

XIV No. 90
IN THE CRIMINAL COURT FOR SEVIER COUNTY, TENNESSEE

AT SEVIERVILLE, TENNESSEE

STATE OF TENNESSEE,

Appellee,

-VS-

GARY WAYNE SUTTON and,
JAMES ANDERSON DELLINGER

Appellants.

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CASE # 5033, 5035

FILED

MAR 7 1994

SUPREME COURT CLERK

TRANSCRIPT OF THE EVIDENCE:

Trial

February 16-24, 1993

Volume 12 of 22 Volumes

BEFORE THE HONORABLE **REX HENRY OGLE**, PRESIDING JUDGE,
AND JURY

APPEARANCES:

FOR THE STATE

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GEN. G. SCOTT GREEN, A.D.A.
Fourth Judicial District
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FOR THE DEFENDANT SUTTON

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CIRCUIT COURT
FILED
HOUR 9:30 A.M.
D.A.
DATE: JAN 07 1994
Glenn H. Hendley
CIRCUIT COURT CLERK
SEVIER COUNTY, TENN.

MR. JEFFREY ZANE DANIEL
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1 21st, is that correct?

2 Q. Yes, on February 21st.

3 A. Yes.

4 Q. When was that first call made on the 21st?

5 A. That call was made at 9:19 p.m.

6 Q. And where was that call made to?

7 A. That was made to telephone number 983-7211.

8 Q. And what is that telephone number listed to?

9 A. That number is listed to the Blount Memorial
10 Hospital.

11 Q. Was there a second call made from this telephone
12 number, Dellinger's telephone number to Maryville that evening?

13 A. Yes, sir, at 9:27 p.m. a call was placed to
14 telephone number 983-3620.

15 Q. And I'll ask you if that -- that number, did you
16 determine the subscriber of that number, 3620?

17 A. Yes, sir, I did. That number is listed to the
18 Blount County Sheriff's Department. It's a communications
19 dispatch.

20 Q. And was there a third call made to Maryville from
21 the Dellinger number that evening, February the 21st?

22 A. Yes, sir, there was a call at 9:30 p.m. to
23 telephone number 983-3320.

24 Q. And whose phone number is that?

25 A. That is the Blount County Jail.

1 Q. I'll ask you, sir, if you'll look at this and see
2 if this is a blown up portion of that record that you were...

3 A. Yes, sir, it is.

4 Q. All right.

5 GENERAL SCHMUTZER: Your Honor, may this be filed?

6 THE COURT: Yes.

7 (EXHIBIT #14 - Phone records (blown up); marked and
8 filed.)

9 BY GENERAL SCHMUTZER:

10 Q. Now did you also, sir, on the request of the State
11 get the phone records for February 21st and 22nd of 1992
12 belonging to Mr. Boyd Branum?

13 A. Yes, I did.

14 Q. All right, sir. Does that -- first, on February
15 the 21st, were there any calls -- direct calls made to Maryville
16 from that phone?

17 A. On the 21st there were not any calls made to
18 Maryville.

19 Q. All right, sir. On the 22nd, were there any calls
20 made to Maryville?

21 A. Yes, sir, there are calls made to Maryville on the
22 22nd.

23 Q. All right, sir. And when were the times of those
24 calls?

25 A. The first call is at 1:13 a.m.

1 Q. And to what number is that?

2 A. And that's to telephone number 983-3320 which we
3 have identified as the Blount County Jail.

4 Q. All right.

5 A. And the second -- there is a second call at 3:54
6 a.m., again to 983-3320, the Blount County Jail, and there is
7 a third call at 12:56 p.m. to 983-3320, again, the Blount County
8 Jail.

9 Q. Okay. Do your records show any collect calls being
10 made to this number from Maryville on either the night -- on
11 February 21st or February 22nd?

12 A. No, sir.

13 Q. Just a second ago -- I didn't ask you, sir. Is
14 this a blown up portion of the calls that were made in the early
15 morning hours of February 22nd...

16 A. Yes, they are.

17 Q. ...those three calls, the last one being to the
18 dispatch, the last being 12:56 p.m.?

19 A. Yes.

20 **GENERAL SCHMUTZER:** May this be filed, Your Honor?

21 **THE COURT:** So ordered.

22 (EXHIBIT #15 - Phone records (blown up); marked and
23 filed.)

24 **GENERAL SCHMUTZER:** Your Honor, may these be passed
25 to the jury?

1 THE COURT: So ordered.

2 GENERAL SCHMUTZER: You may cross examine.

3 MR. MILLER: I have no questions.

4 **

5 CROSS-EXAMINATION

6 BY MR. DANIEL:

7 Q. Let me ask you a few questions, Mr. Duggan.

8 A. Okay.

9 Q. As I understand it, of course, you don't know
10 anything -- who these calls were made to or who talked on any
11 of these, do you, sir?

12 A. No, I do not.

13 Q. You have no recording, and no way to know, do you?

14 A. No, I do not.

15 Q. Do you all keep calls that are made locally that
16 you have a log that you don't make public or that you don't send
17 a bill to people on calls that comes to and from a phone number?

18 A. I'm not sure I understand your question, sir, but
19 we don't -- the general principle is that we do not collect data
20 related to calls that are made unless there's billing associated
21 with them.

22 Q. In other words, if I'm here at the courthouse, and
23 call across the street, or from across the street to the
24 courthouse from a private phone number, for example, you won't
25 have any records anywhere that keeps up with that, is that

1 correct -- even though you don't bill on it, isn't there some
2 sort of a record that's made by the company that you just don't
3 hardly ever use, but you still have a record?

4 A. On service that is flat rate service, in other
5 words, unlimited number of local calls, there is a date stream
6 that could be collected, but it's not collected unless there is
7 billing related to specific individual calls.

8 Q. If I was to check, for example, on one of these
9 phone numbers that you've given us, say on March the 1st, within
10 say 30 days of when these calls are made, you say there would
11 be no record whatsoever on them, am I correct, from any of these
12 phone calls?

13 A. For the type call -- a local call that is dialed
14 from a flat rate service, which means that you can call
15 unlimited local calls, there would not be a record.

16 Q. Is there phones that you have that -- like a person
17 in Maryville has a telephone, and you can call to Sevierville,
18 and it would be a flat rate, and it would not -- you won't have
19 any billing on it? Do you have phones like that?

20 A. From Maryville to Sevierville?

21 Q. Yes.

22 A. Yes.

23 A. Just the same as you can have a phone here in
24 Sevierville -- back when you had to make long distance calls,
25 you could have a Knoxville telephone line, couldn't you?

1 A. Yes.

2 Q. Do you know whether or not there was a telephone
3 at the Blount County Jail back on February the 21st of 1992
4 where you could call, say, to Knoxville or to Sevierville or
5 different places, and it didn't -- it wasn't a long distance
6 call?

7 A. No, I don't know that for certain. I would have
8 to review records to determine that.

9 Q. You know they have some of those phones in the
10 courthouse over there -- did have them in the courthouse when
11 it was long distance, don't you, sir, in Blount County?

12 A. I'm not sure I understand your question.

13 Q. In Maryville at the Blount County Courthouse you
14 know there was telephones in there back at that time where you
15 could dial Knoxville, which would be long distance, before they
16 changed?

17 A. Oh-okay.

18 Q. And if you had a local -- you had a number that you
19 could dial anywhere in Knoxville, and it wouldn't cost anything.
20 It would be the same as if you dialed somewhere in Knoxville,
21 isn't that correct?

22 A. I personally don't know that. I would not be
23 surprised if that was true that they had a foreign exchange
24 Knoxville number at the courthouse. That would not surprise me,
25 but I do not personally know for a fact that they did.

1 Q. And you do not have any records as to that, is that
2 correct? You just don't know?

3 A. I don't know that for a fact. No, sir, I do not.

4 Q. So as I understand it, the first call that was made
5 from this one number was called to the Blount Memorial Hospital,
6 is that correct?

7 A. Which service are we talking about, sir?

8 Q. On February 21st, I believe you said, from Mr.
9 Dellinger's phone. It was 983-7211 was the call, and you
10 determined that to be the Blount Memorial Hospital?

11 A. Yes.

12 Q. Then the next call was made to a -- that you would
13 call over to communications to try to get a number or to be
14 transferred to another number -- a communications number, I
15 believe you said, at 9:27, is that correct?

16 A. Yes, that is correct.

17 Q. And then at 9:30 a call was made from that number
18 to the Blount County Jail?

19 A. Yes.

20 Q. Can you tell us the time of each one of those
21 calls?

22 A. The duration of the call?

23 Q. Yes.

24 A. The first call was two minutes.

25 Q. That would be to the hospital.

1 A. The call to the hospital was two minutes. The call
2 that was initiated at 9:27 p.m., which is to the communications
3 -- the police communications position was one minute, and the
4 call that was initiated at 9:30 p.m. or connected at 9:30 p.m.
5 was one minute, and that was to the jail.

6 MR. DANIEL: No further questions.

7 **

8 CROSS-EXAMINATION

9 BY MR. MILLER:

10 Q. Just one question that might lead into to, Mr.
11 Duggan. When a collect call is made, for instance, to the Boyd
12 Branum residence, if accepted, even though there's no
13 conversation that takes place, if a collect call is accepted,
14 will there be a billing for that?

15 A. Yes, sir, if it's -- if it is accepted at the far
16 end there would be a billing.

17 Q. And if you'll look at the Boyd Branum records that
18 you have for February 21st, can you tell us if there are any
19 collect calls? I think you've already testified to that...

20 A. Yeah, there were none.

21 MR. MILLER: That's all I have.

22 **

1 REDIRECT EXAMINATION

2 BY GENERAL SCHMUTZER:

3 Q. One thing, sir. It is a long distance to call from
4 Sevier County to Blount County, is that not correct? A 453
5 exchange to -- do you have that? These calls that were made to
6 Maryville that you've testified to here were toll calls?

7 A. Yes, they are toll calls.

8 Q. Right. In other words, it's not -- you can't pick
9 up the phone in Sevierville or Sevier County exchange, and call
10 Maryville without being charged unless you have some special
11 type of line -- a Maryville number?

12 A. That is correct. The new -- the metro area calling
13 plan, which is the new plan that allows greater access, is to
14 and from Knoxville...

15 Q. Right.

16 A. ...to communities that surround Knoxville. It's
17 like a spoked wheel. You can -- Sevierville can call into
18 Knoxville, Maryville can call into Knoxville as a local call,
19 but Sevierville can't call Maryville, and Maryville can't call
20 Sevierville, if you understand that.

21 Q. Yes, sir. So it would have to be -- and the mere
22 fact that you might have a line to call Knoxville would not get
23 you into the Sevierville exchange without -- you'd have to call
24 Sevierville, is that correct, unless you had a Knoxville line?

25 A. If you had a Knoxville line in Maryville...

1 Q. Right, if you had a Knoxville line you could do
2 that, I take it? I'm sorry, go ahead.

3 A. Yes, yes. If you have a Knoxville line in
4 Maryville, and you pick your Knoxville line up, you can call
5 anywhere that Knoxville can, which would mean Sevierville.

6 Q. Okay. Thank you, sir.

7 **

8 RECROSS-EXAMINATION

9 BY MR. DANIEL:

10 Q. And that would be -- there would be no record of
11 that call, would there, sir, because it would be what you call
12 a flat rate call?

13 A. That would be -- if it was placed on a flat rate
14 line then there would not -- we would not keep a record, that's
15 correct.

16 Q. On collect calls, if I make a phone call to
17 someone's house, and it's a collect call -- wherever you call
18 from, that is automatically billed if they accept that call to
19 that number, isn't that correct?

20 A. Yes, it is. The party that accepts the call
21 accepts the bill.

22 Q. And once it's accepted, there's a bill -- charge
23 that goes down on that phone number, isn't that correct?

24 A. That's correct.

25 Q. Thank you, sir.

1 THE COURT: You may step down. Is he excused?

2 MR. MILLER: Yes, Your Honor.

3 MR. DANIEL: Yes, Your Honor.

4 THE COURT: You're free to go.

5 THE WITNESS: Thank you.

6 **

7 THE COURT: Ladies and gentlemen, that is all the
8 proof we're going to hear today. Do not discuss the case among
9 yourselves or with anyone else. Do not watch any T.V. broadcast
10 news, listen to any radio broadcast news, or read any newspapers
11 pending further orders. We'll see you in the morning at 9:00
12 a.m. All rise.

13 (JURY OUT)

14 MR. DANIEL: Your Honor, he wanted me to ask you
15 if you could get the sheriff to let him see his little girl.
16 He's got a daughter that was brought up here from somewhere.

