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Transcript of the Testimony of Charles Gray

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STATEMENT UNDER OATH
OF
CHARLES GRAY

taken pursuant to Notice by Alison Salyards, a Court Reporter and Notary Public in and for the State of West Virginia, at the National Mine Health and Safety Academy, 1301 Airport Road, Beaver, West Virginia on Tuesday, June 29, 2010, beginning at 8:12 a.m.

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A P P E A R A N C E S (cont.)

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P R O C E E D I N G S

ATTORNEY HAMPTON:

My name is Pollyanna Hampton. Today is June 29th, 2010. I am with the Office of the Solicitor, U.S. Department of Labor. With me is John Godsey, an accident investigator with the Mine Safety and Health Administration, MSHA, an agency of the United States Department of Labor. Also present are several people here from the State of West Virginia, and I ask that they state their appearance for the record right now.

MR. FARLEY:

I'M Terry Farley, with West Virginia Office of Miners' Health, Safety and Training.

MR. O'BRIEN:

John O'Brien, with the West Virginia Office of Miners' Health, Safety and Training.

ATTORNEY MCATEER:

Davitt McAteer, with the Governor's Office.

ATTORNEY HAMPTON:

And there are also several other members of the accident investigation teams in the room here today. Mr. Godsey will do the initial part of

1 questioning.

2 All members of the Mine Safety and Health

3 Accident Investigation Team and all members of the

4 State of West Virginia Accident Investigation Team

5 participating in the investigation of the Upper Big

6 Branch Mine explosion shall keep confidential all

7 information that is gathered from each witness who

8 voluntarily provides a statement until the witness

9 statements are officially released. MSHA and the

10 State of West Virginia shall keep this information

11 confidential so that other ongoing enforcement

12 activities are not prejudiced or jeopardized by a

13 premature release of information. This

14 confidentiality requirement shall not preclude

15 investigation team members from sharing information

16 with each other or with other law enforcement

17 officials. Your participation in this interview

18 constitutes your agreement to keep this information

19 confidential.

20 Government investigators and specialists

21 have been assigned to investigate the conditions,

22 events and circumstances surrounding the fatalities

23 that occurred at the Upper Big Branch Mine-South on

24 April 5th, 2010. The investigation is being conducted

25 by MSHA under Section 103(a) of the Federal Mine

1 Safety and Health Act and the West Virginia Office of
2 Miners' Health, Safety and Training. We appreciate
3 your assistance in this investigation.

4 You may have a personal attorney present
5 with you during the taking of this statement or
6 another personal representative, if MSHA has permitted
7 it. Your statement is completely voluntary. You may
8 refuse to answer any question and you may terminate
9 your interview at any time or request a break at any
10 time. Since this is not an adversarial proceeding,
11 Cross Examination of you will not be permitted. Just
12 so that the record is clear, do you have a personal
13 representative with you here today?

14 MR. GRAY:

15 No.

16 ATTORNEY HAMPTON:

17 Your identity and the content of this
18 conversation will be made public at the conclusion of
19 the interview process and may be included in the
20 public report of the accident, unless you request that
21 the identity --- your identity remain confidential or
22 your information would otherwise jeopardize a
23 potential criminal investigation. If you request us
24 to keep your identity confidential, we will do so to
25 the extent permitted by law. That means that if a

1 judge orders us to reveal your name or if another law
2 requires us to reveal your name or if we need to
3 reveal your name for other law enforcement purposes,
4 we may do so. Also, there may be a need in the future
5 to use the information that you provide to us in other
6 investigations into and hearings about the explosion.

7 Do you understand?

8 MR. GRAY:

9 Yes.

10 ATTORNEY HAMPTON:

11 Do you have any questions?

12 MR. GRAY:

13 No.

14 ATTORNEY HAMPTON:

15 After the investigation is complete, MSHA

16 will issue a public report detailing the nature and
17 causes of the fatalities in the hope that greater
18 awareness about the causes of accidents can reduce
19 their occurrence in the future.

20 Information obtained through witness

21 interviews is frequently included in these reports.

22 Since we will be interviewing other individuals, we
23 request that you not discuss your testimony with any
24 person aside from a personal representative or a
25 lawyer. A court reporter will record your interview,

1 so please speak loudly and clearly. If you do not
2 understand a question, please ask the questioner to
3 rephrase it. Please answer each question as fully as
4 you can, including giving us information that you've
5 learned from someone else.

6 I'd like to thank you in advance for your
7 appearance here today. We really appreciate your
8 assistance in this investigation. Your cooperation is
9 critical in making the nation's mines safer.

10 After we have finished asking questions,
11 you will then have an opportunity to make a statement
12 and provide us with any other information that you
13 believe is important. If at any time after the
14 interview you recall any additional information that
15 you believe might be useful, please contact Norman
16 Page at the telephone number or the e-mail address
17 provided to you in a letter that was sent to your
18 home.

19 Any statements given by miner witnesses
20 and MSHA --- to MSHA are considered to be an exercise
21 of statutory rights and protected activity under
22 Section 105(c) of the Mine Act. If you believe any
23 discharge, discrimination or other adverse action is
24 taken against you as a result of your cooperation with
25 this investigation, you are encouraged to immediately

1 contact MSHA and file a complaint under Section 105(c)
2 of the Act.

