

~~XXIV~~ No 90  
IN THE CRIMINAL COURT FOR SEVIER COUNTY, TENNESSEE

AT SEVIERVILLE, TENNESSEE

STATE OF TENNESSEE,

Appellee,

-vs-

GARY WAYNE SUTTON and,  
JAMES ANDERSON DELLINGER

Appellants.

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CASE # 5033, 5035

FILED

MAR 7 1994

SUPREME COURT CLERK

TRANSCRIPT OF THE EVIDENCE:

**Trial**

February 16-24, 1993

Volume 22 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

HOUR 9:30 A. M

DATE: JAN 07 1994

*William H. Goodday*  
CIRCUIT COURT CLERK  
SEVIER COUNTY, TENN.

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1 the criminal offenses occurred as alleged.

2 You are the judges of the law and the facts; the  
3 law as given you by the Court, and the facts as given you by the  
4 witnesses, and ultimately, the guilt or innocence of each of  
5 these defendants.

6 During your deliberations the Court reminds you to  
7 reason together, as your verdict, whether or not guilty, must  
8 be unanimous.

9 These instructions set forth the legal principles  
10 raised by the evidence. Consider each instruction in connection  
11 with all others, and in light of the proof.

12 Singular words may be taken equally to mean the  
13 plural. Words of gender may mean either he or she, as the case  
14 may require.

15 Statements, arguments, and remarks of counsel are  
16 intended to help the Court, and to help you in understanding the  
17 evidence, and applying the law, but such are not evidence. You  
18 will look to the witnesses for the facts, and the Court for the  
19 law.

20 The Court will not relate to you the theory of the  
21 prosecution of the defense, but will rely instead upon the  
22 arguments.

23 A defendant is criminally responsible for an  
24 offense committed by another if the defendant solicits, directs,  
25 aids, or attempts to aid another person to commit an offense,

1 and the defendant acts with the intent to promote or assist the  
2 commission of the offense, or to benefit in the proceeds or the  
3 results of the offense.

4 First degree murder is defined as follows:

5 Any person who commits the offense of first degree  
6 murder is guilty of a crime. For you to find the  
7 defendant guilty of this offense, the State must  
8 have proven beyond a reasonable doubt the existence  
9 of the following essential elements:

10 1. That a defendant unlawfully killed the alleged  
11 victim; and

12 2. That the killing was intentional.

13 A person acts intentionally with respect to the  
14 nature of the conduct or to a result of the conduct when it is  
15 the person's conscious objective or desire to engage in the  
16 conduct or cause the result.

17 3. That the killing was deliberate.

18 A deliberate act is one performed with cool  
19 purpose.

20 4. That the killing was premeditated.

21 A premeditated act is one done after the exercise  
22 of reflection and judgment. Premeditation means that the intent  
23 to kill must have been formed prior to the act itself. It is  
24 not necessary that the purpose to kill pre-exists in the mind  
25 of the accused for any definite period of time. It is

1 sufficient that it preceded the act, as long as it was the  
2 result of reflection and judgment.

3 The mental state of the accused at the time he  
4 allegedly decided to kill must be carefully considered in order  
5 to determine whether the accused was sufficiently free from  
6 excitement and passion as to be capable of premeditation.

7 If the designed to kill was formed with  
8 deliberation and premeditation, it is immaterial that the  
9 accused may have been in a state of passion or excitement when  
10 the design was carried into effect.

11 Furthermore, premeditation can be found if the  
12 decision to kill is first formed during the heat of passion, but  
13 the accused commits the act after the passion has subsided.

14 If you find from the proof beyond a reasonable  
15 doubt that the defendant is guilty of murder in the first  
16 degree, you will so report your verdict, and in that event shall  
17 be, "We the jury find the defendant guilty of murder in the  
18 first degree."

19 If you so find, then it shall be your duty, after  
20 a separate sentencing hearing to determine whether the defendant  
21 will be sentenced to life or death in prison -- I'm sorry, to  
22 death or life in prison. But you will not consider punishment  
23 for this offense at this time.

24 Second degree murder is defined as follows:

25 Any person who commits second degree murder is

1 guilty of a felony. For you to find the defendant  
2 guilty of this offense, the State must have proven  
3 beyond a reasonable doubt the existence of the  
4 following essential elements:

5 1. That the defendant unlawfully killed the  
6 alleged victim; and

7 2. That the killing was knowing.

8 The requirement of knowing is also established if  
9 it is shown that the defendant acting intentionally. I have  
10 already defined for you intentionally in these instructions, and  
11 I refer them to you for further description.

12 Knowingly means that a person acts knowingly with  
13 respect to the conduct, or to circumstances surrounding the  
14 conduct when the person is aware of the nature of the conduct,  
15 or that the circumstances exist.

16 A person acts knowingly with respect to a result  
17 of a person's conduct when the person is aware that the conduct  
18 is reasonably certain to cause the result.

19 Before a defendant in this case can be convicted  
20 of any degree of homicide, the State must have proven beyond a  
21 reasonable doubt that the death of the deceased, Connie Branum,  
22 was brought about as a result of a criminal agency of the  
23 defendant, that is, that the death of the deceased was due to  
24 the unlawful act of a defendant.

25 One who unlawfully inflicts a dangerous wound upon

1 another is held for the consequences flowing from such injury,  
2 whether the sequence be direct, or through the operation of  
3 intermediate agencies dependant upon, and arising out of the  
4 original cause.

5 To convict the defendant, it is not necessary that  
6 his act or failure to act be the sole cause, nor the most  
7 immediate cause of death. It is only necessary that the  
8 defendant unlawfully contributed to the death of the deceased.

9 When a wound from which death might ensure is  
10 inflicted with intent to kill, you may infer that death  
11 following that wound was caused by such wound. If you so infer,  
12 in that case, the defendant should show that the death resulted  
13 from some other cause not attributable to the defendant.

14 However, the burden of proof never shifts, and is  
15 always upon the State to prove beyond a reasonable doubt that  
16 the death of the deceased was brought about by the unlawful act  
17 of the defendant.

18 If you find that the defendants acts, if any, did  
19 not unlawfully cause or contribute to the death of the deceased,  
20 or if you have a reasonable doubt as to this proposition, your  
21 verdict will be not guilty.

22 The State is not required to prove the exact method  
23 or cause of death, but must show beyond a reasonable doubt that  
24 death was the result of some criminal agency. This can be  
25 established by circumstantial evidence, but cannot be

1 established by an inference drawn from a presumption, or a  
2 presumption based on a presumption.

3 The Court has charged you concerning an inference  
4 in this case that you may make in regard to certain evidence.  
5 However, you are not required to make this inference. It is the  
6 exclusive province of the jury to determine whether the facts  
7 and circumstances shown by all the evidence in the case warrant  
8 the inference which the law permits you to draw.

9 The inference may be rebutted by direct or  
10 circumstantial evidence, or both, whether it exists in the  
11 evidence of the State, or is offered by the defendant.

12 Although the defendant is not required by law to  
13 do so, when the defendant offers an explanation to rebutt the  
14 inference raised, you should consider such explanation, along  
15 with all the evidence, to determine not only the correctness of  
16 the inference, but also the reasonableness of the defendant's  
17 explanation.

18 You are not bound to accept either the inference  
19 or the defendant's explanation. The State must prove beyond a  
20 reasonable doubt every element of the offense before a defendant  
21 can be found guilty.

22 Any person who commits the offense of setting fire  
23 to personal property is guilty of a felony.

24 For you to find the defendant guilty of this  
25 offense, the State must have proven beyond a reasonable doubt the

1 existence of the following essential elements:

- 2 1. That the defendant damaged by fire or explosion  
3 the personal property, and  
4 2. That the defendant did so without the consent  
5 of all persons who have a possessory or proprietary  
6 interest therein, or that the defendant had the  
7 intent to destroy or damage the said property for  
8 an unlawful purpose, and  
9 3. That the defendant acted knowingly.

10 To constitute a burning within the meaning of this  
11 instruction, it is not necessary that the subject of the fire  
12 be destroyed. There is a sufficient burning if the nature of  
13 a combustible to which the fire or explosive is set is changed  
14 or charred.

15 I have already defined for you knowingly, and I  
16 have already defined for you intentionally, and unless requested  
17 by defense counsel, I will not charge it further.

18 MR. WEBB: No, Your Honor.

19 MR. MILLER: No, Your Honor.

20 THE COURT: Okay. Property means anything of  
21 value, including, but not limited to money, real estate,  
22 tangible or intangible personal property.

23 Whether a crime has been committed and the identity  
24 of the person responsible are all questions for you. The law  
25 presumes the defendant is innocent of the charges against him,

1 and he is not required to prove his innocence.

2 On the contrary, the burden of proof is always on  
3 the State, who must prove every element of the offense to your  
4 satisfaction beyond a reasonable doubt.

5 A reasonable doubt is an honest doubt which remains  
6 after investigation of all of the evidence, which will not  
7 permit the mind to rest easily as to the certainty of guilt.

8 A reasonable doubt does not include a captious,  
9 possible, or an imaginary doubt.

10 Absolute certainty of guilt is not required to  
11 convict, but moral certainty is required, and this certainty  
12 extends to every element necessary to constitute the offense.

13 You must look to the evidence given you from the  
14 witness stand alone in determining the facts of this case. In  
15 this connection you will consider all the evidence, both direct  
16 and circumstantial, together with such inferences or  
17 presumptions as may be justified by the proof.

18 You will also consider any admission, stipulation,  
19 or exhibit admitted into evidence. Lay aside unimportant,  
20 immaterial, or insignificant evidence or issues that have no  
21 bearing on guilt or innocence.

22 You are the exclusive judges of the facts and the  
23 credibility of the witnesses. Every day of your lives you have  
24 judged people, their reliability, their truthfulness, and the  
25 accuracy of their statements. In the case now on trial, you

1 will apply that same knowledge and experience in finding the  
2 truth from the evidence presented to you.

3 In determining the facts, you will, of course, look  
4 to the intelligence and respectability of the witnesses, their  
5 impartiality or bias, their means of knowledge, the  
6 reasonableness of their statements, their conduct on the witness  
7 stand, and all of the evidence in the case tending to support  
8 or contradict them.

9 A witness may be impeached, that is, the  
10 reliability of the testimony may be put in doubt by showing  
11 inconsistent, contradictory, unreasonable, or improbable  
12 statements on this or other occasions regarding the evidence  
13 given.

14 You alone determine the trustworthiness of the  
15 evidence, and the weight and value it should receive.

16 The guilt of a defendant, as well as any fact  
17 required to be proved may be established by direct evidence, by  
18 circumstantial evidence, or by both combined. Direct evidence  
19 is defined as evidence which proves the existence of the fact  
20 in issue, without inference or presumption of any other facts.

21 Direct evidence may consist of testimony of a  
22 person who has perceived, by the means of his or her senses, the  
23 existence of a fact sought to be proved or disproved.

24 Circumstantial evidence consists of proof of  
25 collateral facts and circumstances which do not directly prove

1 the fact in issue, but from which that fact may be logically  
2 inferred.

3 Ladies and gentlemen, when the evidence is made up  
4 entirely of circumstantial evidence, then, before you would be  
5 justified in finding a defendant guilty, you must find that all  
6 the essential facts are consistent with the hypothesis of guilt,  
7 as that is to be compared with all the facts proved.

8 The facts must exclude every other reasonable  
9 theory or hypothesis except that of guilt, and the facts must  
10 establish such a certainty of guilt of the defendant as to  
11 convince the mind beyond a reasonable doubt that the defendant  
12 is the one who committed the offense.

