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Transcript of the Testimony of Brandon Davis

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STATEMENT UNDER OATH
OF
BRANDON DAVIS

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, Room C-137, Beaver, West Virginia, on Wednesday, September 1, 2010, beginning at 3:51 p.m.

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* Exhibit not attached

P R O C E E D I N G S

1
2 -----
3 ATTORNEY BABINGTON:

4 My name is Matt Babington. Today is
5 September 1st, 2010. I'm with the Office of the
6 Solicitor, U.S. Department of Labor. With me is Erik
7 Sherer, an accident investigator with the Mine Safety
8 and Health Administration, MSHA, an agency of the U.S.
9 Department of Labor. Also present are several people
10 from the State of West Virginia. I ask that they
11 state their appearance for the record.

12 MR. FARLEY:

13 I'm Terry Farley with the West Virginia
14 Office of Miners' Health, Safety and Training.

15 MR. O'BRIEN:

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

18 ATTORNEY KOERBER:

19 I'm Barry Koerber, an Assistant Attorney
20 General assigned to represent the West Virginia Office
21 of Miners' Health, Safety and Training.

22 MS. MONFORTON:

23 And I'm Celeste Monforton with the
24 Governor's independent team.

25 ATTORNEY KOERBER:

1 Would you swear in the witness, please?

2 -----

3 BRANDON DAVIS, HAVING FIRST BEEN DULY SWORN, TESTIFIED

4 AS FOLLOWS:

5 -----

6 ATTORNEY KOERBER:

7 Sir, would you please state your full

8 name for the record and spell your last name?

9 A. Brandon John Davis, D-A-V-I-S.

10 ATTORNEY KOERBER:

11 And would you please state your address

12 and your telephone number?

13 A. (b) (7)(C)

14 (b) (7)(C)

15 ATTORNEY KOERBER:

16 And do you have an attorney or personal

17 representative here with you today?

18 A. Yes.

19 ATTORNEY KOERBER:

20 And who would that be?

21 A. John McCuskey.

22 ATTORNEY KOERBER:

23 Okay. Sir, would you identify yourself

24 and your firm for the record?

25 ATTORNEY MCCUSKEY

1 Yes, John McCuskey, law firm Shuman,
2 McCuskey & Slicer, Charleston, West Virginia,
3 representing Brandon Davis.

4 ATTORNEY KOERBER:

5 And you're Mr. Davis's client --- or Mr.
6 Davis is your client?

7 ATTORNEY MCCUSKEY:

8 Wait a minute. Yes.

9 ATTORNEY KOERBER:

10 Okay. I apologize about that.

11 ATTORNEY MCCUSKEY:

12 That's all right.

13 ATTORNEY KOERBER:

14 I also see we have another attorney in
15 the room. I would ask that he identify himself, his
16 firm and who he represents.

17 ATTORNEY HARDY:

18 Yes, I'm David J. Hardy with Allen
19 Guthrie & Thomas and I'm here to represent Performance
20 Coal.

21 ATTORNEY KOERBER:

22 Mr. Davis, are you appearing here today
23 as a result of receiving a subpoena?

24 A. Yes, sir.

25 ATTORNEY KOERBER:

1 This is a copy of that subpoena, and I'd
2 like you to look at it and make sure it's September 1,
3 4:00 p.m.

4 A. Yes, sir.

5 ATTORNEY KOERBER:

6 I'd like that to be marked as Exhibit
7 One.

8 (Exhibit B. Davis One marked for
9 identification.)

10 A. Oh, here. Here's a little thing for the subpoena.

11 ATTORNEY KOERBER:

12 Yeah. You can keep that one. You have
13 not seen this document. This is the return of service
14 filled out by the Raleigh County Sheriff's Office,
15 showing that they served you on the ninth day of
16 August at 7:30 a.m. And attached to that is also a
17 copy of the same subpoena. This is marked by the
18 Sheriff's Office, so I'd like that to be Exhibit Two.

19 (Exhibit B. Davis Two marked for
20 identification.)

21 A. Okay.

22 ATTORNEY KOERBER:

23 Sir, the statute that authorizes the
24 Director to issue subpoenas requires the Director to
25 offer a witness fee and the mileage. To my

1 understanding, your attorney's gone over that
2 requirement with you prior to this interview. Would
3 you like to fill out the forms ---

4 A. No.

5 ATTORNEY KOERBER:

6 --- to receive that money?

7 A. No.

8 ATTORNEY KOERBER:

9 Thank you.

10 ATTORNEY BABINGTON:

11 There are several members of the --- and
12 may be several members of investigation team who will
13 be present for the interview today. Erik Sherer will
14 be conducting initial questioning.