3 MR. FARLEY:

4 Mr. Gray, on behalf of the West Virginia
5 Office of Miners' Health, Safety and Training, we'd
6 like to advise you that the West Virginia Coal Mine
7 Health and Safety Regulations also protect coal miners
8 from potential discrimination for participating in
9 interviews of this type. I'm going to provide you
10 with some contact information should you experience
11 any such treatment. Also, I'll provide you with my
12 business card and business card for Mr. Bill Tucker.
13 He's our underground lead investigator. Should you
14 experience any problems, you feel free to contact us.
15 Okay?

16 ATTORNEY HAMPTON:

17 Do you have any questions before we get
18 started?

19 MR. GRAY:

20 No.

21 ATTORNEY HAMPTON:

22 Okay. Could you swear in the witness?

23 -----

24 CHARLES GRAY, HAVING FIRST BEEN DULY SWORN, TESTIFIED
25 AS FOLLOWS:

1 -----

2 EXAMINATION

3 BY MR. GODSEY:

4 Q. Mr. Gray, we appreciate you coming in this
5 morning, taking the time to help us out a little bit.
6 Can you give us your full name and spell your last
7 name, please?

8 A. Charles Edward Gray, G-R-A-Y.

9 Q. Your home address and your telephone number?

10 A. (b) (7)(C) .

11 Q. Are you appearing here today voluntarily?

12 A. What do you mean?

13 Q. Are you here on your own?

14 A. Yes.

15 Q. Has anyone made any promises to you for giving a
16 statement or offered you any rewards in exchange for
17 your statement?

18 A. No.

19 Q. Has anyone threatened you or warned you not to
20 provide a statement?

21 A. No.

22 Q. Has anyone from the company or another attorney
23 representing the company talked to you concerning the
24 explosion?

25 A. No.

1 Q. Do you have any certifications or special
2 training?

3 A. No.

4 Q. The number of years you've got mining experience?

5 A. About four.

6 Q. And how many years is that with Massey or
7 Performance?

8 A. About five months.

9 Q. Just give us a brief description of your mining
10 history, when you started and where you worked at.

11 A. I don't really know when I started.

12 Q. Okay.

13 A. I worked over at Black King for a couple months
14 --- well, two months, and worked over at Logan's Fork
15 for about a year, then over at Parker Peerless for
16 about two-and-a-half years, then over at UBB for like
17 five months.

18 Q. Are you presently employed? Are you working right
19 now?

20 A. Yes.

21 Q. Where are you working?

22 A. Rhino Eastern.

23 Q. And when did you start there?

24 A. About two months ago, I think.

25 Q. And what is your present job title?

1 A. Roof bolter operator.

2 Q. Okay. Now, the following questions I'm going to
3 ask you, they'll be all about UBB, nothing about
4 Rhino, nothing like that. How much time have you been
5 assigned to UBB --- were you assigned to work at UBB?

6 A. I'd say about five months, should have been.

7 Q. And what was your first job assignment?

8 A. What do you mean?

9 Q. What was you assigned to work? What was your
10 first job duty?

11 A. Oh, roof bolter.

12 Q. And what areas of the mine did you visit the first
13 day?

14 A. Just right there at the barrier section.

15 Q. And do you remember who traveled with you?

16 A. The mine foreman. I'm trying to --- I don't
17 remember his name.

18 Q. And what training did you receive before you
19 started working at UBB?

20 A. Just the normal hazard training thing on --- for
21 the mantrips and one for the bolt machine.

22 Q. Did you walk the escapeway or anything like that?

23 A. No.

24 Q. Have you received the Massey Initial Training, the
25 company training for Massey Energy?

1 A. Like the yearly retraining stuff we get?

2 Q. Well, they have their own training regimen and
3 stuff. Did you ---?

4 A. No.

5 Q. Okay. When was your last annual refresher
6 training? Was it this year?

7 A. Yes, it was this year.

8 Q. Okay. What time --- what shift did you work and
9 what time did you arrive there at UBB?

10 A. That day?

11 Q. Yeah, on April 5th.

12 A. I was on evening shift. Started at 4:30.

13 Q. And what was your job title on April 5th?

14 A. Still roof bolter operator, but I was on the
15 buggy.

16 Q. And your shift ran from 4:30 to --- what time did
17 you stop? I didn't write it down.

18 A. 4:30 to --- I think it was like 11:30. I think
19 it's nine hours.

20 Q. Who was your supervisor?

21 A. It would be Brandon Davis.

22 Q. And have you worked for him the entire time you've
23 been there?

24 A. Yes.

25 Q. Approximately five months?

1 A. Yes.

2 Q. What areas of the mine have you worked at?

3 A. That's just about it, the barrier section.

4 Q. What is the furthest point of travel that you've
5 done here at the mine?

6 A. Like at the switch over --- I don't know if it's
7 LBB Switch or something.

8 Q. Or it can be called Ellis Switch?

9 A. It might have been called that.

10 Q. Have you been on the longwall?

11 A. No.

12 Q. The Headgate 22 section?

13 A. No.

14 Q. Tailgate 22?

15 A. No.

16 Q. You've never been inby?

17 A. Uh-uh (no).

18 Q. Okay. And what portal did you enter?

19 A. The main UBB Portal.

20 Q. And approximately how many was on your crew?

21 A. Probably about seven.

22 Q. Okay. And did you all enter punctually at 4:30 or
23 did you have some lag time where you have to wait for
24 people?