17 THE COURT: Sure. Sheriff Ogle?

18 MR. DANIEL: If he can't, he can't, but I just told
19 him I'd ask. If he's going to go away, he needs to see his kid.

20 SHERIFF OGLE: Yes, Your Honor?

21 THE COURT: I understand that Mr. Sutton's little
22 girl is here. If you've got the people available, go ahead and
23 let him see the child for a few minutes.

24 SHERIFF OGLE: I have no problem with that.

25 THE COURT: You tell your officers how much I

1 appreciate how they've handled this thing. They've done a good
2 job, they really have, and I'll tell them later on.

3 SHERIFF OGLE: I appreciate that, Your Honor.

4 THE COURT: But you make sure that they know that.

5 SHERIFF OGLE: I'll sure tell them. Thank you.

6 (COURT STOOD IN ADJOURNMENT THIS DATE)

7 **

Courtesy of
Time of Death Podcast
by Beth Braden

1 **THE COURT:** Just remain standing for the jury, if
2 you will, please.

3 **(JURY IN)**

4 **THE COURT:** Waive the call for the State?

5 **GENERAL SCHMUTZER:** Yes, Your Honor.

6 **THE COURT:** And the defense?

7 **MR. MILLER:** Yes, Your Honor.

8 **MR. DANIEL:** Yes, Your Honor.

9 **THE COURT:** You may be seated. By way of
10 housekeeping, I have stated that I plan to work today until
11 about 2:30. The jury has requested that if possible that we
12 work right through lunch, so the Court is willing to do that,
13 and I want to tell the jury again that in most of these times
14 when you all are outside in the jury room, we often, in fact in
15 most cases in this trial, as I recall, have stayed in the
16 courtroom at least for most of those times, and worked, and so
17 the Court wants to give all counsel and the Court, in all
18 candor, and the jury some time to have a break, and I am well
19 aware that when Court is not in session, of course, that your
20 options are somewhat limited, and I -- so we are taking that
21 into consideration, and that, in all candor, is why the Court
22 is working today. Mr. Schmutzer, you may call your next
23 witness.

24 **GENERAL SCHMUTZER:** Thank you, Your Honor. Before
25 we do, if the Court please, yesterday the fire fighter

1 testified, and he had a report, and he left it on the counter,
2 Your Honor. I did not ask it be filed, and I'd it be filed at
3 this time.

4 THE COURT: He, I believe, read from that report
5 as I recall.

6 GENERAL SCHMUTZER: He did, Your Honor.

7 THE COURT: Yes, it may be filed.

8 (EXHIBIT #16 - Fire fighter's report; marked and
9 filed.)

10 GENERAL SCHMUTZER: The State calls Herman Lewis.

11 THE COURT: Herman Lewis. As Mr. Lewis is coming
12 in, approach the bench, counsel. There's another housekeeping
13 matter I have to advise you of.

14 (A bench conference is held on the record, to-wit:)

15 THE COURT: The jury -- I think tomorrow, as I
16 understand it, there is a plan for the sheriff's
17 department to take them on their bus on an
18 excursion, maybe out to Cade's Cove to just drive
19 them around out there. I just wanted to tell you
20 that, and I've told them they may take them as long
21 as they're all together or at least an officer is
22 with all -- you know...

23 MR. DANIEL: There's no problem with that, Judge.

24 MR. WEBB: Well, one request, Your Honor, can Zane,
25 and Ed, and I go along? We don't want to invite

1 the general, but...

2 **GENERAL SCHMUTZER:** The attorney general's office
3 could order steaks...

4 **THE COURT:** To accommodate them -- aren't you all
5 kind. Thank you.

6 **MR. DANIEL:** Thank you.

7 (Said bench conference being completed, the
8 following proceedings are had in open court.)

9 **THE COURT:** I believe they got our light fixed,
10 too, didn't they? Now you know how hot that is by the time it
11 gets...

12 **

13 **HERMAN LEWIS** was called, and being duly sworn, was
14 examined and testified as follows:

15 **DIRECT EXAMINATION**

16 **BY GENERAL SCHMUTZER:**

17 **Q.** Mr. Lewis, if you will, please, sir, state your
18 full name.

19 **A.** Herman M. Lewis.

20 **Q.** And where do you live?

21 **A.** 328 Mars Hollow Road, Seymour.

22 **Q.** Okay. And where is Mars Hollow Road?

23 **A.** It's Chapman Highway north, down where the old
24 stockyard used to be.

25 **Q.** And what relation are you to the victim in this

1 case, Connie Branum?

2 A. I'm her uncle.

3 Q. You're Viola Griffin's...

4 A. Brother.

5 Q. I take it you obviously also knew Tommy Griffin,
6 is that right?

7 A. Yes, sir.

8 Q. Where were you when you first learned that Tommy
9 Griffin's trailer was on fire?

10 A. I was up at my sister's.

11 Q. And that's Viola Griffin?

12 A. Viola Griffin.

13 Q. And what were you all doing up there?

14 A. Well, me and Connie and Tammy -- that's another one
15 of my nieces, and my wife was sitting up there play cards --
16 rummy.

17 Q. Okay. How were you notified?

18 A. One of the kids, I believe it was Jennifer, called
19 down there and told them that Tommy's trailer was on fire.

20 Q. You didn't actually answer the phone?

21 A. No, sir.

22 Q. And you don't know for sure who called, but you
23 know it was one of the kids?

24 A. Right.

25 Q. Who answered and took the call, if you remember?

1 A. I believe it was -- I believe it was Viola.

2 Q. In any event, what did you all do after the call
3 came in?

4 A. Well, Viola and Connie and Lucy, and there's was
5 another one, I believe, went on up there.

6 Q. You say "Lucy," who is that?

7 A. That's Viola's youngest kid.

8 Q. And you say they -- that they -- after the phone
9 call came in how long was it before they left?

10 A. They just went out immediately, and Tammy went in
11 there and called 9-1-1.

12 Q. Tammy called 9-1-1?

13 A. Yes, sir.

14 Q. That would be Tammy Griffin?

15 A. Yes.

16 Q. Another one of your nieces?

17 A. Yes, sir.

18 Q. What did you do?

19 A. Well, I waited until Tammy got through, and then
20 she wanted to go on up there, so I took her and her little girl
21 on up there.

22 Q. When you left had Connie and your mother already
23 left? Did they leave before you left?

24 A. Yes, sir.

25 Q. Did Connie Branum at any time make a phone call

1 before she left there?

2 A. Not that I know of.

3 Q. Did anybody, to your knowledge, make a phone call
4 besides Tammy?

5 A. Not that I know of, sir.

6 Q. When you went up there, who all was with you?

7 A. My wife, Tammy, and Tammy's little girl.

8 Q. When you got up there how did you go into the
9 hollow?

10 A. Well, I went up the back way up to the left.

11 Q. When you get to the forks in the road on Gibson
12 Hollow Road you -- rather than going up Bluff Heights you went
13 to the left the other way?

14 A. Yes, sir. There was a police car behind me, and
15 I thought there was a fire truck coming in, too, so I went the
16 other way to keep from blocking them.

17 Q. And circled and came down then towards the trailer?

18 A. Yes, sir.

19 Q. How far down did you get with your car?

20 A. I got down there to McDermon's. That's the house
21 right above the trailer.

22 Q. Tommy's trailer?

23 A. Yes, sir.

24 Q. I take it you saw the fire there. Did you all sit
25 there a while?

- 1 A. Yes, sir, we set there a few minutes.
- 2 Q. Did you see Jennifer while you were there?
- 3 A. Yes, sir, she come down by the car.
- 4 Q. Did -- were you able to see Connie and her mother
5 up there?
- 6 A. They was standing in Mays' yard.
- 7 Q. Is that Devon Mays' yard?
- 8 A. Yes, sir.
- 9 Q. And where is their place in relation to Tommy's
10 trailer?
- 11 A. Right straight across from it.
- 12 Q. Did you stay until the fire was put out?
- 13 A. No, sir.
- 14 Q. What did you do?
- 15 A. I backed -- well, Jennifer got in the car with us
16 to take care of the baby -- help us take care of the baby, and
17 I backed up there at Connie's house -- backed up in the
18 driveway.
- 19 Q. How long did you all stay up there?
- 20 A. 10 or 15 minutes, I guess, or maybe longer than
21 that.
- 22 Q. Did you -- did you stay there until the fire was
23 put out or was it still going?
- 24 A. It was -- well, the fire trucks was still there.
- 25 Q. Did you stay out there in your car, or did you go

1 in the house?

2 A. Set in the car.

3 Q. Were you in a position to still see the fire?

4 A. No, sir, I was backed up in the driveway.

5 Q. You were backed up in the driveway?

6 A. Yes.

7 Q. Whose place was that?

8 A. That's Boyd Branum's and Connie's.

9 Q. And where is that in relation to James Dellinger's?

10 A. That's right straight across from it.

11 Q. Did you know -- at that time, did you know James
12 Dellinger?

13 A. Well, I'd seen him around, yes.

14 Q. Did you know him personally?

15 A. Well, I'd talked to him several times.

16 Q. How about Gary Sutton?

17 A. Never seen him, not that I know of.

18 Q. While you were setting up there did you see
19 anything over at the Dellinger residence that got your
20 attention?

21 A. Yes, sir, we was sitting there, and Jennifer had
22 took the little baby on in the house there at Connie's. We was
23 setting there, and they was two people come out.

24 Q. Come out of where?

25 A. Out of the trailer, and got...

1 Q. Whose trailer?

2 A. James'.

3 Q. All right.

4 A. And got in the car, and then they went over to the
5 truck, and got something out of it, and took it and put it in
6 the back seat of the car.

7 Q. What kind of car was this?

8 A. Well, I thought it was an Oldsmobile or a Buick.

9 Q. All right.

10 A. I thought it was a green Buick's what I thought it
11 was.

12 Q. At the time?

13 A. Yes, sir.

14 Q. Did you later learn it was a different color car?

15 A. Yes, sir.

16 Q. In any event, when the two individuals came out,
17 you say they went over -- what truck did they go over to? Did
18 they both go over or -- what happened when they came out?

19 A. Well, one of them went over the truck and got
20 something out of it, and put it in the back seat of the car.

21 Q. Did you see what it was?

22 A. No, sir.

23 Q. Could you describe what you did see?

24 A. Well, it looked like something you hold in your
25 hand like that right there, but it had a coat or something

1 around it -- whatever it was. It was -- it couldn't have just
2 been a coat -- you know.

3 Q. For the benefit of the court reporter, you are
4 showing holding on with one hand and gripping it?

5 A. Yes, sir.

6 Q. Gripping around it?

7 A. Yes, sir.

8 Q. What did the other person do while this person was
9 getting...

10 A. Just set in the car.

11 Q. Could you tell who that was?

12 A. No, sir.

13 Q. All right. Could you tell who either one of them
14 were?

15 A. No, sir, I couldn't.

16 Q. After they did that -- after this person took this
17 out of the truck and put it in the back seat of the car what did
18 he do?

19 A. He got in the car.

20 Q. Then what happened?

21 A. Well, they just set there.

22 Q. What did you all do?

23 A. My wife's medicine was due, and she's -- well, it
24 was past due.

25 Q. What time was her medicine supposed to be taken?

- 1 A. 10:00.
- 2 Q. So you say it was past due?
- 3 A. Yes, sir.
- 4 Q. So it would have been after 10:00?
- 5 A. Yes, sir.
- 6 Q. What did you do?
- 7 A. She said, "Let's go."
- 8 Q. Did she have her medicine with her?
- 9 A. No, sir.
- 10 Q. Where did you have to go to get the medicine?
- 11 A. To the house.
- 12 Q. Did you -- when she said, "Let's go," did you all
- 13 go on?
- 14 A. We stayed there about five minutes more. I was
- 15 waiting for somebody else to come up there to take care of the
- 16 kid.
- 17 Q. Did anybody else come up?
- 18 A. No, sir, and we left.
- 19 Q. While you were there did Connie Branum ever come
- 20 up to the fire?
- 21 A. No, sir, I never seen her no more after I seen her
- 22 down there in the yard.
- 23 Q. Did -- when you left, which direction did you go
- 24 in to get out of the hollow?
- 25 A. Well, I went back around the same way I came in.

1 Q. And did you ever see this car again?

2 A. Yes, sir, it was behind us.

3 Q. When you say it was behind you, what -- was it
4 moving, following behind you, or what?

5 A. Yes, sir, it -- about the top of the hill it fell
6 in behind us.

7 Q. If you would, please, sir -- have you had a chance
8 to look at this -- what's been filed as Exhibit #2? Would you
9 mind to step down, if you don't mind, please, sir, and take a
10 look at that.

