

1V No. 90

IN THE CRIMINAL COURT FOR SEVIER COUNTY, TENNESSEE

AT SEVIERVILLE, TENNESSEE

FILED

MAR 7 1994

SUPREME COURT CLERK

STATE OF TENNESSEE,

Appellee,

-VS-

GARY WAYNE SUTTON and,
JAMES ANDERSON DELLINGER

Appellants.

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CASE # 5033, 5035

TRANSCRIPT OF THE EVIDENCE:

Trial

February 16-24, 1993

Volume 2 of 22 Volumes

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

APPEARANCES:

FOR THE STATE

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

FOR THE DEFENDANT SUTTON

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

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
Circuit Court Clerk
Sevier County, Tenn.

February 16, 1993

1 a very important reason. They're not required to give evidence
2 in their own behalf, they're not required to offer any evidence
3 at all. They're presumed evidence -- presumed innocent, and the
4 burden is on the State.

5 Now, we have heard already from a number of jurors that
6 have been excused that they've formed an opinion; that they've
7 formed an opinion that they can't change based primarily on what
8 they've read in the paper, heard on the radio, or heard no doubt
9 through hearsay comments, gossip out in the community. They've
10 passed judgment one way or the other, and the Bible talks about
11 passing judgment, shouldn't do it. You're going to be called
12 upon to render a judgment in this case. You're going to have
13 to do that. But the most important thing about passing judgment
14 on another person, another human being, is that you pass
15 judgment with knowledge of all the facts.

16 Now, you've heard from these individuals already that
17 they've passed judgment, one way or the other, without knowledge
18 -- without any knowledge of the proof, because there's not been
19 one witness called yet. Now, if any of you feel that way, find
20 any of you have passed judgment or are leaning in one direction
21 or the other, you need to let me know now. Later it'll be too
22 late. You need to let me know now. Has anybody formed an
23 opinion one way or the other, ready to pass judgment without
24 hearing the first witness?

25 (No jurors respond audibly.)

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

Voir Dire

1 Quality Inn in (indiscernible).

2 THE COURT: You're the manager of them?

3 JUROR THOMAS: Assistant manager for both places.

4 THE COURT: Each day?

5 JUROR THOMAS: And I'm the only one that can do what I
6 do, as far as the (indiscernible) and audits and everything.

7 THE COURT: I'll let you go.

8 JUROR THOMAS: Thank you.

9 THE COURT: Uh-huh (affirmative).

10 (Juror Thomas is excused.)

11 THE COURT: Yes, ma'am?

12 JUROR EAGAN: I'm Christine Eagan, and I...

13 THE COURT: Eagan?

14 JUROR EAGAN: Eagan.

15 THE COURT: Okay.

16 JUROR EAGAN: And I have two children at home, and I'm
17 a single mother, and (indiscernible).

18 THE COURT: I'll let you go, Ms. Eagan. Yes. Anyone
19 else?

20 JUROR UNIDENTIFIED: You'll talk to me after awhile?

21 THE COURT: Yes, sir. Yes, sir.

22 JUROR UNIDENTIFIED: Okay, I'll go eat.

23 THE COURT: I don't blame you. I'm hungry, too.

24 (Whereupon, the court is recessed for lunch.)

AFTERNOON PROCEEDINGS

THE COURT: Okay, will the four jurors that were remaining in the box -- where are they? Okay, if you'll bring those in, please.

(The prospective jury panel returns to the jury box, and the following proceedings were had.)

THE COURT: If you can get back in your same seats, all of -- let's see. Yeah. Mr. Daniel, you're recognized.

MR. DANIEL: Thank you, Your Honor.

Mr. Carter, and the three gentlemen of the jury, my name is Zane Daniel, and I, along with Mr. David Webb, represent Mr. Gary Sutton. And we want to ask you some questions, and I'm not wanting to belabor this point and keep -- get things dragging out, but as you all understand, this is a serious matter, and I'm sure if you all were as unfortunate enough as these gentlemen to be sitting over here, and they was over here, you'd want us to take the time and ask -- and try to ask questions, make sure we understand where we are, and we start off even on this.

I got the impression, from sitting over there listening---and maybe I'm wrong; you correct me if I'm wrong ---that the State takes the position that there's just no question about these gentlemen's guilt. That's their position. They take that on every case. But we're here to say that these -- we're -- our case is a case -- we've entered a plea of not

1 guilty. And I think, as the general said, you're going to try
2 this case on circumstantial evidence. And circumstantial
3 evidence is a case that -- where they don't have any
4 eyewitnesses or direct evidence to link either one of these
5 defendants to the crime, so they have to prove it by what they
6 call circumstances.

7 Now, we've got a law, and I'm going to ask you, and I
8 -- if the judge should charge you concerning circumstantial
9 evidence, that the facts must exclude every other reasonable
10 theory or hypothesis except that of guilt, would you all follow
11 that law? Do you have any quarrels with that rule of law? Do
12 you think it's not proper?

13 (No jurors respond audibly.)

14 **MR. DANIEL:** You all understand, where they're trying
15 to say circumstances prove something, an example is a guy walks
16 in a building and he's wet, you can presume by the circumstances
17 that it's raining outside. Or you can also say, "Well, a fire
18 hydrant broke," or, "Somebody threw a water balloon on him," or,
19 "Something happened," or, "He was wet when he left home." You
20 can't automatically say, because something is that way, that
21 that's -- that is automatically the only answer there can be.
22 Do you follow what I'm saying? And that's what circumstantial
23 evidence is. It has to exclude every other reasonable theory
24 or hypothesis except that of guilt.

25 Now, the burden is not on us to show something else

1 happened, but they have to bring all of their evidence together,
2 and it's got to zero in on this one point; there is no other
3 answer, whatsoever, except the guilt of these two defendants to
4 this crime, and that's beyond a reasonable doubt. If you have
5 a single reasonable doubt as to that -- as to their theories,
6 what they want to prove, you've got no other choice except,
7 under the law, to render a verdict of not guilty. Now, do you
8 any of you have -- would you have any trouble doing that, if you
9 felt -- if you felt the State had failed to show that? Can you
10 be fair with us, and can we start off with the understanding
11 that this is not a cut-and-dried situation? That we're here to
12 defend these boys, and they're here to do their job and try to
13 prosecute them. You've got some fine prosecutors over here,
14 some of the best in the state, and they're going to try their
15 best to try to pin this on these boys.

16 **GENERAL SCHMUTZER:** I'd object to that, Your Honor.
17 That statement, "trying to pin something," is improper to say.
18 It...

19 **MR. DANIEL:** Well,...

20 **GENERAL SCHMUTZER:** They're here on a charge and an
21 indictment, and we're prosecuting the case, and I think it's --
22 to make that type of allegation...

23 **THE COURT:** I think the jury understands the respective
24 roles of the prosecutor's office and the defense counsel. Move
25 along.

1 MR. DANIEL: Thank you, Your Honor.

2 Now also, in this case, the case may have---and I guess
3 it will have---certain what we call expert witnesses. Have any
4 of you ever sat on a case where an expert witness was called?
5 And, Mr. Young, is that correct? You've sat on a prior jury
6 trial, is that right, sir?

7 JUROR YOUNG: Yes.

8 MR. DANIEL: Was that a civil case or a criminal case,
9 or both?

10 JUROR YOUNG: Both.

11 MR. DANIEL: You've been on both since you've been here?
12 I know you're on the other panel. We got a list of the jury.
13 Did they use what they call expert witnesses, or somebody that
14 qualifies to give an opinion, they say?

15 JUROR YOUNG: Yes.

16 MR. DANIEL: If you get enough background, they'll let
17 you give an opinion on something.

18 JUROR YOUNG: Right.

19 MR. DANIEL: In this case, if the -- an expert witnesses
20 are called (sic) and His Honor told you that expert testimony
21 should be received by you with caution, would you receive that
22 testimony with caution the way you would -- as the judge tells
23 you? Following the law, do what your oath says you should do,
24 follow the law?

25 (No jurors respond audibly.)

1 **MR. DANIEL:** And if he should also tell you it's largely
2 a field of speculation, it's beset with pitfalls and
3 uncertainties, and requires a careful and intelligent evaluation
4 on your part of it to be a valid means of reaching the truth,
5 would you follow that law as to what the judge tells you?

6 (No jurors respond audibly.).

7 **MR. DANIEL:** You realize experts sometimes will disagree
8 on things? One expert will say one -- his opinion, and some of
9 you all have backgrounds and expertise in certain fields, and
10 you all disagree on things. And the point is: If experts
11 testify, will you follow the law, and listen to what His Honor
12 tells you the law is on expert witnesses?

13 (No jurors respond audibly.)

14 **MR. DANIEL:** In this case His Honor asked you about
15 pretrial publicity, and it doesn't take a smart person to tell
16 you that this case has gotten -- had some publicity, going to
17 have publicity, and been publicity in the past. I even heard
18 it on the radio.. I live in Knoxville, but driving up here this
19 morning I heard it on WIVK, they talk about it. And it's my
20 understanding, what the young lady said on there, I don't think
21 that's even the State's theory in this case. So the point I'm
22 making is: Will you lay aside whatever you've heard, because
23 you don't hear the defense side of a case until after everything
24 goes in. That's the last thing you hear in a case. Can you lay
25 aside anything you might have -- somebody's opinion as to what's

1 going to be proven or what somebody thinks, and judge this case
2 on what you hear here in the courtroom?

3 (No jurors respond audibly.)

4 MR. DANIEL: I've tried cases and go home, somebody ask
5 me about the case and you hear about it on television or
6 something, and I'd wonder if that was the same case that I's in
7 the courtroom with, because it's a -- it's somebody's opinion.
8 And I'm not putting the media down, don't get me wrong; I'm just
9 saying we need to try this case on what's here in the courtroom.
10 And can you do that?

11 (No jurors respond audibly.)

12 MR. DANIEL: Now, Ms. McCarter, I believe you stated
13 that your husband worked up there with the -- at the same place
14 where the young lady that's deceased here's husband works or
15 worked, is that correct?

16 (No jurors respond audibly.)

17 MR. DANIEL: And how big a place is that? How many
18 employees are we talking about? Can you just give me a rough
19 idea? I don't know.

20 JUROR McCARTER: To me, from what I -- I mean, just --
21 I would say there's four shifts, and that there's probably a
22 good 3,000, 4,000 employees.

23 MR. DANIEL: It's a larger place than just maybe a
24 small...

25 JUROR McCARTER: Yes, sir.

1 THE COURT: Is it Cherokee Textile Mill, is that...?

2 JUROR McCARTER: Yes, sir.

3 MR. DANIEL: Is that it, Judge? I'm sorry, I don't...

4 THE COURT: That's...

5 MR. DANIEL: I'm not very familiar with it. And I knew
6 that it was large, but I didn't know it was that large.

7 JUROR McCARTER: It's consisted of four different
8 shifts, you know. A person could be working, and if they've got
9 different -- different areas that you work in, like weaving,
10 spinning, things like that, where they make cloth.

11 MR. DANIEL: Yes, ma'am.

12 JUROR McCARTER: You know, and somebody could work --
13 that's why I said, I knew that the gentleman worked there, but
14 I don't know him.

