

1 GENERAL SCHMUTZER: In this case -- I think he said
2 generally he would consider it, but not in this case
3 because it is a circumstantial case.

4 THE COURT: I'll -- I'll ask him further. I will ask
5 him further about that.

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

8 THE COURT: Mr. Hopkins, let me ask you this: Is it
9 your response that in any circumstantial evidence case, in the
10 event of a conviction in a circumstantial evidence case, that
11 you would not consider the death penalty under -- under those
12 circumstances at all?

13 JUROR HOPKINS: Only way I would consider the death
14 penalty is without a doubt that I know that this person
15 committed the act of murder.

16 THE COURT: Okay. That's a fair statement. Now, the
17 law -- and I have instructed you on the law in circumstantial
18 evidence and in direct evidence.

19 JUROR HOPKINS: Yes, sir.

20 THE COURT: And it makes no distinction as to which is
21 more credible for purposes of determining guilt or innocence,
22 okay?

23 JUROR HOPKINS: Okay.

24 THE COURT: In the proper case, it will be just as much
25 your duty to convict someone on circumstantial evidence as it

1 would direct evidence, okay?

2 Conversely, in a proper case, it would be just as much
3 your duty to acquit someone based on direct evidence, if you so
4 felt, okay? It's a two-tiered test here. The first thing is,
5 is in determining guilt or innocence, okay? And then, once you
6 make that determination, if you should determine guilt, then the
7 law goes further and says I must instruct you on the mitigating
8 factors and the aggravating factors applicable in that
9 particular case. Do you understand that?

10 **JUROR HOPKINS:** Yes, sir, I do.

11 **THE COURT:** Now, based upon what I have told you, in a
12 proper case, based on the aggravating factors and the mitigating
13 factors, would you consider the death penalty as a sentencing
14 option?

15 **JUROR HOPKINS:** Well, (indiscernible) there, Your Honor.
16 But in my heart, before I could impose the death penalty, I've
17 got to know...

18 **THE COURT:** Sure.

19 **JUROR HOPKINS:** ...without a doubt that that person
20 (inaudible).

21 **THE COURT:** That's only a fair statement. And that's
22 what the law -- well, it doesn't say any doubt, it says beyond
23 a reasonable doubt.

24 **JUROR HOPKINS:** I understand what the law says, but I'm
25 going by my own...

1 **THE COURT:** And I certainly appreciate that. Based on
2 what I have told you the law to be, do you feel like that you
3 could follow the law and apply the law in a proper case?

4 **JUROR HOPKINS:** That would be the only way I would do
5 it.

6 **THE COURT:** Fair enough. Fair enough. Okay. All
7 right. You may proceed, General Schmutzer. And as I've told
8 all of you, ladies and gentlemen, and the State nor the defense
9 or this Court is ever going to ask you to do something against
10 your conscience. And these are all important issues, and I want
11 all of you, as well as the Court, to be able to go home and
12 sleep at night. That's a pretty good indication for you, if
13 whether or not you've done what you think is right (sic). And
14 so I certainly appreciate the concerns of each and every one of
15 you, as does the State and the defense. Very well.

16 **GENERAL SCHMUTZER:** Ms. Hurst, where do you live,
17 please?

18 **JUROR HURST:** I live in Pigeon Forge.

19 **GENERAL SCHMUTZER:** Okay. And your occupation?

20 **JUROR HURST:** I am a self-employed (indiscernible).

21 **GENERAL SCHMUTZER:** Okay, thank you. Let's see, I have
22 Mr. Atchley. Where do you live, please, sir, and your
23 occupation?

24 **JUROR ATCHLEY:** I'm retired, and I live over on Arden
25 Lane.

1 **GENERAL SCHMUTZER:** Thank you, sir.
2 And Mr. Hopkins?
3 **JUROR HOPKINS:** I live in Seymour.
4 **GENERAL SCHMUTZER:** And your occupation, please, sir?
5 **JUROR HOPKINS:** I'm in charge of train movements with
6 Norfolk & Southern Railroad.
7 **GENERAL SCHMUTZER:** All right.
8 **THE COURT:** In charge of what?
9 **JUROR HOPKINS:** Train movements.
10 **THE COURT:** I bet you have a lot to do, don't you?
11 **JUROR HOPKINS:** It's a very stressful job.
12 **THE COURT:** I bet it is.
13 **GENERAL SCHMUTZER:** The -- you've heard all the
14 questions I've asked. I'm not going to go back over them again
15 about circumstantial evidence. Did I understand you to say---
16 and I may have misunderstood you---but I take it you understand
17 that circumstantial evidence and direct evidence, there's not
18 one better than the other. Either one can point to guilt beyond
19 a reasonable doubt, you understand that?
20 **JUROR HOPKINS:** Yes, sir, I understand that.
21 **GENERAL SCHMUTZER:** Did I understand -- would you
22 require the State to prove more than it's required to prove
23 under the law before you could convict or before you could find
24 someone -- or sentence someone to death?
25 **JUROR HOPKINS:** It would have to be proven without a

1 doubt to me.

2 **GENERAL SCHMUTZER:** In other words, you could not -- you
3 would raise the standard of proof above beyond a reasonable
4 doubt?

5 **JUROR HOPKINS:** Yes, sir.

6 **GENERAL SCHMUTZER:** It'd have to be...?

7 **JUROR HOPKINS:** (Inaudible) a person's life, yes, sir.

8 **GENERAL SCHMUTZER:** Your Honor, I'd ask that...

9 **THE COURT:** Let's see, Mr. Hopkins. Based on that
10 answer, the Court will have to excuse you. All right, sir.
11 Thank you.

12 **GENERAL SCHMUTZER:** Thank you, sir. I appreciate your
13 candor.

14 **THE COURT:** Thank you for your honesty, Mr. Hopkins.
15 The Court understands. Thank you. Thank you for being with us
16 the last two days.

17 **JUROR HOPKINS:** That's fine.

18 (Juror Hopkins is excused.)

19 **GENERAL SCHMUTZER:** Mr. Atchley, Ms. Hurst, I think
20 there's been some mention, maybe you've heard about expert
21 witnesses. Either one of you (indiscernible). And it was
22 mentioned about experts may be disagreeing. That experts might
23 disagree. You understand we're dealing with this case. You
24 won't decide whether experts disagree unless there's experts
25 take this stand and disagree. And then, of course, if they do

1 take the stand and disagree, then you would consider it, is that
2 right?

3 MR. DANIEL: Objection, Judge.

4 THE COURT: That's...

5 GENERAL SCHMUTZER: That's correct.

6 THE COURT: That, in and of itself, is a proper
7 statement.

8 MR. DANIEL: But they've still got a right, Your Honor,
9 I believe, to reject it.

10 THE COURT: I have -- and I have instructed them on
11 that, that they don't have to believe or disbelieve any witness.
12 You know, that is based on the totality of their testimony and
13 the testimony of others.

14 GENERAL SCHMUTZER: But you understand you don't
15 consider whether experts agree or disagree on something unless
16 they actually take the stand and disagree? Any of you all --
17 you understand that? If they don't -- if they don't take the
18 stand and disagree, of course, then, that wouldn't be -- even
19 though that -- you know, that's not the proof, then. You go by
20 the proof, what comes from this witness stand. Any of you
21 dismiss it -- either of the two of you all dismiss it out of
22 hand, expert evidence or testimony?

23 (No jurors respond audibly.)

24 GENERAL SCHMUTZER: Mr. Atchley, would you dismiss it
25 out of hand, simply because it was an expert witness, or would

1 you listen to what they had to say?

2 JUROR ATCHLEY: I'd listen to what they had to say.

3 GENERAL SCHMUTZER: Thank you. You, Ms. Hurst?

4 JUROR HURST: (No audible response.)

5 GENERAL SCHMUTZER: You folks think of anything at all
6 you need to bring to our attention, that you think might cause
7 you some difficulty in being a juror in this case?

8 JUROR HURST: My family lives in an area where this
9 happened, and we did get more than just the newspaper and
10 (indiscernible) ever since its been going on. And I'm also
11 worried someone (indiscernible) family as far as children and
12 the youth programs (indiscernible). It might have a tendency
13 to sway me, because I have to be around those people.

14 GENERAL SCHMUTZER: I understand. Well, only you can
15 -- you know, you're the only one that knows, Ms. Hurst, and...

16 JUROR HURST: Well, I -- when it actually got down to
17 it, you know,...

18 GENERAL SCHMUTZER: Sure.

19 JUROR HURST: It would make me uncomfortable.

20 GENERAL SCHMUTZER: Okay. Do you think that -- do you
21 think it would deter you from doing your duty, which is just to
22 -- to decide this case on the evidence and the law, and that,
23 and that, alone; and not be swayed by sympathy or prejudice?
24 As the law will say, you fearlessly do your duty? That's what
25 you'll be told.

1 **THE COURT:** All of us -- all of us have had sympathies
2 for children and elderly people and the victims of alleged
3 crimes. But the issue -- the bottom line is -- issue is: Can
4 you do your job under the law?

5 **JUROR HURST:** I would certainly try.

6 **THE COURT:** Do you think you could do that?

7 **JUROR HURST:** I would hate to (indiscernible).

8 **THE COURT:** I'm sorry.

9 **JUROR HURST:** I would hate to look the children in the
10 eye if I had to tell them, you know,... It does make me
11 uncomfortable, and I -- it would probably sway me some. You
12 also didn't ask me about the death penalty.

13 **THE COURT:** I hadn't got that far yet, I don't believe.

14 **GENERAL SCHMUTZER:** Somehow I got to asking you
15 questions, but the judge didn't. I apologize.

16 **THE COURT:** Have you got...?

17 **JUROR HURST:** I do believe in the death penalty, but I
18 do not under circumstantial evidence.

19 **THE COURT:** Under any circumstances?

20 **JUROR HURST:** Under circumstantial evidence.

21 **GENERAL SCHMUTZER:** Under circumstantial...

22 **THE COURT:** I understand that. That was a bad choice
23 of words by the Court. But if it is purely a case of
24 circumstantial evidence, are you saying that in any
25 circumstantial evidence case of first degree murder you would

1 not consider the death penalty as an option? Is that what
2 you're saying?

3 JUROR HURST: Right. Yes.

4 THE COURT: Okay. All right. I believe we will let you
5 go. Thank you, Ms. Hurst.

6 GENERAL SCHMUTZER: Thank you, Ms. Hurst. I appreciate
7 it.

8 (Juror Hurst is excused.)

9 GENERAL SCHMUTZER: Anyone else feel that way?

10 (No jurors respond audibly.)

11 GENERAL SCHMUTZER: I take it by your silence you don't.
12 Thank you.

13 THE COURT: And -- and for purposes of the record, the
14 Court excludes her also for the statements concerning her
15 possible feelings on the children in this case.

16 Call two more.

17 (The following jurors were called to fill the jury box:
18 Doyle Ogle and James C. Ogle.)

19 THE COURT: For the Ogle gentlemen, have you both heard
20 all the questions?

21 UNIDENTIFIED: Yes, sir.

22 THE COURT: Mr. Doyle Ogle, is there anything that's
23 been said that raises an issue in your mind as to whether or not
24 you could be fair to both sides in this case?

25 JUROR DOYLE OGLE: No, sir.

1 **THE COURT:** Have you read or heard anything about the
2 case?

3 **JUROR DOYLE OGLE:** Oh, yes, I've read quite a bit about
4 it.

5 **THE COURT:** Okay. Have you formed an opinion about the
6 guilt or innocence of any person based on what you've read or
7 heard?

8 **JUROR DOYLE OGLE:** No, sir.

9 **THE COURT:** Okay.

10 Mr. James Ogle, anything that you've read or heard about
11 this case?

12 **JUROR JAMES OGLE:** Yes, sir, I've read about it, but I
13 haven't -- haven't formed an opinion.

14 **THE COURT:** Very good. Have you understood the Court's
15 instructions about the law concerning first degree murder in
16 regards to the death penalty?

17 **JUROR JAMES OGLE:** Yes, I have.

18 **THE COURT:** Do you have any moral or ethical reservation
19 against considering the death penalty as a sentencing option?

20 **JUROR JAMES OGLE:** No, I don't.

21 **THE COURT:** Okay. And conversely, would you
22 automatically vote to impose the death penalty for any
23 conviction for first degree murder?

24 **JUROR JAMES OGLE:** No, I wouldn't.

25 **THE COURT:** All right. Mr. Doyle Ogle, same question:

1 Have you got any moral reservations about considering it as a
2 sentencing option?

3 JUROR DOYLE OGLE: No, sir.

4 THE COURT: Would you automatically vote to impose it?

5 JUROR DOYLE OGLE: No, sir, I would not.

6 THE COURT: All right. General Schmutzer?

7 GENERAL SCHMUTZER: You gentlemen have heard all my
8 questions, I take it. Any problems with any of them?

9 JUROR JAMES OGLE: I've got the same problem Mr. Galyon
10 had earlier; I work with the stepfather and aunts and a couple
11 of uncles, but (indiscernible).

12 GENERAL SCHMUTZER: That's -- you don't consider that
13 a problem in this case?

14 JUROR JAMES OGLE: No, I don't.

15 GENERAL SCHMUTZER: Okay.

16 JUROR JAMES OGLE: Don't (indiscernible).

17 GENERAL SCHMUTZER: The -- I'm not going to go through
18 all my questions again. I take it, when you say that, you're
19 covering everything you've heard here the last two days that
20 I've asked, both of you have. Understand, we lawyers aren't on
21 trial. They're excellent lawyers over here, and they do a good
22 job. And I take it, though, you'll ultimately decide this case
23 on the law and the evidence and the facts that you get from this
24 courtroom and this courtroom, alone, decide it straight up and
25 down. Can't think of anything else. I'm going to sit down.

1 Thank you.

2 THE COURT: Thank you. Mr. Miller?

3 MR. MILLER: Ask the Ogles, are you all related in any
4 way, closely?

5 JUROR JAMES OGLE: (Inaudible).

6 MR. MILLER: Not related to His Honor?

7 JUROR DOYLE OGLE: (Inaudible).

8 THE COURT: You probably wouldn't claim it if you were,
9 would you?

10 MR. MILLER: Mr. Doyle Ogle, you said you'd read quite
11 a bit in the paper about it?

12 JUROR DOYLE OGLE: Yes.

13 MR. MILLER: But you've not formed an opinion based on
14 what you've read, is that correct?

15 JUROR DOYLE OGLE: No.

16 MR. MILLER: Mr. James Ogle, same go for you?

17 JUROR JAMES OGLE: Yes.

18 MR. MILLER: Heard about it, but not formed an opinion?
19 Mr. Atchley, I don't believe I've asked you yet. You've heard
20 some about the case, I'm sure.

21 JUROR ATCHLEY: Right.

22 MR. MILLER: Have you formed an opinion one way or the
23 other?

24 JUROR ATCHLEY: Nothing involved in this case.

25 MR. MILLER: And you all understand the dangers in

1 believing everything you read in the newspaper, and trying the
2 case through the media, that we just can't do that. We won't
3 do that, will we?

4 JUROR ATCHLEY: No.

5 MR. MILLER: There's I think a nice article in the paper
6 about Judge Ogle, and you might have formed an opinion that he's
7 a heck-of-a-guy.