15 All members of the Mine Safety and Health
16 Accident Investigation Team and all members of the
17 State of West Virginia Accident Investigation Team
18 participating in the investigation of the Upper Big
19 Branch Mine explosion shall keep confidential all
20 information that is gathered from each witness who
21 voluntarily provides a statement until the witness
22 statements are officially released. Just to say, this
23 isn't voluntarily provided, because you are in fact
24 subpoenaed here. MSHA and the State of West Virginia
25 shall keep this information confidential so that other

1 ongoing enforcement activities are not prejudiced or
2 jeopardized by a premature release of information.
3 This confidentiality requirement shall not preclude
4 investigation team members from sharing information
5 with each other or with other law enforcement
6 officials. Team members' participation in this
7 interview constitutes their agreement to keep this
8 information confidential.

9 Government investigators and specialists

10 have been assigned to investigate the conditions,
11 events and circumstances surrounding the fatalities
12 that occurred at the Upper Big Branch Mine-South on
13 April 5th, 2010. The investigation is being conducted
14 by MSHA under Section 103(a) of the Federal Mine
15 Safety and Health Act and the West Virginia Office of
16 Miners' Health, Safety and Training. We appreciate
17 your assistance in this investigation.

18 You may have your personal attorney

19 present during the taking of this statement or another
20 personal representative if MSHA has permitted it, and
21 you may consult with your attorney or representative
22 at any time. Since this is not an adversarial
23 proceeding, formal Cross Examination will not be
24 permitted. However, your legal representative may ask
25 clarifying questions as appropriate.

1 Your identity and the content of this
2 conversation will be made public at the conclusion of
3 the interview process and may be included in the
4 public report of the accident, unless you request that
5 your identity remain confidential or your information
6 would otherwise jeopardize a potential criminal
7 investigation. If you request us to keep your
8 identity confidential, we will do so to the extent
9 permitted by law.

10 That means that if a judge orders us to
11 reveal your name or if another law requires us to
12 reveal your name or if we need to reveal your name for
13 other law enforcement purposes, we may do so. Also,
14 there may be a need to use the information you provide
15 to us or other information we may ask you to provide
16 in the future in other investigations into and
17 hearings about the explosion. Do you understand?

18 A. Yes.

19 ATTORNEY BABINGTON:

20 Do you have any questions?

21 A. No.

22 ATTORNEY BABINGTON:

23 After the investigation is complete, MSHA
24 will issue a public report detailing the nature and
25 cause of the fatalities in the hope that greater

1 awareness about the causes of accidents can reduce
2 their occurrence in the future. Information obtained
3 through witness interviews is frequently included in
4 these reports. Since we will be interviewing other
5 individuals, we request that you not discuss your
6 testimony with any person aside from a personal
7 representative or counsel.

8 A court reporter will record your
9 interview. Please speak loudly and clearly. If you
10 do not understand a question asked, please ask the
11 interviewer to rephrase it. Please answer each
12 question as fully as you can, including any
13 information you've learned from someone else.

14 We'd like to thank you in advance for
15 your appearance here. We appreciate your assistance
16 in this investigation. Your cooperation is critical
17 in making the nation's mines safer.

18 After we have finished asking questions,
19 you'll have an opportunity to make a statement and
20 provide us with any other information that you believe
21 to be important. If at any time after the interview
22 you recall any additional information that you believe
23 might be useful, please contact any of us or Norman
24 Page at the contact information provided.

25 Finally, any statements given by miner

1 witnesses to MSHA are considered to be an exercise of
2 statutory rights and protected activity under Section
3 105(c) of the Mine Act. If you believe any discharge,
4 discrimination or other adverse action is taken
5 against you as a result of your cooperation with this
6 investigation, you're encouraged to immediately
7 contact MSHA and file a complaint under Section 105(c)
8 of the Act. Terry?

9 MR. FARLEY:

10 Mr. Davis, on behalf of the Office of
11 Miners' Health, Safety and Training, I'd like to
12 inform you that the West Virginia State Mining
13 Regulations also provide protection against potential
14 discrimination which might result from participation
15 in these type interviews. I'd like to pass along some
16 contact information for the West Virginia Board of
17 Appeals. The Board is charged with hearing complaints
18 from coal miners regarding discrimination. Should you
19 experience any problems, I would encourage you to
20 contact the board immediately. Also, in the event you
21 should have a problem and you need to file a claim,
22 you need to do so within 30 days of whenever it
23 occurs; okay?

24 A. Okay.

25 MR. FARLEY:

1 Thank you.

2 ATTORNEY BABINGTON:

3 Erik?

4 EXAMINATION

5 BY MR. SHERER:

6 Q. I want to thank you for coming down here this
7 afternoon, Mr. Davis.

8 A. Thank you.

9 Q. We're investigating this explosion and any
10 information you can share with us would be greatly
11 appreciated. Let's start with some background.
12 Roughly, how many years of mining experience do you
13 have?

