

Exhibit 1

IN THE CRIMINAL COURT FOR DAVIDSON COUNTY
TENNESSEE AT NASHVILLE
DIVISION II

CRIMINAL COURT
2022 APR -4 PM 12: 25

OSCAR SMITH)	
)	
Petitioner)	
)	No. 89-F-1773
v.)	Capital Case
)	
STATE OF TENNESSEE)	
)	EXECUTION DATE:
Respondent)	APRIL 21, 2022

**MOTION TO REOPEN POST-CONVICTION PROCEEDINGS
AND/OR FOR REVIEW UNDER THE
POST-CONVICTION DNA ANALYSIS ACT OF 2001**

After 32 years of adamantly asserting his innocence, Oscar Smith finally has proof that someone else murdered his family. Indeed, he now has the perpetrator's fingerprints and DNA. Last year Mr. Smith presented proof in this Court showing that the unknown assailant's fingerprints were on the awl that was indisputably used in the murders for which he was sentenced to death. Ex. 1, Report of Kathleen Bright--Birnbaum; see Ex. 2, TT Vol. 18, pp. 2566, 2600 (describing the wounds created by the awl). Mr. Smith also presented new expert palm print analysis that eviscerated the state's sole "scientific" proof at his capital trial—Sergeant Johnny Hunter's testimony that there was "no doubt" that the palm print at the murder scene belonged to Smith. Despite his proof that "the most important piece of evidence presented to the jury," was, in the end, junk science, the courts closed their doors to Mr. Smith. Ex. 3, DA Letter; see *Smith v. State*, No.

M202101339CCAR3PD, 2022 WL 854438, at *1 (Tenn. Crim. App. Mar. 23, 2022).

Now, as a result of new technological advances in DNA analysis, Mr. Smith has discovered DNA left behind by the murderer in that unknown print on the awl. Ex. 4, SERI Report. He files the instant Motion seeking review and relief, either through the reopening of his petition for postconviction relief or through a new action under the Post-Conviction DNA Analysis Act of 2001. The courts must listen now—or in 17 days, Tennessee will execute an innocent man.

I. Factual and Procedural Background

As this Court is aware, Mr. Smith attempted to present proof of his innocence in July 2021. He filed, on the day relief became available, a Petition pursuant to the newly-enacted Post-Conviction Fingerprint Analysis Act of 2021, Tenn. Code Ann. §§ 40-40-403 through 40-40-413. In support of that Petition, Mr. Smith presented the declaration of Kathleen Bright-Birnbaum, a pre-eminent fingerprint examiner who primarily testifies for law enforcement. Ms. Bright-Birnbaum revealed that the identification of Mr. Smith by then -Sgt. Hunter of the Metro Police Department was “not supported.”

He also presented the Court with Ms. Bright-Birnbaum’s earlier analysis, wherein she found that Hunter had made multiple other errors besides wrongly “identifying” Mr. Smith. *See* Ex. 1 Bright-Birnbaum Report. While any error in fingerprint identification is horrifying, it is hard to evaluate which of Hunter’s errors was most egregious.

First, after mishandling the evidence in Mr. Smith’s case, Hunter failed to identify his own fingerprint among those collected, intrinsically

demonstrating incompetence and lack of professionalism. *Id.* at 12 (identifying latent print #001-01A—which Hunter identified as having come from the awl and labeled as “N/V” (or no value)—“as having been made by the Left Ring finger of Officer Hunter beneath the lift tape”); *see* U.S. Dep’t of Just., Off. of Just. Programs, *Crime Scene Investigation: A Guide for Law Enforcement* 26–28 (2000) (because “handling of physical evidence is one of the important factors of the investigation,” officers “shall ensure the effective collection, preservation, packaging, and transport of evidence” and should prioritize collecting evidence in a manner that “prevent[s] loss, destruction, or contamination”); 1 Am. Jur. Trials 555, *Locating & Preserving Evidence* § 21 (2022 update) (when picking up objects at a crime scene, the investigating officer must use “proper methods of moving, marking, packaging, and transporting the article, with the least possible chance of destroying or contaminating the evidence it may disclose,” as it is “inexcusable for any investigator to go to the scene of a crime and handle objects promiscuously, open or close drawers, or move papers before they have been photographed and examined for fingerprints”); *see id.* at § 107 (“In moving an article suspected of having friction-ridge prints, the investigator should realize that he cannot handle the item indiscriminately merely because he is wearing gloves or is using a handkerchief or other fabric. It is true that this will prevent him from leaving his own prints, but it may also destroy prints already on the object....Whenever an investigator moves an article while wearing gloves or using a handkerchief, he should tell the lab expert that he has done so.”).

Additionally, Hunter then identified Mr. Smith as the murderer

based upon a biased and scientifically unsupported palm print analysis procedure, and he testified to that finding to an absolute certainty. Ex. 5, Trial Testimony Excerpt at 2010. Identifying the wrong man is particularly horrifying in a capital case, and the harm done to Mr. Smith cannot be overstated.

Arguably, however, Hunter’s most egregious error was in failing to realize that he had an identifiable print from the perpetrator on the murder weapon itself. The perpetrator left a fingerprint on the awl. *See, Ex. 2, TT Medical Examiner Testimony* pps. 65,120(describing wounds inflicted by awl; *see also, Ex. 6, Supp. TT of Opening and Closing Statements* at 6 (arguing “[a]nd he had taken three weapons with him, a .22 pistol, a buck knife, which he carried frequently, and what’s called an awl, which is like an ice pick, which is a leatherworking tool”).

