

STATEMENT UNDER OATH

OF

JAMES SMITH

Taken pursuant to Notice by Miranda
D. Elkins, a Court Reporter and
Notary Public in and for the State of
West Virginia, at the Wingate Inn,
350 Conference Center Way,
Bridgeport, West Virginia, on Sunday,
March 26, 2006, at 12:16 p.m.

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1 A P P E A R A N C E S (continued)

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P R O C E E D I N G S

MR. O'DONNELL:

My name is Joe O'Donnell. I'm an accident investigator with the Mine Safety and Health Administration, an agency of the United States Department of Labor. With me is James Crawford from the Solicitor's Office, Mike Rutledge and Dave Stuart with the West Virginia Office of Miners' Health, Safety & Training.

I've been assigned to conduct an investigation into the accident that occurred at the Sago Mine on January the 2nd, 2006, in which 12 miners died and one was injured. The investigation is being conducted by MSHA and the West Virginia Office of Miners' Health, Safety & Training to

1 gather information to
2 determine the cause of the
3 accident. And these
4 interviews are an important
5 part of the investigation.

6 At this time, the
7 accident investigation team
8 intends to interview a number
9 of people to discuss anything
10 that may be relevant to the
11 cause of the accident. After
12 the investigation is
13 completed, MSHA will issue a
14 written report detailing the
15 nature and causes of the
16 accident. MSHA accident
17 reports are made available to
18 the public in the hope that
19 greater awareness about the
20 causes of accidents can reduce
21 their occurrence in the
22 future.

23 Information obtained
24 through witness interviews is
25 frequently included in these

1 reports. Your statement may
2 also be used in other
3 enforcement proceedings.

4 I'd like to thank you
5 in advance for your appearance
6 here. We appreciate your
7 assistance in this
8 investigation. The
9 willingness of miners and mine
10 operators to work with us is
11 critical to our goal of making
12 the nation's mines safer. We
13 understand the difficulty for
14 you in discussing the events
15 that took place, and we
16 greatly appreciate your
17 efforts to help us understand
18 what happened.

19 This interview with Mr.
20 James Smith is being conducted
21 under Section 103(a) of the
22 Mine --- Federal Mine Safety &
23 Health Act of 1977 as part of
24 an investigation by the Mine
25 Safety and Health

1 Administration and the West
2 Virginia Office of Miners'
3 Health, Safety & Training into
4 the conditions, events and
5 circumstances surrounding the
6 fatalities that occurred at
7 the Sago Mine owned by
8 International Coal Group in
9 Buckhannon, West Virginia on
10 January the 2nd, 2006.

11 This interview is being
12 conducted at the Wingate Hotel
13 in Bridgeport, West Virginia
14 on March 26th, 2006.

15 Questioning will be conducted
16 by representatives of MSHA and
17 the Office of Miners' Health,
18 Safety & Training.

19 Mr. Smith, the
20 interview will begin by my
21 asking you a series of
22 questions. If you don't
23 understand a question, please
24 ask me to rephrase it. Feel
25 free at any time to clarify

1 any statements that you make
2 in response to the questions.
3 After we've finished asking
4 questions, you'll also have an
5 opportunity to make a
6 statement and provide us with
7 any other information you
8 believe may be important.

9 If at any time after
10 the interview you recall any
11 additional information that
12 you believe may be useful in
13 the investigation, please
14 contact Mr. Richard Gates at
15 the phone number or e-mail
16 address provided to you.

17 Your statement is
18 completely voluntary. You may
19 refuse to answer any question
20 and you may terminate your
21 interview at any time. If you
22 need a break for any reason,
23 let us know.

24 A court reporter will
25 record your interview and will

1 later produce a written
2 transcript of the interview.
3 Please try and respond to all
4 questions verbally since the
5 court reporter cannot record
6 nonverbal responses. Also try
7 to keep your voice up. Copies
8 of the written transcript will
9 be available at a later time.

10 If any part of your
11 statement is based not on your
12 own firsthand knowledge, but
13 on information that you
14 learned from someone else, let
15 us know. Please answer each
16 question as fully as you can,
17 including any information that
18 you've learned from someone
19 else. We may not ask the
20 right question to learn the
21 information that you have, so
22 don't feel limited by the
23 precise question that we ask
24 you. If you have information
25 about the subject area of a

1 question, please provide us
2 with that information.

