

7 THE COURT: Court is back in session. Call your
8 next witness on behalf of the State.

9 ERIC AUBUCHON, being duly sworn by the clerk,
10 testified as follows:

11 DIRECT EXAMINATION by Mr. Rupp:

12 Q. Sir, can you state your name for the record,
13 please.

14 A. My name is Eric Aubuchon.

15 Q. And, Mr. Aubuchon, would you tell the ladies and
16 gentlemen what you do for a living?

17 A. Right now I'm the managing partner of Sonic Drive-
18 In, in Potosi, Missouri.

19 Q. Where do you live?

20 A. I live in Potosi, Missouri.

21 Q. And how long have you lived in Potosi, Missouri?

22 A. Lifetime.

23 Q. And, Mr. Aubuchon, in addition to your regular job
24 as a manager, do you have another job?

25 A. I am a volunteer fire fighter for the Potosi Fire

1 Protection District.

2 Q. And how long have you been a volunteer fire
3 fighter?

4 A. Five years. I joined when I was 16-years-old.

5 Q. And, sir, if I could take you back to December 5th,
6 of the year 1998, do you recall whether or not you had this
7 position as a volunteer fire fighter at that time?

8 A. Yes, I did.

9 Q. And you indicated that you had been one for about a
10 year at that point, two years?

11 A. I joined in '96, so it was December of '98, so I
12 would have been probably around one year, two years,
13 something like that.

14 Q. Sir, if I could call your attention to December the
15 5th, of the year 1998, and I ask you, in the morning hours
16 did you receive a page?

17 A. Yes.

18 Q. Real quickly, would you explain to the ladies and
19 gentlemen of the jury what that means, that you received a
20 page?

21 A. The page I received was to a structure fire in
22 Hopewell at the Politte residence. And that just means that
23 somebody made a call that there was a fire at the residence
24 in Hopewell. So I got up, got dressed, and ready to go.

25 Q. And you got up, got dressed. Where did you go?

1 A. Then I went out to the vehicle with Mr. Roger
2 LaChance, and that's when we received the second page that
3 they believed there was someone trapped inside the
4 residence.

5 Q. Okay.

6 A. And then we proceeded to the scene.

7 Q. Did you go to the fire house, or did you leave from
8 your house?

9 A. No. We went directly from his house to the scene
10 of the fire.

11 Q. How long do you think it took you to respond?

12 A. Oh, from page out time, I'd say probably 12 to 15
13 minutes.

14 Q. Okay. And what happened? About what time did you
15 get there? Do you recall?

16 A. I believe it was probably around ten minutes to
17 seven, ten till, five to seven, probably in that area.

18 Q. Okay. And what did you do when you got to the
19 scene?

20 A. Well, the first thing I did was, I got out of the
21 truck, and I suited up in my turn-out gear, fire department
22 gear. And I was instructed by the officer in charge, Roger
23 LaChance, to go to the back of the residence and make sure
24 that no one entered or exited the building and make sure
25 that everything was okay.

1 Q. And did you go to the back of the residence?

2 A. Yes, sir, I did.

3 Q. Did you observe the back of the residence?

4 A. Yes, I did.

5 Q. And in the back of that residence there were a
6 couple doors?

7 A. I believe there was a sliding glass door.

8 Q. Any windows?

9 A. I'm not really for sure. I think. I'm not
10 positive on that though. I know that there was sliding
11 glass doors for definite.

12 Q. And did you observe whether any of these windows or
13 doors had been opened?

14 A. There was a small crack in the sliding glass doors
15 to where it had been opened.

16 Q. What do you mean, a small crack?

17 A. I'd say probably two to two and a half inch gap
18 between the latch and the door itself.

19 Q. So it was opened about that much?

20 A. Yeah, I'd say about that far.

21 Q. And how long were you back there?

22 A. I was back there probably 10 to 15 minutes when I
23 was met by another fire fighter at the back door. We stayed
24 there and talked for probably another five to ten minutes,
25 and then I went back around to the front of the residence

1 after I was relieved.

