

IN THE SUPERIOR COURT OF TATTNALL COUNTY  
STATE OF GEORGIA

THE MAYOR AND CITY COUNCIL )  
OF THE CITY OF GLENNVILLE, )  
Plaintiff, )  
)  
vs. )  
)  
JERRY ALAN KNIGHT, )  
LOUIS P KNIGHT, )  
)  
Defendant. )

CASE NUMBER: 2025-SUV-63

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HEARING  
MAY 6, 2025 AT 9:58 A.M.  
TATTNALL COUNTY COURTHOUSE  
GLENNVILLE, GEORGIA  
HONORABLE MARK A. HENDRIX, PRESIDING

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APPEARANCES

FOR THE PLAINTIFF: Mr. Hugh McCullough  
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FOR THE DEFENDANT: Mr. John Harvey  
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PROCEEDINGS

1  
2 THE COURT: The Court calls the case of The Mayor and  
3 City Council the City of Glenville versus Jerry Allen  
4 Knight and Louis P. Knight. Mr. McCullough is here on  
5 behalf of the City of Glenville, and Mr. John Harvey is  
6 here on behalf of Mr. Jerry Allen Knight and Mr. Louis P.  
7 Knight. Good morning to you all. Mr. McCullough, and Mr.  
8 Harvey, do y'all want this taken down?

9 MR. MCCULLOUGH: Yes, Your Honor.

10 MR. HARVEY: Yes, Judge.

11 MR. MCCULLOUGH: Mr. McGovern taught me years and  
12 years ago that I should always say yes.

13 THE COURT: Right. He was a good one to listen to.

14 MR. MCCULLOUGH: He taught me by saying no, he was on  
15 the other side of the case.

16 MR. MCCULLOUGH: He didn't know he was teaching me  
17 something but I was learning.

18 THE COURT: He was good lawyer, and good one to learn  
19 from. Okay. There was an ex parte order signed in this  
20 case. I don't have a file, and my apologies to counsel for  
21 that. But Mr. Knight, Mr. Knights, and I know Mr. Harvey.  
22 Well, you all have two of the finest lawyers in our area,  
23 Mr. McCullough, I think very highly of and I think very  
24 highly of Mr. John Harvey. I'm sure he's explained to you  
25 that when an ex parte order is entered by a Court, I only

1 have the benefit of hearing from one side. I only have the  
2 benefit of hearing, you know, just as the evidence as it's  
3 portrayed to repeat by one side only so. And having said  
4 that, I'm not trying to suggest that Mr. McCullough  
5 misrepresented any of the facts and the fact the  
6 announcement from the lawyers, were we kind of agree to the  
7 facts. We just disagree, perhaps, on the manner in which a  
8 local, Is it a local ordinance and an interpretation of the  
9 state statute in conjunction with the local ordinance.

10 So there's just --- my understanding is that there's  
11 just a disagreement, which it seems to be a genuine  
12 disagreement over the manner of how you interpret this  
13 particular statute. I joked when your counsel made the  
14 argument that they were going to need me to intervene and  
15 use my expert kind of judgment to settle that dispute. I  
16 will represent to you that they are far smarter than I am.  
17 So someone just has to have the final say in this. And so I  
18 just wanted you all to know that I'm sure Mr. Harvey has  
19 indicated I don't attribute any ill will toward you all. I  
20 don't know that what you're doing was illegal. I just  
21 entered the order as I saw appropriate at the time Mr.  
22 McCullough presented it to me, my understanding further is  
23 that these two lawyers know each other. They know each  
24 other well. They go way, way, way, way back. It's always  
25 easier. I have learned in the year and some odd months I've

1           been doing this, that when you have two good lawyers that  
2           are presenting the case, it tends to be a whole lot easier.  
3           So with that, I will shut up and let Mr. McCullough  
4           proceed.

5           MR. MCCULLOUGH: Your Honor, you said that you don't  
6           have a copy of the file, I have one.

7           THE COURT: If you have an extra one, I would. And I  
8           appreciate it. And I do remember this.

9           MR. MCCULLOUGH: Your Honor, I wish to do what I will  
10          mark as plaintiffs exhibit number one and give this to the  
11          Court. As the Court hears the testimony and the arguments  
12          of councils, it's kind of a birds eye view photograph.  
13          What this is plaintiffs exhibit number one is the aerial  
14          photo from qPublics of the property. This first one  
15          outlined in blue is Mr. Jerry Knights property. And then  
16          adjacent, you can see they fit together as Mr. Louis  
17          Knights property.

18          THE COURT: Mr. Jerry Knight's property is the 29.98  
19          track?

20          MR. MCCULLOUGH: Yeah, and what we're talking about is  
21          on the north side of the hilltop.

22          THE COURT: Thank you. so P ones admitted without  
23          objection by plaintiff.

24          Mr. McCullough, I'm ready wherever you are.

25          MR. MCCULLOUGH: May It please the Court and Mr.

1 Harvey, as the Court has alluded to, this is a case  
2 primarily of interpretation of law. This is not one where  
3 either side is shouting and yelling at each other.  
4 Everybody knows, I think everybody gets along in this case,  
5 with everybody and so this is, I guess, in a way, analogous  
6 to the case, the case that was before the Court. Just a  
7 moment ago.

8 THE COURT: Thank God.

9 MR. MCCULLOUGH: And what we're dealing with here is  
10 open burning within the city limits of Glennville in the  
11 application of O.C.G.A 12-6-90, which is the code section  
12 of the Official Code of Georgia Annotated, that deals with  
13 the permits required for burning woods and lands, marshes  
14 and other flammable vegetation, and certain exceptions to  
15 that, and how it conflicts with or is to be interpreted  
16 within connection of the Official Code of Ordinances of  
17 Glennville, Georgia, Chapter 22 section 22-32, which deals  
18 with open burning of vegetative material for the purpose of  
19 land clearing. And we will provide the Court with copies of  
20 it. Your Honor, if I may approach give you a copy of the  
21 Code of Glennville Ordinance 22-32, as well as a copy of  
22 O.C.G.A 12-6-90.