25 A. It all depends on if there's mantrips out there or

1 we have to wait on the other section to get out.

2 Q. Okay. What was the condition of the track?

3 A. It was good.

4 Q. From the portal all the way to the ---?

5 A. Yes.

6 Q. And describe the rock dust. Was it marginal,
7 thick, on the track?

8 A. Normal. Thick, I guess.

9 Q. And describe the roof and the ribs and the floor
10 from the portal to your section?

11 A. It was a bunch of loose rock everywhere.

12 Q. Loose rock on the mine roof, the floor?

13 A. The mine roof.

14 Q. Was it just hanging dry rock or ---?

15 A. It was mostly dry rock. We had that wire mesh
16 stuff all up through there.

17 Q. Did it ever give you a concern?

18 A. No. Kind of used to that.

19 Q. You get used to it. Did you ever see any floor
20 heaving in that area?

21 A. No.

22 Q. And what about the rib conditions?

23 A. The ribs sloughed out a little bit where it had
24 that middle band in it.

25 Q. Did it have rock in the middle?

1 A. Yes.

2 Q. How much rock did you have?

3 A. At least maybe two or three foot of rock in the
4 middle.

5 Q. Did that cause much problem with the rib rolling
6 and stuff?

7 A. It can be.

8 Q. Did they have any support on any ---?

9 A. They had the rib bolts on there.

10 Q. And what about ventilation on the mainline, how
11 did it --- was it adequate?

12 A. What do you mean?

13 Q. Did you have enough air?

14 A. Yes.

15 Q. And you went through some airlock doors, I guess?

16 A. Yes.

17 Q. Were they automatic or manual?

18 A. Automatic.

19 Q. Did you ever find those doors open --- both of
20 them open or one of them open when you went in or came
21 out? At one time when you came out, when you come up
22 where the doors are supposed to be, were they ever
23 open?

24 A. No.

25 Q. And do you know if your supervisor --- did you

1 have a methane monitor assigned to you, a spotter?

2 A. Yeah. They give us one on the bolter.

3 Q. But did you have one to carry in and out with you?

4 A. No.

5 Q. Did your supervisor ever mention about finding any
6 methane or ---?

7 A. No.

8 Q. Does the track and the belt run together?

9 A. No.

10 Q. Did you ever notice or was you ever on the
11 track --- belt any?

12 A. A little bit.

13 Q. How did they maintain the belt? Was it clean all
14 the time, rock dusted or was there a lot of spillage
15 or float dust or ---?

16 A. There was rock dust on there.

17 Q. How about cleanup?

18 A. They had some gob piles here and there, but about
19 normal.

20 Q. Did you ever see any bottom rollers running coal
21 or ---?

22 A. No.

23 Q. Did you have any water on the track, much water,
24 like over the rail or anything?

25 A. No, nothing like that.

1 Q. Any pumps? Any water pumps?

2 A. There was one down on our section.

3 Q. Okay. And how were the switches maintained for
4 the track? Were they --- did you ever have to get out
5 and use a slate bar to ---?

6 A. Yes.

7 Q. Did you have problems with that?

8 A. One up there at our section until they fixed it.

9 Q. Okay. And do you remember what the air direction
10 was on the belt? Which way was it going? Was it
11 coming out towards the surface or was it going in
12 towards the section?

13 A. I think it was coming out towards the surface.

14 Q. And approximately what is the time it takes you
15 from leaving the portal --- and which portal --- did
16 you enter the North Portal or the South Portal?

17 A. Which ones are at the main one?

18 Q. As you come out of the motor barn, the one on the
19 right will be the north and the one on the left would
20 be the south.

21 A. The one on the right, I think.

22 Q. Okay. And how long did it take you to get to the
23 section?

24 A. About 20 minutes.

25 Q. And when you arrived up on --- in the section, at

1 the end of the track, how long did it take you to walk
2 the section?

3 A. Just a couple minutes. It was about two breaks
4 away from the section.

5 Q. What entry did you all walk, the intake, neutral
6 or ---?

7 A. Neutral.

8 Q. Was that with the belt?

9 A. That's with the track.

10 Q. Okay. Did you ever walk the belt up?

11 A. From towards the outside?

12 Q. From the end of the track to the section?

13 A. No. We just walked the neutral.

14 Q. On the section, describe your ventilation. How
15 was your ventilation, adequate or low? Did you have
16 problems with it?

17 A. No. It was just really high sometimes and hard to
18 hang curtain, but we did.

19 Q. Curtains, were curtains used all the time?

20 A. Yes, curtains and flies.

21 Q. What about stoppings, how were they maintained up
22 to the section?

23 A. It was all the way up except one open break line.

24 Q. And you say you bolted up on the section. What
25 was the mine roof --- what was the condition of the

1 mine roof?