11 Do you recognize that? Have you had an opportunity
12 to see that?

13 A. Yes, sir.

14 Q. Okay. And could you show the Court and jury what
15 direction you were going in, and where it was you saw this car
16 the two people had gotten in?

17 A. I was going this way right here.

18 THE COURT: Can all of you see that? Can all the
19 jury see that? Okay.

20 BY GENERAL SCHMUTZER:

21 Q. You'll need to stand to the side there. You're
22 pointing...

23 A. I left from right in here, and went up around, and
24 down this way.

25 Q. Okay. Where was it that you saw the car?

1 A. Right along in here is where we saw some lights and
2 the car.

3 Q. Was that the same car that you thought at the time
4 was a green Buick?

5 A. Yes, sir.

6 Q. Okay. But it had left there from the Dellinger
7 residence sitting beside the truck?

8 A. Yes, sir.

9 Q. That truck that they had gotten this object out of
10 and put in the back -- you can go back up and sit down, sir.
11 Did you recognize the truck? Had you ever seen it before?

12 A. Yes, sir, it's a white Dodge.

13 Q. Have you ever seen that white Dodge before?

14 A. Yes, sir.

15 Q. Who does it belong to?

16 A. It belonged to James.

17 Q. Now as you went on home, as you come out of the
18 hollow to get down to Goose Gap Road, I take it you turn left,
19 and go toward Chapman Highway?

20 A. Yes, sir.

21 Q. Did that car continue to follow you?

22 A. Yes, sir.

23 Q. When you got on Chapman Highway was it still behind
24 you?

25 A. Yes, sir.

1 Q. When you went on down and turned off there at the
2 stockyard going home was it still behind you then?

3 A. Yes, sir, it went on down towards Knoxville.

4 Q. Okay. Now from where the stockyard is, is that
5 before you get to the "Y" where you could go to Maryville?

6 A. Yes, sir.

7 Q. And also before where you could turn -- go on down
8 and turn on 411 to go to Maryville?

9 A. Yes, sir.

10 Q. About what time -- how far do you live from Chapman
11 Highway?

12 A. Off the road?

13 Q. Uh-huh (affirmative.)

14 A. About a mile.

15 Q. When you got in the house did you notice what time
16 it was?

17 A. Yes, sir, it was about 25 till 11:00.

18 GENERAL SCHMUTZER: You may cross examine.

19 **

20 CROSS-EXAMINATION

21 BY MR. MILLER:

22 Q. Mr. Lewis, you said, I believe, that before Connie
23 left the house there she didn't make a call that you knew of?

24 A. That's right, sir.

25 Q. What your saying is that you just don't know

1 whether she made a call or not?

2 A. No, sir.

3 Q. And when you went back up the hill to Boyd's house
4 you took, I take it, the little girl with you?

5 A. Yes, sir.

6 Q. Jennifer?

7 A. Yes, sir.

8 Q. And you waited out in the car by yourself?

9 A. No, my wife was with me.

10 Q. And the purpose was just to take them home, her and
11 the baby?

12 A. Yeah, we was taking care of the baby because it was
13 sort of cold that night.

14 Q. And you say you looked up there at the Dellinger
15 residence and saw somebody putting something into a green Buick?

16 A. Well, I thought it was a green Buick, sir.

17 Q. And you made a statement, did you not, sir, that
18 it was a 70's model green Buick that belonged to Eddie Blair?

19 A. No, sir, I didn't make that statement.

20 Q. You didn't make that statement? You did make the
21 statement -- did you make a statement to Detective David
22 Davenport of the Tennessee Bureau of Investigation back on
23 2/29/92? Do you remember talking with Mr. Davenport?

24 A. No, sir.

25 Q. You don't remember talking to him?

1 MR. MILLER: Was that statement, General, taken by
2 David?

3 GENERAL SCHMUTZER: It was transcribed, but he
4 probably didn't know him personally.

5 BY MR. MILLER:

6 Q. You talked to somebody about this case back on
7 2/29/92, do you remember that?

8 A. Yes, sir.

9 Q. Do you remember telling them that you saw somebody
10 put something from a white truck and pitch it in the back seat
11 of a green Buick, a 70's model Buick, dark green in color which
12 may have belonged to Eddie Blair?

13 A. No, I didn't know who it belonged to.

14 Q. Did you tell the detective that?

15 A. No, sir, I don't remember telling him that.

16 Q. You say you went out of the hollow back the way
17 your came, and didn't see this car -- didn't see the car until
18 you got up to the top of the hill, is that right?

19 A. That's right.

20 Q. So you don't know where that car came from, isn't
21 that true?

22 A. That's right.

23 Q. Okay. And the car -- of course it was dark, and
24 it had it's headlights on, didn't it?

25 A. Yes, sir.

1 Q. And you couldn't identify that car in your mirror,
2 could you, with the headlights shooting into your mirror?

3 A. No, sir, I couldn't identify it.

4 MR. MILLER: That's all I have, Your Honor.

5 THE COURT: Mr. Daniel?

6 **

7 CROSS-EXAMINATION

8 BY MR. DANIEL:

9 Q. Mr. Lewis, you are the brother of Viola Griffin,
10 is that correct?

11 A. Yes, sir.

12 Q. So Connie would be your niece?

13 A. Right, sir.

14 Q. And Tommy Griffin would be your nephew?

15 A. Yes.

16 Q. And you've known Gary Sutton for some time?

17 A. No, sir.

18 Q. You never did know him?

19 A. Not that I know of.

20 Q. Did you know that he and Tommy ran around together
21 all the time -- were good friends?

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

23 Q. You don't have any knowledge of that one way or the
24 other?

25 A. No.

1 Q. You don't know Gary Sutton then at all, do you,
2 sir?

3 A. Not that I know of.

4 Q. To your knowledge you never saw Gary Sutton on the
5 night in question then?

6 A. No.

7 Q. You can't identify anybody as being him, can you,
8 sir?

9 A. No.

10 Q. Let's talk about Connie a minute. You know that
11 back about a week before this happened or so around February the
12 10th of '92 Connie tried to commit suicide, didn't she?

13 A. No, I didn't know that she tried to commit suicide,
14 no, sir.

15 Q. You didn't know that?

16 A. No, sir.

17 Q. You did know that she was placed in a mental
18 institution down in Knoxville?

19 A. Yes, sir, I knew that.

20 Q. You didn't know why she was in there?

21 A. No, sir.

22 Q. You do know that her father had committed suicide
23 sometime before that?

24 A. Yes, sir.

25 Q. Not too awful long before that?

1 A. About a year.

2 Q. And her and Boyd were having marital problems at
3 the time, weren't they?

4 A. Not that I know of.

5 Q. Well, wasn't it true that she was staying down
6 there at your -- at your sister's house, her mother's quite a
7 bit?

8 A. No, sir, she wasn't.

9 Q. She wasn't staying there?

10 A. No.

11 Q. You don't know then what her diagnosis was when she
12 was admitted to the hospital over in Lakeshore as to what the
13 problem -- emotional problems were, do you?

14 A. No, sir.

15 Q. So if there was any marital problems between her
16 and Boyd, you're just not aware of it?

17 A. That's right.

18 Q. Okay, sir. Now as I understand it, you -- there's
19 a call came down there at the house, and you were at your
20 sister's house where the call came, and there was a fire?

21 A. Yes, sir.

22 Q. And there were some phone calls made at that time?

23 A. One that I know of.

24 Q. There could have been others, couldn't there, Mr.
25 Lewis?

- 1 A. Yes, sir.
- 2 Q. And everybody was kind of in a frantic state there?
- 3 A. Yes, sir, I was in the kitchen.
- 4 Q. You were in the kitchen?
- 5 A. Right.
- 6 Q. So you don't know whether or not Connie -- you
- 7 can't in all honesty say whether Connie made any phone calls or
- 8 not, can you?
- 9 A. No, sir.
- 10 Q. And then you stated that you went up -- you went
- 11 up to the fire. Did you go up with Connie?
- 12 A. No, sir.
- 13 Q. Who did she go with?
- 14 A. She went with my sister.
- 15 Q. And did you leave before they did or did you all
- 16 leave about the same time?
- 17 A. She left before we did.
- 18 Q. Just a little bit before?
- 19 A. Yes, sir.
- 20 Q. And as you were going out up through there you say
- 21 there was a police came in behind you, is that correct?
- 22 A. Yes, sir.
- 23 Q. And did the police car come on up to the scene of
- 24 the fire?
- 25 A. Well, supposedly it did because I went on up the

1 left hand side.

2 Q. Okay. And it was there close to the fire where
3 you're talking about, is that correct, sir?

4 A. It was right behind me.

5 Q. Right behind you. So you went on up there, and
6 then the fire trucks were right behind the police car, is that
7 correct?

8 A. Well, they was one fire truck up there when I got
9 around there.

10 Q. So there was one fire truck already there when you
11 arrived, is that correct?

12 A. Yes, sir.

13 Q. I'm sorry, I misunderstood you. I thought you
14 said...

15 A. I thought they was one behind me, too.

16 Q. Okay. There was more than one fire truck that was
17 there on the scene when you were up there, is that correct?

18 A. Yes, sir, there was two.

19 Q. And one fire truck was there -- you don't know what
20 time it was, then, that that first fire truck arrived, do you?

21 A. No, sir.

22 Q. The trailer was almost consumed in fire, wasn't it?

23 A. Yes, sir, when I got up there.

24 Q. You never went down and inspected it, did you, sir?

25 A. No, sir, I set there.

1 Q. You stayed...

2 A. I stayed right there in the car.

3 Q. You stayed there. And then you went up there in
4 the car, and you say you backed your car up there, and was
5 sitting there, and you saw someone take something out of a --
6 was it a green -- dark green colored 70's model Buick? Was that
7 what you saw somebody put something into?

8 A. That's what I thought it was at the time.

9 Q. And did you tell Officer Davenport at any time that
10 you thought this belonged to Eddie Blair?

11 A. Not that I know of, sir.

12 Q. Do you know Eddie Blair?

13 A. No, sir.

14 Q. So if Officer Davenport made a statement that you
15 thought it belonged to Eddie Blair, then he'd be wrong on that
16 because you don't even know Eddie Blair, do you?

17 A. No, sir.

18 Q. And you made your statement, and you gave your
19 statement to Mr. Davenport on the -- March the -- well, let's
20 see, March the 12th. Well, the interview was on February the
21 29th, is that correct? Is that when you first talked to Mr.
22 Davenport?

23 A. Over at Maryville?

24 Q. I don't know where it was, but there's -- we have
25 a statement that's been furnished to us that says "Tennessee

1 Bureau of Investigation," and it says, "Interview with Herman
2 Lewis on February the 29th, 1992 from David Davenport." Did you
3 give Mr. Davenport a statement on that occasion?

4 A. I talked to someone on that...

5 Q. You don't know who Mr. Davenport is then?

6 A. No, sir.

7 Q. Would that be about the correct date, the 29th of
8 February?

9 A. I think it was.

10 Q. So that would be after Tommy Griffin's body had
11 been found, and also after the body of Connie Branum had been
12 found, is that correct -- when you gave your statement to him?
13 Or had she been found at that time?

14 A. I don't remember.

15 Q. Well, maybe I'm getting my dates mixed up. Maybe
16 she hadn't been found. The 29th of February it was leap year,
17 wasn't it, so we've got an extra day in February, is that
18 correct?

19 A. Yes, sir.

20 Q. Now as I understand it, you can't tell -- you're
21 not trying to tell this Court and jury what anything was that
22 anybody put in that car up there, are you, sir?

23 A. No, sir.

24 Q. Because you couldn't see it, and you couldn't tell,
25 could you?

1 A. No, sir.

2 Q. And you say you left, and you went out down Chapman
3 Highway, and this car that followed you -- that left from up
4 there followed you that way?

5 A. Yes, sir.

6 Q. And you turn off before you get to an area they
7 call the "Y"?

8 A. Right.

9 Q. And the "Y" is the way that you go -- you go the
10 "Y", and then you go over to Maryville, is that correct, sir?

11 A. That's right.

12 Q. And from where you live and the way you went,
13 that's the most direct route to Maryville, isn't that correct?

14 A. Yes, sir.

15 Q. So the car that followed you, if it was either one
16 of these parties it went on down the road -- Chapman Highway,
17 is that correct?

18 A. Right.

19 Q. And then it would have turned off later after it
20 passed you to go over to Maryville?

21 A. Yes, sir.

22 Q. Did you ever tell Officer Davenport any make or
23 model or color of this car?

24 A. I told him I thought it was a Buick.

25 Q. And you still think that was a Buick because you

1 never told him anything about Eddie Blair's car, did you?

