

IN THE CRIMINAL COURT FOR SEVIER COUNTY, TENNESSEE

**FILED**

MAR 8 1994

**SUPREME COURT CLERK**

Appellee,

\*\*\*

CASE # 5033, 5035

Appellants.

February 16-24, 1993  
Volume 6 of 22 Volumes

CIRCUIT COURT  
FILED  
HOUR 9:30 A. M  
DATE D.A. JAN 07 1994  
*Shawn R. Hendrix*  
CIRCUIT COURT CLERK  
SEVIER COUNTY, TENN.

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1 the record is, but I think over -- well over 200 jurors were  
2 called for service; we've been through I don't know how many  
3 that were actually here. I know there's been 50, maybe close  
4 to 100 that have excused -- have been excused because they  
5 formed opinions about the case.

6 It may well be that we can keep dragging jurors in for  
7 days and days, and seat 12, but I think the whole thrust behind  
8 a motion for a change of venue is that the publicity surrounding  
9 the case has just permeated every area of this community to the  
10 -- to the degree that you can't assure that these men will  
11 receive a fair trial. And, therefore, we would ask the Court  
12 to change the venue in this case.

13 THE COURT: And I take it Mr. Sutton joins in that?

14 MR. WEBB: We'll join in that.

15 THE COURT: General Schmutzer, what's your -- if you  
16 have a response?

17 GENERAL SCHMUTZER: I think obviously, Your Honor, it  
18 has been, I think, difficult. We've been in jury selection for  
19 two days; there's -- jury selections go on much longer than  
20 that. Many people have taken themselves off because of the  
21 death penalty more so -- more people have taken themselves off  
22 because of the death penalty than they have because they've  
23 already formed an opinion.

24 THE COURT: As -- as...

25 GENERAL SCHMUTZER: That's been the biggest hurdle to

1 overcome, I think.

2           **THE COURT:** As the Court notes, and I have paid  
3 particular attention to it, not so much in keeping exact  
4 statistics of it, but I have noted in my mind that most of the  
5 jurors who excused themselves about opinions indicated it did  
6 not have anything to do with the pretrial publicity. Several  
7 of the prospective jurors either knew one side or the other;  
8 didn't feel like they could be fair. Very few of them had  
9 indicated that the pretrial publicity had affected any opinion  
10 in this case.

11           I think, as stated by both counsel -- and obviously  
12 several jurors excused themselves for feelings one way or  
13 another about the efficacy of the death penalty. And that is  
14 their privilege, and all of us appreciate their candor. But I  
15 -- I still do not have a belief that the death penalty -- or,  
16 I'm sorry, the pretrial publicity has affected this case. I  
17 have also noted and -- as to how counsel has exercised their  
18 peremptory challenges, and that's certainly their privilege.  
19 But several of the jurors who were excused---in fact, the vast  
20 majority of jurors who were excused---had indicated no opinion  
21 at all formed as a consequence of any pretrial publicity. So  
22 -- and also a large number of our prospective jurors have been  
23 excused because of work and other commitments. I think that's  
24 taken a good ten to 15% of our jurors. So, with that, for those  
25 reasons, the Court must respectfully overrule the motion for

1 change of venue for the reasons stated.

2 Let me get the jury in here, and then I will take up any  
3 other short matters that counsel has. If you'll ask the jury  
4 back in, Sheriff Ogle, please, sir.

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

7 **THE COURT:** Members of the jury don't have to sit down,  
8 'cause you're not going to be here that long. We are going to  
9 conclude your participation in this case for today. We are  
10 going to call some additional jurors in over the nighttime, and  
11 we hope it will conclude the jury selection process tomorrow.  
12 Don't talk about the case, don't read any newspapers over the  
13 night or in the morning or at any time throughout these  
14 proceedings, and do not watch any television broadcast news or  
15 any radio news. I'm sure you won't watch any radio news, just  
16 don't listen to it.

17 And we will see you, then, in the morning at 9:00 a.m.  
18 The officers will be happy to assist you as far as making  
19 arrangements for your personal belongings, and any emergency  
20 calls that you might have to make as far as letting your family  
21 know where you're at. So we'll see you in the morning. Yes,  
22 sir?

23 **UNIDENTIFIED:** I'm still living in Sevier County, but  
24 I've changed my address, 'cause I'm supposed to be moving like  
25 the first of next month.

1           **THE COURT:** Okay.

2           **UNIDENTIFIED:** Is that going to be a problem?

3           **THE COURT:** Still got you. Only if we get through  
4 before the end of the month.

5           (The entire jury venire is excused.)

6           **THE COURT:** Are there any matters of short duration that  
7 we can take up?

8           **MR. WEBB:** I've handed General Schmutzer some orders as  
9 a result of yesterday's hearings, and I wanted him to review  
10 them...

11           **GENERAL SCHMUTZER:** We'll have to look at them.  
12 Obviously we haven't had a chance.

13           **MR. WEBB:** That's fine, I just wanted to remind you.

14           **MR. DANIEL:** Your Honor, can we approach the bench on  
15 -- it's just something that should be brought to Your Honor's  
16 attention.

17           **THE COURT:** Surely. Surely.

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

19           **MR. DANIEL:** I don't think I ought to say anything about  
20 this in open court. We've got those motions on those  
21 statements. You know, what we've done is dictated a  
22 thing for you to look at. It's saying certain portions  
23 of those statements which are argumentative, and certain  
24 things should be excluded. If you want to take that,  
25 or if you want to wait and have it...

1           **THE COURT:** Take them home with me and look at them?  
2           **MR. DANIEL:** No, no, I'm just saying we've got them  
3           ready, if you want us to do that.  
4           **THE COURT:** Sure.  
5           **GENERAL SCHMUTZER:** I have gone -- you may as well give  
6           them to me. I'm not going into a lot of that, Zane.  
7           You know me better than that.  
8           **MR. DANIEL:** There's some -- there was -- there's...  
9           **GENERAL SCHMUTZER:** Well, what happened was, they talked  
10          at first, and then -- and in the second statement...  
11          **THE COURT:** They got accusatory.  
12          **GENERAL SCHMUTZER:** Right, they got accusatory, and then  
13          it... I'm not going into all that.  
14          **MR. DANIEL:** Well, that's -- they talk about a chicken  
15          and fighting and...  
16          **THE COURT:** Assume nobody'd get inflamed over chicken  
17          fighting, now.  
18          **GENERAL SCHMUTZER:** If we were in Cocke County, it'd be  
19          all right.  
20          **THE COURT:** Okay.  
21          (A discussion was held off the record.)  
22          **THE COURT:** You gentlemen, have you gone through those  
23          statements together? I've asked -- as I told you  
24          yesterday you know, certainly if -- I wouldn't let the  
25          entire statements be read if they otherwise were not

1 relevant. And that's...

2 MR. WEBB: That brings up another point, at this point.

3 THE COURT: Okay.

4 MR. WEBB: Let's put this on the record.

5 MR. DANIEL: This needs to be on the record. Okay.  
6 There are portions of those statements that are  
7 inaudible.

8 THE COURT: Yes.

9 MR. DANIEL: In our opinion. And there are certain  
10 stages that inaccurate and a writer's interpretation of  
11 them as to who says what and who says this. We feel  
12 that the only fair thing is to let the tape be played  
13 in the portions. And somebody asked me how can you do  
14 that. I said it's very simple, you take a tape and you  
15 can play this one, and you can record off onto another  
16 one, and they can stop this one when they get to the  
17 points that should be omitted, and then put it on, and  
18 you can get a tape that's clear.

19 THE COURT: Now, say that again.

20 MR. WEBB: He said -- he said it better the other day.

21 MR. DANIEL: You can get a clean tape with what's they  
22 want (sic) -- we want to put in, simply by recording  
23 onto a new tape those sections that's competent, and  
24 leaving out the incompetents.

25 MR. WEBB: It's very simple.

1 MR. DANIEL: It's then that complicated, is what I'm  
2 saying, and that's... And to let the read statements,  
3 they're going to have to hear the tapes, because...

4 THE COURT: Well, now, I have always ruled, in these  
5 tape cases, that, you know, any -- obviously any portion  
6 of the tape that either side deems otherwise relevant  
7 is admissible. You know, if -- if, for some reason --  
8 and our court -- our state supreme court has also held,  
9 of course, that written transcripts, as an aid to the  
10 jury, is allowed.

11 Now, granted there, you know, are times that there  
12 are disputes over whether the transcription is accurate  
13 or not, and that's always an issue. And I would  
14 certainly allow you to play the tape, any tape of any  
15 statement that's offered. I would certainly allow you  
16 so to do that. However, I'm not going to tell you or  
17 I'm not going to tell the State as to whether or not  
18 they have to choose either/or, okay?

19 MR. DANIEL: Well, what we're saying is, the way I've  
20 seen it done in the past, and I -- in the limited times  
21 that it's done, is they play the tape, and you've got  
22 the transcript as an aid to the tape.

23 THE COURT: Right. Right.

24 MR. DANIEL: But to say that you can just read the  
25 transcript without the tape, when there is objections,

1 inaudibles, and things like this...

2 **THE COURT:** Okay.

3 **MR. DANIEL:** ...I think is not proper. I don't...

4 **THE COURT:** I don't -- you know, I have no problem, if  
5 we're going to get into that, of having the tape played  
6 at the same time, and let the jury have a written  
7 transcript of it at the same time, and then they can  
8 determine in their own mind whether or not it's accurate  
9 or not.

10 **MR. DANIEL:** I've got no problem with that. It's -- the  
11 problems we've got -- the problems with it, Your Honor,  
12 is there are certain -- we go -- and then, once you come  
13 to an area that we say is objectionable, and maybe the  
14 general don't even intend to put in. And the only way  
15 I would -- can suggest is that we would take a -- the  
16 tape and get a clean tape, based on what everybody can  
17 agree, or Your Honor can.

18 **THE COURT:** If you all can...

19 **MR. DANIEL:** And then we don't have to worry about that.

20 **THE COURT:** ...can agree... And I'll say this, you  
21 know: If either side knows there is going to be a  
22 problem or an objection over certain portions of it, and  
23 it would shorten the time I would have to send the jury  
24 out, I would suggest that you all try to agree upon  
25 that, because we've obviously had this jury out a long

1 time.

2 MR. DANIEL: I'd agree with that.

3 THE COURT: And so that is something I would encourage  
4 all of you to do. Both sides.

5 MR. DANIEL: And, Your Honor, that's the reason we have  
6 got a motion setting forth the pages and areas we think  
7 is inadmissible.

8 THE COURT: Okay.

9 MR. DANIEL: There's no need to put the ones that are  
10 admissible, 'cause I'm assuming it...

11 THE COURT: Is the something that you all can look at?

12 MR. DANIEL: I guess we can -- the general said let him  
13 look at it.

14 MR. WEBB: Well, we can let the general look at it.

15 THE COURT: And...

16 GENERAL SCHMUTZER: You've got to realize, Judge, this  
17 is not like a -- this is not like an undercover case.

18 THE COURT: I understand that.

19 GENERAL SCHMUTZER: We've got people that were there,  
20 you know, taking notes and the whole business. So, you  
21 know, I'm -- you know, I don't have any problem -- I'm  
22 not going to have any problem, you know, with what we  
23 do.

24 THE COURT: If you think -- you know, if...

25 GENERAL SCHMUTZER: I'm not going to -- you know,

1 they're not going to decide how I'm going to do it, and  
2 not tell them how to do it, either.

3 **THE COURT:** Why, sure. But if there -- you know, I will  
4 allow -- obviously, I will allow the actual tapes of the  
5 statements given into evidence.

6 **GENERAL SCHMUTZER:** Right.

7 **THE COURT:** I'm saying that on the front end. So if  
8 there is a reasonable -- well, strike that. If there  
9 is a dispute over whether or not the transcriptions are  
10 accurate or not, then I'm certainly going to let the  
11 jury hear the tape and see the transcript of it.

12 **GENERAL SCHMUTZER:** Right. I think that's only fair.

13 **THE COURT:** Sure, it's fair. If the transcript's  
14 inaccurate...

15 **GENERAL SCHMUTZER:** They can make that decision,  
16 themselves.

17 **THE COURT:** Now, if there is a large portion of the  
18 tapes, either because of how the questions were answered  
19 -- asked, or the tone of the question, or whatever, that  
20 are objectionable, and even the State doesn't think that  
21 they would want to introduce that aspect of it, then I  
22 think counsel should get together over the evening and  
23 take a look at that whole set of events, and try to  
24 determine if you can agree upon how to do that. If you  
25 can't, the Court will tell you how to do it.

1 MR. DANIEL: Well, that's the reason I brought it up  
2 tonight, Your Honor.

3 THE COURT: Yeah.

4 MR. DANIEL: And the reason we -- we have done what I  
5 think all we can do is, which we -- I've set forth...

6 THE COURT: Sure.

7 MR. DANIEL: ...portions that I say is objectionable.

8 THE COURT: Okay. And let General Schmutzer...

9 MR. DANIEL: And I'll give that to the general, and if  
10 he wants to look at it tonight or make a decision  
11 tomorrow or whatever. But...

12 THE COURT: That'll be fine.

13 MR. DANIEL: But what I'm saying is, the problem you've  
14 got, if you start playing a tape...

15 THE COURT: The entire tape. I understand that.

16 MR. DANIEL: ...it's hard to stop it and start it and  
17 jump and...

18 THE COURT: Well, we've had that issue before in this  
19 Court.

20 MR. DANIEL: But there is ways, very simple, that you  
21 can take the competent portions, transfer it to...

22 THE COURT: Sure.

23 GENERAL SCHMUTZER: Well, you can't in this case, Your  
24 Honor, because one tape in particular is not -- it was  
25 difficult for them to transcribe because of the room

1 they were sitting in. It was a very hollow sounding  
2 room, and attempt to transcribe it and put it on another  
3 tape makes it that much worse. They've tried to do it.  
4 So I'll just tell the Court that, for what it's worth.

5 **THE COURT:** Well, if...

6 **MR. DANIEL:** Which one was that, do you remember?

7 **THE COURT:** If there's -- if there's some way that  
8 counsel -- you know, I also think I ought to give you  
9 all the opportunity to take a look at that before the  
10 Court has to start tromping through your trial tactics.

11 **MR. DANIEL:** Well, we'll just give them a copy tonight,  
12 and then maybe first thing in the morning, before we  
13 start, we can go over the thing. It may not be -- it's  
14 portions we may be talking about is something that's no  
15 problem, either. But we -- as I understood, that's what  
16 Your Honor wanted us to do.

17 **THE COURT:** Sure, I do. I sure want you to do that.  
18 Now,...

19 **MR. DANIEL:** And I -- Ed's done the same thing for his  
20 -- on his.

21 **THE COURT:** And if you all want to step back down, if  
22 there's no other thing, just take up... Thank you.  
23 Thank you.

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

1           **THE COURT:**     We probably -- let's see, the --  
2 Mr. Dellinger has three challenges left; Mr. Sutton has two  
3 challenges left; and the State has eight challenges left. That  
4 is 13. If we had 40 additional jurors here tomorrow, do you  
5 think that would be a large enough panel, counsel?

6           **GENERAL SCHMUTZER:** If we actually had 40 here?

7           **THE COURT:**     Yeah, 40 bodies.

8           **GENERAL SCHMUTZER:** I think it would be.

9           **MR. WEBB:**     We think so, but you can never tell.

10          **GENERAL SCHMUTZER:** Well, you know, there's a difference  
11 between subpoenaing 40, and nine show up.

12          **THE COURT:**     Right. Right. Actually, we had about 20  
13 out of those 40 -- or the 40 that we subpoenaed last night, and  
14 some because of either employment or health...

