

XV 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 13 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.
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CIRCUIT COURT
FILED

HOUR 9:30 A.M.

DATE: JAN 07 1994

Robert F. Hensley

CIRCUIT COURT CLERK
SEVIER COUNTY, TENN.

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1 this?

2 A. No.

3 Q. So nothing was unusual to you when you just saw her
4 standing there at the tree staring?

5 A. Well, she owned the trailer, and I guess she was
6 kind of devastated, as far as I knew, that her trailer had
7 burned.

8 Q. But you didn't know anything about her emotional
9 or mental problems at that time that would have caused you to
10 be aware of anything -- anything unusual about that, is that
11 correct?

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

13 Q. Well, maybe it's not a very well put question. You
14 didn't know anything about her mental problems at all, her
15 emotional problems, or that she'd been in the hospital, did you?

16 A. I didn't know she had any mental problems.

17 Q. You didn't know that she had been committed?

18 A. No.

19 Q. Now you stated that the next day you went around,
20 and you smelled some gas at the back of the trailer?

21 A. Correct, by the driveway and toward the back.

22 Q. You smelled nothing in the front?

23 A. No.

24 Q. And you know the front door was open at the time
25 when the fire trucks came down there, and the fire was going on

1 -- the front door was open?

2 A. It wasn't open when I looked out the window and saw
3 the fire coming out the front windows.

4 Q. It wasn't?

5 A. No.

6 Q. So that's where you first saw the fire, coming out
7 the front windows?

8 A. Correct.

9 Q. So -- you know that Tommy Griffin kept automobile
10 parts at the back of his trailer, didn't he?

11 A. No, not really, because I had never been over
12 there, really.

13 Q. You never went over to his trailer?

14 A. No.

15 Q. You didn't know if he kept parts or gasoline...

16 A. No, I didn't go over there, no.

17 Q. Lawn mower or anything like that back there?

18 A. No.

19 Q. Now, you did state that when they were talking
20 there at the fire, though, someone said something about they had
21 had some electrical problems with the house?

22 A. That's what the fireman thought.

23 Q. And the firemen were all around there, and put the
24 fire completely out?

25 A. Correct.

1 Q. And walked around and looked at everything, and
2 examined it, didn't they?

3 A. They were just putting the fire out. I don't know
4 about examining. I don't know anything...

5 Q. You don't know what they did after the fire was put
6 out?

7 A. I just saw them trying to clean up around it, and
8 they acted like they were looking for something. I don't know.

9 Q. And then the next thing is that -- let me ask you
10 this -- strike that. Did you know that she was -- that Connie
11 was a heavy smoker?

12 A. I knew she smoked. I don't know how much.

13 Q. Do you know how many packs of cigarettes she'd
14 smoke a day?

15 A. I would have no idea.

16 Q. Did you know she drank alcohol?

17 A. I never saw her.

18 Q. You never saw her drink alcohol?

19 A. No, absolutely not.

20 Q. You don't know where she went on Tuesday -- on
21 Saturday when she left, you don't know where she went, and you
22 never saw her again after that, did you?

23 A. She told me where she was going, and I never saw
24 her again.

25 Q. And you don't know whether she ever went to the

1 jail or where she went -- or whether she went to a bar and drank
2 or whatever, do you?

3 A. Not being with her, no.

4 Q. Okay. Now as I understand it you say that when she
5 told you she was leaving she also told you that she had
6 information that Tommy had left over there with a girl -- and
7 was with a girl in Blount County, didn't she?

8 A. Left from his house?

9 Q. Yes.

10 A. That's what Jennifer told her mother.

11 Q. Told her mother. And you were there when she told
12 her that?

13 A. Yes.

14 Q. And you also know that Connie told you that she had
15 information that her brother was -- had been told that his
16 trailer had burned?

17 A. No, I don't know anything about that.

18 Q. Did she tell you that James had told Tommy that his
19 trailer had burned?

20 A. No.

21 Q. Let me ask you then about this question -- if you
22 made this statement. The question -- did you make this
23 statement in a recorded statement? I want you to listen to it,
24 ma'am. It says, "And she said James told Tommy that the trailer
25 -- is trailer had burned, and Tommy didn't believe him."

1 A. She could have told me that afternoon, but I don't
2 recall it. It's been a year. I just remember where she told
3 me she was going.

4 Q. You don't remember, then, making a statement --
5 recorded statement...

6 GENERAL SCHMUTZER: Your Honor, that's repetitious.
7 She did say that she did not remember...

8 THE WITNESS: I don't recall it.

9 MR. DANIEL: But she said she recalled making the
10 recorded statement.

11 THE COURT: He can ask her if she recalls giving
12 a recorded statement.

13 BY MR. DANIEL:

14 Q. Did you give a recorded statement, ma'am?

15 A. I've already said yes, I did.

16 Q. And do you recall that that statement was in that
17 recorded statement?

18 A. I don't recall.

19 Q. Would it be safe to say your memory was much better
20 back at that time then it is now?

21 A. On some facts, yes.

22 Q. So some things you could remember better then, and
23 some things you can remember better now?

24 A. No, some things I can remember better then, and
25 some things just fade away in a year.

1 Q. Okay. So that -- what statement she made to you
2 about that, if you said that, that's faded away?

3 A. I don't recall it.

4 Q. What about Bill Cogdill? You knew him?

5 A. I know he works at the dump. I don't know him
6 personally.

7 Q. You've seen him over there around Mr. Dellinger's
8 house and around Tommy's house shooting guns, haven't you?

9 A. No.

10 Q. You've never seen him over there at all?

11 A. I've saw him over there, but I never saw no gun
12 shooting with Bill Cogdill. I don't know.

13 Q. As a matter of fact, the day before Tommy
14 disappeared, which would be on a Friday, on a Thursday, wasn't
15 Bill Cogdill over there, and didn't he and Tommy get in an
16 altercation?

17 A. I never saw that, no.

18 Q. Did you ever tell police officers that, or tell
19 that to...

20 A. I never knew about it.

21 Q. You never knew about it?

22 A. I never knew about it.

23 Q. But you had seen Bill Cogdill over at Tommy's
24 house, hadn't you?

25 A. I'd seen him over there before.

1 MR. DANIEL: May I have just a moment, Your Honor.

2 THE COURT: Yes.

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

4 MR. MILLER: No questions.

5 **

6 REDIRECT EXAMINATION

7 BY GENERAL SCHMUTZER:

8 Q. Ms. Mayes, in talking about shooting, was there an
9 incident back some weeks before this fire occurred there at
10 Tommy Griffin's trailer where there was a shooting involving a
11 street light?

12 MR. WEBB: Your Honor, I'm going to object. You've
13 ruled on that, didn't you? We're going to object.
14 I thought you'd ruled on that issue. I apologize.

15 THE COURT: Okay. What was the question again,
16 General?

17 GENERAL SCHMUTZER: I'm going into what we
18 discussed earlier, Your Honor, about the...

19 MR. WEBB: And I apologize to the Court. I thought
20 the Court ruled on that.

21 THE COURT: Approach the bench.

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

23 THE COURT: In all honesty, I didn't hear the
24 question. That's why I brought you up.

25 GENERAL SCHMUTZER: I'm going into that -- where

1 they were shooting a rifle at a street lamp,
2 Dellinger was, and they found the shells there
3 later.

4 **THE COURT:** Yes, yes. I've already ruled on that.
5 (Said bench conference being completed, the
6 following proceedings are had in open court.)

7 **BY GENERAL SCHMUTZER:**

8 **Q.** I'll ask you about the incident there where they
9 were shooting at a street light. Where was the light that was
10 being shot at?

11 **A.** It was at the house next door to Tommy Griffin's
12 trailer, the McDermon's.

13 **Q.** The McDermon's summer place?

14 **A.** Right.

15 **Q.** About what time of the night was this?

16 **A.** It was around 1:00 in the morning, somewhere around
17 there.

18 **Q.** Did you get up and look out to see what was going
19 on?

20 **A.** Yes, we were terrified?

21 **Q.** When you looked out what did you see?

22 **A.** We saw them opening the door shooting off guns.

23 **Q.** Who was shooting when you looked out?

24 **A.** I saw Gary Sutton shooting.

25 **Q.** Did you see anyone else shooting?

1 A. I couldn't really tell. I was afraid to go near
2 the windows.

3 Q. What direction were they shooting in?

4 A. They were shooting toward the McDermon's and across
5 the road toward our bank.

6 Q. But this was at the Tommy Griffin trailer, is that
7 correct?

8 A. Correct.

9 Q. Did -- your little dog -- you mentioned about your
10 dog. Did your dog ever drag anything over to your house the
11 next morning?

12 A. The next morning I was getting ready for church,
13 and I went out on the front porch, and there was a carton from -
14 - the only reason I remember, I picked up the carton, and it was
15 a British 303...

16 THE COURT: Hold on just a minute, please.
17 Approach the bench.

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

19 THE COURT: What is this testimony going to be?

20 GENERAL SCHMUTZER: This testimony is that it was
21 a British 303 box, and we later found a couple of
22 shells there at Tommy Griffin's that matched.

23 THE COURT: 303?

24 GENERAL SCHMUTZER: Yeah.

25 THE COURT: Okay. Okay.

1 MS. LAWS: Are we talking about the Saturday when
2 the street light was shot out?
3 GENERAL SCHMUTZER: Yeah.
4 MR. MILLER: I don't see the relevance of the box
5 and the shells.
6 MR. WEBB: Only that the dog drug it in.
7 MR. MILLER: You don't know where it came from.
8 GENERAL SCHMUTZER: He can go into that in cross
9 examination.
10 THE COURT: It goes to the weight.
11 MR. WEBB: We renew our objection.
12 THE COURT: Sure.
13 (Said bench conference being completed, the
14 following proceedings are had in open court.)
15 BY GENERAL SCHMUTZER:
16 Q. Ms. Mayes, you were telling us or describing a box,
17 and what you remembered about it? What do you remember?
18 A. It was a red and white box, a Winchester box, and
19 when I picked it up to throw it away, it said British 303 rifle.
20 Q. That's all.
21 THE COURT: Any further questions?
22 MR. MILLER: I don't have any, Your Honor.
23 THE COURT: Mr. Daniel?
24 MR. DANIEL: Just one or two questions, Your Honor.
25 **

1 RECROSS EXAMINATION

2 BY MR. DANIEL:

3 Q. As I understand it, you testified that you didn't
4 know whether or not Tommy had worked on any car parts, and had
5 no knowledge about any car parts over there around his trailer,
6 is that correct?

7 A. No, I said I didn't know if he had any at his home.
8 I hadn't been over there.

9 Q. In the statement that you made to these officers
10 when you were giving your recorded statement, didn't you tell
11 them that you figured Tommy had been working on cars?

12 A. I said I thought because my father had always
13 worked on cars, and I knew he used gasoline to clean car parts,
14 so I just -- that's what I assumed. I didn't have a reason to
15 think differently at that time.

16 Q. And isn't it true you hadn't seen Gary Sutton up
17 there for some time before this happened? You hadn't seen him
18 around, had you?

19 A. I don't recall.

20 Q. Do you recall telling the officers that you hadn't
21 seen him very much up there sometime before this incident
22 happened -- before she left?

23 A. He has been in and out. I don't know how many
24 times or how often.

25 Q. Just come and go at times, is that correct?

- 1 A. I worked at Townsend Shopping Center.
- 2 Q. And where is the Townsend Shopping Center located?
- 3 A. Down in the middle of Townsend.
- 4 Q. Okay. And where is it in relation to where 321
- 5 crosses the river there in Townsend, and goes toward Wears
- 6 Valley?
- 7 A. Well, it's, I guess, close to about an eighth of
- 8 a mile like you're going back over to the air field.
- 9 Q. Okay. Were you working back on Saturday, the 22nd
- 10 of February, 1992 -- were you working there that afternoon?
- 11 A. Yes.
- 12 Q. Did a person come in inquiring about someone?
- 13 A. yes, sir.
- 14 Q. Just tell the Court and jury about that, please.
- 15 A. Well, this lady came in, and wanted to know at
- 16 first if she could leave her car parked out front while she went
- 17 to look for her brother, and I told her I couldn't tell her,
- 18 she'd have to ask Jerry Sullivan, the owner of the store.
- 19 Somebody went to get him or something, and anyway, he -- I asked
- 20 if she had a picture of her brother in case he had been in the
- 21 store, and she showed me a picture of him, and I did identify
- 22 her brother that he'd been in the store back in fall of the year
- 23 when they had some softball tournaments in the store.
- 24 Q. He hadn't been in there recently?
- 25 A. No, he hadn't been in recently.

1 Q. How did you recognize him as being the one? Did
2 you...

3 A. Well, I recognized him because his picture looked
4 familiar, and I asked her if he had a wooden leg -- artificial
5 leg, and she said, "Yeah," and I said, "Well, that was him,"
6 because when he was in the store at that time he was over in the
7 drug department of the store, and he had on a baseball uniform,
8 and I noticed he was limping, and I said, "Well, did you get
9 hurt playing softball?" About that time he walked around, and
10 I seen he had an artificial leg, and it sort of embarrassed me.

