

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

AT SEVIERVILLE, TENNESSEE

STATE OF TENNESSEE,

Appellee,

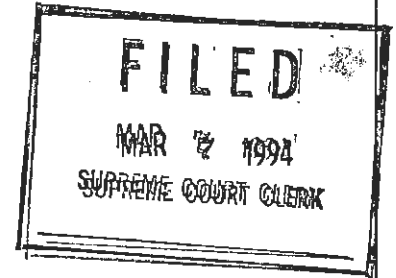
-vs-

GARY WAYNE SUTTON and,
JAMES ANDERSON DELLINGER

Appellants.

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CASE # 5033, 5035



TRANSCRIPT OF THE EVIDENCE:

Trial

February 16-24, 1993

Volume 9 of 22 Volumes

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

APPEARANCES:

FOR THE STATE

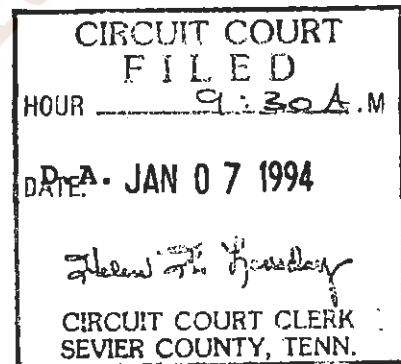
GEN. ALFRED C. SCHMUTZER, JR.,
GEN. G. SCOTT GREEN, A.D.A.
Fourth Judicial District
Sevier County Courthouse
Sevierville, Tennessee

FOR THE DEFENDANT SUTTON

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Courtesy of
Time of Death Podcast
by Beth Braden

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

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1 **GENERAL SCHMUTZER:** Your Honor, McGowan vs. State
2 says that "Crimes are not limited to those perpetrated against
3 the victim, but can also include crimes of violence perpetrated
4 against the victim's family."

5 **THE COURT:** That's always been the law.

6 **MR. WEBB:** Your Honor, there's a motion in limine
7 that I have before me that's not been filed. I'll file it just
8 as soon as I make this argument.

9 We received a supplemental report from Dr. William
10 Bass, state forensic anthropologist, and he gives two statements
11 in that supplemental report that we would ask the Court to
12 preclude Dr. Bass from testifying to, as he is not qualified.
13 The two statements are as follows:

14 "I'm positive some accelerant was used," and then
15 another statement, "This type of burn did not
16 result from Connie Branum smoking or dropping a
17 cigarette in her car."

18 Dr. Bass is a very well qualified forensic
19 anthropologist, but I don't believe anyone here can state that
20 he is qualified to testify as an arson expert.

21 **THE COURT:** I believe we better wait until I hear
22 his qualifications.

23 **GENERAL SCHMUTZER:** I think Your Honor -- the fact
24 is, Your Honor, as a forensic anthropologist, he has written
25 some articles on fire burnings, car burnings, and studied burned

1 bodies, and things like that.

2 MR. WEBB: We would ask for a jury out on that,
3 Your Honor.

4 THE COURT: Surely. Mr. Miller?

5 MR. MILLER: Your Honor, I have a motion in limine
6 I have not filed in a written motion, but we were furnished
7 recently with a copy of a criminal -- some type of citation, I
8 think, for illegal hunting where Mr. Dellinger, I guess, was
9 ultimately convicted of illegal hunting. They've put me on
10 notice of a witness, Tony Proffitt, who was a Wildlife Resources
11 Agency officer that cited him for illegal hunting, and I don't
12 know what it has to do with this case.

13 GENERAL SCHMUTZER: Your Honor, this took place
14 within a mile of where this happened, and this was to show that
15 this -- we're not going to, unless they open it up -- I
16 furnished them all the information. All I'm going to ask the
17 officer is did he ever have contact with this defendant in the
18 vicinity of where this crime occurred.

19 THE COURT: Except, when did this contact occur?

20 GENERAL SCHMUTZER: This was in 1990, Your Honor,
21 to show he's familiar with this -- this is a very remote area,
22 Your Honor.

23 MR. MILLER: Sand Mountain, Waldon Creek. I don't
24 know the area, but I've been told that's nowhere near this
25 place.

1 **GENERAL SCHMUTZER:** You'll have to get that from
2 the officer.

3 **MR. WEBB:** I talked to Mr. Proffitt the other day -
4 - yesterday or the day before, and he said he don't even think
5 it was the same man.

6 **GENERAL SCHMUTZER:** Well, you can cross examine on
7 that, but he's told us who it was.

8 **THE COURT:** Well, if it happened down on Walden's
9 Creek, even though I probably can't take judicial notice of
10 this, I actually know that Walden's Creek is not Happy Hollow
11 or Clear Fork.

12 **GENERAL SCHMUTZER:** Your Honor, what this is is
13 that there's a ridge between this area, and it's not down on the
14 creek. This is up on Sand Mountain, and you can read all that.
15 Sand Mountain butts up to this. All you've got to do is cross
16 over the ridge, and come down to wherever this is. In fact, you
17 probably -- a four wheel drive, which he had, you could drive
18 into their. It's only to show -- we're not going into the fact
19 that he gave him a citation. He did submit, and probably did
20 tell them earlier that he didn't think it was the same man
21 because he used the wrong name. I'm not even going to go into
22 that. All I want to show is that this man was in this area...

23 **THE COURT:** In 1990?

24 **GENERAL SCHMUTZER:** In 1990. Just to show that
25 he's familiar with this area, Your Honor, because otherwise,

1 it's a remote area, you don't have any signs going to it, it's
2 not a county road.

3 **THE COURT:** Gentlemen, the Court feels like that
4 based on the fact that Mr. Dellinger lived in the area, that it
5 is unnecessary for Officer Proffitt to testify in chief about
6 this, and that he was there in 1990 has, obviously, as stated,
7 no bearing on any real issue in this case at this time. Now,
8 it could become relevant if the door is opened, but at this
9 time, I will grant your motion in limine on that, Mr. Miller.
10 I sure will.

11 **MR. MILLER:** Your Honor, I have -- I want to at
12 this time renew my motion to suppress shotgun shells found
13 pursuant to a search warrant conducted -- when a search was
14 conducted at the Dellinger residence prior to any consent being
15 given by Linda Dellinger prior to her being there. And I raise
16 it again, and I know the Court's ruled on it, but I raise it
17 again for this reason. When we heard the motion the other day,
18 Mr. Schmutzer's response was, "No, they didn't develop the
19 proof."

20 These shells were found down at the Homer Gray
21 residence. Today, twice, in his proffers to the Court, he
22 stated that these two shells that compared to the shells found
23 over in Blount County were found in James Dellinger's yard.

24 **GENERAL SCHMUTZER:** Your Honor, there was one --
25 I was talking in generalities. He owns both this property, but

1 Angel Gray is the daughter, and was using one of the trailers.
2 Two were found down there at her place, to my understanding, and
3 one was found up behind his place. This was all gone into. The
4 Court has ruled.

5 THE COURT: I've ruled on it.

6 GENERAL SCHMUTZER: They came back, and the Court
7 held that he came too late. We heard that months ago, and he
8 waited, and he came up, and brought it back up to the Court, I
9 guess, Tuesday, and the Court ruled again on it.

10 MR. MILLER: I just wanted to bring that to the
11 Court's attention that the attorney general did represent today
12 that the shells that matched were found in the yard of James
13 Dellinger.

14 THE COURT: Okay. Anything further?

15 MR. MILLER: Just one minute, Your Honor. Your
16 Honor, just so the record's clear, and I think they Court may
17 have ruled previously, but I again ask the Court to rule on the
18 validity of the search warrant at this time.

19 THE COURT: The Court declines to rule on the issue
20 of the search warrant because I've already held the evidence is
21 admissible pursuant to a consensual search of the premises, and
22 that the other matter does come too late -- some November,
23 December, January, February -- some three months after the
24 motion hearing that I scheduled -- two motion hearings that I've
25 scheduled.

1 **GENERAL SCHMUTZER:** Nothing more from the State,
2 Your Honor.

3 **THE COURT:** The defense?

4 **MR. MILLER:** Just so -- I think the Court knows,
5 we did raise, and ask the Court to rule on the search warrant
6 at that time. It is my position at no time -- this man's life
7 is on the line, and due process standard is high, and that if
8 anything isn't too late as long as it comes before the jury is
9 sworn.

10 **THE COURT:** The Court further holds that the
11 evidence in question after the consent to search would have been
12 found anyway. That's what the Court holds. Any further
13 motions?

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

15 **THE COURT:** Mr. Miller, Mr. Daniel, Mr. Webb, Ms.
16 Thomas?

17 **MR. MILLER:** Nothing further, Your Honor.

18 **THE COURT:** This Court stands adjourned...

19 **MR. WEBB:** Your Honor, may we approach the bench?

20 **THE COURT:** Sure.

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

22 **MR. WEBB:** Just a house cleaning matter. I'm sure
23 the general has no objection, but both these
24 defendants have not been getting any sleep at
25 night. What had happened, and Sheriff Ogle

1 explained this to objection, and we had no
2 objection at the time. They've been removed from
3 their normal cell, wherever that happens to be, to
4 a place closer up front...

5 **THE COURT:** For security.

6 **MR. WEBB:** Well, but the doors open and shut. Gary
7 told me he slept about an hour last night. I can't
8 speak for Mr. Dellinger, but -- Sheriff, would you
9 come up, please? I'm talking about something we
10 need to make you a party to. I apologize, Sheriff,
11 I started talking without you being here, and I
12 apologize. Gary's advised that apparently the
13 doors slam all night, and he got about an hour's
14 sleep last night.

15 **SHERIFF OGLE:** Listen, David. You've asked me to
16 give them their exercise at night, I'm doing it.
17 I moved them up front so I could watch them, and
18 make it more convenient to get them in and out.
19 It's costing me valuable added man hours to oblige
20 you. I've done everything you've asked me. I
21 cannot control the doors.

22 **MR. WEBB:** Okay. I'm just making that. It's
23 nothing personal, Sheriff, I'm just bringing that
24 to the Court's attention.

25 **THE COURT:** Jails by nature, I would -- from my own

1 experience, are not a quiet place to live. I don't
2 know, gentlemen, what we can -- you know, and
3 there's certainly no way that the sheriff's
4 department is doing anything intentionally to keep
5 these defendants from sleeping because they have -
6 - the sheriff has been extremely...

7 MR. WEBB: What I mean to say -- I hope that's not
8 been the inference I raised because if it was, I'll
9 certainly apologize to everybody here. That
10 certainly was not the inference.

11 THE COURT: No, I didn't even take it as that, Mr.
12 Webb.

13 MR. WEBB: Well, I hope the Sheriff didn't. I
14 apologize if you did, Sheriff.

15 THE COURT: But he has done everything that...

16 SHERIFF OGLE: No, I just wanted to make my point.
17 We're going everything we know to do.

18 MR. WEBB: I understand, Sheriff, and I just didn't
19 want you to think we were criticizing. We were
20 not.

21 THE COURT: The Court certainly appreciates, and
22 this is not anything merely for gratuity, but I
23 sincerely appreciate the efforts that Sheriff Ogle
24 and his staff, throughout this trial, the
25 accommodations, the courtroom security has been

1 outstanding, and I appreciate that. You know,
2 absent some extreme circumstance to the contrary,
3 the Court is not going to get into the management
4 or housing of the prisoners, other than, as stated,
5 Sheriff Ogle agreed yesterday to provide the hour
6 of recreation, and I'm sure he will do everything
7 he can to see that their time there is as
8 accommodating as possible.

9 MR. WEBB: Thank you, Your Honor.

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

12 THE COURT: The Court stands adjourned until 9:00
13 a.m. in the morning.

14 (END OF PROCEEDINGS THIS DATE)

1 **THE COURT:** The Court wanted -- after our hearing
2 last evening in regards to the request of Mr. Miller in regards
3 to the search warrant, I went back and reviewed my notes and the
4 transcript that had been prepared from that hearing earlier, Mr.
5 Miller, and in fact, you had requested the Court at that time
6 to rule on the search warrant, and in all candor, in the
7 intervening months in discussing the other crimes evidence, the
8 Court, in all candor, had forgotten that, and so the Court is
9 prepared to rule on the search warrant question.

10 I had ruled at that time that the search in
11 question was consensual, and therefore, did not rule on the
12 search warrant question. But the Court does find that the
13 affidavit of the search warrant was woefully inadequate upon
14 which to base a search warrant, and therefore, must hold that
15 that search warrant was not up to constitutional standards.
16 However, the Court does find and did find that the search was
17 pursuant to a consensual search. It was uncontradicted in the
18 record that the search was pursuant to a valid consent, and that
19 the evidence -- other evidence, as stated, would have been
20 inevitably found anyway under existing federal case law. So
21 that's the ruling of the Court.

22 Anything further? I understand there's some issues
23 about the statements?

24 **MR. WEBB:** Yes, Your Honor. Yesterday evening
25 after court -- immediately after Court, the attorney general's

1 office provided us with some Jencks material. Counsel for the
2 defendants have reviewed that, and we would ask the Court to
3 consider a motion in limine on a couple of those statements.

4 There is a...

5 THE COURT: Okay, now. I'm looking at the Sutton
6 statement of February 25th...

7 MR. WEBB: No, let me focus your attention. This
8 is Jencks material that was handed to us by the State.

9 THE COURT: I'm sorry. Okay.

10 MR. WEBB: And a couple of some witnesses they are
11 going to call. One of their witnesses, Your Honor, is an
12 officer at the Sevier County Sheriff's Department, John Brown,
13 and apparently, John Brown was the officer who went up on
14 February 15th at the Dellinger residence to take an offense
15 report regarding a vandalism at the Dellinger residence.

16 THE COURT: Okay.

17 MR. WEBB: There was a statement that Mr. Dellinger
18 made to Officer Brown as follows, and I will quote it to you.
19 I hope it's accurate. "Mr. Dellinger further stated Gary Sutton
20 had been in a fight with one of the Griffin boys, and one of
21 them done the shooting." Let's let that soak in just a little
22 bit.

23 THE COURT: He'd been in a fight with one of the
24 Griffin boys, and they'd done the shooting.

25 MR. WEBB: And what our situation is, Your Honor,

1 with respect to Mr. Sutton, that's a statement made by the co-
2 defendant about Mr. Sutton to this officer. Mr. Sutton was not
3 present at that time, and we feel that that statement is
4 hearsay, and may very well have some Bruton problems attaching
5 to it.

6 THE COURT: Repeat the statement again, please.

7 MR. WEBB: All right. The statement is, "Mr.
8 Dellinger further stated..." obviously, he stated this to John
9 Brown... "Gary Sutton had been in a fight with one of the
10 Griffin boys, and one of them done the shooting."

11 THE COURT: Okay.

12 MR. WEBB: So I don't think it's proper for John
13 Brown to testify to something Mr. Dellinger said about Mr.
14 Sutton when Mr. Sutton wasn't there. I'd ask the Court to
15 prohibit the State from asking that question, and certainly
16 prohibit John Brown from testifying in that regard.

