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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

In Re the Personal Restraint Petition of:)
) NO. 46848-4-II
)
CONLAN JADEN SHAW) PERSONAL RESTRAINT PETITION
)
Petitioner)
)
_____)

STATUS OF PETITIONER

Petitioner was convicted in Pierce County Juvenile Court of three counts, Residential Burglary, Arson in the First Degree, and Malicious Mischief in the First Degree in cause number 13-8-00892-8. Based upon ineffective assistance of counsel, it is clear that petitioner was denied a fair trial. Petitioner is being held in the Department of Juvenile Rehabilitation of the State of Washington. Petitioner was sentenced on February 26, 2014 for 103 to 129 weeks with credit for 69 days served. The one year time limit per RCW 10.73.090 prohibiting collateral attacks of more than one year has not passed since petitioner was only convicted of the charges and is restrained unlawfully as of February 26, 2014.

GROUND FOR RELIEF

1.a. Evidence Relied Upon

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3 In addition to the previously filed transcript (Appendix A), evidence relied upon are the
4 attached Declaration of Nancy J. Pringle (Appendix B) and Declaration of Donald Gordon
5 Spencer (Appendix C).

6 **1.b. Facts**

7 By Information, Appellant was charged on August 8, 2013 with Arson in the First Degree
8 and Residential Burglary. CP 1. Charges were amended to also include Malicious Mischief in the
9 First Degree. CP 6-7. This took place on January 28, 2014, first day of trial. Appellant was
10 convicted of all charges. CP 19.

11 Following trial, the Court entered Findings of Fact and Conclusions of Law on February 27,
12 2014. In particular, first off the Court found that Conlan Jaden Shaw was born June 25, 2000. CP
13 29. All relevant events took place in Pierce County. CP 30

14 Tacoma Police Officer James Pincham responded to a Tacoma residence just before noon on
15 July 20, 2013, at 4314 N. Pearl Street, Tacoma, in response to a 911 call involving hearing breaking
16 glass at the location. CP 30. The officer had previously heard breaking glass when he drove through
17 the neighborhood on an unrelated call. Upon arriving, the officer saw broken windows at the front
18 of the house. CP 31. The officer and back-up officer as they approached the residence smelled the
19 odor of smoke. The front door was unlocked. They entered the residence and could smell a stronger
20 odor of smoke. The entryway was covered with broken glass. The officers determined the home to
21 be unoccupied. CP 31; RP 34. There was extensive damage throughout the home, both upstairs and
22 downstairs. There was broken glass in the kitchen, the refrigerator had been tipped over and had
23 dents in it. CP 31-32.
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3 There were holes in the living room area as well as a floor lamp was broken and laying on
4 the floor. A table with a glass top was shattered. CP 32.

5 The hallway leading south from the living room in the upper level of the home also had
6 broken glass on the floor. A ceiling light fixture had been broken, a damaged thermostat was on the
7 wall and the doorbell was missing. It was later found at the entryway on the floor. The hallway
8 ceiling was covered in black soot. In the upper level there are two bedrooms, one of which suffered
9 little damage, but had a strong odor of smoke. The other bedroom had a broken ceiling light fixture,
10 a broken floor lamp as well as broken glass on the floor and both windows in the bedroom were
11 shattered. CP 32.

12 The upstairs bathroom had extensive damage, including a broken mirror and ceiling fan. CP
13 32.

14 On the lower level there are two bathrooms. The hallway on the lower level there again was
15 a strong odor of smoke and the hallway walls were covered in soot. CP 33. The family room on the
16 lower level had carpet that had been burned, but was still smoldering. The wall on the north end had
17 been blackened by smoke. CP 33.

18 The laundry room also had smoke damage with broken fixtures found on the floor. CP 33.

19 In the hallway there was soot and smoke damage as well as apparent blood evidence that
20 officers noticed. Forensic technician later responded to the scene and took samples. CP 33.

21 The lower level bathroom had a shattered window. The toilet paper dispenser had smoke
22 damage near it and a burned roll of toilet paper was found on the floor. There was damage on the
23 wall next to the toilet paper. CP 33.
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3 Officer Pincham further found a burned roll of toilet paper in one of the downstairs bedrooms
4 and saw burning embers in that bedroom's carpet indicating that the fire had recently been set there.

5 CP 34; RP 76.

6 The other downstairs bedroom had a shattered window and had blood evidence on the frame
7 of the window indicating a likely point of entry of that window. Forensic evidence was taken of that
8 blood as well. Further forensic evidence involving latent fingerprints was also obtained from upper
9 and lower levels of the home. CP 34; RP 79. The Court further found that since there was evidence
10 of broken glass on the exterior of the home in the same area where the broken rear window was and
11 the screen for the window was found on the exterior also there was blood evidence on the frame on
12 the lower level bedroom was, the Court made a finding that the respondent broke that window to
13 gain entry and in so doing, cut himself. Further that he smeared his fresh blood on the hallway wall
14 as he went through the residence. CP 34. The Court found that Officer Pincham's testimony was
15 very credible. CP 35.

16
17 The Washington State Patrol Crime Lab forensic technician and scientist extracted the DNA
18 from the blood evidence and determined that it matched respondent's DNA beyond statistical
19 question. The Court determined that respondent had entered the residence through the broken
20 window in the lower bedroom and walked down the hallway and wiped his blood on the walls.
21 Further forensic evidence by a different forensic scientist trained in comparing fingerprints
22 determined that respondent's prints were located at several locations in the home including on the
23 broken floor lamp found in the upper level and upon a piece of broken window glass from the
24 residence. CP 35.

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3 Mary Casey, a next door neighbor testified that she heard broken glass between 8:30 and
4 9:00 a.m. on June 20, 2013 and the last time she heard breaking glass was when the officer was
5 walking towards the residence. CP 35; RP 54.

6 The residence owner, Ester Mbajah testified that the home had been vacant for some time
7 prior to June 20, 2013, and a real estate agent had been hired to rent the property, but that she had a
8 habit of driving past the residence each weekday on her way to work and did so on June 20, 2013, at
9 approximately 7:30 in the morning. She saw no signs of damage at that time, including no broken
10 windows and no broken dining chairs in the driveway. CP 36. She had last been in the residence
11 itself a day or two prior to June 20, 2013, without any of the damage testified to having had
12 occurred. She testified that she does not know the appellant and did not give him permission to be in
13 the home or cause any damage to the home. CP 36.

14 Ms. Mbajah testified that her insurance company estimate was roughly \$20,000, but denied
15 the claim so she and her husband had to pay for the damages themselves and spent over \$13,000 to
16 do so. CP 36. This did include some upgrades, but the fire damage exceeded \$5,000 including the
17 cost of replacing the burned carpet which exceeded \$1,200. Her testimony was determined to be
18 very credible. CP 36-37.

19
20 Tacoma Fire Department arson investigator, Kenneth Hansen testified that fires in the home
21 originating in three separate areas of the home, including the burnt toilet paper roll found toward the
22 middle of the floor in one of the lower level bedrooms that caused a small fire to the carpeting on the
23 floor, another toilet paper roll that burned in the lower level bathroom that appeared to have been
24 ignited while on the toilet paper holder prior to falling to the ground and causing additional damage
25 to the base of the wall and the largest burned area of carpeting that occurred in the family room. The
26 two carpet fires originated away from walls and were not near any source of potential accidental

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3 ignition such as faulty wiring based on the nature and origin of the fires, the multiple location of
4 fires throughout the lower level, the lack of any other source of nature or accidental ignition and the
5 degree and volume of other contemporaneous damage throughout the house. Hansen opined that
6 the fires were intentionally set, although he was not able to offer any opinion as to whether an
7 accelerant was used. RP 106. Hansen testified that with fires in three different locations in the home,
8 they are not accidental fires based on "common sense". CP 37; RP 109.

9 On cross examination, the arson investigator acknowledged that he couldn't rule out that
10 someone maybe was playing with matches and had lit the toilet paper. RP. 110-111; 115-116. He
11 acknowledged not doing a very "thorough" fire investigation in this case. RP 111.

12 The appellant stipulated that the DNA and fingerprint evidence would be admissible in
13 Court. RP 14-15.

14 Any photographs taken at the scene were also admitted without objection. RP 17.

15 In his closing argument, the prosecutor acknowledged that in fingerprint stipulation there was
16 an "unidentified fingerprint in the residence." RP 163 CP 59, LL 20-22 ("TDP Martin also noted
17 that there is one fingerprint that remains unidentified".)

18 Appellant's grandmother, Nancy Pringle attended all Court hearings. She prior to trial
19 arranged with defense counsel for Donald Gordon Spencer, to testify as to appellant's whereabouts
20 during the relevant time period. The Court appointed attorney refused to call Mr. Spencer. Ms.
21 Pringle attempted to get the Court's attention, but was chastised and quieted down. See Appendix B,
22 Cf RP 17-18. Ms. Pringle had previously met with the public defender some days before trial and
23 requested to allow Mr. Spencer to be a defense witness. See Appendix C, Declaration of Donald
24 Gordon Spencer.
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3 In Mr. Spencer's Declaration, he indicates on June 20, 2013, he was with appellant, Conlan
4 Jaden Shaw from about 10:00 a.m. to about 2:00 p.m. at appellant's residence, 3928 N. Defiance
5 Street in Tacoma. He had to awaken Conlan at 10:00 a.m. Conlan helped him with some computer
6 employment issues and they did some other computer activities. Appendix C, P. 1.

7 Mr. Spencer was at Court each day of the trial in order to be available to testify as an alibi
8 witness. Appendix C, P.1.

9 The appellant was convicted of all the amended charges and sentenced on February 26, 2014.
10 He was committed to the Department of Juvenile Rehabilitation for 103 to 129 weeks with credit for
11 60 days served. CP 19-25.

12 Petitioner filed a direct which is currently pending under #45959-1 II. This Personal
13 Restraint Petition follows.

14 **2. Why Other Remedies are Inadequate**

15 Appellant has filed a direct appeal. However, the prosecution has objected to the use of the
16 Declarations of Nancy J. Pringle and Donald Gordon Spencer since that evidence was not available
17 to the Court below. Therefore there is no remedy that considers this important evidence that
18 explains specifically how appellant was unlawfully restrained because he has been denied the chance
19 to have an alibi witness to testify at trial on his behalf due to ineffective assistance of counsel of his
20 court appointed attorney.
21

22 **3.a. Conviction Against Petitioner was Restrained under RAP 16.4(c)(2) in Violation of**
23 **Petitioner's Constitutional Rights Under the United States Constitution; in Particular his**
24 **Right to be Free from Ineffective Assistance of Counsel; ie his Right to Counsel**

25 Under the Fourteenth Amendment of the United States Constitution, an appellant has a due
26 process right to be represented by an effective attorney when he is facing criminal charges which

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3 result in incarceration. Sixth Amendment, United State Constitution, as applied to the States pr
4 the Fourteenth Amendment.

5 **3.b. Petitioner is also being unlawfully restrained under RAP 16.4(c)(3)**

6 Material facts do exist which were not presented or heard, which in the interest of justice
7 do require vacation of petitioner's conviction in the Juvenile criminal proceedings instituted by
8 Pierce County Juvenile Court. In particular, witness Donald Gordon Spencer has presented a
9 Declaration that he in fact was an alibi witness on the day in question, at the time in question. He
10 indicates in his sworn testimony that June 20, 2013, he was with the petitioner from 10 a.m. to 2
11 p.m. See Appendix C. The police arrived at the scene with smoke smoldering at noon, so Mr.
12 Spencer is a crucial alibi witness. The declaration of not only this witness, but of Nancy J.
13 Pringle established that the public defender refused to allow Mr. Spencer alibi testimony for the
14 petitioner. See Appendixes B and C. Again, the fire was smoldering at noon or shortly thereafter
15 when police arrived. There was glass heard to be broken during the 10 a.m. to noon timeframe.
16 Mr. Spencer presents as a factually significant alibi witness that supports petitioner's innocence
17 particularly in regards to the Arson in First Degree charge, but also to a significant extent as the
18 Malicious Mischief in the First Degree charge. The timing of the fires that were subject of the
19 arson charge is certainly brought into significant question with Mr. Spencer's testimony that was
20 not before the lower court.
21
22

23 **4. Legal Authority**

24 DID THE PUBLIC DEFENDER PROVIDE INEFFECTIVE ASSISTANCE OF
25 COUNSEL WHEN SHE REFUSED TO CALL AN ALIBI WITNESS ON BEHALF OF
26 THE APPELLANT?

27 State v. Sherwood, 71 Wn.App. 481, 860 P.2d 407 (Div. II 1993) sets forth:

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3 The analysis for denial of the federal and state constitutional right to effective
4 assistance of counsel consists of two parts: First, that defense counsel's
5 performance was deficient, that is, did it fall below an objective standard of
6 reasonableness; second, was the defendant thus prejudiced. Strickland v.
7 Washington, 466 U.S. 668, 687, 80 L.Ed. 2d 674, 104 S.Ct. 2052 (1984); State v.
8 Thomas, 109 Wn.2d 222, 225-26, 743 P.2d 816 (1987); State v. Harper, 64
9 Wn.App. 283, 286, 823 P.2d 1137 (1992); State v. Staten, 60 Wn.App. 163, 171,
10 802 P.2nd 1384, review denied, 117 Wn.2d 1011 (1991).

11 In this case, the evidence shows that there was a fire burning or smoldering in the structure
12 at the time that police arrived at the scene. CP 33. This was approximately noon on June 20,
13 2013. Mr. Spencer is an alibi witness as to the timing. See Appendix C. This is crucial
14 particularly as to the Arson in the First Degree Charge. Since the fire had been still going at noon
15 when the officers arrived, it was prejudicial to the defense to not have this witness testify and for
16 the Court to not be able to consider that testimony given that there was an unidentified fingerprint
17 at the scene (CP 59, LL 20-22) as to show the timing as to when the appellant was actually in the
18 residence. This certainly had an effect on the trial result. From Spencer's testimony, appellant
19 was gone from the dwelling by before 10:00 a.m.

20 It is highly unlikely that the appellant would have been convicted of the arson charge in
21 particular, as well as the malicious mischief charge had the public defender called this alibi
22 witness that was available, for which she was essentially begged to call as a witness. The
23 justification presented that this is a "winnable" case without the alibi witness obviously was untrue
24 given the result of conviction. See Appendix B. That is not a sufficient basis to constitute a
25 strategy and should not be sanctioned given the overwhelming value of the alibi witness testimony.
26 The "strategy" was tantamount to cutting corners because the public defender claimed to have a
27 good case without the alibi witness. Shortening the trial is not a reasonable basis to strategize in
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2 these circumstances. This is a crucial defense witness that should have been called to testify. Not
3 calling Mr. Spencer to testify easily fell below the required standard without legitimate
4 justification, to the obvious prejudice of appellant.
5

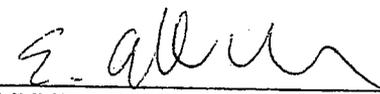
6 **REQUEST FOR RELIEF**

7 Petitioner requests his conviction be vacated and the case be remanded for a new trial,
8 particularly as it relates to the Arson in the First Degree and Malicious Mischief in the First
9 Degree charges.

10 **VERIFICATION**

11 After being duly sworn, on oath, I depose and say:

12 That I am the attorney for the petitioner, that I have read the petition, know its contents,
13 and I believe the petition is true.
14

15
16 
17 E. ALLEN WALKER, WSB #19621
18 Attorney for Petitioner

19 Subscribed and sworn to before me this 13th day of October, 2014.



27 Susan M Heilesen
28 Notary Public in and for the State of
Washington, residing at Puyallup.
My commission expires on 09/01/15.

WALKER ALLEN LAW OFFICE

October 14, 2014 - 12:51 PM

Transmittal Letter

Document Uploaded: prp-Personal Restraint Petition-20141014.pdf

Case Name: In Re the Personal Restraint Petition of Conlan Jaden Shaw
Court of Appeals Case Number:

Is this a Personal Restraint Petition? Yes No

The document being Filed is:

- Designation of Clerk's Papers Supplemental Designation of Clerk's Papers
- Statement of Arrangements
- Motion: _____
- Answer/Reply to Motion: _____
- Brief: _____
- Statement of Additional Authorities
- Cost Bill
- Objection to Cost Bill
- Affidavit
- Letter
- Copy of Verbatim Report of Proceedings - No. of Volumes: _____
Hearing Date(s): _____
- Personal Restraint Petition (PRP)
- Response to Personal Restraint Petition
- Reply to Response to Personal Restraint Petition
- Petition for Review (PRV)
- Other: _____

Comments:

No Comments were entered.

Sender Name: E. Allen Walker - Email: awalker@tacomalegal.com

A copy of this document has been emailed to the following addresses:

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APPENDIX A

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IN THE SUPERIOR COURT IN AND FOR THE COUNTY OF PIERCE
STATE OF WASHINGTON

STATE OF WASHINGTON,)
)
 Plaintiff,)
)
 vs.) No. 13-8-00892-8
) COA No. 45959-1-II
 CONLAN JADEN SHAW,)
)
 Respondent.)

VERBATIM REPORT OF PROCEEDINGS
VOLUME 1

January 28, 2014
Pierce County Juvenile Court
Remann Hall
Tacoma, Washington
before the
HONORABLE KITTY-ANN van DOORNINCK

Reported by,
Carla J. Higgins, CSR

A P P E A R A N C E S

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For the Plaintiff: MR. R. BRIAN LEECH
Deputy Prosecutor
5501 Sixth Avenue
Tacoma, Washington 98406

For the Respondent: MS. JEAN ANN O'LOUGHLIN
Attorney at law
949 Market Street
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Tacoma, Washington 98402

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1 BE IT REMEMBERED that on the 28th day
2 of January, 2014, the above-mentioned cause came on duly
3 for hearing before the HONORABLE KITTY-ANN van DOORNINCK,
4 Superior Court Judge in and for the County of Pierce, State
5 of Washington; the following proceedings were had, to-wit:

6 * * * * *

7 JANUARY 28, 2014

8 MORNING SESSION

9 MR. LEECH: Good morning, Your Honor.

10 These are the matters of State versus Conlan Jaden
11 Shaw. There's two cause numbers on the docket today.
12 Cause No. 13-8-00892-8, charges of arson 1, residential
13 burglary, and I have an Amended Information adding
14 malicious mischief first degree. That's set for trial
15 today.

16 And then Cause No. 12-8-01292-7. This is a deferred
17 disposition that was granted back in June of last year on
18 unlawful manufacturing of an explosive devices and unlawful
19 possession of a controlled substance, marijuana. That's on
20 for revocation. Obviously that matter will track the
21 trial.

22 I'm Brian Leech for the State. The respondents is
23 present, represented by Ms. O'Loughlin. He's out of
24 custody and I believe the parties are ready for trial.

25 MS. O'LOUGHLIN: We are ready to proceed, Your

State v. Shaw - 1/28/14
Colloquy

1 Honor.

2 THE COURT: Okay.

3 MR. LEECH: There are a few housekeeping matters.

4 First of all, of course, the amendment which adds the count
5 of malicious mischief first degree. I did previously
6 notify Ms. O'Loughlin of that intent and I provided her a
7 copy of the Amended Information in advance. I would ask
8 the Court to re-arraign the respondent on the amendment.

9 MS. O'LOUGHLIN: Your Honor, we have received a copy
10 of the Amended Information, would waive formal reading and
11 enter pleas of not guilty to all the charges.

12 THE COURT: I'll find probable cause and enter a not
13 guilty plea. And there was notice in the original
14 declaration that this might occur.

15 MR. LEECH: Thank you.

16 I've spoken with Ms. O'Loughlin prior to trial in
17 the preceding weeks and we've worked out a couple of
18 stipulations regarding DNA and fingerprint evidence. And I
19 have provided copies of those stipulations to
20 Ms. O'Loughlin, previously. She reviewed those, indicated
21 that she did not have any exceptions to those. She did ask
22 me to add one phrase, which I did add that in the
23 fingerprint stipulation. And then Mr. Conlan Shaw has
24 signed those stipulations. I would ask the Court to engage
25 in the appropriate colloquy for both of those stipulations

State v. Shaw - 1/28/14
Colloquy

1 and accept them.

2 THE COURT: I haven't read this, but can you just
3 tell me what the stipulations consists of, as I'm reading
4 at the same time?

5 MR. LEECH: When the officers responded, the
6 forensic investigator responded and located several latent
7 fingerprints at the residence. He obtained the latent
8 copies of those prints. They were subsequently examined by
9 a forensic investigator. The latent print examiner found
10 it matched the respondent's known prints. And the
11 stipulation relates to the prints that were found in the
12 residence and the various locations where they were found.

13 The DNA stipulation, based on the evidence, it
14 appears that the point of entry was a downstairs window
15 that was shattered. There was blood evidence found on the
16 exterior and interior of that frame. There was blood
17 evidence found on the walls in the hallway of the lower
18 level of the residence. And the forensic investigator
19 swabbed those blood -- suspected blood evidence, and that
20 was then sent to the DNA lab, state patrol crime lab, where
21 it was examined. Detective Jason Brooks obtained a buccal
22 swab from the respondent as a reference sample, and that
23 reference sample was then compared to the DNA evidence at
24 the state patrol crime lab. It was found it matched the
25 respondents. And the odds I believe of those -- of the DNA

1 belonging to a random person in North America is one in 68
2 quintillion. The stipulation relates to the collection of
3 that evidence, the preservation of that evidence and the
4 testimony, as well.

5 THE COURT: Oh, the blood that was tested and
6 matched by the DNA was inside and outside the window and
7 then on the walls?

8 MR. LEECH: On the walls in the interior of the
9 residence.

10 THE COURT: Three different locations, generally.

11 MR. LEECH: I think there were two locations on the
12 hallway walls and then roughly two or three locations
13 around the entry window.

14 THE COURT: Is that your understanding, as well?

15 MS. O'LOUGHLIN: That's my understanding, as well.
16 I did go over the stipulation with Conlan, read them to him
17 and explained them to him and he signed it, as well as
18 myself.

19 THE COURT: Is what Ms. O'Loughlin just said, is
20 that true?

21 THE RESPONDENT: Yes, Your Honor.

22 THE COURT: There's two documents that she went over
23 with you. Is that correct.

24 THE RESPONDENT: Yes, Your Honor.

25 THE COURT: We'll talk about the first one here.

1 It's called a Stipulation Regarding DNA Evidence. And
2 basically what I'm understanding is that there are several
3 locations in this home -- around the window and then on
4 some walls -- that there was blood found. And that blood
5 matched yours, according to the DNA, one in 68 quintillion.
6 Is that your understanding?

7 THE RESPONDENT: Yes, Your Honor.

8 THE COURT: You're agreeing that that evidence will
9 be admitted in court?

10 THE RESPONDENT: Yes.

11 THE COURT: We don't need to have testimony from
12 witnesses, you're just agreeing this is what the evidence
13 is. Is that correct?

14 THE RESPONDENT: Yes, Your Honor.

15 THE COURT: So you had an opportunity to talk to
16 your attorney about this. Is that correct?

17 THE RESPONDENT: Yes, Your Honor.

18 THE COURT: Without saying what she said, is this
19 your decision to agree that this evidence will be
20 admissible in the trial?

21 THE RESPONDENT: Yes.

22 THE COURT: That means I can take it into
23 consideration. Do you understand that?

24 THE RESPONDENT: Yeah.

25 THE COURT: Under the circumstances, are you

1 MS. O'LOUGHLIN: That's correct.

2 THE COURT: Again, there's apparently 89 photographs
3 of the scene, apparently. Have you had a chance to look at
4 these?

5 THE RESPONDENT: Yes, Your Honor.

6 THE COURT: And talked to your attorney about those
7 as well?

8 THE RESPONDENT: Yes, Your Honor.

9 THE COURT: You agree those are going to be admitted
10 without having the person who actually took the photos come
11 and talk about those. Is that correct?