11 Q. When this lady that you're talking about -- you've
12 since learned that her name was Connie Branum?

13 A. Yes.

14 Q. Was she under the influence of anything? How did
15 she appear to you?

16 A. She appeared to be a nice lady. She didn't seem
17 to be under the influence of anything. She was real clean
18 dressed.

19 Q. When she left do you know whether or not she did
20 leave her car there?

21 A. I don't know. I didn't look out. I don't know
22 whether she did or not. I was at the cash register, and I
23 didn't go to the door to see.

24 Q. Jerry Sullivan, who is he?

25 A. He's the owner of the Townsend Shopping Center.

1 Q. Thank you.

2 GENERAL SCHMUTZER: You may cross examine.

3 **

4 CROSS-EXAMINATION

5 BY MR. MILLER:

6 Q. Ms. Bryant, what time did you leave the store --
7 the shopping center that evening?

8 A. Well, I can't exactly remember what time we closed
9 because I've been under some medication since then. I've had
10 two heart attacks, so...

11 Q. That's what I understood. And your memory now is
12 not as good as it was at the time, I take it?

13 A. No.

14 Q. Do you remember giving a statement to the
15 investigator for the defense that your husband came to pick you
16 up about 8:00, and Connie Branum's car was still there?

17 A. I don't.

18 Q. But if you did, you may have forgotten it?

19 A. Yeah, I may have forgotten it.

20 Q. You just don't remember whether or not it was there
21 when you left at 7:00?

22 A. I don't remember.

23 Q. And I think you've given some statements, probably,
24 to the State officers that you know it was there at 7:00. Do
25 you remember giving those statements?

1 you that her car was gone when he got there -- when he picked
2 you up?

3 A. He said he thought it was.

4 Q. It was gone...

5 GENERAL SCHMUTZER: Your Honor, that's not proper.

6 THE COURT: That would be classic hearsay, wouldn't
7 it?

8 BY MR. DANIEL:

9 Q. Without saying what was said, did your husband
10 indicate whether or not he...

11 GENERAL SCHMUTZER: That's just another way, Your
12 Honor, to get in -- that's hearsay.

13 THE COURT: Sustained.

14 MR. DANIEL: It's not about that point, Your Honor,
15 it's about something else.

16 THE COURT: Okay. Ask your question, then.

17 BY MR. DANIEL:

18 Q. Did your husband indicate that he had seen her when
19 she was there and when she left?

20 A. Yes, he told me he had...

21 Q. They say you can't tell what he said. I'm just
22 saying did he give you information that he had information as
23 to...

24 THE COURT: That's still sustained.

25 MR. DANIEL: Okay, Your Honor. Thank you. No

1 further questions.

2 THE COURT: Anything further?

3 GENERAL SCHMUTZER: May this lady be excused?

4 MR. DANIEL: Yes.

5 MR. MILLER: Yes, Your Honor.

6 GENERAL SCHMUTZER: Thank you very much. The State
7 calls Mr. Sullivan.

8 **

9 GARY SULLIVAN was called, and being duly sworn, was
10 examined and testified as follows:

11 DIRECT EXAMINATION

12 BY GENERAL SCHMUTZER:

13 Q. If you will, please, sir, state your full name.

14 A. Gary Sullivan.

15 Q. And your connection with the Townsend Shopping
16 Center?

17 A. Owner.

18 Q. Back in February -- Saturday, February 22nd of
19 1992, sir, were you there at your store when a lady came in in
20 the afternoon asking about her brother, and had some pictures
21 showing them around?

22 A. Yes, sir, I was.

23 Q. Did you look at the pictures yourself?

24 A. I glanced at them.

25 Q. Did you recognize him at all?

1 A. No.

2 Q. Okay. After that did she ask about leaving her

3 vehicle or anything there?

4 A. Yes.

5 Q. What did you tell her?

6 A. I don't think she asked me.

7 Q. Did she ask someone else?

8 A. I believe she did, yeah.

9 Q. In any event, did you -- how long did she stay in

10 there?

11 A. 10 minutes, 15 minutes, maybe.

12 Q. Okay. Was she talking to your various clerks in

13 there?

14 A. Yes, sir.

15 Q. Ms. Bryant, I think, was working with you at that

16 time, is that right?

17 A. Yes.

18 Q. When she left out of the store did you have an

19 occasion to go outside?

20 A. Yes, sir.

21 Q. And what did you see?

22 A. I went out to check -- she wanted to leave her car,

23 and I wanted to make sure she didn't block a door or block a

24 business. We have that happen quite often -- somebody leave a

25 vehicle in the way.

Jerry S. Brookshire, OCR
Fourth Judicial District, State of Tennessee

Testimony of: Sullivan
Direct Examination by: Schmutzer

1 Q. Yes, sir.

2 A. But when I went out, this lady that was hunting her
3 brother was standing behind her car talking to two men in a
4 pickup truck.

5 Q. What kind of pickup truck was it?

6 A. White Dodge.

7 Q. Did you -- what kind of car did she have?

8 A. It was a little Dodge. I don't know what model it
9 was or name, but it was a brownish, rusty color.

10 Q. All right, sir. When -- were you able to get a
11 good enough at the people -- men in the truck to see who they
12 were?

13 A. No, I didn't pay much attention to who it was. I
14 just noticed what was going on.

15 Q. Yes, sir. What time did you close that day? Let
16 me ask you this. Did you stay out long enough to see the truck
17 leave?

18 A. No.

19 Q. All right. What time did you close that day?

20 A. It would have been 6:00, I think, or maybe 7:00.
21 I'm not sure. I believe it was 6:00.

22 Q. What time did you leave the store, if you remember?

23 A. Probably -- generally I leave 15 to 30 minutes
24 after closing time.

25 Q. Was the car still there when you left?

1 A. Yes, sir.

2 Q. Were you the last one to leave out? Had your help
3 gone?

4 A. I believe so, yeah. Usually I am.

5 GENERAL SCHMUTZER: You may cross examine. Let me
6 ask you one question I forgot to ask you, sir.

7 BY GENERAL SCHMUTZER:

8 Q. About what time of the day was this when you saw
9 this girl in there?

10 A. It was about 2:00 in the afternoon.

11 Q. About 2:00 in the afternoon? Were you paying
12 attention -- that's, I guess, an estimate, is that right?

13 A. Yeah.

14 THE COURT: Mr. Miller?

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

16 **

17 CROSS-EXAMINATION

18 BY MR. DANIEL:

19 Q. Just a couple of questions, Mr. Sullivan. As I
20 understand it, this young lady went outside, got in this truck,
21 and she drove off -- she was the driver, is that correct?

22 A. No.

23 Q. She didn't drive?

24 A. No, I didn't see her get in the truck. I saw her
25 talking to the people in the truck.

1 Q. Did you see her get in the driver's side under the
2 steering wheel?

3 A. I didn't see her get in it.

4 MR. DANIEL: May we approach the bench, Your Honor?

5 THE COURT: Yes.

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

7 MR. DANIEL: This is the stuff they've furnished
8 us. If they've got a statement to that effect,
9 we're entitled to it.

10 THE COURT: Who typed that? Do you know who...

11 GENERAL SCHMUTZER: I have no earthly idea, Your
12 Honor. It came from the Blount County officers.

13 MR. DANIEL: See what it says, Judge?

14 THE COURT: Yeah, sure do.

15 MR. DANIEL: "There were two men in the truck, and
16 they scooted over, and let the girl get in on the
17 driver's side under the steering wheel." That's
18 about as plain as I've ever seen.

19 THE COURT: It's pretty plain, isn't it?

20 MR. DANIEL: I'd like to be able to cross examine
21 him on that. It's information they furnished us.

22 THE COURT: You can certainly ask him who made that
23 statement. Yes, you can.

24 MR. DANIEL: The Blount County Sheriff's
25 Department?

1 THE COURT: Ask him who he gave the statement to,
2 and anything about that. Yes, sir, absolutely.

3 MR. DANIEL: Okay. Thank you, Your Honor.

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

6 BY MR. DANIEL:

7 Q. Mr. Sullivan, I don't want to...

8 GENERAL SCHMUTZER: Zane?

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

10 GENERAL SCHMUTZER: If it will save some time, I'll
11 stipulate that that's in that -- that he made that
12 statement or that that statement was taken by an
13 officer if that will help any.

14 MR. DANIEL: Okay. Yeah, but I'm still going to
15 ask him about it.

16 THE COURT: Sure, you can.

17 MR. DANIEL: If you're going to do that then.

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

20 BY MR. DANIEL:

21 Q. Mr. Sullivan, and don't take this wrong. I'm not
22 implying that you're saying anything wrong. I have in front of
23 me a statement, and I want to ask you, did you give a statement
24 to the Blount County Sheriff's Department?

25 A. Yes, I did.

1 Q. That's who investigated this, is that right, sir?

2 A. Well...

3 Q. As far as you're concerned?

4 A. Well, I've talked to them. Sevier County and
5 somebody from the T.B.I. and Blount County, too.

6 Q. Is that correct?

7 A. Plus the prosecutors and the defense attorneys.

8 Q. You had nothing to hide, so you talked to anybody
9 that asked you?

10 A. If anybody wanted to know, I'd tell them what I
11 know.

12 Q. I'm probably the only one's that never talked to
13 you, is that correct?

14 A. There's been so many I couldn't remember them.

15 Q. I just want to ask you did you make this statement
16 to an officer, and if somebody says you made this statement
17 would they be right or would they be wrong, okay? You just
18 listen to this statement. "There were two men in the truck, and
19 they scooted over and let the girl get in on the driver's side
20 under the steering wheel." Now, did you ever -- you never made
21 that statement to anybody, did you?

22 A. No.

23 Q. So if somebody says you said that, they're
24 incorrect, is that right?

25 A. Yeah, right.

1 Q. Okay, sir. As I understand it then, you came back
2 -- would that be some officer's opinion -- if some officer wrote
3 that down would that be his words, or would that be your words?

4 A. I think he's got me confused with somebody else.

5 Q. Okay. Your nickname is "Slick?"

6 A. Yeah.

7 Q. Jerry "Slick" Sullivan. Is that what they call
8 you, "Slick?"

9 A. A lot of people do. I've got a lot of nicknames -
10 - a lot of them.

11 Q. Okay, sir.

12 A. I know which Blount County officer would have put
13 that on there because there's one I went to school with once
14 upon a time, yeah.

15 Q. Okay, sir. Now the question is, you say you closed
16 up somewhere around maybe 6:00 that night?

17 A. Yes, sir.

18 Q. And you're usually gone -- what, it takes you 15
19 to 30 minutes max to close, get out, and go on home?

20 A. Yes, sir.

21 Q. And this would have been on a Saturday, so if
22 you're like everybody else, you were wanting to get on home, is
23 that right?

24 A. Always.

25 Q. So you don't remember anything about the car,

1 whether it was -- anything about it after that? Do you remember
2 whether it was even there or not when you left?

3 A. Yeah, it was there when I left.

4 Q. You think it was still there when you left?

5 A. It was there when I left, yeah.

6 Q. And that would have been somewhere around maybe
7 6:15 or something?

8 A. Yeah, 6:15 to 6:30.

9 Q. Okay, sir. Thank you very much, Mr. Sullivan.

10 THE COURT: Anything further of this witness?

11 MR. MILLER: No, Your Honor.

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

13 THE COURT: Yes. You are free to go, Mr. Sullivan.
14 Thank you.

15 GENERAL SCHMUTZER: The State calls Jamie Forsythe,
16 Miss Jamie Marie Forsythe.

17 **

18 JAMIE MARIE FORSYTHE was called, and being duly
19 sworn, was examined and testified as follows:

20 DIRECT EXAMINATION

21 BY GENERAL SCHMUTZER:

22 Q. Miss Forsythe, is you will, please, state your full
23 name.

24 A. Jamie Marie Forsythe.

25 Q. And where do you live?

1 A. In Maryville.

2 Q. Back in February of last year where were you
3 working?

4 A. Howie's Hideaway Lounge.

5 Q. And that's located where?

6 A. In Maryville on 321.

7 Q. Going towards Townsend?

8 A. Yes.

9 Q. Back on February the 21st, a Friday, were you
10 working there that day?

11 A. Uh-huh (affirmative.) I worked 10:00 to 5:00.

12 Q. 10:00 to 5:00 p.m. -- 10:00 in the morning...

13 A. 10:00 in the morning till 5:00 p.m.

14 Q. Okay. Then who would relieve you?

15 A. Terri Lilly.

16 Q. Were you -- during that day from 10:00 to 5:00 on
17 the 21st, did you have an occasion to see either one of these
18 two defendants there at Howie's Hideaway Lounge?