8 THE COURT: Just don't ask my wife.

9 MR. MILLER: Probably formed a correct opinion in that
10 case. Either Mr. Ogle, Mr. Ogle, or Mr. Atchley, do you have
11 any involvement in law enforcement, yourself, or have you in the
12 past?

13 JUROR ATCHLEY: None, whatsoever.

14 MR. MILLER: Have any relationships with people involved
15 in law enforcement?

16 UNIDENTIFIED: Not presently.

17 JUROR ATCHLEY: Yeah, I've got a nephew by marriage
18 that's a policeman.

19 MR. MILLER: What's his name?

20 JUROR ATCHLEY: Jim (indiscernible).

21 MR. MILLER: Okay.

22 One of you answered not presently involved in law -- or
23 have anybody involved in law enforcement. Did somebody say
24 that? That they had in the past?

25 THE COURT: Mr. Doyle Ogle said that.

1 JUROR DOYLE OGLE: Not presently. Years ago my first
2 cousin (inaudible).

3 MR. MILLER: Okay. But you understand why I ask the
4 question: We're not going to believe a law officer over anybody
5 else, just because they wear a uniform and have a badge, is that
6 correct?

7 (No jurors respond audibly.)

8 MR. MILLER: Talked a lot about experts and experts
9 disagreeing. You all understand you can disagree with an
10 expert? Just because they're qualified as an expert, you don't
11 necessarily have to agree with what they say.

12 And it's being referred to as scientific evidence about
13 these shells, shell comparison. And, quite frankly, what the
14 man did was look at one shell and look at the other through a
15 microscope, and made an opinion that they may have been shot
16 from the same -- same gun. Now, if putting the microscope in
17 there, if that makes it science, that's science, I guess. But
18 you all understand you can reject any witness' testimony, and
19 even an expert, just like any other witness?

20 (No jurors respond audibly.)

21 MR. MILLER: Mr. Hopkins, who was excused earlier,
22 raised I think an interesting and important question. He could
23 not inflict the death penalty unless he didn't have a doubt
24 about these men's guilt. Now, what's the difference between a
25 doubt and a reasonable doubt, when you put that qualifier in

1 there? I submit to you that it's not that big a difference when
2 you're talking about a man's life.

3 GENERAL SCHMUTZER: I object, Your Honor. That's not
4 proper.

5 THE COURT: I have -- I have instructed you on the law,
6 and I respect you to follow that law as defined.

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

8 THE COURT: Okay. Mr. Daniel?

9 MR. DANIEL: Mr. Atchley, you say you have a -- is it
10 a nephew, sir, that's in the police department?

11 JUROR ATCHLEY: By marriage, yes.

12 MR. DANIEL: Is that here in Sevier County?

13 JUROR ATCHLEY: He's (indiscernible) in Pigeon Forge.

14 MR. DANIEL: In Pigeon Forge?

15 JUROR ATCHLEY: Right.

16 MR. DANIEL: And you, yourself, have not been involved
17 in any law enforcement, is that correct?

18 JUROR ATCHLEY: No.

19 MR. DANIEL: What type of work are you in or have you
20 followed?

21 JUROR ATCHLEY: I don't do anything.

22 MR. DANIEL: What type of work...?

23 JUROR ATCHLEY: I've been retired ten years from Western
24 Electric.

25 MR. DANIEL: Western Electric? Is that in Knoxville,

1 or did you work here?

2 JUROR ATCHLEY: I worked all over the country.

3 MR. DANIEL: I see. You lived here most of your life?

4 JUROR ATCHLEY: Well, when I wasn't on the road.

5 MR. DANIEL: Stayed on the road a lot?

6 JUROR ATCHLEY: My home's been here.

7 MR. DANIEL: I see. Is your -- are you married?

8 JUROR ATCHLEY: Yes, sir.

9 MR. DANIEL: Does your wife work outside...?

10 JUROR ATCHLEY: (No audible response.)

11 MR. DANIEL: What type -- has she ever worked outside
12 the home?

13 JUROR ATCHLEY: (No audible response.)

14 MR. DANIEL: She's always been a housewife, so to speak?

15 JUROR ATCHLEY: Right.

16 MR. DANIEL: Mr. Doyle Ogle, is that correct, sir?

17 JUROR DOYLE OGLE: Right.

18 MR. DANIEL: And what type of work do you follow?

19 JUROR DOYLE OGLE: I'm with Holiday Inn, Gatlinburg,
20 Assistant Manager.

21 MR. DANIEL: We had somebody here on the jury earlier
22 that's with Holiday Inn. Was that...?

23 JUROR DOYLE OGLE: Pigeon Forge. She's in Pigeon Forge.

24 MR. DANIEL: She's different? They've split those up
25 some, now. I know in certain areas different people own them,

1 is that correct? It's not all owned by Holiday Inn?

2 JUROR DOYLE OGLE: Well, these two are owned by the same
3 owners. Franchise.

4 MR. DANIEL: Okay. And Mr. James Ogle.

5 JUROR JAMES OGLE: Yes.

6 MR. DANIEL: What type of work have you followed, sir?

7 JUROR JAMES OGLE: I work for Arnold Engineering
8 Company. I'm a grinder set-up operator.

9 MR. DANIEL: Okay. Is that -- I'm not familiar. Is
10 that here in Sevier County?

11 JUROR JAMES OGLE: Yes, it is.

12 MR. DANIEL: Neither one of you all have any persons or
13 family that's involved in law enforcement, is that correct?

14 JUROR JAMES OGLE: No, I don't.

15 MR. DANIEL: I know there was a lot of names read awhile
16 ago, and you gentlemen probably have lived here in the county
17 for many years. And it's a -- while it's a fairly large county,
18 it's still like where I was raised in Grainger County, it's
19 still small, you know. Everybody'd like to know everybody. Do
20 you -- do those names of any of those witnesses ring a bell with
21 any of you? Close friends at all?

22 JUROR JAMES OGLE: I recognize some of the names, but
23 no close contact.

24 MR. DANIEL: Nothing with...

25 JUROR DOYLE OGLE: I went to school with a couple of

1 people on there.

2 MR. DANIEL: Do you remember who they were? Were they
3 law enforcement officers or just...?

4 JUROR DOYLE OGLE: Jerry (indiscernible) and Herman
5 Lewis. Went to school, grammar school with him, but that's been
6 30 years ago.

7 MR. DANIEL: That wouldn't cause you any problem, would
8 it, Mr. Ogle?

9 JUROR DOYLE OGLE: No.

10 MR. DANIEL: The reason we ask those questions, there's
11 nothing wrong with knowing anybody, and everybody's got some
12 people they know, and friends. But we just want to make sure
13 that, somebody gets on the stand, that you wouldn't take their
14 word over somebody else's. I don't know whether it's for our
15 witnesses or theirs, but you won't ever just automatically say,
16 "We're going to believe this witness over another one."

17 You could hear the questions that's been asked on the
18 circumstantial evidence and stuff, is that correct?

19 JUROR DOYLE OGLE: Right.

20 MR. DANIEL: And you heard the question that's been
21 asked about publicity. I'm sure everybody's read something or
22 heard something about this. If you've read the newspapers or
23 heard -- turned on your television or your radio lately, you've
24 heard something. Do you all understand and do you feel like you
25 could try this case, if chosen as jurors, on the evidence that's

1 heard here in the courtroom, and not what you might have heard
2 or what you may have think (sic), or somebody thought the proof
3 shows? Do you understand that?

4 (No jurors respond audibly.)

5 MR. DANIEL: We got -- you heard about expert witnesses
6 and people that's may testify (sic) and give opinions. And
7 since this is a circumstantial case, these opinions may -- they
8 may become important, they may not be important. Question is:
9 Will you weigh their testimony like you would anybody else's?
10 Just because a person has some training in certain areas doesn't
11 mean that it's infallible, that his opinions are -- are
12 infallible. Do you all -- we'll all agree with that, can't we?

13 (No jurors respond audibly.)

14 MR. DANIEL: You all don't have -- in your working with
15 the Holiday Inn, you don't have any kind of experts that you
16 work with as far as metallurgist and things of this nature, do
17 you?

18 JUROR DOYLE OGLE: No, sir.

19 MR. DANIEL: I know everybody works with people --
20 person that works on a car sometimes can qualify as an expert
21 as a mechanic, see, because he knows how to work on a car. So
22 experts can come in different shapes and forms.

23 May I have just a minute?

24 THE COURT: Sure.

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

1 MR. DANIEL: No further questions at this time.
2 THE COURT: Approach the bench, counsel, just a moment.
3 (A bench conference is held on the record, to-wit:)
4 THE COURT: Was it your intent to excuse Juror 1 or...?
5 MR. WEBB: No, we're not.
6 THE COURT: Okay. Very good.
7 MR. WEBB: Sorry about that.
8 THE COURT: Yes?
9 MS. THOMAS: While we're up here,...
10 THE COURT: Yes. Sometimes they'll run.
11 MS. THOMAS: Wait, let me finish my...
12 GENERAL SCHMUTZER: Sorry, Judge.
13 THE COURT: She has a question now. Yes, ma'am?
14 MS. THOMAS: I would like to object to excusing jurors
15 that say they won't consider the death penalty in a
16 circumstantial evidence case. Mr. Hopkins and the juror
17 prior to that. I wanted to place an objection in the
18 record.
19 THE COURT: Okay, now, as -- and I understand.
20 GENERAL SCHMUTZER: Mr. Hopkins said that he would
21 require...
22 THE COURT: That -- beyond a reasonable...
23 GENERAL SCHMUTZER: ...beyond any doubt.
24 THE COURT: Yeah.
25 GENERAL SCHMUTZER: Not reasonable doubt.

1 THE COURT: Right. The other juror said that -- she
2 likewise said the same thing about a circumstantial
3 evidence.

4 GENERAL SCHMUTZER: Had problems with it.

5 THE COURT: And she also said that she would have
6 trouble looking those little children in the eyes. So
7 that's...

8 GENERAL SCHMUTZER: Said that might sway her.

9 THE COURT: Right. How long have we been back?

10 GENERAL SCHMUTZER: An hour and a half.

11 MR. DANIEL: Hour and a half.

12 THE COURT: I'd say everybody's ready for a break, don't
13 you?

14 GENERAL SCHMUTZER: I'd say, yes.

15 THE COURT: Okay. Very good.

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

18 (Peremptory Challenge Slip #9 was submitted, and the
19 following juror was excused: Juror Atchley.)

20 THE COURT: The Court's going to take a short break.
21 We've been back in here about an hour and a half, and I'll let
22 you all have a break. Do not discuss the case, let anyone else
23 talk to you about the case.

24 (The court is recessed.)

25 (The prospective jury panel returns to the courtroom,

1 and the following proceedings were had.)

2 THE COURT: Is it okay, gentlemen, to turn any of the
3 witnesses loose for today?

4 GENERAL SCHMUTZER: Yes, Your Honor.

5 THE COURT: Okay, if there are any witnesses here, you
6 are free to go until in the morning. So you do not have to stay
7 if you were a witness, only.

8 You may be seated.

9 (The following juror was called to fill the jury box:
10 Jack D. Morrow.)

11 THE COURT: Heard all the questions, Mr. Morrow?

12 JUROR MORROW: Yes, sir.

13 THE COURT: Anything raises any issue in your mind as
14 to whether or not you can be fair to both sides in this case?

15 JUROR MORROW: No, sir.

16 THE COURT: Have you read or heard anything about the
17 case before you came here?

18 JUROR MORROW: Very little.

19 THE COURT: Have you formed any opinion based on that
20 very little you read or heard?

21 JUROR MORROW: No, sir.

22 THE COURT: Okay. How about the issues concerning the
23 death penalty? If, and only if, someone were convicted of first
24 degree murder, do you have any moral reservations about
25 considering the death penalty as an option?

1 JUROR MORROW: No, sir.

2 THE COURT: On the other hand, would you likewise
3 automatically vote to impose the death penalty in every first
4 degree murder case?

5 JUROR MORROW: No, sir.

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

7 GENERAL SCHMUTZER: Mr. Morrow, where do you live,
8 please, sir?

9 JUROR MORROW: Pigeon Forge.

10 GENERAL SCHMUTZER: And your occupation?

11 JUROR MORROW: 'Dozer operator.

12 GENERAL SCHMUTZER: Okay. And you've heard all the
13 questions I've asked. I'm not going to repeat them again. Any
14 problems with the fact that this is a circumstantial evidence
15 case?

16 JUROR MORROW: No, sir.

17 GENERAL SCHMUTZER: Okay. Anything else I've asked that
18 may cause you a problem?

19 JUROR MORROW: I don't think so.

20 GENERAL SCHMUTZER: None of them you've heard, anyway?

21 JUROR MORROW: No, sir.

22 GENERAL SCHMUTZER: Okay. Know the -- any connection
23 at all with the attorneys or the defendants? Know anybody?

24 JUROR MORROW: No, sir. Just from being on jury duty
25 since November.

1 **GENERAL SCHMUTZER:** Right. Know -- not being
2 represented or any family or anything else like that?

3 (No jurors respond audibly.)

4 **GENERAL SCHMUTZER:** Let me ask this of everyone. It's
5 been awhile. Anybody else that's -- any connection with the
6 defense lawyers?

7 (No jurors respond audibly.)

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

9 I haven't asked this in a little while, so let me ask
10 it again. It's been asked from time to time if we have
11 prosecuted any cases on your behalf. But same token, have
12 myself or my office (sic) ever prosecuted a case that maybe
13 involved a personal friend or relative at any time, to your
14 knowledge? Anyone? Mr. Ogle?

15 **JUROR DOYLE OGLE:** Prosecuted a case where I was
16 assaulted with a deadly weapon in '77.

17 **GENERAL SCHMUTZER:** Okay, sir.

18 **JUROR DOYLE OGLE:** At the Holiday Inn.

19 **GENERAL SCHMUTZER:** Right. Anything about that either
20 way that would cause you any difficulties in being a juror in
21 this case?

22 **JUROR DOYLE OGLE:** No, sir.

23 **GENERAL SCHMUTZER:** Anything else or anyone else?

24 (No jurors respond audibly.)

25 **GENERAL SCHMUTZER:** Okay, thank you. That's all, Your

1 Honor.

2 THE COURT: Mr. Miller?

3 MR. MILLER: Mr. Morrow, you know anybody on either side
4 of this case? The victim's family?

5 JUROR MORROW: Not to my knowledge, I don't.

6 MR. MILLER: Okay. And you heard the list of witnesses
7 who were called. Do you know any of these people?

8 JUROR MORROW: Not that I recollect.

9 MR. MILLER: Do you, yourself, have any background in
10 law enforcement?

11 JUROR MORROW: No, sir.

12 MR. MILLER: Have any relatives or close friends
13 involved in law enforcement?

14 JUROR MORROW: No, sir.

15 MR. MILLER: You've heard the law many times, and I
16 won't repeat it. But can you follow the law as the judge gives
17 it to you?

18 JUROR MORROW: Yes, sir.

19 THE COURT: Mr. Daniel?

20 MR. DANIEL: Mr. Morrow, do you have any involvement
21 with any of these law enforcement officers here, sir?

22 JUROR MORROW: Just maybe to say hello to them every now
23 and then.

24 MR. DANIEL: You know them?

25 JUROR MORROW: I don't know them personally.

1 MR. DANIEL: You've heard all these questions that we've
2 asked. What we're trying to do is get a jury we can start fair
3 with, we can start from scratch. You understand that?