14 A. Ten.

15 Q. Ten. How many of those were with the Massey
16 organization?

17 A. Nine and a half.

18 Q. Nine and a half. Did you start out as a
19 contractor?

20 A. Yes.

21 Q. Okay. Which contractor?

22 A. Lightning Contract Service.

23 Q. Okay. How long were you at the Upper Big Branch
24 Mine prior to the explosion?

25 A. Roughly two months.

1 Q. Okay. So you started about the 1st of February or
2 so?

3 A. Yes.

4 Q. What was your job description?

5 A. I was production foreman.

6 Q. Production foreman. Any particular section?

7 A. On Number Four, barrier section.

8 Q. Okay. Which shift did you normally work?

9 A. Swing shift, two weeks day, two weeks evening.

10 Q. Okay. Who was in your crew?

11 A. Let's see. James Lucas was a continuous miner
12 operator. Let's see. Mike Richards, continuous miner
13 operator. That's people I had at the time ---

14 Q. Yeah.

15 A. --- of the explosion? Ricky Brown. He was a roof
16 bolt operator. Let's see. Bobby Bishop, roof bolt
17 operator. Let me see, here. Kevin Lambert, shuttle
18 care operator. Charles Gray, shuttle car operator.

19 MR. FARELY:

20 Excuse me. Did you say Gray?

21 A. Yes, Charles Gray. And Travis Holdren, scoop
22 operator, and George Holtzapfel, electrician.

23 BY MR. SHERER:

24 Q. Okay. Thank you. Who did you report to?

25 A. Gary May, Rick Foster.

1 Q. Okay.

2 A. Gary May, superintendent; Rick Foster, mine
3 foreman.

4 Q. Okay. Thank you. Did you have the authority to
5 hire or fire people?

6 A. I couldn't hire anybody. I had the power to send
7 someone outside to ---. And the superintendent would
8 have to do the final firing.

9 Q. Okay. Did you have the authority to plan or
10 direct work?

11 A. What do you ---?

12 Q. Plan or direct the work of those people?

13 A. Yes.

14 Q. Okay. Did you have the authority to purchase or
15 requisition parts or supplies?

16 A. Purchase supplies?

17 Q. Uh-huh (yes).

18 A. No, sir.

19 Q. Did you have the authority to requisition
20 supplies?

21 A. What do you mean?

22 Q. Order a pallet of rock dust, order some blocks,
23 roof bolt?

24 A. Call out and tell them we needed them?

25 Q. Uh-huh (yes).

1 A. Yes.

2 Q. Okay.

3 A. I could call outside and tell them we needed it.

4 Q. Okay. Thank you. What was the ventilation like
5 on that barrier section?

6 A. At the time of the explosion we had sweep
7 ventilation.

8 Q. Okay.

9 A. It swept from 71.

10 Q. Okay. Had you had split ventilation on that
11 section at any time?

12 A. Yes, prior to that we had split ventilation.

13 Q. Do you recall when that change was made?

14 A. I don't remember the exact date.

15 Q. Uh-huh (yes).

16 A. But it was probably three weeks, three to four
17 weeks before the explosion. It was just after the
18 ventilation change on the longwall was made.

19 Q. Okay. And that was March the 9th, I think.

20 A. I don't remember the exact date.

21 Q. Okay. Do you recall why you changed from split to
22 sweep?

23 A. The right return quit pulling. It wouldn't pull
24 enough air to legally run. And I don't know the
25 cause. They told us to change to sweep air.

1 Q. Who chose to change to sweep air?

2 A. I assume Gary May.

3 Q. Okay.

4 A. Or it could possibly have been above Gary.

5 Q. Okay.

6 A. I don't know.

7 Q. Did you ever have any problem with methane on that
8 section?

9 A. No, sir, never found no methane.

10 Q. Okay. Were you guys working on April the 5th when
11 the explosion occurred?

12 A. Yes, we was on evening shift.

13 Q. Okay. So you were coming in?

14 A. Yes, sir.

15 Q. Okay.

16 A. Some, of the men was there already and some of
17 them hadn't got there yet.

18 Q. Oh, okay. Were you there when the explosion
19 occurred?

20 A. Yes. I was in the bath house, putting my boots
21 on.

22 Q. What do you recall happening right after you
23 became aware of the event?

24 A. I remember when I was putting my boots on, I heard
25 a loud noise, and that being, I found out later, that

1 was the fan had reversed.

2 Q. Okay.

3 A. And I went, walked out, after I got my boots on,
4 over to the shop and I seen an electrician and asked
5 him what was going on with the fan. And he said he
6 didn't know, yet something bad had happened. And then
7 I walked on over to the lamp house and seen another
8 one, guy, and I asked him what was going on, and he
9 said that the fan had reversed. They either had had a
10 major fall or an explosion.

11 Q. When did you first find out that it was an
12 explosion?

13 A. Confirmed explosion?

14 Q. Uh-huh (yes), sure.

15 A. Probably around 3:30.

16 Q. Okay. Who told you that? Do you recall?

17 A. I do not recall exactly. I remember --- I think
18 Gary May, maybe, or maybe ---. Somebody had told me I
19 needed to --- because I already had on my belt and
20 everything. I was ready to go. And he told me I
21 needed to go to the portals and take gas readings and
22 air readings every 20 minutes and log them down.