23 THE COURT: Yes, sir.

24 MR. MCCULLOUGH: It's regulations that are single in  
25 conflict, that we'll argue. Not so much. So what we have is

1 a situation where the two Mr. Knights have land that's  
2 within the city limits of Glennville. It was previously  
3 forest. It was covered, a portion that was covered with  
4 pine trees. Those pine trees were clear cut sometime last  
5 year. Also, the city of Glennville amended its open burn  
6 ordinance to include a section that provided for the open  
7 burning of the vegetative material for the purpose of land  
8 clearing within the city limits is permitted with the use  
9 of an air curtain destructor provided certain conditions  
10 are met. An air curtain destructor is a device that I have  
11 never heard of until this time, and it's something that our  
12 city manager had come up with from looking at ordinances  
13 that other cities had implemented. But as I understand it  
14 an air curtain destructor if anybody in here can give a  
15 better explanation of the sort of device that sat there by  
16 the fire that draws in the smoke from a fire and scrubs or  
17 removes soot and ash from it and dissipates the smoke to a  
18 certain degree so that is not quite as thick and offensive  
19 to those surroundings, and it allows it to dissipate into  
20 the atmosphere quicker and better. The --- there was a  
21 meeting between the city officials and representative from  
22 the Georgia Forestry Commission, Mr. Lynn (ph), last  
23 September 18, we discussed our disagreements over this, and  
24 nothing else was done with respect to this was in  
25 connection with their intent to burn that property, and

1 then nothing else was done. This was September the 18th of  
2 last year, and then on March the 27th of this year, the  
3 fire department was notified by the Forestry Commission  
4 that fire that those lands would be burned on that  
5 particular day, shortly before the fire was set. Fire was  
6 set. It burned that day. You'll hear a little testimony  
7 about that, but that's the aftermath of this. It was our  
8 belief and intent that their intention was to continue  
9 burning. They didn't burn everything that was there that  
10 showed on the area, and so that's whenever we sought the  
11 temporary restraining order to hold everything into place,  
12 to get this matter before the Court, so that the Court  
13 could make an interpretation of the interplay between these  
14 two ordinances and does this one trump the other, and  
15 before anything else was done. thus far, the only thing  
16 that possibly could have harmed, would have come from it,  
17 would have been delay of two to three weeks of additional  
18 burning. If the Court was to rule in favor of the Knights,  
19 we would respect the decision and the City of Glennville  
20 Ordinance would not apply. And so today's, the purpose of  
21 today's hearing is a hearing on whether the temporary  
22 restraining order should be continued and made  
23 interlocutory.

24 MR. HARVEY: I think that brings us back to where we  
25 are today.

1 THE COURT: Mr. Harvey.

2 MR. HARVEY: Thank you, Your Honor. And I'll be brief  
3 I think Mr. McCullough outlined the issues there very well.  
4 I think if the Court would like to cut to the chase, the  
5 chase is that statute there , Your Honor, is specifically  
6 12-6-90€ and how the Court established that when this issue  
7 first came up the forestry department reached out to the  
8 Attorney General's Office and Assistant General Attorney  
9 issued an opinion about it that essentially found that the  
10 State law controlled and any additional requirements, like  
11 the requirements that are contained when the ordinance are  
12 not valid. Georgia law specifically says you cannot have  
13 those additional requirements. We have as a witness, Mr.  
14 Barrett with the state forestry department, who's dealt  
15 with, you know burns within the city. He's got a forestry  
16 degree and he can explain it to the Court. You know how  
17 these burns are necessary after trees are cut. This is not  
18 like land clearing where stumps are removed and land is  
19 graded. It's essentially burned to burn off the understory  
20 and the brush and the fuel for fires, basically to prevent  
21 the kind of crazy wildfires that spread and what not. So,  
22 just so the Courts got these while we're talking about  
23 them. Can I go ahead and tender these, Your Honor?

24 THE COURT: Is there a disagreement counsel as to  
25 whether or not this is land clearing?

1 MR. HARVEY: I think there is, our argument is that  
2 it's not land clearing.

3 THE COURT: Is it the City of Glennville's position  
4 that is it in fact land clearing?

5 MR. MCCULLOUGH: Yes, sir. And I don't have any  
6 issues with these two exhibits. I do have an issue with  
7 this unofficial opinion that is not the opinion of the  
8 Attorney General. It specifically says within the body of  
9 it that this memorandum constitutes the informal legal  
10 analysis of the author only is intended to express the  
11 opinion of the Attorney General. I would argue that this  
12 not the authority that the Court can rely upon.

13 THE COURT: With all due respect, Mr. McCullough, I'll  
14 give it what weight I deem appropriate, but it will  
15 certainly help me. In fact, if that wasn't provided to me,  
16 there's been reference made to it and I made note of it, I  
17 would go and seek that opinion out to assist me in kind of  
18 seeing what the agency's office has said. So I will note  
19 your objection, but I am going to allow that.

20 MR. MCCULLOUGH: And I just wanted to note that for me  
21 for the record I suspected that would be the ruling.

22 MR. HARVEY: And these are just pictures of the  
23 property.

24 THE COURT: Please understand, I don't clear property.  
25 I don't own an air curtain, you know, so all the

1 information that I can get will certainly be beneficial.

2 Thank you, Mr. Harvey.

3 MR. HARVEY: Your Honor, the exhibits two and three,  
4 that says USDA at the top. So my clients have the property  
5 in a conservation type program, I'm familiar with  
6 Georgia's, more familiar with Georgia's program. My family  
7 farms and has a conservation funded easement. The Knights  
8 have their property in the USDA program that actually  
9 requires them to burn periodically as a part of the best  
10 practices and conservation for the property. So that's a,  
11 it's obviously a big concern for the. If they're, they're  
12 not allowed to burn throughout the, you know, the proper  
13 permitting process through the Georgia Forestry Department.  
14 They can have a problem with the USDA down the road for  
15 violating the covenant. So that's, that's part of the  
16 reason that they're concerned about.

17 MR. MCCULLOUGH: And Mr. Harvey, I'm sorry ---

18 MR. HARVEY: No, that's okay.

19 MR. MCCULLOUGH: Mr. Harvey, could we stipulate that  
20 on plaintiffs one that is a fair and accurate description  
21 of the property in question, the two combined?

22 MR. HARVEY: The picture?

23 MR. MCCULLOUGH: With respect, and we can stipulate  
24 that the property does, in fact lie within the city limits  
25 of Glennville?

1 MR. HARVEY: Yeah.

2 MR. MCCULLOUGH: Sorry I had to go through that.

3 MR. HARVEY: That's no problem.

4 THE COURT: So defendants exhibit D1, D2, D3, and D4  
5 are admitted. And I'll note counsels objection to the  
6 admissibility of D1.

7 MR. HARVEY: One more thing, Your Honor, O.C.G.A 12-6-  
8 220 actually defines forest. I understand from talking  
9 with Mr. McCullough, he's argued that this property is not  
10 a forest because it's been burned, and I think this  
11 definition contradicts that. But you know, a forest is how  
12 do you say, what's a forest like? How high did the trees  
13 have to be to be a forest, I think the Georgia Code makes  
14 it clear that if there's an ability to grow trees and have  
15 a forest, then it's a forest under Georgia law. That's it  
16 in a nutshell. You know, the Knights are law abiding  
17 citizens. They tried to do this the right way, they  
18 contacted the State Forestry Department, who said, you're  
19 doing it the right way. They were issued a permit. They  
20 proceeded with the burn. And then this issue arose.

21 MR. MCCULLOUGH: Well let the record reflect that  
22 nobody's accusing the Knights of being anything other than  
23 good citizens of the City of Glennville. We just have a  
24 disagreement as to the interpretations of these ordinances  
25 and statutes.

