

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,

Petitioner,

No. 79452

Electronically Filed
Aug 22 2019 11:46 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

v.

THE SECOND JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
WASHOE; AND THE HONORABLE
KATHLEEN DRAKULICH, DISTRICT JUDGE,

Respondents,

and

DAVID CHARLES RADONSKI,

Real Party in Interest.

_____ /

PETITIONER'S APPENDIX – VOLUME 1

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PETITIONER

ATTORNEYS FOR REAL PARTY
IN INTEREST

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1 **Code 4105**

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5 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
6 **IN AND FOR THE COUNTY OF WASHOE**

7 **THE STATE OF NEVADA ,**

8 **Plaintiff,**

Case No. CR18-1731

9 **vs.**

10 **David Charles Radonski,**

11 **Defendant.**

12 **SUPPLEMENTAL PROCEEDINGS**
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21

No. 18 SCR 01187

IN THE JUSTICE'S COURT OF SPARKS TOWNSHIP
IN AND FOR THE COUNTY OF WASHOE, STATE OF NEVADA
THE HONORABLE JESSICA LONGLEY, JUSTICE OF THE PEACE

- oOo -

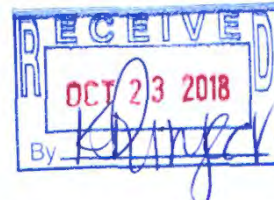
STATE OF NEVADA,

Plaintiff,

vs.

DAVID CHARLES RADONSKI,

Defendant.



PRELIMINARY EXAMINATION

TRANSCRIPT OF PROCEEDINGS

Monday, October 8, 2018

Sparks, Nevada

Transcribed By: Darby Talbott

ORIGINAL

APPEARANCES:

For the Plaintiff:

MATT LEE

Deputy District Attorney

Reno, Nevada

For the Defendant:

JORDAN DAVIS

Deputy Public Defender

Reno, Nevada

I N D E X

WITNESSES	DIRECT	CROSS	REDIRECT	RE CROSS
VICTORIA BARNETT	7	12	--	--
ANDREW CHIZEK	20	27	--	--
DEIDRE ERWIN	31	39	--	--
SCOTT FISCHER	42	57	--	--
ADAM SULLY	70	87	109	--
WILLIAM ATKINSON	112	127	--	--

STATE EXHIBIT	DESCRIPTION	MARK	ADMIT
1	Photo - fire origin	5	--
2	Photo - fire origin	5	--
3	Photo - fire origin, vehicle	5	10
4	Photo - Dodge Durango	5	121
5	Photo - aerial, 1955 Piute Creek Rd	5	24
6	Photo - aerial, 2055 Piute Creek Rd	5	34
7	Photo - 2055 Piute Creek Rd	5	34
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1	13	Photo - 2055 Piute Creek Rd	5	34
2	14	Fire progression map	5	54
3	15	Sketch of fire scene	5	50
4	16	Photo - vehicle cigarette lighter	5	53
5	17	Damage assessment map	5	--
6	18	Photo - Dodge Durango	5	121
7	19	Not identified	5	--
8	20	Not identified	5	--
9	21	Photo - 2355 Piute Creek Rd	5	123
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12	24	Photo - 2400 Piute Creek Rd	5	123
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14	26	Photo - 2400 Piute Creek Rd	5	123
15	27	Photo - 2400 Piute Creek Rd	5	123
16	28	Photo - 2400 Piute Creek Rd	5	123
17				
18				
19	DEFENSE EXHIBIT	DESCRIPTION	MARK	ADMIT
20	1	Video of interview	102	--
21	2	Return of service	133	--
22				
23				
24				

1 SPARKS, NEVADA, MONDAY, OCTOBER 8, 2018, 2:26 P.M.

2 -oOo-

3
4 (State Exhibits 1 through 28 marked.)

5 THE COURT: This is 18 SCR 1187, State of Nevada
6 versus David Charles Radonski. Mr. Radonski is present
7 with his attorney, Mr. Davis. Mr. Lee is here on behalf
8 of the State.

9 I have an amended criminal complaint. Mr. Davis,
10 do you have a copy of that amended criminal complaint?

11 MR. DAVIS: Your Honor, we do have a copy of the
12 amended criminal complaint. Mr. Radonski's name is
13 spelled correctly on line 7. He's familiar with the
14 contents of that criminal complaint, of that amended
15 criminal complaint, and waives a formal reading.

16 THE COURT: It's the time set for a preliminary
17 hearing. Are we going forward with the preliminary
18 hearing?

19 MR. DAVIS: We are.

20 MR. LEE: Yes, Your Honor.

21 THE COURT: Any preliminary motions?

22 MR. DAVIS: Your Honor, I would just invoke the
23 rule of exclusion.

24 THE COURT: Okay. Mr. Lee, do you have any

1 preliminary motions?

2 MR. LEE: I'm sorry, Your Honor?

3 THE COURT: Do you have any preliminary motions?

4 MR. LEE: No, I do not.

5 THE COURT: How many witnesses do you have,

6 Mr. Lee?

7 MR. LEE: Seven.

8 THE COURT: And do you have any witnesses today,

9 Mr. Davis?

10 MR. DAVIS: No, Your Honor.

11 THE COURT: Could you please have all the
12 witnesses who are here on behalf of the State please rise.

13 The defense has invoked the rule of exclusion.
14 What that means is that you're going to need to wait
15 outside. You cannot discuss the case with anybody,
16 including each other, even after you've testified, until
17 this case has concluded.

18 And so what we're going to do is I'm going to
19 have the first witness remain in the courtroom and the
20 rest go ahead and go out there and sit. You can talk to
21 each other, just not about this case.

22 And we will come and -- either my bailiff or
23 Mr. Lee will come and get you when it's your turn to
24 testify. All right?

1 Who's going to be your first witness?

2 MR. LEE: State will first call Ms. Victoria
3 Barnett.

4 THE COURT: Will you please raise your right
5 hand.

6 (Witness sworn.)

7 THE COURT: Okay. Go ahead and have a seat.

8

9 VICTORIA BARNETT

10 Called as a witness on behalf of the State,
11 was previously sworn and testified as follows:

12

13 DIRECT EXAMINATION

14 BY MR. LEE:

15 Q Ma'am, could you please state your full name and
16 spell your last name for us.

17 A Victoria Barnett. Last name B, as in boy,
18 a-r-n-e-t-t.

19 Q Ms. Barnett, back on July 27th of this year,
20 2018, did you see something that brings you here today?

21 A Yes.

22 Q Generally speaking, what was that that you saw?

23 A The Perry Fire.

24 Q Okay. You named it by a colloquial name, Perry

1 Fire; right?

2 A Mm-hmm. That's what the newsman's calling it,
3 so...

4 Q Okay. Well, what was that? What did you see
5 just initially?

6 A My boyfriend and I got there, and we saw someone
7 in a car kind of far away as we were approaching on the
8 left, and that car had moved to the right. And the person
9 had got out, circled around his car, got back in. And we
10 eventually pulled to where we were going, and then we
11 didn't see the car again until later when the fire
12 started.

13 Q So when you first saw this person, was there
14 anything that drew your attention to this?

15 A We just thought maybe there was just another
16 person there to use it for recreational use --

17 Q Okay.

18 A -- at first.

19 Q So you didn't see the fire initially; right?

20 A No, we didn't see the, like, initial spark of it,
21 but we saw the blaze on the mountain as we were trying to
22 leave.

23 Q Did you actually take a picture of that?

24 A Yes.

1 Q And at this area where you're talking about this,
2 what general area are we talking about?

3 A If you're going Pyramid Highway north, there's
4 a -- it's before the lake but after like that horse corral
5 type of thing.

6 Q Okay.

7 A But there's like an abandoned mailbox that you
8 take a right on, and there's a dirt path that you go up.

9 Q So at some point does Pyramid Highway turn east
10 towards the lake?

11 A Yes.

12 Q Is it in that general area?

13 A Yeah, like it's the east side of the road, if
14 that's what you're asking.

15 Q Okay. Is that -- test your geography here,
16 Ms. Barnett. Is that within Washoe County?

17 A Yes? Sorry, I'm not from -- originally from
18 Washoe County.

19 Q That's fine. That's fine.

20 MR. LEE: May I approach the witness, Your Honor?

21 THE COURT: Yes.

22 BY MR. LEE:

23 Q Going to show you what's been marked as State's
24 Exhibit 3. Do you recognize what that exhibit shows?

1 A Yes.

2 Q What is that?

3 A It's the picture that I took.

4 Q And what's it showing, generally speaking?

5 A It shows the fire, its initial stages of the fire
6 in the background. And when we were trying to leave to
7 call 911, that was the car that was coming from that area.

8 Q Okay.

9 MR. LEE: Your Honor, I move to admit Exhibit 3.

10 MR. DAVIS: No objection.

11 THE COURT: Exhibit 3 will be admitted.

12 (State Exhibit 3 admitted.)

13 MR. LEE: Judge, on all these, when I move to
14 admit, may I also be understood to be moving to publish?

15 THE COURT: Yes.

16 MR. LEE: Thank you.

17 BY MR. LEE:

18 Q So showing, Ms. Barnett -- can you see it on the
19 screen in front of you?

20 A Mm-hmm.

21 Q Okay. Showing you first Exhibit 3, which has
22 just been admitted. Is this the picture you took?

23 A Yes.

24 Q Looking at the center towards the right here that

1 I'm circling with my finger, what is what?

2 A That's the fire.

3 Q And did you see any other fire at any other
4 location, or was it all right there?

5 A No, it was right there.

6 Q And then looking just to the left on this photo,
7 towards the bottom left, I'm circling here, what is that?

8 A That's the initial car that we saw there by
9 themselves coming out where the fire happened to be.

10 Q Okay. So you saw that car there without any fire
11 at first?

12 A Yeah.

13 Q And then when you took this photo, which
14 direction was that car coming from?

15 A Uh...

16 Q Bad question. Let me ask it this way.
17 Was he coming toward you, away from the fire, or
18 was he was going --

19 A He's --

20 Q -- towards the fire?

21 A He's coming away from the fire.

22 Q Okay. How would you describe that vehicle?

23 A I would describe it as a really bright blue Dodge
24 Durango with metallic bumpers.

1 Q Okay. Were the bumpers a different color than
2 the rest of it?

3 A Yeah. And there was no front license plate.

4 Q Okay.

5 MR. LEE: May I approach, Your Honor?

6 THE COURT: Yes.

7 BY MR. LEE:

8 Q Showing Exhibit 4. I'm just going to ask you in
9 general terms. What's -- that which is depicted in
10 Exhibit 4, does that generally resemble the vehicle you
11 saw?

12 A Yes.

13 MR. LEE: Your Honor, that's all the questions I
14 have for Ms. Barnett.

15 CROSS-EXAMINATION

16 BY MR. DAVIS:

17 Q Good afternoon, Ms. Barnett.

18 A Good afternoon.

19 Q On July 27th, you and your boyfriend went to go
20 target shooting.

21 A Mm-hmm.

22 Q At an open area near Pyramid Lake; right?

23 A Yes.

24 Q Had you been to that area before?

1 A Myself, no.

2 Q Now, on July 27th when you drove to that

3 location, you saw a blue SUV; is that right?

4 A Yes.

5 Q And the driver of the SUV get out of the car?

6 A They did after they made the right towards --

7 there's like a backdrop over there at Pyramid, that area.

8 When they -- they got out of the car then and then did a

9 circle around the car but didn't get anything out of the

10 vehicle.

11 Q And from where you were looking, that individual

12 was possibly a white male?

13 A Yeah. He wasn't tan at all. I --

14 Q But you couldn't be sure.

15 A No, I guess not.

16 Q Because you were too far away; right?

17 A Yeah. But I would be -- in my mind I'd think it

18 was a white guy.

19 Q Okay. And -- and you couldn't make out any other

20 identifying features for this individual; is that right?

21 A No. Just like a white guy in a T-shirt and

22 shorts.

23 Q Okay. And so you set up your target to begin

24 target shooting; right?

1 A Mm-hmm.

2 Q And from where you were set up shooting, did you
3 see any houses around you?

4 A No. It was like abandoned -- there was like
5 nothing there. The only thing that was there in the
6 distance, like an abandoned watercooler of some sort, like
7 maybe someone wanted to shoot it and they brought it
8 there, but that's it.

9 Q So was it a pretty desolate area?

10 A As in empty? Yes.

11 Q Yeah. And did you fire any guns that afternoon?

12 A No.

13 Q Did your boyfriend fire any guns that afternoon?

14 A No.

15 Q And as soon as you set up the targets, I believe
16 you looked to your left --

17 A Yeah.

18 Q -- and you see a fire?

19 A Yep.

20 Q You then packed up your stuff?

21 A Yeah.

22 Q And drove out of the area quickly to call 911;
23 right?

24 A Yes, sir.

1 Q Because you had no cell phone service where you
2 were located?

3 A Mm-hmm.

4 Q Because it's fairly remote.

5 A Yes.

6 Q How long did it take you to get from the target
7 shooting location to where you could call 911?

8 A I'd say probably a good like 15, 20 minutes down
9 the road over there. Because we had to go down south on
10 Pyramid to get the signal.

11 Q And so how long after you initially saw the fire
12 did you call 911?

13 A Well, I was trying to call 911 right when we saw
14 it, but we had no signal, so it was -- I was like on my
15 phone, my boyfriend's phone, calling, calling, calling,
16 but there was no signal until it finally rang as we were
17 going south on Pyramid.

18 Q Okay. So you called 911 as fast as you could?

19 A Yeah.

20 Q And you attempted to call them multiple times?

21 A Yeah.

22 Q And it didn't go through because there was no
23 service?

24 A Mm-hmm.

1 Q Okay. And you left the area because of the
2 fire --
3 A Yes.
4 Q -- is that right?
5 You didn't -- you weren't concerned about the
6 weather conditions that day, were you?
7 A No.
8 Q And just to be clear, you don't know how the fire
9 started?
10 A No.
11 Q And you didn't see anyone start the fire?
12 A No.
13 Q And you met with police in this case; right?
14 A I believe I met with investigators, yes.
15 Q And you provided the police with an email
16 outlining what you had observed on July 27th; right?
17 A Yes.
18 Q And you sent them that email?
19 A Yes, I did.
20 Q But you never filled out a written statement to
21 police aside from that email, did you?
22 A In person with the police?
23 Q Correct.
24 A I don't think so.

1 Q So -- so is the email the only written document
2 that you provided to the police?

3 A I'm not sure. Because I know we met with
4 investigators several times, so I don't know if that
5 counts as any written documentation that they had.

6 Q Okay. And at the time you drafted that email,
7 you wrote down everything you remembered.

8 A Mm-hmm.

9 Q Everything that seemed important to you.

10 A Yes.

11 Q And prior to sending it, you reviewed it?

12 A Yes.

13 Q Made sure it was accurate?

14 A Mm-hmm.

15 Q Truthful?

16 A Yes.

17 Q And complete; right?

18 A Yes.

19 Q And is it your testimony today that everything
20 you put in that email is a hundred percent accurate?

21 A Correct.

22 Q Did you have a fire extinguisher with you?

23 A Yes, we did.

24 Q You did?

1 A Yes.

2 Q And did you make any attempt to put out the fire?

3 A We were way too far away at that point.

4 Q And I believe the DA asked you if you knew if you
5 were in Washoe County, but you're not sure if that was in
6 Washoe County?

7 A Yes.

8 Q Okay. And -- and the -- the DA showed you a
9 picture. And is this the picture that you took as --

10 A Yes, sir.

11 Q And is that -- and -- and that accurately depicts
12 what you took on that particular day; is that right?

13 A Yes.

14 Q And -- and is that what that SUV looked like?

15 A Yes.

16 Q And that -- and that looks bright blue to you?

17 A Yes.

18 Q Okay. I have nothing further. Thank you.

19 A Thank you.

20 THE COURT: Any redirect?

21 MR. LEE: I have no further questions, Your
22 Honor.

23 THE COURT: Okay. May she be excused for the
24 day, or do you want her to remain outside?

1 MR. LEE: I'd ask that she be excused at this
2 point.

3 MR. DAVIS: And I have no objection to that.

4 THE COURT: So, ma'am, you are actually free to
5 go today.

6 THE WITNESS: Okay.

7 THE COURT: You don't have to stay out there. If
8 you would like to, you are more than welcome to.

9 THE WITNESS: Okay. Thank you so much.

10 MR. LEE: Your Honor, our next witness will be
11 Mr. Andrew Chizek.

12 THE COURT: Good afternoon, sir.

13 THE WITNESS: Hello.

14 THE COURT: Will you please raise your right
15 hand.

16 (Witness sworn.)

17 THE COURT: Go ahead and have a seat.

18

19 ANDREW CHIZEK

20 Called as a witness on behalf of the State,
21 was previously sworn and testified as follows:

22 ///

23 ///

24 ///

DIRECT EXAMINATION

BY MR. LEE:

Q Thank you, sir. Could you please state your full name and spell your last name for us.

A Andrew Paulus Chizek, C-h-i-z-e-k, Jr.

Q Sir, do you own property in Washoe County?

A Yes, I do.

Q Where is that located at?

A 1955 Piute Creek Road.

Q And Piute is spelled P-i-u-t-e?

A Correct.

Q What general area of the county is that in?

A Palomino Valley.

Q And that's -- that is within Washoe County; correct?

A Yes, it is.

Q At that property that you own there, do you reside there?

A I do. That is my home.

Q And who resides there with you?

A My wife and our stepson and his girlfriend currently.

Q Okay. What's on this property?

A Single-family dwelling, two-story, some

1 outbuildings, including a barn that we use to store ATVs
2 and a boat and things like that.

3 Q Okay. How big is this barn?

4 A 30-by-50.

5 Q Feet?

6 A Yes, sir.

7 Q And you mentioned boat, ATV. Were there multiple
8 boats or ATVs?

9 A There were two ATVs and a -- and a bass boat.

10 Q And then anything else inside this barn?

11 A We did have a -- it started off as a tack room
12 for horses and horse tack. Over the years became storage
13 for heirlooms and things handed down as family members
14 passed away.

15 Q Okay. No horses were kept in there at the time?

16 A No.

17 Q Or "at the time" meaning on -- let's say July
18 27th --

19 A No, sir.

20 Q So you mentioned the house, the barn, things that
21 are in the barn. Any other buildings on that property?

22 A There was a feed barn she shed so we didn't -- we
23 could bring the hay down closer to the house when we fed
24 animals and livestock. We had a shed, a she shed as well.

1 Q Okay. And then let's bring it to July 27th or --
2 or within a few days of that. Were you in town on that
3 day, July 27th?

4 A Is that the day the fire started?

5 Q Well, it's kind of -- I -- so let me ask you the
6 questions here.

7 Was that in late July that you remember the fire
8 starting?

9 A Yes.

10 Q Do you remember being evacuated ever?

11 A Yes. On Saturday.

12 Q Okay. And was that late July on Saturday?

13 A Yes.

14 Q Do -- when you evacuated, what did you bring with
15 you?

16 A What we could grab. The HAZE (phonetic) team
17 came up, told us we had about 30 minutes. If we had any
18 livestock, they would take care of it. And basically we
19 got about two suitcases of some clothing items, documents
20 like birth certificates, stuff like that.

21 Q Okay. And then how soon, approximately, sir,
22 were you able to go back to your property?

23 A We went in Monday morning, escorted with the fire
24 department, and were able to grab some other various

1 items, comfort items, things like that. But we weren't
2 given much time.

3 Q Okay. What did you find when you went back
4 Monday morning?

5 A The fire had gotten really close, but our house
6 was still standing.

7 Q Okay. And then you had to leave again?

8 A Yes.

9 Q You went back at a later time?

10 A Tuesday morning.

11 Q What did you find Tuesday morning?

12 A Everything was gone.

13 Q Okay. The house?

14 A The house.

15 Q The -- the -- the 30-by-50-foot barn you
16 described?

17 A Yes.

18 Q The items within the barn?

19 A Everything was gone.

20 Q Okay.

21 A There was nothing left.

22 Q Sir, did you have also trees and other vegetation
23 on that property?

24 A Yes. Quite a bit of landscaping. A lot of it

1 was there when we bought the home, but it was -- it was
2 well done.

3 Q Okay. And was that damaged, destroyed?

4 A Yes, destroyed. There are a couple of trees
5 still along the driveway, but that's it.

6 Q Okay. And how big -- how many acres do you have?

7 A It's 136-acre lot.

8 MR. LEE: May I approach, Your Honor?

9 THE COURT: Yes.

10 BY MR. LEE:

11 Q I'm going to show you what's been marked as
12 Exhibit 5. Just let me turn that around. Do you
13 recognize what that is?

14 A That would be an aerial view of my property.

15 MR. LEE: Your Honor, I move to admit Exhibit 5.

16 MR. DAVIS: No objection, Your Honor.

17 THE COURT: Exhibit 5 will be admitted.

18 (State Exhibit 5 admitted.)

19 BY MR. LEE:

20 Q Sir, on the screen in front of you, showing you
21 the same Exhibit 5. Can you see that okay in front of
22 you?

23 A I can.

24 Q So is that Piute Creek that's running east -- or

1 left and right here in this picture?

2 A That is correct.

3 Q And tell us what we're looking at here just south
4 of Piute Creek.

5 How about this: What's the -- what's the
6 light-colored building?

7 A That would be the -- the barn I spoke of.

8 Q Okay. Just to the left of that in this picture I
9 see something that's reddish colored. What's that?

10 A That's the feed barn and the she shed.

11 Q And then to the left of that, a dark colored --

12 A That would be our dwelling, our home.

13 Q Okay. Sir, when did you buy the house?

14 A 2006.

15 Q Do you recall -- I'm sorry, did you build it?
16 Did you buy it?

17 A We were the second -- we bought it from the
18 original owner.

19 Q And how much did you buy it for?

20 A 380.

21 Q Have you received, generally speaking, any
22 estimates from insurance regarding the loss to the home?

23 A We have.

24 Q What was that estimate for?

1 A It's broken down into three numbers. It's
2 actually what it would cost to rebuild the house minus
3 depreciation, but it's a recoverable value of 340,000
4 estimated to be needed to rebuild.

5 Q Okay. Did you also -- are you taking note,
6 anyways, of personal possession items that are --

7 A We were also asked to itemize all of our personal
8 property, and the -- what we submitted to the insurance
9 company is in the neighborhood of 170,000 personal
10 property.