19 A. Yes, those two come in with another gentleman.

20 Q. You're saying those two. Are you referring to the
21 two defendants?

22 A. That man there, and that man there.

23 GENERAL SCHMUTZER: Let the record reflect, Your
24 Honor, she pointed out the two defendants.

25 BY THE WITNESS:

1 A. They pulled right up and parked in front of the
2 door, and they came in with another gentleman.

3 Q. Did you see what -- you say they parked in front
4 of the door. Did you see what they were driving?

5 A. I'm not really good with cars, but it was a dark
6 blue, it looked like a Trans Am or a Camaro.

7 Q. When they came in, you say with another guy, about
8 what time was this?

9 A. Early afternoon.

10 Q. When they came in did you -- I take it you served
11 them?

12 A. Yeah. They came right in and sat at the -- sat at
13 a booth right away, and I went over and said, "My name's Jamie.
14 If you guys need anything, give me a holler," and he said,
15 "We'll take three Budweisers," and I got three Budweisers, and
16 took them over there, and I said, "When you guys are ready, just
17 give me a holler."

18 Q. Okay. Who was doing the talking to you?

19 A. The older gentleman was.

20 Q. You are pointing to defendant Dellinger?

21 A. Uh-huh (affirmative.)

22 Q. Now the man that they were with, did you notice
23 anything about him?

24 A. He -- when I went to the table he didn't even look
25 at me. He just put his head down, so there really wasn't no eye

1 contact with him. But when he walked in he had a really bad
2 limp, and I did notice that when he walked to the table.

3 Q. Did you have any conversation with him at all?

4 A. No, none whatsoever.

5 Q. Now about how long -- were they still there when
6 you left?

7 A. Yeah, they...

8 Q. When you left at 5:00?

9 A. They were there when I left. All three of them
10 were still in the same booth.

11 Q. Did you work the following day, Saturday?

12 A. Saturday morning from 10:00 to 5:00.

13 Q. Did these two defendants come in again on Saturday?

14 A. Yes. They come in Saturday with a girl, and she
15 said her name was Connie, and she was pretty upset, and she said
16 that she was there looking for her brother, and that gentleman
17 there said, "Do you remember who we were? We were in here
18 yesterday?" And I said, "Yeah, I know who you are." He said,
19 "Are you sure you remember who we were?" I said, "Yeah, you sat
20 over at that booth over there, and you was with another
21 gentleman, and you were just drinking Budweiser and stuff." And
22 Connie was crying and she said, "Well, I'm looking for my
23 brother. His trailer burned down last night," and stuff, and
24 that gentleman there cut her off, and he says -- asked me, "Did
25 you see who he left here with yesterday?" I said, "You guys

1 were still here when I got off." Then he proceeded to ask me
2 quite a few times if I remembered who they were, and I kept
3 saying, "Yeah, I'm real good with faces." And he said, "Are you
4 sure you remember who we are?" And I said, "Yeah, I'm real good
5 with faces. You guys was in here yesterday." And Connie tried
6 to start to describe her brother, and I said, "He walked with
7 a real bad limp," and he said, "Yeah, that's my brother." Then
8 he said, "Well..."

9 Q. Let me ask you this. Was there ever any statements
10 made about another girl?

11 A. Yeah. That gentleman there said...

12 Q. When you're referring to that gentleman there --
13 if we can identify which one. Who are you referring to?

14 A. The older gentleman. He had a floppy hat on
15 Saturday when he come in.

16 Q. All right.

17 A. And he had said the last time -- he said, "The last
18 time we seen him was up the road a piece, and he was with a
19 short, fat, dark haired girl, and she was real ugly. Have you
20 seen her in here?" I said, "No, I've never seen no one come in
21 here that fit that description." He said, "Well, we figured
22 that he'd come back here because yesterday we picked him up from
23 jail and come here and had a drink, and he doesn't know the
24 area, so we thought he'd come back here." I said, "He hasn't
25 been in today while I've been in," and I opened that morning.

1 Q. Are you sure they told -- he told you that they had
2 picked up this man with a limp after he got out of jail, and
3 come in there?

4 A. That's what he said Saturday to me. He said we
5 just picked him up from jail, and came in here to have a drink,
6 and we thought he'd come back because he doesn't know the area.

7 Q. What happened then? What did they...

8 A. Then he asked me -- the older gentleman asked me
9 again if I remembered who they were, and I said, "Yes, I
10 remember who you are. I never forget a face."

11 Q. How many times in all did he ask you that?

12 A. Quite a few times. He asked me that quite a few
13 times if I remembered who they were, and "Are you sure you
14 remember who we are?"

15 Q. This time you're now talking about when he said
16 that, what happened?

17 A. Them two looked at each other, and they went to the
18 bathroom, and Connie...

19 THE COURT: Which two are you referring to?

20 THE WITNESS: The older gentleman and the younger
21 gentleman.

22 THE COURT: Okay. Let the record so reflect that
23 she has made reference to the two defendants.

24 BY THE WITNESS:

25 A. Then they went to the bathroom, and Connie had pay

1 for the first round.

2 Q. After that where did they go and what did they do?

3 A. They went across and sat at a booth.

4 Q. While they were in there did they continue to
5 drink, the three of them?

6 A. Uh-huh (affirmative.)

7 Q. All three of them?

8 A. All three of them.

9 Q. Did you continue to wait on them, I take it?

10 A. Well, I tried to go over to the table, and I really
11 didn't serve them at the table too much. I would just clear the
12 empties off, and the ash trays because the older gentleman would
13 come up and get the drinks at the bar every time.

14 Q. All right. Did you have any further conversation
15 with them that afternoon?

16 A. Not that I can recall.

17 Q. As time went on, and as you were serving them, who
18 was having the most to drink?

19 A. Connie was drinking them pretty fast, I would say,
20 more so than the gentlemen, but they was all drinking. But I
21 would say Connie was...

22 Q. What else were they doing while they were there?

23 A. He was -- the younger gentleman was sitting on the
24 same side of the booth as Connie was, and I thought them two
25 were together. I didn't see them kiss or nothing, but they sat

1 real close together, and was real friendly and stuff, and the
2 older gentleman was sitting on the other side, and they was just
3 laughing and talking, and...

4 Q. What time did you leave that afternoon?

5 A. It was after 5:00 because my fiancé was late
6 picking me up. Then my brother come in, and I guess I left
7 about between -- about 5:30.

8 Q. Who took over from you when you left?

9 A. Terri Lilly.

10 GENERAL SCHMUTZER: You may cross examine.

11 MR. MILLER: May we approach the bench, Your Honor?

12 THE COURT: Yes.

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

14 MR. MILLER: I hate to interrupt the flow, but we
15 have Jencks material that's probably 17 or 18
16 pages.

17 MR. DANIEL: They furnished this this morning when
18 we walked into the courtroom.

19 THE COURT: Okay.

20 GENERAL SCHMUTZER: Your Honor, we gathered up all
21 of our Jencks material, and gave them the rest of
22 it this morning.

23 MR. DANIEL: Your Honor, in all honesty, we're
24 having to try to read while they testify.

25 THE COURT: I understand that.

1 MR. DANIEL: We're reading as fast as we can, and
2 some of those questions on that girl a while ago,
3 I couldn't read that that good, and...

4 GENERAL SCHMUTZER: It's a lot better than getting
5 it after they've testified.

6 MR. DANIEL: We're entitled to a recess.

7 THE COURT: Is that what you're asking for?

8 MR. DANIEL: I just need to time to read this.
9 It's 10 till 12:00. Do you want to go to eat lunch
10 and come on back.

11 THE COURT: They don't want to go to eat lunch.

12 MR. MILLER: You might want to ask again, they
13 might be hungry.

14 THE COURT: Can you just advise that we've got
15 something that we've got to...

16 GENERAL SCHMUTZER: I would object to telling them
17 -- we're just going to take a break.

18 THE COURT: I will tell them that -- I'll handle
19 it one way or another. I'll ask them if they want
20 to go to lunch.

21 MR. DANIEL: I just hate for the jury just to sit
22 there.

23 GENERAL SCHMUTZER: If they are going to do that,
24 and before they do, there were some exhibits that
25 I had filed that have not been passed to the jury.

1 Can I do that at this period of time until they go
2 out?

3 THE COURT: Sure.

4 MR. DANIEL: Your Honor, I don't know how long it
5 will take to read this, but...

6 THE COURT: I'm going to give you time to read it.

7 MR. DANIEL: If we'd been given it last night we
8 wouldn't have to do this.

9 THE COURT: I know.

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

12 GENERAL SCHMUTZER: Your Honor, may I pass to the
13 jury some exhibits that were filed that they did not have an
14 opportunity to see before?

15 THE COURT: Sure. Let me ask you this, ladies and
16 gentlemen. Because of circumstances beyond anyone's control,
17 the Court must give counsel opportunities to read and go over
18 certain evidence. It will take some time...

19 MR. DANIEL: Five minutes, I would say, your Honor.

20 THE COURT: Okay. Are there other items that have
21 to be looked at as well?

22 GENERAL SCHMUTZER: I don't know, Your Honor.

23 THE COURT: Approach just one more time, gentlemen.

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

25 THE COURT: If there are other statements that can

1 be gone over and reviewed at the same time of
2 witnesses who are expected to testify here today...

3 MR. MILLER: If they'll let us know who they are,
4 could we get the rest of the Jencks.

5 GENERAL SCHMUTZER: We'll give it to them at the
6 time...

7 THE COURT: I understand that, but if you can tell
8 us within reasonable certainty who your next couple
9 of witnesses are, I can give them some time to read
10 that all at one time so that we don't have to take
11 a recess.

12 GENERAL SCHMUTZER: Jamie Forsythe and Terri Lilly,
13 I can think of off the top of my head.

14 THE COURT: Who is expected to testify after Ms.
15 Lilly?

16 GENERAL SCHMUTZER: I can't think off the top of
17 my head. I'd have to look at my notes.

18 THE COURT: If you will, do that. Hold on just a
19 minute, Mr. Daniel, and let General Schmutzer see
20 who the next witness is after Miss Lilly.

21 GENERAL SCHMUTZER: Gordons and Carter.

22 THE COURT: Okay. Are there statements that
23 they've given?

24 GENERAL SCHMUTZER: I've given them some
25 statements.

1 MR. MILLER: They're not that long.

2 MR. DANIEL: If they're not long, it don't matter,
3 but when we get one that's 20 pages, it's hard to
4 look at it, Judge.

5 THE COURT: Right. How long do you think you need?

6 MR. DANIEL: I'd say five minutes. If I can read
7 it in five or six minutes. They can wait here,
8 just give us a chance to read it.

9 THE COURT: Okay. I'm going to ask them what their
10 preference is.

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

13 THE COURT: There are some items of evidence that
14 have to be reviewed at this time by counsel. They say it is
15 going to take five to seven minutes. If you all want to take
16 a break, I will let you do that, or if you want to stay in the
17 box, I'll let you do that. Any preference? In or out?

18 JUROR: We'll stay in the box.

19 THE COURT: All right.

20 GENERAL SCHMUTZER: Your Honor, while they're doing
21 that, can I pass these?

22 THE COURT: Surely.

23 GENERAL SCHMUTZER: They've been filed, and they
24 haven't had an opportunity to see them.

25 GENERAL GREEN: Could I step out for just a moment?

1 **THE COURT:** Sure. While the jury is looking at
2 that, and while they're reading the statements, the Court is
3 going to make a phone call, and I'll be right back.

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

5 **GENERAL SCHMUTZER:** The next witness, Your Honor,
6 is Terri Lilly. Now she's on that, too. That's
7 both of them in there together.

8 **THE COURT:** I think that's what's caused the
9 problem.

10 **GENERAL SCHMUTZER:** The problem is that when they
11 transcribed this -- the woman that transcribed this
12 got them mixed up, and put the wrong names down.
13 That's all it is. And in some places -- where
14 we've marked it is where they've gone through and
15 changed it. I guess yours is, I don't know.

16 **MR. DANIEL:** Let's see, this is hers. I don't know
17 if this is both witnesses at the same time.

18 **THE COURT:** So what do you want to do, Mr. Daniel?

19 **MR. DANIEL:** I don't want the jury to get pissed
20 of at us -- pardon my language there, but the
21 bottom line is there's no way we can possibly --
22 can we just reserve the right to recall...

23 **GENERAL SCHMUTZER:** I would object to that, Your
24 Honor. I would suggest to the Court that the Court
25 controls it anyway, and that we just take 30

1 minutes for lunch or whatever for a light lunch,
2 and then we can come back...
3 THE COURT: But the jury doesn't want to take
4 lunch.
5 GENERAL SCHMUTZER: Well, I know that, Judge, but
6 you're the Judge, and...
7 THE COURT: Am I?
8 GENERAL SCHMUTZER: What I'm trying to say is...
9 THE COURT: Thank you. Thank you.
10 GENERAL SCHMUTZER: ...is, Judge, even if we had
11 to take longer -- obviously, the State would object
12 to having the witnesses come back, and we've got
13 the burden of proof...
14 MR. DANIEL: Do you have any other witnesses
15 besides these two girls...
16 GENERAL SCHMUTZER: Not if you come in line, no.
17 I would get totally out of sequence in this case.
18 It's a circumstantial evidence case, and the order
19 of witnesses is extremely important.
20 THE COURT: Okay. I'll take a short break.
21 MR. DANIEL: I don't know anything else to do,
22 Judge.
23 THE COURT: Well, that's all you can do. I
24 understand that.
25 (Said bench conference being completed, the

1 following proceedings are had in open court.)