15          **GENERAL SCHMUTZER:** I'm just saying -- don't get me  
16 wrong. I'm just saying...

17          **THE COURT:**     Yeah.

18          **GENERAL SCHMUTZER:** I didn't know if you were talking  
19 about subpoenaing that many, or actually having the warm bodies  
20 here.

21          **MR. MILLER:**    Over in Grainger County Sheriff Campbell  
22 gets all the courthouse authorities to come.

23          **THE COURT:**     Well, I would prefer to pull them from the  
24 jury box that our jury panel has gone through. What do you say?  
25 Eighty? Should subpoena 80 to try to get 40 here? Let's do

1 that, Ms. Helen. Can your staff and you do that over the night?

2

3 CLERK: My staff's gone.

4 THE COURT: Your staff's gone? Is there anybody you can  
5 get to come and help you, Ms. Helen?

6 CLERK: (Inaudible).

7 THE COURT: Okay. Aren't you glad you came?  
8 Everybody's glad to be here.

9 Okay, anything further?

10 GENERAL SCHMUTZER: Nothing for the State, Your Honor.

11 THE COURT: Anything further for the defense?  
12 Mr. Miller, Mr. Daniel, Mr. Webb?

13 MR. WEBB: Pardon, Your Honor?

14 THE COURT: Anything further?

15 MR. WEBB: No, Your Honor.

16 MR. DANIEL: No, Your Honor.

17 THE COURT: Okie-dokie. Adjourn 'til 9:00 a.m.

18 (A discussion was held off the record.)

19 MR. MILLER: I think he misses his hour to get out and  
20 exercise when he's over here, and he's just having a lot of  
21 problems with it.

22 THE COURT: Sheriff Ogle. Sheriff Ogle.

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

24 THE COURT: I'm advised by Mr. Miller that Mr. Dellinger  
25 has got some back problems, or he's had some back

1 problems in the past, and that he's -- he's not been  
2 able, obviously because of our time here, to have any  
3 time to exercise, as I understand you give all your jail  
4 inmates, is that correct? Is it possible, after he gets  
5 back, during the night for him to have his hour or so  
6 of exercise made available to him?

7 SHERIFF OGLE: I'll see that it's done.

8 THE COURT: Okay, thank you.

9 SHERIFF OGLE: Another thing, if I might ask Your Honor.

10 THE COURT: Yes.

11 SHERIFF OGLE: I would like to ask the attorneys, after  
12 we break each day, to give me time to get these  
13 defendants out before they come through that door.  
14 They're ganging up in there, and it's creating a problem  
15 for me.

16 THE COURT: Okay. Okay.

17 MR. MILLER: Just as long as they -- you know, we let  
18 the jury out and everything, that's fine.

19 THE COURT: Oh, sure. Sure. Okay.

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

22 THE COURT: Counsel, Sheriff Ogle has asked me to ask  
23 you at the end of the day, because of the large traffic as they  
24 -- as everyone exists the courtroom here, is to ask counsel not  
25 to leave, or at least not to go out at the same time as the

1 defendants, to give them an opportunity to take their security  
2 measures. So is that agreeable to everyone? Is that fine?  
3 Okay.

4 MR. WEBB: Long as the attorney general's office has to  
5 stay, we'll...

6 THE COURT: Well, sure.

7 SHERIFF OGLE: No, what I asked was not to come through  
8 that door while we're in the process.

9 MR. WEBB: Oh, okay. Oh.

10 THE COURT: Yeah. Thank you, Sheriff.

11 MR. WEBB: Your Honor, did you take up the matter with  
12 the sheriff about exercising?

13 THE COURT: Yes, I already took care of that.

14 MR. WEBB: Took care of it for both of them? Both of  
15 them?

16 THE COURT: Where's Sheriff Ogle? If you will, make  
17 that an exercise available for both defendants.

18 (Whereupon, the court is adjourned until February 18,  
19 1993, at 9:00 p.m.)

P R O C E E D I N G S

**THE COURT:** Be seated.

**GENERAL SCHMUTZER:** Your Honor, before we begin can we approach the bench?

**THE COURT:** Yes. Uh-huh (affirmative), sure.

**GENERAL SCHMUTZER:** One little matter I want to bring up with the Court.

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

**GENERAL SCHMUTZER:** Does the Court -- besides keeping the numbers, do you keep a list of the actual people that we excuse?

**THE COURT:** Uh-huh (affirmative). Sure do.

**GENERAL SCHMUTZER:** May I look at our list?

**THE COURT:** You sure may. Yes.

**GENERAL SCHMUTZER:** Okay, there was one that I sent up and the Court -- my handwriting wasn't good enough and it didn't get called. But if you didn't count me off, I won't, either.

**THE COURT:** Okay. I'll do that, if you want me to.

**GENERAL SCHMUTZER:** No, I can do it on -- I can handle it.

**THE COURT:** Okay. I know which one you're talking about, 'cause I looked and I thought, 'None'? 'No one'? It's that left hand.

**GENERAL SCHMUTZER:** That's it.

1 THE COURT: Anything further, counsel?

2 GENERAL SCHMUTZER: That's all for the State, Your  
3 Honor.

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

6 THE COURT: I notice that we have some new individuals  
7 with us who were called over the nighttime, and I know you were  
8 extremely glad to get the telephone call from the clerk's  
9 office.

10 We are here, ladies and gentlemen, to try the cases of  
11 State versus Gary Sutton and Mr. Dellinger, what is...?

12 MR. MILLER: James Dellinger.

13 THE COURT: James Dellinger. These gentlemen are here  
14 facing charges of first degree murder and the arson of personal  
15 property, of an automobile.

16 We have excused a large number of jurors, and as a  
17 consequence we've had to call additional jurors in, and that is  
18 the reason you're here. As I explained -- as I've explained for  
19 the past two days, I understand that it is a hardship for people  
20 to take a considerable length of time to serve on a jury. I  
21 appreciate that. But, on the other hand, it is -- it is not  
22 only the civic thing to do, it is the right thing to do. We --  
23 it's an important case for these defendants and for this  
24 community. It's important for any community to take care of its  
25 own business. That's what we're trying to do. If any of you,

1 as we talk further this morning, if you have a real hardship,  
2 either a family hardship or some extraordinary business  
3 hardship, I will consider that. However, just because you were  
4 working, in most cases that, in and of itself, is not enough to  
5 excuse you. I hope you understand that. I hope you understand  
6 why we have to do it as we're doing it here, and I hope you'll  
7 bear with us. It's a long process, but if you were involved in  
8 a court case of importance to you, I would hope that you would  
9 want jurors who would freely and voluntarily come and serve, and  
10 do their civic duty.

11 All jurors please stand and raise your right hand. All  
12 prospective jurors please stand and raise your right hand.

13 (The new prospective jury venire is duly sworn.)

14 **THE COURT:** In the normal course of events, if you were  
15 called for the regular term of jury, normally it would be Judge  
16 Holt who would see you first. He starts off the term, he goes  
17 through juror orientation, he impanels a grand jury, and talks  
18 to you about the differences in civil juries and criminal  
19 juries. This, of course, is obviously a criminal case. But  
20 it's important to point out to you the differences in the types  
21 of cases, and in particular the burden of proof in each of these  
22 cases.

23 In a criminal case, after it gets to this stage of the  
24 proceeding, a defendant is here as a consequence of the grand  
25 jury issuing an indictment or a presentment. And indictment or

1 a presentment is an official accusation or charge only; it is  
2 not evidence against anyone; it raises no inference or  
3 presumption of guilt. Throughout a criminal proceeding a  
4 defendant is presumed innocent throughout. That, as I've told  
5 you on other items, is right. It's not only because the  
6 Constitution of the United States and the state of Tennessee  
7 says that, but because it's -- it's just that we believe that.  
8 Anytime we, as a society, are asking to take someone's liberty  
9 or their life, it is only just and proper that it be after a  
10 trial, and that everyone's constitutional rights are protected,  
11 and that the government, be it the state or the federal  
12 government, prove that guilt beyond a reasonable doubt and a  
13 moral certainty. That's the standard of proof. And I hope  
14 that's the creed by which all of us live our lives. It's  
15 important.

16 And, as I said, I can promise you only a couple of  
17 things out of this if you serve as jurors, is that somebody's  
18 going to disagree with what you do. Somebody disagrees with me  
19 every day; somebody disagrees with the State every day; somebody  
20 disagrees with defense counsel every day. But we can't worry  
21 about that.

22 I've had jurors ask me or apologize to me sometimes if  
23 they've been unable to reach a verdict in a case. I tell them  
24 not to worry about that, because if you, as a juror, go back  
25 into that jury room after you've listened to a case, and you

1 vote your conscience, after deliberation with your fellow  
2 jurors, and if you all are unable to agree, justice has been  
3 served because you've done your job according to the  
4 constitutions that we live under and the oath that you take.  
5 So don't worry about that.

6 Now, in a civil case everyone starts out on an even  
7 plane. And the person or persons having the burden of proof on  
8 a particular point or issue has to tip the scales of evidence  
9 ever so slightly in their favor. Just slightly over 50%.  
10 That's what we call a preponderance of the evidence.

11 In a criminal case, however, the burden of proof is  
12 different. The State must prove each and every element of the  
13 crime beyond a reasonable doubt and a moral certainty. Now,  
14 that's a higher standard of proof, but that's as everyone agrees  
15 it should be. The State agrees with that, as it should be, and  
16 the defense agrees to that. And that's what the law says.

17 If, after all the evidence is in, you have a reasonable  
18 doubt, then your verdict must be not guilty. Now, a reasonable  
19 doubt isn't a captious doubt or an imaginary doubt, but it's an  
20 honest doubt after all the evidence is in. Absolute certainty  
21 of guilt is never required, but a moral certainty is required,  
22 and that's why we have the standard of reasonable doubt that you  
23 must go by.

24 In a criminal case a defendant is not required to prove  
25 his innocence, because he is presumed innocent. He or she may

1 offer evidence or they may not offer evidence, as they choose.  
2 They don't have to say one word, they don't have to put on a  
3 witness, they don't have to cross-examine the witnesses, if they  
4 don't want to. They don't have to say one word.

5 As everyone I think agrees in this case, the evidence  
6 that is expected to be offered is what we call circumstantial  
7 evidence. And the lawyers will ask you about that as you are  
8 called. But I want to read you what the law says on the  
9 differences between direct and circumstantial evidence. And  
10 it's as follows:

11 "The guilt of a defendant, as well as any fact required  
12 to be proved may be established by direct evidence, by  
13 circumstantial evidence, or by both combined. Direct evidence  
14 is defined as evidence which proves the existence of the fact  
15 in issue, without inference or presumption of any other facts.  
16 Direct evidence may consist of testimony of a person who has  
17 perceived by the means of his or her senses the existence of a  
18 fact sought to be proved or disproved.

19 "Circumstantial evidence consists of proof of collateral  
20 facts or circumstances which do not directly prove the fact in  
21 issue, but from which that fact may be logically inferred. When  
22 the evidence is made up entirely of circumstantial evidence,  
23 then before you would be justified in finding the defendant  
24 guilty, you must find that all the essential facts are  
25 consistent with the hypothesis of guilt, as that is to be

1 compared with all the facts proved.

2 "The facts must exclude every other reasonable theory  
3 or hypothesis except that of guilt, and the facts must establish  
4 such a certainty of guilt of the defendant as to convince the  
5 mind beyond a reasonable doubt that the defendant is the one who  
6 committed the offense. It is not necessary that each particular  
7 fact should be proved beyond a reasonable doubt, if enough facts  
8 are proved to satisfy the jury beyond a reasonable doubt of all  
9 the facts necessary to constitute the crime charged.

10 "Before a verdict of guilty is justified, the  
11 circumstances, taken together, must be of a conclusive nature  
12 and tendency leading on the whole to a satisfactory conclusion,  
13 and producing, in effect, a moral certainty that the defendant,  
14 and no one else, committed the offense as charged."

15 Now, our first job here, in trying this case, is to  
16 determine the guilt or innocence of either or both of these  
17 gentlemen who are sitting here today charged with these crimes.  
18 If you find -- if you find them innocent, or if you find that  
19 the State has failed to prove their case beyond a reasonable  
20 doubt, that's it; we go no further.

21 If, on the other hand, you should find either or both  
22 of them guilty of first degree murder, then a separate  
23 sentencing hearing would be held. The penalties for first  
24 degree murder are either life imprisonment or death by  
25 electrocution. Our Tennessee law says, and rightfully so, that

1 a jury is never required to mandatorily impose a death sentence.  
2 At the sentencing hearing I would instruct you on the  
3 aggravating circumstances as required by statute that I should  
4 charge you, and also the mitigating circumstances. In order for  
5 you to vote to impose the death penalty, the jury must  
6 unanimously agree that the aggravating circumstances outweigh  
7 the mitigating circumstances. If you fail to agree on that, it  
8 would automatically be a life sentence.

9 Now, if for some reason any of you feel that in each and  
10 every case someone should receive the death penalty upon any  
11 conviction for first degree murder, regardless of the  
12 circumstances, then by law you cannot serve on this jury.

13 On the other hand, if any of you have a moral or ethical  
14 reservation about imposing the death penalty in a proper case,  
15 then Tennessee law says you cannot serve on this jury. I  
16 understand, the lawyers on both sides understand that the issue  
17 of the death penalty is a moral question in a lot of people's  
18 minds. And people of goodwill and good reason disagree on that  
19 issue, so don't be afraid to tell us how you feel about that.  
20 No one's going to laugh at you or say harsh things to you. I  
21 want you to understand that. And I want you to feel comfortable  
22 not only in talking about that issue, but any other issue that  
23 you feel is important for us to know or for you to tell us  
24 about. If a juror or a lawyer or a witness is scared in this  
25 courtroom, it obviously has an affect upon how they perform.

1 If the judge is scared. So I understand that. And I want all  
2 of you to feel like that you can tell me and tell these lawyers  
3 anything that's on your mind about why either you should or  
4 should not serve on this jury.

5 Now, Mr. Dellinger -- Mr. James Dellinger, if you would,  
6 please, sir, stand up.

7 (Defendant Dellinger stands before the jury venire.)

8 **THE COURT:** He is represented by Mr. Ed Miller and  
9 Ms. Susanna Laws Thomas. Thank you.

10 Mr. Sutton, if you would, please, sir, stand up.

11 (Defendant Sutton stands before the jury venire.)

12 **THE COURT:** He's represented by Mr. David Webb, of the  
13 Sevierville bar, and Mr. Zane Daniel of the Knoxville bar.  
14 Thank you, gentlemen.

15 State of Tennessee is represented by District Attorney  
16 General Al Schmutzer, and assisted by Assistant District  
17 Attorney Scott Green. Thank you.

18 Also with us is Attorney General Mike Flynn from Blount  
19 County. Thank you.

20 Now, at this juncture, as I told you, if someone has a  
21 valid reason that you think either for business reasons or  
22 personal family reasons, that you cannot serve, then, if you  
23 would, raise your hand. How many of you have a valid...?

24 (Certain jurors respond.)

25 **THE COURT:** Okay. If you would, Mr. Breeden, come on

1 down. And if counsel wants to come to the bench, I'm -- I'm not  
2 going to ask Mr. ... Come on up, Mr. Breedon.

3 **GENERAL SCHMUTZER:** You want counsel to come up?

4 **THE COURT:** If you want to you can. You don't have to.  
5 You might...

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

7 **THE COURT:** How are you?

8 **JUROR BREEDON:** I'm Assistant Superintendent of  
9 (inaudible).

