

VI No. 40
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 4 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

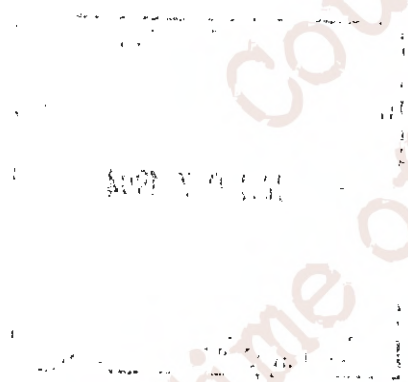
MR. DAVID W. WEBB
Attorney at Law
140-A Court Avenue
Sevierville, Tennessee

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.
DATED JAN 07 1994
Alfred C. Schmutzer, Jr.
CIRCUIT COURT CLERK
SEVIER COUNTY, TENN.

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



Courtesy of
Time of Death Podcast
by Beth Braden

1 **MR. MILLER:** You're not associated with anybody on
2 either side, that you know of?

3 **JUROR RANEY:** No.

4 **MR. MILLER:** Any of the new jurors have any relationship
5 with anybody involved in law enforcement? Ms. Huskey, who is
6 that?

7 **JUROR HUSKEY:** I have relatives with the sheriff's
8 department.

9 **MR. MILLER:** Here in Sevier County? And who are they?

10 **JUROR HUSKEY:** I have an uncle, Donnie Huskey, and
11 Michael Huskey.

12 **MR. MILLER:** Okay.

13 **JUROR HUSKEY:** And I've worked with the city for several
14 years and I know several city police officers.

15 **MR. MILLER:** Okay. Is that going to cause you any
16 problem? Can you weigh their testimony just -- officers'
17 testimony just like you would any other officer (sic)? Or would
18 you tend to lean more towards an officer's testimony?

19 **JUROR HUSKEY:** I think I would tend to believe my family
20 over a stranger.

21 **MR. MILLER:** Are you they going to be called to testify,
22 that you know of or...?

23 **JUROR HUSKEY:** I don't know.

24 **MR. MILLER:** Have you talked to them about the case?

25 **JUROR HUSKEY:** No, I haven't.

1 **MR. MILLER:** Anybody else have associations with anybody
2 in law enforcement?

3 (No jurors respond audibly.)

4 **MR. MILLER:** We've gone over and over the burdens of
5 proof and circumstantial evidence. Can each of you give me your
6 word that you will follow those rules that the Court -- and
7 instructions that the Court will give you, and hold the State
8 to that burden of proof?

9 (No jurors respond audibly.)

10 **MR. MILLER:** Thank you.

11 **MR. DANIEL:** Ms. Huskey, I understand you to say Donnie
12 Huskey is your cousin?

13 **JUROR HUSKEY:** He's my brother-in-law. I think I said
14 uncle, but he's my brother-in-law.

15 **MR. DANIEL:** He's your brother-in-law. Okay. And you
16 say you would tend to believe, of course, family, people you'd
17 know, rather than somebody that you didn't know, is that
18 correct?

19 **JUROR HUSKEY:** Probably, unless there was greater
20 evidence the other way.

21 **MR. DANIEL:** We understand that he may be on this list
22 of some 90-something witnesses or something that's listed. Do
23 you think if he was called to testify it would create a problem
24 with you, if you -- in reviewing his testimony compared to other
25 persons? I don't know if he will be, I'm just asking you if he

1 would be.

2 JUROR HUSKEY: If it was his word against someone
3 else's, I'd probably believe him.

4 THE COURT: Excuse me just a moment. Ma'am, the child's
5 going to have to be taken out of the courtroom.

6 MR. DANIEL: Your Honor, we would just ask to challenge
7 her for cause, because she said she'd believe...

8 THE COURT: I'll have to let you go, Ms. Huskey. Thank
9 you for your honesty.

10 (Juror Huskey is excused.)

11 THE COURT: If you want to go ahead and finish your...
12 Sure.

13 MR. DANIEL: Mr. Raney, I'm -- I'm going to start with
14 you, if I can, just ask you a question. I couldn't hear real
15 well over there, and I apologize. My hearing's not as good as
16 it used to be. But I -- where do you work, sir?

17 JUROR RANEY: (Inaudible).

18 MR. DANIEL: And is that here in Sevier County?

19 JUROR RANEY: (No audible response.)

20 MR. DANIEL: How many years have you been there?

21 JUROR RANEY: I've been there about a year and a half.

22 MR. DANIEL: You've heard these questions. We're trying
23 to hopefully not go over everything again, but we're afraid --
24 don't want to miss something. Do you have any folks that's in
25 law enforcement here, related to anybody at all?

1 JUROR RANEY: (No audible response.)

2 MR. DANIEL: Have you sat on a jury before, or were you
3 just called in especially for this case?

4 JUROR RANEY: Yes, I have.

5 MR. DANIEL: In times past, or just this term of court?

6 JUROR RANEY: No, this term of court.

7 MR. DANIEL: Have you ever sat back in the past on a
8 case?

9 JUROR RANEY: No.

10 MR. DANIEL: You know -- you don't know any of the
11 parties involved?

12 JUROR RANEY: No, I don't.

13 MR. DANIEL: Said you'd heard some -- I'm sure
14 everybody's probably heard some, if you listen to the radio or
15 pick up a newspaper or something, you've heard something.

16 JUROR RANEY: What I've read in the paper.

17 MR. DANIEL: Do you feel like that, based on what you've
18 heard, whether it be for the defendants or whether it be for the
19 prosecution, that would cause you any problems one way or the
20 other as trying to make a decision?

21 JUROR RANEY: No.

22 MR. DANIEL: Do you understand that you don't try cases
23 in the newspapers and -- and you understand newspapers can be
24 inaccurate at times, is that correct?

25 JUROR RANEY: (No audible response.)

1 MR. DANIEL: If the -- General Schmutzer asked the
2 question---I'll ask this of the other jurors, too, that's --
3 Mr. Ellis and the rest of -- and the other jurors that sat down
4 here. He said that if all the pieces in the mosaic fit, if
5 there's one missing -- my question is, if he tries to put this
6 thing together like he says, with circumstantial evidence, which
7 means there's no direct proof of these boys' guilt, and there's
8 a piece missing, and that piece causes you a reasonable doubt,
9 would you have any hesitancy, whatsoever, to vote for not
10 guilty? Do you understand that?

11 (No jurors respond audibly.)

12 MR. DANIEL: Ms. Shoemaker, let me ask you something.
13 I'm -- did I hear you've lived here a year and a half?

14 JUROR SHOEMAKER: Uh-huh (affirmative).

15 MR. DANIEL: Where are you from originally?

16 JUROR SHOEMAKER: Well, I lived here, but I lived in
17 Georgia for...

18 MR. DANIEL: Moved down there and then came back?

19 THE COURT: Couldn't stay away from us.

20 MR. DANIEL: And may I ask you, are you married, ma'am?

21 JUROR SHOEMAKER: Yes.

22 MR. DANIEL: What type of work does your husband follow?

23 JUROR SHOEMAKER: He's retired army.

24 MR. DANIEL: What -- any special branch of the army?
25 Was he an expert or considered specialized in any field or

1 anything?

2 JUROR SHOEMAKER: (No audible response.)

3 MR. DANIEL: In this case---and you've already seen it
4 some---there's -- we told the other jurors, and I don't know if
5 you heard it, but it's necessary for an attorney who's defending
6 a person to make an objection at times. And if you don't
7 object, you automatically let that evidence in, and the torts
8 say that even if it's improper and it shouldn't have been
9 considered, under certain circumstances you can go ahead and
10 consider it just because the lawyer didn't object. So my
11 question is: If there's objections, if we make objections or
12 if you have to leave the room for the judge to decide on some
13 evidence as to whether it should be considered or not, will you
14 hold that against my client, Mr. Sutton, in any way?

15 (No jurors respond audibly.)

16 MR. DANIEL: You all understand that's -- we have to try
17 the case on facts, not newspapers, not opinions, not hearsays
18 and conclusions and things like that. We have to try it on
19 facts. And will you understand, if that develops, it's not
20 somebody's trying to hide anything from you, it's just the fact
21 that there has to be certain things ruled on before it's decided
22 should it be considered. Legally, should you consider it. Do
23 you all understand that? Will that cause you any problems if
24 it develops?

25 (No jurors respond audibly.)

1 **MR. DANIEL:** And if we were -- if you was on the -- over
2 here at defense table, you'd want that same -- somebody to try
3 you on competent proof, not on just what somebody thought or
4 somebody's opinion or hearsays error.

5 **GENERAL SCHMUTZER:** Object, Your Honor. He's asking for
6 sympathy. That's just the objection he made to me.

7 **THE COURT:** The law is, of course, each side makes
8 objection. They've already made several that you saw me rule
9 on. You know, obviously the lawyers have to do their job. It
10 takes time. Don't hold it against either side for making
11 objections. Just because one side objects doesn't mean they're
12 right. And just because the Court might rule against a
13 particular side on an objection should not be taken by you as
14 any indication as to how the Court feels about the merits of
15 this case. I have to make rulings, and some of them I like,
16 some of them I don't like, but I have to make them. So don't
17 hold that against either side.

18 **MR. DANIEL:** I noticed when we were here yesterday
19 picking the jury, some of you other jurors were here seated
20 already, and I'm sure you other jurors were here in the
21 courtroom. Mr. Mike Flynn, who is the prosecutor for Blount
22 County, the district attorney, was seated over here about all
23 day yesterday. Are any of you familiar -- do you know
24 Mr. Flynn, the prosecutor or the District Attorney for Blount
25 County?

1 JUROR UNIDENTIFIED: I don't know him personally, but
2 (inaudible).

3 MR. DANIEL: Is that right? You think you might be some
4 kin to him, Ms. ...?

5 JUROR UNIDENTIFIED: I don't (inaudible).

6 MR. DANIEL: Is that through your marriage or through
7 your husband, or through your family?

8 JUROR UNIDENTIFIED: Through my real mother. She passed
9 away when I was born, and she was a Flynn first.

10 MR. DANIEL: I see. The reason I want to ask this,
11 there's some proof will come in and you'll probably hear some
12 statements about the fact that these two defendants are charged
13 on a case over in Blount County. Actually, just tell you
14 straight out, they're charged with the murder of Tommy Griffin.
15 That case has to be tried and heard over there in front of a
16 jury of people in Blount County.

17 The reason you may hear some proof on it is today -- or
18 when you get seated as a juror, is because it's part of the
19 State's theory that they're going to attempt to develop
20 regarding why they say this incident happened. Now, my question
21 is this: Should His Honor charge you that you're not to
22 consider that as to any evidence of their guilt in this case,
23 because they're supposed to be tried over there or got a case
24 pending, will you listen to that?

25 (No jurors respond audibly.)

1 **MR. DANIEL:** Like I said, there's going to be a lot of
2 things come in in this case; you're going to have to listen to
3 His Honor and try to keep your minds clear and try your -- this
4 case. And the only issue to be tried in this case: Has the
5 State proved beyond a reasonable doubt through this
6 circumstantial evidence that these two defendants are guilty of
7 the death of Connie Branum? Now, that's the whole issue. You
8 can talk a week, and you come back to that one issue. So my
9 question is: That's the issue you're to decide.

10 If you hear some proof or some testimony or something
11 is said regarding something -- another charge or another crime
12 or something like this, will you understand that that is not to
13 be taken as to the guilt in this case, because the guilt in this
14 case goes to the facts surrounding this charge? That's
15 something they'll have to try and face over in Blount County.
16 And I saw Mr. Flynn here, and I thought I'd better ask that
17 question and see if any of you knew him. Do you all understand
18 that that's the -- it's kind of unusual, but you're going to be
19 hearing evidence -- possibly evidence of something that occurred
20 somewhere else that -- that actually they're not on trial for.
21 And can you try this case? It's going to be hard for you to,
22 but can you try this case on the issues that's presented to you
23 here?

24 (No jurors respond audibly.)

25 **MR. DANIEL:** If you heard some proof regarding a --

1 matters that's happened in another county or something else that
2 you felt that -- drinking and fighting and just different
3 things, or things like this, but you felt that it -- that the
4 State still has not proved to your satisfaction, beyond all
5 reasonable doubt, that these boys killed this girl, would you
6 hesitate to find them not guilty? Can you understand that these
7 are things they'll have to face at another time, and that
8 decision will be made by someone else other than you? Can we
9 understand that? I want to get that out right now, because...

10 THE COURT: Wait, gentlemen. It might be time for the
11 Court, based on those statements, to read to you the charge and
12 the law on other crimes evidence.

13 "If, from the proof, you find the defendant has
14 committed a crime other than that for which he is on trial, you
15 may not and shall not consider such evidence to prove his
16 disposition to commit time crime for which he is on trial. The
17 evidence may only be considered by you for the limited purpose
18 of determining whether or not it proves:

19 "Motive; that is, such evidence may be considered by you
20 if it tends to show a motive of the defendant for the
21 commission of the offense presently charged, or;

22 2) the defendant's intent; that is, such evidence may
23 be considered by you if it tends to establish that the
24 defendant actually intended to commit the crime with
25 which he is presently charged.

1 "The evidence may be considered for this purpose only.
2 That evidence must be clear and convincing before you may
3 consider it even for this limited purpose. It may not be
4 considered to reflect on the character of the defendant. If it
5 has any value, which you alone must determine, it may only be
6 considered for the limited purpose of determining intent. You
7 may not presume or infer that the defendant is probably guilty
8 of this offense merely because there is present, clear, and
9 convincing evidence---if you should find that there is---that
10 another offense of a similar nature was committed about the same
11 time.

12 "You are reminded again that the defendant is presumed
13 innocent, and the burden of proof is on the State to prove every
14 element of the offense, including the specific intent already
15 defined." Mr. Daniel, you may proceed.

16 MR. DANIEL: Your Honor, at this time if you want to
17 read those names,...

18 THE COURT: I can do that.

19 GENERAL SCHMUTZER: Can we approach the bench, Your
20 Honor?

21 THE COURT: Yes.

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

23 GENERAL SCHMUTZER: I don't have your list of names.

24 MR. DANIEL: She's told me that was combined with this
25 one. This one's on...

1 **GENERAL SCHMUTZER:** I couldn't -- Green was looking, and
2 he couldn't find any. You had a second list up here,
3 and I think that's what that...

4 **MR. DANIEL:** She had something I thought was just for
5 our notebook, but I thought that was ours. I thought
6 she said this was...

7 **GENERAL SCHMUTZER:** Where is the list of ours?

8 **MR. WEBB:** Well, there's some here -- I notice there's
9 some that we're going to...

10 **THE COURT:** Why don't we take a break and let you all
11 look...

12 **GENERAL SCHMUTZER:** That might be -- that might be
13 easier.

14 **THE COURT:** If you're finished asking questions.

15 **MR. DANIEL:** There's some of them duplicated.

16 **THE COURT:** I know.

17 **MR. DANIEL:** But the other defendant, co-defendant has
18 -- I haven't had a chance to just get a complete list.

19 **THE COURT:** Okay.

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

22 **THE COURT:** The Court is going to take a short recess
23 to allow counsel to combine and consolidate the witness list,
24 so I may read it one time, and one time, only. Do not discuss
25 the case, and do not let anyone talk to you about it. All

1 right.

2 (The court is recessed.)

