

XVII No. 90

IN THE CRIMINAL COURT FOR SEVIER COUNTY, TENNESSEE

AT SEVIERVILLE, TENNESSEE

FILED
MAR 7 1994
SUPREME COURT CLERK

STATE OF TENNESSEE,

Appellee,

-VS-

GARY WAYNE SUTTON and,
JAMES ANDERSON DELLINGER

Appellants.

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CASE # 5033, 5035

TRANSCRIPT OF THE EVIDENCE:

Trial

February 16-24, 1993

Volume 15 of 22 Volumes

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

APPEARANCES:

FOR THE STATE

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

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CIRCUIT COURT
FILED
HOUR 9:30 A M
DATE: **JAN 07 1994**
D.A.
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Courtesy of
Time of Death Podcast
by Beth Braden

1 THE WITNESS: Thank you, sir.

2 GENERAL SCHMUTZER: The State calls Mr. Gordon.

3 **

4 JAMES R. GORDON was called, and being duly sworn,
5 was examined and testified as follows:

6 DIRECT EXAMINATION

7 BY GENERAL SCHMUTZER:

8 Q. Mr. Gordon, if you will, please, just state your
9 full name.

10 A. James R. Gordon.

11 Q. And you are the husband of Mrs. Barbara Gordon
12 that's previously testified in this case, is that correct?

13 A. Yes, sir.

14 Q. I understand that you all were home sitting, I
15 guess you might call it, at the home of some friends, Chuck
16 Guise and his wife?

17 A. Yes, sir.

18 Q. And where is it located?

19 A. Out in Wears Valley off of Happy Hollow Road.

20 Q. Known as the Clear Fork area?

21 A. Clear Fork area, yes, sir.

22 Q. And back -- were you all there back on the weekend
23 of February the 21st and 22nd?

24 A. Yes, sir.

25 Q. Of 1992?

1 A. Yes, sir.

2 Q. On that Saturday, February the 22nd, was there
3 something that occurred out there that got your attention?

4 A. Yes, sir. It was evening, and my wife and I were
5 going to a friend's house, and we was supposed to eat dinner
6 with them and be there at 8:00, and we was running a little
7 late. We went out on the porch of the house we were staying in,
8 and we could see a fire back off through the woods, just the
9 flames through the tree trunks kind of thing -- you know, and
10 it lit up the sky. We heard a high whistling noise, and we
11 didn't know what that was. And I wanted to go back there then,
12 but we was late for this deal, and went to our neighbors' house,
13 and talked to them about it, and they said, "Well, it's probably
14 campers in the woods or something," and not to worry about it.

15 Q. Okay.

16 A. But all week long after that I kept hearing all
17 these reports about all this stuff going on, and about people
18 being missing, and all this, and the more I got to wondering
19 about it the more I thought I should check this fire out -- you
20 know, because it appeared to me to be bigger than a camp fire.

21 Q. All right, sir. And did you do that?

22 A. Well, yeah. Approximately -- well, the following
23 Friday, because it rained hard all week, after work I took my
24 foster son, and we went back and looked all in the woods and
25 couldn't find nothing, and drove around the roads and went down

1 all the back roads, and we come upon a burned up car, yes, sir.

2 Q. You were driving?

3 A. Yes, sir. We stopped way back away from the car.
4 We didn't want to -- you know, cause no confusion or nothing.

5 Q. And when you -- where you found this burned out
6 car, was it in the vicinity where you had seen the fire a few
7 days earlier back on the 22nd?

8 A. The way the mountains lay it's real hard to tell,
9 but after you get to understand what's happened, yes, sir, it
10 was the same fire -- had to be.

11 Q. All right, now. I take it you reported that that
12 same day to the law enforcement officers?

13 A. Yes, sir.

14 Q. And they came out and began their investigation -
15 - I believe that was something like February the 28th?

16 A. Yes, sir, approximately -- yeah, I guess so.

17 Q. Subsequently, sir, have you gone back out with the
18 officers, and while the officers set off a smoke bomb where this
19 car was found, did you have an opportunity to view that from the
20 same place where you viewed the fire originally?

21 A. Yes, sir.

22 Q. The home of the Guises?

23 A. Yes, sir.

24 Q. And was that the same spot?

25 A. Yes, sir.

1 Q. I'll show you, sir, a photograph, and -- this
2 bottom photograph if you will, sir -- if you will look at that,
3 and see if you recognize that -- the green smoke?

4 A. Yes, sir.

5 Q. And does that show the smoke coming up from --
6 where is this photograph taken from?

7 A. Well, it's -- I don't know exactly what direction
8 off of their porch. You're looking up a little valley, and then
9 there's ring of mountains that follows, and that's where it's
10 pointing is up into that valley. Now keep in mind we didn't see
11 smoke, we saw flames through the woods. It was night time.

12 Q. I understand. This -- where the smoke is located
13 now, is that the same vicinity where you saw the flames?

14 A. Approximately, yes, sir.

15 Q. Thank you, sir.

16 GENERAL SCHMUTZER: May this be filed, Your Honor?

17 THE COURT: Yes.

18 (EXHIBIT #33 - Photograph; marked and filed.)

19 GENERAL SCHMUTZER: You may cross examine.

20 **

21 CROSS-EXAMINATION

22 BY MR. MILLER:

23 Q. Mr. Gordon, when you and your foster son went out
24 to look about this fire, how did you go? Did you go on a little
25 trail at the end of the driveway, and went on up through there?

1 A. Well, yeah. We first started looking -- we drove
2 up into the field up in behind the house. There's a little kind
3 of driveway that comes up to the house, and then it dead ends
4 in this field, and we drove as far as we could into this field,
5 and couldn't get through any further. And then we walked around
6 up in the woods looking, and there's all kinds of little criss-
7 cross roads and stuff, but we didn't find anything. I was
8 looking -- I wasn't looking for what I found, I was looking for
9 where the fire was -- you know.

10 Q. What kind of vehicle were you in?

11 A. We were in a Volkswagen van.

12 Q. Okay. I'll show you just a couple of pictures, Mr.
13 Gordon.

14 MR. MILLER: May I approach the witness, Your
15 Honor?

16 THE COURT: You sure may.

17 BY MR. MILLER:

18 Q. This may be too close of a shot for you to
19 identify. Was that kind of where the trail ends up there, and
20 you can't go any further? Do you recognize that?

21 A. Possibly. It could be a thousand places.

22 Q. I understand. Is that the field there you're
23 talking about?

24 A. It appears so.

25 GENERAL SCHMUTZER: I object, Your Honor, to it

1 could be a thousand places. Obviously, he can't
2 identify that.

3 **THE COURT:** His first one, I believe, he couldn't
4 identify -- the first photograph.

5 **BY MR. MILLER:**

6 **Q.** Did you go back -- did you have to across a creek
7 bed, or do you know of a creek bed back there along...

8 **A.** Yes, sir, we had to walk through there -- walk up
9 through that area.

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

11 **THE COURT:** Okay. Mr. Webb?

12 **

13 **CROSS-EXAMINATION**

14 **BY MR. WEBB:**

15 **Q.** Mr. Gordon, do you work for the phone company?

16 **A.** I sure do, sir.

17 **Q.** You know Steve Wright then?

18 **A.** Yes, sir, he used to be my boss.

19 **Q.** Okay. Let me focus your attention, Mr. Gordon, on
20 Friday when you saw this fire. You saw no vehicles come or go
21 from that area, did you, sir?

22 **A.** No, sir.

23 **GENERAL SCHMUTZER:** Your Honor, I think he
24 testified he saw this on Saturday -- I don't know
25 if...

1 MR. WEBB: Did I say Saturday?

2 GENERAL SCHMUTZER: You said Friday.

3 MR. WEBB: I'm sorry.

4 BY MR. WEBB:

5 Q. Let me rephrase the question, I mixed my dates up.
6 It was Saturday when you saw the fire, and that night you saw
7 no vehicles come or go from that area?

8 A. No, sir.

9 Q. Okay. For the jury to have an idea, this area is
10 a rural area -- out in the woods?

11 A. Yes, sir.

12 Q. And you don't have a whole lot of neighbors?

13 A. No, sir.

14 Q. There's not a lot of traffic in that area?

15 A. Right.

16 Q. It's sort of a nice, peaceful, tranquil area?

17 A. I assumed it was, yes, sir.

18 Q. And what you're doing -- from where you're at
19 you're sort of surrounded by the mountains, is that a fair
20 statement?

21 A. Yes, sir.

22 Q. In an area like that, sound travels. That would
23 be a fair statement, wouldn't it?

24 A. Yes, sir.

25 Q. An echo effect, or something like that. Would that

1 be a fair statement?

2 A. I assume it would, yes, sir.

3 Q. Nowhere during that night did you hear any gun
4 shots, did you, sir?

5 A. No, sir.

6 Q. Were you present -- your wife gave a statement to
7 John Brown, I believe. Do you remember a Detective John Brown?

8 A. Seems to me I do, yes, sir.

9 Q. You were present when -- I guess you and your wife
10 was telling this officer what you basically told today, is that
11 correct?

12 A. Yes, sir.

13 Q. Your wife gave a statement that the vehicle she saw
14 coming through and past the house you were sitting at on Sunday
15 was a Blazer or Bronco, that's correct, isn't it?

16 A. She mentioned the fact that it was a Blazer or
17 Bronco, but she also said that it was a boxy looking vehicle,
18 and she doesn't have a great knowledge of vehicles -- you know.

19 Q. Would you agree with me that a Blazer and a Bronco
20 is quite a bit different than a pickup truck? That's a fair
21 statement, isn't it, sir?

22 A. To an untrained eye it would be hard to know the
23 difference if it was going away from you.

24 Q. But to your trained eye there is a great difference
25 between a Bronco and a Blazer as opposed to a pickup truck,

1 isn't there, sir?

2 A. Yes, sir.

3 Q. And you weren't there Sunday to see what your wife
4 saw or thinks she saw?

5 A. No, sir.

6 Q. Thank you, Mr. Gordon.

7 GENERAL SCHMUTZER: May this witness be excused,
8 Your Honor?

9 THE COURT: Without objection, yes.

10 GENERAL SCHMUTZER: The State calls Gary Clabo.

11 **

12 GARY CLABO was called, and being duly sworn, was
13 examined and testified as follows:

14 DIRECT EXAMINATION

15 BY GENERAL SCHMUTZER:

16 Q. State your full name, please.

17 A. Gary Clabo.

18 Q. And your occupation and position?

19 A. I'm an Arson Investigator II for the State of
20 Tennessee.

21 Q. What is your background and training in that
22 regard, sir?

23 A. I have a high school education. I have some
24 college credits. I've been in law enforcement, certified since
25 1968. I've attended several schools which specialized in fire

1 and arson investigation. The National Fire Academy in
2 Emmettsburg, Maryland, I hold completion from a school in fire
3 and arson investigation. The U.S. Treasury Alcohol, Tobacco,
4 and Firearms Division, I hold a completion from a school in
5 arson for profit. The F.B.I., I have completed in arson task
6 force. With the state fire marshall's office I have
7 approximately 500 plus hours of individual training and in-
8 service from the state fire marshall.

9 Q. All right, sir. And over what period of time have
10 you investigated fires?

11 A. I've been with the state for approximately 13 and
12 one half years investigating fires.

13 Q. Can you tell the Court approximately how many fires
14 that you have investigated over that 13 and one half years? Is
15 there way of...

16 A. Approximately 1,000 or more.

17 Q. And I take it you investigate fires to determine
18 whether or not they involve arson or not?

19 A. Yes, sir, I do.

20 Q. That's your primary purpose?

21 A. Yes...

22 Q. Whether they are natural caused, or caused by
23 arson?

24 A. Yes, origin and cause is part of our duties, as
25 well as the investigation of known arsons.

1 **GENERAL SCHMUTZER:** Your Honor, I'd like to offer
2 Officer Clabo as a firearms -- I'm sorry -- an
3 arson investigator, and as an expert in that field.

4 **MR. DANIEL:** Your Honor, that's for the jury to
5 determine. We can't stipulate that -- it's a jury
6 determination.

7 **THE COURT:** The Court orders and so finds that
8 Officer Clabo is an expert in the field of fire
9 investigations, and may so testify.

10 **BY GENERAL SCHMUTZER:**

11 **Q.** Sir, in your capacity as an arson investigator, did
12 you go to the scene of the trailer fire of Tommy Griffin located
13 on Bluff Heights Road here in Sevier County?

14 **A.** Yes, sir, I did.

15 **Q.** And I'll ask you, sir, that when you went there -
16 - when was it that you went to the fire scene?

17 **THE WITNESS:** May I refer to my report, Your Honor?

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

19 **BY THE WITNESS:**

20 **A.** I went to the mobil home structure on February the
21 28th of 1992.

22 **Q.** When you went there on February the 28th and began
23 your investigation, were you able to determine, sir, what the
24 cause of that fire was?

25 **A.** Yes, I did.

1 Q. And what is that?

2 A. I found at that time that the fire was incendiary
3 in origin and cause, that someone or some people -- some person
4 had set fire to it.

5 Q. All right, sir. And what did you base that opinion
6 on?

7 A. I based it on the elimination of natural and
8 accidental causes of the fire in the structure, and also on the
9 burn patterns that I found in the structure at the time I
10 examined it.