3 At this time, Mr.
4 Rutledge, do you have anything
5 that you would like to add on
6 behalf of the Office of
7 Miners' Health, Safety &
8 Training?

9 MR. RUTLEDGE:

10 Yeah. I have a short
11 statement here that the Office
12 of Miners' Health, Safety &
13 Training is conducting this
14 interview session jointly with
15 MSHA and is in agreement with
16 the procedures outlined by Mr.
17 O'Donnell for the interviews
18 that will be conducted today.
19 The Director of Miners'
20 Health, Safety & Training does
21 reserve the right, if
22 necessary, to call or subpoena
23 witnesses, or require the
24 production of any record,
25 document, photograph or other

1 relevant materials necessary
2 to conduct this investigation.
3 We also thank you for being
4 here. We appreciate you
5 taking the time.

6 If you have any
7 questions concerning any of
8 the state business, you can
9 contact, Mr. Mills at this
10 address.

11 MR. O'DONNELL:

12 Mr. Smith, are you
13 aware that you may have a
14 personal representative
15 present during the taking of
16 the statement?

17 MR. SMITH:

18 Yes.

19 MR. O'DONNELL:

20 And do you have a
21 representative with you here
22 today?

23 MR. SMITH:

24 Yes, I do.

25 MR. O'DONNELL:

1 Would you identify him,
2 please?

3 MR. SMITH:

4 Steven McGowan.

5 MR. O'DONNELL:

6 Thank you. Would you
7 please swear in Mr. Smith.

8 -----

9 JAMES SMITH, HAVING FIRST BEEN DULY
10 SWORN, TESTIFIED AS FOLLOWS:

11 -----

12 BY MR. O'DONNELL:

13 Q. Would you please state your
14 full name and spell your last name?

15 A. James Allen Smith, S-M-I-T-H.

16 Q. And your address and telephone
17 number, please?

18 A. Box 151, 319 Tote Avenue,
19 Windsor Heights, West Virginia,
20 26075. (304)394-1202.

21 Q. And are you appearing here
22 today voluntarily?

23 A. Yes.

24 Q. And what mining company do you
25 work for?

1 A. Consol Energy, McElroy Coal
2 Company.

3 Q. And what do you do at the
4 mine?

5 A. I'm electrician.

6 Q. And what is your position on
7 the team?

8 A. I'm number five man on the
9 team.

10 Q. Okay. What I'm going to do
11 now, is I'm just going to --- you
12 just tell us the series of events
13 from the time you were notified until
14 the time that you were finished at
15 the Sago Mine.

16 A. The series of events. I got
17 up --- I think it was a holiday, the
18 day after the holiday of whatever it
19 was. I got up in the morning and
20 seen that --- had CNN on and seen
21 that there was a disaster. And at
22 the same time I seen that there was a
23 disaster I got a phone call. It
24 said, you know, this is from Jim. It
25 said, you know, we got a disaster, we

1 need to get ready. Get your clothes
2 ready and stuff and be ready to go.
3 We may have to go. So he notified me
4 that --- I forget what timeline it
5 was, but it was in the morning.

6 And then, you know, we got
7 ready and stuff. I settled back to
8 watch the ballgame, and I think I was
9 watching the ballgame or started
10 watching it, and then Jim called and
11 said, you know, get down to the
12 station, we're going to go. So I got
13 my stuff and headed down to our mine
14 rescue station. And we got all our
15 stuff loaded up and got on the road
16 and headed down to where they told us
17 to go to a motel. So we got down
18 there and got settled in with our
19 stuff, and they said nothing was
20 going to happen tonight, you know,
21 they wanted us down there to be
22 ready.

23 So the next day we got up, ate
24 breakfast and we went over and we
25 checked all our apparatuses out and

1 checked all our equipment out, made
2 sure everything was in good shape.
3 And then we was just waiting around,
4 and Jim said we was going to go ---
5 they wanted us to be there at eight
6 o'clock, because we was going to be
7 backup. You know, said okay. So we
8 left early because we knew there was
9 a lot of traffic down that way, and
10 we knew there was a lot of problems.
11 Plus earlier, he had to haul some
12 stuff down there, and --- he said,
13 you know, there's a lot of traffic, a
14 lot of --- you know, we'll go early
15 and make sure we get there and get
16 our stuff ready.