2 A. Well, it was good, then it would fall out. We had
3 to maintain at least 20 foot of cut all the time.

4 Q. Did it fall out a lot after they started cutting
5 before you bolted it?

6 A. Yeah, before we bolted it sometimes it would fall
7 out.

8 Q. How high would it fall?

9 A. Probably about a foot, just that dry rock.

10 Q. What was your main roof?

11 A. Huh?

12 Q. What was you anchoring in?

13 A. We was using five-foot bolt.

14 Q. Were you anchoring in sandstone, shale or ---?

15 A. Sandstone.

16 Q. Was it pretty thick?

17 A. Yes.

18 Q. After the miner --- have you watched them cut coal
19 up there, I mean with a miner?

20 A. Uh-huh (yes).

21 Q. Do they use a scrubber all the time?

22 A. Yes.

23 Q. Do they ---?

24 ATTORNEY HAMPTON:

25 Was that a yes?

1 A. Yes.

2 BY MR. GODSEY:

3 Q. Were they using --- was the curtain pulled back at
4 outby ---?

5 A. Just right behind the scrubber a little bit.

6 Q. So you said you cut 20 feet?

7 A. Uh-huh (yes).

8 Q. Did you see over the scrubber the curtain further
9 back behind the boom than what's normal?

10 A. Uh-uh (no).

11 ATTORNEY HAMPTON:

12 Can you say yes or no?

13 BY MR. GODSEY:

14 Q. So you have to run --- the shuttle car has to run
15 through flies?

16 A. Yes.

17 Q. What condition were the flies maintained?

18 A. Always on the last open break, right.

19 Q. Was there any left hanging down or ---? Were they
20 always up the way they're supposed to be?

21 A. Yes, they was always up where they're supposed to
22 be.

23 Q. What is the mining height up there?

24 A. I think it was around like nine foot, I think.

25 Q. Once the --- okay. You said you watched them

1 bolt. Had anyone ever mentioned to you or have you
2 ever seen when they were cutting and something
3 happened to the methane monitor on the miner that may
4 have went out and somebody may have altered it somehow
5 so they can continue working it until it gets time to
6 fix it?

7 A. No. I never seen anything like that.

8 Q. After they finished mining the cut, did you ever
9 bolt downwind? In other words, the miner would be on
10 the intake side and you would be on the return side
11 and the miner --- the dust would come off the --- from
12 the miner to you while you all were bolting?

13 A. Sometimes.

14 Q. How often would that happen?

15 A. Maybe once a shift.

16 Q. Say that the miner completely was cut and you were
17 getting ready to go in there, what was the procedure
18 for you all pulling your miner? Did you drill into
19 the place that had just been cut?

20 A. What do you mean, like ---?

21 Q. What would you do? I mean, what --- before you
22 pulled in there, what would you all do to the entry?

23 A. Well, we usually tested gas and make sure the
24 curtain was up right and go in.

25 Q. How did you check the methane?

1 A. With the methane detector and the rod.

2 Q. You had a probe?

3 A. Yeah, a probe.

4 Q. Okay. Did you all have a certain amount of air
5 you had to maintain at the line curtain while you all
6 were bolting?

7 A. Yes, but I can't actually remember what it was. I
8 think it was 30,000, 35,000 or something.

9 Q. Where you were drilling?

10 A. Uh-huh (yes), I think.

11 Q. Who would take the air reading?

12 A. The boss.

13 Q. Would it --- how close did you have to keep to the
14 bumper of your roof bolter, the curtain?

15 A. We always keep it to where the controls are on the
16 side. At least maybe like one roof bolt behind us or
17 two.

18 Q. Which side? Were you offside or ---?

19 A. Offside.

20 Q. What was your bolt pattern?

21 A. What do you mean?

22 Q. What was the distance between the bolts? When you
23 put your first bolt up and you put your second one how
24 far were they inby each other?

25 A. I'd say about four foot.

1 Q. Did you have --- what type of drill did you have?
2 What type of roof drill did you have? Did you have a
3 double head?

4 A. Yeah, double-headed Fletcher.

5 Q. Did you have a walk-through?

6 A. No.

7 Q. Okay. How close did you bolt to the face?

8 A. At least four foot from the face.

9 Q. And you were using what type of roof bolt? You
10 told me I think.

11 A. Five-foot blue bolts.

12 Q. Fully grouted?

13 A. Fully grouted.

14 Q. Okay. Did you all ever use any supplemental
15 support?

16 A. No.

17 Q. And how did you all --- how long did it take you
18 to bolt a 20-foot cut?

19 A. About 30 minutes.

20 Q. And you took your --- and every 20 minutes you
21 would take your gas check. How would you do that?

22 A. The probe.

23 Q. Did you ever find any methane?

24 A. No.

25 Q. And did you have any floor heave up on the

1 section?

2 A. No.

3 Q. What about some faults or any kind of problems
4 with the coal or the roof up there?

5 A. Just the dry rock would fall out on us.

6 Q. Is that in certain places or was it all over the
7 section?

8 A. Pretty much all over the section.

9 Q. And did you all have a methane monitor on your
10 drill?

11 A. No.

12 Q. And you said you had a methane spotter?

13 A. Yes.

14 Q. And were you trained in it?

15 A. Yes.

16 Q. Before you all --- when you get up on the section
17 in the morning, say you arrive and you all, I guess,
18 maybe have a safety talk, who checks the dust
19 parameters? How did you all check the dust parameters
20 on the miner and drill?

