

CAUSE NO. 24,467

71544

STATE OF TEXAS ( IN THE DISTRICT COURT  
(  
VERSUS ( NAVARRO COUNTY, T E X A S  
(  
CARMERON TODD WILLINGHAM ( 13TH JUDICIAL DISTRICT

-----  
STATEMENT OF FACTS  
VOLUME XI OF 16 VOLUMES  
AUGUST 18, 1992  
-----

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

MR. JOHN JACKSON  
MR. ALAN BRISTOL  
ASSISTANT CRIMINAL DISTRICT ATTORNEYS  
NAVARRO COUNTY COURTHOUSE  
300 W. Third Ave.  
Corsicana, Texas 75110  
903-654-3045

ATTORNEYS FOR THE STATE

MR. DAVID MARTIN  
ATTORNEY AT LAW  
200 N. 13th Street  
Corsicana, Texas 75110  
903-874-1000

**ORIGINAL**

MR. ROBERT C. DUNN  
ATTORNEY AT LAW  
115 W. Collin  
Corsicana, Texas 75110  
903-872-3024

ATTORNEYS FOR THE DEFENDANT

-----  
BE IT REMEMBERED that on the 18th day of August, 1992, the  
above styled and numbered cause came on for hearing before said  
HONORABLE KENNETH A. (BUCK) DOUGLAS, Judge presiding, and the  
following proceedings were had; to wit:

**FILED IN**  
COURT OF CRIMINAL APPEALS  
NOV 23 1992

Thomas Lowe, Clerk

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## P R O C E E D I N G S

THE COURT: Prior to the time the jury panel comes in, have you furnished them with a copy of your motion?

MR. MARTIN: I did, Your Honor.

MR. JACKSON: State's seen a copy of it, Your Honor, and agree to take up matters with reference to photographs and extraneous offenses outside the presence of the jury and obtain a ruling prior to eliciting any testimony.

THE COURT: That will be fine.

MR. MARTIN: Is the Defendant's motion granted, Your Honor?

THE COURT: Yes, sir.

THE COURT: Bring the panel in, Bill.

MR. DUNN: We would ask the Court to swear the witnesses in.

THE COURT: Before you bring them in -- all the witness that expect to testify in this case, stand and raise your right hand if you are going to testify.

(Witnesses sworn)

THE COURT: The rule has been

1 invoked -- did you want the rule?

2 MR. DUNN: Yes, Your Honor.

3 MR. MARTIN: Yes.

4 THE COURT: The rule has been invoked  
5 which means that all witnesses that expect to testify in  
6 this case must go outside the courtroom and remain outside  
7 the courtroom and remain close by subject to call, and  
8 from this point forward not discuss what your testimony  
9 has been or will be other than under the direction of this  
10 Court.

11 Now, there is some people that have come in later.

12 Those of you that were not sworn a few minutes ago,  
13 will you raise your right hand?

14  
15 (Witnesses sworn)

16  
17 THE COURT: Each of you were in the  
18 courtroom at the time I was telling you what the rule was.  
19 Most of you know what the rule is; and you will need to  
20 remain outside the courtroom, remain close by subject to  
21 call and from this point forward not discuss what your  
22 testimony has been or will be with anyone other than under  
23 the direction of this Court. You will need to go outside  
24 the courtroom.

25 Okay. Bill, bring the panel in.

1 THE COURT: Now, members of the jury  
2 panel, if you are comfortable, stand and raise your right  
3 hands, please?

4  
5 (Jurors duly sworn)

6  
7 THE COURT: You may be seated.  
8 Members of the jury panel, I'm going to go over  
9 some additional instructions with you.

10 Basically, this case will proceed in the following  
11 order:

12 The State may make an opening statement outlining  
13 its case. The opening statement is not evidence but is  
14 merely to aid you in generally understanding the nature of  
15 the case and the significance of evidence when it is  
16 introduced.

17 After the State makes an opening statement, the  
18 defendant may -- defense attorney may make an opening  
19 statement or he may wait until later or he may not make  
20 one.

21 After the opening statement, if any, the State may  
22 introduce evidence; and at the conclusion of the State's  
23 evidence, the defendant has a right to make an opening  
24 statement if he hasn't already made one and to introduce  
25 evidence. However, he need not do so.

1 Rebuttal evidence may be introduced.

2 At the conclusion of all the evidence, the  
3 attorneys may make their closing arguments to you.

4 Faithful performance by you of your duty is vital  
5 to the administration of justice.

6 The law applicable to this case will be contained  
7 in the instructions I give you during the course of this  
8 trial. And it is your duty to follow all such  
9 instructions.

10 It is your duty to determine the facts and  
11 determine them from the evidence and the reasonable  
12 inferences arising from such evidence. And in so doing,  
13 you must not indulge in guesswork or speculation.

14 The evidence which you are to consider consists of  
15 the testimony of witnesses and the exhibits admitted in  
16 evidence.

17 The term "witness" means anyone who testifies in  
18 person or by deposition, including the defendant. The  
19 admission of evidence in court is governed by rules of  
20 law. From time to time it may be the duty of the  
21 attorneys to make objections and my duty to rule on those  
22 objections on whether you can consider certain evidence.  
23 You must not concern yourselves with the objections or the  
24 Court reasons for these rulings.

25 You must not consider testimony or exhibits to

1 which an attorney was sustained or which has been ordered  
2 stricken.

3 Opening statements and closing arguments of the  
4 attorneys are intended to help you in understanding the  
5 evidence and applying the law, but they are not evidence.

6 You must not be influenced in any degree by any  
7 personal feeling of sympathy for or prejudice against the  
8 State or the defendant in this case, for each is entitled  
9 to the same fair, impartial consideration. No statement  
10 or ruling or remark which I may make during the  
11 presentation of testimony is intended to indicate my  
12 opinion as to what the facts are.

13 You are to determine the facts. In this  
14 determination you alone must decide upon the believability  
15 of the evidence and its weight and value.

16 In consideration of the weight and value of the  
17 testimony of any witness, you may take into consideration  
18 the appearance, attitude and behavior of the witness, the  
19 interest of the witness in the outcome of the case, the  
20 relation of the witness to the State or the defendant, the  
21 inclination of a witness to speak truthfully or not, the  
22 probability or improbability of the witnesses' statement,  
23 and all other facts and circumstances in evidence.

24 Thus, you may give the testimony of any witness  
25 just such weight and value as you may believe the



1 testimony of such witness is entitled to receive.

2           Until this case is submitted to you for your  
3 deliberations -- you previously had this one gone over  
4 with you a couple of times -- but until this case is  
5 submitted to you for your deliberation, you must not  
6 discuss the case with anyone or remain within hearing of  
7 anyone discussing it; neither should you read any  
8 newspaper article, listen to any radio broadcast or view  
9 any TV program which discusses the case.

10           After this case has been submitted to you, you must  
11 discuss the case only in the jury room when all members of  
12 the jury are present.

13           You are to keep an open mind, and you must not  
14 decide any issue in this case until the case is submitted  
15 to you for your deliberation under the instructions of the  
16 Court.

17           Is the State ready to proceed in this cause?

18                   MR. JACKSON: In this case in which the  
19 defendant stands accused of the offence of capital murder,  
20 the State is ready.

21                   THE COURT: Is the defendant ready?

22                   MR. MARTIN: The defense is ready, You  
23 Honor.

24                   THE COURT: Mr. Jackson, you want to  
25 read the indictment?

1 (Defendant arraigned in open court)

2

3

4

THE COURT: Now how does the defendant  
plead?

5

MR. MARTIN: Not guilty.

6

THE COURT: All right.

7

Call your first witness.

8

Do you want to make an opening statement?

9

MR. JACKSON: I have a very brief  
opening statement, Your Honor.

10

11

THE COURT: You may proceed.

12

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## OPENING STATEMENT

By Mr. Jackson

Members of of the jury, Cameron Todd Willingham stands accused of the crime of capital murder here in Navarro County, Texas. That crime is alleged to have occurred here in Corsicana two days before Christmas of last year.

State believes that the evidence in this case will show that Cameron Todd Willingham and his wife, Stacy Willingham, lived on 11th Avenue here in Corsicana and that they had three children, one of those children named Amber, two years old, and two one-year-old twins, Carman Willingham and Cameron Willingham.

The State believes that the evidence in this case will show that on the 23rd of December, two days before Christmas, in the mid morning hours, Cameron Todd Willingham poured a combustible liquid on the floor of the babies' room there in the house on 11th Avenue in Corsicana. And also that he poured this combustible liquid in the hallway of that same house leading to the entrance door of the house. The State believes that it will further prove that he set fire to that combustible liquid in that house, starting the fire that killed those three children, Amber Kuykendall, Carman and Cameron

1 Willingham.

2 We believe the evidence will show that he stood by  
3 and he did nothing as the heat and the flames and the  
4 smoke killed those three children.

5 Members of the jury, we think that the evidence  
6 will show that he was urged to enter the house to rescue  
7 those children; and he did nothing.

8 State believes that the evidence will show that the  
9 patterns of those combustible liquids that burned those  
10 children burned in puddles on the floor of that house in  
11 the babies' room and also in the hallway of that house.

12 And the State believes that the evidence will show  
13 that Cameron Todd Willingham, the defendant in this case,  
14 unmistakably committed the conduct of which he is accused.

15 State will present evidence in this case from that  
16 witness stand through witnesses' testimony and through  
17 documents and through exhibits. Some of those pieces of  
18 evidence will be big, and some of them will be little.

19 All we can ask you to do is listen to that evidence  
20 and pay attention to the big pieces and pay attention to  
21 the little pieces.

22 Thank you very much.

23 THE COURT: Mr. Martin, you want to  
24 make one at this time?

25 MR. MARTIN: We do, Your Honor.

## OPENING STATEMENT

By Mr. Martin

May it please the Court, ladies and gentlemen of the jury, the charge is capital murder; and the penalty is life in prison or death. You can imagine, I'm sure, the pressure and anxiety that is brought to bear upon the participants in this proceeding.

But no pressure and no anxiety, I'm sure, is as great as yours as the State prepares to commence the presentation of their case.

I want to remind you before the State begins their evidence of just a thing or two and tell you what I think the evidence is going to show.

Every time I hear described to me the State's theory of what happened -- and it is a theory; no one knows for certain; it is a theory that they propose to you -- it makes me shutter. It truly does.

Because the State's theory in the case is the most unexpected, improbable, unreasonable scenario that we can imagine.

The accusation is that this 24-year-old father of three poured a flammable liquid throughout his house and set it on fire to murder his three infant children. That is the State's theory that they offer to you.

1 But the law requires, and wisely so for all of our  
2 sakes, that they must be able to prove to you in your mind  
3 that that is the most reasonable theory that exists about  
4 the circumstances that were found because this is a  
5 circumstantial evidence case --

6 MR. JACKSON: I am going to have to  
7 object to that characterization, Your Honor. That has yet  
8 to be seen, and the State believes that it is not a  
9 circumstantial case.

10 MR. MARTIN: Let me change my statement  
11 then, if I may.

12 THE COURT: All right, sir.

13 MR. MARTIN: We believe that the  
14 evidence is going to be that it is a circumstantial  
15 evidence case. We believe that the State is relying upon  
16 circumstances that they say they have found that points  
17 toward their theory. But they must, in your mind, ladies  
18 and gentlemen, prove it beyond a reasonable doubt.  
19 Because although the question you will be asked to answer  
20 at the end of the State's case is whether Todd Willingham  
21 is guilty or not, the ultimate issue that must be resolved  
22 in your mind is: Has the State, in the presentation of  
23 their evidence, excluded from your mind every other  
24 reasonable explanation for the circumstances that were  
25 found?

1 I ask you to do this: As the State presents their  
2 case.

3 MR. JACKSON: Excuse me, Your Honor. I  
4 am going to have to object one more time. This is an  
5 argument. This is not an opening statement.

6 MR. MARTIN: This is not an argument.  
7 I am reminding the jurors of the obligation of the law and  
8 that alone, Your Honor.

9 THE COURT: We need to proceed, Mr.  
10 Martin.

11 MR. MARTIN: As the evidence is  
12 presented, please bear this in mind. The ultimate  
13 question for you to decide is: Has the State taken out of  
14 your mind and erased it as a possibility any other  
15 reasonable explanation for the circumstances that they  
16 present?

17 Thank you.

18 THE COURT: Call your first witness,  
19 Mr. Jackson.

20 MR. JACKSON: State calls Johnny Webb.

21 THE COURT: Were you sworn?

22 THE WITNESS: (Shaking head negatively)

23 THE COURT: Raise your right hand.

24

25 (Witness sworn)

1 THE COURT: Take your seat there in the  
2 witness chair.

3 MR. JACKSON: May I proceed?

4 THE COURT: Yes, sir. You may.

5 JOHNNY EVERETT WEBB,  
6 After having been called as a witness by the State and  
7 after having been first duly sworn to tell the truth, the  
8 whole truth, and nothing but the truth, the witness  
9 testified on his oath as follows:

10 DIRECT EXAMINATION

11 BY MR. JACKSON:

12 Q Would you state your name, please?

13 A Johnny Everett Webb.

14 Q Johnny, I think it's apparent the place that  
15 you come from. Tell me where you live at this time.

16 A I live in Navarro County Jail, B-21 cell.

17 Q How long have you been in the Navarro County  
18 Jail, Johnny?

19 A Six, seven months.

20 Q All right. My understanding is that you're  
21 confined in the Navarro County Jail based on a robbery  
22 conviction; is that correct?

23 A Yes, sir.

24 Q How long have you been in jail on this robbery  
25 charge, Johnny?



1 A Six or Seven months.

2 Q All right. It's my understanding that you were  
3 convicted of the crime of robbery back in March of this  
4 year; is that correct?

5 A I believe so.

6 Q All right. How old are you, Johnny?

7 A Twenty-two.

8 Q You have had a rather extensive criminal  
9 histroy, have you not?

10 A Yes, sir, I have.

11 Q You've been charged and convicted one time or  
12 another for stealing a car; is that right?

13 A Yes.

14 Q Of delivery of marijuana?

15 A Yes, sir.

16 Q Theft?

17 A Yes, sir.

18 Q Forgery?

19 A Yes, sir.

20 Q And of burglary, in addition to the robbery; is  
21 that right?

22 A Yes, sir.

23 Q Johnny, what is your problem as far as not  
24 being able to stay out of trouble?

25 A Drugs.

1 Q I take it you are off drugs now.

2 A Yes, I am, Except for the medication.

3 Q Okay. You have any trouble with mental  
4 impairment or anything like that, Johnny?

5 A Not always.

6 Q Okay. You have a good grasp of what is  
7 happening around you?

8 A Yes, I do.

9 Q Okay. What kind of education do you have?

10 A About 10th grade.

11 Q All right. Johnny, while you were in jail, did  
12 you come in contact with a person named Cameron Todd  
13 Willingham?

14 A Yes, I did.

15 Q Is that the same Todd Willingham that is  
16 present here in this courtroom today?

17 A Yes, it is.

18 Q Is he here seated at the counsel table with his  
19 defense attorneys?

20 A Do what?

21 Q Is that the same Cameron Willingham seated here  
22 with his defense lawyers?

23 A Yes, it is.

24 Q What do you do at the jail, Johnny?

25 A Housekeeper.

1 Q Are you a trusty?

2 A Yes, sir, I am.

3 Q What does that mean?

4 A It just means I get to go out, clean up, you  
5 know, in the morning and at night, just keep the floors  
6 mopped, swept.

7 Q How did you happen to come in contact with  
8 Cameron Willingham?

9 A Doing my normal thing, you know, just sweeping  
10 and mopping every day.

11 Q Did you know what he was in jail for?

12 A When I first met him?

13 Q Yes, sir.

14 A No, sir, I didn't. It took me a couple days  
15 before I found out what he was in jail for.

16 Q How did you find out?

17 A I was told.

18 Q By somebody else at the jail?

19 A Yeah.

20 Q Did you have a chance to engage him in  
21 conversation?

22 A Yes, sir, I did.

23 Q Did he know what you were in jail for?

24 A I'm not sure. I don't know if I told him or  
25 not. I imagine he does, though.

1 Q Did you ever talk to him about why he was in  
2 jail?

3 A Yeah, I did.

4 Q All right. Did anybody ever ask you to go find  
5 out what Cameron Willingham knew about this crime?

6 A No, sir, they did not.

7 Q Were you working for any law enforcement agency  
8 when you talked to him?

9 A No, I was not.

10 Q Did anybody ever threaten you or coerce you?

11 A No, sir, they never did.

12 Q What did Mr. Willingham tell you about the  
13 incident of the fire at his house?

14 MR. MARTIN: Object to the hearsay, Your  
15 Honor.

16 THE COURT: I overrule the objection.

17 MR. JACKSON: You may answer that  
18 question.

19 THE WITNESS: He said he had done it.

20 BY MR. JACKSON:

21 Q Pardon?

22 A He said he had done it.

23 Q Can you tell us what he told you about those  
24 events?

25 A Yes, sir.

1 MR. MARTIN: We object, Your Honor, to  
2 the hearsay.

3 THE COURT: I overrule the objection.

4 MR. JACKSON: You may answer that.

5 THE WITNESS: He was telling me about  
6 something about he had came home or something, and he  
7 was -- I don't remember exactly where he was at or what he  
8 was doing -- but when he came in the house that one of the  
9 babies were injured or dead or something like that and he  
10 freaked out and --

11 Q Did he tell you who had injured the child?

12 A His wife.

13 Q All right. Please continue.

14 A And he didn't know what to do. She was crying  
15 and going on, and he said he thought of a way to get them  
16 all out of it by setting the house on fire.

17 Q Did he tell you what he did at that point?

18 A Yes, he did. He said that he took some kind of  
19 lighter fluid, squirting around the walls and the floor  
20 and set a fire.

21 Q Did he tell you anything else about how he  
22 attempted to shift the blame from him to someone else?

23 A I'm not sure.

24 Q Did he tell you anything about what he did with  
25 the children?

1 MR. MARTIN: We object. Leading.

2 THE COURT: I overrule the objection.

3 THE WITNESS: Yes. He said that he had  
4 burned one of the kids. I don't know which one, and I  
5 assumed at the time that it was --

6 MR. MARTIN: We object to the witness  
7 speculating.

8 THE COURT: I sustain the objection.

9 BY MR. JACKSON:

10 Q You can't tell us about your assumptions. Just  
11 tell us what he told you.

12 A That he took some paper, wadded it up, and lit  
13 a fire and burned one of the kids on their arm, on their  
14 forehead to make it look like they were playing with fire.

15 Q What else did he say, Johnny?

16 A That he ran out of the house to go call 911,  
17 and someone asked him to go get the kids. He said they  
18 were still in the house, and someone told him to go get  
19 them. He refused.

20 Q Did he tell you why he wouldn't go back in the  
21 house?

22 A Because he knew they would find out one of the  
23 babies was injured.

24 Q Did he say whether he left all the children in  
25 the same room?

1 MR. MARTIN: Object. Leading.

2 THE COURT: Overrule the objection.

3 THE WITNESS: No, he didn't.

4 BY MR. JACKSON:

5 Q Why did you decide to tell anyone about this  
6 conversation?

7 A Because it got to bugging my conscience.  
8 That's why -- I mean, three kids -- I mean, you know,  
9 someone tells you something like that, it's not something  
10 to be taken lightly.

11 Q Did it worry you?

12 A A lot, yeah.

13 Q Who did you tell about it?

14 A Robert Chapman.

15 Q Based on your conversation with Mr. Chapman,  
16 did you elect to talk with me?

17 A Well, in a way. Not exactly you; but, you  
18 know, I told him, I said, "What should I do 'cause I don't  
19 really want to go get into it, but it's bugging me." And  
20 he said, "Well, yeah, it's true."

21 MR. MARTIN: Object. Hearsay.

22 THE COURT: Overrule the objection.

23 THE WITNESS: But, you know, he said,  
24 "Now it's on my conscience, too" because I had told him.  
25 He said, "I don't think I can -- I don't think I can

1 handle that on my conscience."

2 So it went on about three weeks. He said, "Look, do  
3 you want me to tell someone?" I said yeah. That's when  
4 he said, "Okay. I will tell them what you told me."

5 Q Do you remember the first time I talked to you,  
6 Johnny?

7 A Yes, I do.

8 Q You remember the first thing I told you?

9 MR. MARTIN: Your Honor, we object to  
10 hearsay.

11 MR. JACKSON: I will rephrase the  
12 question, Your Honor.

13 THE COURT: All right, sir.

14 BY MR. JACKSON:

15 Q Do you remember our conversation when I first  
16 met with you over across the street?

17 A Somewhat, yes, I do.

18 Q Johnny, have I ever promised you anything in  
19 return for your testimony in this case?

20 A No, sir, you haven't.

21 Q As a matter of fact, I told you there is  
22 nothing I can do for you.

23 MR. MARTIN: Object. Leading.

24 THE COURT: Overrule the objection.

25 THE WITNESS: You said there was nothing



1 that no one can do for me.

2 BY MR. JACKSON:

3 Q Do you understand you placed yourself at risk  
4 by coming forward with this testimony?

5 MR. MARTIN: Your Honor, we object to  
6 that as leading, assuming some facts not in evidence.

7 THE COURT: Go ahead.

8 MR. MARTIN: There is no evidence  
9 whatsoever that he has been placed at risk at all in any  
10 way.

11 THE COURT: I sustain the objection.

12 MR. JACKSON: Pass the witness.

13 MR. MARTIN: Judge, I need to get the  
14 black board, if I may.

15 THE COURT: Sure.

16 CROSS-EXAMINATION

17 BY MR MARTIN:

18 Q Mr. Webb, how long have you been in jail?

19 A Six, seven months.

20 Q And you were in jail -- this time, was it  
21 robbery or burglary?

22 A Both. Burglary, robbery and forgery.

23 Q Who did you rob? A woman?

24 A Yes.

25 Q Robbed her of her purse?

1 A No, I did not.

2 Q What did you take?

3 A Nothing.

4 Q You were charged with robbery, yet, you did not  
5 take anything?

6 A True.

7 Q Tried to take something?

8 A What they say I did.

9 Q But it's not true?

10 A I don't know if it's true or not.

11 Q You don't know whether you are guilty of  
12 robbery or not?

13 A True.

14 Q They did a fabrication on the part of the  
15 police?

16 A I doubt that very seriously.

17 Q Then you think it is true?

18 A I could have done it, but I do not remember  
19 doing it.

20 Q Because you were under the influence of drugs?

21 A True.

22 Q What kind of dope was it? Crack cocaine?

23 A Marijuana and drink.

24 Q You been smoking marijuana and drinking since  
25 you were nine?

1 A About that, yes.

2 Q And have smoked marijuana and drank liquor  
3 since the age of nine until -- how old are you now?

4 A Yes, drink, until I was 16 or 17.

5 Q All right. Smoked marijuana since you were  
6 nine?

7 A Right.

8 Q And on occasion you have mental difficulties?

9 A Yes, sir.

10 Q You are on medication for that now?

11 A Yes, sir.

12 Q And what has the doctor diagnosed your mental  
13 problem as being?

14 A Post dramatic stress disorder.

15 Q And what is it that caused the stress and the  
16 trauma?

17 A I decline to answer that question in open  
18 courtroom.

19 Q Well, I ask you to answer me immediately. What  
20 caused it?

21 A I still decline.

22 MR DUNN: May we have an instruction,  
23 Your Honor. I think that's very probative in the  
24 credibility of this witness.

25 THE COURT: Mr. Webb, you need to answer

1 that question.

2 THE WITNESS: I was assaulted in the  
3 penitentiary.

4 BY MR. MARTIN:

5 Q And that was when?

6 A '88.

7 Q And how long were you in the penitentiary that  
8 time?

9 A Thirty days shock probation.

10 Q And you were sexually assaulted?

11 A Yes.

12 Q Raped by an inmate?

13 A Yes.

14 Q I don't mean to be indelicate, but you can see  
15 this is quite important, can you not?

16 A Yes.

17 Q And since that time -- and we sympathize with  
18 you; we do -- but since that time, you have suffered  
19 off-and-on mental difficulties?

20 A Yes, I have.

21 Q And would you tell us what the medication is  
22 that you take now?

23 A It's Elavil, but I get the generic form.

24 Q It's prescribed to you by a doctor?

25 A Yes, it is.

1 Q You've seen a psychiatrist?

2 A Yes, I have.

3 Q He has diagnosed you as having these mental  
4 problems?

5 A Yes, he has.

6 Q And you went to jail this time, did you tell  
7 me, in February?

8 A No, I did not tell you February.

9 Q What did you say?

10 A I believe I came to jail January the 9th of  
11 this year.

12 Q Oh, and have been in there continuously since  
13 that time?

14 A I have never been out since January the 9th.  
15 I've been there continuously.

16 Q But the last day that you had outside of the  
17 jail, you were under the influence of marijuana and  
18 liquor? Is that the day you were arrested?

19 A I was under the influence of not only marijuana  
20 and alcohol but, yet, crack cocaine, too, the day I was  
21 arrested.

22 Q And how long had you used crack cocaine?

23 A Probably four or five months.

24 Q And do you steal to get money to buy crack?

25 A Most people do.

1 Q Is it possible for you to describe for us the  
2 strength of the addiction to crack cocaine? Would you say  
3 it is utterly overwhelming to be --

4 A No, I wouldn't.

5 Q You can control your actions when you were  
6 under its influence?

7 A Sometimes.

8 Q And sometimes you cannot?

9 A Right.

10 Q The strength of the addiction is so strong that  
11 you will go out and rob people, correct?

12 A Some people do.

13 Q You do, do you not?

14 A No, I did not.

15 Q So, are you telling us that you did not rob  
16 someone or that you did or that you just don't know?

17 A I'm telling you I did not rob someone for the  
18 money to get crack cocaine.

19 Q Why did you rob them?

20 A I don't know as if I did.

21 Q But you pled guilty to robbing someone.

22 A Well, it seems pretty weird that someone would  
23 come up and say I tried to rob them when I didn't, don't  
24 you think?

25 Q I don't know.

1 But, in other words, are you telling us that  
2 you stood her -- was it in this courtroom?

3 A Yes, it was.

4 Q You were placed under oath just like you were  
5 now?

6 A Yes, I was.

7 Q Swore to the Court that you committed this  
8 robbery?

9 A Yes, I did.

10 Q But you can't remember whether you did so or  
11 not?

12 A True.

13 Q I suppose that you and Todd Willingham have  
14 been friends for a great many years?

15 A No.

16 Q You haven't been?

17 A No, we haven't.

18 Q You met him only when?

19 A Jail.

20 Q In jail this year. And do you remember when  
21 this year in jail?

22 A Between January 9th and January 30th.

23 Q You met him first in January?

24 A January or first of February.

25 Q And you were in the same cell with him, and you

1           were friends with him and talked to him every day?

2           A       I was not in the same cell with him.

3           Q       You were not in the same cell, but you talked  
4           to him for hours at a time, no doubt?

5           A       Probably 30 minutes to an hour, yeah.

6           Q       When? Once a day?

7           A       Once or twice.

8           Q       And in some hidden spot there of the jail where  
9           no one else could hear you?

10          A       No. Anyone could have keyed a mike in on the  
11          telephone on the speaker system and heard exactly what I  
12          was saying.

13          Q       This occurred under a speaker in the jail?

14          A       Yes, it did.

15          Q       The deputies could have heard?

16          A       The deputies could have heard.

17          Q       Anybody else in the cell could have heard?

18          A       Not unless --

19          Q       -- they were listening?

20          A       Yes.

21          Q       You see what I've drawn here on the board? You  
22          don't know what this is yet, do you?

23          A       No, I don't.

24          Q       Well, what this is meant to be is a drawing of  
25          the place where you say this conversation took place there



1 in the jail. This is meant to represent Cell Block 38,  
2 okay.

3 Is that any more familiar to you now? Do you  
4 recognize this as the small area outside the cell blocks?

5 A Yes, I do.

6 Q And right out here a few feet away is the  
7 control room where a deputy stays; isn't that right?

8 A Yes, it is.

9 Q And this is where you would go into this little  
10 area here to pick up trays and sweep up?

11 A Just sweep up. I never picked up trays.

12 Q You just go in there to sweep?

13 A Sweep and mop.

14 Q Okay. The deputies stay in this control room?

15 A Yes, he does.

16 Q And this is all glass right here, isn't it?

17 A Yes, it is.

18 Q And this is all glass, isn't it?

19 A Except for the metal.

20 Q Metal door?

21 A Yeah.

22 Q But there are no bars, right?

23 A No bars.

24 Q There is no solid steel doors in this area, is  
25 there?

1 A No, there's not.

2 Q Anybody standing anywhere out here or in these  
3 cells could see you standing here, couldn't they?

4 A Sure could.

5 Q And could see Todd standing there, right?

6 A Yes.

7 Q He's not in solitary confinement or anything,  
8 is he?

9 A No, sir, he's not.

10 Q There are three cells right here, aren't there?

11 A Yes, there is.

12 Q And this is the day room area with the table  
13 and television set, right?

14 A Yes, it is.

15 Q And during the day the prisoners in that cell  
16 block can come out there, wonder around, eat, watch TV,  
17 right?

18 A Right.

19 Q And same is true for this cell block and this  
20 cell block, true?

21 A True.

22 Q Everybody over here can see everybody over here  
23 if they are standing around the door, can't they?

24 A Yes, they can.

25 Q The deputies can see everybody all the time,

1 can't they?

2 A Sure can.

3 Q Because it's glass all the way through here and  
4 here, right?

5 A Yes, it is.

6 Q Wouldn't you agree that it was made so that the  
7 deputy could see everybody sitting from the control room?

8 A That's the purpose, yes.

9 Q And inside this room, this door shuts and  
10 locks, doesn't it?

11 A Yes, it does.

12 Q Inside this room there is an intercom, isn't  
13 there?

14 A Yes, there is.

15 Q The deputy in the courtroom (sic) can listen to  
16 every conversation in there, can't he?

17 A Yes, he can.

18 Q And what you are telling us is that Todd  
19 Willingham stood at this door and talked to you through  
20 the food tray slot, correct?

21 A Correct.

22 Q I want to show you a videotape of this area and  
23 ask you to tell us whether it is exactly the spot where  
24 you are saying you were, okay?

25 (Videotape playing)

1

2

BY MR. MARTIN:

3

Q Is that it? Is that the door?

4

A It may be -- yeah, that's it.

5

Q This is where you say you stood while this

6

conversation was taking place, right?

7

A Yes.

8

Q Prisoners in here, right?

9

A Yeah.

10

Q Prisoners in here?

11

A Uh-huh.

12

Q All these food trays stay out all the time,

13

don't they?

14

A Yes, they do.

15

Q Just like that?

16

A Just like that.

17

Q There's where Todd is locked up. There's other

18

prisoners in there with him, correct?

19

A I would assume so.

20

Q Well, there were other people in there when you

21

say you were talking to him, weren't there?

22

A I believe there was.

23

Q And so you are telling us that standing there

24

at this food tray slot with these other people around, a

25

person whom you did not know before you met them in jail

1 confessed to you that he had murdered his three children?

2 A True.

3 Q Told you all about those details that you  
4 described?

5 A Yes, he did.

6 Q And you were dumbfounded?

7 A I don't understand the word "dumbfounded".

8 Q You were shocked?

9 A Yes, I was.

10 Q You were surprised --

11 A Yeah.

12 Q -- that anybody would do such a bizarre thing?

13 A Yes.

14 Q First time it's ever happened to you? Someone  
15 confess to you?

16 A Yes.

17 Q Never happened before?

18 A Not with something like this, no.

19 Q You took some notes?

20 A No, I didn't take no notes.

21 Q Can you write?

22 A Yes, I can write.

23 Q And read?

24 A Yes.

25 Q You took no notes?

1 A (Shaking head negatively)

2 Q This conversation occurred over the course  
3 of -- what did you tell us -- two or three weeks?

4 A About a month.

5 Q Over a month's time?

6 A Yes.

7 Q Bits and pieces picked up over 30 days or so?

8 A No.

9 Q How did it happen?

10 A Well, I had been talking to him and he had been  
11 having --

12 Q Talking to him about what? Just --

13 A Everyday events, things. He was having a hard  
14 time sleeping and asked me if I would give him some of my  
15 medication. I said yes, I would.