2 Q. Okay. And when you went back around to the front
3 of the residence, did you see anybody there?

4 A. When I went back to the front of the residence, I
5 went over to Dwayne Bourbon's truck.

6 Q. And was somebody around his truck?

7 A. That's when I had contact with Mr. Politte at that
8 time. I talked to him at that time.

9 Q. Now, when you say Mr. Politte, who are you
10 referring to?

11 A. Oh, Bernie.

12 Q. Do you see him present in the courtroom today?

13 A. Yeah.

14 Q. Could you point him out?

15 A. Yes, sir. (Pointing.) Right there.

16 MR. RUPP: I'd like the record to reflect this
17 witness is indicating towards the defendant.

18 THE COURT: Where is he seated, sir?

19 THE WITNESS: Between these two.

20 THE COURT: In the middle there?

21 THE WITNESS: Yes, sir.

22 THE COURT: The record will so reflect.

23 Q. (By Mr. Rupp): And did you know the defendant prior
24 to that?

25 A. Yeah. I grew up in Hopewell.

1 Q. So you knew who he was?

2 A. Yeah.

3 Q. Did you hear the defendant say anything at that
4 time

5 A. There was, you know, small talk. I don't remember
6 exactly what we had talked about first. And then we both
7 observed a police officer that was looking at a motorcycle
8 gas tank or a gas tank of some kind. And I think Mr.
9 Politte at that time said, "I guess they think something's
10 going on with that gas tank," or whatever. He said, "That's
11 been off of my motorcycle for two to three weeks now."

12 Q. Did he say anything else?

13 A. He said, "There shouldn't be anything in there.
14 Like I said, it's been off for two or three weeks now."

15 Q. Okay.

16 A. He said, "I don't know why they'd be looking at
17 that."

18 Q. Was he agitated with that?

19 MR. WILLIAMS: Objection, Your Honor. It calls for
20 speculation.

21 THE COURT: Sustained as to the form of the
22 question.

23 Q. (By Mr. Rupp): Did he appear to get excited from the
24 way he was prior to them picking up the gas tank?

25 MR. WILLIAMS: Objection, Your Honor. Same thing.

1 It calls for speculation.

2 THE COURT: Overruled.

3 A. I believe he just kept his normal tone of voice.

4 He said, you know, "I don't understand why they'd be looking
5 at that. That's been off for two to three weeks now."

6 Q. (By Mr. Rupp): How would you describe his attitude?

7 A. That morning?

8 Q. Correct.

9 MR. WILLIAMS: Objection, Your Honor, as to the
10 description of his attitude.

11 THE COURT: His attitude, sustained.

12 Q. (By Mr. Rupp): Did you observe him when you were
13 talking to him at the truck?

14 A. Yeah.

15 Q. Did he appear to be crying?

16 A. He had redness around his eyes.

17 Q. Was he crying?

18 A. I don't believe he was at that particular time.

19 Q. Was he screaming?

20 A. No.

21 Q. Shouting?

22 A. No.

23 Q. Was he calm?

24 A. I'm not going to say he was calm. He wasn't
25 talking in a normal tone, but he wasn't screaming or

*This is speculation
But when the defense
Asks if he
Appeared to
be in shock
(See page 204
Leigham Skiles
Testimony)
They consider
that 'speculation'*

1 shouting at anyone or me.

2 Q. His voice wasn't quivering, anything of that
3 nature?

4 A. Not really.

5 MR. RUPP: I don't have any further questions.

6 CROSS-EXAMINATION by Mr. Williams:

7 Q. Mr. Aubuchon, you were there that day on December
8 the 5th, 1998, right?

9 A. Yes, sir.

10 Q. At Rita Politte's residence?

11 A. Yes, sir.

12 Q. And you observed all these things back in 1998; is
13 that correct?

14 A. Yes, sir.

15 Q. Three years ago, roughly?

16 A. Yeah.

17 Q. Okay. And no one took -- Well, did anybody -- Let
18 me ask you this. You didn't talk to anybody from the
19 Attorney General's Office, did you, back then?

20 A. (No response.)

21 Q. An investigator, we'll say?

22 A. I don't recall.

23 Q. And you didn't talk to anybody --

24 A. Are you saying on that date? Is that what you're
25 asking me?

1 Q. Let me just say for the rest of that year.

2 A. Okay.

3 Q. That month?

4 A. For the rest of 1998?

5 Q. Yes.

6 A. No, I don't believe so.

7 Q. Okay. And you didn't talk to any investigators
8 from the Attorney General's Office, from the Attorney
9 General's Office in 1999, either, did you?