Hunter collected the perpetrator’s print from the awl, but marked it as “N/V,”—or, “no value”— indicating that it could not be used for identification. Ex. 7, Hunter Report (dismissing 30 prints, including that on the awl, as having “no identifiable value”). As part of federal litigation, Bright-Birnbaum re-analyzed the prints lifted by Hunter and determined that Hunter had made 14 errors.¹ Among the errors was Hunter’s

¹ For procedural reasons relating to the scope of the remand from the Supreme Court of the United States, Mr. Smith’s actual innocence was not before the federal courts in 2016. Instead, he was constrained to the development and presentation of claims of ineffective assistance of counsel and post-conviction counsel under *Martinez v. Ryan*, 556 U.S. 1 (2012).

determination that the print on the awl, Item 001-01B, had no value. *See id*; Ex. 1, Bright-Birnbaum Report at 1-2. In addition to determining that Mr. Smith did not leave that print on the awl, Bright-Birnbaum found that Item 001-01B *was* identifiable—that is, enough of the print from the awl was lifted and preserved to provide sufficient information such that a comparison could be made. *Id.* at 2. Despite his compelling claim, the courts closed their doors to Mr. Smith for procedural reasons. *Smith v. State*, No. M202101339CCAR3PD, 2022 WL 854438, at *1 (Tenn. Crim. App. Mar. 23, 2022).

With his entitlement to relief based on the fingerprint evidence on appeal,² Mr. Smith learned that new DNA technology is available. Though it has been theoretically possible to develop “touch DNA” for several years, the Applied Biosystems™ GlobalFiler™ PCR Amplification Kit was not developed until 2012 and did not become available in most labs until after 2017. Ex.4 at 8, SERI Rep. The fully continuous probabilistic genotyping software program used for analysis on the awl, Bullet Proof Sentry, was not available until 2022. *Id.* That is, touch DNA was not available until well after Mr. Smith’s trial and post-conviction proceedings, and the technology used to perform the touch DNA analysis that supports this Motion was not available until

² Mr. Smith filed his Application for Permission to Appeal the denial of his Fingerprint Act petition to the Tennessee Supreme Court pursuant to Tennessee Rule of Appellate Procedure 11 on March 28, 2022. His Application remains pending as of the date of this filing.

this year. Ex. 4, SERI Report at 8.³

Upon realizing that Bright-Birnbaum's analysis showed that the unknown murderer's print was on the murder weapon and that new scientific procedures were available to obtain profiles in such circumstances, Mr. Smith sought touch DNA analysis of the awl. On January 19, 2022, this Court, seeing the agreement of the parties, ordered the release of the awl to Mr. Smith's DNA analyst. January 19, 2022 Agreed Order. On February 28, 2022, this Court ordered release of the known samples back to SERI. , 2d Agreed Order. Re-analysis of the known samples was required because the prior analysis results were not sufficient for comparison with the new technology used to analyze the biological material left behind on the awl.

On March 30, 2022, SERI issued a report confirming the presence of the unknown assailant's DNA on the murder weapon. Ex. 4, SERI Report at 4. That is, SERI found an identifiable DNA profile on the murder weapon and *definitively excluded* Oscar Smith as the contributor of that DNA. *Id.*

The significance of this result cannot be overstated: Oscar Smith has, using new touch DNA technology, demonstrated that he is not the

³ As noted in the SERI report, the technology used here is so new that he had to re-examine the "known" specimens previously analyzed in 2016 so that a scientifically valid comparison could be achieved. Ex. 4, SERI Rep. at 2 (noting resubmission of items); *see also* Second DNA Order, February 28, 2022 (releasing the known samples to SERI pursuant to the parties' agreement).

person who used the awl to kill his family. Unlike other cases, there has never been any question that this crime was committed by one person. Indeed, in both opening and closing arguments, the prosecution argued that Mr. Smith, by himself, committed this crime. Ex. 6, Supp. TT of Open and Closing Statements at 4 (“Then he made the conscious decision, when he couldn’t find someone else to do this dirty work for him, that he would kill.”); *id.* at 4-8 (arguing that Mr. Smith committed the murders alone); *id.* at 62-64 (arguing that “there is only one man” who committed the crime). Mr. Smith did not kill his family. For 32 years, he has maintained his innocence and has attempted the nearly impossible task of proving a negative—that he did *not* murder anyone. Mr. Smith now presents this court with new scientific proof of his actual innocence: the fingerprint and the DNA of the perpetrator. He is entitled to relief.

II. Motion to Reopen Petition for Post-Conviction Relief

Pursuant to Tennessee Code Annotated § 40-30-117, a petitioner may, in certain circumstances, have his post-conviction petition reopened by the trial court. One such circumstance is where the petitioner obtains “new scientific evidence establishing that the petitioner is actually innocent of the offense or offenses for which the petitioner was convicted[.]” Tenn. Code Ann. § 40-30-117(a)(2). The petitioner must allege facts which, if true, would “establish by clear and convincing evidence that the petitioner is entitled to have the conviction set aside or the sentence reduced.” Tenn. Code Ann. § 40-30-117(a)(4); Tenn. Code Ann. § 40-30-117(b) (the factual basis must be supported by affidavit and “shall be limited to information which, if offered at an evidentiary hearing, would be admissible through the testimony of the affiant under

the rules of evidence”).

Based upon the new scientific evidence contained in the SERI Report, this Court must permit Mr. Smith to reopen his post-conviction proceedings, and he should be granted an evidentiary hearing. At that evidentiary hearing, Mr. Smith should be permitted to present all evidence supporting his actual innocence to meet his burden of showing that his murder convictions should be set aside or, at a minimum, that his death sentence should be vacated.

III. Post-Conviction DNA Analysis Act of 2001

The availability of STR technology and DNA testing databases have produced scores of DNA exonerations in recent years that have been nothing less than astonishing—both because of the minute traces of biological material involved and because of the grave errors revealed in a host of criminal cases where the defendants’ guilt had appeared to be beyond dispute. The Tennessee legislature, through the Post-Conviction DNA Analysis Act of 2001, Tenn. Code Ann. § 40-30-301, *et seq.*, (the “DNA Act”), recognized the importance of granting access to DNA testing to individuals convicted of serious crimes and review of the integrity of those convictions in light of the results of such testing. The Act’s legislative history shows it has two purposes: “to aid in the exoneration of those who are wrongfully convicted,” and “to aid in identifying the true perpetrators of the crimes.” *Powers v. State*, 343 S.W.3d 36, 44, 59 (Tenn. 2011). In recognition of those broad dual goals and the grave but real danger of wrongful conviction, the Tennessee Supreme Court has acknowledged that “[t]here is nothing in the Act limiting DNA testing to only those cases in which there was tenuous evidence supporting the

jury's finding of guilt." *Id.* at 57.