1 THE COURT: All right.

2 MR. MCCULLOUGH: Yes, Your Honor. We'd call to the  
3 stand Mr. Billy Conely (ph).

4 THE COURT: Billy Conley (ph).

5 MR. MCCULLOUGH: Yes, sir.

6 THE COURT: Billy Conely (ph), good morning to you,  
7 sir. If you would please make your way up here to our  
8 witness stand.

9 WITNESS CONELY: Where do you need me to go?

10 THE COURT: I'm sorry, up here in the witness stand,  
11 you can at least be a little more comfortable. Would you  
12 please raise your right hand, sir.

13 Do you solemnly swear that the testimony you're about  
14 to give about this will be the truth, the whole truth, and  
15 nothing but the truth, so help you God?

16 WITNESS CONELY: I do.

17 THE COURT: Thank you, Mr. Conely, please speak loudly  
18 and clearly. That microphone, I think, amplifies your  
19 voice, but everything's being recorded. We just want to  
20 make sure we can pick it all up.

21 WITNESS CONELY: Yes, sir.

22 **BILLY CONELY**

23 UPON BEING FIRST DULY SWORN, WAS EXAMINED AND TESTIFIED

24 AS FOLLOWS:

25 **DIRECT EXAMINATION**

1 **BY MR. MCCULLOUGH:**

2 Q. For the record, tell the Court your full name, sir.

3 A. Billy Daniel Conely (ph)

4 Q. You've got to speak up a little louder, Mr. Conely.

5 A. Billy Daniel Conely (ph)

6 Q. How are you currently employed?

7 A. Code Enforcement Officer for the city of Glennville.

8 Q. And how long have you been so employed?

9 A. Going on three years, now.

10 Q. Let me ask you this, did you on occasion go to a fire on  
11 the Knights property on March 27, 2025?

12 A. I did.

13 Q. Tell the Court how you came to come out there?

14 A. Mr. Dale Barnard, our fire chief, called and said the  
15 Knights were burning their property and that the forestry called  
16 Dale, the fire chief, and told him that the fire was going to  
17 started in about 15 minutes or so.

18 Q. So the forestry unit gave the fire chief 15-minute  
19 notice?

20 A. That's what the fire chief told me. So anyway, Stan the  
21 city manager had had surgery and he had been out for a couple  
22 weeks, and I called him and kind of let him know what was going  
23 on and he said ---

24 Q. As a result of that phone call did you go on out there  
25 to the fire?

1 A. I did.

2 Q. And what did you find when you arrived?

3 A. It was all on fire.

4 Q. Did you take some photographs?

5 A. I did.

6 Q. Did you have any conversations with anybody when you go  
7 there?

8 A. I did.

9 Q. And who did you have a conversation with?

10 A. I spoke with Mr. Lynn, with the forestry and I told him  
11 that fire needed to be put out, that they had to have a permit  
12 to burn.

13 Q. And what was the response to that?

14 A. Well, he instructed me that he had his paperwork from  
15 the State that gave him the right to burn the property.

16 Q. Okay. Did he indicated to you that he was not going to  
17 be putting the fire out?

18 A. He did.

19 Q. And did the fire continue to burn?

20 A. It did.

21 Q. I'm going to show you what's been marked for purposes  
22 of identification, plaintiffs exhibit number two and ask if  
23 you can identify that.

24 A. Yes, that a picture that I took.

25 Q. And you took that on that morning?

1 A. I did.

2 Q. And does it fairly and accurately depict the scene as  
3 you saw it when you arrived?

4 A. Yes.

5 Q. I'm going to hand you what has been marked as for  
6 purposes of identification plaintiffs exhibit number three and  
7 ask if you can identify that?

8 A. Yes.

9 Q. And what is that?

10 A. It's a picture I took of the fire.

11 Q. Okay. And does it fairly and accurately depict the  
12 scene as you --- after you arrived on the morning on March 27?

13 A. Yes.

14 Q. I'm going to hand you what's been marked for purposes  
15 of identification, plaintiffs exhibit number four and ask if you  
16 can identify that?

17 A. Yes.

18 Q. And does that depict?

19 A. It's another picture that I took of the fire that was  
20 where the piles had already burnt down.

21 Q. Okay. And that was later on the same morning?

22 A. Yes.

23 Q. And does it fairly and accurately depict the scene as  
24 you saw it on that day?

25 A. Yes.

1 Q. I'm going to hand you what's been marked for purposes  
2 of identification purposes, plaintiffs exhibit number five and  
3 ask if you can -

4 MR. MCCULLOUGH: And, Your Honor, I'll let the Court  
5 know that I have already provided copies of these and  
6 distributed them, I mean exhibited, to Mr. Harvey.

7 MR. HARVEY: And at the same time, we stipulate and  
8 have no objections to all.

9 THE COURT: Thank you.

10 **RESUMING BY MR. MCCULLOUGH:**

11 Q. Okay, sir, will you tell the Court what that picture  
12 is?

13 A. This is Mr. David Andrews, house. That was his  
14 property, where actually the forestry went in and they set, set  
15 his fence on fire.

16 Q. Okay. Hold on, hold on. I'm not asking that yet.  
17 Remember the rules?

18 A. Yes.

19 Q. Okay, does this fairly and accurately depict the scene  
20 as you saw it on that day?

21 A. It does.

22 Q. Okay. If you'll put that down. Now, I'm going to hand  
23 you what's been marked for identification purposes plaintiffs  
24 exhibit six, can you identify that?

25 A. Yes. That's a picture I took.

1 Q. Okay. And did you take it on that morning, on March  
2 27?

3 A. I did.

4 Q. Does it fairly and accurately depict the scene as you  
5 saw it on that morning?

6 A. Yes.

7 Q. I'm going to hand you what's been marked for purposes  
8 of identification, plaintiffs exhibit number seven. Can you  
9 identify that?

10 A. Yes. It's a picture I took.

11 Q. And when did you take that, on March 27 or later on the  
12 same morning?

13 A. Yes.

14 Q. Does it fairly and accurately depict the scene around  
15 the fire as you saw it on that day?

16 A. Yes.

17 Q. I'm going to hand you what's been marked for purpose of  
18 identification plaintiffs exhibit number eight and ask if you  
19 can identify that?

20 A. Yes.

21 Q. Is that a photograph that you took?

22 A. Yes.

23 Q. Now you didn't take that on March 27, did you?

24 A. No, I took this the day after.

25 Q. Okay does it fairly and accurately depict the scene as

1 you saw it?

2 A. Yes.

3 MR. MCCULLOUGH: Your Honor, I'm going to tender  
4 plaintiffs two through eight.

5 THE COURT: All right. Plaintiffs two through eight  
6 admitted and have been stipulated to by counsel and no  
7 argument.

