

X-1-X No. 9D

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 17 of 22 Volumes

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

APPEARANCES:

FOR THE STATE

GEN. ALFRED C. SCHMUTZER, JR.,
GEN. G. SCOTT GREEN, A.D.A.
Fourth Judicial District
Sevier County Courthouse
Sevierville, Tennessee

FOR THE DEFENDANT SUTTON

MR. DAVID W. WEBB
Attorney at Law
140-A Court Avenue
Sevierville, Tennessee

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

MR. JEFFREY ZANE DANIEL
Attorney at Law
550 Main Avenue
Knoxville, Tennessee

FOR THE DEFENDANT DELLINGER

MR. EDWARD C. MILLER, P.D.
MRS. SUSANNA LAWS THOMAS, A.P.D.
P. O. Box 416
Dandridge, Tennessee

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

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1 A. Yes, sir.

2 Q. And there's no way of telling how many thousands
3 of shot guns there are in the United States -- .12 gauge shot
4 guns, are they, that's in people's homes, in use, or wherever
5 they may be?

6 A. I would seriously doubt that you could.

7 Q. It would be in the thousands, and maybe millions,
8 isn't that correct?

9 A. Yes.

10 Q. Now, in addition to the breach face marks we've
11 talked about there's also what we call extractor marks, isn't
12 that correct?

13 A. That's correct. However, extractor and ejector
14 marks do not tell you that it was fired in the particular
15 weapon. They only tell you that it had been chambered.

16 Q. Okay. Would extractor and ejector marks show up
17 on a shell after you extract the shell from the gun? They will,
18 won't they?

19 A. Yes, sir.

20 Q. You found no extractor and no ejector markings on
21 these that you could identify, did you, sir?

22 A. On these particular two shot shells here there were
23 some extractor marks on it. However, all the other shot shells,
24 the rims are rusted, and I could not see any on there. So, in
25 essence, they were not identifying characteristics of any

1 extractor or ejector marks that I could match them all together.

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

3 THE COURT: Yes, sir.

4 BY MR. DANIEL:

5 Q. So what you're saying is the two that you found
6 there at the scene of where they said this deceased, Tommy
7 Griffin, was found, you can match those through extractor
8 markings, is that correct?

9 A. Similar extractor markings, yes, sir.

10 Q. And you could not find any similar extractor
11 markings on the other shells that you're referring to, could
12 you, sir -- that you used for comparison to those two?

13 A. That's correct, and like I said, the main reason
14 is because the rims are rusted.

15 Q. Well, you have tests that you can run -- scientific
16 tests that you can tell even with rust on those, can't you, Mr.
17 Carmen?

18 A. I'm not aware of any.

19 Q. Does the F.B.I. have tests you can run in addition
20 to those tests that you performed on these shells?

21 A. The F.B.I.?

22 Q. Yeah, the F.B.I. lab in Washington.

23 A. I'm not aware of it, no, sir.

24 Q. You're not aware of any type of scientific test
25 that can be performed other than the looking for breach face,

1 looking for extractor, looking for ejector, and looking for
2 primer marks, is that what you're telling this Court and jury?

3 A. If I understand your question, no, sir, I don't
4 know of any other.

5 Q. So what you're telling us then, you used a
6 microscope to look at these things, is that correct?

7 A. Yes, sir.

8 Q. Now, when you use a microscope, that microscope is
9 hooked up with a video camera, isn't it? You can hook a video
10 camera to it?

11 A. No, sir, not ours.

12 Q. You can't hook a video camera up to it?

13 A. We do not have that capability.

14 Q. There are some that have those capabilities?

15 A. Yes, sir.

16 Q. And you can also hook a camera up to it so you can
17 photograph what you're seeing, can't you?

18 A. Yes, sir.

19 Q. And you did not hook the camera and use the
20 photographs, did you?

21 A. No, sir, I did not.

22 Q. And you say the camera shows in two dimensional,
23 but you were looking in at three dimensional?

24 A. That's correct.

25 Q. So you found -- the way you're making your

1 comparison is based solely on the primer marks that was on the
2 shells, is that correct?

3 A. My identification was based on the firing pin
4 impression within the primer mark.

5 Q. The indentation that went in where the hammer hits,
6 to get it in lay language -- where the hammer hits the shell,
7 and it has to be very minute, is that correct, because it has
8 to hit that little ball there that sets the shell off, is that
9 correct?

10 A. Well, I wouldn't say exactly minute. That's
11 relative. To me, it's a fairly good impression within the
12 primer itself, and those individual markings on the firing pin
13 itself are transferred over into the primer indentation -- the
14 firing pin impression, and I saw very sufficient, very rich
15 individual characteristics within that firing pin.

16 Q. You made no photographs of those?

17 A. No, sir, I did not.

18 Q. Now, you will agree with me that those firing pin
19 impressions are made by what we would call a hammer hitting
20 that, is that correct -- the firing hammer or whatever you want
21 to call it?

22 A. Firing pin.

23 Q. Firing pin, is that correct? That's what causes
24 the impressions, is that correct?

25 A. Yes, sir.

1 Q. And you'll agree with me that those firing pins are
2 not made on an individual basis, are they, sir? They are made
3 through die cast models, and every model has -- uses the same
4 firing pin -- it's casted in the same mold, isn't it, sir?

5 A. No, sir. These firing pins at the factory are made
6 through a variety of tooling processes such as cutting,
7 scraping, sanding, filing, and broaching on these firing pins.
8 And what you get is the individual markings. The reason why you
9 don't get the same markings from one firing pin consecutively
10 made to the other is because the surface of these tooling
11 surfaces that's doing all these processes on this firing pin is
12 constantly changing all the time. So you'll never have the same
13 markings from one firing pin to another. The same thing applies
14 with breach face, the same thing applies with extractor and
15 ejector, chamber, and rifling within a barrel. That's the whole
16 basis -- principal for firearms identification.

17 Q. The point is, each one of them are sanded or
18 blasted or however they -- in the same manner, aren't they, sir?

19 A. Yes, but as I said, you will not have a constant
20 surface to deal with. The surface of the tool is constantly
21 changing so therefore, you will have different marks.

22 Q. And you say you have the same thing with breach
23 face marks?

24 A. That's correct.

25 Q. You'd have the same thing with extractor marks?

1 A. Yes.

2 Q. And you'd have the same thing with ejector marks?

3 A. Yes.

4 Q. Tell the Court and jury where the extractor and
5 ejector marks are on -- should be on the shell as it kicks them
6 out.

7 A. They would be -- the pinning on what type of
8 ejector you have, they would be on the rim. An extractor mark
9 would also be on the rim. Sometimes ejectors have the firing
10 pin themselves as ejector, but not in this particular case.

11 THE COURT: Say that again. I'm sorry.

12 THE WITNESS: Sometimes the firing pin itself would
13 be the ejector, but not in this particular case
14 here. Ejectors usually hit on the side of the rim,
15 knocking the shot shell out of the shot gun, or
16 they are hit right on the edge of the shot shell
17 knocking it out. So they would be on the rim.

18 THE COURT: Okay.

19 BY MR. DANIEL:

20 Q. Now, you made a statement under your earlier
21 testimony that they leave finger prints, and I think what you
22 mean by that, they leave individual markings, isn't that
23 correct?

24 A. That's correct.

25 Q. And in finger prints, you know in order to get a

1 positive identification there has to be a certain number of
2 points, such as 10 to 12 points, before you can get a positive
3 identification, isn't that correct, sir?

4 A. Well, sir, I'm not an expert in latent prints. I
5 don't really know. I can tell you, however, that finger print -
6 - forensic finger print identification and forensic firearms
7 identification are two totally different areas, and we do not
8 use points for identification.

9 Q. You don't use any points in yours? You just look
10 at it through a microscope, and you make a determination based
11 on what you see, is that correct?

12 A. That's correct.

13 Q. And, of course, if you are seeing unusually good
14 that day it may be better than it would be, say, if you had a
15 cold or something in your eyes, because that's all -- you're
16 doing it strictly by what we say, looking through a microscope
17 and seeing what you see in there, is that what you're telling
18 us?

19 A. We're looking through a microscope, and looking at
20 the individual characteristics, and if we're satisfied that we
21 see the consistency, the quality, and the reproducibility of
22 those individual markings, and we're 100% sure -- not 99% sure,
23 but 100% sure, we will make an identification call on that
24 particular ammunition component.

25 Q. You realize that the -- also, the decision and

1 opinion you're making, of course, is an opinion based on your
2 training and your eyesight, and what you see, is that correct?

3 A. I do, sir.

4 Q. You also realize that on other markings on there -
5 - if there were markings on some of those other shells -- but
6 you did not see any extractor markings or breach markings at all
7 on any of them, did you?

8 A. I did not see any breach face markings on any of
9 them, so in that respect they are consistent. The extractor
10 markings that I found on the two shot shells at the crime scene,
11 when comparing them to the other shot shells, there was no
12 extractor markings on them because of the rusted edges. And as
13 I said before, extractor markings and ejector markings do not
14 tell you that it had been fired in that shot gun. It only tells
15 you that it had been chambered in there.

16 Q. All right. What do you mean by chambered? Would
17 they have been in that same shot gun, but not fired? Is that
18 what you're stating?

19 A. Yes, that's correct. The -- only the firing pin
20 impression and breach face marks can really tell you that that
21 particular shot shell had been fired in that shot gun.

22 Q. So you're saying extractor markings and ejector
23 markings are of no consequence?

24 A. I wouldn't say they're of no consequence. They
25 certainly could be used as a very important investigative tool.

1 Q. Now, in this case -- in addition to this, you say
2 you looked at the .00 buck, or whatever bullets that you found -
3 - that were testified here to. Are those -- can you tell us
4 from looking at those whether those -- what kind of shell those
5 were fired from?

6 A. No, sir, I can't tell you scientifically that they
7 were fired from a specific manufactured shot shell. I can't
8 tell you for absolute scientific certainty that they were fired
9 from the crime scene shells. I can only tell you that they are
10 consistent in that regard.

11 Q. You can't say with any scientific certainty or any
12 kind of certainty that these two shells actually are the shells
13 that fired those bullets, or whatever you want to call them,
14 that were found that you examined, can you, sir?

15 A. I cannot.

16 Q. You can't tell from what type of shell that was
17 fired, can you, or whether or not it would have been a Remington
18 or a Federal or any other type shell, can you?

19 A. I can only tell you it's consistent with Remington.

20 Q. With Remington. What other shells are there that
21 make .00 buck, the same type shells?

22 A. There's numerous others.

23 Q. Federal?

24 A. Federal, Winchester, Biochi -- I'm sure there's
25 others.

1 Q. Is that all?

2 A. I'm sure there's more, but I can't think of them
3 now.

4 Q. As a matter of fact, there's several, aren't there?

5 A. Yes, sir, there are.

6 Q. And you also did -- as a part of your laboratory
7 work you looked to see if you could find accelerants in some
8 evidence that was sent to you that came from this car that was
9 supposedly -- that was on fire up there, is that correct?

10 A. I believe there was an examination done in that
11 area, but I'm not the examiner that did that, nor do I have the
12 expertise in that area.

13 Q. It wasn't done there at your -- where you work?

14 A. I'm sure it was done there, but I did not do it.

15 Q. Do you know whether or not there where you work
16 there was any tests run to determine whether or not there was
17 any drugs in this person's body that was found in this car?

18 A. I believe there was some toxicology done, however,
19 I did not do that.

20 Q. Do you have any expertise in blood sampling or soil
21 sampling?

22 A. No, sir, I do not.

23 Q. Did you -- did anyone there in your -- that works
24 with you do any testing on any blood samples or blood -- attempt
25 to determine if there was any blood or determine where any soil

1 samples may have come from -- either one of those?

2 A. I'm not aware of it.

3 Q. Do you know whether or not these shells that you
4 have shown -- the green shells were ever dusted to determine if
5 there were finger prints on those shells?

6 A. The two here from the crime scene?

7 Q. Yes

8 A. I'm not aware of that either.

9 Q. When you received them had they been dusted for
10 finger prints, in your opinion, based on the residue and things
11 that you would find on them?

12 A. If I can check my notes?

13 Q. You may, sir.

14 A. I did not make any notation as far as any residue
15 on them, and I'm not sure that if there was any latent tests
16 done that there may have been.

17 Q. But you found nothing microscopically when you were
18 looking at these to determine that there was anything on there
19 that would indicate that any finger print tests had been run on
20 those shells?

21 A. I did not make any notations to that effect.

22 Q. Of course, that would show up because you have to
23 dust them with certain types of powders and things in order to
24 get finger prints, don't you, sir?

25 GENERAL SCHMUTZER: I'd have to object to that,

1 Your Honor. He's already stated he's not a finger
2 print expert.

3 THE COURT: Did you state that you have had samples
4 that you have examined that have had finger print
5 dust on them before, or is that something that you
6 would have made a notation of?

7 THE WITNESS: Not really, sir. No, sir, it would
8 not have been.

9 THE COURT: Okay. Let's move on.

10 BY MR. DANIEL:

11 Q. As I understand it, you don't have any knowledge,
12 or you can't tell by looking at those shells, especially that
13 rifle shell, as to when it would have been fired, can you, sir?