4 JUROR MORROW: Yes, sir.

5 MR. DANIEL: You can look at that gentleman, Gary right
6 there, and say, "Gary, you're innocent, and they're going to
7 have to prove..."?

8 JUROR MORROW: He's innocent until he's proven guilty.

9 MR. DANIEL: "And they're going to have to prove you
10 guilty beyond a reasonable doubt before I vote that," is that
11 correct?

12 JUROR MORROW: Right.

13 MR. DANIEL: And will you -- you'd want that same law
14 applied to you?

15 JUROR MORROW: Right.

16 MR. DANIEL: Mr. Ogle, just in view of the fact that --
17 you made the statement, you said you had a case where the
18 attorney general's office prosecuted for you. You said it was
19 an assault case. Did you have, what, kind of a robbery or
20 something up there?

21 JUROR DOYLE OGLE: There was an attempted robbery.

22 MR. DANIEL: Attempted? And was someone actually
23 prosecuted and brought to trial for that, and you had a case
24 here?

25 JUROR DOYLE OGLE: It never did go to trial. He finally

1 admitted to it, that...

2 MR. DANIEL: Pled guilty or whatever. You think that
3 fact that you have had a charge where you more or less sat over
4 here and prosecuted someone would make you more prosecuting or
5 prosecuting oriented or something like that? You understand...?

6 JUROR MORROW: I don't think so. I just want to see all
7 the facts, first.

8 MR. DANIEL: Have you ever had any person, a good, close
9 friend, where they've had a charge? I'm not saying you, but
10 maybe somebody -- some friend of yours has gone through where
11 they've been accused of something, or had a charge of something?

12 JUROR MORROW: Not that I recall.

13 MR. DANIEL: So you've basically been -- the only
14 dealings you have with our judicial system has been from the
15 prosecution's standpoint, is that correct?

16 JUROR MORROW: (No audible response.)

17 MR. DANIEL: Do you remember if any of these officers
18 that's -- names that's been read here was involved in your case
19 in any way?

20 JUROR MORROW: I don't believe so. I know Larry McMann,
21 but I don't believe he was involved.

22 MR. DANIEL: Okay. He's been here in the county for
23 several years. I know Larry as a -- as an officer.

24 Mr. Morrow, you've been sitting here, what, for two days
25 listening to this?

1 JUROR MORROW: Yes, sir.

2 MR. DANIEL: You're getting tired of hearing it, and
3 we're getting tired of saying it. You realize this is a serious
4 case?

5 JUROR MORROW: Yes, sir.

6 MR. DANIEL: And you realize that if you're chosen as
7 a juror, it's a -- it's a serious and awesome responsibility
8 that you have?

9 JUROR MORROW: Yes, sir.

10 MR. DANIEL: And you'll listen to the evidence, and
11 you'll listen to the judge's charge, is that correct?

12 JUROR MORROW: Yes, sir.

13 MR. DANIEL: You understand this is a circumstantial
14 case?

15 JUROR MORROW: Yes, sir.

16 MR. DANIEL: You understand that's distinguished from
17 a case where there'd be direct proof that a person's done
18 something?

19 JUROR MORROW: Right.

20 MR. DANIEL: And you'll make the State prove their case
21 beyond any reasonable doubt before you would even think about
22 or consider, even, voting for any kind of guilt on any part of
23 either one of these defendants, is that correct?

24 JUROR MORROW: Yes.

25 MR. DANIEL: If there's any other reasonable hypothesis

1 other than that of their guilt, you wouldn't hesitate to say,
2 "Not guilty," would you, sir?

3 JUROR MORROW: No, I wouldn't hesitate if they didn't
4 prove it.

5 MR. DANIEL: And you wouldn't feel like -- you wouldn't
6 feel like you'd have to explain to me or whatever it would be,
7 the attorney general or anybody else, do you?

8 JUROR MORROW: No.

9 MR. DANIEL: You don't have to, you understand that,
10 don't you?

11 JUROR MORROW: Yes, sir.

12 (Peremptory Challenge Slip #10 was submitted, and the
13 following jurors were excused: Juror Doyle Ogle and
14 Juror Guffy.)

15 (The following jurors were called to fill the jury box:
16 Billy Yarnell and Robert E. Weaver.)

17 THE COURT: Approach the bench, counsel, while
18 everybody's coming down.

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

20 THE COURT: I have, General Schmutzer, that you have ten
21 challenges left, is that according to what you have?

22 GENERAL SCHMUTZER: That's right.

23 THE COURT: Okay. Sutton has three left, is that the
24 figures you gentlemen have?

25 MR. WEBB: I believe that's correct.

1 THE COURT: Okay.

2 MR. WEBB: I'm going to check that, but I...

3 GENERAL SCHMUTZER: How many?

4 THE COURT: Three. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11,

5 12. That makes it easier for me to see.

6 MR. WEBB: I'll check that, but I think that's correct.

7 THE COURT: And Mr. Dellinger has five, is that the

8 figures you have, Mr. ...?

9 MR. MILLER: That's correct.

10 THE COURT: Okay. All right. Thank you.

11 (The bench conference having been concluded, the

12 following proceedings were had in open court.)

13 THE COURT: For Mr. Weaver and Mr. Yarnell, have you all

14 heard all the questions that have been asked so far, gentlemen?

15 (No jurors respond audibly.)

16 THE COURT: Is there anything that's been said or stated

17 that raises an issue in your mind as to whether or not either

18 of you could be fair and impartial to both sides in this case?

19 (No jurors respond audibly.)

20 THE COURT: All right. Mr. Weaver, have you heard or

21 read anything about this case before you came here this week?

22 JUROR WEAVER: I have seen it on television back when

23 (inaudible).

24 THE COURT: Okay. Have you formed an opinion, based on

25 what you've seen or heard, about the guilt or innocence of

1 either of these gentlemen here today?

2 JUROR WEAVER: No.

3 THE COURT: Okay. Same question for you, Mr. Yarnell
4 (sic)?

5 JUROR YARNELL: Yes, sir, like everybody else.

6 THE COURT: Have you formed any opinion?

7 JUROR YARNELL: No.

8 THE COURT: Okay. Mr. Yarnell, have you understood the
9 law that the Court has instructed on concerning the death
10 penalty?

11 JUROR YARNELL: Yes, sir.

12 THE COURT: And do you understand, of course, that the
13 first issue that you and Mr. Weaver and your fellow jurors have
14 to decide is, is someone guilty of first degree murder. But --
15 and so, in the event someone were found guilty of first degree
16 murder, sir, do you have any moral or ethical reservation about
17 considering the death penalty as an option?

18 JUROR YARNELL: No.

19 THE COURT: And do you also, sir, understand -- or I'll
20 ask you this: Would you, in every case of first degree murder,
21 vote to impose the death penalty?

22 JUROR YARNELL: No, I wouldn't.

23 THE COURT: Okay. Mr. Weaver, have you any moral
24 reservations about considering the death penalty as an option?

25 JUROR WEAVER: (No audible response.)

1 **THE COURT:** You do have?

2 **JUROR WEAVER:** Yes.

3 **THE COURT:** Okay, I'll ask you, sir, if you would, under
4 a proper case, consider the death penalty as a sentencing
5 option?

6 **JUROR WEAVER:** (No audible response.)

7 **THE COURT:** You would not consider it under any
8 circumstances?

9 **JUROR WEAVER:** (No audible response.)

10 **THE COURT:** Okay, I'll have to ask you to step down,
11 Mr. Weaver. Thank you, sir.

12 (Juror Weaver is excused.)

13 (The following juror was called to fill the jury box:
14 Larry Lynn Sorrell.)

15 **THE COURT:** An avid basketball fan, aren't you,
16 Mr. Sorrell?

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

18 **THE COURT:** Have you heard all the questions,
19 Mr. Sorrell?

20 **JUROR SORRELL:** Yes, I have.

21 **THE COURT:** Is there anything that's raised any issue
22 in your mind as to whether or not you could be fair to both
23 sides in this case?

24 **JUROR SORRELL:** No.

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

1 case?

2 JUROR SORRELL: Yes, I have.

3 THE COURT: Have you formed an opinion based on what
4 you've seen or heard?

5 JUROR SORRELL: Yes, I have formed some opinions.

6 THE COURT: Okay. Are those opinions such that they
7 could not be changed by evidence coming from the witness stand?

8 JUROR SORRELL: They could be changed.

9 THE COURT: Okay, I'll ask you this: In making your
10 verdict, if called upon to make a decision in this case, could
11 you consider only the evidence that comes from the witness stand
12 in this case, and the law that the Court gives you in reaching
13 your decision?

14 JUROR SORRELL: Yes, sir.

15 THE COURT: And put aside any other opinions you may
16 have?

17 JUROR SORRELL: Yes, sir.

18 THE COURT: Okay. Have you understood the law that the
19 Court has given you considering the death penalty?

20 JUROR SORRELL: Yes, sir.

21 THE COURT: Do you understand that it is an option only
22 in the event of a conviction of first degree murder?

23 JUROR SORRELL: Yes, sir.

24 THE COURT: Do you have any ethical or moral
25 reservations about considering it as an option?

1 JUROR SORRELL: No, sir.

2 THE COURT: And, on the other hand, would you
3 mandatorily impose the death penalty in every conviction for
4 first degree murder?

5 JUROR SORRELL: No, sir.

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

7 GENERAL SCHMUTZER: Is it Yarnell, sir?

8 JUROR YARNELL: Yes, sir.

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

10 JUROR YARNELL: Kodak.

11 GENERAL SCHMUTZER: And your occupation?

12 JUROR YARNELL: Robert Shaw.

13 GENERAL SCHMUTZER: All right. Okay.

14 And Mr. Sorrell?

15 JUROR SORRELL: Sorrell (pronouncing).

16 GENERAL SCHMUTZER: Sorrell (pronouncing). I'm sorry.

17 And where do you live, please?

18 JUROR SORRELL: Pigeon Forge.

19 GENERAL SCHMUTZER: And your occupation?

20 JUROR SORRELL: (Inaudible).

21 GENERAL SCHMUTZER: Okay, thank you.

22 You gentlemen have heard all the questions I've asked
23 in here. Any problems with any of them? Any problems with the
24 fact this is a circumstantial evidence case? Can you follow the
25 law that the Court gave some time ago about that?

1 (No jurors respond audibly.)

2 **GENERAL SCHMUTZER:** Same with expert witnesses. Won't
3 get into the business of experts disagreeing, unless they get
4 on the stand and disagree, I take it. Then, of course, you'll
5 consider that, and look at it, and decide who might be telling
6 the truth?

7 (No jurors respond audibly.)

8 **GENERAL SCHMUTZER:** Any problems with anything I've
9 asked, Mr. Sorrell or...

10 **JUROR SORRELL:** No, sir.

11 **GENERAL SCHMUTZER:** ...Mr. Yarnell, either one of you
12 all?

13 (No jurors respond audibly.)

14 **GENERAL SCHMUTZER:** Either of you have any -- anything
15 that -- that would distract you? This case is going to take
16 some time to try. Either one of you have anything that would
17 -- you think might distract, either physically, or anything at
18 work or home or anything else that might take your mind off --
19 off this case?

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

21 **GENERAL SCHMUTZER:** Okay. Nothing?

22 **JUROR YARNELL:** No, sir.

23 **GENERAL SCHMUTZER:** Anything I've asked that would cause
24 you any problems or difficulties?

25 **JUROR SORRELL:** No.

1 **GENERAL SCHMUTZER:** Thank you. Thank you, Your Honor.

2 **THE COURT:** Mr. Miller?

3 **MR. MILLER:** Thank you, sir.

4 Mr. Sorrell, you'd stated that you have formed some
5 opinions regarding this case?

6 **JUROR SORRELL:** Yes, sir.

7 **MR. MILLER:** Is that based on what you'd seen on TV and
8 through the newspaper?

9 **JUROR SORRELL:** Mostly through the newspaper.

10 **MR. MILLER:** Okay. Have you discussed the case with
11 anybody?

12 **JUROR SORRELL:** My wife.

13 **MR. MILLER:** All right. You all discussed, I take it,
14 maybe the theories and stuff behind the...

15 **JUROR SORRELL:** Yes, sir.

16 **MR. MILLER:** ...behind the case? Understand that
17 everything they put in the paper about theories and so forth
18 isn't necessarily true?

19 **JUROR SORRELL:** Yes, sir.

20 **MR. MILLER:** And, in all likelihood, is not what you're
21 going to hear from the witness stand. And, no doubt, you've not
22 heard anything from the defense side in the newspaper.

23 My question, you said you could set aside your opinions
24 in deliberating. And I know that's tough to do. It's kind of
25 like trying to un-ring a bell. Evidently some bell's been rung

1 in your head, and you've formed an opinion. Do you feel
2 comfortable with yourself that you could set that aside in
3 deliberating?

4 JUROR SORRELL: Yes, sir.

5 MR. MILLER: It's not -- I think you had mentioned you
6 -- maybe some facts could overcome that opinion, some evidence
7 could overcome that opinion. We don't want that to be the
8 situation, either, because, as Mr. Daniel has pointed out, we
9 want everything to start even. Whatever opinion you had, we
10 need to leave it outside of the door. You think you can do
11 that?

12 JUROR SORRELL: I've already -- like I said before, I've
13 already formed some opinions about what I think happened. So,
14 evidence is the only way I can change those opinions.

15 MR. MILLER: Cause as to him.

16 THE COURT: Mr. Sorrell, let me ask you this question:
17 Do you think that you could be totally fair and impartial in
18 your decision-making in this case?

19 JUROR SORRELL: Yes, sir.

20 THE COURT: All right, sir. And that your opinions
21 previously formed would not influence how you decide this case?

22 JUROR SORRELL: No, sir.

23 THE COURT: And you could base your verdict solely from
24 the evidence that comes from this witness stand?

25 JUROR SORRELL: Yes, sir.

1 THE COURT: And the law I give you?

2 JUROR SORRELL: Yes, sir.

3 THE COURT: He's competent.

4 MR. MILLER: Your Honor, if I -- I hate to belabor the
5 point, but if I could further inquire...

6 THE COURT: You -- sure. You sure may.

7 MR. MILLER: ...on that -- on the a matter.

8 MR. MILLER: I understood you to say---and correct me
9 if I'm wrong, Mr. Sorrell---that you would require evidence from
10 us to overcome the opinions that you currently hold.

11 JUROR SORRELL: Yes, sir.

12 THE COURT: Approach the bench, counsel.

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

14 THE COURT: In looking at Rule 24, it says---and that's
15 on that pretrial publicity, forming opinions, and that's
16 -- that's the issue we're discussing here in regards to
17 Mr. Sorrell---it says, "A juror's exposure to
18 potentially prejudicial information makes him
19 unacceptable as a juror. But the degree of exposure and
20 the prospective juror's testimony as to his state of
21 mind shall be considered in determining acceptability.
22 A prospective juror who states that he will be unable
23 to overcome his preconception shall be subject to
24 challenge for cause, no matter how slight his exposure.
25 If he has seen or heard, and if he remembers information

1 that will be developed in the course of trial, or that
2 may be inadmissible but is not so prejudicial as to
3 create a substantial risk that his judgment will be
4 affected, his acceptability shall depend on whether his
5 testimony as to impartiality is believed. If he admits
6 to having formed an opinion, he shall be subject to
7 challenge for cause unless the examination shows
8 unequivocally that he can be impartial."