17 THE COURT: General Schmutzer?

18 GENERAL SCHMUTZER: Your Honor, I -- number one,
19 obviously, there are no Bruton problems because there's no
20 confession. Secondly, this does not in any way -- this only
21 states the reason why he thinks the Griffins had shot into his
22 outbuilding -- because there was a problem. And there's going
23 to be independent proof, I already pointed out to the Court,
24 that there was a fight between Gary Sutton -- the Court has
25 ruled that admissible.

1 **THE COURT:** Right.

2 **GENERAL SCHMUTZER:** And so it's not -- it's nothing
3 that's prejudicial. It's only a statement of facts that are
4 going to come in independently by an eye witness. But this goes
5 to his state of mind, and it goes to the reason why he thought
6 the Griffins were the ones that had shot into this outbuilding -
7 - over this fight with Sutton. The accusation doesn't involve
8 Sutton, the accusation involves the Griffins. He's accusing the
9 Griffins of shooting into his place. Of course, that's the bad
10 blood.

11 **THE COURT:** Okay. Read the statement one more
12 time, Mr. Webb.

13 **MR. WEBB:** "Mr. Dellinger further stated Gary
14 Sutton had been in a fight with one of the Griffin boys, and one
15 of them done the shooting." I'd like to raise another point of
16 evidence on that as well, if I could.

17 **THE COURT:** Okay.

18 **MR. WEBB:** Your Honor, the General, and yesterday
19 the Court did rule that they can bring in other evidence about
20 his fight that this statement pertains to. We feel that this
21 is highly prejudicial against our client. He was not there, and
22 it's hearsay.

23 This evidence here -- if the State can prove it
24 another way, then this evidence becomes irrelevant in the sense
25 that they have another way of proving it.

1 **GENERAL SCHMUTZER:** Your Honor, we're not trying
2 to prove the fight at all. It's taken out of context. He was
3 asked, that being Dellinger -- the officer asked him who he
4 thought might be responsible for the vandalism, and he stated
5 the Griffins.

6 **THE COURT:** Okay.

7 **GENERAL SCHMUTZER:** Then he said, "Mr. Dellinger
8 further stated Gary Sutton had been in a fight with one of the
9 Griffin boys, and one of them had done the shooting." So
10 obviously, if one of them had done the shooting, it's talking
11 about the Griffins. And that is...

12 **THE COURT:** I will -- I will allow the portions of
13 the statement that relate to what Mr. Dellinger thinks happened,
14 except the reference to Gary Sutton. The Court will -- under
15 that caveat. It will be redacted to that extent.

16 **MR. WEBB:** That will be fine, Your Honor.

17 **GENERAL SCHMUTZER:** I don't know exactly how to...

18 **THE COURT:** Well, any portion of that statement
19 that Mr. Dellinger makes a statement about Gary Sutton, and so
20 forth, being in a fight, at this juncture, it -- I hold that
21 that is inadmissible in that statement.

22 **GENERAL SCHMUTZER:** May I ask the Court how -- you
23 know, how we can approach that? "He further stated blank had
24 been in a fight?"

25 **THE COURT:** No, no. I don't want any reference to

1 the fight. He makes a statement in there...

2 **GENERAL SCHMUTZER:** I thought you meant just to
3 Gary Sutton. You don't want any reference to the fight at all?

4 **THE COURT:** Right, and he may state that -- his
5 statement, of course, that he thinks that the Griffins shot into
6 his building. That is admissible. The Court's already ruled
7 on that.

8 **MR. WEBB:** Your Honor, if I could approach the
9 bench -- approach Miss Helen?

10 **THE COURT:** Sure.

11 **GENERAL SCHMUTZER:** I understand the Court's
12 ruling, but it sort of leaves us hanging with him not stating
13 his reason why he thinks the Griffins -- just to simply say the
14 Griffins did it.

15 **THE COURT:** I don't -- you know, the statement is
16 being offered to show the intent of Mr. Dellinger, as I have
17 understood what you told me yesterday.

18 **GENERAL SCHMUTZER:** But that's not as to that
19 statement, Your Honor, that is as to the statement, "If I have
20 to, I'll wipe out the entire hill of Griffins."

21 **THE COURT:** Right.

22 **GENERAL SCHMUTZER:** But this statement is only
23 stating why he thinks the Griffins shot into his trailer.

24 **THE COURT:** I understand that.

25 **GENERAL SCHMUTZER:** And -- you know, it's not

1 saying that Sutton has done anything. It's not accusing him,
2 or anything else at all. That's only making reference to
3 this...

4 THE COURT: I understand that. The Court's ruled.

5 MR. WEBB: Your Honor, I have another motion in
6 limine regarding some other Jencks material, and this is a
7 statement provided -- of an Officer Steven Brooks, and an
8 Officer Drew Roberts.

9 If I can approach Miss Helen, I'd like to go ahead,
10 and file that for the record.

11 THE COURT: Sure.

12 MR. WEBB: I'll try to articulate -- this was a
13 little more difficult, I think, to draft, but what basically
14 we're saying, Your Honor, is that these officers are going to
15 come in -- these statements have a lot of hearsay, they have
16 some things that we feel are irrelevant, immaterial,
17 incompetent, and they draw some conclusions.

18 Now, what I have done, Your Honor, I have marked
19 those parts of each of these officers statements that I feel
20 objectionable, and just however it's easier for the Court, I
21 can probably approach Your Honor with...

22 GENERAL SCHMUTZER: I think what we're doing here,
23 we're trying to anticipate testimony, Your Honor. If the
24 question was asked, they could object, and go into it at that
25 time. There's a number of things in these statements, of

1 course, that the State's not going to attempt to go into because
2 they are conclusory, and we're not going to attempt to prove...

3 MR. WEBB: Your Honor, the reason...

4 GENERAL SCHMUTZER: We're going to show facts --
5 there's a number of things, too, that's said to be hearsay, of
6 course, that wouldn't be hearsay like saying he was directed -
7 - he received a call that directed him to the Hunt Road
8 overpass. That's not offered for the truth, that's offered to
9 show what he did in response to that.

10 THE COURT: Right, why he went out there.

11 GENERAL SCHMUTZER: That's outside the hearsay
12 rule. I think the only way you can handle that is when these
13 officers take the stand and testify, and if we ask a question
14 that elicits a...

15 THE COURT: You know, I understand, and I certainly
16 appreciate the motion in limine issues that both sides have
17 raised. I think a lot of it -- you know, truthfully, I think
18 we can adequately deal on these matters as they are brought up
19 in testimony because, otherwise, I would have to go through each
20 and every witness of both sides, and tell you gentlemen what you
21 can ask, and what you can't ask, and I don't think I have to do
22 that.

23 MR. WEBB: Well, I apologize to the Court. What
24 we were trying to do is just save time for the jury and that
25 type thing.

1 THE COURT: I know.

2 MR. WEBB: That will be fine, Your Honor, if we can
3 raise that at the appropriate time. Thank you, Your Honor.

4 THE COURT: Anything further?

5 GENERAL SCHMUTZER: Your Honor, we had asked for
6 some Jencks material, and all I received was a -- and it may
7 have been just a mistake, but a note -- paste on -- Jencks
8 material, and it was on the statement that we had furnished them
9 on one of the defendants.

10 MR. MILLER: Well, Your Honor, we got our Jencks
11 material, of course, last night or the evening before, and
12 obviously, we haven't had time to get that ready, and of course,
13 our proof won't start for several days, and it will give them
14 several days to go through the Jencks material. I don't think
15 that seems fair. I know...

16 THE COURT: Except all counsel told this Court last
17 night, both in this hearing and in chambers last night, that you
18 would exchange Jencks material prior to the testimony. Is
19 that...

20 MR. MILLER: As I remember it taking place in here
21 in the courtroom, Mr. Schmutzer requested Jencks material. He
22 said he's cooperate with us if we would cooperate with him, and
23 I think I told the Court we would furnish the statements adopted
24 by our witnesses. I didn't say when, but...

25 THE COURT: Well, I'll say when. We'll do that

1 before the day's over. If you all have agreed to exchange
2 Jencks material, and the State has provided you, in advance,
3 theirs...

4 **GENERAL SCHMUTZER:** Your Honor, we have -- as we
5 go through, we're providing -- as long as they're going to give
6 me their Jencks material -- you know, I was understanding they
7 were going to give it to me -- obviously, I won't need them
8 until they -- you know, before. I want them, certainly, before
9 they begin their proof. I don't -- and I don't have to have
10 them right now because...

11 **THE COURT:** I understand. Okay.

12 **GENERAL SCHMUTZER:** I understand their situation.
13 I wanted to bring up to the Court, though, that I hadn't
14 received anything, and I would like for them at some point in
15 time to, before they start their proof...

16 **THE COURT:** You know, I can't make you all in
17 advance of witness' testimony do that, but if you agree it's
18 going to be exchanged, gentlemen, let's -- you know, it needs
19 to be mutual.

20 **MR. WEBB:** Well, Your Honor, to put on the record,
21 the General gave us approximately seven or eight statements last
22 night. He's not given us all his Jencks material.

23 **THE COURT:** Well, if you all are going to exchange
24 Jencks material, do it fully. Anything else?

25 **MR. WEBB:** Your Honor, we would -- we did talk in

1 chambers, and we had previously filed a motion for
2 investigator's rough notes, and we were provided with some
3 Jencks material last night that had some summaries of what an
4 officer said a particular witness would testify to, and we would
5 ask the State to be required to provide rough notes as to these
6 statements so that we can look at them.

7 **GENERAL SCHMUTZER:** Your Honor, I don't know what
8 statement they're talking about, but to the extent officers have
9 rough notes and bring them up here, they would have a right to
10 look at them. Otherwise, all we have are the statements. We
11 don't have rough notes.

12 **THE COURT:** If the officer has rough notes of any
13 statements taken by any witness that expects to be offered, and
14 of course, especially of the defendants statements that they...

15 **GENERAL SCHMUTZER:** I think we've done that, Your
16 Honor.

17 **THE COURT:** ...intend to testify to, the Court
18 orders those, of course, to be preserved, and to be provided to
19 defense counsel, and any Jencks material that you all have
20 agreed to exchange.

21 **MR. WEBB:** I can be specific, Your Honor. The
22 Jencks material provided last night were transcribed statements
23 of a lady named Terri Lilly, a Miss Davis, and a Miss Walker.

24 **GENERAL SCHMUTZER:** I don't have any rough notes
25 from those.

1 **THE COURT:** Okay. If you will inquire of your
2 officers, if they do have any rough notes, provide those, as the
3 statements have already been provided -- if they have those
4 notes.

5 **GENERAL SCHMUTZER:** Well, I'll need some time to...

6 **THE COURT:** I understand that. Anything further?

7 **MR. WEBB:** Your Honor, at some time, whenever the
8 Court feels appropriate, we would ask the witnesses be sworn and
9 the rule demanded. I don't know when the Court wants to...

10 **GENERAL SCHMUTZER:** Your Honor -- you know, we're
11 actually -- if the Court please, we're furnishing them what we
12 have. These are statements -- if the officers took rough notes
13 -- those are obviously not statements adopted.

14 **THE COURT:** I don't know that.

15 **GENERAL SCHMUTZER:** Right -- you know, but we have
16 been furnishing them statements, even though they may not have
17 been statements that the witnesses signed or read over, and in
18 any way adopted. We're still furnishing them to them.

19 **THE COURT:** Right.

20 **GENERAL SCHMUTZER:** They, obviously, are not going
21 to do that, and we know we're not going to get much from them
22 because their policy is not to have them sign or adopt any
23 statement. They seem to be writing them out. If we're going
24 to have to furnish rough notes, Your Honor, then we ask --
25 because that's outside Jencks -- the rule of Jencks. We would

1 expect their rough notes if they're going to require...

2 THE COURT: For -- I'm not talking about
3 investigative notes, I'm talking about any notes from which
4 statements have been transcribed is all I'm talking about here.
5 Okay? If...

6 GENERAL SCHMUTZER: Well, there was a tape -- I
7 don't know if they have those -- I don't know if...

8 THE COURT: All I'm saying is if they are available
9 -- you know, if there's a question between the difference in a
10 transcription and the original statement or notes taken of that
11 statement from which a later transcript or typed statement is
12 prepared, I think all of you are entitled in your cross
13 examination -- if they have a Jencks statement that they are
14 going to offer you, and there is a question or could be a
15 question about whether or not it is the same as the notes of
16 that statement, then I think both sides would be entitled to
17 that.

18 GENERAL SCHMUTZER: I have no problems -- if Terri
19 Lilly takes the stand and testifies, she's going to -- she
20 doesn't have anything. The officer that -- you know, that took
21 that statement, we'll have to run him down, and see what else
22 he has besides the...

23 THE COURT: I'm saying if you can find it. You
24 know, the motion is being heard this morning. I can't rule on
25 something before it's filed or brought to my attention, and all

1 I'm saying is, if it's something that's readily available, find
2 out, and provide it.

3 GENERAL SCHMUTZER: If you can give us some time,
4 Your Honor, we can do that.

5 THE COURT: Well, I'm -- as I said, the motion has
6 just been filed and brought to the Court's attention. I'm here,
7 the jury's here, the witnesses are here. I'm going to start
8 this case.

9 GENERAL SCHMUTZER: I understand, Your Honor. One
10 of those witnesses he mentioned, Your Honor, is my second
11 witness. If I make opening statement and begin questioning
12 witnesses, obviously, I won't have a chance to...

13 THE COURT: I'm sorry?

14 GENERAL SCHMUTZER: I said if I make opening
15 statement, it will be my second witness, Ms. Lilly.

16 THE COURT: I'm going to start the trial. I'm
17 ready to start.

18 MR. WEBB: That's fine, Your Honor. There's a lot
19 of people over at the attorney general's office, and I assume
20 the investigator who took the statement is available. It's not
21 that inconvenient. I think we're entitled to it.

22 THE COURT: Okay. Anything further?

23 MR. MILLER: We would ask for the rule before
24 opening statements.

25 THE COURT: Surely.

1 MR. MILLER: May we approach the bench real quick,
2 Your Honor, before that?

3 THE COURT: Yes.

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

5 MR. MILLER: We have quite a few witnesses,
6 primarily family members, who would testify only
7 if this case reached a sentencing hearing, and I
8 would ask the Court that they be allowed to remain
9 in during this...

10 THE COURT: Surely.

11 MR. WEBB: I don't know who I've got here, but I'm
12 in the same posture. I have some of those folks
13 that may be actual defense witnesses, and I'll
14 instruct them if the Court...

15 THE COURT: "At the request of a party, the Court
16 shall order the witnesses, including rebuttal
17 witnesses, excluded at trial or other adjudicatory
18 hearings. Separation shall be effective before
19 voir dire or opening statements, if requested."
20 That means all witnesses. That's what 615 says.
21 Okay? So they'll have to stay out. If exclusion
22 is demanded, it means all of them.