2 A. No, sir.

3 Q. So you still think it was a Buick?

4 A. I thought it was a Buick or...

5 Q. Did you think it was a 70's model Buick? Did you
6 tell him that?

7 A. I thought it was an older model Buick -- you know.

8 Q. And you thought it was dark green?

9 A. I thought it was green.

10 Q. And that's from your vision from looking there, and
11 what you could see?

12 A. Yes, sir.

13 Q. And in all fairness, Mr. Lewis, it was dark, and
14 it was hard to tell what color things were up there, isn't that
15 correct?

16 A. That's right.

17 Q. It's hard to see what...

18 A. But there's a street light right up on the bank
19 right there in front.

20 Q. Yes, sir. But it's still dark, and it's still hard
21 to see at night, isn't that correct?

22 A. Yes, sir.

23 MR. WEBB: Your Honor, before Mr. Daniel concludes
24 can we approach the bench on one matter?

25 THE COURT: Sure.

1 (A bench conference is held on the record, to-
2 wit:)

3 MR. WEBB: I just didn't want to have any
4 confusion. General? Your Honor, we're looking at
5 a statement that the attorney general gave us about
6 their interview with Henry Lewis pursuant to
7 Jencks. I'm just confused, and I need to clear
8 this up. Is this the statement that David
9 Davenport took, or is this a statement someone else
10 took?

11 GENERAL SCHMUTZER: I would assume it's David
12 Davenport; I don't know.

13 GENERAL GREEN: I would think it's Davenport. If
14 I'm recalling right he'll put "this was received
15 from."

16 MR. DANIEL: Okay. One other question, General,
17 just for clarification. If I understood his
18 statement he said, "Was this the one over at
19 Maryville?" I would assume by that he must have
20 made a statement in Maryville?

21 GENERAL SCHMUTZER: I don't know.

22 MR. DANIEL: And do you have another statement that
23 would have been taken by the Maryville officers?

24 GENERAL SCHMUTZER: No, that's the only one I've
25 got.

1 GENERAL GREEN: I'm not aware of one.

2 MR. DANIEL: Can you check it? You all just don't

3 have any other statement other than this one?

4 GENERAL SCHMUTZER: That's the only one we have.

5 We can check and see, but that's the only one we...

6 THE COURT: See if the officer has one.

7 MR. DANIEL: He just said that, "That's the one

8 over in Maryville."

9 GENERAL SCHMUTZER: I'll ask.

10 THE COURT: Any further questions, Mr. Daniel?

11 MR. WEBB: Wait just a second.

12 THE COURT: Okay.

13 (Said bench conference being completed, the

14 following proceedings are had in open court.)

15 BY MR. DANIEL:

16 Q. Mr. Lewis, where was Boyd Branum at the time? Do

17 you know?

18 A. Yeah, he come out and went down to the fire.

19 Q. After you got up there he came out of the...

20 A. Yeah, I seen him walking down towards the fire.

21 Q. And this would be some -- well, whenever it was you

22 got up there, you had already got there, and you saw him come

23 out -- come out of his house or trailer, whatever...

24 A. No, I didn't see him come out of his house.

25 Q. But you saw him walking...

1 A. I was down there setting there at McDermon's when
2 he walked down the road.

3 Q. Okay. Now, you looked up there -- how many
4 vehicles was parked up there at the Dellinger's house, would you
5 say?

6 A. Well, I thought they was just two.

7 Q. And that would be the truck and the...

8 A. And the car.

9 Q. And which one -- was the car parked behind the
10 truck?

11 A. No, sir, it was parked on the side.

12 Q. Were both of them parked side by side?

13 A. Yes, sir.

14 Q. Do they park around back? Is it kind of where you
15 pull in the back, and park?

16 A. No, sir, it just pulls -- well, like that right
17 there.

18 Q. So when you were looking up there what you was
19 actually seeing would be the rear of two vehicles, is that
20 correct?

21 A. Yes, sir.

22 Q. You couldn't see the front of the vehicles?

23 A. No, sir.

24 Q. Nor could you see the sides of the vehicles?

25 A. Well, I could see the side of the car.

1 Q. Of the car?

2 A. Yes, sir.

3 Q. But you couldn't see the side of the truck?

4 A. No, sir.

5 Q. If they was parked side by side then the truck
6 would be around on the other side of the car, would that be
7 right?

8 A. Well, the truck was pulled in -- my recollection
9 was it was pulled next to the trailer, but you could still see
10 the back end of it.

11 Q. Did you see any other vehicles up there at all?

12 A. No, sir.

13 Q. You had a clear view that you could have seen them,
14 you think, if they had been there?

15 A. Yes, sir.

16 Q. What about -- Connie was not up there with you?

17 A. No, sir.

18 Q. You don't know where she was during this period of
19 time?

20 A. As far as I know she was still down there at the
21 fire.

22 Q. All right. There's several houses right in there
23 real close -- other house right in there real close to that
24 area, is that correct?

25 A. Yes, sir.

1 Q. And you never saw Connie, I believe you said, after
2 you left -- after you left the house, or she left the house down
3 there, is that correct?

4 A. No, sir, I said I didn't see her after I seen her
5 in the yard down there at the fire.

6 Q. After you saw her in the yard?

7 A. Yes, sir.

8 Q. Okay. Thank you.

9 MR. DANIEL: No further questions, Your Honor.

10 **

11 REDIRECT EXAMINATION

12 BY GENERAL SCHMUTZER:

13 Q. How much time did Connie hang around or stay at
14 Viola Griffin's after the call came in telling you that Tommy's
15 place was on fire until when she and her mother left?

16 A. It couldn't have been over five minutes at the most
17 because she went out the screaming -- you know.

18 Q. We sometime talk in minutes as though it's...

19 MR. DANIEL: Your Honor, I object to the
20 suggestion.

21 THE COURT: Sustained.

22 BY GENERAL SCHMUTZER:

23 Q. Did you see her -- you say she went out the door
24 screaming. How soon was that after the phone call had come in?
25 Did she answer the phone or talk to anybody on the phone?

1 MR. DANIEL: That's been asked and answered, Your
2 Honor.

3 GENERAL SCHMUTZER: They went into it, Your Honor.

4 BY THE WITNESS:

5 A. Not that I know of.

6 GENERAL SCHMUTZER: They went into it on cross
7 examination.

8 THE COURT: That's true. Go ahead.

9 BY GENERAL SCHMUTZER:

10 Q. You say she went out the door screaming?

11 A. Yeah.

12 Q. Who went with her?

13 A. My sister, her mother.

14 Q. That's all. Thank you, sir.

15 THE COURT: You may step down. Is he excused?

16 BY GENERAL SCHMUTZER:

17 Q. Let me ask you one thing, if I may. Did Tammy call
18 9-1-1 before Connie left or after Connie had left?

19 MR. WEBB: Your Honor, I would object to this. He
20 has no knowledge of that.

21 GENERAL SCHMUTZER: Well, he'd already testified
22 that Tammy Griffin made the phone call. He's
23 testified to that.

24 BY THE WITNESS:

25 A. Yeah, she run in there and called, and they was

1 done going out the door.

2 Q. Let me just get that straight. When Tammy Griffin
3 made the phone call had Connie left the house or was she still
4 there?

5 A. She was out the door. She was out there in her
6 car.

7 Q. Out in her car leaving?

8 A. Out at her car, and Viola was going out there.

9 Q. That's when Tammy Griffin called 9-1-1?

10 A. Yeah.

11 Q. That's all. Thank you.

12 MR. DANIEL: Just one second, Your Honor.

13 THE COURT: Hold on a minute.

14 MR. DANIEL: I don't have any further questions.

15 THE COURT: You may step down. Is he excused?

16 GENERAL SCHMUTZER: As far as the State's
17 concerned, Your Honor.

18 THE COURT: Is he excused?

19 MR. DANIEL: Yes, Your Honor.

20 THE COURT: Okay. Thank you.

21 GENERAL SCHMUTZER: Call Mr. Ray Herrin.

22 **

1 RAY HERRIN was called, and being duly sworn, was
2 examined and testified as follows:

3 DIRECT EXAMINATION

4 BY GENERAL SCHMUTZER:

5 Q. Please state your full name.

6 A. Charles Ray Herrin.

7 Q. And where are you employed at this time?

8 A. I'm retired at this time.

9 Q. Okay, sir. And where did you retire from?

10 A. Blount County Sheriff's Department.

11 Q. And how long have you been retired?

12 A. Since the first day of September of '92.

13 Q. What was -- back in February -- how long have you
14 worked with the sheriff's department?

15 A. 20 years.

16 Q. In what capacity were you working there back in
17 February of 1992?

18 A. Supervisor of the night shift in the jail.

19 Q. Specifically, sir, were you working on the night
20 of February the 21st, 1992?

21 A. Yes, sir.

22 Q. I'll call your attention, sir, to what's marked as
23 an intake information card, and ask you, sir, if you recognize
24 that?

25 A. Yes, sir.

1 Q. All right, sir, and what is this car for? I mean -
2 - generally, what do you use these cards for?

3 A. This is an intake card that we fill out -- the
4 jailers fill out on each and every inmate that is brought to the
5 Blount County Jail or admitted to the Blount County Jail.

6 Q. And specifically, what I handed you there, who was
7 that for?

8 A. Tommy Mayford Griffin.

9 Q. And was he taken into the jail on the night of
10 February the 21st?

11 A. Yes, sir.

12 Q. Does it show what time he came in?

13 A. 19:40, which would be 7:40 p.m.

14 Q. All right. And I believe he was charged with
15 public intoxication, is that correct? Is that what your report
16 shows?

17 A. Yes, sir.

18 Q. Were you there that evening?

19 A. Yes, sir, I was there when they brought him in.

20 Q. And I believe parts of this had been filled out,
21 is that correct?

22 A. Yes, sir.

23 Q. After he was brought in, sir, did anyone come to
24 get him?

25 A. Yes, sir.

1 Q. Who was that?

2 A. Mr. Dellinger, and there was another man with him.
3 I have no idea who he was.

4 Q. When he came -- how long was this after the
5 defendant was brought in -- or Tommy Griffin was brought in?

6 A. It was just a short while. In my estimation it was
7 probably 45 minutes to an hour. That's just a rough guess on
8 it.

9 Q. I take it you weren't making any note of time?

10 A. No, not on that particular thing, no, sir.

11 Q. What time do your records show that Tommy Griffin
12 was released?

13 A. He was released at 23:25, which would have been
14 11:25 p.m. that same night.

15 Q. All right. When the individual -- when Mr.
16 Dellinger came the first time, did you release him at that time?

17 MR. DANIEL: I object to the first time. He's
18 never testified to that.

19 GENERAL SCHMUTZER: I'm sorry.

20 BY GENERAL SCHMUTZER:

21 Q. When he came -- when Mr. Dellinger came, and this
22 other person you didn't know, was he released at that time? Was
23 Tommy Griffin released to him?

24 A. No.

25 Q. You said he came a short time after he was put in?

1 A. No, he wasn't released at that time, no, sir.

2 Q. What did you tell him, if anything?

3 A. To be back around 10:30, 11:00, and we would
4 process and try to get him out.

5 Q. Do you all have a policy on holding anyone that's
6 under the...

7 A. Anyone that's charged with public drunkenness we
8 try to keep them a minimum of four hours.

9 Q. Do you remember anyone coming back for Tommy
10 Griffin?

11 A. Yes, sir.

12 Q. And who was that?

13 A. Mr. Dellinger.

14 Q. Was anybody else with him then?

15 A. There was someone else with him, but they were in
16 the lobby. I don't remember anybody else except Mr. Dellinger
17 coming up to the window.

18 Q. Was Mr. Griffin released at that time?

19 A. Well, they got there earlier. He wasn't ready to
20 go when they got there. I'm not sure exactly the time that they
21 got there, but they were there I would estimate about 25, 30
22 minutes, 35 minutes, or something like that.

23 Q. Were you making any notes of times or anything,
24 sir?

25 A. No, sir.

1 Q. You are just guessing at that?

2 A. This is just approximately.

3 Q. In any event, did he leave with them at 11:25?

4 A. Well, when he was released from the jail, he went
5 out into the jail lobby. I don't know who he left with, sir.

6 Q. I see.

7 A. I was still inside the jail office. I have no idea
8 who he left with. I couldn't say who he left with.

9 Q. Okay, sir.

10 GENERAL SCHMUTZER: You may cross examine. I want
11 to introduce this card, Your Honor, and if we may -
12 - at a later time, if I could replace that with a
13 copy.

14 THE COURT: Sure.

15 GENERAL SCHMUTZER: Since it is an original. Do
16 you want me just to wait, then? We'll do that at
17 the next break.

18 THE COURT: It will be Exhibit #17.

19 (EXHIBIT #17 - Intake card; marked and filed.)