13 It is not necessary that each particular fact  
14 should be proved beyond a reasonable doubt if enough facts are  
15 proved to satisfy the jury beyond a reasonable doubt of all the  
16 facts necessary to constitute the crime charged.

17 Before a verdict of guilty is justified, the  
18 circumstances, taken together, must be of a conclusive nature  
19 and tendency, leading on the whole to a satisfactory conclusion,  
20 and producing, in effect, a moral certainty that the defendant,  
21 and no one else, committed the offense.

22 If from the proof in this case you find that a  
23 defendant has committed crimes other than that for which he is  
24 on trial, you may not consider such evidence to prove his  
25 disposition to commit such a crime as that on trial. This

1 evidence may only be considered by you for the limited purpose  
2 of determining whether it provides, one, the complete story of  
3 the crime. That is, such evidence may be considered by you  
4 where the prior crimes and the present alleged crime are  
5 logically related or connected, or are part of the same  
6 transaction, so that the proof of the other tends or is  
7 necessary to prove that the one charged, or is necessary for a  
8 complete account thereof; or motive, that is such evidence may  
9 be considered by you if it tends to show a motive of the  
10 defendant for the commission of the offense presently charged,  
11 or the defendant's intent, that is, such evidence may be  
12 considered by you if it tends to establish that the defendant  
13 actually intended to commit the crime with which he is presently  
14 charged.

15 Such evidence of other crimes, if considered by you  
16 for any purpose, must not be considered for any purpose other  
17 than that specifically stated to you. The evidence must be  
18 clear and convincing before you may consider it for this limited  
19 purpose.

20 Generally, a witness may not testify as to his  
21 opinions or conclusions, but the Court may permit a witness who  
22 has special knowledge or experience on a particular question to  
23 testify as an expert on that question.

24 An expert witness may state an opinion, and give  
25 reasons for his testimony. Expert testimony should be received

1 by you with caution. While expert testimony is sometimes the  
2 only means of, or the best way of reaching the truth, yet it is  
3 largely a field of speculation beset with pitfalls and  
4 uncertainties, and requires careful and intelligent evaluation  
5 on your part if it is to be a valid means of reaching the truth.

6 You are not bound to accept expert testimony, but  
7 you should give it such weight and value as you think it  
8 deserves, along with all the other evidence in the case governed  
9 by the purpose to arrive at the truth.

10 In this case, the defendant has presented evidence  
11 of an alibi. An alibi is defined as evidence which, if  
12 believed, would establish that the defendant was not present at  
13 the scene of the alleged crime when it allegedly occurred. If  
14 the defendant was not present when the crime was committed, he  
15 cannot be guilty.

16 The burden is on the State to prove beyond a  
17 reasonable doubt that the defendant was at the scene of the crime  
18 when it was committed. If you find from your consideration of  
19 all the evidence that the State has failed to prove beyond a  
20 reasonable doubt that the defendant was at the scene of the  
21 crime when it was committed, you must find the defendant not  
22 guilty.

23 In this case the defendant Dellinger did not  
24 testify. His failure to testify may not and shall not be  
25 considered by you as an admission of guilt, as evidence against

1 him, or that the charges could not be answered, for he is  
2 presumed innocent, and is not required to prove his innocence.

3 In this case the defendant Sutton testified, and  
4 you will judge his evidence just as you do that of the other  
5 witnesses in this case.

6 You are trying two separate cases which have been  
7 consolidated for trial. The first indictment charges the  
8 defendant Dellinger with the offense of first degree murder and  
9 burning of personal property.

10 The second indictment charges the defendant Sutton  
11 with the offenses of first degree murder, and the burning of  
12 personal property.

13 Both indictments will be given to you, together  
14 with this charge, when you begin your deliberations, and I refer  
15 you to those indictments for further description of the  
16 particular offenses charged.

17 In consideration of all cases, it is your duty to  
18 carefully weigh the evidence as it applies to each case. If  
19 there be evidence that sheds light upon the guilt or innocence  
20 in one case, but is immaterial or irrelevant as to others, be  
21 certain that you did not permit the evidence to receive any  
22 consideration, or have any bearing on your verdict in cases to  
23 which it cannot apply.

24 In other words, consider each indictment or count  
25 within an indictment separately, and consider only that portion

1 of the evidence that bears on that precise charge. Do not let  
2 your verdict of guilt or innocence on any single charge affect  
3 your verdict as to the other charges.

4 Your judgment must be independently made as to each  
5 charge, and to each count on each charge.

6 Likewise, the indictments contain -- each  
7 indictment contains two charges called counts, and you will  
8 report a separate verdict on each charge or count.

9 You may convict a defendant on all counts, or you  
10 may acquit a defendant on all counts, or you may convict on one,  
11 and acquit on others as the law and the evidence justify.

12 You shall give separate consideration to each  
13 defendant. Each is entitled to have his case decided on the law  
14 and the evidence which is applicable to him.

15 Any evidence which was limited to one defendant  
16 should not be considered by you as to any other defendant. In  
17 other words, you must confine your attention to that evidence  
18 which bears on the guilt or innocence of a particular defendant  
19 on a particular charge, and you may convict the defendants of  
20 different grades of the same offense.

21 So, therefore, after carefully considering all of  
22 the evidence as it applies to each defendant, you may convict  
23 both, or you may acquit both, or you may convict one, and acquit  
24 the other.

25 While the indictment -- each indictment contains

1 the principle charge of first degree murder, by implication of  
2 law, it also includes the lesser offense of second degree  
3 murder. You will consider the principle offense first. It is  
4 for your determination what offense, if any, has been committed,  
5 and when you reach a unanimous verdict, you will report that  
6 verdict.

7 As to the charge of first degree murder, consider  
8 first the charge of first degree murder. If you convict,  
9 report. If not satisfied as to guilt on first degree murder,  
10 consider the lesser included charge of second degree murder.  
11 If you convict, report.

12 If you find a defendant guilty, name the defendant,  
13 name the offense, and report. If you are not satisfied as to  
14 a defendant's guilt beyond a reasonable doubt, your verdict will  
15 be not guilty as to him.

16 On your verdict of not guilty the Court will  
17 dismiss the charges. On your verdict of guilty, the Court will  
18 determine the appropriate punishment after an additional  
19 hearing.

20 The punishment for first degree murder is either  
21 life in the penitentiary or death, and that would be determined  
22 by you at a subsequent hearing.

23 The punishment for second degree murder, a felony,  
24 may be a term of years not less than 15 years, nor more than 25  
25 years in the state penitentiary.

1           The punishment for the burning of personal  
2 property, a felony, may be a term of years not less than one,  
3 nor more than two years in a state penitentiary.

4           Finally, it is not your duty ladies and gentlemen,  
5 to please the prosecutor, a defendant, the attorneys, interested  
6 parties, or this Court. To attempt to satisfy any of them would  
7 be a violation of your oath.

8           Your sole purpose will be to do justice according  
9 to your conscience, and the oath you have taken in this case.  
10 In so doing, you will not only honorably discharge your duty,  
11 and serve the cause of justice, but you will renew again the  
12 faith and confidence of all impartial citizens in justice under  
13 our laws.

14          You must bring to bear upon the consideration of  
15 the facts of this case your best judgment, your experience, your  
16 reason, and your common sense. You must be fair, you must be  
17 impartial, and you must fearlessly do your duty without sympathy  
18 or prejudice to any person.

19          If a defendant is guilty, name the offense and  
20 convict him. If you have a reasonable doubt as to guilt, your  
21 verdict will be not guilty.

22               Anything further for the State?

23           **GENERAL SCHMUTZER:** Nothing, Your Honor.

24           **THE COURT:** Anything further for the defense?

25           **MR. MILLER:** No, Your Honor.

1           MR. WEBB:   Nothing, Your Honor.

2           THE COURT:   Ladies and gentlemen of the jury,  
3 retire. Take this charge, a copy of each indictment, elect a  
4 spokesman to represent you, and as soon as you have reached a  
5 verdict, so advise the bailiff, and we will take your verdict  
6 at that time.

7           As to the alternate jurors, it is not my privilege  
8 to excuse you from further duty in this case at this time. If  
9 you wish to stay with us here in the courtroom or in the  
10 hallway, please feel free to do so. I understand if you want  
11 to do that; you've been here this long. But if you desire to  
12 leave, you certainly may do so.

13           If you'll hand this to the jury. Approach the  
14 bench, counsel, one moment before we send the jury out, and  
15 Sheriff Ogle...

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

17           THE COURT: The jurors made a request that was sent  
18 to me by the bailiff that they be allowed to go  
19 back over to their hotel. There's apparently a  
20 large conference there where they have food  
21 available for them, and snacks available, and soft  
22 drinks available. Without objection, I think  
23 that's fine. If these people have been here this  
24 long, and they want to do that, that's fine.

25           GENERAL SCHMUTZER: We agree, Your Honor.

1 MR. MILLER: No problem.

2 THE COURT: The only thing that might be a problem  
3 is if they have a question, but if they...

4 GENERAL SCHMUTZER: If they don't they can just  
5 call us, I guess, and they can bring them over  
6 here.

7 THE COURT: Sure. Thank you.

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

10 THE COURT: This Court will stand in recess until  
11 we hear from the jury again. All rise for the jury. Court  
12 stands in recess.

13 (THE JURY RETIRED TO DELIBERATE AT 3:17 p.m., AND  
14 RETURNED WITH A VERDICT AT 6:00 P.M.)

15 VERDICT:

16 THE COURT: Waive the call for the State?

17 GENERAL SCHMUTZER: Yes, Your Honor.

18 THE COURT: And the defense?

19 MR. MILLER: Yes, Your Honor.

20 MR. WEBB: Yes, Your Honor.

21 THE COURT: You may be seated. Ladies and  
22 gentlemen of the jury, have you reached a verdict?

23 FOREMAN McCLELLAN: Yes, sir.

24 THE COURT: You are the foreman?

25 FOREMAN McCLELLAN: Yes, sir.

1 THE COURT: You are Mr. McClellan?

2 FOREMAN McCLELLAN: Yes, sir.

3 THE COURT: All right, sir. I will, sir, ask you  
4 in regards to Case #5033, in the case of State of Tennessee vs.  
5 Gary Wayne Sutton on the charge of first degree murder, how does  
6 the jury find?

7 FOREMAN McCLELLAN: Guilty, Your Honor.

8 THE COURT: And on the charge of burning of  
9 personal property, how does the jury find?

10 FOREMAN McCLELLAN: Guilty.

11 THE COURT: In regards to Mr. Sutton, is that the  
12 verdict of each and every juror? If so, raise your right hand.

13 (ALL HAND RAISED)

14 THE COURT: Let the record reflect. In Case #5045,  
15 State vs. James Anderson Dellinger, in regards to the count of  
16 first degree murder, how does the jury find, sir?

17 JUROR McCLELLAN: Guilty.

18 THE COURT: And on the charge of burning of  
19 personal property, how does the jury find?

20 JUROR McCLELLAN: Guilty.

21 THE COURT: In regards to the verdict of Mr. James  
22 Anderson Dellinger, is that the verdict of each and every juror?  
23 If so, raise your right hand.

24 (ALL HANDS RAISED)

25 THE COURT: Let the record so reflect. Gentlemen,

1 approach the bench.

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

3 **THE COURT:** In regards to sentencing at this time,  
4 is the State prepared to go on to sentencing at  
5 this time?

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

7 **THE COURT:** In regards to your case in chief in  
8 sentencing is there going to be any additional  
9 proof?