16 Q And you did?

17 A Yes, I did.

18 Q Had it in your pocket?

19 A Yes, I did.

20 Q Is it sleeping pills?

21 A Yes, it is.

22 Q Is that the only kind of medication you had?

23 A No, it's not.

24 Q You had some other medication on you?

25 A Yes.

1 Q And the people of the jail just let you wonder  
2 through the jail with medicine in your pocket?

3 A No, they don't.

4 Q But you had it with you?

5 A Yes.

6 Q Weren't supposed to?

7 A Wasn't supposed to.

8 Q How did you get it?

9 A Through the nurse.

10 Q Was she supposed to give it to you?

11 A Yes, she was.

12 Q What were you supposed to do with it?

13 A Take it.

14 Q Take it and put it up?

15 A No. Take it by mouth.

16 Q But you didn't?

17 A Yes.

18 Q You just stuck it in your pocket?

19 A Not all of it. I would give him, like, one  
20 pill every now and then to help him sleep because he said  
21 he was having a real hard time sleeping. He was telling  
22 me about the case the whole time, but he was always  
23 telling me that he didn't do it. Then one day, mainly, he  
24 just broke down and said, "I done it."

25 Q Cried, no doubt?

1 A Yeah.

2 Q And everybody could see him there crying,  
3 confessing to you?

4 A No. There was no one at the other doors.

5 Q Everybody was --

6 A -- watching TV.

7 Q Okay. And the television, as I recall, in this  
8 cell block is about right here?

9 A Yes, it is.

10 Q And the television in the other day rooms is  
11 always up near the front, isn't it?

12 A No. It's about middle-ways of the wall back.

13 Q Back down here somewhere?

14 A No. On this other one.

15 Q We will watch the tape again in a minute see if  
16 we can see.

17 No one else was in Todd's cell except him?

18 A I don't remember. There might have been  
19 someone laying in there. I don't remember.

20 Q So, in other words, he talks to you about it  
21 for 30 days, says he didn't do it. Then all at once, much  
22 to your surprise, he confesses?

23 A True.

24 Q You go back to your cell; you write down what  
25 he said?



1 A No.

2 Q You just remembered it?

3 A Yes.

4 Q This occurred when?

5 A About in April, I would imagine.

6 Q And then you told us that you told the  
7 deputy --

8 A Robert Chapman.

9 Q -- a month later?

10 A No. About a week later. A week later, but,  
11 you know, I told him I didn't want him to tell what I  
12 knew. He said that he wouldn't, and I kept talking to  
13 him. He said, "Well, man --" he says, "-- what are you  
14 going to do about that?" I said, "I don't know what to  
15 do. I really don't want to get involved in it." He said,  
16 "Yeah, but the man told you something that people really  
17 do need to know. I mean, if the dude done it, then you  
18 need to tell someone." You know, it got to bugging me.

19 Q But you slept on it for a week?

20 A Hum?

21 Q You didn't tell anybody for a week?

22 A No. Robert, that's it.

23 Q Okay. But for the first week after this  
24 supposed confession, you didn't say anything to anyone?

25 A No.

1 Q Didn't tell anyone at all?

2 A No.

3 Q Then a week later your conscience began to  
4 bother you?

5 A My conscience bothered me from the day he told  
6 me.

7 Q You told the deputy sheriff that somebody had  
8 confessed three murders to you, and he asked you what you  
9 were going to do about it?

10 A Well, you know, I considered him my friend. I  
11 said, "Look, can I tell you something without you telling  
12 anybody?"

13 Q And for three weeks this secret was kept  
14 between you and he?

15 A Yes, until he made the decision that it was the  
16 right decision. He just wanted me to do the right thing.  
17 That's what I tried to do.

18 Q You know Joe Jackson?

19 A Yes, I do.

20 Q He was in the cell with James McKnight? Do you  
21 know the FBI agent, Mike McKlusky? You know him, don't  
22 you? You know any FBI agents at all?

23 A No, I don't.

24 Q Mr. Webb, aren't you the same Mr. Webb that  
25 made a complaint to the FBI in May of this year that you

1 were being physically abused in the jail?

2 A No, I'm not.

3 Q You called the FBI --

4 A No, I did not.

5 Q -- in Dallas? They came down here to  
6 investigate?

7 A No, I did not.

8 Q You were interviewed by the FBI in May?

9 A No, I was not.

10 Q Not at all? That's not true, not any of it?

11 A No, sir, it's not.

12 Q You never made a complaint to the FBI?

13 A No, sir, I haven't.

14 Q Joe Jackson?

15 A He's a black guy that was in Cell 44.

16 Q It's around here?

17 A Yes, sir.

18 Q Where? Over here?

19 A No, next one.

20 Q Here?

21 A Right there.

22 Q And how long was Joe in there?

23 A I don't know, four, five months, maybe longer.

24 I can't remember.

25 Q How did you know him, just like you did Todd?

1           A       Just came around. You know, they ask us for  
2       bleach to clean their showers. We give them the stuff.  
3       That's about it.

4           Q       How did you learn his name?

5           A       Well, I've known him before from jail. I've  
6       been there. I know who he is.

7           Q       This wasn't the first time you met him?

8           A       No, it wasn't.

9           Q       Now, presently, you are under a sentence of 15  
10      years to do in the penitentiary?

11          A       True.

12          Q       Is that aggravated or non-aggravated?

13          A       Aggravated.

14          Q       How much time do you understand that you will  
15      stay at minimum in the penitentiary?

16          A       Three years, nine months.

17          Q       And when were you sentenced to that?

18          A       Sometime either in late January or early  
19      February.

20          Q       Do you know why you are still here?

21          A       Basically, no, I don't. I think to testify on  
22      this, but I'm not sure.

23          Q       You should have gone to the penitentiary before  
24      now, but you you've been held over to testify here?

25          A       Not necessarily. There's another person in

1 jail that's got 35 years aggravated. He's been there 18  
2 months. They are not really rushing to get anybody with  
3 aggravated time out because they got so much time to do.

4 Q Would you tell us what the symptoms of your  
5 mental problems have been? Depression?

6 A Yes.

7 Q Loss of sleep?

8 A Yeah, I've lost a lot of sleep.

9 Q Mental confusion?

10 A I wouldn't say mental confusion.

11 Q You mean, you don't know that you robbed  
12 somebody, but you are not mentally confused?

13 A I think I was so blitzed on drugs, you know, I  
14 blacked out.

15 Q And how long have you been on medication?

16 A Two years.

17 Q Continuously for two years?

18 A Not continuously.

19 Q Just off and on?

20 A Off and on.

21 Q Have you been on medication for your mental  
22 problems the entire time you've been in jail?

23 A Yes, I have.

24 Q Been taking medicine every day for the entire  
25 time you've been in jail?

1 A Yes, I have.

2 Q It was prescribed to you by the jail nurse?

3 A By the jail doctor.

4 Q Who is that?

5 A Barnaby.

6 Q Can you tell us how many times you've been  
7 interviewed by the prosecutors in this case?

8 A As in who?

9 Q Mr. Jackson, Mr. Bristol, mister --

10 A I've been interviewed about four times.

11 Q Did you ever make any notes about any of it?

12 A No.

13 Q Can you tell us when you are expecting to go to  
14 prison?

15 A I expect to go whenever they make a list and  
16 put my name on it.

17 MR. MARTIN: Pass the witness.

18 REDIRECT EXAMINATION

19 BY MR. JACKSON:

20 Q Johnny, I believe you told Mr. Martin that this  
21 defendant was having a hard time sleeping; is that right?

22 A Yes, it's true.

23 Q He told you why he was having a hard time  
24 sleeping, didn't he?

25 MR. MARTIN: Object. Leading.

1 THE COURT: Overruled.

2 THE WITNESS: Yes, he did.

3 Q He told you he killed his children, didn't he?

4 A Yes, he did.

5 Q He told you he needed your sleeping medication  
6 to sleep; is that right?

7 A True.

8 Q You understand there's going to be lots of  
9 problems for you associated with giving this testimony,  
10 don't you?

11 A I'm well aware of that fact.

12 Q What happens to people who give this type of  
13 testimony in your situation?

14 MR. MARTIN: Your Honor, we object to  
15 that as calling on the witness to speculate to things.  
16 Irrelevant. No personal knowledge.

17 MR. JACKSON: Let me rephrase that.

18 BY MR. JACKSON:

19 Q Do you have personal knowledge of people who  
20 have given information about fellow inmates?

21 A Not really.

22 Q You have information of what's happened to you  
23 after you've given information about fellow inmates, don't  
24 you?

25 A Yes, sir.

1 Q What has happened to you?

2 MR. MARTIN: We object to that as being  
3 irrelevant.

4 THE COURT: I overrule the objection.

5 THE WITNESS: My life has been threatened  
6 as well as my family's life. And if I make it to the  
7 penitentiary, then I'm going to be in deep trouble.

8 Q Who has threatened you, Mr. Webb?

9 A Two people, sir. Robert Lyles and Todd  
10 Willingham.

11 Q What did Mr. Willingham say he would do?

12 A He just pointed his finger at me. He did like  
13 this.

14 MR. JACKSON: Let the record show, Your  
15 Honor, that the witness has drawn a his finger across his  
16 neck.

17 THE COURT: The record will so reflect.

18 BY MR. JACKSON:

19 Q Mr. Webb, you gave a written statement to a  
20 deputy sheriff in this case, I believe; is that correct?

21 A True.

22 Q In that written statement, I believe you said  
23 Todd Willingham told you --

24 MR. MARTIN: Your Honor, we object to  
25 this as an improper attempt to bolster the witness'



1 statements.

2 MR. JACKSON: The credibility of this  
3 witness has been substantially attacked during  
4 cross-examination. I think I'm entitled to do that.

5 THE COURT: Rephrase your question, Mr.  
6 Jackson.

7 BY MR. JACKSON:

8 Q Did Todd Willingham tell you he poured lighter  
9 fluid on the children's floor of the children's room in an  
10 X pattern?

11 A Yes, he did.

12 Q Did he tell you he removed one of the children  
13 to a different location in the house?

14 A No, I don't think he said that.

15 Q Okay. You made a statement at an earlier time,  
16 I believe --

17 MR. MARTIN: We object to this again as  
18 an improper attempt to bolster the witness. It's also  
19 leading.

20 THE COURT: Overrule the objection  
21 BY MR. JACKSON:

22 Q I believe you said at one point he said he  
23 moved one of the kids from one room to another; is that  
24 right?

25 MR. MARTIN: May the record reflect that

1 the prosecutor is showing the witness a piece of paper.

2 THE COURT: Yes, sir.

3 MR. MARTIN: May we know for the record  
4 what the prosecutor is showing the witness?

5 MR. JACKSON: I will be happy to offer it  
6 at any point you choose, Mr. Martin.

7 MR. MARTIN: I'm not offering it.

8 BY MR. JACKSON:

9 Q In that statement you said, "He then moved one  
10 of the kids from one room to another, then started the  
11 fire in the hallway." Would that be a fair statement?

12 A Yes, I believe it would.

13 Q Are you scared of Todd Willingham?

14 A Scared of what could happen through the people  
15 he knows, yes.

16 MR. JACKSON: Pass the witness.

17 RECROSS-EXAMINATION

18 BY MR. MARTIN:

19 Q Now, Mr. Webb, you told us twice that Todd  
20 didn't say anything to you about taking one of the  
21 children to another room; and then when the prosecutor  
22 showed you the script, you changed your mind. Now, which  
23 one is it?

24 A I think he said -- you know, I can't remember  
25 exactly; but I think that's probably right.

1 Q After being reminded by Mr. Jackson of what you  
2 said in the script he showed you, right?

3 A Not just that. It's just, you know, that's  
4 probably right.

5 Q Now, when Todd supposedly told you this, you  
6 didn't think too much about it, did you?

7 A At first, no. It stunned me. I didn't really  
8 know what to think.

9 Q Well, you said in the past that you didn't  
10 think too much about what he told you, did you?

11 A I don't believe I've made that statement.

12 Q Well, let me show you what Mr. Jackson showed  
13 you that he provided me. Didn't you say, "In the past at  
14 first I did not think too much about what Todd told me?

15 A Probably, yeah.

16 Q You said that, didn't you?

17 A Yes, I did.

18 Q Now, are you swearing to this jury that you  
19 never made a complaint to the FBI about being abused in  
20 jail?

21 A I have never been abused in jail.

22 Q Are you swearing that you did not complain to  
23 the FBI this year that you had been abused in jail?

24 A I have never complained to the FBI.

25 MR. MARTIN: Pass the witness.

## FURTHER DIRECT EXAMINATION

BY MR. JACKSON:

Q Johnny, has Mr. Martin said anything that would make you doubt your testimony here this morning?

A No, sir.

Q Does it remain your testimony that Cameron Willingham said he killed his children?

A Yes, it does.

MR. JACKSON: Pass the witness.

MR. MARTIN: No further questions.

THE COURT: You may step down,

Members of the jury panel, at this time we are going to take about a ten-minute recess.

It's very important to continue to remember the instructions previously given everybody with reference to conversation among yourselves or with anyone else.

If you happen to -- if you run into some of the people in the audience outside the courtroom, if you are outside the courtroom, if anyone attempts to talk to you about this case, you need to let me know about it at once, okay.

You can go in the jury room.

(Recess)

1 THE COURT: Jury panel is back in the  
2 courtroom.

3 Mr. Jackson, call your next witness.

4 MR. JACKSON: State calls Diane Barbe.

5 THE COURT: Come forward, please, ma'am.  
6 You were previously sworn?

7 THE WITNESS: Yes.

8 THE COURT: Take your seat, please.

9 MR. JACKSON: May I proceed, Your Honor?

10 MARY DIANE BARBE,  
11 After having been called as a witness by the State and  
12 after having been first duly sworn to tell the truth, the  
13 whole truth, and nothing but the truth, the witness  
14 testified on her oath as follows:

15 DIRECT EXAMINATION

16 BY MR. JACKSON:

17 Q Would you state your name, please, ma'am?

18 A Mary Diane Barbe.

19 Q And where do you live, Mrs. Barbe?

20 A 1205 West 11th.

21 Q That's here in Corsicana, Texas?

22 A Yes, sir.

23 Q Is that correct?

24 A Yes, sir.

25 Q Is that near the house that used to be the

1 residence of the Willinghams?

2 A Yes.

3 Q Can you tell us where the Willingham house is  
4 or was with reference to your house?

5 A Two doors down.

6 Q All right.

7 A East, I believe. I have a bad sense of  
8 direction. Two doors down.

9 Q And did Cameron Todd Willingham live in that  
10 house for a period of time?

11 A Yes.

12 Q Did his wife, Stacy, live in that house?

13 A Yes, she did.

14 Q And did the children Amber, Carman and Cameron  
15 also live in that house?

16 A Yes, they did.

17 Q Let me ask you first: How long have you lived  
18 where you do, Mrs. Barbe?

19 A I have lived at 1205 for 15 years.

20 Q So, you lived there back on December the 23rd  
21 of last year; is that correct?

22 A Yes, sir.

23 Q Do you have a recollection of that date, ma'am?

24 A Very well.

25 Q Let me direct your attention to the mid-morning

1 hours of that date. And let me ask you what you were  
2 doing around 10:00 o'clock in the morning?

3 A Well, I was babysitting. I was in the living  
4 room, the den.

5 Q Does that time, 10:00 o'clock, stick in your  
6 mind for any particular reason?

7 A Yes, because my two youngest daughters, and  
8 they had two sleep-overs, was in the back room -- had been  
9 in the back room playing. They come in and wanted to go  
10 out on the back patio because they was bored.

11 When they come into the den, it was 10:00 o'clock.  
12 Bob Barker was coming on, "The Price is Right," and I  
13 looked up at the clock. I told them, I said, "You can  
14 stay out there just a little while," because it was cool.

15 Q Can you tell us what, if anything, unusual  
16 happened at that point or shortly after that time?

17 A Well, Buffy, my youngest one --

18 Q How old is she?

19 A Eleven.

20 Q Okay.

21 A They were outside playing. They had been out  
22 there, I guess, maybe ten minutes whenever she come  
23 running through the back door and screamed that Sheila's  
24 house was on fire.

25 Q And what did you do at that point?

1           A       I jumped up from the chair, and she was right  
2 behind me because it's a long room, the den area and  
3 dining room is together and she was right behind me; and  
4 we hit the screen door about the same time, and I just run  
5 out the front door.

6           Q       She said Sheila's house was on fire; is that  
7 correct?

8           A       Yes.

9           Q       Who is that?

10          A       Mrs. Daniels, sir, that lives right next door  
11 to us.

12          Q       In fact, her house was not on fire, though; is  
13 that correct?

14          A       That's right.

15          Q       At what point did you find that out?

16          A       When we got out to the front of the house, when  
17 we opened the front door.

18          Q       Did you go out the front door in a hurry?

19          A       Yes, in a run.

20          Q       Would you say you banged the door on the way  
21 out?

22          A       Yes, it was a screen door. Yes, it banged.

23          Q       Can you tell us what you first saw when you  
24 went out that door, when you ran out that door?

25          A       As soon as we got out the front door, I just



1 immediately looked and Cameron was on the front porch  
2 screaming, had started screaming whenever we come outside.

3 Q It that the same Cameron Todd Willingham  
4 present here in the courtroom today?

5 A Yes, sir.

6 MR. JACKSON: I would ask the record  
7 reflect the witness has identified the defendant.

8 THE COURT: Record will so reflect.

9 BY MR. JACKSON:

10 Q Let me ask you something, Mrs. Barbe: Had you  
11 heard any calls or screams from Mr. Willingham before you  
12 ran out the front door?

13 A No, sir.

14 Q Can you describe then what you saw when you ran  
15 out the front door?

16 A He was on the front porch and he had both arms  
17 crossed like this and he was crouched down screaming,  
18 hollering.

19 Q Okay. When did he start screaming?

20 A When we come outside.

21 Q Okay. So he had not been screaming before that  
22 point?

23 A I had not heard any screams, and my daughter --  
24 two daughter's and their two friends were in the backyard,  
25 and they heard no screaming. Until she run -- we went out

1 in the front yard, we didn't hearing any hollering.

2 Q When you say he was crouched down, where was he  
3 crouched down?

4 A In front of his front door, facing his front  
5 door on his front porch?

6 Q Was the house engulfed in flames at that point?

7 A No, sir.

8 Q Could you describe the condition of the house  
9 for me?

10 A There was smoke coming out.

11 Q What did the smoke look like?

12 A It wasn't real dark at that point. It was  
13 coming out the -- of course, whenever I looked over there,  
14 I was facing, you know, the side and the porch. It was  
15 coming out the front windows and the front door and the  
16 side windows of the front room. And it was coming down  
17 low. It wasn't a high smoke. It was low.

18 Q Coming from a low point in the house?

19 A Uh-huh.

20 Q At that point did you determine whether Mr.  
21 Willingham was injured or not?

22 A Not at that time. I didn't -- all he did was  
23 holler that, you know, the house was on fire and that the  
24 babies was in the house, and my kids, the three girls  
25 were, you know, was out there. Then I told them, I said,

1 "You stay here." I turned back around to go into the  
2 house when I realized that the phone wasn't working, and I  
3 just told mother, I said, "The babies are in the house.  
4 The house is on fire." I turned back around, just ran  
5 outside, started running.

6 Q Let me back up a little bit. Before we go  
7 further, based on your observation, did Mr. Willingham  
8 appear to be overcome by smoke, or was he coughing at that  
9 point?

10 A Well, I wasn't up close to him. I didn't see  
11 him coughing. He was hollering.

12 Q Okay. Tell us what you did next.

13 A I ran back out the front door, told the kids to  
14 stay in the yard, stay there until I got back. I ran down  
15 the street until I found somebody to call 911.

16 Q Who did you finally find to call?

17 A It was on the next block about three doors  
18 down. I think they was finally -- they said they called.  
19 So I don't know what call that was that come into it  
20 but --

21 Q But how long would you estimate it took you to  
22 go down to the neighbor's house to call 911?

23 A Well four, five, six minutes.

24 Q Is that the time it would have taken you to go,  
25 or to go and come back?

1           A       Go and come back, yes. I was -- I've lost some  
2 weight. I've lost about 80 pounds. So, you know, it's  
3 harder to run and get somewhere when you are real heavy,  
4 you know, but I was going as fast I could and I was real  
5 upset, too, you know, and everybody around our house, our  
6 neighborhood, they were -- they all work or gone. You  
7 know, it was down the street before I could find anybody  
8 to call.

9           Q       Tell us what you did when you got back to the  
10 house that was on fire?

11          A       As soon as I ran back up to our house, Cameron  
12 ran and met me about where my fence was and --

13          Q       What did he do or say at that point?

14          A       I asked him where the babies was. I tried to  
15 get him to come into my house because I didn't know -- I  
16 know when you are in shock and stuff, it can be critical.  
17 I didn't know how badly he was hurt or anything; and he  
18 was hysterical, hollering and all. I tried to ask him  
19 where the kids was and to get him to come in my house  
20 because I didn't know, you know, how bad it was, how badly  
21 hurt he was.

22          Q       What was the condition of the house next door  
23 at that time?

24          A       Still a lot of smoke coming out, just the  
25 front.

1 Q Were you concerned about the children in the  
2 house?

3 A I was hysterical. I was -- I got three  
4 daughters myself.

5 Q Did you or anybody else ask Cameron to go back  
6 in the house or get the babies?

7 A My daughter, that's all they were hollering.  
8 That's all they were hollering, screaming, "Go back in and  
9 get them."

10 Q Did he make any response?

11 A No.

12 Q Did he go in the house with you?

13 A Did he go in my house? No, sir, I could not  
14 get him to.

15 Q What did he do?

16 A Well, I asked him, I said, "Where are the  
17 babies?" He said that Amber had woke him up, and the  
18 house was full of smoke. She jumped off the bed. He  
19 couldn't find her, and he run out.

20 Q Did he say where he ran out?

21 A Run out back is what he told me, ran out back.

22 Q He told you he ran out the back?

23 A Out back.

24 Q Okay. Tell us what happened next, Mrs. Barbe?

25 A Well, the house was still smoking bad and my

1 oldest daughter was out screaming for him to go back in,  
2 and he had gone back over to the house several times. We  
3 couldn't get him to do anything, couldn't get him to go in  
4 the house or anything. The fire truck still wasn't there.

5 Q Was the back of his house involved in any  
6 flames or smoke?

7 A No, sir.

8 Q Just the front?

9 A That's all I could see coming out the front  
10 room and the front door.

11 Q All right. I want you to continue in  
12 chronological order just as you remember then you couldn't  
13 get him to go back in the house?

14 A So Mr. Long down the street, the other end of  
15 the street, had heard all the hollering and stuff. I seen  
16 him come out in the middle of the street, and he run down  
17 there and talked to Cameron, and it was about that time, I  
18 think, that the house erupted in fire. It blew up, blew  
19 out. I was -- I had been talking to him whenever I seen  
20 that, you know. I couldn't tell where the kids was when  
21 me and my oldest daughter -- I was in Mrs. Daniels' yard.  
22 She was in the street, and we started running back up  
23 toward the house when it blew up.

24 Q Why were you running back toward the house?

25 A Well, I was going to try to see if I could get

1 in or, you know, see if we could see where the kids was.  
2 I didn't know the kids room had been moved. I still  
3 thought that their room was across, and that was the  
4 living room where all the flames was. I didn't know they  
5 had moved their rooms.

6 Then, let's see, when it blew up, of course, I  
7 knew there wasn't anything we could do. It was just, you  
8 know, it was totally engulfed in that front room and --

9 Q You understood that you could not get in the  
10 house at that point when the fire actually broke out?

11 A No. The heat was so intense. I just -- I was  
12 in the middle of Mrs. Daniels' yard, it just met me.

13 Q Just to clear it up, where is Mrs. Daniels'  
14 house?

15 A In the middle of our houses.

16 Q Mrs. Daniels' house is between your house and  
17 Willingham house, right?

18 A Right.

19 Q All right. Mrs. Barbe, tell us what you  
20 remember after the fire ignited in flames?

21 A Well, Cameron hollered about his car; and he  
22 run and pushed it back.

23 Q Did he start the car up?

24 A No. He pushed it back. I guess you have to  
25 put it out of gear to push it back. He pushed it back

1 maybe five or eight feet, not far. It was up by the tree  
2 right by the house. He pushed it back down in the  
3 driveway.

4 Q He was concerned about his car?

5 A Well, he pushed it back.

6 Q Did he ever go back in the house at any time  
7 you were present before the fire broke out?

8 A No.

9 Q Can you tell us how Cameron Willingham was  
10 dressed during these events?

11 A He had on a pair of britches. That's all.

12 Q Did he have on any shoes?

13 A No, sir.

14 Q No shirt?

15 A No.

16 Q No socks?

17 A No socks.

18 Q Did he have any injuries to his feet?

19 A No.

20 Q Did you have an opportunity to look at him to  
21 see later to see if he had any significant injuries?

22 A I had my arms around him one time trying --  
23 whenever I was trying to get him into the house and to  
24 find out where the kids was, and his hands had black all  
25 on his arms and some on his back and his eye lashes and



1 the top of his hair was singed was all that I seen. I  
2 couldn't tell. You know, I couldn't tell.

3 Q Did he have any actual burns that you could  
4 tell?

5 A I didn't see any, but his arms was black.

6 Q What did Todd Willingham do after he moved his  
7 car?

8 A He went across and sat in front of Mrs.  
9 Arnett's house right across the street from their house.  
10 That was about the time that the ambulances and fire  
11 trucks and police cars was all pulling up out there.

12 Q Do you have any idea how long it was from the  
13 time Buffy first told you about the smoke and you ran out  
14 in the yard until the time the fire actually broke out?

15 A Well, I would say it wasn't any more than ten  
16 minutes, if they were out there that long; and I think the  
17 fire trucks got there at 10:26.

18 Q What did you do at that time, Mrs. Barbe?

19 A When fire trucks got there?

20 A Yes, ma'am.

21 Q Well, I was hysterical and we finally got two  
22 paramedics to get Cameron, and they couldn't get him to  
23 the ambulance. He went and sat on the back of the big  
24 fire truck that was right in front of their house and --

25 Q That was after he moved the car?

1 A This was when the first trucks got there.

2 Q Okay.

3 A And they was taking care of him, and they was  
4 trying to put out the fire.

5 Q Were you there when the defendant, Mr.  
6 Willingham, was taken to the hospital?

7 A Yes, sir.

8 Q When was the next time you saw him or came in  
9 contact with him after that?

10 A The next morning I seen him.

11 Q Was there anything that drew your attention to  
12 him the next morning?

13 A Well, it was -- I don't really know what time  
14 it was that morning, but I was in the kitchen and I was  
15 baking and, you know what boom boxes are? I don't know if  
16 that's the correct term for them, but any how, they go  
17 down the street all the time with these, kids, with these  
18 boom boxes.

19 Q Talking about a big radio?

20 A Yes, sir.

21 A And I was in there, I just thought one of the  
22 cars or something was -- well, it just kept getting louder  
23 and louder and I walked out of my kitchen, down into the  
24 den and you could feel the vibration of it coming off my  
25 walls, and I walked to the front door and looked out and

1       there were some people over at the house in front of the  
2       house.

3           Q       The burned house?

4           A       Yes.

5           Q       This was the next morning; is that correct?

6           A       Yes, sir.

7           Q       Who was there?

8           A       Cameron was there. I don't know who all was  
9       there. There was a small pick-up and another car out  
10      front. The little pick-up was parked partly in Sheila's  
11      driveway and partly in their driveway across it, and  
12      that's where the music was coming from, was from the  
13      little pick-up.

14          Q       I may have asked you that, but the defendant,  
15      Todd Willingham, was there?

16          A       Yes, he was.

17          Q       What was he doing?

18          A       They were out in the front yard talking.

19          Q       Mrs. Barbe, did you have an opportuntiy to see  
20      how they acted, what their attitude was like?

21          A       They were just all around talking in the front  
22      yard and whenever they seen me and the girls come outside  
23      they --

24                   MR. MARTIN: We object to this as  
25      nonresponsive.

1 MR. JACKSON: Let me back up and ask a  
2 question.

3 BY MR. JACKSON:

4 Q What happened when they saw you come out?

5 A When we went outside, they turned off the jam  
6 box or boom box.

7 Q Did the party get quieter after that?

8 MR. MARTIN: We object to that as a  
9 misstatement of the testimony and assumption of facts not  
10 in evidence.

11 THE COURT: I sustain the objection.  
12 Restate your question, Mr. Jackson.

13 BY MR. JACKSON:

14 Q Did the gathering get quieter after that, after  
15 they saw you?

16 A Yes, the music stopped.

17 Q Do you have any idea how long that went on out  
18 there that morning?

19 A How long they stayed?

20 Q Yes, ma'am.

21 A I didn't stay outside long, but the kids stayed  
22 outside. Cameron and some other people was with him.  
23 They was getting stuff out of the house.

24 Q Did you have an opportunity to see Cameron  
25 later on that day?

1 A That night.

2 Q Can you tell us how that came about?

3 A Well, Channel 5 come over to the house, I  
4 think, it was right at 6:00 o'clock that night. I seen  
5 them drive up, and it wasn't long afterwards that Stacy  
6 and Todd drove up, and they talked to Channel 5.

7 Q Did Mr. and Mrs. Willingham come to your house  
8 at any time during that period of time?

9 A After they got through with talking to them,  
10 they walked over.

11 Q Did you have an opportunity to talk with Mr.  
12 Willingham or Mrs. Willingham at that time, that point?

13 A Yes, sir. They come in, and that's the first  
14 time I had seen Stacy since it had happened.

15 Q What was Todd talking about to you at that  
16 time?

17 A Stacy sat down in the chair. I was trying to  
18 talk to her. She was crying, and I was trying to talk to  
19 Stacy; and Cameron was talking to us about the neighbor  
20 who had took up some money and what they had went and  
21 bought for Amber, what they had bought for Amber, and he  
22 told her that when I ran down the street was when he went  
23 back into the house.

24 Q You overheard Todd Willingham tell his wife  
25 that he went back into the house?

1 A Yes, sir.

2 Q To your knowledge did Todd Willingham ever go  
3 back in that house?

4 A Not while I was out there.

5 Q Do you have any reason to believe he ever went  
6 back in the house?

7 MR. MARTIN: We object to that as calling  
8 on the witness to speculate, Your Honor.

9 THE COURT: Restate your question, Mr.  
10 Jackson.

11 BY MR. JACKSON:

12 Q You've had an opportunity to speak with your  
13 daughters, I assume, about what happened when they were  
14 there?

15 A Yes, sir.

16 Q Did it surprise you that Todd Willingham told  
17 anyone he went back in the house?

18 A Yes, it did. My husband asked me why I didn't  
19 say something. I told him I couldn't.

20 Q Why couldn't you?

21 A Because Stacy had just lost them three babies.  
22 How could you tell somebody. She was devastated.

23 Q What was your reaction to hearing Todd say  
24 that?

25 A I couldn't believe he said it.

1 MR. JACKSON: Pass the witness.

2 CROSS-EXAMINATION

3 BY MR. MARTIN:

4 Q Mrs. Barbe, is it fair to say that during these  
5 events you described that you were hysterical?

6 A Yes, I was hysterical.

7 Q As was everybody else there?

8 A Yeah.

9 Q And it gets -- is that the first time you've  
10 ever been that close to a house on fire; is that correct?

11 A That close, yes.

12 Q And the first time you've ever been present  
13 when a house burned belonging to someone you knew?

14 A Yes.

15 Q Do you know what Mr. Willingham's wife calls  
16 him?

17 A I guess his name.

18 Q Do you know, though? That's my question.

19 A No, sir. I've always called him Cameron. I  
20 don't know.

21 Q But you don't know what Stacy referred to him  
22 as far as what she used for him?

23 A No.

24 Q You have not been in their home? ~~At~~I've been in  
25 that home but not since they -- I've been in that

1 backyard.

2 Q Would not consider yourself a close family  
3 friend of theirs?

4 A No, sir.

5 Q Let's try to get some perspective on what you  
6 are telling us here. If this is the Willingham home, Mrs.  
7 Daniels lives here and your home is here?

8 A Yes.

9 Q Your van is parked out here?

10 A Yes.

11 Q And there is a fence here; is that correct?

12 A And one in between my house and Mrs. Daniels  
13 house.

14 Q And the fence here, does it go behind your  
15 house?

16 A Yes, sir.

17 Q As well as behind the Willingham house?

18 A I believe it does. I know it does Sheila's. I  
19 don't know if it does theirs or not.

20 Q You told us that at some point during these  
21 events that Todd's car was parked -- was it parked here,  
22 about the corner of the house?