15 MR. DANIEL: Do you feel -- and I appreciate -- I like
16 the candor of the gentleman seated beside you awhile ago. He's
17 obviously wrestling with some thoughts and feelings about
18 different matters, and that's -- and you should on a case like
19 this. And I appreciate your candor of telling us that, because
20 we might not have any way of knowing it if you hadn't told us.

21 JUROR McCARTER: Right.

22 MR. DANIEL: Do you feel like that if you were accepted
23 as a juror, and you ever saw this ex-husband of the deceased,
24 you'd ever have to explain anything, you'd ever have to explain
25 your...? If you found that the State failed to prove these boys

1 guilt beyond a reasonable doubt and under your oath you voted
2 not guilty, you feel like you'd have to explain anything to
3 anybody?

4 JUROR McCARTER: No, sir. No, sir.

5 MR. DANIEL: You realize you don't have to explain
6 nothing to me, the attorney general, the police, or the judge
7 or anybody? You're your own juror, you understand that?

8 (No jurors respond audibly.)

9 MR. DANIEL: And while I'm on that, I'd like to ask this
10 of the other gentleman, too. In a criminal case, although you
11 go back and sit as a collective panel and you talk about things,
12 you are your own juror unto yourself. I don't know any other
13 way to put it. But that means that you, yourself, individually,
14 not collectively, but individually have to be satisfied beyond
15 a reasonable doubt of the defendant's guilt before you can vote
16 for guilty. And even though it might be a lot of pressure, and
17 there might be somebody think there is, or there might be more
18 think there's not, a person still has to vote their conscience.
19 Do you all understand that? 'Cause you're the ones got to live
20 with your conscience and what you do. And if you -- and if you
21 had a single reasonable doubt, would you hesitate to stand up
22 and say so in front of whoever? Can all of you do that? Would
23 you do that? Would you have the courage to do that?

24 (No jurors respond audibly.)

25 MR. DANIEL: We have a list. And, Your Honor, I don't

1 know how to handle this, with all these State's witnesses. We
2 talked about this. There's a list of witnesses, and boy, my --
3 stretched a mile long. But somewhere along the line we're going
4 to have to read these names of these witnesses to the jury and
5 see if any of them are close friends to them or know them and...

6 **THE COURT:** I tell you what let's do, Mr. Daniel,...

7 **MR. DANIEL:** ...we've tried to figure out some way to
8 do it and save everybody a lot of time.

9 **THE COURT:** If you don't mind, after you have questioned
10 these jurors and we bring the others down, I will do that all
11 then at that time.

12 **GENERAL SCHMUTZER:** Can we approach the bench?

13 **THE COURT:** Sure.

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

15 **GENERAL SCHMUTZER:** My understanding that we were just
16 going to compile a list and...

17 **THE COURT:** Right.

18 **GENERAL SCHMUTZER:** ...read them without attributing
19 them to anyone.

20 **THE COURT:** Right. Right.

21 **GENERAL SCHMUTZER:** Well, he's already said the State
22 has this list of witnesses over a mile long, and I
23 object to that. Now, we weren't going to say who...

24 **MR. DANIEL:** Well, I...

25 **GENERAL SCHMUTZER:** And, you know, it's just like saying

1 they're trying to...

2 MR. DANIEL: I just said there is a list of witnesses.
3 I didn't think about that, Judge. But there -- they
4 gave us 85 or 90 witnesses.

5 GENERAL SCHMUTZER: Never mind what we gave you. The
6 agreement was that we were just simply going to read a
7 list of witnesses, because -- and not identify them
8 as...

9 THE COURT: I will tell them again.

10 MR. DANIEL: And just say it's both combined witnesses.

11 THE COURT: Sure. Sure. And so I will wait until
12 you've examined these, and then we bring the other eight
13 down.

14 MR. DANIEL: That'd be fine.

15 THE COURT: And I'll read those lists at that time.

16 MR. DANIEL: And maybe read them loud enough to
17 everybody can hear them, because (sic)...

18 THE COURT: I'll do the best I can. I'll do the best...

19 MR. DANIEL: It'll take a long time to go through them.

20 THE COURT: Sure. Sure.

21 MR. WEBB: Judge, are all the jurors in here?

22 THE COURT: I hope.

23 MR. WEBB: Are there some out in the hall?

24 THE COURT: No. No, I was told they were all in here.

25 (The bench conference having been concluded, the

1 following proceedings were had in open court.)

2 MR. DANIEL: I'm going to try to talk loud so some of
3 these other jurors can hear me back here, 'cause they may be
4 brought down. And I'm not trying to drown you out by talking
5 so loud, but maybe if I do that'll save some time later on with
6 the other jurors. And just for -- can you all hear me in the
7 back? Am I talking loud enough that everybody can hear me?

8 In this case, I believe -- let me ask you, are you the
9 only one that's -- Mr. Young, that's had prior jury service out
10 of you four seated here? Is that correct?

11 (No jurors respond audibly.)

12 MR. DANIEL: Have any of you -- I guess we should ask
13 this question: Have you ever had a case before this case, like
14 in another jurisdiction or another county or here years before
15 or anything? Is this just your first -- first time you've been
16 in the judicial system, so to speak, as a juror?

17 (No jurors respond audibly.)

18 MR. DANIEL: Okay. In this case, then, I'd like to just
19 -- since you are new, do you all understand how our grand jury
20 system works? Because these two gentlemen are seated here on
21 trial, and they've been indicted by the grand jury. And His
22 Honor told you you're not to take that as any evidence of guilt.
23 And what it is, the grand jury meets in secret, and they hear
24 proof from one side, and they don't find out whether a person's
25 guilty or innocent or not; they just find out is there -- should

1 that person go to trial. Should it -- and it leaves it up to
2 you folks and these other people to be seated as jurors, to
3 determine whether or not they're guilty or innocent or not.
4 It's just a formal accusation to bring a person to trial.

5 It's like if you was the plaintiff and suing on a
6 lawsuit, you file a lawsuit; the defendant files an answer. He
7 can -- and that's what we've done, we've said we're filing an
8 answer, we're not guilty. Well, their lawsuit they filed, so
9 to speak, is the indictment. And you all understand that?

10 (No jurors respond audibly.)

11 MR. DANIEL: Some people -- I heard somebody say, "Well,
12 he's over there; he must be guilty of something." And that's
13 not the way our system works, and it -- 'cause they don't hear
14 the defense side of the case in the grand jury.

15 Now, in a case like this, in a criminal case, as
16 Mr. Young would know, there are certain things that a -- well,
17 let us start first with a civil case. A civil case, plaintiffs
18 put their burden -- their proof on first, and their burden of
19 proof is like a preponderance of evidence. That's like if you
20 tip the scales 51% in your favor, then that plaintiff is
21 entitled to recover. That's basically the law in a civil case
22 where you're suing for damages or property rights or stuff like
23 that. And that's likening to the State, they're like the
24 plaintiff, they're bringing the cause of action.

25 The defendant in a criminal case, you don't go under

1 that. It's a different standard. They've got to prove to you
2 beyond all reasonable doubt as to any material -- all material
3 elements in a case before they can -- you can vote to convict
4 someone. Do you all understand that's the burden they're under?
5 It's not like a civil suit: Just maybe this happened or maybe
6 that happened or, well, it could have been that. You don't try
7 it that way. You first say: Do I have a reasonable doubt as
8 to this person's guilt? And if you've got a reasonable doubt,
9 that's the end of it. And that's the -- that's the law. Do all
10 of you agree with that law, or do you disagree with that law?
11 Do any of you think it's not right? Would you want that same
12 law applied to you if you was sitting over here as a defendant
13 in a case or you'd been accused or charged by somebody? You'd
14 want those rules applied to you.

15 In a case like this the State always puts on their proof
16 first. And for that reason, the defendant has to go last,
17 because that's the way the system works. The burden's on them,
18 so they put their proof on first, and the defendant goes last.
19 Can you wait until you hear all of the proof before you start
20 to make up your mind or even consider making up your mind on a
21 case, and not just say, "Well, the first witness out of the
22 barrel, so to speak, that's the case." Or opening statements,
23 "They've said this, they're going to prove this, and that's
24 sufficient." Can you wait until you hear all of the evidence?

25 (No jurors respond audibly.)

1 **MR. DANIEL:** Now, in this case there's going to be a lot
2 of probably objections. And I want to explain to you what
3 objections are. Just the person -- or the State says something,
4 and we feel like that that's not competent evidence. You don't
5 want to try cases on hearsays and innuendos and opinions and
6 stuff like that. You want to try it on cold, hard facts and
7 stuff. Can you -- do you understand that if we make an
8 objection on behalf of the defendant, not that you're trying to
9 hide anything, but that you're wanting the case to be tried on
10 the competent evidence, not just incompetent stuff that you
11 shouldn't really be considering. And that if we do that, then
12 you will not hold it against one or more of these defendants for
13 making an objection? Can we understand that, so you don't
14 misunderstand what the purpose of an objection is?

15 And the law says that if we don't object, we think it's
16 right, and we don't object and it goes in, even though you
17 shouldn't have heard it, and it's totally irrelevant,
18 incompetent, hearsay, or whatever, then we waive that. So
19 you've got to object.

20 Now, His Honor will decide, for right or wrong -- he's
21 like the umpire, he calls the balls and the strikes. But we
22 still have to make those objections, and I want to get that
23 across, because a lot of people -- jurors don't understand why
24 lawyers object a lot in cases, and they hold it against a
25 defendant sometimes.

1 In this case you're going to hear the State's theory in
2 this case, that before this young lady was supposedly missing
3 and before she was ever found, both of these defendants---and
4 particularly my client, Mr. Sutton, me and Mr. Webb's client
5 ---came up and made voluntary statements, talked to the officers
6 on two different occasions before they -- before they even
7 charged him. Came in voluntarily, without a lawyer, talked to
8 them. I think one of those statements is probably 50 pages,
9 told them everything they know about it. You may hear that.
10 Question is, will you -- if they give a statement, listen to the
11 statement, take into consideration that you've got trained
12 police officers on one side questioning, and an uneducated
13 person on the other side trying to answer questions or give it.
14 I just want you to leave your mind open to what -- and accept
15 it with a broad mind, if that comes in.

16 It may come to the point that the -- one or more of the
17 defendants, especially Mr. Sutton, may -- he may not testify.
18 May be nothing else left to say, he's told his whole story, told
19 it twice to them, been up here and told it twice, no need to
20 tell it again, say the same thing again. If he didn't testify
21 or we decided there wasn't any use for him to testify, is there
22 any reason that you'd hold it against him? Because the law says
23 a person doesn't have to if they don't want to, and if you can't
24 add nothing to a case, sometimes lawyers say, "Well, if you
25 can't add nothing, first thing you do is don't -- don't open

1 your mouth." On cross-examination, if you got nothing to
2 answer, you don't -- first question you cross...

3 GENERAL SCHMUTZER: Your Honor, this is dwelling on
4 something that's a constitutional right, that the Court will
5 charge them on. And I think for him to go on, trying to go into
6 all the reasons why the man may not testify, is... As you know,
7 there's a lot of reasons. The State could go into some other
8 reasons, too, that...

