

## STATEMENT OF FACTS

Appellee Joseph Pendergrass was indicted on count one with involuntary manslaughter, on count two with criminal damage to property in the second degree, and on count three with reckless conduct. (R. 3- 5). On April 18, 2007 Appellee filed a motion to dismiss the indictment. (R. 21 – 24). The motion was heard on July 17, 2008 (T. 1 – 15), and on July 25, 2008 the trial court granted an order dismissing counts one and three of the indictment. (R. 229).

No evidence was placed before the trial court during the motions hearing. The trial court granted both parties a full and fair opportunity to be heard. At no time did the State seek to place evidence before the trial court. (T. 1 – 15). Appellant's statement of material facts is accordingly derived from statements and documents furnished to Appellee in the course of discovery, and from the transcript of the preliminary hearing.

Lieutenant Willis' investigation revealed that the Appellee was living in the residence that caught fire. (R. 35). There is no indication anywhere in the record that the Appellee did not have permission to be in the house. (R. 141). The investigation did not reveal that Appellee left the candle unattended. In fact, the investigation revealed that on November 23, 2006 the Appellee was in the house