11 Q. All right, sir. I'll show you some photographs,
12 and ask you, sir, if these would aid you in explaining to the
13 court and jury your investigation and what it revealed?

14 A. Yes.

15 GENERAL SCHMUTZER: Your Honor, may we file this
16 as an exhibit?

17 THE COURT: Sure.

18 (EXHIBIT #34 - Board with six (6) photographs;
19 marked and filed.)

20 BY GENERAL SCHMUTZER:

21 Q. This is a board consisting of six photographs, is
22 that correct, sir?

23 A. Yes, it is.

24 Q. If you would, please, sir, if you could step
25 down...

1 THE COURT: Is that going to take some time,
2 General Schmutzer?

3 GENERAL SCHMUTZER: It probably will, Your Honor.

4 BY GENERAL SCHMUTZER:

5 Q. To begin with, the photograph here on the far left
6 at the top, what does that basically show? Is that the trailer?

7 A. That is the mobile home structure as I found it,
8 this being the bedroom area, this being the front porch area,
9 and the living room.

10 Q. When you say a porch, was that actually a porch or
11 a stoop?

12 A. It was just a concrete pad -- step-type porch.

13 Q. All right, sir. You had mentioned burn patterns.
14 Would you explain to the Court and jury what you are referring
15 to, and...

16 A. When a fire burns across any substance, whether it
17 be a structure or any other item, it leaves a char behind, or
18 at pattern. We look at those to see, number one, what type of
19 pattern it is, and if it burned upward and outward, which is
20 normal. A fire normally burns upward and outward in a "V" or
21 inverted cone shape. So we look for different patterns, and
22 read these the way they burn. The burn patterns in this
23 structure are very -- are all across the floor. They are all
24 low at floor level, which is unusual. The burn patterns on this
25 floor -- you might be able to see it more clearly, were that of

1 unburned carpet, unburned carpet and heavy char down into the
2 subfloor level around it. That's not normal. We don't normally
3 find that in fires. Normally, when we find this condition
4 exists, we have a liquid accelerant that has been poured on the
5 floor.

6 Q. And why is that, sir? Why is it...

7 A. Well, liquid accelerant will burn where it -- where
8 the accelerant is poured, and as it is splashed or poured it
9 will miss these areas. And the fuel will burn quicker than the
10 carpet will burn.

11 Q. All right, sir. And you found that in what parts
12 of the trailer -- what parts of the trailer did you find this
13 in, these burn patterns?

14 A. I found it in the living room area, the kitchen
15 area of the mobile, and also out onto the concrete pad on the
16 front.

17 Q. All right, sir. Did you find anything else there,
18 sir, that indicated to you that there was a liquid accelerant
19 that had been poured into that structure?

20 A. The burn -- the temperature range in the structure
21 was higher than what we normally have in a normal structure fire
22 with a normal fuel load, fuel load being furniture.

23 Q. Okay, sir. What about, specifically, with regard
24 to a refrigerator that was in the place?

25 A. The refrigerator was in the mobile home. This is

1 the stove of the mobile home. This would be the top or cooking
2 part, and this area would be the oven. This is the bottom. We
3 have extremely heavy burning up underneath of this stove that
4 indicates that there was something that ran up underneath, and
5 caused these heavy burns. It setting on the floor, should be
6 protected from the fire. The fire should be above the bottom
7 of this in a normal fire. Something had to have been placed -
8 - went underneath of this stove to cause this heavy burning that
9 we have on it, and also on the bottom of the stove.

10 Q. I take it you have investigated numerous fires
11 before that have involved a liquid accelerant such as this, is
12 that correct?

13 A. Yes, I have.

14 Q. And this was consistent with those type of fires?

15 A. This was consistent with all the fires that I have
16 found -- burn patterns are consistent with a liquid accelerant
17 burn.

18 Q. Would that type of burning be consistent with a
19 faulty plug -- receptacle?

20 A. No, sir.

21 Q. How -- have you investigated fires that have
22 involved defective plugs or receptacles?

23 A. Yes, I have.

24 Q. On few or many occasions?

25 A. Approximately 100, 150.

1 Q. How does the fire -- when you have a receptacle or
2 plug, how does it burn -- the receptacle and plug?

3 A. Fires always burn upward and outward from where it
4 starts. If it starts in an electrical outlet on a wall several
5 inches from the floor, the fire from that point will burn upward
6 and outward from there. There should not be any fire at floor
7 level below that if that's where it started. Fire normally does
8 not burn downward.

9 Q. All right. Now, did you make a specific
10 investigation beyond that to determine if there was some
11 electrical cause or origin to that fire?

12 A. Yes.

13 Q. Beyond that, and what was that?

14 A. We looked at the fuse boxes of the structure, and
15 I checked the wiring throughout the structure. Some of the
16 wiring, the insulation had burned off, and it was clean and
17 smooth, but I found no arcing, beading, or tearing, or melting
18 of the wire in the boxes or on the wiring inside the structure
19 which would indicate an electrical problem such as an electrical
20 short.

21 Q. Thank you, sir. You may go back up. Now, did you
22 also have an occasion to go out to the Clear Fork area to
23 investigate the fire of an automobile?

24 A. Yes, I did.

25 Q. And when was this?

1 A. My investigation started on February the 28th of
2 '92. I arrived at the scene at approximately 11:30 p.m.

3 Q. That was in the evening. Would you explain where
4 this Clear Fork area is located -- where this automobile was
5 found?

6 A. The Clear Fork area is located off of Wears Valley
7 area of Sevier County.

8 Q. Where this was located was it on a logging type
9 road, or was it on a county road, or...

10 A. No, it wasn't on a county road. It was a private
11 road that someone had put into their property -- that's what it
12 appeared to be.

13 Q. All right. Were there any houses or anything back
14 in that area?

15 A. Not that I saw, no.

16 Q. Did you conduct an investigation relative to the
17 fire of that automobile?

18 A. Yes, I did.

19 Q. And if I may, if I can ask you to step back down
20 again, and I'll pull this back up. Let me show you these
21 photographs before you step down. Do you recognize these six
22 photographs?

23 A. Yes, I do.

24 Q. And would they aid you in describing to this Court
25 and jury the fire, and the origin of this fire?

1 A. Yes, they would

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

3 THE COURT: If I may see it, please, before you -
4 - it will save me a trip down. All right.

5 (EXHIBIT #35 - Photographs of burned car; marked
6 and filed.)

7 BY GENERAL SCHMUTZER:

8 Q. If you will come back down, sir. If you would,
9 please, taking these photographs -- this is also located in
10 Sevier County, is that correct?

11 A. Yes, sir.

12 Q. If you will, please, start with the photograph
13 facing you, the far left top.

14 A. This photograph was taken by myself, and it shows
15 the vehicle that was found burned out there, this being the
16 front area, the hood area, this being the driver's side. This
17 is another shot of the same vehicle showing the rear area, and
18 the roof, and again showing the driver's side.

19 Q. All right, sir. During the course of your -- after
20 your investigations were you able to determine the cause of that
21 fire?

22 A. Yes, I was.

23 Q. And what is that?

24 A. It was incendiary -- it was a set fire.

25 Q. All right, sir, and what do you base that on?

1 A. I base that on the burn patterns, again, in the
2 vehicle. As you can see in this photograph, this would be the
3 passenger seat area -- front area. We have burning up under
4 these frames, and have fire across the floor and across the
5 transmission hump, and we have irregular burn patterns, again,
6 in the vehicle that we did in the mobile home. We have heavy
7 charring and damage, burn through all the way to here, but we
8 have carpet padding here. We have some carpet padding in this
9 area. We have heavy burning again here, but then we have
10 burning up under the seat, the fire coming from the floor area.

11 Q. The fire up under the seat, what would that be
12 indicative of?

13 A. Something being placed or poured in this vehicle,
14 an accelerant that would run up under here to create this. The
15 carpet and padding under the seat, in a normal automobile fire
16 that was from some other cause, this area would have been
17 protected to a certain degree from fire, and if the fire started
18 on the floor, and had burned upward, it would have burned
19 evenly. The fire pattern would have been an even burn across
20 the floor instead of burning here, burning here, burning here -
21 - spotty. That's indicative of a liquid accelerant, the burn
22 pattern again.

23 Q. All right, sir. And what else did you observe?
24 Did you look at the vehicle to see if there could have been any
25 other source of the fire, such as fuel tank or transmission,

1 or...

2 A. Yes, yes. We checked the engine compartment. This
3 is the engine compartment, and you can see the heavy burning in
4 the interior of the vehicle. It also shows on the door and on
5 the roof area, but you can actually see the original paint above
6 the hood. This is the original brown paint of this vehicle.
7 The engine compartment is virtually intact. The battery area
8 is burned, but all of this -- this is the fuel line, and it's
9 still intact, including the fuel filter, and even the hose --
10 the rubber hose that attaches the fuel filter to the line are
11 still intact. The fire did not originate from here. Also, we
12 have a foil type hose going to the breather in the engine
13 compartment that is still virtually intact. This being a very
14 light metal, and the rubber being easily burned and damage,
15 there's not that much heat in this area. So we eliminated this
16 area as being the origin of the fire.

17 Q. What effect would that have had on the paint on the
18 hood of the car if the fire had been in that area -- origin to
19 that area?

20 A. If the fire had originated here we would not have
21 probably had any at all paint on the hood. The hood would have
22 looked like the roof and the side areas. It would have been
23 burned off.

24 Q. Were you able to determine whether it was a hot
25 fire or not?

1 A. Yes, this fire was hotter than what is normal that
2 we find in a vehicle type fire. We've got collapsing of the
3 metal springs, the temper and tension are out of them. We've
4 got heavy burns on that metal, oxidation from burn, and it's all
5 underneath. And the temperature range is much higher than what
6 we normally find in vehicles.

7 Q. All right. When you say "normally find," are you
8 talking about where there's not a liquid accelerant involved?

9 A. Where there's not a liquid accelerant involved.

10 Q. Did you find the accelerant that was poured in this
11 fire, was it in the interior or exterior of the car or both?

12 A. It was in the interior area, and on the victim.

13 Q. Okay. Is there a picture there -- was there a body
14 found in the vehicle?

15 A. Yes, there was.

16 Q. And is there a picture of that?

17 A. Yes, we have a victim found in the front seat area
18 of the vehicle here.

19 Q. All right, sir. And you are pointing to the
20 photograph on the right as you face it at the top -- far right?

21 A. Yes.

22 Q. And what was the condition of those remains?

23 A. They were virtually cremated. They were in very,
24 very poor condition.

25 Q. All right, sir. I take it that others came to the

1 scene to also aid in the investigation?

2 A. Yes.

3 Q. Among those a Dr. Bass, forensic anthropologist
4 from the University of Tennessee?

5 A. Yes, that's correct.

6 Q. You may step back up.

7 GENERAL SCHMUTZER: You may cross examine.

8 **

9 CROSS-EXAMINATION

10 BY MR. MILLER:

11 Q. Mr. Clabo, in regards to the trailer fire...

12 GENERAL SCHMUTZER: Your Honor, may these be
13 passed, by the way?

14 THE COURT: Sure.

15 BY MR. MILLER:

16 Q. In regards to the trailer fire, Mr. Clabo, I think
17 you testified that you made your first arrival on the scene on
18 February the 28th, 1992?

19 A. Yes, sir.

20 Q. Okay. What was the date of that fire?

21 A. The date of the fire was February the 21st of 1992.

22 Q. So you were there almost exactly a week later, is
23 that correct?

24 A. Yes, it is.

25 Q. Would you agree with me, in making an investigation

1 on the fire, one of the more important things is arriving on the
2 scene of the fire as soon after the fire as possible?

3 A. That is important.

4 Q. I take it you were not requested to make an
5 examination of the trailer until what date, the 25th? Am I
6 correct on that?

7 A. Yes, February the 25th of '92 is when I was called.

8 Q. And you had been told at that time that the trailer
9 fire -- the occupant of that trailer that you were
10 investigating, he had been found dead over in Blount County, is
11 that correct?

12 A. The best that I recall, that's correct.

13 Q. Okay. Now, you would have -- who all did you talk
14 to prior to your examination of the trailer scene?

15 A. I talked to Jeff McCarter, the sheriff's department
16 detective, and Mr. Boyd Branum, who was the owner of the mobile
17 home.

18 Q. Is that all?

19 A. To the best of my memory it is, yes.

20 Q. Did Mr. Branum tell you about the faulty plugs in
21 the trailer?

22 A. Not on his initial statement to me, no, sir.

23 Q. So you didn't have any knowledge at the time that
24 you made your investigation that there was faulty plugs in the -
25 - faulty outlets in the trailer?

1 A. To the best of my memory, no, sir, I did not know
2 that at the time I arrived at the scene.

3 Q. I believe you say in your investigative report that
4 -- basically that the electrical wiring system was in good shape
5 -- I think that's the words you used. Is that what you put in
6 your report? Number 26...

7 A. Yes, number 26. None found in the structure.
8 That's referring to a fusing arcing of the electrical
9 conductors. Electrical wiring system was in good condition that
10 I found.