9 THE COURT: Well, let's don't -- General Schmutzer.

10 GENERAL SCHMUTZER: Well, I object to that.

11 THE COURT: Well, object, but don't make other
12 statements to the jury, please, sir. Let's go on to something
13 else, Mr. Daniel.

14 MR. DANIEL: Thank you, Your Honor.

15 In this case there is a possibility, and I don't know
16 that -- what all will happen to the State's proof, but we have
17 to anticipate some things. And if -- and my question, I guess,
18 is more as a hypothetical, "should this happen." Should the
19 State try to bring in proof of some other crime or something of
20 this nature, will you understand that you are here to try one
21 issue and one case. I might as well just tell you up front,
22 it's -- I'm sure if you heard the radio you understand it, and
23 everybody knows it: My client's indicted over -- along with the
24 other client, in Blount County on a murder charge that they're
25 going to -- that their theory is it relates -- has some relation

1 to this. Now, the point is, you're not trying that case over
2 there. In fact, if they bring -- if evidence comes in
3 pertaining to that case, will you all understand that your
4 decision as a juror is to try the issue: Did these -- one or
5 more of these defendants kill Connie Branum, and if so, under
6 what circumstances? Can you understand that?

7 Because this is a complicated situation. It's a -- it's
8 a thing -- and the judge may tell you you can accept some
9 evidence against one defendant and you can't accept it against
10 the other. And it's awful hard for a jury to say, "Well, this
11 half of my mind will block that out and the other half will
12 listen." You're going to hear it, and I'm wanting to be
13 straight forward with you on it, and I'd like you to be straight
14 forward with me. If that happens, will you listen, and still
15 remember that His Honor's going to charge you; you're going to
16 decide on their guilt or innocence on the case that's before
17 you. Whatever happens in Blount County, that's -- later on,
18 that's not your -- that's something that they'll worry with or
19 try over there, that's another case. But I want to get that...

20 **THE COURT:** I'll say this at this time, also, to all
21 jurors in the courtroom. As Mr. Daniel just said, there are
22 other charges pending in other counties, in Blount County, that
23 are of no consequence to you in deciding this case to you in
24 that. Just because they are charged with another crime in
25 another county cannot and should not be used against them in

1 this trial. Now, if evidence does come in on other issues about
2 things that might have happened in another county, I will
3 instruct you at that time as to how you should weigh that and
4 how you should consider that. But just because someone is
5 charged in another county has no bearing in this case.

6 MR. DANIEL: Thank you, Your Honor.

7 In this case I notice General Schmutzer said something
8 about motive, and talked to you about motive. If the proof
9 should show that this boy that's deceased that's -- of which
10 they're charged with over in Blount County, Tommy Griffin, was
11 one of the defendant's here's best friends, will you all take
12 that into consideration as to whether or not there's any motive?

13 GENERAL SCHMUTZER: Your Honor, I object to this. He's
14 attempting to go through -- go through the defendant's proof and
15 ask them if they will consider this and they will consider that,
16 and will they do this. That's improper voir dire. You know,
17 there's a lot of evidence here -- again, if we're going to start
18 doing that, we will be here...

19 MR. DANIEL: Well, now, I object to -- make his
20 objection, but don't make a speech, General.

21 GENERAL SCHMUTZER: Well, I was just talking about your
22 speech.

23 THE COURT: Gentlemen, I've told you once and I'll tell
24 you one more time and one more time only: I know everybody's
25 stressed out here, and I know you don't like me saying this, but

1 I could care less. Do not talk back and forth to each other.
2 I will not tolerate that on the state of Tennessee or on defense
3 counsel. Is that clear?

4 GENERAL SCHMUTZER: It's clear.

5 MR. DANIEL: Clear, Your Honor.

6 THE COURT: Okay, now, approach the bench.

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

8 MR. DANIEL: (Indiscernible), Judge.

9 THE COURT: Well, you know -- well, now, guys, now, I
10 -- I think the world of both of you. But, now, we're
11 not going to do that here. Now, everybody just settle
12 down.

13 MR. DANIEL: You're right.

14 THE COURT: Just settle down. If I -- I do think you
15 need to hasten up on that and don't ask them about each
16 particular piece of evidence, okay?

17 MR. DANIEL: Okay.

18 THE COURT: You know, ask them generally about -- butt
19 let's go on.

20 MR. DANIEL: I want to go into one other area that I
21 feel like, because of the circumstantial evidence, I
22 should go into some other possible things that, if they
23 should develop, will they consider it. Some people may
24 not consider certain things, I don't know. There's some
25 pills involved, there's some drinking involved. If

1 there's -- I think they've got a right to consider
2 whether or not this girl may have (indiscernible),
3 there's a lot of things could have happened, Judge, and
4 I think I'm going to find if some people -- they're
5 liable to pay attention to that.

6 **GENERAL SCHMUTZER:** I don't think he can do that.

7 **THE COURT:** I don't think you can ask them to disregard
8 the evidence, any evidence. I think you can ask them
9 if they would just weight it according to the law that
10 the Court gives them. You know, I don't think you can
11 ask them if -- if they'll disregard evidence in one way
12 or look at any evidence in another way.

13 **MR. DANIEL:** If they can look at it in light of the
14 other evidence.

15 **THE COURT:** Right, of all the other evidence, and that's
16 the instruction.

17 **MR. DANIEL:** That's fair. Thank you.

18 (The bench conference having been concluded, the
19 following proceedings were had in open court.)

20 **MR. DANIEL:** In this case, and essentially we're talking
21 about it being a circumstantial case, and there may be
22 circumstances that point to out possible hypotheses, other than
23 that of guilt of the defendant; such as, maybe another person
24 had knowledge and things of this nature. I won't go into all
25 the detail. But I'll ask you, and think -- I'm not suggesting

1 any of these, I'm just saying will you keep an open mind to
2 these things as to the situation of the deceased? It's going
3 to be our position in this case that the State does not know and
4 nobody knows how she died. Can't prove how she died. We're not
5 supposed to -- we're not supposed to prove that, they're
6 supposed to prove that as an element of their case, how she
7 died. If the proof should show that she had pills in her or
8 drugs in her system, she'd been drinking that day and that
9 became important, would you consider it? If it became -- if the
10 evidence developed that she had tried to commit suicide a week
11 before, and even had been to the -- a mental institution the day
12 before, and it became relevant, would you consider it along with
13 the rest of the proof?

14 (No jurors respond audibly.)

15 **MR. DANIEL:** If it comes to in the proof that a person
16 had information that only a person who supposedly had had
17 something to do with this death could have known before she was
18 ever found, and you found that was relevant, will you consider
19 it?

20 (No jurors respond audibly.)

21 **MR. DANIEL:** The point I'm making is, all hypotheses,
22 you have to exclude all reasonable hypotheses except that of
23 guilt of these defendants before you can vote for guilty. The
24 question is: Will you follow the law and will you do what the
25 judge tells you the law is regarding that, and not guess

1 somebody guilty? Can we start with open minds and be fair and
2 lay aside prejudice and feelings and things you might have, and
3 let's try this case the same as you'd want somebody to try you
4 if you was over here?

5 (No jurors respond audibly.)

6 **MR. DANIEL:** Thank you.

7 **THE COURT:** At this time we will call eight more jurors
8 into the box, starting on the back row first.

9 (The following jurors were called to fill the jury box:
10 Jimmy R. Justice; H. F. Johnson; Robert Turner; Teddy
11 Loposter; Barbara Macaboy; Stanley Whitted; Chris
12 Underwood; Harold Burns.)

13 **THE COURT:** I'll ask for the new jurors who have come
14 in -- first I want to ask you about the pretrial publicity, the
15 questions that have been asked. How many of you knew eight
16 jurors have seen or heard something about this case before you
17 came here today?

18 (Certain jurors respond.)

19 **THE COURT:** Okay, several of you have. I'll start with
20 Ms. -- is it Macaboy, is that right? Have you formed an opinion
21 based on what you've seen or heard about the guilt or innocence?
22 And don't tell me what it is, but have you formed an opinion?

23 **JUROR MACABOY:** No.

24 **THE COURT:** Okay. Is there any reason, based on the
25 questions that have been asked beforehand, of why you couldn't

1 be fair and impartial to both sides in this case, and do your
2 job?

3 JUROR MACABOY: Yeah, I think so, because I know the
4 (indiscernible). It'd be hard for me.

5 THE COURT: Okay. And did you say that you knew them
6 well?

7 JUROR MACABOY: Well, I know of them.

8 THE COURT: Okay. Okay. Our county's still a small
9 county, and people have a tendency to know each other, or at
10 least know of each other. Do you feel like that you could do
11 your job and be fair and impartial to both sides in this case,
12 and not feel like you had to explain your verdict to any person?

13 JUROR MACABOY: Yes.

14 THE COURT: Okay. All right. Mr. Loposter, same
15 questions about the pretrial publicity. Have you formed an
16 opinion based on anything you've read or heard?

17 JUROR LOPOSTER: (Inaudible).

18 THE COURT: Is that opinion such it would not be changed
19 by evidence coming from this witness stand?

20 JUROR LOPOSTER: (Inaudible).

21 THE COURT: So you're saying, as I understand your last
22 answer, that you can base your verdict solely on what you heard
23 from this witness stand and the law that the Court gives you?

24 JUROR LOPOSTER: (Inaudible).

25 THE COURT: And do you feel like you could be fair and

1 impartial to both sides?

2 JUROR LOPOSTER: (Inaudible).

3 THE COURT: You don't feel like that? All right, sir.
4 All right, sir, you may step down.

5 (Juror Loposter is excused.)

6 THE COURT: Mr. Turner, same question. Any problems?

7 JUROR TURNER: No.

8 THE COURT: Have you formed an opinion about this case?

9 JUROR TURNER: (No audible response.)

10 THE COURT: Okay.

11 Mr. Johnson, have you formed an opinion about this case
12 based on any pretrial publicity or anything you've heard?

13 JUROR JOHNSON: (No audible response.)

14 THE COURT: Mr. Justice?

15 JUROR JUSTICE: No.

16 THE COURT: Okay.

17 JUROR JUSTICE: I do know some of the people.

18 THE COURT: Okay, who all do you think you know, anyway?

19 JUROR JUSTICE: I know James (indiscernible) and some
20 of the ones -- James (indiscernible) and some of the ones that
21 are going to be called by the State (indiscernible).

22 THE COURT: Okay. Based on your knowledge of some of
23 the witnesses, do you feel like that you would be able to do
24 your job fairly and impartially?

25 JUROR JUSTICE: Yes.

1 **THE COURT:** And do you feel like you would have to
2 explain your verdict to anybody, whatsoever?

3 **JUROR JUSTICE:** I'd rather not be put in that position.

4 **THE COURT:** I understand that. Right. I understand
5 that. But do you feel like that you could do your job if called
6 upon to do it?

7 **JUROR JUSTICE:** Well, if I had to.

8 **THE COURT:** Okay. Mr. Whitted, same question. Any
9 problems? Have you formed an opinion about the guilt or
10 innocence of anybody based on anything you've seen or heard?

11 **JUROR WHITTED:** No.

12 **THE COURT:** Okay.