11 Q And does that include things such as your boat,
12 the ATVs?

13 A It does not include the boat and ATVs. We had
14 separate insurance for those items.

15 Q Okay. And those items, have you received any
16 estimate for that?

17 A Yes. We've already -- they've already given us a
18 payout on all the loss.

19 Q Do you know how much for the said boat?

20 A It's going to be about 10,000, 12,000 total
21 payout.

22 Q Mr. Chizek, thanks for being here today.

23 MR. LEE: Your Honor, that's all the questions I
24 have.

1 THE COURT: All right.

2 CROSS-EXAMINATION

3 BY MR. DAVIS:

4 Q Good afternoon, sir. So your house was located
5 at 1955 Piute Creek Road?

6 A Correct.

7 Q Your house burned down between a Monday and a
8 Tuesday?

9 A Monday night, yes.

10 Q Monday night. And the fire started on a Friday?

11 A Correct.

12 Q And so your house was there on Saturday; right?

13 A Correct.

14 Q Was there on Sunday?

15 A Correct.

16 Q It was there on Monday up until Monday night?
17 Right?

18 A That is correct.

19 Q And you had -- you didn't have that much time to
20 gather your belongings; is that right?

21 A The HAZE team gave us about 30 minutes on
22 Saturday afternoon.

23 Q Do you know what, if anything, firefighters did
24 to protect your house?

1 A When we went in on Monday morning -- most of what
2 I would know is what people are telling you; that you're
3 in an evacuation center, a lot of people are talking.

4 What we heard on Saturday --

5 MR. LEE: Objection. I'm going to object for
6 hearsay.

7 BY MR. DAVIS:

8 Q Yeah, so I -- I'm -- you can't tell -- you can't
9 tell me what you heard, because that's objectionable.

10 A Understood.

11 Q But -- but I just wanted to know: Do you know
12 what the firefighters particularly did in your case to
13 protect your house?

14 A No, I don't.

15 Q Do you know an individual by the name of David
16 Radonski?

17 A No, I do not.

18 Q Have you ever met Mr. Radonski?

19 A No, I have not.

20 Q Do you have any reason to believe that he wanted
21 to burn down your house?

22 A No, I do not.

23 Q Did you call 911 to inform them that your house
24 was -- the fire was approaching your house?

1 A No, I did not.

2 Q Did you receive a call from 911 or any fire
3 personnel about evacuating?

4 A Just the arrival of -- on our property.

5 Q And just to be thorough, you don't know how the
6 fire started; right?

7 A I do not.

8 Q And you didn't see anyone set the fire?

9 A I did not.

10 Q And nobody from your family was injured; is that
11 right?

12 A That is correct.

13 Q And you met with police in this case?

14 A I have not.

15 Q You don't know?

16 A I have not.

17 Q Oh, okay. So have you ever filled out a written
18 statement?

19 A I have not.

20 Q I have no further questions. Thanks for being
21 here.

22 THE COURT: Mr. Lee?

23 MR. LEE: Nothing further, Your Honor. And may
24 Mr. Chizek be excused?

1 THE COURT: May he be excused for the remainder
2 of the day?

3 MR. LEE: I'm sorry?

4 THE COURT: Can he be excused --

5 MR. LEE: Yes, that's what I would ask.

6 THE COURT: Okay. So, sir, you have been
7 excused. You are free to go about your business today, or
8 you can remain at the courthouse. It will be your choice.

9 THE WITNESS: Thank you.

10 MR. LEE: Next witness will be Ms. Deidre Erwin.
11 It will be just a brief minute.

12 THE COURT: Good afternoon, ma'am.

13 THE WITNESS: Good afternoon.

14 THE COURT: If you could please raise your right
15 hand.

16 (Witness sworn.)

17 THE COURT: Go ahead and have a seat.

18

19 DEIDRE ERWIN

20 Called as a witness on behalf of the State,
21 was previously sworn and testified as follows:

22 ///

23 ///

24 ///

DIRECT EXAMINATION

BY MR. LEE:

Q Good afternoon, ma'am. Could you please state your first and last name and spell them both for us, if you could.

A Deidre, D-e-i-d-r-e, Erwin, E-r-w-i-n.

Q Ms. Erwin, do you -- do you own property within Washoe County?

A Yes.

Q Where's that at?

A It's at 2055 Piute Creek Road in Palomino Valley.

Q Palomino Valley area?

A Yes.

Q Do you have neighbors I believe on your west side who were here today?

A Yes.

Q Who's that?

A That'd be Sherry and Andy.

Q Okay. Back at the end of -- of July of this year, were you evacuated from your home?

A Yes.

Q For what purpose?

A A fire had started out towards the highway, quite a ways away.

1 Q Okay. Describe your residence for us, then.
2 What's -- what's there on that property?
3 A We have a main residence and a mother-in-law's
4 residence, is the way they described it, a smaller home.
5 Q Okay. How far apart were those, roughly
6 speaking?
7 A About 400 yards.
8 Q Okay. Let me --
9 MR. LEE: Your Honor, may I approach?
10 THE COURT: Yes.
11 BY MR. LEE:
12 Q I'm going to show you first what's been marked as
13 Exhibit 6 here. Do you recognize what's depicted there?
14 A Yes.
15 Q What is that? What are we looking at?
16 A It's an aerial photograph of the main home and
17 the rental home -- or what we call the cabin.
18 Q Okay. Were you getting it -- at the time, were
19 you getting it ready for someone to live there?
20 A Yes.
21 Q Who was that?
22 A My daughter.
23 Q Okay. And then when you -- excuse me. At some
24 point after the evacuation, were you able to go back into

1 the home?

2 A Never.

3 Q Never? Have you been back to the property,

4 though?

5 A Yes.

6 Q What did you see when you returned after the

7 fire?

8 A Nothing but ashes.

9 Q I'm going to show you, Ms. Erwin, a series of

10 photographs here, starting with Exhibit 7 and ending with

11 Exhibit 13. Make sure I'm getting these the right way.

12 Go ahead and take a look at all of these. Take

13 your time. Just look through them all, and then look up

14 when you're done. I'll have a few questions for you.

15 Thank you. Do you recognize what's depicted in

16 those, 7 through 13?

17 A Yeah.

18 Q What are we looking at?

19 A What's left of the home my parents built, the

20 first home that was in that canyon.

21 Q And do these pictures all -- are they all

22 pictures of that home, or what's left of it, as you

23 described it?

24 A Yes.

1 Q And do they all show parts -- or property that
2 you own on that property?

3 A Yes.

4 Q Okay.

5 MR. LEE: Your Honor, I'd move to admit 7 through
6 13 and then also Exhibit 6. So 6 through 13.

7 MR. DAVIS: No objection.

8 THE COURT: Exhibits 6 through 13 will be
9 admitted.

10 (State Exhibits 6 - 13 admitted.)

11 BY MR. LEE:

12 Q So we're going to just go in order here. Exhibit
13 7 first. Can you see it there on your screen?

14 A Yes.

15 Q Okay. What are we looking at here?

16 A This is looking from what would have been the
17 front of the house. This corner would be the master
18 bedroom.

19 Q The corner to the right of the photo?

20 A Yes.

21 Q Okay.

22 A And then further back would be the kids' bedroom,
23 and then there was -- there's a tank sitting there that
24 was our pump house. And --

1 Q What's that? What's the pump house?

2 A It's where our well puts water into a tank and

3 either puts it into this home and the lower home.

4 Q Was that house as well, the pump house, destroyed

5 as well?

6 A Yes. We are still currently without power to the

7 well.

8 Q Okay. Looking at Exhibit 8, what are we looking

9 at here?

10 A My granddaughter's quad.

11 Q Exhibit 9, draw your attention to the upper

12 right-hand portion -- whoops -- upper right-hand portion

13 just above this red flag. What is that?

14 A It's a Scout. I'm not sure of the year.

15 Q Let me be -- let me make it easier for you. Is

16 it a motor vehicle?

17 A Yes.

18 Q Okay.

19 A It was.

20 Q One that you owned?

21 A Yes.

22 Q Okay. And did it get burned by the fire -- is

23 that -- anyways, is that damage I see there from the fire?

24 A Yes.

1 Q And Exhibit 10, what are we looking at here?

2 A This is from the driveway area looking across

3 through the trees at what would have been the patio area

4 of the home.

5 Q Okay. And is that -- what structure I see back

6 there, is that the home?

7 A That is what was added onto by my father. It was

8 more of a workshop area.

9 Q Okay. Is that destroyed --

10 A It's all steel.

11 Q Made of steel?

12 A Yeah.

13 Q Okay.

14 A It's made of steel.

15 Q Is it --

16 A That's why it's still standing.

17 Q Is it operable or usable right now?

18 A No.

19 Q And, again, Exhibit 11 now, does this motor

20 vehicle in the middle here belong to you?

21 A It belonged to my son. I guess you'd say it's

22 ours now.

23 Q Destroyed, though, by this fire?

24 A Yes.

1 Q Exhibit 12, is this as well a motor vehicle that
2 was yours and on your property?

3 A Yes, sir.

4 Q And also damaged by the fire?

5 A Yes. The tires burnt right off of it.

6 Q Okay. And then Exhibit 13, the last one I'll put
7 up for you, Ms. Erwin, what are we looking at here?

8 A This was a two-stall horse house, barn.

9 Q And before the fire, was it fully functional?

10 A Yes.

11 Q Were there any animals within that structure?

12 A Not in this structure, but in the main structure,
13 yes.

14 Q In the main -- in the -- that residence that was
15 burnt?

16 A Yes.

17 Q And what animals were they?

18 A They were two house cats.

19 Q And what happened to the two house cats?

20 A We weren't able to get -- to get them out.

21 Q Okay. Ms. Erwin, just so we can see, since we --
22 I asked you questions about this Exhibit 6 here, is this
23 an overhead view of your property that we largely just
24 described in these other --

1 A Yes.

2 Q -- exhibits?

3 A To the left is the main home, and where the
4 cluster of trees are in the middle of the page is the --
5 just behind it you can see a squared-out structure. That
6 was the home that was destroyed.

7 Q Okay. Have you at this point, Ms. Erwin, been
8 working with insurance?

9 A Yes.

10 Q Have you had any value estimate on your home
11 done?

12 A It was definitely underinsured. The insurance
13 was for 65,000. They did just under that.

14 Q Okay.

15 A But with everything else included, there's a lot
16 of damage down around the main home, and it's just
17 destroyed so much around there that was sitting. I mean,
18 we raised five grandchildren. Every single bike they
19 owned was burnt. The quads. The cattle fencing.

20 Q Okay. One moment, please.

21 Ms. Erwin, thanks for being here. That's all the
22 questions I have.

23 A Thank you.

24 MR. LEE: Ms. Erwin, I'm sorry, one more.

1 THE WITNESS: I'm sorry.

2 MR. LEE: Mr. Davis will question you.

3 CROSS-EXAMINATION

4 BY MR. DAVIS:

5 Q Good afternoon, Ms. Erwin. So your house was
6 located at 2055 Piute Creek Road?

7 A Yes, sir.

8 Q And did you say that that was either the first
9 house in that area or one of the first houses?

10 A It was the first house in that canyon.

11 Q And what year was that built?

12 A I was a teenager, so I -- I know it was built in
13 the very latter part of the '70s or the first of the '80s.

14 Q And your father built it?

15 A Yes.

16 Q Are you aware that the fire started on a Friday
17 night?

18 A Yes.

19 Q And when were you first notified --

20 A I --

21 Q -- about the fire?

22 A We saw the smoke lighting up -- or the flames
23 lighting up the sky. And me and my daughter drove down to
24 the highway where we could see the flames.

1 Q And when you drove down there, you were able to
2 see the flames?

3 A Yes, sir.

4 Q And were you allowed to go back to your property?

5 A Yes. At that point in time, it was miles away
6 from our home.

7 Q Okay. So it was miles away from your home. And
8 were you ever advised to exit or evacuate your house?

9 A Yes. On Saturday morning.

10 Q Okay. So really you had an evening to only
11 gather your things; is that right?

12 A Yes, sir.

13 Q Do you know if the firefighters built a perimeter
14 around your house? No?

15 A No.

16 Q Do you know if they did anything to protect your
17 house?

18 A I honestly don't know if the firefighters were
19 even in the vicinity during the time that it burned.

20 Q Okay. And do you know an individual by the name
21 of David Radonski?

22 A No.

23 Q Have you ever met him?

24 A No.

1 Q Do you have any reason to believe that he wanted
2 to burn down your house?
3 A I don't know.
4 Q You never met him; right?
5 A Right. I don't know the man.
6 Q And just to be clear, you don't know how the fire
7 started.
8 A No.
9 Q You didn't see anyone set a fire.
10 A No.
11 Q Did you have an opportunity to meet with the
12 police in this case?
13 A Yes.
14 Q Did you provide them with a written statement?
15 A No.
16 Q Did they ask you for a written statement?
17 A No.
18 Q Thank you for being here.
19 MR. LEE: No further questions, Your Honor. May
20 she be excused?
21 MR. DAVIS: No objection.
22 THE COURT: Ma'am, you're excused for the day.
23 You can remain at the courthouse or go about your --
24 whatever you want to do today. Okay?

1 THE WITNESS: Thank you.

2 MR. LEE: State's next witness, Your Honor, will
3 be Scott Fischer.

4 THE COURT: Good afternoon.

5 THE WITNESS: Hello.

6 THE COURT: Please raise your right hand.

7 (Witness sworn.)

8 THE COURT: Go ahead and have a seat.

9

10 SCOTT FISCHER

11 Called as a witness on behalf of the State,
12 was previously sworn and testified as follows:

13

14 DIRECT EXAMINATION

15 BY MR. LEE:

16 Q Good afternoon, sir.

17 A Hello.

18 Q Would you please state your first and last name
19 and spell your last name for the record.

20 A Scott Fischer, F-i-s-c-h-e-r.

21 Q How are you employed?

22 A I work for the United States Bureau of Land
23 Management. I'm a --

24 Q In what capacity?

1 A Field staff ranger is my title.

2 Q So would people refer to you as Ranger Fischer?

3 A They would. They can.

4 Q How should we refer to you.

5 A Scott, Fischer...

6 Q How about in a professional capacity, how should
7 we refer to you?

8 A Mist- -- or Ranger Fischer is fine.

9 Q How long have you been with BLM?

10 A I've worked for them -- in two days it will be
11 nine years.

12 Q And prior law enforcement experience before that?

13 A I worked for the National Park Service as a
14 federal officer starting in 2000 -- I'm sorry, 1999.

15 Q Okay. And then have you any expertise with
16 regard to investigating wildland fires?

17 A I do. I have training through the Bureau of Land
18 Management for what we call the FI-210, which is their
19 course for origin and cause investigator. I went through
20 that course in 2011. Since then I've investigated
21 approximately 65 -- or been involved in investigating
22 approximately 65 wildland fires.

23 Q Have you testified with regard to these
24 investigations before?

1 A I've never testified before.

2 Q And are you a member of any fire investigation

3 groups?

4 A I'm not.

5 Q Sir, on -- on -- in late July of 2018, were you

6 called to assist an investigation of -- of what was known

7 as the Perry Fire?

8 A I was.

9 Q When did you begin assisting in that fire

10 investigation?

11 A I was notified of the fire on the evening of the

12 27th, which I believe was a Friday, and requested to come

13 out and assist with it on Saturday morning, the 28th.

14 Q And who did you work with primarily?

15 A Primarily would've been Special Agent Adam Sully

16 with the Bureau of Land Management.

17 Q Did you work in conjunction in the investigation?

18 A Yes.

19 MR. LEE: One moment, Your Honor.

20 Your Honor, I have two demonstrative exhibits

21 I'll present at this point, just so no one gets scared if

22 I'm presenting it. First of all, Exhibit 1.

23 BY MR. LEE:

24 Q Do you recognize what's depicted here?

1 A Yes.

2 Q What are we looking at, generally speaking?

3 A The rectangular is land owned by the -- I believe
4 it's University of Nevada, Reno. And outside that is
5 Bureau of Land Management land. There's a -- a bump
6 left -- kind of upper left corner, that square, that's
7 some type of old mine shaft or something. I'm not exactly
8 sure what it is. And that's the area where the fire
9 started.

10 Q So is that just pretty much right square in the
11 middle of the photograph?

12 A Roughly, yeah.

13 Q So zooming in. Does that show the area you were
14 talking about a little better?

15 A It does.

16 Q And then just to give context with regard to
17 Exhibit 2 here, on the bottom right I see a square, at
18 least that appears on this photograph. Is that the
19 University's square plot of land that you just spoke of?

20 A That's correct.

21 Q And then that brighter color towards the top left
22 of that square, is that the area you mention as the mine
23 or something like that?

24 A That's correct.

1 Q And then at the top cutting across from left to
2 right -- or actually right to left, whichever it is, what
3 is that that we're looking at? And it's in red.

4 A That's Pyramid Highway.

5 Q Okay. So if I were to take Pyramid Highway
6 further to the right of this photo, would I run into
7 Pyramid Lake?

8 A You would.

9 Q Okay. And then to the left of this photo, would
10 that be where roughly the shooting area -- Washoe County
11 shooting range is?

12 A Yeah, it's not far from there.

13 Q So going back to Exhibit 1 here and zooming into
14 this spot that you reference, did you have in your
15 investigation reason to believe that this area was of
16 interest to you?

17 A I did.

18 Q What's that?

19 A Witnesses provided a photograph, and they showed
20 us from the location of where they took that photograph,
21 and it was shoot -- pointed in this general direction
22 towards this possibly mine shaft.

23 And so we utilized that photograph to kind of
24 narrow in the area. And the photograph was -- we were

1 told was taken minutes after the fire had started.

2 Q So I'll show an Exhibit 3 which has previously
3 been admitted. Is that the photograph you speak of?

4 A That's correct.

5 Q And so are those flames close to where that --
6 we'll call it the concrete shaft is?

7 A Correct.

8 Q Now, that only gives you the general broad area;
9 correct?

10 A Yep.

11 Q Were you able to narrow down a more direct area
12 of where the fire started?

13 A We were.

14 Q How'd you do that?

15 A Adam -- Special Agent Adam Sully, he was there
16 the previous evening, and he determined what we call a
17 general origin area. It's one of the three areas we look
18 for as fire investigators. Second would be a specific
19 origin area, and finally the ignition area.

20 I examined his -- the area that he determined as
21 the general origin area by walking around it and through
22 it, and I looked for fire progression indicators, or fire
23 pattern indicators, which are small things that we see
24 that we're taught in our training. As fire progresses

1 through an area, it leaves distinct indicators to show the
2 direction the fire burned.

3 So using those indicators -- there's a variety of
4 different ones -- I concurred with his assessment of the
5 general origin area. And then we worked from the
6 advancing side of the fire in towards eventually the
7 ignition area.

8 Q And let me stop you there real fast. And what do
9 you mean by there's a number of "indicators," you said,
10 correct?

11 A There's 11 different indicators, fire pattern or
12 progression indicators that we use.

13 Q And how about with regard to this specific
14 investigation, did you -- were some more relevant than
15 others?

16 A Absolutely. The main ones that we used for this
17 were protection, is one. We also used cupping white ash.
18 And there was some foliage freeze, which is when a plant
19 is exposed to fire, it causes the -- the leaves to freeze
20 in a certain pattern.

21 Primarily, the -- as we determined these
22 indicators, they all kind of pointed back to this --
23 eventually what we determined to be the ignition area.

24 Q So using these indicators, it helps you narrow

1 down the scope?

2 A Yes.

3 Q Okay. And then with regard to the ignition area,
4 where did it point to? Where did you -- where did it lead
5 you to?

6 A We determined a specific origin area. There is a
7 small -- I call it an island. It had two points of
8 escape. There was a small berm. So on the -- if you're
9 looking at the current map we're looking at, so it'd be on
10 the right side of that concrete structure, right on the
11 corner, to the north side of it, there was a small berm.

12 And the fire progressed out of that berm in two
13 locations. And they are very small. And we basically --
14 after we determined that was our specific origin area, I
15 confirmed that the fire could've only progressed beyond
16 those two -- through those two pieces out. So we
17 determined that area to be our specific origin area.

18 We then worked that area, again, starting on the
19 advancing side down to -- using similar indicators into an
20 area which we called the ignition area, which is
21 approximately a foot, foot and a half in diameter.

22 MR. LEE: May I approach, Your Honor?

23 THE COURT: Yes.

24 ///

1 BY MR. LEE:

2 Q Some more exhibits I'm going to show you.
3 Specifically, Exhibit 15. Do you recognize what's
4 depicted there?

5 A Yes.

6 Q What is that?

7 A That's a sketch. As part of a fire
8 investigation, we do a sketch of the fire scene to
9 indicate how the fire progressed out of the ignition area.
10 In this case, this was a sketch done by Adam,
11 Special Agent Sully.

12 Q And this sketch, does it concur with the
13 testimony you just gave?

14 A It does.

15 MR. LEE: I move to admit Exhibit 15, Your Honor.

16 MR. DAVIS: No objection.

17 THE COURT: It will be admitted.

18 (State Exhibit 15 admitted.)

19 BY MR. LEE:

20 Q So this area that's labeled "old mine tunnel," is
21 that that concrete form that we saw --

22 A Yes, it is.

23 Q -- on the photograph?

24 And then I see a red star with a blue circle and

1 other arrows, and I see also three blue -- looks like
2 humps.

3 Q Could you describe what we're looking at?

4 A Those are actually U's.

5 Q U's?

6 A So when we do sketches, we use symbols to
7 indicate -- so red arrows would be advancing fire
8 indicators, yellow triangles would be lateral fire
9 indicators, and then a U would be a backing indicator.

10 Q And so what is a lateral fire?

11 A So as the fire progresses, there's a predominant
12 head to the fire. So the fire -- the wind pushes the
13 fire, typically, or the terrain causes the fire to
14 advance. As the fire advances, it also burns sideways.
15 And that would be our lateral fire.

16 Q And so in this case the fire initially advanced
17 southeast?

18 A That's correct.

19 Q And then explain the U's again.

20 A The U's would be backing. So in addition to as
21 the fire moves forward, it also will burn backwards. It
22 burns backwards at a very slow rate compared to advancing.
23 Especially when there's wind pushing it. But you will
24 have that backward burn.

1 Q And this -- what you're testifying to today, when
2 was primarily this investigation done?

3 A So that would have been Saturday midday. So
4 the -- I believe that's the 28th.

5 Q So the 28th?

6 A Yeah.

7 Q And at that point were you aware of whether
8 Mr. Radonski had been interviewed by Agent Sully or not?

9 A I had not heard of any interviews being done.

10 Q I'm going to show you next what's been marked as
11 Exhibit 16. What are we looking at there?

12 A It's a cigarette lighter from an automobile.

13 Q And where was that located?

14 A That was -- I don't remember the exact distance,
15 maybe a half mile from the area we investigated for the
16 origin of fire. It was near where the witnesses had
17 viewed the fire initially and taken that picture. It was
18 in the middle of the main road.