17 So we got there, I imagine it
18 was around 6:30 or so. And we got
19 ready to go, got all our stuff, and
20 Jim said, well, we're up, we're
21 going. I said, okay, you know, we're
22 ready to go. So we got saddled up,
23 got all our equipment on, and we went
24 down and we was waiting for one of
25 the teams to come out, then we was

1 going to go in. We was waiting at
2 the pit mouth.

3 We was just waiting around
4 there, then the team come out. Jim
5 talked to some of the people there,
6 and --- you know, and I said hello to
7 some of the people. Acquaintances,
8 because we all worked together. And
9 we headed in. I have to drive the
10 vehicle, because I'm --- that's my
11 job, drive the vehicle in. So we
12 drove in up there, and our orders was
13 when we got there to break the track
14 at 43 wall. So that's the first
15 thing we did, and we broke the track,
16 got it all --- separated the ties,
17 make sure there wasn't no electrical
18 connection up into the area ---
19 affected area. And then they said we
20 needed a car unloaded of safety
21 supplies and stuff that we may be
22 needing, so we unloaded that. Then
23 we went on up to the fresh air base,
24 was up at around 56, 58, somewhere up
25 there. I'd have to look at the map.

1 Let's see where it was. Fifty-eight
2 (58) somewhere.

3 So we went up the, I think it
4 was the intake entry, Number Four
5 entry. I believe that's what entry
6 it was. We got up to the fresh air
7 base. It's quite a way to go
8 carrying everything we could carry,
9 you know. You know, we're a little
10 winded, you know, take a little break
11 there and sat all our stuff down.
12 And Jim says while we're up, we're
13 going in. They wanted to know if we
14 could go. And you know, everybody
15 said, yeah, we'll --- you know, we're
16 ready. So we got over --- we walked
17 through the door, and I seen some of
18 the --- the Bailey's mine rescue team
19 there, and I said hello to them, you
20 know.

21 And we went on over to our
22 staging area where we was going to
23 put on our packs and get everything,
24 get under oxygen. So we get in a
25 circle there, and we got --- got

1 under oxygen, made sure everybody was
2 all right. We had to take 12 SCSR
3 100s with us. So we figured out that
4 two of the guys had --- they were
5 kind of heavy and awkward to carry,
6 and two of the guys that were with
7 us, one was a state inspector and one
8 was a federal inspector, they had
9 them on their belts. So we figured
10 we only needed so many to go. We had
11 like 14, so we only took 12. And we
12 was carrying that up through there,
13 but we got oxygen and everybody was
14 all right, you know. So we started
15 up through there. And no sooner than
16 we got maybe two breaks, my meter ---
17 my detector was going off. It was
18 reading 100 to 200 parts CO, you
19 know. It's registered to go off at
20 100 parts per million, high alarm ---
21 and the high alarm was beeping since
22 we got a couple breaks.

23 We're checking our ---
24 checking on them to make sure we
25 ain't got no methane, and you know,

1 make sure we was all right. It was
2 reading per --- you know, plenty of
3 oxygen. So we got there to the first
4 overcast, and I fell down, you know,
5 and got up and made sure I was all
6 right, made sure I didn't knock my
7 apparatus off, made sure I still had
8 a good seal. But carrying that stuff
9 was a little awkward, you know.

10 And this stuff was all over
11 the track there, you know, where you
12 was going over top an overcast. It
13 was kind of hard to get over it, you
14 know.

15 Q. Yeah.

16 A. Well, I tripped and fell. But
17 we was all right, and we headed on up
18 to --- Number Ten break is where we
19 come into the portal bus. We found
20 our bus. So there was a bucket on
21 there, and Jim says we're going to
22 check for a note, and he checked for
23 a note, and there was nothing in
24 there. No notes or nothing. And we
25 went to the right and checked and

1 went to the left and checked and
2 didn't find nothing, you know. And
3 we headed on up. We got on up to
4 where the supply car was, we seen a
5 shining there, we didn't know what it
6 was. And here it was a car --- old
7 cans. The supply car. And you know,
8 that was --- you know, there was
9 nothing there that we ---. And we
10 went up a little further and we seen
11 something reflecting over to the
12 right of us in the other entry, and
13 we thought, well, you know, it's
14 reflecting, we better go check it.
15 Because all miners wear reflective
16 material.

