at?

A The door would have been further to his right.

Q All right. This way?

A Correct.

Q Behind Investigator Garrett; correct?

A Yes.
Q Is this young man right here Investigator Garrett?
A It is. He is. I'm sorry.
Q Mean looking fellow right there?
A I wouldn't characterize -- you said mean? I wouldn't characterize him as mean.
Q I'm joking, joking around, but that's Investigator Garrett; correct?
A Correct.
Q Okay. And the two of you all had him in the room together?
A Correct.
Q Okay. All right. And you all began to talk to him about what happened?
A Yes, sir.
Q All right. And you all talked to him pretty much ad nauseam about his personal life and what he was like and all that good stuff; correct?
A Correct.
Q Now, he tells you all that he basically has a sixth or seventh grade education; right?
A Yes. He talked -- we asked him about his educational level, I believe.
Q You know he's not well-equipped mentally; correct?
A I know that he had -- mentally, I can't make that

assessment. I know that his educational level stopped around seventh grade.

Q Okay. All right. Was he like every Defendant? Like, was he like me?

A No.

Q If he sat in the room with me and we talked, is he like me?

A Of course not. You have an advanced degree.

Q Absolutely. Is he like every Tom, Jane in the street? Is he like that? Did he present to you that way? You've done a lot of this.

A To me he presented, presented as someone that knew his wherewithal. He could talk to us.

Q Absolutely.

A And carry on a conversation, an intelligent conversation on the questions that we were asking him.

Q Okay. All right. Well, let me ask you this then, at some point in time in the interview when you all were talking to him, you all asked him about his living conditions; correct?

A Correct.

Q All right. What did he -- tell the jury, what did he tell you all?

A Well, I'd actually been by his trailer. He lived in a mobile home.

Q Yes, sir.
A He said that, if I remember correctly, that there was no power.
Q Yes.
MS. RICHARDSON: Your Honor, may we approach briefly?
(Whereupon, a bench conference is held in the presence, but out of the hearing of the jury.)
Q You all asked him about what he ate for dinner; right?
A Yes, sir.
Q What did he tell you?
A He had a burger. He likes burgers.
Q Okay. That he likes burgers. Okay. And then you all asked him, you know, how he pretty much lives in his, in his trailer; correct?
A Correct.
Q All right. And he said he had a cooler; correct?
A I believe --
Q If you don't recall it's okay.
A I'm going to have to go with I don't recall for sure then.
Q All right. But he's not living, based on what you know from this situation, he's not living like an average person; is he?
A No.
Q Okay. Very good. All right. I want to go back and talk

briefly about the fire itself, and I know that you've been qualified in this case as an expert regarding the fire.

A Yes, sir.

Q Okay. You've seen pictures of the scene, of the actual house burning; correct?

A Correct.

Q Of the burned house?

A Right.

Q All right. There's actually standing water on the ground; isn't there?

A Yes, sir.

Q All right. And it was pouring rain?

A Cats and dogs.

Q Right. It was torrential that night; correct?

A Correct?

Q How difficult is it to light something in the rain?

A Well, that, again, that depends. I mean, if you're lighting a piece of wet paper with using just a match you're not going to overcome the water, but if you have an accelerant, which the purpose of an accelerant is to accelerate the fire, then you stand a better chance of lighting it.

Q But let me ask you this, now, earlier one of the other investigators, I think the expert his name was Wright, Agent Wright.

A Yes, sir.
Q He testified that basically you would have to be inside the residence and he -- what he observed to be a pour pattern where someone was going back and forth and then backed out of the actual room. Do you recall that testimony?
A Yes, sir.
Q Is that, in your opinion, also about what happened?
A My opinion is that there -- the accelerant was in the room prior to the fire being lit.
Q Well, I mean, that's logical; right?
A Correct.
Q Right. One follows the other. What I'm asking is do you agree with the fact that he says someone was in the room pouring the accelerant?
A I can't testify to that because that would me -- I would have to speculate what a person did prior to the fire. All I can tell you is that the accelerant, based on the evidence that we have, based on the dog's alerts, based on the burn patterns in the house, that the accelerant was in the, in the room at the time of the fire.
Q Okay. So your testimony today as an expert in this area of arson, and I know that you're an expert, is that you disagree with the doctor, with the, with the agent, with Agent Wright?
A Not at all. His testimony states that the accelerant was

in there. I can't testify how the accelerant got in there. I can only testify to that it was present at the time of the fire.

Q Well, let me ask you about the burn patterns that he talked about. Remember when he talked about the irregular burn patterns?

A Correct.

Q Okay. Irregular burn patterns don't occur if the accelerant is in one location; correct?

A Those burn patterns, no. The accelerant would have to be in separate locations.

Q All right. And indicative of someone actually going into that area and actually putting it. You've got to place it. You can't just -- how do you -- how does it get in there?

A Well, in that case a person would have to go in there and pour it.

Q Okay. Very good. That's what I'm after. All right. Now, if the door's unlocked, the person who went inside of the actual residence to actually pour it had to have a key; correct?

A Or the door was unlocked. I mean, whether it was unlocked prior to them getting in there or if there was a key.

Q All the testimony though that's come in from the first responders, and I know you were in here, and even from yourself is that they had to gain entry; correct?

A Yeah. They had to force entry.
Q They had to force entry. So again, the accelerant was already inside; correct?
A Correct.
Q All right. Now, that night when it's raining cats and dogs and it's pouring out there, pouring rain out there, your testimony would be that, again, somebody on the outside would have to have an accelerant, kerosene, gasoline, some form of petroleum, jet fuel, something that would help it ignite, otherwise the rain is going to drown it out.
A Correct.
Q Okay. All right. Now, before you all talked with Randy Collins did you all have any, and I know you collected a lot of stuff over here and that this was a lot of evidence. This is -- they've got boards, calls. They got forensic evidence from the scene. Did you all collect one piece of evidence other than his statement which ties Randy Collins to this crime?
A No. The evidence did not point to him.
Q Okay. All right. And as a fire investigator, you've investigated fires where you know, look, we can identify who burned this house.
A Yes.
Q Yes. And then you can actually use the evidence that you have to identify that person and then, you know, try them or

let them do whatever, be charged or whatever's going to happen; correct?

A Correct.

Q In this case, when you all talked to him, and you said you all let him go that day; right?

A Correct.

Q You all didn't have a warrant for his arrest; did you?

A Not at the time, no.

Q No. Because you didn't have probable cause at the time; did you?

A No.

Q Okay. All right. So when you sat down with him that day and you told him, "Look, it's either going to be you or Marissa," he then had a choice to make; right?

A Correct.

Q All right. And now, this was a month later, over a month later.

A Yes.

Q You talked to him. This happened March 29th, 2014; is that right?

A Correct.

Q All right. And you all didn't talk to him in the interview room until June 4th, I believe?

A June 4th.

Q 10:20 a.m.

A Correct.
Q All the way up till 1:51 p.m.?
A Correct.
Q Okay. And of that interview how much of that interview when he's there in that span of time, how much of that interview is actually on tape, that three hours and 21 minutes, 31 minutes? I'm sorry.
A I can't give you an estimate. I'd have to go back and look at it.
Q Would it be -- well, let me -- would it surprise you if I told you it was -- you all were missing 57 minutes of time?
A No. If you're saying that it wouldn't surprise me. I can't imagine why you would lie.
Q I'm sorry.
MR. WILSON, JR.: I had to laugh, Judge. I apologize, Your Honor. I'm sorry.
BY MR. WILSON, JR.:
Q I, I guess my question is this, really, with that time that's missing and the most critical time where you begin to then say, "Let me tell you what we think happens", right --
A Correct.
Q -- which is the last thing you see on there before you come back and then Agent -- excuse me, Investigator Garrett is drawing a diagram of what he believes happened.
A Right.

Q All that is missing; isn't it?
A Yes, sir.
Q About what led up to Randy Collins saying, "Look, I want to tell you something."
A Right.
Q Also during that conversation you all had to give him several pointers on where he was during the time this happened; correct?
A Pointers as to him being at the --
Q In the --
A You might need to --
Q I apologize. In the video you all -- he says he's at the car at one point in time; right?
A Okay. Now I'm tracking.
Q Yes, sir.
A Right.
Q Right. But you can't see from where you all said the car was; right? You can't see the house; can you?
A You can see the back of the house.
Q But you can't see the front?
A No.
Q And so then you all say, "Well, no, that's possible"; right?
A Uh-huh.
Q "You can't be there."

A Right.
Q All right. You got to be somewhere else; correct?
A Correct.
Q All right. So then he changes his story again?
A Yes.
Q All right. Then also in the video you all ask him about a pool.
A Correct.
Q You all mentioned the pool; right?
A Yes.
Q He never mentioned it; did he?
A No. He didn't.
Q You all also in the video are telling him, "We think that Marissa did this. We think that Marissa did this for money, and we don't believe that this was intentional." You all told him that; correct?
A We -- believe -- let me expound on that.
Q Yes, sir.
A We didn't believe that the death of Mr. Coombs, Dave or Syience, was intentional.
Q Right. Yeah. That, that, that his death was intentional. I apologize.
A We did believe that the fire was intentional.
Q That it --
A It's incendiary.

Q Right. That it was set by somebody?
A Right.
Q You also told him that, "Look, we don't want you. We want Marissa Cohen."
A Correct.
Q Okay. And you all told him, "Look, no matter what happens you're going to go home today."
A Yes.
Q Okay. All right. Now, during this video when he's telling you all over and over again, "I did not do it. I did not do it. I did not do it," did you all ever accept that as an answer?
A No.
Q No. You continued on him; didn't you?
A Yes.
Q You worked on him; right?
A Correct.
Q Okay. All right. And that's what police officers do; right?
A Correct.
Q All right. And what you were talking about earlier with, with the Prosecutor was that basically your job is to first disarm?
A Yes.
Q Okay. Make him feel comfortable?

A Exactly.
Q Right. Exactly. And then your job then is to then get him to try to tell you something?
A Correct. That would be the interview process.
Q Right. Which he did not, did he?
A Well, he did. He told us that he didn't have anything to do with it and then he started going to the stories why he couldn't have done it, and that would be the interview process.
Q But the diagram that Investigator Garrett drew, right?
A Right.
Q Which is when the video comes back on.
A Yes, sir.
Q He didn't draw that diagram; did he?
A No. Mr. Garrett was helping him with that or Investigator Garrett.
Q Investigator Garrett was helping him on that. All right. And then you all then tear that up; correct?
A Yes.
Q It was balled up?
A Correct.
Q And then you all tell him, "Look. You draw this and tell us again."
A Uh-huh.
Q So then --

A Correct.
Q All right. Thank you. And then he misses certain things. He gets things confused; doesn't he?
A If I remember correctly, yes.
Q And he then throws out this story, and you all say, "Look, you know, there was a -- somebody lit the match," and then he says, "Yeah, somebody lit a match and threw it in there"; right?
A I don't remember that specifically.
Q Well, let me ask you this.
A I'd have to look at the video again.
Q He did tell you that somebody lit a match at one point in time?
A Yes.
Q Then he changed it to a piece of paper.
A Correct.
Q Right. And then you all are questioning him about, "That makes no logical sense."
A Right.
Q Okay. And tell the jury why it is that you believe that made no logical sense.
A Because chances are that if he picked up any paper at the, at the scene on the ground it would have already been wet.
Q Okay. The story didn't make sense to you.

A Right.
Q And you're an arson investigator?
A Yes, sir.
Q All right. Have you counted the number of calls that Marissa Cohen made on March 29th?
A No, sir. I did not.
Q All right. And if I told you it was 117 phone calls and only one was to Randy Collins that morning; would that sound about right?
A Again, I'll take your word for it based on what you're telling me.
Q All right. During your investigation did you find that people in this community, and I don't know if you're from here or not, but this is a tight community; correct?
A Again, I'll take your word for it, but I'm not from here.
Q Okay. All right.

MR. WILSON, JR.: Your Honor, I have no further questions, Judge.

THE COURT: All right.

REDIRECT EXAMINATION

BY MS. RICHARDSON:

Q Let me show you again State's 32, and Mr. Wilson asked you about calls that were made around 1 a.m. on the morning of the 29th. I'm going to show you that. I think it's lines 1587 and 1588 on the phone records, if I can direct you to

that. That'd be page 73, page 73 of the phone records.
A Okay. Okay. I got it.
Q Okay. And if you can look at, at 1 a.m. On lapse time could you tell me the length of those two calls he's talking about?
A Okay. What was the line again?
Q 1587 and 1588.
A Okay. Those correspond -- that line corresponds to 3-29-14 at 1:02 a.m. The seizure time was 24, and I don't know what the seizure time means, and the elapse time appears to be five seconds.
Q .05?
A .05. Yes.
Q And the next one?
A At 1:03 that's going to be .07.
Q Okay. All right. And as -- and again, I think on the morning of the 29th when the fire occurred how many phone calls were between Marissa Cohen and Randy Collins?
A On the 29th?
Q Yeah. If you want to look at your chart that you did.
A Oh, yes, please. That would actually be more beneficial --
Q Yeah.
A -- than having to look at all the numbers. Let's see. Can I hold it a little bit?

Q Yeah.
A Three on the 29th.
Q Okay. And as far as the Miranda warnings you said you actually read those to him?
A Yes, ma'am.
Q And did you have information that he had a driver's license?
A Not at that time, no, ma'am. I don't remember.
Q Okay. But you're aware of that now?
A I am.
Q Okay. And he has a driver's license?
A Yes, ma'am.
Q And just in your conversations with his day-to-day work he was -- he was able to tell you about he knew how to repair cars?
A Yes, ma'am.
Q Do you know how to change a manifold?
A No, ma'am.
Q He knew that he could get a DNA test for paternity?
A Yes, ma'am. He did know that.
Q And when you downloaded these other cell phones that he had, these other cell phones that he had --
A Correct.
Q -- and you actually got phone records and contents of text messages; did you not?

A I didn't actually do the downloading, but yes, that's part of the packet that I got from the -- from that unit. I got all of that, photos, phones, song titles, all sorts of stuff.

Q So on those phones were there text messages between him and other individuals?

A Yes, ma'am.

Q Okay. And he had downloaded songs?

A Yes, ma'am. I believe so.

Q Okay. And in fact, he actually used a flip phone during your interview?

A Oh, at the very beginning, yes, ma'am.

Q Now, Mr. Wilson asked you if before you talked with him you had any evidence against him. He had given a statement to Officer Garrett; is that right?

A Mr. who?

Q Mr. Collins had given a statement with an alibi to Officer Garrett?

A Correct. Yes.

Q Okay. And did you have information that that wasn't true?

A That what he said wasn't true?

Q That his alibi wasn't true?

A Yes. We had information.

Q All right. So when he came in you felt like he'd already

told a lie?
A Correct.
Q Okay. And then when you started asking him where he was he tells you -- kind of tells you that again?
A Yes, ma'am.
Q All right. And you knew that wasn't true?
A Correct.
Q All right. And then he denies any of those phone calls with Marissa Cohen.
A Correct.
Q And you knew that was a lie?
A Yes, ma'am.
Q And then eventually he actually does admit to you that he did talk to her?
A Yes, ma'am.
Q And admits that he talked with her -- he admits that he talked to her the morning her child died?
A Yes, ma'am.
Q And that she had called him, and he told her how sorry he was?
A Correct.
Q Okay. "I'd do anything for you?"
A That's true.
Q Okay. "I'd do anything for you," and that was the morning of the fire?

A Yes, ma'am.
Q Do people usually just come in and say, "Hey, you got me"? I mean, really?
A No, ma'am. That's very rare.
Q Does it take pointing out evidence, the problems with what they've told you to get them to come forward?
A That's part of the whole process. We -- as I've stated earlier, the first part of our techniques would be just to disarm them, to get to know them, find out about them, their well-being, could -- I mean, should they be talking to us right now. I like to make sure that they're fed, slept, not on any sort of drugs or alcohol because that's problematic, and then going into further detail the interview process is getting their side of the story so that we can compare it to what we already know. Then once that -- if it meshes with what we know then it stops. If it doesn't mesh, then we go into an interrogation method which is accusatory, and we start saying, "Well, look, you're telling us this but everything that we've learned so far is saying that it didn't happen this way."
Q And before, before this interview had there been any information regarding the window on the front side of the house?
A No, ma'am.
Q All right. I have no further questions.

MS. RICHARDSON: I'd ask that he be excused from his subpoena.

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

RECROSS EXAMINATION

BY MR. WILSON, JR.:

Q The calls on the 29th, you don't know who was on the phone that night; do you?

A No. I just know the phone numbers.

Q That's right. And you don't know what conversation took place?

A Again, no.

Q Do you know how long -- in your investigation did you find out how long Tina or Marissa Cohen had known Randy Collins?

A Since a long time ago, childhood.

Q She'd actually stayed with him at one point in time; didn't she?

A Correct.

Q And you all discovered that in your investigation; correct?

A Yes, sir.

Q Okay. Now, on the cell phones, counsel asked you about the cell phones and that there were text messages. On cell phones can you speak into the cell phones and it copies what you say?

A Actually with some cell phones you can. It's -- like with the Iphone you can say like if you're driving, "I'll be home later," and it'll write it down and you send it.
Q It'll write it down for you?
A Correct.
Q All right. And actually he never said sorry in the interview; did he?
A I'm sorry?
Q Randy Collins never said he told Marissa Cohen sorry? Did he say that in the interview?
A I do not recall.
Q Well, let me ask you this, isn't what he really said was, "Look, I'll do anything for you that I can do for you"? Isn't that what he said?
A I believe so.
Q Okay. All right. Now, last question, your office and, and, and, and, and the investigator's office from Georgetown you all go through an exhaustive process to investigate these cases; correct?
A Yes, sir.
Q Yes. And a lot of times it is -- I know it's tough work. I understand that. In this case, obviously, this was a tough one?
A Yes, sir.
Q Because of the child; correct?

A Correct.
Q Okay. But other than his statement is there anything else, that there's a nexus or connection or anybody that says that Randy Collins did the burning on this house?
A Right. Just his statement.
Q All right.
MR. WILSON, JR.: And that's it, Judge. No, no further questions, Your Honor.
MS. RICHARDSON: No further questions, Your Honor.
THE COURT: You may step down. Thank you.
A Thank you.
THE COURT: Ms. Richardson, you were going to publish the tapes, but you need some time to redact?
MS. RICHARDSON: Not at this point I'm not going to publish them, Your Honor.
THE COURT: Okay. All right.
MS. RICHARDSON: But I will need some time to redact. I do have a witness we could do before lunch and --
THE COURT: Certainly. Certainly.
MS. RICHARDSON: -- maybe take a little --
THE COURT: Certainly.
MS. RICHARDSON: Okay.
THE COURT: Call your witness.
MS. RICHARDSON: The State calls Hue Tang to the stand.
THE COURT: Mr. Tang, come around.

WHEREUPON, Hue Tang is called to the stand, duly sworn by the clerk and testified as follows:

THE CLERK: Would you please spell your name for the Court?

MR. TANG: H-U-E, T-A-N-G.

THE CLERK: Thank you so much. Please have a seat.

MR. TANG: Thank you.

DIRECT EXAMINATION

BY MS. RICHARDSON:

Q Good morning.

A Good morning.

Q Did you drive from Columbia this morning?

A Yes, ma'am.

Q Okay. Could you tell us again your name?

A Hue Tang.

Q Okay. And Mr. Tang, where are you employed?

A I'm employed by South Carolina Law Enforcement Division.

Q All right. And that's SLED?

A That's correct.

Q All right. And what do you do there?

A I'm employed as a forensic scientist assigned to trace evidence section.

Q And what sort of education do you have?

A I receive a Bachelor of Science with major in chemistry from University of South Carolina, and I attend a few courses,

graduate course from University of South Carolina, also.
Q Okay. So you have a degree in chemistry?
A That's correct.
Q And I don't know if Mr. Wilson wants me to go through all these --
MR. WILSON, JR.: Your Honor --
Q -- but you do have multiple trainings in your area?
A That's correct.
Q Okay.
MR. WILSON, JR.: Judge, he's absolutely an expert. We don't contest that.
THE COURT: All right. Then you -- you're offering him as an expert in the field of --
BY MS. RICHARDSON:
Q Is it usually trace evidence?
A Trace evidence.
THE COURT: Trace evidence, and again, I have explained to you what an expert is and that an expert may give an opinion and this witness has been qualified in the field of trace evidence chemistry. Okay.
Q And how long have you been with SLED?
A 28 year.
Q Okay. Could you even guess at how many samples you've tested?
A Thousand of cases.

Q Okay. All right. And in this case you've been asked to come testify about SLED, SLED lab number L1404106; is that right?
A That's correct.
Q Okay. And that's indicated as a case involving a deceased individual, Dave Coombs?
A That's correct.
Q All right. And in that regard, were you given items to test?
A Yes, ma'am.
Q All right.
A I receive five, five items from this case.
Q All right. Let me show you -- I'm handing you --
A I'm sorry, six item.
Q -- State's 25, State's 26, 27, 28 -- yeah. The number's on the side of that one, 29 and 30, and are those the items that you received?
A Yes, ma'am.
Q Okay. And tell me how you can identify them.
A By the label of the case, have the case number and the item number and that's my initial and that's the day I initialed the label and I did that to all these items.
Q Okay. And do you keep records of who handled the evidence prior to you --
A We have a --

Q What we call a chain of custody?
A That's correct.
Q Okay. And do you have that?
A Yes, ma'am.
Q Okay. And can you tell who first received the evidence at the SLED lab?
A Our evidence technician, Patricia Crooks.
Q Okay. And is, is Ms. Crooks still with the agency or she retired?
A She retirement.
Q Okay. And then from there where did it go?
A I receive it from her on the same day on March 31st, 2014.
Q And do you have safeguards to make sure nobody's opened, opened those cans or broken the seals and done anything with the evidence?
A I receive from her that day and I went ahead and processed the case on that day.
Q Okay. And when you received the evidence had, had it been tampered with in any way? Were the seals still intact?
A The seal was intact.
Q And you tested those items?
A Yes, ma'am.
Q Okay. And what are you testing them for?
A Test for ignitable liquid in those sample.
Q Okay. And let's go with sample number one, can you

briefly just kind of tell us how you do it just real briefly?
A Sure. First we take inventory of the item from the container. In this case, container A contain six item and example the seal of the each can and this one is all them are seal and had the tamper proof label, and I place the label on with my initial on each item. After that I open the lid and quickly observe the contents of the -- each can and I place what we call is activated charcoal strip. What this does is function is to absorb and, and we place this can in the oven. We set a temperature between 60 and 70 overnight for 16 hour. During that time the oven heats the sample and the volatile competent from the debris escape from it and it's absorbed onto that charcoal strip.

The following day I removed the charcoal strip, and I archive half of that, which is in this small pouch, and I place the other half into a tube and I add a solvent. In this case it's carbon disulfide. Then I sonicate it. Then I remove the liquid from the tube and place it in the vial and we place on an instrument, gas chromatograph with the detector mass spectrometer.

Q Okay. And that's what tells you whether or not there are ignitable liquids. That's the process you use as a chemist?
A Yes. That schematic, yes.
Q Okay. And for item number one what did you find?
A Found a having -- sorry, heavy petroleum distillate

found. Example for heavy petroleum distillate include, but are not limited to, kerosene, diesel fuel, some jet fuel and some charcoal starters.

Q And in item two?

A Same result.

Q Same result, heavy petroleum distillate?

A That's correct.

Q And item number three?

A Item number three is a mixture of gasoline and a heavy petroleum distillates were found.

Q Okay. And item number four?

A Same as item number three.

Q Okay. Gas and a heavy petroleum distillate?

A That's correct.

Q And item number five?

A Item number five no ignitable liquid of evidential value is found.

Q Okay. And item number six, and we have 5.1 and 6?

A 5.1 and 6 no, no ignitable liquid found for item 5.1, and for item 6 no ignitable liquids found.

Q And can you explain to us the difference in the flammability of a heavy petroleum distillate and just gasoline?

A Gasoline a very flammable liquid is required a lower ignition source to start, ignite a fire as compared to HPD,

I'm sorry, heavy petroleum product, distillates.
Q And as far as kerosene, does it burn longer or shorter than gas?
A The, the time it's burn, yeah, it burn longer.
Q And what about the flammability point or the ignition point between gas and kerosene?
A Flash point for gasoline is at negative, I believe negative 45 Fahrenheit, and flash point for kerosene is at 116 to 159 range.
Q Okay. And tell me what that means in just regular.
A As I mentioned earlier its, its flash point is the -- when the vapor escape, the minimum temperature for the vapor escaping the sample to ignite.
Q All right. I have no further questions. Answer any questions that Mr. Wilson may have for you.

MR. WILSON, JR.: Just briefly, Your Honor.

CROSS EXAMINATION

BY MR. WILSON, JR.:
Q Kerosene --
A Yes, sir.
Q -- is different -- it's a different substance from gasoline; isn't it?
A That's correct.
Q All right. And can you explain to the jury how kerosenes differ from gasoline?

A As I mentioned earlier the, the flash point for one is a flammable. The other one is combustible.
Q Okay. And, and these are liquids that we're talking about; correct?
A That's correct.
Q All right. But they can also dissipate over time?
A That's correct. If you leave exposed to the environment.
Q Exactly. So if you put gasoline on something or you pour it on the floor and the carpet it would actually go into vapor as it dissipate; correct, over a period of time?
A Gasoline is considered more volatile. It escape faster. Since kerosene it's heavier, it's linger longer.
Q So it'll sit around?
A Yes. Compared to gasoline. Yes.
Q Compared to gasoline?
A Correct.
Q But both will go eventually into vapors; correct?
A Yes. It's evaporate.
Q Okay.
A Volatile.
Q Thank you.
MR. WILSON, JR.: No further questions, Your Honor.
MS. RICHARDSON: Your Honor, and I forgot to --
THE COURT: You want to introduce your reports?

MS. RICHARDSON: The reports and that's one. This has already been marked. All right.

REDIRECT EXAMINATION

BY MS. RICHARDSON:

Q And I'm going to show you 31, State's 31. Is that the charcoal strip you used in some of your testing?

A The small pouch this archived one. This one we did not test.

Q Okay.

A We did not test with the instrument but we extract it from the fire debris.

Q Okay. That's what you used to extract?

A Yes.

Q And then let me show you State's 34. Is that your report?

A Yes, ma'am, this a copy of my report.

Q Okay.

MS. RICHARDSON: So Your Honor, at this time I would offer State's 25, 26, 27, 28, 29, 30, 31 and 34 into evidence.

MR. WILSON, JR.: Your Honor, without objection, Judge.

THE COURT: All right. They're admitted then.

MS. RICHARDSON: Okay.

(State's Exhibit Number 25 [Arson Can - #1 sample], State's Exhibit Number 26 [Arson Can - #2 sample], State's Exhibit Number 27 [Arson Can - #3 sample], State's Exhibit

Number 28 [Arson Can - #4 sample], State's Exhibit Number 29 [Arson Can - #5 sample], State's Exhibit Number 30 [Glass Vial - #6 sample], State's Exhibit Number 31 [Glass Vial] and State's Exhibit Number 34 [Report - Tang] admitted into evidence and appropriately marked.)

BY MS. RICHARDSON:

Q And one more thing, as far as the mixtures that you found between gasoline and heavy petroleum, do you have any information about the ratio of that?

A No, ma'am.

Q Okay.

MS. RICHARDSON: I have no further questions.

MR. WILSON, JR.: Just one question, Judge.

RECROSS EXAMINATION

BY MR. WILSON, JR.:

Q All the items that you collected, nothing came back connected to my client; correct?

A I have no knowledge that.

Q Thank you so much.

MR. WILSON, JR.: No, no further questions, Judge.

THE COURT: You may step down. Thank you, Mr. Tang.

MS. RICHARDSON: We'd ask that he be excused from his subpoena.

MR. WILSON, JR.: Your Honor, without objection.

THE COURT: Mr. Tang, you're released from your subpoena.

A Thank you, Your Honor.

THE COURT: Thank you, again.

MS. RICHARDSON: And Your Honor, this may be a good point to break to do that redaction.

THE COURT: All right. Ladies and gentlemen, we have a, a little technical matter that we have to handle. I'm going to let you go to lunch. I ask you to be back at 1. That'll be an hour and 15 minutes. Thank you. We're at ease.

OFF THE RECORD

(On the record. The following takes place outside the presence of the jury.)

THE COURT: Are we ready now? Please just keep your seats.

MS. RICHARDSON: Your Honor, we are ready. We can proceed with a few witnesses and then would have to take a break and have Mr. Wilson review the redactions. I could start with Mr. Garrett, but --

THE COURT: Well, Mr. Wilson, can't he review those tonight, and, and let's at least get some witnesses today?

MS. RICHARDSON: Yes, Your Honor.

THE COURT: Okay.

MS. RICHARDSON: I just wanted to make sure you knew he still had to review it.

THE COURT: I mean, that could be another two hours. Okay. Let's go ahead and bring the jury in then.

(Whereupon, the following takes place in the presence of the jury.)

THE COURT: All right. We have all of our jurors in the courtroom now. Ladies and gentlemen of the jury, I apologize for this extraordinary delay. You heard before lunch that we were preparing to provide you with some sort of video recording or whatever. You, you heard that. We've had some serious technical difficulties with that which we've been trying to resolve, have not been completely resolved, but what we're going to do is I've asked Ms. Richardson then to take some witnesses out of order and so we can move on this afternoon and perhaps will have that for us in the morning. I certainly hope so and those issues would be resolved, and again, I apologize. I know it's not a pleasant thing to have to sit back there in the, in the jury room wondering what we're doing but just one of those things, and we're -- and I apologize. Ms. Richardson, call your witness.

MS. RICHARDSON: The State calls Dr. Michael Caplan.

WHEREUPON, Michael Caplan is called to the stand, duly sworn by the clerk and testified as follows:

THE CLERK: Okay. Would you please spell your last name for the Court?

MR. CAPLAN: Yes. My last name is spelled C-A-P-L-A-N.

THE CLERK: Thank you, Mr. Caplan. Please have a seat.

THE COURT: Good morning, Doctor.

MR. CAPLAN: Good morning.

THE COURT: Ms. Richardson.

DIRECT EXAMINATION

BY MS. RICHARDSON:

Q Dr. Caplan, where are you employed?

A I am employed at the Suffolk County New York Office of the Medical Examiner in Hauppauge, Long Island, New York.

Q Okay. And were you formerly employed at the Medical University of South Carolina?

A Yes. I was.

Q And how long were you at MUSC?

A I was at MUSC for two different periods, one from 2004 to 2008 and then another period from 2011 to 2014.

Q Okay. And what was your position at the Medical University?

A I was in the Department of Pathology and Laboratory Medicine where I practiced forensic pathology, pediatric pathology and also participated in teaching of residents and medical students.

Q And could you tell us your educational background?

A Yes. So I obtained my college undergraduate degree at Michigan State University in forensic science in 1983. Following that I went to the University of Connecticut School of Medicine, graduated with an MD degree in 1987. Then I completed a five-year residency in pathology, which is the

specialty of medicine which deals specifically with disease. That was at the University of Michigan from 1987 to 1992. I then did a year in forensic pathology and that's the branch of pathology which deals specifically with issues of public health and public safety. That was at the New York City Medical Examiner's Office from 1992 to 1993 and then I completed one more year of training in pediatric pathology, which is the study of diseases of children, infants and unborn fetuses. That was at the University of Pittsburgh Medical Center from 2003 to 2004. So that's the extent of my education and training.

Q And how many autopsies do you think you have performed?

A I would estimate that I have either performed or directly supervised somewhere between 2000 and 2500 autopsies roughly.

Q And have you been qualified as an expert to testify in court?

A Yes. I have.

Q And how many times?

A I would estimate somewhere between 100 and 150 times.

Q Does that include the State of South Carolina?

A Yes. It does.

MS. RICHARDSON: Your Honor, at this time I'd offer Dr. Caplan as an expert in the field of forensic pathology.

THE COURT: Mr. Wilson?

MR. WILSON, JR.: Your Honor, without objection.

THE COURT: He's so qualified, and again, I have explained to you what it means to be qualified as an expert and how that relates to giving opinions and giving the reasons for opinions, and again, that would apply to Dr. Caplan as well. Thank you.

BY MS. RICHARDSON:

Q Dr. Caplan, on March 30th of 2014, did you perform an autopsy on Dave Coombs?

A Yes. I did.

Q And who requested that autopsy? How was it referred to you?

A The autopsy was requested by Mr. -- I believe his name was Mr. Chase, was it Chase -- I want to make sure I have the, the, the last, the last name properly here, Chase Ridgeway. I'm sorry. Mr. Chase Ridgeway, who was the deputy coroner for Georgetown County, and he requested that the Medical University of South Carolina perform the autopsy, so referred from the Georgetown County Coroner.

Q And how old was Mr. Coombs?

A Mr. Coombs was 12 years old to my understanding.

Q Okay. And a male child?

A Yes.

Q What was his height and weight?

A He was approximately weighed 66 pounds and was approximately four feet seven inches.

Q And you did a complete autopsy on him?
A Yes. I did.
Q Okay. And what were your findings?
A Well, the main findings were that David was a well-developed, well-nourished child whose, you know, growth was consistent with what you would expect to see in a, in a 12 year old boy. He had black curly hair. He had brown eyes. He had braces on his teeth, and, and really, you know, no, no sort of, you know, scars or, or any other major skin lesions on the outside. My main findings on the external exam was that he had multiple burns that were mostly on his back. Some were on the, the -- there was some on the upper part of the back. There was some on the lower part of the back. There was some over the buttock region, some over the calves, more the left than the right, and those injuries, the, the -- those and they were partial thickness burns. They weren't completely all the way through, but they were enough that they were -- they had sloughed the outer layer of skin, what we call the epidermis so that you could see the dermis and that the area of, of his body surface that was involved by those burns was somewhere between 13 and 15 percent to my estimation.
Q And could you tell if those were postmortem?
A It's, it's not, it's not possible to tell actually whether those burns were, were postmortem. So I use the term

perimortem meaning they could have, they could have occurred, you know, still when he was technically alive but around the time of his death, and so we use the term perimortem.

Q And those were just on the back side of his body?

A That is correct. He did have one other small area of skin slippage over the jaw line, but all of the other burns were over on the, the back surface of his body.

Q And what else did you find?

A The other things that I found was that he had, on the external examination, he had -- his nose and his mouth were singed with, with, with soot. So he had some, some deposition of soot, and I define soot as basically completely any fine particles of, of black carbon material, and that was deposited on his, as I said on his nose and on his mouth, and he also had a little bit of soot that was over the lower part of his back. Besides that, he did -- also had a little bit of wrinkling on the palm surfaces of his, of his hands and fingers, and that's pretty much the extent of what I saw on his external examination.

Q And did you do some tests on his blood?

A Well, yes, I, I did a test on his blood. I submitted tests on his blood and that was part of the internal examination which had, which had findings, also.

Q Okay. Well, tell me about the internal findings.

A Yes. So on the internal examination what I found was

that his entire airway all the way from the epiglottis, which is the flap that sits over the larynx to prevent you from choking when you're swallowing, that that surface was completely covered with black soot and mucous and that black soot went all the way down from the epiglottis over the vocal cords and then down into the major bronchi, which are the major tubes that go to the lungs. So there was basically a layer of black soot and mucous that went all the way down to, to the lungs. This was also, and one thing that I forgot to mention on the external examination is that he had a very prominent what we call a foam cone which is a mixture of fluid and air that churns into a fine froth and that was in his nose and mouth and was also in his lungs, and we have a fancy name for that. That's -- we call that pulmonary edema, and so the other thing I noticed in the internal examination was that all of his organs were -- had a very bright red color, the heart, the thymus, which sits over the, the interior surface of the heart and the body cavities were bright red, what I would describe as almost a cherry red, and then also as part of the internal examination we did take specimens for toxicology, including blood, urine and vitreous fluid from the eye, and I didn't actually test that. We submitted that to an independent forensic laboratory that we call AIT, Associated Independent Laboratories in, in Indiana.

Q And were there any significant findings based on that?

A Yes. There were.
Q Okay. And tell me about that.
A Yes. The most significant finding was that the carbon monoxide level, and by definition the carbon monoxide is bound to the hemoglobin in the blood. So we have -- we call that carboxyhemoglobin. The level of that was 74.4 percent. Also, the toxicology in the blood and in the vitreous was entirely negative for alcohol or other related substances or any illicit or therapeutic drugs. The only other positive finding was that the urine had ethanol, ethyl alcohol at a concentration of .092 percent.
Q Okay. And what does that mean?
A Well, the, the presence of alcohol in the urine and not in the, the blood or the vitreous suggests that there was a source other than from the outside that caused it, meaning that instead of -- alcohol can be formed not only from drinking from the outside, but it can also be formed by bacteria inside the body through a process called fermentation, and if there's bacteria and there's sugar it can actually make alcohol in the urine and that can occur after death.
Q So since his blood was negative and his urine was positive you feel like it was from the bacteria?
A Yes. In my opinion, and then not just the blood but also the vitreous, the eye fluid, which correlates very well with

the blood.
Q So based on these findings what did you determine was his cause of death?
A In my opinion the cause of David Coombs' death was inhalation of products of combustion, which is a way of saying smoke inhalation, but includes all of the -- not just the injuries from the -- from the smoke itself, but from the carbon monoxide and other chemicals that, that get into the blood.
Q And with the, the skin slippage and burn marks that were on the back --
A Correct.
Q -- could that be caused by the heat that was in the building?
A Yes. That could be one factor, absolutely.
Q Okay. But no indication of a direct deep burn; is that right?
A That's right. All of the burns that I observed were partial thickness, meaning that they didn't go below -- the epidermis is the most -- is the layer of skin that we all see, and then when you have a cut or a scrape then you see the dermis, which is the next layer, but nothing went deeper, nothing went to the fat, deeper than the, than the dermis.
Q And then, again, the front side of his body appeared to have been protected from that?

A That's correct. With, with the one exception of, of, of one small area on the, on the left side of the jaw.
Q Okay. And, and if his face were turned up then that would be expected to be similar to the back; is that right?
A That's correct.
Q And do you have a, a timeframe or can kind of put in perspective how long it would have taken him to succumb to his injuries and how that actually occurs?
A Yes. So the, the time that it takes to succumb to injuries like this is related to multiple factors, but the two biggest factors are the, the, the concentration of the carbon monoxide and then the smoke in the, in the environment, how much and other factors include how much oxygen gets -- there is or gets depleted, and then the other factor is whether he had any other diseases that could have made his threshold lower for the injury. He was healthy. So he didn't have any other diseases, but in an -- in a closed space with, with, with very high concentrations of carbon monoxide, in my opinion it would have taken somewhere in the range of minutes for him to succumb, and even before he actually died, it's been shown that once carbon monoxide saturations get above 30 percent it's been shown that people can become incapacitated. Their, their lives can still be saved but they become incapacitated. Their ability to move and, and perform volitional, voluntary actions is, is significantly

compromised. So in my opinion it would have -- minutes is, is, is probably the most that I can, can say.

Q Okay. And you also found an abrasion on his right shoulder?

A Yes. I did.

Q Okay. And would that be consistent with falling?

A Yes. That could be consistent with falling or stumbling or, you know, any, any kind of contact, you know, with, with a, with a surface on the inside of the room.

Q And this level of carbon monoxide, would that cause some disorientation?

A Yes. The, the, the, the level of carbon monoxide that would cause disorientation is actually well below that, you know, in the range of 20 to 30 percent. The level of, of carbon monoxide, his 74 percent is, is basically in the level that we see with people that die from smoke inhalation and carbon monoxide poisoning that don't have underlying illnesses.

Q And is this a, a common type thing when you see people who are trying to escape a burning building, this breathing in?

A Yes. It's, it's, it's that when, when, when people are exposed to very high amounts of, of smoke and, and, and in an enclosed space that, yes, that it is typical when we see that high carbon monoxide and we see the soot in the airway that is

the evidence to us that the person was alive and breathing at the time of the fire.

Q And do you also determine manner of death?

A Yes. We determine manner of death, but that's done not just from the autopsy but in conjunction with the entire circumstances that we glean from the, from the case investigation.

Q Okay. And what are the options for manner of death?

A Well, the options for manner of death are a natural, which by definition means due entirely to a disease process, and then non-natural gets divided into homicide, which is death at the hands of another person or as the result of a deliberate act of another person, accident, which is death where there's no intent to do harm, suicide, which is self-inflicted where there's an intent to hurt yourself and then undetermined is when we, when we don't have enough evidence, information to sub-classify a manner of death. So sometimes, for example, somebody may be found at the bottom of the stairs and you don't know how they got there, you're not sure whether they were drunk and it was an accident or whether they were pushed or -- and then in, in situations like that we would call it undetermined, which if we got information at a later time we could, we could always change that. So natural, homicide, suicide, accident and undetermined, those are the manners of death.

Q And in this case what did you determine the manner of death to be?
A In this case I determined the manner of death to be homicide.
Q And that was based on?
A That was based on information provided to me by the Georgetown County Coroner and, and the sheriff's department.
Q So two, these findings on cause of death as smoke inhalation, I guess, the common term --
A Yes.
Q -- and that the manner of death was homicide, are those your opinions to a reasonable degree of medical certainty?
A Yes. They are.
Q I have no further questions. Answer any questions.
THE COURT: Mr. Wilson.
MR. WILSON, JR.: Your Honor, just briefly, Judge.

CROSS EXAMINATION

BY MR. WILSON, JR.:
Q Good afternoon, Doctor.
A Good afternoon.
Q Just a couple of questions. When you do your autopsy your primary focus is to determine manner of death, how somebody died basically?
A Well, actually my focus is to determine not just manner of death but, but cause of death, and really to show -- the

autopsy is done to help reconstruct or contribute to figuring out how the events occurred. It's a part of the overall case investigation.

Q Okay. Did you collect any evidence or did you find any information or anything in your case file to support that Randy Collins committed a homicide against this young man?

A Not directly from the autopsy, but within the context of the entire investigation I did, and when we determine manner of death, it's based upon the entire investigation, not just what goes on in the autopsy room.

Q Okay. Let me be clear, are you telling the jury that you know for a fact that Randy Collins committed a homicide against Devon [sic] Coombs?

A That's not what I said.

Q I'm asking you to clarify for the jury.

A Okay. I'm, I'm sorry. What was the question again?

Q My question is, do you have any information in your case file or did you collect any data while you did your pathology report; correct, report on pathology?

A Yes.

Q Okay. Do you have any evidence which tends to show that this man, Randy Collins, committed a homicide against Devon [sic] Coombs?

A I have evidence that comes from statements from speaking with the Georgetown County Coroner and Georgetown County

Sheriff's Office. That's the evidence that's in the report.
Q I understand, but I'm asking you --
THE COURT: You, you asked him if he had anything in his file --
MR. WILSON, JR.: That's right.
THE COURT: -- which I would assume everything. I believe what you meant to ask him was were any of his findings.
BY MR. WILSON, JR.:
Q Were any of your findings, did you find that Randy Collins committed a homicide?
A No. I did not.
Q You don't do that kind of work; do you? You don't investigate crimes to determine who did what?
A No. But indirectly we can sometimes provide information like that, and I'd be glad to give you an example if you like.
Q Well, I'm talking about this case. Tell me -- give me, the jury, give the jury an example of what evidence forensically that you gathered against Randy Collins.
A The evidence that I gathered was that I determined that David Coombs was a healthy child who had no diseases that contributed to his death and that he died from the effects of smoke inhalation, and the effects of that smoke inhalation were created from the circumstances which were provided to me which indicated that this -- that your Defendant caused this,

and that's how I got my information.
Q So everything you got you got from Georgetown County?
A In terms of the circumstances of the death, correct. In terms of the autopsy findings I got those myself.
Q Okay. Well, what in the autopsy findings did you find that will inculpate or tend to prove that Randy Collins killed somebody?
A Well, nothing directly, but indirectly, yes, and again, I know that David Coombs did not die of a natural disease process. He didn't have any diseases, and the fatal injury that I found was that he had smoke inhalation with soot in his airway and a fatal concentration of carbon monoxide in his system and that was created by a fire, the circumstances of which, again, were provided to me by the Georgetown County Coroner and sheriff's office, and that's the basis of my opinion.
Q Okay. And so what nexus are you pointing out to the jury? What piece of evidence are you pointing out to the jury which connects Randy Collins to the fire and his death, particularly his death?
A I don't understand the question, sir. I'm sorry.
Q Give you an example, okay. You do an autopsy. Okay. All right. And let's say in this particular autopsy you find out that someone was shot. All right. They died by a shooting; correct? That, that's happened.

A Many times, yes.
Q Okay. All right. And then you can pull out or you would I assume extract the bullet if it's still there during the autopsy, turn it over to law enforcement; correct?
A That is correct.
Q Okay. All right. And then during the autopsy you would go in to determine what caused this person's death. All right.
A That is correct.
Q Okay.
A As I did in this case.
Q All right. Now, what I'm asking you, excluding what Georgetown, because we're going over that in this trial, what Georgetown already did, what they gave. What I'm asking you is what you find. You said that you are determining that he is connected to this crime, and I'm asking you please tell us what the nexus is, what the connection is that you see here between Randy Collins, which you testified under oath to the jury that you have evidence of that? I'm saying what evidence do you have other than what they gave you, what pathology -- pathological evidence do you have?
A Other than what they gave me I don't have any direct evidence. I only have indirect evidence based on my autopsy findings, but no direct evidence.
Q No further questions. Thank you, sir.

THE COURT: Ms. Richardson.

MS. RICHARDSON: Redirect.

REDIRECT EXAMINATION

BY MS. RICHARDSON:

Q And homicide basically means at the hands of another?

A That's correct. Homicide is defined as death at the hands of another person or persons.

Q Okay. And based on the injuries on the body of Mr. Coombs, there was no indication that it was accidental?

A Yeah. There, there was no indication of, of the -- based on, on the, the pattern of, of injuries from the autopsy there's, there's no way to determine the manner of death just from the, the -- from the autopsies. In other words, that pattern of injuries could also be seen with, with an accidental death, but again, my determination of manner of death is based on the sum total of circumstances, the autopsy findings and the investigation.

Q Okay. But no indication of an explosion or anything on the front side of his face?

A That is correct.

Q All right. No further questions.

MR. WILSON, JR.: Just briefly, Judge.

RECROSS EXAMINATION

BY MR. WILSON, JR.:

Q Doctor, flat out yes or no answer, did you -- do you know

based on a pathological autopsy who started the fire?
A No. I do not.
MR. WILSON, JR.: No further questions, Judge.
MS. RICHARDSON: Your Honor, I'd ask that he be released from his subpoena.
THE COURT: Mr. Wilson?
MR. WILSON, JR.: Without objection, Your Honor.
THE COURT: Thank you, Doctor. You are excused from your subpoena.
A Thank you.
MS. RICHARDSON: The State calls Ms. Loretta Miller.
WHEREUPON, Loretta Miller is called to the stand, duly sworn by the clerk and testified as follows:
THE CLERK: Would you please spell your first name for the Court?
MS. MILLER: L-O-R-E-T-T-A.
THE CLERK: Loretta Miller. Thank you. Please have a seat and just -- let's move that mike up closer to you.

DIRECT EXAMINATION

BY MS. RICHARDSON:
Q Ms. Miller, where do you live?
A Andrews, South Carolina.
Q And you are the mother of James Miller?
A Yes. I am.
Q Okay. And without telling me anything about the cause of

death, is, is Mr. Miller still with us?
A No. He pass.
Q Okay. And when did he pass?
A April the 26.
Q 2015?
A Uh-huh.
Q Okay.
A Oh, man.
Q Now, Ms. Miller, you know that James was also charged in this fire?
A Yes.
Q Okay. Now, tell me did you know Dave Syience Coombs?
A That's my nephew.
Q Okay. And explain that family relation.
A Well, Marissa mom is my sister, my oldest sister.
Q Okay. Marissa Cohen.
A Mother is my sister.
Q Is your sister. Okay. So she's your niece?
A That's my niece, my nephew and Devon Coombs is my nephew.
Q And Devon is the older brother of Dave, just to keep that --
A No. Devon is the, the -- the oldest brother is in Pennsylvania. Devon is the next oldest.
Q Okay.
A And then Syience.

Q But we're -- the death we're talking about is the death of Dave Coombs, the younger boy; right?
A Uh-huh.
Q Okay. All right. And what about Randy Collins, do you know him?
A Yes.
Q And how do you know Randy?
A Randy brother is James father.
Q Okay. So tell me that again. His brother --
A Randy brother is my kids' father.
Q Okay. All right. So back on March 28th or 29th, 2014, were you advised about the fire at Tina or Marissa's home?
A Yes.
Q Okay. And how did you find out about it?
A My cousin came to my house and told, told us about it.
Q Okay. And where did you live at that point?
A 306 Jones Avenue.
Q Okay. And that's pretty close to James Drive?
A Yes.
Q Okay. And once you found out about it what did you do?
A My son and I and we went down there.
Q Okay. And did you see Ms. Marissa Cohen?
A Yes.
Q Okay. And how was, how was she acting? What was her demeanor?

A At, at the fire when the detective came out and say he pass, which --
Q And how did she act when the detective told her that?
A Well, when the, when the detective came out and told Marissa that her baby on the floor dead she didn't act like -- had no kind of remorse, didn't cry, didn't do anything.
Q Okay. And when you said your son was with you, is that your son James?
A Yes.
Q All right. And did you, and did you stay around there for a while?
A I stay there until they pull him out the, out the, out the house.
Q And you stayed at the scene until they took little Dave out of the house?
A Take him out the house.
Q Is that a yes?
A Yes.
Q Did you observe Ms. Cohen making any sort of phone calls?
A Do I have to answer that? Yes.
Q Okay. You don't want to be here; do you?
A No.
Q Okay. I understand.
A It just bring --
Q But you're under subpoena.

A -- bring back memory, that's all.
Q I know. All right. So did you see her on the phone?
A Yes.
Q Okay. And did she make a phone call?
A Yes.
Q Okay. And did you -- could you tell anything about who she was talking with?
A Okay. Tina was standing right there. I was standing there, and when the detective came out and say that her baby die on the floor, dead on the floor, she didn't react. She didn't cry. She didn't holler. She didn't do nothing. The only thing that she did she reached in her pocket and she said, "Randy, my baby's dead. My baby Syience dead on the floor." Randy began to say, "You got to live with that."
Q And how did you know -- how -- could you hear what was on the other end of the phone?
A Yes.
Q Okay. All right. So eventually James, Marissa and Mr. Collins were charged and arrested; is that right?
A Right.
Q All right. And did the older boy, Devon, come live at your place?
A Yeah. Devon live with me. Yes.
Q Okay. And that was at 306 Jones?
A 306 Jones Avenue.

Q And with James?
A Uh-huh.
Q Is that a yes?
A Yes.
Q Okay. And after, after James passed did you have to clean out his stuff?
A Yes.
Q Okay. And did you do that right away after he died? Did you clean out?
A No.
Q Okay. When did you do that?
A Probably about a month after he was buried, I think.
Q Okay. And did you find anything in there from Devon?
A Yes.
Q All right. Let me show you -- if I can mark this one. All right. Now, I'm going to show you what's been marked as State's Exhibit Number 33. Can you tell me what that is?
A That's Devon papers that he left in my house when he got arrested.
Q Okay. And, and those are the ones you found when you were cleaning out James' things?
A Yes. I find these in a middle bedroom and then I give them to my daughter.
Q Okay. Now, what did you find them in?
A In, in another brown -- like this here.

Q In a bigger envelope like that?
A It was -- this here was in a bigger envelope. Yes.
Q Okay. And what were those in?
A They were just in a big 'nother brown -- this was in another brown envelope under the mattress. Yes.
Q Okay. And did Devon have any other stuff there, clothes and that sort of thing?
A He had clothes and stuff, but I, I didn't --
Q Okay. All right. And of course that's his name on there?
A Yes.
Q Okay. And what else is on there?
A A whole lot of remembers and everything on there.
Q Remembrances of Syience?
A Right.
Q "Rest in peace, Dave?"
A Peace. Yes.
Q "RIP Syience?"
A Right.
Q Okay. And I'm going to show you, this is State's Exhibit 35, and is that just a picture of that envelope?
A Yes. It is.
Q Okay. And that's an accurate picture of sort of the stuff that we pulled out of it that's in there?
A Yes. It is.

Q And did you -- other than taking it out and reading it did you make any changes or anything to those letters?
A Huh-uh.
Q Okay.
MS. RICHARDSON: Your Honor, at this time I'd offer State's Exhibit 35 into evidence, and we're going to ask to leave 33 just for identification.
MR. WILSON, JR.: Judge, let me take a look at it. Let me take a look at it. Let me see. Thank you, Judge. Without objection, Your Honor.
THE COURT: Very well. Admitted.
(State's Exhibit Number 35 [Photographs of Envelopes] admitted into evidence and appropriately marked.)
By MS. RICHARDSON:
Q So but you did open it up and look inside to see what was in there; is that right?
A Yes. I did.
Q And we can see from the pictures there were letters and that sort of thing?
A Yes.
Q And maybe some legal mail and that sort of thing?
A Uh-huh.
Q And I believe you might have had some music lyrics? He liked to write raps?
A Yeah.

Q He did?
A Uh-huh.
Q Okay. And all that stuff was in there. All right. And did you start looking at some of the letters?
A Yeah. I, I opened it and I look at it, and I take it to my daughter.
Q All right.
A Because is --
Q And did you find that there were letters between Devon and his mother Marissa Cohen?
A Right. But we, we didn't open that one.
Q Okay. All right. Let me show you what's been marked as State's Exhibit 36 and 37, and these are photos of those letters?
A Yes.
Q Okay. And if you want to look at --
A No. Yeah.
Q And did you add anything or write on or do anything to any of these letters?
A No.
Q And you notified -- when you saw them obviously they involved Marissa?
A Right.
Q So who did you notify?
A I gives to my daughter.

Q And what's your daughter's name?
A Juanita McCollough.
Q Okay. I have no further questions. Answer any questions Mr. Wilson may have for you.
A All right.

CROSS EXAMINATION

BY MR. WILSON, JR.:

Q Good afternoon, Ms. Miller. How you doing, ma'am?
A I'm doing all right.
Q I just have a few questions for you.
A Okay.
Q The night or the early morning of March 29th you were with your son; right?
A Right.
Q Okay. Did you go to Randy Collins' house that night?
A No.
Q You didn't go there that night?
A Huh-uh.
Q Okay. All right. Well, let's back up then to the phone call that you talked about.
A Okay.
Q All right. Did you ever hear Randy Collins say that he burned a house down?
A I didn't hear Randy Collins say anything. I heard my niece make a call on the phone to him.

Q Okay.
A Over the phone.
Q What, what I'm asking you is --
A And we was in that -- Randy call and all we was at my niece house.
Q I understand.
A The house that got burned.
Q I understand. What I'm asking you is just flat out --
A Okay.
Q -- did you hear Randy Collins say, "I burned a house down tonight?"
A I didn't hear him say nothing.
Q Earlier you testified --
A Not like that, not no burn the house down.
Q Earlier you testified that you heard Randy Collins --
A No. Earlier I testified saying that my niece call Randy.
Q Right.
A Randy was on the phone. She said, "Randy, Syience is dead, Syience on the floor dead," and he make and said, "You got to live with that," and that's all I hear.
Q So you heard that on the phone?
A I heard that on the phone. Don't never --
Q And, and what other conversation did they have during that time?
A That's it. That's it.

Q So nothing else was said on the phone?
A Nothing else.
Q So --
A It been -- it was a hundred percent rain, we was in the rain. They pull Syience out that house at 6:45 in the morning.
Q I understand. All right. What I'm asking you though is this, she called Randy; right?
A Yes. She did.
Q All right. And on the phone she's telling him that Syience had passed away?
A Yes.
Q So once he said that, "You got to live with that," that's what you said; right?
A That what she -- that what he say.
Q Then what happened on the phone then?
A Then he -- she hang up.
Q She hung up the phone?
A Right.
Q Okay. You said that Marissa was acting very strange; right?
A No. I say she didn't did nothing when she find her son was dead in that she didn't cry. She didn't make no commotion or nothing like she -- he was nothing.
Q And everybody was looking for -- people in the community,

everybody that was out there, family, friends were looking to see how she was behaving; correct?

A Everybody was out there wishing that that wasn't true, that Syience was in there dead.

Q Well, I understand that.

A So I ain't know where you going to.

Q What I'm asking though is this, you got a call from who to tell you about what happened?

A My cousin called me. I was at home.

Q Yes, ma'am.

A And told them that, you know, Marissa house is on fire.

Q Right.

A So me and my son and we went down there.

Q And then you and James?

A Me, James and Isaac, yes.

Q And you all went down to the house where the fire was; correct?

A Right. Right.

Q Okay. And during that time when you were out there -- how long were you out there that night?

A We was up there, I mean, I -- Your Honor, I told him I was up there ever since 6:40, it something to seven when they pull that body out. So why you want to ask me the same thing over and over?

Q Okay. I'm just asking you questions. That's --

A No. You trying to get somebody puzzled but I'm not, I'm not like that.
Q I'm --
A I'm not going to change why I'm here.
Q I'm not trying -- asking you to change anything, ma'am.
A Okay.
Q I just want you to answer my questions. That's all.
A Okay. Go ahead.
Q Okay. And, and these are important questions about what happened.
A Okay.
Q So at some point in time you say you're going through stuff for Syience, right, things that Devon left?
A Yeah. I was cleaning my house. I was going through nothing. I found them.
Q Okay.
A The room that he was sleeping in.
Q Okay. All right. Mr. Miller is no longer with us; correct, your son?
A No.
Q Okay. And you are aware that Mr. Collins gave a statement against Mr. Miller; correct?
A Yes.
Q Okay. And that didn't make you happy; did it?
A Well, if it make me happy or make me unhappy it ain't

gonna' bring my son back.
Q I'm just asking you a flat out question.
A No.
Q You weren't happy about it?
A I mean, would you be happy?
Q Ma'am, I'm just asking questions and I just want to know the answer to the questions. I want to know were you happy or sad or mad, whatever your feelings were.
A I'm pleased. I'm pleased.
Q Why are you pleased? Tell the jury why you're pleased.
A Because I mean, if I get, if I get mad or, or, or fuss him out ain't going to bring my son back, so, you know.
Q Tell the jury why you're pleased. That was my question.
A Well, tell the jury why I am pleased?
Q Yeah. Why are you pleased?
A When -- I can't bring him back. So why I should be mad with them? It, it was going on three years. You know the Bible say if you, you got to forgive yourself in order to get -- forgive him. So if I hold a grudge him my place in heaven ain't no, nothing, mean nothing. So see, I put my life -- I put my life in God hand. That who carry me through this tragic.
Q Let me ask you this, have you ever been arrested?
A 2000 and '91 2000, '90.
Q What were you arrested for?

A That's not the case here.
THE COURT: Please answer the question.
A Okay. I get my husband rob a store and, and blame me, and he skip town.
Q Were you arrested for anything else, ma'am?
A Not as I can remember.
Q You ever had a charge for driving under the influence?
A I, I don't drink. No. I don't drink.
MS. RICHARDSON: Your Honor --
A I don't drink.
MS. RICHARDSON: -- I object.
A The only -- the strongest thing I drink is Pepsi Cola.
MS. RICHARDSON: It's not proper under the --
MR. WILSON, JR.: Judge, her -- thank you, Judge.
A Never.
(Whereupon, a bench conference is held in the presence, but out of the hearing of the jury.)
Q Let me ask you this, ma'am.
A Yes.
Q At any point in time while you were out there that night did you travel anywhere else with James at all?
A No. We stay out there until 6:45.
Q Okay. All right.
MR. WILSON, JR.: No further questions, Judge.
THE COURT: Ms. Richardson, anything further?

REDIRECT EXAMINATION

BY MS. RICHARDSON:

Q Ms. Miller, when he was asking if you left, that was when you were staying at the scene, at the fire scene with James?

A Right.

Q Okay. But earlier that night had James left?

A That be -- James, Jr., left -- James, Jr., left before we went to the fire.

Q Okay.

A Now, where he went before the fire I don't know.

Q Okay. No further questions.

MR. WILSON, JR.: No follow-up, Judge.

THE COURT: You may step down.

MS. RICHARDSON: Your Honor --

THE COURT: Thank you.

A Okay. Thank you.

MS. RICHARDSON: -- and I'd ask that she be released from her subpoena. I'm sure she'll be glad to hear those words.

THE COURT: Mr. Wilson?

A Yes, sir.

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

THE COURT: You are released from your subpoena. You may leave. Thank you, ma'am.

A Thank you, sir.

MS. RICHARDSON: The State calls Juanita McCollough.

Whereupon, Juanita McCollough was called to the stand, duly sworn by the clerk and testified as follows:

THE CLERK: Would you please spell your first and last name for the Court?

MS. MCCOLLOUGH: It's Juanita McCollough, J-U-A-N-I-T-A, M-C-C-O-L-L-O-U-G-H.

THE CLERK: Thank you, Ms. McCollough. Please have a seat.

DIRECT EXAMINATION

BY MS. RICHARDSON:

Q Ms. McCollough, where do you live?

A I live in Andrews.

Q Okay. And have you always lived in Andrews?

A No. Atlanta, Georgia.

Q Okay. And how long did you live in Atlanta?

A Three years.

Q Okay. And when was that?

A I've been home now three years and a month.

Q Okay.

A It's been a minute. I can't even remember.

Q Okay. But other than that were you born and raised in Andrews?

A Yes.

Q And your mother, Ms. Loretta Miller, just testified.

A Uh-huh.

Q That's your mother?
A Yes, ma'am.
Q And how many siblings do you have?
A I have -- all I had was a brother and sister. Both is deceased.
Q Okay. And your brother was James Miller?
A Yes. That's correct.
Q And are -- you are related to Marissa Cohen?
A That's my cousin.
Q Okay. And they call her Tina?
A We call her Tina.
Q Okay. Because she has a daughter that also goes by the name Marissa or Rissa?
A Rissa. Uh-huh.
Q Okay. And also Randy Collins?
A Excuse me. Yes. I know Randy. That's my uncle.
Q Okay. And you've known obviously both of them your whole life?
A We all been close my whole life.
Q Okay. And you spent a lot of time with both of them?
A Yes. That's correct.
Q And what sort of work do you do?
A I'm a certified nursing assistant.
Q And where do you work?
A Full-time at Prince George, part-time at Winyah.

Q Okay. And how long have you been doing CNA work?
A 27 years.
Q And do you have children?
A Yes. Seven.
Q Seven children. Okay. And do you -- and you have a child that's about the same age as Syience?
A Yes. Actually, my son Taiwan and Syience would have been -- when he passed they was like I think a year apart.
Q Okay.
A A couple of months apart. My son used to stay with them most of the time or Syience would be to my house.
Q And did you spend a lot of time with Marissa's children?
A Yes.
Q Science, Devon.
A Yes. We were close. We were real close.
Q And where were you living on the morning that Syience died?
A Atlanta, Georgia.
Q And how did you find out about it?
A My cousin, Rahqiya Dorsey had called me, and she was like, Juanita, Tina house is on fire. You know how to reach Tina?" I was like, "I think she's at Carolyn's house." She said, "Well, I been trying to reach your mom and I can't get her to wake up." I said, "Well, you got to bam on the door hard." So she said, "Hold on." She hung up, and I guess went

back and bam on the door. Then I called her back. She said, "Well, we on our way to go get Tina now." I said, "Okay." The last time I talked to her it was down at Tina's house that was on fire. She call me back and say, "Girl, there's a body in the house. They say it Syience."

Q Okay. And did you actually get in touch with Tina?

A Yes. I called Tina. I said, "Tina, they say your house on fire."

Q Okay.

A She say, "Okay," and then --

Q All right. And --

A -- that was all.

Q All right. Because -- and they were having trouble getting in touch with her?

A They couldn't reach her but I, I, I could reach her. I called her on her phone.

Q Okay. All right. And did you -- were you able to go to the funeral and that sort of thing?

A Yes, ma'am. I did.

Q And obviously your brother ended up being one of the ones charged in it?

A Yes. He was charged.

Q Okay. And after your brother died did you help clean out his belongings?

A My mom cleaned it out and gave me a book sack. It was

like a black bag, and that's what the -- that's where that brown envelope you had was in.

Q Okay. And that is State's 33; is that it?

A Yes. This is the envelope.

Q Okay. And the picture of it is State's 35 that was admitted into evidence?

A Yes, ma'am. That's correct.

Q And did you go, did you go through some of the contents?

A Yes, ma'am. I did. I read some of the letters, some of the raps.

Q Okay. And did some of those letters give you some concern?