23 MR. MILLER: Well, I know if the past, we've --
24 sentencing witnesses we've allowed to stay in the
25 courtroom, and I...

1 GENERAL SCHMUTZER: We may be able to work out
2 something, Your Honor.

3 THE COURT: If you agree to it.

4 GENERAL GREEN: If you could give us a specific
5 list of those people so we'd have something...

6 THE COURT: I'll let you all talk about that
7 momentarily here. I'll take a short recess, and
8 let you talk.

9 MR. WEBB: I hate to delay things, Your Honor, but
10 these things come up.

11 THE COURT: I understand, gentlemen. Now, in
12 opening statements -- I mean, I'm not going to --
13 in opening statements the Court, obviously, and
14 especially in a case like this, I'm going to give
15 you as much time as reasonably possible, but in -
16 - I would remind you, of course, that during voir
17 dire, each of you have made a lot of statements to
18 them preparatory to questioning. So I would ask
19 that you be as cautious as you can, especially in
20 talking about the law because I don't -- hopefully,
21 there wouldn't be a lot of reasons for objections
22 during the opening statement, and I want to try to
23 avoid that because I don't want to try your all's
24 lawsuit for you, and tell you how to try your
25 lawsuit. So keep that in mind, and let's move as

1 quickly as we can, and try to get these witnesses
2 on, and get to moving.

3 **GENERAL SCHMUTZER:** Let me ask you this, Your
4 Honor, because I just want to make sure. The
5 Court, with regard to notes on these witnesses,
6 that's limited only to those that we'd be required
7 to give as Jencks?

8 **THE COURT:** Yes, yes, yes.

9 **GENERAL SCHMUTZER:** If we have someone we furnish,
10 then, that's not Jencks material, and has not been
11 adopted, signed, or is not recorded, we don't have
12 to go forward and try to round up those notes, I
13 take it?

14 **THE COURT:** That's right.

15 **GENERAL SCHMUTZER:** Only on the ones that...

16 **THE COURT:** Right. You know, all I'm saying is,
17 and basically -- if there is a statement of a
18 witness that is going to be offered by either side
19 that would be subject to impeachment, then if there
20 are notes or written composites of a statement of
21 that witness, then I think either side would be
22 entitled, also, to see that to see if there's any
23 variance in either the transcribed statement, or
24 the statement that signed, and then any statement
25 taken by an officer or other investigator -- you

1 know, so it can be reasonably compared for purposes
2 of impeachment. That's the reason for the Court's
3 ruling.

4 **GENERAL SCHMUTZER:** The problem I have, Your Honor,
5 is that the public defender's officer, as a matter
6 of policy, they take -- they type up their
7 statements, but they never have them sign them or
8 read them over, or adopt them, so they can go on
9 the technicality that even though -- so I don't
10 even get that, much less the notes that it comes
11 from. I don't how Mr. Davenport does his, but
12 that's the situation I run into. So that sort of
13 leaves me hanging in the wind.

14 **THE COURT:** Well, you might need to adopt the same
15 policy they have.

16 **GENERAL GREEN:** The problem is we've provided...

17 **THE COURT:** I understand that.

18 **GENERAL GREEN:** It's technically not Jencks because
19 the witness never...

20 **THE COURT:** But if their could be a reason for the
21 person who took the statement to be able to say
22 that, "No, the witness said something otherwise,"
23 then -- you know...

24 **GENERAL SCHMUTZER:** That goes to Brady, and of
25 course, we've furnished Brady, and we'll continue

1 to do that if anything comes to our attention.

2 **THE COURT:** If those notes are available, just
3 maintain them, then if there's a question that
4 comes up about it, the Court can rule on it.
5 That's all I'm saying.

6 **MR. DANIEL:** The reason it came to our attention,
7 Your Honor, some of the statements they gave us
8 said so and so states so and so, and it sounds like
9 somebody's took a statement, and then they've just
10 summarized their statement for purposes of getting
11 the case ready for trial, and I would assume there
12 would be another rough notes or information that...

13 **GENERAL SCHMUTZER:** They're not entitled to it
14 because that's not a Jencks statement.

15 **THE COURT:** Well, I've ruled, and if you all want
16 to talk about your witnesses, then I'll be back
17 momentarily.

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

20 (COURT STOOD IN RECESS)

21 **THE COURT:** The parties have agreed, as I
22 understand it, that the witnesses who would be testifying only
23 in the event of a sentencing hearing may stay in the courtroom,
24 is that correct, gentlemen?

25 **GENERAL SCHMUTZER:** That's right, Your Honor, and

1 also the Sheriff may remain in the courtroom.

2 THE COURT: Okay. All other witnesses please stand
3 -- well, all witnesses please stand, and raise your right hand.

4 (WITNESSES SWORN)

5 THE COURT: All witnesses except, as I have
6 previously told you, and the parties themselves, of course, will
7 have to step outside. Do not discuss the case, do not discuss
8 anyone else's testimony after you have testified in this matter,
9 and don't let anyone else talk to you about the case.

10 GENERAL GREEN: Your Honor, may we approach just
11 to put the names of these folks on...

12 THE COURT: Sure. All other witnesses step outside
13 the courtroom.

14 MR. WEBB: Your Honor, if we can approach, I have
15 a house cleaning matter I want to take up with the Court.

16 THE COURT: Sure.

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

18 GENERAL GREEN: I don't know if Your Honor just
19 wants me to read these names out just so these
20 folks know they can stay in the courtroom.

21 THE COURT: Okay.

22 GENERAL GREEN: These are the names that Mr. Webb
23 and Mr. Miller have provided me, and stated that
24 they will only be sentencing witnesses. We have
25 no objection to them remaining in the courtroom

1 during the guilt phase.

2 THE COURT: Ralph Dellinger, George Dellinger,
3 Clyde Dellinger, John Dellinger, Ann Morris,
4 Marilee Ramsey, Mary Ramsey, and Clay Sutton may
5 stay in the courtroom pursuant to agreement of
6 counsel, and Sheriff Ogle.

7 MR. WEBB: Let me say this, Your Honor. Clay
8 Sutton's daughter is here. I don't know her name,
9 but she's -- she won't be a witness at all.

10 THE COURT: Okay.

11 MR. WEBB: Your Honor, one house cleaning matter.
12 Just from an abundance of caution I have asked one
13 of my family members to stand outside the door, and
14 don't let any -- obviously, all our witnesses are
15 not here, but I'm going to make him stand there,
16 and tell them not to come in the door.

17 THE COURT: That's fine.

18 MR. WEBB: I would ask the State, once again, as
19 a precautionary measure, to have someone there that
20 will not let any of them potential witnesses come
21 in the courtroom.

22 THE COURT: The State has Ms. Perkins. She's out
23 there. So advise them, obviously, to stop all
24 witnesses that...

25 MR. WEBB: Sworn or unsworn.

1 THE COURT: Sure.

2 MR. MILLER: Your Honor, there's a lot of witnesses
3 that the State has subpoenaed that I know they may
4 not call, but we may call. I just want to make
5 sure they understand that everybody...

6 THE COURT: I think I told on the first day that
7 those witnesses, even though I excused them,
8 they're still subject to subpoena.

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

11 THE COURT: Anything further? Bring the jury in,
12 please, sir. All rise for the jury.

13 I'm advised by the court reporter that the
14 microphone on that podium is not taped, so if counsel needs to
15 turn it around or whatever, you may do so at such point as you
16 deem necessary.

17 MR. WEBB: Do you want us just to remove it?

18 THE COURT: No, don't move the microphone.

19 (JURY IN)

20 Waive the call for the State?

21 GENERAL SCHMUTZER: Yes, Your Honor.

22 THE COURT: For the defense?

23 MR. MILLER: Yes, Your Honor.

24 THE COURT: You may be seated. Ladies and
25 gentlemen of the jury, you will now hear the opening statements

1 first by the State of Tennessee, then from each of the
2 defendants. The opening statements, I remind you, are not
3 evidence. They are intended to help you, to explain each side's
4 theory of the case. Consider it for that purpose, and that
5 purpose alone. General Schmutzer, you are recognized.

6 OPENING STATEMENTS:

7 GENERAL SCHMUTZER: Thank you very much, Your
8 Honor. Good morning. The proof in this case is going to show
9 that a Mrs. Viola Griffin had 10 children, seven of which were
10 living back up until February of 1992, but by February the 22nd
11 of 1992, she only had five.

12 In this case you are going to hear from some of the
13 family to give you some background to this. Among those
14 children, the seven that were living the beginning of February,
15 that you will hear about are sons, James and Bill Griffin, and
16 Tommy Griffin. You will also hear of a daughter, Connie Griffin
17 Branum.

18 The proof will show that Mrs. Viola Griffin lived
19 in the White's School Community, along with some of the other -
20 - some of her sons and their families, and that Tommy Griffin,
21 and his sister, Connie Branum, lived in separate houses or
22 trailers in the Gibson Hollow area of this county, just a short
23 distance of White's School Road. Those of you that don't know
24 the area maybe that well, this is off the Goose Gap Road that
25 runs around the base of Bluff Mountain, and ultimately ends up -

1 - if you're going south on it -- ends up in Walden's Creek area
2 at the Fox Store on the Walden's Creek Road. If you come any
3 other direction, you'd go through White's School, and end up on
4 Chapman Highway.

5 That in this Gibson Hollow area there's a Bluff
6 Heights Road. There's three ways to get in and out of the area
7 where Mrs. Branum and Tommy Griffin lived. There's also some
8 other trailers and people living up in there.

9 The proof will be that there developed some bad
10 blood between the Griffins and these defendants. The proof will
11 show that the defendant, Gary Sutton, is the nephew of James
12 Dellinger.

13 There had been a fight. Gary Sutton and Bill
14 Griffin had had a fight, and the proof will show that he
15 virtually stomped him -- whipped him pretty badly, and put him
16 in the hospital. Tempers got hot. That on February the 15th,
17 Officer John Brown, who just happens to also live in this area,
18 and who will be telling you about it, answered a call -- a
19 complaint from the defendant, James Dellinger.

20 When he went up there, James Dellinger showed him
21 where an out building of his right behind where he lived had
22 been shot into. The officer asked him who he thought had done
23 it, and he told him, "The Griffins." He made the statement to
24 the effect, "And if I have to, I'll wipe out that whole hill of
25 Griffins."

1 Ironically, in this whole thing, quite frankly, it
2 will show that Tommy Griffin ran with these two. In fact, on
3 February the 21st, they were together out drinking. That they
4 were over in Blount County. That they ended up at a Howie's
5 Hideaway Bar located on Highway 321 coming out of Maryville
6 going in the direction of Wallen and Townsend.

7 That the three of them left together, that they
8 were riding in Gary Sutton's Camaro, a dark blue Camaro. After
9 they left, the proof will show that a couple on their way to
10 Knoxville on the Alcoa Highway saw a dark blue Camaro with some
11 men fighting parked on the side of the road at the Hunt Road
12 overpass. One of them had a mobile phone that went into Rural
13 Metro, and they called it in and reported it.

14 The proof will further show that a second lady who
15 apparently came by at about the same time saw, near the same
16 place at the Hunt Road overpass, a man stumbling around without
17 a shirt on. That officers, in response to the call by the first
18 couple, came, and first didn't see anything, but then some
19 lights were blinking from a truck, and one of the officers
20 responded and went up and found sitting in the back of the truck
21 where these two men had picked him up, was Tommy Griffin,
22 without a shirt, in February. He had cuts and scrapes on him,
23 and the officer asked him what happened, and he said, "I was
24 with some friends, got in an argument, and they put me out," or
25 words to that effect. When the officer pressed him, he said,

1 "I just can't talk about it anymore."

2 The proof will show that he had been drinking, that
3 he was not belligerent, was cooperative, and in fact, was
4 apologetic that he'd put the officer to the trouble. The
5 officer arrested him for public drunkenness, and took him in, and
6 put him in jail, the proof will show, around 7:40 p.m. that
7 evening.

8 Shortly afterwards these defendants came in to get
9 him out, or at least one of the defendants came in with another
10 man, but told him they'd hold him for a period of time. So they
11 left, and came back, and picked him up at around 11:25. But in
12 the meantime, the proof will show, it was around 7:40 when he
13 was arrested. That back in Sevier County in the Bluff Heights
14 area, a neighbor gets up because his dog's barking, and looks
15 out, and sometime in the interim, these defendants have changed
16 vehicles because he then sees coming into the hollow -- this is
17 a neighbor to the defendant Dellinger -- and sees a white truck
18 just up from Tommy Griffin's trailer.

19 That when he sees it, the passenger side door is
20 open, and it closes. It goes by -- he can't see who is in it,
21 but he recognizes the truck. He recognizes it as his neighbor's
22 truck, James Dellinger, and he watches it as it drives right up,
23 and pulls into James Dellinger's driveway.

24 He then looks right back down to Tommy Griffin's
25 trailer, and sees fire coming out of the front door. His wife

1 calls 9-1-1, and you'll see the records on that, that call came
2 in at 9:02. He ran down to the fire, that the family was
3 notified, that Connie Branum and her mother -- she was at her
4 mother's house.

5 The big concern was that Tommy might be in that
6 trailer. The proof will show that as they went around, and
7 listen closely to the proof because it's going to become
8 significant as to who told who what.

9 The young daughter of Connie Branum runs over to -
10 - and they live just up, and you'll see this -- they live right
11 across from the Dellinger's. She runs over to tell them that
12 the trailer is on fire. She sees these two defendants, and they
13 tell her that Tommy is over in Blount County with some girl.
14 She runs back down to tell her mom that he's okay, and they're
15 still concerned, and the fire goes on, but ultimately, Connie
16 Branum sends her daughter into a neighbor's house down there
17 across from Tommy's to call to see just where Tommy is.

18 This is somewhere in the neighborhood of 9:45,
19 10:00, and she calls, and finds out from James Dellinger that
20 he's in jail, and that they'll go get him. The proof will show
21 that they had made phone calls first to the hospital and to the
22 jail between 9:17 and 9:30 that evening from James Dellinger's
23 trailer.

24 It becomes important, I submit to you, because
25 later when they're talking to the officers about this, and

1 listen closely to what they say, they claim that the reason why
2 they called was because Connie Branum had called them. The
3 proof will not bear that out. Connie Branum wasn't near a phone
4 until they had even left the hollow.

5 The proof will show that they loaded up, that they
6 got in, and they took something was wrapped in what looked like,
7 maybe, a sheet, and it was taken out of the back of Dellinger's
8 truck. The proof will show that he carried, as a matter of
9 course, in the back of his truck a shotgun, or a gun of some
10 kind. They loaded it into the car of his wife, Linda Dellinger,
11 and left to go get Tommy Griffin out of jail.

12 That they got him out at 11:25. 30 minutes later,
13 nine miles away from the jail, a mother and her son hear two
14 shots that came from the direction of Manning Lane or the Blue
15 Hole, a swimming hole. Peculiar enough, the young man had kept
16 a diary, and wrote it down in his diary, and put the time. 30
17 minutes later.