12 THE RESPONDENT: Yes, Your Honor.

13 THE COURT: So 1 through 89 are going to be
14 admitted.

15 (Exhibit Nos. 1 - 89

16 admitted into evidence.)

17 MR. LEECH: Thank you.

18 THE COURT: Anything else?

19 MS. PRINGLE: He really doesn't know. We were shown
20 those photographs by our attorney, but he really doesn't
21 know that that is the house.

22 THE COURT: So it's not your turn to talk. I've
23 made my record. Thank you.

24 That's not what the question was about. Just so you
25 understand, it's so that the person who did the photographs

1 her way to work. At this point in time when she drove by,
2 she didn't notice any damage to the residence.

3 Later in that day, she would be summoned to that
4 residence by law enforcement and she would discover that
5 her house had been substantially vandalized and a fire had
6 been started within the residence.

7 One of her neighbors of the rental property is a
8 woman by the name of Mary Casey. She lives one or two
9 houses from the residence. She was later contacted and she
10 will testify that in the morning of June 20th, shortly
11 after 9:00 a.m. she recalls hearing sounds of crashing and
12 breaking glass coming from the area of this rental
13 property. She didn't really think much of it because she
14 assumed that people were just working on the property.

15 The house was actually a rental property that was
16 vacant at the time. It was available for rental and a
17 realtor was marketing the property for rental purposes. At
18 one point in time, Esther will testify that she had tried
19 to sell the house but it was unsuccessful.

20 Mary Casey will also testify that the last time she
21 recalls hearing any damage or breaking sounds of glass at
22 that residence would be shortly before noon, which is
23 approximately the same time that Officer James Pincham from
24 Tacoma Police Department responded to the scene.

25 He will testify that he responded to the scene in

1 response to a 911 call where apparently a mailman had
2 walked by the residence and seen some chairs, some broken
3 dining room chairs, in the driveway of the residence and
4 the upper window shattered just below -- sorry -- just
5 above the chairs that were on the driveway. Other windows
6 in front of the house had clearly been broken, as well. So
7 that prompted a welfare check of the residence.

8 When Officer Pincham arrived, he waited, he parked
9 outside of the residence because he wasn't sure exactly
10 whether there were people in the house still causing the
11 damage, whether there was an officer safety risk. So he
12 waited a few moments for back-up to arrive.

13 Once back-up arrived, he and Officer Celis, from the
14 Ruston Police Department -- I think at the time he was with
15 Tacoma police -- went into the residence. As they
16 approached the residence, they could smell the odor of
17 smoke coming from the residence. As they got closer, they
18 will testify that that smell became stronger. They saw, of
19 course, these broken windows at the front of the residence.
20 There were at least two large windows, two sections of
21 large windows that had been shattered clearly. And then,
22 of course, they also saw the dining room chairs that had
23 apparently been thrown through the upper window on to the
24 driveway.

25 As they went into the residence, they noticed the

1 door was unlocked. They walked in. The entryway was just
2 covered with shattered glass and pieces of the chandelier
3 that was, at one point, hanging above that entryway. There
4 were other pieces of items, fixtures in the residence, on
5 the floor in the entryway, including the door bell cover
6 and a few other items.

7 This is a split level residence. As he enters the
8 residence, the officers looked up, they could see at the
9 top of the stairs is apparently the kitchen area. And
10 there was a refrigerator that had been knocked over and it
11 was leaning about 45 degrees up against the wall. They
12 could see that from the entryway. And then downstairs
13 leads down to another section of the residence, which
14 includes several bedrooms and a family room.

15 They first went upstairs and examined the scene.
16 Officer Pincham will testify in detail about what he
17 discovered as he went through this residence. In fact, he
18 and Officer Celis went through the residence room by room.
19 And I'll ask Officer Pincham to testify regarding his
20 discovery of the damage that he discovered in each of these
21 rooms. Essentially, the upstairs consists of a kitchen, a
22 dining room and a living room on the one end, and then on
23 the other end is a hallway that leads to two bedrooms and a
24 bathroom.

25 He will testify that there was effectively damage in

1 every single room of the house. Almost every window in the
2 residence had been shattered. Fixtures throughout the
3 residence, light fixtures, fixtures in the bathroom such as
4 towels, mirrors et cetera, were all broken and damaged.
5 There was some furniture left over in the residence,
6 including a couch, the dining room furniture, a couple of
7 glass table tops and a couple floor laps that were also
8 damaged. I don't believe the couch was damaged but the
9 other furniture was significantly damaged -- excuse me --
10 the other items were significantly damaged.

11 He'll go through each room and indicate what damage
12 he saw. As he goes down stairs, that's where he will
13 discover that several sections in three different locations
14 in the lower section of that residence had been started on
15 fire. And you'll see photos showing smoke damage
16 originating from the lower area and coming up through the
17 entryway stairwell. And the soot, smoke damage, will cause
18 damage not only to the walls and ceiling of the lower
19 section, but also into the upper section of the residence.

20 He will indicate to you that as he went downstairs
21 he went room by room. As he comes down the stairs, it's a
22 similar layout as in the upstairs. As you're either going
23 up the stairs or down the stairs, and you're at the top or
24 the bottom of the stairs, to the left are bedrooms and to
25 the right are other rooms. So when he walked downstairs, he

1 came into a hallway. He saw some apparent blood evidence
2 smeared on the walls next to the bathroom and further down
3 in the hallway next to another bedroom. And then he will
4 go through the rooms. In the basement, or the downstairs,
5 I should say, are two bedrooms, a bathroom and a family
6 room. And the family room had a laundry room attached to
7 it. And the heating ventilation air conditioning system is
8 contained in the closet of the lower family room.

9 He will testify that when he went down into the
10 lower section, he found a large section of carpeting that
11 had been started on fire in the family room. The fire
12 originated in the -- toward the -- not the center of the
13 floor but several feet away from the wall and appears to
14 have burned a large section. I think if I recall it was a
15 four-by-eight foot patch of carpeting that had been set on
16 fire. And then that fire had caused damage to the wall,
17 one of the walls it was next to. You will see some smoke
18 damage and burn damage on the wall as well.

19 Officer Pincham will testify that he recalls that
20 the large section was still smoldering when he first
21 arrived at the residence.

22 He went down to another part of the house. There's
23 two bedrooms in the lower section. One of those bedrooms
24 had a roughly six-inch square area of carpeting toward the
25 center of the floor that had been lit on fire, as well.

1 When officer Pincham first arrived, I believe he
2 will testify that he saw some toilet paper, or remnants of
3 toilet paper, that had caused the carpet to catch on fire.
4 When he moved the toilet paper, there were actually still
5 red embers coming up, visible from the smoldering patch in
6 that bedroom.

7 Finally, he will testify that when he went into the
8 bathroom of the lower area, that there was a toilet paper
9 -- roll of toilet paper that had been lit on fire and had
10 apparently fallen off of the toilet paper roll holder on to
11 the ground, or was on the ground when it was lit on fire.

12 Then he will also testify to damage in those rooms,
13 additional damage in those rooms.

14 He naturally called Tacoma Fire to respond when he
15 discovered the smoke and the fire damage. They responded
16 and put out or doused the remnants of the smoldering carpet
17 in the family room as well as the red embers in the
18 bedroom.

19 A fire investigator, Kenneth Hanson, also responded
20 to the scene. And he will testify that he has the training
21 and experience to determine and investigate the cause and
22 origin of fires and determine whether or not fires are
23 intentionally started or whether they were accidental or
24 acts of God. And he will explain to the Court what types
25 of things he looks at when he makes that determination as

1 to whether a fire was an intentional malicious act or
2 whether it was an accident or an act of God, such as
3 lightning.

4 He will testify that there was no evidence, based on
5 the circumstances of this incident, to suggest that this
6 was anything but intentional and malicious.

7 Esther Mbajah will also testify about her residence,
8 about the condition of the property before the incident
9 and, obviously, after the incident. And she will tell the
10 Court what she believes it's going to cost to repair all of
11 these damages.

12 She did have homeowner's insurance on the property.
13 But because it had been vacant pending rental, the
14 insurance company denied the claim. They provided roughly
15 \$20,000 to repair that damage.

16 Esther will indicate that she had to obviously
17 repair this out of pocket and she's still in the process of
18 paying for the damages. And I believe she will testify
19 that she's already shelled out several thousand dollars to
20 repair some of the damages, and then she expects that the
21 additional costs to complete the repairs would easily
22 exceed the \$5,000 limit for first degree malicious
23 mischief.

24 And then obviously you will read the stipulations
25 for the DNA evidence and the print evidence and you'll

1 learn that the forensic investigator came in and found the
2 fingerprint evidence. He took latent impressions of what
3 he believed to be valid fingerprint impressions in several
4 locations. The stipulation will indicate that one of those
5 locations where he obtained the fingerprints is on one of
6 the floor lamps in the dining room that was damaged as part
7 of this vandalism.

8 As well as the DNA, the forensics officer, pursuant
9 to the stipulation, has indicated that he swabbed the
10 suspected blood evidence. Detective Brooks then obtained a
11 buccal swab. The DNA was extracted from the blood evidence
12 that was found in three or four different locations in the
13 residence. And then they tested it, compared it to the
14 known sample from the respondent. And as I indicated in
15 the stipulation, the DNA evidence shows that the blood
16 evidence at the scene was, in fact, the respondent's and
17 that it -- the odds of it being someone else is roughly one
18 in 68 quintillion, which as the Court knows is a massive
19 number with many zeros.

20 Esther will indicate also that she's never known the
21 respondent. She didn't give her permission to enter the
22 residence. She certainly didn't give permission to cause
23 any damage to the residence or light anything on fire.

24 At the end of the trial, Your Honor, I will ask the
25 Court to find the respondent guilty as charged on all three

1 counts: Residential burglary for breaking into the
2 residence to cause the damage; arson in the first degree
3 for lighting the carpeting in the dwelling on fire; and
4 then malicious mischief first degree for all the other
5 damage in the residence that exceeded \$5,000.

6 Thank you very much.

7 THE COURT: Ms. O'Loughlin.

8 MS. O'LOUGHLIN: We would reserve opening, Your
9 Honor.

10 THE COURT: Your first witness, Mr. Leech?

11 MR. LEECH: State calls Officer James Pincham.

12
13 DIRECT EXAMINATION

14 BY MR. LEECH:

15 Q. State your name and spell your last name for the
16 record.

17 A. James Pincham, p-i-n-c-h-a-m

18 Q. Can you tell me how you're employed?

19 A. Police patrol officer for the City of Tacoma.

20 Q. How long have you worked as a patrol officer for Tacoma
21 Police?

22 A. March 1st will be 29 years.

23 Q. What kind of duties do you have as a patrol officer?

24 A. Currently I'm assigned operations patrol, which is I'm
25 a call responder for calls that are pending, I get

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1 dispatched to them.

2 Q. And what kind of training, just generally, do you have
3 for your work as a law enforcement officer?

4 A. I went through the basic academy back in '85 and any
5 in-service training and there's been a couple
6 additional classes throughout the years, and then
7 on-the-job training.

8 Q. And are you a fully commissioned officer?

9 A. Yes, I am.

10 Q. Do you have prior law enforcement experience before
11 working for Tacoma Police?

12 A. Four years in the Air Force.

13 Q. Were you on duty on June 20th of this past year?

14 A. Yes, I was.

15 Q. Do you recall what shift you were working?

16 A. I was working day shift.

17 Q. What day of the week was June 20th?

18 A. Thursday.

19 Q. Now, prior -- at some point in time you received a call
20 to respond to this address on Pearl Street. Is that
21 correct?

22 A. That's correct.

23 Q. Prior to receiving that call, what were you doing?

24 A. I was still on patrol, driving around. And just before
25 I got this call, I was dispatched to Point Defiance Zoo

1 and Park in reference to an unattended child complaint.

2 Q. On your way en route to Point Defiance for the earlier
3 unrelated call, did you have occasion to drive by the
4 victim residence on North Pearl Street?

5 A. Yes, I did.

6 Q. As you drove by, did you hear anything?

7 A. Yes, I did. It was approximately 11:40 a.m. I was
8 driving northbound on North Pearl. I just passed the
9 victim residence and I heard glass breaking coming from
10 behind me and to the west, to my left. I did a quick
11 look around and as I was going I didn't see anything at
12 that time. I assume somebody had dropped something in
13 one of the neighbors or one of the residences, so I
14 went ahead and proceeded to my call.

15 Q. Was your window down in your patrol car?

16 A. Yes, it was.

17 Q. A few minutes later in that morning were you actually
18 dispatched to the residence you had just driven by?

19 A. Yes, I was. I cleared the call at Point Defiance just
20 before about 11:55 and at about 1204, I got dispatched
21 to the victim residence.

22 Q. Okay. What was your understanding for the reason of
23 the call?

24 A. My understanding was that a caller, a mailman, had been
25 passing by the residence and saw a broken --

1 MS. O'LOUGHLIN: I'm going to object, Your Honor,
2 it's hearsay.

3 THE COURT: I'll sustain.

4 MR. LEECH: It's not offered for the truth of the
5 matter asserted, just to explain the officer's --

6 THE COURT: You can do it without that much detail.

7 MR. LEECH: Okay.

8 Q. (By Mr. Leech) Just generally, do you understand what
9 you were responding to?

10 A. Correct. There was a broken window on a residence and
11 a couple chairs laying in the driveway directly beneath
12 the broken window.

13 Q. What residence were you dispatched to?

14 A. 4312, I believe, or -- North Pearl.

15 Q. Okay. Are you certain about the street address?

16 A. No, I'm not. It might have been 4314.

17 Q. All right. Just to clarify the actual number at the
18 residence, would it help you to review your report?

19 A. Yes, it would.

20 Q. Did you write your report around the time that you
21 responded to the incident?

22 A. Yes, I did, directly after I finished my investigation.

23 Q. Would it help you refresh your memory to review your
24 report as to the address?

25 A. Yes, it would.

1 MR. LEECH: May I approach, Your Honor?

2 THE COURT: What's the number of exhibit?

3 MR. LEECH: Exhibit 91.

4 THE COURT: Yes, go ahead.

5 Q. (By Mr. Leech) If you could take a look at that. What
6 is that?

7 A. It appears to be a copy of the report that I wrote the
8 day of the investigation.

9 Q. Okay. If you could just briefly review that and let me
10 know when you're done.

11 A. Okay.

12 Q. Did that help you remember the exact street address of
13 the residence you responded to?

14 A. Yes, it did.

15 Q. What was the house number?

16 A. 4314 North Pearl.

17 Q. Is that in Pierce County?

18 A. Yes.

19 Q. Approximately how long did it take you to arrive after
20 you left Point Defiance?

21 A. I was actually out of Point Defiance at that time and I
22 was only about two blocks away when I got the call. So
23 it took me less than a minute to get there.

24 Q. What did you first do when you arrived?

25 A. I pulled up a couple houses away from the victim

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1 residence, parked my vehicle, started to approach the
2 house on foot. But I didn't go all the way to the
3 house. I waited for back-up units to arrive.

4 Q. Why did you do that?

5 A. Because I wasn't sure what was going on inside the
6 house. I didn't know if there was some kind of a fight
7 going on in there or something that would require two
8 officers.

9 Q. Based on the context of the call and your earlier
10 experience with the residence when you heard the noise,
11 did you have any officer safety concerns?

12 A. Yes.

13 Q. And what were those?

14 A. Again, I didn't know what was going on in the
15 residence. I didn't know what I would find in there,
16 who I would find in there, what the situation actually
17 was, whether there were weapons involved. So it was
18 prudent on my part to wait for somebody else.

19 Q. And when another officer arrived, did you then approach
20 the residence?

21 A. Yes, we did.

22 Q. Can you just generally describe the residence? What
23 kind of a house is it?

24 A. It's a two-story split-level house. It sits on the
25 west side of North Pearl Street.

1 Q. And do you recall what color the house is?

2 A. I believe it's tan.

3 Q. Is that a residence?

4 A. Yes, it is.

5 Q. Now, before you entered the residence, did you see any
6 obvious signs of the disturbance or damage at the
7 residence?

8 A. While I was waiting for Officer Celis, I was standing
9 there looking at the residence, I could see that the
10 second floor window on the north side of the doorway
11 was completely shattered. I could also see that on the
12 south side of the doorway, the lower level, side was
13 also busted.

14 Q. For the Court's information as you're facing the
15 residence, what direction is north?

16 A. As you're facing the residence to your right would be
17 north, to your left would be south.

18 Q. Okay. Once you started approaching the residence, did
19 you see any other damage to the house?

20 A. Yes, I did.

21 Q. What did you see?

22 A. As I approached the residence, took a look to my right,
23 to the north, and I could see two chairs, black in
24 color, kind of a high-rise chair, appeared to be
25 aluminum, laying in the driveway, and also what

1 appeared to be remnants of a brass chandelier, they
2 were laying there.

3 Q. Did you see any other evidence of damage in the
4 driveway?

5 A. Broken glass in the driveway.

6 Q. Did you determine or suspect where those chairs had
7 come from?

8 A. Yes, I did.

9 Q. What did you suspect?

10 A. I suspected they came from inside the residence via one
11 of the windows.

12 Q. Now, as you and Officer Celis approached the front
13 door, did you smell anything?

14 A. I could smell, as I was a little ways -- still a little
15 ways from the residence, I could smell wood smoke. As
16 I approached --

17 Q. Go ahead.

18 A. As I approached closer to the residence, the smell of
19 wood smoke grew stronger. I had a feeling that it was
20 coming from inside the residence.

21 Q. Did you actually see any smoke coming out of the
22 residence when you approached?

23 A. No, I did didn't.

24 Q. Did you then enter the residence?

25 A. I went up and tried the front door. The front door was

1 closed at the time. So I tried the handle to see if it
2 was locked or unlocked. It was unlocked so I opened
3 the door. I announced our presence and then he and I
4 went into the residence.

5 Q. When you first entered the residence, can you describe
6 what you saw in the entryway?

7 A. Well, when I first opened the door, the smell of wood
8 smoke was very strong coming from inside the house. So
9 before I even went into the residence, I notified
10 dispatch that there was smoke inside the house and I
11 asked that the fire department respond.

12 Q. Okay.

13 A. So as I opened up the doorway, there's -- it opens
14 directly into the main entryway. And to your right,
15 slightly to your right are the stairs that go upstairs
16 and directly in front of you are the stairs that go
17 downstairs. So I opened up the door. I could see
18 broken glass laying in the entryway floor.

19 Q. Was -- can you describe the general quantity or rough
20 estimate?

21 A. I would have to say up to 30, 35 pieces of shards of
22 broken glass laying on the floor. I could also see
23 what appeared to be black soot on the wall of the lower
24 entryway, lower stairway walls.

25 Q. I'm going to back up a little bit. I'm going to show

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1 you Exhibit No. 4. Do you recognize that?

2 A. Yeah. It appears to be the chairs that were laying in
3 the driveway of the residence.

4 Q. Thank you. I'm going to approach again and show you
5 Exhibit No. 14. Can you tell the Court what this photo
6 depicts?

7 A. This is the front entryway of the residence.

8 Q. Is this taken from the exterior of the residence?

9 A. That's correct.

10 Q. Exhibit No. 15, is this -- does this show what you saw
11 on the entryway floor?

12 A. Yes, it does.

13 Q. And did you indicate that they were -- I'm going to
14 show you on the lower left corner of that photo, do you
15 have an idea of what that was or what that is?

16 A. That appears to be part of the chandelier that was
17 hanging from the ceiling of the entryway. When I
18 looked up there, I could still see the rod it had been
19 attached to, there were bare wires hanging out of it,
20 but the chandelier itself was gone.

21 Q. This white box here to the upper right of the
22 chandelier?

23 A. It appears to be the door bell cover.

24 Q. Did you determine where the door bell was actually
25 located in the residence?

1 A. If I remember correctly, it's in the upstairs hallway
2 to the south of the stairway.

3 Q. I'll show you Exhibit No. 16.

4 A. That's looking up the stairway to the second floor.
5 There's a -- as you look up, there's a doorway that
6 leads directly into the kitchen and this is the
7 refrigerator that's been tipped over. It was laying up
8 against one of the walls in the kitchen.

9 Q. Is that how you found the refrigerator when you
10 arrived?

11 A. Yes, it is.

12 Q. Did you then walk up the stairs and explore the
13 upstairs of the residence?

14 A. Yes, I did.

15 Q. Can you tell the Court, just give the Court a general
16 idea of how the upstairs is laid out in the residence?

17 A. At the top of the stairs there's a hallway that runs
18 north to south. To the north is, as you turn to the
19 north it goes directly into the living room. Adjoining
20 the living room to the south -- or to the west is a
21 dining area. And then to the south of that dining area
22 is the kitchen. So there's walls that separate the
23 kitchen from the hallway. But the -- it's an open area
24 between the dining area and the kitchen. So it kind of
25 forms a circular "L" pattern.

1 Q. I'm going to show you State's Exhibit No. 1. What does
2 this photo depict?

3 A. That's the exterior of the victim house.

4 Q. I'm going to kind of angle myself so the Court can see.
5 Can you point out what direction north is in this
6 photograph?

7 A. North would be that direction.

8 Q. Thank you.

9 Let me ask you again, based on -- now that you've
10 been in the house and you've seen the layout, can you
11 point for the Court what area of the house contains the
12 living room?

13 A. The living room would be directly -- that's the living
14 room window there, the shattered one, on the northwest.

15 Q. What's down here?

16 A. Those are bedrooms.

17 Q. Okay. Thank you.

18 Do you recall how many bedrooms were located on the
19 upper level?

20 A. Two.

21 Q. Is there also a bathroom up there?

22 A. Yes, there is.

23 Q. Do you recall, were there any other rooms up at the top
24 of the residence?

25 A. Two bedrooms, bathroom, living room, kitchen. I

1 believe that's it.

2 Q. Okay. Now, let me take you to the living room. So
3 that would be to the right as you go up the stairs?

4 A. Correct.

5 Q. What did you see in the living room?

6 A. Entered the living room, I could see a couch, which
7 would be if you entered the living room and turned to
8 face the broken window, that couch would be on the
9 right. There were a couple of chairs sitting in the
10 living room which matched the chairs that were laying
11 in the driveway. I saw an approximately three-foot,
12 maybe, section of aluminum piping that was black in
13 color. It was the same color as what the chairs were.
14 It had a white colored dust on it that I believed to be
15 drywall dust.

16 Q. I'm going to show you State's Exhibit Nos. 17, 18 and
17 19. Taking Exhibit No. 17 first. Can you tell the
18 Court what this exhibit depicts?

19 A. Yes. That's the living room of the victim residence.

20 Q. Okay. And, again, I'm going to kind of turn so I can
21 face the Court. Can you show the Court the metal piece
22 that you were referring to?

23 A. That would be that piece there in front of the couch.

24 Q. That's the piece that you thought had drywall dust on
25 it?

- 1 A. That's correct.
- 2 Q. And then can you point to the Court where the chairs
3 are that you believed matched the ones that were out in
4 the driveway?
- 5 A. That would be the three chairs, high-backed chairs
6 there.
- 7 Q. This is the window, of course?
- 8 A. That's correct.
- 9 Q. Did you see any broken glass on the floor in the living
10 room?
- 11 A. There was broken glass directly in front of the window,
12 a couple feet inside the window.
- 13 Q. And then to the lower left of the photo, Exhibit No.
14 17, can you see a black item there?
- 15 A. Yeah. That was a fireplace poker that was laying on
16 the floor when we got there.
- 17 Q. Now, Exhibit No. 18 is -- is this also the living room?
- 18 A. That's correct.
- 19 Q. Is that just a close-up of the glass on the floor?
- 20 A. Yes, it is.
- 21 Q. Can you tell the Court what Exhibit No. 19 shows?
- 22 A. Exhibit No. 19 is a view through the broken window. It
23 depicts North Pearl Street with the fire rig parked
24 there in the front of the residence.
- 25 Q. Thank you.