The DNA Act provides a procedural mechanism whereby convicted persons in Tennessee can seek exoneration through DNA testing. A petitioner, may, "at any time, file a petition requesting the forensic DNA analysis of any evidence that is in the possession or control of the prosecution, law enforcement, laboratory, or court, and that is related to the investigation or prosecution that resulted in the judgment of conviction and that may contain biological evidence." Tenn. Code Ann. § 40-30-303. The Court may order DNA analysis if it finds:

- (1) A reasonable probability exists that analysis of the evidence will produce DNA results that would have rendered the petitioner's verdict or sentence more favorable if the results had been available at the proceeding leading to the judgment of conviction;
- (2) The evidence is still in existence and in such a condition that DNA analysis may be conducted;
- (3) The evidence was never previously subjected to DNA analysis, or was not subjected to the analysis that is now requested which could resolve an issue not resolved by previous analysis; and
- (4) The application for analysis is made for the purpose of demonstrating innocence and not to unreasonably delay the execution of sentence or administration of justice.

Tenn. Code Ann. § 40-30-305. The testing must be performed by "a laboratory that meets the standards adopted pursuant to the DNA Identification Act of 1994 (42 U.S.C. § 14131 *et seq.*)." Tenn. Code Ann.

§ 40-30-310. “If the results of the post-conviction DNA analysis are favorable, the court shall order a hearing[.]” Tenn. Code Ann. § 40-30-312.

In this case, the parties agreed to DNA analysis, and the Court ordered release of the evidence for the purpose of the SERI examination. Feb. 22, 2022 Order. SERI meets the standards adopted pursuant to the DNA Identification Act of 1994, as required by Tennessee Code Annotated § 40-30-310. Ex. 8, SERI Accreditation Certificate. And there can be no serious doubt that the identification of a DNA profile on a murder weapon that *excludes* the condemned and the victims is “favorable” evidence. *See* Tenn. Code Ann. § 40-30-312. Thus, SERI’s identification of the unknown assailant’s DNA on the murder weapon entitles Mr. Smith to a hearing under the DNA Act.

As outlined above, the DNA Act does not contain a limitations period. Rather a petitioner may file a petition pursuant to the DNA Act “at any time,” Tenn. Code Ann. § 40-30-303. A petitioner must nonetheless make his petition for “the purpose of demonstrating innocence and not to *unreasonably* delay the execution of sentence or administration of justice.” Tenn. Code Ann. § 40-30-305(4) (emphasis added). While delay of Mr. Smith’s execution could conceivably be required for this Court to be able to adjudicate Mr. Smith’s entitlement to relief, Mr. Smith has been doggedly seeking this proof and has brought it to Court as soon as practicable after obtaining the results. This application is not driven by a desire to unreasonably delay the execution of Mr. Smith’s sentence or the administration of justice. Rather, Mr. Smith seeks to demonstrate what he has maintained from the very

start—that he is not the perpetrator of this crime.

While there is no case law from Tennessee courts interpreting the DNA Act’s unreasonable delay provision with respect to capital cases, at least one court in Texas, interpreting a similar provision of Texas law, granted a testing request submitted *the same day* a petitioner was set to be executed. In *Pruett v. State*, No. AP-77,065, 2017 WL 1245431, at *5 (Tex. Crim. App. Apr. 5, 2017), the court granted the last-minute request even though it “ha[d] no doubt the request for the proposed DNA testing was made to delay the execution of sentence” because “although such delay tactics appear to be unreasonable, it is not clear that they, in fact, are unreasonable. Although unlikely, it is not impossible to conceive that there could be exculpatory results[.]”

The same logic applies here. This is not a case where a last-minute claim has been brought based upon long-known facts or where a petitioner has slept on his rights. *See Ramirez v. Collier*, --- S. Ct. ----, 2022 WL 867311, at *13 (U.S. Mar. 24, 2022) (citing *Gomez v. U.S. Dist. Ct. for N. Dist. of Cal.*, 503 U.S. 653, 654 (1992) (*per curiam*); *Gildersleeve v. New Mexico Mining Co.*, 161 U.S. 573, 578 (1896)). Rather, Mr. Smith has steadfastly maintained his innocence and has been attempting to prove his innocence in Tennessee state court for the better part of a year. This is instead a case where the development of new law and new scientific testing and methodology have allowed Mr. Smith—who has been incarcerated for more than three decades—to obtain new and previously unavailable facts that prove his innocence. *Herrera v. Collins*, 506 U.S. 390 (1993) (“[I]n a capital case a truly persuasive demonstration of ‘actual innocence’ made after trial would render the execution of a

defendant unconstitutional[.]”); *see, e.g., House v. Bell*, 547 U.S. 518 (2006) (new DNA evidence excluding capital petitioner as source of semen found in murder victim was “of central importance” where identity was an issue and where the previous DNA evidence pointing to petitioner was the sole forensic evidence presented to the jury); *Aguirre-Jarquin v. State*, 202 So.3d 785 (Fla. 2016) (ordering new trial and vacating death sentence for capital petitioner where new DNA evidence showed profile of alternate perpetrator, supporting petitioner’s trial theory and persistent protestations of innocence). There is nothing unreasonable about seeking to use new information to save one’s own life by proving one’s innocence, no matter when that request is made. The Court should order a hearing.

IV. Prayer for Relief

Mr. Smith respectfully requests the following:

1. This Court should grant the Motion to Reopen and set this case for further proceedings.

2. Having shown that the results of the post-conviction DNA analysis are favorable to Mr. Smith, this Court should order a hearing pursuant to Section 40-30-312.

4. Mr. Smith requests any and all process or relief as this Court deems necessary and appropriate in the interests of justice and to effectuate the purpose of Tennessee Code Annotated § 40-30-117 and/or the DNA Act.

Respectfully submitted,

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BY: 

Counsel for Oscar Smith

CERTIFICATE OF SERVICE

I, Amy D. Harwell, certify that on April 4, 2022, a true and correct copy of the foregoing was sent to the Office of the District Attorney General, 226 2nd Avenue North, Suite 500, Washington Square, Nashville, Tennessee, 37201-1649.