18 The proof will show that the body wasn't found
19 right then, and in fact, wasn't discovered until Monday. This
20 was on a Friday night, the 21st, and the body wasn't discovered
21 until Monday, the 24th by a fisherman with his children.
22 Because of the way the body was located, you couldn't readily
23 see it. It was down off a steep bank, and you couldn't even see
24 it, hardly, from the river. You certainly couldn't see it from
25 the road. They found Tommy Griffin shot in the back of the

1 head. Two spent shells were found at the scene.

2 But going back, in the meantime before the body was
3 even found, Connie Branum, as the proof will show, was very
4 close to Tommy. She was very concerned that they hadn't been
5 able to find him. That evening of the 21st after these
6 defendants went off to get him out of jail the proof will show
7 they didn't come in until 1:00 that morning, contrary to their
8 statements they made to the police.

9 She was sitting up waiting on them, and when they
10 got in, she called over there. Not satisfied with what they
11 told her, and I submit to you that the statements of these
12 defendants are that the girl that Tommy Griffin had left with
13 earlier in the evening was -- she showed up at the jail, and he
14 left with her again.

15 The proof will pinpoint this pretty well because
16 she makes a call to the jail for the first time. She makes a
17 call over there at around 1:18 looking for him, and calls again
18 later that night. The next day, he still hasn't shown. She's
19 still concerned. She takes a picture of him, she takes her kids
20 and takes them up to a neighbor's house, and leaves going to the
21 jail to show that picture, and she'll be back directly.

22 That she left the hollow, and the proof will show
23 that before she ever got to the jail in Maryville she ran into
24 these two defendants in Townsend. At that time, rather than
25 driving the Camaro, they were driving the defendant Dellinger's

1 white truck. She gets in with them, and supposedly they're to
2 help her find Tommy -- their friend Tommy.

3 They ended up back at Howie's Hideaway. Listen
4 closely to the conversations that were had. When she went in
5 there she was looking for her brother, she's showing the
6 picture, she's asking about him. Listen to what was said. I
7 submit to you it will reveal that these defendants had not been
8 truthful with her about what had happened the night before.

9 That they were not interested, in fact, in her
10 finding Tommy, but to the contrary, were attempting to mislead
11 her in her efforts to find her brother. They stayed in there,
12 and they stayed for a number of hours, and she began to get
13 inebriated as they were drinking. She got to the point where
14 she, quite frankly, got loud, and when they left, these two
15 defendants had to assist her, and get her -- take her out the
16 door.

17 When she had gotten together with these defendants
18 she had left her vehicle in Townsend, and ridden over in their
19 truck. The proof will show that they left the bar at around
20 7:00 or a little after -- p.m. That was the last time she was
21 even seen alive.

22 At about 8:00 to 8:30 p.m. that same evening, a
23 couple who was house sitting, staying at a friend's house up on
24 Clear Fork saw a big blaze. They were leaving the house, going
25 out somewhere, and back in the woods behind the house some

1 distance away, they saw a big blaze that lit up the mountain
2 side. It certainly got their attention, but they went on. They
3 didn't think a whole lot about it then, but later when they
4 heard in the paper about finding -- this was, of course, --
5 remember, this is the 22nd -- this is on Saturday night. Tommy
6 Griffin's body still hasn't been found. Later in the week when
7 his body is found on Monday, and the publicity about a body
8 being found, and she is still missing, they get curious.

9 The husband walks back to where he had seen the
10 fire, and this was on the 28th, and finds the charred remains
11 of a car belonging to Connie Griffin Branum, and her remains.
12 Just before this, and as I was telling you, after Tommy
13 Griffin's body was found in Blount County on Manning Lane,
14 Blount County officers got involved, of course, in the
15 investigation.

16 These two defendants voluntarily come in to assist,
17 and tell what they know to try to help them find their friend,
18 Tommy Griffin. Listen to what they tell the officers. I submit
19 to you that rather than telling them the truth, they tell them
20 a lie. They are talked to separately, and when asked about
21 Tommy Griffin, they never mention being in Howie's bar. They
22 said to the contrary they had been to a bar over on Chapman
23 Highway, had driven back through Maryville, bought a case of
24 beer, and while they were buying a case of beer, Tommy just
25 happens to meet a girl there in the parking lot. They described

1 it in detail, said she was driving a Falcon, she was short and
2 fat, stringy hair, black hair, and that he left with her, and
3 that they didn't see him again until they went to get him out
4 of jail.

5 Listen closely to what they each say because
6 they're being talked to separately. On that they're on point,
7 but when it gets to the point about telephone calls and who
8 called whom, Dellinger says that they learned about the fire
9 from Connie Griffin Branum. That Connie Branum called them,
10 told them about the fire, and later called back and said that
11 Tommy had called her, and she wanted them to go get him out of
12 jail. You will see the phone records, and there was never any
13 call because it had to be a collect call coming out of the jail.
14 There was no call made from that jail that evening to Connie
15 Branum's home.

16 Sutton, on the other hand, says, "Well, Connie
17 Branum told us the trailer was on fire, and we went and looked
18 out. She later called back, and wanted us to call the hospital
19 or the jail, and see where he was." The problem is, they had
20 already made those calls before they had ever talked -- those
21 calls, the proof will show, were made by 9:30 before they had
22 ever had an opportunity to talk to Connie Branum. She was never
23 on the phone. She was down at the fire standing in her
24 neighbor's yard wondering about her -- the only person to ever
25 call was her daughter, Sandy.

1 What's the significance? Obviously, two things.
2 The proof will show that these men, number one, what they say
3 couldn't possibly be true because, number one, if he had, in
4 fact, left with a girl, as they claimed, there would have been
5 no reason to be looking at a hospital or a jail. Secondly, and
6 more importantly, they had gone back to the jail, apparently
7 before they ever came back to Sevier County and burned him
8 trailer, and tried to get him out.

9 They were further asked at that interview -- this
10 was on the 25th, the day after the body was found. They tell
11 the officers when asked about Connie Branum -- Dellinger, when
12 asked, "When was the last time you have seen or heard from her,"
13 he said, "Well, Saturday when she saw my wife, and left going
14 to the jail." He never once mentioned anything about Howie's
15 Hideaway.

16 The defendant Sutton, when asked, and he was asked
17 differently because he was asked, "When was the last time you've
18 been to Howie's Hideaway with her?" He said, "Two weeks ago.
19 It's been some time ago." It was the following day that the
20 officers then talked to the witnesses at Howie's Hideaway, and
21 learned otherwise.

22 They came back on the 28th and talked to these men,
23 and all of the sudden, "Yes, we want to get this straight. Yes,
24 we were with her on the 28th," but the only explanation offered
25 was, "Well, she really didn't really want us to tell." Even

1 though she had been missing for three or four days, "She didn't
2 want us to tell anyone that she was there with us." And yet,
3 Sutton had told them that they were there together, the three
4 of them, only he put it two weeks earlier. Apparently, it was
5 because she was out with these men, and possibly Dellinger had
6 something going that she didn't want them to tell. He had no
7 problem telling that she was Dellinger and him two weeks before.

8 They never gave an explanation as to why they
9 didn't tell the officers about being with Tommy Griffin at
10 Howie's Hideaway. In fact, defendant Dellinger said he really
11 couldn't remember that. Watch the memories as to what was
12 remembered.

13 On the 28th, also, that day, after talking to these
14 defendants for the second time, the officers go to the home of
15 James Dellinger, where it will be shown that Gary Sutton had
16 been staying up there for about two weeks. They conduct a
17 search, and recover some spent shotgun shells, and also get a
18 303 rifle that's just by chance. They also find a barrel to a
19 shot gun, a Mossberg shotgun. Mossbergs come with an
20 interchangeable barrel -- they never find the shot gun. It's
21 not there.

22 The officer just happened to take the 303, and then
23 after that, Mr. Gordon, the gentleman I was telling you about
24 that had seen the fire went back and discovered the remains of
25 Connie Branum in her car. The proof on that will show that in

1 that investigation they found at that crime scene a 303
2 cartridge, the same caliber as the rifle taken from the closet
3 of James Dellinger.

4 They also determined that that rifle had been shot
5 before, one time at Tommy Griffin's trailer while Dellinger was
6 trying to shoot out a street light up there at Bluff Heights.
7 Officers went there and found a couple more spent 303 shells
8 that had been fired. They also determined that same evening
9 that they had fired it up on Walden's Creek up near the Blount
10 County line. They went up there, and found four shells. They
11 sent all these off to the laboratory.

12 In the interim, listen closely, because as I
13 pointed out to you, she was burned beyond recognition. She was
14 virtually cremated. The anthropologist who came out there, Dr.
15 Bass from U.T., will tell you that looking at her body, he could
16 not determine how she had died because there just wasn't enough
17 there.

18 Look at all the other facts and circumstances. The
19 proof will show that this car was found in a very remote area
20 of this county on not a county road, but more like a logging
21 road, an unmarked road that went to nowhere in the woods. A 303
22 shell, a single shell, was found in the floorboard of her car.

23 The proof will be that based on the burning of the
24 car, and in particular, her body, that her body had burned as
25 a result of an accelerant. She had been lit and set on fire -

1 - that there's no way it could have happened by a cigarette or
2 something like that.

3 That same arson investigator that investigated that
4 that he also went to the trailer of Tommy Griffin's that had
5 been burned back on the 21st, and though there was some talk at
6 the time of the fire that maybe it was electrical, and thought
7 to be that, in fact, it turned out it was also started by an
8 accelerant.

9 The shells that were found at the scene where
10 Connie Griffin's body were found were found to match the shells
11 taken from the yard of Dellinger, from the trailer right below
12 him that belonged to him, that his daughter was living in, Angel
13 Gray. They were fired from the same weapon. A 303 shell found
14 in the floor board of Connie Branum's car was found to have been
15 fired in that 303 rifle taken from Dellinger's closet.

16 In considering this, though, I'll submit to you
17 that the proof will go to both of these defendants because
18 afterwards in March, March the 9th, the defendant Sutton asked
19 to speak to an officer, and ended up speaking to a T.B.I. agent,
20 and tells him that he was with James Dellinger night and day on
21 the 21st and the 22nd and the 23rd. They were together during
22 the entire time, and he never saw Dellinger kill anyone --
23 linking them together, those being the times of the deaths of
24 Tommy Griffin and Connie Branum.

25 Listen closely also to the car. Remember I

1 mentioned back to you about the fight at the -- on Alcoa Highway
2 there at the Hunt Road overpass? The first couple that went by,
3 the husband looked back, and saw one of the headlights out on
4 the car -- on that Camaro. Defendant Sutton admitted that he
5 had a headlight out on his Camaro.

6 He also told the officer at that time that he, on
7 Saturday, was back home before 7:00 p.m., and the proof will
8 show that they were still at Howie's Hideaway with Connie at
9 7:00 p.m.

10 You are going to hear other proof. I mentioned to
11 you about chasing rabbits. There will be mention of a Bill
12 Cogdill, who apparently made some statements that would indicate
13 that maybe he knew something about this crime. Listen closely
14 to the statements. Look at all the proof, and see who had the
15 means, the motive, and the opportunity; the means being the
16 firearms, and the motive, obviously, for these defendants being
17 the fact that Connie Branum was getting hot on their trail, and
18 catching them in some lies with regard to her brother's death,
19 and the opportunity, the fact that they were the last people
20 with her seen alive. None of that will exist with this other
21 individual. In fact, that was information recovered from our
22 investigation, and recovered by the officers.

23 MR. DANIEL: Your Honor, please, I would object to
24 that -- what his investigation revealed.

25 THE COURT: Overruled. This is opening statement.

1 The jury will hopefully recall opening statements,
2 and whether or not the evidence is in alignment
3 with those.

4 **GENERAL SCHMUTZER:** I think that's very important
5 because let me submit to you this. It has been mentioned and
6 talked about theories. The State is not coming in here and
7 asking you to convict anybody on any theory. Our case will be
8 based upon the facts and the evidence, and I submit to you
9 that's ultimately what you'll decide this case on.

10 It will also be shown, and the proof will come out
11 that Connie Branum had been having some mental problems,
12 depression. That she had tried only a week before this to
13 commit suicide. There may be some indication, I don't know, but
14 maybe to try to lead you to believe that she committed suicide.
15 Listen closely to the facts and circumstances surrounding her
16 death in deciding whether or not she committed suicide or she
17 was killed -- murdered, including the facts that I had earlier
18 stated to you. Listen to all of it.

19 I would like to ask you that if any time during
20 this trial that you have difficulty in seeing or hearing the
21 witnesses, you would just let His Honor know so that we can be
22 sure and correct that, on either side for that matter, to be
23 sure that you have all the facts.

24 As you can see, it does cover a period of time, and
25 those dates, if you can remember them, and what causes a little

1 bit of the confusion is the fact that the bodies themselves were
2 discovered at different times, but they were both missing by the
3 end of the 22nd. Tommy's body was not found until the 24th, and
4 her body isn't discovered until the 28th. So you have things
5 happening in between. Keep those dates in your mind.

6 I submit to you that at the end of all the proof
7 in this case these two defendants will be guilty as charged of
8 first degree murder of Connie Branum. Thank you.

9 THE COURT: Mr. Miller?

10 MR. MILLER: Good morning, ladies and gentlemen.
11 Over the past several days you all have been selected to perform
12 a very important duty, probably the most important duty you've
13 ever been called upon to render in your life; to sit here and
14 hear evidence and render a verdict in a case where the ultimate
15 penalty is either life imprisonment or death by electrocution.

16 We've talked a lot about the death penalty and
17 things like that. Let's put that out of our mind for the time
18 being because that's not the issue right before us here. The
19 issue is the death of Connie Branum and how that was caused, and
20 whether or not these two men did that. That's the only issue
21 we're here to try.

22 Mr. Schmutzer has told you a lot of what he expects
23 to prove. I submit to you that if he proved every factor that
24 he said he would prove, that still is not enough to prove the
25 guilt of Mr. Dellinger and Mr. Sutton beyond a reasonable doubt.

1 I submit to you in no way will he be able to prove all those
2 facts that he said will be shown.

3 The most important thing -- we're still on an even
4 plane. We're still on a clean slate. You still must look at
5 Mr. Sutton and Mr. Dellinger, and say, "I presume that you're
6 innocent." Why is that? Because nothing that Mr. Schmutzer
7 said, none of that is evidence. Nothing has been testified to
8 from the witness stand, so we're still on an even slate. ~~Listen~~
9 to what the proof shows. Don't listen necessarily to what Mr.
10 Schmutzer says.

11 A lot of things he talked about don't -- have a lot
12 to do with Blount County, and don't have a lot to do with the
13 ultimate issue here in Sevier County that you all are deciding.
14 Remember, as we told you, that these boys are going to be tried
15 in Blount County at a later date, and let's don't pass judgment
16 on them on this case based on Blount County, based on a judgment
17 that's going to be rendered in another county at another time
18 by another jury. Let's stick to the ultimate here.