1 Now, did you then go to the dining room? I should
2 say dining area.

3 A. Dining area. I believe I referred in my report to the
4 dining room, but I believe it was a dining area.

5 Q. Let me show you State's Exhibit Nos. 20 and 21. Do
6 Exhibit Nos. 20 and 21 show the dining area in the
7 kitchen?

8 A. Yes, it does.

9 Q. Can you describe to the Court what is contained in this
10 photograph, what you saw when you arrived?

11 A. When we went inside, I saw broken glass on the floor.
12 I saw what appeared to be a small wooden table that
13 used to have a glass top on it. The glass top for the
14 -- the table was in the dining area up by the rear of
15 the sliding glass door that exits out on to the deck
16 behind the residence. The broken glass top for the
17 table -- or the glass top for the table there was
18 broken on the floor next to it. I believe there was
19 also a floor lamp, approximately six-foot tall, it was
20 laying on its side. It had been broken, the shade for
21 it was also busted.

22 Q. Was that the only floor lamp you found in the dining
23 area?

24 A. Yes.

25 Q. Was the sliding glass door broken?

- 1 A. No, it was not.
- 2 Q. Now, next to the dining area, what's next to the dining
3 area?
- 4 A. Next to the dining area to its left, to the south, is
5 the kitchen.
- 6 Q. Did you observe the kitchen?
- 7 A. Yes, I did.
- 8 Q. Did you notice whether there was any damage in the
9 kitchen?
- 10 A. There was no obvious damage that I saw in the kitchen.
11 The only thing I noticed was the refrigerator that was
12 tipped over blocking the exit door. And also the
13 sprayer for the sink. It was still attached to the
14 hose, the hose was -- it was still attached to the hook
15 up, but the hose and the sprayer were laying on the
16 kitchen counter.
- 17 Q. Was there any evidence that the sprayer had been used
18 in any way?
- 19 A. No. Nothing that I saw.
- 20 Q. I'm going to show you State's Exhibits 22 and 23. Do
21 these depict the kitchen?
- 22 A. Yes, they do.
- 23 Q. In the photograph of the refrigerator, did you see
24 whether there was any damage to the refrigerator?
- 25 A. The refrigerator was dented in several areas.

1 Q. Okay. And then on the floor in the kitchen, did you
2 see any remnants of damage there?

3 A. Broken glass on the floor.

4 Q. Now, in the dining room, was there a ceiling fixture?

5 A. I believe there was, but it had been busted.

6 Q. Okay. Do you recall whether there were any lighting
7 fixtures in the kitchen that had been damaged?

8 A. You know, to be perfectly honest, I don't recall.

9 Q. After you explored the kitchen, where did you move on
10 to next?

11 A. We moved down the hallway to the south.

12 Q. Okay. And did you observe any damage in the hallway on
13 the upper level?

14 A. There appeared to be a few -- or a little bit of black
15 on the walls. Nothing major.

16 Q. And what did you attribute that black to?

17 A. Appeared to be soot. Also, in the hallway, there was a
18 thermostat, a digital thermostat that was still
19 attached to the wall but it appeared to have been
20 beaten. And then there was the door bell, which was
21 missing its cover.

22 Q. I'm going to show you State's Exhibit No. 24. Does
23 this show the hallway that you just referenced?

24 A. Yes, it does.

25 Q. And for the Court's information, just to the right,

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1 lower right of the -- in this picture, in Exhibit 24,
2 what do you see?

3 A. That's the refrigerator.

4 Q. Okay. And so you're standing essentially next to the
5 kitchen facing down the hallway?

6 A. Correct.

7 Q. And can you show the Court where you saw the chime
8 housing for the door bell?

9 A. That would be on this wall here.

10 Q. So the black section on the wall there?

11 A. Correct.

12 Q. And what about the thermostat?

13 A. That's the white section there, shortly beneath the
14 door bell.

15 Q. Is that a programmable digital thermostat?

16 A. Yes.

17 Q. What do you see down here at the bottom, just directly
18 below the thermostat?

19 A. I believe that's a portion of the door bell. I could
20 be mistaken, but I believe that's what that was.

21 Q. Thank you.

22 Where did you move to next after the hallway?

23 A. I believe the -- I moved in to the bathroom.

24 Q. Okay. Where was the bathroom located in reference to
25 the hallway?

1 A. Bathroom was located on the west side of the hallway
2 between the kitchen and bedroom.

3 Q. So as you're walking down the hallway from the kitchen
4 area, would that be on the right?

5 A. Yes, it would.

6 Q. I'll show you State's Exhibit Nos. 25 through 28 --
7 sorry -- through 29. Excuse me. Let me show you 25
8 first. What does that show?

9 A. The second floor bathroom.

10 Q. Can you illustrate for the Court what kind of damage
11 you saw as you looked into the bathroom?

12 A. When I looked into the bathroom to the right is the
13 vanity and the mirror, the sink. On the left side of
14 the vanity on the wall, what you're facing when you
15 come into the bathroom, there was a mirror. That
16 mirror was busted. You go in to -- or directly in
17 front of you is the shower/tub combo. I could see -- I
18 looked at that, I could see that right above it was a
19 light and fan, exhaust fan combination. The cover off
20 of that -- the cover for that had been ripped off and
21 was laying in the bathroom and it appeared that the
22 light bulbs in the light fixture were busted and had
23 been broken. I believe also that the towel fixture had
24 been ripped off of the wall.

25 Q. So in reference to 25, can you tell the Court what

1 perspective this shows?

2 A. That's from the hallway directly into the bathroom.

3 Q. And then you testified, as you're facing into the -- or
4 looking into the bathroom, that the vanity and the
5 mirror are on the right?

6 A. Correct.

7 Q. You said the tub is straight ahead?

8 A. Correct.

9 Q. Okay. In Exhibit No. 26, what does that depict?

10 A. That's the vanity to the right. And this would be the
11 mirror that you could see from the hallway.

12 Q. Okay. No. 27, can you tell the Court what this photo
13 depicts?

14 A. That's the bathtub in the second floor bathroom.

15 Q. Inside the bathtub, can you indicate what you see in
16 there?

17 A. That would be the cover for the combo light fixture
18 exhaust fan.

19 Q. Is there something else?

20 A. It appears to be the shower curtain rod, I believe, or
21 some type of rod laying there. I can't remember
22 exactly what it was.

23 Q. Does that rod appear to be damaged?

24 A. Yes, it does. It's bent.

25 Q. Exhibit 28, what does this show?

1 A. That is the cabinets, I believe, right above the
2 vanity.

3 Q. Okay. And did you observe any damage to that?

4 A. No.

5 Q. And then Exhibit 29?

6 A. That's the exhaust fan and light fixture above the
7 bathtub.

8 MR. LEECH: Thank you.

9 MS. O'LOUGHLIN: Your Honor, I hate to interrupt.
10 Can we take a short break? My client needs to use the
11 bathroom.

12 THE COURT: Sure. Now would be a good time to take
13 a recess.

14 (Recess.)

15 MR. LEECH: Your Honor, just a housekeeping issue,
16 the neighbor is present. She's out in the hallway waiting
17 to testify, and she will be brief. I anticipate that
18 Officer Pincham's testimony will go beyond the noon hour.
19 What I wanted to propose is finish the upstairs testimony
20 from Officer Pincham and release him to come back at 1:30
21 and then get Ms. Casey in, because she has a one o'clock
22 medical appointment.

23 THE COURT: That's fine.

24 MR. LEECH: Thank you.

25 Q. (By Mr. Leech) Officer Pincham, I think we left off in

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1 the bathroom in the upper floor. Now, after you looked
2 at the bathroom, where did you go next in the
3 residence?

4 A. I believe I went to the bedroom on the -- located on
5 the east side of the hallway.

6 Q. Okay. I'm going to show you State's Exhibits 30
7 through 32. Showing you first State's Exhibit No. 30.
8 What does this depict?

9 A. That is the bedroom on the east side of the hallway.

10 Q. Okay. So east side. Would that be toward the front of
11 the house then?

12 A. Correct.

13 Q. And is this -- does this show the view from the
14 hallway?

15 A. Yes, it does.

16 Q. Did you go into that bedroom to see if there was any
17 damage in there?

18 A. Yes, I did.

19 Q. I'm going to show you State's Exhibit 31. What does
20 that depict?

21 A. That is the -- this direction, that would be the
22 condition of the bedroom that I found it in at the
23 time.

24 Q. Okay. That's the east bedroom, again?

25 A. That's correct.

- 1 Q. And then Exhibit 32.
- 2 A. That is the carpeting of that bedroom.
- 3 Q. Okay. When you went into this bedroom, what kind of
4 damage, if any, did you see?
- 5 A. The only thing is the globe was missing from the light
6 fixture ceiling -- the light fixture, but I don't know
7 where it was.
- 8 Q. Okay. And then did you see any debris on the floor in
9 that bedroom?
- 10 A. Nothing that I can recall.
- 11 Q. Let me show you State's Exhibit 32, again.
- 12 A. It appears to be broken glass.
- 13 Q. Do you know --
- 14 A. Sorry.
- 15 Q. That's all right.
- 16 Do you have any idea where that broken glass came
17 from?
- 18 A. No.
- 19 Q. Was the exterior window of that room broken out at all?
- 20 A. I don't believe so.
- 21 Q. Okay. Now, after you went to the east bedroom, where
22 did you go next?
- 23 A. One thing about the east bedroom, when I walked in I
24 could smell wood smoke inside the bedroom, so I looked
25 for any --

- 1 Q. You didn't find any evidence of fire?
- 2 A. In that bedroom, no.
- 3 Q. Did you, in fact, find any evidence of fire in the
- 4 upper level of the house?
- 5 A. No, I did not.
- 6 Q. Aside from the smoke damage?
- 7 A. Correct.
- 8 Q. Now, did you then go to the next bedroom on the upper
- 9 level?
- 10 A. Yes, I did.
- 11 Q. Where was that bedroom located?
- 12 A. That was on the south end of the hallway, slightly to
- 13 the west.
- 14 Q. Okay. And as you entered that bedroom, what kind of --
- 15 what did you observe?
- 16 A. I noticed that the ceiling fixture, the globe for it,
- 17 was shattered. I believe the windows were shattered.
- 18 I also believe -- and I'd have to refer to the report
- 19 -- I believe there was a floor lamp that was broken and
- 20 laying on its side on the floor, as well as I believe
- 21 another wooden table that was in the dining room.
- 22 Q. Okay. Let me show you State's Exhibit 33 through 37.
- 23 Exhibit 33, does this show the bedroom at the end of
- 24 the hallway?
- 25 A. Yes, it does.

1 Q. What perspective is that from?

2 A. That's from the hallway facing directly into the
3 bedroom.

4 Q. And what can you see as you look into the bedroom from
5 the hallway?

6 A. I believe it's broken glass and I think that's the bed,
7 floor lamp.

8 Q. Let me show you 34, which is the next exhibit. Is this
9 also of the bedroom at the end of the hallway, upper
10 level?

11 A. Yes.

12 Q. What does that show?

13 A. That shows the interior of the bedroom with the broken
14 floor lamp, broken glass on the ground and the table
15 that I described.

16 Q. Exhibit 35, does that also show the bedroom at the end
17 of the hallway, upper level?

18 A. Yes, it does. That's facing -- taken to the left.

19 Q. I believe you testified that the windows were broken.

20 A. Yes, I did.

21 Q. Can you tell from Exhibit No. 35 whether those windows
22 are broken?

23 A. Not from the lighting coming in.

24 Q. What about Exhibit No. 36, what does that show?

25 A. Exhibit 36 is the windows, closer up view of it, and it

1 does show that the sliding section of the window is --
2 both are completely shattered.

3 Q. Thank you. Exhibit 37, does this also show the upper
4 bedroom at the end of the hallway?

5 A. Yes, it does. That shows facing to the east.

6 Q. So that would show facing toward the hallway?

7 A. No. Actually the hallway would be to your left.
8 That's facing the front of the house there, the closet
9 area, facing the front of the house.

10 Q. Thank you. Now, after you looked at the -- well,
11 actually does that complete your check of the upper
12 level?

13 A. Yes, it does.

14 MR. LEECH: Maybe this would be a good time to break
15 with Officer Pincham's testimony and recall him.

16 THE COURT: Okay. Do you want him to come back at
17 1:30?

18 MR. LEECH: Yes, please.

19 THE COURT: Okay.

20 MR. LEECH: And then I'll call State's witness Mary
21 Casey.

22 THE COURT: Okay. Raise your right hand.

23 MARY CASEY

being first duly sworn,

24 testified as follows:

25 THE COURT: Go ahead and sit down.

1 MR. LEECH: Good morning, ma'am.

2 THE WITNESS: Good morning.

3
4 DIRECT EXAMINATION

5 BY MR. LEECH:

6 Q. Can you state your name and spell it for the court
7 reporter, please?

8 A. Mary Casey, m-a-r-y c-a-s-e-y.

9 Q. Now, are you employed presently?

10 A. No, I'm retired.

11 Q. And what area of town do you live in?

12 A. I live out in the west end by Point Defiance Park.

13 Q. Do you live near the address located at 4314 North
14 Pearl Street?

15 A. Yes. It's my neighbor.

16 Q. Next-door neighbor?

17 A. Yes. Next-door neighbor.

18 Q. Do you recall being home on June 20th of last summer?

19 A. Yes, I was.

20 Q. And what were you doing at home that day?

21 A. I was letting my dog outside.

22 Q. About what time did you let your dog out?

23 A. I would say it was between 8:30 and nine o'clock, in
24 that vicinity.

25 Q. When you let your dog out, where do you let -- is it a

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- 1 male or female?
- 2 A. Female.
- 3 Q. Where do you let her out?
- 4 A. I let her out the side sliding door onto my patio.
- 5 Q. On this day, did you let her out from that direction?
- 6 A. Yes, sir.
- 7 Q. And when you let your dog out, did you hear anything
- 8 going on next door?
- 9 A. I certainly did.
- 10 Q. Was that the residence at 4314 North Pearl?
- 11 A. Yes, sir.
- 12 Q. What did you hear?
- 13 A. I heard glass breaking.
- 14 Q. I'm sorry. Did I ask you about what time you let her
- 15 out?
- 16 A. Yes, you did.
- 17 Q. Okay. And you said 8:30 to 9:00, if I recall?
- 18 A. It was around that vicinity. I don't know exactly. I
- 19 didn't look at my watch but it was in that area.
- 20 Q. So it was in the morning area?
- 21 A. Yeah. She usually goes out between 8:30 and 9:00.
- 22 Q. And you heard some sounds coming from 4314?
- 23 A. Oh, yes.
- 24 Q. And can you describe to the Court what you heard.
- 25 A. It sounded like glass breaking, lots and lots of glass

- 1 breaking, loud glass breaking.
- 2 Q. Did you hear any other sounds coming from that home?
- 3 A. No, just the broken glass.
- 4 Q. And how long did you hear it when you were outside your
5 residence?
- 6 A. Oh, I would say probably half an hour, 45 minutes.
- 7 Q. What did you think when you heard that noise?
- 8 A. I thought they were tearing the house down.
- 9 Q. All right. Did you do anything about what you heard?
- 10 A. I went in the house and shut the door.
- 11 Q. Okay. Now, later in that day, did you go out again or
12 hear some more noise coming from that residence?
- 13 A. No, not really. I saw a police officer walking down
14 Pearl Street in front of my house, and about that time
15 the noise stopped.
- 16 Q. Okay. So you were still hearing similar sounds from
17 coming from 4314?
- 18 A. Broken glass.
- 19 Q. Okay. Before you saw the officers walking up toward
20 that residence, did you see anybody else?
- 21 A. The mailman.
- 22 Q. Okay. When the mailman was walking by, did you also
23 hear these sounds of breaking glass?
- 24 A. Yes, sir.
- 25 Q. Do you recall whether you were able to investigate what

1 these noises were?

2 A. I don't go out because of my walker and I have a
3 difficult time walking and I was afraid I would fall,
4 so I stay home in my own house.

5 Q. Do you drive yourself?

6 A. No, I don't, not any more.

7 Q. Do you always use your walker when you're --

8 A. When I'm out, yes. I have another one that I use in
9 the house.

10 Q. Did you hear -- I'm sorry -- did you see anybody in the
11 residence?

12 A. No, I didn't.

13 Q. Did you have a clear view of the residence when you
14 heard this noise?

15 A. I did, yes.

16 Q. Can you tell whether the noises were coming from inside
17 or outside the residence?

18 A. I assumed that they must have been coming from the
19 inside, because if it would have been on the outside,
20 there's a big lanai on the back and I would have seen
21 somebody and I didn't see anybody, so I assumed it must
22 have been from the inside.

23 Q. When you saw the mailman walking by, did you still hear
24 noises coming from the 4314 residence?

25 A. Yes, I did.

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1 Q. What about when the officer was arriving in the area,
2 did you still hear noises?

3 A. Like I said, I heard the noise until the officer walked
4 out in front of my house, and was walking down there,
5 he would be walking right in front of the other house
6 and the big picture window is facing Pearl Street.
7 Whoever was in there, whatever they were doing, would
8 have seen him walk by and then they stopped.

9 MR. LEECH: Okay. Thank you.

10 Nothing further, Your Honor.

11 THE COURT: Cross-examination.

12

13 CROSS-EXAMINATION

14 BY MS. O'LOUGHLIN:

15 Q. You said you let your dog out about 8:30 or 9:00 and
16 starting hearing glass breaking then?

17 A. Yes.

18 Q. You heard the glass breaking for half an hour, 45
19 minutes?

20 A. Approximately, yes.

21 Q. You didn't go over to the house to check it out?

22 A. No, I did not.

23 Q. But you look at the house from your patio?

24 A. Yes, yes, yes. I can see the back of the house from my
25 patio.

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Mary Casey - Cross by Ms. O'Loughlin

1 Q. You couldn't see anyone at all?

2 A. No, I couldn't see anyone at all.

3 Q. You didn't see anyone go in the house?

4 A. I didn't see anyone go in or out, no.

5 Q. Didn't see anyone come out of the house?

6 A. No.

7 Q. And you didn't call the police?

8 A. No, I didn't. The mailman did.

9 Q. Okay. And did you smell smoke?

10 A. No.

11 Q. No smoke?

12 A. Huh-uh.

13 Q. And the house had been vacant for a period of time?

14 A. Yes, it had.

15 Q. Do you know about how long?

16 A. Approximately 18 months, give or take.

17 Q. The backyard of 4314, is that fenced back there?

18 A. No.

19 Q. No fence in the backyard?

20 A. No fence at all.

21 Q. So you have no idea how many people were in the house
22 that day?

23 A. None whatsoever.

24 MS. O'LOUGHLIN: I don't have anything.

25 THE COURT: Redirect, Mr. Leech?

REDIRECT EXAMINATION

1
2 BY MR. LEECH:

3 Q. Ms. Casey, do you have a fence around your backyard?

4 A. Yes, I do.

5 Q. How tall is that fence?

6 A. Six foot.

7 Q. Does that fence obstruct some of your view of the
8 neighboring property?

9 A. Yes, it does.

10 Q. What side of the -- what color is your house?

11 A. Light yellow with gray-blue trim.

12 Q. So you live on the south side of that residence, of
13 4314?

14 A. Yes. The south side, yes, sir.

15 Q. I'm going to show you State's Exhibit No. 12. Is this
16 -- do you recognize this?

17 A. Yes.

18 Q. What is that?

19 A. That would be underneath the lanai in the backyard of
20 their house.

21 Q. Okay. Is that fence that you can see in that photo, is
22 that your fence?

23 A. Yes, it is my fence.

24 Q. Thank you.

25 MR. LEECH: That's Exhibit No. 12, if I didn't

1 mention it.

2 Thank you. Nothing further.

3 THE COURT: Anything based on that?

4 MS. O'LOUGHLIN: No, Your Honor.

5 THE COURT: Thank you. You can step down.

6 So we're waiting for the officer. Do we have
7 another witness that we can fill in?

8 MR. LEECH: I don't, no.

9 THE COURT: She was fast.

10 The Amended Information has June 17th, not June
11 20th. Maybe we can do a corrected or something.

12 We'll be at recess until 1:30.

13 (Lunch recess.)

14 \\\

15 \\\

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AFTERNOON SESSION

1
2 THE COURT: Officer, do you want to come back?
3 You're still under oath.

4 MR. LEECH: For the record, we're back on State vs.
5 Conlan Shaw, Cause No. 13-8-00893-8.

6 At the close of the morning session, Your Honor, I
7 mentioned that I included the incorrect date on the Amended
8 Information for Count III, which is the vandalism the
9 count, and I did correct that over the noon hour, made that
10 date of violation as June 20 and I provided two copies to
11 Ms. O'Loughlin and her client.

12 MS. O'LOUGHLIN: We received those, Your Honor.

13 THE COURT: And it's still a not guilty plea?

14 MS. O'LOUGHLIN: Yes.

15 THE COURT: Thank you.

16 MR. LEECH: Officer Pincham, as the Court indicated,
17 you are still under oath.

DIRECT EXAMINATION (Cont.)

18
19
20 BY MR. LEECH:

21 Q. I think as we broke this morning, you were about to
22 head downstairs.

23 A. Correct.

24 Q. So let's go ahead. After you reviewed the upstairs
25 area, you did go downstairs to look at that area?

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1 A. Yes, I did.

2 Q. I'm going to show you just a few exhibits that kind of
3 relate to your way down the stairs. Exhibits 38 and
4 39, do you recognize these items?

5 A. That would be the chandelier that's in the front
6 entryway.

7 Q. Okay.

8 A. Or the remnants of it.

9 Q. That is what hangs over the entryway?

10 A. The entryway floor, correct.

11 Q. All right. So then you walked down those stairs and
12 went downstairs?

13 A. Correct.

14 Q. Or to the lower level, I should say.

15 I'm going to show you State's Exhibit No. 40. Now,
16 as you were walking down the stairs, did you have
17 occasion to take a closer look at the damage as you
18 went down the stairs?

19 A. I went down the stairs, there was black soot marks on
20 the stairway walls. The soot became darker the further
21 down the stairs I went. I got to the bottom and there
22 was broken glass on the stairs leading down. I got to
23 the bottom and I could see that the entire hallway
24 ceiling was covered with black soot. There was also
25 additional soot on the walls.

1 Q. Let me stop you there. I'm going to show you first
2 Exhibits 40 and 41. Can you tell the Court what these
3 photos depict?

4 A. The photo here in your left hand, that's the stairway
5 leading down to the lower level.

6 MR. LEECH: That's Exhibit 40, for the Court's
7 information.

8 A. There's black soot on the walls there and also you can
9 see it on the wall that you're facing and on the
10 ceiling, also.

11 Q. (By Mr. Leech) At the end of the stairs, there's a
12 door. Do you recall what that door leads to?

13 A. That would be the bathroom, the downstairs bathroom.

14 Q. There's a mark on the -- next to the door knob on the
15 wall. Did you have occasion to look at that mark?

16 A. Yes, I did.

17 Q. Do you have an idea or do you suspect what that might
18 have been at the time?

19 A. At the time, it appeared to be dried blood.

20 Q. Okay. And then now that you're downstairs, I'm going
21 to ask you if you could kind of describe to the Court
22 how the downstairs area is laid out.

23 A. As you get to the bottom of the stairs, directly in
24 front of you is the bathroom. To the right or to the
25 north the hallway continues a little further and then

1 it opens into a family room area, which fills up
2 basically the north end of the floor. Just to the west
3 of the family room there is a -- what appeared to be a
4 laundry room area. In the family room is located the
5 hot water tank and the furnace, I believe. Going back
6 out in the hallway, you head southbound there is the --
7 I think it's the utility closet, and then there's the
8 bathroom door. And then further down at the end of the
9 hallway on the east and west, both sides, there's a
10 bedroom on each side.