11 Q. Okay. That you found?

12 A. Yes, sir.

13 Q. And that's -- that may be hard for these people to
14 understand, Mr. Clabo. Was there anything in that trailer that
15 was in good condition, including the wiring? Nothing was left
16 in that dwelling, was there?

17 A. Yes, there was items left. The wiring, as I
18 testified earlier, was still virtually intact. The insulation
19 had been burned off of most of it.

20 Q. You're not telling the jury that you examined all
21 the electrical wiring system inch by inch, are you?

22 A. No, I did not examine the whole system inch by
23 inch.

24 Q. Now, you -- do you have your -- besides the
25 pictures that the jury is looking at, do you have your pictures

1 with you?

2 A. Yes, I do.

3 Q. If I could see those, we may refer to them. Thank
4 you.

5 MR. MILLER: May I approach the witness, Your
6 Honor?

7 THE COURT: You sure may.

8 BY MR. MILLER:

9 Q. I believe this may be one that was shown to the
10 jury where you were talking about burn patterns or something to
11 that effect. Can you show me in there what you're talking
12 about?

13 A. Well, this isn't the one that I showed to the jury,
14 but you've got heavy burns out in this area. You've still got
15 carpet here and here, and some carpet residue here, but a heavy
16 burn here. You've got burn along this wall partition all the
17 way at the floor level. If the fire had started above that, we
18 should not have found a heavy burn all the way down the
19 partition wall, and the different burn patterns in the
20 structure.

21 Q. Now what are you referring to as a burn pattern,
22 is you can tell us what you're talking about.

23 A. Well, we've got burn here, the floor totally gone.
24 We've got an unusual pattern here. We've got an unusual pattern
25 here. We've got carpet that's still good here with heavy burn

1 around it, so that would be the irregular burn pattern.

2 Q. Did you take any pictures of this wiring system you
3 say was in good shape?

4 A. Just what I have on the board that the jury has.

5 Q. Just the fuse box?

6 A. Yes, just the two boxes.

7 Q. Didn't take any of the wiring system or the outlets
8 in the house?

9 A. No, sir, not unless they're shown in the
10 photographs there.

11 Q. Now, are you saying that in any fire, if the fire
12 starts above a certain level you won't find burning below that
13 level?

14 A. There can be burning below that level from fall
15 down burn, but the primary, heaviest pattern should be from
16 where the fire starts upward and outward.

17 Q. So are you saying that if a fire starts at one
18 level than can be burning below that level?

19 A. Yes, fire can fall down from some other source and
20 do some burns.

21 Q. And in fact, I think you testified as to the car
22 that the fire was in the floor board -- front floor board, is
23 that correct?

24 A. That's correct.

25 Q. And you would agree that the tires on a vehicle are

1 lower than the floor board?

2 A. Yes, they are.

3 Q. And in fact, the tires in that vehicle were burned?

4 A. To some degree.

5 Q. So that's another example of where the fire burned
6 down, is it not?

7 A. Yes, fire burned down on those.

8 Q. Okay. And maybe something that will strike a
9 little closer home. The jury -- on a house, maybe, that
10 caught...

11 GENERAL SCHMUTZER: Object, Your Honor, to the form
12 of the question.

13 THE COURT: Sustained as to form.

14 BY MR. MILLER:

15 Q. A house, maybe, that caught fire on the second
16 story, are you saying that the first story of the house -- the
17 first floor can't burn?

18 A. No, it can burn if it goes undetected and
19 unextinguished due to the fall down.

20 Q. And you realize that this trailer fire was fully
21 engulfed before any firemen were on the scene? It was virtually
22 gone by the time they got there?

23 A. I understand that, yes.

24 Q. And likewise with the car, it was never
25 extinguished...

1 A. No, there was no extinguishment of the car, to our
2 knowledge.

3 Q. Now, trailers, they, I take it, burn a little bit
4 differently than a normal residence, is that correct?

5 A. Yes, it is.

6 Q. They will burn a lot faster, a lot quicker, and
7 probably a lot hotter?

8 A. It will burn faster and quicker, yes.

9 Q. In fact, the roofing system on a trailer just
10 doesn't ventilate quite like a regular house, is that correct?

11 A. No, a metal roof on a mobile home structure tends
12 to hold heat in.

13 Q. You didn't talk to fireman Tim Nichols before your
14 investigation of this fire, did you?

15 A. I do not believe that I did.

16 Q. You were not aware that he believed the fire to be
17 electrical in nature?

18 A. No, sir, I did not.

19 Q. Did you talk to anybody that was there at the fire
20 about whether or not they smelled liquid accelerants?

21 A. At the time of my investigation of the fire scene,
22 no, I did not.

23 Q. And, if, in fact, nobody there during the fire or
24 shortly after the fire smelled any accelerants would that mean
25 something in your investigation?

1 A. Not necessarily, no, sir.

2 Q. Did you -- you would agree with me that it's
3 typical for you, during your investigation, to take samples --
4 if you believe a liquid accelerant has been used to take samples
5 of the flooring that you've showed us, and send it to the
6 laboratory?

7 A. If I smell residue, I take it, yes, sir.

8 Q. And you take it on a number of occasions when
9 there's -- when you determine a liquid accelerant has been used,
10 do you smell gasoline when you investigate?

11 A. Depending on the severity of the burn, and as to
12 whether the product could have been consumed before the fire
13 before I arrived, and depending upon how quick after I arrive,
14 due to evaporation of the product. If I smell it, I take a
15 sample. If I don't smell it, normally I base my opinion and my
16 investigation on the burn patterns that I do find.

17 Q. Now being as how you were a week before you got
18 onto the scene here, did you talk to anybody, or did you realize
19 that there had been a lot of cleaning up going around at the
20 trailer before you investigated?

21 A. I didn't see any evidence that someone had gone in
22 and cleaned the floors off or moved a lot of the debris. I was
23 told by Detective McCarter that there had been people in and
24 around the mobile home since it burned.

25 MR. MILLER: May I approach the witness, Your

1 Honor?

2 THE COURT: Yes.

3 BY MR. MILLER:

4 Q. This is your sketch there, is that correct, of the
5 trailer fire?

6 A. Yes, it is.

7 Q. You've got burn patterns -- you've got them all
8 over the trailer, is that right?

9 A. Yes.

10 Q. What do you mean by that?

11 A. That merely shows where fire traveled from one end
12 of the trailer to the other.

13 Q. By burn pattern -- you're talking about the whole
14 trailer, is that right?

15 A. General burning, yes.

16 Q. Now again on the investigation of the car fire.
17 You were there approximately a week after this car supposedly
18 burned, is that correct?

19 A. Approximately, yes, sir.

20 Q. I believe you testified that this fire appeared to
21 be hotter than your normal vehicle fire, is that correct?

22 A. Yes.

23 Q. Would it be fair to say a fire started by
24 accidental means, and a fire started by intentional or arson,
25 if they burn the entire car, such as this, that the fire is

1 going to get just as hot in an accidental fire as an
2 intentionally set fire?

3 A. If the intentionally set fire was accelerated by
4 liquid accelerant it would be much hotter than an accidental
5 type fire.

6 Q. You're saying an accidental type fire can't get as
7 hot as an intentional fire, assuming the car, as this one, was
8 completely burned up?

9 A. No, the temperature range, if an accelerant was
10 used, will be much higher than that of a normal fire in a normal
11 vehicle.

12 Q. Now in your investigation report on the car fire
13 you make a lot of assumptions. Were you provided a lot of
14 information that's in your report that you didn't personally
15 find yourself? In other words, you had information that the
16 lady in this car had been shot, and you put that in your report,
17 isn't that correct?

18 A. Yes, I did. In my initial chronological events
19 report, yes.

20 Q. You know now that nobody knows whether she was shot
21 or not, is that correct?

22 A. That's correct. I based that on what I was told
23 by another person.

24 Q. You also, I think, make an inventory when you do
25 your investigation, is that correct?

1 A. Yes.

2 Q. And you listed several things on your inventory
3 such as rings and the shell that was found, and so forth. You
4 didn't actually find those, did you?

5 A. No, sir, those were found by another person and
6 handed to me at the scene.

7 Q. And also in your investigative report you put
8 initially that it was a liquid or a solid accelerant?

9 A. Yes.

10 Q. And now today you are telling the jury you are sure
11 it was a liquid accelerant?

12 A. Yes.

13 Q. But you didn't know when you made your
14 investigation that it was liquid or solid?

15 A. I knew that there was a liquid accelerant
16 definitely. I did not know about the solid accelerant. A solid
17 accelerant, of course, would be paper, cloth, some other type
18 of solid form that would help the fire burn quicker and hotter.

19 Q. So when you said liquid or solid accelerant in your
20 investigative report, are you saying now that that should have
21 been liquid and/or solid accelerant?

22 A. Yes, it should. I know that there was a liquid
23 accelerant in the vehicle and on the victim. I'm not sure at
24 this time about a solid accelerant. There could have been solid
25 accelerants there, and there could not have been.

1 Q. Number 31 on your investigative report you say
2 something about "carpet and hair pad had liquid accelerant burn
3 patterns..."

4 THE COURT: Carpet and what?

5 MR. MILLER: Carpet and hair pad.

6 THE COURT: Okay.

7 BY MR. MILLER:

8 Q. What are you -- this hair pad, what are you
9 referring to there?

10 A. The padding underneath the carpet. It was not
11 polyurethane foam rubber. It had to be made out of another
12 material.

13 Q. Now you will agree with me that older model cars
14 such as this vehicle, I believe, a 1970 vehicle, its interior
15 components are a whole lot more volatile as far as fire goes
16 than modern day cars, is that correct?

17 A. No, sir, it's not.

18 Q. You disagree with that?

19 A. I disagree with that.

20 Q. Well, do you also say that its -- as far as an
21 arson investigation goes, and particularly of a vehicle, that
22 the most important thing an investigator must know is how long
23 the car burned?

24 A. Yes. The burning time of a vehicle, the longer it
25 burns the more damage it's going to do, of course.

1 Q. So you will agree that's a very important part of
2 an arson investigator's investigation is to know how long it
3 burned?

4 A. Yes, sir, trying to determine that.

5 Q. You don't know how long this fire burned, do you?

6 A. No, sir, I do not.

7 Q. You referred to the body as being virtually
8 cremated?

9 A. Yes, sir.

10 Q. How long does it take, even in a commercial
11 crematorium to cremate a body?

12 A. A commercial crematorium such as used by funeral
13 homes in this area probably cannot completely destroy a body.
14 It takes furnace temperatures of approximately 2,000 to 3,000
15 degrees fahrenheit over a period of time, three to four hours,
16 to completely destroy to ash a human body.

17 Q. So would it be fair to say that this fire burned
18 at least four hours then?

19 A. This fire burned anywhere, probably, from 30
20 minutes to two or three or four hours, yes. That's a guess.

21 Q. Well, if it takes a body four hours in a commercial
22 crematorium at 3,000 degrees to be cremated, and this body was
23 virtually cremated, wouldn't you agree that it had to burn at
24 least four hours then?

25 A. Yes, it had to burn around two to four hours.

1 Q. Would it be a fair statement to say that if
2 somebody were to drop a cigarette or something like that on some
3 type of accelerant in the car, be it paper or clothing or
4 whatnot, it would be fair to say that the same damage could have
5 happened to this car that happened to it -- that you're saying
6 happened to it?

7 A. There wouldn't be a total burn out of the car, and
8 the temperature ranges on the metal and other debris would not
9 be as high as what we found in this.

10 Q. And I -- would it be fair to say an arson
11 investigator, they are supposed to eliminate all accidental
12 causes, is that correct?

13 A. That's correct, yes, sir.

14 Q. What accidental causes did you eliminate and put
15 in your report with regard to that fire?

16 A. I did not find that the electrical system in the
17 vehicle was involved in the ignition of the vehicle. Natural
18 and accidental causes such as lightening, spontaneous
19 combustion, static electricity were eliminated. Those
20 conditions were not found to be present at the time of the fire.
21 The fire burned through the vehicle too rapidly for a slow
22 burning, smoldering type fire from a cigarette or some other...

23 Q. Let me stop you on that...

24 GENERAL SCHMUTZER: Your Honor, I would object,
25 Your Honor, to stopping him. He asked a question,

1 and he was answering the question.

2 MR. MILLER: I'll wait.

3 BY MR. MILLER:

4 Q. Go ahead.

5 A. The fire burned too rapidly through the structure
6 for a cigarette or smoldering type fire. It takes a slow build
7 up of heat over a long period of time for a cigarette to ignite
8 a vehicle. The material in the vehicles from this basic period
9 that the vehicle was built would not be conducive to a
10 cigarette fire as much as possible materials from an earlier
11 model. The fire just got too hot too quickly, according to the
12 burn patterns, for a cigarette ignition. It would smolder. The
13 glass found in the vehicle was clear, and had crazing that was
14 large. That indicates a rapid, fast burning fire, and not one
15 that smolders.

16 MR. MILLER: Your Honor, can I stop him at this
17 point. He's not being responsive as to the
18 particular things he eliminated.

19 THE COURT: Ask him another question.

20 BY MR. MILLER:

21 Q. You talk about the fast spreading fire, and I was
22 going to ask you, I though we had decided that this fire did
23 burn a long time?