20 **

21 CROSS-EXAMINATION

22 BY MR. MILLER:

23 Q. Mr. Herrin, you didn't know Mr. Dellinger back at
24 that time, is that correct?

25 A. I didn't understand the question.

1 Q. You didn't know Mr. Dellinger back at that time
2 back a year ago, is that correct?

3 A. Yes, sir, I knew him.

4 Q. You knew him?

5 A. Yes, sir.

6 Q. This -- you testified that he and somebody else
7 came in at 8:00, and are you testifying from your memory or have
8 you recorded that down somewhere?

9 A. No, we don't record who comes up to the jail
10 window.

11 Q. There at the jail -- you all have got phones there
12 in the jail that sometimes the inmates can use, is that right?

13 A. Yes, sir.

14 Q. You've got Knoxville lines there in the jail, is
15 that right?

16 A. In the jail office we have a Knoxville line.

17 Q. So it's possible for people to make calls from
18 there to Sevier County without it being long distance, is that
19 correct?

20 A. Well, are you talking about an inmate making a
21 phone call? Anyone that would use the phone in the jail office
22 would have to give the jailer a number, and one of the jailers
23 would have to dial that number for him.

24 Q. And I believe it was your testimony that once he
25 was bonded out that you don't know who he left with from the

1 jail?

2 A. No, sir, I wasn't out in the jail lobby. I
3 couldn't say who he left with, sir.

4 MR. MILLER: I believe that's all, Your Honor.

5 THE COURT: All right. Mr. Daniel?

6 **

7 CROSS-EXAMINATION

8 BY MR. DANIEL:

9 Q. Mr. Herrin, you say that somebody came there and
10 then asked to get him out of jail, and you told them they would
11 have to come back in a little bit, is that correct?

12 A. That's right, sir.

13 Q. You can't tell us what time that was, can you, sir?

14 A. Not exactly to the minute. It was somewhere, I'd
15 say, within 45 minutes to an hour after he was brought to the
16 jail and booked.

17 Q. If this was an hour, this would be up at least 8:40
18 or 8:45, is that correct

19 A. Well, I don't know if it would be that far because
20 we booked him at...

21 Q. You booked him at 7:40.

22 A. 7:40.

23 Q. That's when he first comes in, and it takes a while
24 to get things situated there, doesn't it?

25 A. Yeah. We have to get the information from them and

1 everything.

2 Q. You've got cameras there that you make pictures of
3 all this, don't you?

4 A. You mean when they first come into the jail?

5 Q. The jail system has a camera system where you video
6 -- in case someone wants to say that somebody mistreated them
7 or something, you all have got video tapes there to show all
8 that, don't you?

9 A. We didn't at that time, no, sir.

10 Q. You didn't have any at that time?

11 A. We had -- there was no camera there in what we call
12 the vestibule where they come off the elevator into the jail
13 booking area.

14 Q. You don't have any -- you didn't have any kind of
15 surveillance system at that time?

16 A. Not at that time, no, sir.

17 Q. Now, you don't have any surveillance system that's
18 outside in the area out from the parking lots then, do you?

19 A. Not in the parking lot. There is a camera in the -
20 - what we call the jail lobby there.

21 Q. Just where a person sets there in the lobby?

22 A. Yeah.

23 Q. That's right outside where you are, is that
24 correct?

25 A. Well, down to the left where I would be.

1 Q. During that period of time you booked -- how many
2 people did you book that night?

3 A. I don't remember.

4 Q. You don't have any idea?

5 A. I don't remember. I would have to look at the jail
6 log.

7 Q. And you had never seen Mr. Dellinger, you say,
8 before, is that correct?

9 A. Oh, yes, I'd seen Mr. Dellinger before.

10 Q. You knew him before?

11 A. Yes, sir.

12 Q. Did you know the other person that was with him?
13 You didn't know who was with him, did you?

14 A. Not to my knowledge.

15 Q. Now I understand it that there is no -- out in the
16 parking lot or outside the courthouse there is no video cameras,
17 is there?

18 A. No, sir, not to my knowledge.

19 Q. So if some officer told one of these defendants
20 that he had him on video over at the jail, that wouldn't be
21 correct, would it, sir, because there is no video?

22 A. There was no video camera in the jail -- in the
23 jail vestibule where they come off the elevator into the jail
24 booking area.

25 Q. But the sheriff's department has no video that's

1 out around the parking lots and the area of the courthouse?

2 GENERAL SCHMUTZER: Your Honor, he's covered this.

3 He has answered this, and said there was none
4 twice. I object to it as being repetitious.

5 MR. DANIEL: Well, I didn't understand you.

6 THE COURT: He can ask that question.

7 BY THE WITNESS:

8 A. There is no outside cameras outside of the
9 building, if that's what you're...

10 Q. So there can, of course, be no videos made of any
11 areas outside the courthouse, can there?

12 A. Not to my knowledge.

13 THE COURT: Not by sheriff's department equipment,
14 right?

15 THE WITNESS: Right.

16 BY MR. DANIEL:

17 Q. Well, is there any other equipment there at the
18 courthouse that has -- any other agency that has any videos
19 outside or cameras outside?

20 A. Not to my knowledge, sir.

21 Q. Okay, sir. Now, was there a boy there in the area
22 that -- before they got him out of jail that had a -- was hurt -
23 - had a hole in his nose or something?

24 A. The City of Alcoa, Sergeant Beeler, brought a young
25 man in, and he had had a head injury, but the extent of the head

1 injury I don't know, but he had been to the hospital, and his
2 head was all bandaged, and I refused to accept him.

3 Q. And he set out in the lobby for a long period of
4 time, didn't he, sir?

5 A. Yes, sir. Sergeant Beeler took him, and they went
6 out into the jail lobby.

7 Q. What time was he out there in the lobby?

8 A. Off hand, I don't know. I'd say it was somewhere
9 after 10:00.

10 Q. You say it was after 10:00?

11 A. I would have thought -- I think so. I couldn't say
12 exactly.

13 Q. You don't know how long he set over there then, do
14 you -- out there in the lobby?

15 A. No, sir, I don't.

16 Q. He didn't sit there very long, did he?

17 A. I don't have any idea, sir.

18 Q. Because you all took him on -- got him sent on to
19 the hospital, is that correct?

20 A. No, he had already been to the hospital. My
21 understanding is that Sergeant Beeler got in touch with some of
22 the young man's folks, and they came and got him.

23 GENERAL SCHMUTZER: Your Honor, I would object to
24 this...

25 THE COURT: What's the relevance of this?

1 MR. DANIEL: It's in the statement, Your Honor.

2 THE COURT: Well, I understand that, but is it
3 relevant to any issue in this...

4 MR. DANIEL: I think it is because of some
5 statements that he made.

6 THE WITNESS: Sergeant Beeler would have to testify
7 how long he was there, Your Honor. I couldn't say
8 for sure on that.

9 MR. DANIEL: I think when Your Honor hears the
10 other testimony it will become relevant.

11 THE COURT: All right.

12 BY MR. DANIEL:

13 Q. So you stated that Mr. Dellinger placed what we
14 call a cash bond, is that correct?

15 A. Yes, sir.

16 Q. Did you all have a hold or something on Tommy
17 Griffin? Did he owe you all -- what we call owe you 48 hours
18 on a drunk driving case?

19 A. Not to my knowledge.

20 Q. You didn't have any records of that?

21 A. Not to my knowledge, sir.

22 Q. And the last thing that you heard when they left,
23 they said, "We're going to get you back to Sevierville," is that
24 correct?

25 A. I don't remember that.

1 Q. You don't remember hearing that?

2 A. No, I don't.

3 Q. Do you remember hearing them say anything about his

4 trailer had burned?

5 A. No, sir.

6 Q. So you just didn't hear any conversations that was

7 had between those then, is that correct?

8 A. No, sir, I didn't hear a conversation between them.

9 MR. DANIEL: Thank you, sir.

10 MR. WEBB: Your Honor, may I approach the bench,

11 please?

12 (A bench conference is held on the record, to-wit:)

13 MR. WEBB: Your Honor, this is just part of the

14 continuing motion about this. At this point Mr.

15 Dellinger has no connection to Gary Sutton at this

16 point, and we'd ask the Court...

17 GENERAL SCHMUTZER: He certainly does, Your Honor.

18 We -- Jennifer Branum says that got in the car

19 together, and left up there, and that James said

20 that they were going to go pick him up at the jail.

21 There's a lot of testimony already in here tying

22 Gary Sutton to being the other individual. This

23 man says he came with James Dellinger...

24 MR. WEBB: I'm renewing my motion for severance,

25 Your Honor.

1 THE COURT: Overruled.

2 GENERAL SCHMUTZER: Your Honor, the question was
3 asked by both counsel, in fact, one said, "You
4 didn't know the other one," and he said, "Yes, he
5 did. He knew -- Dellinger had been in there just
6 within a year's period of time.

7 THE COURT: Unless some issue is raised on --
8 further issue is raised as to his ability to
9 identify him, I'm not going to let that in. If
10 it's raised, forewarned, it can come in.

11 MR. MILLER: Do you want me to ask him how he
12 knows?

13 THE COURT: I anticipated this as he was
14 testifying, but if you leave sleeping dogs lying...

15 MR. MILLER: I'm learning.

16 MR. WEBB: You'll let it lie.

17 THE COURT: I'll let it lie, yeah.

18 GENERAL SCHMUTZER: The only potential problem is,
19 Your Honor, obviously if I raise any question --
20 I mean, that's the obvious next answer, "how do you
21 know him?"

22 THE COURT: I understand.

23 GENERAL SCHMUTZER: Could I lead him, and say --
24 you know, that he had contact with him without
25 saying what it is?

1 THE COURT: I don't think we need to go into that
2 at this time, General.

3 (Said bench conference being completed, the
4 following proceedings are had in open court.)

5 **

6 REDIRECT EXAMINATION

7 BY GENERAL SCHMUTZER:

8 Q. Mr. Herrin, if a prisoner -- I take it by what you
9 said that a prisoner does not have direct access to a telephone,
10 that the jailer is going to have to make that call for him, and
11 give it to him, is that right?

12 A. Yes, sir. When he first comes in, yes, sir.

13 Q. And do your cards show where this man, Tommy
14 Griffin, was locked up -- what cell he was in?

15 A. Yes, sir. He was put in our second -- number two
16 isolation cell.

17 Q. Is there any telephone in that isolation cell?

18 A. Not in the cell. There's one in that hallway.

19 Q. Would the prisoner have access to it to go up to
20 it himself and use that?

21 A. No, sir.

22 Q. That phone -- is it a collect phone?

23 A. It is a pay phone, yes, sir.

24 Q. Do you -- if a jailer makes a call for a defendant,
25 is that reported -- made a record?

1 A. Yes, sir.

2 Q. And where would that show up?

3 A. That would show up here on the back of the intake
4 card.

5 Q. Okay, sir. Does that show -- what calls does that
6 show that Tommy Griffin made?

7 A. It doesn't show that he made any.

8 GENERAL SCHMUTZER: Has that been filed, Your
9 Honor?

10 THE COURT: Yes.

11 GENERAL SCHMUTZER: That's all.

12 MR. DANIEL: Just a couple more questions, Your
13 Honor.

14 **

15 RE CROSS-EXAMINATION

16 BY MR. DANIEL:

17 Q. Sir, let me ask you this then. If someone calls
18 up there at the jail and checks on him, you don't have any
19 record of that, do you?

20 A. No, sir. We would just advise the person that the
21 person was either in jail or not in jail.

22 Q. I'm sure people call every few minutes checking on
23 somebody to see if they're in jail and when they're going to be
24 able to get out, and things of this nature, is that correct?

25 A. Well, we get calls concerning people.

1 Q. Is there more than one person that handles those
2 calls?

3 A. Oh, yeah, whoever happens to be in the jail --
4 working in the jail at that time.

5 Q. So it wouldn't be just you if you were there?
6 There would be other people around, is that correct, sir?

7 A. Yes, sir.

8 Q. What's the phone number over there at the jail?

9 A. Well, of the night we had 982-5263, 64, 65, and 66.
10 Then we had a Knoxville line -- I'm not sure of the number of
11 it, but I believe it was -- I can't remember what the Knoxville
12 number is. Then we had a line directly for the jail which was
13 983-3320, I believe.

14 Q. Do you have another number that's like -- if
15 somebody just wants to call and check on something -- trying to
16 get some information from the sheriff's department? Do you have
17 a number that's a communications number that you call?