8 (Plaintiffs exhibits two eight admitted)

9 **RESUMING BY MR. MCCULLOUGH:**

10 Q. Now, with respect to number eight, well, I'm also going  
11 to hand you what's been admitted as plaintiff exhibit number one  
12 and ask if you can look at that. Do you know what that is?

13 A. Yes.

14 Q. What is this?

15 A. A picture of the property that was being burned.

16 Q. That's an aerial photograph of that, is that right?

17 A. Yes.

18 Q. And there is in the neighborhood, is there a small  
19 place where children congregate?

20 A. Yes, the HeadStart.

21 Q. Okay. Where is it in connection with plaintiffs  
22 exhibit number one, and as you're holding the photograph up to  
23 the left side of the photograph, you see some ballfields there?

24 A. Yes.

25 Q. What is that?

1 A. The recreation department is here.

2 Q. Okay. And then there's a small piece in the curve  
3 there between the ball field and the Knight property, is that  
4 correct?

5 A. Yes.

6 Q. And what is that little cutout?

7 A. HeadStart.

8 Q. Okay. What is the HeadStart?

9 A. That's the pre-k children, three and four years olds.

10 Q. What in plaintiffs exhibit number eight, what is that?

11 A. This is a picture I took of the playground.

12 Q. The day after the fire or the day of?

13 A. There were 16 children on it that day.

14 Q. And then plaintiffs exhibit number seven and number  
15 six, what is that?

16 A. This is a picture of the HeadStart building. That's the  
17 playground back over inside the building over here.

18 Q. Okay. Is this the same playground that you showed in  
19 plaintiffs eight?

20 A. It is.

21 Q. In plaintiffs six, what does that depict?

22 A. This is the recreation department over on the right,  
23 and this is the dumpster right beside the HeadStart building.

24 Q. Okay. And so this is the smoke as it showed by the  
25 recreation department?

1 A. That's correct.

2 Q. Did it encompass the recreation department as well?

3 A. It did.

4 Q. Okay. And plaintiffs five and four what does show,  
5 does this show a forest?

6 A. No, that's David's backyard.

7 Q. Okay ---

8 THE COURT: Whose backyard?

9 WITNESS CONELY: David Andrews.

10 THE COURT: Okay.

11 **RESUMING BY MR. MCCULLOUGH:**

12 Q. All right. Mr. Andrews, let's go back to plaintiffs  
13 exhibit number one. This is his property depicted there?

14 A. It is.

15 Q. Where is it?

16 A. Right there. (indicating on the photograph)

17 Q. Okay you got to tell the Court where that is, sir.

18 A. It's on Veterans Drive.

19 Q. So it's on the northeast corner, Mr. Knights property  
20 is shown on the first part, is this correct?

21 A. That's correct.

22 MR. MCCULLOUGH: Can the Court see that?

23 THE COURT: Yes, sir.

24 **RESUMING BY MR. MCCULLOUGH:**

25 Q. Okay. And that's his house that's in plaintiffs number

1 five?

2 A. That's correct.

3 Q. And where he's standing is the back of his house, is  
4 that correct?

5 A. Correct.

6 Q. And then plaintiffs three and two are just showing the  
7 fire as it was blazing and then the aftermath, is that correct?

8 A. Right.

9 MR. MCCULLOUGH: Your Honor, may I approach?

10 THE COURT: Yes, sir.

11 MR. MCCULLOUGH: That's all I have of this witness.

12 THE COURT: Mr. Harvey, any cross?

13 MR. HARVEY: No, sir.

14 THE COURT: All right. Can this witness be excused?

15 MR. MCCULLOUGH: He may.

16 THE COURT: Thank you, sir. You're welcome to stay in  
17 the courtroom, or you're free to go, sir.

18 WITNESS CONELY: Thank you.

19 THE COURT: Mr. McCullough, you may call your next  
20 witness.

21 MR. MCCULLOUGH: That's all I have, Your Honor.

22 THE COURT: Okay.

23 MR. MCCULLOUGH: In retrospect he's got a brief bit of  
24 testimony and then it's arguing the statute of the case.

25 THE COURT: Yes, sir.

1 MR. HARVEY: That's correct.

2 THE COURT: Thank you, Mr. Harvey.

3 MR. HARVEY: Your Honor, since we're stipulating that  
4 this was permitted through the State, and I don't plan to  
5 call my clients to go through all that. I don't think  
6 there is any issue there. I will call Mr. Thomas Barrett.

7 THE COURT: Mr. Barrett same deal. If you would  
8 please just before you sit down, raise your right hand.

9 Do you solemnly swear that the testimony you're about  
10 to give will be the truth, the whole truth and nothing but  
11 the truth, so help you God?

12 WITNESS BARRETT: I do.

13 THE COURT: Thank you, sir.

14 **THOMAS BARRETT**

15 UPON BEING FIRST DULY SWORN, WAS EXAMINED AND

16 TESTIFIED AS FOLLOWS:

17 **DIRECT EXAMINATION**

18 **BY MR. HARVEY:**

19 Q. Good morning, sir. Would you please state your name  
20 for the record?

21 A. Good morning. William Thomas Barrett.

22 Q. Okay. And who is your employer, Mr. Barrett?

23 A. The Georgia Forestry Commission.

24 Q. Okay. And how long have you worked for the Georgia  
25 Forestry Commission?

1 A. A little over 23 years.

2 Q. Okay. All right. Would you please run through your  
3 education background?

4 A. I have a forestry degree from University of Georgia.  
5 I'm a registered forester for the state of Georgia. That's how  
6 I started my career with the commission, was as a forester. I  
7 was primarily helping landowners manage their properties. I got  
8 an opportunity to move over into the fire control side of the  
9 Forestry Commission. I became an area manager, and then kind of  
10 worked my way up from there. Now, I'm the Forest Protection  
11 Chief.

12 Q. Okay. For what region?

13 A. For the state.

14 Q. Okay. For the state of Georgia?

15 A. Yes.

16 Q. All right, where's your office located?

17 A. Macon.

18 Q. Okay. Can you give us just a short description of your  
19 job, like what's the scope of your job?

20 A. So, kind of the unofficial title is the fire chief. So  
21 I'm the fire chief for the forestry commission in charge of all  
22 the wild land and fire program. So obviously our number one job  
23 is the suppression of wildfires, but we also do a lot of  
24 mitigation work, which is where prescribed burns fall under. So  
25 that is the whole burning fire program.

1 Q. Okay. All right. And what is the purpose for the  
2 fires, like this case, the Knights participated in?

3 A. So as I understand it, the Knights are looking to  
4 replant the property or to reforest the property. So it's a  
5 very common civil cultural practice to you know, once the trees  
6 are cut off of the property, to come in with machinery, either  
7 rake and pile debris, or sometimes do what we call wind rows,  
8 which is a little bit more debris than that, I think the pile  
9 that they have on their property. And the purpose of that is to  
10 clean, prepare the land for replanting, or to come up naturally  
11 in new growth.