14 A. As to the time and the date?

15 Q. Yes.

16 A. No, sir.

17 Q. And you can't, from looking at the gun, determine
18 when was the last time it was fired, is that correct?

19 A. That's correct.

20 Q. Did I understand you correctly, and you correct me
21 if I'm wrong, but you said there are tests to determine that,
22 but those tests were not performed?

23 A. No, sir, I believe that I said that I don't know
24 of any tests that could determine that. I don't.

25 Q. You don't know of any further tests that can be

1 made by any other scientific means to determine when that gun
2 was fired?

3 A. No, sir. The only thing that I can tell you
4 scientifically is that this particular rifle was not cleaned the
5 last time it was fired.

6 Q. That could be a matter of days, months, years, or
7 whatever, couldn't it?

8 A. That's correct.

9 Q. Do different type of shells leave different types
10 of markings on the shells -- the different types of load that
11 you determine, such as an eight shot versus a .00 buck shot?

12 A. Sometimes the breach face markings on the shot
13 shells may not be as high in quality as a higher load shot
14 shell.

15 Q. And it would be possible such as -- how many shells
16 -- strike that. How many bucks would be in what we call a .00
17 buck? How many of those pellets, or whatever you want to call
18 them, would be in there?

19 A. If you're referring to a two and three quarter inch
20 .00 buck, there would be nine. The two and three quarter inch
21 magnum is 12, and the three inch magnum there are 15.

22 Q. Okay. How many of those that you're referring to -
23 - I guess we call them bullets, or pellets, or whatever you want
24 to refer to them -- how many did you find, and did you examine?

25 A. There were two.

1 Q. Two. So you couldn't tell from that -- from that
2 examination whether it was fired from a magnum, or what type of
3 shell it was fired from, could you, sir?

4 A. Not scientifically, no.

5 MR. DANIEL: No further questions.

6 GENERAL SCHMUTZER: May he come down, and be
7 excused, Your Honor?

8 THE COURT: Yes.

9 GENERAL SCHMUTZER: The State rests.

10 **

11 THE COURT: Very well. Ladies and gentlemen of the
12 jury, I have some matters I must take up outside your presence.
13 Approach just a moment, gentlemen.

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

15 THE COURT: Did you all want to put on any proof
16 today? I take it you don't.

17 MR. DANIEL: We've got several motions to argue,
18 and Your Honor said you had a death in the family,
19 and it's...

20 THE COURT: I need to leave here by 6:00.

21 MR. WEBB: Well, we'll be through plenty before
22 then.

23 THE COURT: I'll let the jury go here for today,
24 let them be taken on.

25 MR. DANIEL: We've got some doctors here -- we've

1 got one that wouldn't take very long going through
2 some hospital records with him. We could let him
3 testify, and then -- you're going to stipulate that
4 lady will come over here and testify that these are
5 her records...

6 THE COURT: The custodian of the records?

7 MR. DANIEL: The custodian of the records.

8 GENERAL SCHMUTZER: We could stipulate to the
9 records to the extent they're admissible.

10 THE COURT: Okay.

11 MR. DANIEL: So she won't have to come in here,
12 and...

13 THE COURT: Yeah, that's fine. Sure.

14 MR. WEBB: I don't know if you want to -- I don't
15 know if they're here or not. I know we told them
16 to be here, but we can tell them to come back in
17 the morning.

18 THE COURT: Let's do that.

19 MR. DANIEL: Whatever you want to do, Judge.

20 THE COURT: Okay, thank you.

21 MR. MILER: Your Honor, if you would have an
22 officer make the announcement to that effect
23 outside so maybe those doctors can go on.

24 THE COURT: Sure.

25 (Said bench conference being completed, the

1 following proceedings are had in open court.)

2 THE COURT: Ladies and gentlemen of the jury,
3 because of the motions, and because I have had a death in my
4 family, I am going to let you go. I must leave fairly early
5 here this afternoon, and I don't want you to think it had
6 anything to do with any of the lawyers or anything like that.
7 This is my situation, and I am going to have to take up some
8 matters here, and so because of that, and because the State has
9 now rested, this is a good stopping point for today.

10 So I will let you go, and we will see you back here
11 in the morning at 9:00 a.m. All rise for the jury.

12 (JURY OUT)

13 **

14 THE COURT: You may be seated. You may advise the
15 witnesses who are in the hallway who are expected to testify for
16 the defense that they may be excused until in the morning at
17 9:00 a.m.

18 Gentlemen, if you have any motions, the Court will
19 take those at this time. I will say that before the motions are
20 made, and I know that you still have continuing objections about
21 certain items of evidence that the Court has admitted, but I do
22 not want to hear any further motions on those as far as either
23 grounds for mistrial or severance or whatever because I've
24 already ruled on that several times. So I will hear any other
25 motions directed towards the...

1 MR. DANIEL: Your Honor, for the record, could we
2 just show that we renewed our motion for severance, and...

3 THE COURT: Sure. But as to the sufficiency issues
4 and so forth, I will hear those.

5 MR. MILLER: I'm not sure I understood, Your Honor,
6 do you not want to -- the Court had said if the evidence wasn't
7 clear and convincing of these crimes to grant a mistrial -- you
8 don't want to hear that?

9 THE COURT: No, I will hear that. I don't want to
10 hear any more motions about whether or not I should have let it
11 in as far as that aspect, but I will certainly, as you should,
12 address the issue of the clear and convincing aspect of that.
13 Yes, sir.

14 MR. MILLER: Your Honor, I think first of all we
15 would move for a mistrial based on the failure of the State to
16 prove in their case in chief by clear and convincing evidence
17 all these other crimes. I think, at least from the defense
18 prospective, especially the arson of the trailer was not shown
19 by clear and convincing evidence. I guess you can take the
20 arson investigator at his word, which I submit Your Honor should
21 not do, and look at the reasonableness behind his testimony, and
22 consider it with everybody else.

23 He basically testifies that there's a burn pattern
24 on the floor, and because there's a burn pattern, it's arson.
25 I think the officers from the fire department testified that

1 there was nothing left there. He doesn't see how he could see
2 a burn pattern. The floor was burned, and so forth. I think
3 the arson investigator said that burn patterns could be caused
4 by fall down, as it's called.

5 **THE COURT:** Okay, let me interrupt you there. If
6 you totally disregard that arson evidence as far as Mr.
7 Griffin's trailer, absent that, what is your position?

8 **MR. MILLER:** The same position, Your Honor. We -
9 - it is our position they've not established by clear and
10 convincing evidence that there was a fight over on Hunt Road.
11 That was let in, and I think the identification of a Camaro over
12 there, there was some doubt about that. One lady said it was
13 and '87 or a new model Camaro -- I think she said '87, '88, or
14 maybe no older than six years old was her testimony, and then
15 one girl who had an '82 Camaro said point blank, without a
16 doubt, it was older -- it was an '82 or older. So there is a
17 direct contradiction between the State's witnesses.

18 And again, Your Honor, the testimony regarding the
19 murder of Tommy Griffin, we state that that was not established
20 by clear and convincing evidence. Primarily, it came out in the
21 State's proof that these boys testified that -- gave statements
22 that they bailed this man out of jail, and he got with this
23 girl, and they were back -- went back home.

24 **THE COURT:** Wait just a minute. Who said that?

25 **MR. MILLER:** The State's witness, Detective

1 Widener, testified that Mr. Dellinger and Mr. Sutton made these
2 statements as part of the State's proof.

3 THE COURT: Okay. The issue of whether or not to
4 believe all or part of those statements -- who is that for?

5 MR. MILLER: It would be for the Court at this
6 time, Your Honor.

7 THE COURT: Okay.

8 MR. MILLER: But I think Your Honor has to look at
9 each piece of evidence independently that was offered to see if
10 it was shown by clear and convincing evidence. I don't want to
11 get away from what's important to the Court, but the arson fire
12 of the trailer -- it was testified by the State's witness, the
13 jailer from Blount County, that these men were over there at
14 8:45, approximately an hour after this man was booked -- over
15 there trying to get him out of jail. This fire happened -- I
16 don't know how far it was testified it was, but a good bit away,
17 and at 9:00 the fire started. That's impossible that they could
18 be at Blount County at 8:45 at the jail, and over there at that
19 trailer at 9:00 setting that fire.

20 THE COURT: I believe one person testified that -
21 - wasn't it 7:00, and one of them at 8:00?

22 MR. MILLER: It was undisputed that the -- the
23 jailer testified it was an hour after he was brought into the
24 jail.

25 THE COURT: I understand what the jailer

1 testified...

2 **GENERAL SCHMUTZER:** No, he didn't say that, Your
3 Honor. He said he didn't know what time it was, said it was
4 shortly after they left. He said it could have been 45 minutes
5 to an hour. He didn't know. It was a short time after they
6 brought the guy in that they came, and tried to get him out, and
7 they wouldn't let them, and of course, the Court has the other
8 proof that transpired in the hollow itself -- the truck going
9 by, pulling in, and the little girl running over there just
10 moments after the fire was spotted, and they were there.

11 **MR. MILLER:** I think that's all I had with regard
12 to that motion for mistrial, Your Honor.

13 **THE COURT:** Okay. Now in regards to your expected
14 argument on the sufficiency of the State's prima facie case, I
15 want to hear that.

16 **MR. MILLER:** As to the charge here in Sevier
17 County?

18 **THE COURT:** Yes.

19 **MR. MILLER:** Well, Your Honor has seen that they
20 cannot determine the cause of death. Nobody knows how this
21 woman died. Number two, nobody knows where she died.

22 **THE COURT:** Okay. Now, on that point -- on the
23 venue statute. "If one or more elements of an offense are
24 committed in one county, and one or more elements in another,
25 the offense may be prosecuted in either county. Offenses

1 committed on the boundary of two or more counties may be
2 prosecuted in either county."

3 And then the burden of proof on venue is by...

4 MR. MILLER: A preponderance of the evidence.

5 THE COURT: A preponderance of the evidence.

6 MR. MILLER: Your Honor, I think you need to --
7 you're assuming that arson was the criminal agency that lead to
8 her death. We're talking about two -- if we're talking about
9 an arson -- we're talking about two separate crimes, a homicide
10 and an arson. I think they have to prove that she died -- or
11 that she was killed in Sevier County.

12 Further, as I said, they can't prove how she died,
13 where she died, and most importantly, they can't say that she
14 died as a result of criminal agency or criminal enterprise.
15 Nobody was able to testify to that effect, that there was any
16 criminal agency that led to her death.

17 THE COURT: Okay.

18 MR. MILLER: I don't know if counsel wants to argue
19 -- add anything on those...

20 MR. WEBB: Your Honor, I don't want to just take
21 up a lot of time, but I think the issue you're wanting to talk
22 about right now is the sufficiency of the State's evidence, and
23 their case in chief. Your Honor, on behalf of defendant Sutton,
24 we would aver that the evidence is insufficient to sustain a
25 conviction.

1 I think the questions you had raised and Mr. Miller
2 had raised about the venue, there's no proof in this record that
3 Ms. Branum was killed in Sevier County. The record is totally
4 devoid of that.

5 THE COURT: Don't you think the fact that her body
6 was found up there burned and in an automobile that was burned
7 beyond recognition is at least a pretty good indication that she
8 would be killed in Sevier County -- that she was killed in
9 Sevier County?

10 MR. WEBB: Your Honor, I think what we come to is
11 when you start talking about -- and what you're talking about
12 is corpus delicti. There -- the case -- there is a case that
13 talks about corpus delicti being proven by circumstantial
14 evidence, and that was a case -- the name escapes me right at
15 the moment -- State v. Foster -- I can provide that to Your
16 Honor. I can't recall the name, but that was a case where a
17 body was found without any other indicia of how it got there,
18 and that particular court -- in fact, Dr. Bass testified in that
19 case. It's an older case, and I think the Court said there that
20 the fact that it was in rural area -- remote area, and that
21 there was no other indicia of how that body got there, to wit,
22 no car or anything, then you could infer that someone took that
23 body there to establish corpus delicti.

24 But in this case, we're a little -- we're quite a
25 bit different, I think. Obviously, an inference can be raised

1 that -- and the Court has some evidence before it about the fact
2 that Ms. Branum was suicidal shortly before she left on that
3 Saturday, that she did have dioxipan in her system, and that she
4 had drank quite a bit.

5 It is a reasonable inference, especially when the
6 uncontroverted testimony is that she had one more place to go,
7 and when you take that with her car being there, and the absence
8 of any other proof that there was more than one vehicle there,
9 there is a reasonable inference that could be drawn that she
10 drove that vehicle to that point.

11 The Court -- I'll just reiterate just a little bit.
12 You've got a rifle shell -- a spent rifle shell that was found
13 there in the vehicle in an area close to where the remains of
14 her purse was found. The State has no forensic evidence to
15 prove that that shell was fired at or around the time of her
16 death.

17 I think that there was some testimony from some of
18 the State's witnesses about children playing with shells, and
19 carrying them here, there, and yonder, and not excluding the
20 vehicle itself.