BY: 

Counsel for Oscar Smith

EXHIBIT 1

Scientific Examination Report

Report prepared by: Kathleen Bright-Birnbaum, CLPE

Completion Date: 07 December 2016

Case: Oscar Smith – Homicide

In May of 2016, I received scans of thirty four (34) latent lift cards said to be developed and lifted from a crime scene located at 317 Lutie Street, Nashville, TN by personnel from the Metropolitan Nashville Police Department (MNPDP) as well as scans of assorted inked prints (known prints/exemplars) of Oscar Smith, Judith Smith, Jason Barnette, and Chad Barnette. The scans of assorted inked prints included unknown inked foot prints with no information as to their source. Also received was a copy of Officer Hunter's supplemental report, dated January 30th, 1990 containing the results of his latent print analysis. On August 02, 2016, I received scans of the fingerprint card of William L. Field and the fingerprint and partial palm prints of Daryl A. Green and Gary L. Green for comparison purposes. No identifications were made to these three (3) individuals with the print cards I received. In October of 2016, I received scans of the major case prints of Officer Deavers and the fingerprint cards only of Officer Hunter and Officer Shea, also for comparison purposes. My results of these comparisons are documented below.

Of the scanned latent lift cards received (MNPDP # 001-01 through 001-34), some of which contained multiple latent fingerprints, Officer Hunter identified twelve (12) latent prints as belonging to Judith Smith, Jason Barnette or Chad Barnette. The remaining latent prints, with the exception of two (2), were labeled as N/V (No Value). One (1) latent print on Latent Lift # 001-01 (B) labeled "Leather Awe and one (1) latent print on Latent Lift # 001-22 labeled "Bathtub", did not have any markings.

During my review of the latent prints and identifications made by Officer Hunter, I concluded that two (2) of the identifications were erroneous. One latent print (# 001-25) identified as belonging to Chad Barnette was actually made by Judith Smith and a second latent print (# 001-34) identified as belonging to Judith Smith was actually made by Jason Barnette.

Of the thirty-three (33) latent prints marked of N/V (Officer Hunters report states there were thirty (30) latent prints to be of No Identifiable value), I found sufficient detail to identify one (1) of the latent prints, # 001-14, to Chad Barnette and two (2) of the latent prints, # 001-20 and 001-33, to Jason Barnette. One (1) additional latent, # 001-01 (A), also marked N/V, was identified as belonging to Officer Hunter. An additional ten (10) latent prints marked N/V (# 001-05, 001-10, 001-18, 001-19, 001-21, 001-23, 001-24 (x2), 001-32, 001-33) and another with no markings (# 001-01), were determined to be of value for comparison purposes, but no identifications were made to the inked/known prints that had been submitted to me.

On a number of the latent lift cards submitted, there were unmarked latent prints near the edges of the lift cards. I identified four (4) of these prints as having been made Officer Deavers on lift cards # 001-20 (x2), 001-22, and 001-33.

The following are the results of my review of each of the latent lift cards reflecting the conclusions of MNPD and Officer Hunter along with my conclusions and observations (a spreadsheet containing the information has been included with my report submission). It should be noted that some of the descriptions and information presented in Officer Hunter's report do not match the descriptions and information recorded on the latent print lift cards. Where a discrepancy exists, my results are based on the descriptions and information recorded on the latent print lift card.

Envelope – 001 317 Lutie Street (Latent Lifts):

Latent Print Card 01 (# 001-01): labeled "Leather Awe" containing two (2) latents, one (1) designated-marked N/V, the other with no markings.

My conclusion is that both of these latent's are identifiable (9 minutiae for the first latent and 13 minutiae on the second marked as minimum search parameters) and later marked as Letter A and B respectively for a later AFIS search by NMPD. Once the AFIS search was completed with no identifications made, I received the inked fingerprints of Officer Hunter and Officer Shea, along with the major case prints of Officer Deavers. I subsequently identified the latent marked N/V (Letter A) as having been made by the Left Ring finger of Officer Hunter beneath the lift tape. The 2nd lift (Letter B) which appears to be an actual latent lift rather than friction ridges on the underside of the tape as Officer Hunters print was, while identifiable, has not been identified.

Latent Print Card 02 (# 001-02): labeled "Door Frame / Door Way From Den to Living" has a latent impression that Officer Hunters report states as being identifiable but was not identified.

I concur with this conclusion and did not make any identification. This latent was later marked as Letter C (multiple locations with identifiable minutia marked as minimum search parameters) and searched through AFIS by NMPD with no identification made.

I noted also that there were friction ridge(s) near the edge of the lift tape that might be possible officer prints but were inconclusive/insufficient for identification purposes.

Latent Print Card 03 (# 001-03): labeled "Back of Telephone Receiver" containing a latent impression designated to be of N/V.

My conclusion is that the latent is inconclusive/insufficient value for identification purposes.

Latent Print Card 04 (# 001-04): labeled "Kitchen Phone Receiver – Back Side" containing a latent impression designated to be of N/V.

My conclusion is that the latent is inconclusive/insufficient value for identification purposes.

Latent Print Card 05 (# 001-05): labeled "Lamp on Mantle First Room on Right as Entering Resident" (sp?) containing a latent impression designated to be on N/V.

My conclusion is the latent is of value for identification purposes. This latent was later marked as Letter D (15 minutiae marked as minimum search parameters) and searched through AFIS by NMPD with no identification made.

Latent Print Card 06 (# 001-06): labeled "Left Bathroom Sink Hot – Water Knob" containing a latent impression designated to be of N/V.

My conclusion is that the latent is inconclusive/insufficient value for identification purposes.

Latent Print Card 07 (# 001-07): labeled "Outer Circumference of Brass Table Leg" containing a latent impression designated to be of N/V.

My conclusion is that the latent is inconclusive/insufficient value for identification purposes.

Latent Print Card 08 (# 001-008): labeled "Outside Door Knob Bathroom" containing a latent impression designated to be of N/V.

My conclusion is that the latent is inconclusive/insufficient value for identification purposes.

Latent Print Card 09 (# 001-09): labeled "Tennis Racket Next to Victims Head in Kitchen" containing a latent impression designated to be of N/V.