10 **GENERAL SCHMUTZER:** No, Your Honor.

11 **THE COURT:** Okay. And I take it the defense will  
12 have some witnesses at that time?

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

14 **MR. DANIEL:** Your Honor, please, can you have a  
15 poll of the jury on this?

16 **THE COURT:** I just did.

17 **MR. DANIEL:** I mean...

18 **GENERAL SCHMUTZER:** I think he means on an  
19 individual verdict -- just ask them each  
20 individually, is this your individual verdict.

21 **THE COURT:** Are you asking me to do that?

22 **MR. DANIEL:** I think we should have on this kind  
23 of case, Your Honor.

24 **THE COURT:** Okay.

25 (Said bench conference being completed, the

1 following proceedings are had in open court.)

2 THE COURT: Ladies and gentlemen of the jury, and  
3 I must ask you, under law, for each of you to stand as I call  
4 your name, and indicate to the Court whether or not the  
5 verdicts, as announced, are your individuals verdicts. Mr.  
6 McClellan.

7 JUROR McCLELLAN: Yes, sir, it is.

8 THE COURT: On both cases?

9 JUROR McCLELLAN: On all counts.

10 THE COURT: Thank you. Mr. Ogle -- James Ogle?

11 JUROR OGLE: Guilty on all counts.

12 THE COURT: Thank you, sir. Mr. Gaps, is that your  
13 verdict, sir on all counts?

14 JUROR GAPS: Yes, sir.

15 THE COURT: Thank you. Ms. Griffin, is that your  
16 verdict on all counts?

17 JUROR GRIFFIN: Guilty of all counts, yes.

18 THE COURT: Thank you. Mr. Howe, guilty on all  
19 counts, sir?

20 JUROR HOWE: Yes, sir.

21 THE COURT: Thank you. Mr. Johnson?

22 JUROR JOHNSON: Guilty on all counts, Your Honor.

23 THE COURT: Mr. Yarnell?

24 JUROR YARNELL: Guilty on all counts.

25 THE COURT: Thank you. Mr. Cole?

1 JUROR COLE: Yes, sir, guilty on all counts.

2 THE COURT: All counts. Mr. Justice?

3 JUROR JUSTICE: Guilty on all counts.

4 THE COURT: Ms. Maples?

5 JUROR MAPLES: Guilty on all.

6 THE COURT: Mr. Gibson?

7 JUROR GIBSON: Guilty on all counts, Your Honor.

8 THE COURT: Thank you. Mr. Ballenger?

9 JUROR BALLENGER: Guilty on all counts, Your Honor.

10 BIFURCATED HEARING:

11 THE COURT: Very well. Thank you. Ladies and  
12 gentlemen, in regards to the finding of guilt on first degree  
13 murder, you, of course, found each of these gentlemen guilty  
14 beyond a reasonable doubt of first degree murder. It is now  
15 your duty to determine within the limits prescribed by law the  
16 penalty which shall be imposed as punishment for this offense.

17 Tennessee law provides that a person convicted of  
18 murder in the first degree shall be punished by death, or by  
19 imprisonment for life. In arriving at this determination, you  
20 are authorized to weight and consider any mitigating  
21 circumstances, and any of the statutory aggravating  
22 circumstances which may have been raised by the evidence  
23 throughout the entire of this trial, including the sentencing  
24 phase.

25 The jury is the sole judge of the facts and the law

1 as it applies to the facts in the case. In arriving at your  
2 verdict, you are to consider the law in connection with the  
3 facts, but the Court is the proper source from which you are to  
4 receive the law. In other words, you are the judges of the law,  
5 as well as the facts, under the direction of the Court.

6 The burden of proof is on the State to prove any  
7 statutory aggravating circumstance or circumstances beyond a  
8 reasonable doubt and a moral certainty.

9 Reasonable doubt is that doubt engendered by an  
10 investigation of all the proof in the case, and an inability,  
11 after such investigation, to let the mind rest easily upon the  
12 certainty of your verdict.

13 Reasonable doubt does not mean a doubt that may  
14 arise from possibilities. Absolute certainty is not demanded  
15 by the law, but moral certainty is required, and this certainty  
16 is required as to every proposition of proof requisite to  
17 constitute your verdict.

18 The law makes you, the jury, the sole and exclusive  
19 judges of the credibility of the witnesses, and the weight to  
20 be given to the evidence.

21 General Schmutzer, you are recognized, sir.

22 **GENERAL SCHMUTZER:** May we approach?

23 **THE COURT:** Yes, you may.

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

25 **GENERAL SCHMUTZER:** I need a copy of our

1           aggravating notice. We just walked in here, and  
2           took this verdict, and I didn't know we were just  
3           going to...

4           **THE COURT:** Okay. That's the one that I have  
5           charged.

6           **MR. WEBB:** Your Honor, while we're at the bench,  
7           for the record, on behalf of Mr. Sutton, I would  
8           like to renew my motions for judgment of acquittal  
9           on the death penalty at this point.

10          **THE COURT:** The Court has ruled, Gentlemen.

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

13          **GENERAL SCHMUTZER:** Ladies and gentlemen of the  
14          jury, as His Honor has told you, this portion of the hearing is  
15          what we call bifurcated hearing, and is for the purpose of  
16          deciding the punishment.

17                 The State's position, and I submit to you, the  
18          State has proven that this aggravating factor that I'm about to  
19          read is the aggravating factor that, in this case, warrants the  
20          death penalty.

21                 "The murder was committed for the purpose of  
22          avoiding, interferring with, or preventing a lawful arrest and  
23          prosecution of the defendants."

24                 At this time, Your Honor, the State -- it is our  
25          position that at the end of all this proof that we will adopt,

1 Your Honor, and if the Court please, all of the proof that's  
2 previously been submitted in this trial as evidence in this  
3 hearing.

4 The proof, and how it relates to the aggravating  
5 factor, it is our position that it's proven, and it's proven  
6 beyond a reasonable doubt, and that it outweighs beyond a  
7 reasonable doubt any of the mitigating factors that may be  
8 brought forth in this case on behalf of the defendants.

9 Thank you very much, Your Honor.

10 THE COURT: Thank you. Mr. Miller, you make an  
11 opening statement, and then present your proof as you deem  
12 proper, sir.

13 MR. MILLER: Thank you, Your Honor. Ladies and  
14 gentlemen, we submit that the aggravating factor listed by the  
15 State does not apply in this case, as a matter of law. You have  
16 heard the proof, and was none offered that this woman was in  
17 any way a witness to a crime, and in no way interfered with any  
18 anyone's arrest.

19 We further go forward, and state that the following  
20 mitigating factors provided by the statute are applicable:

21 That the murder was committed while the defendant  
22 was under the influence of extreme mental or  
23 emotional disturbance;

24 The defendant was an accomplice in a murder  
25 committed by another person, and his participation

1 was relatively minor;

2 The defendant could not appreciate the wrongfulness  
3 of his conduct, or conform his conduct to the  
4 requirements of law, and was substantially impaired  
5 as a result of his intoxication.

6 We will further go forth in proof of other  
7 mitigating factors not specifically listed in the statute that  
8 we've asked you to consider.

9 THE COURT: Mr. Daniel or Mr. Webb, any opening  
10 statements?

11 MR. WEBB: Yes, Your Honor. Ladies and gentlemen,  
12 I know I probably look haggard to you, and it's for a pretty  
13 good reason, and I know you all are probably the same way. It's  
14 been a tough week for all of us.

15 I think I can speak on behalf of everyone here,  
16 that we very much appreciate you, and you are well respected by  
17 everybody. You are just a perfect example of good Sevier County  
18 people.

19 I know that you all have followed along very, very  
20 close, and everyone appreciates that. You've been attentive,  
21 you've been patient -- you've had the patience Jobe. The  
22 lawyers have worked hard, and we've interfered with your lives.

23 You know now what it's like to locked up. That's  
24 what you've been for a week.

25 It's very difficult -- but what I want to talk to

Courtesy of  
Time of Death Podcast  
by Beth Braden

1 you about in opening just for a moment is the law -- the Judge  
2 will instruct you, probably, better than I will. You do have  
3 the aggravating factor that General Schmutzer read to you. I  
4 submit that the proof does not meet that aggravating factor, and  
5 what's happened is terrible, but from the pure letter of the  
6 law, there just simply is not the proof that Connie Branum was  
7 a witness to her brother's murder.

8 I want to tell you, and I want the Judge or the  
9 General to tell me if I'm wrong, but you do have a choice. And  
10 you can look at this aggravating factor, and if you find that  
11 it's not been met, then you can come back and report.

12 If you go for -- I think, in all fairness to my  
13 client, that you need to hear a little bit about him. What I'm  
14 basically talking about is that you've got the ultimate, the  
15 most awesome power, and if I were sitting where you're at, I  
16 would want to know a little bit about the man I was going to  
17 pass judgment on.

18 I submit that when you hear from these people, that  
19 you will learn that Gary Sutton does have value. His life is  
20 worth something. He has some redeeming qualities, and we'll use  
21 the word mitigation, but really what we're talking about is  
22 value and redeeming qualities.

23 I'd ask you to listen to some of the proof -- well,  
24 all of the proof we'll offer on behalf of Mr. Sutton, and the  
25 Judge will instruct you on mitigation a little later. One of

1 the things he'll tell you is that you can take any other  
2 mitigation that you think, from what you've heard, and what  
3 you're about to hear.

4 I just ask you to, as you have been, to be patient  
5 with us, and please consider what you're going to hear on behalf  
6 of Mr. Sutton. Thank you.

7 THE COURT: Mr. Miller, any proof that you desire  
8 to offer, sir, you may...

9 MR. MILLER: Call Linda Dellinger, Your Honor.

10 \*\*

11 LINDA DELLINGER was called, and being duly sworn,  
12 was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MR. MILLER:

15 Q. You are Linda Dellinger?

16 A. Yes.

17 Q. You are James Dellinger's wife, is that correct?

18 A. Yes.

19 Q. How long have you been married to Mr. Dellinger?

20 A. For 12 years.

21 Q. Do you all have children?

22 A. Yes.

23 Q. How many children do you all have?

24 A. We have three living children.

25 Q. Is that three of your own between the two of you,

1 or...

2 A. Between the two of us.

3 Q. I believe you have some children by a previous  
4 marriage?

5 A. Yes.

6 Q. And you mentioned three living. Was there another  
7 child?

8 A. We had two children that are dead, yes.

9 Q. I believe James was married prior to you, and had  
10 a son and a daughter by that marriage, is that correct?

11 A. Yes.

12 Q. What were those children's names?

13 A. Timmy and Tammy.

14 Q. And how old is Timmy?

15 A. Timmy is 22.

16 Q. After James was divorced from his first wife, did  
17 you all get custody of those two children?

18 A. Yes, we did.

19 Q. And was it Tammy that was later killed?

20 A. Yes.

21 Q. How did she die?

22 A. She was killed in a car wreck.

23 Q. How long ago was that?

24 A. That was in '88.

25 Q. Did that affect James?

1 A. Very much, yes.

2 Q. James also suffered an injury a while back, is that  
3 correct, on the job?

4 A. Yes, he did.

5 Q. And that cause him to be permanent disabled?

6 A. Yes.

7 Q. How long ago was that?

8 A. Two years ago.

9 Q. And up until that time was he a good worker and  
10 provider?

11 A. Yes.

12 Q. How did he become injured and disabled?

13 A. He was on the job, and he fell down a flight of  
14 stairs, and it disintegrated three disks in his back.

15 Q. Did he have to see a lot of doctors?

16 A. Yes.

17 Q. Was he in a lot of pain?

18 A. Very much pain.

19 Q. Does he still suffer from that?

20 A. Yes, he does.

21 Q. Did it also affect him psychologically, as far as  
22 his nerves?

23 A. Yes.

24 Q. Can you tell the jury some about that?

25 A. He was in so much pain, and everything that he --

1 his nerves got real bad, and he got to where he couldn't even  
2 talk to people. They would try to talk to him, and he just  
3 couldn't stand it, and he would just get up, and go into another  
4 room.