23 A The corner of the house. There's a tree that's  
24 about where they -- it was parked right by the tree. It's  
25 a small --



1 Q Front porch is out here, isn't it?

2 A Uh-huh.

3 Q And there's a tree here?

4 A Well, it's up by the porch.

5 Q Okay.

6 A Right next, right up next to the porch.

7 Q The car was parked about here?

8 A Uh-huh.

9 Q It was very close to the burning house?

10 A Uh-huh.

11 Q Originally? Is that right?

12 A It was up by the porch, yes.

13 Q Just like a foot or two from the porch,  
14 probably?

15 A Well, it was --

16 Q Very close at any rate?

17 A -- by the tree. I don't know how close the  
18 tree is. It's just right there.

19 Q Then Todd pushed the car back this way?

20 A Yes.

21 Q And when this happened, the house was burning,  
22 it was smoking; you could see it smoke; you knew it was on  
23 fire?

24 A You could see the smoke, yes.

25 Q Now, let me draw the front of the Willingham's

1 home here.

2  
3 (Attorney drawing on board).  
4

5 BY MR. MARTIN:

6 Q Is that pretty much the way it is?

7 A Uh-huh.

8 Q This is the front door here?

9 A Yeah.

10 Q And there is a window here, is there not?

11 A Is that facing the outside?

12 Q Yes. The street is out here.

13 A Yes.

14 Q In other words, this is the front porch here.

15 It's raised a foot or two out of the ground? You have to  
16 go up the steps to get on it?

17 A Yes.

18 Q And there are two windows and the front door on  
19 the front of the house on this side?

20 A And two on the side.

21 Q Okay. There's two on this side facing your  
22 house?

23 A Uh-huh, yes, sir.

24 Q And when you first came out of your house over  
25 here, you ran around here?

1 A Yes.

2 Q That's where you stopped; is that correct?

3 A Uh-huh.

4 Q At that point you saw Todd on the front porch  
5 of his house?

6 A Uh-huh.

7 Q And he was about here?

8 A Somewhere in that, right in the area of the  
9 front door.

10 Q He was crouched down?

11 A Yes.

12 Q Had his arms folded across his chest?

13 A Yes.

14 Q You thought he had been injured? He looked  
15 like he had been injured?

16 A (Nodding head affirmatively)

17 Q Was that your first thought?

18 A Yes. The house was on fire. I mean, the house  
19 was smoking. He was hollering. He was screaming the  
20 babies was in there.

21 Q You saw smoke coming out from around the front  
22 window?

23 A Come out the front door, down the windows, on  
24 the side windows.

25 Q Smoke was coming out the side of the house,

1 over here, right?

2 A Uh-huh.

3 Q Smoke was coming out the front door?

4 A Uh-huh.

5 Q But you don't know whether the front door was  
6 opened or closed?

7 A No, because I didn't run over there.

8 Q You never got over here in front of the house?

9 A My kids did. I did not.

10 Q But my question to you is that you don't know  
11 whether the front door was open or closed at this time?

12 A No. The girls said it was open.

13 MR. MARTIN: I object to that. That's  
14 not responsive and hearsay.

15 THE COURT: I sustain the objection.

16 MR. MARTIN: Request the jury to be  
17 instructed to disregard.

18 THE COURT: The jury panel is so  
19 instructed.

20 BY MR. MARTIN:

21 Q Mrs. Barbe, I am interested in only what you  
22 know, okay?

23 A Uh-huh.

24 Q If you will, just answer those questions.

25 And so you saw smoke coming out the front door?

1 A Uh-huh.

2 Q But don't know whether it was open or shut?

3 A Right.

4 Q Now, is it fair to say that this area here was  
5 smoking?

6 A Yes it was smoking.

7 Q Would you describe it as being filled with  
8 smoke?

9 A When I first come out, it was smoking; but it  
10 wasn't a black smoke.

11 Q Like a gray smoke?

12 A It was grayish, but it had not gotten black  
13 like it did right before it busted into flames.

14 Q But you did not, at any time when you were out  
15 there before it burst into flames, see any actual fire on  
16 the front of the house, did you?

17 A I didn't see any at first. I just seen the  
18 smoke.

19 Q And that was just coming out of the windows and  
20 the doors as I've indicated?

21 A Yes.

22 Q But no fire?

23 A Huh-uh.

24 Q And you didn't see any flames until, as you  
25 described, the house burst into flames?

1 A That's right.

2 Q And that was about two minutes before the fire  
3 department arrived?

4 A Yes, sir, approximately.

5 Q And then at that time you described something  
6 similar to an explosion?

7 A Well, when we was running back up toward the  
8 house, it just busted out.

9 Q Did the windows break out?

10 A The windows, the electricity started crackling  
11 and popping, and the top of the -- well, I was facing the  
12 side of the house, and it just blew out. The flames just  
13 blew out.

14 Q Did you first see flames coming out of windows?

15 A Well, I was -- yeah, I seen them coming out of  
16 windows and the top. You know, I mean, it's just busted  
17 out.

18 Q Yes, ma'am.

19 A All the windows and the front room was  
20 engulfed. I guess what I'm trying to say, it was just  
21 engulfed.

22 Q So, the flames you saw when you did see them  
23 came out of these windows and these windows over here on  
24 the side?

25 A Yes, sir. I was facing the side windows; and,

1       you know, that's what I remember seeing. It's just coming  
2       up at me.

3               Q       Yes, ma'am. And where were you when this  
4       happened?

5               A       I was in the middle of Mrs. Daniels' yard and  
6       Brandy was in the middle of the street. We was running up  
7       back toward the house.

8               Q       Okay. Is it fair to say that at any time  
9       during all of this, did you ever come into the middle of  
10      the yard or in front of the house?

11              A       I did not.

12              Q       Did you stay beside the house; is that correct?

13              A       Yes.

14              Q       So, what we have is the benefit of your vantage  
15      point from about here; is that right?

16              A       I was in Sheila's yard, about the middle of  
17      Sheila's yard.

18              Q       So, the events that you described were viewed  
19      from over here; is that correct?

20              A       About there.

21              Q       Now when your daughter, Buffy, ran in the back  
22      door and ran through the house here, you went out the  
23      front door initially went to about here, you say?

24              A       That's where.

25              Q       Then Todd, was he screaming, "My babies are

1 burning up"?

2 A Yes, that's what he was hollering: "My babies  
3 are burning."

4 Q He appeared to be hysterical?

5 A Yes.

6 Q Do he tell you to dial 911?

7 A Yes. He hold me to go call 911.

8 Q That's why you went to do it?

9 A Yes.

10 Q It was Todd that asked you to do so, scream it,  
11 rather?

12 A Uh-huh.

13 Q And you were in such a state of confusion that  
14 first you ran back into your own house?

15 A Yes, I forgot the telephone, you know, wasn't  
16 working.

17 Q How long had it not been working?

18 A That morning it was working. You couldn't  
19 hear. There was water in the lines. It had rained so  
20 much.

21 Q You had forgotten that in your state of  
22 excitement?

23 A Yeah. I just, you know --

24 Q -- ran into the house. Did you actually go to  
25 your phone and pick it up?



1           A       Whenever I got in front door, mother said, "The  
2 phone is not working."

3           Q       Your mother's there with you?

4           A       She had broken her foot.

5           Q       You had been taking care of her?

6           A       Yes.

7           Q       How many children did you have in the house at  
8 that time?

9           A       We had four sleep-overs and keep five. There  
10 was nine to ten kids there at the house.

11          Q       And did all ten of those children, had they  
12 been there all night?

13          A       No. Four sleep-overs.

14          Q       And when did the other six arrive?

15          A       That morning.

16          Q       About what time?

17          A       About 7:00, 8:00.

18          Q       Are those children that you care for in your  
19 home?

20          A       Uh-huh, some of them.

21          Q       So, at the time that all this happened, you had  
22 ten children in the home with you?

23          A       Uh-huh.

24          Q       Your mother with a broken foot?

25          A       Uh-huh, that's right.

1 Q Now, after you went to this location and Todd  
2 was on the porch, he asked you to call 911 --

3 A Uh-huh.

4 Q -- did he not? Then you ran to your house,  
5 forgot your phone was out of order, then you came back and  
6 ran this way down the street?

7 A That's right.

8 Q You went down there about a block or so?

9 A No. Let's see, in the middle of the next block  
10 is where they finally called.

11 Q And were you just running down the street  
12 screaming for someone to call 911?

13 A Yes. Everybody works around there. They are  
14 gone.

15 Q Yes, ma'am.

16 A And several people, several of them doesn't  
17 have phones so --

18 Q So, finally --

19 A Kim came out of their house. She hollered and  
20 asked me what was happening. I told her, I said, "The  
21 house up here is burning. The babies are in there."

22 Q Then after you had done that, you ran back to  
23 about here, the middle of Sheila's yard?

24 A Yes, the fence between my yard. The fence.

25 Q Ran over here. Is that about where you

1 remained for the duration?

2 A You got the wrong fence. My fence, mine and  
3 Sheila's fence. That's where Cameron run down and met me  
4 whenever I come back up the street.

5 Q Over to your fence?

6 A Yeah.

7 Q Here?

8 A Uh-huh.

9 Q And Cameron ran from the porch and met you  
10 here?

11 A Uh-huh.

12 Q And is that where you tried to talk him into  
13 going back into your house?

14 A Yes, it is.

15 Q And he wouldn't do so?

16 A No.

17 Q He was hysterical from all --

18 A Yes, he was.

19 Q He went back into his front yard, somewhere in  
20 that area?

21 A Several times.

22 Q Running back and forth?

23 A Yes.

24 Q Obviously excited?

25 A Yes.

1 Q About as excited or more so than you were?

2 A Well, yeah, I would say we was both excited.

3 Q Now, you didn't go into the burning house,  
4 obviously?

5 A No, sir. It looked to you as if you could not  
6 get in. It was burning.

7 A Whenever the flames burst out? Is that what  
8 you are talking about or at any time?

9 A Yeah, it was smoking bad.

10 Q All right. Smoking bad the first time you saw  
11 it?

12 A No. When I first come out, it wasn't then. I  
13 mean, it was smoking; but it was getting worse as the time  
14 went on. But, I mean, we are talking about, like, ten  
15 minutes here, in ten minutes' time.

16 Q Okay. You think the whole affair from the time  
17 you went outside until when was about ten minutes?

18 A Well, I would say Buffy come in maybe by ten  
19 after 10:00. She wasn't out there maybe ten minutes  
20 whenever, you know, she came back through there; and they  
21 got there at 10:26. That's what? 13, 14 minutes?

22 Q And it was your daughter who was in your back  
23 door that first noticed the smoke?

24 A Yes.

25 Q Do you remember what she said when she came

1 running through the house?

2 A Yes, sir.

3 Q "Sheila's house is on fire"?

4 A Uh-huh.

5 Q And who was caring for these ten children in  
6 your home while this was happening?

7 A My daughter, Brandy, which is 17, and my mother  
8 and me. Four of them was sleep-overs. They were big  
9 kids.

10 Q Now, you talked about the next morning you  
11 heard a loud radio in the yard?

12 A Yes, sir.

13 Q And was that coming from somebody's car?

14 A Little truck.

15 Q Little pick-up?

16 A Uh-huh.

17 Q It was not Todd's pick-up, though, as far as  
18 you know?

19 A No. His car was over in the yard.

20 Q Okay. It was somebody else's pick-up playing  
21 the music; is that correct?

22 A Uh-huh, right.

23 MR. MARTIN: Pass the witness.

24 REDIRECT EXAMINATION

25 BY MR. JACKSON:

1 Q Mrs. Barbe, you've talked about electricity  
2 popping. At what point did you first hear the electricity  
3 popping?

4 A When it engulfed the house, when the fire broke  
5 out.

6 Q When the flames engulfed the house?

7 A Yes. It started, you know, cracking and  
8 sparking, all that.

9 Q Had you heard any electrical noises before  
10 that?

11 A No.

12 Q I will show you what's been marked State's  
13 Exhibit No. 1. Just to get an accurate photograph of what  
14 the house looked like, would you take a look at that and  
15 identify it for me, if you can?

16 A That's Cameron and Stacy's house.

17 Q Is that an accurate representation of the house  
18 that you testified about that was smoking and caught fire?

19 A Yes, sir.

20 MR. JACKSON: I offer this as State's  
21 Exhibit 1.

22 MR. MARTIN: No objection.

23 THE COURT: It's admitted.

24 BY MR. JACKSON:

25 Q When you had an opportunity to see Cameron the

1 next day, could you tell that he had no serious injuries?

2 A I didn't see any.

3 Q Did he act like he had any serious injuries?

4 A No.

5 Q Have any bandages or anything like that at any  
6 point on his body?

7 A No. He had on a sweater, britches and shoes  
8 and socks.

9 Q Do you have any idea how long that house had  
10 been on fire when Buffy first smelled smoke and came into  
11 the house?

12 A She went outside at 10:00 o'clock, and she  
13 smelled the smoke when she went outside, first went  
14 outside.

15 Q At 10:00 o'clock?

16 A Yes, sir. But she thought -- what she told me,  
17 I know, which is hearsay. I won't --

18 Q Do you know it was 10:00 o'clock when she went  
19 outside.

20 A It was 10:00 o'clock.

21 Q It was about ten minutes after 10:00 o'clock,  
22 then, when you first came out through the door, at least?

23 A Yeah. I don't know if they had really been out  
24 there that long before she looked up. You know how kids  
25 are when they get to playing. They don't think about

1 anything, and she didn't bother even to look until she --

2 Q You had not heard a cry for help during that  
3 time period?

4 A No, sir, I did not.

5 Q You did not hear a cry for help until you  
6 hurriedly went out the front door?

7 A Until we went out the screen door, yes, sir.

8 Q Was Stacy Willingham, the wife, at home at this  
9 time to your knowledge?

10 A No, sir, she wasn't.

11 MR. JACKSON: Pass the witness.

12 RECROSS-EXAMINATION

13 BY MR. MARTIN:

14 Q Now, Mrs. Barbe, before you went outside, you  
15 were in your home watching television with ten children?

16 A Uh-huh, six.

17 Q Six children?

18 A There was four outside.

19 Q And you believe that Buffy, your youngest  
20 daughter, had been outside smelling smoke for about ten  
21 minutes before she came in and alarmed you?

22 A Uh-huh.

23 MR. MARTIN: Pass the witness.

24 MR. JACKSON: I have no further  
25 questions.



1 THE COURT: You may step down.

2 Call your next witness, Mr. Jackson.

3 MR. JACKSON: State calls Brandy Barbe.

4 THE COURT: Come forward, please.

5 You were sworn earlier?

6 THE WITNESS: Yes.

7 THE COURT: Take your seat in the witness  
8 chair.

9 MR. JACKSON: May I proceed, Your Honor?

10 THE COURT: Yes, sir, you may.

11 BRANDY BARBE,

12 After having been called as a witness by the State and  
13 after having been first duly sworn to tell the truth, the  
14 whole truth, and nothing but the truth, the witness  
15 testified on her oath as follows:

16 DIRECT EXAMINATION

17 BY MR. JACKSON:

18 Q Would you state your name for the record,  
19 please?

20 A Brandy Barbe.

21 Q And where do you live?

22 A At 1205 West 11th.

23 Q About how long have you lived there?

24 A About 12 or 13 years.

25 Q I believe you are the daughter of Diane Barbe;

1 is that correct?

2 A Uh-huh.

3 Q You were living on 11th Avenue, I believe, back  
4 in December of last year; is that correct?

5 A Uh-huh.

6 Q Let me direct your attention to the 23rd of  
7 December of last year, two days before Christmas. Do you  
8 remember that day?

9 A Yes, sir.

10 Q Let me direct your attention to the mid-morning  
11 hours of that day. Can you tell me, in your own words,  
12 what you remember about the events that took place shortly  
13 after 10:00 o'clock that morning?

14 A After 10:00? Well, I heard my mom come back in  
15 the house screaming that there was a fire and that the  
16 babies were burning up. I had just gotten out of the  
17 shower. I threw something on, and I ran out there in the  
18 street.

19 Q Can you tell me what you saw when you got out  
20 in the street?

21 A Todd was standing in the yard when I got out  
22 there.

23 Q Can you tell us or describe for us what part of  
24 the yard he was standing in?

25 A He was standing by a tree. It was right by the

1 driveway.

2 Q And what was he doing when you first saw him?

3 A He was screaming that there was a fire, that  
4 his babies were burning and for someone to help him, to  
5 call 911.

6 Q What did you do at that point?

7 A I was screaming for him to go back in the house  
8 and get the babies or tell somebody where the babies were,  
9 and my little sister was with me. I told her to go to the  
10 house next to his and call 911.

11 Q Did he ever make an attempt to go back in the  
12 house when you asked him to go back in?

13 A Not that I seen.

14 Q Did he ever go back or attempt to go back in  
15 the house while you were there?

16 A Not that I seen.

17 Q Can you describe what happened after you asked  
18 him to go back in the house?

19 A Well, he was screaming about the car a little  
20 while later and told someone to help him move it out of  
21 the driveway. The next thing I seen, he went across the  
22 street and sat down on the curb.

23 Q Were you there present while your mother was  
24 going down the street to try to get help?

25 A Uh-huh. That's when I run down towards his

1 house.

2 Q All right. And about how long did you stay  
3 there outside the premises of his house?

4 A I was there until the fire trucks got there.

5 Q All right. And you, at no time, saw him try to  
6 go back in the house?

7 A No.

8 Q Was he coughing during this time period?

9 A No.

10 Q Did you see him move his car?

11 A Yes.

12 Q Did he seem concerned about his car?

13 A Yes.

14 Q After the fire department got there, did he  
15 try -- what did Todd Willingham do?

16 A Well, he was still screaming about the babies,  
17 and by that time I had left.

18 Q Were you acquainted with Cameron Todd  
19 Willingham and his wife, Stacy?

20 A Well, I knew that they lived next door. I  
21 never really talked to them.

22 Q Did you later have an opportunity to go to the  
23 hospital?

24 A Yes.

25 Q Can you tell us how you happened to go to the

1 hospital?

2 A Well, one of my friends, Stephanie, she babysat  
3 on Tuesday nights with Amy O'Shay, and she was hysterical.  
4 She couldn't believe the fire had happened and everything.  
5 She asked me to take her out there. I took her out there.

6 Q What did you do when you got to the hospital?

7 A We found out where his room was and went up to  
8 his room.

9 Q Did you have an opportunity to see him when you  
10 got to the room?

11 A Yes.

12 Q Can you describe him when you walked into the  
13 room?

14 A Well, when we first walked in, he was on the  
15 phone talking about caskets and --

16 Q For the babies?

17 A Uh-huh, I believe so.

18 Q You overheard him making funeral arrangements?

19 A Well, that's what it sounded like.

20 Q This was how long after the fire?

21 A It was probably about 2:30 or 3:00 that day.

22 Q Fire was at 10:10, and this was about 2:30?

23 A Uh-huh.

24 Q What did he look like. Did he have any  
25 injuries?

1           A       Well, his eye lashes and eye brows was singed,  
2           but other than that, I didn't see anything wrong with him.

3           Q       Did he make any request of you or Stephanie at  
4           this time?

5           A       Well, we went downstairs, and then Stephanie  
6           said, "Well, let me call back up there to see if they want  
7           anything to eat." When she called up there, they wanted  
8           us to go --

9                   MR. MARTIN: We object to hearsay or  
10           speculation if she wasn't the party to the phone call, and  
11           she obviously wasn't.

12                   MR. JACKSON: I will rephrase my  
13           question.

14                   THE COURT: All right, sir.

15                   MR. JACKSON: Based on a request from Mr.  
16           Willingham's room, what did you do at that point?

17                   MR. MARTIN: Your Honor, we object to  
18           that as getting hearsay through the back door. It's  
19           assuming facts not in evidence.

20                   MR. JACKSON: I'm not asking for any  
21           hearsay.

22                   THE COURT: Overrule the objection.

23           BY MR. JACKSON:

24           Q       What did you do at that point?

25           A       We went to Jack in the Box and got some food

1 and then we came back to the hospital and I dropped  
2 Stephanie off and she took the food up to the room. I did  
3 not go back in.

4 Q Were you upset at this point?

5 A Yes, I was upset.

6 Q Why were you upset?

7 A Well, I couldn't believe that somebody would  
8 even think about eating after his babies had just burned  
9 up.

10 Q Did Todd make any comments about the babies?

11 A Like that day?

12 Q While you were there at the hospital?

13 A I didn't really talk to him.

14 Q Did he seem overcome with emotion when you saw  
15 him?

16 MR. MARTIN: We object to that as  
17 leading.

18 MR. JACKSON: It's an observation, Your  
19 Honor.

20 THE COURT: I overrule the objection.

21 MR. JACKSON: You can answer.

22 THE WITNESS: What was the question?

23 BY MR. JACKSON:

24 Q Was he upset in the room when you saw him?

25 A He wasn't crying or anything.

MR. JACKSON: Pass the witness.

CROSS-EXAMINATION

BY MR. MARTIN:

Q Miss Barbe, you have never lost a family member in a fire, have you?

A No.

Q Never lost a close family member, have you, to accident or death?

A I lost my grandmother, my great grandmother.

Q But you weren't in --

A I was small. I hardly remember it.

Q So, my point is that this is the first time you've ever been around someone who has lost children in a fire or an accident; isn't that correct?

A Yes.

Q And so you wouldn't know typically how people would respond to that, would you?

A No.

Q You were not a party to the conversation that Amy O'Shay had with Todd in the hospital when she talked to Todd, were you?

A No.

Q Don't know what was said during that conversation?

A No.



1 Q Now, did I understand you to say that you ran  
2 out of the house and ran to where?

3 A Toward his house.

4 Q And how far did you get? If this is your  
5 house, that's Mrs. Daniels, that's the Willingham house,  
6 how far?

7 A I was right beside him, where the small tree  
8 is.

9 Q Did you go on this side of the fence between  
10 the Daniels?

11 A I went past the fence.

12 Q You went over here to the tree?

13 A Yes.

14 Q May I see that? Thank you.

15 And is the tree you are describing shown in this  
16 picture?

17 A Yes.

18 Q Which tree is it?

19 A That one right there.

20 Q Can you tell us about how far out from the  
21 house that tree is into the yard?

22 A I'm not sure.

23 Q It's not as far as from you to me, is it?

24 A Not quite that far.

25 Q Is it about as far as you are from that table

1 there?

2 A It's a little bit more. It's about to me to  
3 the chair.

4 Q To this chair?

5 A Uh-huh.

6 Q About 15 feet or so, you think? However far  
7 that is?

8 A If that's 15 feet.

9 Q All right. And there is another tree up closer  
10 to the house?

11 A I think there is one beside their house, and  
12 there was one in front of it; but it's been cut down.

13 Q Was the tree that you are talking about behind  
14 the car?

15 A No.

16 Q Was it in front of the car?

17 A It was on the side of the car. It was in front  
18 of it.

19 Q So, the car at first was parked about where the  
20 tree was?

21 A A little bit up more than the tree was.

22 Q You ran to that tree?

23 A Uh-huh. He was standing beside it.

24 Q Okay. And this was after your mother had run  
25 back down the street the other direction?

1 A She was down the street.

2 Q Now, were you there to see Todd break these  
3 windows out the front of the house?

4 A No.

5 Q Had that already happened?

6 A I didn't even know about it.

7 Q You never saw that?

8 A I never seen that.

9 Q And when you came out, were the windows broken  
10 out on the front of the house?

11 A I don't know. I never looked at the house.

12 Q You just looked at him?

13 A I was -- yes, I was looking at him.

14 Q You were telling him to go back in the house?

15 A Yes.

16 Q But you didn't go back in the house?

17 A No.

18 Q Nor try to go into the house?

19 A No.

20 Q Nor do you know --

21 A We made an attempt. We was running towards the  
22 house, me and my mother, we was fixing to go and try to  
23 get in, and that's when it was an explosion, the  
24 electricity and everything.

25 Q You and your mother did this?

1           A       Well, we was on our way. We was in Mrs.  
2 Daniels' yard, and we was running up towards the house.

3           Q       Was this after the time you had first gone out  
4 there and talked to Todd?

5           A       Uh-huh.

6           Q       So, you had been out there talking to him, then  
7 you went back?

8           A       I didn't talk to him. I was pleading with him  
9 to go back in the house.

10          Q       But you didn't go in?

11          A       No.

12          Q       Because the house was smoking?

13          A       It was smoking.

14          Q       You could tell it was on fire?

15          A       I didn't see any flames but --

16          Q       But you did not feel it safe for you to go into  
17 the house, did you?

18          A       No.

19          Q       Because it was smoking?

20          A       Uh-huh.

21          Q       Because you recognized that it was on fire, but  
22 you didn't know how extensive the fire was inside, did  
23 you?

24          A       No.

25          Q       And from your vantage point here, you couldn't

1 see down the hallway here, could you?

2 A No.

3 Q But you saw smoke coming out the front door and  
4 the front windows and the window on the side of the house?

5 A Yes.

6 MR. MARTIN: Pass the witness.

7 REDIRECT EXAMINATION

8 BY MR. JACKSON:

9 Q Were you present the next night when the  
10 Willinghams were at your house?

11 A Yes.

12 Q You mentioned something in one of your  
13 statements. Let me ask you about it.

14 MR. MARTIN: Your Honor, we object to  
15 improper attempt to bolster the witness.

16 THE COURT: Overrule the objection.

17 MR. JACKSON: I'm not bolstering the  
18 witness.

19 BY MR. JACKSON:

20 Q Did he make a statement about the babies  
21 walking in the hands of the Lord?

22 MR. MARTIN: Your Honor, we object to  
23 that as leading.

24 THE COURT: I sustain the objection.

25 MR. JACKSON: Let me reask it.

1 BY MR. JACKSON:

2 Q Did you remember him making a statement about  
3 the babies?

4 A He said something like that.

5 Q You didn't know where the children were in the  
6 house, did you?

7 A No.

8 Q The rear of the house was not involved in smoke  
9 and flames, was it?

10 A No.

11 Q Did it seem strange to you that Todd Willingham  
12 wouldn't go back in the house to try to rescue his own  
13 children?

14 MR. MARTIN: Your Honor, we object to  
15 that as leading.

16 MR. JACKSON: That's not leading, Your  
17 Honor.

18 THE COURT: I overrule the objection.

19 MR. MARTIN: It also calls on the witness  
20 to speculate.

21 THE COURT: I overrule the objection.

22 BY MR. JACKSON:

23 Q Did it seem strange to you?

24 A At the time I didn't think about anything; but  
25 after awhile I started thinking about it, yes.

1 MR. JACKSON: Pass the witness.

2 RECROSS-EXAMINATION

3 BY MR. MARTIN:

4 Q Well, Miss Barbe, did it seem strange to you  
5 that you didn't go rushing into a smoking house? That  
6 wasn't peculiar to you, was it?

7 A No.

8 MR. MARTIN: Pass the witness.

9 FURTHER DIRECT EXAMINATION

10 BY MR. JACKSON:

11 Q You think if you had children, you might have  
12 gone into a smoking house?

13 MR. MARTIN: We object to this as calling  
14 on the witness --

15 THE COURT: I sustain the objection.

16 MR. JACKSON: Pass the witness.

17 MR. MARTIN: Nothing further, Your Honor.

18 THE COURT: You may step down.

19 Members of the jury panel, we are going to take about  
20 five or ten minutes.

21  
22 (Recess)

23  
24 THE COURT: Call your next witness, Mr.  
25 Jackson.

1 MR. JACKSON: State calls Buffy Barbe.

2 THE COURT: Come forward, please.

3 You were sworn earlier, weren't you?

4 THE WITNESS: Yes.

5 THE COURT: Take your seat there in the  
6 witness chair.

7 MR. JACKSON: May I proceed, Your Honor?

8 THE COURT: You may.

9 BUFFY BARBE,

10 After having been called as a witness by the State and  
11 after having been first duly sworn to tell the truth, the  
12 whole truth, and nothing but the truth, the witness  
13 testified on Her oath as follows:

14 DIRECT EXAMINATION

15 BY MR. JACKSON:

16 Q Buffy, you may have to speak into this  
17 microphone so that people can hear what you say. The jury  
18 has to hear what you say. This lady has to hear what you  
19 say so she can write it down. Understand?

20 Would you tell us your name?

21 A My name is Buffy Barbe.

22 Q Buffy, I believe you are the daughter of Diane  
23 Barbe; is that correct?

24 A Yes.

25 Q Where do you live?



1 A 1205 West 11th.

2 Q Let me ask you to remember something for me.  
3 First of all, how old are you?

4 A Eleven.

5 Q Okay. Let me ask you to remember back to two  
6 days before Christmas. Do you remember then?

7 A Yes.

8 Q Well, do you remember the house catching on  
9 fire two doors down from you?

10 A Yes.

11 Q All right. Can you tell us what happened in  
12 your own words on that date?

13 A Yes.

14 Q Okay.

15 A My sister and me went out back to play, and we  
16 had a friend, and we were playing, listening to the radio  
17 and I smelled smoke. So it didn't really bother me the  
18 first time. Then I saw it, and then I said, "Oh, my God,  
19 the house is on fire." So I ran in and said, "Sheila's  
20 house is on fire" because there was so much smoke you  
21 couldn't tell which house it was. Me and my mom ran out  
22 the front door at the same time. And when we ran out the  
23 front door, he started hollering.

24 Q Had you heard him hollering before then?

25 A No, sir.

1 Q You had been outside, hadn't you?

2 A Uh-huh.

3 Q Can you tell us what you did after you saw him?

4 A Well, he went to Mrs. Daniels' yard to the  
5 driveway and --

6 Q When we are talking about him, I assume you are  
7 talking about Mr. Willingham?

8 A Cameron.

9 Q Cameron Willingham; is that correct?

10 A Yes.

11 Q Okay. Then what did you do?

12 A He was hollering, "My babies are inside burning  
13 up. Help me." I said, "Go back in and get the babies."

14 Q What did he do, Buffy?

15 A He just stood there.

16 MR. JACKSON: Pass the witness.

17 CROSS-EXAMINATION

18 BY MR. MARTIN:

19 Q Buffy, how old did you tell us you were?

20 A Eleven.

21 Q Do you think you were in the backyard about ten  
22 minutes or so before you ran in the house and got your  
23 mom?

24 A Yes.

25 Q You thought at first it was the house next door

1 that was on fire?

2 A Yes.

3 Q Because there was so much smoke?

4 A Yes.

5 Q And you saw Todd break out the windows on the  
6 front porch of the house while he was there?

7 A One of them.

8 MR. MARTIN: Pass the witness.

9 REDIRECT EXAMINATION

10 BY MR. JACKSON:

11 Q Was the house on fire when you first went over  
12 there, or was there smoke?

13 A There was just a lot of smoke.

14 MR. JACKSON: Pass the witness.

15 MR. MARTIN: No further questions.

16 THE COURT: You may step down.

17 Call your next witness.

18 MR. JACKSON: State calls John H. Bailey.

19 THE COURT: Come forward, please. You  
20 were sworn awhile ago, were you not?

21 THE WITNESS: Yes, sir.

22 THE COURT: Take your seat.

23 MR. JACKSON: May I proceed, Your Honor?

24 THE COURT: You may.  
25

JOHN HENRY BAILEY,

After having been called as a witness by the State and after having been first duly sworn to tell the truth, the whole truth, and nothing but the truth, the witness testified on his oath as follows:

DIRECT EXAMINATION

BY MR. JACKSON:

Q Would you state your name, please?

A John Henry Bailey.

Q And, Mr. Bailey, where do you live?

A 1204 West 11th.

Q Do you live in close proximity to the house that burned there on 11th Avenue back in December?

A Pretty close. Right across the street.

Q Were you aware that Mr. and Mrs. Willingham and their children lived in that house?

A Yes, I was.

Q Were you at home while the fire took place?

A No, I was not. I came -- I got there about -- I guess I drove up there about noon.

Q All right. Let me ask you: Were you at home the next day after the fire took place?

A Yes, I was after lunch.

Q That would be the 24th? Christmas Eve?

A Christmas Eve.

1 Q Did you observe anything across the street that  
2 seemed unusual to you?

3 A Well, I seen Todd and his wife. They came  
4 home -- well, they came back to the burned out house.  
5 They were going through a lot of the debris. I called the  
6 police department because I was pretty sure there was an  
7 ongoing investigation.