18 A. If they wanted -- they would call dispatch, and
19 that would be 983-3620.

20 Q. And then is that -- that does not put you in
21 contact with the jail, does it?

22 A. No, sir.

23 Q. So if a person calls that number they would have
24 to get a jail number in order to then turn around and call your
25 number, is that correct?

1 A. Yes, sir.

2 Q. And do you know the number of the hospital --
3 Blount Memorial Hospital?

4 A. No, not offhand, I don't, sir.

5 Q. Okay. When everybody comes in I'm sure you all
6 give them at least one phone call to make, don't you?

7 A. If they request one, yes, sir. We try to unless
8 they're just falling down drunk or something, and not capable
9 of making one.

10 Q. Was this Tommy Griffin falling down drunk that
11 night when he came in?

12 A. No, he wasn't falling down drunk, no, sir.

13 Q. So you would have given him a phone call then?

14 A. If he had requested one I'd say we probably would
15 have. Our policy is that if they come in intoxicated, why, they
16 get a phone call when they get -- start to get out.

17 Q. There is a phone back in the jail. Is it one of
18 those portable phones like they have over in Knoxville that you
19 can roll around, and...

20 A. No, sir, it is permanent fixed on the wall.

21 Q. And it's a coin phone?

22 A. It's coin operated.

23 Q. So anybody that's got any money or can get some
24 change from somebody in there can call about anybody they want
25 to as long as they pay for it?

1 A. Yeah, if they could reach the phone they could.

2 Q. And they -- and if you pay for it, there is no
3 record of that, of course?

4 A. There's no record on those, no, sir.

5 Q. Thank you, sir. Do you know -- do you have any
6 knowledge how much money Tommy Griffin had on him when he came
7 in?

8 A. No, sir, I don't. I'd have to look at his property
9 receipt.

10 Q. And see whether he had any money at all?

11 A. To see what he had -- what was listed for him.

12 Q. Thank you, sir.

13 **

14 REDIRECT EXAMINATION

15 BY GENERAL SCHMUTZER:

16 Q. Are they allowed to keep the money when they are
17 placed in the jail?

18 A. No, we take -- when a person comes in on any form
19 of intoxication we take all their property. Then if they can't
20 make bond when their four hours is up or whenever, and we have
21 to put them back in population, we will allow them certain items
22 such as, I think at one time it was \$10.00, but it may be up to
23 \$20.00 now, I'm not sure.

24 Q. That was after the four hours are up?

25 A. That's after they go back into population, yes,

1 sir.

2 Q. General population?

3 A. Yes, general population.

4 Q. That's all. Thank you, sir.

5 GENERAL SCHMUTZER: May he be excused, Your Honor?

6 THE COURT: Without objection.

7 MR. MILLER: No objection, Your Honor.

8 THE COURT: Thank you.

9 GENERAL SCHMUTZER: The State calls Lieutenant
10 DeFoe.

11 **

12 THOMAS DAVID DeFOE was called, and being duly
13 sworn, was examined and testified as follows:

14 DIRECT EXAMINATION

15 BY GENERAL SCHMUTZER:

16 Q. State your full name, please, sir.

17 A. Thomas David DeFoe.

18 Q. And your position?

19 A. I'm a lieutenant with the Blount County Sheriff's
20 Department.

21 Q. And how long have you been with the Blount County
22 Sheriff's Department?

23 A. I've been with them going on 13 years this time.

24 Q. Back on the evening of February the 21st of 1992
25 were you working that evening?

1 A. Yes, sir, I was.

2 Q. Specifically, were you there at the jail at around
3 11:30 or so?

4 A. Yes, sir, I was.

5 Q. While you were there did you have an occasion to
6 see either one of these two defendants there at the jail?

7 A. Yes, sir, I did.

8 Q. And which one did you see?

9 A. I saw both the defendants.

10 Q. And when you saw them were they with someone else
11 or alone?

12 A. The first time I saw them they were alone. They
13 were walking into the lobby.

14 Q. Is that where you were, in the lobby part? Where
15 were you in the jail?

16 A. I was in the lobby just outside of the jail.

17 Q. All right. And did you -- after they came in did
18 you see them get with anyone?

19 A. Yes, sir.

20 Q. When they came out were they with someone else?

21 A. Yes, sir, there was a third person with them.

22 Q. Have you been able to identify that third person?

23 A. Yes, sir.

24 Q. And who was that?

25 A. That was Mr. Griffin -- Tommy Griffin, or something

1 like that. I don't recall the last name for sure.

2 Q. As they were going out did you overhear anyone
3 saying something?

4 A. As they come out -- like I said, there's a little
5 hallway just down to my left from where I was standing in the
6 lobby. I was talking to another officer from another agency at
7 the time the three came out. They started down a flight of
8 steps that leads down to the downstairs parking lot, and one of
9 them mentioned something about, "We got to go out this way.
10 We're parked up here." And the comment was made something
11 about, "We've got to get back to Sevierville -- get you back to
12 Sevierville."

13 Q. Okay. Now, did -- when they first came in -- when
14 you first saw them when they came in, did either one of them
15 have anything in their hand that you know of?

16 A. I noticed one was carrying a shirt, but that was
17 about all.

18 Q. That's all.

19 MR. MILLER: I have no questions, Your Honor.

20 **

21 CROSS-EXAMINATION

22 BY MR. DANIEL:

23 Q. Mr. DeFoe, did you hear them say the reason they
24 wanted to get back to Sevierville -- did you hear any mention
25 about his trailer had burned?

1 A. No, sir.

2 Q. You didn't hear anything other than those
3 statements you've stated?

4 A. That's all I heard, sir.

5 Q. They didn't say why they wanted to get him back to
6 Sevierville -- why he needed to get back to Sevierville?

7 A. No, sir.

8 Q. Was there a boy there that had been injured that
9 was setting there in the waiting area where you were?

10 A. Yes, sir. That's what I was speaking to the other
11 officer about. There was another party in the lobby at the time
12 sitting in the chairs.

13 Q. And he had been there for some period of time?

14 A. I don't know exactly how long he had been there,
15 sir.

16 Q. How long were you there from the time you arrived
17 until these boys left?

18 A. I would say 15 or 20 minutes.

19 Q. So you stayed after they left for some period of
20 time?

21 A. Yes, sir.

22 Q. But you were there 20 minutes before they left, is
23 that correct?

24 A. I'm guessing that's about right, yes, sir. I had
25 been called off the road to speak with the Alcoa officer.

- 1 Q. You never saw them come in?
- 2 A. I saw them walk through the lobby, yes, sir.
- 3 Q. As they came in or as they left?
- 4 A. As they came in and when they left, yes, sir.
- 5 Q. Did you go outside -- did you see them after they
- 6 left the jail portion there?
- 7 A. No, sir, I remained in the lobby.
- 8 Q. You don't know whether or not there would be
- 9 anybody outside then one way or the other, do you?
- 10 A. No, sir, I don't.
- 11 Q. And you know that they do not make videos of the
- 12 people that come and go to the jail? They don't have a video
- 13 system where you can record it, do they?
- 14 A. No, sir.
- 15 Q. They don't have one outside where you can record
- 16 what's going on out around the courthouse, do they?
- 17 A. No, sir, they do not.
- 18 Q. If some officer made a statement that these boys
- 19 were on videotape...
- 20 GENERAL SCHMUTZER: Your Honor, I'm going to object
- 21 to this. He can testify to what he knows.
- 22 THE COURT: Sustained as to the form.
- 23 MR. DANIEL: Okay. Thank you, Mr. DeFoe.
- 24 THE COURT: Is he excused?
- 25 MR. DANIEL: Yes, Your Honor.

1 THE COURT: You may go.

2 THE WITNESS: Thank you, sir.

3 GENERAL SCHMUTZER: Call Jason McDonald.

4 **

5 JASON McDONALD was called, and being duly sworn,
6 was examined and testified as follows:

7 DIRECT EXAMINATION

8 BY GENERAL SCHMUTZER:

9 Q. State your full name.

10 A. Jason Eugene McDonald

11 Q. And how old are you, sir?

12 A. 18.

13 Q. Are you in school?

14 A. Yes, sir.

15 Q. Where do you go do school?

16 A. Heritage High School.

17 Q. And back in February of 1992, where were you living
18 then?

19 A. Walland.

20 Q. And where you live, where is it in relation to the
21 Manning Lane -- I think it's called the Blue Hole?

22 A. It's about 500 feet up the hill.

23 Q. Your house is about 500 feet up the hill?

24 A. On the other side of the river.

25 Q. Okay. And were you home on the night of February

1 the 21st of 1992?

2 A. Yes, sir.

3 Q. Was anybody else home there with you that evening?

4 A. My mother.

5 Q. And her name?

6 A. Brenda McKeon.

7 Q. Was there anything that happened that evening that
8 got your attention?

9 A. Yes. I was sitting at my desk writing in my
10 journal, and I heard two shots down the hill towards the
11 direction of Manning Road.

12 Q. You say you were writing in a journal. Is this
13 something that you do on a regular basis?

14 A. Yes.

15 Q. How regular?

16 A. Every night just about.

17 Q. When you heard these shots what direction did they
18 come from?

19 A. Towards Manning Road, towards the left of where I
20 was sitting at.

21 Q. Now, did you make any notation of that?

22 A. Yes, I wrote it in here.

23 Q. Where did you write it in?

24 A. My journal.

25 Q. Okay. Let me show you, sir, if I may -- you have

1 your journal there. Let me show you a copy, and ask you if
2 you'll look at that. Is that one in the same?

3 A. Yes, sir.

4 Q. And what -- did you note the time that you heard
5 those shots?

6 A. 11:55 by the clock that was on my desk.

7 Q. 11:55 p.m., that evening?

8 A. Yes, sir.

9 Q. After you...

10 GENERAL SCHMUTZER: Your Honor, may it be filed?

11 THE COURT: Yes, without objection.

12 (EXHIBIT #18 - Copy of page from journal; marked
13 and filed.)

14 BY GENERAL SCHMUTZER:

15 Q. Afterwards did you learn anything about a body
16 being found down there on Manning Lane?

17 A. Yes, four days later I saw it on the news, and I
18 called the 25th of February.

19 Q. Okay, and that would have been -- and did you make
20 a note of that in your journal, also?

21 A. Yes, sir.

22 Q. And in that one you had indicated -- you wrote in
23 there about the body being found?

24 A. Yes, sir, the 24th.

25 Q. Let's just go back, if you don't mind. We're

1 putting this into evidence. Read your notation that you made
2 on February the 21st.

3 A. 21st. "I just heard two or three gun shots down
4 the hill. It is now 11:55 by my clock p.m."

5 Q. Okay. And going to February the 24th, if you would
6 read that -- the portion that pertains to...

7 A. "Murder or suicide. Body found down at the river.
8 Male, mid to late 20's. They were diving for a weapon tonight.
9 It's all creepy."

10 Q. Okay. And that was on February the 24th?

11 A. Yes, sir.

12 Q. What did you note on February the 25th? What did
13 you do on February the 25th?

14 A. I called the sheriff's department down in
15 Maryville.

16 Q. And why did you call them?

17 A. Because I figured since the shots were in that
18 direction, I figured it had something to do with the body
19 because that late at night it was unusual to hear shots.

20 Q. I'll show you this, sir, and ask you if you -- I
21 take it they came out and talked to you about that --
22 interviewed you?

23 A. They called on the phone, but they never did come
24 down.

25 Q. Okay, sir. Would you look at that right there?

25 | A. Yes.

1 Q. Were you home with him the evening that he heard
2 these shots?

3 A. Yes, I was.

4 Q. Did you hear them, too?

5 A. Yes, I did.

6 Q. How many were there?

7 A. Two.

8 Q. What direction did they come from?

9 A. The river, directly straight in front of our house.

10 Q. Where is that in relation to what's known as
11 Manning Lane and the Blue Hole?

12 A. We live up on the hill. There's a road -- another
13 small tract of land down there, and then the river, and it's
14 right across.

15 Q. It's right across...

16 A. Right across. It's directly in a line.

17 Q. Thank you. That's all.

18 MR. DANIEL: No questions, Your Honor.

19 THE COURT: Is she excused?

20 GENERAL SCHMUTZER: May she be excused?

21 MR. DANIEL: Yes.

22 THE COURT: You are free to go.

23 GENERAL SCHMUTZER: Call Ms. Elaine Mayes.

24 **

1 ELAINE MAYES was called, and being duly sworn, was
2 examined and testified as follows:

3 DIRECT EXAMINATION

4 BY GENERAL SCHMUTZER:

5 Q. Ms. Mayes, I understand you've been under the
6 weather, and have got this flu bug, is that right?

7 A. Yes.

8 Q. Are you doing better now?

9 A. Yeah.

10 Q. Okay. We're sorry to have to bring you out, and
11 appreciate you being here. State your full name, please.

12 A. Georgia Elaine Mayes.

13 Q. And where do you live?

14 A. I live at 2322 Bluff Heights Road.

15 Q. And were you living there back in February of last
16 year?

17 A. Yes, I was.

18 Q. And your husband, his name?

19 A. Devon Edward Mayes.

20 Q. And I believe -- where is he employed?

21 A. Sevier County Sheriff's Department.

22 Q. And what does he do there?

23 A. He's the sergeant of corrections.

24 Q. All right. Now where is your home in relation to
25 the Tommy Griffin trailer, or where it was located before it

1 burned?