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

5 **THE COURT:** At this time the Court is going to take, I
6 suggest, a considerable length of time to read over all of the
7 prospective witnesses in this case, and I reiterate they are
8 prospective only. They may or may not be called by either or
9 both sides in this case. If for some reason they are not called
10 unless I otherwise instruct you, do not even consider that fact.

11 And, as I told you earlier, simply because you know a
12 witness does not mean you would automatically be excluded as a
13 juror in this or any other case. Only should your knowledge
14 about that witness, or association with that witness unfairly
15 affect how you would decide the issues in this case would it be
16 necessary to exclude you. What's Dr. Bass' first name? William
17 Bass?

18 Dr. William Bass of the University of Tennessee; Fire
19 Marshall Gary Clabo; David Davenport; Kent Hatcher; Sheriff Don
20 Ogle; Mike Von Cannon; Elaine Mayes; Alvin Henry; Matthew Mayes;
21 Danny Sutton; Larry McMann; Donnie Huskey; Arthur Harmon; Viola
22 Griffin; Tammy Griffin; Billy Griffin; James Griffin; Alvin Lee
23 Henry; Judy Griffin; Carolyn Weaver; Linda Dellinger; Barbara
24 Gordon; Judy Paine; David Paine; Larry Munsey; Eddie Buchanan;
25 Ronald Suttles; Kenneth Bryant; Jamie Marie Forsythe; Nancy

1 Bryant; Fred Atchley; David Claxton; Bill Body; Gary Hamilton;
2 Tom DeFoe; Ray Herrin; Drew Roberts; Steven Brocks.

3 Is it Brocks or Brooks?

4 **GENERAL GREEN:** I believe that name is supposed to be
5 Brooks, Your Honor.

6 **THE COURT:** Brooks. Okay.

7 Stephen Brooks; Ken Beeler; Thomas Carter, Jr.; James
8 McDonald; Jason McDonald; Sharon Davis; Pat Crawford; Sherry
9 Russell; Cindy Walker; Dr. Ellington. And what is
10 Dr. Ellington's first name?

11 **GENERAL GREEN:** Eric Ellington.

12 **THE COURT:** Eric Ellington. Dr. Eric Ellington; Dana
13 Carter; Danny Westering; Phil Smith; Linda Henry; John Brown;
14 James R. Gordon; Johnny Wade McCarter; Boyd Ray Branum; Mark
15 Holt; Mark Turner; Jeff McCarter; Devon Mayes; Robin Branum;
16 Herman Lewis; Arthur Bohannon; Dr. Steve Madison; Jack Sutton;
17 Joyce Tipton; Eddie Blair; Donald I. Carmon; Dale Gurley; Jim
18 Widener; David Griswald; Murray Marks; Chester Owenby; David
19 Hutcheson.

20 Terry Lynn Lilly; David -- I'm sorry, Debbie Campbell;
21 Jerry Sullivan; Jeff Hufstetler; Sandra Hicks; Kenneth Rocky
22 Walker; Jeanie Branum; Mrs. Herman Lewis; Stella Griffin
23 Whitted; Jennifer Branum; Sandra Viola Branum; Arnold Lewis;
24 James Willie Henry; Dr. Shaw. First name?

25 **UNIDENTIFIED:** I believe it's Charles.

1 **THE COURT:** Charles Shaw; Dr. Charles Sheehan; Dr. Ti
2 Van Incoyen, is that correct?

3 **MR. DANIEL:** It's hard to pronounce. It's Incoyen or
4 something. He works over at the Lakeshore Mental Hospital.

5 **THE COURT:** Okay. Anyone associated with Lakeshore
6 Mental Health.

7 Brenda M. Keehan; Shelly Betts; Matthew Coberly; Tim
8 Nichols; Cindy Leatherwood; Dave Dougan; Tony Proffitt; Tony --
9 is it Heflin or Hefler?

10 **UNIDENTIFIED:** It's Tommy Heflin, Your Honor.

11 **THE COURT:** Tommy Heflin? Okay.

12 Lt. Tom Defoe; Dennis Huddleston; Ricky Hurst; Gary
13 Litton; Shelly Longmire; Jerry Renning; Dr. M. F. Smith; Justin
14 Sutton; Jimmy and Diane Sutton; Lisa Wells; Jama Williams;
15 Dr. Charles L. Roach; Claude Sutton; Teresa Sutton; Carolyn
16 Weaver; Dennis Shuler; Bobby Floyd; Rose Parton; Hazel Sutton;
17 Jack Romines; Pauline Romines; Reece Sutton; Nell Sutton; Casey
18 Thomas; Lucille Thomas; James Sutton; Shirley Sutton; Clay
19 Sutton; Pat Sutton; Leroy Sutton; Carol Jean Sutton; Creed
20 Stella Sutton; Conway Parton; Debbie A. Campbell Hunt; Robert
21 Webb; Freddie Ledbetter; Ron Whitley; anyone associated with
22 Overlook Mental Health Center.

23 Jack Sutton; Joyce Tipton; Danny Westerly; Devon Mayes;
24 Dr. -- is it Kenneth Shaw?

25 **UNIDENTIFIED:** Your Honor, I believe that's the Shaw we

1 were referring to earlier.

2 THE COURT: Okay. Okay. Okay.

3 Dr. Charles Shin; Dr. I. T., and then the last name is
4 spelled M-a-l-r-y-e-k-k-e-l. Malryekkel, I suppose. I guess.

5 Dr. Wayne Stewart; Junior Parton; Linda Dellinger; Clyde
6 Dellinger; John Dellinger; Ralph Dellinger; George Dellinger;
7 Ann Morris; Omira Lee Ramsey; Mary Ramsey; Bill Cogdill; Bruce
8 McCoy; and Dr. Allen White.

9 Those are the list of witnesses. For those of you in
10 the box, do you know personally any of these witnesses who I
11 have read to you?

12 (Certain jurors respond.)

13 THE COURT: Okay, Mr. Young?

14 JUROR YOUNG: Ann Morris and Clay Sutton.

15 THE COURT: Okay. Is that based on the association that
16 you already told us about earlier?

17 JUROR YOUNG: Well, Clay Sutton used to be the pastor
18 where my mother and sister go to church.

19 THE COURT: Okay. And based on what you said earlier,
20 sir, would that have any effect upon how you would decide the
21 issues in this case?

22 JUROR YOUNG: No.

23 THE COURT: All right. Anyone else? Yes, Mr. Ellis?

24 JUROR ELLIS: Sandy Branum.

25 THE COURT: Yes.

1 JUROR ELLIS: She stays some with my sister (inaudible).
2 That doesn't have anything to do with my sitting. I don't know
3 if she has (inaudible).

4 THE COURT: Do you have any dealings with her, other
5 than that? I mean, are you friends with her or...?

6 JUROR ELLIS: I just -- no.

7 THE COURT: Casual acquaintance?

8 JUROR ELLIS: Right.

9 THE COURT: You say that wouldn't have any effect upon
10 how you decide this case?

11 JUROR ELLIS: No.

12 THE COURT: All right. Anyone else?
13 (Certain jurors respond.)

14 THE COURT: Yes.

15 JUROR MAPLES: Dr. Stephen (inaudible).

16 THE COURT: Okay.

17 JUROR MAPLES: I go to church with him, and he's kin to
18 my husband.

19 THE COURT: Okay. Would you automatically believe or
20 disbelieve his testimony just because he testified? Would you
21 look at his testimony just like you would anyone else's?

22 JUROR MAPLES: (No audible response.)

23 THE COURT: Okay. Yes, ma'am? Mr. Cole, would you
24 have...?

25 JUROR COLE: I knew several of the names on there, but

1 I have no relationships with them.

2 THE COURT: Okay. Okay. Thank you.

3 JUROR SHOEMAKER: Tony Proffit, I go to church with him.

4 THE COURT: Okay.

5 JUROR SHOEMAKER: And then Ann Morris, I used to work
6 with her.

7 THE COURT: Okay. Because of that association or
8 knowledge, would that have any effect on how you would view the
9 evidence in this case or make your decision?

10 JUROR SHOEMAKER: No.

11 THE COURT: Would you automatically believe or
12 disbelieve them just because they testified?

13 JUROR SHOEMAKER: No.

14 THE COURT: Okay, thank you.

15 All right, let's call one other juror, please.

16 (The following juror was called to fill the jury box:
17 Barbara Gibson.)

18 THE COURT: I know you're tickled we got to you,
19 Ms. Gibson.

20 JUROR GIBSON: I'm not staying.

21 THE COURT: Oh, you're not staying? You're not going
22 to stay with us? Well, if you're sure of that, just sit down
23 right there.

24 I take it you've heard all the questions?

25 JUROR GIBSON: (No audible response.)

1 **THE COURT:** Have you formed an opinion, based on
2 anything you've seen or heard, about the guilt or innocence of
3 either of these defendants. Don't tell me what that opinion...

4 **JUROR GIBSON:** No.

5 **THE COURT:** Okay, you've not formed an opinion?

6 **JUROR GIBSON:** No.

7 **THE COURT:** Okay. Do you know any of the witnesses that
8 the Court...?

9 **JUROR GIBSON:** Yes.

10 **THE COURT:** Okay. What about that poses a problem for
11 you?

12 **JUROR GIBSON:** Well, Bill Cogdill I know real well.

13 **THE COURT:** Okay.

14 **JUROR GIBSON:** I used to rent to Shelly Longmire. And
15 I had some ill feelings toward Ralph Dellinger.

16 **THE COURT:** Okay. And you think that would have a
17 bearing on how you would view the evidence in this case?

18 **JUROR GIBSON:** Yes, sir.

19 **THE COURT:** You may be excused. Thank you.

20 (Juror Gibson is excused.)

21 (The following juror was called to fill the jury box:
22 Marilyn Teaster.)

23 **THE COURT:** Good morning, Ms. Teaster. Have you heard
24 all the questions, Ms. Teaster, that has been asked over the
25 past two days?

1 JUROR TEASTER: Yes, sir.

2 THE COURT: In regards to the pretrial publicity, have
3 you formed an opinion about the guilt or innocence of anyone
4 based on what you've seen or heard?

5 JUROR TEASTER: (No audible response.)

6 THE COURT: Okay. In regards to the death penalty, have
7 you heard the explanation of the Court about the law concerning
8 the death penalty?

9 JUROR TEASTER: (No audible response.)

10 THE COURT: Do you have any moral or ethical
11 reservations about imposing the death penalty in a proper case?

12 JUROR TEASTER: (No audible response.)

13 THE COURT: On the other hand, would you automatically
14 impose the death penalty just because someone might be convicted
15 of first degree murder?

16 JUROR TEASTER: (No audible response.)

17 THE COURT: Okay. And would you be able to consider the
18 aggravating and mitigating factors that the Court might instruct
19 you on?

20 JUROR TEASTER: (No audible response.)

21 THE COURT: Okay. Did you hear the list of witnesses
22 that the Court read?

23 JUROR TEASTER: (No audible response.)

24 THE COURT: Did you know any of those witnesses?

25 JUROR TEASTER: Dr. Wayne Stewart is my family doctor.

1 THE COURT: I'm sorry?

2 JUROR TEASTER: Dr. Stewart is my doctor.

3 THE COURT: Okay. I don't know if Dr. Stewart is going
4 to be called as a witness; I don't know what Dr. Stewart would
5 be testifying to. But just because Dr. Stewart testified and
6 is your doctor, would you automatically believe or disbelieve
7 that testimony just because of your professional relationship?

8 JUROR TEASTER: No.

9 THE COURT: Okay. Would you give -- judge that
10 testimony just like you would anyone else's, under the
11 guidelines the Court told you about on expert witnesses?

12 JUROR TEASTER: (No audible response.)

13 THE COURT: Okay. General Schmutzer?

14 GENERAL SCHMUTZER: Ms. Teaster, where do you live,
15 please, ma'am?

16 JUROR TEASTER: Seymour.

17 GENERAL SCHMUTZER: And your occupation?

18 JUROR TEASTER: I'm a Customer Service Director at
19 (inaudible) in Knoxville.

20 GENERAL SCHMUTZER: Okay, thank you.

21 You've heard all the questions I've asked with regard
22 to circumstantial evidence. Any problems with following the law
23 on that regard?

24 JUROR TEASTER: (No audible response.)

25 GENERAL SCHMUTZER: You've heard the questions with

1 regard to expert witnesses. Is there any -- would you exclude
2 an expert witness on the front end, or would you listen to what
3 he or she would have to say, and look at their background and
4 training and what they have to say, and the reasonableness of
5 it, and judge it based on the law the Court gives you? Would
6 you do that? Wouldn't dismiss it out of hand, I take it?

7 **JUROR TEASTER:** (No audible response.)

8 **GENERAL SCHMUTZER:** The -- there was also mentioned
9 ---and I ask this not just of you, Ms. Teaster, but to everyone
10 ---that in listening to the statements of these defendants, I
11 ask you will you listen carefully not only to the statements,
12 but will you take those statements and hold them up to
13 uncontroverted facts, other facts, and determine whether or not
14 they're telling the truth? Will you do that?

15 (No jurors respond audibly.)

16 **GENERAL SCHMUTZER:** The -- Ms. Teaster, can you think
17 of anything at all that I have asked in the past, or anyone else
18 has asked, that may cause you some difficulty in being a juror
19 in this particular case? Anything you can think of?

20 **JUROR TEASTER:** (No audible response.)

21 **GENERAL SCHMUTZER:** The -- if you're selected, just use
22 your reason and common sense in deciding this case. You'll not
23 require the State to prove it to an absolute certainty, but
24 would require beyond a, quote, "reasonable doubt"?

25 **JUROR TEASTER:** (No audible response.)

1 GENERAL SCHMUTZER: Thank you.

2 MR. MILLER: Ms. Teaster, are you married?

3 JUROR TEASTER: Yes.

4 MR. MILLER: Where does your husband work?

5 JUROR TEASTER: He's employed at Alcoa, but he's laid
6 off right now.

7 MR. MILLER: You're not associated with anybody on
8 either side of this case, be it Mr. Sutton or Mr. Dellinger's
9 family, or the family of the victim?

10 JUROR TEASTER: I don't know them.

11 MR. MILLER: Okay. Do you have anybody that's
12 associated with you that's involved in law enforcement?

13 JUROR TEASTER: This boy right here is my husband's
14 cousin, but I really don't know him.

15 MR. MILLER: Okay. No doubt you've heard about the case
16 through the press and the TV and so forth, is that correct?

17 JUROR TEASTER: (No audible response.)

18 MR. MILLER: Have you formed an opinions based on what
19 you've heard?

20 JUROR TEASTER: (No audible response.)

21 MR. MILLER: And you can sit and hear this case with an
22 open mind, and make a decision from what comes from the witness
23 stand?

24 JUROR TEASTER: Yes.

25 MR. MILLER: Did you hear anything about the case, did

1 you talk with any about -- anybody about it, or did you hear
2 gossip about it around town?

3 **JUROR TEASTER:** No, I haven't.

4 **MR. MILLER:** Mr. Schmutzer asked you to hold these
5 statements up to uncontroverted facts. Again, I think he is
6 assuming a lot, and...

7 **GENERAL SCHMUTZER:** Object, Your Honor, to personal
8 reference to attorneys assuming a lot. That's not proper.

9 **THE COURT:** So the -- ask about the -- ask your
10 question, Mr. Miller.