11 Q. Do you recall whether there was a bathroom in the lower
12 area?

13 A. Yeah. The bathroom?

14 Q. Yes.

15 A. Yes. That's right after the utility closet, I believe,
16 and it's right across from the bottom of the stairway.

17 Q. Now, for now, let's just focus on the hallway as you go
18 down the stairs. I'm going to show you Exhibits 42 and
19 43. Let me show you 42 first. Do you recognize this
20 photo?

21 A. Yes, I do.

22 Q. What does that depict?

23 A. That depicts what I believe is dried blood on the south
24 side of the doorway, the bathroom doorway.

25 Q. That's what you have seen as you were going down the

1 stairs?

2 A. Yeah.

3 Q. Exhibit 43, what does that show?

4 A. Exhibit 43, that is the entryway to the family room.

5 Q. Okay. And can you tell the Court what perspective that
6 shows?

7 A. That's from the hallway at the bottom of the stairs
8 looking to your north.

9 Q. In the hallway on the ground, do you see any evidence
10 of debris or vandalism there?

11 A. It appears that there's a fixture of some kind,
12 something laying in the hallway right in front of the
13 bathroom door.

14 Q. Now, once you got downstairs, did you go first into the
15 family room to the right there?

16 A. I believe I went to the right. I believe in both
17 locations I went to the right first.

18 Q. You previously testified that to the right on the lower
19 level is the family room?

20 A. Correct.

21 Q. When you went into the family room, what did you see?

22 A. As I was approaching the family room, I believe there
23 was a burgundy colored carpet, wall-to-wall carpeting
24 in the family room. Across from the doorway by the
25 north wall of the family room there was a large area,

1 approximately eight foot by five foot irregular shape
2 section of carpeting that was blackened. I could see
3 some object laying inside the blackened area. Also
4 appeared to be a small amount of smoke coming from that
5 blackened area of the carpeting.

6 Q. So the blackened area of the carpeting and the family
7 room was still smoldering when you arrived?

8 A. Right. There's still some smoke coming off of it.

9 Q. I'm going to show you Exhibits 44 through 54. If you
10 could take a moment and look at these photos yourself
11 and let me know what those relate to.

12 A. Okay.

13 Q. Have you had a chance to look at those?

14 A. Yes, I have.

15 Q. What do photos 44 through 54 depict?

16 A. Exhibit 44 is the blackened area on the burgundy rug
17 that I was describing when I stepped through the
18 doorway, and the blackened area of the wall on the
19 north side of the family room.

20 Q. Now, is that the area that was still smoldering?

21 A. Yes. That's correct.

22 45 is a -- it's basically the same area except
23 taken from a slightly different angle.

24 Q. Okay.

25 A. 46 is the area again showing some debris laying on the

1 carpeting, some broken glass on the carpeting. Also,
2 you can see the north edge of what was the curtain rods
3 that had been torn down off the window. They were
4 laying on the floor.

5 Q. If you could turn that photo around and show it to the
6 judge, what you're referring to.

7 A. 47, again, is the burnt area of the carpeting. Again,
8 you can see a little more of the curtains and curtain
9 rod that is laying there. And then this object right
10 here in the front is part of a bed frame, the kind that
11 have the two arms that pull out and then you connect
12 them all together to form the bed frame themselves.

13 48, again, is the blackened area. There's the
14 curtains that are laying on the floor, and this is the
15 west window of the family room.

16 Q. Now, that window appears to have curtains that hang
17 down from basically -- to the floor. Is that a French
18 door or is that a window?

19 A. Those are actually windows.

20 Q. Were you able to determine whether those windows were
21 broken?

22 A. You know, I don't believe they were broken. I would
23 have to refer to the report. But from going off my
24 independent recollection, I don't believe that they
25 were broken.

1 Q. Okay. That's fine. What about 49?

2 A. 49 is the family room, again. There's the burnt area
3 to the north and this is looking into what the -- the
4 laundry room area. Over here are the folding doors
5 that contain -- or the closet that contains the hot
6 water heater and the furnace.

7 Q. What about Exhibit 50?

8 A. Exhibit 50 is inside the family room looking to the
9 south. That's the doorway that you enter through.
10 There's the stairs that lead upstairs to the entryway
11 and that's the furnace.

12 51, again, is the -- looking at the family room
13 toward the window to the west, the burnt area,
14 curtains, rod, debris on the floor.

15 Q. Now, 52, what does that show?

16 A. 52 was a patch of carpeting that was taken by the
17 I-dent technician who responded to the scene. It was
18 taken of that carpeting for analysis.

19 Q. When you first arrived, was that patch of carpeting cut
20 out at that point in time?

21 A. No, it wasn't.

22 Q. So that was done later by law enforcement?

23 A. Correct.

24 Q. What about 53?

25 A. 53 is the burnt section, again, but this appears to be

1 taken from the north wall, standing against the north
2 wall, basically shot straight down, showing the burnt
3 area in the center of it.

4 54 is the center of the burnt area. A close-up of
5 the -- of the location there.

6 Q. Now, it looks to me like you can see some of the
7 padding on the carpeting underneath this burned area.

8 A. Correct.

9 Q. Is that how it was when you arrived or is that a result
10 of, perhaps, an investigation?

11 A. That's how it was when we got there. The only thing
12 that is different from how I arrived is the section
13 that's been cut out by I-dent.

14 Q. Now, with regard to the way this room is laid out, one
15 of the pictures shows the windows, which that would be
16 windows facing the backyard. Is that correct?

17 A. No. Facing Pearl Street.

18 Q. Pearl Street. Okay. So where in relation to the room
19 is this section that I'm showing you, 44, which is the
20 first picture that shows the big area of burnt
21 carpeting?

22 A. That is as you enter the door, it's directly across, to
23 the right.

24 Q. To the right. Thank you.

25 Now, after you checked on the family room, did you

1 notice, first of all, whether there's any damage to the
2 HVAC system, the heating ventilation air conditioning
3 system?

4 A. I didn't notice any damage to that, any obvious damage
5 to it.

6 Q. Did you see any obvious damage to the hot water tank?

7 A. No, I did not. But, to be honest, I didn't look.

8 Q. Okay. Now, you've testified that one of the rooms that
9 goes off of the family room is a laundry room. Is that
10 accurate?

11 A. That's correct.

12 Q. Let me show you State's 55 through 59. If you'll take
13 a moment to take a look at those photos.

14 A. Okay.

15 Q. Now, with regard to Exhibit 55, can you tell the Court
16 what that illustrates?

17 A. 55 is taken from inside the family room. This is the
18 doorway that's at the west side -- yeah, the west side
19 of the room that opens and leads into the laundry room.
20 This is obviously the hot water tank and the furnace
21 inside their closet there.

22 Q. And then Exhibit 56, what does that show?

23 A. 56 is the floor of the laundry room showing broken
24 glass on it. I believe that this is the bottom of the
25 washer and dryer.

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1 Q. And just so -- for the Court's information, you're
2 pointing to the right of that photo?

3 A. Correct. That would be to the south of the room.

4 Q. And what does 57 show?

5 A. 57 is the light fixture for the laundry room with the
6 filament area bent and the globe missing, busted. I
7 believe that was the broken glass on the floor.

8 Q. Were there any other apparent sources of broken glass
9 in that room, other than the light fixture?

10 A. No.

11 Q. What about Nos. 58 and 59?

12 A. 58 is looking to -- it would be to the north when you
13 enter the laundry room, so it would be to the right,
14 just shelving that was in the room and a step stool
15 that was there.

16 And then 59 would be the washer and dryer, which would
17 be to your left as you enter the laundry room, again,
18 with shelving.

19 Q. Was there -- did you see any obvious signs of vandalism
20 with regard to the appliances in the laundry room?

21 A. No, I didn't.

22 Q. Did you see any kind of soot or soot damage with regard
23 to the laundry room?

24 A. The walls and the ceiling were darkened with soot.

25 Q. After you finished investigating the family room, what

1 did you do next?

2 A. We moved out of the family room and went back into the
3 hallway and worked to the south, checking rooms there.

4 Q. Now, you testified previously about the apparent blood
5 evidence at the end of the stairs as you walk down into
6 the hallway. Did you see any other signs of apparent
7 blood evidence in the hallway?

8 A. I believe there might have been another small smudge
9 further south in the hallway by the south -- southwest
10 bedroom.

11 Q. Okay. Let me show you State's Exhibit 60, 61 and 62.
12 Do you recognize the -- what's depicted in Exhibit No.
13 60?

14 A. Yes. 60 would be the south end of the hallway to your
15 right, or to the west is the door for the bedroom, the
16 southwest bedroom, and then to your left would be the
17 southeast bedroom.

18 Q. What do you see on the floor there?

19 A. On the floor directly between the two bedroom doors is
20 a roll of toilet paper. And then on the wall about a
21 third of the way up the wall by the door on the
22 southwest bedroom appears to be a small -- a smudge of
23 what I believe is dried blood.

24 Q. I'll show you Exhibit No. 61. Do you recognize that?

25 A. Yeah. That's the smudge that I found on the wall by

1 the southwest bedroom.

2 Q. So it's a closer up view?

3 A. Correct.

4 Q. And then finally 62?

5 A. 62 would be a picture of the same smudge, slightly
6 further.

7 Q. Did you take a close look at that toilet paper roll in
8 the hallway?

9 A. I didn't get down and examine it, but I believe it was
10 blackened. I couldn't tell if it was from soot or it
11 had actually been burned.

12 Q. Now, after you -- which room did you first go into when
13 you were downstairs, after the family room?

14 A. The next room would be the bathroom.

15 Q. Tell me again where the bathroom was located.

16 A. The bathroom was located on the west side of the
17 hallway almost directly across but slightly north of
18 the bottom of the stairway.

19 Q. Okay. Do you recall what you saw in the bathroom in
20 the lower area when you looked at that?

21 A. I saw a lot of broken glass on the floor. I saw towel
22 holders that had been ripped off the wall; they were
23 laying on the floor. As you first enter it, there's
24 the entryway and then I believe there's a partial wall
25 and then to your left, or to the south is the toilet

1 and sink. Directly across is a window that's slightly
2 higher up, maybe a two-foot-by-two-foot window,
3 consists of a stationary section and a movable section
4 that slides side ways.

5 Q. What is the condition of that window when you saw it?

6 A. The glass was broken.

7 Q. I'm going to show you Exhibits 83 through 89. If you'd
8 take a moment to look at these. What do 83 to 89
9 depict?

10 A. The bathroom condition as I found it.

11 Q. When you went into that bathroom, did you notice any
12 signs that a fire had been started in that room?

13 A. Yes, I did.

14 Q. And what was that evidence that you saw?

15 A. Next to the toilet, as you're facing the toilet, to the
16 left of it, there's the toilet paper roll holder, its
17 built into the wall. And beneath that there was burnt
18 toilet paper, which had burned, had darkened the floor,
19 and there was also a burned section of the bathroom
20 wall right next to the toilet, right beneath the toilet
21 roll.

22 Q. Thank you. After you've checked the bathroom in the
23 lower area of the home, what room did you go to next?

24 A. I went to the southeast bedroom.

25 Q. When you went into that room, can you recall what it

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1 looked like?

2 A. You opened it up, directly across from the door are the
3 windows, so it would be on the west side of the house.
4 To the north, or to your left, there is a small cubby
5 or a small hole or door that opens up into a crawl
6 space, cubby type of deal. I believe the closet is to
7 your right, but I could be mistaken about that.

8 Q. You said the southeast bedroom?

9 A. Correct.

10 Q. Is that correct? Okay. So would that be the front
11 bedroom in the lower corner of the house?

12 A. Right. If you're facing the house, that would be the
13 lower windows that you saw on the left-hand side of the
14 house.

15 Q. Okay. I'm going to show you State's Exhibits 74
16 through 82. Take a moment to look at these for us.
17 Again, that's 74 through 82.

18 A. (Witness complies.)

19 Q. So 74 and 75, do these -- can you tell me whether you
20 know which room that is?

21 A. That would be the southwest bedroom.

22 Q. Okay. Then what about 76? Is that part of the
23 southeast bedroom that you were talking about?

24 A. That's correct.

25 Q. Now, when you walked into the southeast bedroom, did

1 you see any signs of something having been set on fire
2 in that room?

3 A. Yeah, I did. As I got closer to the bedroom toward the
4 south end of the hallway, just the smell of smoke got
5 -- was strongest than any other time. I opened up the
6 door and I looked in and I could see just inside the
7 doorway and about the center of the area, of the rug,
8 there was what appeared to be a pile of burned, or
9 burning toilet paper on the floor. And so I went over
10 there and moved it with my foot to see if there was
11 smoke coming off of it. I moved it with my foot and I
12 could see embers in the carpeting.

13 Q. So that toilet paper was still actively burning when
14 you arrived in the residence?

15 A. Yes, it was.

16 Q. And Photo 76, can you see that spot you just described?

17 A. Yeah. This is standing in the hallway looking into the
18 southeast bedroom. This blackened the area here just
19 to the edge of the door, that's the area where the
20 toilet paper was burning and the carpet was smoldering.
21 And then to the -- this area here, that's the door
22 leading to the crawl space, the cubby space. And then
23 these were the windows on the west side of the
24 building.

25 Q. On the west side or the east side of the residence?

- 1 A. I'm sorry. On the east side of the residence.
- 2 Q. Do you recall whether the windows in the southeast
3 bedroom were broken?
- 4 A. No. They were broken. I could see they were broken
5 when I first approached the house.
- 6 Q. Exhibits No. 77, does that also show part of that room
7 in the southeast bedroom?
- 8 A. Yes, it does. Actually inside the bedroom looking to
9 the south, there's a crawl space, the cubby space, the
10 windows to the east.
- 11 Q. And where is that burned spot?
- 12 A. Burned spot is right here, about four or five inches
13 from the edge of the door.
- 14 Q. And then does 78 also show the southeast bedroom?
- 15 A. Yes, it does.
- 16 Q. What perspective does that show, for the Court?
- 17 A. This is also taken from the south -- yeah, the south
18 end of the bedroom.
- 19 Q. And are you able to -- were you able to identify what
20 this round, white object is on the floor?
- 21 A. It's the cover off the smoke detector.
- 22 Q. Do you remember where that smoke detector was located?
- 23 A. I believe it was located on the south, I believe, but I
24 could be mistaken.
- 25 Q. Of that bedroom?

1 A. Of that bedroom.

2 Q. What about the other objects on the floor there? Do
3 you recognize any of those items?

4 A. To be honest, I couldn't tell you what they were.

5 Q. Now, Exhibits 79 and 80, do those also show the
6 southeast bedroom?

7 A. 79 and 80 are both taken from inside the room looking
8 out through the east windows.

9 Q. Based on those photos, it appears there's two sets of
10 windows in the southeast bedroom?

11 A. Yes.

12 Q. They both face Pearl Street?

13 A. Yes.

14 Q. Were the panes broken in each of those windows?

15 A. I know that they were on the left-hand side one. I
16 don't remember if they were on the right. I know the
17 ones on the left were broken.

18 Q. Now, exhibit -- the final exhibits you have are 81 and
19 82. What do those photos show?

20 A. These photos are inside the bedroom looking to the
21 south and to the west, this is the closet, the bedroom
22 closet. It shows a box on the ground. I believe it
23 was empty. And I think this object here is Styrofoam
24 packing, if I remember correctly.

25 Q. Thank you. After you looked at the southeast bedroom,

1 where did you go next?

2 A. After I checked that bedroom, I went across the hall
3 and checked the southwest bedroom.

4 Q. Now, as part of your investigation, were you able to
5 determine where the apparent point of entry was?

6 A. Yes.

7 Q. Where was that?

8 A. That would be on the window on the west side of the
9 residence, of the southwest of --

10 MS. O'LOUGHLIN: Your Honor, I'm going to object for
11 lack of foundation.

12 Q. (By Mr. Leech) Can you explain how you reached that
13 conclusion?

14 A. Checking the window -- when checking the exterior of
15 the house, there was a screen that had been removed
16 from that window. It was laying on the ground a couple
17 feet away from the window. The glass was broken. The
18 glass appeared to have broken inward. The majority of
19 the glass was laying on the bedroom floor, not laying
20 outside the window. There was blood on the -- dried
21 blood on the exterior frame and casing of that window,
22 as well as on the interior frame and casing, indicating
23 that the window had been broken and somebody was
24 bleeding coming through that window.

25 Q. I'm going to show you State's Exhibit 63. Does this

1 show the southwest bedroom?

2 A. Yes, it does.

3 Q. In what perspective does that show?

4 A. That's from the hallway looking into the bedroom.

5 Q. As you looked into the bedroom, what did you see?

6 A. A mattress laying on the floor just inside the doorway
7 to the left or to the south, broken -- or pieces of
8 wood laying on the floor, broken glass on the
9 carpeting.

10 Q. Was there a light fixture in that room as well?

11 A. I believe that there had been. I don't believe it was
12 still intact. I believe it was broken.

13 Q. I'll show you Exhibit 64. Is this also a photo from
14 the southwest bedroom?

15 A. Yes, it is.

16 Q. What does that show?

17 A. That shows the window on the west side of the room with
18 the glass broken.

19 Q. I'm going to show you Exhibits 65 through 70. Do you
20 recognize the photos in 65 through 70?

21 A. Appear to be photographs of the window on the west side
22 of the southwest bedroom.

23 Q. Now, does that bedroom look into the backyard?

24 A. Yes, it does.

25 Q. And based on the way the home is built, approximately

1 how far up is the bottom of the window to the exterior
2 of the ground level outside the house?

3 A. It's only a couple feet.

4 Q. Now, does 66 essentially show the same thing?

5 A. Correct.

6 Q. And 67, what does that show?

7 A. What 67 is, is 67 is the edge of the window, the
8 sliding portion of the window, I believe. That would
9 be dried blood on the frame, edge of the window. As in
10 65 and 66, it's a close-up of this area of the window.
11 Again, in 66 it's a close-up of that section.

12 Q. And how is 68 different than 67?

13 A. 68 appears to be, again, the same. It is slightly
14 closer up, I believe, and also the I-dent tech had
15 added measuring rulers to the frame. But that's the
16 only difference from what I saw.

17 Q. And 69, do you recall what that shows?

18 A. 69 is an extreme close-up of the blood area on the
19 frame.

20 Q. Lastly, 70?

21 A. Again, another blood area on the frame. If I could add
22 something to it: I believe that those last two are
23 from the outside of the room looking in.

24 Q. So that would be 68 and 69?

25 A. Correct. Taken from the backyard outside looking into

1 the bedroom.

2 Q. Okay. I'm sorry the last two -- my mistake -- were 69
3 and 70?

4 A. Correct.

5 Q. It's those?

6 A. Right. I believe those are from the outside looking
7 into the bedroom.

8 Q. Now, at any point in time when you were in the
9 residence, did you locate anybody inside the residence?

10 A. No. There was nobody inside the residence.

11 Q. I'm going to show you State's Exhibit 71 and 72. Do
12 you recognize those photos?

13 A. Yeah. That's the -- that's the southwest bedroom,
14 again, looking to the south, showing the mattress that
15 was laying on the floor, as well as some wood items.

16 Q. Thank you.

17 Now, after you had gone through all the rooms in
18 the house, what happened next?

19 A. I wanted to be sure that the house was clear, there was
20 nobody inside. I requested that the fire department
21 come in and put water on the smoldering areas of the
22 carpeting in the family room and in the bedroom. As
23 they were doing that, I was trying to locate a victim,
24 since this apparently was a vacant residence. But I
25 had seen that there was a for-sale sign out front and

1 there was some Realtor's cards laying on the kitchen
2 counter. So I had our records people trying to contact
3 one of the realtors so I could find out who owned the
4 house.

5 Q. Did you have a chance, after you had gone through the
6 interior of the residence, to check the exterior of the
7 residence?

8 A. Yes, I did.

9 Q. Did you go into the backyard at all?

10 A. Yes, I did.

11 Q. Can you describe for the Court what you saw in the
12 backyard?

13 A. In the backyard there was a vehicle -- I don't remember
14 what kind, for some reason I'm thinking a Honda Accord
15 -- but it was parked in the back, the doors were open,
16 the trunk was up, it had been spray painted. There was
17 some logs laying in the backyard. If you face the rear
18 of the house, so you're facing to the west, to the
19 north -- or to the -- yeah, the north side, there's a
20 deck that comes off of the upper level. And to the
21 south side there's the windows for the two south side
22 bedrooms.

23 Q. Okay. Let me show you -- first of all, with regard to
24 that car that you found in the backyard, did you have
25 any reason to believe that that was related to the

1 vandalism of the interior of the residence?

2 A. We weren't certain at the time, but the thing that was
3 making me think it was not was because I didn't find
4 any graffiti inside the residence and the car had a
5 bunch of graffiti on it. Also, on the west side of the
6 alley, there's a fence for an adjoining residence, and
7 that had graffiti on it.

8 Q. I'm going to show you State's Exhibit No. 6. Do you
9 recognize that?

10 A. Yeah. That's the back of the residence.

11 Q. If you could turn that toward the Court. And can you
12 tell the Court -- this is the back of the residence --
13 where the bedrooms were located from that perspective?

14 A. This is the lower southwest bedroom, the upper
15 southwest bedroom.

16 Q. And do you know where the bathroom window is on the
17 back of the house?

18 A. You can just barely see it underneath the stairs
19 leading up to the deck.

20 Q. And then underneath the deck there, would that be where
21 the family rec room area is?

22 A. Yes. Just on the other side of the wall is where the
23 laundry room area was.

24 Q. I'm going to show you State's Exhibit 7, which is a
25 closer-up of the back. Can you take a look at that?

1 A. Yes.

2 Q. What does that show?

3 A. That shows the bottom of the stairs leading to the deck
4 as well as the windows for the southwest bedrooms on
5 the residence, upper and lower level.

6 Q. Now, based on your prior testimony -- did you testify
7 that this window is the window that you believed to be
8 the point of entry?

9 A. That's correct.

10 Q. Did you find the screen to that window some place
11 outside?

12 A. Yeah. The screen was out of picture shot here. It was
13 more to the west and I believe slightly to the north,
14 laying on the ground.

15 Q. Let me show you State's Exhibits 12 and 13. Can you
16 tell the Court what those photos show?

17 A. This would be 12. 12 is taken from the north end of
18 the residence shooting toward the south. This would be
19 the area underneath the back deck. This would be the
20 bathroom window, the stairs leading to the deck. That
21 would be the screen that was missing off of the
22 lower-level southwest window.

23 And then 13 is the same, basically, showing the
24 bathroom window, the screen. This is just a closer-up
25 view.

1 Q. Now Exhibit No. 10, can you take a look at that?

2 A. Exhibit No. 10, this would be a picture of the window,
3 the lower-level southwest bedroom, showing the broken
4 glass. It's into, showing inside the bedroom, showing
5 what appears to be dried blood at the bottom of the
6 window on the frame and also mid-level of the frame
7 between the two windows.

8 Q. Now, is that also the same window frame where there was
9 suspected blood evidence on the interior of that frame?

10 A. That's correct.

11 Q. Did you meet with me yesterday about this trial?

12 A. Yes, I did.

13 Q. Did I ask you to drive by the residence, the 4314
14 residence?

15 A. Yes, you did.

16 Q. And do you know the respondent's address, based on
17 supplemental police reports?

18 A. I believe it's 3928 North Defiance.

19 Q. Okay. Did you have an occasion to determine where in
20 relation the respondent's home address is in relation
21 to the victim's address in this case?

22 A. It's approximately half a mile to the south, a couple
23 blocks over from Pearl Street.

24 Q. I'm going to show you State's Exhibit No. 90. Do you
25 recognize this?

1 A. Yes, I do.

2 Q. What is that?

3 A. That's a Mapquest directions from 3928 North Defiance
4 to the victim's address.

5 Q. Is that a two-page exhibit?

6 A. Yes.

7 Q. What's on the second page?

8 A. The second page would be the map of that -- from that
9 3928 North Defiance to the victim's address with
10 approximately driving route.