8 Q Did you have an opportunity to observe their  
9 demeanor while they were going in and out of the house?

10 A Yes, sir, I did. It was not the attitude of  
11 people that just lost their children should have had. It  
12 was more of a laughing, cutting-up type attitude.

13 Q Did the police arrive at that premises?

14 A Yes, sir, they did.

15 Q Did you notice anything unusual insofar as  
16 change of demeanor at that time?

17 A Yes, sir. Everything got certainly somber,  
18 more the attitude they should have had the whole time.

19 MR. JACKSON: Pass the witness.

20 CROSS-EXAMINATION

21 BY MR. MARTIN:

22 Q Mr. Bailey, you live across the street from  
23 this house?

24 A Not directly. Just more of a catter-corner  
25 type.

1 Q And these observations that you described for  
2 us, they were made from your house?

3 A Yes, sir, my front porch.

4 Q Like, if this is the Willingham home here, do  
5 you live over here across the street from Mrs. Daniels?

6 A Yes, sir, right directly in front of Mrs.  
7 Daniels.

8 Q You live here then?

9 A Yes, sir.

10 Q And you were standing on your front porch?

11 A Yes, sir, I certainly was.

12 Q And Todd and Stacy were inside their house or  
13 where?

14 A When I observed them, they were on the front  
15 porch.

16 Q They were over here, right at the entrance of  
17 the house? They weren't acting in a way you thought they  
18 should be acting?

19 A Nothing -- it struck me rather unusual.

20 Q Do you have children?

21 A Yes, sir, I do. I have daughters.

22 Q Have you ever lost a child?

23 A No, sir, I have not.

24 Q Have you ever lost a family member --

25 A Yes, I have.

1 Q -- or close friend in an accident that you  
2 witnessed?

3 A No, sir.

4 Q Have you ever seen anybody immediately after  
5 they have lost their children?

6 A Yes, sir.

7 Q And when was that?

8 A It was at an auto accident a few years ago.

9 Q People you knew?

10 A No, sir.

11 Q And you called the police on them?

12 A Well, I assumed that there was an ongoing  
13 investigation.

14 Q You were suspicious?

15 A As much as -- yes, sir, I was.

16 MR. MARTIN: Pass the witness.

17 MR. JACKSON: No further questions at  
18 this time.

19 THE COURT: You may step down.

20 Call your next witness.

21 MR. JACKSON: State calls Jerry Long.

22 THE COURT: Come forward, please, sir.  
23 You were sworn this morning, were you not?

24 THE WITNESS: No.

25 THE COURT: Raise your right hand.

(Witness sworn)

THE COURT: Take your seat.

JERRY LONG,

After having been called by the State and after having been first duly sworn to tell the truth, the whole truth, and nothing but the truth, the witness testified on his oath as follows:

DIRECT EXAMINATION

BY MR. JACKSON:

Q Would you state your name, please, sir?

A Jerry Wayne Long.

Q Jerry, where do you live?

A 813 South 29th.

Q Jerry, do you live in fairly close proximity to the house on 11th Avenue that burned two days before Christmas last year?

A Not at this time. I did live at 1129 South 11th.

Q How would you describe where you lived then in relation to the Willingham house?

A It was two houses west on the same side of the street.

Q Do you remember the event of the day when that



1 house burned?

2 A Yes, sir.

3 Q All right. Can you tell us where you were  
4 during the morning hours?

5 A I was in the backyard of my house working on my  
6 truck, and I heard them hollering, smoke and stuff.

7 Q Okay. What kind of hollering did you hear?

8 A I just heard some yelling. I'm not sure, just  
9 loud hollering, "Oh my God" and stuff like that.

10 Q Did you go over to the house at that time?

11 A Yes, sir.

12 Q Can you describe what you saw when you got  
13 there?

14 A As I was walking up, I seen a man walking from  
15 between a house and a fence. There was a car sitting in  
16 the driveway at this address where the house was burning,  
17 and this man walked -- looked like he had walked from the  
18 back of the house between the fence and the car out toward  
19 the street.

20 Q Did you know that man at that time?

21 A No, sir.

22 Q Do you know who he is at this point?

23 A Yes, sir.

24 Q Okay. Did you later find out that he was Mr.  
25 Willingham, occupant of the house?

1 A Yes, sir.

2 Q What was -- tell us again what he was doing  
3 when you first saw him?

4 A When I first walked up, he was walking from the  
5 back of the house. He walked out to the curb, and I  
6 walked up to him. The house was burning, and he was  
7 telling me that his children were in the house and he was  
8 just standing out by the curb.

9 Q Did he try to get back in the house while you  
10 were there?

11 A No, sir.

12 Q Did you notice anything unusual about him as  
13 far as his demeanor or what he said or what he did?

14 A He just -- he wasn't real excited. He would  
15 stop and look at his self. He would holler. He would  
16 tell me that his kids were in the house, and then he would  
17 stop and look at himself, his arms, and he would check his  
18 self to see if he was, I guess, burnt or whatever.

19 Q Was he coughing when you saw him?

20 A No, sir.

21 Q Did he ever try to explain what was happening  
22 to you?

23 A To me?

24 Q Yes, sir.

25 A What do you mean happening to me?

1 Q No. Did he ever try to explain to you what had  
2 happened with the house or anything like that?

3 A Well, he just told me -- he pointed up to the  
4 meter where the wires come from, the utility pole, up to  
5 the house. He pointed up to those, told me that he had  
6 been having trouble with those, that they had been having  
7 trouble with the electricity in the house.

8 Q So, he was trying to tell you about problems  
9 with wiring at this time.

10 MR. MARTIN: We object to that as  
11 leading.

12 MR. JACKSON: Well, let me rephrase that.

13 BY MR. JACKSON:

14 Q What was he trying to tell you about?

15 A Well, he just --

16 MR. MARTIN: We object to this as  
17 repetitive and leading. The witness has already testified  
18 on the subject twice.

19 THE COURT: I overrule the objection.

20 MR. JACKSON: You may answer the  
21 question.

22 THE WITNESS: He just pointed where the  
23 wires met the house and told me that he had been having  
24 electrical trouble with the electricity in the house.

25 MR. JACKSON: Pass the witness.

## CROSS-EXAMINATION

BY MR. MARTIN.

Q Mr. Long, what kind of work do you do?

A I'm not employed.

Q What did you last do?

A I was a truckdriver.

Q Now, you heard screaming and yelling for five to ten minutes before you ever went to the house, correct?

A Yes, sir.

Q And when you got there, the smoke coming out of the front of the house was so thick you couldn't see the front wall of the house, could you?

A I could see the bottom part of the front wall.

Q But not the top?

A But not -- I could see smoke and flames come out where the porch met the front wall. It was just boiling smoke and flames out of the top of there.

Q The house was obviously on fire?

A Yes, sir.

Q And you saw Todd Willingham cry?

A Cry tears or --

Q Cry. You saw him crying and screaming?

A I heard him screaming. I seen him screaming. I didn't see him crying.

Q Didn't you say earlier in a statement that you

1 saw him start to cry?

2 A I don't remember seeing him cry.

3 Q But do you remember giving a statement to James  
4 Palos, fire marshall?

5 A Yes, sir.

6 Q You don't remember in that statement saying you  
7 saw him start to cry?

8 A I don't remember, no, sir.

9 Q Let me show it to you and see if it refreshes  
10 your recollection about that.

11 Is this your statement here that you gave?

12 A Yes, sir.

13 Q Is that your signature?

14 A Yes, sir.

15 Q Did you say in here you saw him start to cry?

16 A Yes, sir.

17 Q He was obviously excited?

18 A Yes, sir.

19 Q And you were, too, no doubt?

20 A Yes, sir.

21 MR. MARTIN: Pass the witness.

22 REDIRECT EXAMINATION

23 BY MR. JACKSON.

24 Q Did there seem anything strange about the way  
25 he was excited?

1           A       It would just come in spurts. It wasn't  
2 continuous. It was -- it's like he would stop and think  
3 about it for a minute.

4                   MR. JACKSON: Pass the witness.

5                   RECROSS-EXAMINATION

6           BY MR. MARTIN:

7           Q       There were sparks when you got there?

8           A       Sparks from the --

9           Q       Sparks from the electric wires?

10          A       Yes, sir.

11          Q       You asked him where the sparks were coming  
12 from? Take a moment to recall, if you will.

13          A       I may have. I don't remember asking him that.

14          Q       But when you got there, the electricity was  
15 popping and there was sparks?

16          A       Yes, sir. It would pop and then it would stop.  
17 It wasn't continuously sparking.

18          Q       You asked him where the sparks were coming  
19 from?

20          A       I may have. I don't remember.

21          Q       He pointed at that time to the box and said  
22 that's where the sparks were coming from?

23          A       What I remember, he told me -- he pointed at  
24 the box and told me he had been having trouble with the  
25 electricity.

1 Q And do you recall the electricity popping and  
2 sparking up there at the meter box when you were there?

3 A Yes, sir.

4 MR. MARTIN: Pass the witness.

5 FURTHER DIRECT EXAMINATION

6 BY MR. JACKSON.

7 Q That was when the house was engulfed in flames,  
8 though; is that correct?

9 A Yes, sir.

10 MR. JACKSON: No further questions.

11 MR. MARTIN: Nothing further, Your Honor.

12 THE COURT: You may step down.

13 Call your next witness.

14 MR. JACKSON: State calls Ron Franks at  
15 this time.

16 THE COURT: Were you sworn awhile ago?

17 THE WITNESS: Yes, sir, I was.

18 THE COURT: Take your seat, please.

19 RONALD G. FRNAKS,

20 After having been called by the State and after having  
21 been first duly sworn to tell the truth, the whole truth,  
22 and nothing but the truth, the witness testified on his  
23 oath as follows:

24

25

## DIRECT EXAMINATION

BY MR. JACKSON:

Q Would you state your name for the record,  
please?

A My name is Ronald G. Franks.

Q Mr. Franks, I think it's apparent to everybody,  
but how are you employed?

A I'm a lieutenant paramedic with the Corsicana  
Fire Department.

Q And how long have you been employed by the fire  
department?

A Approximately six years, ten months.

Q I'm assuming, then, you were employed in that  
capacity back on the 23rd of December of last year; is  
that correct?

A Yes, sir, I was.

Q Were you dispatched to a house fire in  
Corsicana during the morning hours of that day?

A Yes, sir, I was.

Q Can you tell us about where that was?

A It was in the 1200 block of West 11th.

Q Tell us what happened when or what you observed  
when you got to that location?

A I was the first unit in. I pulled up on the  
scene. It was a wood frame structure with fire totally



1 involved in one room and the front porch was involved with  
2 the fire, and there was some fire coming out the east side  
3 window of the structure.

4 Q Were you the first unit on the scene?

5 A Yes, sir, I was.

6 Q What procedure did you follow as soon as you  
7 got there?

8 A I positioned my truck in front of the house to  
9 the west side of it. I immediately went to pull a line  
10 off to make an attack on the fire; and at that time I was  
11 approached by a man that said that his babies were inside  
12 the house.

13 Q What action did you take at that time?

14 A I asked the man where in the house they were at  
15 and how many. Then I proceeded to charge the line and  
16 attack the fire.

17 Q Can you describe how you did that?

18 A I pulled the line off the back of the truck,  
19 charged pump panel, then I approached the front porch,  
20 which was fully involved with fire. I tried to knock it  
21 down, tried to direct the stream in the room that was  
22 fully involved, knocked it down, also; and then the smoke  
23 rolled out of the house and I turned around, looked at the  
24 assistant chief. "We need some men with air packs on."  
25 He advised me to go get air packs on. He took my line.

1           Q       Could you tell where the fire was coming from  
2 or which portions of the house were most involved at that  
3 time?

4           A       The northeast room, which was the front room  
5 just behind the front porch. It was fully involved. The  
6 front porch was involved with fire. The fire was rolling  
7 over the top of the front porch. It was fire coming out  
8 the window on the east side.

9           Q       Was fire burning low or middle on the walls or  
10 high? Could you --

11          A       The fire was burning all the way down on the  
12 porch.

13          Q       All right. Were the floors of the house  
14 involved in the fire?

15          A       Yes, they were.

16          Q       Did you -- and, in fact, were you able to equip  
17 yourself so that you could enter the house.

18          A       Yes, I did. Once I turned the line over to  
19 Chief Fogg, I went back and put on air packs. Then I took  
20 the line back and attempted to go into the room that was  
21 fully involved. And as I entered it, knocking some of the  
22 fire down, another line came in from the west side of the  
23 house and the stream struck me. So I backed out of that  
24 room, came back out, went back in and made a primary  
25 search of the house.

1 Q When you first entered the house, how did you  
2 enter?

3 A I entered through the front window of that room  
4 that was involved on the front porch.

5 Q You later came back through that window?

6 A I came back out the window. Then I entered the  
7 front door.

8 Q Was the floor burning in that room when you  
9 entered it?

10 A Yes, it was.

11 Q Okay. You came back outside the house. Then  
12 what did you do at that point?

13 A I left my line with another man outside. Then  
14 I went in for a primary search through the front door,  
15 down the hallway to the back of the house, worked my way  
16 back up to the front.

17 Q What did you find when you got inside the house  
18 as far as fire involvement?

19 A The fire pretty much had been knocked down by  
20 the other crew going in, but there was a lot of heat, a  
21 lot of smoke. There was few areas of fire still burning  
22 all through the hallway through the room that was fully  
23 involved. At first I went back to the back of the house.  
24 There was a lot of heat, a lot of smoke. I went to make a  
25 search of the house where the kitchen was and tried to

1 open the back door for ventilation, and there was a  
2 refrigerator in front of it.

3 Q Was it possible to exit through the back of the  
4 house?

5 A No, sir.

6 Q Tell us why.

7 A Because there was a refrigerator in front of  
8 the back door.

9 Q What did you do from that point?

10 A I moved on around to the other room, searching  
11 each room and making sure there was no body in each room.

12 Q Was that normal fire scene procedure?

13 A Yes, it is.

14 Q Did you determine where the children were,  
15 where the fatalities of the fire were?

16 A When I pulled up on the side, Mr. Willingham  
17 approached me. I asked him where the children were at.  
18 He pointed to the room that was fully involved with the  
19 fire. He told me the number of children. Then it's still  
20 customary that we search every room to insure that nobody  
21 is in each room.

22 Q Can you identify the room that was fully  
23 involved in the fire as to where the children were?

24 A He pointed to that room. (Witness pointing)

25 Q After the fire was knocked down, you had an

1 opportunity to inspect those rooms. Did you learn at that  
2 time where the fatalities of the fire were located?

3 A Yes, sir, I did. I saw the twins.

4 Q Where were they?

5 A They were just -- as you step inside the front  
6 door, there's a door going to the bedroom, and they were  
7 right there by the door, just right near the front window  
8 where I walked in.

9 Q Was that room damaged significantly?

10 A Heavy damage.

11 Q Were the children burned beyond any possible  
12 survival?

13 A Yes.

14 Q May I have just a moment?

15 A Yes, sir.

16 Q Sir, I will ask you to take a look at what has  
17 been marked State's Exhibit No. 2 and I will ask you to  
18 identify this photograph for me, please.

19 A That's right inside the doorway. That's the  
20 twins underneath the spring.

21 Q Does that portray the crime scene in which one  
22 of the twins was found inside that front room?

23 A Yes.

24 MR. DUNN: Your Honor, I object to "the  
25 crime scene".

1 MR. MARTIN: May we approach the bench?

2

3 (Bench conference held outside the hearing of the jury)

4

5 MR. MARTIN: It seems to me to be a  
6 rather clear violation of the Order in Limine.

7 The photograph of the children at the scene --

8 MR. JACKSON: That's one child at the  
9 scene.

10 MR. MARTIN: I thought you were  
11 showing --

12 MR. JACKSON: We intend to.

13 We can take them outside the presence of the jury.

14 THE COURT: How long is this going to  
15 take? How many pictures do you have?

16 MR. JACKSON: We only have one for this  
17 police officer to identify.

18 MR. MARTIN: What's the Court going to  
19 do?

20 THE COURT: You want me to rule now or  
21 rule after you have a hearing?

22 MR. MARTIN: I guess after we have the  
23 hearing.

24 THE COURT: Okay.

25 Members of the jury panel, I need you to go back in

1 the jury room for a minute and shut the door. We are  
2 going to take a hearing matter up outside the presence of  
3 the jury.

4  
5 (The following was held outside the presence of the jury)

6  
7 THE COURT: That is No. 2?

8 MR. MARTIN: Before I -- may the record  
9 reflect that in the presence of the jury, the prosecutor  
10 handed this witness Defense No. 2 (sic) which he  
11 identified as a photograph of Cameron and Carman  
12 Willingham at the scene of the fire. May the record so  
13 reflect that?

14 THE COURT: The record will so reflect.

15 MR. DUNN: May it so reflect that these  
16 prosecutors referred to this as the "crime scene" to which  
17 we objected.

18 MR. JACKSON: I don't know how exactly to  
19 describe it at this point. It's a crime scene as far as  
20 I'm concerned and as far as the bulk of the witnesses are  
21 concerned in the case, Your Honor, and certainly --

22 MR. MARTIN: May we say at this time that  
23 we move for a mistrial.

24 THE COURT: That request is denied.

25 MR. MARTIN: Do you want us to make

1 particular objections about each exhibit, Your Honor,  
2 or --

3 THE COURT: Why don't we just go ahead  
4 and see what he's going to offer in evidence.

5 BY MR. JACKSON:

6 Q I will also ask you to identify what has been  
7 marked State's Exhibit No. 3 and ask you if you can  
8 identify that photograph also?

9 A This is also one of the twins.

10 Q Are those two photographs, State's Exhibit 2  
11 and 3 an accurate representations of what you observed at  
12 the fire scene?

13 A Yes, they are.

14 Q Okay.

15 MR. JACKSON: I'd offer these into  
16 evidence as State's Exhibit No. 2 and 3 for purposes of  
17 this hearing.

18 These are photographs I would offer before the jury  
19 and ask be admitted before the jury, also.

20 MR. MARTIN: We object to Defendant's 2  
21 and 3 (sic) as not being relevant of any issue in dispute.

22 It is undisputed that these two children died in the  
23 fire. Of course, the location of them is not disputed.  
24 There are other photographs which the prosecutor has which  
25 do not show the bodies of the infants but show the



1 location where they were found on the floor.

2 The inflammatory effect of these photographs greatly  
3 outweighs any probative value. We object the them.

4 We further request the Court exclude them under Rule  
5 403, exclusion of relevant evidence on special grounds.

6 THE COURT: Overrule the objection. They  
7 both will be admitted to the jury.

8 Bring the panel back, Bill.

9  
10 (Jury present)

11  
12 THE COURT: The Jury is back in place.

13 Proceed, Mr. Jackson.

14 BY MR. JACKSON:

15 Q Mr. Franks, I will ask you to take a look at  
16 two photographs marked Exhibit 2 and Exhibit 3.

17 Can you identify these for me, if you can, please,  
18 sir?

19 A Yes, I can. These are photographs of the twins  
20 that were in the fire that were burned.

21 Q Where were those bodies found?

22 A They were found just inside as you go in the  
23 front door. There's a door to your left that leads to the  
24 bedroom. They are just inside that door to the left of  
25 the room.

1 time?

2 A Yes, sir.

3 Q What were the circumstances of that?

4 A Firefighter Vandavor had gone in a different  
5 direction doing a search, and he was at the back of the  
6 house when he found the child; and before I made it back  
7 to the front of the house, he had already taken her out.

8 Q I'm sure you have had an opportunity to see  
9 people who suffer from smoke inhalation, have you not?

10 A Yes, sir, I have.

11 Q You had a chance to observe the defendant,  
12 Cameron Todd Willingham, on this occasion; is that  
13 correct?

14 A Yes, sir, I have.

15 Q Did he appear to be a person who was suffering  
16 from any type of smoke inhalation problems or coughing?

17 A Not at that time. I didn't notice any -- he  
18 was really excited. And once he told me there were  
19 children in the house, I proceeded to attack the fire.

20 Q Let me direct your attention to an occasion a  
21 few days later, the 27th of December of 1991.

22 Did you have an opportunity to return to that fire  
23 scene?

24 A Yes, sir, I did.

25 Q Can you tell me the reasons why you returned to

1 the fire scene on that day?

2 A Yes, sir. I was to assist the fire marshall  
3 with the drawing of a sketch of the house.

4 Q What type activity had you been engaged in just  
5 prior to returning to the fire scene?

6 A I had been to the children's funeral.

7 Q When you came to the fire scene just after the  
8 children's funeral on the 27th, was the defendant, Cameron  
9 Todd Willingham present?

10 A When I returned to the fire scene?

11 Q Yes, sir.

12 A No, sir, not at that time. He came later on.

13 Q Okay. Did you have an opportunity to observe  
14 him there at the fire scene on that occasion also?

15 A Yes, sir, I did.

16 Q I think you have indicated who was there, but  
17 can you do that for the jury at this time?

18 A The fire marshall was there, Captain Ricky  
19 Crenshaw was there, also; and I believe Mr. Willingham's  
20 father was there.

21 Q Did Mr. Willingham attempt to engage you in  
22 conversation at this point?

23 A Yes, sir, he did.

24 Q Did he, in fact, speak to you on this occasion?

25 A Yes, he did.

1 Q Did you initiate any questions with him?

2 A No, sir, I did not.

3 Q What did Mr. Willingham want to speak with you  
4 about on this occasion?

5 MR. MARTIN: Your Honor, we object to  
6 that as hearsay. No relevance has been shown.  
7 Irrelevant.

8 THE COURT: I overrule the objection.

9 MR. JACKSON: You may answer the  
10 question.

11 THE WITNESS: Initially, he had asked  
12 about a dart set that was in there, that was in the fire  
13 structure and the fire marshall -- he asked to escort him  
14 inside so that he might look for it. As we were going  
15 through, he proceeded in the bedroom where the children  
16 were burned, and he made comment to the effect that when  
17 he came into the room --

18 MR. MARTIN: We object to this as  
19 nonresponsive.

20 MR. JACKSON: I believe it's responsive.  
21 It's a continuation of the question I asked.

22 I will be happy to ask another question.

23 THE COURT: Reask the question.

24 BY MR. JACKSON:

25 Q Can you tell us what other type conversation he

1 engaged you in when you entered into the children's room?

2 A He asked me if I knew where the fire started or  
3 how it started?

4 Q Did he make any statement to you about his  
5 knowledge of the fire?

6 A Yes, sir. He said that when he came into the  
7 room, it was burning. He pointed over to an area of the  
8 room along this wall and on the ceiling.

9 Q So, he indicated to you he came into the room;  
10 is that correct?

11 A Yes, sir, he did.

12 Q Did he seem to be upset about his dart board?

13 A Yes, sir, he did.

14 Q Let me ask you another question about this  
15 conversation: Did he make any conversation with reference  
16 to samples being taken by the police or fire department.

17 MR. MARTIN: We object to that as  
18 leading.

19 THE COURT: I overrule the objection.

20 MR. JACKSON: You may answer the  
21 question.

22 THE WITNESS: Yes, sir. As we were  
23 coming out of the house, we met the fire marshall toward  
24 the front door of the hallway; and he made the statement  
25 to the effect that if any more samples were taken of the

1 floor, he had poured some cologne on the floor because the  
2 children had liked the smell of that cologne. He poured  
3 it from the bathroom to where the children were burned.

4 Q He told -- let me make sure I get this right.  
5 He told you he poured it from the bathroom through the  
6 hall into the children's room?

7 A Yes, sir.

8 Q The cologne?

9 A Yes, sir.

10 Q And mentioned this in reference to samples that  
11 were being taken?

12 A He said if there were anymore samples taken,  
13 the cologne would probably show up in the samples.

14 MR. JACKSON: Pass the witness.

15 CROSS-EXAMINATION

16 BY MR. MARTIN:

17 Q Mr. Franks, when you first saw Todd at the  
18 scene, you were not examining him for the purpose of  
19 diagnosing smoke inhalation, were you?

20 A No, sir, I wasn't.

21 Q You were in hurry?

22 A Yes, sir, I was.

23 Q He was hysterical?

24 A Yes, sir.

25 Q Your attention was on the other matters?

1 A Yes, sir.

2 Q Now, it is not uncommon for people to return to  
3 their home after a fire to claim property, is it?

4 A No, sir, it's not.

5 Q You would expect them to do that, would you  
6 not?

7 A Yes, sir.

8 Q And if any one had poured anything on the floor  
9 of the residence that was being investigated, you would  
10 want to know that, would you not?

11 A Yes, sir.

12 Q And what it was, wouldn't you?

13 A Yes, sir.

14 MR. MARTIN: Pass the witness.

15 MR. JACKSON: I have no further  
16 questions.

17 THE COURT: You may step down.

18 THE COURT: It's ten minutes to 12:00.  
19 How long will it take for the next witness?

20 MR. JACKSON: It's going to be longer  
21 than ten minutes.

22 THE COURT: In the interest of lunch,  
23 based on your statement, I'm going to recess at this time.

24 Members of the jury panel, I'm going to -- we are  
25 going to take a recess at this time until 1:00 o'clock.

1 I want everyone in the room to remain in the  
2 courtroom until the jury panel is outside the courtroom.

3 Remember the previous instructions.

4 We will see you back at 1:00 o'clock.

5  
6 (Lunch recess)

7  
8 THE COURT: The jury is back in place.

9 Call your next witness.

10 MR. JACKSON: State calls Steven  
11 Vandavor.

12 THE COURT: Take your seat.

13 You may proceed.

14 STEVEN KEITH VANDAVOR,  
15 After having been called by the State and after having  
16 been first duly sworn to tell the truth, the whole truth,  
17 and nothing but the truth, the witness testified on his  
18 oath as follows:

19 DIRECT EXAMINATION

20 BY MR. JACKSON:

21 Q Would you state your name, please?

22 A Steven Keith Vandavor.

23 Q Steve, how are you employed?

24 A Corsicana Fire Department.

25 Q Steve, let me direct your attention back to the



1 morning hours of December 23rd, 1991.

2 Do you remember that day?

3 A Yes.

4 Q Can you tell us what type duties you were  
5 engaged in on that day?

6 A We had just had a house fire on North 36th, and  
7 we were back at the station cleaning up, getting the  
8 trucks ready to go back into service.

9 Q Can you tell me what location, approximately,  
10 you were dispatched to on that morning?

11 A The call come in as 1200 block of West 11th.

12 Q Did you proceed to that location?

13 A Yes, sir.

14 Q Can you tell us what you found when you  
15 arrived?

16 A When we arrived, there was a frame residence,  
17 it was pretty well involved in fire. There was fire  
18 coming out the front windows and pretty well the whole  
19 front porch was involved in fire.

20 Q Did you learn that there were children who  
21 might be present in the house?

22 A Yes, sir. There was people out in the street  
23 and stuff saying there was still kids in the house.

24 Q What action did you take at that time?

25 A We were -- we later laid a line from the

1 hydrant at 19th street, and we were hooking it up and I  
2 put on an air pack, went around to the front of the house.  
3 They already had a line pulled off the other truck and  
4 Lieutenant Charles Dennison and I started going into the  
5 house.

6 Q Can you tell us: What did you notice when you  
7 went into the house?

8 A A lot of fire, you know, in the front of the  
9 house and to the left front room. To the left there was a  
10 lot of fire.

11 Q How did you make entry into the house?

12 A Charles Dennison was in front of me. We went  
13 in the front door, knocked down the fire. We went and --

14 Q Let me ask you about that: You say you were  
15 knocking down the fires?

16 A Putting water on it.

17 Q Where was the fire concentrated? Where was it  
18 burning?

19 A The front of the hallway into the first room to  
20 the left.

21 Q Was the floor on fire?

22 A Yes, sir.

23 Q Do you find that rather unusual in house fires?

24 A Yes, sir. Most of the time the floor will be  
25 the safest place to be because there won't be any fire

1           there. It will be cooler. It won't have as much heat and  
2           smoke on the floor.

3           Q       Did that create a problem for you in this  
4           particular fire?

5           A       Yeah. It slowed us up a little bit. We had to  
6           really put a lot of water on it so we could, you know, go  
7           further into the house.

8           Q       When you got the fire knocked down and got into  
9           the house, what did you do? What was your duty?

10          A       We went all the way down the hall and to the  
11          kitchen, and I let go of the hose, went to the right, the  
12          first room to the right, and started doing a search under,  
13          you know, on the floor and went through.

14          Q       What were you looking for?

15          A       Well, just feeling around mainly. You can't  
16          see anything. You are just feeling around to feel  
17          somebody or something.

18                   I went through the first room there and then  
19          didn't find anything in there; and kind of by accident, I  
20          went through the door into the bedroom, and I started  
21          checking in there.

22          Q       Can you tell us what happened when you got in  
23          there?

24          A       I felt a bed. I couldn't really see the bed.  
25          I started feeling around on it, and about that time they

1 got the what we call exhaust fan set up in the front door,  
2 they turned that on. It started blowing some of the smoke  
3 out, and I could make out a body laying on the bed.

4 Q All right. What action did you take at that  
5 point?

6 A There was another fireman next to me, and I  
7 tapped him on the shoulder as I grabbed her so he could  
8 help lead me back out of the house, and I picked her up  
9 and we made our way out in the front yard.

10 Q Can you tell me where on the bed she was lying?

11 A She was lying about in the middle of the bed  
12 face down, and her head was probably about the edge of  
13 where the pillows would be at the top of the bed.

14 Q Had she apparently been the victim of some  
15 burns?

16 A I could not -- all I could really see on her  
17 was some what I would call soot. It was kind of around  
18 her mouth and stuff. That's all I could see because I  
19 still had my mask on and stuff. It was kind of hard to  
20 see.

21 Q Do you -- could you tell whether she was alive  
22 at that time?

23 A I couldn't tell.

24 Q Did you have an opportunity to see a person  
25 identified to you as Cameron Willingham on that day?

1 A No, sir, I never did.

2 Q Okay. You were involved with the fire?

3 A Uh-huh.

4 MR. JACKSON: Pass the witness.

5 MR. MARTIN: No questions, Your Honor.

6 THE COURT: You may step down.

7 Call your next witness.

8 MR. JACKSON: State would call Ethel  
9 Baptist at this time.

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

11 Were you sworn this morning?

12 THE WITNESS: No.

13  
14 (Witness sworn)

15  
16 ETHEL BAPTIST,  
17 After having been called by the State and after having  
18 been first duly sworn to tell the truth, the whole truth,  
19 and nothing but the truth, the witness testified on her  
20 oath as follows:

21 DIRECT EXAMINATION

22 BY MR. JACKSON:

23 Q Would you state your name, please, ma'am?

24 A Ethel Baptist.

25 Q Where do you live?

1 A 1207 South 1st street here in Corsicana.

2 Q Can you tell us what kind of work or occupation  
3 you are engaged in?

4 A Nursing supervisor, emergency room.

5 Q How long have you been a nurse at the emergency  
6 room?

7 A Twenty years.

8 Q Are you a licensed nurse or registered nurse?

9 A Registered nurse.

10 Q All right. I take it then you were on duty --  
11 well, I will ask you: Were you on duty at the emergency  
12 room on the 23rd of December of last year?

13 A Yes, sir.

14 Q All right. Were you on duty when certain  
15 persons, apparently the victims of a fire, were brought to  
16 the hospital?

17 A Yes.

18 Q Did you have an opportunity to come in contact  
19 with a person by the name of Cameron Willingham at that  
20 point?

21 A Yes, I did.

22 Q And did you have an opportunity to observe him?

23 A Yes.

24 Q Can you tell us the context or the  
25 circumstances in which you came in contact with Mr.

1 Willingham?

2 A Actually, I was in my office when we got the  
3 call that they were coming in. The nurses needed  
4 assistance, and I came out. They were taking care of  
5 another child. So I went to his room and took care of  
6 him.

7 Q All right. Can you tell us what you observed  
8 insofar as Mr. Willingham was concerned?

9 A Well, he was doing a lot of crying and a lot of  
10 talking about the fire and how he should have died with  
11 them, that it should have been him instead of them and  
12 that he was asleep at the time and heard one of the  
13 children calling him.

14 Q Did he make any comments about where he  
15 observed the fire in the house?

16 A Well, he started talking about how hot it was.  
17 Then he said the ceiling was on fire. At one point he  
18 said the ceiling was on fire.

19 Q All right. Was Mr. Willingham's wife present  
20 there in the hospital?

21 A She entered later, I believe.

22 Q All right. Were you made aware then that she  
23 was present?

24 A Yes.

25 Q Did Mr. Willingham ask to see her on one or

1 more occasions?