10 **THE COURT:** Yes.

11 **JUROR BREEDON:** Scottie, the superintendent there, he...

12 **THE COURT:** Scottie Clabo?

13 **JUROR BREEDON:** Yeah. He got his hand messed up, so  
14 he's not able to be there all the time. And he's going  
15 to be out for awhile. And it's -- you know, I'm in  
16 charge, and so...

17 **THE COURT:** I understand.

18 **JUROR BREEDON:** So...

19 **THE COURT:** It's going to take several days to try this  
20 lawsuit.

21 **JUROR BREEDON:** Yeah, that's...

22 **THE COURT:** If you tell me that -- that it's -- I know  
23 you have important duties, and if you -- if you tell me  
24 that you can't serve, I'm going to believe you.

25 **JUROR BREEDON:** Yeah. I -- well, I -- I can't.

1 THE COURT: Okay. Okay, I'll let you go, Donald. Okay.

2 JUROR BREEDEN: Can I leave?

3 THE COURT: Yeah, you're free to go.

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

6 (Juror Breeden is excused.)

7 THE COURT: Approach the bench, counsel.

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

9 THE COURT: I excused Mr. Don Breeden. That's -- is  
10 there anything else I need to take up before we bring  
11 the other jurors back in and seat them back in their  
12 spot, and then start calling the other jurors? Have I  
13 left out anything?

14 MR. DANIEL: Well, one of the -- we've got one possible  
15 suggestion.

16 THE COURT: Okay.

17 MR. DANIEL: We've wore these other -- the State and  
18 defense and everybody's wore these other jurors out.  
19 They've sat in here for two days and listened to this.  
20 Would it be feasible to put these new jurors in the box,  
21 question them, and then bring the other jurors in, and  
22 you can make your challenges at that time? I don't know  
23 that -- I don't know if you want to do it that way. I'm  
24 just saying we've just...

25 THE COURT: Well, if -- listen, if I bring 12 down in

1 the box, then I have to go back and put them back in and  
2 then bring the jury in.

3 MR. DANIEL: I don't know. I...

4 THE COURT: That'd be a real good time. I know. I  
5 thought about that over the nighttime, and I just don't  
6 know of any other way. And -- and, of course, with the  
7 back striking and everything else you still have  
8 available,...

9 MR. DANIEL: Yeah.

10 THE COURT: ...that's -- that's the problem.

11 MR. DANIEL: If we bring them all in for striking,  
12 that's... I was just -- I think they're just tired of  
13 hearing this same...

14 GENERAL SCHMUTZER: I think Zane's saying is correct,  
15 but I think the Court -- there's no way to...

16 THE COURT: To send them all back. And I'd say after  
17 they've spent the night out over there, they're probably  
18 ready to come back in here and...

19 MR. DANIEL: Listen to the same stuff again?

20 THE COURT: That must be a part of what goes on. I  
21 don't know of any other way to do it.

22 GENERAL SCHMUTZER: That jury room's not, you know,...

23 THE COURT: Yeah, it's not the most comfortable place.  
24 It's...

25 MR. DANIEL: You know, I've had that (inaudible).

1 THE COURT: On good days, if have a lot of skinny  
2 jurors, they can all get in there. That's awful. A  
3 disgrace for...

4 All right, now, as far as what the Court has told  
5 this panel, is there any suggestions of additions on  
6 that?

7 MR. MILLER: May go over the witnesses.

8 THE COURT: Oh, yeah. I better do that. Thank you.  
9 That's fine. Thank you. Yes, thank you.

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

12 THE COURT: Ladies and gentlemen, also the Court has a  
13 list of witnesses that I am going to read to you. If you know  
14 any of these potential witnesses, as you are called you here  
15 please tell us. Simply because you know a witness or know of  
16 them doesn't automatically exclude you from jury service. I  
17 will talk to you about that more as you're called, if you know  
18 any of them.

19 Mary Ramsey; Bill Cogdill; Bruce McCoy; Dr. Allen White;  
20 Dr. William Bass; Gary Marshall of the state fire marshal's  
21 office; David Davenport; Kent Hatcher; Sheriff Don Ogle; Officer  
22 Mike Von Cannon; Elaine Mayes; Alvin Henry; Matthew Mayes; Danny  
23 Sutton.

24 Officer Larry McMann; Officer Donnie Huskey; Officer  
25 Arthur Harmon; Viola Griffin; Tammy Griffin; Billy Griffin;

1 James Griffin; Alvin Lee Henry; Judy Griffin; Carolyn Weaver;  
2 Linda Dellinger; Barbara Gordon; Judy Paine; David Paine; Larry  
3 Munsey; Eddie Buchanan; Ronald Suttles; Kenneth Bryant; Jamie  
4 Marie Forsythe; Nancy Bryant; Fred Atchley. That's Fred Allen  
5 Atchley, I believe.

6 David Clayton; Bill Boddy; Gary Hamilton; Don DeFoe; Ray  
7 Herrin; Drew Roberts; Steven Brooks; Ken Beeler; Thomas Carter,  
8 Jr.; James McDonald; Jason McDonald; Sharon Davis; Pat Crawford;  
9 Sherry Russell; Cindy Walker.

10 Dr. Eric Ellington; Dana Carter; Danny Westering; Phil  
11 Smith; Linda Henry; John Brown; James R. Gordon; Johnny Wade  
12 McCarter; Boyd Ray Branum; Mark Holt; Mark Turner; Jeff  
13 McCarter; Davon Mayes; Robin Branum; Herman Lewis; Arthur  
14 Bohannon; Dr. Steve Madison; Jack Sutton; Joyce Tipton; Eddie  
15 Blair; Donald Harmon; Dale Gurley; Jim Widener; David Griswald;  
16 Murray Marks; Chester Owenby; David Hutcheson; Terry Lynn Lilly;  
17 Debbie A. Campbell; Jay Sullivan; Jeff Hufstetler; Sandra Hicks;  
18 Kenneth Rocky Walker; Jeannie Branum; Mrs. Herman Lewis; Stella  
19 Griffin Whitted; Jennifer Branum; Sandra Viola Branum; Arnold  
20 Lewis; James Willie Henry.

21 There are several doctors associated with the Tennessee  
22 Department of Mental Health at Lakeshore in Knoxville. Brenda  
23 Keehan; Shelly Betts; Matthew Cubberly; Tim Nichols; Cindy  
24 Leatherwood; Dave Dougan; Tony Proffitt; Tommy Hefler; Jack  
25 Sutton; Joyce Tipton; Danny Westerly; Dr. Charles Sheehan;

1 Dr. Wayne J. Stewart; Junior Parton; Linda Dellinger; Clyde  
2 Dellinger; John Dellinger; Ralph Dellinger; George Dellinger;  
3 Ann Morris; Marilee Ramsey; Lt. Tom DeFoe; Dennis Huddleston;  
4 Ricky Hurst; Gary Litton; Shelly Longmire; Jerry Reney; Dr. M.  
5 F. Smith; Justin Sutton; Jimmy Sutton; Diane Sutton; Lisa Wells;  
6 Jama Williams; Dr. Charles L. Roach; Claude Sutton; Teresa --  
7 I'm sorry, Tessa Sutton.

8 Carolyn Weaver; Dennis Shuler; Bobby Floyd; Rose Parton;  
9 Hazel Sutton; Jack Romines; Pauline Romines; Reese Sutton; Nell  
10 Sutton; Casey Thomas; Lucille Thomas; James Sutton; Shirley  
11 Sutton; Clay Sutton; Pat Sutton; Leroy Sutton; Carol Jean  
12 Sutton; Creed Stella Sutton; Conway Parton; Debbie Campbell  
13 Hunt; Robert Webb; Freddie Ledbetter; Ron Whitley or Whitely or  
14 Wheatly. And, as I said, there'll be several witnesses  
15 associated with Overlook Mental Health Center here in  
16 Sevierville. So those are most of the witnesses that are listed  
17 for both the defense and the state of Tennessee. I will caution  
18 you, ladies and gentlemen, that all of those witnesses may not  
19 be called. If for some reason they should not be called, don't  
20 worry about that. Don't assume or infer anything by that; but  
21 each side has provided a list of their potential witnesses,  
22 only.

23 Anything further? Bring the jury in. All rise, please.  
24 (The prospective jury panel returns to the courtroom,  
25 and the following proceedings were had.)

1           **THE COURT:** Did everybody have a good night?

2           (No jurors respond audibly.)

3           **THE COURT:** Okay, at this time we will call the next  
4 prospective juror down.

5           (The following juror was called to fill the jury box:  
6 Eric Spivey.)

7           **THE COURT:** Mr. Spivey, did you hear all of the  
8 statements that the Court made to you, sir, a few moments ago?

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

10          **THE COURT:** Do you understand what I told you about the  
11 burden of proof, in particular?

12          **JUROR SPIVEY:** Yes, sir, I do.

13          **THE COURT:** Okay. And about, of course, the fact that  
14 just because someone is charged with a crime doesn't mean  
15 they're guilty of anything. You understand that?

16          **JUROR SPIVEY:** Correct.

17          **THE COURT:** And that if you had to vote right now as to  
18 the guilt or innocence of either or both of these gentlemen  
19 here, of course, it would be not guilty at this time, wouldn't  
20 it?

21          **JUROR SPIVEY:** That is right. I haven't heard any  
22 proof.

23          **THE COURT:** Okay, haven't heard any proof.

24               I must ask you if you have heard or read anything about  
25 this case before you came here today?

1 JUROR SPIVEY: Yes, sir, I have, both when the case  
2 happened and recently.

3 THE COURT: Okay. As have a lot of people, and that's  
4 fine. The question is: Based on what you have read, have you  
5 formed any opinion as to the guilt or innocence of either or  
6 both of these gentlemen?

7 JUROR SPIVEY: Partly, yes. In a way, yes, just because  
8 of what the media says and that type of thing.

9 THE COURT: I understand that. Do you believe  
10 everything you read or hear in the -- or read in the newspaper  
11 or hear on TV or the radio?

12 JUROR SPIVEY: (Inaudible).

13 THE COURT: Right. That's the only comment. We are a  
14 media society, aren't we?

15 JUROR SPIVEY: Yes.

16 THE COURT: Do you feel, as you sit there, if you were  
17 called upon to serve as a juror, that you could be fair and  
18 impartial to both sides in this case?

19 JUROR SPIVEY: I think I could. I would try.

20 THE COURT: Okay. And would you base your verdict only  
21 on what you see and hear from this witness stand and the law  
22 that I would instruct you applies to this case?

23 JUROR SPIVEY: Yes, sir.

24 THE COURT: Could you put out of your mind and ignore  
25 anything you have read or heard about this case before you came

1 here today?

2 JUROR SPIVEY: I think so.

3 THE COURT: Okay. If -- if something that you read or  
4 heard previously was not testified to from this stand, can you  
5 tell this Court that you would not use what you previously heard  
6 in considering the evidence in this case? Could you do that?

7 JUROR SPIVEY: That would be hard, but I would try.

8 THE COURT: Okay.

9 JUROR SPIVEY: You also mentioned the death penalty.  
10 I believe very strongly against the death penalty.

11 THE COURT: Okay. And that's fine. Is your opinion  
12 about the death penalty such that in a proper case you would not  
13 consider imposing the death penalty?

14 JUROR SPIVEY: Yes, it is.

15 THE COURT: Okay. I'll let you go, Mr. Spivey. Thank  
16 you. Have a good day.

17 (Juror Spivey is excused.)

18 (The following juror was called to fill the jury box:  
19 Robert C. Welch.)

20 THE COURT: Good morning, Mr. Welch.

21 JUROR WELCH: 'Morning.

22 THE COURT: Have you heard all of the statements and the  
23 comments by the Court so far this morning?

24 JUROR WELCH: Yes, sir.

25 THE COURT: Has anything that's been stated raised any

1 issue in your mind as to whether or not you could be fair and  
2 impartial to both sides in this case?

3 JUROR WELCH: No.

4 THE COURT: Okay. Have you read or heard anything about  
5 this case before you came here today?

6 JUROR WELCH: Yes, sir.

7 THE COURT: Okay. Based on what you've read or heard,  
8 have you formed an opinion about the guilt or innocence of  
9 either or both of these defendants?

10 JUROR WELCH: I don't believe so.

11 THE COURT: Okay. I'll ask you also, sir, about the  
12 death penalty. Did you understand the law as the Court tried  
13 to explain it to you on the death penalty?

14 JUROR WELCH: I believe so.

15 THE COURT: Okay. And, of course, as you understand,  
16 the first issue and the most crucial threshold issue is whether  
17 or not someone is guilty of an offense here; that these  
18 defendants are presumed innocent throughout this trial. You  
19 understand that?

20 JUROR WELCH: Yes, sir.

21 THE COURT: And do you agree with that proposition of  
22 law?

23 JUROR WELCH: I do, sir.

24 THE COURT: Okay. Do you have any moral or ethical  
25 reservation about considering the death penalty as an option in

1 sentencing in a proper case?

2 JUROR WELCH: Having not been faced with that  
3 circumstance, I'm not sure.

4 THE COURT: Okay, let me ask you this. As I told you,  
5 the penalties for first degree murder are either life in prison  
6 or death. Those are sentencing options. The death penalty is  
7 never mandated or required; it's never automatic. Upon a  
8 conviction for first degree murder the Court would hold a  
9 separate sentencing hearing. I would read to you certain  
10 aggravating factors as required by the statute, if any; and  
11 certain mitigating factors as required by the statute, if any.  
12 If you found those enhancing factors outweighed the mitigating  
13 factors, then you might find or might impose the death penalty  
14 at your option. But it is not required, do you understand that?

15 JUROR WELCH: I understand that.

16 THE COURT: Could you, sir, in a proper case, under the  
17 instructions I would provide to you, consider the death penalty  
18 as an option?

19 JUROR WELCH: Yes, sir.

20 THE COURT: Either not automatically impose it, or  
21 automatically exclude it. Okay, you can do that?

22 JUROR WELCH: I believe so.

23 THE COURT: Okay. Now, did you understand the  
24 statements that the Court made about the burden of proof and the  
25 presumptions of innocence that I've already talked to you about?

1 JUROR WELCH: (No audible response.)

2 THE COURT: As you sit there right now, if you had to  
3 vote I take it your vote would be not guilty?

4 JUROR WELCH: Right.

5 THE COURT: Okay. All right. Thank you. General  
6 Schmutzer, you may proceed.

7 GENERAL SCHMUTZER: Thank you very much, Your Honor.

8 Good morning. Mr. Welch, I'm going to be asking some  
9 questions. These people have heard them for two days, and I  
10 hope they'll forgive me, but we've got to almost start over  
11 again, because you haven't had the opportunity to sit in here  
12 for two days. And as those that are here, if you would, please,  
13 if you can hear me, listen to my questions and I'll try to  
14 shorten them as we go along to -- so that we don't get bogged  
15 down. If you can just -- I may just ask you, "Do you remember  
16 my questions?" and ask you to respond to them if you have a  
17 problem with anything that I might ask. I would appreciate  
18 that.

19 Mr. Welch, it was mentioned to you about the burden of  
20 proof in this case beyond a reasonable doubt. Not a captious  
21 or imaginary doubt, but an honest doubt, after you've looked at  
22 all the evidence. I take it you have no problems with that.

23 JUROR WELCH: No, sir, I don't.

24 GENERAL SCHMUTZER: And that's the burden of proof the  
25 State has whether it's a public drunkenness case or a first

1 degree murder case. It's the same, regardless. It doesn't  
2 change or doesn't vary. Do you feel, sir, that in a first  
3 degree murder case that you would hold the State to a higher  
4 burden of proof simply because it was a first degree murder  
5 case, or would you follow the law as set out by the Court?