19 The ultimate issue being whether the State can
20 prove beyond a reasonable doubt to your satisfaction, number
21 one, that Connie Branum was killed, and number two, that these
22 men had something to do with it. That it was intentional and
23 premeditated with deliberation. That's the ultimate issue.

24 You are going to have to sift through a lot of
25 facts that have little or nothing to do with those issues, and

1 I call on you to do that.

2 Also, they must prove, as I told you, venue, where
3 Connie Branum died. How she died -- they told you they don't
4 know how she died. They don't know how she died, and they can't
5 tell you where she died.

6 A lot of the things Mr. Schmutzer talked about
7 being able to prove, just think about those and the
8 reasonableness of those things. He started off by telling you
9 that there was bad blood between Sutton, Dellinger, and the
10 Griffins, and that their theory is that these killings happened
11 because Mr. Dellinger made the statement, "I'm going to wipe out
12 that whole hill of Griffins."

13 As Mr. Schmutzer says, ironically, these boys ran
14 with Tommy Griffin. They were good friends. The proof is going
15 to show there was no closer friends than these two men and Tommy
16 Griffin. A lot closer was Mr. Griffin to these two men than he
17 was to his own family.

18 He called James Dellinger "Daddy," and he called
19 Gary Sutton his brother. He didn't have people that close to
20 him in his family.

21 Think of the reasonableness of the statement that
22 Mr. Schmutzer made, "I'll wipe out that whole hill of Griffins."
23 That's what Mr. Dellinger said, according to them. Even if
24 that's true, and even if that's his intent, why does he go --
25 start wiping out the Griffins with his best friend?

1 The proof will show also that they were very close
2 with Connie Branum. They had some problems with other Griffins
3 at times, but never had any problems with Connie Griffin or
4 Connie Branum and Tommy Griffin. Think about the reasonableness
5 of knocking those two people off on your way to knocking off the
6 whole hill of Griffins. It just doesn't make sense.

7 Another thing Mr. Schmutzer talked about that won't
8 be able to be proven. Something about these two men unloading
9 something from a truck into a car, and he even made reference
10 it was a shot gun. When you hear the witness testify, listen
11 to that witness, and what they testify to, what they saw.
12 That's what the proof is, not what Mr. Schmutzer told you. They
13 are not going to be able to prove that.

14 They conducted a search at James Dellinger's
15 residence. Mr. Schmutzer emphasized this. They found this 303
16 rifle. They didn't find the shot gun, the shot gun that they
17 say is the one that killed Tommy Griffin. Think about the
18 reasonableness of that.

19 The State's theory is that, yes, Tommy Griffin was
20 shot with this shot gun, and Connie Branum was shot with this
21 303 rifle. Why would you take a 303 rifle home and put it in
22 your closet, and then do away with the shot gun? That's just
23 not reasonable.

24 Mr. Schmutzer has been mentioning all along the key
25 word is reasonable in considering the evidence. Listen to the

1 witness, and consider what is reasonable.

2 Mr. Schmutzer gets up here and tells you that the
3 trailer was an arson, was an intentionally set fire, cut and
4 dry. Nobody has testified to that from the witness stand, and
5 when they do, you listen to their testimony, their opinions, and
6 look at all the factors to see if that can be proven.

7 We told you in the beginning, every single element,
8 every single factor in this case is going to be in controversy.
9 He further stated about the car, that it was arson, and they can
10 prove that. Again, somebody is going to be rendering an opinion
11 about that. Look at all the factors in considering whether or
12 not the car was burned.

13 I'm not going to be as lengthy as Mr. Schmutzer.
14 I'm not going to talk a whole lot about what the defense proof
15 will show, and I do that for several reasons. Number one, as
16 I told you from the beginning, the defense has no burden of
17 proof. We need to offer nothing. We're going to offer proof,
18 and ask you to consider that carefully.

19 Another reason -- for your sake, another reason I'm
20 not going to go into that is because I know how Mr. Daniel tries
21 a case, and I know he's going to go quite into detail about
22 this, and the proof as to Mr. Sutton, that will be offered as
23 basically the proof as to Mr. Dellinger that we offer on behalf
24 of the defense. I don't want you all to have to sit up here and
25 listen to all of it twice.

1 But a few things I will highlight, and I've
2 mentioned this already. The State cannot prove how Connie
3 Branum died. The proof will show she was very depressed around
4 this time, that she had attempted suicide, and had been placed
5 in Lakeshore Mental Health Institute. When she came out, she
6 was worse off then she was before.

7 I will further state that Connie got along,
8 probably, with these two men better than she did her own family,
9 better than she did her husband. That's what the proof is going
10 to show. They were having some marital difficulties.

11 Mr. Schmutzer talks about statements. You listen
12 to the statements, and you listen to what these boys said. They
13 came in voluntarily. What's reasonable? If you kill somebody -
14 - you know, you get the heck out of town. You don't come down
15 here to the sheriff's department volunteering information.

16 Mr. Schmutzer evidently is going to attempt to
17 point out some inconsistencies in these boys' statements. In
18 considering those, think about the length of these interviews
19 they had with these men, in excess of an hour on each interview.
20 There are no people who can talk -- two people who can talk
21 about certain events over a period of days and be consistent on
22 every factor. If the State is asking you to lock these men for
23 the rest of their lives or put them in the electric chair
24 because of some inconsistencies in a statement, I submit to you
25 that's not reasonable. Just because there may have been some

1 inconsistencies in a statement does not prove beyond a
2 reasonable doubt that they killed anybody.

3 You will hear further, as Mr. Schmutzer has already
4 mentioned, about a man named Bill Cogdill who made some
5 statements. People may say, "The truth ain't in it," but these
6 statements you will not be able to ignore. These statements
7 that he made at the time before Connie Branum's body was found
8 could only have been made by someone who had something to do
9 with the crime. If not, he's very prophetic because he
10 mentioned in those statements, before her body was found, that
11 yes, Connie would be found up in Happy Hollow, the Clear Fork
12 area, dead in her car, and her car burned. That's what the
13 defense is going to offer. It is a reasonable hypothesis that
14 Bill Cogdill had something to do with this. That's no rabbit.
15 We're not asking you to run a rabbit.

16 We don't have any theories. We don't know how she
17 died. We're going to present the proof to you that we have
18 that's developed from our investigation of the case.

19 Each of you told me during voir dire process that
20 you would weigh each witness' testimony equally. Police
21 officers, men in uniform, citizens -- you will weigh all
22 equally, and look at the reasonableness of their testimony by
23 the surrounding facts. I submit to you right off the bat, maybe
24 before we go to lunch, you are going to be called upon to make
25 that judgment.

1 The State's theory is that all this happened
2 because James Dellinger said to an officer, "I'll wipe out that
3 whole hill of Griffins if I have to."

4 You are going to be called upon probably this
5 morning to make a determination as to whether or not he even
6 made that statement. I submit to you that the proof is going
7 to show that he never made that statement, and when you know by
8 the proof that he never made that statement, where is the
9 State's case? That's their theory. When that theory falls, and
10 the rest of the proof comes in, the rest of their theory is
11 going to fall.

12 Each of you had told me during voir dire process
13 that you can look at these men and presume that they are
14 innocent. Throughout the trial, the presumption of innocence
15 remains with them. That you would hold the State to their
16 burden of proof beyond a reasonable doubt, and that if the State
17 cannot prove their case beyond a reasonable doubt, that each one
18 of you would fearlessly do your duty, and not worry about the
19 effects after the trial if a not guilty verdict is rendered.
20 Fearlessly do your duty, and when the verdict is in, your
21 verdict must be not guilty. Thank you.

22 **THE COURT:** Mr. Daniel?

23 **MR. DANIEL:** Ladies and gentlemen of the jury, I
24 agree with Mr. Miller that we're not here to give any theory.
25 The State's burden is to prove somebody guilty beyond a

1 reasonable doubt, and it's not the obligation of the defendant
2 to give a theory. The law says, basically, that the burden is
3 on the State to show that there's no other reasonable hypothesis
4 other than the guilt of these defendants.

5 I want to talk to you about some things that
6 General Schmutzer said, and our position in this, and what we
7 think the evidence will show. Contrary to what Mr. Schmutzer
8 said, and like Mr. Miller told you, the proof is going to show
9 that the best friend in the world that Gary Sutton had was Tommy
10 Griffin. They were together constantly.

11 He bought him a water bed over there one time, and
12 put in his house so Tommy could stay with him. Tommy stayed
13 with him all the time. They ran together, they were just like
14 brothers. He called him brother. If there was one person in
15 the world that Gary Sutton loved, it was Tommy Griffin. They
16 were best friends. Best friends a lot better than all their
17 families.

18 These boys were together when the families were
19 feuding, and you're going to hear some about these type of
20 people, and how they'll sometimes argue and fuss, and then
21 they'll make up and drink together, and then they'll fuss again,
22 and then they'll make up.

23 But there's one thing that you're going to hear.
24 Gary Sutton and Tommy Griffin never had any problems basically.
25 They might argue a little bit like brothers will do when they

1 were running around, but they stayed together, he gave him a
2 place to stay. If Tommy was drunk and something happened, he
3 would go down there, and make sure he went to bed, make sure
4 that he had some heat where he wouldn't get cold, and he just
5 took care of him because Tommy Griffin had a wooden leg. He was
6 crippled, in a sense.

7 That becomes important when you hear some things
8 that's going to be concerning some drugs that Tommy -- Tommy did
9 some drugs. And I think you'll hear from the statements that
10 was made to these officers when they talk, Gary Sutton told them
11 about the drugs -- that Tommy did some drugs. He carried some
12 drugs in his leg. He would put them in his leg, and transport
13 them. But I'll get into that a little bit more, but Gary, he
14 didn't do drugs, but Tommy did the drugs.

15 The things that you'll see that starts back about
16 February the 10th of 1992, Connie Sutton tries to kill herself -
17 - I mean, Connie Branum tries to kill herself. They have to
18 come over to her house -- her husband calls, and she's having
19 marital problems. He calls, or somebody calls, and they go over
20 there, and she's tried to O.D. on Doxipan, I believe, is the
21 name of the drug. If I'm wrong, I apologize. I'm not very good
22 on medicine, but anyway, it's a drug. She took a handful, and
23 she tried to O.D., tried to kill herself, and admitted she tried
24 to kill herself.

25 They took her to the hospital, not because she

1 wanted to go, but because two doctors -- fine doctors here in
2 Sevierville, and I think you may have heard their names. They
3 may testify or may not testify, but these doctors put her in -
4 - decided she needed to go down to Lakeshore Mental Health
5 Hospital. She needed some help -- this lady was suicidal, and
6 she was wanting to kill herself.

7 But she goes down, and you'll hear -- you'll see
8 the records from Lakeshore, and you'll probably hear the doctor
9 testify from Lakeshore. She goes down there, and when they
10 enter her in the hospital, she's got the diagnosis of -- she's
11 having marital problems, she's suicidal -- tried to attempt --
12 commit suicide, there's no question about that. The reason
13 behind that was that she had lost her job, she was having
14 marital problems, her father had committed suicide about --
15 sometime shortly before this, and that she was suicidal, and she
16 had O.D.'d, and she said that she thought that she could do
17 this, she could kill herself by taking these pills, and it will
18 also show in these records that she knew that taking pills and
19 drinking -- taking these pills and drinking would kill you --
20 mixing drugs and alcohol can kill you.

21 Well, then after this occurs on the 21st, the proof
22 will show that Tommy Griffin and these two defendants all went
23 over to Maryville. They were riding around and they were
24 drinking. They went to a bar over there, and they drank some.
25 They left, and when they left, they went to -- stopped at a

1 store to get a case of beer, and while they were there, Tommy
2 Griffin ran into a girl. We don't know if he knew this girl,
3 had known this girl, had seen her or met her before, or what,
4 but she comes up, and they told these officers, and gave these
5 statements -- they came up here, and told them all this. It's
6 all recorded, and you can listen to the tape.

7 That when she came out there, that she said, "Let's
8 go get some blow," or some "toot," or whatever they call it --
9 commonly street named cocaine. He had a bottle of Xanax on him
10 because he gave her a bunch of those pills, and she took some -
11 - he gave her two or three of those, and he had the pills when
12 they left. They said, "Come on, Tommy, let's go home." No, he
13 was going to go with this girl.

14 They say they came back home, that he left, and
15 that later on that night they got to calling and asking where
16 he was, and they told, just like General Schmutzer said, they
17 told them, "Well, he's over in Sevierville with some girl" --
18 not Sevierville -- "He's over in Blount County with some girl -
19 - Maryville."

20 So then they get to calling, and pursuant to that,
21 there was a phone call made to the hospital to see if he could
22 be at the hospital. Then a call was made to the sheriff's
23 department number, and the referred them to the jail, and they
24 called the jail. And they went back over because these boys has
25 always been buddies, and they found out he was in jail, and what

1 his bond would be, and everything, so they went back over there
2 to get him out. And when they got him out, the first thing --
3 this girl was still out there. She was out there in the car -
4 - the one he'd been with earlier.

5 So he gets -- he says, "Come on, Tommy, let's go
6 home. You're trailer's burned." He said, "You boys are kidding
7 me." It technically wasn't Tommy's trailer anyway, it was Mr.
8 Branum's trailer, and Tommy just lived there, and he paid them
9 some rent, and it had insurance on it. So they said, "Come on,"
10 and he said, "No, I'm going with her."

11 So he takes off with the girl, and they come on
12 home -- come on back home. Well, when they get home, and
13 they'll tell you what all happened, and then the next day when
14 Tommy doesn't come in, they go back over there to see if they
15 can find him. And while they're over there -- this is on a
16 Saturday -- Connie Branum comes to see them, and starts looking
17 for him -- she's looking for him also.

18 Now, they're saying that she's all distraught over
19 Tommy, but I think the proof will show the next morning, the
20 first thing she did was call the insurance company on Saturday
21 morning to see about getting her insurance on the place because
22 it was hers and her husband's trailer that was burned, and that
23 she got the -- she called the insurance, and she went over there
24 and got with these boys, and she wanted to go down there to the
25 bar where they had been down there with Tommy to see if anybody

1 had seen him. So they take her down there. They all go down
2 there, they drink, they dance, they shoot pool, they stay in
3 there and they drink. It's not -- we don't think you'll see the
4 picture of a girl that's distraught or worried about her brother
5 at this time.

6 Then they say that they are going to come back home
7 -- they are ready to go home, and she said, "There's one more
8 place I want to look," and she leaves with that statement.
9 That's the last statement she said -- "There's one more place
10 I'm going to look."

11 She had parked her car up there, she'd gotten in
12 the truck, and ridden down there with them, and the proof will
13 show where the car was parked up there at the shopping center.
14 They take her back out, and drop her off at the car, and then
15 they come on home.