11 **MR. MILLER:** More of a statement. I submit to you that
12 everything just about in this case is going to be in
13 controversy. That's why we were here. If it was uncontroverted
14 we wouldn't be here. You understand that there's going to be
15 two sides to everything here, and nothing's uncontroverted?

16 (No jurors respond audibly.)

17 **MR. DANIEL:** Ms. Teaster, I'm Zane Daniel. And myself,
18 along with David Webb, we represent Gary Sutton in this case.
19 You've been sitting here practically through this whole
20 scenario, is that correct, ma'am?

21 **JUROR TEASTER:** (No audible response.)

22 **MR. DANIEL:** And we're trying to get down to getting a
23 jury. We don't want to overlook anybody, or anything we feel
24 like we ought to ask, but we keep just asking these questions
25 in areas over again.

1 You stated you worked where? I couldn't hear. I'm
2 sorry.

3 **JUROR TEASTER:** Best Receptions Systems. They're a
4 wholesale distributor for satellites.

5 **MR. DANIEL:** How long have you been there?

6 **JUROR TEASTER:** About four and a half years.

7 **MR. DANIEL:** Okay. And, now, you say your husband works
8 at...?

9 **JUROR TEASTER:** The aluminum company.

10 **MR. DANIEL:** Beg your pardon?

11 **JUROR TEASTER:** Aluminum company in Alcoa.

12 **MR. DANIEL:** How long has he been there?

13 **JUROR TEASTER:** Fifteen (15) years.

14 **MR. DANIEL:** Where did -- did he work somewhere before
15 that, do you know?

16 **JUROR TEASTER:** Yeah, about -- I think it was a meat
17 packing place (inaudible).

18 **MR. DANIEL:** Okay. And...

19 **THE COURT:** East Tennessee Packing Company, I believe,
20 didn't he, Ms. Teaster?

21 **JUROR TEASTER:** Right.

22 **MR. DANIEL:** And then he went into business for himself
23 after that?

24 **JUROR TEASTER:** (No audible response.)

25 **MR. DANIEL:** And you don't know any of these people,

1 lawyers, or witnesses, other than what we've talked about here
2 some -- a doctor, is that correct? Friend of yours?

3 JUROR TEASTER: That's right.

4 MR. DANIEL: That's your doctor.

5 You've heard the judge ask the other jurors about the
6 pretrial publicity and things like that. You feel like that's
7 going to cause you any problems about things you may have read
8 or heard on TV, radio, or by the newspaper?

9 JUROR TEASTER: (No audible response.)

10 MR. DANIEL: You understand that just because
11 something's on the -- somebody writes or prints something about
12 it doesn't make that the Gospel, and sometimes it's not even the
13 theory of the State, what they're saying, what they're charging,
14 do you understand that?

15 JUROR TEASTER: (No audible response.)

16 MR. DANIEL: You've heard us talk about the
17 circumstantial evidence and things of this nature. Is it -- do
18 you understand what His Honor's said about circumstantial
19 evidence?

20 JUROR TEASTER: Yes, sir.

21 MR. DANIEL: If chosen as a juror, you would -- you
22 would make the -- hold the State to the burden, as you're under
23 your oath you're supposed to do, to prove to you beyond all
24 reasonable doubt that there's no other reasonable hypothesis,
25 other than that of guilt of this defendant, my client, and

1 Mr. Dellinger? Do you understand that?

2 JUROR TEASTER: (No audible response.)

3 (Peremptory Challenge Slip #5 was submitted, and the
4 following jurors were excused: Juror Shoemaker, Juror
5 Ellis, and Juror Raney.)

6 (The following jurors were called to fill the jury box:
7 Kenneth Hicks, Daniel J. Talbott, and Deborah A. Vann.)

8 THE COURT: Ms. Vann, have you read or heard anything
9 about this case before you came here today or yesterday?

10 JUROR VANN: Very little.

11 THE COURT: Very little? Have you formed an opinion
12 about the guilt or innocence of either of these defendants based
13 upon what you've seen or heard?

14 JUROR VANN: (No audible response.)

15 THE COURT: Okay. Mr. Talbott, same question: Have you
16 heard anything about this case?

17 JUROR TALBOTT: Just around here yesterday.

18 THE COURT: Okay, yesterday?

19 JUROR TALBOTT: (inaudible).

20 THE COURT: That cuts down on a number of questions to
21 ask about pretrial publicity, doesn't it, if you're not here.
22 I take it, then, you've not formed any opinion, then?

23 JUROR TALBOTT: No.

24 THE COURT: Okay.

25 And Mr. Hicks, same question: Have you heard anything

1 about this case before you came here yesterday?

2 JUROR HICKS: Just what I heard on TV.

3 THE COURT: Okay. Based on what you've heard and seen
4 on TV, have you formed an opinion about the guilt or innocence
5 of either defendant in this case?

6 JUROR HICKS: No, sir.

7 THE COURT: Okay. In regards to the death penalty,
8 Mr. Hicks, have you heard what the Court instructed about the
9 law on first degree murder cases?

10 JUROR HICKS: Yes, sir.

11 THE COURT: Do you have any moral reservations about
12 considering the death penalty as a possible sentence in a proper
13 case?

14 JUROR HICKS: I don't know if I could or not.

15 THE COURT: Okay. If, after the Court instructed you,
16 in the event of a conviction for first degree murder, could you
17 consider the aggravating and mitigating factors that the Court
18 instructed you on?

19 JUROR HICKS: (No audible response.)

20 THE COURT: If you felt it was proper in the right set
21 of circumstances, could you impose the death penalty?

22 JUROR HICKS: I don't know.

23 THE COURT: Okay. All right, sir, that's a fair and
24 honest statement, because, as I told all of you yesterday, these
25 are issues of conscience and morality, and good and honest

1 people of different opinions have different opinions on those.
2 I'll excuse you, Mr. Hicks. Thank you.

3 (Juror Hicks is excused.)

4 (The following juror was called to fill the jury box:
5 Jo Ann Roundtree.)

6 **THE COURT:** Ms. Roundtree, did you know anything about
7 this case before you came over here yesterday?

8 **JUROR ROUNDTREE:** No.

9 **THE COURT:** So I take it you've not formed any opinions?

10 **JUROR ROUNDTREE:** No.

11 **THE COURT:** Okay. Have you heard what the Court has
12 said about the death penalty?

13 **JUROR ROUNDTREE:** (No audible response.)

14 **THE COURT:** Do you have any moral reservations against
15 considering the death penalty as a possible sentence in the
16 event of a conviction on first degree murder?

17 **JUROR ROUNDTREE:** I really don't know. I haven't
18 thought about it.

19 **THE COURT:** Okay. Would you think about it?

20 **JUROR ROUNDTREE:** If I had to, I could.

21 **THE COURT:** Okay. And would you consider the
22 aggravating and mitigating factors that the Court might instruct
23 you on?

24 **JUROR ROUNDTREE:** (No audible response.)

25 **THE COURT:** On the other hand, would you automatically

1 sentence someone to death just because they might have been
2 convicted of first degree murder?

3 JUROR ROUNDTREE: (No audible response.)

4 THE COURT: Okay.

5 Mr. Talbott, same questions: Do you have any moral
6 reservations about considering the death penalty as a possible
7 punishment?

8 JUROR TALBOTT: No.

9 THE COURT: On the other hand, would you automatically
10 impose the death penalty if someone should be convicted of first
11 degree murder?

12 JUROR TALBOTT: Yes.

13 THE COURT: Automatically do it? I'll excuse you,
14 Mr. Talbott. Thank you.

15 (Juror Talbott is excused.)

16 THE COURT: Ms. Vann, the same questions for you. Have
17 you any moral reservations about considering the death penalty
18 as an option in sentencing for first degree murder?

19 JUROR VANN: No.

20 THE COURT: On the other hand, would you automatically
21 impose the death sentence?

22 JUROR VANN: No, sir.

23 THE COURT: Okay. All right. Call one more.

24 (The following juror was called to fill the jury box:
25 William Bohannan.)

1 **THE COURT:** Good morning. Have you heard all the
2 questions, Mr. Bohannan?

3 **JUROR BOHANNAN:** Yes, sir.

4 **THE COURT:** Is there anything---and for Ms. Vann and
5 Ms. Roundtree---any other questions that have raised an issue
6 in either of your minds as to whether or not, in your judgment,
7 you could be fair and impartial to both sides in this case?

8 (No jurors respond audibly.)

9 **THE COURT:** Have you heard anything about this case,
10 Mr. Bohannan, before you came here yesterday?

11 **JUROR BOHANNAN:** Yes, sir, I have.

12 **THE COURT:** How did you hear about the case?

13 **JUROR BOHANNAN:** Newspaper.

14 **THE COURT:** Newspaper and TV, radio? Based on what you
15 saw or heard, have you formed an opinion about the guilt or
16 innocence of any person?

17 **JUROR BOHANNAN:** Yes, sir.

18 **THE COURT:** Is your opinion such that it could not be
19 changed by evidence that came from the witness stand?

20 **JUROR BOHANNAN:** No, sir.

21 **THE COURT:** It couldn't be changed, is that what you're
22 saying?

23 **JUROR BOHANNAN:** It won't be changed.

24 **THE COURT:** It won't be changed. We'll let you go.

25 **JUROR BOHANNAN:** Thank you.

1 **THE COURT:** Thank you.

2 (Juror Bohannon is excused.)

3 (The following juror was called to fill the jury box:
4 Kevin McMann.)

5 **THE COURT:** Mr. McMann, have you heard all the
6 questions?

7 **JUROR McMANN:** Yes.

8 **THE COURT:** Is there anything that's been asked that
9 raises an issue in your mind as to whether or not you could be
10 fair and impartial to both sides in this case, and do your job?

11 **JUROR McMANN:** No, sir.

12 **THE COURT:** Okay. Have you read or heard anything about
13 this case before you came here for jury service?

14 **JUROR McMANN:** A little.

15 **THE COURT:** A little, you say? Have you formed an
16 opinion about the guilt or innocence of either of these
17 defendants, based upon that?

18 **JUROR McMANN:** No, Your Honor.

19 **THE COURT:** Okay. Have you heard what the Court has
20 instructed about the death penalty?

21 **JUROR McMANN:** Yes, sir.

22 **THE COURT:** Do you have any moral or ethical
23 reservations about considering, as an option in sentencing, the
24 death penalty?

25 **JUROR McMANN:** No, sir.

1 **THE COURT:** On the converse or other hand, would you
2 automatically impose the death penalty just because someone
3 happened to be convicted of first degree murder?

4 **JUROR McMANN:** No.

5 **THE COURT:** Okay. General Schmutzer?

6 **GENERAL SCHMUTZER:** Ms. Vann, where do you live, please?

7 **JUROR VANN:** I live in Kodac.

8 **GENERAL SCHMUTZER:** Kodac? And your occupation?

9 **JUROR VANN:** I work at Levi's.

10 **GENERAL SCHMUTZER:** I'm sorry, I...

11 **JUROR VANN:** I work the Levi's.

12 **GENERAL SCHMUTZER:** Levi's? Okay.

13 Let's see, I have Mr. McMann? Sir, where do you live,
14 please?

15 **JUROR McMANN:** (Inaudible).

16 **GENERAL SCHMUTZER:** And your occupation?

17 **JUROR McMANN:** I'm a technician at TRW.

18 **GENERAL SCHMUTZER:** And I have on the end here, I
19 believe, Ms. Roundtree. And where do you live, please, Ms. ...?

20 **JUROR ROUNDTREE:** Pigeon Forge.

21 **GENERAL SCHMUTZER:** And your occupation?

22 **JUROR ROUNDTREE:** Night auditor, Holiday Inn.

23 **GENERAL SCHMUTZER:** Okay.

24 **THE COURT:** Do you work with Mr. Roger Videll?

25 **JUROR ROUNDTREE:** (No audible response.)

1 **THE COURT:** Nice man, isn't he?

2 **JUROR ROUNDTREE:** Yes, he is.

3 **GENERAL SCHMUTZER:** You all've heard all the questions
4 with regard to circumstantial evidence. Any problems with that?

5 (No jurors respond audibly.)

6 **GENERAL SCHMUTZER:** I take it none. The -- heard the
7 questions with regard to -- oh, there's one just brought up
8 about the proof of other crimes, and you've heard---and this is
9 not just the three of you, but all of you---you heard the
10 Court's charge that will be on other crimes. The State expects
11 to prove other crimes that these defendants were involved in to
12 show their motive, their intent in taking this woman's life.
13 Can you consider it for that purpose?

14 (No jurors respond audibly.)

15 **GENERAL SCHMUTZER:** Anyone that wouldn't consider it for
16 that purpose?

17 (No jurors respond audibly.)

18 **GENERAL SCHMUTZER:** I take it by your silence you would.
19 And that's the judge's charge, it's to be considered on those
20 points. Obviously you don't look at it to see whether they have
21 a propensity to commit crime, but you would look indirectly
22 towards the intent and motive.

23 **MR. DANIEL:** Object to that, Your Honor. Propensity to
24 commit a crime, I don't think that's...

25 **THE COURT:** Well, he -- as I understood, his statement

1 was he said that they could not consider it in regards to their
2 propensity to commit crime, but only as to motive or intent, is
3 what I...

4 **GENERAL SCHMUTZER:** Yeah, I believe... You all
5 understand that?

6 (No jurors respond audibly.)

7 **GENERAL SCHMUTZER:** For the three of you that just came
8 in, can you think of anything at all that's been asked that
9 might cause you some difficulty in being a juror in this case?

10 (Certain jurors respond.)

11 **GENERAL SCHMUTZER:** Mr. McMann?

12 **JUROR McMANN:** I know several of the witnesses.

13 **GENERAL SCHMUTZER:** Do you? I'm not going to go into
14 trying to name all those witnesses, but do you know any of them
15 to the extent that it would cause you some difficulty in being
16 a juror in this case?

17 **JUROR McMANN:** Yes, I probably do.

18 **GENERAL SCHMUTZER:** You do? Have they talked to you
19 about the case, maybe, or something like that?

20 **JUROR McMANN:** No, they have not. But I know what kind
21 of person they are, and they're a key witness in this case.

22 **THE COURT:** Okay, don't tell us who they are.

23 **GENERAL SCHMUTZER:** Don't tell us who -- yeah.

24 **JUROR McMANN:** And I may tend to believe what they say
25 over someone else.

1 **THE COURT:** Simply because of your knowledge of them,
2 is that correct?

3 **JUROR McMANN:** Yes.

4 **THE COURT:** Okay, just a moment. Would you be able to
5 judge their testimony just like anyone else's, or is it
6 something that you'd just totally believe what that person might
7 say, that that would be it in your mind?

8 **JUROR McMANN:** It'd be hard for me to take someone
9 else's word over theirs.

10 **THE COURT:** Okay. We'll let you go. Thank you for your
11 honesty, Mr. McMann.

12 (Juror McMann is excused.)

13 **GENERAL SCHMUTZER:** How about you, Ms. Vann? Anything
14 come to your mind might cause you some difficulty in this case,
15 based on the questions that have been asked here or anything
16 else?

17 **JUROR VANN:** (No audible response.)

18 **GENERAL SCHMUTZER:** Okay. Thank you, Your Honor.

19 **THE COURT:** If you will, before the other side starts
20 I'll call another juror down and we'll...

