

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

AT SEVIERVILLE, TENNESSEE

STATE OF TENNESSEE,

Appellee,

-vs-

GARY WAYNE SUTTON and,
JAMES ANDERSON DELLINGER

Appellants.

*
*
*
*
*
*
*
*
*
*
*
*

CASE # 5033, 5035

FILED

MAR 7 1994

SUPREME COURT CLERK

TRANSCRIPT OF THE EVIDENCE:

Trial

February 16-24, 1993

Volume 21 of 22 Volumes

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

APPEARANCES:

FOR THE STATE

GEN. ALFRED C. SCHMUTZER, JR., D.A.
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

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

CIRCUIT COURT
FILED

HOOR 9:30 A. M

DATE: JAN 07 1994

Glenn R. Hensley

CIRCUIT COURT CLERK
SEVIER COUNTY, TENN.

GENERAL INDEX
VOLUME 21

	<u>VOLUME</u>	<u>PAGE</u>
RON DRINNON Cross Examination (Schmutzer)	21	2001
MOTIONS		2007
REBUTTAL:		
GARY CLABO Direct Examination	21	2017
DON OGLE Direct Examination	21	2020
Cross Examination	21	2022
MARK TURNER Direct Examination	21	2023
Cross Examination (Daniel)	21	2028
WILLIAM MARTIN BARNES Direct Examination	21	2046
Cross Examination (Daniel)	21	2048
	Redirect	2048
CLOSING ARGUMENTS	21	2063
CHARGE OF THE COURT	21	2099

INDEX OF EXHIBITS
VOLUME 21

<u>EXHIBIT #</u>	<u>ITEM</u>	<u>VOLUME</u>	<u>PAGE</u>
68	Radio log	21	2026
69	Log	21	2040

Courtesy of
Time of Death Podcast
by Beth Braden

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

Exhibit Index

1 "Come on over, and leave that boy alone."

2 Q. And would it be fair to say that she told you on
3 more than one occasion, maybe four or five, that she didn't want
4 you to tell any of her people that she was over there?

5 A. She might have said it twice. I remember more than
6 once, but...

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

8 THE COURT: General Schmutzer?

9 **

10 CROSS-EXAMINATION

11 BY GENERAL SCHMUTZER:

12 Q. Mr. Drinnon, you were in there a short time, what,
13 about 10 or 15 minutes?

14 A. Yeah, if that long.

15 Q. Had about time for one beer?

16 A. One beer.

17 Q. You left, and they were all still there?

18 A. Yeah.

19 Q. You never saw her when she was talking to the girl
20 at the bar there, did you? You never overheard any of that, did
21 you?

22 A. I don't recall any of it, no.

23 Q. In any event, while you were there she appeared to
24 be pretty well drunk?

25 A. She was -- like I said, I never seen her drinking

1 anything, but I could tell, yeah, she had been drinking.

2 Q. And in fact, I believe you told them that she
3 appeared to be drunker than the men?

4 A. Yeah.

5 Q. That's all.

6 THE COURT: You may step down. Is he free to go?

7 MR. DANIEL: Yes, Your Honor.

8 THE WITNESS: And you didn't want to see me or
9 nothing?

10 THE COURT: Bye. As long as they got you here.
11 Mr. Miller, anything further?

12 MR. WEBB: Your Honor, that's our proof.

13 THE COURT: So Mr. Sutton rests, and Mr. Dellinger
14 rests. Okay. General Schmutzer, if you will
15 approach.

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

17 GENERAL SCHMUTZER: We will have three, possibly
18 four witnesses that could be fairly long, Your
19 Honor.

20 THE COURT: Okay. The -- I don't want to get in
21 a situation of...

22 GENERAL SCHMUTZER: Reversal.

23 THE COURT: ...going all night.

24 MR. WEBB: How long do you think it will last,
25 General?

1 **GENERAL SCHMUTZER:** I don't know, but I think it
2 will last a while.

3 **MR. WEBB:** Who have you got? Do you know now?

4 **GENERAL SCHMUTZER:** I know some, but I've got to
5 go back over everything, obviously, because there's
6 a lot of things that were said...

7 **THE COURT:** I take it Turner will be one of them,
8 and...

9 **GENERAL SCHMUTZER:** Right, and possibly David
10 Davenport again, but Turner for sure. You've
11 Clabo, you've got -- you've got possibly Widener
12 again, and you've got...

13 **THE COURT:** Okay. Well, I think one of those cases
14 that Judge Porter's got reversed on was where
15 everybody agreed to go on, didn't they?

16 **MR. WEBB:** We agreed to go on.

17 **THE COURT:** And they did in that case, too, that
18 got reversed.

19 **MR. WEBB:** Everybody else does, so we agree to go
20 on, Judge, all night, if necessary.

21 **THE COURT:** I will adjourn, and start at 9:00 in
22 the morning. If you've got any -- I have told you
23 I'm going to charge first degree murder, second
24 degree murder, the -- what are you asking the Court
25 to charge on the arson charges, General Schmutzer,

1 or have you had a chance to think about that yet?

2 **GENERAL SCHMUTZER:** I haven't had a chance to look
3 at it yet.

4 **THE COURT:** Okay. Think on that over the night.

5 **MR. DANIEL:** Are we trying the arson case, too,
6 Judge?

7 **THE COURT:** Of her car.

8 **MR. WEBB:** Is that arson, or burning of personal
9 property?

10 **THE COURT:** That's all I'm going to charge, isn't
11 it, burning of personal property. I'm sorry. And
12 if you want me try those others, we can...

13 **MR. DANIEL:** Join them all together, and...

14 **MR. WEBB:** Might as well.

15 **THE COURT:** Better not do that. As I've already
16 said, if you've got any special charges, again, I
17 will give you an opportunity -- after the proof
18 is in, I'll take a break, we'll talk about charges,
19 and if you want to look at any of my charges, fine.
20 I will charge, of course, the expert witness, the
21 alibi defense, the other crimes evidence, and...

22 **MR. WEBB:** I might like -- is that from T.P.I.
23 or...

24 **THE COURT:** Yeah, 3705.

25 **MR. WEBB:** And that's directly from T.P.I.?

1 THE COURT: Yes, 3705.

2 MR. DANIEL: Thank you, Your Honor.

3 THE COURT: Okay. And then anything else that is
4 relevant, the Court will certainly consider that.
5 Okay.

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

8 THE COURT: Ladies and gentlemen of the jury, you
9 have heard both cases in chief by the State of Tennessee, and
10 by the defendants in this case. Because of the late hour --
11 there may be some rebuttal testimony in the morning offered by
12 the State of Tennessee. Because of the late hour, I am going
13 to recess until 9:00 a.m. in the morning. After the final proof
14 is in in the morning we will hear closing arguments. I will
15 charge the jury, and you will retire at that juncture for your
16 deliberations.

17 So I hope all of you have a good night. As I told
18 you before, don't watch any news broadcast, listen to any news
19 broadcast, or read any newspapers, and don't discuss the case
20 at this juncture, because all of the proof may not be in. So
21 we will see you in the morning. All rise for the jury. Good
22 night.

23 (JURY OUT)

24 THE COURT: Is there anything, counsel, that the
25 Court needs to take up tonight?

1 MR. WEBB: Your Honor, we want to renew our motion
2 for judgment of acquittal on...

3 THE COURT: I will hear your motion if you want me
4 to -- if you want to make it tonight you can...

5 MR. DANIEL: Do we do it before rebuttal, Your
6 Honor? I don't know if we do.

7 MR. WEBB: I think we can do it right now at the
8 end of our proof.

9 THE COURT: You may do it now if you want to, and
10 if you want to wait until after rebuttal, you're certainly
11 entitled to do that, Mr. Daniel. I will leave that up to you.

12 MR. WEBB: You're going to give us the option,
13 though, to raise that in the morning?

14 THE COURT: Yes, sir, I sure will. That's your
15 privilege. Okay.

16 MR. WEBB: We'll wait and see.

17 THE COURT: Okay, that will be fine, Mr. Daniel.
18 The Court stands adjourned until 9:00 a.m.

19 **

1 THE COURT: You all may be seated. Gentlemen, do
2 you all have a motion?

3 MR. WEBB: Yes, Your Honor.

4 THE COURT: Is it a renewal of the other motion,
5 Mr. Webb?

6 MR. WEBB: Your Honor, what I'm going to do, just
7 to take a moment of the Court's time, is once again renew the
8 motion for judgment of acquittal that was made on behalf of Gary
9 Sutton at the end of the State's proof. We would renew that
10 motion at this point for those same reasons.

11 I'd like to take just a minute, Your Honor -- the
12 course of this trial has taken some turns in it, but I think the
13 -- most of the proof that has come out is that there -- it
14 started with the State's first witness, John Brown, with respect
15 to Mr. Dellinger's statement that he was going to wipe out the
16 whole hill of Griffins.

17 Now, from that point, the jury has heard evidence
18 that, if believed, could point towards Mr. Dellinger as having
19 some involvement in one or more of these deaths. And I probably
20 missed some of the things, but we know we've got a -- we've got
21 that statement to begin with, then we carry on, and we've got
22 shotgun shells, we've got a 303 shell, and we've got a rifle
23 that that 303 shell matches with. We've got the shotgun shells
24 at the Tommy Griffin scene that matches the shotgun shells found
25 on Mr. Dellinger's property.

1 All those things point in that direction towards
2 Mr. Dellinger. None of those, if you look at it just from that
3 point of view, has any connection to Gary Sutton -- none of that
4 physical evidence, or that statement.

5 THE COURT: Mr. Webb, the Court don't mean to cut
6 you short. I have heard all the proof, and I have previously
7 ruled, and I reaffirm the ruling that there is powerful evidence
8 in this record which, if believed by this jury, would connect
9 your client and Mr. Dellinger together on all times pertinent
10 throughout this particular time frame. Again, what the jury
11 believes, and what they believe is their -- it's up to them, and
12 so that's not for this Court to determine. The issues on the
13 evidentiary matters, of course, the Court has already rule on
14 those either correctly or incorrectly, and I stand by those
15 rulings. Is there anything else that you all want to put in the
16 record that has transpired?

17 MR. WEBB: Your Honor, give me just one or two more
18 minutes, and I beg the Court's indulgence, but for the reasons
19 I've just stated, I would renew the motion for severance, and
20 I understand the Court's overruled that, and I don't want to
21 take up much of the Court's time.

22 I want to talk just a minute on -- if the Court -
23 - if the jury believes, and takes these things, they may have
24 a belief that Mr. Sutton was present, and as the Court
25 understands, and the law recognizes, presence alone is not

1 enough to convict.

2 THE COURT: Right.

3 MR. WEBB: What I -- I submit to the Court that
4 there's no proof in this record that Mr. Sutton participated,
5 even if you assume presence, there is no proof that he
6 participated or took any action, nor shared any intent, and I'm
7 going to ask the Court to -- in other words, there is not proof
8 in that sense of first degree murder on Mr. Sutton's behalf, and
9 I ask the Court to consider making a ruling on that in the sense
10 of dismissing the first premeditated charge.

11 THE COURT: The State's case is based, obviously,
12 entirely upon circumstantial evidence. There is testimony in
13 the record, if believed, that places Mr. Sutton and Mr.
14 Dellinger together. In particular, the testimony concerning the
15 activities at the Howie's Hideaway Lounge taken with all the
16 other evidence makes it a jury question for this -- in this
17 case, for the jury to determine who they believe, and what they
18 believe. So for that reason, the Court respectfully overrules
19 the motion for judgment of acquittal and severance.

20 MR. WEBB: Your Honor, I would -- just a couple
21 more things. I want -- I'm not going to go into the details of
22 it, but this corpus delicti issue, we would move -- aver that
23 the State has not proven that, no criminal instrumentality in
24 the death of Connie Branum that can be shown, and that is an
25 essential element of their case in chief, vis-a-vis, corpus

1 delicti, and we would ask the Court to rule in our favor on that
2 issue.

3 **THE COURT:** The Court -- as the Court has
4 previously ruled, the entire circumstances of the location, the
5 expert testimony as to the cause of death, which could
6 certainly, if believed, create a reasonable inference that the
7 cause of Ms. Branum's death was by reasons other than her own
8 self destruction.

9 **MR. WEBB:** And an appropriate...

10 **THE COURT:** And as I've already ruled, as the Court
11 understands the law, it has never been the law in the State of
12 Tennessee that the State of Tennessee, i.e., the government, had
13 to prove exact cause of death.

14 **MR. WEBB:** My scientific means.

15 **THE COURT:** Right, by any other means. The State,
16 as well as the defendant, is entitled to rely upon all the
17 logical inferences drawn by the proof, and in this case, that
18 is certainly enough, I think, to create a jury question.

19 **MR. WEBB:** Your Honor, two more brief matters. The
20 Court, at some point, will have to charge this jury on certain
21 things, and at the appropriate time, I would like, either here
22 or somewhere, to talk to Your Honor about charges...

23 **THE COURT:** Sure.

24 **MR. WEBB:** ...that we would like for you to
25 consider.

1 **THE COURT:** I've told all counsel, I will give you
2 every opportunity to submit the written charges that you want
3 the Court to consider, and I always do that -- I always let you
4 look at mine, and that's fine.

5 **MR. WEBB:** I just wanted to remind the Court of
6 that. Your Honor, I apologize for the delay this morning, and
7 I think the Court understands there was reasons behind that that
8 were reasonable.

9 **THE COURT:** I'm well aware of the circumstances,
10 and I thank counsel on all sides for the efforts they have made
11 in this case, and I understand.

12 **MR. WEBB:** And I would thank General Green and
13 General Schmutzer for that time that we needed.

14 **THE COURT:** That's what we're here for.

15 **MR. WEBB:** That was a decent thing. Your Honor,
16 I'm going to yield -- I think co-counsel, maybe, wants to put
17 something else on the record, and I don't know if they would
18 want to approach on that issue or...

19 **THE COURT:** I'll leave that up to everyone's
20 option. If everyone agrees to do it at the bench, you can, or
21 if you don't agree, it may be stated...

22 **MR. DANIEL:** Your Honor, in the defendant's proof,
23 we have introduced some headlights that was taken from the car
24 in question, the Camaro that belonged to Gary Sutton. I asked,
25 and Your Honor granted -- an officer went to the car, watched

1 the headlights removed, and brought them in to the courtroom
2 sealed.