21 I think the strong points the Court has to consider
22 is the fact that no one of any expertise can say to Your Honor
23 that her death was a result of any criminal instrumentality,
24 nor that she was shot, nor even as to the date or time of her
25 death. So I submit to Your Honor that on the circumstances that

1 the State has presented that there is a lack of proof with
2 respect to the corpus delicti, to wit, to proof of
3 crime/criminal instrumentality, and then no proof of any
4 connection. If the Court jumps that hurdle to find a crime, no
5 proof of a casual connection.

6 I'll let Mr. Miller come back. I just wanted to
7 talk about that aspect of it. I'm sure I've left out a whole
8 lot, and if somebody else, or Mr. Miller wants to talk -- I
9 wanted to make clear before I leave the podium, Your Honor, that
10 -- and I'm worried about our record, and I think everybody else
11 is too, and I -- hopefully if something happens from here on
12 out, the Court of Appeals will remember that we did not have to
13 jump up every time...

14 THE COURT: I've said that several times.

15 MR. WEBB: ...and disrupt the trial process about
16 the other crimes evidence and the motion to sever, but I do want
17 that on the record that we were following your instructions, and
18 obviously, I think the Court knows that every time a piece of
19 evidence was presented, that we were ready, willing, and able
20 to jump up and object to...

21 THE COURT: Sure.

22 MR. WEBB: ...with the appropriate objection, but
23 I would renew the motion to sever the case, and ask the Court
24 to reconsider it's previous ruling on the prior act evidence,
25 and submit to the Court that that has not been proven clearly

1 and convincingly.

2 THE COURT: Okay.

3 MR. WEBB: And I'm going to yield the floor to
4 someone else.

5 MR. DANIEL: Your Honor, please, just in addition
6 to that, a couple of matters that we feel like -- we also asked
7 at the beginning of the trial during our questioning of some of
8 the State's witnesses there was a stipulation that was entered
9 into in this matter, and we filed a copy of that with the Court
10 for the record, and Your Honor took it as such. We would ask
11 that that be made a part of this proof because it is a
12 stipulation between the State and the defendant Gary Sutton.

13 The stipulation says, "Come the State and defense,
14 and by agreement stipulates the following facts," and all those
15 facts are set forth, and it was entered into the 25th of August
16 of '92, and there's nothing on that stipulation to indicate that
17 it was only for the purpose of any bond hearing or something of
18 this nature. It was entered in the case as part of a
19 stipulation.

20 As we understand a stipulation to be, we don't have
21 to prove that, that's something that can be taken as proven by
22 both or either side, and therefore, we would move that that
23 stipulation which was filed be made a part of this record, and
24 be made a part of the...

25 THE COURT: It already is a part of the court

1 record. It was entered at the first, if not the second bond
2 hearing that we had. The Court recalls that very well. I asked
3 counsel for as many stipulations as possible for purposes of
4 that hearing, Mr. Daniel.

5 MR. DANIEL: And we relied upon that. No motion
6 or notice was ever given by the State that that would not be a
7 stipulation that would be binding throughout the entire trial.

8 THE COURT: The proof has varied from that
9 stipulation at this point.

10 MR. DANIEL: We would just like that to be entered,
11 Your Honor.

12 THE COURT: It's part of the record.

13 MR. DANIEL: Your Honor, also, I think at this time
14 we would move the Court to rule that the question regarding the
15 death penalty phase of this matter, wherein the State's asked
16 for it, and that's, of course, not ruled that it is a case where
17 it should or should not be granted or whether the jury should
18 determine, but at the end of the State's proof, I think, is the
19 proper time. Should, as we all say, charge the jury, then the
20 question would be, is there sufficient proof in this record at
21 this time that would justify the -- should the defendants be
22 found guilty, the jury going further and having the hearing
23 regarding the punishment of the death penalty.

24 I'm going to yield to Mr. Miller, and let him --
25 we'll let him argue that.

1 THE COURT: Well, hold on just a minute. I want
2 to rule first on the -- on whether or not there is a prima facie
3 case to even take further in this case before we consider the
4 other motions. So if there's any other argument that counsel
5 wants to make in regards to that, I will hear you now.

6 MR. DANIEL: Your Honor, we would only state that
7 if Your Honor rules that -- prima facie -- that does not mean
8 that the defendants are guilty of anything, and that it would
9 not be misconstrued by the press or the spectators.

10 THE COURT: I can't help what they construe or
11 misconstrue.

12 MR. DANIEL: I got in that situation one time where
13 the Judge ruled -- had to rule on a client conspiracy, and he
14 ruled there was, and everybody thought that was the end -- that
15 he had ruled against us. So I'm sure that that wouldn't be
16 taken that way, but we'd like for Your Honor to know that the -
17 - that we'd like that explained to these spectators.

18 THE COURT: Okay. Mrs. Thomas?

19 MRS. THOMAS: Your Honor, I'd like to just address
20 one issue on the sufficiency of the evidence, that being that
21 there's no evidence in this record of premeditation to support
22 a first degree murder conviction. I'm relying on the West case,
23 State vs. West, that was decided by this state's supreme court
24 on November the 23rd of 1992 wherein the State has the burden
25 of coming forward with evidence of malice, deliberation, and

1 cool purpose in order to support a first degree murder
2 conviction. There has been no evidence of that sort in the case
3 in chief. In the absence of that, of course, I presume it would
4 be a second degree homicide.

5 THE COURT: Okay. Is that all on that point?

6 MRS. THOMAS: Yes, Your Honor. I have a copy of
7 the case, and I would like to...

8 THE COURT: Is that the state supreme court case?

9 MRS. THOMAS: Yes.

10 THE COURT: I've seen that one, I believe.

11 MRS. THOMAS: It says the State's theory in absence
12 of evidence is insufficient.

13 THE COURT: Sure. Is there anything, General
14 Schmutzer, you want to add to what...

15 GENERAL SCHMUTZER: No, Your Honor, we've already
16 addressed the specific point.

17 THE COURT: Several matters that the Court wants
18 to deal with in ruling on the other crimes evidence. The issue
19 for the trial court, at least ostensibly, is, is there enough
20 evidence shown which, if believed, would be clear and convincing
21 evidence of the other crimes alleged? The Court finds that it -
22 - and obviously, at this juncture it is uncontradicted because
23 the defense has not put on any proof, and I'm not holding this
24 as binding on them from putting in proof, but the record is
25 clear in this Court's mind that the evidence offered by the

1 State of Tennessee is clear and convincing that the -- if the
2 testimony as offered is believed by the jury would be sufficient
3 for the proof of those other crimes, and the Court so holds.

4 The next matter deals with the sufficiency of the
5 evidence in regards to the State's prima facia case. The Court
6 must determine in looking at the evidence, is there enough
7 evidence which, if believed, and I point that out again --
8 which, if believed, would sustain a verdict of guilty on the
9 crimes charged.

10 Now, there is differing evidence in this case on
11 different elements of the crime. The Court, in this instance,
12 and the jury in their consideration has to consider all
13 evidence, regardless of who presented it, weigh any conflicts
14 in the testimony, if any, that they deem important. That's
15 their job, that's not my job. And I would point out in the jury
16 charge that has been charged in the State of Tennessee forever,
17 as follows:

18 "It is not necessary that each particular fact
19 should be proved beyond a reasonable doubt. If
20 enough facts are proved to satisfy the jury beyond
21 a reasonable doubt of all the facts necessary to
22 constitute the crime charged..."

23 That is the law. The Court also is constrained to
24 find, and I point out for everyone's benefit that the exact
25 cause of death -- it has never been the law in the State of

1 Tennessee or any other jurisdiction in this country that I'm
2 aware of that you had to prove the exact cause of death. You
3 must prove enough facts for a jury to be able to conclude beyond
4 a reasonable doubt of enough facts necessary to prove, in this
5 case, that Connie Branum was killed by some act of these
6 defendants, either or both of them, to the exclusion of all
7 other reasonable hypothesis.

8 The State's case in chief creates in this Court's
9 mind a prima facie case sufficient to submit this case to a jury
10 for it's determination. Anything further?

11 MR. MILLER: On that issue, Your Honor?

12 THE COURT: Any other motions that you have, Mr.
13 Miller.

14 MR. MILLER: Your Honor, I have a motion at this
15 time for a judgment of acquittal as to the death penalty, and
16 basically as Mr. Daniel stated, whether or not at this point
17 there is sufficient evidence to charge the jury on the death
18 penalty should these men be convicted by the jury.

19 THE COURT: Okay.

20 MR. MILLER: And I brought this to the Court's
21 attention, I think, at a pre-trial...

22 THE COURT: Many months ago.

23 MR. MILLER: That I do not believe that this
24 aggravating factor applies to these facts, and cited the Court
25 several supreme court decisions, and I finally went a little bit

1 further and made a phone call, and sent a letter to the
2 draftsman of the death penalty statute, Mr. David Raven, and
3 explained to him the factual situation in this case, and I'll
4 provide the motion which has a copy of Mr. Raven's response to
5 me, and an article written by him. Mr. Raven says that the
6 aggravating factor simply does not apply to this set of facts.

7 THE COURT: Would you agree that Mr. Raven doesn't
8 sit on the state supreme court or the court of criminal appeals?

9 MR. MILLER: Your Honor, I already submitted the
10 list of supreme court cases, as construed, and he cites supreme
11 court cases that say it does not apply to these facts.

12 THE COURT: Well, Mr. Miller, I feel like the jury
13 -- a jury in any case is obviously not bound by the
14 representation of facts by either party. The jury may draw such
15 logical conclusions as they deem proper under the facts of any
16 case. There is evidence which, if believed, in this record,
17 would tend to show that Connie Branum was killed as she was
18 attempting to find about the death or the whereabouts of her
19 brother. The Court feels like that based upon that evidence it
20 is a reasonable issue -- it could be reasonable for a jury to
21 determine that she was killed because of that. So for that
22 reason, the Court, while I have all the respect in the world for
23 Mr. Raven, he's not set here and heard the proof in this case.

24 MR. MILLER: Your Honor, I went to a lot of trouble
25 to get that prepared, and Mr. Raven went to some trouble to get

1 it to me, and I would just ask Your Honor to look at it.

2 THE COURT: Gentlemen, I have considered this, and
3 I appreciate the efforts that Mr. Raven went through, and I
4 appreciate the efforts that you went through, and I may be as
5 wrong as I can be, but that's the ruling of the Court.

6 MR. MILLER: I have one other motion, Your Honor,
7 which I have in writing that I'd make at this time.

8 THE COURT: Okay.

9 MR. DANIEL: Your Honor, for the sake of time, you
10 understand we adopt all the motions of co-counsel, so the record
11 will reflect that all these motions were made by both
12 defendants.

13 THE COURT: Sure, Mr. Daniel.

14 MR. MILLER: Subsection (H) of the death penalty
15 statute says as follows:

16 "If the jury cannot ultimately agree as to
17 punishment, the Judge shall dismiss the jury, and
18 the Judge shall impose a sentence of life
19 imprisonment. The Judge shall not instruct the
20 jury, nor shall the attorneys be permitted to
21 comment at any time to the jury on the effect of
22 the jury's failure to agree on punishment."

23 Your Honor instructed this jury that if they
24 couldn't agree on punishment, a life sentence would be imposed.
25 We move for a mistrial on that...

1 THE COURT: You failed to timely object. If I gave
2 that instruction before and you did not object on it, it's
3 waived, Mr. Miller.

4 MR. MILLER: Your Honor, I can hardly see how that
5 error could be cured by any instruction.

6 THE COURT: If you sit there and let this Court -
7 - if I made that statement, and you sat there, and we picked a
8 jury for three days, and you did not say one word about it, sir,
9 it is waived.

10 MR. MILLER: Well, I looked at the law yesterday,
11 Your Honor, and that was the first time...

12 THE COURT: Well, it would have been good to have
13 looked at it before we picked the jury.

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

15 THE COURT: Anything further?

16 MR. DANIEL: Your Honor, we would move that that
17 stipulation be introduced and passed to the jury as part of the
18 State's proof.

19 GENERAL SCHMUTZER: We would object, Your Honor.

20 THE COURT: Let me see that. Have you asked that
21 the range of penalties be charged in this case? Is there a
22 motion in the file on that?

23 MR. MILLER: Should be, Your Honor, I usually file
24 one.

25 THE COURT: Okay. I believe that would be -- okay.

1 MR. WEBB: I'm sure I filed one, Your Honor.

2 THE COURT: Those stipulations simply restate the
3 evidence in this case, and therefore, it will not be passed to
4 the jury. Anything further?

5 Court stands adjourned until 9:00 a.m. in the
6 morning.

7 (COURT STOOD IN ADJOURNMENT)

Courtesy of
Time of Death Podcast
by Beth Braden

1 THE COURT: Is there anything we need to take up
2 before we bring the jury in, either side?

3 GENERAL SCHMUTZER: No, Your Honor.

4 THE COURT: You may bring the jury in.

5 (JURY IN)

6 THE COURT: You may be seated. Waive the call for
7 the State?

8 GENERAL SCHMUTZER: Yes, Your Honor.

9 THE COURT: And the defense?

10 MR. MILLER: Yes, Your Honor.

11 THE COURT: Ms. Griffin, if you would, approach the
12 bench, please, with counsel -- one from each side here.

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

14 THE COURT: How are you this morning?

15 JUROR GRIFFIN: Fine. Doing great.

16 THE COURT: Well, good. I have advised counsel in
17 chambers of the injury you sustained here
18 yesterday. I advised them that you went to the
19 hospital last night, that I spoke with you over the
20 telephone, and that you feel like that you can
21 proceed in this trial. It's in the nature of a
22 lower back strain or sprain?