23 Q. Uh-huh (yes).

24 A. And so that's what I went and did. And then a guy
25 came out. I can't remember his name. And he told me

1 that it was confirmed that they had had an explosion.

2 Q. Okay. And that was about 3:30 or so?

3 A. Yes. Yeah, I would say 3:30, maybe later. I'm
4 not for sure.

5 Q. Sure. Now, do you recall what Mr. May did after
6 telling you that?

7 A. Yeah. Like I say, I'm not positive it was Gary
8 that told me to do that. I remember somebody, because
9 Gary --- I remember him and Jim Walker went
10 underground.

11 Q. Okay.

12 A. I can't remember if Gary told me that as he was
13 going or if somebody else told me.

14 Q. Okay. Did you participate in the rescue and
15 recovery effort?

16 A. Yes.

17 Q. What'd you do?

18 A. I was generally outside in charge of the mantrips.

19 Q. Okay.

20 A. Keeping the mantrips ready and the water, gurneys,
21 any things that the rescue teams needed.

22 Q. Sure.

23 A. Make sure they was charged, cleaned out, batteries
24 watered off, things of that nature.

25 Q. Sure.

1 A. And then I think it was on a Saturday, the
2 following Saturday, I went underground and helped
3 build temporary ventilation so they could get
4 ventilation to One Section to get the other set of men
5 out.

6 Q. Sure. Everybody that's been involved in that
7 appreciates the effort you guys made. That was vital
8 to the whole process.

9 A. Yeah.

10 Q. Let's talk about the Massey Appreciation Day.
11 That was February 13th. It was a Saturday. Do you
12 recall working that Saturday?

13 A. Yes, sir.

14 Q. What'd you do, guys do that Saturday?

15 A. They was cutting out a belt channel.

16 Q. That was for the barrier section?

17 A. Yes.

18 Q. Were you guys just turning the section off, then?

19 A. Say --- excuse me?

20 Q. Just turning the section off the ---?

21 A. Yeah, they had set us up and they had been
22 cleaning up gob in the areas that would be the face.
23 And then we had to cut out for a belt line and cut out
24 for overcast ---

25 Q. Sure.

1 A. --- to build, and basically initial development
2 for the section.

3 Q. Okay.

4 A. Rehabilitation.

5 Q. Sure. How many miners did you have cutting that
6 day?

7 A. One.

8 Q. Do you recall who the mine operator was?

9 A. James Lucas.

10 Q. Did you guys have a problem with a methane monitor
11 that day?

12 A. Yes, sir.

13 Q. Do you recall what the methane monitor did?

14 A. The sniffer malfunctioned.

15 Q. Sniffer malfunctioned. What did you guys do then?

16 A. Gary May had directed George to bridge it out.

17 Q. Okay. And by George, you're referring to ---?

18 A. Yeah, my section electrician.

19 Q. George ---?

20 A. Holtzapfel.

21 Q. Holtzapfel. Thank you. Did Mr. Holtzapfel bridge
22 that --- successfully bridge that methane monitor out?

23 A. Yes.

24 Q. Did he know how to do it?

25 A. Not to begin with.

1 Q. Okay. Who told him how to do it?

2 A. Gary May went to the mine phone and called out. I
3 do not know who he spoke to, and they told him how to
4 do it, and he referred back to George.

5 Q. Okay. About how long did it take him to bridge
6 that out?

7 A. Oh, probably 30 minutes or so, but the first time
8 it did not work.

9 Q. Okay.

10 A. And he went back to the phone and come back, and
11 then it still didn't work. And we went to Ellis
12 switch to pick up a new sniffer.

13 MR. FARLEY:

14 Who went back to the phone, May or
15 Holtzapfel?

16 A. The second time?

17 MR. FARLEY:

18 Uh-huh (yes).

19 A. Gary.

20 MR. FARLEY:

21 Okay.

22 A. I'm pretty positive.

23 MR. FARLEY:

24 Okay.

25 BY MR. SHERER:

1 Q. Okay. Who went to the Ellis switch?

2 A. I went, along with Gary May.

3 Q. Okay.

4 A. We was gone approximately ten minutes.

5 Q. Okay. Where'd you pick the sniffer up at?

6 A. We met a guy at the Ellis switch.

7 Q. Who did you meet?

8 A. I don't know his name ---

9 Q. Okay.

10 A. --- because I was new there and I didn't know very
11 many people.

12 Q. Where was the guy coming from? Was he coming from
13 inby or from ---?

14 A. He was coming from the portal.

15 Q. From the portal.

16 A. From the Ellis Portal.

17 Q. Why would there have been a spare methane monitor
18 at the Ellis Portal?

19 A. Well, George didn't have one, and I guess when
20 Gary was on the phone, he --- the guy said he had one,
21 maybe. I don't know.

22 Q. Okay.

23 A. And we'd went down there and he was going to meet
24 us at the Ellis Switch. And when Gary got me and told
25 me to come with him.