3 There has been some testimony that they headlights,
4 and there was one headlight that was not like the others, which
5 I noticed when we took it out of the box. There is also some
6 dates on there which may indicate that it was manufactured, or
7 at least the lot number was, shortly before this incident
8 occurred, which would be after the time the defendant testified
9 that he changed the light bulb.

10 There's so many options that's developed in this
11 that -- one option being that since the car has been in custody
12 of other parties, someone has changed the light bulb. That's
13 a possible option. Our client was in jail during this period
14 of time, and obviously could not have done it anywhere from
15 March the 5th on.

16 It caught me totally by surprise. With all of the
17 proof that we had heard from neighbors, the constable, other
18 witnesses that -- photographs that the headlights were burning.
19 And for that reason, we feel like we needed to contact somebody
20 with the -- that manufactures these in order to try to find out
21 when they were manufactured -- what numbers they were.

22 I felt like that there would be proof that it was
23 made afer the time that the defendant said he put it in the car,
24 but before the time when the alleged crime was supposed to have
25 been committed. I -- probably, it's a question for the jury as

1 to what weight they want to give that testimony, but I think we
2 would ask Your Honor for a special charge that if someone that
3 has -- trying to help the defendant has ultimately drowned him,
4 so to speak, we need some kind of special charge that if someone
5 has done something with some evidence, and this was not at the
6 direction of the defendant, that he should not be held
7 responsible for this.

8 This is a possibility that something -- I don't say
9 it is, but I think we just need a special charge on that, Your
10 Honor.

11 **GENERAL SCHMUTZER:** We would certainly object, Your
12 Honor. That charge would not be supported by any proof in this
13 record. The proof in this record is clear. It was in his
14 family's hands; three different ones have had the vehicle, kept
15 it, and told this Court and jury from the time they got it right
16 on that no one has tampered with these headlights. It's a
17 matter to be considered like any other matter. And certainly,
18 that type of charge would not be proper, and I don't know of any
19 law that would say that -- it's just a matter of, quite frankly,
20 getting -- if his client sinks, his client sunk himself.

21 **THE COURT:** For the record, the Court was advised
22 of this situation last evening after we had concluded our
23 activities in court. When it was brought to the Court's
24 attention, the Court advised that it be brought to all counsel's
25 attention, if it had not, in fact, already been done.

1 This is a grave, grave matter, as grave as any I've
2 ever seen as a lawyer or a judge. It is devastating, or could
3 be, depending on what the jury determined the facts to be.

4 Counsel for the defendant has properly and duly
5 brought it to the Court's attention, brought it to their
6 clients' attention. Because of what has transpired this
7 morning, I know that it has been further explained to the
8 defendants. They choose to go on. That is their option. That
9 is their peril.

10 This Court, as stated by General Schmutzer, and I
11 think correctly, this Court is not aware of any instruction that
12 it can give in regards to how the jury may consider the
13 credability of any witness. That is -- it is contained in the
14 general charge that all of you have heard this Court give
15 before. That is what the Court will do.

16 If evidence was offered by anyone in this Court
17 that turns out to be perjury -- that is a peril anyone runs when
18 they swear under oath to testify truthfully, and I have no
19 control over that other than I will charge the law as I
20 understand it. If perjury has been committed by anyone who's
21 testified, that, as I say, is their problem. That is their
22 peril.

23 It may work to the detriment of either or both of
24 these defendants. That has been explained to you, gentlemen.
25 The decision as to whether to proceed is yours. But that -- if,

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

1 in fact, that testimony turns out to be in error to the jury's
2 satisfaction, it could be devastating to you. So I've said all
3 I have to say.

4 MR. MILLER: Your Honor, on behalf of Mr.
5 Dellinger, we would move the Court for a severance because of
6 the prejudice of this evidence that was offered that we had no
7 control over. Of course, it was offered by the co-defendant,
8 and we've been joined together for trial, and we have no control
9 over it, and it certainly prejudiced us without us having
10 anything to do with it.

11 THE COURT: The Court realizes, again, the severity
12 of the problem. These clients own -- strike that. These
13 defendants' own statements placed them together throughout this
14 period, other witnesses placed them together. There is
15 absolutely no reason, other than the facts themselves, that
16 create a problem for these defendants in being tried together,
17 but under the law, these defendants should have been tried
18 together, and they are tried together, and the evidence comes
19 in as it comes in. That's the law.

20 MR. WEBB: Your Honor, one other thing, and I beg
21 the Court's indulgence. I want to make sure for the record that
22 we have -- on behalf of the defendant Sutton that we have
23 renewed our motion for judgment of acquittal with respect to the
24 death penalty.

25 THE COURT: Overruled.

1 MR. WEBB: I understand -- for the reasons we've
2 earlier stated.

3 THE COURT: Overruled. Yes, sir. Gentlemen, do
4 you need anymore time based on what the Court's said? The
5 Court's ready to go, the jury's ready to go. It's...

6 MR. WEBB: Your Honor, I think we are ready to
7 proceed.

8 THE COURT: Very well. Bring the jury in.

9 (JURY IN)

10 THE COURT: Waive the call for the State?

11 GENERAL SCHMUTZER: Yes, Your Honor.

12 THE COURT: For the defense?

13 MR. MILLER: Yes, Your Honor.

14 MR. DANIEL: Yes, Your Honor.

15 THE COURT: You may be seated. Ladies and
16 gentlemen of the jury, I know you have been here since before
17 9:00. There has been, obviously, a very substantial delay. It
18 is truly unavoidable, and I ask you, and I hope, and I know that
19 you would not hold that against either the defense or the State
20 of Tennessee. If you feel like you've got to blame somebody,
21 blame me. But it was unavoidable, and I'm sorry, but as you
22 know, this is a serious matter, and the Court had other things
23 to consider. General Schmutzer, you may proceed to call your
24 next witness, sir.

25 REBUTTAL:

1 GENERAL SCHMUTZER: The State calls Investigator
2 Gary Clabo.

3 **

4 GARY CLABO was called, and being duly sworn, was
5 examined and testified as follows:

6 DIRECT EXAMINATION

7 BY GENERAL SCHMUTZER:

8 Q. For the record, sir, you are the same Gary Clabo
9 that testified earlier in this trial?

10 A. Yes, I am.

11 Q. Sir, at that time you testified that you -- let me
12 ask you this. Did you take a statement from Carolyn Weaver?

13 A. Yes, I did.

14 Q. And who was present when you took that statement?

15 A. Detective Donnie Huskey of the Sevier County
16 Sheriff's Department.

17 Q. When did you actually talk to her, or get the
18 information that was in the statement?

19 A. March the 5th of '92.

20 Q. Okay, sir. I'll show you what's been filed as
21 Exhibits #49 and #50. After you talked to her -- during that
22 time that you talked to her, did you or Donnie Huskey, or anyone
23 else threaten her, yell at her, or do anything out of the way
24 with her?

25 A. No, sir.

1 Q. After you got that information -- did she sign any
2 statement on the 5th when you took it?

3 A. No, she did not.

4 Q. Okay, sir. What did you all do then?

5 A. We left the Cherokee Apartments where we took the
6 statement.

7 Q. All right, sir. And did you draw up a statement?

8 A. Yes, sir.

9 Q. But you say she didn't sign it? When did she
10 ultimately sign the statement?

11 A. On March the 9th of '92.

12 Q. And where was this?

13 A. That was at the Sevier County Sheriff's Department.

14 Q. Before she signed it was she given an opportunity
15 to read it?

16 A. Yes, she was.

17 Q. Did she read it?

18 A. Yes, she did.

19 Q. In reading it, was she given an opportunity to make
20 any changes she wanted to make in it?

21 A. Yes.

22 Q. And did she make any changes in it?

23 A. Yes, she did.

24 Q. Specifically, what changes did she make?

25 A. She changed the word "all" in her statement to

1 "most," and initialed it.

2 Q. All right, sir. And that's what appears in #49,
3 is that correct?

4 A. Yes, it is.

5 Q. I believe in #50 -- that's the statement without
6 her signature -- that statement was prepared before she had an
7 opportunity to read it, and sign it, and correct it, is that
8 right?

9 A. Yes, that's correct.

10 Q. Now, at the time that she came back in, and made
11 this -- and signed this, and made this change, did you all --
12 did you or anyone threaten her in any way?

13 A. No, sir, I did not.

14 Q. Did she tell you, sir, those facts that are set out
15 in that statement, and specifically with regard to what she had
16 done on Friday, February the 21st?

17 A. Yes, she did.

18 Q. I believe on the statement it shows that as March
19 21st, but that obviously would be a misprint, is that correct?

20 A. Yes.

21 Q. March 21st, 1992 hadn't occurred yet?

22 A. No, it had not.

23 Q. And she understood that, of course, that you were
24 talking about the Friday, February 21st?

25 A. Yes.

1 GENERAL SCHMUTZER: You may cross examine.

2 THE COURT: Mr. Miller?

3 MR. MILLER: No questions, Your Honor.

4 THE COURT: Mr. Daniel?

5 MR. DANIEL: No questions on this, Your Honor.

6 THE COURT: You may step down, Mr. Clabo.

7 GENERAL SCHMUTZER: Call Sheriff Ogle.

8 **

9 DON OGLE was called, and being duly sworn, was
10 examined and testified as follows:

11 DIRECT EXAMINATION

12 BY GENERAL SCHMUTZER:

13 Q. State your full name and position, please, sir.

14 A. Don Charles Ogle, Sheriff of Sevier County.

15 Q. In that capacity, sir, your department was
16 investigating the death of Connie Branum?

17 A. That's correct.

18 Q. And were you being assisted by the T.B.I., and in
19 particular, Agent David Davenport?

20 A. That, too, is correct, sir.

21 Q. Back in March, sometime before March the 9th of
22 1992, sir, did you -- while the defendant Sutton was
23 incarcerated there in your jail, did you contact Agent Davenport
24 relative to coming to the jail to talk to the defendant Sutton?

25 A. I did.

1 Q. And what occasioned that, sir? What brought that
2 about?

3 A. One of our jail personnel stopped me during the
4 course of the day, and informed me that Mr. Sutton wanted to
5 speak.

6 Q. Did you advise this -- did you contact Agent
7 Davenport?

8 A. I contacted his office, yes, sir.

9 Q. And did you advise him that -- of this?

10 A. I did.

11 Q. Did he later come to the jail to speak with this
12 defendant?

13 A. Yes, sir, he did.

14 Q. Did you assign any one of your detectives to
15 participate in that interview with him?

16 A. I did.

17 Q. And who was that?

18 A. I assigned Detective Mark Holt to accompany Agent
19 Davenport.

20 Q. Was it Mark Holt or Mark Turner?

21 A. I beg your pardon, Mark Turner.

22 Q. They both happen to be detectives with the same
23 first name?

24 A. That's correct.

25 GENERAL SCHMUTZER: You may cross examine.

1 THE COURT: Mr. Miller?

2 MR. MILLER: No questions.

3 THE COURT: Mr. Daniel?

4 **

5 CROSS-EXAMINATION

6 BY MR. DANIEL:

7 Q. Sheriff, you weren't present when this statement
8 was taken, were you, sir?

9 A. No, sir, I was not.

10 Q. And you had no further contact after turning it
11 over to Detective Turner, is that correct?

12 A. That's correct, sir.

13 Q. When did you contact Mr. Davenport?

14 A. The day -- the day that the officer mentioned it
15 to me, I contacted the office, and I'm not sure at this point,
16 sir, whether I had to do it by paging Mr. Davenport, which I
17 most often did. I had to page Mr. Davenport when I needed to
18 speak with him.

19 Q. And that would be March the 7th, is that correct?

20 A. To the best of my recollection it was March the
21 7th.

22 Q. Thank you.

23 GENERAL SCHMUTZER: That's all, Sheriff, you may
24 come down. Call Detective Mark Turner.

25 **

1 MARK TURNER was called, and being duly sworn, was
2 examined and testified as follows:

3 DIRECT EXAMINATION

4 BY GENERAL SCHMUTZER:

5 Q. State your full name, please.

6 A. Detective Mark Turner.

7 Q. And where are you employed?

8 A. Sevier County Sheriff's Department.

9 Q. And how long have you been employed in that
10 capacity?

11 A. Ever since September of '90.

12 Q. And I'll ask you, sir, if back in February or March
13 -- let me ask you this. Were you involved, sir, in the
14 investigation that came about as a result of the finding of
15 Connie Branum's body over at Clear Fork?

16 A. Yes, sir, I was.

17 Q. During the course of that investigation, did you
18 have an opportunity to view this defendant's automobile?

19 A. Yes, sir, I did.

20 Q. And where was this?

21 A. It was on Ingle Town Road -- Ingle Hollow Road, I'm
22 sorry.

23 Q. And where is Ingle Hollow Road located?

24 A. It's off of Chapman Highway.

25 Q. When you first observed the vehicle, where was it?

1 A. It was in the driveway of Jimmy Sutton's residence.

2 Q. All right, sir. And what was the reason for you
3 making a note that vehicle?

4 A. We were in the process of trying to find Carolyn
5 Weaver for interview process.

6 Q. Did you understand Carolyn Weaver to be the
7 girlfriend of Gary Sutton?

8 A. Yes, sir, I did.

9 Q. When you observed Gary Sutton's automobile there -
10 - where was it again?

11 A. It was parked in the driveway at Jimmy Sutton's
12 residence.

13 Q. All right, sir. And did you subsequently see that
14 automobile?

15 A. Yes, sir, I did.

16 Q. When was saw it were the headlights on or off?

17 A. At the time -- which time?

18 Q. The second time. Where were you when you saw it
19 the second time?

20 A. I was parked at the Buckskin Trading Post on
21 Chapman Highway.

22 Q. Did you observe this vehicle again later at that
23 time when you were at the Buckskin Trading Post?

24 A. Yes, sir, I did.

25 Q. When you observed it at that time, sir, were the

1 headlights on or off?

2 A. It had the headlights on.

3 Q. All right, sir. Did you observe anything about any
4 of those lights, and whether they were all on and burning or
5 not?