17 Q. Right.

18 A. So we went over there and
19 looked, and it was oil cans or
20 something laying over there. So we
21 come back up, and we kept going up,
22 and Jimmy had --- I was in the track
23 entry, and Jimmy had to go over and
24 check the tailpiece to make sure
25 there was a --- they drilled a hole

1 down it, and he had to check that out
2 and make sure it was a --- you know,
3 the same thing around there. And we
4 checked --- he went and checked all
5 that out. I didn't see that because
6 I was still in the track entry.

7 And we moved on up, and we
8 went up past a power center. I can
9 remember going past the power center,
10 and I see these Handi Wipes and stuff
11 all spread all over, like somebody
12 been there. You know what I mean?
13 But I didn't --- so we went on up,
14 and we went up to --- it was ---
15 well, Number Four entry, we walked up
16 through there. And to the left of
17 us, we see a curtain that's put up.
18 It looks like it could have been a
19 barricade. Do you know what I mean?
20 So we walked on up and we cut over,
21 and we said, well, me and --- two
22 other guys was with me, said we're
23 going to cut back and check the other
24 side of that, make sure it wasn't a
25 barricade or just a curtain.

1 So we got halfway down there,
2 and Jim --- I hear Jim yelling,
3 they're here, they're over here. Get
4 over here, I found them. So I take
5 off on a dead run heading that way.
6 And went on in there, through a
7 curtain there just hanging there and
8 went on in, and there they were, all
9 --- all --- Jim's working on McCloy,
10 because he's alive, you know, he's
11 --- and I go directly to the opposite
12 side of him and start checking for
13 pulse and --- you know, any breathing
14 on the guys on the right-hand rib.

15 So I'm working my way down
16 checking each one of these guys to
17 make sure, you know --- to see if
18 they were alive, you know. Checking
19 for a pulse, checking for breathing.
20 And I get all the way down to the
21 last guy and then Jim yells come over
22 here and help me, I need some help.
23 So I come over there to help him, and
24 McCloy is still in a slouched
25 position breathing really --- I mean,

1 his breathing was real low. But he
2 was making a noise while he was
3 breathing. And that's the noise we
4 heard. You know, we heard a noise,
5 and that's what it was.

6 So we --- me and Jim was
7 trying to get the SCSR and get him
8 some oxygen, you know, get some air
9 into him somehow. So we got one of
10 them working, got the bag filled up,
11 and Jim put it in his mouth, you
12 know, and got him a shot of oxygen
13 out of it. And he seemed like he
14 picked up pretty good you know. So
15 Jim says, well, you know, we got to
16 get him ready to go. So we drug him
17 down and laid him out in a turned
18 position, but we had to move the guy
19 --- one of the guys that was next to
20 him fell over on his lap. He was ---
21 you know. And I checked him real
22 quick to make sure he wasn't --- to
23 see if he was alive, you know, but he
24 was
25 fell over on his lap, and then you

1 could see where he had bled a lot. I
2 mean, a good bit.

3 Well, anyways, we moved him
4 off, then we pulled Randal down and
5 got him laid down. And I'm rubbing
6 his legs trying to get circulation
7 going, because it's cold, you know.
8 And I'm rubbing, trying to get
9 circulation going in his legs, and
10 just trying to get him --- and Jim
11 says take over up here with this, and
12 hold this in his mouth, and you know,
13 try to get him breathing. I said
14 just wait, let me get another one, I
15 got another one I think, and we
16 opened it up and put it in his mouth,
17 you know, just to make sure it was
18 good, you know. I believe I did. I
19 can't really place whether I did or
20 not, but I think that we did. I'm
21 not for sure.

22 Well, anyways, Jim said, I'm
23 going to check these guys. I said,
24 Jim, we got to get some help up here.
25 While we was down there working on

1 him, the radio was in between my legs
2 there laying on the ground, because
3 when we got there we dropped
4 everything, and my detector, I even
5 dropped it, you know. And Jim says,
6 hand him --- I'm looking for it, you
7 know. Then I found it, and I give it
8 to somebody. I don't know who I give
9 it to, but I give it to somebody, my
10 --- the radio. And you know, that's
11 when we started working on --- we
12 started working on him, getting him
13 ready to go, and I says, Jim, we got
14 to get him ready to get some help up
15 here. We're going to need some help
16 to carry him out of here, get some
17 help out here, we got to get a
18 backboard stretcher or something
19 there. And Jim says, yeah, he was
20 yelling for Mike to go look for a
21 stretcher and a --- some medical
22 grade oxygen.