2 THE COURT: Ladies and gentlemen, I had hoped the
3 matters that I am dealing with or that need to be dealt with
4 right now could take a short period of time, but because of the
5 order of witnesses and other matters, the Court does not want
6 to disrupt the process of how witnesses are called, how you
7 would hear witnesses. So because of that, I must apologize to
8 you, but we are going to have to take a longer break.

9 Now, I will ask you this. If you want us to take
10 you to lunch because of this, I will do that, or if you all
11 would just rather wait here, I'll do that, either way. Anybody
12 got -- yes, sir?

13 JUROR: How long do you think the break will be?

14 THE COURT: They anticipate about 30 minutes.

15 JUROR: I'd rather just stay here.

16 THE COURT: Okay. The Court will take a 30 minute
17 break. If you will go with the jury, Sheriff.

18 (COURT STOOD IN RECESS)

19 THE COURT: General Flynn, if you will tell the
20 officer to bring the jury back in. We'll make you our door
21 keeper.

22 (JURY IN)

23 THE COURT: Waive the call for the State?

24 GENERAL SCHMUTZER: Yes, Your Honor.

25 THE COURT: And the defense?

1 MR. DANIEL: Yes, Your Honor.

2 MR. MILLER: Yes, Your Honor.

3 THE COURT: You may be seated. If you will have
4 the witness come back.

5 **

6 CROSS-EXAMINATION

7 BY MR. MILLER:

8 Q. Just a few questions, Miss Forsythe. On Friday
9 when Tommy Griffin, and Mr. Dellinger, and Mr. Sutton came in
10 there to Howie's they came in drinking and having a good time,
11 and playing pool, is that correct?

12 A. Yes, sir.

13 Q. I believe you indicated that you thought they might
14 have been drinking before they got there?

15 A. They seemed to be.

16 Q. Okay. They all appeared to be good friends, would
17 you agree with that?

18 A. Uh-huh (affirmative.)

19 Q. And when they left everybody was in a good mood -
20 - good friends?

21 A. They were still there when I left.

22 Q. You didn't see them leave?

23 A. No.

24 Q. On Saturday, again, when Mr. Dellinger and Mr.
25 Sutton came in with Connie Branum, although Connie may have been

1 a little bit upset at first, they were all having a good time
2 later on, drinking, shooting pool, and dancing, and so forth,
3 is that correct?

4 A. I didn't see them dancing or shooting pool.

5 THE COURT: Did or did not?

6 THE WITNESS: I did not.

7 THE COURT: Okay.

8 BY MR. MILLER:

9 Q. Mr. Dellinger and -- Ms. Branum, quite frankly, was
10 all over Mr. Dellinger, would you agree with that? Hugging and
11 kissing, and had her legs across his lap and so forth.

12 A. I'm not sure who is who. I just...

13 Q. All right, but one of them was anyway?

14 A. When I -- when they were in there while I was at
15 work she was sitting next to the younger gentleman real cozy,
16 and I didn't see them kissing or nothing, but I thought that
17 they were together.

18 Q. And I believe you previously testified that Connie
19 was drinking a little bit faster than both of these men, is that
20 right?

21 A. Yes, sir.

22 Q. I was going to ask you this -- were you there when
23 Connie and these two men left on Saturday?

24 A. No, sir. They were there when I left.

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

26 **

CROSS-EXAMINATION

BY MR. DANIEL:

Q. Miss Forsythe, let me ask you a few questions, ma'am. You were not there on Friday when they left?

A. No, sir, I wasn't.

Q. You weren't there Saturday when they left?

A. No, sir, I wasn't.

Q. Because your shift runs up to 5:00, and a few minutes later you leave, is that correct?

A. Yes, sir.

Q. So then what happened -- they came in on the first day which was Friday, the three men, Tommy, and the two defendants?

A. Yes, sir.

Q. And you've given statements to the police officers concerning this, is that correct?

A. Yes, sir.

Q. You even signed one statement, and is this -- did you make it in your own handwriting? Is that your handwriting?

A. No, sir.

MR. DANIEL: May I approach the witness, Your Honor?

THE COURT: You sure may.

BY MR. DANIEL:

Q. We have been furnished this statement, along with

1 some recorded -- a recorded statement, and I'll ask you, is that
2 your initials, "J.F.?"

3 A. Yes, sir.

4 Q. And then I'll ask you is that your initial on page
5 two, "J.F.?"

6 A. Yes, sir.

7 Q. Which indicates you read both pages?

8 A. Uh-huh (affirmative.)

9 Q. And then another initial on page three, "J.F."?
10 That's your initials?

11 A. Yes, sir.

12 Q. You read that, of course, is that right?

13 A. Yes, sir.

14 Q. And then your signature at the bottom of that page
15 three, and that's your signature?

16 A. Yes, sir, that is.

17 Q. So you read that statement, is that correct?

18 A. Yes, sir.

19 Q. And what you told them then was the best that you
20 could remember, and your memory, of course, would have been real
21 fresh at that time when this statement was made, is that
22 correct?

23 A. Yes, sir.

24 Q. Now isn't it correct what happened that on the
25 second day after they -- the two defendants came in with Connie

1 Branum, they came in and ordered some beer, all three of them?

2 A. Yes, sir.

3 Q. They all three drank beer, is that correct?

4 A. Yes, sir.

5 Q. Was laughing, cutting up, and having a good time?

6 A. Yeah, after they were there for a while.

7 Q. And shooting pool?

8 A. I can't remember if they shoot pool. I know Connie
9 didn't. Connie and the younger gentleman stayed at the table
10 the whole time I was there.

11 Q. Let me ask you this question, and see if they asked
12 you this question and you made this answer. "Did you sell them
13 Budweiser? Was it in cans or bottles?" And you said, "Cans,
14 because we don't have bottles."

15 A. That's correct. Michelob Light we have bottles,
16 and wine coolers.

17 Q. And you do recall making that statement?

18 A. Yes, sir.

19 Q. Then do you recall this question and this answer?
20 "Okay. Do you remember anything Friday out of the ordinary
21 prior to them leaving?" And you answered, "No, they were
22 shooting pool, and they was -- no, they were like good friends,
23 and I didn't think anything of it. They were all three over
24 there shooting pool".

25 A. All three of them wasn't shooting pool. I know -

1 - I read that and I signed it and stuff, but when I gave that
2 statement I was -- they gave it to me at work and stuff, and I
3 was trying to give a statement and work at the same time. But
4 all three of them did not shoot pool together.

5 Q. So that was on the 26th...

6 GENERAL SCHMUTZER: Your Honor, may we approach the
7 bench?

8 THE COURT: Yes.

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

10 GENERAL SCHMUTZER: Your Honor, this cross
11 examination is totally improper. First he has to
12 ask the question, as I understand it, and get an
13 answer, and then if her answer differs from
14 anything that she's given here, then he can go to
15 this. But what he has done, Your Honor, he has
16 taken this statement, and shown it to her, and now
17 he's going back to this statement right here about
18 question -- this is not a question and answer.
19 This what she signed and went through was a
20 narrative, but he's asking her about this
21 statement, and all he's doing is going through and
22 asking her what was in this statement, but he's
23 referring to this right here. I object to that,
24 Your Honor. That's not proper. If he's going to
25 talk about...

1 MR. DANIEL: Your Honor, what difference does it
2 make. She obviously made a statement, and the
3 purpose of impeachment is if she made a statement
4 on the stand that's contrary to a statement she's
5 made at a prior time, whether it's in this
6 statement, this statement to John Doe, or anybody
7 else.

8 GENERAL SCHMUTZER: Your Honor, you have got to -
9 - the rule is that first she has to give the
10 answer, and then if she -- if they want to go to
11 impeachment they have to give her the time and the
12 place, and who she made it to, and give her an
13 opportunity to respond. But what they're doing,
14 they're asking her about this statement, and then
15 actually they qualify her with this statement, but
16 then they're asking questions from the transcript.

17 THE COURT: Well, in Rule 613 it says that "In
18 examining a witness concerning a prior statement
19 made by that witness, whether written or not, the
20 statement need not be shown, nor its contents
21 disclosed to the witness at that time. But on
22 request, the same shall be shown or disclosed to
23 opposing counsel." Of course, we don't have that
24 problem. You know, if you're asking her about a
25 statement, Mr. Daniel, at least refer to the...

1 MR. DANIEL: The proper statement.

2 THE COURT: Yes, sir.

3 MR. DANIEL: I apologize. We're just trying to
4 speed things up. We're trying to rush things maybe
5 too much. I'll take my time.

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

8 BY MR. DANIEL:

9 Q. You gave actually two statements to the officers
10 who investigated this, is that correct?

11 A. I gave one to Blount County, and the statement you
12 had, Sevier County, come out to my job, and when I was giving
13 that statement I was also watching the bar, and trying to work,
14 also.

15 Q. And so we won't misunderstand anything, the hand
16 written statement, the narrative statement that I showed you was
17 the first one you gave, and was up at your trailer, is that
18 correct, where you signed and all of that?

19 A. No, I never gave a statement at my trailer.

20 Q. Where was this statement?

21 A. That was taken inside Howie's when I was at work -
22 - on duty.

23 Q. Okay. And the second statement was taken behind
24 Howie's at your trailer?

25 A. Yes, sir, at Howie's trailer.

1 Q. So the questions I asked you, you said you were
2 mixed up at that time because you gave those statements down at
3 Howie's, is that correct, that I just read to you -- about
4 shooting pool? You stated that they were all three shooting
5 pool. I asked you in the statement did you make that statement,
6 and you said you were mixed up. You correct me if I'm wrong.
7 I'm not arguing with you...

8 A. No. What I said is I might have said that when I
9 was giving the statement, and when I read over it, I was trying
10 to read it and watch the bar because I was working there by
11 myself during the day, and wait on customers also, and I did
12 sign it, and I know that that's what it says, but all three of
13 them did not shoot pool.

14 Q. So my question is, at the time you told the
15 officers that you -- they were shooting pool, all three
16 together, that was the statement that you made down at the
17 lounge, and not at your apartment or trailer, is that correct?

18 A. It wasn't my trailer or apartment. It was behind
19 Howie's and it's Howie's.

20 Q. Okay, I'm sorry. It was not there -- the first
21 statement that I showed you was the one...

22 A. Taken at Howie's inside the Hideaway.

23 Q. And the second one I read you about shooting pool -
24 - strike that. The other statement was made later behind
25 Howie's, is that correct?

1 A. That first statement you showed me, that's the
2 second statement I gave. That wasn't the very first statement
3 I gave. The first statement I gave was the one behind Howie's
4 Hideaway in Howie's trailer. That was my very first statement.

5 Q. And that would have been on February the 26th at
6 about 3:00 p.m.?

7 A. I'm not sure of the date or the time.

8 MR. DANIEL: May I approach the witness, Your
9 Honor?

10 THE COURT: Sure.

11 BY MR. DANIEL:

12 Q. I'll show you here a statement, and ask you if this
13 is the statement that was taken from you, and this statement
14 says it was approximately 3:11 p.m. at 2/26/92 in a trailer
15 behind Howie's Hideaway Lounge, is that correct?

16 A. Yes, sir. That was the first statement I gave.

17 Q. Now that statement you were clear on what happened
18 because you weren't in the lounge, and you had time to think
19 about it, is that correct?

20 A. I was still pretty nervous. I've never really had
21 to deal with police officers or anything like that, and I was
22 nervous.

23 Q. Is it true -- that's not the time you are telling
24 us you were nervous, and you got mistaken about what you told
25 them; that was on the second statement that you say you gave,

1 is that right?

2 A. Yes, sir, I was working on that second statement.

3 MR. DANIEL: May I approach the witness again?

4 THE COURT: Sure.

5 BY MR. DANIEL:

6 Q. Now since you've stated that, would you then read
7 what you said in this recorded statement which was on the first
8 occasion?

9 A. It says, "No, they were shooting pool, and they was
10 -- no, like they were like good friends, and I didn't think
11 anything of it. They were all three over there shooting pool."

12 Q. You told them that, didn't you?

13 A. I did tell them that.

14 Q. That was the first time when they met over there
15 behind the lounge, is that correct, ma'am?

16 A. I guess, because it's in my statement.

17 Q. Okay. Now let me ask you -- you stated that when
18 you were over there on Saturday, you stated that Mr. Dellinger
19 said that he came in there with Tommy on Saturday night after
20 he got him out of jail, is that correct?