23 JUROR GRIFFIN: Strain.

24 THE COURT: And that you say that you are not on
25 any pain medication, and that you will tell the

1 Court if your pain gets too bad for you to endure,
2 is that correct?

3 JUROR GRIFFIN: That's correct.

4 THE COURT: And I advised counsel that you told me
5 under no circumstances did you want to be sent home
6 last night.

7 JUROR GRIFFIN: No.

8 MR. WEBB: Already been here too long.

9 JUROR GRIFFIN: That's right.

10 THE COURT: All of us admire your courage, and
11 appreciate the efforts that you've given, Ms.
12 Griffin, so you may return, and we'll proceed.

13 JUROR GRIFFIN: Okay, great.

14 GENERAL SCHMUTZER: As she steps down, could the
15 lawyers just step here one second?

16 THE COURT: Sure.

17 GENERAL SCHMUTZER: I'd just like to make a motion
18 in limine that up to now we have not received any
19 reports from any experts, and we would, before they
20 called anyone that they would expect to call as
21 expert -- before they even call his name, that they
22 first approach the bench, and give us an
23 opportunity to respond.

24 THE COURT: That's fine. Yes, sir.

25 (Said bench conference being completed, the

following proceedings are had in open court.)

THE COURT: Mr. Miller, you may proceed to call
your first witness.

MR. MILLER: Call Dr. Wayne Stewart.

**

DEFENSE PROOF:

DR. WAYNE STEWART was called, and being duly sworn,
was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MILLER:

Q. Could you tell us your name, please, sir?

A. My name is Dr. Wayne Stewart.

Q. And what is your occupation?

A. I'm a family physician.

Q. Is that here in Sevier County?

A. Yes.

Q. In that capacity have you had occasion over the
past several years to treat a person by the name of Connie
Branum?

A. Yes, I have.

Q. And do you have her records pertaining to your
treatment of her there?

A. Yes, I do.

Q. Okay. If you'll pull those out, we may refer to
those on occasion, Doctor. I'll ask you first, sir, if you

1 recall, and I refer you to, I think, March the 12th, 1990, did
2 you see Connie Branum in relation to her injuries which were
3 sustained after she was beaten by a Jack Sutton?

4 **GENERAL SCHMUTZER:** I object to this, Your Honor.
5 What may have happened to her back in 1990 would
6 be totally irrelevant.

7 **THE COURT:** What is the relevance?

8 **MR. MILLER:** Approach the bench, Your Honor?

9 **THE COURT:** Yes.

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

11 **MR. MILLER:** Your Honor, of course, it shows
12 somebody else had ill will. The defense being that
13 we don't know how this woman died -- it is relevant
14 for that reason. Number two, I think it will be
15 made relevant by later testimony of Bill Cogdill,
16 whereby, in talking with Jack Sutton it was
17 relevant in their conversation that Jack Sutton has
18 had problems with Connie Branum in the past, and
19 Bill Cogdill makes reference to that.

20 **GENERAL SCHMUTZER:** Is it something you can prove
21 through someone -- to prove it through the medical
22 records, I...

23 **THE COURT:** However, statements contained in the
24 medical records for purposes of diagnosis are an
25 exception to the hearsay rule. The -- as I have

1 understood the statements this week of trial is
2 that the purpose for the medical testimony was to
3 show that she had had psychiatric problems.

4 **GENERAL SCHMUTZER:** That's what I thought, Your
5 Honor.

6 **MR. MILLER:** I think basically it is, besides this
7 instant. I can get on this and off of it. I'm
8 just going to ask him about that one instance,
9 and...

10 **THE COURT:** I will sustain the objection as to the
11 form of the question, and then any statements
12 contained -- any medical diagnosis, he may testify
13 to. I will instruct at that time, but -- you know,
14 it could be -- it is questionably relevant. I will
15 let that in, but as I understood it, his main
16 purpose was for the psychiatric evaluation.

17 **GENERAL SCHMUTZER:** This doctor, Your Honor, didn't
18 have anything to do with the psychiatric
19 examination. He's a family doctor.

20 **THE COURT:** He can testify to that, though, if
21 there were psychiatric problems. He could testify.

22 **GENERAL GREEN:** If he's competent.

23 **THE COURT:** Yeah, well, if he's an M.D., I think
24 he could, but...

25 **GENERAL GREEN:** He's not an M.D.

1 THE COURT: He's not an M.D.?

2 GENERAL SCHMUTZER: They need to qualify this man,
3 Your Honor. A D.O. is a long way from being an
4 M.D., and certainly has absolutely no -- they
5 cannot qualify him under any circumstance.

6 THE COURT: He's a what now?

7 GENERAL SCHMUTZER: D. O. He's one step above a
8 chiropractor. He's an osteopath.

9 MR. MILLER: An osteopath, as I understand it, has
10 the same qualifications as a medical doctor. They
11 prescribe a lot of medication.

12 GENERAL SCHMUTZER: I'm quoting the A.M.A. on that.

13 THE COURT: It would arguably come in, I guess,
14 under 803 -- under the medical doctor evidence.
15 Go ahead.

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

18 BY MR. MILLER:

19 Q. Did you have an occasion to treat Ms. Branum back
20 on 3/12 of '90?

21 A. Yes, I did.

22 Q. What were here -- what was she complaining of at
23 that time?

24 A. She had injuries sustained from an assault.

25 Q. Did she state who assaulted her?

1 A. She stated that -- yeah. "Patient presented to the
2 office complaining of being beat up by a person by the name of
3 Jack Sutton, who assaulted her.

4 **THE COURT:** Ladies and gentlemen of the jury,
5 statements made by someone to a physician for
6 purposes of medical treatment or diagnosis are an
7 exception to the hearsay rule, and you may consider
8 that testimony as you deem it proper and relevant
9 under the facts and circumstances of this case.

10 **BY MR. MILLER:**

11 Q. What injuries did she receive as a result of that
12 assault?

13 A. She was hit in the face, and dragged to the ground,
14 and complaining of pain in her right knee. She had an injury
15 to the right frontal area, and soft tissue swelling and
16 abrasions to the nasal area. She had no injury to her teeth,
17 but she said that they felt somewhat loose. It was mostly
18 facial injuries and injury to her right knee.

19 Q. Okay. I'll direct your attention to the records
20 of 2/25/91. Do you have those records before you?

21 A. Yes.

22 Q. What was she complaining of on that occasion?

23 A. She presented to the office complaining of pain in
24 the right side of her jaw, and she stated she was having
25 problems off and on since the area was injured approximately one

1 year ago when she was beat up. She had seen various dentists
2 in the past for the problem.

3 Q. And did you make a diagnosis of her condition at
4 that time?

5 A. I felt she had a TMJ disfunction of the jaw.

6 Q. Just briefly explain to the jury what that is.

7 A. It's the templa mandular joint, which is located
8 right here, and she was getting pain in that area, and some pain
9 in the back of her neck.

10 Q. Okay. And in looking through your records, Doctor,
11 would it be fair to say that you saw Connie Branum on a -- at
12 least once a month, and sometimes bi-monthly?

13 A. Fairly frequent, yes.

14 Q. And on a number of those occasions medication was
15 prescribed for her?

16 A. Correct.

17 Q. Okay. What types of medication were prescribed for
18 her?

19 A. I saw her various conditions, and medications were
20 prescribed, depending on the condition that I saw her for. Do
21 you want me to go through each of them?

22 Q. You describe in there, I think, in your records
23 that you treated her for panic attacks. Could you explain that?

24 A. Yes, I did. She had a form of panic attacks which
25 present themself with headaches and feeling very anxious and

1 nervous, and occasion some G.I. complaints -- gastrointestinal
2 complaints.

3 Q. Do you also remember her having some psychological
4 problems by virtue of her father having committed suicide?

5 A. She had some acute grief following the death of her
6 father.

7 Q. And on most occasions when you saw her did you
8 prescribe or either -- prescribe a refill for Xanax?

9 A. She took Xanax, yes.

10 Q. Okay. Regularly?

11 A. As she needed it.

12 Q. And you also prescribed Valium for her, and she was
13 on Valium for a period of time, is that correct?

14 A. I believe a short term following the death of her
15 father.

16 Q. Directing your attention to the records of 4/22/91,
17 I find a notation there that she was taking the Valium T.I.D.
18 instead of P.R.N. What does that mean?

19 GENERAL SCHMUTZER: Your Honor, I -- I fail to see
20 the relevance of what she was taking. What he
21 indicated he wants proved by this witness, I
22 thought he had gone into, but I object to going
23 into this.

24 THE COURT: Is there a continuing aspect of
25 medication for Xanax or other types of drugs?

1 THE WITNESS: She was on Xanax for quite some time.

2 THE COURT: I'll let him testify about that.

3 GENERAL SCHMUTZER: I think he has, Your Honor,
4 but...

5 THE COURT: Well, he was directing his attention.
6 Go ahead.

7 BY MR. MILLER:

8 Q. Do you remember my last question, Doctor?

9 A. Yes. Are you referencing 4/22/91 or...

10 Q. 4/22/91. I believe that's correct.

11 A. It doesn't say anything on that date about that.

12 Q. Okay. And I believe your records of 12/5/91...

13 A. Yes.

14 Q. On that date I believe you prescribed some Xanax,
15 and recommended some counseling for her, is that correct?

16 A. Patient presented to the office. Recently she had
17 sinus surgery, and is following an ear, nose, and throat
18 specialist concerning that. I felt at that time that she had
19 some asthma and panic attacks. She was prescribed an inhaler
20 for her asthma, and Xanax, and I gave her some counseling.

21 Q. Did you recommend counseling at that time?

22 A. I gave her counseling in the office, which I often
23 do.

24 Q. Was that for mental health problems?

25 A. Concerning her panic attack, yes.

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

2 THE COURT: Mr. Daniel, any questions of this
3 witness?

4 MR. DANIEL: I believe the State would be first,
5 Your Honor.

6 GENERAL SCHMUTZER: No, Your Honor, we're last.

7 MR. DANIEL: May we approach the bench?

8 THE COURT: Yes.

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

10 MR. DANIEL: Your Honor, please, I believe that the
11 State has the defendant charged, and just because
12 the cases are tried together doesn't mean that the
13 State gets the right to cross examine last.

14 GENERAL SCHMUTZER: The State has the burden of
15 proof, Your Honor, and I think the rule is clear -
16 - I have never even tried it another way.

17 THE COURT: That's the way I always had to try
18 them.

19 MR. DANIEL: I don't think that would be right,
20 Your Honor, because the way we would present the
21 case...

22 GENERAL SCHMUTZER: I would have the State getting
23 up after each one of them, Your Honor.

24 MR. DANIEL: This is not our witness though, Your
25 Honor. If this was our witness -- if we had called

1 this witness, I would understand, but this is not
2 our witness. We start putting on our proof at the
3 end of their proof.

4 THE COURT: I can't specifically find the rule
5 right off the top of my head, but the -- in these
6 situations I always had to ask my questions, and
7 then the State -- that's the way I always had to
8 do, but that may be wrong.

9 MR. DANIEL: I bet they never raised it.

10 THE COURT: May not have been, but anyway, that's
11 the way we'll go.

12 MR. DANIEL: We would object, and for the record,
13 we would again -- this would be another grounds for
14 a severance because we are asking to...

15 THE COURT: It doesn't prohibit you from cross
16 examination. He's not your witness, and you may
17 cross examine him as you would any other witness.

18 MR. DANIEL: But to allow the State to -- that's
19 telling the jury that we're calling this witness,
20 also, which...

21 GENERAL SCHMUTZER: We're not telling this jury
22 that.

23 MR. DANIEL: There's an inference to the jury that
24 this is our witness, too...

25 THE COURT: Well -- let's go ahead.

1 MR. DANIEL: Just note our objection.

2 THE COURT: Surely.

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

5 **

6 CROSS-EXAMINATION

7 BY MR. DANIEL:

8 Q. Doctor, as I understand it, you treated Ms. Branum
9 for some period of time, is that correct, sir?

10 A. That's correct.

11 Q. Did you have anything to do with her treatment or
12 her admission to Lakeshore Hospital back in February of 1992
13 when she attempted suicide?

14 A. No, I didn't.

15 Q. Do you know -- do your records note that she was
16 a heavy smoker?

17 A. I believe she was a smoker. I don't know what
18 quantity.

19 Q. You don't know how much she smoked. You will agree
20 with me that the mixture of drugs and alcohol can, under certain
21 circumstances, be fatal, isn't that true?

22 A. Yes, they can.

23 Q. No further questions. Thank you.

24 THE COURT: General Schmutzer?

25 GENERAL SCHMUTZER: No questions.

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

2 MR. MILLER: Yes, Your Honor.

3 THE COURT: Do you want any of his records to be
4 filed?

5 MR. MILLER: We would file his -- is that an extra
6 copy?

7 THE WITNESS: This is the original.

8 MR. MILLER: Your Honor, I have a copy if we could
9 file it.

10 THE COURT: Okay. Thank you, Doctor.

11 (EXHIBIT #46 - Copy of medical records; marked and
12 filed.)