2 A Yes, he did.

3 Q Did she immediately enter the room where --

4 A No.

5 Q Did you find that unusual?

6 A Yes, and he had asked several times where she  
7 was. I believe one of the ladies in the room was maybe a  
8 family member of hers that was telling him why she wasn't  
9 there. So I thought it was really unusual.

10 Then, finally, they just kept telling him she would  
11 be here in a few minutes. I thought it was unusual.

12 Q Was your impression that she didn't want to see  
13 him?

14 MR. MARTIN: We object to that as calling  
15 on the witness to speculate.

16 THE COURT: I sustain the objection.

17 BY MR. JACKSON:

18 Q Do you believe based on what you saw that she  
19 did not want to see him?

20 MR. MARTIN: Your Honor, same objection.  
21 The witness doesn't have any personal knowledge of what  
22 another person thoughts were. So we object to it.

23 THE COURT: I sustain the objection.

24 BY MR. JACKSON:

25 Q Did she finally come into the room with him?



1 A Yes.

2 Q Did he seem agitated with her failure to come  
3 in sooner?

4 MR. MARTIN: Object. Leading.

5 THE COURT: I overrule the objection.

6 MR. JACKSON: You may answer that.

7 THE WITNESS: Yes.

8 BY MR. JACKSON:

9 Q In what way did he seem agitated?

10 A Well in that he -- when she came to the room,  
11 he wanted her -- he kept begging for her. She wouldn't  
12 approach the bed where he was lying, and he kept telling  
13 her, "Come on up here. Come up here to me," and she kept  
14 kind of standing back. Finally, he said, "Come on up to  
15 me. What's wrong with you? Why are you acting like  
16 that?"

17 Q You have an opportunity to observe people under  
18 very traumatic circumstances, I'm sure?

19 A Yes.

20 Q Is that true, Ms. Baptist?

21 A Yes.

22 Q Based on what you observed, did this seem  
23 unusual behavior for a person to exhibit in the face of  
24 circumstances like these?

25 A Yes.

1 MR. JACKSON: I will pass the witness.

2 CROSS-EXAMINATION

3 BY MR. MARTIN:

4 Q Ms. Baptist, did you know that at the time you  
5 saw Stacy she had been informed that her three children  
6 were dead?

7 A I believe she had.

8 Q Did you know that she was in the room with  
9 Amber, and that's why she didn't come in there with Todd  
10 during the time you are talking about?

11 A The lady told him that.

12 Q You don't find it unusual that a mother would  
13 go to the bedside of the dead or dying child first, do  
14 you?

15 A No, I don't.

16 Q You recognize that under these kinds of  
17 circumstances, people act differently and they act  
18 strange, don't they?

19 A Yes.

20 MR. MARTIN: Pass the witness.

21 REDIRECT EXAMINATION

22 BY MR. JACKSON:

23 Q By the same token, you would still characterize  
24 Mr. Willingham's behavior as strange?

25 A Yes.

1 Q Did he -- I assume he was brought in for  
2 observation; is that correct?

3 A I'm not sure except for he had --

4 MR. MARTIN: Your Honor, we object if she  
5 is not sure. We object to her speculating about it.

6 THE COURT: Restate your question.  
7 Rephrase your question, Mr. Jackson.

8 BY MR. JACKSON:

9 Q Did you observe any injuries insofar as Mr.  
10 Willingham was concerned?

11 A Couple of small burns.

12 Q But would you characterize these as  
13 inconsequential injuries?

14 A Yes.

15 Q Did he seem to be suffering from any type of  
16 smoke inhalation?

17 A No.

18 MR. JACKSON: Pass the witness.

19 CROSS-EXAMINATION

20 BY MR. MARTIN:

21 Q Now, Mrs. Baptist, you weren't the treating  
22 physician, were you?

23 A No.

24 Q And did you render any medical care?

25 A Yes.

1 Q And what did you do?

2 A I initially -- I assessed his injuries, his  
3 vital signs, and I stayed with him and gave him medicine.

4 Q And did you clean the burn on his shoulder?

5 A No. I only put cold compresses on those burns.

6 Q So, he had burns?

7 A Yes.

8 Q He had burns on one of his hands and burns on  
9 his shoulders?

10 A Yes.

11 Q His hair, his eye lashes and eye brows were  
12 burned?

13 A I think that's right.

14 Q And, in fact, he had soot in his -- in fact,  
15 his nasal hairs were singed, weren't they?

16 A I don't recall.

17 Q Do you know that he had soot in his nasal  
18 cavities and pharynx?

19 A No.

20 Q How do you get soot in there?

21 A From inhalation of smoke.

22 MR. MARTIN: Pass the witness.

23 REDIRECT EXAMINATION

24 BY MR. JACKSON:

25 Q But still I believe your earlier testimony was

1 that he did not seem to be suffering from smoke  
2 inhalation; is that correct?

3 A That's right.

4 Q Did he have any injuries on his feet?

5 A Not that I recall.

6 Q The burn on his shoulder, I believe, was  
7 characterized as -- well, you characterized it as  
8 inconsequential.

9 It was about an inch or two long; is that correct?

10 A Yes.

11 Q He had a blister on his hand?

12 A That's right.

13 MR. JACKSON: Pass the witness.

14 RECROSS-EXAMINATION

15 BY MR. MARTIN:

16 Q Were you there when the doctor examined him?

17 A Yes.

18 Q Which doctor was that?

19 A Dr. Shaw.

20 MR. MARTIN: Pass the witness.

21 MR. JACKSON: No further questions.

22 THE COURT: You may step down.

23 MR. JACKSON: This witness needs to get  
24 back to work. May she be excused?

25 MR. MARTIN: We know where to reach her.

1 THE COURT: You are excused subject to  
2 call, Ms. Baptist.

3 MR. JACKSON: State calls Jason Grant.

4 THE COURT: Were you sworn this morning?

5 THE WITNESS: No, sir.

6 THE COURT: Raise your right hand.

7  
8 (Witness sworn)

9  
10 THE COURT: Take your seat, please.

11  
12 JASON GRANT,

13 After having been called by the State and after having  
14 been first duly sworn to tell the truth, the whole truth,  
15 and nothing but the truth, the witness testified on his  
16 oath as follows:

17 DIRECT EXAMINATION

18 BY MR. JACKSON:

19 Q Would you state your name, please?

20 A Jason Grant.

21 Q I think it's apparent, but how are you  
22 employed?

23 A At the police department.

24 Q How have you been employed at the police  
25 department?

1 A Be two years in October.

2 Q I'm assuming then that you were employed back  
3 in December of last year; is that correct?

4 A Yes.

5 Q And I believe you had an opportunity to be  
6 present at least at a house fire that took place on the  
7 23rd of December of last year; is that correct?

8 A Yes.

9 Q Can you tell me what your duties were insofar  
10 as that fire was concerned?

11 A Well, just to assist the fire department mostly  
12 and kind of steer the traffic away from the fire scene.

13 Q Did you have an opportunity to observe Cameron  
14 Willingham, the defendant in this case, at that fire  
15 scene?

16 A Yes.

17 Q Can you describe what his demeanor was at the  
18 fire scene?

19 A Well, he was upset and we had to -- we talked  
20 to him, you know, had sent him off to the side, sat him  
21 down on the back of the fire truck, tried to calm him  
22 down, talk to him. We had to end up restraining him a  
23 little bit.

24 Q Did he seem to be coughing or suffering from  
25 smoke inhalation at that point?

1 A I don't remember.

2 Q Let me move you in time to a few days later.

3 Well, let's move to a day later, the next afternoon.

4 Did you have an opportunity to be back at that scene?

5 A Yes.

6 Q Can you tell me how or why you happened to be  
7 there?

8 A I went there earlier in the day to -- someone  
9 called and said people were -- they are taking things out  
10 of the house, and I went over there and Mr. Willingham and  
11 some family members were over there going through some  
12 personal things and stuff. Then I went back over there  
13 that evening for Channel 5 came down here to do a newscast  
14 story on it. I went over there for that.

15 Q Did you have an opportunity to observe Mr.  
16 Willingham before the newscast?

17 A Yes.

18 Q And can you describe what his demeanor was at  
19 that time?

20 A He was -- compared to how he seemed earlier, he  
21 was in pretty good shape. He was, you know, he wasn't  
22 real shaken up like he was earlier.

23 Q Did he seem relatively calm at that point?

24 MR. MARTIN: Object. Leading.

25 MR. JACKSON: Well, I'll not sure.



1 THE COURT: Overrule the objection.

2 BY MR. JACKSON:

3 Q Did he seem calm at that point?

4 A Yes.

5 Q All right. Did you have an opportunity to  
6 observe him while the camera crew was filming?

7 A Yes.

8 Q Did his attitude or demeanor continue during  
9 that filming?

10 A I believe towards the end of the filming, he  
11 was crying. His wife was also there with him. She was  
12 crying.

13 Q Then at a later time after the cameras stopped,  
14 did you have an opportunity to view him or see him?

15 A Yes.

16 Q What was his demeanor at that point?

17 A Well, he was -- he calmed down again. And as a  
18 matter of fact, I believe we went over to his -- I guess  
19 his in-law's house maybe. The camera crew also went over  
20 there.

21 Q You had an opportunity, I'm sure, to hear Mr.  
22 Willingham talk to the camera crew on that occasion.  
23 Would that be fair statement?

24 A Yes.

25 Q Was there any particular thing he was most

1 concerned about in the course before that interview?

2 A He was -- he kept asking the news people if  
3 they had a station in Oklahoma. He wanted -- he had a lot  
4 of family and friends up there in that part of the State.  
5 He wanted to make sure they were going to see this, and  
6 he asked them several different times would his friends be  
7 able to see this on television in Oklahoma.

8 MR. JACKSON: Pass the witness.

9 CROSS-EXAMINATION

10 BY MR. MARTIN:

11 Q Officer Grant, you mean that the house was not  
12 secured or guarded?

13 A It had some yellow tape around it.

14 Q But that's it?

15 A That was it.

16 Q There was no front door on it? It had burned  
17 down?

18 A I believe so.

19 Q Anybody could get in the house?

20 A If they wanted to, they could.

21 Q There was no guards there at any time that you  
22 know of?

23 A There was no guards there when I went in.

24 Q Has it been your experience as a policeman that  
25 when some tragedy happens, the people who are involved

1 want their friends and family members to know what  
2 happened and to be informed about it?

3 A Well, to tell you the truth, this is -- I  
4 haven't went on anything really similar to this. So I  
5 couldn't say.

6 Q First time you ever been in this situation,  
7 isn't it?

8 A Why sure, yes.

9 Q Does it strike you as peculiar while people are  
10 being asked about the death of their children that they  
11 cry?

12 A No.

13 Q Does it seem peculiar to you that people are  
14 able to compose themselves at some point in time and stop  
15 crying?

16 A No.

17 Q You don't find that unusual, do you?

18 A No.

19 MR. MARTIN: Pass the witness.

20 REDIRECT EXAMINATION

21 BY MR. JACKSON:

22 Q Did Mr. Willingham seem to be suffering from  
23 any injuries at this time that you could tell?

24 MR. MARTIN: We object to that as calling  
25 on the witness to speculate. He is not qualified to

1 testify whether he was suffering from --

2 MR. JACKSON: Let me rephrase my  
3 question.

4 BY MR. JACKSON:

5 Q Did you see any injuries?

6 A I saw, I guess it was a burn on his shoulder.  
7 I don't remember which one, just about that long, on one  
8 of his shoulders. His hair was singed a little bit.  
9 Other than that, just mostly ash and soot and stuff.

10 Q This is at the fire scene you are talking  
11 about?

12 A Yes, sir.

13 Q Okay. No serious injuries that you saw; is  
14 that correct?

15 A No.

16 Q All right. Did it seem a little strange to you  
17 that a person could be composed and then suddenly cry for  
18 the cameras then be composed again?

19 MR. MARTIN: Your Honor, we object to  
20 that as a misstatement of the testimony, assuming a fact  
21 not in evidence, calling on the witness to speculate.

22 THE COURT: Restate your question, Mr.  
23 Jackson.

24 MR. JACKSON: I think I will withdraw the  
25 question at this time and pass the witness.

## REXCROSS-EXAMINATION

BY MR. MARTIN:

Q You say this burn you saw was on his back?

A On his shoulder, yeah.

Q On the back of his shoulder?

A Right.

MR. MARTIN: Pass the witness.

## FURTHER DIRECT EXAMINATION

BY MR. JACKSON:

Q What was he wearing?

A I believe --

Q Was he wearing any shirt when you saw him at  
the fire scene?

A No.

Q Any shoes?

A No. I believe all he had on was black or gray  
pants.

Q Okay.

MR. JACKSON: Pass the witness.

MR. MARTIN: No further questions.

THE COURT: You may step down.

MR. JACKSON: State calls Doug Fogg.

THE COURT: Come forward, please, sir.

Were you sworn this morning?

THE WITNESS: Yes, sir.

1 THE COURT: Take your seat.

2 MR. JACKSON: May I proceed, Your Honor?

3 THE COURT: You may.

4 DOUGLAS FOGG,

5 After having been called by the State and after having  
6 been first duly sworn to tell the truth, the whole truth,  
7 and nothing but the truth, the witness testified on his  
8 oath as follows:

9 DIRECT EXAMINATION

10 BY MR. JACKSON:

11 Q Would you state your name for the record,  
12 please?

13 A Douglas Fogg.

14 Q Mr. Fogg, how are you employed?

15 A Assistant fire chief for Corsicana Fire  
16 Department.

17 Q How long have you been a part of the fire  
18 department?

19 A A little over 22 years.

20 Q So, you were employed back on the 23rd of  
21 December of last year; is that correct?

22 A That's correct.

23 Q Did you have an opportunity to be present at a  
24 structure fire on 11th Avenue in Corsicana on that day?

25 A Yes, I was.

1 Q Can you tell us how you came to be present  
2 there at the fire?

3 A The alarm came in. We were at another  
4 structure fire on North 36th. The alarm came in as a  
5 structure fire on West 11th with children in the house. I  
6 responded from there.

7 Q What did you find when you got to the house?

8 A Heavy fire, heavy smoke on the front of the  
9 house.

10 Q Did you see a gentleman in the front yard later  
11 identified as Mr. Willingham?

12 A Mr. Willingham was saying, "My babies are in  
13 the house." I asked Mr. Willingham to step back in that  
14 there was some electrical lines that broke way from the  
15 house. They were still popping in the front yard.

16 George was there out by the engine. I asked him to  
17 get with Mr. Willingham. I went around and relieved  
18 Lieutenant Franks on the nozzle so he could get his air  
19 pack on and proceeded to put water on the fire through the  
20 porch through the window and through the front door.

21 Q What was the part of the house that was most  
22 heavily involved in the fire that you could see?

23 A Across the front porch. Fire coming out of the  
24 front doorway and the double window on the front of the  
25 house.

1 Q Were -- did you remain there at the fire scene  
2 until the fire was extinguished?

3 A Yes, I did.

4 Q Can you tell us what procedure you followed  
5 after the fire was extinguished?

6 A After the fire was extinguished, the remaining  
7 two bodies were discovered. We called for a justice of  
8 the peace to come to the fire scene. And after the two  
9 remaining bodies were removed, we started investigation as  
10 to the origin and cause of the fire.

11 Q Can you tell us, just for the benefit of the  
12 jury, just how you go about a fire scene or arson  
13 investigation?

14 A Normally, we work from least damaged to most  
15 damaged of the fire scene, itself, in that we were present  
16 during the fighting of the fire. Then we go to the areas  
17 of heaviest fire that we saw while we were there to start  
18 the investigation.

19 Q Is that the type of investigation you began in  
20 this case?

21 A Yes, it was.

22 Q Can you go through with us the step-by-step  
23 process that you employed in attempting to determine the  
24 origin and the cause of this fire?

25 A Initially, we started looking in the front



1 hallway, northeast bedroom area of the house. That was  
2 the area of most fire damage.

3 Initially, we started looking for accidental causes  
4 of the fire. We started eliminating those in the  
5 northeast bedroom.

6 One of the first things we look for was the space  
7 heater. The space heater was located in the southeast  
8 corner of the bedroom. The stop along the east wall or  
9 gas outlet along the east wall was found to be in the  
10 "off" position. We eliminated that space heater.

11 We started looking for electrical shorts from wiring  
12 which was visible in the bedroom. We found no electrical  
13 shorts in the bedroom.

14 From there we went to the hallway, which was just  
15 outside the doorway of the bedroom. The low burn, heavy  
16 burn ended immediately south of the doorway. And in that  
17 area there was no gas outlets. There was a light switch  
18 by the front door facing. The wires were in tact. No  
19 evidence of electrical short.

20 And as we started removing debris then from the  
21 floor, as we had low burn, we started finding  
22 configurations of puddling effect, pouring effect of a  
23 liquid or what we would consider a liquid being used to  
24 accelerate a fire.

25 Q Before we get into that, let me ask you

Douglas 1066

1 something. I think you have already answered this  
2 question.

3 Did you seek to eliminate certain causes of the fire  
4 at the outset of your investigation?

5 A Yeah.

6 Q The accidental causes of the fire?

7 A Yes.

8 Q Which causes were those that you particularly  
9 paid attention to?

10 A Electrical, gas. We even had the gas company  
11 come out and do a leak test and bar test where they punch  
12 holes, checking for gas leaks, which they found none.

13 The electrical, you look at the electrical wiring for  
14 evidence of shorts from the outlets, from fixtures, so  
15 forth. There again, those were eliminated.

16 Q Do you feel that you eliminated gas as a cause  
17 or an electrical cause as the origin of this fire?

18 A Yes.

19 Q All right. Can you tell us what you proceeded  
20 to do at that point?

21 A From there we started going to the deep burn or  
22 lowest burn areas that we found deepest burns, being floor  
23 level in the hallway and followed that into the bedroom,  
24 northeast bedroom where the two twins were found.

25 We removed some of the debris. We had to punch holes

1 in the floor to allow some of the water to drain out and  
2 as the water drained down, more patterns -- we call them  
3 pour patterns, puddling effects -- were evidenced on the  
4 floor. We started removing debris from the floor and  
5 additional areas of low burn. Floor level burns were  
6 noted.

7 Q Did this cause some suspicion in your mind with  
8 regard to the cause of this fire?

9 A Yes, it did.

10 Q Can you tell me what that -- can you articulate  
11 what that cause of suspicion was at this point?

12 A After eliminating the accidental causes, you  
13 start suspecting a deliberately set fire. And with deaths  
14 involved, you have to go a lot further before making a  
15 statement as to a deliberately set fire.

16 We have to settle in our own mind that we have  
17 eliminated all accidental causes, which we did. Not only  
18 did we attempt to connect the low burn on the floor  
19 configurations, it actually ended up starting on the front  
20 porch, through the threshold of the front door into the  
21 hallway, very minutely linked to the bedroom. Then the  
22 patterns in the bedroom were interlinked.

23 Q Doug, I want to hand to you what has been  
24 marked State's 4, and I am asking you to identify these  
25 photographs, if you can.

1           A       This is a pour pattern, burn pattern in the  
2       bedroom floor of the northeast bedroom. You can see the  
3       remains of the springs of a crib as we replaced those back  
4       into place. They were --

5           Q       This is Exhibit 5; is that correct?

6           A       Yes, it is.

7           Q       All right.

8           A       This again is the northeast bedroom by the  
9       remains of the crib frame there, and the interlinking and  
10      puddling burning effect of the liquid on the floor.

11          Q       Are these true and accurate representations of  
12      what you observed at the fire scene?

13          A       Yes, they are.

14                   MR. JACKSON: I would offer these into  
15      evidence as State's Exhibit 4 and 5 at this time, Your  
16      Honor.

17                   MR. MARTIN: No objection, Your Honor.

18                   THE COURT: They are admitted.

19      BY MR. JACKSON:

20          Q       I would like you to take these photographs and  
21      show them to the jury and point to what you have described  
22      as pour patterns or puddling patterns in that structure.

23          A       Okay. In the floor covering of the bedroom was  
24      carpet tile, under the tile was quarter-inch ply wood.  
25      Then there was felt or tar paper. Then the original oak

1 flooring. In this photograph most of the carpet is gone,  
2 but the tile remains; and the areas where liquid has been  
3 poured is very evident where the tile remains. Then as it  
4 burns on down through the other coverings into the  
5 original oak flooring.

6 Here again, we are looking at the same floor, the  
7 crib being over in this corner and the interlinking of the  
8 pour patterns on the floor.

9 Q Once you found that, did you proceed with what  
10 you believed was an arson investigation?

11 A Not at that time. We had to take a look at all  
12 of the contents that were in the room to determine whether  
13 they could have left this impression.

14 Q Did you proceed to do that?

15 A Yes, we did.

16 Q Can you tell us how you did it, what your  
17 findings were with regard to any other explanations?

18 A As you go through the debris, removing the  
19 debris off of the floor, we found clothes; we found some  
20 toys, plastic toys on the floor. To eliminate the plastic  
21 toys melting and running, we looked at the area around the  
22 remains of the plastic toys to determine whether they had  
23 ran and produced these patterns, and we found that they  
24 had not.

25 Q Can you tell us now what the next step of your

1 investigation was?

2 A We continued on removing debris. The fire  
3 marshall took some samples to be carried to the lab for  
4 analysis and into the investigation of December 26th to  
5 confirm what I had determined at the scene.

6 A call was put into the State Fire Marshall's office  
7 for an investigator to double check everything that I had  
8 found just to be sure that we were not calling it a  
9 deliberately set fire when it was not.

10 Q I assume you wouldn't want to make any hasty  
11 decision of that nature; is that correct?

12 A That's correct.

13 Q I'm going to ask you to take a look at what's  
14 been marked State's Exhibit No. 6 and identify the  
15 photograph for me, if you can.

16 A This is the threshold of the front door with  
17 the concrete front porch to the bottom of the picture.  
18 The remains of the threshold were removed, part of the  
19 threshold plate for laboratory analysis.

20 Q Was that the location from which you obtained  
21 one of the samples you submitted?

22 A Yes, it was.

23 Q All right. Is that picture otherwise  
24 significant, do you think?

25 A It is, in that there is burning down on the seal

1 of the foundation of the house, underneath the threshold  
2 plate. It had gotten down -- liquid had dripped down as  
3 it was poured, ran down under the threshold plate.

4 Q It that a true and accurate representation of  
5 what you observed at the fire scene?

6 A Yes, it is.

7 MR. JACKSON: I would offer this into  
8 evidence, State's Exhibit 6, at this time.

9 MR. MARTIN: No objection.

10 THE COURT: It's admitted.

11 BY MR. JACKSON:

12 Q When you are investigating a fire, do you look  
13 for unusual burning characteristics?

14 A Yes, we do.

15 Q Does that photograph exhibit an unusual burning  
16 characteristic?

17 A Yes, it does.

18 Q Can you explain what that is?

19 A Yeah. When a fire normally burns, it burns up.  
20 As heat rises flames go up. This burning characteristic  
21 had fire going under the threshold plate, which is very  
22 unusual in that it should have been protected from flame  
23 itself under that base plate.

24 Q To what do you attribute that?

25 A Liquid being used to accelerate the fire.

1 Q Okay. I will show you now a small photograph  
2 that I will ask you to identify as State's Exhibit No. 7.

3 Can you identify this photograph?

4 A This is basically the threshold plate again of  
5 the front door. This photograph was taken from inside the  
6 hallway out on to the porch.

7 Q In what way is this photograph significant?

8 A The burn patterns -- it's showing the burn  
9 patterns from the hallway across the threshold plate, even  
10 melting part of the aluminum, and out on to the concrete  
11 floor, also on the concrete floor, the discoloration that  
12 originally was missed, but the staining left is very  
13 characteristic of a liquid burning on the concrete.

14 Q I think you used the term accelerant. That's a  
15 common term as far as criminal lawyers and arson  
16 investigators and some law enforcement are concerned.

17 When you refer to accelerant, what is an accelerant?

18 A An accelerant is something that is used to  
19 accelerate a fire or to make a fire burn faster.

20 Q Do you find evidence of an accelerant in this  
21 fire?

22 A Yes, we did.

23 Q And is that based on your testimony and the  
24 photographs that you have shown the jury here this  
25 afternoon?



1 A Yes.

2 Q In your opinion are these clear examples of  
3 accelerants?

4 A Very clear, yeah.

5 MR. JACKSON: I offer this into evidence  
6 as State's Exhibit No. 7 at this time.

7 MR. MARTIN: No objection.

8 THE COURT: It's admitted.

9 BY MR. JACKSON:

10 Q Have you -- I believe you said earlier that you  
11 had an opportunity to associate with the State Fire  
12 Marshall; is that correct?

13 A That is correct.

14 Q And at what point did you decide to involve  
15 him?

16 A Christmas day I made the decision to go ahead  
17 and call them, and it was December the 26th that I  
18 actually placed the call.

19 Q And did you later meet with him?

20 A Yes, I did.

21 Q Did you and he make a journey to the fire  
22 scene?

23 A Yes, we did.

24 Q And can you tell us what you and the State Fire  
25 Marshall did at that point?

1           A       Initially, upon arrival, he came down -- was  
2 here December the 27th. We visited the fire scene. I  
3 stayed back, and he walked through the fire scene. Then  
4 we got together and matched my findings to what he saw and  
5 came to the same conclusion that we had a deliberately set  
6 fire.

7           Q       All right.

8                   MR. JACKSON: Pass the witness.

9                   CROSS-EXAMINATION

10          BY MR. MARTIN:

11           Q       Chief, any arson investigator must be very  
12 careful when he encounters what he believes to be a puddle  
13 pattern; is that correct?

14           A       That's correct.

15           Q       Because it's not just accelerants that can  
16 cause those, right?

17           A       That's correct.

18           Q       In fact, anything that is in that area of the  
19 floor that causes the fire to burn hotter might mistakenly  
20 lead you to that conclusion; is that correct?

21           A       That's correct.

22           Q       That's why, for example, you've examined  
23 whether it was a plastic toy that caused it, right?

24           A       That is correct.

25           Q       Now, did you know that this house is about 40

1 years old?

2 A Later on after the investigation, yes.

3 Q But you determined -- that being the case, it  
4 was built sometime in the '50s?

5 A Yes, sir.

6 Q And originally had an oak tongue and groove  
7 floor?

8 A Yes, sir, it did.

9 Q And on top of that was tar paper?

10 A Yes, sir.

11 Q We call it tar paper because it's got tar in  
12 it?

13 A That's correct.

14 Q And tar burns?

15 A That's correct.

16 Q On top of that was linoleum tile?

17 A No, sir. On top of that was quarter-inch ply  
18 wood.

19 Q And on top of that was the tile?

20 A Yes, sir.

21 Q Was the ply wood all over the floor?

22 A To my knowledge it was. I did not see an area  
23 where it was not.

24 Q And the tile was all over the floor?

25 A To my knowledge it was, yes.

1 Q And what is the tile connected to the floor  
2 with?

3 A It would have been an adhesive. ✓

4 Q Glue?

5 A Glue.

6 Q Glue burns?

7 A Some glue does, yes.

8 Q Tar paper?

9 A Yes.

10 Q Linoleum burns?

11 A Yes, it does.

12 Q Plastic toys will run when they are hot and  
13 melt?

14 A Some do and some do not.

15 Q Some clothing?

16 A Some clothing will.

17 Q And some other items that we may not be able to  
18 think of right now?

19 A Yes, sir.

20 Q But there are things that will do that, right?

21 A Oh, yes, sir.

22 Q Now, the reason that you find a pattern in the  
23 floor that is burned deeper than elsewhere is basically  
24 two reasons. One, you suppose the fire is hotter there;  
25 and, two, the floor is thinner there in some instances?

1 A That is correct.

2 Q For example, a house that has been lived in for  
3 40 years has had a lot of foot traffic. Can we suppose  
4 that?

5 A Yes, sir.

6 Q And in certain areas of the house, like where  
7 you walk through a door, there is more foot traffic than  
8 elsewhere, isn't there?

9 A That's correct.

10 Q These areas of the floor are thinner because  
11 they have been walked on a lot?

12 A That's a possibility, yes.

13 Q Those areas will burn faster and deeper than a  
14 area with less foot traffic?

15 A Not necessarily in that you are talking of a  
16 floor level.

17 Q But commonly so, correct?

18 A Commonly so.

19 Q Aren't you cautioned in the arson investigation  
20 books that you read and refer to that you must be careful  
21 to distinguish those areas?

22 A Yes, sir.

23 Q It says in these books that heavily traveled  
24 areas will burn down deeper than less traveled areas,  
25 generally speaking?

1 A Sometimes, yes.

2 Q Now, in every area, for example, the areas that  
3 were shown in Defendant's 5 is a place where there is  
4 tile, correct?

5 A Well, the tile has been burnt away.

6 Q Well, where there was tile originally?

7 A Yes.

8 Q And the areas that we see that are burned down  
9 are burned below the tile, correct?

10 A Correct.

11 Q In other words, they are burned below the level  
12 of tile, right?

13 A That's correct.

14 Q And glue on the bottom of tiles will burn in a  
15 fire, won't they?

16 A Yes. It will if it can receive the heat and  
17 the air.

18 Q And you don't think that the glue did burn in  
19 this case, do you?

20 A Surely some of the glue had to burn.

21 Q Because some of the tile was burned?

22 A Yes, that's correct.

23 Q Glue can be an accelerant as well, can't it?

24 A That's correct. It can be.

25 Q And in areas where the glue burns, it will burn

1 hotter than just in an area where the tile burns, correct?

2 A Sometimes, yes.

3 Q And in every case where you found some kind of  
4 pattern on the floor, there was glue before it burned up  
5 as far as you can tell?

6 A As it burned down past that in several areas.

7 Q There was tar paper as far as you can tell?

8 A That's correct.

9 Q And so what you found is that in most areas,  
10 the carpet that was on top of here burned up, right?

11 A That's correct.

12 Q And that the tile burned up and some of the  
13 wood burned up?

14 A That's correct.

15 Q And all the ply wood was covered with glue  
16 because it was all under the tile, correct?

17 A Top part of it, yes.

18 Q Now, you didn't perform any tests yourself on  
19 any of these samples that you took, did you?

20 A No, sir, I did not.

21 Q And you say that you found some areas on the  
22 porch that you thought had had some accelerant on them?

23 A That's correct.

24 Q Like charcoal lighter fluid?

25 A That's correct.

1 Q And, for example, as far as you can tell,  
2 someone could have been barbequing on the front porch,  
3 spilled lighter fluid and make the same kind of stain,  
4 won't it?

5 A That's correct.

6 Q There is a photograph that you took that shows  
7 a big hole between the porch and the threshold. It shows  
8 a big hole in the porch on this side of the threshold. Do  
9 you remember that?

10 Let me ask you another question or two: While we are  
11 looking for those, we know, of course, that any fluid on  
12 the flat surface will return to wherever the lowest center  
13 of gravity is, won't it?

14 A That's correct.

15 Q Like on the front porch, any fluid out there,  
16 we would expect it to run to the lowest place on the  
17 porch?

18 A That's correct.

19 Q Do you remember the big hole I'm talking about  
20 on the front porch between the porch and the threshold?

21 Maybe we will have a picture of it here in a minute.

22 A You are talking about this area? Let's see  
23 where the concrete ends.

24 Q Yes, sir.

25 A That's it. Uh-huh.



1 Q And there was a rather large crack between the  
2 threshold and the concrete porch, correct?

3 A Yes, sir.

4 Q And when you went down to the house to wash the  
5 place down, did you wash the front porch off?

6 A Yes, we did.

7 Q Did you notice water running down this hole?

8 A No, sir, I did not. I noticed it running off  
9 of the front of the porch.

10 Q You mean from the threshold to the front of the  
11 porch?

12 A That's correct.

13 Q Did you look for that specifically?

14 A Yes, sir. Same thing in the bedroom, also.

15 Q And the threshold before it burned was painted  
16 or do you know?

17 A I could not say for sure.

18 Q So, you don't know whether it was painted or  
19 not right off?

20 A I don't remember seeing any painting on it.

21 Q But paint burns?

22 A Yes. Some paint does.

23 Q If you have a piece of painted wood, the  
24 painting will burn off of it?

25 A If it's an oil base paint, yes. If it's water

1 base, it will not.