1 Q. Okay. Now, was it the monitor itself?

2 A. What do you mean?

3 Q. The readout unit?

4 A. What, that malfunctioned?

5 Q. Uh-huh (yes).

6 A. No, it was the ---

7 Q. The sniffer?

8 A. --- sniffer is what George told me.

9 Q. Okay. So you went to the Ellis switch, you picked
10 up a --- do you know if it was a new or a used
11 sniffer?

12 A. Sir, I don't know.

13 Q. Okay. Did it come in a box?

14 A. I don't know. I didn't see it. Gary got out of
15 the mantrip and went to his mantrip and got it ---

16 Q. Okay.

17 A. --- and come back.

18 Q. Okay. You guys took it back to the barrier
19 section?

20 A. Yes.

21 Q. Did Mr. ---?

22 A. Holtzapfel.

23 Q. Holtzapfel, thank you. Did he replace the
24 defective component?

25 A. I'm not sure. We got back. The miner was

1 running.

2 Q. The miner was --- oh, okay.

3 A. When we returned back Gary went to the miner and I
4 went to the bolt machine, ---

5 Q. Okay.

6 A. --- which was spot bolting.

7 Q. Sure, uh-huh (yes). Did you talk to Mr.

8 Holtzapfer --- sorry about that. Did you talk to him
9 about what he did?

10 A. What do you mean?

11 Q. How he fixed the miner.

12 A. He never said.

13 Q. Okay. Have you talked to him since then about how
14 he fixed the miner?

15 A. The following day we returned back to work.

16 Q. Uh-huh (yes).

17 A. We was still on dayshift. George come up to me.
18 It was approximately, I'd say 30 minutes into the
19 shift.

20 Q. Uh-huh (yes).

21 A. We, you know, hadn't done anything, just
22 preparing. He come up to me and told me, the miner is
23 fixed, the miner's calibrated, it is ready to go.

24 Q. Okay. On that Sunday, who was the miner operator?

25 A. On Sunday?

1 Q. Yeah. You said the following shift.

2 A. It was the following shift that we worked.

3 Q. Oh, okay. When was that?

4 A. We was off Sunday and Monday, I believe.

5 Q. Okay.

6 A. And it would've been the Tuesday morning.

7 Q. Oh, okay. So you came back on Tuesday morning and
8 it was fixed then. Do you know if that section ran on
9 Monday?

10 A. No, it was idle.

11 Q. Okay. Were you the only crew that was working on
12 that section?

13 A. On which day?

14 Q. On Monday.

15 A. Monday?

16 Q. Uh-huh (yes).

17 A. No, Tuesday. We worked Saturday.

18 ATTORNEY BABINGTON:

19 I believe he said Monday they were idle.

20 MR. SHERER:

21 Yeah. Okay.

22 ATTORNEY BABINGTON:

23 And the next shift was Tuesday.

24 BY MR. SHERER:

25 Q. Okay. So there was no shifts that ran on Monday?

1 A. No.

2 Q. Okay.

3 A. Not to my knowledge.

4 Q. Okay. So was your crew the first crew that worked
5 back on that section after Saturday?

6 A. Evening shift worked Saturday, and then the third
7 shift would've worked Monday night.

8 Q. Okay. Do you know if the monitor was repaired
9 prior to the evening shift working on Saturday?

10 A. No, sir, it wasn't.

11 Q. Okay.

12 A. I notified the section foreman on the following
13 shift, Jack Martin.

14 Q. Uh-huh (yes).

15 A. I notified him of what was wrong with the miner.

16 Q. Okay. Was there any indication that the methane
17 monitor wasn't working correctly?

18 A. I believe the miner lost power.

19 Q. But then it started back up?

20 A. Yeah, or it could've quit. I'm not positive, sir.

21 Q. Okay.

22 A. I remember ---. I wasn't right there when the
23 miner went down.

24 Q. Oh, okay.

25 A. And I heard the miner not running, and I walked

1 over and Gary and George were standing there and
2 anyway, that's when he told me that it was the
3 sniffer.