13 THE COURT: Next witness?

14 MR. MILLER: Matthew Coverly.

15 THE COURT: Matthew Coverly. While we're waiting
16 on that witness, gentlemen, the last matter that
17 we discussed at the bench conference, I refer you
18 to Rule 611 of the Tennessee Rules of Evidence
19 611(a).

20 MR. MILLER: Your Honor, may we approach the bench?

21 THE COURT: Yes.

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

23 MR. MILLER: He is under subpoena. He's a member
24 of the sheriff's department, and I'd like to have
25 them locate him. We paged him this morning to be

1 here.

2 THE COURT: Sure. Who is your next witness?

3 MR. MILLER: I can't pronounce his name, but we can
4 probably go on to him.

5 MR. WEBB: I was just informed that Matthew Coverly
6 is on his way.

7 THE COURT: He's on his way? Okay. If you would,
8 just make sure that he is on his way, okay? So who
9 is your next witness?

10 MR. MILLER: It might fair to say "Doctor from
11 Lakeshore" when they call out in the hall.

12 THE COURT: Well, if you'll get him, Mr. Miller,
13 we'll hear him.

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

16 THE COURT: There is a doctor from Lakeshore that
17 is out in the hallway. If you'll send him in.

18 **

19 DR. ITTOOP T. MALIYEKKEL was called, and being duly
20 sworn, was examined and testified as follows:

21 DIRECT EXAMINATION

22 BY MR. MILLER:

23 Q. Would you tell us your name, please, sir?

24 A. I'm Dr. Ittoop Maliyekkel.

25 Q. Okay.

1 THE COURT: If you would, please, could you spell
2 your name for the court reporter?

3 THE WITNESS: M-a-l-i-y-e-k-k-e-l.

4 THE COURT: Thank you.

5 BY MR. MILLER:

6 Q. What is your occupation?

7 A. I'm a psychiatrist working at Lakeshore Mental
8 Health Center.

9 Q. How long have you been at Lakeshore?

10 A. Somewhere around nine years.

11 Q. In your capacity at Lakeshore, did you have an
12 occasion to see a patient by the name of Connie Branum?

13 A. I did.

14 Q. Okay. What was the reason for Ms. Branum being
15 admitted to Lakeshore?

16 A. Ms. Branum came to Lakeshore after a suicide
17 attempt. It was known that she'd been depressed since April of
18 '91 at which time her father died, and she was also upset about
19 her brother getting into an accident, was having marital
20 problems. Also, one of her children was sexually molested, and
21 she was upset about all these things.

22 Q. Do you also recall marital problems being one of
23 her complaints?

24 A. Yes.

25 Q. And also alcohol abuse?

1 A. Alcohol abuse. She told me that she drank alcohol
2 on one or two occasions during her life, one was this time just
3 before she took the overdose.

4 Q. And I was going to ask you, sir, do you recall how
5 she attempted suicide?

6 A. The reports from the emergency room says that she
7 took an overdose of Sinequan pills, which is an antidepressant.

8 Q. And was that mixed with alcohol?

9 A. She did say that she was drunk at the time that she
10 took the overdose.

11 Q. Did she tell you she was attempting to kill
12 herself?

13 A. She didn't particularly say that, no.

14 Q. Do you recall her telling you that she heard that
15 if you mixed alcohol and took some pills that it could kill you?
16 Do you remember her telling you that?

17 A. I don't remember she telling me that, no.

18 Q. And you completed a report yourself on this. What
19 was her outlook as far as the future, her personal outlook as
20 she told you?

21 A. I saw her only one time for a 30 to 45 minute
22 period. At that time she had a pessimistic outlook for the
23 future, but she was not suicidal anymore, and I changed her
24 antidepressant to another medication.

25 Q. What was the other medication?

1 A. Prozac, which is an antidepressant.

2 MR. MILLER: If we could file these records. This
3 is a certified...

4 GENERAL SCHMUTZER: Is that what you furnished us?

5 MR. MILLER: Yes.

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

7 GENERAL SCHMUTZER: I have a small problem. The
8 records we were furnished are not the same ones,
9 or...

10 MR. MILLER: I think, Your Honor, what it is, I
11 think this record includes all of those, and maybe
12 some more things like pharmacy and other things.
13 What happened, I obtained those records and
14 furnished them to General Schmutzer, and Mr. Daniel
15 obtained these which are authenticated and
16 certified. They may contain...

17 GENERAL GREEN: Myself and Mr. Hutchinson
18 specifically came over to Mr. Webb's office last
19 week...

20 MR. DANIEL: We've got her under subpoena, Your
21 Honor. We can have her bring them in. I went over
22 there, and they xeroxed the whole thing and
23 certified it.

24 GENERAL GREEN: Well, we're entitled to copies of
25 it -- it's discovery.

1 THE COURT: Sure.

2 MR. DANIEL: I think you all furnished them.

3 MR. MILLER: I think we probably have, Your Honor.
4 I've never looked at these before, and Mr. Daniel
5 and I, I guess, assumed we had the thing. These
6 may contain a little bit more.

7 GENERAL SCHMUTZER: Let me ask you this. Does this
8 right here -- Dr. Shin, is he going to testify?
9 Is his record in there?

10 MR. DANIEL: I don't know. What is the objection,
11 General?

12 GENERAL SCHMUTZER: Well, there are some records
13 here that we don't have, and then we've got some
14 records that apparently aren't in here. I'm not
15 as concerned about what's there that we don't have
16 as I am about what we understood the record had in
17 there.

18 MR. DANIEL: What happened, Judge, I went over
19 there and took a court order that you signed, and
20 while they were xeroxing them I went up and talked
21 to him, and I came back and picked those up, and
22 they had them ready when I left.

23 GENERAL SCHMUTZER: Okay. That's fine.

24 THE COURT: Okay.

25 (Said bench conference being completed, the

1 following proceedings are had in open court.)

2 MR. MILLER: I ask those be filed, Your Honor.

3 THE COURT: Yes.

4 (EXHIBIT #47 - Records from Lakeshore; marked and
5 filed.)

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

7 **

8 CROSS-EXAMINATION

9 BY MR. DANIEL:

10 Q. Doctor, I would like to ask you some questions.
11 You work at the Lakeshore Mental Health Institute, is that
12 correct, sir?

13 A. That's right.

14 Q. Where did you take your medical background and
15 training?

16 A. I had my major education in India.

17 Q. And you've been practicing medicine for how many
18 years now?

19 A. Almost 22 years.

20 Q. And do you specialize in any certain field?

21 A. I specialize in psychology. I had my training at
22 Johns Hopkins in Baltimore, and (indiscernible) Hospital in
23 Detroit.

24 Q. How long have you been over at the Lakeshore Mental
25 Health Institute?

1 A. Nine years.

2 Q. So I believe you were working there then, of
3 course, back on February the 11th of '92 when a young lady by
4 the name of Connie Branum was brought down there, is that
5 correct?

6 A. She was admitted by another doctor, Dr. Teague.
7 He's the on call doctor, and he did it on February 11th, early
8 morning, around 9:00.

9 Q. Do you have with you, and have you brought copies
10 with you of the medical records there that -- from the hospital?

11 A. I do.

12 Q. You have reviewed them, haven't you, Doctor?

13 A. Yes, I did.

14 Q. And it's true that she came in on the 11th, she
15 gave a history where she was 33 years of age, and I'm following
16 on the narrative summary of the clinical mental health institute
17 -- that portion. She was 33 years of age, and she was separated
18 from her husband, is that correct?

19 A. That's right.

20 Q. And that she had been brought in on an emergency
21 basis from Sevier County where she had went to this Fort Sanders
22 Hospital Emergency Room, which is -- I believe there's a Fort
23 Sanders here in Sevier County, is that correct?

24 A. At this time, yes.

25 Q. And that she had taken an overdose of pills?

1 A. That's right.

2 Q. Tried to commit suicide, is that correct?

3 A. Yes.

4 Q. And that she had -- she had certain reasons, and
5 I guess you could say you made a diagnosis of certain things,
6 one, that she had -- her father had a suicide back on April the
7 19th, 1991, is that correct?

8 A. That's right.

9 Q. And, of course, isn't it true that a person --
10 sometimes when there's a suicide in the family, especially a
11 father or a mother, that this often leads to another suicide in
12 the family, isn't that correct, sir?

13 GENERAL SCHMUTZER: I object to this, Your Honor.
14 That calls for speculation.

15 THE COURT: He...

16 MR. DANIEL: Give his opinion.

17 THE COURT: Rephrase your question and lay the
18 ground work.

19 BY MR. DANIEL:

20 Q. You have studied medicine regarding suicides, is
21 that correct?

22 A. That's right.

23 Q. Not only course on it, but gone through schooling,
24 and worked with people with suicidal tendencies?

25 A. That's right.

1 Q. And it's true, isn't it, Doctor, that a person
2 where a suicide is in the family like that it's often found that
3 there will be other suicides, especially with children, and
4 things of this nature, isn't that correct?

5 A. Of course, we do know that sometimes suicide runs
6 in the family because many times depression runs in families,
7 yes.

8 Q. Depression runs in the families?

9 A. Yes.

10 Q. So then she also told you, in addition to her
11 father's suicide, which had happened about April 19th of 1991,
12 that she had lost her job, is that correct?

13 A. Yes, that's right.

14 Q. And that was another problem that was depressing
15 her?

16 A. That's right.

17 Q. And she also her -- the marital problems was
18 causing her depression, is that correct?

19 A. Part of the picture, yes.

20 Q. And as a result of that, when you -- you then
21 admitted her to the hospital, and she stayed there until the
22 14th of February, is that correct, sir?

23 A. I did not do that, another doctor admitted her.

24 Q. I mean, she was admitted to the hospital, and
25 stayed there until the 14th?

1 A. That's right.

2 Q. And she was taken -- she was treated there at the
3 hospital during that period of time, is that correct?

4 A. That's right.

5 Q. Now, I'll ask you to refer to the hospital records,
6 and referring to the date of February the 11th of 1992, she
7 stated that she had taken an overdose of pills, and it's
8 Dioxipan, is that correct?

9 A. That's right. That is the chemical name for
10 Siniquan.

11 Q. That was my next question. Siniquan and Dioxipan
12 are the same pill, is that correct?

13 A. That's right.

14 Q. And she had taken a hand full of those pills?

15 A. Yes, undetermined number, that's right.

16 Q. An undetermined number. And she said that she --
17 she stated that she was unable to cope with the matters, and was
18 wanting to kill herself, is that correct?

19 A. She didn't specifically tell me this was a suicide
20 attempt, but from the fact that she did take all of those
21 Siniquan, it was called a suicide attempt.

22 Q. Isn't it true that she told you on the 11th,
23 referring to the hospital records, said that she felt empty,
24 hurt, and really wanted to die? Would you refer to the note at
25 the top of the page on February the 11th, 1992, the hospital

1 notes?

2 A. I don't think I made that. The nurse must have
3 written that.

4 Q. Also, the records show that she heard if you mix
5 alcohol and drugs it would kill you?

6 A. We tell all our patients that you shouldn't mix
7 alcohol and drugs, yes.

8 Q. And did she state at that time she knew that
9 because she had heard -- referring to that statement, "If you
10 mix alcohol and drugs, it will kill you?"

11 A. I didn't specifically make that statement. Another
12 doctor must have made that comment.

13 Q. And you will agree with me that the mixture of
14 Dioxipan and alcohol in sufficient amounts or in quantities
15 could kill you?

16 A. That's right.

17 Q. Isn't that correct, sir?

18 A. That's right.

19 Q. And she stayed there for a period of -- until the
20 14th when she was released, is that correct, sir?

21 A. Yes, at which time she was no longer under my care.
22 She was under Dr. Shin's care, and he's no longer at Lakeshore
23 now.

24 Q. Okay, sir. And I'll ask you to refer to the
25 records under "Habits."

1 THE COURT: Under what, Mr. Daniel?

2 MR. DANIEL: Habits, h-a-b-i-t-s. It's listed in
3 the hospital records.

4 BY MR. DANIEL:

5 Q. Do you know where those are, Doctor, under
6 psychological assessment?

7 A. I don't know -- you must be again talking about the
8 nurse's notes.

9 Q. Okay, sir. But in those nurse's notes in "Habits"
10 it states that she smokes two packs a day, isn't that correct,
11 sir?

12 A. Yes.

13 Q. And when she was discharged she was to have a
14 follow up treatment at Overlook Mental Health Institute, is that
15 correct, sir?

16 A. That's right. When a patient was discharged from
17 Lakeshore, usually we hook them up with -- in her case,
18 Overlook, yes.

19 Q. Where is Overlook located? Are you familiar with
20 that, Doctor?

21 A. I know they have a satellite treatment center
22 located somewhere in Sevierville, but the headquarters is in
23 Knoxville.