2 Q Well, isn't it common that exteriors of houses  
3 painted with oil base?

4 A Some cases. Most of it is water base.

5 Q But if you had a piece of wood like this jury  
6 rail or if it had oil base paint, had finish on the bottom  
7 and caught fire, you would expect the bottom of it to  
8 burn?

9 A Not that much. More or less it would blister  
10 more than char burn.

11 Q Would it be uncommon to find paint that would  
12 burn off of a piece of wood?

13 A Oil base painting will, yes.

14 Q When it does so, it leaves an indication on the  
15 wood that there's been a fire on it?

16 A Not a char burn or a deep burn but a  
17 discoloration type burn, yes.

18 Q Well, in other words, Chief, if the threshold  
19 is painted and the house catches on fire, heavily involved  
20 in fire, wouldn't you expect the painting to burn, to be  
21 some indications on it, on the threshold?

22 A Yes.

23 Q Now, when you say that you eliminated all the  
24 causes of the fire, you are speaking really of the  
25 electricity and the space heaters, aren't you?

1 A That's your most common type accidental fires,  
2 yes.

3 Q Because, for example, a child could have  
4 started a fire with a cigarette lighter or match?

5 A Not unless they set it outside and went back  
6 in.

7 Q If you will just answer the question.

8 MR. MARTIN: I object as unresponsive.

9 Just answer the question I ask, please.

10 BY MR. MARTIN:

11 Q Wasn't anything about the fire that eliminated  
12 the possibility that a child started the fire, was there?

13 A A child could have done it.

14 Q You have investigated fires that were  
15 accidentally set by children, have you not?

16 A Yes, I have.

17 Q And it's not uncommon in human experience for a  
18 child in a home where people smoke to get a hold of a  
19 cigarette lighter and light it, is it?

20 A No, that's not uncommon.

21 Q And it's not uncommon around any home to have  
22 accelerants in a place where children could reach them, is  
23 it?

24 A No, that's not uncommon.

25 Q It has been your experience in these past 20

1 years to find fires where a child, for example, has gotten  
2 a hold of an accelerant and sprayed them or poured them or  
3 some other way got them on the floor then accidentally set  
4 it on fire?

5 A That's correct.

6 Q It happens?

7 A It happens.

8 Q It could have happened in this case as far as  
9 you know, couldn't it?

10 A In my opinion, no.

11 Q I'm not asking about your opinion now, and I  
12 know you have one; but I'm asking about what you found at  
13 the scene.

14 This is my real question: Why could not have the  
15 child, Amber, for example, two years of age, have  
16 inadvertently or accidentally got the charcoal lighter  
17 fluid or sprayed the lighter fluid and inadvertently set  
18 it on fire?

19 A In my experience, it has been that whenever --

20 Q My question -- excuse -- pardon me just a  
21 moment. Just a moment.

22 To be sure you understand my question. My question  
23 is about the facts of the physical evidence of this fire.  
24 Do you understand my question?

25 A Uh-huh.

1 Q This fire wasn't anything that you discovered  
2 or anything about it that would have eliminated that as a  
3 possibility, was there?

4 A I could not say that she did not set the fire.

5 Q That's my question.

6 MR. MARTIN: Pass the witness.

7 REDIRECT EXAMINATION

8 BY MR. JACKSON:

9 Q Based on your opinion, do you believe that  
10 babies set this fire, Doug?

11 A In my experience from other fires where  
12 children have accidentally set them and where they have  
13 ignited an accelerant type or liquid type, there was one  
14 area. It did not go from, in this case, the front porch  
15 into the hall and into the bedroom. No, I've never seen  
16 one like that.

17 Q In your opinion would that be implausible?

18 A It could happen, but the possibility would be  
19 very remote.

20 Q Doug, Mr. Martin asked you lot of questions  
21 about how glue burns and how paint burns and how tar paper  
22 burns. Did any of these -- did glue or paint or tar paper  
23 leave those puddle patterns on the floor in this room and  
24 the burn trails in this house?

25 A In my opinion, no. If that glue -- of course,

1 glue will burn some. Even water base type glue will burn;  
2 but in order for it to burn, it's got to get some air.  
3 The glue being sandwiched between the tile and the ply  
4 wood did not have the opportunity for the air to get to it  
5 until after the tile loosend from heat that was coming  
6 from another source, and then you are talking about a very  
7 thin layer of glue that is sandwiched between the tiles  
8 and the ply wood. So I don't think the glue would have  
9 had anything to do with the puddle configurations.

10 Q That was my next question. Does glue leave  
11 puddle configurations like you found in this house?

12 A No, not unless the glue was poured; and then  
13 the glue would burn off. It would leave more or less a  
14 stain with an ash.

15 Q Does it -- in the face of the questions that  
16 were asked you by Mr. Martin, do you still find this is,  
17 in your opinion, this was an intentionally set accelerated  
18 fire?

19 A Yes.

20 MR. JACKSON: Pass the witness.

21 RECROSS-EXAMINATION

22 BY MR. MARTIN:

23 Q Well, Chief, this room had clothing, furniture,  
24 plastic toys and other things in it, didn't it?

25 A I didn't hear you. I'm sorry. Would you

1 repeat that, please?

2 Q This room that we are talking about had  
3 clothing in it, wooden furniture, plastic toys and other  
4 things that burned, didn't it?

5 A That's correct.

6 Q And when those things burn, they get hot, do  
7 they not?

8 A They do.

9 Q They will burn through the floor. And it could  
10 easily set the glue on fire under the tile, couldn't it?

11 A Not until after the tile had been loosened.

12 Q Well, let me show you what we will mark  
13 Defendant's D-1.

14 This is a picture that you took?

15 A Yes.

16 Q Is that a picture of tile in the bedroom?

17 A Yes.

18 Q It shows the glue was burned?

19 A It shows a small area where we picked up a  
20 piece of the tile, yes.

21 Q Could you answer the question that I asked you?

22 A I cannot say that the glue itself burned. It  
23 could have been where the liquid burns, and it got up  
24 under the tile and burned.

25 Q Or it could be where the glue burned, couldn't

1 it?

2 A It's possible. The other glue on the back of  
3 the tile did not, though.

4 MR. MARTIN: We will offer in evidence  
5 Defendant's 1.

6 MR. JACKSON: No objection.

7 THE COURT: It's admitted.

8 BY MR. MARTIN:

9 Q Let me show you Defendants 2.

10 Do you recognize this as a picture that was taken of  
11 the front porch of the house?

12 A Yes, I do.

13 Q And do you recognize the white object there as  
14 being a disintegrated portion of a charcoal lighter  
15 container?

16 A Yes, I do.

17 Q This was on the front wall of the northeast  
18 bedroom, correct?

19 A That's correct.

20 MR. MARTIN: We will offer in evidence  
21 Defendant's 2.

22 MR. JACKSON: No objection.

23 THE COURT: It's admitted.

24 BY MR. MARTIN:

25 Q Let me show you Defendant's 3.



1 Do you recognize this as a newspaper photograph taken  
2 while the fire was burning?

3 A I did not see that in the paper.

4 Q Do you recognize this as the front of the house  
5 we are talking about?

6 A It appears to be, yes.

7 Q Do you see behind this fireman an upside down  
8 charcoal grill?

9 A Yes, sir.

10 MR. MARTIN: We will offer in evidence  
11 Defendant's 3.

12 MR. JACKSON: No objection.

13 THE COURT: It's admitted.

14 BY MR. MARTIN:

15 Q And do you recognize Defendant's 4 as the pile  
16 of debris outside the northeast room window?

17 A Yes.

18 Q And that was all of the things that were  
19 shuffled, raked, swept out of that bedroom; is that  
20 correct?

21 A That's correct.

22 MR. MARTIN: We will offer in evidence  
23 Defendant's 4.

24 MR. JACKSON: No objection.

25 THE COURT: It's admitted.

1 BY MR. MARTIN:

2 Q There is no reason why the brown stains you  
3 described on the front porch couldn't have come from that  
4 charcoal lighter fluid container, is there?

5 A No.

6 Q It's not uncommon to find a charcoal lighter  
7 fluid container around a charcoal grill, is it?

8 A No, it's not.

9 Q Are you familiar with those charcoal lighter  
10 fluid containers that HEB used to sell, generic lighter  
11 fluid?

12 A Yes, I am.

13 Q Do you know they had easily accessible lids  
14 children could get into?

15 A Yes.

16 Q Are you aware of the fact HEB pulled those from  
17 the shelves because the number of the children opening  
18 them and starting fires or injuring themselves?

19 A No, I was not.

20 MR. MARTIN: Pass the witness.

21 FURTHER DIRECT EXAMINATION

22 BY MR. JACKSON:

23 Q Is it still your testimony in your opinion this  
24 was a deliberately set, arson fire.

25 A Yes, it is.

1 Q Based on anything Mr. Martin has asked you, do  
2 you -- can you visualize a situation where some child went  
3 through the house pouring these puddle patterns, leaving a  
4 trail out through the hall and into the front of the house  
5 as you have described in your testimony? Does that seem  
6 logical to you?

7 A No, it does not.

8 MR. JACKSON: Pass the witness.

9 FURTHER CROSS-EXAMINATION

10 BY MR. MARTIN:

11 Q Nothing in your investigation would make it  
12 impossible that a child took a container of some flammable  
13 liquid and inadvertently or otherwise spilled or poured it  
14 on the floor and set it on fire, correct?

15 A That would be correct to make it impossible.

16 Q There wasn't anything you found that would show  
17 that that could not have happened, correct?

18 A That's correct.

19 MR. MARTIN: Pass the witness.

20 MR. JACKSON: No further questions.

21 THE COURT: You may step down.

22 THE COURT: Members of the jury panel, we  
23 are going to be in recess for about ten minutes.

24  
25 (Recess)

1  
2 THE COURT: The jury panel is back in  
3 place.

4 Call your next witness, Mr. Jackson.

5 MR. JACKSON: James Palos, Your Honor.

6 THE COURT: Were you sworn this morning?

7 WITNESS: Yes, sir.

8 THE COURT: Take your seat, please.

9 MR. JACKSON: May I proceed?

10 THE COURT: Yes, sir.

11 JAMES PALOS,

12 After having been called by the State and after having  
13 been first duly sworn to tell the truth, the whole truth,  
14 and nothing but the truth, the witness testified on his  
15 oath as follows:

16 DIRECT EXAMINATION

17 BY MR. JACKSON

18 Q Would you state your name for the record,  
19 please?

20 A My name is James Palos.

21 Q James, how are you employed?

22 A I'm the fire marshall at the Corsicana Fire  
23 Department.

24 Q James, tell us basically what your duties  
25 consist of as fire marshall?

1           A       My duties as fire marshall of City of Corsicana  
2 include inspections on various businesses, investigation  
3 of fires and public education.

4           Q       Let me direct your attention back to the 23rd  
5 of December, two days before Christmas last year.

6           Did you have an opportunity to be present at a  
7 structure on 11th Avenue in Corsicana that was damaged by  
8 fire?

9           A       Yes, I was.

10          Q       Can you tell us -- can you tell us basically  
11 what -- how you came to arrive at that premises when you  
12 came to arrive at it just roughly?

13          A       The alarm came in at 10:24 in the morning and  
14 other units responded at that time. I was tied up in  
15 another structure fire. I was gathering my information,  
16 and I arrived at the one on West 11th at approximately,  
17 say, 11:00 o'clock that morning. That's where -- earlier  
18 that morning I was in another fire.

19          Q       Did you have an opportunity to participate in a  
20 fire scene investigation with Mr. Fogg and others?

21          A       Yes, I did.

22          Q       All right. And in the course of that fire  
23 scene investigation, did you take certain samples of  
24 materials and other items?

25          A       Yes, I did.

1 Q I will show you what has been marked State's  
2 Exhibit No. 6.

3 I will ask you to identify that for me, if you can.

4 A That is at the front door, the wooden  
5 threshold.

6 Q Was that an area that was utilized by you as a  
7 sample in this case?

8 A Yes, it was.

9 Q Can you tell us the reason you obtained a  
10 sample from this area?

11 A Yes. I obtained a sample from this area  
12 because of the unusual burn characteristics on the wood.

13 Q Was -- were these samples obtained in the  
14 course of what later became an arson investigation?

15 A Yes.

16 Q And can you tell us the means by which you  
17 obtained that sample?

18 A Well --

19 Q Did you use a saw?

20 A Yes, they cut with a saw.

21 Q Tell us what you did with the sample after it  
22 was obtained.

23 A I took my sample, I placed it in a container  
24 which I myself sealed; and I tagged it with an evidence  
25 tag and placed it in my van.

1           Q     I believe that's already been admitted into  
2 evidence. Let me show you another photograph, State's  
3 Exhibit 8. Can you identify this for me, please?

4           A     Yes. That's going to be the east side of the  
5 front porch.

6           Q     Would you explain what that photograph depicts?

7           A     This area here is the front porch, as the side  
8 of the house, and this was the remains, some type of  
9 plastic which was collected as evidence also.

10          Q     All right. Can you tell us what you did with  
11 that particular piece of evidence after it was collected?

12          A     Yes. That piece of evidence there again was  
13 placed in a container, tagged, put in my possession and  
14 was taken to Armstrong Forensic Laboratory.

15          Q     Were both of these exhibits taken to  
16 laboratories?

17          A     Yes. All of them were taken there.

18          Q     Do you have copies of your submission?

19          A     Yes, I do.

20          Q     Could you show those to me, please?

21                I believe you previously identified this  
22 photograph as marked as State's Exhibit 8 said that --  
23 restate what that photograph portrays.

24          A     Some type of plastic container.

25          Q     All right.

1 MR. JACKSON: I would offer this into  
2 evidence as State's Exhibit 8 at this time and ask it be  
3 admitted.

4 MR. MARTIN: No objection.

5 THE COURT: Admitted.

6 BY MR. JACKSON:

7 Q Can you identify now what has been marked as  
8 State's Exhibit 9, 10 and 11 for me please?

9 A Yes. No. 9 is my submission of the first five  
10 samples I took. No. 10 is a submission of 6 through 11 of  
11 my samples. And No. 11 is No. 12 and No. 13 of my  
12 samples.

13 Q I'm going to ask you to focus on these  
14 submissions with regard to those photographs with regard  
15 to the threshold. Which number submission or which number  
16 sample is that?

17 A Be No. 6.

18 Q All right. With regard to the remains of --  
19 melted remains of a plastic container, which submission  
20 number would that be?

21 A It would be No. 12.

22 Q Okay.

23 MR. JACKSON: No. 6 and No. 12, we offer  
24 these into evidence as State's Exhibits 9, 10 and 12.

25 MR. DUNN: Your Honor, at this time



1 the defendant would object to State's 10, 11 and -- 9, 10  
2 and 12 because it is our understanding that the fire  
3 department and the D.A.'s office has the responsibility of  
4 proving the chain of custody.

5 We believe that they are trying to have the cart  
6 admitted before the horse as identified. If they wish to  
7 stop and present a chain of custody at this time, we would  
8 hold our objection subject to that; but at this time we  
9 object to this.

10 MR. JACKSON: We have not offered any of  
11 these items into evidence.

12 MR. DUNN: I understand, Your Honor, they  
13 are admitting these for the truth of the matter asserted  
14 therein, that there is a No. 13, remains of some type of  
15 plastic container as they are exhibited in here, which is  
16 hearsay to the Court at this time.

17 We object to the admissibility because of no chain of  
18 custody.

19 MR. JACKSON: I think that goes to the  
20 weight not the admissibility, Your Honor. We will  
21 certainly make an offer of proof at a later time. Those  
22 particular items will be offered into evidence.

23 THE COURT: I overrule the objection.  
24 They are admitted.

25 BY MR. JACKSON:

1 Q What is the purpose -- what was the purpose  
2 that you took samples in this particular structure fire?

3 A The reason I take samples in a fire  
4 investigation is to identify any possible accelerants that  
5 could have been used in a fire.

6 Q With regard to the threshold Sample No. 67 on  
7 your submission, was this obtained from an area which you  
8 believed had been accelerated?

9 A Yes, I do.

10 Q All right.

11 MR. JACKSON: Pass the witness.

12 CROSS-EXAMINATION

13 BY MR. MARTIN:

14 Q But those were the only samples you took?

15 A No, sir.

16 Q You took many others?

17 A Yes, I did.

18 Q You took various samples from the hallway and  
19 the northeast room?

20 A Sir?

21 Q You took samples from the hallway of the house?

22 A Yes.

23 Q And from the room on the northeast of the  
24 house?

25 A Yes.

1 Q You took samples from any area that you thought  
2 was suspicious?

3 A Yes.

4 Q And sent them to the lab, did you not?

5 A Yes, I did.

6 Q Do you recognize this as an accurate drawing of  
7 the interior of the house in question.

8 This would be the front porch here, the hallway here,  
9 and this is the northeast bedroom where the children  
10 slept; is that kind of how they are?

11 A Yes, it does resemble some.

12 Q The bathroom is here. Remember that?

13 A Yes.

14 Q Kitchen down here. Maybe this will be  
15 sufficient for our purposes.

16 The room here is a bedroom, correct?

17 A Yes.

18 Q And this room was used as the living room?

19 A Yes.

20 Q And that was the child's room here?

21 A Yes, it was.

22 Q And you took samples from the threshold here,  
23 correct?

24 A Yes, I did.

25 Q Found a charcoal lighter container, the remains

1 of it about there somewhere?

2 A Yes, I found the remains of some type of  
3 plastic bottle.

4 Q And sent those off to the lab, you told us?

5 A Yes, I did.

6 Q Now, also you took some glass. Where did you  
7 get the glass?

8 A I retrieved fragments of glass from the  
9 northeast bedroom below the east front window of the north  
10 wall.

11 Q About right here?

12 A Yes.

13 Q Window glass?

14 A Yes, sir.

15 Q Window glass? Are you sure?

16 A It appeared to be window glass. It was where  
17 other window glass was.

18 Q Okay. And then you took carpet and glass  
19 samples?

20 A Yes.

21 Q From where?

22 A They were from the floor of the northeast  
23 bedroom approximately three foot inside the door.

24 Q About here?

25 A Yes.

1 Q Where else?

2 A There was a Sample 3. It was bottom of the  
3 south side door facing from the doorway into the northeast  
4 bedroom.

5 Q Here?

6 A Yes.

7 Q And then Sample 4 was some more wood?

8 A It was base board underneath the south window  
9 in the northeast bedroom.

10 Q South window in the northeast bedroom?  
11 Actually -- I don't have this drawn exactly right -- this  
12 is that, isn't it?

13 A Yes.

14 Q There's a window here. You took a sample form  
15 there?

16 A Yes.

17 Q Sample 5 was wood. And from where was that?

18 A It was from the front doorway.

19 Q Here again?

20 A No, sir. More towards the corner of the door.

21 Q Like to your left or right?

22 A To be my left.

23 Q Like over here?

24 A Yes.

25 Q Sample 6 was wood?

1 A Yes.

2 Q Where was that from?

3 A It was wooden threshold from the door.

4 Q All right. Sample 7 was from where?

5 Q From the northeast bedroom?

6 A Where.

7 Q It's going to be right under the end in the

8 northeast --

9 Q About right there?

10 A Right there.

11 Q Sample 8 was carpet from where?

12 A It was found in the northeast bedroom near the

13 east wall.

14 Q Over here?

15 A Yes.

16 Q Sample 9 was here?

17 A Yes.

18 Q From where?

19 A It was near the window on the south wall.

20 Q Near here somewhere?

21 A Yes.

22 Q Sample 10 was wood?

23 A Yes.

24 Q From where?

25 A The west wall, the hallway by the living room

1 door.

2 Q West wall hallway by living room door here?

3 A Yes.

4 Q Sample 11 was metal?

5 A It was aluminum.

6 Q Okay. From where was it?

7 A It was aluminum threshold taken from the front  
8 door.

9 Q You sent these to a lab?

10 A Yes.

11 Q You concentrated your collection on areas which  
12 were most suspicious to you?

13 A Yes.

14 Q And then sent them off and asked the lab to  
15 detect whether there was an accelerant in those samples?

16 A Yes, I did.

17 Q And the only accelerant that was detected was  
18 here, the container for the charcoal lighter fluid?

19 A Yes.

20 Q And here, the threshold of the door?

21 A Yes.

22 Q But none others, correct?

23 A That's true.

24 Q All else was negative?

25 A Right.

1 Q Now, Mr. Palos, are you familiar with the kind  
2 of container that you have identified for us in that  
3 photograph as charcoal lighter fluid?

4 A Yes.

5 Q It's generic?

6 A Uh-huh.

7 Q It's sold at H.E.B. It's cheap, isn't it?

8 A Yes.

9 Q It has just a flip top on the top, doesn't it?

10 A That is correct.

11 Q A child at a very young age could open it,  
12 could they not?

13 A It's possible.

14 Q Well, any child who could flip it up could open  
15 it, right? It didn't have child proof tamper lid like  
16 medicine bottles?

17 A Right.

18 Q Did you know that HEB doesn't sell those  
19 anymore because they had so many experiences with children  
20 opening those, setting fires, harming themselves?

21 A No.

22 Q Have you tried to buy those at H.E.B. lately or  
23 at any time?

24 A No.

25 Q Did you go to HEB before you came to court



1           today to see whether they were still available?

2           A     No, sir, I haven't.

3           Q     Do you still have with you the remains of that  
4           container that you have shown us in the photograph?

5           A     No, sir, I don't. They are with Dr. Armstrong.

6           Q     All right. Are you familiar with this kind of  
7           kerosene lantern that I have here? You have seen those  
8           before?

9           A     Yes, sir, I have.

10          Q     And, technically, they are used by filling them  
11          with kerosene and lighting the wic, are they not?

12          A     True.

13          Q     And kerosene that will work in this lamp is the  
14          same kind of kerosene that were found in your samples,  
15          correct, or do you know?

16          A     Can I refer back to my notes?

17          Q     Please do.

18          A     My sample that was found in No. 6 stated it  
19          contained a mineral spirits of kerosene.

20          Q     May I see that? Is that the lab report?

21          A     Yes, it is.

22          Q     Okay. May I look at it? Do you have the other  
23          letter from Dr. Armstrong? Do you have another letter  
24          from Dr. Armstrong?

25          A     Yes, I do.

1 Q This one has the section I was looking for.

2 The doctor reported to you, did he not, that what was  
3 recovered from the threshold and also from the charcoal  
4 lighter container was straight run petroleum distillate  
5 known as mineral spirits of kerosene, correct?

6 A Yes.

7 Q In other words what we can buy at the gas  
8 station and call kerosene. Is that the way you understand  
9 that?

10 A Yes.

11 Q I mean it's just kerosene?

12 A Kerosene.

13 Q And this kind of distillate can be found as a  
14 fuel in some charcoal starters?

15 A That's true.

16 Q Or as solvent for paints and specialty  
17 products?

18 A Correct.

19 Q The kind of kerosene we might light this lamp  
20 with if we wanted to?

21 A Yes.

22 MR. MARTIN: Pass the witness.

23 MR. JACKSON: No further questions at  
24 this time.

25 THE COURT: You may step down.

1 Call your next witness.

2  
3 (Witness sworn)

4  
5 THE COURT: Take your seat please, sir.

6 MR. JACKSON: May I proceed, Your Honor?

7 THE COURT: Yes.

8 ANDREW T. ARMSTRONG,

9 After having been called by the State and after having  
10 been first duly sworn to tell the truth, the whole truth,  
11 and nothing but the truth, the witness testified on his  
12 oath as follows:

13 DIRECT EXAMINATION

14 BY MR. JACKSON

15 Q Would you state your name for the record?

16 A Yes, sir. My name is Andrew T. Armstrong.

17 Q Where are you from, Dr. Armstrong?

18 A I reside in Arlington, Texas.

19 Q Can you tell us what type of occupation or  
20 profession you engage in?

21 A Yes, sir. I'm a chemist by trade,  
22 consultant/chemist.

23 Q Do you do -- what types of chemistry work or  
24 analysis do you do, Doctor?

25 A Well, I run Armstrong Forensic Laboratories.

1 We specialize in the recovery and identification of  
2 flammable and combustible liquids from suspect fire  
3 debris. We handle the analysis to determine if there is  
4 something present and to identify that material if at all  
5 possible.

6 The laboratory also does environmental work for  
7 leaking underground storage tanks to produce  
8 identification in quantitation. We handle general  
9 chemical consulting, and we handle industrial hygiene  
10 samples where we try to protect the worker from the  
11 chemical environment by testing for particular chemicals  
12 in the workplace.

13 Q You mentioned something initially, Doctor, that  
14 caught my attention. You talked about flammable and  
15 combustible liquids. What is the difference between  
16 flammable and combustible liquids?

17 A It's a labeling problem. A flammable liquid is  
18 a warning; and if you have a flammable liquid, it has a  
19 property of being easily ignited. Particularly, it has a  
20 flash point below 100 degrees Fahrenheit, a combustible  
21 liquid will have a flash point above the hundred degrees  
22 Fahrenheit. It's a labelling consideration.

23 Q I didn't mean to digress. That was something  
24 that came to my mind. I didn't want to forget.

25 I would like to get into a little bit of your

1 background as far as education and experience with  
2 reference to the type of work you do.

3 What is your educational background, sir?

4 A I have a bachelor's of science degree in  
5 chemistry from North Texas State in Denton, Texas. That  
6 was about '58. A master's in chemistry at North Texas  
7 State in '59. I have an earned Ph.D. in chemistry from  
8 Lousiana State University in Baton Rouge. It's about '67.  
9 I've got one year plus graduate training in chemistry,  
10 University of California at Los Angeles and one year post  
11 graduate training in chemistry at Lousiana State  
12 University in Baton Rouge.

13 Q It's my understanding you also have some  
14 academic teaching experience; is that true, Doctor?

15 A Yes, sir.

16 Q What is that? Can you tell us about that?

17 A Well, after receiving the master degree, I  
18 taught for two years at West Texas State College in  
19 Canyon, Texas. Discovering that I enjoyed teaching at the  
20 college level, I then pursued the Ph.D. while studying for  
21 the Ph.D. on the faculty of LSU.

22 After the postgraduate work, I obtained a position  
23 with the University of Texas System at the University of  
24 Texas at Arlington in '69 and held that position until  
25 '84.

1           Q     With regard to the subject matter of your  
2     field, have you had an opportunity to author publications,  
3     that sort of thing during the past few years?

4           A     Yes, sir.

5           Q     How would you characterize those? Few  
6     publications? Many publications?

7           A     Several, about 19 or 20 scientific publications  
8     of which one or two deals specifically with the research  
9     into the field of the recovery and identification of  
10    flammable and combustible liquids. There are some others  
11    on more esoteric areas, but that's what we are concerned  
12    about today.

13          Q     Yes, sir. Does -- do you have an opportunity  
14    to conduct analyses of samples submitted to you on a  
15    regular basis?

16          A     Yes, sir.

17          Q     Do you have any idea how many such analyses  
18    your lab or might do in the course of a year?

19          A     In the course of a year, about 1500 cases of  
20    suspect fire a year; and each one of those on the average  
21    will handle about four samples. So that would be  
22    approximately 6,000 samples a year, and we've been doing  
23    this for maybe 15 years.

24          Q     Well, in regard to any professional  
25    certifications, do you hold any professional

1           certifications, Doctor?

2           A       Yes, sir.

3           Q       What are those?

4           A       I'm a certified chemist by the American  
5       Institute of Chemists, the laboratory is a certified  
6       industrial hygiene laboratory by the American Industrial  
7       Hygiene Association.

8           Q       Let me get away from your qualifications,  
9       background and experience for a little bit, Doctor.

10          Let me ask you: Have you had an opportunity to  
11       receive certain samples of materials from the Corsicana  
12       Police Department over the past several years?

13          A       Yes, sir.

14          Q       Do they submit samples to your lab on a regular  
15       basis?

16          A       Yes, sir.

17          Q       All right. Let me narrow that down to a  
18       particular case. I'm sure that you are aware of the  
19       subject matter of your testimony here today with regard to  
20       a particular event or instrument?

21          A       Just facts.

22          Q       Okay. Let me ask you: Has James Palos  
23       submitted certain samples to you with regard to a fire  
24       scene investigation?

25          A       Yes, sir.

1 MR. MARTIN: May I voir dire the witness  
2 on matters of personal knowledge before we begin this line  
3 of questioning?

4 THE COURT: All right, sir.

5 MR. DUNN: Can We do so out of the  
6 presence of the jury, Your Honor?

7 MR. MARTIN: Well, that's all right.

8 MR. DUNN: Waive my objection. Defer to  
9 counsel, Your Honor.

10 VOIR DIRE EXAMINATION

11 BY MR. MARTIN:

12 Q Dr. Armstrong, you have employees at the  
13 laboratory?

14 A Yes, sir.

15 Q How many do you have?

16 A Approximately 22.

17 Q And was it an employee at the laboratory that  
18 actually seized the samples from the Police Department?

19 A Certain samples were seized by an employee,  
20 yes, sir.

21 Q And not by yourself but by the employee; is  
22 that correct?

23 A Certain samples were seized by the employee,  
24 yes, sir.

25 Q And did you personally receive some?



1 A Yes, sir.

2 Q And an employee personally received some?

3 A That's correct.

4 Q I notice in your report a gentleman by the John  
5 Corn. Was it Mr. Corn that actually conducted the test on  
6 the samples?

7 A Yes, sir. He is chief chemist of the  
8 laboratory. He works under my direct supervision and  
9 control.

10 Q But you did not personally perform any of the  
11 tests?

12 A I may have personally performed some of the  
13 tests. I did perform the analysis of the data that was  
14 generated from the samples.

15 Q Do you know whether you conducted any of the  
16 tests personally?

17 A Yes, sir, on selected tests. I did perform  
18 some of the tests.

19 Q Can you tell us what tests you performed?

20 A Water soluble analyses on samples 13 -- 12 and  
21 13, inspection of the contents of the containers and the  
22 data analysis.

23 Q And were samples 12 and 13 the only two that  
24 you personally seized?

25 A No, sir. I personally seized items 12 and 13

1 and items 6 and 8, 9, 10 and 11.

2 Q So, items 1 through 5 you did not receive?

3 A I personally did not receive them; that is  
4 correct.

5 MR. MARTIN: Your Honor, we object. Mr.  
6 Corn received those samples. We object to this witness  
7 testifying about the receipt of Items 1 through 5 since he  
8 has no personal knowledge of those facts.

9 MR. JACKSON: Custody within laboratories  
10 in consequence according to the law, any objection of that  
11 goes merely to -- not to the admissability but to the  
12 weight only.

13 MR. MARTIN: Where is that law? We  
14 object to this witness testifying about the receipt of  
15 items he did not receive.

16 MR. JACKSON: That's just not the way it  
17 works, Your Honor.

18 THE COURT: I overrule the objection as  
19 made.

20 MR. JACKSON: May we proceed?

21 THE COURT: Yes, sir.

22 MR. DUNN: Your Honor, we would further  
23 object to the chain of custody in toto. There has not  
24 been any examination by the State of who originally took  
25 these, no identification and none shown that those are the

1 same items that were presented to this laboratory. We  
2 object to that.

3 THE COURT: I overrule the objection.

4 MR. JACKSON: May we proceed?

5 THE COURT: Proceed.

6 BY MR JACKSON:

7 Q Doctor, I will show you what has been marked  
8 State's Exhibit 9, 10 and 11 at this point. I will ask if  
9 your laboratory received those particular samples from the  
10 Corsicana Fire Department?

11 A State's Exhibit 9 is identification of Samples  
12 1, 2, 3, 4 and 5; yes, sir. I have the original  
13 transmittal there in the file.

14 State's Exhibit 10 is Samples 6, 7, 8, 9, 10, 11. I  
15 personally seized on December the 31st, 1990. I have the  
16 original in the file.

17 And State's Exhibit 11, I received on January the  
18 20th, 1992; and those are items 12 and 13. And I have the  
19 originals with the change of possession for those in the  
20 file.

21 Q So, your answer would be yes, you did receive  
22 those particular samples from the Corsicana Police  
23 Department or your laboratory received those samples from  
24 the Corsicana Fire Department?

25 A Yes.

1 Q And what was requested of your laboratory with  
2 respect to those various samples or submissions?

3 A To analyze the samples to determine if there  
4 was a flammable or combustible material present in each of  
5 the samples.

6 Q And it's your -- did your lab proceed to  
7 undertake that work?

8 A Yes, sir.

9 Q Can you tell us the process by which that type  
10 of work is undertaken?

11 A Yes, sir.

12 Q If you would, I would appreciate it.

13 A The samples are received -- typically, they are  
14 in metal containers. And the process is to establish a  
15 unique laboratory file number to label each individual  
16 item with that file number to document the transmittal  
17 letter, to compare the transmittal letter with the items  
18 that were submitted so that everything is accounted for.  
19 And to note on each sample the sample number, both on the  
20 side of the container and on the lid.