12 Q. Okay. And why is that important?

13 A. It, just with Georgia's forest industry, big industry  
14 in the state, \$42 billion a year. So it's important to the  
15 state's economy, and it's just a common practice. It's one of  
16 the cheapest methods that you can do to get the land prepared.

17 Q. Okay. Now, you're familiar with the issue, in this  
18 case, the conflict, or whatever, between the city ordinance and  
19 state law. In any of your positions with the state, have you  
20 ever dealt with similar issues and discussions with cities  
21 before?

22 A. Sure.

23 Q. Could you tell the Court about those?

24 MR. MCCULLOUGH: Your Honor, I would object to that to  
25 grounds of relevancy.

1 MR. HARVEY: Your Honor, he's an --- I'm sorry I  
2 didn't mean to cut you off.

3 MR. MCCULLOUGH: It's okay.

4 MR. HARVEY: He's an expert in the forestry field, and  
5 experts can give opinions about regulations and statutes  
6 and how they're applied in situations. So I thought his  
7 testimony might be helpful to the Court to see, you know,  
8 how he, how the bar commission has dealt with issues like  
9 this and burns in the cities. It's kind of a unique  
10 situation. I've never seen it in 25 years, as far as a  
11 court case.

12 THE COURT: You know, the threshold for relevant  
13 evidence is, is low anything.

14 MR. MCCULLOUGH: I understand that.

15 THE COURT: Anything intended to help to try or fact,  
16 make a determination, draw from the testimony,  
17 determinations and inferences, just like the letter that  
18 it's projected to in D1 it would be helpful for me to hear  
19 this testimony as it relates to his having done this for  
20 his 23-year career.

21 MR. MCCULLOUGH: I didn't mean to cut you off --- I'm  
22 sorry.

23 THE COURT: That's okay.

24 MR. MCCULLOUGH: May I?

25 THE COURT: I was going to let you respond.

1 MR. MCCULLOUGH: I just going to say if and  
2 understood, if I understood the point of the question was,  
3 how did you deal with this with the other municipalities?  
4 And I think that you would need to know what the ordinance  
5 in question was with the other municipal. Other  
6 municipality and what the facts were behind that, before  
7 making a blanket generalization about where this happened  
8 in another city. So this should be what happens in this  
9 city. And we're talking about specifically this ordinance  
10 and this set of facts in this case.

11 THE COURT: You know Mr. McCullough, I don't, I don't  
12 disagree with what it is that you're saying, but I'm, I'm  
13 saying that, is it relevant? And I believe that the answer  
14 to that question is, is yes, it's relevant and helping me  
15 determine the facts of the case. So I'm going to overrule  
16 the objection and I'm going to allow the testimony.

17 MR. MCCULLOUGH: Thank you, Your Honor.

18 THE COURT: But your objection is noted.

19 **RESUMING BY MR. HARVEY:**

20 Q. Okay, Mr. Barrett, if you can answer, now?

21 A. Okay, so we get, we get calls, obviously, from cities  
22 and towns as well, all the time if they're looking to enact an  
23 ordinance on that deals with prescribed burning, just to get  
24 sort of our opinion and our understanding of how state law  
25 applies. Most Recent examples would be lots of towns and cities

1 around this area, after Hurricane Helene we're looking to enact  
2 temporary burn ordinances within their city limits due to just  
3 the overwhelming piles that were up on the side of the road and  
4 things like that. And we, you know, we offer our advice, and we  
5 try to explain those, those codes. Somebody already mentioned,  
6 12-6-90, 12-6-80, 2-6-146, I believe, a review that come into  
7 play. It's always been our interpretation of the state laws that  
8 local ordinances can be more restrictive than the state law. And  
9 specifically, as it relates to agriculture and civil culture  
10 burns. And then I think it's 12-6-146, that goes on and explains  
11 the definition of civil culture, which I think is kind of  
12 applies in this situation. So we try to work generally. We try  
13 to work with the cities and explain that to them and help them.  
14 We show examples of other ordinances that cities have done over  
15 the past, and we try to tell them that number one, after  
16 Hurricane Helene to make it temporary. Number two, to be sure  
17 and spell out specifically what can be excluded or doesn't apply  
18 in the ordinances, so that people will really understand exactly  
19 what they can and can't burn. And generally, that works. It  
20 works well.

21 Q. Okay. Just out of curiosity, do you know if there were  
22 ever any discussions with Glenville about their ordinance when  
23 it was enacted.

24 A. Yeah, well, I don't know, not, not necessarily, when it  
25 was acting --- when enacted. But I think with this situation

1 coming up, knowing that Mr. Knights, that Mr. Knights wanted to  
2 burn, I think Richard Lynn and Kim both had conversations with  
3 the city about the ordinance to try to explain that we didn't  
4 think it was that it was in violation of state law, basically.  
5 And so we did have those conversations that probably would have  
6 been September, October, and it was right after that that we  
7 sought the opinion of the Attorney General just to make sure  
8 that we were that their opinion was in compliance with ours.

9 MR. HARVEY: Okay. I think that is all that I have,  
10 unless you have some questions, Your Honor.

11 THE COURT: I do not. Thank you, Mr. Harvey. Okay,  
12 Mr. McCullough.

13 **CROSS EXAMINATION**

14 **BY MR. MCCULLOUGH:**

15 Q. Yes, please. Good morning, Mr. Barrett.

16 A. Good morning.

17 Q. Mr. Barrett, what you received was not, in fact, an  
18 opinion of the Attorney General. Is that correct?

19 A. Correct?

20 Q. An opinion from someone it specifically says it is not  
21 intended to express an opinion of the Attorney General within  
22 the body of the document you're referring?

23 A. Yeah, it's just a person in their office that we work  
24 with from time to time to help us clarify.

25 Q. Just to clarify, it's not an opinion off the Attorney

1 General?

2 A. Correct.

3 Q. And is it your position, not personally, but of the  
4 department, I guess, that the city can enact no regulations with  
5 respect to burning within the city limits?

6 A. No, sir.

7 Q. Is it your position that they can enact no regulations  
8 that prohibits the burning of land, wooded land?

9 A. No, sir. They can't. So the opinion, my opinion, I  
10 guess, I shouldn't say department, but just my opinion. The  
11 state law does not allow them to limit the right of the person  
12 to burn for agriculture and civil culture, but you can totally  
13 enact ordinances in cities or counties or other local  
14 municipalities that would restrict burning of hand piles and  
15 leaf piles.

16 Q. Well, that's not what we're talking about with respect  
17 to this. So to clarify my question a little bit. Would it be  
18 your position that the city has no right to enact any ordinance  
19 that would impact in any way whatsoever the burning that the  
20 Knights did and want to do in this particular case?

21 A. Yes, I think what the Knights were doing was normal  
22 civil culture.

23 Q. And so therefore you're saying that even though it's in  
24 the city limits, the city has no say over that?

25 A. At least according to my opinion of the law. Just

1 personal opinion.