6 **JUROR WELCH:** I would hope I would follow the law.

7 **GENERAL SCHMUTZER:** Okay. And not -- at least not say  
8 to the State, "We're going to require you to prove this more  
9 than really a reasonable..."? You understand reasonable doubt,  
10 it's what's reasonable, what -- you know, using your common  
11 sense and reason. It's not absolute certainty. We can't prove  
12 anything absolute. And we had a prospective juror earlier  
13 rather candidly said in this type case he would have to have  
14 absolute proof. We can't produce it. There's no human being  
15 on earth than can produce that. I think that -- you know, as  
16 we mentioned before, taxes and death are about the only thing  
17 that are absolute in this world. My only question to you is:  
18 Will you require the State to go forward with more? And you say  
19 no, I take it.

20 (No jurors respond audibly.)

21 **GENERAL SCHMUTZER:** The case -- the State's case is one  
22 of circumstantial evidence. Certainly not unusual in a murder  
23 case, in view of the fact that one potential witness the State  
24 would have, the victim, which we have in most every other case,  
25 we don't have in this case because the victim's dead. Does that

1 in any way cause you any problems or difficulty? You understand  
2 that it is as much your duty to convict on circumstantial  
3 evidence as it is on direct evidence, and that one is not  
4 necessarily better than the other? Do you understand that?

5 JUROR WELCH: Are you asking me that question?

6 GENERAL SCHMUTZER: Okay. Yes, sir. Do you understand  
7 that one's as good as the other, and it's as much your duty,  
8 following the Court's instruction, the law that he read to you  
9 just awhile ago, it's as much your duty to convict on  
10 circumstantial evidence as direct evidence. And the key word  
11 there, I think, is the same as beyond a reasonable doubt, that  
12 word "reasonable." Because it's the State's burden, in a  
13 circumstantial evidence case, for its proof to rule out any  
14 other reasonable hypothesis or theory, other than the theory of  
15 guilt, the key word being "reasonable," not just any hypothesis.

16 MR. DANIEL: I object to the key word. I think the  
17 whole entire law is...

18 THE COURT: Well, he can -- he can make his suggestion  
19 on...

20 GENERAL SCHMUTZER: You know what I'm saying? It's not  
21 just any hypothesis; it has to be a hypothesis based upon  
22 reason; and reason is based upon the evidence, upon facts, not  
23 upon speculation. You understand that?

24 JUROR WELCH: Yes, sir.

25 GENERAL SCHMUTZER: Any -- I take it you have no problem

1 with that?

2 JUROR WELCH: I do not.

3 GENERAL SCHMUTZER: The -- as you -- well, I'd like to  
4 shorten this, but I can't say, "As you sit there hearing other  
5 questions... You haven't heard any other questions, other than  
6 what the Court's asked. I take it you don't know any of the --  
7 been introduced, no contact, or any connection with any of the  
8 attorneys in the case on either side?

9 JUROR WELCH: No.

10 GENERAL SCHMUTZER: Don't know the defendants?

11 JUROR WELCH: No.

12 GENERAL SCHMUTZER: Going to be some evidence of  
13 drinking in this case, both by the victim and these defendants.  
14 Not having a referendum on drinking, but would that cause you  
15 any concern or would that cloud your mind to reason? Are you  
16 so opposed to drinking that you might let that cloud your  
17 thinking process?

18 JUROR WELCH: (No audible response.).

19 GENERAL SCHMUTZER: Is there anything at all that --  
20 that might cause you a problem in sitting on this case and  
21 devoting your full attention to it? It's going to go -- it's  
22 going to go for a number of days. It's not going to be over  
23 with today, assuming we even get a jury today. It's going to  
24 go on for a few days. It's a circumstantial evidence case.  
25 There'll be a number of witnesses. Is there anything that you

1 think that's on your mind, anything at home or at work that  
2 might cause you, sitting there, to be thinking about something  
3 else other than this case?

4 JUROR WELCH: I guess there's a possibility, you know.  
5 I don't...

6 GENERAL SCHMUTZER: Nothing that's on your mind right  
7 now, though, that you can think of?

8 JUROR WELCH: Not that I can think of.

9 GENERAL SCHMUTZER: No place that you think that you  
10 have to be immediately that would divert your attention from the  
11 serious job of -- if you're called as a juror, of deciding this  
12 case and listening to all the facts and evidence?

13 JUROR WELCH: I don't think so.

14 GENERAL SCHMUTZER: Any difficulty with hearing or  
15 seeing? There's going to be a number of -- I speak out a little  
16 bit, but there'll be some witnesses that will not be quite so  
17 easy to hear, obviously. There'll be some children testify.  
18 Their voices are a lot lighter. Any difficulty -- I happen to  
19 have some hearing difficulty. I've just fired too many firearms  
20 over the years. That's under the FBI. But that's -- I do have  
21 a problem. Sometimes I have to ask people to repeat things.  
22 But do you have anything like that that might...

23 JUROR WELCH: Slight.

24 GENERAL SCHMUTZER: Slight? Think it would cause you  
25 any difficulty in the courtroom with hearing things?

1 JUROR WELCH: I can hear you fine.

2 GENERAL SCHMUTZER: Great. Take it you can -- can you  
3 think of anything at all that might cause you a problem in being  
4 a juror in this case, if you're called upon, sir?

5 JUROR WELCH: No, I don't think so.

6 GENERAL SCHMUTZER: Sorry you have to be singled out,  
7 but I can't asked these questions of everybody. But I  
8 appreciate your speaking with me. Thank you, sir.

9 THE COURT: Mr. Miller?

10 MR. MILLER: Thank you, Your Honor.

11 Good morning.

12 JUROR WELCH: Good morning.

13 MR. MILLER: I have several questions for you,  
14 Mr. Welch. And I first want to apologize to the other jurors.  
15 I think you all know the importance of these questions and why  
16 we have to ask the new jurors these. And please bear with me.

17 Mr. Welch, Mr. Schmutzer talked about the time factor  
18 and consideration of time in this case, and said it would go on  
19 several days. Didn't say exactly how long it will go on. Of  
20 course, nobody knows. But I think it's fair to say at this time  
21 it'll be at least through Monday. Now, is that going to cause  
22 you any problems where you couldn't devote your full attention  
23 to the case?

24 JUROR WELCH: Well, obviously I don't want to be doing  
25 it, but...

1           MR. MILLER: I don't think there's anybody that wants  
2 to be here. But -- and, of course, I don't know if it's been  
3 mentioned to you or the new jurors yet. You'll be sequestered  
4 the entire time until the time is over.

5           JUROR WELCH: No, sir, that wasn't mentioned until right  
6 now.

7           MR. MILLER: Is that a problem?

8           JUROR WELCH: Makes me even more want not to be here.

9           MR. MILLER: I don't...

10          THE COURT: Do you snore, Mr. Welch?

11          JUROR WELCH: My wife says I do.

12          THE COURT: Boy, that's what my wife says. And I notice  
13 this morning when I woke up that she was in the other bedroom,  
14 so I suspected I snored a lot last night, but that's... I don't  
15 guess that excludes you from jury service or being a judge.

16          MR. MILLER: Any particular reason that staying  
17 sequestered 'til maybe Monday or Tuesdays, any specific reason  
18 as far as work or anything that you can think of that you  
19 couldn't devote your full attention to the case?

20          JUROR WELCH: Just (indiscernible). I need to be at  
21 work.

22          MR. MILLER: Where do you work?

23          JUROR WELCH: (Inaudible).

24          MR. MILLER: But do you feel like you -- you wouldn't  
25 compromise your verdict or anything in this case because of

1 time?

2 JUROR WELCH: No.

3 MR. MILLER: And decide the case based on the law and  
4 the evidence?

5 JUROR WELCH: I hope so.

6 MR. MILLER: You had indicated that you'd heard somewhat  
7 about the case in the newspapers, and I take it on TV?

8 JUROR WELCH: Right.

9 MR. MILLER: And I think, when the judge asked you if  
10 you'd formed any opinions, I think you said, "I don't believe  
11 so." I want to make sure that you haven't formed any opinions,  
12 and don't carry any opinions, based on what you've read, into  
13 this courtroom in deciding this case. Whatever you've heard,  
14 can you put that aside and start out on a clean slate here in  
15 the courtroom?

16 JUROR WELCH: I believe so.

17 MR. MILLER: And, of course, you realize the dangers of  
18 relying on what you've heard on TV and the newspaper and so  
19 forth. Everything you see in the media is not exactly true.  
20 And, of course, probably haven't heard anything, as far as the  
21 defense side of the story, in the newspaper and the press. So,  
22 for that reason, can you leave what you've heard outside the  
23 courtroom?

24 JUROR WELCH: I think so.

25 MR. MILLER: Mr. Welch, have you ever sat as a juror

1 before?

2 JUROR WELCH: No.

3 MR. MILLER: The judge has instructed you on the law as  
4 far as the burden of proof beyond a reasonable doubt. That  
5 burden is on the State at all times. There's no burden on my  
6 client, Mr. Dellinger, to come forward with proof to explain  
7 anything, you understand that?

8 JUROR WELCH: Yes, sir.

9 MR. MILLER: The entire burden is on the State. My  
10 client has a right to testify or not to testify, a  
11 constitutional right. He may or may not testify. The law says  
12 you can't hold that against him for any reason. A lot of jurors  
13 are of the mind that, you know, if he's not guilty he should  
14 stand up and at least say that. You believe that's true? You  
15 going to require him to answer?

16 JUROR WELCH: No.

17 MR. MILLER: And, in fact, just by being here and  
18 entering a plea of not guilty, he has, in fact, said, "I'm not  
19 guilty of any crime." He's denied that all along.

20 Mr. Welch, have you ever been the victim of a crime,  
21 yourself, or had anybody closely related to you that's been a  
22 victim of a crime?

23 JUROR WELCH: Not a violent crime.

24 MR. MILLER: Okay. Have you ever had a case prosecuted  
25 by the attorney general's office?

1 JUROR WELCH: (No audible response.)

2 MR. MILLER: Do you, yourself, have any experience in  
3 law enforcement?

4 JUROR WELCH: No, sir.

5 MR. MILLER: Do you know anybody that you're closely  
6 associated with that does have -- may be in law enforcement or  
7 used to be in law enforcement?

8 JUROR WELCH: Not in years.

9 MR. MILLER: And the reason I ask that question is that  
10 there'll be some officers testifying, there'll be some just  
11 ordinary citizens testifying that don't wear a uniform and don't  
12 wear a badge. Are you going to consider their testimony the  
13 same? In other words, you're not going to consider the police  
14 officer's testimony more credible than anybody else's?

15 JUROR WELCH: No.

16 THE COURT: Where do you live, Mr. Welch?

17 JUROR WELCH: Seymour.

18 THE COURT: Okay. I'll ask this. We had a lady stay  
19 here for two days that lived in Knoxville County. Is there  
20 anybody -- are there any of the -- of the prospective jurors who  
21 live in a county other than Sevier County?

22 (No jurors respond audibly.)

23 THE COURT: Okay, glad we got that out of the way. As  
24 I told her yesterday, I sure am glad that she doesn't live in  
25 Sevier County and vote here, 'cause we'd be in trouble.

1           **MR. MILLER:** Mr. Welch, His Honor has gone over the  
2 elements of first degree murder. There are basically four major  
3 elements: That the victim was unlawfully killed by  
4 Mr. Dellinger and Mr. Sutton; that the killing was intentional;  
5 and that the killing was premeditated; and done with  
6 deliberation. No, those are four separate elements that the  
7 State must prove all of beyond a reasonable doubt. If they  
8 prove one, prove two, prove three, and maybe prove four, that  
9 doesn't get it. They've got to prove them all beyond a  
10 reasonable doubt. Will you hold the State to that burden?

11           **JUROR WELCH:** (No audible response.)

12           **MR. MILLER:** Circumstantial evidence has been mentioned  
13 by the judge and by Mr. Schmutzer. Basically, a circumstantial  
14 evidence case means there's no eyewitness, no confessions. The  
15 State's relying on the circumstances to try to show guilt of  
16 this crime.

17           Not only must the circumstances point unerringly at  
18 Mr. Dellinger, but they must exclude every other reasonable way  
19 that this woman died. And if the State does not exclude every  
20 other reasonable way that she died, then you must vote "not  
21 guilty." Do you have any problem with that?

22           **JUROR WELCH:** I don't think so.

23           **MR. MILLER:** I think you will hear proof, and I ask you  
24 if you'll consider this, in making your decision, that nobody  
25 can testify, nobody knows how this woman died. Will you take

1 that testimony, along with the other circumstances that are  
2 offered, in making your decision?

3 JUROR WELCH: (No audible response.)

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

5 THE COURT: Mr. Daniel?

6 MR. DANIEL: Mr. Welch, I'm Zane Daniel. And along with  
7 Mr. David Webb, we represent Gary Sutton. And the reason I'm  
8 going to explain this to you, we're trying both of these cases  
9 together, although they are two separate cases. Sometimes the  
10 Court tries cases together, and sometimes they're tried  
11 separately.

12 My question is of you, sir, do you understand you've got  
13 to judge each case separately. There may be a possibility  
14 ---and I don't know if this will happen or not---but at least  
15 a possibility that some evidence would come in regarding one  
16 defendant that would not apply to the other defendant. And the  
17 judge would admonish you and charge you that you can't consider  
18 that against the other party. That's hard to do, because you  
19 sit and you listen to it, and it's hard to put one side of your  
20 mind working one way, and the other one say, "I've got to cut  
21 this off," because we know if you hear it, you hear it. But my  
22 question is: Will you follow the law?

23 His Honor will tell you, at the end of the trial, find  
24 you're chosen as a juror, what all of the law is, and listen to  
25 him as to tell us what the law is. Can you do that?

1 JUROR WELCH: I think so.

2 MR. DANIEL: You understand that because they're being  
3 tried together is no indication that one or both are guilt --  
4 or one or both are -- are guilty or anything like this, it's --  
5 that everything is the same about them. You understand that?  
6 That it has -- they're just tried together because they were  
7 charged together. You understand?

8 JUROR WELCH: (No audible response.)

9 MR. DANIEL: Sometimes they're severed; one's tried one  
10 time, and one's tried another time. But this time we're trying  
11 them together. You understand that?

12 JUROR WELCH: (No audible response.)

13 MR. DANIEL: I notice that they asked you -- everybody's  
14 asked about pretrial publicity, and that's stuff that you may  
15 read in the paper or here on the radio or see on television or  
16 hear -- and hear on television and things. Have you -- you say  
17 you haven't read or heard anything that you've formed any  
18 opinions one way or the other?

19 JUROR WELCH: I don't think so.

20 MR. DANIEL: You understand that not everything in the  
21 paper -- in the newspaper and the TV is accurate? You will  
22 agree the that?

23 JUROR WELCH: (No audible response.)

24 MR. DANIEL: I think one time there was -- the TV --  
25 radio and television statements, that they were hunting these

1 defendants, when they were actually up here giving voluntary  
2 statements to the -- to the officers. This was on television.  
3 Everybody thought they was fugitives, and they was actually  
4 sitting over here at the jailhouse. So you understand that  
5 everything you read or hear in the paper is just not always that  
6 way? You understand that?

7 JUROR WELCH: I do.

8 MR. DANIEL: If the proof shows to you that they came  
9 up here on two different occasions and gave voluntary statements  
10 and told everything that they knew about this, and answered  
11 questions to these officers, will you take that into  
12 consideration, if you hear the statements that they've made and  
13 what they've told the police officers, and listen to their --  
14 what they've told just the same as you'd listen to what  
15 everybody else says? Will you do that, sir?