2 A. It's directly across from his trailer.

3 Q. Now back on the night -- were you home the night
4 the trailer burned?

5 A. Yes, I was.

6 Q. What brought your attention to the fire?

7 A. I was sitting in the living room, and I heard glass
8 breaking, and I turned around and I saw the trailer was on fire
9 outside my living room window.

10 Q. What did you do when you saw that?

11 A. My husband was on the phone, and I yelled for him
12 to get off the phone so we could call the fire department, and
13 he immediately got off the phone, and I dialed 9-1-1.

14 Q. You dialed 9-1-1?

15 A. Yes, I did.

16 Q. Okay. After you did that -- called 9-1-1, what did
17 you do?

18 A. I went outside.

19 Q. Okay. While you were there -- did you know Connie
20 Branum and Ms. Viola Griffin?

21 A. Yes, I do.

22 Q. Did they ever come up while you were there?

23 A. Yes, they came up almost immediately after the fire
24 started. They pulled up in my driveway.

25 Q. When they came did they come in the house or did

1 you all stay outside?

2 A. They never came in the house, no. They stayed
3 outside.

4 Q. While you were -- while you all were out there
5 watching the fire, did you -- did anyone ask to use the phone?

6 A. Sandy Branum asked permission if she could go in
7 and use the phone, and I said, "Sure," and she was the only one
8 that ever went in.

9 Q. Okay. When the -- while you were there how long
10 did Connie Branum stay out there in your yard watching this
11 fire?

12 A. She stayed until all the fire equipment was gone.

13 Q. Until all the fire equipment was gone?

14 A. Correct.

15 Q. Was there any particular reason for that?

16 MR. DANIEL: We object. That calls for a
17 conclusion, Your Honor.

18 GENERAL SCHMUTZER: That does. I take that back.

19 BY GENERAL SCHMUTZER:

20 Q. Let me ask you this. Could she have gotten out if
21 she wanted to where she was parked there?

22 A. Not as long as the fire equipment was there, no.

23 Q. Were they blocking your driveway?

24 A. Right.

25 Q. When -- did you see her again -- how long did she

1 stay down there before she left, is you remember?

2 A. It was -- the fire equipment had left, and the
3 reason I remember, I went into the house after they had left,
4 and she left -- she never came in, she left, and I remember
5 walking in and the 11:00 news was on. So it was about two hours
6 -- an hour an a half or two hours, somewhere around there.

7 Q. After she left did you see her again that evening?

8 A. No.

9 Q. How about the next day?

10 A. I saw her the next morning approximately 7:30 or
11 8:00. She was standing in front of her brother's trailer leaned
12 up against a tree, and she stood there for about 45 minutes.
13 I just saw her out the door. I never went out and spoke to her.

14 Q. She was just standing down -- where was she
15 standing? Was she in the yard or...

16 A. She was in the yard facing directly to the trailer.
17 She was standing up against a tree -- just standing there
18 staring at it.

19 Q. Was it in the front of the back of the trailer?

20 A. The front.

21 Q. Did you yourself ever go over to the trailer?

22 A. I went over there twice that day. I went over
23 about -- somewhere around -- between 9:00 and 10:00, and later
24 on about 12:00 -- I went over there. I remember I had my mail
25 in my hand, and my mailbox is across -- down at the road, and

1 I walked over there again.

2 Q. The first time you went over there what did you do?

3 A. I walked around to the back of the trailer, and was
4 just looking.

5 Q. Was there anything at all that got your attention
6 when you walked around behind it?

7 A. Yes. There was a smell of gas very, very strong.
8 It was a lot -- it was real strong.

9 Q. This was around, you say, 10:00 or so?

10 A. Around 10:00 in the morning, yes.

11 Q. Did you -- when you went around the second time -
12 - when you went over there the second time did you go around it
13 again, or did you just...

14 A. I just went back to the same spot, and then I went
15 toward the front, and I only smelled the gas toward -- by the
16 back driveway and around toward the middle of the trailer in the
17 back. I never smelled any anywhere else.

18 Q. You didn't smell any in the front of the trailer?

19 A. No.

20 Q. Now that evening when the fire was being fought did
21 you overhear conversation about possibly faulty plugs?

22 A. The firemen came over and was talking to Connie,
23 and he said that he thought the cause of fire could have been
24 electrical -- a faulty outlet, but they didn't know for sure.

25 Q. In any event, did you tell anyone about this? Who

1 did you tell about this first -- about smelling the gasoline?

2 A. I told my husband that evening when he got home
3 from work.

4 Q. After that evening what was the -- what happened
5 to the weather?

6 A. It started raining in the middle of the night
7 Saturday night very, very hard, and it rained for about three
8 days.

9 Q. Now that Saturday when you talked about Connie
10 coming down and looking at the trailer that morning, did you see
11 her at all again that day?

12 A. She came to my house again that afternoon. It was
13 approximately 2:30, and she asked me to watch...

14 MR. DANIEL: Your Honor, I have to object to what
15 was said. We have no objection to telling what
16 went on, but what was said would be hearsay.

17 GENERAL SCHMUTZER: Your Honor, may we approach the
18 bench?

19 (A bench conference is held on the record, to-wit:)

20 THE COURT: So now this was when?

21 GENERAL SCHMUTZER: This was Saturday after the
22 fire.

23 THE COURT: Okay. So this is a statement by the...

24 GENERAL SCHMUTZER: Tommy Griffin's sister. We
25 have some law on that.

1 THE COURT: Is it your position it would come in
2 under excited utterance?

3 GENERAL SCHMUTZER: No, Your Honor.

4 THE COURT: Okay. What is your position?

5 GENERAL SCHMUTZER: I'll let my lawyer tell you.

6 GENERAL GREEN: Perhaps it would be best just to -
7 - it's about time for the jury to take a break, and
8 the Court might want to review these materials real
9 quick. It goes to a statement.

10 GENERAL SCHMUTZER: Future conduct is the issue.

11 THE COURT: Okay. Let's take a break.

12 (Said bench conference being completed, the
13 following proceedings are had in open court.)

14 THE COURT: The Court is going to take a short
15 recess to look over some law here. Don't discuss the case,
16 ladies and gentlemen of the jury, and don't let anyone else talk
17 to you about it.

18 (JURY OUT)

19 THE COURT: If you would, have the witness step
20 off, and I want to ask you all some questions. You may be
21 seated. The Court wants to ask -- if you will have the witness
22 step outside. Well, the witness may stay because it may be
23 necessary to ask you a question about this testimony. All quiet
24 in the courtroom, please.

25 General Schmutzer, what is the -- the witness was

1 about to testify that Connie Branum said what?

2 **GENERAL SCHMUTZER:** Connie Branum, Your Honor, came
3 over and left her kids, and said that she was going to the
4 Blount County Jail. She had a photograph of Tommy, and she was
5 going to the Blount County Jail, and she asked her to take care
6 of her kids, and she'd be back directly.

7 **THE COURT:** Okay. Now what is the relevance of
8 that, please, sir?

9 **GENERAL SCHMUTZER:** Well, Your Honor, it's her
10 stated purpose and where she was going, and that she had no
11 intention of being gone for any long period of time. She was
12 going in one direction. She had a destination she was headed
13 to.

14 Of course, our proof is going to be that, in fact,
15 she ran into these defendants in Townsend, and never made it to
16 the jail.

17 **THE COURT:** Okay. And this statement was made on
18 which day, General Schmutzer?

19 **GENERAL SCHMUTZER:** This was made on the day we say
20 she was murdered, the 22nd of February.

21 **THE COURT:** The 22nd, about what time?

22 **GENERAL SCHMUTZER:** This would have been, Your
23 Honor, I think the testimony is somewhere in the neighborhood
24 of 3:00, or in that neighborhood.

25 **THE COURT:** In the afternoon?

1 **GENERAL SCHMUTZER:** In the evening -- afternoon.
2 And it is our position her car was seen burning around --
3 between 8:00 and 8:30 that evening, about five hours later.

4 **THE COURT:** Okay. The Court will be in a short
5 recess.

6 **(COURT STOOD IN RECESS)**

7 **THE COURT:** You may be seated. Anything further
8 on this proffered testimony? Anything? The Court has read the
9 rules, in particular, Rule 803(3) under the hearsay exceptions,
10 and the Court finds, based on the rule and the annotations, that
11 the proffered testimony is admissible.

12 **MR. DANIEL:** Your Honor, may we approach the bench
13 on one matter that -- while we're at it, we'll just get the
14 whole matter...

15 **THE COURT:** Sure.

16 **MR. DANIEL:** There's some other...

17 (A bench conference is held on the record, to-wit:)

18 **MR. WEBB:** Let me raise another objection on that,
19 Judge. I don't know if you considered this. That
20 testimony can be proven by the General otherwise.
21 She was over there, and you've got other witnesses
22 that say that she was looking for her brother, is
23 that correct?

24 **GENERAL SCHMUTZER:** Not that -- I don't have what
25 she says, no.

1 MR. DANIEL: There's another area that she got into
2 on some statements that said that they had had some
3 bad blood between -- talking about the fight where
4 she came up on a fight down there, and Connie was
5 telling her about it. It has nothing to do with
6 any of this stuff. It goes way out of the...

7 GENERAL SCHMUTZER: I'm not going into that. If
8 I was going into that, I would approach the bench.

9 MR. DANIEL: Maybe we can just eliminate some of
10 the time, and tell me what...

11 GENERAL SCHMUTZER: Basically we're going into when
12 she saw her last leaving that day, and then back
13 before this, James...

14 THE COURT: I'm sorry?

15 GENERAL SCHMUTZER: Back before this in January,
16 James Dellinger, and Gary Sutton, and Tommy at
17 Tommy's trailer, and James was shooting a rifle at
18 that street light, and the next day her dog dug
19 over a box that said British 303, and we recovered
20 some shells -- a couple of shells from there that
21 we identified as being fired from the murder
22 weapon, and of course, you're saying he was
23 shooting this gun there. That is the only thing
24 I would prove.

25 MR. DANIEL: I think everybody was shooting around

1 there.

2 **GENERAL SCHMUTZER:** I'm just telling you what she
3 said. I don't know.

4 **MR. DANIEL:** I'm sure it was a shooting range from
5 what it looked like.

6 **MR. WEBB:** We'll offer our objection on relevance
7 grounds, Your Honor.

8 **MR. MILLER:** Your Honor, on behalf of defendant
9 Dellinger we offer the same objection.

10 **MR. DANIEL:** The other statement she made about -
11 - there is one -- I know you're not trying to slip
12 anything in, but there was something about -- we
13 just got this, and I've hurriedly read it, but that
14 she said that they had told -- she knew that her
15 brother had left with a girl in Blount County, or
16 that he had been with a girl in Blount County --
17 the statement was made down at...

18 **THE COURT:** Start over.

19 **MR. DANIEL:** There was a statement made down either
20 at the fire or the next day, and I just hurriedly
21 read this, that the girl...

22 **GENERAL SCHMUTZER:** She said that the Branum --
23 Jennifer Branum, I think, came down while they were
24 at the fire, and said that he was in Blount County
25 with a girl, and I think she said Gary -- but she

1 heard the name Gary, but she didn't know how it fit
2 in there.

3 **GENERAL SCHMUTZER:** So you're not going into that,
4 I take it?

5 **MR. DANIEL:** We think it might be relevant, Your
6 Honor, if she's going to get into some of these
7 statements. It might be something I want to ask.
8 I don't know that I will, but I'm just saying that
9 since we're up here I just wanted to ask you if -
10 - regarding that issue. I don't know that I will,
11 but if it comes up.

12 **THE COURT:** Okay. Now who said what?

13 **MR. DANIEL:** She says that...

14 **THE COURT:** Who's she?

15 **MR. DANIEL:** The witness.

16 **THE COURT:** Okay.

17 **MR. DANIEL:** Says that Connie...

18 **GENERAL SCHMUTZER:** She says that the little girl
19 came down -- Jennifer came down, and said something
20 about him being -- said something about Tommy
21 being...