19 Q Okay.

20 A The main dirt road that kind of went up there.

21 Q And was that of interest to you?

22 A It was.

23 Q How come?

24 A I had been told that Mr. Radonski had --

1 MR. DAVIS: Objection, Your Honor. Hearsay.
2 Calls for hearsay.

3 MR. LEE: Your Honor, here it's just giving his
4 state of mind as to why it was important to him. It's not
5 offered for the truth of the matter asserted.

6 THE COURT: Okay. I'll allow it for state of
7 mind.

8 THE WITNESS: Special Agent Sully had spoken with
9 the defendant, and there was discussion about a cigarette
10 lighter that may have been missing.

11 MR. LEE: Your Honor, move to admit Exhibit 16.

12 MR. DAVIS: No objection.

13 THE COURT: 16 will be admitted.

14 (State Exhibit 16 admitted.)

15 BY MR. LEE:

16 Q I'm going to hang on to that. I'll ask you about
17 Exhibit 14 in just a moment.

18 So with regard to Exhibit 16, that's what we're
19 looking at, that cigarette lighter?

20 A Yes.

21 Q And is that a -- is that a possible source as
22 well, ignition source?

23 A You can start fires with a cigarette lighter.

24 Q Okay. In Exhibit -- what's in front of you

1 there, 14?

2 A Yes.

3 Q What are we looking at there in Exhibit 14?

4 A That's a map of the fire. It's actually a
5 progression map, so it shows the -- how the fire
6 progressed over multiple days.

7 Q And is that put out by the agency you're employed
8 with?

9 A It is -- it's put out by the Great Basin
10 Management -- Incident Management Group, which is a
11 combination of federal land management agencies that fight
12 wildland fires.

13 Q How big was that fire?

14 A According to the map here, it's 51,400 acres.

15 Q And looking at that map, is that generally the
16 areas you understand of where the fire burned?

17 A It is.

18 MR. LEE: Your Honor, move to admit Exhibit 14.

19 MR. DAVIS: No objection.

20 THE COURT: 14 will be admitted.

21 (State Exhibit 14 admitted.)

22 BY MR. LEE:

23 Q So what we're looking at here at Exhibit 14 of
24 what's titled at the bottom as the Perry Fire, different

1 colors represent different progressions each day of the
2 fire?

3 A That's what I believe.

4 Q And then is that Pyramid Lake there to the top
5 middle?

6 A It would be.

7 Q Okay.

8 MR. LEE: One moment, please, Your Honor.

9 BY MR. LEE:

10 Q This whole area you've spoken of, and
11 specifically the area of the origin, is that within Washoe
12 County?

13 A Yes, sir.

14 Q What was the weather like on Friday evening of
15 the -- or afternoon or evening of the 27th?

16 A As I recall, it was hot, dry. I believe the
17 temperature was in the 80s or 90s and low relative
18 humidity, and there was some wind.

19 Q Is that important to you in your investigation?

20 A Absolutely.

21 Q How come?

22 A Weather will tell us how the fire progresses. So
23 wind and wind direction will help us assess how and where
24 the fire advanced to. In addition, the fire behavior

1 is -- weather condition is really important in how fire
2 behaves and how it moves and how quickly it moves.

3 Q Were the conditions there also dry?

4 A Very dry.

5 Q At the scene, did you ever see a -- a water
6 bottle, approximately 1 1/2 half liter or so --

7 A I did not see one that large.

8 Q Did you see any evidence of scraping let's say on
9 the ground of any dirt or anything?

10 A I did not.

11 Q And any evidence of any suppression efforts of
12 that area of origin?

13 A There was nothing that I would call suppression
14 activity there.

15 Q And then also did you do some type of
16 experimentation with a Roman candle?

17 A We did.

18 Q What did you do?

19 A We went to the regional training facility in --
20 the Washoe County regional training facility. We had fire
21 crews on hand, and we used it -- a Roman candle to
22 simulate and see if -- how it would start a fire. And we
23 were able to successfully start a fire at the training
24 facility.

1 Q And tell us about that, if you could. What did
2 you do?

3 A Detective Atkinson was the one that was actually
4 holding the -- the Roman candle, and it was pointed -- due
5 to the safety considerations and not wanting to get the
6 fire to get out of hand or anything, he was probably less
7 than 10 feet from a bush that had dried cheatgrass at the
8 base of it, and he pointed the Roman candle at that bush.

9 Q And what happened with that bush?

10 A After several projectiles came out of the Roman
11 candle, fires were started.

12 We also tested the cigarette lighter to see if we
13 could get cheatgrass to ignite, and we were able to get a
14 cheatgrass to smoke and to smolder.

15 Q So the cheatgrass smoldered?

16 A That's correct.

17 Q Did you happen to do any tests with regard to
18 lighting the Roman candle with the cigarette lighter?

19 A I don't recall.

20 MR. LEE: Thank you, Your Honor. That's all the
21 questions I have.

22 CROSS-EXAMINATION

23 BY MR. DAVIS:

24 Q Good afternoon, Ranger Fischer.

1 A Hello.

2 Q So you've been a ranger almost nine years; is
3 that right?

4 A With the Bureau of Land Management. I've
5 actually been a park ranger with the National Park
6 Service. I started in 1995. I started in law enforcement
7 with them in 1999.

8 Q Okay. And so you've been trained on how to
9 investigate a crime?

10 A That's correct.

11 Q You've also been trained on how to write a report
12 about your investigation?

13 A That's correct.

14 Q And you know it's important to include in your
15 report all the steps you took during your investigation?

16 A Yes.

17 Q Who you talked to?

18 Is that a yes?

19 A Yes, sir.

20 Q What they said?

21 What -- yes?

22 A Yes.

23 Q What you saw?

24 A Correct. I'm sorry.

1 Q I apologize. So they're recording this, so you
2 have to --
3 A Oh.
4 Q -- answer out loud.
5 A Got it.
6 Q Any physical evidence?
7 A Yes.
8 Q Anything that stands out to you as relevant
9 during that investigation?
10 A Yes.
11 Q And you put all that in your report; right?
12 A That's correct.
13 Q And you try to write your report as -- as soon as
14 possible after your investigation?
15 A That's correct.
16 Q Because you know that it could be months before
17 the State comes back and charges a case; right?
18 A Yes.
19 Q And you might be called to testify at trial?
20 A That's correct.
21 Q And you might have to review the report before
22 trial?
23 A That's correct.
24 Q And your memory is better at the time you write

1 your report than it is several months later.

2 A Absolutely.

3 Q And it's fair to say that for all those reasons

4 that your report is complete?

5 A Yes.

6 Q Accurate?

7 A Yes.

8 Q Truthful?

9 A Yes.

10 Q In this case you didn't prepare a report.

11 A No, sir.

12 Q Now, you met with Victoria Barnett on July 28th;

13 right?

14 A That's correct.

15 Q And isn't it true you didn't obtain any written

16 statement from that?

17 A I did not.

18 Q And on July 28th you went to the scene of the

19 fire; is that right?

20 A That's correct.

21 Q And you were able to identify the ignition area

22 as approximately one square foot in size?

23 A That's correct.

24 Q But you did not find an ignition source or

1 collect any evidence from the ignition area on that day?

2 A That's correct.

3 Q And you took a photograph of a vehicle tire

4 print?

5 A That's correct.

6 Q Did you ever check to confirm that that tire

7 print matched Mr. Radonski's vehicle?

8 A I did not.

9 Q And on August 3rd you went back to the general

10 area of origin for the Perry Fire; right?

11 A On -- I'm sorry, what date?

12 Q On August 3rd.

13 A I -- I did go back. I don't know the specific

14 date, so if that's...

15 Q And from that area of origin, isn't it true that

16 you couldn't see either of the two houses that were burned

17 down from where you were standing?

18 A That's correct.

19 Q Did you see any houses from where you were

20 standing --

21 A There are no houses or structures, other than the

22 mine shaft-type thing there.

23 Q Okay. And during your investigation, you didn't

24 find any evidence that Mr. Radonski intentionally set two

1 houses on fire, did you?

2 A I did not.

3 Q He didn't travel from the spot where the fire
4 initially started to the house and set that on fire, did
5 he?

6 A I have no idea what he did.

7 Q Okay. Did your investigation show that he shot
8 any fireworks at either of those houses?

9 A No, sir.

10 Q Was that no?

11 A No, sir.

12 Q Okay. Are you aware that Mr. Radonski was
13 arrested for third degree arson charges?

14 A I am aware of that.

15 Q Because the fire destroyed sheds, outbuildings,
16 and pump houses? Are you aware of that?

17 A Yes, sir.

18 Q During your investigation, did you find that
19 Mr. Radonski had shot fireworks at any of those
20 structures?

21 A No, sir.

22 Q On August 3rd, you and Agent Sully finally
23 identified the specific point of origin; correct?

24 A I'm sorry, what date?

1 Q On August 3rd.
2 A August 28th.
3 Q So --
4 A I'm sorry, July 28th is when we did the origin
5 and cause investigation.
6 Q So on July 28th, you're -- you're testifying
7 today that you identified the specific point of origin?
8 A I identified the ignition area on August 28th --
9 Q On July --
10 A I believe that's July 28th, the Saturday.
11 Q Was the specific point of origin where David had
12 told Mr. Sully it would be?
13 A I didn't -- I wasn't privy to that conversation.
14 I mean, that would be something that Adam -- Special Agent
15 Sully would have to speak to.
16 Q Now, you did find a water bottle at that scene;
17 correct?
18 A That's correct.
19 Q You determined that that water bottle was not the
20 same bottle that you were looking for?
21 A It was a small -- like a pint size.
22 Q And you also saw boards that were shot up and
23 flimsy?
24 A That's correct.

1 Q And this was approximately one week after the
2 fire had started?

3 A No, this was the next day after the fire started,
4 when we did the origin cause investigation.

5 Q So it's your testimony today that on July 28th
6 you went out to the scene -- yes?

7 A Yes.

8 Q That you saw a water bottle?

9 A Yes, sir.

10 Q That you saw boards that were shot up and flimsy?

11 A That's correct.

12 Q And that was the very next day?

13 A That's correct.

14 Q You know you're under oath; right?

15 A Yes, sir.

16 Q And you determined that the dirt near the area
17 was not disturbed?

18 A There was no indication that anyone had done any
19 fire suppression.

20 Q So there was no signs that firefighters were --
21 put out a fire there?

22 A On the -- the specific origin area, no.

23 Q So how did the fire go out?

24 A Fire burns out. It doesn't necessarily have to

1 be put out by water or firefighting activity.

2 Q Now, on August 16th, I believe the State asked
3 you about a test that you conducted.

4 A Yes, sir.

5 Q Now, on July 27th, when the fire started, it was
6 a hundred degrees out; right?

7 A Approximately. I don't recall the specific
8 temperature.

9 Q The wind gusts were 19 miles per hour?

10 A Again, I don't recall the specific...

11 Q Is this important information?

12 A Oh, absolutely.

13 Q Would it refresh your recollection to see a copy
14 of a report --

15 A The origin and cause investigation that Special
16 Agent Sully prepared would have the weather at the -- on
17 the first page near the kind of top.

18 Q And just to be clear, you were there, you were
19 present during that test; right?

20 A That's correct. We did take weather for that,
21 that test. I did not -- I was there as a participant of
22 the test. It was the county Detective Atkinson who was
23 the one that was conducting the test.

24 Q Okay. So you didn't determine the humidity that

1 day, the temperature?

2 A We did.

3 Q You did -- they did, but you didn't?

4 A The -- I -- I actually have a weather -- a device
5 where we measure weather, and I used that and I gave them
6 the readings off of it.

7 Q Okay. And so on that day can you tell me if the
8 humidity was 22 percent?

9 A On the day that we conducted the test, is that --

10 Q Correct.

11 A -- what you're asking?

12 As I recall, it was probably within that -- that
13 same -- again, I didn't -- I don't -- I did not prepare a
14 report for that. That was something that I was there to
15 assist them with, and I gave them that information.

16 Q Are you aware that the wind gusts were 3 to 8
17 miles per hour during that test?

18 A That -- again, I don't recall the exact wind
19 measurements, but I did measure them and I did provide
20 that information to Detective Atkinson.

21 Q All right. Let's talk about the tests for a
22 minute. So you shoot a Roman candle at some brush.

23 A Mm-hmm.

24 Q Is that right?

1 A That's correct.

2 Q And it started a fire?

3 A That is correct.

4 Q And within 60 seconds that fire had spread to an
5 approximate size of 5 feet by 5 feet?

6 A That's correct.

7 Q That's correct. And fire crews on scene had to
8 extinguish that fire?

9 A That's correct.

10 Q Can you tell me how they extinguished that fire?

11 A Used water.

12 Q And in your test, was there any way that you
13 could have put out that fire with a bottle of water?

14 A No, sir.

15 Q Was there any way that you could have put that
16 fire out with a flimsy piece of wood?

17 A Doubtful.

18 Q And on the date of your test, the humidity was
19 higher -- and I'll move on because I will ask Detective
20 Atkinson those questions.

21 So on the date of -- of this fire, would you say
22 that it would be nearly impossible, if the conditions were
23 the same as the test day, to put the fire out with a
24 bottle of water?

1 A From my experience, I would say it would be
2 impossible.

3 Q Impossible. And impossible to -- to put it out
4 with a piece of wood; right?

5 A That's correct.

6 Q The only way you could put this out would be
7 with?

8 With what?

9 A Well, you could either do water or, as a
10 firefighting technique that we use -- I'm also a wildland
11 firefighter -- where you build a line, scratch a line in
12 the -- in the ground, and it prevents the fire from
13 progressing past where you've scratched that line.

14 So really the two techniques that you would
15 either do, you'd need a shovel in order to do that, or you
16 could use water.

17 Q Okay. But when a fire is spreading this quickly,
18 that would be difficult to do?

19 A It would be very difficult, especially if you
20 were by yourself.

21 Q Now, you had testified that this was the lighter
22 that you had found during your investigation?

23 A That is correct.

24 Q Are you aware if this lighter was fingerprinted?

1 A I don't know that. I collected it as evidence.
2 I turned it over to Detective -- I'm sorry, Special Agent
3 Sully, and I believe he turned it over to Detective
4 Atkinson.

5 Q And is this lighter -- is this -- does this photo
6 depict where it was found?

7 A That is correct.

8 Q And there's no brush around that; right?

9 A No, it was in the middle of a road.

10 Q Okay. And did you ever determine that the
11 cigarette lighter started this fire?

12 A No, sir.

13 Q Did you make any determination as to how this
14 fire started?

15 A No, sir.

16 Q All right. I have no further questions. Thank
17 you.

18 A Thank you.

19 MR. LEE: Nothing to follow up, Your Honor.

20 THE COURT: Okay. Did you want him to remain, or
21 can he go about his duties?

22 MR. LEE: He can be excused, please.

23 MR. DAVIS: He can be excused.

24 THE WITNESS: Thank you.

1 THE COURT: So you are free to go about your
2 duties, or you can wait out there.

3 THE WITNESS: Thank you.

4 MR. LEE: Your Honor, State's next witness will
5 be Adam Sully.

6 THE COURT: Good afternoon. Please raise your
7 right hand.

8 (Witness sworn.)

9 THE COURT: Go ahead and have a seat.

10 THE WITNESS: Thank you.

11
12 ADAM SULLY

13 Called as a witness on behalf of the State,
14 was previously sworn and testified as follows:

15
16 DIRECT EXAMINATION

17 BY MR. LEE:

18 Q Sir, could you please state your name and spell
19 your last name for us.

20 A Adam Sully.

21 Q And how are you employed?

22 A Spelled S-u-l-l-y.

23 I'm a special agent with the Bureau of Land
24 Management.

1 Q And sorry I didn't give you time to spell your
2 name. Appreciate that.

3 So what are your duties in that capacity?

4 A I'm a -- I'm a criminal investigator with the
5 U.S. Department of Interior, Bureau of -- Bureau of Land
6 Management.

7 So we investigate crimes that occur either on
8 BLM-administered land or -- there's a nexus. So it --
9 like for in this instance, if a fire burns on the BLM that
10 starts somewhere else, then there's that nexus. So we'll
11 do property crimes, natural resource crimes.

12 Q Where's -- where's your home base?

13 A In Salem, Oregon.

14 Q So how did you get involved in -- in
15 investigation of the Perry Fire?

16 A So I'm a fire investigator, and part of that
17 detail -- part of those responsibilities, I'll go on
18 details in different areas if they're shorthanded for
19 investigators. And so I was down here for two weeks to
20 conduct fire investigations for the BLM.

21 Q And did you just happen to be here when this fire
22 started?

23 A Yes, I was.

24 Q Okay. Did you -- and so were you at the -- at

1 the fire scene out by Pyramid Highway, in that general
2 area of the Perry Fire, on the night of Friday, July 27th
3 of this year?

4 A Yes, I was.

5 Q And at some point while there -- and, I'm sorry,
6 were there suppression efforts going on that night?

7 A When I got out there, there were suppression
8 efforts going on.

9 Q Later you and -- and Scott Fischer determined an
10 area of origin; is that correct?

11 A Correct.

12 Q Was there any suppression efforts specifically at
13 that area, meaning firefighters or anything, or did the
14 fire already move past that area?

15 A There was a fire truck out there. It had moved
16 past -- it already burned that area and had burned to the
17 southeast when I had got there.

18 Q That night, on July 27th, out there at the scene,
19 did you come into contact with an individual identified to
20 you as David Radonski?

21 A Yes.

22 Q Do you see that individual in the courtroom
23 today?

24 A Yes, I do.

1 Q Could you please point out where he's located
2 and, say, color of shirt he's wearing?
3 A Yeah. He's sitting at the table in front just to
4 your left in the gray shirt.
5 MR. LEE: And may the record reflect
6 identification of Mr. Radonski by this witness?
7 THE COURT: The record will so reflect.
8 BY MR. LEE:
9 Q What was your contact with Mr. Radonski on that
10 Friday night?
11 A So I had secured what -- where the fire had
12 started and was heading back out. I was contacted by one
13 of the firefighters who said that there was someone kind
14 of -- at that point it was called a staging area, just off
15 the Pyramid Highway, who had said that they had something
16 to report regarding the fire.
17 Q And that was of interest to you?
18 A Correct.
19 Q So did you respond to that location?
20 A I did.
21 Q Is that when you were introduced to Mr. Radonski?
22 A Yes, it is.
23 Q Did you converse with him?
24 A Yes, I did.

1 Q What did he tell you that was of interest to you
2 with regard to the fire?

3 A He told me that he was out there earlier in the
4 day on his motorcycle, and when he was traveling on the
5 highway, he saw the fire. At that time he said he saw two
6 vehicles leaving the area at a high rate of speed. He
7 described them as desert racing or leaving the area,
8 kicking up a lot of dust as they were leaving.

9 And then he gave a description of two vehicles he
10 saw that he thought were related to the fire. He tried --
11 he said he tried to catch up to the vehicles to get a
12 better description, but his motorcycle couldn't keep up
13 with the vehicles.

14 Q That night did he tell you anything as well about
15 a lighter?

16 A Yes.

17 Q What did he say?

18 A He said that he had dropped a lighter out there
19 either on Saturday -- sometime before that, before Friday,
20 last week, and that he said we might find a silver lighter
21 out there.

22 Q Did he tell you what kind of lighter it was?

23 A He said it was a push button-type lighter.

24 Q Okay. So I'm going to show you what's been

1 previously admitted as Exhibit 16. Does -- does
2 Exhibit 16 look familiar to you?

3 A Yes.

4 Q And is that something that was found by you and
5 Scott Fischer out near the area of origin?

6 A Yes, it is.

7 Q How close approximately from that area of origin
8 did you find this?

9 A It was down the road, I would say probably --
10 estimate maybe a quarter mile.

11 Q Okay. But just -- was it in the road?

12 A Yes.

13 Q And does that -- does that, as depicted in
14 Exhibit 16, match what Mr. Radonski was telling you that
15 he left behind?

16 A Yes.

17 Q Was that comment that he made Friday night of
18 interest to you?

19 A Yes, it was.

20 Q Why?

21 A It -- that and some other comments were just out
22 of the ordinary that he would mention that he was afraid
23 that there's evidence that we would find or things that --
24 he didn't say "evidence," he didn't describe that, but

1 | things that we might find that -- that were his in that
2 | area.

3 | Q You said "that and some other" things. Do you
4 | have any examples of any other things he said?

5 | A When he was describing the vehicle that he saw
6 | leaving the area, I asked him if -- if there was anything
7 | out of the ordinary of the vehicle that would stand out,
8 | and he said, well -- he said he has a blue Durango and
9 | that it looked similar to that. And he said he was
10 | concerned about coming back out to the area; that someone
11 | might think it was him that started the fire.

12 | Q But when you contacted him, he had a motorcycle;
13 | is that right?

14 | A That's correct.

15 | Q About how long were you out there at the staging
16 | area?

17 | A I probably --

18 | Q Let me -- I'm sorry, let me ask it a different
19 | way.

20 | About what time did you leave? Not necessarily
21 | how long were you there.

22 | A It would have been about 3:30 the next morning.

23 | Q So on Saturday morning?

24 | A Saturday morning, yes.

1 Q Did Mr. Radonski -- had he already taken off by
2 then?

3 A Yes.

4 Q About when did he leave?

5 A I spoke with him about 9:00. I know there was
6 some other people that saw him in the area. I'm not sure
7 exactly what time, but probably around 10:30 or 11:00 he
8 had left the area that we were at.

9 Q Okay. That's when you last saw him?

10 A Mm-hmm.

11 Q And then did you have -- was that the last
12 contact you had with him for a few days?

13 A Yes.

14 Q Did you then have another contact with
15 Mr. Radonski on Tuesday, July 31st?

16 A I did.

17 Q And what was the purpose of that?

18 A I asked -- previously on the 30th of July I
19 asked -- called Mr. Radonski and asked if he was willing
20 to come in and do an interview, kind of give us that story
21 again. And he was willing to do that.

22 Initially he said he was not available on the
23 31st, but then he called me that morning and said that
24 he -- that he got off of work early and that he was

1 available to come in on the 31st.

2 Q So did you, in fact, interview him?

3 A Yes.

4 Q Where did that take place?

5 A At the Washoe County Sheriff's Office.

6 Q In the interview room, was anyone else present?

7 A No.

8 Q Just you and Mr. Radonski?

9 A Yes.

10 Q At that interview, was he free to go?

11 A Yes.

12 Q Initially?

13 A Yes.

14 Q Was he told that?

15 A Yes.

16 Q How about were any doors locked, anything like

17 that?