11 Q. Now, does the first page of that exhibit give you an
12 estimated distance between the two residences?

13 A. Yes, it does.

14 Q. And did you have occasion to drive that same route
15 that's depicted in the Mapquest photo?

16 A. I did, with one exception: I didn't go onto Pearl.

17 Q. Okay. And when you drove that route, approximately
18 what was the distance from the respondent's home to the
19 Pearl Street?

20 A. Approximately half a mile.

21 Q. Thank you. Is that a true and accurate layout of that
22 area?

23 A. Yes, it is.

24 Q. Does that have a scale on the map as well?

25 A. I believe -- I believe so. Yes, it does.

1 MR. LEECH: I move to admit Exhibit No. 90.

2 MS. O'LOUGHLIN: No objection.

3 THE COURT: 90 will be admitted.

4 (Exhibit No. 90 is
5 admitted.)

6 MR. LEECH: I have nothing further. Thank you.

7 THE COURT: Cross-examination.

8 MS. O'LOUGHLIN: Thank you.

9
10 CROSS-EXAMINATION

11 BY MS. O'LOUGHLIN:

12 Q. So you pulled up to the residence in a marked patrol
13 vehicle?

14 A. That's correct.

15 Q. And you parked a short distance away?

16 A. Approximately two houses away.

17 Q. On Pearl Street?

18 A. Correct.

19 Q. And you didn't use your lights or sirens at that point?

20 A. That's correct.

21 Q. But you were in uniform?

22 A. Yes.

23 Q. And you were watching the residence from that point
24 forward?

25 A. Yeah, the front of the residence. I couldn't see the

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1 back.

2 Q. You didn't hear or see anyone leave the residence?

3 A. No, I did not.

4 Q. And you heard no sounds coming from the residence at
5 that point?

6 A. That's correct.

7 Q. So you didn't hear any breaking glass?

8 A. No.

9 Q. You searched the residence?

10 A. Correct.

11 Q. And you found nobody in the house. Is that fair?

12 A. That's correct.

13 Q. So you can't tell from your personal experience how
14 many people had been in the house on that occasion?

15 A. I have no idea.

16 Q. No idea. And when you -- and when you came up to the
17 house, the front door was unlocked?

18 A. That's correct.

19 Q. You had never been in the house before, I don't
20 suppose?

21 A. No.

22 Q. So when you went into the house and you found it in the
23 condition that you testified to?

24 A. Correct.

25 Q. The blood that you found in the house, it was all dry?

- 1 A. It was dried. It was still kind of a reddish color.
2 It wasn't a dark color. It was dried but it wasn't
3 completely dry.
- 4 Q. Okay. And you found burnt toilet paper lying on the
5 floor in the bathroom?
- 6 A. That's correct.
- 7 Q. In the southeast bedroom you found a small amount of
8 toilet paper on the floor there, too?
- 9 A. Correct.
- 10 Q. When you saw evidence of a fire, you called the Tacoma
11 Fire Department at that point?
- 12 A. Actually when I smelled smoke I called the fire
13 department, just in case. So they were there in case I
14 went inside and I needed them right away.
- 15 Q. At this point the fire marshal was primarily
16 responsible for investigating the fire?
- 17 A. Yeah. Once they put the -- they extinguished and knew
18 it was no longer burning, they called their arson
19 investigator.
- 20 Q. They were primarily responsible for the fire
21 investigation?
- 22 A. The fire portion of it, yes.
- 23 Q. Now, you testified that you went through the house room
24 by room, and when you went into the utility room, did
25 you notice that there was a door to the utility room?

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1 A. I'm sorry. The utility room, there was a little
2 closet, utility closet. Are we talking about the
3 laundry room?

4 Q. The laundry room.

5 A. I don't believe there's a door. There's a doorway. I
6 don't believe there's a door.

7 Q. There's no door. Is there a door that the furnace and
8 water heater are behind?

9 A. There's folding doors, what I call accordion doors.
10 They folded out and close up.

11 Q. They didn't appear damaged?

12 A. Not that I recall.

13 Q. And the toilet in the bathroom in the basement, that
14 did not appear damaged either?

15 A. I didn't make mention of it so, no, I don't believe so.

16 Q. Uh-huh. And the front door to the residence, that was
17 not damaged, was it?

18 A. No, I don't believe it was.

19 Q. And you had testified that with regard to the kitchen,
20 the only obvious damage there was to the refrigerator?

21 A. Correct.

22 Q. You didn't notice any damage to the hot water tank or
23 the furnace at that points?

24 A. I did not. But I didn't look directly at them. I made
25 note that they were there and moved on.

1 Q. So no obvious damage?

2 A. No, nothing that grabbed me.

3 Q. You had made mention that you heard fire -- excuse me
4 -- glass breaking when you were driving by initially?

5 A. Correct.

6 Q. You didn't put that in your report anywhere?

7 A. No, I didn't. My report stuck strictly with the time
8 of the call.

9 Q. So even though it related to the call you didn't --

10 A. I didn't know it related to the call. All I heard was
11 glass breaking. I can't say that that's where the
12 glass -- the breaking glass came from, so I didn't add
13 it to the report.

14 Q. So you can't say that for sure that it was coming from
15 that house?

16 A. No. All I can say is I heard glass breaking as I
17 passed by.

18 Q. You looked at all the pictures that have been testified
19 to today?

20 A. Yes.

21 Q. And those pictures pretty much represent what you saw
22 on that date?

23 A. Yes, they did.

24 MS. O'LOUGHLIN: Okay. I don't have anything
25 further.

1 THE COURT: Redirect.

2
3 REDIRECT EXAMINATION

4 BY MR. LEECH:

5 Q. Officer Pincham, when you first arrived to the
6 residence and you were waiting for back-up, were you
7 able to see in the backyard?

8 A. No, I was not.

9 Q. Were you able to see the sides of the residences from
10 your vantage point at that time?

11 A. The only side I could see was the south side. I
12 couldn't see the north side of the residence.

13 Q. So you were standing closer to the -- where the
14 bedroom-end of the house was?

15 A. Correct. I was standing on Pearl Street, to the south.
16 There's a neighboring residence, there's some bushes or
17 hedge up in that area, I was standing there.

18 Q. So if somebody had attempted to flee the residence as
19 you were approaching, you wouldn't be able to see that
20 person fleeing from the back of the house?

21 A. No.

22 Q. Or from the north of the house?

23 A. Correct.

24 Q. Now, when you drove by the house earlier, prior to the
25 call on your way to Point Defiance, you testified that

1 THE COURT: Anything else, Mr. Leech?

2 MR. LEECH: No.

3 THE COURT: Thank you, Officer. You can step down.

4 MR. LEECH: Can we take maybe a five minute recess?
5 I want to see -- I have two witnesses who are probably
6 here.

7 THE COURT: Sure. We'll take a five-minute recess
8 (Recess.)

9 MR. LEECH: State calls Kenneth Hansen, Tacoma Fire
10 Department.

11 THE COURT: Raise your right hand, please.

12 KENNETH HANSEN

being first duly sworn,
13 testified as follows:

14 MR. LEECH: Good afternoon, sir.

15
16 DIRECT EXAMINATION

17 BY MR. LEECH:

18 Q. Can you state your name and spell your first and last
19 name for the court reporter?

20 A. Kenneth Hansen. K-e-n-n-e-t-h Hansen, h-a-n-s-e-n.

21 MR. LEECH: I see you leaning into that microphone.
22 That actually doesn't work. Just speak up so the court
23 reporter can hear you. She's the microphone.

24 Q. (By Mr. Leech) How are you employed, sir?

25 A. Excuse me?

1 Q. How are you employed?

2 A. I'm employed through the City of Tacoma with the Tacoma
3 Fire Department. I work in the fire marshal's office.

4 Q. How long have you worked for the Tacoma Fire
5 Department?

6 A. I've been with the Tacoma Fire Department for 19 years
7 and with the fire marshal's office the last three.

8 Q. Now, does the 19 years include the three years as a
9 fire marshal?

10 A. Correct.

11 Q. Do you have prior experience working with regard to --

12 A. Well, as a fire fighter, well, 16 years out in the
13 field. I was on a fire engine and we did numerous fire
14 calls and EMS calls and such. Most of any career was
15 down in the south and east side of the city. I can't
16 tell you how many fires I've been to. I know it's well
17 over 30 or more hours fires when I'll actually burst in
18 and bust down the door down and go put the fire out. I
19 got to observe how the fire reacts to water and
20 different things that happen during a house fire or
21 structure fire, so to speak.

22 The last three years I've been in the fire
23 marshal's office and my primary responsibility is an
24 arson investigator. So I've had several schools back
25 east and in the state here, different conferences and

1 training and stuff on becoming a better investigator,
2 so to speak.

3 Q. So for the first 16 years, you were a fire fighter?

4 A. Correct.

5 Q. And I assume you went through the training that most
6 fire fighters go through?

7 A. Yes. I went through the department's -- we have a
8 13-week academy that we go through and learn all about
9 fire fighting and how to operate the equipment and
10 such.

11 Q. Okay. And then after you became a fire fighter you
12 continued --

13 A. Yeah. After graduating from the academy, you get sent
14 out to the field and you work on a fire engine and a
15 ladder truck and stuff like that, and respond to calls.
16 911, here we come.

17 Q. Now, you said three years ago you started work as a --

18 A. Yes. As of April of this year, it will be 36 months
19 I've been in the fire marshal's office.

20 MR. LEECH: I'm going to ask you if could let me
21 finish my question because the court reporter can't type
22 two people talking about the same thing. I understand
23 you're anxious though.

24 Q. (By Mr. Leecdh) What kind of training, additional
25 training, did you receive as an arson investigator?

1 A. As an arson investigator, I've gone to over 160 hours
2 of investigation, how to conduct a proper
3 investigation, how to do interviewing and
4 interrogation, courtroom testimony, basic fire
5 investigation, electrical wiring, how to identify if
6 electrical wiring was part of the cause. I've had a
7 little bit of reading assignments and stuff, learning
8 how to identify flammable liquids and haz-mat materials
9 that are associated with fires.

10 Q. After you've done your training to become an arson
11 investigator, do you receive some sort of certificate?

12 A. Yes.

13 Q. And after you receive that certificate, is that when
14 you can work as an arson investigator in the field?

15 A. With the city, we were more on-the-job training, so to
16 speak. So we get placed into the office, they give us
17 some initial training. We shadow a person that's more
18 experienced, learn from them. And then they cut you
19 loose and you kind of go on. The art of the fire
20 investigation is an ever-evolving science, so it's
21 consistently improving. Every time I do -- one
22 investigation is never the same as the other
23 investigation.

24 Q. Do you draw on your experience as an actual fire
25 fighter when you're working as an arson investigator?

1 A. Very much so.

2 Q. What exactly is the role of a fire investigator or
3 arson investigator?

4 A. As an arson investigator, my primary role with the city
5 is to conduct an origin-and-cause of the fire, to
6 identify where did it originate and how it happened.

7 Q. Okay. And what kind of tools do you use to determine
8 the origin and cause, typically, when you're
9 investigating a suspected arson?

10 A. This particular fire?

11 Q. Just generally.

12 A. Generally. Mostly through photographs; through digging
13 through the scene itself; taking, you know, shovels,
14 rakes, whatever it may be; digging through; trying to
15 identify the origins of a fire. What I do is I follow
16 the burn patterns and that leads me to an area, a room.
17 Okay. We have the room here. And then I'll start
18 breaking it down into a grid, like from one part to
19 another, identifying, well, it didn't happen here,
20 start ruling out different ideas by using a scientific
21 method to identify what my hypothesis may be, in terms
22 of how this fire started, the cause of the fire.

23 Q. All right. As part of the training and experience, do
24 you also consider whether an accelerant may have been
25 used in a fire?

1 A. Yes.

2 Q. How, generally, do you determine whether accelerants
3 are present?

4 A. There are some tell tale signs that would indicate
5 maybe an accelerant was here. Now, first-arriving
6 crews, when they come in to fight the fire, are there
7 before I am. Obviously, I talk to them and I try to
8 identify what they saw, how the fire reacted to the
9 water or suppression efforts, how big the fire got in
10 terms of when it was identified by a 911 caller versus
11 when the first-arriving crews arrived. You know, how
12 intense the fire became. How far did it travel? You
13 know, did it go from one room to another room? And
14 identifying, you know, was there a pour pattern or a
15 flammable liquid used that would help facilitate the
16 travel of the fire, in that case.

17 Q. So the speed with which a fire spreads?

18 A. Yeah. That's one of the common things that helps.
19 Also, how much soot is a really big thing. So if they
20 use a hydrocarbon -- a gasoline, so to speak -- there
21 seems to be, you know, in reading and in the classes
22 I've gone through and also in my experience, what
23 leaves behind is a lot of soot, and flaky, like snow.
24 So that's an indication. Then when I do determine the
25 area and the origin of the fire, then I'll start taking

1 evidence, taking a sample of what I believe is -- could
2 be a possible flammable liquid, and then taking a
3 comparable in another area of the room that, you know,
4 I believe has not been touched or been involved with
5 that particular product.

6 Q. And then does somebody conduct scientific testing on
7 those samples?

8 A. Yes. We take all of our evidence to the Washington
9 State Troopers lab over in -- I think it's Kent.

10 Q. Okay. As part of your role as arson investigator, do
11 you also try to determine whether a fire started
12 accidentally or intentionally?

13 A. Yes.

14 Q. What kind of factors do you look at when determining
15 whether it's accidental or intentional?

16 A. Well, there's four different causes of a fire. You
17 have your accidental fires, your incendiary fires, your
18 natural and -- it's escaping my mind.

19 But what I look at is how did this happen. An easy
20 fire to do is a cooking fire. Somebody put oil in
21 their pan, they are going to fry up some food, they get
22 busy, are distracted, the oil catches fire. That's an
23 accident. They didn't intentionally try to set --
24 especially if the homeowner comes up and says, "I did
25 this," that's an accident. It happens often.

1 More of an arson fire is if there's, you know,
2 suspicion, like something doesn't normally catch fire.
3 Like a bed doesn't normally catch fire, but let's say
4 it's next to an outlet or a lamp that has some issue.
5 Now, that could be we have an incendiary-type fire or
6 an accidental fire, something that happened
7 accidentally but wasn't intentional.

8 Q. Is it common that electrical or faulty wiring is a
9 common source of fires?

10 A. They are common in older homes.

11 Q. What about the phrase "acts of God"? Do you determine
12 whether something like that occurred?

13 A. Natural fires are more, you know -- I guess the natural
14 fire is if lightning strikes. If lightning hits the
15 power pole and wires come down and hit the house or the
16 gasoline tank or -- that's an act of God. Anything
17 that naturally would happen. Earthquake happens,
18 shakes the gas line off the gas heater and then
19 somewhere an ignition source happens, maybe faulty
20 wiring next to the gas heater. All of this happened
21 because of an earthquake. Natural things that you just
22 don't see coming.

23 Q. Okay. How many arson investigations do you think
24 you've done?

25 A. I have done -- my latest count was 72.

1 Q. Of those, do you have an idea of approximately how many
2 of those were proven to be arson?

3 A. Proven to be arson. You know, I don't know that
4 number. At this point here, all of my conclusions have
5 been justified either by people in the office who agree
6 with my conclusion or a private investigator that was
7 working for the insurance company. We work hand in
8 hand with them. We will say, "Well, this is what I
9 came up with," and in all cases thus far, they have
10 agreed, "Yeah. You've got it right."

11 Q. In essence, you've had a peer review corroborator?

12 A. That would be the best way, peer review.

13 Q. Now, what about -- you mentioned burn pattern earlier
14 and how that interplays into your investigation. Can
15 you expand on that a bit?

16 A. On the incendiary fire?

17 Q. Well, tell me -- can you explain incendiary fire?

18 A. Well, an incendiary fire is a fire being ignited or lit
19 by a known person, knowing full well that that should
20 not be happening, in terms of lighting a car on fire,
21 or lighting a carpet on fire, or lighting -- just
22 playing around with matches. Like kids, you know, they
23 have a bush there and they burn the bush, knowing they
24 shouldn't do it. That is an act of arson.
25 Intentionally set a fire that should not be set.

1 Q. Okay. Thank you. Did you respond to the residence at
2 4314 North Pearl back on June 20th?

3 A. I did.

4 Q. Do you recall approximately what time you arrived?

5 A. I believe that was a -- somewhere, two in the
6 afternoon, I believe.

7 Q. Okay. When you arrived, what did you first do?

8 A. When I was first on scene, I had my partner with me,
9 Lieutenant Nils Chandler. When we first arrived on
10 scene, Engine 14 was there, Tacoma Police Department
11 were there and the forensic team was there. Engine 14
12 had called me up just to let me know what was going on,
13 at the fire marshal's office.

14 I arrived on scene, went inside the house, observed
15 all the damage that was in the house. The lieutenant
16 in charge of the fire engine, he brought me downstairs
17 to show me where -- what their concerns were about the
18 fire in the -- the fire on the carpet downstairs and
19 the two rolls of toilet paper that had been lit on
20 fire.

21 Q. What did you -- did you inspect those areas?

22 A. I took a visual look at them.

23 Q. So you were able to ascertain or determine the
24 locations of these fires in their respective rooms?

25 A. Yes.

1 Q. Was it -- when you first arrived, did you check the
2 family room where the larger fire had occurred?

3 A. Yes.

4 Q. And were you able to -- first of all, was that fire
5 still smoldering when you arrived?

6 A. The larger of the three?

7 Q. Yes.

8 A. You know, I can neither confirm nor deny that. I'm not
9 sure.

10 Q. You don't know whether the fire department had doused
11 it before you arrived?

12 A. It's my understanding that they had. They had taken a
13 pee can, or water can, and extinguished the fires with
14 that.

15 Q. Okay. So when you went into the family room and
16 investigated this larger section of the burned area,
17 what were your determinations? Strike that.

18 What did you first look at?

19 A. First, I looked at the burn pattern. There is a rather
20 large burn pattern. There was a bedding rail or bed
21 framing that was in the area. I noticed a little bit
22 of char or soot on one wall, so I ascertained the fact
23 that something might have been leaning up against that
24 wall. But the major burn was on the floor. So my
25 hypothesis was that this fire had started on the floor

1 itself.

2 Q. Did you notice whether there were any electrical
3 outlets near where the fire would have originated on
4 the floor?

5 A. My determination was there was no outlets near the
6 center of the fire. I mean, there's outlets on the
7 wall, but those outlets were far away from the actual
8 burn pattern.

9 Q. Okay. And what were you able to determine, based on
10 that information?

11 A. My first thought -- and I had to go through the process
12 of ruling things out -- I was like, well, this looked
13 to me like somebody set fire on the carpet. Somebody
14 threw something on the carpet, maybe a flammable
15 liquid, and ignited that. I didn't take any evidence
16 to determine whether there a flammable liquid. That
17 was left with forensics.

18 Q. When you're dealing with carpeting, do you typically
19 expect to be able to determine whether an accelerant
20 was used to light carpeting on fire?

21 A. Yes. We can determine that by just the burn patterns.
22 There's a trailer, like a trail you would find in the
23 woods, a path. In this case, we didn't find a trailer.
24 But the burn pattern on the carpet itself was large, a
25 little bit irregular. But, again, I'm unable to

1 determine if a flammable liquid was used or not.

2 Q. Were you able to determine an apparent source of
3 ignition for that fire?

4 A. No. I had no idea what the ignition source would be
5 for that fire.

6 Q. Were you able to determine, based on what you observed,
7 whether there was an intentional fire?

8 A. My hypothesis, yes, this fire was intentionally set.

9 Q. What led you to that conclusion?

10 A. With the lack of ignition source available, no
11 electrical outlets in the near vicinity to start this
12 fire, I couldn't find a match, couldn't find a Bic
13 lighter or anything that would start this fire. And
14 carpet doesn't self heat and spontaneously combust. It
15 just doesn't do that. Something started this fire.
16 What that ignition source was, I have no idea.

17 Q. It largely has to do with logic, at least in this
18 particular setting?

19 A. Correct.

20 Q. Now, did you also go look at the other two areas in the
21 house where there was apparent fire damage?

22 A. Yes.

23 Q. Where did you go next?

24 A. Down the hallway there was a bathroom where there was a
25 roll of toilet paper that was on fire. And from my

1 observation, it looks as if the toilet paper might have
2 been on the role itself. Somebody or something started
3 that fire there and the toilet paper fell down on the
4 grounds. That toilet paper was extinguished by fire
5 personnel. There was another roll of toilet paper that
6 was on the ground, made a little burn pattern on the
7 carpet. But it was pretty obvious that the paper
8 itself had started the carpet. It was just a small
9 area.

10 Q. Now, in your experience, had you ever seen toilet paper
11 spontaneously combust?

12 A. Not yet.

13 Q. When you were in the bathroom and you observed the
14 location of the toilet paper roll holder, were there
15 any apparent signs of ignition near that that could
16 have started the fire?

17 A. Nothing of the sort.

18 Q. What about the location of the fire in the bedroom
19 where that toilet paper was on the carpeting, is that
20 what you found?

21 A. That's what I found, yes. It was just lying there,
22 like somebody had tossed it or kicked it.

23 Q. Were there any apparent source of ignition at that
24 location?

25 A. Again, there's no reason for that particular paper to

1 catch fire.

2 Q. What was your conclusion with regard to --

3 A. I believed it was another hand-held incendiary device,
4 a Bic lighter, a lighter, something that somebody lit
5 fire with and pocketed the instrument and walked away.

6 Q. Based on your training and experience and your review
7 of the scene at this residence, was it your
8 determination that each of these three locations of
9 fire were intentionally set?

10 A. Yes, I would say that.

11 Q. Did you have any suggestion or any evidence to suggest
12 that these were accidental?

13 A. No.

14 Q. Did you have any evidence to suggest that any of these
15 three locations of burning debris were natural fires?

16 A. No indication of that at all.

17 Q. What was the weather like on the day, June 20th, when
18 you responded?

19 A. I believe it was in the mid 60's, little bit of wind
20 coming out. I'm not sure of the direction. It was a
21 bit breezy that day.

22 Q. Was there any lightening on that day?

23 A. No. It was a clear, sunny day.

24 Q. In your training and experience, have you ever seen a
25 situation where lightening had started a fire on the

1 interior of the residence but not the exterior?

2 A. No. I have not seen that nor read that.

3 MR. LEECH: Thank you. Nothing further.

4 THE COURT: Cross-examination.

5
6 CROSS-EXAMINATION

7 BY MS. O'LOUGHLIN:

8 Q. When you showed up initially to this residence, you
9 considered it more of a vandalism than a serious fire.

10 Is that --

11 A. When I first went upstairs, yes, my thought was, "This
12 is vandalism; why did you call me here?" Then the
13 lieutenant on the fire engine brought me down to the
14 reason why he needed a fire marshal.

15 Q. And can you define incendiary for us?

16 A. Incendiary fire is one that was intentionally set by a
17 person, knowing that a fire should not begin or start,
18 be set.

19 Q. Included in that would be someone playing with matches?

20 A. Yes.

21 Q. And your conclusion on the fires that were in this
22 house were that they were each incendiary?

23 A. Yes.

24 Q. So in those cases, you can't rule out the fact that
25 maybe someone was playing with matches and lit the

1 toilet paper?

2 A. I can't rule that out. But, if they are playing with
3 matches, they are playing with matches, that's
4 incendiary because they know they shouldn't be starting
5 a fire.

6 Q. It could have been someone playing with matches and
7 toilet paper that lit the fire?

8 A. That is quite possible.

9 Q. You actually didn't do a very thorough fire
10 investigation in this case, did you?

11 A. That would be correct. I did not do the standard fire
12 investigation that I would normally do in a structural
13 fire. But at the same time, with the lead forensics
14 there, I directed what I would do and what I would need
15 in doing this. They took the photographs and I
16 directed them where you need to take the evidence and
17 such. So I blindly left that to them.