2 Q. Thank you, sir, that's all I have.

3 THE COURT: Anything else, Mr. Harvey?

4 MR. HARVEY: No, sir.

5 THE COURT: All right, sir. You can step down. Mr.  
6 Harvey do you have additional witnesses?

7 MR. HARVEY: No, sir.

8 THE COURT: Mr. McCullough, anything you'd like to  
9 call in rebuttal?

10 MR. MCCULLOUGH: No, sir. I believe I have the right  
11 to open and conclude the argument. I'll waive the opening  
12 and reserve the concluding.

13 THE COURT: All right. Mr. Harvey.

14 MR. HARVEY: Your Honor, I think, I think you get the  
15 issue. I'll be very brief, O.C.G.A. 12-6-90(d), the last  
16 part makes it clear no additional restrictions provided by  
17 local ordinance shall prohibit burning the understory for  
18 the health of the forest and wildlife, or prohibit the  
19 landowner's ability to reduce fuel loads on the forest  
20 floor for the safety of the community. And I think that's  
21 the key part of that provision. It makes it clear that, I  
22 mean, normally a city can have more restrictions than state  
23 law they do with zoning and different things, but when you  
24 have a state provision that specifically says you can't do  
25 it, then you can't do it. So, you know, cities can

1 certainly require permits for fires, but it's, you know,  
2 when, when they added the additional requirement of the  
3 smoke curtains, that's, that's where that violated 12-6-  
4 90(d) because it says you're not allowed to impose any  
5 additional restrictions. So, you know, I agree. I'm not  
6 going to argue that it's an official attorney general  
7 opinion. It's not. It is an opinion from a lawyer that  
8 works there. And I think you know that that opinion, as  
9 well as the testimony of an employee that's been working  
10 for a forestry department for 25 years, hopefully, would  
11 carry some weight it's a unique issue. I've never seen it  
12 as a lawyer in 25 years it's kind of an oddball case, but I  
13 think if you listened to that testimony with that statute,  
14 it's pretty clear.

15 THE COURT: Mr. Harvey, I appreciate that. Mr.  
16 McCullough?

17 MR. MCCULLOUGH: First off, with respect to the  
18 unofficial attorney the opinion of somebody who works in  
19 the Attorney General's Office, we do not know what  
20 information that he had. If he looked at any photographs of  
21 the land and made a determination from that, if he actually  
22 viewed the land and took it and made a determination from  
23 that. I will note that he quotes 12-6-90(d), the part that  
24 he quotes half the sentence in on this position, and his  
25 position was that that code section prohibits the County

1 Municipal Government for restricting prescribed burns by  
2 parties who have obtained permits under 12-6-90(d) and 1-6-  
3 90(a), being the department that requires them to get the  
4 permit from the Georgia Forestry Commission. And so his  
5 unofficial opinion is that the state law appears to  
6 prohibit county he didn't say it does. He said it appears  
7 to prohibit county municipal governments from restricting  
8 prescribed burns by parties who have obtained permits. So  
9 his opinion, unofficial, is that under no circumstances can  
10 the city enact any ordinance as long as they've gotten a  
11 permit from the state. That's what it says here. Alright,  
12 let's go back and look at 12-6-90(d) and read it. The  
13 notice or permit required by this code section shall be in  
14 addition, in addition to it, not exclusive. It says it  
15 shall be in addition to any other notice or permit or other  
16 requirement for burning provided for by law or by  
17 ordinance, resolution or regulation of any county or  
18 municipality of this state.

19 Okay if the interpretation that I just heard it under No  
20 circumstances under this case, could a city enact anything  
21 that would be in conflict with that, or be in addition to  
22 that? Then this code, this this sentence would not be in  
23 this code section. This sentence is the one that the  
24 gentleman at the Attorney General's office and making his  
25 unofficial opinion left out. And it'll be in the first full

1 paragraph on the second page of that opinion, he did not  
2 put that part in there. What he did put is provided,  
3 however, that no additional restrictions provided by local  
4 ordinance shall prohibit the burning of the understory for  
5 the health of the forest, understory. In order to have an  
6 understory, you have to have an over story, or a story the  
7 top the, the canopy of the forest.

8 That's what this is talking about here. It says that  
9 no additional restrictions can be provided by local  
10 ordinance shall prohibit the burning of the understory for  
11 the health of the forest. In wildlife. Okay, if you'll look  
12 at the photographs, you'll clearly see that there is no  
13 story, no over story. This is a land that has been clear  
14 cut a number of months ago. You can look on the plaintiffs  
15 exhibit one and tell from that area that it's been clear  
16 cut, and you can look at the plaintiff's photographs and  
17 see that there's no trees standing on the property other  
18 than around the actual outside boundary. We don't even know  
19 if that's on their property, if that's on the adjoining  
20 landowner's property, so or and I stopped the sentence  
21 there, and then we'll continue the sentence. It says, or  
22 prohibit the landowner's ability to reduce fuel loads on  
23 the forest floor for the safety of the community. Okay,  
24 there has to be a forest for there to be a forest floor.  
25 Again, there's not a single tree on that property, all

1 right. And it says for the safety of the community. If you  
2 look, we had no testimony about that. This was necessary  
3 for the safety of the community. And if you look at the  
4 photographs showing the smoke billowing all around that  
5 neighborhood, you look at the aerial photographs on  
6 plaintiffs one, you'll see that there's a residence there.  
7 There is the Head Start program that has a number of small,  
8 four- and five-year-old children, and it's right adjacent  
9 to the recreation department. And there's residential  
10 properties all around, and the city of Glenville, in  
11 seeking to protect the health and, safety, and welfare of  
12 its citizens as a whole, enacted section 22-32(c), which  
13 provides an open burning of vegetative material for the  
14 purpose of land clearing using an air curtain destructor  
15 shall be permitted, provided the following conditions are  
16 met. One of those is that you notify the fire chief that  
17 when it's going to be and that there be an air curtain to  
18 destructor, and it tells the requirements of how that's  
19 going about the physicality of it. And so, if you look at  
20 the photographs, this is exactly what the city of Glenville  
21 was seeking to protect its citizens from. Was that fire and  
22 that type of exposure to its citizens, its young children,  
23 the kids using the recreation department, the people living  
24 around? You'll see there's an industrial building on one  
25 side of the employees there, and there's a trailer park on

1 one side of it. So they were all subjected to that. And the  
2 position of the Forestry Commission is that the city can do  
3 nothing about that to protect its citizens, and they cite  
4 this restriction or this exception, and the exception  
5 requires that it be, that the burning be for the health of  
6 burning of the understory, for the health of the forest.  
7 Again, there's no forest there, and to reduce fuel loads on  
8 the forest floor. Again, there's no forest there for the  
9 safety of the community. And there's nothing shown that  
10 this did anything to protect the safety of the community,  
11 that the purpose of it was to clear it up so that it could  
12 be replanted. That's what I heard you. So we're arguing  
13 semantics here, I think, and I would cite the case to the  
14 Court, to the case of FDIC (indiscernible) 887 F3d 1050, a  
15 2019 Supreme Court case that was decided for the 11th  
16 Circuit to determine the question and that.