18 A No.

19 Q Was he shown that as well?

20 A I showed him that the door was open.

21 Q Was he -- anything to make him comfortable? Was

22 he given water or anything like that?

23 A I gave him a cup of water. Yeah, I asked -- I'm

24 sorry, a bottle of water and asked if there was anything

1 else he needed.

2 Q Did he say he did?

3 A No.

4 Q And then with regard to the initial conversation,
5 was it free-flowing?

6 A Yes.

7 Q And you'd ask a question; he'd give an answer?
8 Any problems?

9 A No.

10 Q What was the story he gave you initially?

11 A Initially it was the same as he had gave me that
12 night out there; that he was out there in the area on his
13 motorcycle.

14 And then changed it to that he had his Dodge
15 Durango out there and then went back to get his
16 motorcycle.

17 Q And went back where? Do you know?

18 A Went back to his house, to his apartment.

19 Q Okay. So was that largely the only difference
20 really from his initial story on Friday to then?

21 A Yes.

22 Q Did his story at some point change?

23 A Yes.

24 Q How so? How'd that come about?

1 A I had a -- the reporting party had taken a
2 photograph of a blue SUV that matched his. I had that
3 photograph. And I showed him that, and then at that time
4 I asked him is -- I said, "This is your vehicle; right?"
5 And that's when he said yes. And then his story changed.

6 Q At some point during this interview, did you then
7 provide a Miranda admonishment?

8 A Yes.

9 Q Did Mr. Radonski indicate to you that he
10 understood his rights?

11 A Yes, he did.

12 Q And did he continue talking to you?

13 A Yes, he did.

14 Q And answering questions?

15 A Yes.

16 Q And was the conversation after that point
17 still -- I'll say free-flowing?

18 A Yes.

19 Q I'm going to show you what's been admitted
20 already as Exhibit 3. Is this the photo that you just
21 described that you had showed him?

22 A Yes, it is.

23 Q On the bottom right here, I see something. What
24 is that handwriting?

1 A I asked him to initial the photograph when I had
2 shown it to him, showing his vehicle.

3 Q So is that, then, his initials?

4 A Yes.

5 Q Did he -- what did he say about that vehicle as
6 depicted there in that exhibit?

7 A He said that was his vehicle.

8 Q Did you ask him regarding the look of the
9 vehicle, whether it had changed?

10 A Yes.

11 Q Explain that, if you could.

12 A That night of Friday the 28th, it had a silver --
13 it was blue color with a silver after-market bumper on it.

14 And then later that week it had been painted
15 black, the silver had been painted black, and one of
16 the -- or two of the fenders had been painted black as
17 well. And he said that he had painted that, those, after
18 the fact, after the fire had started.

19 Q So then after -- after -- when his story began to
20 change, what did he say then of how this all happened?

21 A He said that he went out there to do some
22 shooting. He went up to this location where the fire had
23 started. He unloaded two 55-gallon drums that were in the
24 back of his vehicle.

1 He had one Roman candle firework. And he lit the
2 firework, aimed the firework in the direction of the
3 barrels, and then the firework started the brush on fire.

4 Q One moment.

5 Did he state he -- he shot any more than just the
6 one Roman candle?

7 A I don't believe so.

8 Q Did -- did he state anything with regard to a
9 lighter?

10 A He said he started it with the push-button -- the
11 vehicle lighter.

12 Q Did he say it was that one that was located,
13 or -- or did he say that type of ignition source?

14 A I don't recall if he described that one.

15 Q What did he state with regard to -- did he say
16 anything about, after the fire had started, what he tried
17 to do?

18 A He said the fire had started. He tried to dump
19 some water on it, and that didn't put it out. He said he
20 picked up a board, and he said he wasn't fanning it, the
21 fire, he said he was trying to scoop dirt onto it, but
22 that didn't put it out.

23 Q Did he tell you anything about the size of the
24 water bottle?

1 A He said it was -- because the -- the water bottle
2 I gave him to drink during the interview was a small --
3 like a 12-ounce bottle. And I asked if it was that size,
4 and he said no, it was a larger size water bottle, like
5 a...

6 Q Was there anything like that size that he
7 described out on the scene when you got there?

8 A No.

9 Q And he -- did he indicate whether he left it
10 behind or whether he took it with him?

11 A He left it -- he said he left it behind.

12 Q And then with regard to the shoveling dirt on it
13 that he told you, when you were out at the scene, did you
14 see any evidence of that?

15 A No.

16 Q With regard to the Roman candle, what did he
17 state as far as how he was shooting it?

18 A He said he was -- described it as aiming it in a
19 horizontal position towards the barrels and then standing
20 back kind of -- there's an old abandoned mine there, so he
21 was away from that, but kind of in that direction towards
22 the barrels.

23 Q And were the barrels inside the mine or outside
24 the mine that he told you?

1 A Outside.

2 Q In this area, then, that he described, what's
3 around that's, say, a possible -- that could ignite?

4 A There's -- there's dry grasses, sagebrush,
5 juniper bushes.

6 Q In your experience -- you said you're a fire
7 investigator?

8 A Correct.

9 Q -- are those all things that can light up pretty
10 fast?

11 A Yes, they are. Especially with the conditions
12 that were out there on those days.

13 Q Like what?

14 A The hot, dry, with multiple days that are in --
15 you know, above 90s. So -- and then the -- the wind at
16 that time makes those conditions where they'll ignite very
17 rapidly.

18 Q Did he say anything with regard to knowing the
19 legality of fireworks?

20 A Yes.

21 Q What was that?

22 A He said that he knew it was illegal to shoot the
23 Roman candle fireworks in that area.

24 Q And then how about with regard to dangerousness?

1 In the context of when he said he was shooting or having
2 shot in the past, what did he say about that?

3 A He said that he only -- I had asked if a fire had
4 ever started when he was out shooting, and he said he only
5 shoots at paper targets. He said he had one steel target,
6 but he only puts it in like a dirt area, away from dry
7 brush or ignitable material.

8 Q Did you ask him whether he had tried to call 911?

9 A I did.

10 Q What did he say?

11 A He did not.

12 Q Did he give a reason?

13 A I don't recall his reason.

14 Q So going back here -- correct me if I'm wrong --
15 he said he was -- he admitted that was his vehicle leaving
16 the fire area. Where did he state he went after that?

17 A So he was driving out. He said he initially
18 headed south on Pyramid Highway, which would be away --
19 turning away from heading back towards town, and then
20 turned back around. He went to the -- I guess that would
21 be on the west side of the -- of the freeway there to
22 another area where he unloaded the barrels and shot at the
23 barrels.

24 Q And this is after the fire?

1 A That's after the fire started, yes.

2 Q Did he tell you about how long he did that?

3 A I don't recall the exact time that -- yeah, that

4 he said, but...

5 Q Where did he say he went after shooting those

6 barrels?

7 A After that, he went back into town. I know he

8 made one stop and then went to his apartment where he got

9 the motorcycle and came back out.

10 Q And is that when you met him?

11 A Correct.

12 Q Did he tell you what stop he made?

13 A I don't recall.

14 Q And then are you aware of the total cost of

15 that -- of the suppression efforts so far?

16 A At this time, yeah, the -- the approximate cost,

17 yes.

18 Q How much?

19 A It's right around \$4.8 million right now.

20 Q And that's just -- again, just to be clear,

21 that's just suppression; that's not property damage?

22 A Correct.

23 MR. LEE: Can I have a quick moment, Your Honor.

24 Thank you. I'll pass the witness.

CROSS-EXAMINATION

BY MR. DAVIS:

Q Good afternoon, Agent Sully.

A Good afternoon.

Q You've been a special agent for how many years?

A Since 2009.

Q Trained on how to investigate a crime?

A Correct.

Q And trained on how to write a report about an investigation?

A Yes.

Q And in this case, you prepared a report; right?

A Yes.

Q And it's accurate?

A Yes, it is.

Q Complete?

A Yes.

Q And truthful?

A Yes.

Q And your report was based upon the origin and cause of the fire; right?

A Correct.

Q And you estimated that the time of ignition was 5 p.m. on July 27th?

1 A Yes.

2 Q And it was first reported at 5:10 p.m. on July

3 27th; right?

4 A Yes, I believe so, just going from memory, yeah,

5 without having the report in front of me.

6 Q And is it your recollection that Ms. Barnett was

7 the individual that first reported the fire?

8 A Yes.

9 Q Right when she had cell phone service; right?

10 A Yes.

11 Q And you arrived on scene on July 27th at 7 p.m.?

12 A Yes, that sounds about right.

13 Q And you contacted BLM firefighters and I believe

14 it was Engine B3903?

15 A Yes.

16 Q And during your investigation, did you learn what

17 time that first fire engine responded to the fire?

18 A I don't recall.

19 Q Now, you determined that the fire originated just

20 east of an abandoned mine.

21 A Correct.

22 Q Is that right?

23 A Yes.

24 Q And at 8:35 p.m. you protected the general origin

1 area of the fire with green tape?

2 A Yes.

3 Q And let the incident commander know to keep
4 firefighters out of that area? Is that right?

5 A That's correct.

6 Q And that was more than three hours after the fire
7 had initially started; right?

8 A Yes.

9 Q So during that three-hour time frame, you're not
10 aware of how many fire fire -- firefighters walked through
11 that area, are you?

12 A No.

13 Q You're not aware if any of that landscape had
14 been altered --

15 A No, I'm not --

16 Q -- are you?

17 A No.

18 Q Or disturbed?

19 A No.

20 Q And at about 8:45 p.m. you met with Mr. Radonski
21 who had voluntarily arrived on scene; right?

22 A That's correct.

23 Q He provided you with a written statement?

24 A Yes.

1 Q And at the time you met with Mr. Radonski, was
2 David Wheeler present?

3 A I believe so.

4 Q Did Mr. Wheeler provide a written statement?

5 A He did not.

6 Q Did you obtain Mr. Wheeler's contact information?

7 A I know we -- I can't remember if we got it that
8 night. I know we made contact with him. But I don't
9 recall if it was that night or not.

10 Q Did -- did you make an effort to interview him?

11 A Yes, we did.

12 Q When you met with Mr. Radonski, you learned that
13 he frequents the area where the fire started; right?

14 A Yes.

15 Q He camps there; correct?

16 A Yes.

17 Q He looks up at stars?

18 A Correct.

19 Q And he shoots there as well?

20 A Yes.

21 Q Was your conversation with Mr. Radonski on that
22 first instance recorded in any way?

23 A No, it was not.

24 Q And you also met with Victoria Barnett in this

1 case?

2 A Yes.

3 Q Did you have her fill out a written statement?

4 A I did not.

5 Q And you met with Sanche (phonetic), and I'm going
6 to pronounce this last name probably incorrectly, but
7 Khongkhatiham, and that's spelled
8 K-h-o-n-g-k-h-a-t-i-h-a-m. You met with him as well;
9 right?

10 A That's correct.

11 Q And did you ever have him fill out a written
12 statement?

13 A No, I did not.

14 Q You were able to identify the ignition area as
15 approximately one square foot in size; right?

16 A That's correct.

17 Q But when you first went out there on July 28th,
18 you didn't find an ignition source or collect any evidence
19 on that first July 28th day, did you?

20 A No, I did not.

21 Q On July 30th you then contacted Mr. Radonski to
22 set up an interview?

23 A Correct.

24 Q And you wanted him to come in on July 31st?

1 A Yes.

2 Q And he did voluntarily come in and he met with
3 you at the Washoe County Sheriff's Office?

4 A Correct.

5 Q In fact, he showed up early; right?

6 A I believe so.

7 Q I think he was there 30 minutes early.
8 Now, you interrogated Mr. --
9 MR. LEE: Objection. There's not a question
10 there.
11 BY MR. DAVIS:

12 Q Did you -- did he show up 30 minutes early?

13 A Yes, I believe so.

14 Q Thank you, Agent Sully.
15 Now, you interrogated him in this case; right?
16 Or you interviewed him.

17 A Inter -- yes.

18 Q And he remained in that interview room for more
19 than four hours; is that accurate?

20 A I don't know the exact time, but...

21 Q Now, during that period when he was in there, you
22 would get up and leave the room to go and meet with
23 Detective Atkinson; correct?

24 A Correct.

1 Q And you did that multiple times during this
2 four-hour period?

3 A Yes.

4 Q In fact, during that four-hour time frame, you
5 got up and left the room approximately eight times;
6 correct?

7 A I'd have to look at the video.

8 Q That's fair. I can withdraw that question.
9 And during the time when you were leaving the
10 room and meeting with Detective Atkinson, Mr. Radonski
11 remained in that room; correct?

12 A That's correct.

13 Q That door was shut; right?

14 A Yes, it was.

15 Q Now, you gave Mr. Radonski a Beheler
16 admonishment; right?

17 A Yes, I did.

18 Q Then you obtained a confession from him,
19 statement from him; right?

20 A Yes.

21 Q And after you did this, you then read him his
22 Miranda warnings?

23 A Yes, I did.

24 Q And then had him repeat his statement; right?

1 A Yes.

2 Q You told Mr. Radonski that that door was
3 unlocked, didn't you?

4 A I did.

5 Q But when he got up to leave the room, the door
6 was, in fact, locked, wasn't it?

7 A That I don't know.

8 Q Sir, did you ever lock that door?

9 A I did not lock it, no.

10 Q Are you aware if anybody locked that door?

11 A It was locked after Detective Atkinson said that
12 they were going to go forward with making an arrest and
13 that he wasn't free to leave at that point, after the
14 admission.

15 Q And so he couldn't leave?

16 A After that point, no.

17 Q During the interrogation, you thanked
18 Mr. Radonski for coming in voluntarily?

19 A Yes.

20 Q You thanked him for his willingness to help with
21 the investigation?

22 A That's correct.

23 Q Told him he was free to go at any time?

24 A Yes.

1 Q That he was not under arrest?
2 A That's correct.
3 Q You told him to be honest?
4 A Yes.
5 Q Told him to be honest multiple times. Right?
6 A Yes, I did.
7 Q David asked you what the legal standing would be,
8 didn't he?
9 A He did.
10 Q But you didn't end your interview at that point,
11 did you?
12 A I did not.
13 Q You didn't end it for him to consult with a
14 lawyer; right?
15 A No.
16 Q Instead, you continued asking him questions;
17 correct?
18 A Correct.
19 Q In fact, you told him it would look a lot better
20 if he told you what happened; right?
21 A Yes.
22 Q And Mr. Radonski asked you if he would be under
23 arrest, didn't he?
24 A I'd have to look at the report. Yes.

1 Q Do you not remember if -- if he asked you that?
2 A I don't remember if he asked me that.
3 Q Would it refresh your recollection to see a copy
4 of the transcript?
5 A Yes.
6 Q One second.
7 MR. DAVIS: Your Honor, may I approach?
8 THE COURT: Yes.
9 MR. DAVIS: (Inaudible) 53.
10 BY MR. DAVIS:
11 Q So, sir, I'm going to ask that you look at that
12 transcript. And when you're done looking at it, on page
13 53, I'm going to just ask that you look up.
14 A Okay. I -- I...
15 Q Mr. Radonski asked you if he would be under
16 arrest?
17 A Yes.
18 Q And you told him that was not your call?
19 A That's correct.
20 Q And he ultimately then told you what happened;
21 right? Right?
22 A I'd have to look and see if it was -- if he had
23 said before that or not. But -- but, yes, he told me
24 that.

1 Q Even though he was scared? Do you remember him
2 telling you that he was scared?

3 A Yes.

4 Q And he told you it was just a complete accident;
5 right?

6 A Yes.

7 Q He admitted that he went there to go shooting;
8 correct?

9 A Yes.

10 Q He previously told you that he worked in the gun
11 industry?

12 A Yes.

13 Q That he sandblasted guns?

14 A Yes, he did.

15 Q That he had shot off some Roman candles?

16 A Yes.

17 Q That he had lit that with his vehicle cigarette
18 lighter?

19 A Yes.

20 Q That he had shot them in the direction of an
21 empty 55-gallon steel drum that was placed in front of an
22 abandoned mine; right?

23 A Yes.

24 Q But that one of the Roman candles had

1 malfunctioned. He told you that; right?

2 A Yes.

3 Q And that Roman candle had struck some vegetation?

4 A Yes.

5 Q And that was near the corner of the cave; right?

6 A It was outside the cave. It was to the east of

7 it.

8 Q All right. And that started the fire?

9 A Yes.

10 Q David admitted to you that he tried to put the

11 fire out?

12 A Yes.

13 Q With a water bottle. Yes?

14 A Yes.

15 Q And with one piece of wood that was nearby?

16 A Yes.

17 Q He told you he couldn't get it under control?

18 A Correct.

19 Q So he left that area?

20 A Correct.

21 Q And he went shooting in another area; correct?

22 A That's correct.

23 Q David told you that this was a hundred percent

24 complete accident, didn't he?

1 A Yes.

2 Q That he had no intention of setting the valley on
3 fire?

4 A Correct.

5 Q And he didn't call the police because he was
6 scared. Right?

7 A Correct.

8 Q And even though he didn't call the police, he did
9 voluntarily meet with you within hours of this fire
10 starting. He did; right?

11 A He met with me, but the story was --

12 Q Story was different.

13 A Yeah.

14 Q But he met with you?

15 A Yes.

16 Q He showed up, and he talked to you and told you
17 that that was -- you might find his cigarette lighter out
18 there?

19 A Correct.

20 Q He described two vehicles that were in that
21 location. He described one of the vehicles as looking
22 like his own. Right?

23 A That's correct.

24 Q And that was at that first time that he

1 voluntarily met with you.

2 A Yes.

3 Q He then voluntarily met with you again for over
4 four hours to help assist with this investigation when he
5 came into the sheriff's office.

6 A Correct.

7 Q He was there voluntarily.

8 A Yes.

9 Q And he apologized for this incident.

10 A Yes.

11 Q He was extremely sorry. Right?

12 A I'd have to find those words in -- in --

13 Q And -- and if -- if you can't remember, it's in
14 the transcript at page 59, if you want to take a minute to
15 look.

16 A Okay.

17 Okay.

18 Q He was extremely sorry; right?

19 A Yes.

20 Q He also offered to take you to collect the
21 barrels that he shot at in the desert?

22 A Yes.

23 Q And he signed a search warrant to allow police to
24 search his phone?

1 A Correct.

2 Q And prior to signing that form, David wanted to
3 know when he would get his phone back?

4 A Yes.

5 Q And you told him he would get his phone back that
6 same day. And this is on page -- if you can't recall,
7 this is on page 75 of the transcript.

8 A Okay.

9 Okay, I see that.

10 Q So you told him he would get his phone back that
11 same day?

12 A Yes.

13 Q That if he didn't want to wait for it, he could
14 actually come back and get it; is that correct?

15 A Correct.

16 Q You told David he could come back in and get his
17 phone multiple times; right?

18 A Correct.

19 Q And based upon what you told him, he gave you
20 consent to search his phone; right?

21 A Yes.

22 Q And prior to that, David had showed you the one
23 single photo he took of the fire that was on his phone?

24 A Yes.

1 Q And after admitting to accidentally starting the
2 fire, he even offered to take you to his house to collect
3 the remaining fireworks, didn't he?

4 A Yes.

5 Q He -- he said he would voluntarily give them up,
6 didn't he?

7 A Yes.

8 Q But he did not agree to sign a search warrant for
9 his house; right?

10 A Correct.

11 Q So you left David in that small room by himself
12 for almost two hours after that; is that correct?

13 A I'd have to look at the time, but, yes, he was in
14 there.

15 Q Would it refresh your recollection to see a copy
16 of the video and the time that you left him in that room?
17 Would that refresh your recollection?

18 A Yes.

19 THE COURT: Mr. Davis, there's been no video
20 marked.

21 MR. DAVIS: Your Honor, may I approach and have
22 this marked?

23 THE COURT: Yes.

24 (Defense Exhibit 1 marked.)

1 BY MR. DAVIS:

2 Q Before I go further, is this the room where you

3 interviewed Mr. Radonski?

4 A Yes, it is.

5 Q Do you recognize that room?

6 A Yes, I do.

7 Q How do you recognize that?

8 A From being in there with Mr. Radonski when I did

9 the interview.

10 Q Is that you in the video?

11 A Yes.

12 Q Is that Mr. Radonski in the video?

13 A Yes, it is.

14 Q And is this the interview that we've been

15 discussing?

16 A Yes, it is.

17 Q Okay.

18 So this is the time where you're discussing

19 whether or not he's going to consent to the search of his

20 house; right?

21 A Okay.

22 Q It's about two hours and 15 minutes in.

23 A Mm-hmm.

24 Q And then at two hours and 17 minutes, you leave

1 the room. And the next time you return it's when you're
2 with Detective Atkinson; right?

3 A Yes.

4 Q Now I'm going to fast-forward the video. And can
5 you see that timestamp --

6 A Yes, I do.

7 Q -- in the corner?

8 Is Mr. Radonski in that room still by himself?

9 A Yes.

10 Q Now, at about four hours and 14 minutes into the
11 video, you see that you're in the room; right?

12 A That's correct.

13 Q And Detective Atkinson is there. So my question
14 to you was: You left David in that small room by himself
15 for almost two hours. Is that correct?

16 A Correct.

17 Q Now, I believe you testified that you weren't
18 aware that the door was locked.

19 A Right.

20 Q Now, on August 3rd you went back to the general
21 origin area of the Perry Fire; right?

22 A Yes.

23 Q And you found a plywood board in that area?

24 A Yes.

1 Q You also found a smaller water bottle.

2 A Yes.

3 Q And that was approximately one week after the

4 fire had started?

5 A Correct.

6 Q Agent Sully, isn't it true that the origin area

7 of the Perry Fire is in a remote, rural location?

8 A Yes, it is.

9 Q Far from any schools; correct?

10 A Correct.

11 Q Far from any parks?

12 A Correct.

13 Q Any playgrounds?

14 A Correct.

15 Q Any areas frequented by children? Right? It's

16 far from that.

17 A The origin is, yes.

18 Q And isn't it a fact that the origin of the fire

19 is far from any residential homes?

20 A Yes.

21 Q Now, there were two houses that burned in this

22 fire; right?

23 A Yes.

24 Q Can you tell me how far were those houses from

1 the origin of the fire?

2 A I cannot.

3 Q I believe they were both located on Piute Creek
4 Road. Right?

5 A I believe so.

6 Q Agent Sully, you went out on the scene of the
7 fire; correct?

8 A Correct.

9 Q And you were there at the area of the origin
10 multiple times?

11 A Yes, I was.

12 Q And isn't it true that you couldn't see any homes
13 from that location?

14 A I could not, no.

15 Q And during your investigation, you didn't find
16 any evidence that Mr. Radonski intentionally set either of
17 those two houses on fire, did you?