My conclusion is that the latent is inconclusive/insufficient value for identification purposes.

Latent Print Card 10 (# 001-10): labeled "Back Wood Door Inside Knob" containing a latent impression designated to be on N/V.

My conclusion is the latent is of value for identification purposes. This latent was later marked as Letter E (9 minutiae marked as minimum search parameters) and searched through AFIS by NMPD with no identification made.

Latent Print Card 11 (# 001-11): labeled "Kitchen Table Broken Leg" containing a latent impression designated to be of N/V.

My conclusion is that the latent is inconclusive/insufficient value for identification purposes.

Latent Print Card 12 (# 001-12): labeled "Kitchen Table Leg Broken" containing a latent impression designated to be of N/V.

My conclusion is that the latent is inconclusive/insufficient value for identification purposes.

Latent Print Card 13 (# 001-13): labeled "Tennis Racket Next to Victims Head in Kitchen" containing a latent impression designated to be of N/V.

My conclusion is that the latent is inconclusive/insufficient value for identification purposes.

Latent Print Card 14 (# 001-14): labeled "Bedroom Wall East Wall" containing a latent impression designated to be of N/V.

My conclusion is the latent is of value for identification purposes and I subsequently identified this latent impression as having been made by the Right Index finger of Chad Barnette.

I noted also that there were friction ridge(s) near the edge of the lift tape that might be possible officer prints but were inconclusive/insufficient for identification purposes.

Latent Print Card 15 (# 001-15): labeled "Clock on Top of Fireplace 1st Rm on Rt" containing a latent impression designated to be of N/V.

My conclusion is that the latent is inconclusive/insufficient value for identification purposes.

Latent Print Card 16 (# 001-16): labeled "Bedroom Wall Above Light Switch East Wall" containing a latent impression designated to be of N/V.

My conclusion is that the latent is inconclusive/insufficient value for identification purposes.

Latent Print Card 17 (# 001-17): labeled "1st Rm on Left Near Wall Switch" containing two (2) latent impressions designated to be of N/V.

My conclusion is that both latents are inconclusive/insufficient value for identification purposes.

Latent Print Card 18 (# 001-18): labeled "Bedroom Near Bath – Mellow Yellow Can" containing two (2) latent impressions designated to be of N/V.

My conclusion is that one (1) latent is inconclusive/insufficient value for identification purposes; the other latent is of value for identification purposes. This latent was later marked as Letter F (10 minutiae marked as minimum search parameters) and searched through AFIS by NMPD with no identification made.

Latent Print Card 19 (# 001-19): labeled "1st Bedroom On Left Wall No Side of House Behind Bed" containing three (3) latent impressions designated to be of N/V.

My conclusion is that two (2) latent's are inconclusive/insufficient value for identification purposes; the third latent is of value for identification purposes. This latent was later marked as Letter G (10 minutiae marked as minimum search parameters) and searched through AFIS by NMPD with no identification made.

Latent Print Card 20 (# 001-20): labeled "Mirror South Wall Bedroom" containing two (2) latent impressions designated to be of N/V.

My conclusion is that one (1) latent is inconclusive/insufficient value for identification purposes; the other latent is of value for identification purposes. I subsequently identified this latent impression as having been made by the Right Palm of Jason Barnette.

I noted also that there were friction ridge(s) near the edge of the lift tape and identified two (2) impressions as having been made by the Right Index finger of Officer Deavers.

Latent Print Card 21 (# 001-21): labeled "Door Way To Den" containing a latent impression designated to be on N/V.

My conclusion is the latent is of value for identification purposes. This latent was later marked as Letter H (17 minutiae marked as minimum search parameters) and searched through AFIS by NMPD with no identification made.

Latent Print Card 22 (# 001-22): labeled "Bathtub" containing a latent impression which did not have any designation markings.

My conclusion is that the latent is inconclusive/insufficient value for identification purposes.

I noted also that there were friction ridge(s) near the edge of the lift tape and identified one (1) impression as having been made by the Right Index finger of Officer Deavers.

Latent Print Card 23 (# 001-23): labeled "Bathtub" containing a latent impression designated to be on N/V.

My conclusion is the latent is of value for identification purposes. This latent was later marked as Letter I (15 minutiae marked as minimum search parameters) and searched through AFIS by NMPD with no identification made.

Latent Print Card 24 (# 001-24): labeled "Bathtub" containing two (2) latent impressions designated to be of N/V and a third latent impression identified on the lift card as having been made by the Right Thumb of Chad Barnette (the report of Officer Hunter states that the latent is the Palm of Chad Barnette).

My conclusion is that the two (2) latent impressions designated N/V are actually of value for identification purposes. These latent's were later marked as Letter J (17 minutiae marked as minimum search parameters) and Letter K (11 minutiae marked as minimum search parameters) and searched through AFIS by NMPD with no identifications made.

The identified latent impression I identified as having been made by the Right Palm of Chad Barnette.

Latent Print Card 25 (# 001-25): labeled "Wall East" containing a latent impression designated as made by Chad Barnette (no markings as to which digit or palm).

The latent identifying Chad Barnette is an *Erroneous Identification* and is actually made by the Left Thumb of Judith Smith. (Officer Hunters report states the latent was recovered from the "East Wall of Bedroom" though the latent lift card itself indicates only "Wall East", no specific room indicated).

Latent Print Card 26 (# 001-26): labeled "Mirror West Wall Bedroom" containing a latent impression identified as having been made by the Left Palm of Jason Barnette. (Officer Hunters report states the latent was recovered from the "Bathroom Mirror")

I concur with this conclusion that the latent impression was made by the Left Palm of Jason Barnette.

I noted also that there were friction ridge(s) near the edge of the lift tape that might be possible officer prints but were inconclusive/insufficient for identification purposes.

Latent Print Card 27 (# 001-27): labeled "Bathroom Toilet Tank From Top" containing a latent impression identified as having been made by the Right Palm of Chad Barnette.

I concur with this conclusion that the latent impression was made by the Right Palm of Chad Barnette.

Latent Print Card 28 (# 001-28): labeled "Bottom Part of Kitchen Phone Left Side" with two (2) latent lifts. A latent impression was identified as having been made by the Right Thumb of Jason Barnette.