17 THE COURT: Do you have the cite?

18 MR. MCCULLOUGH: I have just recently switched to  
19 Lexus from Westlaw.

20 THE COURT: Yes, sir. It's traumatizing.

21 MR. MCCULLOUGH: And I'm having trouble depicting  
22 that.

23 THE COURT: I understand that fully.

24 MR. MCCULLOUGH: They present things differently. And I  
25 know right there is where it would be in Westlaw on the

1 site. This is the case.

2 THE COURT: Well, I've got a copy.

3 MR. MCCULLOUGH: It's cited as 887 F3d 50 11th,  
4 circuit Georgia, April 24, 2018, and in that which that  
5 doesn't apply to the facts of this case, except it is  
6 determining how to define and draw what the legislature  
7 means from writing the statute, and specifically it says  
8 that a statute draws its meaning from its text because an  
9 appellate Court presumes that the General Assembly meant  
10 what it said and said what it meant. When it comes to the  
11 meaning of statutes, the Court must read the statutory text  
12 in its most natural and reasonable way as an ordinary  
13 speaker of the English language, important are the common  
14 and customary usage usages of the words, which, in some  
15 cases, include the usual and customary meaning of the terms  
16 as used in a legal context. For context, the Court may look  
17 to other provisions of the same statute, structure and  
18 history of the whole statute and other law that forms the  
19 legal background of the statutory provision in question.  
20 So, what is the ordinary and common usage of the word  
21 forest? Forest is a large area covered chiefly with trees  
22 and undergrowth. So says Oxford languages, as I determined  
23 from finding it on a Google search under dictionary.com  
24 define what is the best definition of forest. The forest is  
25 a large area of land that's covered in trees. The word

1 forest can also refer collectively to those trees.  
2 Wikipedia says forest is a dense growth of trees in  
3 underbrush covering a large tract. And britannica.com  
4 forest is an ecosystem characterized by a dense community  
5 of trees. USDA, a forest is a complex ecological system in  
6 which trees are the dominant life form. Cambridge  
7 Dictionary, a forest is a large area of land covered with  
8 trees and plants. Merriam-Webster defines a forest as a  
9 dense growth of trees and underbrush covering a large area.  
10 The Bureau of Land Management defines forest as a is a with  
11 the term forest is widely used to describe any landscape  
12 with trees. All of these have one thing in common when  
13 talking about forest, and that's the word that I kept  
14 hearing, is trees and a combination of trees and a group of  
15 trees. Let's look at Black's Law Dictionary. Forest,  
16 historically, a tract of land not necessarily wooded, but  
17 reserved to the king or a grantee for hunting deer and  
18 other game. Well, that's not what we have here. This is not  
19 owned by the king. It is owned by a Knight, though, and but  
20 it's not reserved for hunting or other game. Number two, a  
21 franchise consisting of the right to keep wild game on  
22 grounds to set apart for the chase. That's not what we have  
23 here. And then number three, forest is a dense growth of  
24 trees and underbrush on a large tract of land. Well, that's  
25 what it defines, as far as it would be most likely to be

1 used in this scenario, and we don't have, as shown by the  
2 photographs, a dense growth of trees and underbrush on a  
3 large tract of land. I 12-6-90, clearly does permit a city,  
4 a city to enact ordinances to control open burning within  
5 the city limits. That's what the city of Glenville did.

6 THE COURT: With all due respect. What is your  
7 response to the law that says that local ordinance can't  
8 place more restrictions on a landowner in this instance  
9 than the statutes of the state of Georgia.

10 MR. MCCULLOUGH: I don't see. Where is that? Where is  
11 it? Where's that law? I heard that said, but that's, that's  
12 not what the law is.

13 THE COURT: Okay. So you don't, you don't agree with  
14 that?

15 MR. MCCULLOUGH: No, and I didn't hear a citation of  
16 that law, okay? Did you?

17 THE COURT: I just wondered if you had a response to  
18 that.

19 MR. MCCULLOUGH: What is? What is being cited that  
20 says that?

21 THE COURT: I'm going to ask Mr. Harvey a question in  
22 a minute. But 12-6-90, what was that, Mr. Harvey?

23 MR. HARVEY: 12-6-90(d). However, no additional  
24 restrictions provided by local ordinances shall prohibit  
25 burning the understory for the health of the forest and

1 wildlife or prohibit the landowner's ability to reduce fuel  
2 loads on the forest for the safety of the community.

3 MR. MCCULLOUGH: Yeah, that's exactly what I am  
4 arguing with the Court.

5 MR. HARVEY: And our point is, is it says, yes, you  
6 can have, you can require permitting. You can have similar  
7 requirements that the state has. What you can't do is go  
8 beyond what the state restrictions are. And that's what  
9 happened here. Glennville took it a step further, and the  
10 state said, no, you know you're going beyond what's  
11 required.

12 THE COURT: And Mr. Harvey with, with all due respect,  
13 as it relates to that very same (d) as Mr. McCullough is  
14 arguing the very first portion of that sentence. How does  
15 that, how do you reconcile? And I'm not asking because I  
16 have the answer. But how do you reconcile your client's  
17 position with the very first sentence of that 12-6-90(d),  
18 you know, again, we can all read? We all read it clearly  
19 and plainly, the notice of permit required by this code  
20 section shall be in addition to any other notice or permit  
21 or other requirement for burning provided for by law, by  
22 ordinance, resolution or regulation of any county or  
23 municipality of the state. I'm having a hard time  
24 reconciling how Glennville didn't have the right to amend  
25 their ordinance.

1 MR. HARVEY: Yes, sir, I think I can answer that with  
2 the code section is saying, okay, here is here are our  
3 requirements, but these requirements are in addition to  
4 what else is, whatever else is out there. It's not  
5 identifying whatever else is out there, but it's saying  
6 it's in addition to that. But then it's got a but, and the  
7 but is, but if there's an ordinance that says there's a  
8 restriction that's going to prohibit a landowner from, you  
9 know, burning the fuel, basically, for their, for their  
10 land, that's cut. You can't do that. So it's that. I know  
11 we're honing in on that little phrase, but that phrase is  
12 important. So I think the first part of that is just  
13 saying, look, we're not if there are other requirements out  
14 there, that's fine, but they can't be restrictions that  
15 would restrict the property owner from, you know, burning  
16 their the understory, the brush and the debris from a cut  
17 like that. So that's, this is all part of the normal  
18 forestry practice, you know, good standards and practice  
19 for managing your life. So that's our position,

20 THE COURT: Okay.

21 MR. MCCULLOUGH: Your Honor, I do want to hone in on  
22 that particular phrase

23 THE COURT: I understand.

24 MR. MCCULLOUGH: Because that's what it says. It  
25 doesn't say that under no circumstances can the city put

1 something more restrictive. It gives two specific examples,  
2 two specific prohibitions. However, no additional  
3 restrictions provided by local ordinance shall prohibit the  
4 burning of the understory, the understory that's burning  
5 off underneath the trees.