16 JUROR WELCH: I will.

17 MR. DANIEL: I notice that they asked you about  
18 circumstantial evidence, and the attorney general has said and  
19 stated, and I think correctly so, that this is what we call a  
20 circumstantial evidence case. And that means there's no direct  
21 proof of these defendants' guilt. They're going to have to try  
22 to prove it through circumstances. That's basically what we're  
23 saying. And through that they'll attempt to use what we call  
24 people that's got some training in a field, and if they've --  
25 if you've got training you can qualify as an expert. Have you

1 ever had any -- in your work or anything where you, yourself,  
2 were entitled to go to court and give an opinion as an expert  
3 witness because you had worked on something or done something?  
4 Do you understand that?

5 JUROR WELCH: (No audible response.)

6 MR. DANIEL: A mechanic can qualify as an expert, and  
7 although he -- if he's worked on cars for several years. He --  
8 that can be qualified as an expert. So certain people with  
9 certain backgrounds can give opinions, where other people can't  
10 give an opinion. You understand what an expert witness is?

11 His Honor will charge you, if you're chosen and if there  
12 are expert witnesses, that expert witnesses' testimony has to  
13 be received with caution because it's got pitfalls, and it's  
14 opinion evidence. And will you listen to all of the evidence,  
15 cross-examination, any evidence that comes in about these  
16 experts as to whether there's other reasonable explanations,  
17 other than their opinion. And it is just an opinion. Do you  
18 understand that?

19 JUROR WELCH: Yes, sir.

20 MR. DANIEL: Now, the -- we were told awhile ago that  
21 the -- there was -- that we have what we call, in criminal court  
22 -- it's not like civil court where they just -- where you sue  
23 for damages. They just have to prove something's more likely  
24 than not, carry the burden of proof to what they call 51%. But  
25 in a criminal case, before you can take somebody's freedom from

1 them, put them in prison, take their life, you must have no  
2 reasonable doubt, no single reasonable doubt as to any material  
3 aspect of this case before you could vote for a guilty  
4 conviction. Do you understand that?

5 JUROR WELCH: (No audible response.)

6 MR. DANIEL: Do you disagree with that law? Do you  
7 think that's not right?

8 JUROR WELCH: No.

9 MR. DANIEL: You'd want that same law applied to you if  
10 you was charged?

11 JUROR WELCH: Yes.

12 MR. DANIEL: And then they'll also tell you that a  
13 person starts out, in any criminal case, that they're innocent.  
14 A defendant does not have to prove his innocence. He doesn't  
15 have to prove anything. That's -- the burden's on the State to  
16 prove that. Do you disagree with that rule of law? Do you have  
17 any quarrels with it?

18 JUROR WELCH: No.

19 MR. DANIEL: You'd want that same law applied to you if  
20 you was -- or one of a member of your family was here?

21 JUROR WELCH: Yes, sir.

22 MR. DANIEL: We also have a statement that they're  
23 cloaked with this presumption of innocence, and that innocence  
24 stands -- presumption stands with them all throughout the trial.  
25 It doesn't change at any time, it doesn't swap that all at once

1 he becomes un-innocent, or that cloak of innocence is taken away  
2 from him during the trial. It stands with him throughout the  
3 trial. Do you understand that? And if His Honor charges you  
4 that's the law, you would follow that law?

5 JUROR WELCH: Yes.

6 MR. DANIEL: Do you disagree with it?

7 JUROR WELCH: No, I don't.

8 MR. DANIEL: Can you look at Gary Sutton right there now  
9 and say, "Gary Sutton, you're innocent"? Can you do that?

10 JUROR WELCH: (No audible response.)

11 MR. DANIEL: He's innocent right now. Can you do that?

12 THE COURT: If you had to vote right now,...

13 JUROR WELCH: I -- yeah, I answered it.

14 MR. DANIEL: Yeah, he's answered...

15 THE COURT: Oh, I didn't hear him.

16 MR. DANIEL: If you...

17 JUROR WELCH: Yeah.

18 MR. DANIEL: If I asked you, "Could you vote, how would  
19 you say," you said,

20 "We're innocent."

21 JUROR WELCH: I would have to say he's innocent.

22 MR. DANIEL: 'Cause he is innocent right now, is that  
23 correct?

24 JUROR WELCH: (No audible response.)

25 MR. DANIEL: And you're going to hold the State to their

1 burden, to try to prove their case beyond all reasonable doubt  
2 to you, is that correct, sir?

3 JUROR WELCH: That's correct.

4 MR. DANIEL: In this circumstantial case, this is a  
5 little different, and I'm going to ask you about this, because  
6 a lot -- there's a little bit of difference in a lot of the  
7 cases that you would hear if you was a juror. In a  
8 circumstantial evidence case the burden is on the State to  
9 exclude every other reasonable hypothesis, other than that of  
10 the guilt of the defendant. Now, that's the law. You -- would  
11 you follow that law, if the judge charges you that's the law on  
12 circumstantial evidence?

13 JUROR WELCH: (No audible response.)

14 MR. DANIEL: You understand that certain circumstances  
15 sometimes can look -- can point to one way, but they could also  
16 be another explanation for it? Might be something could happen  
17 that you can't explain, but there could be another answer to it,  
18 so to speak. You understand that?

19 JUROR WELCH: (No audible response.)

20 MR. DANIEL: I'm sure everybody...

21 GENERAL SCHMUTZER: Your Honor, that has to be a  
22 reasonable explanation.

23 THE COURT: Right. It's...

24 GENERAL SCHMUTZER: Not just any explanation.

25 MR. DANIEL: I'm sure you, like everybody else, may have

1 had -- been falsely accused of something sometime, or know  
2 somebody that's been falsely accused, is that -- has that  
3 happened in your life? You, yourself, or know somebody that's  
4 been falsely accused, is that...?

5 JUROR WELCH: Yes.

6 MR. DANIEL: And that can happen. We all know that.

7 In the case at hand, Mr. Welch, we're going to be trying  
8 this case, there may be some evidence of some other -- some  
9 other charge come up that's in -- tried -- to be tried in  
10 another county. And I'm just going to be straight with you; in  
11 Blount County. Because these two defendants are charged with  
12 a murder charge that -- it's all coming out of this -- they say  
13 this same instance in Blount County. Now, we're not going to  
14 be trying that, I'm telling you up front. That's not your  
15 decision to make regarding that Blount County case.

16 So my question is: If you hear any proof regarding  
17 that, will you understand that you're still to try the one  
18 issue. The one issue is: Can the State prove beyond a  
19 reasonable doubt, by circumstantial evidence, excluding all  
20 other hypothesis except that of guilt for these defendants,  
21 regarding the death of Connie Branum? Now, that's the bottom-  
22 line issue that you all are going to decide. Can you listen to  
23 the evidence and decide that issue? And if there's proof of  
24 other things come in, realize that you're not supposed to try  
25 that case. You're not -- you understand that?

1 JUROR WELCH: (No audible response.)

2 MR. DANIEL: And Mr. Mike Flynn's here. He's the  
3 attorney general from over in Blount County, and he'll -- he's  
4 seated there at the table. And Mr. Flynn was handling the case  
5 that's to be prosecuted over in Blount County. So that's to be  
6 tried by another jury in another county in another place.  
7 That's not -- you all don't have to worry about that; it's not  
8 your decision to make whether they're guilty or not guilty of  
9 that charge.

10 But because of the State's theory---now, we say it's  
11 just theory---but it's their theory that that's what happened,  
12 and they're going to attempt to bring in some evidence of this.  
13 It's our theory that it has nothing to do with this case, and  
14 shouldn't be, but that's -- that's our theories involved. The  
15 question is: Will you listen to what His Honor will tell you  
16 about the law regarding that, if chosen as a juror, follow what  
17 His Honor tells you?

18 JUROR WELCH: (No audible response.)

19 MR. DANIEL: We want to try the case on the issues, not  
20 on things that's -- you decide guilt or innocence on something  
21 that's not the issue that you're deciding. We want to try it  
22 on the issue. And you'll do that, won't you, sir?

23 JUROR WELCH: Right.

24 MR. DANIEL: Said you work for (indiscernible)?

25 JUROR WELCH: That's right.

1 MR. DANIEL: How long have you been with them?

2 JUROR WELCH: Eighteen (18) years.

3 MR. DANIEL: Have you? Is that -- that's down in --  
4 that's down in Knoxville?

5 JUROR WELCH: Right.

6 MR. DANIEL: Thank you, sir.

7 (Peremptory Challenge Slip #14 was submitted, and the  
8 following jurors were excused: Juror Morrow, Juror  
9 Boling, and Juror Raisor.)

10 (The following jurors were called to fill the jury box:  
11 Terry Justus, Billy E. Parrott, and Alice Grayson.)

12 THE COURT: Messrs. Parrott and Justus and Ms. Grayson,  
13 have you heard all the statements that the Court has made here  
14 this morning?

15 (No jurors respond audibly.)

16 THE COURT: And have you heard all of the questions that  
17 have been asked by counsel for both sides?

18 (No jurors respond audibly.)

19 THE COURT: Is there anything that's been stated so far  
20 that raises any issue in either of your minds as to whether or  
21 not you could be fair and impartial to both sides in this case  
22 as you sit there?

23 (No jurors respond audibly.)

24 THE COURT: And do all of you understand, and we've  
25 talked about different issues here this morning, and we've

1 talked about burden of proof and presumptions of innocence and  
2 the standards of proof and so forth. And do you understand that  
3 the first and primary obligation is to determine whether or not  
4 someone is guilty of a charge before we go any further?

5 (No jurors respond audibly.)

6 **THE COURT:** And just because I talk to you and instruct  
7 you about the death penalty does not mean and should not be  
8 taken by you that the Court thinks somebody's guilty. Do you  
9 understand that? Simply because I charge you and instruct you  
10 on different issues of law, whether or not those apply depends  
11 upon what you find the facts to be. And I have to instruct you  
12 on a wide range of issues.

13 Ms. Grayson, have you heard or seen anything about this  
14 case before you came here today?

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

16 **THE COURT:** Is that newspaper reports and TV reports or  
17 radio reports?

18 **JUROR GRAYSON:** Yes.

19 **THE COURT:** Okay. And that's understandable. I'd say  
20 almost everyone has seen or heard something about it.

21 Based on what you've seen or heard, have you formed an  
22 opinion about the guilt or innocence of either of these  
23 defendants in this case?

24 **JUROR GRAYSON:** Yes.

25 **THE COURT:** Okay. Based upon that opinion, is your

1 opinion such that you could not be changed by evidence that came  
2 from this witness stand?

3 JUROR GRAYSON: (No audible response.)

4 THE COURT: And could you listen to the evidence and  
5 base your verdict solely on the evidence that comes from this  
6 witness stand and the law that the Court gives you?

7 JUROR GRAYSON: (No audible response.)

8 THE COURT: You could do that? Okay.

9 Mr. Justus, the same question: Have you heard anything  
10 about this case before you came down here?

11 JUROR JUSTUS: I've read some in the media.

12 THE COURT: Okay. Have you formed any opinions about  
13 the guilt or innocence of anybody?

14 JUROR JUSTUS: (No audible response.)

15 THE COURT: Okay, thank you. Mr. Parrott, same  
16 question: Have you heard anything about the case?

17 JUROR PARROTT: (No audible response.)

18 THE COURT: Have you formed an opinion about the guilt  
19 or innocence of anyone?

20 JUROR PARROTT: (No audible response.)

21 THE COURT: Is that opinion such that it cannot be  
22 changed by any evidence in this case?

23 JUROR PARROTT: (No audible response.)

24 THE COURT: From your answer, sir, could you base your  
25 verdict solely on the evidence that comes from this witness

1 stand alone, and the law that the Court gives you?

2 JUROR PARROTT: Yes, sir.

3 THE COURT: .You could do that? Very well.

4 Ms. Grayson, have you understood what the Court has said  
5 about the death penalty?

6 JUROR GRAYSON: Yes.

7 THE COURT: And do you understand it is an option only  
8 if you find someone guilty?

9 JUROR GRAYSON: (No audible response.)

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

13 JUROR GRAYSON: (No audible response.)

14 THE COURT: Okay. Could you consider the death penalty?

15 JUROR GRAYSON: No.

16 THE COURT: You could not or would not consider it in  
17 any case?

18 JUROR GRAYSON: No.

19 THE COURT: All right, ma'am, I'll have to excuse you.  
20 Thank you.

21 (Juror Grayson is excused.)

22 (The following juror was called to fill the jury box:  
23 Jeffrey Johnson.)

24 THE COURT: Good morning. Were you here last night,  
25 Mr. Johnson?

1 JUROR JOHNSON: (No audible response.)

2 THE COURT: Okay. Have you heard all the questions,  
3 Mr. Johnson, and instructions by the Court?

4 JUROR JOHNSON: Yes, sir.

5 THE COURT: Is there anything that's been stated or said  
6 that raises any issue in your mind as to whether or not you  
7 could be fair and impartial to both sides in this lawsuit?

8 JUROR JOHNSON: (Inaudible).

9 THE COURT: Okay. Have you heard or read anything about  
10 this case before you came here today?

11 JUROR JOHNSON: Yes, sir.

12 THE COURT: Based on what you've seen or heard, have you  
13 formed any opinion about the guilt or innocence of either of  
14 these gentlemen here?

15 JUROR JOHNSON: No.

16 THE COURT: Okay. And could you base your verdict, if  
17 called upon to sit as a juror, solely on the evidence that comes  
18 from this witness stand, and the law that the Court tries to  
19 give you?

20 JUROR JOHNSON: (No audible response.)

21 THE COURT: Okay. Do you understand what I've tried to  
22 explain about the death penalty?

23 JUROR JOHNSON: (No audible response.)

24 THE COURT: And do you understand that just because that  
25 I'm talking to you about the death penalty doesn't mean that I

1 think anybody's guilty of anything, do you understand that?

2 JUROR JOHNSON: Yes, sir, I do.

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

6 JUROR JOHNSON: I wouldn't want to.

7 THE COURT: I understand that. But is it something that  
8 you could consider? I'm not asking you if you would impose it  
9 or not. But could you consider it as a sentencing alternative?

10 JUROR JOHNSON: Yes.

11 THE COURT: Okay. And, on the other hand, would you  
12 automatically vote to impose the death sentence in every case  
13 of a conviction of first degree murder, or would you look at the  
14 circumstances of each case and follow the law that I give you  
15 on that?

16 JUROR JOHNSON: (Inaudible).

17 THE COURT: Each and every case. That's fair enough.

18 Now, I've asked all of the other two jurors, Mr. Justus  
19 and Mr. Parrott, about the death penalty, I believe, didn't I?  
20 Or have I asked you about -- I've not asked you about that?  
21 Okay. Mr. Parrott, do you understand what the Court has said  
22 about the death penalty?

23 JUROR PARROTT: (No audible response.)

24 THE COURT: Do you have any moral or ethical  
25 reservations about considering the death penalty as a sentencing

1 option?

2 JUROR PARROTT: (No audible response.)

3 THE COURT: And on the other hand, sir, would you  
4 automatically vote to impose the death sentence in each and  
5 every case of a conviction of first degree murder?

6 JUROR PARROTT: (Inaudible).

7 THE COURT: Okay. In other words, I would instruct you,  
8 if someone is found guilty of first degree murder, on the  
9 enhancing factors and the mitigating factors, and those are what  
10 you would consider. If you found the enhancing factors  
11 outweighed the mitigating factors, you may vote to impose the  
12 death penalty as you wish. But if -- even if you should find  
13 enhancing factors outweigh mitigating factors, it is still your  
14 decision, and yours alone, along with your fellow jurors. You  
15 understand that?