22 **THE COURT:** Okay, now that would be hearsay unless
23 it went to go to impeach something that witness has
24 already said by prior inconsistent or...

25 **MR. DANIEL:** This is her statement. This is not

1 what somebody else said. This is when she was
2 going out the next day, supposedly, and "I think
3 James told Tommy that because Connie told me --
4 that was another thing she told me when she was up
5 here. She said James told Tommy that his trailer
6 had burned, and Tommy didn't believe him, and I
7 asked her, 'Do you believe him?' And she said,
8 'No, I wouldn't, I guess." But anyway, the
9 statement was made about whether or not she
10 believed the statement or not, and it is
11 conclusions and opinions.

12 **GENERAL SCHMUTZER:** Well, it's not her opinion,
13 Your Honor.

14 **THE COURT:** I'm trying to figure that out here.
15 That's what I'm wanting to...

16 **GENERAL SCHMUTZER:** I don't intend to go into that,
17 Your Honor. If they do, I say they open up -- you
18 know, that's a can of worms they get into...

19 **MR. DANIEL:** I don't think you open it up to her
20 opinions as to whether or not it's truthful. Who
21 cut who off and why they did this, that's not --
22 you can't make that relevant under any
23 circumstances, Your Honor. I think if they are
24 going to say that she told her she was going
25 looking for somebody, I'd say, "Well, she also told

1 you that she had told you that she thought she had
2 information that he was with a girl in Blount
3 County." It's the same -- part of the same
4 statement.

5 **MR. WEBB:** That's what the statement says.

6 **MR. DANIEL:** If she's going to say that we -- that
7 she told us that she was going over there looking
8 for him, then we'll say she had information at that
9 time that he was with a girl in Blount County.

10 **THE COURT:** Okay.

11 **MR. DANIEL:** That follows that logical -- that
12 whole conversation. But to let her say, "I think
13 this or I think that..."

14 **THE COURT:** Right. Right.

15 **GENERAL SCHMUTZER:** I couldn't understand that.
16 Is this -- Judge, you can see it better than I can.
17 You're younger. Does this say Connie expressed the
18 opinion that they weren't telling the truth, or is
19 this witness, Ms. Elaine Mayes, saying that...

20 **THE COURT:** Well, as to...

21 **GENERAL SCHMUTZER:** I think if we get into Connie's
22 statements, obviously -- I think if Connie makes
23 any statement like that that would be admissible
24 in regard to that, but if it's Ms. Mayes
25 conclusion, I agree with Zane that it would not.

1 THE COURT: Okay. Wait a minute. "I think James
2 told Tommy..."

3 MR. DANIEL: "Because Connie told me."

4 THE COURT: Okay. "That was another thing she told
5 me when she was up here. She said James told Tommy
6 that the trailer -- his trailer had burned, and
7 Tommy didn't believe him." And Tommy didn't
8 believe him.

9 GENERAL SCHMUTZER: Yeah. That's what James says.

10 MR. DANIEL: And said that she was hunting him, and
11 the reason they're saying she's hunting him, she
12 don't know where he is. Well, there's some proof
13 in these statements that Connie told her that --
14 said that she was with a girl in Blount County.

15 THE COURT: Okay. If Connie said that she'd been
16 told or whatever that Tommy was with a girl in
17 Blount County at the same time she made this other
18 statement as to where she was going, she may
19 testify to that. She cannot testify -- well,
20 simply because it is a part of that exact statement
21 at that same time. As to whether or not Tommy
22 believed it, I don't think that could come in
23 unless you can show me something to the contrary.
24 I know that if it otherwise qualifies under another
25 exception, it comes in, and if you can show me

1 that, I will consider that.

2 MR. DANIEL: I think -- the point is, Your Honor,
3 the basic point is that there's part of these
4 statements -- if they're going to get statements
5 in that can be made, then we're entitled to get in
6 the other statements, but not just because they
7 have a statement where she's given a statement that
8 she believes or Connie thinks...

9 THE COURT: Right, right.

10 GENERAL SCHMUTZER: To the extent it's otherwise
11 admissible we can go into it.

12 THE COURT: Right.

13 MR. DANIEL: But actual statements made and what
14 they thought happened is not what somebody's
15 actually said.

16 THE COURT: Right. If she said that she was going
17 to Blount County because she had been told that
18 Tommy had been over there with a girl or something
19 like that, that is something admissible. It sure
20 would be.

21 MR. DANIEL: If she had that information when she
22 was going over there. If she was going to the jail
23 and look, then she could go to the jail, and...

24 THE COURT: And as I recall the statements, or at
25 least portions of them, that is part of the

1 defense's theory.

2 MR. WEBB: Your Honor, what exception, just to
3 clear my mind up, what exception does both these
4 statements fall under?

5 THE COURT: 803(3). It talks about such as intent,
6 plan, motive, design, mental feeling, pain,
7 etcetera, etcetera.

8 (Said bench conference being completed, the
9 following proceedings are had in open court.)

10 THE COURT: Anything further, gentlemen? Bring the
11 jury in. All rise for the jury.

12 (JURY IN)

13 THE COURT: Waive the call for the State?

14 GENERAL SCHMUTZER: Yes, Your Honor.

15 THE COURT: And the defense?

16 MR. MILLER: Yes, Your Honor.

17 THE COURT: You may be seated. You may proceed,
18 General.

19 BY GENERAL SCHMUTZER:

20 Q. Ms. Mayes, before we broke the last time you were
21 testifying about some events that occurred on the following --
22 you had been testifying about the day after the fire, which
23 would have been a Saturday, February the 22nd, and without going
24 through it all, I think you told about going around the trailer,
25 and being over there at least on two occasions, and I had asked

1 you about seeing Connie Branum, and you said you had seen her
2 that morning. Did you see her again that afternoon?

3 A. Yes, she came to my house about 2:30, 20 till 3:00
4 or somewhere around there, and asked me...

5 Q. I'm sorry. What did she ask you to do for her?

6 A. She asked me to watch her children.

7 Q. And who was that?

8 A. That was Jennifer and David.

9 Q. Now did you tell her that you would?

10 A. Yes, I did.

11 Q. Did she tell you where she was going or what she
12 was going to do?

13 A. Yes.

14 Q. And what was that?

15 A. She told me that she was going to Blount County
16 Sheriff's Department to see if they had arrested Tommy the night
17 before, and that she had a picture of him because they weren't
18 sure, and she needed a picture to identify him with.

19 Q. Did she tell you about how long she expected to be?

20 A. She just told me she would be back as quick as she
21 could.

22 Q. Now when she left -- when you saw her last when she
23 left your home, where was she?

24 A. She was out in my yard going down the driveway to
25 her car.

1 Q. Okay. Did you ever see her after she went down the
2 driveway talk to anyone?

3 A. I saw Linda Dellinger and Angela Gray pull up in
4 her car, and I was sitting out in my yard, and she stood there
5 and talked to them for a few minutes, and I went -- I told her
6 I would see her when she got back, and I went in the house.

7 Q. Did you see her while she was talking to her show
8 them anything?

9 A. She had the picture in her hand. She was leaning
10 in the car window.

11 Q. Okay. Now who is Angel Gray?

12 A. Linda Dellinger's daughter.

13 Q. And would that be James Dellinger's step daughter?

14 A. Correct.

15 GENERAL SCHMUTZER: You may cross examine.

16 **

17 **CROSS-EXAMINATION**

18 **BY MR. MILLER:**

19 Q. Ms. Mayes, you've lived up there in the hollow for
20 a while with all these people, is that correct -- the
21 Dellinger's?

22 A. Correct.

23 Q. You would agree with me that James Dellinger and
24 Tommy Griffin were real good friends?

25 A. I wouldn't know about that.

1 Q. You knew that they hung around quite a bit
2 together, didn't you?

3 A. I saw them coming and going. I don't know what
4 their relationship was.

5 Q. You saw them together quite a bit, though, coming
6 and going?

7 A. On occasion.

8 Q. Also, up there at the -- strike that, Your Honor.
9 I've never been up to this hollow that we're talking about, but
10 I picture it as being sort of a quiet place. There's no main
11 roads or highways running nearby, are there?

12 A. I don't understand what you're saying.

13 Q. Is it quiet up there in the hollow? Is it a quiet
14 place away from roads, highways, traffic?

15 A. I don't know. There's several different roads in
16 there. I don't know what you're saying. I don't understand.

17 THE COURT: It's a rural area, I believe, isn't it?

18 THE WITNESS: Yes, it's a rural area.

19 THE COURT: Not like downtown Sevierville?

20 THE WITNESS: No.

21 BY MR. MILLER:

22 Q. Not a lot of traffic noise?

23 A. There's traffic in and out. I don't know if it
24 qualifies as a lot.

25 Q. And you live there, I believe, between, according

1 to this diagram, between Tommy Griffin's trailer, where it was,
2 and the McDermon residence?

3 A. No. I live directly across from Tommy Griffin's
4 trailer.

5 Q. Okay. And then the McDermon residence is up above
6 it a little bit, is that correct?

7 A. Next to Tommy Griffin's, across the road.

8 Q. You testified, I think, that the first thing you
9 heard was glass breaking?

10 A. Correct.

11 Q. You didn't hear any dogs barking?

12 A. Dogs are barking all the time around there. I
13 don't pay too much attention to it.

14 Q. But that specific night you don't remember any dogs
15 barking?

16 A. I just recall the glass breaking.

17 Q. And you never heard any vehicle noise out in the
18 road?

19 A. There's always cars going up and down.

20 Q. On that particular night do you remember hearing
21 any vehicle noise?

22 A. I don't recall.

23 Q. Did you hear any doors slam?

24 A. No.

25 Q. Did you see any headlights?

1 of breaking glass?

2 A. Correct.

3 Q. And that's what was the first thing that called
4 your attention to it?

5 A. Right.

6 Q. And that fire was already going at that time, and
7 the fire, presumably, had broken the glass, is that correct?

8 A. Correct.

9 Q. So you did not hear any dogs barking?

10 A. I don't recall.

11 Q. Well, didn't you give a statement to the officers
12 when they questioned you that you did not hear any dogs barking?

13 A. I don't recall, it's been a year. I just remember
14 the glass breaking.

15 Q. So you don't recall hearing any dogs barking?

16 A. No. They could have, but I don't -- we have a dog,
17 too, so I don't know.

18 Q. Your dog never barked?

19 A. I don't know.

20 Q. Let me ask you then, do you recall giving a
21 statement to the person who interviewed you, Mr. Arthur Harmon
22 and Mike VonCannon? Do you recall giving that statement?

23 A. Which statement?

24 Q. That would have been on -- several days after this
25 incident occurred. I don't know the exact date, and I don't

1 believe this thing says the exact date. Do you recall giving
2 a recorded statement -- a tape recorded statement, you and your
3 husband, to the two officers?

4 A. I gave one. My husband wasn't with me at the time.

5 Q. Is your husband named Matthew Mayes?

6 A. No, that's my son.

7 Q. That's your son then, okay. So your son was there
8 when you gave the statement?

9 A. Correct.

10 Q. And you stated that -- didn't you make a statement
11 to them that your dog never barked?

12 A. I don't recall if I did or not. Like I said, my
13 dog barks, and I don't pay too much attention to it. He could
14 have; he could have not.

15 Q. The question was made, and says, "So I didn't --
16 you know, think so much about it one way or the other, and our
17 dog wasn't barking or anything."

18 A. He could have not been. Like I said, I don't
19 recall.

20 Q. But you -- my question is, and you stated, "But if
21 there was someone around here that had been there before, the
22 dog probably wouldn't have barked."

23 A. That's possible, very possible.

24 Q. The dog -- you had a dog, but it never barks?

25 A. He barks, but if he knows the people in the area

1 he doesn't bark at them unless it's a stranger.

2 Q. Now the question is this. After you heard the
3 breaking of the glass, the fire started, you stated you later
4 saw Ms. Connie Branum?

5 A. Correct.

6 Q. She's a real good friend of yours?

7 A. She's a friend of mine, yes.

8 Q. She was -- she was a real good friend, wasn't she?

9 A. What do you call real good?

10 Q. You kept her children at times?

11 A. She trusted me with her children, yes.

12 Q. And did she ever keep your children?

13 A. No.

14 Q. Okay. Now you knew that she was having marital
15 problems at that time?

16 A. I didn't know anything about marital problems, no.

17 Q. You didn't know anything about it?

18 A. No.

19 Q. Did you know that she had attempted suicide just
20 shortly before that?

21 A. No.

22 Q. You didn't know anything about that?

23 A. No.

24 Q. So you didn't know she had been in -- down here at
25 Lakeshore at the mental institution about a week or so before