A Yeah. When I read it and in one of the letter that was from Marissa to Devon --

Q Okay. And let me clear this up. We've had -- I think we've had a little mix-up just because the names are so close but Devon is the older, older son?

A Yeah. They -- all their name is something alike.

Q Okay.

A But we call, we call -- I call Syience Syience.

Q But his name was Dave?

A Yeah.

Q Okay.

A Devon is, is the brother and he's the middle.

Q Okay. And so the, the stuff that we're talking about is

Devon the older brother?
A The middle brother.
Q Oh, the middle brother.
A Uh-huh.
Q The older brother lives away?
A Yeah. Yes, ma'am. All their names kind of similar.
Q But none of these letters are obviously from Syience?
A No.
Q Okay.
A All of these are from Devon, yeah, from Marissa and Devon.
Q So tell me what about the letters piqued your interest?
A They had -- the first letter I read is where a letter Marissa wrote Devon --

MR. WILSON, JR.: Judge, Judge, may we approach, Your Honor?

THE COURT: Yes.

MR. WILSON, JR.: Thank you.

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

BY MS. RICHARDSON:
Q I'm going to withdraw that question, and I don't want you to say what was in the letters, but let me just show you State's 36 and 37, and if you want to flip through them and read.

A You want me to read it out.
Q Don't read them out loud, but to yourself.
A Oh, okay. Okay.
Q And see if you recognize them.
A Yes, ma'am. This -- I'm not going to say what's in it, but this the actual letter that caught my attention and made me brought them to the court.
Q That's one of the -- and that's which -- what number is on that, on the yellow sticker?
A 37 and 36.
Q Okay. And those are some of the letters that, that caught your attention?
A Yes, ma'am.
Q Okay. And did you write on them, change them or do anything with those letters?
A No, ma'am. I just read them and then I brought them down to the solicitor's office.
Q Okay. And so you brought them to our office to our attention?
A Yes, ma'am.
Q Okay. And thereafter did you turn them over to the police department?
A Yes, ma'am. I think if I'm not mistaken Andrews Police Department should have it.
Q Okay.

A And you got all of them.
Q You took them to Andrews Police Department?
A The rest.
Q All right. And again, you didn't mark them or change them or do anything like that?
A No, ma'am. I brought the envelope and everything just like it was, the envelope that it came in. That everything just like it was.
Q Okay. All right. Thank you.
THE COURT: Mr. Wilson?
A You're welcome.

CROSS EXAMINATION

BY MR. WILSON, JR.:
Q Just very briefly, ma'am. You don't have any knowledge about who started this fire at this house; do you?
A Only what my brother said to me.
Q You can't, you can't say what your brother said to you.
A I won't.
Q You --
MS. RICHARDSON: Your Honor, he asked her.
MR. WILSON, JR.: Judge, I asked her does she have knowledge, direct knowledge, were you there?
A I wasn't there, but my brother had talked with me.
THE COURT: Okay. Well, that's --
MR. WILSON, JR.: Thank you very much. No further

questions, Judge.

THE COURT: All right.

REDIRECT EXAMINATION

BY MS. RICHARDSON:

Q Based on what he just asked you, what did your brother tell you?

MR. WILSON, JR.: Objection, Your Honor.

A My brother --

THE COURT: Wait a minute. Send the jury out, please. Take the jury out. Don't answer that question.

A I won't, sir.

(Whereupon, the following takes place outside the presence the jury.).

THE COURT: All right. Ask that question again.

BY MS. RICHARDSON:

Q What did your brother, James, tell you?

THE COURT: The brother is?

MS. RICHARDSON: James Miller.

THE COURT: James Miller?

A Uh-huh.

THE COURT: A co-conspirator. Okay. Okay. Ask the question.

BY MS. RICHARDSON:

Q What did your brother tell you?

A He told me that he took Randy to Tina house that night,

that Randy asked him to give him a ride over there, he had a job to do. He said he went and picked Randy up. They load a tire and some other stuff in the truck and went over there. He said later on he dropped Randy off at home, he went up to Carnell's Bar. He said he was in there chilling, some guys came in later on that night, say, "Yo, your cousin house is blazing." He said, "You kidding me." He say he jumped up and he went to the house. It was on fire. I called Rahqiya back. Rahqiya was like, "Yeah, that was Syience body." So I called Randy on the phone. I called Randy over the phone. I said, "Randy, you know Tina house on fire," and he said, "Syience dead." He said, "Oh, that sad." That was it. I called Randy back I think like two more other times and I was like, "You heard anything." He's like, "No." I was like, "Dang, man." That was it, and it was -- by that time I think it was like, like between I want to say one, two. That was all.

THE COURT: Okay. Let me hear from you, Ms. -- I, I know Mr. Wilson is going to object to this. Mr. Wilson, and your objection is going to be hearsay; right?

MR. WILSON, JR.: And among other things, Judge.

THE COURT: Okay. Well, that me hear what you got.

MR. WILSON, JR.: It's not only rank hearsay, but again, she's trying to give testimony, trying to get it in the record on what the co-conspirator, who is not here and not available --

THE COURT: Well, let me, let me -- let's clear that up. There's no question that Mr. Miller is now unavailable.

MR. WILSON, JR.: That's right.

THE COURT: Okay. All right. Is this a statement -- I want her to say again, is this a statement against Mr. Miller's interest?

MR. WILSON, JR.: Judge, we, we had this discussion --

THE COURT: Wait, wait -- no, what I'm, what I'm saying here is she appears to be saying that Mr. Miller is simply saying Mr. Collins asked for a ride and he took him there and he finds out later that the house is on fire. That's not a statement against interest by Mr. Miller; is it?

MR. WILSON, JR.: It depends on exactly how she's going to frame it, Judge.

THE COURT: Wait, wait a minute. Listen. Listen. That supports your position.

MR. WILSON, JR.: No. I agree, but I'm afraid -- what I -- my fear is this, this statement --

THE COURT: What I'm getting at is I don't -- Ms., Ms. Richardson, what she just said Mr. Miller said is not a statement against Mr. Miller's interest. Therefore, it's not a 804 (b)(2) or (b)(3) statement excluded by the, by the hearsay rule.

MR. WILSON, JR.: I agree, and that's why I was agreeing with you, Judge, but I was saying that the statement has

changed from --

THE COURT: Well, that's the first time, Mr. Wilson.

MR. WILSON, JR.: No, no. There was a written -- we have a report on what she said earlier.

THE COURT: Okay. All right. Well, okay. So it's not a statement against interest. Okay. But Ms. Richardson is it in the course in furtherance of a conspiracy?

MS. RICHARDSON: No. No, Your Honor, not this part.

THE COURT: Okay. Well, then is this admissible? Under what theory would this, this, this statement be admissible? If Mr. Miller had admitted complicity with Mr. Collins or admitted any liability on his part it would be an 804(b)(3) --

MR. WILSON, JR.: Statement against interest.

THE COURT: -- exception to hearsay --

MR. WILSON, JR.: That's right.

THE COURT: -- and admissible, but I don't think she's said that. Has she, Ms. Richardson?

MS. RICHARDSON: No, Your Honor. I was getting ready to ask her about it though.

THE COURT: Okay. Go ahead.

MS. RICHARDSON: All right.

THE COURT: Ask, ask her. Let's see what we got.

BY MS. RICHARDSON:

Q Did he say anything else about the job?

A No. All he say is that Randy asked him to give him a

ride to Tina house because he had a job to do for Tina. That's all he said.

Q Okay.

A He load a tire and some other stuff in the truck. He said they left and went to Tina house.

Q And did you previously give a statement saying that James said that Randy had offered him money to help?

A I don't remember.

Q Okay.

A It's been so long.

Q Okay.

MS. RICHARDSON: Our position would just be that taking him over there would be a statement against his interest knowing that --

THE COURT: Well, what I understood her to say was he was surprised when he gets the phone call that there's a fire which indicates to me that he didn't know there was going to be a fire.

A He said he was at Carnell's Bar.

THE COURT: Did --

A Them the guys came in and say, "Your cousin house blazing," and he was like, "You kidding me." He jump up and went over there.

THE COURT: Did your brother say anything to implicate himself in this matter?

A No, sir.

THE COURT: Okay. All right. That's, that's what I wanted to know. All right. I won't allow it.

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

THE COURT: Okay. Anybody need a break? Okay. Bring them back.

MS. RICHARDSON: Yes. If we could just go ahead and take a short one then I think that would keep us from taking one next.

THE COURT: Okay.

A So we can leave?

THE COURT: No one speak to the witness, please. All right. We'll just take a minute. The witness may leave the stand, but I want the witness in the presence of law enforcement -- okay -- or a bailiff.

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

OFF THE RECORD

(On the record. The following takes place outside the presence of the jury.)

THE COURT: Let's bring the jury in. Do we need Ms. -- yeah. Mr. Wilson, are you through with Ms. McCollough?

MR. WILSON, JR.: With who, Judge? I'm sorry.

MS. RICHARDSON: I was on redirect. So and that's when we stopped.

THE COURT: You were on redirect, right?

MS. RICHARDSON: Right.

THE COURT: Okay. Then she needs to come back. Ms. McCollough.

MR. WILSON, JR.: Yes, sir.

THE COURT: Where is she?

MR. WILSON, JR.: Right here, Judge.

(Whereupon, the following takes place in the presence of the jury.)

THE COURT: Yes, ma'am. Anything further?

MS. RICHARDSON: No, Your Honor.

THE COURT: Mr. Wilson.

MR. WILSON, JR.: Nothing further, Your Honor.

THE COURT: All right. You may step down, Ms. McCollough. Any further need for Ms. McCollough?

MS. RICHARDSON: No, Your Honor.

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

THE COURT: You're released from your subpoena, Ms. McCollough. Thank you.

All right. Ms. Richardson.

MS. RICHARDSON: Your Honor, the State calls John Jack Jamieson to the stand.

Whereupon, John Jack Jamieson is called to the stand, duly sworn by the clerk and testified as follows:

THE CLERK: Thank you. Please have a seat.

DIRECT EXAMINATION

BY MS. RICHARDSON:

Q Mr. Jamieson, where are you employed?

A I'm employed at the forensic lab, which is part of SLED, the South Carolina Law Enforcement Division.

Q And how long have you been there?

A About a year and a half.

Q And what is your position there?

A I'm a questioned document examiner.

Q Okay. And can you tell me what your education is?

A I have a bachelor of science in biochemistry and chemistry as well as a certificate in criminology.

Q And have you had any specialized training?

A Yes. I started training in June of 1981 in order to become a questioned document examiner. The training is comprised of a two-year apprenticeship type program, where you study under the tutelage of senior questioned document examiners. You read various texts. You read various journals, periodicals. We do test cases. There are numerous exams and quizzes, as well as there was a board examination where the -- I presented my findings in a mock case in front of the director as well as the deputy director of the place where I was working.

Q Okay.

A And then I have continued on with training. We usually go to a conference once a year. We get -- we subscribe to

various journals and periodicals, and I've taken several courses over the years as well.

Q Okay. And before you were at SLED where were you?

A I was at the Virginia Department of Forensic Science for 17 years.

Q And what did you do there?

A Questioned documenting.

Q So altogether you have been doing it how many years? I'm sorry?

A 37.

Q Do you have any estimate as to how many samples or questioned documents you've examined?

A I've done over 3500 cases. I don't how many questioned document, documents those would involve. The usual case is maybe 10 or 11 knowns with one questioned. So multiply that, but that's very, very rough estimate.

Q Have you been qualified as an expert --

A Yes. I have.

Q -- in courts?

A Yes. I have.

Q And would that be in Virginia and in South Carolina?

A Yes. And Ontario, Canada, where I started out.

Q Okay. And in state and federal courts?

A Just state.

Q And what, what have you been qualified as an expert in?

A Questioned document examination, which includes the examination and comparison of handwriting, handprinting and signatures, examinations of pens, papers, inks and pencils, the decipherment of alterations, obliterations and erasures, as well as the decipherment of indented writings.

MS. RICHARDSON: Your Honor, at this time I'd offer Mr. Jamieson as an expert in the area of questioned document examination.

MR. WILSON, JR.: He's absolutely an expert. Without objection, Judge.

THE COURT: All right. And he is so admitted as an expert in questionable documents, and again, I've explained to you what an expert witness means and what that witness may do and you would apply it to this witness' testimony.

BY MS. RICHARDSON:

Q All right. So can you tell us briefly the process and what do you do when you're analyzing questioned documents?

A Well, in this case I looked at the questioned writings, and I looked at the questioned letters, letter portions first. I received questioned envelopes, as well as letters. So I looked at the questioned letters first to see whether or not they were written by the same person. Once I determined that I looked at the envelopes to see if they were written by the same person. I then looked at the letters versus the envelopes and determined that they were written by one in the

same person. Then I performed a one-to-one comparison between the questioned material and the known material that was submitted in the case. Things I'm looking for are such things as letter formations, relative heights of letters, initial and final strokes on letters, relative heights, skill level and the like, and what I'm looking for is a set of individual similarities with no significant differences in order to arrive at an identification.

Q Okay. So basically, you're asked to examine a letter that we want to know who wrote, that's questioned?

A Yes.

Q Tell us who wrote this, and asking you to compare it to things that we know are from that person?

A That's correct.

Q So in this case, let me show you what's been marked as State's 36 and 37, and these are photocopies, and I am also going to mark the original envelopes, State's 38 and 39, and would the envelope or packaging help you in any way?

A No.

Q No. Okay.

A No. Yes. I was provided with the original letter and envelopes for State's Exhibits 38 and 39 and the State Exhibits 37 and 36 appear to be copies of the original material that I examined. The reason I know I examined it it's got the case number, item number and my initials on each

and every piece of paper.
Q And what sort of known samples did you receive?
A I received numerous known samples from an individual who was told to me part of the submission was the known writer was Marissa Cohen.
A Okay. And where were those samples from? Was it indicated in your information?
A May I refer to my notes, please, Your Honor?
THE COURT: Certainly.
A In the submission documents nothing specific as to where they were obtained. From the contents of them they were from various sources.
Q Okay. And how many did you receive?
A I received 63 known standards written by Marissa Cohen.
MS. RICHARDSON: Your Honor, I believe Mr. Wilson has agreed to stipulate that those are known samples without the necessity of producing all of those writings to the jury.
MR. WILSON, JR.: That's correct, Judge, and the Defense will stipulate, Judge.
THE COURT: Very well. Well, the Defense has stipulated. That means agreed. Sometimes that occurs in a trial, and it means that you may accept that fact or that stipulation as a fact in your deliberation. It's no longer in question. In this case the State has presented the examiner with some documents that they say came from Melissa [sic] Cohen, and Mr.

Wilson has agreed that those are authentic documents from her. That is the knowns that will be compared against the questioned documents. Okay. He does not stipulate that the questioned documents were from her; is that correct?

MR. WILSON, JR.: That is correct, Your Honor.

THE COURT: All right. Thank you.

BY MS. RICHARDSON:

Q Now, Mr. Jamieson, what is the process of these items being taken to SLED? Where are they first taken?

A They are taken to our evidence intake people.

Q Okay. And in this case who took the -- who took the documents to SLED? And basically we're going over what we commonly refer to as the chain of custody.

A And I really don't have all that information for you.

Q Okay.

A I can say that the submitter from the document I received to be -- appears to be a Michael Thacker.

Q Okay. And would --

A And he's down as case officer.

Q Okay. And would the printed chain of custody from the South Carolina Law Enforcement Division refresh your recollection?

A Certainly.

Q And I'm going to show you what's been marked as State's 40 for identification purposes only, see if that would refresh

your recollection?
A Yes. The documents were brought in. They were given or the, the packaging was submitted through Doris Yarborough of our evidence receiving department. It was then placed in evidence storage, and then I went downstairs to pick it up and I received it from Jackie Davis of the evidence receiving section. I then took it up. I booked it into our secure evidence intake section in the section and then I removed it, worked the case and then turned back the sealed envelopes to Amy Stephens Black, who stored them in the evidence room until they were picked up by the agency, Michael Thacker.
Q Okay. And does SLED have methods in place to make sure that these documents are sealed when you receive them?
A Yes. They're sealed by the submitter right in front of the evidence technician and then they arrive in my hand sealed, and when I get them I make sure they are sealed. I make notation that they are sealed, and, and if they, they were not sealed then that would be noted as well, but in this case it was sealed.
Q Okay. And other than doing your examination, did you alter, amend or, or make any changes to these documents?
A Other than putting my case number, initials and item number on them, no.
Q Okay. All right. And based on your examination of these, of these documents, which the originals are State's

Exhibit 38 and 39, with copies being State's 37 and 36, did you compare those two to the 60 some pages that everyone agrees belonged to Marissa Cohen?

A Yes.

Q Okay. And were you able to make an opinion as to whether those two letters and the -- the two letters that you have, were written by Marissa Cohen?

A Yes. I was.

Q Okay. And what is your opinion?

A My opinion is that Marissa Cohen wrote those two letters and envelopes.

Q Okay. And did you issue a report in that regard?

A Yes. I did.

Q Okay. And that report has some additional documents that are not before the Court that you also examined; is that right?

A That's correct.

Q Okay. And do you know which item numbers these are that you did examine?

A I'm just verifying it, but one of the envelopes was item one. The letter inside the envelope was item two. I sub-broke it into 2.1, 2.2, which is the face and back of the piece of paper. Then that -- the other envelope I looked at was item seven, and the two-page letter with writing on both sides was marked as item eight, and again, I sub-itemed the

face and backs of the -- both pieces of paper 8.1, 8.2, 8.3, 8.4.

Q Okay. I'm going to hand you what's been marked as State's 41. Can you tell me what that is?

A It's a copy of my report --

Q Okay.

A -- in this case.

MS. RICHARDSON: Your Honor, at this time I'd offer State's 41 into evidence.

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

MS. RICHARDSON: As well as State's 39 and 38.

MR. WILSON, JR.: Without objection, Judge.

MS. RICHARDSON: And we have photocopies of those that are just easier to flip through because they're written in pencil, and that's State's 36 and 37, offer those as well.

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

THE COURT: Without objection.

MS. RICHARDSON: Okay.

(State's Exhibit Number 36 [Letters], State's Exhibit Number 37 [Letters], State's Exhibit Number 38 [Envelopes], State's Exhibit Number 39 [Envelopes], and State's Exhibit Number 41 [Jamieson Report] entered into evidence and appropriately marked.)

BY MS. RICHARDSON:

Q Mr. Jamieson, can you publish for us State's 39, and I

don't know if it would be easier to read it from the original or from the copy.

A What do you mean by publish?

Q Or read it to us, please?

A Okay. I can try. It's -- okay. Okay. I have an envelope, State Exhibit 39. The return address is Marissa Cohen, 2394 Browns Ferry Road, Georgetown, South Carolina, SC, 29440. The envelope is addressed to Devon Coombs, 2394 Browns Ferry Road, Georgetown, South Carolina, SC, 29440. The letter starts out with Marissa Cohen, 2394 Browns Ferry Road, Georgetown, South Carolina, 29440, November 11th, 2014. [As read], "Hey, little Dev, Gregory told me that your probation would be over on November 20th, 2014, when you turn 18. Rissa said that she love you, love you. Her address 6719 North 6th Street, P-H-I-L-A, PA, 19126. At least you lawyer comes and see you. I talked to Isaac today. He said that he spoke to her, and they denied me a bond again. Shit. When was that bitch going to come and let me know. Shit, when was court? Dev, I have a bad feeling about this. Randy needs to go. I be thinking about all kinds of shit. I could come up with everything to help everybody else, but when I comes to me I can't think of shit. I need some help bad. November 15th Roy Boy I being moved three times already within these few days. Now I'm with a psycho," or it's p-s-y-h-o, "for real. I think that I'm also on lockdown. It's your birthday in five days.

Happy birthday. You're going to be 18. Wow, my lawyers still haven't gotten in contact with me. I heard Randy has a bond. I wish that I had some backup and Randy did have a bond just to deal with him. Try to find out now -- how I can get some money from my books to yours. I'm so depress. I feel all alone in this situation. Well, I wrote a grievance. P-S-Y-H-O is gone. Devon, I be having all kinds of thoughts, mood bad, everything under the sun. Devon, hows do you think things are going to turn out for me? Do you think that I'm going to get life? I hope not. I need a gun and meet up with Randy and Mano," or it might be M-A-I-N-O. "I need out of here. I wish that we all were home," and it looks like C-O-A-N-Y, "me, Rissa and you. Don't forget S-Y-O-E-N-C-E. Anyway, I love you, wrote back soon, mommy." And that's it for that one.

Q I'm not going to ask you to read the other -- the entire contents of the other one.

A It was too painful, was it? Sorry.

Q If you could just on the next one. That's all right. We'll publish that one at a different time. That's all the questions I have. Answer any questions that Mr. Wilson may have for you.

CROSS EXAMINATION

BY MR. WILSON, JR.:

Q Just very briefly. Can you give me the dates on those

letters?
A Certainly. State's Exhibit 38 is dated December 22nd, 2014.
Q Okay.
A And State's Exhibit 39 is dated November 11th, 2014.
Q Very good. Did the State provide you with any handwriting samples from Randy Collins?
A No, sir.
Q Okay. And you haven't observed any handwriting samples from Randy Collins; correct?
A No, sir.
Q These were from Marissa Cohen written to her son Devon Coombs?
A The questioned material?
Q The questioned material. Yes, sir.
A Yes, sir.
Q Okay.
A If Devon Coombs is her son.
Q Right. Right. If he's her son. Yes, sir. And in these letters the dates that she has on there are in December and was the other one November?
A Yes.
Q When she sent both letters?
A Yes.
Q Okay. Did they tell you the incident date or the date

that Randy Collins actually gave a statement?
A No.
Q Okay. Thank you so much.
MS. RICHARDSON: Nothing further from this witness, Your Honor, and we'd asked that he be excused from his subpoena.
MR. WILSON, JR.: Without objection, Your Honor.
THE COURT: Thank you. You're excused.
A Thank you, Your Honor.
THE COURT: And released from your subpoena.
A Thank you.
THE COURT: Thank you. Ms. Richardson, you want to come up and make sure that --
MS. RICHARDSON: Yes, Your Honor.
THE COURT: -- that Grace has the exhibits.
All right. We're good?
MS. RICHARDSON: Yes, Your Honor.
THE COURT: Thank you.
MS. RICHARDSON: If we may talk with you just a second.
(Whereupon, a bench conference is held in the presence, but out of the hearing of the jury.)
THE COURT: Okay. All right. We're going to adjourn for this afternoon. Hopefully, we're going to be able to finish this up tomorrow. We hope so anyway. So please take the jury back to their room. Make sure they have their things and get out safely, and we'll see them back at 9:30. Okay? Attorneys

at nine, okay. Thank you.

MR. WILSON, JR.: Yes, sir.

MS. RICHARDSON: Yes, Your Honor.

THE COURT: We're adjourned. Everyone wait for the jury. All right. See you all in the morning.

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

MS. RICHARDSON: Thank you, Your Honor.

(Adjourned for day.)

(On the record November 9, 2018. The following takes place outside the presence of the jury.)

THE COURT: Preliminarily let me just put something on the record. On yesterday I made a ruling concerning certain letters that were introduced that were purported to be letters of a Codefendant not on trial here today, jailhouse letters to her, her son. It was my ruling that they were clearly admissible or I felt they were admissible under Rule 804 as a, a statement against interest. I am of that opinion this date. However, I want this record to be clear in that I am aware of the case law, some case law indicating that it should be, when that is done in a criminal case it should be supported by corroborating circumstances clearly indicating its trustworthiness. I think that the corroborating circumstances are certainly there. First of all, we have heard the testimony of Mr. -- Ms. Richardson, who was the gentleman who testified that she told him she was going to burn the house.

MS. RICHARDSON: Oh, Benjamin Brown, Your Honor.

THE COURT: Mr. Brown. We've heard the testimony of Mr. Brown that she stated she was -- is the, the author of the letters that she was going to, to burn her house. We have the statement of the Defendant himself, which it's about to be played, but of course, I have seen it many times and I have ruled on its admissibility, and there's an agreement as to the redacted copies. In that statement he very clearly

implicates, of course, there's an issue for the jury to determine whether the statement's voluntary, but in that statement implicates himself in the, in the burning of the trailer and his, his conversations with the author of the letters, the Codefendant, he indicates that, and in addition to that, there's been testimony by an expert authenticating the letters as being in the handwriting of the, the Codefendant, also the circumstances under which they were discovered I think adds to their trustworthiness. There is a, a significant amount of evidence in this case that would -- from which the jury certainly could infer, clearly, that there was a, a -- an agreement between the parties for the burning of the building, and unfortunately it led to the death of this young man. I think that there are clear indications of trustworthiness in that writing. I think the clear inference that a jury could raise from that is that she states that she wants the two persons with the Defendant in his statement indicates as being her Coconspirators need to be killed, the clear inference is that they're going to testify against her, she's afraid that she's going to get life in prison as she indicates in her letter, whether that's true or not, that certainly indicates her, her mindset at the time. I believe that there are corroborating circumstances that support clearly the trustworthiness of her statement, that the statement is against her interest, and should come in as an

804 exception to hearsay, and again, I have looked at that statement under a 403 analysis. I understand that it is highly prejudicial to the Defendant, but it is not unfairly prejudicial. He has made a statement that comports with the inferences that could be raised by those statements. The connection between the Defendant and this Defendant and the Codefendant is crucial to this case, must be proven. It's an important part of the State's case, and I do not see it as being unfairly prejudicial to the Defendant. I just want that on the record. Okay. All right.

Now, I also understand that over the evening based on my rulings there has been an agreement as to the redaction of the statement given by the Defendant which the jury will hear this morning. Is that correct, Ms. Richardson?

MS. RICHARDSON: Yes, Your Honor.

THE COURT: Is that correct, Mr. Wilson?

MR. WILSON, JR.: That's correct, Judge, obviously subject to our previous objections in Jackson v. Denno, Judge.

THE COURT: Oh, certainly. And of course, there is an agreement that during the breaks that Ms. Richardson will explain to the jury that there is a break here because the parties agree that this is -- these are matters which are not relevant to the jury's decisions and that there was a bathroom break or that this is the portion where the camera battery ran out as the witness has already testified. Okay. Is that

right?

MS. RICHARDSON: Yes, Your Honor.

THE COURT: Okay. And no comment on the, on the content, simply that's what the breaks are for so as not to confuse the jury. All right. Right, Mr. Wilson?

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

THE COURT: Okay. All right. Now, anything further?

MS. RICHARDSON: Nothing from the State, Your Honor.

MR. WILSON, JR.: Nothing from the Defense, Judge.

THE COURT: Okay. And I also would like to put on the record we have this morning had a fairly extensive conference on the charge. I -- my clerk had a charge prepared and we have added some things at the request of the parties and that those are being sent to you so that you will have them as early on as possible, and I want to make sure that you -- and I know you do, you know my policy. I give the jury a written transcript of my charge. Everyone knows that. Right, Mr. Wilson?

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

THE COURT: Okay. And Ms. Richardson. Okay. Thank you. Okay. Let's bring in the jury.

(Whereupon, the following takes place in the presence of the jury.)

THE COURT: Okay. Have we got everyone back? Yeah. We certainly do. Okay. Ladies and gentlemen, we brought you in

a little bit later this morning but I've had the attorneys in for quite a while now, and we have done a great deal of shortening up what's left, and so please don't think that we were wasting your time. We were -- certainly had judicial economy at heart when we conferenced this morning, and I think we accomplished a good bit. Okay. Ms. Richardson, you may proceed.

MS. RICHARDSON: The State calls Investigator Melvyn Garrett to the stand.

THE COURT: Come around, Mr. Garrett.

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

THE CLERK: Please have a seat.

DIRECT EXAMINATION

BY MS. RICHARDSON:

Q Good morning.

A Good morning.

Q All right. Investigator Garrett, where are you employed?

A Georgetown County Sheriff's Office.

Q And what is your position there?

A Criminal investigator.

Q And can you briefly describe to us your work history in law enforcement?

A Certainly. I began law enforcement in 2002. I -- 2007 I went to Iraq to train police officers. In 2010 I went to

Afghanistan to train police officers. 2014 I went to the Andrews Police Department where I served as deputy chief and then chief of police, and then 2017 I came back.

Q And so you were with Georgetown from what period of time, 2000 --

A 2002 to 2007, 2008 to 2009, 2010 to 2014 and 2017 to current.

Q And in March of 2014 then you were with Georgetown County Sheriff's Office?

A That is correct.

Q And your position there was?

A Criminal investigator.

Q Okay. And were you called out to investigate a fatal fire that occurred near the Town of Andrews on March 29, 2014?

A Yes. I was.

Q Okay. And obviously that's in Georgetown County?

A It is.

Q Okay. And are you familiar with the, with the Town of Andrews?

A I am. I am.

Q You were chief there as well?

A Absolutely.

Q Okay. Let me show you what's been marked as State's Four, the map, the GIS map of --

A Yes.

Q -- of, of Andrews.
A Uh-huh.
Q And you've reviewed that previously?
A I have.
Q Okay. And just to kind of get everybody oriented this where I'm pointing that says crime scene 10 James Drive is on this point?
A Yes. That's the location of the fire.
Q Okay. Tell me how you would generally be notified that you needed to respond to a scene because obviously every scene wouldn't have an investigator; is that right?
A That is correct. What, what generally happens is patrol will show up at a scene. They would call their supervisor, tell them what they have and the supervisor would make a determination of whether or not an investigator is needed.
Q And that was done in this case?
A Yes. It was.
Q And the initial responding officer was who?
A Allen Flagler.
Q Okay. All right. So about what time did you arrive?
A It would have been shortly before three.
Q And can you just describe the scene and what was going on when you got there?
A Absolutely. There's a lot of folks around. I noticed that the trailer was burned with the SLED guys described as

the A B side to keep it consistent. So the first thing I would do is talk with the responding officer, "Hey, tell me what you got," and so he told me about the death. I look at the -- well, first I go and I view the body, look at the scene. The first thing I noticed that the A B side of the trailer is burned, but the kitchen is on the other end. So I found that kind of strange, but okay, we're going to keep moving. Now, growing up, I've had some experience with kerosene heaters. We used them, and when I looked in I noticed that there were five or six heaters in that room, and for a space that small typically you would only need one. So at that time I decided to call SLED for an arson investigation.

Q Okay. And obviously the -- you knew at that point that it was a fatality with the child?

A Absolutely.

Q And did that give you some concern as well?

A Oh, absolutely. He's only 12 years old, and he's home alone. So I also contacted DSS.

Q And how was the weather that night?

A It was raining off and on.

Q So you, you called in the SLED arson investigators and then what did you do?

A I would've had to go and get a search warrant because typically if we got a crime scene we use a search warrant to

actually investigate the case, brought it back and met with SLED and then we served that search warrant, which means we started working the crime scene, collecting evidence, so on and so forth. I received some information that the child's mother was acting kind of strange, but I needed to speak with her anyway. You know, I need to find out why the child is here, "Where were you?" So we went to Georgetown and I did notice that, in fact, of all the interviews I've done there's only been three occasions when I looked into somebody's eyes and I didn't see anything at all. She was just cold.

Q And did you gather any information from your interview about possible causes for the fire?

A Yeah. She told me that she had been having some electrical problems. So they moved out and moved into Arbor Place Apartments.

Q And did you investigate why the child was there alone?

A She told me that he went to a party that night at the rec center, and he was supposed to come back to the apartment, but he never did, and so I asked, "Well, you didn't call to see where he was?" She said, "I tried to but it went to voicemail."

Q And as far as the -- as getting the search warrant does that take a little time?

A It does. It does. You got to go back, write the search warrant, then meet with the judge, which the on-call judge, I

believe, was in Pawleys Island or Murrells Inlet. So I had to travel over there, get it signed and then go back to Andrews.

Q So after you had, you had done that and had interviewed the mother about what time was it at that point?

A I want to think it was about six that morning that I interviewed her. If you'd let me look at the notes, 7:30-ish.

Q And after that you went back to the scene?

A I did.

Q Okay. And then what else did you do?

A We -- I was -- I, I met with the SLED investigators. They told me, "Hey, you know, this is certainly an intentional fire." So we continued to work the scene, and, and I believe that was it that particular day.

Q And the scene was clear, cleared after that as far as --

A Absolutely. Uh-huh.

Q And then what was the next steps in your investigation?

A Well, because she mentioned that there -- she'd had some electrical problems I contacted the electric company, spoke with their investigator, "Hey, have you had any complaints?" He said no. I asked him if there was any way he could tell whether the currents were off that night. He said there wasn't a way to tell so.

Q And then after that did -- what else happened in your investigation?

A Well, I, I received an anonymous tip at the office one

day. So I went out to Andrews to Super Chick and met with the clerk who was on duty the night prior to the fire. She told me that Marissa Cohen came in, that she knew Marissa, but she came in and bought kerosene. I said, "Okay, well, first tell me how you remember that." She said, "Well, it was strange. She used a $100 bill and initially I thought she wanted three dollars worth of kerosene, but she told me she wanted 20." So I had to do two separate transactions.

Q And were you able to get any evidence from Super Chick?

A Absolutely. I got the two receipts. I asked about the video, but their camera system wasn't working that day.

Q Any other actions that you took as a result of the information you'd received?

A Oh, that -- yes. I contacted Agent Hardee who was working hand-in-hand with me, had him to check to see if she had renter's insurance on the trailer. Sometime later he found out that she did. A little less than a month prior to the fire she got renter's insurance.

I then spoke with Benjamin Brown. He told me that he didn't know anything about it, he wasn't there, and I was able to confirm that through other residents where he was staying. I spoke with a few other people in that time period, and then I went to go find Randy Collins to speak with him.

Q Okay. And how -- where did you -- and what -- do you know what date that was? Well, first let me show you. I know

this will refresh your recollection, what's been marked as State's Exhibit Number One for identification purposes, and do you recognize that?

A Yes. I do. This is --

Q Okay. And what is that?

A This is a handwritten statement from Randy Collins. I actually wrote the statement at his request.

Q Okay.

A At it's -- this is dated April 9th.

Q And tell me about the circumstances of that statement? Where did you locate him?

A I believe he was in the roadway near his house. So as I approached, we saw him. I, I believe I was with Investigator -- Officer Nesmith at the time, and I stopped and I got out and walked up to him, and I do that because I want to, I want to get an idea of how they feel, what their body language is so I can watch, see what's going on, and I, I told him that -- I -- well, I asked him where he was. I didn't ask him where he was. I asked him if he knew anything about the fire. He told me he did not know. He heard about it, but he didn't know anything other than that, and then he went on to tell me, well, you know, I was at the bar from nine till 11. I didn't ask him that, but he told me that. So I asked him to write it down in a statement. He said, "I'd prefer that you do it." So I wrote it, and then I left him, got his phone number and

all that good stuff, said, "Hey, I may have some more questions for you later."

Q Okay. And did you put him in the car in handcuffs or anything like that?

A No. We were standing outside.

MS. RICHARDSON: Your Honor, at this time I'd offer State's One into evidence.

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

MS. RICHARDSON: Okay.

THE COURT: And you're, you're referring to the statement that was written by the officer?

MS. RICHARDSON: And signed by Mr. Collins. Yes, sir.

THE COURT: Okay. All right. That's in.

MS. RICHARDSON: Okay.

THE COURT: Without objection.

(State's Exhibit Number One [Collins' Statement 4-9-14] admitted into evidence and appropriately marked.)

BY MS. RICHARDSON:

Q And would you publish or read this statement to the jury, please?

A Certainly. [As read], "On the night of the fire I was with my nephew, James Miller, and we went to Carnell's Club. We went there at nine and left around 3 a.m. T that runs the bar was there. I did not have anything to do with the fire."

Q All right. And what did you know at that point about

James Miller?
A I didn't know anything about James Miller. This was the first time I heard his name.
Q So based on that information and the statement that you were given what did you do?
A I went to go find James Miller to confirm what Randy said and he did.
Q Okay. And did you do anything else?
A Absolutely. I -- after, you know, during this investigation, like I said, I received a tip, and I took certain measures to confirm more that tip. I met with Randy again, and I told him that I wanted to meet with him a third time because I had some more questions. He agreed to meet with me, but he never showed up came.
Q And as far as --
MR. WILSON, JR.: No objection, Your Honor.
THE COURT: Without objection.
BY MS. RICHARDSON:
Q Now, let me show you what's been marked as State's 42.
A Okay. This is a statement taken by -- from James Miller. It appears that I wrote this statement as well, and he signed it and approved it. This is on April 10th.
Q Okay. And where did you end up getting up -- that was April 10th?
A Yes.

Q Okay. And where did you end up finding Mr. Miller?
A He -- his driver's license said that he lived one place, but I actually found him at 6 Soapberry Road where he was living.
Q And if you --
MS. RICHARDSON: Your Honor, at this time I'd offer State's 42 into evidence.
THE COURT: I think he just said without objection; right?
MR. WILSON, JR.: Your Honor, without objection, Judge.
MS. RICHARDSON: I just hadn't moved it in.
THE COURT: Okay. It's admitted
(State's Exhibit Number 42 [Statement of James Miller] admitted into evidence and appropriately marked.)
BY MS. RICHARDSON:
Q And could you publish that to the jury?
A Certainly. [As read], "On the night of the fire myself and my uncle, Randy Collins, went to Carnell's around nine and we left around 3 a.m. My Uncle Randy was there with me the entire time. I had nothing to do with the fire."
Q And did you do any follow-up based on their statements?
A Absolutely. I went to Carnell's Club to speak with the owner because Randy mentioned that he specifically spoke with T who was the bartender that night, and well, when I spoke with T, it didn't match with what Randy said. I also spoke

with other patrons who were at the bar that night and their statements were inconsistent with what Randy said.

Q How many of them, all -- how many people all together did you speak with?

A Five or six.

Q And so after that you said that you met with Mr. Collins again?

A I did.

Q And that was to schedule another appointment that he failed to appear for?

A That's correct.

Q And when was that?

A That was on May 8th or at least my report says May. It was probably April.

Q And in between the time of the fire and May --

A Uh-huh.

Q -- you and Agent Hardee were still working hand in hand?

A Absolutely, we were.

Q And what other sorts of things were you and he doing in your investigation?

A Okay. So once I found out that -- I got information that was inconsistent with the statements I got we -- Agent Hardee did a search warrant for the telephone numbers to see if, you know, we could see any communication between the parties and, you know, of course, we contacted the insurance company and,

and, and also the storage -- I believe we contacted the storage shed to see if Marissa had moved out, moved anything out.

Q Okay. And so then was there another occasion you met with Mr. Collins?

A Yes. The day of the -- we actually did interview him a second time. We met with him over at Andrews Town Hall to return his phones to him, and while we were there we asked to speak with him about the statement he had given and some of the things that we had learned through the investigation.

Q And tell me how, how that came about.

A Well, he had -- we, we took -- we seized two cell phones so we could also do search warrants on them and download the content, and so we met, we talked with him, I believe he talked with Officer Nesmith, and an arrangement was made for us to meet at town hall to return those phones.

Q Okay. And he did come there?

A He did.

Q All right. And where did you meet up with him at town hall?

A There's a conference room there and that's where we, that's where we met him.

Q And explain to us the setup of Andrews Town Hall and Police Department.

A Okay. So they're connected, partitioned by a glass door.

So one side's the police department. The other side is actual town hall where they collect money for the water bill and so on and so forth.

Q And when he came to town hall was he by himself or what or how did he arrive? Do you remember?

A I want to think he was dropped off there.

Q Okay.

A I don't -- I don't remember whether he drove or whether he was dropped off, but he arrived in a vehicle.

Q And did you take him into custody? What was the process at that point?

A Absolutely not. We talked with him for a little bit, you know, "Hey. Thank you for coming. We're going to return the phones, but while you're here is it okay if we -- we got a few questions for you. Would you like to talk?" He said, "Yeah. I'll talk to you."

Q And what was his demeanor?

A Well, he seemed pretty cooperative at the time.

Q And how about his physical condition?

A He was in good shape.

Q And did he appear to be under the influence of alcohol or drugs?

A No. In fact we asked him. He said no.

Q And did you make any threats, coercions or promises to get him to talk with you?

A No.
Q So once he agreed what did you do? Did you -- at that point where did you go?
A Well, we went into that conference room and we advised him of his Miranda rights, you know, right to remain silent, anything you say, so on and so forth, and, and then we started asking him questions, and, and at this point the questions that we're asking is just to get him comfortable with talking.
Q Let me show you what's previously been introduced as State's Exhibit Two and tell me about that.
A So the Miranda rights form that I spoke about. This is normally what we do. We read the rights line by line, ask him if he understands. He'll initial each line and then sign the bottom.
Q Were you present for that?
A I was.
Q Okay. And is your signature on that form?
A It is.
Q Now, tell me about how this, this interview was recorded.
A So Agent Hardee had a personal camcorder that he had with him. So while we were beginning to interview, he decided, "Hey, let's, let's go ahead and record this while we're here." So I agreed and he set up his personal camera.
Q And where was the camera?
A It was placed on the table between him and Randy Collins.

Q Okay. Were you also at the table?
A I was.
Q Okay. And was it completely visible?
A Yes. It was.
Q And so tell me about the process of questioning.
A Okay. So, like I said, the first bit of questioning is just to get the person or whoever, the subject that we're talking to comfortable with talking. During that process we will then switch over to an interrogation type process where we will confront him about the inconsistencies in the statement and that's, that's what we did.
Q Did he know why he was there?
A Yes. He knew.
Q Now, about how long did this interview last?
A It was around three hours.
Q And tell me if anything that you did to provide for his comfort.
A Well, absolutely, you know, "If you need anything to drink, any time you need to use the bathroom or you want to smoke, you know, you're, you're free to go. You can do whatever you want," so anytime he requested it then that's what we try to do.
Q Did you provide him anything like that?
A Absolutely. He had soda and cigarettes.
Q And what about food?

A Well, if he had said he was hungry we would have gotten him food.
Q And did that happen?
A But he -- no.
Q And did he ever ask to terminate the interview?
A No. He didn't.
Q Now, at some point, and we heard testimony about, testimony about this previously, some of the -- some of the statement is not on video; is that right?
A That's correct.
Q Okay.
A That's correct.
Q Tell me about that.
A So while we're talking to him I think we're about an hour, hour and a half in, the camcorder went dead. Now, we didn't notice that until we went to take the next break and Agent Hardee -- so he tried to correct that.
Q Because -- and why would you have noticed it during a break?
A Well, because we're getting ready to cut the camera off for the break, and that's when he noticed that it was already off.
Q Okay. All right. And while -- but you were still interrogating him without realizing that the camera was off?
A Partly, partly. I'm sure we'd taken a break in between

there.
Q And what, if anything, occurred while you were off camera?
A I mean, we just went out and smoked cigarettes, used the bathroom. That's about it.
Q And would there have been anything different during that period than what we see on tape?
A No.
Q While the camera was not recording, did you threaten, coerce or coerce Mr. Collins?
A Absolutely not.
Q Did you make any promises or do anything to induce him to continue to talk to you?
A No. Not really. You know, I told him no matter what he told me I was going to let him go home that day.
Q Either way?
A Either way.
Q And while the camera was off did -- was the -- did your demeanor change at all or did you change your approach?
A No. I'm a pretty even keel guy.
Q And while the camera was off did he say he wanted to quit the interview or, or anything like that?
A No. He didn't.
Q Did you do anything to make him feel that he had no choice?

A No. No. Absolutely not.
Q Now, tell me what he initially told you when the interview began.
A Well, he maintained his story that he didn't do it, he didn't set the fire, he wasn't there, he didn't know anything about it and that was before I started to confront him about what we'd learned on the investigation.
Q Okay. And when you started confronting him tell me what you started confronting him with.
A Well, I want to think that the first thing I confronted him about was the fact that he told me he was at the bar and he wasn't. You know, he told me all the people that he talked to and their stories were different than his. So and I, I noticed that it was strange that the times that he told me he was at the bar would have put him as far away from the crime scene as he could possibly be, which is something that we typically see in interviews.
Q Okay. And when you started confronting him with these inconsistencies what happened then?
A Well, he would have to change his story. "Well, I was there, but I left," or, you know, "I know something about it, but I didn't do it," and so he just kept inching closer and closer until he put himself at the crime scene when the fire was started.
Q And can you explain your method in that interview

technique?
A Well, absolutely, because if he's -- if you tell me something and that's -- and this is the reason why we get an initial statement it's just to lock him in, "Okay, this is what you say happened." We do an investigation and then we revisit that initial statement, and so when, when he tells me he didn't know anything about it, but then I learnt, he says, "Well, you know, she called. Marissa called and she offered me $5,000 to burn down the trailer, but I told her no," and then it was, "Well, I told my nephew James about it, but I didn't go," and then, "I went but I didn't get out of the car," and "I got out of the car, but I didn't walk through the woods," and "I walked through the woods, but I didn't go to the house," and that's just how the -- how it progressed all the way to the end.
Q Now, at this point had -- did you have any of the case materials with you?
A I don't believe I did.
Q Okay. Did you show him any of the crime scene photos or anything like that?
A I wouldn't have had those with me. No.
Q And let me show you what's been marked as State's Three for identification purposes only, and can you tell me what that is?
A Yes. These are, these are three disks from the interview

that we had with Randy Collins on that day we're talking about now.

Q And you've reviewed those?

A I have.

Q And does -- do those disks contain everything that you recorded that day?

A Yes.

Q And obviously if you didn't record it it couldn't be on there; right?

A Absolutely.

Q Okay. But as far as what was recorded was all of that placed on the disk?

A All of it's right here on the disk.

Q Okay. All right. And you didn't take away from it or change it in any way?

A No.

MS. RICHARDSON: Your Honor, at this time the State would offer State's Number 43 into evidence and pursuant to the Court's prior rulings and discussions with the Defense counsel this is a -- and I believe he will stipulate this is the portions of the interview that'll be shown to the jury. There are certain portions that have been redacted per your ruling that are not relevant to the jury's determination.

THE COURT: Is that right, Mr. Wilson?

MR. WILSON, JR.: Your Honor, that's correct, subject to

the Jackson v. Denno, Judge, and also obviously the portion that Your Honor acknowledges is missing.

THE COURT: All right. Okay.

(State's Exhibit Number 43 [Statement of Defendant - redacted] admitted into evidence and appropriately marked.)

MS. RICHARDSON: Just for clarification, State's 43 is not everything that's on State's Three for identification but it's --

THE COURT: Are you about to publish?

MS. RICHARDSON: Yes, Your Honor.

THE COURT: Ladies and gentlemen, let me maybe explain what Ms. Richardson was just saying. These are lengthy, lengthy tapes. There are some portions that are not relevant to your inquiry or anything that would be before you that some by agreement, some by my ruling have been -- we're just going to skip over them. There are parts where there are bathroom breaks, skips in the tape, and of course there was a portion where it was not recorded. Okay. And we, we have all met about that and we're going to try to explain to you or Ms. Richardson or Mr. Wilson will as we get to those parts so, so you will know what the skip is. Okay. All right, and I think that'll help you follow the tape and answer any questions in your mind that you might have about that.

MS. RICHARDSON: If I could have just a moment.

THE COURT: Mr., Mr. Garrett, do you want to return to

your seat during, during this?
A Sure.
THE COURT: I, I don't have any objection to that. Otherwise you'll just be sitting there for an hour or so. So if you would like -- can -- any objection to that, Mr. Wilson?
MR. WILSON, JR.: No, Your Honor, no objection, Judge.
THE COURT: I think he'd be more comfortable sitting in the -- or anywhere you'd like to actually
A Thank you, Judge. That's right.
MS. RICHARDSON: And Your Honor, obviously, this is a little lengthy. So I'm assuming you'll let us know when you want to take a break and stop.
THE COURT: Any time I see a juror raise his hand or her hand.
MS. RICHARDSON: Okay.
THE COURT: Let me ask. I anticipate this being over an hour, maybe an hour and a half. Would you like to take a quick break while they're setting it up? No one would? Okay. All right.
(State's Exhibit Number 43 played in open court.)
MS. RICHARDSON: And Your Honor, could we take a break at this point?
THE COURT: Certainly. Let's take a quick break. All right.
(Whereupon, the following takes place outside the

presence of the jury.)

THE COURT: We'll be at ease for about 10 minutes.

OFF THE RECORD

(On the record. The following takes place outside the presence of the jury.)

THE COURT: How much more time on the tape, an hour?

MS. RICHARDSON: About a hour and 20, 15, 20.

THE COURT: Okay. All right. Let's bring the jury in.

MS. RICHARDSON: Your Honor, I want to address one matter before we do.

THE COURT: Uh-huh.

MS. RICHARDSON: The reason I asked for a pause and when I was looking at my transcript I realized there was something that Mr. Wilson had asked to be removed that was not. So we have skipped over that part and will queue it up.

THE COURT: Okay. Whatever. All right. Okay. Let's get the jury in. Okay. We got one -- waiting. All right.

(Whereupon, the following takes place in the presence of the jury.)

THE COURT: All right. Ladies -- we usually break at lunch at this time, but it's really not a good time. I'd like to finish this up. What I'm going to do is order you some lunch so we can make best use of what time we have this week, and I think the clerk's going to get that, but let's continue on with this video. All right. Ms. Richardson.

MS. RICHARDSON: And Your Honor, for the record we are beginning back at a, at a point that is going to exclude some information based on our agreement but it is information that was previously on the CDs.

THE COURT: There's a skip because we've all decided it is not --

MS. RICHARDSON: Yes, Your Honor.

THE COURT: -- appropriate or relevant to this issue. Okay. Okay.

(State's Exhibit Number 43 played in open court.)

MS. RICHARDSON: And Your Honor, this will be another skip that is pursuant to your ruling.

THE COURT: Okay.

(State's Exhibit Number 43 played in open court.)

MS. RICHARDSON: Okay. Your Honor, that was another skip.

(State's Exhibit Number 43 played in open court.)

MS. RICHARDSON: And Your Honor, this is the point where the officers have testified the battery went dead. I'm going to start back at the next portion.

THE COURT: All right.

(State's Exhibit Number 43 played in open court.)

THE COURT: You need a break? Okay. Stop it. Take the jury to the jury room, let them take a break.

(Whereupon, the following takes place outside the

presence of the jury.)

THE COURT: Okay. We're at ease for just a few minutes. How much more is left, Ms. Richardson?

MS. RICHARDSON: This next portion is 30 minutes and 58 seconds. So almost 31 minutes.

THE COURT: Okay. And you had some definitions or some additions to the charge, and I understand you hadn't gotten them to Brett yet. Please get them to him so if you want them added.

MS. RICHARDSON: Okay.

THE COURT: All right. Let's take a quick break.

OFF THE RECORD

(On the record. The following takes place outside the presence of the jury.)

THE COURT: All right.

MS. RICHARDSON: Yes, Your Honor.

THE COURT: Bring in the jury.

(Whereupon, the following takes place in the presence of the jury.)

THE COURT: All right. We have our jurors and our alternates here, and we're ready to go forward. Ms. Richardson, you may continue.

(State's Exhibit Number 43 played in open court.)

THE COURT: Okay. Anything further, Ms. Richardson? Ms. Richardson, anything further for this witness?

MS. RICHARDSON: Yes, Your Honor. I'm sorry. I was trying to get this disk or this flash drive back to Ms. Grace here.

BY MS. RICHARDSON:

Q Okay. Investigator Garrett, let me hand you what's been marked as State's Exhibit Number Eight for identification. Can you tell me what that is?

A That is the statement that we all witnessed me write for Mr. Collins there.

MS. RICHARDSON: Your Honor, at this time I'd offer State's Eight into evidence.

MR. WILSON, JR.: Your Honor, without objection.

THE COURT: All right.

(State's Exhibit Number Eight [Collins' Statement] introduced into evidence and appropriately marked.)

BY MS. RICHARDSON:

Q Let me show you State's 44 for identification and what is that?

A That is a drawing from Randy Collins.

Q And that's the drawing we saw him do on the tape?

A Yes.

Q Okay. And that's a copy of that drawing?

A That is.

Q Did you make any changes or alterations to it?

A I did not.

MS. RICHARDSON: Your Honor, at this time I'd offer State's 44.

THE COURT: Mr. Wilson?

MR. WILSON, JR.: Your Honor, without objection.

THE COURT: Without objection.

(State's Exhibit Number 44 [Sketch by Defendant] entered into evidence and appropriately marked.)

MS. RICHARDSON: Your Honor, if I could ask the witness to step down.

THE COURT: Certainly.

BY MS. RICHARDSON:

Q All right. I'm going to show you again and have you show the jury, this is State's Four, an aerial map. Okay. So if you can just sort of show us and go over the areas that are highlighted.

A Okay. Well, here is Randy's address, 18 Clair Street. This is where Marissa Cohen was living at the time of the fire, which is referred to as the projects, but it's Arbor Place. This is James Miller's house. This is where I first talked to him.

Q I think we might be blocking some of them.

A Okay. This is, this is the rec center -- I'm sorry. You can't see just let me know -- where the party was, where the child was. This is where James Miller's mother lives, and here's the actual trailer that was burned down.

Q Okay.
A And here's the storage units where she put the furniture the day before.
Q Okay. And what about Carnell's, where is Carnell's?
A It's going to be in this area here. So this is Main Street that runs right through Andrews if you come up 521 and it's here on the corner.
Q Okay. And I heard something about, "We drove through west." What is west commonly referred to in Andrews?
A All this is referred to as the west end. So that's what he's talking about, "We drove through west."
Q Okay. Now, let me pull these other large pictures.
A Sure. Sure.
Q All right. Now, again, if you could show us the area of the crime scene.
A Okay. 10 James Drive is here.
Q Okay. And is -- this is James Drive?
A Yes.
Q Okay. And it has sort of a, a big curve or hooking --
A Right. Yeah. There's a -- yeah. There's an L shape.
Q Okay. And how do you access James Drive?
A You have to come down Jones Avenue. You're going to make a right on Miller and then a right onto James, and it's right here in the curve just as soon as you get out of the curve.
Q Okay.

Q And so it's not connected directly to Jones Avenue?
A No. It's not.
Q Okay. And the street that we heard referred to as the back road --
A Uh-huh.
Q -- what is that?
A That's Laurie Street. Now, that's where all the confusion came from. When he initially was talking about the wooded area I thought they came in on James, but he was talking about the street behind James, and there's a path through the wood line here that goes to the trailer.

MR. WILSON, JR.: Judge, objection, Judge. It's speculative testimony. He's talking about what my client intended.

A Well --

THE COURT: Well, if he pointed it out.

MR. WILSON, JR.: He pointed it out. He did. He did.

THE COURT: I, I think he was referring to the fact that he was confused, not necessarily your client. He was confused as to what your client was telling him I thinks what -- is, is that what you're saying, officer?

A Absolutely. That's exactly what.

THE COURT: Your client wasn't confused. He was confused.

A Correct.

THE COURT: Okay.

MR. WILSON, JR.: Thank you, Judge.
Q Okay. So this is the diagram of the mobile home, which is State's Exhibit Number Seven. All right. So in reference to this where would James Street be?
A James is here.
Q And that's the front?
A That is the front.
Q And Laurie Street?
A Would be back here.
Q All right. Okay. And so State's Exhibit Five, which is the map of the front of the burned or the photo of the burned trailer --
A Uh-huh.
Q -- again, James Street?
A Is here on this side of the trailer.
Q Okay.
A And Laurie is behind it.
Q And what about this wood line?
A Right. That's the wood line that he was referring to.
Q Okay. And are there homes on Laurie Street?
A There are. Uh-huh. So when he said the brick home that's what he's talking about. It's on Laurie.
Q Okay. All right. If you would have a seat back. All right, and I've just retrieved State's 21. Just a moment.
MS. RICHARDSON: Madam Clerk, can we have the monitors

on?
BY MS. RICHARDSON:
Q Okay. Now, I want to show you the first photo on that.
THE COURT: Can you see that clearly enough? I can see your monitor and you've got the worst monitor in the house.
A We do.
THE COURT: Do you understand what --
A I do.
THE COURT: Can, can you see well enough to recognize the photo?
A I can this one, please.
THE COURT: Okay. All right.
MS. RICHARDSON: And if not, Your Honor, he can come testify from the table if you would allow.
BY MS. RICHARDSON:
Q And is that how everything appeared when you arrived?
A Yes.
Q Okay. And it was still dark outside?
A Yes. It was.
Q Okay. And this is photo number 24, and can you come down and point out what you were talking about about the houses on Laurie Street?
A All right. So if you look through the wood line where the pointer is you'll see a house here.
Q Okay. And, and again, can you tell us about this one?

This is 46.
A Right. So this is showing a side view of the front of the trailer, so the front to the side.
Q Okay. And can you show us where your information indicates they were parked?
A Okay. So if you --
Q Can you see?
A All right. So if you look again where the cursor is it's back -- there's a path that leads through this wood line to Laurie Street. So according to him they were parked on Laurie.
Q Okay. You can have a seat. That's good. What was Mr. Collins' driver's license status?
A I'm sorry?
Q What, what about Mr. Collins, did he have a driver's license?
A Yes. Class D the same driver's license you and I would have if you're not a CDL driver.
Q Now, tell me what occurred when we had the point in the tape where the battery died.
A Okay. So we were talking and we were beginning to confront him about the inconsistencies in the statement. Sometime during there we took a break and that's when we discovered that the battery died.
Q Okay. Did you know all of the information that he

provided?
A I didn't have a clue about most of it, a lot of it.
Q Okay. What were some things he told you that you didn't know about?
A Well, number one, again, when we were doing the sketch I had no idea that he was talking about Laurie Street. I thought he came in on James. I didn't know, and if we look at the State's Exhibit you'll see I didn't know there was a window there, and so that was news to me. We went back and looked at the crime scene, and you actually can see a shutter under some of the rubble, but I didn't know that.
Q Okay. All right. I have no further questions. Answer any questions Mr. Wilson --
THE COURT: Mr. Wilson, you may examine.
MR. WILSON, JR.: Your Honor, if it please the Court, Judge.

CROSS EXAMINATION

BY MR. WILSON, JR.:
Q Good afternoon, Melvyn.
A Good afternoon, sir.
Q Good to see you again, sir.
A Always a pleasure.
Q All right. Let me ask you about your training regarding confessions.
A Certainly.

Q Tell me and the jury about your training when you interrogate suspects?
A Well, I've, I've got a lot of training in interviews and interrogations. I couldn't actually tell you how much but over the years I've been to many courses.
Q Tell us about some of the courses. Tell us about some of the things they teach you in these courses regarding interrogation.
A Well, a lot of times and the biggest thing is just to let them talk, just to let them talk, and again, part of it is to get an initial statement before you do your investigation. You know, at this point there's speculation but I don't know what his involvement is, and so give me a statement and I'll go out and begin investigation and if -- and what we learn in investigation doesn't match what's in the statement then we have something to talk about.
Q Okay. So I'm understanding you try to get into this conversation, but I just want to know what tactics police are trained to use, what they can do in interrogation.
A Oh, well, we can lie.
Q Can you repeat that for the jury?
A We can lie.
Q You can lie.
A Sure.
Q Okay. What else can you do in interrogation?

A I don't know. Why don't you throw some things out and I'll, I'll --
Q Can you mislead somebody?
A Sure.
Q Okay. Can you promise them things?
A No. Not really.
Q Can you --
A What kind of things?
Q I apologize. Can you promise somebody that you're going to go and help them out in their case?
A Well, we tell them that. I tell them that, sure.
Q You tell them that all the time; don't you?
A Sure.
Q All right. And do you tell them things like, you know, we're going to talk to the Prosecutor for you?
A You heard it on the tape.
Q I'm asking you is that, is that a tactic?
A Sure.
Q Okay. We're going to get to this other stuff in a minute.
A All right.
Q But is that a tactic that you use?
A Sure.
Q And you use that for the purposes of doing what?
A Well, it's to make them feel at ease like, if you, if

you're going to tell me the truth you're going to tell me what your involvement is and you're the first person I talk to, then when I talk to the Solicitor I can say, "Hey, look, he cooperated. How much you want to give him or how much help you want to give him?" That's, that's not my, my deal there.

Q Can you also promise people that they can go home, that kind of thing?

A I let him go home.

Q I know. I'm asking, is that something that you would do in an interrogation?

A That's something I did do, absolutely.

Q Okay. All right. And you can also do a lot of other things. Can you threaten somebody?

A No.

Q You can't threaten to -- that they're going to go to jail for a long time?

A Well, I can say that but that's part of the -- that's just part of the tactic.

Q Well, let me ask you this, have you ever gone into any interrogation and threatened to send somebody away for a long time?

A I don't know if I'd call it a threat but I've said that. I will let them know what the penalties are.

Q Well, have you -- did you say that to Randy Collins?

A Sure.

Q Okay. All right. Now, let's talk about this interrogation.
A Okay.
Q Okay. All right. Let's talk about this interrogation. When you guys actually were -- well, let's talk about this. You first said that you tried to talk to him in the street; right?
A Yes.
Q And he gave you a statement?
A Yes.
Q Okay. And you wrote that statement for him; correct?
A I did.
Q And during that time what generally did he tell you when you first got that statement? What did he say to you?
A "I don't know anything about it."
Q Okay. And that he didn't do it; right?
A Right.
Q He said that a lot; didn't he?
A In the video he did.
Q Okay. All right. All right. But you wrote that statement and then you left?
A Yes.
Q Okay. Now, before you got that statement, what evidence did you have to show that he actually committed any crime whatsoever?

A I got an anonymous phone call.
Q Okay.
A And based on that phone call I went out to verify if those things that I was told was true and it turns out that they were.
Q What things, what things that you found out were true because if I remember correctly what you told the Court was and the jury was that you found out that Marissa Cohen had gone to a store?
A Uh-huh.
Q Well, I have a question.
A Okay.
Q You never told the jury how you found out Marissa Cohen had went to that store? You say there was an anonymous tip, that they had done something together; right?
A Right.
Q How'd you find out about going to the store? Who told you about go to the store and you're going to get some video on Marissa Cohen?
A Are we okay with this, Your Honor?
MS. RICHARDSON: Your Honor, I believe there was an objection earlier is why he's asking that.
THE COURT: I haven't heard an objection. Is there an objection?
MS. RICHARDSON: May we approach?

THE COURT: Yes. Help me out here.

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

Q Let me ask you this, sir, at some point in time you try to meet with him again or didn't you?

A Yes.

Q And he didn't want to meet with you; did he?

A No. He said he would.

Q He said he would but he didn't show up; did he?

A No. He didn't show up.

Q Okay. And you tried to call him; didn't you?

A I did.

Q He didn't answer your phone call; did he?

A No.

Q Okay. All right. And so when you all tell him, well, look, he won't come meet with you. So we're going to get Nesmith who he knows; right?

A Uh-huh.

Q You all call Nesmith?

A I don't remember whether he called Nesmith asking for the phones back or whether we called Nesmith and asked, but we ended up there together.

Q Agent Hardee testified the other day that --

A Well, that's, that's fine. Okay. I'll go with that.

Q Right. I understand. Let me, let me finish my question.

A Yes, sir.
Q Agent Hardee --
A And I apologize.
Q -- testified the other day that basically he had the cell phones. So Nesmith didn't have the cell phones?
A I don't think that's what he -- yeah, whatever. Okay. So he had the cell phones.
Q Well, all right. Then my question is this, did you all tell Randy Collins that you all were going to be out there that day waiting on him to try to get him into the conference room and talk to him?
A Of course not. No.
Q No. Of course not because it's a tactic to get him there; right?
A Uh-huh.
Q You're trying to lure him there?
A But he knew, he knew previously that I wanted to meet with him.
Q I understand.
A Okay.
Q But I'm talking about on that particular day.
A Okay.
Q You lured him there; correct?
A Well, he came to pick up his cell phones.
Q Did he know, sir, that you all were going to be there

waiting on him at the front door with cigarettes?
A Yes. Yes.
Q You told him that?
A Well, he knew he was coming to meet with us to get his cell phones.
Q Did he come there to make a statement to you?
A Well, he did make a statement so.
Q Did he come there for the purpose of making a statement to you?
A He came there for the purposes of picking up his cell phone.
Q Didn't he tell you also when he first got there that, not on the recording, he told you guys he didn't feel well that day and he didn't want to talk?
A No. He didn't say that.
Q Never told you that
A No. I mean, what you heard on the video was, you know, "Hey, I didn't really feel like it but I want to help you guys out. So I'm here."
Q So he never told you that morning, "Look, I don't feel well. I don't feel well. Please understand I don't want to talk to you"? He never said that to you?
A No. I don't call anything like that.
Q You don't recall that?
A No.