23 Because when we walked
24 through, we all come through there, I
25 didn't pay much attention, but I

1 watched Mike and them go check the
2 guys that were below us. They went
3 that way, and we all converged there,
4 and one guy was supposed to --- was
5 yelling to go get help and stuff, and
6 Mike was looking for the --- I
7 believe it was the --- you know, the
8 oxygen and stretcher.

9 Q. Yeah.

10 A. And me and Jim's getting him
11 ready to load up. And I'm still
12 holding that in his mouth, and Jim
13 says --- well, we finally got the
14 stretcher, and we got him over there,
15 and Jim's looking for something to
16 tie him down, because we don't have
17 nothing to tie him down with. So we
18 had a bag that we carried these
19 rescuers with. We cut the straps off
20 of it, and Jim was looking for
21 anything. And I'm still trying ---
22 I'm rubbing McCloy's head, you know,
23 telling him it's going to be all
24 right, we're going to get you out of
25 here, trying to get some you know,

1 - - - because his eyes was open and he
2 was looking, you know. You could
3 tell he was, you know, dazed or
4 whatever. And we're - - - I'm trying -
5 - - rubbing his head. I'm concerned
6 with him more or less anything else.

7
8 And you know, I'm trying to
9 get him - - - you know, talking to him.
10 We're going to get you out of here,
11 you know. You'll be all right.
12 We're going to get you out of here.

13 Q. Would you like to take a
14 little break?

15 A. I'll be all right. Just give
16 me a minute.

17 Q. All right.

18 A. Well, anyways, we got him on
19 the backboard, and I'm still trying
20 to hold this in his mouth while we're
21 carrying him, you know. So we're
22 carrying him down through there and
23 we got a tight place to squeeze by a
24 miner, and down past the power
25 center. We, you know, we're

1 squeezing --- and I'm beat. And I
2 says, somebody --- because before
3 that the other guys come in, the guys
4 we called for help. And they come in
5 and --- it was like no time they was
6 up there, pal. They were right
7 there. And I heard them checking
8 them guys, you know. And we all got
9 on there, and we all took off with
10 them.

11 Well, anyways, we got so far
12 in and I said, hey, somebody give me
13 a break. Somebody else took over.
14 So we went a little further and
15 somebody yelled give me a break. So
16 I took the head of the stretcher, and
17 I started carrying the head of the
18 stretcher. And we got down to the
19 bus, and Kelvin was down there at the
20 bus. And I yelled, Kelvin, you know,
21 here give me a break, because I'm
22 probably the oldest guy up there. I
23 said, hey, give me a break, I'm beat,
24 you know. Because it's tough
25 carrying somebody like that out of

1 there.

2 Q. Yeah.

3 A. And Kelvin took over and gave
4 me the radios. So we got down past
5 the bus around --- well, probably
6 between Ten and Nine, and I hear some
7 noise coming over the radios. I
8 can't hear and I can't make out,
9 because we were making a lot of noise
10 carrying him. And we're stopping,
11 you know, to
12 re-adjust him, and we're trying to
13 get him out of that --- because CO
14 was all the way up in there, and we
15 were trying to get him out of there
16 as fast as we can.

17 And I'm walking ahead of him
18 trying to kick stuff out of the way
19 so they have a clear path, you know.
20 And I heard somebody yelling on the
21 radio, I didn't know what they were
22 saying, you know. Rescue teams,
23 rescue teams. And I just got on the
24 radio and said, we just passed the
25 portal bus, we'll be there in a few

1 minutes. And I heard somebody say
2 all of you, and I said, yes, all of
3 us. And then I come back and said
4 --- because I didn't want to talk on
5 the radio.

6 Q. Right.

7 A. I said just wait a few
8 minutes, just --- what did I say? I
9 think it went as, just hold on, we'll
10 be there in a few minutes. We'll be
11 looking at you in a few minutes.
12 Okay. Then I didn't say no more,
13 because I kept going.