6 A. Just at the time I seen it, it just had one burning
7 headlight.

8 Q. All right. Were one of the headlights burned out?

9 A. Yes, sir.

10 Q. Or it was out?

11 A. Yes, sir.

12 Q. How did you know this was one in the same car?

13 A. I ran the tag registration on it, and it come back
14 registered to Mr. Sutton.

15 Q. And do you have the radio logs to show that you had
16 done that -- the day you did that?

17 A. Yes, sir, I do.

18 Q. And you have the log in front of you there. Does
19 this show that as being logged in on what date?

20 A. March the 2nd of 1992.

21 Q. And what does that show the license number that you
22 asked to be run?

23 A. It was X-ray, Robert, Mary, 144.

24 Q. Okay, sir, and do you have a certified copy of
25 that?

1 A. Yes, sir, I do.

2 GENERAL SCHMUTZER: May that be filed, Your Honor?

3 THE COURT: Yes, it may.

4 (EXHIBIT #68 - Radio log; marked and filed.)

5 BY GENERAL SCHMUTZER:

6 Q. Does that show it being registered to Gary Sutton?

7 A. Yes, sir.

8 Q. Now, subsequently, on March the 9th, you were
9 present -- or were you present when the defendant, Gary Sutton,
10 was interviewed?

11 A. Yes, sir, I was.

12 Q. And who was there, also?

13 A. It was myself and Agent Davenport.

14 Q. What had occasioned you all to be talking to him
15 on March the 9th?

16 A. It came to -- Mr. Sutton wanted to speak to some
17 officers.

18 Q. All right, sir. Before you spoke to him, was there
19 any discussion had about him having an attorney?

20 A. Yes, sir, there was.

21 Q. Was he told that he could have his attorney
22 present?

23 A. Yes, sir, he was.

24 Q. Was he told specifically that if he wanted David
25 Webb present, he could have him?

1 A. Yes, sir, he was.

2 Q. Did he tell you whether or not he wanted David Webb
3 present?

4 A. Yes, sir, he told us at that time he did not want
5 him present.

6 Q. Was he read his constitutional rights?

7 A. Yes, sir, he was.

8 Q. Is it also noted on those constitutional rights
9 that it had been discussed with him about having an attorney?

10 A. Yes, sir.

11 Q. Did he sign those rights?

12 A. No, sir, he didn't.

13 Q. Did he say -- refuse to sign the rights? Did he
14 say he didn't want to speak to you, or that he wanted to speak
15 to you? What did he say?

16 A. He advised that he would speak to us anyway.

17 Q. That he would or wouldn't?

18 A. He would, anyway, speak to us, yes, sir.

19 Q. Did he say why it was he didn't want to sign it?

20 A. No, sir, he didn't.

21 Q. Okay, sir. Did he, in fact, speak with you?

22 A. Yes, sir, he did.

23 Q. And specifically, sir, in talking with you, did he
24 give you a statement, or was he asked about the headlights on
25 his automobile?

1 A. Yes, sir, he was.

2 Q. And what did he say?

3 A. He said that he had one headlights out at that
4 time.

5 Q. Let me ask you this, sir. At any time, did he --
6 did you or -- did Agent Davenport make a statement and
7 contribute it to this man?

8 A. No, sir.

9 Q. The statement, and I take it you have seen that
10 statement?

11 A. Yes, sir.

12 Q. Exactly what it was this man told you all that day?

13 A. Yes, sir, it was.

14 Q. At any time, did Agent Davenport, or you, or anyone
15 else tell him that you'd make up what evidence they could to
16 convict him?

17 A. No, sir.

18 GENERAL SCHMUTZER: You may cross examine.

19 MR. MILLER: No questions, Your Honor.

20 **

21 CROSS-EXAMINATION

22 BY MR. DANIEL:

23 Q. Mr. Turner, you say you first saw this vehicle,
24 which was the car that was involved, on March the 2nd, is that
25 correct?

1 A. Yes, sir.

2 Q. And that would have been after both the Branum girl
3 had been found, and also, Tommy Griffin, is that correct?

4 A. Yes, sir.

5 Q. And if there was a light in here in these four
6 bulbs that came out of there, and so you'll understand, we had
7 an officer go take these lights out of that car. Were you
8 yesterday when that occurred?

9 A. No, I wasn't aware of that, no, sir.

10 Q. Okay. If there was one in there, then it would
11 have been put in after March the 2nd, which would have been
12 about the time that he was arrested, is that correct?

13 A. I couldn't advise.

14 Q. You don't know who would have done that, or under
15 what circumstances, do you?

16 A. No, sir.

17 Q. Let's take it one step further. You brought the
18 car down here to the jail when he was arrested, which would have
19 been about what, March the 5th?

20 A. I don't recall that.

21 Q. Did you ever see the car down here?

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

23 Q. Did you know some photographs were made of it down
24 here that --

25 MR. DANIEL: Where are those photographs? While

1 she's looking...

2 BY MR. DANIEL:

3 Q. If someone placed a light in that thing, and say
4 it was all burning today or yesterday, then someone had to put
5 a light bulb in there, didn't they?

6 A. They probably did, yes, sir.

7 Q. Because you say one of them was out?

8 A. Yes, sir.

9 Q. Not all four of them were out, is that my
10 understanding?

11 A. I just -- at the time I seen it, I just seen one
12 headlight on it.

13 Q. And you then -- you didn't examine the car when it
14 was down here at the jail when they had it on about the 5th to
15 determine whether or not the headlights were working...

16 A. No, sir.

17 Q. Okay. Let's go down to this date that you say that
18 you were with Detective Davenport or Agent Davenport, is that
19 correct?

20 A. Yes, sir.

21 Q. And he came over to the jail to talk to the
22 defendant, Gary Sutton?

23 A. Yes, sir.

24 Q. And you knew at that time -- you used a tape
25 recorder in your -- when you talked with somebody, you took tape

1 recorded statements, didn't you, sir?

2 A. No, sir, not at all times, no, sir.

3 Q. Did you take one of Jack Sutton that was tape
4 recorded?

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

6 Q. Did someone with the sheriff's department take a
7 statement from Jack Sutton which was recorded?

8 A. I don't recall, sir.

9 Q. If you put your initials down, would that be "M.T."
10 -- would that be your initials?

11 A. Yes, sir.

12 Q. And...

13 MR. DANIEL: May I have just a second, Your Honor?

14 THE COURT: Sure.

15 BY MR. DANIEL:

16 Q. You were not present when the statement was taken -
17 - recorded statement of Joyce Tipton, is that correct?

18 A. I don't recall. I was present with Jack Sutton.
19 I don't recall...

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

22 THE COURT: Yes.

23 BY MR. DANIEL:

24 Q. Is this your initials that says, "Jack Sutton's
25 statement," the first page of his statement that was taken?

1 A. Where is it?

2 Q. Right here.

3 A. Yes, that's it.

4 Q. Is that yours?

5 A. Yes, sir.

6 Q. So you did take, back on March the 4th, a recorded
7 statement from Jack Sutton, is that correct?

8 A. Yes, sir, I did.

9 Q. And that statement was regarding the...

10 GENERAL SCHMUTZER: I object, Your Honor, to what
11 the statement was regarding. He can't go into what
12 the statement was about. That would be the rankest
13 of hearsay.

14 THE COURT: At this juncture, that would be -- Mr.
15 Sutton has not testified, has he?

16 GENERAL SCHMUTZER: No.

17 BY MR. DANIEL:

18 Q. Did Mr. Sutton tell you that he...

19 GENERAL SCHMUTZER: I object, Your Honor, to what
20 Mr. Sutton has told him. That would be hearsay.

21 THE COURT: At this juncture, based on what I told
22 you yesterday on 803 and 804, I would have to
23 sustain that.

24 MR. DANIEL: Well, what I want to ask him, Your
25 Honor -- I don't disagree with Your Honor's order.

1 May we approach?

2 **THE COURT:** Yes.

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

4 **MR. DANIEL:** Judge, I wanted to -- he took a
5 recorded statement of Jack Sutton. They were
6 together, as I understand -- they're both March the
7 4th.

8 **THE COURT:** Jack Sutton and...

9 **MR. DANIEL:** March the 4th is my understanding, and
10 that Joyce Tipton was there, also, and it was
11 recorded. She's testified, and we would like to
12 show that he took a recorded statement of Jack
13 Sutton.

14 **THE COURT:** If you want to ask him that...

15 **GENERAL SCHMUTZER:** Your Honor, wait one second.
16 He has already asked that, and he had already
17 testified that he did, and identified it. Now,
18 what he's asking -- he's say, "What did Jack Sutton
19 tell you," and of course, he can't do that.

20 **THE COURT:** Right. I've already held that that...

21 **MR. DANIEL:** Well, what about Joyce Tipton, due to
22 the fact that she's testified.

23 **THE COURT:** As to her statement, anything that she
24 said in his presence, or the statement he took from
25 her may be asked about for purposes of impeachment.

1 GENERAL SCHMUTZER: Your Honor, unless he's -- this
2 was his witness he put on. I can't believe that
3 he would try to impeach his own witness.

4 THE COURT: Under the rule, and under the Boling
5 case, any witness may impeach.

6 GENERAL SCHMUTZER: Then I would ask, Your Honor,
7 he be instructed only to go to those areas that
8 would go to impeachment because this is rebuttal.
9 He would not be permitted to go along to show that
10 she made these statements. The law is clear you
11 cannot show prior consistent statements unless
12 someone shows an inconsistent statement.

13 THE COURT: That's true, that's true.

14 MR. DANIEL: Your Honor, I want to show that he was
15 present on two tape recorded statements.

16 THE COURT: That's fine.

17 GENERAL SCHMUTZER: Well, I think he's...

18 THE COURT: Well...

19 GENERAL SCHMUTZER: The question was, "What did he
20 tell you?" And I would object to that.

21 THE COURT: Right, and sustained on that. The
22 Court has already ruled on that.

23 GENERAL SCHMUTZER: If any of these statements are
24 passed to the jury, I'd ask that any portion of the
25 contents of the statement be marked out, and the

1 only thing that would be shown to him would be his
2 initials showing that he was present.

3 **THE COURT:** As to the statement of the -- of Ms...

4 **MR. DANIEL:** I don't intend to pass them, General.

5 **GENERAL SCHMUTZER:** Okay.

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

8 **BY MR. DANIEL:**

9 **Q.** Mr. Turner, what I'm asking you, you were present,
10 and took a taped interview of Jack Sutton. We've established
11 that, is that correct, sir?

12 **A.** Yes, sir.

13 **Q.** And was it true that Joyce Tipton was there at the
14 same time, and likewise gave a recorded statement?

15 **A.** Yes, sir.

16 **Q.** And this was March the 4th of 1992?

17 **A.** I believe I would have to look at the statement to
18 recall it.

19 **Q.** So when you took the statement, you say, from Mr.
20 Sutton on March the 9th, 1992, you were in the -- you tape
21 recorded your statement, didn't you, sir?

22 **A.** Some statements, yes, sir.

23 **Q.** But Mr. Davenport didn't want to tape record this
24 statement?

25 **A.** No, sir, I don't think so, no, sir.

1 Q. Did you hear Mr. Davenport say that he didn't tape
2 record statements?

3 A. No, sir.

4 Q. You know that he did tape record the statement of
5 Mr. -- Miss Joyce Tipton -- was he present when that was tape
6 recorded?

7 A. Who are you talking about, sir?

8 Q. Mr. Davenport.

9 A. No, sir, I don't believe he was.

10 Q. You don't think he was present at that time?

11 A. Joyce Tipton?

12 Q. Yes.

13 A. No, sir, I don't think so.

14 Q. Then you say that he called you to go with him to
15 take this statement, is that correct?

16 A. I was told by Sheriff Ogle to go with, and assist
17 Mr. Davenport.

18 Q. You knew at that time that the defendant was under
19 arrest?

20 A. Yes, sir, I did.

21 Q. And you knew that he had employed counsel, or had
22 at least contacted counsel prior to that time?

23 A. He advised us that he talked to Mr. Webb.

24 Q. And you had his statement which had been given on
25 the 28th of February, 1992, didn't you, when you took this

1 statement?

2 A. From Blount County?

3 Q. Yes.

4 A. I don't believe I had it at that time, no, sir.

5 Q. Had you seen it or heard it at that time?

6 A. No, sir, I hadn't.

7 Q. You know, then, at that time that he told the
8 Blount County officers that he didn't want to talk to any
9 officers, and he wanted his counsel present, is that correct?

10 A. No, sir, I wasn't aware of that.

11 Q. You wasn't aware of that?

12 A. No, sir.

13 Q. Well, when it came time to witness the rights, you
14 were not present, were you?

15 A. Yes, sir, I was.

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

18 THE COURT: Yes.

19 MR. DANIEL: To save some time, may I use this
20 photocopy?

21 THE COURT: Without objection.

22 BY MR. DANIEL:

23 Q. To save us a little time, I'll show you something,
24 Mr. Turner. This is a copy of what's been filed an exhibit
25 previous here. Do you recognize that?

1 A. Yes, sir, I do.

2 Q. And I notice that you were not present when that
3 was given, were you, sir?

4 A. Yes, sir, I was.

5 Q. Well, now, did you witness this?

6 A. Yes, sir, I did.

7 Q. And that's your signature?

8 A. No, sir, that's David Davenport's signature.

9 Q. So he signed your name to it?

10 A. Yes, sir, I told him to sign my name to it. Yes,
11 sir.

12 Q. Okay. Now, at that time, you know that he was
13 brought down there at 11:40 a.m., is that correct?

14 A. I think that was the time, yes, sir.

15 Q. And they started advising him of his rights, and
16 it says then -- you witnessed it, and you witnessed it at 11:45
17 a.m., is what time you advised him of his rights, isn't that
18 correct?

19 A. I did not advise him of his rights.

20 Q. Did you witness that -- Mr. Davenport write that
21 time down, 11:45?

22 A. Yes, sir, I did.

23 Q. You know at that time he wasn't even out of the
24 jail and down there, isn't that correct, Mr. Turner?

25 A. No, sir.

1 Q. Have you reviewed the jail records?

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

3 Q. There was questions brought up then about this
4 headlight, of course, weren't they?

5 A. Mr. Davenport asked him about his vehicle, and he
6 said he had a water pump that was bad, and he asked him if he
7 had a headlight out, and he stated, "Yes, I did."

8 Q. He told you the reason he had the water pump bad
9 -- that he had left his car at his brother's, and driven his
10 truck on that Friday, is that correct?

11 A. Yes, sir.

12 Q. Denied to you that he had ever killed anyone?

13 A. Yes, sir, he did.

14 Q. And then he was arrested, what, on March the 5th?

15 A. Yes, sir.

16 Q. You don't know what happened to his car after that,
17 or who took possession of it, do you?

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

19 Q. Was it -- did it stay over here at the jail for a
20 period of time, do you know?

21 A. I couldn't advise, no.

22 Q. You never saw the car after that -- see it driving
23 up and down the road then, I take it, did you?

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

25 Q. And that date that you said -- the last time you

1 saw it was what, March the 2nd?