5 Q. Did he have trouble staying in the room with  
6 anybody because of his nerves?

7 A. Yes.

8 Q. After his back injury, did his drinking increase?

9 A. Yes, it was an escape from the pain.

10 Q. He drank more and more after he was injured?

11 A. Yes.

12 Q. He got a little bit of settlement money from that  
13 injury, is that correct?

14 A. Yes.

15 Q. And he was very generous with this money, was he  
16 not?

17 A. He was always generous with money. It didn't  
18 matter if he didn't have any or a lot, he gave it to anybody  
19 that asked or that he thought needed it. He didn't really care  
20 if he had any or not.

21 Q. Are James' parents still living?

22 A. His father is deceased, his mother is living.

23 Q. How long ago did his father die?

24 A. His father died about six years ago.

25 Q. And I believe you told me he had a hard time over

1 that?

2 A. Yes, he did, a very hard time.

3 Q. Was he just starting to get closer to his father  
4 at that time?

5 A. Yes.

6 Q. Since he's your husband, I take it you love him  
7 very much, is that true?

8 A. Yes, I do.

9 Q. Is there anything else you can tell the jury?

10 A. He's not a bad man. He's always been good to  
11 everyone that he could be good to.

12 MR. MILLER: I believe that's all I have, Your  
13 Honor.

14 THE COURT: Anything else you want to say, Mrs.  
15 Dellinger?

16 THE WITNESS: I just hope you can see that he  
17 deserves a chance to live.

18 THE COURT: General Schmutzer?

19 GENERAL SCHMUTZER: No questions.

20 MR. MILLER: Call Mary Ramsey.

21 \*\*

1                    MARY RAMSEY was called, and being duly sworn, was  
2   examined and testified as follows:

3   DIRECT EXAMINATION

4   BY MR. MILLER:

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

6            A.    Mary Ramsey.

7            Q.    You are James' sister, is that correct?

8            A.    Yes.

9            Q.    You are his big sister?

10          A.    Yes.

11          Q.    I just want you to tell the jury, if you can -- I  
12 know it may be hard, but just tell this jury -- you grew up with  
13 James?

14          A.    Yes.

15          Q.    As he was growing up. Tell the jury a little bit  
16 about how James grew up, and the life that you all had.

17          A.    He was a good brother to us, and he was always  
18 good. All my brothers was good to us.

19          Q.    James didn't get to go very far in school, is that  
20 correct?

21          A.    No.

22          Q.    Why was that?

23          A.    Because we had to work on the farm, and we didn't  
24 get to go to school that much.

25          Q.    How many brothers and sisters do you have?

1 A. I have five brothers, two sisters.

2 Q. James, I think, didn't go through but about the  
3 second or third grade, is that correct?

4 A. No, he can't read or write.

5 Q. And did he have to drop out in the second or third  
6 grade because he had to work at home, and farm?

7 A. Yes.

8 Q. I believe you all were relatively poor, is that  
9 correct?

10 A. Yes.

11 Q. Your father -- was he a farmer?

12 A. Yes.

13 Q. You described your brother as a good brother?

14 A. Yes.

15 Q. Did he take care of you when anybody would pick on  
16 you?

17 A. Yes, he always took up for us.

18 Q. Do you remember back when James was, I guess, about  
19 18 years old, when a motorcycle ran into the side of his car?

20 A. Yes.

21 Q. Can you tell the jury just a little bit about that,  
22 what you remember about that?

23 A. Well, the motorcycle run into his car, and the man  
24 on the motorcycle died, and it really upset my brother very bad.

25 Q. I believe you all told me he was angry at the

1 rescue squad personnel because they weren't trying to revive  
2 him?

3 A. Yes.

4 Q. Is there anything else you want to tell this jury  
5 before they deliberate on his life?

6 A. He's a very good brother, and I love him.

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

8 THE COURT: Is there anything else, ma'am, that you  
9 would like to say to this jury -- anything at all?  
10 You don't have to, but...

11 THE WITNESS: I can't think of anything else.

12 THE COURT: Okay. Any questions, General  
13 Schmutzer?

14 GENERAL SCHMUTZER: No, Your Honor.

15 THE COURT: You may step down.

16 MR. MILLER: Margaret Ramsey.

17 \*\*

18 MARGARET RAMSEY was called, and being duly sworn,  
19 was examined and testified as follows:

20 DIRECT EXAMINATION

21 BY MR. MILLER:

22 Q. Could you tell us your name, please, ma'am?

23 A. Margaret Ramsey.

24 Q. You're James' sister?

25 A. Yes.

1 Q. His baby sister?

2 A. Yes.

3 Q. How much older is he than you?

4 A. About three years.

5 Q. Tell the jury a little bit about your all's  
6 childhood, and the hard times there at home.

7 A. Well, it was real hard. We was real poor, and none  
8 of us has got a real good education. I've got a third grade  
9 education, and my brothers, I doubt if they've even got a first  
10 grade education.

11 Q. You all weren't able to go to school because you  
12 were working?

13 A. We had to work on the farm just to make a living.

14 Q. How about James as far as a brother? Was he a good  
15 brother?

16 A. I can truthfully, honestly tell you'uns, he was a  
17 good brother to me, and I love him very much. Can I please be  
18 excused?

19 MR. MILLER: That's all, Your Honor.

20 THE COURT: Any questions, General Schmutzer?

21 GENERAL SCHMUTZER: No questions.

22 THE COURT: You may step down.

23 MR. MILLER: Call Timmy Dellinger.

24 \*\*

1 TIMMY DELLINGER was called, and being duly sworn,  
2 was examined and testified as follows:

3 DIRECT EXAMINATION

4 BY MR. MILLER:

5 Q. Tell us your name, please, sir.

6 A. Timmy Dellinger.

7 Q. Are you James' son?

8 A. Yes, sir.

9 Q. How old are you?

10 A. I'm 21.

11 Q. And I believe you are his son from a previous  
12 marriage, is that correct?

13 A. Yes.

14 Q. Your parents when you were about, what, nine years  
15 old?

16 A. Uh-huh (affirmative).

17 Q. And did he get custody of you when you were about  
18 11 years old?

19 A. Yes, sir.

20 Q. As far as a father, what can you tell the jury  
21 about James?

22 A. He's a good father.

23 Q. Did he treat you good?

24 A. Yes, sir.

25 Q. I believe you got married not too long ago, is that

1 right?

2 A. Two years ago.

3 Q. Did your daddy get you a wedding present?

4 A. When we got married we was having it rough with the  
5 rent, and stuff, and he come and give us \$300.

6 Q. Has he always been that way? Would he give you  
7 whatever he had?

8 A. Yes, sir.

9 Q. He's your father, and I guess the only father  
10 you've got?

11 A. Yeah.

12 Q. Do you want this jury to spare his life?

13 A. No.

14 Q. I think you might have misunderstood me, but I  
15 said, do you want them to spare his life?

16 A. Oh.

17 Q. You don't want them to take his life?

18 A. No.

19 Q. Is there anything else you'd like to tell the jury?

20 A. I love my father very much.

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

22 GENERAL SCHMUTZER: No questions.

23 THE COURT: You may step down.

24 MR. MILLER: That's all we'd offer, Your Honor.

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

1 MR. WEBB: I'd like to call my secretary, Connie  
2 King. I don't think she's been sworn.

3 \*\*

4 CONNIE KING was called, and being duly sworn, was  
5 examined and testified as follows:

6 DIRECT EXAMINATION

7 BY MR. WEBB:

8 Q. State your name, please.

9 A. Connie King.

10 Q. And you're my secretary?

11 A. Absolutely.

12 Q. For good or bad?

13 A. Better or for worse.

14 Q. You've been involved in this case with me for about  
15 a year, haven't you?

16 A. Yes, sir.

17 Q. And you've had many occasions to talk to Gary?

18 A. That's correct.

19 Q. Do you recall back a little bit before Valentine's  
20 Day when you received something from Gary?

21 A. I do.

22 MR. WEBB: If I may approach, Your Honor.

23 THE COURT: Sure.

24 BY MR. WEBB:

25 Q. I'd like you to look at that, and see if you can

1 identify it.

2 A. I do.

3 Q. And would you tell the jury what it is?

4 A. This is a hand made Valentine to me personally.

5 Q. And was there an inscription on the inside?

6 A. Absolutely.

7 Q. Would you read it for the jury, please?

8 A. It says, "For a special lady. I just wanted to  
9 wish you a Happy Valentine's Day, Connie, and to say thanks for  
10 all the hard work that you've put into my case. And I want to  
11 say thanks for always being so nice and police. Your friend,  
12 Gary."

13 Q. Connie, how -- when you received this, how did that  
14 make you feel?

15 A. It was very special to me because I have been  
16 working for you for 11 or 12 years, and I try to work very hard.  
17 Very rarely do our clients remember to say thanks, or  
18 acknowledge all the hard work that we menial people do, and when  
19 a client goes to as much effort to make something in the way of  
20 a home card, and get it to me personally, it has deep  
21 significance for me.

22 MR. WEBB: Your Honor, can I mark this as an  
23 exhibit, and ask it be passed?

24 THE COURT: Yes.

25 (EXHIBIT #1 - Valentine's Day Card; marked and

1 filed.)

2 MR. WEBB: That's all I have, General.

3 GENERAL SCHMUTZER: No questions.

4 THE COURT: Any questions, Mr. Daniel?

5 MR. WEBB: Your Honor, the next item of proof I  
6 would like to offer, if the Court please, I have a transcript  
7 of an earlier hearing, and I'd like to read to the jury what  
8 Gary Sutton said at that hearing.

9 GENERAL SCHMUTZER: We might want to approach the  
10 bench. I have some idea of what it is, but...

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

12 MR. WEBB: Where we argued, fussed, and fought, and  
13 that's the statement made to the Griffin family.

14 GENERAL SCHMUTZER: Well, I think you should leave  
15 out by me, "Let him talk."

16 MR. WEBB: I won't do that.

17 THE COURT: Okay.

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

20 MR. WEBB: Your Honor, if I could just put it in  
21 paraphrase. This was a statement that Gary had made to the  
22 Griffin family.

23 "MR. SUTTON: If I may say one more thing. Well,  
24 I just want to say I hope God may be with her, and  
25 I'd just like to say I feel hurt for you and her."

1 MR. WEBB: Your Honor, if I could mark that, I'd  
2 like to pass it to the jury at a later time. I think we  
3 agreed...

4 THE COURT: If you'll make a copy of that page, and  
5 then excise the things that we've talked about, that will be  
6 fine.

7 MR. WEBB: I understand. And I'll pass that a  
8 little later. I'd like to call Sheriff Ogle, if I could.

9 \*\*

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

12 DIRECT EXAMINATION

13 BY MR. WEBB:

14 Q. Sheriff, I know this has been an ordeal for you,  
15 as well as everyone in this courtroom, but I just basically want  
16 to ask you -- while Gary has been an inmate over there, he's  
17 never been abusive to fellow inmates or your officers -- the  
18 people under your control?