9 Now, I believe, under that standard, I still believe
10 that this juror is acceptable, based on his statements
11 that he, in his mind, can be totally impartial and base
12 his verdict on the evidence that comes from the witness
13 stand.

14 **MR. MILLER:** I think that's what he -- he told Your
15 Honor. But then, when you go back and ask him the
16 question, "Is it going to take evidence to overcome...?"
17 "Overcome," that's one of the things that... In other
18 words, he can't presume that they're innocent. If he'd
19 vote now, he'd find them guilty based on his opinion.
20 He's not said that yet.

21 **THE COURT:** Well, now, he's not said that yet.

22 **MR. MILLER:** No.

23 **THE COURT:** But you're afraid to ask him that. Well,
24 I'm not afraid to ask him. I can ask him. Do you want
25 me to ask him that?

1 MR. MILLER: It's my position that he's said it already.
2 We can go further.

3 THE COURT: I mean, if -- if he states he's already
4 formed an opinion as to guilt or innocence, then I would
5 have to excuse him then.

6 MR. WEBB: But he said he's formed an opinion, so it has
7 to be one way or the other.

8 THE COURT: Well, not necessarily. No.

9 GENERAL SCHMUTZER: He said he has formed certain
10 opinions about...

11 MR. WEBB: My used-to-be friend has made a smart remark.

12 THE COURT: He said that he has formed an opinion about
13 certain facts in the case. I did not understand him to
14 say he has formed an opinion about anyone's guilt or
15 innocence.

16 GENERAL SCHMUTZER: Well, he hasn't.

17 GENERAL GREEN: One point, while we're up here. And I
18 just caught the tail end of what Mr. Miller was saying
19 in that particular question.

20 THE COURT: Okay, why don't you wake up.

21 GENERAL GREEN: Okay. I was talking to General
22 Schmutzer. What I understood Mr. Miller to say was that
23 these defendants didn't have any control of what was in
24 the press, implying that the State has, or the State's
25 responsible for the -- some of the publicity in the

1 press. I didn't catch the front part.
2 **THE COURT:** I think -- I didn't catch the same import
3 of his statement that you did.
4 **GENERAL GREEN:** Okay.
5 **THE COURT:** But I...
6 **MR. MILLER:** I said that they hadn't heard their side
7 of the story in the paper.
8 **THE COURT:** That's what he said.
9 **GENERAL GREEN:** Well, I just wanted to clear it up.
10 **GENERAL SCHMUTZER:** He wouldn't tell us what
11 (inaudible).
12 **THE COURT:** Yeah, that's the other side of that, but we
13 won't get into that. All right, thank you.
14 (The bench conference having been concluded, the
15 following proceedings were had in open court.)
16 **THE COURT:** Mr. Sorrell, based upon the opinions you
17 have formed about certain matters in the case, have you formed
18 an opinion as to the guilt or innocence of either of these
19 defendants, based...?
20 **JUROR SORRELL:** No, sir, I have not.
21 **THE COURT:** Okay. So you don't assume anybody's guilty?
22 **JUROR SORRELL:** No, sir.
23 **THE COURT:** And you would guard their presumption of
24 innocence throughout this trial?
25 **JUROR SORRELL:** Yes, sir.

1 **THE COURT:** And would it -- and would you hold the State
2 to the same burden of proof, beyond a reasonable doubt and a
3 moral certainty?

4 **JUROR SORRELL:** Yes, sir.

5 **THE COURT:** Okay. And if you -- if you felt that they
6 had not met that burden of proof, could you vote to dismiss this
7 case, if they didn't meet that standard of proof?

8 **JUROR SORRELL:** If there was a reasonable doubt?

9 **THE COURT:** Yes, sir.

10 **JUROR SORRELL:** Yes, sir.

11 **THE COURT:** Okay. And you wouldn't feel like you had
12 to explain your verdict to any person, whatsoever?

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

14 **THE COURT:** He's competent.

15 **MR. MILLER:** Thank you, Your Honor.

16 Just a little bit more, Mr. Sorrell. You, of course,
17 have heard me talk about the dangers of forming opinions and
18 making decisions based on what you read in the newspaper and
19 here on TV, that you heard maybe theories, maybe even a
20 newspaper editor's theory behind the case, or how they perceive
21 the case, not what the witnesses will testify to. I take it
22 you'll render your decision based on the testimony from the
23 witness stand, is that correct?

24 **JUROR SORRELL:** Yes, sir.

25 **MR. MILLER:** Did you have any association with anybody

1 on either side, or any of the witnesses whose names were called?

2 JUROR SORRELL: Yes, sir.

3 MR. MILLER: Who's that?

4 JUROR SORRELL: Several of the witnesses I'm acquainted
5 with; two of the police officers. I also drove a church bus and
6 picked up the Branum children for a period of about two years.

7 MR. MILLER: Okay. You're not longer doing that?

8 JUROR SORRELL: No, sir.

9 MR. MILLER: Okay.

10 THE COURT: How long ago has that been?

11 JUROR SORRELL: That's been about four or five years.

12 THE COURT: Is there anything about that that would make
13 you feel uncomfortable about sitting on this case?

14 JUROR SORRELL: No, sir.

15 THE COURT: One way or another? Wouldn't feel like
16 you'd have to explain your verdict to anybody?

17 JUROR SORRELL: No, sir.

18 THE COURT: Okay.

19 MR. MILLER: Who are the police officers you know?

20 JUROR SORRELL: Arthur Harmon and Don Huskey.

21 MR. MILLER: Okay. How well are you connected with
22 them?

23 JUROR SORRELL: Just acquaintances.

24 MR. MILLER: Speak to them if you see them, and that's
25 about it? Don't socialize with them?

1 JUROR SORRELL: No.

2 MR. MILLER: Would you believe their testimony over
3 somebody else's?

4 JUROR SORRELL: No, sir.

5 MR. MILLER: Mr. Yarnell, how about you? You've heard
6 about the case a little bit, I think you said.

7 JUROR YARNELL: I was more or less born and raised in
8 West Knoxville. That's where most of my youth is at. I know
9 very little about these cases.

10 MR. MILLER: So you've not formed any opinion on this
11 case at all?

12 JUROR YARNELL: I have -- I don't know enough about it
13 to even think about it.

14 MR. MILLER: I take it you don't know anybody on either
15 side of the case, then?

16 JUROR YARNELL: I'm acquainted with some relatives
17 (inaudible), but I (inaudible). Jack Romine, he's supposed to
18 be a potential witness. What kin he is to him, I don't know.

19 MR. MILLER: Okay. Is that going to affect the way you
20 decide this case, the fact that you know Mr. Romines, if he
21 testifies?

22 JUROR YARNELL: No, sir, it won't. No, sir.

23 MR. MILLER: Do you have any experience in law
24 enforcement, Mr. Yarnell?

25 JUROR YARNELL: I have a friend on the auxiliary police.

1 MR. MILLER: That's not -- you're not going to believe
2 a police officer's testimony over anybody else just because he's
3 your friend, is that correct?

4 JUROR YARNELL: He's just a friend. No.

5 MR. MILLER: Okay. That's all, Your Honor.

6 THE COURT: Okay. Mr. Daniel?

7 MR. DANIEL: Mr. Yarnell, you work down at Robert Shaw,
8 is that correct, sir?

9 JUROR YARNELL: Yes, sir.

10 MR. DANIEL: How many years you been down there?

11 JUROR YARNELL: Going on 24.

12 MR. DANIEL: And are you married, sir? Are you married?

13 JUROR YARNELL: No.

14 MR. DANIEL: And have you -- before you went to Robert
15 Shaw did you work somewhere else, did you follow some other kind
16 of work?

17 JUROR YARNELL: I work at Standard Knitting Mills four
18 and a half years, and I worked with (indiscernible) Computer for
19 about two years, I think.

20 MR. DANIEL: When did you work out at Standard? What
21 department were you in?

22 JUROR YARNELL: (Inaudible).

23 MR. DANIEL: I worked at Standard Knitting Mill, too,
24 so...

25 JUROR YARNELL: I think I went down there in about '62,

1 and I quit in '65 and went to (indiscernible) in '66, went back
2 to Standard Knitting Mill, worked there 'til '59. I went to
3 Robert Shaw in '69, been there ever since.

4 MR. DANIEL: Okay. You were back there, then, in '62,
5 is that correct? You were working there at -- in '62 at
6 Standard?

7 JUROR YARNELL: Yes, sir, that's when I got out of the
8 service.

9 MR. DANIEL: Okay, sir.

10 Mr. Sorrell, the -- His Honor said something to you
11 about you was a basketball fan, is that correct?

12 JUROR SORRELL: Yes, sir.

13 MR. DANIEL: Is that for local, or the university, or
14 both?

15 JUROR SORRELL: Both.

16 MR. DANIEL: Both? You said you had some friends on the
17 police department?

18 JUROR SORRELL: Acquaintances.

19 MR. DANIEL: Acquaintances. And you've sat here for two
20 days, and you've heard these questions we've asked.

21 JUROR SORRELL: Yes, sir.

22 MR. DANIEL: And we're going to try to speed this thing
23 up. But I want to ask you, you say you -- you've had some
24 opinions that you've formed, is that correct?

25 JUROR SORRELL: That's correct.

1 MR. DANIEL: Did you -- did you -- I'm not going to ask
2 you what opinions you have of what you read, but did you read
3 anything, when the -- about statements that was made by either
4 one of these defendants? Do you recall reading anything about
5 statements they made when they...?

6 JUROR SORRELL: No, sir. About them personally making
7 statements?

8 MR. DANIEL: Yes, what they've said or anything?

9 JUROR SORRELL: No.

10 MR. DANIEL: Did you read it back when it happened? You
11 know, it's been about a year. I think it's almost a year to the
12 day. We're getting to it.

13 JUROR SORRELL: Yes, sir.

14 MR. DANIEL: And you didn't remember reading anything
15 about what they said or anything like that at that time?

16 JUROR SORRELL: No, sir.

17 MR. DANIEL: Are you married, sir?

18 JUROR SORRELL: Yes, sir.

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

20 JUROR SORRELL: She works for the business.

21 MR. DANIEL: You mentioned business. Do you care to
22 tell us what kind of business that is?

23 JUROR SORRELL: I own two go-cart tracks. I own one and
24 am partners in another in Pigeon Forge.

25 MR. DANIEL: Is that the ones on the left as you go up

1 toward -- in Pigeon Forge?

2 JUROR SORRELL: One on each side of the (indiscernible).

3 MR. DANIEL: One on each side? Are you originally from
4 this area?

5 JUROR SORRELL: No, sir.

6 MR. DANIEL: Where are you from, originally?

7 JUROR SORRELL: I grew up in Oklahoma, and spent 20
8 years in Detroit, Michigan. Then I moved here in '83.

9 MR. DANIEL: Okay. You haven't had any background in
10 law enforcement, yourself?

11 JUROR SORRELL: No, sir.

12 MR. DANIEL: Gentleman seated before you in that chair
13 said he'd had -- been charged where he prosecuted someone. Have
14 you ever prosecuted anyone or been a -- on the prosecution side
15 of a case?

16 JUROR SORRELL: Beg your pardon?

17 MR. DANIEL: Have you ever been on the prosecution side
18 of a case?

19 JUROR SORRELL: No, sir.

20 MR. DANIEL: I think Mr. Ogle, I think, said he had been
21 one time before, prosecuted somebody.

22 JUROR SORRELL: No, sir, I haven't.

23 MR. DANIEL: So you're not -- other than casually
24 acquainted with the attorney general's office, maybe just know
25 them from being around here, is that correct?

1 JUROR SORRELL: Yes, sir.

2 MR. DANIEL: Are you telling us---and I don't want to
3 belabor this point---but are you telling us that we can start
4 out this case even, and we can all start from scratch even?

5 JUROR SORRELL: Yes, sir.

6 MR. DANIEL: You can lay aside anything you may have
7 heard, and listen to what's happened here in -- was you hear
8 here in the courtroom?

9 JUROR SORRELL: Yes, sir.

10 MR. DANIEL: One of the elements was the State has to
11 prove beyond a reasonable doubt that the deceased died from some
12 criminal instrumentality, and they couldn't prove that, or there
13 was no proof of that, or they couldn't prove it beyond a
14 reasonable doubt, would you have any hesitancy to return a not
15 guilty verdict, if that was one of the elements of the charge?

16 JUROR SORRELL: No, sir.

17 THE COURT: Anything further, Mr. Daniel?

18 MR. DANIEL: No, thank you. I'm sorry.

19 (Peremptory Challenge Slip #11 was submitted, and the
20 following juror was excused: Juror Sorrell.)

21 (The following juror was called to fill the jury box:
22 Joanna Lynn Norton.)

23 THE COURT: Ms. Norton, have you heard all the
24 questions?

25 JUROR NORTON: Yeah, buddy.

1 **THE COURT:** Do you want to hear them again?

2 **JUROR NORTON:** Not really.

3 **THE COURT:** Okay. Is there anything that's been asked
4 or raised that creates, in your mind, an issue of whether or not
5 you could be fair and impartial to both sides in this case?

6 **JUROR NORTON:** There's no way I could be.

7 **THE COURT:** I'm sorry?

8 **JUROR NORTON:** There's no way that I could be.

9 **THE COURT:** Could be fair to both sides in this case?

10 **JUROR NORTON:** (Inaudible).

11 **THE COURT:** We'll let you go.

12 (The following juror was called to fill the jury box:
13 Steve Trentham.)

14 **THE COURT:** Steve, you know anything about this case?

15 **JUROR TRENTHAM:** Just what's been in the newspaper and
16 on TV.

17 **THE COURT:** Have you formed an opinion about the guilt
18 or innocence of either of these gentlemen?

19 **JUROR TRENTHAM:** Absolutely not.

20 **THE COURT:** Okay. Have you heard the Court's
21 explanation of the sentences, in the event someone is convicted
22 of first degree murder?

23 **JUROR TRENTHAM:** Yes, I have.

24 **THE COURT:** Do you have any moral reservation about
25 considering the death penalty in a proper case?

1 JUROR TRENTAM: No, sir.

2 THE COURT: And, on the other hand, would you
3 automatically impose the death sentence for each and every
4 person convicted of first degree murder, regardless of the
5 circumstances?

6 JUROR TRENTAM: No, sir.

7 THE COURT: Okay. General Schmutzer?

8 GENERAL SCHMUTZER: Mr. Trentam, where do you live,
9 please, sir?

10 JUROR TRENTAM: I live in Gatlinburg.

11 GENERAL SCHMUTZER: And your occupation?

12 JUROR TRENTAM: I own my own wholesale business.

13 GENERAL SCHMUTZER: Okay. And you've heard all my
14 questions. I'm not going to repeat them. Any problems with any
15 of them?

16 JUROR TRENTAM: Yes, sir. I went to high school with
17 four of the detectives that were mentioned on the witness list.