Q Okay. Well, let me ask you this, do you recall actually bringing him in then to the conference room where you say you guys read him his Miranda rights?
A Yes.
Q Okay. He is not well-equipped mentally; is he?
A I disagree.
Q Okay. Well, tell me what's your opinion of him and how he is mentally?
A I think he's just fine.
Q He's just fine?
A I think so.
Q Do you know if he has any impairments at all?
A Well, he said he had a stroke at some point.
Q You actually commented about his stroke in the actual interrogation room; didn't you?
A I did. Yes, sir. I did.
Q You commented about it because he couldn't remember something; right?
A I don't know if that's why I commented, but, but again, again, part of that's just to make him feel at ease so he'll talk.
Q You don't recall saying to him in the interrogation room, "Well, sometimes that'll happen if you have a light stroke?"
A Yeah. I said that.
Q You said that; didn't you?

A I certainly did.
Q Okay. Now, you went was it the convenience store to get tape on Marissa Cohen; right?
A Yes.
Q Okay. And while you went to get tape on, on her you couldn't find the tape.
A They said the video system wasn't working that day.
Q Okay. But now, you did find a witness that you talked to?
A That was the cashier that actually sold her the kerosene.
Q Okay. Very good. And the cashier to you identified her as being the person who came there and picked up that kerosene; right?
A Yes.
Q And if you were in the courtroom, and I know you were, she -- I asked her if she saw Randy Collins with her that day and she said no; right?
A Yes.
Q Okay. All right. So on that particular witness there was no evidence that Randy Collins was involved with Marissa Cohen at that point in time; correct?
A What happened there was that was the first part of the anonymous tip that was actually confirmed. So I get a tip.
Q Against Marissa Cohen; correct?
A Right. The first part.

Q Not against Randy Collins; correct?
A Not about the kerosene.
Q Okay. All right. Then you talk about Carnell's. You made a big deal about that; right?
A I don't know if I made a big deal about it but --
Q But you said in the interrogation room, you told Randy Collins, "Look, you lied to us about Carnell's"?
A Yes.
Q You say that to him multiple times?
A Yes.
Q You said it was the basis of you saying there were inconsistencies?
A Well, that is inconsistent.
Q I understand. We're going to get there, too.
A Okay.
Q But I'm asking you did you not say that to him?
A Yes.
Q Okay. And when you said that to him you were saying, "Look, we went and talked to people who said they didn't see you there"; right?
A Yes.
Q You been in Carnell's before?
A I have.
Q Do you know what goes on there?
A I do.

Q Tell the jury what goes on at Carnell's.
A Well, you know, they have parties. They shoot pool. There's music playing.
Q Well, tell them how the place is situated though. Tell us what it looks like and what they do in the back of Carnell's?
A Do you happen to have a --
Q I don't have anything.
A Okay. All right.
Q Let me ask you this. I'll ask you questions. When you walk into Carnell's you walk into a what, into a bar area; correct?
A Yes.
Q Okay. Now, there's a back area to Carnell's; isn't there?
A Yes.
Q And in the back area it's covered by a wall and a door you got to walk through.
A Yes.
Q Okay. And in the back area is where the pool tables are and the gambling goes on; correct?
A At one time, absolutely.
Q Okay. All right.
Q And this was four years ago?
A Yes.
Q Five years ago, four years ago?

A Uh-huh.
Q All right. So in this particular bar when you go in there, if he had been in the back, not everybody would have seen him; correct?
A Well, the people who he identified would have seen him that he said he talked to.
Q Did you go and talk to Parsons, Cooter Parsons?
A No. I don't -- I didn't.
Q He asked you to go talk to Cooter Parsons; didn't he, and his brother?
A I think I had a problem with Cooter. He's, he's, he's normally has an arrest warrant. So yeah, it's hard to find him.
Q Everybody at that place got arrest warrants; don't they?
A No. Not everybody at that place has arrest warrants.
Q Let me ask you this. You said during your interrogation of Randy Collins you told him that you had GPS locations on him and you were tracking him around Andrews; right?
A Yes.
Q And you told him, said, "Look, we got your phone records"?
A Yes.
Q "We know the numbers you called"?
A Yes.
Q And so you told him you all were tricking him; right?

A Absolutely.
Q Okay. Well, tell the jury, you know, if you were tracking him, tell the jury where you tracked him to.
A We didn't track him.
Q You didn't track him at all; did you?
A No.
Q He is pinging actually in the phone records that you all introduced, the State introduced --
A Uh-huh.
Q -- on the same cell tower all night long on the 28th and the 29th; isn't he?
A Absolutely.
Q Let me ask you this, did you check to see where Marissa Cohen's phone was pinging at the time of this?
A I didn't check to see where his was pinging.
Q I understand that, but my question --
A So, so to answer your question, no, we didn't check any cell phone pings.
Q Did you pull the phone number that Marissa Cohen called and you referred to it earlier --
A Uh-huh.
Q -- at 1:00 o'clock in the morning and check where that was pinging at?
A No. Absolutely not.
Q Okay.

A But at that point --
Q Why not?
A -- I didn't.
Q Marissa Cohen makes a phone call at 1:05 or 1:06 in the morning twice.
A Yes.
Q And is on the phone for seven and five seconds --
A Uh-huh.
Q -- with somebody. Why don't you all pull those phone records?
A Well, at that particular point it wasn't important. Randy said him and James they were the only two together.
Q You're telling this jury that it's not important when she makes a phone call minutes before she is alleged to have masterminded her house burning down.
A Well, that wasn't minutes before she masterminded it. She masterminded it a month earlier.
Q I agree with you. I agree she did. There's no dispute about that. What I'm asking you is is it not strange that the lead investigator and an agent from SLED who is well trained --
A Uh-huh.
Q -- wouldn't pull that number to see exactly who it is?
A No. That's not strange at all.
Q That's not odd at all?

A No. It's not strange.
Q No. Now, at some point in time you are in the interrogation room with Randy Collins, and you say, "Hey, look, we've got these inconsistencies. You weren't at Carnell's," and he tells you over and over again, "I was there. I was there. I was there." Correct?
A Yes.
Q He's adamant about that?
A Yes. He is.
Q Okay. He says that, "Me and James drank some beers" --
A Uh-huh.
Q -- "smoked some cigarettes at the house and then we went to Carnell's"?
A Yes.
Q Okay. All right. And then at Carnell's he says that, "We played pool and then James took me home."
A Yes. He said that at least one time.
Q Now -- at least one time.
A Right.
Q Okay. All right. And at some point in time you guys say, "Look, if you don't tell us something," you said it, I believe, "you're going to have to take Marissa's place"?
A I don't know if those were exactly the words, but similar.
Q Well, tell the jury then exactly what you said because if

I'm getting it wrong I don't want to get it wrong for the jury. Tell the jury what you said.
A It was something similar to that.
Q Is that a threat?
A No. It's not because he, he was arrested.
Q I understand that. What, what I'm asking you is at the time of the interrogation is that a threat? Were you threatening him?
A No. I wouldn't think that's a threat.
Q What do you call it?
A Yes. That is a tactic to get him to talk.
Q Okay. I understand that. I get it. I just want to know how you would characterize it. If I'm looking at it as a threat I want to know how you would characterize it.
A I wouldn't call it a threat.
Q What would you call it then?
A It's just a tactic that we use.
Q Just a tactic that you use.
A Uh-huh.
Q All right. So at some point in time after you say that then you tell him, "Look, we know what happened"; right?
A Uh-huh.
Q "We know everything. We know exactly what happened, and let me tell you what we think happened," and you all tell him that; right?

A Well, see, that part's missing from the video.
Q Well, not --
A So.
Q -- not the part I just asked you.
A Okay.
Q You all said, "Let me tell you what we think happened."
A Right. That's what Scott said. Absolutely.
Q And then the video goes blank; right?
A Uh-huh.
Q But before that you all are telling him the entire time, "Look, we don't want you. We want Marissa. We're not interested in you"; right?
A Yes.
Q All right. "We don't care who lit this fire", which is not true; right?
A Which is absolutely not true.
Q Absolutely untrue. Well, so, you all are telling him this the entire time trying to convince him to go ahead and tell you all something and tell the jury why it is you all need Randy Collins so bad?
A Well, he's part of it. That's why he's here. So we --
Q What did you say on the tape to Randy Collins about why you needed his statement?
A Well, because then his statement would then corroborate -- to, to -- it would add to the anonymous tip that I

initially got. So all of it fit together. What I was told, what we found during the investigation and what he said all fit together like a puzzle.

Q You wanted to arrest Marissa Cohen; correct?

A We did.

Q As a matter of a fact, as soon as you all got done with Randy Collins you all went and got warrants for Marissa Cohen?

A I think I got warrants for all three of them.

Q I understand that, but I'm asking you did you not run out right then to the magistrate and get an arrest warrant for Marissa Cohen?

A It could have been right then. It wasn't long after.

Q It was shortly after.

A Okay.

Q Is that fair?

A Sure.

Q Okay. All right. And you all couldn't arrest her before you talk to Randy Collins; could you?

A We couldn't -- we didn't arrest anybody before we talked to Randy.

Q What I'm saying is did you have probable cause? Police have -- before they can issue a warrant --

A Right.

Q -- you know this --

A Uh-huh.

Q -- and you've been doing this for a long time. You all got to have probable cause before you can issue a warrant.
A Right. Absolutely.
Q And everybody was out there saying that Marissa Cohen and Mano and Randy Collins and James were involved in this fire; correct?
A No. Actually, no. They just said Marissa, Randy and Mano.
Q Mano came in in, in that tip that you got; right?
A Yes.
Q Okay. So they were saying they were involved in the fire?
A Uh-huh.
Q That was the anonymous tip.
A Yes.
Q Which we don't know the origin of that tip; do we?
A Well, it was anonymous.
Q And so we don't know the origin?
A We don't.
Q Okay. And just to be sure about this anonymous tip, an anonymous tip when it comes in you don't know the person's name, number, who they are, what their motivation is when they say what they're saying; correct?
A Generally, uh-huh.
Q Okay. And, and that's not different in this situation?

A No. It's not.
Q Okay. All right. So at some point in time during this conversation with Randy Collins you all are telling him all this stuff that you got all this evidence and that you know everything that happened and you all start telling him what you believe happened; right?
A I -- we told him that we believed he was involved.
Q Well, who was the first person in the room to mention a key?
A I mentioned the key, but he told me, "We didn't have a key."
Q No. I'm asking you who the first person in the room was that mentioned it?
A Well, I answered. I said I mentioned the key.
Q You mentioned the key. Okay. Who was the first person in the room to mention that this probably was an accident?
A Oh, it was either me or Scott, but we, we suggested it.
Q You all said that; correct?
A Absolutely.
Q Who was the first person in that room that mentioned to Randy Collins, "Look, there's a pool here. You forgot about the pool." Who mentioned that to him?
A I don't know if we said, "You forgot about the pool," but he didn't mention the pool but, you know, there were a lot of things in the yard that he didn't mention. I was just trying

to get an orientation.
Q My question is who mentioned the pool first?
A I guess I mentioned the pool.
Q Okay. Who also mentioned to Randy Collins that obviously at some point in time this place burned? Who said that this place burned?
A I don't, I don't know. I, I really don't remember. I don't remember hearing that.
Q All right. Fair enough. Let me ask you this then, at any point in time in the conversation in, in the first hour and a half of actually interviewing him what did he say to you that led you to believe that you had evidence to corroborate what he was saying already?
A It's not necessarily a hundred percent what he said, but it's what he was doing. If you paid attention, the heavy breathing, the closed posture, I mean, those are all signs that he's hiding something.
Q Is it possible that he is stressed?
A Oh, I'm sure he was stressed.
Q Yeah. I'm sure he was, too. Is it possible that -- and you're not a psychologist; are you?
A No, sir.
Q A psychiatrist?
A No.
Q Okay. You knew he'd had a stroke?

A He said he had a light stroke.
Q Okay. Well, you know now that he had a stroke. You know that?
A I know that now.
Q Okay. All right. And you also know that he at the time told you that he'd been in a car accident; correct?
A Yeah. He said that on the video.
Q All right. He also told you about his education; didn't he?
A About his, about his what?
Q Education. I'm sorry. I apologize.
A Oh.
Q I turned around, education.
A Yeah. I think he said he had a seventh grade education.
Q All right. And he is not too quick. I mean, he can write a little bit. He can read a little bit, but he's not well-equipped mentally?
A I think he's very well equipped mentally.
Q I understand what you think, but did you see that in your interview with him?
A Well, yeah. You asked me my opinion. I did see that in the interview.
Q Okay. I, I, I appreciate you giving me your opinion.
A Yes, sir.
Q Now, not only did you not track him with GPS which you

said -- you told him you did.
A We told him we did.
Q All right. And not only that but you also never went back to determine whether or not he had called anybody else that night; did you?
A I don't, I don't recall doing that.
Q You know where he was at 2:46 in the morning?
A Where was he?
Q I'm asking.
A No.
Q Do you know where he was at 1:30 in the morning?
A Well, I'm assuming he was at 10 James Drive burning down the trailer.
Q Well, you can assume all you want to. That's not what I'm asking you. I'm asking you do you know based on the GPS report that you all have got where he was?
A We don't have a GPS report.
Q Do you have the GPS coordinates on the actual phone log?
A I don't -- they're there, there --
Q Let me, let me get it for you. This has been marked as State 32.
MS. RICHARDSON: And Your Honor, I'm just going to object to the characterization. Those are pings, not GPS coordinates for a phone. I just don't want to mischaracterize what's already been put into evidence.

MR. WILSON, JR.: And I'll change the characterization.

THE COURT: Okay.

BY MR. WILSON, JR.:

Q My -- I'll withdraw that, and I'm going to ask you if you noticed where he's pinging at, okay, for the entire day.

A Okay.

Q These are his records on the right side.

A All right.

Q All right. Do you know where he's pinging at?

A Well, the coordinates are 33 degrees .45907302 by negative 79 5780848.

Q And does he ever deviate from that latitude, longitude?

A No. He doesn't.

Q He does not. Now, that cell phone is the cell phone you say that he had with him when he was actually at Carnell's or outdoor burning; right?

A Yes.

Q What do you know about false confessions? How are false confessions gotten?

A I don't, I don't know. I guess -- I'm sorry.

Q I apologize.

A Please. Please.

Q Have you ever been trained in how to avoid false confessions?

A I don't know anything about false confessions.

Q How long you been in law enforcement?
A Sixteen years.
Q And you've been a chief and I know you've been a deputy chief.
A I have never had anybody come to me and tell me they did something that they didn't do.
Q Never ever?
A Never ever.
Q And that time, let me ask you this, and you're in law enforcement.
A I am.
Q And I would consider you to be an expert in law enforcement.
A Okay.
Q No doubt about it. How many --
MS. RICHARDSON: Your Honor, is that a question?
MR. WILSON, JR.: Judge, I am simply --
MS. RICHARDSON: Make an objection.
THE COURT: He's on cross. I'm going to let him go. He can lead.
BY MR. WILSON, JR.:
Q How many cases are overturned because of false confessions?
A I, I wouldn't have the slightest idea. I know that --
Q Thirty percent of DNA cases are overturned because of

false confessions?

MS. RICHARDSON: Your Honor, again --

THE COURT: Mr. Wilson, you're testifying now.

Q How does one elicit a false confession? How does that happen?

A I've never done it. I don't know.

Q If as an interrogator you go into a room with someone --

A Uh-huh.

Q -- and you hold them there long enough, okay, and then at some point in time you begin to tell them certain things about the crime that nobody else would know and they pick up on it and they start saying it back to you, isn't that the beginning of getting a false confession?

A I've never gotten a false confession.

Q That's not my question.

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

Q I asked you about this particular tactic.

A Oh.

Q Do you run the danger --

MS. RICHARDSON: Your Honor, the witness --

THE COURT: Mr. Wilson, he's said he knows nothing about them.

MR. WILSON, JR.: I understand that, Judge.

THE COURT: And --

MR. WILSON, JR.: But he understands tactics, Your Honor.

THE COURT: But you can ask him about tactics, but you've asked him a series of questions about false confessions and we're getting the same answer, "I know nothing about them."
BY MR. WILSON, JR.:
Q All right. Well, let me ask you this plain out, did you suggest a number of things about this crime to Randy Collins that nobody else knew and Randy Collins picked up on it?
A I don't believe I did.
Q You don't think you led him on anything?
A No.
Q Well, what about when you're in the video saying, "Nah, nah, nah, you can't be at the truck", do you recall saying that to him?
A Well, he said he saw the fire being lit. So obviously he can't be in two places at one time.
Q My question is do you recall saying that to him?
A Yes. I, I recall saying that to him.
Q You corrected him; didn't you?
A I don't know if I corrected him, but I let him know that I, I know that that wasn't true.
Q Well, let me ask --
A Based on what he said.
Q The diagram you drew --
A Uh-huh.
Q -- you drew that; didn't you?

A The -- one of them.
Q The first diagram.
A If that was the first, yes.
Q The first diagram you drew, explain to the jury what you drew for him.
A Okay. So what I did was I drew the trailer because I wanted him to tell me how they got there and where they were standing and, and all of that, but for some reason, like I explained earlier, it wasn't making sense because I was approaching it from the James Drive side and he was approaching from the Laurie side. So I think once we got together on that it, it made sense.
Q All right. So you drew a diagram. This was off camera; right? This is the part that's not on there.
A Yes.
Q Well, I'm asking you because when we go back to the tape --
A Uh-huh.
Q -- what the jury sees is the diagram already written.
A Right. Right.
Q And you have a pen.
A I do. No. I'm not, I'm not saying I didn't draw that diagram. I just don't know if that was the first one. I don't know how long it was --
Q It's okay. I understand.

A Okay.
Q What I'm asking you though is you had a diagram when the camera comes back on.
A Yes. I did.
Q And you had a pen?
A Yes.
Q Pointing out certain things to him.
A Yes.
Q Okay. All right. Now, I'm going to ask you this.
A Okay.
MR. WILSON, JR.: May I approach the witness, Judge, briefly?
THE COURT: Certainly.
BY MR. WILSON, JR.:
Q Does your diagram look anything like this?
A I don't know.
Q Well, you drew a diagram; right?
A Yes.
Q Of the trailer and the surroundings?
A Yes.
Q Because you had been out there already; right?
A Yes.
Q You all had started investigation by that time.
A Yes.
Q So you were well familiar with the area?

A You know, I didn't know -- you know, I've, I've worked for Georgetown County or in Georgetown County for 16 years. This was the very first time I had been on James Drive. So there's a lot of things I didn't know, like the path to Laurie Street, those things I learned from Randy.

Q Did you know that the front of the actual building was the front of the building?

A I called it the front of the building because of the address. Yes.

Q Well, let me ask you this then, when you all do these investigations you're going to actually go out and get the make and model of these mobile homes; right?

A I didn't get the make and model of this mobile home.

Q Well, if you're doing an arson investigation wouldn't it be a good thing to say, "Hey, I need to go find out whether or not this mobile home has electrical problems or a recall." Somebody did that already?

A I don't know that you could do that based on a make and model, but -- and I don't know that it wasn't done. You know, again, I didn't handle the actual arson investigation.

Q Now, let me get this right, this is a picture of the front.

MR. WILSON, JR.: And I apologize, Judge.

A Yes. I would call that the front.

Q This is the front; right?

A Yes.
Q Okay. And you can see all the windows that are up here; right?
A Yes.
Q Now, your testimony earlier is that you all were amazed to find out there was a window on the other side of this building.
A I didn't use the term amazed.
Q I'm sorry.
A What I said was I didn't know there was a window there.
Q It surprised you all --
A And I still don't know where it would have been. I mean, look, look at the front of the trailer.
Q You're telling me as an investigator you don't know where the window would have been in this house?
A Well, I don't, I don't make mobile homes. I just investigate crimes. That's all. I, I don't know -- I don't know how many were there, how many windows were there. There may have been more than one.
Q Okay. All right. There may have been more than one.
A Could have been. I -- they're all gone.
Q Now, inside of this interrogation when you all get to the portion where he says, "James did it. I, I think that James did it," you know, and "James, how did he light it?" And you, you all said match.

A Uh-huh.
Q And he says, "Yeah. He threw a match." All right.
A Uh-huh.
Q You heard him say that?
A I heard him say it.
Q Then he says, "Oh, a match or a lighter or a piece of paper, I'm not sure."
A Yes.
Q Right?
A I heard him say that.
Q Then he says again, "Oh, no, he picked it up from the ground, a piece of paper and lit that piece of paper"; right?
A Right.
Q And then multiple times he goes back from match to paper to lighter, all sorts of stuff just trying see how these things are getting lit; right?
A I don't know if that's what he was trying to do, but he said that.
Q If he was really there --
A Uh-huh.
Q -- committing an arson or with somebody when they are trying to commit an arson, wouldn't he know what was going on?
A I believe he does know.
Q You believe he does know?
A Uh-huh.

Q So why is it then that continuously he then says, "I'm at the truck" and you say, "No, no, no, you can't be at the truck. You got to be behind him. You're behind him." You say that to him; correct?
A I may have.
Q Okay. And then he says, "Oh, yeah. I'm behind him," and then --
MR. WILSON, JR.: Did I hear something, Judge?
A I heard it, too. I don't know what it was.
Q I apologize. I thought I heard something. Then at some point in time you say, "No, no. That's -- this doesn't make any sense," and in the video you actually sit back in frustration.
A Uh-huh.
Q Do you recall that?
A I do.
Q Tell the jury why you were frustrated at this time.
A Because I felt like Randy was lying, and if he was lying --
Q You felt like Randy was lying?
A Oh, absolutely.
Q Yeah. I agree with you. I think he was lying, too.
MS. RICHARDSON: Your Honor, again, he's testifying.
THE COURT: I understand. Mr. Wilson, please.
MR. WILSON, JR.: I understand, Judge. I apologize, Your

Honor.

THE COURT: All right.

MR. WILSON, JR.: I withdraw that. I apologize.

THE COURT: Okay. And the jury will disregard the comment. Thank you.

By MR. WILSON, JR.:

Q You thought he was lying?

A I still believe he is.

Q Because the story doesn't make sense; does it?

A Well, when you leave parts out it's never going to make sense.

Q I, I agree with you, but I'm asking you did that story that he told you make sense at all? The story he told you, did it make sense?

A Well, none of it made sense right from the very beginning.

Q Yes, sir. I agree. All right. Now, the evidence you got against Marissa Cohen which has come out in this case --

A Uh-huh.

Q -- Marissa Cohen, according to the testimony that came out on the stand, said that she wanted to kill Mano.

A Yes.

Q Or she alluded to it.

A Yes.

Q And she did that right after the fire; correct?

A Yeah. Well, I --
Q That was the testimony from Rose.
A Okay.
Q Okay. All right. And then at some point in time after Randy Collins gives this statement -- what dates did Randy Collins give his statement?
A Could I see that statement form?
Q Yes, sir.
A I think that's the one right on top. Yeah. There it is.
MR. WILSON, JR.: Your Honor, may I approach briefly?
THE COURT: Yes.
BY MR. WILSON, JR.:
Q Yes, sir.
A All right. June 4th, 2014.
Q June 4th, 2014.
A Yes.
MR. WILSON, JR.: Your Honor, the Court's indulgence. I need to find this. I'm sorry, Judge.
BY MR. WILSON, JR.:
Q Here we go. This has been marked as State's 37 and 36. Now, on your investigation you determined -- you, you talked to Rose Collins; right?
A I don't think I ever spoke with Rose. I'm not sure.
Q Well, somebody got a statement from her where she said she wanted to kill Mano.

A Yes. Uh-huh.
Q Okay. All right. And you've discovered that in your investigation; right?
A Yes. Uh-huh.
Q She also says in these letters that she wanted to kill Randy Collins.
A Absolutely she did.
Q But she didn't say it in the beginning. She said it after he gave his statement on June 4th; didn't she?
A Yes.
Q What's the date of the letter on those letters?
A December 22nd, 2014, and November 17th, 2014.
Q Very good. Thank you very much.
A You're welcome.
MR. WILSON, JR.: May I approach, Your Honor, briefly?
THE COURT: Yes.
By MR. WILSON, JR.:
Q Now, the word had got out at some point in time that Randy Collins was cooperating with the State or giving statements.
A We didn't spread it. Well, I don't, I don't know that it got out.
Q She was arrested shortly after he gave his statement.
A Who knew that he gave a statement is -- he didn't tell anybody where he was going when he met with us.

Q Well, let me ask you this, the discovery would have went out to her; right?
A Yes.
Q All right. So she would know by November?
A By the time she got discovery she would certainly know.
Q Absolutely. So my question is this, in your investigation before then were there any threats against his life from her?
A I don't know.
Q Did you -- did you --
A I mean, this, this, this -- go ahead.
Q I apologize. Did you discover any threats against him before that?
A I want to think that that's the first time I heard of it. I know that he was nervous himself.
Q Okay. Well, he was what?
A He was nervous or afraid about being in Andrews himself.
Q Right. Afraid of her; is that correct?
A I don't know. She was in Kentucky, and we took her into custody in Kentucky.
Q Well, let me ask you this, she made several threats against a lot of people.
A Uh-huh.
Q And, and again, with Mano, Mano and her were fairly tight, you found that out in your investigation.

A Tight, I, I don't know. I know they knew each other. He helped her move.
Q Do you recall hearing I think his name is Bobby Bellamy, that's Mano, testify?
A Yeah. Mr. Brown, Benjamin Brown. Uh-huh.
Q I apologize, Mr. Brown. And, and Mr. Brown testified that he told you guys that she talked about the burning to him.
A Yeah. That may have come sometime later. Once an arrest is made the investigation is not over, but I didn't personally -- when I talked with him he told me he didn't know anything about it. He was home.
Q And he had alibi witnesses just like Marissa Cohen; correct?
A Yes. Uh-huh.
Q All right. Saying that she was home, also; correct?
A Yes.
Q Okay. But Randy Collins didn't have anybody at his house because he lived alone?
A I don't know if he lived alone.
Q Now, the policy that she took out, she took out a policy that you found out in your investigation; right?
A Yes.
Q All right. Did you find out in your investigation that Randy Collins was a part of that? Did you find out any

credible evidence which supports that he was a part of that policy or that he was on the policy?
A Far as we know he was not on the policy.
Q Okay. Well, let me ask you this then, the policy, the kerosene, the storage rental all done by Marissa Cohen; correct?
A Yes.
Q And based on the testimony of Langley and then Brown himself they were there helping her that day.
A Yes.
Q Okay. And in the two phone calls you all say are not important at one something in the morning, you don't know who that is; do you?
A I know that she told me she tried to call Syience.
Q Okay. Did you check to see what that number was?
A I didn't personally check.
Q Did anybody check that you're aware of in this investigation?
A Not that I'm aware.
Q Randy Collins, during his interrogation with you, latched on to one thing and he wanted to go home; right?
A At what point?
Q At any point. I mean, you sat here and heard the actual tape itself; right?
A Yes.

Q You were actually there.
A Uh-huh.
Q Didn't he tell you or you told him, "Look, we're going to let you go home."
A Oh, yeah, of course. Yeah.
Q Okay. And then he said to you before he started doing anything else he said, "Are you still going to let me go home." He said that; right?
A Yes.
Q He didn't want to be there anymore; did he?
A I disagree. I believe what he was talking about was, "If I continue to tell you or tell you what happened are you still going to let me go home when this is done." I think that's how I understood that.
Q So after three hours of being with you --
A Yes.
Q -- and being with Agent Gates, I mean, Agent Hardee, you think that Randy Collins wanted to be there still?
A Well, I don't think Randy Collins wanted to tell us what he had done. In fact, he still tries to minimize his part of it.
Q Well, let me ask you this, is there any evidence at all that you've collected, and you all have done an exhaustive search, I've said it many times, is there any evidence that James, other than what Randy says, that James did anything at

all, period in this burning, one shred of evidence?
A That, that James and it, it depends on which evidence you're talking about.
Q Any evidence.
A Well, you know, some of it we can't even talk about and then so.
Q So, I'm sorry. I --
A Yeah. Some of it we, you know, some of it we hadn't talked about.
Q James, what do you have against James?
A You talking about James --
Q What evidence is there against James?
A You talking about James Miller?
Q James Miller.
A Okay. So when we got to the crime scene the evidence from the actual crime scene tells us that this fire is intentional. So that's the first piece of it, and then we get an anonymous tip that we were able to confirm and then we speak with Mr. Randy who actually confirms the anonymous tip and what happened at the house. I think it's all evidence.
Q My question to you is this, name one piece of evidence, as a matter of a fact I'll go so far as to say this, name one piece of evidence that you have tying either James Miller or Randy Collins to this fire. I don't care if it's GPS records, you know, somebody is saying that they saw him do it, you've

got, you know, DNA from the, from the crime scene, you have an ID that was dropped at the floor of, excuse me, at the door of the actual trailer, name one piece of evidence. We know that you went through your process of investigation.

A All right. I'll name two.

Q Okay.

A I got an anonymous tip that said he did it, and I talked with him and he said he did it.

Q An anonymous tip that said he did it and then he said he did it.

A Yes.

Q But the first time you talked to him he didn't say he did it; did he?

A No. He didn't say he did it.

Q The second time you talked to him he told you he didn't do it.

A The second time I talked to him I told him I wanted to sit down and have another conversation. He said he would be there.

Q No. I'm saying the second time you actually talked to him.

A Oh, you're talking about on tape?

Q That's right.

A Right. Well, initially he said he didn't do it.

Q Right. He told you for an hour and a half, "I didn't do

it."
A Right.
Q And then he starts telling you the story that you admit under oath does not make sense.
A I didn't admit that the story didn't make sense. There were portions of the story that just didn't make sense, but I understand why he would say that.
Q Well, the name Sholanda [spelled phonetically] came up in your investigation; did it not?
A I don't recall. It may have.
Q All right. Do you recall him telling you that he had a girlfriend named Sholanda?
A Oh, yeah. I remember that.
Q All right. And do you recall that she was still in town during that time? He even said he took her food; right?
A Yes.
Q All right. And do you know or did you discover in your investigation whether or not Marissa Cohen knew Sholanda?
A No.
Q Did you discover what -- didn't he tell you in the tape that she kept the kids?
A Okay. All right.
Q All right. Well, let me ask you this then, the experts testified that the kerosene heater that you all say belonged to Randy Collins did not cause this fire.

A Well, what they said was it didn't have any kerosene in it. So, yes. I don't think that the kerosene heater caused the fire.
Q Right. Okay. Well, did he get the kerosene from the store?
A No. He didn't.
Q Okay. All right. And you don't have any proof that he did; do you?
A No. No.
Q Now, a couple of times during the interrogation he said to you, "I'm listening to you. I'm listening to you." Do you recall him saying that?
A Uh-huh.
Q Because he was waiting to see what you were about to say?
A I think he said, "I'm going to listen to you," --
Q Right.
A -- because we were both trying to talk at the same time.
Q I agree.
A Uh-huh.
Q But I'm asking you do you recall him saying that?
A Yeah. What he said was, "I'm going to listen to you."
Q Do you recall him actually at one point in time in the interview saying, "What had happened. What do you want me to say"?
A He may have said that.

Q Well, in the last part where you're getting him to write down a statement --
A Uh-huh.
Q -- because Agent Hardee said that's their policy; right?
A Right.
Q So when he's writing that down he says three or four words to you, and he says, "Look, this is my statement." You say, "Give me your statement," and what does he say?
A He said, "I didn't do it."
Q And he stops; doesn't he?
A Yeah. Him and Agent Hardee started talking about something.
Q Wasn't it you in the video who prompted him and said, "Look. You've got to tell me more?"
A Well, I -- it'd been three hours. I was tired of being there, too, but I wanted him to tell me exactly what and he did.
Q All right. Fair enough, but you recall actually having to prompt him several times during that statement; don't you?
A What -- I don't know if I prompted him or what, but again, he was distracted somewhat by Agent Hardee asking questions while I'm trying to get him to tell me what he wanted me to put in that statement.
Q Sir, do you recall telling Randy Collins, "You've got to tell me X, Y and Z?" Do you recall saying that to him?

A I said that several times during the interview.
Q Okay. No. No. While you're getting -- while you're actually writing down a statement for him, do you recall saying that?
A Judge, I answered the question. I, I --
THE COURT: I'm sorry. I missed it.
MR. WILSON, JR.: The question is this, Judge, whether or not he recalls telling him, "You've got to continue to tell me X, Y and Z."
THE COURT: I think he answered that question.
MR. WILSON, JR.: I don't recall an answer.
THE COURT: Okay. Answer it.
A Okay. I don't, I don't remember. I'm sure I told him, "Hey, what do you want me to put here."
Q You don't remember that? Do you recall Randy Collins asking you, "What else should I put?"
A No. I don't, but I've had that happen before several times.
Q You had that happen before.
A Yeah. Normally, you know, people want to know exactly what you want in the statement.
Q Do you recall in the interview telling him, "Look, we know she was offering you some money. You needed some money. You needed some money. You were broke and poor. You had to get money for your cheeseburgers." Do you remember ever

telling him that?

MS. RICHARDSON: Your Honor.

A I think he added --

MS. RICHARDSON: I'm just going to object. He's, he's attempting to quote from the video. We've all seen the video. I feel like some of it's being mischaracterized and --

THE COURT: Well, the jury will know whether it's being mischaracterized.

A All right.

MR. WILSON, JR.: Judge, then I'd like -- wait. Let's approach. Let's approach.

A Now -- okay.

MS. RICHARDSON: Wait a minute. I'm coming up.

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

THE COURT: Counsel.

BY MR. WILSON, JR.:

Q Just a few more questions. Let me ask you this.

A Certainly.

Q Now, at the very end of this interview with you after he did the statement and he told you all this story, right, about what happened the last thing he says to you before he left was, "I didn't do it." Do you recall that?

A Yes.

Q Okay. How many times do you think during this interview

he said, "I didn't do it?"
A A lot.
Q Okay. All right. But you and Agent Hardee didn't want to take that for an answer? You --
A I still don't believe that.
Q I understand that you don't believe that. That's not --
A And, and not only that, it -- it's my -- I believe he's talking about "I'm not the one that actually lit the match," when he says, "I didn't do it."
Q Okay. All right. So then tell me, other than what he said, all right, other than what he said to you that day, what physical or other evidence -- let me finish the question before you answer -- what physical other evidence do you have to support what he says?
A Oh, well, he said that Marissa called him and told him that she was going to put the kerosene in the back room and leave the back door open. We know that kerosene was used to burn the house down. I mean, again, you got the evidence from the scene. You've got the anonymous tip. You've got his statement. All together, it all ties together.
Q Didn't you actually mention, you and Agent Hardee mention the kerosene first?
A Sure. I mentioned the kerosene.
Q Right. And you told him the door was locked, too; right?
A He said -- I think he said the doors were locked. He

said they checked the doors but they were both locked.
Q You asked him if they had a key because they couldn't get in.
A Right. Well, we knew the doors were locked. I said, "Well, who had the key?" He said, "Neither one of us had a key. The back door was supposed to be unlocked."
Q That's right. Exactly. Now, my question is does that make sense with the evidence that you have? The evidence shows that someone went inside the house, right, the trailer? That's what one of the experts testified to, and took kerosene, poured it in a pattern. Do you recall that?
A Yes.
Q And that's in the evidence; correct?
A Uh-huh.
Q And that somebody lit it; right?
A Yes.
Q Now, if they couldn't get inside -- let, let me ask you this, if somebody's going in to actually burn their house down --
A Okay.
Q -- and there's no doubt obviously that that happened; right? Wouldn't you want to make sure the fire is lit?
A I wouldn't burn down a house, but I -- let me answer your question. Okay. I heard the, the witness' testimony that in his opinion kerosene was poured in a pattern and it probably

was. Now, the doors were locked according to the fire department when they got there. We don't know how long they were locked, don't know if he went inside and lit it, don't know if Marissa poured it when she took it. We don't know.

Q Well, do you know whether or not Marissa Cohen went there with Mano and burned the house? Do you know that for sure?

A Not according to Randy.

Q I understand that. I'm saying do you have any other evidence that might show that, that she did it herself?

A Again, all of the evidence, you know, it, it involves Marissa, Randy Cohens [sic] and James Miller.

Q So you're telling this jury that under oath that you know for a fact that Randy Collins went to that house and burned that trailer?

A I know exactly what he told me.

Q Do you -- that's not what I asked you. I said do you know that he did it, sir?

A Yeah. I believe he did it, and he said he did it. So I'm assuming he did it.

Q What evidence did you use to corroborate that?

A Okay. So when we worked the scene we got evidence from the scene. We got the anonymous tip. We've got his testimony and all of it mirrors each other. It's not like there's, you know, any differences in it.

Q Okay. All right. Let me say this. You have a burned

house; correct?
A I do.
Q All right. You have a child that died; correct?
A Absolutely.
Q Okay. You have, you know, forensic evidence which they collected; correct?
A Yes.
Q You have a kerosene heater that falls out of the actual house; right, when it burned?
A I don't know if it fell out when it burned. I, I don't know, but there's a kerosene heater outside.
Q There's a kerosene heater outside --
A Yeah.
Q -- in the pictures, okay.
A Yes.
Q All right. And you know it's raining; right?
A Yes.
Q All those things, you all went through the house, no doubt, collected what you could; right?
A Yes.
Q Now, other than his statement, please tell the jury what evidence you have of his guilt.
A Well, it's not for me to decide whether or not he's guilty, but --
Q I'm not saying that. I'm asking you what evidence.

You're the lead investigator.
A Again, I got an anonymous tip and the entire tip checked out. What that person called and said is exactly what happened based on the investigation --
Q No further questions.
A -- and that information we compared to the statement that he gave and because he could no longer cover his tracks then he finally told us exactly what he did. So, so all of it is relative. It all works together
Q Cover his tracks? Please tell me how Randy Collins before you talked to him --
A Because he said he didn't know.
Q Let me finish my question.
A Okay.
Q I'll repeat the question. Tell me how Randy Collins before you talked to him was covering his tracks.
A Because he said, "I know nothing of the fire. I was at the bar all night with my nephew," and then I went home. That's all I know. Nothing else.
Q Did he go, did he go back out to the, the place and try to move some of the stuff from the scene of the crime?
A I don't know if he did or not.
Q You have evidence of that?
A Not, not, not while we were there.
Q Do you have evidence of that, sir?

A I didn't, I didn't go back to see if he had been back.
Q I'm asking you -- you've made a statement about him covering his tracks. So what I'm asking you about now is that issue. Do you have any evidence that Randy Collins was covering his tracks --
A Well, I --
Q -- or did anything malicious to hurt this case or obstructed the evidence in this matter?
A I just explained what I meant by that.
Q I understand.
A Okay.
Q But my question still stands.
A Okay. No. I, I don't know that he went back to the house after we left.
Q Did you charge him with obstruction of justice in this case?
A No. We have not.

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

THE COURT: Ms. Richardson.

REDIRECT EXAMINATION

BY MS. RICHARDSON:

Q Who first mentioned the kerosene heater?
A Randy Collins.
Q And did he describe it?
A Yeah. He said he had a heater and that she wanted to

borrow it and, and so he let her use it. She took it to the house.

Q And do you recall him describing what it looked like?

A No. I, I don't recall him describing what it looked like.

Q Now, Mr. Wilson has asked you repeatedly about what evidence there is in this case. Now, have you actually just summarized every single thing that's been brought in front of this jury?

A No.

Q Okay. And he asked you how many times Randy Collins said he didn't do it.

A Yes.

Q Do you have any idea as to how many times you said, "We just want the truth?"

A I've got no idea.

Q Did you say that?

A Yes. I did.

Q Okay.

MS. RICHARDSON: I have no further questions.

THE COURT: Mr. Wilson.

MR. WILSON, JR.: Just last question.

MS. RICHARDSON: Your Honor, we're going to go --

THE COURT: Well, understand, Mr. Wilson, it's limited to redirect.

MR. WILSON, JR.: It's one question, Judge.

THE COURT: All right.

MR. WILSON, JR.: And it's related to what she just asked.

RECROSS EXAMINATION

BY MR. WILSON, JR.:

Q You also said, "don't" -- I apologize. You also told Randy Collins in that interrogation room not to actually tell you things just because he thought you wanted to hear it; correct?

A Yes.

Q Because -- and why did you tell him that?

A Well, because in my opinion he was, he was trying, again, minimize his portion of it. You know, "I was there, but I, I didn't do anything. You know, Marissa called and I, yeah, I told James and I rode with him, but this ain't on me. This is, this is all James."

Q Okay. Thank you very much.

MR. WILSON, JR.: Judge, no further questions, Your Honor.

THE COURT: Thank you. You may step down, sir.

A Thank you, Judge.

THE COURT: Witness?

MS. RICHARDSON: Your Honor, the State rests.

THE COURT: Very well. Would you take the jury out,

please, while I take up matters? While the jury's going out we'll take five minutes.

OFF THE RECORD

(On the record. The following takes place outside the presence of the jury.)

THE COURT: The State has rested, motions?

MR. WILSON, JR.: Judge, at this time obviously the Defendant's going to move for a directed verdict, Your Honor. I'm going to base it on obviously corpus delicti. Again, the State hasn't shown any connection other than this client's statement, this Defendant's statement, they haven't shown any connection whatsoever to the body of the crime in this case. They have --

THE COURT: Well, I think his statement corroborates many of the facts that are in the evidence about the burning with the kerosene, about the hiring by the owner of the property, the mother taking out an insurance policy. I think there's a lot of evidence that he gave in his, his statement that goes in step with the physical evidence that was found. There's obviously no doubt of the fact that there was a crime committed. There's been nothing but evidence to show that it was an intentionally set fire and that it was a death that resulted from it. So I believe that there is evidence from which a reasonable jury could convict your, your, your client based upon not only his statement but the physical evidence

and how his statement meshes with that physical evidence.

MR. WILSON, JR.: Judge, can I put the rest of it on, on the record?

THE COURT: Yes. Yes.

MR. WILSON, JR.: Again, I'm going to argue corpus delicti. All of the cases that I have read regarding this matter specifically state that a case that the State brings against an individual, especially when there's a confession, has to stand on firmer ground than simply that confession, and I would submit to the Court that they know -- they had the information already regarding the fire about the kerosene and all that good stuff. They already knew that already. They even said it to him in the actual interview itself. They didn't get one shred of additional evidence after they finally got probable cause for the arrest, not one thing, nothing.

THE COURT: He lawyered up.

MR. WILSON, JR.: Well, I hope so. I hope so.

THE COURT: I was not being facetious though.

MR. WILSON, JR.: I understand, Judge.

THE COURT: All right. Yes. I was being facetious --

MR. WILSON, JR.: That's okay. It's all right.

THE COURT: -- Mr., Mr. Wilson.

MR. WILSON, JR.: But, but, but again, there, there was --

THE COURT: That, that's pretty typical in these cases;

is it not?

MR. WILSON, JR.: Well, it's typical to have a situation where there's probable cause and you might get the, the statement from him and then arrest him, but the question is they couldn't arrest him without the statement, and the question after that is what else do they have beyond that? They got the stuff from the actual trailer that burned. They got the forensic evidence that they collected. They tested it, and then they found out that Marissa Cohen got the kerosene, that Marissa Cohen got the policy, that Marissa Cohen got the storage facility, and we believe that Marissa Cohen burned this place, but again, there's no evidence other than his statement to stand on firm ground, and I think when it goes to the Court of Appeals in light of the totality of the circumstances as far as his, obviously, Jackson v. Denno and other things in this case regarding his mental status, I think that it gets overturned, Judge. That's my opinion.

THE COURT: All right. Ms. Richardson.

MS. RICHARDSON: Your Honor, obviously, there is plenty of evidence that a crime has been -- has occurred here. I think State v. -- I think it's State v. Williams is very similar in facts in that there is evidence typing him to the crime, of course, his -- besides his own statement, it is the statements of Rose Collins who indicates his demeanor and statements he made immediately after the crime, as well as his

own nephew.

THE COURT: And the phone calls and the contact between the --

MS. RICHARDSON: Multiple phone calls around the critical times around the time of the purchase of the kerosene and --

THE COURT: Proximity.

MS. RICHARDSON: -- after the fire.

THE COURT: I, I would respectfully deny your motion for directed verdict, Mr. Wilson. Okay.

MR. WILSON, JR.: Your Honor.

THE COURT: Yes, sir.

MR. WILSON, JR.: If I may for purposes of the record, and I understand the Court's ruling and I'm not obviously contesting your ruling, Judge, but I do want to put on the record that there was ample evidence that came out on the record even through the State's own exhibits, obviously he lived close to this area. This is a small community, and in addition to that, Judge, I'll, I'll leave it there, Your Honor. I'll leave it there.

THE COURT: Okay. All right. Mr., Mr. Wilson, does your client intend to testify?

(Mr. Wilson and Mr. Collins confer.)

MR. COLLINS: Yes. I'll testify.

MR. WILSON, JR.: You want to testify?

MR. COLLINS: Yes.

(Mr. Wilson and Mr. Collins confer.)

THE COURT: All right. Let, let me --

MR. WILSON, JR.: Judge, Judge, briefly, let me talk with my client one second.

THE COURT: Okay. Let, let -- Mr. Wilson, let me --

MR. WILSON, JR.: Yes, sir.

THE COURT: -- read him his rights and then you talk to him.

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

THE COURT: All right. You, sir, are Randy Collins?

MR. COLLINS: Yes.

THE COURT: Okay. Now, is he under oath? Would you place him under oath, please?

(Defendant is sworn by the clerk.)

THE COURT: All right. Now, Mr. Collins, at this time I'm going to explain some things to you, certain rights that you have, and if you don't understand anything I say please let me know. I will explain it again. I'll explain it until you tell me you understand it. Do you -- is that fair enough?

MR. COLLINS: Yes, sir.

THE COURT: Okay. You understand what I'm telling you now?

MR. COLLINS: Yes.

THE COURT: Okay. Now, we've reached the stage in the trial where you can present your defense and you have the

right to claim the protections given you by the Fifth Amendment to the Constitution of the United States. That amendment says in part no person shall be compelled, that means required, made in any criminal case to be a witness against himself. That means that you cannot be required to testify in this case. You have the right to testify on your own behalf if you wish. However, no one can make you testify. Now, this is a personal right you have and no one can waive or give up that right except you.

Now, if you decide to testify understand this, you will be subject to the same rules that govern other witnesses, and you can be examined by your attorney, then cross examined by Ms. Richardson or Mr. Stephens on any relevant issue in this case. All right.

MR. COLLINS: Yes.

THE COURT: In addition, if you have any convictions involving dishonesty or false statement or for crimes punishable by imprisonment for more than year and I determine that the probative value, the evidentiary value of the -- of admitting this evidence outweighs its prejudicial or harmful effect to you, the Solicitor, Ms. Richardson or Mr. Stephens will be able to introduce your record to attack your credibility or believability. If you decide to testify, this decision on your part must be freely, voluntarily and intelligently made with the knowledge or understanding of the

protections given you, the rights given you by the Fifth Amendment and the consequences of your decision to testify. If you decide not to testify I will tell this jury that they cannot give that fact, the fact that you did not testify any consideration whatsoever. I will tell them they cannot even mention it in the jury room and that there is to be absolutely no prejudice to you because you did not testify. It is left entirely up to you whether or not you testify. Now, I'm going to let you talk with Mr. Wilson, your family, your friends, anyone else that might give you sound advice, but the final decision will be entirely up to you. Now, do you understand what I have explained to you?

MR. COLLINS: Yes, sir.

THE COURT: You understand? Do you have any questions for me about what I've explained to you?

MR. COLLINS: No, sir.

THE COURT: You understand now?

MR. COLLINS: Yes.

THE COURT: You, you don't have to testify. The jury cannot use that against you. If you do testify you're going to be subject to questioning by the Solicitor, that would be Ms. Richardson, the Prosecutor, or Mr. Stephens. Do you understand? Do you understand that?

MR. COLLINS: Yes.

THE COURT: Okay. Now, I want you to discuss this with,

with your lawyer. I'm going to give you a few minutes. He says he needs a few minutes with you, and then I'm going to bring you back and let you tell me. Okay?

MR. COLLINS: All right.

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

MS. RICHARDSON: Your Honor, I'm going to step out for a few minutes while they're meeting.

THE COURT: All right.

OFF THE RECORD

(On the record. The following takes place outside the presence of the jury. Whereupon, a bench conference is held in the presence, but out of the hearing of the jury.)

MR. WILSON, JR.: Your Honor, for the record, I've talked with my client. He has expressed an interest in testifying. I want to put on the record that I have serious concerns about his mental status, as well as his mental abilities, his ability to understand and, again, I said this in the Jackson v. Denno that -- and in the Blair hearing that we had that I have concerns about his mental capacity, Judge. I would remind the Court that he did test at an 18 level on the MOCA exam. I understand the examiner has found him to be competent, but competency does not necessarily indicate that he doesn't have diminished capacity. I'm telling the Court from working with him for the past couple of years that his capacity is diminished, but he has expressed an interest in

testifying. I just want to put on the record that I've advised him not to.

THE COURT: Well, well, I, I just want to make sure that he understands.

Mr., Mr. Collins, again, I'm hearing from your attorney that he's advising you not to testify; is that correct? Is, is that right? Sir?

MR. COLLINS: All right.

THE COURT: All right. But you want to testify; is that correct?

MR. COLLINS: Right.

THE COURT: All right, sir. And, and I want to make, make sure that you understand what I told you a minute ago. You don't have to. Okay. No one can make you. It's a constitutional right.

MR. COLLINS: Right.

THE COURT: And I would tell the jury, if you did not testify, I would tell them they can't use that against you. Okay.

MR. COLLINS: Right.

THE COURT: You understand that? Do you understand that?

MR. COLLINS: Right.

THE COURT: Okay.

MR. COLLINS: Yes. Yes, sir.

THE COURT: All right, sir. And do you further

understand that if you take this stand, you are making yourself open to cross examination, interrogation by the Prosecutors in this case, and any testimony that they elicit could be used -- would be used against you by this jury if it were incriminating. Do you understand that?

MR. COLLINS: Right. Yes, sir.

THE COURT: Okay. So if you were to say anything incriminating that might hurt you you can't take it back. I mean, I'm always concerned, and I don't want to, I don't, I don't want to try to tell you not to testify or to testify. That is 100 percent your call. It's just that your attorney, Mr. Wilson, tells me that he has concerns about your decision to do that. It's not his decision. It's your decision as to whether or not to testify, and I wanted to make that very, very clear to you, and if you want to testify, we're going to hear your testimony. That is absolutely your right, but I want to make sure that you understand that sometimes there are pitfalls that come from that. Sometimes great things can happen from it, you know, it's possible.

MR. COLLINS: Yes.

THE COURT: But the other can happen, happen as well. I don't know about your case like your attorney does. I could never give you advice. It would be improper for me to give you advice. It's just that I encourage you to talk this through with your attorney, and of course, it's your decision.

You have to, you have to make that decision. He can't make it for you, but I would tell you that it would probably be a good thing to listen to him, and then if you want to testify absolutely, we'll be happy to hear your testimony, but do you need to discuss this further with Mr. Wilson?

MR. COLLINS: Yes.

THE COURT: Okay. And I'm going to give you all the time you -- because this is a very important decision, Mr. Collins. Okay?

MR. COLLINS: Okay.

(Mr. Wilson and Mr. Collins confer.)

MR. WILSON, JR.: Ask the question again.

THE COURT: All right. Mr. Collins, do you wish to testify or not?

MR. COLLINS: No, sir.

THE COURT: All right. Very well, Mr. Collins. Okay. Then, Mr. Wilson, do you have another witness you will call?

MR. WILSON, JR.: No, Your Honor. The Defense rests at this time, Judge.

THE COURT: All right. Very well. Let's bring the jury in.

(Whereupon, the following takes place in the presence of the jury.)

THE COURT: All right. Ladies and gentlemen, the State has rested and now the Defense has also rested, and we are

prepared to go forward with arguments. Will you waive -- will the State open as to the law?

MS. RICHARDSON: Yes, Your Honor.

THE COURT: All right.

MS. RICHARDSON: Good afternoon. We're here today, and we've been here all week because a 12 year old little boy is dead. You've heard him referred to as Dave. You've heard him referred to as Syience, but we all know that he died at the age of 12 on the floor of that trailer with black smoke filling the air, and he was all alone, and why did he die? For greed, for money, for $5,000 out of 25, and his own family, of course, first of all, his own mother, but his own family worked together and didn't protect him. Now, nobody knew he was there. Nobody is saying in this case that he was intentionally killed, and that's not the intent we look at. What we're looking at is the intent, the plan, the conspiracy to burn down this trailer to get insurance money. That's the intent, and the law says that they're responsible for the results of that act and that plan.

You heard testimony from the arson investigators. You saw those horrible pictures. A fire is a dangerous thing, quick. He wasn't that far from the door. The doctor told you how fast he was overcome, and the law says if you set a fire you're responsible for that, and it doesn't matter if you know if they're there or not. It can be the fireman who comes in,

something happens to him. It can be a neighbor. If Mr. Langley had seen that fire and gone in the house and tried to -- and thought Syience was there, he could have succumbed, but you are responsible. It is a dangerous thing. You saw the pictures, ceiling fans melted, blinds melted off the wall, black smoke everywhere. He's responsible.

He's charged with two crimes, arson in the first degree and criminal conspiracy. The Judge will explain to you what the criminal conspiracy is, and it's the conspiracy to commit this arson, but conspiracy is basically a plan among participants ahead of time and then taking some action in furtherance, and each member of the conspiracy is just as guilty as the other.

You've heard testimony Marissa Cohen was home in bed drugged up, asleep when her son died. She's part of that plan, she's just as guilty. We don't care if she was there or not. No. She wasn't there.

Arson, a person who willfully and maliciously, and there's two parts here, causes an explosion, sets fire to or causes to be burned or aids, counsels or procures a burn, willfully and maliciously. We know it wasn't no accident. We've heard that. You heard -- I'm sure you saw more pictures than you wanted to and heard from the arson investigators. Everything they did to determine it wasn't an accident, and I don't think that's really in dispute here, but of course, the

first thing was it was going to be an electrical fire.

The second thing is, you know, we've got this kerosene heater sitting around. Of course, the funny thing is it was empty, but the kerosene was everywhere it shouldn't have been, not in it, but around it. I don't think there's any question that this was arson. This was an intentional fire, and these, these two things causes an explosion, sets fire to or causes to be burned, clearly that's a given. It's burned, or you can either cause it, like do it yourself, light a match, cause it or, and this is a little different, this is kind of a different area of the law, you can aid, counsel or procure that burning which means you, you do not have to be there, if you pay somebody to do it, you advise somebody on how to do it, you help them, help them, and any of that is the same as if you do it yourself and to do these things you don't have to be here. Again, Marissa Cohen, home in bed, the same thing, and then that results in damage. There's got to be damage, and that's easy, to a building, structure or property, that's easy, too. I mean, obviously we can see that that was damaged, which results in the death or serious bodily injury of a person directly or indirectly, and that's why you heard from the pathologist who explained exactly what happened to little Syience, and that he did die from this fire, from the smoke that was produced in this fire.

So the issue in this case is Randy Collins. What role

did, did he play in this? Well, first of all, it became apparent right off the bat. You heard from multiple people at the scene. "Something's not right here. Something is not right. This mother is not acting right. Something's wrong." Her child is dead. She has not much reaction. Boy, she's on that cell phone. She is on that phone. Who is she talking to? She is talking to Randy Collins, Randy Collins. In the past month she had talked to him one other time until these two days, and all of a sudden these two days she's talking to him, and what times is she talking to him? We know she went to purchase kerosene at the Super Chick that morning between 10 and 11. Shortly after that, she's on the phone with him, and again in the afternoon and again at 9:00 o'clock at night and around three in the morning, and what's significant about those times? What time did he try to give an alibi for? Nine to three. "Nine to three I'm at Carnell's not 11 to 2, we had a big -- nine to three, and not just me, guess who I'm with? I'm with James Miller." Okay. And you'll have these to look at, and both of them were statements and both of them are exactly the same, and guess what, both of them are lies. Evidence of deceiving and lying when you're confronted is evidence of your guilt. He lied and James lied.

The morning of the fire the people, the family, the community, everybody knows what's happened, concerned about this tragedy. Herman Collins, Rose Collins come down to see

their family. Herman is going to talk to his uncle, and Rose is going to see her first cousin who's also like a sister to her, Marissa. They roll up there early that morning and describe how he's acting and what does he say? "It's f'd up. It's f'd up," and Rose says he says, "Wasn't supposed to happen like that. Wasn't supposed to" -- or something to that effect -- "it wasn't supposed to be like that." So Rose goes over to Marissa's house and what does she hear? The same thing. "He wasn't supposed to be there. Wasn't supposed to be like that. He wasn't supposed to be there."

So word starts getting out in the community. They get this anonymous tip, check it out. Sure enough, Marissa has taken out an insurance policy just a little over a month before. Just a little over a month before she's taken out an insurance policy, and she's bought kerosene. When they talk to him and he lies. They get the cell phone records and see that there's been communications. So they bring him in, and that's where things get interesting, and that's what most of this trial's been about. It's like throwing spaghetti up on a wall and see what sticks. Well, first of all he was tricked. You know, he, he didn't know why he was coming there. You heard Investigator Garrett say he had talked to him. He'd already given one statement that he had checked out and found not to be true. Set up an appointment to meet up with him again and he didn't come in. So when he came to get those

cell phones he -- what'd he say, and if you go back, and you can listen to the tape if you want to, he said, "You know, all the family was there. I didn't tell them I was coming. I, I didn't tell them I was coming," but he knew, he knew they were going to talk to him again.

Okay. So first, you know, he got tricked into going there. Second, well, what about this room he's in? He's at the Andrews Police Department. What about this room? Oh, this room just made him feel like, you know, he didn't have a choice. A big deal was made about where is he sitting? Where's the door? What else is in the building? Okay. So the room was not suitable. Then it's he's hungry. He didn't have breakfast. Of course, he didn't ask for anything to eat. He didn't feel good. Let's see what else it was. He had been in an accident a few years ago and his leg hurt, every little thing, and then it's, "Well, he's promised. You know, he's made promises he can go home." Well, he did go home, that it was either way, and he clearly knew why he was there and what they were talking to him about, and he knew there was a cost, is what he said, for it and a penalty. He knew this was a serious crime. That's why he said he wasn't nowhere near it from nine to three that night. He knew what he was there for, and then it's, "Well, you know, he's, he's just not that smart. He's limited and he doesn't have a high education," and that's not the end all there. Many of us who know older

people in the community, some of our own grandparents may not have gone that far in school, but education from a book sense is not the same as smarts, and it doesn't mean he doesn't have intelligence. Think about some of the words he used, hesitate and consideration, and he knew what was going on clearly, clearly, and look at his demeanor and the way he acted. You know, oh, he's had a stroke. Okay. His memory was just fine when he started talking. When he first started talking it's, "Well, we did this and we went to Carnell's. When we went to Carnell's we had this many beers, and we played pool and you know that last fellow he played pool with he was really good." He remembered a lot more details there, but when things got harder and he knew things weren't matching up, then it's, "Uh, uh, I had a stroke. My, my memory's not so good." Then that's when that starts. It's manipulation, and that, that is a sign of intelligence. He talked about being a mechanic. He has a driver's license. He's able to function on a day to day basis. So we've talked about the room and the way he got there and the fact that, okay, maybe, you know, he's not so smart, all those things, and then it's the tape cut off. The tape cut off. He's trying to take advantage of a battery dying. Now, we all watched this long interview, and you didn't even see all of it, you know, we've had to remove portions, and you heard Scott Hardee testify, and I don't know that there is a battery pack that could outlast Scott Hardee.

He is long-winded, but you know, the battery does cut off and then we go back into the interview, and at that point the suggestion is, "Oh, well, you know, he's been told what to say." Well, if he did he didn't do a very good job because they were still trying to figure out which side of the road he was on. Think about the part when it came back in. Officer Garrett didn't even know which road they had parked on and which was the front or the back of the house because they were -- he didn't realize which street they were talking about. So then and for that to be an issue you would have to believe that he and Officer Hardee did that on purpose, that they just cut that thing on purpose and did something while it was off. You saw them both. You saw their demeanor. You saw their demeanor when the tape came back on. Do they look like the kind of men who, who did something horrible to him during the break, and did he look like anything had happened with his demeanor? No. Trying to take advantage of that, that situation, and then it's, "Well, they told him everything to say. They fed him all the information. He didn't know any of it. So they told him all of it."

Think back. There are several things that he mentioned that they wouldn't know anything about, which street it was on, that they didn't have a key. There were several of the details that he brought out that nobody knew, and just think about the normal progression of it and think about in your

day-to-day life how things happen. Some of us may have been caught doing things wrong when we were younger, may have gotten in a little trouble in high school. Some of us may have wrecked a truck and wanted to tell their daddy a little different story, and that happened to me one time. Decided I was going to show off a little bit and hit a tree, and I knew I was going to be in trouble. So what did I say? Somebody must have hit this car. Somebody must have hit this truck, make an excuse. That's what people do, blame something else. "I wasn't there. I don't know anything about it. I came back and that's the way it was." Well, then it's, "Okay, Alicia, let's just call the police department and make a report." "Um, um, maybe we shouldn't do that." "Okay. What about this limb sticking out up under the truck?" So then who comes clean?

The same thing here, the same thing we all do in life. The same thing you do with children. You look at the evidence and you point out the inconsistencies to get them to tell their truth. Now, some people are more honest and they just come right out when we're facing a crime. That doesn't often happen. That's why there are interviews, and that's why there are techniques, and that's why they use the tools of investigation and the evidence they get and confront people with it, it's a normal progression.

"I wasn't there. I was with my cousin, James, from nine

to three, all night, and T can tell you." "No. He can't," and James says the same thing. "No. He can't." "Well, okay, then maybe I'm not so good with time. Maybe it was 11 and maybe I got home at two," and then in the interview still throwing out names, then eventually he admits, "Well, I was with James. I was with James." They broke him. They broke him by confronting him with the inconsistencies, just like anybody does, just like anybody does. There's nothing unfair or undue or wrong. They confronted him with what wasn't true, and then he eventually came forward, and you're going to hear the Judge explain to you that you have to determine if a confession is voluntary, and he's going to talk about promises and threats and his ability to understand, but in the end the key, the determining factor, and the Judge will tell you, was his free will overborne? Was his free will overborne so that he had no choice but to say what they wanted him to say and what they told him to say? Was his free will overborne? No. And how do we know that? How do we know his free will wasn't overborne? He was still protecting Randy. He was still protecting Randy. "It's all James. I was there. I was with the wrong crowd," that's a good one. "I was with the wrong crowd, but it was James. James did everything." He was able to protect himself and minimize his role right up to the end of it, and after he had written that statement, after he had written that statement, "That's real. That's real. That's

true and I'm not a liar. That's real. That's real," and they're getting ready to walk out and he finished writing everything and what does he say? "You know, I don't know if Marissa even knew James was involved." Marissa didn't know about James, and he does say from start to finish, "I didn't do it. I didn't do that. I didn't do that. James lit it," and to him that's the difference, but to the law it's not. It's not. It doesn't matter which one of them lit it. What matters is they were all in a plan and they all worked together, and the Judge is going to talk to you about mere presence, and there are times when people just happen to be at the wrong place at the wrong time. The law says if you're just there and you, you're not doing anything it's not your responsibility. That's not what happened here. Who links Marissa and James together? James' number is not on those cell phone records. Randy says Marissa didn't even know that James was part of it. Marissa's the ring leader, but he's the link. He's the link. He brought James in. He's the link to everything.

James wanted some money or yams, which is I'm sure something the officer -- a term the officers didn't give Randy. He wanted some yams, and one of the main reasons we know that the two of them are working together is they gave the same statement, the same statement, same false statement, and we know it's not true. He finally admitted it wasn't

true. James' own momma came in and said it wasn't true and James wasn't there from nine to three. James' own sister was in here.

I wish it weren't true because if they -- if him and James Miller had been at Carnell's from nine to three, and by the way, nobody said that statement was forced; have they? Oh, no. That one's completely voluntary. If they had been there from nine to three Syience wouldn't have been there. Syience is dead because of their greed. He joined together to get insurance proceeds and carried it out, and I ask that you consider all the testimony and evidence and find him guilty of arson in the first degree and criminal conspiracy.

THE COURT: Mr. Wilson.

MR. WILSON, JR.: Your Honor, if it please the Court, Judge.

Good afternoon, ladies and gentlemen. When I first talked to you I told you that all of you were selected as individuals. Okay? And I know we refer to this as a jury panel, but there's a reason why we selected each and every single person that is on this jury panel and that is because of your experience, life experiences, who you are and what we believe you are, and we're asking you today to make sure that you follow the oath that you took. Okay.