2 A. March the 2nd, yes, sir.

3 Q. Would that be late in the afternoon, or do you have
4 a time log on that?

5 A. It was late, and dusty dark, yes, sir.

6 Q. Do you have a log that shows when that was made?

7 A. Yes, sir.

8 Q. May I see that, sir?

9 MR. DANIEL: May I approach the witness?

10 GENERAL SCHMUTZER: May a copy of that be filed,
11 Your Honor?

12 THE COURT: Yes, it may.

13 (EXHIBIT #69 - Log; marked and filed.)

14 BY MR. DANIEL:

15 Q. And that was at 17:14. What time would that be?

16 A. That would be at 5:15.

17 Q. 5:15?

18 A. Yes, sir.

19 Q. Did he even have his headlights on at that time?

20 A. No, sir, the vehicle was still parked at that time.

21 Q. Are you familiar with how the jail works over here?

22 A. Some, not that much.

23 Q. You know that you keep -- are you familiar that
24 they keep records of everything that moves, such as 11:36, 11:42
25 -- the correct time over there of things that happen within the

1 jail, is that correct?

2 A. Yes, sir.

3 Q. And you know that --- where -- did you go get Mr.
4 Sutton out of jail, and take him down to the interview room?

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

6 Q. You know he was brought down there by Sargeant
7 Mayes and Mr. Clayton, do you now that?

8 A. I don't know who was brought -- brought him to the
9 holding room. I don't know who brought him.

10 Q. And I'll ask you to look at -- how far is that from
11 where you all took the statement?

12 A. From where?

13 Q. From where he was in the jail to the interview
14 room?

15 A. I didn't know where he was...

16 Q. Would you say at least the time you go through
17 checking them out, locking the doors, and unlocking them --
18 approximately five minutes, would that be correct?

19 A. I guess.

20 Q. If someone testified about five minutes, you
21 wouldn't disagree with that?

22 A. That would be close, I'd say.

23 Q. I notice that this is 11:42, and there has been
24 something whited out, and something else written in there. Who
25 is -- what is that?

1 A. It looks like Chief VonCannon, or something like
2 that. I don't...

3 Q. Do you know what was in there before that was
4 marked out and changed?

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

6 Q. And you will agree with me that's the only changed
7 portion on that entire page for that time, isn't it?

8 A. That's what it looks like, yes, sir.

9 Q. Can you read then what time it was that he was
10 taken from his jail cell down there?

11 A. It says here at 11:42.

12 Q. And you don't know what this would be -- why that
13 would be whited out?

14 A. No, sir.

15 MR. DANIEL: May we pass that to the jury?

16 THE COURT: You sure may.

17 BY MR. DANIEL:

18 Q. Mr. Turner, let me ask you a couple more questions.
19 You say that you saw this car on March the 2nd, and the
20 headlights were burning, is that correct?

21 A. One headlight was on at the time I saw it.

22 Q. Where was this car at that time?

23 A. At the time I seen it with the light on?

24 Q. Yes.

25 A. It come out Ingle Hollow Road onto Chapman Highway.

1 Q. And you saw that, is that correct?

2 A. Yes, sir, I did.

3 Q. And you know that that would be a violation of the
4 law to drive a car with one headlight?

5 A. Yes, sir.

6 Q. You didn't make an arrest at that time?

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

8 Q. Didn't call it in, did you?

9 A. I called the tag in on this vehicle.

10 Q. Okay, but you didn't attempt to make an arrest?

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

12 Q. Do you have the power to arrest somebody on that,
13 is that correct?

14 A. Yes, sir, I do.

15 Q. And have done it many times before, I guess?

16 A. Yes, sir.

17 Q. Do you know who was driving it at that time?

18 A. Yes, sir, I do.

19 Q. And who was that?

20 A. Mr. Sutton.

21 Q. The defendant over here?

22 A. Yes, sir.

23 Q. And that would be at what time in the afternoon?

24 A. At the time I seen him pull out onto the highway,
25 it was around 6:10, 6:15.

- 1 Q. Is this military time that you're referring to?
- 2 A. Yes, sir, it is.
- 3 Q. So military time would be -- what would military
- 4 time be?
- 5 A. That would be 5:15.
- 6 Q. So when you saw it, it was actually 5:15 instead
- 7 of 6:15, is that correct?
- 8 A. When I ran the tag it was 5:15, yes, sir.
- 9 Q. Well, you couldn't run the tag until after you'd
- 10 seen it, of course?
- 11 A. I seen it at 5:15 parked in the driveway, yes.
- 12 Q. So you had seen it earlier than that?
- 13 A. Yes, sir.
- 14 Q. Well, if you ran it at 5:15, the tag number, what
- 15 time did you see it parked in the driveway earlier?
- 16 A. That was the time I seen it parked in the driveway.
- 17 Q. Okay, I'm sorry. I thought you said you'd seen it
- 18 earlier.
- 19 A. No, that was the correct time.
- 20 Q. Okay. So that's the time you called in on it, is
- 21 that correct?
- 22 A. Yes, sir.
- 23 Q. And that was 5:15. It would be about this time of
- 24 year, is that correct?
- 25 A. Yes, sir.

1 Q. Thank you. You knew whose car it was, didn't you,
2 Mr. Turner?

3 A. At which time?

4 Q. When you saw it. You didn't have to run the tag
5 number on that, did you, sir?

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

7 GENERAL SCHMUTZER: Which time he saw it, Your
8 Honor.

9 BY MR. DANIEL:

10 Q. On March the 2nd.

11 A. Yes, sir.

12 GENERAL SCHMUTZER: No questions.

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

14 MR. DANIEL: Yes, Your Honor.

15 THE COURT: Okay.

16 GENERAL SCHMUTZER: If he can make a copy of that,
17 Your Honor, and turn that over to -- the original
18 back -- just leave that with the court reporter.

19 THE COURT: He sure may.

20 GENERAL SCHMUTZER: Call Mr. Barnes.

21 **

1 WILLIAM MARTIN BARNES was called, and being duly
2 sworn, was examined and testified as follows:

3 DIRECT EXAMINATION

4 BY GENERAL SCHMUTZER:

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

6 A. William Martin Barnes, Jr.

7 Q. And your position?

8 A. Manager of manufacturing at the Wagner Lighting
9 Plant in Sevierville.

10 A. I'll ask you, sir, if among those things
11 manufactured by Wagner are seal beam headlights for automobiles?

12 A. Yes, sir.

13 Q. And I'll ask you, sir, if there is a requirement
14 of the United States Department of Transportation that a date
15 code, showing the date of manufacture, be placed on seal beam
16 headlights?

17 A. That's correct.

18 Q. And do you all do that with your headlights?

19 A. Yes, sir, we do.

20 Q. Are you also, sir, familiar with the date codes put
21 -- does that requirement apply not only to Wagner, but also to
22 General Electric, and...

23 A. That is an industry standard, yes.

24 Q. So that anyone that makes headlights has to put
25 that manufacturing date on it, is that correct?

1 CROSS-EXAMINATION

2 BY MR. DANIEL:

3 Q. Mr. Barnes, there's what they call lot numbers, is
4 that correct, sir.

5 A. Yes, sir.

6 Q. Which means that you have a many a headlight that's
7 got the same date on them, is that correct?

8 A. Yes, sir.

9 Q. So that's the date of manufacture, which would be
10 February the 13th, is that correct?

11 A. Yes, sir.

12 Q. Okay. Thank you, sir.

13 THE COURT: Anything further of this witness?

14 MR. DANIEL: No, Your Honor.

15 GENERAL SCHMUTZER: Yes, Your Honor.

16 **

17 REDIRECT EXAMINATION

18 BY GENERAL SCHMUTZER:

19 Q. I take it, sir, based on that, there is no way this
20 headlight could have been installed in a vehicle six months
21 before that date?

22 A. No, sir.

23 Q. That's all. Thank you, sir. Come down.

24 THE COURT: You may step down.

25 GENERAL SCHMUTZER: The State rests.

1 THE COURT: Any sir rebuttal?

2 MR. WEBB: Nothing from Gary Sutton, Your Honor.

3 MR. MILLER: Nothing from Mr. Dellinger, Your
4 Honor.

5 THE COURT: Ladies and gentlemen, you've heard all
6 of the proof in this case. Let me ask you, as close as it is
7 to lunch, do you want to go to lunch now, or do you want to hear
8 the closing arguments? It will take some time. I suspect, in
9 guessing, it would take well in excess of an hour.

10 JUROR: We'll take a break, Your Honor.

11 THE COURT: Break for lunch. Very well. Are you
12 doing all right, Ms. Griffin.

13 JUROR GRIFFIN: Fine, Your Honor.

14 THE COURT: Great. The Court will take a recess
15 until 1:00. Do not discuss the case, do not let anyone talk to
16 you about it, and we'll be back here at that time. If counsel
17 will stay, I will take up the other matters with you. If you'll
18 take the jury, please. Quiet in the courtroom, please.

19 (JURY OUT)

20 THE COURT: These matters have to be taken up on
21 the record, as far as the jury instructions -- I want those
22 placed in the record.

23 You may be seated. Let the Court state that my
24 intention is to charge, based on the record as the Court
25 understands it, the offense of first degree murder, second

1 degree murder, as to the murder count against each defendant,
2 and the Class E felony charge of burning of personal property
3 as to the other count against each defendant.

4 The Court intends to charge the other crimes
5 evidence under T.P.I. 3705, expert witness charge under 3713,
6 alibi charge under 3601. Of course, I will charge as to the
7 defendant Dellinger's failure to testify, the defendant Sutton's
8 actual testimony, the consolidated indictments charge, the
9 charge as to multiple defendants, as far as considering -- as
10 to giving separate consideration to each defendant, the charge,
11 of course, the implication of law, the second degree murder
12 charge -- the form on that.

13 The specific penalty ranges -- are both of these
14 defendants range one?

15 GENERAL GREEN: They are, Your Honor.

16 THE COURT: Okay, so it would be 15 to 25 on the
17 second degree murder, and then one to two on the burning of the
18 personal property.

19 GENERAL GREEN: Correct, Your Honor.

20 THE COURT: That's all the Court intends to charge,
21 absent further suggestion.

22 MR. WEBB: You said you were going to charge alibi?

23 THE COURT: Yes.

24 MR. WEBB: Let me -- Your Honor, I would ask the
25 Court to consider charging, based upon the proof, the lesser

1 included of voluntary manslaughter. I think the jury can find
2 first degree homicide, second degree, or voluntary manslaughter,
3 and I ask the Court to...

4 **GENERAL SCHMUTZER:** Object, Your Honor, there is
5 no indication whatever in here...

6 **THE COURT:** No testimony anywhere of adequate
7 provocation or passion to entitle a charge on that. There's
8 been absolutely no testimony as to the issue of adequate
9 provocation.

10 **MR. MILLER:** Your Honor, I think on the other hand
11 there was no direct testimony of any premeditated state of mind,
12 and we would ask that all degrees of homicide be charged.

13 **THE COURT:** The Court has ruled.

14 **MR. WEBB:** Let me consult with Mr. Miller just a
15 second. Let's see, Your Honor -- you might want to say you
16 caught me off guard, but I'm going to ask -- Your Honor, I would
17 ask the Court to instruct on corpus delicti, and I have prepared
18 an instruction on that. I hope I can find it for you, but I
19 have prepared one. Okay, yeah, I've got it, Your Honor.

20 **THE COURT:** Let's see it. Is that a standard
21 charge anywhere?

22 **MR. WEBB:** Your Honor, it's not in T.P.I. What I
23 did, I looked in the same volume -- I can't remember who makes
24 that -- it's a red book, a Tennessee Practice book, and found
25 out corpus delicti, and...

1 GENERAL SCHMUTZER: I'm sorry?

2 MR. WEBB: General, what I did, I looked in the -
3 - I can't remember what those books -- Tennessee Practice -- I
4 looked in Tennessee Practice under whatever volume it happened
5 to be, and drafted my own instruction on corpus delicti, and
6 General, I apologize, I don't have an extra copy of it, but...

7 GENERAL SCHMUTZER: Off hand, we would object to
8 it, Your Honor.

9 THE COURT: Let me look at it, gentlemen, and I can
10 tell you right quick if I'm going to charge it or not. The
11 elements of that charge are contained in the Court's principle
12 standard charge, so...

13 GENERAL SCHMUTZER: Your Honor, I will present the
14 Court with this when we come back because I've not had it typed
15 yet, but the State is basically requesting a charge be that the
16 State is not required to prove the exact method or cause of
17 death, but must show beyond a reasonable doubt that death was
18 caused by some criminal agency.

19 THE COURT: Let me look right here just a moment.
20 Read yours to me, if you...

21 GENERAL SCHMUTZER: "The State is not required to
22 prove the exact method or cause of death, but must show beyond
23 a reasonable doubt that death was caused by the result of some
24 criminal agency."

25 THE COURT: I'll tell you what I'll do. I will

1 charge that, and if you'll add this language to it. "Corpus
2 delicti may be established by circumstantial evidence. However,
3 the elements of corpus delicti cannot be established by
4 inferences drawn from presumption."

5 GENERAL SCHMUTZER: However...

6 THE COURT: "...the elements of corpus delicti
7 cannot be established by inference," period.

8 GENERAL SCHMUTZER: By inference?

9 THE COURT: Well, it has to be more than an
10 inference, it has to be beyond a reasonable doubt -- you know,
11 proof by a reasonable doubt, and that's contained in the Court's
12 main instruction.

13 GENERAL SCHMUTZER: I understand, Your Honor, the
14 the inference -- the whole thing -- we're telling them the whole
15 time -- they could infer from everything...

16 THE COURT: Logical.

17 GENERAL SCHMUTZER: ...through this case -- right.
18 But I think that's telling them that they can't be -- I would
19 read this as saying that corpus delicti could not be -- I don't
20 understand -- certainly, this is an inference.

21 THE COURT: Read that again to me, General
22 Schmutzer.

23 GENERAL SCHMUTZER: Okay. "Corpus delicti may be
24 established by circumstantial evidence. However, the elements
25 of corpus delicti cannot be established by inference."