24 Q. It's headquartered there, and it may have a little
25 place up here what you call a satellite, is that correct?

1 A. Right.

2 Q. In different areas of East Tennessee?

3 A. Right.

4 Q. You did not see her again after she was released
5 on the 14th, is that correct, sir?

6 A. I saw her only one occasion, the admitting date,
7 for 30 to 45 minutes. After that she was under the care of Dr.
8 Shin, and I didn't have anything to do with that.

9 Q. But you didn't see her after she was released?

10 A. No, I haven't.

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

12 BY MR. DANIEL:

13 Q. Doctor, just one other matter. In the narrative
14 summary of the -- the clinical record narrative summary, isn't
15 it true that she had increased the use of alcohol the more she
16 got depressed?

17 A. I don't know about that. The only thing -- what
18 she told me was that she used alcohol only on two occasions
19 during her life.

20 Q. And referring to this -- are you following me on
21 the same page where it's got the...

22 MR. DANIEL: May I approach the witness, Your
23 Honor, to save us some time?

24 THE COURT: Yes.

25 BY MR. DANIEL:

1 Q. Doctor, let me show you this to save us some time
2 here. This area here -- isn't it true that she had become
3 increasingly withdrawn and depressed with increased use of
4 alcohol, which she never used to drink, is that correct? That's
5 in the records.

6 A. It's on the -- it's not dictated by me. It was
7 signed by Dr. Shin.

8 Q. I understand, but it's still part of the medical
9 records?

10 A. Right.

11 Q. And also the medical records state there was
12 increased marital problems and alcohol use, is that correct,
13 sir?

14 A. Yes, it shows that there, yes.

15 Q. Thank you, Doctor.

16 **

17 CROSS-EXAMINATION

18 BY GENERAL SCHMUTZER:

19 Q. Doctor, do you have -- you said Dr. Shin was the
20 doctor that followed up with her?

21 A. That's right. The patient, Connie Branum, was
22 assigned to Dr. Shin. I happened to see her on the day that she
23 was admitted, but once she -- she was assigned to Dr. Shin.

24 Q. So you only saw her one time, and that was at the
25 beginning when she was first admitted, and she was there until

1 the 14th when she was discharged. You didn't see her from that
2 time?

3 A. I saw her on the day she was admitted, and that is
4 the only time I saw her.

5 Q. Okay, the 11th of February?

6 A. Yes.

7 Q. I call your attention, sir, to part of the hospital
8 records from Dr. Shin, and ask you, sir, to read that -- what
9 he says was her condition upon discharge.

10 A. "Patient was sober, not psychotic, not depressed,
11 had no suicide ideas, and was stable. She had no limitation of
12 physical activity, and was on a regular diet."

13 Q. Okay. I call your attention, too, to the
14 medication that was...

15 A. Siniguan, 100 milligram.

16 Q. And that Siniguan is the Dioxipan?

17 A. That's right.

18 Q. And that was prescribed for her to take after she
19 left there on the 14th of February?

20 A. That's right.

21 Q. That's all.

22 THE COURT: You may step down. Thank you. Is he
23 excused?

24 MR. DANIEL: He's excused.

25 THE COURT: He's excused to leave, sir. Thank you.

1 MR. MILLER: Call Matthew Coverly, Your Honor, if
2 he's here.

3 **

4 MATTHEW COVERLY was called, and being duly sworn,
5 was examined and testified as follows:

6 DIRECT EXAMINATION

7 BY MR. MILLER:

8 Q. Would you tell us your name, please?

9 A. Matthew Coverly.

10 Q. Where are you employed, Mr. Coverly?

11 A. Sevier County Sheriff's Department.

12 Q. How long have you been there at the sheriff's
13 department?

14 A. Since 1989.

15 Q. I direct your attention back to 2/10/92. Did you
16 have occasion to answer a complaint by Boyd Branum?

17 A. Yes, sir, I did.

18 Q. And what was the nature of that complaint?

19 A. It was an attempted suicide.

20 Q. Attempted suicide by who?

21 A. Connie Branum.

22 Q. And did you respond to that call at the Branum
23 residence?

24 A. Yes, sir, I did.

25 Q. Tell us what you found when you got to the Branum

CROSS-EXAMINATION

BY GENERAL SCHMUTZER:

Q. Officer Coverly, back on January the 18th of 1992, about a month before this or a little less, I believe you had an opportunity to see James Dellinger and Bill Cogdill together over in the Douglas Dam area, is that correct?

A. Yes, sir, I did.

Q. And was this in the daytime or nighttime that you saw them over there?

A. It was nighttime.

Q. You saw them together?

A. Yes, sir, at 12:54 a.m.

Q. And were they drinking together?

A. Yes, sir, I arrested both...

Q. They were drinking together?

A. Yes, sir.

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

THE COURT: Anything further?

MR. MILLER: No, Your Honor.

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

MR. MILLER: Yes, Your Honor.

THE COURT: You are free to go. Thank you. Next witness.

MR. MILLER: Just a second, Your Honor. Call Bill Cogdill, Your Honor.

1 BAILIFF: As I understand it, Your Honor, his
2 father passed away, and he thought he was excused.
3 He's not here.

4 MR. MILLER: Approach the bench, Your Honor?

5 THE COURT: Yes.

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

7 MR. MILLER: He is a very material witness, Your
8 Honor. I don't know when he -- it might be that
9 we can take another order, but it's not going to
10 that much longer before we have to call him anyway.
11 I don't know what...

12 MR. DANIEL: Judge, we haven't excused.

13 GENERAL SCHMUTZER: We don't know him. I wouldn't
14 know him if I saw him.

15 MR. MILLER: You would remember him.

16 MR. DANIEL: I would suggest we just tell the one
17 of the officer to go get him.

18 GENERAL GREEN: I think they are burying his daddy
19 today, I'm not sure, but Your Honor had released
20 his brother yesterday.

21 THE COURT: Yeah.

22 GENERAL SCHMUTZER: That may be what it was.

23 THE COURT: I let his brother from out of the jail.

24 MR. DANIEL: Do you know what time the funeral is?

25 GENERAL SCHMUTZER: They've probably got that

1 order...

2 THE COURT: What I would suggest -- he's obviously
3 crucial to your case based on what the Court
4 understands you proof to be, or the theory of the
5 case to be. If you can go to another witness, I
6 will direct the sheriff's department to try to
7 locate him, assuming it is not coinciding with the
8 burial of his father. I will order him brought
9 here...

10 MR. DANIEL: Your Honor, most funerals I have been
11 to are either in the morning or afternoon, so it
12 looks like it's going to be at 10:00 or 2:00. We
13 ought to be able to get him right after that.

14 MR. WEBB: I would suggest, Your Honor, if we could
15 take a break we could call the funeral homes. He's
16 got to be at one of them, and we could ascertain
17 the time, and then we could proceed from there.

18 GENERAL GREEN: That's a pretty good idea.

19 THE COURT: I'm glad you came today.

20 MR. WEBB: I'm right on top of things, Judge.

21 MR. DANIEL: We could tell one of these sheriffs
22 to go out here and call.

23 THE COURT: Okay.

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

1 THE COURT: Ladies and gentlemen, the Court has to
2 take a short recess. Do not discuss the case, or allow anyone
3 to talk to you about it. Sheriff Ogle, if you will approach the
4 bench.

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

6 SHERIFF OGLE: Yes, Your Honor?

7 THE COURT: If you will get with counsel, or have
8 one of your officers...

9 MR. DANIEL: They say they receive friends tonight,
10 so there will be no funeral today.

11 THE COURT: Apparently, for some reason, Mr. Bill
12 Cogdill is under the impression he didn't have to
13 be here, so if you will get with counsel, and if
14 they need one of the officers to go get him, if
15 you'll help them raise that?

16 SHERIFF OGLE: Okay, sir.

17 GENERAL GREEN: Apparently Mr. Cogdill's
18 whereabouts are know, and it will take just a
19 couple of minutes if somebody can go up and get
20 him.

21 THE COURT: Yeah, that's what I told the sheriff
22 to -- if you'll talk to the sheriff, and if you all
23 know where he is, go get him, that will be fine.

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

1 THE COURT: The Court will take a short recess.

2 (COURT STOOD IN RECESS)

3 THE COURT: Sheriff Ogle, if you will ask the
4 jury...

5 (JURY IN)

6 THE COURT: Waive the call for the State?

7 GENERAL SCHMUTZER: Yes, Your Honor.

8 THE COURT: And the defense?

9 MR. MILLER: Yes, Your Honor.

10 THE COURT: Mr. Miller, you may call your next
11 witness, sir.

12 MR. MILLER: Call Linda Dellinger.

13 **

14 LINDA DELLINGER was called, and being duly sworn,
15 was examined and testified as follows:

16 DIRECT EXAMINATION

17 BY MR. MILLER:

18 Q. Would you tell us your name, please, ma'am?

19 A. Linda Dellinger.

20 Q. And you are the wife of Mr. James Dellinger, is
21 that correct?

22 A. Yes.

23 Q. Where do you live, Mrs. Dellinger?

24 A. On the Maryville Highway in Seymour.

25 Q. How long have you lived in Sevier County?

- 1 A. About eight years.
- 2 Q. How long have you been married to Mr. Dellinger?
- 3 A. 12 years.
- 4 Q. Do you all have children?
- 5 A. Yes, we do.
- 6 Q. How many?
- 7 A. We have three living children.
- 8 Q. Did you also Tommy Griffin during his lifetime?
- 9 A. Yes, I did.
- 10 Q. Would Tommy Griffin visit up there at your all's
- 11 trailer?
- 12 A. Yes.
- 13 Q. Okay. Just tell the jury what type of relationship
- 14 Tommy Griffin had with your husband?
- 15 A. They were very close.
- 16 Q. Did they do a lot of things together?
- 17 A. Yes.
- 18 Q. Were together a whole lot?
- 19 A. Yes, daily.
- 20 Q. I'll draw your attention back to February the 21st,
- 21 being a Friday night, the Friday night the trailer fire
- 22 occurred, at some point in that evening did Gary Sutton and
- 23 James Dellinger and Carolyn Weaver arrive there at your trailer?
- 24 A. Yes, they did.
- 25 Q. Approximately what time was that?

1 A. It would have been somewhere in the neighborhood
2 of 7:30 to something to 8:00, I think.

3 Q. Later on that evening did something draw your
4 attention to the fire that had occurred down at the trailer?

5 A. Yes.

6 Q. I believe that Miss Branum, Jennifer Branum...

7 GENERAL SCHMUTZER: I would object, Your Honor, to
8 leading his witness. I think he needs to just...

9 THE COURT: Sustained as to form, Mr. Miller

10 BY MR. MILLER:

11 Q. What drew your attention to the fire first?

12 A. Well, Jenny Branum ran over to our house and
13 knocked on the door, and I answered the door, and she was very
14 excited, real nervous, and she just started blurting out that
15 Tommy's trailer was on fire, and a lot of other things that I
16 couldn't understand, and I asked her to just calm down, and tell
17 me what was wrong, and she told me that Tommy's trailer was on
18 fire, and then she spoke directly to James, and asked him if he
19 would go down, and see if Tommy was inside the trailer.

20 Q. And at that time had James come to the door there?

21 A. Yes.

22 Q. Did you at any time tell Jennifer Branum that James
23 or Gary were not there?

24 A. No, sir.

25 Q. What did James tell Miss Branum regarding Tommy?

1 A. He told her that Tommy was not up here, that he was
2 in Maryville with friends.

3 Q. Okay. And did Jennifer Branum leave there
4 thereafter sometime?

5 A. Yes.

6 Q. Did James go down to the fire that night?

7 A. No, he didn't.

8 Q. If you know, why didn't he go down to the fire?

9 A. Well, James and Bill Griffin, Tommy brother...

10 GENERAL SCHMUTZER: This would have to be hearsay,
11 Your Honor, as to why he wouldn't do something.

12 MR. MILLER: I skip over that, that's okay.

13 BY MR. MILLER:

14 Q. After there fire were there a number of calls made
15 to your trailer?

16 A. Yes, there was.

17 Q. And at some point in the evening did James --
18 shortly after the fire did James make some phone calls to Blount
19 County?

20 A. Yes.

21 Q. And, of course, other than what he may have said,
22 do you know who he was calling?

23 A. Well, I made the first call. I called to Blount
24 Memorial Hospital in Maryville, and asked if they had had a
25 Tommy Griffin brought in any time that evening.

1 Q. Why were you all calling over in Blount County?

2 A. Well, Connie had called and asked us to do that.
3 She was afraid since she didn't know the people that he was with
4 that he would get in trouble, or they may do something to him,
5 so she asked us to call.

6 Q. Was it uncommon for Tommy to end up in jail when
7 he wandered off?

8 A. No.

9 Q. Had James had to go to other counties to bail Tommy
10 out of jail on previous occasions?

11 A. Yes, several times.

12 Q. Specifically, did he have to go to Cocke County on
13 occasion to...

14 GENERAL SCHMUTZER: This is all leading, Your
15 Honor.

16 THE COURT: Sustained as to form, Mr. Miller.

17 BY MR. MILLER:

18 Q. Did you at some point learn that Tommy was in jail
19 in Blount County?

20 A. Yes.

21 Q. And at some point that evening did Gary and James
22 leave to go to Blount County to get Tommy?

23 A. Yes, they did.

24 Q. In case you can remember, and I know it's been
25 along time ago, what time did they return?

1 A. It was right at midnight.

2 Q. How do you remember that?

3 A. Well, I was on the phone talking to our niece,
4 Diane Sutton, and she was just asking me if they had returned
5 yet, and I told her that it was just 12:00, and I really wasn't
6 looking for them to be back yet. I thought it would take longer
7 to get him out of jail.