18 Q. You said you can't tell whether flammable liquids were
19 involved?

20 A. Unless testing was done, there's no way I can confirm
21 that.

22 Q. There's no testing --

23 A. That's my understanding. There was no testing so I
24 can't say there was. The burn pattern indicates that,
25 but, again, I'm not going to say that it happened.

1 Q. You can't say that it happened?

2 A. No. I won't say that it happened. Can't prove it.

3 Q. And you said you had no idea of an ignition source for
4 the fires?

5 A. Correct. Again, there was no plausible way why those
6 fires would have started, unless it was someone
7 intentionally trying to set that fire.

8 Q. You've got not quite three years of training as an
9 arson investigator. Is that correct?

10 A. Correct.

11 Q. And out of the four possible causes of fires, your
12 conclusion was incendiary?

13 A. Correct.

14 Q. Again, your definition of incendiary? I know you
15 already said it, can you say it one more time?

16 A. Sure. An incendiary fire is a fire being created by a
17 person knowing that they should not be creating that
18 fire, or starting that said fire.

19 Q. Knowing they shouldn't be starting the fire. Thank
20 you.

21 Q. You can't say how long the fire smoldered?

22 A. No. From indications, it doesn't look like it was
23 smoldering too long before the engine company showed up
24 and extinguished what they had.

25 Q. But from any kind of scientific certainty, can you say

1 how long it smoldered?

2 A. Not after the fire, no.

3 MS. O'LOUGHLIN: I don't have anything further.

4 THE COURT: Redirect.

5

6

REDIRECT EXAMINATION

7

BY MR. LEECH:

8

Q. Mr. Hansen, I want to clarify some of your testimony.

9

You mentioned in cross-examination that the burn

10

pattern -- did you say the burn pattern was consistent

11

with the use of an accelerant?

12

A. The burn pattern was an irregular burn pattern. Being

13

a carpet fiber -- and reviewing the pictures earlier --

14

it had an irregular shape to it but that didn't

15

necessarily mean that it was from a flammable liquid.

16

Now, there was -- there might have been -- there's some

17

indications on the wall there that shows there was

18

something up against the wall that was burning also, so

19

that could have contributed to the fire pattern itself,

20

too. Again, without a test, I was unable to confirm or

21

deny a flammable liquid as all.

22

Q. But you can conclude, based on the evidence available

23

to you, that this was an incendiary fire?

24

A. Correct.

25

Q. Meaning it was?

1 A. Intentionally set.

2 Q. Intentionally set.

3 But you also leave room for recklessly setting a
4 fire, like playing with matches?

5 A. Yes.

6 Q. Did you have any evidence at the scene that would lead
7 you to believe that this was a nonaccidental -- I'm
8 sorry -- a nonintentional accidental fire?

9 A. With the vandalism involved, I didn't take it that way.
10 I thought somebody went in there with the intent of
11 destroying this home.

12 Q. When you're talking about the example that counsel used
13 with you, the children playing with matches, is it
14 common for you to find a situation where a child may
15 have played with matches and caused a fire
16 accidentally, but do that on three separate occasions
17 in the same residence in different rooms?

18 A. Well, the events that I have been involved with, with
19 children playing with matches and caused a fire, it's
20 one area, they got panicky and ran out. In this
21 situation here, we have two different areas with toilet
22 papers and the carpet being ignited. Again, my
23 interpretation is that was intentional, something --
24 they wanted something to happen, dramatically.

25 Q. When you responded to the scene, did you feel that this

1 particular incident warranted a complete arson
2 investigation?

3 A. Our policy with the fire department is that when I get
4 called out to do an investigation of fire, it has to be
5 a minimum value of \$3,000 or more. That's when they
6 call out an investigator. In this case, the damage in
7 cost was minimal, well below that estimate. I was
8 called as a courtesy.

9 Q. When you say the damage has to be a minimum of 30,000
10 (sic) does that relate specifically to the fire damage?

11 A. Yes, specifically to the fire.

12 Q. So you weren't considering the rest of the damage to
13 the property?

14 A. No, I was not.

15 Q. Now, had you --

16 MR. LEECH: Strike that.

17 Nothing further.

18 THE COURT: Anything based on that?

19 MS. O'LOUGHLIN: Just a couple things.

20
21 RE-CROSS-EXAMINATION

22 BY MS. O'LOUGHLIN:

23 Q. So you can't exclude the fact that it could have been
24 somebody playing with matches that started each of the
25 fires?

1 A. That's correct. I cannot exclude that.

2 MS. O'LOUGHLIN: That's all.

3 MR. LEECH: Nothing further.

4 THE COURT: Thank you. You can step down.

5 THE WITNESS: Thank you.

6 THE COURT: Your next witness.

7 MR. LEECH: State would call next Esther Mbajah.

8 THE COURT: Do you want to come forward over here
9 all the way in the front. Stop and raise your right hand.

10 ESTER MBAJAH being first duly sworn,
11 testified as follows:

12 THE COURT: Go ahead and sit down. This is the
13 court reporter, who's recording everything. Although
14 there's a microphone here, it doesn't work and doesn't do
15 anything, so ignore it. Thank you.

16 If you could state your name, please, and spell your
17 first and last names for the record.

18 THE WITNESS: Esther Mbajah. First name
19 e-s-t-h-e-r; last name m-b-a-j-a-h.

20 THE COURT: Thank you.

21 MR. LEECH: Good morning. Sorry. I mean, good
22 afternoon.

23 THE WITNESS: Good afternoon.

24 MR. LEECH: Do you mind if I call you Esther?

25 THE WITNESS: Yes. That's okay.

1 MR. LEECH: The "M" is silent in your last name?

2 THE WITNESS: Yes.

3 MR. LEECH: Thank you.

4
5 DIRECT EXAMINATION

6 BY MR. LEECH:

7 Q. Do you and your husband own a rental property on North
8 Pearl Street?

9 A. Yes, we do.

10 Q. What is the address of that property?

11 A. 4314 North Pearl Street, Tacoma, Washington, 98407.

12 Q. Thank you. Is that in Pierce County?

13 A. Yes.

14 Q. And how long have you and your husband owned that
15 property?

16 A. Since '92.

17 Q. And is it presently a rental property?

18 A. Yes.

19 Q. Have you ever lived in the property?

20 A. Yes, we did.

21 Q. When did you live in it?

22 A. We lived there after 2001.

23 Q. So 1992 to 2001?

24 A. Correct.

25 Q. And has it been a rental property since 2001?

1 A. Correct.

2 Q. Was there a point in time when you tried to sell the
3 residence?

4 A. Yes.

5 Q. And how recently was that?

6 A. It was up for sale and the sale didn't happen and then
7 we decided to put it out for rental with the same
8 realtor.

9 Q. And how long was the house available for rental, prior
10 to this incident on June 20th?

11 A. About six months.

12 Q. Had there been prior tenants living in that residence
13 over the years?

14 A. Yes.

15 Q. Has that address ever been used for anything other than
16 a residence for people to live in?

17 A. Not that I recall, no.

18 Q. So you've never used it for a business address?

19 A. No.

20 Q. Have any of your tenants ever used it for anything
21 other than a dwelling?

22 A. No.

23 Q. Is that the primary purpose of the property, to be used
24 for lodging or dwelling?

25 A. Yes.

- 1 Q. Can you just generally describe the residence to the
2 Court. What kind of a house is it?
- 3 A. It's a split-level with a downstairs and upstairs.
- 4 Q. Okay.
- 5 A. And upstairs there's two bedrooms, a bathroom, sitting
6 room and a kitchen.
- 7 Q. Okay. What about downstairs?
- 8 A. Downstairs there's two bedrooms, a bathroom and a
9 family room.
- 10 Q. Is that also where you have your hot water heater?
- 11 A. Yes.
- 12 Q. And then a laundry room in the downstairs area?
- 13 A. Correct.
- 14 Q. So there's a total of four bedrooms in that house?
- 15 A. Yes.
- 16 Q. And then two bathrooms?
- 17 A. Correct.
- 18 Q. Now, do you presently live in Tacoma?
- 19 A. Yes, I do.
- 20 Q. You don't have to give me your actual home address, but
21 can you tell me, do you live near the 4314 Pearl Street
22 address?
- 23 A. Yes, I do.
- 24 Q. Do you have family who live in the Tacoma area?
- 25 A. Yes, I do.

1 Q. Between you and your family, did you have anyone
2 checking on the house while it was vacant?

3 A. Yes.

4 Q. Who would do that?

5 A. I have three children living in Tacoma, so we check the
6 house on and off. But because I live by there, I drive
7 through in the morning when I go to work. I go through
8 the alley and then I go to the front door.

9 Q. Do you do that every day?

10 A. Yes. Driving around, I do every day.

11 Q. What kind of work schedule do you have?

12 A. I start work at 7:00. And because I'm exempt, I work
13 longer hours than seven or eight hours.

14 Q. So you would typically be to work by 7:00 a.m.?

15 A. Around 7:00 a.m., 7:00 to 8:00.

16 Q. 7:00 to 8:00 a.m. you would arrive?

17 A. Yes.

18 Q. And then you would spend the day at work and then come
19 home?

20 A. Correct.

21 Q. Is that a Monday-through-Friday job or does it include
22 weekends?

23 A. Yes. Monday through Friday and sometimes I work over,
24 the weekend.

25 Q. When you would work Monday through Friday, would you

1 drive by the 4314 property each day on your way to
2 work?

3 A. Yes.

4 Q. Did you say that you -- there's an alley behind that
5 residence?

6 A. Yes, there is.

7 Q. And what route would you typically take when you would
8 go by that house?

9 A. I take 45th and then go down.

10 Q. Let me clarify that. That was a bad question.

11 When you would go by the house, would you routinely
12 drive a certain way around the house to check on it?

13 A. Yes, I do. I would go through the back alley and then
14 go back and go through the front.

15 Q. Okay.

16 A. And the front is Pearl Street.

17 Q. Okay. So you would drive by and kind of do a circle
18 around the house and look at it from the outside?

19 A. Correct.

20 Q. Now, did you do that on the morning of June 20th?

21 A. Yes, I did.

22 Q. And did you have a normal work schedule that day?

23 A. Yes, I did.

24 Q. Do you recall approximately what time you drove by the
25 4314 residence?

1 A. Between 7:00 and 8:00 a.m.

2 Q. Okay. And when you drove by, did you do the usual
3 drive by where you drive past the back of the alley and
4 then around the front of the house?

5 A. Correct.

6 Q. I assume when you drive by the house, you actually look
7 at the exterior of the residence?

8 A. Yes.

9 Q. Did you do that on June 20th?

10 A. Correct.

11 Q. Did you see any damage to the property when you drove
12 by that morning?

13 A. No, I did not.

14 Q. Did you notice whether there were any broken windows?

15 A. No.

16 Q. Did you see any dining room chairs on the driveway of
17 the front of your residence?

18 A. No, I did not.

19 Q. Would you have noticed whether there were broken
20 windows in your house at that time?

21 A. Yes, I would have.

22 Q. Now, do you also on occasion go physically inside the
23 residence to check on the status of that home?

24 A. Not that morning.

25 Q. Okay. When was the last time that you had actually

- 1 been inside the residence?
- 2 A. About two days or one day prior to that.
- 3 Q. One or two days before the June 20th?
- 4 A. Correct.
- 5 Q. Do you remember about what time of the day you went
- 6 into the house?
- 7 A. I don't recall that.
- 8 Q. When you went into the house on the last occasion,
- 9 prior to June 20th, did you walk through the whole
- 10 residence?
- 11 A. Walked through the whole residence.
- 12 Q. So you would go up to the upper level and the lower
- 13 level?
- 14 A. Correct.
- 15 Q. Did you go into each of the rooms?
- 16 A. Yes.
- 17 Q. On that date, the one or two days prior to June 20th,
- 18 did you notice or see any kind of damage in the house
- 19 at that point?
- 20 A. No, I did not.
- 21 Q. Now, at that point in time when you were inside the
- 22 house, did you notice any broken windows?
- 23 A. (No response.)
- 24 Q. Where any of the windows in your house broken at that
- 25 point in time?

- 1 A. No.
- 2 Q. Were there any light fixtures broken?
- 3 A. No.
- 4 Q. Was any of the carpeting burned?
- 5 A. No.
- 6 Q. Had the refrigerator been tipped over at that point in
7 time?
- 8 A. No.
- 9 Q. Do you recall whether there was any -- if there had
10 been any dents in the refrigerator before June 20th?
- 11 A. I don't recall that.
- 12 Q. Did you notice whether there were any broken mirrors in
13 the house when you were inside one or two days prior to
14 the incident?
- 15 A. No.
- 16 Q. Were there any holes in the drywall?
- 17 A. Would you repeat the question.
- 18 Q. Were there any holes in the drywall?
- 19 A. No.
- 20 Q. Did you leave any furniture in the home while the house
21 was vacant?
- 22 A. Yes, I did.
- 23 Q. What kind of furniture did you leave?
- 24 A. There was a dining set and --
- 25 Q. What did that consist of?

- 1 A. It consisted of a table and the top of the table was
2 glass, and then there were some chairs.
- 3 Q. What kind of chairs were they?
- 4 A. Metal.
- 5 Q. Do you recall how many there were?
- 6 A. About four.
- 7 Q. What other types of furniture did you have in the home?
- 8 A. There was a sofa set in the sitting room and also there
9 was a table, a small table.
- 10 Q. When you say a sitting room, do you mean the -- on the
11 upper level?
- 12 A. Yes.
- 13 Q. By the kitchen?
- 14 A. Yes.
- 15 Q. Was there any other type of furniture in that area of
16 the home?
- 17 A. Those are the ones I recall.
- 18 Q. Do you recall any floor laps in the house?
- 19 A. Yes, there was.
- 20 Q. Do you remember where those floor laps were located?
- 21 A. That one was upstairs in the dining room.
- 22 Q. When you say the dining room, do you mean the area with
23 the linoleum floor next to the kitchen?
- 24 A. (No response.)
- 25 Q. Is the dining area right next to the kitchen in that

1 house?

2 A. Correct.

3 Q. It's your testimony that the floor lamp that you left
4 on the upper level was in the dining area?

5 A. It could have been in the dining area or in the sitting
6 room.

7 Q. Okay.

8 A. There was one up there.

9 Q. You don't recall specifically where that last was?

10 A. It was kind of streeted (sic) at that point in time.

11 Q. Was it standing up?

12 A. It was a tall standing-up one.

13 Q. Did that have a glass fixture of some sort on it?

14 A. It had a cover where the light goes. I don't recall if
15 it was glass.

16 Q. Was it operational at that point?

17 A. Yes.

18 Q. Now, was there any damage to the dining chairs that you
19 had in the house at that point?

20 A. No.

21 Q. Was there any damage to the couch in the sitting area?

22 A. I don't recall that.

23 Q. Okay. And the tables that you mentioned in the upper
24 area, were those tables damaged prior to June 20th?

25 A. No.

1 Q. Now, when you were last in the house prior to June
2 20th, were any of your dining room chairs on the
3 driveway in front of the house?

4 A. No.

5 Q. Where were they before June 20th?

6 A. Before that they were inside the house, the dining
7 area.

8 Q. And were those -- did they have any kind of damage to
9 them prior to June 20th?

10 A. No.

11 Q. Prior to June 20th, was there any smoke damage in your
12 residence?

13 A. No.

14 Q. Now, when you walk into the entryway from the front of
15 the house, you mentioned this was a split-level house,
16 correct?

17 A. Yes.

18 Q. So you walk into the entryway and you have stairs going
19 up and down from that location?

20 A. Right.

21 Q. What condition was that entryway in when you were last
22 in the house before June 20th?

23 A. It was in perfect condition.

24 Q. Okay. Did you have a chandelier above the entryway
25 landing?

1 A. Yes.

2 Q. What kind of chandelier was that?

3 A. It was a chandelier with glass on it, going down like
4 this. And then I think there was four of them and each
5 one of them had a glass, maybe three glasses, hanging
6 on one side like that.

7 Q. And was that a brass chandelier, kind of gold in color?

8 A. Yes.

9 Q. And were any of those globes broken before June 20th?

10 A. I don't recall that, no.

11 Q. Was the glass on the chandelier, was that a tinted
12 glass or clear glass or something else?

13 A. I think they were tinted.

14 Q. And to your knowledge, was that chandelier fully
15 operational before June 20th?

16 A. Yes, it was.

17 Q. Do you recall how that residence at 4314 North Pearl is
18 heated and cooled, the kind of ventilation system you
19 have?

20 A. Electrical heating system.

21 Q. Does the air flow through ducts in the ceiling or in
22 the floors?

23 A. Could you clarify the question?

24 Q. Sure. Does each room -- well, do you know how the heat
25 or air is transported from the mechanism, the heater,

- 1 for example, to another room?
- 2 A. It goes through the wall and then around each room
- 3 there is a vent and that's how the heat --
- 4 Q. Are those floor vents?
- 5 A. Floor and maybe downstairs they may be up.
- 6 Q. Okay. And do you recall, was that system functional
- 7 when you last went to that residence before June 20th?
- 8 A. Yes, it was functional.
- 9 Q. What about the thermostat in the upstairs hallway, was
- 10 that functional as well?
- 11 A. Correct.
- 12 Q. And the doorbell housing, the area where the chimes
- 13 were in the hallway, was that intact as well?
- 14 A. Yes.
- 15 Q. I'm going to show you State's Exhibit 15. Is this the
- 16 entryway landing in your house?
- 17 A. Yes.
- 18 Q. Can you describe -- does it look different -- strike
- 19 that.
- 20 Does Exhibit No. 15 look different from when you
- 21 last saw it prior to June 20th?
- 22 A. Yes.
- 23 Q. And how is it different?
- 24 A. There's a lot of glass damage and there's some broken
- 25 walls.

1 Q. I'm going to show you State's Exhibit 17, which is a --
2 can you tell the Court what area of the house this is?

3 A. The sitting room.

4 Q. Okay. And this would be the upstairs area?

5 A. Yes.

6 Q. Are these the dining chairs that you were mentioning
7 earlier?

8 A. Correct.

9 Q. Or some of them, I should say.

10 A. Right.

11 Q. This fire poker on the floor, do you remember where
12 that was when you were last in the house prior to June
13 20th?

14 A. It was next to the fireplace, right here.

15 Q. Do you see this black cylindrical object on the floor
16 in the front couch in Exhibit 17?

17 A. Right.

18 Q. Do you know what that come from?

19 A. I don't know what that is.

20 Q. Was that there when you were last in the house before
21 June 20th?

22 A. No, it wasn't.

23 Q. I'm going to show you State's Exhibits 20, you
24 testified earlier about this, the floor lamp, is that
25 the floor lamp you were referring to in your earlier

1 testimony?

2 A. Yes.

3 Q. Do you recall, was this floor lamp in this location
4 when you were last in your house prior to June 20th?

5 A. I don't recall, but I know it was upstairs.

6 Q. Okay. And was it laying down broken on the ground when
7 you last saw it?

8 A. No.

9 Q. Did you go through your entire house at 4314 on June
10 20th when you went to check out the damage?

11 A. Yes, I did.

12 Q. So you went to both the upstairs and the lower area?

13 A. Correct.

14 Q. And did you notice any new damage in the lower area of
15 the house when you went to visit it?

16 A. Yes, I did.

17 Q. And prior to June 20th, when you were last in that
18 house, had any of the carpeting in the lower level been
19 burned or scorched?

20 A. No.

21 Q. What general condition was that carpeting in when you
22 were last in the house?

23 A. It was in good condition.

24 Q. When the house sat vacant when you were trying to rent
25 it, do you recall was there toilet paper left behind in

1 the some of the bathrooms?

2 A. Yes. There was toilet paper there.

3 Q. And did you see the remnants of that toilet paper when
4 you visited the residence on June 20th?

5 A. Repeat the question, please.

6 Q. Do you remember seeing any of that toilet paper in the
7 house on June 20th when you went to see the damage in
8 the house?

9 A. Yes. It was scattered around.

10 Q. Regarding the bathrooms in both the upper and lower
11 section of the house, was there any preexisting damage
12 in either of the bathrooms when you last visited the
13 house before June 20th?

14 A. No.

15 Q. Were any of the mirrors broken in either bathrooms?

16 A. No.

17 Q. Were either windows broken in those bathrooms?

18 A. No.

19 Q. What about towel bars, were they affixed to the wall?

20 A. Yes, they were.

21 Q. Now, Esther, did you have insurance on this house at
22 the time this happened?

23 A. Yes, I did.

24 Q. Did the insurance company cover the losses that were
25 resulting from that vandalism?

1 A. No, they did not.

2 Q. Do you have an idea of how much it's going to cost you
3 to repair the damage that you saw at your residence on
4 June 20th?

5 A. The insurance gave me an estimate.

6 Q. Do you recall what that approximately was?

7 A. About 20,000. And I don't think that estimate included
8 the windows, the glass windows.

9 MS. O'LOUGHLIN: I'm going to object. I think there
10 is -- the damages, a lot of the damages --

11 THE COURT: A legal objection.

12 MS. O'LOUGHLIN: Relevance.

13 THE COURT: Overruled. She's testifying about the
14 damage and her basis of that knowledge. If you want to
15 distinguish, you can ask on cross-examination.

16 Q. (By Mr. Leech) Since the insurance company denied the
17 claim, have you had to undertake some of the repairs
18 yourself?

19 A. Yes, I have.

20 Q. And what kind of things have you repaired since this
21 happened?.

22 A. The house was painted completely to take care of the
23 smoke. We did the downstairs, upstairs the carpet was
24 cleaned. We called a specialist to work on the
25 furnace, that was also repaired, to make sure it

1 worked.

2 Q. What was wrong with the furnace?

3 A. The smoke. First of all, we did not want to have it on
4 because the people who were working there were afraid
5 that they would be affected. So we had to call them to
6 come in to check and they worked on it.

7 Q. Did that work include cleaning the duct work?

8 A. I don't recall that one.

9 Q. What other work have you had done on the house?

10 A. The bathrooms were fixed. The mirrors that were broken
11 were fixed. We cleaned the fridge and there was some
12 writings on it that was done. The walls that were
13 broken or punched in were repaired. The windows that
14 were broken were also replaced.

15 Q. Okay. Now, you mentioned the walls, the drywall that
16 had been broken or punched in, did that damage -- was
17 that damage present when you saw the house just prior
18 to June 20th?

19 A. No.

20 Q. Do you know how much you've paid out so far to repair
21 the work you just indicated you've had done?

22 A. Paid about 15,000, but there's also loss of rent, five
23 months.

24 Q. And what about the carpeting in the downstairs? How
25 did that get repaired or is it being repaired?

- 1 A. We replaced the whole flooring for the carpet
2 downstairs.
- 3 Q. And do you recall how much that cost?
- 4 A. It's about 1,200.
- 5 Q. Does that -- did that 1,200, roughly, did you include
6 that in the 13,000 that you've paid out so far?
- 7 A. Correct.
- 8 Q. With regard to the fire damage, the flames, for
9 example, in Exhibit 44, the fire damage on the walls
10 here, do you know how that was repaired?
- 11 A. They -- each of them were repaired, I don't know, but
12 they repaired that and then they painted everything.
- 13 Q. Do you know if they had to do any work with the drywall
14 on the wall or did they just have to repaint it?
- 15 A. I don't know how they did that. I don't recall that.
- 16 Q. Now, what else remains to be repaired in the residence
17 that hasn't yet been fixed?
- 18 A. We have done everything now.
- 19 Q. Oh, you have? Okay. What was the total you've had to
20 expend to repair all of that damage?
- 21 A. The total cost for the repairs is about 15,000. I
22 don't have the exact numbers here with me. And then
23 plus the 6,000 that we lost for the loss for the rent.
- 24 Q. Do you know the respondent, Conlan Shaw?
- 25 A. No, I don't.

1 Q. Did you ever give him permission to enter your home at
2 4314 North Pearl Street?

3 A. No, I did not.

4 Q. Did you ever give him permission to burn your
5 carpeting?

6 A. No, I did not.

7 Q. Did you ever give him permission to cause any damage at
8 4314 North Pearl?

9 A. No.

10 Q. To your knowledge, do any of your family members know
11 Mr. Shaw?

12 A. No, I don't.

13 Q. And to your knowledge, did -- have any of your family
14 members before given him permission to enter or damage
15 that property?

16 A. No.

17 Q. One last question: I understand that there was
18 substantial damage done to a vehicle that was parked in
19 the backyard of that residence?

20 A. Yes.

21 Q. Did that occur before June 20th?

22 A. There had been some prior damage, but that day also
23 there was another damage to that.

24 Q. So there was additional damage to the car?

25 A. Right, yes.

1 MR. LEECH: Thank you.

2 THE WITNESS: Can I say one more thing? Am I
3 allowed to say --

4 THE COURT: Ask another question. Ask her what she
5 would like to say.

6 MR. LEECH: Okay.

7 Q. (By Mr. Leech) What would you like to say?

8 A. I recall that there was bedding downstairs, one of the
9 bedrooms, is what I forgot.

10 Q. Right. So there's a mattress in the one of the
11 bedrooms?

12 A. Right.

13 Q. Was that mattress there before the incident occurred?

14 A. Yes.

15 Q. Do you remember seeing the condition of that mattress
16 when you returned to the house on June 20th to look at
17 the damage?

18 A. It was in good condition.

19 Q. It was in the same or similar condition as it was
20 before?

21 A. Yes.

22 MR. LEECH: Thank you. Nothing further.

23 THE COURT: Cross-examination, Ms. O'Loughlin.

24 MS. O'LOUGHLIN: Just a few questions, Your Honor.

25 \\\

CROSS-EXAMINATION

1
2 BY MS. O'LOUGHLIN:

3 Q. So although the initial statement had been \$20,000, so
4 far your outlay has been \$13,000, about, correct?

5 A. Correct.

6 Q. Does that include a new front door?

7 A. Yes.

8 Q. Was that damaged during the vandalism?

9 A. It was the smoke. I had to paint it because of the
10 smoke.

11 Q. You needed to paint it because of the smoke?

12 A. Yes.

13 Q. But you replaced the front door itself?

14 A. Yes, we did.

15 Q. And you installed doors to the utility room that hadn't
16 been there before?

17 A. I think there were doors there.

18 Q. Are you sure whether or not there were doors?

19 A. I don't recall, but there were doors.

20 Q. And you replaced the toilet and sink in the basement.

21 Is that correct?

22 A. Yes.

23 Q. And the toilet and sink upstairs, also?

24 A. Yes. Because of the fire damage.

25 Q. And you pressure washed the front steps and the

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1 driveway and that was part of the total?

2 A. Yes. The reason why we did that was because of the
3 glass that went through the window.

4 Q. Okay. Thank you. In the kitchen you replaced the sink
5 cabinet, counter top and faucet?

6 A. No. That had been replaced before. We were just
7 cleaning.

8 Q. Okay. The house had been empty for about six months.
9 Is that correct?

10 A. That's what I recall.

11 Q. And there had been some vandalism to the back of the
12 house prior to this incident on the car and the fence?

13 A. Just the car.

14 Q. Just the car. Is there graffiti on the car?

15 A. Yes.

16 Q. Okay. Is that one of the reasons you checked on the
17 house, because of the vandalism?

18 A. I checked on the house because it was empty.

19 Q. Okay.

20 A. I wanted to make sure that it was okay.

21 Q. And the last time you had been in the house it had been
22 a day or two before this incident. Is that correct?

23 A. Correct.

24 MS. O'LOUGHLIN: I don't have anything further, Your
25 Honor.

1 THE COURT: Thank you.

2 Mr. Leech?

3 MR. LEECH: Yes.

4
5 REDIRECT EXAMINATION

6 BY MR. LEECH:

7 Q. Esther, do you recall the items that Ms. O'Loughlin
8 just mentioned -- the kitchen counter, the bathroom
9 vanity and toilet in each bathroom and the front door
10 -- did those items cost -- sorry, strike that. Did the
11 rest of the damage, excluding those items, still exceed
12 \$5,000?

13 A. I don't recall that.

14 Q. Okay. So you said that you've shelled out about
15 \$13,000 in damages?

16 A. Yes.

17 Q. Do you recall what it cost to replace the vanity in the
18 two bathrooms?

19 A. Can you repeat the question?

20 Q. Do you recall what it cost to replace the vanity in the
21 two bathrooms?

22 A. I don't recall. The details are in the...

23 Q. Okay. Esther, did you provide to my office copies of
24 receipts that you've -- for items that you've paid out
25 for damage in the house?

1 A. Yes, I did.

2 Q. I'm going to show you State's Exhibit 92 for purposes
3 of identification. If you could just take a moment to
4 review those documents.

5 THE COURT: Why don't you direct her to something
6 specific, if you have a specific question for her.

7 MR. LEECH: Okay. If I could have the witness
8 identify what these are.

9 THE COURT: Sure.

10 Q. (By Mr. Leech) For the record, can you identify these
11 documents?

12 A. Yes, I do.

13 Q. What are they?

14 A. They are repairs.

15 Q. And on the lower right-hand corner there are something
16 called Bates stamps. Can you refer to those numbers
17 when you're referring to the exhibit?

18 A. 00079.

19 Q. Okay. What is page 79? What is that?

20 A. That is the furnace repair.

21 Q. Okay. That was for the furnace, to repair the motor
22 and clean the system?

23 A. Correct.

24 Q. And what was the amount that you paid for that?

25 A. \$393.76.

1 Q. Okay. And if you could turn over page 80, Bates stamp
2 80 of Exhibit 72 (sic), what is that for?

3 A. This is the repair of the house which included
4 installation of the light and the door and then the
5 toilet and then the clothes hanger rod, then the door
6 track, and then repair of the upstairs bathroom, then
7 the paint and then the pressure wash of the front steps
8 of the doorway.

9 Q. On the second page of that invoice, does it indicate
10 what else the --

11 A. It's the bathroom ceiling fan and light, and Sheetrock,
12 Sheetrock tape, texture, screws, bathroom light,
13 utility room, ADA toilet, water line, wax ring and
14 bolts, floor trim, staples, caulk, black paint, light
15 bulbs, flex ducting, alum elbow, metal tape, cloth
16 hanger rods, door top guides, closet doors, utility
17 room door, shims, door trim, floor cleaner, transformer
18 cover, bifold doors, sliding door track.

19 Q. So that invoice on pages 80 and 81 of Exhibit 72 (sic)
20 addresses several repairs on the house?

21 A. Right.

22 Q. And what was the total expense for those items?

23 A. \$1,511.10.

24 Q. Now, does it break down how much it costs for each
25 toilet or each item that is listed in that invoice?

1 A. No.

2 Q. If you'd turn around to page 82. Is that another
3 invoice? I'm sorry. That's page 3 of that same
4 invoice.

5 A. Yes.

6 Q. Do you recall what this invoice is for, in terms of
7 repair to the house?

8 A. Yes.

9 Q. You don't need to read the whole thing, but summarize
10 for the Court what it repaired.

11 A. This was also a repair for Sheetrock screws, rock tape,
12 wood patch, switches, textures, sandpaper, paint
13 rollers, brushes, roller pan, bathroom cabinet, cabinet
14 top, faucet, and window trim, floor trim, and exterior
15 door and door locks. And then also disposal of the
16 garbage.

17 Q. And what was the total expenses associated with those
18 repairs?

19 A. That one was \$3,150.

20 Q. Okay. Now, Bates stamp 83 of Exhibit 72 (sic), is that
21 also an invoice that you paid?

22 A. Yes.

23 Q. And can you summarize for the Court what damages that
24 repaired?

25 A. Wash all walls throughout the home, get as much smoke

1 off as possible, then prime and paint them. Remove all
2 fire damaged carpet and pad. Replace the Sheetrock on
3 the wall in the large room downstairs. Replace floor
4 trim as needed. Replace Sheetrock on the end wall.
5 Repair switches in the entryway. Replace window trim.
6 Install new doorbell and new heater thermostat.

7 Q. What was the total expense for those repairs?

8 A. 3,000.

9 Q. Then Bates stamp 84, is that a second page of that
10 invoice?

11 A. Yes.

12 Q. Does that list additional work that was covered under
13 that invoice?

14 A. Yes.

15 Q. And then if you could turn to Bates stamp 85 of Exhibit
16 72 (sic), what is that?

17 A. This was the original document that the repair person
18 gave me. The original estimate he thought it was going
19 to be 4,376, and then I gave him a down payment of
20 2,000. Then after he started the work, he came back
21 and said this was not sufficient money to pay. So then
22 he came back with all of these others.

23 Q. When you say the other invoices, meaning the ones that
24 you've just referenced?

25 A. Correct.

1 Q. And then Bates stamp 86 of Exhibit 72 (sic)?

2 THE COURT: For the record, Mr. Leech, it's Exhibit
3 92. You keep saying 72.

4 MR. LEECH: My apologies

5 THE COURT: So the record is straight: Every time
6 he has said 72 in the last ten minutes, it's 92.

7 MR. LEECH: Thank you for correcting me.

8 A. This is the detail of the glass replacement, window
9 glass replacement.

10 Q. (By Mr. Leech) Again, for the record that's Bates stamp
11 86 of Exhibit 92?

12 A. Correct.

13 Q. How much did you pay for that window repair?

14 A. 1,694.51.

15 Q. And then the next page, Bates 87?

16 A. This is a receipt for the carpeting.

17 Q. Okay. And what does it say?

18 A. So the -- the long receipt, the total payment, the
19 check that I gave them was 1,239.20.

20 Q. Okay. And that was to replace the carpeting
21 downstairs?

22 A. Correct.

23 Q. Then on Bates stamp 89 of Exhibit 92?

24 A. This is the detail of the carpet replacement that I got
25 from Lowe's.

1 Q. And that was actually addressed in the prior receipt
2 that you just mentioned. Is that correct?

3 A. Correct.

4 Q. Then it looks like Bates 90 is part of that same, as is
5 91?

6 A. Correct.

7 Q. And then Bates stamp 96 of Exhibit 92, what is this
8 document?

9 A. This is the light fixture replacement that I bought
10 from Lowe's.

11 Q. What was the total expense for the light fixtures you
12 paid out?

13 A. 158.58.

14 Q. Finally, Bates stamp 98 of Exhibit 92, what is that?

15 A. This is the carpet cleaning cost for upstairs.

16 Q. What did you pay to have the carpets cleaned upstairs?

17 A. 155.35.

18 MR. LEECH: Thank you. Move to admit Exhibit 92,
19 Your Honor.

20 MS. O'LOUGHLIN: No objection.

21 THE COURT: Exhibit 92 will be admitted.

22 Q. (By Mr. Leech) Does Exhibit 92 contain all of the
23 receipts for items that you've had to pay for in this
24 house?

25 A. One thing that is missing there is the receipt of what

1 I paid for the lawyers, the charges to work with them
2 to figure out what the insurance was going to cover,
3 the damage.

4 Q. Were there any other receipts that you had to pay out
5 for damage that were not contained in Exhibit 92?

6 A. When I submitted them, I numbered them. That one I see
7 starting from No. 3. So No. 1 and No. 2 -- I don't
8 recall what No. 2 was. The two last -- the first two
9 items, I recall one of them was the receipt for the
10 lawyer.

11 Q. Okay.

12 A. Yeah.

13 MR. LEECH: All right. Nothing further.

14 THE COURT: Recross?

15 MS. O'LOUGHLIN: Nothing.

16 THE COURT: Thank you. You can step down. Thank
17 you very much.

18 MR. LEECH: With that, the State rests.

19 MS. O'LOUGHLIN: Your Honor, if I could have a
20 moment.

21 THE COURT: Sure.

22 (Ms. O'Loughlin

23 conferring with client.)

24 MS. O'LOUGHLIN: Your Honor, I discussed with Conlan
25 his rights to testify and he's electing not to testify, so

State v. Shaw - 1/28/14

Esther Mbajah - Redirect by Mr. Leech

1 the defense would rest.

2 THE COURT: Okay. Without telling me what you and
3 Ms. O'Loughlin talked about, you understand that you have a
4 right to testify in this trial?

5 THE RESPONDENT: Yes, Your Honor.

6 THE COURT: And you had an opportunity to talk to
7 her about whether that's a good thing or a bad thing and
8 what your choices are?

9 THE RESPONDENT: Yes, Your Honor.

10 THE COURT: And the decision not to testify that she
11 just told me about, that's your decision?

12 THE RESPONDENT: Yes, Your Honor.

13 THE COURT: So somebody is raising their hand in the
14 back, and I don't know if you want to take a break to talk
15 to her or not.

16 MS. O'LOUGHLIN: If I could take just a short break,
17 Your Honor.

18 THE COURT: We'll take about a five-minute break

19 (Recess.)

20 THE COURT: Is there anything else you want to tell
21 me, otherwise I'm going to redo my colloquy, I think.

22 MS. O'LOUGHLIN: No, Your Honor.

23 THE COURT: I don't know what he's looking at. I
24 need to make sure that you understand that it's your
25 individual right to determine whether you want to testify

1 or not. And you can get advice from everybody, but it's
2 your decision. Do you understand that?

3 THE RESPONDENT: Yes, Your Honor.

4 THE COURT: And given that, do you want to testify
5 today or not?

6 THE RESPONDENT: No, Your Honor.

7 THE COURT: Okay. Thank you.

8 With that, the defense rests?

9 MS. O'LOUGHLIN: Yes, Your Honor. I was going to
10 ask if we could do closing in the morning.

11 THE COURT: I don't have a big problem with that.

12 MR. LEECH: I'm fine with that.

13 THE COURT: We have another case ready to go, so if
14 we could do it right at 9:00.

15 MR. LEECH: Certainly.

16 THE COURT: So we'll be at recess until nine
17 o'clock.

18 (Adjourned.)

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IN THE SUPERIOR COURT IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON

STATE OF WASHINGTON,)
)
Plaintiff,)
)
vs.)
)
CONLAN JADEN SHAW,)
)
Respondent.)

No. 13-8-00892-8
COA No. 45959-1-II

VERBATIM REPORT OF PROCEEDINGS
VOLUME 2

January 29, 2014

Pierce County Juvenile Court

Remann Hall

Tacoma, Washington

before the

HONORABLE KITTY-ANN van DOORNINCK

Reported by,
Carla J. Higgins, CSR

A P P E A R A N C E S

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5 For the Plaintiff:

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JUDGE'S DECISION

173

1 BE IT REMEMBERED that on the 29th day
2 of January, 2014, the above-mentioned cause came on duly
3 for hearing before the HONORABLE KITTY-ANN van DOORNINCK,
4 Superior Court Judge in and for the County of Pierce, State
5 of Washington; the following proceedings were had, to-wit:

6 * * * * *

7 JANUARY 29, 2014

8 CLOSING ARGUMENT

9 MR. LEECH: This is state versus Conlan Jaden Shaw,
10 Cause No. 13-8-00892-8.

11 Brian Leech for the State. Respondent is present,
12 out of custody, represented by Ms. O'Loughlin.

13 As the Court knows, we were in trial yesterday, and
14 we're here for closing argument, and the State is ready to
15 proceed.

16 THE COURT: Ms. O'Loughlin?

17 MS. O'LOUGHLIN: We are ready.

18 THE COURT: State's closing.

19 MR. LEECH: Thank you, Your Honor.

20 Well, yesterday the Court obviously heard all of the
21 evidence in the case, four witnesses, and the Court heard
22 the evidence as the State presented. So the question for
23 the Court today is did the evidence, as presented by the
24 State, prove beyond a reasonable doubt all of the elements
25 of the three crimes charged. As you know, the three crimes

State v. Shaw - 1/29/14

Closing Argument - By Mr. Leech

1 are residential burglary, arson in the first degree and
2 malicious mischief in the first degree. I'm sure the Court
3 is familiar with those elements.

4 Arson in the first degree, obviously, requires the
5 State proving beyond a reasonable doubt that the respondent
6 knowingly and maliciously caused a fire or explosion and
7 that the fire or explosion caused damages to a dwelling,
8 and that occurred in Pierce County.

9 Residential burglary requires the State to prove
10 beyond a reasonable doubt that the respondent entered or
11 remained unlawfully in the dwelling with the intent to
12 commit a crime against a person or property therein.

13 And the malicious mischief in the first degree
14 requires the State to prove beyond a reasonable doubt that
15 the respondent knowingly and maliciously caused damage
16 exceeding \$5,000 in property on that day.

17 I would submit to the Court that the evidence the
18 State has presented to the Court proves each and every one
19 of those elements beyond a reasonable doubt.

20 What do we know? Well, we know that the home at
21 4314 North Pearl Street is a residence. We obviously know
22 that the primary purpose of the residence is for lodging.
23 There's no evidence to the contrary. We know that the
24 interior of the house was not damaged as of one to two days
25 prior to June 20th, based on the testimony of Esther

1 Mbajah, who had routinely checked on the residence. And
2 she testified that one to two days prior to the day of the
3 incident, she had been inside the house and did not see any
4 damage.

5 We know that the exterior of the residence showed no
6 damage, no signs of damage, as of 7:30 a.m. on June 20th.
7 And that, again, is based on Ms. Mbajah's testimony that
8 she routinely and daily drives by the residence at 4314
9 North Pearl, drives around the residence from the alley to
10 the front and checks the exterior to see if there's any
11 obvious signs of disruption.

12 In this case, as we know from the multiple photos
13 that the Court has reviewed or will review, that, in fact,
14 there are obvious signs of exterior damage at the time that
15 this incident occurred. We know that several broken
16 windows could be seen from the street. We know that
17 apparently dining chairs had been thrown through the upper
18 windows out of the living room onto the driveway. Clearly,
19 Ms. Mbajah would have noticed those things if they had
20 occurred when she drove by that morning, and she testified
21 that she had not seen anything.

22 Finally, we know that the damage occurred apparently
23 between the hours of roughly 9:00 a.m. and noon. That's
24 based on the testimony of the officer and Mary Casey, the
25 neighbor, as well as the evidence that the mailman walked

1 by just before noon and he was the source of the 911 call
2 which prompted the response by the officer.

3 Mary Casey obviously testified that she first heard
4 the noises of glass breaking between 8:30 and 9:00. And we
5 know from her testimony that the last time she heard
6 crashing or breaking of glass was as the officer was
7 approaching. And the officer's testimony was that he
8 arrived around noon, just after noon, about 12:05.

9 We know that the apparent point of entry for the
10 burglary was in the back of the house, the southwest
11 bedroom. This makes sense in several regards. First of
12 all, the lower portion of the house would be the most
13 accessible. The upper windows would not be reachable by a
14 burglar, unless they had a ladder or some other mechanism
15 to elevate themselves to that level. We know that the
16 burglar is not going to generally, logically break into the
17 residence from the front of the house, more likely to be
18 seen.

19 And then, of course, we know that the southwest
20 bedroom window was shattered and there was blood evidence
21 on the exterior and interior of that frame, and that that
22 blood evidence then proceeded through the hallway of the
23 lower portion of the house.

24 Now, this suggests that the respondent, when he
25 broke into the house, damaged himself or cut himself on the

1 window. And we know that happened at the point of entry
2 most likely because the blood progressed through the lower
3 portion of the house, as opposed to going outside of the
4 house. In other words, the cut would not have occurred as
5 he was exiting the house because there wouldn't be blood on
6 the inside. And we know that the blood from the inside of
7 the residence, the lower portion, indicates that that would
8 be the apparent point of entry because there was no blood
9 evidence found on the upper point of the house. Clearly
10 the burglary was on both levels of the house and caused
11 extensive damage on both levels.

12 We know this is a burglary from the context of the
13 circumstances. Obviously, Ms. Mbajah does not know the
14 respondent, never gave him permission to be in the home.
15 He had absolutely no reason to be there. But we do know
16 that it was an unlawful entry based on the fact of the
17 broken glass and the fact of what occurred inside the
18 residence, both the burn and the senseless vandalism.

19 Therefore, we know that the burglar had the intent
20 to commit a crime against people or property therein
21 because of what happened once the burglar was inside the
22 residence.

23 We know that malicious mischief first degree has
24 been proved beyond a reasonable doubt. That's based
25 largely on the circumstances, again. We know that the

1 house was extensively damaged. Almost every window in the
2 house was broken. Almost every fixture in the house was
3 broken. Doors were broken. Walls were damaged. The
4 heating and ventilation system was damaged by the smoke.
5 The carpeting was damaged by the burning. We know that the
6 lamp posts, the furniture that was in the house, was also
7 vandalized. And we know that the damage absolutely
8 exceeded the \$5,000 threshold necessary to prove first
9 degree malicious mischief.

10 That's based on primarily two things. One, we know
11 that the insurance company -- before they denied the claim
12 -- made an estimate of roughly \$20,000 to repair the damage
13 that existed in that house after the burglary. We also
14 know that insurance companies are loathe to pay more than
15 what they absolutely have to. In fact, in this case, they
16 paid nothing because they determined that the policy did
17 not cover the residence.

18 We know that Esther Mbajah then had to pay out for
19 herself, through her own funds, to repair all of this
20 damage, and her expenses exceeded \$13,000. That included
21 replacing the carpeting, replacing windows, repainting the
22 house, cleaning the damage, vacuuming, cleaning the
23 carpets, replacing fixtures, et cetera. All the damage
24 that you saw had to be repaired as a result of the
25 respondent's behavior.

1 We know that Ms. Mbajah made some upgrades to the
2 residence. We know that she replaced the toilets that were
3 not damaged. We know she replaced counter tops that were
4 not damaged and a few other things. But I think it's safe
5 to say based on Exhibit 92 -- you can review those receipts
6 -- it's clear that those upgrades certainly did not exceed
7 \$8,000, which would be the difference between what
8 Ms. Mbajah paid and what the threshold is for malicious
9 mischief first degree.

10 Of course, there's no question that this was done
11 maliciously and knowingly. Malicious is defined as done
12 with evil or vexing intent. We clearly know that was the
13 case in this particular circumstance, just by the nature of
14 the crime itself, the nature of the damage and the extent
15 of the damage.

16 We also know that arson first degree occurred in
17 this residence. As I indicated at the beginning of my
18 closing that I'd prove that the respondent knowingly and
19 maliciously caused the fire or explosion that caused damage
20 to the property. We also know that damage is defined as,
21 specifically in the arson setting, as anything that
22 includes diminution of the value of the property as a
23 result of the arson. But, of course, smoke damage -- smoke
24 damage, et cetera, and we had that happening.

25 The carpeting in the downstairs had to be replaced at

1 the cost of roughly \$1,200. Then there's some additional
2 cleaning that had to be done, scrubbing of the walls,
3 repainting. And I did submit to the Court that the Court
4 can subtract those amounts from the total that Ms. Mbajah
5 paid with regard to the other damages, and there would
6 still be sufficient damage to not only establish first
7 degree malicious mischief, but the fact that there was
8 damage resulting from the fire. And the photos show that
9 based on the three areas in the house where the carpeting
10 was clearly burned.

11 We know that this was contemporaneous with the time
12 frame where -- that all of this occurred contemporaneously
13 between the hours of 9:00 and 12:00, because the fire was
14 still smoldering in at least two spots when the officer
15 responded. The large section in the family room was still
16 smoldering, still smoking, and the toilet paper roll that
17 had been thrown onto the carpeting in the southeast bedroom
18 in the lower portion of the house was not only smoking, but
19 when he moved the toilet paper, you could still see red
20 embers. When you look at the damage in the photos,
21 particularly regarding the toilet paper roll in the
22 bathroom and the fire damage in the southwest bedroom, you
23 can see smoke damage going up the wall. So clearly there
24 were flames that climbed up that wall and caused that
25 damage before it apparently kind of dwindled down or burned

1 itself out, and was finally suppressed by the fire officers
2 that responded and doused the smoldering carpet.

3 We know that this was not accidental. We know it
4 was intentional, and it was malicious. We know it's
5 malicious, the arson part is malicious, because of the
6 context. It was contemporaneous with a great deal of
7 damage that was done throughout the home.

8 And then, of course, we know that just the fact that
9 the act of causing a fire inside somebody else's house that
10 you're not supposed to be in, in and of itself, is
11 malicious.

12 We know that it was intentional. There's no
13 evidence to suggest that this was an accidental fire or a
14 child playing with matches. Even the fire investigator,
15 his testimony -- and I think it's important that you pay
16 close attention to what we actually said -- is that based
17 on his training and experience and his investigation --
18 granted, a lot of what he did was common sense, and I think
19 that's logical from a lay person's perspective as well. It
20 doesn't take a rocket scientist to go into this house and
21 see that this fire was intentional and malicious, based on
22 the circumstances.

23 We know it's not accidental. We know that somebody
24 wasn't playing with matches and just dropped a match
25 inadvertently or inadvertently set a toilet paper roll

1 fire, because it occurred three different times in three
2 different locations.

3 One can argue that perhaps if there was just one
4 fire, one toilet paper roll that had been caught on fire,
5 perhaps that was just a reckless incident based on somebody
6 playing with fire and being reckless. But we know that
7 once the act is repeated multiple times around the same
8 time frame, that that is no longer reckless, that becomes
9 intentional. And the officer testified, the fire
10 investigator testified, that based on his training and
11 experience, this was clearly an intentional and malicious
12 fire.

13 We know it wasn't accidental, also -- in other words
14 not accidental by virtue of an act of God or faulty wiring
15 or some other innocuous event that causes fires -- because
16 of the location of the fires and where they started. It
17 essentially started in two carpeted areas in the center of
18 the carpet and expanded from there. There was no faulty
19 electrical wiring anywhere near any of the sources of
20 ignition in this case. So we know that those fires didn't
21 just start on their own, or start as a result of a faulty
22 outlet or an act of God. For example, an earthquake
23 breaking a gas line which then ignites, that didn't occur.
24 There wasn't a earthquake on June 20th. We know it wasn't
25 lightening, there was no storm on June 20th. And, of

1 course, logic tells you that lightening will not strike on
2 the inside of the house as opposed to the outside.

3 So we have ruled out the other causes of the fire
4 that are common in this kind of a setting. We have
5 established beyond a reasonable doubt that the fire was
6 started intentionally and that it was done with a malicious
7 intent based on the surrounding circumstances.

8 We don't know whether or not an accelerant was used
9 because the testing wasn't completed to verify that. I
10 believe the investigator testified that the burn pattern in
11 the family room, the large burn pattern, was consistent
12 with an accelerant, but he can't testify that that was his
13 conclusion. And we don't have to establish that an
14 accelerant was used to start the fire, because not all
15 intentional fires require accelerants.

16 But most importantly what we know is that the
17 respondent was involved in this incident. I can't say that
18 the respondent was the only person responsible for this,
19 but the evidence shows that. It's possible that he had
20 accomplices, that there were people with him when he did
21 this. But largely, that is a speculative inference based
22 on perhaps the volume of the evidence, the amount of
23 damage.

24 In the fingerprint stipulation there was an
25 unidentified fingerprint in the residence. That is not

1 unusual. People have lived in that residence. People have
2 been in that residence that were not the respondent. We
3 don't know who the other prints belonged to on that lamp
4 post -- excuse me -- the floor lamp. But it doesn't
5 necessarily mean that an accomplice or somebody, to the
6 respondent's exclusion, is the one who caused the damage.

7 We know that the respondent lives very near this
8 residence, so it's convenient access to him. It's a vacant
9 residence up for rent nearby where he lives, within
10 half-a-mile driving time, if you take that contorted route
11 in the exhibit, which is obviously the paved route a car
12 would take from his residence to the victim residence,
13 which is listed as .52 miles on the Mapquest. A respondent
14 walking or on a bike can take a more direct route that will
15 take him less time to get from his home to the victim
16 residence.

17 We know the respondent was throughout that house on
18 the morning of June 20th because of where the prints were
19 found and the DNA. There were prints found upstairs.
20 There were prints found downstairs. The stipulation
21 indicates that there were prints -- that his palm print on
22 the point of entry, that was essentially in the bloody
23 friction impression, was identified as being his. His
24 print was found on a piece of broken glass on the ledge of
25 one of the windows on the interior. His print was found on

1 the floor lamp in the dining room that was knocked over and
2 damaged. And I believe there was another print found on a
3 window. So we know that he was throughout that house.

4 His DNA was found in three different locations in
5 that house: Point of entry and then the wall, the hallway
6 wall and the lower level in two areas.

7 We know that the respondent is, at a minimum, an
8 accomplice and most likely a principal. And, again, he's a
9 principal based on the fact that that is what the evidence
10 shows. We have evidence putting him in the house. We have
11 evidence tying him to the vandalism by virtue of where the
12 prints in blood are found, the fact that it's
13 contemporaneous with the burglary and the vandalism. We
14 know that the respondent is the one who committed this
15 crime. Whether he was doing it on his own or with others,
16 makes him equally culpable.

17 And finally, Your Honor, I would like to touch
18 briefly on what we believe the defense will argue, which is
19 lesser included or lesser degree. I believe Ms. O'Loughlin
20 has provided you a WPIC, and myself as well, reckless
21 burning first degree. State vs. Hobart (phonetic), I
22 provided you a copy of that case and I handed that up.
23 That case indicates that reckless burning is a not a lesser
24 included of arson in the first degree because it does not
25 -- reckless burning includes elements that are not included

1 in arson in the first degree.

2 Now, arson in the second degree is a lesser --
3 excuse me -- a lesser degree crime and I think the Court
4 can consider that.

5 However, I would submit to the Court that the Court
6 cannot find arson in the second degree based on the
7 evidence before the Court because the difference between
8 arson 1 and arson 2 is the Court would have to establish or
9 find beyond a reasonable doubt that this residence was just
10 a building, not a dwelling. That's the distinction between
11 1st and 2nd degree in this case, is that the residence that
12 was damaged was an active dwelling.

13 The fact that it was vacant between six to 18 months
14 does not change the characterization of the home. It
15 simply establishes that they were unable to rent the house
16 during that timeframe. There's no evidence that the home
17 was being converted to a different use, such as a
18 commercial property or it was uninhabitable.

19 There's a case, State vs. McDonald, which is at 123
20 Wn. App. 85, it's a 2004 Division II case, where the issue
21 was the defendant had been convicted by a jury of burglary
22 and the defendant appealed arguing that the lesser included
23 burglary second degree should have been offered to the
24 jury. And the Court indicated that -- in fact, in that
25 case, the home that was burglarized was vacant, it was in

1 the process of being remodeled. A wall had been torn down
2 by the home owner. The front steps had been removed by the
3 homeowner and a trench had been dug around the house to
4 work on the foundation of the house. And the opinion
5 essentially actually said that the house was essentially in
6 a state of construction. But it determined that the jury
7 had the right to make that factual determination, even
8 given those facts. And the jury obviously found that it
9 was a dwelling, a residence, because of the circumstances,
10 even with those facts, which are clearly much more -- are
11 clearly -- the facts in our case are much more clear that
12 this is a residence, because it wasn't under construction.
13 It wasn't being in the process of walls being taken down
14 and plywood being put up and stairs being removed. It was
15 simply a vacant property in pristine or good condition, as
16 Ms. Mbajah testified, at least prior to June 20th.

17 So I would submit to the Court that the Court can't
18 find arson 2 in this case because the facts indicate that
19 this is clearly a dwelling under the case law and the
20 definition of dwelling.

21 In closing, I would ask the Court to find the
22 respondent guilty beyond a reasonable doubt of each and
23 every one of these crimes. Clearly, he is the individual
24 who committed this incident. His prints and his DNA are
25 found throughout the house. Contemporaneous with extensive

1 vandalism, we know this vandalism didn't occur previously
2 because of the timing of the witness statements from the
3 neighbor, the officer and the mailman. And we also know,
4 based on the fact that the victim routinely checked on the
5 house and did so that morning, that the damage occurred
6 during that time frame of roughly 9:00 a.m. to noon on June
7 20th.

8 I would ask the Court to find him guilty as charged.
9 Thank you.

10 THE COURT: Ms. O'Loughlin.

11 MS. O'LOUGHLIN: Thank you, Your Honor.

12 The State has not proven beyond a reasonable doubt
13 that Conlan Shaw is guilty of arson in the first degree,
14 and there's two major problems in this case with regard to
15 that issue. One is the State has not shown that the fire,
16 in fact, was an arson in the first degree as opposed to a
17 reckless burning in the first degree. And we're not
18 arguing it's a lesser included, but we're arguing that's
19 what the State has proven. The State has proven a reckless
20 burning in the first degree, not an arson in the first
21 degree.

22 (Reporter interruption.)

23 MS. O'LOUGHLIN: The Court should find the
24 respondent not guilty of arson in the first degree.

25 To be guilty of arson in the first degree, a person

1 must knowingly and maliciously start a fire and damage a
2 dwelling. To be guilty of reckless burning, a person must
3 knowingly start a fire and thereby recklessly damage a
4 building.

5 What might have been presented to show an arson in
6 the first degree has not been shown in this case. There
7 could have been statements from the respondent. We have
8 none of those. There could have been use of an accelerant.
9 We have none of that. There could have been some motive to
10 start this fire knowingly and maliciously. We don't have
11 that. Witness statements, we don't have. Physical
12 evidence, we don't have. There could have been evidence of
13 burn patterns in the carpet. They could have known an
14 arson in the first degree. We don't have that. Other
15 forensic evidence, we don't have.

16 The fire marshal, who was the State's own expert,
17 can't say it was an arson in the first degree. And he, by
18 his own admission, did not do a thorough fire
19 investigation, which I think is significant in this case.
20 The most he could say definitively is it was an incendiary
21 fire. And I asked him what does incendiary mean? He said,
22 someone igniting a fire knowing that it should not be
23 happening. That could be consistent with someone playing
24 with matches, is what he said. So by his own definition of
25 incendiary, which was his conclusion with regard to the

1 fire, this could have been a reckless burning in the first
2 degree and not an arson in the first degree.

3 He was not able to say whether accelerants were
4 used. He said it's possible but he couldn't rule out the
5 fact that accelerants were not used in this case. He had
6 no idea what kind of ignition was used. Could have been
7 toilet paper. Could have been something else. He couldn't
8 testify to that. He was not able to say how long the fire
9 smoldered, which I think is significant in this case.

10 The fire marshal really just raised questions but
11 answered none.

12 If there's going to be a charge of arson in the
13 first degree, the investigation really should be
14 commensurate with the charge in this case. We don't have
15 that.

16 The evidence is consistent with reckless burning:
17 Starting toilet paper on fire and recklessly burning the
18 carpet.

19 So we would ask the Court to find the respondent not
20 guilty of arson in the first degree based on what has
21 actually been proven by the State has been a reckless
22 burning and not arson in the first degree.

23 Second, and probably more importantly, there's been
24 no showing beyond a reasonable doubt that Conlan Shaw is
25 the one who started the fire. Each witness has said they

1 could not tell how many people were in the house that
2 morning. Fingerprints and blood certainly show that Conlan
3 Shaw had been in the house and that he was cut by broken
4 glass, but nothing shows he started the fires. There are
5 no fingerprints that connected him to the fire. There's no
6 fingerprints on any kind of accelerants, no fingerprints on
7 the toilet paper roll, no fingerprints on a lighter. We
8 don't have statements, we don't have eye witnesses, we
9 don't have forensic evidence, nothing that shows that
10 Conlan Shaw started the fire.

11 Arson is a separate and distinct charge from the
12 residential burglary and malicious mischief in the first
13 degree. It has its own specific elements and they just
14 haven't been met here. And proximity is not enough.
15 Washington case law is replete with a reference to the
16 presence alone is not enough, and that's really all we have
17 in this case is them showing that Conlan Shaw is in the
18 house and there had been a fire. You need something more
19 to show that he started the fire and we just don't have
20 that in this case. We don't even really have proof as to
21 when the fire was started. Fire marshal said he doesn't
22 know how long the fire had smoldered. And Ms. Mbajah had
23 been in the house a day or two before and we don't know
24 when the fire started or how long it had been going.

25 We're asking the Court to find the respondent not

1 guilty of arson in the first degree.

2 With regard to the reckless burning and the
3 malicious mischief, the evidence did show that Conlan Shaw
4 had been in the house, but not a sufficient showing beyond
5 a reasonable doubt to support malicious mischief in the
6 first degree. There is no showing who else was in the
7 house, that there could have been other people in the house
8 on that day and there was no showing as to who did what.
9 We're pretty much left with conjecture, and conjecture is
10 not enough.

11 Obviously, Conlan Shaw was not wearing gloves but
12 his fingerprints were only at a few spots of the house,
13 possibly the ingress and egress places in the house. The
14 window that was on the southeast corner, I believe that's
15 the one that was -- where the officer said that -- thought
16 the ingress had occurred. And then there was another
17 window on the main floor where there was a fingerprint also
18 where he could have left the house. But there's no showing
19 of fingerprints anywhere else in the house, except for with
20 regard to the floor lamp. But other than that, we don't
21 have fingerprints in the other parts of the house.

22 Again, presence alone is not enough. We would ask
23 the Court to judge the malicious mischief and the
24 residential burglary beyond a reasonable doubt and find
25 that they haven't been met in this case.

1 THE COURT: Is there anything else?

2 MS. O'LOUGHLIN: No.

3 THE COURT: I don't need to have rebuttal argument.
4 I'm ready to make a ruling.

5 I'll say flat out I'm going to find him guilty as
6 charged on all three counts. I think there's overwhelming
7 evidence of guilt.

8 True, it is circumstantial evidence, which is
9 supposed to be treated the same way as direct evidence.
10 But the physical evidence that's demonstrated in Exhibits 1
11 through 89, the stipulations regarding the DNA and where
12 the DNA was located -- both on the outside of the window
13 the inside of the window -- two places in the lower
14 hallway, the fingerprints. Obviously, there's no question
15 that the respondent was in the house, that he broke into
16 the house. And there's no question that there's an arson
17 in the first degree in that he knowingly and maliciously
18 caused damage to a dwelling. There's no question it's a
19 dwelling, and it was knowingly and maliciously because of
20 the physical evidence in three different areas.

21 The first area that was testified about is a large
22 area of carpet, which certainly indicates that it was
23 knowing and malicious and an attempt to destroy or damage
24 the dwelling. The fact that there were other locations
25 where fires were started, it is just lucky that the whole

1 house didn't come down. And that's what arson in the first
2 degree is about.

3 It's not a reckless burning. It's intentional
4 because of the three different locations, primarily, and
5 the inference that can be drawn from that is that it's
6 intentional.

7 The malicious mischief in the first degree needs to
8 be damage that is separate from the fire damage. And I
9 think that Ms. Mbajah testified and Exhibit 92 demonstrates
10 that -- although it's kind of mixed up in terms of fire
11 damage and smoke damage versus other damage -- there was
12 overwhelming damage to the house: The windows, the
13 furniture in the living room, the glass table that was
14 broken, the lamp that was broken, the chandelier that was
15 broken. The fact that the respondent's fingerprints were
16 on the lamp that was broken indicates he's responsible for
17 the malicious mischief.

18 I can only go on the evidence that's presented and
19 not speculation that it might have been somebody else. I
20 have overwhelming beyond a reasonable doubt circumstantial
21 evidence that the respondent is responsible for each and
22 every one of the acts.

23 I do want to say for the record that I found
24 Ms. Mbajah very credible in her testimony and Officer
25 Pincham were both very credible and I think made the

1 State's case. There was no contradictory evidence
2 presented.

3 So, again, I can only base the decision on what was
4 presented in court, not on some other speculation.

5 So I think that's all I need to say. We need to set
6 a sentencing date.

7 THE FATHER: Can I ask a question?

8 THE COURT: No.

9 Three weeks. February 12th. Mr. Leech, is that
10 going to work? It's short of three weeks, but that's
11 because I'm not available in three weeks.

12 MR. LEECH: I believe so, yes. I can make myself
13 available.

14 JUDICIAL ASSISTANT: 9:00, 8:45?

15 THE COURT: 9:00.

16 Is there anything else for the record?

17 MR. LEECH: I assume you want to set a revocation
18 for that same date?

19 THE COURT: Yes. February 12 at nine o'clock.

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SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THE COUNTY OF PIERCE

DEPARTMENT NO. 20 HON. KITTY-ANN van DOORNINCK, JUDGE

STATE OF WASHINGTON,)
)
 Plaintiff,)
)
 vs.)
)
 CONLAN JADEN SHAW,)
)
 Respondent.)

No. 13-8-00892-8
COA No. 45959-1-II

STATE OF WASHINGTON)
) ss
COUNTY OF PIERCE)

I, Carla J. Higgins, Official Reporter of the Superior Court of the State of Washington, County of Pierce, do hereby certify that the foregoing comprises a true and correct transcript of the proceedings held in the above-entitled matter.

Dated this day of 2014.

Carla J. Higgins, CSR
Official Reporter

APPENDIX B

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8 **COURT OF APPEALS DIVISION I OF THE STATE OF WASHINGTON**

9 STATE OF WASHINGTON)

10 Respondent)

CAUSE NO: 45959-1

11 v)

12 CONLIN JADEN SHAW)

DECLARATION OF

13 Appellant)

14 Comes now Nancy J. Pringle and declares as follows:

15
16 On January 28, 2014, as we were walking down the hall to the courtroom I asked our attorney,
17 Jean O'Loughlin, if Spencer should wait in the lobby since he was going to testify. She said no
18 he can come in the courtroom as he will not be testifying. I told her we had made it clear that
19 we wanted both Conlan and Spencer to testify. She told me to sit down and be quiet because
20 the prosecutor didn't have a case. When the trial started I tried to get the judge's attention,
21 the judge told our attorney to please inform your clients of the proper procedures in a court
22 room. I sat back down because I wanted to stay in the courtroom. The prosecutor, Mr. Leech,
23 began his statement. Again I raised my hand when Mr. Leech was halfway through his
24 statement and I said he really doesn't know and we — the court cut me off. I was told to sit
25 down. When Mr. Leech finished his current statement he asked if we should make a record of
26 who that was. The Judge asked who are you? I said my name is Nancy Pringle. The judge said
and who are you. I said I'm Conlan's grandmother.

27 **DECLARATION**
Page 1

E. ALLEN WALKER
Attorney at Law
2607 Bridgeport Way West, Ste. 2C
Tacoma, WA 98466
253-566-3383 Fax 253-566-2248

1
2 The judge said so for everybody else in the audience, it's not an interactive process. It's a trial
3 in which evidence is going to be presented by the attorneys and the witnesses. We are not
4 having a conversation. Okay?

5
6 At this point I feared I would be asked to leave so I sat down. I had wanted to stop the trial as I
7 did not trust our attorney. I she had full control over Conlan and she was not conducting
8 herself in his best interest.

9
10 Our family had met with our attorney a few days before the trial and the family made it clear to
11 her that we wanted both Spencer and Conlan to testify. She said that the prosecutor didn't
12 have any evidence. She stated that there is no way they can prove arson in the first degree, so
13 all charges would be dropped. She said since Conlan had disabilities, Autism, General Anxiety
14 and was Easily Persuaded -- the prosecutor would tear him apart. We said we steel wanted
15 Conlan and Spencer to testify. When we were in trial, she wouldn't let them testify. I wanted
16 to stop the proceedings because I did not want her as an attorney at that point. I was aware
17 that due to her caseload she wasn't able to properly conduct the background to help Conlan.
18 She had two meetings with Conlan in private and Conlan believed everything she said -- so he
19 listened to her when she told him what to say at the trial.

20 During the trial the judge told Conlan several times that if he wanted to speak he could, that he
21 did not have to listen to his attorney. Conlan said no because Jean had told him to say no. She
22 was telling Conlan what to say. He had paper and pencil and during most of the trial he was
23 doodling.

24 At the end of the trial; the judge said guilty on all counts. Sara Lier, Team Child, ask the court if
25 she could submit documents for the judge's consideration before the sentencing date. The
26 judge agreed to review the work and the packet was handed to her. Sara had compiled a file on
27 Conlan including some of his medical records. This is what she left for the judge to review. Sara

1
2 had been working with us and the Tacoma School District and Conlan was admitted to Jason
3 Lee Middle School under a 504 Plan.

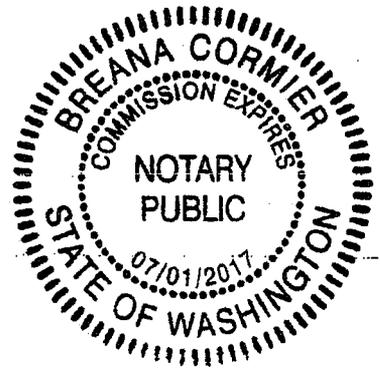
4
5 On the sentencing date the judge was asked if she had reviewed the documents. The judge said
6 no, she hadn't had time.

7
8 After Conlan was charged, we started tracking back on the dates. We wanted to know what
9 Conlan had done on June 20, 2013. We learned that Conlan had been with Spencer around
10 10am-2pm. They had planned to meet on that day. On Wednesday, June 19, I had taken
11 Conlan for his last session with the occupation therapist at Mary Bridge Children's Hospital. We
12 had had 12 sessions, all at 8am on a Wednesday. Conlan has dysgraphia, finger and hand
13 control limitations.

14
15
16 I certify that I have satisfactory evidence that the GRANTOR,

17 Nancy J. Pringle, *Nancy J. Pringle* signed this instrument and acknowledged
18 it to be his free and voluntary act for the uses and purposes mentioned in the instrument.

19 Given under my hand and seal of office this 10th day of July, 2014



20
21 NOTARY PUBLIC in and for the State of Washington,
22 Residing at Pierce County
23 Commission Expires 07/01/2017
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APPENDIX C

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COURT OF APPEALS DIVISION I OF THE STATE OF WASHINGTON

STATE OF WASHINGTON)

Respondent)

v)

CONLIN JADEN SHAW)

Appellant)

CAUSE NO: 45959-1

DECLARATION OF

Comes now Donald Gordon Spencer and declares as follows:

On June 20, 2013, I was with Conlan Jaden Shaw, from about 10:00am till 2:00pm. We were at Conlan's residence, 3928 North Defiance Street, Tacoma, Washington. I woke Conlan up when he came over around 10:00am. Conlan ate as we talked about what I needed from him. He used the computer to look up information for me, mostly employment possibilities. Conlan was always showing me how to play simple games on the computer and he also helped me find things on Craig's list.

I was in court every day of the trial. Conlan's grandma, Nancy Pringle, had told Attorney Jean O'Loughlin (Conlan's attorney from assigned counsel) that I was there to testify as to where Conlan was on June 20, 2013. We traced the date back through the unemployment records I had to submit. The first day of the trial Nancy Pringle told me I would probably have to wait in the lobby until called to testify. Jean O'Loughlin said I didn't need to stay in the Lobby.

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4 I have dyslexia which is a learning disorder marked by severe difficulty in recognizing and
5 understanding the English language on paper. It is marked by a severe difficulty which can lead
6 to spelling and writing problems. It is not caused by low intelligence or brain damage. I made it
7 through the 7th grade although I didn't learn to express myself well on paper. Back then they
8 didn't have classes or teachers for exceptional children.
9

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14 I certify that I have satisfactory evidence that the GRANTOR,

15 Donald G. Spencer *SPENCER D*, signed this instrument and acknowledged
16 it to be his free and voluntary act for the uses and purposes mentioned in the instrument.

17 Given under my hand and seal of office this 8 day of July 2014,

18 *Elladell Louise Marie*

19 NOTARY PUBLIC in and for the State of Washington,

20 Residing at Tacoma WA

21 My Commission Expires Dec. 5, 2015
22
23
24
25
26