4 Q. Okay. Did you see the methane readout later on in
5 the shift at any ---

6 A. No, sir.

7 Q. --- point in time?

8 A. No, sir, I didn't.

9 Q. Okay. Are you familiar with David Taraczkozy,
10 Doughnut?

11 A. Doughnut?

12 Q. Yeah.

13 A. Oh, yeah.

14 Q. Okay.

15 A. I didn't know who you was talking about. Yes,
16 Doughnut was the chief electrician.

17 Q. Do you think he was the person that told Mr. May
18 how to bridge that out?

19 A. I don't know for sure. Honestly, I don't know if
20 he worked that day.

21 Q. Okay.

22 A. I don't know.

23 Q. Okay. Are you familiar with Keith Snow?

24 A. Keith Snow?

25 Q. Sometimes referred to as Snowman?

1 A. Yes, sir. He was the maintenance foreman on the
2 third shift.

3 Q. Okay. Do you know if he worked that day?

4 A. That Saturday?

5 Q. Uh-huh (yes).

6 A. Not to my knowledge.

7 Q. Okay.

8 A. I don't recall if he did.

9 Q. Okay.

10 A. Like I say, he would be on the owl shift, the
11 third shift.

12 Q. So he probably worked Sunday night?

13 A. Or the Monday night.

14 Q. Monday night; okay.

15 A. Yes, sir.

16 MR. SHERER:

17 Okay. Thank you. That's all the
18 questions I've got for right now.

19 EXAMINATION

20 BY MR. FARLEY:

21 Q. Okay. On Saturday, February 13th, you indicated
22 that Gary May had directed Holtzapfel to bridge the
23 continuous mining machine methane monitor.

24 A. Yes, sir.

25 Q. Now, this was after the machine had apparently

1 shut off and wouldn't restarted; is that correct?

2 A. Yes.

3 Q. Okay. Now, when the machine shut off and wouldn't
4 restart, was it under unsupported top? How much of
5 the belt channel had been cut by that point?

6 A. I'm going to say from the best of my memory,
7 probably 20 feet of the top had been cut. I could be
8 wrong, but ---.

9 Q. Okay. Now, where ---?

10 A. I don't really remember exactly.

11 Q. Okay. Where would the sniffer have been located
12 on the machine?

13 A. The sniffer itself?

14 Q. Yes, sir.

15 A. It is located up on the head itself ---

16 Q. Okay.

17 A. --- back inside the frame inside of the cutter
18 motor.

19 Q. Okay. Now, at that point was the ripper head
20 clearly under unsupported top?

21 A. Yes, the ripper head was under unsupported top.

22 Q. Okay. Now, I guess apparently some period of time
23 elapsed in Mr. Holtzapfel's attempts to ---

24 A. Yes.

25 Q. --- override the thing. And was he able to do

1 that before you and May left to go get the new
2 sniffer?

3 A. No, sir.

4 Q. Okay.

5 A. When we left, it still was not running.

6 Q. Okay. It was still in the same location?

7 A. Yes.

8 Q. Now, approximately how long were you gone?

9 A. Ten minutes.

10 Q. Okay. Now, I think you indicated that the machine
11 was running when you returned ---

12 A. Yes, sir.

13 Q. --- and that you went to the roof bolter and May
14 went to the continuous miner.

15 A. Yes, sir.

16 Q. Now, when you say that the machine was running
17 when you returned, how was it running? Was it
18 tramming? Was it cutting?

19 A. It was cutting.

20 Q. Okay. Continuing to cut the belt channel?

21 A. Yes. I think he had just a little piece of rock
22 to cut down. Then he would clean up so he could get
23 it out of there so the bolt machine could come back
24 in.

25 Q. Okay. All right. Now, then, at the end of the

1 shift you informed the oncoming foreman, Jack Martin,
2 that the methane monitoring system on the mining
3 machine was inoperable?

4 A. Yes. I told him that Gary had George bridge out
5 the sniffer on the miner.

6 Q. And the new sniffer was not installed?

7 A. Yes.

8 Q. Okay. Did Mr. Martin clearly understand what you
9 told him?

10 A. Yes, he said, yes --- he said, I know. Gary has
11 already told me.

12 Q. Okay, all right. Back up. April 5th, you put
13 your boots on in the bath house and you heard all the
14 commotion. You went outside. You said you saw an
15 electrician. He said something bad had happened. Do
16 you remember who that electrician was?

17 A. Now, I think it might've been Tom Sheets.

18 Q. Okay.

19 A. I'm pretty positive it was Tom Sheets.

20 Q. Okay. Now, I think for the period of time that
21 elapsed here, maybe 20 or 30 minutes, you said another
22 person. I think you said an electrician said a roof
23 fall or explosion. Who said that?

24 A. I don't recall ---

25 Q. Okay.

1 A. --- who that was. And that had been probably ten
2 minutes from the time that I spoke with Tom Sheets ---

3 Q. Okay.

4 A. --- because I was walking from the bath house
5 through the shop, around the building to where the
6 lamp house was located.

7 Q. Okay. Now, I think you indicated a short time
8 later you learned or someone told you that it had been
9 confirmed that there was an explosion. Do you recall
10 who told you that?

11 A. I don't recall exactly who that was. Honestly, I
12 don't recall.

13 Q. Okay. That's fine. Now ---?

14 A. Because I was over there taking the air readings
15 when that person --- I forget who it was --- come and
16 told me.

17 Q. Okay. Now, at the time the explosion occurred and
18 you were in the bath house, was it --- upon arrival at
19 the mine, was the bath house your first stop?

20 A. Yes.

21 Q. Okay. Did you go into the office area anywhere?

22 A. No, sir. I walked straight from my vehicle into
23 the bath house and put my --- changed my clothes and
24 put my boots on.