21 A. No, sir. What he said was, "We were in here
22 yesterday. Do you remember who we are?" And I said, "Yes, I
23 do. I'm real good with faces." And he said, "Are you sure?"
24 And I said, "Yeah. You sat over there, you drank Budweisers."
25 He said, "Well, we thought he'd come back here because we had

1 just picked him up out of jail, and we came in here to have a
2 drink." That's what he said meaning Friday.

3 Q. So you -- are you telling the Court and jury that
4 he told you that they came back after they got him out of jail,
5 and came by there and had a drink? Is that what you're saying
6 that he said?

7 A. No, I'm just saying what I know, sir, and what he
8 said to me Saturday was, "Did you see who he left with?" And
9 I said, "You were all three here when I got off of duty," and
10 he said, "The last time I seen him was up the road a piece with
11 a short, dark headed, ugly woman. Has anyone been in here that
12 fits that description?" And I said, "No." And he said, "That's
13 who we thought that he would come back here because we picked
14 him up from jail yesterday and came right from jail to here, and
15 had a drink, and he doesn't know the area." The way I took it
16 is they came -- when they came in the afternoon.

17 Q. Okay.

18 MR. DANIEL: May I approach the witness again, Your
19 Honor?

20 THE COURT: Sure.

21 BY MR. DANIEL:

22 Q. Ma'am, let me ask you this. Can you read that
23 statement, and is that your handwriting right there?

24 A. Yes, sir.

25 Q. And you signed that, and you read this, is that

1 correct?

2 A. Yes, sir.

3 Q. Read that to the jury, what you said in that
4 statement.

5 GENERAL SCHMUTZER: Again, I would ask the Court
6 if we can approach the bench.

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

8 GENERAL SCHMUTZER: Again, Your Honor, in trying -
9 - I object to this. He is supposed to first ask
10 her, "Did you not on this date and this time and
11 place make this statement?" If she says, "Yes, I
12 did," that's the end of it. If she says, "No, I
13 didn't," then he can go into to impeachment, but
14 just to say -- ask the question, and hand her one
15 of these statements, and have her to read something
16 else, Your Honor, is not proper. That's an
17 improper way to...

18 THE COURT: Well, I -- it has been a little bit
19 confusing in one sense, but he's showing her the
20 statement that he's asking...

21 GENERAL SCHMUTZER: Well, Your Honor, he's led
22 everyone to believe that in this statement right
23 here she said they were all shooting pool, and then
24 she made the statement again in the other one she
25 didn't. And this statement says they never shot

1 pool at all.

2 MR. DANIEL: It doesn't matter. This is cross
3 examination, Your Honor. If she makes two
4 different statements...

5 THE COURT: He can ask...

6 GENERAL SCHMUTZER: If she made this same statement
7 both times is both statements, but she didn't do
8 that.

9 MR. DANIEL: I asked her, General, if she made that
10 statement...

11 THE COURT: Well, he's asked about a couple of
12 different statements, and the way it's been asked
13 has caused her problems, but I don't think he's
14 picking out something from one statement and asking
15 her if it's contained in another statement.

16 GENERAL SCHMUTZER: That's what happened the first
17 time, and he needs to clear that up.

18 THE COURT: Well, he did.

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

21 BY MR. DANIEL:

22 Q. Ma'am, let me just ask it, then, this way. Didn't
23 you tell the officers -- didn't you give a written statement to
24 the officers when they asked you about this right after this
25 incident occurred, that Mr. Dellinger told you...

1 GENERAL SCHMUTZER: Your Honor, that -- we've got
2 two different statements. I would ask that he give
3 her an opportunity...

4 THE COURT: If you would refer...

5 GENERAL SCHMUTZER: He can tell her which one it
6 was, and...

7 BY MR. DANIEL:

8 Q. The written statement that you gave -- that was in
9 handwriting that you signed, and you told the jury that you
10 initialed each one of these pages. You recall that, don't you,
11 ma'am?

12 A. Yes, sir.

13 Q. The one I just showed you that's got about three
14 and a half pages, okay?

15 A. Yes.

16 Q. Didn't you tell them and give a statement to the
17 officers in effect that Mr. Dellinger told you that "they
18 thought that he might come back up here," and that after they
19 told you about getting him out of jail that "he might come back
20 up here because he doesn't know any other bars around here, and
21 this is the only bar that they had been to yesterday (Friday),"
22 which meant Howie's?

23 A. Yes, sir.

24 Q. And that's right? He never, ever told you that
25 they came back up there after they got him out of jail, did

1 they?

2 A. Yes, sir, he did. That's what he said.

3 Q. I'll ask you, then, if you made this statement.
4 It's the last statement you made -- the last paragraph.

5 A. That's what he said. That's what I'm saying on the
6 first statement -- that he said -- I mean, I don't know if...

7 Q. Can you read it to the jury, and let the jury
8 determine it?

9 A. "I remember that one. Dellinger told me about
10 getting him (Tommy) out of jail. He (Dellinger) said, 'We
11 thought that he might come back here because he doesn't know any
12 other bars around here.' Dellinger said that this was the only
13 bar they had been to yesterday, meaning Friday. Connie
14 requested that I have Tommy call her if he come in."

15 Q. So the point I'm making, ma'am, is you did not --
16 he did tell you at that time that they had come back up there
17 after they got him out of jail, did they?

18 A. Yes, sir, he did. He said -- this was what he said
19 -- can I explain what happened Saturday when they come in?

20 THE COURT: Please, and let's move on.

21 BY MR. DANIEL:

22 Q. You weren't there Saturday night after 5:00, were
23 you?

24 A. Yeah, I was there until about 5:30.

25 Q. 5:30. After 5:30 on Saturday night you were not

1 there, were you?

2 A. No, sir, I was not.

3 Q. You don't know from your own knowledge whether they
4 came back up there or not, do you?

5 A. No, sir.

6 Q. And therefore, you know just what Mr. Dellinger
7 told you about whether they had been there or not?

8 A. Right.

9 Q. And you're stating that this statement you've told
10 them there -- that that says that he had been to the bar after
11 they got him out of jail?

12 A. That's what Mr. Dellinger said Saturday when he
13 come in with Connie and the younger gentleman.

14 Q. Well, why did they say, "We thought he might have
15 come back here?"

16 GENERAL SCHMUTZER: She wouldn't know why they
17 would say...

18 BY THE WITNESS:

19 A. I don't know, sir. I just know...

20 THE COURT: Ma'am, if they make an objection, you
21 hush. Sustained.

22 MR. DANIEL: Yes, Your Honor.

23 BY MR. DANIEL:

24 Q. You told them, in any event, that Mr. Dellinger
25 said that, "We thought that he might come back here." Isn't

1 that what you told them?

2 THE COURT: Gentlemen, that's been asked and
3 answered. Let's go on.

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

5 **

6 REDIRECT EXAMINATION

7 BY GENERAL SCHMUTZER:

8 Q. Going to this statement, ma'am, where you read the
9 last part, on page two beginning right here, would you read
10 that, please?

11 MR. DANIEL: Your Honor, that's improper. I want
12 him to ask the question. He's made the same
13 objection to my -- to the way I ask the questions,
14 so...

15 GENERAL SCHMUTZER: I'm not trying to -- I'm not
16 the one that uses a statement, and tries to...

17 THE COURT: Well, and it says, "It need not be
18 shown, nor its contents disclosed to the witness
19 at that time, but on request, the same shall be
20 shown or disclosed." Now, both of you have shown
21 the statement to her, I'm going to let her read it,
22 and I want you all to get on with it. And I bet
23 the jury does, don't you. All right. Let's go.

24 BY THE WITNESS:

25 A. It says, "Dellinger told me that they had just

1 gotten him out of jail yesterday, and came to Howie's Hideaway
2 indicating that they had gotten them out of jail when they were
3 here at 3:00 p.m.

4 Q. Thank you. And that was the statement that...

5 THE COURT: She's already answered that.

6 BY THE WITNESS:

7 A. Yes, sir.

8 GENERAL SCHMUTZER: That's all.

9 THE COURT: Any further questions?

10 MR. DANIEL: No further questions.

11 THE COURT: You may step down. Is she excused?

12 MR. DANIEL: Yes, Your Honor.

13 THE COURT: You're excused.

14 THE WITNESS: Thank you.

15 THE COURT: Next witness.

16 GENERAL SCHMUTZER: The State calls Miss Terri
17 Lilly.

18 BAILIFF: No answer.

19 GENERAL SCHMUTZER: Call Ms. Barbara Gordon. One
20 second. Call Ms. Debbie Hunt, I'm sorry.

21 THE COURT: In regards to these statements, have
22 they been filed in the record?

23 GENERAL SCHMUTZER: I don't know, Your Honor, but
24 I would like to file that one in the record.

25 MR. DANIEL: We'd like both of them to be filed,

1 Your Honor.

2 THE COURT: So ordered.

3 (EXHIBIT #20 - Statement of Forsythe; marked and
4 filed.)

5 (EXHIBIT #21 - Statement of Forsythe; marked and
6 filed.)

7 THE COURT: Do you want them passed to the jury?

8 GENERAL SCHMUTZER: No problem.

9 MR. DANIEL: Your Honor, there's some hearsay
10 things in them...

11 THE COURT: Okay.

12 GENERAL SCHMUTZER: Call Ms. Gordon.

13 THE COURT: Here's Miss Lilly.

14 GENERAL SCHMUTZER: Okay.

15 **

16 TERRI LILLY was called, and being duly sworn, was
17 examined and testified as follows:

18 DIRECT EXAMINATION

19 BY GENERAL SCHMUTZER:

20 Q. Ms. Lilly, you're the same Terri Lilly that
21 testified yesterday, is that correct?

22 A. Yes, sir.

23 Q. And at that time you testified that you were
24 working at Howie's Hideaway bar, and was there on Friday, coming
25 in at around 5:00 p.m.?

1 A. Yes, sir.

2 Q. And working till closing?

3 A. Yes, sir.

4 Q. And you had taken over for Ms. Forsythe?

5 A. Yes, sir.

6 Q. Now, without going back through everything that you
7 testified to, ma'am, that Friday evening when these two
8 defendants and the other man, Tommy Griffin, were in there, and
9 as you said, they had left sometime around 7:00, did they ever
10 come back that evening at all?

11 A. No, sir.

12 Q. Did you see them again after that?

13 A. Yes, sir.

14 Q. When was this?

15 A. The next day. They were there when I came on at
16 5:00 Saturday, in the afternoon.

17 Q. And who did you relieve that day?

18 A. Jamie.

19 Q. And that's Jamie Forsythe?

20 A. Yes, sir.

21 Q. When you came on who all was there?

22 A. They to gentlemen who had been there the day
23 before, and there were with a girl which I know now as Connie.

24 Q. All right. The two men that were there were these
25 two defendants, is that right?

1 A. Yes, sir.

2 Q. How did you know her name was Connie?

3 A. She told me.

4 Q. Did she talk to you about anything, and if so,
5 what?

6 A. Yes, sir. At the time that I came to work they
7 were already there, and I think this other couple, Mike Henry
8 and his girlfriend, Candy, and the place isn't that big at all,
9 and I went to check on everyone whenever I first get there, and
10 I went at their table, and she started talking to me about her
11 brother, Tommy.

12 Q. What did she ask you about Tommy?

13 A. Well, first she just started telling me about he -
14 - you know, they were trying to find him, and that he had been
15 missing since Friday or something, and that his trailer burned
16 down, and she was going into all this, and I was just standing
17 there listening, and then the -- one of the other guys, the
18 older guy that now I know as James Dellinger said, "Yeah, we
19 came in here yesterday with him after we bailed him out of jail.
20 Do you remember us?" And I said, "Yeah, I remember you." Then
21 he asked me if I was sure, and I said, "Yes," and told him where
22 they had been sitting, and they had played pool at this table
23 here. And then she asked me who her brother had left with, and
24 I...

25 Q. Who was this that asked you...

1 A. Connie. Connie asked me who her brother left with.

2 Q. Were they talking about Friday?

3 A. Yes, Friday -- who he had left with Friday. And...

4 Q. Did you tell her?

5 A. Well, I got a little confused, and when I started
6 to answer, and the other gentlemen -- the same gentlemen, the
7 older guy with the hat on had asked me to go get their beer, and
8 so I just walked off from the table, and went and got them a
9 beer.

10 Q. Did you ever -- who did Tommy leave with?

11 A. He left with the two gentlemen he came with.

12 Q. And she asked you who he had left with?

13 A. Yes, sir.

14 Q. Did you ever get an opportunity to tell her that
15 evening who her brother left with?

16 A. No, I didn't really think much of it, and I didn't
17 continue the conversation, and she never asked me again.

18 Q. Okay. How long were they there?

19 A. They were there until around 7:00.

20 Q. P.M.?

21 A. Yes.

22 Q. And during that time did she -- I take it -- when
23 you were talking to her how did she appear? Did she appear to
24 be inebriated in any way or under the influence?