14 Q. Yeah.

15 A. And we had tin and stuff to
16 get out of the way to get down
17 through there, you know, where the
18 overcast had fell down. And I'm
19 throwing the tin and stuff out of the
20 way so they have a clear path to get
21 down there. Then when we got down
22 there, the guy says, well, where are
23 they all at. I said --- I was
24 shocked. I said gee, I don't know.
25 I'm huffing and puffing. I'm pulling

1 my mask off because we're in fresh
2 air, you know. And Jim, I think went
3 to the phone right away to call
4 somebody and tell them, you know,
5 what we had. And they said bring
6 everybody out, everybody get out,
7 come out of the mine. Because when I
8 got down there, we was doing the
9 carrying, and we met people down
10 there where the fresh air was, and
11 they took over. And Jim wanted them
12 --- a regular apparatus to put on
13 him, and they put an apparatus on him
14 right there. And they put him on the
15 bus and hauled him out. Then the
16 rest of us, you know, gathered up all
17 our stuff and we got on a bus and
18 headed out behind them. And I had to
19 drive the bus on out.

20 You know, and that's when we
21 seen all the people out there looking
22 like, you know, where's everybody at.
23 We had the one man.

24 Q. Thanks.

25 A. And that's --- that was the

1 story right there.

2 Q. Let me just go back over it a
3 little bit and clarify some points.
4 So when you first went into the mine
5 you got --- what was your --- you
6 said you got a briefing outside, and
7 your ---

8 A. Yes.

9 Q. --- and your instructions were
10 to do what? Well, you thought you
11 were going to go in to just be a
12 backup?

13 A. Right. Right.

14 Q. And what else? Just tell me
15 about who gave you the briefing
16 and ---?

17 A. I don't know who the fellow
18 was. He was one of the people from
19 there and briefed us, you know, and
20 said, well, they went up to --- this
21 is what they found, we found --- they
22 found Mr. Hess (sic). You know, they
23 had already found Mr. Hess. And you
24 know, they said where he was at. As
25 a matter of fact, we walked --- we

1 didn't walk up the track entry, we
2 went around it to get up to the fresh
3 air base. Which we already knew that
4 they found him, you know. And we was
5 going in as a backup is what I knew,
6 you know.

7 Q. You found that out outside
8 before you went in?

9 A. Right. That we was going to
10 be a backup in there.

11 Q. And one of the miners was
12 found?

13 A. Yeah, we knew that.

14 Q. Okay. So you get to the ---
15 you had to unload a supply car of
16 supplies that you may have needed.

17 A. Right.

18 Q. And traveled to the fresh air
19 base. And how did you find out that
20 you were not going to backup but you
21 were going to go in?

22 A. Jimmy said, you know ---.

23 Q. Jimmy?

24 A. Our captain, Jim Klug.

25 Q. Klug, okay.

1 A. Fellows are going to set up
2 --- you know, they wanted us to go.
3 I said okay, you know.

4 Q. So as you traveled in and were
5 checking things out, what did you do
6 as far as the radios go? Did you
7 drop people off?

8 A. We dropped Kelvin off at
9 Number Ten, right by the --- I think
10 it was somewhere around there, you
11 know. They dropped him off because
12 he couldn't get the radio reception,
13 and that was the furthest he could
14 get it.

15 Q. And who was communicating with
16 him from the fort?

17 A. It was Jimmy or ---?

18 Q. I mean, one of you guys had
19 the radio ---?

20 A. Somebody --- I didn't have no
21 radio. Somebody had a radio.

22 Q. And when you were up to the
23 barricade, you say Jim was already in
24 the barricade and he hollered for
25 you?

1 A. Yes. Yes.

2 Q. And the curtain --- when you
3 first went in, was there curtains
4 down or curtains up, or ---?

5 A. The curtain was hung
6 diagonally across, okay. And it was
7 open like on one corner. There was
8 no --- it was --- it was just --- it
9 was open.

10 Q. Just on ---?

11 A. It wasn't tight.

12 Q. Just on one side, or was it
13 both sides?

14 A. I didn't really see the other
15 side.

16 Q. Okay. And you began assessing
17 the miners that you found there?

18 A. Right.

19 Q. And you say that you had to
20 move one of the miners off of Mr.
21 McCloy. And you said you put an SCSR
22 --- did you put it into --- is that
23 what you tried to do, force oxygen
24 into him?