18 A No.

19 Q Isn't it a fact that he didn't travel from the
20 spot where he was to that house and set it on fire, did
21 he?

22 A No.

23 Q He didn't aim a firework at that house and set it
24 on fire, did he?

1 A No.

2 Q So you don't feel like he was intentionally
3 trying to burn down those houses; right?

4 MR. LEE: Objection. It's a legal answer or
5 conclusion.

6 MR. DAVIS: Your Honor, my response is that for a
7 first-degree arson charge, he has to show that he
8 intentionally and maliciously started this fire and burned
9 down these two homes.

10 Agent Sully drafted a report. He made certain
11 findings, and those findings go directly towards whether
12 or not the State can prove their case.

13 If -- if Agent Sully in his investigation as a
14 firefighter believes that these fires were intentionally
15 set, he's going to put that in his report, and he can
16 testify to that. If he doesn't believe that that is
17 actually accurate, I believe he can testify that --
18 testify to that, too.

19 THE COURT: Well, I agree it is a legal
20 conclusion that is saved for the trier of fact and not for
21 a witness. Not everything in a report is admissible.

22 BY MR. DAVIS:

23 Q Let me ask you this: Did you find any evidence
24 that he was trying to burn down those two homes?

1 A No.

2 Q You ultimately determined that this fire was
3 possibly started by fireworks; correct?

4 A That's correct.

5 Q Fireworks that ignited dry grass and sagebrush?

6 A Yes.

7 Q Now, as you sit here today, isn't it true that
8 there's absolutely no evidence, zero evidence, that
9 Mr. Radonski used any accelerants to start this fire?

10 A That's correct.

11 Q No gasoline?

12 A Not that we found.

13 Q No acetone?

14 A No.

15 Q No Tannerite?

16 A No.

17 Q And is it your best guess that this fire was
18 started exactly how Mr. Radonski told you it was?

19 A Yes.

20 Q By shooting off Roman candles?

21 A Yes.

22 MR. DAVIS: Nothing further.

23 THE COURT: Mr. Lee, any redirect?

24 MR. LEE: Very briefly.

REDIRECT EXAMINATION

BY MR. LEE:

Q I'll actually show you -- actually, Exhibit 14,
do you recognize Exhibit 14 here?

A Yes.

Q What does that show?

A The area of the fire as it burned.

Q Is that the extent of it?

A Yes.

Q And so in this -- did it start there somewhere
towards the top left corner?

A Yes.

Q Of the coloring, the dark --

A Correct.

Q -- dark green color?

A Yes.

Q Did that fire start by Mr. Radonski, by his own
words?

A Yes, it did.

Q He stated he lit the Roman candle; right?

A Yes, he did.

Q He stated he threw the Roman candle; right?

A Yes.

Q And that fire caused those two houses to be

1 burned?

2 A Yes, it did.

3 Q And all the other property at different locations
4 within what we see here on Exhibit 14?

5 A Yes.

6 MR. LEE: That's all the questions I have.

7 MR. DAVIS: Nothing in response to that, Your
8 Honor.

9 THE COURT: May he be excused for today?

10 MR. DAVIS: Yes.

11 MR. LEE: Please.

12 THE COURT: Agent Sully, you may step down, and
13 you are excused --

14 THE WITNESS: Thank you.

15 THE COURT: -- for today.

16 MR. LEE: Your Honor, State's last witness, and
17 that will be Detective Atkinson.

18 THE COURT: Mr. Lee, we're going to take a brief
19 five-minute break. Does Mr. Radonski need to go use the
20 restroom or anything?

21 MR. DAVIS: I think he's all right, Your Honor.

22 THE COURT: All right. So it will be five
23 minutes. It is -- looks like 4:17, so we'll be back about
24 4:22.

1 MR. LEE: Thank you, Your Honor.

2 (Recess from 4:16 p.m. to 4:21 p.m.)

3 THE COURT: So we're back on the record with 18
4 SCR 1187. All parties are present. The State has called
5 Detective Atkinson, who is at the -- witness on the chair.

6 So I'm going to swear you in.

7 (Witness sworn.)

8 THE COURT: Okay. Go ahead and have a seat.

9 THE WITNESS: Thank you.

10 THE COURT: Mr. Lee, the ones that you're not
11 using for this witness, could you let the clerk have them
12 so she can scan them?

13 MR. LEE: Yes.

14 THE COURT: Okay.

15 MR. LEE: And if you can give me a moment, I'll
16 even put them in order.

17 THE COURT: Oh, that's not necessary.

18 MR. LEE: Okay.

19

20 WILLIAM ATKINSON

21 Called as a witness on behalf of the State,
22 was previously sworn and testified as follows:

23 ///

24 ///

DIRECT EXAMINATION

BY MR. LEE:

Q All right, Detective, if you could please state your first and last name and spell your last name for us.

A William Brian Atkinson, A-t-k-i-n-s-o-n.

Q And, sir, how are you employed?

A I'm a detective with the Washoe County Sheriff's Office.

Q How long have you been in law enforcement?

A Working on my 20th year.

Q All with the sheriff's office?

A Yes.

Q And what's -- what are you currently assigned to?

A I'm currently assigned to the criminal investigations unit, specifically the property division as well as an ancillary assignment of arson investigations.

Q So did you investigate the arson -- or the case known as the Perry Fire?

A I did.

Q Did you ultimately determine it to be arson?

A I did.

Q I'm going to bounce around just a little bit, but starting off first: Were you at the -- at the scene or at the command post, let's say, of the Perry Fire on Friday,

1 February -- excuse me, July 27th?

2 A Yes, I was.

3 Q Did you come in contact with an individual named

4 David Radonski?

5 A I did not.

6 Q Did you see him there?

7 A I did not.

8 Q I'm sorry?

9 A I did not.

10 Q Okay. At any time that night did you see him

11 there?

12 A I did not. I was told he was there.

13 Q Okay. When you -- what time did you leave that

14 scene?

15 A Approximately 3 a.m.

16 Q Did you at some point come into contact with

17 Mr. Radonski?

18 A I did not. I'd spoke with Special Agent Sully,

19 Chief Beaver and other individuals who had --

20 Q Well, and I'm talking about in general. Did you

21 meet him, say, on even a Tuesday?

22 A Oh, yes.

23 Q Okay.

24 A Excuse me.

1 Q Do you recognize Mr. Radonski if you see him?
2 A I do. Yes.
3 Q Is he in the courtroom today?
4 A Yes, he is.
5 Q Where is he located?
6 A He's seated at the defense table.
7 Q Okay. What color shirt?
8 A Gray.
9 Q And is that based on your recognition of him from
10 meeting him on that Tuesday?
11 A Yes.
12 MR. LEE: Can the record reflect this witness's
13 identification of Mr. Radonski?
14 THE COURT: The record will so reflect.
15 BY MR. LEE:
16 Q Are you familiar, Detective Atkinson, with a
17 Roman candle?
18 A Yes, I am.
19 Q What is that?
20 A It's a type of firework.
21 Q Have you -- what -- what does it do?
22 A You light the fuse end, and it essentially will
23 emit like a flaming ball that will potentially explode,
24 or, depending upon the style of Roman candle, may explode

1 or just burn, like a -- what's called a star, emitting a
2 light.

3 Q Does each Roman candle just light one of those
4 balls?

5 A There's ten of them. So it kind of goes in
6 succession, and it just keeps going until the fuse has
7 burned its way through the end of the Roman candle.

8 Q Did you -- were you participating in the search
9 warrant of Mr. Radonski's residence?

10 A Yes, I was.

11 Q What street is that on?

12 A Kuenzli.

13 Q Is that downtown Reno area?

14 A Yes.

15 Q Did you also search his vehicle, a blue Dodge
16 Durango?

17 A Yes.

18 Q Inside his residence -- we'll start there
19 first -- what, if anything, did you find that was relevant
20 to your investigation on this case?

21 A Multiple fireworks; ammunition, those consistent
22 with ammunition from the fire scene, as well as ammunition
23 that was consistent from his vehicle.

24 Q How many fireworks?

1 A Approximately two boxes. Approximately the legal
2 paper box size, like reams of paper would fit in it.

3 Q Okay. So two of those boxes worth?

4 A Yes.

5 Q Were they your boxes that you put them into?

6 A Yes.

7 Q Okay. And then how about in his vehicle, what
8 did you find?

9 A Multiple cigarette lighters, the ones that would
10 push into a car that you would light a cigarette -- or
11 they're officially called a cigar lighter.

12 Q Is it similar to the one that was -- you were
13 aware that was found quarter mile to a half mile from the
14 area of origin?

15 A Yes.

16 Q How many were there?

17 A I'd say approximately three additional were
18 found.

19 Q Was that more than there were slots in the
20 vehicle for?

21 A Yes.

22 Q Going back to the fireworks that were found in
23 the residence, any Roman candles found there?

24 A Yes.

1 Q And how many? Do you recall?

2 A I believe there was nine additional Roman candles
3 found.

4 Q Were you aware that there were -- that
5 Mr. Radonski in his interview had mentioned something
6 about barrels that he was shooting?

7 A Yes.

8 Q What -- what were those? What were you looking
9 for?

10 A I was looking for steel barrels, steel drums,
11 approximately the size of the 55-gallon drums.

12 Q Did you do some research into where that might
13 have -- those might have come from?

14 A I did.

15 Q Where did you determine they came from?

16 A I determined they came from Legacy International,
17 his employer. He was given permission to take a barrel
18 from work, which was subsequently located later.

19 Q Okay. What were the barrels? Were they empty?

20 A To my knowledge, they were supposed to have been
21 emptied. They contained an acetone that Legacy
22 International uses for their cleansing /stripping of
23 metals, and they use it in their -- their process. But
24 they were supposed to be empty, yes.

1 Q Okay. And then did you eventually find these
2 barrels?
3 A I did.
4 Q Where?
5 A Just to the outside of the Perry Fire on the --
6 I'm going to say it's the north -- kind of northwest side
7 of Pyramid Highway, deep in a canyon.
8 Q Both? Two barrels found?
9 A Two barrels found.
10 Q Did those barrels match the ones that were taken
11 from his work?
12 A Yes, they did.
13 Q Or, I'm sorry, I shouldn't say that. Let me
14 clarify.
15 Did they match the type of barrels that his work
16 had?
17 A Yes.
18 Q That area that the barrels were found, what could
19 you see from there?
20 A Looking back from the ravine where they were
21 found, you could see the northern portion of the fire and
22 where the fire was progressing through.
23 Q So if -- if I had been there on the evening or
24 afternoon of the 27th after the fire had started in that

1 location, could I have seen and watched the fire?

2 A Yes.

3 Q This whole area, the area of origin and
4 everywhere where the fire burned, was that within Washoe
5 County?

6 A Yes, it was.

7 Q Did you also go inside the area that had burned
8 to -- well, as part of your investigation?

9 A Yes, I did.

10 Q For any other reason?

11 A No.

12 Q Were you looking for anybody for their safety or
13 anything?

14 A I was.

15 Q What was that?

16 A We'd received reports there was an elderly
17 gentleman who had been contacted by -- or family members
18 had been contacted by fire, who they were unable to
19 confirm as to whether or not he had been spoken to or seen
20 of.

21 So after the fire, we went -- or once containment
22 was established, we went into the fire scene looking for
23 him and trying to establish whether or not he was alive
24 and his well-being.

1 Q Okay. Did you also take some pictures while you
2 were out there?

3 A Yes, I did.

4 Q As well, did you -- did you go -- before
5 searching the vehicle -- and when did you search the
6 vehicle?

7 A The same day, Tuesday -- I don't know the exact
8 date, but Tuesday.

9 Q When he was interviewed?

10 A Yes.

11 Q Did you -- had you gone out to his residence to
12 see the vehicle first before that?

13 A I had.

14 Q Okay. I'm going to first show you what's been
15 marked as -- right there -- Exhibit 4. And then I'm also
16 going to show you Exhibit 18.

17 Do you recognize those?

18 A Yes, I do.

19 Q How do you recognize those?

20 A These are the vehicles identified from
21 Mr. Radonski's residence, his Durango that was registered
22 to him.

23 MR. LEE: Your Honor, I move to admit Exhibit 4
24 and 18.

1 MR. DAVIS: No objection.

2 THE COURT: They will be admitted.

3 (State Exhibits 4 & 18 admitted.)

4 BY MR. LEE:

5 Q First looking at Exhibit 4 here.

6 A Mm-hmm.

7 Q What color -- may not show up as well in these

8 lights. What color was that fender?

9 A Silver/gray.

10 Q When you went back out, was it the next day after

11 that picture was taken?

12 A No, that picture was taken late Friday/early

13 Saturday morning. And I went back out the following

14 Monday.

15 Q Okay. So you went back out the following Monday.

16 Is this Exhibit 18 what you saw?

17 A Yes, it is.

18 Q What was the difference?

19 A The front fender had been changed from the

20 silver/gray color to a black.

21 Q Okay. And then with regard to your going out in

22 the area of the scene, showing you first Exhibit 17.

23 Do you recognize that?

24 A Yes, I do.

1 Q What is that?

2 A It was an overall damage assessment map that was
3 given to me showing properties and areas of damage within
4 the fire boundaries.

5 Q Okay. Then I'm also going to show you Exhibits
6 21, 22, and 23. Lay those all out here in front of you.

7 Generally speaking, what -- what are we looking
8 at there?

9 A A damaged vehicle, second damaged vehicle with
10 contents, and then kind of a damaged property area with
11 like stairs and some barrels.

12 Q Did you take these pictures?

13 A I did.

14 Q Is that at 2355 Piute Creek?

15 A Yes.

16 Q I'm going to show you more exhibits -- 24, 25,
17 26, 27, and 28. Go ahead and take a look at these too.
18 Thumb through them, and look up when you're done.

19 Do you recognize all those?

20 A I do.

21 Q Did you take those photos?

22 A Yes, I did.

23 Q And are those from 2400 Piute Creek?

24 A Yes, they are.

1 MR. LEE: I would move to admit -- excuse me --
2 21 through 28.

3 MR. DAVIS: No objection.

4 THE COURT: They will be admitted.

5 (State Exhibits 21 - 28 admitted.)

6 BY MR. LEE:

7 Q And then going back to 17, you mentioned this is
8 a printout of the area of the fire; correct?

9 A Correct.

10 Q Those blue dots, what are those showing?

11 A Those were damage assessed that different teams
12 within the fire suppression efforts would document, damage
13 to different structures, residences, outbuildings, as they
14 would go through with their suppression efforts.

15 Q Okay. Detective, were you aware, was there
16 damage located at the address of 300 Microwave Road?

17 A Yes.

18 Q 1800 Wrangler Road?

19 A Yes.

20 Q 455 Wrangler Road?

21 A Yes.

22 Q 1955 Piute Creek?

23 A Yes.

24 Q 2055 Piute Creek?

1 A Yes.

2 Q 2155 Piute Creek?

3 A Yes.

4 Q 2000 Piute Creek?

5 A Yes.

6 Q 2355 Piute?

7 A Yes.

8 Q 2400 Piute Creek?

9 A Yes.

10 Q 5100 Wayside?

11 A Yes.

12 Q 3600 Right Hand Canyon?

13 A Yes.

14 Q 3700 Right Hand Canyon?

15 A Yes.

16 Q And -- and/or 1200 Whiskey Springs?

17 A Yes.

18 Q Looking at these exhibits here, first Exhibit 28,

19 that 2355 [sic] Piute Creek, what are we looking at there?

20 A That was a -- essentially on the right-hand side

21 of the picture from my -- my angle of it, you have a

22 trailer that was there and there's no longer the tires on

23 it and it's just basically the steel frame of that

24 trailer.

1 Q Okay. Exhibit 27, still at the same address,
2 what are we looking at there?

3 A That was a bus that was in kind of the middle of
4 that property that has been converted, had a couple rows
5 of seats and then some additional cleared-out seats.
6 Wheels were gone.

7 Q Exhibit 26, what is that?

8 A That was an outbuilding. You can see the cinder
9 blocks down kind of running from the left to the kind of
10 more of the center of the screen of an outbuilding that
11 was there. So kind of like the foundations or footings
12 that they had set up for this outbuilding.

13 And then on the right edge of the white, closer
14 to the tree, is -- there's actually some shingles. You
15 can see some of those.

16 Q (Inaudible) to Exhibit 25?

17 A This was another trailer that was built into the
18 property. You can see the footings where they'd taken the
19 tires off of it. At the foreground of the picture on the
20 right-hand side of the steel frame that's left is one of
21 the footings for it.

22 Q And then Exhibit 24, is that just more of an
23 overall of what you just described?

24 A Yes.

1 Q I'm sorry, I think I got that backwards. Is that
2 at 2400?

3 A That's 2400; correct.

4 Q So now looking at 2300 [sic], Exhibit 21, what do
5 we see there?

6 A These were barrels when we first walked into the
7 property. It kind of surrounded a trench that goes down
8 behind the barrels.

9 Q Exhibit 23?

10 A This was a truck of some sort. We don't know
11 what it was used for. Had tires on it and is completely
12 flattened, and it's just left of the -- the frame and
13 steel left of it.

14 Q And then Exhibit 22. It's kind of dark, but can
15 you tell what we're looking at?

16 A Yes. This was another truck that was facing the
17 road on the property at 2355. In the back it had like
18 paint can size of like old MRE or C-Rations.

19 MR. LEE: One moment, Your Honor. I think I'm
20 almost done.

21 BY MR. LEE:

22 Q And then just to be clear, that area of where the
23 origin is near, is there a road, a dirt road going by
24 there named Appian Way?

1 A Yes, sir, it's just to the -- should be to the
2 north of it.

3 MR. LEE: That's all I have, Your Honor.

4 THE COURT: Mr. Davis?

5 CROSS-EXAMINATION

6 BY MR. DAVIS:

7 Q Good afternoon, Detective Atkinson.

8 A Good afternoon.

9 Q Now, you seized a number of items from
10 Mr. Radonski's residence; is that right?

11 A Yes.

12 Q I'd like to take a few moments to go through
13 that.

14 You found a number of firearms in his residence;
15 correct?

16 A Yes.

17 Q And you seized those firearms? Is that accurate?

18 A Yes.

19 Q None of those firearms are believed to have been
20 used or involved in the Perry Fire; correct?

21 A In the ignition of the fire or --

22 Q In the ignition of fire.

23 A Correct.

24 Q And Mr. Radonski is a U.S. citizen, isn't he?

1 A Yes.

2 Q He has no prior felonies?

3 A No.

4 Q No convictions of any kind; right?

5 A No.

6 Q And he's able to lawfully possess firearms?

7 A Correct.

8 Q He's able to lawfully possess ammunition?

9 A Correct.

10 Q Now, you found a box of shooting supplies and
11 targets at his residence; right?

12 A Correct.

13 Q He's able to lawfully possess those as well? Is
14 that accurate?

15 A Some, yes.

16 Q Now, during your search you found a tub of binary
17 exploding target material. Right?

18 A Correct.

19 Q That's also known as Tannerite?

20 A Correct.

21 Q Tannerite is a brand of an exploding target, and
22 that's used for firearm practice?

23 A Correct.

24 Q It's not illegal, is it?

1 A In certain aspects, it is.
2 Q It's sold at Scheels --
3 A In the city --
4 Q -- right?
5 A -- of Sparks.
6 Q In the city of Sparks?
7 A Correct.
8 Q Is Sparks in Washoe County?
9 A Yes, it is.
10 Q Okay. So he could lawfully be in possession of
11 something he purchased at Scheels, couldn't he?
12 A He lives in the city of Reno.
13 Q So -- so let me get this straight. So in the
14 city of Reno, Tannerite is not legal?
15 A Correct.
16 Q But in Sparks it is?
17 A Correct.
18 Q Let me ask you this. During the course of your
19 investigation, did you determine that this fire was
20 started using Tannerite?
21 A Initially, I didn't do the origin and cause, so I
22 couldn't ascertain how it started.
23 Q During the course of your investigation, did you
24 ever learn that Tannerite was involved in the ignition of

1 this fire?

2 A I did not.

3 Q During your investigation, did you ever learn

4 that any accelerants were used in the starting of this

5 fire?

6 A I did not.

7 Q Did you find -- I think you testified to this.

8 You found a box of fireworks at Mr. Radonski's house?

9 A Yes.

10 Q And you found some Roman candles there?

11 A Yes.

12 Q Now, isn't it true that when you met with -- when

13 you met with Special Agent Sully -- or, excuse me, when

14 Mr. Radonski met with Special Agent Sully at the Washoe

15 County Sheriff's Office, you were there?

16 A Yes.

17 Q You were actually outside of the room, weren't

18 you?

19 A Yes.

20 Q And you were -- you were looking in. I mean,

21 you -- you were watching a video of what was happening;

22 right?

23 A Yes.

24 Q Okay. And didn't he voluntarily come in there?

1 A Yes, he did.

2 Q And so you're aware that Mr. Radonski told Agent

3 Sully that he had fireworks at his house; right?

4 A Yes.

5 Q And you're also aware that he agreed to go there

6 with the police and give them the fireworks; right?

7 A Yes.

8 Q He volunteered to do this, didn't he?

9 A Yes.

10 Q You also know, then, that he claimed to have

11 purchased the fireworks from a store in Wadsworth?

12 A I didn't hear that.

13 Q You didn't hear that?

14 A I did not.

15 Q Were you watching the testimony?

16 A I had stepped out at one point to use the

17 restroom, and that may have been when that happened. But

18 I didn't hear that he had purchased -- where he had

19 purchased the fireworks from.

20 Q Is Wadsworth in Washoe County?

21 A Yes, it is.

22 Q Is it legal for certain stores in Wadsworth to

23 sell fireworks?

24 A I believe so.

1 Q So if it's legal for them to sell them in
2 Wadsworth, is it legal, then, to purchase those in
3 Wadsworth?

4 A I would have to assume. I don't know how they
5 sell them on tribal land.

6 Q Okay. Now, when you searched Mr. Radonski's
7 house, you confiscated two laptops?

8 A Yes.

9 Q One was a Toshiba laptop; right?

10 A Yes.

11 Q And one was a Dell laptop?

12 A Yes.

13 Q And you were the officer that applied for the
14 search warrant of the house?

15 A Yes.

16 Q When you applied for the search warrant of the
17 house, you didn't put down that you were trying to seek
18 out any computers; right?

19 A We did not.

20 Q Despite that, you confiscated two computers.

21 A Yes.

22 Q And you only listed one of those computers on the
23 return of service?

24 A Should have been both listed.

1 Q Do you believe that you put down both computers
2 on that return?

3 A I thought I had, yes. It should have been both.

4 Q Can you recall -- would it refresh your
5 recollection to see a copy of the return of service?

6 A It would help, yes.

7 MR. DAVIS: Your Honor, can I have this marked?

8 THE COURT: Yes. Is it just one exhibit?

9 MR. DAVIS: Yeah.

10 (Defense Exhibit 2 marked.)