21 **GENERAL SCHMUTZER:** You want me to just wait here?

22 **THE COURT:** If you will, please, while we're at this
23 juncture.

24 (The following juror was called to fill the jury box:
25 Linda Martin.)

1 THE COURT: Aren't you glad we called you, Ms. Martin.

2 JUROR MARTIN: Yeah.

3 THE COURT: Have you heard all the questions,
4 Ms. Martin? I know I've seen you here the past two days. Have
5 you heard anything about this case before you came here?

6 JUROR MARTIN: Just a little.

7 THE COURT: Okay. Based on the little bit you heard,
8 have you formed an opinion about the guilt or innocence of
9 either defendant?

10 JUROR MARTIN: No, sir.

11 THE COURT: Okay. Have you heard the questions and the
12 law that the Court has stated about the death penalty?

13 JUROR MARTIN: Yes, sir.

14 THE COURT: Do you have any ethical or moral
15 reservations about considering the death penalty as an option?

16 JUROR MARTIN: No, sir.

17 THE COURT: And, on the other hand, would you
18 automatically vote for the death penalty in every case of first
19 degree murder?

20 JUROR MARTIN: If they murder (inaudible).

21 THE COURT: Okay. Okay. We'll have to let you go,
22 then, Ms. Martin. Thank you. Thank you for staying with us for
23 two days.

24 (Juror Martin is excused.)

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

1 Douglas M. Sharp.)

2 THE COURT: Mr. Sharp, you've heard all the questions.

3

4 JUROR SHARP: Yes, sir.

5 THE COURT: Have you heard anything about this case
6 before you came here yesterday?

7 JUROR SHARP: Very little.

8 THE COURT: Very little? Have you formed an opinion
9 about the guilt or innocence of either defendant in this case?

10 JUROR SHARP: (No audible response.)

11 THE COURT: Have you heard what I've said about the
12 death penalty?

13 JUROR SHARP: (No audible response.)

14 THE COURT: Do you think you understand what I've said
15 about the death penalty?

16 JUROR SHARP: (No audible response.)

17 THE COURT: Do you have any moral or ethical
18 reservations about considering the death penalty as an option?

19 JUROR SHARP: (No audible response.)

20 THE COURT: Okay, on the other hand, sir, would you
21 automatically impose the death penalty just because someone was
22 convicted for first degree murder?

23 JUROR SHARP: Not automatically, but the circumstances
24 would have to be very strong for me not to vote for the death
25 penalty.

1 **THE COURT:** I understand that. But would you consider
2 all of the aggravating and mitigating circumstances in arriving
3 at your decision, and if the mitigating circumstances outweigh
4 the aggravating circumstances, would you vote not to impose the
5 death penalty?

6 **JUROR SHARP:** Yes, sir, I would.

7 **THE COURT:** Okay, very well. General Schmutzer?

8 Any other reason as to why you might not think you can
9 be fair and impartial to both sides in this case?

10 **JUROR SHARP:** Well, Dr. Steve Madison is my dentist.

11 **THE COURT:** Is your dentist? Okay. I don't know if
12 he's going to testify or what his testimony would be concerning.
13 But would you automatically believe or disbelieve his testimony
14 just because he was testifying?

15 **JUROR SHARP:** To be honest, if somebody contradicted
16 him, I would be more intend to believe Steve (sic), because I've
17 known him for years, and I know the good guy that he is.

18 **THE COURT:** Okay. Okay. Approach the bench, counsel,
19 just a moment.

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

21 **THE COURT:** I don't know which side subpoenaed him.

22 **GENERAL SCHMUTZER:** We did, Your Honor.

23 **THE COURT:** Okay.

24 **GENERAL SCHMUTZER:** I think maybe they did, too, but
25 it's our witness.

1 **THE COURT:** Okay.

2 **GENERAL SCHMUTZER:** He -- he's the one that supplied the
3 dental...

4 **THE COURT:** Dental work? Is there any question about
5 that?

6 **MR. MILLER:** As I said earlier, there's a question about
7 everything.

8 **THE COURT:** Okay. Okay. So -- well, you -- that's why
9 I called you up here. If there's no question about what
10 he's going to testify to, then the Court would keep him.
11 But if there is... And I also want to remind you, as
12 you're up here, the State has exercised three
13 challenges, so you have 13 left. Sutton has exercised
14 1, 2, 3, 4, 5, 6, 7, 8, so you have seven left. And
15 Mr. Dellinger has 1, 2, 3, 4, 5 -- he has exercised six
16 challenges, so you have nine left. Okay? All right,
17 thank you.

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

20 **GENERAL SCHMUTZER:** Mr. Sharp, you've heard all the
21 questions that I've asked previously. Any problems with any of
22 those that I've asked?

23 **JUROR SHARP:** (No audible response.)

24 **GENERAL SCHMUTZER:** Thank you, sir.

25 **THE COURT:** Mr. Sharp, the Court will have to let you

1 go. Thank you.

2 (Juror Sharp is excused.)

3 (The following juror was called to fill the jury box:
4 James D. Wheeler.)

5 **THE COURT:** Good morning, sir.

6 **JUROR WHEELER:** Good morning, sir. Your Honor,...

7 **THE COURT:** Yes.

8 **JUROR WHEELER:** ...I've listened to all of them, and I
9 know of no reason but one. I am a -- have been a duly elected
10 sheriff of a county, and I'm afraid, in all honesty, it might
11 influence me.

12 **THE COURT:** In other words, if...

13 **JUROR WHEELER:** I don't say it would, but I can't say
14 it wouldn't.

15 **THE COURT:** Okay, we'll let you go, Mr. Wheeler. Thank
16 you, sir.

17 (Juror Wheeler is excused.)

18 (The following juror was called to fill the jury box:
19 Charles F. Harper.)

20 **THE COURT:** Good morning, Mr. Harper.

21 **JUROR HARPER:** I've heard all the questions, too. I've
22 got a couple of reasons: Because I know the boys, I know the
23 victim, I'm a good friend of the boys. I've worked with them
24 for years up at Cherokee. I just don't believe I could be
25 really a good -- be honest and...

1 THE COURT: Fair and impartial to both sides? Okay.
2 Thank you, sir.

3 (Juror Harper is excused.)

4 (The following juror was called to fill the jury box:
5 Russell Wallace.)

6 THE COURT: Mr. Wallace, have you heard all the
7 questions?

8 JUROR WALLACE: Yes, sir.

9 THE COURT: Is there anything that's raised an issue in
10 your mind as to whether or not you could be fair and impartial
11 to both sides in this case?

12 JUROR WALLACE: I've read about the event in the
13 newspaper, kept up with the local news, and I have my own
14 opinion.

15 THE COURT: Okay. Have you formed an opinion as to the
16 guilt or innocence of either of these defendants? Now, don't
17 tell me what the opinion is.

18 JUROR WALLACE: Yes, I have.

19 THE COURT: Okay. Is that opinion such that it cannot
20 be changed by evidence coming from this witness stand?

21 JUROR WALLACE: No, it couldn't be changed.

22 THE COURT: It could not be changed?

23 JUROR WALLACE: No, it can't.

24 THE COURT: We'll say good-bye to you, sir. Thank you.

25 (Juror Wallace is excused.)

1 (The following juror was called to fill the jury box:
2 Jack Boling.)

3 THE COURT: Have you heard all the questions,
4 Mr. Boling?

5 JUROR BOLING: Yes, sir.

6 THE COURT: Was there anything that's raised an issue
7 in your mind as to whether or not you could be fair and
8 impartial to both sides in this case?

9 JUROR BOLING: No, sir. I know Mr. Webb.

10 THE COURT: Okay. Has he represented you?

11 JUROR BOLING: No, sir.

12 THE COURT: Okay. Are you all close personal friends?

13 JUROR BOLING: No.

14 THE COURT: Okay. Because of your knowledge and
15 association with Mr. Webb, would that have any impact upon how
16 you would look at the evidence in this case or make your
17 decision?

18 JUROR BOLING: No, sir.

19 THE COURT: Okay. Do you -- have you heard or seen pre-
20 trial publicity about this case?

21 JUROR BOLING: Yes, sir, I have.

22 THE COURT: Okay. Have you formed an opinion about the
23 guilt or innocence of either -- either defendant, based on what
24 you've seen or here?

25 JUROR BOLING: No, sir.

1 THE COURT: Okay. Have you heard the Court's
2 instruction on the death penalty?

3 JUROR BOLING: Yes, I have.

4 THE COURT: Do you have any moral reservations about
5 considering the death penalty as an option in a proper case?

6 JUROR BOLING: No, sir.

7 THE COURT: On the other hand, would you automatically
8 impose the death penalty merely because someone might be
9 convicted of first degree murder?

10 JUROR BOLING: No, sir.

11 THE COURT: All right, sir. General Schmutzer?

12 GENERAL SCHMUTZER: Is it Boling? Is that correct?

13 JUROR BOLING: Yes, sir.

14 GENERAL SCHMUTZER: Okay, thank you. Your relationship
15 with Mr. Webb, I missed that. Did you say that you were good
16 friends or...?

17 JUROR BOLING: No, sir.

18 GENERAL SCHMUTZER: Okay.

19 JUROR BOLING: My brother is married to his sister.

20 GENERAL SCHMUTZER: Okay.

21 JUROR BOLING: We don't have any kind of...

22 GENERAL SCHMUTZER: Okay. Nothing in that, one way or
23 the next? You won't...

24 JUROR BOLING: No, sir.

25 GENERAL SCHMUTZER: We lawyers, from time to time, get

1 to talk to the jury. Obviously those -- we're not witnesses,
2 we can...

3 THE COURT: Well, you're not on trial.

4 GENERAL SCHMUTZER: We're not on trial.

5 THE COURT: You don't worry about convicting any of the
6 lawyers.

7 GENERAL SCHMUTZER: We lawyers aren't on trial, so I
8 take it that would not have a factor in it...

9 JUROR BOLING: No, sir.

10 GENERAL SCHMUTZER: ...in it one way or the next?

11 JUROR BOLING: No, sir.

12 GENERAL SCHMUTZER: Because we happen not to know each
13 other.

14 Anything at all that I've asked that you might have some
15 difficulty with?

16 JUROR BOLING: I have worked for Cherokee in the past.

17 GENERAL SCHMUTZER: Do you know Mr. ...?

18 JUROR BOLING: I know -- I knew Mr. Branum.

19 GENERAL SCHMUTZER: Okay. Anything about that that
20 would cause you any difficulty being a juror?

21 JUROR BOLING: No, sir.

22 THE COURT: Do you feel like you'd have to explain your
23 verdict to anybody at all, Mr. Boling? You think you...?

24 JUROR BOLING: No, sir.

25 THE COURT: Okay. Fair enough.

1 **GENERAL SCHMUTZER:** Decide the case strictly on the law
2 and the evidence, using your reason and common sense?

3 **JUROR BOLING:** (No audible response.)

4 **GENERAL SCHMUTZER:** Look at all the evidence; not just
5 piece by piece, but every bit of it in making a decision in this
6 case, one way or the next?

7 **JUROR BOLING:** (No audible response.)

8 **GENERAL SCHMUTZER:** Thank you. Can't think of anything
9 else to ask, Your Honor.

10 **THE COURT:** Okay. Mr. Miller?

11 **MR. MILLER:** Thank you.

12 Mr. Boling, you're not going to hold it against our
13 clients because Mr. Webb's involved in this case and you know
14 him?

15 **JUROR BOLING:** No, sir.

16 **MR. MILLER:** Just wanted to check.

17 How long ago did you work with Mr. Branum at Cherokee,
18 Mr. Boling?

19 **JUROR BOLING:** It's probably been seven years or so.

20 **MR. MILLER:** Don't have any contact with Mr. Branum
21 anymore?

22 **JUROR BOLING:** No.

23 **MR. MILLER:** Now, as I've said earlier, and ask each of
24 the three new jurors, live in a vacuum during this week and
25 during the trial, and pay attention to what comes from the

1 witness stand, and make your decision based on that, and
2 fearlessly do your duty, without regard to what other people may
3 think about it. Can you all do that? Will you give me your
4 word you can do that?

5 (No jurors respond audibly.)

6 MR. MILLER: Ms. Roundtree, do you know anybody on
7 either side of this case?

8 JUROR ROUNDTREE: (No audible response.)

9 MR. MILLER: Okay. Did you know any of the witnesses?

10 JUROR ROUNDTREE: I'm not sure. You called a Dave
11 Dugger. Was that David M. Dugger, or is that another one?

12 THE COURT: I believe it was a Dougan, David Dougan.

13 JUROR ROUNDTREE: Dougan? I'm sorry. Okay. No, I
14 don't know him.

15 THE COURT: Okay.

16 MR. MILLER: Ms. Vann, do you know anybody on either
17 side?

18 JUROR VANN: (No audible response.)

19 MR. MILLER: All right. Mr. Boling, other than
20 Mr. Branum, do you know anybody on either side of the case?

21 JUROR BOLING: One of the witnesses, Reece Sutton, did
22 some grading for me one time. And Dr. White has treated one of
23 my sons.

24 THE COURT: Is there anything about that that poses a
25 problem one way or another for you, Mr. Boling?

1 JUROR BOLING: No, sir.

2 THE COURT: Okay.

3 MR. MILLER: Ask the three of you again, the new jurors,
4 whether you have any associates involved in law enforcement,
5 anybody you know?

6 (No jurors respond audibly.)

7 MR. MILLER: And you're not going to take a law
8 officer's testimony over anybody else's, just because they wear
9 a badge and wear a uniform, is that correct?

10 (No jurors respond audibly.)

11 MR. MILLER: You're going to hold the State to the
12 burden of proof that we've talked about for two days now, beyond
13 a reasonable doubt? Can you do that?

14 (No jurors respond audibly.)

15 MR. MILLER: I believe that's all, Your Honor.

16 THE COURT: Okay. Mr. Daniel?

17 MR. DANIEL: Mr. Boling, you've heard the questions that
18 we've asked these other people, is that correct, sir? Did you
19 hear that?

20 JUROR BOLING: Yes, sir.

21 MR. DANIEL: And Ms. Vann, I asked you -- did you say
22 you worked at Levi's, ma'am?

23 JUROR VANN: (No audible response.)

24 MR. DANIEL: Are you married, may I ask?

25 JUROR VANN: Yes.

1 MR. DANIEL: What type of work does your husband do, if
2 I...?

3 JUROR VANN: My husband drives a tractor-trailer.

4 MR. DANIEL: Okay. Over-the-road, a long distance
5 truck?

6 JUROR VANN: Yes.

7 MR. DANIEL: And you live in the Kodac area, is that
8 what you said?

9 JUROR VANN: (No audible response.)

10 MR. DANIEL: Is this your first experience with jury
11 duty? Have you ever been here?

12 JUROR VANN: Yes, it is.

13 MR. DANIEL: Ms. Reynolds (sic), you said you worked at
14 the Holiday Inn, is that correct, ma'am?

15 JUROR ROUNDTREE: Yes.

16 MR. DANIEL: And your husband -- are you married? I
17 should...

18 JUROR ROUNDTREE: I'm not married.

19 MR. DANIEL: Okay. How long have you been with Holiday
20 Inn?

21 JUROR ROUNDTREE: Eight years.

22 MR. DANIEL: Are you originally -- I'm from Knoxville.
23 I've got to apologize.

24 JUROR ROUNDTREE: I'm from Georgia.

25 MR. DANIEL: Okay. You're not originally from Sevier

1 County. How long have you lived here in the county,
2 approximately?

3 JUROR ROUNDTREE: Lived here ten years.

4 MR. DANIEL: Mr. Boling, you say you're related to
5 Mr. Webb through marriage, is that correct?

6 JUROR BOLING: Yes, sir.

7 MR. DANIEL: Through -- your sister is married to...

8 JUROR BOLING: My brother.

9 MR. DANIEL: Your brother is married to his sister, is
10 that correct?

11 JUROR BOLING: Yes.

12 MR. DANIEL: We kid him. You wouldn't hold that against
13 him, of course.

14 JUROR BOLING: No.

15 MR. DANIEL: Could you all hear the questions that's
16 been asked these other jurors? I don't want to just keep
17 repeating this, but this is an important and serious case, and
18 you understand it's serious. And do you all understand that
19 because the judge asked you about the death penalty on first
20 degree murder, that that's not to imply -- you shouldn't take
21 that to imply that the judge thinks or anybody thinks that
22 anybody's guilty of anything. Do you we understand that?