21 A. They usually --- the miner --- the miner man will
22 make sure all of his water sprays and stuff is working
23 right. And the bolters, we usually just make sure,
24 you know, the filters are clean and the dust boxes are
25 cleaned out.

1 Q. Did you all have a vacuum gauge to check your
2 pressure on your ---?

3 A. Yes.

4 Q. And what did it usually run?

5 A. In between 16 to 18.

6 Q. Who was your bolting partner?

7 A. There was two of them. I was the walker.

8 Bubba --- I don't remember his last name.

9 Q. Everybody got a nickname.

10 A. I think that was his real name.

11 Q. Oh, really? Okay.

12 A. And --- I can't remember the other boy's name.

13 Q. Well, if you was to remember, just, you know, pop
14 up, let me know. Okay?

15 A. Ricky. I don't remember his last name, though.

16 Ricky Brown. Yeah, Ricky Brown.

17 Q. Ricky Brown?

18 A. Yeah.

19 Q. Good name. Did you ever have any lack of
20 ventilation on the section? Did you ever feel that
21 way? Did you ever feel any fluctuations in air
22 current?

23 A. No.

24 Q. Pretty constant all the time?

25 A. Yeah.

1 Q. Did you all have split ventilation or sweep?

2 A. Sweep, I think, yes.

3 Q. In other words, you came up one side and went down
4 the other?

5 A. Yes.

6 Q. What was the last shift you worked prior to April
7 5th before the accident? It happened on Monday. What
8 was the last shift you worked before that?

9 A. Dayshift.

10 Q. Now, what day was it? It was a holiday weekend, I
11 think.

12 A. See, the accident happened on Monday, wasn't it?

13 Q. Right.

14 A. I guess it would be that Friday.

15 Q. Did you notice anything different that Friday,
16 anything about the ventilation or any conditions or
17 anything?

18 A. No.

19 Q. Did anybody talk --- mention to you maybe there
20 may have been something that they noticed that was
21 maybe a little different?

22 A. No.

23 Q. Do you all have radios on the section?

24 A. Yeah. We kept them on the power box.

25 Q. No one --- did the foreman carry one or

1 electrician carry one or ---?

2 A. Yeah, I think the electrician always carried one,
3 but everybody else was near the face. They just kept
4 theirs to the power center.

5 Q. Okay. And did you observe much cutting and
6 welding on the section?

7 A. When we first started a section there was a lot of
8 cutting and welding when we was putting that belt head
9 together.

10 Q. What procedures would they do? How would they go
11 about doing it?

12 A. I really don't know. I was never around them.

13 Q. Do you know if there were ever any ventilation
14 changes made while people were still working
15 underground?

16 A. I heard of something, that they was changing the
17 air. I mean, that's about it.

18 Q. What did you hear?

19 A. That they was just going to change it. That's all
20 I heard.

21 Q. Was that during a shift or while you all were
22 working or ---?

23 A. I don't know. I don't know when they did it.

24 Q. Did you have any kind of concerns on the section?
25 Anything bothered you that you that you didn't feel

1 safe with or ---?

2 A. No.

3 Q. Did you ever hear of any floor rips there, like a
4 methane outburst at that mine, or anybody talking
5 about it?

6 A. No.

7 Q. And when was the last --- I know I'm jumping
8 around here, but when was the last time that you
9 traveled your primary escapeway?

10 A. I don't think I ever did that up there.

11 Q. Ever since you've been there you never --- didn't
12 know your travelway, primary?

13 A. Well, just they showed us on the map. That was
14 about it.

15 Q. About the --- was you working in March? You
16 worked March of this year?

17 A. Uh-huh (yes).

18 Q. Were you aware of any large ventilation change or
19 a ventilation change they made sometime during that
20 month?

21 A. No, just --- I just heard they was changing the
22 air, but I didn't know when they was going to do it or
23 nothing.

24 Q. Did you ever see anyone taking out stoppings or
25 adding stoppings during your shift or moving

1 stoppings?

2 A. Uh-uh (no). No.

3 Q. Okay. You said that also ran a shuttle car for
4 the last little bit?

5 A. Yes.

6 Q. Describe what --- when you went up and the miner
7 loaded your car, did you ever look at the methane
8 monitor on the miner?

9 A. Yes.

10 Q. Did you ever see any methane on it?

11 A. No. Mostly I sees double zeros or it said like a
12 .1 or something like that.

13 Q. And .1 you say is about the highest you've seen?

14 A. Yeah. They said it needed to be recalibrated or
15 something.

16 Q. Did someone ever --- the foreman ever check while
17 they were mining for methane?

18 A. I don't really know.

19 Q. How was the roadway, the travelway for your
20 shuttle cars back and forth?

21 A. It was smooth.

22 Q. Did you have --- how many miners did you have on
23 the section?

24 A. Two.

25 Q. Did you ever operate them both at the same time?

1 A. No.

2 Q. How would they use those? How would they do it?

3 A. Well, one will cut on this side, then after he
4 quits this one over here will start cutting.

5 Q. And how many machine operators --- miner men do
6 they have up there?

7 A. Two.

8 Q. In other words, this one uses this side and then
9 the other one ---?

10 A. Yes.

11 Q. How many roof drills do they have?

12 A. They had two bolters.

13 Q. So one bolter and one miner kept at one side and
14 one driller and a miner kept to the other side?

15 A. Yes.

16 Q. And how many foremen did you have up there?

17 A. One.

18 Q. Have you ever called a 800 --- Massey 800 for a
19 safety concern or anything?

20 A. No.

21 Q. How about the MSHA hotline?

22 A. No.

23 Q. Have you ever been injured?

24 A. No.

25 Q. Do you know of anybody that has been?

1 A. No.

2 Q. Have you --- so you worked the evening shift.

3 Have you ever --- how many times have you been on a
4 section and someone's called in outside or maybe you
5 run the shuttle car or the phone or something and said
6 that there was an inspector coming or there was an
7 inspector on the property?