24 A. Yes, it did.

25 Q. Okay. And it could have -- strike that. You said

1 it would take a long time for a cigarette to ignite. This, of
2 course, depends on circumstances, doesn't it?

3 A. Yes, it does.

4 Q. The amount of oxygen in the vehicle and drafts,
5 etcetera?

6 A. Yes, and how much insulation the cigarette would
7 obtain.

8 Q. You mentioned spontaneous combustion. What is
9 spontaneous combustion?

10 A. Spontaneous combustion is fire ignition from
11 pressure, and also from a slow build up of heat. We find that
12 condition in barns and also, sometimes we find it in structure
13 fires where there's newspaper, oily rags, that type of thing,
14 that are piled one upon the other, and creates heat internally.

15 Q. And there was such destruction of this car you
16 don't know whether there had been any oily rags in there or not?
17 You can't rule that out, can you?

18 A. I didn't find a lot amount of debris from such
19 condition. If we would have had a large amount of rags in the
20 vehicle or paper that was placed tightly together, we should
21 have found a large amount of ash residue from those, and we did
22 not.

23 Q. You've heard, sir, that -- or maybe you have
24 investigated in the past fires -- vehicle fires that were
25 started because of a dragging brake lining or some heat in the

1 wheels themselves. Have you ever investigated a fire like that?

2 A. I haven't personally, no, sir.

3 Q. But you know that can happen, is that correct?

4 A. It's possible, yes, sir.

5 Q. And you did not eliminate that as the cause of this
6 fire?

7 A. I didn't find that condition, no, sir.

8 Q. You didn't look for that condition?

9 A. I looked at the wheels and the vehicle, and the
10 tires, but I did not find it.

11 Q. Is that in your report, sir?

12 A. I don't believe it is.

13 Q. And is that a complete report of your findings and
14 investigation?

15 A. Yes.

16 Q. Would it be fair to say you didn't look at the
17 wheels?

18 A. Yes, I looked at the wheels and the tires, also.

19 Q. And how come that's not in your report?

20 A. I did not place it in my report.

21 Q. You also would agree, sir, that the exhaust system
22 in a vehicle can get very warm also?

23 A. Yes, that's true.

24 Q. And can get warm enough to go through and set the
25 bottom of the floor or even the carpet in the floor board on

1 fire?

2 A. Yes, that's possible.

3 Q. Did you eliminate that as a cause?

4 A. Yes, we looked at the bottom of this vehicle, and
5 eliminated that.

6 Q. Is that in your report?

7 A. No, sir, it's not.

8 Q. Did you tell me what you thought the temperature
9 of this fire was?

10 A. Somewhere between 1,500 and 2,000 degrees
11 fahrenheit, approximately.

12 Q. Were you aware, or did you yourself examine any
13 vehicle tracks, tread marks, or foot prints out there at the
14 scene?

15 A. I saw some, but I did not physically examine them
16 myself.

17 Q. Do you know whether or not that was done?

18 A. I don't recall. I know photograph were made of
19 them, but I don't know if any other evidence was taken from
20 them.

21 Q. Now if we take your assumption or your finding that
22 this is an arson, an intentionally set fire, in other words,
23 that the fire didn't start accidentally or by the person who
24 died as a result of the fire, somebody else had to be there, is
25 that correct?

1 A. Yes.

2 Q. And wouldn't it be very important to look for foot
3 prints out there at the car?

4 A. Yes, it would.

5 Q. Did you look for foot prints?

6 A. I looked around the general area, and I did not
7 find anything other than some tracks, and I believe I
8 photographed those, but I would have to look at my other
9 photographs.

10 Q. Likewise, would tire tracks -- that would be very
11 important, also, wouldn't it?

12 A. Yes, it would.

13 Q. And you didn't examine those, and make comparisons
14 with the suspect's vehicle?

15 A. I didn't, no.

16 GENERAL SCHMUTZER: He's not qualified to do that,
17 Your Honor. This officer is an arson investigator.

18 MR. MILLER: That's part of an arson investigation,
19 Your Honor. He's already testified to that.

20 THE COURT: Well, ask him if he does that -- if
21 makes those comparisons if you want to pursue that
22 line of questioning.

23 BY MR. MILLER:

24 Q. Let me ask one before that. I think you did
25 testify that that would be important in your investigation, foot

1 prints and tire tracks?

2 A. Yes, if there was unknown tire tracks from a second
3 or third vehicle that would be important.

4 Q. And it's your understanding there were some unknown
5 tire tracks out there?

6 A. There were some tire tracks found.

7 Q. Did you take those, and have anybody or yourself
8 compare those to the subject's vehicle?

9 A. I did not personally, no.

10 Q. Do you know whether or not it was done?

11 A. I don't recall. That was probably done by the
12 evidence technician on the scene if it was done. I didn't do
13 it myself.

14 Q. I think I'm about finished. I'll pass your
15 pictures back up. Would it be fair to say, Mr. Clabo, that a
16 automobile fire is, if not the toughest, one of the toughest
17 investigations there is?

18 A. It's difficult.

19 Q. Almost impossible to tell for sure whether or not
20 it was arson?

21 A. No, sir.

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

23 THE COURT: Mr. Daniel?

24 **

CROSS-EXAMINATION

BY MR. MILLER:

Q. Mr. Clabo, I'm Zane Daniel. Along with Mr. Webb, we represent Mr. Sutton. I'm going to ask you a few questions about this. Let's go back to your originally -- your original investigation. I believe you stated you made one of the trailer fire, is that correct?

A. Yes.

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

THE COURT: Yes.

BY MR. DANIEL:

Q. I have here a photograph that shows this trailer after it burned. Do you recognize that as being the trailer?

A. Yes, I do.

MR. DANIEL: I'd like to offer that as the next exhibit, Your Honor.

THE COURT: Sure.

(EXHIBIT #36 - Photograph of burned trailer; marked and filed.)

Q. This is Exhibit #36. You will agree with me, won't you, Mr. Clabo, that that entire trailer was consumed with fire?

A. Most of it, yes.

Q. Well, you say most of it. What portions were not consumed as shown in this photograph?

1 A. Well, it still had flooring in the middle of the
2 structure -- it's still intact. There are some wood particles
3 that are still intact.

4 Q. So basically we can agree that that is basically
5 a consumed fire, is that correct -- that was extinguished before
6 it was -- it consumed the entire trailer?

7 GENERAL SCHMUTZER: Your Honor, he's already
8 answered that, and I think he even called for a
9 conclusion.

10 THE COURT: He said it wasn't entirely consumed,
11 and he said what he described as not being
12 consumed.

13 BY MR. DANIEL:

14 Q. You never talked to Tim Nichols, did you, sir?

15 A. No, I don't recall that I did.

16 Q. You have never talked with Tom Nichols, have you,
17 about this fire?

18 A. I don't recall; I don't think so.

19 Q. Do you know that he was the fireman that was on the
20 scene that was in charge of the other firemen, the person who
21 was in charge of the entire fire out there that night? Does
22 your report show that?

23 A. I have a copy of the fire department report, and
24 my copy doesn't say who was in charge of the fire.

25 Q. As a matter of fact, you never talked to any

1 fireman who was present at the scene when this fire was burning,
2 did you, sir?

3 A. Yes, sir, I did.

4 Q. You did? Who did you talk to?

5 A. I talked to Mike Rollins, the assistant fire chief.

6 Q. Was he present there when the fire was burning?

7 A. Yes, he was, according to the fire department
8 report.

9 Q. They told you at that time they smelled no gasoline
10 or anything like this that would indicate to you this was arson,
11 isn't that correct, sir?

12 A. Mr. Rollins didn't tell me anything about smelling
13 gasoline out there.

14 Q. Or oil?

15 A. No, sir, not about oil that I recall.

16 Q. Okay. Of course, if you had of, you would have put
17 that down; that would have been important to you, wouldn't it,
18 sir?

19 A. Yes, it would.

20 Q. And did they tell you that the fire, when they
21 first saw it -- did you talk to a witness that told you the
22 fire, when they first saw it, was coming from the middle of the
23 house, and spreading outward?

24 A. Yes, I did.

25 Q. And that was before the fire had completely

1 consumed the -- or at least consumed the trailer as we now see
2 it, is that correct?

3 A. That's before it burned and did the damage that it
4 was.

5 Q. And you will agree with me that when a fire burns
6 and the roof catches on fire that it starts dropping down onto
7 the floor, doesn't it?

8 A. Yes, fire can do that.

9 Q. And when it drops down, and it's burning, and it
10 burns on an area on the floor, it makes burn patterns, doesn't
11 it, sir?

12 A. To some degree, yes, sir.

13 Q. And you also know that this house was heated by
14 coal -- this trailer, strike that -- this trailer was heated by
15 coal?

16 A. No, sir, I didn't know that.

17 Q. You didn't know it had a coal stove?

18 A. I don't recall seeing one.

19 Q. Did your -- does your report show how it was
20 heated?

21 A. No, sir, it doesn't.

22 Q. So let's assume it was heated by either kerosene
23 or coal, then you would expect either kerosene or coal to be
24 present in that living room or wherever the stove would be,
25 isn't that correct, sir?

- 1 A. It should be if it was heated by that.
- 2 Q. Do you know what it was heated by?
- 3 A. I don't really know, no, sir.
- 4 Q. Did you find any heaters that had been there --
- 5 what we call electrical heaters that had burned in the fire?
- 6 A. I don't recall.
- 7 Q. You didn't make a note of that?
- 8 A. I didn't make a note of it in my report, no, sir.
- 9 Q. The truth of the matter is it was about five days
- 10 or so before you got out there to this place before you ever
- 11 investigated the fire -- five days had lapsed before you
- 12 investigated the fire, isn't that correct?
- 13 A. It occurred on the 21st. I was there on the 28th,
- 14 so it was approximately seven days.
- 15 Q. Approximately seven days. Do you know it rained
- 16 during that period of time?
- 17 A. Yes, sir.
- 18 Q. Several days?
- 19 A. Yes, sir.
- 20 Q. And you were hired by the -- and you are hired and
- 21 paid by the state?
- 22 A. Yes, sir, I am.
- 23 Q. You're not an independent investigator, we call it,
- 24 where you work for yourself?
- 25 A. No, sir, I'm not.

1 Q. You're on state salary?

2 A. Yes, I am.

3 Q. And then you went -- after that you went to the
4 scene where they found this vehicle -- this car, is that
5 correct?

6 MR. DANIEL: May I pass this to the jury?

7 THE COURT: Surely.

8 BY MR. DANIEL:

9 Q. Is that correct, sir?

10 A. Yes, later that night, I did.

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

13 THE COURT: Yes.

14 BY MR. DANIEL:

15 Q. I'll show you, Mr. Clabo, a photograph that shows
16 the car there, and there's two gentlemen in that photograph.
17 Can you identify those people?

18 A. Yes, sir. The one in the blue is Dr. William Bass
19 from the University of Tennessee. The one in the brown or the
20 blue cap is Murray Marks, his assistant, from the University.

21 MR. DANIEL: I offer that as an exhibit.

22 THE COURT: May I see that, please?

23 MR. DANIEL: Yes. I'll show you this other
24 photograph, also. I'm sorry. I should have shown
25 you that.

1 THE COURT: Is this the scene where the car was
2 actually found?

3 GENERAL GREEN: Yes, Your Honor.

4 THE COURT: Okay. Thank you.

5 MR. DANIEL: I'd like to offer this as an exhibit.

6 THE COURT: All right.

7 (EXHIBIT #37 - Photograph of car; marked and
8 filed.)

9 BY MR. DANIEL:

10 Q. And in this photograph it shows the area where the
11 car was found when you did your investigation, is that correct,
12 sir?

13 A. Yes, it does.

14 Q. And you know that that is a remote area, and the
15 only way to get up to this road is to pull in there, and then
16 you have to back or pull -- go back out. Is that correct --
17 because you can't go on through?

18 A. The best that I can recall, yes, that's correct.

19 Q. And you stated that when you got there you looked
20 for foot prints?

21 A. Yes.

22 Q. And you found none?

23 A. I didn't find any.

24 Q. You saw foot prints?

25 A. I saw some foot prints, but I could not tell you

1 if those were from the sheriff's or police department people
2 from the night before, or if those were left by someone else.

3 Q. You also -- did you take any soil samples from the
4 area?

5 A. No, sir, I did not.

6 Q. It's often that arson investigators take soil
7 samples to determine where oil has dripped on the soil, and
8 gasoline and things of this nature, is that correct?

9 A. Sometimes, yes.

10 Q. You did not do that on this occasion?

11 A. No, sir, I did not.

12 Q. And did you -- you looked, and you never found any
13 gasoline cans or oil cans?

14 A. No, sir, I did not.

15 Q. Did not find any caps to any gasoline cans or oil
16 cans?

17 A. No, sir, I did not.

18 Q. Did not find any bottles such as like what we call
19 a motiltot cocktail or something like that -- you didn't find
20 any bottle, did you?

21 A. No, sir.

22 Q. And...

23 A. Not with accelerants. We found some bottles, but
24 not anything that contained an accelerant.

25 Q. And they were off to the side of the car, is that

1 correct?