16 Well, Tommy's body is found on Monday morning. And
17 you listen to these times because it's kind of interesting that
18 after these times develop -- people -- these things start
19 developing, they say, on this proof that they have. A good
20 example was one of these -- this gentleman who is Mr. Branum's
21 best friend, he didn't ever make a statement about the fact that
22 he'd seen any truck down there at that fire. He was down the
23 night the fire was there, and they was talking about it being
24 electrical. They had problems with some plugs, and they was all
25 down there, and Connie was down there, and they talked about it.

1 Nothing was ever said about any truck -- Mr.
2 Dellinger's truck down there at that time. It's only after
3 Tommy's body is found on Monday morning that that night or
4 sometime later that he says -- Branum is his best friend, her
5 husband. He gives a statement that says that -- he says that
6 he's going to wipe out this hill of Griffins or something, and
7 tells about the fight. You just listen to that. It gets
8 confusing, but you listen to the time elements on this. That's
9 what's important.

10 Then about the -- they came up here, and on the
11 25th, they gave a statement, both defendants, and like Mr.
12 Miller said, they were long. They are 40 or 50 pages of
13 typewritten statements over there, and they're recorded. They
14 gave statements, and they told these officers the same thing,
15 basically, they've told here, and this is one of those "Catch
16 22" things. If their statement had been exactly the same, they
17 would say they rehearsed it, and they're like parrots.

18 The main portions of these statements, and
19 everything that matters is alike. There might be a few minor
20 discrepancies. And they say they didn't tell them anything
21 about -- "You told us about going down there with Tommy Griffin,
22 but you didn't tell us anything about going down there with
23 Connie Branum."

24 Well, they got up there later, and when they come
25 in on the 28th -- come back, and she still hasn't shown up, and

1 "We want to tell you that we were down there with Connie Branum,
2 and she had told us not..." She was having marital problems -
3 - "She told us not to tell anybody." They didn't think on the
4 25th there was any problems with Connie at that time. "So she
5 told us not to tell anybody that she had been down there." This
6 will be supported by a boy that was down there at the bar that
7 night. She told him that she didn't want anybody to know that
8 she had been over there -- not to say anything to anybody.

9 Nobody's trying to hide anything. They came up
10 here -- this was before her body had ever been found. In the
11 meantime what is important is that there's a gentleman out here
12 by the name of Bill Cogdill. You've heard his name, and you'll
13 hear it again. Bill Cogdill had had a fight -- we've got what
14 we call exculpatory evidence that's given to us by the attorney
15 general's office. They general has to, under the law, give us
16 certain evidence.

17 Exculpatory evidence means that it points to the
18 innocence -- it exculpates you from the crime. Well, they have
19 to give us certain information. They give us the statement that
20 on the day before Tommy disappears, he has a fight with Bill
21 Cogdill -- an altercation with Bill Cogdill. I don't know
22 exactly how much, but an altercation. Then after that...

23 **GENERAL SCHMUTZER:** Your Honor, we're going to
24 object to that unless he has some independent proof
25 because the proof will show that that statement

1 turned out to be false, and we furnished him that,
2 also.

3 **THE COURT:** This is introductory statements. I
4 have told you, ladies and gentlemen, to listen to
5 them as to the theories, but ultimately, whether
6 or not their theories match the evidence is up to
7 you to determine, each side. You may go ahead, Mr.
8 Daniel.

9 **MR. DANIEL:** Thank you, Your Honor. I tell you
10 right now, if I say anything to you that doesn't follow with
11 what I think the evidence is going to show, because we have been
12 furnished certain information, you disregard what I say. Listen
13 to what you hear from the stand.

14 Anyway, Bill Cogdill had had some problems with
15 Connie Branum. And what's more ironic, Bill Cogdill had been
16 trading shot guns with Mr. Dellinger over here, and been down
17 at his place, and shot shot guns -- had bought a shot gun from
18 him -- a .12 gauge shot gun before this incident ever happened.

19 Then, Mr. Cogdill says -- tells two people on about
20 the 28th or somewhere near -- the 25th or 26th, that they are
21 going to find Connie Branum's body in a burned car -- in her car
22 burned, up on Happy Hollow, and she'll be dead, burned in her
23 car.

24 This was three or four days before anybody had ever
25 found this. The only person that could have possibly known this

1 was somebody that knew something about it. That's the only
2 logical inference you can get. Whether he's a liar or whatever,
3 as Mr. Miller says, he certainly knew what he was talking about
4 because the evidence is going to show you that she was found in
5 Happy Hollow in the car, and she was burned to death in that
6 car.

7 Then what's even more important -- well, not more
8 important, but it's important, is that at the same time, he told
9 this to a gentleman by the name of Jack Sutton. We have
10 statements from Mr. Sutton, and Miss Tipton was there -- Joyce
11 Tipton. He told Jack -- turned around to Jack, and Jack had had
12 some problems with Connie Branum, too. They all fussed, argued,
13 and fought, and went on -- you'll hear all kinds of stuff like
14 that. He turned around, and he said, "Jack, mine and your
15 problems are over, but I'll have to live with it the rest of my
16 life," and leaves.

17 Then he tells a boy by the name of Gary Sutton a
18 statement that he wants to take his car up to Happy Hollow and
19 burn it. This may become important, and it may not. The point
20 is, these statements was by Mr. Bill Cogdill, totally unrelated
21 to these two defendants up here.

22 Now, they came back on the 25th -- gave a statement
23 on the 25th. They came back on the 28th, and started talking
24 about Connie, and told them all this because she told them not
25 say anything, but "We want to tell you where she was the last

1 time we saw her."

2 Then the State is going to attempt to introduce
3 some proof -- now, what happened on the 28th with Gary Sutton
4 is Gary Sutton got in an argument with these police officers
5 because the police officers on the 28th when taking these
6 statements, they started telling -- brow beating these boys.
7 They starting hammering them -- you can call it anything you
8 want to. They said that -- they told them, for example, said,
9 "You wasn't in that store down there where you say you got that
10 beer. We've got video tapes, and those video tapes don't show
11 you down there. You've lying to us." They said, "Well, if you
12 got tapes, they'll show us there."

13 The proof is going to show the officer lied. He
14 didn't have any video tapes. He said they had video tapes at
15 the jail. "You've lied about being over there -- this girl
16 being there." He said, "Well, get your videos out, and show
17 them." Well, they didn't have any video tapes. The officers
18 lied to them.

19 The officers made a statement there was two shots -
20 - in one of these statements, "There was two shots fire on
21 Friday night, and there was two shots fired on Saturday night."
22 They lied to them. They don't have any proof any shots were
23 fired on Saturday night.

24 Then they told them also about -- told Mr.
25 Dellinger, "Well, we've got us somebody that's going to tell us

1 the whole thing," indicating that Gary Sutton was testifying -
2 - they separated them, you see, and he's telling -- "He's
3 telling us what happened, and he's confessing." There was never
4 a confession. Gary Sutton has denied this from day one, and he
5 made the statement, "No, I haven't killed anybody."

6 And they start hammering him on the 28th, and they
7 say, "Do you want a lawyer?" And he said, "If you're going to
8 keep pointing your finger at me or accusing me, I want one."
9 So he called Mr. Webb over here. Mr. Webb comes over here to
10 the courthouse, and that's the end of the conversation.

11 Now, both of these times these statements were
12 recorded. You can hear the statements, you can hear their
13 answers, their questions. Both times they voluntarily, without
14 lawyers, signed waivers waiving their right to counsel. So then
15 they put him in jail and arrest him, and after this -- about
16 this time they start developing -- they are trying to develop
17 evidence to point to these two boys.

18 Then they come down on the 9th, David Davenport
19 comes down, and they bring him out of his cell, and he walks
20 down there, and they say, "You said that you wanted to talk to
21 us." "What do you mean, I want to talk to you. I don't want
22 to talk to anybody." They had a hearing on these statements
23 over here.

24 **GENERAL SCHMUTZER:** That's inadmissible, Your
25 Honor.

1 THE COURT: Sustained as to that, Mr. Daniel.

2 MR. DANIEL: Okay. I apologize. Anyway, Davenport
3 did not -- he supposedly read him his rights, and you listen to
4 the cross examination when he says he did this. He wouldn't
5 sign this rights waiver at that time. He'd done had his
6 problems with them, they'd done been accusing him, they'd done
7 arrested him, and put him in jail, and he wouldn't sign it.

8 Davenport says that he don't tape record his
9 conversation -- his statements, so he goes out, and long writes
10 up a statement. It's never signed by Gary, he's never waived
11 his right to a lawyer, and the first thing they want you to
12 believe is -- the first statement out of his mouth, "I had --
13 my Camaro had one head light out." That's a voluntary statement
14 without anybody bringing it up, and it's never been mentioned
15 whatsoever. That's ridiculous.

16 This is the reason they want that because, as
17 General Schmutzer said, they had had a witness that said that
18 that Camaro that they had seen over there, that car that they
19 seen had its head light out. So they know if they're going to
20 try to prove this theory that they've got about being over there
21 at Hunt Road, they car has to have a head light out, or
22 otherwise, poof, there goes their whole story on that, and it's
23 got nothing to do with this.

24 You are going to listen to what we are talking
25 about this head light later. Just wait to you listen to the

1 proof on the head lights.

2 And then he also -- the second statement he made,
3 "Me and James Dellinger were together all three days, Friday,
4 Saturday, and Sunday." He writes that down, and that's -- then
5 the rest of the statement is basically what he's already told,
6 which they've already got the statement, and they already know.

7 It's our contention that the State come down here -
8 - the officer did, put those statements in there they thought
9 they needed to make their case against Gary Sutton, when the
10 proof is going to show that they weren't together all the time.
11 They was a time on Sunday some lady sees a truck up there coming
12 out of the valley that's -- a truck that comes out right there
13 where it was burned on Sunday, and the proof will show that he
14 was at home, and Dellinger was not with him during that period
15 of time, and that people came up there at the hollow, and talked
16 to him on the phone, and even came up to his house. You'll hear
17 the witnesses.

18 It's our position that the reason they done that
19 is because they want to show, and have to show those things in
20 order to try to make a case on Gary Sutton.

21 You'll hear about these officers, and what they
22 told them -- how they told them what proof they had, and tried
23 to get them to confess, and they still said, "I don't know what
24 you're talking about." We're saying that was the only way they
25 could make the case.

1 Now, you'll also hear that when Connie Branum's
2 body was found, they went up there and found this car -- that
3 they went up there, and the things you look for in an arson, you
4 see is there any tire tracks around there because if somebody
5 burned the car, they had to leave some way or another because
6 they didn't stay there or they'd still be sitting there when
7 they got there, so you've got to have some other vehicles come
8 up and burn the car. So you leave in the other vehicle. That's
9 what the theory has to be because that just makes common sense
10 on any arson investigation.

11 I think the proof will show that they took tire
12 prints of a vehicle that was there at the scene, and I think the
13 proof will show that the tire prints does not match the truck
14 that he was supposedly driving that night, and what they say,
15 and what everybody says they was driving.

16 They also brought his truck down here, and they
17 went through it with a fine tooth comb. They got dirt samples
18 from here, dirt samples from there, mud samples from the tires,
19 mud samples from underneath -- all this, and they don't have any
20 proof whatsoever that that truck was ever up there in that place
21 where this car burned. We don't know -- you can use your common
22 sense. You can take a -- soil's different in the mountain than
23 it is down in the valley, and they didn't have any proof. They
24 have the tire tracks. They have no proof. I submit to you that
25 the tire tracks didn't turn out.

1 They took all kinds of things, and they took finger
2 prints, and they found no finger print whatsoever to match these
3 defendants at any place, and if their position is right, that
4 they went over and got Tommy Griffin out of jail, and took him -
5 - and got in their car and rode to the place where he was killed
6 -- if that's their position -- their theory, there would be
7 finger prints in that car of Tommy Griffin. They did not --
8 they do not have any proof that there's any finger prints in
9 there.

10 They did find finger prints off of some Budweiser
11 cans, but it turned out not to be that of these two defendants,
12 and we still don't know whose finger prints those are.

13 They have -- they brought this ballistics person
14 that they say -- they found two shells, and they're trying to
15 say that they match. There's four things. You listen to these
16 experts when they start talking about ballistics. There's
17 ejector markings that's on the shells. When you eject a shell
18 out, it puts scratches and marks -- they all have distinctive
19 markings. That's what we call ejector markings.

20 They have extractor markings where it extracts the
21 shell, and kicks it out. I don't know all the details, but I
22 know it's called an extractor marking. And the most important,
23 when any gun is fired, they have recoil. You know how it hits
24 your shoulder, it's got the recoil, and it puts breach markings
25 on the shells. And then you have the markings that put from the

1 little hammer, I guess you'd call it, that hits that bullet that
2 sets it off. There are four types of identification.

3 I think the proof will show you there are no breach
4 markings on those shells, which is the most important. There
5 are no breach markings to identify them. There are no extractor
6 markings to compare to this comparison. There are no ejector
7 markings to compare. This expert, in my opinion, and based on
8 what we know, and what we feel like the proof will show, is
9 going to say that that one mark before that hit that shell,
10 based on that, he's going to come to the conclusion -- his
11 opinion, that they were fired from the same gun. And you can
12 use your common sense on this. How many guns is made in the
13 United States, and they don't make a different hammer for each
14 one of them. They are all made from die casts. They cast them,
15 and every hammer is the same, and it hits -- you can use your
16 own common sense on that.

17 We say that that is totally not sufficient evidence
18 to even attempt to make a comparison on the shells. We say on
19 the finger prints -- they have to have so many points on finger
20 prints that they can make. You can get six points, maybe, on
21 a finger print, but they said, "Well, we know there's six
22 markings, but we can't say, based on these six, that that finger
23 print is of this person. But if we can get 11 or 12, we can say
24 that that's the person. We can then give our opinion." Well,
25 I'm telling you its the same way with these shells, that there's

1 not enough -- there's no extractor, no ejector, and no breach
2 markings, and the only thing is this one thing, which is the
3 least of all of the markings on the shells because it's made by
4 the hammer. We say that that's totally inaccurate, and that's
5 what they're basing this figure on.

6 On the question of the shell that was found, and
7 the reason I'm talking about this, some of this stuff doesn't
8 apply to Gary Sutton, but because they're tried together, I have
9 to do this, and I have to cross examine, and I have to make
10 these points because we're being tried at the same time.

11 On this shell, there was a shell, they say, found
12 in the car, and they're saying that that shell was fired from
13 the gun that they found over there. It doesn't make any sense
14 if you just think of how you would -- they'll bring the gun in
15 here and show you -- how you could put that thing in there, and
16 shoot somebody, and then eject it out of there, and throw the
17 shell inside. It doesn't make any sense. It doesn't have any
18 reasoning. And I think the proof will show, and the State will
19 even agree that they can't say, and don't have any proof that
20 that shell that was found in that car was fired at any time near
21 the time of death of Connie Branum.