21 Now, after that is done, inventory is checked, the  
22 items are signed for. The next step in the procedure is  
23 to take one of these containers and place it into a heated  
24 chamber in which we had two needles that go into the top  
25 of the container. One of these needles pushes gas into

1 the sample, and the other needle collects it and brings it  
2 out and passes through a small tube of charcoal. This is  
3 effectively the same things is what you do with baking  
4 soda in your ice box. You absorb all the smells from your  
5 ice box. Here we are heating the sample, passing the pure  
6 nitrogen gas through the sample then exiting through this  
7 small tube of charcoal. The ends are broken off so that  
8 the gas actually passes through to the charcoal on the way  
9 out.

10 After that has been done for approximately an hour to  
11 concentrate any vapors from the material into the  
12 charcoal, the sample is then washed with a solvent and  
13 then this solvent, where it is extracted, the material  
14 hydrocarbon base material from the charcoal is analyzed on  
15 a device called a gas chromatograph; and that is nothing  
16 more than a fancy piece of plumbing that separates the  
17 wheat from the shaft, in particular, through appropriate  
18 plumbing.

19 The sample is introduced into a very long tubular  
20 device called a column, helium carrier. Gas pushes the  
21 sample down this long piece of tube. And I will advise  
22 you at the time of the analysis, the tube is in one piece.  
23 It's not broken. This actually has a hole in it, and the  
24 sample is pushed along. As it is being pushed along in  
25 this computer controlled hot air oven, eventually it comes

1 out the end where it's burned; and any time you burn  
2 something, it generates an electrical signal. This  
3 electrical signal is then displayed on a stip chart  
4 recorder which is most of this file and presents a  
5 pattern.

6 As things go through this long column, half the  
7 length of a football field, the small molecules will come  
8 out first. The larger molecules will take a little  
9 longer, and it's just like looking at a city sky line.  
10 You get certain patterns of information. If you compare  
11 those to knowns and compare those to standards, they match  
12 up; and when they do match up, you have made a proper  
13 identification.

14 The laboratory does not rely on just one test. It  
15 relies on two separate analytical columns, two separate  
16 charts that are completely different. It's like looking  
17 at a city sky line from the west and then turning around  
18 and taking another look from the south. You see all the  
19 same buildings. They are just in different positions.

20 And as a result, you are certain of your analysis on  
21 the first analysis and you are certain of your analysis on  
22 the second one. When you combine those two values, we say  
23 we are positive.

24 Q With regard to one of the submissions, I  
25 believe Submission No. 6 identifies a piece of threshold.

1 Did your laboratory have an occasion to perform tests  
2 on that particular submission, Doctor?

3 A Yes, sir.

4 Q Do you have that particular sample here with  
5 you today?

6 A Yes, sir.

7 Q I believe you have identified it to me earlier  
8 as contents of this package; is that correct?

9 A Yes, sir.

10 Q All right. Could you display that to the jury  
11 please, sir?

12 A This particular one is Sample No. 11.

13 Q Okay.

14 A Sample No. 6, it's in the container.

15 Q I tell you what. Sample 6 is the particular  
16 one that I am concerned with. Can you look inside that  
17 container?

18 A Certainly.

19 Q Retrieve that for me please.

20 A This was the original container that Sample 6  
21 was received in?

22 A Do you have a screwdriver?

23 Q All right. If I may I would like to label this  
24 container containing this particular exhibit as a State's  
25 exhibit at this time, please.

1           Q     All right. Doctor, you received what's been  
2           labeled State's Exhibit No. 12, I believe; is that  
3           correct?

4           A     Yes, sir.

5           Q     And tell you what: Tell me once again how your  
6           laboratory obtained that particular exhibit.

7           A     This particular sample was submitted on  
8           December 31st by Mr. James Palos along with five other  
9           samples. I personally received it. The original  
10          transmittal letter is dated and documented.

11          Q     And the tests that you have described for the  
12          Court and jury were -- did you implement those tests or  
13          submit this particular exhibit to those tests?

14          A     Yes, sir.

15          Q     Can you tell us -- I don't want to go through  
16          the examination or the analysis process again with you --  
17          can you tell us your findings with regard to that  
18          particular exhibit?

19          A     Yes, sir. Those findings were reported in the  
20          report dated January the 6th and in the section called  
21          "Data Analysis" established Sample 6, wood from --

22                   MR. MARTIN: Just to make the record  
23          clear, we object to this witness testifying about any  
24          tests that he did not conduct because he has no personal  
25          knowledge. It's hearsay.



1 THE COURT: Overrule the objection.

2 MR. DUNN: We further object, Your Honor,  
3 because the chain of custody has not been adequately  
4 proved to prove this is admissible evidence.

5 THE COURT: I overrule the objection.

6 Proceed, sir.

7 THE WITNESS: Sample 6, wood from a  
8 threshold containing components of narrow range straight  
9 run petroleum distillate known as mineral spirits of  
10 kerosene. This range can be found as fuel in some  
11 charcoil starters or as solvent or paints and especially  
12 solvents mineral spirits. Kerosene is a Class 3 petroleum  
13 distillate.

14 Q When we speak of a petroleum distillate, what  
15 does that mean Dr. Armstrong?

16 A Basically, when you take crude oil, you have  
17 petroleum and they sent it to a refinery and they do all  
18 kinds of things with it. One of those processes is  
19 distilling it, and this is a way of referring to material  
20 which has gone through a distillation process. It may  
21 have gone through other processes in addition to that, but  
22 it has been distilled and refined from petroleum.

23 This technique is, you know, quite common and it  
24 serves to divide very, very volatile material from things  
25 that aren't so volatile such as diesel fuel and motor oil,

1       those sorts of the things.

2           Q       When you speak of a mineral spirits of  
3       kerosene, what you found in this sample, how does that  
4       compare to the normal kerosene such as you can buy at a  
5       service station or such as you would burn in the lamp?  
6       Are we talking about the same thing or different things?

7           A       No. You are not talking about the same thing.  
8       You are talking about different things. The kerosene that  
9       you would normally put into a kerosene stove or lantern,  
10      that sort of thing, is a very broad distillation range.  
11      It has a wide range of boiling point of each of its  
12      components. This has been more refined. It's a very  
13      narrow distillation range typically marketed as a charcoal  
14      starter fluid. Technically, it's a combustible liquid.

15          Q       If you would explain to me again the  
16      distinguishing factor between combustible and flammable?  
17      How do you characterize combustible now?

18          A       Combustible and flammable are terms in  
19      labeling. And combustibles, the ignition point is a  
20      hundred degrees Fahrenheit. Combustible has a flash point  
21      above that. And flammable has a flash point below that.

22          Now flash point is a laboratory test that measures  
23      how easy this material is to ignite. If we have gasoline  
24      or gas stove fuel that's very easy to ignite, it's  
25      extremely flammable. If we have something like paint,

1 painting thinner, that's just flammable. And if we have  
2 something like charcoal starter fluid, it's combustible.  
3 The distinction is made on the basis that if you had a  
4 spill, you had an accident, you had a spill, what degree  
5 of hazard would you be exposed to? Would this material  
6 get to a hot water heater and flashback? If it's a  
7 flammable or extremely flammable material, that is  
8 possible.

9 Let's start back. If it's extremely flammable, it's  
10 very likely. If it's flammable, it's certainly possible  
11 with a high degree of probability. If it's a combustible  
12 liquid, the material will not give off enough vapor so  
13 that you can light it as a vapor until you get it to a  
14 hundred degrees Fahrenheit. You have to heat it to make  
15 it flash. That's where the word "flash point" comes from.

16 This is why you use combustible products to ignite  
17 your charcoal so that it doesn't flashback on you. You  
18 never do it with gasoline, which is a flammable, but a  
19 combustible is relatively safe to ignite from a close  
20 distance.

21 Q Would it be safe to say then that a combustible  
22 liquid requires more effort to light than a flammable or  
23 extremely flammable liquid?

24 A Yes.

25 Q Doctor, let me ask you to examine or -- well, I

1 would like to talk to you about another sample that was  
2 submitted to your laboratory by the Corsicana Fire  
3 Department in this case. Sample No. 12.

4 Can you tell us what this particular sample is? At  
5 least give us a physical discription of it?

6 A Yes, sir. It's a burned plastic container,  
7 white.

8 Q Have you brought that particular exhibit with  
9 you here?

10 A Yes, I have.

11 Q Could you retrieve that for me so that we could  
12 mark it as an exhibit, please?

13 MR. JACKSON: So as not to confuse  
14 these particular articles, could we have them marked as a  
15 State's exhibit.

16 Q Doctor, I will hand you what's been marked as  
17 State's Exhibit 13 and 14. Will you describe these for me  
18 at this time?

19 A Yes, sir. State's Exhibit 14 is a glass  
20 container which the sample orignally came to the  
21 laboratory, and it's marked with the appropriate File No.  
22 9, FR-3577, No. 12.

23 Q Based on your examination of that exhibit, is  
24 that the same sample submitted to you by the Corsicana  
25 Fire Department, Fire Marshall Palos?

1 A Yes, sir.

2 Q All right. Thank you.

3 Now would you look at the other exhibit and identify  
4 that for me, if you will?

5 That is what court exhibit number?

6 A This is 13.

7 Q 13. Please identify that or me.

8 A State's 13 is a one-quart container, metal,  
9 identified with 91-FR-3577, No. 12, with the word  
10 "transfer" on it, where the contents of State's 14 were  
11 transferred to State's 13 for the appropriate analysis.

12 On the top of the container is noted the two holes  
13 that were generated when the sample was analyzed sometimes  
14 known technically as the dynamic head space.

15 Q May we open that container so that the jury may  
16 take a look at that?

17 A Certainly. There we are.

18 Q Would you describe that for the record, please  
19 sir?

20 A Melted, charred plastic with an attached label  
21 partially decomposed. I can discern "C-h-a-r" on one line  
22 and "g-h-t" on the next line below that. I interpret that  
23 to mean "charcoal lighter". It's been through a fire.

24 Q Did you or persons under your supervision  
25 submit that particular exhibit that is the burned what was

1       once a plastic container to the testing procedures you  
2       have described?

3           A       Yes, sir.

4           Q       And can you tell us what the result of that  
5       testing disclosed?

6           A       Yes, sir.

7           Q       Report stated: "January the 27th, 1992, the  
8       reported Sample 12 contained mineral of kerosene, Class 3,  
9       petroleum distillate.

10          Q       How does that compare with your findings in the  
11       Exhibit No. 6, which you have already identified for the  
12       Court?

13          A       We address that in the main body of the report.  
14       Sample 6 has been through a fire. This has been through a  
15       fire. An item-by-item, compound-by-compound analysis  
16       could not be made. However, there is no technical reason  
17       that the contents of State's 13 could not have generated  
18       the material that was recovered from Sample No. 6.

19                Because of the nature of the fire, I can't say that  
20       that this was the only source that 6 could be. That's  
21       impossible for anybody to do, but there is no  
22       distinguishing characteristic in this that was not present  
23       in the other. There is nothing in Sample 6 which could  
24       not be counted for here. The way I worded it in the  
25       report, the Sample 6 was from the threshold, contains the

1 same range of petroleum product, no exact match could be  
2 achieved. There is no reason the recovery from Sample 6  
3 could not have originated from the same source as Sample  
4 12.

5 Q So, you find them to be consistent. Would that  
6 be a fair statement?

7 A Yes, sir.

8 Q I will ask you to take a look at --

9 MR. JACKSON: Well, first of all, I will  
10 ask that State's Exhibits 12, 13 and 14 be admitted into  
11 evidence at this time. I would offer them at this time.

12 MR. DUNN: We would object on the same  
13 grounds as offered before.

14 THE COURT: Objection overruled. They  
15 are admitted.

16 BY MR. JACKSON:

17 Q I'll have to ask you to look at State's Exhibit  
18 No. 14 and 15. I will ask you to identify these  
19 documents.

20 A Pardon me for being technical. Do we have an  
21 overlap?

22 Q Excuse me. Let me remark those. Let me  
23 resubmit to you what has been marked State's Exhibit 15  
24 and 16. Will you identify these?

25 A Yes, sir, I can.

1 Q What are those?

2 A State's Exhibits 15 and 16 are the two reports  
3 I was referring to. State's 15 is the final report of  
4 January 27th, concerning samples 12 and 13. And State's 16  
5 is January 6th reports referring to the first 11 samples  
6 that were submitted to the laboratory.

7 Q Are those laboratory reports with regard to the  
8 exhibits that you have just testified regarding?

9 A Yes, sir.

10 Q All right. Are these true and accurate copies  
11 of the reports contained within them the records of your  
12 laboratory?

13 A Yes, sir. These are the original reports  
14 submitted to Corsicana Fire Department. They have a stamp  
15 on them.

16 Q I assume that you are custodian of the records  
17 of that Armstrong Forensic Laboratories, Incorporated; is  
18 that correct?

19 A Yes, sir.

20 Q These were made in the course and scope of the  
21 activities conducted by your laboratory and made at a time  
22 that is near the time that the events were stated in here  
23 actually occurred?

24 A Yes, sir, they are.

25 Q Okay.



1 MR. JACKSON: I would offer these into  
2 evidence as Exhibits 15 -- State's Exhibit 15 and 16.

3 MR. MARTIN: No objection.

4 THE COURT: They are admitted.

5 MR. JACKSON: Pass the witness.

6 MR. MARTIN: We have no questions of this  
7 witness.

8 THE COURT: You may step down.

9 MR. MARTIN: May I ask that this witness  
10 remain available for a few more minutes.

11 THE COURT: That's fine.

12 Members of the jury panel, we are going to take about  
13 a ten-minute recess.

14  
15 (Recess)

16  
17 THE COURT: Call your next witness, Mr.  
18 Jackson.

19 MR. JACKSON: Manuel Vasquez.

20 THE COURT: Were you sworn this morning?

21 THE WITNESS: No, sir.

22  
23 (Witness sworn)

24  
25 THE COURT: Take your seat in the witness

1 chair, please, sir,

2 MR. JACKSON: For the purpose of the  
3 record, Mr. Bristol will examine this witness.

4 THE COURT: That will be fine.

5 You may proceed

6 MANUEL VASQUEZ,

7 After having been called as a witness by the State and  
8 after having been first duly sworn to tell the truth, the  
9 whole truth, and nothing but the truth, the witness  
10 testified on his oath as follows:

11 DIRECT EXAMINATION

12 BY MR. BRISTOL:

13 Q Deputy Vasquez, could you state your name and  
14 address, please.

15 A My name is Manuel Vasquez. My home address is  
16 305 West 4th Street in Lancaster, Texas.

17 Q And what is your occupation, sir?

18 A Sir, I'm deputy State Fire Marshall.

19 Q And how long have you been so employed?

20 A I've been employed with the State Fire Marshall  
21 for six months -- six years, nine months, last Saturday.

22 Q You have any rank or title?

23 A Yes, sir. I'm Deputy III.

24 Q And for the ladies and gentlemen of the jury,  
25 could you just give them a job description of what you do?

1           A       Yes, sir. My job is to determine the origin  
2           and cause of all fires that I get assigned to.

3           Q       What is your prior employment before you became  
4           a deputy State Fire Marshall?

5           A       I was employed for seven years as Fire Marshall  
6           for the City of Lancaster.

7           Q       What were your duties in that position?

8           A       They were the same duties with the additional  
9           duties of making fire safety inspections, reviewing  
10          building plans and inflammable liquid spills and other  
11          complaints of violations of fire codes and fire safety  
12          ordinances.

13          Q       Where did you work, if any, before you were  
14          Fire Marshall in Lancaster?

15          A       Prior to my employment with the City of  
16          Lancaster, I was with Dallas County, assistant Fire  
17          Marshall for three years.

18          Q       And where did you work prior to that?

19          A       Prior to the employment with the Dallas County  
20          Fire Marshall's office, I worked for the Grand Prairie  
21          Fire Department for 13 years.

22          Q       And that's a long time, but what, if anything,  
23          else have you done prior to that experience?

24          A       Yes, sir. I attended undergraduate of UTA in  
25          Arlington for three years.

1 Q And did you have any professional or any other  
2 type job before you went to UTA?

3 A Yes, sir. I served in the armed forces. I was  
4 in the intelligent services.

5 Q What branch?

6 A Army.

7 Q How --

8 A Eight years.

9 Q Could you go over your education, please?

10 A Yes, sir. I have -- like I said, I attended  
11 UTA for three years, and I am a certified Texas police  
12 officer. I am also a certified Texas arson investigator.  
13 I completed Dallas County Sheriff's Academy, and I  
14 completed the Dallas County Fire Academy. I was  
15 instructor at both facilities, and I have attended  
16 numerous courses of seminars at Texas A & M during the  
17 fire training school.

18 Q How long have you been a certified peace  
19 officer?

20 A Fifteen years, sir.

21 Q How long have you been a certified arson fire  
22 investigator?

23 A Fifteen years.

24 Q Are you a member of any professional  
25 association?

1           A       Yes, sir. I belong to the Texas Law  
2       Enforcement Intelligence Association, and I belong to the  
3       North Texas Fire Investigator's Association.

4           Q       What are your duties as Fire Marshall, Manuel?

5           A       With the State Fire Marshall?

6           A       Yes, sir.

7           Q       My duties are to investigate fires and  
8       determine the origin and cause of the fires. If I  
9       determine that the fire is accidental, usually at the end  
10      of the investigation, if I determine that the fire is  
11      incinery --

12          Q       What does incinery mean?

13          A       Okay. Incinery in our agency means that a fire  
14      is deliberately set intentionally.

15          Q       Or an arson?

16          A       That is the crime of arson, yes, sir.

17                   And if I cannot prove either accidental or  
18      incinery, then the fire is undetermined.

19          Q       Were there any requirements to you becoming a  
20      deputy State Fire Marshall?

21          A       Yes, sir. You have to have at least five years  
22      prior experience in fire service or law enforcement and  
23      also be a certified peace officer.

24          Q       And how many fires have you investigated since  
25      becoming a certified fire arson investigator?

1 A Perhaps in the range of 1200 to 1500 fires.

2 Q Of these 1200 to 1500 fires, how many turned  
3 out to be arson in your opinion?

4 A With the exception of a few, most all of them.

5 Q And how many -- again, based on your  
6 experience, how many arson fires that you investigated  
7 involved injuries or death?

8 A Unfortunately, fires injure a lot of people,  
9 kill a lot of people. It's about 50 percent.

10 Q How many trials have you testified in, Manuel?

11 A Twenty-five or thirty trials.

12 Q Do you also testify for the State?

13 A Yes, sir.

14 Q Have you ever testified on behalf of the  
15 Defendant or for the defense?

16 A I have testified in civil cases.

17 Q Have you ever investigated an arson or what  
18 maybe the police or fire department believed to be arson  
19 and cleared an individual of suspicion?

20 A My job is to determine the cause of the fire  
21 based on the facts and the evidence that I can determine.  
22 In some cases, the homeowner is suspected of setting the  
23 fire; and I have had luck or occasions where I have proven  
24 that the owner did not set the fire and that the fire was  
25 either set accidentally or by another person or persons

1 unknown.

2 Q Let me direct your attention specifically to  
3 your investigation of this case.

4 How did you become involved in this investigation?

5 A The state procedure is that we make all the  
6 investigations upon request by community in the area. We  
7 work in the North Texas area. We are responsible for 33  
8 counties. And when we receive a request, then our  
9 supervisor assigns that case to one of the investigators.  
10 I think this request was received on December 26th, 1991;  
11 and the request was made by the assistant fire chief, Doug  
12 Fogg.

13 Q When did you first come to Corsicana?

14 A I arrived in Corsicana the next day, December  
15 27th, close to noon.

16 Q Deputy Vasquez, could you explain to the jury  
17 how you conduct a fire scene investigation just in  
18 general?

19 A Yes, sir. It's a systematic method, and the  
20 fire scene is investigated in three phases. You conduct  
21 the perimeter examination, which means the area around  
22 where the fire occurred. Upon that, then the next thing  
23 you examine the exterior of the structure that burned. In  
24 many cases, the structure burns completely, totally.

25 However, there are still signs of whatever. You can

1 check the area where the walls used to be. You check for  
2 glass, aluminum things of that nature because they tell  
3 you a story. And upon completion of the exterior  
4 examination, then you examine the interior. And if the  
5 structure is still standing, you usually start from the  
6 area of least damage. And the fire, itself, you follow  
7 the trail of the fire. The fire brings you back to the  
8 scene of the fire or where the fire originated or to the  
9 area of most damage.

10 MR. BRISTOL: May I approach the witness,  
11 Judge?

12 THE COURT: Yes, sir.

13 BY MR. BRISTOL:

14 Q I've got a lot of exhibits here. Could you  
15 look at these Exhibits 18 through 50. Can you identify  
16 all of these?

17 A These are photograpgs, exact duplicates of the  
18 photographs that I took.

19 A Those are photos you took as part of your  
20 investigation?

21 A Yes, sir.

22 Q What is State's Exhibit 18?

23 A State's Exhibit 18 is a diagram that I, myself,  
24 drew of the structure where the fire occurred.

25 Q It's not to scale, is it?



1           A       No, sir, it's not. It's approximate.

2           Q       Okay. Would these photographs and this  
3 diagram, would they help you explain your testimony to the  
4 jury?

5           A       Yes, sir.

6           Q       Do the photographs accurately portray or depict  
7 the scene as you viewed it when you took those photos?

8           A       Yes, sir.

9                   MR. BRISTOL: I offer State's 18 through  
10 50, Judge.

11                  MR. MARTIN: No objection.

12                  THE COURT: They're admitted.

13                  MR. BRISTOL: Judge, may the witness come  
14 down to the diagram?

15                  THE COURT: You bet.

16 BY MR. BRISTOL:

17           Q       Could you just go through and describe your  
18 investigation of the scene? I believe the house was  
19 located at 1213 West 11th, City of Corsicana, Navarro  
20 County, Texas?

21           A       This photograph right here, first of all, is as  
22 you look at the diagram, the bottom part of the diagram is  
23 the north. This is the north looking north. The top part  
24 of the diagram is south; and obviously, these are in here  
25 as the east and this over here is the west. So if at any

1 time when I give directions, you are not oriented very  
2 well, please somebody tell me and I will reiterate.

3 This picture here -- of course, like I said, the  
4 first thing that I did with the perimeter examination,  
5 there was some residences. This residence -- there are  
6 residences on both sides. So when I made the examination  
7 of the residence, there was nothing of significance that I  
8 could see. There was no fire; there was no burning in the  
9 next house; there was no radiated heat to the next  
10 property. So that was an indicator that I had that the  
11 fire was probably contained in the structure.

12 This photograph is the east side. I took it from  
13 this direction facing south, and the burned marks on the  
14 wall indicates that the smoke and the fire vented out and  
15 up as determined. It's called auto ventilation. It's an  
16 indication of fire behavior. All fire goes up. All water  
17 goes down. Or any liquid goes down unless man changes the  
18 course. And this is what I saw when I first arrived. I  
19 took a picture of it.

20 Then I went -- you are here. It's the same room and  
21 I saw where the flames also come out of this here. That's  
22 this photograph right here. Then I went to the south part  
23 of the structure, which is -- this is the back door to the  
24 kitchen. Above the kitchen door, there was smoke where  
25 the smoke had vented out, had come out. There was no

1 flame, just smoke, when I entered the structure here, it  
2 was just a little area just for me to have squeeze in and  
3 the reason was because there was a refrigerator before and  
4 after the fire blocking this door. And the person who  
5 moved the refrigerator was the assistant fire chief, Doug  
6 Fogg when he was doing fire fighting operation when he  
7 first arrived.

8 I entered from here in the kitchen. There was no  
9 fire in the kitchen, just a lot of smoke. This door right  
10 here from the kitchen, this is the north door of the  
11 kitchen. As you go into the hallway -- I had not -- I did  
12 not know there was a hallway there, but this door here --  
13 the way the smoke and stains and the heat indicated to me  
14 that the fire come from above and because it was more on  
15 the north side than on the south. I knew the fire was  
16 coming from this direction, which I'm following. In other  
17 words, the fire is coming from this direction. I don't  
18 know where yet because I'm in here.

19 However, I'm in here. I went into this bedroom,  
20 which is the utility room; and in this room the only thing  
21 I found was a lot of soot, smoke on top of everything.  
22 There was some pictures on the wall that I took, and these  
23 are some of the pictures.

24 This one here is on this wall on this corner right  
25 here, on the southeast corner on this wall right here,

1 it's this picture. It's the grim ripper. It's got some  
2 other weird things. And this other picture's again  
3 indicating -- weird pictures in there on this wall right  
4 here, which is on the northwest area of this room.

5 Also in this room we found a piece of carpet, and I  
6 know you have seen this carpet on the wall with the dogs  
7 playing poker. Okay. When we unrolled it, there was a  
8 bunch of blond hairs inside this roll of carpet. So we  
9 just rolled it back up. I don't know what significane it  
10 had. I don't know, but we got it.

11 From here I went into the master bedroom. The master  
12 bedroom is at the center of the house on the west side,  
13 and this is the bed right here. When you walked in here,  
14 you could see the burnt patterns on the doors. The heat  
15 had come from the hallway. That was the main thing that I  
16 noticed from here. It had almost the same burn patterns  
17 that the kitchen door had. So it told me that the fire  
18 came from somewhere in the hallway. So I'm following it  
19 in that direction.

20 However, I went into the master bedroom. I went  
21 north into the living room. This room here had burned  
22 damage on the doors, and there was a lot of heat in this  
23 thing here. The heat line because heat rises up, and when  
24 it comes down the wall and leaves a mark just like a water  
25 mark, but the water marks from the bottom up the heat mark

1 comes from the top down. So that's what it had there. I  
2 went into this area here. One of the things that I  
3 noticed there was a Christmas tree right here next to this  
4 closet, but during the fire fighting operations, it got  
5 knocked down.

6 MR. MARTIN: We object to the witness  
7 testifying about what happened during the fire fighting  
8 operations. That was on December 23rd. He didn't get  
9 there until the 27th. There is no personal --

10 THE COURT: I sustain the objection.

11 MR. MARTIN: Perhaps, maybe, we ought  
12 to -- so we can anticipate these inadmissible comments --  
13 ask that it be conducted in question and answer form.

14 MR. JACKSON: Well, let me respond to  
15 that. First of all, Mr. Vasquez is an expert; and the  
16 method of his investigation takes a particular trail  
17 throughout the house. I think that if we get into a  
18 situation where it's necessary for Mr. Martin to make  
19 particular objections throughout the case, I think that  
20 will be apparent to Mr. Martin and the State and to the  
21 Court.

22 I would ask that he be allowed to proceed until such  
23 time that it appears that that creates a problem.

24 THE COURT: I'm going to overrule the  
25 objection. Proceed.

1           A       The significant part about this living room,  
2 ladies and gentlemen, was that there was no fire in here.  
3 There was a lot of heat damage on this side, but in this  
4 room there was no window here. The window was gone, but  
5 the heat came from the outside. And this window here, the  
6 heat came from the inside. And on this window in here,  
7 the heat came from the outside. So, you know, right now  
8 I'm just collecting information. I'm collecting facts. I  
9 have not made any determination. I don't have any  
10 preconceived idea. I'm just -- that's my job, to collect  
11 the information and analyze --

12                   MR. MARTIN: We object to this narrative  
13 explanation. The question was: What did he do?

14           We object to that as unresponsive to the question.

15                   THE COURT: Proceed, Mr. Vasquez.

16           A       Thank you, sir. From here I went back into the  
17 bedroom, and then I followed the trail of the heat  
18 patterns, and I got into the hallway. And this hallway  
19 had a lot of damage. There's a lot of debris on the  
20 floor. There's a lot of insulation falling down here.  
21 And when I got down here, and I'm looking at it, I noticed  
22 that right here, this is the east wall and the west wall,  
23 the burn pattern was from the floor in a 45 degree angle  
24 going up, like a lane taking off on both sides. That is  
25 what in the fire service and investigations is one of the

1 indicators of the origin of the fire. It's a V pattern.

2 You know, so this was all the debris. I get an  
3 indication right now for the first time that I'm inside  
4 that possible fire origin. It's in this area, and I won't  
5 know this until we clean this area up to make sure.

6 So, when I did that, then from here as I look down  
7 here, the next thing that I noticed looking north is that  
8 the door is totally gone. There is no door. It's  
9 completely burned. It had burned totally. And that was  
10 also unusual. I have seen fires in a bedroom and kitchen,  
11 and portions will burn on the door, but portions of the  
12 door are left. So, you know, my curiosity is up. Why is  
13 this burnt? So I go back in here, and again the floor is  
14 covered with debris. The fire department, prior to my  
15 arrival, had made an attempt to clean up some of the  
16 evidence.

17 MR. MARTIN: We object to things prior to  
18 his arrival.

19 THE COURT: I sustain the objection.

20 THE WITNESS: Okay. May I proceed?

21 THE COURT: Yes, sir.

22 A Then I went in here and started looking. And  
23 when I walked in, one of the things that I do, I look at  
24 the walls; I look at the ceiling; I look at the windows  
25 and things of that nature. And I noticed that this wall

1 right here had very intensive damage from a fire right  
2 here. And the fire line, again, was a few feet, two or  
3 three feet from the floor. Then I noticed this one right  
4 here also.

5 Here's a picture of the hallway as I was describing  
6 it with all of the debris, and this is the V pattern in  
7 the hallway. Also, in the hallway, right about here,  
8 there was a heater, a space heater right here, which is  
9 this one right here. The fire, as the V patterns goes, it  
10 goes over the heater. It got -- the heater got some  
11 damage from heat, but it went right over the heater. And  
12 because of the patterns around the heater, anything like  
13 that, it is my determination that this heater was a victim  
14 of the fire, was not the cause of the fire.

15 Again, let's go back to this area right here. Let me  
16 explain this marking. So this area right here are what I  
17 call burn trailers. Burn trailers is like a trailer, you  
18 know, like a little path, a burnt path. A pour pattern,  
19 which is a pattern like somebody put some liquid on the  
20 floor or wherever; and, of course, when you pour liquid,  
21 then it creates a puddle. Liquids creates puddles. When  
22 it rains, you get puddles. When the baby drops it's milk,  
23 you create puddles. If you ever drop a coke, you create  
24 puddles. All this area has that, has the burn trailer  
25 pour patterns and configurations.



1           This area right here, which is right here, almost in  
2 front of this bed is deep charred. The floor, it didn't  
3 burn through the floor, but it burned the three layers of  
4 the floor. And a pour pattern and trailer is an  
5 indication that somebody poured something, you know,  
6 either going in or out.

7           This figure, if you are here, is the hallway. It's  
8 been cleaned up a little bit. The hallway in front of  
9 this door, I'm beginning to discern or see some areas of  
10 puddle configurations and pour patterns in here.

11           A       Mr. Vasquez, could you indicate which photos by  
12 exhibit number you are talking about?

13           A       Yes, sir. This is Exhibit 26.

14           Q       Okay. What does it indicate?

15           A       It indicates -- you are beginning to see the  
16 puddle configurations, the pour patterns right here in  
17 this area in front of the bedroom, but in the hallway --  
18 again, now, we are looking at this area right here. Just  
19 before you go into the bedroom, you are still in the  
20 hallway. This picture right here, that's Exhibit No. 27.  
21 And you got a char burning, like, for example, this is the  
22 bottom here. It's burned down here at the bottom. That  
23 is an indicator in my investigation of an origin of fire  
24 because it's the lowest part of the fire.

25           Q       Mr. Vasquez, I hate to interrupt you. Could

1 you identify those by number also? Just say what they  
2 are.

3 A Okay. The photograph that sees the V pattern  
4 debris, that's Exhibit No. 23. The one that tells where  
5 the V is, that's possible origin of the fire. The one  
6 with the puddle configurations, trailers and pour patterns  
7 is Exhibit No. 25, and that is in the hallway looking  
8 toward inside the door to the bedroom. And the photograph  
9 that shows the space heater, where the heat went right  
10 over the heater is Exhibit No. 24.