25 Q. Approximately what time did you arrive?

1 A. Did I arrive?

2 Q. Yes.

3 A. Around 15 'til 3:00.

4 Q. Okay; all right. Okay.

5 A. And then I remember when I heard that fan start
6 making that noise, I looked and it was two minutes
7 after 3:00 on my watch.

8 Q. Okay. Now, with all that was going on after the
9 explosion occurred, and I know it was all pretty
10 hectic and frantic, ---

11 A. Yeah.

12 Q. --- did anyone tell you at any time that there had
13 been any kind of a distress call from any of the
14 working sections underground prior to the explosion?

15 A. No, sir.

16 Q. Okay. When you initially began making
17 examination, making --- taking air readings and gas
18 readings at the portal after the explosion, what kind
19 of results did you get?

20 A. The first --- well, I don't know if it was the
21 first, but one time I read in, which would be the left
22 return ---. Looking at the portals I logged them as
23 One, Two, Three, Four, Five, you know, just so I could
24 keep them in order and straight. And in the Number
25 One Portal I read .05 methane one time. And I have

1 that. It's logged down. It was at the mine site when
2 I left. And then other than that, everything was
3 clear, 20.8 oxygen, 0 methane, 0 CH4.

4 Q. Okay, all right. One more thing. The sniffer
5 that you and Mr. May went to get when you met the guy
6 at Ellis switch, would it be correct that that came
7 from Ellis Portal, that area outside?

8 A. Yes, that's the way he was coming from ---

9 Q. Okay.

10 A. --- was from the portal.

11 Q. All right.

12 A. He was coming from the portal toward the switch.

13 MR. FARLEY:

14 Okay. Thank you.

15 EXAMINATION

16 BY MS. MONFORTON:

17 Q. I just have a couple of clarifying questions. You
18 indicated that you heard this loud noise when you were
19 in the bath house.

20 A. Yes.

21 Q. And then someone later told you that it was the
22 fan and it had reversed.

23 A. Yes.

24 Q. What's your understanding of a fan reversing? How
25 would that happen?

1 A. It would take an initial force of the air blowing
2 in normally, and it would take in a concussion or
3 initial force to push back to reverse the blades and
4 make it blow air out.

5 Q. Okay.

6 A. You know, coming --- knowing now, coming from the
7 explosion is what made it do that.

8 Q. Okay. So it's your understanding that the blade
9 could actually move in the opposite direction ---

10 A. Yeah.

11 Q. --- with that type of force?

12 A. Yeah. It is now.

13 Q. Okay.

14 A. I mean ---

15 Q. Okay.

16 A. --- I didn't ---. Honest, I never thought that
17 anything could reverse, you know, ---

18 Q. Okay.

19 A. --- the fan like that.

20 Q. And then after the force, then it went back
21 spinning the right way?

22 A. Yes.

23 Q. Okay. And that's your understanding?

24 A. Yes. It spun in reverse for approximately what
25 seemed like an hour, but probably --- well, maybe a

1 minute.

2 Q. Okay.

3 A. Thirty (30) seconds to a minute. But it seemed
4 like it was forever.

5 Q. Okay.

6 A. (Indicates sound). You know, it was just---

7 Q. And had you ever heard a noise like that before?

8 A. No.

9 Q. And you were very confident it was the fan?

10 A. Yes.

11 Q. Okay.

12 A. Now, well, as when I first heard it. My initial
13 thought was a blade might've come off balance on the
14 fan and causing it to shake. You know, that's what it
15 struck me as, and then they had told me that the
16 blades had been reversed.

17 Q. Okay. And because I want the record to be clear,
18 when you talked about the electrician bridging out the
19 monitor, what's your understanding of when bridging
20 out the monitor is appropriate? I mean ---?

21 A. When it is appropriate?

22 Q. Are there times when it's appropriate, based on
23 your understanding of the law?

24 A. To back it out for repair.

25 MS. MONFORTON:

1 Okay. Very good. Thank you.

2 RE-EXAMINATION

3 BY MR. SHERER:

4 Q. I have a couple additional questions. You
5 mentioned that you looked down at your watch when you
6 heard the fan, and you noticed it was 3:02 p.m. Was
7 your watch fairly accurate?

8 A. Seemingly, I thought. Of course all my men always
9 said it was slow, which, you know, it could've been
10 slow.

11 Q. Yeah, but like, if you --- they called out the
12 time on the radio or something, did everyone notice it
13 was about the same time?

14 A. No, I never recall, you know, actually looked to
15 check.

16 Q. Okay. Now, do you recall what model continuous
17 miner that was?

18 A. It was a Joy 14/15

19 Q. 14/15. Do you recall what the error code was in
20 the methane monitor?

21 A. No, sir.

22 Q. Did that miner have the methane monitor override
23 feature?

24 A. Not to my knowledge.

25 MR. SHERER:

1 Okay. Thank you.

2 RE-EXAMINATION

3 BY MR. FARLEY:

4 Q. Just to make sure I did not misunderstand
5 anything. The first attempt to bridge the methane
6 monitor failed?

7 A. Yes.

8 Q. Okay. Now, and when you and May left the section
9 to go get the new one, the machine was still not
10 running; is that correct?