This is a serious case. Arson in the first degree is a serious crime, so is conspiracy, but I told you in the

beginning that the Defendant is draped in a robe of righteousness. He is innocent until proven guilty and even right now he is still innocent.

What I want to talk to you about, and I'm not going to belabor over all the evidence because I know you've sat and I've saw you. You've watched vigilantly, and you've been attentive to what's been happening, but I do want to talk about something. This has been a perfect trial to try Marissa Cohen. This is the perfect trial to find out that Marissa Cohen did something illegal. Almost every piece of evidence in this case regarding conspiracy, if it exists, and the arson is related to Marissa Cohen. You go back and you look at the policy itself. You go back and you look at the rental itself. Go back and look at the day of the crime where she's moving stuff out of the house with Langley and with Brown, and I might add to you and you heard me bring it out in testimony she wasn't trying to kill Randy Collins until Randy Collins decided to go and make a false statement to Investigator Garrett and to Agent Hardee, and the reason she wasn't interested in Randy Collins is because Randy Collins didn't know anything. They didn't talk to him that second time until June 4th and that's why I said at the beginning this is a complex case. You have to weed through what's going on here. It's a complex case because these people all know each other. They're all family. They've known each other for years. They

spend time together. They have dinners together. This happens all the time.

June 4th is when they talk to him. She didn't talk about killing him until November. Why do you think that is? Why do you think that is? Mr. Brown got on the stand and told you that the day he was helping him move she talked about burning it that day. She told him, and do I believe that Marissa Cohen was out shopping for somebody to burn her house? Absolutely. Do I think that the family knew about it? Yes. I think most of the people in this story knew about it, but knowledge of a crime, even after the fact, and because you can recite certain things is not evidence of a crime.

I taught -- I had the privilege of teaching criminal law in law school for the ABA and LSD and for the SBA. Two things that are, that are at the core of criminal law act, which is actus reus, and mens rea, which is the intent, and the Prosecutor is right, intent is required for every single crime before you can be convicted. The act is required and then proof beyond a reasonable doubt. Before they talked to Randy Collins they couldn't get arrest warrants. They couldn't get anything, nothing, and this was a serious case. This was a serious case, and they needed something.

Now, I am not telling you that Randy Collins is an imbecile because that's not the case. What I told you was he is honestly not educated. He'd had a stroke the year before,

which came out in evidence. It's in his statement, and you watched him the entire time on the video. You saw him and how he is. You heard him talk about his lifestyle and how simple it is. You saw him.

Now, when we talk about the evidence in this case, if and they have put Marissa Cohen in the evidence completely. If you're talking about proving conspiracy you're talking about somebody that may have talked to her around the time that this house burned. Okay? You're talking about the fact that she then took steps to go ahead and get the storage facility, to go ahead and get the policy. None of those things Randy Collins was accused of doing or even have knowledge of and I'll tell you right now the anomaly for me when I started this case was not what Randy Collins said in his interview. It is what he did not say, the information he did not have about the conspiracy. He had no clue about anything other than what they told him. He didn't know about the policy. He didn't know about her going to the gas station. Everything, and you don't believe me go back and listen, everything they told him everybody already knew. Everybody knew the place had burned down. They knew there was a window on the other side of that trailer. This is not rocket science, and did he know what happened? He knew the facts about what happened because everybody was talking about it. The entire circle of that community in Andrews in that

area was talking about what happened, and check his phone records. Check her phone records. I encourage you to take the exhibits back and you look at them. She calls him in February. She talks to him again on the 28th and on the 29th, but there was a lot going on in this time, but who does she call? Look and see who she calls at 1:00 o'clock in the morning right before this fire occurred. I want you to look at those numbers, and I also want you to pay close attention to the actual cell site location for Randy Collins and then look at the cell site location for Marissa Cohen. His cell site location does not ping anywhere else, the entire time, and then the next day it's the same place. So he had to literally be at the fire if he's pinging at the same place. There was no evidence and I asked on the stand almost every witness, "Did you see Randy Collins at that scene even after the fire, after everybody had gathered around there?" Everybody said no. "We hadn't see him." "No. We hadn't talked to him," and I know you've got to be -- it's got to be burning in your mind because it was burning in my mind, why in God's green earth did this man go in there and make up this crazy lie because that's the issue. We all believe this place burned. We believe that it was a criminal act. We all believe that. Why would he lie? It is a simple, simple answer because you're talking about a simple, simple man with a simple mind. He was ready to go home. He did not want to

be there. That's it, and if you are confused about his abilities he could not even keep straight the path that he took through the woods. He couldn't keep straight the fact that was it a piece of paper? That's something simple because if I go up now with my paralegal, my office manager, and I say, "Look, we're going to burn this house right now," and I see her take a match and light it and light a piece of paper I'm going to tell you each time, "Look. She lit a piece of paper." He goes from match to lighter to paper and even suggests at one point in time that the guy picked up a piece of paper on the ground, which the investigators knew couldn't be true, which is why they say, "Look, Randy, you ain't telling us the truth. This can't happen this way," because they knew that the evidence didn't support that, and I know that I drew it out and we had a long conversation, Investigator Garrett and I, but he told you they can lie and they can. Constitutionally they can lie to Defendants, and they told him they knew more than they did. Randy Collins, "Well, look I might as well go and say something so I can get out of here. They want Marissa Cohen. They don't want me," and for you and I that might be a simple process for us to say, "Hey, look, it's going to take you longer than three hours to break me." It would probably take you literally three or four days to break me. The question is how long would it take to break someone like Randy Collins. That's the

question, and does what he said make logical sense to you? They say that he did not go to that bar, that he wasn't at Carnell's, and that was one of the things they said was inconsistent about his statement. You recall that. Yet the Prosecutor just got up and told you that he talked about a game, talked about it like it happened yesterday in the interview and said to you, "Hey, that last guy, that last guy beat him really bad." That is a normal conversation that would take place. I would submit to you he was at that bar. He was at Carnell's. There was nothing inconsistent about the statement he gave. He didn't know where else to go with this, and I ask you this, at the time when they made the arrest at one point in time they had no evidence. This is the scales of evidence that we use in, in law, that'd be general sessions, that's criminal court and then also civil court, no evidence at one point in time.

The next level of evidence is scintilla. That is literally what we call the size of a mustard seed. That's a small bit of evidence, something that honestly you can't even get an arrest warrant for. Reasonable suspicion, that's enough for me to stop you if I'm a law enforcement agent. Okay. Probable cause, probable cause is a low standard in our system. Probable cause is, "Hey, you may have done it." What is probable cause in general life? Okay. I'll give an example. It's about reasonable doubt. Okay. And in the end

that's what this is all about, but probable cause is not reasonable doubt. Reasonable doubt is up here. Probable cause is down here. So if I tell you, "Hey, I just went and slapped my paralegal," you can arrest me. I gave an admission. I gave a statement against myself, but then you got to go investigate the matter and make sure that I'm telling the truth, corroborating evidence. Well, if she's got a red mark on her face and she's crying and she says, "Ralph slapped me" then I'm guilty, at least that's evidence, right, of guilt. That's probable cause. Do you have enough to go get an arrest warrant. That's probable cause. Can you get a search warrant? That's probable cause. You got to have probable cause before you can get a search warrant.

The next standard is preponderance of the evidence. The next standard is clear and convincing evidence and then the next standard is reasonable doubt. Now, what is reasonable doubt? In your life every day we make decisions, all of us do. Okay. You know, if I decide -- I'm already married, but I'm going to say that -- but if I decide to get married tomorrow, and I had a relationship with my girlfriend and I say, "Look, I'm about to agree to get married, but she's not that good with money." That might give me some reasonable doubt about whether or not I should marry that person, and in your life you can make those decisions, say, "Look, I'm not getting married." In the courtroom you cannot because once

you reach that level where you say, "Look, I have reasonable doubt," then you have to find, the Judge will tell you you have to find the Defendant not guilty. There's no choice. In life you have choices, but under the rule of law we accept the rules of evidence. We accept the rules that the court places in place to protect people and that's one of the things that I do. Now, I want to tell you this so you'll understand. Yes. I'm a lawyer. Yes. I'm from Horry County, born and raised there, and I'll tell you this right now I have a private practice, but I was not retained by Randy Collins, not at all. I was appointed by the Court to represent him in this matter. I don't want any of you leaving here thinking that Randy Collins is rolling in money because you heard on the tape through the evidence he is not.

This man did not commit this crime. My job is to defend people like this. He didn't do this, and I know it's tough because you want to, you have to, human nature is we have to find somebody to blame in this situation, but when you go through the evidence it doesn't support his statement. Go through the phone records. It doesn't support his statement. Okay. Go through the evidence. It doesn't support him, not one shred, and I tried to get the doctor, the expert, the fire expert, I tried to get everybody to give me one piece of evidence which would corroborate what he's saying. Nobody could. Oh, there were inconsistencies, an anonymous tip. The

anonymous tip literally would be evidence that would be considered scintilla or no evidence at all in our standard -- in our system. That's not evidence. It's not competent evidence to put a man in jail. He is innocent and he's not just sitting here telling you that he's not guilty. He is telling you, "I didn't do this." That's what he's doing sitting over here now, and he has a right not to testify. He doesn't have to get up and say anything, and the Judge is going to tell you he doesn't have to say anything. I am asking you to make certain that you look at this case with open eyes, with open eyes because there are complex issues at play here. There are complex relationships. There are complex issues at hand, and if you don't give it a careful eye what's going to end up happening is you could make a mistake, and I'm asking you not to do that. Search the evidence and I'll be honest with you you will not find that you can get beyond a reasonable doubt in this case. It is not possible. There is no evidence other than what he said, and to give you an example, he actually when he was arrested they then had probable cause to go and arrest Marissa Cohen, but what else did they have other than him saying something? What else do they have? Marissa Cohen should be here in court here today in this trial, not Randy Collins. I am asking you to come back with a fair and just verdict of not guilty on both conspiracy and on arson first degree and on conspiracy

something that the Prosecutor didn't say is it requires assent and I'll be honest with you, when I look at this case even from his entire statement if you take it, when he says, "Oh, yeah, Mr. Wilson, I, you know, or Mr. Garrett I went over there and I was there in the car with him and I went behind him," there was no overt act and he didn't put anybody in contact with Marissa Cohen. As a matter of a fact he said otherwise. "I told my nephew about it, and my nephew decided he wanted to go do it." That is not him acting in concert with anybody. Everybody knew about this, and I'm not suggesting that you believe his statement. What I am telling you is if you happen to believe it, even under that circumstance, he's not guilty of a crime. He's not guilty of conspiracy because unless you can tie him directly to Marissa Cohen and that's not a call at 9:00 o'clock at night. That's a call at 1:00 o'clock in the morning where you know the conversation might be about the fire, then he wasn't involved in a conspiracy. There was no mutual assent between him and Marissa Cohen. There's no proof of it. There's no proof he set a fire. There's no proof that he procured anybody or garnered anybody or had anybody do it. I don't know why he lied but he did, and he's in this situation now. He shouldn't have lied. I don't know why he did it. I have no clue other than what I know he says and what he says in that video, "I wanted to go home. I just want to go home." Thank you so

much.

THE COURT: Ms. Richardson, reply. I'm sorry. I'm sorry.

All right. Ladies and gentlemen of the jury, I am going to now instruct you on the law in this case.

As I said at the beginning, I have always used something that I really don't know any other Judges do and, and that is I prepare a transcript of my charge. The Supreme Court has said that's appropriate if I'm willing to do it, but I must give you a verbatim transcript of my charge. So I'll be reading my charge to you in just a moment, but, but let me say this, the charge should be taken as a whole. One of the dangers of providing you with a written copy of the charge is that you might zero in on one paragraph, one sentence, one part of, of the charge. You -- of course you could do that if I didn't give you a, a, a transcript, but it is probably more dangerous if I give you one. So, so let me caution you to remember that the charge should be taken as a whole. Every part of the document is important, important and they are intertwined and you will, I think, understand that as I give you the charge and as you take it in your jury room and read it. So I ask you to please take, take special note of the fact that you should consider all parts and all parts should be taken together as a whole.

Now, I would remind you that during this trial you and I

have certain duties to perform, and as the trial judge, it's my responsibility to preside over the trial of the case, and I also have the duty to rule on the admissibility of the evidence offered during this trial, and you are to consider only the competent evidence before you. If there was any testimony ordered stricken from the record in this case during the trial, you must disregard that testimony. You are to consider only the testimony which has been presented from this witness stand and any exhibits which have been made a part of the record in this case and any stipulations, agreements of counsel. I have the additional duty to charge you the law applicable to this case, and as the presiding judge, I am the sole judge of the law of this case, and it's your duty as jurors to accept and apply the law as I now state it to you.

If you already have any idea as to what the law is or what the law ought to be and it does not agree with what I now tell you the law is, you must abandon this idea because you are sworn to accept and apply the law exactly as I state it to you. In every case tried in this court before a jury, the jury becomes the sole and exclusive judge of the facts in a case. A trial judge cannot intimate, state, comment on or make any statement to a trial jury about the facts in a case. Since you the jury are the sole judge of the facts in this case you are not to infer from what I have said during the progress of this trial in ruling on the admissibility of

evidence or otherwise or anything that I say, say now during the course of these instructions to you that I have any opinion about the facts in this case. The law does not allow me to have an opinion about the facts in this case. This is a matter solely for you the jury to determine. As jurors it is your duty to determine the effect, value, weight and truth of the evidence presented during this trial.

Now, the indictments charge the Defendant with arson in the first degree and conspiracy. I want to remind you that the fact a Defendant was arrested, charged and indicted in this case is not evidence in this case and cannot be considered as you as evidence of guilt in this case, nor does it create any presumption or inference of guilt. These documents simply are the formal written instruments which contain the charges made against the Defendant. They are the formal documents by which the case is brought into the court.

Now, the indictments in this case, as I said, allege several different offenses against the Defendant. The charges are in indictment number one arson in the first degree, indictment number two conspiracy. Each indictment charges a separate and distinct offense. You must decide each indictment separately on the evidence and the law applicable to it uninfluenced by your decision as to any other indictment. The Defendant may be convicted or acquitted on any or all of the offenses charged. You will be asked to

write a separate verdict of guilty or not guilty for each indictment.

Now, the Defendant has pled not guilty to these indictments, and that plea puts the burden on the State to prove the Defendant guilty. A person charged with committing a criminal offense in South Carolina is never required to prove himself innocent. I charge you that it is an important rule of the law that the Defendant in a criminal case or trial, no matter what the seriousness of the charge may be, will always be presumed to be innocent of the crime for which the indictment was issued unless guilt has been proved by evidence satisfying you of that guilt beyond a reasonable doubt. This presumption of innocence does not end when you begin your deliberations, but it accompanies the Defendant throughout the trial until you reach a verdict of guilt based on evidence satisfying you of that guilt beyond a reasonable doubt.

The presumption of innocence is like a robe of righteousness placed about the shoulders of the Defendant which remains with the Defendant until it has been stripped from the Defendant by evidence again satisfying you of the Defendant's guilt beyond a reasonable doubt.

The presumption of innocence is not mere legal theory. It's not just a legal phrase. It is a substantial right to which every Defendant is entitled unless you, the jury, are

satisfied from the evidence of the Defendant's guilt beyond a reasonable doubt. Now, what is reasonable doubt in the law? A reasonable doubt is the kind of doubt that would cause a reasonable person to hesitate to act.

The State has the burden of proving the Defendant guilty beyond a reasonable doubt. Some of you may have served as jurors in civil cases where you were told that it's only necessary to prove that a fact is more likely true than not true, such as by a greater weight or a preponderance of the evidence. In criminal cases, the State's proof must be more powerful than that. It must be beyond a reasonable doubt.

Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the Defendant's guilt. Now, there are very few things in the world that we know with absolute certainty, and in criminal cases the law does not require proof that overcomes every possible doubt. If, based on your consideration of the evidence, you are firmly convinced that the Defendant is guilty of the crime charged, you must find the Defendant guilty. If on the other hand you think there is a real possibility that the Defendant is not guilty, you must give the Defendant the benefit of the doubt and find him not guilty.

Now, there are two types of evidence generally presented during a trial, direct evidence and circumstantial evidence. Direct evidence is the testimony of a person who

claims to have actual knowledge of a fact, such as an eyewitness. It's evidence which immediately establishes the main fact to be proved. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact. It's evidence which immediately establishes collateral facts from which the main fact may be inferred. Circumstantial evidence is based on inference and not on personal knowledge or observation. The law makes absolutely no distinction between the weight or value to be given either direct or circumstantial evidence, nor is a greater degree of certainty required of circumstantial evidence than of direct evidence.

You should weigh all the evidence in a case, and after weighing the evidence, if you are not convinced of the guilt of the Defendant beyond a reasonable doubt, you must find the Defendant not guilty. However, to the extent the State relies on circumstantial evidence all the circumstances must be consistent with each other and when taken together point conclusively to the guilt of the accused beyond a reasonable doubt. If these circumstances merely portray the Defendant's behavior as suspicious, the proof has failed.

I instruct you and emphasize the fact that a Defendant -- that the Defendant -- excuse me. I instruct you and emphasize the fact that a Defendant that did not testify is not a factor to be considered by you in any way in your deliberations and

in your consideration on the question of guilt or innocence of the Defendant. It must not be considered by you in any manner whatsoever. A Defendant has the constitutional right to remain silent, and the assertion of the right must not be considered by you in your deliberations. I repeat, under your oath, you are not to draw -- you are to draw no conclusions whatsoever from the fact that the Defendant in this case did not testify. The fact that this Defendant did not testify should not even be discussed in the jury room. The burden of proof, as I have stated to you, is on the State. The Defendant is not required to prove his innocence. The burden of proof remains on the State to prove guilt beyond a reasonable doubt.

Now, necessarily, you must determine the credibility of witnesses who have testified in this case, in this case. Credibility simply means believability. It becomes your duty as jurors to analyze and to evaluate the evidence and determine which evidence convinces you of its truth. In determining the believability of witnesses who have testified in this case, you may believe one witness over several witnesses or several witnesses over one. You may believe part of the testimony of a witness and reject the remaining part of the testimony of that same witness. You may believe the testimony of a witness in its entirety or reject the testimony of a witness in its entirety. You may consider whether any

witness has exhibited to you any interest, bias, prejudice or other motive in this case. You may also consider the appearance and manner of a witness while on the witness stand.

Now, a statement alleged to have been made by the Defendant has been admitted into evidence in this case. While the Court has determined that the statement is admissible, I instruct you that you make the ultimate decision on whether or not the Defendant made the statement. If the Defendant did make the statement, you must determine whether the statement was made by the Defendant voluntarily and of his own free will. This means that the statement was not caused by pressure, force, fear, threats, coercion or intimidation, or by hope of or a promise of leniency or a reward. The pertinent inquiry is if the Defendant -- if the Defendant's will was overcome. In determining whether the statement was voluntary, you should consider both the characteristics of the Defendant and the details of the questioning. Some of the factors that you must consider are: one, the age of the Defendant; number two, the Defendant's education or lack of education; number three, the Defendant's mental capacity or ability; number four, the Defendant's IQ or, or intelligence; number five, the Defendant's background and environment; number six, the place and length of the detention; number seven, the nature of the questioning; and number eight, the advice, or lack thereof, to the Defendant of his

constitutional rights including, but not limited to, the right to remain silent, that any statement could be used against him in a court of law, the right to have a lawyer present, that if he could not afford a lawyer, a lawyer would be appointed to represent him without any cost and that he could stop making a statement at any time. You must carefully consider all of the surrounding circumstances before you give any weight to an alleged statement.

The State has the burden of proving beyond a reasonable doubt that the alleged statement was voluntary. If you determine it was, you may give the statement any further consideration that you deem proper. You must decide what weight, if any, should be given to the alleged statement. If you determine the alleged statement was not free and voluntary -- was not the free and voluntary statement of the Defendant, you should not consider the statement at all.

Now, the rules of evidence ordinarily do not permit witnesses to testify to opinions or conclusions, and an exception to this rule exists for witnesses we call expert witnesses. A witness who, by education and experience, has become an expert in some art, science, profession or calling may state an opinion as to relevant and material matters in which the witness claims to be an expert and may also state the reasons for those opinions. You should consider any expert opinion received in evidence in this case and, like any

other evidence, give it the weight you think it deserves. If you decide that the opinion of an expert witness is not based on sufficient education and experience, or you conclude that the reasons given in support of the opinion are not sound, or that the opinion is outweighed by other evidence, you may disregard the opinion entirely. An expert witness' testimony is to be given no greater weight than that of other witnesses simply because the witness is an expert. Further, you are not required to accept an expert's opinion, even though it is not contradicted.

Now, the Defendant in this case is charged with arson in the first degree or first degree arson. In order to prove first degree arson, the State must prove beyond a reasonable doubt that the Defendant willfully and maliciously caused an explosion, set fire to, burned, caused to be burned, aided, counseled or procured the burning of certain properties.

Willfully means that it was not done by accident, but was done knowingly and intentionally. The State must show that the burning was by the willful act of some person and not as a result of a natural or accidental cause. Maliciously means with hatred, ill will or hostility towards another person. A person who intentionally does a wrongful act without legal justification or excuse does the act maliciously. A malicious burning is an act done with a condition of mind that shows a heart bent on mischief, showing a design to do an intentional

wrong act towards another or towards the public without any legal justification or excuse. This malice need not be express but may be inferred. Burning means actual combustion of some portion of a piece of property. It is not necessary that the property be consumed or destroyed. Charring of the material of which the property is constructed or a change in the fiber or composition of the structure is required for a burning. Singeing, smoking, blistering, scorching or discoloring by heat, however, is not enough to constitute a burning.

Next, the State must prove beyond a reasonable doubt that the property which was burned was a building, a structure, a dwelling house, a church or other place of worship, a public or private school facility, a manufacturing plant or warehouse, a building where business is conducted, an institutional facility, any structure designed for human occupancy, including local and municipal buildings, a railway car, a ship, boat or other watercraft, an aircraft, an automobile or other motor vehicle or personal property.

Finally, the State must prove beyond a reasonable doubt that the explosion or burning directly or indirectly caused the death or serious bodily injury of a person.

If a crime is committed by two or more people who are acting together in committing a crime, the act of one is the act of all. A person who joins with another to commit an

unlawful act is criminally responsible for everything done by the other person which happens as a probable or natural consequence of the acts done in carrying out the common plan and purpose. For example, two people can be guilty of killing another person when only one of the two had a gun, there was only one bullet and only one of the two fired the shot that caused the death. If two or more people are acting together and assisting each other in committing the offense, the act of one is the act of all or, as sometimes said, the hand of one is the hand of all.

Prior knowledge that a crime is going to be committed, without more, is not sufficient to make a person guilty of that crime. Mere knowledge that another person is going to commit a crime, even if the Defendant is present when the crime is committed, is not sufficient to convict the Defendant as a principal. Mere knowledge that another person is engaged in or another person or other persons are engaged in criminal conduct is not sufficient to show an agreement to join in that conduct. Simply -- similarly, the mere fact that the Defendant may have associated with another person or other persons or may have met with such person or persons or assembled together and discussed common aims and interests with this person or these persons does not necessarily establish proof of the existence of a conspiracy or the Defendant joining any conspiracy merely sharing objectives,

meeting together and engaging in similar or parallel conduct is not sufficient. In order to convict a Defendant of conspiracy, the State must prove beyond a reasonable doubt that not only the Defendant knew of the illegal conduct but also that the Defendant agreed to combine with the other person or persons for the purpose of accomplishing the unlawful conduct. Guilt as a principal is shown by actual or constructive presence at the scene as a result of a prior arrangement. Therefore, a finding of a prior arranged plan or scheme is necessary for the finding of guilt as a principal. The State must prove beyond a reasonable doubt by competent evidence the theory of the hand of one is the hand of all.

A principal in a crime is one who either actually commits the crime or who is present aiding, abetting or assisting in the committing of the crime. When a person does an act in the presence of and with the assistance of another, the act is done by both. Where two or more, acting with a common plan or intent, are present at the commission of a crime, it does not matter who actually commits the crime. All are guilty. The hand of one is the hand of all. Present at the commission of a crime means to be sufficiently near to aid and abet and assist in the commission of the crime. However, mere presence at the scene of a crime is not sufficient to convict one as a principal on the theory of aiding and abetting. Intent is also a necessary element, for there must have been a common

design or intent to commit the crime and the crime must have been committed pursuant thereto with the person aiding and abetting by some overt act. Intent means intending the result which actually occurs, not accidentally or involuntary. Intent may be shown by acts and conduct of the Defendant and other circumstances from which you may naturally and reasonably infer intent. The State must prove these elements beyond a reasonable doubt.

The Defendant is also charged with conspiracy. The State must prove beyond a reasonable doubt that the Defendant combined with one or more persons for the purpose of committing an unlawful act or of committing a lawful act by an unlawful means.

There must be a mutual understanding, agreement or common intent and plan. Mere passive knowledge of or consent to the criminal conduct of another is not enough to make a person a conspirator. There must be guilty knowledge and participation.

Similarly, the mere fact that the Defendant may have associated with another person or met with another person and discussed common aims and interests does not necessarily establish proof of the existence of a conspiracy or that the Defendant was involved in a conspiracy.

On the other hand, it is not necessary that the agreement be a formal one, that it be in writing, that the persons hold

a meeting and expressly state the terms of the common plan or that the agreement be stated in words between them. The agreement of a criminal conspiracy may come into being through an implied, mutual understanding. The willful, intentional, and knowing adoption by two or more persons of a common plan is sufficient.

No overt act need to be shown to establish a conspiracy. A conspiracy may be shown by circumstantial evidence and the conduct of the parties.

In order to convict the Defendant of conspiracy, the State must prove beyond a reasonable doubt not only that the Defendant knew of the unlawful conduct, but the Defendant agreed to combine with the other persons for the purpose of accomplishing the unlawful conduct.

Now, there are several possible verdicts which you may find in this case, guilty or not guilty as to each charge, arson in the first degree and conspiracy, and there's no significance whatsoever in the order in which I state these possible verdicts. It's just simply that one had to be stated first.

Now, ladies and gentlemen, your verdict must be a unanimous one. Madam Foreperson, I'm going to have you go in your jury room, and when your jury agrees on a verdict, you will write the verdict on the back or, excuse me, write the verdict on the verdict form which I'm going to provide for

you. It's very simple. It says, as to the charge of arson in the first degree we, the jury, unanimously find the Defendant and you circle either guilty or not guilty, and as to the charge of criminal conspiracy we, the jury, unanimously find the Defendant guilty or not guilty and you simply circle your verdict, then sign it. Then when you've reached a verdict you will knock on the, on the jury room door and we'll bring you back in to receive your verdict.

I'm going to ask you now to return to your jury room. I am going to talk with these attorneys about anything I might need to add to my charge. If I need to I will bring you back and charge you further. If I don't do that, but I send in the exhibits in this case and I send in the charge and I send in the verdict form, that means I'm not going to have to charge you further, begin your deliberations. Okay? Would you take the jury to the jury room, segregate the alternates. All right.

(Whereupon, the following takes place outside the presence of the jury.)

THE COURT: Anything from the State?

MS. RICHARDSON: None from the State, Your Honor.

THE COURT: The Defense?

MR. WILSON, JR.: Nothing from the Defense, Judge.

THE COURT: Very well. Would you please come forward, make sure that we have all the exhibits. Ms. Hurley, would

you mark the -- please mark the charge as State's One, I mean, Court's One if there's not another one, and it will go back with the verdict form.

(Court's Exhibit Number Two [Charge] appropriately marked.)

THE COURT: You want to see the verdict form, Mr. Wilson?

MR. WILSON, JR.: No, Your Honor.

THE COURT: Okay. Okay. No, no, no. Just very straightforward.

MR. WILSON, JR.: Yes, sir.

MS. RICHARDSON: And Your Honor, we do have a clean laptop we can send back with them to review.

MR. WILSON, JR.: I prefer if the Court has one.

THE COURT: Is there -- we don't have a clean tape. I mean, we don't have a clean disk?

MR. WILSON, JR.: Not one fully redacted. No.

THE COURT: Okay. Can you start working on that then because I got a feeling they may ask for it.

MS. RICHARDSON: Okay. We will.

THE COURT: And Ralph, I want you to have someone look at this laptop.

MR. WILSON, JR.: Yes, sir.

THE COURT: We're not going to bring them back here and make them sit through three and a half more hours to get to two minutes.

MR. WILSON, JR.: Absolutely, Judge. Yes, sir.

THE COURT: Okay.

(Exhibits reviewed and approved by counsel for State and Defense.)

THE COURT: All right. So you got them clean and ready to go? Okay. Take them back. Bring the alternates out.

(Alternates dismissed by Court. Deliberations begin at 5:17 p.m.)

OFF THE RECORD

(On the record. The following takes place outside the presence of the jury. Question from jury at 6:05 p.m.)

THE COURT: All right. We have a question. The question is, "Can we get a copy of the State's final presentation board regarding arson law"? What, what -- was that an exhibit or was that just something you used for demonstration during your closing? What, what was that?

MS. RICHARDSON: It was just what I used during closing, just a --

THE COURT: It was just something you used in --

MS. RICHARDSON: It's not a -- it was --

THE COURT: -- in your, in your closing?

MS. RICHARDSON: Yes, Your Honor.

THE COURT: Okay. All right. "If not can we get clarification of the elements of arson, copy of -- copy of ratings, level of evidence board", must have been something

you had, Ralph, maybe?

MR. WILSON, JR.: I apologize, Your Honor. Copies of what now?

THE COURT: I think it says copy of ratings level.

MR. WILSON, JR.: Levels of proof, Judge, probably.

THE COURT: Of evidence board.

MR. WILSON, JR.: But it's in the same situation as the Prosecution's exhibit.

THE COURT: It was just used like that. Okay.

MR. WILSON, JR.: Yes, sir.

THE COURT: Okay. Then what I'm going to do is I'm going to tell them that those were not evidence. They were merely demonstrative aids to the closings and that they can't get it and I'll be happy to read or recharge them on arson, but you have a copy of it or if they have something in the charge that they don't understand and they will indicate that, that we can perhaps help them with it. Okay?

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

THE COURT: I don't know anything else to do. Okay.

MS. RICHARDSON: And Your Honor, do you want to ask them if they need the laptop or the other exhibit?

THE COURT: Okay. All right. Bring them in.

(Whereupon, the following takes place in the presence of the jury.)

THE COURT: All right. I, I have your, your note, Madam

Forelady, and let me make sure I understand it. It says, "Can we get a copy of the State's final presentation board regarding the arson law"; is that correct?

FOREPERSON: Yes, sir. Just the visual.

THE COURT: Okay. "And if not, can we get clarification of the elements of arson, and then a copy of" -- I think it says ratings level of evidence.

FOREPERSON: The evidence level.

THE COURT: And that would have been a board that was used by Mr. Wilson showing the levels of proof; is that right?

FOREPERSON: Yes, sir.

THE COURT: Okay. Well, first let me say that demonstrative charts, boards used in closing are not in evidence, and we cannot present those to you. However, you know, I gave you a written copy of my arson in the first degree charge, and I'm sure that you can just read it again, and if I just read it to you here in court I don't think it would help you anymore. I'm sure you're all capable of reading it. It -- is there a particular element or a particular thing that you need clarification on as it, as it pertains to the elements of arson?

FOREPERSON: Yes, sir. I think the specific question was the willingness and the maliciousness if that went together for each of those elements.

THE COURT: Oh, okay.

FOREPERSON: I, I think you had an opening paragraph with that in it.

THE COURT: All right. And they're really two things, and, and I guess you were talking about intent.

FOREPERSON: Yes.

THE COURT: Okay. Intent are and malice are two different things. Intent is -- let me look at it and make sure that I -- is, is very much akin to willfulness. It means that the act was done not by accident but knowingly and willfully done, and in this case the State must show that the, the building was a willful act, a knowingly done, not an accidental thing, the actual burning. Does that help?

FOREPERSON: Yes.

THE COURT: Okay. And malice means -- has more to do with the motive or reason or the state of mind that the, the perpetrator may have had at the time. It means that he intentionally committed the act with hatred or ill will or hostility towards another person. My charge says a person who intentionally does a wrongful act without legal justification or excuse does it maliciously. A malicious burning is an act done with a condition of mind that shows a heart burnt -- bent on mischief and shows a design to do an intentional wrong act towards another or towards the public without any legal justification or excuse, and when I say it can be expressed or implied that means the person could say it, write it, express

it in writing or, or by -- or verbally or it may be implied in the way the person acts or, or, or, or does the act. Does that help any? I guess what you're asking me does -- is intent and malice the same thing and, and they are not. Intent goes to willfulness to commit an act. Malice goes to the state of mind when it was -- the act was completed if that, if that helps you. Does that help? Anything further you'd like to add to that, Mr. Wilson?

MR. WILSON, JR.: Your Honor, they also asked about levels of proof. I would ask that the Court would review the reasonable doubt statute, Judge, or the portion of that.

THE COURT: Well, that's not what they asked me, Mr. Wilson. They asked me if they could have those boards, and they cannot have those. Now, if they want me to, to reach --

FOREPERSON: Hold on. I, I do think we have a question on the levels of evidence or the portion that Mr. Wilson referenced in his closing statement.

THE COURT: All right.

FOREPERSON: We do have a question on that.

THE COURT: Could, could you, could you tell me, Madam Forelady?

FOREPERSON: I think there's a question to review the levels and what they mean, probably specifically reasonable doubt being the top level that we were looking at. Thank you.

THE COURT: And reasonable doubt is the only level that

should concern you here.

FOREPERSON: Right.

THE COURT: The lesser levels of proof are not applicable to a, a criminal case. Now, I have a section in here on reasonable doubt. Does that clarify it for you? I mean, do -- or do you want me to tell you again what reasonable doubt is? Okay. And I'll be happy to do that. I'll go back over it.

FOREPERSON: I think we, we can reference that.

THE COURT: Okay. You're good?

FOREPERSON: I think that's it. Thank you.

THE COURT: Thank you. Now, also, I, I failed to mention you, you notice I did not send in the CD or the DVD or whatever you call those disks. We have that prepared for you and we have a clean computer that we could send in with you if you want to review that, those materials, and if you want them you let us know. We'll send it in with a, a clean computer that you can play it on.

FOREPERSON: Okay.

THE COURT: Okay.

FOREPERSON: I think at, at this time we're okay on those.

THE COURT: Okay. Good.

(Whereupon, the following takes place outside the presence of the jury.)

THE COURT: Okay. We'll be at ease.

OFF THE RECORD

(On the record. Verdict is reached at 6:25 p.m. The following takes place in the presence of the jury.)

THE COURT: All right. Madam Forelady, have you reached a verdict?

FOREPERSON: Yes, Your Honor.

THE COURT: Have you reached a verdict as to both charges?

FOREPERSON: Yes, sir.

THE COURT: And was it a unanimous verdict as to both charges?

FOREPERSON: Yes, sir.

THE COURT: Would you please give the verdict form to the bailiff and have him give it to me?

(Complies with request.)

THE COURT: Thank you very much.

Madam Clerk, will you publish the verdict, please?

THE CLERK: Mr. Collins, if you'll please stand.

(Complies with request.)

THE CLERK: The State versus Mr. Randy Collins, on indictment number 2014-GS-22-00803 and on 2014-GS-22-00804, as to the charge of arson in the first degree we, the jury, unanimously find the Defendant guilty.

As to the charge of criminal conspiracy, we, the jury,

unanimously find the Defendant guilty.

THE COURT: All right. Mr. Wilson, is there a request to poll individually?

MR. WILSON, JR.: No request, Judge.

THE COURT: All right. Very well. Then, Mr. Wilson, I'll entertain any motions.

MR. WILSON, JR.: Judge, obviously, at this point in time we would ask the Court to consider a verdict in the Defendant's favor of not guilty considering the lack of evidence in this matter. Also, we would ask for a new trial nisi based on the fact that there was no corroborating evidence in this matter, and we feel as if this was a verdict that may be unfair to the Defendant in light of the fact that he is mentally incapacitated, which I pointed out before regarding the Defendant's MOCA examination from the State, which placed him close to the area of Alzheimer's Disease on that standard. I would also point out to the Court that my client has pointed out his lack of education, Judge, as well as his inability to read and write on a, on a, on a serious level, and we would ask for a new trial, Your Honor, at this point in time, Judge.

THE COURT: All right. Ms. Richardson, I'll hear from you.

MS. RICHARDSON: Your Honor, as the arguments previously stated, there is ample evidence, the Defendant did confess,

voluntarily confess to the crimes. There was phone records that corroborated, as well as evidence that this was an arson, and there were also some witness testimonies who verified the statements he made afterwards.

THE COURT: All right. I, I find, Mr. Wilson, that there is significant evidence of your client's guilt in this case, certainly evidence that would support the jury's verdict in this matter. Certainly, his, his own confession would indicate his guilt. I find that that's -- that, that confession was corroborated by the other facts in the case, I mean, as he described it where the incendiary device, whatever it was, was thrown, was, again, where they, they found evidence of someone having poured an accelerant. There's no question that the -- it was a dwelling house, no question that there was a death that was involved. The evidence of the owners having acquired insurance shortly before, took part of her, her personal property and secreted it in a rental unit just before the, the building burned, all of these things fit together and corroborated his, his statement.

As to his competency, of course, we had a competency hearing. We had a, a full day or practically a full day. We, we devoted Monday to his Blair hearing and the examiners, well-qualified from the MUSC, both testified that there was no evidence of mental retardation. They both testified that he was competent to, to assist you in his defense. I have

observed him on the videos of his statement and it was very clear to me that he was competent. He was able to formulate thought and or thought process, his thought process. He was able to change his story around when he, when he needed it. He also has testified in this court that he bought and sold mobile homes, redid them, did mechanic's work, was a scrapper, always worked for himself. There's, there's no doubt in my mind that he is competent and was competent to assist you and to be tried in this matter, and therefore, I would respectfully deny your motions.

Now, Ms. -- is there any reason why we cannot go forward with sentencing at this point?

MS. RICHARDSON: No, Your Honor.

THE COURT: Do you have sentencing sheets for me, Ms. Richardson?

MS. RICHARDSON: I do, Your Honor.

THE COURT: Have you slipped back into your bad habit of not putting the sentencing range on it?

MS. RICHARDSON: I've got it on there, Your Honor.

THE COURT: Thank you, ma'am.

My understanding, and I want to give Mr. Wilson a chance to address this. My understanding of the statute says no less than 30 years for arson first? All right. Is that correct, Ms., Ms. Richardson? Is that your understanding, a minimum of 30 years?

MS. RICHARDSON: Yes. Yes, Your Honor.

THE COURT: Okay. Is that a minimum mandatory? I'll hear Mr. Wilson on that.

MR. WILSON, JR.: On the mitigation, Judge, or on --

THE COURT: On the, the sentencing range first, please.

MR. WILSON, JR.: Judge, I mean, I think the statute is obviously clear. Obviously my concern here, again, I have had the opportunity, I want to put this on the record, to see my client on a daily basis for some time. I had a chance to talk with him regarding this matter. Again, I would suggest to the Court again that there are -- there's very little evidence in this matter other than his statement. Having said that, Your Honor, obviously, we will respect the wishes of the, of the, the jury or their desires. Obviously, I want to put on the record as well I've advised my client to file a notice of intent to appeal. I'd inform him that I will do that.

THE COURT: Sure.

MR. WILSON, JR.: As far as, as far as the sentencing goes, Judge, I think the range on that is 30 years. That's the minimum that the Court can impose. I also believe that the conspiracy, Judge, is zero to five years.

THE COURT: Five years, uh-huh.

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

THE COURT: All right. All right. Let me hear you, Mr. Wilson, if you want to put anything else on the record?

MR. WILSON, JR.: Judge, yes, sir. I want to put down this, he has no criminal history, Your Honor, at all, period. He has lived in Georgetown and Andrews all his life. He, obviously, has a simple life. I've said that before. He has five children that he takes care of and helps take care of. Regardless of the findings of the MUSC doctor, one of who is a -- this was her first evaluation, I want to put on the record as well for his mitigation purposes, Judge, that he did score an 18 on the MOCA, which I have said multiple times, including a Jackson v. Denno hearing and the Blair hearing, which is 1.8 points away from Alzheimer's Disease. For him, Your Honor, it's going to be a difficult adaption to prison life, obviously. I'm, obviously, going to ask the Court to impose the minimum sentence, and in this particular case, Judge, it's going to be 30 years. I think that is more than enough time for the crime that he's alleged to have committed. I don't believe, also, Your Honor, that there was any wickedness in his heart when this was done. I don't know if I believe firmly that he is guilty per se, but based on my conversations with him he understands the penalty and he's going to just appeal.

THE COURT: All right. Mr. Collins, would you like to say anything to me?

MR. COLLINS: Yes. I would like to say something. I didn't do it.

THE COURT: All right, sir.

MR. COLLINS: I didn't done that crime.

MS. RICHARDSON: And Your Honor, may I just put some information on the record?

THE COURT: Yes.

MS. RICHARDSON: The father of the victim was here earlier in the week and could not, could not stay the whole week. Obviously, the mother is in jail awaiting charges, and the older brother is in prison for murder of or manslaughter of the Codefendant.

Your Honor, when this child died, the family, the older brother was involved with the Department of Juvenile Justice, DSS. Multiple people from across the community came in, were very upset. This, apparently, was a delightful child with a big personality. There's just no one else here to speak on his behalf. I'd also ask that the Court consider the information that was excluded, that although Mr. Collins has no criminal history, there has been a history of multiple insurance claims, at least one of which was deemed suspicious and ruled incendiary by the insurance company.

THE COURT: Okay. Mr. Collins, you know, the jury has spoken and I think the jury's verdict is well supported, and I see no reason to set aside the jury verdict in this matter.

Mr. Collins, I've had discussions inside and outside of this courtroom with your attorney and Ms. Richardson. I don't

think any of us really believe that you intended to kill this, this child, but the statute that you're charged under does not require that. This is one of the most serious offenses we have in the State of South Carolina and the mandatory sentence reflects the legislature's feelings on that matter. I have no doubt in my mind that you were involved in this matter, that you are culpable in this matter and this child has paid the price for that. He has paid a price for the greed of his mother, and probably you as well.

I sentence you, Mr. Collins, to the State Department of Corrections for a period of 30 years on the offense of arson in the first degree. I sentence you to a concurrent term of five years in the Department of Corrections on the charge of criminal conspiracy. Good luck to you, sir. Thank you.

(Jury released by the Court.)

(Adjourned.)

National Security Fire & Casualty Company

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www.nationalsecuritygroup.com

Agency# / Agent#
S275 / 1398
Policy # / Risk #
1161602 / 604489

APPLICANT: COHEN, MARISSA

NAME	ROLE	DOB	SSN	MARITAL	TELEPHONE
MARISSA COHEN	Individual / Billing	7/27/1974	210-54-8703	S	(843) 264-2270

BILLING ADDRESS

MARISSA COHEN
10 JAMES DR
ANDREWS SC 29510-3134

LOCATION OF PROPERTY

10 JAMES DR
ANDREWS SC 29510-3134

COUNTY: GEORGETOWN
TERRITORY: 2

COVERAGES FROM 2/20/2014 TO 2/20/2015

AMOUNT OF COVERAGE	DESCRIPTION	PREMIUM
	No Dwelling Coverage	0
	No Related Private Structures Coverage	0
$25,000.00	C - Personal Property	$229.00
	No Additional Living Costs Coverage	0
$50,000.00	L - Personal Liability	$35.00
$1,000.00	M - Medical Payments to Others - Per Accident	Included
$500.00	M - Medical Payments to Others - Per Person	Included
	Optional Perils - Extended Coverage	Included
	Vandalism	$2.00
	$1000 Deductible	($48.00)
	Annual Premium:	$220.00
	Mode Premium:	$55.00
	Billing Fee:	$5.00
	Total Mode Premium:	$60.00

Initial Payment Method	Payment Mode	Deductible	Total Contract Premium
☐ Agent to mail check	☐ Monthly **	☐ $500	Monthly
☐ Bill Mortgagee	☒ Quarterly	☐ $250	⅓ or ¼ annual $55.00
☐ Charge to agent's account	☐ Semi-annual	☒ $1,000	Billing Fee $5.00
☒ Sweep agent's account	☐ Annual		Total Mode Premium $60.00

**Requires two (2) months down payment AND must complete ACH Form 1011.

MORTGAGE INFORMATION

Mortgagee Name & Address	1st	2nd	
Loan #	1st	2nd	

MOBILE HOME DESCRIPTION

Year	1970	Make		Model		Annex 1	Size 0 x 0
Size	60 x 28	Serial #				Annex 2	Size 0 x 0
Central Air	2-3 ton 3 ½ ton	Tied Down	☐ Yes ☒ No	Skirting	☒ Yes ☐ No	Type: None	

RATING INFORMATION

Date Purchased	Price Paid	Occupancy	# of Families	Protection Class	Servicing Fire Department
1/1/0001	$0.00	OWNER	1	6	ANDREWS FD

City Limits	Attached Garage	Basement Garage	Detached Garage	Carport
☐ In ☒ Out	Size 0 x 0	Size 0 x 0	Size 0 x 0	Size 0 x 0

Patio(s) Size 0 x 0 Covered Size 0 x 0	Open Breezeway Size 0 x 0	Porches Size 0 x 0 Size 0 x 0 Decks Size 0 x 0 Size 0 x 0

FC-953 A

(Applicant must receive copy of application.)
HOME OFFICE COPY

RECORD 000814

UNDERWRITING QUESTIONS	YES	NO	REMARKS
1. Is building or land for sale? (If yes, risk prohibited.)		No	
2. Any business on premises? (Includes daychild care.) Explain in remarks.		No	
3. Does risk contain wood or coal heater? (Mobile Home - Risk prohibited) If yes, completed form FC-934 and submit photo of heater.		No	
4. Does risk contain a fireplace? (Mobile Home--1976 or later & UL approved)		No	
5. Is applicant employed? If no or self-employed, explain in Remarks section. Include Employer in Remarks Section		No	DISABILITY
6. Swimming pool with diving board on premises? (If yes, risk prohibited.)		No	
7. Trampoline on premises? (If yes, risk prohibited.)		No	
8. Is property within 300 feet of a commercial or non-residential property?		No	
9. Does applicant have full unconditional ownership of the building and land upon which it is located? (If yes, risk prohibited.)		No	
10. Is risk vacant or unoccupied? If yes, explain in remarks.		No	
11. Any coverage declined, cancelled, or non renewed during the last 3 years?		No	
12. Has applicant had a foreclosure, repossession, bankruptcy, judgements, liens or any other credit/financial problems during the past seven years? Explain in Remarks		No	
13. Has anyone with a financial interest in this property been convicted for arson, fraud, or other property crime within the last 10 years?		No	
14. Does applicant / tenant have any dogs or exotic pets? Explain in Remarks section.		No	
15. Is property situated on more than 5 acres?		No	

LOSS HISTORY

Any losses, whether or not paid by insurance, during the last 5 years, at this or any other location? Yes ☐ No ☒ (If Yes, explain below)

Date	Type	Description of Loss	Amount

PRIOR COVERAGE – IS RISK A NEW PURCHASE? Yes ☐ No ☒ If no, provide prior carrier information.

Prior Carrier	Prior Policy Number	Expiration Date

IMPORTANT NOTICE

In compliance with the requirements of the Fair Credit Reporting Act (Public Law 91-508), we advise that as part of our routine procedure in reviewing applications for insurance or renewals of insurance policies, this Insurance Company may procure an investigative Consumer Report including information as to the consumer's character, general reputation, personal characteristics, or mode of living, if such insurance is for an individuals and is primarily for personal, family, or household purposes. Such information will be obtained through personal interviews with neighbors, friends, or others with whom the consumer is acquainted. Upon written request to this Insurance Company, made within a reasonable period of time after receipt of this notice, this Company will provide in writing a complete and accurate disclosure of the nature and scope of the investigation request, if one was request, or advise that none was requested.

I hereby apply to National Security Fire and Casualty Company for a policy of insurance for the coverage set forth above. I certify that I have read the statements above and the notice relating to the Fair Credit Reporting Act. I further certify that there is no other insurance and that I own title in fee simple to any land upon which an insured building is located. I understand that other insurance is prohibited. It is understood and agreed that any policy issued is based upon the above statements which I warrant to be true. If I have given incorrect information herein and this information is material to the Company's acceptance or rating of the risk, it may result in coverage under the policy being null and void under State law relative to Material Misrepresentation.

Carol H Hunter
Signature of Agent or Broker (Application will be returned without signature of broker.)

CAROL HUNTER
ANDREWS INSURANCE ASSOC
PO BOX 558
ANDREWS SC 29510-0558

[signature]
Signature of Applicant (Must be signed by applicant only, no proxies permitted.)

4:56 AM PM
Time Signed (Required)

2/20/14
Date Signed (Required)

Date Printed: 2/20/2014

Notice to Al. applicants: Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or who knowingly presents false information in an application for insurance is guilty of a crime and may be subject to restitution fines or confinement in prison, or any combination thereof.

FC-953 A

(Applicant must receive copy of application.)
HOME OFFICE COPY

GS - Georgetown County Sheriff's Office

INCIDENT REPORT

AGENCY I.D.
SCORI SC0220000

CASE NUMBER: 14009155

NCIC: INQ | ENTO

EVENT

INCIDENT TYPE	COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TYPE VICTIM
1. GSO Suspicious Fires	☐No ☑Yes	☐No ☐Yes	20 - Residence/Home		☐Individual ☐Business ☐Financial Institution ☐Government ☐Religious Organization ☐Society/Public ☐Other ☐Unknown ☐Law Enforcement Officer
2.	☐No ☐Yes	☐No ☐Yes			
3.	☐No ☐Yes	☐No ☐Yes			

INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET AND NAME AND NUMBER)	SUBDIVISION	ZIP CODE	WEAPON TYPE
10 JAMES DR ANDREWS SC		29510	

INCIDENT DATE	24 HR. CLOCK	TO	DATE	24 HR. CLOCK	DISPATCH DATE / TIME 24 HR. CLOCK: DISP. DATE	DISP. TIME	TIME ARRIVED	DEPART TIME	AREA	GRID
3/28/2014	02:00								GSO 2	

COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)	RELATIONSHIP TO SUBJECT	RES	RACE	SEX	AGE	ETH.	DAYTIME PHONE	EVENING PHONE

ADDRESS	CITY	STATE	ZIP CODE

VICTIM NO. 1

VICTIM'S NAME (LAST, FIRST, MIDDLE)	RELATIONSHIP TO SUBJECT (1 2 3)	RES	RACE	SEX	AGE	ETH.	DAYTIME PHONE	EVENING PHONE
MARISSA, COHEN		J	B	F	39	N		843.461-5398

HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.
5' 5"	150	Black	Brown	-

ADDRESS	CITY	STATE	ZIP CODE	LOCATION
10 JAMES DR	ANDREWS	SC	29510	

VISIBLE INJURY (VICT. 1) ☑No ☐Yes EXPLAIN: COMPLAINT OF ANY NON-VISIBLE INJURIES: ☑No ☐Yes

VICTIM (NO. 1) USING: ALCOHOL ☐YES ☑NO ☐UNK DRUGS ☐YES ☑NO ☐UNK TYPE:

☐TWO-MAN VEH. ☐ONE-MAN VEH. ☐DET./SPEC.ASMNT ☐OTHER ☐ALONE ☐ASSISTED

J = THIS JURISDICTION S = STATE O = OUT OF STATE U = UNKNOWN

SUBJECT NO. 1

☐SUBJECT ☐RUNAWAY ☐WANTED ☐WARRANT ☐ARREST ☐JAIL ☐SUMMONS

NAME (LAST, FIRST, MIDDLE)	RACE	SEX	AGE	ETH.	DATE OF BIRTH	HEIGHT	WEIGHT	HAIR	EYES

FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.	NCIC NUMBER
- -	

ADDRESS	CITY	STATE	ZIP CODE	LOCATION NO.

SUBJECT (NO. 1) USING: ALCOHOL ☐YES ☐NO ☐UNK DRUGS ☐YES ☐NO ☐UNK	ARRESTED NEAR OFFENSE SCENE: ☐No ☐Yes TOTAL # ARRESTED:	DATE / TIME OF OFFENSE	DATE / TIME OF ARREST

NARRATIVE

JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY	JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY

PROPERTY

TYPE(GROUP)							TOTAL VALUE
STOLEN							
DAMAGED							
BURNED							
RECOVERED							
SEIZED							

ADMINISTRATIVE

SUBJECT IDENTIFIED ☑No ☐Yes	SUBJECT LOCATED ☑No ☐Yes	☑Active ☐Adm.Closed ☐Unfounded	☐Arrested Under 18 ☐Arrested 18 and Over	☐Ex-Clear Under 18 ☐Ex-Clear 18 and Over

REASON FOR EXCEPTIONAL CLEARANCE: ☐Death of Offender ☐Prosecution Declined ☐In Custody of Other Jurisdiction ☐Victim Refused to Cooperate ☐Juvenile/No Custody ☐Not Applicable

REPORTING OFFICER(S)	DATE	DEPT. NO.	APPROVING OFFICER	DATE	DEPT. NO.
040002776 - FLAGLER, ALLEN	3/29/2014	S54	040000166 - Ard, Clark	3/29/2014	S50
			FOLLOW UP INVESTIGATION ☐No ☐Yes — OFFICER		

GS - Georgetown County Sheriff's Office
SUPPLEMENTARY REPORT

AGENCY I.D.
SCORI: SC0220000

CASE NUMBER: 14009155

NCIC: INQ | ENTD

☑ORIGINAL REPORT ☐SUPPLEMENTAL REPORT ☐INVESTIGATIVE FOLLOW UP ☐ADDITIONAL STOLEN PROPERTY ☐MODIFIES ORIGINAL
☐CASE STATUS CHANGE ☐ADDITIONAL RECOVERED PROPERTY ☐FIELD CONTACT INFO

NARRATIVE

ON 3-29-2014 I, DEP. FLAGLER RESPONDED TO 10 JAMES DR. IN THE ANDREWS SECTION OF GEORGETOWN COUNTY IN REFERENCE TO A FIRE AND ALSO A CHILD BEING DECEASED AT THE FIRE.

ON SCENE I MET WITH FIRE AND EMS OFFICIALS WHO STATED THAT THERE WAS A FIRE AND THAT THE BODY OF A CHILD WAS FOUND INSIDE OF THE MOBILE HOME.

WHILE ON SCENE MARISSA COHEN (MOTHER/VICTIM) ARRIVED AND ASKED WHAT WAS GOING ON AND SHE WAS ASKED IF SHE HAS A CHILD AND SHE REPLIED YES. SHE WAS INFORMED THAT THERE WAS A BODY OF A CHILD AND SHE THEN GRABBED HER FACE AND WALKED AWAY. SHE STATED THAT HER SON DAVE SYIENCE COOMBS (VICTIM / DECEASED) WAS AT A PARTY AT THE REC CENTER AND HE WAS NOT SUPPOSE TO BE IN THE HOME. MRS. COHEN ALSO STATED THAT SHE AND HER KIDS WERE STAYING AT A FRIEND'S HOUSE AT ARBOR PLACE APARTMENTS DUE TO ELECTRICAL PROBLEMS AT THE HOME. I, DEP. FLAGLER THEN ASKED WHAT KIND OF PROBLEMS AND SHE STATED THAT THE WALL PLUGS WOULD SPARK AND THE BREAKERS WOULD TRIP.

I, DEP. FLAGLER THEN ASKED MRS. COHEN WHERE SHE WAS TONIGHT AND SHE STATED SHE WAS AT ARBOR PLACE APARTMENTS SLEEPING FROM TAKING HER MEDICINE. SHE STATED SHE WAS TOLD HER HOUSE WAS ON FIRE AND THAT IS WHEN SHE RUSHED OVER TO SEE WHAT WAS GOING ON. SHE SAID IT WAS AROUND 7:30 PM TONIGHT WHEN SHE LAST SAW HER CHILD ALIVE AT THE APARTMENT COMPLEX.

SGT. ARD RESPONDED TO SCENCE AS WELL AS CPL. LEE, INVESTIGATOR GARRETT RESPONDED ALONG WITH A CORONER.

A VOLUNTARY STATEMENT WAS COMPLETED BY THE MOTHER. A CRIME SCENE LOG WAS ALSO TAKEN. THERE IS NOTHING FURTHER AT THIS TIME.

ADMINISTRATIVE

SUBJECT IDENTIFIED	SUBJECT LOCATED			
☑No ☐Yes	☑No ☐Yes	☑Active ☐Adm.Closed ☐Unfounded	☐Arrested Under 18 ☐Arrested 18 and Over	☐Ex-Clear Under 18 ☐Ex-Clear 18 and Over

REASON FOR EXCEPTIONAL CLEARANCE: ☐Death of Offender ☐Prosecution Declined ☐In Custody of Other Jurisdiction ☐Victim Refused to Cooperate ☐Juvenile/No Custody ☐Not Applicable

REPORTING OFFICER(S)	DATE	DEPT. NO.	APPROVING OFFICER	DATE	DEPT. NO.
040002776 - FLAGLER, ALLEN	3/29/2014	S54	040000166 - Ard, Clark	3/29/2014	S50
			FOLLOW UP INVESTIGATION ☐No ☐Yes OFFICER		

Georgetown County Sheriff's Office Follow-Up Report

Georgetown County Sheriff's Office
430 N Fraser ST
Georgetown, SC 29440
843 546-5102

Case No. 14009155
Report No. 14009155.2
Report Date: 3/29/2014

1

Subject:	ARSON/GARRETT				
Case Report Status	I - In Process	Date Entered	3/29/2014 12:04:52 PM	Reporting Officer	
Status Indicator		Entered By	040000977 - Garrett, Melvyn		040000977 - Garrett, Melvyn
Status Change Date		Date Verified			
Occurred On (and Between)	3/28/2014 2:00:00 AM	Verified By			
End Date		Date Approved			
End Time		Approved By		Assisted By	
		Connecting Cases			
Location	10 JAMES DR ANDREWS SC 29510	Disposition	Arrest		
Jurisdiction	JJ - JURISDICTION	Clearance Reason			
Grid		Date of Clearance			
Sector	GSO 2 - ZONE 2 Andrews /Lambertown	Reporting Agency	Georgetown County Sheriff's Office		
Map		Division	Georgetown County Sheriff's Office		
Tract/Geo-Indicator		Notified			
Call Source	Field				
		Means			
		Other Means			
Vehicle Activity		Motive			
Vehicle Traveling		Other Motives			
Cross Street					

Report Narrative

3/29/14 0225- RESPONDED TO 10 JAMES DR IN ANDREWS IN REFERENCE TO A RESIDENTIAL FIRE WITH A FATALITY. CONTACT WAS MADE WITH CPL. LEE WHO STATES THAT FIRE PERSONNEL HAD LOCATED A BLACK MALE CHILD IN THE RESIDENCE WHO HAD SUCCUMB TO THE FIRE.

A SURVEY OF THE SCENE WAS CONDUCTED AND IT WAS DETERMINED THAT A SEARCH WARRANT WOULD BE NECESSARY. CONTACT WAS THEN MADE WITH THE STATE LAW ENFORCEMENT DIVISION'S ARSON UNIT AND THEIR ASSISTANCE REQUESTED.

0500- A SEARCH WARRANT WAS OBTAINED. CONTACT WAS THEN MADE WITH DEPUTY CORONER CHASE RIDGEWAY AND AGENT SCOTT HARDEE (SLED) AND A TIME SET FOR US TO MEET AT THE SCENE WHICH REMAINED SECURED BY SHERIFF'S PATROL UNITS.

0613- THE SEARCH WARRANT WAS EXECUTED AND THE CONDITION OF THE SCENE DOCUMENTED VIA PHOTOGRAPHS. 13 YEAR OLD DAVE SCIENCE COOMBS WAS OBSERVED ON THE SOUTH SIDE OF THE RESIDENCE, LYING FACE DOWN ON THE FLOOR IN THE LIVINGROOM, WEARING BLACK SHORTS AND GREEN PLAID BOXER SHORTS. THERE WERE NO OBVIOUS SIGNS OF TRAUMA TO THE BODY, HOWEVER, AN AUTOPSY HAS BEEN SCHEDULED FOR SUNDAY 3/30/14 @ 0900 MUSC.

THE NORTH SIDE OF THE RESIDENCE SUSTAINED THE THE MAJORITY OF THE DAMAGE AND HAS BEEN DETERMINED TO BE THE FIRE'S ORIGIN. THERE WERE APPROXIMATELY 9 ALTERNATIVE HEAT SOURCES LOCATED THROUGHOUT THE RESIDENCE, 6 OF WHICH WERE LOCATED IN THIS AREA.

CONTACT WAS THEN MADE WITH THE VICTIM'S MOTHER MARISSA COHEN WHO AGREED TO MEET ME AT THE SHERIFF'S OFFICE IN GEORGETOWN TO GIVE A VIDEO/AUDIO STATEMENT. THE FOLLOWING IS A BRIEF SYNOPSIS OF MARISSA'S STATEMENT WHICH BEGAN AT 0739;

SHE STATES THAT SOMETIME IN JANUARY THEY BEGAN TO HAVE ELECTRICAL PROBLEMS WHICH WERE FIXED AND RECCURED IN FEBRUARY. ON THE DAY IN QUESTION, MARISSA STATES THAT SHE, THE VICTIM AND HER 2 OTHER DEPENDENT CHILDREN WENT TO STAY WITH A FRIEND NAMED L AT ARBOR PLACE APARTMENTS BUILDING 3 APT H-3. THE VICTIM WAS ALLOWED TO ATTEND A PARTY AT ANDREWS REC CENTER WHICH BEGAN AT 1900 HRS AND WAS TO END AT 2300 HRS. MARISSA STATES THAT SHE ATTEMPTED TO CALL THE VICTIM'S CELL PHONE A FEW TIMES AROUND 2100 BUT WAS DIRECTED TO VOICE MAIL ON EACH ATTEMPT. MARISSA STATES THAT SHE THEN WENT TO SLEEP AS SHE WAS ON SEVERAL MEDICATIONS TO INCLUDE MORPHINE FOR PAIN. MARISSA EXPLAINS THAT SHE RECEIVED A PHONE CALL FROM HER COUSIN JUANITA MCCULLEN (678-308-2160) AROUND 2AM ADVISING THAT HER RESIDENCE WAS ON FIRE. MARISSA THEN STATED THAT THE VICTIM WAS INSTRUCTED TO RETURN TO ARBOR PLACE FOLLOWING THE PARTY AND NOT TO RETURN TO THE RESIDENCE ON JAMES DR. A COPY OF THE 911 CALL WAS ALSO OBTAINED A WILL BE ATTACHED.

0815- ASSISTANT SOLICITOR RICKY TODD WAS CONTACTED AND BRIEFED ON THIS INCIDENT.

0900- AGENT ZAHKEAH MARION WITH THE DEPARTMENT OF SOCIAL SERVICES WAS CONTACTED AND BRIEFED AS WELL.

0915- I THEN RETURNED TO THE SCENE TO BRIEF AGENTS CONCERNING THE INTERVIEW WITH MARISSA COHEN. ALL EVIDENCE WAS COLLECTED, SEALED AND TRANSPORTED BY SLED ARSON INVESTIGATORS.

4/4/14 1030- CONTACT WAS MADE WITH ROBERT KINNEY (DUKE ENERGY INVESTIGATOR 919 810-3630) IN REFERENCE TO THIS INCIDENT. KINNEY STATES THAT THERE HAS BEEN NO DOCUMENTED COMPLAINTS BY COHEN IN REFERENCE TO ANY ELECTRICAL ISSUES. KINNEY WAS ASKED IF THERE WAS A WAY TO TELL WHETHER OR NOT THERE WERE ANY ABNORMALITIES WITH THE CURRENT ON THE NIGHT IN QUESTION TO WHICH HE REPLIED NO. KINNEY WAS ASKED AND AGREED TO TAG AND PRESERVE THE METER AS WELL AS THE SERVICE WIRE FOR EVIDENCE.

4/7/14- RECEIVED A CALL FROM A FEMALE WHO WISHED NOT TO GIVE HER NAME. SHE STATED THAT TINA (MARISSA COHEN) HAS JUST RECENTLY TAKEN OUT AN INSURANCE POLICY ON HER CONTENT, SHE WAS UNSURE WITH WHO. SHE THEN STATED THAT COHEN HAD AN AGREEMENT WITH BENJAMIN BROWN & RANDY COLLINS TO BURN DOWN THE TRAILER AND THAT SHE WOULD PAY THEM WITH THE INSURANCE CHECK. THE CALLER ALSO STATED THAT MARISSA PURCHASED $20.00 WORTH OF KEROSENE FROM THE SUPER CHIC IN ANDREWS THE MORNING OF THE FIRE. THE CALLER WAS UNABLE OR UNWILLING TO EXPLAIN WHERE SHE OBTAINED THIS INFORMATION.