8 Q. And you -- when you were talking to her on the
9 phone, is that when they pulled up?

10 A. Yes.

11 Q. Was Tommy Griffin with them at that time?

12 A. No, he wasn't.

13 Q. Did they tell you where Tommy Griffin was?

14 A. Yes, they said that he had stayed in Maryville with
15 the girl that he was with earlier.

16 Q. Later on that evening did the four of you, and I'm
17 talking about you, and James, and Gary Sutton, and Carolyn
18 Weaver, did you go out to eat?

19 A. Yes, we did.

20 Q. And where did you go?

21 A. We went to a new Huddle House in Pigeon Forge.

22 Q. Did you return home after that?

23 A. Yes.

24 Q. I direct your attention to the next morning,
25 Saturday, February the 22nd. Did James and Gary leave the house

1 that day?

2 A. Yes, they did.

3 Q. Where did they go?

4 A. The first time that they left they went out by
5 Gary's home to check his mail.

6 Q. And when they returned were you still at the house?

7 A. Yes, I was.

8 Q. And did they leave again?

9 A. Yes, they did.

10 Q. When they left again did you and Carolyn leave?

11 A. Yes, we did.

12 Q. When you and Carolyn returned were James and Gary
13 at home?

14 A. No, they weren't.

15 Q. Okay. As best you remember, when is the next time
16 that you saw them on Saturday the 22nd?

17 A. When they returned home that evening it was -- I
18 want to say about 8:00.

19 Q. Okay. And who all did they return with, was it
20 just James and Gary?

21 A. Yes, it was.

22 Q. Had they -- do you know where they had been just
23 prior to coming over to your house?

24 A. Not at that time, no, I didn't.

25 Q. Was Carolyn Weaver over there at the time?

- 1 A. Yes, she was.
- 2 Q. And how did she get there?
- 3 A. She came over with them on Friday night.
- 4 Q. And she had stayed there with you that day?
- 5 A. Yes.
- 6 Q. And after they arrived back there at 8:00, did they
- 7 leave again that night -- Saturday night?
- 8 A. No, they did not.
- 9 Q. And Mr. Dellinger was with you that entire time?
- 10 A. Yes.
- 11 Q. Now directing your attention to Sunday. After you
- 12 woke up, what took place on Sunday morning?
- 13 A. Well, first off we had company. Jim and Shirley
- 14 Sutton stopped in, and had Gary's unemployment which they gave
- 15 to him, and...
- 16 Q. Let me ask you this. Was Gary -- did Gary and
- 17 Carolyn leave at any time Sunday morning?
- 18 A. Yes, they did.
- 19 Q. And where did they go, as far as you know?
- 20 A. They went out to his home to get a change a
- 21 clothes, and they also wanted to stop at the store.
- 22 Q. Did they get some groceries at the store?
- 23 A. Yes, they did.
- 24 Q. Did you cook breakfast?
- 25 A. Yes, I did.

1 Q. Were you with James all day that day there at the
2 house?

3 A. Yes, I was.

4 Q. Did a girl by the name of Amy Hanes or Amy Franklin
5 call up at the house?

6 A. Yes, she did.

7 Q. And did she later come by the house?

8 A. Yes, she did.

9 MR. MILLER: Your Honor, if I may refer to one of
10 these diagram?

11 THE COURT: Sure.

12 BY MR. MILLER:

13 Q. Come down, Mrs. Dellinger, please, and look at this
14 diagram. On Friday night of the trailer fire, how many vehicles
15 were up there at your trailer?

16 A. There was three.

17 Q. Okay, and what vehicles were those?

18 A. My husband's truck, my car, and Jimmy Sutton's
19 small truck.

20 Q. Okay. And if you can -- you see the location of
21 your trailer here -- the James Dellinger residence. Just point
22 out to the jury there where James' truck would have been parked.

23 A. Well, our driveway came into the back of the
24 trailer, and had a big gas tank that was behind the trailer, and
25 the truck was always pulled over to the right of the gas tank.

1 Q. Okay. And where was your car parked?

2 A. My car was directly in behind his.

3 Q. And what was the other vehicle?

4 A. Jimmy Sutton's truck.

5 Q. And where was it parked?

6 A. It was parked behind my car.

7 Q. Okay. In your opinion, is there any way you could
8 have seen James' truck from down here at the Branum's?

9 GENERAL SCHMUTZER: I object, Your Honor, to her
10 opinion.

11 THE COURT: Sustained as to the form.

12 MR. MILLER: You may go back up to the stand.
13 That's all I have at this time, Your Honor.

14 THE COURT: Mr. Daniel?

15 **

16 CROSS-EXAMINATION

17 BY MR. DANIEL:

18 Q. Mrs. Dellinger, I'm Zane Daniel, and I believe I've
19 spoken with you on one occasion, is that correct?

20 A. Yes.

21 Q. And asked you questions about this matter?

22 A. Yes.

23 Q. I want to start, and ask you something about what
24 happened, and for the purpose of getting right in to this case,
25 about Friday, which would be the 21st, the day of the fire.

1 A. Yes.

2 Q. As I understand it, you were at home most of that
3 afternoon or late that afternoon is that correct?

4 A. From about 4:00 I was at home.

5 Q. Okay. Now do you have a daughter by a previous
6 marriage?

7 A. Yes, I do.

8 Q. And where does she live?

9 A. She lived next door to us in a mobile home.

10 Q. Does she have a small child?

11 A. Yes, she does.

12 Q. Which would be your grandchild, and Mr. Dellinger's
13 step grandchild, would that be correct?

14 A. Yes.

15 Q. How old, back of February the 21st, was this child?

16 A. He was three weeks old.

17 Q. I believe what happened, and you correct me as we
18 walk through this -- you were at home -- did you receive a phone
19 call from James sometime just shortly before he got home from
20 over at Jimmy Sutton's house?

21 A. Yes, I did.

22 Q. Did you speak with him on the phone?

23 A. Yes, I did.

24 Q. And for the record, how far is your home -- where
25 you live from where Jimmy Sutton lives?

- 1 A. It would be about five miles.
- 2 Q. About a seven or eight minute drive or something
- 3 like this?
- 4 A. Yes.
- 5 Q. After you talked with James, I believe you talked
- 6 with Jimmy's wife, is that correct?
- 7 A. Yes, I did.
- 8 Q. And what is her name?
- 9 A. Diane.
- 10 Q. And was it true that you were still talking on the
- 11 phone with her when they came into the house?
- 12 A. Yes.
- 13 Q. And you stated this was sometime around -- between
- 14 7:30 and 8:00?
- 15 A. Yes.
- 16 Q. You weren't watching the time, I presume, and had
- 17 no reason to look at the clock at that time?
- 18 A. No.
- 19 Q. And who all would have been there -- who arrived
- 20 when your husband came in?
- 21 A. My husband, and Gary, and Gary's girlfriend,
- 22 Carolyn Weaver.
- 23 Q. Carolyn Weaver?
- 24 A. Yes, sir.
- 25 Q. The three of them came in, is that correct?

1 A. Yes.

2 Q. And she had been over at Jimmy's house, is that
3 your...

4 GENERAL SCHMUTZER: I object, Your Honor, she
5 wouldn't know that unless she -- that would be
6 hearsay.

7 THE COURT: Sustained as to form.

8 MR. DANIEL: Okay.

9 BY MR. DANIEL:

10 Q. Do you know where she had been before she arrived
11 there at your house?

12 A. Yes.

13 Q. And where was that...

14 GENERAL SCHMUTZER: Object, Your Honor, unless she
15 knows from her own knowledge.

16 THE COURT: If she knows of her personal knowledge
17 she may testify to that.

18 BY MR. DANIEL:

19 Q. Do you know of your own knowledge, or just
20 basically...

21 A. Yes, sir, I do. She was at Jimmy and Diane
22 Sutton's home.

23 Q. And you say the three of them arrived in a truck.
24 And whose truck did they arrive in, was it Jimmy's?

25 A. Yes, it was Jimmy Sutton's truck.

1 Q. And what color type truck is this? You may not be
2 real good on trucks, but what color is it?

3 A. At that time it was white.

4 Q. And this would have been, you say, between 7:30 and
5 a quarter till 8:00?

6 A. Yes, I believe so.

7 Q. So that would have put there at your house then,
8 you, your daughter, your granddaughter, after they arrived, Gary
9 Sutton, your husband, and Carolyn Weaver, is that correct?

10 A. Yes.

11 Q. And I believe you stated you were still talking on
12 the phone to Jimmy's wife when they arrived?

13 A. Yes.

14 Q. And was that because when you were talking to your
15 husband you turned -- before he hung up, you started talking to
16 her, is that correct?

17 A. Yes.

18 Q. Now how long had you been there -- you say that
19 would be about a quarter till -- 7:30 or 8:00 -- quarter till
20 8:00 or something like that. The fire happened, I believe we've
21 established, around 9:00. How long -- had you been there at
22 least an hour before this fire occurred?

23 A. Yes, sir.

24 Q. And who -- you say this little girl came up to the
25 -- the first thing you hear about the fire is the little girl

1 came up to your door, is that correct?

2 A. Yes, Jenny Branum.

3 Q. And is that -- I believe I asked you, and you have
4 drawn a diagram that shows the house, and where your house is,
5 and the other houses, is that correct?

6 A. Yes.

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

9 THE COURT: Sure.

10 BY MR. DANIEL:

11 Q. This is not to scale, we understand that, is that
12 right?

13 A. Yes.

14 Q. And this shows the area out there in the -- where
15 you live. It says, "James Dellinger's," and this is the door?

16 A. Yes.

17 Q. And it shows a well house, Boyd's out building,
18 Boyd Branum's house, and another trailer here. Whose trailer
19 would that be?

20 A. That was my daughter's.

21 Q. That would be your daughter's?

22 A. Yes.

23 Q. And that was down across from Boyd Branum's?

24 A. Yes, directly across.

25 Q. And then there is a place that says, "Henry's," and

1 who lives there?

2 A. Alvin Henry.

3 Q. Now, did you have up there next to your house a
4 large tank, and what we mean by that, a propane type tank?

5 A. Yes, we did.

6 Q. What was the purpose of that?

7 A. Well, our whole trailer was on gas, so it fed the
8 whole trailer with gas.

9 Q. Now, I believe you've -- where was your husband,
10 James', truck parked in regards to the gas tank?

11 A. It was on the back side of the gas tank.

12 Q. Away from the house?

13 A. Yes.

14 Q. So there's an area between -- the trailer -- I'm
15 referring to the trailer as a house. There's an area between
16 the house or the trailer and the gas tank, is that correct?

17 A. Yes, sir.

18 Q. And your door -- you've marked a door here. Is
19 that the door that the little girl came to?

20 A. Yes.

21 Q. And this is the driveway or the area in which --
22 did you see her when she left?

23 A. I really didn't.

24 Q. Okay, but this is the area that you generally walk
25 up and down through there?

1 A. Yes.

2 Q. Between the gas tank and the house?

3 A. Yes.

4 MR. DANIEL: Your Honor, we'd like to offer that
5 as an exhibit.

6 GENERAL SCHMUTZER: May we see it?

7 BY MR. DANIEL:

8 Q. Let me ask you one more question. You've drawn in
9 some vehicles here, and it says, "James' truck, Linda's car."
10 Is that your car?

11 A. Yes.

12 Q. And "Jimmy's truck."

13 A. Yes.

14 Q. Is that the way the vehicles were parked when they
15 were -- there when the little girl came up to the house?

16 A. Yes, sir.

17 Q. And you're the one that drew those, or somebody
18 else drew those in there, is that right?

19 A. Yes.

20 MR. DANIEL: Your Honor, I would offer that as the
21 next exhibit.

22 THE COURT: Sure.

23 (EXHIBIT #48 - Diagram of location of cars,
24 etcetera; marked and filed.)

25 BY MR. DANIEL:

1 Q. Mrs. Dellinger, would you step down so we can see
2 what we've been talking about?

3 A. (Witness complies.)

4 Q. We realize this is not to scale, but this is
5 basically they way the area is, is that correct?

6 A. Yes.

7 Q. And where it says, "James Dellinger's," this is the
8 trailer that we're referring to, is that correct?

9 A. Yes.

10 Q. And the gas tank -- right here is where the gas
11 tank was that fed the house?

12 A. Yes.

13 Q. And there is an out building up in here, and you've
14 listed this as where your husband's truck was parked?

15 A. Yes.

16 Q. Was it parked there that afternoon when you came
17 in at 4:00?

18 A. Yes, it was.

19 Q. And you've listed here, "Linda's car." Is this the
20 car that you drove?

21 A. Yes.

22 Q. And what kind of car is that?

23 A. It was a gray, '88 Oldsmobile.

24 Q. And Jimmy Sutton's truck was parked, you say, back
25 in here -- you've got it kind of caddie cornered. Would that

1 be the way it was?