16 JUROR PARROTT: (No audible response.)

17 THE COURT: Okay. Same question to Mr. Justus: Any  
18 moral reservations about considering the death penalty as an  
19 option?

20 JUROR JUSTUS: (No audible response.)

21 THE COURT: And again, sir, do you feel like in every  
22 case of first degree murder that you would automatically vote  
23 to impose the death sentence, or could you look at each and  
24 every circumstance that the Court would instruct you on and  
25 consider it?

1 JUROR JUSTUS: (No audible response.)  
2 THE COURT: All right, sir. General Schmutzer?  
3 GENERAL SCHMUTZER: Thank you very much.  
4 Let's see, Mr. Parrott, where do you live, please, sir?  
5 JUROR PARROTT: Kodak.  
6 GENERAL SCHMUTZER: Kodak? And your occupation?  
7 JUROR PARROTT: (Inaudible).  
8 GENERAL SCHMUTZER: Okay. And thank you.  
9 Mr. Justus, where do you live, please?  
10 JUROR JUSTUS: Pigeon Forge.  
11 GENERAL SCHMUTZER: And your occupation?  
12 JUROR JUSTUS: Assistant manager for Black & Decker  
13 (indiscernible).  
14 GENERAL SCHMUTZER: Okay, thank you.  
15 And Mr. Johnson?  
16 JUROR JOHNSON: Sevierville.  
17 GENERAL SCHMUTZER: And your occupation?  
18 JUROR JOHNSON: I'm a clerk at Cash Hardware.  
19 GENERAL SCHMUTZER: Thank you.  
20 You all heard my questions a minute ago with regard to  
21 circumstantial evidence. You understand a circumstantial  
22 evidence case -- it's just as much your duty, based upon the law  
23 presented to you, to convict on circumstantial evidence as it  
24 is direct evidence. In fact, in some instances circumstantial  
25 evidence cases can even be better than direct evidence cases.

1 There's not one that's better than the other. And there's  
2 certainly not one that's unusual in a murder case.

3 Any of you have any difficulties or problems with that  
4 at all, following that law as given to you by the Court?

5 (No jurors respond audibly.)

6 **GENERAL SCHMUTZER:** It's mentioned particularly about  
7 hypotheses. You realize those have to be reasonable hypotheses.  
8 We're not out running rabbits. But it -- ultimately you're  
9 going to base your decision in this case, regardless of how it  
10 is, on the evidence, the facts that come from this witness  
11 stand, and the law given to you by the Court; and that, and that  
12 alone.

13 That if there is a hypothesis presented that, when held  
14 to the facts that come from this witness stand doesn't hold  
15 light when using reason and common sense, it's obviously  
16 unreasonable. You understand that? We're not here, in other  
17 words, to guess anybody guilty or to guess them not guilty.  
18 We're not here to speculate. Every decision is to be made upon  
19 the facts and the evidence. Anybody have any problem with that?

20 (No jurors respond audibly.)

21 **GENERAL SCHMUTZER:** The -- it was mentioned about expert  
22 witnesses. The State expects and will put on a number of expert  
23 witnesses, included expert witnesses from the crime laboratory.  
24 Any of the three of you think that you would dismiss out-of-hand  
25 the testimony of an expert witness?

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1 (No jurors respond audibly.)

2 **GENERAL SCHMUTZER:** I take it you wouldn't do that.  
3 Would you listen to their testimony and look at their  
4 background, their training, how they present themselves, look  
5 at all of that in deciding that evidence. Look at it in light  
6 of all the other evidence, too, I take it?

7 (No jurors respond audibly.)

8 **GENERAL SCHMUTZER:** The -- there's mentioned about the  
9 defendants gave statements. They did. They asked if you'd  
10 listen to those statements; I will ask you to listen to those  
11 statements and hold those statements up to the facts in this  
12 case to see whether or not they, in fact, were telling the  
13 truth. Will you do that? Not just take whatever they say as  
14 being the Gospel, but you'll look at what they have to say in  
15 light of the other facts and evidence in this case? I take it  
16 you all would do that.

17 The -- I ask this not just of you three, but to  
18 everyone. It's something I haven't covered up to this point,  
19 and it came to mind. Two things, actually. One is: During the  
20 course of the trial we lawyers will be able to cross-examine  
21 witnesses from time to time. In doing that, we can lead the  
22 witness, we can suggest certain facts to them. Will each and  
23 every one of you carefully listen to the questions and realize  
24 that it's not the question ultimately that's evidence, it's the  
25 answer. We lawyers may suggest a number of different facts, but

1 we're not witnesses. If that fact is not proven under oath from  
2 that witness stand, it's not a fact, it's only a lawyer's  
3 suggestion. Can you do that, and keep those -- and keep that  
4 separated, each and every one of you all?

5 (No jurors respond audibly.)

6 **GENERAL SCHMUTZER:** I take it you can.

7 The second question has to do with the fact, this being  
8 a circumstantial evidence case, we cannot prove to you which one  
9 of these individuals actually did the killing, actually pulled  
10 the trigger. They're both charged as principals. The law says  
11 that if two people, in a common purpose, commit a crime,  
12 harboring the same intent, or one aids and abets the other in  
13 the commission of that crime, both are equally guilty of that  
14 crime, regardless of who actually pulled the trigger. Any  
15 problems with that? You understand that?

16 (No jurors respond audibly.)

17 **GENERAL SCHMUTZER:** We're not required to do that, if  
18 we otherwise carry the burden of proof.

19 The mention about other cases; the State is going to  
20 prove not other cases but we're going to prove other crimes  
21 committed by these defendants to go to show their motive and  
22 their intent in the commission of this crime. That's what it  
23 will be entered for, and that will -- I take it you all will  
24 consider it for that purposes. The attorney is right; you're  
25 not here to try those cases. But it's going to be relevant and

1 material evidence, highly probative as to their motive and  
2 intent in the murder of Connie Branum. Will you consider it for  
3 that purpose, each of you?

4 (No jurors respond audibly.)

5 **GENERAL SCHMUTZER:** How about you, Mr. Parrott? Will  
6 you do that, too, sir?

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

8 **GENERAL SCHMUTZER:** The three of you in particular that  
9 just came in, as you sit there can you think of anything at all  
10 that might cause you some difficult or problems in being a juror  
11 in this case?

12 (No jurors respond audibly.)

13 **GENERAL SCHMUTZER:** Anything that, you know, might stand  
14 in the way of you giving it your full and undivided attention  
15 over the next few days?

16 (No jurors respond audibly.)

17 **GENERAL SCHMUTZER:** I take it by your silence there's  
18 not. Mr. Johnson, you sort of looked at me like there might be  
19 something.

20 **JUROR JOHNSON:** (Inaudible).

21 **THE COURT:** I believe you and about half the courtroom.

22 **GENERAL SCHMUTZER:** But other than that, you just...?  
23 Nothing about that, though, would bother you, and you can hear  
24 everything okay and feel good enough to serve?

25 (No jurors respond audibly.)

1           **GENERAL SCHMUTZER:** Thank you. Anything -- anyone else?

2           **JUROR BALLENGER:** I've got a question.

3           **GENERAL SCHMUTZER:** Yes, sir, Mr. Ballenger.

4           **JUROR BALLENGER:** You said both people were assumed  
5 equal in the guilt by law?

6           **THE COURT:** No.

7           **GENERAL SCHMUTZER:** Based on -- you have to remember,  
8 now,...

9           **MR. DANIEL:** I object to that, Your Honor, and...

10          **THE COURT:** Well, I'll answer that question. Just a  
11 moment, let me give you the...

12          **GENERAL SCHMUTZER:** The Court will give you the full law  
13 on that.

14          **THE COURT:** ...that, so that... You know, simply  
15 because someone is charged along with someone else doesn't mean  
16 anything, in and of itself, okay? But -- and you should not  
17 assume that. But our law says that a person may be responsible  
18 for the criminal acts of another if they act under certain  
19 circumstances.

20          "A defendant may be criminally responsible for an  
21 offense committed by another if the defendant solicits, directs,  
22 aids, or attempts to aid another person to commit an offense,  
23 and the defendant acts with intent to promote or assist the  
24 commission of the offense, or to benefit in the proceeds or the  
25 results of that offense." But, before you can find someone

1 guilty in that situation, all of those elements must be met.

2 JUROR BALLENGER: And if they do the other  
3 (indiscernible) the same, are they...?

4 THE COURT: No, no, no, each person. Each case is --  
5 each defendant must be found guilty based on the evidence as it  
6 applies to them in the case, first of all.

7 Then, in sentencing, each defendant is judged on their  
8 own, okay? So just because you might find one guilty doesn't  
9 mean you have to find the other guilty. In any case where two  
10 people are tried together for the same offense you may acquit  
11 both or you may convict both, or acquit one and convict the  
12 other, as the law and the evidence justifies.

13 Secondly, in sentencing, as I say, each person stands  
14 on their own. And that is something that you would exercise in  
15 your own judgment, Mr. Ballenger. Okay?

16 JUROR BALLENGER: Okay.

17 THE COURT: Anything...?

18 GENERAL SCHMUTZER: Does that answer that,  
19 Mr. Ballenger?

20 JUROR BALLENGER: Yes.

21 GENERAL SCHMUTZER: Great. Very good explaining it  
22 firsthand, didn't he?

23 JUROR BALLENGER: He done good.

24 GENERAL SCHMUTZER: He sure did.

25 THE COURT: Done good, didn't I?

1           **GENERAL SCHMUTZER:** Anyone else have any question? Any  
2 question been raised by what I have asked you?

3           (No jurors respond audibly.)

4           **GENERAL SCHMUTZER:** I take it by your silence there's  
5 not. Thank you very much.

6           **THE COURT:** If I can, before Mr. Miller starts, I want  
7 to read you also the law on the -- on the issue of other crimes  
8 evidence, because that is -- is important for all of you to  
9 consider. And the law that I will instruct you on at the end  
10 of this trial is as follows:

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

17           "Motive: That is, such evidence may be considered by  
18 you if it tends to show a motive of the defendant for the  
19 commission of the offense presently charged. Or intent: That  
20 is, such evidence may be considered by you if it tends to  
21 establish that the defendant actually intended to commit the  
22 crime with which he is presently charged. The evidence may be  
23 considered for these purposes only. The evidence must be clear  
24 and convincing before you may consider it even for that limited  
25 purpose or purposes," as I have told you.

1 "It may not be considered to reflect on the character  
2 of the defendant. If it has any value, which you alone must  
3 determine, it may only be considered for the limited purpose of  
4 determining intent or motive. You may not presume or infer that  
5 the defendant is probably guilty of this offense merely because  
6 there is present clear and convincing evidence, if you should  
7 find there is, that another offense of a similar nature was  
8 committed about the same time. You are reminded again that the  
9 defendants are presumed innocent, and the burden of proof is on  
10 the State to prove every element of the offense, including the  
11 specific intent in the particular crime charged."

12 Mr. Miller?

13 MR. MILLER: Two things that were mentioned by  
14 Mr. Schmutzer during his questioning, and by Mr. Ballenger, that  
15 bother me somewhat. First of all, Mr. Schmutzer saying that  
16 they can't prove which one of these men actually pulled the  
17 trigger, and Mr. Ballenger, of course, looking ahead and asking  
18 the very bright, intelligent questions about the possible  
19 sentencing ramifications and so forth. And I know Mr. Ballenger  
20 is not doing this, but you run into that situation, you feel  
21 like you're putting the cart before the horse. And this is --  
22 of course, it's our position that these boys had nothing to do  
23 with this. I don't want us to start from the premise or the  
24 assumption that one of them did it, and this is just a case to  
25 decide which one of them did it. That's not what we're here to

1 do. Our position is neither one of them did it, that they  
2 didn't have anything to do with it. Can we all do that? We all  
3 understand we're not sitting here trying to figure out which  
4 one did it? That's not -- that's not the issue.

5 (No jurors respond audibly.)

6 MR. MILLER: Mr. Johnson, do you have any connection  
7 with any of the witnesses whose names were mentioned earlier,  
8 or any person on either side of this case, that you know of?

9 JUROR JOHNSON: (No audible response.)

10 MR. MILLER: Okay. Mr. Justus, I'll ask you the same  
11 question: Do you have any connection?

12 JUROR JUSTUS: (No audible response.)

13 MR. MILLER: And Mr. Parrott?

14 JUROR PARROTT: I know several officers.

15 MR. MILLER: All right. What officers do you know?

16 JUROR PARROTT: It's hard to remember. About all of  
17 them.

18 MR. MILLER: About all of them? And how do you know  
19 them?

20 JUROR PARROTT: Personal friends.

21 MR. MILLER: Okay. Are you close personal friends with  
22 certain officers, a few which you could mention their names to  
23 me?

24 JUROR PARROTT: I know (indiscernible) McCarter and  
25 (indiscernible) Atchley.

1           **MR. MILLER:** Okay. Of course, they probably will be  
2     testifying in this case. And it may or may not come to an issue  
3     of whether you believe them over somebody else. But since  
4     they're officers and they're personal friends of yours, if it  
5     came to pitting their word against somebody else's, would you  
6     tend to favor their side and believe their testimony?

7           **JUROR PARROTT:** Probably.

8           **THE COURT:** Just let me ask you this, Mr. Parrott. And  
9     obviously in our county all of us know a lot of people. It's  
10    still a small county in a lot of ways. Just because you know  
11    an officer or are friends with an officer, would you  
12    automatically believe that officer just because he is either a  
13    friend or an acquaintance, or just because he's an officer?

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

15          **THE COURT:** And would you look at the circumstances  
16    about which they are testifying in relation to all other  
17    evidence before you make a decision about who you believe?

18          **JUROR PARROTT:** (No audible response.)

19          **THE COURT:** Okay.

20          **MR. MILLER:** I kind of halfway listened to the judge's  
21    questions and your answer there, Mr. Parrott. I'm sorry. But  
22    you feel like you can give equal weight to the testimony of any  
23    other witness as put up against Mr. McCarter or any other law  
24    officer, and look at the facts and the reasonableness of their  
25    testimony?

1 JUROR PARROTT: (No audible response.)

2 MR. MILLER: Mr. Parrott or Mr. Justus or Mr. Johnson,  
3 have you all ever been the victim of a crime that perhaps was  
4 prosecuted by the attorney general's office?

5 (No jurors respond audibly.)

6 MR. MILLER: Have any association with their office at  
7 all?

8 (No jurors respond audibly.)

9 MR. MILLER: Each of you have heard several times now  
10 ---not as much as the rest of these jurors---about the burden  
11 of proof being on the State at all times as to each element  
12 beyond a reasonable doubt. Mr. Johnson, can you hold the State  
13 to that burden?

14 JUROR JOHNSON: (No audible response.)

15 MR. MILLER: And can you look at my client,  
16 Mr. Dellinger, and say right now, "You're innocent. I presume  
17 that you're innocent." Understand that that presumption of  
18 innocence remains with him throughout this trial?

19 JUROR JOHNSON: (No audible response.)

20 MR. MILLER: Mr. Justus, can you do the same and old the  
21 State to that burden?

22 JUROR JOHNSON: (No audible response.)

23 MR. MILLER: Mr. Parrott, can you do that, likewise?

24 JUROR PARROTT: (No audible response.)

25 MR. MILLER: Mr. Parrott, you had mentioned earlier that

1 you had heard some publicity about the case, and had actually  
2 formed some opinions, is that correct?