I concur with the conclusion that the latent impression was made by the Right Thumb of Jason Barnette.

My conclusion is that the additional lift is actually a second lifting of the same location of the first lift.

Latent Print Card 29 (# 001-29): labeled "Kitchen Table Leg Broken" containing a latent impression identified as having been made by the Left Ring finger of Jason Barnette.

I concur with this conclusion that the latent impression was made by the Left Ring finger of Jason Barnette.

Latent Print Card 30 (# 001-30): labeled "Kitchen Table Broken Leg" containing a latent impression identified as having been made by the Left Middle finger of Jason Barnette.

I concur with this conclusion that the latent impression was made by the Left Middle finger of Jason Barnette.

Latent Print Card 31 (# 001-31): labeled "Bathroom Mirror" contains two (2) latent impressions identified as having been made by the Right Middle and Right Ring fingers of Jason Barnette.

I concur with this conclusion that the latent impressions were made by the Right Middle and Right Ring fingers of Jason Barnette.

I noted also that there were friction ridge(s) near the edge of the lift tape that might be possible officer prints but were inconclusive/insufficient for identification purposes.

Latent Print Card 32 (# 001-32): labeled "Receiver in Kitchen on Top of Refrig" containing two (2) latent impressions designated to be of N/V and a third latent impression identified as having been made by the Left Middle finger of Jason Barnette.

I concur with the identification of the latent as having been made by the Left Middle finger of Jason Barnette.

My conclusion is that of the two (2) latents designated as N/V, one (1) latent is inconclusive/insufficient value for identification purposes; the other latent is of value for identification purposes. This latent was later marked as Letter L (11 minutiae marked as minimum search parameters) and searched through AFIS by NMPD with no identification made.

Latent Print Card 33 (# 001-33): labeled "Inside Kitchen Cabinet" containing two (2) latent impressions designated to be of N/V and a third latent impression identified as having been made by the Right Middle finger of Jason Barnette.

I concur with the identification of the latent as having been made by the Right Middle finger of Jason Barnette.

My conclusion is that the two (2) latent impressions designated N/V are actually of value for identification purposes. I subsequently identified one (1) latent impression as having been made by the Right Middle finger of Jason Barnette.

The remaining latent was later marked as Letter M (19 minutiae marked as minimum search parameters) and searched through AFIS by NMPD with no identification made.

Latent Print Card 34 (# 001-34): labeled "South Window Play Room?" containing two (2) latent impressions, one (1) identifying the Right Thumb of Judith Smith, the other designated as N/V.

The latent identifying Judith Smith is an *Erroneous Identification* and is actually made by the Left Thumb of Jason Barnette. (Officer Hunters report states the latent was recovered from the "Playroom Wall").

My conclusion on the other latent is that it is inconclusive/insufficient value for identification purposes.

I noted also that there were friction ridge(s) near the edge of the lift tape that might be possible officer prints but were inconclusive/insufficient for identification purposes.

* * *

The above conclusions are based upon my years of training and experience involving the processing and comparisons of latent prints.

I retired from the Pima County Sheriff's Department in Arizona, with over thirty six (36) years of service with the Forensic Unit. Over those years I served as a Latent Print Examiner, Automated Fingerprint Identification System (AFIS) Site Manager and Crime Scene Technician. I have been a Certified Latent Print Examiner through the *International Association for Identification* (IAI) since January of 1995 and have served on the Editorial Review Board of the IAI's *Journal of Forensic Identification* since 2001. I have been published in magazines such as the *Journal of Forensic Identification*, *Servamus Security Magazine* and *The Champion*. Since leaving the sheriff's department, I have continued to serve the criminal justice community through my company, *Desert Forensics*. Based in Tucson, Arizona, *Desert Forensics* provides independent forensic consulting services to attorneys throughout the US and Canada. I began teaching fingerprint identification classes to law enforcement personnel while at the Pima County Sheriff's Department and now provide advanced and expert level classes to forensic personnel throughout the US. I have also traveled extensively to South Africa to provide fingerprint identification classes to the South African Police Service and to speak at forensic educational conferences. A copy of my curriculum vitae has been provided for inspection.

I declare under the penalty of perjury that this report, and the conclusions stated herein, are true and correct to the best of my knowledge.


Kathleen Bright-Birnbaum

12/07/2016
Date Signed



EXHIBIT 2

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DR. MONA GRETEL CASE HARLAN was called,
and being duly sworn, was examined and testified, as
follows, to-wit:

DIRECT EXAMINATION

BY GEN. BLACKBURN:

Q Please state your name.

A My name is Mona Gretel Case Harlan.

Q If you would, spell your last name for
the court reporter.

A Harlan is H-a-r-l-a-n.

Q And Dr. Harlan, you are an Assistant
Medical Examiner here in Davidson County; is that
correct?

A That is correct.

Q And are you also a Medical Examiner for
the State of Tennessee?

A Not officially.

Q Not officially yet. As a part of your
duties, are you required to testify in the courts of
Davidson County and other counties with regards to
autopsies?

A Yes, I am.

GEN. BLACKBURN: Your Honor, for the
purposes of this hearing, do I need to qualify her or--

1 THE COURT: Mr. Dean, do you have any
2 questions about Dr. Harlan?

3 MR. DEAN: No.

4 THE COURT: She's testified a number of
5 times in this Court, and I think she's qualified to
6 testify as an expert in her field. So go ahead.

7 Q (By Gen. Blackburn) Dr. Harlan, I'm
8 going to have Mr. Smith hand you three different sets
9 of photographs and ask you if you can look through
10 those and see if you can identify those?

11 A (Witness looks through photograph.)

12 Q You can probably take the yellow
13 stickers off.

14 A That's okay. Yes, I can identify these.
15 These are photographs taken by me in examining the
16 bodies of Chad Burnett, Judith Lynn Warden, also known
17 as Smith, and Jason Burnett at the Morgue.

18 Q All right. Now, with regard to the
19 photographs of -- let's take them in order -- of Judith
20 Smith, what are those photographs of, the ones that you
21 have there, what particular --

22 A These photographs are of the gunshot
23 wound to the upper neck, the stab wound, which is a
24 laceration or incision of the neck, a puncture wound to
25 the anterior chest, a gunshot wound to the arm, and the

1 -- again, the puncture wound to the chest with clothing
2 still on.