18 GENERAL SCHMUTZER: You did?

19 JUROR TRENTAM: Yes.

20 GENERAL SCHMUTZER: Would that cause you a problem in
21 this case, knowing them?

22 JUROR TRENTAM: One of them was my college roommate for
23 three and a half years, and I believe so.

24 GENERAL SCHMUTZER: I take it, if you were that close...

25 JUROR TRENTAM: Yes, sir.

1 GENERAL SCHMUTZER: ...you'd tend to believe him?
2 JUROR TRENTHAM: It'd be very difficult.
3 GENERAL SCHMUTZER: Be very difficult not to? Your
4 Honor, I'll let you...
5 THE COURT: Believe I'll let you go, Mr. Trentham.
6 Thank you.
7 GENERAL SCHMUTZER: Thank you, Mr. Trentham. Appreciate
8 your candor.
9 (Juror Trentham is excused.)
10 (The following juror was called to fill the jury box:
11 Faith Louise Robeson.)
12 THE COURT: Ma'am, have you heard all the questions?
13 JUROR ROBESON: Yes.
14 THE COURT: Is there anything that raises an issue in
15 your mind as to whether or not you could be fair and impartial
16 to both sides in this lawsuit?
17 JUROR ROBESON: Not that I know of.
18 THE COURT: Okay. Have you read or heard anything about
19 this case before you came down here?
20 JUROR ROBESON: Very little. Very little.
21 THE COURT: Have you formed any opinion about the guilt
22 or innocence of either of these gentlemen here?
23 JUROR ROBESON: No.
24 THE COURT: Okay. Have you heard what the Court has
25 instructed about the death penalty?

1 JUROR ROBESON: Yes, sir.

2 THE COURT: Do you understand, however, that your first
3 obligation, if chosen as a juror, is to consider first of all
4 whether or not they're guilty of any offense, right?

5 JUROR ROBESON: (No audible response.)

6 THE COURT: Okay. If, however, some of them were
7 convicted of first degree murder, do you have any moral
8 reservations about considering the death penalty as a sentencing
9 option?

10 JUROR ROBESON: (No audible response.)

11 THE COURT: Okay. On the other hand, would you
12 automatically vote to impose the death penalty in each and every
13 conviction for first degree murder?

14 JUROR ROBESON: (No audible response.)

15 THE COURT: Okay. I take it you could look at all the
16 circumstances and the factors that the Court instructs you on
17 before you make that decision?

18 JUROR ROBESON: (No audible response.)

19 THE COURT: Okay. General Schmutzer?

20 GENERAL SCHMUTZER: Ms. Robeson, where do you live,
21 please?

22 JUROR ROBESON: Kodak.

23 GENERAL SCHMUTZER: And your occupation?

24 JUROR ROBESON: Retired.

25 GENERAL SCHMUTZER: Okay. And where'd you retire from?

1 JUROR ROBESON: Secretary of a school.

2 GENERAL SCHMUTZER: Any problems with any of the
3 questions I've asked in here about circumstantial evidence or
4 anything else like that?

5 JUROR ROBESON: (No audible response.)

6 GENERAL SCHMUTZER: Any of the -- the judge has given
7 the law to you, and a few -- any problems with any -- follow
8 that if you're called upon the sit?

9 JUROR ROBESON: (No audible response.)

10 GENERAL SCHMUTZER: Think of anything at all that you
11 think might cause you a problem?

12 JUROR ROBESON: (No audible response.)

13 GENERAL SCHMUTZER: Thank you.

14 THE COURT: Mr. Miller?

15 MR. MILLER: Ma'am, I take it you don't have anybody
16 involved on either side, don't know the parties or any of the
17 witnesses who've been called?

18 JUROR ROBESON: (No audible response.)

19 MR. MILLER: Likewise, do you have any people associated
20 with you or close friends to you that are involved in law
21 enforcement?

22 JUROR ROBESON: (No audible response.)

23 MR. MILLER: You've heard -- I take it you've heard all
24 the questions you've asked today and yesterday about the law.
25 Do you understand that, and can you follow the law and hold the

1 State to the burden of proof that we've talked about?

2 JUROR ROBESON: (No audible response.)

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

4 THE COURT: Mr. Daniel?

5 MR. DANIEL: Ms. Robeson, am I pronouncing that
6 correctly, ma'am?

7 JUROR ROBESON: Robeson (pronouncing).

8 MR. DANIEL: I thought I'd caught what you said. Did
9 you say you are a secretary to the schoolteacher, or you're...?

10 JUROR ROBESON: No, I was -- retired as secretary. Two
11 years before my husband retired I did substitute teaching.

12 MR. DANIEL: Substitute teaching. I'm sorry, I'm -- I
13 just couldn't hear. And where did you teach, ma'am?

14 JUROR ROBESON: Michigan.

15 MR. DANIEL: In Michigan? And that was before you all
16 moved down here, is that correct?

17 JUROR ROBESON: (No audible response.)

18 MR. DANIEL: How long have you been living here in
19 Sevier County?

20 JUROR ROBESON: Approximately five years.

21 MR. DANIEL: And you're married, is that correct?

22 JUROR ROBESON: Right.

23 MR. DANIEL: And your husband's retired?

24 JUROR ROBESON: He's retired.

25 MR. DANIEL: What did he -- type of work did he follow?

1 JUROR ROBESON: He was a speech writer for Henry Ford,
2 the President of Ford Corporation.

3 MR. DANIEL: He wrote his speeches for him, is that
4 correct?

5 JUROR ROBESON: He wrote his speeches.

6 THE COURT: For Henry Ford, did you say, or Gerald Ford?

7 JUROR ROBESON: Henry Ford.

8 THE COURT: Henry Ford?

9 JUROR ROBESON: When he died...

10 THE COURT: Sure.

11 JUROR ROBESON: ...it -- took the replacement.

12 THE COURT: I bet that was an interesting job, wasn't
13 it?

14 JUROR ROBESON: Right.

15 MR. DANIEL: Did he do all of his letter writing and
16 everything for him?

17 JUROR ROBESON: Out of the Speech Department.

18 MR. DANIEL: Out of the Speech Department? You all live
19 in the Kodak area?

20 JUROR ROBESON: (Inaudible).

21 MR. DANIEL: Have you not -- have you read -- you said
22 you'd read and heard something about this case, is that correct?

23 JUROR ROBESON: Very little. We were not here when it
24 happened.

25 MR. DANIEL: Okay. Were you -- have you ever sat on a

1 jury before, maybe in Michigan or somewhere else?

2 JUROR ROBESON: I was called, but it was settled by the
3 judge before it was tried.

4 MR. DANIEL: Some kind of a civil case of some kind?

5 JUROR ROBESON: (No audible response.)

6 MR. DANIEL: This is your first experience as far as
7 sitting on a criminal jury, is that correct?

8 JUROR ROBESON: Yes.

9 MR. DANIEL: Ms. Robeson, could you hear the questions
10 that was asked of these jurors, potential jurors, and can you
11 understand, as we sit here and start here in this criminal case,
12 that these defendants are innocent? Do you understand that?

13 JUROR ROBESON: (No audible response.)

14 MR. DANIEL: Can you look at Mr. Sutton right now and
15 say, "You're innocent, and the State has to prove to you beyond
16 all reasonable doubt before I could vote to convict you"? You
17 understand that?

18 JUROR ROBESON: Yes.

19 MR. DANIEL: Would you follow that, ma'am?

20 JUROR ROBESON: Yes.

21 MR. DANIEL: You've never been involved with law
22 enforcement, or your husband hasn't?

23 JUROR ROBESON: (No audible response.)

24 MR. DANIEL: And you've never -- have you ever had a
25 time that you've prosecuted someone or was on the prosecution

1 side of a case?

2 JUROR ROBESON: (No audible response.)

3 MR. DANIEL: Do you understand -- you've heard about --
4 I'm sure you've heard it for two days, that this is a
5 circumstantial evidence case.

6 JUROR ROBESON: Right.

7 MR. DANIEL: And you understand the law, and you'd hold
8 the State to that burden of circumstantial evidence, is that
9 correct?

10 JUROR ROBESON: Right.

11 MR. DANIEL: Yes, ma'am. Thank you.

12 (Peremptory Challenge Slip #12 was submitted, and the
13 following jurors were excused: Juror Sullivan and Juror
14 Robeson.)

15 (The following jurors were called to fill the jury box:
16 Charlotte G. Ware and Russell W. Galyon.)

17 THE COURT: Have you both heard all the questions?

18 JUROR GALYON: Over and over.

19 THE COURT: Over and over and over. Anything raises any
20 issue in either of your minds? Ms. Ware?

21 JUROR WARE: Several of the people on the witness list
22 are personal acquaintances. Several of the doctors, we have
23 several friends on the staff at Overlook, and they're
24 professional colleagues of my husband.

25 THE COURT: Dr. Edward Ware?

1 JUROR WARE: Yes, sir.

2 THE COURT: Would your knowledge or friendship with
3 those individuals have any affect upon how you would view their
4 testimony?

5 JUROR WARE: Some. If I -- if I had to weigh their
6 testimony against someone else's opinion, I really -- you know,
7 I'd have to say it probably would.

8 THE COURT: Okay. You think that, based on your
9 knowledge of them, Ms. Ware, that you might judge their
10 testimony differently than you would that of someone else?

11 JUROR WARE: Uh-huh (affirmative).

12 THE COURT: Okay, I believe we'll let you go. Thank
13 you, and I'm sorry you had to stay with us for two days, but
14 we're always glad to have you.

15 (Juror Ware is excused.)

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

18 THE COURT: You heard all the questions, Mr. Cheeks?

19 JUROR CHEEKS: (No audible response.)

20 THE COURT: Anything raises any issue in your mind as
21 to whether or not you can be fair and impartial to both sides
22 in this case?

23 JUROR CHEEKS: No.

24 THE COURT: Same thing -- question for you, Mr. Galyon,
25 any problems?

1 JUROR GALYON: No problems, whatsoever.

2 THE COURT: Okay. Have you read or heard anything,
3 Mr. Galyon, about this case before we came here today?

4 JUROR GALYON: Heard a little on the news, but it didn't
5 affect my judgment.

6 THE COURT: Have you formed any opinions based on that?

7 JUROR GALYON: No.

8 THE COURT: I'll ask you the same question, Mr. Cheeks:
9 Have you formed any opinions based on anything you've seen or
10 heard?

11 JUROR CHEEKS: No.

12 THE COURT: Have you heard the Court's explanation
13 concerning the death penalty?

14 JUROR CHEEKS: No.

15 THE COURT: Do you have any moral reservations against
16 considering the death penalty as an option if and only if
17 someone were convicted of first degree murder?

18 JUROR CHEEKS: Right.

19 THE COURT: Likewise, is there anything about your
20 belief in that, that you would automatically vote to impose the
21 death penalty should someone be convicted of first degree
22 murder?

23 JUROR CHEEKS: (No audible response.)

24 THE COURT: Okay. Mr. Galyon, same...

25 JUROR GALYON: Same answers.

1 **THE COURT:** Same answers for you? Okay. Each of you
2 would look at the -- if someone were convicted of first degree
3 murder, I take it each of you would consider the mitigating and
4 aggravating circumstances I might charge you?

5 (No jurors respond audibly.)

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

7 **GENERAL SCHMUTZER:** Mr. Cheeks, where do you live,
8 please, sir?

9 **JUROR CHEEKS:** Seymour.

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

11 **JUROR CHEEKS:** I work for Power Equipment.

12 **GENERAL SCHMUTZER:** And in what capacity do you work?

13 **JUROR CHEEKS:** I'm (inaudible).

14 **GENERAL SCHMUTZER:** Okay. And you, Mr. Galyon?

15 **JUROR GALYON:** Mechanic.

16 **GENERAL SCHMUTZER:** Okay. Get everybody straight here.

17 Heard all my questions? I'm not going to go back over
18 them all. I take it you have no problems with any of them.
19 Decide this case solely on the facts as you get from that
20 witness stand, and the law given to you by the Court, and use
21 your reason and common sense, remembering that it's a reasonable
22 doubt; it has to be a reasonable hypothesis, not just any
23 hypothesis, not just any doubt.

24 Anything at all you can think of you need to bring to
25 our attention?

1 JUROR GALYON: Nothing.

2 GENERAL SCHMUTZER: Thank you.

3 MR. MILLER: Mr. Cheeks, you've heard a little bit about
4 the case, but said you've formed no opinion based on what you've
5 heard. Have you talked to anybody about the case?

6 JUROR CHEEKS: No.

7 MR. MILLER: Are you associated with anybody on either
8 side, the victim or our clients?

9 JUROR CHEEKS: I know one of the witnesses.

10 MR. MILLER: What witness is that?

11 JUROR CHEEKS: Rose.

12 MR. MILLER: Who?

13 JUROR CHEEKS: Rose.

14 MR. MILLER: Do you have -- are you involved with
15 anybody that's on the law enforcement staff here or other
16 counties?

17 JUROR CHEEKS: In other counties.

18 MR. MILLER: Okay, and what county is that?

19 JUROR CHEEKS: Rhea County, two uncles.

20 MR. MILLER: Pardon?

21 JUROR CHEEKS: Two uncles in Rhea County.

22 MR. MILLER: Okay. The fact that your uncles are with
23 the sheriff's department in Rhea County, would that cause you
24 to believe a police officer's testimony over somebody else's?

25 JUROR CHEEKS: (No audible response.)

1 MR. MILLER: You're going to take their testimony just
2 the way you would anybody else?

3 JUROR CHEEKS: (No audible response.)

4 MR. MILLER: Mr. Galyon, likewise you've heard about the
5 case, but you haven't formed any opinions, I take it?

6 JUROR GALYON: (No audible response.)

7 MR. MILLER: Never talked to anybody about the case?

8 JUROR GALYON: No.

9 MR. MILLER: Do you know anybody involved in law
10 enforcement?

11 JUROR GALYON: I've got a first cousin who's a state
12 trooper here in Sevier County.

13 MR. MILLER: Okay, and who is that?

14 JUROR GALYON: Arthur Galyon.

15 MR. MILLER: Okay.

16 JUROR GALYON: And my wife's uncle works for the
17 sheriff's department. Deputy.

18 MR. MILLER: Here in Sevier County? What's his name?

19 JUROR GALYON: James Houser.

20 MR. MILLER: Would you tend to believe a police officer
21 or a sheriff's deputy more than any other person?

22 JUROR GALYON: (No audible response.)

23 MR. MILLER: I've -- been awhile since I've asked
24 everybody these questions, but just want to ask each one of you,
25 go down the line, some of the major, important questions I've

1 asked, and ask you to give me your word on these questions that:
2 Number one, that you can follow the law as the judge gives it
3 to you, and hold the State to the -- to the burden of proof as
4 the judge gives it to you, beyond a reasonable doubt.

5 Follow the law as to circumstantial evidence as its been
6 explained to you; that it must not only point unerringly at
7 Mr. Dellinger, but it must exclude every other reasonable
8 hypothesis of the way Ms. Branum died. And as to experts, you
9 can agree with them and disagree, and you can reject their
10 testimony. Each of you -- will each of you leave whatever
11 preconceived notions and opinions you had about this case, and
12 make your decision based on the evidence you hear in the --
13 during this week of trial?

14 (No jurors respond audibly.)

15 MR. MILLER: And can each of you sit there now and look
16 over at Mr. Dellinger and say that, "You're innocent. I presume
17 that you're innocent," as the law requires?