2 A. Yes, in the general area.

3 Q. Do you know that finger prints were made of those
4 cans and bottles and things that were found there?

5 A. Yes.

6 Q. Okay. And you -- did you find the keys to the car?

7 A. We found a key ring with three metal keys, and it
8 was surrounded by some type of cloth.

9 Q. Okay. So then you began to look at the car in
10 order to attempt to come to a conclusion as to where the origin
11 of the fire was, is that correct, sir?

12 A. Yes.

13 Q. And you'll agree with me that a car that is
14 completely consumed such as this car was, was not extinguished,
15 that that car will burn as completely if it's set accidentally
16 as it will if it's intentionally set. You'll agree with that,
17 won't you, sir?

18 A. If there's no extinguishment and it's allowed to
19 burn out, yes, there will be extreme damage to it.

20 Q. And are you familiar with Mr. Lee Cole, who has
21 written a book on investigation of motor vehicle fires? Are you
22 familiar with him?

23 A. No, sir, I'm not.

24 Q. You've never read that book?

25 A. No, sir, I have not.

1 Q. Ever been to any places where he's lectured or
2 given lectures on this?

3 A. Not to my knowledge, no, sir.

4 Q. Then you will also agree with the statement that
5 all of the volumes that you read on arsons and car fires, so to
6 speak, it says, "It's difficult to detect, and even harder to
7 prove," is that correct? Do you agree with that statement?

8 A. Not entirely, no, sir. Some are extremely
9 difficult to detect, and some are not.

10 Q. Now you stated, as I understand it, that your
11 determination was that the fire started in the passenger side
12 of the vehicle, is that correct? Strike that, I'm sorry, Mr.
13 Clabo. In the driver's side of the vehicle?

14 A. The origin was in the front seat area of the
15 vehicle, according to my report.

16 Q. And it was n the front seat at the -- where the
17 driver and the steering wheel is, in that area -- that portion
18 of the front seat?

19 A. Well, that would be part of the front seat, yes.

20 Q. And that was where you determined the origin to be?

21 A. In the front seat area, yes, sir.

22 Q. And in the front seat -- that portion of the front
23 seat which would be near -- at the driver's side, isn't that
24 correct?

25 A. Well, my report says in the front seat area of the

1 vehicle was where the point of origin was.

2 Q. Well, did you determine that it was the entire
3 front seat, or did you determine it was started at one
4 particular place?

5 A. I did not find one particular spot out of the whole
6 front seat. It was just in the general area.

7 Q. General area. So you can't tell us with any
8 certainty, then, whether it was on the far passenger side or on
9 the left side where the driver would be sitting, is that
10 correct?

11 A. Based on the burn patterns in the vehicle, no, sir.

12 Q. Okay. Now you stated that in your investigation -
13 - you stated that you felt it started there in the front seat
14 by either a liquid or a solid accelerant, isn't that true?

15 A. Yes.

16 Q. And so you were not -- and when you did this report
17 this was some weeks later after you had done your investigation,
18 isn't that correct, sir?

19 A. I made this report on the 3rd.

20 Q. On the 3rd...

21 A. Of March.

22 Q. And you did your investigation on the 28th?

23 A. Yes, sir.

24 Q. And what we mean, so we'll understand, by liquid
25 accelerants, that would be like oil, gas, or something that's

1 liquid, of course?

2 A. Yes.

3 Q. And by solid, that would mean paper, correct?

4 A. Paper, cloth.

5 Q. Cloth?

6 A. Padding -- several different items. Plastic.

7 Q. Plastic? All cars have plastic in them?

8 A. To some degree, yes, sir.

9 Q. And you can't say, and you can't given an opinion
10 here that this was -- whether it was a liquid or a solid
11 accelerant, you say, that started this fire?

12 A. Yes, I think it was a liquid accelerant based on
13 the burn patterns that I found in the floor board.

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

16 THE COURT: Yes.

17 BY MR. DANIEL:

18 Q. Mr. Clabo, I'll show you, referring to Number 40
19 on your report. Could you read that section to the jury what
20 your probable initial material ignited was?

21 A. Probable initial material ignited possibly liquid
22 or solid accelerants.

23 Q. So you stated it was possible it was liquid, is
24 that correct?

25 A. I believe it's liquid. It's possible there could

1 be solids there also. That's what I meant by that.

2 Q. Okay. But you stated it was possible liquid or
3 solid accelerant?

4 A. Yes, that's what I stated on the report.

5 Q. And you will agree with me that if someone drops
6 a cigarette, and that cigarette gets into some paper that it -
7 - or something that could ignite it, you can get a fire with a
8 cigarette, can't you, sir?

9 A. Yes, you can.

10 Q. It happens all the time with people dropping them
11 in bed, and they burn up, or the house catches on fire, isn't
12 that correct?

13 A. Yes, sir, it is.

14 Q. And you found -- and when you went through your
15 samples, and I'll refer you to Number 30, you found that there
16 was paper that had been in that car, isn't that correct?

17 A. Number 38?

18 Q. "Fire cause, evidence removed. Four samples: 1.
19 Cloth; 2. Paper."

20 A. Yes.

21 Q. So you will agree with me that you found evidence
22 that there was paper in the car?

23 A. Yes, according to what I found there was.

24 Q. And you will also agree with me that cloth is what
25 we call a solid accelerant?

1 A. Yes, it is.

2 Q. And cloth will burn with a cigarette, is that
3 correct?

4 A. Yes.

5 Q. And do you know what she was wearing at the time
6 when this incident occurred?

7 A. I found cloth in the front seat area.

8 Q. But I asked you, do you know what she was wearing,
9 supposedly, from your investigation, what kind of clothing she
10 had on?

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

12 Q. You know it was February?

13 A. Yes, I do.

14 Q. You know it was cold?

15 A. Yes.

16 Q. And did you find buttons and things like this which
17 would indicate -- or zippers that would indicate what type of
18 clothing it was?

19 A. Yes, we did.

20 Q. All right. And how many buttons did you find?

21 A. We found bobby pins and safety pins. My report
22 doesn't reflect where we found buttons, per say.

23 Q. Well, did you find buttons?

24 A. The best that I can recall, I did.

25 Q. But you don't know how many there were or, of

1 course, naturally, you wouldn't know what they went to, is that
2 correct?

3 A. That's correct.

4 Q. Did you also determine that when her autopsy was
5 performed that there was dioxin, which is a drug, found in her
6 body?

7 A. No, sir, I'm not aware of that.

8 Q. You didn't know that?

9 A. No, sir.

10 Q. You didn't know that when you prepared this report,
11 did you?

12 A. No, sir, I did not.

13 Q. Did you know that she smoked? Did you determine
14 whether or not she was a smoker?

15 A. I found a zippo type metal cigarette lighter in the
16 passenger side front seat area, but as to whether she smoked or
17 not, I could not answer that, I don't know.

18 Q. And I believe you then took all of this area that
19 you felt where the fire started from, and got that evidence, and
20 sent it to Nashville to the laboratory, is that correct?

21 A. Yes, I did.

22 Q. And you know that the laboratory in Nashville
23 determined that there was no evidence of any liquid accelerants,
24 isn't that correct?

25 A. Yes, that's what the lab report shows.

- 1 Q. Now all cars have accelerants in them?
- 2 A. Vehicles?
- 3 Q. Vehicles.
- 4 A. Yes, sir, they do.
- 5 Q. Gasoline is an accelerant, and unless it's out of
- 6 gas, it's got gasoline, is that correct?
- 7 A. Yes, sir.
- 8 Q. Power steering fluid is an accelerant?
- 9 A. It will burn.
- 10 Q. And brake fluid?
- 11 A. Yes, it is.
- 12 Q. It actually burns -- brake fluid and power steering
- 13 fluid is about the same thing, isn't that correct?
- 14 A. It's close, similar.
- 15 Q. And they'll burn hotter and ignite quicker than,
- 16 say, gasoline, isn't that correct?
- 17 A. No, sir, that's not correct.
- 18 Q. It's not? Gasoline will ignite quicker?
- 19 A. Gasoline will ignite quicker and faster, and burn
- 20 hotter.
- 21 Q. You have also oil, which is an accelerant?
- 22 A. Yes, sir, motor oil.
- 23 Q. Now, you will agree with me also that the
- 24 ventilation in the car has a lot to do with how a fire can get
- 25 started, isn't that correct?

1 A. Yes, sir, it does.

2 Q. This was an older model car?

3 A. Yes, sir, it was.

4 Q. Did you determine if it was a straight shift or an
5 automatic?

6 A. It wasn't a straight shift on the floor. It could
7 have been a straight shift on the column, but I did not find the
8 handle and the steering wheel.

9 Q. You will agree that there is drafts that come from
10 around the area of the gas tank?

11 A. Yes.

12 Q. And you'll agree there's drafts that comes from the
13 area around the brake?

14 A. Yes.

15 Q. And possibly other drafts in older model cars?

16 A. Yes.

17 Q. And that's just like when we start a fire at the
18 house in our fireplace, you can -- once you get those drafts
19 going, things will burn quicker, is that correct?

20 A. Wind will affect the burning of the fire, yes.

21 MR. DANIEL: May I have just a moment, Your Honor,
22 please?

23 THE COURT: Yes.

24 MR. DANIEL: I'd like to pass this exhibit to the
25 jury if I may, Your Honor.

1 THE COURT: Sure.

2 BY MR. DANIEL:

3 Q. Mr. Clabo, you know -- when you came on the scene
4 there, there had already been some people going through the
5 vehicle, is that correct?

6 A. To the best that I can recall, the sheriff's
7 department was at the scene. Now whether anybody reached inside
8 the vehicle and went through it, I don't recall that happening
9 in my presence.

10 Q. What time did you actually arrive on the scene?
11 I believe you said this was the 28th, is that correct, sir?

12 A. February 28th of '92, and I arrived at
13 approximately 11:30 p.m.

14 Q. Do you know whether Dr. Bass or anybody else had
15 been there at that time?

16 A. No, to my knowledge they had not.

17 Q. Of course, you can't tell when a car like this
18 burns by smelling gas because everybody knows a car's got gas
19 in it, isn't that correct? You've always got a smell of gas in
20 the car?

21 A. If there was gas in the gas tank and the gas tank
22 was open there could be the smell of gasoline in and around the
23 car.

24 Q. Okay. Where did you take all of those samples from
25 that you sent to the laboratory to determine whether or not

1 there was any liquid accelerants used?

2 A. Item #1 was a cloth sample taken from the driver's
3 side floor. Item #2 is a paper sample taken from the
4 passenger's front side floor. Item #3 was body tissue taken
5 from the victim in the front seat. And Item #4 was cloth from
6 the transmission hump between the two seats.

7 Q. So you went the paper sample off, and you sent the
8 cloth sample off to determine if any liquid accelerants would
9 be on those, is that correct?

10 A. Yes, I sent those four off.

11 Q. And you found none -- there was none, was there,
12 sir?

13 A. The lab found none.

14 MR. DANIEL: I believe that's all.

15 **

16 **REDIRECT EXAMINATION**

17 **BY GENERAL SCHMUTZER:**

18 Q. You testified, sir, with regard to both of these
19 fires, you -- they had been sitting there for some time -- the
20 scenes had been sitting there for some time before you got an
21 opportunity to investigate them, is that correct?

22 A. That's correct.

23 Q. And also, during that period of time it had been
24 raining for some two or three days?

25 A. Yes, sir, that's correct.

1 Q. What effect would the sitting there a long time and
2 the rain -- how would that affect your investigation?

3 A. The portion of my investigation it would affect the
4 most would be if there was a liquid accelerant, and it was a
5 light range accelerant, it would probably dissipate and
6 disappear due to evaporation -- just being exposed to the open
7 atmosphere for a long period of time, and the rain would
8 probably tend to wash any accelerants away or out of the
9 material.

10 Q. Would that have any effect upon the burn patterns
11 from which you testified here that...

12 A. No...

13 Q. ...that a liquid accelerant was used?

14 A. No, sir. Rain or weather would not affect the burn
15 patterns because they are burned into the item.

16 Q. Now, the fact that you -- I think you said you've
17 investigated a large number of fires. Is it uncommon, sir, to
18 send off items from a fire that was, in fact, incendiary in
19 origin involving accelerants, and the lab not able to come up
20 with anything?

21 MR. DANIEL: Your Honor, I object to that. That
22 would be...

23 THE COURT: Let me think just a minute. Approach
24 just a moment, please.

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

1 THE COURT: That's a tough one. He can testify as
2 -- you know, he can give an opinion as to whether
3 or not he opines as arson, even in those cases
4 where there aren't incendiary findings as far as
5 gasoline or otherwise. Now, what was the exact
6 question that you...

7 GENERAL SCHMUTZER: This is not an opinion, Your
8 Honor. This is just based on his experience, and
9 he found that it's not uncommon to send debris from
10 a fire, a known incendiary origin fire involving
11 accelerants, and it come back negative as far as
12 a finding of accelerants, and I expect to go into
13 that.

14 THE COURT: I'm sorry, the last part?

15 GENERAL SCHMUTZER: It would not be uncommon for
16 it to come back negative.

17 THE COURT: I'll allow that.

18 MR. DANIEL: Your Honor, that would be -- because
19 every case is different...

20 THE COURT: Right, and that's...

21 MR. DANIEL: That's the point, and he -- to let him
22 compare that to another case, I don't think that's
23 the point of our objection.