25 A. She was pretty depressed. She was real worried -

1 - depressed -- worried is more like it. She was concerned about
2 her brother, and concerned about her mother being concerned
3 about her brother, and whenever -- that's whenever I had first
4 had gotten there. She just seemed really concerned and worried.

5 Q. Did she change as the afternoon wore on?

6 A. Yes, sir.

7 Q. And how was that?

8 A. She got to be in a pretty good mood, funny,
9 laughing, and talking to the others that were in the bar.
10 During this time two other people had come in, and so she was
11 just friendly, laughing like.

12 Q. Were they drinking -- were the three of them
13 drinking during this time?

14 A. Yes, sir.

15 Q. When they left -- I take it you were there when
16 they left -- when the three of them left?

17 A. Yes, sir.

18 Q. What was her condition when she left as far as
19 sobriety?

20 A. Well, I had gone up to the table the last time that
21 I saw her -- I believe it was the last beer they had started
22 on, and I asked who was driving because I felt like -- you know,
23 he mood had changed so dramatically from the time that I'd
24 gotten there to the time -- you know, from that time, and she
25 said, "Oh, I'm going to drive," and they said, "No, don't worry

1 about it, we'll take care of her." So I went ahead and served
2 the beer.

3 Q. So if she were going to drive you were not going
4 to serve another beer, is that correct?

5 A. No, I wouldn't.

6 Q. When they left how did she go out? Did she go out
7 on her own or how?

8 A. She was like between them. I believe the older
9 gentleman walked out first, and then the younger one was behind
10 her, and just kind of had her by the arm. She was walking fine.
11 She wasn't stumbling or anything.

12 Q. Did you ever see them again after they left that
13 Saturday?

14 A. No.

15 Q. The older gentleman that you've been referring to,
16 have you since learned his name to be James Dellinger?

17 A. Yes, sir.

18 Q. And the younger one to be Gary Sutton?

19 A. Yes, sir.

20 Q. Thank you.

21 THE COURT: Mr. Miller?

22 **

CROSS-EXAMINATION

BY MR. MILLER:

Q. On Saturday the three of them appeared to be enjoying themselves, I take it, drinking together, playing pool, dancing, and so forth?

A. They didn't play pool that night.

Q. They did dance?

A. Yes, she danced with James Dellinger.

Q. And was she being fresh, so to speak, with James Dellinger?

A. Pardon me, I don't understand.

Q. Was she being fresh...

A. Was she being fresh with James?

Q. Yes.

A. They were -- I just assumed they were together. I don't know exactly what you're referring to, being fresh.

Q. She was hugging on him, and she had his legs across his lap. Do you remember that?

A. Yes, they were being very friendly with each other.

Q. Now you made the statement about Mr. Dellinger said they came in the day before after they bailed him out of jail. What time are you talking about Mr. Dellinger was talking about?

A. Well, this was Saturday when he told me this. He said, "Yeah, we had just bailed him out of jail, and he came in here to get a cold beer."

1 Q. And that was before you came on -- when Jamie was
2 working when they would have been there the day before?

3 A. I saw them the day before. That was the Friday
4 evening that they left at around 7:00.

5 Q. You didn't know -- strike that. When they were
6 getting ready to leave, do you recall Ms. Branum saying that she
7 was going to be driving, and you told her that she didn't need
8 anything else to drink then?

9 A. Yes.

10 Q. That's what happened?

11 A. I was concerned about who was driving because...

12 Q. And she said, "I'm driving..."

13 A. She said, "I'll drive," and then they told me, "No,
14 don't worry about it. We'll take care of her."

15 Q. Do you recall making a statement to the, I take it,
16 some Blount County officers back on 2/26/92? I think you and
17 Ms. Forsythe both sat down and gave a tape recorded interview
18 with these officers. Do you remember that?

19 A. Yes, sir.

20 Q. And the question was asked to you, "Do you remember
21 what they were in, or did she say anything about..." And then
22 you said, "She said she was driving, and so I told her she
23 didn't need anything else to drink." And then the conversation
24 just continued on. You didn't mention anything in that
25 statement about them saying that they would take care of her,

1 so you got her another beer. You didn't mention that to the
2 police back at the time, did you?

3 A. That was a year ago. I couldn't tell you.

4 Q. If it's not in the statement then you didn't
5 mention it to them?

6 A. Pardon me?

7 Q. If it's not in the statement then you didn't
8 mention it to them?

9 A. If it's not in the statement, I don't know.

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

11 THE COURT: Mr. Daniel?

12 **

13 CROSS-EXAMINATION

14 BY MR. DANIEL:

15 Q. Ms. Lilly, let me ask you this. You worked from
16 5:00 until closing both Friday and Saturday?

17 A. Yes, sir.

18 Q. And so you saw them in there on Friday afternoon -
19 - Friday when you came to work, is that correct?

20 A. Yes, sir.

21 Q. And they left sometime, and I believe you told the
22 officers it was somewhere around 6:30 or sometime before 7:00,
23 is that correct?

24 A. Somewhere around -- yeah. They were there for a
25 couple of hours. Are you talking about Friday?

1 Q. Friday. It was still light outside when they left?

2 A. I don't remember. I just remember stating that
3 they were there for a couple of hours.

4 Q. And do you remember making the statement that,
5 "There was probably a little light outside because we had the
6 doors open all day." Did you ever make that statement?

7 A. I wouldn't know if the door was open all day. I
8 had just come on at 5:00.

9 Q. But was it still daylight when they left on Friday,
10 yes or no? Or if you don't remember, that's fine.

11 A. I don't remember if it was daylight.

12 Q. And so you were talking to her about her brother,
13 and they made a statement to you that he had been with a short,
14 ugly, fat girl, is that correct?

15 A. No.

16 Q. You never heard that conversation?

17 A. No, not from them. No, I have never heard that
18 conversation.

19 Q. You never heard that at all?

20 A. No.

21 Q. Do you recall that when -- did they ask you the
22 question -- did they tell you they bailed him out of jail?

23 A. Yes, sir.

24 Q. And they said that, "We thought he'd come back here
25 today because, like I said, we bailed him out of jail, and he

1 don't know the area." Do you remember them making that
2 statement, and you giving that statement to the officers that
3 that's what they had said, one or both of them?

4 A. I think that Jamie made that statement. They said
5 that they bailed him out of jail, and they came there to get
6 something to drink. They had told Connie that night that they
7 would wait there because that was the last place that they had
8 seen him. I think that you're getting my testimony confused
9 with Jamie's.

10 Q. Well, you were there when Jamie was giving her
11 testimony? You all gave the statements together. These are
12 joint statements that we've got. They were both talking to you
13 at the same time?

14 A. Okay. No, I didn't say -- Jamie might have said -
15 - they never told me about any...

16 Q. They never said anything to you about coming back
17 there after they left, did they? They never made any statements
18 to you about that?

19 A. Not to me.

20 Q. What your saying -- is that what Jamie said that
21 they said?

22 A. No, I'm not saying that. I'm telling you what they
23 told me. I can't tell you what they told Jamie. What they told
24 me was that they had come in there after they bailed him out of
25 jail to get a cold beer. That's what they told me.

1 Q. Are you sure they didn't say that, "We thought that
2 he would come back here after we bailed him out of jail because
3 he didn't -- because he don't know the area?"

4 A. Yes, I'm positive. I know what he told me. He
5 said that they had just bailed him out of jail whenever they
6 came in to get a cold beer.

7 Q. Well, you knew that they didn't come in to get a
8 cold beer after 10:30 or 11:00, did they?

9 A. Pardon me?

10 Q. They didn't come back there at 10:30 or 11:00?

11 A. No, they didn't.

12 Q. So if they bailed him out of jail you would be
13 talking about before 7:00 that afternoon. Is that what
14 you're...

15 GENERAL SCHMUTZER: Well, Your Honor, she's not
16 going to know when they bailed him out of jail.

17 BY THE WITNESS:

18 A. I don't know when they bailed him out.

19 Q. Based on what they told you, if they said they
20 bailed him out before they came in there, that would have had
21 to have been before you got there at 5:00?

22 A. I didn't know either three gentlemen, so I wouldn't
23 know. I'm just telling you what he told me. I can't tell you
24 when they bailed him out of jail because I don't know anything
25 about that.

1 Q. Well, is it fair to say that there was a lot of
2 talking, and it's not possible to be exact on what anybody said?
3 Would that be a fair statement?

4 A. No, sir.

5 Q. That's not fair?

6 A. No, sir.

7 Q. Well, let me ask you. You said that they bailed
8 him out of jail -- this is confusing. You say they told...

9 GENERAL SCHMUTZER: I'm going to object this
10 harassment...

11 MR. DANIEL: I object to that, Your Honor. This
12 is not harassment.

13 GENERAL SCHMUTZER: Well, he's repeatedly asked the
14 question, and I object to it, Your Honor. It's
15 repetitious.

16 THE COURT: I believe, Mr. Daniel, that that has
17 to be...

18 MR. DANIEL: Well, I just can't get it clear, Your
19 Honor.

20 GENERAL SCHMUTZER: I object to that statement,
21 Your Honor.

22 THE COURT: Well, I object to your objecting right
23 now, so sit down. It's been asked and it's been
24 answered by this witness, and by the other witness
25 many times. So let's move on to something else.

BY MR. DANIEL:

Q. You know that they did not come back there at any time after they left on Friday night until you saw them again on Saturday, as far as what you know, isn't that correct?

A. I know that, yes.

Q. Was she dancing there with people there on Saturday?

A. She danced with Mr. Dellinger.

Q. Did she dance with anybody else?

A. No, I didn't see her dancing with anyone -- no. She talked to someone else, but she didn't dance with anyone else.

Q. She talked with someone else at the bar?

A. Uh-huh (affirmative.)_

Q. You don't know -- strike that. No further questions.

GENERAL SCHMUTZER: May she be excused, Your Honor?

THE COURT: Just a moment.

MR. WEBB: May we have just a moment, Your Honor?

THE COURT: Yes.

BY MR. DANIEL:

Q. Was there a guy there by the name of Ron Dellinger -- not Dellinger, Ron Drinnon? Do you know a gentleman by the name of Ron Drinnon?

A. I don't know his name. There was a guy in there,

1 but I think that his name was -- I couldn't swear to it. Maybe
2 his name was Ron, but he was sitting up at the bar. But there
3 were only -- they were the only ones in there besides three
4 other people -- four other people.

5 Q. So there were not very many people in there?

6 A. No, sir.

7 Q. And Ron Drinnon -- if that was Ron Drinnon sitting
8 at the bar, did you see her have any conversations with him?

9 A. Yes, sir.

10 Q. Did you see any statements or anything made by Mr.
11 Dellinger regarding her and Ron Drinnon in any way?

12 A. He asked her to come sit down because she was
13 bothering him.

14 Q. You saw no arguments, no fusses, no fights out of
15 either Connie or either one of these two defendants, did you,
16 ma'am?

17 A. No, I didn't see any fights.

18 Q. Did you see any arguments?

19 A. No. I saw -- no I didn't see any arguments.

20 Q. Okay.

21 THE COURT: You may be excused. Next witness.

22 GENERAL SCHMUTZER: The State calls Ms. Gordon.

23 **

1 BARBARA ANN GORDON was called, and being duly
2 sworn, was examined and testified as follows:

3 DIRECT EXAMINATION

4 BY GENERAL SCHMUTZER:

5 Q. Ms. Gordon, if you will, please, state your full
6 name.

7 A. Barbara Ann Gordon.

8 Q. And where do you live?

9 A. 906 Laurel Lick Road in Pigeon Forge.

10 Q. And your husband's name?

11 A. Jim Gordon.

12 Q. Ms. Gordon, back in February, the week of February
13 the 21st, Friday, the 22nd, Saturday of 1992, where were you and
14 your husband that weekend?

15 A. We were home sitting for some friends of ours over
16 on Clear Fork in Wears Valley.

17 Q. And while you were over there, specifically on
18 Saturday evening, was there something that occurred that got
19 your attention?

20 A. Yes, sir. We were going over to some friends'
21 house, and when we come outside on the porch we heard this --
22 it was like a high pitched whistling-type noise off in the
23 woods, and we noticed that -- we could see a fire off in the
24 woods. The woods was all lit up from the fire.

25 Q. Okay. About what time was this?

1 A. Probably between 8:00 and 8:30 because we were
2 supposed to be at their house about 8:30. We were getting ready
3 to leave.

4 Q. You were going to visit somebody?

5 A. Yes, we have some other friends that live on that
6 road, and we were going to visit them.

7 Q. Did you all leave at that time?

8 A. Yes, sir, we did.

9 Q. When you came back -- how long were you all gone?

10 A. Probably two or three hours.

11 Q. When you came back -- did you see the fire when you
12 came back?

13 A. You couldn't see it, no, sir.

14 Q. Okay. You and your husband were together then.
15 Did you all stay over Saturday night?

16 A. Yes, sir, we did.

17 Q. Now, where that house is situated does the road
18 that runs by it -- does it end there at the house -- the
19 traveled portion of the road?