1 THE COURT: You're right. Let me think just a
2 moment. Approach the bench, gentlemen, and bring your charge,
3 General Schmutzer.

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

5 THE COURT: What I would like to do, if you
6 gentlemen can talk about this here, I would like
7 to take the body of what you have, and try to
8 combine it with the last two paragraphs of Mr.
9 Webb's proposed instruction here on the corpus
10 delicti. If you gentlemen can take those and look
11 at them, I don't think you -- I don't think they
12 are generally inconsistent with each other.

13 GENERAL SCHMUTZER: Okay.

14 THE COURT: If you all can agree upon a language
15 of that.

16 GENERAL SCHMUTZER: If you'll make me a copy of
17 that over lunch, we can both work on it, and get
18 together beforehand, and see if we can't agree.
19 If we can't, we can present each of our proposals
20 to the Court, and the Court may decide which is
21 better.

22 THE COURT: Okay.

23 MR. WEBB: Your Honor, let me ask you this. I'd
24 like this filed into the record...

25 THE COURT: You sure may.

1 MR. WEBB: Who do I give that to? I don't believe
2 I give it to the court reporter, do I?

3 THE COURT: Actually, give it to Miss Helen or Mrs.
4 Newman there.

5 MR. WEBB: Mrs. Newman, would you make sure that's
6 filed in the record, and provide me a copy for
7 General Schmutzer?

8 THE COURT: If you'll make two copies of that,
9 please.

10 MR. WEBB: I'll let you look at it, General, and
11 tell me...

12 GENERAL SCHMUTZER: I can look it over lunch.

13 THE COURT: Okay, because if I'm going to charge
14 the one -- the first part of Mr. Webb's charge is
15 contained in the principle charge, and so if both
16 of you want to focus on the issues of the corpus
17 delicti, I feel obligated, then, to charge at least
18 a portion of what Mr. Webb...

19 GENERAL SCHMUTZER: Fine.

20 THE COURT: Okay?

21 GENERAL SCHMUTZER: Yes, Your Honor.

22 THE COURT: So I will do that.

23 GENERAL SCHMUTZER: We'll look at that, and come
24 up with something.

25 THE COURT: Yes, sir?

1 GENERAL GREEN: Your Honor had indicated that the
2 Court would be charging that "Every fact need not
3 be proven beyond a reasonable doubt..."

4 THE COURT: Right. Yes, sir.

5 MR. WEBB: That's the standard circumstantial
6 evidence charge.

7 THE COURT: It comes straight from T.P.I., yes,
8 sir.

9 MR. WEBB: That's fine.

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

12 MR. WEBB: Your Honor, if you please, I have
13 another instruction that I've asked the Court to consider, and
14 once again, it was not a standard T.P.I. instruction. I, once
15 again, looked at Tennessee Practice, and drafted an instruction
16 on causation, and I would like to approach the bench, and...

17 THE COURT: Sure.

18 MR. WEBB: ...and General, once again I apologize.
19 I don't have an extra copy. I'll furnish you one. And I
20 apologize, sincerely, I...

21 THE COURT: Well, he only had his written. That's
22 fine.

23 GENERAL SCHMUTZER: I believe causation, Your
24 Honor, is covered...

25 THE COURT: It is. It is included, in fact -- I

1 have a charge on cause of death.

2 MR. WEBB: Is that a standard T.P.I....

3 THE COURT: Standard T.P.I. -- 37.11, if you
4 gentlemen want to...

5 MR. WEBB: Would you mark that one rejected then,
6 for me, if that's what you want to do?

7 THE COURT: Hold on a minute. Let me read it.
8 Okay. Part of that 37.11 would not be charged that talks about
9 intervening cause because there's been no evidence shown by
10 either side of any intervening cause. It is -- wait just a
11 minute. In fact, a good portion of that charge would not be
12 applicable, but anyway, that's -- so I will refuse, but will
13 charge T.P.I. 37.11.

14 MR. WEBB: Your Honor, if I can ask that to be
15 filed?

16 THE COURT: Yes. And Mrs. Newman, if you'll make
17 me -- let me make sure that there's not another -- okay, that's
18 the only one I have, 37.11.

19 MR. WEBB: Your Honor, if you please, I would ask
20 the Court, and I don't have this in writing, that the Court give
21 an instruction to the jury that the cause of a person's death
22 is presumed to be accidental, and the State has the burden of
23 proof to prove beyond a reasonable doubt otherwise.

24 THE COURT: I'll charge the last part of that. I'm
25 not going to charge the other presumption stated in your -- it

1 is contained in the Court's principle charge about the elements
2 of the crime, and that those must be proved beyond a reasonable
3 doubt and a moral certainty. So that's what the Court is going
4 to stick with on that one.

5 MR. WEBB: I'd ask for the same instruction on
6 suicide, as well, that there's presumption.

7 THE COURT: In all candor with you, Mr. Webb, and
8 I understand the position that you all are in, but there is
9 absolutely no evidence of suicide in this case. Based on the
10 uncontradicted expert testimony in this case -- well, all the
11 testimony in this case, there is absolutely no proof of suicide.

12 MR. WEBB: Your Honor, next I would ask the Court
13 to charge, pursuant to -- this came out of T.P.I. 3.01(a),
14 Criminal Reponsibility for Conduct of Another...

15 THE COURT: Got that one.

16 MR. WEBB: Okay.

17 GENERAL GREEN: What was the number, please?

18 THE COURT: 3.08, paragraph (a), I believe is what
19 I've got marked.

20 MR. WEBB: I think that's correct, Your Honor.

21 THE COURT: Yes, part (a), 3.01 -- I'm sorry.
22 Anything further?

23 MR. WEBB: Yes, Your Honor. I would ask the Court
24 to consider charging T.P.I. 3.03, Accessory After the Fact.

25 THE COURT: What does the State say about that?

1 GENERAL SCHMUTZER: Do what now?

2 THE COURT: Accessory after the fact.

3 GENERAL SCHMUTZER: There's no proof of it.
4 There's nothing to support that.

5 THE COURT: There's no proof in this record.

6 MR. WEBB: Your Honor, I think the remaining
7 instructions I've got pertain to sentencing situations, so I
8 think we ought to wait on those.

9 THE COURT: I will take that up later.

10 MR. WEBB: But I do have some.

11 THE COURT: Very good. Anything from the State?
12 Mr. Miller, anything from Mr. Dellinger?

13 MR. MILLER: We would merely adopt the -- both the
14 instructions previously requested by Mr. Webb on behalf of Mr.
15 Sutton, and Mr. Daniel was trying to explain another
16 instruction, and he may be able to...

17 THE COURT: Does that cause of death instruction
18 alleviate the necessity for your gentlemen to talk on the other
19 charges, or to put the other charge together that you were
20 talking about, General Schmutzer? Does that change anything?
21 I can't remember now.

22 GENERAL SCHMUTZER: I haven't gotten it yet.

23 MR. WEBB: I didn't follow your conversation.

24 THE COURT: Okay. The State had offered an
25 instruction in writing that you were going to type up?

1 GENERAL SCHMUTZER: Yes, Your Honor.

2 THE COURT: And Mr. Webb had submitted one...

3 GENERAL SCHMUTZER: On corpus delicti.

4 THE COURT: Okay. So that still needs to be...

5 GENERAL SCHMUTZER: Apparently so, Your Honor.

6 THE COURT: ...discussed. Okay. Let me look right
7 here.

8 GENERAL SCHMUTZER: Your Honor, the one on
9 causation the Court had denied, and I think -- this causation
10 instruction is in your charge.

11 THE COURT: The 37.11, yes, sir.

12 GENERAL SCHMUTZER: Now, were you asking me if
13 37.11 covered what we were talking about?

14 THE COURT: It doesn't. After looking at it, it
15 obviously doesn't. I was trying to see if I had a corpus
16 delicti charge as such, and while I may have it, I cannot find
17 it. I don't think I do in the -- I would refer you, in
18 discussing about your instruction, that you, Mr. Webb, are going
19 to talk about, to look at 37.19 on presumptions or inferences.

20 GENERAL SCHMUTZER: 37.19, Your Honor?

21 THE COURT: Yes, 37.19. Let's see. I believe that
22 -- it's a general charge on -- I think that statute deals -- I
23 think that charge deals with statutory presumptions or
24 inferences, as opposed to the general inferences drawn from the
25 evidence which is contained in the Court's main charge.

1 MR. DANIEL: Your Honor, there's just -- we would
2 ask that you charge on the theory of suicide because we think
3 there's evidence in the record that would justify the jury's
4 finding...

5 THE COURT: I don't have anything that I'm aware
6 of on the...

7 GENERAL SCHMUTZER: I'm not aware of any charge on
8 suicide. That ought to be covered in -- we have to prove
9 criminal agency, Your Honor, and suicide is not a criminal
10 agency.

11 MR. DANIEL: And we again adopt, Your Honor, the
12 statements and stipulations that were entered into by all
13 parties before this trial began, which have been filed and made
14 a part of the record.

15 GENERAL SCHMUTZER: I submit to the Court that
16 that's followed the evidence.

17 THE COURT: I've already ruled on that. That was
18 a stipulation entered into at the time of a bond hearing for
19 purposes of the Court's consideration of the granting or denial
20 of bond in this case, and that was the purpose of that
21 stipulation. It was not -- at that time, the case was still
22 developing, as a matter of fact, for both sides, and so the
23 Court's ruled on that. The Court stands in adjournment until
24 1:00.

25 (COURT STOOD IN RECESS)

1 THE COURT: You may be seated. I've been handed
2 the agreed charge that was being typed, if you gentlemen would
3 like to approach and look at it before you begin your argument.
4 I take it you don't.

5 MR. WEBB: That we just discussed?

6 THE COURT: Yes. It will be given as a part of the
7 cause of death instruction. I am going to write on this, by
8 agreement, that it was by agreement -- this charge by agreement,
9 correct?

10 MR. WEBB: That's fine, Your Honor.

11 THE COURT: So I'm writing on -- well, actually,
12 what I will do, I will read it into the record rather than write
13 something on the charge to give to the jury. In addition to the
14 Court's standard instruction on cause of death, the parties have
15 agreed that the following instruction shall be read:

16 "The State is not required to prove the exact
17 method or cause of death, but must show beyond a
18 reasonable doubt that death was the result of some
19 criminal agency. This can be established by
20 circumstantial evidence, but cannot be established
21 by an inference drawn from a presumption, or a
22 presumption based upon a presumption."

23 You may bring the jury in.

24 (JURY IN)

25 THE COURT: Waive the call for the State?

1 GENERAL SCHMUTZER: Yes, Your Honor.

2 THE COURT: And the defense?

3 MR. MILLER: Yes, Your Honor.

4 MR. WEBB: Yes, Your Honor.

5 THE COURT: Let the record reflect that both
6 defendants are present in court with counsel. Ladies and
7 gentlemen, you have now heard the proof in this case. You will
8 now hear closing arguments, first, by the State of Tennessee,
9 then from counsel for each of the defendants, and then from the
10 State of Tennessee again. I remind you that once the defendants
11 have spoken through their counsel that you will not hear from
12 them again. I ask you to consider that as any other matter that
13 has been brought to your attention. General Schmutzer, you are
14 recognized.

15 CLOSING ARGUMENTS:

16 GENERAL SCHMUTZER: Thank you very much, Your
17 Honor. Ladies and gentlemen, the phrase, and I'll just
18 paraphrase it, goes like this. "Oh, what a tangled web we weave
19 when at first we try to deceive." I submit to you that that
20 phrase, probably as well as any, fits this case.

21 We saw it beginning back at Howie's Hideaway when
22 these two defendants, attempting to cover up the fact that they
23 had brutally murdered Connie Branum's brother, and burned his
24 trailer, to with her ostensibly for the purpose of helping her
25 to find her brother.

1 Determined from the ladies that worked there that,
2 obviously, they had not been truthful to Connie Branum. The
3 statement was made, "Oh, we were in here with Tommy right after
4 we got him out of jail, and had a beer."

5 Connie Branum at one point asked, "Who did my
6 brother leave with?" Before the waitress could give her an
7 answer, Dellinger butts in, and says, "I thought you were going
8 to get us a beer." What did that waitress say? She was
9 confused when that question was asked. Why would she be
10 confused? Because she's sitting with the two men he had left
11 with on Friday. Why would she possibly be asking that question?

12 Connie Branum, slowly but surely, was getting to
13 the truth as these two defendants continued to weave that web
14 of deceit, and she pointed them out to be liars. They got her
15 drunk, took her to Clear Fork, and they horribly murdered her,
16 burning her body beyond recognition.

17 The web continued. On the 25th, the day after
18 Tommy's body's found, these two men, who would like to be
19 pictured as two good samaritans, came over here, and voluntarily
20 wanted to assist the officers in finding their good buddy,
21 Tommy, who they had just murdered.

22 In the process of weaving that web of deceit and
23 lies, left out not only that they had been at Howie's Hideaway
24 that evening, Friday evening, just before his death, with him,
25 but also, when asked about his sister, Connie, who was missing

1 some four days at that time, never once mentioned Howie's
2 Hideaway. The big secret.

3 It was out at Howie's Hideaway that Connie Branum
4 was last seen alive walking between these two defendants. It
5 was Howie's Hideaway that refuted the tail they had begun to
6 weave, that they had left Tommy at a convenience store with some
7 mysterious woman that drove a Falcon. And that was pointed out
8 by the fact that the defendant Dellinger's wife came in here
9 attempting to try to help her husband, had forgotten, and
10 herself got caught up in the web because when talked to back in
11 March, she told them, even as late as March, that these
12 defendants couldn't have been in Howie's Hideaway on Friday
13 night with Tommy because they had told her that when they were
14 in there Saturday with Connie, they remembered them from being
15 in there some months before when they were clowning around with
16 earrings in their ears.

17 Oh, that tangled web. The same was true, also, for
18 the girlfriend, Carolyn Weaver. All of a sudden we're talking
19 about the arson, the truck driving up, the fire starting at
20 Tommy's trailer, the truck driving up, and going right on into
21 Dellinger's trailer. Oh, we've got to change that. Something's
22 got to occur there -- we've got to cover that -- we've got to
23 alibi that. They were looking for an alibi for everything, and
24 if you'll remember one of the statements. The way they were
25 going to cover their alibi on that arson was Carolyn Weaver,

1 another part of the web of deceit and deception.