10 A. Not that I recall.

11 Q. Or the Year 2000, right?

12 A. I did have contact with someone, I believe, in the
13 Year 2000.

14 Q. But it wasn't from the Attorney General's Office,
15 was it?

16 A. Yes. Yes, it was.

17 Q. It was?

18 A. Yes.

19 Q. Do you remember who that person was?

20 A. No, sir, I do not. I can tell you where I was
21 living and the phone call that I received.

22 Q. So your first contact with somebody from their
23 office was in the Year 2000?

24 A. Yes.

25 Q. Okay. And isn't it true that on November the 19th,

1 of 2001, you had contact with another investigator from the
2 Attorney General's Office?

3 A. November 19th?

4 Q. November 19th, of last year?

5 A. I can't recall. I can't say yes or no on that,
6 honestly.

7 Q. Before Thanksgiving?

8 A. (No response.)

9 Q. You don't know?

10 A. I don't know.

11 Q. Okay. So you don't know if there was a report made
12 or anything of that nature about that conversation you had
13 with someone, right?

14 A. (No response.)

15 Q. You don't even know if there was a conversation
16 with anyone? You don't recall, right?

17 A. I don't recall.

18 Q. You don't recall speaking to an investigator by the
19 name of Mitch from the Attorney General's Office at that
20 time?

21 A. At that present time, I don't recall.

22 Q. Is it possible you could have?

23 A. It's possible.

24 Q. Now, so the first time you talked to anybody was in
25 the Year 2000?

1 A. At first recollection, yes.

2 Q. You told them this account? Is that when you told
3 them this account, right here, what you're testifying today?

4 A. Yes. We had a phone conversation. I explained
5 everything I done at the residence, and then we talked a
6 little more, and that was it.

7 Q. Okay. With respect to -- Well, no further
8 questions, Judge.

9 **REDIRECT EXAMINATION by Mr. Rupp:**

10 Q. Mr. Aubuchon, do you recall talking to somebody by
11 the name of Micky Hughs from the Attorney General's Office?

12 A. Yes, sir.

13 Q. And that was within the last few months; is that
14 right?

15 A. Yes, sir.

16 MR. WILLIAMS: Objection, Your Honor, as to the
17 leading form of the question.

18 THE COURT: Sustained as to the form of the
19 question. Rephrase.

20 Q. (By Mr. Rupp): You recall giving him a statement; is
21 that correct?

22 A. Yes, sir.

23 Q. In that statement do you recall telling him that
24 Bernie acted surprised and upset by them looking at the gas
25 tank?

1 A. Yeah. He was just surprised in general that, you
2 know, they were looking at the gas tank, because he had
3 stated that it had been off for several weeks.

4 Q. And he was upset?

5 A. I guess.

6 MR. WILLIAMS: Objection, Your Honor. That's
7 speculation.

8 THE COURT: Well, he's asking if he remembers
9 giving that statement --

10 MR. RUPP: That's correct.

11 THE COURT: -- at this point. Do you remember
12 giving that statement, is the question, sir?

13 THE WITNESS: Do I remember giving a statement to
14 Mr. Hughs that he was surprised and upset about the gas
15 tank? Yes, I do.

16 MR. RUPP: I don't have any other questions.

17 RE-CROSS-EXAMINATION by Mr. Williams:

18 Q. Mr. Aubuchon?

19 A. Yes, sir.

20 Q. Wouldn't be surprising then for somebody to be
21 upset if they thought they were being accused of a crime,
22 would it?

23 A. No, I don't guess so.

24 Q. Especially if it's one that you didn't commit,
25 would it?

1 A. I can see your point there. I don't think so.

2 MR. WILLIAMS: Nothing further, Judge.

3 FURTHER REDIRECT EXAMINATION by Mr. Rupp:

4 Q. Mr. Aubuchon, at that point did you see any law
5 enforcement officers taking to him, around him, or anything?

6 A. At the time that I was talking to him?

7 Q. Yes.

8 A. No.

9 Q. As a matter of fact, he was sitting in a fireman's
10 truck; is that correct?

11 A. Yes, yes.

12 MR. RUPP: No other questions.

13 FURTHER RECROSS-EXAMINATION by Mr. Williams:

14 Q. Mr. Aubuchon, you don't know if any other police
15 officers had previously talked to him that morning or not,
16 do you?

17 A. No.

18 MR. WILLIAMS: Nothing further.

19 THE COURT: Anything else?

20 MR. RUPP: No.

21 THE COURT: Witness be excused permanently?

22 MR. RUPP: Yes.

23 MR. WILLIAMS: Yes.

24 THE COURT: You may step down, sir. You're free to
25 go.