20 A. Yes, sir.

21 Q. Okay. Is there any kind of a logging road or
22 anything that runs on in there?

23 A. Yeah, there's an old road that goes on back off in
24 the woods there.

25 Q. Was that back off in the direction that you saw the

1 fire?

2 A. Yes, sir.

3 Q. The next morning did you see any vehicles come out
4 of that area?

5 A. Yes, sir.

6 Q. What was that?

7 A. I seen a white truck.

8 Q. Do you remember what it looked like or anything
9 about the truck?

10 A. It was just a white box, square looking shaped
11 truck. It wasn't like a real long bed truck. It was just a
12 white boxy shaped truck.

13 Q. Where was it coming from when you saw it?

14 A. It was headed out from the woods direction coming
15 past the house going out.

16 Q. Was your husband home at that time?

17 A. No, sir, I was just there by myself at that time.

18 Q. About what time was this?

19 A. Probably between about 10:00 or 11:00 that morning.

20 Q. Now subsequently, did you have an opportunity to
21 look at a vehicle?

22 A. Yes, sir.

23 Q. Down at the sheriff's office?

24 A. Yes, sir, I did.

25 Q. That vehicle that you saw, did you recognize it?

1 A. Yes, sir.

2 Q. Now I'll show you, if I may -- I'll show you these
3 photographs, and ask you if you -- if this is what you saw?

4 A. This is the truck I seen right here.

5 Q. Could you describe the truck that you saw? Was
6 anything else -- you said it was a boxy truck. Was there
7 anything else about it that you remember?

8 A. It had a tinted window on the glass.

9 Q. Which glass?

10 A. Well, I seen it from the side and from the back.
11 The back window was -- it looked like a tinted window. It was
12 kind of dark.

13 Q. Okay. Did you notice anything else about it?

14 A. Well, it was just white. It had like mud tires on
15 it. They were solid, and it didn't look like there was any
16 writing on it. There was no stripes or nothing on the truck.
17 It was just a white truck.

18 Q. Now when you -- I believe after that, a few days
19 later, your husband went back in the woods to see just what
20 caused that fire?

21 MR. DANIEL: We would object to that conclusion.
22 She can tell what she did, but...

23 THE COURT: Sustained as to the form.

24 BY GENERAL SCHMUTZER:

25 Q. Did your husband, at any time, go back into the

1 woods?

2 A. Yes, sir. It had rained that week -- the rest of
3 that week, so he couldn't go back off in there, but that coming
4 Friday he went back in the woods because -- I mean, we were
5 house sitting for these people, and as far as we knew, nobody
6 was supposed to be back there.

7 Q. Okay. Let me ask you this. You didn't go with
8 him?

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

10 Q. The officers, I believe, ultimately came out there
11 after that -- after he went back there?

12 A. Yes, sir.

13 Q. And when the officers came out there did you tell
14 one of the officers that you thought it might -- the vehicle you
15 saw that Sunday might be a Blazer or Bronco?

16 A. Yes, sir. I was pretty shaken up that night. I
17 was pretty tore up when he found that body in the car and stuff,
18 but after I calmed down and really thought about what I had seen
19 coming out -- you know, then when I thought about it, I
20 remembered what I had seen.

21 Q. A Bronco or Blazer, it doesn't have a bed like a
22 truck, but it's enclosed?

23 A. Right. Well, when I thought about it, I thought
24 it couldn't have been a Bronco or a Blazer because I could see
25 the back of their heads at the back of the truck -- you know,

1 when I was -- I was trying to see who it was because there
2 wasn't nobody supposed to be back there, and we were house
3 sitting for these people. All I could see was the back of their
4 heads in the truck, and I realized that wasn't what I had seen.

5 Q. Okay. Was there anything that you remember being
6 in the back of the bed of the truck?

7 A. Just that it had a tool box on it -- one of those
8 big work tool box deals on the back of it.

9 GENERAL SCHMUTZER: May it be filed, Your Honor,
10 this picture?

11 THE COURT: Yes.

12 (EXHIBIT #22 - Photograph of truck; marked and
13 filed.)

14 GENERAL SCHMUTZER: You may cross examine.

15 MR. MILLER: Your Honor, before that's passed may
16 I look at the picture?

17 THE COURT: Yes.

18 MR. MILLER: And I would also like to see the other
19 two pictures that were on that display.

20 GENERAL SCHMUTZER: Right here.

21 **

CROSS-EXAMINATION

BY MR. MILLER:

Q. Ms. Gordon, regarding the fire that you saw, I believe you have given a statement at some point that you were going to some friends -- getting ready to go to some friends house when you saw the fire?

A. Yes, sir.

Q. Were those friends nearby there or...

A. Yes, sir.

Q. Did they see the fire also?

A. No, sir. They live on up the road. You have to go out -- on out that road. I don't know what that main road that comes through there is. You have to go out the road where Chuck and Jill live on, and then go on up into the hollow there's where they live.

Q. All right. And what did you testify that the time of the fire that you saw? Was it 8:30, did you say?

A. It was between 8:00 and 8:30 because we were supposed to at their house somewhere around there, so we left there about 8:00.

Q. And I take it you have no idea how long that fire burned?

A. No, sir, I don't.

MR. MILLER: May I approach the witness, Your Honor, with some pictures?

1 **THE COURT:** You sure may.

2 **BY MR. MILLER:**

3 **Q.** Is that the inside of the -- the living area of the
4 Gordon residence? Do you recognize that?

5 **A.** Yes, that's inside of Chuck and Jill's house in the
6 living room, but that's not the window I seen it out of.

7 **Q.** I understand that now. At the time the pictures
8 were taken I thought that was the window.

9 **A.** No, sir.

10 **Q.** You were in the kitchen, I think you said?

11 **A.** I was -- like the living room's here, the kitchen's
12 here, and I was sitting between them right here. I was
13 painting. I was working on a painting.

14 **Q.** Is the kitchen window on the same side of the house
15 as that window would be?

16 **A.** No, sir.

17 **Q.** Are you looking...

18 **GENERAL SCHMUTZER:** Your Honor, I think it might
19 help if -- I don't think she means to, but be
20 specific as to what she's seeing, the fire or the
21 truck.

22 **BY MR. MILLER:**

23 **Q.** We're talking about the truck now.

24 **A.** Okay. I didn't see the truck out of this window,
25 no. That's looking in the wrong direction.

1 Q. You saw it out of the...

2 A. I saw it...

3 Q. ...side of the house. Did you see the truck out
4 of another part of the side of the house or out of the front of
5 the house?

6 A. When you first come in the road this is the front
7 of the house, and this is where the front door is, and it's got
8 a solid window in it. I seen the truck out that window, and
9 then I got up and went to the kitchen window which is right
10 here, which faces the road going out, and I looked out the
11 kitchen window and saw it.

12 THE COURT: Is that at the same time that you saw
13 you saw the fire?

14 THE WITNESS: No, sir. I seen the fire the night
15 before that. This was the next morning.

16 THE COURT: Okay.

17 BY MR. MILLER:

18 Q. I think you talked a little bit to the officers in
19 your statement about the road that it came out -- that the truck
20 came out?

21 A. Uh-huh (affirmative.)

22 Q. The Gordon's driveway sort of ends, and then
23 there's a little cut trail back in there, is that right?

24 A. Sir, it's not the Gordon's, it's the...

25 Q. I'm sorry. You're Ms. Gordon. I apologize.

1 A. Right. You come in -- Chuck and Jill's house sits
2 here. The road comes in like this, goes around their house, and
3 goes back off into the woods.

4 Q. Have you been back there on that road?

5 A. No, sir.

6 Q. Have you ever walked back there any at all?

7 A. Probably in years past I've walked some the way
8 back there just visiting with them.

9 Q. I've got some pictures, in fact, of that road. Do
10 you recognize that as being part of that -- it's actually not
11 a paved road or a gravel road or even a trail back there, is
12 there?

13 A. It's just roads that run in and out of there where
14 they've logged it and stuff.

15 Q. Okay, but it's some distance back, the logging
16 roads, where there's actually a cut road, is it not? Don't you
17 have to go through terrain like that prior to getting to the
18 logging roads? There's the logging roads you're talking about.

19 GENERAL SCHMUTZER: Well, Your Honor, I would
20 object to him telling her what it is. If she can
21 identify these photographs, if she's seen it, and
22 if she hasn't...

23 BY THE WITNESS:

24 A. Well, I didn't go back there so I really don't --
25 I can't tell you because I didn't go back there.

1 Q. You've never walked back to the logging roads?

2 A. I haven't in years.

3 Q. You've never driven a car back there?

4 A. No, sir.

5 Q. You wouldn't attempt to do that in a two wheel
6 drive, would you?

7 GENERAL SCHMUTZER: I object, Your Honor, to what
8 she would do. That calls for an opinion.

9 BY MR. MILLER:

10 Q. You've been back there before. Have you ever
11 driven back through there before?

12 A. No, sir, I haven't.

13 Q. In your opinion could you get back through there...

14 GENERAL SCHMUTZER: Object, Your Honor. Again,
15 that calls for an opinion. She hasn't been back
16 there; she already testified to that.

17 MR. MILLER: She said years ago she had been back
18 there.

19 THE COURT: Well, there's no -- it would be hard
20 for her to compare it if she hasn't been back there
21 in years, wouldn't it? Sustained. I take it
22 there's other witnesses you can prove that by?

23 MR. MILLER: Yes, probably.

24 BY MR. MILLER:

25 Q. Now this truck that you described, did you not

1 describe it to the detectives or officers as a -- particularly
2 the tires as being a distinguishable feature. They were "big,
3 old, black mud tires."

4 A. That's what they looked like to me. They didn't
5 have any writing on them -- on the tires.

6 Q. So you did call them big, old, black mud tires?

7 A. Yes, sir.

8 Q. And you initially told the officers that you saw
9 a Bronco or a Blazer?

10 A. The night they found the body, yes, sir. I was
11 pretty upset that night. After I calmed down, and had to really
12 think about what I had seen -- I mean, when I seen the truck
13 that I seen, I didn't think of it as being -- I thought it was
14 some campers back there at the time, but once I calmed down and
15 really thought about what I had seen...

16 Q. Did the officers ask you if you had seen a white
17 truck?

18 A. No, sir.

19 Q. What changed your mind from the Blazer to the
20 pickup truck?

21 A. Well, after I calmed down, and I realized that I
22 had to think about what I had seen that was what changed my
23 mind. I just had to think about what I had seen. I was just
24 pretty upset that night they found the body.

25 Q. Did you talk to the officers at one time and tell

1 them it was a Blazer, and then they came back and talked to you
2 later on, and you told them it was a truck? Is that how it
3 happened?

4 A. When I come back down to the police station to give
5 them my statement, that was when I told what I had seen, yes,
6 sir.

7 Q. That's all I have.

8 THE COURT: Mr. Webb?

9 **

10 CROSS-EXAMINATION

11 BY MR. WEBB:

12 Q. Ms. Gordon, let me focus your attention to Saturday
13 night. You stated that you were getting ready to go out and
14 visit some friends, is that correct, ma'am?

15 A. Yes, sir.

16 Q. When you walked out you heard a high pitched noise,
17 and that's what focused your attention to the direction of what
18 you say was the fire?

19 A. Yes, sir. That's when we saw the fire.

20 Q. Ma'am, were you home all that day?

21 A. Yes, sir, I was.

22 Q. Okay. Was there any time during the course of that
23 day that you heard any gun shots or anything like that? There
24 wasn't, was there, ma'am?

25 A. No, sir.

1 Q. And this is an area that you can see, and it's
2 relatively close to you, isn't it, ma'am? Isn't that a fair
3 statement?

4 A. Well, it's not real close.

5 Q. Something you can see visually, can't you, ma'am?
6 That's a fair statement? You can see the area?

7 A. You can see the woods back off in that area.

8 Q. Okay. You had told an investigator that you
9 thought you saw that fire at 7:00, is that correct, ma'am.

10 A. I believe it was around 8:00 because we were
11 getting ready to leave and go to some friends' house.

12 Q. Ma'am, is it a fair statement you really don't know
13 the time?

14 A. Well, I know about what time we left because we
15 were supposed to be at their house a little after 8:00, so we
16 left around 8:00 or a little after that.

17 Q. And ma'am, I'm not meaning to trick you or
18 anything, but I just want to try to get it straight. I know
19 you've talked to several people about this case, haven't you?

20 A. I've talked to my family.

21 Q. I'm talking about investigators from the police
22 department, and investigators for the defense?

23 A. Yes, sir.

24 Q. Do you remember talking to a fellow named Gary
25 Litton, L-i-t-t-o-n? Do you remember talking to Mr. Litton?

1 A. I don't remember the name, sir.

2 Q. Okay. You don't remember talking to Mr. Litton at
3 all?

4 A. I don't remember the name. I don't know if I
5 talked to him or not, but I don't recall the name.

6 Q. Okay. Ma'am, did you ever tell anyone the answer
7 to this question. "What time was it when you saw the fire? Do
8 you remember about what time it was?" Your answer: "It was
9 probably around 7:00, something like that." You said that,
10 didn't you, ma'am?