2 But lo and behold, she gets caught up by the very
3 fact that she had given a statement, also in March, strictly
4 contrary to what she attempted to tell you here under oath, and
5 that is that she was not with some girlfriend all day, but was,
6 in fact, with Linda Dellinger. In fact, she even made the
7 change. Where they put "all" day, she changed it to "most" of
8 the day. On Friday, February 21st she was with Linda Dellinger.

9 I think you saw it better than I did, probably.
10 They went out about 6:00 to get some videotapes, and came back
11 and watched videos all night. No, Carolyn wasn't riding with
12 them from Jimmy's over to the trailer at all. These two
13 defendants, coming back, having thrown Tommy out out there on
14 the road at Alcoa Highway, ripped his shirt off him, beat up on
15 him, coming back in, still mad, still upset.

16 I can't tell you what went on in that car -- that
17 Camaro that night. I can't tell you what their motive was for
18 doing what they did, but I can submit to you the proof is clear.
19 Why is that? All of a sudden, this case began taking a turn.

20 Who would have though eight days ago when we
21 started this case that it would find itself turning on a single
22 piece of evidence? Who would have thought after all the pieces
23 of evidence that have been filed in this case, that all the
24 sudden, an ordinary headlight to a Camaro would become the
25 pivotal point of the case?

1 Obvious reasons. That headlight was out. These
2 defendants, rather than being the good samaritans they would
3 love for you to believe, turned out to be the cold blooded
4 killers they really are.

5 They had to get this headlight shining. They
6 couldn't leave it out in the face of the witnesses that saw the
7 headlight out, including the officer, including the statement
8 of this defendant himself given to the officers back on the 9th
9 of March. We struggled over this headlight all day long
10 yesterday.

11 It was like a pyramid, inverted pyramid coming up.
12 Everything came right down to a headlights. And lo and behold,
13 even this defendant put the icing on the cake because he had to
14 explain how it was that there was a different headlight. One
15 different headlight in the car, obviously, by looking at it --
16 you saw it. The only clean and fresh one, testified under oath,
17 that when he bought this car six months before, it had a
18 headlight out, and he had to replace it.

19 And they brought in the headlights, and they filed
20 them into evidence, and I submit to you it was simply by chance
21 that the web of deceit was broken. All of the sudden, a little
22 date on the back of that headlight, incontrovertible proof, that
23 Gary Sutton was lying. There was absolutely no way he could
24 have been putting this headlight in six months before, when it
25 hadn't even been manufactured yet.

1 The jerked out the headlights, and everything else
2 fell like a deck of cards, and going right with it the rabbits
3 they wanted you to run about Billy Cogdill, the rabbits they
4 wanted you to run about suicide. When that headlight fell,
5 these defendants fell, and they fell together, because I submit
6 to you the proof in this case is uncontroverted, even by their
7 own statements given to law officers, and the testimony of this
8 man right here, that they were together on Friday and Saturday
9 both, all night long. They are either both guilty, or they're
10 both innocent. They're either both convicted, or they both
11 walk.

12 Earlier I had thought that I would get up here in
13 opening statement going over, again, all the proof the State had
14 put on to refresh your mind as to what had happened some days
15 ago. But when the headlight came about, I realized to do so
16 would be to take up just more of your valuable time because you
17 heard all the proof.

18 You have been very attentive, and there's no need
19 to go back over it. This case has become focused on this
20 headlight right here, and I submit to you that there is
21 absolutely no way, following your reason and common sense, based
22 on all the facts that came from that witness stand that this
23 headlight and this date can be explained away.

24 And when it's over, these defendants, both of them
25 together, James Dellinger and Gary Sutton, stand guilty as

1 charged in the murder of Connie Branum. Thank you.

2 THE COURT: Mr. Miller?

3 MR. MILLER: Thank you, Your Honor. Ladies and
4 gentlemen, over the past week you've heard a lot of proof, a lot
5 of evidence, a lot more than I'm sure you wanted to hear. If
6 you'll remember, probably, the first four or five days of proof
7 pertained to Blount County. We had maybe a day of testimony
8 that had anything to do with Sevier County.

9 Mr. Schmutzer has mentioned, and the Judge has
10 charged you several times that whatever happened in Blount
11 County has nothing to do with the issues you decide here in
12 Sevier County, except for the limited issue of motive.
13 Therefore, the State still must prove in Sevier County each and
14 every element of first degree murder.

15 When you look at Sevier County, and see what was
16 proved, the evidence started with the testimony of Mr. John
17 Brown, the young patrolman back at the time, who had gone up to
18 the Dellinger residence to answer a complaint back on 2/15/92.

19 Somebody had shot in Mr. Dellinger's trailer, and
20 he called the sheriff's department, and they reported up there
21 to file a report. A report, at that time, which Mr. Brown
22 testified was a full and complete report of the events that took
23 place at the Dellinger residence when he answered that call.

24 Lo and behold, after these men are -- had been
25 interrogated, they are suspects, and the State is still out of

1 a motive, this report is somehow supplemented. But pay careful
2 attention to the way in which it was supplemented. It was
3 supplemented not by Mr. Brown -- supplemented in his report, but
4 by a statement given to another officer. "Let's get these
5 people charged. Sign a statement so we can bind you to it."

6 What was most unbelievable about Mr. Brown's
7 testimony, and go back -- in order to supplement it -- you'll
8 remember how they supplemented the report by the statement.
9 That gave them their motive. "I'll wipe out that whole hill of
10 Griffins if I have to." I submit to you that statement was
11 never made.

12 When you consider the rest of the testimony of Mr.
13 Brown, and I told you early on in opening statements that you
14 would be called upon to render judgment as to the credibility
15 of witnesses, including law enforcement officers. I submit to
16 you that statement was never made.

17 What else did Mr. Brown tell you? He was a
18 patrolman working in the sheriff's department, and this
19 investigation -- you all saw it -- was all over the front page
20 of every newspaper, the Knoxville paper, Sevierville paper,
21 Gatlinburg, all over every television network, and on 3/2/92,
22 Mr. Brown told you he didn't know anything about this
23 investigation, didn't know these men were accused of anything.
24 That's kind of hard to swallow. To use one phrase Mr. Schmutzer
25 uses, that dog just won't hunt. That statement was never made.

1 That was there to provide a motive.

2 Well, what else the the proof in Sevier County
3 show? Very little, if you look at each item. There was Nancy
4 Brayant and Jerry Sullivan who testified about Connie parking
5 her car up there in Townsend at the shopping center. Connie got
6 in, and drove these two men away. She wasn't under their
7 control. They were not forcing her to go anywhere. That's what
8 their testimony showed.

9 Jamie Forsythe and Terri Lilly, the barmaids, they
10 established little other than that these men were down there
11 with Connie Branum, which they had admitted to the police. They
12 tried to indicate that these men were -- or that Mr. Dellinger
13 and Mr. Sutton were trying to interrupt Ms. Branum from talking
14 to anybody, but Mr. Drinnon was also there at the bar, and
15 independent witness who came in, and cleared that up. He told
16 you that they were just having a good time, and trying to get
17 her to leave him alone because she was a little bit drunk.

18 Barbara Jordan, who saw the fire out there in a
19 quiet, remote section -- out there at Clear Fork -- saw the
20 fire, but heard no gunshots. That's because there were no
21 gunshots. No bullet was ever found. The State went to the
22 trouble of presenting this shell, this 303 shell, to try to link
23 James Dellinger to this crime because they later seized a 303
24 rifle from his house. But they went over that car, and they
25 went over the body -- Dr. Bass, over and over, and there never

1 was a projectile from that 303 -- never was a bullet found.

2 Barbara Jordan also added to her testimony that on
3 Sunday, the day after the fire, that a white pickup truck came
4 off this trail that leads into her driveway -- on out to the
5 road, and if you'll remember, she had previously identified,
6 back when her memory was very fresh, a Bronco or a Blazer, and
7 each of you know that a Bronco and a Blazer are very different
8 than a pickup truck. They later took a statement where she did
9 say it was pickup truck, but at no time did she give a statement
10 that it had a tool box on it, not until she got out here in
11 court, or came down to see these officers, and they showed her
12 a picture of Mr. Dellinger's truck with a tool box -- never,
13 before then, did she ever say it had a tool box. I'm not going
14 to suggest she's lying, she doesn't have a dog in this fight.
15 I'm just suggesting to you the power of suggestion that these
16 officers may have had.

17 Mr. Jordan, likewise, heard no gunshots out there.
18 He also testified about the terrain where he went back there to
19 try to find the car, the same trail that this pickup truck would
20 have had to come down, and he said, quite frankly, you couldn't
21 drive on it. He drove as far as he could, and got out and
22 walked. He had to go over a creek bed, so it's not passable by
23 a vehicle.

24 Gary Clabo also testified about events in Sevier
25 County. He gave an investigative opinion as to the cause of the

1 fire of the car; said that it was arson. If you go through and
2 pick out his report, he says that his report, which he said was
3 a complete report, there was a liquid or solid accelerant which
4 would mean gas, oil, etcetera, and solid accelerant meaning
5 clothing, paper, or other things.

6 He said clearly in his report, "Cause of fire --
7 liquid or solid accelerant." But then in his testimony you
8 heard, he is convinced that was a liquid accelerant.

9 He testified that one of the main reasons he knew
10 it was an intentionally set fire was that it burned far too fast
11 to be a smoldering fire or an accidental fire, but he had
12 forgotten that he had previously testified that the body was
13 nearly cremated, and then when asked about how long it would
14 take a body to burn in a commercial crematorium, where he says
15 the temperature was some 3,000 degrees, he said it would take
16 four hours. But if you remember, the temperature in this car
17 would have been some 1,600 degrees, and you're talking about a
18 fire in excess of four hours. That's not a fast burning fire.

19 Ladies and gentlemen, in viewing his testimony, use
20 your common sense. A fire that is set with gas or any other
21 flammable liquid, and one that starts accidentally, if it's
22 allowed to build, and not extinguished, both fires, whether it's
23 accidental or intentional will burn to the same degree with the
24 same heat because of the other accelerants in the structure.

25 Mr. Clabo told us, when asked, that, "Vehicle fires

1 are very difficult to investigate. You must first eliminate all
2 accidental causes." He said that he did that. When I asked him
3 about some specific accidental causes such as a brake lining
4 overheating, and the exhaust rubbing against the bottom of the
5 car, and coming through the floor board, he admitted that that
6 could happen, but he said that he had checked that, but somehow
7 it did not end-up in his complete report.

8 Dr. Bass had testimony about Sevier County. He
9 found no 303 bullet. He testified that they found a shell.
10 They found dioxipin in the victim's body. Most importantly
11 about Dr. Bass' testimony, he can't tell you how Ms. Branum
12 died, he can't tell when she died, and he doesn't know where she
13 died.

14 Larry McMahan of the sheriff's department here in
15 Sevier County testified that prints were made around the burned
16 car up there to try to locate the other cars that may have come
17 up there to set the fire, and that it did not match the vehicle
18 of Mr. Dellinger.

19 Matt Coverly testified about a complaint he
20 answered at the Boyd Branum residence. He had called, and had
21 a complaint on his wife, and when Officer Coverly arrived, Ms.
22 Branum was up on the top of a chair, and before getting her
23 under control, Ms. Branum assaulted both her husband, Mr.
24 Branum, and the officer, and was taken for emergency
25 committment. She was later hospitalized, and committed to

1 Lakeshore Mental Health Institute where the doctor testified
2 that she was suicidal, and she had severe depression, and her
3 outlook on life was very poor.

4 I'm sure everybody will remember the testimony of
5 Bill Cogdill, the man with the speech impediment. He denied
6 making these statements about the location of this body prior
7 to the body ever being found. And right behind him, Joyce
8 Tipton came in, and verified that back on Tuesday before the
9 Friday that Ms. Branum's body was found, that Bill Cogdill had
10 told her that, "Connie will be found burned, and her car, too,
11 up at Happy Hollow," or Clear Fork, the same area the body was
12 found. That scared her, and she went to report it, and was
13 ultimately interviewed by the T.B.I. There was no reason at all
14 for her to come in here, and swear a false testimony. You saw
15 her up there yourself. She wanted to claim the fifth -- she
16 didn't want to testify.

17 As we told you and stressed to you at the beginning
18 of this trial, this is a circumstantial evidence trial,
19 circumstantial evidence case. The State must exclude every
20 other reasonable hypothesis of how Ms. Branum died.

21 Is suicide a reasonable hypothesis? Based on the
22 condition of Ms. Branum at the time, I submit to you that it is
23 reasonable. Is accidental death reasonable? That's not for us
24 to prove it was an accidental death, but you have to remember
25 it's for the State to disprove beyond a reasonable doubt.

1 Mr. Clabo said no, it was not an accidental fire,
2 but remember the other things that Mr. Clabo said. It was a
3 fast fire, and we've decided that's wrong. It just have lasted
4 at least four hours. Mr. Clabo also made a lot about the fact
5 that fire does not burn down. If the fire started in the floor
6 board of that car, the tires got blown, and were burned. Use
7 your common sense. If you light the top of a paper bag or any
8 other flammable object, it's going to burn all the way to the
9 ground. Fire does burn down.

10 Furthermore, Clabo said that he eliminated all
11 accidental causes of the fire. If he did, he sure didn't bother
12 to put it in his report.

13 If you are convinced by the proof that it was
14 arson, then who set it? Isn't it reasonable to infer from the
15 testimony that Bill Cogdill was the one who set it? He knew
16 exactly where the body was, and knew it would be found burned
17 back before the body was even found. He either did it, or he
18 is prophetic.

19 In making your decision in this case, I urge you
20 to put aside what happened in Blount County, what the proof was
21 from Blount County, and use it only for the issue that the Judge
22 tells you you can, the motive. Focus on the issues here in
23 Sevier County, and whether or not the State has proven beyond
24 a reasonable doubt that this woman was killed, and that Mr.
25 Dellinger had something to do with it.

1 And finally, if you are convinced that there was
2 a homicide, you must remember that every homicide is presumed
3 to be second degree -- the Judge will instruct you on that --
4 absent any other proof of premeditation, intent, and
5 deliberation. And how do you determine that state of mind? One
6 might infer by a defendant producing false testimony in front
7 of the the jury that they were in that state of mind, but you
8 never heard James Dellinger get up here and swear any lies to
9 you, or present any false testimony.

10 We presented the case, the cross examination, the
11 presentation of the witnesses as our investigation saw fit. We
12 didn't tell no lies to you. We did not pull any wool over your
13 eyes. I just ask you to consider that. Thank you.