11 BY MR. DAVIS:

12 Q Sir, can you take a moment and look at this
13 return of service?

14 A Absolutely.

15 Q Are you done reviewing it?

16 A Yes.

17 Q And do you see that you didn't list two computers
18 on that? Correct?

19 A Correct.

20 Q There's only one computer that's listed; right?

21 A Correct.

22 Q Now, did you look through those computers?

23 A No.

24 Q So you never obtained a search warrant to go

1 through them?

2 A No.

3 Q Now, there were two houses that burned down in
4 this fire; correct?

5 A Yes.

6 Q And do you know how far the origin of the fire
7 was to the location where the houses were burned?

8 A Several miles.

9 Q Several miles. And they were both on Piute Creek
10 Road?

11 A Yes.

12 Q Are you aware of the days that those houses
13 burned down?

14 A Off the top of my head, no, I'm not.

15 Q Now, on July 27th, you were notified of a
16 suspicious fire; right?

17 A Yes.

18 Q And you were notified at approximately 2341
19 hours?

20 A Yes.

21 Q And the fire was first reported around 5 p.m.
22 that day?

23 A Yes.

24 Q And Mr. Radonski was listed as a person of

1 interest?

2 A Yes.

3 Q Just so I can nail down a timeline, at 5:10 is
4 when a call comes in about the fire; right?

5 A Correct.

6 Q It's believed to have started at 5:00.

7 A Okay.

8 Q And you first respond to the scene when?

9 A Approximately 2341 was when I was notified. I
10 got there maybe a half hour after that.

11 Q And so nobody contacted you from around five
12 o'clock to around 11:00; is that right?

13 A Correct.

14 Q Special Agent Sully did a lot of investigative
15 work for this case, didn't he?

16 A He did.

17 Q And he determined that the fire started just east
18 of the abandoned mine?

19 A Yes.

20 Q And that appeared to have been a target shooting
21 area?

22 A Yes.

23 Q And he had that area protected, didn't he?

24 A He did.

1 Q But prior to having it taped off, you're not sure
2 if any firefighters disturbed that area, are you?
3 A I couldn't...
4 Q You wouldn't know; right?
5 A Yeah.
6 Q Isn't it true that within hours of the fire
7 starting Mr. Radonski came forward and spoke with
8 authorities?
9 A To my knowledge, yes.
10 Q And he did that voluntarily?
11 A Yes.
12 Q On his own free will?
13 A Yes.
14 Q Just hours after the fire started; right?
15 A I don't know an exact time frame, but, yes, he
16 did come Friday and speak to authorities.
17 Q He then provided a voluntary statement?
18 A Yes.
19 Q And he also provided you with his home address?
20 A Yes.
21 Q And on July 30th, you decided you wanted
22 Mr. Radonski to come in for an interview the following
23 day?
24 A Yes.

1 Q And so Agent Sully contacted Mr. Radonski and set
2 that up?
3 A Correct.
4 Q And then came in. And he was interrogated by
5 Agent Sully, wasn't he?
6 A He was interviewed.
7 Q He was interviewed?
8 A Mm-hmm.
9 Q He was interviewed for more than four hours,
10 wasn't he?
11 A He was there for several hours, yes.
12 Q Okay. And during the time that he was there, was
13 he free to go?
14 A Yes, he was, initially.
15 Q Was he told that the door was unlocked?
16 A Yes, he was.
17 Q And isn't it true that the door was, in fact,
18 locked?
19 A No. It was unlocked.
20 Q It was unlocked?
21 A Mm-hmm.
22 Q Did you ever lock the door?
23 A I locked it when Mr. Radonski was Mirandized and
24 the determination was that we were going to arrest him

1 that day. Then it was locked at that point.

2 Q So after he was Mirandized, you then locked the
3 door?

4 A After the interview was concluded and we were
5 done and the PC -- as I was typing the PC up, yes, it was
6 locked at that point.

7 Q And he wasn't free to go at that point?

8 A Correct.

9 Q During his interview, Mr. Radonski admitted that
10 he shot off some Roman candles; right?

11 A Yes.

12 Q And he shot them in the direction of an empty
13 55-gallon steel drum --

14 A Yes.

15 Q -- correct?

16 But that one of those candles had malfunctioned?

17 A He had said it was an accident.

18 Q He said it was an accident?

19 A Yes.

20 Q Would it refresh your recollection to see a copy
21 of that transcript?

22 A It would.

23 Q All right.

24 MR. DAVIS: Your Honor, may I approach the

1 witness?

2 THE COURT: Yeah.

3 BY MR. DAVIS:

4 Q So after you take a minute to review that page,
5 I'm going to ask -- I'm going to ask you my question.

6 A Go ahead.

7 Q So isn't it true that he said that one of the
8 Roman candles malfunctioned?

9 A Yes.

10 Q And it struck some vegetation?

11 A He said it went up or around something and landed
12 in the bush.

13 Q And that started a fire; right?

14 A Can I go to the next page? Because just based on
15 that, it doesn't say anything about starting the fire. It
16 just says it went in the bush.

17 Q Let me ask you this. During the time that you
18 watched the interview, did Mr. Radonski admit that he
19 started the fire?

20 A Yes.

21 Q And he admitted that the fire started because he
22 shot a Roman candle --

23 A Yes.

24 Q -- right? All right.

1 He admitted that he tried to put the fire out,
2 didn't he?

3 A He stated he tried to put the fire out, yes.

4 Q But he couldn't get it under control?

5 A Yes.

6 Q And so he left that area?

7 A Correct.

8 Q Went shooting at another place?

9 A Correct.

10 Q And he didn't call the police because he was
11 scared?

12 A Correct.

13 Q And even though he didn't call the police, he
14 came and he met with investigators; right?

15 A Yes.

16 Q And even after he spray painted his car, he met
17 with investigators; right?

18 A Yes.

19 Q It's not illegal to paint your car, is it?

20 A No.

21 Q Okay. He admitted to accidentally starting this
22 fire; right?

23 A Yes.

24 Q And he offered to take you to the house to

1 collect the fireworks; right?

2 A Yes.

3 Q And, despite that, you arrested him for two

4 counts of first degree arson; right?

5 A Yes.

6 Q You based that upon two residential homes that

7 were burned?

8 A Yes.

9 Q Now, you went out to the scene of this -- of this

10 fire; right?

11 A Yes.

12 Q When you looked around, did you see any homes?

13 A I did.

14 Q You did?

15 A I did.

16 Q Is that "I did"?

17 A Yes, I did see a home. It was destroyed.

18 Q Okay. So from the -- from the origin of where

19 the fire started, you could see houses?

20 A Not from the origin, but you said "the scene."

21 So to me the scene is the entire --

22 Q I apologize.

23 A -- fire scene, the entire encompassing fire.

24 Q From the origin of fire.

1 A Correct.

2 Q You looked around. Could you see any houses?

3 A I could not.

4 Q And you determined, based upon what you heard,
5 that he intentionally started these fires?

6 A Yes.

7 Q Now, in executing your search warrant, the
8 regional Bomb Squad was called out, weren't they?

9 A They were.

10 Q And they found certain exploding materials;
11 right?

12 A Yes.

13 Q That those were used for target practice; right?

14 A Correct.

15 Q They determined that that material was stable?

16 A Yes.

17 Q And you then went to Mr. Radonski's work.

18 A Yes.

19 Q And you met with his HR supervisor.

20 A Yes.

21 Q Confirmed he was employed there?

22 A Yes.

23 Q And confirmed that he had taken two empty
24 barrels; right?

1 A Correct.

2 Q And those barrels, they weren't filled with
3 acetone, were they?

4 A They were not vented and they were not the ones
5 that he was told by the shop foreman that he could take.
6 He took barrels from within the building that have been
7 not dried or vented. So they still had some remnants of
8 acetone in them.

9 Q Are you aware if any acetone was used to start
10 this fire?

11 A There was not.

12 Q Okay. You also found a water bottle on the scene
13 of where the fire started; right?

14 A Yes.

15 Q And you found boards that were shot up and
16 flimsy?

17 A Yes.

18 Q On August 8th you went back to the scene and
19 photographed the area while flying in the RAVEN?

20 A Yes.

21 Q Did -- who was with you when you were flying in
22 the RAVEN?

23 A Myself -- I don't remember the crew chief. I
24 want to say it was Deputy Coffindaffer. The pilot,

1 Sergeant Russell. And one time I had the DA there. And
2 then one time I had Mike Lucido there, our videographer
3 from the sheriff's office.

4 Q So you brought the DA with you to view this
5 evidence?

6 A One of the times, yes.

7 Q And did -- did he go up with you?

8 A Yes.

9 Q Did you ever reach out to our office to see if we
10 wanted to go see the evidence?

11 A I did not.

12 Q Okay. On August 8th you located two black,
13 empty, 55-gallon barrels in the desert; right?

14 A Yes.

15 Q And you don't believe that those were involved in
16 the setting of the fire at all?

17 A Correct.

18 Q Now, on July 27th, when the fire started, the
19 temperature was a hundred degrees out?

20 A Approximately, yes.

21 Q And the wind gusts were up to 19 miles per hour?

22 A Yes.

23 Q The humidity was 12 percent?

24 A Correct.

1 Q Now, you conducted a test in this case; right?
2 A We did, yes.
3 Q And on the day of the test, the temperature was
4 97 degrees?
5 A Yes.
6 Q The wind was 3 to 8 miles an hour?
7 A Correct.
8 Q And the humidity was 22 percent.
9 A Correct.
10 Q The test you conducted was three hours earlier in
11 the day than the actual fire that happened; right?
12 A Correct.
13 Q So is it fair to say that, in the test you
14 conducted, the temperature, humidity and wind conditions
15 were all different than on the day of the incident?
16 A Correct.
17 Q And, in fact, they were all better than on the
18 day of the incident?
19 A Better --
20 Q More humidity, less hot, and the wind wasn't as
21 strong. Right?
22 A Correct.
23 Q Despite that difference in conditions, you lit a
24 Roman candle, you shot it at sagebrush, and within a

1 minute there was a huge fire?

2 A Correct.

3 Q And within 60 seconds it spread to approximately
4 five feet by five feet?

5 A Yes.

6 Q And fire crews on scene had to extinguish that?

7 A Correct.

8 Q And in your test, was there any way that you
9 could have put out that fire with a water bottle?

10 A No.

11 Q Was there any way that you could have put it out
12 with a flimsy piece of wood?

13 A No.

14 Q Would it have been possible to put the fire out
15 without the assistance of firefighters?

16 A It would not.

17 Q So on that date of the fire, if it happened the
18 way David told you it happened, would you agree with me
19 that it would be nearly impossible for him to put the fire
20 out without firefighters?

21 A Yes.

22 Q And the area where the fire started, that was a
23 common target practice area?

24 A I don't know if it's common or not.

1 Q Did it appear to be a popular area for target
2 shooters?

3 A There was shell casings there. Whether it's
4 popular or not, I -- I can't speak to that. But target
5 shooting had occurred there in the past.

6 Q And David told you he liked to go there and shoot
7 guns; right?

8 A He said he liked to go to the area and shoot
9 guns.

10 Q And he actually planned to do that on that
11 particular day; right?

12 A Yes.

13 Q Now, after conducting this entire investigation,
14 is it your opinion that David went out to that spot with
15 some guns and fireworks to intentionally start a fire?

16 A Yes.

17 Q You believe that he intentionally meant to set
18 two residences that he couldn't see on fire?

19 A I believe he intended to start the fire, and I
20 think the subsequent consequence of those residence
21 burning was a result of that fire getting out of control.

22 Q Do you believe that he intentionally meant to
23 start 51,000 acres on fire?

24 A Again, I believe he went with the intent to start

1 a fire, but I believe the intent was not necessarily to
2 burn 51,000 acres. I think it got out of control and it
3 burned beyond what he had initially planned or had thought
4 would happen.

5 Q So you thought he intended to start a fire at a
6 place where he loved to go shooting?

7 A Yes.

8 Q Where he loved to go camping? Yes?

9 A Yes.

10 Q Where he loved to stargaze?

11 A Yes.

12 Q During your investigation, isn't it true that you
13 didn't find any evidence linking Mr. Radonski to any other
14 fire?

15 A Correct.

16 Q You didn't locate any evidence at his house where
17 he was planning on setting a fire?

18 A Correct.

19 Q (Inaudible) planning on setting a fire; right?

20 A Correct.

21 Q And when you searched his phone, you didn't find
22 any articles about setting fires?

23 A Correct.

24 Q About arson?

1 A Correct.

2 Q You didn't locate any evidence at his work that
3 he was planning on setting a fire, did you?

4 A I did not.

5 Q He's never been arrested for arson or for setting
6 fires, has he?

7 A No.

8 Q And when you searched his cell phone, you didn't
9 locate any evidence about him wanting to set fires, did
10 you?

11 A No.

12 Q No evidence that, "Oh, I want to burn Pyramid
13 Lake down"; right?

14 A No.

15 Q So, in reality, you believe that he acted
16 maliciously after the fire started; right?

17 A I believe there was an intent and a maliciousness
18 behind it by not reporting it to the fire department.

19 Q Okay. But that was after the fire started,
20 wasn't it?

21 A Yes.

22 Q Okay. And you believe that because he didn't
23 call 911?

24 A Yes.

1 Q Because he told investigators a different story
2 at first?

3 A Yes.

4 Q And because he painted his bumper?

5 A Correct.

6 Q Even though he met with investigators right after
7 or shortly after the fire started.

8 A Correct.

9 Q And even though he met with investigators for
10 over four hours. Right?

11 A Mm-hmm.

12 Q And even though he said, "Hey, I'll turn over my
13 fireworks"? Yes?

14 A Yes.

15 Q The lighters that you found in Mr. Radonski's
16 car, did you believe that those were used in the ignition
17 of this fire?

18 A I do.

19 Q You do?

20 A Yes.

21 Q Did you have them tested?

22 A I did not have them tested, but I believe they
23 were used to start the fuse for the Roman candle.

24 Q You believe that --

1 A Well, not the ones that we found in his car, the
2 one that we found on the scene.

3 Let me rephrase that for you. The one we found
4 on scene I believe was used for that. The ones we found
5 in his car I do not believe were used for this fire.

6 Q Okay. Now, the one that you found on scene, did
7 you have that one fingerprinted?

8 A We did not.

9 Q And that one was located in the center of the
10 road?

11 A Correct.

12 Q It wasn't located near any bush; right?

13 A No.

14 MR. DAVIS: I have nothing further. Thank you.

15 THE COURT: Any redirect?

16 MR. LEE: No, Your Honor. Thank you.

17 THE COURT: Can we have the exhibits returned?
18 There's some that still need to be scanned.

19 MR. LEE: Judge, can I just confirm with you, I
20 believe from the State's side every exhibit has been
21 admitted. 1 and 2 were demonstrative, so I didn't ask
22 accept. And then 17, 19, and 20 I did not ask. Is that
23 accurate?

24 THE COURT: That's what I have as well.

1 MR. LEE: Okay. Then I'll follow -- if I can,
2 Your Honor, I'll tend to the Court every single exhibit
3 the State has.

4 THE COURT: Including the ones that have not
5 been --

6 MR. LEE: Including the ones that have not
7 been --

8 THE COURT: Okay.

9 MR. LEE: -- admitted. I'll just leave on the
10 clerk's table.

11 THE COURT: Perfect.

12 MR. LEE: And then the rest that have been
13 admitted are in a separate pile.

14 THE COURT: Detective Atkinson, you may step
15 down.

16 THE WITNESS: Thank you.

17 THE COURT: Kind of jumped the gun, and I
18 apologize.

19 MR. LEE: I meant to do that even before he was
20 released, so just in case. So thank you, Your Honor.

21 Your Honor, that's the State's case for today.

22 THE COURT: Mr. Davis?

23 MR. DAVIS: Your Honor, I have conferred with my
24 client, and he will not be testifying today, and we don't

1 have any witnesses to call at this time.

2 THE COURT: And you advised him of his right to
3 testify?

4 MR. DAVIS: I did, Your Honor.

5 THE COURT: Any argument, Mr. Lee?

6 MR. LEE: Briefly, Your Honor, if I could.

7 Your Honor, lighting off Roman candles under
8 these conditions -- hot, dry -- as -- as Ranger Fischer
9 said, extremely dangerous conditions, he knew fireworks
10 were illegal, he even had knowledge of dry and dangerous
11 conditions being a hazard, because he says in his
12 interview that he tries to be careful when he's shooting,
13 so he shoots away from dry brush, talking about previous
14 times using a firearm.

15 Despite knowing that, he still decides to go up
16 to this area on a perfect-condition day for a fire,
17 bringing Roman candles with him, and he shoots one. Each
18 of those candles contains within it multiple balls of
19 fire, if you will, that he fires off.

20 What happened is his act, which was willful, he
21 admitted to willingly lighting this Roman candle -- wasn't
22 lit on accident by any means -- what happens is a
23 51,000-acre fire burning numerous buildings, structures,
24 vehicles, other personal property items, certainly

1 resulting in the destruction of two homes, and then a lot
2 of areas of wildland were destroyed as well. I'll touch
3 on this, these things, just because it's important.

4 With regard to Count V, the State has to show to
5 make this a Category C felony that these items had a value
6 of 5,000 or more. Your Honor heard testimony from the two
7 homeowners as to the values of their properties and the
8 barn and vehicles and other items of personal property
9 well exceeded the \$5,000 there.

10 So the State has to show willfully. And, again,
11 he admitted to doing the act that would set this in
12 motion; again, lighting the Roman candles. That is
13 willfully.

14 As far as maliciously, Your Honor, the statute,
15 193.0175, states that maliciousness can be inferred from
16 an act done in willful disregard; 2, an act wrongfully
17 done without just cause or excuse; or an act betraying
18 willful disregard of social duty.

19 There's a Ninth Circuit case, *U.S. v. Doe*, that
20 states it's "an intentional act creating an obvious fire
21 hazard," is malicious.

22 And then we -- so not only did what he do count
23 as willful and malicious, but what he does afterwards is
24 also interesting.

1 One, he states he tried to put this fire out,
2 saying, "It's an accident; therefore, I tried to put it
3 out." There's no evidence of suppression at the scene.
4 No scraped dirt. That water bottle he said he left there
5 was not there.

6 And then he doesn't call 911. Instead, he goes
7 across the highway to an area with a great vantage point
8 after the fire started and takes time to unload two
9 barrels and shoot them up. And then he -- then he leaves
10 and goes back home.

11 He tells twice a fake story to investigators --
12 once at the scene and then initially at his interview on
13 that next Tuesday -- that some other guys did it. He's
14 trying to put the blame elsewhere.

15 He tries to limit his exposure, worried that,
16 perhaps, there's a truck similar to his that was seen, and
17 he says, "Hey, it might have been a similar truck. You
18 might find a lighter there that I left previously." And
19 it's not until he's actually caught, until he's shown that
20 picture of his truck leaving the scene, that his story
21 changes.

22 And then as far as Count V, Your Honor, gross
23 negligence, there's this definition from *Hart v. Kline*, 61
24 Nev. 96: Gross negligence is a manifestly smaller amount

1 of watchfulness and circumspection than the circumstances
2 require of a prudent man.

3 Gross negligence is manifested by the absence of
4 even slight diligence or want of even scant care or
5 heedless and palpable violation of a legal duty respecting
6 the rights of others.

7 Your Honor, what happened here is Mr. Radonski
8 set a fire in one location just south of Pyramid Highway.
9 What happened then is that fire took off, caused a lot of
10 vegetation to burn, caused a lot of -- or two
11 structures -- two houses and then multiple structures.

12 He is liable on each -- each of those counts.
13 And it's simply because of the statute itself prescribes
14 or prohibits either the setting of fire, burning and/or
15 causing to be burned. By starting a fire in one location,
16 he certainly caused that he burned a house even miles
17 away.

18 And certainly (inaudible) of arson is not setting
19 the fire, which might cause certain damage, it prescribes
20 the acts of burning that results in different structures
21 or lands. Each separate structure therefore represents a
22 distinct injury and a different count, and that's what the
23 arson statute prescribes.

24 Given all that, Your Honor, for purposes of this

1 hearing, I believe probable cause is sufficiently proven.

2 THE COURT: Mr. Davis?

3 MR. DAVIS: Your Honor, with respect to the first
4 two counts, Mr. Radonski is charged with first degree
5 arson, and that does require that he acted willfully and
6 unlawfully and maliciously to set a fire.

7 The State's correct in that "malice" is defined
8 in NRS 193.0175, and they define it as: Importing an evil
9 intent, wish or design to vex, annoy or injure another
10 person.

11 That's how malice is defined in NRS 193.0175.

12 In *Batt v. State* -- this is 111 Nev. 1127 --
13 that's a Nevada Supreme Court case that discusses -- that
14 discusses intent, and they provide that for a defendant to
15 be guilty of malicious arson, fire must be caused
16 intentionally or by design, rather than accidentally or
17 carelessly, as willful act is done intentionally and not
18 accidentally.

19 So that's our backdrop for both the first degree
20 arson and for the third degree arson counts, because they
21 both require that he acted willfully and maliciously.

22 Now, you heard testimony today from a number of
23 people. Ms. Barnett was the first witness, and she told
24 you that she didn't see anybody start the fire. She saw a

1 vehicle that matched Mr. Radonski's, but, again, she
2 didn't have a description of that individual.

3 And she called I think authorities as soon as she
4 could, from the very beginning, within 10 minutes, and
5 that's when she was able to.

6 And there was no cell phone service in that
7 location, and I thought that that was important because
8 there was no way for Mr. Radonski to make any phone call
9 during that time because that location was so remote,
10 which we heard from a number of witnesses.

11 You also heard from Andrew Chizek. He doesn't
12 know Mr. Radonski. He's never met him. He stated that he
13 didn't have any reason to believe that he wanted to burn
14 down his home. And he testified that the fire burned his
15 home, I believe, on Monday night, and that was a few days
16 after.

17 I think it's important to realize that -- that
18 this origin of fire -- and I asked a number of these
19 witnesses this: Could you see any residence from where
20 the fire started? And all of them said no.

21 And the only thing that I was shocked at was our
22 last witness when -- when he said: Well, at the scene I
23 could see some -- some houses. But at the origin, he
24 couldn't see any.

1 And I just believe that when you're looking at
2 first degree arson charges, you have to have this
3 intentional malice to light that house on fire, to light
4 that piece of property on fire. And from what we've heard
5 today, I just don't think that the State could meet that
6 burden.

7 I think that there's testimony that Mr. Radonski
8 accidentally lit the fire; that he felt sorry about it;
9 that he offered to turn over his fireworks; that he met
10 with police; that he voluntarily met with police, he spoke
11 with them.

12 There was also testimony I believe from our last
13 witness that didn't find anything. There was no text
14 messages about starting fires, there was nothing leading
15 up to the fire.

16 I think that the malice that everybody is trying
17 to put into this case is what occurred after the fire,
18 but -- but my argument is, at the point where the fire
19 started, there was nothing leading up to that point
20 showing that he had this malice and willful, evil intent
21 to start a fire and burn down two houses that you couldn't
22 even see and burn down anything, really, for that matter.

23 You know, I'll concede that some of the actions
24 that he did after the fire started were probably not the

1 best things that he could have done, but they still don't
2 make him guilty of first degree or third degree arson.

3 D- -- in D- -- I think it's Diedre Erwin also
4 testified that her house is miles away from the fire.
5 Again, you couldn't even see the house from -- from where
6 this fire had started.

7 You heard from Ranger Fischer. He didn't
8 determine how the fire was started. He never even drafted
9 a report in this case. And he I think importantly said it
10 wouldn't have been -- it would have been impossible to put
11 out this fire with a bottle of water or with a board.

12 Agent Sully did draft a report about the fire,
13 noting that -- that Mr. Radonski voluntarily came in, he
14 apologized, and he consented to a search of his phone.

15 Those are not actions of somebody that goes and
16 just tries to light things on fire. He has no history of
17 that.

18 I think that for purposes of those four charges,
19 based upon the fact that they have to show some type of
20 evil intent, I don't think that they can bind over on
21 those.

22 With respect to the last charge, that charge was
23 just amended today, and that deals with gross negligence.
24 I will submit that to the Court based upon what you've

1 heard about the fire starting.

2 And that's what I have, Your Honor.

3 THE COURT: As we know, all inferences are drawn
4 in favor of the State. And so it appears to me from the
5 complaint on file herein and from the testimony adduced at
6 the preliminary examination that the crimes of first
7 degree arson, Count I; first degree arson, Count II; third
8 degree arson, Count III; third degree arson, Count IV; and
9 destruction of timber, crops or vegetation by fire, Count
10 V, have been committed and there is sufficient evidence to
11 believe that the defendant, David Charles Radonski,
12 committed said crimes.

13 I hereby order that the defendant be bound over
14 to the Second Judicial District Court to answer to the
15 charges.

16 We will return all exhibits.

17 We need to have one of your exhibits so we can
18 scan it in.

19 MR. DAVIS: I never admitted it, Your Honor,
20 so...

21 THE COURT: Well, and that's the video. That was
22 already -- that was --

23 THE CLERK: But wasn't there an affidavit marked
24 to be --

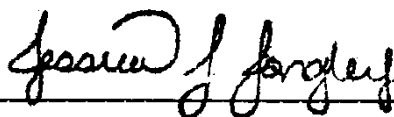
1 THE COURT: We still scan them in if they're
2 marked.
3 MR. LEE: (Inaudible) warrant returned?
4 THE COURT: Have the warrant returned?
5 MR. DAVIS: Oh, okay, yeah.
6 THE COURT: Yeah, we still scan them in. I
7 didn't view them.
8 (Proceedings concluded at 5:14 p.m.)
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1 I, JESSICA LONGLEY, Justice of the Peace of
2 Washoe County, sitting as Committing Magistrate in Sparks,
3 Washoe County, Nevada, hereby certify:

4 That Darby Talbott transcribed the proceedings
5 had in the preliminary examination in the matter of THE
6 STATE OF NEVADA, Plaintiff, vs. DAVID CHARLES RADONSKI,
7 Defendant.

8 That when the examination of the witnesses and
9 the presentation of evidence was closed, it appearing from
10 the evidence adduced at said preliminary hearing that
11 there was reasonable cause and sufficient grounds to
12 believe that said defendant probably committed such crime
13 as charged.

14 That said defendant was then bound over to the
15 Second Judicial District Court.

16 
17 _____

18 Justice of the Peace

19 Sparks Township, sitting as Committing
20 Magistrate in Sparks, Washoe County,
21 Nevada
22
23
24

1 STATE OF NEVADA)
2)
3 COUNTY OF WASHOE)
4
5

6 I, DARBY TALBOTT, hereby state:

7 That I transcribed from a CD the proceedings
8 entitled herein into typewriting as herein appears;

9 That the foregoing transcript is a full, true
10 and correct transcription to the best of my ability of
11 said proceedings.

12 That the foregoing transcript, consisting of
13 pages 1 through 164, contains a full, true and complete
14 transcript of said transcription,
15

16 DATED: At Sparks, Nevada, this 22nd day of
17 October, 2018.

18 
19 _____
20 DARBY TALBOTT

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**SECOND JUDICIAL DISTRICT COURT
COUNTY OF WASHOE, STATE OF NEVADA**

**AFFIRMATION
Pursuant to NRS 239B.030**

The undersigned does hereby affirm that the preceding document, _____
All pertinent information being sent to Second Judicial District Court for bindover proceedings

(Title of Document)

filed in case number: CR18-1731



Document does not contain the social security number of any person

-OR-



Document contains the social security number of a person as required by:



A specific state or federal law, to wit:

(State specific state or federal law)

-or-



For the administration of a public program

-or-



For an application for a federal or state grant

-or-



Confidential Family Court Information Sheet
(NRS 125.130, NRS 125.230 and NRS 125B.055)

Date: 10.23.18

Kelli Pinger
(Signature)

Kelli Pinger
(Print Name)

(Attorney for)

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

STATE OF NEVADA,

Plaintiff,

vs.

Case No. BIND-2018

DAVID CHARLES RADONSKI,

Defendant.

NOTICE OF BINDOVER

DEFENDANT'S NAME: David Charles Radonski

AKA's:

DATE OF BIRTH: 04/04/1984

DATE OF BINDOVER: 10/8/2018

JUSTICE COURT: Sparks Justice Court

J/C Case Number: 18-SCR-01187 DA Case Number: 18-8562

Co-Defendant(s): N/A

DAS Supervision: No

PROSECUTING ATTORNEY: Matthew D. Lee

DEFENSE COUNSEL: Public Defender

☐ BAIL BOND FORFEITURE

Start Date

☐ BAIL BOND

☐ CASH BAIL

DA #18-8562

WCSO WC18-003578

FILED
Electronically
CR18-1731
2018-10-16 01:11:23 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 6930680 : jalvarez

CODE 1800
Christopher J. Hicks
#7747
P.O. Box 11130
Reno, NV 89520
(775) 328-3200

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF WASHOE

* * *

THE STATE OF NEVADA,

Plaintiff,

v.

DAVID CHARLES RADONSKI,

Defendant.

Case No.: CR18-~~1116~~ ¹⁷³¹

Dept. No.: D01

INFORMATION

CHRISTOPHER J. HICKS, District Attorney within and for the
County of Washoe, State of Nevada, in the name and by the authority
of the State of Nevada, informs the above entitled Court that DAVID
CHARLES RADONSKI, the defendant above-named, has committed the
crime(s) of:

COUNT I. FIRST DEGREE ARSON, a violation of NRS 205.010, a
category B felony, (50414) in the manner following, to wit:

That the said defendant, DAVID CHARLES RADONSKI, on or
about July 27th, 2018, within the County of Washoe, State of Nevada,
did willfully, unlawfully, and maliciously set fire to, burn and/or

///

1 cause to be burned a dwelling house located at or near 1955 Piute
2 Creek Road, Washoe County, Nevada.

3 COUNT II. FIRST DEGREE ARSON, a violation of NRS 205.010, a
4 category B felony, (50414) in the manner following, to wit:

5 That the said defendant, DAVID CHARLES RADONSKI, on or
6 about July 27th, 2018, within the County of Washoe, State of Nevada,
7 did willfully, unlawfully, and maliciously set fire to, burn and/or
8 cause to be burned a dwelling house located at or near 2055 Piute
9 Creek Road, Washoe County, Nevada.

10 COUNT III. THIRD DEGREE ARSON, a violation of NRS 205.020,
11 a category D felony, (50416) in the manner following, to wit:

12 That the said defendant, DAVID CHARLES RADONSKI,
13 on or about July 27th, 2018, within the County of Washoe, State of
14 Nevada, did willfully, unlawfully, and maliciously set fire to, burn
15 and/or cause to be burned unoccupied personal property of another
16 having a value of \$25.00 or more, to wit: outbuildings, vehicles
17 and/or other property located at or near 300 Microwave Road, 1800
18 Wrangler Road, 455 Wrangler Road, 1955 Piute Creek Road, 2055 Piute
19 Creek Road, 2155 Piute Creek Road, 2000 Piute Creek Road, 2355 Piute
20 Creek Road, 2400 Piute Creek Road, 5100 Wayside Road, 3600 Right Hand
21 Canyon Road, 3700 Right Hand Canyon Road and/or 1200 Whiskey Springs
22 Road, Washoe County, Nevada.

23 COUNT IV. THIRD DEGREE ARSON, a violation of NRS 205.020, a
24 category D felony, (50416) in the manner following, to wit:

25 That the said defendant, DAVID CHARLES RADONSKI,
26 on or about July 27th, 2018, within the County of Washoe, State of

1 Nevada, did willfully, unlawfully, and maliciously set fire to, burn
2 and/or cause to be burned timber, forest, shrubbery, crops, grass,
3 vegetation or other flammable material not his own, originating at or
4 near a dirt road south of Pyramid Highway, near Appian Way, and
5 spreading across a large area of land, in Washoe County, Nevada.

6 COUNT V. DESTRUCTION OF TIMBER, CROPS OR VEGETATION BY
7 FIRE, a violation of NRS 475.040, a category C felony, (51827) in the
8 manner following, to wit:

9 That the said defendant, DAVID CHARLES RADONSKI, on or
10 about July 27th, 2018, within the County of Washoe, State of Nevada,
11 did, with gross negligence, light a fire for any purpose at any place
12 in the open and thereby, or by any other means, set fire to any
13 growing timber or forest, shrubbery, crops, grass or vegetation, and
14 thereby cause the destruction of any timber, forest, crops, grass,
15 vegetation or property not his own, said loss resulting therefrom
16 being \$5,000.00 or more, to wit: the said defendant did start a fire
17 at or near a dirt road south of Pyramid Highway, near Appian Way, and
18 spreading across a large area of land, in Washoe County, Nevada.

19 ///

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1 All of which is contrary to the form of the Statute in such
2 case made and provided, and against the peace and dignity of the
3 State of Nevada.

4
5 CHRISTOPHER J. HICKS
6 District Attorney
7 Washoe County, Nevada

8 By: /s/ Matthew Lee
9 MATTHEW LEE
10 10654
11 DEPUTY DISTRICT ATTORNEY
12
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1 The following are the names and addresses of such witnesses
2 as are known to me at the time of the filing of the within
3 Information:

4 WASHOE COUNTY SHERIFF'S DEPARTMENT:

5 WILLIAM BRIAN ATKINSON

6 FIRE MARSHAL, NORTH LAKE TAHOE FIRE PROTECTION DISTRICT:

7 MARK REGAN 866 ORIOLE WAY INCLINE VILLAGE, NV 89451

8 BUREAU OF LAND MANAGEMENT, 1717 FABRY RD SE, SALEM OREGON 97306:

9 ADAM SULLY

10 SCOTT FISCHER, BLM AGENT CARSON CITY, NV

11 VICTORIA BARNETT, 7000 MAE ANNE AV #314 RENO, NV 89523

12 SAMCHAI "SAM" KHONGKHATITHAM, 6591 CHULA VISTA DR SPARKS, NV 89436

13 ANDREW CHIZEK, 1200 WHISKEY SPRINGS RD RENO, NV 89510

14 DEIDRE ERWIN, 2055 PIUTE CREEK RD RENO, NV 89510

15 AFFIRMATION PURSUANT TO NRS 239B.030

16 The party executing this document hereby affirms that this
17 document submitted for recording does not contain the social security
18 number of any person or persons pursuant to NRS 239B.030.

19
20 CHRISTOPHER J. HICKS
21 District Attorney
22 Washoe County, Nevada

23 By: /s/ Matthew Lee
24 MATTHEW LEE
25 10654
26 DEPUTY DISTRICT ATTORNEY

PCN: WASO0078516C-RADONSKI

CASE NO. CR18-1731 STATE OF NEVADA VS. DAVID CHARLES RADONSKI

DATE, JUDGE
OFFICERS OF
COURT PRESENT

APPEARANCES-HEARING

CONTINUED TO

10/23/18
HONORABLE
KATHLEEN M.
DRAKULICH
DEPT. NO. 1
M. Schuck
(Clerk)
D. Cecere
(Reporter)
Deputy Stewart
(Bailiff)

ARRAIGNMENT

Deputy D.A. Matthew Lee represented the State.
Defendant present with counsel, Jordan Davis, Esq.
Parole and Probation Specialist, Thomas Wilson, also present.
Defendant acknowledged receipt of a copy of the Information;
waived formal reading; waived time in which to enter pleas and pled
Not Guilty to Count I - First Degree Arson, a category B felony,
Count II - First Degree Arson, a category B felony, and Count III -
Third Degree Arson, a category D felony.

TRUE NAME: DAVID CHARLES RADONSKI

Court addressed the wrong case number on the Information;
Counsel Lee and Davis had no objection to the case number being
corrected by interlineation: **CR18-1731** and not CR18-1116.
Counsel Davis indicated the Defendant would enter pleas of not
guilty to all counts as contained in the Information and further
indicated the Defendant would waive the 60-day rule. He stated he
would not address custody status, but would be filing a motion with
his request. He noted a pretrial writ had been filed and denied by
the Nevada Supreme Court.

Counsel Lee had nothing to add.

Court canvassed the Defendant regarding entry of pleas and 60-
day rule; Defendant pled not guilty to all counts as contained in the
Information and waived the 60-day rule.

COURT ORDERED: Matter continued for motion to confirm and
jury trial. Further all pretrial motions to be fully briefed and
submitted for decision by close of business on February 15, 2019.
Defendant remanded to the custody of the Sheriff.

3/05/19 at
9:00 a.m. for
Mtn to Confirm

4/01/19 at
9:30 a.m. for
Jury Trial
(6 days)

2645
CHRISTOPHER J. HICKS
#007747
P.O. Box 11130
Reno, NV 89520-3083
(775) 328-3200
Attorney for Plaintiff

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF WASHOE.

* * *

THE STATE OF NEVADA,

Plaintiff,

Case No. CR18-1731

v.

Dept. No. 1

DAVID CHARLES RADONSKI,

Defendant.

MOTION TO DETERMINE, PRELIMINARILY,
INSTRUCTION TO JURY, RE: *MENS REA* OF ARSON

COMES NOW, the State of Nevada, by and through CHRISTOPHER J. HICKS, District Attorney of Washoe County, and MATTHEW LEE, Chief Deputy District Attorney, and hereby moves this Court to determine, preliminarily, the instruction to the jury regarding the *mens rea* element of the crime of arson. This instruction is central to the issues of this trial, and this Court's determination thereof will aid and assist in pretrial negotiations and trial preparation, as opposed to settling this vital instruction during trial. This motion is made and based upon the following Points and Authorities.

///

POINTS AND AUTHORITIES

I. BRIEF SUMMARY OF FACTS¹

On the afternoon and evening of July 27, 2018, the defendant started a fire off a dirt road south of Pyramid Highway, near Appian Way. The fire quickly spread and for several days burned through brush, shrubs, trees, vehicles, buildings, and even consumed two homes. In total, the fire burned over 51,000 acres just west of Pyramid Lake at a suppression cost of over \$4.8 million.² 13 victim properties have been identified as affected by damage from the fire.

The fire was first observed by two individuals in the area who reported it to authorities. They also snapped a photograph of a blue SUV with silver fenders driving from the fire's area of origin. Later, while suppression efforts were underway, Mr. Radonski arrived on scene in a motorcycle and gave deceptive statements to investigators. He stated that he had observed two vehicles fleeing from the fire's area of origin. Mr. Radonski continued, that after giving chase unsuccessfully while on his motorcycle, he returned to his home in Reno to obtain his phone, and then drove all the way back to Pyramid. Never did he call 911. He also told investigators that they may find his vehicle cigarette lighter in the area. The defendant stayed at the scene watching suppression efforts until approximately 3:00 in the morning.

Given the suspicious circumstances, investigators later located a blue Dodge Durango with silver fenders registered to the defendant

¹ This Summary of Facts is derived from reports provided to the State by the Washoe County Sheriff's Office.

1 parked at his residence, which matched the description given by the
2 reporting parties. Two days later, the same vehicle had been spray-
3 painted to change its appearance.

4 Investigators then reached out to the defendant for an interview
5 to which he agreed. The defendant gave contradicting statements but
6 maintained his original story until he was confronted more intently
7 by the evidence. At that point, the defendant conceded that he was
8 in the area shooting fireworks (Roman candle), which caused the fire.
9 The defendant stated that he tried to shoot the Roman candle toward a
10 concrete structure, but it caught brush on fire. He tried to then
11 put the fire out by using a water bottle which he left at the scene
12 and by scraping dirt on the fire, but that it got out of hand. After
13 starting the fire, the defendant also admitted to driving to another
14 location to go target shooting. Investigators subsequently located
15 that area and found it to have an excellent vantage point from which
16 to watch and observe the fire. Further, investigators found no
17 evidence of any suppression efforts at the area of origin: no water
18 bottle as described and no scraping of the dirt.

19 **II. PROPOSED INSTRUCTIONS FOR THIRD DEGREE ARSON, re: MENS REA**

20 Instruction #1 - Elements

21 The crime of Third Degree Arson consists of the following
22 elements:

- 23 1. The defendant willfully and maliciously;
- 24 2. Sets fire to, or burns, or causes to be burned;

26 ² This figure does not represent costs associated with loss of property to victims.

1 **III. ARSON, AS CHARGED, IS A GENERAL INTENT CRIME**

2 The State hereby requests this Court to determine whether the
3 crime of arson, as set forth in NRS 205.010, is a general or specific
4 intent crime. In other words, and as applied to the facts in this
5 case, does the *mens rea* element require that the State prove that the
6 defendant willfully did an act with the intent to burn property or
7 forestry, etc., and thus injure the property (specific intent) or
8 does it require that the State prove that the defendant willfully did
9 an act that caused a fire without legal justification or which
10 disregards a social duty?

11 This is a matter not yet specifically addressed by the Supreme
12 Court in Nevada, although California, having a practically identical
13 statute, identifies arson as a general intent crime. For the reasons
14 set forth below, and given the disjunctive construction of the
15 "Malice" definition of NRS 193.0175 and of the arson statute itself,
16 arson may be alleged either as a general or a specific intent crime.
17 But, in this particular case, considering the charging document, the
18 State chose to allege the crimes under the general intent sections of
19 the law. Arson, in NRS 205.020, is defined as follows:

20 **A person who willfully and maliciously sets fire to or burns or**
21 **causes to be burned, or who aids, counsels or procures the**
 burning of:

- 22 1. **Any unoccupied personal property of another which has**
 the value of \$25 or more;
23 2. Any unoccupied personal property owned by him or her
 in which another person has a legal interest; or
24 3. **Any timber, forest, shrubbery, crops, grass,**
 vegetation or other flammable material not his or her
25 **own,**

26 ///

1 is guilty of arson in the third degree... (highlighted portions
2 relate to specific facts and allegations of the case).

3 A **general intent** is an "intent to do that which the law
4 prohibits." Bolden v. State, 121 Nev. 908, 923, 124 P.3d 191, 201
5 (2005).⁶ It does not require proof that the defendant intended the
6 precise harm or result of the act, but it is the intent to do the
7 act. Id. A **specific intent**, on the other hand, does require an
8 intent to achieve a harm or particular result.⁷ Id.

9 Under Nevada's statutory scheme, arson can be alleged as a
10 specific or a general intent crime, in two ways. First, under NRS
11 205.020, willfully and maliciously setting fire to, burning, or
12 causing to be burned is a general intent theory. But, the statute
13 also contains a specific intent theory: aiding, counseling, or
14 procuring the burning. See Sharma v. State, 118 Nev. 648, 655, 56
15 P.3d 868, 872 (2002) (Aiding or abetting is a specific intent crime.
16 That is, the aider and abettor must have knowingly aided the other
17 person with the intent that the other person commit the crime).
18 Here, the State did not pursue the aiding or abetting theory.

19 The second option for the State to allege as either a general or
20 specific intent exists in the statutory definition of malice, which
21 provides in NRS 193.0175:

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23
24 ⁶ See also, People v. Lara, 44 Cal.App.5th 102, 107, 51 Cal.Rptr.2d 402, 405 (Cal.
25 App. 2 Dist., 1996) ("As with all general intent crimes, the required mental state
entails only an intent to do that act that causes the harm")

26 ⁷ For example, in a successful first-degree murder prosecution, the State must prove
that the defendant intended to kill the victim (intent to achieve a result or
harm), not just batter the victim (intent to do a proscribed act).

1 'Malice' and 'maliciously' import an evil intent, wish or
2 design to vex, annoy or injure another person. Malice may
3 be inferred from an act done in willful disregard of the
4 rights of another, or an act wrongfully done without just
cause or excuse, or an act or omission of duty betraying a
willful disregard of social duty.

5 Thus, a person can be alleged to start a fire with intent to "injure
6 another person" (specific intent) or to cause a fire without legal
7 justification or willfully disregarding a social duty (general
8 intent).⁸ Malicious does not equate to intentional conduct.⁹ Again,
9 the State is pursuing the general intent theory of maliciousness.

10 Dicta within a footnote of a Nevada decision can be easily
11 misconstrued. In the footnote the court did "not find it necessary
12 to discuss in depth the meaning of the words 'willful' or
13 'malicious,'" but wished to "point out" that to be guilty, "a fire
14 must be caused intentionally or by design, rather than accidentally
15 or carelessly." Batt v. State, 111 Nev. 1127, 1132 n.4, 901 P2d 664,
16 667 n.4 (1995). The State likewise agrees with this definition
17 because it is the igniting of the fire to which the *mens rea* applies,
18 not the result of that ignition. Indeed, it is in line with the
19 discussion within People v. Atkins, *infra*, which will be more fully
20 discussed below. Putting this in the context of the instant case,
21 Mr. Radonski intentionally lit the Roman candle "firecracker." This

23 ⁸ Ewish v. State, 110 Nev. 221, 229 n.4, 871 P.2d 306, 312 n.4 (1994) (Citing NRS
24 193.0175, the Court provided insight to the definition of malice: "Although this
25 definition does refer to intentional conduct, it also **includes conduct betraying a**
26 **social duty**...the important fact is that **"maliciously" is not consumed by**
intentional conduct. Thus, the crime malicious destruction does not require the
specific intent to commit some further act, beyond the prohibited conduct
itself" (emphasis added)).

⁹ Id.

1 was not an accident or careless act, by his own admission - he
2 willfully lit the Roman candle to shoot. It was willful and without
3 regard to a social duty (malicious) because a reasonable person would
4 realize that the consequence of his act of lighting that Roman candle
5 in the dry brush would be a burning of forestry and timber. Again,
6 Batt discusses the act of ignition, not the result thereof.

7 As no Nevada Supreme Court decision analyzes the arson statutes
8 for the purposes brought in this motion, a look to the California
9 Supreme Court is instructive, especially because the California arson
10 statute, as it pertains to the *mens rea* element, is identical.¹⁰ The
11 relatively recent decisions in People v. Atkins, 18 P.3d 660 (Cal.
12 2001) and In re V.V., 252 P.3d 979 (Cal. 2011) are most instructive.
13 Likewise, a federal decision regarding an intentional ignition with
14 an unintended burning is helpful from U.S. v. Doe, 136 F.3d 631 (9th
15 Cir. 1998).

16 People v. Atkins

17 The defendant made threats against property and ultimately set
18 fire to the victim's property. The defendant sought a voluntary
19 intoxication defense, but the trial court ruled this defense not
20 relevant or available to the general intent crime of arson. The
21 Supreme Court agreed and thoroughly analyzed the Arson statute
22 (identical to Nevada's), holding that Arson "requires only a general
23 criminal intent." The Court noted that language typical of a

24
25 ¹⁰ Cal. Pen. Code, § 451: "A person is guilty of arson when he or she **willfully and**
26 **maliciously sets fire to or burns or causes to be burned or who aids, counsels or**
procures the burning of, any structure, forest land, or property." (emphasis
denotes word-for-word similarity with NRS 205.020).

1 specific intent crime, such as "with the intent" to accomplish or
2 "for the purpose of" accomplishing a further result is absent from
3 the statute. It does not require an additional intent that the
4 burning be accomplished, but "only an intent to do the act that
5 causes the harm." Atkins, 18 P.3d at 667. In other words, the
6 statute's description of the proscribed act fails to refer to an
7 intent to do a further act or achieve a future consequence." Id.

8 In defining "willfully," the Court cited to a definition
9 identical to that which is used in Nevada to articulate general
10 intent crimes: "The word, willfully, when applied to the intent with
11 which an act is done or omitted, implies simply a purpose or
12 willingness to commit the act, or make the omission referred to. It
13 does not require any intent to violate law, or to injure another, or
14 to acquire any advantage." Id. at 666; see also Childers v. State,
15 100 Nev. 280, 283, 680 P.2d 598, 599 (1984) (defining "willful" with
16 the identical definition).

17 The purpose, it states, of the statute's including willfully and
18 maliciously is to ensure that the initial ignition of the fire is a
19 "deliberate and intentional act, as distinguished from an accidental
20 or unintentional ignition." Atkins, 18 P.3d at 668; cf. Batt v.
21 State, 111 Nev. at 1132 n.4, 901 P2d at 667 n.4 ("a fire must be
22 caused intentionally or by design, rather than accidentally or
23 carelessly").

24 In re V.V.

25 Two minors lit a large firecracker (a "cherry bomb") and tried
26 to throw it onto a concrete area. Instead, they missed and it landed

1 in a brush-covered hillside, resulting in a 5-acre fire. The minors
2 challenged the sufficiency of the evidence leading to their juvenile
3 wardship, arguing that because they lit a firecracker without the
4 intent to cause a fire or any other harm, they could not be
5 adjudicated for Arson. While they conceded that the intent to commit
6 the resulting harm is not an element of arson, they maintained that
7 there must be evidence that they intended to cause a larger fire or
8 some other harm.¹¹ The Supreme Court disagreed.

9 It further defined the *mens rea* element of Arson, that it
10 "implies that the person knows what he is doing, intends to do what
11 he is doing and is a free agent." In re V.V., 252 P.3d at 983. It
12 notes that malice will be implied from the intentional or deliberate
13 "ignition or act of setting a fire without a legal justification."
14 Id. at 984; *cf.* NRS 193.0175 (Malice may be inferred from an act done
15 in willful disregard of the rights of another, or an act wrongfully
16 done without just cause or excuse, or an act or omission of duty
17 betraying a willful disregard of social duty). The Court clarified
18 that it is the initial igniting of the fire to which the *mens rea*
19 applies, not the result of the initial ignition.

20 The Court held that a defendant may be guilty of arson if he is
21 aware of "facts that would lead a reasonable person to realize that
22 the direct, natural, and highly probable consequence of igniting and

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26 ¹¹ This is also the same defense being offered by the defendant in this case.

1 throwing a firecracker into dry brush would be the burning of the
2 hillside." Id. at 985.

3 U.S. v. Doe

4 A juvenile intentionally set a fire to paper towels in a school
5 bathroom, but "blew it out." The building subsequently caught fire.
6 The court held that the "elements of willfulness and maliciousness
7 are established by proof that the defendant set the fire
8 intentionally and without justification or lawful excuse with no
9 suggestion that the fire started as a result of accident or
10 negligence." Doe, 136 F.3d at 635-36. It reasoned, "An intentional
11 act creating an obvious fire hazard...done without
12 justification...would certainly be malicious." In re V.V., 252 P.3d
13 at 984(quoting U.S. v. Doe, 136 F.3d at 635 n.4).

14 Discussion

15 From these decisions, we learn that the proscribed act in a
16 general intent theory arson is the willful ignition of an item, not
17 the result of that ignition. Here, Mr. Radonski is liable for the
18 crime of arson because he willfully ignited a roman candle and shot
19 it in a dry desert without legal justification and under
20 circumstances that would lead a reasonable person to realize that the
21 direct, natural and highly probable consequence thereof would be the
22 burning of forest and timber or other property.

23 To claim that specific intent applies to Arson ignores the plain
24 language of the arson and malicious statutes. They do not require a
25 result or a specific intent. These same defense arguments have been
26 raised in relevant California cases, interpreting the same statutes,

1 and were found to be meritless, because Arson is a general intent
2 crime.

3 **III. CONCLUSION**

4 Arson requires the State to prove that the defendant willfully
5 and maliciously set fire to or burned or caused to be burned personal
6 property or timber, forest, shrubbery, crops, grass, vegetation or
7 other flammable material not his own. His ignition of the Roman
8 candle firework was not an accident; it was completely volitional.
9 His willful choice to light a firework in the dry desert was an act
10 done without legal justification and betraying a willful disregard of
11 a social duty.

12 The statute, as written, does not require the State to prove
13 that Mr. Radonski intended to light the brush on fire or to burn
14 51,000 acres or any of the buildings therein. Arson is a general
15 intent crime.

16 AFFIRMATION PURSUANT TO NRS 239B.030

17 The undersigned does hereby affirm that the preceding document
18 does not contain the social security number of any person.

19 Dated this 28th day of January, 2019.

20
21 CHRISTOPHER J. HICKS
22 District Attorney
23 Washoe County, Nevada

24 By /s/ Matthew Lee
25 MATTHEW LEE
26 10654
Chief Deputy District Attorney

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CERTIFICATE OF SERVICE BY E-FILING

I certify that I am an employee of the Washoe County District Attorney's Office and that, on this date, I electronically filed the foregoing with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

WASHOE COUNTY PUBLIC DEFENDER
JORDAN DAVIS

DATED this 28th day of January, 2019.

/s/DANIELLE RASMUSSEN
DANIELLE RASMUSSEN

1 CODE 3880
2 WASHOE COUNTY PUBLIC DEFENDER
3 JORDAN A. DAVIS, BAR# 12196
4 P.O. BOX 11130
5 RENO, NV 89520-0027
6 ATTORNEY FOR DEFENDANT

7 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
8
9 IN AND FOR THE COUNTY OF WASHOE.

10 THE STATE OF NEVADA,

11 Plaintiff,

Case No. CR18-1731

12 vs.

Dept. No. 1

13 DAVID CHARLES RADONSKI,

14 Defendant.
15 _____/

16 **RESPONSE TO THE STATE'S MOTION TO DETERMINE**
17 **THE MENS REA OF ARSON**

18 DAVID CHARLES RADONSKI (the "Defendant") by counsel, Washoe
19 County Public Defender JOHN L. ARRASCADA and Deputy Public Defender
20 JORDAN A. DAVIS, hereby files this Response to the State's Motion to Determine
21 the Mens Rea of Arson. This Response is made and based upon the points and
22 authorities submitted in support hereof, and any oral argument which may be
23 heard in this matter. Oral argument requested.

24 **MEMORANDUM OF POINTS AND AUTHORITIES**

25 **INTRODUCTION**

26 Arson is a specific intent crime in Nevada. Nevada's statutory scheme and
case law are clear. The State cites to no authority holding that in Nevada arson

1 can be charged under either a general or specific intent theory. Assuming
2 arguendo, if this Court were to adopt the State's argument and find that the mens
3 rea of arson under the same statute can be charged under either theory, then both
4 arson statutes are vague and therefore unconstitutional.

5 **A. ARSON IS A SPECIFIC INTENT CRIME IN NEVADA.¹**

6 In accordance with Nevada law, the Court must instruct the jury that arson
7 is a specific intent crime. In Ewish v. State, the defendant who was charged with
8 arson took the stand and admitted committing a culpable act by throwing a
9 molotov cocktail at a home. Ewish v. State, 110 Nev. 221, 228, 871 P.2d 306, 311
10 (1994), on reh'g, 111 Nev. 1365, 904 P.2d 1038 (1995). The defendant then claimed
11 that due to his voluntary intoxication, he could not have formed the requisite
12 specific intent necessary to commit arson. Id. The Nevada Supreme Court
13 concluded that this was a viable defense to a specific intent crime, and the jury
14 had been instructed accordingly.² Id. The Court went on to note that if believed,
15 the only crime the defendant could have committed was explosive destruction, a
16 general intent offense. Id. Likewise, in an even earlier decision, the Nevada
17 Supreme Court found that the district court properly instructed the jury on the
18 specific intent required for the crimes of robbery and arson. Brimmage v. State, 93

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22 ¹ It is important to note that the intent element for arson is identical for first and
23 third degree arson. The degree of arson is separated based upon the type of property
24 burned.

25 ² Subsequently, in a per curiam decision, the Nevada Supreme Court again noted
26 that lack of specific intent is a valid defense to arson. Ewish v. State, 111 Nev. 1365,
1367, 904 P.2d 1038, 1039 (1995)("[w]e indicated in our prior opinion, with respect to
Ewish's co-defendant, that lack of specific intent is a valid defense to arson . . .").

1 Nev. 434, 443, 567 P.2d 54, 60 (1977).³ Accordingly, Mr. Radonski seeks a pretrial
2 ruling that the jury be instructed that arson is a specific intent crime in
3 accordance with Nevada law.

4 **B. THE NEVADA SUPREME COURT DECISION BATT V. STATE IS LEGALLY**
5 **INSTRUCTIVE REGARDING THE INTENT ELEMENT FOR ARSON.**

6 The Nevada Supreme Court decision Batt v. State is factually similar to the
7 present case and legally instructive regarding the intent element for third degree
8 arson. Batt v. State, 111 Nev. 1127, 1129, 901 P.2d 664, 665 (1995). In Batt, the
9 prosecution arose out of a disastrous fire that was accidentally set by Randall
10 Batt's female companion who caused the fire when she set off a firework on
11 Peavine Mountain. At trial, Batt was convicted of third-degree arson. On appeal,
12 the Nevada Supreme Court reversed Batt's conviction for third-degree arson
13 finding that there was insufficient evidence for the jury to conclude that Batt
14 caused the fire in question and absolutely no evidence that Batt acted "willfully
15 and maliciously" in any regard. The Nevada Supreme Court's conclusion in Batt
16 supports the proposition that arson is a specific intent crime where the **result of**
17 **the ignition** should be considered. Batt v. State, 111 Nev. 1127, 1130–31, 901
18 P.2d 664, 666 (1995)(" . . . there is absolutely nothing to suggest that he **intended**
19 **to burn the forest** or that he did anything that even remotely suggests malice or
20 willfulness on his part.")(emphasis added).

21 Additionally, to be guilty of malicious arson, a fire must be caused
22 intentionally or by design, rather than accidentally or carelessly, **as was the case**
23 **here**. Id. at fn 4 (emphasis added). Despite such clear precedent, where the

24
25 ³ Failure to instruct the jury on a specific intent crime will result in a reversal. See
26 Ford v. State, 127 Nev. 608, 613–14, 262 P.3d 1123, 1126–27 (2011)(reversing a pandering
conviction under plain error review for the failure to instruct the jury on specific intent).

1 Nevada Supreme Court makes it a point to note that the Peavine Mountain Fire
2 started by a firework was set accidentally or carelessly, the State erroneously argues
3 that it is the igniting of the fire to which the mens rea applies, not the result of the
4 ignition. A plain reading of Batt suggests that the mens rea required to support a
5 third degree arson conviction is **a willful and malicious intent to burn the**
6 **forest** – not to light a firework. Regarding the instant offense, there is absolutely
7 no evidence that Mr. Radonski "willfully" and "maliciously" intended to set two
8 residences and/or personal property on fire which is what is needed to support first
9 and third degree arson convictions. At most, this fire appears to have been started
10 carelessly or accidentally in a remote area far away from any residences and/or
11 structures by a firework.

12 **C. THE CASES CITED BY THE STATE TO SUPPORT ITS PROPOSITION THAT**
13 **ARSON IS A GENERAL INTENT CRIME ARE NOT CONTROLLING AND**
14 **DISTINGUISHABLE.**

15 Contrary to the State's assertion that this Court should turn to California
16 case law for guidance, the cases cited by the State to support the proposition that
17 arson is a general intent crime are not controlling and distinguishable.⁴

18 The facts here are *not* comparable to those in United States v. Doe, 136 F.3d
19 631, 634 (9th Cir. 1998). Factually, Doe involved a juvenile who lit a paper towel
20 on fire in the women's bathroom which resulted in the building catching fire. Id.
21 The minor in Doe intentionally and illegally set fire to the school's property and
22 the fire spread. Intentionally setting that fire was the illegal act that furnished
23 the requisite malice to support the arson conviction in that case. Here, by

24
25 ⁴ If the State believes that the statutory language in the arson statute and in the
26 definition of "maliciousness" lends itself to two or more reasonable interpretations, the
statute is ambiguous, and the Court should then look beyond the statute in determining
legislative intent. See e.g. State v. Lucero, 127 Nev. 92, 95–96, 249 P.3d 1226, 1228
(2011)(when interpreting a statute, "legislative intent is the controlling factor.")

1 contrast, Mr. Radonski did not intentionally set a fire; he lit a firework. Legally,
2 Doe is also distinguishable because it interpreted the mens rea required to prove a
3 violation of the **federal** arson statute – not the Nevada arson statute.

4 In People v. Atkins the defendant made threats against the victim's
5 property and ultimately set fire to that property. People v. Atkins, 25 Cal. 4th 76,
6 79, 18 P.3d 660, 662 (2001). Here, by contrast, no threats were made to set any
7 property on fire – it was simply an accidental fire set as a result of a firework
8 similar to the factual scenario in Batt. In addition, the holding in Atkins, that
9 evidence of voluntary intoxication was not admissible in determining whether the
10 defendant formed the required mental state (general intent) for arson runs
11 completely afoul to the result reached by the Nevada Supreme Court in Ewish v.
12 State, 110 Nev. 221, 228, 871 P.2d 306, 311 (1994), on reh'g, 111 Nev. 1365, 904
13 P.2d 1038 (1995)(concluding that voluntary intoxication is a viable defense to the
14 requisite specific intent necessary to commit arson).

15 The State cites to In re V.V. to further support its general intent argument.
16 Although the court in In re V.V., held that the juveniles' intentional conduct in
17 throwing a firecracker that set a hillside on fire was willful and malicious as
18 required to support an arson finding, it relied heavily on the Atkins decision to
19 support that conclusion. In re V.V., 51 Cal. 4th 1020, 252 P.3d 979 (2011).
20 Because Atkins completely contradicts the result reached in Ewish, In re V.V. is
21 unpersuasive.

22 In addition, to the extent that the Court looks to In re V.V. for guidance, the
23 dissent seems more aligned with Nevada's interpretation of the intent element of
24 arson. In re V.V., 51 Cal. 4th 1020, 1034, 252 P.3d 979, 988 (2011)(dissenting
25 Justice Kennerd, J. concluding that although a fire resulted from the act of
26 lighting a firecracker and throwing it down a brush-covered hill, this was clearly

1 accidental and did not rise to the maliciousness required to support an arson
2 conviction); compare with Batt v. State, 111 Nev. 1127, 1130–31, 901 P.2d 664, 666
3 (1995)(“ . . . there is absolutely nothing to suggest that he **intended to burn the**
4 **forest** or that he did anything that even remotely suggests malice or willfulness
5 on his part.”)(emphasis added).

6 As a final note, even if this Court were to turn to case law outside the
7 jurisdiction, in an even more recent decision out of Maryland, the Maryland
8 Appellate Court discusses the mens rea element of arson noting that arson is a
9 specific intent crime. In re David P., 234 Md. App. 127, 135, 170 A.3d 818, 823
10 (2017)(holding that arson is a specific intent crime).

11 **D. NEVADA’S ARSON STATUTES ARE CLEAR ON THEIR FACE.**

12 Nevada’s first degree and third degree arson statutes are clear on their face.
13 NRS 205.010 provides: “A person who willfully and maliciously sets fire to or
14 burns or causes to be burned, or who aids, counsels or procures the burning of any:
15 1. Dwelling house or other structure or mobile home, whether occupied or vacant;
16 or 2. Personal property which is occupied by one or more persons, whether the
17 property of the person or of another, is guilty of arson in the first degree which is a
18 category B felony and shall be punished by imprisonment for a minimum term of
19 not less than 2 years and a maximum term of not more than 15 years, and may be
20 further punished by a fine of not more than \$15,000.” NRS 205.010.

21 Third Degree Arson is defined as, “[a] person who willfully and maliciously
22 sets fire to or burns or causes to be burned, or who aids, counsels or procures the
23 burning of: 1. Any unoccupied personal property of another which has the value of
24 \$25 or more; 2. Any unoccupied personal property owned by him or her in which
25 another person has a legal interest; or 3. Any timber, forest, shrubbery, crops,
26 grass, vegetation or other flammable material not his or her own, is guilty of arson

1 in the third degree which is a category D felony and shall be punished as provided
2 in NRS 193.130.” NRS 205.020.

3 The word “willful” as used in both charges relates to an act or omission
4 which is done intentionally, deliberately or designedly, as distinguished from an
5 act or omission done accidentally, inadvertently, or innocently. Robey v. State, 96
6 Nev. 459, 461, 611 P.2d 209, 210 (1980). In other words, to be found guilty of
7 malicious arson a fire must be caused intentionally or by design, rather than
8 accidentally or carelessly. Batt v. State, 111 Nev. 1127, 1131, 901 P.2d 664, 666
9 (1995).

10 The term “maliciously” as used in both charges is defined by statute. *See*
11 NRS 193.0175. “Malice” and “maliciously” import an evil intent, wish or design to
12 vex, annoy or injure another person. Malice may be inferred from an act done in
13 willful disregard of the rights of another, or an act wrongfully done without just
14 cause or excuse, or an act or omission of duty betraying a willful disregard of social
15 duty. NRS 193.0175.

16 Because the Nevada statutes are clear on their face and the terms “willful”
17 and “maliciously” are defined in statute and/or case law, the Court need not look to
18 other jurisdictions for guidance.

19 **E. ALTERNATIVELY, IF THE COURT FINDS THAT THE ARSON STATUTES ARE**
20 **NOT CLEAR AND MAY BE ALLEGED EITHER AS GENERAL OR SPECIFIC**
21 **INTENT CRIMES THEN THE ARSON STATUTES ARE VAGUE AND THEREFORE**
UNCONSTITUTIONAL.

22 The State argues that arson may be alleged either as a general or as a
23 specific intent crime without citation to any legal authority. Opposition at 5.
24 Incredulously, the State further contends that in this case it chose to allege arson
25 under the general intent section of the law. Id. Assuming arguendo that the
26 Court finds that arson may be alleged either as a general or specific intent crime

1 then the arson statutes are vague and therefore unconstitutional. See e.g.
2 Flamingo Paradise Gaming, LLC v. Chanos, 125 Nev. 502, 217 P.3d 546
3 (2009)(finding that the criminal penalty portion of the Nevada Clean Indoor Air
4 Act was unconstitutionally vague). More specifically, the arson statutes would be
5 unconstitutionally vague because they would: (1) fail to provide notice sufficient to
6 enable persons of ordinary intelligence to understand what conduct is prohibited
7 (i.e. the very question posed by the State's Motion regarding the mens rea element
8 of first degree and third degree arson); and (2) lack specific standards, thereby
9 encouraging, authorizing, or even failing to prevent arbitrary and discriminatory
10 enforcement (i.e. a prosecutor deciding to allege either a general or specific intent
11 theory under the same statute.)

12 CONCLUSION

13 Arson is not a general intent crime in Nevada. Arson is a specific intent
14 crime and to be found guilty of arson the State must prove that Mr. Radonski
15 acted intentionally and not accidentally. Alternatively, if the Court finds that arson
16 may be alleged either as a general or specific intent crime then the arson statute is
17 vague and therefore unconstitutional.

18 AFFIRMATION PURSUANT TO NRS 239B.030

19 The undersigned does hereby affirm that the preceding document does not
20 contain the social security number of any person.

21 Dated this 7th day of February, 2019.

22 JOHN L. ARRASCADA
23 Washoe County Public Defender

24 /s/ Jordan Davis
25 JORDAN A. DAVIS
26 Deputy Public Defender

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Washoe County Public Defender's Office, Reno, Washoe County, Nevada, and that on this date I deposited in the office court run, a true copy of the attached document, addressed to:

Deputy District Attorney
Inter-Office Mail

DATED this 7th day of February, 2019.

/s/ Jessica Haro
JESSICA HARO

CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on August 22, 2019. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

John Reese Petty
Chief Deputy Public Defender

Jordan A. Davis, Deputy Public Defender

Joanna L. Roberts, Deputy Public Defender

I further certify that I served a copy of this document by e-mailing a true and correct copy thereof, to the Chambers of:

The Honorable Kathleen Drakulich, Second Judicial District Court,
Department 1

/s/ Margaret Ford
MARGARET FORD