8 A. Quite a few times.

9 Q. Okay. Who would usually call in?

10 A. One of the people outside. I don't know names.

11 Q. And they would --- the foreman would find out and
12 he --- then what would you do?

13 A. Just make sure the section is right.

14 Q. Would you shut down and ---?

15 A. Most of the time no.

16 Q. Okay. You say it happened quite often?

17 A. Usually.

18 Q. Did the air ever increase, I think, when
19 inspectors came up there?

20 A. What do you mean?

21 Q. The ventilation, did I increase? In other words,
22 the volume, did it increase?

23 A. Basically it was about the same.

24 Q. Had you talked to other people on different
25 sections, on the headgate section and the longwall

1 section? Did you ever talk to any of the miners up
2 there?

3 A. Yes.

4 Q. Did they have any concerns about ventilation?

5 A. No. They never mentioned anything about like
6 that.

7 Q. Are you aware of any time that an oncoming shift,
8 say, that you were going to come up --- you came up to
9 the mine and they said, well, you're not going to work
10 today or something is wrong and come back maybe
11 tomorrow or hold you up from going in for a while,
12 something like that?

13 A. No.

14 Q. Have you ever been on a section and they've called
15 in and said everybody needs to get outside, we have a
16 problem or ---?

17 A. Just when the power goes off or the fan goes off.

18 Q. Your section foreman --- say you had a problem and
19 he stopped production for a while to correct something
20 and he has called outside every so often to report
21 downtime and they told him to go back to work and he
22 would worry about the problem later?

23 A. No.

24 Q. Do you know of anyone that's ever made a complaint
25 to management about safety or any other concern?

1 A. No.

2 Q. Well, how do you think they would receive that if
3 you had made a complaint?

4 A. I don't really know.

5 MR. GODSEY:

6 You want to take it?

7 MR. FARLEY:

8 Sure.

9 EXAMINATION

10 BY MR. FARLEY:

11 Q. Mr. Gray, let me back up on a couple things just
12 to clarify. You indicated you had been at Upper Big
13 Branch for five months. Was that five months
14 continuous up until the time of the explosion?

15 A. Yes.

16 Q. And you're now at Rhino Eastern. Is that a Massey
17 company?

18 A. No.

19 Q. Did Performance or Massey offer you employment
20 elsewhere after ---

21 A. Yes.

22 Q. --- the UBB explosion?

23 A. Yes.

24 Q. Where did they offer you employment?

25 A. Over at Ellis Eagle.

1 Q. Okay. Any particular reason you chose to go to
2 Rhino Eastern as opposed to staying with Massey?

3 A. It was too low. I didn't feel like crawling.

4 Q. Okay. I understand.

5 Q. Now, you indicated you worked evening shift at
6 UBB. Now, on April 5th, the day of the explosion,
7 what time did you arrive at the mine?

8 A. I think I was there about three o'clock.

9 Q. Were you there when the explosion occurred?

10 A. Yes.

11 Q. Where exactly were you located at that time?

12 A. In the motor barn.

13 Q. Okay. Now, did you happen to notice the time when
14 things began to unfold?

15 A. No. I didn't pay attention to the time.

16 Q. Now, you were in the motor barn. What exactly did
17 you see, hear and feel at the time of the event?

18 A. The only thing we seen was the fan going
19 backwards. It was blowing --- I guess running
20 backwards is what the guys was saying.

21 Q. Okay. Did it appear that air or dust was coming
22 out the fan?

23 A. We just seen dust coming from the portal coming
24 out.

25 Q. Okay. Now, if you're in the motor barn and you

1 look out toward the supply yard, ---

2 A. Yeah.

3 Q. --- the North Portal would be on your right; is
4 that correct?

5 A. Yes.

6 Q. Okay. That would be the portal you would normally
7 enter; is that correct?

8 A. Yes.

9 Q. When you saw dust coming from a portal or portals,
10 which portal was the dust coming from?

11 A. From the North Portal on the right.

12 Q. Okay. Anything coming from the South Portal?

13 A. No.

14 Q. Now, who was with you at the time this happened?

15 A. Nobody. I was getting my light from the lamp
16 house.

17 Q. Okay. Was anyone else in the motor barn at the
18 time that you can recall?

19 A. There might be some mechanics was in there working
20 on mantrips and stuff.

21 Q. Anyone you can remember?

22 A. No.

23 Q. Okay. You saw dust coming from the North Portal.
24 How long did this go on, as best you can estimate?

25 A. You mean the dust coming out?

1 Q. Yes, sir.

2 A. About 30 minutes maybe.

3 Q. Okay. Now, you indicated that you thought the fan
4 began running backwards. Now, was there any unusual
5 noise associated with that?