13 Mr. Underwood, have you formed an opinion about anything
14 in this case yet?

15 **JUROR UNDERWOOD:** No.

16 **THE COURT:** Okay.

17 And Mr. McClellan? No, you've already been asked.

18 Mr. Burns?

19 **JUROR BURNS:** No, sir.

20 **THE COURT:** Okay.

21 Now, in talking about the death penalty I have
22 previously told all of you the penalties for first degree murder
23 should you, in that event, find someone guilty. Do you feel --
24 any of you feel either that you would automatically impose the
25 death penalty, or automatically not consider the death penalty

1 as an option in sentencing in a proper case? Anyone have a
2 problem with that?

3 (Certain jurors respond.)

4 THE COURT: Ms. Macaboy?

5 JUROR MACABOY: I think maybe I might have a problem
6 with it. That would be hard for me to do, to form an opinion
7 to -- either for the death penalty or (indiscernible).

8 THE COURT: Okay. And I certainly understand that,
9 because, you know, there's people have opinions outside, and
10 they can all tell you what to do. But when you come in here and
11 start having to make the decision, it's a whole lot different,
12 isn't it?

13 JUROR MACABOY: It'd be hard.

14 THE COURT: But let's get back to the same story. Would
15 you consider as an option the death penalty in a proper case,
16 if the facts were there? And would you automatically exclude
17 the death penalty as an option?

18 JUROR MACABOY: (Indiscernible).

19 THE COURT: Now, wait a minute, I -- those are
20 inconsistent answers there based on the way I was asking the
21 questions. I'll ask it another way.

22 As I understand what you said, it would be something
23 that you would consider it (sic), is that correct? If they were
24 convicted of first degree murder?

25 JUROR MACABOY: Yeah, I would consider it.

1 **THE COURT:** Okay. And would you automatically either
2 rule it in or out as an option, or would you weigh the evidence
3 and base your decision on the law that I give you?

4 **JUROR MACABOY:** I will weigh the evidence.

5 **THE COURT:** Okay. Okay. Anyone else?

6 **JUROR JUSTICE:** I really -- I believe -- you know, I'm
7 for the capital punishment. You know, that's...

8 **THE COURT:** Okay, and that's...

9 **JUROR JUSTICE:** Because they walk -- a person walked up
10 and jumped somebody and then they murder him, I don't see why
11 (indiscernible).

12 **THE COURT:** Okay. Now, and I told you earlier,
13 Mr. Justice, the law says that the death penalty is an option,
14 it is not mandatory in every case -- in any case, in fact, in
15 Tennessee. It's not mandatory. I would instruct you, if these
16 defendants were found guilty, of the statutory mitigating
17 factors and the statutory enhancing factors. And from that, the
18 jury is to consider whether or not they, in their wisdom, impose
19 the death penalty.

20 Now, I'm asking you, if -- if these defendants were
21 found guilty of first degree murder, would you automatically
22 impose the death sentence just because they had been convicted
23 of first degree murder, or would you consider the mitigating
24 factors and enhancement factors that the Court tells you about?

25 **JUROR JUSTICE:** I'd probably consider the evidence and

1 weigh the evidence.

2 THE COURT: Okay. All right, sir. Thank you. Anyone
3 else?

4 (No jurors respond audibly.)

5 THE COURT: Okay, let's call one more juror down,
6 please.

7 (The following juror was called to fill the jury box:
8 Mary Baumann.)

9 THE COURT: Ms. Baumann? She's the lady that doesn't
10 want to be here 'til March 2nd. Is it Bowman or Baughman or...?

11 JUROR BAUMANN: Baumann (pronouncing).

12 THE COURT: Baumann? Missed it all the way around,
13 didn't I?

14 JUROR BAUMANN: That's the East Tennessee pronunciation.

15 THE COURT: That's right, we have a little different
16 French to it, don't we. Just like General Patton told the
17 British, "We're all separated by a common language."

18 Ms. Baumann, you've heard all the questions that have
19 been asked?

20 JUROR BAUMANN: Yes.

21 THE COURT: In particular, about the pretrial publicity.
22 Have you formed any opinion, based on anything you've read or
23 heard, about the guilt or innocence of anybody in this case?

24 JUROR BAUMANN: (No audible response.)

25 THE COURT: About the death penalty: If -- if these

1 defendants were found guilty of first degree murder, would you
2 consider as an option the death penalty under the law?

3 JUROR BAUMANN: (No audible response.)

4 THE COURT: Understanding that you don't have to
5 automatically impose the death penalty. You understand that?
6 It's not proper in every case.

7 JUROR BAUMANN: I understand that.

8 THE COURT: Okay. And do you have anymore reservations
9 about imposing the death penalty in any -- in a proper case?

10 JUROR BAUMANN: (Inaudible).

11 THE COURT: Okay. General Schmutzer, you may proceed.

12 GENERAL SCHMUTZER: Thank you, Your Honor.

13 If I can begin with Ms. Macaboy and find out where you
14 live and your occupation, I'd sure appreciate it.

15 JUROR MACABOY: I live at Fox (indiscernible) in
16 Sevierville, and I work at Family Dollar.

17 GENERAL SCHMUTZER: Okay. And Ms. Baumann?

18 JUROR BAUMANN: I live in Grandview Estates in Kodac.

19 GENERAL SCHMUTZER: Okay. And you mentioned, I think,
20 earlier -- were you the one that -- with the accounting?

21 JUROR BAUMANN: No, no.

22 GENERAL SCHMUTZER: Okay, I thought you mentioned...
23 Your occupation?

24 JUROR BAUMANN: Sure. Semi-retired housewife.

25 GENERAL SCHMUTZER: Okay. Got plenty to do, then.

1 Mr. Turner?

2 JUROR TURNER: I live in Sevierville.

3 GENERAL SCHMUTZER: Okay, sir. And your occupation?

4 JUROR TURNER: I'm corporate purchasing manager for
5 Busch (indiscernible).

6 GENERAL SCHMUTZER: Thank you.

7 Mr. Justice?

8 JUROR JUSTICE: Sevierville.

9 GENERAL SCHMUTZER: And your occupation, sir?

10 JUROR JUSTICE: Midnight clerk at Krogers.

11 GENERAL SCHMUTZER: At Krogers? Okay. Mr. Johnson, I
12 skipped over -- I'm sorry.

13 JUROR JOHNSON: Seymour.

14 GENERAL SCHMUTZER: All right, sir. And your
15 occupation, please?

16 JUROR JOHNSON: Diesel mechanic.

17 GENERAL SCHMUTZER: Thank you, sir. Let's see, I had
18 down here Mr. Whitted, is that right, sir?

19 JUROR WHITTED: Yes, sir.

20 GENERAL SCHMUTZER: And where do you live, please?

21 JUROR WHITTED: I live in Seymour.

22 GENERAL SCHMUTZER: And your occupation?

23 JUROR WHITTED: I work in an auto shop.

24 GENERAL SCHMUTZER: Mr. Underwood?

25 JUROR UNDERWOOD: Kodac.

1 **GENERAL SCHMUTZER:** Okay, sir. And your occupation,
2 please?

3 **JUROR UNDERWOOD:** I'm a (indiscernible) technician for
4 TVA.

5 **GENERAL SCHMUTZER:** For TVA? Thank you.
6 Mr. Burns?

7 **JUROR BURNS:** Yes, sir.

8 **GENERAL SCHMUTZER:** Yes, sir?

9 **JUROR BURNS:** (Indiscernible) retired.

10 **GENERAL SCHMUTZER:** All right, sir. And you retired
11 from...?

12 **JUROR BURNS:** Beatrice. Beatrice Foods Company in
13 Chicago.

14 **GENERAL SCHMUTZER:** All right, sir.

15 You that just came have heard the questions before when
16 it was asked about circumstantial evidence. You understand what
17 circumstance -- anyone that doesn't understand what
18 circumstantial evidence is about? This case is based upon
19 circumstantial evidence. Any of you think you would have any
20 difficulties in finding someone guilty simply because the case
21 is based upon circumstantial evidence, as you sit there? Any
22 one of you?

23 (No jurors respond audibly.)

24 **GENERAL SCHMUTZER:** I take it by your silence you
25 wouldn't, is that -- am I right on that? Okay.

1 You understand and you've been told about the law, and
2 the key thing about circumstantial evidence---and it is---the
3 State has the burden of proof, and to show that there's --
4 exclude any other reasonable theory or hypothesis. The key word
5 being "reasonable." Just like with a reasonable doubt. That
6 word calls into play your reason and common sense. Any of you
7 have any difficulty with that? And I ask that not only of the
8 new ones, but also to the ones that were already here, because
9 this was really gone into on voir dire after I'd had an
10 opportunity to speak. Anybody have any problems with that?

11 (No jurors respond audibly.)

12 **GENERAL SCHMUTZER:** One thing that His Honor will tell
13 you for sure, I believe, is that ultimately, towards the close
14 of his charge to you, that you're to decide this case solely on
15 the law and the evidence. So what's reasonable, I take it, is
16 what you would find reasonable based upon the law and the
17 evidence in this case; that you're not going to guess someone
18 guilty, you're not going to guess someone not guilty. In
19 deciding whether or not a certain hypothesis...

20 **MR. DANIEL:** I believe I'll object to the form of that,
21 "Don't guess them not guilty." That's not the law and I don't
22 -- I don't know if the general made a slip of the tongue, but
23 object to that.

24 **GENERAL SCHMUTZER:** I believe it is, Your Honor. Your
25 Honor will give you the -- "reasonable" means you don't guess,

1 but you go on the facts.

2 THE COURT: That's the law.

3 GENERAL SCHMUTZER: Any one of you have any problems
4 with that?

5 (No jurors respond audibly.)

6 GENERAL SCHMUTZER: I take it you don't.

7 The -- it was mentioned to you about statements being
8 made by these defendants, and that they were telling all they
9 know. Will you listen closely to the statements of the
10 defendants, and put those -- what they say up against the other
11 facts in this case in deciding whether or not they were telling
12 the truth, especially the first time they talked to these
13 officers? Will you do that?

14 (No jurors respond audibly.)

15 GENERAL SCHMUTZER: I take it you will.

16 The -- it was...

17 MR. DANIEL: Your Honor, I'll object to that statement.
18 They've got a right to listen to all their statements, not just
19 one.

20 THE COURT: I think the upshot, ladies and gentlemen,
21 of what all counsel have asked you to do is not to single out
22 any one piece of evidence, but look at all the evidence in light
23 of all the other, and in light of the law that the Court
24 instructs you on. Each side has their theory of the evidence;
25 it may or may not be correct. That's for you to determine,

1 based on all the evidence in this case. You may go ahead.

2 GENERAL SCHMUTZER: I think that same situation is
3 mentioned about the defense position being apparently that the
4 State cannot prove how this woman died. Again, you will look
5 to all of the facts and circumstances surrounding her death,
6 including location, how the body may have been, things like
7 this, in just making that decision?

8 (No jurors respond audibly.)

9 GENERAL SCHMUTZER: I take it you would do that.

10 The State can prove the agency or cause of death by
11 circumstantial evidence just as it can anything else. It turns
12 out the body in this case was burned beyond recognition. So by
13 looking at the body you can't tell the cause, you have to look
14 at other factors beyond that, around the crime scene. You can
15 do all that, then, I take it?