2 A. Yes.

3 Q. Okay. And then down here is the -- this says,
4 "Boyd's out building," and this says, "Boyd Branum's house," and
5 the well house, and this is your daughter's, is that correct?

6 A. Yes, sir.

7 Q. And this is the Henry's home down here?

8 A. Yes.

9 Q. If you'll wait just one second. I believe that's
10 basically the same as the one that the State has got...

11 GENERAL SCHMUTZER: Object, Your Honor, to what he
12 thinks they are. I think this witness can testify,
13 but his conclusions, and what he thinks are not
14 proper for the jury.

15 MR. DANIEL: All right. I'll ask then...

16 BY MR. DANIEL:

17 Q. Is this basically the same as the State's where it
18 shows James Dellinger's house, this would be Boyd Branum's, this
19 would be your daughter's house or trailer over here?

20 A. Yes.

21 Q. Which is in this area, and then on down -- and
22 there's the Henry residence, and that's as far as your diagram
23 goes? It doesn't go on down...?

24 A. Yes.

25 Q. It's basically the same area, is that correct?

1 A. Yes.

2 Q. You may step back up.

3 A. (Witness complies.)

4 MR. DANIEL: I will pass these the jury in just a
5 few minutes, Your Honor.

6 BY MR. DANIEL:

7 Q. So when they came to your house, then, whose truck
8 were they driving? Was it Jimmy Sutton's truck when the three
9 of them arrived?

10 A. Yes.

11 Q. And you've shown there where the truck was parked.
12 Was that about the way it was parked when it pulled there into
13 the house?

14 A. Yes, sir, it was.

15 Q. Now, you stated about the little girl running up
16 there and knocking on the door?

17 A. Yes.

18 Q. Did she ask if Tommy was there?

19 A. Yes.

20 Q. And what -- did you tell her?

21 A. Yes, sir, I did. I said, "No, he's not."

22 Q. What did she say about wanting someone to go down
23 to the trailer to...

24 A. She wanted James to go down and check, and make
25 sure Tommy wasn't inside the trailer.

1 Q. And I believe you stated at that time he said that
2 he was down there, and he couldn't be down there because he was
3 -- they left him with a girl in Maryville, is that correct?

4 A. I didn't state that. She was asking James at that
5 time.

6 Q. And he made that statement in your presence?

7 A. Yes, he did.

8 Q. And I believe that you had -- your daughter was
9 standing there close by you at that time, is that correct?

10 A. Yes, sir.

11 Q. And you -- I've talked to you about this, so you
12 correct me if I'm wrong, but you had the daughter in your arms,
13 is that correct?

14 A. No, sir, my grandson.

15 Q. Is it a grandson?

16 A. Yes, yes.

17 Q. I'm sorry. I apologize. You had your grandson in
18 your arms?

19 A. Yes, I did.

20 Q. And when you went to the door, your daughter came
21 and took the grandson out of your arms, is that correct?

22 A. Yes, it was very cold, and when I opened the door,
23 of course -- you know, the cold air was coming on him, and she
24 run back there to get the baby.

25 Q. Now, where was Gary Sutton and Carolyn Weaver at

1 this time when you went to the door? Do you know where they
2 were?

3 A. Well, everybody -- when they heard Jenny being so
4 excited and saying something about the fire, and everything,
5 everybody had just scrunched up to the door. We were all just
6 bunched up there.

7 Q. And then did Gary Sutton decide not to go down
8 there to the fire because he had had some problems with Bill
9 Griffin?

10 A. Yes, sir.

11 GENERAL SCHUMTZER: I object, Your Honor -- I've
12 already objected to that. There's not way she
13 would know unless she talked to him.

14 THE COURT: Sustained as to the form of the
15 question.

16 BY MR. DANIEL:

17 Q. Let me ask you, didn't Gary Sutton make a statement
18 to the effect that he -- that he didn't want to go down there
19 because Bill Griffin was down there, and he might have some
20 problems with him?

21 A. Yes, sir.

22 Q. And you know from your own knowledge that he and
23 Bill Griffin had had some problems before?

24 A. Yes, I did.

25 Q. But do you know what Gary Sutton's relationship was

1 with Tommy Griffin?

2 A. Yes, sir.

3 Q. And it was a very good relationship?

4 A. Oh, yes, sir.

5 Q. And did -- Gary Sutton and Tommy Griffin were close
6 friends?

7 A. Yes.

8 Q. Ran around together?

9 A. Yes, Tommy would go out and stay with Gary three
10 or four days at a time.

11 Q. Do you know -- were you present or know anything
12 about when Gary got in a fight with one of the Griffin boys, and
13 Tommy sided with Gary?

14 A. I wasn't present, no, but Tommy told me about it
15 himself.

16 Q. Now, you stated that there was some calls that came
17 to the house. Was there a lot of calls coming and going there
18 at your house that night?

19 A. Yes, sir, there was.

20 Q. About the fire?

21 A. Yes.

22 Q. Did anybody in particular that you know that's
23 local call you about checking on the fire to see if was your
24 all's house or what it was?

25 A. Yes, some people that had scanners had just heard

1 a little bit of it -- just the address, I think, and they called
2 wanting to know if it was ours because we had had a home that
3 just burned down a year before.

4 Q. And where did that fire take place, there at the
5 same area?

6 A. Yes, sir.

7 Q. And then you -- I believe after that you made --
8 you say you made a call to the hospital, is that correct?

9 A. Yes, sir.

10 Q. Was James there standing with you when you made
11 these calls?

12 A. Yes, he was.

13 Q. And you called the hospital?

14 A. Yes, sir.

15 Q. And that was for the purpose of seeing of Tommy
16 could be over there?

17 A. Yes.

18 Q. And then I believe the next phone call was made,
19 and I don't know if you've seen those phone records, but you
20 made a phone call to the sheriff's department?

21 A. Yes, I did.

22 Q. Or some number over there in Blount County?

23 A. Well, I just had a number for the Blount County
24 Police Department.

25 Q. Where did you get that number out of, do you recall

1 -- if you recall?

2 A. Well, I don't really remember. I had had it for
3 quite some time.

4 Q. And then after that did they direct you, or give
5 you a number to call the jail?

6 A. Yes, they did.

7 Q. And the jail number -- and you called the jail?

8 A. Yes, I did.

9 Q. Now, did you talk to the jailer, or did someone
10 else talk to the jailer, or do you recall?

11 A. All I asked was if they had a Tommy Griffin.

12 Q. Did you ask -- what his bond -- what he was charged
13 with, and what his bond was?

14 A. No, sir, when they told me that they did have one,
15 I handed the phone to Gary, and he asked all the other
16 questions.

17 Q. Could you hear what he asked the jailer?

18 A. Yes, I could hear what he was saying.

19 Q. All right. Just tell us what you remember that he
20 said.

21 A. I think he repeated my question, and asked if they
22 did have Tommy Griffin, which, evidential, they said yes, and
23 he said, "What are his charges?" Then he asked how much his
24 bond would be, and what time they might pick him up.

25 Q. Now you overheard that conversation, correct?

1 A. Yes.

2 Q. You heard Gary talk to the jailer?

3 A. Yes, sir.

4 Q. Now, did sometime around, say, 10:00 or later, did
5 your husband and Gary leave the house and go to pick Tommy
6 Griffin up?

7 A. Yes, they did.

8 Q. Let me ask you, when they came in the house, the
9 first time they came in from Jimmy's house, did they have some
10 beer with them?

11 A. Yes, they did.

12 Q. Do you know whether they had one bag or two bags
13 of beer?

14 A. They each had a bag.

15 Q. Each had a bag of beer?

16 A. Yes.

17 Q. And then when they left, did they take some beer
18 with them when they left to go in your car?

19 A. Yes, they did.

20 Q. And they took your car?

21 A. Yes.

22 Q. And did James wear -- take a red -- what was he
23 wearing as far as -- a tee shirt and a flannel shirt, is that
24 what he had on?

25 A. Yes, it was.

1 Q. And did he have any other clothing that he took
2 with him as far as -- did he usually carry another piece of
3 clothing with him, in particular, a jacket?

4 A. Yes, he took a -- it was thin, sort of wind breaker
5 type small jacket.

6 Q. What color was it, and what does it look like?

7 A. It was camouflaged, green.

8 Q. Did he wear that often?

9 A. Yes, fairly often, yes.

10 Q. This was in February of last year, just about this
11 time. Was it cold at that time -- cold of the night?

12 A. It had been real warm that day, but by this time
13 at night it was pretty cool.

14 Q. Now your husband took -- they took some beer with
15 them, you say?

16 A. Yes, I believe they did.

17 Q. And got in your car and left?

18 A. Yes.

19 Q. Do you know about what time this was? Would this
20 be around 10:00, or just give us your best estimate.

21 A. Well, I can only guess, but I thought that it was
22 close to 11:00.

23 Q. Okay. Do you have way of knowing what time it was
24 at that time?

25 A. No, sir, I didn't really look.

1 Q. And they were gone, and when they returned did they
2 return in your car?

3 A. Yes, they did.

4 Q. And I believe you stated earlier you did check the
5 time to see about what time they returned, is that correct?

6 A. Well, I was talking to Diane Sutton, and we were
7 discussing the time because I thought they would have to hold
8 Tommy for a while before they would let him out, and she was
9 asking me if they had returned yet, and I told her no, and I
10 said, "It's only 12:00. I don't look for them back for -- you
11 know, a good while."

12 Q. They did return, and after you were there, did you
13 then later go to the Huddle House, you said, and got something
14 to eat?

15 A. Yes, sir, we did.

16 Q. And what happened to your daughter in the mean
17 time? You said your daughter was there when they arrived. Was
18 she there when they left to go to pick him up?

19 A. Yes, sir.

20 Q. Was she there when they returned?

21 A. No, she was not.

22 Q. Where had she gone?

23 A. After they had left to go get Tommy, me and Carolyn
24 walked my daughter down to her trailer, and left her there, and
25 we walked on down to the fire.

1 Q. Did you see anyone down there at the fire that
2 night?

3 A. Yes, I did.

4 Q. Who did -- was Connie Branum down there?

5 A. Yes, sir, I did. I talked with her and her
6 daughter, Sandy.

7 Q. Now the next morning -- what time did you get back
8 in -- do you know what time it was, how long you was at the
9 Huddle House?

10 A. No, I don't really know how long we were there.
11 I just know that after we returned home, we had just gotten into
12 bed when somebody knocked on the door, and I have a clock radio
13 setting on my night stand, and it's got the great big digital
14 type letters, and it was shining right in my face, and I
15 happened to notice it was 3:00, and I thought -- you know, who
16 could be knocking on the door at 3:00 in the morning.

17 Q. And who was it?

18 A. It was Arnold Lewis -- it was Connie's uncle.

19 Q. And did he stay there, come in, or did he just...

20 A. He stepped up on the steps to the door, but he
21 didn't actually step on into the house.

22 Q. Okay. Now the next morning, did you have a chance
23 to leave the house, and did you drive your car -- that's on
24 Sunday.

25 A. On Sunday?

1 Q. No, strike that. On Saturday -- did you leave your
2 house on Saturday?

3 A. Yes, I did.

4 Q. And where did you go?

5 A. Well, me and Carolyn just went to town, and were
6 shopping.

7 Q. There's a -- did someone testify that -- well, let
8 me ask you this. Did you have a conversation with Connie
9 Branum?

10 A. Yes, sir, I did.

11 Q. Where did you see her?

12 A. It was as we were returning home. She was -- her
13 car was parked in the road in front of Devon Mayes' house, and
14 she was standing the front yard talking to Devon's wife, and as
15 I came up the hollow, I stopped at her car, and Connie walked
16 down, and stood beside the car, and talked to us.

17 Q. If someone testified or made the statement that who
18 was riding with you would have been your daughter, would that
19 have been correct?

20 A. No, sir, my daughter had went to Townsend.

21 Q. And who was riding with you would be who then?

22 A. It was Carolyn Weaver.

23 Q. Carolyn?

24 A. Yes, sir.

25 Q. And after you'd talked with them, do you know

1 whether or not your husband had left the house or was still
2 there at the house at the time when you all left, if you
3 remember?

4 A. No, sir, they were not.

5 Q. And then later did -- did you see your husband the
6 rest of that day up until later that afternoon?

7 A. No, sir, I didn't, not until late evening.

8 Q. And what time did you see him or what time did he
9 return home that -- later that afternoon?

10 A. It was right at 8:00.

11 Q. And who was there at your house at that time when
12 he returned?

13 A. At that time only me and Carolyn Weaver.

14 Q. And was anybody with your husband? Was Gary with
15 him at that time?

16 A. Yes, he was.

17 Q. And at that time did you know what he was driving?
18 Was he driving his truck at that time?

19 A. Yes, he was.

20 Q. Now, Jimmy's truck had been there the day before.
21 Did it set there for a day or so before it was moved?

22 A. Yes.

23 Q. When was it moved, if you recall?

24 A. The best I can remember, I believe they drove it
25 down to Jimmy's late Sunday night.