18 (No jurors respond audibly.)

19 MR. MILLER: Mr. Ogle, can you do that? All those
20 things?

21 JUROR JAMES OGLE: (No audible response.)

22 MR. MILLER: Mr. McClellan?

23 JUROR McCLELLAN: (No audible response.)

24 MR. MILLER: Can each of you do that?

25 (No jurors respond audibly.)

1 MR. MILLER: Thank you.

2 THE COURT: Mr. Daniel?

3 MR. DANIEL: Mr. Galyon, you say Arthur Galyon, who's
4 with the highway patrol department, is your cousin?

5 JUROR GALYON: First cousin.

6 MR. DANIEL: First cousin? We had someone else on here
7 who was related to him earlier, I believe, is that correct? Do
8 you remember another juror, potential juror came. I'm not sure
9 if they're still here or if they're gone, but was that person
10 related to you, also, that was on?

11 JUROR GALYON: (No audible response.)

12 MR. DANIEL: You say you work as a mechanic?

13 JUROR GALYON: Uh-huh (affirmative).

14 MR. DANIEL: Where, sir?

15 JUROR GALYON: Ryder Systems.

16 MR. DANIEL: And is that in Knoxville?

17 JUROR GALYON: Uh-huh (affirmative).

18 MR. DANIEL: How long have you been with Ryder Systems?

19 JUROR GALYON: Almost 21 years.

20 MR. DANIEL: Quite a while. You say you have a -- your
21 wife's uncle is with the sheriff's department here in Sevier
22 County?

23 JUROR GALYON: Uh-huh (affirmative).

24 MR. DANIEL: Works with the sheriff's department, is
25 that right? If I'm right, his name was James Houser?

1 JUROR GALYON: Uh-huh (affirmative).

2 MR. DANIEL: You could hear the questions as asked of
3 all these other witnesses back here -- jurors or other witnesses
4 ---getting late in the day---other jurors. And do you have any
5 answers to any of those you feel like you'd like to say
6 regarding your feelings regarding circumstantial evidence or
7 anything, or the way we start out these trials equal?

8 JUROR GALYON: No, sir.

9 MR. DANIEL: You have no quarrels with that, do you?

10 JUROR GALYON: No.

11 MR. DANIEL: Mr. Cheeks, you work for Power Equipment.
12 Is that down in Knoxville, way out there on the Alcoa Highway?

13 JUROR CHEEKS: (No audible response.)

14 MR. DANIEL: How long have you been there?

15 JUROR CHEEKS: About six years.

16 MR. DANIEL: Okay. Have you worked in that type of
17 business for many years, or is that..?

18 JUROR CHEEKS: Not really.

19 MR. DANIEL: Just went there, started that work? Are
20 you married, sir?

21 JUROR CHEEKS: (No audible response.)

22 MR. DANIEL: Okay. And you say you have two uncles that
23 works down in Rhea County, in the sheriff's department down
24 there?

25 JUROR CHEEKS: (No audible response.)

1 **MR. DANIEL:** You understand this and all the rest of
2 these questions that's been asked these other jurors. Do you
3 have any answers that you feel like you'd like to give, that
4 would save us some time or anything? Do you have any problems
5 with us starting out this case equal, and the State having to
6 prove all of their elements beyond any reasonable doubt?

7 **JUROR CHEEKS:** No problems.

8 **MR. DANIEL:** You can look at Gary sitting right there
9 and say, "You're innocent, Gary. They're going to have to prove
10 you guilty to my satisfaction beyond a reasonable doubt. If
11 they can't, I'll vote not guilty, I wouldn't care what anybody
12 else says, what anybody else does." You'd do that, wouldn't
13 you?

14 **JUROR CHEEKS:** (No audible response.)

15 **MR. DANIEL:** Want that same thing applied to you?

16 **JUROR CHEEKS:** Yes.

17 **MR. DANIEL:** Thank you.

18 (Peremptory Challenge Slip #13 was submitted, and the
19 following jurors were excused: Juror Galyon and Juror
20 Cheeks.)

21 (The following jurors were called to fill the jury box:
22 Harold Maples and Kimberly Rollins.)

23 **THE COURT:** Have both of you heard all the questions
24 that have been asked?

25 (No jurors respond audibly.)

1 THE COURT: Mr. Maples, have you heard or read anything
2 about this case before you came here yesterday?

3 JUROR MAPLES: Yes, sir, I have.

4 THE COURT: Have you formed any opinions based on what
5 you've read or heard?

6 JUROR MAPLES: Yes, sir, I have.

7 THE COURT: Could those opinions be changed by any
8 evidence that would come from the witness stand?

9 JUROR MAPLES: I'm afraid not.

10 THE COURT: Let you go.

11 (Juror Maples is excused.)

12 (The following juror was called to fill the jury box:
13 Darlene Raisor.)

14 THE COURT: Is it Raisor, is that...?

15 JUROR RAISOR: Raisor (pronouncing).

16 THE COURT: Yeah. Have you read or heard anything about
17 this case, Ms. Raisor?

18 JUROR RAISOR: Yes.

19 THE COURT: Have you formed any opinions?

20 JUROR RAISOR: (No audible response.)

21 THE COURT: Okay. Ms. Rollins, is -- is it Rollins?
22 Is that correct?

23 JUROR ROLLINS: Rollins (pronouncing).

24 THE COURT: Okay. Have you formed any opinion based on
25 anything you've read or heard?

1 JUROR ROLLINS: (No audible response.)

2 THE COURT: Okay. Have you understood the Court's
3 instructions on the matter of the death penalty in this case?

4 JUROR ROLLINS: (No audible response.)

5 THE COURT: Do you have any moral or ethical
6 reservations about considering the death penalty as an option
7 in a case of first degree murder, if someone is convicted?

8 JUROR ROLLINS: (No audible response.)

9 THE COURT: And would you, on the other hand,
10 automatically vote to impose the death penalty just because
11 someone is convicted of first degree murder?

12 JUROR ROLLINS: (No audible response.)

13 THE COURT: Okay, Ms. Raisor, the same question: Have
14 you any ethical or moral problems in considering the death
15 penalty as an option?

16 JUROR RAISOR: (No audible response.)

17 THE COURT: Would you automatically vote to impose the
18 death penalty in each and every case of first degree murder?

19 JUROR RAISOR: No.

20 THE COURT: Okay. General Schmutzer?

21 GENERAL SCHMUTZER: Ms. Rollins, where do you live,
22 please?

23 JUROR ROLLINS: Knoxville.

24 GENERAL SCHMUTZER: Knoxville?

25 THE COURT: You live in Knoxville? In Knox County,

1 Tennessee?

2 JUROR ROLLINS: (No audible response.)

3 THE COURT: How, pray tell, did we get you?

4 JUROR ROLLINS: All my mailing address still comes here,
5 but (inaudible).

6 THE COURT: But you're not a resident of Sevier County,
7 Tennessee?

8 JUROR ROLLINS: No, sir. I live in Knoxville, but all
9 my permanent address is (inaudible).

10 THE COURT: 'Bye.

11 GENERAL SCHMUTZER: Two days to find that out.

12 THE COURT: Oh, God.

13 GENERAL SCHMUTZER: I'll sit back down while you're...

14 THE COURT: Boy, I sure am glad you voted in Knox
15 County. I hope you don't vote in Sevier County.

16 (Juror Rollins is excused.)

17 THE COURT: Well, okay, moving right along.

18 (The following juror was called to fill the jury box:
19 Joan Maury.)

20 THE COURT: Have you heard all the questions, Ms. Maury?

21 JUROR MAURY: Yes, sir.

22 THE COURT: Anything raise any issue in your mind...

23 JUROR MAURY: No.

24 THE COURT: ...as to whether you could be fair and
25 impartial to both sides in this case?

1 JUROR MAURY: (No audible response.)

2 THE COURT: Have you read or heard anything about the
3 case before you came here?

4 JUROR MAURY: No.

5 THE COURT: So I take it you've not formed any opinions.

6 JUROR MAURY: None.

7 THE COURT: Do you understand the Court's instruction
8 on the issue of the death penalty?

9 JUROR MAURY: Yes.

10 THE COURT: Do you have any moral reservations about
11 considering the death penalty as a sentencing option if someone
12 is convicted of first degree murder?

13 JUROR MAURY: No.

14 THE COURT: Likewise, would you automatically impose it
15 as a sentence in every case of first degree murder?

16 JUROR MAURY: Yes, I would.

17 THE COURT: Regardless of the circumstances?

18 JUROR MAURY: Long as it's first degree murder.

19 THE COURT: In all cases?

20 JUROR MAURY: (No audible response.)

21 THE COURT: Okay. We'll excuse you.

22 (Juror Maury is excused.)

23 THE COURT: Approach the bench, counsel.

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

25 THE COURT: That is the last of our box of jurors. We

1 have the nine or so that are remaining. What I would
2 propose to do is to let this group go out in the jury
3 room, and let them have a break, instead of letting me
4 go through the definitions and everything with the other
5 jurors, the other nine.

6 **MS. THOMAS:** Do you think...

7 **THE COURT:** Huh?

8 **MS. THOMAS:** ...do you think that nine is going to be
9 sufficient?

10 **THE COURT:** Oh, I don't think so, no.

11 **MS. THOMAS:** But is there any point in (inaudible).

12 **GENERAL SCHMUTZER:** Well, I was going to suggest the
13 same thing. If we -- depending on -- if we think we can
14 get a jury out of nine, I say let's go.

15 **THE COURT:** That's what I...

16 **GENERAL SCHMUTZER:** If we've got that problem, though,
17 if we're not going to get a jury out of nine, then I
18 would suggest that we don't -- we get some more people
19 in here tonight and start, and we can get that jury and
20 get going.

21 **THE COURT:** Okay, Sutton has exercised 1, 2, 3, 4, 5,
22 6, 7, 8, 9, 10, 11, 12, 13. So they have two left.
23 Dellinger has 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12.
24 They have three left. Is that what you understand? Is
25 that right?

1 MR. MILLER: Uh-huh (affirmative).

2 THE COURT: Okay. The State has exercised 1, 2, 3, 4,
3 5, 6, 7, 8, so you have eight left. Is that what your
4 figures show? Okay. I can talk to these nine and at
5 least try to qualify them preliminarily, and see.

6 MR. WEBB: That won't hurt anything, will it, to do
7 that. They may all nine stay, they may all nine...

8 MR. DANIEL: Yeah, you might run into a problem where
9 six or seven of them says they -- like some of these
10 other people have said, and then you have -- then you'll
11 know.

12 THE COURT: That's right. That's right. You know, go
13 ahead and ask them, and then, if not, then we can
14 adjourn at least this...

15 MR. DANIEL: Save that for when they come in.

16 GENERAL SCHMUTZER: Yeah, let's get some of them outside
17 to come back in.

18 THE COURT: Yeah.

19 GENERAL SCHMUTZER: I think that's a good idea.

20 THE COURT: Okay. Okay.

21 MR. MILLER: That's -- that's -- I think that'll be
22 (inaudible).

23 THE COURT: That's right. That's right, and have them
24 come back tomorrow.

25 MR. DANIEL: I'm not trying to tell you...

1 **THE COURT:** No, that's why I asked you.

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

4 **THE COURT:** Okay, what I am going to do is, I'm going
5 to ask the members of the jury panel who are sitting in the box
6 to step outside, and you may stay in the -- in the jury room,
7 or if they -- any special needs they have, take care of those.
8 I have to go through some additional questioning of some other
9 potential jurors. We have reached the end of our original jury
10 panel, so I'm going to ask you to step outside and let us go
11 through the other questions, and then I will call you back in.
12 All rise. The Court will take a short recess, and we'll come
13 back.

14 (The prospective jury panel leaves the courtroom, and
15 the court is recessed.)

16 **THE COURT:** Let me make sure that I have everyone's name
17 here. Is it Terry Kiernan? K-i-e-r-n-a-n?

18 (No jurors respond audibly.)

19 **THE COURT:** Wrong? Okay. Gary King?

20 **JUROR KING:** Yes.

21 **THE COURT:** Okay. Stanley Benson?

22 **JUROR BENSON:** Here.

23 **THE COURT:** Okay. Howard Houk?

24 **JUROR HOUK:** Here.

25 **THE COURT:** Okay. Dorothy Ogle?

1 JUROR OGLE: Here.

2 THE COURT: Okay. Kyle Wells?

3 JUROR WELLS: (No audible response.)

4 THE COURT: Present on the front row, aren't you, Kyle?
5 Martha Ward?

6 JUROR WARD: (No audible response.)

7 THE COURT: Okay. Terry Bradley's here. Richard
8 Huskey?

9 JUROR HUSKEY: (No audible response.)

10 THE COURT: Tommy Owenby?

11 JUROR OWENBY: (No audible response.)

12 THE COURT: Okay. Robert Allen's here? Mr. Allen?

13 JUROR ALLEN: Yes, sir, I am.

14 THE COURT: Thank you. Jack Williams?

15 JUROR WILLIAMS: (No audible response.)

16 THE COURT: Okay. If you want to come on down here in
17 front, Mr. Williams. And Robert Caudill, is that correct? Did
18 I say that right?

19 JUROR CAUDILL: Yes, sir.

20 THE COURT: Okay. All of you stand and raise your right
21 hand.

22 (The prospective jurors are duly sworn.)

23 THE COURT: I will go sort of in reverse order here,
24 questioning-wise. There have been some questions asked if
25 anyone has any knowledge about this case through pretrial

1 publicity. How many of you have heard or read something about
2 this case before you came down here yesterday or today?

3 (Certain jurors respond.)

4 UNIDENTIFIED: Just read it recently or...?

5 THE COURT: Yes, or anytime.

6 UNIDENTIFIED: When it happened, that's all.

7 THE COURT: Okay. Okay. I'll start with Mr. Williams
8 first. Have you formed any opinion, Mr. Williams, based on
9 anything that you've read or heard about the guilt or innocence
10 of any person in this case?

11 JUROR WILLIAMS: No, sir.

12 THE COURT: Okay. And, so, what's your name, sir?

13 JUROR KING: Gary King.

14 THE COURT: Well, I couldn't see you. I know...

15 JUROR KING: Right.

16 THE COURT: Have you read or heard anything about this,
17 Mr. King?

18 JUROR KING: Yes, sir, I have.

19 THE COURT: Have you formed any opinion?

20 JUROR KING: Yes, sir, I have. One of my employees is
21 a witness, and -- or they were subpoenaed. One of my employees
22 that works with me is a witness in this case.

23 THE COURT: Okay.

24 JUROR KING: And they talked to me about it before they
25 were subpoenaed. And I think it would give me a biased opinion.

1 **THE COURT:** Is that opinion such that it could not be
2 changed by any evidence coming from the witness stand?

3 **JUROR KING:** No, it could be changed.

4 **THE COURT:** Is it -- is it a situation where that you
5 think you could be fair and impartial to both sides, regardless
6 of the fact that your employee might testify?

7 **JUROR KING:** Yeah, I believe I could.

8 **THE COURT:** Do you -- what is your employee's name?

9 **JUROR KING:** Linda Henry.

10 **THE COURT:** Okay. I don't know which side she has been
11 subpoenaed for, and it makes no difference at this juncture to
12 the Court. Is it such that you would believe what your employee
13 would say...