25 A. That's what Jim did, yeah.

1 Jim was - - - .

2 Q. And that seemed to help?

3 A. Yeah.

4 Q. And you called for help, and
5 others came in?

6 A. Yeah. Yes. We said right off
7 the bat, you know, Jim and I
8 discussed, you know, we're going to
9 need some help getting him out of
10 here.

11 Q. And do you know who it was
12 that came up and helped? Do you know
13 what team it was, or - - - ?

14 A. I have no idea. You know, I
15 wasn't really looking at faces.
16 Everybody has a mask on. I just knew
17 we had some help. I knew that Denny
18 come up, and he was on our team. I
19 knew he was there.

20 Q. Denny?

21 A. Denny Crow.

22 Q. Okay. So when you left and
23 you secured Mr. McCloy to get him out
24 of there and - - - did all of you leave
25 together?

1 A. Yes.

2 Q. The whole crew did?

3 A. Everybody left altogether.

4 Q. Right. After you made your
5 assessments - - -

6 A. Right.

7 Q. - - - and you left? So when you
8 got down to the fresh air base and
9 you loaded Mr. McCloy up, he - - - .

10 A. See, I didn't load him up.
11 When we got down to fresh air base,
12 there was a bunch of guys there that
13 took over. I just kind of like let
14 it go. I pulled my mask off, you
15 know.

16 Q. Then they went out ahead of
17 you?

18 A. Yes.

19 Q. Did you ever see them again on
20 your way out?

21 A. No.

22 Q. So they had - - - how many
23 minutes ahead of time did they go out
24 ahead?

25 A. I don't know.

1 Q. But it was long enough that
2 you --- when you traveled out, you
3 could just go without stopping, or
4 did you see anyone else on your way
5 out?

6 A. I had to stop --- there was
7 people coming in.

8 Q. Oh, there were?

9 A. Yes. And I had --- I just
10 seen the people that was coming in,
11 but I just know I had to stop ---
12 they didn't get up there or whatever,
13 and the next thing I knew, we was all
14 going back out.

15 Q. Everybody? Where did you meet
16 those ---?

17 A. I have no idea. I just know
18 that we met them somewhere.

19 Q. But it wasn't the crew that
20 was in front of you, it was another
21 crew that had been coming in?

22 A. Yes.

23 Q. Okay. And then you met them,
24 and did you have to tell them that
25 you were all coming out, or ---?

1 A. I didn't tell them nothing. I
2 was operating the vehicle, and I
3 didn't tell them nothing.

4 Q. They just knew to turn around
5 and ---?

6 A. Somehow. I don't know.

7 Q. Okay.

8 A. All I know is, I was driving
9 the vehicle and they took off and I
10 went behind them.

11 Q. Did you drive all the way
12 outside then?

13 A. Drove all the way outside.

14 Q. Okay.

15 MR. O'DONNELL:

16 Mike, do you have any
17 follow-up questions?

18 BY MR. RUTLEDGE:

19 Q. James, you said when --- well,
20 first off, Jim, your team captain was
21 the first guy in the barricade?

22 A. Him and, you know, whoever was
23 with him. I can't remember.

24 Q. Okay. So ---.

25 A. But we --- I come in right

1 behind him.

2 Q. So you were probably the third
3 person to go in there?

4 A. I'm thinking, yeah.

5 Q. Okay. And you said that you
6 were checking the guys --- Jim went
7 to the left and you went down from
8 the face outby down the right rib ---

9 A. Yes.

10 Q. --- checking each of the
11 miners? And did you say that you
12 heard other people checking ---?

13 A. Yeah, I could hear people
14 around me checking the guys.

15 Q. And then after you all had
16 hollered for help, okay, and the
17 backup team came in, you had a lot of
18 extra guys up there, they were
19 checking as well?

20 A. Yeah. They checked everybody,
21 too.

22 Q. Okay. And on your way in to
23 the mine, or onto the section, going
24 up the track entry there on the way
25 to the section, you didn't have the

1 radio?