23 (No jurors respond audibly.)

24 MR. DANIEL: There's some reasons he has to ask that,
25 because if -- if it ever got to that point, then the law says

1 that the judge must ask those questions ahead of time. Do you
2 understand that?

3 (No jurors respond audibly.)

4 MR. DANIEL: But we're starting out with this case, not
5 that a person's guilty, whether you're going to -- guilty of
6 first degree murder, and whether you're going to electrocute
7 them or put them in prison for the record rest of their life.
8 It's a question of whether or not the State can prove them
9 guilty beyond all reasonable doubt, based on circumstantial
10 evidence. Do you all understand that? And can we start with
11 that? Do you understand that, Mr. Boling?

12 JUROR BOLING: (No audible response.)

13 MR. DANIEL: And we ask all these questions of these
14 other people, and I don't like to keep repeating them, but there
15 are certain things that are important. Will you hold the State
16 to that burden?

17 (No jurors respond audibly.)

18 MR. DANIEL: If you feel like it's not fair, that that
19 law's not proper, if you disagree with our law on circumstantial
20 evidence, that before you can convict on circumstantial evidence
21 the State must exclude all other reasonable hypothesis of guilt,
22 other than that that shows you guilt? Can you all follow that,
23 and would you follow that?

24 (No jurors respond audibly.)

25 MR. DANIEL: Do you understand -- do you all feel like

1 that there's circumstances, you can be caught in a situation or
2 get in a situation where circumstances might appear that you're
3 guilty or you've done something, and you actually haven't done
4 it? Do all of you know that that can happen to anybody? Get
5 caught in a circumstance or situation where somebody might think
6 you've done something, or it may -- somebody might try to make
7 it look like or contend you've done something when you're not
8 -- when you haven't done anything? Do you understand that?

9 (No jurors respond audibly.)

10 MR. DANIEL: So, before you could convict on
11 circumstantial evidence, would you listen to His Honor's charge
12 and make sure in your mind, beyond all reasonable doubt, that
13 there is no other reasonable hypothesis that points to anything
14 else other than these defendants' guilt? Now, that's the bottom
15 line, and that's the law, and that's what you're going to try
16 this case on. Do you understand that?

17 (No jurors respond audibly.)

18 MR. DANIEL: You'd want that same law applied to you if
19 you was on trial, is that correct?

20 (No jurors respond audibly.)

21 MR. DANIEL: We're also going to hear, and will possibly
22 hear about some things that's got nothing to do with the
23 ultimate issue you all are going to decide, which is the guilt
24 or innocent (sic) regarding the death of Connie Branum. Do you
25 understand that if certain proof comes in on something that's

1 -- that's got something to do with another county or another
2 charge in another county, that that's something these defendants
3 will have to deal with, and another jury, like you, will have
4 to decide that over in maybe Blount County. Do you understand
5 that? And you're not to decide their guilt or innocence on
6 anything here regarding anything other than this charge of their
7 guilt or innocence regarding Connie Branum. Do -- can we start
8 out, everybody, with that understanding, and know that's what
9 we're here to do, and exclude these other things from your mind
10 when it comes to making this final decision? Can you do that?

11 **GENERAL SCHMUTZER:** I object to that, Your Honor.
12 They're not excluding evidence that might be relevant or
13 material. That's asking them to commit to something they
14 shouldn't do. I object.

15 **THE COURT:** I've already instructed all of you, ladies
16 and gentlemen, about other crimes evidence. And you will
17 consider all evidence under the instructions that the Court
18 gives you, and consider all evidence in light of -- of all other
19 evidence, and exclude such portions of it as you deem proper
20 under the circumstances and under the law that the Court gives
21 you.

22 **MR. DANIEL:** Thank you.

23 In this case they've asked you about this pretrial
24 publicity, His Honor has, and certain people have come down here
25 on the stand, and I know you -- you've sat in the jury box and

1 you've heard them say that they just were -- have a closed mind,
2 they're just not going to listen to anything other than what
3 they've heard or read in the papers or seen on television or
4 heard on the radio. Are we starting out that way, or are we
5 starting with a clear -- clear mind and with a presumption of
6 innocence that is presumed of everybody that's in a case? And
7 can you look at these two defendants right now, and particularly
8 Gary Sutton, and say, "Gary Sutton, you're innocent"? 'Cause
9 as he sits there, he's innocent. Can you do that? Can you look
10 at him and say that right now?

11 "You're innocent, Gary. And they're going to have to
12 prove to me -- they're going to have to prove to me beyond all
13 reasonable doubt before I'll convict you, put you in prison or
14 whatever -- or whatever the charges are before I'll vote to
15 convict you. Whether I like you or whether I don't like you,
16 or whether you live a life that I wouldn't live or what, I'm not
17 going to judge you on that, I'm going to judge you on this case.
18 And you're innocent as you sit there." Can you look at him and
19 say that, Mr. Boling? "You're innocent." Because he is
20 innocent as he sits there.

21 JUROR BOLING: (No audible response.)

22 MR. DANIEL: Can you, ma'am?

23 (No jurors respond audibly.)

24 MR. DANIEL: All of you, can you do that?

25 (No jurors respond audibly.)

1 **MR. DANIEL:** We want to start fair. We want -- if you
2 was out here being tried, you'd want a fair jury.

3 **GENERAL SCHMUTZER:** Your Honor, object to continually
4 remarking to them being tried. The Court -- he objected earlier
5 to me reversing that, and -- 'cause I think the Court knows...

6 **THE COURT:** Well, gentlemen, if you have an objection,
7 state your objection to the Court. As I've told you earlier,
8 ladies and gentlemen, it's -- it's whether or not you can be
9 fair and impartial to both sides. And if you were being -- if
10 you were involved in a case, either as a witness or as a
11 defendant or anyone else, would you be satisfied having a juror
12 in the same state of mind as you are? That's the long and short
13 of it.

14 Our job is to be fair and not worry about what anybody
15 else thinks, what the defense thinks, what the State thinks, or
16 what does the judge think. I've had jurors asked me -- in fact,
17 in a case in this county, had a case where the jury was unable
18 to reach a verdict. After that case was over, jurors came up
19 to the Court and apologized to the Court because they were
20 unable to reach a verdict. My statement to them and my
21 statement to you is: You never have to apologize for your
22 verdict or inability to reach a verdict. As long as you do your
23 job according to your conscience and the oaths I will give to
24 you, you have done your job.

25 Now, whether you reach a verdict or not, you have

1 fulfilled your obligation to the system of justice we live under
2 in this country. That's all anybody can ask you to do, and
3 nothing more.

4 MR. DANIEL: Thank you, Your Honor. I have no further
5 questions.

6 THE COURT: Okay.

7 MR. WEBB: Your Honor, can I approach the bench for a
8 moment?

9 THE COURT: Sure, all of you.

10 MR. WEBB: Well, just -- I just have a few questions,
11 for clarification.

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

13 MR. WEBB: If we choose to strike (inaudible) are we
14 closed out?

15 THE COURT: If everyone -- if there is no challenge by
16 someone, then we have a jury.

17 MR. WEBB: But if there's one challenge, then I can come
18 back?

19 THE COURT: Oh, sure. Sure.

20 MR. WEBB: Okay.

21 GENERAL SCHMUTZER: While we're up here. Why is it that
22 I can't ask these jurors what they continue to ask: If
23 you were a defendant over here, or a parent of the
24 defendant over here, would you be satisfied with someone
25 in your frame of mind? My question is simply: If you

1 were -- if your family was a victim in this case, do you
2 be satisfied? And the Court has sustained that
3 objection continually...

4 **THE COURT:** Well, I have sustained -- and I have
5 sustained your further objection on that, on the issue
6 of the defendants. As I just -- I told the jury, I have
7 instructed them that it's not, as to these defendants
8 -- it's can they be fair and impartial to both sides.
9 I think you guys are so wired, I think that you all are
10 scared to death that somebody is going to say something
11 that might, in some backhanded way, hurt somebody.

12 **GENERAL SCHMUTZER:** Obviously we're concerned about voir
13 dire, you know. The only thing that's being said to the
14 jurors -- I just was -- I just asked the Court that.
15 I mean, you know, I just...

16 **THE COURT:** I have -- I have sustained your objection,
17 and (indiscernible) made about that. And I sustained
18 it. That's the ruling of the Court.

19 **GENERAL SCHMUTZER:** All right.

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

22 **MR. WEBB:** One moment, Your Honor.

23 (Peremptory Challenge Slip #6 was submitted, and the
24 following jurors were excused: Juror Roundtree and
25 Juror Vann.)

1 **THE COURT:** Ladies and gentlemen, we are going to break
2 for lunch. Those jurors who are in the box will go with the
3 officers to lunch. Don't any of you, either in the box or those
4 in the audience, discuss the case or let anyone talk to you
5 about it. Do not read any newspapers, listen to any news
6 broadcasts either on radio or on TV. I will ask the jurors to
7 leave, and I want counsel to stay for a few moments after the
8 jury leaves. So all rise for the jury. See you back about --
9 let's say 1:30.

10 (The prospective jury and prospective jurors leave the
11 courtroom.)

12 **THE COURT:** The defendants may stay here. Hold on just
13 a minute 'til we get finished.

14 Ms. Helen, do you know how many additional jurors that
15 have signed in who have not been excluded by the Court for...?

16 **CLERK:** Let me check the sheets.

17 **THE COURT:** Okay, if you will. Sure, that's fine.

18 We -- if you will close that door, please, sir. Thank
19 you. The State -- 1, 2, 3, 4. The State has 12 challenges
20 left. The Defendant Sutton---1, 2, 3, 4, 5, 6, 7, 8---has seven
21 challenges left. The Defendant Dellinger has eight challenges
22 left. We have, as I announced earlier, subpoenaed other jurors.
23 What the Court proposes to do, because in the event any of them
24 are used, I will have to bring them over here and give them the
25 preliminary instructions that other jurors have had. So, rather

1 than do that now or after lunch, we have some 31 jurors still
2 left in the present pool of jurors. We have gone through, I
3 would say, probably 13, 14, 15 jurors here today. Does anyone
4 have a feel as to whether or not we could turn those jurors
5 loose for today, or if you think we need to have them stay here
6 or come back at some other time in the day? That's just -- I'll
7 throw that out for discussion. General Schmutzer?

8 **GENERAL SCHMUTZER:** I don't have a feel for it, Your
9 Honor, truthfully.

10 **THE COURT:** I am -- if we keep them here, I'm going to
11 ask that the chancery courtroom be cleared, and let those jurors
12 stay over there and keep them segregated over there until we
13 need them, if we need them. Does anyone have any problem over
14 that, or any other suggestion than that? It's the largest area
15 available for that number of people.

16 **GENERAL SCHMUTZER:** If the Court -- suggestion, the
17 Court excuse them 'til 3:00 or 3:30. I can't imagine us working
18 through that other pool of 30 some.

19 **THE COURT:** I'd say, yeah, or 4:00.

20 **MR. WEBB:** What'd you say, come back at 1:30?

21 **THE COURT:** Yes.

22 **GENERAL SCHMUTZER:** That's an hour and a half.

23 **THE COURT:** Right. How many...? There's nine left?
24 Gosh. Nine left.

25 **GENERAL SCHMUTZER:** Oh, I thought you said there was 31

1 left.

2 THE COURT: I'm sorry. In our original pool of jurors
3 there's 31 left. In the new pool that were subpoenaed last
4 night there are nine of those. Some of them were able to serve,
5 some of them had employment problems that the Court released
6 earlier this morning.

7 MR. DANIEL: Forty (40) altogether?

8 THE COURT: Yeah, 40 is our pool left.

9 GENERAL SCHMUTZER: We definitely want to go through
10 what we have, so we don't have to go back and...

11 THE COURT: Go through that, right.

12 GENERAL SCHMUTZER: ...voir dire brand new jurors.

13 THE COURT: What you can do, Ms. Helen, and at -- as
14 those jurors come back in, if you will tell the clerks out there
15 to have them come back at, say, 4:00, or to call back before
16 4:00, okay?

17 MR. WEBB: Your Honor, I know we've had a list of jurors
18 that's been here for, what, three months, let's say?

19 THE COURT: Yes. Yes, sir.

20 MR. WEBB: And then we've got the new ones that were
21 issued or have Ms. Helen come in and...

22 THE COURT: Last night.

23 MR. WEBB: No, I'm talking about...

24 THE COURT: Oh, previous?

25 MR. WEBB: Yeah. And they've all been here, haven't

1 they? I mean, we've voir dired...

2 THE COURT: Had a good group of them here, yes.

3 MR. WEBB: Well, I -- that's...

4 MR. DANIEL: The new group that's been -- the last --
5 the last group, have they heard any of the voir dire?

6 THE COURT: No. No.

7 MR. DANIEL: Are they in that...?

8 THE COURT: Group here? No. No, they are not. No.

9 MR. DANIEL: Oh, I understood there was nine in this
10 group.

11 THE COURT: No, there are nine available who were
12 subpoenaed last night by the Court. The Court issued a subpoena
13 for some 30 or 40 additional jurors last night.

14 MR. DANIEL: And nine -- you've got nine out of that
15 group?

16 THE COURT: Yeah. Isn't that good.

17 MR. DANIEL: Okay, I understand. I was thinking there
18 was nine in the box.

19 THE COURT: No. Oh, no, sir. No. No. Good Lord, no.
20 We'd be in trouble, I believe. Anything further?

21 GENERAL SCHMUTZER: No, Your Honor.

22 THE COURT: See you at 1:30.

23 (Whereupon, the court recessed for lunch at 12:15 p.m.,
24 and reconvened at 1:30 p.m.)

A F T E R N O O N P R O C E E D I N G S

1:30 p.m.

THE COURT: Is there anything we need to take up before the jurors in the box come back?

GENERAL SCHMUTZER: Nothing for the State, Your Honor.

MR. MILLER: Nothing, Your Honor.

THE COURT: All right. Bring the jury in. All rise for the jury.

(The prospective jury panel returned to the courtroom, and the following proceedings were had.)

THE COURT: You may be seated. Let's call two more.

(The following jurors were called to fill the jury box: Robert A. Walker and Richard A. Ballenger.)

THE COURT: Mr. Walker and Mr. Ballenger, have you both heard all the questions over the past couple of days here that...?

(No jurors respond audibly.)

THE COURT: Is there anything in those questions or comments that have raised any issue in your mind as to whether or not you can be fair and impartial to both sides? Mr. Ballenger and Mr. Walker, is there something that's raised an issue in your mind as to whether or not you can be fair and impartial to both sides?

JUROR WALKER: Yes, sir.

THE COURT: Do you feel that you could be fair and

1 impartial to both sides in this case?

2 JUROR WALKER: No, sir.

3 THE COURT: All right, sir. We'll excuse you,
4 Mr. Walker. Thank you.

5 (Juror Walker is excused.)

6 (The following juror was called to fill the jury box:
7 Randy Ryhuff.)

8 THE COURT: Have you heard all the questions,
9 Mr. Ryhuff?

10 JUROR RYHUFF: (No audible response.)

11 THE COURT: Is there anything that's been asked or
12 stated that raises an issue in your mind as to whether or not
13 you can be fair to both sides?

14 JUROR RYHUFF: (No audible response.)

15 THE COURT: Do you feel that you could be fair to both
16 sides in this case?

17 JUROR RYHUFF: No.

18 THE COURT: All right, sir.

19 (Juror Ryhuff is excused.)

20 (The following juror was called to fill the jury box:
21 James D. Guffy.)

22 THE COURT: Have you heard anything, Mr. Guffy, that's
23 causing a problem for you being fair to both sides in this case?

24 JUROR GUFFY: No, Your Honor.

25 THE COURT: Have you read or heard anything about this

1 case before you came here yesterday?

2 JUROR GUFFY: Just what the newspaper articles say.

3 THE COURT: Have you formed an opinion about the guilt
4 or innocence of either party?

5 JUROR GUFFY: No, sir.

6 THE COURT: How about you, Mr. Ballenger?

7 JUROR BALLENGER: No.

8 THE COURT: Okay. Have you understood what the Court
9 has explained the law to be in regards to the death penalty?

10 JUROR BALLENGER: Correct.

11 THE COURT: Do you have any moral or ethical
12 reservations about considering the death penalty as an option
13 in sentencing?

14 JUROR BALLENGER: No, sir.

15 THE COURT: Okay. Conversely, would you automatically
16 impose the death penalty for someone convicted of first degree
17 murder?

18 JUROR BALLENGER: Would you describe first degree
19 murder?

20 THE COURT: Okay. Okay. Well, let me read the exact
21 definition here for you. Might be better just to read the
22 statute.

23 First degree murder is defined as follows, as it applies
24 in this case: It's an intentional, premeditated, and deliberate
25 killing of another. As I have told you, the death penalty is

1 an option only in -- in the event someone is convicted of first
2 degree murder. It is never required, it is not mandated, it is
3 an option only. And as I have understood you to say, you have
4 no more reservation about considering it as an option in
5 sentencing.

6 JUROR BALLENGER: Correct.

7 THE COURT: On the other hand, sir, as I've explained
8 to you, in the event someone were found guilty of first degree
9 murder, would you consider the aggravating and mitigating
10 factors before a verdict to impose the death penalty, or would
11 you automatically vote to impose the death penalty?

12 JUROR BALLENGER: I'd consider it.

13 THE COURT: Okay. All right, sir. Thank you.

14 Likewise, Mr. Guffy, have you understood what the law
15 is?

16 JUROR GUFFY: (No audible response.)

17 THE COURT: Have you any moral or ethical reservation
18 against considering?

19 JUROR GUFFY: No problem with it.

20 THE COURT: Okay. On the other hand, of course, is it
21 something that you would automatically impose in each and every
22 case?

23 JUROR GUFFY: No.

24 THE COURT: Okay. Very well. General Schmutzer?

25 GENERAL SCHMUTZER: Thank you.

1 Mr. Ballenger, where do you live, please, sir?
2 JUROR BALLENGER: In Seymour.
3 GENERAL SCHMUTZER: Okay. And your occupation?
4 JUROR BALLENGER: I'm a sales representative for Graphic
5 Design.
6 GENERAL SCHMUTZER: All right, sir. Thank you.
7 Mr. Guffy, where do you live, please, sir?
8 JUROR GUFFY: Gatlinburg.
9 GENERAL SCHMUTZER: And your occupation?
10 JUROR GUFFY: Real estate and property management.
11 GENERAL SCHMUTZER: Yes, sir. Thank you.
12 You gentlemen have heard all the questions I've asked.
13 I'm not going to attempt to go through all of them again. Any
14 problems with anything I've talked about?
15 (No jurors respond audibly.)
16 GENERAL SCHMUTZER: Any -- think of any reason at all
17 why you couldn't sit as a juror in this case, either one of you
18 gentlemen?
19 (No jurors respond audibly.)
20 GENERAL SCHMUTZER: Thank you.
21 THE COURT: Okay. Mr. Miller?
22 MR. MILLER: Mr. Guffy, have you -- I think you
23 indicated you'd heard a little bit about the case. Is that just
24 through the press?
25 JUROR GUFFY: Just through the press.

1 **MR. MILLER:** You've not discussed the case with anybody,
2 or heard anybody talk about it?

3 **JUROR GUFFY:** (No audible response.)

4 **MR. MILLER:** How about you, Mr. Ballenger? Just through
5 the press?

6 **JUROR BALLENGER:** I didn't know nothing about it 'til
7 yesterday.

8 **MR. MILLER:** Okay. Just...

9 **JUROR BALLENGER:** My job takes me out of town quite
10 often.

11 **MR. MILLER:** All right.

12 **THE COURT:** You wish it'd taken you out of town this
13 week?

14 **JUROR BALLENGER:** Yeah, that'd have been real lucky.

15 **MR. MILLER:** Have either one of you all ever sat on a
16 jury before?

17 (No jurors respond audibly.)

18 **MR. MILLER:** Either civil or criminal, you never sat on
19 either?

20 (No jurors respond audibly.)

21 **MR. MILLER:** You've heard for two days, now, about the
22 burden of proof, and certainly understand that by now, I take
23 it. The burden's on the State to prove beyond a reasonable
24 doubt each and every one of those elements that the judge just
25 read you of first degree murder. My question to you is: Will

1 you hold the State to that burden?

2 (No jurors respond audibly.)

3 MR. MILLER: Do either one of you all have any friends
4 or relatives involved in law enforcement?

5 (No jurors respond audibly.)

6 MR. MILLER: The witnesses -- you want to repeat those
7 names, Judge?

8 THE COURT: No, thank you.

9 MR. MILLER: Did you recognize any of those names,
10 anybody you know?

11 THE COURT: I will, if you think it's necessary. In all
12 candor, I would.

13 (No jurors respond audibly.)

14 MR. MILLER: You all, I take it, have no association
15 with the district attorney general's office, never had occasion
16 to have a case prosecuted by them?

17 (No jurors respond audibly.)

18 MR. MILLER: We've talked about the case being heard
19 through the media, and some people obviously have formed some
20 opinions on that. I think one juror made the statement,
21 interesting to me, that he's followed all the evidence through
22 the newspaper. And you all understand there's been no evidence
23 in the newspaper; evidence is what comes from the witness stand,
24 and that's what you'll base your decision on, I take it.

25 (No jurors respond audibly.)

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

2 **THE COURT:** Thank you. Mr. Daniel?

3 For those jurors who have come in who were asked to be
4 here at 2:00, if you -- if you want to go and come back at 4:00,
5 that is fine, as well. As we have progressed here today, it --
6 it would be sometime before you would be considered as jurors,
7 if, in fact, we get to that point. So if you want to come back
8 at 4:00, you may do that. You may go, Mr. Daniel.

9 **MR. DANIEL:** Thank you, Your Honor.

10 Mr. Guffy, you're in the real estate business, is that
11 correct, sir?

12 **JUROR GUFFY:** Real estate and property management.

13 **MR. DANIEL:** Property management? Who do you manage
14 properties for, may I ask?

15 **JUROR GUFFY:** Chalet Condominiums.

16 **MR. DANIEL:** Okay, sir. Are you married, sir?

17 **JUROR GUFFY:** Yes, sir.

18 **MR. DANIEL:** Does your wife work outside the home? Does
19 your wife work outside the home?

20 **JUROR GUFFY:** She works with me.

21 **MR. DANIEL:** Oh, you all work together? Okay, sir.

22 Mr. Ballenger, likewise, are you married, sir, and does
23 your wife work outside the home?

24 **JUROR BALLENGER:** (No audible response.)

25 **MR. DANIEL:** Are you married, sir?

1 JUROR BALLENGER: Yes, sir, I am.

2 MR. DANIEL: Does your wife work outside the home?

3 JUROR BALLENGER: Housewife.

4 MR. DANIEL: Say that way because I was told one time
5 that it is work, working in the home, so... You're a sales rep.
6 for Graphic Designs? That's there in Knoxville, is that
7 correct?

8 JUROR BALLENGER: That's correct.

9 MR. DANIEL: And you -- this is your first jury -- time
10 you've ever been called for jury service? Is that the same with
11 you, Mr. Guffy?

12 JUROR GUFFY: I've been called, but I've never served.

13 MR. DANIEL: Never served on a jury? So you've never
14 served on either a civil jury or a criminal jury?

15 JUROR GUFFY: (No audible response.)

16 MR. DANIEL: I don't want to take a lot of time. These
17 gentlemen have sat here, and there's people that's on the --
18 that's been here for awhile have heard all these things, and we
19 don't want to just keep going over and over it, but we do need
20 to know: Is there anything about the law that you don't
21 understand or you feel like you should say you disagree with the
22 law regarding circumstantial evidence?

23 (No jurors respond audibly.)

24 MR. DANIEL: You've heard people make statements from
25 the jury box about circumstantial evidence; you've also heard

1 us -- questions about the first degree murder and the death
2 penalty and things of this nature. You do understand that this
3 is not just a question of whether or not you're going to come
4 back with first degree murder, or life or death. You
5 understand, we've not even started this trial. The judge has
6 to ask you those questions because the law requires him to if
7 you're going to sit on this type of a case, do we understand
8 that?

9 (No jurors respond audibly.)

10 MR. DANIEL: We're starting out with the fact that Gary
11 Sutton, as you sit and look at him here, is innocent. Can you
12 look at him and say that, Mr. Ballenger, here, as...?

13 JUROR BALLENGER: (No audible response.)

14 MR. DANIEL: That's the way you'd want it -- you'd want
15 the same law applied to you, is that correct?

16 JUROR BALLENGER: (No audible response.)

17 MR. DANIEL: And can we do that, also? Are we going to
18 start from scratch, and not try this case in the newspapers and
19 media, but what you hear here?

20 (No jurors respond audibly.)

21 MR. DANIEL: If the -- if the State could not prove to
22 your satisfaction, and that's beyond a reasonable doubt, all of
23 the elements that they've got to prove in this case regarding
24 circumstantial evidence and other evidence, would you have any
25 hesitancy, whatsoever, to say, "Not guilty"?

1 (No jurors respond audibly.)

2 MR. DANIEL: Do you understand you don't guess people
3 -- we're not guessing here. Not just wondering, 'Maybe it could
4 be,' or whatever like that. It's a question: Do I have a
5 reasonable doubt? That's the decision you have to make.

6 (No jurors respond audibly.)

7 MR. DANIEL: You understand that this is a
8 circumstantial evidence case. We're not -- a lot of cases --
9 some cases are tried on circumstantial evidence, but a lot of
10 them are tried on what we call direct evidence, where they have
11 some direct proof of a person's guilt. But this is
12 circumstantial evidence, indirect proof. Do all of you
13 understand that?

14 (No jurors respond audibly.)

15 MR. DANIEL: Do you understand the law as His Honor read
16 to you awhile ago regarding circumstantial evidence? And that
17 they have to prove beyond all reasonable doubt, that there's no
18 reasonable hypothesis other than that of guilt of this
19 defendant. If there's any other hypothesis and it points in any
20 other direction, you must vote not guilty.

21 GENERAL SCHMUTZER: I object, Your Honor. It's any
22 other reasonable hypothesis.

23 THE COURT: It is reasonable hypothesis. I believe he
24 said that.

25 MR. DANIEL: I thought I did.

1 **THE COURT:** The first time you did and the second time
2 you failed to do that, Mr. Daniel.

3 **MR. DANIEL:** Okay, Your Honor. I meant to say
4 "reasonable hypothesis."

5 We've asked this of others. You've heard all of these
6 witnesses that was read. Do you all know any of these people?

7 (No jurors respond audibly.)

8 **MR. DANIEL:** Not? Do you -- any of you have ever been
9 involved in law enforcement, have friends or relatives or
10 neighbors or something that's law enforcement?

11 **JUROR BALLENGER:** I've been involved.

12 **MR. DANIEL:** You have been involved? What was that,
13 Mr. Ballenger?

14 **JUROR BALLENGER:** In '85, when I went back to graduate
15 school, I was deputized for the purpose of security at
16 Dollywood.

17 **MR. DANIEL:** At Dollywood?

18 **JUROR BALLENGER:** Yes, sir.

19 **MR. DANIEL:** How long did you work there?

20 **JUROR BALLENGER:** That summer.

21 **MR. DANIEL:** Did you have any...?

22 **JUROR BALLENGER:** Just during...

23 **MR. DANIEL:** Beg your pardon?

24 **JUROR BALLENGER:** Just during graduate school and while
25 I was attending graduate school.

1 MR. DANIEL: I understand. I understand. As an extra
2 job or temporary job?

3 JUROR BALLENGER: Have some money.

4 MR. DANIEL: I see. I know that feeling. Do you feel,
5 as a result of that, it might make you oriented to be -- think
6 more or less for the prosecution, for any officer that
7 testifies? Do you understand that...?

8 JUROR BALLENGER: No, sir.

9 MR. DANIEL: Do you understand that everybody is
10 presumed to swear the truth? Is that...?

11 JUROR BALLENGER: (No audible response.)

12 MR. DANIEL: If you hear statements that's -- that these
13 defendants, that they gave to the officers and all, you'll
14 consider their statements right along with any and all the other
15 proof, is that right?

16 JUROR BALLENGER: I think so.

17 MR. DANIEL: Thank you.

18 THE COURT: Okay.

19 (Peremptory Challenge Slip #7 was submitted, and the
20 following jurors were excused: Juror Galyon, Juror
21 Whitted, and Juror Teaster.)

22 (The following jurors were called to fill the jury box:
23 Martha R. Watson, Ruby C. Holt, and Curt Kraehmer.)

24 THE COURT: For Mr. Kraehmer, Ms. Watson, and Ms. Holt,
25 have you all heard all the questions and the statements by the

1 Court and counsel throughout this proceeding?

2 (No jurors respond audibly.)

3 THE COURT: First of all, Mr. Kraehmer, have you heard
4 anything about this case before you came here today?

5 JUROR KRAEHMER: Very little.

6 THE COURT: Okay. Have you formed any opinion based on
7 what very little you've heard?

8 JUROR KRAEHMER: No, sir.

9 THE COURT: All right. Ms. Holt, same question: Have
10 you heard anything?

11 JUROR HOLT: Yes.

12 THE COURT: Okay, have you formed any opinion about the
13 guilt or innocence of either of these defendants based on that?

14 JUROR HOLT: (No audible response.)

15 THE COURT: All right. Ms. Watson, have you heard
16 anything?

17 JUROR WATSON: Yes.

18 THE COURT: Have you formed an opinion?

19 JUROR HOLT: No, sir.

20 THE COURT: All right. In regards to the law about the
21 death penalty: If, and only if someone should be convicted of
22 first degree murder, the sentencing options are either life
23 imprisonment or the imposition of the death penalty. It is not
24 mandatory at all, and I would instruct you on the statutory
25 mitigating and statutory aggravating circumstances, after which

1 it would be your job to consider it only. Do you have any more
2 reservations, Mr. Kraehmer, about considering the death penalty?

3 JUROR KRAEHMER: No, sir.

4 THE COURT: All right. And on the other hand, sir,
5 would you automatically vote for the death penalty without
6 considering the sentencing factors, mitigating and aggravating,
7 that the Court has told you?

8 JUROR KRAEHMER: No, sir.

9 THE COURT: All right. Ms. Holt, same question: Do you
10 have any moral reservation about considering the death penalty?

11 JUROR HOLT: I don't believe I could give anybody the
12 death sentence.

13 THE COURT: I'm sorry?

14 JUROR HOLT: I don't believe I could give anybody the
15 death penalty.

16 THE COURT: Are you saying under no circumstances,
17 whatsoever, would you vote to impose the death sentence?

18 JUROR HOLT: It would bother me.

19 THE COURT: I understand that, ma'am. But I must ask
20 you, if at all possible, for you to answer the question as --
21 as asked of you. Could you consider it, and in a -- in a proper
22 case, vote to impose the death sentence? In a proper case, not
23 necessarily this case, but in a hypothetical proper case under
24 the factors that the Court would instruct you on?

25 JUROR HOLT: No, when it comes down to it, I probably

1 couldn't.

2 THE COURT: All right, ma'am. Thank you.

3 (Juror Holt is excused.)

4 THE COURT: Ms. Watson, have you any moral reservations
5 about considering the death penalty as a sentencing option?

6 JUROR WATSON: No, sir, I don't.

7 THE COURT: Okay. And -- and, on the other hand, would
8 you automatically vote to impose the death sentence in every
9 conviction for first degree murder?

10 JUROR WATSON: (Inaudible).

11 THE COURT: All right, thank you. Let's call one more
12 witness (sic).

13 (The following juror was called to fill the jury box:
14 Charles McGill.)

15 THE COURT: Have you heard all the questions,
16 Mr. McGill?

17 JUROR MCGILL: Yes, sir, I have.

18 THE COURT: Is there anything that's been asked or
19 stated that raises an issue in your mind as to whether or not
20 you could be fair and impartial to both sides in this case?

21 JUROR MCGILL: None.

22 THE COURT: Okay. Have you heard or read anything about
23 this case before you came down here, sir?

24 JUROR MCGILL: No, I haven't.

25 THE COURT: Okay, so I take it you've not formed an

1 opinion.

2 JUROR MCGILL: Correct.

3 THE COURT: Okay. On the issue of the death penalty,
4 do you feel like you understand the law as its been explained
5 to you by the Court?

6 JUROR MCGILL: I believe so.

7 THE COURT: Okay. Do you have any moral or ethical
8 reservations against considering the death penalty as an option?

9 JUROR MCGILL: No, I don't.

10 THE COURT: Okay. Is there any -- and on the other side
11 of it, would you automatically vote to impose the death penalty
12 in the event of a first degree murder conviction?

13 JUROR MCGILL: No, I would not.

14 THE COURT: Okay. Very well. Thank you. General
15 Schmutzer?

16 GENERAL SCHMUTZER: Where do you live, Mr. McGill?

17 JUROR MCGILL: Fourteen (14) miles towards Jones Cove.

18 GENERAL SCHMUTZER: All right, sir. And your
19 occupation?

20 JUROR MCGILL: Retired.

21 GENERAL SCHMUTZER: Okay. And you're retired from
22 where, sir, or what?

23 JUROR MCGILL: I was a schoolteacher in South Florida.

24 GENERAL SCHMUTZER: All right. Thank you very much.

25 Let's see, now, I have Ms. Watson. Yes, ma'am. Where

1 do you live, please?

2 JUROR WATSON: I live at Douglas Dam.

3 GENERAL SCHMUTZER: Douglas Dam? And your occupation?

4 JUROR WATSON: I'm a nurse at Ft. Sanders.

5 GENERAL SCHMUTZER: Okay. Thank you very much.

6 Mr. Kraehmer?

7 JUROR KRAEHMER: Sevierville. And I work at Krystal.

8 GENERAL SCHMUTZER: Okay, thank you. Well, all three
9 of you have heard the questions I've asked before about
10 circumstantial evidence. Do any one of the three of you think
11 that just because it's a circumstantial evidence case, that that
12 automatically makes it a weaker case, you're less likely to
13 convict simply because it's circumstantial? Any one of the
14 three of you?

15 (No jurors respond audibly.)

16 GENERAL SCHMUTZER: I take it by your silence you do
17 not. You understand the State's witness is dead.

18 The -- talking about -- it has been mentioned about
19 opinion...

20 MR. DANIEL: Your Honor, (inaudible).

21 THE COURT: I'm sorry?

22 MR. DANIEL: May we approach the bench?

23 THE COURT: Sure.

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

25 MR. DANIEL: (Inaudible) State's witness is dead.

1 That's not appropriate in a murder case. It's always
2 (inaudible).

3 **GENERAL SCHMUTZER:** Well, of course, Your Honor, this
4 is a circumstantial evidence case and...

5 **THE COURT:** As to the -- the victim is dead. But if you
6 say the State's witness, I guess that's technically
7 incorrect. It's not necessarily the State's witness,
8 the eyewitness in this case may be dead.

9 **GENERAL SCHMUTZER:** Next time I'll just make it
10 eyewitness, the State's eyewitness.

11 **MR. DANIEL:** Your Honor, on that request we wanted to
12 -- I was going to do it in writing and hand it to you,
13 but we've been sitting here for two days talking about
14 the penalty of first degree murder. I get the distinct
15 impression, from listening to the questioning, when the
16 questioning goes back and forth with the Court and with
17 the jury, that we are to the point that they're talking
18 about is this a case of life or death, it's not a case
19 of whether or not the defendants are... Okay, I want
20 -- I would just ask Your Honor to admonish them...

21 **THE COURT:** Oh, I sure would.

22 **MR. DANIEL:** ...periodically and...

23 **THE COURT:** And I think I have done that.

24 **MR. DANIEL:** I know you have to ask those questions.

25 **THE COURT:** Right.

1 **MR. DANIEL:** But after awhile the (indiscernible) is
2 that we at least start out -- and I feel like I have to
3 ask questions about...

4 **THE COURT:** I will admonish them, after -- after General
5 Schmutzer asks his questions, or I can do it before
6 that.

7 **MR. DANIEL:** I just feel like that...

8 **THE COURT:** Okay.

9 **MR. DANIEL:** ...it sets the tone for the jury.

10 **THE COURT:** Sure. I'll do that. I sure will. Be glad
11 to.

12 **MR. DANIEL:** Thank you, Judge.

13 **THE COURT:** Uh-huh (affirmative).

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

16 **GENERAL SCHMUTZER:** The Court wants to do something
17 right now.

18 **THE COURT:** Okay. Ladies and gentlemen, in the -- in
19 the course of a trial, and especially the jury selection
20 process, I have found and the attorneys have found, and I'm sure
21 those of you who have set before have found, that the longer the
22 voir dire process or the questioning process goes along, the
23 shorter the questioning is. And because of that, I want to
24 remind you again that the first obligation of all of us, jurors
25 and judge here, is to hear the case and decide guilt or

1 innocence first. And I point out to you again that just because
2 these defendants are here in this courtroom charged under an
3 indictment creates no presumption of guilt against them. They
4 are presumed innocent. And the first obligation of you as
5 jurors is to determine guilt or innocence.

6 Now, I must ask you, in qualifying you as potential
7 jurors, your opinions about the issue of the death penalty,
8 because that is a sentencing option. But please do not
9 understand the Court to mean that just because I ask you about
10 that question or that issue, I hope you don't mean that that is
11 an indication by the Court that all you're here to determine is
12 life or death. Obviously, the first and most important question
13 is: Is someone guilty of some offense? And then, and only
14 then, do you consider the other question. So please understand
15 that. General Schmutzer?

16 And---excuse me again, General Schmutzer---and I want
17 to make it clear, also, that the State is not asking you to
18 bypass that. Obviously the State's not asking you to do that.
19 The State asks you questions, as -- as does the defense counsel,
20 and I say, as we go along the process is shortened both somewhat
21 for the State and somewhat for the defense. So please don't
22 think that anyone is asking you to bypass any steps along the
23 way.

24 **GENERAL SCHMUTZER:** And His Honor mentioned, too, of
25 course, we -- I have certainly shortened my question. I'm

1 relying upon you all coming in, having heard them over and over
2 again, to let me know and not have to go back and reiterate all
3 the time, and to keep us all here much longer. And I take it
4 that, in talking to the three of you all, to this point you have
5 -- there's nothing that I have asked in the past that would --
6 if something brought to my -- you need to bring to my attention.
7 You, Mr. Kraehmer, or...?

8 JUROR KRAEHMER: I have gone to school with some of the
9 witnesses and your son.

10 GENERAL SCHMUTZER: Okay. Do you -- that -- would that
11 cause you any difficulty? You mean some of the witnesses in
12 this case? You've heard the names called out?

13 JUROR KRAEHMER: Right.

14 GENERAL SCHMUTZER: Would that cause you any difficulty?

15 JUROR KRAEHMER: No, sir.

16 GENERAL SCHMUTZER: The fact that you went to school
17 with my son, would that cause you any problem one way or the
18 other?

19 JUROR KRAEHMER: (No audible response.)

20 GENERAL SCHMUTZER: Okay. Anyone else? Ms. Watson?

21 JUROR WATSON: (No audible response.)

22 GENERAL SCHMUTZER: Mr. McGill, anything at all that
23 we've talked about?

24 JUROR MCGILL: Nothing at all.

25 GENERAL SCHMUTZER: Thank you.

1 We had been talking about expert testimony and about
2 opinions. It was mentioned that everybody has an opinion on a
3 lot of things. Well, that's true. You understand there is a
4 difference between an opinion and an informed opinion?

5 (No jurors respond audibly.)

6 **GENERAL SCHMUTZER:** Do any of you think you'd dismiss
7 out-of-hand scientific evidence or testimony, simply because it
8 was an opinion, or would you look to the qualifications of that
9 individual giving it, and their background and training, before
10 making that judgment?

11 (No jurors respond audibly.)

12 **GENERAL SCHMUTZER:** I take it you wouldn't just -- would
13 you dismiss it out of hand just because they were an expert, and
14 say, "I'm just flat-out not going to listen to that person or
15 not believe them"? How about you, Ms. Watson, would you do
16 that?

17 **JUROR WATSON:** No.

18 **GENERAL SCHMUTZER:** Mr. Kraehmer, would you?

19 **JUROR KRAEHMER:** (No audible response.)

20 **GENERAL SCHMUTZER:** The -- let me clear this up right
21 now. We were talking about scientific evidence, and some of
22 it's going to have to do with firearms. You're going to hear
23 some testimony about firearms, and the fact that when weapons
24 are fired, that they leave a distinct impression upon the shell
25 that they fire, that they shoot. And that, through scientific

1 evidence at the crime laboratory, they can take and look at that
2 evidence and determine in most instances if it's -- if there's
3 sufficient markings there, they can determine whether or not
4 that was fired...

5 **MR. DANIEL:** Object to that. That's not what they
6 determine. They can give an opinion, but whether they determine
7 that is for the jury to decide. What they -- what they will
8 determine is for the jury to decide, what the proof will show
9 on it. Not just cut and dried.

10 **THE COURT:** Well, as to what the expert testifies, as
11 to their opinion, it is obviously based on what they find from
12 their physical examinations and the theories by which they would
13 reach their opinions. So I would hope that you would judge that
14 first, look at the basis for their opinion, look at the facts
15 upon which they base their opinion, and consider it as you would
16 any other evidence. You're not bound to accept it and you're
17 not bound to reject it.

18 **GENERAL SCHMUTZER:** I think that the Court pretty well
19 covered it. Any problems with that at all, with that type of
20 evidence?

21 (No jurors respond audibly.)

22 **GENERAL SCHMUTZER:** The -- sometimes, in watching
23 television, we get -- you know, we've got Quincy and some of
24 those people. We think that somebody walks in the room -- in
25 this case there was attempts to get fingerprints. That's one

1 thing we weren't able to come up with. We came up with some on
2 a can that was about a mile and a half away from the actual
3 scene, but beyond that, didn't. In touching things, sometimes
4 we think, as lay people, that they can be left any and
5 everywhere, if someone merely walks into a room and touches
6 something. They leave a print. You understand that's not
7 necessarily the case? That in most instances you can't get a
8 readable print.

9 **MR. DANIEL:** Your Honor, they -- that's determined from
10 the facts and circumstances surrounding where we get them.

11 **GENERAL SCHMUTZER:** Well, Your Honor, that's what I'm
12 going into.

13 **THE COURT:** In some cases -- in some cases you can get
14 fingerprints, in some cases you can't.

15 **GENERAL SCHMUTZER:** Some cases you cannot. You under
16 -- I'm asking them if they understand that.

17 **MR. DANIEL:** I think he said in most cases, he said, and
18 I don't think that's correct.

19 **GENERAL SCHMUTZER:** Well, I think we'll find out whether
20 it's...

21 **THE COURT:** Well, in some you can, some you can't.

22 **GENERAL SCHMUTZER:** But do you understand that just
23 because someone touches something don't necessarily leave a
24 readable print? That so -- as was said, so many different
25 factors involved. First you have -- can't be wearing gloves;

1 second thing is you have to have enough oil on your hands; third
2 thing is you have to have a substance that is such that's
3 conducive to leaving a print. There are all sorts of...

4 MR. DANIEL: We would object to that. I don't think the
5 general's qualified to...

6 THE COURT: Let's -- let's go on to something else.
7 They've answered they can.

8 GENERAL SCHMUTZER: Do you all have any problems or
9 difficulty with the fact that that -- you won't be expecting to
10 find something here that's not here? You'll be looking at the
11 facts and the evidence, and deciding this case on that, and
12 that, alone, right? And what's reasonable, using that, your
13 reason and common sense in deciding this case. And that, and
14 that, alone? Won't run rabbits unless it's a reasonable rabbit,
15 I take it? Any problem with that?

16 (No jurors respond audibly.)

17 GENERAL SCHMUTZER: Especially the three that just came
18 in, any problems at all with that?

19 (No jurors respond audibly.)

20 GENERAL SCHMUTZER: Thank you. Thank you very much,
21 Your Honor.

22 THE COURT: Mr. Miller?

23 MR. MILLER: You all are ultimately going to hear the
24 evidence from these witnesses, and that's what you need to pay
25 attention to. But don't be misled by what Mr. Schmutzer says

1 about...

2 GENERAL SCHMUTZER: Your Honor, I'm going to object to
3 that.

4 THE COURT: Your Honor, it's -- it's about reached that
5 point in a day like we had yesterday that everybody's a little
6 edgy and -- and you all are obviously and understandably
7 sensitive about the statements of each other. But I'm -- I'm
8 going to tell you one more time here -- here today that I do not
9 want counsel making reference about something that someone else
10 has said. It's unnecessary; the lawyers aren't trying each
11 other; and this jury needs to be -- deserves better than that.
12 So let's move on to something else, and hopefully I don't have
13 to sit down on anybody, but I'm about to that point. So,
14 everybody's warned.

15 MR. MILLER: Mr. McGill, I believe you said you'd heard
16 very little if anything about the case?

17 JUROR MCGILL: Probably nothing. I can't recollect
18 anything I may have heard, I haven't connected with anything.

19 MR. MILLER: Okay. So you've definitely not formed an
20 opinion based on what you've heard?

21 JUROR MCGILL: That's correct.

22 MR. MILLER: Not talked to anybody about the case?

23 JUROR MCGILL: No, I haven't.

24 MR. MILLER: You don't know anybody on either side, or
25 any of these witnesses that have been called?

1 JUROR MCGILL: No, I don't know them. I did see the
2 headlines today when I was (inaudible) about jury selection, and
3 I assumed that it would have to do with this. That's about all.

4 MR. MILLER: Like the rest of us, you know you can't
5 believe everything you see in the paper?

6 JUROR MCGILL: (Inaudible).

7 MR. MILLER: Mr. Kraehmer, you said you knew some of the
8 witnesses. Which witnesses do you know?

9 JUROR KRAEHMER: I've gone to school with (inaudible).
10 I think -- he wasn't exactly in my class, but we finished at the
11 same time.

12 MR. MILLER: Did you attend school with him or was it
13 more than that? Were you friends with him or...

14 JUROR KRAEHMER: He just -- he went to my school.

15 THE COURT: Would that pose any problem for you,
16 Mr. Kraehmer, in...?

17 JUROR KRAEHMER: No, sir.

18 THE COURT: Would you feel like you would have to
19 explain your verdict with anybody if it's -- ever how you voted
20 on your conscience?

21 JUROR KRAEHMER: No, sir.

22 MR. MILLER: Ms. Watson, you've heard something about
23 the case, is that correct?

24 JUROR WATSON: Yes.

25 MR. MILLER: And where'd you hear that?

1 JUROR WATSON: From the TV and the newspapers.

2 MR. MILLER: Have you heard it talked about around town,
3 discussed with anybody?

4 JUROR WATSON: No.

5 MR. MILLER: Did you form an opinion based on what you
6 heard?

7 JUROR WATSON: No, sir.

8 MR. MILLER: Either the -- Mr. McGill, Ms. Watson, or
9 Mr. Kraehmer, do you all have any relationship with anybody
10 involved in law enforcement?

11 (No jurors respond audibly.)

12 MR. MILLER: Any association with the attorney general's
13 office? Have they ever prosecuted a case for you?

14 (No jurors respond audibly.)

15 MR. MILLER: You've heard the law many times in the past
16 two days. Will you give me your word that you'll follow the law
17 as the judge instructs you, and that you'll make your decision
18 based on what you hear from the witness stand?

19 (No jurors respond audibly.)

20 MR. MILLER: Anything that you think you may need to
21 tell me or bring to my attention that may affect your service
22 as a juror in this case?

23 (No jurors respond audibly.)

24 MR. MILLER: Thank you.

25 THE COURT: Mr. Daniel?

1 MR. DANIEL: Thank you, Your Honor.

2 Mr. McGill, let me just ask you first, sir, since you're
3 on this side. You said you taught school. Where did you taught
4 (sic)? In Florida, you said?

5 JUROR MCGILL: Ft. Lauderdale.

6 MR. DANIEL: Ft. Lauderdale? What type of subjects did
7 you teach?

8 JUROR MCGILL: Mathematics.

9 MR. DANIEL: Math? Did you have any dealings with
10 forensic type -- scientific, forensic things, such as pathology
11 and things of this nature?

12 JUROR MCGILL: No, I haven't.

13 MR. DANIEL: Been some questions about there may be some
14 experts or people that are entitled, because we call them
15 expert, a person that's got some kind of background or
16 knowledge, that can, under certain circumstances, can give an
17 opinion. And General Schmutzer asked some questions of you and
18 these other people that came on the jury about this. Do you
19 understand and do you believe that -- or do you agree that even
20 the most qualified person in the world can be wrong in their
21 opinion on -- when you're talking about scientific things and
22 things of this nature?

23 JUROR MCGILL: I do agree with that, yes, sir.

24 MR. DANIEL: Sometimes you don't have enough facts even
25 to make a determination, and sometimes your opinion may be

1 different from someone else's. I presume in your math -- of
2 course, math is a little more certainty than...

3 JUROR MCGILL: More precise.

4 MR. DANIEL: More precise than other sciences, but...

5 JUROR MCGILL: And even that is not totally.

6 MR. DANIEL: Not totally so? In different sciences
7 where you have people look at things, and some person draws this
8 conclusion, and somebody may look at it and draw another
9 conclusion, you -- have you, in your studies and teachings and
10 things, had situations where experts and people disagree on
11 different things, and yet they're both well qualified persons,
12 is that correct? You understand that?

13 JUROR MCGILL: (No audible response.)

14 MR. DANIEL: Mr. Kraehmer -- let me ask you one other
15 question, Mr. McGill. Did -- are you married, sir?

16 JUROR MCGILL: Yes, I am.

17 MR. DANIEL: Does your wife work, or did she work? You
18 say you're retired.

19 JUROR MCGILL: She's not drawing any retirement, but she
20 did teach for awhile.

21 MR. DANIEL: Did she teach with you in Florida also?

22 JUROR MCGILL: Not in the same school, no.

23 MR. DANIEL: But you all then moved up here after you
24 -- did you move up here after you retired?

25 JUROR MCGILL: That's correct.

1 MR. DANIEL: Mr. Kraehmer, as I understand it, I heard
2 General Schmutzer -- you went to school with one of his sons,
3 or his son, is that correct?

4 JUROR KRAEHMER: His son, uh-huh (affirmative).

5 MR. DANIEL: Were you close friends with him?

6 JUROR KRAEHMER: No, sir, just...

7 MR. DANIEL: Just from going to school, everybody goes
8 to...?

9 JUROR KRAEHMER: Well, him and 300 kids. We had other
10 kids in my class.

11 MR. DANIEL: So you knew who he was, but you all weren't
12 -- you'd don't visit in Mr. Schmutzer's home or anything? You
13 don't feel like that would cause you any problems; you feel like
14 if you should find, from sitting in that -- if you was chosen
15 as a juror and you found that the State failed to prove to you
16 beyond a reasonable doubt the defendant's guilt, that you would
17 have to explain your verdict if you voted not guilty, would you,
18 sir? You wouldn't have to explain it to anybody, would you?

19 JUROR KRAEHMER: No.

20 MR. DANIEL: You -- could you hear all the -- I tried
21 to talk loud, and I -- sometimes I can hear things and sometimes
22 I can't over there. But did -- could you hear all the questions
23 we asked these other jurors? And I'll ask this of -- also of
24 Ms. Watson and Mr. McGill. Could you all hear these questions?
25 We tried to talk loud enough that we won't keep going over it.

1 Is there any -- do you have any law enforcement -- involved in
2 law enforcement in any way, any three of you?

3 (No jurors respond audibly.)

4 MR. DANIEL: And I take it, then, if you -- you would
5 adhere to the fact you wouldn't believe a law enforcement
6 person's testimony over that of someone else merely because he's
7 a law enforcement officer, is that correct? Everybody -- you'd
8 believe someone else as quick as you would a law enforcement
9 officer, is that right?

10 JUROR MCGILL: Right.

11 MR. DANIEL: You'd believe -- would you believe a law
12 enforcement officer before you would believe anyone else?

13 JUROR MCGILL: No, sir.

14 MR. DANIEL: Okay. Maybe I asked it in the wrong way.
15 I'm sorry.

16 You heard what we talked about, circumstantial evidence,
17 and -- which is -- where there's no direct proof of evidence
18 that a person is guilty of anything, the finger points the guilt
19 toward them. You have to do it by what they call circumstances
20 or circumstantial evidence. You heard what the judge told you
21 the law on that to be. You all have any quarrels with that rule
22 of law? Do you disagree with it?

23 (No jurors respond audibly.)

24 MR. DANIEL: You realize there's many things in life
25 that's uncertain?

1 (No jurors respond audibly.)

2 MR. DANIEL: Do all of you agree, and would you agree
3 with this statement? If you disagree, I'd appreciate you
4 stating it, that you can get into a situation where somebody
5 might think that you've done something and you're really not
6 guilty of that -- of that circumstances (sic). There may be
7 some circumstances that point that way, there may be some
8 circumstances point another way. But do you all feel like that
9 just because anybody's charged with anything, that that
10 automatically means that they're guilty of anything? You
11 understand that they're presumed innocent as they sit here
12 today?

13 (No jurors respond audibly.)

14 MR. DANIEL: Mr. Kraehmer, can you look at Mr. Sutton
15 right over there and look at him right now and say, "You're
16 innocent, sir," because he is innocent as he sits here?

17 JUROR KRAEHMER: (No audible response.).

18 MR. DANIEL: Can you do that also, Mr. McGill?

19 JUROR MCGILL: I agree with the American way.

20 MR. DANIEL: Thank you. Good. You don't believe in
21 trying people before we put on the proof through the papers or
22 newspapers, do you, sir?

23 JUROR MCGILL: (No audible response.)

24 MR. DANIEL: Do you have any quarrels with our rule of
25 law that your -- the State must prove -- the burden's always on

1 the State, and the State must prove that, and a person's
2 innocent 'til proven guilty beyond a reasonable doubt. Do you
3 have any quarrels with that rule? Ms. Watson, do you, ma'am?

4 JUROR WATSON: No.

5 MR. DANIEL: You think that's the way we ought to have
6 it?

7 JUROR WATSON: (No audible response.)

8 MR. DANIEL: Thank you, ma'am. Thank you.

9 (Peremptory Challenge Slip #8 was submitted, and the
10 following jurors were excused: Juror Kraehmer, Juror
11 Watson, and Juror McGill.)

12 (The following jurors were called to fill the jury box:
13 Richard Atchley, David Hopkins, and Gordon A. Hatcher.)

14 THE COURT: For Mr. Atchley, Mr. Hopkins, and
15 Mr. Hatcher, have you all heard the questions and the comments
16 that have been made over the past two days?

17 UNIDENTIFIED: Several times.

18 THE COURT: Several times? More than you wanted to?

19 UNIDENTIFIED: More than I wanted to.

20 THE COURT: Okay. Is there anything that's been said
21 that raises any issue in either of your minds as to whether or
22 not you could be fair and impartial to both sides in this case?
23 Either one of you?

24 UNIDENTIFIED: No, sir.

25 THE COURT: Okay. Mr. Hatcher?

1 JUROR HATCHER: I know the victim's husband, close
2 friends.

3 THE COURT: Is he a close friend of yours?

4 JUROR HATCHER: Worked with him.

5 THE COURT: That check you took...

6 JUROR HATCHER: I've not formed an opinion, but I don't
7 think I could be biased.

8 THE COURT: Be unbiased you mean?

9 JUROR HATCHER: Be unbiased, yeah.

10 THE COURT: Have you formed an opinion, Mr. Hatcher?

11 JUROR HATCHER: Not really as to guilty or innocent.

12 THE COURT: Okay.

13 JUROR HATCHER: But in the back of my mind I don't know
14 whether I could sit on this jury in honesty or not.

15 THE COURT: And be fair to both sides?

16 JUROR HATCHER: Right.

17 THE COURT: Let you go, Mr. Hatcher. Thank you.

18 (Juror Hatcher is excused.)

19 (The following juror was called to fill the jury box:
20 Myra Hurst.)

21 THE COURT: You've heard all the questions, Ms. Hurst?

22 JUROR HURST: Pardon?

23 THE COURT: Have you heard all the questions?

24 JUROR HURST: Yes.

25 THE COURT: Is there anything that raises in your mind

1 an issue as to whether or not you could be fair to both sides
2 in this case?

3 JUROR HURST: (No audible response.)

4 THE COURT: Okay. Have you heard or read anything about
5 this case before you came here today?

6 JUROR HURST: Yes.

7 THE COURT: Have you formed an opinion about the guilt
8 or innocence of either defendant in this case, based on what
9 you've read or heard?

10 JUROR HURST: No.

11 THE COURT: All right. Likewise, Mr. Hopkins, have you
12 heard anything about the case, or read anything?

13 JUROR HURST: Just what I read in the paper, sir.

14 THE COURT: Okay. Have you formed an opinion based on
15 what you read in the newspaper?

16 JUROR HURST: No, sir.

17 THE COURT: Okay. And Mr. Atchley, same question?

18 JUROR ATCHLEY: I've heard some.

19 THE COURT: Have you formed an opinion?

20 JUROR ATCHLEY: No.

21 THE COURT: Okay. Likewise, Mr. Atchley, have you
22 understood what the Court has instructed on the law of first
23 degree murder?

24 JUROR ATCHLEY: (No audible response.)

25 THE COURT: Do you have any moral or ethical

1 reservations about considering the death penalty if and only if
2 someone were convicted?

3 JUROR ATCHLEY: No problem.

4 THE COURT: Okay. On the other hand, if someone were
5 convicted of first degree murder, would you automatically vote
6 to impose the death penalty?

7 JUROR ATCHLEY: No.

8 THE COURT: Okay, thank you. Mr. Hopkins, any moral
9 reservation?

10 JUROR HOPKINS: Yes, sir, I do. I don't believe in the
11 death penalty, but (inaudible) that in this case it being
12 circumstantial evidence, I don't believe I could convict -- if
13 the persons were found guilty, I do not believe I could impose
14 the death penalty.

15 THE COURT: Okay. All right, sir. Mr. Hopkins, we'll
16 let you go.

17 MS. THOMAS: Your Honor, that doesn't quite meet the...

18 THE COURT: Don't just tell me what the law is. If you
19 want to approach the bench, I will let you do that.

20 MS. THOMAS: Can we approach the bench?

21 THE COURT: Yes.

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

23 THE COURT: Don't ever stand up and tell me what -- you
24 know, I may be wrong, but that -- that's not...

25 MS. THOMAS: I apologize. He didn't say -- he said he

1 could consider it, but it'd be with the circumstantial
2 case only...

3 **THE COURT:** Only, he wouldn't -- he wouldn't consider
4 to impose it.

5 **MS. THOMAS:** But the test is...

6 **GENERAL SCHMUTZER:** He said on a circumstantial evidence
7 case he wouldn't convict.

8 **MS. THOMAS:** But the test is whether or not he could
9 consider the death penalty in any case.

10 **THE COURT:** In a proper case. In an appropriate case.
11 And as I understand the law, the death penalty applies
12 in an appropriate case to a circumstantial evidence
13 case, if it's appropriately circumstantial evidence.

14 **MS. THOMAS:** Well, Your Honor, I think he's been fully
15 instructed on how the death penalty would apply. He
16 would still qualify to sit on the jury if he could
17 consider it in any case. If he would look at the facts,
18 he would still qualify.

19 **THE COURT:** If he says in a circumstantial evidence case
20 he would never vote to impose the death penalty, are you
21 saying that that would be proper?

22 **MS. THOMAS:** I'm saying that if the gentleman here says
23 that he would consider the death penalty and to follow
24 the law -- that he would consider it and follow the law,
25 then he's qualified to sit.