4/9/14 1330- VISITED THE SUPER CHIC IN ANDREWS AND SPOKE WITH CHARLENE SCOTT. SCOTT WAS THE CASHIER ON DUTY THE MORNING OF THE FIRE (3/28/14) AND STATES THAT COHEN CAME IN AROUND 10:16 AM AN ASKED FOR $20.00 DOLLARS IN KEROSENE. SCOTT EXPLAINS THAT SHE THOUGHT COHEN WANTED $3.00 DOLLARS WORTH SO SHE HAD TO RING UP AN ADDITIONAL $17.00 DOLLARS AND THAT'S WHAT MADE THAT TRANSACTION STAND OUT IN HER MIND. THE SURVEILLANCE SYSTEM WAS INOPERABLE ON THE DAY IN QUESTION, HOWEVER, I WAS ABLE TO OBTAIN A COPY OF THE TRANSACTION RECEIPT (STATEMENT & RECEIPT ATTACHED).

THE FOLLOWING INTERVIEWS WERE CONDUCTED WITH THE ASSISTANCE OF OFFICER OLIVER NESMITH (ANDREWS POLICE DEPARTMENT);

1350- MET WITH COHEN'S ELECTRICIAN TIMOTHY MILLER WHO STATES THAT SOMETIME IN JANUARY, COHEN CALLED HIM TO FIX AN OUTLET THAT HAD BURNED OUT AND TRIPPED A CIRCUIT BREAKER. MILLER EXPLAINS THAT HE INSPECTED THE OUTLET AND SAW THAT COHEN WAS RUNNING 4 ELECTRIC HEATERS VIA A SURGE PROTECTOR ON A SINGLE WALL PLUG. MILLER ADVISED AGAINST THIS PRACTICE AND TOLD HER WHAT SUPPLIES TO GET FOR HIM TO REPAIR THE OUTLET. MILLER GOES ON TO EXPLAIN THAT 2 WEEKS PRIOR TO THE FIRE, HE WAS AGAIN CALLED BY COHEN TO REPAIR THIS SAME OUTLET. MILLER STATES THAT HE FIXED THE PLUG TEMPORARILY AND ADVISED COHEN THAT THIS ISSUE WOULD RECUR AS THAT SIDE OF THE RESIDENCE WOULD NEED TO BE REWIRED.

1421- SPOKE WITH BENJAMIN BROWN AKA MANO WHO STATES THAT HE WAS IN THE HOUSE ON THE DAY IN QUESTION WITH A COLD. PRESENT IN THE RESIDENCE WAS HIS COUSIN SHALANDA COACHMAN, HER BOYFRIEND ANTHONY THOMPSON AND THEIR CHILDREN. BROWN DENIES HAVING ANY KNOWLEDGE OF OR INVOLVEMENT IN THE FIRE (STATEMENT ATTACHED).

1445- MET WITH COACHMAN & THOMPSON BOTH OF WHICH CONFIRMED BROWNS WHERE ABOUTS ON THE DAY IN QUESTION (STATEMENTS ATTACHED).

1504- MET WITH RICKY NELSON AGE 12 AT 5 LAUREN STREET IN ANDREWS. NELSON STATES THAT ON THE DAY IN QUESTION HE AND COOMBS ATTENDED A BIRTHDAY PARTY AT THE REC CENTER IN ANDREWS AROUND 1900 HRS. NELSON STATES THAT THE PARTY ENDED AT 2300 SO HE AND THE VICTIM LEFT TOGETHER. THE VICTIM ADVISED HIM THAT HE WAS SUPPOSED TO GO TO THE PROJECTS WERE HIS MOTHER WAS STAYING BUT BECAUSE OF THE HEAVY RAIN HE DECIDED TO GO TO THE INCIDENT LOCATION TO SPEND THE NIGHT. NELSON STATES THAT THE VICTIM TOLD HIM THAT IF HIS MOTHER HAPPENED TO LOOK FOR HIM SHE WOULD KNOW TO CHECK THE INCIDENT LOCATION.

1527- MADE CONTACT WITH RANDY COLLINS JUST DOWN FROM HIS RESIDENCE AT THE INTERSECTION OF GATOR LN AND HARDY STREET IN ANDREWS. COLLINS STATES THAT ON THE NIGHT IN QUESTION HE AND HIS NEPHEW JAMES MILLER WENT TO CORNELLS CLUB AROUND 2100 AND DID NOT LEAVE UNTIL 0300. COLLINS EXPLAINED THAT HE DID NOT HAVE ANYTHING TO DO WITH THE FIRE (STATEMENT ATTACHED).

1552- VISITED JAMES MILLER'S RESIDENCE WITH NEGATIVE CONTACT.

1600- MET WITH THERON CHANDLER WHO WAS THE BAR TENDER AT CORNELLS ON THE NIGHT IN QUESTION. CHANDLER STATES THAT HE REMEMBERS SEEING JAMES MILLER EARLIER IN THE DAY ON (3/28/14) BUT AT NO TIME DID HE SEE COLLINS IN THE CLUB ON THE DAY IN QUESTION. CHANDLER EXPLAINS THAT THERE WERE VERY FEW PERSONS IN THE CLUB THAT NIGHT SO HE WOULD HAVE SEEN COLLINS IF IN FACT COLLINS WAS THERE.

4/10/14 0935- MET WITH JAMES MILLER @ 306 JONES AVE IN REFERENCE TO THIS INCIDENT. MILLER STATES THAT ON THE DAY IN QUESTION, HE AND HIS UNCLE RANDY COLLINS VISITED CORNELLS CLUB AROUND 2100 AND LEFT AROUND 0300. WHEN CONFRONTED WITH THE INFORMATION FROM THE BAR TENDER ABOUT COLLINS NOT BEING

THERE, MILLER BECAME VERY HESITANT BUT MAINTAINED THAT HE AND COLLINS WERE THERE ALL NIGHT AND DIDN'T LEAVE (STATEMENT ATTACHED).

1000- MET WITH FRANK WASHINGTON AKA L AT HIS RESIDENCE (ARBOR PLACE APARTMENTS). WASHINGTON STATES THAT ON THE DAY IN QUESTION, COHEN AND HER CHILDREN MOVED IN WITH HIM BRING ONLY A FEW ARTICLES OF CLOTHING. WASHINGTON EXPLAINS THAT COHEN DID NOT LEAVE THE APARTMENT UNTIL SHE RECEIVED A CALL THAT HER RESIDENCE WAS ON FIRE. IT WAS AT THIS TIME THAT COHEN REALIZED THAT THE VICTIM WAS NOT AT THE APARTMENT.

1030-CONTACT WAS MADE WITH AGENT SCOTT HARDEE WHO WAS ABLE TO CONFIRM THAT COHEN HAD TAKEN OUT AN INSURANCE POLICY ON THE INCIDENT LOCATION ON FEBRUARY 20, 2014 FOR $25,000 DOLLARS IN CONTENT COVERAGE. THE INSURANCE COMPANY IS NATIONAL SECURITIES FIRE & CASUALTIES AND THE INSURANCE INVESTIGATOR IS JENNIFER DINKINS (334) 494-0559.

1300- CONTACT MADE WITH DEPUTY CORONER RIDGEWAY WHO STATES THAT THE PRELIMINARY AUTOPSY WOULD SUGGEST THAT THE VICTIM DIED OF SMOKE INHALATION. THE VICTIM ALSO RECEIVED 2ND DEGREE BURNS ON HIS BACK WHICH IS BELIEVED TO HAVE OCCURRED POSTMORTEM.

4/14/14 1830-MET WITH GLENDELL JACKSON AT THE ANDREWS POLICE DEPARTMENT. JACKSON STATES THAT ON THE NIGHT OF THE FIRE SEE WAS PRESENT WITH THERON CHANDLER WHO OPENED CORNELLS BAR AROUND 2215 HRS. JACKSON STATES THAT PRESENT IN CLUB WAS JOYCE SESSIONS, MARGARET GILES, CAROLYN POPE & MILDRED GREEN. JACKSON EXPLAINS THAT THERE WERE 1 OR 2 OTHER PEOPLE PRESENT, HOWEVER, RANDY COLLINS AND JAMES MILLER WERE NOT THERE. JACKSON STATES THAT SHE REMAINED AT THE CLUB UNTIL ABOUT 0130 (STATEMENT ATTACHED).

1905- MET WITH MILDRED GREEN WHO STATED THAT CORNELLS CLUB OPENED BETWEEN 2200 & 2230 AND DURING HER TIME THERE SHE DID NOT SEE RANDY COLLINS OR JAMES MILLER.

1920- MET WITH KENNETH AND JOYCE SESSIONS AT THE ANDREWS POLICE DEPARTMENT. THEY BOTH STATED THAT DURING THEIR TIME AT CORNELL'S THEY DID NOT SEE JAMES MILLER OR RANDY COLLINS IN ATTENDANCE.

1955- MET WITH COHEN'S SON DEVON COHEN WHO STATED THAT ON THE DAY IN QUESTION, THE OUTLET IN HIS ROOM BEGAN SMOKING MORE THAN NORMAL. DEVON STATES THAT HE WOULD NORMALLY CUT THE CIRCUIT BREAKER OFF DURING BED TIME AND TURN IT BACK ON IN THE MORNING TO TAKE A SHOWER AND GET DRESSED. DEVON GOES ON TO EXPLAIN THAT HIS MOTHER (MARISSA COHEN) HAD MOVED OUT OF THE RESIDENCE A "WHILE" BEFORE THE FIRE NOT ON THE MORNING OF AS SHE EXPLAINED. DEVON WOULD NOT BE SPECIFIC AS TO WHEN OR HOW LONG HIS MOTHER HAD BEEN GONE.

5/8/14 1400- MET WITH COLLINS WHO HAS AGREED TO TAKE A POLYGRAPH EXAMINATION WHICH HAS BEEN SCHEDULED FOR MONDAY MAY 12TH @ 0930.

5/12/14- COLLINS FAILED TO SHOW FOR THE SCHEDULED POLYGRAPH. COLLINS COULD NOT BE LOCATED AT HIS RESIDENCE OR VIA CELL PHONE.

6/4/14 1024- MYSELF ALONG WITH AGENT HARDY MET WITH RANDY COLLINS AT THE ANDREWS POLICE DEPARTMENT IN REFERENCE TO THIS INCIDENT. COLLINS WAS MIRANDIZED AND AGREED TO SPEAK WITH US. A BRIEF SYNOPSIS OF THAT INTERVIEW FOLLOWS;

COLLINS STATES THAT THE DAY BEFORE THE FIRE 3/27/14 MARISSA COHEN VISITED HIS RESIDENCE ASKING TO BORROW HIS KEROSENE HEATER, WHILE THERE, SHE OFFERED COLLINS $5,000 DOLLARS TO BURN DOWN HER TRAILER. COLLINS STATES THAT HE CALLED HIS NEPHEW JAMES MILLER AND ADVISED HIM OF THE OFFER. ON THE DAY IN QUESTION, COLLINS STATES THAT COHEN INFORMED HIM THAT SHE HAD PURCHASED THE KEROSENE AND LEFT IT AT THE INCIDENT LOCATION IN THE BACK BEDROOM. SHE ALSO TOLD HIM THAT THE BACK DOOR WOULD BE UNLOCKED. COLLINS STATES THAT HE AND MILLER VISITED CORNELL'S CLUB LATER THAT EVENING AND HAD A FEW BEERS. THEY THEN LEFT AND DROVE AROUND ANDREWS DISCUSSING THE PLAN. MILLER & COLLINS THEN PARKED THEIR VEHICLE ON LAUREN STREET IN ANDREWS AND WALKED THROUGH A PATH THAT LEADS TO THE INCIDENT LOCATION. COLLINS STATES THAT THE DOORS WERE LOCKED SO MILLER PUSHED OPEN A WINDOW, LIT A PIECE OF PAPER AND THREW IT IN THE RESIDENCE. COLLINS EXPLAINS THAT HE AND MILLER DROVE BACK AND FORTH PAST LAUREN STREET A FEW TIMES TO SEE IF THE RESIDENCE CAUGHT FIRE BUT THEY NEVER SAW ANY SMOKE. COLLINS DREW A DIAGRAM ILLUSTRATING HOW THEY GOT TO THE RESIDENCE (ATTACHED). COLLINS STATES THAT MILLER THEN DROVE HIM HOME WHERE HE REMAINED. COLLINS STATES THAT HE TALKED TO COHEN AROUND 3AM AND SHE INFORMED HIM THAT HER SON WAS DEAD(AUDIO/VIDEO & WRITTEN STATEMENT ATTACHED).

6/5/14- THE FOLLOWING ARREST WARRANTS WERE OBTAINED; MARISSA COHEN 2014A2210800079 ARSON 1ST & 2014A2210800080 CONSPIRACY. JAMES MILLER 2014A2210800084 CONSPIRACY & 2014A2210800085 ARSON 1ST. RANDY COLLINS 2014A2210800082 CONSPIRACY & 2014A2210800083 ARSON 1ST PENDING WARRANT SERVICE.

6/6/14- MILLER WAS TAKEN INTO CUSTODY BY SLED AGENTS WHO ATTEMPTED TO INTERVIEW HIM. AGENT HARDY ADVISED THAT MILLER WOULD NOT SIGN HIS MIRANDA WARNING NOR WOULD HE ANSWER ANY QUESTIONS. MILLER WAS TRANSPORTED TO THE GEORGETOWN COUNTY DETENTION CENTER BY DEPUTY CASSIDY. AGENT HARDY ALSO ADVISED THAT MARISSA COHEN HAD BEEN TAKEN INTO CUSTODY BY THE KENTUCKY STATE POLICE.

1600-JAMES MILLER'S MOTHER VISITED THE ADREWS POLICE DEPARTMENT TO INQUIRE ABOUT THE CHARGES AGAINST HER SON. SHE INITIALLY STATED THAT MILLER COULD NOT BE INVOLVED AS HE WAS HOME WITH HER THE INTIRE DAY. SHE THEN STATED THAT AROUND THE TIME OF THE FIRE, MILLER CAME TO HER RESIDENCE AND PICKED HER UP AND THE 2 (MILLER & HIS MOTHER) WENT TO THE FIRE SCENE. WHILE AT THE SCENE, SHE STATES THAT SHE HEARD MARISSA COHEN ON THE PHONE WITH AN UNKNOWN PARTY ADMONISHING THEM ABOUT NOT CHECKING THE RESIDENCE BEFORE THEY SET IT ON FIRE. SHE ALSO STATES THAT SHE HEARD MARISSA THEM THAT HER SON WAS DEAD BECAUSE OF IT. MILLER'S MOTHER REFUSED TO WRITE A STATEMENT AND STATED THAT SHE DID NOT WANT TO BE INVOLVED.

6/9/14- RANDY COLLINS TURNED HIMSELF IN TO OFFICER NESMITH OF THE ANDREWS POLICE DEPARTMENT. HE WAS TAKEN INTO CUSTODY AND TRANSPORTED TO THE GEORGETOWN COUNTY DETENTION CENTER BY DEPUTY SCOTT.

6/10/14- VISITED THE RESIDENCE OF JAMES MILLER IN AN ATTEMPT TO INTERVIEW HIM WITH NEGTAIVE RESULTS. A BUSINESS CARD WAS LEFT WITH HIS MOTHER ALONG WITH A MESSAGE TO HAVE MILLER CONTACT ME.

Offense Detail: 9135 - GSO Suspicious Fires

Offense Description	9135 - GSO Suspicious Fires				
IBR Code		Offense Date			
IBR Group		Location	20 - Residence/Home		
Crime Against		2nd Location Type			
Using		Special Circumstance			
Victim Use		Offense Completed?	Yes	No. Prem. Entered	
		Hate/Bias	88 - None (No Bias)	Entry Method	
		Domestic Violence	No	Type Security	
Criminal Activity				Tools Used	
Weapons/Force				Cargo Theft	

Suspect S2: MARISSA, COHEN

Suspect Number	S2	DOB	7/27/1974	Place of Birth	
Name	MARISSA, COHEN	Age	39	SSN	210-54-8703
AKA		Sex	F - Female	DLN	101043735
Alert(s)		Race	B - Black	DLN State	SC - South Carolina
		Ethnicity	N - Not of Hispanic Origin	DLN Country	USA - United States of America
Address	10 JAMES DR	Ht.	5' 5"	Occupation/Grade	
CSZ	ANDREWS, SC 29510	Wt.	150	Employer/School	
		Eye Color	BRO - Brown	Employer Address	
Home Phone	843 461-5398	Hair Color	BLK - Black	Employer CSZ	
Work Phone		Hair Style		Res. County	GEORGETOWN
Email Address		Hair Length		Res. Country	USA - United States of America
		Facial Hair		Resident Status	J - This Jurisdiction
		Complexion			
		Build			
		Teeth			

Scars/Marks/Tattoos
Suspect MO
Other MO
Attire
Habitual Offender Status
Suspect Notes

		Build	L - Large		
		Teeth			
Scars/Marks/Tattoos					
Modus Operandi					
Other MO					
Attire					
Habitual Offender					
Status					
Arrest No.	2	Arrested For	9135 - GSO Suspicious Fires		
Arrest Type	T - Taken Into Custody	Fingerprints		Arrested On	6/9/2014 11:40:00 AM
FBI No.		Photos		Arrest Location	ANDREWS POLICE DEPARTMENT
State No.		Miranda Read		Booked On	
Armed With	01 - Unarmed	Miranda Waived		Booked Location	GCDC
Multi. Clearance	N - Not Applicable	Number of Warrants		Released Location	
Multi. Clearance Offense				Released On	
Prev. Suspect No.		Juvenile Disposition		Released By	
Notified		Adult Present		Release Reason	
				Held For	
Type Criminal Activity					
Drug Type					
Arrest Notes					

Property Description Item 1: 1303 - Photograph - CRIME SCENE PHOTOS

Item No.	1
Property Category	1303 - Photograph
IBR Type	27 - Recordings-Audio/Visual
UCR Type	F - TV's, Radios, Stereos, Etc...
Status	E - Evidence (Including Other Seized Property And Tools)
Count	1
Value	
Manufacturer	
Model	
Serial No.	
License No.	
Color	
Description	CRIME SCENE PHOTOS
Vehicle Year	
License Year	
State	
Body Style	
Recovered Date	
Recovery ORI	
Owner	
Disposition	
Evidence Tag	
Alert(s)	
Drug Type	
Drug Quantity	
Drug Measure	
Property Notes	

Property Description Item 2: 1306 - Recording - Compact Disk - 911 CALL

Item No.	2
Property Category	1306 - Recording - Compact Disk
IBR Type	27 - Recordings-Audio/Visual
UCR Type	F - TV's, Radios, Stereos, Etc...
Status	E - Evidence (Including Other Seized Property And Tools)

Count	1
Value	
Manufacturer	
Model	
Serial No.	
License No.	
Color	
Description	911 CALL
Vehicle Year	
License Year	
State	
Body Style	
Recovered Date	
Recovery ORI	
Owner	
Disposition	
Evidence Tag	
Alert(s)	
Drug Type	
Drug Quantity	
Drug Measure	
Property Notes	

Property Description Item 3: 1306 - Recording - Compact Disk - marissa cohen interview

Item No.	3
Property Category	1306 - Recording - Compact Disk
IBR Type	27 - Recordings-Audio/Visual
UCR Type	F - TV's, Radios, Stereos, Etc...
Status	E - Evidence (Including Other Seized Property And Tools)
Count	1
Value	
Manufacturer	
Model	
Serial No.	
License No.	
Color	
Description	marissa cohen interview
Vehicle Year	
License Year	
State	
Body Style	
Recovered Date	
Recovery ORI	
Owner	
Disposition	
Evidence Tag	
Alert(s)	
Drug Type	
Drug Quantity	
Drug Measure	
Property Notes	

Property Description Item 4: 1306 - Recording - Compact Disk - CD OF PHONE RECORDS

Item No.	4
Property Category	1306 - Recording - Compact Disk
IBR Type	27 - Recordings-Audio/Visual
UCR Type	F - TV's, Radios, Stereos, Etc...
Status	E - Evidence (Including Other Seized Property And Tools)

Count 1
Value
Manufacturer
Model
Serial No.
License No.
Color
Description CD OF PHONE RECORDS
Vehicle Year
License Year
State
Body Style

Recovered Date
Recovery ORI
Owner
Disposition
Evidence Tag
Alert(s)

Drug Type
Drug Quantity
Drug Measure

Property Notes

Property Description Item 5: 1306 - Recording - Compact Disk - Cohen Phone Records

Item No. 5
Property Category 1306 - Recording - Compact Disk
IBR Type 27 - Recordings-Audio/Visual
UCR Type F - TV's, Radios, Stereos, Etc...
Status E - Evidence (Including Other Seized Property And Tools)

Count 1
Value
Manufacturer
Model
Serial No.
License No.
Color
Description Cohen Phone Records
Vehicle Year
License Year
State
Body Style

Recovered Date
Recovery ORI
Owner
Disposition
Evidence Tag
Alert(s)

Drug Type
Drug Quantity
Drug Measure

Property Notes

Property Description Item 6: 9999 - Other - SKETCH DRAWN BY RANDY COLLINS

Item No. 6
Property Category 9999 - Other
IBR Type 77 - Other
UCR Type K - Miscellaneous
Status E - Evidence (Including Other Seized Property And Tools)

Count	1
Value	
Manufacturer	
Model	
Serial No.	
License No.	
Color	
Description	SKETCH DRAWN BY RANDY COLLINS
Vehicle Year	
License Year	
State	
Body Style	
Recovered Date	
Recovery ORI	
Owner	
Disposition	
Evidence Tag	
Alert(s)	
Drug Type	
Drug Quantity	
Drug Measure	
Property Notes	

Property Description Item 7: 1306 - Recording - Compact Disk - RANDY COLLINS INTERVIEW

Item No.	7
Property Category	1306 - Recording - Compact Disk
IBR Type	27 - Recordings-Audio/Visual
UCR Type	F - TV's, Radios, Stereos, Etc...
Status	E - Evidence (including Other Seized Property And Tools)
Count	1
Value	
Manufacturer	
Model	
Serial No.	
License No.	
Color	
Description	RANDY COLLINS INTERVIEW
Vehicle Year	
License Year	
State	
Body Style	
Recovered Date	
Recovery ORI	
Owner	
Disposition	
Evidence Tag	
Alert(s)	
Drug Type	
Drug Quantity	
Drug Measure	
Property Notes	

GEORGETOWN COUNTY SHERIFF'S OFFICE
P.O. Box 1292, Georgetown, S.C. 29442

CASE #: 140091555

VOLUNTARY STATEMENT

PAGE NO. 1 OF 1 PAGES

DATE 4/9/14, 1527. TIME 1527 M. PLACE Hardy + Gator

I, [redacted], am 43 years old and I live at 18 CLAIRE ST

M. GARRETT

I am giving this statement to Investigator, who has identified himself as a

and he has duly warned me that I have the following rights: that I have the right to remain silent and not make any statement at all: that any statement I make may be used against me at my trial; that any statement I make may be used as evidence against me in court; that I have the right to have a lawyer present to advise me prior to and during any questioning; that if I am unable to employ a lawyer, I have the right to have a lawyer appointed to advise me prior to and during any questioning and that I have the right to terminate the interview at any time.

Prior to and during the making of the statement, I have and do hereby knowingly, intelligently, and voluntarily waive the above explained rights and I do make the following voluntary statement to the aforementioned person of my own free will and without any promises or offers of leniency or favors, and without compulsion or persuasion by any person or persons whomsoever:

On the night of Fire I was with my Nephew James Miller And we went Cornells CLUB. we went there At 9 And left Around 3AM. T That runs the Bar was there I Did Not Have Anything to Do With the The Fire

Written By: MK

END

Approved By: JC

Statement

I have read each page of this statement consisting of 1 page(s), each page of which bears my signature, and corrections, if any, bear my initials, and I certify that the facts contained herein are true and correct.

SWORN to before me this

_____ day of _____, _____

Signature of person giving voluntary statement

Witness

Notary Public for South Carolina

My Commission Expires: _____

Witness

GCSO #14

MIRANDA RIGHTS

PLACE: Andrews PD DATE: 6-4-2014 TIME: 10:20 AM

BEFORE WE ASK YOU QUESTIONS, YOU MUST UNDERSTAND YOUR RIGHTS.

RG — You have the right to remain silent.

BG — Anything you say can be used in court as evidence against you.

RG — You are entitled to talk to a lawyer now and have him present now or at any time during questioning.

BG — If you cannot afford an attorney, one will be appointed for you without cost.

BG — If you decide to answer questions now, without a lawyer present, you will still have the right to stop answering at any time. You also have the right to stop answering at any time until you talk to a lawyer.

YES — **Do you understand these rights?**

YES — **Do you wish to talk to us at this time?**

WAIVER OF RIGHTS

I have read this statement of my rights and I understand what my rights are. I am willing to talk now without a lawyer present. I understand and know what I am doing. No promises or threats have been made to me and no pressure or coercion of any kind has been used against me.

Signed: Randy Gilbert

Witness:

Witness:

Form # P-022 (Rev. 7-24-06)
CALEA 1.2.3, 44.2.3

State Trial Exhibit S-3

DVDs 1, 2, 2B, 3

Defendant Interview (ID Only) recorded on June 4, 2014

(in possession of the Court of Appeals)

GEORGETOWN COUNTY SHERIFF'S OFFICE
P.O. Box 1292, Georgetown, S.C. 29442

CASE #: 1400 9755

VOLUNTARY STATEMENT

PAGE NO. 1 OF 2 PAGES

DATE June 4, 2014 TIME 1:40 M. PLACE APD

I, Trent Cotton, am 43 years old and I live at 18 Clair St.

I am giving this statement to _____, who has identified himself as a _____

and he has duly warned me that I have the following rights: that I have the right to remain silent and not make any statement at all: that any statement I make may be used against me at my trial; that any statement I make may be used as evidence against me in court; that I have the right to have a lawyer present to advise me prior to and during any questioning; that if I am unable to employ a lawyer, I have the right to have a lawyer appointed to advise me prior to and during any questioning and that I have the right to terminate the interview at any time.

Prior to and during the making of the statement, I have and do hereby knowingly, intelligently, and voluntarily waive the above explained rights and I do make the following voluntary statement to the aforementioned person of my own free will and without any promises or offers of leniency or favors, and without compulsion or persuasion by any person or persons whomsoever:

I DID NOT DO it. Tina Thome she wanted Herten To go in Her House, she need to be WARM. But I Realize it was For the WARMNest. She TOLD Me She would give me 5000 Dollars to Do A Job. She Said She wanted me to Do A Job For Burning her House. I told Her I DID know about that. She said if you think About it, talk to me. I Told My nephew James About it and he Said I could use Some "yams" He Said Ill she I might Do it. He Picked me up And we went to Cornells And He played it couple games of Pool. Had A Couple of Beers And Afterward we Leave. And when we Leave we cut A couple of Blocks. we I told Him to Take me home. but he DIDNT. we Rode on A Road AND Parked, And he walk out the car and went through The woods And I went behind him through the woods. He checked both Doors but they were

I have read each page of this statement consisting of 2 page(s), each page of which bears my signature, and corrections, if any, bear my initials, and I certify that the facts contained herein are true and correct.

SWORN to before me this

_____ day of _____, _____

_____
Notary Public for South Carolina

My Commission Expires: _____

Trent Cotton
Signature of person giving voluntary statement

_____
Witness

_____
Witness

GCSO #14

GEORGETOWN COUNTY SHERIFF'S OFFICE
P.O. Box 1292, Georgetown, S.C. 29442

CASE #: 14009155

DATE 6/4/14

STATEMENT OF:

Locked. He Pushed the window back And he Lit A piece of Paper And threw it. when he threw it he went back through the woods And went back to the CAR. he the circled the block A couple of Times. but he didn't see anything Lit. Then he Pushed me home he went back And picked his MOMA up. After He picked his momma up, it was About 330., he came To My house And TOLD Me Spince was DEAD. But before that Marcia called Me And TOLD Me Spince was DEAD And I TOLD Her if there was something I could Do just Let Me know.

Written By: M.G

Approved by: STATEMENT

GCSO #13

ARREST WARRANT

2014A2210800082

STATE OF SOUTH CAROLINA

[X] County/ [ ] Municipality of

Georgetown

GCSO
FILED
JUN 05 2014
GEORGETOWN COUNTY S.C.
2014 JUN 27 PM 1:21
WARRANTS
ALMA T. WHITE
CLERK OF COURT

THE STATE

against

Randy Collins

Address: 10 Clair Street

Andrews, SC 29510-

Phone: SSN:

Sex: M Race: B Height: Weight:

DL State: DL #:

DOB: 8/27/1970 Agency ORI #: SC0220000

Prosecuting Agency: Georgetown County Sheriff

Prosecuting Officer: Melvin Garrett - 0064

Offense: Conspiracy / Criminal Conspiracy, Common Law conspiracy defined

Offense Code: 0049

Code/Ordinance Sec: 16-17-0410

This warrant is CERTIFIED FOR SERVICE in the [ ] County/ [ ] Municipality of _____. The accused is to be arrested and brought before me to be dealt with according to the law.

_____ (L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant Randy Collins on 6-9-14 11:48 Am.

Jeray Scott

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
P. O. Box 479
401 Cleland Street, Room 115
Georgetown, SC 29442

ORIGINAL ORIGINAL ORIGINAL ORIGINAL

STATE OF SOUTH CAROLINA)
[X] County/ [ ] Municipality of)
Georgetown)

AFFIDAVIT

ORIGINAL

Form Approved by S.C. Attorney General April 21, 2003 SCCA 516

Personally appeared before me the affiant Melvin Garrett who being duly sworn deposes and says that defendant Randy Collins did within this county and state on or about 3/29/2014 violate the criminal laws of the State of South Carolina (or ordinance of [X] County/ [ ] Municipality of Georgetown) in the following particulars:

DESCRIPTION OF OFFENSE: Conspiracy / Criminal Conspiracy, Common Law conspiracy defined

M. Cohen was WB

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

That on or about March 29, 2014 in the Andrews section of Georgetown County, one Randy Collins did with co-conspirators Marissa Cohen and James Miller, unlawfully plan and scheme to accomplish the crime of Arson at 10 James Drive. The crime was accomplished and did cause the death of 12 year old Dave Syience Coombs. This beinat against the Peace and Dignity of ;the State of South Carolina and a violation of the South Carolina Code of Law 16-17-0410.

Elder
14009155/Garrett
915;10/10

Signature of Affiant

STATE OF SOUTH CAROLINA)
[X] County/ [ ] Municipality of)
Georgetown)

Affiant's Address 430 N. Fraser Street
Georgetown, SC 29440-
Affiant's Telephone (843)436-3600

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on or about 3/29/2014 defendant Randy Collins did violate the criminal laws of the State of South Carolina (or ordinance of [X] County/ [ ] Municipality of Georgetown) as set forth below:

DESCRIPTION OF OFFENSE: Conspiracy / Criminal Conspiracy, Common Law conspiracy defined

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable

Sworn to and subscribed before me on 6/5/2014

Elaine C. Elliott (L.S.)

Signature of Issuing Judge

Elaine Cox Elliott

Judge Code: 7018

Judge's Address 9174 Pleasant Hill Drive
Hemingway, SC 29554-3841
Judge's Telephone (843)558-9711

Issuing Court: [X] Magistrate [ ] Municipal [ ] Circuit

ORIGINAL ORIGINAL ORIGINAL ORIGINAL

RECORD 000831

841

ARREST WARRANT

2014A2210800083

STATE OF SOUTH CAROLINA

[X] County/ [ ] Municipality of

Georgetown

GCSO
GEORGETOWN COUNTY, S.C.
JUN 05 2014
2014 JUN 26 PM 1:22
WARRANTS
ALINA HAITE
CLERK OF COURT

THE STATE
against

Randy Collins

Address: 18 Clair St
Andrews, SC 29510-

Phone: SSN:

Sex: M Race: B Height: Weight:

DL State: DL #: 8976089

DOB: 8/27/1970 Agency ORI #: SC0220000

Prosecuting Agency: Georgetown County Sheriff

Prosecuting Officer: Melvin Garrett - 0064

Offense: Arson / Arson - First degree

Offense Code: 3535

Code/Ordinance Sec: 16-11-0110(A)

This warrant is CERTIFIED FOR SERVICE in the [ ] County/ [ ] Municipality of _____. The accused is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant Randy Collins on 6-9-14 11:40 Am.

Jerry Scott

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
P. O. Box 479
401 Cleland Street, Room 115
Georgetown, SC 29442

ORIGINAL ORIGINAL ORIGINAL ORIGINAL

AFFIDAVIT

ORIGINAL

Form Approved by S.C. Attorney General April 21, 2003 SCCA 616

STATE OF SOUTH CAROLINA

[X] County/ [ ] Municipality of

Georgetown

Personally appeared before me the affiant Melvin Garrett who being duly sworn deposes and says that defendant Randy Collins did within this county and state on or about 3/29/2014 violate the criminal laws of the State of South Carolina (or ordinance of [X] County/ [ ] Municipality of Georgetown) in the following particulars:

DESCRIPTION OF OFFENSE: Arson / Arson - First degree

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

That on or about March 29, 2014 in the Andrews Section of Georgetown County one Randy Collins did willfully and maliciously set fire to 10 James Dr, the residence of Marrissa Cohen. which resulted in damaging such residence and causing the death of 12 year old Dave Syience Coombs. This being aganist the Peace and Dignity of the State of South Carolina and a violation of the South Carolina Code of Law 16-11-110.

101043735/Garrett

Signature of Affiant

STATE OF SOUTH CAROLINA

[X] County/ [ ] Municipality of

Georgetown

Affiant's Address 430 N. Fraser Street
Georgetown, SC 29440-

Affiant's Telephone (843)436-3600

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on or about 3/29/2014 defendant Randy Collins did violate the criminal laws of the State of South Carolina (or ordinance of [X] County/ [ ] Municipality of Georgetown) as set forth below:

DESCRIPTION OF OFFENSE: Arson / Arson - First degree

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable

Sworn to and subscribed before me on 6/ 5/2014

Elaine C Elliott (L.S.)

Signature of Issuing Judge

Elaine Cox Elliott

Judge Code: 7018

Judge's Address 9174 Pleasant Hill Drive
Hemingway, SC 29554-3841

Judge's Telephone (843)558-9711

Issuing Court: [X] Magistrate [ ] Municipal [ ] Circuit

ORIGINAL ORIGINAL ORIGINAL ORIGINAL

RECORD 000832

842

WITNESSES

Georgetown County Sheriff's Office

ARREST WARRANT NUMBER

2014A2210800082
CDR: 0049 §16-17-0410
DOI: 3/27-29/2014

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: 08/20/14

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2014GS2200803 JJ

The State of South Carolina

County of Georgetown

Alicia Richardson 14G00543

COURT OF GENERAL SESSIONS

AUGUST 2014, TERM

THE STATE

vs.

RANDY COLLINS
18 CLAIR STREET
ANDREWS, SC 29510
DOB: 8/27/1970
SSN: 251-27-0803
B / M

ATTORNEY: ~~Linda Morris Burroughs~~ Ron Hozzard

Indictment for

CRIMINAL CONSPIRACY

Jimmy A. Richardson, II, Solicitor

10 Clair Street

STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN)

INDICTMENT

At a Court of General Sessions, convened on August 20, 2014, the Grand Jurors of Georgetown County present upon their oath:

CRIMINAL CONSPIRACY

CDR: 0049 16-17-0410

That Randy Collins did in Georgetown County on or about March 27-29, 2014 combine with Marissa Cohen & James Miller, and/or with other persons, for the purpose of accomplishing a criminal or unlawful object or an object that is neither criminal nor unlawful through criminal or unlawful means, to wit: Arson, in violation of Section 16-17-410, 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.

JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR

WITNESSES

Georgetown County Sheriff's Office

ARREST WARRANT NUMBER

2014A2210800083
CDR: 3535 §16-11-0110(A)
DOI: 3/28-29/2014

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: 8/20/14

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2014GS2200804

The State of South Carolina

County of Georgetown

Alicia Richardson 14G00543

COURT OF GENERAL SESSIONS

AUGUST 2014, TERM

THE STATE

vs.

RANDY COLLINS
18 CLAIR ST
ANDREWS, SC 29510
DOB: 8/27/1970
SSN: 251-27-0803
B / M

ATTORNEY: ~~Linda Morris Burroughs~~ Ron Hazzard

Indictment for

ARSON, FIRST DEGREE

Jimmy A. Richardson, II, Solicitor

RECORD 000835

845

STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN)

INDICTMENT

At a Court of General Sessions, convened on August 20, 2014, the Grand Jurors of Georgetown County present upon their oath:

ARSON, FIRST DEGREE
CDR: 3535 §16-11-0110(A)

That Randy Collins did in Georgetown County on or about March 28-29, 2014, willfully and maliciously cause an explosion, set fire to, burn, or cause to be burned, or aided, counseled or procured the burning of any property which resulted either directly or indirectly in the death of Dave Coombs, in violation of Section 16-11-110(A), S. C. Code of Laws, 1976, as amended.

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

JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR

WITNESSES

Georgetown County Sheriff's Office

ARREST WARRANT NUMBER

2014GS2200805
CDR: 0116 §16-03-0010, 0020
DOI: 3/28-29/2014

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: 08/20/14

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2014GS2200805

The State of South Carolina

County of Georgetown

Alicia Richardson 14G00543

COURT OF GENERAL SESSIONS

AUGUST 2014, TERM

THE STATE

vs.

RANDY COLLINS
18 CLAIR STREET
ANDREWS, SC 29510
DOB: 8/27/1970
SSN: 251-27-0803
B / M

ATTORNEY: Linda Morris Burroughs

Indictment for

MURDER

Jimmy A. Richardson, II, Solicitor

COMPETENCY TO STAND TRIAL EVALUATION

Examinee: Randy Collins
DOB: 08/27/70
DMH#: 1045-2048
Date of Evaluation: 09/24/18
First Examiner: Abby L. Mulay, Ph.D.
Second Examiner: Emily D. Gottfried, Ph.D.
Others Present: Lauren Jutras, M.S., Fourth Year Medical Student
Report Date: 09/26/18
Charge(s): Murder; First Degree Arson; Criminal Conspiracy

IDENTIFYING DATA: Mr. Randy Collins is a 48-year-old man currently charged with Murder; First Degree Arson; and Criminal Conspiracy for the alleged events occurring on 03/29/14. An evaluation of his competency to stand trial was ordered on 08/08/18 (and received by MUSC on 09/05/18) by the Honorable Benjamin H. Culbertson, Judge of Georgetown County Court of General Sessions, South Carolina, pursuant to State v. Blair, 275 S.C. 529, 273 S.E.2d 536 (1981) and S.C. Code Ann. 44-23-410 (1976). The basis for the order reads: "Unable to assist with attorney due to possible intellectual disability; review of discovery material and Defendant's report of a stroke in the past." Alicia Hall, Ph.D. of the South Carolina Department of Disabilities and Special Needs (DDSN) was consulted to determine if this case should be referred for evaluation by DDSN, and it was determined that since Mr. Collins' issues appear to related to his stroke in 2013, the evaluation falls under the purview of the Department of Mental Health (DMH). Mr. Collins is currently on bond and presented for evaluation on 09/24/18 to the Medical University of South Carolina (MUSC) Forensic Psychiatry Program.

OPINION/COMPETENCY TO STAND TRIAL: *Per S.C. Code Ann. 44-23-410 (1976), an individual "...is not fit to stand trial because the person lacks the capacity to understand the proceedings against him or to assist in his own defense as a result of a lack of mental capacity...."*

Yes. It is our opinion Mr. Collins currently has a factual and rational understanding of the proceedings against him and the capacity to rationally assist counsel in his own defense. Therefore, on the date of the evaluation, it is our opinion he is competent to stand trial.

SOURCES OF INFORMATION:

1. Electronic mail from Georgetown County Detention Center nursing staff, dated 09/25/18;
2. Clinical interview of Mr. Collins on 09/24/18 for two hours and seven minutes at the Medical University of South Carolina (MUSC) Forensic Psychiatry Program;
3. Order for Competency to Stand Trial signed by the Honorable Benjamin H. Culbertson, Judge of Georgetown County Court of General Sessions, South Carolina; dated 08/08/18 (and received by MUSC on 09/05/18);
4. Arrest Warrants, 2014A2210800082 (03/29/14), 0083 (03/29/14);
5. South Carolina Law Enforcement Division Investigative File records, to include:
    a. Investigative Report, dated 06/18/15;
    b. Criminal History Report for Mr. Collins, retrieved on 08/04/14;
    c. Voluntary Statement, dated 06/09/14;

d. Cell Phone Extraction Reports, dated 05/16/14;
e. Search Warrants, dated 04/11/14, 05/12/14;
f. Trace Report, dated 04/07/14;
g. Laboratory Analysis Electronic Packing Slip, dated 03/31/14
h. Autopsy Report, dated 03/30/14;
i. Incident Recalls, dated 03/29/14 and 03/31/14;
j. Georgetown County Sherriff's Office Crime Report, dated 03/29/14;
k. Fire Report, dated 03/29/14;
l. Search Warrant, dated 03/29/14;
m. Fire scene sketch, dated 03/29/14;
n. South Carolina Law Enforcement Division Arson K9 Report, dated 03/29/14;
o. SLED Laboratory Forensic Services Request, dated 03/29/14;
p. Voluntary Statement, dated 03/29/14;
q. Handwritten list of items, no date;

6. Georgetown Memorial Hospital records, dated 04/21/13-02/03/15.

DISCLOSURE OF NON-CONFIDENTIALITY: Mr. Collins was informed of the nature and purpose of the evaluation prior to the interview. Specifically, he was informed that the judge in his case had ordered a forensic evaluation regarding his competency to stand trial. It was explained that any observations and information he provided would not be held confidential, and would be included in a written report submitted to the court and disseminated to the judge and attorneys for both the defense and prosecution. Mr. Collins was also informed evaluators may be asked to provide oral testimony. When asked to read the notification form out loud, Mr. Collins first stated, "I can't read." He was asked to attempt to read the form and Mr. Collins read the content slowly and with some degree of impairment in his reading ability. The remainder of the notification form was read out loud to him, and Mr. Collins said he did not have any questions. He recalled the purpose of the evaluation ("my lawyer sent me here for an evaluation") and acknowledged the limits to confidentiality (i.e., he recalled the report would be provided to the judge, the solicitor, and his attorney). Mr. Collins signed the notification form and agreed to proceed.

BACKGROUND HISTORY: *The following information has been synthesized from a clinical interview with Mr. Collins and a review of collateral information.*

Mr. Collins reported that he was born and raised by his parents in Georgetown, South Carolina. He and his twin sister are the youngest of 10 children in total (six brothers and four sisters). He also reported that his father died of cancer, but he did not recall how old he was when his father passed away. When asked about history of childhood physical abuse, he reported that his father pushed Mr. Collins and his head hit the concrete, which required hospitalization. Mr. Collins did not recall how old he was when this incident occurred, though he estimated somewhere between the ages of 8 to 10. He did not report any history of childhood sexual or emotional abuse, or involvement by the Department of Social Services (DSS). He endorsed having enough food, clothing, and other necessary resources during his youth. He did not endorse engagement in childhood problematic behaviors, to include fire setting, cruelty to animals, theft, bullying peers, or running away from home.

Regarding educational history, Mr. Collins reported that he was suspended from school an unknown amount of times for fighting with peers. He said he was never expelled. He repeated a grade, though he did not recall in which grade he was retained. In the first grade, he was placed in special education for certain classes due to the fact that he was "slow at learning," where he remained for the duration of his schooling. He was in regular education classes for social studies and math. Additionally, he endorsed a history of learning difficulties in reading and an inability to keep up with academic material. He did not recall at what age he left school, but he estimated that it occurred in either the seventh, eighth, or ninth grade. At some point, he also enrolled in Job Corps, where he remained for seven months. He has not obtained his General Education Development (GED) certificate.

Mr. Collins reported a number of previous odd jobs, including building schools, helping brick masons, mechanic work, in a warehouse, and "selling junk." He currently does maintenance work and has held this position for three years. He endorsed being fired from a position at a warehouse following several instances of being tardy for work. He has never collected disability benefits, though he began the application process prior to his arrest for the alleged offenses. He has never served in the military, but he endorsed previous involvement in "ROTC" (i.e., Reserve Officers' Training Corps). It should be noted that he likely meant Junior ROTC, as he did not attend college.

Regarding relational history, Mr. Collins is married but has been separated from his wife since 2007. He has three children, ranging in age from 18 to 21. Currently, Mr. Collins resides in Columbia, South Carolina, where he has been living with a friend for two or three years. He also reported that, in the past, he lived on his own, maintained residence in a trailer, and has lived on and off with his mother. He also endorsed that he manages his finances, is able to cook for himself, and has a current driver's license.

Medically, Mr. Collins reported that he suffered a stroke in 2013, and he now "forgets things" as a result. He also reported a history of seizures that occurred around the age of 8, but he did not provide any further details, and the seizures appeared to resolve on their own. As previously mentioned, Mr. Collins hit his head on concrete when he was a child, and he was reportedly hospitalized for two weeks. He stated that he sustained a concussion following the injury, and he "might have" lost consciousness. He endorsed an additional head injury, at which time he fell and "blank[ed] out." He did not recall at what age this injury occurred, and he did not seek medical treatment. At the age of 6 or 7, Mr. Collins underwent surgery to remove a "knot" from his chest, and he stated that he had an "enlarged heart" as a child. He currently has high blood pressure and high cholesterol, for which he has taken medication.

Regarding family history of mental illness, Mr. Collins reported that his "older cousins" had an unknown kind of "mental disturbance." He also stated that his sister suffered from health problems, though it was unclear whether Mr. Collins was referring to medical or mental health issues. No further information is known about his family history of mental illness.

Mr. Collins said that he has never been diagnosed with a mental illness. He has never been hospitalized for a psychiatric reason, nor has he taken any psychotropic medication. He stated that, while incarcerated at the Georgetown County Detention Center, he saw a mental health counselor

"every two days" to discuss stress related to his legal situation, as well as the death of a family member. He has no further history of mental health treatment.

Mr. Collins did not report any problematic use of substances. He stated that he first tried alcohol at age 23, but he has largely stopped drinking as a result of his health concerns. He endorsed having one beer three days prior to the evaluation, noting that he has an alcoholic drink "every once in a while." He did not report any negative consequences as result of drinking alcohol. Additionally, he stated that he tried cannabis on one occasion at age 30, and he denied any additional substance use, including cocaine/crack, heroin, methamphetamine, phrencyclidine (PCP), lysergic acid diethylamide (LSD), mushrooms, ecstasy, or inhalants. He denied any history of substance abuse treatment.

Finally, regarding legal history, Mr. Collins said that he was never arrested prior to the age of 18. He reported two previous arrests as an adult for domestic disputes.

COLLATERAL RECORDS:

Georgetown Memorial Hospital

Records obtained from Georgetown Memorial Hospital indicated that Mr. Collins was seen for diagnostic imaging and blood testing in the outpatient setting on 02/02/15. Findings were notable for cystic change in the medial hip joints (bone cyst potentially caused by osteoarthritis), calcification of tendinous insertions along the interior lesser trochanter (hardening in the hip joint), and mild degenerative changes in the lumbar spine (possible osteoarthritis of the spine). Records also indicated that Mr. Collins was seen on 12/22/14, and diagnostic imaging indicated mild chronic increase in interstitial lung markings without focal infiltrate (changes in the lungs) and mild chronic elevation of the right hemidiaphragm (elevation of the muscle that separates the chest cavity from the abdomen and is responsible for breathing). From 04/23/13 to 04/25/13, Mr. Collins was admitted to Georgetown Memorial Hospital after he presented to the emergency department endorsing sudden onset of difficulty speaking following the use of a spray lacquer. His diagnoses were as follows: Acute left frontal ischemic stroke with expressive aphasia (i.e., partial loss of the ability to produce language), mild dilated cardiomyopathy, hyperlipidemia, tobacco use, alcohol abuse, and low-normal vitamin B12. Records from 04/21/13 also indicated altered mental status and dysarthria (difficult to understand articulation of speech). Of note, treating physicians also spoke to his sister, who described Mr. Collins as a binge drinker of alcohol.

COURSE OF PREVIOUS DETENTION: Mr. Collins' records were requested from Georgetown County Detention Center. However, staff informed the examiners by electronic mail on 09/25/18 that they do not have any records on file for Mr. Collins.

BEHAVIORAL OBSERVATIONS AND MENTAL STATUS EXAMINATION: A formal mental status exam was conducted with Mr. Collins on 09/24/2018. Mr. Collins is a 48-year-old man who did not evidence problems with his hygiene or grooming. He was dressed in casual attire. His eye contact was appropriate. His motor activity was normal. Mr. Collins spoke at a normal rate and low in volume. His thoughts appeared organized, coherent, and linear. He appeared to be cooperative and putting forth his best effort.

Mr. Collins described his current mood as "tired." His observed mood appeared to be reasonably positive, and his affect (outward emotional expression) was consistent with his observed mood. He reported that he "hardly get[s] any sleep," due to his work schedule. He stated he typically gets approximately five hours of sleep per night and sometimes wakes feeling rested, though at other times, wakes feeling tired. Over the past three years, he noted that he has purposefully lost 20 to 30 pounds for health reasons, and he is not concerned about his weight loss. He did not endorse having any urges to engage in self-injurious behaviors, suicidal ideation, or homicidal ideation. Mr. Collins reported that he sometimes hears "somebody whispering" to him, though he clarified that he believes it is his own conscience. Additionally, Mr. Collins endorsed seeing "Jesus," though he then reported that this occurs in the context of praying. He denied any further psychotic symptoms, including grandiosity, thought insertion, or paranoia. Additionally, there was no observed evidence of psychosis, significant anxiety, depression, or mania.

Mr. Collins was oriented to person, place, time, and situation; he was aware of whom he was, that he was currently in Charleston, South Carolina, the current date, and the reason for the evaluation. He recalled three out of three words immediately after presentation. He was unable to recall the three words after a brief delay, but he successfully recalled two out of three words with category clues, and the third word after both category and multiple choice clues. To assess his working memory (i.e., the ability to hold and manipulate things in one's mind), Mr. Collins was asked to complete a serial three task (i.e., subtracting the number three from 100 and then subtracting three from that answer and so on). He provided five correct subtractions before being told he could discontinue the task. He correctly spelled the word "world" forward and backward. He did not identify the name of the current United States President, though he recalled the most recent predecessor ("Obama"), as well as past presidents ("Clinton, Reagan"). He mistakenly identified "Kennedy" as the first President of the United States. In order to test Mr. Collins' common sense judgment to hypothetical situations, he was asked what he would do if he had an 8:00 a.m. appointment across town and woke up at 7:55 a.m., to which he replied, "Call the people I've got the appointment with and change the time." He was also asked what he would do if he observed thick smoke and flames coming from the window of his neighbor's house. He said, "Dial 911, try to get help." His abstract reasoning abilities (i.e., ability to apply theoretical and complex concepts which are not directly tied to concrete objects) appeared intact. For example, he described an orange and a banana as similar because they are "fruit." With encouragement, he also provided an accurate definition of a common proverb.

PSYCHOLOGICAL TESTING: Mr. Collins was administered the **Montreal Cognitive Assessment (MoCA)**, a measure designed as a rapid screening instrument for mild cognitive dysfunction. The MoCA assesses attention and concentration, executive functions, memory, language, visuoconstructional skills, conceptual thinking, calculations, and orientation. Results of the MoCA indicated that Mr. Collins had global impairments in the domains of visuoconstructional skills, language, attention, abstraction, and delayed recall. His total score on the MoCA was 18 out of 30; a score below 26 is considered impaired.

DIAGNOSTIC FORMULATION: The following diagnostic conclusions are rendered on the bases of the above data and according to the Diagnostic and Statistical Manual of Mental Disorders, 5th Edition (DSM-5; 2013).

Due to Mr. Collins' history of experiencing a stroke, he was assessed for the presence of a neurocognitive disorder. In order to be diagnosed with a neurocognitive disorder, the DSM-5 (2013) indicates that there must be evidence of "cognitive decline from a previous level of performance in one or more cognitive domains (complex attention, executive function, learning and memory, language, perceptual-motor, or social cognition)" (p. 602). This concern may be expressed by either the individual in question or an informant, and these impairments are to be documented by standardized cognitive assessment or clinical assessment. These cognitive impairments must also interfere with the individual's ability to complete daily activities on their own, such as paying bills or taking medications. Mr. Collins expressed concern about recent cognitive decline. More specifically, he reported that, following his stroke, he has experienced difficulty remembering information. Additionally, there is some degree of concern about Mr. Collins' cognitive functioning from his attorney, which was outlined in the Court Order as the basis for the present evaluation, in part. Collateral records suggest that he also experienced expressive aphasia (i.e., an impaired ability to generate language) immediately following his stroke in 2013. It is important to note that, on the MoCA, which is a screening instrument for mild cognitive dysfunction, Mr. Collins' performance was impaired. However, Mr. Collins does not appear to experience any difficulties in his activities of daily living. Rather, he continues to work, manages his finances, is able to cook for himself, has a current driver's license, adequately attends to hygiene, and drove a significant distance on his own to attend the present evaluation. Importantly, there was no evidence of significant cognitive decline in any of the collateral documentation provided to the examiners at the time of the evaluation. As such, although there may be some concern about Mr. Collins' cognitive functioning expressed by both himself and his attorney, he does not currently meet criteria for a neurocognitive disorder. Additionally, during the current evaluation, cognitive deficits were not observed during assessment of his competency to stand trial. At times, he was slow to answer some questions, but when he did answer, his responses were logical and relevant. He also demonstrated the ability to track the conversation and sustain his attention for the duration of the evaluation.

Additionally, consideration was given to whether Mr. Collins has an intellectual disability. As outlined in the DSM-5 (2013), an intellectual disability is a "disorder with onset during the developmental period that includes both intellectual and adaptive functioning deficits in conceptual, social, and practical domains" (p. 33). Deficits in intellectual functioning include difficulties in reasoning, problem solving, planning, abstract thinking, judgment, and learning. Deficits in adaptive functioning include a "failure to meet developmental and sociocultural standards for personal independence and social responsibility" (p. 33), with impairments in the domains of communication, social participation, and independent living. Overall, Mr. Collins does not demonstrate significant impairments in adaptive functioning. As previously discussed, he works, manages his finances, is able to cook for himself, has a current driver's license, is able to attend appointments on his own, and adequately cares for himself. He does indicate some degree of impairment in general intellectual functioning, as evidenced by his self-reported issues in school and observed behavior during the evaluation; however, as he does not demonstrate impairments in the domain of adaptive functioning, a diagnosis of intellectual disability is not assigned.

The DSM-5 (2013) notes, "The essential feature of a substance use disorder is a cluster of cognitive, behavioral, and physiological symptoms indicating that the individual continues using the substance despite significant substance-related problems" (p. 483). It should be noted that Mr. Collins denied any problematic use of alcohol. However, in collateral documentation, his sister described him as a

binge drinker. It is possible that Mr. Collins may have alcohol use disorder, though a diagnosis cannot be assigned at this time, based upon the information provided to the evaluators.

Finally, consideration was also given to whether Mr. Collins meets criteria for antisocial personality disorder. According to the DSM-5 (2013), antisocial personality disorder is a "pervasive pattern of disregard for and violation of the rights of others, occurring since age 15 (p. 659)." Regarding childhood issues, Mr. Collins reported a history of fighting. No additional information about any additional problematic behaviors was made available at the time of the evaluation. As an adult, he has been arrested several times, but there is no evidence to suggest deceitfulness, significant impulsivity, irritability and aggressiveness, irresponsibility/failure to honor financial obligations, or a lack of remorse. As such, he does not currently meet criteria for antisocial personality disorder.

COMPETENCY TO STAND TRIAL: Mr. Collins' competency to stand trial was assessed using a semi-structured interview format on 09/24/18.

Regarding his ability to factually understand the proceedings against him, Mr. Collins reported that he is being charged with "Murder, conspiracy, burning a place." He was informed of the formal name of his charge (i.e., Arson), and he indicated that he recognized this charge and was aware that it pertained to his legal situation. He was also aware of the general definition of each charge. More specifically, he was aware that Murder means to "kill that person," Conspiracy means "to plot," and Arson means "a fire you burn or something." He was unaware whether his charges were felonies or misdemeanors, though correctly identified that a felony is more serious than a misdemeanor. He then came to the correct conclusion that, based upon the nature of his charges, he is likely facing felonies. When asked about potential penalties associated with his charges, he stated that his lawyer and the judge informed him that he could face a specific number of years in prison. Mr. Collins was asked to define the potential punishment of probation and accurately stated that, while on probation, you remain in the community and are under the supervision of a probation officer. Additionally, Mr. Collins stated that you must report to your probation officer, and if you do not, you could possibly return to prison.

Mr. Collins demonstrated some initial degree of difficulty expressing the various roles and functions of key courtroom personnel, though he responded well to education and appeared to retain the information after a delay. He defined the defense attorney's role as to "defend you, the defendant...looking out for that person by defending you in court." When asked what outcome the attorney should desire for his or her client, he said, "not guilty." He first stated that the solicitor's job was to "charge you," but he then noted that the solicitor "prove[s]" that the defendant is "guilty." He defined the role of the judge as, "He wants to hear the truth." Mr. Collins was provided with education and correctly identified the judge as a neutral party in the courtroom. He also initially provided an incorrect definition of the role of the jury: "The one that prosecute." He was also unaware of how many individuals serve on a jury, first stating "1,000" and then "200." Additionally, he did not know how many jurors must agree when reaching a verdict. He was provided with education and was able to explain the role of the jury using his own words: "[they] decide guilty or not." At the conclusion of the evaluation, the examiners asked Mr. Collins to recount the various roles of the courtroom personnel to gauge his ability to learn and retain information. When asked the role of the defense attorney, he stated, "to defend you," and he recalled that the defense attorney hopes for a "not guilty" outcome. He then defined the role of the

solicitor as "to prosecute [the defendant], to find [the defendant] guilty," noting that the solicitor is "against" the defendant. When asked about the role of the judge, Mr. Collins said, "They make sure everything is okay in the courtroom. They tell you guilty or not guilty." Finally, he also retained the role of the jury and noted the following: "They decide guilty or not guilty." He also recalled that there are 12 jurors and all must agree when reaching a verdict.

Mr. Collins correctly identified himself as the defendant. He also provided a correct definition of the term witness, noting, "Somebody that witnessed against me." He also stated that a witness can either be for or against a defendant ("No, he didn't do that, or yeah, he did that"). He correctly defined evidence as "proof," and identified potential evidence from a hypothetical case. He was aware that testifying includes an individual being questioned by lawyers for either side in court. He was also aware that the oath is "to tell the truth, so help me God," and he correctly indicated that an individual can get in trouble if they lie in court. He was subsequently provided the definition of perjury, to which he expressed an understanding.

Regarding potential pleas, Mr. Collins defined not guilty as "didn't do it" and guilty as "[the defendant] did it." He was aware that, following a plea of not guilty, a defendant proceeds to trial. He then stated that, following a plea of guilty, "they charge you," which he further defined as "prosecuted." Mr. Collins was then provided with education regarding correct terminology, as he appeared to confuse the term "prosecute" with "sentence." Following this education, he was then able to use the term "sentence" correctly. He defined a plea bargain as the following: "The lawyer pleading for you, a lower charge...to get a lesser charge," and he correctly stated that a defendant must enter a plea of "guilty" when accepting a plea bargain.

Regarding his ability to rationally understand the proceedings, Mr. Collins was able to describe the allegations against him, and he provided a logical explanation related to his preferred outcome. He also reasoned through hypothetical plea bargains. If a witness told a lie about him during their testimony, Mr. Collins stated that he would "let him know he's lying." He was then asked if he could speak openly during court, to which he stated "no," and he then noted that he would inform his lawyer if a witness told lies about him during testimony. If he does not understand something happening in court, he indicated that he would "talk to my lawyer." When asked how a defendant is expected to behave in court, he stated, "Quiet. Just listen until it's time to speak." He acknowledged that a defendant can only speak in court when asked to do so by the judge, and he stated that speaking without permission could result in the judge "tell me to be quiet, hold me in a cell until court is over." He was unaware of the name of the charge that a defendant can incur for speaking out of turn in court (i.e., contempt), and he was provided with education. He appeared to understand this based on the discussion.

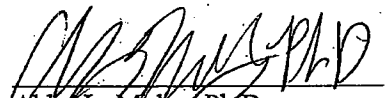
In regard to the capacity to rationally assist counsel in his own defense, Mr. Collins reported he is currently represented by Attorney "Ralph Wilson, Jr." When asked if he has confidence in his attorney's ability to defend him, he stated, "Yes, I feel that he is real...judge according to what's right...that's how I feel in my heart." Regarding how he can help his attorney, Mr. Collins replied, "Telling him the truth." He said he has not disagreed with his attorney's handling of his case. When asked what he will do if he disagrees with his attorney in the future, he said, "Let him know." When asked if he needs an attorney to defend him, he stated that he did not wish to represent himself. He also expressed an awareness that conversations between himself and his attorney are confidential,

though, in some cases, his attorney may have discussions with the judge or solicitor. Based on his presentation during the current evaluation, Mr. Collins possesses a capacity to work effectively work with an attorney if he chooses to do so. Specifically, Mr. Collins exhibited no significant difficulty in communicating during the present evaluation and appeared to be cooperative.

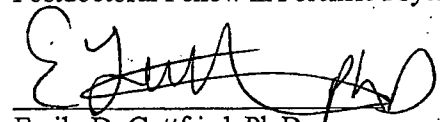
CLINICAL IMPRESSIONS: Mr. Collins does not currently meet diagnostic criteria for a mental illness, neurocognitive disorder, or intellectual disability. He was administered a brief screening measure that was designed to assess cognitive impairment (i.e., the MoCA), and results revealed impairment in the domains of visuoconstructional skills, language, attention, abstraction, and delayed recall. Despite this impaired performance on the screening measure, during the present evaluation, Mr. Collins demonstrated a factual understanding of the proceedings against him. Although he expressed some degree of confusion regarding the roles of various courtroom personnel, he successfully retained the correct information following efforts at education by the examiners. He also successfully generated information regarding available pleas. His rational understanding of his case was adequate, and he discussed his preferred legal outcome in a logical and coherent manner. Furthermore, he understood the adversarial nature of legal proceedings and exhibited intact abilities to make rational decisions for his case. Based upon his behavior during the evaluation, Mr. Collins demonstrated the ability to effectively work with his attorney, as well as the ability to maintain appropriate behavior in the courtroom. It is therefore our opinion that Mr. Collins is currently competent to stand trial.

SUMMARY: Mr. Randy Collins is a 48-year-old man currently charged with Murder; First Degree Arson; and Criminal Conspiracy. He does not currently meet diagnostic criteria for a mental illness, neurocognitive disorder, or intellectual disability, and it is our opinion that Mr. Collins is not currently experiencing symptoms or cognitive issues impacting his competency to stand trial. Mr. Collins exhibited an adequate level of both factual and rational understanding of the proceedings against him and the capacity to rationally assist counsel in his own defense. Therefore, it is our opinion that Mr. Collins is currently competent to stand trial.