16 (No jurors respond audibly.)

17 GENERAL SCHMUTZER: The -- I had mentioned about
18 motives, and the State expects to prove motive in this case, but
19 you understand the State is not required to prove motive, per
20 se. And we -- that is not one of the elements to first degree
21 murder. You all -- those that just came in, you understand
22 that, also, I take it?

23 Any problem with the fact that there's going to be some
24 proof of drinking beer, both by the defendants and by the victim
25 in this case?

1 (No jurors respond audibly.)

2 **GENERAL SCHMUTZER:** I take it there's not.

3 Think of anything at all that you need to bring to my
4 attention, or the attention of defense counsel or the judge that
5 you think might cause you a problem with sitting in this case,
6 as you sit there.

7 (No jurors respond audibly.)

8 **GENERAL SCHMUTZER:** Great. Thank you.

9 Thank you very much, Your Honor.

10 **MR. MILLER:** I'll just reiterate somewhat what
11 Mr. Daniel said, seems like we're putting the cart before the
12 horse here. Had a lot of questions about the death penalty and
13 so forth, and my boys haven't even had their trial yet. The
14 judge is doing his job as he's supposed to be, but I just don't
15 want you all to put the cart before the horse and assume we're
16 here to decide whether or not these boys get the death penalty.
17 There's been no proof; no proof at all.

18 Also, Mr. Daniel and myself earlier talked about
19 listening to the whole case before you render a decision.
20 Listen to all the evidence, listen to our cross-examination of
21 the State's witnesses. I think a perfect example of passing
22 judgment too early: This morning I got up, very windy, it was
23 raining, my trash can and trash blown all over the yard, and
24 just a nasty day. And I made up my mind then it was going to
25 be a nasty day outside, and even when we went to lunch it was

1 a nasty day, and we stayed over there about an hour and come
2 back, and the sun's out, and the sun's heating everything up,
3 and it's a beautiful day. That's the mistakes you -- and the
4 problems with passing judgment before you know all the facts.

5 Ms. Macaboy, is that correct?

6 JUROR MACABOY: (No audible response.)

7 MR. MILLER: And I believe you said you may know some
8 of the people on one side or the other. Who do you know?

9 JUROR MACABOY: I know James Griffin, I know the niece
10 of the deceased real well.

11 MR. MILLER: Okay. The niece of the deceased? Who --
12 would that be one of her brother's children or...?

13 JUROR MACABOY: Uh-huh (affirmative).

14 MR. MILLER: Okay. And which brother's child would
15 that...?

16 JUROR MACABOY: (Inaudible).

17 MR. MILLER: Okay. How do you know them?

18 JUROR MACABOY: I've known her since she was a baby,
19 went to school with her mother.

20 MR. MILLER: You've known who since they were babies?

21 JUROR MACABOY: Christie. I've known Christie since she
22 was a little girl.

23 MR. MILLER: The niece? You went to school with her
24 mother?

25 JUROR MACABOY: I went to school with her mother, and

1 I also went to school with James.

2 MR. MILLER: Okay. You went to school all the way
3 through with them, or as far as...?

4 JUROR MACABOY: No, through high school.

5 MR. MILLER: Consider yourself friends of theirs?

6 JUROR MACABOY: Well, I haven't seen James in 15 years
7 or so, but the niece I see quite often.

8 MR. MILLER: Were you -- at the time you knew James did
9 you consider yourself a friend of his?

10 JUROR MACABOY: Yeah.

11 MR. MILLER: Would you have any problem, if the State
12 didn't prove their case, in rendering a verdict of not guilty?
13 Because you may later, probably after the trial, you may see
14 James. Would that cause you any uneasiness?

15 JUROR MACABOY: Probably.

16 MR. MILLER: Would it cause you to, in deliberating on
17 the case, maybe be less that fair? Just possible?

18 JUROR MACABOY: Probably could.

19 THE COURT: Ms. Macaboy, I'll let you go.

20 (Juror Macaboy is excused.)

21 MR. MILLER: Mr. Justice, do you know the Griffins,
22 also?

23 JUROR JUSTICE: (No audible response.)

24 MR. MILLER: Okay. You know James Griffin?

25 JUROR JUSTICE: James and his brother (indiscernible).

1 **MR. MILLER:** Okay. How do you know them?

2 **JUROR JUSTICE:** We used to run around together some
3 about -- years ago.

4 **MR. MILLER:** Okay. How long ago was that?

5 **JUROR JUSTICE:** About the ten years.

6 **MR. MILLER:** Consider yourself friends of theirs?

7 **JUROR JUSTICE:** Yes.

8 **MR. MILLER:** Still consider yourself a friend, even
9 though you may not see each other as much?

10 **JUROR JUSTICE:** Yeah, we speak whenever we see each
11 other.

12 **MR. MILLER:** Okay. Knowing that you may see James or
13 Bill after the trial, would that cause you to be less that fair,
14 sitting here and deliberating on a case that involved the death
15 of their sister?

16 **JUROR JUSTICE:** I wouldn't really say it'd cause me to
17 be unfair, but I really don't feel like that I could sit here
18 and put somebody -- you know, let somebody off if they killed
19 his sister, or whether they didn't or did not. I just don't
20 want to...

21 **MR. MILLER:** Well, let me ask you this: If you were
22 sitting over here where Mr. Dellinger and Mr. Sutton are and you
23 were charged with the murder of Ms. Branum, and I'm sitting up
24 here talking to the juror and he's saying that he's good friends
25 with these people and may feel somewhat uncomfortable, would you

1 want that person sitting on your jury?

2 JUROR JUSTICE: I just -- not knowing what they could
3 get, I mean,...

4 MR. MILLER: Pardon?

5 JUROR JUSTICE: No, not the way -- knowing what they
6 could get, no, I wouldn't feel comfortable about it.

7 MR. MILLER: You don't feel like you could be fair to
8 both sides in this case, knowing your past relationship with
9 them?

10 JUROR JUSTICE: No, not really.

11 THE COURT: Mr. Justice, we'll let you go.

12 (Juror Justice is excused.)

13 MR. MILLER: Anybody else know the Griffins, Branums,
14 have any relationship with them at all?

15 (No jurors respond audibly.)

16 MR. MILLER: Know Mr. Dellinger and Mr. Sutton or any
17 of their folks? And, again, you'll hear the witness list read
18 here in a moment; please tell us if you know these people, have
19 any relationship with them.

20 How many people do we now have in the box that have sat
21 on a criminal jury before? If you'll raise your hand.

22 (Certain jurors respond.)

23 MR. MILLER: Okay. The other jurors that have not sat
24 on a criminal jury, have you sat on a civil jury sometime in the
25 past?

1 (Certain jurors respond.)

2 MR. MILLER: And you by now have probably learned the
3 difference in the burden of proof, and I won't go into that.
4 But you understand that? You'll hold the State to that?

5 (No jurors respond audibly.)

6 MR. MILLER: Anybody apparently in the box who now --
7 for the time being, the people -- the four who were originally
8 here can just ignore me, and I'll speak to the rest of them on
9 these questions. Do you know anybody or have any association
10 with people involved in law enforcement?

11 (Certain jurors respond.)

12 JUROR UNDERWOOD: Yeah, I've got a bunch of friends that
13 are either police officers, or were police officers or law
14 officers.

15 MR. MILLER: Okay. Here in Sevier County or other
16 places?

17 JUROR UNDERWOOD: Have one -- one here in Sevier County
18 is a friend; one in Anderson; and just different places.

19 MR. MILLER: Who in here in Sevier County?

20 JUROR UNDERWOOD: (Inaudible).

21 MR. MILLER: Who?

22 JUROR UNDERWOOD: (Inaudible).

23 MR. MILLER: Okay. And you heard me ask earlier? The
24 reason I asked that question, that they're just like anybody
25 else, the badge and uniform doesn't change them. You're not

1 going to take their testimony over anybody else's, is that true?

2 JUROR UNDERWOOD: (No audible response.).

3 MR. MILLER: Anybody on the panel now have any
4 association with Mr. Schmutzer of the attorney general's office,
5 campaign for him, or did he prosecute a case for you, anything
6 like that?

7 (No jurors respond audibly.)

8 MR. MILLER: Anybody, other than the original four who
9 I've asked already, been a victim of any type of crime, any type
10 at all?

11 (No jurors respond audibly.)

12 MR. MILLER: Some lucky people here.

13 THE COURT: Yes.

14 MR. MILLER: We usually ask that question and everybody
15 raises their hand.

16 And I'm sure you all have heard me go over the elements
17 of first degree murder, which is the charge here. Four separate
18 elements; the State must prove all of those. Will you require
19 the State to prove all those elements, hold the State to that
20 burden?

21 (No jurors respond audibly.)

22 MR. MILLER: His Honor's already gone over this
23 somewhat, but raise your hands, other than the four who I've
24 asked already, if you have knowledge of this case from any
25 source, be it the TV, newspaper, radio.

1 (Certain jurors respond.)

2 MR. MILLER: Okay. Any of you formed an opinion based
3 on what you've heard or saw in the paper?

4 (No jurors respond audibly.)

5 MR. MILLER: Can you understand where that information's
6 coming from? They're certainly not interviewing the defense
7 attorneys and the defendants and getting their side of the
8 story. A lot of that information is hearsay and theories and
9 so forth. None of it would constitute proof. Can you all set
10 whatever you heard aside and, as I said, live in a vacuum for
11 this week, and base your decision from what you hear from the
12 witness stand?

13 (No jurors respond audibly.)

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

15 JUROR UNDERWOOD: I've got a question for you.

16 MR. MILLER: Yes.

17 JUROR UNDERWOOD: Once sometime earlier you were talking
18 about the elements to be found guilty. One of them was whether
19 they did it or not, I guess, or something like that, and then
20 there was three others that was, like, sub-elements of that, or
21 four others.

22 THE COURT: Okay.

23 JUROR UNDERWOOD: Or may have been one of the sub-
24 elements, then there was three others. Seems like one of them
25 -- that was -- I just wanted it cleared for me. Seemed like

1 that one element was if you found that that -- that that was
2 true, that they did it or whatever, then the other four seemed
3 irrelevant. You see what I'm saying?

4 THE COURT: Okay,...

5 JUROR UNDERWOOD: You know what -- you see what I'm
6 saying?

7 THE COURT: ...the danger that we get into when the
8 lawyers or the judge starts talking about the law in voir dire,
9 sometimes they don't tell you the whole story, accidentally. But
10 -- and they paraphrase. And so I will instruct you on each of
11 the elements of first degree murder or any other crime that I
12 charge at the end of the trial. I will tell you what elements
13 you must find in order to find someone guilty of such and such
14 a crime.

15 Some crimes have options of facts that might make
16 someone guilty of a crime. Other crimes, other statutes say a
17 jury must find each of the following set of circumstances to be
18 applicable in order to find them guilty. So it varies on the
19 statute in question. So at the end of the trial I will charge
20 you on all of the elements of the crime you are to consider, if,
21 in fact, it goes that far, okay?