6 A. No.

7 Q. Okay. How long do you think this situation with
8 the fan continued?

9 A. I really don't know because they made us go back
10 inside, into the main office.

11 Q. Okay. Who instructed you to go back inside?

12 A. My supervisor.

13 Q. Okay. And that was Brandon Davis?

14 A. Brandon Davis.

15 Q. Okay. Did he or anyone else offer any information
16 as to what might have happened?

17 A. No. They just said they don't know what's going
18 on. They can't get a hold of nobody.

19 Q. Okay. All right. After the explosion, how long
20 did you remain at the UBB Portal --- mine office, I
21 mean?

22 A. At least maybe four hours I was still there.

23 Q. Did you do any work during that four-hour period?

24 A. No.

25 Q. Okay. Did you stay in the building?

1 A. Yes.

2 Q. Okay. At any point did anyone advise you as to
3 what they think might have happened?

4 A. Well, there was a bunch of people saying there
5 might have been a roof fall happen at first until we
6 pretty much listened to on the phone, when they was
7 talking, and they said it was an explosion.

8 Q. Are you familiar with the Performance Coal
9 management people?

10 A. Do you mean superintendent?

11 Q. Like superintendents, vice-president, president,
12 any of those people?

13 A. Kind of.

14 Q. Okay. Would you know who the Performance
15 president was?

16 A. Chris Blanchard, wasn't it?

17 Q. Now, from the time you arrived at around 3:00 p.m.
18 on April 5th, did you see Mr. Blanchard at any time?

19 A. No.

20 Q. Did you see any other upper management people that
21 you can remember?

22 A. When the accident happened?

23 Q. After.

24 A. After?

25 Q. Before or after.

1 A. There was some people got off of a helicopter, but
2 I don't remember who they was.

3 Q. Okay. Can you remember approximately what time
4 the helicopter arrived?

5 A. Maybe about four o'clock, 4:30.

6 Q. Okay. After the explosion on April 5th, did you
7 have any conversation with anybody about what might
8 have happened? Did anybody suggest that somebody
9 might have made a ventilation change during the
10 previous weekend, anything like that?

11 A. No, I ain't heard nothing.

12 Q. Okay.

13 MR. FARLEY:

14 Mr. McAteer?

15 EXAMINATION

16 BY ATTORNEY MCATEER:

17 Q. Do you go by Charles or Charlie?

18 A. Charles.

19 Q. Charles? What's your shift?

20 A. Oh, it's a UFC shirt.

21 Q. UFC?

22 A. Uh-huh (yes).

23 Q. What is that, a group, a band or something?

24 A. No. It's a boxing/wrestling thing.

25 Q. Okay. When you started in the mines, did you

1 start out as a contractor or did you start out as an
2 employee?

3 A. Started out as a contractor.

4 Q. Who did you work with?

5 A. Dave Stanley.

6 Q. Dave Stanley. And when you went to --- the first
7 time you went to Massey, were you a contractor?

8 A. Yes.

9 Q. With Dave Stanley as well?

10 A. Yes.

11 Q. Are you continuing as a contractor or are you ---?

12 A. No.

13 Q. When did you become an employee there?

14 A. I become an employee for Massey back in '08.

15 Q. Okay. Do you know anything about this P1 manual?

16 A. No.

17 Q. Did you ever hear of the S1 manual?

18 A. Yes.

19 Q. Ever seen it?

20 A. I think so.

21 Q. When did you see it?

22 A. I don't remember.

23 Q. What's the front look like?

24 A. I think it's got an S1 on it.

25 Q. There you go. The other one's got a P1, I

1 suppose, huh?

2 A. Yeah.

3 Q. Did you ever study it or anything or ---?

4 A. No. They just pretty much --- the S1 program,
5 they read it to us during the day, different parts of
6 it every day on every shift.

7 Q. Okay. That would be before you go in?

8 A. Yes.

9 Q. How long does that last?

10 A. About 10, 15 minutes.

11 Q. You said the doors were automatic?

12 A. Yes.

13 Q. Did those automatic things work?

14 A. Half the time.

15 Q. Did you ever have to get out and open the doors?

16 A. Sometimes.

17 Q. How does the methane spotter work that you had?

18 A. You had to push these two buttons ---

19 Q. Right.

20 A. --- to see if the battery is any good, then you
21 hit this one, then it will like start counting down,
22 and it will end up staying on zeros.

23 Q. Okay. And do you know what kind it is, the make
24 of it?

25 A. It's the one for the bolt machine. That's the

1 only one I fooled with.

2 Q. Have a name on it or anything?

3 A. No.

4 Q. What color was it?

5 A. Gray or silver.

6 Q. Okay. Do you ever calibrate them?

7 A. No.

8 Q. Who would do that?

9 A. The outside man, dispatcher.

10 Q. Okay. Did you bring it out to him?

11 A. Yes.

12 Q. Who's the outside man?

13 A. I don't remember his name.

14 Q. You said you were in the motor barn the day of the
15 disaster, the explosion. You testified it lasted 30
16 minutes.