3 Q Now, with regard to the gunshot wound to
4 the neck, why is it necessary that you be able to show
5 that particular picture to the jury?

6 A This gunshot wound illustrates the
7 features of a near or a very close compact, almost,
8 gunshot wound to the neck, and it is the immediate
9 cause of death in her.

10 Q Is there anything -- if that's the best
11 way to show the Ladies and Gentlemen of the Jury that
12 this was a near gunshot wound, that would be the --
13 what, the skin and the stippling and the powder in that
14 particular area?

15 A The powder on there is very, very
16 helpful in this picture.

17 Q Very helpful, in order to show that it
18 was a near -- and the definition of a near gunshot
19 wound is what?

20 A A near gunshot wound is that gunshot
21 wound which is capable of leaving powder on the wound,
22 which with most weapons is within two feet. Hers is
23 quite a lot nearer than that, because there is no
24 dispersion of the stippling pattern.

25 Q And does that -- is there any way to
tell from that particular wound that the gunshot,

1 whether or not it was before, during or after death?
2 A From the photograph itself, it's cleaned
3 up. Yes, I still can. There is reddening and
4 erythema around the wound.
5 Q Okay. And that would be the case in
6 prior to death?
7 A Prior to death. Correct.
8 Q Now, with regard to the lacerations of
9 her neck --
10 A Uh, huh.
11 Q Why would that be important to show the
12 Ladies and Gentlemen of the Jury?
13 A The laceration to the neck shows very
14 little response at all, and its only response is that
15 of a small amount of hemorrhage.
16 Q Okay. Which would tell you what?
17 A That it happened at or after death.
18 Q At or after death.
19 THE COURT: That's the second picture,
20 is that right, Doctor, the second picture that you're
21 now referring to?
22 THE WITNESS: It is now.
23 THE COURT: Okay. And that shows very
24 little response and that --
25 THE WITNESS: Correct.

1 THE COURT: -- tells you that that wound
2 was inflicted either at or after the time of death?

3 THE WITNESS: That is correct.

4 THE COURT: Okay.

5 Q (By Gen. Blackburn) Now, the
6 photographs of, I believe, the gunshot wound to the --
7 to the arm?

8 A Uh, huh.

9 Q That would indicate what to the Ladies
10 and Gentlemen of the Jury?

11 A This is a good comparison photograph,
12 because it is a distant gunshot wound, again, showing
13 vital reaction.

14 Q Showing vital -- that being before
15 death?

16 A Correct.

17 THE COURT: Which picture is this now?

18 THE WITNESS: The arm gunshot wound. I
19 will put it third.

20 THE COURT: It's the same person.

21 THE WITNESS: This is the same person.

22 Q (By Gen. Blackburn) Well, we're talking
23 about Judy?

24 A These are all on Judith.

25 THE COURT: These are all -- all six of
them are?

1 GEN. BLACKBURN: Yes, all -- all that --
2 I'll switch gears.

3 THE WITNESS: There are five here.

4 GEN. BLACKBURN: There are five
5 photographs.

6 THE COURT: All right.

7 THE WITNESS: Right.

8 THE COURT: All right. So the third
9 picture you're referring to shows the distant gunshot
10 wound to the arm?

11 THE WITNESS: That's correct.

12 THE COURT: Which shows comparison
13 between it and the close gunshot wound that you had
14 earlier?

15 THE WITNESS: That's correct.

16 Q (By Gen. Blackburn) In addition to it,
17 that it was before death?

18 A Also correct.

19 Q Based on -- the next photographs would
20 be what area?

21 A The next two photographs are of the
22 clothed chest and the chest after removal of the shirt
23 present.

24 Q And what is the -- what results are
25 depicted in those photographs?

1 A The -- the photographs here of a
2 puncture type stab wound with very little blood loss.

3 Q Which would tell you what with regard to
4 whether it was before or after death?

5 A These appear to be made after death.

6 Q Okay. So the puncture wound, which is
7 also in contrast to the throat cut, and the gunshot
8 wound, we have a third type weapon.

9 A Correct.

10 Q So there's three different kinds of
11 weapons that were used on the body of Judith Smith?
12 And that photograph clearly shows that it's a
13 puncture type wound --

14 A Yes, it does.

15 Q -- and it happened after death?

16 A Yes, it does.

17 Q Okay. Now, those --

18 GEN. BLACKBURN: Your Honor, if Your
19 Honor would want to look at those photographs, those
20 would be the ones.

21 (Three photographs handed to
22 the Court.)

23
24 THE COURT: Which one is this, Doctor?
25

1 THE WITNESS: This is the puncture wound
2 to the chest, upper chest.

3 THE COURT: Okay.

4 THE WITNESS: That's the last one you--

5 THE WITNESS: Yes, it's the same one as
6 the shirt shows.

7 THE COURT: The same as that (holding up
8 photograph)?

9 THE WITNESS: Yes.

10 THE COURT: Okay.

11 Q (By Gen. Blackburn) Okay. Now, with
12 regard to the photographs of Chad Burnett?

13 A All right.

14 Q If you would look at those, please, and
15 describe those.

16 A The first photograph is of the face of
17 Chad Burnett, showing the gunshot wound to the inner
18 edge of the -- inner edge of the left eyebrow and the
19 cuts to the neck.

20 Q What is important about that gunshot
21 wound that you could demonstrate to the Ladies and
22 Gentlemen of the Jury?

23 A Again, that there is some vital reaction
24 to it, and again, that it is a contact type wound.

25 Q Okay.

1 A Very near.

2 Q This is a contact type wound, meaning
3 that the barrel of the weapon was actually on the skin?

4 A It appears so.

5 Q Okay. And when you say hemorrhage that
6 -- or the reaction would be that he was alive or that
7 was before death?

8 A That is correct.

9 Q All right.

10 THE COURT: You say "contact wound"?

11 THE WITNESS: Yes, sir.

12 THE COURT: Which is even nearer than a
13 near gunshot wound when you were referring to this.

14 THE WITNESS: Correct.

15 THE COURT: And this is what a contact
16 wound would be?

17 THE WITNESS: Uh, huh.

18 THE COURT: To the skin. Looking at it?

19 THE WITNESS: Yes, sir.

20 THE COURT: Okay.

21 Q (By Gen. Blackburn) The next
22 photograph?

23 A Okay. The next photograph is of the
24 neck wounds, again, but this time with the skin
25 extended so that you can see all of the wounds.