22 JUROR UNDERWOOD: Okay.

23 THE COURT: Does that answer your question, or does
24 that...?

25 JUROR UNDERWOOD: Well, see, there was one, I can't in

1 fact remember what it was, it was -- what he said. It was
2 something like if it was found that they did it, you know, they
3 have to prove that, then there was like three different things
4 under that, that they'd have to find.

5 THE COURT: Okay.

6 JUROR UNDERWOOD: Seems like if you found they did it,
7 then these other three wouldn't have to be proved at all, you
8 know, because there it is.

9 THE COURT: Well, under the statute for first degree
10 murder---and I will read that statute to you---it says,

11 "First degree murder is an intentional, premeditated, and
12 deliberate killing of another; or a reckless killing of
13 another committed in the perpetration of certain felonies."

14 That's not, I don't think -- well, it might be an element here.
15 But:

16 "A reckless killing of another committed in the
17 perpetration of or attempt to perpetrate any first degree
18 murder, arson, rape, robbery, burglary, theft, kidnapping,
19 or aircraft piracy; a reckless killing of another committed
20 as a result of unlawful throwing, placing, or discharging of
21 a destructive devise or bomb; or a killing of a child under
22 13 under..., "

23 under certain different circumstances. So there are different
24 elements of each crime. It requires a certain act, it requires
25 a certain mental state. I will instruct you on that. So all

1 of the elements have to come together under the statute. Does
2 that make sense to you?

3 JUROR UNDERWOOD: Yeah, it does, but I was just
4 getting...

5 THE COURT: Well,...

6 JUROR UNDERWOOD: You know, you see what I'm saying, it
7 seems like if that is true, this one point, then these other
8 sub-elements wouldn't have any bearing.

9 MR. DANIEL: I think I understand exactly where he's
10 coming from, and I think I said that they must prove that the
11 defendants killed this person, and then I went on to say maybe
12 that they must prove that she was killed. Of course, if they
13 -- that's where he's coming from.

14 JUROR UNDERWOOD: Yeah, that's -- that's it.

15 THE COURT: Okay. Well, all of the elements of a crime:
16 a death, if you will; and -- and you must show it was done by
17 some act of the person accused of it; and that there must be
18 some intent as set out in the statute, either intentionally or
19 premeditatedly or deliberate. Okay? So all of them have to
20 come together. Now -- and, so, it all depends on what you find
21 the facts to be. And just because I might talk to you about
22 first degree murder, about the death penalty, about a lot of
23 options in sentencing should not be taken by you or anyone else
24 to infer anything that the Court thinks might have happened.
25 I must ask you these questions as we qualify you as jurors, but

1 just because I charge you or talk to you about range of
2 penalties or different crimes doesn't mean that I think it's
3 there, okay?

4 Mr. Daniel?

5 MR. DANIEL: Thank you, Your Honor.

6 Mr. Underwood, is that correct? I just wanted -- while
7 you brought that up and while I was thinking about it, want to
8 address something and ask you and the other members of the jury.
9 In light of what you -- question you asked, if the judge should
10 charge you before you can find anybody guilty of anything that
11 the State's got an obligation to prove certain elements, and the
12 point is: If they have to prove these certain elements, if one
13 of the elements they can't prove would you hesitate to vote not
14 guilty? That's the bottom line.

15 JUROR UNDERWOOD: No. That -- but what he brought up,
16 though, was not -- it's like excluding one -- you know, one part
17 excluding the other, you know, that they did it, then all these
18 other things are irrelevant, is what I -- what I was bringing
19 up.

20 MR. DANIEL: Well,...

21 THE COURT: Well, it's not necessarily true, okay?

22 JUROR UNDERWOOD: Yeah, I understand that.

23 THE COURT: You know, if -- there has to be an act.

24 JUROR UNDERWOOD: Yeah.

25 THE COURT: Something done. And there's also a required

1 mental state that has to concur with that. And, so, it must
2 coincide. And the elements have to be there together, okay?

3 JUROR UNDERWOOD: Okay. I just thought I'd ask the
4 question, 'cause I didn't want...

5 THE COURT: Yeah.

6 MR. DANIEL: Mr. Underwood, you have some -- as I -- did
7 I understand you? I was -- I was writing when you spoke. You
8 said you knew somebody in here and Anderson County, and I didn't
9 understand what that was as -- for you talking.

10 THE COURT: He said law enforcement.

11 JUROR UNDERWOOD: Law enforcement people.

12 MR. DANIEL: Beg your pardon?

13 JUROR UNDERWOOD: Law enforcement.

14 MR. DANIEL: Oh, law enforcement. Okay, there -- you
15 have friends here and friends in Anderson County and friends in
16 Knox County that's in law enforcement, right?

17 JUROR UNDERWOOD: Yeah, in Grainger and...

18 MR. DANIEL: Do you feel like you might want to try to
19 help the law enforcement out, since you have friends on it, it's
20 going to be hard for any defendant that's charged with anything
21 to start even with you?

22 JUROR UNDERWOOD: No.

23 MR. DANIEL: If a law enforcement officer got up and
24 swore something, and somebody else swore something else, would
25 you believe the law enforcement officer merely because he's a

1 law enforcement officer?

2 JUROR UNDERWOOD: No.

3 MR. DANIEL: Do you believe a law enforcement officer
4 is capable of just telling a lie like everybody else is, aren't
5 they?

6 JUROR UNDERWOOD: Yeah, I know that.

7 MR. DANIEL: In that regard, I notice one gentleman that
8 was seated back here, if I heard correctly. I didn't quite
9 believe I heard what I -- he said what I heard, but I think he
10 said he couldn't vote for not guilty whether they did it or
11 whether they didn't do it. Is -- did I hear that correctly?
12 Was that...? You don't feel that way, do you, sir?

13 JUROR UNDERWOOD: No, I don't feel like...

14 MR. DANIEL: Any of you other jurors feel that way, that
15 you couldn't vote for not guilty whether they did this or
16 whether they didn't do it? Are we starting out at that kind of
17 a stage in this ballgame? I sure hope not. I hope we're
18 starting out -- I want to start out even. We want to start out
19 fair. And if he -- I think that's what he said. I may be
20 wrong. If I'm wrong, I apologize, but I thought I heard that.
21 And I couldn't hardly believe I heard it. But if any of you
22 feel that way, simply because there has been -- somebody is
23 dead, that these boys are guilty of something, then we might as
24 well just quit right now. But are you going to listen to the
25 proof, are you going to be open-minded? If you were over here

1 charged with this murder, you'd want somebody to listen to your
2 proof, listen to the proof and follow the law, am I correct on
3 that? Can we all agree on that?

4 (No jurors respond audibly.)

5 MR. DANIEL: This case -- as I stated, one of the
6 elements the State has to prove is that she died as a result of
7 some criminal act. The very fact a person is dead doesn't
8 automatically make anybody guilty of a homicide or murder. Do
9 we all agree on that, understand that?

10 (No jurors respond audibly.)

11 MR. DANIEL: And the burden's not on the defendants to
12 prove that she didn't; the burden is on the State at all times
13 ---at all times throughout this trial---to prove beyond any
14 reasonable doubt that she died as a result of this -- some
15 criminal instrumentality. Do you all understand that?

16 (No jurors respond audibly.)

17 MR. DANIEL: And can we start with that? If the State
18 couldn't do that, that would be the end of the trial, do you
19 understand that? But would you follow that law and follow
20 that...? Can we agree on that, if that's the -- that's what the
21 burden of the State is to do, and they couldn't do it, whether
22 you thought somebody was guilty or whether you -- or anything,
23 you still are going to have to follow the law, as His Honor
24 tells you what the law is. 'Cause if we're not going to do
25 that, we might as well go back to communism or wherever, where

1 you don't have any laws and nobody has any rights, and we don't
2 have any rules to follow. Somebody just decides you're going
3 to go to jail, and then you don't have to prove anything.

4 This -- these -- His Honor will read, as Mr. Miller
5 said, a list of these witnesses to you, and I want you to listen
6 to them closely, when he does, and tell us if you know any of
7 them, because it's important that we know that -- because some
8 witness gets on the stand, that you listen to all witnesses, and
9 not just take one witness's statement over that of another.

10 Mr. Burns, I notice His Honor said what -- said you'd
11 been on several juries, is that correct, sir?

12 JUROR BURNS: Not several, just one.

13 MR. DANIEL: Just -- oh, just one?

14 THE COURT: Yeah, he's been on the panel a long...

15 MR. DANIEL: Oh, he said he was an experienced juror.
16 I thought he meant you had been on several juries. I apologize.
17 I took it by that that you had probably sat on several juries.
18 Now, you have tried one jury case, is that correct, sir?

19 JUROR BURNS: Yes, sir.

20 MR. DANIEL: Was that a criminal or a civil?

21 JUROR BURNS: Criminal.

22 MR. DANIEL: Criminal case. So you've heard His Honor
23 talk about the burdens of proof, and what the State has to
24 prove. And do you have any quarrels with them rulings of law?

25 JUROR BURNS: Sir, if I'm under honor or...

1 MR. DANIEL: Oath.

2 JUROR BURNS: ...word of honor, I would have to take the
3 police officer's word more than the citizen's word. It's just
4 the way I feel.

5 MR. DANIEL: Is that right? You mean, if the gentleman
6 sitting next to you would swear something, the police officer
7 would swear, you'd rather believe the police officer than him?

8 JUROR BURNS: I think I would tend to, if I'm going to
9 be honest.

10 MR. DANIEL: I appreciate you being honest, because we
11 want everybody that comes on here to swear to tell the truth,
12 and we feel just because you put a badge -- somebody swears you
13 in and you put a badge on or you wear a uniform shouldn't make
14 your testimony any better than anybody else's. I'd hope if I
15 was on the stand and I swore something, somebody'd believe me
16 the same as they would a police officer, you see what I'm
17 saying?

18 JUROR BURNS: Yes.

19 MR. DANIEL: And would you? Would you feel like if a
20 police officer swore something and you swore different, that
21 they -- that people ought to believe the police officer over
22 you?

23 JUROR BURNS: No.

24 MR. DANIEL: Well, then, we want the same -- we want the
25 same rights to our side that you would...

1 JUROR BURNS: But sir, I'm trying to be honest with you.

2 MR. DANIEL: I understand. I appreciate -- I appreciate
3 it, Mr. Burns. I'm not being funny, but I'm trying to show that
4 we all have inborn feelings and inborn prejudices, and we have
5 to get rid of those if we're going to try a lawsuit and be fair.
6 Would you -- so if an officer came on and said something, and
7 some other witnesses said different, you would pay more
8 attention, of course, to what the police officer said?

9 JUROR BURNS: I would try not to, sir, but I probably
10 would.

11 THE COURT: Well, let me ask you this: Would you look
12 at what the officers says in light of that officer's
13 observations of what that officer was able to observe, any
14 matters about credibility that may be raised with that officer's
15 testimony, and judge it just like you would anyone else's?

16 JUROR BURN: (No audible response.)

17 THE COURT: Okay. Mr. Daniel?

18 MR. DANIEL: Mr. Burns, I'm not trying to be harsh with
19 you, I'm just trying to be very candid, and I'm glad you were
20 candid with us. But you understand here that everybody that
21 gets on the stand is presumed to swear the truth until it can
22 be shown to the contrary? And that if you hear statements or
23 recordings or whatever it might be from each of these
24 defendants, you would -- would you listen to their statements
25 they make, just the same as you would anybody else?