19 A. None of that's ever been brought to my attention,  
20 sir.

21 MR. WEBB: That's all. Thank you.

22 THE COURT: Mr. Miller, anything you want to ask?

23 MR. MILLER: No questions.

24 GENERAL SCHMUTZER: No questions.

25 MR. WEBB: Your Honor, I'd like to call Lisa

1 VanHoose, if she's here.

2 SPECTATOR: She's not here.

3 MR. WEBB: Okay. Call Ricky Hurst.

4 \*\*

5 RICKY HURST was called, and being duly sworn, was  
6 examined and testified as follows:

7 DIRECT EXAMINATION

8 BY MR. WEBB:

9 Q. Ricky, tell the jury your name, and where you live.

10 A. I'm Ricky Van Hurst, and I live in Kodak.

11 Q. And where do you work?

12 A. I work for Mynatt's Construction in Knoxville.

13 Q. Okay. How long have you been there?

14 A. About four years.

15 Q. How long have you known Gary Sutton?

16 A. All my life.

17 Q. Would you consider him a friend of yours?

18 A. I'd consider him just like a brother.

19 Q. When you all -- did you all work together?

20 A. Yes, sir.

21 Q. Where did you all work together at?

22 A. A. J. Keys Lumber Company.

23 Q. And how long ago was that?

24 A. I left there about five year ago, and we worked  
25 together off an on for about nine years.

1 Q. Gary was -- how would you describe Gary as far as  
2 his work ethic -- do you know what I'm saying, the way he  
3 worked, and about reporting on time, and whether he was good  
4 worker, a bad worker?

5 A. He was always on time, and he always worked good.

6 Q. Did he ever have any problems with his co-workers?

7 A. No, sir.

8 Q. Would he get along with his co-workers?

9 A. Yes.

10 Q. Have you ever known him to either help you or  
11 others?

12 A. Yes, sir, I have. He's helped me plenty of times.

13 Q. And how would he help you?

14 A. Well, if Gary hadn't been around one day, I'd have  
15 probably lost my life.

16 Q. Would you tell the jury a little about that?

17 A. I just -- well, it was at the mill, and me and  
18 another fellow had some words, and three or four was going to  
19 jump on me, and Gary stood up, and said, "No, two or three won't  
20 jump on my brother." And I've never forgot that, and I never  
21 will.

22 Q. I don't think it's any secret Gary drinks beer?

23 A. Right.

24 Q. And maybe sometimes he drinks a little too much?

25 A. Yeah, we both have.

1 Q. Have you ever known Gary to start a fight?

2 A. No, sir, I have not.

3 Q. Have you ever known him to run from one?

4 A. No, he never has.

5 Q. And he stood up for you?

6 A. Yes, sir he has.

7 Q. When you needed him?

8 A. All my life, just like a brother.

9 Q. And when you needed him, he was there?

10 A. Right.

11 MR. WEBB: That's all.

12 GENERAL SCHMUTZER: No questions.

13 THE COURT: You may step down, sir.

14 THE WITNESS: Could I say something?

15 MR. WEBB: I'm sorry, I didn't ask you that.

16 THE COURT: You sure may.

17 THE WITNESS: I don't want to ask this jury here  
18 nothing for me, or nothing for Gary's family, but  
19 Gary's got a little girl, and she's been coming  
20 here to see him, and I've got a little seven year  
21 old girl myself, and I'm going to ask you for her -  
22 - for nobody else. Please, spare Gary's life for  
23 his daughter. Please.

24 BY MR. WEBB:

25 Q. How old's his daughter?

1           A.    I'm not sure.   The last time I seen her she was  
2 just little bitty until this here come up.

3           MR. WEBB:   Mr. Hurst, we thank you.   Thank you for  
4 coming.

5           THE WITNESS:   Thank you.

6           MR. WEBB:   Your Honor, I'd like to call Hazel  
7 Sutton.

8                               \*\*

9           HAZEL SUTTON was called, and being duly sworn, was  
10 examined and testified as follows:

11   DIRECT EXAMINATION

12   BY MR. WEBB:

13           Q.    Hazel, I know this is hard on you, but I want you -  
14 - if you can, I want you to talk to the jury a little bit, okay?  
15 Tell the jury your name, please.

16           A.    Hazel Sutton.

17           Q.    And Hazel, what's your relationship to Gary?

18           A.    I'm his aunt.

19           Q.    And Hazel, did you help raise Gary?

20           A.    Yeah, I did.

21           Q.    Do you remember how old he was when you started  
22 help him raise him?

23           A.    He was about three or four.

24           Q.    And did his parents divorce?

25           A.    Yes.

1 Q. And is that the reason that you helped raise him?

2 A. Yeah.

3 Q. I want to ask you a little bit -- his grandm and  
4 grandfather are still living, is that correct?

5 A. Yeah.

6 Q. What's their names?

7 A. Stella and Creed Sutton.

8 Q. And they've lived here in this county all their  
9 lives?

10 A. Yes.

11 Q. Hazel, if you would, I want you to tell the jury  
12 what kind of -- were you all poor, or were you well to do, or...

13 A. No, we wasn't well to do.

14 Q. Tell us how Gary grew up.

15 A. Well, we just done the best we could, we just  
16 worked for -- we tried to bring him up the best we could.

17 Q. Gary didn't get too far in school?

18 A. No, I can't remember just how far.

19 Q. Hazel, was there -- let me ask you this. Were you  
20 aware that while Gary was in Greeneville that he got saved?

21 A. Yes, he did, I seen him.

22 Q. Were you there?

23 A. I seen him just as he come out. Yes, I was.

24 Q. Was he different than he had been in a while?

25 A. Yeah, he had the prettiest little shiny face, and

1 his little eyes were just shining, and he was just laughing.

2 Q. And he felt good about it?

3 A. Yeah, he said he did. I talked to him, and he said  
4 he got saved, and I believe him.

5 Q. And you believe that was sincere?

6 A. Yeah, I do.

7 Q. Hazel, I've got a letter here...

8 A. I don't believe I could read it.

9 Q. I won't...

10 MR. WEBB: Let me go back, and approach, Your  
11 Honor.

12 THE COURT: Sure.

13 BY MR. WEBB:

14 Q. Is this a letter that Gary wrote you?

15 A. Yes.

16 MR. WEBB: Your Honor, if I could mark that as an  
17 exhibit?

18 THE COURT: You may.

19 (EXHIBIT #2 - Letter; marked and filed.)

20 BY MR. WEBB:

21 Q. Hazel, is there anything else you'd like to say  
22 before the jury goes and deliberates Gary's fate?

23 A. Just that I'll never believe he ever done it. He's  
24 just not that type of boy. He's just a sweet, little, loving  
25 boy, and I love him like he was my own.

1 Q. Has he been good to you?

2 A. Yes, he has. He's never said a bad word to me, and  
3 always minded me.

4 Q. Never mistreated you?

5 A. No.

6 Q. Never took advantage of you?

7 A. No, and he loved my daughter just like a little  
8 sister. He calls her his sister, and he says I'm just like a  
9 mama to him, and I treat him just like a mama.

10 Q. And you love him?

11 A. Yeah, I do. I love him with all my heart.

12 Q. Would you ask the jury to consider sparing his  
13 life?

14 A. Yeah, I sure would, if they would at all. I don't  
15 believe he would ever do something like this.

16 MR. WEBB: That's all I have.

17 GENERAL SCHMUTZER: No questions.

18 MR. WEBB: Hazel, you can come down. Your Honor,  
19 if I may pass this letter to the jury, and ask them  
20 to read it?

21 THE COURT: You may.

22 MR. WEBB: Your Honor, I call Pat Sutton.

23 \*\*

1           PAT SUTTON was called, and being duly sworn, was  
2   examined and testified as follows:

3   DIRECT EXAMINATION

4   BY MR. WEBB:

5           Q.   Tell the jury your name, please.

6           A.   Pat Sutton.

7           Q.   And your relationship to Gary?

8           A.   I'm his aunt by marriage.

9           Q.   And who is your husband?

10          A.   Clay Sutton.

11          Q.   And what does Clay do?

12          A.   He's a minister.

13          Q.   Where?

14          A.   He's the pastor right now of Howard's View Baptist  
15   Church.

16          Q.   Did you know Gary when he was growing up?

17          A.   Yes.

18          Q.   I have been told that his parents divorced when he  
19   was about three years old?

20          A.   Yes.

21          Q.   And his grandparents and Aunt Hazel helped raise  
22   him?

23          A.   Yes.

24          Q.   As Gary was growing up as a child, could you just  
25   describe to the jury about his raising, and what type of boy he

1 was?

2           A.    He was brought up in a christian home.. He went to  
3 church. He wasn't took, he went voluntarily. He used to ride  
4 the bus, and go to church. And when he was small, he was a  
5 typical little boy. He was always a loving child, and I love  
6 him, and I've never had any problems with Gary.

7           Q..   How did he -- as he was growing up, how did you  
8 observe him getting along with other people?

9           A.    I have a 25 year old son, and him, and Gary, and  
10 the neighbor's kids always got along fine. Gary -- he would  
11 take up for hisself, but he wouldn't voluntarily fight with them  
12 or anything, but he got along well with other kids.

13          Q.    As he was growing up, I think he went either  
14 throught the seventh or eighth grade in school?

15          A.    I'm not sure how far he went, but he did go.

16          Q.    And he began working, is that correct?

17          A.    Yes.

18          Q.    And as long as you've known him, has he been able  
19 to work and hold down a job?

20          A.    Yes.

21          Q.    You told me that he attended Bible School?

22          A.    Yes, the bus -- we live near Providence Baptist  
23 Church, and they had Bible School, and on Friday night they had  
24 youth night, and Gary would get ready, and the bus would come  
25 by and pick him up, and they were having some kind of a little

1 contest -- I called it. I didn't really know what it was, but  
2 whichever one got their lessons done or memorized their Bible  
3 verses and things, they got something extra special. And Gary  
4 was always ready. He would stop -- the bus would stop and pick  
5 him up, and he come in one night, and he had got the first --  
6 he got his done, and they had bought him a little Bible, and he  
7 was tickled, and he was probably 10 or 12 years old then. He  
8 was tickled to death with that little Bible.

9 Q. Was there ever an occasion where one day you walked  
10 in on him, and he was in the basement, I believe you told me?

11 A. Yes.

12 Q. Tell the jury what that was about.

13 A. My washer and dryer is downstairs, and I had went  
14 down to put some -- do some laundry, and I had a clothes line  
15 behind the house, and of course, the door was unlocked, and Gary  
16 was in there. I asked him what he was doing, and he said he was  
17 hiding. And I said, "What are you hiding from?" And he said -  
18 - well, James and some of the other boys was coming out there,  
19 and he didn't want to go off with them, so he was hiding in the  
20 basement, and I just left him there. I didn't question him any  
21 more, I just went on about my work.

22 Q. How old was he, do you recall?

23 A. He was probably 12, 14, somewhere in that age.

24 Q. Do you know -- I believe Gary started drinking at  
25 an early age, do you know that?

1           A.    I've never saw Gary drink.  I don't -- I know he  
2 says -- you know, the others do, but he's never drank in front  
3 of me.

4           Q.    And I take it you and your husband don't believe in  
5 drinking?

6           A.    Well, it's everybody's own personal -- whatever  
7 they want, but no, I don't drink.  I don't think it's right, but  
8 I don't smoke either.