24 THE COURT: I understand. He -- and you may
25 certainly cross examine him about that point as

1 well. It goes to the weight of it.

2 MR. DANIEL: Okay.

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

5 BY GENERAL SCHMUTZER:

6 Q. As I was asking you, sir, during your years of
7 experience, and the number of fires that you have investigated,
8 is it uncommon in a known fire that's known to be incendiary
9 involving liquid accelerant to collect debris from the fire, and
10 send it to the lab, and there not -- they not find any evidence
11 of accelerant?

12 A. Yes, that's very possible.

13 Q. And does that happen on few or many occasions?

14 MR. DANIEL: Your Honor, I would object to that.

15 MR. WEBB: The question was asked, and it was
16 answered.

17 GENERAL SCHMUTZER: It goes to his experience, Your
18 Honor.

19 THE COURT: Sustained. He's answered. Let's move
20 along.

21 BY GENERAL SCHMUTZER:

22 Q. And what would be the reason for that, that they
23 would not be able to find anything?

24 A. From the fact that the fire consumed whatever was
25 there, or the fact that it evaporated before the sample was

1 taken.

2 Q. Yes, sir. Now, it was asked about fall down. You
3 have, of course -- in investigating fires, you have investigated
4 fires where the roof and things like this would fall down?

5 A. Yes.

6 Q. Did the fall down, sir, create the irregular burn
7 patterns that you found in this trailer, or did it burn in a
8 regular pattern...

9 MR. DANIEL: That's been questioned and answered.
10 He's already testified to this, and the General is
11 going back in the same thing we had earlier.

12 THE COURT: You may go ahead, and I'll let you
13 recross.

14 BY THE WITNESS:

15 A. I'm sorry. What was the question?

16 Q. Fall down such as we had here, you have
17 investigated arson cases that have -- where the roof or other
18 material falls down into the fire?

19 A. Yes.

20 Q. Does that create an irregular or regular burn
21 pattern where it falls?

22 A. Normally it will create a regular burn pattern.
23 It will fall down, and it will be in one area or one long
24 continuous area, and it will make a burn in that area where it
25 falls.

1 Q. Is that distinguishable, sir, from the type of burn
2 pattern that you found in the trailer?

3 A. Yes, it is.

4 Q. In this case?

5 A. Yes, it is.

6 Q. All right. It was asked about talking to Tim
7 Nichols, sir, and I believe you stated that you, in fact, did
8 have a report from the Sevierville Volunteer Fire Department?

9 A. Yes, I do.

10 Q. And I'll show you, sir, Exhibit #16, this first
11 page, and ask you, sir, if that's the same report that you had?

12 A. Yes, sir, I believe it is.

13 Q. All right, sir. And if you would, please, sir, can
14 you put your finger on yours right away, or is it going to take
15 up a lot of time? Is it going to take some time? Is that the
16 same report?

17 A. Yes, it is.

18 Q. And this report having previously testified -- it
19 was put in by Mr. Tim Nichols. Does it indeed show on there the
20 cause of ignition?

21 A. The cause of ignition stated as unknown.
22 Unoccupied at time.

23 Q. Thank you, sir. Now, from your experience, sir,
24 is it uncommon to not be able to smell accelerants during the
25 burning of a fire that is, in fact, caused by accelerant?

1 A. Not always will you smell an accelerant while the
2 fire is present and in open burn stage. Normally you should,
3 but it's not always that you do.

4 Q. Did you later learn that, in fact, someone had gone
5 the next day before any rain had occurred, and did smell some
6 accelerant?

7 MR. DANIEL: Your Honor, I object to that.

8 GENERAL SCHMUTZER: Well, they've gone into that,
9 Your Honor, as to what other witnesses have said.

10 THE COURT: If you'll repeat the question again?

11 GENERAL SCHMUTZER: I asked him if during the
12 course of his investigation did he later learn that
13 someone had gone there the following day and
14 smelled an accelerant before the rain.

15 THE COURT: But that's not anything that was told
16 to him by...

17 GENERAL SCHMUTZER: Something he later learned,
18 Your Honor.

19 THE COURT: Sustained. It's been brought out by
20 other witnesses.

21 BY GENERAL SCHMUTZER:

22 Q. Now, with regard to the car, sir, did you find any
23 -- it was asked about the fact that you could drop a cigarette,
24 and it could fall on a piece of paper or even cloth, and cause
25 a fire, and I believe you stated that's correct?

1 A. Yes, it's possible for a cigarette to be dropped
2 on cloth or paper and cause fire.

3 Q. All right, sir. Specifically, though, with regard
4 to this fire, is there any way that that could have occurred and
5 caused the fire that...

6 MR. DANIEL: Your Honor, I object to that. That's
7 for the jury to determine. He can give his
8 opinion, but...

9 GENERAL SCHMUTZER: I'm asking his opinion.

10 MR. DANIEL: His opinion, but to ask him if there's
11 any way that can happen...

12 GENERAL SCHMUTZER: I'm asking his opinion.

13 MR. DANIEL: That's for the jury's determination.

14 THE COURT: He can give his opinion as to the cause
15 of the fire.

16 BY THE WITNESS:

17 A. In my opinion, this fire was caused by someone
18 setting fire to the vehicle and the mobile home.

19 Q. All right. Why is it, sir, that you would rule out
20 the causation being a cigarette starting -- falling and starting
21 paper or cloth to burn in this particular fire?

22 A. Based on the burn patterns that I found, the fire
23 would have burned to its conclusion, but not as hot, and it
24 would have burned slower than what it did. Also, the glass that
25 was found from the vehicle was clear. If it had come from a

1 smoldering type cigarette, the soot and debris from the burning,
2 the smoke, would have been on the glass and adhered to the
3 glass, and would have been in the form of soot on the glass, and
4 would have turned the glass dark.

5 Q. Well, what about the burning pattern that you found
6 up underneath the seat?

7 A. The burn pattern up underneath the seat would have
8 been a regular burn pattern if it had been from a cigarette,
9 meaning that it would have burned outward evenly from the seat,
10 and not erratically with heavy damage and unburned material next
11 to it.

12 Q. All right, sir. It was asked, of course, about
13 cars having various fluids -- the gas tank. Did you find
14 anything about the gas tank to show that it had ruptured or any
15 gasoline from the gas tank was involved in the fire?

16 A. The gas tank itself was virtually intact except for
17 the area where the gas line went back into the bottom of the
18 tank, and there was an opening there. That could have
19 contributed to the heavy heat in the trunk area and rear area
20 of the vehicle, but not the interior.

21 Q. Not the interior?

22 A. No, sir.

23 Q. Did you find anything at all that indicated that
24 any of the car's fluids would have been in the front seat -- let
25 me ask you this first. Did you also examine the body?

1 A. Yes, sir, I did.

2 Q. Did you see the body that was there?

3 A. Yes, I did.

4 Q. I take it you've seen numerous bodies that have
5 been involved in fires, including car fires?

6 A. Yes, I have.

7 Q. Was there anything to indicate to you, sir, that
8 there was an accelerant used with regard to the body?

9 A. The extreme burn on the body. The body was burned,
10 the torso and chest cavity was burned very deeply. The extreme
11 amount of heat that was placed on that area, the victim was
12 virtually dehydrated by the fire, and heavy damage. The last
13 part of a victim that burns would be the pelvic torso area, and
14 we had heavy damage to that which indicates to me that an
15 accelerant was used there.

16 Q. If a cigarette had fallen and started some clothing
17 on fire, and the clothing had burned up on an individual, would
18 you find this -- and I take it you've investigated those type
19 fires?

20 MR. DANIEL: Your Honor, I object to all these
21 leading and suggestive measures.

22 THE COURT: That's a couple of questions in one.

23 GENERAL SCHMUTZER: I did, Your Honor. I
24 apologize.

25 THE COURT: Rephrase it.

1 BY GENERAL SCHMUTZER:

2 Q. You've investigated -- let me ask them one at a
3 time. You've investigated fires involving cigarettes and cloth
4 or paper burning?

5 A. Yes, I have.

6 Q. And have you investigated that involving bodies,
7 human remains?

8 A. Yes, I have.

9 Q. And do you find, sir, the type of burning that you
10 found with this body in that type of fire?

11 A. No, sir, I don't. It's a slow burning process, and
12 it doesn't do the extreme damage to the victim that we found in
13 this one.

14 GENERAL SCHMUTZER: That's all, Your Honor.

15 THE COURT: Okay.

16 MR. MILLER: No questions, Your Honor.

17 MR. DANIEL: We have a few questions.

18 **

19 RECROSS-EXAMINATION

20 BY MR. DANIEL:

21 Q. Mr. Clabo, as I understand it, we do agree on one
22 thing, and that is when a fire burns completely as this car did,
23 and no one puts the fire out, that from just looking at it, it
24 burns just as completely from accidental means as it does from
25 intentional means, isn't that correct, sir?

1 A. It's possible for the products inside to be
2 consumed totally from an accidental means.

3 Q. And you found that they were consumed?

4 A. Most of them, yes, sir.

5 Q. And the accelerants that we're talking about, you
6 said about the body, well, we all agree that these clothes I've
7 got on are an accelerant, aren't they, sir?

8 A. They're a form of solid accelerant, yes.

9 Q. And this paper or any paper that would be in the
10 floor board of a car or in a person's lap or anywhere would be
11 an accelerant, wouldn't it, sir?

12 A. It would be a solid type, yes.

13 Q. And you stated that there was no smoke. Isn't it
14 correct that this rear glass was smoked?

15 A. There might have been some smoking on it.

16 Q. You saw that, didn't you?

17 A. I saw some, yes, sir.

18 Q. And that wouldn't, of course, come from the fire -
19 - the gas fire because when gas catches on fire it really goes,
20 doesn't it?

21 A. Yes, it will.

22 Q. And that -- so you did find smoking, at least, on
23 one glass, is that correct?

24 A. On some of the glass, yes, but not all over.

25 Q. Okay. Now you'll agree with me that the field of

1 investigation of fires, in particular car fires, is a hard --
2
3 it's hard to determine because of the different accelerants that
4 are in cars, is that correct -- that you don't find in houses,
5 and things of this nature?

6 A. Vehicles do have, naturally, accelerants on board
7 or in the vehicles.

8 Q. They have drafts that you don't usually find in
9 houses, such as the drafts from the gas and brake pedals, and
10 things of this nature, in addition to other drafts that can be
11 in the cars, isn't that correct?

12 A. Vehicles are not air tight.

13 Q. Okay, sir. And you also agree with me that this
14 field is a field of some speculation, isn't it, sir?

15 A. The field of fire investigation is not an exact
16 science.

17 Q. Okay, sir. So that's what you meant, then, when
18 you said on your investigative report as to the origin of the
19 fire, it was possible liquid accelerants, and possible solid
20 accelerants, isn't that correct, sir?

21 A. Item #40, I said, "Possible liquid or solid
22 accelerants" on that particular question.

23 Q. And that's the question as to how -- what ignited
24 the fire, or how it -- the origin of the fire, isn't it?

25 A. The origin of the fire was in the interior in the

1 front seat area.

2 Q. You're correct. I'm sorry with my terminology.
3 But possible initial material ignited -- that's what you look
4 to, and that's what we call an accelerant, isn't it, sir?

5 A. Number 40, possible initial material ignited is
6 possibly liquid or solid accelerant.

7 Q. Just as the General asked you the question about
8 finding out that maybe a car could have -- be an arson, and you
9 not find any accelerant, you could also come to the conclusion
10 that a car was arson, and find out later on that it was not
11 arson, couldn't you, sir?

12 A. If a fire of a car was ruled arson, there was
13 definite grounds for ruling that.

14 Q. Well, I'm asking you in your opinion. We're just
15 talking about your opinion now. When you come to an opinion on
16 something, you know that, and you have seen people give
17 opinions, experts give an opinion on one area like you are
18 giving here, and find out later that their opinion was wrong?

19 A. It's possible.

20 Q. So what we're dealing with is a lot of
21 possibilities, isn't that correct, sir?

22 A. Yes, but it's not reasonable in this case.

23 Q. Well, you will agree that it's possible?

24 A. It's possible, anything's possible.

25 Q. Thank you, sir.

26 **

REDIRECT EXAMINATION

BY GENERAL SCHMUTZER:

Q. Did you find anything here, sir, since this time or at any time that would lead you to believe that your assessment that this was an incendiary origin fire involving a liquid accelerant was wrong...

MR. DANIEL: Your Honor, I object to...

THE COURT: I'll tell you, guys, I think you all have asked him about every possible thing except his social security number. I'm going to let him step down.

GENERAL SCHMUTZER: Your Honor, he brought up a couple of things on the report that I would like to bring out.

THE COURT: Well, I've given you every opportunity on both sides. Now he's -- unless there's some grave overlooked area, he's finished.

GENERAL SCHMUTZER: May I approach the bench, Your Honor?

THE COURT: Yes. This is like we had the other day, gentlemen, and we're not going to start today that way.

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

GENERAL SCHMUTZER: Your Honor, he, on his recross, went into the report, and I only want to point out

1 two areas on his report that -- he said burn
2 patterns indicate use of liquid accelerants...