1 JUROR BURNS: Yes, I would.

2 MR. DANIEL: Let me ask you this, since you brought that
3 up. In the process of this case you heard a tape recording and
4 an officer was trying to get a person to confess or say
5 something, and a person totally denied it, continued to deny it,
6 and denies it to this day, would that fact, that he -- maybe the
7 tactics that the police officer used, would you take into
8 consideration the methods of how they attempted to question
9 these two defendants? Would you listen to that? And if you
10 felt the police officer was wrong, would you hesitate to say
11 that police officer was wrong?

12 JUROR BURNS: Yes, sir, I would.

13 MR. DANIEL: You would hate to say that?

14 JUROR BURNS: I would say he was wrong.

15 MR. DANIEL: Okay. If we could prove, and it comes to
16 your -- in the proof that one or more of these police officers
17 has told a falsehood -- well, let's call it a lie. Let's call
18 it like it is, say they lied; they lied to one of these boys to
19 try to get them to confess, they lied to them maybe on more --
20 about more than one thing, would you consider that in listening
21 to this? You don't think -- you think it's all right for a
22 police officer to do -- to use tactics like that?

23 GENERAL SCHMUTZER: I object, Your Honor. I think he's
24 going -- and, again, we're going to start going into proof and
25 evidence and what he thinks about that. And, of course, there's

1 so much involved.

2 THE COURT: I think, gentlemen, if we ask about every
3 witness in this case, that it'll take us six weeks to pick a
4 jury. I -- the test is, Mr. Burns, be it a police officer, be
5 it a lawyer, be it a judge or whoever on the witness stand,
6 would you judge everyone's credibility the same, and base your
7 verdict on what they say and their credibility to you?

8 JUROR BURNS: Your Honor, honestly I think I could be
9 a good juror.

10 THE COURT: Very good.

11 MR. DANIEL: Any more questions?

12 THE COURT: No, that's all.

13 MR. DANIEL: Have any of you had law enforcement
14 background, or any people -- persons of your family are members
15 of law enforcement? I know Mr. Underwood stated he had some
16 friends. You don't have relatives or anything, is that correct?

17 (No jurors respond audibly.)

18 MR. DANIEL: Any of you all have close friends or
19 relatives or anyone that's involved in law enforcement?

20 (Certain jurors respond.)

21 MR. DANIEL: Okay, is it Mr. Jarman? Am I correct on
22 that, sir?

23 JUROR JOHNSON: Johnson.

24 MR. DANIEL: Johnson? Johnson. I'm sorry. I can't
25 read my writing. Who...?

1 JUROR JOHNSON: Walter Gaylon, a state trooper.

2 MR. DANIEL: Is he kin to you?

3 JUROR JOHNSON: No, he's kin to my wife; he's a friend
4 of mine.

5 MR. DANIEL: He works in Knoxville some and... Yeah,
6 okay. That cause you any problems, whatsoever, in this case?

7 JUROR JOHNSON: (No audible response.).

8 MR. DANIEL: Just because he's related by marriage, I
9 presume, to your -- to you, you wouldn't feel like that you
10 would believe a police officer's testimony over that of somebody
11 else merely because they're police officers?

12 JUROR JOHNSON: (No audible response.).

13 MR. DANIEL: He's been with them quite a while.

14 Anyone else?

15 (Certain jurors respond.)

16 MR. DANIEL: Okay, Mr. Turner, am I correct on that,
17 sir?

18 JUROR TURNER: Mark Holt and I are good friends.

19 MR. DANIEL: Okay. Okay. I know Mark, I know who he...
20 May I have just a second, Your Honor please?

21 THE COURT: Sure.

22 (Mr. Daniel confers with other defense counsel.)

23 MR. DANIEL: Let me just ask you one question,
24 Mr. Johnson. Did you say Mark Holt?

25 JUROR TURNER: Mr. Turner.

1 MR. DANIEL: I mean Turner. I'm sorry. Excuse me.

2 JUROR TURNER: Yes.

3 MR. DANIEL: Mark Holt, is he in -- is he a detective
4 or what? There was a Holt boy. I said I know him. I know a
5 Holt that was at Jefferson City, that was a police officer over
6 there. Would that be -- that's not the same one, then? Maybe
7 it's Mike Holt. Maybe I'm wrong on the first name. It's Holt.

8 No further questions, Judge.

9 THE COURT: Call two more, please.

10 (The following jurors were called to fill the jury box:
11 Glen Cole; Robert Hall.)

12 THE COURT: For Mr. Hall and Mr. Cole, have you heard
13 all the questions that have been asked here this morning and
14 this afternoon?

15 (No jurors respond audibly.).

16 THE COURT: In regards to any pretrial publicity, have
17 you, Mr. Hall, read or heard anything about this case before you
18 came here today?

19 JUROR HALL: Yes, I read about it in the papers, and
20 also saw it on television when it happened.

21 THE COURT: Okay. Have you formed an opinion as to the
22 guilt or innocence of anyone based on what you saw or heard?

23 JUROR HALL: Kind of a little bit, yes.

24 THE COURT: Okay. Do you feel like that you would be
25 able to overcome any opinions that you might have had based on

1 the evidence that you hear from the witness stand?

2 JUROR HALL: No, I really don't think so. I don't think
3 I'd be a good juror.

4 THE COURT: We'll let you go, then. Thank you.

5 (Juror Hall is excused.)

6 THE COURT: How about you, Mr. Cole, have you formed an
7 opinion as to the guilt or innocence of anybody based on the...?

8 JUROR COLE: No, sir.

9 THE COURT: Okay. And on the issue of the death
10 penalty, have you heard the questions and the statements that
11 the Court's made about the death penalty earlier today?

12 JUROR COLE: Yes.

13 THE COURT: Do you have any moral or ethical reservation
14 against considering the death penalty as an option in a proper
15 case?

16 JUROR COLE: (No audible response.)

17 THE COURT: Okay. And on the other hand, if and only
18 if a defendant was found guilty of first degree murder, in that
19 event would you automatically sentence someone to death just
20 because they've been convicted of first degree murder, or would
21 you follow the mitigating and aggravating factors the Court
22 charges you?

23 JUROR COLE: (No audible response.)

24 THE COURT: Okay. All right, let's call one more.

25 (The following juror was called to fill the jury box:

1 Suzanne Williams.)

2 THE COURT: You heard all the questions, Ms. Williams?
3 Anything that's been stated that raises a problem for you?

4 JUROR WILLIAMS: (No audible response.)

5 THE COURT: Have you read or heard anything about this
6 case?

7 JUROR WILLIAMS: (No audible response.)

8 THE COURT: Have you formed an opinion based on what
9 you've read or heard?

10 JUROR WILLIAMS: (No audible response.)

11 THE COURT: Likewise about the death penalty: Would you
12 consider the death penalty as an option in a proper case upon
13 conviction of first degree murder?

14 JUROR WILLIAMS: (No audible response.)

15 THE COURT: Would you automatically impose death as a
16 sentence in a first degree murder case?

17 JUROR WILLIAMS: No, sir.

18 THE COURT: All right. General Schmutzer?

19 GENERAL SCHMUTZER: Mr. Cole and Ms. Williams, is that
20 right? Where do you live, Ms. Williams?

21 JUROR WILLIAMS: Gatlinburg.

22 GENERAL SCHMUTZER: Okay. And your occupation?

23 JUROR WILLIAMS: Desk clerk at Ski Mountain Chalets.

24 GENERAL SCHMUTZER: Okay. And how about you, Mr. Cole?

25 JUROR COLE: I live on King Branch Road.

1 **GENERAL SCHMUTZER:** Okay, sir. And your occupation?

2 **JUROR COLE:** Pipe fitter.

3 **GENERAL SCHMUTZER:** Pipe fitter? Thank you, sir.

4 Heard my question with regard to circumstantial
5 evidence. Any difficulty in sitting on a case that involves
6 circumstantial evidence? Any of you think you...? Shouldn't
7 cause you any problems at all? Great.

8 Using your reason and common sense, that's what it's
9 going to come down to. That's what you're going to use like you
10 use every day in getting through life. Any problems with that?
11 In deciding whether there's a doubt, deciding whether or not
12 there's a reasonable hypothesis, you're going to use your reason
13 and common sense and look at the evidence, be guided by the
14 evidence. Neither of you have any problems with that, I take
15 it?

16 (No jurors respond audibly.)

17 **GENERAL SCHMUTZER:** It was mentioned and asked this, not
18 just of you all, but of everyone that's in the panel right now,
19 it was mentioned about expert testimony. There will be expert
20 testimony offered in this case. There will be a charge given
21 to you about expert testimony. Will any of you dismiss out of
22 hand what an expert gets on the witness stand and testifies to?

23 (No jurors respond audibly.)

24 **GENERAL SCHMUTZER:** I take it you wouldn't.

25 Will you listen to what they have to say and look at

1 their qualifications and decide -- along with everything else
2 in deciding whether or not what they say is true? And they
3 mentioned also that experts disagree. If in this case there are
4 experts that take the stand that do disagree, will you look at
5 the relative qualifications of the two experts, and their
6 background, and what they know about this in deciding who is
7 correct and who's not? Would you do that? Just not throw up
8 your hands and say, "Well, there's two disagree, so we can't
9 decide that." You'll go further and decide which one of them
10 is telling the truth, if there is more than one and they
11 disagree?

12 (No jurors respond audibly.)

13 **GENERAL SCHMUTZER:** Okay.

14 The -- I don't know if it's been asked or not, but do
15 all of you all in there, any connection at all that you or any
16 members of your family might have with the defense lawyers?
17 Been asked about the prosecution, but any connections having
18 used them in the past as attorneys or using them now, anybody?

19 (No jurors respond audibly.)

20 **GENERAL SCHMUTZER:** It was gone into again about --
21 mainly for you two that just came in, about the State proving
22 criminal agency, that this woman was killed through a criminal
23 agency. The State expects to prove that, and we'll do that
24 through circumstantial evidence. Do you have any difficulty
25 with that, any problems with that? It's been said once or

1 twice. As I said, the body was burned beyond -- it was
2 virtually cremated. You can't take the body, itself, and tell
3 what it was, but you can by looking at all the other facts and
4 circumstances that were found there at the scene, including the
5 scene, itself, it's location, etcetera. Any problems with that?

6 (No jurors respond audibly.)

7 **GENERAL SCHMUTZER:** I take it you don't.

8 You two in particular that judge came in, anything you
9 can think of that may cause you a problem or difficulty in being
10 a juror in this case? The death penalty or anything else,
11 either one of you?

12 (No jurors respond audibly.)

13 **GENERAL SCHMUTZER:** Okay, thank you. Thank you very
14 much.

15 **MR. MILLER:** Thank you. Mr. Cole, I didn't get your
16 first name.

17 **JUROR COLE:** Glen.

18 **MR. MILLER:** Thank you. Mr. Cole, do you -- I think you
19 said you'd heard something about the case through the media.
20 Did you hear it on TV or newspaper or both?