9           Q.    He respected you, didn't he?

10          A.    Yes.

11          Q.    And your husband, Clay?

12          A.    Yes.

13          Q.    Is there anything you'd like to add to what I've  
14 asked you?

15          A.    I love Gary.  Gary was brought up in a christian  
16 home with a loving family, and I don't think he's done any bad  
17 crimes.  And I just pray every night that the Lord will have  
18 mercy on him, and the Court, and the jury have mercy on him.

19          Q.    Thank you, Mrs. Sutton.

20          MR. WEBB:  Any questions, General?

21          GENERAL SCHMUTZER:  No questions.

22          THE COURT:  Anything other witnesses, sir?

23          MR. WEBB:  Yes, Your Honor, I'd like to call Ann  
24 Morris.

25          THE COURT:  Ann Morris.

26                   \*\*

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

3 DIRECT EXAMINATION

4 BY MR. WEBB:

5           Q.    If you would, tell the jury your full name.

6           A.    Ann M. Morris.

7           Q.    And who are you married to now?

8           A.    Darrell Morris.

9           Q.    How long have you all been married?

10          A.    The 13th of April will be 19 years.

11          Q.    Gary is your son?

12          A.    Yes, he is.

13          Q.    And his father is James?

14          A.    Yes.

15          Q.    And you and Gary's father divorced when he was  
16 about three years old?

17          A.    He was about three.

18          Q.    And if you would, I'd like for you if you can --  
19 I'd just like you to describe, and tell this jury about Gary's --  
20 - how he grew up. If you can just tell the jury about how he  
21 grew up.

22          A.    Well, it was hard on him because he loved his  
23 daddy, and he loved me, and he didn't want to leave either one  
24 of us, and I moved away, and he cried, and he told his daddy he  
25 wanted to stay with me, and...

1 Q. Ma'am, looking back on that do you feel that the  
2 divorce has hurt Gary?

3 A. Yeah, it hurt Gary a lot.

4 Q. And he was young there, and I'd like for you just  
5 to -- if you can think back, and, of course, it caused your  
6 family to split up, and I just want to -- if you can tell the  
7 jury how you feel looking back?

8 A. He was a real sweet little, ol' boy. His  
9 babysitters always liked him, and they always commented on how  
10 good he was and everything. Whenever I moved back to Tennessee,  
11 I remarried, and I -- I had other kids, and his daddy would  
12 come, and beg for him to come out, and stay with him, and he  
13 went out and stayed then with his grandma and grandpa a lot, and  
14 he would get with older people, and get out and run around and  
15 things, and I didn't know it for a long time, and I tried,  
16 whenever I learned about it -- you know, about stopping him from  
17 running with older people. He was even working on a job doing  
18 carpenter work whenever he was something like 14, 15 years old,  
19 and he should have still been in school, but -- I don't know.  
20 I guess us being divorced just made it hard, and you allow kids  
21 do things that you wouldn't normally do because you want to try  
22 to get along with them, and you don't want them mad at you, you  
23 want them to love you, and to come back, and stay with you, and  
24 I know that's the way it was with me and Jim. We both loved  
25 him, and we didn't want to do...

1 Q. Ma'am, he quit school, didn't he?

2 A. Yeah, I think we went about the fifth or sixth  
3 grade. He wouldn't stay in school.

4 Q. And I believe what you're telling the jury, he  
5 would come to you, and come to his dad, and whoever would let  
6 him do what he wanted, that's the way it was?

7 A. Yeah, he would always come to me and complain about  
8 his dad wasn't doing this or doing that, and I'd get -- then he  
9 go to his dad -- you know how kids are when people's divorced.  
10 But he's a good, loving boy. He's always been good to me. I've  
11 always told him I'd be there for him any time.

12 Q. Ma'am, I believe he's 28 years old today?

13 A. Yes, he is.

14 Q. Has he been a good son?

15 A. Yes, he has.

16 Q. Ma'am, let me show you...

17 (WITNESS LEAVES STAND CRYING)

18 THE COURT: Help her out the side door there.

19 MR. WEBB: Your Honor, I've got some things that  
20 Gary's made while he's been incarcerated, and I'd  
21 like to just make those a collective exhibit, and  
22 pass them to the jury?

23 THE COURT: Sure.

24 (EXHIBIT #3 (Collective) - Drawings; marked and  
25 filed.)

1 MR. WEBB: Your Honor, I'd like to pass that to the  
2 jury for that consideration?

3 THE COURT: Sure.

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

5 THE COURT: Any rebuttal from the State?

6 GENERAL SCHMUTZER: No, Your Honor.

7 THE COURT: Ladies and gentlemen, first of all, go  
8 ahead, and look at any exhibits. Gentlemen, approach the bench.

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

10 THE COURT: Do you all want to take a short recess  
11 before you start your final closing?

12 GENERAL SCHMUTZER: I don't.

13 THE COURT: Okay.

14 MR. WEBB: Whatever you think.

15 GENERAL SCHMUTZER: Your Honor, I think in the  
16 interest of saving time, I'd rather go ahead, and  
17 I'll just close -- I'll waive my opening.

18 MR. WEBB: That's fine.

19 THE COURT: Okay. What my plan is, because of this  
20 phase, and because of the security problems, and  
21 everything else, what I would like to do -- I don't  
22 think they'll reach a verdict -- they may or may  
23 not, who knows. But what I would like to do is  
24 after closing, give them an opportunity to  
25 deliberate, if they can. They -- you know, they've

1 heard all the proof, they've made findings of guilt  
2 -- is to give them a short opportunity -- I'm not  
3 going to keep them here all night. I can either  
4 let them deliberate here, or I can transfer they,  
5 maybe, across the hall to the chancery courtroom.  
6 It's more accomodating, and it's larger.

7 **GENERAL SCHMUTZER:** Right.

8 **THE COURT:** Sheriff Ogle, I asked you this earlier.  
9 In security -- for security purposes would it be  
10 a hardship to transfer them over to the chancery  
11 courtroom tonight for purposes of deliberation?

12 **SHERIFF OGLE:** No, Your Honor.

13 **THE COURT:** Okay. If you can make arrangements for  
14 some paper or something to put over the doors, I  
15 have talked to maintenance, and they said they  
16 would be glad to do that. So I would do that, and  
17 if we could have guards standing outside the  
18 courtroom there...

19 **SHERIFF OGLE:** I'll take care of that.

20 **THE COURT:** Okay, thank you. And I think it would  
21 be better to give them an opportunity to deliberate  
22 on it tonight, and stay here for a reasonable  
23 length of time.

24 **MR. WEBB:** We don't have any objection.

25 **GENERAL SCHMUTZER:** I have no objection, Your

1 Honor.

2 THE COURT: Okay.

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

5 THE COURT: So the closing argument, General  
6 Schmutzer?

7 GENERAL SCHMUTZER: The State would waive our  
8 opening, Your Honor.

9 THE COURT: Very good.

10 MR. MILLER: The question that may be on your minds  
11 is why should you spare Mr. Dellinger's life after what you've  
12 found him guilty of. Why should you spare his life?

13 You must ask yourself the question, how can  
14 somebody end up in this situation Mr. Dellinger is ended up in?  
15 How did he end up in this mess?

16 You've heard about his childhood. He was raised  
17 poor with a bunch of brothers and sisters, and his father was  
18 a farmer. He had to quit school in the second or third grade  
19 to stay at home, and work on the farm.

20 He didn't have a lot as a kid, and when he was 18  
21 tragedy first struck his life when a young man on a motorcycle  
22 ran into the side of his car, and died right in front of Mr.  
23 Dellinger.

24 Although he had little education, he went on, had  
25 kids, a wife, and was a good provider. All he could do was

1 simple labor because he had no education.

2 Later, his teenage daughter died, and he was also  
3 ver devastated. Two years ago, his father started going down  
4 real bad. He was an uneducated adult, he became disabled on the  
5 job. Under excruciating pain from the back, he was unable to  
6 ever work again. He was permanently disabled.

7 And I believe that set in the cycle that led him  
8 where he is now. He began driving to calm his nerves to get  
9 away from the problems of life, to get away from the pain of  
10 life. He couldn't stand to be in a room with other people  
11 because his nerves were so shocked by this back injury.

12 I began drinking and running the roads, and that's  
13 how he ended up here. Of course, we don't know what's behind  
14 all this.

15 You've heard from his family members who love him  
16 very much that he has always been very good to them. James  
17 wanted to get up here, and tell you that he was sorry, but he  
18 was so overcome, and so ashamed of what you had found him guilty  
19 of, he asked me to say it for him. But he is sorry.

20 I mentioned that James was -- we heard about it  
21 during the trial -- sitting on the jury must be a lot like  
22 sitting in jail. I suppose it is to a certain extent. And  
23 that's where he'll be for the rest of his life if you decide to  
24 impose the life sentence. And he's still got to go to trial,  
25 and face the charges in Blount County.

1           Whatever judgment you all decide to make, either  
2 way, it's not going to bring back Connie Branum. And they're  
3 sorry for that, but she can't be brought back. There's no way  
4 we mean to malign the life of Connie Branum by presenting the  
5 evidence that we did. Her life had value, and we're in no way  
6 trying to malign her life.

7           But taking James' life is not going to bring her  
8 back. Taking from a quote in the Bible, "Mercy must overcome  
9 judgment." You all have made a judgment that will keep this man  
10 in the penitentiary for the rest of his life. Now you must make  
11 a judgment about taking his life. And in making that decision,  
12 I would just ask you to have love and mercy that God would, and  
13 have mercy to spare his life.

14           I want to thank you all for your all's attention  
15 in this case.

16           MR. WEBB: Ladies and gentlemen, I once again want  
17 to say thank you for all the attention that you've shown. This  
18 is the last time you'll hear from me on behalf of Gary, and his  
19 co-counsel, Mr. Daniel. General Schmutzer, he'll come in, and  
20 he'll finish up with his last say.

21           I don't know that there's ever been a more  
22 difficult thing that I've ever had to do, and I know that it was  
23 difficult for each of you all, and I respect you for that. I  
24 want you to know that.

25           Gary is 28 years old today. I guess in life

1 expansion, that's fairly young. I'm 37, and I feel like I'm  
2 about 90.

3 I wanted to take a little time with you, and let  
4 you see Gary from letters and things that he's done, and I'm not  
5 going to go over all the proof; to do so would be a waste of  
6 your time. But I think what we're trying to say is that  
7 hopefully, everyone's life has some value, and has some  
8 redeeming qualities. What you have decided -- it was terrible,  
9 and it was shocking. Why? I don't know. You each have decided  
10 that part of it.

11 If someone has value, and someone's life has value,  
12 they don't deserve to die. You've heard from the witnesses now,  
13 and it's an emotional time for Gary's family, and I think all  
14 of you understand that.

15 But I want to point out, you've heard from Mr.  
16 Hurst. He came in, and told you what kind of person Gary was.  
17 Gary was a value to Mr. Hurst. He was a friend, he helped Mr.  
18 Hurst financially, and was there when he was needed. And I  
19 suppose that's the purest form of friendship.

20 This family loves him, and I think that's  
21 obviously. What affect events in your childhood have, I think  
22 is the -- there's the old saying, "You are what you eat." You  
23 see trauma from divorce, and I'm not saying that's why you would  
24 kill somebody. But you see trauma from divorce.

25 When you're growing up, and others influence you

1 that are older, it has a bearing on your life. It really does.

2 I wanted to the sheriff -- Sheriff Ogle is a fine  
3 man. He has put up with me for a year, and ever since he's been  
4 elected, and I've been on this case, and I wanted to let you  
5 know that Gary gets along with people. I think that's important  
6 for you to know. He's someone that can live a life, what little  
7 life it is, in the penitentiary. You all know how it feels.