11 Exhibit No. 28 is the part of the door that you go  
12 into, the last side, and it's got a wire along the door,  
13 you know, along the edge of the door. It goes up  
14 alongside. The main thing that's the significant part  
15 about that is that this wire is not broken. It's not  
16 beaded. All the coating burned off, which indicates that  
17 the wire is a victim of the fire. This wire did not  
18 contribute to the fire.

19 Then on the right side, it's the bed again. There is  
20 a lot of burned area on the wall right above the bed. My  
21 determination is based on the heat patterns on the walls  
22 that there was -- this bed or baby cribs, whatever they  
23 were, at one time were on fire; and, consequently, the  
24 heat radiated next to the wall and left that burnt pattern  
25 on there. There, of course, is nothing. The springs were

1 on the floor, just completely burned. This one right here  
2 had a spring in it, and we turned the spring over and what  
3 did I find, the springs were burned from underneath. This  
4 indicates there was a fire under this bed because of the  
5 burn underneath that bed.

6 MR. JACKSON: Could you identify that?

7 THE WITNESS: Yes, sir. This is Exhibit  
8 No. 29.

9 BY MR. BRISTOL:

10 Q No. 29?

11 A Again, the same bed here, the significant part  
12 about this bed is on the east side of the bed, notice that  
13 the frame, the metal frame, this area here, which is the  
14 north side, is white and the south side is rusty colored.  
15 This indicates that the white part was subjected to  
16 intense heat. Metal reacts to heat. You don't burn  
17 metal, but it leaves the mark there. That's intense heat  
18 right there. And there was more intense heat on this side  
19 than on this side of the bed.

20 Q Excuse me. That's State's Exhibit 30; is that  
21 correct?

22 A Yes, sir. Exhibits No. 30.

23 I will identify it first. Then I will go into  
24 it.

25 This is Exhibit No. 31. The springs on this bed

1 right here, this bed here is next to the door to the  
2 entrance to the bedroom. If you reach out from the  
3 hallway, you can touch the bed, the springs, because I  
4 tried it and my arm is not very long; but I could reach  
5 down there to right here. Again, this is the burn pattern  
6 on the wall where the intense heat was from that bed on  
7 exhibit. I'm inside the bedroom now.

8 And Exhibit 32, I'm next to this wall here, next to  
9 these windows. And I have noted that it's more burnt on  
10 the left than on the right side; but one of the things  
11 that is significant here is, again, there is a wire coming  
12 down from the ceiling all the way down to the electrical  
13 outlet. When I examined the wire, it's burned -- the  
14 insulation is burned off. The wire from the top going  
15 down on Exhibit 32. And, of course, I couldn't take a  
16 whole picture of the wall because I'm too close. I took  
17 two pictures. And this is the bottom of the wall there,  
18 and you can see the wire. And as you get close to the  
19 electrical outlet, the wire is in tact. The insulation is  
20 still on it. So this indicates that the fire went up and  
21 reached the attic and then mushroomed and went in that  
22 direction then down. That's why the wire is burned from  
23 the top to the bottom. That's 32 and 33.

24 By this time we are cleaning a lot of this area here  
25 in the bedroom, and we are finding again pour patterns and

1 puddle configurations on the floor. And one of the things  
2 that I noticed was that in some areas, the tile was burned  
3 off and in some areas the tile didn't burn. I noted that  
4 a piece of tile was loose. So I picked it up, and I  
5 noticed the burned pattern underneath the tile.

6 Okay. I have to be very careful with this. Because  
7 there is glue. There is other things that -- you can put  
8 the tile on just like you put paneling on the walls. You  
9 can put glue on it to stick them. Well, the difference is  
10 on the burn pattern, the glue or the varnish, because it's  
11 poured evenly, it burns evenly. And if a liquid burns  
12 down, the fire only burns where the liquid was. And on  
13 here, you can see the liquid burned down the whole tile.  
14 It's not burned just where the liquid was. This is  
15 Exhibit 34.

16 Ladies and gentlemen, and sir, by this time, I am  
17 seeing something that I am not very happy with. I am  
18 seeing other parts of the floor and the burn patterns on  
19 the floor on Exhibit No. 36. When a liquid hits the floor  
20 or any flat area -- this desk may look flat, but if you  
21 ever played pool, you put the pool ball on that table,  
22 that ball will roll. You can't see the table that's not  
23 even, but the ball does. The same thing the fluid does.  
24 It goes to the lowest level. When it does, as it goes it  
25 soaks in. If you pour something on this floor here, then

1 the liquid is going to look for the lowest level. If it  
2 goes, it goes in a 45-degree angle. Then it puddles so  
3 when it burns, it burns in the same way that it went down.  
4 It burns up in a 45-degrees angle. You can see that on  
5 the burnt patterns on this puddle configuration on Exhibit  
6 No. 36. This is a strong indicator of a liquid.

7 Exhibit 37 -- and let me say this: The fire is  
8 telling me this. The fire tells a story. I am just the  
9 interpreter. I am looking at the fire, and I am  
10 interpreting the fire. That is what I know. That is what  
11 I do best. And the fire does not lie. It tells me the  
12 truth. Again, what this picture here tells me -- Exhibit  
13 No. 37 -- this shows that the hardwood floor was charred.

14 Okay. What does that tell me? It tells me that it  
15 took a little while for that liquid to soak in. In other  
16 words, if you, on your carpet at home, if your husband or  
17 baby drops coffee or coke, you want to clean it up right  
18 away, don't you, because if it soaks in, then you can't  
19 get the stain out. Same thing with this liquid. It goes  
20 all the way down. It hit the wood. When it burns, it  
21 charred the wood; but it didn't go all the way through.  
22 Sometimes it does. Sometimes there is holes in the floor  
23 where it burns down. Exhibit 37. This charred area is  
24 this area right here, where these lines are. That's where  
25 that char area is.

1           The same thing with Exhibit No. 38 in this area as  
2           you can see.

3                   THE COURT:   Sir, what exhibit is this?

4                   MR. BRISTOL:   Your Honor, for the purpose  
5           of the record, some of Mr. Vasquez's pictures have been  
6           introduced earlier. They were taken out of the order of  
7           his presentation. So that's Exhibit 4.

8                   A       Exhibit 4. The reason I took this picture,  
9           after we cleaned up this floor with water, with a water  
10          hose from the fire department, with a pressure hose, we  
11          cleaned everything out and the only thing left was the  
12          floor. And you can't mistake -- I mean, there was a lot  
13          of this room was saturated with a liquid. At this time I  
14          don't know what kind of liquid it is. So I can't say  
15          whether it's a combustible liquid or a flammable liquid,  
16          but it is a liquid.

17                  Q       Let me interrupt you. Do you know? Was it  
18          either or was it --

19                  A       Do I know now?

20                  Q       At that point?

21                  A       No, sir. At that point I did not. This  
22          picture here is close to this wall to this window, and  
23          that is sunlight coming in the window. I mean, it just  
24          lights up the puddle configurations, the burnt trailers,  
25          the pour patterns on that floor. That's why when I took

1 the pictures, I took the picture from the north side  
2 looking south on this here.

3 Q Which number is that, sir?

4 A That's Exhibit No. 5, previously introduced.

5 Exhibit No. 39 is a space heater. Also this space  
6 heater is in this northeast bedroom, and it's in this  
7 corner right here in the southeast corner or closest to  
8 the southeast corner.

9 Again, I examined this space heater because, you  
10 know, if it was an accidental fire, the space heater  
11 caused the fire.

12 MR. MARTIN: Your Honor, we object to  
13 these statements which are not responsive to the question:  
14 "What did he do?" That one is not responsive.

15 MR. JACKSON: We will be happy to ask  
16 that question.

17 MR. MARTIN: Can we have a ruling on that  
18 objection?

19 THE COURT: Overrule the objection.

20 Q Again the heat pattern behind this space heater  
21 is from above. There is nothing but debris around this  
22 space heater, and the top part and the front part of the  
23 space heater has received a lot of heat damage. There is  
24 no way that this heater could have started the fire. So  
25 that was eliminated.



1           If I may say so, one of the things that I need to  
2 find out: Was the heater on or off? The heaters were  
3 off.

4           MR. MARTIN: Your Honor, we object to  
5 that. This is the problem with this long running  
6 narrative. He wasn't there. He doesn't know. He got  
7 there four days later. He doesn't know whether they were  
8 off or on or anything. This is hearsay. We object to it  
9 as being nonresponsive and hearsay.

10           MR. JACKSON: Your Honor, excuse me, this  
11 is a different situation. We have an expert witness  
12 testifying upon facts that were communicated to him. He  
13 has an opportunity to assess these facts and assimilate  
14 these facts and base an opinion based on the material  
15 that's available to him. So I would ask the Court to  
16 overrule that objection.

17           THE COURT: I overrule the objection.

18           A       Again, as I stated at the beginning, I make,  
19 you know, look around the room -- like if you go to  
20 your -- let's say you go to your mother-in-law's house.  
21 This is first time you've been there. You want to look  
22 and see what the house looks like. I do the same thing.  
23 I have the same curiosity. I want to see what that room  
24 looks like and the ceiling, I looked at it. And from what  
25 I have seen on the floor and what I have seen on the

1 ceiling, the fire behavior from what I know is not normal.  
2 It's inconsistent with fire behavior. This is exhibit 40.  
3 That's another indicator that I had. After I finished  
4 with this room here in the northeast, then I made a closer  
5 look at the porch. At the beginning, when I first  
6 arrived, I looked at the porch but I decided to do the  
7 other thing, go around and leave the porch for the last.  
8 To me it was very important, and I made that decision to  
9 look at the porch last.

10 And Exhibit No. 41 is a picture of the porch right  
11 here, this area right here. Right at the entrance to the  
12 hallway from the north going into the hallway just like  
13 you are going into the house.

14 That's the entrance to the house. Again, there is no  
15 door; and the reason I'm saying that, the auto ventilation  
16 is different. This fire here on this window -- you  
17 remember the first picture I showed you? How the fire  
18 went up in Exhibit 41? The fire does not auto ventilate.  
19 This indicates to me from the char patterns that I see  
20 that the fire was outside going in. At closer examination  
21 of the front of the door, I found that the baseboard, when  
22 you go, you step on the door, is charred. I mean, it's  
23 very black and charred, burned. That's a very low fire.  
24 Why did it burn so low? Then I noticed there was some  
25 brown stains in front of the door. These brown stains are

1 consistent with a combustible or flammable liquid that's  
2 poured on the concrete, and concrete is porous; but this  
3 liquid did not have time to soak into the concrete. So it  
4 leaves a stain. So there is a difference. This here on  
5 the porch that burned didn't have time to soak in. The  
6 liquid in this room did. Exhibit No. 42.

7 This is the same area except I'm outside. I'm  
8 taking the picture looking inside, and this time I'm  
9 looking at the aluminum threshold. And aluminum melts at  
10 1200 degrees normal. Wood fire does not exceed 800  
11 degrees. So to me, when aluminum melts, it shows me that  
12 it has had a lot of intense heat. It reacts to it. That  
13 means its temperature is hot. The temperature cannot  
14 react. Therefore, the only thing that can cause that to  
15 react is an accelerant. You know, it makes the fire  
16 hotter. It's not normal fire. It's Exhibit No. 43.

17 Exhibit 44. That's a picture of the hallway, looking  
18 out the door, and I got a light there to show and then I  
19 took the picture looking at the large puddle  
20 configurations right here. In my experience, I have -- I  
21 took this into consideration when making this  
22 investigation, and I'm not just telling you something, but  
23 if a person wants to impede or create a barrier, and it's  
24 an upstairs fire, they set fire on the stairs so the  
25 fireman don't get up to save whatever is in there. In

1 this case the hallway --

2 MR. MARTIN: Your Honor, we object to  
3 this as the grossest sort of speculation with no basis in  
4 fact given to the expert before he testifies. It's not an  
5 opinion. It's unresponsive to the question that was  
6 asked.

7 MR. JACKSON: Your Honor -- excuse me,  
8 Your Honor. If Mr. Martin wants to cross-examine this  
9 witness, he can certainly do it at a later point. This  
10 witness is testifying as an expert. He can testify about  
11 his findings based on his experience and his education.  
12 That's what he's doing in this case.

13 MR. MARTIN: Well, but the question that  
14 was asked is: What did he do? What he just said is rank  
15 speculation that is not based on anything whatsoever.

16 MR. JACKSON: On the contrary --

17 THE COURT: Let me say this: I'm going  
18 to overrule the objection; but Mr. Bristol, why don't you  
19 ask another question.

20 Q Mr. Vasquez, what do these pour patterns that  
21 you have talked about indicate in Exhibit 44?

22 A These pour patternd indicate to me, sir, the  
23 intent of why the fire was set. And the intent was to  
24 prevent people from coming in through that place or delay  
25 this entrance of persons thereby creating a fire that

1 would impede the entrance, a barrier, a fire barrier.

2 That's Exhibit No. 44.

3 Again, I'm looking at the 2-by-4 or 2-by-6 at that  
4 time on the floor, the board here at the door; and I  
5 noticed that it's charred underneath. And the only thing  
6 that makes that char pattern is a liquid. So we cut that  
7 piece out and sent it to the laboratory.

8 Q Is this the area underneath the aluminum  
9 threshold?

10 A Yes, sir.

11 Q The wood underneath there?

12 A Yes, sir. And when the report came back is  
13 when I found out what kind of liquid it was.

14 This is Exhibit 6, which has previously been  
15 introduced.

16 A Exhibit No. 45, this is the 2-by-4 at the  
17 bottom of the screen door. That's all that is left. And  
18 it's burned underneath, which is an indicator of a liquid  
19 underneath the screen door, underneath the base board, and  
20 the door burned. Now I know why the door burnt.

21 Q And why is that, Mr. Vasquez?

22 A The door burned because it was incinerated with  
23 the -- with that liquid outside and inside. It ran down  
24 the door before it was ignited. It got under the base  
25 board. It got also in the front of the boards there on

1 the concrete. That's why it burned down.

2 Exhibit No. 46 is the wall on the west side of  
3 the porch, which is right next to the door. Okay. The  
4 whole wall down here from the base is burned evenly up the  
5 whole wall, and the charring on the base board at the  
6 bottom indicate there was a liquid down there. That's why  
7 it burned. There is no V pattern. It just burned  
8 completely up because that's the way -- that's why there  
9 was a fire outside. Without looking inside this room when  
10 I was making interior examination, there was no fire  
11 inside the room because it came -- now I know why. It  
12 came from the outside because there was a fire on the  
13 porch. That's why it came from the outside. Exhibit No.  
14 46.

15 Then I walked east along the porch here and at this  
16 area here at the end on the west end. I am looking at  
17 this area here, and I'm seeing low char burned patterns  
18 evenly burned up to where below the window and also the  
19 brown stains of a liquid that have been there and then  
20 there is a glob down here that's fused to a wire. We  
21 looked at it, and we could see what the glob was.

22 This little glob here was charcoal lighter fluid.

23 Q Mr. Vasquez, let me show you what's previously  
24 been introduced as Exhibit 13. Is that the same glob you  
25 are talking about?

1 A Yes, sir.

2 Q The other part about this picture where this  
3 glob was, the wall here is blistered down at the bottom.  
4 Okay. If you remember, that first picture where the fire  
5 went out of this wall out of this window, it went up. The  
6 painting is still on the outside of the window. Why?  
7 Because you got flame heat coming out, but it's going up.  
8 So the bottom of the window of that is not charred.  
9 There's no blisters on it, but on this one, this window,  
10 there is blisters, which indicates that the fire didn't  
11 come out of that window. It was below the window outside  
12 on the porch. Exhibit No 8.

13 Exhibit 47 is still the same area of the porch, but  
14 it's between the windows here.

15 Q What, if anything, does that indicate to you?

16 A It's a brown stain all along the base and the  
17 char burning on the concrete.

18 Like I said, I make a systematic examination of  
19 the fire scene. And I looked up into the attic because I  
20 know that the ceiling in the bedroom, the fire had not  
21 penetrated into the attic, but I wanted to make sure that  
22 the fire -- there was no fire in the attic. So Exhibit  
23 No. 48, that's my flashlight. I'm pointing the flashlight  
24 with the light. Then I take pictures. There is smoke up  
25 in the attic, but there was no fire. That's straight

1 ahead. The attic here is the area right above the  
2 bedroom, right above this bedroom here. And Exhibit No.  
3 49 is the same area that's in the attic. After we had  
4 cleared the bedroom here -- and, of course, I've always  
5 known that there had been two bodies found in this  
6 bedroom -- and I asked the assistant chief Doug Fogg to  
7 mark on the floor where the bodies were found in the  
8 debris when they first put out the fire. And one body is  
9 right here laying 18 inches from the door. The other body  
10 is a few feet down here from the crib, according to the  
11 markings.

12 Q Okay. Let me ask you some questions about  
13 these photos.

14 In your investigation, what, if anything, did you  
15 determine upon completion of the internal examination of  
16 the house?

17 A The interior examination -- first of all, if  
18 this fire had been a combustible material fire, like a  
19 pile of clothes or a pile of paper or something to that  
20 effect, wood, then you would have a point of origin  
21 because that's all that burns is that combustible material  
22 there, but when you have a liquid, either combustible or  
23 flammable, then you no longer have a point of origin. You  
24 have an area of origin. That's the whole room here on the  
25 northeast bedroom is a point of fire origin.



1           Also the hallway here is another area of fire origin.  
2           So inside the interior I have determined two points, two  
3           areas of origin; in the hallway and in the bedroom. And  
4           then the examination of the porch, the entrance in here  
5           front of the door is another area of origin. So there  
6           were three areas of origin. That's what we call multiple  
7           areas of origin.

8           Q       What does multiple areas of origin indicate?

9           A       Multiple areas of origin indicate -- especially  
10          if there is no connecting path, that they were  
11          intentionally set by human hands.

12          Q       Can you explain a term to the jury, and  
13          incinery indicator. You've been talking about indicators.  
14          Could you explain to them what that means?

15          A       Yes, sir. The first incinery indicator is the  
16          auto ventilation. The inconsistency of the fire going out  
17          of this window and the fire going out of the door and this  
18          window here. That's inconsistent with fire behavior.  
19          That's an indicator that it's a possible incinery fire.

20          Okay. Puddle configurations, pour patterns, low char  
21          burning, charred floor, the underneath burning of the base  
22          board, the brown stains on the concrete, the underneath of  
23          the bed, because of the fire right underneath the bed,  
24          puddle configurations in that area, and the total  
25          saturation of this floor is indicated with pour patterns,

1 because that's all I'm doing is looking at the facts, at  
2 the evidence. That's all I'm using. That's exactly what  
3 it is, and the fire was contained to the bedroom and to  
4 the hallway. Of course, there was some heat damage to  
5 this door and heat damage in this bedroom, but this was it  
6 right here. That's some of the indicators that I came up  
7 with.

8 Q Could you explain the difference in the burning  
9 of the floor, the pour pattern in the deep char versus the  
10 burning on the ceiling in that northeast bedroom?

11 A Yes, sir. Heat rises. In the wintertime when  
12 you are going to the bathroom and if you don't have any  
13 carpet or rug and you are barefooted, and you step on that  
14 cold floor, that floor is colder than the ceiling. It  
15 always is. Like right now, this floor is colder than this  
16 ceiling here.

17 So when I found that the floor is hotter than the  
18 ceiling, that's backwards, upside down. It shouldn't be  
19 like that. The only reason that the floor is hotter is  
20 because there was an accelerant. That's the difference.  
21 Man made it hotter or woman or whatever. Human being made  
22 it hotter.

23 Q Could you explain how the puddle configurations  
24 were created in your opinion?

25 A Yes, sir. The liquid, this one here, when the

1 liquid was poured in this room, it was not ignited  
2 immediately.

3 Q How do you know that?

4 A Because it went -- it soaked through floor to  
5 the hardwood floor. It had time to soak. It took at  
6 least five minutes or more for that liquid to soak.  
7 That's what I said awhile ago. When you spill something  
8 on your carpet, you got to clean it right away because it  
9 goes down. And then it's harder to get out. Same thing  
10 with this here. Being a combustible, if that was a  
11 flammable liquid, you don't want to start a fire with  
12 gasoline in this room here because you will incinerate  
13 yourself, but a combustible liquid like kerosene, diesel  
14 fuel, no problem. A lamp, you know, kerosene lamp, you  
15 light the wick, it burns; but you got -- this is it here  
16 is combustible. I've got to put the open flame to it to  
17 catch fire. It's going to take a little while. Paper is  
18 the same way. A combustible, it takes a little while.  
19 That's why. But if it's flammable liquid, those fumes are  
20 in here. People have died in fires with flammable liquids  
21 when they breathe because they got fumes in their lungs.  
22 They breathe fire from gasoline. In a combustible, you  
23 don't. You have to set this fire here. You have to set  
24 this fire. You got to set this fire. There were three  
25 fires set. If it had been gasoline or something like

1 that, you better be out here when you throw that match,  
2 because it's going to -- everybody is going to hear it  
3 because you are going to hear a big noise. We got -- a  
4 gas stove is the same way. When you light your pilot  
5 light or something, all of the sudden, poof, right in  
6 front of you.

7 Q. Based on your experience, your training, your  
8 investigation, examination of the scene, do you have an  
9 opinion as to whether this particular fire was arson or  
10 incinery in nature?

11 A Yes.

12 Q What is that opinion?

13 A It's a set fire. It's an incinery fire, and  
14 consequently is a crime of arson.

15 Q What led you to believe this fire was incinery?

16 A Besides what I've already said, I've talked to  
17 the occupant of this house, and I let him talk and he told  
18 me a story of pure fabrication.

19 MR. MARTIN: Your Honor, we object to  
20 this as hearsay and also a conclusion on the part of the  
21 witness, that he's not been shown qualified to draw. It's  
22 speculation.

23 MR. JACKSON: I'm not sure what he's  
24 fixing to --

25 THE COURT: Let me visit with you just a

1 minute.

2  
3 (The following bench conference was held on the record)

4  
5 THE COURT: What is it he's going to say?

6 MR. MARTIN: He was fixing to say that  
7 what the Defendant told him was pure fabrication. That's  
8 what he said.

9 MR. BRISTOL: Based on his investigation.

10 THE COURT: Okay. Let's go.

11  
12 (Open court)

13  
14 THE COURT: I overrule the objection.

15 BY MR. BRISTOL:

16 Q Deputy Vasquez, on your investigation and  
17 examination of this, did you interview witnesses,  
18 including the occupants of this house?

19 A Yes, sir.

20 Q Why?

21 A If I am going to have a complete investigation,  
22 I have to have all the information I can possibly get.  
23 The witness were --

24 THE COURT: Take your seat back over  
25 there.

1 Q Let me reask it, Deputy Vasquez. You  
2 investigated the scene, examined the fire scene. Based on  
3 your experience and training and the interviews that you  
4 conducted of, say, witnesses and the occupants of the  
5 house, do you have an opinion as to whether it's incinerary  
6 or arson?

7 A Yes, sir.

8 Q And how did you arrive at that decision?

9 A From what I have already reiterated and  
10 explained on the diagram and on the photographs and the  
11 interview with the occupant.

12 Q Okay. What, if anything, did he tell you?

13 A The occupant gave me a completely --

14 MR. MARTIN: Your Honor, we have the  
15 same objection.

16 THE COURT: Yes, sir. I have overruled  
17 the objection. Go ahead.

18 A I listened to him. I never questioned him. I  
19 never asked him any questions. He just talked and he  
20 talked, and all he did was lie.

21 Q What --

22 A Pure fabrication.

23 Q What did he tell you?

24 A The inconsistent thing that he said right away  
25 was that he had kicked the door to exit from the hallway

1 with his bear foot and that his little girl had awakened  
2 him by saying, "Daddy, daddy," twice. Then he went from  
3 the bedroom to the hallway on through the door and then  
4 went straight south into the porch and out. And he said  
5 that when he woke up, the room was full of smoke.

6 Sir, let me tell you: When you breathe smoke --

7 Q Let me ask you: based on your investigation,  
8 why is this particular story implausible?

9 A He's -- what he said he had done is  
10 inconsistent with the burn patterns in the house.

11 Q What did the burn patterns indicate, in your  
12 opinion, happened?

13 A The fire was set in three different places. So  
14 the fire did not set -- did not start by itself, and when  
15 he said that he had done this, and that it's, it's  
16 impossible for him to do what he did.

17 Q Okay. In your opinion, could this fire have  
18 been started accidentally?

19 A No, sir. It was not accidental.

20 Q In your opinion, based on your experience, is  
21 it possible that one of the children started the fires?

22 A No, sir.

23 Q What do you base that upon?

24 A First of all, which of the children went around  
25 pouring a liquid into three areas of the house then

VASQUEZ

1 ignited three different areas. If they had done that, the  
2 occupant would be dead right now. He would have died in  
3 the fire.

4 Q Mr. Willingham wouldn't have made it out; is  
5 that right?

6 A He would not have made it out.

7 Q Can you tell me from your investigation or do  
8 you have an opinion as to the order in which these fires  
9 were started?

10 A Based on my experience and from what I observed  
11 at the fire scene, the first fire was in the bedroom, the  
12 northeast bedroom.

13 Q The bedroom that the twins were found?

14 A Yes, sir. Then the second fire was in the  
15 hallway, and the third fire was on the front door on the  
16 porch.

17 Q Mr. Vasquez, you have been made aware of Mr.  
18 Willingham's injuries, the injuries he suffered?

19 A Yes, sir.

20 Q Are they consistent with the story he told you?

21 A No, sir.

22 Q How are they inconsistent?

23 A In my opinion, they are self-inflicted.

24 Q What kind of injuries would a person have  
25 sustained if his story had been true?



1 MR. MARTIN: Your Honor, we object to  
2 that. This witness has not been shown to be qualified  
3 whatsoever to testify about wounds to the human body or  
4 how they were inflicted. We object because he's not been  
5 qualified to give an opinion. He has no personal  
6 knowledge on the --

7 MR. JACKSON: He's testified about a  
8 particular scenario as opposed a particular story that  
9 he's characterized as fabrication. Your Honor, I think  
10 he's entitled to tell the jury why he thinks it's a  
11 fabrication, why it's inconsistent with the so-called  
12 injuries.

13 MR. MARTIN: Being an arson investigator  
14 doesn't make him an expert in all things investigated in a  
15 fire, and it hasn't been shown -- we are asking for a  
16 common-sense opinion, not a medical opinion. He didn't see  
17 him. He wasn't there.

18 MR. JACKSON: On the contrary. He saw  
19 him after the fire took place, Your Honor, and he can  
20 certainly appreciate that there were no significant  
21 injuries, certainly not injuries consistent with this  
22 fire.

23 MR. MARTIN: May I voir dire the witness?  
24 I bet he saw his head and his hands. The rest of his body  
25 was clothed.

## VOIR DIRE EXAMINATION

BY MR. MARTIN:

Q Mr. Vasquez, the first time you saw him was on  
or about when?

A When he gave us a statement -- I mean, when I  
got the consent to search.

Q When was that? After the fire by several days?

A Yes, sir.

Q You were not there at the fire?

A No, sir.

Q You didn't see him at the fire?

A No, sir.

Q You haven't seen any pictures of his injuries  
at the fire?

A No, sir.

MR. MARTIN: We object. No personal  
knowledge.

MR. JACKSON: May I qualify this witness?

BY MR. JACKSON:

Q Mr. Vasquez, you had an opportunity to review  
many records --

MR. MARTIN: We object to both  
prosecutors questioning the same --

MR. JACKSON: Okay.

THE COURT: Mr. Bristol, you may proceed.

## DIRECT EXAMINATION (Cont'd)

BY MR. BRISTOL:

Q Have you had an opportunity to look at many documents involved in this investigation?

A Yes, sir.

Q Reports from different agencies, including medical reports from the Corsicana Fire Department and from the police department, interviews from several eyewitnesses, original hospital documents; is that correct?

A Yes, sir.

Q Based upon all that, do you have an opinion concerning the story that you were told by the defendant, Mr. Willingham?

A Yes, sir.

Q Do you have an opinion as to the type of injuries he would have suffered if his story were true?

A Yes, sir.

Q What is that opinion?

A The little girls died from smoke inhalation and carbon monoxide poisoning. He did not exhibit any symptoms of smoke inhalation. I have experienced smoke inhalation personally.

Q Could you describe it for the jury?

A Yes, sir. The feeling of smoke inhalation, you

1 want somebody to put a gun to your head and shoot you  
2 because it's excruciating. You want to puke your guts  
3 out. You feel -- furthermore, it takes a long time for  
4 you to clear the smoke out of your system. The blood has  
5 an infinity for carbon monoxide.

6 MR. MARTIN: We object to this witness  
7 testifying about blood or any effects of chemicals on the  
8 blood.

9 THE COURT: I sustain the objection.

10 BY MR. BRISTOL:

11 Q Just describe -- how long did it take you to  
12 get over it?

13 MR. MARTIN: We object to that as being  
14 irrelevant. This witness is not a doctor and cannot  
15 testify to the effects.

16 THE COURT: Overrule.

17 MR. BRISTOL: He had personal knowledge.

18 A It took me two weeks to get rid of the cough.  
19 I had that constantly day and night.

20 Q Based on what you learned from the  
21 investigation, did Mr. Willingham suffer from smoke  
22 inhalation?

23 A When I saw him, he had no symptoms of smoke  
24 inhalation.

25 Q Based on the story Mr. Willingham told you,

1 would you, in your opinion -- would he have had injuries  
2 on other parts of his body?

3 A On his feet. There was fire on the floor.

4 Q He told you he kicked the doors; is that right?

5 A Yes, sir. He had no injuries on his feet.

6 Q Based on information that he was simply wearing  
7 blue jeans, no shirt, no shoes, would you have suspected  
8 there to be more injuries?

9 A Yes, sir. If he was inside a hot, very hot  
10 house, he would certainly receive some injuries.

11 Q If a child or some other person had started  
12 those three fires that you previously testified about, Mr.  
13 Willingham, if you believe his story, would have had to go  
14 through that fire; is that right?

15 A Yes, sir. He never would have woken up.

16 Q Deputy Vasquez, do you have any opinion as to  
17 the motive or reason that somebody would start a fire like  
18 this?

19 MR. MARTIN: Your Honor, we object to  
20 that as calling on the witness to speculate.

21 THE COURT: I sustain the objection.

22 BY MR. BRISTOL:

23 Q Based upon all your investigation and  
24 interviews and experience as a fire or arson investigator,  
25 do you have an opinion as to the person or persons who

1 started this particular fire?

2 MR. MARTIN: Your Honor, again, that calls  
3 on the witness to speculate. It is impossible that he  
4 could tell based upon either the facts put to him in the  
5 question or what he's testified to so far. It calls on  
6 him to speculate about it.

7 MR. JACKSON: On the contrary, Your  
8 Honor.

9 MR. MARTIN: Need I argue against two  
10 lawyers with one witness?

11 THE COURT: I overrule the objection.

12 BY MR. BRISTOL:

13 Q Do you have an opinion as to who started this  
14 fire?

15 A Yes, sir.

16 Q What is that opinion?

17 A The occupant, Mr. Willingham.

18 MR. BRISTOL: Pass the witness.

19 MR. MARTIN: May we approach the bench?

20 THE COURT: Members of the jury panel, we  
21 are going to go some while longer. We are going to be in  
22 recess for about ten minutes.

23 You may step down.

24

25 (Recess)

1 THE COURT: Members of the jury panel,  
2 due to a few complications, we are going to be in recess  
3 until the morning at 9:00 o'clock.

4 It's very important that you remember the previous  
5 instructions.

6 Everyone in the courtroom needs to remain in the  
7 courtroom until the jury panel is outside.

8  
9  
10  
11  
12 (Court recessed for the day)  
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25

STATE OF TEXAS :

COUNTY OF NAVARRO :

I, SHERRY D. DEAREN, Acting Official Court Reporter for the  
13th Judicial District Court in and for Navarro County, Texas,  
do hereby certify that the above and foregoing contains a true  
and correct transcription of all the proceedings in the  
foregoing styled and numbered cause, all of which occurred in  
open court or in chambers and were reported by me.

I further certify that this transcription of the record of  
the proceedings truly and correctly reflects the exhibits, if  
any, offered by the respective parties.

Witness my hand this the 5<sup>th</sup> day of October,  
1992.

Sherry D. Dearen  
SHERRY D. DEAREN, CSR  
Acting Official Court Reporter  
13th Judicial District Court

Certification Number of Reporter: 3113  
My CSR license expires: December 31, 1993  
Business Address: 210 Westwood Court  
Duncanville, Texas 75116  
Telephone Number: 214-283-8554