22 You'll hear about kids playing in and out of those
23 cars. There are shells down there -- everybody would just get
24 down there, and just shoot guns, and these kids would pack these
25 shells with mud, and throw them at each other. They would carry

1 those shells around in their pockets like boys will do. Boys
2 will pick up shells and throw them in their pocket, in and out
3 of her car, throwing shells in and out of her car. The boys
4 were about 10 or 12 years old at that time, and they were just
5 in and out of everything. There is just as reasonable an
6 explanation for why that shell was in there as it is the State's
7 theory that it had something to do with her death when they
8 can't prove, and we don't have to prove it didn't -- they can't
9 prove and can't say she even died from a criminal
10 instrumentality, and I think that's going to be uncontroverted.

11 Before you can convict Gary Sutton, or as far as
12 that goes, Mr. Dellinger, also, you are going to have to prove
13 that she died as far as some criminal instrumentality.

14 They talked about this arson. I'm not trying to
15 suggest to you that she committed suicide. Don't get me wrong.
16 I'm just saying that this is just as logical an inference as
17 what they're trying to say. And I'm not trying to say -- we
18 don't know how she died, but the proof will show she was a heavy
19 smoker. She smoked at least two and a half packs of cigarettes
20 a day. The proof will show when they did an autopsy on her body
21 that they found that she had Dioxipan in it -- the liver and
22 all, that she had drugs in her body at the time when she died.
23 She had done been told that drugs and alcohol mixed will kill
24 you. She had done tried to commit suicide one time by taking
25 the same drug, Dioxipan -- that's what she had taken when she

1 went down to the health department, and that it's just as
2 logical to infer that she went up there, maybe committed
3 suicide, or maybe because she had been drinking all day, and
4 they say she was drunk when she left, that she drove up there,
5 and maybe this is where she was hunting Tommy -- the one more
6 place she had to go, and she got up in there, and maybe she set
7 down, and maybe she dropped a cigarette.

8 I think the proof will show that if you drop a
9 cigarette, and the proof will show it started right on her --
10 in her section of the car. With a cigarette, with any kind of
11 an accelerant, paper, clothes, will burn. You hear it every
12 day. Somebody drops a cigarette on their mattress, and they
13 catch on fire, and the house burns down.

14 The proof will also show, regarding these experts,
15 I believe they will agree that once you see -- an expert or
16 anybody that comes up to an arson first, that once you see a car
17 burned, there is no difference from the end result whether it
18 starts intentionally, or whether it starts accidentally. The
19 end result, the entire car burns. So you have to start with the
20 fact that you don't know how it started.

21 And what's further important, they sent all of this
22 stuff to the lab. They took this car, and they went through
23 this, and they sent this down to the laboratory in Nashville,
24 and Nashville come back that they couldn't find no accelerants
25 had been used -- no gasoline or nothing poured in. And you'll

1 also hear testimony that every car -- it's the most difficult
2 of any type of arson to prove. Listen to what these experts say
3 about it. Of all arsons, an automobile is the hardest because
4 it has natural accelerants in it. It has gas, and you know gas
5 will burn. It has oil, and oil will burn. It has power
6 steering fluid, transmission fluid, and all these things burn,
7 and they are accelerants.

8 That's what you call an accelerant. An accelerant
9 is something that just starts a fire, and they can't tell you,
10 if they say accelerant was used, whether it was liquid or it was
11 solid. If it was solid it could be just as easily the clothes
12 or paper. She had some papers -- if she had eaten anything, if
13 there was any papers in the floor board or anywhere, that that
14 could just as easily have started it, and they can't tell you,
15 we feel, other than trying to give an opinion, that this started
16 this way.

17 Now, another thing I want you to listen to on this
18 expert. You are going to hear that when this person -- he's for
19 the State, he's hired by the State, and he's come up here to
20 prove an arson case. He's not come up here to say, "No, this
21 could be accidental." We know that. He's come up here -- but
22 when he first comes up, he's done decided when the fire started
23 and when she died before he ever goes over there. His report
24 says he got a call, and pursuant to the call that he determined
25 that the fire happened on the 22nd, and that she died as a

1 result of the fire on that day. So they start out with the
2 premise they've got. They say that somebody's killed her, and
3 it's an arson. They are going to show how. They don't start
4 with an open mind, and that's what we want you folks to do,
5 start with an open mind.

6 We say that it's just as important that you listen
7 to all this proof. They talk about Tommy out there on that
8 road, and they stopped, and they said they picked him up -- when
9 he was picked up. He told the officers that he didn't know who
10 the people were. He said, "I don't know." He told the officers
11 he didn't know the people. Well, he certainly knew these boys.

12 They were talking about different things, and we
13 say that when you listen to all of this proof, you'll see that
14 this case is woefully lacking in what necessary elements it
15 takes to convict somebody of any homicide, and particularly,
16 first degree murder.

17 They don't have any proof that she died as a result
18 of a criminal instrumentality. They don't know how she died.
19 They -- we do know that she smoked, and she had pills in her
20 body, and she had drunk -- had been drinking heavily that day.
21 That's just as logical as theirs.

22 Then we also know that somebody, Bill Cogdill in
23 particular, knew she was dead, she was burned, she was in that
24 car, and she was up there, and that car was in Happy Hollow
25 burned before her body was ever found, and while these boys were

1 up here giving statements. And they also know that Bill Cogdill
2 traded guns with James Dellinger, and bought a .12 gauge shot
3 gun from him.

4 If you want to believe that those shots did come
5 from the same gun, couldn't they just as easily have been the
6 gun that Bill Cogdill had? Bill Cogdill is the one that had the
7 problems with Tommy the day before, and had his problems with
8 Connie Branum. These boys didn't have any problems with these
9 people. They were best friends.

10 This other guy down there, Sutton, and Miss Joyce
11 Tipton, and Cogdill turned around and says, "Yours and my
12 problems are over, but I'm going to have to live with this the
13 rest of my life." You listen to that statement -- what they
14 tell you he told, and this was before she was ever found, before
15 anybody knew she had been burned in her car.

16 I want you to listen to the evidence. If I've said
17 something that's wrong, disregard it. But disregard also what
18 Mr. Schmutzer told you, and what they think they're going to
19 prove, and listen to these witnesses.

20 I'm not trying to say all these officers are
21 telling falsehoods, but there's some of them that we just about
22 caught lying.

23 **GENERAL SCHMUTZER:** I'm going to object to that,
24 Your Honor.

25 **THE COURT:** Sustained as to the form of the

1 statement, Mr. Daniel.

2 MR. DANIEL: I apologize, and rephrase that. We
3 say that they lied to our clients in an attempt to get them to
4 confess because they do not have video tapes, as they told them.
5 They don't have any proof of any shots being fired on Saturday
6 as they told them.

7 I want you to listen to it. It's a big case --
8 they wanted to convict somebody. They don't want this thing to
9 go without a conviction. You listen to their reasons, and what
10 they say. Thank you very much.

11 THE COURT: All jurors please stand, and raise your
12 right hand.

13 (JURY SWORN)

14 THE COURT: You may be seated. Approach the bench,
15 counsel.

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

17 THE COURT: How long do you expect your first
18 witness to be, General?

19 GENERAL SCHMUTZER: I don't know, Your Honor. I
20 think it would depend on how long their cross
21 examination would be. How many witnesses do you
22 want to try to -- do you want to try to get on a
23 couple, or do you want to break for lunch, and come
24 back at 12:15, and start the proof, and keep going?

25 THE COURT: Do you know who your first witness is

1 going to be?
2 GENERAL SCHMUTZER: Yeah.
3 THE COURT: Who is it?
4 GENERAL SCHMUTZER: Detective John Brown, and he'll
5 have some charts and things like that.
6 THE COURT: So he'll take a while, won't he? Is
7 that what you anticipate?
8 GENERAL SCHMUTZER: It depends on what their...
9 THE COURT: I would say -- okay. I think it'll be
10 better for everybody not to break his testimony up.
11 Let's start with him at say, 12:30, okay?
12 GENERAL SCHMUTZER: That will be fine.
13 GENERAL GREEN: The Court please, in Gray vs.
14 Miller, copies of the investigative notes of Donnie
15 Huskey and Mark Holt -- the notes that they
16 apparently took during the course of this
17 investigation, and among those notes was the
18 reference made to Bill Cogdill, that they had had
19 an argument -- an altercation between Bill Cogdill
20 and Tommy Griffin . The officers do not know who
21 gave him that information. I have personally tried
22 to run down...
23 THE COURT: I'm sorry. Say that again.
24 GENERAL GREEN: The officers don't know who gave
25 them that information. I have personally tried to

1 find out that information. The information I got
2 it was either Elaine Mayes or Linda Henry, who are
3 neighbors across the road from Tommy Griffin's
4 trailer. I have called them, and it's my
5 understand Mr. Webb's called them, and they both
6 deny...

7 MR. WEBB: I've not called them. I've not called
8 them, I don't believe. You told me that.

9 GENERAL SCHMUTZER: We furnished that information
10 to them.

11 GENERAL GREEN: They both deny that...

12 THE COURT: That that statement was made.

13 GENERAL GREEN: The point we're making is they
14 should not be able to try to elicit that from this
15 officer because it's obviously hearsay testimony.

16 THE COURT: Okay.

17 GENERAL SCHMUTZER: In particular, them trying to
18 introduce one of our letters to them that we
19 furnished with discovery.

20 THE COURT: If Mr. Cogdill had given that
21 statement, it might qualify as some statement
22 against interest to him under the hearsay rule, but
23 if that officer did not hear that, or if you don't
24 have a witness who is willing to testify to that,
25 then that would be classic hearsay. So I will

1 sustain the State's motion as to that form of
2 eliciting that testimony. Okay?

3 MR. DANIEL: Okay.

4 GENERAL SCHMUTZER: We would ask, Your Honor, that
5 they approach the bench if they intend to go into
6 that so we can...

7 MR. DANIEL: I've never seen that. I saw a little
8 one paragraph -- do you have that in there that you
9 all furnished with one statement?

10 MR. WEBB: You've got that, don't you, the
11 statement -- the actual statement you furnished us.
12 It was a one or two liner. Let's produce that.

13 GENERAL SCHMUTZER: That was what the officer wrote
14 down. That's what we furnished -- I mean, that's
15 what we referred to in that letter.

16 THE COURT: Okay.

17 GENERAL SCHMUTZER: But that's obviously the
18 officer's -- it wasn't what he saw, it wasn't
19 anything -- he didn't know who he got it from. We
20 thought that it came from these two people, and we
21 furnished that to them, and it turned out these two
22 people said no, they had never saw that. What I
23 would suggest to the Court, if they intend to go
24 into that, we would ask them to approach the bench,
25 and tell us how they intend to go into it, and give

1 us an opportunity to object, to make sure that
2 we're not going to have a situation where an
3 opening statement was made that we had furnished
4 this information to them. The discovery, of
5 course, was totally -- you know, that couldn't be
6 introduced that way under the circumstances.

7 **THE COURT:** The Court has ruled.

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

10 **THE COURT:** Have arrangements been made for the
11 jury's lunch?

12 **SHERIFF OGLE:** Yes, Your Honor.

13 **THE COURT:** Okay. Ladies and gentlemen of the
14 jury, I am as anxious as you are to begin testimony in this
15 case. However, I am advised by all counsel that the first
16 witness will take a considerable length of time in which to
17 testify, and to be examined and cross examined by all counsel.

18 As a consequence of that, rather than starting and
19 having to either interrupt that flow of testimony, I'm going to
20 let you go to lunch now. Be back at approximately 12:30 or
21 12:45 -- as quickly as you can, and we'll have the first witness
22 at that time.

23 Do not discuss the case, or allow anyone to talk
24 to you about it. Thank you.

25 **(JURY OUT)**

(COURT STOOD IN RECESS FOR LUNCH)

THE COURT: Just remain standing. Bring the jury in, please.

(JURY IN)

THE COURT: Waive the call for the State?

GENERAL SCHMUTZER: Yes, Your Honor.

THE COURT: And the defense?

MR. MILLER: Yes, Your Honor.

MR. DANIEL: Yes, Your Honor.

THE COURT: You may be seated. General Schmutzer, you may call your first witness.

GENERAL SCHMUTZER: The State calls Detective John Brown.

**

JOHN BROWN was called, and being duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY GENERAL SCHMUTZER:

Q. State your full name, please, sir.

A. John David Brown.

Q. And your position?

A. Detective.

Q. With the Sevier County Sheriff's Department?

A. Yes, sir.

Q. And how long have you been employed with the Sevier

1 County Sheriff's Department?

2 A. Five years.

3 Q. Back in February of last year what position did you
4 hold at that time?

5 A. Patrolman for the sheriff's department.

6 Q. All right, sir. And where do you live?

7 A. 2301 High View Road, Sevierville, Tennessee.

8 Q. And where is that in relation to Bluff Heights
9 Road?

10 A. It's at the intersection of Bluff Heights Road and
11 High View Road.

12 Q. All right. And is that in what is known as the
13 Gibson Hollow here in Sevier County?

14 A. Yes, sir, it is.

15 Q. I'll ask you if you would, please, sir, if you
16 could come down. (Witness complies.) How long have you lived
17 there?

18 A. Five and a half years.

19 Q. Are you familiar with the defendant, James
20 Dellinger?

21 A. Yes, sir, I am.

22 Q. And familiar with where he lives?

23 A. Yes, sir.

24 Q. And how about Tommy Griffin?

25 A. Yes, sir.

1 Q. Do you know where he lived in his lifetime?

2 A. Yes, sir.

3 Q. I'll call your attention, sir, to a -- if you'll
4 come right around here.

5 THE COURT: Is he going to be down there some time,
6 General Schmutzer?

7 GENERAL SCHMUTZER: Yes, sir.

8 THE COURT: Okay. The Court will come down.

9 GENERAL SCHMUTZER: Let's get this where everyone
10 can see. Can you see that okay? Your Honor, can
11 you see that okay?

12 THE COURT: Yes.

13 BY GENERAL SCHMUTZER:

14 Q. Okay. Beginning first -- looking at this chart we
15 have before us, sir, will this aid you in explaining to the
16 Court and jury the location, and how the houses and trailers are
17 located up there in the Gibson Hollow area?

18 A. Yes, sir.

19 GENERAL SCHMUTZER: May it be filed, Your Honor,
20 as an exhibit?

21 THE COURT: So ordered.

22 (EXHIBIT #2 - Chart; marked and filed.)

23 MR. WEBB: Your Honor, can I -- if I could sit over
24 here somewhere where I can see.

25 THE COURT: I think we can squeeze you in.

1 MR. WEBB: Mr. Allen, I want to make sure you can
2 see, too, but I want to -- thank you.

3 BY GENERAL SCHMUTZER:

4 Q. Now, if you would -- first, what is the main road
5 going through here?

6 A. Goose Gap Road.

7 Q. All right. And going in this direction, I guess
8 basically in a northerly direction, are you going out towards
9 Chapman Highway?