14 **THE COURT:** Mr. Daniel?

15 **MR. DANIEL:** Thank you, Your Honor. Ladies and
16 gentlemen of the jury, I've tried criminal cases for 25 years
17 or better, prosecuted some like General Schmutzer, and defended
18 for years, and I can say without a doubt that this is the
19 wildest and strangest case that I've ever been through. And I'm
20 going to tell you up front. This is a case that's got more
21 twists, more turns, more questions, more unanswered questions
22 that I've wrestled with since I got in on this about a month
23 ago...

24 **GENERAL SCHMUTZER:** Object, Your Honor. I hate to
25 interrupt him, but I don't think he can comment on

1 himself, as to what he's wrested with.

2 MR. DANIEL: That's just argument, Your Honor.

3 THE COURT: Let's stick to it. Okay.

4 MR. DANIEL: And this case has the strangest --
5 some of the strangest things that I've ever seen. I'm going to
6 tell you up front, somebody, when they did this, has tried to
7 help, probably, this defendant, and has probably done the worst
8 thing that they could ever do to try to help him.

9 We brought this car -- we had them bring it -- you
10 heard proof from a constable, a next door neighbor, that that
11 car had two headlights. We have proof from other people that
12 the car had headlights. We had an officer, one of the officers
13 for the court, to go outside, and take these headlights out, put
14 them in that box, and seal it, and bring them in here so there
15 would be no question about these are the headlights that came
16 from that car. And I'm telling you right now, I had no inkling,
17 no idea, no unearthly suspicion that this could be here, and
18 I've learned a long time ago, you don't kid a jury -- you don't
19 kid anybody, it's here. Somebody has done it, but it's not our
20 client.

21 Somebody who did their best to try to help him, has
22 hurt him. That's something I can't explain. I don't know who -
23 - if I had had any idea, I certainly wouldn't have brought it
24 in here, and I wouldn't have went to all the trouble to get an
25 officer to watch them take it out of the car so there would be

1 no question about it being the lights that came in here, and
2 it's here. And I'm telling you it's here.

3 I've found over the years that jurors find
4 something in a case that they think's important, and it is
5 important. It's important. But I'm telling you the proof has
6 shown, as we heard an officer say, that a few days before he was
7 arrested -- a day or so before, he had a car that had one light.
8 We have heard proof from a constable who lives close by, and has
9 no dog in the fight, as the old saying goes, that he had two
10 lights. So what better evidence would there be when we see a
11 picture of -- you've seen those pictures of the headlights --
12 than to bring the headlights in.

13 I wanted to make sure -- there's no question about
14 these are the headlights that come out of that car. Someone,
15 somebody has done something to this headlight either right
16 before this happened or right after it happened or sometime
17 thereafter. Now, all it's done is hurt this young man over
18 here. You know the proof, and you've heard the proof. It
19 wasn't him. Maybe he had put a headlight in, maybe this is the
20 kind that blowed -- I don't know. He could have put a headlight
21 in back when he first bought it, and somebody else put another
22 one in. I don't know.

23 The point I'm going to make to you is that this is
24 something that somebody has done, and it's hurt him. It's hurt
25 him as far as you people seeing it, and I know that. But I want

1 you to look it in this light.

2 This is something regarding something that happened
3 in Blount County. When we analyze this thing -- what happened,
4 you've got a situation where the State's theory, and what
5 they're showing -- there's a lot of proof in this, there's a lot
6 of admissions to this.

7 They all three were over in Blount County at this
8 place called Howie's bar. They're saying they were out on Hunt
9 Road, etcetera. None of that -- it doesn't make any sense
10 that's relevant whatsoever when they both admit that they go to
11 the jail to get him out. What difference does it matter if he
12 was at five bars or four different places? What it was, if
13 you're going to try to hide something from somebody or tell
14 them, why not tell them we didn't get him out, we didn't go over
15 there, whatever?

16 Do you see what I'm saying? It doesn't make any
17 sense because what is important is that when they got him out
18 of jail, that they were with him.

19 Now, I've never seen a case before where I've seen
20 as many people, probably, admitting lying, or just...

21 **GENERAL SCHMUTZER:** I'm going to object, Your
22 Honor, to his injecting his own findings as to
23 what's transpired.

24 **THE COURT:** As to your own opinions, Mr. Daniel.

25 **MR. DANIEL:** Well, you all have seen cases -- this

1 is a case where people admit lying. You see people -- the
2 officers admit that they lied to these boys trying to get them
3 to confess. They lied about things that they said that they
4 had, evidence they had, and the didn't have any evidence like
5 that. They just flat admitted, yeah, we lied to them to get
6 them to admit to something.

7 What is the wildest that I've ever heard or ever
8 seen is the fact that you've got an officer who admitted on the
9 stand that he lied in front of a Judge to get a search warrant.
10 This is the almost unheard of. It is unheard of. A search
11 warrant is a very powerful piece of paper -- a document -- it's
12 something where they can go over here, and search your house,
13 and walk into your house, kick your door down, and do whatever
14 they want to do with a search warrant. It's powerful, and it's
15 protected by our constitution. It's one reason our United
16 States was formed because of people abusing their authority, and
17 didn't want people to search their houses -- just officers run
18 over them. We've still got some rights.

19 But that's what he testified to in order to get us
20 to -- he took an oath in front of a Judge, and that's something
21 that's not right. So I submit to you that this is a case, not
22 where they maybe had some untruth told here or told there, but
23 there's untruths everywhere. It's wild. It's really
24 unbelievable.

25 But there is some things that I'll probably never

1 understand, and we'll never have any answers to, and some things
2 that's bothered me from day one, and I'm sure it's bothered you
3 since you've been here on this jury. We know that back up there
4 in that remote area, a place that I had never heard of, Clear
5 Fork or Happy Hollow, there was a car found up there where a
6 woman was in it, and she had been burned up, and she's dead, and
7 she was in her car in that area. It's a remote area. It's not
8 like downtown Sevierville. Everybody knows that's a remote
9 area.

10 You've got a lady who comes down here to -- about
11 the time she was found, she comes down here to tell the police,
12 and they have to, under what they call exculpatory evidence,
13 furnish us copies of these statements, and we get a statement
14 from Joyce Tipton that she had some information that before this
15 body was ever discovered, before anybody even really knew where
16 Connie Branum was or how she would be missing -- there was still
17 a question as to whether she'd run off -- she was having marital
18 problems, and there was a question whether she was really
19 missing or not -- that she would be found up in that area, and
20 she would be found dead in her car, burned.

21 And then the zinger, as they call it, comes out,
22 and said there would be a gunshot or something to the shoulder.
23 What did Dr. Bass tell you? Dr. Bass said there was zinc -- he
24 thought it was lead first, and he thought it was gunshot to the
25 shoulder. This was before -- this was before -- this was March

1 the 4th that they analyzed -- this was before there was ever any
2 autopsy or any reports sent back because this all had to be
3 taken -- Dr. Bass told you how they sifted through, and went,
4 and took this stuff, and did this work.

5 I'll never -- I don't think you'll ever be able to
6 reconcile how somebody could possibly know that without having
7 personal knowledge. It's inconceivable.

8 We then have a situation, and we've got proof that
9 Jack Sutton had a fight with Connie Branum. Actually, the
10 doctor came in here, and said he'd broke her jaw or something
11 like that. He treated her for a while. And when he made this
12 statement, he told Jack Sutton there, in Joyce Tipton's
13 presence, told Jack Sutton, said, "Your and my problems are
14 over," referring to the fact that he'd had some problems with
15 her, and Jack had had some problems with her, but said, "But
16 I'll have to live with it the rest of my life."

17 This is not evidence that we've brought, this is
18 evidence that's given by the State -- that's taken by the State
19 right after -- right about the time this incident occurred. You
20 can't sweep that away. That's not, as the General says, chasing
21 a rabbit. That's no rabbit. I don't think we can say Bill
22 Cogdill is a psychic by any means, but there's some reason he
23 had to have that information.

24 Then you take --- the next situation is that Connie
25 Branum says the last time that she talked to these two boys, and

1 they tell -- she says, "There's one more place I want to look,"
2 and they take her to her car, and let her out. There was no
3 question about it, she parked her car in the parking lot, they
4 drove the truck down there to the bar, danced, drank, had a big
5 time. She told Mr. Ron Drinnon, I believe his name is, there
6 at the bar, that she didn't want anybody to know she was down
7 there because she was having marital problems. She said her
8 husband had committed her, and sure enough, he had. He had had
9 her committed about a week or so -- the 10th or 11th of
10 February.

11 She said, "There's one more place I want to look,"
12 and that's the last statement that anybody ever heard she ever
13 made as she pulled off.

14 Now, during this time, and also, this is even more
15 unanswered questions, and all. Tommy was undoubtedly carrying
16 or hauling drugs, and even his wooden leg to carry them -- to
17 conceal them. He carries the drugs. He takes the drugs with
18 him. They were talking about some boys that got busted, and
19 what was interesting to me is that it was over at the airport.
20 Now, that's over on the other side of Maryville, as you know,
21 as you're toward Knoxville.

22 They talked about the fact that that's where his
23 supplier was. That's where this incident happens on Hunt Road.
24 I don't know if -- the proof is not shown that these defendants
25 were on Hunt Road. There's been talk about two different

1 Camaros, different types of cars, and things of this nature,
2 plus, testimony as to where they were at the time when some of
3 this was supposed to have happened. It doesn't make any sense
4 why they would even be out there in that area. They've got no
5 reason to be out there.

6 In all of this testimony you've heard, never had
7 they gone over past Maryville for any reason. Could it be Tommy
8 got with this girl, as they said, at the store? Could it be
9 that he ran into some of his buddies up the road, got in the car
10 with them to go get some drugs, and they got into it, and maybe
11 tried to take -- took his Xanax from him, because you realize
12 that he had a whole bottle of Xanax when he left, and when he
13 was taken to the jail, he didn't have any. Somebody got his
14 Xanax. It certainly wouldn't have been the defendant, Gary
15 Sutton, because he said that he didn't do drugs. There's no
16 proof he's done any drugs.

17 But if they had wanted any drugs, he'd have given
18 them some. He gave that girl some down there at the store.
19 There's certain things about this case that just mind boggling.
20 The Attorney General would like to have you believe it's simple,
21 but it's not simple.

22 I'll say that headlight is something that's a
23 problem, but it's not the making of this defendant. If somebody
24 tried to help him, they've done him the biggest disservice
25 they've ever done in his life. But you shouldn't hang your hat

1 on something like this that somebody else thinks might be of
2 help to him, and convict him on something like that which has
3 nothing to do, basically, with the case.

4 The issues that you that you are to try are about
5 the case here in Sevier County regarding Connie Branum. That's
6 the issues that you're going to try. They are going to have to
7 face the jury over in Blount County regarding Tommy Griffin's
8 case -- murder case. They are charged -- you all know that,
9 they are charged with the murder over there. That's a decision
10 that has to be made over there.

11 It's our theory that the reason the State wanted
12 to try all of that stuff over is they don't have a case on
13 Connie Branum's murder, and in order to try to convict them,
14 they want to prove all they can about Tommy Griffin's murder.
15 That's the whole reason for this.

16 You've listened to all this proof about stuff
17 that's going to ultimately decided by a jury like you in Blount
18 County whenever it comes it trial, very shortly.

19 So you've also got the question -- they've brought
20 these experts in here, and it's kind of interesting because, as
21 the Judge is going to charge you, experts have opinions. Well,
22 everybody has opinions, and they can give their opinions.

23 They say they have finger prints, but they never,
24 ever go to the trouble to tell us who those finger prints belong
25 to. They say it was down the road a little bit. It wouldn't

1 matter to me in a case if I was investigating a case like this
2 how far the beer cans were away. If I had a beer can that had
3 positive finger prints on it, I'd certainly want to know who it
4 belonged to. And they say they go -- you take their theory that
5 when they get Tommy out of jail, he gets in the Buick car, which
6 belonged to Mrs. Dellinger -- Oldsmobile, whichever it is -- and
7 starts back toward town, and then they say they kill him.
8 That's they theory.

9 They said they dusted that car for finger prints.
10 "We found finger prints, but we did not find any finger prints
11 belonging to Tommy Griffin." They didn't find any finger prints
12 that belonged to him. If he was in that car, isn't it
13 reasonable to believe that there would have been finger prints
14 in there?

15 So when you get down to it, and you start talking
16 about -- then on finger prints, you've got to have so many
17 points for comparison before you can make them. All right, the
18 same way we've got on these shells -- the expert, they've got
19 four different ways that they can put together, not just one
20 way, this way or that way, but you combine them, and it forms
21 a picture on the shells -- ejector, extractor, breach markings,
22 and you've got the hammer or plunger, whatever you want to call
23 it.

24 They look through a microscope, see this down here
25 -- take this shell out, and look through a microscope, and say

1 they think it was fired from the same gun. Something so small
2 that's it's hard to believe. He's entitled to give his opinion,
3 and I'm not going to argue with that, it's the law. But His
4 Honor is going to charge you that you listen to their expert
5 testimony because it's based upon opinions. It is their
6 opinion.

7 On the question of the car, that's all beset with
8 speculation. They say there was either liquid or solid
9 accelerants -- their opinion. A solid accelerant would be that
10 coat right there. It would be paper, it would be cloth, and you
11 know that they -- I asked Mr. Clabo -- Mr. Clabo took cloth and
12 paper from that vehicle, and sent all of this to the lab for
13 comparison. Remember the four things they sent? And they
14 checked them in the lab, and they found no liquid accelerants
15 on any of those articles. And they are wanting you to believe
16 that there's just probably some accelerant poured all over the
17 car, or whatever, but yet, you've got paper in the front seat
18 right down in the front of the car, and there's nothing on it
19 whatsoever -- on nothing.

20 I say to you it's just as likely that Ms. Branum
21 could have taken too many pills, and we know she was drinking
22 pretty heavily, and as a result of that, she could have dropped
23 a cigarette, and could have started it. I'm not saying that's
24 how it started, but the point is, the defendants do not have to
25 prove these theories.

1 That's what circumstantial evidence is, as I told
2 you to begin with. All -- you have to exclude all hypotheses,
3 and everything has to point toward guilt.