8 But life is precious, which I believe to be true -  
9 - it is life. Gary has a daughter, she's two years old. Gary's  
10 wife's been here throughout the trial. I don't know -- Mr.  
11 Hurst said it -- is that a good enough reason to spare his life?  
12 She loves her dad, no matter how bad he is.

13 I've not seen my son in over a week. I come home,  
14 and he's in bed, and I get up, and he's in bed, and there's  
15 nothing, probably, more precious than your children.

16 I'm not going to tell you that I'm the most  
17 religious of people, and my wife has fussed with me more than  
18 not about not getting up on Sunday mornings, and going to  
19 church. But I've been saved, and Gary Sutton's been saved. God  
20 is merciful.

21 If you can see it, I would ask you to be merciful.  
22 You do have a choice. There is no greater power than life or  
23 death. And whatever your decision, I've told you how I feel  
24 about you all, and that won't change my opinion.

25 I would ask you that if you're going to error, I

1 would ask you to error on the side that's fairest for Gary. The  
2 Judge will talk to you about mitigating circumstances, and there  
3 are some set out in the statute that you can consider if you  
4 feel that they apply. But the last thing he'll tell you is any  
5 other mitigating factor raised by the evidence, and that's why  
6 I'm trying to spend a little time with you.

7           They call it mitigation, and I call it value. I  
8 just feel that Gary's life does have some value. He reminds me  
9 of a broken toy. It's broken now, but it can be repaired. And  
10 I hope that you can see that in the limited things that we've  
11 done here. I hope you can.

12           I ask you to consider it, and on behalf of the  
13 family, I would ask you to consider sparing his life. Thank you  
14 all.

15           **GENERAL SCHMUTZER:** Ladies and gentlemen of the  
16 jury, it is suggested that maybe the aggravating factor the  
17 State is relying upon doesn't fit in this situation. I submit  
18 to you that it fits the situation. These men murdered Connie  
19 Branum simply to avoid arrest and prosecution for the murder of  
20 Tommy Griffin. You've already found that in your verdict beyond  
21 a reasonable doubt.

22           The only question right now is whether the  
23 mitigating factors that they have presented here are such that  
24 that aggravating factor doesn't offset it.

25           It was stated, "Why did they end up here?" And we

1 begin to hear about being poor, lack of education, tragedy in  
2 families, broken homes, divorce. Well, I submit to you that  
3 there are a lot of people that have tragedies -- most people  
4 live long enough to have tragedy in their lifetime, but they  
5 certainly don't use that as a license to kill.

6 The fact that you're poor, or may have a lack of  
7 education is certainly no license to kill. The fact that you  
8 may be in pain is certainly no license to go out, and inflict  
9 pain and ultimately death on someone else. There's people out  
10 here that walk the streets every day that cope with whatever it  
11 is life has to offer without ultimately taking it out on  
12 somebody else.

13 You know, something we've gotten in to, it seems  
14 like, in society today, and that's sort of passing the buck, and  
15 wanting to blame everything and everybody -- it was society, the  
16 environment that did this. Well, let me tell you what. As  
17 individuals, we are all responsible, ultimately, for our  
18 actions, us and no one else.

19 You can't keep going around, and blaming everything  
20 else for our ills. We're required to live under the law if  
21 we're going to have a civilized society. If we're not going to  
22 live in anarchy, we've got to have people who are willing to  
23 respect the law, and respect the lives of others. That's not  
24 that hard to do.

25 Why are we here? There's no doubt about it that

1 you've seen the tears and the crying of the families involved,  
2 but why are they crying? Because of the actions of these two  
3 men right here, because they've made a conscious decision to  
4 murder Connie Branum within 24 hours after they had taken the  
5 life of her brother. That's why we are here. But for that, we  
6 wouldn't be here today. No one would be having to go through  
7 this.

8 They say, "Well, they've got family." Well, I tell  
9 you what. Connie Branum certainly had a family. You don't get  
10 an opportunity to hear from her family. You didn't get an  
11 opportunity to stand by them when they were shedding those tears  
12 over what were the remains of her body when it was laid in the  
13 grave. To be with them on the nights when they laid awake  
14 thinking about her over the last year. And Connie Branum had  
15 done absolutely nothing. She's certainly not the cause of this.

16 They talk about how difficult all this is. Let me  
17 tell you what. You talk about being difficult. You don't even  
18 get to this point unless myself, as the District Attorney  
19 General, makes the decision to seek the death penalty. You  
20 don't think that's difficult?

21 But I submit to you that just because something is  
22 difficult doesn't mean you shouldn't do your duty. There is no  
23 excuse to back off, and not do what -- what does the law say?  
24 We are to do justice under the law. Justice, without sympathy  
25 or prejudice.

1 Well, there's no doubt about it, there is value in  
2 every life. If that is the reason to not inflict the death  
3 penalty, then we should do away with the death penalty because  
4 I promise you, any person -- any human being has some redeeming  
5 qualities. They are going to find somebody that's going to shed  
6 a tear for them, and that loves them. But ultimately, they are  
7 where they are because of their own conscious decision to commit  
8 the crime that was committed here.

9 I submit to you there could be no more cold or  
10 calculated killing than took place out there on Clear Fork. It  
11 was not any spur of the moment action that was taken. It was  
12 not something that flared up suddenly, and before you knew it,  
13 a life had been taken. This involved coming all the way from  
14 Blount County to Sevier County -- you saw the mileage -- going  
15 back into this very remote area about a half a mile, killing  
16 her, hopefully, before they burned her body, and then began  
17 trying to cover it up.

18 And that's where we've been for the last year.  
19 Where is the remorse for Connie Branum? The most you've heard  
20 up to this point has been through a lawyer, one of the  
21 defendants saying, "I'm sorry. I'm ashamed for what I did."  
22 That's the extent of it.

23 You have another who, even in the things they  
24 present, trying to make you think he hasn't done anything in the  
25 face of all this overwhelming proof. That's as cold blooded as

1 you can get. There's no -- the tears they're shedding now  
2 aren't tears of remorse for her. Those should have been shed  
3 a long time ago. Those are tears for themselves because they've  
4 finally been brought to the bar of justice, and they're having  
5 to face the consequences of their own actions.

6 You are the conscience of the community, and we'll  
7 live by your decision. All I ask you to do on behalf of the  
8 State and the family of Connie Branum, is that you do your duty  
9 fearlessly, and you do justice under the law. Thank you. Thank  
10 you, Your Honor.

11 MR. WEBB: Your Honor, may we approach just one  
12 moment?

13 THE COURT: Sure.

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

15 MR. WEBB: I wanted to have somebody take that  
16 transcript down, and pass it to the jury.

17 THE COURT: If you want to do that, I will instruct  
18 them, and you can hand that to them before they go  
19 out, if that's agreeable with you, General  
20 Schmutzer.

21 GENERAL SCHMUTZER: That's fine.

22 THE COURT: Okay.

23 GENERAL SCHMUTZER: I don't want them to take it  
24 with them.

25 THE COURT: No, right. No, it can't be.

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

3 **THE COURT:** Ladies and gentlemen, you've now heard  
4 the proof and the argument in this, the sentencing phase of  
5 these proceedings.

6 It is now your duty, again, to determine, within  
7 the limits prescribed by law, the penalty which shall be imposed  
8 as a punishment for this offense.

9 Tennessee law provides that a person convicted of  
10 murder in the first degree shall be punished by death, or by  
11 imprisonment for life.

12 In making this determination, you are authorized  
13 to weigh and consider any mitigating circumstances, and any of  
14 the statutory aggravating circumstances which have been raised  
15 by the evidence throughout the entire course of these  
16 proceedings, including this phase.

17 You are the sole judge of the facts, and the law  
18 as it applies in this case. I instruct you to -- in arriving  
19 at your verdict you are to consider the law in connection with  
20 the facts, but the Court is the proper source from which you are  
21 to obtain the law.

22 In other words, you are the judges of the law, as  
23 well as the facts under the direction of this Court. The burden  
24 of proof is upon the State of Tennessee to prove any statutory  
25 aggravating circumstances beyond a reasonable doubt, and to a

1 moral certainty.

2 Reasonable doubt is that doubt engendered by an  
3 investigation of all the proof in the case, and an inability  
4 after such investigation to let the mind rest easily upon the  
5 certainty of your verdict.

6 Reasonable doubt does not mean a doubt that may  
7 arise from possibility. Absolute certainty is not demanded by  
8 the law, but moral certainty is required, and this certainty is  
9 required as to every proposition of proof requisite to  
10 constitute your verdict.

11 The law makes you, the jury, the sole and exclusive  
12 judges of the credabiliy of the witnesses, and the weight that  
13 you give to that testimony.

14 Tennessee law provides that no death penalty shall  
15 be imposed by a jury but upon an unanimous finding that the  
16 State has proven beyond a reasonable doubt the existence of one  
17 or more of the statutory aggravating circumstances which, in  
18 this case, shall be limited as follows:

19 The murder was committed for the purpose of  
20 avoiding, interferring with, or preventing a lawful  
21 arrest or prosecution of the defendant or another.

22 Members of the jury, the Court has read to you this  
23 aggravating circumstance which the law requires you to consider.  
24 If you find beyond a reasonable doubt that the evidence of the  
25 same was established, you shall not take account of any other

1 facts or circumstances as the basis for deciding whether the  
2 death penalty would be appropriate punishment in this case.

3 Likewise, Tennessee law also provides that in  
4 arriving at the punishment, the jury shall consider, as  
5 heretofore indicated, any mitigating circumstances which shall  
6 include, but are not limited to, the following:

7 1. That a defendant has no significant history of  
8 prior criminal activity.

9 2. That the murder was committed while the  
10 defendant was under the influence of extreme  
11 mental or emotional disturbance.

12 3. That the defendant was an accomplice in the  
13 murder committed by another person, and the  
14 defendant's participation was relatively minor.

15 4. That the defendant acted under extreme duress,  
16 or under the substantial domination of another  
17 person.

18 5. The youth or advanced age of a defendant at the  
19 time of a crime.

20 6. The capacity of the defendant to appreciate the  
21 wrongfulness of his conduct, or to conform his  
22 conduct to the requirements of law was  
23 substantially impaired as a result of mental  
24 disease, defect, or intoxication, which was  
25 insufficient to establish a defense to the crime,

1 but which substantially affected their judgment.

2 And finally, any other mitigating factor that is  
3 raised by the evidence, produced by either the prosecution or  
4 defense, at either the guilt or sentencing hearing. That is,  
5 you shall consider any aspect of a defendant's character or  
6 record, or any aspect of the circumstances of the offense  
7 favorable to the defendant which is supported by the evidence.

8 No distinction shall be made between mitigating  
9 circumstances -- strike that. No distinction shall be made  
10 between the mitigating circumstances otherwise raised by the  
11 evidence which are specifically requested by either the State  
12 or defense.

13 The defendant does not have a burden of proving a  
14 mitigating circumstance. If there is some evidence that a  
15 mitigating circumstance exists, then the burden of proof is upon  
16 the State to prove beyond a reasonable doubt that the mitigating  
17 circumstance or circumstances do not exist.

18 There is no requirement of jury unanimity as to any  
19 particular mitigating circumstance, or that you agree on the  
20 same mitigating circumstance.