6 THE COURT: I understand.

7 MR. MCCULLOUGH: There are no trees there. The  
8 photographs plainly show the aerial showing that there's  
9 been no trees there for months when this fire was set on  
10 March the 27th for the understory, for the health of the  
11 forest. There's no forest there, or prohibit the  
12 landowner's ability to reduce fuel loads on the forest  
13 floor. There is no forest there. So, there is no forest  
14 floor for the safety of the community. And nowhere has it  
15 been shown that what they did or what they're doing or what  
16 they want to do is for the safety of the community, and  
17 those are the two ways that the city cannot make anything  
18 more restrictive for those to prohibit those that's not  
19 what the city is trying to do. The city is trying to  
20 protect the respiratory health of the citizens the kids  
21 that are surrounding this property, it's in the city limits  
22 of Glenville,

23 MR. HARVEY: Your Honor, may I briefly respond to just  
24 one more thing?

25 THE COURT: Yes, please.

1 MR. HARVEY: If you look in the photographs, the trees  
2 are cut, there's brush, there's grass, there's everything  
3 under there. That's the, you know, that's the understory.  
4 That's what you're trying to get rid of before you replant.  
5 So the trees will grow up beyond the brush and everything  
6 else it's there. So if you look at the photographs, you can  
7 see there, there, there is some other vegetation there. It  
8 doesn't define, you know, what the understory is. We  
9 provided the Court with the definition of forest, which  
10 clearly talks about the ability to have timber there so,  
11 and we would argue that the Georgia code definition of  
12 forest would override, you know, the Google definition of  
13 forest.

14 THE COURT: It also states in the city ordinance is  
15 22-32 and I'm looking at the exceptions C. Stumps, tree  
16 trunks, limbs from land clearing cannot be burned. I mean,  
17 some of the photographs that were submitted.

18 MR. MCCULLOUGH: Oh no, it says only wood ways,  
19 consisting of trees, logs, large brush, and stumps, shall  
20 be burned with an air curtain destroyer.

21 THE COURT: I was looking at the exceptions, under up  
22 under B 22-32 open burning. It says stumps, tree trunks and  
23 limbs from land clearing does not be burned. So this would  
24 be in your client's favor. And what I'm looking at is the  
25 photographs that were tendered. For example, plaintiffs

1 three seems to me, and I don't know, and again, I'm no  
2 forestry expert, and I don't pretend to be. To me that  
3 looks plaintiffs three appears to be large stumps, large  
4 logs, unturned earth with branches brushes, as contemplated  
5 in the city's ordinance as being improper, cannot be  
6 burned. Plaintiffs number four, again, tends to show what  
7 looks to be large limbs, what's left over from the cutting  
8 of trees or cultivating of trees and so and again I look at  
9 again, I'll just keep, I'll stop at plaintiffs five. But to  
10 me, that also appears to be large stumps, which are  
11 contemplated in the statute as being what cannot be burned.  
12 And again, all I'm pointing out is I understand now, maybe  
13 clearer when I did, before we began this, why this is a  
14 unique case, and why there's dispute over, can you do it  
15 without the local permit, or does the state statute  
16 suffice.

17 MR. MCCULLOUGH: I think, and I understand, Mr. Harvey  
18 would agree with me. I was surprised, and I've thoroughly  
19 researched it. I'm quite sure he has, as well. There's a  
20 dearth of cases. There's no cases that hit right on this,  
21 right?

22 THE COURT: Right. Y'all make it really  
23 (indiscernible), and I appreciate it.

24 MR. HARVEY: Sorry for giving you a nice little  
25 political football to deal with right in your early career

1 on the bench. But it is. It's unique. We've asked around. I  
2 think there may be some trial Court decisions out there,  
3 but without the case names in the county, you're not going  
4 to find them. And again, those would just be persuasive  
5 anyway. So like I said at the very beginning of all this,  
6 this is up to you to interpret the statute is what this all  
7 boils down to.

8 MR. MCCULLOUGH: The Court has gotten the gist of both  
9 of our arguments.

10 THE COURT: Yes, sir,

11 MR. MCCULLOUGH: So I'll quit beating a dead horse,  
12 because I believe, well ---

13 THE COURT: I always appreciate good advocacy and your  
14 humor while you're doing it. Although I know this is a  
15 serious matter.

16 MR. MCCULLOUGH: It is

17 MR. HARVEY: Yes, sir.

18 THE COURT: I will, I am, I am not going to make a  
19 hasty decision. I've learned a lot during this hearing,  
20 which is the whole purpose of having a hearing is to inform  
21 the trier of fact, luckily for me, I've got some folks back  
22 at the office that are able to help me. They can discuss  
23 this with me, and we can go into more detail and beat the  
24 horse even more, but try to arrive a reasoned and good  
25 decision. And I understand fully well that there is a pause

1 put on the work that you all are trying to do. So I'll try  
2 to get a decision out to you lawyers as quickly as I can.  
3 But as it is for now, it would just remain in place until I  
4 can make that decision and I'll get I will make that my  
5 priority. But for me to give a ruling right now, I think  
6 would be ill advised on my part, because I simply don't  
7 know what I don't know. But again, I know a whole lot more  
8 about forestry and cultivating and all those things than I  
9 ever did before. So I appreciate all the resources. I'm  
10 going to keep all these. You don't. Y'all didn't want any  
11 of these, these documents back. I'm going to need them,  
12 quite frankly, anything else, Mr. McCullough?

13 MR. MCCULLOUGH: I don't believe so.

14 THE COURT: Mr. Harvey, anything?

15 MR. HARVEY: No, sir.

16 MR. MCCULLOUGH: Can I get the copy of my complaint  
17 back?

18 THE COURT: I do have a copy of that. Thank you both,  
19 that concludes this hearing.

20 MR. MCCULLOUGH: Thank you, Your Honor.

21 MR. HARVEY: Thank you, sir.

22 (PROCEEDINGS CONCLUDED AT 10:58 A.M.)  
23

**CERTIFICATE OF REPORTER**

I, TINA LONG, do hereby certify that the forty-six (46) pages of typewritten material were taken down and transcribed by me and that the same contain a true, correct, and complete transcript of the proceedings as stated in the caption.

I further certify that I am not of kin nor counsel to any of the parties hereto and, further, that I have no interest whatsoever in the outcome of said proceedings.

SO, WITNESS MY HAND AND SEAL this 12th day of June, 2025.

*Tina Long* 5513-9356-8437-0432 (SEAL)

Tina Long, CCR

Official Court Reporter

Atlantic Judicial Circuit