14 **JUROR KING:** I'm sorry?

15 **THE COURT:** Is your relationship or knowledge of your
16 employee such that you would believe your employee, whatever
17 that testimony was?

18 **JUROR KING:** Yes, sir, I would.

19 **THE COURT:** Okay. Based on that, Mr. King, the Court'll
20 have to let you go.

21 **JUROR KING:** Thank you, sir.

22 **THE COURT:** Thank you, and we're sorry to have got you
23 in here. I didn't recognize you with your hair cut.

24 (Juror King is excused.)

25 **THE COURT:** Okay, sir?

1 JUROR BENSON: Stanley Benson.

2 THE COURT: Okay. Have you formed any opinion,
3 Mr. Benson, based on anything you've seen or heard in this case?

4 JUROR BENSON: No, I haven't.

5 THE COURT: Okay. Mr. Wells?

6 JUROR WELLS: No, sir.

7 THE COURT: All right, sir. Mr. Houk?

8 JUROR HOUK: No, sir.

9 THE COURT: Okay. Ms. Ogle?

10 JUROR OGLE: Yes, sir.

11 THE COURT: Have you formed an opinion?

12 JUROR OGLE: Yes, sir.

13 THE COURT: I'm not going to ask you what that opinion
14 is, but is it such that your opinion could not be changed by any
15 evidence that came from the witness stand?

16 JUROR OGLE: It could not be changed.

17 THE COURT: Could not be changed. We'll let you go.
18 Thank you.

19 (Juror Ogle is excused.)

20 THE COURT: Ms. Ward, have you read or heard anything
21 about this case before you came down here?

22 JUROR WARD: Yes, sir.

23 THE COURT: Have you formed an opinion, based on
24 anything you've read or heard?

25 JUROR WARD: I'm afraid I have.

1 **THE COURT:** Is that opinion such that it cannot be
2 changed by any evidence offered from the witness stand?

3 **JUROR WARD:** I wouldn't think so.

4 **THE COURT:** Don't think it could be changed?

5 **JUROR WARD:** I don't think so.

6 **THE COURT:** We'll let you go.

7 (Juror Ward is excused.)

8 **THE COURT:** Mr. Huskey,...

9 **JUROR HUSKEY:** Yes, sir.

10 **THE COURT:** ...have you formed an opinion based on
11 anything you've read or heard?

12 **JUROR HUSKEY:** Yes, sir.

13 **THE COURT:** Is it such that it cannot be changed?

14 **JUROR HUSKEY:** It would be difficult.

15 **THE COURT:** It would be difficult? Would you place a
16 higher burden of proof on one of these parties in this case in
17 order to change your opinion?

18 **JUROR HUSKEY:** No, sir.

19 **THE COURT:** Okay. Do you think that you could be fair
20 and impartial to both sides in this case?

21 **JUROR HUSKEY:** No.

22 **THE COURT:** Based upon...

23 **JUROR HUSKEY:** It would be very difficult. I grew up
24 in the White's community.

25 **THE COURT:** Okay.

1 JUROR HUSKEY: Have lots of family ties to it.
2 THE COURT: Okay. All right, we'll let you go. Thank
3 you.
4 (Juror Huskey is excused.)
5 THE COURT: Mr. Caudill, have you read or heard anything
6 about this case?
7 JUROR CAUDILL: I read what was on the front page of the
8 Sentinel last night.
9 THE COURT: Last night? Have you formed an opinion
10 about the guilt or innocence of anyone based upon what you've
11 seen or heard?
12 JUROR CAUDILL: (No audible response.)
13 THE COURT: Okay. Mr. Allen, same question for you,
14 sir?
15 JUROR ALLEN: No opinion. I have read articles in the
16 paper. But I have not formed any opinion.
17 THE COURT: Okay. All right, sir. Mr. Bradley?
18 JUROR BRADLEY: I don't know anything.
19 THE COURT: Haven't read anything about...?
20 JUROR BRADLEY: I've read the papers on it.
21 THE COURT: Have you formed any opinion one way or the
22 other?
23 JUROR BRADLEY: No.
24 THE COURT: Okay.
25 MR. WEBB: What's Mr. Allen's first name?

1 THE COURT: Robert. Mr. Owenby, is that...?
2 JUROR OWENBY: Yes, sir.
3 THE COURT: Okay. Have you read or heard anything about
4 this case?
5 JUROR OWENBY: Yes, sir.
6 THE COURT: Have you formed an opinion about it?
7 JUROR OWENBY: Sure have.
8 THE COURT: Is your opinion such that it cannot be
9 changed by any evidence offered in this case?
10 JUROR OWENBY: I think so.
11 THE COURT: It is such that it could not be changed, is
12 that what you're saying?
13 JUROR OWENBY: Yeah, it's -- I grew up with people.
14 THE COURT: Okay. All right, sir, we'll let you go.
15 Thank you.
16 (Juror Owenby is excused.)
17 THE COURT: Your name, sir?
18 JUROR MANN: Timothy Mann. I was subpoenaed last night.
19 THE COURT: I'm sorry?
20 JUROR MANN: They called me last night.
21 THE COURT: Aren't you glad? It's Timothy Mann, M-a-n-
22 n?
23 JUROR MANN: M-a-n-n, yes.
24 THE COURT: Okay. Have you read or heard anything about
25 this case, sir?

1 JUROR MANN: A long time ago.

2 THE COURT: Have you formed any opinion based upon what
3 you've read or heard?

4 JUROR MANN: No, sir. No, sir.

5 THE COURT: Okay. So we've got Mr. Benson, Mr. Houk,
6 Mr. Wells, Mr. Bradley, Mr. Allen, Mr. Williams, Mr. Caudill,
7 and Mr. Mann, is that correct? Have I left anybody out?

8 MR. WEBB: You have a Terry Kiernan. I have him on this
9 list here, Your Honor. I don't know if that's the same list
10 we're looking at.

11 THE COURT: Right. But Mr. Kiernan apparently is not
12 here.

13 MR. WEBB: Oh, okay. We'll excuse him.

14 THE COURT: Yeah, we'll let him go. He may have gotten
15 mad and left.

16 GENERAL SCHMUTZER: He took that hour and a half break.

17 THE COURT: He took the hour and a half break that
18 everybody thought I gave. Okay, let's see here. Gentlemen, the
19 reason we're here---and I know a couple of you have heard this
20 before, but I must go through it again---we're here because
21 Mr. Sutton and Mr. Dellinger have been indicted by the Sevier
22 County grand jury for the charges of first degree murder and the
23 arson of personal property.

24 An indictment occurs after our grand jury meets and
25 determines there is probable cause to believe a crime has been

1 committed, and that a person should stand trial for it. A grand
2 jury does not determine guilt or innocence, they only determine,
3 as I say, probable cause sufficient to believe that a crime has
4 been committed, and that someone should stand trial for it. In
5 the grand jury, that is where the State or the State's witnesses
6 appear in front of that grand jury and give their version of
7 what happened, and the grand jury, at that time, then decides
8 that if that evidence were to be believed at trial, at a further
9 trial, that that is sufficient to cause there to be a trial.

10 In the grand jury, the defendant nor the defendant's
11 attorney is present; it is a secret proceeding. They have no
12 opportunity to offer any evidence or to give their version of
13 what they say happened. After an indictment or presentment is
14 issued, then we get to this stage of the proceedings, and that
15 indictment is an official accusation or allegation only. It is
16 not evidence against the defendant; it raises no inference or
17 presumption of guilt, whatsoever.

18 In any trial, in any criminal case, the state of
19 Tennessee has the burden of proving each and every element of
20 the crime in question beyond a reasonable doubt and a moral
21 certainty. In every criminal case -- or in no criminal case
22 does the defendant have any burden, whatsoever. A defendant
23 doesn't have to offer any evidence, they don't have to say one
24 word, they don't have to cross-examine a witness, they don't
25 have to do anything but sit there, if they choose so to do that.

1 That's their privilege.

2 Likewise, and more importantly than anything else under
3 our system of law, every person charged with a crime is presumed
4 innocent until proven guilty, and that presumption of innocence
5 stays throughout the trial. And, as stated, they don't have to
6 prove anything.

7 If at the close of the trial you have a reasonable doubt
8 as to whether or not someone committed a crime, then your
9 verdict must be "not guilty." It's not that they might be
10 guilty, they probably -- or they're probably guilty, or they
11 ought to be guilty for something. But they're here on a
12 specific charge that they are here to be tried upon. And if you
13 have any reasonable doubt as to any of the elements of the
14 crime, whatsoever, then it is your job to find them not guilty.

15 I will tell you what I've told the other jurors here for
16 the past two days: I can promise you that, no matter what you
17 do, either not guilty or guilty or no verdict, somebody
18 somewhere in this county is probably going to disagree with you.
19 And they disagree with what I do every day, I'm sure. But we
20 can't worry about that. When we come into this courtroom, when
21 people's liberty is at stake, and important issues are at stake,
22 it's our job to do the very best we can and not worry about how
23 anyone else might think about it. And you're not here to please
24 me, you're not here to please the prosecution, you're not here
25 to please the defense or their attorneys. If you do your job

1 and listen to this proof, and do our job according to the oaths
2 that you would take, then justice has been served regardless of
3 what you do. You and other jurors are the conscience of our
4 community. And you stand in the place of everyone in our
5 community. That's our job. People trust us to do our job. And
6 whether they agree with it or whether they disagree with it, if
7 you do your job then, as I say, justice has been served.

8 Now, this case could take several days. It is going to
9 take several days to try. It's important issues, as I say, a
10 lot of number of witnesses (sic) that apparently are going to
11 be heard from. Do any of you have a problem, a real serious
12 problem, as far as staying overnight over a several days period?
13 Mr. Williams?

14 JUROR WILLIAMS: Need to work real bad.

15 THE COURT: Where do you work, Mr. Williams?

16 JUROR WILLIAMS: I build homes.

17 THE COURT: Okay. For yourself?

18 JUROR WILLIAMS: Yes, sir.

19 THE COURT: Is there anyone else there that can do the
20 work that you were doing?

21 JUROR WILLIAMS: No, sir.

22 THE COURT: Have you got jobs and projects ongoing right
23 now?

24 JUROR WILLIAMS: It's already sold.

25 THE COURT: Sold? Are they -- well, that's good if you

1 can sell them before you build them. That's -- I might need to
2 talk to you. But -- well, how many employees do you have?

3 JUROR WILLIAMS: Just three.

4 THE COURT: Three? And I take it you're they're
5 supervisor?

6 JUROR WILLIAMS: Well, I'm really the laborer.

7 THE COURT: Maybe I don't need to talk to you. If
8 you're doing all the labor, there's something wrong here. We
9 may have to... Well, I'll let you go, Mr. Williams.

10 JUROR WILLIAMS: I sure appreciate it. Thank you, sir.

11 THE COURT: Thank you.

12 (Juror Williams is excused.)

13 THE COURT: Anyone else? Yes, sir, Mr. Bradley?

14 JUROR BRADLEY: I'm self-employed, and if it's going to
15 be several days it'd be hard to get someone to take my place and
16 run the business.

17 THE COURT: I believe you have a wrecker service and...

18 JUROR BRADLEY: Yes, sir.

19 THE COURT: ...also do some mechanic work and...?

20 JUROR BRADLEY: Yes, sir.

21 THE COURT: And you don't think there's any way that you
22 could have...

23 JUROR BRADLEY: Well,...

24 THE COURT: ...reasonably get someone, Mr. Bradley? The
25 Court's not going to -- I...

1 JUROR BRADLEY: Part of them's out of town.

2 THE COURT: Okay. Okay. I'll let you go, Mr. Bradley.
3 Thank you.

4 (Juror Bradley is excused.)

5 THE COURT: Anyone else?

6 (No jurors respond audibly.)

7 THE COURT: Okay. Briefly talking, and as I understand
8 from what has been said here by both the State and the defense
9 counsel, this case is primarily based upon circumstantial
10 evidence as opposed to direct evidence, as far as someone
11 saying, "I saw a certain act done." It's the State's theory,
12 as I understand it, that they are going to show facts or intend
13 to show facts from which they say certain inferences may be
14 drawn, and from that a finding of guilty on the issues of first
15 degree murder and arson. Okay? Now, the law says that in order
16 to convict someone based upon circumstantial evidence alone, the
17 State must prove beyond a reasonable doubt that the offense
18 occurred in that way, and that no other reasonable explanation
19 is possible. I think that's a fair statement. I hope I've not
20 stomped all over it. I can read you the instruction, I guess,
21 easier than I can the... It's been a long day, folks.

22 I'll read this to you. Be much better, and more
23 succinct. Is, "The guilt of a defendant, as well as any fact
24 required to be proved, may be established by direct evidence,
25 by circumstantial evidence, or by both combined. Direct

1 evidence is defined as evidence which proves the existence of
2 the fact in issue, without the inference or presumption of any
3 other facts. Direct evidence may constitute a testimony of a
4 person who has perceived by the means of his or her senses the
5 existence of the fact sought to be proved or disproved.

6 Circumstantial evidence consists of proof of collateral
7 facts and circumstances which do not directly prove the fact in
8 issue, but from which those facts may be logically inferred.
9 In a case where the evidence is made up entirely of
10 circumstantial evidence, then, before you would be justified in
11 finding a defendant guilty, you must find that all the essential
12 facts are consistent with the hypothesis of guilt, as that is
13 to be compared with all the facts proved.

14 The facts must exclude every other reasonable theory or
15 hypothesis except that of guilt, and the facts must establish
16 such a certainty of guilt of the defendant as to convince the
17 mind beyond a reasonable doubt that the defendant is the one who
18 committed the offense. It is not necessary that each particular
19 fact be proved beyond a reasonable doubt, if enough facts are
20 proved to satisfy the jury beyond a reasonable doubt of all the
21 facts necessary to constitute the crime charged.

22 Before a verdict of guilty is justified, the
23 circumstances, taken together, must be of a conclusive nature
24 and tendency leading, on the whole, to a satisfactory
25 conclusion, and producing, in effect, a moral certainty that the

1 defendant, and no one else, committed the offense."

2 Is that understandable? Do all of you understand that?

3 (No jurors respond audibly.)

4 **THE COURT:** Now, I want to talk also a minute about the
5 standard of proof. As I said, it is beyond a reasonable doubt
6 and a moral certainty. In a civil case, as contrasted with a
7 criminal case, everyone starts out on an even playing field, as
8 you will. And the person or persons having a burden of proof
9 on a particular issue have to tip the scales ever so slightly
10 in their favor in order to win on that point or issue. It can
11 -- it can be by 51% or 50 plus percent, but it just has to be
12 ever so slight in their favor.

13 In a criminal case, however, it's different. And
14 because a person's liberty is being sought here, our state and
15 our federal constitutions require a higher standard of proof,
16 and that is beyond a reasonable doubt and a moral certainty.
17 Absolute certainty is not required, but moral certainty is
18 required. Do all of you feel that you understand that standard
19 of proof that I've explained to you, gentlemen?

20 (No jurors respond audibly.)

21 **THE COURT:** Do any of you have any problems with that?

22 (No jurors respond audibly.)

23 **THE COURT:** Do any of you want to ask any questions
24 about that?

25 (No jurors respond audibly.)

1 **THE COURT:** Is there anything, counsel for the State,
2 that I have not raised as far as...