3 THE COURT: He's already said that.

4 GENERAL SCHMUTZER: No, he didn't testify from his
5 report.

6 THE COURT: Well, but he's testified -- he's...

7 GENERAL SCHMUTZER: Your Honor, I just wanted to
8 show -- he was going through his report as though
9 his report only says "possible use," and of course,
10 this doesn't say that, and I want to show there's
11 more to his report than just that one section, Your
12 Honor. It leaves it unclear.

13 MR. DANIEL: The report is not evidence. He's the
14 one that's testifying.

15 THE COURT: Gentlemen, let's go on. I promise you
16 it's not...

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

19 THE COURT: You may step down, Officer Clabo. The
20 Court is going to take a short recess. Is he
21 excused?

22 MR. DANIEL: Subject to recall. We'll give him
23 plenty of time.

24 THE COURT: You're free to go.

25 THE WITNESS: Thank you, Your Honor.

(COURT STOOD IN RECESS)

THE COURT: Sheriff Ogle, if you'll ask the jury
to step in.

(JURY IN)

THE COURT: Waive the call for the State?

GENERAL SCHMUTZER: Yes, Your Honor.

THE COURT: And the defense?

MR. MILLER: Yes, Your Honor.

MR. DANIEL: Yes, Your Honor.

THE COURT: You may be seated. You may call your
next witness.

GENERAL SCHMUTZER: The State calls Dr. William
Bass.

MR. WEBB: Your Honor, while the General and I are
coming, may the General and I approach the bench?

THE COURT: Sure.

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

MR. WEBB: Just a housekeeping matter, Your Honor.
I wanted to remind Your Honor that we had filed a
motion in limine to preclude Dr. Bass from
testifying with respect to his opinion as to the
cause of the fire. He was a -- he was called to
that scene as a forensic anthropologist to
determine the cause of death of this lady, and he
was not asked to do anything at the scene with

1 DR. WILLIAM BASS was called, and being duly sworn,
2 was examined and testified as follows:

3 DIRECT EXAMINATION

4 BY GENERAL SCHMUTZER:

5 Q. Dr. Bass, if you will, please, just state your full
6 name.

7 A. Dr. William Marvin Bass.

8 Q. And your position, please, sir?

9 A. I'm professor and director of the Forensic
10 Anthropology Center at the University of Tennessee in Knoxville.

11 Q. All right, sir. And I believe you are a forensic
12 anthropologist?

13 A. That's correct.

14 Q. Just explain to the Court and jury what a forensic
15 anthropologist is.

16 A. All right. I'm on the medical examiners staff in
17 Tennessee to identify all skeletal material that comes in
18 through the medical examiner's system. This puts me identifying
19 individuals who've been dead two or three weeks or two or three
20 months or two or three years, or in cases where you have
21 somebody in a fire or somebody who may have been alive tonight,
22 and burned in a state beyond recognition, although I don't think
23 you can do this, but you get somebody who is burned, and
24 somebody could see somebody the next day or however or so forth.

25 Q. All right, sir. Are you limited simply to

1 determining identity, or do you also determine causes...

2 A. No. The -- as a forensic anthropologist, I'm
3 normally called into a case by law enforcement agencies, the
4 district attorney general's people, and the law enforcement
5 area. If you find a skeleton, you ask an anthropologist the age
6 of the individual, the sex, the race, the stature, and can you
7 determine the cause of death. So yes, we are always looking for
8 the cause of death.

9 Q. All right, sir. What is your education background?

10 A. Bachelor's from the University of Virginia, Masters
11 from the University of Kentucky, a doctoral degree from the
12 University of Pennsylvania.

13 Q. All right, sir.

14 A. And I'm a board certified forensic anthropologist.

15 Q. All right. And what does board certified mean, if
16 you will, please, sir?

17 A. Board certification occurs in the medical fields
18 in which you not only receive the highest academic degree, but
19 it states that you have had experience in the area, and are
20 certified so that legally nobody is better trained than you are.

21 Q. Do you have -- is there any type of testing or
22 anything that's done to be board certified?

23 A. Yes, there is. There's a two day test; a day of
24 written exams, and a day of oral exams.

25 Q. Now, the -- what teaching experience -- you say you

1 are the head of the anthropology department?

2 A. Well, I was. After I got my bachelor degree I
3 taught one year at the University of Nebraska, I taught 11 years
4 at the University of Kansas, and I came to Tennessee in June of
5 1971 as head of the anthropology department. I was head of the
6 department for 21 years, and gave up being department head last
7 May.

8 Q. Okay, sir. Thank you. Now, you have, I believe,
9 done a considerable amount of writing, articles, books,
10 papers...?

11 A. Yes, sir.

12 Q. ...pertaining to -- and other types of publications
13 pertaining to forensic anthropology, is that correct?

14 A. That's correct.

15 Q. And would that number over a hundred or so?

16 A. Yes, I think 192 or 193 now.

17 Q. Specifically, sir, have you done any research and
18 prepared any literature and publication with regard to the fire
19 and the effects of fire on a body?

20 A. Yes, sir, I have.

21 Q. And you've done studies in that regard, is that
22 correct?

23 A. Yes, sir.

24 Q. Approximately how many -- have you also done
25 studies and prepared writings with regard to forensic fire

1 scenes?

2 A. Yes, sir, I have.

3 Q. And I believe that is entitled Forensic Fire
4 Scenes?

5 A. Investigation.

6 Q. All right, sir. And you've also prepared
7 specifically for anthropologists The Role of the Forensic
8 Anthropologist in a Fire Scene Investigation.

9 A. That's correct.

10 Q. And have you done -- over these years that you have
11 -- how long have you been, sir, a forensic anthropologist?

12 A. My first case was in 1954, so...

13 Q. Have you had few or many occasions to examine
14 remains involved in fires?

15 A. Many.

16 Q. What are we talking about, hundreds, thousands?

17 A. Hundreds in fires.

18 Q. How about in car fires? Have you also examined
19 bodies that were involved and consumed in car fires?

20 A. 20 to 30 range in car fires.

21 Q. Have you examined bodies that were specifically
22 involved in burns that were caused by an accelerant?

23 A. Yes, sir.

24 Q. Now, I'll ask you sir, if at the request of the
25 Sevier County Sheriff's Department, did you go to the fire scene

1 located on Clear Fork, being a Dodge Dart automobile with the
2 remains inside?

3 A. Yes, sir, we did.

4 Q. And who came with you?

5 A. One of my doctoral students, Murray Marks.

6 Q. First going to identification, would you -- what
7 was the extent of the damage -- fire damage done to this body?

8 A. Extensively burned, parts of it cremated.

9 Q. Were you able to make an identification visually
10 by just looking at the body?

11 A. No.

12 Q. How were you able to identify the body as being
13 that of Connie Branum?

14 A. On the basis of dentition, the teeth.

15 GENERAL SCHMUTZER: Your Honor, I believe that's
16 been stipulated to that that happened, so I'm not
17 going to go into detail about that.

18 BY GENERAL SCHMUTZER:

19 Q. Would you explain, sir, if you could, do you have
20 some photographs that would aid you in telling the Court and
21 jury, and explaining to them about your findings and what they
22 revealed, in your opinion, sir?

23 A. All right, I'd be happy to.

24 Q. Let me show those to you, and ask you if you
25 recognize them.

1 A. Yes, these are three photographs that were taken
2 at the time of the excavation of the automobile and removal of
3 the body.

4 Q. All right, sir.

5 THE COURT: May I see those?

6 GENERAL SCHMUTZER: Yes, Your Honor.

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

8 MR. MILLER: Your Honor, I think we would object
9 to showing these pictures to the jury based on
10 their prejudicial effect.

11 THE COURT: Overruled.

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

14 GENERAL SCHMUTZER: May this be filed, Your Honor?

15 THE COURT: Yes, it may.

16 (EXHIBIT #38 - Three (3) photographs of body in
17 car; marked and filed.)

18 THE COURT: Are you asking him to be qualified as
19 an expert, General Schmutzer?

20 GENERAL SCHMUTZER: No, Your Honor.

21 THE COURT: What?

22 GENERAL SCHMUTZER: Yes, I would ask that he be
23 qualified as an expert.

24 THE COURT: So ordered.

25 GENERAL SCHMUTZER: I would like to offer Dr. Bass,

1 Your Honor, as an expert in the field of forensic
2 anthropology.

3 THE COURT: So ordered.

4 MR. WEBB: No objection, Your Honor.

5 BY GENERAL SCHMUTZER:

6 Q. Dr. Bass, if you will, please, sir, if you could
7 step down, and I'll give you this pointer.

8 THE COURT: Is he going to be down for some time,
9 General Schmutzer?

10 GENERAL SCHMUTZER: Probably for a little while,
11 Your Honor.

12 BY THE WITNESS:

13 A. Do you want me to explain what we have here?

14 Q. Yes, sir, if you will, please, sir.

15 A. All right. These three photos are prints of series
16 of slides that we took of the excavation of the car. Sevier
17 County Sheriff's Office called us, and said they had a body
18 burned in an automobile, and we came over, and essentially what
19 you're doing is applying to a forensic situation archeological
20 techniques that you would learn if you were excavating a site
21 here in Sevierville. There are lots of pre-historic sites in
22 Sevierville, and an archeologist would come out and excavate
23 these things.

24 What we are doing is literally applying these
25 techniques that you would learn in archeology to a modern

1 forensic situation. And so what we start with here is the
2 inside of the car, the body lying on the front seat. This
3 picture is taken through the passenger side window looking
4 across the front seat. The head of the individual is over here
5 against the driver's side door.

6 If you get a little closer and look through here,
7 what I'm going to do now -- this picture is that part of the
8 picture right there showing the head of the individual. Before
9 we get there you can't determine in here the anatomical
10 features, however, what you are looking at are the internal
11 organs of the body.

12 This fire was very hot, and the body was
13 extensively burned, burning off the soft tissue and the muscles
14 over the abdominal region. So what you have here are the
15 internal organs that are exposed.

16 When we got up to the head, the head is up here
17 against the door. This would be the door, and you may be able -
18 - this is the right eye, and that is the left eye, and this is
19 the nose. This is the left arm, the elbow -- this would be the
20 elbow sticking out here. The skull is not complete like you and
21 I would normally see a skull because it has been so hot that the
22 flames and gas is coming up between the door and the seat, and
23 have literally cremated the top of the skull.

24 When you are cremated -- what happens in a fire is
25 that your arms and your legs are surrounded by oxygen, and they

1 will burn off. As you continue to burn, the fluids on the
2 inside of your skull will expand, and your skull will blow up,
3 and there are little pieces on the floor. When you continue to
4 burn, you have a torso that burns, and that is the last part of
5 the body to go in that case.

6 What you have here, the arms and legs were burned
7 off. The radius and the ulna -- anything below the elbow is
8 gone here, and you have the humerus here, and the skull is
9 between the door -- the driver's side door and the seat with a
10 inch or so -- a couple of inches of space there. The flames and
11 stuff coming up have literally cremated the top of the skull so
12 you don't see that. That is now burned and exploded, and fallen
13 into the floor of the car.

14 We then removed the body, excavated this entire
15 area, and this is a view of what you have left there, which is
16 nothing but the springs in the front seat. All of the covering
17 of the seat has been burned off there.

18 Q. Do you, sir -- based upon your examination of this
19 body, sir, do you have an opinion as to whether or not a liquid
20 accelerant was placed on this body?

21 MR. MILLER: Your Honor, we would renew our
22 objection.

23 THE COURT: Overruled.

24 BY THE WITNESS:

25 A. Yes, I feel certain that there was. There is more

1 burning in this situation than you get from what's in a car.

2 Q. All right, sir. And how is that? Could you
3 explain that, please, to the Court and jury?

4 A. Well, in all honesty, in a car, if you set this on
5 fire and you sit in there, you will die from the fumes and the
6 smoke and so forth, and it's possible that you could burn the
7 arms and legs, although, I've seen cases in which this doesn't
8 happen, but you do not get -- unless you've got something added
9 there there's not enough material in this car -- there's not
10 enough material to get the burning that you have of this body
11 without there being something added to it.

12 Q. Did you try to extract any type of liquid from the
13 body?

14 A. Yes. One of the things that you try to do -- when
15 you try to find out an individual's cause of death, one of the
16 first questions you want to answer -- if you were alive, you
17 were breathing in the gases which contain carbon monoxide.
18 Carbon monoxide is in the blood. We tried to get blood out of
19 this body, but there wasn't anything there we could get blood
20 from. In other words, all of these organs had been cooked, so
21 there was no blood. So what we did was to take a sample of the
22 liver, send it over to the crime lab, and ask them to do a
23 toxicology test for us, and it came back saying they couldn't
24 do it because the tissue was cooked too much. We tried, but
25 that evidence was destroyed before we got it.

1 Q. What is the significance of the fact that the
2 internal organs were cooked this extensively?

3 A. A hot, hot fire -- a very hot fire.

4 Q. All right, sir. I believe the most they came up
5 with was out of the mouth -- some dioxipan. Do you remember
6 that?