Respectfully submitted,



Abby L. Mulay, Ph.D.
Postdoctoral Fellow in Forensic Psychology



Emily D. Gottfried, Ph.D.
Licensed Clinical Psychologist

ATE OF SOUTH CAROLINA)
OUNTY OF George)
TATE VS.)
Randy Collins)
AKA:)
Race: BLACK Sex: M Age: 48)
DOB: 08-27-1970 SS#: 251-27-0803)
Address: 18 Clair Street)
City,State,Zip: Andrews, SC 29510)
DL#: SID#:)
*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2014GS2200803
A/W#: 2014A2210800082
Date of Offense: 3/29/2014
S.C. Code § : 16-17-0410
CDR Code #: 0049

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☑CONVICTED OF or ☐PLEADS
TO: Criminal Conspiracy 0-5 yrs.
in violation of § 16-17-0410 of the S.C. Code of Laws, bearing CDR Code # 0049
☑NON-VIOLENT ☐VIOLENT ☐SERIOUS ☐MOST SERIOUS ☐Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐§17-25-45
The charge is: ☑As Indicted, ☐Lesser Included Offense, ☐Defendant Waives Presentment to Grand Jury. _____ (defendant's initials)
The plea is: ☐Without Negotiations or Recommendation, ☐Negotiated Sentence, ☐Recommendation by the State.
ATTEST:

Richardson, Alicia	SCB8880		Wilson, Jr., Ralph J.	SCB76716
	SC Bar#	Defendant	Attorney for Defendant	SC Bar#

WHEREFORE, the Defendant is commited to the ☐ **State Department of Corrections,** ☐ **County Detention Center,** for a determinate term of 5 days/months/years or ☐ under the **Youthful Offender Act** not to exceed _____ years and/or to pay a fine of $ _____; provided that upon the service of _____ days/months/years and/or payment of $_____; plus costs and assessments as applicable*; the balance is suspended with **probation** for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.
☑CONCURRENT or ☐CONSECUTIVE to sentence on: 2014GS2200804
☐The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC.
☐The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.
Pursuant to 18 U.S.C Section 922,it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ **RESTITUTION:** ☐**Deferred** ☐**Def. Waives Hearing** ☐**Ordered** **PTUP** _____

Total: $ _____ plus 20% fee: _____ $ _____
Payment Terms: _____
☐ Set by SCDPPPS _____
Recipient: _____

*Fine:		$
§14-1-206 (Assessments 107.5 %)		$
§14-1-211(A)(1) (Conv. Surcharge)	$100	$ 100.00
§14-1-211(A)(2) (DUI Surcharge)	$100	$
§56-5-2995 (DUI Assessment)	$12	$
§56-1-286 (DUI Breath Test)	$25	$
Proviso (Public Def/Probation)	$500	$
§14-1-212 (Law Enforce. Funding)	$25	$ 25.00
§14-1-213 (Drug Court Surcharge)	$150	$
§50-21-114(BUI Breath Test Fee)	$50	$
§56-5-2942(J) (Vehicle Assessment)	$40/ea	$
3% to County (if paid in installments)		$ 3.75
TOTAL		$ 128.75

_____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E begining _____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ 20.00 beginning (1) month after release
$ _____ paid to Public Defender Fund
Other: _____

☐ Appointed PD or appointed other counsel, Proviso requires $500 be paid to Clerk during probation and shall be collected before any other fees.

Clerk of Court/Deputy Clerk: Wendy Rogers
Court Reporter: Grace Hurley
Presiding Judge: _____
Judge Code: 2152
Sentence Date: 11-9-2018

SCCA/217 (04/2018)

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF Georgetown)
STATE VS.)
Randy Collins)
AKA:)
Race: BLACK Sex: M Age: 48)
DOB: 08-27-1970 SS#: 251-27-0803)
Address: 18 Clair St)
City,State,Zip: Andrews, SC 29510)
DL#: 8976089 SID#:)
*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐)

INDICTMENT/CASE#: 2014GS2200804
A/W#: 2014A2210800083
Date of Offense: 3/29/2014
S.C. Code § : 16-11-0110(A)
CDR Code #: 3535

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☑ CONVICTED OF or ☐ PLEADS
TO: Arson / Arson - First degree minimum of 30 yrs.
in violation of § 16-11-0110(A) of the S.C. Code of Laws, bearing CDR Code # 3535
☐ NON-VIOLENT ☑ VIOLENT ☐ SERIOUS ☑ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45
The charge is: ☑ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (defendant's initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST:

Richardson, Alicia	SCB8880		Wilson, Jr., Ralph J.	SCB76716
	SC Bar#	Defendant	Attorney for Defendant	SC Bar#

WHEREFORE, the Defendant is committed to the ☑ **State Department of Corrections,** ☐ **County Detention Center,** for a determinate term of 30 days/months/years or ☐ under the **Youthful Offender Act** not to exceed _____ years and/or to pay a fine of $ _____; provided that upon the service of _____ days/months/years and/or payment of $_____; plus costs and assessments as applicable*; the balance is suspended with **probation** for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☑ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2014GS2200803

☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922,it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ **RESTITUTION:** ☐**Deferred** ☐**Def. Waives Hearing** ☐**Ordered** **PTUP** _____

Total: $ _____ plus 20% fee: _____ $ _____

Payment Terms: _____
☐ Set by SCDPPPS _____

Recipient: _____

*Fine:		$
§14-1-206 (Assessments 107.5 %)		$
§14-1-211(A)(1) (Conv. Surcharge)	$100	$ 100.00
§14-1-211(A)(2) (DUI Surcharge)	$100	$
§56-5-2995 (DUI Assessment)	$12	$
§56-1-286 (DUI Breath Test)	$25	$
Proviso (Public Def/Probation)	$500	$
§14-1-212 (Law Enforce. Funding)	$25	$ 25.00
§14-1-213 (Drug Court Surcharge)	$150	$
§50-21-114(BUI Breath Test Fee)	$50	$
§56-5-2942(J) (Vehicle Assessment)	$40/ea	$
3% to County (if paid in installments)		$ 3.75
TOTAL		$ 128.75

_____ days/hours Public Service Employment

Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E begining _____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ 20. beginning (1) month after release
$ _____ paid to Public Defender Fund
Other: _____

☐ Appointed PD or appointed other counsel, Proviso requires $500 be paid to Clerk during probation and shall be collected before any other fees.

Clerk of Court/ Deputy Clerk Wendy Rogers
Court Reporter: Grace Hurley

Presiding Judge
Judge Code: 2152
Sentence Date: 11-9-2018

SCCA/217 (04/2018)

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of General Sessions

Larry B. Hyman, Jr., Circuit Court Judge

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

The State,..... Respondent,

v.

Randy Collins,..... Appellant,

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The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

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October 21, 2019
Charleston, South Carolina

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of General Sessions

Larry B. Hyman, Jr., Circuit Court Judge

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

The State, ...Respondent,

v.

Randy Collins,.....Appellant,

FINAL INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

I. DID THE TRIAL COURT ERR IN RULING THAT APPELLANT'S CONFESSION WAS VOLUNTARILY GIVEN?

II. DID THE TRIAL COURT ERR IN REFUSING TO REQUIRE FURTHER EVALUATION OF APPELLANT FOR COMPETENCY TO STAND TRIAL BASED ON INDICATIONS THAT HE SUFFERED FROM INTELLECTUAL DISABILITIES?

STATEMENT OF THE CASE

On June 5, 2014, arrest warrants were issued for Appellant Randy Collins on charges of arson, first degree, and criminal conspiracy in connection with a fire that burned a mobile home near Andrews, Georgetown County, that resulted in the death of David Coombs. (R. pp. 831-832.) The grand jury for Georgetown County issued indictments against Mr. Collins on August 20, 2014 for criminal conspiracy; arson, first degree; and murder. (R. pp. 833-837.)

Based on concerns about Mr. Collins's ability to assist his attorney due to possible intellectual disability, Mr. Collins's court appointed trial counsel requested a competency evaluation, which was granted by the Honorable Benjamin Culbertson on August 8, 2018. (R. pp. 1-6.) The competency evaluation was conducted on September 24, 2018 by Abby L. Mulay, Ph.D., and Emily D. Gottfried, Ph.D. (R. pp. 838-846.) The examiners issued a report on September 26, 2018, concluding that Mr. Collins was competent to stand trial. (*Id.*)

A trial was held at the Georgetown County Courthouse in Georgetown, South Carolina, from November 5, 2018 through November 9, 2018, with the Honorable Larry B. Hyman, Jr., presiding. Prior to the beginning of trial, Judge Hyman held a competency hearing pursuant to *State v. Blair*, 275 S.C. 529, 273 S.E.2d 536 (1981). (R. p. 18, line 1-p. 127, line 10.) Judge Hyman adopted the report of the competency evaluators and ruled that Mr. Collins was competent to stand trial. (R. p. 125, line 12-p. 127, line 10.)

Following Judge Hyman's determination of competency, Mr. Collins's counsel moved for reconsideration of the competency finding and requested that an independent evaluation of Mr. Collins be conducted based on his low score on the Montreal Cognitive Assessment ("MoCA") as conducted by Dr. Mulay and Dr. Gottfried, which indicated possible cognitive impairment. (R. p.

159, line 9-p. 161, line 3.) Judge Hyman denied the motion for reconsideration, concluding that further examination was not needed. (*Id.*)

After ruling that Mr. Collins was competent to stand trial, Judge Hyman held a hearing to determine the voluntariness of Mr. Collins's confession under *Jackson v. Denno*, 378 U.S. 368 (1964). (R. p. 127, line 13-p. 155, line 25; R. p. 162, line 23-p. 291, line 10.) At the conclusion of the hearing, Judge Hyman ruled that the state had proven by a preponderance of the evidence that Mr. Collins's confession was voluntarily given. (*Id.*)

On November 9, 2018, the jury convicted Mr. Collins of criminal conspiracy in violation of S.C. Code Ann. § 16-17-410 and arson in the first degree in violation of S.C. Code Ann. § 16-11-110(A). (R. p. 806, line 5-p. 807, line 4.) Judge Hyman then sentenced Mr. Collins to 30 years in prison for the arson conviction and 5 years in prison for the conspiracy conviction to run concurrently with the arson sentence. (R. p. 809, line 11-p. 813, line 14.; R. pp. 847-848.)

Mr. Collins timely filed a notice of appeal on November 16, 2018. (R. p. 7.)

STATEMENT OF FACTS

I. Fire.

In February 2014, Marissa Cohen obtained property insurance in the amount of $25,000 on a mobile home she rented near Andrews, South Carolina. (R. p. 344, line 24-p. 348, line 25; R. pp. 814-815.) About a month later, Ms. Cohen rented a storage unit and began moving furniture and household appliances out of the home. (R. p. 357, line 25-p. 368, line 22.) To assist her in moving, Ms. Cohen enlisted the services of Benjamin "Mano" Brown. (R. p. 375, line 11-p. 377, line 24; R. p. 382, line 10-p. 383, line 24.) According to Mr. Brown, Ms. Cohen stated her intention of burning the home, but she did not identify anyone else involved in her plans. (*Id.*) On the same day that Ms. Cohen was moving items out of her home, she purchased kerosene from a nearby convenience store. (R. p. 370, line 6-p. 374, line 8.)

Shortly after Ms. Cohen moved her furniture out of the home, a fire was reported at the home on the morning of March 29, 2014. (R. p. 310, line 21-p. 312, line 10; R. pp. 816-825.) When firefighters arrived on the scene, they forcibly entered the home and found a deceased child inside. (R. p. 310, line 9-p. 318, line 8.) The child turned out to be Ms. Cohen's twelve-year-old son, David Coombs, who was walking home from a birthday party that night and apparently entered the abandoned trailer to escape the rain and fell asleep. (R. p. 300, line 11-p. 303, line 23; R. p. 338, line 23-p. 341, line 18; R. p. 828, State Ex. 3)

II. Investigation.

SLED and the Georgetown County Sheriff's Office initiated an investigation into the fire and death of Mr. Coombs. The SLED investigators quickly concluded that the fire was intentionally set and investigated it as possible arson. (R. p. 665, lines 9-13.) The investigators

received an anonymous tip that Ms. Cohen had purchased kerosene just prior to the fire, and they began investigating her connection to the fire. (R. p. 665, line 23-p. 666, line 18.)

The sheriff's office also interviewed Mr. Collins a couple weeks after the fire upon receiving an anonymous tip about his alleged involvement. (R. p. 666, line 22-p. 667, line 2; R. p. 697, line 23-p. 698, line 1.) Mr. Collins informed the investigator that he had been at a club with his nephew on the night of the fire and that he had nothing to do with it. (R. p. 667, line 10-p. 668, line 24; R. p. 826.) The investigator then drafted Mr. Collins's statement in his own handwriting. (R. p. 667, lines 6-7; R. p. 697, lines 9-22; R. p. 826.)

The investigators later obtained a search warrant for Mr. Collins's phone. (R. p. 672, lines 11-16.) After conducting the search of Mr. Collins's phone, an investigator arranged for Mr. Collins to retrieve his phone at the Andrews Police Department on June 4, 2014. (R. p. 672, lines 11-20.) When Mr. Collins arrived to get his phone, the investigators requested that he participate in an interview. (R. p. 673, lines 12-16.) Mr. Collins agreed to answer their questions and they took him into a room, where they began interrogating him. (R. p. 672, lines 19-22.)

The investigators recorded the interrogation on a personal camcorder, and it began at 10:24 a.m. (R. p. 674, lines 20-25; R. p. 828, State Ex. 3, DVD 1, 1:00-1:10.) Although the investigators read Mr. Collins his *Miranda* rights prior to starting the interview (R. p. 143, line 16-p. 144, line 19; R. p. 192, line 18-p. 193, line 1; R. p. 827.)[1], they later promised him that whatever he told the investigators would not leave the room:

> Q: Do you ... Not digging into what we've already said. What do you think? Do you think this was, this fire was start, was it started intentionally, do you think somebody might've started that fire or do you think it was a bad accident?

[1] The investigators did not record the *Miranda* warning provided to Mr. Collins. (R. p. 192, line 18-p. 193, line 1)

A: I don't, I can't say, I ain't know nothing like about that. I can't really say about that. I can't even say. I ain't one to say the wrong thing. I don't know.

Q: Well you're not going to say the wrong thing.

A: Uh huh.

Q: Whatever you tell me it ain't going to leave this room. This tape is going into my file.

A: Yes, sir.

Q: I'm going to burn a copy for him.

A: Mmmhhmm.

Q: And we'll have a copy of this tape. It ain't going to go any further than this room. That's why we have the door shut, blinds pulled ...

A: Yes, sir.

Q: ... there's no sound device in here. I want you to be honest with me and tell me what you think.

(R. p. 828, State Ex. 3, DVD 1, 21:00-21:30; R. p. 240, line 20-p. 241, line 2.)[2]

Mr. Collins began by explaining that he was in physical discomfort from a prior car accident and that he had suffered a stroke about a year earlier. (R. p. 828, State Ex. 3, DVD 1, 3:00-4:30.) He further stated that he had not eaten since the previous night and had problems getting to bed. (R. p. 828, State Ex. 3, DVD 1, 4:30-5:30.)

When questioned about the fire at the beginning of the interrogation, Mr. Collins consistently and repeatedly denied having any involvement in the fire. (R. p. 828, State Ex. 3, DVD 1; R. p. 196, line 25-p. 197, line 6.) He explained his whereabouts on the night of the fire,

[2] The investigator making this statement admitted that this representation was not true. (*Id.*)

which was consistent with the explanation that he had previously provided to the investigators. (R. p. 828, State Ex. 3, DVD 1, 8:15-12:00.)

After the questioning had continued for approximately 30 minutes, Mr. Collins stated that he didn't know that he "had to answer" questions when he came to the police station that morning and that he was not feeling well. (R. p. 828, State Ex. 3, DVD 1, 29:00-30:00; R. p. 202, line 24-p. 203, line 11.) Nevertheless, the investigators continued interrogating him, claiming that they needed to get to the bottom of the truth so that they could inform members of the community that Mr. Collins was innocent. (R. p. 828, State Ex. 3, DVD 1, 30:00-31:00.) And Mr. Collins continued to insist that he was not involved in the fire. (R. p. 828, State Ex. 3, DVD 1, 30:00-31:30; R. p. 196, line 25-p. 197, line 6.)

The investigators then explained to Mr. Collins their theory of the case that Ms. Cohen had obtained insurance on the mobile home with the plan to burn it and collect the insurance proceeds. (R. p. 828, State Ex. 3, DVD 3, 15:00-23:47.) They further stated that they believed that no one knew that Mr. Coombs would be in the trailer and that no one intended for him to die, but that Ms. Cohen failed to make sure that he did not go to the home before the plan to burn it was executed. (R. p. 828, State Ex. 3, DVD 3, 15:00-23:47.)

Then, one of the investigators said that he wanted Ms. Cohen to go to jail for 34 years for her role in the fire but that he would settle for anyone. (R. p. 828, State Ex. 3, DVD 3, 17:20-17:30.) He repeated that he "wanted" Ms. Cohen but that if Mr. Collins was not truthful in the interview he would come back to get Mr. Collins and that Mr. Collins would likely die in prison. (R. p. 828, State Ex. 3, DVD 3, 21:00-21:45; R. p. 204, line 20-p. 205, line 12.) The investigator then assured Mr. Collins: "It's not you I want; it's Marissa. I promise my right hand to God." (R. p. 828, State Ex. 3, DVD 3, 22:10-22:20.)

The recording of the interview stopped approximately an hour and a half after the interrogation began. (R. p. 231, line 5-p. 232, line 10.) According to the investigators, the battery on the camcorder died, unbeknownst to them. (R. p. 231, line 5-p. 232, line 20.) As a result, the interrogation continued without being recorded. (*Id.*) Once they discovered that the camcorder was not recording, the investigators replaced the battery and began recording the interrogation again. (*Id.*)

The video of the interrogation recommences with Mr. Collins speaking mid-sentence, confessing to his partial involvement in the fire and stating that his cousin James started the fire. (R. p. 828, State Ex. 3, DVD 2, 0:01-1:30.) However, he denied seeing James starting the fire. (R. p. 828, State Ex. 3, DVD 2, 0:01-1:00.) The investigators then told Mr. Collins if the solicitors thought he was lying they would push for 34 years in prison. (R. p. 828, State Ex. 3, DVD 2, 1:30-2:00.) After that, Mr. Collins explained that Ms. Cohen had approached him and offered him $5,000 to burn the trailer. (R. p. 828, State Ex. 3, DVD 2, 4:00-5:15.) He also told the investigators that he told James about Ms. Cohen's offer, and James agreed to burn the trailer. (R. p. 828, State Ex. 3, DVD 2, 5:15-6:30.)

At that point, the investigators expressed disbelief in Mr. Collins's account and told him that he needed to start worrying about himself. (R. p. 828, State Ex. 3, DVD 2, 7:00-8:00.) One investigator exclaimed, "Save yourself!" (R. p. 828, State Ex. 3, DVD 2, 7:00-8:00.) When Mr. Collins failed to provide a satisfactory explanation of the events of the fire to the investigators, the investigator told Mr. Collins that the investigator was not going to speak up for him if he wasn't being totally honest. (R. p. 828, State Ex. 3, DVD 2, 8:00-8:30.) Mr. Collins then provided the investigators more information. (R. p. 828, State Ex. 3, DVD 2, 8:30-9:30.) As the investigators

continued to press for more details, they told Mr. Collins that he couldn't save anybody but himself. (R. p. 828, State Ex. 3, DVD 2, 13:10-13:20.)

Although Mr. Collins tried to satisfy the investigators by providing more information, he continued to get confused about the details. He expressed uncertainty about what James had used to start the fire, alternating between a lighter, a match, and a lit piece of paper. (R. p. 828, State Ex. 3, DVD 2, 13:30-16:00.) In addition, Mr. Collins provided inconsistent statements about where he was standing when the fire started as he tried to comply with the investigators' requests for more information. (R. p. 828, State Ex. 3, DVD 2, 13:30-17:00.) The investigators repeatedly told Mr. Collins that they were going to let him go home after the interview. (R. p. 828, State Ex. 3, DVDs 1, 2, 2B, 3.)

Throughout the interview, the investigators expressed disbelief in Mr. Collins's account. When that would happen, the investigators would suggest answers to their questions and get Mr. Collins to agree to what they believed happened. (R. p. 828, State Ex. 3, DVD 2.) In fact, the investigators even suggested at one point that Mr. Collins was attempting to tell the investigators what he believed they wanted to hear. (R. p. 828, State Ex. 3, DVD 2, 22:55-23:20.)

As Mr. Collins attempted to answer their questions, the investigators told him that Ms. Cohen was setting him up. (R. p. 828, State Ex. 3, DVD 2, 32:30-33:00.) At which point, Mr. Collins again tried to explain the events that led to the fire and his participation in it. (R. p. 828, State Ex. 3, DVD 2, 33:00-40:43.) Mr. Collins gave a rambling account in which he admitted to participating in setting the fire, but his timeline was inconsistent with when the fire was actually set and reported. (R. p. 828, State Ex. 3, DVD 2, 37:30-38:00.) In response to this inconvenient fact, the investigators then convinced Mr. Collins that he was not sure of the timeline. (R. p. 828, State Ex. 3, DVD 2, 38:00-38:30.)

As the interrogation continued, the investigators continued to tell Mr. Collins that they were there to "help" him. (R. p. 828, State Ex. 3, DVD 2B, 1:25-1:45; R. p. 204, lines 13-19.) They then told him that Ms. Cohen had more money than they did, thereby falsely implying that she had received insurance proceeds from the fire, and that she was going to hire lawyers to defend her who would blame Mr. Collins for the fire. (R. p. 828, State Ex. 3, DVD 2B, 1:45-3:00.)

At that point, the investigators ended the interrogation and stated that they wanted Mr. Collins to write a statement. (R. p. 828, State Ex. 3, DVD 2B, 3:30-4:00.) Mr. Collins requested that the investigators write the statement and that he be allowed to sign it because he could not "spell too good." (R. p. 828, State Ex. 3, DVD 2B, 3:30-4:30.) The investigators agreed that they would write the statement but that it would be a verbatim transcription of what Mr. Collins said. (R. p. 828, State Ex. 3, DVD 2B, 4:30-5:00.) They then requested that Mr. Collins provide a verbal statement for the investigators to transcribe. (R. p. 828, State Ex. 3, DVD 2B, 4:00-4:30.)

Mr. Collins's oral statement began, "I did not do it." (R. p. 828, State Ex. 3, DVD 2B 4:30-4:45.) The investigators then interrupted Mr. Collins and coached him on what to write. (R. p. 828, State Ex. 3, DVD 2B, 4:45-5:00.) On instruction from the investigators, Mr. Collins stated that "Tina" approached him about burning the home. (R. p. 828, State Ex. 3, DVD 2B, 5:00-5:30.) The investigators interrupted Mr. Collins again and asked if he knew "Tina's" real name. (R. p. 828, State Ex. 3, DVD 2B, 5:00-5:30.) Although there had been repeated references and discussions about Ms. Cohen's name being "Marissa," Mr. Collins explained that "Tina" was the only name he knew. (R. p. 828, State Ex. 3, DVD 2B, 5:00-5:30.) Then at the prompting of the investigators, Mr. Collins stated that James had agreed to burn the home and that he was with James when James lit the fire. (R. p. 828, State Ex. 3, DVD 2B, 5:30-17:00.) Then he stated that "Marissa" had called him later in the night, just minutes after not being able to remember Marissa's

name. (R. p. 828, State Ex. 3, DVD 2B, 15:00-15:15.) Mr. Collins then signed the statement that had been transcribed by the investigator. (R. p. 828, State Ex. 3, DVD 2B, 19:00-19:25.)

At the conclusion of the interrogation, the investigators repeated what they had previously said, which was that Mr. Collins had gotten himself on the track to "save" himself by confessing to his participation in the fire. (R. p. 828, State Ex. 3, DVD 23:30-24:05.) One investigator added further that "if you're helping us, we're helping you." (R. p. 828, State Ex. 3, DVD 2B, 28:30-28:40.) The interrogation concluded at 1:51 p.m., approximately 3 ½ hours after it began. (R. p. 828, State Ex. 3, DVD 2B, 30:45-30:58; R. p. 208, lines 6-10.)

On June 5, 2014, arrest warrants were issued for Mr. Collins on charges of arson, first degree, and criminal conspiracy. (R. pp. 831-832.) The grand jury for Georgetown County issued indictments against Mr. Collins on August 20, 2014 for criminal conspiracy; arson, first degree; and murder. (R. pp. 833-837.)

III. Competency Evaluation & Hearing.

Upon the issuance of Judge Culbertson's order for a competency evaluation, Mr. Collins was evaluated by two forensic psychologists at the Medical University of South Carolina under the purview of the Department of Mental Health. (R. pp. 1-6; R. pp. 838-846.) The primary evaluator was Abby Mulay, who testified in a competency hearing for the first time in Mr. Collins's case. (R. p. 21, line 12-p. 22, line 7.)

The evaluators conducted a clinical interview of Mr. Collins and discovered that he had a history of childhood abuse, including an incident in which his father had pushed him to the concrete as a child. (R. p. 839; R. p. 25, lines 2-9.) As a result of this incident, Mr. Collins suffered a concussion and was hospitalized for two weeks. (R. p. 840.) In school, Mr. Collins was placed in special education classes because he was "slow at learning." (*Id.*) Mr. Collins could not

remember how far he made it school but estimated the he left school in either 7th, 8th, or 9th grade. (*Id.*) He also reported that he suffered a stroke in April 2013, which causes him to forget things. (*Id.*)

As part of the evaluation, Mr. Collins's medical records were reviewed. These records confirmed that Mr. Collins suffered a stroke in April 2013, less than a year before the fire. (R. p. 841.) They also showed that, as a result of the stroke, he experienced expressive aphasia, i.e. partial loss of the ability to produce language, and altered mental status and dysarthia, i.e. difficult to understand articulation of speech. (*Id.*) At the competency hearing, the evaluator testified that a neurologist who treated Mr. Collins for the stroke concluded that Mr. Collins's appearance was consistent with encephalopathy, which is a neurological disorder. (R. p. 26, line 13-p. 28, line 7.) However, the evaluator stated that she was not a medical doctor and that neurological disorders were outside of her expertise. (R. p. 26, lines 13-17.)

The evaluators also administered the Montreal Cognitive Assessment ("MoCA"), which is an instrument used to assess cognitive dysfunction. (R. p. 842.) MoCA assesses attention and concentration, executive functions, memory, language, visuoconstructional skills, conceptual thinking, calculations, and orientation. (*Id.*) A MoCA score below 26 is considered impaired, and Alzheimer's patients score an average of 16.2 on test. (R. p. 29, line 21-p. 37, line 24.) Mr. Collins scored 18 out of 30, which "indicated that [he] had global impairments in the domains of visuoconstructional skills, language, attention, abstraction, and delayed recall." (R. p. 842.)

Although Mr. Collins's score was suggestive of cognitive impairments, the evaluation did not include any testing overseen by a neuropsychologist, which is necessary to make a diagnosis of cognitive impairments or neurocognitive disorder. (R. p. 34, lines 15-24.) No intelligence testing of Mr. Collins was performed either. (R. p. 43, lines 11-16.)

Instead of having neurocognitive or intelligence testing performed on Mr. Collins, the evaluators conducted a mental status exam, which appears to have consisted of questions being posed to Mr. Collins. In this exam, Mr. Collins reported that he sometimes hears "somebody whispering" to him and that he occasionally sees Jesus. (R. p. 842.) He could not name the current President of the United States, and he identified "Kennedy" as first President. (*Id.*)

Despite the various indicators of low intelligence, neurological and neurocognitive disorders, and mental impairments, the evaluators concluded that Mr. Collins was competent to stand trial. (R. p. 846.) This conclusion appears to be based primarily on Mr. Collins's "factual understanding of the [legal] proceedings against him." (*Id.*) However, the evaluators admitted that Mr. Collins believed at different times during the exam that the jury was made up of "1,000" or "200" individuals. (R. p. 844.) The evaluators further stated that Mr. Collins expressed "confusion regarding the roles of various courtroom personnel" and could only retain the correct information following "education by the examiners." (R. p. 53, line 3-p. 54, line 11; R. p. 844.)

Prior to trial, Judge Hyman conducted a *Blair* hearing and adopted the report of the evaluators, ruling that Mr. Collins was competent to stand trial. (R. 125, line 12-p. 127, line 10.) At the hearing, Dr. Mulay admitted that the examiners did not conduct any testing to determine intellectual disability but that there were indications that Mr. Collins was intellectually impaired. (R. p. 29, line 13-p. 40, line 24; R. p. 43, lines 11-16; p. 44, line 19-p. 45, line 19.) In response to questioning by the judge, Dr. Mulay advised that further evaluation by the Department of Disabilities and Special Needs ("DDSN") would add clarity to whether Mr. Collins, in fact, suffered from an intellectual disability. (R. p. 45, line 20-p. 46, line 10.)

Following the questioning of the examiners, the judge acknowledged that evidence indicated that Mr. Collins suffered from an "intellectual disability." (R. p. 125, lines 12-22.) He

also expressed concern that the matter should have been referred to DDSN for further evaluation, but he stated that was not warranted because Dr. Mulay and Dr. Gottfried found no indications of "mental retardation." (R. p. 126, line 20-p. 127, line 4.) The judge then ruled that Mr. Collins had not proved by a preponderance of the evidence that he lacked capacity to stand trial. (R. p. 127, lines 4-10.)

Mr. Collins's counsel moved for reconsideration of this finding and requested that further evaluation of Mr. Collins be conducted due to his low MoCA score and the inexperience of the evaluator. (R. p. 159, line 9-p. 160, line 4.) Judge Hyman denied that motion, finding that there was no need for a DDSN evaluation because there was no indication of "mental retardation." (R. p. 160, line 10-p. 161, line 3.)

IV. Trial.

At trial, the State's case against Mr. Collins was based almost entirely on his confession. There was no evidence that Mr. Collins helped Ms. Cohen obtain an insurance policy. (R. p. 356, lines 11-19.) There was no evidence that Mr. Collins aided Ms. Cohen in securing a storage unit. (R. p. 362, lines 6-18.) There was no evidence that Mr. Collins helped Ms. Cohen move her furniture and appliances. (R. p. 382, line 25-p. 383, line 16.) There was no evidence that Mr. Collins purchased kerosene. (R. p. 374, lines 11-23.) There was no evidence that Ms. Cohen told others that Mr. Collins was involved in her plan to burn the home and collect insurance proceeds. (R. p. 383, lines 9-16.) And other than his confession, there was no evidence that Mr. Collins was present when the fire began or participated in the burning of the home. (R. p. 580, lines 2-5.)

ARGUMENT

I. Appellant's statements should not have been admitted because they were induced by deception regarding their use, promises of leniency, threats of severe punishment, and other factors indicating that the statements were not voluntarily given.

"[A] defendant in a criminal case is deprived of due process of law if his conviction is founded, in whole or in part, upon an involuntary confession, without regard to the truth or falsity of the confession." *Jackson v. Denno*, 378 U.S. 368, 373 (1964). If a defendant "was advised of his *Miranda* rights, but nevertheless chose to make a statement, the burden is on the State to prove by a preponderance of the evidence that his rights were voluntarily waived." *State v. Neely,* 271 S.C. 33, 40, 244 S.E.2d 522, 526 (1978).

The trial judge's determination of whether a statement was knowingly, intelligently, and voluntarily made requires an examination of "the totality of the circumstances" surrounding the waiver. *State v. Doby*, 273 S.C. 704, 708, 258 S.E.2d 896, 899 (1979). The totality of the circumstances includes "the youth of the accused, his lack of education or his low intelligence, the lack of any advice to the accused of his constitutional rights, the length of detention, the repeated and prolonged nature of the questioning, and the use of physical punishment such as the deprivation of food or sleep." *State v. Pittman*, 373 S.C. 527, 563, 647 S.E.2d 144, 164 (2007) (quoting *Schneckloth v. Bustamonte*, 412 U.S. 218, 226 (1973)).

Furthermore, a "statement may not be extracted by any sort of threats or violence, or obtained by any direct or implied promises, however slight, or obtained by the exertion of improper influence." *State v. Miller*, 375 S.C. 370, 386, 652 S.E.2d 444, 452 (Ct. App. 2007).

In this case, the totality of the circumstances demonstrates that Mr. Collins's confession was not made freely and voluntarily.

A. Misrepresentations and Deception About the Use of Mr. Collins's Statements.

The investigators coerced and tricked Mr. Collins into making inculpatory statements regarding his participation in burning the home by misrepresenting to him that his statements would not be used against him. After Mr. Collins insisted on his innocence, the investigators informed him that his statements and the video recording of his interrogation would "not leave this room." (R. p. 240, line 20-p. 241, line 2; R. p. 828, State Ex. 3, DVD 1, 20:53-21:30.) Furthermore, the investigators told him that the video recording would merely be placed in their files, suggesting that it would not be used against him in a future trial. (*Id.*) Of course, these representations turned out to be false (R. p. 240, line 20-p. 241, line 2), as the State relied almost exclusively on Mr. Collins's statements during the interrogation to convict him. And it was only after the investigators' promise to keep his statements buried in their files did Mr. Collins make any incriminating statements.

The fact that the investigators prefaced the interview with a *Miranda* warning does not obviate the coercive nature of their tactics. Instead, the promise that Mr. Collins's statements and the video recording would not leave the interrogation room rendered the *Miranda* warning meaningless.

Although it does not appear that South Carolina courts have addressed the voluntariness of a statement after police have assured its confidentiality, other jurisdictions have ruled that such assurances alone preclude a finding of voluntariness. For example, in *Redmond v. People*, 180 Colo. 24, 501 P.2d 1051 (1972), the Colorado Supreme Court reversed the trial court's ruling that a confession was voluntarily given. In that case, the police detective provided the defendant a full *Miranda* warning but then told the defendant that they were only interested in an alleged co-

conspirator. *Id.* at 26, 501 P.2d at 1052. The detective further instructed that what the defendant told the defective would be just between the two of them and would be off the record. *Id.*

Quoting *Miranda*, the court concluded that the defendant's subsequent confession was not voluntary because any evidence that the defendant "was threatened, tricked, or cajoled into a waiver will . . . show that the defendant did not voluntarily waive his privilege [against self-incrimination]." *Id.* at 27, 501 P.2d at 1052. In so ruling, the court declared that the *Miranda* "warning was meaningless after the defendant was told that parts of his statement would not be used against him and that the focus of attention was not upon him, but upon" his alleged co-conspirator. *Id.* at 28, 501 P.2d at 1053.

Similarly, in *Porter v. State*, 143 Ga. App. 640, 239 S.E.2d 694 (Ga. Ct. App. 1977), the Georgia Court of Appeals reversed the trial court's admission of a confession obtained after the investigators misrepresented how the defendant's statements would be used. In that case, the investigator read the defendant his *Miranda* rights and then told the defendant that his statements would not be used against him and that the interview was being recorded as an aid in developing the investigator's file. *Id.* at 642, 239 S.E.2d at 696. The court ruled that a "confession given under such a pretense may not be admitted against the confessor." *Id.*

More recently, the Ninth Circuit Court of Appeals ruled in *United States v. Preston*, 751 F.3d 1008 (9th Cir. 2014), that the police's deception about how the defendant's statements would be used was a significant factor in the involuntary nature of his confession. There, the police, while interrogating the defendant, suggested that his statements would not be used against him if he confessed. *Id.* at 1027. According to the court, this type of deception that went beyond the facts of the case was impermissible, and it ruled that the trial court erred in admitting the defendant's confession. *Id.* at 1027-28; *see also, Henry v. Kernan*, 197 F.3d 1021, 1027-28 (9th

Cir. 1999) (ruling that police's "slippery" tactic of conveying the impression that statements would not be used against defendant deceived him into confessing); *People v. Parada*, 188 Colo. 230, 232-33, 533 P.2d 1121, 1122 (1975) (affirming exclusion of confession induced by promise not to use against defendant).

In this case, the investigators' deception regarding the use of Mr. Collins's statements are nearly identical to the coercive tactics involved in the cases discussed above. Their promises to Mr. Collins that his statements would not leave the room and that the video recording would be placed only in their files conveyed to him that whatever he said would not be used against him. Moreover, they rendered the previous *Miranda* warnings meaningless and ineffective. Thus, Mr. Collins did not knowingly waive his privilege against self-incrimination, and his statements were not made voluntarily. The trial court, therefore, erred in admitting his statements into evidence.

B. Promises of Leniency.

As stated above, a statement may not be obtained by "any sort of threats . . . [or by] any direct or implied promises, however slight." *Miller*, 375 S.C. at 386, 652 S.E.2d at 452. "A statement induced by a promise of leniency is involuntary only if so connected with the inducement as to be a consequence of the promise." *State v. Peake*, 291 S.C. 138, 139, 352 S.E.2d 487, 488 (1987).

Here, Mr. Collins statements were not voluntary because they were induced by implied promises of leniency if he cooperated in the interview and threats of dying in prison if he did not. Specifically, the investigators conveyed that the focus of their investigation was Ms. Cohen and that Mr. Collins could "save" himself if he provided information that could lead to her prosecution. (R. p. 828, State Ex. DVD 2, 7:00-8:00, DVD 3, 23:40-24:05.) One of the investigators said that he "wanted" Ms. Cohen but that if Mr. Collins was not truthful in the interview then he would

come back to get Mr. Collins and that Mr. Collins would likely die in prison. (R. p. 828, State Ex. 3, DVD 3, 21:00-21:45.) The investigator then assured Mr. Collins: "It's not you I want; it's Marissa. I promise my right hand to God." (R. p. 828, State Ex. 3, DVD 3, 22:10-22:20) (emphasis added).

Shortly after the investigators made these threats and promises, Mr. Collins began making incriminating statements. Yet when he was short on providing details or if the investigators believed he was not telling the whole truth, the investigators encouraged him to "save" himself by providing fully truthful answers. (R. p. 828, State Ex. 3, DVD 2, 7:00-8:00.) They also said they were there to help him but that they would not speak up for him if he wasn't telling the truth. (R. p. 828, State Ex. 3, DVD 2, 8:00-8:30.) Overall, the investigators created the unmistakable impression that Mr. Collins could "save" himself from dying in prison if he confessed to his role in burning the home.

These empty promises of leniency for confessing and implied threats of harsh sentencing are precisely the types of coercion that the South Carolina Supreme Court declared improper in *Peake*. In that case, the police officer suggested to the defendant that the state would not seek the death penalty if he gave a statement. *Id.* at 139, 352 S.E.2d at 488. The court concluded that the police officer's suggestion was tantamount to a promise of leniency and ruled that it rendered the statement involuntary as a result. *Id.*

The coercive nature of the investigators' promises of leniency and threats of harsh punishment is compounded with other promises that they would not use his statements against him. Together, they created the impression that his statements were needed to aid the prosecution of Ms. Cohen and that they would not be used against him because he could save himself by

providing information against her. As a result, they rendered his statements involuntary, and the trial court erred in admitting them.

C. Intelligence.

Although mental deficiency alone is not sufficient to render a confession involuntary, it is a factor to be considered along with other attendant facts and circumstances in determining the voluntariness of a confession. *Doby*, 273 S.C. at 709, 258 S.E.2d at 899. As the court explained in *Preston*, those who are intellectually disabled are more susceptible to deceptive interrogation practices:

> "Because of their cognitive deficits and limited social skills, the mentally retarded . . . often lack the ability to appreciate the seriousness of a situation." Steven A. Drizin & Richard A. Leo, *The Problem of False Confessions in the Post-DNA World*, 82 N.C. L. Rev. 891, 919-20 (2004). "Under interrogation, they are not likely to understand that the police detective who appears to be friendly is really their adversary or to comprehend the long-term consequences of making an incriminating statement." Jon B. Gould & Richard A. Leo, *One Hundred Years Later: Wrongful Convictions After a Century of Research*, 100 J. Crim. L. & Criminology 825, 847 n.119 (2010). They fail "to understand the context in which interrogation occurs, the legal consequences embedded in the rules or the significance of confessing." Cloud et al., *supra*, at 501. In particular, research shows that the intellectually disabled are "significantly more likely . . . to believe the suspect will be allowed to go home after making a confession" to a serious crime. Gudjonsson, *supra*, at 326. So being told falsely that, after a confession, one could simply "move on," or that the confession would be kept confidential, is likely to have a considerably greater impact on a person with serious intellectual impairments, such as [the defendant], than on an individual of normal intelligence.

751 F.3d at 1027.

In this case, Mr. Collins's low level of education, recent stroke, and cognitive impairments, when considered along with the investigators' other coercive interrogation tactics, demonstrate that his confession was not voluntary. Mr. Collins's intellectual challenges made it difficult for

him to reconcile the *Miranda* warning with the investigators' inconsistent representations that his statements would not be used against him. (R. p. 250, line 23-p. 252, line 13.) Also, Mr. Collins likely believed the investigators' assurances that they were there to help him and that they were focused on getting information from him to aid the prosecution of Ms. Cohen without fully appreciating that they were laying traps that would lead to his own conviction. Similarly, the investigators' promises that he would be allowed to go home after the interview further created the impression that his statements would not result in the severe sentence that he ultimately received. (R. p. 828, State Ex. 3, DVD 2, 10:30-11:00.) Overall, Mr. Collins's cognitive impairments deprived him of the ability to provide a voluntary waiver of his right against self-incrimination when faced with the deceptive tactics of experienced and well-trained interrogators.

D. Length of Interrogation; Physical Condition; Deprivation of Food and Sleep.

Finally, the length of the interrogation and Mr. Collins's physical and mental condition contributed to the involuntary nature of his statements. The investigators convinced Mr. Collins to come to the police station to retrieve his phone when they actually planned to interrogate him when he arrived. (R. p. 188, line 2-p. 191, line 12.) They then proceeded to interrogate him for nearly three and a half hours although he had not eaten since the night prior. (R. p. 828, State Ex. 3, DVD 2B, 30:45-30:58.) He complained of physical ailments and informed the investigators that he had a hard time getting to sleep the night before. (R. p. 828, State Ex. 3, DVD 1, 3:00-5:30.) When he tried to explain that his memory was not good, they interrupted him and would not let him finish his statements. (R. p. 828, State Ex. 3, DVD 3, 18:00-19:00; R. p. 209, lines 5-13.) Although the investigators informed Mr. Collins that he would be able to leave the police station after the interview, they never informed him that he was free to leave at any time during

the interview. In fact, at one point, the investigators informed him that he could not leave the interrogation room. (R. p. 240, lines 7-19; R. p. 245, lines 4-9.)

Under these conditions, Mr. Collins's resolve was broken, and he eventually succumbed to the pressure exerted by the investigators so that the interview would end. The video recording shows that Mr. Collins became increasingly confused as the interrogation continued. (R. p. 828, State Ex. 3, DVD 2-2B.) He began by insisting on his innocence. (R. p. 196, line 25-p. 197, line 6.) But after the investigators assured Mr. Collins that what he told him would not leave the room and that their focus was on Ms. Cohen, he began making incriminating statements, albeit in a rambling and incoherent manner. (R. p. 828, State Ex. 3, DVD 2-2B.) He could not remember details, and those that he did claim to remember were often inconsistent. (*Id.*) He got confused about Ms. Cohen's real name, at one time claiming he only knew her as Tina and then calling her Marissa just a few minutes later. (R. p. 828, State Ex. 3, DVD 2B, 5:00-5:30, 15:00-15:15.) Mr. Collins was obviously providing information that he believed investigators wanted to hear, which the investigators acknowledged during the interview. (R. p. 828, State Ex. 3, DVD 2, 22:55-23:20.)

All of this demonstrates that Mr. Collins's will was overborne by the investigators' deception, the length of interrogation, and his impaired physical and mental condition and that he was saying whatever he could to end the interview and get home, as the investigators had promised him. (R. p. 828, State Ex. 3, DVD 2, 10:30-11:00.) Thus, the totality of circumstances reveals that Mr. Collins's confession was not given voluntarily.

II. The trial court erred by not requiring further evaluation of Appellant's competency based on the examiners' conclusion that there was indication of intellectual disabilities.

Prior to trial, the circuit court ordered that Mr. Collins undergo a competency evaluation pursuant to *State v. Blair*, 275 S.C. 529, 273 S.E.2d 536 (1981), and S.C. Code Ann. § 44-23-410. Under Section 44-23-410(A), whenever a circuit court judge has reason to believe that a defendant is not fit to stand trial because he lacks capacity to understand the proceedings against him or to assist his own defense because of mental capacity, the judge shall order examination of the defendant. The examination should be conducted by the Department of Mental Health ("DMH") if the person is suspected of having a mental illness or by DDSN if the person is suspected of having an intellectual or related disability. § 44-23-410(A). If the examiners designated by DMH find indications of an intellectual or related disability but not mental illness, they should not render an evaluation on the person's mental capacity but should recommend that the person be evaluated by DDSN. § 44-23-410(D).

In this case, the trial judge erred in failing to order further evaluation based on the indications that Mr. Collins suffered from an intellectual disability. The judge acknowledged that the competency examiners found indications of "some intellectual disabilities." (R. p. 125, lines 16-22.) Under S.C. Code Ann. § 44-23-410(D), those indications alone required that the examiners not opine on Mr. Collins's competency to stand trial. Instead, the matter should have been referred to DDSN. But the trial judge refused to do so because he found no indication of "mental retardation." (R. p. 126, line 20-p. 127, line 4; R. p. 160, line 10-p. 161, line 3.)

By refusing to order further evaluation of Mr. Collins, the judge violated the clear and unambiguous requirements of S.C. Code Ann. § 44-23-410(D). In disregarding the indications of "intellectual disability" and finding no indication of "mental retardation," the judge seemed to

make a distinction between "intellectual disability" and "mental retardation." However, any such distinction is in error under the law because "intellectual disability" and "mental retardation" have the same meaning. *State v. Stanko*, 402 S.C. 252, 283, 741 S.E.2d 708, 724 fn. 1 (2013). As a result, Mr. Collins should have been evaluated further by DDSN because of the indications of an intellectual disability (R. p. 29, line 21-p. 37, line 24; R. p. 44, line 17-p. 46, line 10.), and the court abused its discretion in failing to order it. *See State v. Evans*, 309 S.C. 471, 424 S.E.2d 512 (Ct. App. 1992) (reversing and remanding conviction where preliminary indications of mental retardation required further competency evaluation under § 44-23-410).

CONCLUSION

For the foregoing reasons, Mr. Collins respectfully requests that the Court reverse his conviction based on his involuntary confession and remand the matter for further evaluation of competency to stand trial under S.C. Code Ann. § 44-23-410.

Respectfully submitted,

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October 21, 2019
Charleston, SC

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of General Sessions

Larry B. Hyman, Jr., Circuit Court Judge

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

The State, ...Respondent,

v.

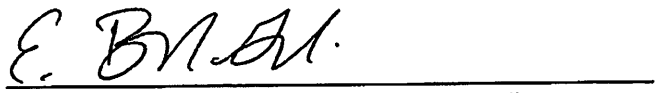
Randy Collins,.....Appellant,

PROOF OF SERVICE

This is to certify that I have this day served counsel for the Respondent in the foregoing matter with a copy of the foregoing ***Final Brief of Appellant*** by depositing the same in the United States Mail with adequate postage affixed thereon to ensure delivery, addressed as follows:

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STATE OF SOUTH CAROLINA
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APPEAL FROM GEORGETOWN COUNTY
The Honorable Larry B. Hyman, Circuit Court Judge

Appellate Case No. 2018-002056

THE STATE, Respondent,

v.

RANDY COLLINS, Appellant.

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STATEMENT OF ISSUES ON APPEAL

I.

Whether the trial judge properly admitted Appellant's voluntary statement when Appellant agreed to be interviewed by law enforcement, where he waived his rights to an attorney, where he was given multiple breaks during the interview, where he admitted he was not threatened by law enforcement, and ultimately acknowledged at trial that his statement was true?

II.

Whether the trial judge abused his discretion by refusing to order a further evaluation of Appellant by the Department of Disabilities and Special Needs when the examiners appointed by the Department of Mental Health found that Appellant did not suffer from an intellectual disability, and therefore any further examination was unnecessary?

STATEMENT OF THE CASE

In August 2014, the Georgetown County Grand Jury indicted Appellant for one count of arson, first degree, one count of criminal conspiracy, and one count of murder. On November 5-9, 2018, a jury trial was held in the Georgetown County Court of General Sessions with the Honorable Larry B. Hyman, presiding. Appellant was represented by Ralph Wilson, Jr., Esquire. The State was represented by Assistant Solicitors Alicia Richardson and Randerson Stephens of the Fifteenth Circuit Solicitor's Office. The State proceeded to trial on the charges of arson, first degree and criminal conspiracy, but declined to proceed with the murder charge. At the conclusion of trial, the jury convicted Appellant of both counts. Following the verdict, the trial judge sentenced Appellant to thirty years' imprisonment for arson, first degree and five years' imprisonment for criminal conspiracy. Each sentence ran concurrently with the other resulting in an aggregate term of thirty years' imprisonment. Appellant then timely served a notice of appeal and an initial brief.

STATEMENT OF FACTS

In the early hours of March 29, 2014, a trailer located at 10 James Drive in the town of Andrews, South Carolina was set on fire. (R 307-09). First responders were initially told the trailer was abandoned and no one lived in it. (R. 309, 313, 316). After the fire was extinguished, firefighters entered the home and found the body of a twelve year-old boy inside. (R. 316). The body was identified as David "Syience" Coombs. Coombs' cause of death was smoke inhalation. (R. 600). Coombs was Marissa Cohen's son. Cohen arrived at the scene of the fire shortly after first responders. Multiple first responders noted Cohen was acting unusually calm, and seemed unaffected after learning of her child's death. (R. 321, 329-30, 336). Loretta Miller witnessed Cohen's behavior at the scene. Miller reported that when Cohen was informed that her son was killed she made a phone call to Appellant. (R. 614). According to Miller, Cohen said "Randy, my baby's dead. My baby Syience dead on the floor." Miller heard Appellant respond "You got to live with that." (R. 614, lines 13-14). Earlier that evening at approximately 8:30 pm, Coombs went to a birthday party at the local recreation center. Coombs and his friend, Ricky Nelson, left the party at approximately 12:30 am. Coombs told Nelson he was going home to check on his mother, get some clothes, and then he would sleep over at Nelson's house. (R. 301). Nelson waited for Coombs to arrive at his house but eventually fell asleep.

In February 2014, Cohen applied for a $25,000 contents-only insurance policy on the trailer at 10 James Drive. (R. 348). Cohen filed a claim with the insurance company on April 7, 2014. (R. 351). The insurance company declined to pay the claim. (R. 354). Investigator Melvyn Garrett of the Georgetown County Sheriff's Office received an anonymous tip that Cohen and Appellant were involved in setting the fire. (R. 134, 665-66). As a result of this tip, Garrett spoke with gas station attendant Charlene Scott. Scott reported that Cohen bought $20 worth of

kerosene the night before the fire. (R. 372-73). Earlier in the week of the fire, Cohen began moving furniture and other items out of the trailer into a storage unit. (R. 309, 366-67, 377). Cohen asked Benjamin "Mano" Brown and Everett Langley to help her move. After Brown had finished moving the items out of the trailer, Cohen told Brown she was going to burn down the trailer. (R. 377).

Garrett spoke with Appellant for the first time on April 9, 2014. Appellant allowed Garrett to write a statement on his behalf which Appellant subsequently signed. (R. 667-69, 826). Appellant denied any role in setting the fire and claimed he was with his nephew, James Miller[1], from 9:00 PM to 3:00 AM at Carnell's Club. (R. 668, 826). After his initial interview with Appellant, Garrett executed search warrants for the phone records of Appellant and Cohen. (R. 671-72).

Law enforcement discovered that Appellant and Cohen exchanged a total of six phone calls in the hours before and after the fire. (R. 529-30). Three phone calls occurred before the fire in the afternoon and evening of March 28, 2014. (R. 529). An additional three phone calls occurred between 2:30 AM and 3:30 AM on March 29, 2014. (R. 529-30).

Garrett and Agent Scott Hardee of SLED arranged for Appellant to retrieve his phones from the Andrews town hall on June 4, 2014. Appellant agreed to stay and talk with Hardee and Garrett about the fire. (R. 673). Appellant was read his Miranda rights and he signed a form indicating he understood and waived his rights. (R. 534, 827). Appellant gave a statement to Hardee and Garrett acknowledging his involvement with the fire. Appellant initially denied any involvement with the fire, but gradually acknowledged he was with Miller when Miller set the

[1] James Miller was eventually charged as a codefendant of Marissa Cohen and Appellant. Prior to Appellant's trial, Miller was killed. Devon Coombs, another son of Marissa Cohen and older brother of David "Syience" Coombs, plead guilty to killing Miller prior to the start of Appellant's trial. (R. 182, 611).

fire. (State's Exhibit #3, R. 829-30). Appellant said Cohen approached him about burning down her trailer and offered him $5,000 for his help. Appellant told Miller about the offer. Miller seemed interested in the offer because he needed some money. On the night of the fire, Appellant and Miller went to the trailer together. According to Appellant, Miller lit a piece of paper on fire and threw it through a window while Appellant looked on. (State's Exhibit #3, R. 829-30). Appellant denied lighting the match that started the fire, but admitted he was at the trailer with Miller. Garrett wrote a statement on Appellant's behalf, which Appellant reviewed and signed. (R. 829-30).

Prior to trial, a mental evaluation of Appellant was ordered by the Honorable Benjamin Culbertson. Appellant was evaluated at the Medical University of South Carolina by Dr. Abby Mulay and Dr. Emily Gottfried. Mulay concluded that Appellant did not have a mental illness nor did he have an intellectual disability. (R. 63, 838-46). Both Mulay and Gottfried concluded Appellant could assist his lawyer at trial and was competent to stand trial. (R. 63, 111, 838-46).

At trial, the State tendered Agent Brian Wright of SLED as an expert in fire origin and cause. Wright classified the fire as incendiary and determined it originated from accelerant that was poured on the floor of the trailer. (R. 487). The State also called a handwriting expert to authenticate a letter dated November 11, 2014 from Cohen to her older son Devon. Cohen made the following statements regarding Appellant in the letter: "I heard Randy has a bond. I wish that I had some backup and Randy did have a bond just to deal with him" and "Do you think that I'm going to get life? I hope not. I need a gun and meet up with Randy and Mano." (R. 652, lines 2-4, lines 9-11).

The State also called Cohen's cousin, Rose Collins as a witness. Collins testified that she traveled with her husband to Andrews the day after the fire and met with Appellant at his house.

When she arrived at Appellant's home, Appellant approached her vehicle and said "We fucked – everything's f'd up. It wasn't supposed to go down like that, nephew. We, we f'd up." (R. 411, lines 12-13). Appellant declined to testify in his own defense. At the conclusion of trial, Appellant was convicted of both counts.

STANDARD OF REVIEW

I.

"It has been uniformly held a confession may be introduced upon proof of its voluntariness by preponderance of the evidence." State v. Washington, 296 S.C. 54, 55, 370 S.E.2d 611 (1988) (quoting State v. Smith, 268 S.C. 349, 354, 234 S.E.2d 19, 21 (1997)). "On appeal, the conclusion of the trial judge as to the voluntariness of a statement will not be reversed unless so erroneous as to show an abuse of discretion." State v. Miller, 375 S.C. 370, 378, 652 S.E.2d 444, 448 (Ct. App. 2007). "When reviewing a trial court's ruling concerning voluntariness, this court does not reevaluate the facts based on its own view of the preponderance of the evidence, but simply determines whether the trial court's ruling is supported by any evidence." State v. Saltz, 346 S.C. 114, 136, 551 S.E.2d 240, 252 (2001).

II.

"The defendant bears the burden of proving his lack of competence by a preponderance of the evidence, and the trial judge's ruling will be upheld on appeal if supported by the evidence and not against its preponderance." State v. Weik, 356 S.C. 76, 81, 587 S.E.2d 683, 685 (2002).

ARGUMENT

I.

The trial judge properly admitted Appellant's voluntary statement because Appellant agreed to be interviewed by law enforcement, waived his rights to an attorney, was given multiple breaks during the interview, admitted he was not threatened by law enforcement, and acknowledged at trial that his statement was true.

Appellant contends the trial judge erred in admitting his confession because it was not voluntarily given. Appellant argues the statement was induced by deception, promises of leniency, and threats of punishment. Appellant's argument is meritless. When considering the totality of the circumstances, Appellant's confession was voluntary. Appellant was not in custody and was free to leave the interrogation at any time. (R. 146-47, 228). Appellant was read his Miranda rights and he waived those rights in writing. (R. 144, 827). Appellant was told that he would be free to go at the end of the interview and would not be arrested no matter what he said. (R.147, 677, Court's Exhibit #3). Appellant was allowed to go home at the end of the interview. Appellant was given multiple breaks to use the bathroom and smoke a cigarette and was allowed to drink a soda during the interview. (R. 145-46, 232-34). Appellant was not promised any specific relief and was only told that law enforcement would speak with the solicitor on his behalf. (R. 147, State's Exhibit #3, disk 2, part 2). Appellant's statement implicated himself, but ultimately was self-serving and attempted to place blame on his co-defendant, James Miller. (R. 829-30). Finally, when Appellant testified on his own behalf at the Jackson v. Denno hearing, he admitted that his written statement was true. (R. 265). When each of the aforementioned circumstances is considered, the trial judge did not abuse his discretion in finding Appellant's confession was voluntary.

"[A] defendant in a criminal case is deprived of due process of law if his conviction is founded, in whole or in part, upon an involuntary confession." Jackson v. Denno, 378 U.S. 368,

376 (1964). A defendant has a constitutional right to object to "the use of the confession and to have a fair hearing and a reliable determination on the issue of voluntariness." Denno 378 U.S. at 377. "The process for determining whether a statement is voluntary, and thus admissible, is bifurcated; it involves determinations by both the judge and the jury." Miller, 375 S.C. at 379, 652 S.E.2d at 448. "Initially, the trial judge must conduct an evidentiary hearing in the absence of a jury. At this phase of the proceedings, the State must show the statement was voluntarily made by a preponderance of the evidence." State v. Breeze, 379 S.C. 538, 543, 665 S.E.2d 247, 250 (Ct. App. 2008). "If the statement is found to have been given voluntarily, it is then submitted to the jury, where its voluntariness must be established beyond a reasonable doubt. Miller, 375 S.C. at 379, 652 S.E.2d at 448.

"In determining whether a confession was given 'voluntarily', this Court must consider the totality of the circumstances surrounding the defendant's giving the confession." State v. Pittman, 373 S.C. 527, 566, 647 S.E.2d 144, 164 (2007). Ultimately, an appellate court must decide whether "'a defendant's will was overborne' by the circumstances surrounding the giving of a confession." Dickerson v. U.S., 530 U.S. 428, 434 (2000) (quoting Schneckloth v. Bustamonte, 412 U.S. 218, 226 (1973)). Appellate courts in South Carolina have recognized a variety of factors to consider in the totality of the circumstances analysis. Those factors include: "background, experience, and conduct of the accused; age; length of custody; police misrepresentations; isolation of a minor from his or her parent; threats of violence; and promises of leniency." Miller, 375 S.C. at 386, 652 S.E.2d at 452.

"A statement induced by a promise of leniency is involuntary only if so connected with the inducement as to be a consequence of the promise." State v. Rochester, 301 S.C. 196, 200, 391 S.E.2d 244, 246-47 (1990). "[M]isrepresentations of evidence by police, although a relevant

fact, do not render an otherwise voluntary confession inadmissible." State v. Von Dohlen, 322 S.C. 234, 244, 471 S.E.2d 689, 695 (1996), overruled on other grounds by State v. Burdette, Op. No. 27910 (S.C. Sup. Ct. filed July 31, 2019) (Shearouse Adv. Sh. No. 31 at 8). "A defendant's mental condition in and of itself does not render a statement involuntary in violation of due process." State v. Hill, 361 S.C. 297, 306, 604 S.E.2d 696, 701 (2004). The voluntariness of a waiver of rights "can be discerned from the fact that the statement which followed it was self-serving and was an attempt on [a defendant's] part to cast the blame on his co-defendant." State v. Pendergrass, 270 S.C. 1, 8, 239 S.E.2d 750, 753 (1977).

Because Appellant has alleged multiple reasons why his confession was involuntary, it is instructive to address each reason individually.

Misrepresentation and Deception

Appellant asserts that he was coerced into making an inculpatory statement because law enforcement misled him by suggesting that no one else would see the tape of his interview. Agent Hardee did make one statement early in Appellant's interview that whatever Appellant told him "aint gonna leave this room." (State's Exhibit #3, Disk 1, part 1, 21:10-21:35). Appellant correctly asserts that the question of whether a statement can be considered voluntary after police make a promise of confidentiality is an issue of first impression in South Carolina. The State concedes that at the very least Hardee's statement was problematic and would be an improper tactic to use if such a promise was used in a repeated manner[2]. However, Hardee only made this statement one time approximately 21 minutes into a three and a half hour interview. Neither Hardee nor Garrett repeated this statement or anything similar to it for the remainder of

[2] Despite the inappropriate nature of Hardee's statement, Appellant acknowledged on cross-examination during the Jackson v. Denno hearing that he was familiar with Miranda rights and knew that his statements could be used against him in court. (R. 261-62).

the interview. Furthermore, Hardee's statement did not immediately precede Appellant's confession. Appellant continued to deny any involvement in the crime for at least one hour after Hardee made the statement[3]. In fact, as Appellant acknowledges in his brief, even in Appellant's confession he continued to downplay his responsibility for the fire and claimed he did not actually set the fire. (Initial Brief of Appellant 10). Appellant consistently claimed that Miller started the fire and he just happened to be there watching. (R. 829-30). Therefore, it is unlikely that one statement by Hardee which occurred approximately three hours before Appellant's written confession overbore Appellant's will. When examining the totality of the circumstances, Hardee's lone statement had little effect on Appellant's eventual confession and certainly did not overbear Appellant's will to the point of making the confession involuntary.

Appellant cites three cases from other states to support his position. Each case cited by Appellant has a similar fact pattern to the current case but they also differ in important ways. In Redmond v. People, Redmond was told by law enforcement that the police would only take notes on the portion of his confession that involved his co-defendant and that anything he told them that didn't involve his co-defendant would not be used against him. Redmond v. People, 180 Colo. 24, 26, 501 P.2d 1051, 1052 (1972). The Colorado Supreme Court ruled that it was impossible to tell from the confusing agreement law enforcement proposed which portions of the confession would be used against Redmond and which ones wouldn't. The situation in Redmond is not present in the current case. No promise was made to Appellant about some portions of his confession being used against him, but others not being used against him.

[3] It is unclear when Appellant first began to acknowledge his role in the crime because the video recorder used by Agent Hardee ran out of power after approximately 87 minutes. (R. 231-32, 676, State's Exhibit #3). When the recording resumes, Appellant is drawing a diagram of the trailer and explaining the chain of events on March 29, 2014 to Hardee and Garrett.

In Porter v. State, Porter was explicitly told immediately after his Miranda warnings were read to him that his statement would not be used against him, but would instead be used to assist a secretary in typing notes for an interview. Porter v. State, 143 Ga. App. 640, 642, 239 S.E.2d 694, 696 (Ga. Ct. App. 1977). Here, Appellant was read his Miranda rights and no such promise was made to him. Hardee did not make his statement regarding information provided by Appellant not leaving the room until 21 minutes after the interview began. The final case cited by Appellant, U.S. v. Preston, features an extreme example of coercion by law enforcement that would not be acceptable in any court in this country. In addition suggesting that if he confessed Preston could move on with his life after apologizing to the victim, law enforcement also presented him with "the choice of confessing to a heinous crime or to a less heinous crime; rejected his denials of guilt; instructed him on the responses they would accept; and fed him the details of the crime to which they wanted him to confess." U.S. v. Preston, 751 F.3d 1008, 1010 (9th Cir. 2014). None of the aforementioned coercive conduct in Preston took place in this case. Neither Hardee nor Garrett promised Appellant he would not be prosecuted. Law enforcement merely promised Appellant that he would be allowed to go home at the conclusion of the interview and they fulfilled that promise.

Promises of Leniency

Appellant next asserts that his confession was involuntary because of promises of leniency made to Appellant by law enforcement. Specifically, Appellant argues that law enforcement encouraged Appellant to save himself by confessing to the crime and implied that he would be spared from harsh punishment if he cooperated. Appellant's assertions are not supported by the record. Appellant was not encouraged to save himself by confessing to the crime, but rather Appellant was encouraged not to lie to save his family member, James Miller.

There are two relevant portions of the interview where law enforcement encourages Appellant not to lie to protect Miller. The first exchange occurs when law enforcement is asking Appellant about Miller's role in the fire. The following exchange occurs:

> Garrett: See I understand, this is what I understand. I understand that James is your nephew
>
> Appellant: Mm hmm
>
> Garrett: That you guys are family, but you got to understand that trying to lie to save him or you at this point is not going to work. Okay? So we need to know the truth. Now only thing you got to worry about is Randy.

(State's Exhibit #3, disk 2, part 1 7:00-7:40). The second exchange occurred a few minutes later:

> Garrett: Did you see [Miller] or did you not see [Miller]?
>
> Hardee: I know your stomach is tore up right now, but you're getting this off your chest.
>
> Garrett: And, and this is about you. I mean you know, again, you cannot save anybody but yourself. I'm sorry, but that's just the fact of the matter. So, did you see, did you, what happened?

(State's Exhibit #3, disk 2, part 1, 13:00-13:30). Appellant was not told to save himself by confessing to the crime, but he was encouraged not to lie to protect a family member.