10 A. Yes, sir, in this direction.

11 Q. All right, and that also goes out towards White's
12 School community?

13 A. Yes, sir.

14 Q. And going back in the other direction on that road
15 -- or what direction are you going on Goose Gap Road?

16 A. Going toward Goose Gap Road toward Walden's Creek.

17 Q. Does that come out there at the Fox -- what used
18 to be the Fox Store out there?

19 A. Yes, sir.

20 Q. Up on Walden's Creek Road?

21 A. Yes, sir.

22 Q. And this lane behind here would be Bluff Mountain,
23 is that right? This goes up towards Bluff Mountain?

24 A. Correct.

25 Q. Now, as you come off Goose Gap Road, you turn off

1 onto Gibson Hollow Road, is that correct?

2 A. Yes, sir.

3 Q. Now if you will, as you turn off there on Gibson
4 Hollow Road, would you just point out for the Court and jury
5 where you live?

6 A. Right here at this intersection of High View Road
7 and Bluff Heights Road.

8 Q. Okay. And which is the Bluff Heights Road?

9 A. This one right here.

10 Q. The one that has the buildings shown on it?

11 A. Yes, sir.

12 Q. Okay. And we don't have yours actually marked, but
13 you're right at that intersection, is that correct?

14 A. Yes, sir.

15 Q. Now, as you go up there and turn onto Bluff Heights
16 Road, if you would, just explain the houses and trailers you
17 come to on the way up.

18 A. The first trailer on the left is Tommy Griffin's
19 residence.

20 Q. Is this the one that burned?

21 A. Yes, sir, it is.

22 Q. All right. And that was it's location at the time?

23 A. Yes, sir.

24 Q. Before it burned. Okay.

25 A. The next residence is Devon Mays residence which

1 is on the right.

2 Q. And is it just about across the road from...

3 A. Yes, sir.

4 Q. ...from Tommy Griffin's?

5 A. Yes, sir.

6 Q. Okay. And what's the next one?

7 A. The next one is McDermon residence.

8 Q. Is that a permanent residence?

9 A. No, sir. The people that own this residence are
10 from Arkansas, and they come in and stay every once in a while.

11 Q. You'll need to speak up a little louder to be sure
12 they can hear you.

13 A. I'm sorry.

14 Q. Go ahead.

15 A. The McDermon residence, the owners live in
16 Arkansas, and every once in a while they come to this residence
17 and stay.

18 Q. Now, is there a -- any type of a street lamp or
19 security lamp there near the McDermon residence?

20 A. Yes, sir, at the edge of the driveway near the
21 roadway.

22 Q. All right. And that burns at night, I take it?

23 A. Yes, sir.

24 Q. And that's marked here on this exhibit?

25 A. Yes, sir.

1 Q. And you come on up. What's the next place you get
2 to?

3 A. The Henry residence.

4 Q. Alvin Henry?

5 A. Yes, sir.

6 Q. All right. And as you go on up beyond that where
7 do you come to?

8 A. The next one on the right is the Boyd Branum
9 residence; it's on the right hand side of the road. The next
10 one is James Dellinger's residence.

11 Q. All right. Now, when you point out Boyd Branum's,
12 that is on the same side of the road as Alvin Henry, is that
13 right?

14 A. Correct.

15 Q. And then you pointed to a trailer directly across
16 from there, and is that where James Dellinger was living at that
17 time, or his daughter?

18 A. Yes, sir, that's where he was living at that time,
19 and his daughter was staying in a trailer here.

20 Q. All right. I believe his daughter was in the first
21 one, was she not, and Mr. Dellinger was in the blue one up
22 above?

23 A. Correct. The first one was James Dellinger, and
24 the second one was his daughter's. He owns both properties.

25 Q. I think you have marked here...

1 MR. WEBB: Your Honor, he's asked and answered.
2 We would...

3 GENERAL SCHMUTZER: Well, Your Honor, he had made
4 this...

5 BY GENERAL SCHMUTZER:

6 Q. His daughter was the brown one, and his was the
7 blue one? That's what you had marked.

8 A. Correct.

9 Q. Okay, sir. Just the opposite of what you had said?

10 A. Yes, sir.

11 Q. Now, in coming -- is there a street lamp, also, up
12 there?

13 A. Yes, sir. At the Boyd Branum residence it's
14 located at the corner of his driveway beside the roadway.

15 Q. So there are two lamps that burn at night up there,
16 is that correct?

17 A. Yes.

18 Q. To get in and out of there, is this the only way
19 that you can get in on Bluff Heights is to come up Gibson Hollow
20 Road and turn in? Are there other directions to get in and out
21 of the hollow other than that?

22 A. Yes. You can turn into Seagle Hollow Road off of
23 Goose Gap Road, and come across the foot of the mountain, and
24 come in on the back side.

25 Q. Okay. And how about this road right here?

1 A. Yes. High View Road to the left, and runs directly
2 to the end of that, and going to Bluff Heights Road, and comes
3 back out on Gibson Hollow Road.

4 Q. So there's a total of three different ways to get
5 in and out of Bluff Heights?

6 A. Correct.

7 Q. Now, in your capacity as the detective, sir, have
8 you personally gone out and gone to different locations, both
9 in Sevier and Blount County, and made -- to check distances?

10 A. Yes, sir, I have.

11 Q. And I'll show you, sir, a diagram here, and ask if
12 you can identify that?

13 A. Yes, sir.

14 Q. And would this aid you in pointing out those
15 locations and distances?

16 A. Yes, sir.

17 GENERAL SCHMUTZER: May this be filed, Your Honor,
18 as an exhibit?

19 THE COURT: It sure may. Is that Exhibit #2?

20 COURT REPORTER: Three.

21 THE COURT: Three.

22 (EXHIBIT #3 - Chart; marked and filed.)

23 BY GENERAL SCHMUTZER:

24 Q. Now, beginning on this side over here, would you
25 just explain what all this represents -- just starting from

1 right there?

2 A. This is the Hunt Road off of Alcoa Highway, and
3 this is the roadway that goes to Blount County Jail, Howie's
4 Lounge, and on out into town.

5 Q. All right. Beginning with the jail which is
6 located, I take it, in the town of Maryville?

7 A. Correct.

8 Q. Going out the Alcoa Highway, sir, what did you
9 determine to be the distance from -- let me just ask you -- when
10 you go out from the jail, you're going out the Alcoa Highway
11 towards Knoxville to the Hunt Road overpass?

12 A. Yes, sir. It's 3.8 miles.

13 Q. All right. Now, coming from the jail and going -
14 - from there, where do you go going back towards Howie's Lounge?
15 What road or highway are you on?

16 A. Townsend Highway.

17 Q. Also known as 321?

18 A. Correct.

19 Q. And as you came -- how far is Howie's Lounge from
20 the jail?

21 A. It is approximately 2.3 miles.

22 Q. As you come on out that highway, how far is it from
23 the jail to Manning Lane, the location of the Blue Hole?

24 A. Approximate 26 to 27 miles.

25 Q. And is that the area where Tommy Griffin's body was

1 found?

2 A. Yes, sir.

3 Q. Going from there on out to the Townsend Shopping
4 Center if you continue on out 321, how far is that?

5 A. 5.9 miles, approximately.

6 Q. The Townsend Shopping Center, where is it located
7 in relation to where 321 turns and crosses the river and goes
8 into Wears Valley?

9 A. It's approximately just past that intersection.

10 Q. Okay, sir. So you are pointing to it right there?

11 A. Yes, sir. The intersection to Wears Valley Road
12 is here just past the Townsend Shopping Center.

13 Q. All right. And how far -- going from there into
14 Wears Valley, how far is it?

15 A. 5.9 miles, approximately.

16 Q. And then once you get into Wears Valley, how far
17 is it into Clear Fork where Connie Branum -- her remains were
18 found?

19 A. From Wears Valley Road to Clear Fork is .7 of a
20 mile, and from Clear Fork into the area where her body was found
21 was .4 of a mile, approximately.

22 Q. But it's a little over a mile, then, from the Wears
23 Valley Road all the way to the car, is that right?

24 A. Correct.

25 Q. Then going on from Wears Valley, how do you get on

1 from there, then, to Goose Gap Road?

2 A. Wears Valley Road to Rushing Gap Road and turn
3 left, and that comes out on Walden's Creek at the intersection
4 of Goose Gap Road.

5 Q. Okay. And what is the mileage there?

6 A. Approximately 4.5.

7 Q. Is that all the way to the Bluff Heights area, this
8 4.5 miles? What is that to?

9 A. That is from the Rushing Gap turn off to the
10 entrance of Bluff Heights.

11 Q. Of course, these are drawn in straight lines.
12 We're not talking about straight lines as far as these roads are
13 concerned, are we, sir?

14 A. Correct.

15 Q. The road, in particular, from Townsend to Wears
16 Valley is in itself curvy, and goes through some mountains?

17 A. Yes, sir, it is curvy.

18 Q. The area located here in the Clear Fork, is that
19 mountainous terrain?

20 A. Yes, sir, it is.

21 Q. Did you also -- in traveling this, did you also
22 determine the approximate time that it would take to drive to
23 these various areas?

24 A. Yes, sir, I did.

25 Q. And did you -- how did you do this?

1 A. With a stop watch.

2 Q. In driving, how did you -- what limits or what
3 speed did you travel?

4 A. I stayed at the speed limits that were posted on
5 each road way.

6 Q. All right. I'll show you a chart, sir, and ask you
7 if you recognize this?

8 A. Yes, sir.

9 Q. All right. Would this chart aid you in explaining
10 to the Court and jury the various distances and times from
11 certain locations?

12 A. Yes, sir, it would.

13 GENERAL SCHMUTZER: May it be filed, Your Honor?

14 THE COURT: So ordered.

15 (EXHIBIT #4 - Chart; marked and filed.)

16 BY GENERAL SCHMUTZER:

17 Q. All right. If you would, just take us through that
18 from the top on.

19 A. From Howie's Lounge to Hunt Road is approximately
20 6.1 miles, and it took approximately 11 minutes to drive.

21 Q. This is Hunt Road, being on the Alcoa Highway where
22 the overpass is?

23 A. Correct.

24 Q. All right.

25 A. From the Blount County Jail to Manning Lane, the

1 distance was approximately 9 miles, and took approximately 11-
2 1/2 minutes.

3 Q. Manning Lane being the location where Tommy
4 Griffin's body was found?

5 A. That is correct?

6 Q. Okay, and the next one?

7 A. From Howie's Lounge to Townsend Shopping Center,
8 the distance was approximately 12.6 miles, and took
9 approximately 16 minutes to travel.

10 Q. All right. From Townsend -- go on.

11 A. From Townsend Shopping Center to Clear Fork Road
12 was 6.6 miles, approximately, and took approximately 10 minutes
13 to drive. From Clear Fork Road to Bluff Heights Road was
14 approximately 12.6 miles, and took approximate 20 minutes to
15 drive.

16 Q. Now, this Clear Fork that we're talking about here,
17 this is the vicinity where Connie Branum was found?

18 A. That is correct.

19 Q. Her remains?

20 A. Yes, sir.

21 GENERAL SCHMUTZER: You can go back up and have a
22 seat.

23 THE WITNESS: Yes, sir.

24 THE COURT: And that's Exhibit #4, is that correct?

25 COURT REPORTER: Yes, sir.

1 BY GENERAL SCHMUTZER:

2 Q. Back on February the 15th of 1992, sir, did you
3 answer a complaint up there at Bluff Heights involving James
4 Dellinger?

5 A. Yes, sir, I did.

6 Q. Did you respond to that?

7 A. Yes, sir, I did.

8 Q. And when you went up there who did you meet?

9 A. The defendant, Mr. James Dellinger.

10 MR. DANIEL: Your Honor, at this time on behalf of
11 the defendant Sutton we would interpose an
12 objection. We would like the record to reflect
13 that we made that objection.

14 THE COURT: So ordered.

15 BY GENERAL SCHMUTZER:

16 Q. Now, was this at his residence up there?

17 A. Yes, sir, it was.

18 Q. And when you got up there who -- you said that
19 James Dellinger was there?

20 A. Yes, sir.

21 Q. Did he show you anything?

22 A. Yes, sir, he showed me a storage building adjacent
23 to his trailer that had been shot into.

24 Q. Did he tell you who he thought had done it?

25 A. Yes, sir, he advised one of the Griffins.

1 THE COURT: At this time, ladies and gentlemen,
2 this statement of Mr. Dellinger may be considered
3 by you only at this time as it relates to him. Do
4 not at this time consider that evidence as against
5 Mr. Sutton.

6 GENERAL SCHMUTZER: If it later becomes material
7 may they consider it later?

8 THE COURT: I will instruct them so.

9 BY GENERAL SCHMUTZER:

10 Q. After -- did he indicate, or did he say to you what
11 he might have to do?

12 A. He advised they had done this before, and that if
13 he had to, he would go wipe the entire -- he'd wipe the entire
14 hill of Griffins out.

15 Q. He told you this?

16 A. Yes, he did.

17 GENERAL SCHMUTZER: Just one second, Your Honor.

18 THE COURT: Yes.

19 GENERAL SCHMUTZER: You may cross examine.

20 **

21 CROSS-EXAMINATION

22 BY MR. MILLER:

23 Q. You live up there, evidently, pretty close to the
24 Dellingers and the Griffins, and so forth, is that correct?

25 A. Correct.

1 Q. Within how -- how close are you up there to them?

2 A. I live below where Tommy Griffin's trailer was
3 located.

4 Q. Of course, you're close to Boyd Branum and his wife
5 at the time, is that correct?

6 A. Correct, I live below them.

7 Q. You, yourself had had some problems up there, and
8 answered calls up there related to the Griffins in the past, is
9 that true?

10 A. Correct.

11 Q. Okay. What did -- strike that. Have you been up
12 there over some problems with the Griffins on more than one
13 occasion?

14 A. No, sir.

15 Q. Just one occasion?

16 A. Yes, sir.

17 Q. Were these problems you were having personally with
18 them or other calls...

19 A. No, sir, routine calls.

20 Q. You answered this call to go up to report this
21 incident at James Dellinger's trailer. You had discussed with
22 James Dellinger that you yourself had had problems with the
23 Griffins in the past, or answered calls up there or something
24 to that effect?

25 A. No, sir, I did not.

1 Q. You didn't mention that to him?

2 A. No, sir.

3 Q. And did you make a statement to Mr. Dellinger that
4 you'd like to put those Griffins in jail for a weekend, all of
5 them, at one time?

6 A. No, sir.

7 Q. Never made that statement?

8 A. No, sir.

9 Q. On February the 15th when you answered the call at
10 the Dellinger residence, did you make a report?

11 A. Yes, sir, I did.

12 Q. And in that report did you include -- it was a
13 complete report, everything that went on?

14 A. Yes, sir.

15 Q. All right. Do you have a copy of that report?

16 A. Yes, sir, I do.

17 Q. Do you have that up there with you?

18 A. Yes, sir, I do.

19 Q. If you can pull that out, we may refer to it.

20 A. (Witness complies.)

21 Q. Is that...

22 MR. MILLER: May I approach the witness, Your
23 Honor?

24 THE COURT: Sure.

25 BY MR. MILLER: