

2022 TENNESSEE JUDICIAL ACADEMY

Hearsay and Confrontation Opinion Evidence and the Judge's Gatekeeper Function

Your Be the Judge

Two causes of action have arisen out of the death of Paula Harris, age 40, killed in a house fire on April 1, 2018. The first is a wrongful death action against Paula's boyfriend, Roger Matthews; the second is a felony murder case against Roger.

You've been assigned to hear: _____

Paula was in the bedroom, presumably asleep when the fire broke out in a home she owned. She was rushed to the ER, alive en route, but succumbed a few hours later. While in the ambulance, Paula made statements to an EMT named Joan Wilson when Wilson asked Paula what happened. Paula responded: *"the SOB tried to kill me. He's done it before, but not with fire. Please, don't let him get away with it."* Paula then lapsed into unconsciousness. The ambulance's on-board recording equipment captured the conversation.

The local fire chief, Bubba Burn, along with several members of the crew, arrived and found Roger standing outside a travel trailer parked behind the home. Roger made the following statement to the fire chief: *"That night, Paula and I had a fight about her drinking so I decided to sleep in the RV. When I awoke to go to the bathroom, the house was on fire. I tried to put the fire out but the hose would not reach. She was always smoking, I'm sure that's what happened. She just set the stupid bed on fire."*

The fire chief, a certified arson investigator, eventually ruled out mechanical or electrical causes for the fire and concluded that the fire's likely ignition point was at the rear of the house, near the bedroom window. The fire chief removed a portion of the wood including some of the window frame. Subsequent lab reports showed a heavy concentration of flammable chemicals on the wood sample.

Witnesses include Joy Murphy, Paula's best friend who would testify to marital problems that had induced Paula to move out twice and to seek an Order of Protection in December 2017. The Affidavit supporting the Order of Protection states: *On the 28th day of December, 2017, Roger Matthews struck me in the face and then wrapped his hands around my neck. He told me he planned to choke me to death because he wanted me dead. I am afraid of Roger and know that he will kill me if he gets a chance."*

Roger read Paula's email and has an email from Paula to her son asking him to come visit during spring break and stating, *"If you don't see me now, you won't see me because I no longer have a reason to live."*

On deposition in the civil trial, Chief Burn testified about his background and the investigation. He was then asked the following question and responded as indicated:

Q: As a result of your experience, education, and training in arson investigation, have you formed an opinion about the cause and origin of the fire that occurred at 380 Mountain View Lane?

A: Yes, I have. In my opinion, the fire at 380 Mountain View Lane was intentionally

When asked the underlying bases of his opinion, Chief Burn responded:

A: I base my opinion on at least six factors. These factors include (1) statements from firefighters who were the first responders at the scene; (2) my interview with Roger; (3) observations I made during my investigation, including burn patterns, which I saw; (4) measurements I took during my site investigation of the scene; (5) statements from neighbors taken by deputies who canvassed the neighborhood; and (6) the report from chemists at the State of Inferno crime lab.

Q: What did you learn from the firefighters at the scene?

A: My fighters all reported the same thing: the fire was located in the rear of the house, isolated in a back wing that we later learned was the master bedroom suite.

Q: What did you learn from your observations?

A: I followed the burn patterns in reverse order and determined the ignition point.

Q: Can you describe any measurement you took at the scene and the relevance?

A: I measured the distance from the ignition point to the bedroom windows to determine how far the fire traveled from ignition until it reached the victim.

Q: How did the deputies aid your investigation?

A: They learned from neighbors that Roger had a girlfriend who stayed with him in the RV.

Q: Showing you what has been marked as Exhibit 2, can you identify this?

A: Yes. That's the report that the official report from the State of Inferno Crime Laboratory

Q: Your Honor, we offer Exhibit 2 in evidence.

Official Report of the State of Inferno's Crime Laboratory, Singe Co. Div. (SICL)

By the authority of Inferno Code Ann. § 24-7-180, I hereby certify the following findings based on chemical analyses conducted by the undersigned on Item 1 (wood); Item 2 (debris); Item 3 (canister containing a liquid), all of which were brought to the SICL on 4-12-16 by Fire Chief Burn, Singe County, State of Inferno, from a residence fire at 380 Mountain View Lane, Inferno:

- (1) Item 1 (wood) and Item 2 (debris) reportedly from a fire at 380 Mountain View Lane were saturated with an accelerant;
- (2) Accelerant on Item 1 had the same chemical composition as kerosene;
- (3) Accelerant on Item 2 had the same chemical composition as kerosene;
- (4) Item 3 (canister) was three-quarters empty and contained liquid identified as kerosene.

I hereby attest that the findings in this report are accurate and that the tests were performed under established laboratory protocols as required by state law and pursuant to my direction.

Signed this 1st day of December 2017

Chief Chemist Flame