7 A. Yes. In the report, we not only asked for carbon
8 monoxide, but we asked if there was any drugs in the body.

9 Q. But that was the only thing that came back in that
10 report?

11 A. That's right.

12 Q. But you were not able to find any liquid in this
13 torso of this body?

14 A. That's correct, we were not. To show you how hot
15 this was, the skull exploded and fell down in the floor of the
16 car. When bone burns, in the first stage of burning the bone
17 is black, and as it continues to burn and gets hotter and
18 hotter, the bone that is black turns to gray, and it continues
19 to burn, and goes to a white. We have in the floor of the car
20 roughly the top three inches of the skull, and these bones are
21 burned to the stage where they're white, and if you drop them
22 on a table, they sound like good china. You know, if you drop
23 fine china, the ring, and this is what you get from burns of all
24 the organic materials to burn out the bone. What we had was a
25 very hot fire.

1 Q. Indicative of a liquid accelerant?

2 A. Had to be something.

3 MR. DANIEL: Object to leading -- suggestive
4 nature.

5 THE COURT: Sustained.

6 GENERAL SCHMUTZER: You may cross examine. Your
7 Honor, I'd like for that to be passed to the jury.

8 **

9 CROSS-EXAMINATION

10 BY MR. MILLER:

11 Q. Dr. Bass, somewhere in your report you -- I believe
12 you all found some rings and a key, and some other objects
13 underneath the passenger's seat. Do you recall that?

14 A. That's correct.

15 Q. I think in your report you indicated those as being
16 contents of a ladies purse?

17 A. Purse.

18 Q. Is that just some conclusion you're reaching based
19 on what these items are, or did you actually find a purse there?

20 A. No, we did not find a purse.

21 Q. That was the same places where the rifle shell was
22 found, is that correct?

23 A. Not in exactly the same place. I mean, the rifle
24 shell was found either underneath or just in front of the
25 passenger side in the front seat.

1 Q. It was Mr. Marks that actually found the shell,
2 wasn't it?

3 A. That's right. I was excavating on the driver's
4 side, and he was excavating on the passenger side. He's the one
5 that found the shell.

6 Q. In regards to this fire, Dr. Bass, it says,
7 "indicative of a very hot fire." Are you aware that an
8 accidental car fire can burn just as hot as an intentionally set
9 car fire?

10 A. I think you still have to have some accelerant,
11 maybe gasoline involved, or something like that.

12 Q. My question was, are you aware that an accidental
13 car fire can burn just as hot as an intentionally set fire?

14 A. I'm aware of that, but there has to be other
15 extenuating circumstances for that.

16 Q. So an accidental fire can -- strike that, Your
17 Honor. And you were called upon not only to identify the body
18 in this case, but to make a determination of cause of death, is
19 that correct?

20 A. That's correct.

21 Q. And you were unable to make that determination, is
22 that also correct?

23 A. That's correct. For something -- to be able to
24 determine a cause of death you had to have something on the
25 skeletal remains that would indicate what that force was, and

1 this body is so badly burned that does not exist any longer.

2 Q. You can't say how she died?

3 A. No, sir, I can't.

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

5 THE COURT: Mr. Webb, Mr. Daniel?

6 **

7 CROSS-EXAMINATION

8 BY MR. WEBB:

9 Q. Hello, Dr. Bass.

10 A. How are you, sir?

11 Q. Fine. Dr. Bass, I have had the opportunity to
12 review your reports, and on March the 11th, I think you dated
13 a report that went into some detail...

14 GENERAL SCHMUTZER: May we approach the bench, Your
15 Honor? Something came to mind.

16 THE COURT: Yes.

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

18 GENERAL SCHMUTZER: We had a motion in limine --
19 he made a motion in limine on his prior finding of
20 zinc, and the Court agreed -- upheld that. I take
21 it you're not going into the finding of zinc?

22 MR. WEBB: No. I am going to go into the finding
23 that he made that it was a gun shot.

24 GENERAL SCHMUTZER: Well, now, if they do that --
25 Your Honor, he can't...

1 THE COURT: He can ask him...

2 GENERAL SCHMUTZER: Your Honor, the thing -- he
3 found what he thought was lead. He said on the
4 basis of that and the shell, that he felt there was
5 gun shot wound. It was later sent to the lab, and
6 found to be zinc. They came to the Court and asked
7 that we not be able to show that this was zinc, but
8 the they want to come back and...

9 MR. WEBB: Well, zinc had nothing to do with
10 anything, but...

11 GENERAL SCHMUTZER: Well, it does. It has to do
12 with an explanation, Your Honor, as to why he has
13 changed his opinion, and they have gotten...

14 THE COURT: If you open the door by asking him if
15 he once determined it was a gun shot wound, and
16 then later determined it wasn't, and ask him his
17 reasons, then that -- that opens the door up.

18 MR. WEBB: All right. I'm glad the General
19 interrupted me. I'd like -- I don't have but two
20 or three questions of Dr. Bass, but I'd like to
21 wait until the jury gets through looking at those
22 exhibits. I mean, I don't want to interrupt them
23 from looking at them.

24 THE COURT: Sure. That will be fine.

25 (Said bench conference being completed, the

1 following proceedings are had in open court.)

2 THE COURT: I believe counsel is going to wait
3 until the jury has seen the exhibit before he
4 starts asking you a few questions.

5 THE WITNESS: Okay.

6 THE COURT: How long have you taught at the
7 University of Tennessee, Dr. Bass?

8 THE WITNESS: 21 and a half years.

9 THE COURT: I was in one of your classes, but I
10 won't tell you what I made.

11 THE WITNESS: I hope it was good.

12 THE COURT: Well, I got out of school, let's leave
13 it at that.

14 THE WITNESS: This is a nice courtroom. Normally,
15 you don't have the jury sitting where you can talk
16 to the jury. I'm going to teach one more year, and
17 call it quits after next year, I think.

18 BY MR. WEBB:

19 Q. Dr. Bass, when you initially arrived at the crime
20 scene...

21 A. The scene of the fire.

22 Q. ...the scene of the fire, some of the officers --
23 one or more of those officers told you that Ms. Branum had been
24 shot?

25 A. I'm not sure I recall that, but...

1 Q. What I'm asking is it could have happened, or it
2 may not have happened?

3 A. That's true. I don't -- you know.

4 Q. I notice that in your report that you stated that
5 she was possibly shot prior to burning?

6 A. Okay.

7 Q. That was in your first report?

8 A. That's right. The report -- when you write a
9 report -- when you do an investigation, you take the body back,
10 and the first thing you always want to do in either a fire
11 victim or a body that's badly decayed is you want to take x-rays
12 of it.

13 What we did was x-ray that body through the body
14 bag. In the left shoulder of this individual there was opaque
15 material. That means that when the x-ray -- when you take the
16 x-ray it shows up as light objects, something that is dense in
17 the shoulder. We dissected that material out. The tissue in
18 the shoulder area was dry and defecated, and what we did was
19 dissect this out, and found down in that tissue these opaque
20 objects which we sent to the crime lab.

21 It takes a while for the crime lab to respond. We
22 write the report, send it as quickly as possible for the
23 sheriff, the district attorney, and the law enforcement agents
24 involved, and the evidence that it looked like that we had was
25 that this individual had been shot in the left shoulder, that

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Fourth Judicial District, State of Tennessee

Testimony of: Bass
Cross Examination by: Webb

1 there was fragments of something there.

2 The crime lab does its analysis, and comes back as
3 zinc, and we don't know of any ammunition that's zinc. We
4 really don't know where this zinc came from, possibly a battery
5 that explodes or something like that, and these pieces of zinc
6 are impelled into the shoulder region. It doesn't drip off a
7 car or fall off the car, it's inside of the tissue, and we don't
8 know where that comes from.

9 So in the initial report where we say that she was
10 shot in the shoulder, this did not hold up under further
11 examination.

12 Q. Dr. Bass, you would agree with me that if someone
13 went to that scene and had information that this lady was shot,
14 and armed with that information, wouldn't you agree that that
15 would make them more prone to believe that the origin of the car
16 fire was arson?

17 GENERAL SCHMUTZER: Your Honor, that calls for pure
18 speculation.

19 THE COURT: That would be a conclusion, and Dr.
20 Bass would not be qualified, at least at this
21 juncture, to testify to.

22 MR. WEBB: Okay.

23 BY MR. WEBB:

24 Q. Dr. Bass, since the date of your original report
25 you, and at least four of your recent graduate students in

1 forensic anthropology, carefully looked at the remains, and in
2 your opinion as an expert, you cannot tell the cause of death?

3 A. We cannot.

4 Q. And in your expert opinion you cannot tell or say
5 the time of date of death, can you, Doctor?

6 A. No, sir.

7 Q. Dr. Bass, based solely on your examination of her
8 remains, the possibility of accidental death cannot be ruled
9 out, can it, sir?

10 A. I don't know. I have a hard -- I've dealt with
11 enough car fires, and looked at enough...

12 MR. WEBB: Your Honor, I would ask him just to
13 answer my question.

14 GENERAL SCHMUTZER: He's got an opportunity to...

15 MR. WEBB: He can explain or whatever, but I'd like
16 a yes or no answer.

17 THE COURT: If he can give a yes or no answer. He
18 may answer it and explain as he deems proper.

19 MR. WEBB: And there's no criticism there.

20 THE COURT: Right.

21 BY THE WITNESS:

22 A. That's a hard question to give a yes or no answer
23 to. It is possible, but kind of inconceivable. I would say
24 there has to be something added to that car to get that much
25 burn.

1 Q. Well, Dr. Bass, you will agree with me that your
2 field, like any other expert -- field of expertise, is not
3 certain?

4 A. If you want to make that statement, I'll agree with
5 it, yeah.

6 Q. Well, if it's true.

7 A. Yes.

8 Q. And there's area for error, if you please?

9 A. That's correct.

10 Q. But some of the things that you do now know is that
11 you cannot opinion that her cause of death was caused by a
12 criminal instrumentality, isn't that true, sir?

13 A. I don't know how death was caused. That evidence
14 was gone before we got there.

15 Q. Okay. You mentioned that you took a liver sample,
16 and that that was analyzed by a laboratory?

17 A. The F.B.I. -- T.B.I. Crime Lab over in Donelson.

18 Q. Okay. And you said that the liver was so damaged
19 that those people could not tell whether or not carbon monoxide
20 was in the body?

21 A. That's correct. It was too cooked.

22 Q. However, they could tell -- it was not cooked
23 enough where they could not tell whether or not Connie Branum
24 had ingested drugs, is that correct?

25 A. They came back with a drug in -- they said they

1 were able to isolate it from the sample.

2 Q. Okay. Dr. Bass, thank you so much.

3 A. Okay. Thank you, sir.

4 THE COURT: Any further questions, General
5 Schmutzer?

6 GENERAL SCHMUTZER: No questions, Your Honor.

7 THE COURT: Is Dr. Bass -- I'm sorry, Mr. Miller.

8 MR. MILLER: Just a couple of questions, Your
9 Honor.

10 THE COURT: Yes.

11 **

12 CROSS-EXAMINATION

13 BY MR. MILLER:

14 Q. Dr. Bass, you thoroughly examined this vehicle
15 interior, is that correct?

16 A. When you say thoroughly examined, we excavated the
17 front part, the passenger part -- we excavated the front seat
18 of the car where the body was.

19 Q. You thoroughly investigated and looked at these
20 body parts in your laboratory, is that correct?

21 A. Yes.

22 Q. And nowhere, either in the car or in the body, did
23 you find a bullet of any kind?

24 A. Not a bullet, no, a shell -- shell casing, but not
25 a bullet.

1 Q. That's all I have, Your Honor.

2 THE COURT: Anything further of Dr. Bass? Dr.

3 Bass, you are free to go...

4 MR. DANIEL: He may be excused, Your Honor.

5 THE COURT: And you're excused. The Court is going

6 to adjourn for lunch. We'll be back at

7 approximately 1:00 p.m. Do not discuss the case

8 or allow anyone to talk to you about the case,

9 ladies and gentlemen of the jury. Court stands in

10 adjournment.

11 GENERAL SCHMUTZER: I have one witness, Your Honor,

12 that I think would be very short, that found this

13 shell that Dr...

14 THE COURT: I'm sorry?

15 GENERAL SCHMUTZER: If I could put him on I could

16 let them both go. Otherwise, he'll have to stay

17 here through lunch. Does the Court have any

18 objection to that?

19 MR. WEBB: Mr. Marks?

20 GENERAL SCHMUTZER: We could put him on quickly,

21 and I could let them go, Your Honor.

22 MR. WEBB: In other words, Dr. Bass and Mr. Marks

23 are riding together.

24 THE COURT: Okay. I will allow that. Ladies and

25 gentlemen, apparently we have one other short

witness.

GENERAL SCHMUTZER: I apologize to the Court and the jury, but it will be short. Call Murray Marks.

**

MURRAY MARKS was called, and being duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY GENERAL SCHMUTZER:

Q. Mr. Marks, if you will, please, just state your full name.

A. Murray Kevin Marks.

Q. And you are a student at the University of Tennessee?

A. Correct, I'm a doctoral student.

Q. I think you're about to get your doctoral?

A. Real close, about a month away.

Q. In anthropology?

A. Yes.

Q. Did you come up with Dr. Bass to assist him in his investigation of the crime scene up on Clear Fork involving a car and Connie Branum, the remains of what turned out to be Connie Branum?

A. Yes, sir.

Q. Specifically, sir, did you sift through the area of the floor board of that car looking for any type -- anything