17 A. Well, I think.

18 Q. No, no. I'm --- and these all --- we understand
19 that your memory is kind of --- something happens and
20 you go, oh. Do you remember what color the dust was?

21 A. I guess it was a brownish-white.

22 Q. Brownish? What kind of commotion was it? Was it
23 stuffed? Did it make noise?

24 A. No.

25 Q. Just pressure of something coming out or ---?

1 A. It was just like a dust of winds that just came
2 out.

3 Q. Okay. Do you know Chris Adkins?

4 A. Chris Adkins, yes.

5 Q. Do you know who he is?

6 A. Kind of. I think I never met him personally,
7 but ---.

8 Q. Sure. Was he in the helicopter?

9 A. I don't remember who came out of the helicopter.

10 Q. Okay.

11 A. I just know it was three guys that came out
12 running.

13 Q. Right. Don Blankenship?

14 A. I don't think it was Don.

15 Q. Okay. Do you know Don?

16 A. Yeah.

17 ATTORNEY MCATEER:

18 Okay. That's all the questions I have.

19 Thank you, sir.

20 ATTORNEY HAMPTON:

21 We're just going to take a quick break.

22 A. Okay.

23 ATTORNEY HAMPTON:

24 Off the record.

25 SHORT BREAK TAKEN

1 ATTORNEY HAMPTON:

2 Okay. Let's go back on the record.

3 RE-EXAMINATION

4 BY MR. GODSEY:

5 Q. Now, we started talking earlier and you said that
6 for a while that you was a roof bolter operator up
7 there ---

8 A. Uh-huh (yes).

9 Q. --- and a shuttle car operator. Did you ever
10 happen to see any coal separation in the coal in the
11 roof, any slickenslides or anything, any deformities
12 in the mien roof?

13 A. Just normal like --- you mean like kettle bottoms
14 and stuff?

15 Q. Yeah.

16 A. Yeah. They was all over the place up there.

17 Q. Was the coal ever separated or the roof have any
18 --- separations in the roof, cracks?

19 A. No.

20 Q. Okay. Have you ever had respirable dust pumps
21 placed on you, you know, to check the dust that was in
22 your work area?

23 A. Not up there.

24 Q. How about the miner operator, have you ever seen
25 him have one on?

1 A. He got the normal ones they give us like for the
2 mines themselves, dust parameter checks. I seen them.
3 They had them on.

4 Q. The dust pumps, the one, you know, that was taking
5 the samples, ---

6 A. Uh-huh (yes).

7 Q. --- did you ever see him take one off of a miner
8 operator or a shuttle --- I mean, a roof operator and
9 put it in the intake, just hang it in the intake?

10 A. I seen it before, and sometimes they'll wear them,
11 too.

12 Q. But did you ever see one take one off --- say you
13 were assigned one ---

14 A. Uh-huh (yes).

15 Q. --- and the foreman came up to you or someone and
16 removed it from your body and placed it in the intake?

17 A. No.

18 Q. Is there anyone that you know of that we could
19 talk to, maybe could get some information ---
20 additional information on what happened on April 5th?

21 A. No, because all the people that I know has already
22 been up here or getting ready to come up here.

23 Q. Have you talked with many people since you --- any
24 miners that worked there since you've left, since this
25 accident?

1 A. Just a couple.

2 Q. What are some of their thoughts about what
3 happened?

4 A. Really nothing. Just still shook up about it and
5 can't believe it happened.

6 MR. GODSEY:

7 That's all I've got.

8 MR. FARLEY:

9 I don't have anything else.

10 ATTORNEY MCATEER:

11 No more questions, Charles.

12 ATTORNEY HAMPTON:

13 On behalf of MSHA and the Office of
14 Miners' Health, Safety and Training, I want to thank
15 you for appearing and answering questions today. Your
16 cooperation is very important to the investigation as
17 we work to determine the cause of the accident. We do
18 request that you not discuss your testimony with any
19 other person other than a personal representative or
20 an attorney.

21 After questioning other witnesses, we may
22 call you if we have any follow-up questions. And if
23 at any time you have any additional information
24 regarding the accident you would like to provide to
25 us, please contact us at the information that was

1 given to you in the letter that we sent to your home.
2 If you wish, you may now go over any answer that
3 you've given to us or you may make any sort of
4 statement if there's any additional information you
5 would like to tell. Is there anything else?

6 A. No.

7 ATTORNEY HAMPTON:

8 Again, we would like to thank you for
9 your cooperation. Off the record.

10

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STATEMENT UNDER OATH CONCLUDED AT 9:02 A.M.

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1 STATE OF WEST VIRGINIA)

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CERTIFICATE

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I, Alison Salyards, a Notary Public in and

6

for the State of West Virginia, do hereby certify:

7

That the witness whose testimony appears in

8

the foregoing deposition, was duly sworn by me on said

9

date and that the transcribed deposition of said

10

witness is a true record of the testimony given by

11

said witness;

12

That the proceeding is herein recorded fully

13

and accurately;

14

That I am neither attorney nor counsel for,

15

nor related to any of the parties to the action in

16

which these depositions were taken, and further that I

17

am not a relative of any attorney or counsel employed

18

by the parties hereto, or financially interested in

19

this action.

20

21



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Alison Salyards

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