Appellant was not promised anything in exchange for his confession. Garrett and Hardee did not say they would speak to the Solicitor on Appellant's behalf until after Appellant had already confessed. (State's Exhibit #3, disk 2, part 2). Even when Hardee and Garrett said they would speak to the Solicitor, no specific promises were made. Garrett told Appellant: "I'm going to speak with the Solicitor and try to get you as much help as I can okay?" (State's Exhibit #3, disk 2, part 2 29:00-29:05). Similarly, Hardee told Appellant: "Like I said, we're not making any promises, but we will go talk to the Solicitor. I'll go talk to the Solicitor with [Garrett] and let them know what happened today." (State's Exhibit #3, disk 2, part 2 29:45-30:00). Not only

did law enforcement not promise Appellant anything other than speaking to the solicitor on his behalf, but they did not make that promise until after Appellant had already confessed. Therefore, Appellant's confession had nothing to do with a promise of leniency by law enforcement.

Contrary to Appellant's assertion, this case is not similar to State v. Peake. In Peake a police officer guaranteed Peake that the State would not seek the death penalty if Peake gave a statement. State v. Peake, 291 S.C. 138, 139, 352 S.E.2d 487, 488 (1987). Our Supreme Court ruled Peake's statement was a product of the officer's promise of leniency. Here, Garrett and Hardee merely promised to speak to the solicitor on Appellant's behalf after he had already given a confession.

Appellant's Lack of Intelligence

Appellant next argues that his lack of intelligence rendered his confession involuntary. Appellant makes a conclusory argument that because he did not go far in school and suffered a recent stroke, his statement could not have been voluntary. In support of this contention, Appellant cites to his self-serving testimony given at the Jackson v. Denno hearing. In the relevant portion of Appellant's testimony, Appellant claims to not remember signing his Miranda waiver and that he did not understand his Miranda rights. (R. 250-52). However, on cross-examination Appellant admitted he was familiar with his Miranda rights and recited two of those rights. When asked what the police say when they arrest someone, Appellant responded "You're under arrest. You have the right to remain silence" and "Any, any chance you talk will and could be used against you in a court of law." (R. 261, lines 21-22, 24-25). Not only did Appellant acknowledge he understood his Miranda rights, but he admitted when asked by the trial judge,

that he was not threatened by Hardee and Garrett and his written statement was true. (R. 264-65, 829-30).

Appellant's testimony lacked credibility because of its' self-serving nature and its' many contradictions. Appellant demonstrated an ability to remember facts that were favorable to him and not remember unfavorable ones. Indeed, the trial judge noted Appellant's selective memory in making his ruling regarding the admissibility of the confession. The trial judge remarked "he only forgets things that may be harmful to him." (R. 275, lines 1-2). Appellant's ability to rationalize his behavior and deflect blame to others demonstrates that he had the requisite intelligence to waive his rights and make a voluntary statement.

Even if this Court finds Appellant's testimony credible, Appellant still failed to present any evidence regarding his lack of intelligence. The only expert testimony presented to the trial judge came from the State's experts, who both opined that Appellant was competent to stand trial. Appellant did not present any expert testimony of his own regarding his mental condition. Therefore, the only evidence in the record regarding Appellant's lack of intelligence was his own self-serving testimony and even that testimony lacked credibility because of its' inherent contradictions.

Length of Interrogation

Finally, Appellant argues his statement was involuntary because of the length of the interrogation, Appellant's lack of access to food, and Appellant's lack of sleep. The record plainly contradicts Appellant's argument. After picking up his phones, Appellant agreed to remain at the town hall and answer the investigators' questions. (R. 673). Appellant was cooperative throughout the interview and even offered to continue to help law enforcement with their investigation at the end of the interview. (State's Exhibit #3, disk 2, part 2, 28:10-28:30).

Appellant was allowed multiple bathroom breaks as well as cigarette breaks. (R. 145-46, 232-34). Appellant was allowed to drink a soda by law enforcement, and although Appellant did not have any food with him, Garrett testified that law enforcement would have provided Appellant food if Appellant said he was hungry. (R. 145, 675-76). Appellant was not suffering from a lack of sleep. At the beginning of his interview with police, Appellant said he went to bed the previous night at 1:00 AM and got up at 10:00 AM. (State's Exhibit #3, disk 1, part 1, 5:00-5:30). Thus, Appellant got nine hours of sleep and was not sleep deprived. Finally, the overall length of the interview was not excessive when considering the number of breaks given to Appellant during the interview.

The facts of this case differ considerable from State v. Parker where this Court also considered whether a confession was voluntary under much more severe circumstances. Like Appellant, Parker was also subjected to a three and a half hour interview with law enforcement, but unlike Appellant, Parker was "in a car wreck, shot at by police, exposed overnight to the cold, and taken to the hospital." State v. Parker, 381, 381 S.C. 68, 93, 671 S.E.2d 619, 632 (Ct. App. 2008). Despite these harrowing circumstances, this Court held that Parker's statement was freely and voluntarily given. Id. Appellant did not face any of the same circumstances. Appellant got nine hours of sleep, had a soda to drink and was given bathroom breaks and cigarette breaks. When taking into consideration all of the circumstances of Appellant's interview with law enforcement, this Court should hold that Appellant's will was not overborne, his statement was voluntarily given, and the trial judge did not abuse his discretion in admitting the statement. Appellant's convictions and sentences should be affirmed.

II.

The trial judge did not abuse his discretion by refusing to order a further evaluation of Appellant by the Department of Disabilities and Special Needs when the examiners appointed by the Department of Mental Health found that Appellant did not suffer from an intellectual disability, and therefore any further examination was unnecessary.

Appellant next argues the trial judge erred by not ordering a further evaluation of Appellant's competency to stand trial by the South Carolina Department of Disabilities and Special Needs (DDSN). Appellant contends that Dr. Mulay and Dr. Gottfried found indications that Appellant had an intellectual disability and therefore should not have rendered an evaluation of Appellant's mental capacity. Rather, Appellant argues Mulay and Gottfried should have recommended that Appellant be referred to DDSN for further evaluation. Appellant's argument is without merit. Dr. Mulay and Dr. Gottfried did not find that Appellant had an intellectual disability. Therefore, it was appropriate for Dr. Mulay and Dr. Gottfried, in their role as examiners appointed by the Department of Mental Health (DMH), to render an opinion on Appellant's mental capacity. Furthermore, the trial judge's ruling that Appellant was competent to stand trial was supported by the evidence presented both in the experts' report and in their testimony during the pretrial hearing. Accordingly, the trial judge did not abuse his discretion in ruling that Appellant was competent to stand trial.

Whenever a trial judge has reason to believe that a person on trial before him lacks the mental capacity to understand the proceedings against them or to assist in their own defense, the trial judge shall order an examination by either DMH or DDSN. S.C. Code Ann. § 44-23-410(A)(1). If a defendant is suspected of having a mental illness, they shall be evaluated by examiners from DMH. However, if a defendant is suspected of having an intellectual disability, then they should be evaluated by DDSN. Id. If examiners from DMH:

> find indications of intellectual disability or a related disability but not mental illness, the department shall not render an evaluation on the person's mental capacity, but shall inform the court that the person is "not mentally ill" and recommend that the person should be evaluated for competency to stand trial by the Department of Disabilities and Special Needs.

S.C. Code Ann. § 44-23-410(D). Similarly, if examiners from DDSN find indications of mental illness, but not intellectual disability, they should not render an evaluation on a defendant's mental state but shall recommend to the court that DMH evaluate the defendant. S.C. Code Ann. § 44-23-410(D).

"A criminal defendant may not be tried unless he is competent." Godinez v. Moran, 509, U.S. 389, 396 (1993). "The test for determining competency to stand trial is whether the defendant has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and whether he has a rational as well as a factual understanding of the proceedings against him." Weik, 356 S.C. at 81, 587 S.E.2d at 685 (2002). "The defendant bears the burden of proving his lack of competence by a preponderance of the evidence, and the trial judge's ruling will be upheld on appeal if supported by the evidence and not against its preponderance." Id.

Here, Judge Culbertson ordered Appellant to be evaluated by DMH to determine if he was competent to stand trial pursuant to State v. Blair, 275 S.C. 529, 273 S.E.2d 536 (1981). (R. 19). Dr. Mulay and Dr. Gottfried were appointed by DMH after consulting with Dr. Alicia Hall of DDSN. Dr. Hall advised that any mental issues that Appellant suffered from were related to his 2013 stroke and not an intellectual disability. (R. 24-26, 838-46). Nonetheless, Dr. Mulay and Dr. Gottfried still considered whether Appellant suffered from an intellectual disability when conducting their evaluation. Mulay and Gottfried referenced the definition of intellectual disability as defined in the DSM-V. They noted "an intellectual disability is a 'disorder with inset

during the developmental period that includes both intellectual and adaptive functioning deficits in conceptual, social, and practical domains.'" (R. 843). Applying this definition to Appellant, the experts concluded: "Overall, [Appellant] does not demonstrate significant impairments in adaptive functioning." (R. 843). Mulay and Gottfried acknowledged that Appellant "[did] indicate some degree of impairment in general intellectual functioning" but because "he does not demonstrate impairments in the domain of adaptive functioning, a diagnosis of intellectual disability is not assigned." (R. 843).

After Appellant was evaluated, the trial judge held a hearing to determine Appellant's competency as required by Blair. The trial judge considered the report submitted by Mulay and Gottfried as well as their testimony. The experts' testimony mirrored the findings of their report. Mulay concluded that Appellant did not suffer from an intellectual disability nor did he suffer from mental illness. (R. 63, 67). Gottfried and Mulay each found that Appellant had a sufficient ability to work with his lawyer, he had a rational understanding of the charges against him, and he had a rational understanding of the court process and the roles of court personnel. (R. 60, 111). Each doctor concluded Appellant was competent to stand trial.

Appellant contends the trial judge found "some intellectual disabilities" in Appellant. (Initial Brief of Appellant 23). Appellant's assertion is contradicted by the record. The trial judge remarked "the doctors, nevertheless, find that there is – there are some intellectual disabilities or impairments. Let's call them impairments. However, [Appellant] functions quite well." (R. 125, lines 20-23). The record demonstrates the trial judge did not find Appellant had an intellectual disability. The trial judge mistakenly used the words "intellectual disability" as evidenced by the fact that he immediately corrected himself and used the word impairments. In fact, the record demonstrates the trial judge endeavored to be very clear in his ruling on Appellant's competency

to stand trial. During Mulay's testimony, the trial judge sought clarification by questioning Mulay directly as to whether an intellectual impairment was an indication of an intellectual disability. (R. 67-68). Mulay reiterated that despite finding intellectual impairments[4], there was no indication of an intellectual disability[5]. At the conclusion of the Blair hearing the trial judge made a detailed ruling. The judge ruled that: any deficiencies in Appellant were related to his 2013 stroke and did not require a referral to DDSN, neither doctor found an indication of an intellectual disability, and Appellant failed to prove by a preponderance of the evidence that he lacked the capacity to stand trial. (R. 126-27). The trial judge did not abuse his discretion in ruling that Appellant was competent to stand trial. Appellant's convictions and sentences should be affirmed.

[4] The findings of intellectual impairments or deficits primarily relate to evidence that Appellant did poorly in school as a child. The trial judge discounted this evidence and noted that it was "anecdotal." (R. 125, line 18). The other possible basis for the experts' findings of impairments was Appellant's low score on the Montreal Cognitive Assessment (MOCA). However, both doctors noted the MOCA is not a diagnostic tool, but rather a brief screening tool used to determine if further testing needs to be done on a particular patient. (R. 29-30, 36, 51, 99-100).

[5] In questioning Mulay at this point in the record, the trial judge used the term "mental retardation" rather than "intellectual disability". The trial judge previously asked Mulay whether the terms "mental retardation" and "intellectual disability" were synonymous and Mulay testified that they were. (R. 44). Appellant claims the trial judge erred by making a distinction between the two terms. The record contradicts Appellant's assertion and demonstrates the trial judge used the terms interchangeably because the terms were synonymous. (R. 44, 127).

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgments and convictions of the lower court be affirmed.

Respectfully submitted,

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October 3, 2019

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
The Honorable Larry B. Hyman, Circuit Court Judge

Appellate Case No. 2018-002056

THE STATE, Respondent,

v.

RANDY COLLINS, Appellant.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies the Final Brief of Respondent complies with Rule 211(b), SCACR.

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THE STATE, Respondent,

v.

RANDY COLLINS, Appellant.

PROOF OF SERVICE

I, Sally Ellison, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

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I further certify that all parties required by Rule to be served have been served. This third day of October, 2019.

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of General Sessions

Larry B. Hyman, Jr., Circuit Court Judge

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

The State, ...Respondent,

v.

Randy Collins,.....Appellant,

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ARGUMENT

I. Appellant's statements should not have been admitted because they were induced by deception regarding their use and promises of leniency, and Appellant was especially susceptible to these improper techniques because of his intellectual impairments.

A. Misrepresentations and Deception About the Use of Mr. Collins's Statements.

Before he was coerced into confessing, Mr. Collins was promised by law enforcement that his statements would not be used against him. In its initial brief, the State acknowledges that law enforcement's promise of confidentiality is "problematic" but nevertheless attempts to excuse this deceptive tactic by speculating as to its effect on Mr. Collins and advancing a legal standard that has never been accepted by any jurisdiction. The Court should reject the State's position and refuse to become the first court to sanction false promises of confidentiality made by law enforcement to induce a suspect into confessing.

Despite admitting that the investigators' promise of confidentiality was "problematic" and "inappropriate," the State claims this tactic would have been improper only if it "was used in a repeated manner." (Resp. Initial Br. p. 10.) Yet the State identifies no authority to support that proposition. And because the issue is one of first impression in South Carolina, the State would have the Court create out of whole cloth a rule that would tolerate – if not encourage – blatant deception by law enforcement as long as such deception is not repeated.

The State's one-free-lie rule conflicts with the holdings in decisions from other jurisdictions that reject without qualification or equivocation the interrogation tactics utilized against Mr. Collins. The State neither criticizes the reasoning in these decisions nor identifies any counter-authorities to support its position. So it attempts to distinguish those cases, but those attempts are unconvincing.

First, the State attempts to distinguish the present case from *Redmond v. People*, 180 Colo. 24, 501 P.2d 1051 (1972), by focusing on the fact that law enforcement in that case gave confusing instructions to the defendant that his statements would not be used against him but could be used against his purported co-conspirator. While law enforcement did not qualify the promise of confidentiality in this case as the interrogators in *Redmond* did, this distinguishing fact does not get the State very far. Rather than give a confusing or qualified promise about the use of his statements, the investigators in this case clearly promised Mr. Collins that the entirety of his statements would not leave the interrogation room. Accordingly, the Court is not presented with the difficult task of determining which parts of the statement were voluntary. Instead, it can make the much easier determination that all of Mr. Collins's statements made after the promise of confidentiality were not voluntarily given because they were induced by a false promise of confidentiality.

Second, the State distinguishes this case from *Porter v. State*, 143 Ga. App. 640, 239 S.E.2d 694 (Ga. Ct. App. 1977), by arguing that the promise of confidentiality in *Porter* occurred immediately after the defendant was read the *Miranda* warning; whereas, the promise of confidentiality in this case occurred approximately twenty minutes after the interview began.[1] Yet the State fails to explain why this distinction is material to the Court's analysis, and nothing in *Porter* suggests it was based on the immediate temporal proximity between the promise of confidentiality and the *Miranda* warning.

[1] The State also claims that Mr. Collins was not promised confidentiality when he was read his *Miranda* rights. However, there is no citation to the record to support that contention, and the video recording of the interrogation does not begin until after the *Miranda* warning was supposedly read to him. Therefore, the record does not support the State's assertion.

Instead, the *Porter* court based its ruling on the fact that the "clear thrust of the conversation [between the law enforcement agent and the defendant] is that [the defendant] is being told that his statement would *not* be used against him and it was being recorded just so the agent's secretary could type his notes." *Id.* at 642, 239 S.E.2d at 696 (emphasis original). Here, Agent Hardee's promises to Mr. Collins had the same import as those of the agent in *Porter*, which is that the statement would not be used against him and was being recorded solely for the agents' case files.

Ironically, though, the State also argues that the promise of confidentiality to Mr. Collins was ineffectual because it was not sufficiently close to the time of his confession. The State fails to acknowledge or attempt to reconcile its seemingly inconsistent argument that to render a confession involuntary a promise of confidentiality must be made immediately after the *Miranda* warning and immediately before the confession.

But this inconsistency is irrelevant because neither *Redmond* nor *Porter* establish that there is a magic window of time in which a false promise of confidentiality to a defendant is permissible, as the State's argument implicitly suggests. Instead, the cases reveal that, for a promise of confidentiality to be improper, it must precede the confession and must not be rescinded. As explained in *Redmond*, the court was swayed by the fact that the promise not to use the defendant's statements against him was never retracted by law enforcement. *Redmond*, 180 Colo. at 26, 501 P.2d at 1052. Here, Agent Hardee, like the investigators in *Redmond* and *Porter*, promised Mr. Collins that what he said would not leave the room and the video would be placed in the agents' file, and he never rescinded that promise.

Third, the State attempts to distinguish *U.S. v. Preston*, 751 F.3d 1008 (9th Cir. 2014), by asserting in conclusory fashion that the interrogation tactics used in that case were much more

extreme than those used against Mr. Collins. But a close examination of the tactics utilized by law enforcement in both cases reveals that they are shockingly similar.

In *Preston*, the court discussed the questioning technique in which the investigators exerted "repeated pressure to change answers inconsistent with guilt and adopt answers evidencing guilt instead." *Id.* at 1024. The investigators repeatedly rejected the defendant's "denials and equivocations" and asked him "the same questions over and over until he finally assented and adopted the details that the officers posited." *Id.* According to the court, "[s]uch acquiescence and willingness to 'shift' answers in response to interrogative pressure is common for the intellectually disabled, who, when presented with leading or suggestive questions, 'frequently seek to conform to the perceived desires of the interrogator.'" *Id.* (citing Stanley L. Brodsky & Allyson D. Bennett, *Psychological Assessments of Confessions and Suggestibility in Mentally Retarded Suspects*, 33 J. Psychiatry & L. 359, 363 (2005)). The court found that the defendant, in response to those techniques, "attempted to tell the officers what they wanted to hear" by shifting his initial denials to answers that met the officers' desires. *Id.*

The *Preston* court further noted that the officers coupled their interrogation techniques with other discouraged practices, such as promising leniency. For example, the officers misled the defendant by telling him "that they would not tell anyone else what he said, and that the confession would never leave the 'folder' or the United States Attorneys Office." *Id.* at 1026. Also, the officers told the defendant "that he was free to leave *after* he finished answering their questions, and threatened that they would keep returning until [the defendant] did so. In this way, the police paired the prospect of relentless questioning with false promises of leniency." *Id.* (emphasis original).

The investigators in this case used the exact same techniques against an individual with intellectual impairments just as the agents did in *Preston*. The investigators repeatedly rejected Mr. Collins's denials and asked him the same questions over and over until he finally assented and adopted the details that they posited. When Mr. Collins failed to provide details of his involvement to the satisfaction of the investigators, they suggested the answers to him. (R. p. 263, lines 6-24; R. p. 267, line 18-p. 268, line 2.) When he provided information that was clearly inconsistent with the crime, they convinced him that that information was incorrect and got him to retract that information. (R. p. 828, State Ex. 3, DVD 2, 37:30-38:00.) Mr. Collins repeatedly searched for the answers he believed the investigators wanted to hear to the point where the investigators even acknowledged it. (R. p. 828, State Ex. 3, DVD 2, 22:55-23:20.)

And just as the investigators in *Preston* told the defendant that he would be free to go after he answered their questions, the investigators in this case promised Mr. Collins that they were going to let him go home and would not arrest him after the interrogation. Mr. Collins even asked at one point if they were going to let him go home before he divulged information. Perhaps most importantly, the investigators in *Preston* made the same promise that the investigators made in this case, which is that the answers to the questions would remain in the file and would not be disclosed to anyone else.

In sum, there are several important similarities between *Preston* and the present case, and the State's attempt to distinguish it rings hollow. As the court explained in *Preston*, interrogating officers may sometimes make false representations concerning the crime or investigation, but they cannot make false promises, whether direct or implied, however slight. *Id.*, 751 F.3d at 1026 (citing *Hutto v. Ross*, 429 U.S. 28, 30 (1976)). Here, the investigators falsely promised Mr. Collins that his statements would not leave the room and the video of the interrogation would

remain in their files. As a result, the Court should find that Mr. Collins's consequent statements were not voluntarily given.

B. Promises of Leniency

The State also argues that the investigators made no promises of leniency or threats of harsh sentencing to extract Mr. Collins's statements. According to the State, the investigators merely said they would speak to the solicitor and try to get him as much help as they could after Mr. Collins confessed. In so doing, the State disregards the most coercive aspect of the investigators' threats and promises of leniency.

As stated in Appellant's Initial Brief, the investigators threatened Mr. Collins that he would die in prison if he did not answer their questions truthfully and give them information to assist in their desired goal of getting Marissa Cohen. (R. p. 828, State Ex. 3, DVD 3 21:00-22:30.) One of the investigators then stated: "It's not you I want; it's Marissa. I promise my right hand to God." *Id.* (emphasis added). The implication of these statements is that the investigators would not pursue charges against Mr. Collins if he would provide information that would help them prosecute Ms. Cohen. When they are combined with the investigators' repeated entreaties to Mr. Collins to "save" himself and promises that his statements would not leave the interrogation room, there can be no doubt that the investigators were making threats of harsh punishment and promises of leniency that depended on Mr. Collins's cooperation in the interrogation.

While the State may choose to ignore these coercive tactics of the interrogators, the Court should not.

C. Intelligence

The State also disregards compelling evidence demonstrating that Mr. Collins's low intelligence impaired his ability to understand his rights against self-incrimination and made him susceptible to the deceptive interrogation techniques of the investigators. In fact, the State incredibly claims that "the only evidence in the record regarding Appellant's lack of intelligence was his own self-serving testimony and even that testimony lacked credibility because of its inherent contradictions."[2] (Resp. Initial Br. p. 15.)

An abundance of evidence, however, contradicts the State's mischaracterization of the record, which is replete with examples of how Mr. Collins lacked intelligence and suffered from cognitive impairments, including the following:

- Mr. Collins's education was limited, and he did not attend school past the 9th grade. (R. p. 840.)
- When he did attend school, he was placed in special education classes. (*Id.*)
- Mr. Collins suffered a stroke in 2013, which caused a partial loss of the ability to produce language, altered his mental status, and made him suffer from dysarthia. (R. p. 841.) His treating neurologist concluded that his symptoms were consistent with encephalopathy. (R. p. 26, line 13-p. 28, line 7.)
- As part of his competency evaluation, the evaluators administered the Montreal Cognitive Assessment ("MoCA"). Mr. Collins had a MoCA score of 18 out of 30, which is just above the average score for Alzheimer's patients and indicates global impairments in

[2] The State claims Mr. Collins's contradictory testimony about whether he understood his *Miranda* rights shows that he was intelligent enough to waive his rights. (Resp. Initial Br. pp. 14-15.) However, Mr. Collins repeatedly stated that he did not understand those rights at the time he was being interviewed. (R. p. 250, line 23-p. 252, line 13; R. p. 262, line 12-p. 263, line 5.)

visuocontructional skills, language, attention, abstraction, and delayed recall. (R. p. 842.)

- During his competency interview with the evaluators, Mr. Collins was unable to identify the current president of the United States and wrongfully identified "Kennedy" as the first president. (*Id.*)

- Mr. Collins provided two separate statements to the police as part of the investigation, and both times the investigators had to write his statement for him because he was not good at writing. (R. p. 667, lines 6-7; R. p. 697, lines 9-22; R. p. 826; R. p. 828, State Ex. 3, DVD 2B, 4:30-5:00.)

- One of the competency evaluators admitted during the competency hearing that there were indications that Mr. Collins was intellectually impaired. (R. p. 44, line 19-p. 45, line 19.) This was consistent with the finding in the competency evaluation report that Mr. Collins "does indicate some degree of impairment in general intellectual functioning, as evidenced by his self-reported issues in school and observed during the evaluation . . ." (R. p. 843.)

- The trial judge acknowledged that the evaluators concluded that Mr. Collins had "some intellectual disabilities or impairments." (R. p. 125, lines 20-22.)

- The video recording of Mr. Collins demonstrates that he lacked communication skills and was often confused. (R. p. 828, State Ex. 3, DVD 1, 2, 2B, and 3.)

This evidence relating to Mr. Collins's intelligence and mental condition must be considered in determining the voluntariness of his statements. "[A]s interrogators have turned to more subtle forms of psychological persuasion, courts have found the mental condition of the defendant a more significant factor in the 'voluntariness' calculus." *Colorado v. Connelly*, 479 U.S. 157, 164 (1986). "It takes less in terms of threats or other means of inducing fear to interfere with the deliberative processes of one whose capacity for rational choice is limited than it takes to affect the deliberative processes of one who capacity is not so limited." *Smith v. Duckworth*, 910 F.2d 1492, 1497 (7th Cir. 1990). As a result, Mr. Collins's impaired mental condition and low intelligence further support a finding that his statements were not voluntary.

II. The trial court erred by not requiring further evaluation of Appellant's competency based on the examiners' conclusion that there were indications that Mr. Collins suffered from an intellectual or related disability.

In defending the trial court's refusal to order further testing to determine whether Mr. Collins suffered from an intellectual or related disability in accordance with S.C. Code Ann. § 44-23-410(D), the State ignores the plain language of that statute and claims that no further testing was required because the Department of Mental Health ("DMH") did not diagnose him with an intellectual disability.

The State's interpretation of § 44-23-410(D) is incorrect because it is based on the circular logic that evaluation by the Department of Disabilities and Special Needs ("DDSN") for competency to stand trial based on a defendant's suspected intellectual disability is only warranted when DMH makes a diagnosis of an intellectual disability. However, the statute dictates that DMH is neither qualified nor authorized to make a diagnosis of an intellectual or related disability. Instead, the General Assembly has authorized only DDSN to make that determination.

The plain language of § 44-23-410(D) requires that DMH "not render an evaluation on the person's mental capacity" if an examiner designated by DMH "find indications of intellectual disability or a related disability but not mental illness." Thus, for the evaluation to be referred to DDSN, there only needs to be an "indication" of intellectual disability – not a diagnosis.

Here, there can be no doubt that Mr. Collins presented indications of an intellectual or related disability. In fact, the DMH evaluators acknowledged that Mr. Collins had an "intellectual impairment" and "does indicate some degree of impairment in general intellectual functioning." (R. p. 45, lines 1-7; R. p. 843.) These findings alone required DMH not to render

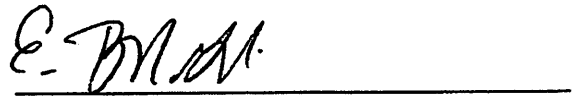
an opinion about his competency. Nevertheless, the DMH evaluators completed the evaluation and issued a report finding Mr. Collins competent to stand trial because his impairment did not meet the clinical definition of an "intellectual disability" because, in their opinion, he did not have problems with adaptive functioning. In so doing, DMH usurped the statutory role of DDSN.

Moreover, DMH's competency evaluation was incomplete because it did not consider whether Mr. Collins had a "related disability" under § 44-23-410(D). As stated above, this statute prohibits DMH from rendering a competency evaluation for individuals with "indications of an intellectual disability or related disability." *Id.* (emphasis added). While DMH refused to assign a diagnosis of an intellectual disability based on its finding that Mr. Collins did not have impairments in adaptive functioning, its finding of intellectual impairments was a sufficient indicator of a "related disability" under § 44-23-410(D).

Either way, the trial court had sufficient indications of both an "intellectual disability" and a "related disability" to refer Mr. Collins to DDSN for further evaluation. Its failure to do so violated § 44-23-410(D).

CONCLUSION

For the foregoing reasons, Mr. Collins respectfully requests that the Court reverse his conviction based on his involuntary confession and remand the matter for further evaluation of competency to stand trial under S.C. Code Ann. § 44-23-410.



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Co-counsel for Appellant

October 21, 2019
Charleston, SC

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of General Sessions

Larry B. Hyman, Jr., Circuit Court Judge

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

The State, ...Respondent,

v.

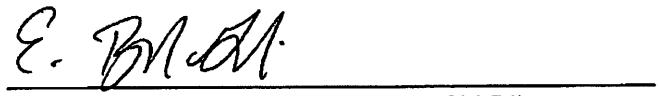
Randy Collins,.....Appellant,

PROOF OF SERVICE

This is to certify that I have this day served counsel for the Respondent in the foregoing matter with a copy of the foregoing ***Final Reply Brief of Appellant*** by depositing the same in the United States Mail with adequate postage affixed thereon to ensure delivery, addressed as follows:

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Co-counsel for Appellant

October 21, 2019
Charleston, SC

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Randy Collins, Appellant.

Appellate Case No. 2018-002056

Appeal From Georgetown County
Larry B. Hyman, Jr., Circuit Court Judge

Opinion No. 5861
Heard May 4, 2021 – Filed September 8, 2021

REVERSED AND REMANDED

E. Brandon Gaskins, of Moore & Van Allen, PLLC, of Charleston, and Chief Appellate Defender Robert Michael Dudek, of Columbia, both for Appellant.

Attorney General Alan McCrory Wilson, and Assistant Attorney General Jonathan Scott Matthews, both of Columbia; and Solicitor Jimmy A. Richardson, II, of Conway, all for Respondent.

HUFF, J.: Appellant, Randy Collins, appeals from his first-degree arson and conspiracy convictions, asserting the trial court erred in (1) ruling his confession was voluntarily given and (2) refusing to require further evaluation of him for competency to stand trial. Because we find the trial court erred in finding his confession was voluntarily given, we reverse and remand for a new trial.

FACTUAL/PROCEDURAL HISTORY

This case involves the tragic death of a twelve-year-old boy (Child) as a result of an intentionally set fire. The State's theory of the case was that Child's mother, Marissa Cohen, obtained an insurance policy on the contents of a rented mobile home, she offered Appellant $5,000 to burn the mobile home, and Appellant enlisted the help of his nephew, James Miller (Miller), to carry out the plan. The vast majority of the crucial evidence admitted against Appellant was the challenged recorded statement he gave to law enforcement.

In the early morning hours of March 29, 2014, Andrews Fire Department and Georgetown County Fire EMS personnel responded to a mobile home fire in Andrews, South Carolina, after receiving a call around 1:15 a.m. Although they received information the home was vacant, once the fire was extinguished and the firefighters forced entry into the locked home, they discovered Child was dead inside the structure. The State produced evidence that Cohen obtained a $25,000 property insurance policy on the contents of the mobile home on February 20, 2014. On March 24, 2014, Cohen rented a storage unit and, shortly before the fire at the mobile home, she moved furniture and household appliances from the mobile home to the storage unit. One of the men who had earlier helped Cohen move her household items, Benjamin "Mano" Brown (Mano), testified that after he helped her move, Cohen told him she intended to burn the home. A couple of days before the fire Cohen moved with her children into the home of Frank Washington at Arbor Place Apartments. On the day of the fire, Cohen purchased $20 worth of kerosene from a convenience store in Andrews. On the night of the fire, Cohen's older son, Devon, and her younger child were at the Arbor Place apartment with Cohen but Child was not there, having gone to a birthday party at a recreation center around 8:30 p.m. on March 28, 2014. When Child and his friend left the party around 12:00 or 12:30 a.m., Child asked his friend if he could spend the night with him. Child said he was going to check on his mother and retrieve some clothes. The friend understood Child was going to the mobile home that they had moved out of earlier in the week. Child never returned.

Investigators quickly determined the fire had been intentionally set with the use of an accelerant poured on the floor of the home. Testing subsequently revealed the presence of heavy petroleum distillate—common in kerosene—in the home. SLED Agent Scott Hardee, an arson investigator, assisted Georgetown County Investigator Melvyn Garrett in the investigation of this case. Based on an anonymous tip, Agent Hardee discovered the insurance policy that had been taken out by Cohen, and Investigator Garrett discovered Cohen purchased kerosene the

day before the fire. This tip also indicated Appellant and Mano were involved. Investigator Garrett testified he spoke with Mano, who stated he was not there and did not know anything about the incident, which the investigator stated he was able to confirm. Investigator Garrett then spoke with Appellant on April 9, at which time Appellant told him he did not have anything to do with the fire and that he was at a club with his nephew, Miller, from 9:00 p.m. until 3:00 a.m. that night. The investigator also talked to Miller, who gave a statement likewise claiming he was with Appellant at a club from 9:00 p.m. until 3:00 a.m. on the night of the fire. Thereafter, Andrews Police Officer Oliver Nesmith served warrants on Appellant, obtaining his two cell phones. Agent Hardee noted phone records showed Cohen's and Appellant's phones had made contact with each other three times on March 28th, 2014—at 12:11 p.m., 3:27 p.m., and 9:07 p.m.—and three more times on March 29, 2014—at 2:50 a.m., 3:01 a.m., and 3:24 a.m.

On June 4, 2014, when Appellant arrived at Town Hall to retrieve his phones from Officer Nesmith,[1] Agent Hardee and Investigator Garrett used the opportunity to obtain an interview from Appellant. The officers read Appellant his rights and obtained a signed waiver of rights form from him at 10:20 a.m.[2] Agent Hardee then set up his personal camcorder to record the interview. Agent Hardee testified Appellant initially denied any involvement in the fire and denied he had any contact with Cohen, but when confronted, he changed his story and admitted contact with her. Agent Hardee testified Appellant ultimately told them that Cohen asked him to burn down her trailer and she would pay him $5,000; he went with Miller to the location; and he put all the blame on Miller as far as starting the fire but admitted he was there. The officers thereafter obtained arrest warrants for Appellant,[3] Cohen, and Miller.[4]

[1] Agent Hardee acknowledged they used Officer Nesmith, who Appellant had known for a long time, to get Appellant to come retrieve his phones with Agent Hardee and Investigator Garrett present. He agreed that, in essence, they tricked Appellant to get him to Town Hall.

[2] The officers proceeded to question Appellant until 1:51 p.m. Roughly an hour and a half into the interview, the battery died on the camcorder and, because the officers did not realize this, some of the interview was not recorded.

[3] Appellant's warrants were filed the next day, June 5, 2014.

[4] The record reveals, although Miller was arrested in this matter, he died on April 26, 2015—before Appellant's trial—apparently at the hands of Child's brother, Devon.

Like Agent Hardee, Investigator Garrett testified Appellant initially maintained that he was not involved with the fire but, as they confronted him with inconsistencies, he changed his story. According to Investigator Garrett, Appellant stated that Cohen offered him $5,000 to burn down the trailer, he told Miller about the offer, and he put himself at the crime scene when the fire started. Subject to Appellant's *Jackson v. Denno*[5] objection, the solicitor played Appellant's redacted interview for the jury.

Numerous individuals testified concerning Cohen's strange behavior and lack of concern regarding Child's death. Additionally, the State presented evidence concerning Cohen's nefarious intentions regarding Appellant and Mano after the fire. In particular, one of Cohen's cousin's testified Cohen told her she needed her to "help [her] get rid of Mano because [he was] the only one [who could] get [her] locked up." The State also presented evidence of a letter Cohen sent to her son, Devon, dated November 11, 2014. In the letter, Cohen wrote, "I heard [Appellant] has a bond. I wish that I had some backup and [Appellant] did have a bond just to deal with him. . . . I need a gun and meet up with [Appellant] and Mano."

The jury found Appellant guilty of arson in the first degree and criminal conspiracy. The trial court sentenced Appellant to thirty years' imprisonment on the arson charge and gave him a concurrent five-year sentence on the conspiracy charge.

ISSUES

1. Did the trial court err in ruling Appellant's confession was voluntarily given?

2. Did the trial court err in refusing to require further evaluation of Appellant for his competency to stand trial based on indications that he suffered from intellectual disabilities?

LAW/ANALYSIS

I. Voluntariness of Statement

A. *Jackson v. Denno* Hearing and the Recorded Statement

[5] 378 U.S. 368 (1964).

Prior to the trial, the court conducted a hearing on the voluntariness of Appellant's statements to law enforcement. Investigator Garrett, Agent Hardee, and Appellant testified during this hearing, and the recording of the Appellant's interview was played at this time.

In regard to Appellant's recorded statement, Investigator Garrett testified that after the officers executed a search warrant on Appellant's phones, they utilized Andrews Police Officer Nesmith—who Appellant was familiar with and possibly related to—to facilitate this matter by having Officer Nesmith return Appellant's phones in his and Agent Hardee's presence at Town Hall. When Appellant arrived, Investigator Garrett and Agent Hardee asked him to speak with them about the incident. Appellant agreed and they went into a conference room at Town Hall. Agent Hardee went over Appellant's *Miranda*[6] rights, having Appellant initial beside each right, and Appellant signed the waiver of rights form at 10:20 a.m. on June 4, 2014. The conference room was not set up for recording purposes, but Agent Hardee had a video camera he was able to set up in the room. Investigator Garrett testified they were there approximately three hours, and during that time Appellant had a soda with him and was allowed to use the bathroom and smoke cigarettes a few times. He stated that at no time did they put any handcuffs or restraints on Appellant, at no time was he told he could not leave, they did not make any threats to get Appellant to talk, they took adequate breaks when Appellant requested them, and he had a phone with him that he could use if he desired. When asked if there were any promises made to Appellant to get him to talk, Investigator Garrett acknowledged that he told Appellant "that no matter what he told [him] . . . he was going to go home that particular day." Asked if they gave any hopes of assistance in the prosecution of the case, the officer replied, "Well, certainly, if he gave any information that led to the case being solved, then we would certainly ask for leniency of any type if we could," but there were no promises of leniency made. The State thereafter played the recorded interview. Concerning the part of the interview that was not recorded, Investigator Garrett stated that was not done with any purposeful intent, and no threats, coercions or promises were made during that time. He also stated he "kept [his] end of [the] bargain" concerning his discussion in the interview about talking with the solicitor. At the end of the interview, Investigator Garrett wrote a statement for Appellant, which Appellant signed.

Agent Hardee testified Appellant appeared to understand his rights and he was not handcuffed and was free to leave. He used his personal battery-powered camera to

[6] *Miranda v. Arizona*, 384 U.S. 436 (1966).

record the interview, which was visible, on the table, to Appellant. Appellant never asked to stop the interview, he never asked to leave, he never asked for food, and he was provided with a soft drink as well as cigarette and bathroom breaks. The agent denied threatening or coercing Appellant into giving his statement. On cross-examination, Agent Hardee estimated the tape recording was turned off for 10-15 minutes during the interview. He agreed there was a time that Appellant asked to smoke a cigarette and he was told no, explaining it was at a very important part of the interview when Appellant was about to make an admission. Agent Hardee also acknowledged he told Appellant at some point that the tape recording of his interview "wasn't going any further" than that room, but the agent knew that was not true.

Appellant testified he did not know or understand about *Miranda* rights and he did not recall the officers reading him his rights. He stated his reading ability was "not too good," he only completed seventh or eighth grade, he never obtained a GED, and he was in special education classes. Appellant claimed he did not remember signing the *Miranda* waiver, explaining that he had difficulty remembering things since he suffered a stroke. He did not understand at the time he was with the officers that he had a right to a lawyer, that he did not have to talk to them, or that what he was saying could be used against him in a trial. Appellant testified he felt that he had to stay there and did not feel that he had the freedom to leave. He stated he thought he was just going to pick up his phone and did not think about giving an interview. Upon questioning by the trial court, Appellant stated the officers did not really threaten him, but they did promise they would talk to the solicitor if he was forthcoming.

A review of the recorded statement reveals Appellant initially denied having any knowledge in the matter. However, Appellant eventually told the officers that Cohen asked him to burn down the mobile home in exchange for $5,000 but he told her no; he told Miller what Cohen had said, and Miller indicated he would do it for $1,500; he and Miller went to the club the night of the fire; when they left, Appellant told Miller to take him home but Miller drove to a backroad behind the mobile home; Miller checked the doors to the home, but they were locked; Appellant told Miller not to do it; Miller threw a lit piece of paper or a match through a window of the home; and when they left, Miller circled around the area, but they did not see anything lit or any smoke, so Appellant did not believe Miller had successfully started a fire. Appellant gave inconsistent statements regarding what Miller used to light the fire and whether Appellant actually observed him throw a lit item into a window or whether Appellant was back at the car at that time so he could not actually see what Miller did.

We observe from the recording that Appellant informed the officers he suffered a stroke in the previous year, he did not feel well that morning, and he repeatedly indicated he had trouble with his memory. Of particular note, however, is an assurance made by Agent Hardee approximately twenty-one minutes into the interview, after Appellant was asked whether he thought the fire was intentionally started, and Appellant responded he did not want to "say the wrong thing." Agent Hardee responded, "Well, you're not going to say the wrong thing. *Whatever you tell me, it ain't gonna leave this room. This, um, tape is going into my file*. And I'm gonna, I'm gonna burn a copy for him. And we'll have a copy of this tape. *And it ain't gonna go any further than this room*. That's why we got the door shut, the blinds pulled, there's no sound device in here. I want you to be honest with me and tell me what you think."

In ruling on the matter, the trial court found "the seminal issue" as to the recorded statement was whether Appellant was *Mirandized*, and the court determined Appellant made a "knowing, voluntary and intelligent waiver of those rights." Remarking that the State must show by a preponderance of the evidence that Appellant waived his rights after being advised under *Miranda*, it found "that showing has certainly been made." The trial court noted that voluntariness hinged on whether there was police coercion. In contemplating the voluntariness of his statement, the trial court considered the characteristics of Appellant and found he had "the requisite intelligence to knowingly and intelligently waive his right to remain silent as well as his right to an attorney at the time the statements were made." It found "absolutely no evidence of coercion or threats made to [Appellant] at any time during the investigative interrogation." It further found the testimony of the two officers more credible than Appellant regarding his understanding of his rights and found the recorded statement was admissible.

B. Discussion

Appellant argues the trial court erred in admitting his recorded statement as it was induced by deception regarding its use, promises of leniency, threats of severe punishment, and other factors which indicate his statement was not voluntary. In particular, he contends he was coerced and tricked into making inculpatory statements by the officers' misrepresentation that his statement would not be used against him. He maintains their promises that his statement would not leave the room and the recording would be placed only in their file conveyed it would not be used against him and rendered the previous *Miranda* warnings meaningless. Although it does not appear South Carolina has addressed the voluntariness of a

statement after police have assured confidentiality, Appellant notes other jurisdictions have ruled such assurances preclude a finding of voluntariness. Additionally, Appellant argues his statement was induced by implied promises of leniency and threats that he would die in prison if he did not cooperate. He also asserts his low level of education, recent stroke and cognitive impairments, along with the officers' coercive tactics, demonstrate his confession was not voluntary. Appellant contends, under the totality of the circumstances, his will was overborne and his statement was not voluntarily given. We agree.

"A confession is not admissible unless it was voluntarily made." *State v. Myers*, 359 S.C. 40, 47, 596 S.E.2d 488, 492 (2004). "If a defendant was advised of his *Miranda* rights, but chose to make a statement anyway, the 'burden is on the State to prove *by a preponderance of the evidence* that his rights were voluntarily waived.'" *State v. Childs*, 299 S.C. 471, 475, 385 S.E.2d 839, 842 (1989) (quoting *State v. Washington*, 296 S.C. 54, 55, 370 S.E.2d 611, 612 (1988)). "The State bears this burden of proof even [when] a defendant has signed a waiver of rights form." *Id.* "On appeal, the trial [court's] ruling as to the voluntariness of the confession will not be disturbed unless so erroneous as to constitute an abuse of discretion." *Myers*, 359 S.C. at 47, 596 S.E.2d at 492. "In determining whether a confession was given 'voluntarily,' [the appellate court] must consider the totality of the circumstances surrounding the defendant's giving the confession." *State v. Collier*, 421 S.C. 426, 435, 807 S.E.2d 206, 211 (Ct. App. 2017) (alteration in original) (quoting *State v. Pittman*, 373 S.C. 527, 566, 647 S.E.2d 144, 164 (2007)).

"The history of the Fifth Amendment right against compulsory self-incrimination, and the evils against which it was directed, have received considerable attention in the opinions" of the United States Supreme Court (USSC). *Michigan v. Tucker*, 417 U.S. 433, 439 (1974). These "decisions have referred to the right as 'the mainstay of our adversary system of criminal justice,' and as 'one of the great landmarks in man's struggle to make himself civilized.'" *Id.* (citations omitted) (first quoting *Johnson v. New Jersey*, 384 U.S. 719 (1966); then quoting *Ulmann v. United States*, 350 U.S. 422, 426 (1956)). "Prior to *Miranda*, [the courts] evaluated the admissibility of a suspect's confession under a voluntariness test." *Dickerson v. United States*, 530 U.S. 428, 432-33 (2000). "Over time, [the courts] recognized two constitutional bases for the requirement that a confession be voluntary to be admitted into evidence: the Fifth Amendment right against self-incrimination and the Due Process Clause of the Fourteenth Amendment." *Id.* at 433. The courts have not "abandoned this due process jurisprudence, and . . . continue to exclude confessions that were obtained involuntarily." *Id.* at 434. The

issue of voluntariness "is not limited to instances in which the claim is that the police conduct was 'inherently coercive.'" *Miller v. Fenton*, 474 U.S. 104, 110 (1985) (quoting *Ashcraft v. Tennessee*, 322 U.S. 143, 154 (1944)). Rather, it "applies equally when the interrogation techniques were improper only because, in the particular circumstances of the case, the confession is unlikely to have been the product of a free and rational will." *Id.*

"A criminal defendant is deprived of due process if his conviction is founded, in whole or in part, upon an involuntary confession." *Pittman*, 373 S.C. at 565, 647 S.E.2d at 164. "This principle is best justified when viewed as part and parcel of 'fundamental notions of fairness and justice in the determination of guilt or innocence which lie embedded in the feelings of the American people and are enshrined in the Due Process Clause of the Fourteenth Amendment.'" *Id.* (quoting *Haley v. Ohio*, 332 U.S. 596, 607 (1948)). "In determining whether a confession was given 'voluntarily,' [the appellate court] must consider the totality of the circumstances surrounding the defendant's giving the confession." *Id.* at 566, 647 S.E.2d at 164. "The due process test takes into consideration 'the totality of all the surrounding circumstances—both the characteristics of the accused and the details of the interrogation.'" *State v. Miller*, 375 S.C. 370, 384, 652 S.E.2d 444, 451 (Ct. App. 2007) (quoting *Dickerson*, 530 U.S. at 434).

> [C]onvictions following the admission into evidence of confessions which are involuntary, i.e., the product of coercion, either physical or psychological, cannot stand. This is so not because such confessions are unlikely to be true but because the methods used to extract them offend an underlying principle in the enforcement of our criminal law: that ours is an accusatorial and not an inquisitorial system—a system in which the State must establish guilt by evidence independently and freely secured and may not by coercion prove its charge against an accused out of his own mouth.

Rogers v. Richmond, 365 U.S. 534, 540-41 (1961). Improperly extorted confessions "may be and have been, to an unascertained extent, found to be untrustworthy." *Id.* at 541. "But the constitutional principle of excluding confessions that are not voluntary does not rest on this consideration." *Id.* Though independent corroborating evidence may verify the truth of a defendant's confession, if a defendant has "been subjected to pressures to which, under our accusatorial system, an accused should not be subjected, [the courts are] constrained to find that the procedures leading to his conviction [have] failed to afford" the defendant due process of law. *Id.* In determining the voluntariness of a

statement, the question is "whether the behavior of the State's law enforcement officials was such as to overbear [the defendant's] will to resist and bring about confessions not freely self-determined—a question to be answered with complete disregard of whether or not [the defendant] in fact spoke the truth." *Id.* at 544. "As important as it is that persons who have committed crimes be convicted, there are considerations which transcend the question of guilt or innocence." *Blackburn v. Alabama*, 361 U.S. 199, 206 (1960). Therefore, when faced with involuntary confessions, our courts "enforce[] the strongly felt attitude of our society that important human values are sacrificed [when] an agency of the government, in the course of securing a conviction, wrings a confession out of an accused against his will." *Id.* at 206-07.

> [T]he [USSC] has instructed [that] the totality of the circumstances includes "the youth of the accused, his lack of education or his low intelligence, the lack of any advice to the accused of his constitutional rights, the length of detention, the repeated and prolonged nature of the questioning, and the use of physical punishment such as the deprivation of food or sleep."

Pittman, 373 S.C. at 566, 647 S.E.2d at 164 (quoting *Schneckloth v. Bustamonte*, 412 U.S. 218, 226 (1973)). Our appellate courts have also "recognized that appropriate factors to consider in the totality-of-circumstances analysis include: background, experience, and conduct of the accused; age; length of custody; police misrepresentations; isolation of a minor from his or her parent; threats of violence; and promises of leniency." *Miller*, 375 S.C. at 386, 652 S.E.2d at 452. "[N]o one factor is determinative, but each case requires careful scrutiny of all the surrounding circumstances." *Pittman*, 373 S.C. at 566, 647 S.E.2d at 164. "The pertinent inquiry is, as always, whether the defendant's will was 'overborne.'" *Myers*, 359 at 47, 596 S.E.2d at 492 (quoting *State v. Von Dohlen*, 322 S.C. 234, 244, 471 S.E.2d 689, 695 (1996)). "Coercive police activity is a necessary predicate to finding a statement is not voluntary." *Miller*, 375 S.C. at 386, 652 S.E.2d at 452. "Coercion is determined from the perspective of the suspect." *Id.*

"A statement may not be 'extracted by any sort of threats or violence, [or] obtained by any direct or implied promises, however slight, [or] obtained by the exertion of improper influence.'" *Id.* (alterations in original) (quoting *State v. Rochester*, 301 S.C. 196, 200, 391 S.E.2d 244, 246 (1990)). "A statement induced by a promise of

leniency is involuntary only if so connected with the inducement as to be a consequence of the promise." *Rochester*, 301 S.C. at 200, 391 S.E.2d at 246-47. "The test of voluntariness is whether a defendant's will was overborne by the circumstances surrounding the giving of a confession." *State v. Goodwin*, 384 S.C. 588, 601, 683 S.E.2d 500, 507 (Ct. App. 2009). "If a suspect's will is overborne and his capacity for self-determination critically impaired, use of the resulting confession offends due process." *State v. Saltz*, 346 S.C. 114, 136, 551 S.E.2d 240, 252 (2001).

Both parties agree that the voluntariness of a statement, following law enforcement assurance of the statement's confidentiality, has not been addressed in South Carolina. However, as noted by Appellant, this issue has arisen in other jurisdictions.

In *Redmond v. People*, 501 P.2d 1051 (Colo. 1972), the Colorado Supreme Court reversed the admission of the defendant's confession, finding the *Miranda* warning given to the defendant was meaningless after the defendant was told parts of his statement would not be used and that the focus of attention was not upon him but upon another.[7] *Id.* at 1052-53. In that case, the evidence showed Douglas Redmond and an individual named Wolford devised a scheme to acquire hashish in San Francisco for eventual sale in Colorado. *Id.* at 1051. Marc Tobias, a part-time police informant, became included in the plan and subsequently alerted the police about airline reservations made for transportation of the drug as well as the location of the drug once they arrived in Colorado. *Id.* at 1051-52. Redmond was given a full *Miranda* warning, signed an advisement form including the same, and was then interrogated. *Id.* at 1052. Before Redmond made any incriminating statements, an officer told him the police were interested in the involvement of Tobias and told him the information he provided, apart from that which involved Tobias, "would just be between the two of them and would be off-the-record and would not be used against him, even if it were incriminating." *Id.* The officer proceeded to take notes during the interview regarding the defendant's statements related to Tobias but stopped taking notes when Redmond discussed matters unrelated to Tobias. *Id.* "Redmond . . . was never told that the barrier of immunity from prosecution, [created by the officer], had disappeared." *Id.* The trial court

[7] Notably, as is the law of this state, Colorado law provides the appellate court is required to accept the trial court's findings and ruling on admissibility of a statement if there is sufficient evidence to support the same. *Id.* at 1052.

admitted the portions of the statement included in the officer's notes, i.e., those that related to Tobias. *Id.* On appeal, the sole issue before the appellate court was "whether the admission of the defendant's statement to [the officer], in . . . light of the non-disclosure agreement which [the officer] made, foreclose[d] the admission of the statement made by Redmond." *Id.* The court determined the clear language of *Miranda* "prohibit[ed] the use of a blue-pencil test as a means of admitting part of Redmond's statement," and found, given the type of promise that prompted Redmond's confession, it was not possible to determine what parts of the statement were truly voluntary and what parts were, at best, inadmissible. *Id.* at 1052-53. Accordingly, the court reversed and remanded for a new trial. *Id.* at 1053.

In *Porter v. State*, 239 S.E.2d 694 (Ga. Ct. App. 1977), the Court of Appeals of Georgia found the defendant's confession was inadmissible on the face of the record before the appellate court.[8] *Id.* at 642. There, after Porter was read his *Miranda* rights, the Sheriff said, "We don't want to get on the street and say anything about what he said now?" *Id.* Another individual in the room responded, "No, that's right. That's what I've told him and the GBI [agent] explained to him this is just for his secretary in typing . . . [.]" *Id.* The court found "the clear thrust of the conversation [was] that Porter was being told his statement would not be used against him" and it was being recorded for the purpose of the agent's notes being typed by his secretary. *Id.* The court then held, "A confession given under such a pretense may not be admitted against the confessor." *Id.*

In *United States v. Preston*, 751 F.3d 1008 (9th Cir. 2014), the United States Court of Appeals for the Ninth Circuit determined that under the totality of circumstances—which included Preston's intellectual disability as well as a promise by officers during questioning that they would not "tell this to anybody,"—Preston's confession was involuntarily given and should not have been admitted at trial. *Id.* at 1010, 1014. The court observed Preston had an IQ of sixty-five—which was in the range of intellectual disability as recognized by the USSC.

[8] Though not addressed in *Porter*, Georgia courts also appear to apply an abuse of discretion standard in reviewing the admissibility of statements. *See Berry v. State*, 326 S.E.2d 748, 751 (Ga. 1985) ("Unless clearly erroneous, a trial court's findings as to factual determinations and credibility relating to the admissibility of a confession will be upheld on appeal."); *Golden v. State*, 852 S.E.2d 524, 530 (Ga. 2020) (noting the appellate court defers to the trial court's findings of disputed facts and will not disturb the trial court's factual and credibility determinations unless they are clearly erroneous, but applies de novo review of the trial court's application of the law to the facts).

Id. at 1010. The court also looked at other factors occurring during the questioning—including some with similarities to the case at hand—such as the fact that: the officers minimized culpability of one type of perpetrator and the consequences of such to those individuals if they were truthful; they told Preston he was not arrested or in custody but also informed him he was "free to go" after the interview while indicating he was free to stop talking to them only when they terminated the interview and conveying that he had to tell them something or they would keep coming back to him until he did; they asked Preston questions that required him to choose between two incriminating alternatives; they asked a number of leading questions that introduced facts Preston did not mention until brought up by the officers; they mislead Preston about the purpose of the statement, promising they would not tell anybody and that his statement would never leave the U.S. Attorney's file; and the summary of Preston's confession was a brief gathering of details chosen by the officers and handwritten by one of the officers, but which Preston never corrected when repeated back to him. *Id.* at 1013-15. The court concluded, "in light of the totality of the circumstances, including Preston's individual characteristics, his confession was involuntary." *Id.* at 1020. In doing so, the court noted Preston's reduced mental capacity, his susceptibility to interrogative pressure based upon such, and the techniques used by the officers during their interrogation of Preston. *Id.* 1020-26. The court cautioned that "when questioning people of low intelligence, investigators should avoid offering promises of leniency or using deceptive interrogation techniques due to the vulnerability of [such a] group." *Id.* at 1026. It then stated as follows:

> The officers misled Preston in other ways as well, telling him that his written confession was just an apology note to the child, that they would not tell anyone else what he said, and that the confession would never leave the "folder" or the United States Attorney's Office. At the same time, they told Preston that he was free to leave only *after* he finished answering their questions, and threatened that they would keep returning until Preston did so. In this way, the police paired the prospect of relentless questioning with false promises of leniency. Such tactics, in combination, would be hard for a person of Preston's impaired intelligence to withstand or rationally evaluate.
>
> Assuredly, interrogating officers can make *false representations* concerning the crime or the investigation during questioning without always rendering an ensuing confession coerced. But *false promises* stand on a different footing.

Id. (second and third emphases added) (footnotes omitted) (citation omitted).

Other states have also determined that trial courts should have suppressed defendants' statements that were induced by misleading tactics of law enforcement. In *Ex parte Johnson*, the trial court conducted a hearing to determine the voluntariness of the defendant's statement, during which the defendant testified that he consented to answer the trooper's questions only upon the trooper's assurance that his responses were for use in the completion of a traffic accident report in an incident in Tennessee and that those responses would not be used against him in any criminal proceeding in Tennessee or Alabama. 522 So. 2d 234, 236 (Ala. 1988). The trooper testified that he did not recall telling Johnson that the statement and accident report would not be used against him in subsequent proceedings in Alabama. *Id.* The testimony being in dispute, the trial court made a credibility determination regarding the disputed testimony in favor of the trooper. *Id.* The Alabama Supreme Court noted,

> [B]ecause the determination of voluntariness of a confession is within the sound discretion of the trial judge, it has been generally held that "his decision will not be disturbed unless it is palpably contrary to the great weight of the evidence. He need only be convinced by a preponderance of the evidence that it was voluntarily made."

Id. (quoting *Hammins v. State*, 439 So.2d 809, 811 (Ala. Crim. App. 1983)). Nonetheless, it found, under the totality of the circumstances—the standard by which the court was bound—the defendant's statement to the trooper was the product of deception. *Id.* at 237. The court observed that the trooper's own testimony showed the defendant "was told the interview was 'strictly' for the purpose of investigation of a traffic accident." *Id.* It further noted the trooper could not affirmatively and unequivocally testify that he did not tell the defendant that the accident report would not be used in Alabama as asserted by the defendant. *Id.* Also, in spite of the fact that there was another witness present during the entire interview, that person was not called to corroborate the trooper's testimony. *Id.* The court thus concluded the defendant's purported waiver of rights was not voluntarily, knowingly, and intelligently made and concluded his statement was inadmissible at trial. *Id.*; *see also State v. Stanga*, 617 N.W.2d 486, 487 (S.D. 2000) (holding the defendant's confession should have been suppressed when the interrogating officer repeatedly told the defendant that any statement he gave was "between you and me," signifying that it would not go beyond the interrogation

room, as law enforcement is not allowed to mislead suspects on their constitutional rights).

We note there is no dispute as to what occurred and what was said during the interview at hand, as we have the video of it before us. Upon a thorough review of the recording, as well as the *Jackson v. Denno* hearing, we find, under the totality of the circumstances, the trial court erred in admitting Appellant's recorded statement. *See Collier*, 421 S.C. at 435, 807 S.E.2d at 211 ("In determining whether a confession was given 'voluntarily,' [the appellate court] must consider the totality of the circumstances surrounding the defendant's giving the confession." (alteration in original) (quoting *Pittman*, 373 S.C. at 566, 647 S.E.2d at 164)). First, like the Georgia, Colorado and Alabama courts, we believe that if a defendant receives *Miranda* warnings and it is thereafter conveyed to him during the interview that his statement, whether in whole or in part, would not be used against him and/or is being obtained for some other purpose, such may render the statement inadmissible.[9] As previously noted, Agent Hardee assured Appellant—before any inculpatory statement made by Appellant—"Whatever you tell me, it ain't gonna leave this room. This, um, tape is going into my file. . . . . And we'll have a copy of this tape. And it ain't gonna go any further than this room. That's why we got the door shut, the blinds pulled, there's no sound device in here." As in *Porter*, "the clear thrust" of this statement by Agent Hardee was that Appellant was being told his statement was not going to be told to others to be used against him but was recorded simply for their own files. As in *Redmond*, the officer indisputably conveyed to Appellant that his statement would not be used against him, and the focus of attention was not on Appellant but was on another—Cohen. Further, at no point during the interview did the officers here communicate that this promise to Appellant was no longer effective. We agree with Appellant that, though interrogating officers may sometimes make *false representations* concerning the facts surrounding the crime without rendering an ensuing confession coerced, they cannot make *false promises*, whether direct or implied, that induce a confession from the individual. *See Miller*, 375 S.C. at 386, 652 S.E.2d at 452 ("A statement may not be 'extracted by any sort of threats or violence, [or] obtained by any direct or implied promises, however slight, [or] obtained by the exertion of improper influence.'" (alterations in original) (quoting *Rochester*, 301 S.C. at 200, 391 S.E.2d at 246)); *Preston*, 751 F.3d at 1026 ("[I]nterrogating officers can make false representations concerning the crime or

[9] The State conceded in oral argument that if *Miranda* warnings were required here, Agent Hardee's assurance negated the warnings, rendering Appellant's statements inadmissible as a matter of law.

the investigation during questioning without always rendering an ensuing confession coerced[, b]ut false promises stand on a different footing." (citation omitted)).

Further, even if Agent Hardee's assurance of the confidentiality of Appellant's statement, on its own, is not sufficient to render Appellant's statement involuntary, we find various other factors unquestionably pushed his statement over the line into one in which Appellant's will was overborne. The officers repeatedly informed Appellant that they would speak to the solicitor on his behalf. We acknowledge that the officers' assurances that they would speak on Appellant's behalf are not, alone, sufficient to constitute promises of leniency that induced Appellant's statement. *See State v. Arrowood*, 375 S.C. 359, 368-69, 652 S.E.2d 438, 443 (Ct. App. 2007) (holding an offer by police officers to attest to a defendant's cooperation with an investigation was not a promise of leniency, and his statements were not produced as a consequence of any promise); *Rochester*, 301 S.C. at 200, 391 S.E.2d at 246-47 ("A statement induced by a promise of leniency is involuntary only if so connected with the inducement as to be a consequence of the promise."). Nevertheless, the officers conveyed this to Appellant in conjunction with various coercive tactics. In particular, the officers pushed for the information they sought while simultaneously indicating to Appellant the following: they sought the information for the purpose of prosecuting Cohen; they did not care who started the fire; they were there to help Appellant; and no matter what he told them, Appellant was going to get to go home after the interview. They also made a promise to speak up for Appellant while threatening Appellant that if he did not give them the information they sought, they would go after Appellant and "put [him] there" with Cohen. They informed Appellant that, while they wanted Cohen to serve thirty-four years for the crime, if it was not her, it would be someone else—implicitly Appellant—and suggested at his current age and health condition, Appellant was "not built" for such a prison sentence and would not survive it. We acknowledge the evidence presented here does not disclose Appellant's IQ or that he suffered an intellectual impairment to the same degree as that of the defendant in *Preston*. Nonetheless, there is evidence that Appellant suffered from a mental deficiency as evidenced by (1) his low level of education and the fact that while in school he was enrolled in special education classes and (2) his physical health issues that may have additionally impaired his cognitive abilities. We find Appellant's statement to be the product of: promises that no matter what he told them, he would be allowed to go home; consistent assurances that Appellant was not the person they sought to hold culpable of the crime; suggestions that if they did not get information from him implicating Cohen, they would come after him; threats that Appellant could go

to jail for thirty-four years and, given his age and poor health, he likely would never come home from incarceration; promises to "speak up" for Appellant and "talk" for him if he gave them the information they wanted; and, most importantly, assurances that whatever Appellant told them would not leave that room. Further, we note, while Appellant may not suffer from an "intellectual disability"—as defined in our statutes—it is undisputed that Appellant does suffer from an intellectual deficit or impairment. Our review of the record demonstrates the officers' coercive and deceptive tactics during the interview caused Appellant's will to be overborne, inducing him to make the inculpatory statement. *See Saltz*, 346 S.C. at 136, 551 S.E.2d at 252 ("If a suspect's will is overborne and his capacity for self-determination critically impaired, use of the resulting confession offends due process.").

We are not insensitive to the deferential standard of review we apply to the trial court's determination of the voluntariness of a statement. *See Myers*, 359 S.C. at 47, 596 S.E.2d at 492. ("On appeal, the trial [court's] ruling as to the voluntariness of the confession will not be disturbed unless so erroneous as to constitute an abuse of discretion."). However, this court is still tasked with considering the totality of the circumstances surrounding the defendant's giving of a confession in determining whether a confession was given voluntarily. *See Collier*, 421 S.C. at 435, 807 S.E.2d at 211 ("In determining whether a confession was given 'voluntarily,' [the appellate court] must consider the totality of the circumstances surrounding the defendant's giving the confession." (alteration in original) (quoting *Pittman*, 373 S.C. at 566, 647 S.E.2d at 164)); *Ex parte Johnson*, 522 So. 2d at 236-37 (observing, while the determination of voluntariness of a confession is within the sound discretion of the trial judge and generally will not be disturbed unless contrary to the great weight of the evidence, the appellate court is bound by the totality of the circumstances). In considering the totality of all the surrounding circumstances—including the characteristics of the accused and the details of the interrogation—we find the trial court abused its discretion in finding Appellant's recorded statement was voluntarily made, and the trial court erred by admitting it into evidence. *See State v. Osborne*, 301 S.C. 363, 365, 367, 392 S.E.2d 178, 179, 180 (1990) (finding the State failed to meet its burden by a preponderance of the evidence and the trial court erred in admitting Osborne's statements into evidence when she was told on numerous occasions that she could remain silent, but if she knew any information, she could be charged with the crime of withholding evidence); *State v. Peake*, 291 S.C. 138, 139, 352 S.E.2d 487, 488 (1987) (holding the State failed to meet its burden of showing the appellant's statement was voluntary and not the product of the officer's promise of leniency when the officer's promise was tantamount to a promise not to seek the death penalty if the

appellant gave a statement). *Cf. State v. Compton*, 366 S.C. 671, 680, 623 S.E.2d 661, 666 (Ct. App. 2005) (finding the trial court properly concluded the appellant's statements were given knowingly and voluntarily, noting the record indicated the appellant "was never told his statements would not be used against him" and nothing indicated the appellant "made the statements involuntarily and based upon a promise of leniency"). Based upon the record before us, we come to the inescapable conclusion that Appellant's confession can fairly be characterized only as involuntary and, therefore, his convictions must be reversed and the matter remanded for a new trial.

II. Competency

Appellant also challenges the trial court's failure to require further evaluation of him by the Department of Disabilities and Special Needs after his examination by the Department of Mental Health. The record reveals that one of the concerns of the trial court was the timing of Appellant's argument that he required further evaluation. Because we are reversing and remanding for a new trial, and inasmuch as Appellant's mental competency may have changed over the course of time—thereby requiring a new evaluation and hearing—we decline to address the competency issue. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (holding an appellate court need not address remaining issues on appeal when its determination of a prior issue is dispositive); *State v. Mekler*, 379 S.C. 12, 17, 664 S.E.2d 477, 479 (2008) (affirming this court's decision reversing defendant's conviction and granting a new trial, but finding it unnecessary to address another issue, noting resolution of the issue upon retrial would be dependent on updated factors).

CONCLUSION

For the foregoing reasons, we reverse Appellant's convictions and remand for a new trial.

REVERSED AND REMANDED.

LOCKEMY, CJ., and HEWITT, JJ., concur.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Georgetown County
The Honorable Larry B. Hyman, Jr., Circuit Court Judge
Appellate Case No. 2018-002056

THE STATE, Respondent,

vs.

RANDY COLLINS, Appellant.

PETITION FOR REHEARING

On September 8, 2021, this Court reversed Appellant's convictions for first-degree arson and criminal conspiracy by finding the trial judge erred in finding Appellant's confession was voluntarily given. State v. Collins, Opinion No. 5861 (S.C. Ct. App. filed September 8, 2021) (Howard Adv. Sh. No. 31). The State respectfully submits this Court misapprehended or overlooked relevant facts in the record and case law in three ways. First, whether Appellant's confession was rendered involuntary by Agent Hardee's promise of confidentiality was not preserved for appeal, because it was not raised to and ruled upon by the trial court during the Jackson v. Denno[1] hearing. Second, the trial court did not abuse its discretion in determining Appellant's confession was voluntary, because there was evidence in the record to support the trial judge's ruling. Third, this Court erred in denying the State's motion to supplement the record on appeal with Appellant's subsequent sworn testimony at his co-defendant's trial in which he acknowledged his guilt in the crimes for which he stood trial in this case. (Order dated

[1] Jackson v. Denno, 378 U.S. 368 (1964).

April 29, 2020). Accordingly, pursuant to Rule 221(a), SCACR, this Court should grant the petition for rehearing and hold the issue of whether Agent Hardee's statement rendered Appellant's confession involuntary was not properly before this Court, and even if it were, the trial judge did not abuse his discretion because there was evidence in the record to support the trial judge's ruling. Furthermore, this Court should hold Appellant's subsequent confession of guilt in open court eliminates any possible prejudice from the trial judge's ruling and obviates the need for an appeal. This Court should affirm Appellant's convictions and sentences.

Error Preservation

Because this Court's opinion focused heavily on the promise of confidentiality offered to Appellant by Agent Hardee, it is instructive to review the arguments made by Appellant at the Jackson v. Denno hearing as well as the arguments made by Appellant on appeal. State v. Collins, Opinion No. 5861 (S.C. Ct. App. filed September 8, 2021) (Howard Adv. Sh. No. 31 at 46-54). Before the Denno hearing began, the trial judge sought to clarify what issues needed to be addressed during the hearing. (R. 129-30). Counsel for Appellant responded:

> Mr. Wilson: -- there, there is an issue regarding Miranda[2] in the beginning, in the middle, and at the end. So Miranda is an issue throughout the entire statement for the Defense.
>
> The Court: Okay.
>
> Mr. Wilson: As well as the duration of the video when the video is cut off and whether or not he was actually free to leave at some point in time during this particular interrogation, Judge.

(R. 130, lines 5-13). Although counsel asked Agent Hardee and Investigator Garrett about the promise of confidentiality on cross-examination, counsel did not argue to the trial judge that the promise rendered Appellant's statement involuntary. (R. 199, 240). In fact, counsel did not

[2] Miranda v. Arizona, 384 U.S. 436 (1966).

mention Hardee's promise at all when arguing Appellant's confession should be suppressed. (R. 273-85). Rather, counsel articulated four separate grounds for the trial judge to suppress Appellant's statement: (1) Appellant did not understand his Miranda rights in general; (2) Rule 106 SCRE precluded the admission of Appellant's confession; (3) Rule 403, SCRE also precluded the admission of Appellant's confession; and (4) the admission of Appellant's confession violated his due process rights under the 14th amendment to the United States Constitution. (R. 279). In a detailed ruling, the trial judge found Appellant waived his Miranda rights, but Miranda rights were not required because Appellant was not in custody when he gave his confession. (R. 287).

On appeal, Appellant argued for the first time that the trial judge erred in admitting the Appellant's confession because it was induced by deception as a result of Hardee's promise of confidentiality. (Final Brief of Appellant 15). Appellant did not argue the trial judge erred by determining Appellant waived his Miranda rights or that the trial judge erred in determining Miranda rights were not required in his Final Brief. Furthermore, Appellant conceded at oral argument that the question of whether Miranda warnings were required was not before this Court[3]. (Oral Argument at 37:00-38:35). Thus, one of the four grounds for suppression that trial counsel raised to the trial judge was explicitly waived on appeal. The remaining three grounds raised by trial counsel were not raised in Appellant's brief or at oral argument. Therefore, the question of whether Appellant's confession was rendered involuntary by Hardee's promise of

[3] In response to Appellant's admission, this Court correctly noted: "Well if the Miranda warnings weren't required then it doesn't matter whether they were negated or not." (Oral Argument 38:45-39:00).

confidentiality was not properly before this Court and should not have been addressed by this Court on appeal[4].

No Abuse of Discretion

In rendering its opinion reversing Appellant's convictions, this Court maintained "We are not insensitive to the deferential standard of review we apply to the trial court's determination of the voluntariness of a statement[5]." State v. Collins, Opinion No. 5861 (S.C. Ct. App. filed September 8, 2021) (Howard Adv. Sh. No. 31 at 56). However, the Court noted it was "still tasked with considering the totality of the circumstances surrounding the defendant's giving of a confession in determining whether a confession was voluntarily given." Id. While an appellate court must consider the totality of the circumstances surrounding a confession, an appellate court must not "reevaluate the facts based on its own view of the preponderance of the evidence, but simply determine[s] whether the trial court's ruling is supported by any evidence." State v. Saltz, 346 S.C. 114,136, 551 S.E.2d 240, 252 (2001). The State respectfully argues that this Court substituted its own judgment of whether the totality of the circumstances supported a finding of voluntariness in a de novo fashion, rather than ruling on whether there was any evidence to support the trial judge's finding that Appellant's confession was voluntary.

Here, there was evidence in the record to support the trial judge's ruling that Appellant's confession was voluntarily given. First and foremost, Appellant testified he was not threatened

---

[4] The State acknowledges it did not raise error preservation in its brief, however the State explicitly raised the issue at oral argument. (Oral Argument at 24:00-26:15). Furthermore, this Court can affirm based on any ground appearing in the record. See Rule 220 (c) SCACR ("The appellate court may affirm any ruling, order, decision, or judgment upon any ground(s) appearing in the Record on Appeal.")

[5] This Court correctly held the standard of review was an abuse of discretion. Multiple questions were posed by the panel at oral argument regarding what the correct standard of review was. Counsel for Appellant conceded the correct standard of review was an abuse of discretion and not an error of law. (Oral Argument at 5:00-7:15).

by either of the officers, and the officers only promised him they would speak to the solicitor on his behalf. (R. 264-65). Perhaps more significant is what Appellant did not say. Appellant never mentioned Hardee's promise of confidentiality at any point in his testimony, nor did he testify that Hardee's statement had any bearing on his confession. (R. 247-65). Even if Appellant's testimony alone wasn't sufficient to support the trial judge's ruling of voluntariness, the testimony of Hardee and Garrett amply support the trial judge's ruling as well. Garrett and Hardee each testified Appellant was free to leave at any time, he was given multiple bathroom and cigarette breaks, he was provided a soda, and he was allowed to leave at the end of the interview. (R. 144-47, 228, 232-34). This evidence was not contradicted by Appellant. (R. 247-65).

Ultimately, the question this Court was called upon to answer on appeal was whether the trial judge erred by holding Appellant's will was not overborne and his capacity for self-determination was not critically impaired. See Saltz, 346 S.C. at 136, 551 S.E.2d at 252 ("If a suspect's will is overborne and his capacity for self-determination critically impaired, use of the resulting confession offends due process."). In this case, the trial judge observed Appellant's demeanor during his testimony and was able to assess his credibility after both seeing and hearing his live testimony, which put the trial judge in a superior position to evaluate the voluntariness of Appellant's statement. See State v. McClure, 312 S.C. 369, 371-72, 440 S.E.2d 404, 405-06 (Ct. App. 1994) ("The question of the voluntariness of McClure's confession came down to a question of credibility. The trial judge resolved the question in favor of the officers. We have no quarrel with that, finding, as we do, no abuse of discretion.") The trial judge appropriately assessed Appellant's demeanor and credibility in the following exchange with trial counsel:

The Court: I, I, I, I don't think that argument holds water, Mr. Wilson, because again today [Appellant] says that's really what happened. [Appellant] may view himself as having nothing to do with it by virtue of the fact that he was present aiding and abetting, but even today he says "what I said was true. James [Miller} did it. James went and threw the lighted thing in the window. James started the fire."

Mr. Wilson: What he was saying actually, Judge, and again, it's because he does not have good language skills, which is why I wanted to go back and question him again.

The Court: I want to question that. I watched him on three hours of tape. He seemed to have excellent language skills, pretty good manipulative skills, which are consistent with what two forensic psychologists had to say about his, his evaluation.

Mr. Wilson: Judge—

The Court: And he always seems to, I agree with [Assistant Solicitor] Richardson, that he, he only forgets those things that may be harmful to him. You know, he seems to have great recall, three hours of, of interrogation, and he was able to carry on conversations as clearly as you and I could.

....

The Court: Will you agree that the question here is whether or not there was coercion.

Mr. Wilson: It's not the only—

The Court: And I asked him if there was coercion.

Mr. Wilson: It's, its's not the only question, but the reason I put him up, Your Honor, was because I knew what he'd already told me about his experience there with the officer. It was important that the Court knows that obviously he felt as if he was overwhelmed with this information.

The Court: I asked him if he was threatened or anything. He said no.

(R. 274, lines 9-25 – R. 275, lines 1-4, lines 11-22). The preceding exchange highlights how the trial judge was able to observe Appellant's demeanor in person and use his observations of Appellant's demeanor to evaluate his credibility. The trial judge appropriately focused on the self-serving nature of Appellant's statement and how Appellant's instinct for self-preservation

never wavered. The preceding exchange also highlights how there was evidence in the record to support the trial judge's finding of voluntariness. Therefore, he did not abuse his discretion.

The trial court's reasoning should be persuasive for this Court. The trial judge correctly noted that Appellant's attempts to cast blame on his co-defendant, James Miller, indicated his will was not overborne. See State v. Pendergrass, 270 S.C. 1, 8, 239 S.E.2d 750, 753 (1977) ("The voluntariness of the waiver can be discerned from the fact that the statement which followed it was self-serving and was an attempt on appellant's part to cast blame on his co-defendant."). In determining whether Appellant's statement was voluntary, it does not matter that Appellant admitted his guilt by establishing his role in a conspiracy to burn down Marissa Cohen's trailer. The relevant consideration for this Court is that in Appellant's mind he was not admitting his guilt. The fact that James Miller, and not Appellant, lit the match that started the fire was very significant to Appellant. Indeed, Appellant emphasized this fact several times in his recorded interview and written statement. (State's Exhibit #3, R. 829-30). In fact, the very first words of Appellant's written statement are "I did not do it." (R. 829). Therefore Appellant's will could not have been overborne by the officer's tactics because his instinct for self-preservation and deflection of blame remained intact for the entirety of his interview.

No Prejudice to Appellant

Pursuant to Rule 212(b), SCACR, on February 25, 2020, the State moved for the leave of this Court to supplement the record on appeal to include Appellant's testimony from the trial of his co-defendant Marissa Cohen on January 8, 2020. On April 29, 2020, this Court denied the State's motion in a written order. (Order dated April 29, 2020). The State respectfully submits this Court erred in denying the State's motion because Appellant's subsequent admission of guilt under oath eliminated any possible prejudice to Appellant even if the trial court erred in its

determination that Appellant's confession was voluntary. Appellant's subsequent admission also precludes Appellant from obtaining any meaningful relief and effectively obviates the need for his appeal.

While represented by counsel, Appellant admitted under oath and in open court that he engaged in a criminal conspiracy with Marissa Cohen and James Miller to burn down Cohen's trailer in exchange for $5,000 of insurance proceeds. (Proposed Supplemental Record 9-13). Appellant further admitted he suggested that kerosene be used to start the fire and that he traveled with Miller to the trailer on March 29, 2014 and witnessed Miller light a piece of paper on fire and throw it through a window of the trailer. (Proposed Supplemental Record 9-13). In light of this admission, Appellant is effectively worse off than he was prior to his trial because the State can now use his subsequent confession against him in a future trial. Appellant will be hard pressed to argue against the admission of a confession given under oath while represented by counsel. Appellant will also struggle to explain his subsequent confession to a future jury if this Court's reversal of his convictions stands.

In two previous decisions, our Supreme Court addressed situations where a defendant admitted their guilt in court and then sought appellate review. In State v. Sroka, the Supreme Court held that Sroka's convictions should be upheld because he admitted prior to sentencing that he participated in the robbery for which he stood trial. see State v. Sroka, 267 S.C. 664, 665, 230 S.E.2d 816, 817 (1976). ("We affirm because the guilt of the appellant is conclusively shown by the record and any alleged error could not have been prejudicial. Any doubt about the correctness of this conclusion is eliminated by the admission of Appellant in open court, after conviction and during the pre-sentence inquiry by the trial judge that he had participated in the robbery with a sawed-off shotgun"). Here, in a similar fashion to Sroka, Appellant admitted his

guilt while under oath in a subsequent proceeding. In Whetsell v. State, the Supreme Court held that when multiple defendants admitted their guilt in a plea hearing and at a post-conviction relief hearing, any review of trial errors was unnecessary and trial counsel was not ineffective for failing to challenge the admission of evidence that would have been used against them. See Whetsell v. State, 276 S.C. 295, 297, 277 S.E.2d 891, 892 (1981) ("Review of a trial error is unnecessary where a defendant admits in open court after his conviction that he is guilty."). Similarly, Appellant's subsequent admission of guilt makes any appellate review of potential errors by the trial judge unnecessary. Therefore, in light of our Supreme Court's decisions in Whetsell and Sroka and Appellant's sworn admission of guilt, Appellant did not suffer any prejudice from the trial judge's decision to admit Appellant's confession to law enforcement, nor can Appellant achieve any meaningful relief if this Court upholds its reversal of Appellant's convictions.

CONCLUSION

For all of the foregoing reasons, the State requests the panel grant the petition for rehearing, and find the issue of whether Agent Hardee's promise of confidentiality rendered Appellant's confession involuntary was not preserved for appeal, and even if preserved, the trial judge did not abuse his discretion in ruling the confession was voluntary because there was evidence in the record to support his ruling. Finally, even if this Court finds the trial judge erred in admitting Appellant's confession, this Court should grant the State's motion to supplement the record on appeal and find Appellant was not prejudiced by the admission of his confession because of his subsequent sworn admission of guilt at his co-defendant's trial. This Court should affirm Appellant's convictions and sentences.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

September 22, 2021

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Georgetown County
The Honorable Larry B. Hyman, Jr., Circuit Court Judge
Appellate Case No. 2018-002056

THE STATE, Respondent,

vs.

RANDY COLLINS, Appellant.

PROOF OF SERVICE

I, Caroline Collins, certify that I have served the within Petition for Rehearing on Appellant by email to the address listed in AIS and with a copy of the same to be deposited in the United States mail, postage prepaid, addressed to:

E. Brandon Gaskins, Esquire
Moore and Van Allen PLLC
Post Office Box 22828
Charleston, South Carolina 29401

Robert Michael Dudek, Esquire
S.C. Commission on Indigent Defense
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Columbia, South Carolina 29211

I further certify that all parties required by Rule to be served have been served.
This 22nd day of September, 2021.



CAROLINE COLLINS
Administrative Coordinator

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The South Carolina Court of Appeals

The State, Respondent,

v.

Randy Collins, Appellant.

Appellate Case No. 2018-002056

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

James E. Lockemy C.J.

Thomas C. Huff J.

J.

Columbia, South Carolina

cc:
Alan McCrory Wilson, Esquire
Robert Michael Dudek, Esquire
E. Brandon Gaskins, Esquire
Jonathan Scott Matthews, Esquire
Jimmy A. Richardson, II, Esquire
The Honorable Larry B. Hyman, Jr.

FILED
Sep 29 2021

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
The Honorable Larry B. Hyman, Circuit Court Judge

Appellate Case No. 2018-002056

THE STATE, Respondent,

v.

RANDY COLLINS, Appellant.

MOTION TO ALLOW FILING OF SUPPLEMENTAL RECORD ON APPEAL

The State through its undersigned counsel, would respectfully show unto the Court as follows:

I.

In August 2014, the Georgetown County Grand Jury indicted Appellant for first degree arson, criminal conspiracy, and murder for his role in a fire that caused the death of twelve year-old David "Syience" Coombs. In November 2018 a jury trial was held in the Georgetown County Court of General Sessions with the Honorable Larry B. Hyman, presiding. The State proceeded to trial on the charges of first degree arson and criminal conspiracy, but declined to proceed with the murder charge. At the conclusion of trial, the jury convicted Appellant of both counts. Following the verdict, the trial judge sentenced Appellant to an aggregate term of thirty years'

imprisonment. Appellant then timely appealed and his appeal is currently pending before this Court.

II.

On appeal, Appellant has raised two separate issues. In Appellant's first issue, he contends: "Appellant's statements should not have been admitted because they were induced by deception regarding their use, promises of leniency, threats of severe punishment, and other factors indicating that the statements were not voluntarily given." (Final Brief of Appellant 15). The statements that Appellant argues should not have been admitted were obtained during an interview that took place on June 4, 2014 between Appellant and Investigator Melvyn Garrett of the Georgetown County Sheriff's Office and Agent Scott Hardee of SLED. (State's Exhibit #3[1], R. 827-30). During this interview, Appellant initially denied any involvement in setting the fire, but eventually Appellant admitted that he was asked by his co-defendant, Marissa Cohen[2], to burn down her trailer in exchange for $5,000 in insurance proceeds. (State's Exhibit #3, R. 829-30). Appellant enlisted the help of his nephew, James Miller, to burn down Cohen's trailer. (State's Exhibit #3, R. 829-30). On the night of the fire, Appellant and Miller went to the trailer together. According to Appellant, Miller lit a piece of paper on fire and threw it through a window while Appellant looked on. (State's Exhibit #3, R. 829-30). Appellant denied lighting the match that started the fire, but admitted he was at the trailer with Miller. Garrett wrote a statement on Appellant's behalf, which Appellant reviewed and signed. (R. 829-30).

[1] State's Exhibit #3 was delivered to this Court on December 6, 2019.
[2] Cohen was the victim's mother.

III.

On January 6-9, 2020, Marissa Cohen proceeded to a jury trial in the Georgetown County Court of General Sessions with the Honorable Kristi F. Curtis presiding. On January 8, 2020, the State called Appellant as a witness. Appellant was represented at the trial by his appellate counsel, E. Brandon Gaskins, Esq. (Supp. 4). Appellant agreed to testify in exchange for the State recommending a downward departure; however, Appellant understood that no specific downward departure was going to be recommended. (Supp. 5). At Cohen's trial, Appellant, while under oath, acknowledged that he agreed to burn down Cohen's trailer after she asked him to do so. (Supp. 9). Appellant testified that Cohen offered him $5,000 of insurance proceeds to burn down her trailer. (Supp. 10). Appellant then recruited James Miller to assist him in setting the fire. (Supp. 10-11). Appellant testified that he and Miller went to the trailer on the night of the fire. (Supp. 10-11). Appellant expressed reservations about following through with their plan, but he acknowledged that he witnessed Miller light a piece of paper on fire and throw it at one of the trailer windows. (Supp. 11-13). Appellant further acknowledged that he suggested the fire be started with the aid of kerosene and that kerosene was supposed to have been poured inside the trailer. (Supp. 12-13).

IV.

Pursuant to Rule 212(b), SCACR, the State moves for the leave of this Court to supplement the record on appeal to include Appellant's testimony from January 8, 2020. In light of Appellant's admission that he was involved in the arson for which he was tried and convicted, the State contends Appellant's sworn testimony at Cohen's trial is important to this Court's consideration and analysis of the first issue raised on appeal by Appellant. As previously mentioned, Appellant has argued to this Court that the trial judge erred in admitting his

statements from his interview with law enforcement because they "were induced by deception regarding their use, promises of leniency, threats of severe punishment, and other factors indicating that the statements were not voluntarily given." (Final Brief of Appellant 15). As a remedy for this error, Appellant requests that this Court reverse his convictions and remand for a new trial. (Final Brief of Appellant 24). The State respectfully submits that it is important for this Court to review Appellant's first claim of error on appeal[3] in light of Appellant's subsequent confession to his involvement in the arson for which he was convicted. Appellant's subsequent confession under oath eliminates any possible prejudice that Appellant may have suffered from the admission of his statements to law enforcement at his trial. See Whetsell v. State, 276 S.C. 295, 297, 277 S.E.2d 891, 892 (1981) ("Review of a trial error is unnecessary where a defendant admits in open court after his conviction that he is guilty."); see also State v. Sroka, 267 S.C. 664, 665, 230 S.E.2d 816, 817 (1976). ("We affirm because the guilt of the appellant is conclusively shown by the record and any alleged error could not have been prejudicial. Any doubt about the correctness of this conclusion is eliminated by the admission of Appellant in open court, after conviction and during the pre-sentence inquiry by the trial judge, that he had participated in the robbery with a sawed-off shotgun"). Therefore, the State requests leave from this Court to supplement the record on appeal with Appellant's testimony from Marissa Cohen's trial.

[3] Appellant's second claim of error on appeal asserts "the trial court erred by not requiring further evaluation of Appellant's competency based on the examiners' conclusion that there was indication of intellectual disabilities." (Final Brief of Appellant 23). This issue is unaffected by Appellant's testimony at Cohen's trial.

WHEREFORE, Respondent prays that this Court will allow the State to file a Supplemental Record on Appeal; accept the filing of the State's Supplemental Record on Appeal; and for such other and further relief as the Court may deem just and proper.

Respectfully submitted,

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February 25, 2020

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
The Honorable Larry B. Hyman, Circuit Court Judge

Appellate Case No. 2018-002056

THE STATE, Respondent,

v.

RANDY COLLINS, Appellant.

PROOF OF SERVICE

I, Caroline Collins, certify that I have served the within Motion to Allow Filing of Supplemental Record on Appeal and Supplemental Record on Appeal on Appellant by depositing two copies of each in the United States mail, postage prepaid, addressed to:

E. Brandon Gaskins, Esquire
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I further certify that all parties required by Rule to be served have been served.
This twenty-fifth day of February, 2020.

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STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
The Honorable Larry B. Hyman, Circuit Court Judge

Appellate Case No. 2018-002056

THE STATE, Respondent,

v.

RANDY COLLINS, Appellant.

SUPPLEMENTAL RECORD ON APPEAL

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State of South Carolina)	Court of General Sessions
County of Georgetown)	Case No. 2014-GS-22-00811
)	
State of South Carolina)	
Plaintiff,)	Transcript of Record
vs.)	
Marissa Cohen,)	
Defendant.)	January, 8, 2020 Georgetown, South Carolina.

BEFORE:

The Honorable Kristi F. Curtis, Judge; and a jury.

APPEARANCES:

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Deputy Solicitor for the State

Besscena M. Wilson, Esquire
Attorney for the Defendant.

Official Court Reporter,
Cynthia D. Weaver

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P-R-O-C-E-E-D-I-N-G-S

MS. RICHARDSON: Your Honor, the State calls Randy Collins.

Your Honor, while he is coming up, may I approach?

THE COURT: Sure.

(Whereupon, a bench conference was held.)

THE CLERK: Do you solemnly swear or affirm that the testimony you are about to give will be the truth the whole truth and nothing but the truth so help you God?

THE WITNESS: Yes.

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

THE WITNESS: My name is Randy Collins.

MS. RICHARDSON: If you could go ahead and have a seat, Mr. Collins, and if you could scoot up a little, please? Okay.

Could you just test that microphone, can you just say hello?

THE WITNESS: Hello.

MS. RICHARDSON: Okay. Is that good?

MS. WILSON: Uh-huh.

MS. RICHARDSON: Okay.

DIRECT-EXAMINATION

BY MS. RICHARDSON:

Q. Mr. Collins, would you spell your last name?

A. C-O-L-L-I-N-S.
Q. And Mr. Collins, obviously you're in a uniform today?
A. Yes, ma'am.
Q. And are you currently in prison?
A. Yes, ma'am.
Q. Okay. And were you con -- convicted or serving a prison sentence for arsen in the death Science Combs?
A. Yes.
Q. Or Dave Combs?
A. Yes.
Q. And that was back in November of 2018?
A. Yes, ma'am.
Q. And Mr. Collins, is your sentence or your conviction currently under appeal? You appealed it, your sentence?
A. Yes, ma'am.
Q. Okay. And you've got a lawyer helping you with that?
A. Yes, ma'am.
Q. Okay. And is he in the courtroom, Mr. Gaskins?
A. Yes.
Q. Okay. And you're here to testify today?
A. Yes, ma'am.
Q. Okay. And that's voluntary, nobody's forced you

to do that?

A. Right.

Q. Okay. And would you tell this Jury what you're hoping to get from this?

A. I'm hoping to get my sentence cut a little bit.

Q. Okay. And has anybody promised you that that's going to happen?

A. No.

Q. And you understand that that's up to the Judge?

A. Right.

Q. And is it true that we have promised that we would bring it to the Judge's attention?

A. Right.

Q. But it's completely up to the Judge?

A. Yes.

Q. Been no agreement as to what number it would be?

A. Right.

Q. All right. And Mr. Collins, do you understand that by testifying today that could hurt your appeal?

A. Right.

Q. And could cause you some problems there?

A. Right.

Q. Do you also understand that anything you say can be used against you if you were to have go back to court?

A. Right.

Q. On that charge?
A. Right.
Q. You understand that?
A. Yes, I do understand.
Q. And you went over your legal rights in that regard?
A. Right.
Q. Your Miranda was read to you again?
A. Right.
Q. All right. And your lawyer was with you?
A. Right.
Q. Okay. So there's been no promise that this won't be used against you?
A. That's right.
Q. All right. Mr. Collins, do you know Marissa Cohen?
A. Yes, ma'am, I do.
Q. Okay. And tell me how you know her.
A. I know her -- I know her for a long time. My -- my -- well -- sister-in-law, Loretta, that's her niece.
Q. Okay. So, your sister-in-law Loretta, and what's her last name?
A. Her name is Miller.
Q. Loretta Miller?
A. Loretta Miller.

Q. Okay. So -- and -- and do you call her Marissa?
A. Who?
Q. Do you call Ms. Cohen -- do you -- do you call her Marissa ---
A. Yes.
Q. --- or what do you call her?
A. Marissa.
Q. All right. Does she have another name that you -- or a nickname that you use sometimes?
A. No, not as I know.
Q. Okay. So you -- what about Tina, have you ever ---
A. Tina, yeah, yes.
Q. Okay.
A. Yes.
Q. All right. And tell me about James Miller. You knew Mr. Miller?
A. James Miller, that's my nephew.
Q. Okay. And how -- explain that relationship.
A. That's my brother -- my oldest brother son.
Q. And, obviously, you've known him his -- you knew him his whole life?
A. Right. We raised up together.
Q. And did you know Dave or who they called Science Combs?

A. Yes, I do.
Q. And how did you know him?
A. I knew him through Marissa, his mom.
Q. And what kind of relationship did you have with the mother, Marissa, and the child?
A. We was like family, like families. Raised up like families. I've known her and her son, he was like a son to me.
Q. And you remember the fire that happened in March of 2014?
A. I didn't see no fire, but I heard about it.
Q. Okay. And you knew about Science dying?
A. Yes, and that hurt me to my heart.
Q. Okay. And tell me, did you have some involvement in that?
A. Yes, ma'am, I do -- I did.
Q. And tell -- tell me and tell this Jury how that started.
A. How it started, Marissa, she had came (sic) to my house, and she used to pick the little children up, you know. I had a girl at the house named Chanda (ph) -- her name was Chanda. And she used to pick the girl up and they used to stay with her sometime, but they wasn't there.
Q. Oh.
A. And she said they had need to use the kerosene

heater because the house was too cold. And I -- I -- I said, "No, I can't do that, 'cause I need it." But she asked me again, and then I told her, I say, "Well, okay, you can use it, but just give it back to me." And she went on.

Q. And did she get the heater?

A. She got the heater, yes.

Q. And got it from your house?

A. Right.

Q. And then what happened?

A. And a couple of days after, she says, "Well, I got a job for you to do, I need a job done."

Q. And how did she tell you that?

A. She said, "I got a job done -- could you do a job for me?" I said, "What you mean? What you talking about?" And she was wanting me to burn her house down so she could get the insurance money. And I say, "No, I better not do that."

And then, a couple of days after, again, I saw her again, and she tell me, "You sure you ain't going to do that for me?" And I said, "Well, I'll go ahead and do it for you."

When I was fixing her car -- I was working on something on her car, I said, "Well, I -- I'll try to go ahead and do that for you." And that's how all of that happened, like that.

Q. Okay. And what were you supposed to get out of it?

A. She offered me $5,000.

Q. And where was she supposed to get $5,000?

A. The insurance company.

Q. Okay. And after you agreed to that, what happened?

A. After I agreed to it, she said she was about to move. She had -- she had everything organized for me. I said, "Okay." And she moved -- she said she moved and nobody supposed to be there.

And that night we went -- me and -- me and -- I tell my nephew -- I told my nephew at first, I say, "James," I say, "You know your -- your cousin, she say she want me to burn her house down for the insurance money." And he said, "What?" And I said, "Yeah, that's what she tells me." And he said, "Well, I wouldn't mind making a little bit right now." and I said, "Okay."

So we went up town. Played a couple of games of pool and we drank a little beer. Then we ride around a little bit, and after we ride around a little bit, that's when we go ahead and check it out, and we went to check it out. Went through the field, you know, parked the vehicle, went through the back and went to the front.

She was supposed to already have stuff organized,

you know, the kerosene and things. But the time we went, whenever she say, well, the door locked, both of the doors were locked and all, so we couldn't get in.

Q. Was that supposed to be the case? Were they supposed to be locked?

A. It was supposed to have been open.

Q. Okay.

A. And he went near the window. You know, and the window was -- looked shut and stuff, and I told him, I said, "We don't need to do this." I said, "Let's don't do it, let's wait to the next day." But he light a cigarette, and he throw a match, and I didn't see nothing light up or nothing. But, the next minute afterwords, we left, ride around a couple more times, and then James took me home. And after he took me home, probably about -- about an hour or so, about 35, 40 minutes or so, Marissa called me and tell me Science is dead. And I say, "For real? You lying." It kind of shook me up. And I told her if there's anything I can do for her, I'd do it.

And I started worrying a little bit, 'cause I know we ain't do that. That's what I say to myself on that. And when James come to pick me up, and then after that, he picked his mom up. And when he picked his mom up, they came to me and tell me about it. But I know, because Marissa called me up on the phone, at -- at the house. But I'm

sorry about everything, if I -- if I did it like that, but I don't think we -- we light that fire.

Q. Let me ask you this: Did you have any idea that Science was in that trailer?

A. No, ma'am. I had no ideal (sic). Hurt me in my heart. I had no idea that was he was in that trailer.

Q. Okay.

A. No. And that's the truth.

Q. And you had said earlier that she -- she had said she had everything ready. How ---

A. Right.

Q. --- how did she let you know that?

A. She called me on the phone.

Q. Was that the same day?

A. She said everything is ready, I done (sic) moved now.

Q. And what was the -- was there a plan about the kerosene?

A. What you say again?

Q. Was there a plan about what was supposed to happen with the kerosene?

A. The kerosene was to start the fire.

Q. And whose idea was that?

A. Me. I tell them the best way to do it is -- is with kerosene.

Q. And where was the kerosene supposed to be?
A. Supposed to be in the room, on the side, but the doors were locked, and I couldn't get to it.
Q. Okay.
A. So I cancel -- to do it.
Q. But you and James were still there?
A. No, we had left.
Q. Okay.
A. We had left.
Q. But after the -- you found out the doors were locked, and did you all go -- or did James go around to the window?
A. Yeah, he went to the window. Like I just now had said that he went to the window, you know, I was at the window, too. And I told him, "Don't do it," again, because it was raining hard, too, that night.
Q. Okay. But did you see him light something?
A. What you say again?
Q. Did you see him light something up?
A. He light a cigarette and then he flick -- he throw -- throw -- he throw a paper -- a piece of paper.
Q. At the window?
A. Yes.
Q. Okay.
A. But we didn't see nothing.

Q. You didn't see it start, you're saying?
A. No.
Q. Okay. Let me show this picture, it's State's Exhibit No. 5. Is that the trailer?
A. Yes, ma'am.
Q. Okay. And when you said you came around the back ---
A. That's the window right there.
Q. Over here?
A. Right -- right there. That -- that one right there looks small.
Q. Uh-huh.
A. That's the window, right there.
Q. Okay. And you came back from back here in the woods ---
A. Yes.
Q. --- is that what you're saying?
A. Yes.
Q. Okay.
A. Ain't no way we done it. Ain't no way. There was a plan.
Q. All right. And let me ask you ---
A. Ain't no way we done it.
Q. All right. And let me ask you this: You -- you talked to the police? They talked to you about it?

A. Yes, I did.
Q. And when you met with them, did you kind of draw up a little sketch about what happened?
A. Yes, I did.
Q. All right. Let me show you -- this hasn't been premarked, yet. It's being marked as Number 34.
(WHEREUPON, State's Exhibit No. 34 was marked for identification only.)
All right.
Is that the map? The little sketch that you drew?
A. Yes. Yes. That's the swimming pool. The swimming pool in the front. Yes.
Q. Okay. And that -- that's the swimming pool in front of the house?
A. Yeah, that circle right there, yes, ma'am.
Q. Okay. And is -- this is the map that you drew?
A. Right. Right.
Q. And that was with the two police officers?
A. Right.
Q. Officer Garrett sitting over here?
A. Right. Yes.
Q. And on the other man ---
A. Right.
Q. --- with SLED?
A. Yes.

Q. Okay.

MS. RICHARDSON: Your Honor, at this time I'd offer State's No. 34 into evidence.

MS. WILSON: No objection, Your Honor.

THE COURT: 34 is admitted.

(WHEREUPON, State's Exhibit No. 34 was admitted into evidence.)

BY MS. RICHARDSON:

Q. Okay. And let me show you this, there's a -- on the top of this picture back here is a little marking. Is that where y'all parked?

A. Yes, ma'am, uh-huh. We parked and walked through the field. Uh-huh.

Q. And this right here, is that the woods or the field?

A. The field, yes, yes.

Q. Okay. And you said that little circle is what?

A. That's the swimming pool right there in the front of the house.

Q. Okay. And there's a little square drawn on there -- little square drawn on the big rectangle right there?

A. That -- that's supposed to be that door -- that little door right there, when I pictured it.

Q. Okay. The window?

A. Yeah, supposed to be up.

Q. Okay. All right.

Mr. Collins, have you had some fires before?

A. Yes, I did. I had about 10, probably. All in my lifetime I had about 10 fires. Those fires were in trailer fires (sic) fires, but they all was (sic) accidents.

Q. And on some of those did you get some insurance money?

A. Yes, I did.

Q. And obviously, you know, a lot of your family knew about that?

A. Huh?

Q. A lot of your family knew when your house burned down, your family helped you?

A. No, my family didn't -- help me do what?

Q. I said, but your family knew when this happened, like your other family ---

A. Oh, yes, my family knew, yes.

Q. And Mr. Collins, how do you -- how do you feel about what happened to Science?

A. I feel bad. I feel bad that happened to him. You know, I cry every day thinking of -- when I think about it. It hurt me bad. That's why I'm here today. That's why I'm here today, to tell the truth.

MS. RICHARDSON: All right. I have no further

questions. Answer any questions Ms. Wilson might have for you, okay?

CROSS-EXAMINATION

BY MS. WILSON:

Q. Mr. Collins, did you feel bad when you went to trial? Did you feel bad about ---

A. Yes, I did feel bad.

Q. Did you -- did you testify in your own trial?

A. My own trial?

Q. Yes.

A. I didn't have the nerve to do it.

Q. Okay.

A. Not right then.

Q. Okay. Now, how many times had you been to Marissa's house?

A. I've been to Marissa's house plenty of times.

Q. So, knowing the lay of that house or the lay of the land, wasn't nothing new to you, was it?

A. Well, the land, it was new to me, yes. Going through the back, that was new to me. Yes, it is.

Q. Okay. Who showed that to you?

A. Marissa husband. He used to go through the field.

Q. So you knew the lay of the land. I mean, you knew it?

A. I never walked -- went through there before. I'd

usually drive.
Q. Okay.
A. I'd usually drive a car.
Q. Okay.
A. That's what I used to do.
Q. You're not saying her husband was with you that night?
A. Oh, no.
Q. Okay.
A. No, uh-huh.
Q. Okay.
A. I'm telling the truth what I'm talking about.
Q. Okay. Now, when you talked with the deputies, they kept telling you, "It's either you or Marissa."
Well, let me back up.
When you first talked with the officers you kept telling them you didn't do it; is that correct?
A. I didn't do it, 'cause I ain't throw the light, or nothing. And I don't think that -- that my nephew do it. I don't think none of us do it do, to be real with you. We just planned -- we just had something planned.
Q. Oh, but you didn't do it?
A. No, I didn't do it, but I still feel bad about the situation.
Q. Okay. Had you ever done -- had Marissa ever had

you do a job before her -- before, any kind of work, you ever did any kind of work?

A. Yes, I fix her car. I do something to her car, I help her and her husband do the car for her.

Q. Okay.

A. Yeah.

Q. And so her wanting you -- saying she wants you do a job, that wasn't unusual to you?

A. Oh, yeah, that's unusual to me by doing a job, like that. You know, doing that, I -- I try to keep things confidential, you know, but I don't want it to get out.

Q. Okay. Well, let me ask you this ---

A. Afraid of that.

Q. Your memory's okay today?

A. Yeah, it's okay today.

Q. Okay.

A. My mind is clear, especially when I'm locked up.

Q. Okay. Now, the State has -- State has said they didn't -- they didn't promise you anything?

A. They didn't promise a thing.

Q. Okay. They promised that they wouldn't fight?

A. No.

Q. Your reduction?

A. Right.

Q. Okay. So they said they wouldn't fight against

your plea for a reduction in sentence?

A. Right.

Q. Okay. So you're really hoping to get your sentence reduced after ---

A. And if I don't ---

Q. --- after -- after ---

A. --- if I don't get it reduced, at least I've come to tell the truth.

Q. Okay.

A. You know.

Q. Did Marissa ever pay you any money?

A. No. Uh-huh.

Q. Okay. But you're saying it was you who told her the best way to do it is with kerosene?

A. Yes, that's what I told her. That would be the best -- the best way to do it.

Q. But you didn't see no fire, but you heard about it?

A. Right.

Q. Okay.

A. Yes, ma'am.

Q. And it was raining heavy that night?

A. Right. And the little boy get hurt. He get killed. And I -- that -- that do it to me.

Q. Okay. Now, you had how many fires?

A. I probably have about 10, probably, in my lifetime.

Q. Okay.

A. But all been accident. I had some that I didn't have insurance on, I lose.

Q. Okay. Did they ever accuse you of setting any of those fires?

A. A couple of people, you know, they tell and say I -- I might have done it. But, hey, they can talk what they want to talk. I know I didn't do it.

Q. Okay. Did you get paid every time you had insurance on the property?

A. Yes, yes, I did. That's what the insurance for.

Q. You didn't get none of your claims denied?

A. No, ma'am.

Q. None of them?

A. No, ma'am. I get my money.

Q. Okay. Now, you testified that Marissa borrowed a kerosene heater from you?

A. Yes, she borrowed one.

Q. Okay.

A. Because she said it was too cold in the house. But it wasn't -- it wasn't because that she was going to do -- set the house on fire. She borrowed it, because -- because we were close.

Q. Okay. When this incident happened -- Court's indulgence, Your Honor.

THE COURT: Uh-huh.

Q. How long have you been in -- when was your trial, Mr. Collins?

A. Where my trial been (sic) at?

Q. Uh-huh.

A. My trial right here.

Q. I said when.

A. I think about two -- '18, 2018.

Q. Okay.

A. I think November -- November the '18, that's when it started.

Q. Okay. November the 18th (sic). Okay.

No further questions -- well, Court's indulgence.

Initially -- your testimony is, initially you told Marissa you wouldn't do the job?

A. At first I told her.

Q. Okay.

A. Yes. But I ---

Q. And when you got to ---

A. --- changed my mind because she asked me again.

Q. Okay. When you got to the house doors were locked.

A. Right.

Q. Okay. Did that strange to you?

A. Yeah, it did seem strange to me, that's why I didn't do it. I told my nephew to back off, don't do it. But I don't know what happened.

Q. Okay. And it was you who -- there's no question about the fact that it was you who got your nephew involved?

A. Right. Right. Because my nephew ain't know nothing about -- he know about Marissa part, but he ain't wanting to hurt them, because he say she got too much her (sic) mouth.

MS. WILSON: Oh, okay. No further questions.

THE COURT: Any redirect?

REDIRECT EXAMINATION

BY MS. RICHARDSON:

Q. So the night that you went to the trailer, you and James, that's the night he lit something and through it at the window?

A. Yes.

Q. And that's the -- shortly after that, that's the same night that y'all found out Science had died in the fire?

A. Right. Right.

Q. And without saying what happened or talk about how, James is no longer with us. James is dead?

A. Yes, and I love him dearly.

Q. And you hate to say anything bad about him?
A. Right.
MS. RICHARDSON: No further questions.
THE WITNESS: Uh-huh.
THE COURT: Anything further, Ms. Wilson?

RECROSS-EXAMINATION

BY MS. WILSON:

Q. Mr. Collins, how far did you go in school?
A. I went to school, might be the seventh.
Q. Okay. And you previous -- previously testified about some medical issues?
A. Right.
Q. Okay.
A. You're right.
MS. WILSON: Nothing further.
THE WITNESS: I just want to get this stuff off my chest.
THE COURT: Thank you, Sir, you can step down.
THE WITNESS: All right.
(Witness stepped down from witness stand.)
END OF REQUESTED PROCEEDINGS.

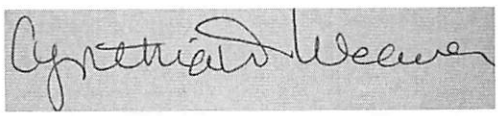
CERTIFICATE OF REPORTER

State of South Carolina)
County of Georgetown)

I, Cynthia D. Weaver, Official Court Reporter for the Fifteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the General Sessions for Georgetown County, South Carolina, on the 8th day of January, 2020.

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

February 14, 2020



Cynthia D. Weaver,
Official Court Reporter
State of South Carolina

CERTIFICATE OF COUNSEL

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

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ATTORNEYS FOR RESPONDENT

February 25, 2020

The South Carolina Court of Appeals

The State, Respondent,

v.

Randy Collins, Appellant.

Appellate Case No. 2018-002056

The Honorable Larry B. Hyman, Jr.
Georgetown County
Trial Court Case No. 2014GS2200804, 2014GS2200803

ORDER

The Court has received the respondent's motion to supplement the record on appeal. This motion is Granted. The supplemental record on appeal is considered served and filed.

FOR THE COURT

BY V. Claire Allen, Deputy
CLERK

Columbia, South Carolina

cc:
Alan McCrory Wilson, Esquire
Robert Michael Dudek, Esquire
E. Brandon Gaskins, Esquire
Jonathan Scott Matthews, Esquire
Jimmy A. Richardson, II, Esquire

FILED
March 6, 2020

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of General Sessions

Larry B. Hyman, Jr., Circuit Court Judge

RECEIVED
MAR 09 2020
SC Court of Appeals

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

The State, ...Respondent,

v.

Randy Collins,.....Appellant,

APPELLANT'S RETURN TO RESPONDENT'S MOTION TO ALLOW FILING OF SUPPLEMENTAL RECORD ON APPEAL

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Co-counsel for Appellant

Pursuant to Rules 212(b) and 240(e) of the South Carolina Appellate Court Rules, Appellant Randy Collins submits this Return to Respondent's Motion to Allow Filing of Supplemental Record on Appeal, dated February 25, 2020. In its motion, the State seeks to supplement the Record on Appeal to include Appellant's testimony in the jury trial of Marissa Cohen held from January 6, 2020 to January 9, 2020 before the Georgetown County Court of General Sessions with the Honorable Kristi F. Curtis presiding.

The State's motion to supplement the record should be denied. Appellant's trial testimony in a separate case should not be included in the record because it was not presented to the lower court in Appellant's case below. As a result, his subsequent testimony is not permitted to be included in the record under Rule 210(c), SCACR. Also, the decisions relied on by the State – *Whetsell v. State*, 276 S.C. 295, 277 S.E.2d 891 (1981), and *State v. Sroka*, 267 S.C. 664, 230 S.E.2d 816 (1976) – do not involve attempts to supplement the record with testimony from a separate trial and, therefore, do not support supplementation of the record.

Even if the record is supplemented, Appellant's testimony does not eliminate the prejudice he suffered as a result of the trial court's erroneous admission of his statements to law enforcement in the case on appeal. Appellant can demonstrate that he was prejudiced by the trial court's error because he would not have testified in Ms. Cohen's trial but for such error. As a result, Appellant's testimony in Ms. Cohen's trial will not affect the issues on appeal.

I. Supplementation of the record is improper because Rule 210(c) expressly bars from the record matters that were not presented to the lower court.

The State's motion to supplement the record is not proper under Rule 210(c), SCACR, which provides that "[t]he Record shall not, however, include matter which was not presented to the lower court or tribunal." Because the trial testimony proffered by the State was given in a separate, subsequent trial and was not presented to the lower court in Appellant's case below, it

should not be included in the record under Rule 210(c). *See Pena v. State*, 932 S.W.2d 33 (Tex. Ct. App. 8th Dist. 1996) (denying motion to supplement record with statement from trial of co-defendant and ruling that it "is not proper for an appellate court to look to another appellate record to supply deficiency in proof of another case under consideration on appeal").

Although Rule 212(b) allows a party to supplement the record with leave of the Court, it does not permit a party to expand the record with materials that were not presented to the lower court. Also, the State does not support its motion with any authority permitting supplementation of the record with testimony from a separate case that was tried after a defendant's conviction.

The only two cases relied on by the State in its motion are *Whetsell* and *Sroka*. However, neither of those cases support the proposition that a record on appeal can be supplemented with materials from a separate case. Both *Whetsell* and *Sroka* involved inculpatory statements made by defendants during the post-conviction phases of their respective cases. They did not involve attempts to supplement the record on appeal with testimony from separate trials. As such, the admissions of guilt in *Whetsell* and *Sroka* were appropriately included in the records on appeal in those cases under Rule 210(c). Therefore, *Whetsell* and *Sroka* do not support supplementation of the record with materials that are expressly excluded from the record under Rule 210(c).

II. Appellant's subsequent testimony does not eliminate the prejudice caused by the lower court's admission of his statements to law enforcement.

Even if Appellant's trial testimony from Ms. Cohen's trial is included in the record, it would not eliminate the prejudice that Appellant suffered from the trial court's admission of his

statements to law enforcement in his case. And the State's reliance on *Whetsell* and *Sroka* to support its argument that Appellant's testimony eliminates any possible prejudice is mistaken.[1]

Neither *Whetsell* nor *Sroka* addresses the situation presented here, which involves a defendant, after his conviction, agreeing to testify in a separate trial of another defendant in return for the State's recommendation of a sentence reduction. In this case, the trial court's error in admitting Appellant's statements, which were the only evidence supporting his guilt, resulted in his conviction and a 30-year prison sentence. Faced with such a substantial sentence, Appellant agreed to testify in Ms. Cohen's trial to seek a downward departure. The lower court's erroneous admission of Appellant's statements directly resulted in the testimony that the State seeks to add to the record, which proves a direct, causal relationship between the statements and the prejudice resulting from the trial court's admission of the statements. Thus, Appellant's subsequent testimony in Ms. Cohen's trial does not eliminate the prejudicial effect of the trial court's error below. If anything, it underscores that prejudice.

Moreover, subsequent decisions from the South Carolina Supreme Court have limited the holding in *Whetsell*. *See Johnson v. Catoe*, 336 S.C. 354, 520 S.E.2d 617 (1999) (explaining that *Whetsell* stands for narrow proposition that a PCR applicant who has pleaded guilty cannot show prejudice if he states he would have pleaded guilty in any event); *Craddock v. State*, 327 S.C. 303, 491 S.E.2d 251 (1997) (distinguishing *Whetsell* on the ground that the defendant stated he would not have pleaded guilty but for counsel's error). As those cases demonstrate, *Whetsell* does not

[1] Appellant's testimony in Ms. Cohen's trial does not amount to an admission of committing first-degree arson. Although Appellant testified about his involvement in the plan to burn Ms. Cohen's home, he also testified that he did not see his cousin light the fire and that he does not believe that they started the fire that burned the home. (Supp. R. pp. 11-14, 19.) Therefore, Appellant's testimony does conclusively establish guilt as the defendant's admission did in *Sroka*.

stand for a blanket rule that any post-conviction statement of guilt by the defendant eliminates any possibility of prejudice from trial error.

In *Whetsell*, the defendants pleaded guilty to larceny on the advice of their counsel. More than a year later, the defendants filed petitions for post-conviction relief based on their attorney's failure to file a motion to suppress evidence. *Whetsell*, 276 S.C. at 297, 277 S.E. at 892. During their post-conviction hearing, the defendants reiterated their guilt and stated that they would plead guilty if granted a new trial. *Id.* Despite these statements, the trial court granted the petitions for post-conviction relief, which the Supreme Court reversed. *Id.* The Supreme Court, citing *Sroka*, ruled that review of trial error by the defendants' counsel was unnecessary because the respondents had admitted their guilt and stated that they would plead guilty again in a new trial. *Id.*

The Supreme Court revisited its holding in *Whetsell* several years later in *Johnson v. Catoe*, 336 S.C. 354, 520 S.E.2d 617 (1999). In that case, the court clarified that *Whetsell* does not stand for the proposition that a defendant who admits his guilt is barred from collaterally attacking his conviction. *Id.* at 358-59, 520 S.E.2d at 619. Instead, the court explained, "*Whetsell* stands only for the narrow proposition that a PCR applicant who has pled guilty on advice of counsel cannot satisfy the prejudice prong on collateral attack if he states he would have pled guilty in any event." *Id.* According to the court, the operative fact that led to its holding in *Whetsell* "is not the admission of guilt but the fact that the PCR applicants in that case stated they would plead guilty again if granted a new trial." *Id.* at 358, 520 S.E.2d at 619. As a result, the Supreme Court concluded that *Whetsell* does not bar a capital defendant who admits his guilt at sentencing from challenging guilt phase errors on collateral attack. *Id.* at 359, 520 S.E.2d at 619.

Johnson demonstrates that the narrow holding in *Whetsell* does not apply to this case. As the court explained in *Johnson*, *Whetsell* is a guilty plea case in which PCR was granted by the

trial court but reversed on appeal based on the operative fact that the defendants admitted that they would plead guilty again if granted a new trial. Thus, the facts in *Whetsell* are far removed from those in this case.

Yet *Johnson* also makes clear that the determination of prejudice should be decided by the effect of the trial error on the defendant's admission of guilt. The court stated in *Johnson* that a defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pleaded guilty. *Id.* at 358, 520 S.E.2d at 619.

Applying the court's reasoning in *Johnson* to the present case demonstrates that Appellant's testimony in Ms. Cohen's trial does not eliminate prejudice from the trial court's error. Appellant can show that there is a reasonable probability that but for the trial court's errors in his case and his resulting conviction, he would not have testified in Ms. Cohen's case. So just as a defendant who admits his guilt at sentencing is not barred from challenging guilt phase errors on collateral attack, a defendant should not be barred from directly challenging his conviction because he provides testimony in a separate trial of another defendant in an attempt to reduce his sentence. Therefore, Appellant should not be barred from directly challenging the errors made by the lower court in his case merely because he provided assistance to the State in Ms. Cohen's trial.

CONCLUSION

Based on the arguments above, Appellant requests that the Court deny the State's motion to supplement the record on appeal.

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Co-counsel for Appellant

March 6, 2020
Charleston, SC

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of General Sessions

Larry B. Hyman, Jr., Circuit Court Judge

RECEIVED
MAR 09 2020
SC Court of Appeals

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

The State,..... Respondent,

v.

Randy Collins,..... Appellant,

PROOF OF SERVICE

This is to certify that I have this day served counsel for the Respondent in the foregoing matter with a copy of the foregoing **APPELLANT'S RETURN TO RESPONDENT'S MOTION TO ALLOW FILING OF SUPPLEMENTAL RECORD ON APPEAL** by depositing the same in the United States Mail with adequate postage affixed thereon to ensure delivery, addressed as follows:

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March 6, 2020
Charleston, South Carolina

The South Carolina Court of Appeals

The State, Respondent,

v.

Randy Collins, Appellant.

Appellate Case No. 2018-002056

The Honorable Larry B. Hyman, Jr.
Georgetown County
Trial Court Case No. 2014GS2200804, 2014GS2200803

ORDER

On March 6, 2020, this Court issued an order granting the respondent's motion to supplement the record on appeal. On March 9, 2020, the Court received a return to the motion from the appellant. Since the appellant's return was timely served, the March 6, 2020, order is withdrawn. The respondent has ten (10) days from the date of this order to file a reply. The Court will then reconsider the motion to supplement the record on appeal, along with the appellant's return, and any reply that is filed.

FOR THE COURT

BY V. Claire Allen, Deputy
CLERK

Columbia, South Carolina
cc:
Alan McCrory Wilson, Esquire
Robert Michael Dudek, Esquire
E. Brandon Gaskins, Esquire
Jonathan Scott Matthews, Esquire
Jimmy A. Richardson, II, Esquire

FILED
March 31, 2020

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
The Honorable Larry B. Hyman, Circuit Court Judge

Appellate Case No. 2018-002056

THE STATE, Respondent,

v.

RANDY COLLINS, Appellant.

REPLY TO APPELLANT'S RETURN IN OPPOSITION TO ALLOW FILING OF A SUPPLEMENTAL RECORD ON APPEAL

The State, through its undersigned counsel, would respectfully show unto the Court as follows:

I.

On February 25, 2020, the State filed a motion to supplement the record on appeal in light of Appellant's testimony against his codefendant, Marissa Cohen on January 8, 2020. On March 6, 2020, this Court granted the State's motion to supplement the record on appeal. On March 9, 2020, Appellant filed a return to the State's motion to allow filing of a supplemental record on appeal. On March 31, 2020, this Court withdrew its previous order in light of Appellant's return and allowed the State to file a reply to Appellant's return. This reply of the State to Appellant's return now follows:

II.

Appellant argues the State's motion to supplement the record on Appeal should be denied for two reasons. First, Appellant argues that it is improper to supplement the record on appeal because Rule 210(c) SCACR expressly bars matter that was not considered by the lower court. Secondly, Appellant argues that his subsequent testimony does not eliminate the prejudice caused by the trial court's admission of Appellant's statements to law enforcement. In support of this argument, Appellant argues "Appellant should not be barred from directly challenging the errors made by the lower court in his case merely because he provided assistance to the State in Ms. Cohen's trial." (Appellant's Return 6). Appellant's argument misapprehends the purpose of the State's motion to supplement the record on appeal. The State is not seeking to dismiss Appellant's appeal before this Court or otherwise prevent Appellant from challenging any alleged errors committed by the trial judge. The State seeks to supplement the record on appeal with a transcript of Appellant's admission of guilt at a subsequent trial because it is relevant for this Court's analysis of whether Appellant was prejudiced by the admission of his original confession to law enforcement at his trial. In light of Appellant's subsequent confession, Appellant has not suffered any prejudice from the admission of his confession at trial. Therefore, any error committed by the trial judge in admitting Appellant's original confession is now harmless.

In his final brief to this Court, Appellant argued that the trial judge erred in admitting Appellant's incriminating statements from his interview with law enforcement because they "were induced by deception regarding their use, promises of leniency, threats of severe punishment, and other factors indicating that the statements were not voluntarily given." (Final Brief of Appellant 15). As a remedy for this error, Appellant requests that this Court reverse his

convictions and remand for a new trial. (Final Brief of Appellant 24). However, in light of Appellant's subsequent sworn testimony admitting his involvement in planning the first degree arson for which he was tried and convicted, Appellant can no longer achieve any meaningful remedy from this Court on appeal. The State is not arguing, as Appellant suggests, that this Court should no longer consider the merits of Appellant's appeal. However, if this Court determines the trial judge erred in admitting Appellant's original confession and chooses to reverse Appellant's conviction and remand Appellant's case for a new trial, Appellant will most likely be retried. In the event of a re-trial, Appellant's sworn testimony from January 8, 2020 will certainly be used against him at a subsequent trial.

In his return, Appellant asserts "Appellant can demonstrate that he was prejudiced by the trial court's error because he would not have testified in Ms. Cohen's trial but for such error." (Return of Appellant 2). Contrary to Appellant's assertion, it is irrelevant whether Appellant would have testified against his co-defendant if not for the trial judge's alleged error. The relevant consideration for this Court is that Appellant gave sworn testimony admitting his involvement in the arson while being represented by appellate counsel. (Supp. 4-13). Appellant testified with no promise of reward other than the State recommending a general downward departure. (Supp. 5). Furthermore, Appellant testified with full knowledge of the potential consequences to his pending appeal. During Appellant's January 8, 2020 testimony the following exchange occurred:

> Assistant Solicitor Richardson: And Mr. Collins, is your sentence or your conviction currently under appeal? You appealed it, your sentence?
>
> Appellant: Yes, ma'am.
>
> Assistant Solicitor Richardson: Okay. And you've got a lawyer helping you with that?

Appellant: Yes, ma'am.

Assistant Solicitor Richardson: Okay. And is he in the courtroom, Mr. Gaskins?

Appellant: Yes.

Assistant Solicitor Richardson: Okay. And you're here to testify today?

Appellant: Yes, ma'am.

Assistant Solicitor Richardson: Okay. And that's voluntary, nobody's forced you to do that?

Appellant: Right.

Assistant Solicitor Richardson: Okay. And would you tell this Jury what you're hoping to get from this?

Appellant: I'm hoping to get my sentence cut a little bit.

Assistant Solicitor Richardson: Okay. And has anybody promised you that that's going to happen?

Appellant: No.

Assistant Solicitor Richardson: And you understand that that's up to the judge?

Appellant: Right.

Assistant Solicitor Richardson: And is it true that we have promised that we would bring it to the Judge's attention?

Appellant: Right.

Assistant Solicitor Richardson: But it's completely up to the Judge?

Appellant: Yes.

Assistant Solicitor Richardson: Been no agreement as to what number it would be?

Appellant: Right.

Assistant Solicitor Richardson: All right. And Mr. Collins, do you understand that by testifying today that could hurt your appeal?

Appellant: Right.

Assistant Solicitor Richardson: And could cause you some problems there?

Appellant: Right.

Assistant Solicitor Richardson: Do you also understand that anything you say can be used against you if you were to have go (sic) back to court?

Appellant: Right.

(Supp. 4-5, lines 14-25, 1-25).

Appellant's subsequent admission of guilt was voluntary and would be admissible against him in any future trial. Appellant will not suffer any prejudice from supplementing the record on appeal with his subsequent testimony, nor will his current appeal be adversely affected. Appellant may well prevail in his appeal to this Court and still be unable to obtain any meaningful relief in light of his subsequent sworn admission of guilt[1].

Appellant's January 8, 2020 testimony could not have possibly been considered by the trial judge at Appellant's trial in November 2018. However, under the unique facts of Appellant's case, the State seeks the leave of this Court to supplement the record on appeal to include Appellant's subsequent testimony because it is relevant to this Court's consideration of

[1] Contrary to Appellant's assertion in his return, Appellant's testimony on January 8, 2020 conclusively established his guilt. Appellant admitted to engaging in a criminal conspiracy with Marissa Cohen and James Miller to burn down Cohen's trailer in exchange for $5,000 of insurance proceeds. Appellant further admitted that he suggested using kerosene and that kerosene was supposed to have been poured inside the trailer when he and Miller arrived. Appellant also witnessed Miller light a piece of paper on fire and throw it at one of the trailer's windows. (Supp. 9-13). It is irrelevant whether Appellant actually saw the fire start. See State v. Chavis ("When several people pursue a common design to commit an unlawful act and each takes the part agreed upon or assigned to him in an effort to insure the success of the common undertaking, '...the act of one is the act of all and all are presumed to be present and guilty.'" State v. Chavis, 277 S.C. 521, 522, 290 S.E.2d 412-413 (1982) (quoting State v. Gilbert, 107 S.C. 443, 446, 93 S.E. 125, 126 (1917)).

whether Appellant was prejudiced from the admission of his original confession and whether any potential error by the trial judge was harmless.

WHEREFORE, Respondent prays that this Court will allow the State to file a Supplemental Record on Appeal; accept the filing of the State's Supplemental Record on Appeal; and for such other and further relief as the Court may deem just and proper.

Respectfully submitted,

ALAN WILSON
Attorney General

SCOTT MATTHEWS
Assistant Attorney General

By: Scott Matthews
Scott Matthews

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April 8, 2020

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
The Honorable Larry B. Hyman, Circuit Court Judge

Appellate Case No. 2018-002056

THE STATE, Respondent,

v.

RANDY COLLINS, Appellant.

PROOF OF SERVICE

I, Shana Montgomery, certify that I have served the within Respondent's Reply to Appellant's Return in Opposition to Allow Filing of a Supplemental Record on Appeal on Appellant by depositing a copy in the United States mail, postage prepaid, addressed to:

E. Brandon Gaskins, Esquire
Moore & Van Allen PLLC
78 Wentworth Street
Post Office Box 11589
Charleston, SC 29401

I further certify that all parties required by Rule to be served have been served.
This eighth day of April, 2020.

Shana Montgomery
Legal Assistant
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The South Carolina Court of Appeals

The State, Respondent,

v.

Randy Collins, Appellant.

Appellate Case No. 2018-002056

ORDER

The State's motion to supplement the record on appeal is denied.

FOR THE COURT

Columbia, South Carolina

cc:
Alan McCrory Wilson, Esquire
Robert Michael Dudek, Esquire
E. Brandon Gaskins, Esquire
Jonathan Scott Matthews, Esquire
Jimmy A. Richardson, II, Esquire

FILED
Apr 29 2020