3 JUROR PARROTT: (No audible response.)

4 MR. MILLER: Okay. Without telling me what your opinion  
5 is one way or the other, in deciding this case and listening to  
6 the evidence and going back in the jury room and deliberating,  
7 are you going to keep those opinions in your mind that you have  
8 formed, and weigh them along with the rest of the evidence?

9 JUROR PARROTT: (Inaudible).

10 MR. MILLER: All right, that's what I wanted to  
11 understand.

12 Any reason that you all can think of, the new jurors,  
13 that -- why you shouldn't sit on this case? Anything you need  
14 to bring to my attention?

15 (No jurors respond audibly.)

16 MR. MILLER: Thank you.

17 GENERAL SCHMUTZER: Mr. Daniel?

18 MR. DANIEL: Thank you, Your Honor.

19 Mr. Justus, let me ask you if I understand correctly,  
20 sir, and you correct me if I'm wrong. You have several friends  
21 with the police department, is that...? I'm sorry, not -- not  
22 Mr. Justus, Mr. Parrott. Excuse me. Justus. I'm sorry, got  
23 my name... Mr. Parrott, you have several friends with the  
24 police department, is that right, sir?

25 JUROR PARROTT: (No audible response.)

1           **MR. DANIEL:** And you know -- how many of these officers  
2 would you say that's been named that you know?

3           **JUROR PARROTT:** (Inaudible).

4           **MR. DANIEL:** About all of them? So you're close friends  
5 with those officers, is that correct?

6           **JUROR PARROTT:** (Inaudible).

7           **MR. DANIEL:** Close friends that you -- close enough that  
8 you know them pretty well? Okay. As I understand it, then, you  
9 had -- you stated that if they testified and their testimony  
10 came up to where it conflicted with somebody else, you'd have  
11 a tendency, because of your friendship and knowledge, to believe  
12 their testimony?

13           **JUROR PARROTT:** (Inaudible).

14           **MR. DANIEL:** And even more so than you would someone  
15 else's? And I understand that, if you've got friends, you know  
16 people, you have a tendency maybe to want to believe them. And  
17 as I understand it, you would have a tendency to believe their  
18 testimony more so than you would that of someone else that you  
19 didn't know?

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

21           **MR. MILLER:** And you say you have -- you have -- you had  
22 some opinions and had some formed opinions about this case when  
23 you came to court, based on what you had heard either from them  
24 or from the newspaper and television or radio or something, is  
25 that correct, sir?

1 JUROR PARROTT: Yes.

2 MR. DANIEL: And so you're stating it would take some  
3 evidence from someone, whether it be the State or it be us, to  
4 set aside that -- those opinions that you have, is that a fair  
5 statement?

6 JUROR PARROTT: (No audible response.)

7 MR. DANIEL: You have -- you base those things upon  
8 things that you've heard, of course, outside the courtroom, not  
9 here in the courtroom, is that correct?

10 JUROR PARROTT: (Inaudible).

11 MR. DANIEL: Beg your pardon?

12 JUROR PARROTT: (Inaudible).

13 MR. DANIEL: Yes.

14 THE COURT: I'll ask this, Mr. Parrott. I don't think  
15 it's been asked of you. Have you talked to any of these  
16 potential witnesses, the officers?

17 JUROR PARROTT: (No audible response.)

18 THE COURT: Okay, you have not? Not, as I understood  
19 the response from the question I believe by Mr. Miller, is that  
20 you said that you could base your verdict solely and completely  
21 on the evidence that comes from this witness stand, is that...?

22 JUROR PARROTT: Yes, sir.

23 THE COURT: And lay aside those opinions that you have  
24 previously had, is that correct?

25 JUROR PARROTT: (No audible response.)

1           **THE COURT:** Okay. And in a previous question that I  
2 asked you in regards to the association with the officers, would  
3 you look at their testimony just like you would anyone else's?

4           **JUROR PARROTT:** Yes.

5           **THE COURT:** And -- and weigh their testimony based on  
6 what they say and the circumstances of the entire case?

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

8           **THE COURT:** Okay. In other words, if -- if your wife  
9 or a good friend came in and told you there was a Martian  
10 standing outside, I take it you just wouldn't automatically  
11 believe that, would you?

12          **JUROR PARROTT:** No.

13          **THE COURT:** Okay. And, so, would you look at that just  
14 like you would anything else?

15          **JUROR PARROTT:** (No audible response.)

16          **THE COURT:** Okay, you may go ahead, Mr. Daniel.

17          **MR. DANIEL:** Let me ask, then, some questions of you,  
18 the new members. We've been talking here, and because His Honor  
19 has an obligation because of the way that the State has chose  
20 to indict and the way these boys have been indicted, charged,  
21 that he has an obligation to ask certain questions regarding  
22 sentencing, the death penalty, and things like this. He will  
23 tell you -- the judge will be the first to tell you that just  
24 because he has to do that, you're not to infer in any way that  
25 these boys -- defendants are guilty of anything. Do you all

1 understand that? Can we start with that premise?

2 (No jurors respond audibly.)

3 MR. DANIEL: We've kind of got, we feel like, the cart  
4 before the horse, because you -- because of the questioning, we  
5 don't want to start out with the premises: Is this a -- this  
6 is a first degree murder conviction where the guilty -- should  
7 they go to the penitentiary for the rest of their life, or  
8 should they be put in the electric chair? That's not the issue.  
9 And we started, because of the thought process and how we go  
10 about it, we start at it that way. I want to get it across to  
11 you this point, and ask you these questions because the judge  
12 has to ask that, and because those are the questions that have  
13 to be asked, Mr. Johnson, for example, do you understand we're  
14 here starting from scratch, and these defendants are innocent  
15 until proven guilty beyond all reasonable doubt. Do you all --  
16 do you understand that?

17 (No jurors respond audibly.)

18 MR. DANIEL: Do you follow that? Do you have any  
19 quarrels or disagreement with our rules of law?

20 (No jurors respond audibly.)

21 MR. DANIEL: You've heard the statements about people's  
22 made up their mind on what they've heard on the radio. And I've  
23 -- like I told somebody, we found out that one radio or  
24 television cast said they was hunting them, they were  
25 desperados, and they were sitting over here at the jail giving

1 a voluntary statement to the officers when this comes up. So  
2 that shows you how newspapers and television, radio can get  
3 things distorted. Just an example. You understand that?

4 (No jurors respond audibly.)

5 **MR. DANIEL:** And will you listen to the proof? You want  
6 that same -- you want -- I guess -- let me ask you this  
7 question: If you were being tried and in their shoes and they  
8 was in the jury box, would you feel like that your mind is such  
9 that you would be satisfied with you being a juror, your mind  
10 is open enough that you'd want -- you feel like you can be fair?  
11 That's a hard question to ask, but can you do that?

12 (No jurors respond audibly.)

13 **MR. DANIEL:** You've heard the question that was asked  
14 these other jurors. I don't want to keep repeating myself and  
15 going over it. It's a serious matter, anytime you're talking  
16 about a case where somebody, if convicted, can go to jail for  
17 the rest of their life, or can be put -- be taken -- their life  
18 can be taken, you've got the power of life or death in your  
19 hands, it's serious. I think we all can agree with that. I  
20 don't think anybody anywhere would disagree with that. And we  
21 hate to keep belaboring this point, but I just -- because we  
22 keep hearing statements about people makes up their mind before  
23 they ever come in courtroom, and never hear one word of proof,  
24 it worries us. Not only...

25 **GENERAL SCHMUTZER:** Object, Your Honor, this is more of

1 a statement than a question. We've been over it once before.

2 MR. DANIEL: Question is: Will you listen to the proof,  
3 and can we start fair and start even in this case?

4 (No jurors respond audibly.)

5 MR. DANIEL: Mr. Justus, can you look over at Gary right  
6 now and tell him, say, "Gary, you're innocent"? Because he is  
7 innocent right now. Can you do that?

8 JUROR JUSTUS: (No audible response.)

9 MR. DANIEL: If you was charged, you want to start out  
10 with the same presumptions with you, and have the same laws  
11 apply to you that apply -- that we're asking you all to apply  
12 to these boys. Can you do that? Can you, Mr. Parrott?

13 JUROR PARROTT: (No audible response.)

14 MR. DANIEL: You, Mr. Johnson?

15 JUROR JOHNSON: (No audible response.)

16 MR. DANIEL: You understand what we're saying? Not  
17 asking you to commit yourself to anything; I'm just asking can  
18 we get a fair trial, a fair shake? Is that fair enough?

19 JUROR PARROTT: I would like to say that  
20 (indiscernible). I'm acquainted with a lot of the officers.

21 THE COURT: I'm sorry.

22 JUROR JOHNSON: Mr. Miller asked if we were connected  
23 with any of the potential witnesses.

24 THE COURT: Yes.

25 JUROR JOHNSON: I'm acquainted with many of the

1 officers.

2           **THE COURT:** Sure, I've heard you -- right, you said  
3 that, as I recall. Is there anything about that, however,  
4 Mr. Johnson, that would cause you to be swayed one way or  
5 another in this case?

6           **JUROR JOHNSON:** No.

7           **THE COURT:** Okay.

8           **MR. DANIEL:** You work for Cash Hardware, is that  
9 correct?

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

11          **MR. DANIEL:** I'm sure I know most people in town; a lot  
12 of people come through there and see you, right?

13          **JUROR JOHNSON:** Many of the potential witnesses.

14          **MR. DANIEL:** You're just going to sit there and listen  
15 to what you hear here from the witness stand and what you hear  
16 in the courtroom, and base your decision on that, is that fair  
17 enough?

18          **JUROR JOHNSON:** (Inaudible).

19          **MR. DANIEL:** Thank you, sir.

20          **THE COURT:** As the attorneys are doing their job here,  
21 ladies and gentlemen, the Court, throughout this trial, will  
22 have to rule on objections and other things in the trial, and  
23 the lawyers will make objections to certain statements or  
24 testimony, whatever, and I'll have to rule on those. And  
25 fortunately for you all, I think you have some of the best

1 attorneys in our state in this courtroom on this trial. They're  
2 good attorneys, and they do their job very well, and they have  
3 to do their job. And so just because they make objections  
4 doesn't mean that they're trying to hide anything. They have  
5 to make objections on issues of evidence and law; I have to rule  
6 on those objections. And just because I might rule one way or  
7 another on a particular objection, or just because I might say  
8 one thing or another to a particular attorney, please do not  
9 infer anything from that, other than I have ruled on an  
10 objection.

11 As I will tell you now and throughout the trial, it's  
12 not your job to please me or anybody associated with this trial,  
13 as long as you do your job according to the oath that you take.

14 (Peremptory Challenge Slip #15 was submitted, and the  
15 following jurors were excused: Juror Parrott and Juror  
16 Welch.)

17 (The following jurors were called to fill the jury box:  
18 Larry Gibson and Charles Latham.)

19 **THE COURT:** For Mr. Latham and Mr. Gibson, have you  
20 heard all the questions that have been asked by counsel so far,  
21 and the statements by the Court?

22 (Certain jurors respond.)

23 **THE COURT:** For either of you gentlemen, has there any  
24 issue been raised in your mind as to whether or not you could  
25 be fair and impartial to both sides in this lawsuit? Either one

1 of you?

2 (No jurors respond audibly.)

3 **THE COURT:** Okay. Mr. Latham, have you understood about  
4 the fact that the indictment, itself, raises no inference or  
5 presumption of guilt, and that these defendants here are  
6 presumed innocent of all the charges? You understand that, sir?

7 **JUROR LATHAM:** Yes, sir, I do.

8 **THE COURT:** Have any problem with that?

9 **JUROR LATHAM:** No.

10 **THE COURT:** Do you agree with that concept of law?

11 **JUROR LATHAM:** Yes, sir, I do.

12 **THE COURT:** Okay. And do you understand, sir, that the  
13 fact that I have to talk to you about issues concerning the  
14 death penalty doesn't mean that I think anybody's guilty, do you  
15 understand that?

16 **JUROR LATHAM:** Yes, sir.

17 **THE COURT:** Have you read or heard anything about this  
18 case, Mr. Latham, before you came here today?

19 **JUROR LATHAM:** Some, yes, sir.

20 **THE COURT:** Some? Okay. Have you formed any opinions  
21 about the guilt or innocence of these defendants, either of  
22 them?

23 **JUROR LATHAM:** Probably an opinion, sir.

24 **THE COURT:** An opinion? Okay. Let me ask you this:  
25 Could you base your verdict solely on the evidence that comes

1 from this witness stand, and the law that I give you, and lay  
2 aside any opinions you might have previously had?

3 JUROR LATHAM: Going to try to.

4 THE COURT: Okay. Could you do that?

5 JUROR LATHAM: I don't know.

6 THE COURT: Okay.

7 JUROR LATHAM: Honestly, I don't know.

8 THE COURT: And I appreciate that. That's -- you know,  
9 that's a hard thing. If you -- if you feel, sir, that you could  
10 not lay your opinions aside, then I would have to excuse you  
11 from service here, you understand that and I understand that.

12 JUROR LATHAM: (Inaudible).

13 THE COURT: Okay. You don't think you could do that,  
14 or don't know if you could do that?

15 JUROR LATHAM: I don't know if I could or not.

16 THE COURT: All right, sir.

17 JUROR LATHAM: I want to be honest.

18 THE COURT: I appreciate that, Mr. Latham. That's why  
19 that I have faith in our jury system, because people, I think,  
20 tell us the truth when they come up here. I'll have to let you  
21 -- I'll excuse you then, Mr. Latham. Thank you, sir.

22 (Juror Latham is excused.)

23 GENERAL SCHMUTZER: Your Honor, may we approach the  
24 bench?

25 THE COURT: You sure may.

1 (A bench conference was held on the record, to-wit:)  
2 **GENERAL SCHMUTZER:** Can we take a break?  
3 **THE COURT:** Why, surely we can.  
4 **GENERAL GREEN:** While we're up here, what's the count?  
5 **THE COURT:** That is a good question. You have one left,  
6 Mr. Webb.  
7 **MR. WEBB:** When we get rid of these, do we get 15 more?  
8 **THE COURT:** Sure. They're renewable.  
9 **MR. WEBB:** That's what I thought.  
10 **THE COURT:** The State has six left.  
11 **MR. MILLER:** Are we going to get two per alternate?  
12 **THE COURT:** It's one per alternate under the rule.  
13 Yeah, we'll take a break.  
14 **GENERAL SCHMUTZER:** I just thought it might be a good  
15 time, because I knew we'd be here awhile.  
16 **THE COURT:** Unless you want me to wait about 30 minutes.  
17 Would you want me to do that?  
18 **GENERAL SCHMUTZER:** I don't think my co-counsel really  
19 wants you to do that.  
20 **THE COURT:** Very good. Very good.  
21 (The bench conference having been concluded, the  
22 following proceedings were had in open court.)  
23 **THE COURT:** Ladies and gentlemen, the Court is going to  
24 take a ten minute recess. Do not discuss the case or let anyone  
25 talk to you about the case, and we'll come back and hopefully

1 quickly conclude the process. Thank you.

2 (The court is recessed.)

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

5 (The following juror was called to fill the jury box:  
6 William E. Taylor.)

7 **THE COURT:** Good morning. Now, before Mr. Taylor, the  
8 last one was called was Mr. Gibson, is that correct? Have I  
9 asked you about the pretrial publicity? Have I asked you any  
10 of that? Yes, sir?

11 **JUROR GIBSON:** (Inaudible).

12 **THE COURT:** Okay. Have you formed any opinion,  
13 Mr. Taylor, based on anything that you've seen or heard, about  
14 the guilt or innocence of either of these defendants?