11 A. Yes.

12 MR. FARLEY:

13 Okay. I got you. I'm done.

14 ATTORNEY BABINGTON:

15 Okay. Let's just take a ---. Do you
16 want to ask ---?

17 MR. SHERER:

18 Sure. No, let's go ahead and take a
19 break.

20 ATTORNEY BABINGTON:

21 Okay. We'll take a short break.

22 SHORT BREAK TAKEN

23 ATTORNEY BABINGTON:

24 Erik?

25 RE-EXAMINATION

1 BY MR. SHERER:

2 Q. Got just a few more questions, Mr. Davis. When
3 they were bolting in that belt channel, do you know if
4 the ATRS was able to reach the roof?

5 A. Yes, sir.

6 Q. Okay. Do you know of any other times that methane
7 monitors have been bridged out at this mine?

8 A. No, sir. That was the first time I've ever seen
9 it, even in different other Massey mines that I've
10 worked at.

11 MR. SHERER:

12 Okay. Thank you.

13 EXAMINATION

14 BY ATTORNEY BABINGTON:

15 Q. You said it was the first time you'd seen that.
16 Did you see it subsequent to that?

17 A. What do you mean?

18 Q. After this mid-April --- yes, after ---.

19 A. Oh, after? Well, no. From that time in my whole
20 mining career, that's the only time I've seen a
21 sniffer bridged out.

22 ATTORNEY BABINGTON:

23 Okay. Terry?

24 MR. FARLEY:

25 We're done. Okay.

1 ATTORNEY BABINGTON:

2 You're finished?

3 MR. FARLEY:

4 I'm done.

5 ATTORNEY BABINGTON:

6 Celeste?

7 MS. MONFORTON:

8 No.

9 ATTORNEY BABINGTON:

10 Okay. For the record, I just want to

11 note that several other individuals from the MSHA team

12 sat in the interview at different points, David

13 Steffey, Rick Stoltz, John Godsey and Tom Morley.

14 Also there were two ---.

15 ATTORNEY HARDY:

16 You say they're all MSHA people?

17 ATTORNEY BABINGTON:

18 All with MSHA, yes.

19 ATTORNEY HARDY:

20 Okay.

21 ATTORNEY BABINGTON:

22 There were two documents that we marked

23 up. B. Davis One is a copy of the subpoena that we've

24 given to the witness, and B. Davis Two is a copy of

25 the return of service.

1 On behalf of MSHA and the Office of
2 Miners' Health, Safety and Training I want to thank
3 you for appearing and answering questions today. Your
4 cooperation is very important in the investigation as
5 we work to determine the cause of the accident. We
6 request that you not discuss your testimony with any
7 person aside from a personal representative or
8 counsel. After questioning other witnesses, we may
9 call you if we have any follow-up questions.

10 If at any time you have additional
11 information regarding the accident that you'd like to
12 provide to us, please contact any of us through your
13 representative at the contact information previously
14 provided to you. If you wish, you may now go back
15 over any answer you've given during this interview,
16 and you may also make any statement that you'd like to
17 make at this time.

18 A. No, I've said all I had to say.

19 ATTORNEY BABINGTON:

20 Okay. Thank you, and again, I want to
21 thank you for your cooperation in this matter. Off
22 the record.

23 ATTORNEY MCCUSKEY:

24 Oh, before we go off the record, if we
25 may, Mr. Davis asked me and made the formal request

1 for a copy of his transcript for his review as soon as
2 it's available.

3 MR. FARLEY:

4 Yes.

5 OFF RECORD DISCUSSION

6 ATTORNEY BABINGTON:

7 Okay. Well, we'll have a ---

8 ATTORNEY MCCUSKEY:

9 Yeah, thanks for that.

10 ATTORNEY BABINGTON:

11 --- procedure in place for transcript

12 review and we'll inform you of that procedure prior to
13 its release.

14 ATTORNEY MCCUSKEY:

15 Okay. And I would like for the record to

16 reflect that I don't concede that that's a proper way
17 to review the transcript, but I understand what you're
18 saying. I'm acknowledging that you said that, but not
19 accepting that as --- he'd like to see it at his own
20 leisure, at his own time and not have to take time off
21 from work to come review a transcript, so ---

22 ATTORNEY BABINGTON:

23 Duly noted.

24 ATTORNEY MCCUSKEY:

25 --- he does not agree to that procedure.

1 ATTORNEY BABINGTON:

2 Okay. Duly noted. Anything else? Okay.

3 Off the record.

4 * * * * *

5 STATEMENT UNDER OATH CONCLUDED AT 4:51 P.M.

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1 STATE OF WEST VIRGINIA)

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CERTIFICATE

5

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



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Alison Salyards

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