3 **GENERAL SCHMUTZER:** Mention the death penalty.

4 **THE COURT:** I haven't yet. No. Okay. Okay.

5 In this case the penalties -- or in any case of first
6 degree murder, the penalty, if someone is found guilty, is
7 either life in prison or death. First of all, of course, the
8 first thing that we're here to determine is the guilt or
9 innocence of these defendants. If you find them not guilty, of
10 course we don't have to worry about the other. It's only if
11 someone is found guilty that we would consider the penalties,
12 and that would happen at a subsequent sentencing hearing.

13 Tennessee law says that a mandatory death sentence is
14 never required. It is never required in any case under
15 Tennessee law. Do any of you gentlemen have any moral
16 reservation about considering the death penalty as an option in
17 a case of first degree murder? If you do, raise your hand.

18 (No jurors respond audibly.)

19 **THE COURT:** Okay. Now, if someone is found guilty of
20 first degree murder, at that subsequent hearing, after the
21 evidence, if any, is offered, I will instruct you on enhancing
22 factors and mitigating factors. And only if you found the
23 enhancing factors outweighed the mitigating factors could you
24 vote for the death penalty. Do any of you feel that in every
25 case of first degree murder that you would automatically vote

1 for a sentence of death, without considering the enhancing
2 factors or mitigating factors? Anyone feel that way?

3 (Certain jurors respond.)

4 **THE COURT:** Okay, Mr. Benson?

5 **JUROR BENSON:** Yes, sir.

6 **THE COURT:** Is it your position in every first degree
7 murder case...?

8 **JUROR BENSON:** I believe in an eye for an eye and a
9 tooth for a tooth.

10 **THE COURT:** Okay, sir.

11 **JUROR BENSON:** If he's found guilty, I would -- I would
12 have to go for the death penalty. That's the way I feel.

13 **THE COURT:** I -- and I appreciate that, Mr. Benson. And
14 as I've told other jurors, and if you've heard me today, I
15 understand. People of goodwill disagree on the issue of the
16 death penalty. A lot of my friends, and I'm sure a lot of your
17 friends, might not feel the death penalty is proper in any case.
18 I also have friends who feel like Mr. Benson does, that it
19 should be applied in every case of first degree murder.
20 However, the law we have to operate under tells us that we must
21 consider it differently. And so, based on that, Mr. Benson, the
22 Court would have to excuse you, sir. And I appreciate your
23 candor and honesty with the Court, and I respect you for it.

24 **JUROR BENSON:** Yes, sir.

25 **THE COURT:** Thank you.

1 (Juror Benson is excused.)

2 **THE COURT:** Anyone else have -- have anything that you'd
3 like to state in regards to the death penalty? Do all of you
4 understand that, as I've told you? Do any of you disagree with
5 the law as I've told you?

6 (No jurors respond audibly.)

7 **THE COURT:** Okay. Anything further, gentlemen, that the
8 Court needs to go into? Anything for the defense that you'd
9 like for me to at this juncture? All I'm doing at this juncture
10 is determining preliminary qualification.

11 **MR. MILLER:** At some point, Your Honor, the witnesses.

12 **THE COURT:** I'll do that right now. Thank you.

13 I have a list -- list here of several witnesses that I
14 will try to read to you, and I want to explain to you, first of
15 all, that simply because a witness is listed does not mean they
16 would be called. They have to be listed, however. And if, for
17 some reason, all of these witnesses were not called, I would not
18 want you to wonder about that. I will read this list of
19 witnesses off; at the conclusion of that, if any of you
20 gentlemen think you know any of them or if there's anything you
21 need to tell us about that, please feel free to do so.

22 Mary Ramsey; Bill Cogdill; Bruce McCoy; Dr. Allen White;
23 Jack Sutton, Joyce Tipton, Danny Westerly; Davon Mayes; Dr. Ti
24 Van, and it's spelled N-g-u-y-e-n, is his last name. He is a
25 doctor at Lakeshore Mental Health Center; Dr. Kaye Shaw at

1 Lakeshore Mental Health Center; and Dr. Charles Sheehan at the
2 same location. Dr. Ittoop is the first name, then the last name
3 is M-a-l-r-y-e-k-k-e-l, also at Lakeshore Mental Health.
4 Dr. Wayne Stewart; Junior Parton; Linda Dellinger; Clyde
5 Dellinger; John Dellinger; Ralph Dellinger; George Dellinger;
6 Ann Morris; Marilee Ramsey; Tom Defoe; Dennis Huddleston; Ricky
7 Hurst; Gary Litton; Shelly Longmire; Jerry Reney; M. F. Smith;
8 Justin Sutton; Jimmy Sutton; Diane Sutton; Lisa Wells; Jama
9 Williams; Dr. Charles L. Roach.

10 Claude Sutton; Tessa Sutton; Carolyn Weaver; Dennis
11 Shuler; Bobby Floyd; Rose Parton; Hazel Sutton; Jack Romines;
12 Pauline Romines; Reese Sutton; Nell Sutton; Casey Thomas;
13 Lucille Thomas; James Sutton; Shirley Sutton; Clay Sutton; Pat
14 Sutton; Leroy Sutton; Carol Jean Sutton; Creed Stella Sutton;
15 Conway Parton; Debbie A. Campbell Hunt; Robert Webb; Freddie
16 Ledbetter; Ron Whitely.

17 Dr. William Bass; Gary Clabo of the state fire
18 marshall's office; David Davenport; Kent Hatcher; Sheriff Don
19 Ogle; Mike Von Cannon; Elaine Mayes; Alvin Henry; Matthew Mayes;
20 Danny Sutton; Larry McMann; Donnie Huskey; Arthur Harmon; Viola
21 Griffin; Tammy Griffin; Billy Griffin; James Griffin; Alvin Lee
22 Henry; Judy Griffin; Carolyn Weaver; Linda Dellinger; Barbara
23 Gordon; Judy Paine; David Paine; Larry Munsey; Eddie Buchanan;
24 Ronald Suttles; Kenneth Bryant; Jamie Marie Forsythe; Nancy M.
25 Bryant; Fred Atchley; David Claxton; Bill Boddy. Is that right,

1 Boddy, B-o-d-d-y?

2 GENERAL GREEN: That's actually David Clayton instead
3 of David Claxton. I think that's a typo.

4 THE COURT: Okay. And so David and -- and Boddy is
5 what?

6 MR. FLYNN: That is Boddy (pronouncing), Your Honor.

7 THE COURT: Boddy?

8 MR. FLYNN: Yes, sir.

9 THE COURT: Thank you.

10 Bill Boddy; Gary Hamilton; Tom Defoe; Ray Herrin; Drew
11 Roberts; Stephen Brooks; Ken Beeler; Thomas Carter; James
12 McDonald; Jason McDonald; Sharon Davis; Pat Crawford; Sherry
13 Russell; Cindy Walker; Dr. Eric Ellington; Dana Carter; Danny
14 Westering; Phil Smith; Linda Henry; John Brown; James Gordon;
15 Johnny Wade McCarter; Boyd Ray Branum; Mark Holt; Mark Turner;
16 Jeff McCarter; Robin Branum; Herman Lewis; Arthur Bohannon;
17 Dr. Steve Madison; Jack Sutton; Joyce Tipton; Eddie Blair;
18 Donald Harmon; Dale Gorely; Jim Widener; David Griswald; Murray
19 Marks; Chester Owenby; David Hutcheson; Terry Lynn Lilly; Debbie
20 Campbell; Jerry Sullivan.

21 Jeff Hufstetler; Sandra Hicks; Kenneth Rocky Walker;
22 Jeanie Branum; Mrs. Herman Lewis; Stella Griffin Whitted;
23 Jennifer Branum; Sandra Viola Branum; Arnold Lewis; James Willie
24 Henry. We've already talked about Dr. Shaw, Sheehan and the
25 other gentlemen. Gentlemen, Brenda M. Keehan; Shelly Betts;

1 Matthew Cubberly; Tim Nichols; Cindy Leatherwood; Dave Dougan;
2 Tony Proffitt; and Tommy Hefler.

3 Now, do either of you gentlemen recall, from that list
4 of witnesses, any one of them who you have any personal
5 association with?

6 UNIDENTIFIED: Just knowing them, you know, to speak to
7 them?

8 THE COURT: Okay, who -- who...?

9 UNIDENTIFIED: Sheriff Ogle.

10 THE COURT: Sheriff Ogle? Other than...

11 UNIDENTIFIED: I know him to speak to him.

12 THE COURT: Right. Do you have any other personal
13 association with Mr. -- Sheriff Ogle, other than that?

14 UNIDENTIFIED: No, sir, not really.

15 THE COURT: Okay. Based upon your association with
16 Mr. Ogle, if he were to testify, would you be able to judge his
17 testimony just like you would anyone else's?

18 UNIDENTIFIED: Yes, sir.

19 THE COURT: Okay. Anyone else?

20 JUROR WELLS: Your Honor, I know about all the Suttons
21 that you referred to in that list.

22 THE COURT: Yes, sir.

23 JUROR WELLS: And it'd be hard to -- for me to sit here
24 and overrule their testimony, I believe, because I've worked
25 with and for some of them.

1 **THE COURT:** Sure. Do you feel like that you would
2 automatically belief their testimony over someone else's?

3 **JUROR WELLS:** Yes, I believe I would. Yes, sir.

4 **THE COURT:** Okay, I'll ask you this, Mr. Wells. And the
5 Court appreciates your candor. I've known you a long time. Is
6 -- as you sit there, do you think you could be fair and
7 impartial to both sides in this case, based on your knowledge
8 of the Sutton family?

9 **JUROR WELLS:** Well, I'm -- I'm thinking I would, but I
10 know -- I've known some of them for many years.

11 **THE COURT:** Yes, sir.

12 **JUROR WELLS:** And I -- I don't know if I could be
13 impartial with them and the prosecution, too.

14 **THE COURT:** Okay. All righty. Approach the bench,
15 please.

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

17 **THE COURT:** What do you think?

18 **GENERAL SCHMUTZER:** I think we've just run our course.

19 **THE COURT:** Any objection to letting him go?

20 **GENERAL SCHMUTZER:** He said he's -- like others, he said
21 he can't be -- you know, he can't be impartial.

22 **MR. WEBB:** If he went that far, that's fine. I didn't
23 know -- I didn't think he went that far. He says he
24 knows them, but that's...

25 **GENERAL SCHMUTZER:** Well, he said he didn't think he

1 could be impartial.

2 **THE COURT:** Yeah, fair and impartial.

3 **MR. WEBB:** As long as he says he couldn't be fair and

4 impartial, if you'll ask that again, that'll suit me.

5 **THE COURT:** Okay.

6 **GENERAL SCHMUTZER:** First he said he thinks he could.

7 And he didn't -- he says, "I don't think I can be

8 impartial to -- to the defendant and the State, knowing

9 the Suttons as long as I have."

10 **MR. WEBB:** I don't know about that. If the Court wants

11 to talk to him a little more, it's...

12 **GENERAL SCHMUTZER:** I wouldn't bug him anymore about it.

13 I think that's...

14 **THE COURT:** He said it would be hard for him, is what

15 he said.

16 **MR. WEBB:** If he -- you know, try to talk to him, if he

17 can lay that aside and be fair and impartial, that's...

18 If he can, fine; if he can't, fine. That's fair enough,

19 either way.

20 **THE COURT:** Okay.

21 **MR. MILLER:** Your Honor, I just thought of a potential

22 witness that we might have that I just overlooked. Van

23 Helton from our office. I certainly don't want to be

24 precluded from using her because I didn't have her on

25 the list.

1 THE COURT: Okay. All right.

2 GENERAL SCHMUTZER: We just gave them the notice of a
3 Dr. Pope, but he's just -- he's with Dr. Madison. And
4 that's just to cover -- that's on records.

5 MR. WEBB: I saw that. There's probably some more --
6 two or three loose ones we haven't mentioned.

7 THE COURT: I understand.

8 GENERAL SCHMUTZER: That's just to cover some of the
9 records.

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

12 THE COURT: Mr. Wells, as I understand what you said,
13 is it going to be difficult for you to sit on this case and be
14 fair to both sides, based on what you said as to your knowledge
15 of the Sutton family, in particular?

16 JUROR WELLS: Well, the State would have to prove the
17 guilt.

18 THE COURT: Right.

19 JUROR WELLS: And I know many of those people, and, you
20 know, I was just sitting here questioning myself. You know,
21 it's -- it's going to be -- really have to dig to get me to
22 override some of their -- whatever their testimony might be, you
23 know. Now, that's what I was a-looking at. You know, I don't
24 know what they're going to say or anything.

25 THE COURT: I understand that.

1 JUROR WELLS: Or even if they'll be called. But I do
2 know the ones that I'm real acquainted with would be, you know,
3 truthful.

4 THE COURT: Okay. Do you feel like that you'd hold the
5 State to a higher burden of proof?

6 JUROR WELLS: I don't know that you'd call it a -- hold
7 them to a higher one. You know, I guess probably you would, I
8 guess. Yes, sir.

9 THE COURT: Okay. Well, based on that, Mr. Wells, and
10 -- and, I say, the Court's known you a long time, and I think
11 you're an honest man, and I appreciate your candor in this case.
12 But based on your answers, the Court will have to excuse you.
13 And I appreciate you very much for being here. Thank you.

14 (Juror Wells is excused.)

15 THE COURT: Well, that leaves Mr. Houk, Mr. Allen,
16 Mr. Caudill, and Mr. Mann. What I propose to do, gentlemen,
17 rather than having you stay here for a whole lot longer here
18 today, it's obvious that we're going to have to get more jurors.
19 And if you -- if it would not be too much additional trouble for
20 you, I would like to ask you to be back here at 9:00 in the
21 morning to be included in the jury panel. Anybody have a
22 problem with that, any of you?

23 (No jurors respond audibly.)

24 THE COURT: Okay. Well, I -- and this is an exceptional
25 circumstance, and it's an exceptional case in that it has -- it

1 has taken us this long on a jury. And I know you've been here
2 a long time, and I certainly apologize to you for that, and I
3 hope you understand, and I hope you'll bear with us. So I will
4 let you go. Be back here in the morning, okay? Thank you.

5 (The prospective jurors are excused.)

6 **THE COURT:** So we'll put Mr. Allen, Mr. Caudill --
7 here's two in. That's Mr. Allen, Mr. Caudill, and then Mr. Houk
8 and Mr. Mann. Those are the four.

9 What I think I will do now is let the other jurors go
10 on, so they can make their arrangements for the night. I'll let
11 the existing jurors who are on the panel now go for the evening.
12 I'll bring them back in here and instruct them, and caution them
13 on the publicity and so forth, but I see no reason to go further
14 at this time.

15 **MR. MILLER:** Your Honor, I do have a brief motion I'd
16 like to make before we do that.

17 **THE COURT:** Sure. What's...?

18 **MR. MILLER:** As Your Honor knows, and we discussed the
19 fact at the motion hearing, defense counsel, I think, on both
20 sides filed a motion for a change of venue.

21 **THE COURT:** Yes.

22 **MR. MILLER:** And, based on the problems we've had in
23 selecting a jury here in this case, we would renew that motion
24 at this time. I think the record should reflect and anybody
25 with more knowledge than I do, if you can correct me as to what