15 **JUROR GIBSON:** Are you speaking to me?

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

17 **JUROR GIBSON:** My name is Gibson.

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

19 **JUROR GIBSON:** No, sir, I haven't.

20 **THE COURT:** Okay, you have not.

21 Mr. Taylor, have you heard all the questions asked by  
22 counsel and by the Court here today?

23 **JUROR TAYLOR:** Yes.

24 **THE COURT:** Have you read anything about this case or  
25 heard anything about the case before you came here, sir?

1 JUROR TAYLOR: I've read about it.

2 THE COURT: Okay. Have you formed an opinion, based on  
3 what you've heard or read, about the guilt or innocence of  
4 either of these gentlemen?

5 JUROR TAYLOR: (Inaudible).

6 THE COURT: Okay. Have both of you gentlemen understood  
7 what the Court has said about the fact that these gentlemen are  
8 indicted in this case raises no inference or presumption,  
9 whatsoever, of their guilt in this case? Both of you understand  
10 that? That they're only officially charged, and that's why all  
11 of you are here, is to determine whether or not they are guilty  
12 of these charges or any charges.

13 Have you understood, Mr. Taylor, what the Court has said  
14 about the death penalty?

15 JUROR TAYLOR: Yes, sir.

16 THE COURT: And do you and Mr. Gibson understand that  
17 simply because I ask you questions about the death penalty  
18 doesn't mean that in this case these gentlemen are guilty of  
19 anything, do you understand that? And that I have to ask you  
20 these questions.

21 Mr. Taylor, do you have any moral reservation about  
22 considering the death penalty as an option in the event either  
23 of these gentlemen were convicted of first degree murder?

24 JUROR TAYLOR: I have some reservations, but I don't  
25 (indiscernible).

1           **THE COURT:** Okay, I'll ask it this way: Could you  
2 consider, in a proper case, after listening to the evidence and  
3 instructions that the Court gives you about the aggravating and  
4 mitigating circumstances, could you consider it as an option in  
5 sentencing?

6           **JUROR TAYLOR:** (Inaudible).

7           **THE COURT:** Okay. And on the other hand, sir, would  
8 you, in each and every case, automatically sentence someone to  
9 death just because they were convicted of first degree murder?

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

11          **THE COURT:** Okay, thank you.

12          Mr. Gibson, the same questions. Do you have any moral  
13 reservations about considering the death penalty as an option?

14          **JUROR GIBSON:** No, sir.

15          **THE COURT:** Okay. And, conversely, would you  
16 automatically sentence someone to death just because they had  
17 been convicted of first degree murder?

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

19          **THE COURT:** Okay. Anything either of you gentlemen  
20 think you need to tell the Court about either any witnesses you  
21 know, or anything that you think might cause you to be unfair  
22 to either side?

23          **JUROR TAYLOR:** I'm familiar with a couple of the  
24 witnesses, but I don't think it would have any bearing.

25          **THE COURT:** Okay. Are they -- are they officers or...?

1 JUROR TAYLOR: One of them is (inaudible).

2 THE COURT: Okay, Dr. who?

3 JUROR TAYLOR: Madison.

4 THE COURT: Yes, Steve Madison. Because of your  
5 knowledge of these individuals, could you look at their  
6 testimony and weigh it just like you would anyone else's  
7 testimony, and judge it not just because they say it, but how  
8 they say it and what they say?

9 JUROR TAYLOR: (No audible response.)

10 THE COURT: Okay, thank you. General Schmutzer?

11 GENERAL SCHMUTZER: Mr. Gibson, where do you live,  
12 please, sir?

13 JUROR GIBSON: Seymour.

14 GENERAL SCHMUTZER: Okay. And your occupation?

15 JUROR GIBSON: I'm an owner of a business.

16 GENERAL SCHMUTZER: Okay, sir. And what kind of  
17 business is that?

18 JUROR GIBSON: It's automotive related. Larry Gibson  
19 Motor Sports.

20 GENERAL SCHMUTZER: Okay, thank you.

21 And Mr. Taylor, where do you live, please?

22 JUROR TAYLOR: Pigeon Forge.

23 GENERAL SCHMUTZER: And your occupation?

24 JUROR TAYLOR: I'm a self-employed (indiscernible).

25 GENERAL SCHMUTZER: I missed the latter part of that.

1 I'm sorry.

2 JUROR TAYLOR: Builder of musical instruments.

3 GENERAL SCHMUTZER: Builder of musical instruments? Do  
4 you have a shop there in Pigeon Forge, or do you do it in your  
5 home or...?

6 JUROR TAYLOR: No, I don't have a shop. It's mostly  
7 wholesale.

8 GENERAL SCHMUTZER: Wholesale? Okay. Thank you.

9 You gentlemen heard the questions I asked earlier. Any  
10 problems with any of them about circumstantial evidence, about  
11 following the law with regard to that?

12 JUROR TAYLOR: No.

13 GENERAL SCHMUTZER: The fact that this is a murder case,  
14 would you require the State to a higher burden of proof than  
15 what the Court will tell you is required, beyond a reasonable  
16 doubt? Not just any doubt?

17 JUROR TAYLOR: No.

18 GENERAL SCHMUTZER: The -- it was mentioned---I ask this  
19 not just for the two of you but to everyone---that this is a  
20 serious case. It is. No doubt about it. Very charge makes it  
21 serious. It's serious to these defendants, it's serious to the  
22 family of the victim, it's serious to this entire community.  
23 Do any of you feel that you would shirk from your duty or be  
24 intimidated by the very fact that it is serious? Because part  
25 of the charge will be that you will fearlessly do your duty,

1 without sympathy or prejudice to anyone. Anyone think that they  
2 would let that be a problem to them in doing your duty?

3 (No jurors respond audibly.)

4 **GENERAL SCHMUTZER:** I take it you wouldn't as you sit  
5 there. Anyone to the contrary?

6 (No jurors respond audibly.)

7 **GENERAL SCHMUTZER:** I take it not.

8 Anything at all we've asked, and particularly Mr. Taylor  
9 and Mr. Gibson, anything that's been asked that would cause you  
10 any problems or difficulty by either side that you can think of?

11 **JUROR TAYLOR:** You asked about any personal things going  
12 on. My -- I'm supposed to, as of tomorrow, take a trip with the  
13 Cub Scouts to Charleston, South Carolina. And part of Cub  
14 Scouting is civic duty, so I... This is a duty. It is -- you  
15 know, it would be in my mind, but they would probably  
16 (indiscernible). But, you know, I would be thinking about that  
17 some.

18 **GENERAL SCHMUTZER:** Sure. All right, well, I appreciate  
19 your candor. And that is important.

20 As pointed out, this is a circumstantial evidence case.  
21 There will be a large number of witnesses. Some will, you know,  
22 obviously have more to -- maybe to bring to the case than  
23 others, but, you know, everything will have some importance and  
24 be relevant and material to the case. And so it's -- you know,  
25 you have to follow that. Do you feel that that would be on your

1 mind to the extent -- or would weigh on your mind to the extent  
2 that you would not be able to follow the evidence as its  
3 presented here?

4 JUROR TAYLOR: I would do my best to follow the  
5 evidence, yes, sir.

6 GENERAL SCHMUTZER: Did you tell me that you do have  
7 someone else that can... Well, you realize, of course, if  
8 you're chosen as a juror, you won't be going on that trip.

9 JUROR TAYLOR: I realize that. That's why I...

10 GENERAL SCHMUTZER: Right, I understand. I mean, the  
11 trip will be out of the question. Well, is that going to knock  
12 all these boys out of getting to go, or are you going to have  
13 someone else that can take them?

14 JUROR TAYLOR: No, there's only one it'll knock out of  
15 getting to go.

16 THE COURT: That's you?

17 JUROR TAYLOR: No, that's my son.

18 GENERAL SCHMUTZER: Oh, your son would not be able to  
19 go with someone else?

20 JUROR TAYLOR: That is correct.

21 GENERAL SCHMUTZER: Well, only you can answer that. You  
22 tell me, and maybe the Court might want to ask a question; I  
23 don't know. But...

24 THE COURT: I'll just say this to you, Mr. Taylor, I had  
25 some plans for this weekend, and my son's off school Friday and

1 Monday. And as -- as are all students, I think, here in Sevier  
2 County. But we've got our job to do. If it's not something of  
3 extreme hardship, of course, the Court would have to ask you to  
4 serve. I certainly don't want to make you serve, but all those  
5 other people sitting in the box really don't want to be here,  
6 either, and I understand where you're coming from. But if you  
7 feel like that you could do your duty here and be fair and  
8 impartial to both sides, we sure would like to have you.

9 JUROR TAYLOR: I just mentioned that.

10 THE COURT: I understand.

11 JUROR TAYLOR: I would like to do my civic duty.

12 THE COURT: Thank you. Thank you. Thank you.

13 GENERAL SCHMUTZER: Appreciate you bringing it to my  
14 attention. Thank you very much.

15 How about you, Mr. Gibson? Anything at all might cause  
16 you to not -- you know, be thinking about something else other  
17 than the case?

18 JUROR GIBSON: Other than the business, that shouldn't  
19 be a problem.

20 GENERAL SCHMUTZER: Okay, sir. Thank you. Anything at  
21 all that's been asked that you think -- anything else that's  
22 been -- not been asked or been asked you think you need to bring  
23 to our attention?

24 THE COURT: I don't know that you all ought to ask all  
25 those open-ended questions, General.

1           **GENERAL SCHMUTZER:**     That's true.     I understand.  
2 Dangerous proposition.

3           Mr. Taylor, I take it if you end up on this jury you're  
4 not going to hold that against the State or the defendants or  
5 anybody else, or the judge? Well, hold it against the judge.

6           **THE COURT:** Hold it against me.

7           **GENERAL SCHMUTZER:** Yeah, you ought to. We can use him.

8           (No jurors respond audibly.)

9           Thank you, you all.

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

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

12          Mr. Gibson, I think you said you'd heard something about  
13 the case. Have you formed any opinions based on what you've  
14 heard or read?

15          **JUROR GIBSON:** I've heard very little about the case.  
16 I don't -- I read no media, no newspapers or nothing. Or very  
17 little.

18          **MR. MILLER:** That's probably a wise thing to do. So you  
19 can come in here with an open mind and make your decision based  
20 on what comes from the witness stand?

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

22          **MR. MILLER:** Do you know anybody that's involved on  
23 either side, any of the witnesses who were called, or any of the  
24 family on either side?

25          **JUROR GIBSON:** Other than just hearing the names. I

1 mean, you know, just here in town, living here in Sevier County,  
2 I mean, you'll hear of them and hear names before, but none of  
3 them I know.

4 MR. MILLER: Okay. And do you know anybody here at the  
5 sheriff's department or that's involved in law enforcement  
6 that's closely associated with you?

7 JUROR GIBSON: No, sir, I do not.

8 MR. MILLER: Mr. Taylor, you've also heard something  
9 about the case, I take it?

10 JUROR TAYLOR: (No audible response.)

11 MR. MILLER: You've not formed any opinions?

12 JUROR TAYLOR: No, sir. What I read in the paper; I  
13 really saw nothing on TV.

14 MR. MILLER: And you understand that whatever you read  
15 and heard you can leave that out there on the outside of the  
16 door. And if it doesn't come from that witness stand, it's not  
17 evidence to be considered. Will you do that?

18 JUROR TAYLOR: (No audible response.)

19 MR. MILLER: You all have heard several times today the  
20 burden of proof beyond a reasonable doubt, and that burden's on  
21 the State at all times. Can each of you give me your word,  
22 Mr. Taylor, Mr. Gibson, that you will hold the State to that  
23 burden?

24 (No jurors respond audibly.)

25 MR. MILLER: And that you can presume James Dellinger

1 is innocent? Will you do that?

2 (No jurors respond audibly.)

3 MR. MILLER: That presumption stays with him throughout  
4 the trial process.

5 And Mr. Taylor, you mentioned a very important thing,  
6 our civic duty to serve as jurors. It's not only your duty as  
7 jurors to serve, but to follow the law as the judge gives it to  
8 you. And if the State does not prove the case beyond a  
9 reasonable doubt, it is your duty as a juror, your civic duty  
10 to find Mr. Dellinger not guilty. Can each of you give me your  
11 word as jurors that you'll do that duty?

12 (No jurors respond audibly.)

13 MR. MILLER: Thank you.

14 MR. DANIEL: Mr. Taylor, what kind of musical  
15 instruments do you make, sir?

16 JUROR TAYLOR: Dulcimers.

17 MR. DANIEL: Dulcimers? I'll ask this of you two  
18 jurors. I'm not going to try to speed this thing up. Could you  
19 hear, Mr. Gibson, the questions that I asked these other jurors,  
20 and the statements that was made here awhile ago?

21 JUROR GIBSON: Yes, I did.

22 MR. DANIEL: Was I talking loud enough for you? Tried  
23 to. Did you hear them, also?

24 (No jurors respond audibly.)

25 MR. DANIEL: These jurors have sat here and heard this

1 same thing over and over, and I know they're sick of it, and I  
2 don't -- I wouldn't blame them. But it is a serious case, and  
3 we wanted to ask you just a few questions.

4           You realize that this is a circumstantial evidence case?  
5 The attorney general said that, and what that means is there's  
6 no direct proof of these defendants' guilt. They're going to  
7 have to try to prove it through circumstances. And basically,  
8 just in a nutshell, the law is that circumstantial evidence must  
9 prove beyond any -- all other reasonable hypothesis, that  
10 everything points to their guilt. If there's any other  
11 reasonable hypothesis you couldn't convict in this case because  
12 it's circumstantial. Would you understand that (sic)?

13           (No jurors respond audibly.)

14           **MR. DANIEL:** And in that regard, there were some  
15 questions about some other possible charges. General Flynn's  
16 here. He's from over in Blount County. He's got a case  
17 pending; he's charged these boys, or they've charged -- they've  
18 been charged over in Blount County on a charge regarding this  
19 murder of Tommy Griffin.

20           The reason we're telling you that, the reason you hear  
21 -- you might hear stuff like that, it's part of the State's  
22 theory that that has something to do with this crime, covering  
23 up this crime or something of this nature. We say that it  
24 doesn't, and it's our theory that they cant prove that they  
25 killed him over -- they have a totally circumstantial case over

1 there, and it's our -- so our theory that it's got nothing to  
2 do with this case. It's our theory that they haven't committed  
3 these crimes.

4 So the point is that because of the way that the charges  
5 are brought, and because of what the State has chose to do, it  
6 may become that -- it may -- it may, I don't know if the judge  
7 will let you consider it or not, he'll have to make that  
8 decision, but he's -- possibility you get to consider that. But  
9 the bottom line is: You're not trying that case. You're trying  
10 this case as to whether or not they are guilty beyond a  
11 reasonable doubt under circumstantial evidence of the death of  
12 Connie Branum. And if that case has to be tried over there,  
13 that's something for another jury in another county; you all are  
14 not concerned with it. That's something somebody else will deal  
15 with. Do you understand that?

16 (No jurors respond audibly.)

17 MR. DANIEL: I want to get that up front, because we're  
18 not trying to hide nothing from you, want to tell you up front  
19 what's going on so you'll come in here with open minds and try  
20 this case on the issues and on the evidence as you hear it, not  
21 what you hear in the newspapers, or what you read, or what  
22 somebody might think. 'Cause this is a case where the State  
23 puts their proof on first, they charge people, the newspapers  
24 pick up what the charges are and what's said there. You don't  
25 hear the other side of the coin, or you don't hear the cross-