21 If you unanimously determine that no statutory  
22 aggravating circumstance has been proved by the State beyond a  
23 reasonable doubt, or if you unanimously determine that a  
24 statutory aggravating circumstance or circumstances have been  
25 proved by the State beyond a reasonable doubt, but that said

1 statutory aggravating circumstance or circumstances have not  
2 been proven by the State to outweigh any mitigating  
3 circumstance beyond a reasonable doubt, the sentence shall be  
4 life imprisonment.

5 You will write your verdict upon the enclosed forms  
6 that I have attached, and made a part of this charge for each  
7 defendant. The verdict should be as follows in that situation:

8 "We the jury unanimously find the punishment shall  
9 be life imprisonment."

10 If you unanimously determine that at least one  
11 statutory aggravating circumstance has been proven by the State  
12 beyond a reasonable doubt, and said circumstance to have been  
13 proven by the State to outweigh any mitigating circumstance or  
14 circumstances beyond a reasonable doubt, the sentence shall be  
15 death.

16 The jury shall reduce to writing the statutory  
17 aggravating circumstance so found, and signify that the State  
18 has prove beyond a reasonable doubt that the statutory  
19 aggravating circumstance outweighs any mitigating circumstances.

20 You will write your findings and your verdict upon  
21 the enclosed forms that I have attached and made a part of this  
22 charge, and if that event, your verdict will be as follows:

23 1. "We, the jury unanimously find the following  
24 listed statutory aggravating circumstance," and  
25 secondly,

1           2. "We, the jury unaanimously find that the State  
2           has proven beyond a reasonable doubt that the  
3           statutory aggravating circumstance so listed above  
4           outweighs any mitigating circumstances," and that,  
5           3. "Therefore, we, the jury unanimously find that  
6           the punishment shall be death."

7           The verdict must be unanimous, and signed by each  
8 juror.

9           As I say, I have provided a form for either life  
10          imprisonment or death as to each defendant in this case, ladies  
11          and gentlemen.

12          Anything further for the State?

13          GENERAL SCHMUTZER: No, Your Honor.

14          THE COURT: For the defendant?

15          MR. WEBB: Your Honor, if I may approach, and  
16          General, if you would.

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

18          MR. WEBB: Your Honor, if I could, I'd like -- this  
19          is a copy that we agreed on, and I'd ask the Court  
20          reporter to mark it as an exhibit, and if I could  
21          have just a moment to have it passed to the jury.

22          THE COURT: Surely.

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

25          (EXHIBIT #4 - Transcript; marked and filed.)

1           THE COURT: After the jury has had an opportunity  
2 to review this last exhibit -- I will wait until you finish.  
3 Please go ahead. What I propose to do, ladies and gentlemen,  
4 is to give you some time to deliberate here this evening, if you  
5 would like to do that, and we will wait a reasonable length of  
6 time here tonight to allow you to have an opportunity in order  
7 to reach a verdict if you can.

8           After a reasonable length of time, and I guess,  
9 since I'm the only one who determines that, I'll make that  
10 decision, but after that time I would have you taken back to  
11 your lodging, if you were unable to reach a verdict, and then  
12 in the morning, if you wanted to deliberate over there, and stay  
13 over there until you reach a verdict, that would be fine as  
14 well.

15          So after you're had an opportunity to review this  
16 exhibit, take these instructions with you -- I am providing  
17 accommodations for you across the hall in the chancery courtroom.  
18 It's a larger facility, and each of you will have an opportunity  
19 that you can stand up and stretch, and walk around, and if you  
20 are able to reach a verdict at that time, so advise the bailiff,  
21 and we will take your verdict at that time.

22          Also, until the jury leaves the courtroom, I do not  
23 want anyone else to leave the courtroom. I would ask that the  
24 hallway be cleared for this jury to be taken so they may  
25 deliberate.

1 Sheriff Ogle, if you -- give it to him, he's right  
2 here. So everyone except the officers be -- stay seated in the  
3 courtroom until the jury leaves. Let's all be seated until they  
4 finish viewing the exhibit.

5 SHERIFF OGLE: We're ready, Your Honor.

6 THE COURT: Sheriff Ogle?

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

8 THE COURT: If the jury should reach a verdict here  
9 tonight, is it your plan that -- where are their  
10 automobiles located? Do you know?

11 SHERIFF OGLE: The jury's?

12 THE COURT: Yes.

13 SHERIFF OGLE: They've all been taken over to the  
14 hotel.

15 THE COURT: Very good. After -- if they should  
16 reach a verdict tonight, don't let me forget to give them their  
17 cards here so they -- as I understand it, they wanted these  
18 after they completed so they wouldn't have to stay around here  
19 or come back through any family members of either side, so we  
20 will do -- I will give them these, or I will give them to you,  
21 and if you'll see that each juror gets them.

22 SHERIFF OGLE: I certainly will, Your Honor.

23 THE COURT: Thank you.

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

1           **THE COURT:** All rise for the jury. Sheriff Ogle,  
2 if you'll advise me when they're in the other courtroom, please,  
3 sir. You may be seated.

4                   **(JURY OUT 7:55 p.m.)**

5           **THE COURT:** You may be seated. Likewise, ladies  
6 and gentlemen, the Court would ask you -- obviously, the  
7 chancery courtroom is directly across the room from here, that's  
8 no secret. But I would ask you not to congregate around the  
9 outside of those doors simply because they have some distance  
10 sometimes between the doors, and the jury might be able to hear,  
11 or the jury might be distracted. So if you can go to one end  
12 of the hallway or the other, that's fine. Okay.

13           **SHERIFF OGLE:** Your Honor, they are in the  
14 courtroom.

15           **THE COURT:** Okay. The Court stands in recess.

16           **(COURT STOOD IN RECESS AWAITING THE VERDICT OF THE JURY)**

17           **THE COURT:** Bring the jury in, Sheriff. Just  
18 remain standing for the jury.

19                   **(JURY IN 8:25 p.m.)**

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

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

22           **THE COURT:** For the defense?

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

24           **MR. WEBB:** Yes, Your Honor.

25           **THE COURT:** Ladies and gentlemen of the jury, have

1 you reached a verdict in this case?

2 JUROR McCLELLAN: Yes, Your Honor.

3 THE COURT: Mr. McClellan, as to the defendant,  
4 Gary Sutton -- Gary Wayne Sutton, how does the jury find?

5 JUROR McCLELLAN: Life in prison.

6 THE COURT: Life in prison. As to the defendant,  
7 James Anderson Dellinger, how does the jury find?

8 JUROR McCLELLAN: Life in prison, Your Honor.

9 THE COURT: Ladies and gentlemen of this jury, you  
10 have labored as long as any jury that I've ever known. This has  
11 been the longest case I've ever had as trial judge or as a  
12 lawyer. I know I asked General Schmutzer that, and it's been  
13 his longest trial.

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

15 THE COURT: You have gone above and beyond the call  
16 of duty in this case. You have heard one of the most heinous  
17 cases that we've had in Sevier County, and you've done your job  
18 honorably, and the people of Sevier County thank you from the  
19 bottom of their hearts. I thank you. I hope this experience  
20 in some way is beneficial to you as citizens.

21 Please go with our blessings, and I hope God  
22 blesses every one of you. Thank you.

23 Sheriff Ogle, if you will hand these to the jury  
24 as they leave. Hold on just a minute.

25 Mr. Dellinger, stand up, please, sir. Based upon

1 the finding of fact by this jury, I sentence you, sir, to life  
2 imprisonment for the death of Connie Branum.

3 The Court finds, pursuant to T.C.A. 40-35-115 that  
4 you are a dangerous offender whose behavior indicates little or  
5 no regard for human life, and no hesitation about committing a  
6 crime in which the risk to human life is high. Therefore, sir,  
7 I give you the maximum of two years on the burning of personal  
8 property, and I order that consecutive. That means you have  
9 life plus two years.

10 Mr. Sutton, stand up, please, sir. Based upon the  
11 finding of fact by this jury, sir, I find you guilty of first  
12 degree murder. I sentence you to life. I find that you, sir,  
13 are a dangerous offender whose behavior indicates little or no  
14 regard for human life, and no hesitation about committing a  
15 crime in which the risk to human life is high. I sentence you  
16 to two years on the -- maximum two years on the burning of  
17 personal property. I order that to run consecutive, sir.

18 You gentlemen are two of the luckiest men that have  
19 ever walked out of this courtroom. This jury has shown you  
20 mercy, and has shown you mercy when you showed no mercy. So  
21 they have done their job, and you owe them your gratitude. You  
22 may be seated.

23 I order that everyone remain in the courtroom until  
24 this jury panel leaves this courtroom. I have provided the  
25 sheriff the statement that each of you asked for, and you may

1 fill in that date on that, and leave with the thanks of this  
2 court. Thank you. All rise for this jury. And if you will  
3 advise me when the jury has left the courthouse, Sheriff.

4 SHERIFF OGLE: Yes, sir.

5 (JURY OUT)

6 THE COURT: You may be seated. Is there any  
7 further matter -- is there an order of transport or a judgment  
8 form for the Court to sign?

9 GENERAL GREEN: We are in the process of preparing  
10 the judgment form, Your Honor.

11 THE COURT: I will wait to sign that.

12 GENERAL GREEN: It will take a few minutes.

13 THE COURT: Yes, sir.

14 GENERAL GREEN: Your Honor, may we approach?

15 THE COURT: Yes, You may.

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

17 GENERAL GREEN: We have the specific date reports  
18 that I can get the pertinent information.

19 THE COURT: That's fine.

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

22 THE COURT: Before we leave, as I said, this has  
23 been a terribly long case for everyone, and I want to thank all  
24 counsel, and the attorney general's office for an outstanding  
25 job, and all defense counsel for an outstanding job, and the way

1 that you have tried your lawsuit.

2 The proof in this case was overwhelming. It was  
3 well prepared, and I want to thank you officers of Sevier and  
4 Blount County for the outstanding job of law enforcement they  
5 did. Justice was served by these convictions.

6 SHERIFF OGLE: The jury is out of the courthouse.

7 THE COURT: This Court stands adjourned. Hold up  
8 a minute. Allow the defendants to be removed from the courtroom  
9 before we leave. You may file the...

10 MR. WEBB: Do you want this?

11 THE COURT: Yes, I do, Mr. Webb. Thank you.

12 MR. WEBB: Look at it. I've tried to fill it out -  
13 - see that it's done right.

14 THE COURT: Okay. If you will file those, please,  
15 ma'am.

16 (EXHIBIT #5 - Presentence Report of Dellinger;  
17 marked and filed.)

18 (EXHIBIT #6 - Presentence Report of Sutton; marked  
19 and filed.)

20 THE COURT: Okay. You may now leave.

21 \*\*

CERTIFICATE

I, the undersigned, JENNY S. BROOKSHIRE-NOE, Official Court Reporter for the Fourth Judicial District of the State of Tennessee, do hereby certify that the foregoing is a true, accurate, and complete Transcript of the Evidence, or portion thereof as the case applies, of the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Circuit Court for the captioned county on the 23rd day of July, 1993.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

This 11th day of November, 1993.

  
JENNY S. BROOKSHIRE-NOE  
Official Court Reporter  
Fourth Judicial District  
State of Tennessee

CERTIFICATE OF THE COURT

This is to certify that the Transcript of the Evidence adduced at the trial of this case has been filed with the Clerk on \_\_\_\_\_, 1993, in accordance with Rule 24 of the Tennessee Rules of Appellate Procedure.

THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED that the Transcript of the Evidence is hereby approved by the Court, and the Clerk is hereby ordered to make the Transcript of the Evidence part of the Record on Appeal in this case.

Entered this 7 day of Jan, 1994.

  
JUDGE