2 A. No.

3 Q. But at some point there, when
4 you and the team captain were working
5 with Mr. McCloy there was a radio
6 laying there, ---

7 A. Yeah.

8 Q. --- and that got passed off to
9 somebody?

10 A. Right.

11 Q. You don't know who that was?

12 A. I just know Jim said, give me
13 my radio, and I handed it back over
14 to whoever.

15 Q. Okay. So you knew that was
16 Jim's radio that you were handing
17 him?

18 A. Yeah. Yeah.

19 MR. RUTLEDGE:

20 Okay. I don't have
21 anything else right now.

22 MR. O'DONNELL:

23 Okay. Do you want to
24 take a short break, five
25 minutes or so?

1 A. It's up to you guys. Do you
2 guys want a break?

3 MR. O'DONNELL:

4 Yeah. Let's do it,
5 because I want to ---.

6 BY MR. O'DONNELL:

7 Q. Just a couple more questions
8 about the --- inside the barricade.
9 You said that you heard signs of life
10 coming from one person, ---

11 A. Right.

12 Q. --- and you immediately went
13 to that person and began ---?

14 A. I didn't immediately go to
15 him, Jim did.

16 Q. Okay. And you said that you
17 and others made other assessments of
18 the other ---?

19 A. When I first got there, I knew
20 Jim was taking care of McCloy, and I
21 thought, wow, I got guys over here, I
22 better go check these guys over here.
23 And I went to the last guy on the
24 end, and I started checking. I
25 grabbed his hand checking for a

1 pulse, you know, and just seeing if
2 there's any breathing, you know. And
3 I didn't see nothing, and I went to
4 the next guy, grabbed his hand, you
5 know, find a pulse.

6 Q. What were your findings that
7 made it so obvious?

8 A. The rigor mortis was setting
9 in, because they were --- when I
10 picked their hand up to check their
11 pulse, their body moved. But I'm
12 still looking for anything, you know.

13 Q. Absolutely.

14 A. And by the time I got down to
15 the last guy on that rib line, which
16 I can't even tell you how many guys
17 was there, because --- you know, I
18 just didn't count. I didn't look for
19 --- I'm just looking for signs of
20 life. I didn't look for anything
21 else.

22 Q. And they were just so obvious
23 that there was no ---?

24 A. Right. And that's when Jim
25 yelled for me to come over to help

1 him.

2 Q. And others, you say, came in
3 after ---?

4 A. They came in right with me,
5 because --- but they --- I went this
6 way, and they went that way. And
7 somehow we converged.

8 Q. And actually maybe even
9 overlapped and ---

10 A. Probably.

11 Q. --- made the assessments. And
12 all of you had that same conclusion;
13 is that right?

14 A. I can't speak for them.

15 Q. But I mean, ---.

16 A. Yeah. Yeah, well, I know that
17 the guys did check them all,
18 especially the guys that come in to
19 help us after, you know, we called
20 for help. They even come in to check
21 them.

22 Q. So there was quite a bit of
23 assessment done?

24 A. Right. That's a lot of
25 assessment done. But I can't speak

1 for them. You know what I mean?

2 Q. I understand that.

3 MR. O'DONNELL:

4 On behalf of MSHA, I
5 want to thank you for
6 appearing and answering
7 questions today. Your
8 cooperation is very important
9 to the investigation as we
10 work to determine the cause of
11 the accident.

12 We ask that you not
13 discuss your testimony with
14 any person who may have
15 already been interviewed, or
16 who may be interviewed in the
17 future. This will ensure that
18 we obtain everyone's
19 independent recollection of
20 the events surrounding the
21 accident.

22 After questioning other
23 witnesses, we may call you if
24 we have any follow-up
25 questions that we feel we may

1 need to ask you. If at any
2 time you have additional
3 information regarding the
4 accident that you would like
5 to provide us, please contact
6 us at the contact information
7 that we had previously
8 provided to you.

9 The Mine Act provides
10 certain protections to miners
11 who provide information to
12 MSHA, and as a result are
13 treated adversely. If at any
14 time you believe that you've
15 been treated unfairly because
16 of your cooperation in this
17 investigation, you should
18 immediately notify MSHA. If
19 you wish, you may go back over
20 any answer you have given
21 during the interview, and you
22 may also make any statement
23 that you would like to make at
24 this time.

25 A. I'm telling you what happened

1 to the best of my knowledge, that ---
2 you know, that I can recollect.

3 MR. O'DONNELL:

4 Sure.

5 A. It's been three months. That
6 comes back to my memory right ---
7 what I told you.

8 MR. O'DONNELL:

9 Okay. Again, I want to
10 thank you for coming forward.
11 We appreciate your part in the
12 investigation.

13 * * * * *

14 SWORN STATEMENT CONCLUDED

15 AT 1:01 P.M.

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