4 Gary Sutton was the best friend of Tommy Griffin.
5 When they got in a fight with his brother down there, Tommy
6 Griffin left and went with him, and was going to come to court
7 to testify for him when they had the case. Remember that?
8 Bought him a waterbed so he could stay with him. What reason
9 would he have to kill him? Tommy was his buddy, Tommy was his
10 friend, and there's no reason for it.

11 There's things that -- they talked to you about the
12 time element -- times, and the witnesses. There was one little
13 witness that I recall, her name was Angela, there with her baby,
14 that told you basically what time that they came in on Friday
15 night, and that was never questioned or impeached. There was
16 one person -- there's only, if you analyze this, there's only
17 one person who says anything that even attempts to link these
18 two defendants to that trailer fire, and that is the person who
19 said he had a problem with his dog and the goat, and he said his
20 dog was barking, and woke him -- didn't wake him up, but he
21 heard his dog barking when he didn't even have a dog. He gave
22 his dog away because he had a problem with the goat.

23 You take these areas, and then you get to
24 wondering. It all creates doubt. We know that there's officers
25 that have admitted that they told some lies. We also know that,

1 like Mr. Davenport, said he didn't tape any conversations when,
2 in fact, he taped one of Joyce Tipton two or three days before
3 they had him over there.

4 There's just so many things in this case -- answers
5 that we'll never have, we'll never know, and there's no way to
6 reconcile. The law is that if you can't reconcile them in your
7 mind where you can go home and sleep without any -- lay your
8 head on your pillow tonight, and sleep without saying, "Well,
9 I'm just wondering about Bill Cogdill, and I wonder if she could
10 have had a problem."

11 We know one thing that sticks out like a sore
12 thumb. She was drinking, and we know with all -- that as
13 destroyed as her body was, that there was still enough drugs in
14 her body that it showed up when they examined it. It has to be
15 a lot of drugs in there, that's common sense. She said she knew
16 drugs and alcohol would kill her. She had tried that before,
17 and she told that to the doctor.

18 I'll ask you, when you deliberate this case, to
19 think of these things that are important. You can't hinge the
20 guilt, or innocence, or a man's life in prison, or his death on
21 something somebody does that's probably, if it happened, was
22 wrong. He didn't have anything whatsoever. You know, we didn't
23 have any idea -- especially, sending an officer to make sure
24 this is the correct light and everything. But this was not the
25 doing of the defendant, but it doesn't -- that little thing

1 doesn't make him guilty in this case.

2 They still have to prove -- the burden is still on
3 the State to prove that Connie Branum -- they are going to have
4 to answer these other charges that they were talking about --
5 discussed over in Blount County by a jury of their peers just
6 like you. That's their situation. You're not deciding Blount
7 County.

8 I know it's hard to say, "Well, I can't put that
9 out of my mind," because you can't put anything you're told out
10 of your mind once you hear it. But still, you took an oath, and
11 I'm sure you folks have set here long and hard, and it's been
12 hard for everybody. You've got the awesome responsibility to
13 have somebody's life in your hands. You're got Gary Sutton's
14 life in your hands.

15 It's horrible to be caged for the rest of your
16 life. If you've ever been to the penitentiaries and seen, and
17 know how it is, it's like you're like an animal in a cage...

18 **GENERAL SCHMUTZER:** Object, Your Honor, going with
19 sympathy. We object to that. It's outside the
20 proof in this record.

21 **THE COURT:** He may make his argument.

22 **MR. DANIEL:** And I just think that if you listen
23 to the evidence, what you heard regarding Connie Branum's case,
24 you'll realize that the State has not proved beyond all
25 reasonable doubt that every hypothesis is totally excludable,

1 and every hypothesis they have points to guilt.

2 I'll never -- we'll never reconcile Bill Cogdill's
3 statements. There's no way that can be reconciled. There's no
4 way no human could know what he knew without knowing something
5 about this murder. This was before she was ever found.

6 This young lady is his friend. She came down here
7 and testified, and she didn't want to testify. She wanted to
8 take the fifth amendment -- she's not wanting to testify against
9 Bill, he's her friend. They ran around together. But she told
10 what he said -- when the General tried to pressure her, "Didn't
11 he say something about..." "No, he said that before Tommy had
12 been found, and before her body was found." We will never
13 reconcile that statement.

14 I'll never be able to reconcile the one more place
15 she wanted to go, the other place she wanted to look. Where was
16 it? Would it be over at Bill Cogdill's, or somewhere in that
17 area to talk to him, and see if he'd seen him? They all had the
18 same friends in that area. Would it be down there where Tommy
19 had been getting his drugs out next to the airport, or over in
20 Townsend? Was Tommy -- that doesn't make any sense.

21 Gary Sutton had no reason whatsoever to kill Tommy
22 Griffin -- no motive, no reason. They were best friends.
23 Robbery was no motive. They had no problems. He got him out
24 of jail dozens of times. Went and told everybody he got him out
25 of jail.

1 What matters what happened back at Howie's
2 Hideaway? That's irrelevant to the issue. The issue you've got
3 to try is how can I reconcile these things about Connie Branum's
4 death, and say without any reasonable doubt whatsoever, and
5 reconcile these areas that there is no answer to. The General
6 says it's chasing rabbits. It's not chasing a rabbit when
7 somebody told -- if there was somebody laying up here in the
8 mountains dead right now in a burned car, and somebody knows
9 about it, and they find her that way, that's not a rabbit.
10 That's a reasonable assumption that somebody knows something
11 about this.

12 I want to thank you for your attention, thank you
13 for your patience, and if I've said or done anything that's
14 offended you, I apologize, and if you want to hold it against
15 me, feel free to do that, but don't hold it against Gary. I
16 want you to listen to the evidence, and because somebody did
17 something that I don't think is right. Somebody has done
18 something in an attempt, maybe, to try to help, and has hurt
19 him, don't let that sway the issue as to the question of whether
20 or not he did this. I represent by the proof that he couldn't
21 have done this. Thank you for your time and attention.

22 **THE COURT:** General Schmutzer?

23 **GENERAL SCHMUTZER:** Ladies and gentlemen of the
24 jury, you said the very day you were chosen as jurors you would
25 apply your reason and common sense to this case, and look at the

1 facts of the case. Let's look at it real quickly.

2 Bill Cogdill. Ms. Tipton. What did she tell you?
3 Bill Cogdill had told her before Connie's body was found that
4 she would be found over in Clear Fork, shot in the shoulder, and
5 burned up. Now, that's what she told the officers. But when
6 did she tell the officers this? If she would have come in
7 before the body was ever found, and they went out there and
8 found it, you'd put some credence to it.

9 She didn't come in and tell the officers that until
10 after the body was found, after it became public knowledge, and
11 she said he said she was shot in the shoulder. She wasn't shot
12 in the shoulder. You heard the proof in here. That turned out
13 to be zinc.

14 That came from a witness that obviously had
15 problems, wanted to take the fifth amendment. If you're taking
16 the stand, and don't have any problems, and simply going to tell
17 the truth, you don't have to be taking the fifth amendment.

18 Means, motive, and opportunity. That's what you
19 look at when you look to a murder case when the State's only
20 witness is dead. Bill Cogdill didn't have the means. The
21 weapons were traced right here to these two men right here, the
22 Dellinger trailer. The shotgun, the shells, the rifle, the
23 spent cartridge.

24 Opportunity. The last time either one of these
25 individuals were seen alive was in the company of these two

1 defendants. Tommy Griffin died from a gunshot wound to the back
2 of his head 30 minutes later after they'd taken him out of the
3 jail. They left him laying on the side of the road.

4 Connie Branum's body burned up within an hour or
5 so after they had taken her out of Howie's Hideaway in a drunken
6 condition.

7 Motive? I told you -- I can't tell you what
8 problem developed in that Camaro that made them beat up Tommy
9 Griffin, and leave him out there, but I told you the proof would
10 show -- no theory, just facts -- no guess work -- that these
11 men did it, and that formed the motive for why they took Connie
12 Branum's life because she was getting to close to them. She was
13 unraveling their web of deceit.

14 Well, the State hasn't shown how she died -- you
15 know, let's run this other rabbit. Can't leave out Bill
16 Cogdill, can you? They want to say, well, she really wasn't
17 murdered, she died accidentally, or maybe she died of suicide.
18 However, if you believe otherwise, then, of course, Bill Cogdill
19 did it. That's the rabbits they are wanting to run around.

20 Let's look at it. The proof in here, again, the
21 only credible proof, I submit to you, at the end of it, and
22 there's not question about it, this woman's body was burned the
23 way it was burned because it had been drenched with an
24 accelerant. I'm not going to tell you what, but I'll tell you
25 what the proof shows.

1 You heard both Clabo and Dr. Bass, and if there was
2 any question when Mr. Clabo came down, Dr. Bass cleared it up.
3 There was never any other expert that took the stand and told
4 you otherwise. Anyone at all? Did anyone take the stand -- did
5 an expert take the stand, and tell you those weren't the shells,
6 those shells weren't fired from the same shotgun, those shells
7 weren't fired from that rifle?

8 They say, "Well, how do we know that she didn't go
9 out there and commit suicide, or it wasn't accidental? The
10 question that was asked by the defense on cross examination of
11 Gary Clabo, and in fact, it was put in this manner, I believe.
12 "You all didn't find any container out there or the remains of
13 any container, did you?" "No."

14 See, there's no way this woman could have taken her
15 life, and doused herself with gasoline, kerosene, or whatever
16 it was, set herself on fire, and then taken -- removed the
17 container from the scene. Use your common sense.

18 His Honor will tell you that the State doesn't have
19 to prove the exact cause of death. I told you at the front end
20 we couldn't do that. The body was too badly burned to do that.
21 I told you what the proof would show. I told you about finding
22 the shells. I told you about the fact that the body -- that
23 there had been an accelerant used. All of that evidence of
24 criminal agency. It wasn't accidental, and it wasn't somebody
25 just taking an overdose of pills, or drank too much beer. I

1 just pray to God that they shot her before they burned her.

2 Now, you come down to this headlight. All of a
3 sudden, after a day of testimony about this headlight, we're
4 told that it really didn't have anything to do with this case,
5 that it's really not relevant. They why did they waste your
6 time?

7 They tried and tried and tried to explain this
8 headlight, and it just can't be done. The explanation being,
9 well, somebody was trying to help the defendant, and instead of
10 helping, they sunk him. Well, I'll tell you exactly what's
11 happened. These lawyers have gotten caught up in their clients'
12 own deception, his web of deception because common sense tells
13 you that nobody would have any interest in changing this
14 headlight if it was burning. If what he and his witnesses all
15 say, that it was burning back on the night in question, that it
16 was burning back during this time this investigation was going
17 on, there was absolutely no reason to change it.

18 You don't go out and change a burning headlight,
19 and put in another headlight that burns. The only way you would
20 change it would be if you wanted to change it from one that
21 didn't burn to one that burned.

22 As we heard, the car has been in the hands of the
23 family, locked under lock and key for all these many months.
24 The only other people that even came close to this car was law
25 enforcement, and obviously, they don't want to change it.

1 His lies went one step too far, and in the process,
2 he took down not only himself, but he's taken down his uncle.
3 Both, together, wrapped up together in this horrible, heinous,
4 and atrocious crime.

5 Ladies and gentlemen, you've heard the proof.
6 There's nothing strange. There's nothing confusing other than
7 what they would wish you to believe was strange and confusing
8 so you wouldn't do your duty, so you won't follow the facts.
9 But you look at all the witnesses, you decide who is telling the
10 truth, you decide who has the most at stake in this case. Who
11 has the biggest interest? Obviously, this man right here.

12 And I submit to you that after all the proof in
13 this case, the fact that this headlight, it turns out, that he's
14 not only a liar, but a murderer.

15 Family, friends, everybody connected. What
16 connection do the two ladies from Howie's Hideaway Lounge have,
17 Mrs. Devon Mayes, Alvin Henry, who was scared, who told you flat
18 out he didn't want to even identify that truck. He was scared
19 to death. Who was he scared of? James Dellinger.

20 Even the jailer --- he's retired. He's got nothing
21 in this. What did he do? You heard him. He told it like it
22 was. These guys actually came back after they'd beat him up,
23 and left him out there on Alcoa Highway -- they went back to the
24 jail, found out he was there, but they couldn't get him out.

25 That did away right there with any talk about this

1 mysterious woman, who just happens to appear at the convenience
2 store, who, again, just happens to appear at the appropriate
3 time at the jail to whisk Tommy Griffin off to his death.

4 She's a figment of their imagination just like this
5 headlight being put into that car six months before this crime
6 was committed is a figment of Sutton's imagination.

7 Ladies and gentlemen, these two men are guilty.
8 They are guilty -- they're guilty as charged of that murder,
9 that brutal murder of Connie Branum. Thank you. Thank you very
10 much, Your Honor.

11 **THE COURT:** The Court is going to take a two minute
12 recess to let anyone in the courtroom leave that wants to leave.
13 I don't want anyone up and walking around while the Court is
14 instructing the jury. If the jurors want to take a break in
15 that two minutes, I will allow you to do that?

16 The jury may remain seated, or stand as you wish.
17 The Court is going to be out two minutes, and let everyone leave
18 that wants to leave.

19 (COURT STOOD IN RECESS)

20 **CHARGE OF THE COURT:**

21 **THE COURT:** Will counsel for the defense and the
22 State approach, please?

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

24 **THE COURT:** During the recess, and after the jury
25 gets out, I would like counsel for the defendant

1 Dellinger to fill out that portion of the
2 defendant's report, if you will. And counsel for
3 Mr. Sutton do the same.

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

6 **THE COURT:** It is now my job, ladies and gentlemen
7 of the jury, to charge you as to the law in this case. At the
8 conclusion of my instructions I will give you these in writing.
9 In portions of them, I have taken a marker and marked through
10 portions of those instructions which have bearing on any issues
11 in this case, so don't worry about what I've marked out, it has
12 nothing to do with this case.

13 Also, at the end of my instructions, I will give
14 to you a copy of the indictments in each of these two cases for
15 you to take back with you in your deliberations.

16 This is a criminal case. The indictment is an
17 official accusation only. It is not evidence against the
18 defendants, and raises no inference of guilt.

19 The defendants say they are not guilty of any
20 offense charged or included in the indictment. They are
21 presumed innocent. The burden of proof is on the State. The
22 standard of proof is beyond a reasonable doubt.

23 The State must prove that the offense occurred in
24 this county, that the defendants before the Court are the
25 parties responsible, and that all of the elements constituting