

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Cherokee County

Roger L. Couch, Circuit Court Judge

RECEIVED

APR 26 2013

S.C. Supreme Court

JIMMY LITTLEJOHN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2012-213169

APPENDIX

KATHRINE H. HUDGINS
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

SUZANNE H. WHITE
Assistant Attorney General
P. O. Box 11549
Columbia, SC 29211

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

INDEX

INDEX.....	i
TRIAL TRANSCRIPT	1
INDICTMENTS AND SENTENCING SHEETS.....	227
POST-CONVICTION RELIEF APPLICATION.....	233
RETURN	240
POST-CONVICTION RELIEF HEARING TRANSCRIPT	246
MEMORANDUM OF LAW IN SUPPORT OF DISMISSAL OF APPLICANT'S POST-CONVICTION RELIEF APPLICATION	312
APPLICANTS'S MEMORANDUM	320
APPLICANT'S EXHIBIT # 1 (INMATE REQUEST FORM).....	329
APPLICANT'S EXHIBIT # 2 (LETTER).....	330
APPLICANT'S EXHIBIT # 3 (REQUEST FOR DOCUMENTS)	331
APPLICANT'S EXHIBIT # 4 (LETTER).....	334
APPLICANT'S EXHIBIT # 5 (FAMILY COURT ORDER)	335
APPLICANT'S EXHIBIT # 6 (INCIDENT REPORT).....	337
APPLICANT'S EXHIBIT # 7 (FIRE REPORT)	338
APPLICANT'S EXHIBIT # 8 (CONSENT TO SEARCH)	342
ORDER OF DISMISSAL	343

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

3
4 THE STATE)
5 -vs-) TRANSCRIPT OF RECORD
6 JIMMY LITTLEJOHN,) 2004-GS-11-975
7 Defendant.) 2004-GS-11-976
8) OCTOBER 27, 2004
9) Gaffney, South Carolina

10 B E F O R E:

11 THE HONORABLE J. MARK HAYES, II, JUDGE.
12

13
14 A P P E A R A N C E S:

15 ABEL GRAY, ASSISTANT SOLICITOR
16 Attorney for the State

17 DON THOMPSON, PUBLIC DEFENDER
18 Attorney for the Defendant

19
20 Michael R. Watts
21 Circuit Court Reporter
22
23
24
25

INDEX

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

WITNESSES

PAGE

(NO WITNESSES CALLED)

EXHIBITS

NO.	DESCRIPTION	ID.	EV.
1			
2			
3	(NO EXHIBITS MARKED)		
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			

1 (PROCEEDINGS, OCTOBER 27, 2004)

2 MR. GRAY: This is also a defense motion, Your
3 Honor, by the defendant.

4 MR. THOMPSON: Yes, Your Honor.

5 Mr. Littlejohn was arrested in July of this year.
6 He was charged with arson and burglary first, occurring at
7 an apartment complex on July 4th of this year, in the
8 apartment of an --

9 MR. GRAY: Ex-wife.

10 MR. THOMPSON: Your Honor, I don't know if she was
11 the ex-wife or ex-girlfriend of the top of my head. I don't
12 have the file in front of me, but it was a past
13 relationship.

14 Judge, Mr. Littlejohn -- we have had a bond
15 hearing in front of Judge Alford. We had the preliminary
16 hearing three weeks ago yesterday. It was waived up by the
17 magistrate. At that time Mr. Littlejohn wasn't happy with
18 my services in the preliminary hearing and instructed me
19 that I was fired. I received a letter from him a few days
20 later. In that letter he instructed me that he no longer
21 wanted my services, for me to make two copies of my file and
22 give it to him. I have told him the same thing as I told
23 Mr. Spencer, and that being I can't just drop
24 representation. That has to be a court matter, since I have
25 been appointed, and we are here before the court to deal

1 about that issue, Your Honor.

2 THE COURT: You are Mr. Littlejohn?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: All right. Were you able to hear Mr.
5 Thompson when he informed me of your desire to have Mr.
6 Thompson relieved as being your lawyer?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Is that what you want?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Do you intend to hire an attorney?

11 THE DEFENDANT: Yes, sir. I have already
12 contacted one already.

13 THE COURT: All right. And do you have the
14 financial ability to be able to afford to pay for your
15 lawyer?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Do you mind telling me who it is that
18 you contacted?

19 THE DEFENDANT: It's Mr. Dewey Tullis in
20 Spartanburg.

21 THE COURT: You mean Rod Tullis?

22 THE DEFENDANT: Dewey Tullis.

23 THE COURT: Dewey is his brother who has passed
24 away.

25 THE DEFENDANT: It's -- all I know is Tullis.

1 MR. THOMPSON: His father I believe is named Dewey
2 also, Your Honor, but his father is a bondsman and not an
3 attorney.

4 THE COURT: Uh-huh.

5 MR. GRAY: And they run a funeral home.

6 THE COURT: All right. Do you understand that
7 that if you don't retain the services of an attorney, that
8 you may be put into a situation where you have to represent
9 yourself?

10 THE DEFENDANT: Yes, I understand. I'd rather
11 represent myself than Mr. Thompson. And during my bond
12 hearing -- I turned myself in I wasn't arrested. I went to
13 the police station twice. My father was here, and he
14 wouldn't talk to my father. He wouldn't talk to me. He
15 didn't even talk to me before the bond hearing. The
16 solicitor made me out that I was a flight risk, I was
17 running from the police, I had threatened my wife. I'm
18 currently still married to the woman. She's not my ex-wife.
19 They made me out to be a lot of different things that Mr. --
20 if only Mr. Thompson would have spoke to me, we could have
21 cleared it up.

22 My momma and father has repeatedly tried to get in
23 contact with Mr. Thompson; went to his office. He refused
24 to talk to them. They have even had witnesses and
25 information pertaining to the case. He won't even talk to

1 them.

2 THE COURT: Do you understand that if you don't
3 hire a lawyer --

4 THE DEFENDANT: I understand all that.

5 THE COURT: -- to represent you, that you may be
6 put in a situation where you have to represent yourself?

7 THE DEFENDANT: That won't happen. I will retain
8 some kind of legal representation before the trial.

9 THE COURT: And you think that you can have
10 yourself an attorney hired to represent you within 30 days?

11 THE DEFENDANT: Yes.

12 I asked Mr. Thompson to put in for a fast and
13 speedy trial in my case. I don't know -- he wouldn't
14 even -- we had 20 minutes before the preliminary hearing. I
15 had some questions that I wanted to ask the detective and he
16 never did -- he never did come by and he never did talk to
17 me or anything, you know.

18 THE COURT: Okay. Do you think that you can have
19 yourself a lawyer in 30 days?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Do you understand that if you don't
22 have that lawyer in 30 days, that then the State is going to
23 be in a position where they can call your case for trial.
24 You might have to represent yourself. Do you understand
25 that?

1 THE DEFENDANT: I understand that.

2 THE COURT: All right. I will grant the motion to
3 relieve Mr. Thompson. I will allow you 30 days --

4 THE DEFENDANT: Yeah.

5 THE COURT: -- of protection.

6 THE DEFENDANT: Okay.

7 THE COURT: After 30 days the State can call your
8 case to trial. Do you understand that?

9 THE DEFENDANT: Yeah, I would like to, because
10 people at my job, we took a fund for me to get an attorney.
11 The job that I used to work at, they took up a fund so I
12 could get me a lawyer.

13 THE COURT: Well, I would get on the telephone day
14 and find yourself a lawyer.

15 THE DEFENDANT: I will.

16 THE COURT: And have him or her contact the
17 solicitor's office, okay?

18 THE DEFENDANT: Okay. Thank you.

19 THE COURT: Good luck to you.

20 MR. THOMPSON: Good luck, Mr. Littlejohn.

21 I'll prepare a written order, Your Honor.

22 THE COURT: Thank you.

23 (END OF REQUESTED TRANSCRIPT OF RECORD)

24

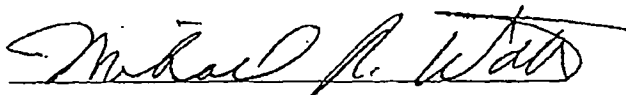
25

CERTIFICATE

I, the undersigned, Michael R. Watts, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for CHEROKEE County, South Carolina, on the 27th day of OCTOBER, 2004.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

FEBRUARY 26, 2007



Michael R. Watts
Circuit Court Reporter

IN THE COURT OF GENERAL SESSIONS
CHEROKEE COUNTY, SOUTH CAROLINA

SOUTH CAROLINA

VERSUS

JIMMY L. LITTLEJOHN, DEFENDANT

CASE NUMBER: 2004-GS-11-975 & 976

HEARD ON WEDNESDAY, MAY 25 & 26, 2005.
BEFORE THE HONORABLE JOHN C. HAYES, III AND A JURY.

APPEARANCES:

MICHAEL MORIN
ASSISTANT SOLICITOR
SEVENTH CIRCUIT SOLICITOR'S OFFICE
125 EAST BAKER BLVD.
GAFFNEY, SC 29340
REPRESENTING THE STATE

REPORTED BY: JANET M. RICH
CIRCUIT COURT REPORTER
1992 DOWNEY STREET
ROCK HILL, SC 29732

I N D E X

1		
2	JURY VOIR DIRE	6
3	JURY SELECTED	14
4	JURY SWORN	22
5	OPENING STATEMENTS:	
6	MR. MORIN	26
7	MR. LITTLEJOHN	28
8	JOHN SPLAWN	
9	DIRECT EXAMINATION	30
10	CROSS EXAMINATION	36
11	REDIRECT EXAMINATION	40
12	JERMEY BROOME	
13	DIRECT EXAMINATION	41
14	CROSS EXAMINATION	44
15	NATHAN ELLIS	
16	DIRECT EXAMINATION	45
17	CROSS EXAMINATION	50
18	BOBBY SHEALY	
19	DIRECT EXAMINATION	52
20	CROSS EXAMINATION	81
21	ALEX LAYTON	
22	CROSS EXAMINATION	90
23		
24		
25		

I N D E X

1	
2	IVEY LITTLEJOHN
3	DIRECT EXAMINATION 96
4	CROSS EXAMINATION 100
5	SHEMEKA WILKINS
6	DIRECT EXAMINATION 100
7	CROSS EXAMINATION 106
8	JAMES WILKINS
9	DIRECT EXAMINATION 110
10	CROSS EXAMINATION 113
11	SHERRY DAVIS
12	DIRECT EXAMINATION 115
13	CROSS EXAMINATION 118
14	TONYA LOGAN
15	DIRECT EXAMINATION 125
16	CROSS EXAMINATION 126
17	ROSE HOUHEY
18	DIRECT EXAMINATION 128
19	CROSS EXAMINATION 130
20	CASANDRA JOHNSON
21	DIRECT EXAMINATION 130
22	CROSS EXAMINATION 133

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

DAVID CLARY
DIRECT EXAMINATION 135
CROSS EXAMINATION 147
REDIRECT EXAMINATION 148
SUSAN CLEMMONS
DIRECT EXAMINATION 150
CROSS EXAMINATION 170
BILLY LITTLEJOHN
DIRECT EXAMINATION 171
CROSS EXAMINATION 175
JIMMY LITTLEJOHN
DIRECT EXAMINATION 176
CROSS EXAMINATION 178
CLOSING STATEMENTS BY:
MR. LITTLEJOHN 185
MR. MORIN 193
JURY CHARGE 200
SENTENCE 216

E X H I B I T S			
		ID	EV
1			
2			
3	S-1-32	PHOTOGRAPHS	58
4	S-33	CARPET SAMPLE	59
5	S-34	CARPET SAMPLE	60
6	S-35	GREEN BLANKET	59
7	S-36	BEDSPREAD	58
8	S-37	BEDSPREAD, SHEET, ETC.	58
9	S-38-39	PHOTOGRAPHS	58
10	S-40	DIAGRAM	56
11	D-1	(4) PHOTOGRAPHS	39
12	D-2	PHOTOGRAPH	87
13	D-3	PHOTOGRAPH	87
14	D-4	PHOTOGRAPH	87
15	D-5	PHOTOGRAPH	87
16	D-6	PHOTOGRAPH ID	
17	D-7	PHOTOGRAPH ID	
18	D-8	PHOTOGRAPH ID	
19	D-9	PHOTOGRAPH ID	
20	D-10	PHOTOGRAPH ID	
21	D-11	PHOTOGRAPH ID	
22	D-12	PHOTOGRAPH ID	
23	D-13	PHOTOGRAPH ID	
24	D-14	PHOTOGRAPH	88
25			

1 THE COURT: MEMBERS OF THE JURY PANEL, THE
2 NEXT CASE IS THE THE STATE VERSUS JIMMY LEE
3 LITTLEJOHN. MR. LITTLEJOHN IS PRESENT. MR.
4 LITTLEJOHN, YOU REPRESENT YOURSELF, IS THAT CORRECT?

5 MR. LITTLEJOHN: YES, YOUR HONOR.

6 THE COURT: HE IS CHARGED WITH BURGLARY IN
7 THE FIRST DEGREE AND SECOND DEGREE ARSON. IT'S
8 ALLEGED THAT ON OR ABOUT JULY FOURTH OF 2004 HE
9 ENTERED A DWELLING OWNED BY IVY LITTLEJOHN AT 100
10 REDWOOD DRIVE APARTMENT 32 HERE IN GAFFNEY WITHOUT
11 CONSENT WITH INTENT TO COMMIT A CRIME THEREIN AND HE
12 ENTERED IN THE NIGHTTIME. IT'S ALLEGED THAT ON THAT
13 SAME DATE HE SET FIRE OR BURNED OR CAUSED TO BE
14 BURNED THAT PARTICULAR APARTMENT UNIT, SO THERE ARE
15 TWO INDICTMENTS AND TO THESE HE'S ENTERED PLEAS OF
16 NOT GUILTY.

17 THE STATE WILL BE REPRESENTED BY MR. MORIN
18 AND MR. LITTLEJOHN IS REPRESENTING HIMSELF. ANY OF
19 YOU KNOW ANYTHING ABOUT THIS CASE, HEARD ABOUT IT
20 FROM ANY SOURCE WHATSOEVER, OR HAVE ANY OF YOU HEARD
21 ABOUT THIS CASE FROM ANY SOURCE WHATSOEVER, READ
22 ABOUT IT, HEARD ABOUT IT IN ANY WHATSOEVER. YES,
23 MA'AM, IF YOU'LL STAND. YOUR NAME?

24 THE JUROR: MY NAME IS ROSE STUDYVANCE.

25 THE COURT: AND YOU HAVE HEARD ABOUT THE

1 CASE?

2 THE JUROR: YES, I HAVE.

3 THE COURT: WOULD THAT AFFECT YOUR ABILITY
4 TO BE FAIR AND IMPARTIAL IN THIS TRIAL?

5 THE JUROR: IT WOULD.

6 THE COURT: THEN YOU JUST HAVE A SEAT.
7 WE'LL PUT YOUR NAME ASIDE. WE WILL NOT HAVE YOU SIT
8 ON THIS JURY. THANK YOU. NO ONE ELSE STANDS.

9 WERE ANY OF YOU MEMBERS OF THE GRAND JURY
10 WHICH PASSED ON THIS INDICTMENT AT AN EARLIER TIME IF
11 SO PLEASE STAND. NO ONE STANDS.

12 ARE ANY OF YOU AWARE OF ANY BIAS OR
13 PREJUDICE TOWARD THE STATE OR MR. LITTLEJOHN OR THE
14 SUBJECT MATTER OF THIS CASE IF SO PLEASE STAND. NO
15 ONE STANDS.

16 ANY OF YOU KNOW OF ANY REASON WHATSOEVER
17 WHY YOU COULD NOT OR SHOULD NOT SERVE AS A FAIR AND
18 IMPARTIAL JUROR IN THE TRIAL OF THIS CASE IF SO
19 PLEASE STAND. NO ONE STANDS.

20 HAVE ANY OF YOU BEEN CHARGED WITH OR BEEN
21 THE VICTIM OF, AND I WON'T ASK YOU TO GO INTO THE
22 PARTICULARS, OF AN ALLEGED BURGLARY OR ARSON IF SO
23 PLEASE STAND. I'M NOT GOING TO ASK YOU THE
24 PARTICULARS BECAUSE THAT IS PERSONAL BUT I'M SIMPLY
25 GOING TO ASK SINCE YOU STOOD AT THIS TIME, YOUR NAME

1 AND NUMBER.

2 THE JUROR: DAVID SPAKE, NUMBER 84.

3 THE COURT: WOULD THAT FACT THAT YOU HAVE
4 STOOD IN REGARD TO THIS, WOULD THAT AFFECT YOUR
5 ABILITY TO BE FAIR AND IMPARTIAL IN THE TRIAL OF THIS
6 CASE?

7 THE JUROR: NO, SIR.

8 THE COURT: WOULD YOU BE ABLE TO BASE YOUR
9 VERDICT SOLELY ON THE LAW AND THE EVIDENCE?

10 THE JUROR: YES, SIR.

11 THE COURT: THANK YOU. ARE ANY OF YOU OR
12 A MEMBER OF YOUR IMMEDIATE FAMILY INVOLVED IN THE
13 PROSECUTION OF CRIMINAL CASES OR IN THE PAST OR ARE
14 YOU OR A MEMBER OF YOUR IMMEDIATE FAMILY BEEN
15 INVOLVED IN LAW ENFORCEMENT, EITHER NOW OR IN THE
16 PAST, OR ARE ANY OF YOU MEMBERS OF OR CONTRIBUTORS TO
17 ORGANIZATIONS SUCH AS MOTHERS AGAINST DRUNK DRIVERS,
18 STUDENTS AGAINST DRUNK DRIVERS, CITIZENS AGAINST
19 VIOLENCE, TROOPERS ASSOCIATION, SHERIFF'S
20 ASSOCIATION, FRATERNAL ORDER OF POLICE, ANY OF YOU IF
21 SO PLEASE STAND AT THIS TIME. ALL RIGHT.

22 THE JUROR: BARBARA MANNING, 102. MY
23 FATHER-IN-LAW IS A SHERIFF IN THE SHERIFF'S OFFICE.

24 THE COURT: IN THE SHERIFF'S OFFICE HERE
25 IN UNION COUNTY.

1 THE JUROR: HERE IN GAFFNEY.

2 (LAUGHTER.)

3 THE COURT: I MEAN CHEROKEE COUNTY. I'M
4 SORRY. MY APOLOGIES. IS THE SHERIFF'S OFFICE
5 INVOLVED IN THE INVESTIGATION OF THIS?

6 MR. MORIN: NO, SIR.

7 THE COURT: THE SHERIFF'S OFFICE WASN'T
8 INVOLVED IN THIS. WOULD THAT AFFECT YOUR ABILITY TO
9 BE FAIR AND IMPARTIAL, THAT RELATIONSHIP?

10 THE JUROR: NO, SIR.

11 THE COURT: WOULD YOU BE ABLE TO BASE YOUR
12 VERDICT SOLELY ON THE LAW AND THE EVIDENCE IN THE
13 TRIAL?

14 THE JUROR: YES, SIR.

15 THE COURT: THANK YOU. I APPRECIATE YOUR
16 STANDING. YES, SIR, YOUR NAME AND NUMBER.

17 THE JUROR: NUMBER 20, PREVIOUS LAW
18 ENFORCEMENT WITH THE CITY OF GAFFNEY.

19 THE COURT: WOULD THAT AFFECT YOUR ABILITY
20 TO BE FAIR AND IMPARTIAL IN THE TRIAL OF THIS CASE.

21 THE JUROR: NO, SIR.

22 THE COURT: WOULD YOU BE ABLE TO BASE YOUR
23 VERDICT SOLELY ON THE LAW AND THE EVIDENCE?

24 THE JUROR: YES.

25 THE COURT: YES, MA'AM.

1 THE JUROR: ALETA DOVER, 21, TIM BRIGHT IS
2 MY COUSIN. I THINK HE'S IN THE PROBATION OFFICE.

3 THE COURT: WOULD THAT AFFECT YOUR ABILITY
4 TO BE FAIR AND IMPARTIAL?

5 THE JUROR: NO, SIR.

6 THE COURT: WOULD YOU BE ABLE TO BASE YOUR
7 VERDICT SOLELY ON THE LAW AND THE EVIDENCE?

8 THE JUROR: YES, SIR.

9 THE COURT: THANK YOU. ANYONE ELSE? THE
10 FOLLOWING ARE PEOPLE WHO MAY TESTIFY IN THIS CASE.
11 DON'T KNOW THAT THEY WOULD ALL TESTIFY BUT WERE
12 LISTED AS WHAT IS CALLED POTENTIAL WITNESSES. IF ANY
13 OF YOU ARE RELATED BY BLOOD OR MARRIAGE OR IF YOU ARE
14 A CLOSE PERSONAL FRIEND OF ACQUAINTANCE OF ANY OF
15 THESE INDIVIDUALS PLEASE STAND. JAMES WILKINS, BILLY
16 LITTLEJOHN, TONYA LOGAN, CASANDRA JOHNSON, ROSE
17 HOUEY, JOHN SPLAWN, JERMEY BROOME, NATHANIEL ELLIS,
18 THOSE THREE INDIVIDUALS ARE WITH THE GAFFNEY CITY
19 FIRE DEPARTMENT. BOBBY SHEALY, ALEX LAYTON, THEY ARE
20 WITH SLED. IVEY LITTLEJOHN I MENTIONED. SHEMEKA
21 WILKINS, SHIRRA MINES, SUSAN MINES-CLEMENS, SHERRY
22 DAVIS, JAMES WILKINS. AND ALSO THE FOLLOWING THREE
23 ARE WITH THE FIRE DEPARTMENT: DOUG BOWERS, JASON
24 BLACKWELL, AND HEATH WHITE.

25 ANY OF YOU RELATED BY BLOOD OR MARRIAGE OR

1 ARE YOU A CLOSE PERSONAL FRIEND OR ACQUAINTANCE TO
2 ANY OF THOSE INDIVIDUALS IF SO PLEASE STAND. STAND
3 BECAUSE IT'S HARD FOR ME TO SEE YOUR HANDS. JUST
4 EVERYBODY STAND THAT FALLS INTO THAT CATEGORY. ALL
5 RIGHT. I'LL START AND WORK MY WAY ACROSS. YES, SIR,
6 YOUR NAME.

7 THE JUROR: JUROR 77 BEN ROGERS. NATHAN
8 ELLIS IS MY COUSIN.

9 THE COURT: ALL RIGHT. WHICH ONE?

10 THE JUROR: NATHAN ELLIS. I THINK YOU
11 SAID NATHANIEL THOUGH.

12 THE COURT: OKAY. I DID. ALL RIGHT.
13 WOULD THAT AFFECT YOUR ABILITY TO BE FAIR AND
14 IMPARTIAL?

15 THE JUROR: NO, SIR.

16 THE COURT: WOULD YOU BE ABLE TO BASE YOUR
17 VERDICT SOLELY ON THE LAW AND THE EVIDENCE IN THE
18 TRIAL?

19 THE JUROR: YES, SIR.

20 THE COURT: ALL RIGHT. YOU CAN HAVE A
21 SEAT. YES, SIR, YOUR NAME AND NUMBER.

22 THE JUROR: MY NUMBER IS 92. MY NAME IS
23 MARVIN WATKINS. CASANDRA JOHNSON, THAT IS MY COUSIN.

24 THE COURT: WOULD THAT AFFECT YOUR ABILITY
25 TO BE FAIR AND IMPARTIAL?

1 THE JUROR: NO, SIR.

2 THE COURT: WOULD YOU BE ABLE TO BASE YOUR
3 VERDICT ON THE LAW AND THE EVIDENCE IN THE TRIAL?

4 THE JUROR: YES, SIR.

5 THE COURT: WOULD YOU BE ABLE TO BASE YOUR
6 VERDICT ON THE LAW AND THE EVIDENCE IN THE TRIAL?

7 THE JUROR: YES, SIR, I WILL.

8 THE COURT: THANK YOU. YOU CAN HAVE A
9 SEAT. YES, SIR, YOUR NAME AND NUMBER.

10 THE JUROR: RUSSELL WHITEFIELD, NUMBER 95.
11 NATHAN ELLIS IS A FRIEND.

12 THE COURT: WOULD THAT AFFECT YOUR ABILITY
13 TO BE FAIR AND IMPARTIAL?

14 THE JUROR: NO, SIR.

15 THE COURT: WOULD YOU BE ABLE TO BASE YOUR
16 VERDICT ON THE LAW AND THE EVIDENCE?

17 THE JUROR: YES, SIR.

18 THE COURT: YOU CAN HAVE A SEAT. YES,
19 MA'AM, YOUR NAME AND NUMBER AGAIN. I KNOW YOU STOOD.

20 THE JUROR: ROSA STUDYVANCE, NUMBER 101.
21 BILLY LITTLEJOHN --

22 THE COURT: DIDN'T I EXCUSE YOU? I'VE
23 ALREADY EXCUSED YOU, SO YOU DON'T HAVE TO STAND
24 ANYMORE. YOU ARE OUT OF THIS PANEL.

25 MR. MORIN: YOUR HONOR, THERE IS A NAME

1 THAT MAY COME UP THAT I THINK THE JURY SHOULD ALSO BE
2 CHECKED AT, MIKE SKEDENA. HE'S WITH THE GAFFNEY CITY
3 POLICE DEPARTMENT.

4 THE COURT: MIKE SKEDENA, CITY POLICE
5 DEPARTMENT. ANYBODY RELATED BY BLOOD OR MARRIAGE OR
6 CLOSE PERSONAL FRIEND OR ACQUAINTANCE WITH THAT
7 INDIVIDUAL IF SO PLEASE STAND. YES, MA'AM, YOUR NAME
8 AND NUMBER.

9 THE JUROR: NUMBER 17 TABATHA COYLE.

10 THE COURT: AND YOU KNOW---

11 THE JUROR: PERSONAL FRIEND.

12 THE COURT: WOULD THAT AFFECT YOUR ABILITY
13 TO BE FAIR AND IMPARTIAL?

14 THE JUROR: NO, SIR.

15 THE COURT: WOULD YOU BE ABLE TO BASE YOUR
16 VERDICT ON THE LAW AND THE EVIDENCE?

17 THE JUROR: YES, SIR.

18 THE COURT: ALL RIGHT. THANK YOU. ANY
19 FURTHER QUESTIONS FROM THE STATE?

20 MR. MORIN: NONE FROM THE STATE.

21 THE COURT: MR. LITTLEJOHN, DO YOU HAVE
22 ANY FURTHER QUESTIONS YOU WANT ME TO POSE TO THE
23 JURY?

24 MR. LITTLEJOHN: NO.

25 THE COURT: FINALLY, DO ANY OF YOU KNOW OF

1 ANY REASON WHATSOEVER WHY YOU COULD NOT OR SHOULD NOT
2 SERVE AS A FAIR AND IMPARTIAL JUROR IN THE TRIAL OF
3 THIS CASE IF SO PLEASE STAND. NO ONE STANDS.

4 MR. LITTLEJOHN, YOU HAVE TEN STRIKES AND
5 THE STATE HAS FIVE. DO YOU CONSENT TO THE CLERK
6 DRAWING THE JURY?

7 MR. LITTLEJOHN: YES.

8 MR. MORIN: YES, SIR.

9 (JURY IS DRAWN AND SEATED.)

10 JUROR NUMBER 2 VIRGINIA ALLISON FEMALE WHITE
11 ACCEPTED.

12 JUROR NUMBER 5 CARL BAKER MALE WHITE ACCEPTED.

13 JUROR NUMBER 77 BEN ROGERS MALE WHITE STRUCK BY THE
14 DEFENSE.

15 JUROR NUMBER 34 DEVIN HOLCOMB MALE WHITE ACCEPTED.

16 JUROR NUMBER 95 RUSSELL WHITFIELD MALE WHITE STRUCK
17 BY THE DEFENSE.

18 JUROR NUMBER 41 WENDY HUSKEY FEMALE WHITE STRUCK BY
19 THE DEFENSE.

20 JUROR NUMBER 92 MARVIN WATKINS MALE BLACK STRUCK BY
21 THE STATE.

22 JUROR NUMBER 103 CAROLYN FOWLER FEMALE WHITE STRUCK
23 BY THE DEFENSE.

24 JUROR NUMBER 80 BARBARA SHAFFER FEMALE WHITE
25 ACCEPTED.

1 JUROR NUMBER 58 BRENDA MITCHELL FEMALE WHITE
2 ACCEPTED.
3 JUROR NUMBER 10 TANGI BONNER FEMALE WHITE STRUCK BY
4 THE STATE.
5 JUROR NUMBER 70 TAMMY PERRY FEMALE WHITE ACCEPTED.
6 JUROR NUMBER 84 DAVID SPAKE MALE WHITE STRUCK BY THE
7 STATE.
8 JUROR NUMBER 24 LORI FLOYD FEMALE WHITE STRUCK BY THE
9 DEFENSE.
10 JUROR NUMBER 67 BARBARA PEELER FEMALE BLACK STRUCK BY
11 THE STATE.
12 JUROR NUMBER 8 TONY BLANTON MALE WHITE STRUCK BY THE
13 STATE.
14 JUROR NUMBER 55 PETER MATTON MALE WHITE ACCEPTED.
15 JUROR NUMBER 20 STEPHEN DOUTT ACCEPTED.
16 JUROR NUMBER 17 TABITHA COYLE FEMALE WHITE STRUCK BY
17 THE DEFENSE.
18 JUROR NUMBER 16 ROBERT COTTER MALE WHITE ACCEPTED.
19 JUROR NUMBER 59 DEANA MOORE FEMALE WHITE ACCEPTED.
20 JUROR NUMBER 100 DANIEL YOUNGBLOOD MALE WHITE
21 ACCEPTED.
22 JUROR NUMBER 71 JAMES PETERSON MALE WHITE ACCEPTED.
23 THE COURT: WE'LL DRAW ONE ALTERNATE. ON
24 THE ALTERNATE THE STATE WILL STRIKE ONE AND YOU GET
25 TO STRIKE UP TO TWO.

1 JUROR NUMBER 21 ALETA DOVER FEMALE WHITE STRUCK BY
2 THE DEFENSE.

3 JUROR NUMBER 15 THOMAS COBB MALE WHITE ACCEPTED.

4 THE COURT: ALL RIGHT. ANYTHING FROM THE
5 STATE REGARDING STRIKING OF THE PANEL?

6 MR. MORIN: NO, SIR.

7 THE COURT: MR. LITTLEJOHN, ANYTHING
8 REGARDING STRIKING.

9 MR. LITTLEJOHN: NO, SIR.

10 THE COURT: THANK YOU. THOSE WHO WERE NOT
11 CHOSEN I'M GOING TO ASK YOU TO LEAVE.

12 (THE MAIN JURY PANEL IS EXCUSED.)

13 THE COURT: THOSE WHO WERE CHOSEN BEFORE
14 WE ADMINISTER THE OATH I'M GOING TO LET THE BAILIFF
15 TAKE YOU TO USE THE GRAND JURY ROOM. I'M GOING TO
16 LET YOU GO TO THE GRAND JURY ROOM JUST FOR A FEW
17 MATTERS. WHEN WE COME BACK IN WE WILL ADMINISTER THE
18 OATH.

19 MR. YOUNGBLOOD, I AM GOING TO ASK YOU
20 TO BE FOREMAN OF THIS JURY, IF YOU'LL SIT IN THIS END
21 SEAT HERE. AND MR. COBB, YOU'LL ALWAYS SIT IN THAT
22 SEAT AS THE ALTERNATE. THE REST WILL SIT WHEREVER
23 YOU HAPPEN TO COME IN. IF YOU'LL GO TO JURY ROOM AND
24 GET REFRESHED FOR ABOUT TEN MINUTES AND THEN WE'LL BE
25 IN A POSITION TO START THE TRIAL.

1 (THE JURY EXITS THE COURTROOM AT
2 10:45.)

3 THE COURT: MR. LITTLEJOHN, JUST BEFORE WE
4 START I WANT TO MAKE SURE THAT EVERYTHING IS IN
5 ORDER. YOU WERE HERE ON MONDAY AND YOU GOT WITNESSES
6 SUBPOENAED AND WE TOLD YOU YOUR CASE WILL START ON
7 MONDAY. SINCE THAT TIME I HAVE CHECKED INTO YOUR
8 FILE AND FOUND OUT THAT YOU ORIGINALLY HAD DON
9 THOMPSON AS YOUR STATE APPOINTED ATTORNEY AND JUDGE
10 MARK HAYES BACK IN OCTOBER OF LAST YEAR RELIEVED HIM
11 OF COUNSEL FOR YOU AND YOU INDICATED YOU WERE GOING
12 TO HIRE AN ATTORNEY AND YOU HAVE NOT DONE THAT, IS
13 THAT CORRECT?

14 MR. LITTLEJOHN: THE ATTORNEY I'M GOING TO
15 HIRE, YOUR HONOR, NO LONGER PRACTICES CRIMINAL LAW SO
16 I COULDN'T AFFORD ONE SO I GOT TO GET MYSELF.

17 THE COURT: SO YOU UNDERSTAND THAT YOU ARE
18 WAIVING YOUR RIGHT TO HAVE AN ATTORNEY BECAUSE YOU
19 FIRED THE ONE THE STATE APPOINTED AND YOU HAVEN'T
20 OBTAINED ONE ON YOUR OWN. YOU UNDERSTAND THAT?

21 MR. LITTLEJOHN: YES, SIR.

22 THE COURT: OKAY. NOW I CAN'T TREAT YOU
23 ANY DIFFERENTLY THAN SOMEBODY WHO DOES HAVE AN
24 ATTORNEY. I CAN'T GIVE YOU ADVICE AND I CAN'T TELL
25 YOU ABOUT THE RULES AS WE GO ALONG. I WILL TREAT YOU

1 JUST AS I WILL TREAT AN ATTORNEY. IF YOU WANT TO
2 OBJECT TO SOMETHING, DON'T HESITATE TO GET UP AND
3 OBJECT TO IT. IF YOU THINK SOMETHING IS NOT GOING
4 RIGHT, YOU STOP AND LET ME KNOW. I WILL CERTAINLY
5 GIVE YOU ALL THE DUE DEFERENCE THAT I WOULD FOR AN
6 ATTORNEY SITTING THERE BECAUSE FOR ALL INTENSIVE
7 PURPOSES YOU ARE YOUR ATTORNEY AT THIS TIME. IF YOU
8 HAVE QUESTIONS YOU CAN CERTAINLY ASK THEM OF ME BUT I
9 AM NOT PROMISING THAT I CAN ANSWER THEM BECAUSE I
10 CAN'T GIVE YOU ADVANTAGE OVER THE STATE JUST LIKE I
11 CAN'T GIVE THE STATE ADVANTAGE OVER YOU. NOW MR. DON
12 THOMPSON IS PRESENT HERE TODAY. I HAVE NOT DISCUSSED
13 THIS WITH HIM, BUT HE DID WORK ON YOUR FILE AT THIS
14 POINT AND I WILL ASK HIM TO STAY AS STAND BY COUNSEL
15 IF YOU WISH HIM TO. DO YOU WISH TO HAVE HIM REMAIN
16 IN CASE YOU HAVE SOME QUESTIONS.

17 MR. LITTLEJOHN: YES, SIR.

18 THE COURT: MR. THOMPSON, DOES THAT
19 PRESENT ANY PROBLEM ANY FOR YOU?

20 MR. THOMPSON: NO, SIR. I WILL JUST NEED
21 TO CLEAR MY CALENDAR FOR TODAY, JUDGE.

22 THE COURT: OKAY. I KNOW I AM SURPRISING
23 YOU WITH THIS, IF YOU WOULD THAT WOULD CERTAINLY HELP
24 THE COURT, AND SINCE YOU WORKED ON THE FILE AND KNOW
25 IT AND I UNDERSTAND, MR. LITTLEJOHN, THAT YOU HAVE

1 NOT ONLY A HIGH SCHOOL EDUCATION BUT ONE YEAR OF
2 COLLEGE, IS THAT CORRECT?

3 MR. LITTLEJOHN: YES, SIR.

4 THE COURT: MR. THOMPSON, IF YOU'LL DO
5 THAT DURING THIS BREAK AND REMAIN AS STAND BY. AND
6 AT ANY TIME YOU WANT TO TALK TO MR. THOMPSON, JUST
7 GET MY ATTENTION AND WE'LL TAKE A BREAK AND LET YOU
8 DO THAT. ALL RIGHT. WE'LL TAKE A SHORT BREAK.

9 (COURT'S IN RECESS AT 10:46 AM.)

10 (COURT RESUMES AT 11:00 AM.)

11 THE COURT: IS THE STATE READY?

12 MR. MORIN: STATE IS READY.

13 THE COURT: MR. LITTLEJOHN, ARE YOU READY
14 TO PROCEED?

15 MR. LITTLEJOHN: YES, SIR.

16 THE COURT: MR. LITTLEJOHN, OF COURSE, YOU
17 ARE VISITING WITH MR. THOMPSON RIGHT NOW AND I HATE
18 TO INTERRUPT THAT BUT I WANT TO TELL YOU WHAT WE WILL
19 DO. I WILL BRING THE JURY IN, I APPOINTED
20 MR. YOUNGBLOOD FOREMAN, WE'LL SWEAR THE JURY IN AND
21 THEN I'LL CHAT WITH THEM FOR A FEW MINUTES, THEN I
22 WILL TURN THE CASE OVER TO YOU AND THE SOLICITOR.
23 THE SOLICITOR AND YOU BOTH HAVE THE RIGHT TO GO
24 BEFORE THE JURY TO MAKE AN OPENING STATEMENT. YOU
25 DON'T HAVE TO AND THE STATE DOESN'T EITHER BUT THEY

1 USUALLY DO AND THESE OPENING STATEMENTS WILL SIMPLY
2 BE, WOULDN'T BE YOUR TESTIMONY, THAT IS, YOU CAN'T
3 GET UP AT THIS TIME AND GIVE ALL YOUR VERSION OF THE
4 FACTS. YOU CAN TELL THEM THE OVERVIEW OF THE CASE,
5 THAT IS, SORT OF WHAT THE OUTLINE OR PREVIEW, LIKE A
6 PREVIEW OF COMING ATTRACTIONS SOMETIMES I'VE HEARD
7 LAWYERS REFER TO IT AS, AND THEN ONCE THAT'S DONE YOU
8 WILL BE SEATED AND THE STATE WILL START CALLING
9 WITNESSES. THEY WILL CALL THE WITNESSES. THEY HAVE
10 THE RIGHT OF COURSE TO DIRECT EXAMINATION AND THEN
11 YOU HAVE THE RIGHT TO CROSS EXAMINE THEM. YOU
12 UNDERSTAND THAT?

13 MR. LITTLEJOHN: YES, SIR.

14 THE COURT: WHEN WE GET THROUGH WITH ALL
15 OF THE STATE'S WITNESSES AND WE'LL PROBABLY BREAK FOR
16 LUNCH BEFORE THAT JUST LOOKING AT THE NUMBER OF
17 WITNESSES, BUT AT THE POINT THE STATE RESTS, WE WILL
18 EXCUSE THE JURY AND I WILL TELL YOU THEN AND TALK TO
19 YOU ABOUT YOUR RIGHT TO REMAIN SILENT AND TURN THE
20 CASE OVER TO YOU IF YOU WANT TO CALL ANY WITNESS
21 WHICH YOU HAVE EVERY RIGHT TO DO AT THAT TIME. YOU
22 WOULD ASK THEM QUESTIONS FIRST, THAT IS, DIRECT
23 EXAMINATION, AND THEN THE STATE COULD CROSS EXAMINE
24 YOUR WITNESSES. THEN AT THE END, AFTER ALL OF THAT,
25 THE STATE MAY HAVE A RIGHT TO REPLY, THAT IS CALL A

1 WITNESS OR TWO IF ANYTHING NEW COMES UP DURING ANY
2 PRESENTATION YOU MAKE, THEN WE WILL PROCEED INTO
3 CLOSING ARGUMENTS. AT THAT TIME THE STATE AND YOU
4 HAVE A RIGHT TO GET BEFORE THE JURY AND TELL THEM WHY
5 THE FACTS THAT HAVE ALREADY BEEN PRESENTED SHOULD
6 LEAD TO A CERTAIN VERDICT. THEY OF COURSE WILL BE
7 ARGUING FOR GUILT AND YOU'LL BE ARGUING FOR A NOT
8 GUILTY FINDING. AGAIN THIS WON'T BE YOUR TESTIMONY.
9 IT WILL ARGUING FACTS THAT ARE IN THE RECORD FOR THE
10 JURY TO CONSIDER AND THEN WE WILL TURN THE CASE OVER
11 TO THE JURY. YOU UNDERSTAND THAT?

12 MR. LITTLEJOHN: YES, SIR.

13 THE COURT: DO YOU HAVE ANY QUESTIONS
14 ABOUT IT?

15 MR. LITTLEJOHN: NO, SIR.

16 THE COURT: IF YOU HAVE QUESTIONS AGAIN
17 JUST STOP ME AND OF COURSE MR. THOMPSON IS THERE WITH
18 YOU.

19 MR. THOMPSON: YOU WANT ME TO SIT AT THE
20 TABLE?

21 THE COURT: I WOULD PREFER, QUITE FRANKLY,
22 THAT YOU EITHER SIT BEHIND HIM OR OVER TO THE SIDE
23 WHERE HE CAN GET YOUR EYE OR EVEN UP HERE, SOMEWHERE
24 YOU CAN GET AN EYE OR I ALREADY TOLD MR. LITTLEJOHN
25 IF HE NEEDS TO STOP AND CHAT WITH YOU ABOUT ANYTHING,

1 IF HE JUST GETS MY EYE, WE'LL TAKE A BREAK.

2 MR. THOMPSON: YES, SIR.

3 THE COURT: BUT I PREFER YOU NOT TO SIT AT
4 THE TABLE BECAUSE THAT'S GOING TO BE, THAT'S GOING TO
5 MAKE A STRANGE PICTURE FOR THE JURY, A LOT OF PEOPLE
6 MIGHT KNOW YOU ARE A LAWYER, A LOT MAY NOT, BUT THAT
7 WILL BE A LITTLE BIT CONFUSING.

8 MR. THOMPSON: YES, SIR.

9 THE COURT: ALL RIGHT. BRING IN THE JURY.

10 (THE JURY RETURNS TO THE COURTROOM AT
11 11:01 AM.)

12 THE COURT: IF ALL OF YOU WILL NOW STAND,
13 RAISE YOUR RIGHT HAND, THE CLERK WILL ADMINISTER THE
14 OATH.

15 (THE JURY IS SWORN.)

16 THE COURT: ALL RIGHT. MEMBERS OF THE
17 JURY PANEL, IN JUST A MOMENT I WILL ALLOW THE
18 ATTORNEY AND MR. LITTLEJOHN TO COME BEFORE YOU AND
19 MAKE AN OPENING STATEMENT. THEY ARE NOT ARGUING
20 THEIR CASE AND THEY ARE NOT TESTIFYING. THEY ARE
21 SIMPLY GIVING YOU A BLUEPRINT OR OUTLINE OF THE
22 TRIAL. SOME LAWYERS CALL IT PREVIEWS OF COMING, I
23 HATE TO CALL IT ATTRACTIONS, BUT PREVIEW OF WHAT'S
24 COMING AND THEY WILL HAVE THE RIGHT BUT NO OBLIGATION
25 TO DO THAT.

1 MR. LITTLEJOHN IS CHARGED WITH ARSON AND
2 BURGLARY AND HE'S ENTERED PLEAS OF NOT GUILTY TO BOTH
3 OF THOSE CHARGES. HIS PLEAS OF NOT GUILTY PLACE ON
4 THE STATE THE BURDEN OF PROVING HIS GUILT BEYOND A
5 REASONABLE DOUBT. HE IS PRESUMED INNOCENT. HE DOES
6 NOT HAVE TO PROVE HIS INNOCENCE. HE IS PRESUMED
7 INNOCENT. THE STATE MUST PROVE HIS GUILT BEYOND A
8 REASONABLE DOUBT BEFORE YOU COULD AS THE TRIAL JURY
9 IN THIS CASE CONVICT HIM.

10 NOW I HAVE SEVERAL JOBS AS THE TRIAL JUDGE
11 IN THIS CASE. ONE IS THAT I AM THE LOGISTICS PERSON.
12 I MAKE SURE THAT THE CASE RUNS, THAT WE TAKE BREAKS,
13 THAT ONE PERSON IS TALKING AT A TIME, JUST MECHANICS,
14 I SOMETIMES CALL IT A WAGON MASTER, JUST KIND OF KEEP
15 THINGS TOGETHER. I ALSO RULE ON QUESTIONS OF
16 ADMISSIBILITY OF EVIDENCE. IF ONE SIDE WANTS TO
17 PRESENT EVIDENCE AND THE OTHER THINKS THERE IS SOME
18 LEGAL REASON IT SHOULD NOT BE ALLOWED TO BE VIEWED OR
19 HEARD BY YOU I HAVE TO MAKE A DECISION ON THAT SO I
20 RULE ON QUESTIONS OF ADMISSIBILITY OF EVIDENCE.

21 MY THIRD JOB IS THAT I AM THE SOLE JUDGE
22 OF THE LAW IN THIS CASE AND YOU MUST TAKE, ACCEPT,
23 AND APPLY THE LAW AS I CHARGE IT AND THIS IS TRUE
24 EVEN IF YOU THINK I CHARGE YOU THE LAW IN ERROR OR
25 EVEN IF YOU THINK THE LAW SHOULD BE DIFFERENT. I'M

1 GIVING YOU A FEW LEGAL PRINCIPLES NOW, AT THE END OF
2 THE TRIAL I WILL GIVE YOU A CONCISE AND COMPREHENSIVE
3 CHARGE ON THE LAW. IT MAY BE THAT DURING THE TRIAL I
4 WILL GIVE YOU SOME CHARGE ON THE LAW, BUT GENERALLY
5 IT'S A LITTLE BIT NOW AND A CONCISE AND COMPREHENSIVE
6 RIGHT BEFORE YOU DELIBERATE.

7 YOU ARE NOT TO TRY TO MAKE UP YOUR MIND
8 AND YOU ARE NOT TO DISCUSS THE CASE AMONG YOURSELVES
9 UNTIL I INSTRUCT YOU TO JOINTLY DELIBERATE AND RETURN
10 A UNANIMOUS VERDICT. PRIOR TO THAT TIME YOU ARE NOT
11 EQUIPPED WITH ALL THE TOOLS YOU NEED TO MAKE A FAIR
12 AND REASONABLE DECISION.

13 DON'T LET ANYONE DISCUSS THIS CASE WITH
14 YOU OUTSIDE THE COURTROOM. IF ANYONE TRIES, TELL
15 THEM YOU CANNOT DISCUSS THE CASE AS YOU ARE A SITTING
16 JUROR AND REPORT BACK TO ME IF ANYONE TRIES TO
17 DISCUSS THIS CASE WITH YOU BECAUSE I WILL HAVE TO
18 HOLD THEM IN CONTEMPT OF COURT FOR TRYING TO TALK TO
19 A SITTING JUROR. AND OF COURSE, DON'T START A
20 CONVERSION WITH ANYONE ABOUT THE CASE. YOU HAVE TO
21 BASE YOUR VERDICT ON WHAT HAPPENS HERE IN THE
22 COURTROOM, THE LAW AS I CHARGE IT, AND THE FACTS AS
23 YOU DETERMINE THEM TO BE.

24 DO NOT INFER -- IF THERE IS ANY NEWS
25 COVERAGE, DON'T LET YOURSELF BE EXPOSED TO IT. I

1 DON'T KNOW THAT THERE WILL BE, BUT IF THERE IS, IF
2 ANYTHING CATCHES YOUR EYE OR EAR THAT COULD REMOTELY
3 DEAL WITH THIS CASE, DON'T READ ABOUT IT, WATCH
4 ANYTHING, OR LISTEN TO ANYTHING ABOUT IT.

5 I JUST TOLD YOU I'M THE SOLE JUDGE OF THE
6 LAW. YOU ARE NOT TO INFER FROM ANYTHING I SAY OR DO
7 AT ANY TIME AS BEING AN INDICATION OF AN OPINION OF
8 MINE ON THE FACTS. A TRIAL JUDGE IS NOT ALLOWED TO
9 FORMULATE OR EXPRESS TO A TRIAL JURY AN OPINION ON
10 THE FACTS. YOU ARE THE SOLE JUDGES OF THE FACTS. IT
11 IS SOLELY UP TO YOU TO EXAMINE THE EVIDENCE AND GIVE
12 TO THE EVIDENCE THE EFFECT, THE VALUE, THE WEIGHT,
13 AND THE TRUTH YOU BELIEVE IT SHOULD HAVE. IN DOING
14 THIS YOU MAY BELIEVE ONE WITNESS AS OPPOSED TO
15 SEVERAL, SEVERAL WITNESSES AS OPPOSED TO ONE, AND YOU
16 MAY BELIEVE ALL, PART, OR NONE OF A WITNESS'S
17 TESTIMONY. USE YOUR COMMON SENSE AND YOUR SENSE OF
18 LOGIC AND YOUR SENSE OF REASON AS YOU ANALYZE THE
19 EVIDENCE. AS JUDGES OF THE FACTS, YOU OF NECESSITY
20 MUST JUDGE THE CREDIBILITY, THAT IS THE BELIEVABILITY
21 OF THE WITNESSES WHO HAVE TESTIFIED. IN ASSESSING
22 BELIEVABILITY, USE THE THINGS I JUST MENTIONED, USE
23 THOSE THINGS THAT YOU IN YOUR DAY-TO-DAY LIFE FIND AS
24 INDICATING TRUTHFULNESS AND YOU CAN USE CERTAIN
25 EVALUATORS, A WITNESS'S DEMEANOR, HOW THEY ACT ON THE

1 STAND. ARE THEY HESITANT OR STRAIGHT FORWARD. IS
2 THEIR TESTIMONY CONSISTENT OR INCONSISTENT. DO THEY
3 HAVE ANY BIAS OR PREJUDICE; THAT IS, DO THEY WISH TO
4 HELP OR HURT ONE SIDE OR THE OTHER. AND YOU CAN
5 CONSIDER THE OPPORTUNITY A WITNESS HAD TO KNOW THOSE
6 THINGS TO WHICH THE WITNESS TESTIFIED. YOU CONSIDER
7 ALL THESE FACTS, DETERMINE THE TRUTH, APPLY THE LAW,
8 AND YOU'LL BE ABLE TO RETURN A VERDICT THAT IS IN
9 FACT TRUE.

10 WE TRY TO TAKE BREAKS ABOUT EVERY HOUR AND
11 A HALF. I FIND THAT THAT'S A GOOD TIME, BUT I KNOW
12 NO ONE CAN BE PAYING ATTENTION IF THEY ARE NOT
13 COMFORTABLE, IF AT ANY TIME ANY OF YOU NEED A BREAK,
14 SIMPLY RAISE YOUR RIGHT HAND AND WITHOUT ANY
15 QUESTIONS ASKED WE'LL TAKE A BREAK AND I EXTEND THAT
16 TO COUNSEL AND MR. LITTLEJOHN. WE WANT TO MOVE THE
17 CASE ALONG, BUT WE'RE NOT IN SUCH A HURRY IF SOMEONE
18 NEEDS A BREAK WE WILL NOT TAKE A BREAK. IT'S NOT
19 FAIR TO GIVE YOU THE TASK OF RESOLVING THIS WITHOUT
20 LETTING YOU SEE AND HEAR WHAT YOU NEED TO SEE AND
21 HEAR, SO IF YOU CAN'T SEE OR HEAR, LET ME KNOW; CUP
22 YOUR EAR, GIVE ME A VOICE-RAISING GESTURE OR A
23 NUDGING GESTURE, AND I WILL CORRECT WHATEVER NEEDS TO
24 BE CORRECTED. YOU DON'T NEED TO TAKE NOTES.

25 MR. FOREMAN, YOU WILL PRESIDE OVER THE

1 DELIBERATIONS. YOU WILL BE THE LIAISON BETWEEN THE
2 JURY AND MYSELF AND YOU WILL ULTIMATELY SIGN THE
3 UNANIMOUS VERDICT OF THE JURY. MR. MORIN.

4 OPENING STATEMENT BY MR. MORIN:

5 GOOD MORNING, LADIES AND GENTLEMEN. MY
6 NAME IS MICHAEL MORIN AND I WORK FOR THE SOLICITOR'S
7 OFFICE. THE CASE BEFORE YOU TODAY, AS THE JUDGE HAS
8 TOLD YOU, IS BURGLARY AND ARSON. AND WHAT THIS CASE
9 IS GOING TO DO OR HOW I ANTICIPATE IT COMING IS IT'S
10 REALLY GOING TO BREAK INTO TWO PARTS. THE FIRST PART
11 IS GOING TO HAVE TO DO WITH FIREMEN AND PEOPLE WHO
12 INVESTIGATED THE FIRE AND THEY ARE GOING TO EXPLAIN
13 TO YOU ABOUT THE ARSON. THEY ARE ALSO GOING TO GIVE
14 YOU SOME INDICATION ABOUT THE BURGLARY. THE SECOND
15 PART OF MY CASE IS GOING TO INVOLVE THE WITNESSES WHO
16 SAW, WHO WILL SAY THEY SAW MR. LITTLEJOHN PRESENT AT
17 THE SCENE, SO WE'RE GOING TO HAVE THE ONE PART WITH
18 FIREMEN AND FIRE INVESTIGATION AND THE CRIME SCENE
19 INVESTIGATION AND THEN WE'RE GOING TO HAVE THE
20 IDENTIFICATION OF MR. LITTLEJOHN.

21 AND OF COURSE, ARSON IS THE INTENTIONAL
22 BURNING IN THIS CASE OF A DWELLING OR APARTMENT 32
23 HERE IN GAFFNEY, SOUTH CAROLINA. IT HAPPENED BACK ON
24 JULY FOURTH AND CARRIED OVER TO JULY FIFTH. IT WAS
25 RIGHT AROUND MIDNIGHT. AND BURGLARY IS THE ENTERING

1 OF ANOTHER PERSON'S DWELLING WITHOUT THEIR CONSENT TO
2 COMMIT A CRIME AND IN THIS CASE WE'RE GOING TO ALLEGE
3 THE CRIME IS ARSON. THAT HE ENTERED HER APARTMENT
4 WITHOUT HER CONSENT AND COMMITTED ARSON. THAT'S THE
5 TWO CHARGES HE'S GOT. THOSE ARE THE TWO BASIC
6 OVERVIEW OF WHAT THE LAW IS AND THAT'S HOW I
7 ANTICIPATE THE TRIAL GOING. SO YOU ARE GOING TO HEAR
8 FROM FIREMEN AND FIRE INVESTIGATORS FIRST AND THEN
9 YOU'RE GOING TO HEAR FROM WITNESSES WHO LIVED OUT
10 THERE. AND I APPRECIATE YOUR ATTENTION TO THIS CASE
11 AND I LOOK FORWARD TO SPEAKING TO YOU AT THE END.
12 OPENING STATEMENT BY MR. LITTLEJOHN:

13 MY NAME IS JIMMY LITTLEJOHN. I'VE BEEN
14 CHARGED WITH FIRST DEGREE BURGLARY AND ARSON. WHAT
15 THE STATE IS NOT GOING TO TELL YOU IS THAT I BROKE
16 IN, WHAT THE STATE IS GOING TO TELL YOU IS THAT I
17 BROKE IN MY WIFE'S HOUSE, ALL RIGHT, NOT ON JULY
18 FOURTH. WHAT YOU WON'T HEAR FROM THEM IS THAT ME AND
19 MY WIFE IS STILL TOGETHER. WHAT YOU ULTIMATELY WON'T
20 HEAR IS THAT I HAVE CLOTHES AND FURNITURE STILL AT
21 THE APARTMENT AND ALSO THAT I WORK 12 HOURS AND SHE
22 ONLY SIX AND THAT I DIDN'T NEED A KEY AND SOMEBODY
23 WAS ALWAYS HOME. THE STATE IS NOT GOING TO TELL YOU
24 THE FACT THAT MY WIFE FAILED TO TELL THE POLICE THAT
25 I LIVED AT THIS APARTMENT FOR FOUR MONTHS OR HOW I

1 CAME DOWN TO THE POLICE STATION THE NEXT DAY OR HOW I
2 TURNED MYSELF IN OR THAT I VOLUNTARILY WAIVED MY
3 RIGHTS TO TALK FREELY TO THE DETECTIVE CLARY AND SLED
4 AGENT OR FAILED, OR THAT THEY FAILED TO INTERVIEW
5 BRAVE MRS. JOHNSON WHO CALLED 911 AND ALERTED HER
6 NEIGHBORS OR MR. WILKINS --

7 MR. MORIN: YOUR HONOR, AT THIS TIME I
8 BELIEVE HE'S ARGUING ABOUT WHAT THE WITNESS ARE GOING
9 TO SAY.

10 THE COURT: WELL, I'M GOING TO LET HIM GO
11 AHEAD.

12 MR. MORIN: OKAY.

13 MR. LITTLEJOHN: WHO WAS SITTING OUTSIDE
14 THAT NIGHT APARTMENT 37. THESE ARE THE FACTS. I
15 WILL POINT OUT TO THE JURY THAT THESE SWORN
16 STATEMENTS WERE COERCED. ALSO THAT I'M GOING TO
17 POINT OUT TO YOU THAT THIS FIRE WAS STAGED BY MY WIFE
18 AND IT ALSO ENDANGERED SEVERAL LIVES THAT NIGHT,
19 INNOCENT LIVES. I HAVE NO HISTORY OF CDV. I'VE HAD
20 NO ORDER OF PROTECTION BEFORE THIS. I'VE HAD NO
21 NOTICE OF TRESPASS --

22 MR. MORIN: YOUR HONOR --

23 THE COURT: I THINK, YOU ARE GETTING INTO
24 SOMETHING ELSE NOW, JUST AN OVERVIEW OF THE TRIAL,
25 YOU'VE GONE BEYOND WHERE YOU SHOULD AT THIS POINT.

1 MR. LITTLEJOHN: OKAY. WELL, I'M OKAY
2 THEN.

3 THE COURT: ALL RIGHT. CALL YOUR FIRST
4 WITNESS.

5 MR. MORIN: THE STATE CALLS JOHN SPLAWN.

6 JOHN SPLAWN, BEING FIRST DULY
7 SWORN, TESTIFIED AS FOLLOWS:

8 DIRECT EXAMINATION BY MR. MORIN:

9 Q MR. SPLAWN, WOULD YOU STATE YOUR NAME FOR THE
10 JURY?

11 A MY NAME IS JOHN MATTHEW SPLAWN.

12 Q WHERE DO YOU WORK, SIR?

13 A I WORK FOR THE CITY OF GAFFNEY FIRE DEPARTMENT.

14 Q WERE YOU EMPLOYED THERE BACK ON JULY FOURTH-JULY
15 FIFTH OF 2004?

16 A YES, SIR.

17 Q DID YOU HAVE AN OCCASION TO RESPOND TO A FIRE
18 CALL AT 100 REDWOOD CIRCLE?

19 A YES, SIR.

20 Q COULD YOU TELL THE JURY A LITTLE BIT ABOUT WHAT
21 HAPPENED?

22 A WE ARE DISPATCHED TO A APARTMENT FIRE, APARTMENT
23 32, AND AS WE ARRIVED WE NOTICED SMOKE COMING FROM
24 THE SECOND FLOOR WINDOW. I PLACED MY AIR PACK AND
25 SVA ON. I THEN GRABBED MY HAND TOOLS. I WENT AND I

1 CHECKED THE DOOR AND I NOTICED THAT THE FRONT DOOR OF
2 THE APARTMENT 32 WAS LOCKED. I THEN WAITED FOR MY
3 PARTNER FIREFIGHTER BROOME AND WE GOT READY TO GO IN
4 THE STRUCTURE. WE THEN FORCED ENTRY. I FORCED ENTRY
5 WITH A PICK HEAD AX AND I USED IT TO HIT THE DOOR
6 RIGHT BESIDE THE BOLT LOCK SO IT WOULD OPEN. ONCE IT
7 OPENED, WE NOTICED A LIGHT TO MODERATE SMOKE
8 CONDITION AND WE WENT TO THE RIGHT OF THE STRUCTURE
9 AND FOUND THE STAIRCASE. WE THEN ADVANCED UP THE
10 STAIRCASE. AS WE MADE OUR FIRST COUPLE OF STEPS MY
11 PARTNER, FIREFIGHTER BROOME, NOTICED THE STEPS WERE
12 ON FIRE. HE THEN FELL THROUGH THE STEPS AND HE
13 ALERTED ME TO THE FACT THAT THE STEPS WERE ON FIRE.
14 I THEN OPEN UP THE NOZZLE AND I PUT THE STEPS OUT AS
15 BEST I COULD. WE THEN CAME BACK DOWNSTAIRS, MADE OUR
16 WAY THROUGH THE REST OF THE APARTMENT TO FIND THE
17 CLOSET THAT WAS UP UNDER THE STAIRS. WE FOUND THE
18 CLOSET, WE OPENED IT, AND SAW THERE WAS NO FIRE UP
19 UNDER THE STAIRS. THE CEILING IN THE CLOSET WAS
20 INTACT. WE THEN CAME BACK OUT OF THE APARTMENT. I
21 SPOKE TO MY INCIDENT COMMANDER WHICH LIEUTENANT DOUG
22 BOWERS. I INFORMED HIM THAT WE DID FIND THE FIRE IN
23 THE STAIRCASE AND THAT WE COULD NOT FIND FIRE IN THE
24 CLOSET UNDER THE STAIRCASE. I THEN EXPLAINED TO HIM
25 THAT WE NEEDED TO GO UPSTAIRS BECAUSE WE DID SEE A

JOHN SPLAWN

DIRECT

32

1 GLOW FROM THE UPSTAIRS ROOMS AND HE ADVISED ME THAT
2 WE SHOULD GO UPSTAIRS, SO WE RE-ENTERED THE
3 STRUCTURE, MADE OUR WAY BACK TO THE RIGHT, BACK UP
4 STAIRCASE AGAIN. AS WE TOPPED THE STAIRCASE WE WENT
5 STRAIGHT OFF THE STAIRCASE INTO A BATHROOM. ONCE WE
6 REALIZED IT WAS A BATHROOM, WE CAME BACK OUT, MADE
7 ANOTHER RIGHT HAND TURN, AND WENT INTO THE FIRST
8 BEDROOM AT THE TOP OF THE STAIRS WHERE WE FOUND THE
9 TV ON AND A HEAVY SMOKE CONDITION. I THEN OPENED THE
10 UPSTAIRS WINDOW TO VENTILATE THE AIR AND CLEAR THE
11 SMOKE OUT SO WE COULD DO OUR SEARCH.

12 WE THEN MADE OUR WAY TO THE SECOND BEDROOM
13 UPSTAIRS AND WE SEARCHED IT FOR ANY INHABITANTS IN
14 THE STRUCTURE, ANY FIRE, WE FOUND NEITHER ONE. WE
15 THEN WENT BACK INTO THE ROOM WHERE I HAD VENTED THE
16 WINDOW, SEARCHED IT, FOUND NO INHABITANTS AND NO
17 FIRE. WE THEN CAME BACK DOWNSTAIRS, MADE ANOTHER
18 SEARCH OF THE FIRST FLOOR, FOUND NO INHABITANTS AND
19 NO FIRE. I THEN REPORTED THIS TO MY INCIDENT
20 COMMANDER LIEUTENANT BOWERS, AND THAT IS WHEN WE
21 STARTED OUR VENTILATION OPERATIONS TO CLEAR THE SMOKE
22 OUT OF THE STRUCTURE.

23 Q LET ME GO BACK AND JUST ASK YOU A FEW QUESTIONS.
24 FIRST OF ALL WHEN YOU GOT THERE, YOU PUT YOUR PACK
25 ON?

1 A YES, SIR.

2 Q TELL ME WHAT THE PACK IS?

3 A OUR AIR PACK IS A SELF CONTAINED BREATHING
4 APPARATUS. IT IS A CYLINDER OF AIR THAT WE PUT ON
5 OUR BACKS AND AS YOU WOULD A BACK PACK OR A SCHOOL
6 BACK PACK. WHAT IT DOES IS IT HAS A REGULATOR ON IT
7 THAT CHANNELS AIR FROM THE BOTTLE TO OUR FACES,
8 PIECES THAT WE PUT ON, AND THAT ALLOWS US TO BREATHE
9 IN HEAVY SMOKE CONDITIONS.

10 Q AND HAS A MASK THAT COVERS YOUR WHOLE FACE?

11 A YES, SIR.

12 Q AND THE SMOKE CONDITIONS WOULD YOU, HOW WOULD
13 YOU DESCRIBE IT WHEN YOU WENT IN?

14 A THE SMOKE CONDITION ON THE BOTTOM FLOOR WAS A
15 LIGHT TO MEDIUM SMOKE CONDITION WHICH MEANS THAT YOU
16 CAN SEE BUT YOU CAN'T SEE VERY WELL. THE SMOKE
17 CONDITIONS UPSTAIRS WERE A WHOLE LOT WORSE BECAUSE OF
18 COURSE SMOKE RISES IN A STRUCTURE THEREFORE THE
19 VISIBILITY WAS A WHOLE LOT WORSE UPSTAIRS.

20 Q OKAY. NOW YOU SAY YOU WENT IN THE FRONT DOOR OF
21 THE APARTMENT?

22 A YES, SIR.

23 Q IS THAT CORRECT?

24 A YES, SIR.

25 MR. MORIN: JUST ONE MOMENT, YOUR HONOR.

1 Q I'M GOING TO SHOW YOU WHAT'S BEEN MARKED AS
2 STATE'S EXHIBIT 40. IT'S MY UNDERSTANDING THAT THE
3 FRONT, AND I WANT TO MAKE SURE I'M CLEAR AND THE JURY
4 IS CLEAR, THE FRONT IS WHERE THE PARKING LOT IS IN
5 FRONT OF THE APARTMENTS, IS THAT CORRECT?

6 A YES, SIR.

7 Q AND YOU SAY THAT YOU ENTERED WITH A PICK AX?

8 A A PICK HEAD AX, YES, SIR.

9 Q ALL RIGHT. DID YOU CHOP IT OR COULD YOU
10 DEMONSTRATE FOR THE JURY HOW YOU OPENED THAT DOOR?

11 A YES, SIR. AN AX, AS YOU ALL KNOW, YOU HAVE THE
12 HEAD OF THE AX AND YOU HAVE THE HANDLE. WHEN YOU
13 TURN THE AX I GUESS YOU COULD SAY IF YOU ARE HOLDING
14 THE AX LIKE THIS, THIS WOULD BE VERTICAL, THIS WOULD
15 BE HORIZONTAL. I HORIZONTALLY HELD THE AX AND I
16 FOUND POSITION OF THE BOLT LOCK AND THE DOOR KNOB OF
17 THE DOOR AND I TOOK THE AX AND I STRUCK IT LIKE THAT
18 TO FORCE THE BOLT OUT AND OPEN THE DOOR.

19 Q OKAY. NOW THIS WAS AN APARTMENT THAT SOMEONE
20 HAD BEEN LIVING IN, IS THAT CORRECT?

21 A YES, SIR.

22 Q OKAY. NOW WHEN YOU SAY YOU BEGAN VENTILATION,
23 CAN YOU TELL US ABOUT WHAT THAT MEANS?

24 A VENTILATION MEANS THAT, LIKE I SAID EARLIER,
25 THERE IS SMOKE CONDITION IN THE HOUSE AND WE NEED TO

1 INCREASE THE VISIBILITY SO WE CAN SEE WHAT WE'RE
2 DOING. WHAT WE DO IS WE OPEN ANY WINDOWS AND WE USE
3 A POSITIVE PRESSURE FAN WHICH WHAT IT IS IS BASICALLY
4 JUST A FAN, A GAS POWER FAN, THAT WE PLACE IN THE
5 DOORWAY OF THE OUTSIDE OF THE STRUCTURE AND WE TURN
6 THIS FAN ON AND IT FORCES A POSITIVE PRESSURE THROUGH
7 THE HOUSE AND PUSHES ALL THE SMOKE, HEAT, AND ANY
8 HARMFUL TOXINS OUT OF THE HOUSE SO WE CAN CONTINUE
9 OUR WORK.

10 Q OKAY. YOU WENT OFF, YOU AND FIREFIGHTER BROOME
11 WERE THE FIRST TWO IN?

12 A YES, SIR.

13 Q YOU TWO WENT IN TOGETHER?

14 A YES, SIR.

15 Q OKAY. AND TO YOUR KNOWLEDGE UP UNTIL THE POINT
16 WHERE YOU PUT THE FAN IN, DID ANY OTHER FIREFIGHTERS
17 ENTER THE STRUCTURE?

18 A NO, SIR.

19 Q JUST YOU AND OFFICER BROOME?

20 A JUST MYSELF AND FIREFIGHTER BROOME.

21 Q FIREFIGHTER BROOME, OKAY. DID YOU NOTICE
22 ANYTHING ABOUT THE FIRE THAT STRUCK YOU?

23 A THE ONLY THING I NOTICED ABOUT THE FIRE THAT I
24 THOUGHT WAS A LITTLE OFF WAS THE FACT THAT THERE WAS
25 NO FIRE IN THE APARTMENT OTHER THAN WHAT WAS ON THE

1 STAIRCASE AND IT WAS ONLY INSIDE THE STAIRCASE AND
2 NOT, HAD NOT COME THROUGH THE CEILING OF THE CLOSET.

3 Q OKAY. YOU KNOW, OKAY. PLEASE ANSWER ANY
4 QUESTIONS MR. LITTLEJOHN MAY HAVE.

5 A YES, SIR.

6 CROSS EXAMINATION BY MR. LITTLEJOHN:

7 Q WHEN YOU ENTERED THE STRUCTURE YOU SAID THAT YOU
8 NOTICED THE STAIRS WERE ON FIRE. HOW LONG DID IT
9 TAKE YOU TO PUT THE STAIRS OUT ONCE YOU ENTERED THE
10 STRUCTURE?

11 A JUST A FEW SECONDS, SIR.

12 Q ALL RIGHT. I NOTICED WHEN YOU OPENED THE DOOR
13 WITH THE PICK AX, YOU GOT A PICTURE OF IT; WHEN YOU
14 COME INTO THE APARTMENT THE BACK DOOR WAS ALREADY
15 OPENED, RIGHT, YOU STATED? YEAH, THE FIRE DEPARTMENT
16 HAD STATED THE BACK DOOR WAS ALREADY OPENED, RIGHT?

17 A I DIDN'T MAKE THAT STATEMENT.

18 Q NO, I'M NOT TELLING YOU MADE THE STATEMENT BUT
19 I'M JUST SAYING THAT THERE WAS A STATEMENT FROM THE
20 FIRE DEPARTMENT THAT THE BACK DOOR WAS OPEN?

21 MR. MORIN: YOUR HONOR, HE'S ASKING FOR
22 HEARSAY.

23 THE COURT: WELL.

24 MR. LITTLEJOHN: IT'S IN THE STATEMENT,
25 SIR.

1 THE COURT: WELL, IT'S NOT IN THE RECORD
2 YET. HE SAID HE ENTERED THE FRONT DOOR. I THINK
3 WHAT YOU ARE TALKING ABOUT IS AFTER---

4 MR. LITTLEJOHN: WELL HE --

5 THE COURT: YOU CAN JUST ASK HIM WHETHER
6 OR NOT HE KNOWS IF THE BACK DOOR WAS OR WAS NOT
7 OPENED OR UNLOCKED AND HE MAY KNOW OR HE MAY NOT.

8 Q WELL, I'M TRYING TO GIVE THE JURY A VIVID
9 PICTURE HERE BECAUSE WE GOT A CLEAR VIEW TO THE BACK
10 DOOR. ONCE YOU ENTER THE APARTMENT AND IN ACTUALITY
11 FROM THIS PICTURE THAT, THIS PICTURE HERE.

12 MR. MORIN: YOUR HONOR, I OBJECT TO
13 SHOWING A PICTURE.

14 THE COURT: IT'S NOT IN EVIDENCE. YOU
15 HAVE TO WAIT.

16 MR. LITTLEJOHN: OKAY. COULD WE PUT THIS
17 IN EVIDENCE?

18 THE COURT: SOMEBODY HAS TO IDENTIFY IT
19 FIRST. YOU CAN ASK HIM IF HE CAN IDENTIFY WHAT THAT
20 PICTURE REPRESENTS AND IF HE CAN WE MIGHT CAN GET IT
21 IN.

22 MR. LITTLEJOHN: HE'S THE ONE WHO SAID HE
23 HAD THE PICK AX. THAT'S WHY I GOT THIS PICTURE.

24 THE COURT: I KNOW BUT I'M JUST TRYING,
25 PROCEDURALLY SOMEBODY WHO IS TESTIFYING HAS TO

1 IDENTIFY IT AND HE MIGHT CAN, SO YOU MIGHT HAND HIM
2 THE PICTURE AND ASK HIM IF HE CAN IDENTIFY THAT AND
3 IF HE SAYS HE CAN YOU CAN ASK HIM WHAT IT IS AND THEN
4 IF IT'S RELEVANT.

5 Q CAN YOU IDENTIFY THAT PICTURE?

6 THE COURT: IT'S ACTUALLY FOUR PICTURES.

7 MR. LITTLEJOHN: YEAH.

8 A IT APPEARS TO BE A PICTURE OF THE BACK DOOR.

9 Q CAN YOU IDENTIFY THIS PICTURE HERE?

10 A THAT IS A PICTURE OF THE BACK DOOR, THAT IS
11 PICTURE OF THE STAIRCASE IT SEEMS, AND THEN THAT IS
12 ANOTHER PICTURE OF THE STAIRCASE AND THAT LOOKS TO BE
13 OUTSIDE THE APARTMENT.

14 Q AND THIS PICTURE HERE AT THE BOTTOM HAND CORNER?

15 A I CAN'T EXACTLY TELL YOU WHERE IN THE APARTMENT
16 THAT WAS.

17 Q THAT'S THE FRONT ROOM. THAT'S THE PARKING LOT.
18 FRONT DOOR?

19 A UH-HUH.

20 Q ALL RIGHT.

21 MR. LITTLEJOHN: COULD WE PUT THESE IN
22 EVIDENCE NOW SINCE HE IDENTIFIED THEM.

23 THE COURT: LET HIM TAKE A LOOK AT THEM TO
24 SEE IF HE'S GOING TO OBJECT.

25 MR. MORIN: THERE IS ONE GROUP HE SAID HE

1 WASN'T SURE ABOUT SO.

2 THE COURT: Y'ALL CAN'T GET IN AN
3 ARGUMENT.

4 MR. MORIN: YOUR HONOR, I HAVE NO
5 OBJECTION.

6 THE COURT: OR EVEN A DISCUSSION, LET'S
7 PUT IT LIKE THAT. BUT HE'S RIGHT, SOMEBODY HAS GOT
8 TO IDENTIFY IT AND.

9 MR. LITTLEJOHN: OKAY.

10 THE COURT: SO AT THIS POINT AS TO THE
11 FOUR ON THE FIRST ONE YOU SHOWED HIM, THERE IS NO
12 OBJECTION AND THAT WILL BE ADMITTED AS EVIDENCE AS A
13 DEFENSE EXHIBIT NUMBER ONE I GUESS.

14 MR. MORIN: YES, SIR.

15 (DEFENSE EXHIBIT ONE (4) PICTURES IN
16 EVIDENCE.)

17 Q LET ME GET BACK TO MY QUESTION. WHAT TIME DID
18 THE CALL COME IN?

19 A WE RECEIVED THE CALL I BELIEVE AT 2:02 IN THE
20 MORNING.

21 Q SO HOW LONG DID IT TAKE YOU TO PUT THE FIRE OUT?

22 A AS I STATED EARLIER JUST A FEW SECONDS.

23 Q A FEW SECONDS, SO WE'RE TALKING ABOUT THE TIME
24 OF ARRIVAL WAS 2:07, WASN'T IT? AND YOU PUT IT OUT
25 WITHIN SECONDS, RIGHT?

1 A ONCE WE FOUND IT, YES, SIR.

2 Q ALL RIGHT. YOU SAID YOU PROCEEDED TO GO
3 UPSTAIRS?

4 A YES, SIR.

5 Q ALL RIGHT. DID YOU SEE ANYTHING OUT OF PLACE?
6 ANYTHING ODD?

7 A NO, SIR.

8 Q YOU STATED THAT YOU WENT TO THE MASTER BEDROOM?

9 A YES, SIR.

10 Q ALL RIGHT. DID YOU SEE THE IRON BROKE?

11 A NO, SIR.

12 Q ALL RIGHT. BUT YOU NOTICED THE TV WAS ON?

13 A YES, SIR.

14 Q WAS THERE ANYTHING OUT OF PLACE? I MEAN WAS THE
15 PLACE RANSACKED OR ANYTHING?

16 A NO, SIR.

17 Q ALL RIGHT. NO MORE FURTHER QUESTIONS, YOUR
18 HONOR.

19 THE COURT: REDIRECT.

20 REDIRECT EXAMINATION BY MR. MORIN:

21 Q ONE QUESTION. WHEN YOU WENT UPSTAIRS, WHEN YOU
22 STARTED UPSTAIRS, I BELIEVE YOU SAID SOMEBODY FELL
23 THROUGH A STAIR?

24 A YES, SIR, THAT WOULD BE FIREFIGHTER BROOME.

25 Q OKAY.

1 MR. MORIN: THAT'S ALL THE QUESTIONS I
2 HAVE OF THIS WITNESS, YOUR HONOR.

3 THE COURT: ANYTHING YOU WANT TO ASK ABOUT
4 THAT, MR. LITTLEJOHN?

5 MR. LITTLEJOHN: NO.

6 THE COURT: OKAY. YOU CAN STEP DOWN. WE
7 APPRECIATE YOUR TIME. THANK YOU.

8 MR. MORIN: CALL JERMEY BROOME.

9 THE COURT: THIS WITNESS BE EXCUSED.

10 MR. MORIN: YES, SIR, WE ASK HE BE
11 EXCUSED.

12 MR. LITTLEJOHN: HE CAN BE EXCUSED.

13 JERMEY BROOME, BEING FIRST DULY
14 SWORN, TESTIFIED AS FOLLOWS:

15 DIRECT EXAMINATION BY MR. MORIN:

16 Q MR. BROOME, WOULD YOU STATE YOUR NAME FOR THE
17 JURY?

18 A MY NAME IS JERMEY BRUCE BROOME.

19 Q WHERE YOU DO WORK, SIR?

20 A GAFFNEY FIRE DEPARTMENT.

21 Q DID YOU WORK THERE BACK JULY FOURTH AND FIFTH
22 2004?

23 A YES, SIR.

24 Q DID YOU HAVE AN OCCASION TO GO TO A FIRE AT 100
25 REDWOOD CIRCLE?

1 A YES, I DID.

2 Q ALL RIGHT. WHO DID YOU, DID YOU ENTER THE

3 STRUCTURE WITH SOMEONE?

4 A SIR?

5 Q DID YOU ENTER THE APARTMENT?

6 A YES, SIR.

7 Q WHO DID YOU ENTER WITH?

8 A JOHN SPLAWN.

9 Q YOU PARTICIPATED WITH HIM ON THE VENTILATION OF

10 THE BUILDING, IS THAT CORRECT?

11 A YES, SIR.

12 Q DO YOU KNOW IF ANY OTHER FIREFIGHTERS OTHER THAN

13 YOU AND MR. SPLAWN ENTERED THE BUILDING PRIOR TO THE

14 VENTILATION BEGINNING?

15 A NO, SIR.

16 Q ALL RIGHT. TELL ME WHAT YOU DID AS FAR AS

17 VENTILATING THE BUILDING?

18 A AS WE COME BACK DOWN THE STEPS AND THEY SET THE

19 FAN UP AT THE FRONT DOOR, I WENT TO THE KITCHEN WHERE

20 THE BACK DOOR WAS AT TO OPEN THE DOOR AND LET THE AIR

21 GO THROUGH. AS I GOT INTO THE KITCHEN I NOTICED THE

22 BACK DOOR WAS ALREADY OPEN AND SO I DIDN'T WORRY

23 ABOUT THAT I JUST, AND I SEEN A BURN PATTERN OR

24 SEEMED TO BE ON THE FLOOR RIGHT THERE AND THE

25 TELEPHONE WAS LAYING ON THE FLOOR SO IT SEEMED KIND

1 OF ODD, SO I WENT BACK OUTSIDE AND GOT WITH MY
2 INCIDENT COMMANDER AND THAT'S WHEN WE WENT TO
3 INVESTIGATION AND STUFF.

4 Q OKAY. SO THE BACK DOOR WAS OPEN AND Y'ALL HAD
5 TO FORCE YOUR WAY INTO THE FRONT DOOR, IS THAT RIGHT?

6 A THAT'S CORRECT.

7 Q OKAY. AND AS FAR AS THE STEP, ARE YOU THE ONE
8 THAT FELL THROUGH THE STEP?

9 A YES, SIR, I DID.

10 Q DID YOU HIT THE STEP HARD?

11 A NO, I DIDN'T. I WAS WALKING UP THE STEPS AND IN
12 THE CENTER, IF THERE IS FIRE GOING UP THE CENTER OF
13 THE STEPS IS THE WEAKEST POINT AND MY FOOT HIT THE
14 CENTER OF THE STEP AND I WENT THROUGH ABOUT ALL THE
15 WAY ABOUT TO MY KNEE.

16 Q OKAY. PLEASE ANSWER QUESTIONS MR. LITTLEJOHN
17 MAY HAVE.

18 A YES, SIR.

19 MR. LITTLEJOHN: YOUR HONOR, I WANT TO
20 ENTER THESE.

21 THE COURT: YOU HAVE TO ASK, SOMEBODY WHO
22 IS TESTIFYING HAS TO SAY, ASK HIM FIRST.

23 MR. LITTLEJOHN: I JUST WANT TO KNOW, GET
24 ME TO UNDERSTAND.

25 THE COURT: OKAY.

1 CROSS EXAMINATION BY MR. LITTLEJOHN:

2 Q I WANT YOU TO IDENTIFY THESE PICTURES, THOSE ARE
3 THE BACK DOOR AREA?

4 A THAT'S THE TABLE SITTING RIGHT THERE AT THE BACK
5 DOOR AND THAT WOULD BE THE KITCHEN AREA.

6 Q CAN YOU IDENTIFY THESE PICTURES, THAT PICTURE
7 TOO?

8 A I'M NOT SURE ABOUT WHERE THE OUTSIDE PICTURES
9 ARE.

10 Q JUST SIDE.

11 A BUT THIS IS THE KITCHEN AREA ALSO.

12 Q THIS IS THE PORCH AND THE PHONE THAT YOU SAY WAS
13 LAYING ON THE FLOOR. THEY TOOK PICTURE OF IT?

14 A I BELIEVE SO.

15 Q ALL RIGHT. I WANT TO ASK YOU A QUESTION, WHY
16 DID YOU THINK IT WAS STRANGE?

17 A WELL, I MEAN, YOU GO IN AND THE PLACE SUPPOSEDLY
18 ON FIRE, THE PHONE IS LAYING IN THE MIDDLE OF THE
19 FLOOR JERKED OUT OF THE WALL.

20 Q OKAY. THAT PHONE WAS ON THE I BELIEVE --

21 MR. MORIN: YOUR HONOR, CAN I APPROACH A
22 MINUTE WITH MR. LITTLEJOHN.

23 THE COURT: JUST COME AROUND.

24 (BENCH CONFERENCE.)

25 Q WHEN YOU ENTERED THE STRUCTURE YOU NOTICED THE

1 BACK DOOR OPEN, WAS THE SCREEN DOOR OPEN?

2 A I DIDN'T NOTICE THE BACK DOOR WAS OPEN UNTIL WE
3 STARTED VENTILATING. I DIDN'T NOTICE IT AT FIRST.
4 YOU COULDN'T SEE ALL THE WAY BACK THROUGH THE
5 APARTMENT.

6 Q BECAUSE OF THE SMOKE?

7 A RIGHT.

8 Q DID YOU NOTICE ANYTHING AROUND THE DOOR AREA? I
9 MEAN.

10 A NO, SIR.

11 Q ANYTHING ELSE MOVED OR ANYTHING ELSE IN THE
12 FLOOR?

13 A NO, SIR.

14 Q NO FURTHER QUESTIONS, YOUR HONOR.

15 MR. MORIN: THAT'S ALL QUESTIONS I HAVE.
16 THIS WITNESS I ASK MAY HE BE EXCUSED?

17 MR. LITTLEJOHN: YES, SIR.

18 THE COURT: YOU CAN BE EXCUSED. WE
19 APPRECIATE YOUR TIME. THANK YOU.

20 MR. MORIN: CALL NATHAN ELLIS.

21 NATHAN ELLIS, BEING FIRST DULY
22 SWORN, TESTIFIED AS FOLLOWS:

23 Q MR. ELLIS, WOULD YOU STATE YOUR NAME FOR THE
24 JURY?

25 A NATHAN EVERETT ELLIS.

1 Q AND WHERE DO YOU WORK, SIR?

2 A I WORK FOR THE CITY OF GAFFNEY FIRE DEPARTMENT.

3 Q WHAT ARE YOUR DUTIES THERE AT THE FIRE
4 DEPARTMENT?

5 A I AM THE FIRE INSPECTOR AND FIRE INVESTIGATOR.

6 Q AND HOW LONG HAVE YOU BEEN EMPLOYED AS A FIRE
7 INSPECTOR?

8 A SINCE OCTOBER OF 2003.

9 Q ON JULY FOURTH OR JULY FIFTH THERE LATE AT NIGHT
10 DID YOU HAVE THE OCCASION TO GO OUT TO APARTMENT 32
11 REDWOOD CIRCLE?

12 A YES, SIR, I DID.

13 Q IS THAT IN THE CITY OF GAFFNEY?

14 A YES, SIR, IT IS.

15 Q IS IT IN CHEROKEE COUNTY?

16 A YES, SIR.

17 Q OKAY. TELL ME WHAT YOU FOUND WHEN YOU GOT OUT
18 THERE AND WHAT YOU DID?

19 A OKAY. I RESPONDED PRETTY SOON AFTER THE INITIAL
20 DISPATCH, SINCE THEY DISPATCHED THE FIRE AND ONCE THE
21 UNITS ARRIVE ON THE SCENE THEY SAID THEY HAD SMOKE
22 SHOWING. THIS IS IN THE MIDDLE OF THE NIGHT, MY
23 PAGER GOES OFF ON THAT INITIAL DISPATCH AND I WOKE UP
24 AND RESPONDED AT THAT TIME. ONCE I HEARD THAT THEY
25 HAD SMOKE SHOWING, I REALIZED THIS WAS IN FACT A

1 STRUCTURE FIRE, SO I WANTED TO ARRIVE AS SOON AS
2 POSSIBLE SO I COULD OBSERVE AS MUCH OF THE
3 SUPPRESSION ACTIVITY AND THE EARLY STAGES OF THE FIRE
4 AS I COULD. AND WHEN I ARRIVED ON THE SCENE THE
5 BUILDING WAS BEING VENTILATED, THE POSITIVE PRESSURE
6 FAN WAS ALREADY SET UP BLOWING FRESH AIR INTO THE
7 BUILDING AND FORCING THE SMOKE OUT OF THE BUILDING.
8 SUPPRESSION ACTIVITY HAD PRETTY MUCH ENDED AT THAT
9 TIME. I THINK SOME OVERALL WAS TAKING PLACE BY
10 FIREFIGHTERS INSIDE THE STRUCTURE. BY OVERALL I MEAN
11 THEY WERE CHECKING FOR EXTENSION, CHECKING INSIDE THE
12 WALLS AND IN THE AREAS WHERE THE FIRE HAD OCCURRED TO
13 MAKE SURE THERE WASN'T ANY FIRE HIDDEN IN THE WALLS
14 OR ANYTHING LIKE THAT. I SPOKE WITH MY INCIDENT
15 COMMANDER AND HE JUST KIND OF BROUGHT ME UP-TO-DATE
16 OR UP TO SPEED ON WHAT HE HAD.

17 Q OKAY. DID YOU ENTER THE APARTMENT?

18 A I DID AT SOME POINT ENTER THE APARTMENT, I DID.

19 Q WHEN YOU ENTERED THE APARTMENT TELL US WHAT YOU
20 SAW?

21 A OKAY. I ENTERED THE APARTMENT BASICALLY JUST TO
22 CONFIRM SOME OF THE STATEMENTS THAT I HAD LEARNED
23 FROM MY INCIDENT COMMANDER. I ENTERED THE APARTMENT
24 THROUGH THE FRONT DOOR, NOTICED THE FRONT DOOR HAD
25 BEEN FORCED OPEN. I IMMEDIATELY NOTICED THE FIRE IN

1 THE AREA OF THE STAIRS. I NOTICED THE HOLE IN THE,
2 WHERE THE FIRST RISER OR THE FIRST TREAD OF THE STAIR
3 SHOULD BE THAT STAIR TREAD WAS ALL THE WAY GONE.
4 OBSERVING THE STAIR I NOTICED THERE WAS FIRE, A BURN
5 PATTERN, ON MOST EVERY TREAD RISER LEADING UP THE
6 STAIRCASE. WITHOUT GOING UPSTAIRS I CONTINUED ON
7 THROUGH THE APARTMENT, I DID NOT GO UPSTAIRS AT THAT
8 TIME, I CONTINUED ON THROUGH THE APARTMENT STRAIGHT
9 TOWARDS THE KITCHEN AREA TOWARD THE BACK DOOR. I
10 NOTICED WHAT I CONSIDERED TO BE AN OBVIOUS FLOOR
11 PATTERN, A BURN PATTERN, IN THE FLOOR OF THE KITCHEN.
12 I NOTICED A BURN PATTERN ON THE BACK DOOR. I NOTICED
13 TWO BAR STOOLS, THERE WAS A TABLE IN THE KITCHEN, A
14 BAR TOP TABLE, HIGH TABLE, AND IT HAD THREE STOOLS
15 AROUND THE TABLE; TWO OF THE STAIRS, TWO OF THE
16 STOOLS, THE SEATS OF THE STOOLS, HAD BEEN BURNED.
17 AND AT THAT TIME I JUST WENT BACK OUTSIDE. AT THAT
18 TIME I FELT THAT I CONFIRMED THAT WE HAD A POSSIBLE
19 ARSON FIRE, POSSIBILITY OF A SET FIRE.
20 AT THAT TIME I GUESS I DIDN'T KNOW FOR SURE THAT IT
21 HAD BEEN ARSON, BUT I THOUGHT FOR SURE THE FIRE HAD
22 BEEN SET, AND I REQUESTED FOR LAW ENFORCEMENT TO BE
23 INVOLVED.
24 Q OKAY. DID YOU OR YOUR DEPARTMENT CONTACT THE
25 STATE LAW ENFORCEMENT DIVISION?

1 A THAT IS CORRECT. I ASKED INCIDENT COMMANDER TO
2 DO THAT. THAT'S OUR PROTOCOL.

3 Q OKAY. DO YOU REMEMBER IF A SLED AGENT OR AN
4 OFFICER WITH THE STATE LAW ENFORCEMENT DIVISION
5 RESPONDED?

6 A THAT'S CORRECT, HE DID.

7 Q WHO WAS THAT?

8 A BOBBY SHEALY.

9 Q OKAY. SO FROM YOUR TRAINING AND EXPERIENCE
10 HAVING GONE IN THERE YOU DETERMINED THAT THERE WERE,
11 WHAT YOU FELT WERE INDICATROS THAT THE FIRE HAD BEEN
12 SET?

13 A THAT IS CORRECT.

14 Q AND FROM THAT POINT YOU CONTACTED THE FIRE,
15 MR. SHEALY AT SLED?

16 A THAT IS CORRECT.

17 Q AND HE RESPONDED TO THE SCENE?

18 A THAT'S RIGHT.

19 Q YOU WERE PRESENT WHEN HE ENTERED AS WELL?

20 A I WAS.

21 Q OKAY. DID YOU HAVE THE OCCASION TO LOOK AT OR
22 SEE THE BACK DOOR?

23 A I DID.

24 Q DID YOU NOTICE ANY ANYTHING ODD ABOUT THE
25 CONDITION OF THE BACK DOOR?

1 A I DID. THE BACK DOOR APPEARED TO BE IN THE OPEN
2 WHEN THE FIRE OCCURRED. THERE WAS ALSO WHAT WE CALL
3 TOOL MARKS, SCRATCH MARKS, ON THE DOOR BETWEEN THE
4 DOOR AND THE DOOR FACING WHERE IT HAD APPEARED TO BE
5 PRIED OPEN.

6 Q THANK YOU. PLEASE ANSWER ANY QUESTIONS
7 MR. LITTLEJOHN MAY HAVE.

8 A YES, SIR.

9 CROSS EXAMINATION BY MR. LITTLEJOHN:

10 Q YOU ARE IN THE APARTMENT, YOU STATED THAT YOU
11 CHECKED BOTH APARTMENTS, I MEAN ADJACENT TO THE
12 APARTMENT. YOU STATED THAT YOU DIDN'T SMELL SMOKE IN
13 JUST ONE APARTMENT, RIGHT, THAT WAS APARTMENT 3,
14 ISN'T THAT TRUE?

15 A I'VE NOT STATED THAT IN MY STATEMENT TODAY.

16 Q BUT NOT IN YOUR STATEMENT?

17 A RIGHT.

18 Q BUT WHAT WE GOT AT THE SCENE EXAMINATION. WHEN
19 YOU WENT UPSTAIRS TO THE MASTER BEDROOM, WAS THERE
20 ANYTHING OUT OF PLACE? I MEAN AS FAR AS STUFF ON THE
21 WALLS, DID IT LOOK LIKE ANY, LOOK LIKE ANY, HOW MUCH
22 DAMAGE WAS DONE TO THE UPSTAIRS?

23 A OKAY. AT A LATER TIME I DID RE-ENTER THE
24 STRUCTURE. TO MORE CAREFULLY OBSERVE THE STRUCTURE,
25 I DID GO UPSTAIRS AND I OBSERVED THE UPSTAIRS ROOMS

1 AND THERE WAS SIGNIFICANT HEAT DAMAGE, SOOTING ON ALL
2 SURFACES, SOOTING CAUSED BY THE SMOKE THAT HAD
3 COLLECTED PRETTY MUCH ON ALL SURFACES; WALLS,
4 CEILINGS, ANY SURFACE. ANYTHING THAT WAS OF PLASTIC
5 MATERIAL OR A LOT OF PLASTIC MATERIALS HAD BEGIN TO
6 MELT BECAUSE OF THE HEAT. SOME ITEMS HAD FALLEN OFF
7 THE WALLS I BELIEVE AS BEST I REMEMBER.

8 Q THAT WAS, I ASKED YOU A QUESTION ABOUT, HOW DID
9 THE FIRE PROGRESS UP THE STEPS? I MEAN YOU DIDN'T
10 MAKE A COMMENT ON THAT, BUT THE FIRE YOU STATED IT
11 WAS JUST HEAT DAMAGE UPSTAIRS, SO I MEAN?

12 A RIGHT. UPSTAIRS THERE WAS HEAT DAMAGE. ON THE
13 STAIRCASE ITSELF THERE WAS ACTUALLY A BURN PATTERN,
14 FIRE, FIRE HAD BURNED ON THE STAIRS ON THE TREADS AND
15 RISERS OF THE STAIRS.

16 Q SO YOU SAYING THAT THE FIRE WAS GOING UP, AS IT
17 WENT UP, IT DONE WHAT?

18 A FOR WHATEVER REASON THE FIRE DID NOT CONTINUE TO
19 BURN, BUT FIRE HAD BURNED ON THE STAIRS.

20 Q YEAH.

21 A IT DIDN'T, YOU KNOW, IT DID NOT SUSTAIN BURNING
22 FOR LONG BUT THERE WERE BURNS MARKS, INDICATION OF
23 BURNING ON THE STAIRS.

24 Q ALL RIGHT. SO NO MORE FURTHER QUESTIONS, YOUR
25 HONOR.

ROBERT SHEALY

DIRECT

52

1 MR. MORIN: THAT'S ALL QUESTIONS I HAVE.

2 THE COURT: YOU CAN STEP DOWN AND BE
3 EXCUSED. WE APPRECIATE YOUR TIME. CALL YOUR NEXT
4 WITNESS.

5 MR. MORIN: CALL BOBBY SHEALY.

6 THE COURT: PLEASE COME UP AND BE SWORN.

7 ROBERT SHEALY, BEING FIRST DULY
8 SWORN, TESTIFIED AS FOLLOWS:

9 DIRECT EXAMINATION BY MR. MORIN:

10 Q OFFICER SHEALY, WOULD YOU STATE YOUR NAME FOR
11 THE JURY?

12 A MY NAME IS BOBBY SHEALY.

13 Q AND WITH WHOM DO YOU WORK?

14 A I'M A SENIOR AGENT WITH THE SOUTH CAROLINA LAW
15 ENFORCEMENT DIVISION. I'M ASSIGNED IN THE ARSON
16 INVESTIGATION SECTION.

17 Q AND HOW LONG HAVE YOU WORKED THERE?

18 A I'VE BEEN WITH THE STATE SINCE APRIL OF '89. I
19 WENT TO WORK WITH THE STATE AS AN ARSON INVESTIGATOR
20 WHEN IT IS A LAW ENFORCEMENT AGENCY UNDER THE STATE
21 FIRE MARSHALL AND WAS THEN KNOWN AS THE SOUTH
22 CAROLINA ARSON CONTROL TEAM. IN JUNE OF '91 THEY
23 MOVED US AS A UNIT FROM THE FIRE MARSHALL'S OFFICE TO
24 THE STATE LAW ENFORCEMENT DIVISION. THAT WAS JUNE OF
25 '91. I'VE HAD THE SAME JOB THE WHOLE TIME I WAS WITH

1 THE STATE.

2 Q HOW LONG HAVE YOU, CAN YOU TELL US JUST BRIEFLY
3 YOUR EDUCATION AND EXPERIENCE INVOLVING FIRE
4 INVESTIGATION?

5 A SURE, I'LL BE GLAD TO. A LITTLE BACKGROUND. I
6 OBTAINED AN ASSOCIATE DEGREE FROM MIDLANDS TECHNICAL
7 COLLEGE IN 1975 IN CIVIL ENGINEERING TECHNOLOGY.

8 I'M PRESENTLY A SENIOR WORKING ON MY
9 BACHELOR'S DEGREE PART-TIME AT NEWBERRY COLLEGE AND
10 I'M A SENIOR THERE.

11 I WAS EMPLOYED WITH THE NEWBERRY FIRE
12 DEPARTMENT IN JANUARY 1976 AND I CONTINUED TO WORK
13 THERE FOR 13 YEARS. AFTER I LEFT NEWBERRY AS A PAID
14 FIREFIGHTER I ALSO STAYED ON AS A VOLUNTEER FOR AN
15 ADDITIONAL TEN YEARS, GIVING ME 23 TOTAL YEARS IN THE
16 FIRE SERVICE.

17 SOME LATER YEARS OF MY PAID TIME THERE I
18 ALSO WAS CONSIDERED FIRE ARSON INVESTIGATOR AND I
19 WOULD BE CALLED BY SOME OF THE 12 FIRE DEPARTMENTS
20 AND SHERIFF'S OFFICES AROUND THE COUNTY TO
21 INVESTIGATE SUSPICIOUS FIRES.

22 ALSO WHEN I WAS AT THE FIRE DEPARTMENT I
23 ALSO ASSISTED THE STATE ARSON CONTROL TEAM WHEN THEY
24 WOULD COME INTO NEWBERRY COUNTY TO INVESTIGATE
25 SUSPICIOUS FIRES.

1 SOME OF MY SCHOOLING INCLUDES BEGINNING IN
2 NUMEROUS SCHOOLS, I WILL JUST HIT THE HIGHLIGHTS SOME
3 OF WHAT I HAD, MARCH OF 1976 I COMPLETED PRINCIPLES
4 AND TECHNIQUES OF FIREFIGHTING. NOVEMBER 1980 I
5 ATTENDED THE SOUTH CAROLINA FIRE ACADEMY FOR
6 FIREFIGHTING FUNDAMENTALS. APRIL OF '88 I COMPLETED
7 1121 WHICH IS A FIREFIGHTING COURSE. IN FEBRUARY OF
8 1991 I COMPLETED 1111 WHICH IS ANOTHER COURSE OFFERED
9 BY THE FIRE ACADEMY. ALL OF THESE COURSES ACTUALLY
10 INCLUDE LESSON IN THE CHEMISTRY OF FIRE.

11 IN MARCH OF 1986 I ATTENDED AND COMPLETED
12 THE BASIC ARSON INVESTIGATION COURSE OFFERED AT THE
13 SOUTH CAROLINA CRIMINAL JUSTICE ACADEMY. IN JULY OF
14 '89 I ATTENDED AND COMPLETED THE ADVANCED CRIMINAL
15 ARSON INVESTIGATION SEMINAR HELD AT THE UNIVERSITY OF
16 GEORGIA SPONSORED BY THE GEORGIA FIRE MARSHALL'S
17 OFFICE.

18 I COMPLETED MY 8 WEEKS OF BASIC LAW
19 ENFORCEMENT TRAINING AT THE CRIMINAL JUSTICE ACADEMY
20 IN MARCH OF 1990. IN 1990, JULY, I ATTENDED AND
21 SATISFACTORILY COMPLETED A COURSE OF STUDY IN FIRE
22 ARSON INVESTIGATION AT THE NATIONAL FIRE ACADEMY IN
23 EMMITSBURG, MARYLAND.

24 SEPTEMBER OF '90 I ATTENDED AND COMPLETED
25 A COURSE IN TECHNICAL INVESTIGATIVE EQUIPMENT AT THE

1 FEDERAL LAW ENFORCEMENT TRAINING CENTER IN GLYNCO,
2 GEORGIA. APRIL OF '92 I COMPLETED TWO WEEK DETECTIVE
3 COURSE. AUGUST OF '94 I SUCCESSFULLY COMPLETED A
4 THREE DAY COURSE OF STUDY IN DETERMINING THE ORIGIN
5 AND CAUSE OF FIRES, CANINE ACCELERANT DETECTION, AND
6 INTERVIEWING AND INTERROGATION WHICH WAS OFFERED BY
7 THE SOUTH CAROLINA INTERNATIONAL ASSOCIATION OF ARSON
8 INVESTIGATORS.

9 AUGUST OF '95 I COMPLETED A FOUR DAY
10 COURSE OF STUDY CONDUCTED BY THE SOUTH CAROLINA
11 CHAPTER OF INTERNATIONAL ASSOCIATION ARSON
12 INVESTIGATORS WHICH INCLUDED THE STUDY OF FIRE
13 BEHAVIOR AND FIRE DYNAMICS AS WELL AS CRIMINAL AND
14 LEGAL ISSUES, KEROSENE HEATERS, AND NFPA 921 AND 1033
15 ISSUES WHICH DEALS WITH FIRE INVESTIGATIONS.

16 Q OFFICER SHEALY, HAVE YOU EVER BEEN QUALIFIED AS
17 AN EXPERT IN SOUTH CAROLINA?

18 A YES, I HAVE.

19 Q FOR ORIGIN AND CAUSE OF FIRE?

20 A I HAVE.

21 MR. MORIN: YOUR HONOR, AT THIS TIME WE
22 MOVE THAT OFFICER SHEALY BE ADMITTED AS AN EXPERT IN
23 THE ORIGIN AND CAUSE OF FIRES.

24 THE COURT: DO YOU HAVE ANY QUESTIONS YOU
25 WANT TO ASK HIM ABOUT HIS QUALIFICATIONS?

1 MR. LITTLEJOHN: NO.

2 THE COURT: I FIND HE IS QUALIFIED.

3 MR. MORIN: THANK YOU, YOUR HONOR.

4 Q OFFICER SHEALY, I'M GOING TO SHOW YOU WHAT'S
5 BEEN MARKED FOR IDENTIFICATION AS STATE'S EXHIBIT
6 NUMBER 40 AND ASK IF YOU RECOGNIZE THAT?

7 A YES, I DO.

8 Q WHAT IS THAT?

9 A THIS IS WHAT I CALLED A FINISH SKETCH. THIS IS
10 A SKETCH THAT I PRODUCED ON THE COMPUTER BASED ON A
11 ROUGH SKETCH THAT I ACTUALLY PREPARED AT THE FIRE
12 SCENE.

13 Q DID YOU PREPARE THIS YOURSELF?

14 A YES, I DID.

15 Q IS IT A RESULT OF YOU ACTUALLY BEING THERE AT
16 APARTMENT 32?

17 A THAT'S CORRECT.

18 MR. MORIN: YOUR HONOR, WE MOVE STATE'S
19 EXHIBIT NUMBER 40 INTO EVIDENCE.

20 THE COURT: WITHOUT OBJECTION.

21 (STATE'S EXHIBIT 40 DIAGRAM RECEIVED INTO
22 EVIDENCE.)

23 MR. MORIN: OKAY.

24 Q I'M ALSO GOING TO SHOW YOU I BELIEVE 39 PICTURES
25 AND ASK IF YOU CAN TELL ME ABOUT THOSE.

1 A YES, I CAN. THESE ARE PHOTOGRAPHS THAT I TOOK
2 WHILE I WAS AT THE FIRE SCENE CONDUCTING MY
3 INVESTIGATION.

4 Q AND THERE MAY BE 34. IF YOU COULD QUICKLY COUNT
5 THEM SO IT WILL BE CLEAR FOR THE RECORD.

6 A 34 IS CORRECT.

7 Q THANK YOU.

8 MR. MORIN: YOUR HONOR, WE MOVE 34
9 PHOTOGRAPHS THAT MR. SHEALY TOOK AT THE SCENE INTO
10 EVIDENCE.

11 THE COURT: ANY OBJECTION?

12 MR. LITTLEJOHN: NO OBJECTION.

13 THE COURT: BE RECEIVED.

14 (STATE'S EXHIBITS NUMBERS 1-32 AND 38 & 39
15 PHOTOGRAPHS RECEIVED INTO EVIDENCE.)

16 Q OFFICER SHEALY, I'M GOING TO HAND YOU A BAG THAT
17 HAS SOME ITEMS IN IT. IF YOU COULD PULL THOSE OUT
18 AND IDENTIFY THOSE FOR US.

19 A DO IT INDIVIDUALLY, SIR?

20 Q YES, SIR.

21 A YES. STATE'S EXHIBIT NUMBER 37, THIS IS, THE
22 BAG THAT I CARRY STORM IS CALLED K-PACK BAG BUT THIS
23 IS K-PACK BAG CONTAINING EVIDENCE THAT I COLLECTED AT
24 THE FIRE SCENE. IT'S A BED SPREAD, PART OF A SHEET
25 AND PART OF A MATTRESS TOP OF A BED THAT WAS IN THE

1 SPARE BEDROOM UPSTAIRS AND IT'S LABELED AS SAMPLE
2 NUMBER FIVE.

3 Q OKAY.

4 MR. MORIN: STATE'S EXHIBIT NUMBER 37 FOR
5 IDENTIFICATION INTO EVIDENCE, YOUR HONOR.

6 THE COURT: ANY OBJECTION?

7 MR. LITTLEJOHN: NO.

8 THE COURT: BE RECEIVED.

9 (STATE'S EXHIBIT 37 INTO EVIDENCE.)

10 A STATE'S EXHIBIT 36 K-PACK BAG. IT'S IDENTIFIED
11 AS SAMPLE NUMBER FOUR. THIS IS A BEDSPREAD SHEET
12 TYPE MATERIAL THAT I COLLECTED FROM THE FLOOR OF THE
13 MASTER BEDROOM UPSTAIRS IN FRONT OF THE CLOSET.

14 MR. MORIN: MOVE STATE'S EXHIBIT 36 INTO
15 EVIDENCE.

16 THE COURT: WITHOUT OBJECTION.

17 (STATE'S EXHIBIT 36 INTO EVIDENCE.)

18 A STATE'S EXHIBIT 35 IDENTIFIED AS SAMPLE NUMBER
19 THREE ON MY LABEL, THIS IS A LIGHT GREEN OR PORTION,
20 A CUT OUT PIECE OF LIGHT GREEN BLANKET FROM TOP OF
21 THE MASTER BEDROOM BED UPSTAIRS, SAMPLE NUMBER THREE,
22 THAT I COLLECTED.

23 MR. MORIN: STATE'S EXHIBIT NUMBER 35,
24 YOUR HONOR.

25 THE COURT: ANY OBJECTION.

1 MR. LITTLEJOHN: NO.

2 THE COURT: BE RECEIVED WITHOUT OBJECTION.

3 (STATE'S EXHIBIT 35 RECEIVED INTO
4 EVIDENCE.)

5 A STATE'S EXHIBIT 33 IDENTIFIED BY MY SAMPLE AS
6 SAMPLE NUMBER ONE AND IS CARPET AND CARPET PADDING
7 THAT I COLLECTED ALONG THE BASEBOARD WALL OF THE
8 HALLWAY DOWNSTAIRS IN FRONT OF THE HALF BATHROOM ON
9 THE FIRST FLOOR DURING MY SCENE EXAMINATION.

10 MR. MORIN: STATE'S EXHIBIT NUMBER 33,
11 YOUR HONOR.

12 THE COURT: ANY OBJECTION?

13 MR. LITTLEJOHN: NO, SIR.

14 THE COURT: BE RECEIVED.

15 (STATE'S EXHIBIT 33 RECEIVED INTO
16 EVIDENCE.)

17 A AND STATE'S EXHIBIT 34 WHICH IS IDENTIFIED AS MY
18 SAMPLE NUMBER TWO WHICH IS CARPET AND CARPET PADDING
19 WHICH I COLLECTED IN THE UPSTAIRS HALLWAY IN FRONT OF
20 THE CLOSET AND IN FRONT OF THE MASTER BEDROOM DOOR
21 AND STATE'S EXHIBIT 34 AND IS MY SAMPLE NUMBER TWO.

22 MR. MORIN: STATE'S EXHIBIT NUMBER 34 MOVE
23 THAT INTO EVIDENCE, YOUR HONOR.

24 THE COURT: ANY OBJECTION?

25 MR. LITTLEJOHN: NO.

ROBERT SHEALY

DIRECT

60

1 THE COURT: BE RECEIVED.

2 (STATE'S EXHIBIT NUMBER 34 INTO EVIDENCE.)

3 Q OFFICER SHEALY, I'M GOING TO HAND YOU THE
4 PHOTOGRAPHS AND I'M GOING TO ASK YOU SOME QUESTIONS
5 ABOUT THINGS THAT HAPPENED ON THE FIRST FLOOR TO
6 BEGIN, OKAY?

7 A ALL RIGHT, SIR.

8 Q THIS IS YOUR DRAWING OF THE FIRST FLOOR, IS THAT
9 CORRECT?

10 A THAT'S CORRECT.

11 MR. MORIN: YOUR HONOR, I ASK THAT MR.
12 SHEALY BE ALLOWED TO STEP DOWN.

13 THE COURT: YOU CAN STEP DOWN, YES, SIR.

14 Q ALL RIGHT.

15 MR. MORIN: JUST HAVE A MOMENT, YOUR
16 HONOR.

17 THE COURT: ALL RIGHT.

18 Q LET ME BEGIN BY ASKING YOU WHAT WAS THE FIRST
19 THING YOU DID WHEN YOU ARRIVED?

20 A UPON MY ARRIVAL ON THE SCENE I MET WITH FIRE
21 MARSHALL ELLIS AND ALSO ALONG WITH INVESTIGATOR MIKE
22 SKEDENA FROM THE CITY OF GAFFNEY POLICE DEPARTMENT,
23 WAS BRIEFED OF THIS FIRE SCENE, AND ALSO MADE SURE
24 THAT A CONSENT TO SEARCH HAD BEEN OBTAINED FOR THE
25 PROPERTY AND THAT WAS SIGNED BY MRS. LITTLEJOHN THE

1 OCCUPANT OF THE PROPERTY TO ALLOW ME PERMISSION TO GO
2 INTO THE SCENE SINCE I DID NOT RESPOND INITIALLY AS A
3 FIREFIGHTER AND WHERE I'M GOING THERE ACTUALLY
4 LOOKING TO SEE IF THERE IS EVIDENCE OF A CRIME. WE
5 HAVE TO HAVE EITHER CONSENT TO SEARCH OR A SEARCH
6 WARRANT. WE HAD THE CONSENT TO SEARCH SO THEN I
7 PERFORMED A CURSORY INSPECTION OF THE INTERIOR AND
8 EXTERIOR OF THE FIRE SCENE AND THEN I BEGAN TO FOCUS
9 MORE THOROUGHLY ON SCENE EXAMINATION AND COLLECT
10 EVIDENCE.

11 Q OKAY. NOW THIS HAS BEEN MARKED AS STATE'S
12 EXHIBIT NUMBER 15, CAN YOU TELL US ABOUT THIS
13 PHOTOGRAPH?

14 A THIS PHOTOGRAPH IS THE FRONT END OF THE
15 BUILDING, THE SIDE THAT'S ACTUALLY FACING THE PARKING
16 LOT, THE PARKING LOT WAS HERE IN THIS AREA HERE. THE
17 SCREEN DOOR OPENED OUTWARD. THE DOOR ACTUALLY SWUNG
18 INSIDE AND HAD THE CRIME SCENE BARRIER TAPE ON IT
19 WHEN I ARRIVED.

20 THIS IS SHOWING THE SECOND FLOOR. YOU CAN
21 ACTUALLY SEE SOME MELT DOWN IN THE WINDOW THERE
22 INSIDE, KIND OF LIKE SOME HEAT DAMAGE AND STUFF
23 INSIDE THAT WINDOW, BUT THAT WAS THE FRONT OF THE
24 BUILDING APARTMENT 32.

25 Q OKAY. NOW I'M GOING TO SHOW YOU STATE'S EXHIBIT

1 NUMBER 16 AND 17 IF YOU CAN TELL US ABOUT THESE.

2 A 16 AND 17 ARE ACTUALLY REAR SHOTS OF THE
3 BUILDING. THIS ONE WAS TAKEN FROM THE CORNER LOOKING
4 BACK TOWARD, TRYING TO GET A PICTURE OF THE REAR END
5 OF THE BUILDING. THIS IS ACTUALLY STANDING THERE AND
6 LOOKING AT THE DOOR IN QUESTION, ACTUALLY ENTER INTO
7 THE REAR DOOR OF APARTMENT 32.

8 Q THIS IS STATE'S EXHIBIT NUMBER 18 AND STATE'S
9 EXHIBIT NUMBER 19, IF YOU CAN TELL US ABOUT THESE?

10 A THIS IS A CLOSER SHOT OF THE BACK DOOR AND THE
11 LANDING AREA AT THE BACK DOOR. JUST TO THE RIGHT OF
12 THE BACK DOOR WAS A BLUE CIGARETTE LIGHTER WHICH THIS
13 A PHOTOGRAPH OF THE BLUE CIGARETTE LIGHTER CLOSE UP
14 PICTURE OF IT AND IT WAS LOCATED RIGHT IN THAT AREA.
15 YOU'LL BE ABLE TO SEE IT WHEN YOU GET TO THE
16 PHOTOGRAPH BEFORE IT.

17 Q STATE'S EXHIBIT NUMBER 20 AND STATE'S EXHIBIT
18 NUMBER -- WELL, YOU BETTER DO ONE AT A TIME. CAN YOU
19 TELL US ABOUT THIS?

20 A THIS IS A CLOSE UP PHOTOGRAPH OF THE DOOR JAMB
21 ON THE REAR DOOR SHOWING THAT THE REAR JAMB HAD BEEN
22 OPENED AND ENTERED AND FORCED OPEN.

23 Q AND STATE'S EXHIBIT NUMBER 21?

24 A TURN THAT SIDEWAYS. THIS IS THE DOOR PLATE AS
25 WELL AND YOU CAN ACTUALLY SEE A LITTLE BIT MORE

1 DAMAGE THERE. YOU CAN ACTUALLY SEE WHERE IT WAS
2 ACTUALLY FORCED OPENED AND ENTERED.

3 Q THIS IS THE BACK DOOR?

4 A THE BACK DOOR.

5 Q OKAY. STATE'S EXHIBITS 23 AND 22, DO YOU KNOW?

6 A THE TOP PHOTOGRAPH IS ACTUALLY THE EXTERIOR SIDE
7 OF THE REAR DOOR. HERE YOU CAN SEE SOME MARKINGS
8 HERE WHERE THE ACTUAL DOOR HAD TRIED TO BE ENTERED
9 AND FORCED OPEN. THIS WOULD BE THE INSIDE, YOU CAN
10 SEE THE INSIDE DOOR KNOB WHERE YOU CAN LOCK IT ON THE
11 INSIDE AND YOU CAN SEE SOME DAMAGE TO THE LOCKING
12 MECHANISM THERE AS WELL, REAR DOOR.

13 Q NOW THIS IS STATE'S EXHIBIT NUMBER 30.

14 A THIS PHOTOGRAPH IS TAKEN FROM JUST OUTSIDE THE
15 REAR DOOR LOOKING IN. YOU CAN ACTUALLY SEE A BURN
16 PATTERN ON THE BASE OF THE LINOLEUM FLOOR INSIDE THE
17 KITCHEN AREA, TABLE; BAR STOOLS, TO THE LEFT JUST
18 INSIDE THE DOOR. IF YOU LOOK STRAIGHT AHEAD YOU'LL
19 SEE A SMALL HALLWAY WITH A PLASTIC RUNNER AND THEN
20 THE FRONT DOOR WHICH EXITS TO THE FRONT SIDE OF THE
21 BUILDING WHICH WOULD BE HERE.

22 WHAT I'M NEXT DOING IS STANDING RIGHT OUT
23 HERE PHOTOGRAPHING IN THIS BACK DOOR AT THAT
24 LOCATION.

25 Q YOU'VE GOT THE GRAY AREA MARKED ON YOUR DIAGRAM?

1 A THAT IS CORRECT. THIS IS SHOWING THE GRAY AREA
2 THAT I PLACED ON MY SKETCH ACTUALLY IS THE BURN
3 PATTERN THAT YOU SEE HERE. THIS BURN PATTERN IS
4 ACTUALLY CONSISTENT WITH THE PRESENCE OF AN IGNITABLE
5 LIQUID. IF YOU'LL NOTICE ALL THE OTHER AREAS AROUND
6 IT THERE IS NO BLISTERING, NO DISCOLORATION
7 WHATSOEVER. IF IT WOULD BE RADIATED HEAT FROM A FIRE
8 SOURCE FROM TOP DOWN THEN YOU WOULD HAVE EQUAL AMOUNT
9 OF DAMAGE TO THE FLOORING. THIS KIND WAS INDICATIVE
10 AND CONSISTENT WITH AN IGNITABLE LIQUID THAT HAD
11 ACTUALLY IGNITED.

12 Q THIS IS STATE'S EXHIBIT NUMBER 31?

13 A WHAT I'M TRYING TO INDICATE IN THIS PHOTOGRAPH,
14 NOT ONLY THE PATTERN AS I MENTIONED BEFORE, BUT IF
15 YOU'LL NOTICE THE BOTTOM SIDE OF THE DOOR IT SHOWS
16 SOOTING AND SMOKE DAMAGE ON THE BOTTOM END CORNER OF
17 THE DOOR WHICH INDICATES THAT THE DOOR WAS OPEN AT
18 THE TIME OF THE FIRE. ALSO YOU CAN SEE HOW IT FITS
19 PERFECTLY WITH THE BURN DAMAGE. SMOKE AND SOOT IS
20 NOTHING MORE THAN A BYPRODUCT OF INCOMPLETE
21 COMBUSTION, WHAT DID NOT BURN, AND THAT'S WHAT LEFT
22 AND SO YOU HAVE THAT KIND OF DAMAGE ON THE END OF THE
23 DOOR SHOWING THAT THE DOOR WAS OPEN AT THE TIME OF
24 THE FIRE.

25 Q ALL RIGHT. THESE ARE STATE'S EXHIBITS 38 AND

1 39.

2 A IN THIS PARTICULAR PHOTOGRAPH I WAS ACTUALLY
3 INSIDE THE KITCHEN, MORE IN THIS AREA, LOOKING BACK
4 TOWARDS THE BACK DOOR. YOU CAN ACTUALLY SEE THE SAME
5 TYPE OF SOOT DAMAGE AND BURN DAMAGE ON THE BOTTOM
6 DOOR HERE. AGAIN IT MATCHES THE BURN PATTERN. ALSO
7 YOU'LL NOTICE THE BAR STOOLS OR THE TABLE CHAIRS
8 WHICHEVER YOU'D LIKE TO REFER TO THEM AS. YOU CAN
9 NOTICE THAT THIS PARTICULAR CHAIR HAS ACTUALLY SOME
10 HEAT DAMAGE AND SMOKE DAMAGE WHERE THIS ONE DOES NOT.
11 IF THIS WOULD HAVE BEEN FROM RADIATED HEAT WE SHOULD
12 HAVE DAMAGE TO BOTH OF THE SAME CHAIR. THIS IS KIND
13 OF INDICATIVE OF SOMETHING MAY HAVE SPLASHED OR PUT
14 ON THAT CHAIR BEFORE THE FIRE.

15 Q AND THESE CHAIRS ON THAT DIAGRAM ARE LOCATED
16 WHERE EXACTLY?

17 A THEY ARE IN THE KITCHEN AND THEY ARE SITTING
18 RIGHT HERE IN THAT AREA WHERE I'VE GOT THE DINING
19 ROOM.

20 Q OKAY. THIS IS GOING TO BE STATE'S EXHIBIT
21 NUMBER 24.

22 A. THIS PHOTOGRAPH IS ACTUALLY A FRONT DOOR,
23 STANDING IN THIS PARTICULAR AREA HERE, TAKING A
24 PHOTOGRAPH INSIDE THE APARTMENT. IN THIS PARTICULAR
25 AREA I WAS ABLE TO ACTUALLY SEE SOME OF THE CARPET

ROBERT SHEALY

DIRECT

66

1 HAD BURNED AND MELTED AWAY IN THIS PARTICULAR AREA
2 AND ACTUALLY CONTINUING ON INTO THE HALLWAY FOR A
3 SHORT DISTANCE. IF YOU'LL NOTICE ON THE BOTTOM OF
4 THIS DOOR YOU DO NOT SEE ANY BURN DAMAGE OR ANY KIND
5 OF SOOT DAMAGE WHATSOEVER WHICH INDICATES THAT THAT
6 DOOR WAS CLOSED AT THE TIME OF THE FIRE, BUT WE DO
7 HAVE FIRE DAMAGE THAT WAS SEEN JUST INSIDE THE FRONT
8 DOOR.

9 Q OKAY. LET ME ASK YOU THIS, AT THIS POINT YOU
10 HAD INDICATION THAT THERE WAS AN ACCELERANT USED?

11 A THERE WERE INDICATIONS, THAT IS CORRECT.

12 Q OKAY. CAN YOU TELL US A LITTLE BIT ABOUT
13 ACCELERANTS AND HOW THIS CARPET WAS BURNED?

14 A IN MY PHOTOGRAPHS A LITTLE BIT FURTHER I SHOW A
15 LITTLE BIT MORE DAMAGE, BUT WHEN YOU TALKING ABOUT
16 ACCELERANTS OR FIRE IN GENERAL, GIVE YOU A LITTLE
17 LESSON IN CHEMISTRY ON FIRE. IF YOU'VE EVER LOOKED
18 AT A FIREPLACE AND LOOKED AT THE WOOD IN THE
19 FIREPLACE YOU NOTICE THAT THE FLAME IS ACTUALLY A
20 SMALL DISTANCE ABOVE THE WOOD ITSELF, SO IT'S NOT
21 ACTUALLY THE WOOD THAT IS BURNING BUT THE VAPORS AND
22 GAS THAT'S BEING RELEASED BY THE WOOD AS IT
23 DECOMPOSES. THE DECOMPOSITION IS ACTUALLY GIVING THE
24 BURNING OR THE CHARRING OR BLACKENING EFFECT BUT IT
25 IS THE GASES AND THE VAPORS ABOVE THAT THAT WAS

1 ACTUALLY BURNING. WHEN YOU HAVE THAT IN A CARPET OR
2 AN IGNITABLE LIQUID IS ACTUALLY POURED ON A CARPET
3 AND OF COURSE IT WILL SEEP INTO THE CARPET AND THE
4 PADDING AND IT WILL ACT LIKE A WICK ON A CANDLE OR
5 SAY A WICK ON A LANTERN AND THE VAPORS ARE ACTUALLY
6 BURNING OFF THE TOP OF IT FIRST. AS IT DEPLETES THE
7 SUPPLY, THEN IT RADIATES THE HEAT DOWN AND
8 DECOMPOSES, IT'S EATING THE CARPET AND THE PAD UP AND
9 ACTUALLY DECOMPOSING IT AND GIVING IT THAT BURNING
10 EFFECT AND BURNING LOOK.

11 ON THE LINOLEUM IF IT WAS A FLASH FIRE
12 WHICH IN THIS CASE IT'S MY OPINION THAT THE FLASH IS
13 AT THE BACK DOOR, IT MAY CONSUME THAT PARTICULAR
14 AMOUNT OF LIQUID CAUSING THE AMOUNT OF THE
15 DISCOLORATION THERE BUT THIS WOULD TAKE A LITTLE BIT
16 LONGER SINCE YOU GOT IT SATURATED INTO THE CARPET AND
17 THE PATH.

18 Q THIS IS STATE'S EXHIBIT NUMBER 25, AND I THINK
19 I'M NOT SURE, YOU'LL HAVE TO TELL ME.

20 A IT'S ACTUALLY LIKE THIS. THIS END OF THIS BURN
21 PATTERN IS ACTUALLY WHAT WE ARE LOOKING AT RIGHT DOWN
22 THE HALLWAY ON THAT FIRST FLOOR AND YOU CAN SEE HOW
23 IT BEGINS TO, IT'S NO DAMAGE AT ALL TO THE CARPET ON
24 THE OUTSIDE, IT'S BEGINNING TO GET A LITTLE MORE
25 SEVERE CLOSER TO THE MIDDLE AND THEN AS THE HEAT

1 PROGRESSES IT GETS A LOT WORSE, THE DAMAGE IS A LOT
2 WORSE. THIS PARTICULAR PATTERN HERE IS JUST
3 INDICATIVE. IF IT HAD BEEN RADIATED HEAT THAT CAUSED
4 IT, ALL THIS CARPET WHEN IT WAS NOT ANYTHING OVER TO
5 PROTECT IT WOULD HAVE ACTUALLY BURNED, BUT IN THIS
6 PARTICULAR CASE HERE YOU CAN SEE WHERE IT'S ONLY
7 ISOLATED TO THAT ONE AREA.

8 Q STATE'S EXHIBIT NUMBER 27.

9 A THE PHOTOGRAPH THAT HE JUST SHOWED YOU, THAT WAS
10 THE END OF THE PARTICULAR BURN PATTERN HERE. AGAIN
11 THIS IS AT THE FRONT DOOR STANDING IN THIS PARTICULAR
12 AREA LOOKING BACK TOWARD THE BACK DOOR. I WANT TO
13 CALL YOUR ATTENTION RIGHT NOW TO THIS, I GUESS IT'S
14 LIKE A BLANKET RACK OR SOME TYPE OF A DECORATIVE RACK
15 RIGHT HERE AND THE RUNNER THAT'S ACTUALLY GOING DOWN
16 THIS PARTICULAR AREA AND THE BACK DOOR. AND THE NEXT
17 PHOTOGRAPH I HOPE IT'S GOING TO SHOW.

18 Q STATE'S EXHIBIT NUMBER 3.

19 A UNDER THIS PARTICULAR RACK HERE, IF YOU'LL
20 NOTICE, THERE IS A SMALL AMOUNT OF SOOTING AND BURN
21 MARKING ON THE BASEBOARD HERE BEHIND THAT PARTICULAR
22 RACK. ALSO IF YOU'LL NOTICE THE PLASTIC RUNNER THAT
23 WAS THERE TO PROTECT THE CARPET, YOU'LL SEE HOW IT
24 HAS SUSTAINED SOME TYPE OF HEAT DAMAGE AND CHANGE AND
25 BEGAN TO MELT IN THAT PARTICULAR AREA. WE HAVE WHAT

1 WE CALL SLANG FORM IS SNIFFERS AND WE USE THESE
2 SNIFFERS TO HELP US IDENTIFY AREAS IF THERE IS A
3 HYDROCARBON PRESENT. I PULLED MY SNIFFER OUT OF THE
4 VEHICLE AND I USED MY SNIFFER IN THIS AREA TO SEE IF
5 IN FACT THERE WERE ANY EVIDENCE OF A HYDROCARBON AND
6 I DID FIND AND GET A POSITIVE READING ON MY SNIFFER
7 IN THAT PARTICULAR AREA, SO I DID TAKE A SAMPLE OF
8 THE CARPET FROM THAT PARTICULAR AREA. AND THIS
9 PHOTOGRAPH IS GOING TO SHOW YOU.

10 Q STATE'S EXHIBIT NUMBER 4.

11 A AND THAT PHOTOGRAPH WILL SHOW YOU I HAD MOVED
12 THE WOOD RACK OUT OF THE WAY AND HAD CUT A PORTION OF
13 THE CARPET AND THE PADDING AND PLACED IT IN THE
14 K-PACK BAG. WHEN WE COLLECT OUR SAMPLES WE USE LATEX
15 GLOVES AND THIS IS TO PREVENT CONTAMINATION SO I USE
16 CLEAN LATEX GLOVES, A NEW SET ON EACH PARTICULAR
17 SAMPLE THAT I COLLECT, AND THAT WILL BE THE SAME IF I
18 MAY, SIR.

19 STATE'S EXHIBIT NUMBER 33. THIS IS THE
20 CARPET AND THE PAD AND YOU CAN ACTUALLY SEE A LITTLE
21 BIT OF THE PLASTIC RUNNER THAT I COLLECTED FROM THIS
22 AREA HERE AND ACTUALLY IT'S IDENTIFIED BY THAT LITTLE
23 GREEN MARK RIGHT THERE BESIDE THERE, YOU CAN SEE IT,
24 THAT PARTICULAR AREA, AND THAT'S THE CARPET AND THE
25 PADDING THAT I COLLECTED AND I CARRIED THIS TO OUR

ROBERT SHEALY

DIRECT

70

1 SLED CHEMIST TO BE ANALYZED TO SEE IF THERE WAS ANY
2 IGNITABLE LIQUID PRESENT.

3 Q STATE'S EXHIBIT NUMBER 26. CAN YOU TELL ME
4 ABOUT THIS?

5 A THIS PHOTOGRAPH IS ACTUALLY OF THE LIVING ROOM.
6 STANDING INSIDE THE FRONT DOOR LOOKING IN YOU CAN SEE
7 THE LIVING ROOM IS FURNISHED, THE FIRE DID NOT SPREAD
8 INTO THIS AREA, IT DID HAVE SOME HEAT AND IT DID HAVE
9 SMOKE DAMAGE IN THE OFFICE, BUT NOT AS BAD AS I'VE
10 SEEN ON OTHERS, BUT THIS PARTICULAR FURNITURE WAS IN
11 THIS ROOM AND DIRECT FLAME IMPINGEMENT DID NOT OCCUR
12 TO THAT PARTICULAR FURNITURE.

13 Q OKAY. STATE'S EXHIBIT NUMBER 9?

14 A YOU'VE HEARD TESTIMONY EARLIER ABOUT THE CLOSET
15 UP UNDER THE STAIRWELL AND IF YOU'LL LOOK ON THE
16 FIRST DIAGRAM COMING IN THE BACK DOOR YOU'LL ACTUALLY
17 SEE MY STAIRWELL THERE, BUT I ALSO HAVE A DOORWAY.
18 THIS IS A CLOSET AND LOOKING UNDER THE CLOSET YOU'LL
19 SEE THAT THE CLOSET ITSELF IS NOT BURNED WHATSOEVER.
20 THE SHEET ROCK HAD FALLEN BY THE TIME THAT I HAD
21 GOTTEN THERE PROBABLY FROM WATER USAGE DURING FIRE
22 SUPPRESSION, BUT YOU CAN ACTUALLY SEE, YOU SEE THE
23 PROTECTED AREA WHERE THE SHEET ROCK WAS NAILED TO THE
24 WOODEN MEMBER THERE, YOU CAN ACTUALLY SEE SOME DAMAGE
25 TO THE STAIRWAY. THAT IS THE BOTTOM OF THE STAIRS

1 LOOKING FROM THE CLOSET LOOKING UPWARDS, OKAY. SO
2 THAT'S ACTUALLY GOING TO BE, IF YOU PUT THE CEILING
3 BACK IN PLACE, THAT WOULD BE THE CEILING IN THE
4 CLOSET AND THE STAIRS ON TOP OF THEM. YOU CAN SEE
5 THE AMOUNT OF DAMAGE THERE IS LESS SEVERE THAN THE
6 DAMAGE THAT I AM GOING TO SHOW YOU WHEN WE GO TO
7 OTHER PHOTOGRAPHS OF THE STAIRS AS WE ENTERED TO THE
8 UPSTAIRS. AND THAT INDICATED TO ME THAT THIS FIRE
9 DID NOT ORIGINATE IN THE CLOSET BUT THE DAMAGE WE
10 HAVE THERE WAS FROM TOP DOWN, FROM ON TOP OF THE
11 STAIRS DOWN.

12 Q THIS IS STATE'S EXHIBIT NUMBER 28?

13 A THIS PHOTOGRAPH I WAS STANDING IN THE LIVING
14 ROOM AREA LOOKING BACK AT THE STAIRWAY AND YOU CAN
15 ACTUALLY SEE A COUPLE OF, A STEP RIGHT HERE AND IT
16 GOES UP TO A LITTLE LANDING PLATFORM THAT TURNS LEFT
17 AND GOES UPWARD. AS YOU CAN VISUALIZE HERE YOU CAN
18 ACTUALLY SEE SOME BURN DAMAGE TO THE SHEET ROCK ON
19 THE SIDE OF THE WALL. YOU ACTUALLY SEE THE BURN
20 DAMAGE OF THE CARPET IN FRONT OF THE STAIRS ITSELF AS
21 WELL AS THE CARPET HERE.

22 NOW THIS WAS ANOTHER INDICATOR OF AN
23 IGNITABLE LIQUID BEING PRESENT. FIRE USUALLY BURNS
24 UP UNTIL IT HITS AN AIR RESISTANCE SUCH AS A CEILING
25 AND THEN IT WILL MUSHROOM OUT IN ALL DIRECTIONS.

1 ONCE IT MUSHROOMS OUT IN ALL DIRECTIONS THEN IT WILL
2 USUALLY BANK BACK DOWN AND FORM WHAT WE CALL A
3 V-PATTERN THAT GOES BACK TO THE SOURCE OF THE FIRE.
4 YOU CAN ALSO GET THESE PATTERNS SOMETIMES FROM FALL
5 DOWN. ONCE THE FIRE GOES UP AND IT'S THE AIR AT THE
6 CEILING AND MUSHROOMS OUT IN ALL DIRECTIONS THE FIRE
7 ORIGINATED HERE, MUSHROOMED OUT, FELL AND BURNED THAT
8 CURTAIN AND IT FELL DOWN AND THE CURTAIN COULD FALL
9 DOWN AND ALSO GIVE YOU A V-PATTERN, SO YOU HAVE TO BE
10 CAUTIOUS ABOUT WHAT YOU ARE LOOKING AT. IN THIS
11 PARTICULAR AREA THERE IS NOTHING THERE ABOVE IT TO
12 FALL DOWN; HOWEVER, WHEN YOU HAVE AN IGNITABLE LIQUID
13 PRESENT INSTEAD OF IT GOING UP IN WHAT WE CALL A
14 PLUME IN A STRAIGHT LINE UNTIL IT HITS THAT AIR
15 RESISTANCE, IT FLASHES AND IT IS BURNING SO YOU
16 SOMETIMES HAVE WHAT WE CALL INVERTED V-PATTERN WHICH
17 MEANS THAT THERE IS MORE OF THE SURFACE ON FIRE THAN
18 YOU WOULD IF IT WAS JUST A SINGLE ITEM. AND YOU CAN
19 ACTUALLY SEE PART OF THAT INVERTED V-PATTERN RIGHT
20 HERE GOING BACK DOWN AND FOLLOWING THAT PATTERN OUT
21 ON THE CARPET.

22 Q IS THIS, DOES THIS PHOTOGRAPH INDICATE
23 SIGNIFICANT EVIDENCE OF IGNITABLE LIQUID?

24 A IT'S AN INDICATOR OF IGNITABLE LIQUID, THAT'S
25 CORRECT.

1 Q THIS IS STATE'S EXHIBIT NUMBER 29.

2 A THIS IS THE BOTTOM STEP OF THE CARPET IN FRONT
3 OF THE BOTTOM STEP. YOU CAN SEE THE DAMAGE IS A LOT
4 WORSE ON THIS CARPET THAN THE CARPET AROUND IT. ALSO
5 THE STEP IS BEGINNING TO, ALL THE CARPET IS PRETTY
6 MUCH BURNED AWAY THERE AND AS YOU WILL NOTICE WHEN WE
7 GET TO THE LANDING AND GOING UP THE STAIRS, THE
8 DAMAGE BEGINS TO GET A LOT WORSE.

9 Q STATE'S EXHIBIT 10?

10 A HERE AGAIN THIS IS THE HOLE WHERE IT BURNED
11 THROUGH THE BOTTOM LANDING AREA BELOW THE STEP, AT
12 THE BASE OF STEP, YOU CAN ACTUALLY SEE WHERE SOME OF
13 THE SHEET ROCK HAD FALLEN ON THE STEPS. OUR RISERS
14 BETWEEN THE STEPS ACTUALLY BURNED AWAY IN THIS
15 PARTICULAR AREA AND THE OTHER RUNNERS OF THE STEP
16 REMAIN. ONCE WE REMOVED THIS DEBRIS YOU'LL BE ABLE
17 TO SEE IT A LITTLE BIT BETTER.

18 Q STATE'S EXHIBIT NUMBER 11?

19 A THIS IS A PHOTOGRAPH STANDING HERE AT THE BASE
20 OF THE PLATFORM LOOKING UP THE STAIRWELL. AS YOU'LL
21 NOTICE HOW THIS DAMAGE BECOMES LESS AS YOU GET CLOSER
22 TO THE TOP. YOU'LL NOTICE HOW THE RISERS, SEE THE
23 CARPET HOW IT BURNED AWAY ONLY IN ONE PARTICULAR AREA
24 AND RIGHT THERE, AGAIN THIS IS INDICATIVE, IT'S NOT A
25 CONSISTENT PATTERN, BUT A PATTERN OF SUCH AS

1 SOMETHING BEING POURED UP A STAIRWELL AND THE DAMAGE,
2 IT ACTUALLY BECAME LESS AS IT GOT CLOSER TO THE TOP
3 OF THE STAIRS.

4 Q STATE'S EXHIBIT 1 AND 2?

5 A THESE PHOTOGRAPHS WERE ACTUALLY TAKEN ON THE
6 FIRST FLOOR IN THE UTILITY ROOM. AS PART OF MY
7 EXAMINATION OF THE SCENE I HAVE TO CONSIDER ANY
8 ACCIDENTAL IGNITION SOURCES FOR THE FIRE. AS PART OF
9 MY INSPECTION I ACTUALLY WENT INTO THE UTILITY AREA.
10 I LOOKED AT THE BREAKER PANEL. AS YOU CAN SEE THERE,
11 THE ELECTRICAL DISTRIBUTION PANEL SHOWED NO
12 INDICATION OF ANY ARCHING OR BEATING WHATSOEVER.
13 ALSO THE WATER HEATER WAS LOCATED IN THAT PARTICULAR
14 AREA AND THE HEATING UNIT AND YOU CAN SEE THAT THE
15 FIRE DID NOT OCCUR IN THAT AREA. THERE IS NO FIRE
16 WHATSOEVER AND THAT IS NOT THE CAUSE OF THE FIRE.

17 Q THIS IS STATE'S EXHIBIT NUMBER FIVE, IS THIS
18 UPSTAIRS?

19 A UPSTAIRS. STATE'S EXHIBIT NUMBER FIVE IS A
20 PHOTOGRAPH SHOWING THE SAMPLE THAT I COLLECTED
21 UPSTAIRS. AS I MENTIONED EARLIER THERE WAS A SMALL
22 HALLWAY IN FRONT OF A CLOSET AND THE MASTER BEDROOM
23 DOOR. THIS IS THE SAMPLE THAT I COLLECTED. THERE
24 WAS A STRONG ODOR I DETECTED ONCE I GOT UPSTAIRS THAT
25 RESEMBLED GASOLINE. I USED MY SNIFFER AND I WAS ABLE

1 TO ACTUALLY DETECT THERE WAS A STRONG READING IN THIS
2 PARTICULAR AREA, SO I COLLECTED SAMPLE NUMBER TWO
3 WHICH YOU'LL SEE HERE. YOU'LL NOTICE MY BAG, MY
4 K-PACK BAG, MY GLOVE LAYING TO THE SIDE AND YOU WILL
5 ALSO SEE THE SQUARE AREA THAT I ACTUALLY CUT THE
6 CARPET OUT AND PLACED INTO THE BAG AND SEAL IT AT THE
7 TOP TO MAINTAIN THE INTEGRITY OF IT TO TURN IT IN TO
8 THE SLED CHEMISTRY LAB, BUT THIS IS THE CARPET AND
9 PAD STATE'S EXHIBIT NUMBER 34 COLLECTED FROM THE
10 UPSTAIRS HALLWAY RIGHT IN FRONT OF THE MASTER
11 BEDROOM.

12 Q SHOWING YOU STATE'S EXHIBIT NUMBER 7?

13 A THIS IS GOING TO BE A BED SPREAD SHEET TYPE
14 MATERIAL THAT I COLLECTED ACTUALLY UPSTAIRS IN THE
15 MASTER BEDROOM RIGHT IN FRONT OF THE CLOSET THAT WAS
16 LYING ON THE FLOOR. I ALSO OBTAINED A POSITIVE
17 READING ON MY SNIFFER WITH THAT PARTICULAR ITEM AND
18 THAT IS GOING TO BE STATE'S EXHIBIT NUMBER 36 MY
19 SAMPLE NUMBER FOUR, IS THE BED SPREAD SHEET FROM THE
20 FLOOR FROM THE MASTER BEDROOM IN FRONT OF THE CLOSET
21 AND I COLLECTED IT AFTER I GOT A POSITIVE READING
22 WITH MY SNIFFER THEN I COLLECTED IT AS A SAMPLE.

23 Q STATE'S EXHIBIT NUMBER 12?

24 A LOOKING INTO THE MASTER BEDROOM ON THE BED.
25 ITSELF I DID NOTICE THAT THERE WERE A NUMBER OF ITEMS

1 THAT WERE ON THE BED. WHILE I WAS IN THAT PARTICULAR
2 AREA I ALSO USED MY SNIFFER ON THE BED AND OFTEN
3 TIMES IN THE DOMESTICS OR YOU'LL FIND THAT IF
4 IGNITABLE LIQUID IS USED OR FIRE IS SET, SOMETIMES
5 THE BED WILL ACTUALLY BE SET ON FIRE. I USED MY
6 SNIFFER ON THE BED AND I ACTUALLY OBTAINED A POSITIVE
7 READING ON IT.

8 Q THIS IS STATE'S EXHIBIT NUMBER 13.

9 A THIS WAS A NOTE THAT WAS ON THE BED ON TOP OF
10 THE BED. YOU'LL BE ABLE TO READ IT A LITTLE BIT
11 BETTER IN A PHOTOGRAPH BUT IT BASICALLY JUST SAYS,
12 "CALL ME ON THE PAY PHONE," AND IT HAS A NUMBER.
13 WHEN WE TALKED TO THE HOMEOWNER SHE SAID THIS
14 PARTICULAR NOTE WAS ACTUALLY IN THE END TABLE DRAWER
15 INSTEAD OF ON THE BED WHEN SHE HAD LEFT THE APARTMENT
16 AND THAT'S THE REASON I PHOTOGRAPHED THAT.

17 Q THIS IS STATE'S EXHIBIT NUMBER SIX.

18 A STATE'S EXHIBIT NUMBER SIX IS A PHOTOGRAPH OF A
19 PART OF A BEDSPREAD OR BLANKET THAT I ACTUALLY CUT.
20 I TOLD YOU I ACTUALLY TOOK MY SNIFFER AND GOT A
21 POSITIVE READING ON TOP OF THE MASTER BED WHICH IS
22 RIGHT THERE TOWARD THE CENTER. YOU CAN SEE WHERE I
23 ACTUALLY TOOK A UTILITY KNIFE AND CUT OUT A PORTION
24 OF THIS LIGHT GREEN BLANKET AND I ACTUALLY BAGGED IT
25 UP AND I COLLECTED IT AND SENT IT TO MY SLED

1 CHEMISTRY LAB FOR ANALYSIS.

2 Q THIS IS STATE'S EXHIBIT NUMBER 8?

3 A WE CONTINUE TO DO OUR EXAMINATION OF THE SCENE
4 AND IN THE VERY BACK BEDROOM, THE SPARE BEDROOM, I
5 ALSO USED MY SNIFFER THERE AS WELL AND I ALSO
6 OBTAINED A POSITIVE READING ON THAT PARTICULAR BED SO
7 I COLLECTED SAMPLE NUMBER FIVE WHICH IS A BEDSPREAD
8 SHEET AND I ACTUALLY CUT DOWN INTO THE MATTRESS TOP,
9 YOU CAN SEE THE MATTRESS TOP HERE TO OBTAIN THIS
10 PARTICULAR SAMPLE, AND IT IS A SAMPLE THAT I
11 COLLECTED AT THE FIRE SCENE STATE'S EXHIBIT NUMBER 37
12 AND I COLLECTED IT TO BE ANALYZED BY THE CHEMIST AT
13 SLED.

14 Q AND THIS IS STATE'S EXHIBIT 14.

15 A THIS PARTICULAR CLOCK HAD FALLEN OFF THE WALL
16 BACK THERE IN THE SPARE BEDROOM AND I TOOK A PICTURE
17 OF IT BECAUSE THE CLOCK HAD ACTUALLY BEGUN TO SHOW
18 SOME HEAT DAMAGE AND MELT DOWN AND AS YOU CAN SEE I
19 TOOK IT BECAUSE IT SAID 10 MINUTES TO ONE AND
20 SOMETIMES THAT WILL GIVE YOU AN INDICATION OF WHEN
21 THAT KIND OF DAMAGE ACTUALLY OCCURRED TO STOP A CLOCK
22 AND IF IT MELTS DOWN AND STOPS THE HANDS FROM MOVING,
23 IT WILL GIVE YOU SOME KIND OF INDICATION ABOUT WHEN
24 MAYBE THE FIRE OCCURRED EARLIER, IF IT HADN'T,
25 OCCURRED EARLIER BECAUSE THE SMOKE AND HEAT WOULD

1 HAVE TO RISE TO GET INTO THE SECOND FLOOR BEDROOM,
2 AND THEN TO START BANKING DOWN FROM CEILING LEVEL AND
3 DOWN TO WHERE THE CLOCK WAS ON THE WALL AND ACTUALLY
4 CAUSE THAT MELT DOWN AT THE TOP, SO THAT INDICATES IT
5 COULD HAVE BEEN RUNNING SOMETIME AFTER THE FIRE
6 BEFORE IT ACTUALLY MELTED DOWN.

7 Q NOW IF YOU'LL HAVE A SEAT. THERE IS A FEW
8 QUESTIONS I'D LIKE TO ASK YOU ABOUT THAT. I NOTICED
9 THAT YOU CUT FOUR SAMPLES FROM THE UPSTAIRS
10 INDICATING ACCELERANTS BUT THERE WAS NO FIRE, IS THAT
11 CORRECT?

12 A THAT'S CORRECT.

13 Q DO YOU HAVE AN OPINION AS TO WHY THAT IS?

14 A MY OPINION IS THAT THE RATIO OF VAPORS BETWEEN
15 THE GASOLINE AND THE OXYGEN WERE NOT SUFFICIENT
16 ENOUGH TO SUPPORT COMBUSTION. IF THE GASOLINE VAPORS
17 WERE SO STRONG THAT THEY OUTWEIGHED AND THE CHEMIST
18 WILL PROBABLY BE ABLE TO ADDRESS THIS A LITTLE BIT
19 MORE AND I'VE SEEN MANY INSTANCES WHERE THE GASOLINE
20 WOULD BE SO RICH THAT IT OVERWEIGHS SO TO SPEAK THE
21 AMOUNT OF OXYGEN OR DEPLETES THE OXYGEN SUPPLY IN THE
22 AIR AND IT WILL NOT IGNITE AND IT WILL NOT BURN AND I
23 FEEL LIKE THE VAPORS WERE SO STRONG IN THE UPSTAIRS
24 WHEN I WAS THERE THE NEXT MORNING INVESTIGATING THE
25 FIRE THAT MY OPINION IS THAT THAT'S THE REASON THAT

1 THEY DID NOT IGNITE IN THE MORNING WHEN IT WAS
2 IGNITED.

3 Q AGENT SHEALY, BASED ON THE EVIDENCE YOU
4 COLLECTED AND THE PHOTOGRAPHS THAT YOU TOOK AND WHAT
5 YOU OBSERVED THERE AT THE SCENE, DID YOU COME TO AN
6 OPINION AS TO HOW THIS FIRE BEGAN?

7 A I DID.

8 Q AFTER EXAMINING THE SCENE I CONSIDERED AND
9 ELIMINATED ALL ACCIDENTAL IGNITION SOURCES THAT I
10 COULD FIND FOR THE CAUSE OF THE FIRE. THEREFORE, IT
11 WAS MY OPINION THAT THIS FIRE WAS AN INTENTIONAL ACT
12 AND THAT THE FIRE SPREAD FROM AN IGNITABLE LIQUID
13 BEING PLACED IN THE BUILDING AND THE FIRE SPREAD
14 THROUGH THOSE VAPORS IN THE GASOLINE.

15 Q AND JUST GETTING BACK TO THE REAR DOOR FOR A
16 MOMENT, YOUR INVESTIGATION REVEALED THAT THAT DOOR
17 WAS LOCKED BUT HAD ALL INDICATIONS THAT IT HAD BEEN
18 FORCED OPEN, IS THAT CORRECT?

19 A THAT IS CORRECT.

20 Q PLEASE ANSWER ANY QUESTIONS MR. LITTLEJOHN MAY
21 HAVE.

22 THE COURT: WE'LL WAIT UNTIL AFTER LUNCH,
23 IT'S 12:20, AND IT'S TIME FOR LUNCH, AND WE ACTUALLY
24 HAVE HEARD, I NEED TO DEAL WITH THE OTHER JURY FOR A
25 LITTLE. SO IF YOU'LL NOW, MEMBERS OF THE JURY PANEL,

ROBERT SHEALY

DIRECT

80

1 YOU CAN GO TO LUNCH, PLEASE BE BACK AT TWO. I HAVE
2 SOME OTHER WORK TO DO AND WE NEED TO TAKE A LUNCH
3 TOO. I HOPE WE WILL BE ABLE TO START RIGHT AROUND
4 TWO, MAYBE A FEW MINUTES AFTERWARDS, BUT WE'LL START
5 AS PROMPTLY AS WE CAN. EXIT THIS WAY AND THE BAILIFF
6 AND OUR FORMER ALTERNATE MAYBE ABLE TO DIRECT YOU HOW
7 TO GET IN AND OUT ON THESE BREAKS AND FOR LUNCH AND
8 WHEN YOU COME BACK THE REGULAR JURY ROOM WILL BE
9 AVAILABLE. SO SOMEBODY WILL OUT THERE AND THEY WILL
10 DIRECT YOU INSTEAD OF IN THE GRAND JURY OR WHATEVER
11 THEY CALL THAT OTHER ROOM INTO THE REGULAR JURY ROOM.
12 SO HAVE A PLEASANT LUNCH, DON'T DISCUSS THE CASE,
13 DON'T LET ANYONE DISCUSS THE CASE WITH YOU AND WE'LL
14 SEE YOU BACK AT TWO O'CLOCK.

15 (THE JURY EXITS THE COURTROOM AT
16 12:22.)

17 THE COURT: WE'LL BE AT EASE IN THIS
18 CASE UNTIL TWO.

19 I KNOW MR. SHEALY IS WELL AWARE OF THIS,
20 HE HAS TESTIFIED BEFORE, THAT YOU OF COURSE CANNOT
21 DISCUSS THE CASE WITH ANYONE YOURSELF SINCE YOU ARE
22 SUBJECT TO CROSS EXAMINATION, EITHER MR. MORIN OR
23 ANYBODY SINCE YOU ARE SUBJECT TO CROSS EXAMINATION.
24 SO HAVE A PLEASANT LUNCH AND BE BACK AT TWO O'CLOCK.

25 A THANK YOU, SIR.

1 (COURT IS IN RECESS.)

2 (COURT RESUMES AT 02:05 PM.)

3 MR. MORIN: MR. LITTLEJOHN, HE'S HANDED ME
4 SOME OTHER PICTURES, WHICH I AM GOING TO HAVE THEM
5 MARKED, THESE PICTURES WERE TAKEN BY MR. ELLIS THE
6 PREVIOUS WITNESS; HOWEVER, IF THIS WITNESS CAN SAY HE
7 RECOGNIZES THEM I DON'T HAVE AN OBJECTION TO THEM,
8 AND WE CAN ENTER THEM.

9 (THE JURY RETURNS TO THE COURTROOM AT
10 02:13 PM.)

11 THE COURT: ALL RIGHT, MR. LITTLEJOHN.
12 CROSS EXAMINATION BY MR. LITTLEJOHN:

13 Q AGENT, YOUR TESTIMONY ABOUT WHAT YOU ARE SAYING,
14 WHEN YOU TALKED ABOUT HOW THE FIRE, COULD YOU PLEASE
15 EXPLAIN THAT AGAIN ABOUT WHEN YOU ARE TALKING ABOUT
16 THE VAPORS, VAPORS CATCHING ON FIRE?

17 A THE VAPORS?

18 Q YEAH.

19 A THE VAPORS ARE ACTUALLY WHAT BURNS IS THE VAPORS
20 AND GASES THAT ARE GIVEN OFF BY THE IGNITABLE LIQUID
21 OR THE MATERIAL THAT WAS SOAKED AND BURNING.

22 Q COULD YOU CLEAR UP SOMETHING FOR ME?

23 A SURE.

24 Q I WANT TO KNOW WHETHER OR NOT, YOU SAID THAT THE
25 FIRE STARTED FROM THE TOP AND CAME FROM THE BOTTOM OF

1 THE STAIRS?

2 A NO, SIR, I DIDN'T SAY THAT. I SAID THAT THE
3 FIRE WAS LESS SEVERE AT THE TOP THAN IT WAS AT THE
4 BOTTOM WHICH INDICATES THERE WAS MORE FIRE DAMAGE
5 MORE FIRE, MORE INTENSE, AND MORE SEVERE NEAR THE
6 BOTTOM LEVEL OF THE STEPS AND PLATFORM THAN IT WAS
7 NEAR THE TOP NEAR THE SECOND FLOOR.

8 Q OKAY. NOW THE VAPORS WERE MORE STRONGER
9 UPSTAIRS, WHY DIDN'T THEY TAKE IT, IF THE VAPORS WHAT
10 BURNED?

11 A ALL RIGHT. AS I MENTIONED EARLIER IN MY
12 TESTIMONY THE GASOLINE VAPORS WERE SO STRONG IN THE
13 SECOND FLOOR THAT THE RATIO BETWEEN THE GASOLINE
14 VAPORS AND THE OXYGEN DID NOT MESH OR DID NOT MEET TO
15 CONFORM TO IGNITION, SO THEREFORE IF THE OXYGEN
16 SUPPLY IS NOT THERE, IT'S NOT GOING TO IGNITE. THE
17 VAPORS FROM THE GASOLINE WERE JUST TOO RICH TO
18 IGNITE.

19 Q ALL RIGHT. DID YOU FIND ANYTHING ON THE SCENE
20 THAT COULD, YOU KNOW, LIKE A GAS CAN OR ANYTHING?

21 A NO, I DID NOT.

22 Q OKAY. DID YOU -- WAS ANYTHING LEFT ON THE SCENE
23 THAT COULD IDENTIFY ANYBODY WHO PROBABLY SET THE?
24 FIRE?

25 A WELL, I CAN TELL THAT IT WAS INTENTIONALLY SET

1 FIRE BECAUSE I WAS ABLE TO CONSIDER AND ELIMINATE ALL
2 ACCIDENTAL IGNITION SOURCES FOR THE FIRE. IT'S MY
3 OPINION THAT THE FIRE WAS INTENTIONAL IN NATURE
4 BECAUSE IF YOU DON'T HAVE ANY ACCIDENTAL INITIAL
5 SOURCE IT WOULD HAVE TO BE AN INTENTIONAL ACT.

6 Q OKAY. YOU HAD A CHANCE TO LOOK AT EXHIBIT 21
7 WHICH WAS INSIDE OF THE DOOR, DO YOU REMEMBER TAKING
8 IT, DID YOU TAKE THIS PICTURE? YOU TOOK A LOOK AT
9 THE DOOR THERE?

10 A RIGHT. THIS LOOKS LIKE A COPY OF THE FOUR
11 PHOTOGRAPHS THAT I DID TAKE, THAT'S CORRECT, WHICH
12 SHOULD BE IN STATE'S EXHIBITS.

13 Q OKAY. ALL RIGHT. DID YOU LOOK AT 22?

14 A WHEN YOU SAY 22 IS THAT THE EXHIBIT NUMBER 2.

15 Q EXHIBIT NUMBER 22.

16 A OKAY.

17 MR. MORIN: YOUR HONOR, IF I MAY.

18 MR. LITTLEJOHN, THESE PICTURES HERE AND THERE, THE
19 NUMBERS ARE ON THE BACK, SO IF YOU'LL REFER TO THEM
20 SO THE RECORD WILL KNOW WHAT YOU ARE SHOWING HIM.

21 THE COURT: IF THEY ARE THE SAME PICTURES,
22 LET'S PICK THEMSELVES INSTEAD OF THE COPIES OFF THE
23 SHEET. THERE IS NOTHING WRONG WITH DOING IT THAT
24 WAY, JUST MAKE IT A LITTLE EASY, MAKE THE RECORD
25 CLEANER.

1 Q ALL RIGHT. NOW YOU MADE A COMMENT EARLIER ABOUT
2 YOU VIEWED THESE PICTURES OR TALKED ABOUT THE TOOL
3 MARKINGS ON IT, THE SCRAPING?

4 A RIGHT.

5 Q THERE IS A LACK OF MARKS HERE ON THE BACK OF THE
6 DOOR THAT'S NOT CONSISTENT WITH ON THE FRAME, THE
7 WEATHER STRIPPING?

8 THE COURT: YOU ARE GOING TO HAVE TO TELL
9 THE WITNESS AND US WHAT NUMBER IT IS.

10 MR. LITTLEJOHN: EXHIBIT NUMBER 20 AND
11 VERSUS NUMBER 21, NUMBER 20 AND 21 EXHIBITS.

12 MR. MORIN: IF YOU COULD HAND HIM FROM
13 THAT STACK 20 AND 21.

14 Q OKAY. THAT'S 21. ALL RIGHT. EXHIBIT NUMBER
15 21 STATES, SHOWS THAT THIS IS THE INSIDE DOOR OF THE
16 HOUSE, RIGHT, THE APARTMENT

17 A THIS IS THE EDGE OF THE DOORFRAME, RIGHT, THE
18 DOOR JAMB.

19 Q OKAY. I LOOKED AT THE WEATHER STRIPPING ON
20 THAT, YOU SEE WHERE THE MARKS, THE SCRATCHING ON THE
21 OUTSIDE

22 A I SEE SOME, YES, SIR.

23 Q IT DON'T COINCIDE WITH THE WEATHER STRIPPING
24 DOWN AT THE BOTTOM, WHY? WOULD THAT BE CONSISTENT
25 WITH SOMEBODY COMING FROM THE OUTSIDE OR THE INSIDE?

1 A IT DEPENDS ON WHICH WAY THE DOOR IS GOING TO
2 SHUT. IN THIS PARTICULAR PHOTOGRAPH THE DOOR IS
3 GOING TO SHUT INTO, IT LOOKS LIKE INTO THE PLATE, SO
4 THAT IT WOULD CLOSE IN THIS DIRECTION.

5 Q YEAH. OKAY. SO WOULD THE DOOR SPLIT THAT WAY?

6 A WHEN THE DOOR SHUT IT WOULD BE, WOULD IT NOT?

7 Q NO, NOT IF THE WEATHER STRIPPING IS ON THE
8 OUTSIDE OF THE DOOR?

9 A I'M LOOKING AT IT AT A DIFFERENT ANGLE THAN YOU
10 ARE. LET ME TURN IT AROUND.

11 THE COURT: ANOTHER THING, MR. LITTLEJOHN,
12 THE JURORS CAN'T REALLY SEE THE WITNESS. WELL, THEY
13 CAN'T SEE, THEN HE CAN'T SEE IT.

14 Q WELL, HE'S GOT A COPY OF IT.

15 THE COURT: THAT'S FINE, BUT I DON'T THINK
16 ALL OF THEM CAN LOOK AT IT AT ONE TIME. MY MAIN
17 CONCERN WAS --

18 MR. MORIN: EXHIBIT 21 NOW.

19 A BASICALLY WHAT I DID, MR. LITTLEJOHN, I TOOK
20 PICTURES --

21 THE COURT: DO THOSE HAVE THE SAME NUMBERS
22 AS THOSE DO?

23 Q YES, SIR.

24 A I TOOK PICTURES OF THE DAMAGE ON THE DOOR AND
25 THAT'S THE WAY THAT I FOUND IT WHEN I ARRIVED ON THE

1 SCENE.

2 Q OKAY. ALL RIGHT. I THINK I HAVE NO FURTHER
3 QUESTIONS FOR THE WITNESS, YOUR HONOR.

4 THE COURT: THANK YOU.

5 MR. MORIN: YOUR HONOR.

6 THE COURT: REDIRECT.

7 MR. MORIN: IF WE MAY APPROACH JUST FOR A
8 MOMENT.

9 (BENCH CONFERENCE.)

10 Q THE PICTURES I SHOWED YOU DID YOU TAKE THOSE
11 PICTURES? I MEAN THE EXHIBIT PICTURES THAT I JUST
12 SHOWED YOU OF THE DOOR, 20 AND 21?

13 A I DID TAKE THOSE PICTURES.

14 THE COURT: WAIT JUST A MINUTE. I THINK
15 WE'RE STILL TALKING ABOUT SOME DIFFERENT PICTURES.

16 Q DID YOU TAKE A LOOK AT THESE PICTURES AND SEE
17 WHETHER OR NOT YOU TOOK THESE PICTURES?

18 A THESE THREE I DID TAKE. THESE FOUR I DID TAKE.
19 AND NO, SIR, MR. LITTLEJOHN, THESE I DID NOT TAKE.
20 THESE HAVE DATE STAMPS ON THEM SO I DID NOT TAKE
21 THESE PHOTOGRAPHS.

22 Q OKAY. I ASK YOU ABOUT EXHIBIT NUMBER FIVE?

23 THE COURT: YOU WANT TO PUT THEM INTO
24 EVIDENCE?

25 MR. LITTLEJOHN: YES, SIR.

1 MR. MORIN: NO OBJECTION.

2 THE COURT: WITHOUT OBJECTION THOSE FOUR
3 HE SAID WERE HIS ARE IN EVIDENCE.

4 Q ALL RIGHT.

5 (DEFENDANT'S EXHIBITS 2-5 PHOTOGRAPHS IN
6 EVIDENCE.)

7 Q WAS IT LIKE THAT WHEN YOU PHOTOGRAPHED IT?

8 A THAT'S THE WAY I FOUND IT, YES, SIR. I
9 PHOTOGRAPH THE SCENE AS IT IS BEFORE I GET STARTED IN
10 MY THOROUGH EXAMINATION.

11 Q DID YOU TAKE THIS PICTURE?

12 A NO, SIR, I DID NOT. THESE ARE TIME/DATE
13 STAMPED.

14 Q ALL RIGHT.

15 A AND ALL OF THOSE THAT ARE DATE STAMPED I DID NOT
16 TAKE.

17 MR. LITTLEJOHN: YOUR HONOR, I NEED TO, I
18 FORGET WHICH PICTURES, THIS EXHIBIT NUMBER IN THIS
19 PICTURE BECAUSE I WANT TO COINCIDE WITH THE PICTURE
20 THAT HE TOOK.

21 THE COURT: OKAY.

22 MR. MORIN: OKAY.

23 MR. LITTLEJOHN: IT'S NOT IN THAT STACK.

24 MR. MORIN: YOUR HONOR, CAN WE TAKE A
25 MOMENT TO CLEAR UP SOMETHING.

1 (BENCH CONFERENCE.)

2 Q DO YOU RECOGNIZE THESE PICTURES ANYTHING WITH
3 THAT PICTURE?

4 A THIS LOOKS LIKE A PICTURE OF THE BEDROOM BUT
5 IT'S NOT ONE THAT I TOOK.

6 Q OKAY. DO YOU RECOGNIZE THAT? I MEAN THE BED,
7 THE AREA?

8 A IT LOOKS LIKE THE BED IN THE MASTER BEDROOM
9 UPSTAIRS, BUT LIKE I SAID, IT'S NOT A PICTURE I TOOK.
10 THIS UNDOUBTEDLY WAS TAKEN BEFORE I ARRIVED ON THE
11 SCENE.

12 Q OKAY. IT WAS TAKEN BY THE FIRE INSPECTOR. I
13 WAS TOLD IT WAS TAKEN BY THE FIRE INSPECTOR. I'D
14 LIKE TO ENTER THIS IN AS EVIDENCE.

15 MR. MORIN: I DON'T HAVE ANY OBJECTION.

16 THE COURT: WITHOUT OBJECTION BE RECEIVED.
17 HAVE HER MARK IT IT.

18 (DEFENSE EXHIBIT NUMBER 14 PHOTOGRAPH
19 RECEIVED INTO EVIDENCE.)

20 Q THIS IS EXHIBIT NUMBER 14, IN THIS PICTURE
21 THAT'S RIGHT THERE BESIDE, IS THAT STANDING UP OR
22 DOWN IN THE FLOOR?

23 A IT LOOKS LIKE THERE IS, THE CAN THAT'S THERE IS
24 STILL IN PLACE AND I CAN'T EXACTLY TELL WHAT THAT IS.

25 Q THIS RIGHT HERE. IT'S GOT THE WHITE TOP TO IT?

1 A OKAY. IT MAY BE STANDING UP.

2 Q HOW DID IT GET ON THE FLOOR IF YOU TOOK THE
3 PICTURE IN THIS ONE?

4 A WELL, I TOOK THE PICTURE IN THAT ONE. I DID NOT
5 GET ON THE SCENE UNTIL THE NEXT MORNING.

6 Q OKAY.

7 A SO THIS ONE WAS TAKEN DURING THE NIGHTTIME I
8 GUESS BY THE FIRE MARSHALL.

9 Q SO THIS ONE WAS TAKEN FIRST AND THIS ONE SECOND?

10 A THAT'S WOULD BE MY UNDERSTANDING. I DON'T KNOW
11 WHO TOOK THAT PHOTOGRAPH THERE. WHEN I GOT MY
12 EXAMINATION IT WAS LIKE THAT.

13 Q THE FIRE INSPECTOR TOOK THIS ONE?

14 A OKAY.

15 Q SO IT'S STANDING UP HERE FIRST HERE AND WHEN YOU
16 TAKE IT, IT'S ON THE FLOOR, RIGHT?

17 A THAT APPEARS TO BE TRUE BUT I DON'T SEE THAT HAS
18 ANY BEARING --

19 Q NO.

20 A ---BEARING ON THE CASE WHATSOEVER. DURING THE
21 FIRE SUPPRESSION AND ACTIVITIES THAT'S TAKING PLACE
22 AND MAKING SURE THAT ALL HOT SPOTS ARE OUT SOMETIMES
23 FIREFIGHTERS WILL ACCIDENTALLY KNOCK OVER SOME
24 MATERIALS INSIDE THE APARTMENT AND THAT VERY EASILY
25 COULD HAVE HAPPENED IN THIS PARTICULAR INSTANCE

ALEX LAYTON

DIRECT

90

1 THERE.

2 Q WASN'T ANY FIRE UPSTAIRS?

3 A THERE WAS NO DIRECT FLAME IMPINGEMENT, NO, SIR.
4 BUT THEY HADN'T CHECKED THE HOT SPOTS TO MAKE SURE,
5 THERE WAS PLENTY OF HEAT UPSTAIRS, SO THE HEAT DAMAGE
6 AND THE SMOKE THAT WAS UPSTAIRS.

7 Q SO THAT MEANT THE BOOKCASE SHOULD HAVE BEEN
8 MOVED TOO?

9 A NOT NECESSARILY.

10 Q OKAY. ALL RIGHT. NO MORE FURTHER QUESTIONS.

11 A WHAT HAPPENED WHEN THEY TOOK THE PHOTOGRAPHS
12 MYSELF I DON'T KNOW.

13 MR. LITTLEJOHN: NO MORE FURTHER
14 QUESTIONS.

15 MR. MORIN: I HAVE NO MORE FURTHER
16 QUESTIONS.

17 THE COURT: YOU MAY STEP DOWN AND YOU CAN
18 BE EXCUSED. WE APPRECIATE YOUR TIME.

19 MR. MORIN: YOUR HONOR, AT THIS TIME THE
20 STATE WOULD CALL ALEX LAYTON.

21 ALEX LAYTON, BEING FIRST
22 DULY SWORN, TESTIFIED AS FOLLOWS:

23 Q MR. LAYTON, WOULD YOU STATE YOUR FULL NAME?

24 A GRADY ALEXANDER LAYTON.

25 Q WHERE DO YOU WORK, SIR?

1 A I WORK AT THE SOUTH CAROLINA LAW ENFORCEMENT
2 DIVISION ALSO KNOWN AS SLED IN THE FORENSICS
3 LABORATORY.

4 Q HOW LONG HAVE YOU BEEN THERE?

5 A 30, A LITTLE OVER 33 AND A HALF YEARS NOW.

6 Q WHAT ARE YOUR DUTIES THERE?

7 A RIGHT NOW I'M CURRENTLY ASSIGNED TO THE TRACE
8 LABORATORY. I'M LIEUTENANT IN THE TRACE LABORATORY
9 AND I ANALYZE FIRE DEBRIS FROM ALL THE VARIOUS
10 AGENCIES, POLICE SERVICE, FIRE SERVICE, SHERIFF'S
11 OFFICES, AND WE HAVE, I THINK IF IT'S CORRECT, UP TO
12 ABOUT 18 FULL TIME ARSON INVESTIGATORS THAT GO OVER
13 ALL THE STATE BRINGING IN EVIDENCE TO BE CHECKED FOR
14 ACCELERANTS.

15 Q ALL RIGHT. CAN YOU TELL US SOME OF YOUR
16 EDUCATION AND TRAINING BRIEFLY ON ACCELERANTS?

17 A YES, SIR. WELL, FIRST I GOT A DEGREE IN
18 CHEMISTRY FROM CLEMSON UNIVERSITY, THAT IS IN 1971,
19 AND I WAS IN THE DRUG LABORATORY FOR AWHILE AND I WAS
20 IN CHARGE OF THE DRUG LAB AND AFTER THAT ABOUT 1990 I
21 TRANSFERRED INTO THE ARSON LABORATORY ITSELF AT THAT
22 TIME AND WAS HEAD OF IT. THE IMMEDIATE COURSE I TOOK
23 WAS ARSON ACCELERANT DETECTION WHICH WAS PUT ON BY
24 THE BUREAU OF ALCOHOL, TOBACCO, AND FIREARMS AND THAT
25 WAS OUT IN BOULDER, COLORADO. THAT WAS A ONE WEEK

1 COURSE. AND THEN LATER THAT SUMMER, THIS IS 1991, I
2 TOOK A LABORATORY EXAMINATION IN ARSON PUT ON BY THE
3 FBI AT QUANTICO, VIRGINIA. THAT WAS A ONE WEEK
4 COURSE ALSO. 1994 I ATTENDED ADVANCE ARSON
5 ACCELERANT DETECTION COURSE PUT ON BY THE MIDWESTERN
6 ASSOCIATION OF FORENSIC SCIENTISTS THAT WAS IN
7 CINCINNATI, OHIO; THAT WAS A ONE WEEK COURSE ALSO.
8 AND I'VE ALSO, THE OTHER TRAINING I'VE HAD, WAS THE
9 AMERICAN SOCIETY OF CRIME LABORATORY DIRECTORS, I CAN
10 GO INTO CRIME LABORATORIES NOW AND DO ACCREDITATIONS
11 OF THEIR PROCEDURES AND POLICIES AND STUFF.

12 Q HAVE YOU HAD OCCASION IN THIS STATE TO BE
13 QUALIFIED AS AN EXPERT IN ACCELERANT DETECTION?

14 A YES, SIR, I HAVE. I'VE TESTIFIED A LITTLE OVER
15 55 TIMES NOW.

16 MR. MORIN: AT THIS TIME WE MOVE OFFICER
17 LAYTON IN AS AN EXPERT IN FIRE ACCELERANT EXPERT.

18 THE COURT: DO YOU HAVE ANY QUESTIONS
19 REGARDING HIS QUALIFICATIONS?

20 MR. LITTLEJOHN: NO, SIR.

21 THE COURT: I FIND HE'S QUALIFIED.

22 Q OFFICER LAYTON, I'M GOING TO SHOW YOU STATE'S
23 EXHIBIT NUMBERS 33 AND 37 AND ASK IF YOU RECOGNIZE
24 THOSE ITEMS?

25 A YES, SIR, I DO. THEY HAVE OUR LABORATORY FILE

1 NUMBER WHICH WAS L-046768. HAS MY INITIALS AND THE
2 DATE THAT I ANALYZED IT ON EXHIBIT NUMBER 33.
3 STATE'S EXHIBIT 37 IS ALSO MY INITIALS, THE DATE, AND
4 THE CORRECT LABORATORY FILE NUMBER. THIS WAS ITEM
5 BAG FIVE.

6 Q ALL RIGHT. DID YOU EXAMINE THESE TWO ITEMS?

7 A YES, SIR, I DID.

8 Q WHAT DID YOU FIND?

9 A I FOUND GASOLINE TO BE PRESENT IN BOTH OF THOSE
10 SAMPLES.

11 Q OKAY. NOW I'LL SHOW YOU STATE'S EXHIBIT 36 AND
12 35 AND ASK IF YOU RECOGNIZE THOSE ITEMS?

13 A STATE'S EXHIBIT 35 HAS THE SAME LABORATORY
14 NUMBER L-046768. THIS WAS BAG THREE. AND STATE'S
15 EXHIBIT 36 IS THE SAME LABORATORY NUMBER, THE DATE,
16 THE SAME DATE, AND INITIALS AND IT WAS MY ITEM NUMBER
17 FOUR ON MY REPORT.

18 Q DID YOU EXAMINE THESE ITEMS?

19 A YES, I DID.

20 Q WHAT WERE YOUR FINDINGS?

21 A I FOUND GASOLINE ON THOSE TWO.

22 Q FINALLY STATE'S EXHIBIT NUMBER 34.

23 A YES, SIR. STATE'S EXHIBIT 34 HAS THE SAME
24 LABORATORY FILE NUMBER DATES AND MY INITIALS ON IT.
25 AND I EXAMINED IT.

ALEX LAYTON

DIRECT

94

1 Q AND YOUR FINDINGS WERE?

2 A GASOLINE.

3 Q HOW MANY TESTS DID YOU RUN TO DETERMINE IF IT
4 WAS GASOLINE?

5 A I RAN TWO DIFFERENT INSTRUMENTAL ANALYSIS OF THE
6 FIRE DEBRIS ITSELF.

7 Q OKAY. AND ON BOTH OF THOSE, YOUR RESULTS WERE
8 THE SAME?

9 A YES, SIR, THEY WERE.

10 Q OKAY. OFFICER LAYTON, YOU DIDN'T GO TO THE
11 SCENE OF THIS CRIME, DID YOU?

12 A NO, SIR, I DID NOT.

13 Q OKAY. YOU ARE OR HAVE YOU SEEN THE DRAWINGS
14 THAT HAVE BEEN SUBMITTED IN THIS CASE?

15 A YES, SIR, I HAVE.

16 Q ALL RIGHT. I WANT TO ASK YOU FOR A MOMENT, YOU
17 ARE EXPERT IN CHEMISTRY, CORRECT?

18 A YES, SIR.

19 Q I MEAN YOU HAVE A DEGREE IN CHEMISTRY?

20 A THAT IS RIGHT.

21 Q FOUR OF THESE FIVE ITEMS WHICH YOU FOUND
22 GASOLINE IN WERE FOUND ON THE SECOND FLOOR OF THIS
23 BUILDING?

24 A YES, SIR.

25 Q THERE WAS NO FIRE FOUND UPSTAIRS ON THE SECOND

1 FLOOR WHILE FOUR OF THESE ITEMS HAD GASOLINE ON THEM?

2 A YES, SIR.

3 Q IN YOUR OPINION OR IN YOUR EXPERTISE OR WHAT YOU
4 KNOW ABOUT CHEMISTRY, CAN YOU EXPLAIN WHY PERHAPS
5 THERE WAS NO FIRE ON THE SECOND FLOOR?

6 A YES, SIR. IN ORDER FOR A FIRE TO OCCUR YOU HAVE
7 TO HAVE THREE THINGS: YOU HAVE TO HAVE AN IGNITION
8 SOURCE, YOU HAVE TO HAVE OXYGEN, AND YOU HAVE TO HAVE
9 AN IGNITABLE LIQUID; AND IN THIS CASE PARTICULAR
10 CASE, IF YOU LOSE THE OXYGEN, WE KNOW WE HAVE
11 IGNITABLE LIQUID, SO NO IGNITION SOURCE OR THE ONLY
12 ALTERNATIVE IS LACK OF OXYGEN. AGAIN WITH ONLY TWO
13 CHOICES IN THIS CASE IT COULD HAVE BEEN LACK OF
14 OXYGEN UPSTAIRS THE REASON IT DIDN'T IGNITE OR LACK
15 OF IGNITION SOURCE UP THERE.

16 Q AND WAS THE FIRE GOING ON DOWNSTAIRS AND ON THE
17 STAIRS, WOULD HAVE THAT HAVE CONSUMED, COULD THAT
18 HAVE CONSUMED OXYGEN NECESSARY FROM UPSTAIRS?

19 A YES, SIR, IT COULD HAVE.

20 Q OKAY.

21 Q BUT JUST SO I UNDERSTAND, ALL FIVE ITEMS THAT
22 WERE SUBMITTED TO YOU, INCLUDING THE FOUR THAT WERE
23 UPSTAIRS, WERE FOUND TO HAVE GASOLINE ON THEM?

24 A THAT'S CORRECT, SIR.

25 Q AND GASOLINE WOULD BE AN ACCELERANT OBVIOUSLY

1 FOR A FIRE?

2 A YES, SIR, IT WOULD BE.

3 Q PLEASE ANSWER ANY QUESTIONS MR. LITTLEJOHN MAY
4 HAVE.

5 MR. LITTLEJOHN: I DON'T HAVE ANY.

6 THE COURT: YOU CAN STEP DOWN AND BE
7 EXCUSED. WE APPRECIATE YOUR TIME. THANK YOU.

8 A THANK YOU.

9 THE COURT: CALL YOUR NEXT WITNESS.

10 MR. MORIN: CALL IVEY LITTLEJOHN.

11 THE COURT: PLEASE COME UP AND BE SWORN.

12 IVEY LITTLEJOHN, BEING FIRST

13 DULY SWORN, TESTIFIED AS FOLLOWS:

14 A WOULD YOU STATE YOUR NAME FOR THE JURY, MA'AM.

15 A IVEY LITTLEJOHN.

16 Q MRS. LITTLEJOHN, DO YOU KNOW THE DEFENDANT
17 JIMMIE LITTLEJOHN?

18 A YES.

19 Q HOW DO YOU KNOW HIM?

20 A MY HUSBAND.

21 Q OKAY. BACK ON JULY FOURTH, 2005 WHERE DID YOU
22 LIVE?

23 A 32, APARTMENT 32.

24 THE COURT: YOU MIGHT WANT TO CORRECT THE
25 DATE. WE HADN'T HAD 2005.

1 Q OH, I'M SORRY. 2004.
2 A REDWOOD CIRCLE.
3 Q OKAY. WHO LIVED THERE WITH YOU?
4 A ME AND MY DAUGHTER.
5 Q HOW OLD IS YOUR DAUGHTER?
6 A 14 AT THE TIME.
7 Q OKAY. WERE YOU HOME ON JULY FOURTH, 2004?
8 A UNTIL ABOUT THREE O'CLOCK.
9 Q THREE O'CLOCK IN THE AFTERNOON OR THE MORNING?
10 A AFTERNOON.
11 Q OKAY. AND YOU LEFT YOUR HOME AROUND THREE IN
12 THE AFTERNOON?
13 A UH-HUH.
14 Q OKAY. WHEN DID YOU NEXT RETURN TO YOUR HOME?
15 A 6:30 THE NEXT MORNING.
16 Q WHEN YOU RETURNED HOME, WHAT DID YOU FIND?
17 A I WAS RIDING UP INTO THE APARTMENT COMPLEX AND
18 IT WAS POLICE EVERYWHERE AND MY NEIGHBOR CAME UP AND
19 SHE SAID YOUR APARTMENT WAS ON FIRE AND I THINK YOUR
20 HUSBAND DID IT.
21 Q WELL --
22 A I WASN'T THERE TO --
23 Q ALL RIGHT. YOU CAME HOME AND FOUND IT ON FIRE?
24 A YEAH.
25 Q OR IT HAD BURNED?

IVEY LITTLEJOHN

DIRECT

98

1 A RIGHT.

2 Q DID YOU HAVE ANY INSURANCE, MA'AM?

3 A NO.

4 Q WHAT DID YOU LOSE IN THE FIRE?

5 A EVERYTHING.

6 Q DID YOU HAVE ANY PETS?

7 A TWO BIRDS.

8 Q AND WHERE WERE THEY?

9 A IN MY ROOM.

10 Q UPSTAIRS?

11 A UH-HUH.

12 Q ALIVE OR DEAD?

13 A DEAD.

14 Q HAVE YOU EVER LIVED IN THAT APARTMENT WITH

15 MR. LITTLEJOHN?

16 A YES.

17 Q WHEN?

18 A FEBRUARY UNTIL APRIL.

19 Q UNTIL APRIL. HE LEFT IN APRIL?

20 A APRIL FIRST.

21 Q DID MR. LITTLEJOHN HAVE A KEY TO YOUR APARTMENT?

22 A NO.

23 Q DID MR. LITTLEJOHN HAVE YOUR PERMISSION TO ENTER

24 YOUR APARTMENT?

25 A NO.

1 Q DID HE ASK TO GO INTO YOUR APARTMENT?

2 A NO.

3 Q ON JULY FOURTH DID YOU SEE MR. LITTLEJOHN THAT
4 DAY?

5 A YES.

6 Q 2004. YOU SAW HIM?

7 A AT THE COOKOUT.

8 Q AT A COOKOUT. DID HE ASK AT THAT TIME IF HE MAY
9 GO OVER TO YOUR APARTMENT?

10 A NO.

11 Q DID HE ASK TO ENTER YOUR APARTMENT?

12 A NO.

13 Q DID YOU AT ANY TIME AFTER THE MIDDLE OF APRIL
14 GIVE HIM PERMISSION TO ENTER YOUR APARTMENT?

15 A NO.

16 Q PLEASE ANSWER ANY QUESTIONS MR. LITTLEJOHN MAY
17 HAVE.

18 THE COURT: ALL RIGHT. MR. LITTLEJOHN,
19 BEFORE YOU ASK HER QUESTIONS LET ME TELL THE JURY,
20 ONE OF HER ANSWERS CONTAINED WHAT WE CALL HEARSAY;
21 SHE SAID THE NEIGHBOR MADE A STATEMENT ABOUT WHO THEY
22 THOUGHT STARTED FIRE OR SOMETHING, DISREGARD THAT
23 BECAUSE THAT'S HEARSAY. IT'S NOT RELIABLE AND YOU
24 CAN'T BASE YOUR DECISION IN THIS CASE ON SOMETHING A
25 THIRD PARTY SAID SO JUST DISREGARD ENTIRELY WHAT THE

1 NEIGHBOR SAID ABOUT HOW THE FIRE GOT STARTED.

2 MR. LITTLEJOHN.

3 MR. LITTLEJOHN: YES, SIR. I'D LIKE TO
4 ENTER THE VICTIM INTERVIEW FORM FROM THE GAFFNEY
5 POLICE DEPARTMENT INTO A EXHIBIT.

6 MR. MORIN: I BELIEVE, YOUR HONOR, HE CAN
7 ASK HER ABOUT WHAT'S IN THERE AND SHE CAN EITHER
8 AGREE OR DISAGREE THAT IT'S IN THERE AND GO FROM
9 THERE.

10 THE COURT: YOU CAN ASK HER WITHOUT
11 PUTTING IT INTO EVIDENCE. HE'S OBJECTING AT THIS
12 TIME AND I'M GOING TO SUSTAIN THE OBJECTION. YOU CAN
13 ASK HER QUESTIONS ABOUT WHAT'S IN THERE.

14 CROSS EXAMINATION BY MR. LITTLEJOHN:

15 Q. OKAY. ALL RIGHT. YOU STATED ON HERE WE HAVE
16 BEEN ON THE OUTS SINCE DECEMBER AND WE'VE BEEN BROKE
17 UP SINCE DECEMBER, BUT YET YOU JUST SAID I MOVED IN
18 FEBRUARY?

19 A CORRECT.

20 Q OKAY.

21 MR. LITTLEJOHN: WELL, I'D LIKE TO ENTER
22 THIS ALSO INTO A EXHIBIT, THIS IS THE SLED REPORT
23 THAT WAS TAKEN ON JULY 13, BY MR. SHEALY?

24 MR. MORIN: I'M GOING TO HAVE TO OBJECT.

25 THE COURT: I WILL SUSTAIN THE OBJECTION.

1 THAT CAN'T COME IN THROUGH THIS WITNESS.

2 MR. LITTLEJOHN: SHE MADE A STATEMENT ON
3 IT.

4 THE COURT: WELL, YOU CAN ASK HER
5 QUESTIONS ABOUT WHAT'S IN THE STATEMENT.

6 MR. LITTLEJOHN: ALL RIGHT.

7 Q WELL, YOU MADE A STATEMENT ABOUT THAT YOU MOVED
8 AWAY IN DECEMBER. YOU MOVED THERE IN DECEMBER TO GET
9 AWAY FROM ME?

10 A CORRECT.

11 Q DID YOU MAKE THAT STATEMENT?

12 A UH-HUH.

13 Q OKAY. YOU JUST MADE A STATEMENT THAT I MOVED
14 IN?

15 A IN FEBRUARY.

16 Q OKAY.

17 A YOU WAS OUT ON THE STREET FOR TWO MONTHS. I
18 TOOK YOU IN.

19 Q ALL RIGHT. YOU MADE A STATEMENT ALSO THAT I
20 WOULD LET JIMMIE AT TIMES COME BY, START FUSSING WITH
21 ME, WHY WOULD YOU LET ME COME BY IF I FUSSING?

22 A BECAUSE YOU HAD AN ATTITUDE IF I DIDN'T LET YOU
23 COME BY.

24 Q OKAY. FOURTH OF JULY WE HAD A COOKOUT?

25 A WE HAD A COOKOUT.

1 Q FOURTH OF JULY YOU STATED YOU HAD A COOKOUT OVER
2 AT YOUR MOMMA'S HOUSE AND I WAS NOT INVITED. I HAD
3 AN ATTITUDE?

4 A UH-HUH.

5 Q YOU SAID YOU GOT THERE, WHAT TIME DID YOU LEAVE
6 THE APARTMENT?

7 A WHAT TIME DID?

8 Q WHAT TIME DID YOU LEAVE FROM YOUR HOME, FROM
9 HOME, TO COME TO YOUR MOTHER'S HOUSE?

10 THE COURT: THE APARTMENT.

11 A THREE O'CLOCK.

12 Q WAS I ALREADY AT THE COOKOUT?

13 A YOU SURE WAS.

14 Q WHAT TIME DID I LEAVE THE COOKOUT?

15 A I HAVE NO IDEA.

16 Q OKAY. DID I LEAVE THE SAME TIME YOU DID?

17 A I THINK YOU LEFT BEHIND ME.

18 Q OKAY. GOOD. ALL RIGHT. YOU MADE THE STATEMENT
19 THAT, TO THE POLICE, THAT THAT LETTER WAS LEFT IN THE
20 DRESSER, WHICH DRESSER DRAWER?

21 A IN THE HIGH TOP DRESSER DRAWER.

22 Q YOU ALSO MADE A STATEMENT THAT IT WAS NOTHING
23 LEFT ON THE BED?

24 A NOTHING WAS ON THE BED.

25 Q CAN YOU EXPLAIN WHY OR HOW TWO POCKETBOOKS AND

1 THINGS OF THAT SORT GOT ON THE BED?

2 A PROBABLY BECAUSE YOU WERE THROWING STUFF AROUND
3 IN MY APARTMENT WHEN YOU WAS IN THERE.

4 Q ALL RIGHT. IT SAYS YOU MADE THE STATEMENT TO
5 OFFICER SHEALY, YOU SAID I WAS YOUR EX-HUSBAND AND
6 THAT I HAD A ATTITUDE AT ALL TIMES?

7 A UH-HUH.

8 Q BUT YOU STATED THAT YOU WOULD LET ME COME BY?

9 A UH-HUH.

10 Q DOES THAT MAKE SENSE, MRS. LITTLEJOHN?

11 A WHY WOULD --

12 MR. MORIN: OBJECT TO THAT QUESTION, YOUR
13 HONOR.

14 THE COURT: I SUSTAIN THE OBJECTION.
15 THAT'S ARGUMENTATIVE.

16 MR. LITTLEJOHN: ARGUMENTATIVE, YEAH,
17 OKAY. NO FURTHER QUESTIONS. WELL, I GOT ONE MORE
18 QUESTION.

19 Q WHAT WAS THE THREAT THAT I THREATENED YOU? WHAT
20 WAS THE ACTUAL THREAT? WHAT WAS THE WORDS THAT WAS
21 THE THREAT? YOU SAID THAT I THREATENED YOU.

22 A WHEN? THAT PARTICULAR DAY OR EVERY DAY OR?

23 Q THAT DAY, JULY FOURTH, MY QUESTION?

24 A I'M GOING TO GET YOU. YOU JUST SAY ANYTHING
25 WHEN YOU GET MAD.

1 Q ALL RIGHT.

2 MR. LITTLEJOHN: NO MORE FURTHER
3 QUESTIONS, YOUR HONOR.

4 MR. MORIN: THAT'S ALL THE QUESTIONS I
5 HAVE OF THIS WITNESS.

6 THE COURT: YOU CAN STEP DOWN. THANK YOU,
7 MRS. LITTLEJOHN. CAN THIS WITNESS BE EXCUSED?

8 MR. MORIN: YES, SIR.

9 THE COURT: YOU CAN STAY OR LEAVE. THAT'S
10 YOUR CHOICE. CALL YOUR NEXT WITNESS.

11 MR. MORIN: WE CALL SHEMEKA WILKINS.

12 SHEMEKA WILKINS, BEING FIRST DULY
13 SWORN, TESTIFIED AS FOLLOWS:

14 DIRECT EXAMINATION BY MR. MORIN:

15 Q MS. WILKINS, CAN YOU STATE YOUR NAME FOR THE
16 JURY?

17 A SHEMEKA WILKINS.

18 Q WHERE DO YOU LIVE, MA'AM?

19 A I LIVE IN APARTMENT 37 REDWOOD.

20 Q DID YOU LIVE THERE BACK ON JULY FOURTH, 2004?

21 A YES, SIR.

22 Q DO YOU KNOW JIMMIE LITTLEJOHN?

23 A I DON'T KNOW HIM BUT I KNOW OF HIM.

24 Q DO YOU KNOW HIM WHEN YOU SEE HIM?

25 A YES.

1 Q HOW DO YOU KNOW HIM?

2 A HE'S MARRIED TO MY COUSIN IVEY.

3 Q IVEY IS YOUR COUSIN?

4 A YES, SIR.

5 Q OKAY. DID YOU SEE HIM ON JULY FOURTH, 2004?

6 A YES, I DID.

7 Q WHERE DID YOU SEE HIM?

8 A AROUND 11 P.M. ON THE NIGHT OF JULY FOURTH I WAS
9 ON MY WAY HOME FROM SHOOTING FIREWORKS AT MY
10 GRANDMOTHER'S. JIMMY WAS DRIVING HIS CAR, WHICH IS A
11 WHITE CHEVY WITH A BURGUNDY TOP OR WHATEVER COLOR,
12 BUT I WAS COMING DOWN PROVIDENCE ROAD, I WAS GETTING
13 READY TO TURN INTO REDWOOD IN THE SECOND DRIVEWAY
14 WHICH I WAS MAKING A RIGHT HAND TURN. BY THE TIME I
15 APPROACHED THE TURN IN, JIMMIE WAS LEAVING OUT OF
16 REDWOOD. I DON'T EVEN KNOW IF HE STOPPED AT THE STOP
17 SIGN OR WHATEVER, BUT HE MADE A LEFT TURN AND WHEN HE
18 MADE HIS TURN HE WAS PRACTICEALLY IN THE GRASS, NOT
19 EVEN ON THE ROAD, AND HE WAS DRIVING OUT OF CONTROL.

20 Q YOU SURE IT WAS MR. LITTLEJOHN?

21 A I'M SURE IT WAS HIM.

22 Q OKAY. DID YOU SEE HIM ANYMORE AFTER THAT?

23 A NO, I DIDN'T SEE HIM.

24 Q OKAY. AND THAT WAS AROUND 11 AT NIGHT?

25 A AROUND 11. I CAN'T TELL YOU THE EXACT TIME. IT

1 WAS AROUND 11.

2 Q OKAY. PLEASE ANSWER ANY QUESTIONS
3 MR. LITTLEJOHN MAY HAVE.

4 A OKAY.

5 CROSS EXAMINATION BY MR. LITTLEJOHN:

6 Q YOU SAID THAT YOU SAW ME DRIVING, LEAVING
7 REDWOOD, ABOUT 11 O'CLOCK, WAS I BY MYSELF?

8 A YOU SURE WAS.

9 Q OKAY. ALL RIGHT. YOU SAID I WAS DRIVING OUT OF
10 CONTROL, WAS OVER IN THE GRASS; NOW IF I WAS GOING TO
11 THE LEFT, WAS GOING BACK UP 150, RIGHT?

12 A NO. STOP SIGN, LEFT IS LIKE GOING TOWARD THE
13 SCHOOL. I WAS COMING IN THAT WAY.

14 Q OKAY. ALL RIGHT.

15 MR. LITTLEJOHN: IS THE FIRE INVESTIGATION
16 REPORT AN EXHIBIT?

17 THE COURT: I DON'T THINK SO.

18 MR. LITTLEJOHN: COULD WE ADD IT SINCE THE
19 FIRE INSPECTOR IS STILL HERE. WE GOT THE INSPECTOR,
20 COULD WE ADD IT? HE INTERVIEWED SOME WITNESSES THAT
21 DAY TOO, THE NEXT DAY.

22 THE COURT: WELL, I UNDERSTAND. DO YOU
23 OBJECT?

24 MR. MORIN: YES, SIR.

25 THE COURT: I HAVE TO SUSTAIN THE

1 OBJECTION. YOU CAN'T PUT IT IN. IT'S NOT
2 ADMISSIBLE.

3 MR. LITTLEJOHN: IT'S NOT ADMISSIBLE.

4 THE COURT: NO.

5 Q LET ME ASK YOU A QUESTION. DO YOU REMEMBER
6 TALKING TO THE FIRE INSPECTOR? THE NEXT DAY, THE
7 SIXTH?

8 A WHO IS THE FIRE INSPECTOR?

9 Q THAT FELLOW?

10 A NATHAN, YES, I DO..

11 Q DO YOU REMEMBER WHAT YOU TOLD HIM?

12 A I PROBABLY TOLD HIM THE SAME THING I TOLD THAT
13 POLICE OFFICER THAT I SAW YOU LEAVING REDWOOD.

14 Q OKAY. COULD WE TURN THIS ON.

15 MR. MORIN: YES, SIR. MAY WE APPROACH,
16 YOUR HONOR.

17 THE COURT: WELL, I THINK WHAT HE WANTS TO
18 DO IS SHOW HER PART OF THE STATEMENT?

19 MR. LITTLEJOHN: YEAH, BECAUSE SHE CHANGED
20 IT. SHE SAID SHE PUT DOWN WHAT SHE, SHE JUST SAID,
21 SHE JUST TESTIFIED THAT SHE JUST PUT DOWN, SHE TOLD
22 THE POLICE --

23 THE COURT: WAIT A MINUTE, I DON'T THINK
24 SHE PREPARED THAT.

25 A I DIDN'T.

1 THE COURT: THAT WAS PREPARED BY SOMEBODY
2 ELSE, SO RATHER THAN PUTTING IT UP ON THE SCREEN JUST
3 ASK HER IF SHE SAID THOSE THINGS.

4 Q OKAY. ALL RIGHT. DO YOU REMEMBER SAYING YOU
5 DIDN'T SEE ANYONE OR HEAR ANYTHING OF RELEVANCE THAT
6 NIGHT TO THE FIRE INSPECTOR?

7 A NO.

8 Q THAT'S WHAT'S HERE. YOU STATED THE APARTMENT
9 CAUGHT ON FIRE BETWEEN AROUND 1:30 A.M. AND THEN?

10 A THAT'S WHAT TIME I WAS AWAKE AT.

11 Q AND YOU SAID YOU HEARD MY CAR AROUND 12-12:15
12 BUT DIDN'T SEE IT OR ME?

13 A (NODS HEAD.) THAT'S RIGHT.

14 Q SO HOW DO YOU KNOW THAT'S MY CAR?

15 A I'VE LIVED IN THAT APARTMENT FOR NINE YEARS,
16 ANYBODY THAT COMES IN AND OUT OF REDWOOD, I CAN TELL
17 YOU, IF I HEARD THAT CAR TWO OR THREE TIMES, I CAN
18 TELL YOU WHO IT IS WHEN THEY COME BACK IN THERE.

19 Q OKAY. THE STATEMENT THAT YOU MADE, YOU TOLD THE
20 FIRE INSPECTOR THAT YOU DIDN'T HEAR ANYTHING. WHY
21 DID YOU TELL THE FIRE INSPECTOR YOU DIDN'T HEAR
22 ANYTHING JULY THE SIX AND JULY THE FIFTH YOU HEARD
23 BUT YOU NEVER SAW?

24 A OKAY. LET ME TELL YOU ABOUT THAT. WHEN I WROTE
25 THAT STATEMENT THAT WAS THE NEXT DAY AND THE OFFICER

1 ASKED DID ANYBODY HEAR OR KNOW ANYTHING. I TOLD HIM
2 THAT WHAT I KNOW IS NOT IMPORTANT. I TOLD HIM WHAT I
3 KNEW AND HE TOLD ME THAT IT WAS IMPORTANT SO THAT'S
4 WHEN THE OTHER STATEMENT CAME IN. WHEN I TALKED TO
5 NATHAN THAT NIGHT I DIDN'T THINK MY EVIDENCE WAS
6 ENOUGH.

7 Q THE POLICE STATEMENT WAS FIRST?

8 A NO. I TALKED TO NATHAN THE NIGHT OF THE FIRE.
9 I TALKED TO THE POLICE OFFICER WHEN I CAME FROM THE
10 SCHOOL THE NEXT DAY.

11 MR. LITTLEJOHN: YOUR HONOR, IT'S DATED
12 JULY SIX.

13 THE COURT: WELL.

14 MR. MORIN: YOUR HONOR, I GOT ABOUT THREE
15 OBJECTIONS, YOUR HONOR.

16 THE COURT: WELL, I SUSTAIN THE OBJECTION.
17 THE DATE ON THERE WASN'T PLACED ON THERE BY HER MOST
18 PROBABLY.

19 MR. LITTLEJOHN: NO, IT WASN'T.

20 THE COURT: SO YOU CAN'T HOLD HER TO THE
21 DATE SOMEBODY ELSE PUT ON THERE. SHE'S SAYING HER
22 VERSION OF IT.

23 Q OKAY. YOU STATED I WAS DRIVING OUT OF CONTROL?

24 A YEAH.

25 Q OKAY. WAS PULLING INTO TRAFFIC OR SWERVING OUT

JAMES WILKINS

DIRECT

110

1 OF TRAFFIC OR?

2 A THERE WASN'T MUCH TRAFFIC AND YOU WERE JUST
3 MAKING THE LEFT TURN TO COME OUT OF REDWOOD, AND AS
4 FAST AS YOU WERE DRIVING YOU WERE ON THE OTHER SIDE
5 OF THE ROAD BUT WHEN YOU DID TRY TO GET IT TOGETHER
6 YOU WERE ALL OVER THE ROAD. I HAD TO PRACTICALLY
7 STOP TO LET YOU HAVE THE ROAD BECAUSE I WAS GOING TO
8 GET HIT.

9 Q OKAY. DID YOU SEE WHERE I WENT?

10 A I WASN'T PAYING ATTENTION TO WHERE YOU WERE
11 GOING.

12 MR. LITTLEJOHN: NO FURTHER WITNESSES,
13 YOUR HONOR. NO FURTHER QUESTIONS FOR THE WITNESS.

14 MR. MORIN: NO QUESTIONS OF THIS WITNESS,
15 YOUR HONOR.

16 THE COURT: ALL RIGHT. YOU CAN STEP DOWN
17 AND BE EXCUSED. WE APPRECIATE YOUR TIME. CALL YOUR
18 NEXT WITNESS.

19 MR. MORIN: JAMES WILKINS.

20 JAMES WILKINS, BEING FIRST DULY
21 SWORN, TESTIFIED AS FOLLOWS:

22 DIRECT EXAMINATION BY MR. MORIN:

23 Q MR. WILKINS, WILL YOU STATE YOUR NAME FOR THE
24 JURY?

25 A JAMES E. WILKINS.

1 Q WHERE DO YOU LIVE, SIR?

2 A WELL, RIGHT NOW I'M IN THE PROCESS OF MOVING,
3 BUT I WAS STAYING AT 37 REDWOOD.

4 Q OKAY. AND THAT'S NEAR, IT'S A FEW DOORS DOWN
5 FROM 32 REDWOOD?

6 A ABOUT FOUR OR FIVE DOORS.

7 Q NOW WERE YOU HOME ON THE NIGHT OF JULY FOURTH,
8 SIR?

9 A YES, I WAS.

10 Q AND DID YOU SEE JIMMY LITTLEJOHN AT THE
11 APARTMENT?

12 A YES, I DID.

13 Q WHAT TIME DID YOU SEE MR. LITTLEJOHN THERE?

14 A BETWEEN 11:30 AND 12 BECAUSE THAT'S WHEN I
15 NORMALLY SMOKE MY LAST CIGARETTE AT NIGHT.

16 Q WHERE WAS MR. LITTLEJOHN?

17 A WELL, WHEN I SAW HIM I DON'T KNOW WHETHER HE WAS
18 COMING OUT OF THE APARTMENT OR NOT, BUT I SAW HIM GO
19 TO HIS CAR AND OPEN HIS TRUNK. BY THE TIME HE GOT
20 HIS TRUNK OPEN, I WAS GOING BACK IN FROM SMOKING.

21 Q ALL RIGHT. SO YOU SAW HIM COME FROM THAT
22 APARTMENT 32?

23 A I DON'T KNOW WHETHER HE WAS COMING OUT OF IT OR
24 NOT. I JUST SAW HIM AS HE WAS GOING TO HIS CAR.

25 Q GOING TO HIS CAR. WAS HE GOING TO HIS CAR FROM

JAMES WILKINS

DIRECT

112

1 THE DIRECTION OF THE APARTMENT?

2 A OH, YES. OH, YES. FROM THE DIRECTION OF THAT,
3 YEAH.

4 Q AND YOU SAW HIM OPEN THE TRUNK?

5 A UH-HUH.

6 Q OKAY. AND YOU WENT BACK IN THE HOUSE?

7 A UH-HUH.

8 Q YOU FINISHED YOUR CIGARETTE?

9 A YES, I WAS ALREADY OUT THERE BEFORE HE EVEN COME
10 OUT.

11 Q OKAY.

12 MR. LITTLEJOHN: OBJECTION, YOUR HONOR.

13 THE COURT: WHAT'S THE OBJECTION?

14 MR. LITTLEJOHN: THIS WITNESS, I DIDN'T
15 SEE THE STATEMENT FROM THE POLICE.

16 THE COURT: WELL, THEY DON'T HAVE TO HAVE
17 A STATEMENT. I OVERRULE THE OBJECTION.

18 MR. LITTLEJOHN: IT'S GOT RELEVANCE TO THE
19 CASE BECAUSE.

20 THE COURT: WELL, I OVERRULE THE
21 OBJECTION.

22 Q MR. WILKINS, DID YOU EVER SPEAK TO THE POLICE
23 ABOUT THIS?

24 A NO.

25 Q ARE YOU HERE UNDER A SUBPOENA TODAY?

1 A YES.

2 Q IS IT MY SUBPOENA OR MR. LITTLEJOHN'S SUBPOENA?

3 A MR. LITTLEJOHN'S.

4 Q IN FACT, AFTER YOU GOT MR. LITTLEJOHN'S SUBPOENA

5 DID YOU CONTACT ME?

6 A I DON'T KNOW IF I CONTACT YOU OR YOU CONTACT ME.

7 Q OKAY.

8 A I'M NOT FOR SURE.

9 Q OKAY. NONETHELESS YOU SAY YOU SAW HIM BETWEEN

10 11:30 AND 12?

11 A UH-HUH.

12 Q AND HE WAS GOING TO HIS TRUNK?

13 A RIGHT.

14 Q PLEASE ANSWER ANY QUESTIONS MR. LITTLEJOHN HAS.

15 CROSS EXAMINATION BY MR. LITTLEJOHN:

16 Q WHEN I PULLED UP THAT NIGHT WERE YOU SITTING

17 OUTSIDE?

18 A NOT WHEN YOU PULLED UP, NO.

19 Q SURE?

20 A I'M SURE. I'M OUT THERE EVERY NIGHT.

21 Q OKAY. HOW LONG DID YOU STAY OUT THERE?

22 A MAYBE, MAYBE TEN MINUTES, MAYBE, BECAUSE I HAD

23 ALREADY SMOKE A WHOLE CIGARETTE.

24 Q HOW LONG WAS MY CAR THERE?

25 A I DON'T KNOW THAT EITHER.

1 Q I MEAN YOU SAID YOU WENT IN THE HOUSE?

2 A UH-HUH.

3 Q AND YOU COME BACK OUT?

4 A NO, I DID NOT COME BACK OUT.

5 Q WELL, YOU SAID --

6 A THAT WAS MY LAST CIGARETTE. I DON'T COME BACK
7 OUT AFTER MY LAST CIGARETTE.

8 Q YOU SAID YOU SAW ME GO IN THE TRUNK?

9 A RIGHT.

10 Q DID I HAVE ANYTHING IN MY HAND?

11 A I DIDN'T SEE YOU GET ANYTHING OUT OF THE TRUNK.

12 Q OKAY. DID YOU, SO YOU DON'T KNOW HOW LONG I WAS
13 THERE?

14 A NO.

15 Q OKAY. YOU DIDN'T SEE ME WHEN I PULLED UP?

16 A NO.

17 Q YOU DON'T KNOW HOW LONG I STAYED?

18 A NO.

19 Q YOU DIDN'T SEE -- DID YOU SEE ANYBODY WITH ME?

20 A NO.

21 Q OKAY. YOU DIDN'T. I GUESS THAT'S IT. THAT
22 NIGHT, JULY THE FOURTH, DID YOU HEAR MY CAR BETWEEN
23 12 AND 12:15?

24 A I CAN'T ANSWER THAT. I'M A TV FREAK. I BE IN
25 WITH MY TV.

1 Q ALL RIGHT. THANK YOU.

2 MR. MORIN: THAT'S ALL QUESTIONS I HAVE OF
3 MR. WILKINS.

4 THE COURT: YOU CAN STEP DOWN AND BE
5 EXCUSED.

6 MR. LITTLEJOHN: YOUR HONOR.

7 THE COURT: WE'LL TAKE A BREAK. I'LL LET
8 THE JURY GO TO THE JURY ROOM. WE'LL TAKE A SHORT
9 BREAK. IF ANYONE WISHES TO SMOKE, THE BAILIFF WILL
10 MAKE ARRANGEMENTS FOR THAT.

11 (THE JURY EXITS THE COURTROOM AT 02:57
12 PM.)

13 THE COURT: WE'LL BE AT EASE FOR ABOUT TEN
14 MINUTES.

15 (COURT'S IN RECESS.)

16 (COURT RESUMES AT 03:10 PM.)

17 THE COURT: BRING IN THE JURY.

18 (THE JURY RETURNS TO THE COURTROOM.)

19 MR. MORIN: THE STATE CALLS SHERRY DAVIS.

20 SHERRY DAVIS, BEING FIRST DULY SWORN,

21 TESTIFIED AS FOLLOWS:

22 DIRECT EXAMINATION BY MR. MORIN:

23 Q MS. DAVIS, WOULD YOU STATE YOUR NAME FOR THE
24 JURY?

25 A SHERRY DAVIS.

SHERRY DAVIS

DIRECT

116

1 Q WHERE DO YOU LIVE, MS. DAVIS?
2 A 29 REDWOOD VILLAGE.
3 Q DID YOU LIVE THERE ON JULY FOURTH 2004?
4 A YES.
5 Q DO YOU KNOW JIMMY LITTLEJOHN?
6 A I DON'T KNOW HIM BUT I SEE HIM ALL THE TIME.
7 Q ALL RIGHT. DO YOU KNOW WHAT HE LOOKS LIKE?
8 A YEAH.
9 Q DO YOU SEE HIM HERE TODAY?
10 A YEAH.
11 Q WHERE IS HE?
12 A OVER HERE.
13 Q OKAY. ON THE NIGHT OF JULY FOURTH DID YOU SEE
14 MR. LITTLEJOHN?
15 A YES.
16 Q WHERE DID YOU SEE HIM?
17 A I WAS WALKING ACROSS THE STREET AND BY THE TIME
18 I GOT ON THE SIDEWALK HE WAS WALKING TO HIS CAR. I
19 DON'T KNOW WHERE HE CAME FROM.
20 Q OKAY.
21 A AND --
22 Q NOW REDWOOD HAS GOT APARTMENTS ON ONE SIDE.
23 A YES.
24 Q AND THEN THIS SIDE.
25 A YES.

1 Q AND THEN THERE IS A PARKING LOT IN BETWEEN,
2 RIGHT?

3 A UH-HUH.

4 Q AND 32, IF YOU DRIVE IN, 32 IS IN THE BUILDING
5 ON THIS SIDE, THE LEFT SIDE, RIGHT?

6 A YEAH.

7 Q AND 29 IS WHERE?

8 A THE RIGHT SIDE.

9 Q ON THIS SIDE. SO IT'S ACROSS THE PARKING LOT?

10 A YEAH.

11 Q OKAY. AND YOU SAW MR. LITTLEJOHN THAT NIGHT ON
12 JULY FOURTH?

13 A YEAH, THAT NIGHT.

14 Q ABOUT WHAT TIME DID YOU SEE HIM?

15 A IT WAS ABOUT, I'D SAY ABOUT 12:30.

16 Q AT NIGHT?

17 A UH-HUH.

18 Q OKAY. ARE YOU CERTAIN IT WAS HIM?

19 A YEAH.

20 Q HAD -- YOU SEEN HIM BEFORE?

21 A YEAH, I USED TO SEE HIM LIKE IN THE MORNINGS
22 BECAUSE HE USED TO WAKE ME UP WITH THAT LOUD CAR.

23 THAT'S HOW I KNEW WHO HE WAS.

24 Q WHAT KIND OF CAR DID HE DRIVE?

25 A A LONG BLACK CAR WITH A BURGUNDY TOP.

1 Q OKAY. NOW JULY FOURTH YOU ARE SAYING 12:30 SO I
2 GUESS TECHNICALLY THAT WOULD HAVE BEEN JULY FIFTH,
3 RIGHT?

4 A YEAH.

5 Q ALL RIGHT. NOW THIS IS THE NIGHT THAT THERE WAS
6 A FIRE, IS THAT CORRECT?

7 A THAT'S RIGHT.

8 Q AND YOU SAW HIM OUT THERE AROUND 12:30?

9 A UH-HUH.

10 Q AND WHERE WAS HE GOING?

11 A HE WAS WALKING TO HIS CAR.

12 Q OKAY.

13 A GETTING IN HIS CAR. BECAUSE WHEN I GOT ACROSS
14 THE STREET I STOOD IN THE DOOR AND I SAW HIM WHEN HE
15 BACKED UP AND THAT'S IT.

16 Q OKAY.

17 A BECAUSE I'M NOSEY LIKE THAT.

18 Q YES, MA'AM. PLEASE ANSWER ANY QUESTIONS THAT
19 MR. LITTLEJOHN HAS.

20 CROSS EXAMINATION BY MR. LITTLEJOHN:

21 Q MS. DAVIS, ABOUT HOW TALL ARE YOU

22 A ABOUT 5'2".

23 Q HOW TALL DO YOU THINK I AM?

24 A I DON'T KNOW.

25 Q YOU MADE ON THE STATEMENT THAT I WAS 5'6". 29 IS

1 ACROSS THE STREET FROM 32?

2 A THAT'S RIGHT.

3 Q YOU MADE A STATEMENT THAT I THINK IVEY'S
4 BOYFRIEND, OKAY.

5 A I DON'T KNOW WHO YOU IS TO HER. I DIDN'T KNOW
6 WHO YOU WAS TO HER. I JUST KNOW WHAT I HEARD.

7 Q OKAY. WHAT DID YOU HEAR?

8 A YOU WAS HER HUSBAND, BUT I SAID BOYFRIEND BUT
9 THEY JUST SAID YOU WAS HER HUSBAND.

10 Q DID YOU SEE WHAT I HAD ON THAT NIGHT?

11 A NO. BUT I KNOW IT WAS YOU.

12 Q DID I HAVE ANYTHING IN MY HAND?

13 A I DON'T REMEMBER THAT. I JUST SEEN YOU WALKING
14 TO THE CAR. THAT'S ALL I SAW. I DON'T KNOW WHERE
15 YOU CAME FROM.

16 Q YOU DON'T KNOW WHAT I HAD IN MY HAND?

17 A NO, I DON'T.

18 Q YOU DON'T KNOW HOW TALL I AM? YOU STATED THAT I
19 HAD A HAT ON. WAS IT PULLED DOWN OR WAS IT COCKED TO
20 THE SIDE OR?

21 A I DON'T KNOW BECAUSE YOU ALWAYS WEAR A HAT. YOU
22 ALWAYS USED TO WEAR A HAT, ALWAYS, SO DON'T EVEN GO
23 THERE.

24 Q I'M GOING TO ASK YOU A QUESTION.

25 A GO AHEAD.

SHERRY DAVIS

CROSS

120

1 Q YOU MADE A STATEMENT THAT I LEAVE THERE LOTS OF
2 TIMES?

3 A YEAH, SURE DO. YOU DID RATHER.

4 Q WHEN THE TIMES YOU USED TO SEE ME LEAVE THERE?

5 A EVERY TIME I SEEN YOU YOU HAD A HAT ON.

6 Q EVERY TIME YOU SAW ME?

7 A THAT'S RIGHT.

8 Q WHERE WAS MY CAR PARKED?

9 A IT WAS PARKED LIKE BETWEEN, LIKE RIGHT THERE,
10 WELL, WHERE MRS. RHODEY'S CAR ALWAYS BE. I KNOW YOU
11 KNOW WHO THAT IS.

12 A I DO BUT THEY DON'T.

13 A WELL, PARKED, I'M LOOKING AT 35, IT WAS PARKED
14 RIGHT LIKE RIGHT UP IN THERE WHERE HER CAR AT.
15 THAT'S WHERE YOU WERE PARKED AT.

16 Q OKAY. PARKED RIGHT IN THE FRONT OF THE BUILDING
17 IS THAT A DEADEND?

18 A YOU WAS PARKED LIKE, MAYBE LIKE TOWARDS RHODEY'S
19 HOUSE AND CASSANDRA'S HOUSE.

20 Q IS THIS A DEADEND? IS THIS A DEADEND?

21 A NO, IT AIN'T A DEADEND SIDE.

22 Q I MEAN IS THIS A DEADEND ROAD OR IS THIS A
23 THROUGH ROAD WHERE I WAS PARKED AT?

24 A AS YOU COMING UP?

25 Q I MEAN WHEN YOU SAY MY CAR WAS, IS IT A DEADEND

1 UP THAT WAY, CAN YOU GO ANY FURTHER?

2 A NO, AIN'T NO DEADEND UP THERE.

3 Q CAN YOU GO ANY FURTHER? I MEAN, CAN YOU DRIVE
4 UP TO ANOTHER PARKING LOT OR EXIT OUT THAT WAY? OR
5 DO YOU HAVE TO BACK OUT AND TURN BACK AROUND AND GO
6 BACK OUT?

7 A YOU HAVE TO GO BACK OUT.

8 Q OKAY. SO THAT, BASICALLY IT'S A DEADEND UP
9 THERE?

10 A YEAH, IT'S A DEADEND UP THAT WAY.

11 Q ALL RIGHT.

12 MR. LITTLEJOHN: NO FURTHER QUESTIONS,
13 YOUR HONOR.

14 MR. MORIN: THAT'S ALL THE QUESTIONS I
15 HAVE, YOUR HONOR.

16 THE COURT: YOU CAN STEP DOWN AND BE
17 EXCUSED. WE APPRECIATE YOUR TIME.

18 MR. MORIN: THE STATE IS GOING TO REST AT
19 THIS TIME, YOUR HONOR.

20 THE COURT: ALL RIGHT. MEMBERS OF THE
21 JURY PANEL, THE STATE IS RESTING; THAT IS, THE STATE
22 IS TELLING US IT HAS PRESENTED ITS EVIDENCE. UNDER
23 CERTAIN CIRCUMSTANCES THEY WOULD HAVE THE RIGHT TO
24 PRESENT OTHER EVIDENCE BUT YOU BASICALLY HEARD THE
25 STATE'S CASE, SO AT THIS POINT WE HAVE TO TAKE UP

1 SOME MATTERS OF LAW OUTSIDE YOUR PRESENCE SO I'M
2 GOING TO LET YOU GO TO THE JURY ROOM AT THIS TIME.

3 (THE JURY EXITS THE COURTROOM AT 03:18
4 PM.)

5 THE COURT: ALL RIGHT. ANYTHING FROM THE
6 STATE?

7 MR. MORIN: NOTHING FROM THE STATE AT THIS
8 TIME, YOUR HONOR.

9 THE COURT: MR. LITTLEJOHN, ANY MOTIONS OR
10 ANYTHING.

11 MR. LITTLEJOHN: YES, SIR, I GOT A MOTION
12 FOR A CORRECTED VERDICT.

13 THE COURT: FOR A DIRECTED VERDICT.

14 MR. LITTLEJOHN: YES, SIR.

15 THE COURT: I DENY THAT MOTION. I BELIEVE
16 THERE IS ENOUGH EVIDENCE FROM, EVEN THOUGH IT'S, A
17 LOT OF IT IS BASED ON WHAT I WOULD CALL OR FIND TO BE
18 SUBSTANTIAL CIRCUMSTANTIAL EVIDENCE, THE EVIDENCE IS
19 SUFFICIENT TO HAVE YOU THERE, THAT IT WAS INCINERARY
20 FIRE, AND THAT YOU WERE THE ONE WHO IN FACT SET IT.
21 I'M NOT SAYING THAT'S WHAT THE JURY WILL FIND, BUT
22 THERE IS ENOUGH EVIDENCE WHERE THEY COULD FIND THAT
23 SO I DENY THAT MOTION.

24 NOW MR. LITTLEJOHN, YOU HAVE A RIGHT TO
25 PRESENT WITNESSES IF YOU WISH, BUT YOU DON'T HAVE TO

1 BECAUSE YOU ARE PRESUMED INNOCENT OF THIS CHARGE.

2 MR. LITTLEJOHN: I WANT TO PRESENT SOME
3 WITNESSES, YOUR HONOR.

4 THE COURT: NOW LISTEN TO ME JUST A
5 MINUTE. YOU DO HAVE THE RIGHT TO TESTIFY IF YOU WANT
6 AND YOU HAVE THE RIGHT TO REMAIN SILENT. IF YOU
7 TESTIFY, THE STATE WILL BE ABLE TO ASK YOU ABOUT
8 CERTAIN PRIOR RECORDS I BELIEVE. ANY PRIOR RECORD?

9 MR. MORIN: THE ONLY PRIOR CONVICTION IN
10 THE LAST TEN YEARS, YOUR HONOR, IS A POSSESSION OF
11 CRACK FROM 1995.

12 THE COURT: THEY WOULD BE ABLE TO ASK YOU
13 WHETHER OR NOT YOU HAVE SUCH A PRIOR RECORD. THAT
14 WOULD BE ONLY REGARDING YOUR BELIEVABILITY. I WILL
15 TELL THE JURY THAT THAT HAS NOTHING TO DO WITH
16 WHETHER OR NOT YOU COMMITTED THIS OFFENSE, BUT THEY
17 COULD CONSIDER YOUR PAST CRIMINAL CONDUCT ON THE
18 ISSUE OF WHETHER TO BELIEVE YOU OR NOT, THAT IS, YOUR
19 CREDIBILITY. BUT IF YOU TESTIFY, THEY CAN ASK YOU
20 THAT AND OF COURSE YOU'LL BE UNDER OATH AND THEY WILL
21 BE ABLE TO CROSS EXAMINE YOU.

22 IF YOU EXERCISE YOUR RIGHT TO REMAIN
23 SILENT, THEN I WILL TELL THE JURY THAT YOU'VE DONE
24 THAT. I WILL TELL THE JURY THEY CANNOT USE THAT
25 AGAINST YOU IN ANY FASHION WHATSOEVER. I WILL TELL

1 THEM THAT YOU ARE PRESUMED INNOCENT AND YOU DO NOT
2 HAVE TO PROVE ANYTHING AND THE STATE MUST PROVE YOUR
3 GUILT BEYOND A REASONABLE DOUBT. YOU UNDERSTAND ALL
4 THAT?

5 MR. LITTLEJOHN: YES, SIR.

6 THE COURT: DO YOU HAVE ANY QUESTIONS
7 ABOUT IT?

8 MR. LITTLEJOHN: NO.

9 THE COURT: ARE YOU GOING TO TESTIFY OR
10 EXERCISE YOUR RIGHT TO REMAIN SILENT?

11 MR. LITTLEJOHN: TESTIFY.

12 THE COURT: LET'S TAKE A -- WE ALREADY HAD
13 A BREAK A FEW MINUTES AGO. LET'S BRING THE JURY BACK
14 IN. YOU READY TO PROCEED?

15 MR. LITTLEJOHN: YES, SIR.

16 (THE JURY RETURNS TO THE COURTROOM AT
17 03:21 PM.)

18 THE COURT: ALL RIGHT. YOU MAY CALL YOUR
19 FIRST WITNESS.

20 MR. LITTLEJOHN: I'D LIKE TO CALL
21 MRS. CLEMMONS TO THE WITNESS STAND.

22 THE COURT: ALL RIGHT.

23 MR. MORIN: YOUR HONOR, MAY I APPROACH.

24 (BENCH CONFERENCE.)

25 THE COURT: I'M TOLD THAT WITNESS IS ON

1 TAP TO BE HERE AROUND FOUR SO HE WILL GO FORWARD WITH
2 ANOTHER WITNESS IF HE WISHES AT THIS TIME.

3 MR. LITTLEJOHN: I'D LIKE TO CALL TONYA
4 LOVE.

5 TONYA LOGAN, BEING FIRST DULY
6 SWORN, TESTIFIED AS FOLLOWS:

7 DIRECT EXAMINATION BY MR. LITTLEJOHN:

8 Q HOW DO YOU KNOW ME?

9 A I MET YOU AT THE A & E WHEN YOU USED TO WORK
10 THERE:

11 Q ON THE NIGHT OF JULY FOURTH WHAT TIME DID I CALL
12 YOU INITIALLY THAT NIGHT?

13 A I DON'T REMEMBER.

14 Q OKAY. JULY FOURTH WHAT TIME DID I GET TO
15 BLACKSBURG?

16 A WE WAS OUTSIDE SHOOTING FIRECRACKERS I'D SAY
17 AROUND 12:05 SOMETHING LIKE THAT.

18 Q OKAY. NOW 12:05 DID I LEAVE?

19 A NO.

20 Q BACK OUT?

21 A NO. YOU LEFT THE NEXT MORNING AROUND WHAT, IT
22 WAS LIKE 20 MINUTES TO 8 BECAUSE I WAS GETTING READY
23 TO GO TO WORK.

24 Q SO WHO ELSE WAS THERE?

25 A MY SON AND MY OTHER SON AND MY MOM.

TONYA LOGAN

CROSS

126

1 Q BASICALLY WHAT KIND OF STATE WAS I IN WHEN I GOT
2 THERE?

3 A YOU WAS DRUNK. SO YOU JUST, YOU KNOW, PASSED
4 OUT ON THE BED.

5 Q WHAT TIME?

6 A IT WAS SOMETHING TO 12.

7 Q DID I SMELL OF GAS?

8 A NO.

9 Q DID I LOOK LIKE I --

10 MR. MORIN: OBJECTION.

11 THE COURT: I HADN'T HEARD THE QUESTION
12 YET. START OVER AGAIN. JUST START OVER AGAIN WITH
13 THAT QUESTION.

14 Q NOW YOU STATED THAT I GOT THERE NO LATER THAN 12
15 O'CLOCK?

16 A SOMEWHERE AROUND THAT TIME.

17 Q ALL RIGHT. DO YOU REMEMBER A CELL PHONE CALL
18 THAT YOU GOT EARLIER?

19 A NO, BECAUSE I LOST MY CELL PHONE.

20 Q OKAY. ALL RIGHT. SO BASICALLY I GOT THERE
21 12:05. WHAT TIME DID I LEAVE THE NEXT DAY?

22 A PROBABLY 20 MINUTES TO 8.

23 Q YOUR HONOR, I HAVE NO FURTHER WITNESS.

24 CROSS EXAMINATION BY MR. MORIN:

25 Q MA'AM, I UNDERSTAND THAT YOU MET MR. LITTLEJOHN

1 WHILE Y'ALL WERE WORKING, IS THAT CORRECT?

2 A YES, SIR.

3 Q WHAT'S THE RELATIONSHIP BETWEEN YOU AND

4 MR. LITTLEJOHN NOW.

5 A WE FRIENDS.

6 Q AND WHAT WAS IT BACK ON JULY FOURTH?

7 A WE FRIENDS.

8 Q OKAY. AND YOUR MOM WAS THERE AT YOUR HOME?

9 A YES.

10 Q AND YOU SAID YOUR TWO SONS?

11 A YES.

12 Q HOW OLD ARE THEY?

13 A 13 AND 6.

14 Q OKAY. AND DID Y'ALL STAY OUTSIDE UNTIL THE

15 FIREWORKS WERE ALL SHOT OR DID YOU SAVE SOME FOR THE

16 NEXT DAY?

17 A WE SAVED SOME FOR THE NEXT DAY.

18 Q OKAY. WERE YOU OUTSIDE WHEN MR. LITTLEJOHN

19 ARRIVED?

20 A YEAH, WE WAS COMING IN THE HOUSE.

21 Q OKAY. AND WHAT HE WAS DRIVING?

22 A HIS WHITE CAR.

23 Q DOES IT HAVE A BURGUNDY TOP?

24 A YEAH.

25 Q THANK YOU, MA'AM.

ROSE HOUEY

DIRECT

128

1 THE COURT: ANY OTHER QUESTIONS?

2 MR. LITTLEJOHN: THAT'S ALL.

3 THE COURT: YOU MAY STEP DOWN.

4 MR. LITTLEJOHN: CALL ROSE HOUEY.

5 ROSE HOUEY, BEING FIRST DULY

6 SWORN WAS EXAMINED AND TESTIFIED AS FOLLOWS:

7 DIRECT EXAMINATION BY MR. LITTLEJOHN:

8 Q HOW DO YOU KNOW ME, MRS. HOUEY?

9 A YOU STAYED AT THE REDWOOD. I KNEW YOU WERE
10 IVEY'S HUSBAND.

11 Q WHERE WOULD I GENERALLY PARK MY CAR?

12 A YOU USED TO PARK IT BY THE FIRE HYDRANT IS
13 BECAUSE I HAD THE HANDICAP APARTMENT AND THEN YOU
14 CHANGED AND START PARKING IN FRONT OF MY HOUSE.

15 Q ALL RIGHT. THAT MORNING OF THE FIRE IN THE
16 PARKING LOT, WHAT WAS THE CONVERSATION, I MEAN,
17 BETWEEN YOU?

18 A THE MORNING THE FOURTH OF JULY OR THE FIFTH?

19 Q THAT, THE FIFTH, THE MORNING?

20 MR. MORIN: YOUR HONOR, THIS CALLS FOR
21 HEARSAY.

22 THE COURT: WHAT WAS THE QUESTION AGAIN?

23 MR. MORIN: WHAT WAS THE CONVERSATION.

24 THE COURT: WELL, YOU CAN ASK HER WHAT YOU
25 SAID, WHY WOULD IT BE HEARSAY IF IT WAS BETWEEN THESE

1 TWO PEOPLE?

2 MR. MORIN: NO, NO. HE ASKED BETWEEN THIS
3 LADY AND OTHER IN THE PARKING LOT.

4 THE COURT: THAT WOULD BE HEARSAY. I
5 THOUGHT YOU WERE TALKING ABOUT BETWEEN THE TWO OF
6 THEM. I SUSTAIN THE OBJECTION.

7 Q WHEN WAS THE FIRST TIME YOU EVER SEEN MY CAR IN
8 THE PARKING LOT?

9 A WHENEVER IVEY MOVED THERE. A LITTLE BIT AFTER
10 SHE HAD MOVED THERE.

11 Q WHEN WAS THE LAST TIME, YOU STATED THAT YOU SAW
12 MY CAR THAT DAY, EARLIER THAT DAY, AND I WAS AT IVEY,
13 RIGHT?

14 A I SEEN, I DON'T REMEMBER WHOSE CAR, WHO, WHAT
15 CAR Y'ALL WAS IN, BUT Y'ALL WAS COMING FROM THE FAR
16 END, Y'ALL WAS LEAVING.

17 Q SO YOU SAW US TOGETHER THAT DAY, RIGHT?

18 A (NODS HEAD.)

19 Q ALL RIGHT. HOW OFTEN WOULD YOU SEE ME?

20 A WHEN, I DON'T KNOW.

21 Q OKAY. ALL RIGHT. DID YOU HEAR MY CAR THAT
22 NIGHT BECAUSE?

23 A YES.

24 Q YOU LIVE IN THE APARTMENT THIRTY --

25 A 34.

CASANDRA JOHNSON

DIRECT

130

1 Q 34. WHAT TIME DID YOU HEAR MY CAR?

2 A AROUND 11.

3 Q OKAY. NO FURTHER QUESTIONS, YOUR HONOR.

4 CROSS EXAMINATION BY MR. MORIN:

5 Q MRS. HOUEY, YOU SAY YOU HEARD HIS CAR OUT THERE
6 AROUND 11?

7 A UH-HUH.

8 Q DID YOU SEE HIM THAT NIGHT?

9 A UH-HUH.

10 Q WHEN DID YOU SEE HIM?

11 A IT WAS AFTER 11. HE WAS STANDING BESIDE HIS
12 CAR.

13 Q OKAY.

14 A AND I SEEN HIM WHEN HE LEFT.

15 Q YOU DIDN'T SEE HIM WHEN HE LEFT?

16 A I SEEN HIM WHEN HE LEFT.

17 Q OKAY. ALL RIGHT. THANK YOU.

18 THE COURT: ANY FURTHER QUESTIONS?

19 MR. LITTLEJOHN: YES, I'M THROUGH.

20 THE COURT: YOU CAN STEP DOWN AND BE
21 EXCUSED. WE APPRECIATE YOUR TIME. CALL YOUR NEXT
22 WITNESS.

23 MR. LITTLEJOHN: MRS. JOHNSON.

24 CASANDRA JOHNSON, BEING FIRST

25 DULY SWORN, TESTIFIED AS FOLLOWS:

1 DIRECT EXAMINATION BY MR. LITTLEJOHN:

2 Q MS. JOHNSON, WHAT APARTMENT DO YOU LIVE IN?

3 A I LIVE IN APARTMENT 33.

4 Q WHERE DID YOU USUALLY PARK YOUR CAR?

5 THE COURT: THIS IS IN REDWOOD NOW?

6 A YES.

7 THE COURT: JUST WANT TO MAKE SURE WE ARE

8 CLEAR.

9 A DIRECTLY IN FRONT OF MY DOOR.

10 Q OKAY. YOU MADE A STATEMENT YOU GOT HOME AT

11 11:15?

12 A YEAH, JUST A LITTLE BIT AFTER 11.

13 Q DID YOU SEE MY CAR IN THE PARKING LOT OR DID YOU
14 PASS ME WHEN LEAVING?

15 A I DON'T RECALL SEEING YOUR CAR. I TOLD THE
16 POLICE OFFICIALS AS WELL AS THE FIRE OFFICIALS, I
17 DON'T RECALL SEEING YOUR CAR. I DON'T REALLY KNOW
18 WHO SET THE FIRE, BUT I DON'T RECALL SEEING YOUR CAR
19 THERE.

20 Q DO YOU REMEMBER HEARING ANY NOISE IN APARTMENT
21 32 THAT NIGHT WHEN YOU GOT HOME?

22 A NO, I CAN'T SAY THAT I HEARD ANYTHING AT
23 APARTMENT 32. WE WAS PREPARING TO GO TO BED AND WENT
24 TO BED AND SLEPT UNTIL I WAS AWAKENED BY MY SMOKE
25 ALARM SO I DON'T KNOW.

1 Q DO YOU RECOLLECT WHAT TIME THAT YOU WENT TO BED
2 THAT NIGHT?

3 A IT WAS SHORTLY AFTER ME AND MY DAUGHTERS COME
4 HOME, SO IF I ENTERED PROBABLY 11:15, WE WERE
5 PROBABLY READY FOR BED 11:30-11:40, SOMEWHERE IN
6 THERE.

7 Q OKAY. ALL RIGHT. SO YOU WENT TO BED ABOUT
8 11:40. YOU DIDN'T HEAR ANYTHING UNTIL WHEN?

9 A APPROXIMATELY TWO A.M. I THINK IT WOULD HAVE
10 BEEN. I HAVE AN ALARM CLOCK AND IT WAS SITTING AT MY
11 HEADBOARD SO PROBABLY ABOUT TWO O'CLOCK WHEN I
12 AWAKENED AND I HAD THE HAND PIECE OF MY CORDLESS
13 PHONE RIGHT NEAR MY BED AND WHEN I AWAKENED BY THE
14 SMOKE ALARM I WENT DOWNSTAIRS TO CHECK AND SEE WHAT
15 WAS GOING ON AND I CAME BACK UPSTAIRS AND SAW THE
16 SMOKE AND I CALLED THE FIRE OFFICIALS, BUT I WOULD
17 SAY IT WAS ABOUT 2 A.M.

18 Q OKAY. WHAT WAS THE FIRST DOOR YOU KNOCKED ON?

19 A I WENT TO MS. CLEMMONS -- WELL, NO. I WENT OVER
20 TO IVEY'S APARTMENT AND I KNOCKED ON THE DOOR AND I
21 ASSUMED NO ONE WAS THERE BECAUSE IT'S LIKE MYSELF,
22 WHEN MY CAR IS THERE I'M THERE AND WHEN IVEY'S CAR IS
23 THERE SHE'S THERE AND I DIDN'T SEE THE CAR, BUT I
24 WANTED TO KNOCK AND MAKE SURE, AND SO I KNOCKED TO
25 MAKE SURE AND I DIDN'T GET A RESPONSE AND THEN I WENT

1 OVER TO MS. CLEMMONS WHO LIVES IN, I DON'T KNOW, THE
2 NEXT APARTMENT, I DON'T REALLY KNOW WHICH ONE THAT
3 WOULD BE.

4 Q WAS THERE A LIGHT ON?

5 A WHO'S LIGHT?

6 Q MS. CLEMMON'S LIGHT?

7 A NO, IT WAS NOT. SHE TURNED THE LIGHT ON WHEN I
8 KNOCKED ON THE DOOR, BUT IT DIDN'T TAKE HER LONG.
9 SHE WAS UP BECAUSE IT DIDN'T TAKE HER LONG TO RESPOND
10 TO ME AND SHE OPENED UP THE WINDOW AND ASKED ME WHAT
11 WAS WRONG AND I TOLD HER THAT THE APARTMENT WAS ON
12 FIRE.

13 Q ALL RIGHT. OKAY. THANK YOU, MS. JOHNSON. NO
14 FURTHER QUESTIONS, YOUR HONOR.

15 CROSS EXAMINATION BY MR. MORIN:

16 Q NOW AT 11, DID YOU SAY 11:15?

17 A I CAN'T GIVE YOU AN EXACT TIME BUT I KNOW IT WAS
18 AFTER 11 O'CLOCK.

19 Q YOU SAY YOU DIDN'T KNOW, I WANT TO MAKE SURE I'M
20 CLEAR. YOU DON'T KNOW IF HIS CAR WAS THERE OR WASN'T
21 OR YOU JUST DIDN'T SEE IT?

22 A I DIDN'T SEE HIS CAR THERE. I DON'T RECALL
23 SEEING ANYONE'S CAR THERE. I PULLED UP AND I USUALLY
24 JUST PAY ATTENTION ENOUGH TO GET ME AND MY DAUGHTERS
25 ON THE INSIDE OF THE HOUSE. IT'S DARK. I DON'T

1 RECALL SEEING HIS CAR THERE.

2 Q BECAUSE CORRECT ME IF I'M WRONG, WHEN YOU PULL
3 IN AND YOU GOT THOSE PARKING SPACES ON BOTH SIDES AND
4 YOU LOOKED FOR ONE THAT'S CLOSE IN FRONT OF YOUR
5 DOOR?

6 A RIGHT IN FRONT OF MY DOOR. I PULLED DIRECTLY IN
7 FRONT OF MY DOOR THAT NIGHT.

8 Q AND THAT'S WHAT YOU REMEMBER DOING?

9 A YES.

10 Q HOW OLD ARE YOUR DAUGHTERS?

11 A 15 AND 12.

12 Q OKAY. Y'ALL GOT OUT AND WENT STRAIGHT INTO THE
13 HOUSE?

14 A UH-HUH.

15 Q WHAT HAD Y'ALL BEEN DOING THAT DAY?

16 A WE WENT OVER TO MY AUNT'S HOUSE. WE HAD A
17 LITTLE GATHERING FOR THE FOURTH OF JULY. WE JUST
18 WENT OVER THERE, WE WERE JUST SITTING AROUND, JUST
19 TALKING. NO ALCOHOL OR ANYTHING INVOLVED. I DON'T
20 DRINK, SO MY MEMORY WOULD HAVE BEEN WELL. I KNOW
21 EXACTLY WHAT HAPPENED.

22 Q NO, I WAS GOING TO SAY AND I DON'T KNOW IF THIS
23 IS TRUE FOR YOU, BUT NORMALLY WHEN YOU COME BACK FROM
24 A PLACE LIKE THAT WITH YOUR CHILDREN, THEY ARE KIND
25 OF EXCITED?

1 A RIGHT.

2 Q AND YOU ARE THINKING ABOUT TAKING CARE OF THEM
3 AND WHAT THEY GOT TO TAKE CARE OF BEFORE THEY GO TO
4 BED?

5 A RIGHT.

6 Q IS THAT A FAIR STATEMENT OF THAT NIGHT?

7 A WHEN WE CAME HOME WE WERE TIRED AND NO ONE HAD
8 TO GO ANYWHERE THE NEXT MORNING, WE DIDN'T HAVE
9 SCHOOL, I DIDN'T HAVE TO GO TO WORK, SO, NO, THE ONLY
10 THING WE WERE REALLY THINKING ABOUT WAS RETIRING FOR
11 THE EVENING SO WE JUST WENT TO BED.

12 Q OKAY. THAT'S ALL QUESTIONS I HAVE, YOUR HONOR.

13 THE COURT: YOU CAN STEP DOWN. WE
14 APPRECIATE YOUR TIME. THANK YOU. CALL YOUR NEXT
15 WITNESS.

16 MR. LITTLEJOHN: DETECTIVE CLARY.

17 MR. MORIN: APPROACH ON THIS.

18 (BENCH CONFERENCE.)

19 THE COURT: IF YOU'LL COME UP AND BE
20 SWORN.

21 DAVID CLARY, BEING FIRST DULY SWORN,
22 TESTIFIED AS FOLLOWS:

23 DIRECT EXAMINATION BY MR. LITTLEJOHN:

24 Q HOW DO YOU CONDUCT YOUR INTERVIEWS, DETECTIVE
25 CLARY? HOW DO YOU CONDUCT AN INTERVIEW WHENEVER YOU

DAVID CLARY

DIRECT

136

1 INTERVIEW SOMEBODY?

2 A I GUESS THAT WOULD DEPEND ON WHAT TYPE OF
3 INTERVIEW YOU ARE TALKING ABOUT.

4 Q WELL, THE WITNESS INTERVIEW FORM, YOU
5 INTERVIEWING A WITNESS, HOW WOULD YOU GO ABOUT
6 INTERVIEWING THEM?

7 A I GENERALLY, GENERALLY TALK TO SOMEONE AND THEN
8 ONCE I TALK TO THEM I RECORD WHAT THEY'VE SAID ON THE
9 WITNESS INTERVIEW FORM.

10 Q IS IT GENERALLY JUST, WHEN THEY WRITE THAT
11 STATEMENT, IS IT JUST MAKE A STATEMENT AT THE TOP
12 LIKE YOU MADE HERE, YOU SAID, STATEMENT TAKEN IN
13 PARKING LOT. YOU USUALLY MAKE STATEMENTS IN THE
14 PARKING LOT? I MEAN YOU USUALLY CONDUCT STATEMENT,
15 GATHERING STATEMENTS, YOU TOOK THEM IN THE PARKING
16 LOT? I MEAN, AROUND A LOT OF POTENTIAL WITNESSES?

17 A I DON'T.

18 THE COURT: REPHRASE THE QUESTION. I'M
19 NOT SURE.

20 Q OKAY. DO YOU GENERALLY INTERVIEW PEOPLE AROUND
21 A LOT OF OTHER PEOPLE?

22 A NO, SIR.

23 Q SO THIS WAS AN EXCEPTION?

24 A I DON'T UNDERSTAND WHAT YOU MEAN BY THIS WAS AN
25 EXCEPTION?

1 Q BECAUSE YOU STATED, I'M ASKING YOU, YOU MADE A
2 STATEMENT, YOU SAID THAT THESE STATEMENTS WERE TAKEN
3 IN THE PARKING LOT?

4 MR. MORIN: YOUR HONOR, IF HE WANTS TO ASK
5 HIM A QUESTION ABOUT SOMETHING HE'S WRITTEN, I'D ASK
6 HE GIVE THE WITNESS AN OPPORTUNITY TO LOOK AT IT.

7 THE COURT: LET HIM SEE WHAT YOU ARE
8 TALKING ABOUT.

9 Q THESE STATEMENTS HERE, AT THE TOP YOU SAID THEY
10 WERE TAKEN IN THE PARKING LOT, AND THAT THAT WAS THE
11 ONLY PEOPLE PRESENT?

12 A THIS WAS A PHOTOCOPY OF THE WITNESS INTERVIEW
13 STATEMENT THAT I TOOK AND AT THE TOP THERE IS A
14 PORTION WHERE I WROTE WHERE I WAS AT AND WHO WAS
15 AROUND WHEN THIS STATEMENT WAS TAKEN.

16 Q OKAY. SO WHEN YOU TAKE A STATEMENT, SAY FOR
17 INSTANCE MRS. CLEMMONS, YOU STAY WITH THAT POTENTIAL
18 WITNESS THE WHOLE TIME THAT YOU CONDUCTED THE
19 INTERVIEW?

20 A YES, SIR, THAT'S CORRECT.

21 Q OKAY. SO FROM 10:45 TO 11:30 IT WAS JUST YOU
22 AND HER DAUGHTER BEING INTERVIEWED, RIGHT?

23 A THAT'S CORRECT.

24 Q OKAY. ALL RIGHT. SHEMEKA WATKINS, TAKE A LOOK
25 AT THAT ONE. YOU STARTED INTERVIEWING HER AT 11

DAVID CLARY

DIRECT

138

1 O'CLOCK. YOU INTERVIEWED HER AT 11 AND YOU ALREADY
2 WERE INTERVIEWING MRS. MINE'S AND HER DAUGHTER AT
3 10:45?

4 A YES, SIR.

5 Q WELL, WOULDN'T YOU INCLUDE HER IN THE STATEMENT
6 AT THE TOP THAT SHE WAS ALSO PRESENT?

7 A NO, SIR, I WOULD NOT.

8 Q YOU JUST STATED THAT IF YOU TAKE A STATEMENT
9 FROM A WITNESS, THEY ARE JUST THE ONLY ONE PRESENT,
10 YOU WOULD HAVE TO PUT POTENTIAL WITNESSES AT THE
11 BOTTOM, RIGHT?

12 A NO, SIR. I DON'T THINK I WOULD HAVE TO PUT
13 ANYONE AS A POTENTIAL WITNESS AT ANY TIME. IF YOU
14 WANT ME TO EXPLAIN WHY THIS IS THE WAY THAT IT IS,
15 KIND OF WHERE YOU ARE GOING WITH THIS, I'LL BE HAPPY
16 TO EXPLAIN IT.

17 Q YEAH?

18 A THERE WERE MANY POTENTIAL WITNESSES OUT THERE
19 THAT DAY AND INSTEAD OF ME TAKING THE TIME FOR EACH
20 INDIVIDUAL PERSON TO GO TO AND SPENDING 8 OR 10 HOURS
21 INTERVIEWING EACH ONE INDIVIDUALLY, I TALKED TO THIS
22 ONE, THIS GROUP, INTERVIEWED THEM, AND THEN HANDED
23 THEM THOSE PAPERS AND THEY STARTED WRITING ON THEM.
24 THEN I WENT TO THIS GROUP AND STARTED INTERVIEWING
25 THEM, THEN I WENT TO THIS GROUP AND INTERVIEWED THEM.

1 THEN I WENT TO THIS GROUP AND EACH ONE WROTE. THAT'S
2 WHY THE TIMES ARE THE SAME.

3 Q THAT'S WHY THE TIMES ARE INTERLAPPING?

4 A THAT'S WHY THE TIMES ARE INTERLAPPING.

5 Q BUT IT'S GOT ON THE BOTTOM THAT THEY WERE
6 WRITTEN IN FRONT OF YOU, SO THEY COULD HAVE
7 COLLABORATED THEIR STORIES WHILE YOU WERE WITH ONE
8 PARTICULAR OTHER GROUP, RIGHT?

9 A I DON'T KNOW WHAT THEY COULD HAVE DONE. YOU
10 WOULD HAVE TO ASK EACH ONE OF THEM WHAT THEY COULD
11 HAVE DONE, BUT WHILE THEY WERE TALKED TO THEY WERE
12 EACH INDIVIDUALLY IN DIFFERENT GROUPS AND IN
13 DIFFERENT AREAS.

14 Q WELL, YOU'VE GOT DOWN HERE AT THE BOTTOM THAT,
15 AND AT THE TOP, THAT PRESENT ONLY STATEMENTS ARE
16 PRESENTED BY DAVID CLARY, CHERYL DAVIS, BRENDA GOOD
17 ONLY. STATEMENTS WRITTEN BY CHERYL. AND HOW MANY
18 PEOPLE WERE YOU SAYING WERE IN A POTENTIAL GROUP?

19 A HOW MANY PEOPLE WERE WHAT?

20 Q IN A POTENTIAL GROUP. YOU SAID THEY WERE
21 GROUPED UP. HOW MANY GROUPS WERE THERE?

22 A YOU WOULD HAVE TO READ WHAT'S ON THE TOP OF THE
23 STATEMENT WITNESS FORM.

24 Q YEAH. THAT'S WHAT I'M LOOKING AT NOW, AT
25 DIFFERENT GROUPS, IT'S SAYING, BASICALLY THESE GROUPS

DAVID CLARY

DIRECT

140

1 GOT TOGETHER AND BASICALLY COME UP WITH THE SAME
2 THING?

3 MR. MORIN: OBJECTION, HE'S TESTIFYING
4 NOW.

5 THE COURT: WELL, HE CAN ASK HIM THAT. IF
6 HE KNOWS THAT THEY DID THAT HE CAN ANSWER YES. IF HE
7 DOESN'T KNOW HE CAN SAY HE DOESN'T KNOW OR NO. SO I
8 THINK THE QUESTION WAS HE CAME UP WITH A STORY.

9 Q YEAH.

10 THE COURT: IF HE KNOWS THAT HE CAN SAY
11 IT. IF HE DOESN'T HE CAN SAY THAT.

12 A I DON'T HAVE A CLUE IF THOSE PEOPLE CAME
13 TOGETHER AND CAME UP WITH A STATEMENT. NO, SIR, I
14 DON'T HAVE A CLUE.

15 Q DIDN'T IT STRIKE YOU AS ODD THEY COME UP WITH A
16 LOT OF DIFFERENT TIMES OF ME KEEP COMING BACK AND
17 FORTH BETWEEN THE CRIME SCENE AND SHOWING UP IN FRONT
18 OF THE BUILDING, BUT NOBODY SAW A GAS CAN OR BURGLARY
19 TOOLS IN MY HAND?

20 A NO, SIR, IT DIDN'T.

21 Q ALL RIGHT. IT DIDN'T STRIKE YOU AS ODD THE
22 DIFFERENT TIMES THEY SAID THEY SAW ME?

23 A NO, SIR.

24 Q WHY?

25 A WHY DIDN'T IT STRIKE ME AS ODD?

1 Q YEAH.

2 A I DON'T KNOW IF I CAN REALLY ANSWER THAT BESIDES
3 JUST THE FACT THAT I DON'T HAVE A CLUE WHAT TIME IT
4 IS RIGHT NOW, SO IF YOU ASK ME WHAT TIME IT WAS, I
5 WOULDN'T KNOW.

6 Q ALL RIGHT. MRS. CHERYL DAVIS STATED THAT I WAS
7 5'6" AND THAT SHE THINKS I'M THE BOYFRIEND. AND THEN
8 AT THE BOTTOM OF HER STATEMENT, TAKE A LOOK AT THAT?

9 A SURE.

10 Q YOU SEE WHERE I'VE GOT IT HIGHLIGHTED?

11 A YES, SIR. I SEE A LOT OF HIGHLIGHTING, YES,
12 SIR.

13 Q OKAY. IT'S STATED, YOU WRITTEN AT THE TOP, THAT
14 STATEMENT WAS WRITTEN BY MRS. CHERYL, ALL RIGHT.
15 THOSE LOOK LIKE TWO DIFFERENT HANDWRITINGS THERE AND
16 THERE. SHE MISSPELLED THE NAME IVEY TWICE?

17 THE COURT: ARE YOU ASKING A QUESTION.

18 MR. LITTLEJOHN: YEAH, I'M ASKING A
19 QUESTION.

20 THE COURT: DID SHE MISSPELL IVEY TWICE?

21 Q DID YOU NOTICE THAT SHE MISSPELLED MY WIFE'S
22 NAME TWICE AND THEN GOT IT RIGHT AT THE BOTTOM WHERE
23 IT IS DIFFERENT HANDWRITING OR IT LOOKS LIKE A
24 DIFFERENT HANDWRITING?

25 A (NO RESPONSE.)

DAVID CLARY

DIRECT

142

1 Q I ASSUME YOU LEFT THEM WITH --

2 A OKAY. WAIT A MINUTE. HANG ON. LET ME ANSWER
3 THE FIRST ONE.

4 THE COURT: LET HIM ANSWER THE FIRST ONE.

5 A IVEY OR IVORY IS WRITTEN ON THIS PHOTOCOPY OF A
6 STATEMENT FORM THREE TIMES IT LOOKS LIKE. TWO TIMES
7 IT'S SPELLED ONE WAY AND THE THIRD TIME IT IS SPELLED
8 A DIFFERENT WAY. WHETHER OR NOT IT'S TWO DIFFERENT
9 HANDWRITINGS, NO, SIR, I CAN'T ANSWER THAT. YOU
10 WOULD HAVE TO ASK HER THAT.

11 Q OKAY.

12 A NOW THEN YOU ARE ABOUT TO GO TO PART THREE.

13 Q YEAH. YOU WASN'T PRESENT WHENEVER SHE WROTE THE
14 FINISHED STUFF, THE LAST PART, BECAUSE YOU STARTED
15 WITH MRS. LITTLEJOHN AT TEN?

16 A NO, SIR, I WAS PRESENT THROUGH ALL THE
17 STATEMENTS. I THOUGHT I EXPLAINED THAT. THEY WERE
18 IN DIFFERENT AREAS.

19 Q YEAH, OKAY. WELL, SHE GOT THROUGH AT 10:15?

20 A OKAY.

21 Q OKAY. IT'S SMALLER WRITING AT THE TOP, DOES
22 THAT LOOK THE SAME WRITING TO YOU?

23 A ALTHOUGH I'D LIKE TO BE A HANDWRITING EXPERT,
24 I'M NOT A HANDWRITING EXPERT, BUT SO I CAN'T ANSWER
25 THAT.

1 Q OKAY. ALL RIGHT. BUT DOESN'T THAT KIND OF
2 STRIKE YOU AS KIND OF ODD?

3 A NO, SIR. I WAS THERE WHILE THEY WROTE IT. I
4 WALKED FROM DIFFERENT AREAS TO DIFFERENT AREAS.

5 Q YOU WALKED FROM DIFFERENT AREAS TO DIFFERENT
6 AREAS AND IT SAYS, SO ACTUALITY IT SAYS THAT YOU
7 WALKED DIFFERENT AREAS, IT SAYS THAT THIS STATEMENT
8 WAS, I SEE WHAT HE'S TALKING ABOUT. HE HAD ONE
9 APARTMENT GROUP IN FRONT OF 23 AND HE HAD A GROUP
10 TOGETHER, IT'S THREE PEOPLE, AND THEN YOU HAD ANOTHER
11 GROUP THAT WAS IN FRONT OF APARTMENT 24, SO WHICH
12 GROUP DID YOU SPEND A LONG TIME, THE LONGEST TIME ON?

13 A I DON'T KNOW.

14 Q DO YOU REMEMBER HOW THEY WERE PAIRED UP? HOW
15 YOU HAD THEM PAIRED UP?

16 A NO, SIR.

17 Q OKAY. WELL, ON HERE YOU HAD ON THE TOP THAT
18 THESE WERE THE ONLY PEOPLE PRESENT THAT WAS WRITING
19 THE STATEMENT, SO IF YOU HAD THEM PAIRED UP THAT
20 MEANT SHE WASN'T BY HERSELF?

21 THE COURT: SHE WHO?

22 Q IVEY?

23 A YOU'LL HAVE TO LET ME LOOK AT IT. NO, SIR, IVEY
24 WOULD HAVE BEEN BY HERSELF BECAUSE I WROTE THAT THE
25 ONLY PEOPLE THAT WERE AROUND IVEY WERE ME AND HER.

DAVID CLARY

DIRECT

144

1 Q OKAY. ALL RIGHT. I HAVE NO FURTHER QUESTIONS.
2 YES, I DO. I GOT TWO MORE QUESTIONS. I WANT TO ASK
3 YOU WHY WASN'T A STATEMENT TAKEN OR WRITTEN FROM ME?

4 A WHY?

5 Q WHY DIDN'T YOU WRITE A STATEMENT THEN WHEN I
6 TALKED TO YOU THE DAY OF JULY 23?

7 A BECAUSE YOU DIDN'T WANT TO GIVE A STATEMENT.

8 Q I SIGNED AWAY MY MIRANDA RIGHTS. I TALKED TO
9 YOU FOR AN HOUR AND FIVE MINUTES?

10 A I DON'T REMEMBER.

11 Q OKAY.

12 A YOU DIDN'T WANT TO GIVE A WRITTEN STATEMENT AS
13 BEST I CAN RECALL.

14 Q I TALKED TO YOU FOR AN HOUR AND FIVE MINUTES AND
15 SIGNED AWAY MY MIRANDA RIGHTS IS BASICALLY TALKING TO
16 YOU, RIGHT? YOU AND THE AGENT?

17 A OKAY.

18 Q WAS THERE, DID YOU CHECK AND SEE WHETHER OR NOT
19 I HAD AN ISSUE OF, NOTICE OF TRESPASS ON ME, ORDER OF
20 PROTECTION?

21 MR. MORIN: OBJECTION TO RELEVANCE, YOUR
22 HONOR.

23 THE COURT: I'LL ALLOW THE QUESTION.

24 A DID I CHECK TO SEE WHETHER OR NOT YOU HAD A
25 HISTORY OF TRESPASS?

1 Q YEAH, TRESPASSING OVER SOMEWHERE OR ORDER OF
2 PROTECTION AGAINST ME OR ANY CDV CHARGE AGAINST ME
3 AND MY WIFE?

4 A I RAN YOUR CRIMINAL HISTORY, I'M NOT EXACTLY
5 SURE WHETHER OR NOT I SHOULD ANSWER THAT.

6 THE COURT: JUST SAY YOU CHECKED HIS
7 HISTORY, THAT'S ENOUGH.

8 A I DID CHECK YOUR CRIMINAL HISTORY, YES, SIR.

9 Q DIDN'T IT STRIKE YOU AS ODD WHEN SHE TOLD YOU
10 THAT WE WASN'T TOGETHER IN DECEMBER, THAT YOU KNOW
11 SHE NEVER MENTIONED TO YOU AT ALL THAT I LIVED THERE?

12 A DID IT STRIKE ME AS ODD WHEN SHE SAID -- I DON'T
13 KNOW IF I UNDERSTAND THAT.

14 Q I MEAN, SHE STATED, WE HAVE BEEN ON THE OUTS
15 SINCE DECEMBER. THE DAY OF THE FOURTH OF JULY HE WAS
16 ACTING STRANGE, FUSSY, TALKING LOUD. NOW YOU SAID
17 THERE WAS A LOT POTENTIAL WITNESSES THAT DAY WHICH
18 YOU CAN'T GET ALL THE STATEMENTS AND YOU
19 SYSTEMATICALLY SAID YOU WENT FROM DOOR TO DOOR.
20 MS. HOUHEY LIVES IN APARTMENT 34, YOU DIDN'T TAKE HER
21 STATEMENT. SHE SAID SHE SAW ME THAT DAY. YOU DIDN'T
22 TAKE HER STATEMENT. ALSO YOU DIDN'T TAKE MY --

23 THE COURT: YOU NEED TO ASK QUESTIONS.
24 YOU ARE JUST TELLING US.

25 Q OKAY. WHY YOU DIDN'T TAKE HER STATEMENT? WHY

DAVID CLARY

DIRECT

146

1 DIDN'T YOU TAKE MS. HOUEY'S STATEMENT?

2 A I DON'T KNOW IF I CAN ANSWER WHY I DIDN'T TAKE
3 SOMEONE'S STATEMENT. CHANCES ARE BACK THEN I KNOCKED
4 ON DOORS AND IF SOMEBODY DIDN'T COME TO THE DOOR,
5 THEN I CAN'T FORCE THEM TO COME TO THE DOOR.

6 Q OKAY. BASICALLY DID MRS. LITTLEJOHN TELL YOU
7 THAT I NEVER LIVED THERE?

8 MR. MORIN: OBJECTION, CALLS FOR HEARSAY.

9 THE COURT: I SUSTAIN THE OBJECTION. HE
10 DOESN'T HAVE TO ANSWER THAT QUESTION. GO ON TO THE
11 NEXT QUESTION.

12 Q ALL RIGHT. WHAT TIME DID YOU GET TO THE SCENE
13 OF THE CRIME THAT NIGHT?

14 A I REALLY DON'T REMEMBER WHAT TIME I GOT THERE.
15 I GOT THERE AFTER 911 CALLED ME AND TOLD ME TO COME.

16 Q WHY DIDN'T YOU INTERVIEW APARTMENT 33? SHE
17 CALLED 911.

18 A I DON'T ---

19 Q MRS. JOHNSON, SHE ALERTED THE AUTHORITIES, WHY
20 DIDN'T YOU INTERVIEW HER?

21 A I DON'T KNOW. THERE WERE A WHOLE LOT OF PEOPLE
22 THERE AND I WAS ASSIGNING PEOPLE TO DO THINGS AND.

23 Q SHE LIVES NEXT DOOR?

24 A OKAY.

25 Q I'M ASKING YOU, DOES SHE LIVE NEXT DOOR?

1 A I DON'T KNOW.

2 Q APARTMENT 33.

3 A THE HOUSE FIRE WAS AT APARTMENT 32.

4 Q YEAH.

5 A OKAY.

6 Q MRS. JOHNSON WAS IN APARTMENT 33?

7 A MY ASSUMPTION WOULD BE, YES, THAT IS THE NEXT

8 DOOR.

9 Q YOU INTERVIEWED A WOMAN IN APARTMENT 31, RIGHT?

10 A OKAY.

11 Q BUT NOT 33?

12 A EITHER SOMEONE DIDN'T ANSWER THE DOOR, WAS NOT

13 THERE, OR I DON'T KNOW. I CAN'T ANSWER THAT.

14 Q ALL RIGHT. NO FURTHER QUESTIONS FOR HIM.

15 CROSS EXAMINATION BY MR. MORIN:

16 Q DETECTIVE CLARY, ARE YOU A NOTARY?

17 A SIR?

18 Q ARE YOU A NOTARY?

19 A I AM.

20 Q I'M GOING TO SHOW YOU ONE OF THE STATEMENTS

21 THAT'S BEEN ASKED ABOUT. NOW THIS IS A STANDARD

22 VOLUNTARY STATEMENT WITNESS FORM, IS THAT CORRECT?

23 A IT IS A GAFFNEY POLICE DEPARTMENT, RIGHT.

24 Q AND IN THIS CASE THE WITNESSES THAT YOU TOOK,

25 THEY WROTE THEIR OWN STATEMENTS, IS THAT CORRECT?

1 A THAT IS CORRECT.

2 Q ALL RIGHT. AND DOWN HERE AT THE BOTTOM OF EACH
3 ONE OF THESE STATEMENTS DOES IT NOT SAY OR CAN YOU
4 TELL ME WHAT IT SAYS REGARDING THAT PART?

5 A SWORN TO AND SUBSCRIBED BEFORE ME IS.

6 Q THEN THE SENTENCE ABOVE THAT?

7 A THE --

8 Q WELL, YEAH, THAT?

9 A I'VE READ THIS STATEMENT CONSISTING OF ONE-PAGE
10 AND I SWEAR OR AFFIRM THAT THE FACTS CONTAINED
11 THEREIN ARE TRUE AND CORRECT. I FURTHER STATE THAT I
12 RECEIVED A COPY OF THIS STATEMENT.

13 Q NOW THE PEOPLE THAT YOU GOT STATEMENTS FROM,
14 THEY WROTE THEIR OWN STATEMENTS, IS THAT CORRECT?

15 A THAT'S CORRECT.

16 Q AND THEY SIGNED THESE STATEMENTS IN YOUR
17 PRESENCE, IS THAT CORRECT?

18 A THAT'S CORRECT.

19 Q AND THEY SWORE AT THAT TIME THAT THEY WERE TRUE
20 AND CORRECT, IS THAT RIGHT?

21 A THAT'S CORRECT.

22 Q THAT'S ALL THE QUESTIONS I HAVE, YOUR HONOR.

23 THE COURT: MR. LITTLEJOHN, ANYTHING ELSE?

24 MR. LITTLEJOHN: YES.

25 REDIRECT EXAMINATION BY MR. LITTLEJOHN:

1 Q THEY SIGNED THEM BEFORE YOU, YOU SAID, BEFORE
2 YOU, BEFORE YOU?

3 A YES, SIGNED IT IN MY PRESENCE.

4 Q OKAY. THAT MEANT YOU WOULD HAVE HAD TO PUT AT
5 THE TOP ON THAT FORM JUST LIKE YOU JUST SAID THAT
6 THEY WERE PRESENT ALSO, IN THAT LITTLE COLLECTIVE
7 GROUP THAT YOU SAID THAT YOU WERE INTERVIEWING,
8 THAT'S THE PURPOSE AND THE REASON WHY YOU PUT IT AT
9 THE TOP, RIGHT, SO THERE WOULD BE NO QUESTION WHO WAS
10 BEING INTERVIEWED AND WHO WAS AROUND?

11 A THAT'S WHY I WRITE THAT AT THE TOP.

12 Q OKAY. ALL RIGHT. SO IF YOU SWORE TO THOSE
13 PEOPLE AT THE TOP, WHY DIDN'T YOU MAKE A NOTE AND
14 SAID THAT THEY WERE ALL IN A LINE? YOU SAID THAT
15 THEY SWORE IT TO YOU IN FRONT OF YOU?

16 A THEY SWEAR TO THE STATEMENT IN FRONT OF ME.

17 Q OKAY. BUT THEY WERE ONLY IN A LITTLE
18 COLLECTIVE GROUPS FINISHING UP THE STORIES?

19 A NO, SIR. WHEN THEY SIGNED IT, THEY SIGNED IT IN
20 FRONT OF ME.

21 Q OKAY. NOW SO THAT MEANT THEY DIDN'T DO THE
22 STORIES IN FRONT OF YOU?

23 A THAT DOESN'T MEAN ANYTHING. IT MEANS THAT WHEN
24 THEY SIGNED IT THEY SIGNED IT IN FRONT OF ME.

25 Q SO YOU'VE, WHEN THEY SIGNED IT YOU TIMED IT

SUSAN CLEMMONS

DIRECT

150

1 WHENEVER THEY GOT THROUGH?

2 A I WROTE DOWN WHAT TIME THEY STARTED TALKING AND
3 WHAT TIME THEY FINISHED. WHAT TIME THEY STARTED
4 THEIR STATEMENT AND WHAT TIME THEY FINISHED IT.

5 Q OKAY. THANK YOU.

6 A THEN THEY SWORE TO IT.

7 Q ALL RIGHT.

8 MR. MORIN: NOTHING FURTHER.

9 THE COURT: YOU CAN STEP DOWN. THANK YOU.
10 WE APPRECIATE YOUR TIME. I NOTICE SOME INDIVIDUALS
11 COMING IN. MRS. CLEMMONS, YOU READY FOR HER.

12 MR. LITTLEJOHN: YEAH.

13 THE COURT: COME FORWARD PLEASE, MA'AM.

14 SUSAN CLEMMONS, BEING FIRST DULY

15 SWORN WAS EXAMINED AND TESTIFIED AS FOLLOWS:

16 DIRECT EXAMINATION BY MR. LITTLEJOHN:

17 Q MRS. CLEMMONS, ON THE DAY OF THE FOURTH, THAT
18 MORNING, DO YOU REMEMBER ME DROPPING IVEY OFF?

19 A REMEMBER YOU DROPPING IVEY OFF, NO.

20 Q YOU DIDN'T HEAR MY CAR?

21 A I HEARD YOUR CAR ABOUT 11:30 THAT NIGHT.

22 Q OKAY. DO YOU REMEMBER WHAT TIME THAT YOU SAID
23 YOU HEARD THE NOISE IN THE BACKYARD?

24 A MAYBE 11:15 OR 10 AFTER 11. MY DAUGHTER AND I
25 LOOKED, WELL, HER BACKYARD BORDERS MY DAUGHTER'S SIDE

1 OF THE BEDROOM, AND MY DAUGHTER SAID, "MOMMA,
2 SOMEBODY OUT THERE," SO I WENT OUT THERE TO LOOK,
3 NOBODY WAS THERE.

4 Q OKAY. SO YOU SAW NO ONE. WHAT KIND OF NOISE
5 DID HEAR?

6 A WHEN?

7 Q IN THE BACKYARD, WHAT KIND OF NOISE?

8 A WELL, MY BEDROOM IS ON THE OTHER SIDE, SO I JUST
9 LOOKED OUT.

10 Q OKAY. YOU STATED YOU HEARD A NOISE, WHAT KIND
11 OF NOISE?

12 A I HEARD A NOISE IN THE APARTMENT WHERE I SAW
13 YOUR CAR PARKED THERE AND I DIDN'T SEE YOU IN THE
14 BUILDING BUT I HEARD YOUR VOICE ON THE PHONE
15 SCREAMING AND HOLLERING AND CURSING, AND LATER ON YOU
16 STARTED DRAGGING STUFF AROUND AS IF YOU WERE THERE
17 TRYING TO GET SOME CLOTHES OUT OF A DRAWER OR
18 WHATEVER AND LEAVE BUT INSTEAD YOU STAYED. AND LIKE
19 I SAID, YOU GOT ON THE PHONE, YOU STARTED CURSING AND
20 HOLLERING AND CALLED SOMEBODY AND ASKED WHERE IVEY
21 WAS AND THEN AFTER AWHILE THE ALARM WENT OFF AND MY
22 DAUGHTER AND I HAD JUST LAID DOWN AND WE HEARD, WE
23 HEARD YOU. WE DIDN'T SEE YOU, BUT WE HEARD YOU.

24 Q YOU STATED A PERSON LEFT.

25 A YES, A LADY OR SOMEBODY WAS DRIVING YOUR CAR AND

1 THEY LEFT YOU THERE, PILING UP THAT FURNITURE AND
2 STUFF IN THAT HOUSE.

3 Q ALL RIGHT. WAS THE FURNITURE IN THE BEDROOM
4 THAT YOU HEARD MOVING?

5 A I DON'T KNOW WHERE IT WAS. IT WAS UPSTAIRS SO
6 APPARENTLY IT IS THE BEDROOM BECAUSE OUR BEDROOMS ARE
7 FRONT TO THE BEDROOMS IN HER APARTMENT..

8 Q OKAY. WAS IT BY THE WALL?

9 A IT WAS IN THE APARTMENT AND ONE WAS BY THE WALL.
10 MY DAUGHTER'S ROOM, WE THOUGHT YOU WERE GOING TO
11 THROW THE DRESSER THROUGH THE WALL THROUGH THE NEXT
12 ROOM.

13 Q I'D LIKE TO PUT IN EXHIBIT NUMBER SEVEN, THIS IS
14 THE DRESSER?

15 MR. MORIN: OBJECTION.

16 A I DON'T KNOW. I NEVER BEEN IN THERE. I DON'T
17 KNOW.

18 THE COURT: I SUSTAIN THE OBJECTION.

19 Q THIS IS THE DRESSER IN QUESTION.

20 THE COURT: WHOEVER TOOK THAT PICTURE,
21 WE'VE GONE DOWN THAT ROAD BEFORE. SHE DIDN'T TAKE
22 THE PICTURE SO SHE CAN'T.

23 Q NO. IN THE PICTURE THAT'S IN QUESTION?

24 THE COURT: NO, YOU CAN'T GO OVER PICTURE.

25 A I HAVE NEVER BEEN UPSTAIRS IN THE HOUSE, SO I

1 DON'T KNOW.

2 MR. LITTLEJOHN: I'M NOT GOING TO ASK HER
3 ABOUT IT BUT.

4 THE COURT: WELL, SOMEBODY ELSE WILL HAVE
5 TO, YOU CAN'T PUT THE PICTURE IN THROUGH HER BECAUSE
6 SHE DOESN'T KNOW IF IT WAS A DRESSER IN MY HOUSE,
7 YOUR HOUSE, MR. MORIN'S HOUSE.

8 MR. LITTLEJOHN: IT'S IN EVIDENCE. I WANT
9 TO SHOW THE JURY.

10 THE COURT: IS THAT ONE ALREADY IN
11 EVIDENCE?

12 MR. MORIN: I DON'T BELIEVE SO.

13 THE COURT: IF IT'S IN EVIDENCE YOU CAN
14 SHOW IT TO HER.

15 MR. MORIN: LET'S CHECK.

16 THE COURT: IF IT'S IN EVIDENCE YOU CAN
17 CERTAINLY SHOW IT TO HER AND ASK HER ABOUT IT. IT
18 APPEARS THEY ARE NOT IN EVIDENCE.

19 MR. LITTLEJOHN: THAT'S WHAT SHE JUST SAID
20 THEY ARE NOT EVIDENCE.

21 THE COURT: YOU CAN'T ASK HER ABOUT IT
22 THEN.

23 MR. LITTLEJOHN: OKAY.

24 THE COURT: YOU CAN ASK HER IF SHE TOOK
25 THEM BUT I THINK WE ALL KNOW THE ANSWER TO THAT. AND

SUSAN CLEMMONS

DIRECT

154

1 SHE ALREADY SAID SHE HAD NEVER BEEN IN THAT ROOM. IF
2 YOU WISH YOU CAN ASK HER IF SHE TOOK THE PICTURES.

3 Q YOU STATED THAT YOU HEARD A LOUD NOISE UPSTAIRS,
4 MOVING FURNITURE AROUND, RIGHT?

5 A YEAH.

6 Q OKAY. ALL RIGHT. HOW CLOSE ARE YOU AND IVEY?

7 A WHAT?

8 Q HOW CLOSE ARE YOU? ARE YOU FRIENDS, GOOD
9 FRIENDS?

10 A I DON'T KNOW. I AIN'T SEEN YOU.

11 THE COURT: I THINK HE SAID, DID YOU SAY
12 YOU AND IVEY OR YOU AND IVEY.

13 Q HER AND IVEY?

14 THE COURT: HE SAID IVEY, NOT HIM.

15 A OH, IVEY. WELL, IVEY STAYED TO HERSELF A LOT.
16 SHE DIDN'T REALLY, SHE SPOKE TO HER NEIGHBORS AND
17 WENT IN THE HOUSE AND THAT WAS, SHE WAS IN THE HOUSE.
18 THAT WAS IT. YOU DIDN'T SEE IVEY ANY MORE UNLESS SHE
19 WAS GOING TO THE GROCERY STORE.

20 Q YOU MADE A STATEMENT THAT I THINK SOMEBODY
21 PICKED HIM UP. WHICH WINDOW DID YOU LOOK OUT AND SAW
22 MY CAR?

23 A MY BEDROOM WINDOW WHICH WAS ON THE SAME SIDE AS
24 YOU GO IN THE DOOR TO IVEY'S APARTMENT.

25 Q DID YOU SEE ME GET INTO THE CAR?

1 A NO, I DIDN'T SEE YOU GET INTO THE CAR. AS I'VE
2 ALREADY TOLD YOU, SOMEBODY LEFT YOU THERE.

3 Q OKAY. ALL RIGHT. YOU STATED THAT IVEY HUSBAND
4 CAME OVER AT 11:30, OKAY. IF I CAME OVER AT 11:30
5 WHO WAS THERE AT 20 MINUTES AFTER 11?

6 A YOU WERE.

7 MR. MORIN: OBJECTION.

8 THE COURT: I OVERRULE THE OBJECTION.

9 MR. MORIN: OKAY.

10 A LIKE I SAID SAID BETWEEN 11 AND 11:15, SO THAT'S
11 5 AFTER 10, 20 AFTER, 13, 14, 15 AFTER.

12 Q YOU STATED ALSO THAT YOU WERE SCARED. WHY DID
13 YOU WAIT TWO HOURS AND 20 MINUTES TO DO NOTHING?

14 A WHAT DO YOU MEAN DO NOTHING? BY THE TIME I WENT
15 TO THE PHONE MY PHONE LINE WAS BURNED, MELTED. I
16 COULDN'T GET TO THE PHONE. LIKE I SAID, I JUST LAID
17 DOWN TO GO TO SLEEP AND ALL THIS STUFF HAPPENED ALL
18 OF A SUDDEN, AND I DON'T KNOW WHAT YOU MEAN TWO HOURS
19 TO DO NOTHING.

20 Q WE HEARD TESTIMONY EARLIER TODAY THAT THE FIRE
21 WAS --

22 MR. MORIN: OBJECTION.

23 THE COURT: YOU CAN'T, YOU GOT TO TAKE HER
24 TESTIMONY AS IT IS. YOU CAN'T PLAY HER OFF OR WHAT
25 WE CALL PIT ONE WITNESS AGAIN ANOTHER. ONE WITNESS'S

SUSAN CLEMMONS

DIRECT

156

1 TESTIMONY IS THEIR TESTIMONY AND HERS IS HERS AND YOU
2 CAN'T TRY TO COMPARE THE TWO. YOU CAN ARGUE TO THE
3 JURY LATER, WELL, THIS ONE SAID THIS AND THIS ONE
4 SAID THAT, BUT YOU CAN'T GET HER TO EXPLAIN HOW HER,
5 WHY, IF OR WHY HER ANSWERS ARE DIFFERENT THAN SOMEONE
6 ELSE'S.

7 Q I WANTED TO GO BACK TO THE PHOTO THAT THE FIRE
8 WAS CONTAINED JUST TO APARTMENT 32 AND DID NOT, IT
9 WAS ON THE OPPOSITE SIDE OF MRS. CLEMMONS APARTMENT.
10 THE UTILITY ROOM, THE MECHANICAL ROOM, WHICH IS
11 EXHIBIT NUMBER 10 AND STATE EXHIBIT NUMBER 40 AND
12 ALSO EXHIBIT NUMBER ONE AND THEN EXHIBIT NUMBER TWO
13 WHERE THE FUSE BOX AND THE MECHANICAL ROOM ARE
14 LOCATED.

15 MR. MORIN: YOUR HONOR, I ASK THAT HE ASK
16 A QUESTION.

17 THE COURT: WE'LL GET TO THAT. YOU'VE GOT
18 TO ASK A QUESTION ABOUT WHATEVER IT IS.

19 Q YOU STATED YOUR PHONE WAS DAMAGED?

20 A YEAH.

21 Q OKAY. I MEAN THAT YOU SAW THE SUSPECT CAR
22 DRIVE, SOMEONE DRIVING, IF YOU HEARD A LOUD NOISE
23 COMING FROM A NEIGHBOR'S HOUSE AND SHE WASN'T AT HOME
24 AND NOT ONLY THAT BUT HEARD YOU STATED THAT YOU, THE
25 SMOKE ALARM, YOU HEARD THE SMOKE ALARM AND MY CAR WAS

1 ALREADY GONE?

2 A EVERYTHING HAD MELTED WHEN THE SMOKE ALARM WENT
3 OFF AND MRS. JOHNSON GOT MOST OF THE SMOKE ANYWAY.
4 YES, YOUR CAR DID LEAVE AND YOU WERE LEFT THERE IN
5 THAT APARTMENT.

6 Q OKAY.

7 A I DIDN'T SEE YOU BUT I KNOW YOUR VOICE BECAUSE
8 YOU COME IN IVEY'S HOUSE AND YOU DON'T SPEAK TO NO
9 ONE. YOU GET OUT OF YOUR CAR AND GO AHEAD IN, BUT I
10 KNOW YOUR VOICE. I HEARD YOU IN THE APARTMENT
11 BECAUSE THE APARTMENTS ARE CLOSE.

12 Q MRS. CLEMMONS, IF I NEVER SPOKE TO YOU HOW COULD
13 YOU HEAR MY VOICE?

14 A I KNOW YOUR VOICE. I TALKED WITH YOU OUTSIDE, I
15 HEARD YOU STANDING OUTSIDE AROUND THE APARTMENTS AS
16 I'M GETTING IN MY CAR LEAVING AND I THOUGHT IT WAS
17 REAL CRAZY WHAT YOU DID TRYING TO BURN US UP.

18 Q DO YOU REMEMBER THAT THE TV ON, DID YOU REMEMBER
19 HEARING THE TV?

20 A I DIDN'T HEAR NO TV BECAUSE LIKE I SAID, WE LAID
21 DOWN FOURTH OF JULY AND WENT TO SLEEP AND THEN ALL OF
22 THIS CAME UP AND I THOUGHT IT WAS A FIRE ALARM COMING
23 FROM A DISTANCE AND MY BABY SAID, MOMMA, I HEAR A
24 FIRE ALARM. I SAID, WHERE IS IT AT? WHERE IS IT
25 COMING FROM? LIKE I SAID I THOUGHT IT WAS FROM A

SUSAN CLEMMONS

DIRECT

158

1 DISTANCE AND THEN AFTER AWHILE SMOKE, YOU SMELL SMOKE
2 AND STUFF AND BY THE TIME I GOT TO MY PHONE MY PHONE
3 WIRES HAD BURNED JUST THAT QUICK.

4 Q YOU STATED THAT IT SOUNDED LIKE HOUSEHOLD ITEMS
5 BEING THROWN AGAINST THE WALL?

6 A YEAH, IT WAS DRESSERS AND THINGS. I THOUGHT YOU
7 WERE IN THERE GETTING CLOTHES SO YOU COULD LEAVE.

8 Q AT THAT PARTICULAR TIME THERE WASN'T A FIRE.
9 WHY DIDN'T YOU CALL THE LAW?

10 A I DIDN'T CALL NO LAW.

11 Q YOU STATED THAT YOU SAW MY CAR PARKED DOWN
12 BETWEEN APARTMENTS 36 AND 37. AND YOU KNEW IVEY
13 WASN'T HOME BECAUSE YOU LOOKED OUT THAT SAME, LOOKED
14 OUT YOUR --

15 A THAT'S RIGHT. I SAID I THOUGHT YOU WERE GOING
16 TO GET CLOTHES AND LEAVE AND YOU AND IVEY HAVE BEEN
17 THERE TOGETHER SO IT WASN'T MY BUSINESS OR MY PLACE
18 TO KNOCK ON THE DOOR AND SEE WHAT YOU WERE DOING IN
19 THERE.

20 Q OKAY. YOU MADE A STATEMENT, MRS. CLEMMONS, TO
21 DETECTIVE CLARY THAT I COME BY AND SPY ON HER, IS
22 THAT YOUR WORDS?

23 A I DID WHAT?

24 Q YOU SAID THAT --

25 MR. MORIN: YOUR HONOR, I ASK THAT HE READ

1 IT TO HER.

2 THE COURT: HAND IT TO HER AND LET HER SEE
3 WHAT YOU ARE TALKING ABOUT.

4 (COMPLIES.)

5 Q IT'S IN ALL THE WAY AT THE BOTTOM. YOU SAID I
6 COME BY AND I SPY. WERE YOU TOLD THIS --

7 A YEAH.

8 Q OR YOU KNEW THAT?

9 A YEAH, I WAS TOLD THAT, PEOPLE TALK, AND YOU DO
10 COME BY AND SPY AND YOU TURN AROUND AND LEAVE OUT THE
11 BUILDING, OUT OF THE COMPLEX.

12 Q OKAY. YOU STATED, YOU JUST STATED EARLIER THAT
13 YOU AND I AIN'T NEVER HAD CONVERSATION, RIGHT?

14 A I DIDN'T SAY WE NEVER HAD CONVERSATION. NO, I
15 DIDN'T.

16 Q WOULD GO IN THE HOUSE?

17 A I SAID AFTER SHE GETS OFF FROM WORK SHE COMES
18 HOME, SHE'S IN THE HOUSE UNTIL SHE NEEDS TO GO OUT.
19 IF I'M ON MY PORCH, MAYBE SHE'LL TALK, WE'LL TALK
20 ABOUT THE WEATHER OR WHAT HAPPENED LAST NIGHT ON TV
21 OR SOMETHING CRAZY, SOMETHING SMALL. IT WASN'T NO
22 WHOLE LONG CONVERSATION.

23 Q OKAY.

24 A IVEY NEVER HAD A LONG CONVERSATION WITH ANYBODY
25 OUT THERE.

SUSAN CLEMMONS

DIRECT

160

1 Q ALL RIGHT. LET ME ASK YOU A QUESTION. WHAT
2 KIND OF CAR DO I HAVE?

3 A WHAT KIND OF CAR DO YOU HAVE? IT'S BURGUNDY
4 TOP, WHITE BOTTOM, I THINK IT'S A CHEVROLET.

5 Q YOU KNOW WHAT YEAR IT IS?

6 A NO, I DON'T. BUT IT'S OLD HOOTIE. I DON'T KNOW
7 WHAT YEAR IT IS BUT IT IS A HOOTIE. I KNOW YOUR CAR.

8 THE COURT: YOU ARE GOING TO HAVE TO SPELL
9 THAT WORD FOR US. WHAT DID YOU SAY?

10 A IT'S A HOOTIE.

11 THE COURT: YOU'LL HAVE TO SPELL THAT.

12 A IT'S H-O-O-M-P-T I GUESS. IT'S LIKE MAYBE A 60
13 CAR. IN THE 1960'S.

14 THE COURT: ALL RIGHT. I GOT YOU.

15 Q OKAY. NOW ON THAT NIGHT OF THE 4 OF JULY YOU
16 STATED THAT I WENT UPSTAIRS AND GOT ON THE PHONE?

17 A YEAH, YOU WERE CURSING AND SCREAMING AND YOU
18 TOLD SOMEBODY, I DON'T KNOW WHERE IN THE HELL IVEY
19 IS. SHE BETTER GET HOME. I GOT MY VEST ON. I HOPE
20 SHE GOT HERS ON. SHE'S GOING TO BE SORRY. YOU SAID
21 EXACT WORDS ON THE PHONE. YOU WERE SCREAMING. LIKE
22 YOU MIGHT HAVE BEEN DRUNK OR SOMETHING.

23 Q BUT YOU JUST MADE A STATEMENT JUST FEW MINUTES
24 AGO, MRS. CLEMMONS, EVERYTHING ELSE SOUNDED FAR OFF
25 LIKE ---

1 A I SAID ALARM, FIRE ALARM, I DIDN'T SAY
2 EVERYTHING ELSE NOW. I SAID FIRE ALARM.

3 Q ACTUALITY YOU DIDN'T MAKE THAT STATEMENT ABOUT
4 THE VEST, YOUR DAUGHTER DID?

5 A YES, THAT'S RIGHT.

6 Q OKAY. HOW DO YOU KNOW I WAS ON THE PHONE?

7 A BECAUSE WHOEVER, YOU CAN TELL WHEN SOMEBODY IS
8 ON THE PHONE WHEN SOMEBODY ANSWERS YOU BACK AND
9 ANSWERED THEM BACK AND THEY ASKED YOU A QUESTION AND
10 YOU ANSWER THEM BACK. YES, YOU WERE ON THE PHONE.

11 Q DID YOU EVER MAKE A STATEMENT IN FAMILY COURT?

12 A I NEVER BEEN TO FAMILY COURT.

13 Q JULY 23.

14 A I NEVER WENT. JULY 23?

15 Q YOU WERE A WITNESS FOR IVEY?

16 A YEAH, RIGHT. I DID GO. THE SMALL COURT OVER
17 THERE, YEAH.

18 Q DO YOU REMEMBER YOUR STATEMENT THAT YOU SAID,
19 MADE A STATEMENT THAT THINGS WERE BEING THROWN
20 AROUND?

21 A YES.

22 Q OKAY. ALL RIGHT. DO YOU REMEMBER THE STATEMENT
23 THAT IT WAS A WOMAN'S VOICE THAT YOU HEARD TOO?

24 A YEAH, IT WAS A WOMAN'S VOICE.

25 Q OKAY.

1 A AND I BELIEVE THAT WOMAN WAS DRIVING YOUR CAR
2 AND LEFT YOU THERE BECAUSE YOU BURNED THOSE
3 APARTMENTS UP.

4 Q WERE THOSE TWO PEOPLE TALKING ON THE PHONE?

5 A ONE PERSON WAS ON THE PHONE.

6 Q SO HOW DID YOU HEAR THE WOMAN'S VOICE.

7 A BECAUSE Y'ALL WERE GOING ON THROUGH THE HOUSE
8 SHE LEFT OUT OF THAT HOUSE OR WHOEVER IT WAS LEFT OUT
9 OF THE HOUSE AND DRIVE YOUR CAR AWAY FROM THERE WHILE
10 YOU DID THE DAMAGE THAT PROPERTY AND HER FURNITURE.

11 Q SO THIS WOMAN'S VOICE THAT YOU HEARD DID YOU
12 HEAR ANY DISTINCT THINGS THAT SHE SAID?

13 A NO, I'M LIKE, OKAY. I DO REMEMBER, OKAY, AND
14 THAT WAS ABOUT IT. THEN THINGS GOT SILENT AND THAT'S
15 WHEN SHE LEFT AND YOU STARTED DOING YOUR DIRTY WORK.

16 Q SO BASICALLY ALL YOU SAW WAS MY CAR OUTSIDE?

17 A I SAID I DIDN'T SEE YOU BUT I KNOW YOUR VOICE.
18 YOU BURNED THAT APARTMENT UP.

19 Q IT'S HEARSAY.

20 A YEAH.

21 MR. MORIN: HE ASKED THE QUESTION, YOUR
22 HONOR.

23 Q WELL.

24 THE COURT: THE JURY IS GOING TO MAKE A
25 FINAL DECISION AS TO WHETHER OR NOT THEY BELIEVE THE

1 STATE HAS PROVEN BEYOND A REASONABLE DOUBT WHETHER OR
2 NOT MR. LITTLEJOHN ACTUALLY DID THIS.

3 Q SO BASICALLY ALL YOU SAW WAS MY CAR LEAVING
4 ABOUT WHAT TIME?

5 A MAYBE 15 BEFORE 12 OR 20 BEFORE 12, SOMETHING
6 LIKE THAT.

7 Q SO I WAS DEFINITELY LEAVING BEFORE 12?

8 A YEAH, OR 10. IT WAS BETWEEN IN THE NEIGHBORHOOD
9 OF 20 'TIL AND 12 O'CLOCK.

10 Q OKAY.

11 A OR A LITTLE AFTER OR SOMETHING LIKE THAT.

12 Q OKAY.

13 A IT'S BEEN SO LONG, BUT I REMEMBER.

14 Q ALL RIGHT. SINCE, WHEN YOU SAW MY CAR WAS I,
15 DID YOU SEE THE WOMAN IN QUESTION LEAVE THE
16 APARTMENT?

17 A NO, IT WAS PITCH DARK.

18 Q ALL RIGHT.

19 A I CAN'T SEE UPSTAIRS AND YOUR CAR AND LEAVING IN
20 THE DARK.

21 Q OKAY. WHICH WINDOW DID YOU SPOT MY CAR OUT OF?

22 A MY BEDROOM WINDOW.

23 Q OKAY. YOU INITIALLY SAID YOU SAW MY CAR PARKED
24 DOWN BY 33 AND 37. WELL, IF YOU LOOK HERE IN FRONT
25 OF THESE APARTMENTS, KIND OF LIKE JUT OUT WINDOWS AND

SUSAN CLEMMONS

DIRECT

164

1 KIND OF STICK TOGETHER.

2 MR. LITTLEJOHN: CAN I GIVE THEM A VISUAL,
3 YOUR HONOR?

4 Q THEY KIND OF LIKE STICK OUT?

5 MR. MORIN: OBJECTION.

6 THE COURT: YOU GOT TO USE THE PICTURES IN
7 EVIDENCE.

8 MR. LITTLEJOHN: THESE ARE IN EVIDENCE.
9 NUMBER 11 FROM THE APARTMENT.

10 MR. MORIN: THESE ARE IN EVIDENCE. THOSE
11 ARE NOT.

12 MR. LITTLEJOHN: I THOUGHT THESE WERE IN
13 EVIDENCE. STATE'S EXHIBIT NUMBER 15. PASS THAT
14 AROUND TO THE JURY. THAT ONE WOULD BE THE NEXT ONE
15 OVER. THAT'S APARTMENT 32 WINDOW. AND THIS WOULD BE
16 THIS APARTMENT IN QUESTION. SHE WOULD HAVE TO LOOK
17 PAST 32.

18 THE COURT: YOU GOT TO ASK QUESTIONS NOW.

19 MR. LITTLEJOHN: I'M ABOUT READY TO ASK A
20 QUESTION.

21 Q YOU SAID YOU SAW MY CAR?

22 A BECAUSE I WAS --

23 Q SIX APARTMENTS DOWN?

24 A YEAH, I COULD STAND IN MY WINDOW AND LOOK DOWN
25 FROM THE SIDE OF THE WINDOW AND THAT LONG CAR IS

1 PARKED THERE.

2 Q OKAY. WAS IT A CAR PARKED BESIDE MY CAR?

3 A I DON'T KNOW. I KNOW I SAW YOUR CAR.

4 Q YOU SAID IT WAS DARK. YOU SAID THE LIGHTS WERE
5 OUT ON THE CAR?

6 A ON THE BUMPER. IT'S A SPEED BUMP THERE.

7 Q ALL RIGHT. WHAT TIME DID YOU SAY I GOT THERE
8 AGAIN?

9 A YOU MIGHT HAVE GOTTEN THERE ABOUT 11:20-11:30.
10 SOMEWHERE IN THE NEIGHBORHOOD.

11 Q I'M GOING TO WRAP THIS UP. NOW --

12 A I WON'T COME IN AND TELL NO LIE ON YOU. LIKE I
13 SAID I DIDN'T SEE YOU BUT I HEARD YOUR VOICE.

14 Q YOU STATED THAT YOU WERE SCARED. WHEN YOU HEARD
15 ALL THAT NOISE, MRS. CLEMMONS, I MEAN THE BANGING,
16 THE CURSING, EVERYTHING, WHAT DID YOU THINK?

17 A I THINK YOU WERE GOING CRAZY OVER THERE. YOU
18 WERE GOING TO GET SOME CLOTHES AND LEAVE BUT
19 APPARENTLY YOU DIDN'T AND THAT'S WHEN LIKE
20 EVERYTHING, MAYBE A FEW MINUTES AFTER YOU STARTED,
21 YOU GOT OFF THE PHONE AND PILING STUFF UP AND MAKING
22 THE FIRE AND ALL AND EVERYTHING HAPPENED SO FAST AND
23 WE LOOKED OUTSIDE AND I COULDN'T GET TO THE PHONE BUT
24 AS MY DAUGHTER AND I WERE COMING DOWN STAIRS CASANDRA
25 JOHNSON KNOCKED ON EVERYBODY'S DOOR AND TOLD THEM TO

SUSAN CLEMMONS

DIRECT

166

1 GET OUT BECAUSE THERE WAS A FIRE.

2 Q OKAY. SO WHAT TIME DID MS. JOHNSON COME KNOCK
3 ON THE DOOR?

4 A I DON'T REALLY REMEMBER THE TIME BECAUSE
5 EVERYTHING HAPPENED SO FAST.

6 Q SO BASICALLY HOW LONG DID YOU --

7 A THE SMOKE DETECTOR WAS GOING OFF FOR A FEW
8 SECONDS, NOT LONG.

9 Q OKAY. IT DIDN'T GO OFF LONG. YOU DIDN'T HEAR
10 IT GO OFF LONG?

11 A NO, NOT REALLY WHAT YOU CALL LONG BUT IT WAS
12 LONG ENOUGH FOR PEOPLE TO HEAR IT AND FOR ME TO GET
13 OUT OF THERE, ME AND MY DAUGHTER.

14 Q SO --

15 A AND COME ON DOWN.

16 Q AS SOON AS YOU HEARD?

17 A UH-HUH.

18 Q AS SOON AS YOU HEARD THE SMOKE ALARM WHAT DID
19 YOU DO?

20 A WE GOT UP, YES, WE DID. THAT'S WHAT WE DID.

21 Q MS. JOHNSON CAME AND KNOCKED ON YOUR DOOR?

22 A YEAH, AS WE CAME HALFWAY DOWN THE STEPS, WE
23 WERE, WELL, WE WERE DOWN THE STEPS AS A MATTER OF
24 FACT AND WE HEARD HER OUT THERE, WE WERE GETTING
25 READY TO PULL THE DOOR OPEN WHEN SHE CAME, HER VOICE,

1 LIKE WE HEARD HER VOICE AND SHE SAID, Y'ALL GET OUT,
2 GET OUT, EVERYBODY GET OUT, FIRE, AND SHE WAS
3 KNOCKING ON DOORS TELLING US TO GET OUT.

4 Q WHAT TIME WAS THIS?

5 A I DON'T KNOW. IT WASN'T LONG AFTER THE FIRE WAS
6 SET.

7 Q YOU JUST STATED THAT I LEFT.

8 A WHEN YOU LEFT.

9 Q SO IT WASN'T -- HOW LONG WAS IT BETWEEN THE
10 SMOKE ALARM AND WHEN I LEFT?

11 A YOU LEFT I GUESS MAYBE A LITTLE BIT BEFORE THE
12 SMOKE ALARM WENT OFF. I REALLY THINK YOU DID. I'M
13 TRYING TO REMEMBER. I THINK YOU LEFT A LITTLE BIT
14 BEFORE THE SMOKE ALARM WENT OFF BECAUSE YOU LEFT
15 BEFORE THE SMOKE ALARM WAS GOING TO GO OFF SO YOU
16 LEFT EARLY.

17 Q NOW THE SMOKE ALARM WENT OFF, HOW LONG BETWEEN
18 THE TIME THAT THE SMOKE ALARM WENT OFF AND THE TIME
19 MS. JOHNSON KNOCKED ON YOUR DOOR?

20 A NOW I CAN'T TELL YOU THAT. I'M NOT REALLY SURE
21 LIKE I SAID. IT WASN'T LONG BETWEEN THERE.

22 Q WAS IT AN HOUR?

23 A NO.

24 Q WAS A TEN MINUTES?

25 A A FEW MINUTES.

SUSAN CLEMMONS

DIRECT

168

1 Q A FEW MINUTES.

2 A YEAH, I GUESS MAYBE TEN. LIKE I SAID OR 8 OR
3 SIX. BECAUSE LIKE I SAID SHE GOT THE MAJORITY OF THE
4 SMOKE ANYWAY.

5 Q BASICALLY WHAT TIME DID YOU SAY I LEFT THE
6 SCENE?

7 A I DON'T KNOW I DIDN'T SEE YOU. I HEARD YOU.
8 BUT I DIDN'T SEE YOU.

9 Q WHAT TIME DID YOU SEE MY CAR?

10 A I SAY PROBABLY 11:15- 11:10-11:30. YOU
11 BASICALLY 11:30.

12 Q OKAY. CAN YOU REMEMBER ANYTHING ELSE THAT NIGHT
13 THAT WAS STRANGE THAT YOU MIGHT WANT TO BRING UP?

14 A NO, THAT WAS STRANGE BECAUSE I NEVER EXPERIENCED
15 ANYTHING LIKE THAT. AND MY NEIGHBORS AND ALL ON THAT
16 NIGHT COULD HAVE BEEN KILLED.

17 Q THAT'S RIGHT. YOU WERE LUCKY TO GET OUT. BUT I
18 WANT TO ASK YOU ANOTHER QUESTION, THIS IS VERY
19 IMPORTANT, OKAY. NOW YOU STATED THAT YOU HEARD ME ON
20 THE PHONE?

21 A UH-HUH.

22 Q ALL RIGHT. NOW, AND THIS WOMAN YOU STATED YOU
23 HEARD HER VOICE TOO?

24 A UH-HUH.

25 Q YOU STATED SHE DIDN'T SAY MUCH. DID THE TWO

1 PEOPLE COMMUNICATE WHATSOEVER?

2 A I DON'T KNOW.

3 Q DID YOU HAVE YOUR EAR TO THE WALL?

4 A NO, I DIDN'T HAVE MY EAR TO THE WALL.

5 Q YOUR BACK TO THE WALL?

6 A NO, I WASN'T INTO IT LIKE THAT, BUT I KNOW
7 SOMETHING, YOU GUYS WERE TALKING OR WHATEVER, AND I
8 TOLD MY DAUGHTER, I SAID, I KNOW HE DIDN'T HAVE A
9 WOMAN IN IVEY'S APARTMENT AND SHE AIN'T HOME. THAT'S
10 WHAT I TOLD MY DAUGHTER. THE WOMAN WAS IN THE
11 APARTMENT.

12 Q OKAY. TO THAT EFFECT YOU WASN'T, EVEN YOUR
13 DAUGHTER DIDN'T MENTIONED THAT TO THE POLICE
14 DEPARTMENT, WHY?

15 A WELL, THERE WAS A WOMAN THERE. WELL, I'M
16 MENTIONING IT NOW.

17 Q OKAY.

18 A IT WAS SOMEBODY, IT MIGHT HAVE BEEN A MAN WITH A
19 SOFT VOICE. I'LL PUT IT LIKE THAT. BUT I KNOW IT
20 WAS TWO PEOPLE IN THERE BECAUSE I HEARD IT. BUT YOU
21 DID MOST OF THE STUFF. SHE LEFT. AND HE LEFT.

22 Q OKAY.

23 A NO MORE FURTHER QUESTIONS, YOUR HONOR, FOR THE
24 WITNESS.

25 THE COURT: ANY QUESTIONS?

SUSAN CLEMMONS

CROSS

170

1 MR. MORIN: YES, SIR, JUST A FEW.

2 CROSS EXAMINATION BY MR. MORIN:

3 Q MS. CLEMMONS, YOU STATED THAT YOU HEARD A NOISE
4 IN THE BACK OF THE APARTMENT, IS THAT CORRECT?

5 A MY DAUGHTER HEARD THE NOISE.

6 Q ALL RIGHT. THEN LET ME BACK UP. YOU SAID YOU
7 LOOKED OUT?

8 A WE CAME DOWNSTAIRS AND LOOKED OUT THE BACK DOOR.

9 Q ALL RIGHT. I'M GOING TO SHOW YOU WHAT'S BEEN
10 MARKED STATE'S EXHIBIT 17, CAN YOU SEE THIS PICTURE
11 RIGHT HERE?

12 A YES.

13 Q DOES THIS LOOK FAMILIAR TO YOU?

14 A IT LOOKS LIKE THE FRONT OF THE APARTMENTS.

15 Q THE FRONT OR THE BACK?

16 THE COURT: YOU CAN STEP DOWN IF YOU NEED
17 TO.

18 (COMPLIES.)

19 A OH, THAT'S THE BACK.

20 Q OKAY. IF YOU CAN COME DOWN HERE JUST FOR A
21 SECOND. YOU SEE THIS DOOR RIGHT HERE, THAT'S IVEY'S
22 DOOR RIGHT THERE, ALL RIGHT. NOW YOU HAVE A BACK
23 DOOR, IS THIS YOUR BACK DOOR OR IS THIS YOUR BACK
24 DOOR?

25 A MY BACK DOOR IS ON THIS SIDE.

1 Q RIGHT HERE?

2 A UH-HUH.

3 Q YOU LOOKED OUT AND YOU DIDN'T SEE ANYTHING, IS
4 THAT RIGHT?

5 A NO.

6 Q DID YOU LEAVE, DID YOU GO OUTSIDE YOUR DOOR?

7 A NO, I OPENED THE SCREEN DOOR AND LOOKED OUT LIKE
8 THIS.

9 Q OKAY. ALL RIGHT. THANK YOU, MA'AM.

10 THE COURT: YOU CAN HAVE A SEAT BACK UP
11 HERE.

12 A THERE IS NOBODY THERE BUT ME AND MY DAUGHTER AND
13 SHE HEARS A NOISE AND STUFF OUTSIDE SHE CALLS ME.

14 Q WELL, THANK YOU. I DON'T HAVE ANY FURTHER
15 QUESTIONS.

16 THE COURT: ANYTHING ELSE? YOU CAN STEP
17 DOWN AND BE EXCUSED. WE APPRECIATE YOUR TIME. THANK
18 YOU. CALL YOUR NEXT WITNESS.

19 MR. LITTLEJOHN: I'D LIKE TO CALL MY FATHER
20 BILLY LITTLEJOHN TO THE STAND.

21 BILLY LITTLEJOHN, BEING FIRST DULY SWORN,
22 TESTIFIED AS FOLLOWS:

23 DIRECT EXAMINATION BY MR. LITTLEJOHN:

24 Q THAT NEXT DAY YOU GOT A CALL, WHAT WAS THE CALL
25 INITIALLY ABOUT?

BILLY LITTLEJOHN

DIRECT

172

1 MR. MORIN: OBJECTION, I DON'T KNOW WHAT
2 CALL, WHAT DAY, THAT CALLS FOR HEARSAY.

3 Q THE FIRE, THE NIGHT OF THE FIRE, MORNING OF THE
4 FIRE, YOU GOT A CALL?

5 A YES, I GOT A CALL FROM IVEY.

6 Q OKAY. WHAT DID SHE INITIALLY SAY TO YOU?

7 MR. MORIN: OBJECTION, HEARSAY.

8 THE COURT: I SUSTAIN THE OBJECTION.

9 Q OKAY. WELL, WHENEVER YOU GOT ON THE SCENE WHAT
10 WAS, WHAT DID IT LOOK LIKE, I MEAN?

11 A WELL, WHEN I GOT THERE DETECTIVE CLARY AND A LOT
12 OF OTHER PEOPLE WERE STANDING AROUND AND IVEY, SHE
13 WAS THERE.

14 Q OKAY. NOW WHAT DID SHE SAY? WHAT DID YOU HEAR
15 HER SAY?

16 MR. MORIN: OBJECTION.

17 THE COURT: THAT'S STILL HEARSAY SO I
18 SUSTAIN THE OBJECTION.

19 Q THAT MORNING WHAT DID YOU OBSERVE?

20 A WELL, I OBSERVED THAT THERE HAD BEEN A FIRE AT
21 THE APARTMENT.

22 Q OKAY. ALL RIGHT. NOW WHEN YOU GOT THERE AND
23 YOU SAW MY WIFE, I MEAN, WHERE WERE THEY?

24 A WELL, THEY WERE ALL STANDING IN FRONT OF THE
25 APARTMENT THAT WAS BURNED.

1 Q ALL RIGHT. NOW DID YOU SEE ANY OF THE PEOPLE
2 THAT WERE TESTIFIED TODAY?

3 A I SEEN MS. CLEMMONS. I KNOW HER. I SEEN HER.
4 THE ONE THAT I KNOW.

5 Q NOW DO YOU RECALL A CONVERSATION THAT I HAD WITH
6 YOU THAT A FELLOW NAMED JAMES WHINESON?

7 MR. MORIN: OBJECTION, YOUR HONOR, NOW
8 HE'S TESTIFYING.

9 THE COURT: I SUSTAIN THE TESTIFYING.

10 Q YOU TALKED TO THAT FELLOW, RIGHT?

11 A I DON'T REMEMBER TALKING TO HIM ANYWAY.

12 Q THE FELLOW THAT LIVES IN '37, YOU TALKED TO HIM?

13 A NO, I DIDN'T GET TO TALK WITH HIM. I TALKED
14 WITH HIS DAUGHTER.

15 Q OH, ALL RIGHT. WHAT WAS THE CONVERSATION?

16 THE COURT: I SUSTAIN THE OBJECTION.
17 THAT'S HEARSAY.

18 Q OKAY. THAT MORNING OR THAT EVENING YOU TALKED
19 TO ME, WHERE WAS I AT?

20 MR. MORIN: OBJECTION, YOUR HONOR, NO
21 FOUNDATION.

22 THE COURT: WHERE WAS HE, I WILL ALLOW
23 THAT.

24 Q WHEN I GOT IN CONTACT WITH YOU, WHAT DID WE DO?
25 WHAT DID YOU AND ME DO AND TOMMY, WHAT DID WE DO WHEN

BILLY LITTLEJOHN

DIRECT

174

1 I GOT IN CONTACT WITH YOU?

2 A WHEN YOU GOT IN CONTACT WITH ME, WE TALKED ABOUT
3 COMING IN AND GIVING YOURSELF UP.

4 Q OKAY. BECAUSE WHAT WAS SAID?

5 A WHAT WAS SAID?

6 Q YEAH.

7 THE COURT: THAT'S HEARSAY.

8 Q THAT'S HEARSAY TOO.

9 THE COURT: I SUSTAIN THE OBJECTION.

10 Q I MEAN WE CAME DOWN TO THE LAW ENFORCEMENT
11 CENTER, RIGHT?

12 A YES.

13 Q WHAT TIME?

14 A I DON'T REMEMBER WHAT TIME IT WAS BUT IT WAS IN
15 THE AFTERNOON.

16 Q WAS IT THE FIFTH OR THE SIXTH?

17 A I'M NOT SURE.

18 Q WAS IT THAT SAME MORNING, DID THE FIRE HAPPEN
19 THAT DAY THAT WE CAME TO THE LAW ENFORCEMENT CENTER?

20 A NO.

21 Q I MEAN FOR THE FIRST TIME?

22 A WHEN THE FIRE HAPPENED THAT DAY I DIDN'T SEE YOU
23 FOR A DAY OR SO.

24 Q THE NEXT DAY AT FIVE O'CLOCK DID WE OR DID WE
25 NOT GO TO THE LAW ENFORCEMENT TO SEE WHETHER OR NOT

1 THEY HAD A WARRANT FOR MY ARREST?

2 A I WENT DOWN WITH YOU AND WE WENT IN AND TALKED
3 WITH LAW ENFORCEMENT PEOPLE AND ASKED DID THEY HAVE A
4 WARRANT FOR YOU AND THEY SAID THEY DIDN'T.

5 Q THAT'S ALL, YOUR HONOR.

6 CROSS EXAMINATION BY MR. MORIN:

7 Q MR. LITTLEJOHN, YOU ARE JIMMY LITTLEJOHN'S
8 FATHER?

9 A YES, I AM.

10 Q WHEN YOU WENT TO SEE IF THERE WAS A WARRANT DID
11 YOU GO TO THE COUNTY ADMINISTRATION BUILDING OR THE
12 CITY OF GAFFNEY?

13 A I THINK IT WAS THE CITY OF GAFFNEY.

14 Q OKAY. NOW YOU ARE FAMILIAR OBVIOUSLY WITH IVEY,
15 IS THAT CORRECT? YOU KNOW IVEY LITTLEJOHN, TOO?

16 A YES, THAT'S MY DAUGHTER-IN-LAW.

17 Q DO YOU RECALL THE LAST TIME THAT YOUR SON AND
18 YOUR DAUGHTER-IN-LAW LIVED TOGETHER?

19 A YES. IT WAS FROM, IT WAS FROM JANUARY UP TO
20 ABOUT THE MIDDLE OF APRIL.

21 Q MIDDLE OF APRIL 2004?

22 A 2004.

23 Q WHAT HAPPENED IN THE MIDDLE OF APRIL?

24 A WELL, HE MOVED OUT AT THAT TIME.

25 Q OKAY. THANK YOU, SIR. THAT'S ALL THE QUESTIONS

JIMMY LITTLEJOHN

DIRECT

176

1 I HAVE.

2 THE COURT: MR. LITTLEJOHN.

3 MR. LITTLEJOHN: THAT'S IT.

4 THE COURT: YOU CAN STEP DOWN AND BE
5 EXCUSED. WE APPRECIATE YOUR TIME.

6 A THANK YOU.

7 THE COURT: CALL YOUR NEXT WITNESS.

8 MR. LITTLEJOHN: THAT'S ALL THE WITNESSES
9 I'M GOING TO CALL, YOUR HONOR. JUST CALL MYSELF.

10 THE COURT: YOU REST.

11 (BENCH CONFERENCE.)

12 THE COURT: YOU GOING TO TESTIFY YOU SAY.

13 MR. LITTLEJOHN: YEAH.

14 THE COURT: COME ON UP AND TAKE THE STAND.
15 YOU HAVE TO BE SWORN IN ALSO.

16 JIMMY LITTLEJOHN, BEING FIRST
17 DULY SWORN, TESTIFIED AS FOLLOWS:

18 ON THAT PARTICULAR NIGHT I GOT THERE ABOUT
19 11 - 11:45. I DROPPED A NOTE OFF AT THE DOOR.
20 MR. WHINE WAS OUTSIDE AT THAT PARTICULAR TIME. I SAW
21 HIM. I DROPPED THE NOTE OFF AT THE FRONT DOOR AND
22 GOT BACK IN MY CAR. I WAS THERE NO MORE THAN ABOUT
23 TEN MINUTES. I WENT TO BLACKSBURG ABOUT 12 O'CLOCK.
24 FROM 12 O'CLOCK UNTIL THAT NEXT MORNING I WOKE UP. I
25 WOKE UP TO A NIGHTMARE. THAT MORNING SOMEBODY CALLED

1 ME ON THE CELL PHONE AND TOLD ME THAT A COUPLE OF
2 PEOPLE HAD SAID I SET A FIRE. SET A FIRE I SAID.
3 HOW? I WASN'T THERE NO MORE THAN TEN MINUTES. WELL,
4 THEY SAID I SET A FIRE AND BASICALLY BROKE IN AND
5 THAT SOMEBODY SAW MY CAR. WELL, THEY SAW MY CAR.
6 THEY SAW MY CAR LEAVE AND THAT WAS IT. AND I NEVER
7 HAD ANY BAD WORDS WITH MY WIFE THAT DAY. YOU KNOW, I
8 WAS AT THE COOK OUT BEFORE SHE WAS. AS A MATTER OF
9 FACT, I WAS THERE COOKING, OKAY. SHE GOT THERE ABOUT
10 THREE O'CLOCK. WHEN SHE GOT THERE SHE LOST HER KEYS
11 I GUESS ABOUT 4-4:30. SHE GOT A ATTITUDE. AS A
12 MATTER OF FACT, I WENT AND GOT CARDS AND WE WAS
13 PLAYING SPADES OR SOMETHING AND IT WAS ALMOST ABOUT
14 THAT TIME I WAS ABOUT WIND DOWN BECAUSE I HAD ANOTHER
15 COOK OUT TO GO TO AND SO I WENT DOWN TO THE COUNTRY
16 AND I STAYED DOWN THERE ABOUT 11:30. I LEFT DOWN
17 THERE ABOUT 11:30 AND I GOT TO PROVIDENCE ROAD ABOUT
18 11:45. WHEN I GOT THERE IT WAS PEOPLE STANDING
19 OUTSIDE. I PULLED UP INTO THE FRONT OF THIS
20 BUILDING, ALL RIGHT, WITH NO CRIMINAL INTENT. I GOT
21 OUT IN A DEADEND. ALL RIGHT. NOTHING IN MY HAND,
22 WENT TO THE DOOR. I KNOWED THE CAR WASN'T HOME AND I
23 LEFT. THAT'S WHY I LEFT. AND I WENT HOME.
24 ACTUALLY, I DIDN'T GO HOME, BUT I WENT TO BLACKSBURG
25 AND, WENT TO BLACKSBURG TO SHOOT SOME FIREWORKS

JIMMY LITTLEJOHN

CROSS

178

1 BECAUSE I HAD SOME MORE FIREWORKS FOR THEM. THEY
2 DIDN'T SHOOT THE REST OF THEM UNTIL THE NEXT DAY.
3 THAT'S WHAT HAPPENED. THAT'S IT.

4 CROSS EXAMINATION BY MR. MORIN:

5 Q MR. LITTLEJOHN, IT'S MY UNDERSTANDING THAT YOU
6 SAW IVEY AT THE COOK OUT AT THREE IN THE AFTERNOON?

7 A YEAH.

8 Q AND IS IT FAIR TO SAY THAT Y'ALL WERE THERE
9 SEVERAL HOURS?

10 A YEAH.

11 Q AND DURING THAT TIME DID YOU TALK TO IVEY OR SAY
12 ANYTHING?

13 A YEAH.

14 Q AND YOU WERE PLAYING SPADES I BELIEVE WITH
15 MR. WILKINS, IS THAT CORRECT?

16 A YEAH.

17 Q ALL RIGHT. NOW YOU DROVE FROM THERE DOWN TO THE
18 COUNTRY, DOWN OVER THE APARTMENT, AND THEN FINALLY TO
19 THE PLACE IN BLACKSBURG YOU SAY YOU WENT AT THAT
20 TIME?

21 A YEAH.

22 Q AND OF COURSE, WE KNOW FROM YOUR WITNESS EARLIER
23 YOU WERE INTOXICATED WHEN YOU GOT THERE, IS THAT
24 CORRECT?

25 A YEAH.

1 Q OKAY.

2 A THAT'S WHY I DIDN'T STAY LONG.

3 Q WELL, NOW WHEN DID YOU LEAVE FROM BLACKSBURG?

4 A I LEFT FROM BLACKSBURG SEVEN IN THE MORNING,

5 ABOUT 7:30 IN THE MORNING.

6 Q DID YOU JUST SAY YOU DIDN'T STAY LONG?

7 A NO, THAT'S WHY I DIDN'T STAY LONG AT THE

8 APARTMENT BECAUSE I WAS INTOXICATED.

9 Q OKAY. NOW YOU HAVE A PRIOR CONVICTION FOR

10 POSSESSION OF CRACK, ISN'T THAT CORRECT?

11 A YEAH.

12 Q OKAY.

13 A BACK IN '95.

14 Q WHEN DID YOU WRITE THE NOTE?

15 A THAT NOTE WAS WRITTEN SOMEWHERE IN BETWEEN MAY.

16 Q YOU WROTE A NOTE IN MAY TO IVEY AND YOU LEFT IT,

17 YOUR TESTIMONY IS, YOU LEFT IT AT HER APARTMENT IN

18 JULY?

19 A THAT NOTE THAT I LEFT WAS NEVER FOUND.

20 Q I UNDERSTAND THAT, BUT I'M ASKING YOU. ALL

21 RIGHT, THE NOTE THAT YOU WROTE THAT YOU SAY YOU LEFT

22 WAS NEVER FOUND?

23 A WAS NEVER FOUND.

24 Q WHEN DID YOU WRITE THAT NOTE?

25 A I WROTE THAT NOTE THAT NIGHT. IT WAS JUST A FEW

1 LITTLE LINES. THE NEXT DAY, IT WAS A MONDAY, WE WAS
2 SUPPOSED TO HAVE WENT TO THE PARK IN CHARLOTTE. I
3 WROTE A FEW LINES. WE ALREADY SET THAT UP AT HER
4 MOMMA'S COOK OUT. I WROTE THE NOTE, WROTE THE NOTE,
5 AND IT WAS ON A LITTLE MATCHBOOK ABOUT LIKE THAT AND
6 I STUCK IT IN THE FRONT DOOR. THAT'S WHAT I ALWAYS
7 DONE. AS A MATTER OF FACT, ON THAT COLLABORATING
8 NOTE THAT WAS FOUND ON THE BED THAT'S HOW WE
9 COMMUNICATED. WHENEVER SHE WASN'T HOME OR I WASN'T
10 HOME, SHE LEFT A NOTE ON MY WINDSHIELD AND I LEFT A
11 NOTE ON HER WINDSHIELD ON HER CAR OR HER DOOR.

12 Q OKAY. I HAVE NO FURTHER QUESTIONS.

13 THE COURT: YOU CAN STEP DOWN. THANK YOU.
14 MR. LITTLEJOHN, AS I UNDERSTAND IT, YOU HAVE NO
15 FURTHER WITNESSES.

16 MR. LITTLEJOHN: NO, SIR.

17 THE COURT: ANYTHING IN REPLY?

18 MR. MORIN: NO, SIR.

19 THE COURT: MEMBERS OF THE JURY PANEL,
20 YOU'VE HEARD ALL THE EVIDENCE AND RECEIVED THE
21 EXHIBITS. IT'S TOO LATE IN THE AFTERNOON TO CHARGE
22 AND HAVE ARGUMENTS AND SEND THE CASE OUT FOR YOUR
23 CONSIDERATION SO WE'LL STOP FOR THE EVENING AND START
24 BACK AT 9:30.

25 NOW YOU STILL ARE NOT IN A POSITION TO TRY

1 TO MAKE UP YOUR OWN MIND. YOU HAVEN'T HEARD MY
2 CHARGE ON THE LAW, YOU HAVEN'T HEARD THE ARGUMENTS OF
3 THE ATTORNEY AND MR. LITTLEJOHN, YOU HAVEN'T HEARD
4 THEIR FINAL PRESENTATIONS, SO YOU ARE NOT IN A
5 POSITION TO MAKE UP YOUR MIND. YOU ARE STILL NOT IN
6 A POSITION TO DISCUSS THE CASE AMONG YOURSELVES. YOU
7 ARE STILL NOT TO LET ANYONE DISCUSS THE CASE WITH YOU
8 OUTSIDE THE COURTROOM AND YOU STILL ARE NOT TO LET
9 YOURSELF BE EXPOSED TO ANY NEWS COVERAGE IF THERE IS
10 ANY. AND ONE OTHER THING AND THIS PROBABLY WOULDN'T
11 CROSS ANY OF YOUR MINDS, BUT I'M GOING TO TELL YOU
12 THIS ANYWAY, DO NOT GO TO REDWOOD APARTMENTS TO SEE
13 ANY PERSONAL INVESTIGATION. THAT IS, DON'T GO TO THE
14 SCENE OF THIS EVENT AND CHECK IT OUT AND SEE WHO
15 COULD HAVE SEEN WHAT FROM WHERE AND MAKE THOSE KINDS
16 OF ASSESSMENTS. I DON'T THINK ANY OF YOU WOULD DO
17 THAT, BUT YOU ARE CONFINED TO THE TESTIMONY THAT TOOK
18 PLACE HERE IN THE COURTROOM AND THE EXHIBITS. SO YOU
19 ARE NOT TO DO ANY INDEPENDENT INVESTIGATION, YOU
20 PROBABLY GOT BETTER THINGS TO DO ANYWAY, BUT WITH ALL
21 THAT SAID I'LL SEE YOU IN THE JURY ROOM AT 9:30 AND
22 WE'LL START AS PROMPTLY THEREAFTER AS WE CAN. THANK
23 YOU.

24 (THE JURY EXITS THE COURTROOM AT 04:42
25 PM.)

1 THE COURT: WE'LL BE AT EASE UNTIL 9:30 IN
2 THE MORNING. THANK YOU.

3 (COURT IS IN RECESS AT 05:19 PM.)

4 (COURT RESUMES AT 9:40 ON MAY 26,
5 2004.)

6 THE COURT: THE STATE READY TO PROCEED.

7 MR. MORIN: THE STATE IS READY, YOUR
8 HONOR.

9 THE COURT: MR. LITTLEJOHN, YOU READY TO
10 PROCEED?

11 MR. LITTLEJOHN: YES, YOUR HONOR. I'D
12 LIKE TO ASK COULD WE ADMIT THOSE OTHER PHOTOS THAT WE
13 DIDN'T GET A CHANCE TO ADMIT INTO EVIDENCE.

14 THE COURT: ANY OBJECTION?

15 MR. MORIN: YES, SIR.

16 THE COURT: ALL RIGHT. THEN, NO, I CAN'T
17 AT THIS POINT. I SUSTAIN THE OBJECTION. ALL RIGHT.
18 AT THIS POINT, MR. LITTLEJOHN, I'M GOING TO ON YOUR
19 BEHALF NOTE THAT YOU ARE MAKING YOUR MOTION FOR
20 DIRECTED VERDICT. YOU DON'T KNOW TO DO THAT PROBABLY
21 SO I'M TAKING IT UPON MYSELF TO NOTE THAT YOU ARE
22 MAKING A MOTION FOR DIRECTED VERDICT WHICH I'M
23 DENYING AS I SAID AT THE CLOSE OF THE STATE'S
24 EVIDENCE. THIS CASE, OF COURSE HAS SOME, A GOOD BIT
25 OF DIRECT EVIDENCE, AMPLE DIRECT EVIDENCE, BUT ALSO

1 SUBSTANTIAL CIRCUMSTANTIAL EVIDENCE FROM WHICH A JURY
2 COULD CONCLUDE THAT YOU WERE IN FACT THE ONE THAT
3 COMMITTED THESE OFFENSES, SO I'M NOTING YOUR MOTION
4 ON YOUR BEHALF BUT THEN DENYING IT.

5 NOW THE STATE WILL START OFF TALKING TO
6 THE JURY ABOUT THE LAW FIRST AND THEN YOU GET UP AND
7 MAKE YOUR PRESENTATION AND IT HAS TO BE BASED ON THE
8 EVIDENCE. AND THEN THE STATE HAS A RIGHT TO WHAT WE
9 CALL CLOSE, TO GET BACK UP AFTER YOU MAKE YOUR
10 STATEMENT AND TALK ABOUT THE FACTS AND WHY THE
11 VERDICT SHOULD BE GUILTY AND OF COURSE YOU'LL BE
12 TALKING ABOUT THE VERDICT SHOULD BE NOT GUILTY. I
13 WILL THEN CHARGE ON THE LAW AND YOU MIGHT WANT TO GET
14 SOME FEEDBACK FROM MR. THOMPSON ON THIS, BUT IN THE
15 COURT'S OPINION AND I'LL BE GLAD TO LISTEN TO BOTH
16 SIDES, IT DOES NOT APPEAR TO ME THAT THERE IS ANY
17 LESSER INCLUDED OFFENSES. I'VE LOOKED AT ARSON THIRD
18 AND THAT DOESN'T SEEM TO APPLY AND I LOOKED AT
19 BURGLARY SECOND AND UNDER ANY VERSION OF THESE FACTS
20 IF THE JURY ACCEPTS THEM, THERE IS NO WAY THEY COULD
21 EITHER FIND YOU NOT GUILTY BUT I DON'T SEE WHERE
22 THERE IS ANY LESSER INCLUDED OF EITHER ARSON THIRD
23 DEGREE OR BURGLARY IN THE SECOND DEGREE. WHAT'S THE
24 STATE'S POSITION ON THAT?

25 MR. MORIN: THAT WOULD BE THE STATE'S

1 POSITION. ALSO, YOUR HONOR, UNLESS MR. LITTLEJOHN
2 CONSENTS WE WAIVE OPENING ON THE LAW BUT.

3 THE COURT: WELL, I WASN'T EVEN GOING TO
4 ASK HIM THAT. YOU CAN GO FIRST AND LET THEM JUST GO
5 LAST INSTEAD OF LETTING, HAVING HIM GO FIRST OR LAST.

6 MR. MORIN: I DON'T WANT TO, IT WOULD PUT
7 ME IN A POSITION OF GOING FIRST AND LAST AND HIM
8 GOING IN THE MIDDLE AND THAT'S.

9 THE COURT: WHY DON'T YOU TALK ABOUT THOSE
10 TWO THINGS WITH MR. THOMPSON IN JUST A MINUTE ABOUT
11 ANY CHARGES.

12 MR. THOMPSON: I TALKED ABOUT THAT LAST
13 NIGHT.

14 THE COURT: AND ALSO WHETHER HE OUGHT TO
15 REQUIRE THE STATE TO OPEN OR WAIVE THAT.

16 (CONFERRING WITH MR. THOMPSON.)

17 THE COURT: ALL RIGHT. MR. LITTLEJOHN,
18 YOU'VE HAD AN OPPORTUNITY NOW TO TALK TO
19 MR. THOMPSON. ANYTHING YOU WANT TO SAY, YOU WANT TO
20 REQUIRE THE STATE TO OPEN OR WAIVE THAT?

21 MR. LITTLEJOHN: I WANT TO WAIVE IT.

22 THE COURT: THEN YOU'LL OPEN AND THE STATE
23 WILL CLOSE AND ANYTHING ELSE BEFORE WE BRING THE JURY
24 IN?

25 MR. LITTLEJOHN: NO.

1 THE COURT: ALL RIGHT. ANYTHING FROM THE
2 STATE?

3 MR. MORIN: NOT FROM THE STATE.

4 THE COURT: BRING IN THE JURY NOW.

5 (THE JURY RETURNS TO THE COURTROOM AT
6 9:45.)

7 THE COURT: MEMBERS OF THE JURY PANEL, YOU
8 WILL NOW HEAR THE CLOSING ARGUMENTS OF THE SOLICITOR
9 AND MR. LITTLEJOHN THEN I WILL CHARGE YOU THE LAW.
10 MR. LITTLEJOHN.

11 CLOSING STATEMENT BY MR. LITTLEJOHN:

12 GOOD MORNING.

13 (THE JURY: GOOD MORNING.)

14 YESTERDAY THE STATE NEVER PROVIDED A
15 MOTIVE FOR ME BREAKING IN AND STARTING THE FIRE AT
16 APARTMENT 32. YOU HEARD MY REASON WHY I WAS THERE.
17 AND THE WITNESS STATEMENTS TOLD YOU CLEARLY I WAS IN
18 THE APARTMENT THE WHOLE TIME. SOME SAID THEY SAW ME
19 ALWAYS BUT THEY ALWAYS SAW ME EMPTIED HANDED. THE
20 STATE NEVER PROVIDED YOU WITH SOMEONE WHO SAW ME
21 ENTER THE DWELLING OR EXIT THE DWELLING. THEY ALWAYS
22 SAW ME IN THE PARKING LOT.

23 ALSO THIS PARKING LOT AREA HAD LIGHTS AND
24 I PARKED NEAR THESE LIGHTS. THAT WAY A PERSON OR ANY
25 PERSON COULD SEE. WHICH MEANT I HAD NOTHING TO HIDE.

1 IF I WAS GOING TO SET FIRE AND BREAK INTO A PLACE I
2 WOULDN'T HAVE PARKED RIGHT OUT FRONT AND LET
3 EVERYBODY IN THE WORLD SEE ME. I WOULD MAKE SURE NO
4 ONE SAW MY CAR OR SAW ME AT THAT APARTMENT THAT NIGHT
5 AND THE STATE HAS NO FINGERPRINTS AT ALL ON ALL ITEMS
6 THAT THEY COLLECTED YESTERDAY. NO EYE WITNESS, ONLY
7 OPINIONS AND HEARSAY. THOSE ARE THE FACTS.

8 THE FACTS ARE THAT MY WIFE TOLD THE SLED
9 AGENT AND THE POLICE A DIFFERENT STORY THAN WHAT SHE
10 TOLD YOU THE JURY. ANY TIME SOMETHING HAPPENS
11 BETWEEN TWO MARRIED PEOPLE THE SPOUSE IS ALWAYS THE
12 SUSPECT. IN THAT RESPECT I ASK YOU THE JURY TO HAVE
13 COMMON SENSE. WHY WOULD I LET SO MANY PEOPLE SEE ME
14 THAT NIGHT IF I PLANNED TO COMMIT A CRIME. AND AT
15 THE APARTMENT THAT NIGHT WHY EVERY TIME SOMEBODY SAW
16 ME IN THE PARKING LOT AND BY MYSELF. NOW ALL THESE
17 PEOPLE STATED THAT THE FIRE STARTED AFTER I WAS GONE.

18 ALSO THE DAMAGE TO THE BACK DOOR. IT WAS
19 A SINGLE LOCK, NOT A DEAD BOLT, THE DAMAGE TO THAT
20 DOOR COULD HAVE EASILY BEEN DONE WITH A KICK BUT IT
21 WAS DONE WITH A TOOL. THAT INDICATES THAT SOMEBODY
22 TOOK TIME TO DO THAT. THE WITNESSES STATED THAT THEY
23 SAW ME IN FRONT AND LEAVE. WHOEVER DONE THAT TOOK
24 THEIR TIME IN GETTING INTO THE BACK DOOR BECAUSE
25 THOSE SCRATCHES TOOK TIME.

1 LADIES AND GENTLEMEN, I'M NOT GOING TO
2 TELL YOU I'VE NEVER BEEN IN TROUBLE BEFORE OR DONE
3 ANYTHING WRONG. IT WAS TEN LONG YEARS AGO THAT I GOT
4 IN TROUBLE AND I LEARNED A VALUABLE LESSON THEN ABOUT
5 MY LIFE AND MYSELF: THAT I'M A FATHER, THAT I'M A
6 HONORABLE AND FAITHFUL SON AND A LOVING CHRISTIAN MAN
7 WITH A BIBLE TRAINED CONSCIOUS THAT I NEVER WOULD
8 HAVE COMMITTED SUCH A CRIME THAT THE STATE SAID I
9 COMMITTED. WELL, I COULD HAVE NEVER TURNED INNOCENT
10 WOMEN AND CHILDREN INTO THE STREET. I THOUGHT IT WAS
11 BEST THAT I SPOKE FOR MYSELF SINCE I DON'T HAVE
12 ANYTHING TO HIDE. YOU KNOW. THAT'S WHY YOU SEE ME
13 REPRESENTING MYSELF BECAUSE I DIDN'T WANT TO HIDE
14 BEHIND NOBODY ELSE'S WORDS BECAUSE I WANTED YOU TO
15 HEAR WHAT I HAD TO SAY BECAUSE WHEN I TALKED TO THE
16 DETECTIVE AND THE SLED AGENT THEY NEVER DID HEAR WHAT
17 I HAD TO SAY. THE TEN WHOLE MONTHS I SAT OVER AT THE
18 COUNTY JAIL NOBODY HEARD WHAT I HAD TO SAY. NOW IS
19 MY TIME TO SAY SOMETHING AND I THOUGHT IT WAS BEST
20 THAT I SAID IT TO YOU DIRECTLY. ALL RIGHT.

21 MY MOMMA ALWAYS TOLD ME THE TRUTH WILL SET
22 YOU FREE. WELL, THIS IS MY TRUTH. THIS CASE HAS A
23 LOT OF CONTRADICTING FACTS IN IT. AT LEAST FOUR
24 CONTRADICTING TIMES PEOPLE SAY THEY SAW ME. TWO
25 PEOPLE SAID THE FIRE STARTED BEFORE 12 BUT SHE DIDN'T

1. CALL THE POLICE. ONE PERSON STATES THAT SHE SAW ME
2. AT 12:30. THAT WOULD PUT THE FIRE AT THE SAME TIME
3. THAT SHE SAID SHE SAW ME. SHE DIDN'T TESTIFY THAT
4. SHE SAW SMOKE. SHE SAW ME COMING FROM THE FRONT DOOR
5. BUT DIDN'T SEE WITH A GAS CAN OR A BURGLARY TOOL IN
6. MY HAND OR GO INTO THE TRUNK OF MY CAR. A DOOR WITH
7. MORE DAMAGE DONE TO THE INSIDE FRAME THAN TO THE
8. OUTSIDE. IN ITSELF IT WAS LACKING OF TOOL MARKS TO
9. THE SILL INDICATING THAT IT WENT ALL THE WAY THROUGH
10. THE DOOR IN ORDER TO OPEN THAT DOOR. SO
11. INADVERTENTLY THAT DOOR HAD TO HAVE BEEN OPENED WITH
12. A KEY. ALSO DIRECTLY BEHIND THAT DOOR THERE WERE
13. ITEMS, THERE WAS A RACK WITH GLASS ON IT, IT WEREN'T
14. DISTURBED. ALSO THE PHONE UPSTAIRS, THE THING ABOUT
15. ME ON THE PHONE UPSTAIRS, WHY WOULD I MAKE SO MUCH
16. NOISE AND BREAK IN AND DRAW ATTENTION TO MYSELF AND
17. PARK RIGHT OUT FRONT OF THIS VERY BUILDING I'M
18. COMMITTING A CRIME IN AND THEN HAVE THE BACK DOOR
19. OPEN. WHY WOULD I PULL OUT OF THE DRESSER DRAWER AN
20. OLD LETTER AND PLACE IT ON THE BED ALONG WITH OTHER
21. ITEMS? AND THE PHONE UPSTAIRS AND WIPE THESE THINGS
22. CLEAN OF FINGERPRINTS AND THE PHONE ALSO DOWNSTAIRS
23. IN THE KITCHEN THAT I NEVER WAS ON IF I PLANNED TO
24. DESTROY THEM BY FIRE. ALSO THE IRON WAS PLUGGED UP
25. UPSTAIRS BUT NO FINGERPRINTS WERE TAKEN FROM THIS

1 IRON. MY WIFE STATED THAT THE LETTER WAS IN THE
2 DRESSER DRAWER BUT IT WASN'T DUSTED. ALSO THE TV WAS
3 LEFT ON. THE NOISE FROM THE TV IS WHAT, PROBABLY
4 WHAT MS. CLEMMONS HEARD THAT NIGHT. WHY DIDN'T I
5 TURN THE TV UP TO DROWN ME OUT? WHY WOULD I PULL
6 INTO A DEAD END WITH MY CAR TO BE SEEN BY ALL AND GET
7 OUT AND GO AROUND BACK? MIND YOU NO ONE SAW ME GO
8 AROUND BEHIND OR INSIDE OF THE APARTMENT, FRONT OR
9 BACK DOOR. REMEMBER THERE WAS GAS POURED EVERYWHERE.
10 MIND YOU NO GAS CAN OR BURGLARY TOOL WAS SAID TO BE
11 SEEN IN MY HAND AND ALSO WHY WOULD I WIPE A LIGHTER
12 AND THEN CONVENIENTLY TOSS IT BY THE BACK DOOR WHERE
13 THE POLICE CAN FIND IT? PEOPLE WHO'VE BEEN DRINKING
14 DON'T REMEMBER THIS KIND OF DETAILS.

15 ALSO MS. CLEMMONS STATED THE THINGS OR
16 ITEMS WERE BEING THROWN OR MOVED IN THE APARTMENT.
17 YOU NEVER DID GET A CHANCE TO SEE THOSE.

18 MR. MORIN: OBJECTION.

19 THE COURT: DON'T GO INTO WHAT THEY DIDN'T
20 SEE. YOU'VE GOT TO TALK ABOUT WHAT THEY DID SEE.

21 MR. LITTLEJOHN: ALL RIGHT. WELL, THINGS
22 WERE STILL ON THE WALL. THINGS WERE STILL ON THE
23 DRESSER ON THE SIDE THAT MS. CLEMMONS APARTMENT WAS.
24 THESE ITEMS ON THE DRESSER WERE NOT MOVED, THEY WERE
25 NOT MOVED AROUND. THE POLICE, AND SLED DONE AN

1 INSPECTION AND THEY FOUND NO VISIBLE DAMAGE DONE TO
2 THE WALLS UPSTAIRS OR IN THE BEDROOM WAS NOT IN
3 DISARRAY WHATSOEVER. HOW AFTER STATING THAT YOU
4 DIDN'T TALK TO ME BUT YOU I.D. MY VOICE THROUGH A
5 WALL THEN HEAR THREATS AND CURSING WITH SOMEONE, WITH
6 A WOMAN, AND STATE THAT HE DOESN'T HAVE A WOMAN OVER
7 AT IVEY'S HOUSE, WHY COULDN'T THAT PERSON HAVE BEEN
8 ANOTHER WOMAN OR MY WIFE'S VOICE FOR THAT MATTER?
9 WHY SHE DIDN'T CALL THE POLICE? MS. CLEMMONS NEVER
10 STATED WHAT KIND OF NOISE IN THE BACK YARD THAT SHE
11 HEARD. I QUESTIONED HER TWICE YESTERDAY. SHE NEVER
12 SAID WHAT KIND OF NOISE. THE KIND OF NOISE THAT YOU
13 WOULD HAVE HEARD RETROSPECT TO THE DOOR WOULD HAVE
14 BEEN A LOUD NOISE, WOULD HAVE BEEN VERY DISTINCT.
15 BOTH NEIGHBORS WOULD HAVE BEEN ABLE TO HEAR IT. WHY
16 SHE DIDN'T CALL THE POLICE DUE TO THE NOISE? SHE
17 SAID SHE WENT LOOKED OUT THE WINDOW AND SHE STATED
18 SHE SAW NO ONE, OKAY. ALL THIS HAPPENED BEFORE THE
19 FIRE. MS. CLEMMONS ALSO STATED THAT TEN MINUTES HAD
20 PAST AND THEN SHE HEARD THE SMOKE ALARM. AND SHE
21 KNEW HER NEIGHBOR WAS NOT AT HOME BUT SHE DIDN'T CALL
22 THE POLICE OR TRY TO TELL ANYONE THAT SHE FIRST
23 HEARD, AFTER SHE FIRST HEARD THE ALARM THAT
24 MRS. JOHNSON WAS THE ONE THAT KNOCKED ON HER DOOR.
25 BUT THE FACTS IS THAT TWO HOURS LATER IS WHEN THE

1 FACT THAT MRS. JOHNSON KNOCKED ON MS. CLEMMONS DOOR.
2 WHAT DID MS. CLEMMONS DO FOR TWO HOURS? AT THAT SAME
3 TIME MS. CLEMMONS STATED THAT THE NOISE WAS GOING ON
4 IN APARTMENT 32. NEVER IS NO WAY, NEVER IN NO WAY
5 THAT YOU COULD MISS THAT KIND OF NOISE DESCRIBED BY
6 MS. CLEMMONS. NO MATTER HOW HARD YOU TRY OR HOW
7 TIRED YOU WERE THE NIGHT BEFORE YOU COULD NEVER MISS
8 THE NOISE THAT SHE DESCRIBED.

9 MRS. JOHNSON STATED THAT SHE DIDN'T
10 REMEMBER SEEING OR HEARING ANYONE IN APARTMENT 32 AT
11 ALL. BUT WE HAVE TWO DIFFERENT STATEMENTS FROM
12 PEOPLE WHO LIVE NEXT DOOR TO BE CONTRADICTORY. ALSO
13 APARTMENT 31 STATED SHE LAST SAW ME IN DECEMBER. THE
14 SAME MONTH MY WIFE SAID SHE MOVED THERE TO GET AWAY
15 FROM ME. IF YOU ARE TRYING TO GET AWAY FROM SOMEBODY
16 YOU DON'T MOVE THEM IN. WHY WOULD THEY WITHHOLD THIS
17 INFORMATION FROM THE POLICE IF THEY HAD NOTHING TO
18 HIDE? LAST MS. CLEMMONS STATED THAT I WAS STILL IN
19 THE APARTMENT AND MY CAR PULLED DOWN TO PICK ME UP
20 BUT NEVER SAW ME BUT MY CAR. THAT'S FUNNY BECAUSE
21 EVERYONE ELSE STATED THAT I WAS ALONE.

22 NOW MS. CLEMMONS STATED THAT THIS WOMAN
23 WAS IN THE APARTMENT, SHE LEFT, SHE GOT IN MY CAR,
24 BUT SHE NEVER DID SEE THE WOMAN. SHE NEVER DID SEE
25 ME EXIT THE APARTMENT WHEN SHE SAID THAT THE CAR

1 WAITED FOR ME. WELL, MS. CLEMMONS STATEMENT ALSO
2 SAID THAT SOMEONE WALKED OR HAD TO WAIT FOR ME TO
3 EXIT THE BUILDING BUT NO ONE EVER SAW THIS MYSTERY
4 WOMAN. HER STATEMENT IMPLIES A CO-DEFENDANT, BUT I'M
5 HERE STANDING ALONE.

6 WHY IS THERE SO MANY CONTRADICTORY
7 STATEMENTS IF I AM SO GUILTY. THE STATE HAS THE
8 BURDEN OF PROOF IN ORDER FOR YOU TO THE JURY TO SAY
9 THAT I AM GUILTY AND TO BE WHAT THE STATE CALLS
10 BEYOND A REASONABLE DOUBT. THAT MEANS THE STATE HAS
11 TO BE, THE STATE HAS TO CLEAR UP ALL THOSE
12 CONTRADICTING STATEMENTS THAT WERE MADE. AND ALL
13 CONTRADICTING STATEMENTS THAT I'M LETTING YOU KNOW
14 THAT ARE IN THIS CASE. THE STATEMENTS ABOUT ME OR
15 SOMEONE WOULD SEEM, WOULD HAVE SEEN ME WITH A GAS CAN
16 OR A TOOL USED TO OPEN THOSE DOORS WERE NOT FOUND AT
17 THE SCENE OF THE CRIME NOR IN THE FRONT OR BEHIND.
18 THE POLICE CHECKED THE AREA, GAS STATIONS, BUT THEY
19 COULD NOT FIND ANYONE SAYING I BOUGHT THE GAS.

20 MR. MORIN: OBJECTION, IT'S NOT EVIDENCE.

21 THE COURT: JUST STICK TO WHAT'S IN THE
22 RECORD.

23 MR. LITTLEJOHN: ALL RIGHT. BUT THEY DID
24 HAVE TWO PEOPLE THAT SAID THEY SAW ME IN THE PARKING
25 LOT WITH NOTHING IN MY HAND AND NOTHING, NOTHING TO

1 THE FACT THAT I WAS IN A HURRY OR BURGLARY TOOL NOW.
2 YOU DIDN'T HEAR THAT I WAS NOT THE ONLY ONE THAT WAS
3 COMING OVER TO THE APARTMENT EITHER. BUT IN ORDER
4 FOR YOU THE JURY TO FIND ME GUILTY OR NOT GUILTY
5 THERE HAS TO BE ENOUGH PROOF THAT I THE DEFENDANT
6 COMMITTED OR DIDN'T COMMIT THE CRIME. AS I STATED
7 EARLIER ONE VERY IMPORTANT RULE IS THAT A PERSON
8 CANNOT BE PUNISHED FOR A CRIME UNLESS HE IS PROVEN
9 GUILTY BEYOND A REASONABLE DOUBT. IF YOU THE JURY
10 BELIEVE THERE IS NOT ENOUGH EVIDENCE TO PROVE THAT ME
11 THE DEFENDANT COMMITTED THE CRIME THE JURY MUST REACH
12 A NOT GUILTY VERDICT. I'VE BEEN LOCKED UP FOR TEN
13 MONTHS FOR A CRIME I HAD NOTHING TO DO WITH. AND
14 THIS IS MY CHANCE TO TELL YOU THAT I DID NOT BREAK IN
15 AND SET FIRE TO APARTMENT 32 THAT JULY FOURTH NIGHT.
16 ALSO THIS LITTLE --

17 MR. MORIN: OBJECTION.

18 MR. LITTLEJOHN: ---IS THE REASON WHY I'M
19 HERE TO TELL YOU.

20 THE COURT: I SUSTAIN THE OBJECTION.
21 THAT'S NOT IN RECORD.

22 MR. LITTLEJOHN: I ASK YOU THE JURY FOR
23 JUSTICE BEYOND A REASONABLE DOUBT. THANK YOU FOR
24 LISTENING TO ME. AND THANK YOU.

25 THE COURT: MR. MORIN.

1 CLOSING STATEMENT BY MR. MORIN:

2 WHY WOULD A PERSON DO SOMETHING SO DUMB?
3 I COULDN'T HAVE DONE THIS BECAUSE IT'S DUMB AND I'M
4 TOO SMART TO DO SOMETHING THIS DUMB. WHY WOULD
5 SOMEBODY BREAK INTO ANOTHER PERSON'S HOUSE AND SET IT
6 ON FIRE? THAT'S TOO DUMB FOR ANYBODY TO DO, YET IN
7 THIS CASE SOMEBODY DID IT. IN THIS CASE JIMMY
8 LITTLEJOHN DID IT. I'LL START OUT WITH THE BURGLARY.
9 I HAVE TO PROVE BEYOND A REASONABLE DOUBT THAT
10 SOMEONE ENTERED THAT APARTMENT WITHOUT CONSENT WITH
11 INTENT TO COMMIT A CRIME AT NIGHT. ALL THE TESTIMONY
12 IS THAT IT WAS DARK, IT WAS 11, SOMETIME BETWEEN 11
13 AND 12:30 SOMEONE BROKE INTO THE HOUSE THAT NIGHT.
14 SOMEBODY BROKE IN. SOMEBODY HIT THAT DOOR AND BROKE
15 IT IN. THEY DIDN'T USE A KEY. I DON'T KNOW IF THEY
16 USED A TOOL OR PICKED IT, BUT THAT EVIDENCE THAT
17 YOU'LL HAVE BACK THERE WITH YOU SHOWS SOMEBODY FORCED
18 THEIR WAY INTO THAT APARTMENT. THAT'S BURGLARY.
19 WHAT IS THE CRIME THAT THEY INTENDED TO COMMIT IN
20 THERE? ARSON. ARSON IS THE WILLFUL INTENTIONAL
21 SETTING OF A FIRE OF A DWELLING. YOU'LL HAVE THIS
22 EVIDENCE AND I APOLOGIZE FOR THOSE OF YOU SITTING IN
23 THE FRONT BECAUSE YOU MAYBE ABLE TO SMELL THESE GAS
24 FUMES RIGHT NOW. JIMMY LITTLEJOHN WENT THROUGH THAT
25 DOOR AND SET HIS ESTRANGED WIFE'S HOUSE ON FIRE. I

1 KNOW THAT HE DIDN'T HAVE CONSENT BECAUSE SHE SAID HE
2 DIDN'T HAVE A KEY AND I DIDN'T TELL HIM TO GO IN
3 THERE. I KNOW THAT HE DIDN'T LIVE THERE BECAUSE HIS
4 DAD TOLD YOU HE MOVED OUT IN APRIL.

5 HOW DO WE KNOW IT WAS JIMMY? 11 O'CLOCK
6 SHEMEKA WILKINS SEES JIMMIE DRIVING OUT OF 100
7 REDWOOD CIRCLE. HOW IS HE DRIVING? HE'S DRIVING OUT
8 OF CONTROL, RAN A STOP SIGN ALMOST RAN OFF THE ROAD
9 MAKING A LEFT TURN. WHAT WAS MR. LITTLEJOHN'S
10 CONDITION IN HIS OWN WORDS? I WAS DRUNK. DOES THAT
11 SUPPORT HER VERSION OF HIM DRIVING OUT OF CONTROL?
12 11:20 MRS. JOHNSON COMES HOME AND SAYS I DIDN'T SEE
13 HIS CAR. SHE WOULDN'T HAVE. MS. WILKINS TESTIFIED
14 HE DROVE OUT AT 11 AND AS MR. LITTLEJOHN POINTED OUT
15 WITH MS. WILKINS WHAT TIME DID YOU HEAR ME COME BACK
16 AT? 11:30. HE CAME BACK AROUND 11:30. HOW DO WE
17 KNOW HE WAS THERE AT 11:30? WELL, BETWEEN 11:30 AND
18 11:45 MR. WILKINS SAYS I'M OUT THERE SMOKING AND I
19 SEE HIM GOING FROM THAT APARTMENT OR FROM THAT
20 DIRECTION TO THE CAR AND GET INTO HIS TRUNK, BUT I
21 DIDN'T PAY HIM ANY ATTENTION, I WENT IN THE HOUSE.
22 HE EVEN ADMITS HE WAS THERE. HIS STORY IS WELL, YOU
23 KNOW, WHAT HAPPENED WAS I WAS AT A COOK OUT AT MY
24 ESTRANGED WIFE'S MOMMA HOUSE WHICH I WAS NOT INVITED
25 TO AND I WAS THERE FOR ABOUT SIX HOURS WITH HER, BUT

1 I NEEDED TO LEAVE HER A NOTE. OH; I NEEDED TO TALK
2 TO HER SO I WENT OVER THERE BUT SHE WASN'T THERE.
3 NOW REMEMBER HE OPENED THIS CASE UP BY SAYING, IVEY
4 SET THE FIRE. AND THEN HE SAT UP HERE AT THE END OF
5 THE DAY AND SAID, IVEY WASN'T HOME. I HAD TO LEAVE
6 HER A NOTE. THEN WE HAVE MS. DAVIS WHO SEES HIM
7 LEAVE SOMETIME, SHE SAID 12:30, SOMETIME AFTER THAT.
8 AND UP TO THAT POINT WE'VE GOT, WE GOT HIM COMING
9 AROUND THERE AT 11:45, WE GOT HIM LEAVING AROUND
10 12:30. WE DON'T HAVE HIM IN THE HOUSE. HE CALLS MS.
11 CLEMMONS. SHE SAYS, I LIVED NEXT DOOR AND I HEARD
12 YOU IN THERE. I HEARD A NOISE IN THE BACK YARD
13 BEFORE THIS HAPPENED, A NOISE. I HEARD YOU IN THERE
14 THREATENING IVEY. THIS NOTE THAT YOU SEE RIGHT HERE
15 ON THIS PICTURE WAS WHERE? IN A NIGHTSTAND IS WHAT
16 THE TESTIMONY IS WHEN SHE LEFT, BUT HERE IT IS ON HER
17 BED WHEN SHE COMES BACK.

18 MR. LITTLEJOHN: OBJECTION, YOUR HONOR, WE
19 NEVER DID STATE WHERE WE FOUND THE DOC--THE NOTE WAS
20 FOUND AT THE DOOR.

21 MR. MORIN: I'M NOT AT THE DOOR.

22 MR. LITTLEJOHN: I KNOW BUT WE NEVER DID
23 BRING IN THE EVIDENCE OF THAT LETTER YESTERDAY.

24 THE COURT: IT WAS TALKED ABOUT. I
25 OVERRULE THE OBJECTION.

1 MR. MORIN: IT'S ON THE BED.. WHAT ELSE
2 DID WE FIND ON THE BED? RIGHT THROUGH TO THE
3 MATTRESS, GAS, YOU'LL HAVE THIS BACK THERE. WHAT DID
4 DETECTIVE SHEALY SAY ABOUT FINDING GAS ON THE BED?
5 IT'S COMMON IN DOMESTIC CASES THAT GAS GETS POURED ON
6 THE BED.

7 NOW THE UPSTAIRS DIDN'T CATCH FIRE FOR ONE
8 REASON OR ANOTHER. THE EXPERTS TELL US IT'S PROBABLY
9 BECAUSE THERE WASN'T ENOUGH OXYGEN TO START THAT PART
10 OF THE FIRE AND WE'RE PROBABLY LUCKY THAT DIDN'T,
11 THAT DIDN'T HAPPEN, BUT WITHIN TWO OR THREE QUESTIONS
12 OF HIS WITNESS MS. CLEMMONS SAYING I HEARD YOU IN
13 THERE, I HEARD THAT NOISE, IT SUPPORTS THAT BURGLARY,
14 I HEARD YOU IN THERE SAYING THINGS IN THIS ROOM WHERE
15 WE SEE THIS PHONE ON THE BED NEXT TO, COVERED WITH
16 GAS AND THE LETTER THAT WASN'T ON THE BED WHEN
17 MS. LITTLEJOHN LEFT, IT WAS IN THE DRESSER DRAWER.
18 THE REST OF THE TIME MR. LITTLEJOHN SPENT TRYING TO
19 GET THAT TOOTH PASTE BACK IN THE TUBE, BUT THE FACT OF
20 THE MATTER IS SHE HEARD HIM IN THERE.

21 AND AS FAR AS THE TIME, LET ME START OUT
22 BY SAYING THIS, ALL OF Y'ALL HAVE BEEN IN THIS
23 COURTROOM ALL DAY YESTERDAY AND YOU HEARD WHAT MR.
24 LITTLEJOHN HAD SAID TODAY AND WHAT I HAD SAID AND
25 WE'LL HEAR WHAT THE JUDGE HAS TO SAY AND WHEN YOU GET

1 BACK IN THE JURY ROOM THERE ARE GOING TO BE THINGS
2 THAT YOU REMEMBER DIFFERENTLY OR YOU REMEMBER OR
3 SOMETHING THAT STANDS OUT IN YOUR MIND THAT DOESN'T
4 STAND OUT IN SOMEONE'S ELSE MIND AND WHEN YOU
5 DELIBERATE YOU'LL FIND IT AND THAT'S WHY WE HAVE SOME
6 PEOPLE SAYING, I REMEMBER SEEING HIM AT 12 OR 12:30
7 AND I REMEMBER HIM GOING TO THE, ONE PERSON, THEY
8 TESTIFIED BEFORE YOU UNDER OATH, THIS IS WHAT I
9 REMEMBER HAPPENED. MS. CLEMMONS SAYS AFTER SHE HEARD
10 THAT, IT WASN'T TOO LONG AFTER THE FIRE STARTED, BUT
11 SHE ALSO SAID I WAS ASLEEP AND MY DAUGHTER WOKE ME UP
12 AND SAID THE FIRE ALARM IS GOING OFF. SO HOW MUCH
13 TIME PASSED FROM THE TIME SHE HEARD HIM FROM THE TIME
14 SHE AWOKEN BECAUSE HER TESTIMONY WAS SHE WOKE ME UP
15 AND SAID THE FIRE ALARM IS GOING OFF AND I SAID WHAT
16 ARE YOU TALKING ABOUT AND SHE SAID THEN I HEARD IT
17 AND IT SOUNDED FAR OFF. SO HOW MUCH TIME PASSED FROM
18 THE TIME SHE FELL ASLEEP TO THEN? SHE COULDN'T SAY.
19 WHO CAN SAY? THE FIRE DIDN'T START UNTIL AFTER HE
20 LEFT. WELL, THAT'S PROBABLY TRUE BECAUSE AFTER HE
21 STARTED IT HE LEFT. WHEN IT COMES TO TIME, THIS IS
22 PROBABLY THE BEST PIECE OF EVIDENCE THERE IS. THIS
23 IS A CLOCK UPSTAIRS MELTED AT THE TOP STOPPED AT
24 ABOUT 10 TO 1. THE TESTIMONY IS, EVEN BY HIS
25 STANDARDS, HE WAS THERE AN HOUR PREVIOUS TO THAT. BY

1 THE TIME THE FIRE STARTED DOWNSTAIRS BECAUSE REMEMBER
2 THERE IS NO FIRE UPSTAIRS, THAT HEAT HAS TO BUILD UP,
3 MELT THE TOP OF THIS CLOCK AND KNOCK IT OFF THE WALL
4 AND STOP, SO WE KNOW THAT AT THAT TIME THAT FIRE HAD
5 ALREADY BUILT UP THAT MUCH HEAT. AND AS DETECTIVE
6 SHEALY SAID, OFFICER SHEALY FROM SLED, IF YOU
7 REMEMBER HE WAS TALKING ABOUT HOW FIRE BURNS. FIRST
8 IT BURNS THE GAS ON TOP, THEN IT BURNS THE GAS COMING
9 OFF THE CARPET, THEN IT BURNS DOWN TO THE CARPET AND
10 THE PADDING. YOU'LL HAVE THE PICTURES IN THERE THAT
11 TALKED ABOUT AND HE SHOWED YOU. THAT TAKES SOME
12 TIME. I MEAN IT DIDN'T FLASH FIRE AND AS YOU CAN
13 TELL BY LOOKING AT THE PICTURES WHERE SOME PLACES ARE
14 BURNED MORE THAN OTHERS, THE TIME HAD TO HAVE PASSED
15 FROM THE TIME HE LEFT UNTIL THE TIME THE SMOKE
16 DETECTOR WENT OFF IN THE APARTMENT NEXT DOOR. THIS
17 IS WHAT HE DID. THERE IS GOING TO BE OTHER PICTURES
18 OF IT BUT THIS IS WHAT HE DID. HE POURED GAS IN
19 THERE AND HE LIT IT ON FIRE. HIS ESTRANGED WIFE, HE
20 DOESN'T LIVE WITH HER, AND WE GOT GAS ALL OVER THE
21 PLACE. WE GOT PEOPLE SAYING, YEAH, HE WAS THERE.
22 EVEN HE SAYS HE WAS THERE, BUT HE WAS DRUNK. BUT
23 BELIEVE HIM IS WHAT HE WANTS TO SAY INSTEAD OF ALL
24 THESE PEOPLE WHO SAW HIM OUT THERE DOING THESE
25 THINGS. NO, HE DIDN'T HAVE TRESPASS NOTICE BUT HE

1 DIDN'T HAVE ANY BUSINESS BEING OVER THERE WHEN SHE
2 WASN'T.

3 I'LL SUBMIT TO YOU THAT THAT EVIDENCE IS
4 PROOF THAT HE WENT IN THERE. MOTIVE, SHE DIDN'T HAVE
5 A MOTIVE. SHE LOST EVERYTHING FROM SMOKE DAMAGE AND
6 OTHER DAMAGE SHE SAID. SHE DIDN'T HAVE INSURANCE.
7 HE'S THE ONE WHO WENT IN THERE, GOT MAD FOR WHATEVER
8 REASON, AND SET THIS PLACE ON FIRE. I SUBMIT TO YOU
9 THAT THE EVIDENCE IS CLEAR AND BEYOND A REASONABLE
10 DOUBT AND WHEN IT COMES TO ARSON AND BURGLARY, IT'S
11 BEYOND ANY DOUBT, BUT BEYOND A REASONABLE DOUBT, HE'S
12 THE ONE THAT DID IT. AND DON'T BUY INTO I'M TOO
13 SMART TO DO SOMETHING THIS DUMB. IF EVERYBODY WHO IS
14 TOO SMART TO DO SOMETHING THAT'S DUMB WE WOULDN'T
15 HAVE ANY CRIME. HE DID IT. HE'S GUILTY.

16 CHARGE BY THE COURT:

17 MEMBERS OF THE JURY PANEL, I APPRECIATE
18 THE ATTENTION YOU'VE GIVEN TO ALL OF US TO THIS
19 POINT. IT IS NOW MY DUTY TO CHARGE YOU THE LAW THAT
20 YOU ARE TO APPLY IN THIS CASE AND IT'S YOUR DUTY TO
21 ACCEPT AND APPLY THE LAW AS I CHARGE IT. THIS IS
22 TRUE EVEN IF YOU THINK I CHARGE YOU THE LAW IN ERROR
23 OR EVEN IF YOU THINK THE LAW SHOULD BE DIFFERENT.

24 NOW THE FACT THAT MR. LITTLEJOHN HAS BEEN
25 CHARGED, ARRESTED, AND INDICTED IS NOT EVIDENCE.

1 THAT'S JUST THE WAY OUR SYSTEM WORKS TO BRING A CASE
2 INTO COURT. THE INDICTMENT THAT YOU WILL HAVE WITH
3 YOU IN THE JURY ROOM IS SIMPLY THE PAPERWORK BY WAY
4 OF WHICH THE CHARGE IS SET FORTH AGAINST
5 MR. LITTLEJOHN. IT CONTAINS THE ALLEGATIONS BUT IT
6 IS NOT EVIDENCE AND IT WILL ULTIMATELY BE WHERE THE
7 UNANIMOUS VERDICT OF THE JURY WILL BE ENROLLED AND I
8 WILL TELL THE FOREMAN MORE ABOUT THAT LATER. AND THE
9 FACT THAT THERE ARE TWO CHARGES IS OF NO MOMENT
10 EITHER. THAT IS, THIS PARTICULAR EVENT GIVES RISE TO
11 WHOEVER PERPETRATED IT TO TWO DIFFERENT ALLEGATIONS
12 OF CRIMINAL CONDUCT. BUT THE FACT THAT THERE ARE TWO
13 IS OF NO WEIGHT IN DETERMINING WHETHER OR NOT
14 MR. LITTLEJOHN IS OR IS NOT GUILTY OF THE CHARGES IN
15 EITHER OR BOTH OF THE INDICTMENTS.

16 MR. LITTLEJOHN IS PRESUMED INNOCENT OF
17 BOTH OF THESE CHARGES. ANYONE CHARGED WITH ANY
18 OFFENSE IN OUR SYSTEM IS PRESUMED INNOCENT UNTIL SUCH
19 TIME AS THE STATE IS ABLE TO PROVE THAT PERSON'S
20 GUILT BEYOND A REASONABLE DOUBT. THIS PRESUMPTION OF
21 INNOCENCE IS NOT A MERE LEGAL THEORY OR A MERE LEGAL
22 PHRASE. IT IS A SUBSTANTIAL RIGHT. THIS RIGHT
23 INURES TO THE BENEFIT OF SOMEONE WHO IS CHARGED AT
24 THE TIME THEY ARE ARRESTED, IT REMAINS WITH THEM AS
25 THEIR CASE IS PROCESSED THROUGH OUR COURT SYSTEM, AND

1 THE PRESUMPTION OF INNOCENCE REMAINS IN AN
2 INDIVIDUAL'S FAVOR, HERE MR. LITTLEJOHN, EVEN NOW AND
3 EVEN AS YOU DELIBERATE. THE PRESUMPTION OF INNOCENCE
4 IN HIS FAVOR IS REMOVED IF AND WHEN AND ONLY IF AND
5 WHEN YOU AS THE TRIAL JURY IN THIS CASE DETERMINE
6 THAT THE STATE HAS PROVEN HIS GUILT BEYOND A
7 REASONABLE DOUBT.

8 NOW THE STATE IS NOT REQUIRED TO PROVE HIS
9 GUILT BEYOND ALL OR BEYOND EVERY DOUBT BUT BEYOND A
10 REASONABLE DOUBT. A REASONABLE DOUBT HAS BEEN
11 DESCRIBED AS THE KIND OF DOUBT THAT WOULD CAUSE A
12 REASONABLE PERSON TO HESITATE TO ACT. PROOF BEYOND A
13 REASONABLE DOUBT IS PROOF THAT LEAVES YOU FIRMLY
14 CONVINCED OF AN INDIVIDUAL'S GUILT. THERE ARE VERY
15 FEW THINGS IN OUR WORLD THAT YOU CAN KNOW WITH
16 ABSOLUTE CERTAINTY AND THE LAW DOES NOT REQUIRE THAT
17 IN A CASE SUCH AS THIS. THE LAW DOES NOT REQUIRE
18 THAT EVERY POSSIBLE DOUBT BE OVERCOME. HOWEVER, IF
19 BASED ON YOUR CONSIDERATION OF THE EVIDENCE YOU ARE
20 FIRMLY CONVINCED THAT MR. LITTLEJOHN IS GUILTY OF ONE
21 OR BOTH OF THESE CRIMES YOU WOULD FIND HIM GUILTY.
22 ON THE OTHER HAND, IF YOU THINK THERE IS A REAL
23 POSSIBILITY THAT HE IS NOT GUILTY AS TO ONE OR BOTH
24 OF THESE CHARGES, YOU MUST GIVE HIM THE BENEFIT OF
25 THAT DOUBT AND FIND HIM NOT GUILTY. HE IS ENTITLED

1 TO THE BENEFIT OF ANY REASONABLE DOUBT THAT YOU HAVE
2 AS TO ANY ISSUE IN THIS CASE. REASONABLE DOUBT MAY
3 ARISE FROM THE EVIDENCE PRESENTED OR FROM THE LACK OF
4 EVIDENCE.

5 AS I TOLD YOU, I'M THE SOLE JUDGE OF THE
6 LAW. YOU ARE THE SOLE JUDGES OF THE FACTS. YOU ARE
7 NOT TO INFER FROM ANYTHING I HAVE SAID OR DONE OR
8 ANYTHING I NOW SAY OR DO AS BEING AN INDICATION OF AN
9 OPINION OF MINE ON THE FACTS. THE LAW DOES NOT ALLOW
10 A TRIAL JUDGE TO FORMULATE OR EXPRESS TO A JURY AN
11 OPINION ON THE FACTS. IT IS SOLELY UP TO YOU TO
12 EXAMINE THE EVIDENCE AND GIVE TO THE EVIDENCE THE
13 EFFECT, THE VALUE, THE WEIGHT, AND THE TRUTH YOU
14 BELIEVE IT SHOULD HAVE.

15 IN DOING THIS YOU MAY BELIEVE ONE WITNESS
16 AS OPPOSED TO SEVERAL, SEVERAL WITNESSES AS OPPOSED
17 TO ONE; YOU MAY BELIEVE ALL, PART, OR NONE OF A
18 WITNESS' TESTIMONY. IN ANALYZING THE EVIDENCE USE
19 YOUR COMMON SENSE, YOUR SENSE OF LOGIC, USE YOUR
20 EXPERIENCES IN LIFE. AS JUDGES OF THE FACTS, YOU OF
21 NECESSITY MUST JUDGE THE CREDIBILITY, THE
22 BELIEVABILITY OF THE WITNESSES WHO HAVE TESTIFIED.
23 IN ASSESING BELIEVABILITY, YOU USE THOSE THINGS THAT
24 I JUST MENTIONED AND USE THOSE THINGS THAT IN YOUR
25 DAY-TO-DAY LIFE YOU FIND TO BE INDICATIVE OF

1 TRUTHFULNESS AND YOU CAN USE CERTAIN EVALUATORS. YOU
2 CAN USE A WITNESS' DEMEANOR: HOW THEY ACT ON THE
3 STAND; ARE THEY HESITANT OR STRAIGHT FORWARD; IS
4 THEIR TESTIMONY CONSISTENT OR INCONSISTENT. YOU CAN
5 CONSIDER WHETHER THEY HAVE ANY BIAS OR PREJUDICE;
6 THAT IS WHETHER THEY WOULD WISH TO HELP OR HURT ONE
7 SIDE OR THE OTHER. AND YOU CAN CONSIDER THE
8 OPPORTUNITY A WITNESS MAY HAVE TO HAVE KNOWN THOSE
9 THINGS TO WHICH THE WITNESS TESTIFIED.

10 YOU'VE HEARD EVIDENCE IN THIS CASE THAT
11 MR. LITTLEJOHN HAD A PRIOR CONVICTION. THIS PRIOR
12 CONVICTION IS ALLOWED INTO EVIDENCE SOLELY IN REGARD
13 TO THE QUESTION OF HIS BELIEVABILITY. THE FACT THAT
14 HE HAS A PRIOR CRIMINAL INSTANCE IN HIS LIFE IS NOT
15 TO BE CONSIDERED BY YOU IN YOUR CONSIDERATION OF
16 WHETHER THE STATE HAS PROVEN HIS GUILT IN THIS
17 OFFENSE BEYOND A REASONABLE DOUBT. EVIDENCE OF PRIOR
18 CRIMINAL CONDUCT IS ALLOWED FOR ONLY ONE REASON IN A
19 CASE AND THAT IS TO ALLOW THE JURY TO CONSIDER THAT
20 WHEN CONSIDERING HIS TESTIMONY AND DETERMINING
21 WHETHER IT IS BELIEVABLE OR NOT. THAT IS THE SOLE
22 ISSUE ON WHICH YOU CAN CONSIDER A PRIOR RECORD.

23 NOW IN THIS CASE WE'VE HAD TESTIMONY OF
24 INDIVIDUALS WHO HAVE QUALIFIED AS EXPERTS. GENERALLY
25 ONE CAN ONLY TESTIFY AS TO SOMETHING THEY HAVE

1 EXPERIENCED WITH ONE OF THEIR FIVE SENSES. USUALLY
2 THEY'VE SEEN SOMETHING OR THEY'VE HEARD SOMETHING.
3 HOWEVER, WHERE AN INDIVIDUAL HAS CERTAIN EDUCATION,
4 SKILL, OR KNOWLEDGE IN A PARTICULAR AREA THAT
5 INDIVIDUAL CAN BE QUALIFIED AS AN EXPERT AND RENDER
6 AN OPINION. LIKE I SAY, GENERALLY ONE CANNOT RENDER
7 AN OPINION ABOUT WHAT FACTS MAY MEAN. THEY CAN ONLY
8 TESTIFY AS TO FACTS. HOWEVER ONE WHO QUALIFIES CAN
9 TAKE FACTS AND FROM THOSE FACTS RENDER AN OPINION.
10 NOW THE OPINION GIVEN BY AN EXPERT IS ONLY ALLOWED
11 INTO EVIDENCE TO ASSIST YOU. IT IS NOT BINDING ON
12 YOU. YOU ARE NOT REQUIRED TO ACCEPT IN WHOLE OR IN
13 PART THE EVIDENCE PRESENTED BY AN EXPERT WITNESS.
14 THEIR TESTIMONY IS TO BE ANALYZED JUST LIKE ANY OTHER
15 WITNESS AS I'VE ALREADY MENTIONED; CREDIBILITY, ALL
16 THOSE THINGS I'VE TALKED ABOUT. ALSO AS TO AN
17 EXPERT'S OPINION YOU ASSESS IT BY ALSO LOOKING AT
18 THEIR QUALIFICATIONS, THAT IS, THEIR CREDENTIALS,
19 THEIR ABILITY TO BE AN EXPERT, AND ALSO YOU CAN LOOK
20 AT THE REASONS THEY GAVE TO SUPPORT THE OPINION THEY
21 RENDER. YOU MAY REJECT IN WHOLE OR IN PART OR ACCEPT
22 IN WHOLE OR IN PART AN EXPERT'S OPINION, BUT KEEP IN
23 MIND THAT THE EVIDENCE ALLOWED, THE EVIDENCE FROM AN
24 EXPERT IS SIMPLY ALLOWED TO ASSIST YOU. IT IS NOT
25 BINDING ON YOU.

1 MR. LITTLEJOHN IS CHARGED WITH TWO
2 STATUTORY OFFENSES, THAT IS, TWO OFFENSES WHICH OUR
3 LEGISLATURE HAS ENACTED AND MADE PART OF OUR LAW.
4 FIRST IS SECOND DEGREE ARSON. IN ORDER TO PROVE
5 SECOND DEGREE ARSON THE STATE MUST FIRST PROVE BEYOND
6 A REASONABLE DOUBT MR. LITTLEJOHN WILLFULLY AND
7 MALICIOUSLY SET FIRE TO, BURN, OR CAUSED TO BE BURNED
8 CERTAIN PROPERTY. WILLFULLY MEANS THAT IT WAS NOT
9 DONE BY ACCIDENT BUT WAS DONE KNOWINGLY OR
10 INTENTIONALLY. IT MUST BE SHOWN THAT THE BURNING WAS
11 BY THE WILLFUL ACT OF SOME PERSON AND NOT AS A RESULT
12 OF A NATURAL OR AN ACCIDENTAL CAUSE. MALICIOUSLY
13 MEANS HATRED, ILL WILL, OR HOSTILITY TOWARD ANOTHER
14 PERSON. A PERSON WHO INTENTIONALLY DOES A WRONGFUL
15 ACT WITHOUT LEGAL JUSTIFICATION OR EXCUSE DOES THE
16 ACT WITH MALICE. A MALICIOUS BURNING IS AN ACT DONE
17 WITH A CONDITION OF MIND THAT SHOWS A HEART BENT ON
18 MISCHIEF SHOWING A PERSON TO DO, I'M SORRY. SHOWING
19 A PERSON TO DO AN INTENTIONAL WRONG ACT TOWARD
20 ANOTHER OR TOWARD THE PUBLIC WITHOUT ANY LEGAL
21 JUSTIFICATION OR EXCUSE IS MALICE. MALICE NEED NOT
22 BE EXPRESSED BUT MAY BE INFERRED. BURNING MEANS
23 ACTUAL COMBUSTION OF SOME PART OF A PIECE OF
24 PROPERTY. IT IS NOT NECESSARY THAT THE PROPERTY BE
25 CONSUMED OR DESTROYED. CHARRING OF THE MATERIAL OF

1 WHICH THE PROPERTY IS CONSTRUCTED OR A CHANGE IN THE
2 FIBER OR COMPOSITION OF THE STRUCTURE IS REQUIRED FOR
3 A BURNING. SINGEING, SMOKING, BLISTERING, SCORCHING,
4 OR DISCOLORATION BY HEAT ALONE HOWEVER IS NOT ENOUGH
5 TO CONSTITUTE BURNING.

6 NEXT THE STATE MUST PROVE BEYOND A
7 REASONABLE DOUBT TO PROVE SECOND DEGREE ARSON. THE
8 STATE MUST PROVE BEYOND A REASONABLE DOUBT THAT THE
9 PROPERTY WHICH WAS BURNED WAS A DWELLING HOUSE. A
10 DWELLING HOUSE IS DEFINED BY OUR LAW AS A BUILDING IN
11 WHICH A PERSON ORDINARILY SLEEPS. TEMPORARY, THIS
12 INCLUDES A RESIDENCE EVEN THOUGH ITS OCCUPANTS ARE
13 TEMPORARILY ABSENT AT THE TIME OF THE EVENT. THIS
14 DEFINITION OF DWELLING, THAT IS, A BUILDING IN WHICH
15 A PERSON ORDINARILY SLEEPS APPLIES ALSO TO THE CHARGE
16 OF FIRST DEGREE BURGLARY WHICH I WILL GO OVER IN JUST
17 A MOMENT. SO IN ORDER TO PROVE MR. LITTLEJOHN GUILTY
18 OF ARSON IN THE SECOND DEGREE YOU MUST PROVE THAT HE
19 WILLFULLY AND MALICIOUSLY BURNED OR CAUSED TO BE
20 BURNED A DWELLING HOUSE.

21 AS TO FIRST DEGREE BURGLARY THE STATE MUST
22 PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT
23 ENTERED THE DWELLING, AND I'VE ALREADY DEFINED
24 DWELLING, WITHOUT CONSENT. IN ORDER TO PROVE THAT
25 MR. LITTLEJOHN ENTERED THE DWELLING THE STATE DOES

1 NOT HAVE TO SHOW THAT HE ENTERED WITH HIS ENTIRE
2 BODY. THE SMALLEST ENTRY IS SUFFICIENT. IT MAY BE
3 ANY PART OF THE BODY SUCH AS A HAND OR A FOOT OR EVEN
4 AN INSTRUMENT SUCH AS A HOOK OR OTHER INSTRUMENT. IN
5 ADDITION THE STATE DOES NOT HAVE TO PROVE THAT FORCE
6 WAS USED TO GAIN ENTRY.

7 NEXT THE STATE MUST PROVE BEYOND A
8 REASONABLE DOUBT THAT MR. LITTLEJOHN INTENDED, IF HE
9 WAS THE ONE WHO WENT IN, COMMITTED A CRIME EITHER A
10 FELONY INTENDED -- LET ME BACK UP. SECOND THE STATE
11 MUST PROVE BEYOND A REASONABLE DOUBT THAT A DEFENDANT
12 INTENDED TO COMMIT A CRIME EITHER A FELONY, AND ARSON
13 SECOND DEGREE IS A FELONY, OR A MISDEMEANOR AT THE
14 TIME OF THE ENTRY. THE MERE ENTRY INTO A DWELLING
15 WITHOUT CONSENT IS NOT BURGLARY. IF THE INTENT TO
16 COMMIT A CRIME IS FORMED AFTER THE ENTRY IT IS NOT
17 BURGLARY. ON THE OTHER HAND, IF THE DEFENDANT
18 INTENDED TO COMMIT A CRIME AT THE TIME OF THE ENTRY
19 IT IS A BURGLARY EVEN IF THE INTENT WAS ABANDONED
20 AFTER THE ENTRY. IT DOES NOT MATTER THAT THE
21 INTENDED CRIME WAS NOT COMPLETED.

22 INTENT MAY BE SHOWED BY ACTS AND CONDUCTS
23 OF THE DEFENDANT AND OTHER CIRCUMSTANCES WHICH MAY
24 NATURALLY AND REASONABLY INFER INTENT FROM WHICH YOU
25 MAY NATURALLY AND REASONABLY INFER INTENT.

1 FINALLY THE STATE MUST PROVE BEYOND A
2 REASONABLE DOUBT THAT THE DEFENDANT ENTERED OR
3 REMAINED IN THE DWELLING IN THE NIGHTTIME. NIGHTTIME
4 IS THE PERIOD BETWEEN SUNSET AND SUNRISE DURING WHICH
5 THERE IS NOT ENOUGH DAYTIME TO RECOGNIZE A PERSON'S
6 FACE EXCEPT BY ARTIFICIAL LIGHT OR BY MOON LIGHT. SO
7 THAT'S WHAT THE STATE MUST PROVE FOR YOU BEYOND A
8 REASONABLE DOUBT TO CONVICT MR. LITTLEJOHN OF
9 BURGLARY IN THE FIRST DEGREE.

10 NOW IN CASES SUCH AS THIS THERE ARE TWO
11 TYPES OF EVIDENCE WHICH ARE GENERALLY PRESENTED,
12 DIRECT AND CIRCUMSTANTIAL EVIDENCE. DIRECT EVIDENCE
13 IS THE TESTIMONY OF A PERSON WHO CLAIMS TO HAVE
14 ACTUAL KNOWLEDGE OF A FACT SUCH AS AN EYE WITNESS.
15 IT IS EVIDENCE WHICH IMMEDIATELY ESTABLISHES THE MAIN
16 FACT TO BE PROVEN.

17 CIRCUMSTANTIAL EVIDENCE IS PROOF OF A
18 CHAIN OF FACTS AND CIRCUMSTANCES WHICH INDICATE THE
19 EXISTENCE OF A FACT. IT IS EVIDENCE WHICH
20 IMMEDIATELY ESTABLISHES COLLATERAL FACTS FROM WHICH
21 THE MAIN FACT MAY BE INFERRED. CIRCUMSTANTIAL
22 EVIDENCE IS BASED ON INFERENCE AND NOT ON PERSONAL
23 KNOWLEDGE OR OBSERVATION. THE LAW MAKES ABSOLUTELY
24 NO DISTINCTION BETWEEN THE WEIGHT OR VALUE TO BE
25 GIVEN EITHER DIRECT OR CIRCUMSTANTIAL EVIDENCE NOR IS

1 A GREATER DEGREE OF CERTAINTY REQUIRED OF
2 CIRCUMSTANTIAL EVIDENCE THAN OF DIRECT. YOU SHOULD
3 WEIGH ALL OF THE EVIDENCE IN THIS CASE. AFTER
4 WEIGHING ALL THE EVIDENCE, IF YOU ARE NOT CONVINCED
5 OF THE GUILT OF MR. LITTLEJOHN BEYOND A REASONABLE
6 DOUBT YOU MUST FIND HIM NOT GUILTY.

7 NOW YOUR VERDICT IN THIS CASE MUST BE
8 UNANIMOUS. ALL 12 JURORS MUST AGREE. ONCE ALL 12
9 JURORS HAVE AGREED THE FOREMAN WILL ENROLL, AND I'LL
10 SHOW YOU THIS IN JUST A MINUTE, THE VERDICT ON YOUR
11 BEHALF AND OF COURSE THE FOREMAN WILL PRESIDE OVER
12 DELIBERATIONS. YOUR VERDICT CANNOT BE BASED ON
13 PASSION, PREJUDICE, PUBLIC OPINION, SYMPATHY, OR
14 MATTERS OUTSIDE THE RECORD.

15 WHEN YOU GO INTO THE JURY ROOM IN JUST A
16 MOMENT DO NOT START DELIBERATING AND DO NOT GET TOO
17 COMFORTABLE BECAUSE I HAVE TO GO OVER WITH THE
18 ATTORNEYS MY CHARGE, IF I HAVE, AND MR. LITTLEJOHN,
19 IF I HAVE MADE AN ERROR I'LL BRING YOU BACK IN AND
20 CORRECT IT. IF I HAVE NOT, I WILL SEND IN TO YOU THE
21 EXHIBITS AND THE INDICTMENTS AND THE BAILIFF WILL
22 TELL YOU TO START DELIBERATING BUT DON'T DO THAT
23 UNTIL YOU ARE PROVIDED WITH THE EXHIBITS AND THE
24 BAILIFF TELLS YOU TO START DELIBERATING.

25 I DO NOT HAVE MY CHARGE IN A WRITTEN FORM.

1 TO SEND IN TO YOU, WE DO NOT DO THAT IN SOUTH
2 CAROLINA, BUT IF YOU WISH ME TO GO OVER ANY PART OR
3 ALL OF THE CHARGE ON THE LAW LET ME KNOW, I WILL
4 BRING YOU BACK IN THE COURTROOM AND RECHARGE YOU.

5 IF YOU HAVE ANY QUESTIONS WHATSOEVER WRITE
6 THEM DOWN, KNOCK ON THE DOOR, AND GIVE THEM TO THE
7 BAILIFF. THE BAILIFF WILL BRING THE NOTE TO ME. I
8 WILL CONFER WITH THE ATTORNEYS. IT MAY BE THAT I CAN
9 WRITE AN ANSWER ON THE NOTE ITSELF OR IT MAY BE THAT
10 I'LL HAVE TO BRING YOU BACK IN HERE AND INSTRUCT YOU
11 IN OPEN COURT. IF YOU WISH TO HAVE TESTIMONY
12 REPLAYED WE CAN DO THAT.

13 ONCE YOU REACHED A UNANIMOUS VERDICT,
14 MR. FOREMAN, AND ENROLLED IT ON THE INDICTMENTS,
15 KNOCK ON THE DOOR, TELL THE BAILIFF, AND THE BAILIFF
16 WILL COME AND GET US AND WE WILL SEND FOR YOU AS
17 PROMPTLY AS WE CAN. WE MAY BE DOING SOME OTHER
18 BUSINESS IN HERE BUT WE WILL BREAK AS PROMPTLY AS WE
19 CAN AND SEND FOR YOU.

20 NOW ON THE BACK OF THE INDICTMENTS YOU
21 WILL SEE THE WORD VERDICT AND FOUR LINES THAT UNDER
22 THERE. THE BOTTOM LINE IS FOR YOUR SIGNATURE. A
23 PLACE FOR THE DATE, TODAY IS THE 26, AND BELOW WHERE
24 YOU WILL SIGN. ON ONE OF THE OTHER THREE LINES YOU
25 WILL WRITE THE UNANIMOUS VERDICT OF THE JURY. IF THE

1 JURY'S UNANIMOUS VERDICT THAT IS NOT GUILTY, THAT IS,
2 IF THE UNANIMOUS AGREEMENT IS THAT THE STATE HAS
3 FAILED TO PROVE MR. LITTLEJOHN'S GUILT BEYOND A
4 REASONABLE DOUBT AS TO ONE OR BOTH OF THE
5 INDICTMENTS, AS TO SUCH AN INDICTMENT YOU WILL USE
6 THE TWO WORDS NOT GUILTY, SIMPLY WRITING ON ONE THOSE
7 LINES. IF ON THE OTHER HAND THE STATE HAS CONVINCED
8 THE JURY UNANIMOUSLY BEYOND A REASONABLE DOUBT OF
9 MR. LITTLEJOHN'S GUILT AS TO ONE OR BOTH OF THE
10 INDICTMENTS YOU WILL PUT THE ONE WORD GUILTY ON ONE
11 OF THOSE LINES.

12 NOW I'M GOING TO LET YOU GO TO THE JURY
13 ROOM AT THIS TIME BUT DON'T START DELIBERATING.
14 YOU'LL STAY WITH US. AS THE ALTERNATE, YOU'LL STAY
15 IN HERE.

16 (THE JURY EXITS THE COURTROOM AT 10:27.)
17 THE COURT: ANY EXCEPTIONS FROM THE STATE?
18 MR. MORIN: NONE FROM THE STATE.

19 THE COURT: MR. LITTLEJOHN, I'M GOING TO
20 GIVE YOU AN OPPORTUNITY TO SPEAK WITH MR. THOMPSON
21 BEFORE YOU ANSWER THAT QUESTION.

22 (CONFERRING WITH MR. THOMPSON.)

23 MR. LITTLEJOHN: NO, YOUR HONOR.

24 THE COURT: NO EXCEPTIONS. OKAY. THANK
25 YOU. CHECK THE EXHIBITS AND THE INDICTMENTS AND WE

1 WILL SEND THEM IN TO THE JURY AND TELL THEM TO START
2 DELIBERATING.

3 (THE ALTERNATE JUROR IS EXCUSED AND COURT
4 IS IN RECESS AWAITING A VERDICT AT 10:30.)

5 THE COURT: EVERYBODY IS PRESENT. WE HAVE
6 A VERDICT. WE'LL BRING IN THE JURY.

7 (THE JURY RETURNS TO THE COURTROOM AT
8 11:35.)

9 THE COURT: I UNDERSTAND THE JURY HAS
10 REACHED VERDICTS.

11 THE FOREMAN: YES, SIR.

12 THE COURT: IF YOU'LL HAND THEM TO ME BY
13 WAY OF THE BAILIFF.

14 (COMPLIES.)

15 THE COURT: THANK YOU.

16 THE CLERK: INDICTMENT 2004-GS-11-975 THE
17 STATE VERSUS JIMMY LEE LITTLEJOHN INDICTMENT FOR
18 ARSON SECOND DEGREE THE VERDICT IS GUILTY SIGNED BY
19 THE FOREPERSON DANNY YOUNGBLOOD.

20 INDICTMENT 2004-GS-11-976 THE STATE VERSUS
21 JIMMY LEE LITTLEJOHN INDICTMENT FOR BURGLARY FIRST
22 DEGREE THE VERDICT IS GUILTY SIGNED BY FOREPERSON
23 DANNY YOUNGBLOOD.

24 LADIES AND GENTLEMEN, IF THAT IS THE
25 VERDICT OF YOU ALL WILL YOU PLEASE INDICATE BY

1 RAISING YOUR RIGHT HAND. THANK YOU.

2 THE COURT: THANK YOU. ANYTHING FROM THE
3 STATE BEFORE THE JURY IS DISMISSED?

4 MR. MORIN: NOTHING FROM THE STATE.

5 THE COURT: ANYTHING, MR. LITTLEJOHN,
6 BEFORE THE JURY IS DISMISSED?

7 MR. LITTLEJOHN: NO.

8 THE COURT: I APPRECIATE YOUR HELP. AS
9 YOU GO OUT THE CLERK WILL GIVE YOU A VOUCHER THAT YOU
10 CAN TAKE DOWNSTAIRS AND RECEIVE SOME MONEY FOR IT BUT
11 THANK YOU AN AWFUL LOT FOR YOUR SERVICE.

12 (THE JURY EXITS THE COURTROOM AT
13 11:35.)

14 THE COURT: MR. LITTLEJOHN, IF YOU'LL COME
15 FORWARD TO THE BAR HERE WE WILL GO FORWARD WITH THE
16 SENTENCING AND FIRST ANYTHING, WELL, JUST ONE MINUTE.
17 DO YOU HAVE ANY MOTIONS OR ANYTHING REGARDING THE
18 TRIAL BEFORE WE GO FORWARD? JUST CHAT WITH
19 MR. THOMPSON REAL QUICK.

20 (CONFERRING WITH MR. THOMPSON.)

21 THE COURT: ANYTHING, MR. LITTLEJOHN.

22 MR. LITTLEJOHN: YES, YOUR HONOR. I'D
23 LIKE TO MAKE A MOTION FOR A NEW TRIAL.

24 THE COURT: THE MOTION IS DENIED. I THINK
25 THE EVIDENCE SUPPORTED THE VERDICT. ALL RIGHT. IF

1 YOU'LL SIGN THOSE AND THERE IS, DOES THE VICTIM WANT
2 TO SAY ANYTHING?

3 MR. MORIN: NO, SIR.

4 THE COURT: OKAY. MR. LITTLEJOHN, BEFORE
5 I IMPOSE SENTENCE, ANYTHING ELSE YOU WANT TO SAY? I
6 HEARD YOUR TESTIMONY AND UNDERSTAND YOU HAVE
7 PRESENTED A CASE AND TAKE THE POSITION THAT YOU ARE
8 NOT GUILTY AND I CERTAINLY UNDERSTAND AND APPRECIATE
9 THAT. I'VE ALSO HEARD A LITTLE BIT ABOUT YOUR
10 BACKGROUND. I KNOW THAT YOU WENT TO AT LEAST ONE
11 YEAR OF COLLEGE AND I DON'T KNOW IF YOU ARE DIVORCED
12 BUT YOU'VE BEEN MARRIED AND HAVE A CHILD. ANYTHING
13 ELSE YOU WANT TO TELL ME ABOUT YOURSELF BEFORE I
14 DETERMINE YOUR SENTENCE?

15 MR. LITTLEJOHN: YES, YOUR HONOR. THE
16 ONLY THING I WAS ACTUALLY GUILTY OF THAT NIGHT WAS
17 DRUNK DRIVING AND I WASN'T LOCKED UP FOR IT BUT
18 BASICALLY THAT'S ALL I HAVE TO SAY. THAT'S IT.

19 MR. MORIN: YOUR HONOR, THERE IS, HIS
20 PRIOR RECORD IS BEYOND THE POSSESSION OF CRACK, THAT
21 WAS THE ONE WE BELIEVED THAT WAS THE ONLY ONE
22 ADMISSIBLE.

23 THE COURT: ALL RIGHT. WHAT ELSE?

24 THE SOLICITOR: 1992 CDV, 1993
25 SHOPLIFTING, SIMPLE ASSAULT AND BATTERY 1993. DRUG

1 PARAPHERNALIA 1995. BURGLARY SECOND DEGREE 1995.

2 THE COURT: ALL RIGHT. MR. LITTLEJOHN,
3 THE SENTENCE ON BOTH OF THESE ARE FOR 25 YEARS AND
4 THEY ARE TO RUN CONCURRENT.

5 MR. LITTLEJOHN: ALL RIGHT.

6 (THE END OF THE PROCEEDINGS.)

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 I, JANET RICH, OFFICIAL COURT REPORTER FOR
2 THE SIXTEENTH CIRCUIT OF THE STATE OF SOUTH CAROLINA,
3 DO HEREBY CERTIFY THAT THE FORGOING IS A TRUE,
4 ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF ALL
5 THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE
6 TRIAL OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN
7 THE CIRCUIT COURT FOR YORK COUNTY, SOUTH CAROLINA, ON
8 THE 26TH DAY OF MAY 2005.

9 I DO FURTHER CERTIFY THAT I AM NEITHER KIN,
10 COUNSEL, NOR INTEREST TO ANY PARTY HERETO.

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

JANET M. RICH

DOCKET NO. ⁴ 02-GS-11- 975

The State of South Carolina

County of Cherokee

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

NOV 0 4 2004

TERM

THE STATE
vs.

Jimmy Lee Littlejohn

Indictment for
ARSON 2ND DEGREE

SC Code: 16-11-0110

WITNESSES

David Clary, GPD

ARREST WARRANT NUMBER

02-059

ACTION OF GRAND JURY

RETURNED TO COURT

Stacy Brown

Person of Grand Jury

VERDICT

Unanimous

Guilty

Daniel Grayblood

Person of Petit Jury

May 26, 2005

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF CHEROKEE)

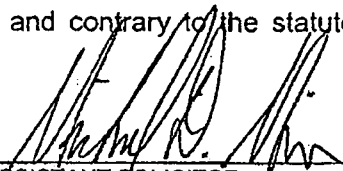
At a Court of General Sessions, convened on NOV 04 2004 the

Grand Jurors of Cherokee County present upon their oath:

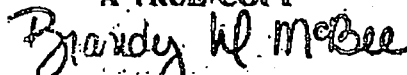
ARSON 2ND DEGREE

That Jimmy Lee Littlejohn, did in Cherokee County on or about July 4, 2004, willfully and maliciously set fire to, burn or cause to be burned a dwelling belonging to Ivey Littlejohn at Redwood Village Apt 32, Gaffney, South Carolina, in violation of §16-11-0110, CODE OF LAWS OF SOUTH CAROLINA, (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

A TRUE COPY

CLERK OF COURT
CHEROKEE COUNTY, S.C.

WITNESSES

David Clary, GPD

Handwritten signature

ARREST WARRANT NUMBER

I-066099

ACTION OF GRAND JURY

TRIP BILL

Handwritten signature

Foreperson of Grand Jury

Date: 11/09/04

VERDICT

unanimous

guilty

Handwritten signature

Foreperson of Petit Jury

Date:

May 26, 2005

DOCKET NO. 04-GS-11- 976

The State of South Carolina

County of Cherokee

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

NOV 04 2004

TERM

THE STATE

vs.

Jimmy Lee Littlejohn

Indictment for

BURGLARY, FIRST DEGREE
(DWELLING)

SC Code: 16-11-0311

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

221

STATE OF SOUTH CAROLINA)
COUNTY OF CHEROKEE)

INDICTMENT

At a Court of General Sessions, convened on NOV 04 2004 the

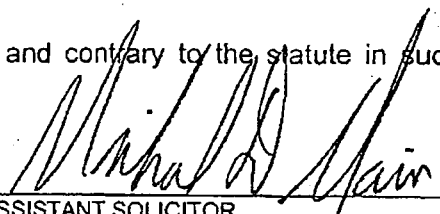
Grand Jurors of Cherokee County present upon their oath:

BURGLARY, FIRST DEGREE

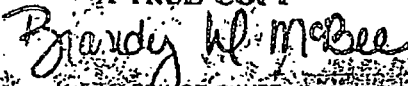
(DWELLING)

That Jimmy Lee Littlejohn, did in Cherokee County on or about July 4, 2004 willfully and unlawfully enter the dwelling of Ivey Littlejohn at 100 Redwood Drive, Apt 32 Gaffney, South Carolina without consent and with the intent to commit a crime therein and the defendant entered in the nighttime, all in violation of §16-11-311, THE CODE OF LAWS OF SOUTH CAROLINA, (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

A TRUE COPY



CLERK OF COURT
CHEROKEE COUNTY, SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Cherokee

VS.

AKA:

Jimmy Lee Littlejohn

Race:

Sex:

M

Age:

39

DOB:

SS#:

Address:

City, State, Zip

DL#

SID#

INDICTMENT/CASE#:

04

-GS-

11

976

A/W#:

I-066099

Date of Offense:

07-04-04

S.C. Code §:

16-11-311

CDR Code #:

0101719

☐ CASE RESTORED

SENTENCE

☐ PLEA ☒ TRIALIn disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO:

Burglary 1st

in violation of § 16-11-311 of the S.C. Code of Laws, bearing CDR Code # 0101719

☐ NON-VIOLENT☒ VIOLENT☒ SERIOUS☐ MOST SERIOUS☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 2.5 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:☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered.

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

\$14-1-206 (Assessments 107.5%)

\$14-1-211(A)(1) (Conv. Surcharge)

\$14-1-211(A)(2) (DUI Surcharge)

\$56-5-2995 (DUI Assessment)

\$35.13 (Public Def/Prob)

\$73.3, 1B TP (Law Enforce. Funding)

\$33.7, 1B TP (Drug Court Surcharge)

\$50-21-114(BUI Breath Test Fee)

\$56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

Bridget M. McBee

Clerk of Court/Deputy Clerk

Court Reporter:

Janet Rich

A TRUE COPY

Bridget M. McBee

PTUP

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

John H. Hargis, Jr.
0101719
May 26, 2005

FORM 5

STATE OF SOUTH CAROLINA)

County of Cherokee)Gaffney S.C.)

Full name and prison number (if any) of Applicant)

Jimmy Littlejohn 220769)Bill Byars Director of Dept. Corr)Alan Wilson Attorney General)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

011CP-110148

BRANDY W. MOORE

2011 MAR -7 A 11:32

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lieber CT CORR.
P.O Box 205 Ridgeville, S.C 29472
2. Name and location of Court which imposed sentence Cherokee
County Gaffney S.C.
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2004-GS-11-00975
 - (b) 2004-GS-11 00976

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) MAY 26, 2005
- (b) 25 concurrent sentence on both
- (c) charges
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. S.C. Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Sentence Affirmed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. MARCH 12, 2010
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) my Appellate defender filed A remittitur
- (b) on march 31, 2010

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Trial Judge failed to make A meaningful inquiry into
 (b) background to determine, sufficient experience knowledge
 (c) to waive counsel, time to prepare Access law library, rule 5
not given tools to fight Adversary process.
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Trial Judge never ASK if I been in A Trial before or knew
 (b) the procedures of court denied Faretta hearing, denied
 (c) the fundamental Fairness of due process, to prepare defense
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
 (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
 ii. _____
 iii. _____
 iv. _____
- (b) the name and location of the Court in which each was filed:
- i. N/A
 ii. _____
 iii. _____
 iv. _____

(c) the disposition thereof:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

N/A

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. N/A
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. N/A
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) my due process right, Appeal Lawyer
 (b) only presented 6th violation. now I want to
 (c) presented my 6th and 14th Amendment Violations, rule 5

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? yes
 (b) your trial, if any? no
 (c) your sentencing? no
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
no

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
 i. Mr Dom Thompson
310-B N. Limestone St. Gaffney S.C 29342
 ii. Joseph L. SAVITZ III Chief Appellate
S.C Commission on Indigent defense
 iii. Division of Appellate defense PO Box 11589
Columbia, S.C 29211-1589
 (b) the proceedings at which each such attorney represented you:
 i. Arraignment
 ii. Appeal - Direct
 iii.

Revised 3/2003

19. State clearly the relief you seek in filing this application:

my sentence be VACATED

And new trial

This I pray.

20. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA)

County of Dutcheter)

VERIFICATION

I, Jimmy Littlejohn, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

[Signature] 3/4/11

SWORN to and subscribed before me this 4th day of March, 2011.

Luchean Bryant (L.S.)
Notary Public

My Commission Expires: May 26, 2020

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2011 MAR -7 A 11:32
BRANDY W. MCREE

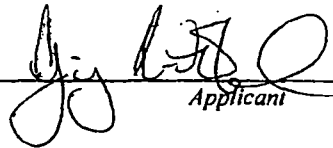
Revised 3/2003

011CP-110148

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Jimmy Littlejohn #220769, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

 3/11/11
Applicant

SWORN or affirmed to and subscribed before me this
4th day of March, 2011.


Notary Public

My Commission Expires: May 26, 2020

7
FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2011 MAR -7 A 11:32
BRANDY W. NOBEE

Revised 3/2003

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF CHEROKEE	)	
	)	
Jimmy Littlejohn, #220769,	)	2011-CP-11-0148
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

In response to the post-conviction relief application filed on March 7, 2011, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Cherokee County Clerk of Court's orders of commitment. The Applicant was indicted at the November 2004 term of the Cherokee County Grand Jury for arson – 2nd degree (2004-GS-11-0975) and burglary – 1st degree (2004-GS-11-0976). The Applicant represented himself at trial, with Don A. Thompson, Esquire, appointed as stand-by counsel. On May 26, 2005, the Applicant was convicted of these charges by a jury. The Honorable John C. Hayes III sentenced the Applicant to confinement for concurrent terms of twenty-five years on each charge.

A timely Notice of Appeal was filed on Applicant's behalf and an Anders brief was submitted. On September 12, 2008, The South Carolina Court of Appeals requested that the parties brief the issue of whether or not the Applicant was adequately warned of the dangers of self-representation and if not, did the record reflect whether the Applicant was aware of his rights from another source or from his background. The South Carolina Court of Appeals affirmed Applicant's

conviction and sentence. State v. Littlejohn, Op. No. 2010-UP-199 (filed March 12, 2010). The Remittitur was returned on March 31, 2010.

Attached herewith and incorporated herein are the records of the Cherokee County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, Applicant's appellate records, and the trial transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his application for post conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Constitutional violations, in that;
 - a. Violations of Applicant's right to a fair trial and due process for failure to provide all discovery materials;
 - b. Trial judge failed to provide Faretta hearing regarding Applicant's waiver of right to counsel for trial; and
2. Ineffective assistance of appellate counsel, in that;
 - a. Appellate counsel failed to raise issues of 14th amendment violations.

III.

The Applicant further alleges that he was denied due process of law. The Applicant's allegation claims infringement of his rights under the sixth and fourteenth amendments to the United States Constitution. In particular, the Applicant alleges that he was denied the right to a fair trial because he did not receive all discovery materials. Respondent submits that this allegation is without merit; however, it raises issues of fact that cannot conclusively be refuted by the record. Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Applicant also alleges that the court abused its discretion in regards to the determination of

his waiver of counsel. However, the Respondent submits that this allegation might raise a direct appeal issue that is procedurally barred by S.C. Code Ann. §17-27-20(b) (2003). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). The Applicant raised this issue on appeal. Therefore, the Court should summarily dismiss this allegation.

V.

The allegation that appellate counsel was ineffective is without merit. Respondent contends that the Applicant's appellate counsel rendered adequate assistance and provided representation within the range of competence required by appellate attorneys. A defendant is constitutionally entitled to the effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830 (1985). Where ineffective assistance of appellate counsel is alleged, the Applicant must show that appellate counsel's performance was (1) deficient; and (2) that there was prejudice from the appellate counsel's deficiency. Southerland v. State, 337 S.C. 610, 524 S.E.2d 833 (1999). To be effective, appellate counsel must give assistance of such quality as to make appellate proceedings fair. Id. Appellate counsel must provide effective assistance but need not raise every non-frivolous issue presented by the record. Id. Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745, 103 S.Ct. 3308 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

When a claim of ineffective assistance of appellate counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to

present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986).

Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test with regard to the claims against appellate counsel. However, the allegation of ineffective assistance of appellate counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

VI.

The Respondent denies each allegation that is not expressly admitted, qualified or explained.

VII.

WHEREFORE, the Respondent requests an evidentiary hearing solely for the purpose of determining whether the Applicant's constitutional rights were violated and appellate counsel was ineffective.

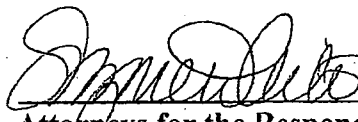
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

SUZANNE H. WHITE
Assistant Attorney General

By: 
Attorneys for the Respondents
P.O. Box 11549
Columbia, S.C. 29211
(803) 734-3737

February 23, 2012.

STATE OF SOUTH CAROLINA
COUNTY OF CHEROKEE

) IN THE COURT OF COMMON PLEAS
) SEVENTH JUDICIAL CIRCUIT

Jimmy Littlejohn, #220769

2011-CP-11-0148

)
)
) Applicant,

)
) v.

CERTIFICATE OF SERVICE BY MAIL

)
) State of South Carolina,

)
) Respondent.
)

-
1. I am an employee of the Respondent in the above-captioned action.
 2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
 3. I have this day served a copy of the Respondent's Return in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Thomas A. Killoren, Jr., Esquire
Harrison White Smith & Coggins, PC
P.O. Box 3547
Spartanburg, SC 29304

Katie E. Davis
Katie E. Davis
Legal Assistant for the Respondent

DATED this 23rd day of February, 2012.

1 STATE OF SOUTH CAROLINA

2 COUNTY OF CHEROKEE

} COURT OF COMMON PLEAS NONJURY

3
4 JIMMY LITTLEJOHN,

5 APPLICANT,

6 VS.

7 STATE OF SOUTH CAROLINA,

8 RESPONDENT.

} TRANSCRIPT

} OF

} RECORD

2011-CP-11-148

9
10 June 11th, 2012
11 Spartanburg, South Carolina
12

13 B E F O R E:

14 THE HONORABLE ROGER L. COUCH, Judge.

15
16 A P P E A R A N C E S:

17 THOMAS A. KILLOREN, JR.
18 ESQ.

Attorney for the Applicant

19
20 ASHLEIGH R. WILSON
21 ASSISTANT ATTORNEY GENERAL
22 Attorney for the Respondent

23
24 PAMELA E. GREEN
25 Circuit Court Reporter
Seventh Judicial Circuit

I N D E X O F W I T N E S S E S

<u>WITNESSES</u>	<u>PAGE</u>
JIMMY LITTLEJOHN	
Direct examination by Mr. Killoren	7
Cross-examination by Ms. Wilson	26
Redirect examination by Mr. Killoren	34
Redirect examination by Mr. Killoren	38
BILLY LITTLEJOHN	
Direct examination by Mr. Killoren	39
Cross-examination by Ms. Wilson	42
DON THOMPSON	
Direct examination by Ms. Wilson	43
Cross-examination by Mr. Killoren	46
Redirect examination by Ms. Wilson	52
Closing by Mr. Killoren	53
Closing by Ms. Wilson	61
Certificate	66

1	<u>E X H I B I T S</u>			
2	<u>NOS.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
3	<u>Applicant's Exhibits</u>			
4				
5	A-1	Inmate Request Form	10	44
6	A-2	Letter	10	44
7	A-3	Request for documents	10	44
8	A-4	Letter	10	44
9	A-5	Family Court order	10	44
10	A-6	Incident Report	10	44
11	A-7	Fire Report	10	44
12	A-8	File		50
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

P R O C E E D I N G S

THE COURT: All right. State may call the next case. I believe Mr. Littlejohn it looks like.

MS. WILSON: May it please the Court, Your Honor.

THE COURT: Yes, ma'am.

MS. WILSON: The next case is Jimmy Littlejohn versus The State. It's Docket Number 2011-CP-11-148, and Mr. Littlejohn was originally indicted for burglary in the first degree and arson in the second degree. He represented himself at trial, at trial, but Judge Hayes pulled in Mr. Don Thompson to act as stand-by counsel. Mr. Thompson had been earlier relieved.

He proceeded to trial and was convicted of both charges and he was sentenced to confinement for 25 years on each conviction, and the sentences are to run concurrently, and he bases his post-conviction relief application in the case on the following allegations:

He makes a claim about due process violation for the trial judge failing to make a meaningful inquiry in his background to determine sufficient experience and knowledge to waive counsel, time to prepare, access to the law library, his Rule 5 wasn't given, and he wasn't given tools to fight the adversary process. I'm quoting the application, Your Honor.

1 He also said that the trial judge never asked if he had
2 been in a trial before or familiar with the procedures of
3 Court, and he was denied a Faretta hearing. Also he
4 alleges---

5 THE COURT: Now, what, what kind of a hearing?

6 MS. WILSON: Faretta.

7 THE COURT: A Faretta hearing. Okay.

8 MS. WILSON: Sorry, Your Honor.

9 He also alleges ineffective assistance of appellate
10 counsel, and he says that his appeal lawyer only presented
11 his Sixth Amendment violations and he wanted his appellate
12 lawyer to present his Sixteenth, I mean his Sixth and
13 Fourteenth Amendment violations on his appeal.

14 I'll turn it over to Mr. Killoren.

15 THE COURT: All right. Mr. Killoren, you're
16 representing Mr. Littlejohn?

17 MR. KILLOREN: Yes, sir, Your Honor.

18 May it please the Court?

19 THE COURT: Yes, sir.

20 MR. KILLOREN: We are here today to present our
21 post-conviction relief hearing based on his allegations of
22 ineffective assistance of counsel. Essentially we're
23 arguing that the Rule 5 discovery materials that were
24 required to be provided to him were not provided to him in a
25 timely manner so that he could effectively represent himself

1 at the trial.

2 I will tell the Court that we intend to present
3 evidence and believe the evidence will show that the Faretta
4 factors that involved the Faretta hearing, which is the
5 hearing to determine whether or not he can represent himself
6 adequately, reflect on the issue of the ineffective
7 assistance of counsel, and the reason I make that statement
8 is because a direct appeal was filed on the Faretta hearing.
9 I'm sure counsel for the attorney general will bring that
10 issue up, and we can't substitute the appeal process in the
11 PCR hearing.

12 THE COURT: That's right.

13 MR. KILLOREN: But we do, we do believe that the
14 allegations or the factors, that the Faretta factors are
15 relevant to the ineffective assistance of counsel argument
16 and we believe that's---

17 THE COURT: Well, let me be sure I understand.

18 You made a motion before the judge to fire his attorney
19 and represent himself?

20 MR. KILLOREN: Correct.

21 THE COURT: A hearing was held on that question?

22 MR. KILLOREN: Correct.

23 THE COURT: And the judge decided to allow him to do
24 that?

25 MR. KILLOREN: That's correct.

1 THE COURT: His former attorney was asked to stand-by
2 as stand-by counsel during the trial?

3 MR. KILLOREN: Correct.

4 THE COURT: Which attorney is he claiming that was
5 ineffective?

6 MR. KILLOREN: His stand-by counsel in that he did not
7 receive the Rule 5 material, the discovery materials from
8 the counsel so that he could represent himself properly.

9 THE COURT: Are you saying that he never, something was
10 withheld from him?

11 MR. KILLOREN: That's correct.

12 THE COURT: All right. You may proceed.

13 MR. KILLOREN: Thank you, Your Honor.

14 We, we call Jimmy Littlejohn to the stand.

15 THE COURT: Mr. Littlejohn, come forward.

16 JIMMY LITTLEJOHN, having been first duly
17 sworn, testified as follows:

18 THE COURT: Have a seat. State your name please.

19 WITNESS: Jimmy Littlejohn.

20 THE COURT: You may proceed, counsel.

21 MR. KILLOREN: Thank you, Your Honor.

22 DIRECT EXAMINATION

23 BY MR. KILLOREN:

24 Q Mr. Littlejohn, you're here today to present your
25 post-conviction relief hearing petition, is that correct?

Jimmy Littlejohn - Direct examination
by Mr. Killoren

1 A Yes, sir.

2 Q And are you prepared to testify in your behalf today?

3 A Yes, I am.

4 Q And you represented yourself in a trial in Cherokee
5 County Court with regard to the burglary charge and an arson
6 charge, is that correct?

7 A Yes, sir, reluctantly I did.

8 Q Did you receive -- well, strike the question.

9 Prior to your going forward with the trial by yourself
10 and representing yourself pro se, were you represented by an
11 attorney?

12 A Yes, I was, Don Thompson.

13 Q Okay. And, and Mr. Thompson's seated in the courtroom
14 today?

15 A Yes, he is.

16 Q And you recognize him?

17 A Yes, I do.

18 Q You had an opportunity to talk to Mr. -- did you have
19 an opportunity to talk to Mr. Thompson prior to asking to go
20 forward on your own in the trial?

21 A No, I did not.

22 Q Okay.

23 A Mr. Thompson only spoke to me one time and that was
24 during the interview at the courthouse and that was it.

25 Q Okay. Is that the only meeting you ever had with Mr.

Jimmy Littlejohn - Direct examination
by Mr. Killoren

1 Thompson?

2 A That and me firing Mr. Thompson because, on several
3 requests, I asked Mr. Thompson to do something for me. He
4 never did. He refused to answer my letters or my phone
5 calls from the jail.

6 Q Okay. Did you ever receive, from Mr. Thompson, any
7 Rule 5 discovery materials --

8 A Yes, I did.

9 Q Okay.

10 A -- and in August the 8th of 2005, three months after I
11 was already convicted.

12 Q Okay. Did you receive the -- and when I say Rule 5
13 discovery materials, do you understand -- what, what do you
14 understand that to mean?

15 A The Rule 5 was actually Brady, the Brady which was --
16 it had everything in it, the testimonies, the tests for the,
17 the interviews, and everything I needed to prepare a
18 adequate defense in order for the, at least me to put up an
19 adequate defense. He had all of that.

20 Q So, did you ask Mr. Thompson to get that material to
21 you before you were tried?

22 A Repeatedly.

23 Q Okay. And did you---

24 A I even sent him a letter on, from the jailhouse.

25 Q All right. We're gonna get to that.

Jimmy Littlejohn - Direct examination
by Mr. Killoren

1 A All right.

2 Q Let's take it one step at a time so everybody can
3 follow.

4 A All right.

5 Q You, you understood -- so, you understand the Rule 5
6 material was an important part of your case for the---

7 A Very important. It was, it was so important that it
8 was damaging for me not to even have it.

9 Q Okay. All right. And you did receive some of that
10 material after the trial was conducted, is that correct?

11 A Three months after I was already sentenced.

12 Q All right. Let's talk about some of the evidence that
13 you believe is important in your case.

14 May I approach, Your Honor?

15 THE COURT: Yes, you may.

16 (WHEREUPON, an inmate request form was marked as
17 Applicant's Exhibit No. 1 for identification purposes only
18 at this time.)

19 Q The, the -- let's start with the, what I'll refer to as
20 Plaintiff's Exhibit No. 1, which is a December 21st, 2004,
21 letter and I'll show you a copy of that. Actually I believe
22 it's December 21.

23 (WHEREUPON, a letter was marked as Applicant's Exhibit
24 No. 2. A request for documents was marked as Applicant's
25 Exhibit No. 3. A letter was marked as Applicant's Exhibit

Jimmy Littlejohn - Direct examination
by Mr. Killoren

1 No. 4. A Family Court order was marked as Applicant's
2 Exhibit No. 5. An incident report was marked as Applicant's
3 Exhibit No. 6. A fire report was marked as Applicant's
4 Exhibit No. 7. All of the above exhibits were for
5 identification purposes only at this time.)

6 Q I want to show you what's been previously -- and I
7 misspoke. I said December 24th. It's December 21. Counsel
8 should have a copy of that. It's not marked, but I've
9 provided them a copy.

10 I'm showing you Applicant Exhibit No. 1.

11 Can you take that for me please?

12 A (Witness complies.)

13 Q Can you tell the Court what that exhibit is please?

14 A This is a request form from the jailhouse from Cherokee
15 County Detention Center.

16 Q Okay. And can you read the relevant part of that -- do
17 you mind if I stand next to you?

18 With regard -- there are some issues with regard to the
19 bond, you see that, in the top paragraph, and then down at
20 the bottom can you read into evidence right here starting
21 with I want?

22 A Okay. I said I want every piece of paper you have on
23 me and my jacket now and I have asked you for this before,
24 and don't make me have to make your people make you do the
25 right thing, and these people who I was talking about was

Jimmy Littlejohn - Direct examination
by Mr. Killoren

1 the people at the NAACP and the ACL.

2 Q Thank you.

3 THE COURT: Can I see that?

4 MR. KILLOREN: Yes, sir, Your Honor.

5 THE COURT: Thank you.

6 Q All right. Now I want to direct your attention to
7 and -- well, before we go to the next exhibit, the reason
8 why you think that that exhibit is important is because
9 you're requesting from Mr. Thompson a copy of your file, is
10 that correct?

11 A Yes, I was.

12 Q Okay.

13 A On several occasions. That was just the one that he
14 questioned and thought that I had actually threatened him.
15 So, this was the one particular one that he had actually
16 saved because he said that I could, I had threatened him---

17 Q Okay.

18 A ---and that's the return letter that you have in your
19 hand.

20 Q All right. We're gonna get -- we'll take it
21 step-by-step.

22 Okay. I want to show you what has been previously
23 marked as Applicant's Exhibit No. 2. This is the
24 December 29, 2004, letter. I'm handing you Applicant
25 Exhibit No. 2.

Jimmy Littlejohn - Direct examination
by Mr. Killoren

1 Can you tell the Court why you think that exhibit is
2 relevant or important to the issue of not receiving your
3 Rule 5 discovery before the trial?

4 A Because here, by him being my previous attorney, he
5 had -- he, he should of relinquished my, my, my Rule 5 to me
6 because he was no longer my attorney. He already said he
7 wasn't.

8 Q Okay. Is there anywhere mentioned in Applicant Exhibit
9 No. 2 that he's giving you a copy of your file?

10 A Nowhere.

11 Q Okay.

12 A If anything, he said you should direct your threats to
13 someone else.

14 Q All right. And I want to---

15 THE COURT: Pass that up please.

16 MR. KILLOREN: Yes, sir.

17 THE COURT: Thank you.

18 Q I like to direct your attention to Applicant's third
19 exhibit, which is your July 13th, 2005, letter. I'm
20 handing you -- are you with me on that?

21 MS. WILSON: Yes.

22 Q Okay. Applicant Exhibit No. 3.

23 what's the -- that's the three page docket and I know
24 you---

25 A Yes, it's a request for production of documents from

Jimmy Littlejohn - Direct examination
by Mr. Killoren

1 Mr. Thompson.

2 Q And is that you're handwriting?

3 A Yes, it is, sir.

4 Q That's a three page letter?

5 A Three page letter.

6 Q And it's dated July 13th, 2005?

7 A Yes, and notarized.

8 Q Okay. And is that a request for Rule 5 discovery
9 before your trial?

10 A Actually that was -- I was already in prison.

11 Q Okay.

12 A It was three months after I already been sentenced is
13 when he sent it. Actually it was a total of 330 days from
14 the time that he was fired till the time that I received it,
15 and I was already in prison. At the time that he, he had
16 sent it I had already been in prison and sentenced.

17 Q Okay. And then I want to show you what's previously
18 been marked as Applicant's Exhibit No. 4, which is the
19 August 8th, 2005, letter from the Cherokee County Public
20 Defender, and can you read what the first line is in that
21 letter?

22 A Enclosed you'll find a complete file, a complete copy
23 of the file that I have related to you and your charges of
24 burglary and arson in 2004. Understanding that this is
25 probably not a complete file relating to your case, as I was

Jimmy Littlejohn - Direct examination
by Mr. Killoren

1 discharged as your attorney in October of 2004.

2 Q Okay. Just to conclude that line of questioning, I'm
3 gonna go on to a different line of questioning now.

4 Those exhibits you believe are relevant because they
5 don't show -- they, they prove to you that you never
6 received the Rule 5 before trial?

7 A Yes, sir.

8 Q Is that correct?

9 Okay. And that's the line of questioning and your
10 argument on that issue, is that correct?

11 A Yes, because that was a part of the reason why my, my
12 trial was fundamentally unfair because of the due process
13 of, that I didn't receive because of my Rule 5. I had no
14 way of -- they didn't give me any raw materials to fight my
15 to, to fight prosecution. He was---

16 Q All right.

17 A He had, he had, he had a Rule 5. I didn't.

18 Q Okay. Thank you. I'd like to ask you questions about
19 another exhibit that I have in front of me, which is
20 Applicant Exhibit No. 5, which is the July 8th, 2004,
21 Family Court order. I'm gonna show that to you.

22 Can you tell that Court what that exhibit is please?

23 A It is protection from Domestic Abuse Act. It's
24 something that my wife filed in July, I think it was July
25 8th.

Jimmy Littlejohn - Direct examination
by Mr. Killoren

1 Q Okay. I'm gonna help you with that if I can. It's
2 Page 2. That looks like -- what's the date shown on that
3 second page?

4 A July 8th.

5 Q what year?

6 A 19 -- 2004.

7 Q Okay. And what box is checked on that Page 2 of
8 Applicant's Exhibit No. 5?

9 A Box H.

10 Q And why is that significant in the, in your estimation
11 in this case?

12 A Well, because, at the time of the trial, she -- my wife
13 stated that she lost everything.

14 well, if that was the case, why would you check this
15 box stating in stopping me from, from selling and
16 transferring or trying to, to come get my property if
17 everything was lost?

18 So, initially everything was not lost because it was
19 little damage done to the apartment --

20 Q All right.

21 A -- and this Rule 5 would of showed that if I'd of had
22 it.

23 Q So, did you receive this when you received the file,
24 the file from Mr. Thompson's office?

25 A Yes, I did.

Jimmy Littlejohn - Direct examination
by Mr. Killoren

1 Q Do you have this---

2 A No.

3 Q ---this Applicant Exhibit -- I'm sorry. You got to let
4 me finish the, before, before I finish my question and then
5 you can answer.

6 Okay. Did you have the Applicant Exhibit No. 5 prior
7 to the trial?

8 A No, I did not.

9 THE COURT: What was the date of trial?

10 WITNESS: May the 25th and 26th of 2005, sir.

11 THE COURT: Thank you.

12 Q I want to show you now what's been previously marked as
13 Applicant's Exhibit No. 6, the incident report from the City
14 of Gaffney Police Department. I'm gonna hand that to you.

15 It looks like Applicant's Exhibit No. 6 is an incident
16 report, is that correct?

17 A Yes, it is, sir.

18 Q And that incident report has at the bottom, under
19 property, a number, is that correct?

20 A Yes, it does.

21 Q And what does that number state?

22 A \$800.

23 Q Okay. And why is -- why do you think that that \$800
24 number is significant in this case?

25 A Because it shows the damage done to the property --

Jimmy Littlejohn - Direct examination
by Mr. Killoren

1 Q Okay.

2 A -- at the residence of Apartment Number 32.

3 Q And why is that significant?

4 A Because this is the property in question where it says
5 that everything was lost and was testified to.

6 Q Okay. And, so, is it your contention in this case that
7 because the property damage is listed at, at only \$800 that
8 that's in contrast to that trial testimony that showed
9 everything was lost?

10 MS. WILSON: Your Honor?

11 A Yes, it is, sir.

12 MS. WILSON: Your Honor, from what I can tell to this
13 document, there's no decimal point. So, I read that as
14 being \$80,000. Maybe you want to take a look at it.

15 THE COURT: Well, it is a copy, but I do, don't see a
16 decimal point. I mean it speaks for itself.

17 MR. KILLOREN: It speaks -- yes, sir, Your Honor. We
18 can address that issue.

19 Do you believe that the document suggest that there was
20 \$800 in damage?

21 A It was \$800 worth of damage because it coincides with
22 the fire report.

23 Q Okay. And I want to show you what's been previously
24 marked as Applicant Exhibit No. 7. This is the Gaffney Fire
25 Department fire investigation report.

Jimmy Littlejohn - Direct examination
by Mr. Killoren

1 Do you see that document?

2 A Yes, I do, sir.

3 Q And why do you believe that Applicant Exhibit No. 7 is
4 relevant to your PCR application today?

5 A Because it actually shows the damage that was done to
6 the apartment and that how relatively -- it was little
7 damage done, and that how the only damage that was, was
8 actually done was to a stool and a bar and the back of the
9 kitchen, which was only worth \$20, which I had purchased
10 from a junk yard, and that was the only real damage that was
11 done. Everything else was soot, soot damage. That was it,
12 and that's not everything. It was \$800 worth of damage
13 done, and that was my furniture.

14 Q And the, the point where you're talking about very
15 little damage is on Page 3 of the four page exhibit, is that
16 correct?

17 A Yes, if you -- it's Page 3 and the last page.

18 Q You're talking about the statement.

19 Can you read that statement on that line?

20 A It says the contents of the closet of this room
21 appeared to be undamaged, and that was, includes the
22 upstairs and the downstairs.

23 Q Did you have a -- did Judge Hayes ask you some
24 questions, Judge John Hayes, before the trial began, is that
25 correct?

Jimmy Littlejohn - Direct examination
by Mr. Killoren

1 A Yes, he asked me a, one question about whether or not I
2 had a lawyer --

3 Q Okay.

4 A -- and I told him no, I was indigent.

5 Q And the -- before you answer, let me finish the
6 question.

7 The transcript went on to indicate he asked you a
8 series of other questions about, on that issue, is that
9 correct?

10 A No.

11 Q Okay. I want to ask you a group of questions, and at
12 the end I want to ask some summary questions about it.

13 what's your age please?

14 A Forty-six.

15 Q Are you a high school graduate?

16 A Yes.

17 Q Okay. Have you ever been involved in a criminal trial
18 prior to this trial?

19 A Not before that one.

20 Q Did you understand the nature of the charges and the
21 possible penalties in this case, and when I say, before you
22 answer, in this case, I mean the case that was being tried
23 in Cherokee County subject to the arson and the burglary?

24 A No, I did not.

25 Q Okay. Did you -- did the, did the attorney -- did Mr.

Jimmy Littlejohn - Direct examination
by Mr. Killoren

1 Thompson ever explain to you the dangers of
2 self-representation?

3 A No, he did not.

4 Q Were you trying to delay or manipulate the proceedings
5 or the trial by firing Mr. Thompson as your attorney before
6 the burglary and arson charges?

7 A No, I did not. It was a, it was a conflict of
8 interest. He stated that he would, he no longer wanted to
9 be my attorney, and he said I threatened him. So, it was no
10 way that we could work together after he, after he already
11 said someone threatened him.

12 Q Did you know that you would be required to comply with
13 the rules of procedure at trial?

14 A No, I did not.

15 Q Did you know the legal challenges you could raise in
16 defense to the charge against you?

17 A That was never discussed.

18 Q Do you believe that the waiver of your right to a or
19 the alleged waiver of your right to a attorney at trial was
20 a result of coercion or mistreatment?

21 A Actually it was coercion and mistreatment because they
22 never came to me with a, with a plea, and my mother and
23 father advised me that I should plea, give an Alford plea.
24 But no one never came to me. So, it was, it was -- they put
25 me in a position where I had to go to trial with nothing to

Jimmy Littlejohn - Direct examination
by Mr. Killoren

1 defend myself.

2 Q Okay. Let's make sure we've covered all the issues
3 that are relevant to our application today before this
4 Court. We talked about the Rule 5 discovery issues that
5 were not presented to you before the trial, is that correct?

6 A Right.

7 Q We talked about some of the issues with regard to
8 waiving your right to a, to an attorney at the trial, is
9 that correct?

10 A That's correct.

11 Q Are there other issues that you believe are relevant in
12 your application today that the Court should consider?

13 A Yes, they violated my un, due process rights because
14 the trial was not fundamentally fair because I never had an
15 opportunity to, to present pictures that the prosecution had
16 brought that morning, and it was a -- I never had the chance
17 to put in the, into evidence the interviews of individuals
18 who had changed their stories two or three times, and the
19 judge had stopped the line of, a couple lines of questioning
20 as I was catching individuals who were telling untrue
21 stories, and this is all in the record and---

22 Q Now, you---

23 A This is all in the transcript.

24 Q I'm sorry. Did I -- were you finished?

25 A Yeah.

Jimmy Littlejohn - Direct examination
by Mr. Killoren

1 Q And I'm just -- I'm not trying to be rude. I just want
2 to make sure I, I follow-up on that.

3 Do you believe that relates to whether or not you were
4 able to properly defend yourself based on your inability to
5 or, or the lack of materials you had to use to prepare your
6 defense?

7 A Yes, sir.

8 Q Okay. Is there -- any there any other issues that we
9 haven't talked about that you think are relevant to your
10 application today?

11 A Yeah, my appellate defense. He -- I, I felt that he
12 should of investigated the reason why Mr. Thompson was
13 fired, and he should of really actually brought that up into
14 the forefront because he allowed the State to use a lot of
15 untrue things that was said that shouldn't have been said in
16 order to reject my, my, my direct appeal.

17 Q Okay. And, so, you believe that the Rule 5 issue that
18 we've discussed here today, relevant to your appeal, and
19 that shouldn't have been raised on your appeal, is that
20 correct?

21 A Yes, sir, that was very important because that was a,
22 made the trial fundamentally unfair because, if I, if I had
23 it, I probably could of given an adequate defense, and I,
24 and I couldn't without it.

25 Q Are there any other issues that you want this Court to

Jimmy Littlejohn - Direct examination
by Mr. Killoren

1 consider in your application today?

2 A Yes, there's one more issue. I'd like to request to be
3 verbally amend it.

4 Q What, what is that issue?

5 A It's a Batson claim that I, the prosecution or the
6 Solicitor's Office preempted three African-Americans before
7 I can even select them on the jury, and I thought they had
8 discriminated on me in that, in that manner.

9 Q Okay. Are there any other issues that you'd like for
10 this Court to consider?

11 A That's it.

12 Q Okay. Is there anything else you'd like to testify to
13 that I haven't mentioned already?

14 You can take a moment if it suits the Court, Your
15 Honor.

16 A Yes, one more other thing. Yeah. Okay. Yeah, Mr.
17 Thompson case -- a person who happens to be a lawyer who's
18 present at a trial alongside the accused is, however, not
19 enough to satisfy the Constitutional command of the Sixth.
20 It recognize the right to assistance of counsel because it
21 envisions counsel playing a role that is critical to the
22 ability of the adversary system.

23 Q Mr. Littlejohn, that -- and we're -- as your attorney,
24 I'll make your arguments under the law --

25 A Yeah.

Jimmy Littlejohn - Direct examination
by Mr. Killoren

1 Q -- based on the comments that you've made today.

2 Is there something about that statement that you wanted
3 the Court to consider that's relevant that's different that
4 we haven't talked about already?

5 A No, not really. But---

6 Q And I don't mean to cut you off.

7 A Yeah.

8 Q I just -- the, the, the State has appointed me to
9 represent you in the case and to make arguments under the
10 law, and I'm happy to do that for you. I'll do it
11 vigorously. But I just wanted to make sure -- it sound to
12 me like you're reading from a Court opinion, and I want to
13 make sure that, that you get a chance to tell the judge
14 everything you think is relevant to your application and not
15 argue the law, which is something that I can do for you.

16 A Okay. All right.

17 Q Is that -- is that understood?

18 A Yeah.

19 Q Have you had a chance to say everything that you wanted
20 to say about the application and facts that you think are
21 important?

22 A Yeah.

23 Q Are you sure?

24 A (Witness nods affirmatively.)

25 MR. KILLOREN: Okay. Thank you, Your Honor. I don't

Jimmy Littlejohn - Direct examination
by Mr. Killoren

1 have anymore questions.

2 THE COURT: Yes, ma'am.

3 MS. WILSON: May it please the Court.

4 CROSS-EXAMINATION

5 BY MS. WILSON:

6 Q Mr. Littlejohn, did you ever go over your rule of
7 discovery with trial counsel prior to firing him?

8 A No.

9 Q And, so, did you receive your discovery prior to trial?

10 A No.

11 Q And did you ever indicate, before starting the trial
12 when the judge discussed with you how you were representing
13 yourself, that you did not want to proceed without your
14 discovery?

15 A I had made, I had made a comment before and Mr.
16 Thompson was present at the, at that morning of the, at the
17 proceedings, and he knew that he hadn't given my, given me
18 my Rule 5. He should of said something then, but he didn't
19 when they appointed him co-counsel. He knew he hadn't gave
20 it to me.

21 Q Did you recognize, at the time that you were going
22 forth with your trial pro se, that Mr. Thompson no longer
23 represented you?

24 A Yes, I knew that because at the, at the particular time
25 I sent him a letter and he vigorously said that he wasn't my

Jimmy Littlejohn - Cross-examination
by Ms. Wilson

1 counsel anymore.

2 Q Did you also know that, at the time when you proceeded
3 to trial, when the judge brought in Mr. Thompson to sit with
4 you, that he was still not representing you as counsel?

5 A That wasn't explained. Actually what was explained is
6 that he was familiar with the case. This was the reason why
7 he appointed him as stand-by counsel.

8 Q The, the -- okay. Do you recall the, maybe the Monday
9 before your trial, subpoenaing different witnesses to come
10 in and testify for you?

11 Did you subpoena -- did you ask certain witnesses to
12 come to trial and testify for you so that you can call them
13 to testify on your behalf?

14 A I think I did. I think, I think I subpoenaed what, two
15 or three people.

16 Q How did you know to subpoena these witnesses if you
17 hadn't had any evidence of any discovery received from the
18 solicitor's office?

19 A Well, the solicitor sent a, sent a piece of paper over
20 and basically said that you could subpoena some witnesses
21 and that was it. He just sent the piece of paper over to
22 the jailhouse like in mail. That was it.

23 Q And did you think to request, from the solicitor, any
24 type of discovery paperwork?

25 A I didn't think, I didn't think that was -- I wasn't

Jimmy Littlejohn - Cross-examination
by Ms. Wilson

1 informed that I could get it from him, and he never informed
2 me that I could get it from him. He never sent me anything.

3 Q Did you file a Rule 5 discovery motion with the Court
4 after you fired Mr. Thompson?

5 A It was a request for documentation.

6 Q Did you file that prior to your trial with the Clerk of
7 Court's Office?

8 A I didn't know anything about that, ma'am. I didn't
9 know anything about the law.

10 Q At the trial, do you remember -- do you recall
11 cross-examining different witnesses based on their
12 statements?

13 A Yeah, I watched Perry Mason.

14 Q Do you, do you recall cross-examining witnesses based
15 off of their specific statements that they gave prior to
16 trial?

17 A Yes, I remember that, but at the time I was doing that
18 the judge always would stop me from my line of questioning
19 and telling me that my line of questioning was -- I couldn't
20 do that. I couldn't pick witnesses against each other. No
21 one never explained anything to me.

22 Q Do you recall trying to impeach some of the witness'
23 credibility by saying the statement that they gave prior to
24 trial was different than the one they were giving at trial?

25 A Yeah, that was the time that he wouldn't allow me to

Jimmy Littlejohn - Cross-examination
by Ms. Wilson

1 put this, the statements into evidence, and that went on
2 throughout the whole trial.

3 Q So, you, you had tried to put certain statements into
4 evidence when you were examining your witness, different
5 witnesses at trial?

6 A (Witness nods affirmatively.)

7 Q After the jury was -- after they picked a jury for your
8 trial, and you -- why didn't you object or ask for a Batson
9 hearing related to the solicitor striking the three
10 African-American jurors?

11 A I didn't know anything about Batson at that particular
12 time. The only time I find out about everything that
13 happened to me, I, when I got to the, to the penitentiary
14 and went to the law library myself and found out what had
15 happened to me and my due process were violated.

16 Q So, you didn't speak up in anyway to tell the judge
17 that---

18 A I didn't know I could.

19 Q -- you thought that was wrong?

20 A I didn't know I could.

21 Q Okay.

22 A Nobody instructed me how to, what to say and Mr.
23 Thompson never said anything. He sat there. He never said
24 anything.

25 Q Do you recall, prior to going to trial, the judge

Jimmy Littlejohn - Cross-examination
by MS. Wilson

1 explaining to you that you were representing yourself and
2 that, as a result, he had to treat you the same way as he
3 had to treat the solicitor?

4 A That was the day of trial.

5 Q Okay. And do you also recall the, the judge, prior to
6 that when you, when you relieved Mr. Thompson as your
7 counsel, notifying you several times that if you didn't get
8 an attorney you would have to represent yourself?

9 A He only notified me one time, and that was the day that
10 he notified me. He told me the day that I fired him. That
11 was the only time he notified me.

12 MS. WILSON: Your Honor, may I approach the witness?

13 THE COURT: You certainly may.

14 MS. WILSON: I'm handing the witness a copy of the
15 hearing transcript where Mr. Thompson was relieved.

16 THE COURT: Yes, ma'am.

17 Q Okay. Mr. Littlejohn, I'm looking on Page 6, and we're
18 on Line 6.

19 Could you please read, read what the Court said right
20 here?

21 See it right here?

22 Starting right here from line -- read into the record
23 Line 6 through 9.

24 A It says all right. Do you understand that if you don't
25 retain the services of an attorney that you may be put into

Jimmy Littlejohn - Cross-examination
by Ms. Wilson

1 a situation where you have to represent yourself.

2 Q And could you read the next line and read your response
3 please.

4 A I said yes, I understand. I rather represent myself
5 than Mr. Thompson.

6 Q Okay. Thank you.

7 Okay. Could you go to Page 7, and could you read,
8 start reading at Line 2 and then read to Line 6?

9 A It says the Court. Do you understand if you don't hire
10 a lawyer. I understand all that.

11 Q And that was the defendant speaking, correct?

12 That would be you?

13 A That would be me.

14 Q Okay. Keeping going.

15 A It says to represent you, that you may be put in a
16 situation where you have to represent yourself.

17 Q And can you read the next line?

18 A And I put that won't happen. I will retain some kind
19 of legal representation before the trial.

20 Q Okay. Hold on to that for me.

21 Could you also turn to Page 17 of the trial transcript?

22 It's kind of -- excuse me. It's a little bit -- sorry.
23 Right there.

24 Could you start reading at Line 17?

25 A It says so you understand that you are waiving your

Jimmy Littlejohn - Cross-examination
by Ms. Wilson

1 right to have an attorney because you fired the one you, the
2 State appointed you and you haven't obtained one on your
3 own. Do you understand that.

4 Q And what was your response to Line 21?

5 A Yes, sir.

6 Q Okay. So, you recall the judge asking you several
7 times and letting you know several times that you would have
8 to represent yourself if you didn't have an attorney?

9 A Well, my understanding was I wasn't gonna represent
10 myself no way, that I tried to hire another attorney.
11 Matter of fact, I even had my mother and father go and ask
12 Mr. Shealy to represent me, and Mr. Shealy refused because
13 Mr. Thompson told him not to represent me.

14 Q Okay. Thank you.

15 Do you also recall when the Court had a conversation
16 with you about how he couldn't treat you any differently
17 than any attorney?

18 A Well, yes, I had, I had that when he, when he told me
19 that. But as I thought about it, I was never trained in the
20 law and how can you treat me the same as a lawyer if you
21 haven't, if nothing's ever been explained to me, and I
22 didn't have the same advantages as the solicitor did. He
23 had the whole Rule 5. I didn't have anything.

24 So, you couldn't treat me as a, as a lawyer because I'm
25 untrained in the law. You didn't explain anything to me.

Jimmy Littlejohn - Cross-examination
by Ms. Wilson

1 Nor the decorum, nor entering evidence, obtaining evidence.

2 You didn't explain -- you didn't give me any of that.

3 Q Okay. And did you also---

4 A So how can you treat me as a lawyer?

5 Q Do you also recall the judge telling you that if you

6 want to object to something don't hesitate to get up and

7 object to it?

8 A What is an objection?

9 What is an objection to a person who doesn't know the
10 law?

11 THE COURT: I'm gonna ask you to answer the question,
12 not ask questions. She asked you if the judge warned you or
13 asked you that, whether or not -- well, to object to
14 anything that you had an objection to.

15 Did he do that?

16 WITNESS: He told me, sir, but---

17 THE COURT: Thank you.

18 Q Okay. So, you -- do you -- you do recall the State --
19 you do recall the judge letting you know that if you didn't
20 represent yourself, if you didn't have an attorney you'd
21 have to represent yourself?

22 A I do recall that, but at the time I told him, I told
23 him, I told the judge the parameters of why that I didn't
24 actually want to represent myself, that I was forced into
25 representing myself.

Jimmy Littlejohn - Redirect examination
by Mr. Killoren

1 Q Thank you, Mr. Littlejohn.

2 That's all I have for him, Your Honor.

3 MR. KILLOREN: Yes, sir, Your Honor.

4 THE COURT: Anything further, Mr. Killoren?

5 REDIRECT EXAMINATION

6 BY MR. KILLOREN:

7 Q Mr. Littlejohn, do you understand what an objection is,
8 a legal objection in Court?

9 A No, I do not.

10 MR. KILLOREN: No further questions, Your Honor.

11 THE COURT: I have a question, Mr. Littlejohn. You got
12 the Rule 5 materials.

13 What information in there would have been relevant to
14 your defense?

15 WITNESS: The statements that were made at the fire,
16 fire report, and the police officers initial incident
17 report, and also too there was a report that was done by the
18 SLED officer that initially stated that the fire, that,
19 that -- it stated that the fire had two ignition points, and
20 we never covered that in the trial. And after I saw, I saw
21 that, it was very relevant to the case, that if it was two
22 ignition points, that, that meant it was two starting
23 points, and this was very relevant to the trial because at
24 the time that it was said that the fire lasted, it said that
25 the fire lasted for two and a half hours. But it never

1 burned through the structure.

2 Now, how is this possible that, that we, we have two
3 clocks saying two different things and you entering into
4 evidence. A clock downstairs where there is one fire, and
5 then there's another clock upstairs where there's another
6 fire, where there's two different times. So, yeah, it was
7 very relevant as this---

8 THE COURT: Well, is that somehow -- does that somehow
9 either -- does it make it more likely that you did it or
10 less likely that you did it?

11 WITNESS: Most likely, sir, because at that particular
12 time they said that I, that it, that this fire lasted for
13 two and a half hours, that I hung around the crime scene for
14 two and a half hours, and that no one called the police.
15 And, and that, at this particular time, the statements had
16 said that there was, there was me and another person who
17 were involved in the, in the break-in and the fire.

18 So, it was very relevant because no one said they saw
19 this other person or did they say they saw me. All they
20 said that they saw my car and initially said they heard my
21 voice through a wall.

22 THE COURT: Now, were these the same statements that
23 you were asking, trying to ask these witnesses about at
24 trial?

25 WITNESS: Yes, sir.

1 THE COURT: Where did you get those statements before
2 the trial to be able to ask them about it?

3 WITNESS: Well, the statements that I got, I got -- I
4 got the statements from the solicitor.

5 THE COURT: Rule 5?

6 WITNESS: No.

7 THE COURT: Well, that's, that's the discovery from the
8 solicitor, isn't it?

9 WITNESS: Well, all I had was the, the, the statements
10 from the, the, that the detectives took.

11 THE COURT: Didn't that come from the solicitor's file?

12 WITNESS: That came from the solicitor's file, and that
13 was---

14 THE COURT: How did you get it?

15 WITNESS: That was the day of the trial.

16 THE COURT: So, you got it from the solicitor the day
17 of the trial?

18 WITNESS: I used it.

19 THE COURT: That's what I was asking you.

20 WITNESS: Yeah, I used it from his file.

21 THE COURT: All right. Now, my question is what, from
22 the solicitor's file, didn't you get before trial?

23 WITNESS: That was it.

24 THE COURT: So, you had all the information from the
25 solicitor's file before the trial?

1 WITNESS: No, sir, the solicitor---

2 THE COURT: What didn't you get from the solicitor's
3 file?

4 WITNESS: I didn't receive anything from the
5 solicitor's. That's what I'm trying to tell you. The
6 solicitor's Office didn't give me anything before the trial.
7 What I received and what I used at the trial was, was from
8 the solicitor's Rule 5 at the trial. I'm going---

9 THE COURT: And, again, I'm gonna ask you to listen to
10 what I'm asking you. Try to -- don't try to argue with me,
11 Mr. Littlejohn. Try to answer my questions.

12 Before the trial began you must of received a statement
13 from the solicitor to be able to ask witnesses about those
14 statements.

15 WITNESS: No, Your Honor. I did not.

16 THE COURT: Well, when did you get them then?

17 WITNESS: I got them the day of the trial, sir, along
18 with the other pictures that they had.

19 THE COURT: Before the trial began, the day of the --
20 before they actually swore the jury and started the trial,
21 you -- did you receive something from the solicitor or not?

22 WITNESS: No, I did not.

23 THE COURT: So, you got it during the trial?

24 WITNESS: During the trial.

25 THE COURT: At what point during the trial was it given

1 to you?

2 WITNESS: After we had made the first opening
3 statements and we had started questioning witnesses.

4 THE COURT: Interesting.

5 Anybody want to follow-up on my questions?

6 MR. KILLOREN: I might, Your Honor.

7 THE COURT: Yes, sir.

8 MR. KILLOREN: Please the Court?

9 REDIRECT EXAMINATION

10 BY MR. KILLOREN:

11 Q There were statements and photographs that the
12 solicitor was using -- well, strike the question.

13 Were there statements and photographs the solicitor was
14 using to try and prosecute the case against you?

15 A Yes, they were.

16 Q And when they were -- when the solicitor was trying to
17 use those statements and those photographs to prosecute the
18 case against you, did you have an opportunity to look at
19 those statements and those photographs?

20 A Yeah, during the trial.

21 Q Okay. If you had a chance to review those statements
22 and photographs prior to the trial itself, do you believe
23 that that would of helped you in your defense of the case?

24 A I could of put up a pretty good defense if I would of
25 had them.

Jimmy Littlejohn - Redirect examination
by Mr. Killoren

1 Q Do you think that you might have used, tried to get
2 other resources or tried to find some other attorney to help
3 you if you had that information prior to trial?

4 A Yes, sir, I probably could of hired my own expert
5 witness myself.

6 Q Did you feel like you had time to adequately review the
7 statements and the photographs when they were presented to
8 you at the trial?

9 A No, I didn't.

10 MR. KILLOREN: That's all the further questions I'd
11 have at this time, Your Honor.

12 THE COURT: All right. Anything further from the State
13 to follow-up?

14 MS. WILSON: Not from this witness, Your Honor.

15 THE COURT: All right. You may step down.

16 Applicant may call its next witness.

17 MR. KILLOREN: Yes, sir, Your Honor.

18 If it pleases the Court, the applicant, Mr. Littlejohn,
19 would call Billy Littlejohn to the stand.

20 THE COURT: Come forward, sir, to be sworn.

21 BILLY LITTLEJOHN, having been first
22 duly sworn, testified as follows:

23 THE COURT: Have a seat.

24 (Witness complies.)

25 THE COURT: State your name please, sir.

Billy Littlejohn - Direct examination
by Mr. Killoren

1 State your name please.

2 DIRECT EXAMINATION

3 BY MR. KILLOREN:

4 Q State your name please.

5 I'm sorry.

6 WITNESS: Billy Littlejohn.

7 THE COURT: All right. Mr. Killoren, your witness.

8 MR. KILLOREN: Thank you, Your Honor.

9 Q Mr. Littlejohn, my name is Tom Killoren. I'm your
10 son's lawyer and I have some questions I'd like to ask you.

11 You are Jimmy Littlejohn's father, is that correct?

12 A Yes, I am.

13 Q And you live in Gaffney, South Carolina?

14 A Yes, sir.

15 Q How long have you lived in Gaffney, South Carolina?

16 A About 22 years.

17 Q And who did you live in Gaffney, South Carolina with?

18 A My wife.

19 Q What's her name?

20 A Annie Littlejohn.

21 Q Is she present in the courtroom today?

22 A Yes, she is.

23 Q Were you present -- well, strike the question.

24 Did you have a chance to go to Mr. Don Thompson's

25 office to ask Mr. Thompson for discovery materials on behalf

Billy Littlejohn - Direct examination
by Mr. Killoren

1 of your son prior to his arson and burglary trial?

2 A Yes.

3 Q And you went to Mr. Thompson's office?

4 A Yes.

5 Q And did you ever speak to Mr. Thompson?

6 A No.

7 Q How did you know it was his office?

8 A His name was on the door.

9 Q And when you went into the office did you ask someone
10 if you could speak to someone, speak to Mr. Thompson about
11 your son's case?

12 A Yes.

13 Q And did you ever get a response from that office or Mr.
14 Thompson with regard to your request?

15 A Only response I got was about a letter that was
16 written.

17 Q Okay. And did you ever get any documents that you were
18 able to give to your son to help him in his case?

19 A No.

20 Q Do you, do you remember ever going to request that
21 another public defender represent your son in the trial?

22 A No.

23 Q Okay. Do you, do you -- did your son ever ask you to
24 try and get someone else to help him with the defense in the
25 case?

Billy Littlejohn - Direct examination
by Mr. Killoren

1 A Yes.

2 Q Were you ever successful in ever getting anyone to
3 defend him or a lawyer, another lawyer in the case?

4 A No, but we suppose to have gotten his partner, but he
5 never did come through.

6 Q Okay. When you, when you say his partner, do you mean
7 Mr. Thompson's partner?

8 A Yes.

9 Q Did you make a request for Mr. Thompson's law partner
10 to represent your son?

11 A It didn't get that far.

12 Q What do you mean it didn't get that far?

13 A Well, because of the letter.

14 Q Okay. So, when you got the letter saying that they
15 didn't want to represent, when Mr. Thompson didn't want to
16 represent your son anymore, was terminated from representing
17 you, did you -- what did that tell you?

18 A That that was my understanding, that he didn't want to.

19 MR. KILLOREN: Okay. No further questions, Your Honor.

20 THE COURT: You may cross-examine.

21 CROSS-EXAMINATION

22 BY MS. WILSON:

23 Q Mr. Littlejohn, did you testify on your son's behalf at
24 trial?

25 A Yes.

Billy Littlejohn - Cross-examination
by Ms. Wilson

1 Q Did he effectively -- did he cross-examine or did he
2 examine you based on your testimony about what happened that
3 night?

4 A No.

5 Q Let me actually rephrase my question.

6 While you were testifying at trial, did he ask you
7 certain questions about what happened that day?

8 A No, because I wasn't there. He was asking me a few
9 questions about who I was and specific things like that.
10 Nothing really about the trial itself.

11 Q Thank you.

12 MR. KILLOREN: No further questions, Your Honor.

13 THE COURT: Sir, you may step down.

14 Applicant may call its next witness.

15 MR. KILLOREN: We have no other witnesses or evidence
16 to present at this time.

17 THE COURT: All right. State may call its witness.

18 MR. KILLOREN: Yes, Your Honor. We'd like to call
19 Mr. Don Thompson.

20 THE COURT: Come forward, Mr. Thompson.

21 DON THOMPSON, having been first
22 duly sworn, testified as follows:

23 THE COURT: Have a seat please.

24 MR. KILLOREN: Just before she begins, I just want to
25 not forget to move into evidence my exhibits that I

Don Thompson - Direct examination
by Ms. Wilson

1 presented.

2 THE COURT: Any objection to the exhibits being marked
3 being made exhibits for the trial?

4 MS. WILSON: No objection, Your Honor.

5 THE COURT: All right. They're in the record. I'll
6 allow them in.

7 (WHEREUPON, Applicant's Exhibit Nos. 1 through 7 were
8 received into evidence at this time.)

9 THE COURT: All right. You may proceed.

10 DIRECT EXAMINATION

11 BY MS. WILSON:

12 Q Mr. Thompson, had you received the defendant's Rule 5
13 prior to the being relieved of counsel?

14 A I had received something. I don't believe it to be the
15 full Rule 5. I was only his counsel for about a two month
16 period, maybe three month, and I don't think we received
17 everything, and I believe, in the letter he sent to me
18 asking for it in 2005, I sent him what I had and put in that
19 letter that I don't believe it was full discovery.

20 Q Did you turn over your file to the applicant after you
21 were relieved, relieved as his counsel?

22 A No, I didn't.

23 Q Is that standard -- is it standard practice to retain
24 your file after you'd been relieved of counsel?

25 A Yes, and if they ask for it I simply make a copy and

Don Thompson - Direct examination
by Ms. Wilson

1 keep a copy and give them the file.

2 Q Had you gone over the rule, the limited Rule 5
3 discovery that you received prior to being relieved?

4 A I don't know at what point in time I received that Rule
5 5. I've got some dates here. I can give you dates as to
6 when certain things happened. But I don't have a date as to
7 when I got the Rule 5, and the reason I say that is the
8 preliminary hearing was on October the 5th of 2004, and at
9 that time I did not have any discovery.

10 It was after that preliminary hearing that
11 Mr. Littlejohn decided he wanted to fire me and that
12 occurred -- we went in front of Judge Hayes, Judge Mark
13 Hayes, on October 27th. So, it was 22 days after the
14 preliminary hearing that I was relieved as his attorney. I
15 did not have the Rule 5 at all on October 5th. I don't
16 know when it came in after that.

17 Q Okay. What is your understanding of what stand-by
18 counsel's role is when a, when a judge asks you to stand-by?

19 A Well, I'm not sure I know what stand-by counsel is. I
20 think it's to be there ready to step in if the defendant
21 decides he wants counsel. But that wasn't what I was told
22 to do in this case.

23 I was actually told to be in the courtroom in case he
24 had any legal questions. He could ask me his legal
25 questions. I wasn't even sitting at the table with him.

Don Thompson - Direct examination
by Ms. Wilson

1 The judge instructed me to sit in a different part of the
2 courtroom.

3 Q Did Mr. Littlejohn ever ask you any questions
4 throughout the trial or try to get your intention to get
5 your input on something that was presented, something that
6 was going while the trial was going on?

7 A No, he did not.

8 Q Thank you.

9 THE COURT: Yes, Mr. Killoren.

10 MR. KILLOREN: Yes, sir, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. KILLOREN:

13 Q Mr. Thompson, did you testify -- is it your testimony
14 that you were not asked to serve as stand-by counsel in this
15 case?

16 A My understanding of what stand-by counsel is, is that
17 I'm there to step in if he decides he doesn't want to
18 continue representing himself. Now, I may be wrong on that.
19 But my understanding of what I was asked to do in this case
20 was simply be in the courtroom to answer any legal questions
21 that he might have, and that's, that's what I did. I sat in
22 the chair that the judge designated for me and --.

23 Q Okay.

24 A -- sat through the trial.

25 Q And do you recall the, the discussion that the judge

Don Thompson - Cross-examination.
by Mr. Killoren

1 had with you on Page 18 of the trial transcript beginning at
2 Line 12 where it stated, where Judge Hayes stated I've not
3 discussed this with him, but he did work on your file at, at
4 this point, and I will ask him to stay as stand-by counsel
5 if you wish him to.

6 Do you wish to have him remain in case you have some
7 questions, Mr. Littlejohn?

8 Yes.

9 And then at Line 18, the Court says Mr. Thompson, does
10 that present any problem for you, and your answer was no,
11 sir, I will just need to clear my calendar to today.

12 And the Court said okay. I know I'm surprising you
13 with this. If you would, that would certainly help the
14 Court, and since you worked on this file and know it, and
15 understand Mr. Littlejohn, that you have not only a high
16 school education, but one year of college, is that correct?

17 Yes, sir.

18 Mr. Thompson, if you'll do that during this break and
19 remain as stand-by, and at any time you want to talk to Mr.
20 Thompson just get my attention and we'll take a break and
21 let you do that. All right. We'll take a short break.

22 Is that---

23 A That's what, that's what the transcript states, yes.

24 Q Okay. And is that your understanding of, of what do,
25 of your discussion with Judge Hayes was on the day the trial

Don Thompson - Cross-examination
by Mr. Killoren

1 began?

2 A There was a discussion. I couldn't give it to you
3 word-for-word. My understanding of what I was to do was be
4 in the courtroom in case he had any legal questions.

5 Q Okay. Do you disagree with the passage that I just
6 read to you?

7 A No, I don't.

8 Q Okay. And do -- did you, did you have a chance to
9 visit with Mr. Littlejohn during the course of the trial?

10 A It appears that I visited with him just during a recess
11 that was taken at that point in time.

12 Q And it looks like -- and on Page 19, on Line 16 it
13 says, the Court said Mr. Littlejohn, of course, you're
14 visiting with Mr. Thompson right now, and I hate to
15 interrupt that, but I want to tell you that we will do -- I
16 will bring the jury in. I appointed Mr. Youngblood foreman.
17 We'll swear the jury in and than I'll chat with them for a
18 few minutes, and then I'll turn the case over to you, and
19 the solicitor. The solicitor and you both have the right,
20 before the jury, to make an opening statement.

21 Do you, do you recall making, having a discussion with
22 Mr. Littlejohn at the trial before the jury came in to make
23 opening statements?

24 A I don't have any independent recollection of that, no.

25 Q Do you recall -- is it your testimony that you did not

Don Thompson - Cross-examination
by Mr. Killoren

1 provide Mr. Littlejohn any Rule 5 discovery materials before
2 the trial began?

3 A That's correct.

4 Q So, did you have any Rule 5 discovery material?

5 A It appears I had some.

6 Q Okay.

7 A Still don't think I've gotten complete Rule 5.

8 Q What did you, what did you have?

9 A Well, the short answer is I had what I sent him, but I
10 can go through it and give it to you if you want me to.

11 Q If you could just tell the Court specially what you had
12 in your file that you provided to him.

13 A A Gaffney Fire Department voluntary consent to search
14 signed by Ivy Littlejohn, a statement of Douglas Bowers, a
15 statement of John Grigg, a statement of John Splawn, a
16 statement of Jeremy Broom, a statement of looks like where
17 they run a DMV check on two vehicles, a statement of, a
18 handwritten statement of Scottie and I can not make out the
19 last name, a statement of Heath White, a statement of Jason
20 Chapman, a statement of Jason Blackwell, statement of Scott
21 Parkerson, rap sheet as to Mr. Littlejohn, 9-1-1 records.
22 It appears that there is a, and I don't know where this --
23 you know, it doesn't, it doesn't go with the 9-1-1 records,
24 but there's a floor plan of the apartment in here, Gaffney
25 Fire Department fire investigation report, arrest warrants.

Don Thompson - Cross-examination
by Mr. Killoren

1 That's basically what I have.

2 THE COURT: Okay. Your Honor, I'd ask if we could mark
3 that as an exhibit, the items that he's testified to, and
4 make that as an exhibit to the file, to the proceeding
5 today.

6 THE COURT: Any objection?

7 MS. WILSON: No, Your Honor, as long as we can get a
8 copy of the file from the court reporter.

9 WITNESS: And I'd like a copy back for mine too.

10 THE COURT: All right. Let's mark it as an exhibit.

11 MR. KILLOREN: Your Honor, may I, may I have one
12 moment---

13 THE COURT: Yes, sir.

14 MR. KILLOREN: ---to review this?

15 (Pause.)

16 MS. WILSON: No objection, Your Honor.

17 THE COURT: Beg your pardon?

18 MS. WILSON: No objection.

19 THE COURT: All right. Be marked as an exhibit for the
20 applicant.

21 (WHEREUPON, the file was marked as Applicant's Exhibit
22 No. 8 and received into evidence at this time.)

23 MR. KILLOREN: Would you like -- would counsel like me
24 to make the copies of this and perhaps you---

25 THE COURT: Once it's an exhibit she's gonna retain it

Don Thompson - Cross-examination
by Mr. Killoren

1 and you can come to the Clerk's office and make the copies.

2 MR. KILLOREN: Okay.

3 MS. WILSON: That's fine, Your Honor.

4 MR. KILLOREN: But I thought Mr. Thompson might like a
5 copy back for his file.

6 WITNESS: I would. But it's not absolutely necessary.

7 THE COURT: Well---

8 WITNESS: I mean I'm gonna assume I'll not be back in
9 here testifying on this again.

10 MR. KILLOREN: Okay. Well, I'll come to the Clerk's
11 Office and make a copy and send Mr. Thompson a copy and send
12 Ms. White a copy.

13 THE COURT: Would that be fine?

14 MS. WILSON: Yes, sir.

15 THE COURT: Thank you.

16 All right. Mr. Killoren, you may proceed.

17 CONTINUED CROSS-EXAMINATION

18 BY MR. KILLOREN:

19 Q So, the exhibit we, that we just marked -- and I'm
20 sorry. I didn't see the number. It must be Thompson
21 probably Exhibit No. 1. Applicant No. 8.

22 That -- those are not materials that you have a record
23 of ever providing to Mr. Littlejohn at anytime prior to his
24 trial, is that correct?

25 A That's right.

Don Thompson - Cross-examination
by Mr. Killoren

1 Q And you don't have an independent recollection of ever
2 providing those to Mr. Littlejohn before the trial?

3 A That's correct.

4 Q And as you sit here today, do you have an independent
5 recollection of ever discussing the information in
6 Applicant's Exhibit No. 8 with Mr. Littlejohn at anytime
7 prior to the trial?

8 A No, not that. I kind of hedge on that because we did
9 have a preliminary hearing. He was present at the
10 preliminary hearing. A lot of that information came out at
11 the preliminary hearing. Okay. But I -- actually, actually
12 as far as sitting down with that set of papers and saying
13 let's go over this, Mr. Littlejohn, I don't have any
14 recollection of ever doing that.

15 MR. KILLOREN: No further questions, Your Honor.

16 THE COURT: Yes, ma'am.

17 REDIRECT EXAMINATION

18 BY MS. WILSON:

19 Q Mr. Thompson, so, it's your testimony today that the
20 applicant never asked you any questions throughout his trial
21 while he was representing himself?

22 A That's correct.

23 Q Did you ever have any discussion with Mr. Littlejohn
24 that he needs to file his own Rule 5 motion since you were
25 no longer representing him?

Don Thompson - Redirect examination
by Ms. Wilson

1 A He sent us a -- you know, probably the letter I sent
2 back to him saying to quit making threats was, was not the
3 best thing I should of done. But Mr. Littlejohn, after he
4 fired me and after the Court relieved me, he continued to
5 send me letters wanting bond reductions, and those letters
6 and notes always had threats attached to them, and I got
7 tired of it. So, the only, the only request I'm aware of,
8 after that, was bond reductions, and, at that time, I told
9 him he represented himself, he needed to do everything
10 himself.

11 Q Had you received some type of indication from the
12 applicant that he wanted to receive a copy of your file,
13 would it have been your standard practice to give it to him?

14 A My standard practice would of been to give it to him,
15 yes. It's not file. It's his file.

16 Q Thank you. Thank you, Mr. Thompson.

17 THE COURT: Anything further?

18 MS. KILLOREN: No other questions, Your Honor.

19 THE COURT: You may step down.

20 The State have additional witnesses?

21 MS. WILSON: No, Your Honor.

22 THE COURT: Mr. Killoren, you wish to argue the case at
23 this time?

24 MR. KILLOREN: Yes, sir, Your Honor.

25 It's our position in the case, based on the evidence

1 that's been presented, that the Applicant's Exhibit 1
2 through 8 that there was, there was ineffective assistance
3 of counsel in the case in that the Rule 5 material was not
4 provided to Mr. Littlejohn in a timely manner where he could
5 provide himself with a chance to educate himself on the
6 facts of the case so that he could give himself an adequate
7 defense in the trial.

8 It's clear, from the evidence in the case based on the
9 admission of the, of Mr. Thompson, that some of those
10 materials were available and were not provided to
11 Mr. Littlejohn. The only information that we have in the
12 case is that there's no evidence that he gave it to
13 Mr. Littlejohn. Based on the preponderance standard, I
14 think that that weighs in favor of the applicant in this
15 case.

16 I think that the Faretta factors are important in this
17 case that talk about the understanding of what's going on in
18 the case, and not from the point of that he not -- not from
19 the prospective of a traditional Faretta hearing because
20 that was argued on appeal, but from the prospective that Mr.
21 -- it shows the understanding that Mr. Littlejohn had with
22 regard to the Court process, and why he needed more time
23 with the materials from the Rule 5 to get ready for trial.

24 THE COURT: well, that's an interesting argument that
25 you make, Mr. Killoren, but in this case there was a

1 substantial period of time that he did represent himself,
2 and certainly he could of made a Rule 5 request himself. I
3 realize you're arguing that he maybe wasn't knowledgeable
4 enough to do that.

5 But once someone embarks on representing themselves,
6 what are you saying the standard is?

7 MR. KILLOREN: I think, I think the Faretta Court gives
8 us guidance with the factors that I've mentioned.

9 THE COURT: Well, we've gotten -- Faretta though is
10 when the attorney is being released --

11 MR. KILLOREN: Correct.

12 THE COURT: -- and you have a hearing on whether or not
13 that should happen or not, and the Court had already ruled
14 that, that he could represent himself. Of course, your
15 client, at that time, was very adamant, from what I've read
16 up here today, saying that he was gonna get his own lawyer,
17 and he did, in fact, cut the judge off one time when he was
18 trying to explain to him or ask him questions about it. So,
19 he was very adamant that he was gonna get a lawyer and I'm
20 not sure he was paying much attention, to be quite frank
21 with you from what I've read, as to what the judge was
22 saying at that time, and -- but then went on and embarked on
23 representing himself and there was a substantial period of
24 time in there in which discovery could of taken place
25 independent of what Mr. Thompson had.

1 The State has an obligation, when new attorneys come in
2 cases all the time, to respond to new Rule 5 requests.

3 MR. KILLOREN: Right.

4 THE COURT: And those continue up until the time of
5 trial. So, maybe, you know, I don't know -- I haven't
6 researched this. I don't know what the obligation of a
7 fired lawyer is to be sure that his former client is
8 adequately representing himself.

9 MR. KILLOREN: Well, I think, in this case, it's unique
10 in that although he was fired and made it a point to make or
11 correct -- I mean points you make are correct.

12 THE COURT: Well, I don't know if they're correct or
13 not. I'm puzzling---

14 MR. KILLOREN: I don't mean to suggest that they're
15 not.

16 THE COURT: I'm puzzling at this time.

17 MR. KILLOREN: Right. The point, the point that I
18 would urge the Court to consider is that the uniqueness of
19 this case is that Mr. Thompson is the lawyer when he was
20 fired, and then Mr. Thompson comes in again as the stand-by
21 counsel.

22 THE COURT: Well, he came in at the day of trial, and
23 then I was reading on that. I got over here to page --
24 let's see.

25 Where am I?

1 Page 21. And they're talking about where Mr. Thompson
2 ought to sit, and the Court -- they even talked about the
3 fact it would look funny and the jury would have a hard time
4 understanding if he were to sit at the counsel table. This
5 is Page 21. Starts on -- oh, let's see. He's talking --
6 he's explaining what's gonna happen to Mr. Littlejohn about
7 Line 12. He says you have any questions. He said no. He
8 said you have any questions, just stop me, and, of course,
9 Mr. Thompson is there, and then Mr. Thompson said do you
10 want me to sit at the table, and the Court went on to say
11 well, I don't want you to sit at the table. I want you to
12 sit somewhere where he can get your eye if Mr. Thompson
13 needs you, and then he went on to talk to Mr. Thompson about
14 he's gone be through, he's available if you need him, get
15 his attention.

16 So, I mean it's, it's not -- what I'm saying is that
17 he, he actually gets involved right as the trial starts it
18 looks like. The judge appoints him to be stand-by counsel.
19 And, so, I mean you got this gap in there. The trial's
20 started. It's in the process of starting once Mr. Thompson
21 is, is, is appointed. And during that interim, your guy's
22 on his own.

23 He's hired -- he's fired his lawyer. He's told the
24 Court he's gonna get a lawyer, he doesn't, and, you know, I
25 don't know the answer to my question as to, to what

1 obligation does a fired lawyer have to see that his former
2 client is adequately representing himself.

3 MR. KILLOREN: And I, I think that's -- you stated the
4 question correctly. I think the factual situation here is
5 different in that he, he comes in as stand-by counsel
6 presumably with a copy of his file, and hasn't---

7 THE COURT: And is available to him---

8 MR. KILLOREN: ---had it at the---

9 THE COURT: ---for any questioning at that time that
10 Mr. -- he says get his eye and he'll answer anything that
11 Mr. Littlejohn asks. Get his eye and he'll answer your
12 questions.

13 MR. KILLOREN: Right, and I guess the argument from the
14 applicant is he---

15 THE COURT: Stand-by counsel I don't think -- my
16 experience from stand-by counsel, and I'll look it up to see
17 exactly what they say they ought to do, is that they don't
18 sit there and, and tell the guy what to do necessarily
19 unless there's a problem or an issue that comes up, and, you
20 know, in other words, you don't pretend -- you don't try the
21 case for your, for the pro se litigant.

22 MR. KILLOREN: Right, and that's not our argument in
23 this case. Our argument is that, that he, that the, the
24 opportunity is present for him at the beginning of the case
25 to give him contact as possible---

1 THE COURT: And wasn't this delved -- I haven't looked
2 at the appeal or the opinion on the appeal, but I would
3 suspect some of this was discussed at the appeal.

4 MR. KILLOREN: Well, the appeal was the Faretta issue
5 at the hearing, the adequacy of the Faretta hearing.

6 THE COURT: Okay.

7 MR. KILLOREN: But the, the, the question today is, you
8 know, how and our argument is that the issue, the
9 opportunity to give Mr. Littlejohn a copy of the file was,
10 was open to Mr. Thompson in that he had represented him
11 before.

12 THE COURT: And I don't know enough about the case to
13 know what in there might be exculpatory or what might have
14 been -- I don't know enough about the case at this point in
15 time to know what in there may have been something that you
16 could of impeached a witness with. See, I tried to get, ask
17 your client that question. I didn't get a real clear
18 answer, to be quite frank with you. I didn't -- I tried to
19 say what in there was it that he needed and he just
20 described the items to me, but he didn't tell me what good
21 they would of been. And, so, I still don't know that I have
22 a good answer on that.

23 THE COURT: well, some of the items that we mentioned
24 in our exhibits are the, the amount of property damage that
25 was done to the house. He believed that would of been a

1 source of opportunity for him.

2 THE COURT: Well, I read the statute too while I've
3 been up here and the statute doesn't have a dollar amount.
4 It just says if you burn someone's property or singed or
5 scorched. It has to be to the real property. And, and, so,
6 I read it. But I was thinking, when your client was talking
7 about a dollar amount, I looked to the statute because I did
8 one of these cases last week and I'd already read the
9 statute, but I -- you wanted to go back and look at it
10 again, and it doesn't have a dollar amount. I mean if you
11 set fire to a building and it burns the wallpaper off that
12 wall, that may not cost but \$100, but that's arson.

13 MR. KILLOREN: I think Mr. Littlejohn's point, and our
14 point as the applicant is that because there's a low amount
15 of property damage, she testified -- the, the victim in the
16 case testified that she lost everything and was devastated
17 by the fire and that those points would of been available to
18 him to argue in the fire department that there was minimal
19 damage, which would have made an argument towards her
20 credibility as a witness in the case, and might of given him
21 a chance for reasonable doubt.

22 THE COURT: That's -- maybe. I'll look at it and see.
23 Like I say, I don't know enough about it to know, know that.
24 I'll, I'll be glad to delve into it, but anything else?

25 MR. KILLOREN: No, sir, Your Honor.

1 THE COURT: And I may ask for a brief on that question
2 I have, what obligation does a fired lawyer have to look
3 into, look into the future representation. I know this is
4 kind of different where he's, he has no obligation at all
5 once he's fired I don't think other than if the files's
6 requested to give the file, and then---

7 MR. KILLOREN: We'll be happy to provide a brief.

8 THE COURT: ---he jumps back in at this other stage,
9 and that is unusual. I'll grant you that. But I found if
10 you dig deep enough it's happened somewhere sometime. You
11 can -- yes, sir.

12 MR. KILLOREN: I'll provide the Court with a brief
13 memorandum.

14 THE COURT: I'd appreciate that on that point.

15 Yes, ma'am, I'll hear from you. I'm sorry. I'm
16 getting -- I act like an Appellate Court sometimes.

17 MS. WILSON: No problem, Your Honor.

18 May it please the Court.

19 As to the defendant's Rule 5 allegation, he made no
20 indication at trial that he hadn't received any discovery
21 material from the solicitor's Office. He didn't object or
22 notify the judge, as he was told to, before he started the
23 proceeding. He made references to this discovery materials
24 at trial several times. He pretty effectively
25 cross-examined the witnesses for a pro se defendant on their

1 prior statements.

2 He, he tried to impeach certain witnesses on their
3 cross-examination. He tried to enter several things into
4 evidence, and from what I could tell, Your Honor, there
5 wasn't any exculpatory evidence in the packet that he
6 received up there. He also -- and he also testified on the
7 stand today that he received these statements, a set of
8 statements and pictures from the solicitor prior to trial.

9 So, Your Honor, for those, for those reasons, we
10 indicate that trial counsel, relieved trial counsel wasn't
11 ineffective for failing to turn over Brady material. He
12 testified -- trial counsel testified that had he been, had
13 the applicant requested that the material be turned over he
14 would have done so.

15 Your Honor, to this -- to the applicant's allegation
16 about his waiver of counsel, the State would move to dismiss
17 the application or the allegation based on that because the
18 allegation was addressed during the applicant's direct
19 appeal. The Court of Appeals affirmed the applicant's
20 conviction and cited Brotten versus State, which stated that
21 if the record demonstrates the defendant's decision to
22 represent himself was made with an understanding of the
23 risks of self-representation, the representation of a
24 voluntary waiver will be satisfied, and they affirmed his
25 conviction in an order filed March 12, 2010, and PCR isn't a

1 substitute for remedies that were available before and
2 during original trial and my review of the appeal.

3 In addition, at a motion hearing to relieve counsel,
4 the applicant was advised several times that if he did, that
5 if he didn't retain counsel he would have to represent
6 himself as we indicated from his reading those statements
7 out of the record.

8 He was also given 30 days, up to 30 days to find a new
9 attorney. He indicated to the judge at the, at the time
10 during the motion to be relieved, where Mr. Thompson was
11 relieved of counsel, that he was gonna try to find someone
12 else, and also prior to trial he was advised that he was
13 waiving his right to counsel, and prior to trial he didn't
14 ask the judge to give him more time to find an attorney, and
15 he, he substantially waived his right to trial, to trial
16 counsel when he proceeded pro se.

17 THE COURT: All right. Thank you very much. And, if
18 you would, I'd like to get some information from you on that
19 question I had.

20 MS. WILSON: Okay, Your Honor, and I also wasn't
21 finished. I'm sorry.

22 THE COURT: Go ahead. I'm sorry.

23 MS. WILSON: Yes, Your Honor. I'll submit, I'll submit
24 a memo on that issue.

25 THE COURT: No, go ahead, go ahead and finish.

1 MS. WILSON: Also he made, he made a -- he testified,
2 when he was on the stand, about appellate counsel only
3 represented a limited amount of his, the limited nature of
4 his claims he felt like he had on appeal, but the appellate
5 counsel filed a brief pursuant to the Anders versus
6 California, and the Anders procedure requires that the
7 Appellate Court review the record in its entirety, and
8 that's exactly what the Court of Appeals did here, and they
9 didn't find any, any other meritorious issues for appeal,
10 and, as a result, this allegation should be dismissed
11 because the Court of Appeals concluded independently that
12 there weren't any issues for appeal.

13 So, in addition, lastly, Your Honor --

14 THE COURT: That's all right.

15 MS. WILSON: -- there -- the applicant hasn't proven
16 any prejudice resulted from either appellate, appellate
17 counsel's actions or Mr. Thompson's actions, and there was
18 overwhelming evidence of guilt against him at his trial
19 because several witnesses testified that they saw him on the
20 scene. They testified that they heard him in the apartment
21 prior, several minutes prior to the fire taking place, and
22 even his own witnesses testified that they saw him there
23 that night during that time.

24 So, with that, Your Honor, we ask that you deny the
25 applicant's post-conviction relief.

1 THE COURT: Thank you. Thank you very much.

2 All right. That concludes the hearing.

3 I would like for you to give me some information on the
4 questions that I had asked or anything else you want me to
5 consider. It is an interesting situation.

6 MS. WILSON: Would you like that within a certain time
7 frame, Your Honor?

8 THE COURT: Oh, gosh, I'll let you pick the time frame.
9 Mr. Killoren, I know you're a busy man.

10 How much time do you think you need to get that to me?

11 MR. KILLOREN: I think the longer we let it go the, the
12 longer it goes. So, I mean I'll try to get it done within
13 21 days and if she wants time---

14 THE COURT: Three weeks and then I'll give you a couple
15 weeks to respond.

16 MS. WILSON: Thank you, Your Honor.

17 THE COURT: Thank you.

18 Two, two weeks.

19 Thank you very much.

20

21 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

22

23

24

25

C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas Nonjury for Cherokee County, South Carolina, on the 11th day of June, 2012.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

November 7th, 2012

A handwritten signature in cursive script, reading "Pamela E. Green", is written over a horizontal line.

PAMELA E. GREEN, Court Reporter

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHEROKEE	)	
	)	
	)	2011-CP-11-0148
	)	
Jimmy Littlejohn, # 220769,	)	
	)	
Applicant,	)	
	)	
v.	)	Memorandum of Law in
	)	Support of Dismissal of
State of South Carolina,	)	Applicant's Post-Conviction
	)	Relief Application
Respondent.	)	
_____	)	

STATEMENT OF THE FACTS

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Cherokee County Clerk of Court's order of commitment. The Applicant was indicted at the November 2004 term of the Cherokee County Grand Jury for arson- 2nd degree (200-GS-11-0975) and burglary- 1st degree (2004-GS-11-0976). Several weeks prior to trial, Don A. Thompson, Esquire, was relieved as counsel at the Applicant's request. The Applicant proceeded to represent himself at trial, with Mr. Thompson acting as stand-by counsel upon the Court's request. On May 26, 2005, a jury convicted the Applicant on all charges. The Honorable John C. Hayes, III sentenced the Applicant to confinement for concurrent terms of twenty-five years on each charge.

A timely notice of Appeal was filed on the Applicant's behalf and an Anders brief was submitted. On September 12, 2008, the South Carolina Court of Appeals requested that the parties brief the issue of whether or not the Applicant was adequately warned of the dangers of self-representation and if not, did the record reflect whether the Applicant was aware of his rights from another source or from his background. The South Carolina Court of Appeals affirmed

Applicant's conviction and sentence. State v. Littlejohn, Op. No. 2010-UP-199 (filed March 12, 2010). The Remittitur was returned on March 31, 2010.

The Applicant filed an Application for Post-Conviction relief on March 7, 2011. The State filed its return on February 23, 2012. An evidentiary hearing was convened on June 11, 2012 at the Spartanburg County Courthouse. The Applicant was represented by the Thomas Killoren, Jr., Esquire. The Respondent was represented by Ashleigh R. Wilson of the South Carolina Office of the Attorney General. This memo follows.

QUESTION

The post-conviction relief court asked whether counsel had any future obligations to the Applicant after being relieved.

ARGUMENT

Relieved trial counsel, Don A. Thompson, Esquire, was not ineffective for failing to turn over the Applicant's defense file after being relieved as counsel. In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable

professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Deficiency

The Applicant argues that relieved counsel was deficient for failing to turn over the Applicant's file in violation of Rule 1.16 of the South Carolina Rules of Professional Conduct. Counsel was not deficient for failing to turn over the Applicant's defense file after being relieved as counsel when trial counsel had no duty to automatically forward a copy of the defense file to the Applicant after representation was terminated.

The Rules of Professional Conduct outlined in South Carolina Appellate Court Rule 407 are designed to provide guidance to lawyers and to provide a structure for regulating conduct through disciplinary agencies. *Rule 407, Scope Section 7*. Violation of a Rule should not itself give rise to a cause of action against a lawyer nor should it create any presumption in such a case that a legal duty has been breached. Id. In addition, violation of a Rule does not necessarily warrant any other non-disciplinary remedy. Id. Although the Rules do not establish standards of conduct for lawyers, a lawyer's violation of a Rule may be evidence of breach of the applicable standard of conduct. Id.

South Carolina's Supreme Court has held that the Rules of Professional Conduct have no bearing on the constitutionality of a criminal conviction. Langford v. State, 310 S.C. 357, 360, 426 S.E.2d 793, 795 (1993). Their purpose is to regulate and guide the legal profession by defining proper ethical conduct. Id. Nothing in the Rules should be deemed to augment any substantive legal duty of lawyers or the extra-disciplinary consequences of violating such a duty. Id.

Rule 1.16(d) provides guidance on the termination of representation by counsel. "Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interest, such as giving reasonable notice to the client, allowing time for employment of other counsel, [and] surrendering papers and property of which the client is entitled". *Rule 1.16(d)*, Rule 407 SCACR.

Relieved counsel was not deficient for failing to turn over the Applicant's defense file as a matter of course. Rule 1.16(d) is to be used as a guidepost for lawyer conduct. The Rule does not create an affirmative legal duty that attorneys are to comply with. Rule 1.16(d) recommends that attorney's take reasonably practicable steps to protect the client's interest after the attorney-client relationship is terminated. It recommends further that counsel surrender papers and property to which the client is entitled. Although trial counsel did not automatically turn over the Applicant's defense file, he took reasonably practical steps to protect the Applicant's interest. The Rule does not suggest that the surrender of the client's file be automatic or as a matter of course. The use of the word "surrender" in the language of the Rule suggests that counsel should turn over client papers and property upon request.

Counsel's behavior was in compliance with Rule 1.16. Relieved counsel testified at the evidentiary hearing that the Applicant never requested a copy of his defense file prior to

representing himself at trial. Counsel testified that the only request made by the Applicant after he was relieved as counsel were in regard to obtaining a bond reduction for the Applicant. Counsel testified further that it is not his general practice to turn over the contents of client's files unless they request it. If the client requests the defense file contents, counsel testified that he sends it to the client.

In addition to making the defense file contents available had the Applicant requested them, counsel also protected the Applicant's interest by insuring that he was relieved in enough time for the Applicant to obtain new counsel prior to trial. Trial counsel testified that he was relieved as counsel shortly after the Applicant's preliminary hearing. This is reflected in the record of the motion hearing where counsel was relieved. The judge gave the Applicant thirty (30) days to obtain new counsel before his case would be set for trial. (Hearing Transcript 7).

Relieved counsel had no duty to automatically turn over a copy of the Applicant's defense file in the absence of any request from the Applicant. Counsel acted in a professionally reasonable manner within the guidelines outlined in the Rules of Professional Conduct. Counsel was not deficient for failing to turn over the Applicant's defense file prior to the Applicant's trial.

Prejudice

The Applicant was not prejudiced by relieved counsel's failure to turn over the Applicant's defense file prior to the Applicant's trial when the Applicant was able to prepare a defense and adequately represent himself at trial. Claims alleging deficiency in attorney performance are subject to a general requirement that the defendant affirmatively prove prejudice. Strickland, 466 at. 693, 104 S.Ct. at 2067. "Even if defendant shows that particular errors of counsel were unreasonable, therefore, the defendant must show that they actually had

an adverse effect on the defense.” Id. “The defendant must show that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.” Id.

The Applicant was able to prepare an adequate defense and represent himself at trial without a copy of his defense file from relieved counsel. The trial record reflects that the Applicant was able to subpoena witnesses to testify on his behalf at trial. The Applicant testified at the evidentiary hearing that he received witness statements from the solicitor’s file. Because the Applicant had access to the witnesses’ statements, he was able to adequately examine his witnesses and cross-examine the state’s witnesses at trial. The Applicant even attempted to impeach the witnesses based on the statements they gave prior to trial.

In addition, the trial judge brought in relieved counsel to act as stand-by counsel for the Applicant who was representing himself at trial. Relieved counsel testified at the evidentiary hearing that the Applicant never asked for his assistance at any time during the trial. When present at trial to assist him was relieved counsel, being without a copy of his defense file could not have prejudiced the Applicant. There is nothing in the record to indicate that the Applicant requested a copy of his defense file from relieved counsel at any time prior to representing himself at trial. The Applicant was not prejudiced by relieved counsel’s performance because he was able to adequately present his own defense. The Applicant has not shown that had trial counsel given him a copy of his defense file as a matter of course, the outcome of his trial would have been different.

CONCLUSION

The State respectfully requests that the Court dismiss the Applicant's application for post-conviction relief.

Respectfully submitted,

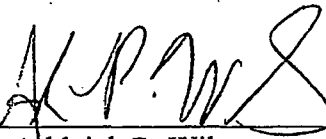
ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

ASHLEIGH R. WILSON
Assistant Attorney General

BY:



Ashleigh R. Wilson

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3737

ATTORNEYS FOR RESPONDENT

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

) IN THE COURT OF COMMON PLEAS
) SEVENTH JUDICIAL CIRCUIT

Jimmy Littlejohn,

2011-CP-11-0148

)
)
) Applicant,

v.

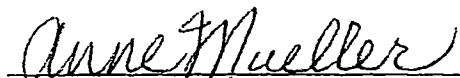
) CERTIFICATE OF SERVICE BY MAIL
)
)
)

State of South Carolina,

)
)
) Respondent.

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Respondent's Memorandum in Support of Dismissal of Applicant's Post-Conviction Relief Application in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Thomas A. Killoren, Jr., Esquire
Harrison, White, Smith & Coggins, P.C.
P.O. Box 3547
Spartanburg, South Carolina 29304


Anne A. Mueller
Legal Assistant for the Respondent

DATED this 18th day of July, 2012.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF CHEROKEE	)	
	)	
Jimmy Littlejohn, #220769,	)	
	)	
Applicant,	)	
	)	
v.	)	
	)	
State of South Carolina,	)	
	)	
<u>Respondent.</u>	)	

STATEMENT OF THE FACTS

An arrest warrant for Jimmy Lee Littlejohn was issued in August 2004 for first-degree burglary and second-degree arson. See Exhibit A, hereto. On October 27, 2004, Mr. Littlejohn appeared before Judge J. Mark Hayes II, at which time Judge Hayes relieved Mr. Littlejohn's public defender, Don Thompson, as counsel. See Exhibit B, hereto. Mr. Littlejohn appeared pro se and was tried before a jury on May 26, 2005. See Appl. For Post-Conviction Relief, p. 2-3, Exhibit C, hereto. The jury convicted Mr. Littlejohn of both charges. See Appl. For Post-Conviction Relief, p. 2-3, Exhibit C, hereto. Mr. Littlejohn remained at the Cherokee Detention Center from the date of his arrest until he was sentenced. See Exhibit B & D, hereto. Mr. Littlejohn was sentenced to concurrent terms of twenty-five years in prison for each charge. See Appl. For Post-Conviction Relief, p. 2, Exhibit C, hereto.

Mr. Littlejohn appealed his sentence, and the Court of Appeals affirmed Mr. Littlejohn's conviction on March 12, 2010. See Appl. For Post-Conviction Relief, p. 2, Exhibit C, hereto. The case was then remitted to the lower court and Mr. Littlejohn

subsequently filed an application for post-conviction relief. See Appl. For Post-Conviction Relief, p. 2-5, Exhibit C, hereto.

SUMMARY OF ARGUMENT

Mr. Thompson's duty to take steps reasonably practicable to protect the interests of Mr. Littlejohn continued after termination of representation, and by failing to return Mr. Littlejohn's complete file, Mr. Thompson rendered ineffective assistance that prejudiced Mr. Littlejohn's ability to prepare a defense. Mr. Thompson had an ethical duty to protect the interests of his former client, Mr. Littlejohn, even after the termination of representation, by surrendering all papers and documents to which Mr. Littlejohn was entitled. Mr. Thompson's failure to return portions of Mr. Littlejohn's file after it was requested is proof that Mr. Thompson failed to adequately safeguard the interests of Mr. Littlejohn, to whom he owed a duty by virtue of their previous attorney-client relationship. As a result, Mr. Littlejohn was prejudiced in preparing his own defense without access to the discovery materials that Mr. Thompson acquired.

STANDARD OF REVIEW

The 6th Amendment grants criminal defendants a right to effective assistance of counsel. McMann v. Richardson 397 US 759, 771 (1970). Courts evaluate allegations of ineffective assistance of counsel using a two-pronged test. Cherry v. State, 386 S.E.2d 624, 625 (S.C. 1989). First, to establish a claim for ineffective assistance of counsel, a postconviction relief ("PCR") applicant must prove that counsel's performance fell below an objective standard of reasonableness. Strickland v. Washington, 466 U.S. 668, 687-88 (1984); Hyman v. State, 723 S.E.2d 375, 379 (S.C. 2012). Under this prong, "the proper measure of attorney performance remains simply reasonableness under prevailing

professional norms.” Cherry, 386 S.E.2d 624 at 625. Second, the applicant must show that counsel’s ineffective performance prejudiced the applicant’s case. Strickland 466 U.S. 668, at 694.

ARGUMENT

- I. **Mr. Thompson’s duty to take steps reasonably practicable to protect the interests of Mr. Littlejohn continued after termination of representation, and by failing to return Mr. Littlejohn’s complete file, Mr. Thompson rendered ineffective assistance that prejudiced Mr. Littlejohn’s ability to prepare a defense.**

Mr. Thompson violated his ethical duty to his former client, Mr. Littlejohn in not surrendering documents to which Mr. Littlejohn was entitled, thereby not affording Mr. Littlejohn access to discovery material that was relevant in preparing his own defense. South Carolina Rule of Professional Conduct 1.16 compels counsel to surrender client documents after termination of representation in an effort to protect the interest of the former client and mitigate foreseeable consequences. Rule 407 SCACR. Mr. Thompson failed to comply with the requirements of the aforementioned rule by not giving Mr. Littlejohn access to his file upon termination of representation. While a violation of a Rule of Professional Conduct does not alone give rise to an independent action, it is evidence of a breach of the standard of professional norms. Scope, Rule 407, SCACR. Thus, by failing to comply with the requirements of the Rules of Professional Conduct, Mr. Thompson’s conduct fell short what is reasonably expected by an attorney in South Carolina. Furthermore, because Mr. Thompson rendered assistance that fell short of the standard of professional norm, Mr. Littlejohn was not afforded access to the discovery material that was paramount to preparing his own defense.

A. Mr. Thompson had a duty to protect the interests of his former client, Mr. Littlejohn by surrendering to Mr. Littlejohn all papers and material to which he is entitled upon termination of representation.

After termination of representation, counsel has a continuing duty to protect the former client's interests and mitigate consequences to the client. See Model Rules of Prof'l Conduct R. 1.9 (2009); Id. R. 1.16 cmt. 9; Restatement (Third) of the Law Governing Lawyers § 33 (2000); R. 1.16, Rule 407, SCACR. This duty compels an attorney to protect and deliver the client's property and documents or copies after the representation ends. Model Code of Prof'l Responsibility DR 2-110(A) (1980); ABA Informal Opinion No. 1461 (1980); Model Rules of Prof'l Conduct R. 1.16(d); R. 1.16, Rule 407 SCACR.

Even without request, an attorney is obligated to deliver to the former client originals or copies of such documents as the former client reasonably needs in the circumstances, not later than promptly after representation ends. See Restatement (Third) of the Law Governing Lawyers § 46 cmt. d (2000). A majority of courts and State legal ethics bodies accord clients upon termination of representation full access to the entire attorney's file on a represented matter. See Sage Realty Corp. v. Proskauer, 689 N.E.2d 879, 888 (N.Y. 1997); Resolution Trust Corp. v. H., P.C., 129 F.R.D. 647 (N.D. Tex 1989); State Bar of Georgia, Formal Advisory Opn No. 87-5; Ohio Sup Ct Bd of Commrs on Grievances and Discipline Opn No. 92-8; Maleski v. Corporate Life Ins. Co., 641 A.2d 1 (Pa. Commw. 1994); Connecticut Bar Assn Comm on Professional Ethics, Opn No. 94-1; Oregon State Bar Assn, Formal Opn No. 1991-125. The obligation to return a client's file exists even when the lawyer has been unfairly discharged by the client.

Model Rules of Prof'l Conduct R. 1.16 cmt 9 (2009);); R. 1.16(d) cmt. 9, Rule 407, SCACR.

In the instant matter, Mr. Thompson failed to mitigate consequences of terminating representation to his former client by not delivering a complete copy of Mr. Littlejohn's file, containing discovery material that was vital to Mr. Littlejohn's case. Mr. Thompson received a letter from Mr. Littlejohn instructing Mr. Thompson to make and deliver copies of his file in 2004. See Exhibit D, hereto. However, Mr. Littlejohn did not receive complete copies of his file including discovery material pertinent to preparing his defense before he stood trial in May, 2005.

B. By failing to perform a duty under the Rules of Professional Conduct, Mr. Thompson rendered ineffective assistance to his former client, Mr. Littlejohn.

By not returning applicant's file, Mr. Thompson failed to adequately protect the interests of his former client and mitigate foreseeable consequences. In failing to protect the interests of his former client, in violation of Rule 1.16 of the South Carolina Rules of Professional Conduct, Mr. Thompson rendered assistance that fell short of the standard of professional norms.

Under Strickland, the performance inquiry must be whether counsel's actions were reasonable considering all the circumstances. Strickland 466 U.S. 668 at 688. Prevailing norms of practice as reflected in the American Bar Association standards and the like are guides to determining what is reasonable under the circumstances. Id. While American Bar Association standards such as the newer Model Rules of Professional Conduct and the older Model Code of Professional Responsibility are guidelines, they are not dispositive but may be used to establish a standard of care owed by an attorney. See

Strickland 466 U.S. 668 at 688-689 (noting that ABA standards are guides to determining what is reasonable, but they are only guides). The Supreme Court of South Carolina has held that while violations of Rules of Professional Conduct do not give rise to an independent cause of action, they, “may be relevant and admissible in assessing the legal duty of an attorney in a malpractice action” as long as the rule is “intended to protect a person in the plaintiff’s position or be addressed to the particular harm”. Smith v. Haynsworth, 472 S.E.2d 612, 614 (S.C. 1996). Furthermore, the Scope of the South Carolina Rules of Professional Conduct confirm that, “since the Rules do establish standards of conduct by lawyers, a lawyer’s violation of a Rule may be evidence of breach of the applicable standard of conduct”. Scope, Rule 407 SCACR.

Summers v. Thompson, 444 F.Supp. 312 (M.D. Tenn. 1977), held that a violation of a Rule of Professional Conduct can alone deny a defendant effective representation. In Summers, the court determined that by failing to notify a client that counsel had withdrawn representation as required under American Bar Association Code of Professional Responsibility, DR-2-110(A)DR-2-110(A), counsel deprived his client of effective representation because the client did not have the opportunity to employ alternate counsel.

In the instant matter, evidence that Mr. Thompson violated Rule 1.16 of the South Carolina Rules of Professional Conduct, virtually identical to the ABA’s Model Rules of Professional Conduct, should be admissible to establish that Mr. Thompson failed to comply with prevailing norms of legal practice. Even if this court analyses the admissibility of Mr. Thompson’s violation of Rule 1.16 under Smith supra, the test is satisfied, because the Rule makes clear that it is intended to protect clients from

prejudices and consequences associated with terminating an attorney-client relationship. Failing to promptly turn over Mr. Littlejohn's file prejudiced the his ability to pursue other remedies and prepare a defense, which violates the lawyer's continuing obligation to reasonably protect the client's interest even after the representation is terminated.

C. By not affording his former client access to discovery material that would be presented against him, Mr. Thompson prejudiced Mr. Littlejohn's ability to prepare his own defense.

To establish prejudice, a defendant is required to show that there is a reasonable probability that but for counsel's unprofessional errors, the results of the proceeding would have been different. Smith v. State 689 S.E.2d 629, 631 (S.C. 2010). A reasonable probability is a probability sufficient to undermine confidence in the outcome. Id. Mr. Littlejohn contends that Mr. Thompson's failure to turn over his file containing discovery material prejudiced Mr. Littlejohn's ability to prepare a defense without access to the evidence that would be presented against him.

Under South Carolina Rules of Criminal Procedure, criminal defendants are entitled to their statements, criminal records, and any documents or tangible objects material to the preparation of their defense or intended for use by the prosecution. State v. Kennerly, 503 S.E.2d 214, 219-20 (S.C. Ct. App. 1998). This mandatory disclosure is grounded in the defendant's fundamental right to a fair trial mandated by the Fifth and Fourteenth Amendments. Id. A purpose of criminal discovery disclosure is to ensure that trial is, "less a game of blind man's bluff and more a fair contest with the basic issues and facts disclosed to the fullest practicable extent." U.S. v. Proctor & Gamble Co., 356 U.S. 677, 682 (1958). Mandatory disclosure by the State is evidence that access to discovery material is essential to receiving a fair trial and the ability to prepare a defense.

Furthermore, Rule 1.16 of the South Carolina Rules of Professional Conduct contemplates that failure to return file can result in prejudice. Rule 1.16 mandates that an attorney upon termination of representation should take steps to “protect a client’s interest, such as... surrendering papers and property to which the client is entitled”. R. 1.16(d), Rule 407, SCACR. Because the purpose of mandating that attorneys return client files is to protect the client’s interest, it follows logically that failing to return a file thereby failing to adequately protect the client’s interest, could prejudice the client’s case. Therefore, the instant situation is the exact type of harm that the rule sought to protect against.

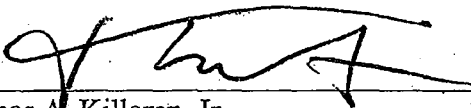
Without access to the evidence the State was planning to use against him, Mr. Littlejohn was unable to prepare his defense. Because Mr. Littlejohn was incarcerated in the months preceding his trial, he was dependent on Mr. Thompson’s delivery of his file containing discovery material. Mr. Littlejohn contends that if he had access to the State’s discovery material, he would have been able to knowledgeably argue against the State’s position and cross-examine witnesses in an effort to prove his innocence. Therefore, if Mr. Thompson had delivered Mr. Littlejohn’s file, as he was supposed to, Mr. Littlejohn would have been able to frame a defense prior to trial, rather than confront the evidence presented against him for the first time at trial.

CONCLUSION

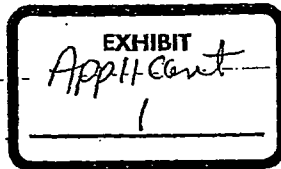
Mr. Thompson rendered ineffective assistance to Mr. Thompson by not performing a duty under the Rules of Professional Conduct which thereby prejudiced Mr. Littlejohn’s ability to defend himself without access to discovery materials. Therefore, Mr. Littlejohn’s application for postconviction relief should be granted.

HARRISON, WHITE, SMITH & COGGINS, P.C.

BY:


Thomas A. Killoren, Jr.
P.O. Box 3547
Spartanburg, SC 29304
864-585-5100
Attorney for Applicant

6-27-12 (Date)



CHEROKEE COUNTY DETENTION CENTER

INMATE REQUEST FORM

INMATE NAME

UNIT

DATE

12/21/04

Jimmy Littlejohn

REQUEST THE FOLLOWING:

I would like to know why my BOND is still \$100,000 I TRY TO File A motion for A BOND reduction and Clerk of Court Told me you are still my Lawyer. Why is so is my BOND High with NO Evidence or indictment? I want my BOND Lowerd And A motion for Dismissal if you Don't ANSWER my request I will be forced To TELL Columbia S.C. ACLU NAACP I Am Tired of you people playing games with my

STAFF RESPONSE

Life And Time, you people All work Together, you were my Lawyer for 16 weeks and don't Take A Statement from me, I fired you before Judge Hayes, how Are you still on my case if you Are, I want every piece of paper

you HAVE ON ME in my JACKET NOW I HAVE

ASK you for THIS before don't make me

RESPONDING OFFICER

DATE OF RESPONSE

make your people do the

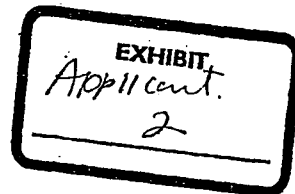
COMMENTS

Right Thing.

THANK YOU.

**CHEROKEE COUNTY
PUBLIC DEFENDER**

DON A. THOMPSON
ATTORNEY AT LAW
CHIEF PUBLIC DEFENDER
P.O. BOX 8008
GAFFNEY, S.C. 29340-8008



310-B N. LIMESTONE ST.
GAFFNEY, S.C. 29340

PHONE (864) 487-6201
FAX (864) 487-6200

December 29, 2004

Jimmy Littlejohn
c/o Cherokee County Detention Center
315 E. Meadow Street
Gaffney, S.C. 29340

RE: State -vs- Jimmy Littlejohn

Mr. Littlejohn:

I am in receipt of your letter dated December 21, 2004.

I no longer represent you in this matter. If you will remember, on October 27, 2004, you went before Judge Hayes and asked that I be discharged as your attorney. Judge Hayes granted your motion. A copy of his order is enclosed for you.

You should now direct your threats to someone else.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Don A. Thompson".

Don A. Thompson

65 days



JIMMY LITTLEJOHN # 220769
 L.C.I. SUMTER N. 1255
 990 WISACKY HIGHWAY
 BISHOPVILLE S.C. 29010

OFFICE OF PUBLIC DEFENDER CHEROKEE COUNTY
 FOR THE 7th JUDICIAL CIRCUIT
 DONA, THOMPSON ESQ.
 POST OFFICE BOX 8008
 GAFFNEY S.C. 29342

RE: REQUEST FOR PRODUCTION OF DOCUMENTS.

Mr. Thompson,

Please allow this Correspondence to serve as my formal request for production of documents, pursuant to RULE 1.16(d), Rules of PROFESSIONAL CONDUCT, RULE 407, SCACR.

It is my position that RULE 1.16(d), RULES of PROFESSIONAL CONDUCT, provides in pertinent part, "upon termination of representation, an attorney must surrender all papers and property to which the client is entitled, since

PAGE 1 OF 3

this office has represented me in the case of, STATE OF SOUTH CAROLINA V. JIMMY LEE LITTLEJOHN, indictment # 04-GS-11-975, 976, Case # 04-02631, I am in this request for production, respectfully seeking the following documents: (1) warrant, (2) affidavit of service, (3) Returns, (4) expert opinions/reports, (5) incident reports, (6) supplemental incident reports, (7) hand written notes, (8) investigative reports, (9) statements, (10) affidavits, (11) indictments, (12) transcript of preliminary hearing, (13) transcript of Grand Jury indictment, (14) transcript of trial, (15) docket entry sheet, (16) sentencing transcript, (17) judgement and commitment order, (18) pre trial / post trial motions, (to include but not limited to, grand jury information discovery, Rule 5, Brady, ect., transcripts of "any" proceedings and any other documents, materials or informations not listed here in that pertains or is relevent to this case,

I would further place this office on notice that I would require this office completely comply within (30) days, exclusive the date of service, in which

Don - - -

to comply and/or object to any portion of this request. If this office were to object to any portion of this request, please forward a written correspondence stipulating with specificity as to any reasons and/or justifications for each objection.

Thank you for your time and attention to this/these matters.

Respectfully submitted,

A. L. [Signature]
Signature of requestor

7-13-05
Date

CC: File _____ Copy.

Sworn and subscribed before me
this 13 day of July 2005

Barbara Richardson
Notary Public for South Carolina

My Commission expires 07 28 2012

CHEROKEE COUNTY PUBLIC DEFENDER



DON A. THOMPSON
ATTORNEY AT LAW
CHIEF PUBLIC DEFENDER
P.O. BOX 8008
GAFFNEY, S.C. 29340-8008

310-B N. LIMESTONE ST.
GAFFNEY, S.C. 29340

PHONE (864) 487-6201
FAX (864) 487-6200

August 8, 2005

Jimmy Littlejohn #220769
L.C.I. Sumter N. 1255
990 Wisacky Highway
Bishopville, S.C. 29010

RE: Your request for your file

Mr. Littlejohn:

Enclosed you will find a complete copy of the file that I have relating to you and your charges of Burglary and Arson in 2004.

Understand that this is probably not a complete file relating to your case, as I was discharged as your attorney in October, 2004, and did not continue working on your case from that point.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Don A. Thompson".

Don A. Thompson

STATE OF SOUTH CAROLINA

COUNTY OF

CherokeeAmy Littlejohn

Petitioner

vs.

Jimmy Littlejohn

Respondent.

IN THE FAMILY COURT
JUDICIAL CIRCUITFAMILY COURT ORDER
PROTECTION FROM DOMESTIC ABUSE ACT
(For Use By Family Court Judges)

FILE NO. _____

Judge: _____

Attorney for Petitioner: _____

Attorney for Respondent: _____

Court Reporter: _____

A Petition for Order of Protection was filed on July 21, 2004. I held a hearing on July 21, 2004. Respondent (was) (was not) given actual notice and an opportunity to participate. After hearing the evidence, and examining the affidavits and verified pleadings, I have determined that the petition should be GRANTED, based on these facts:

1. Abuse occurred on (date) July 4, 2004 at _____ o'clock _____ m. at (location) _____ in this manner:

The Petitioner has not adequate time to interview witnesses, has the Def - I am going to keep A.S. and continuing. Since Def has pending criminal charges, he committed this abuse. She also has a history of being victimized by this criminal.

2. Jimmy Littlejohn committed this abuse.
3. Amy Littlejohn (was) were the victim(s) of this abuse.

☐ Check here if the victim is less than 18 years old and name: _____

4. That the Respondent and the Petitioner (check one or more):

- ☒ are husband and wife ☐ have this child/children in common: ☐ are cohabiting
☐ were husband and wife ☐ are grandparent and grandchild ☐ were cohabiting
☐ are parent and child ☐ are siblings

5. ☐ The evidence establishes that Petitioner/Respondent represents a credible threat to the physical safety of the victim. The Petitioner/Respondent used, attempted to use, or threatened to use physical force against Petitioner/Respondent that is reasonably expected to cause bodily injury.

6. Venue is properly in this county, since this is the county where

- ☐ a. the act of abuse occurred; or
☐ b. the Respondent resides; or
☐ c. the parties last resided together.

- ☐ 7. Petitioner/Respondent is employed at _____ and earns approximately \$ _____ gross per month and has reasonable monthly expenses of \$ _____

- ☐ 8. Petitioner/Respondent is employed and earns approximately \$ _____ gross per month, and has reasonable monthly expenses of \$ _____ for herself / himself and the minor children.

- ☐ 9. Petitioner/Respondent has shown a need for child support in the amount of \$ _____ per _____ and Petitioner/Respondent has the ability to make these payments.



Name	Date of Birth	Address

- ☐ grant reasonable visitation or ☐ deny visitation.
- ☐ e. issue an order granting Petitioner temporary child support (Financial Declaration [Form SCCA/430] **MUST** be completed and attached).
- ☐ f. issue an order granting Petitioner temporary alimony (Financial Declaration [Form SCCA/430] **MUST** be completed and attached).
- ☐ g. issue an order granting Petitioner temporary exclusive use and possession of the home and furnishings.
- ☒ h. issue an order which forbids Jimmy L. Littlejohn from transferring, selling, destroying, encumbering, or otherwise disposing of real or personal property belonging to Petitioner or jointly owned.
- ☐ i. issue an order which gives Petitioner assistance from law enforcement in that Petitioner will be accompanied:
- ☐ (1) in removing Personal property from _____ (Street Address) _____ in _____ (City) _____ (County), South Carolina.
- ☐ (2) in placing Petitioner in possession of the home and furnishings at _____ (Street Address) in _____ (City) _____ (County), South Carolina.
- ☐ j. issue an order reimbursing Petitioner for costs and attorney's fees.
- ☒ k. hold a hearing within 15 days of the date of filing these papers.
- ☐ l. hold an emergency hearing within 24 hours.
- ☐ m. issue an order granting Petitioner the following additional requests: _____

SWORN to and Subscribed before me)
this 8 day of July, 2004)
Maria E. Drummond)
Notary Public for South Carolina)
My Commission expires: 9/10/2013)

[Signature]
Signature of Petitioner or
Person on Behalf of Petitioner under 18 years old

NOTICE TO RESPONDENT: YOU HAVE THE RIGHT TO EMPLOY COUNSEL TO REPRESENT YOU.

AGENCY I.D. :
SCO 0110200

**INCIDENT REPORT
CITY OF GAFFNEY POLICE DEPT.**

CASE NUMBER
2004023631

NOTE	
INFO.	ENTB.

INCIDENT TYPE				COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TYPE VICTIM	
1. <u>Arson</u>				☒ YES ☐ NO	☒ YES ☐ NO	<u>Residence</u>	<u>0</u>	☒ Burglary ☐ Business ☐ Foreign Int. ☐ Government ☐ Race, Org. ☐ Sex / Public ☐ Other ☐ Unknown ☐ Police Off.	
2.				☐ YES ☐ NO	☐ YES ☐ NO				
3.				☐ YES ☐ NO	☐ YES ☐ NO				
INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER)						20 CODE		WEAPON TYPE	
						<u>29340</u>			
INCIDENT DATE		24 HR. CLOCK		TO DATE		24 HR. CLOCK		DISPATCH DATE / TIME 24 HR. CLOCK	
<u>7-4-04</u>		<u>2330</u>		<u>7-5-04</u>		<u>0200</u>		DISPATCH TIME <u>0202</u>	
COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUBJECT		RESIDENT	RACE	SEX	AGE	ETH.	DAYTIME PHONE
<u>See Victim</u>				☒ YES ☐ NO					
ADDRESS		CITY		STATE		ZIP CODE		LOCATION NO.	
<u>See Victim</u>								<u>4</u>	
VICTIM'S NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUBJECT		RESIDENT	RACE	SEX	AGE	ETH.	DAYTIME PHONE
<u>Littlejohn Ivey G</u>				☒ YES ☐ NO	<u>B</u>	<u>F</u>	<u>36</u>	<u>N</u>	
WEIGHT	HEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.					
<u>503</u>	<u>140</u>	<u>Blk</u>	<u>Brn</u>						
ADDRESS		CITY		STATE		ZIP CODE		LOCATION NO.	
		<u>Gaffney</u>		<u>SC</u>		<u>2934</u>		<u>41</u>	
VEHICLE INJURY (VCT. 1) ☐ YES ☒ NO ☐ EXPLAIN				COMPLAINT OF ANY NON-VEHICLE INJURIES: ☐ YES ☒ NO					
VICTIM (NO. 1) USING ALCOHOL ☐ YES ☒ NO ☐ UNK ☐ DRUGS: ☐ YES ☒ NO ☐ UNK ☐ TYPE									
TWO-MAN VEH. ☐ ONE-MAN VEH. ☐ DETECTIVE/PLAIN. ☐ OTHER (1) ALONE ☐				ASSISTED ☐ J - This Jurisdiction S - State O - Out of State U - Unknown 1 - This Jurisdiction S - State O - Out of State U - Unknown					
SUBJECT		NAME (LAST, FIRST, MIDDLE)		RACE	SEX	AGE	ETH.	DATE OF BIRTH	HEIGHT
☒ SUSPECT		<u>Littlejohn Jimmy Lee</u>		<u>B</u>	<u>M</u>	<u>38</u>	<u>N</u>	<u>508</u>	<u>170</u>
☐ RUMORER		FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.							
☐ WITNESS		ADDRESS		CITY		STATE		ZIP CODE	
☐ WITNESS				<u>Gaffney</u>		<u>SC</u>			
☐ ALIEN		SUBJECT (NO. 1) USING ALCOHOL ☐ YES ☒ NO ☐ UNK ☐ DRUGS: ☐ YES ☒ NO ☐ UNK ☐ TYPE		ARRESTED NEAR OFFENSE SCENE ☐ YES ☒ NO ☐ DATE / TIME OF OFFENSE		DATE / TIME OF ARREST			
☐ RUMORER				<u>See above</u>					
On above date & times R/O was called to above location by Gaffney City F.D. The Fire Dept. stated they had forced entry to the scene above. The City F.D. Also found two pour patterns that had been burnt. Two subjects who live in Apt. #31 state they heard the suspect listed above in the Apt. next door fussing with someone. The two subject state they saw the suspect listed above vehicle was parked down by Apt. 37. The two subjects state shortly after his vehicle left the smoke detector had blown off. The lady that lives in Apt. #33 woke up and noticed smoke in her Apt. and called 911.									
JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY				JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY					
TYPE (GROUP)		<u>Residence</u>		TOTAL VALUE					
STOLEN				<u>80000</u>					
DAMAGED									
BURNED									
RECOVERED									
SEXED									
SUBJECT IDENTIFIED		SUBJECT LOCATED		X ACTIVE ☒ 11 ADL. CLOSED ☐ 11 UNFOUNDED ☐		11 ARRESTED UNDER 18 ☐ 11 ARRESTED 18 AND OVER ☐		11 EX-CLEAR UNDER 18 ☐ 11 EX-CLEAR 18 AND OVER ☐	
<u>YES</u> ☒ NO ☐		<u>YES</u> ☒ NO ☐							
REASON FOR EXCEPTIONAL CLEARANCE: 1. 11 OFFENDER DEATH 2. 11 NO PROSECUTION 3. 11 EXTRADITION DENIED 4. 11 VICTIM OCCASION'S COOPERATION 5. 11 AVAILABLE - NO CUSTODY				REPORTING OFFICER'S		DATE		UNIT NUMBER	
				<u>M. Searcy</u>		<u>7-5-04</u>		<u>1126</u>	
FOLLOW-UP				OFFICER		DATE		UNIT NUMBER	



GAFFNEY FIRE DEPARTMENT

NATHAN ELLIS, FIRE INSPECTOR

205 NORTH LIMESTONE STREET

GAFFNEY, SOUTH CAROLINA 29340

TELEPHONE: 864-487-8516

FAX: 864-489-2511

EMAIL: NELLIS@CITYOFGAFFNEY-SC.COM

FIRE INVESTIGATION REPORT

DATE: July 6, 2004

SUBJECT: Fire Within a Structure --

FROM: Nathan Ellis, Fire Inspector



Introduction:

The Gaffney Fire Department Stations 10 and 15 responded to a report of smoke in a structure at Gaffney SC at approximately 0202 on Monday, July 5, 2004. Upon arrival, first in units reported a working fire coming from the wood frame, 2 story, apartment building. Gaffney Station 14 was requested to respond for additional man power. Law enforcement was requested to assist with evacuation of nearby apartments, and Grassy Pond Volunteer Fire Department, Station 3, was requested to provide man power and an equipment truck. Blacksburg, station 9, relocated a truck to station 10 to respond to any additional calls in the Gaffney response area. The fire was suppressed, a search of the home was performed, and ventilation was performed. This fire inspector responded to the scene to assist with origin and cause determination. The Gaffney Police Department and SLED assisted with the investigation. The Gaffney Fire Department remained on scene until the investigation was complete.

Interviews:

The tenant was not at home when the fire occurred and could not be located until later on in the morning. I began my interviews by questioning the neighbors.

The call came in from apartment 33, where Casandra Johnson resides. She states that she arrived home last night at around 11:15. She did not remember seeing anyone or hearing anyone in apartment 32 when she got home. She stated that she awoke to the sounds of her smoke detector, saw smoke coming from around the upstairs bathroom area, and called 911. She exited her apartment to alert her neighbors. She saw fire in apartment 32 and reported this to 911 as well. She continued to alert the neighbors of the fire in the structure.

Susan Clemons and her daughter Shirra Mines reside in apartment 31. They reported hearing Jimmy Littlejohn, the tenant's estranged husband on the phone or talking to someone earlier in the evening. He was reportedly making threats and cursing loudly. They also reported seeing his car, a white Chevy Caprice with a burgundy top, parked outside about the same time. They heard his car leave, but still heard someone in the apartment moving things around. A short time later, they began to hear the smoke detectors going off, but they did not realize that that was what they were hearing. They report that Jimmy's car is very loud and that is how they know when it came and when it left. They report hearing the words "meet me at the commercial" along with other threats to "put some led" in someone coming from his voice inside the apartment. They did not remember seeing Ivey Littlejohn come or go today.

Apartment 34 belongs to Rose Houey (). She reported seeing Ivey Littlejohn earlier today during daylight hours, but could not pin point the time. She also remembers seeing Jimmy at the apartment, and thinks that the two of them were there together.

Annie Jones (lives in apartment 36. She reported hearing Jimmy's car at around 12:30am. She did not see him or Ivey all day.

Apartment 37 belongs to Shameka Wilkins). She did not see anyone or hear anything of relevance at the apartment that night.

In the apartment building across the driveway, Sharon Davis, who lives in apartment 29 saw Jimmy leaving the apartment and getting into his car at about 12:30am.

The tenant's mother, Cornelious Willis) was also at the scene. She stated that she had not seen her daughter that evening, and did not know where her daughter might be.

At approximately 0630, Mrs. Littlejohn arrived home at the apartment complex. She stated that the last time that she was at home was about 3:00pm on the previous day. ~~She had stayed overnight at a friend's house because she was afraid to come home because Jimmy had been threatening her. They had been estranged since~~ before she moved into the apartment in December. He did not have a key to her apartment and should not have been there without her present. She could think of no other person who might have been inside the apartment as the neighbors described.

I also interviewed the firefighters who were on the scene. All firefighters who entered the structure gave written statements of their actions to police. The Incident Commander, Lt. Doug Bowers reported to me that the firefighters forced entry on the front door and found heavy fire on and around the area of the stairs in the apartment, and also in the kitchen floor of the apartment. The firefighters noticed what appeared to be a pour pattern in the floor of the kitchen and also in two of three bar stools. An apparent unconnected fire and pour pattern had burned some of the stair treads and risers nearly completely away. The firefighters reported a strong smell of gasoline in the second floor bedrooms. When using a thermal imaging camera to check for heat in the second floor, they discovered an iron laying on the floor and plugged into the wall. Firefighters reported that they found the back door already open when they went inside to fight the fire. The firemen broke the upper floor windows for ventilation.

All of this information was shared with law enforcement to assist with their portion of the investigation.

Scene Examination:

I began to examine the scene by observing the apartment building from the outside. I began with the A-side and noticed that the front door had been forced open. The bottom floor window was broken from the outside. It was a double pane window and only the outside pane was broken. Other than the broken and blacked out glass, there was no visible signs of fire on the exterior of side A. The upper floor windows were both broken. The B side of the structure showed no signs of fire. The C-side of the structure appeared to be untouched by the fire as well. An upstairs window was broken. The door into the fire apartment appeared to have been forced open. There was blackening around the bottom, exterior of the rear door, which swings into the apartment. A blue cigarette lighter was discovered on the ground outside of the rear door to the apartment. The D-side was not affected by the fire. The fire was reportedly contained to apartment 32, so I observed the two apartments adjacent to the fire apartment. Accompanied by the tenant, I entered apartment 31. I observed the walls and ceilings upstairs and downstairs and saw no signs of fire or smoke impingement into this apartment. I, also accompanied by the tenant, entered apartment 33. A slight smell of smoke could be detected. Ventilation was still being performed. I observed the walls and ceiling of both floors and saw no signs of fire or smoke impingement into this apartment.

Next, I entered Apartment 32 through the front door. From the doorway I could see the charring on the floors and wall near the stairs and also in the kitchen floor. To observe the interior of the structure, I used a systematic routine of observing all walls and areas of each room. First, I observed all areas of the living room. There was

sooting on all surfaces in the room. An arm chair near the front door and near a charred area on the floor near the stairs showed cracking associated with exposure to heat. Items hanging on the walls as well as the blinds showed signs of heat damage. The carpet in the living room was completely burned away in the area of the stairs.

Next I entered a short hallway between the living room and the kitchen. The smoke detector mounted to the ceiling in this hallway was almost completely melted away. Heavy sooting was noted in the hallway. A bathroom was observed on the left of this hall. The bathroom showed signs of sooting and heat damage.

Next, I entered the kitchen. I observed what appeared to be a pour pattern on the floor near the rear exit door. Heavy sooting had taken place on all surfaces in the kitchen area. The rear exit door showed signs of fire impingement on the bottom corner away from the hinged end. The locking cylinder was noticed to have been damaged by a prying tool. The door and door frame showed "tool marks" and other signs of forced entry. Two of three bar stools had been ignited and burned. The ceiling had been pulled by firefighters to check for fire extension, but no signs of fire was observed on the surface of the ceiling. No possible accidental ignition sources could be found near the kitchen floor or bar stool area fires. All controls for the heating elements of the kitchen stove were noticed to be in the off position.

A storage room/mechanical room was located off of the kitchen. The water heater and furnace was located in this room as well as an electrical panel. There was very little sooting noticed in this room. There was no signs of fire near any appliance or on any of the contents of this room.

A storage room beneath the stairs was also discovered to be accessible from the kitchen area. Upon opening the door, a clear line of sign was established through the stairs and into the landing area. The treads and risers of the stairs were completely burned away. The sheetrock that was attached to the underneath side of the stairs had broken loose, but it was observed that charring had taken place only on the stair side. Other than pieces of debris that had dropped down from the stairs, the items found in this closet were not burned.

An outside storage room was observed to have no contents and no signs of fire or smoke damage.

Next, I went back into the living room and observed the stair landing. The floor of this landing had been almost completely burned away. I observed the contents of a closet that opened from the landing. There was no signs of fire impingement inside this closet. I observed the steps leading to upstairs. The bottom two stairs had been burned almost completely away. The amount of burning on the stairs decreased as the elevation increased. Still, burning was observed on every tread and riser. The pattern of the burning along the surfaces of the steps resembled a distinct pour pattern.

Next, I observed the upstairs. As I approached the top of the stairs I could smell a strong smell of gasoline. I observed the landing area at the top of the stairs. A T.V. was laying on the floor. There was heavy sooting and extreme heat damage in this area. The paint was noted to have begun to blister on the walls.

I observed all of the wall of this upstairs landing area and noticed a distinct line of demarcation, indicating the level of the extreme heat. The smoke detector which was mounted to the ceiling was almost completely melted away. Heavy sooting and heat damage was noticed, but no signs of fire on the second floor landing area.

I entered the front bedroom. I observed a birdcage with two dead birds. I noticed the strong smell of gasoline. Sooting had occurred on all surfaces. Items inside closets appeared to have very little damage.

Next I observed a hallway closet. Items in this closet appeared to have very little damage.

Next, I observed the upstairs back bedroom. This room appeared to belong to a child. There was a strong smell of gasoline in this room also. There was signs of heavy heat damage and sooting on all surfaces, but no signs of fire in this room. The contents of the closets of this room appeared to be undamaged.

Lastly, I observed the upstairs bathroom. This room showed signs of heavy heat and sooting. The continuation of the line of demarcation could be noted in this room as well. This room was directly in front of the stairs. Sooting had occurred on all surfaces.

At no point through out the structure did I observe that fire penetrated into a wall or ceiling except into the underneath side of the stairs.

Photo's were taken as each area was observed as described above.

Conclusion:

Based on the information gathered from the tenant, the firefighters who entered the burning structure, the people who were present during and in the time leading up to the event of the fire, and from the scene itself, it was the opinion of this fire investigator that this fire is incendiary in nature. Due to possible criminal intent, the Gaffney Police Department and State Law Enforcement Division was notified. I obtained a Voluntary Consent to Search statement from the tenant, and remained on scene until law enforcement authorities arrived. All information collected by this investigator was made available to law enforcement authorities.



GAFFNEY FIRE DEPARTMENT

205 NORTH LIMESTONE STREET
GAFFNEY, SOUTH CAROLINA 29340
TELEPHONE: 864-487-8516
FAX: 864-489-2511

STEVE BLANTON
FIRE CHIEF

VOLUNTARY CONSENT TO SEARCH

I, Ivey Robinson do hereby freely, voluntarily, without threats, pressure, or coercion of any kind consent to a warrantless search of my APARTMENT 32 by representatives of the Gaffney Fire Department and individuals in their company, ^{including SLED} ~~including SLED~~. These representatives are ^{NE, FL} ~~NE, FL~~ authorized to seize any items, materials, or other property that they may deem to be of possible evidentiary value.

Location and description of premises to be searched:

County of Cherokee,

APARTMENT 32 - REDWOOD CIRCLE APARTMENTS

Ivey Robinson
Signature of person consenting to the search

TENANT
Relation to the premises

Nathan Ell
Witness

Michael Scrymgeour
Witness

Date of Birth

Social Security #

Incident Number

07-5-046:30 AM

Date

Time



STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF CHEROKEE) FILED IN OFFICE OF
CLERK OF COURT 2011-CP-11-0148

CHEROKEE COUNTY, S.C.

Jimmy Littlejohn, #220769) 2012 SEP 26 AM 10 37

Applicant) BRANDY W. MCBEE

v.)

ORDER OF DISMISSAL

State of South Carolina,)

Respondent.)

This matter comes before the Court by way of an application for post-conviction relief (PCR) dated March 7, 2011. The Respondent made its return on February 23, 2012. An evidentiary hearing on the matter was convened on June 11, 2012 at the Spartanburg County Courthouse. The Applicant was present at the hearing and represented by Thomas Killoren, Jr. Ashleigh R. Wilson, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified at the hearing, along with his father Billy Littlejohn. Also testifying was Don Thompson, Esquire. The Court had before it the trial transcript, the Cherokee County Clerk of Court records, the Applicant's records from the South Carolina Department of Corrections, the Applicant's application, the Respondent's return, and the Applicant's appellate records.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Cherokee County Clerk of Court. The Applicant was indicted at the November 2004 term of the Cherokee County Grand Jury for arson- 2nd degree

1 

(2004-GS-11-0975) and burglary- 1st degree (2004-GS-11-0976). He was represented by Don Thompson, Esquire. However, on October 27, 2004, the Applicant made a motion to relieve Mr. Thompson as his counsel. The Applicant's motion was granted and Mr. Thompson was relieved.

On May 26, 2005, the State called the case for trial. The Applicant represented himself at trial while Mr. Thompson was present as standby counsel. The jury found the Applicant guilty on all charges and the Applicant was sentenced by the Honorable John C. Hayes III to confinement for concurrent terms of twenty-five years on each charge.

A notice of appeal was filed on the Applicant's behalf and an Anders brief was submitted. On September 12, 2008, the South Carolina Court of Appeals requested that the parties brief the issue of whether or not the Applicant was adequately warned of the dangers of self-representation and if not, did the record reflect whether the Applicant was aware of his rights from another source or from his background. The South Carolina Court of Appeals affirmed the Applicant's convictions and sentences. State v. Littlejohn, Op. No. 2010-UP-199 (filed March 12, 2010). The Remittitur was returned on March 31, 2010.

ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Constitutional violations
 - a. Violations of Applicant's right to a fair trial and due process for failure to provide all discovery materials
 - b. Trial judge failed to provide Faretta hearing regarding the Applicant's waiver of right to counsel for trial
2. Ineffective assistance of appellate counsel for failing to raise issues of 14th amendment violations

At the hearing, Applicant proceeding solely on the allegations of ineffective assistance of relieved counsel, constitutional violations, and ineffective assistance of appellate counsel.



FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. Sec. 17-27-80 (2003).

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "the burden of proof is on the applicant to prove his allegation by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For the Applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984), Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). In order to prove prejudice, an applicant must show "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, 300 S.C. 115, 117-118, 386 S.E.2d 624, 625 (1989). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052).

The Applicant was present and testified at the evidentiary hearing. He testified that he represented himself at trial and that he was previously represented by Don Thompson. The Applicant testified that he asked his counsel repeatedly to do certain things and he requested a copy of his discovery. The Applicant testified further that he requested discovery via a letter

dated December 21, 2004. He testified that counsel responded with a letter dated December 29, 2004. He then testified that he sent counsel another letter dated July 13, 2005 requesting his discovery.

The Applicant testified that he received his discovery from counsel 330 days after he was convicted and that he had no materials to fight the prosecution because trial counsel had his discovery. The Applicant testified that he did not review his Rule 5 discovery with counsel prior to his requesting that counsel be relieved. He testified that trial counsel should have spoken up at trial and told the court that the Applicant did not have a copy of his discovery. The Applicant recalled cross-examining witnesses during the

trial based on their statements. He also recalled impeaching the credibility of the State's witnesses at trial. The Applicant testified that he did not file a Rule 5 or Brady motion on his own after he relieved his counsel. He testified that he recalled subpoenaing witnesses prior to trial because he was told by the solicitor that he could do so.

The Applicant also testified that the trial judge should have given him a Faretta hearing to determine if he was able to represent himself at trial. He testified that he has a high school education and that he did not understand the charges or nature of the charge against him. He testified that he had never gone to trial before and that he did not understand the dangers of self-representation. He testified that he was not trying to delay the proceedings by firing his attorney and that he did not know certain rules of court. The Applicant testified further that he felt coerced and mistreated because he was never given a plea offer.

The Applicant testified that his due process rights were violated because his trial was fundamentally unfair and he never had the chance to view pictures or statements of witnesses

prior to trial. Lastly, he testified that the Rule 5 issue should have been raised by appellate counsel.

The Applicant also called his father, Billy Littlejohn, to testify on his behalf. The witness testified that he went to counsel's office to request a copy of the Applicant's discovery file, but was unable to see counsel. He also testified that the Applicant sent a letter requesting discovery to counsel, but never received any documents. Lastly, the witness testified that the Applicant did not request another public defender and the Applicant asked him to help him find a new attorney.¹

Don Thompson, Esquire also testified at the evidentiary hearing. Counsel testified that when he was relieved he had only received some of the Applicant's Rule 5 discovery. He testified that was unsure if he reviewed the Rule 5 discovery with the Applicant prior to being relieved because he was relieved shortly after the Applicant's preliminary hearing. Counsel testified that at the time of the Applicant's preliminary hearing, he had not received the Applicant's discovery. He testified further that a lot of the State's evidence against the Applicant came out at the Applicant's preliminary hearing.

Counsel testified that he acted as standby counsel for the Applicant during his trial, but that the Applicant never asked him any question during the trial. He testified that his understanding of what standby counsel does is be available in case the Applicant wanted counsel. Counsel testified further that he did not turn over his file to the Applicant immediately after being relieved. He testified that it was not his standard practice to turn over his file unless the file is requested by his former client. Counsel testified that if the file is requested, he always

¹ At the evidentiary hearing, the Applicant also entered into evidence several exhibits. Exhibit 1- Letter from Applicant to Counsel dated 12/21/04, Exhibit 2-Letter from Counsel to Applicant dated 12/29/04, Exhibit 3- Letter from Applicant to Counsel dated 7/13/05, Exhibit 4- Letter from Counsel to Applicant dated 8/8/05, Exhibit 5- Family Court Order, Exhibit 6- Gaffney Police Dept. Incident Report, Exhibit 7- Fire Investigation Report.

sends it to the client. Lastly, counsel testified that he received a letter from the Applicant after he was relieved, but the letter was about a bond reduction and not a request for a copy of his file. Counsel testified that he would have given the Applicant a copy of the file prior to trial had he requested it.

This Court finds the Applicant's testimony is not credible, while also finding trial counsel's testimony is credible. This Court further finds trial counsel adequately conferred with the Applicant and thoroughly fulfilled his responsibilities to the Applicant prior to and after being relieved as counsel.

Failure of relieved counsel to turn over a copy of the Applicant's Rule 5 discovery

This Court finds that the Applicant failed to meet his burden of proving that relieved counsel was ineffective for failing to turn over a copy of his file prior to the Applicant's trial. This Court finds that relieved counsel adequately protected the interests of the Applicant after their attorney-client relationship ended. Counsel provided credible testimony that it is not his general practice to turn over his file as a matter of course after being relieved. Counsel testified further that when a file is requested, it is his general practice to turn it over to the client. This Court finds that counsel properly turned over to the Applicant a copy of his file after a written request from the Applicant on July 13, 2005. This Court finds that relieved counsel was not ineffective for failing to turn over a copy of the Applicant's Rule 5 discovery.

This Court finds further that even if relieved counsel was deficient for failing to turn over a copy of his file to the Applicant prior to trial, the Applicant has failed to provide any evidence that the outcome of his trial would have been different if the Applicant had access to counsel's file prior to trial. Claims alleging deficiency in attorney performance are subject to a general requirement that the defendant affirmatively prove prejudice. Strickland, 466 at 693, 104 S.Ct. at

2067. Even if defendant shows that particular errors of counsel were unreasonable, the defendant must show that they actually had an adverse effect on the defense. Id. "The defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id.

This Court finds that the Applicant was able to prepare an adequate defense and represent himself at trial without a copy of his defense file from relieved counsel. The trial record reflects that the Applicant was able to subpoena witnesses to testify on his behalf at trial. The Applicant testified at the evidentiary hearing that he received witness statements from the solicitor's file. Because the Applicant had access to the witnesses' statements, he was able to adequately examine his witnesses and cross-examine the state's witnesses at trial. The Applicant even impeached the credibility of the State's witnesses based on the statements they gave prior to trial.

In addition, the trial judge brought in relieved counsel to act as stand-by counsel for the Applicant who was representing himself at trial. Relieved counsel gave credible testimony at the evidentiary hearing that the Applicant never asked for his assistance at any time during the trial. This Court finds the Applicant was not prejudiced by relieved counsel's performance because he was able to adequately present his own defense. This Court further finds the Applicant has not shown that had counsel given him a copy of his defense file as a matter of course, the outcome of his trial would have been different.

Failure of trial judge to allow a Faretta hearing

At the Applicant's evidentiary hearing, the State moved to summarily dismiss this allegation because the allegation raises a direct appeal issue that is procedurally barred by S.C. Code Ann. 17-27-20(b) (2003). This Court finds that this allegation is summarily dismissed as an

7 

issue not proper for post-conviction relief. Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). This Court finds that the Applicant raised this issue on direct appeal, therefore it is improper for post-conviction relief and is summarily dismissed.²

Failure of appellate counsel to address the Rule 5 issue on appeal

This Court finds that the Applicant failed to meet his burden of proving appellate counsel was ineffective for failing to address the Rule 5 issue on appeal. A defendant is constitutionally entitled to effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985). "However, appellate counsel is not required to raise every non-frivolous issue that is presented by the record." Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523 (1990). Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745, 1023 S.Ct. 3308 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

The Applicant must show that appellate counsel's performance was deficient and that he was prejudiced by the deficiency. Thrift, at 537; Gilchrist v. State, 364 S.C. 173, 612 S.E.2d 702 (2005); Anderson v. State, 354 S.C. 431, 581 S.E.2d 834 (2003). When a claim of ineffective assistance of counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and

² On appeal, the South Carolina Court of Appeals requested that the parties brief the issue of whether or not the Applicant was adequately warned of the dangers of self-representation and if not, did the record reflect whether the Applicant was aware of his rights from another source or from his background.

obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

This Court finds that appellate counsel presented significant and obvious issues on appeal. The Applicant represented himself at trial, therefore the most obvious issue on appeal is whether the Applicant knowingly waived his right to counsel. This Court finds further that after the filing of an Anders brief on the Applicant's behalf, the Court of Appeals reviewed the record in its entirety and requested briefing on the meritorious issue. This Court finds that the Applicant has failed to prove that appellate counsel's performance was deficient. This Court finds that the Applicant has also failed to prove that any prejudice resulted from appellate counsel's alleged deficient performance.

Accordingly, this Court finds the Applicant failed to prove the first prong of the Strickland test- that counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that counsel committed either errors or omissions in his representation of the Applicant.

This Court also finds the Applicant has failed to prove the second prong of Strickland- that he was prejudiced by counsel's performance. This Court finds that there was overwhelming evidence of guilt presented against the Applicant at trial. Where there is overwhelming evidence of guilt, a trial counsel's deficient representation will not be prejudicial. Ford v. State, 314 S.C. 245, 442 S.E.2d 604 (1994); See also Humbert v. State, 345 S.C. 332, 548 S.E.2d 862 (2001), Geter v. State, 305 S.C. 365, 409 S.E.2d 344 (S.C., 1991). During the Applicant's trial, the State presented multiple witnesses who were able to identify the Applicant and testify that they saw the Applicant shortly before the fire started around the victim's home. The State also presented a

Boyle
89

witness who identified the Applicant and testified that she heard the Applicant in the victim's home prior to the fire. This Court finds that there was overwhelming evidence of guilt against the Applicant. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

All Other Allegations

As to any and all allegations that were raised in the application at the hearing in this matter and not specifically addressed in this Order, this Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore they are hereby denied and dismissed.

CONCLUSION

Based on all the forgoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel were not deficient and the Applicant was not prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

Del
10

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 24th day of September, 20 12


The Honorable Roger Couch
Presiding Judge
Seventh Judicial Circuit

, South Carolina.

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2012 SEP 26 AM 10 37
BRANDY W. MCBEE