21 **JUROR COLE:** Newspaper.

22 **MR. MILLER:** Have you heard any talk around town about
23 the case?

24 **JUROR COLE:** Not much. A little at work.

25 **MR. MILLER:** Okay. How about you, Ms. Williams?

1 JUROR WILLIAMS: I heard about it when it first
2 happened, there was a little in the newspaper.

3 MR. MILLER: Okay. Heard any talk around town about it?

4 JUROR WILLIAMS: (No audible response.)

5 MR. MILLER: Have either one of you -- talking about
6 publicity, has anybody on the panel, from what you've heard,
7 have you -- did any of you hear that this woman died as a result
8 of a gunshot wound? Anybody hear that?

9 (No jurors respond audibly.)

10 MR. MILLER: Nobody's formed that opinion? Good.

11 Mr. Cole and Ms. Williams, have you all served on a jury
12 before, any kind?

13 (Certain jurors respond.)

14 MR. MILLER: Civil or criminal, Ms. Williams?

15 JUROR WILLIAMS: Both.

16 MR. MILLER: Both? Mr. Cole?

17 JUROR COLE: (No audible response.)

18 MR. MILLER: On both recently?

19 JUROR COLE: Yes.

20 MR. MILLER: Okay. You all well understand the burden
21 of proof, and the difference in a civil and criminal case, and
22 you'll apply that in this case, I take it?

23 (No jurors respond audibly.)

24 MR. MILLER: Do either one of you have any ties to law
25 enforcement?

1 JUROR WILLIAMS: My father was a police officer.

2 MR. MILLER: He was a police officer for who?

3 JUROR WILLIAMS: (Inaudible).

4 MR. MILLER: Okay. Take it you're like most people,
5 you'd believe your father over anybody, but not just because he
6 was a policeman, I take it. Okay. How about you, Mr. Cole?

7 JUROR COLE: (Inaudible).

8 MR. MILLER: Okay.

9 Have either of you had a case prosecuted by the attorney
10 general's office here in Sevier County or another county? Been
11 the victim of any type of crime at all?

12 (No jurors respond audibly.)

13 MR. MILLER: Have either of you all ever testified in
14 any type of case, be it civil or criminal?

15 JUROR WILLIAMS: Child support.

16 MR. MILLER: Okay.

17 THE COURT: I'm sorry, what was that?

18 JUROR WILLIAMS: Child support.

19 THE COURT: Oh, okay.

20 MR. MILLER: There's been some talk by counsel on both
21 sides defendants may, may not testify, not required to testify.
22 Would you, Mr. Cole, expect them to get up and tell their side
23 of the story before you could find them not guilty? You
24 understand that's a right they have?

25 JUROR COLE: (No audible response.)

1 **MR. MILLER:** How about you, Ms. Williams, would you
2 expect them to get up and tell their side of the story before
3 you could find them not guilty?

4 **JUROR WILLIAMS:** (No audible response.)

5 **MR. MILLER:** There's been some talk about an individual
6 verdict. I think basically what we'd like to have up here is
7 hardheaded men and women that are going to form their opinion
8 based on what they hear. Can everybody say they're pretty much
9 like that, that they're going to... Of course, you discuss the
10 case back there, and Mr. Schmutzer will probably ask you to do
11 that. But you're not going to vote one way or the other just
12 because somebody else feels that way, you're going to vote your
13 conscience. May be 11 in there voting one way, and one the
14 other. Are you still going to vote your conscience, long as it
15 takes, hold out as long as it takes?

16 (No jurors respond audibly.)

17 **MR. MILLER:** That's all, Your Honor.

18 **THE COURT:** Okay.

19 **MR. WEBB:** Your Honor, is it all right for me to address
20 the jury?

21 **THE COURT:** Yeah.

22 **MR. WEBB:** I recognize some of you all.

23 **THE COURT:** Approach the bench just a minute, Mr. Webb,
24 General Schmutzer.

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

1 MR. WEBB: That's why I asked, I didn't know if you
2 wanted me...

3 THE COURT: I will let you ask these two new jurors.
4 I can't let counsel -- counsel go back and forth on the
5 other jurors.

6 MR. WEBB: I didn't want to disrupt everything. That's
7 what we discussed. I didn't know if you wanted us to
8 do that or not. I probably should have approached the
9 bench to ask you.

10 THE COURT: Yeah, 'cause if you -- you know, I can't let
11 every counsel on all sides go back through the jury.

12 MR. WEBB: Let me tell -- I'll tell them... I think
13 when I get through I'll...

14 THE COURT: I'm sorry.

15 GENERAL SCHMUTZER: Wait until we've put in our
16 challenge, and then I think it'd be wide open to do
17 that, don't you?

18 THE COURT: As to...?

19 GENERAL SCHMUTZER: As to him going up and voir diring
20 the jury, once we have exercised our first...

21 THE COURT: Sure, after these first... Right.

22 MR. WEBB: I'll ask these first two just a question or
23 two, and then I'll sit back down, it'll be no big deal.

24 THE COURT: Okay. Okay.

25 (The bench conference having been concluded, the

1 following proceedings were had in open court.)

2 MR. WEBB: I've not had the opportunity to talk to
3 anybody today. And, first of all, the fine attorneys that you
4 have talked to. I recognize some people. I'm not saying that
5 I know them as personal friends, but I have seen you before.
6 I think one question that has not been asked is: Does any of
7 you jurors that are now sitting in the box know any of the other
8 jurors that you're sitting with? Who knows a fellow juror?

9 (Certain jurors respond.)

10 MR. WEBB: Who do you know? Mr. Burns? Mr. who?

11 JUROR UNIDENTIFIED: (Inaudible).

12 MR. WEBB: Mr. Young? Okay. You all sat on a jury
13 before? Okay. Well, you -- was that a criminal jury, ma'am?

14 JUROR UNIDENTIFIED: Both.

15 MR. WEBB: Both? Okay. Well, everybody's told you
16 this, and I think you believe it, and you do believe that it's
17 your individual verdict. And, of course, Mr. Burns and
18 Mr. Young, they may gang up on you, but you're not going to let
19 them -- let them change your mind if you're convinced beyond a
20 reasonable doubt that someone's not guilty?

21 JUROR UNIDENTIFIED: (No audible response.)

22 MR. WEBB: Okay. This is a circumstantial evidence
23 case. Does everybody have a good -- I'll talk to Ms. Williams
24 and -- who was the other one? Mr. Cole? Were you all able to
25 hear the other attorneys while they were talking about

1 circumstantial evidence, and is it -- do each of you feel
2 comfortable with that concept, and making the state of Tennessee
3 prove, with this circumstantial evidence, beyond a reasonable
4 doubt? What that means is, their circumstances must unerringly
5 -- the finger of guilt must unerringly point to one or both of
6 these defendants. If there's any other reasonable hypothesis
7 or situation, then could each of you feel comfortable finding
8 these defendants not guilty? Any problem with that, Mr. Cole?

9 JUROR COLE: (No audible response.)

10 MR. WEBB: Okay. Okay, thank you all.

11 THE COURT: Submit your challenges, Counsel.

12 (Peremptory Challenge Slip #1 was submitted, and the
13 following jurors were excused: Juror Young, Juror
14 Underwood, and Juror Williams.)

15 (The court is recessed.)

16 (The prospective jury panel returns to the courtroom.
17 The following jurors were called to fill the jury box:
18 Brenda Carr; Pam McClelland; and Jack Huffaker.)

19 THE COURT: For the three new jurors, have you heard all
20 the questions and statements that have been made today? In
21 regards to the pretrial publicity, first on Ms. Carr, have you
22 read or heard anything about this case before you came here
23 today?

24 JUROR CARR: Quite a bit.

25 THE COURT: Okay. Based on what you've seen or heard,

1 have you formed an opinion as to the guilt or innocence of any
2 party in this case?

3 JUROR CARR: No.

4 THE COURT: Okay. Ms. McClelland, have you formed any
5 opinion about the guilt or innocence of any party based on
6 anything you've seen or heard?

7 JUROR McCLELLAND: No, I haven't read that much about
8 it.

9 THE COURT: Okay, very good. And Mr. Huffaker, same
10 question?

11 JUROR HUFFAKER: Same answer.

12 THE COURT: Same answer. Okay.

13 Now, in regards to the death penalty, I have told you
14 that only if someone should be found guilty of first degree
15 murder that the death penalty is a sentencing option for the
16 jury to pass upon at a later hearing. Do you either of you have
17 any moral reservation against considering the death penalty in
18 a proper case? Ms. Carr?

19 JUROR CARR: I don't think I could do it.

20 THE COURT: Okay. Would you consider the enhancing and
21 the mitigating factors that the Court would instruct you on if
22 someone were found guilty of first degree murder?

23 JUROR CARR: (No audible response.)

24 THE COURT: In a proper case, could you vote to impose
25 the death penalty?

1 JUROR CARR: I don't know.

2 THE COURT: Okay.

3 JUROR CARR: I don't know.

4 THE COURT: I understand. I understand, and I
5 appreciate that. As I said earlier, that is an issue of moral
6 conviction for people, and it's a whole lot easier to have an
7 opinion outside the courtroom if you're reading the newspaper
8 than it is if you're sitting in the courtroom making the
9 decision. And if you tell the Court that you do not know, in
10 good faith, whether or not you could consider it or do it, I
11 will excuse you.

12 JUROR CARR: I don't know.

13 THE COURT: All right, ma'am. Thank you very much.

14 (Juror Carr is excused.)

15 THE COURT: Thank you for your honesty, Ms. Carr.

16 Yes, sir, Mr. ...?

17 JUROR HUFFAKER: Are you going to ask us if we...?

18 THE COURT: Yes. Yes, I was just coming to you. Yes,
19 sir?

20 JUROR HUFFAKER: I couldn't do it.

21 THE COURT: You just couldn't do it? All right, sir,
22 we'll let you go.

23 (Juror Huffaker is excused.)

24 THE COURT: Ms. McClelland, same question.

25 JUROR McCLELLAND: I could. I could.

1 THE COURT: Okay. You could consider it as an option?

2 JUROR McCLELLAND: Yes.

3 THE COURT: Would you automatically impose the death
4 sentence in every first degree murder case, or is it something
5 that you would consider looking at the enhancing and mitigating
6 factors?

7 JUROR McCLELLAND: I would consider it looking at the
8 factors.

9 THE COURT: Okay. It's not mandated; it's never
10 required a jury impose a death sentence. It shouldn't be
11 imposed in every case; that's why the law gives us some leeway
12 there. But, under what the Court's told you, it would be a
13 sentencing alternative for you, is that correct?

14 JUROR McCLELLAND: Yes.

15 THE COURT: Okay. Let's call two more.

16 (The following jurors were called to fill the jury box:
17 Jama W. Smith; and Evelyn W. Griffin.)

18 THE COURT: For Ms. Smith and Ms. Griffin, have you
19 heard the questions all day?

20 (Certain jurors respond.)

21 THE COURT: In regard to the pretrial publicity,
22 Ms. Smith, have you read or heard anything about this case
23 before you came here today?

24 JUROR SMITH: Yes, sir.

25 THE COURT: Based on what you've seen or heard, have you