11 A. I don't know. I remember what time I left.

12 Q. Okay. We'll talk to Mr. Litton about that. Ma'am,
13 you were saying that you were setting in front of the door while
14 you were working on a puzzle. This was on Sunday, is that
15 correct?

16 A. Yes, Sunday morning.

17 Q. Okay. Is that correct, you were sitting in the
18 doorway working on a puzzle?

19 A. Not right in the doorway, but I was sitting where
20 I could see out of the door.

21 Q. Okay. And you say that you saw this truck, and it
22 had to be between 10:00 and 11:00 a.m. Sunday morning, is that
23 correct, ma'am?

24 A. Yes, sir.

25 Q. And once you saw the truck coming by, you get up,

1 and you walk over to the window, the kitchen window, is that
2 correct, ma'am?

3 A. Yes, sir.

4 Q. Okay. And you cannot identify who was in the
5 vehicle, it take it, can you, ma'am?

6 A. No, sir, I just seen the back of their heads.

7 Q. And this vehicle went by, and is it a fair
8 statement, ma'am, that you had just a few seconds to look at
9 this vehicle? Is that a fair statement, ma'am?

10 A. I'd say I had a couple of minutes instead of
11 seconds.

12 Q. So it took the vehicle about two minutes to pass
13 in front of your house. Is that what you're saying, ma'am?

14 A. I can't say two minutes. I don't know exactly how
15 long it took, sir.

16 Q. It was real quick, wasn't it, ma'am?

17 A. I just seen it go by the door, and I got up and
18 went to the kitchen window, and watched it go on by around the
19 curve.

20 Q. And that occurred real quick, didn't it, ma'am?

21 A. I can't give you time wise, but -- you know, it...

22 Q. Was it real quick, ma'am?

23 GENERAL SCHMUTZER: Your Honor, that calls for a
24 conclusion. He's asked it three times.

25 THE COURT: She's given her best estimate.

1 MR. WEBB: I understand, Your Honor.

2 BY MR. WEBB:

3 Q. I don't mean to be argumentative with you, ma'am,
4 I just want to see if we can get to what happened. You were
5 asked what kind of truck this was, and you said that you
6 couldn't even tell what model truck it was -- what make or model
7 it was, could you, ma'am?

8 A. Just a white boxy shaped truck is what I seen.

9 Q. Did you see the tailgate, ma'am?

10 A. I probably did, but I wasn't really paying that
11 much attention to the tailgate on it.

12 Q. Well, you can't tell this jury whether it was a
13 Chevrolet, Ford, Chrysler, Dodge, Plymouth -- you can't tell -
14 - Luv truck. You can't tell this jury what type of truck that
15 was, can you, ma'am?

16 A. All I can tell you is it was a white, boxy shaped
17 truck with black tires on it and no stripes or nothing.

18 Q. Okay. That's fair enough. Ma'am, are you aware
19 that the park service goes up in that area to check on their
20 wolves and things like that they've released into the national
21 park? Are you aware of that, ma'am?

22 A. No, sir.

23 Q. Are you aware that they drive Dodge pickup trucks,
24 ma'am?

25 A. No, sir.

1 Q. Are you aware that you have a neighbor right up the
2 street that has a pickup truck -- a white pickup truck, ma'am?

3 A. Where I live or...

4 Q. On that road -- yeah, where they -- the people you
5 were house sitting?

6 A. Okay. No, sir, because I don't live in that area.

7 Q. Okay. And basically this was a white truck with
8 big, white mud tires, is that correct?

9 GENERAL SCHMUTZER: Your Honor, we've been over
10 this three or four times.

11 MR. WEBB: I've not been over it, Your Honor.

12 GENERAL SCHMUTZER: This is repetitious.

13 MR. WEBB: Other counsel may have been over it.

14 THE COURT: She's -- I believe she's answered it.

15 BY MR. WEBB:

16 Q. And you were asked a question by an investigator,
17 "Was there any antennas, anything unusual about it? Any dents,
18 any bent fenders, anything like that," and you didn't recall
19 anything of that, did you, ma'am?

20 A. No, sir.

21 Q. And I understand that you were rightfully upset
22 when your husband told you about what he had discovered.

23 A. Yes, sir.

24 Q. But you know the difference between a pickup truck
25 and a Blazer and a Bronco, don't you, ma'am?

1 A. Yes, sir.

2 Q. Thank you.

3 MR. MILLER: Just one second, Your Honor. I want
4 to look at that picture again.

5 **

6 CROSS-EXAMINATION

7 BY MR. MILLER:

8 Q. I'll ask you, ma'am, if this is similar to the
9 truck that you...

10 GENERAL SCHMUTZER: Your Honor, we haven't seen
11 that.

12 MR. MILLER: Okay.

13 BY MR. MILLER:

14 Q. Is that similar to the truck you saw?

15 A. But it don't have the tool box on it.

16 Q. I'm sorry?

17 A. It doesn't have the tool box on it.

18 Q. In fact, today is the first day you've mentioned
19 to anybody about a tool box, isn't it?

20 GENERAL SCHMUTZER: I would object to that, Your
21 Honor.

22 THE COURT: What?

23 GENERAL SCHMUTZER: I withdraw my objection.

24 BY MR. MILLER:

25 Q. Today is the first day you've mentioned to anybody

1 about a tool box?

2 A. Yes, sir.

3 Q. You didn't give that to Gary Litton or to the
4 detectives when they took your statement about the tool box?

5 A. No, sir. When I remembered seeing the tool box on
6 the back was when I was asked to come down and identify the
7 truck I had seen.

8 Q. That's in your interview -- you told them about the
9 tool box? Is it in your interview that you told them about the
10 tool box?

11 A. I don't think so.

12 Q. That's all I have.

13 **

14 REDIRECT EXAMINATION

15 BY GENERAL SCHMUTZER:

16 Q. How many heads did you see in the truck?

17 A. Two.

18 Q. That's all.

19 THE COURT: You may step down. Is she excused?

20 GENERAL SCHMUTZER: That's fine, Your Honor.

21 THE COURT: Is she excused?

22 MR. DANIEL: Yes, Your Honor.

23 GENERAL SCHMUTZER: Call Mr. Carter.

24 **

1 THOMAS A. CARTER, JR. was called, and being duly
2 sworn, was examined and testified as follows:

3 DIRECT EXAMINATION

4 BY GENERAL SCHMUTZER:

5 Q. If you will, please, state your full name?

6 A. Thomas A. Carter, Jr.

7 Q. And where do you live?

8 A. In Louisville.

9 Q. Back on February the 24th, a Monday, 1992, did you
10 have an occasion to be down off Manning Lane in what's known as
11 the Blue Hole area on Little River there?

12 A. Me and my kids were down there fishing.

13 Q. You and your kids?

14 A. Right.

15 Q. While you all were down there did you all discover
16 something?

17 A. Yeah, as we was getting ready to leave, my daughter
18 was getting the stuff in the car, and she looked down the hill
19 and seen a guy laying there.

20 Q. Okay. Now where was the guy laying in relation to
21 Manning Lane?

22 A. Well, you couldn't see him from the road.

23 Q. You couldn't see the body?

24 A. No. You had to be right on the edge of the road
25 looking down the bank.

- 1 Q. Was the body all the way down in the water?
- 2 A. No, it was about half way down, face down.
- 3 Q. Did you all attempt to disturb the body in any way?
- 4 A. No, we didn't go around it. We just left, and
- 5 called the police right then.
- 6 Q. About what time was this, if you remember?
- 7 A. It was around 2:30, 3:00, something like that.
- 8 Q. You may cross examine.

9 **

10 **CROSS-EXAMINATION**

11 **BY MR. MILLER:**

- 12 Q. Mr. Carter, you didn't see any weapons or shotgun
- 13 shells or anything out there at the scene at the time, did you?
- 14 A. Yeah, I did see a shotgun shell.
- 15 Q. You saw one?
- 16 A. Yeah, one.
- 17 Q. That's all I have.

18 MR. DANIEL: No questions, Your Honor.

19 MR. WEBB: No questions.

20 THE COURT: Is he free to go?

21 GENERAL SCHMUTZER: Yes, Your Honor. May we

22 approach the bench?

23 THE COURT: Sure.

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

25 GENERAL SCHMUTZER: This next witness is going to

1 be a long witness. Could we take just a short
2 break.

3 GENERAL GREEN: Quite frankly, if the Court's
4 wanting to quit...

5 GENERAL SCHMUTZER: I think we've got time.

6 MR. WEBB: Let me ask you, Judge. I'd like to
7 recess for the day. I'm worn out. I'll just be
8 candid with you. I've set here and not eaten
9 lunch, and I'm just tired.

10 THE COURT: I'll go one more -- is this your last
11 witness that you expect to get on for today?

12 GENERAL SCHMUTZER: The -- Your Honor, I have a
13 doctor. I have him, and that won't be too long,
14 and we have three witnesses that we can probably
15 put on by 2:30 or 3:00.

16 MR. DANIEL: We may stipulate some things.

17 GENERAL SCHMUTZER: The pathologist, as to the
18 cause of death of Tommy Griffin.

19 MR. DANIEL: Who is that, Dr. Bass?

20 GENERAL SCHMUTZER: Dr. Ellington.

21 MR. WEBB: I don't know if we have any problems
22 with that.

23 GENERAL SCHMUTZER: Well, I had asked you all
24 earlier if you wanted to stipulate...

25 MR. WEBB: Let's take a recess. We may talk about

1 it.

2 MR. DANIEL: As long as Your Honor will get it
3 across that we're not stipulating by stipulation
4 or agreeing that we agree, or that we have anything
5 to do with anything, we've got no questions that
6 he died, but I'm just so leery about stipulating
7 anything that the jury gets the wrong idea. If you
8 can handle it in such a way that they realize that
9 we're not admitting that we did anything or...

10 THE COURT: I can state -- after you state your
11 stipulation as to the cause of death, I can state
12 that everyone stipulates -- if the doctor were
13 called he would stipulate as to that, but no
14 further.

15 MR. DANIEL: But then by that stipulation not to
16 infer that there is an admission...

17 THE COURT: Sure.

18 GENERAL SCHMUTZER: The doctor is not going to say
19 anything anyway that would link either one of your
20 clients to it.

21 MR. DANIEL: Okay.

22 GENERAL SCHMUTZER: Then I can release him?

23 MR. DANIEL: There's nothing about his testimony
24 that would link either one of these two defendants
25 to anything. He just proves the cause of death?

1 GENERAL SCHMUTZER: That's all he's doing.
2 MR. WEBB: You see what we're leery about.
3 GENERAL SCHMUTZER: There is one other thing. In
4 part of the stipulation -- he did remove some "00"
5 buck...
6 THE COURT: I'm sorry?
7 GENERAL SCHMUTZER: He removed some pellets and
8 some wadding, and gave it over to officers...
9 MR. DANIEL: As long as he don't try to testify
10 what it is.
11 GENERAL SCHMUTZER: He doesn't know what it was.
12 MR. DANIEL: He can testify he gave it...
13 GENERAL SCHMUTZER: He took out some pellets and
14 wadding, and turned it over to officers.
15 MR. DANIEL: ...to somebody else, we've got no
16 problem with that.
17 THE COURT: Okay.
18 MR. DANIEL: If he tries to start to qualify it as
19 "00" buck...
20 GENERAL SCHMUTZER: I'm not going to qualify the
21 doctor, I'm just going to make a stipulation. I'm
22 not going to say that. I'm going to say it's
23 pellets, and...
24 THE COURT: Okay, wait a minute. Don't be in such
25 a hurry.

1 MR. DANIEL: I'm sorry, Your Honor. I thought we
2 were through.
3 THE COURT: After that stipulation how many other
4 witnesses do you have?
5 GENERAL SCHMUTZER: I just have Munsey, Your Honor.
6 That's a good place to shut down.
7 THE COURT: After Munsey?
8 GENERAL SCHMUTZER: Yes. Widener, and then we'll
9 stipulate to Ellington, and then Munsey.
10 THE COURT: Okay. Do the stipulation...
11 GENERAL SCHMUTZER: The stipulation will come after
12 Widener.
13 THE COURT: Okay.
14 MR. DANIEL: Now Widener is going to be a while,
15 Judge.
16 THE COURT: Okay. So Widener is the next witness?
17 GENERAL SCHMUTZER: Yeah.
18 MR. DANIEL: I think we're looking at quite a while
19 with Widener.
20 MR. MILLER: He did the entire investigation in
21 Blount County.
22 GENERAL SCHMUTZER: We have our motion in limine,
23 Your Honor, obviously, as to what his investigation
24 revealed, and what other people said, unless it's
25 an exception to the hearsay rule.