1 Q Okay. And what about those
2 particular wounds to the neck?

3 A These, again, show very little
4 tissue reaction, not much in the way of bleeding.

5 Q And that would indicate what?

6 A That these were inflicted at or after
7 death.

8 THE COURT: Is this the gunshot wound?

9 THE WITNESS: No, these are the slice
10 wounds to the neck.

11 THE COURT: Slice wounds. All right.

12 Q (By Gen. Blackburn) And how many slice
13 wounds are there to the neck?

14 A It is a composite type of wound that I
15 have labelled, I believe, as three different plus an
16 abrasion. There are two, main, larger lacerations, but
17 they have edges that show more than one stroke was
18 required to inflict them.

19 Q Okay. So, in that photograph, it would
20 aid you to show to the Ladies and Gentlemen clearly
21 that there is more than one stroke required to make
22 those incisions on the neck, and that it was either at
23 or after death?

24 A Correct.

25

1 Q Which would illustrate, well, more than
2 one time that the individual would have to do that,
3 correct?

4 A That's correct.

5 Q The next photograph?

6 A The next photograph is of the right
7 shoulder, right side of the neck, and the right upper
8 chest, and simply shows the puncture wound to the upper
9 middle chest. The gunshot wound to the right chest and
10 the entry wound to the right upper shoulder, in
11 addition to the stab wound to the right side of the
12 chest, so there are actually one, two, three, four
13 separate wounds here.

14 Q And also the gunshot wound to the chest
15 is a contact wound, is it not?

16 A That is correct.

17 Q And was done before or after death, or
18 can you tell?

19 A That was definitely done before death.

20 Q Okay. So that particular -- well, the
21 one on the head is also before death, and the gunshot
22 wound to the chest, again, a contact wound, meaning the
23 barrel of the gun is on the chest, and then you've got
24 puncture wounds and stab wounds?

25 A Correct.

1 THE COURT: That's going to be the last
2 picture?

3 THE WITNESS: The third picture.

4 THE COURT: The third picture you've got
5 a gunshot wound --

6 THE WITNESS: Yes, sir.

7 THE COURT: -- to the chest, as well as
8 wounds --

9 THE WITNESS: And an angled gunshot
10 wound to the upper shoulder as well.

11 THE COURT: You've got two gunshot
12 wounds in that photograph?

13 THE WITNESS: Two gunshot wounds, a
14 puncture type stab wound and a -- an incised type stab
15 wound.

16 THE COURT: Okay.

17 Q (By Gen. Blackburn) Now, again, that
18 -- would that indicate the three different weapons used
19 on that -- just in that photograph alone?

20 A Yes, minimum of three.

21 Q Okay. And the stab wounds and the
22 puncture wounds, can you tell or does that illustrate
23 before or after death that these wounds were
24 inflicted?
25

1 A The two gunshot wounds do show vital
2 reaction, even in this further back type picture.
3 The puncture wound has a scrape going to it. I'll have
4 to check and see. I think -- let me see which one that
5 was. I believe it also shows some vital reaction. It
6 appears to. I'll have to go to my chart to figure out
7 which one it was. It does show vital reaction. I did
8 not note that in the report.

9 Q Okay. And that is the stab wounds?

10 A That is the puncture type wound.

11 Q The puncture type wound, so that would
12 be inflicted prior to death?

13 A That's correct.

14 Q All right. Now, the next photograph of
15 Chad would be?

16 A The next photograph is a closer
17 photograph of the left side of the chest. It also
18 shows the puncture wound previously described. It also
19 -- in the corner of the photograph, shows a little
20 closer shot of the gunshot wound to the right chest
21 itself. And it also shows a stab wound that an
22 incised type, knife type, just adjacent to the left
23 nipple.

24 THE COURT: That shows something in
25 addition to what the one just before it shows?

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THE WITNESS: Yes, it shows an additional wound here?

THE COURT: The last stabbing wound?

THE WITNESS: Yes, it does.

Q (By Gen. Blackburn) Okay. And the additional wound, is it before or after death?

A It is before death.

Q Before death?

A Yes.

Q All right. And the next photograph?

A The next photograph I'll go to is the two stab wounds to the abdomen, near the belly button. It's a close-up photograph. And they do show vital reaction.

Q So that's also before death?

A These are also before death.

Q The stab wounds?

A Yes.

Q Okay.

A The next one I'll go to is the stab wound to the back, which, again, shows vital reaction.

Q Okay. So there is a stab wound in the back?

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A It doesn't show up on any of the other photographs because it's a different body area.

Q A different part of the body, and then before death?

A Correct.

Q All right.

A The next photograph is a photograph of his right thumb showing a stab wound type laceration to the inside of the right thumb, with vital reaction.

Q Okay. And that would -- could that be classified as a defensive type wound?

A It appears to be a defensive type of wound, yes.

Q All right. And that is prior to death?

A Yes.

Q And the last photograph?

A The last photograph is, again, an incised type wound, which is on the upper left leg.

Q Okay. And is that prior to death?

A That's before death.

Q Okay.

THE COURT: You said a stab or a slash?

THE WITNESS: It's a slash.

THE COURT: It was up the leg?

THE WITNESS: Yes.

1 Q (By Gen. Blackburn) If you would hand
2 them to the Judge and let him --

3 A All right. Let me make sure --

4 THE COURT: Let me ask you a question,
5 and I believe you've already answered it.

6 THE WITNESS: Yeah.

7 THE COURT: I understand that in all
8 eight of these pictures, they have each an additional
9 thing to consider. They're not any of them that are
10 just actually a --

11 THE WITNESS: No.

12 THE COURT: -- rediscussion of the same
13 picture? And just a little bit different?

14 THE WITNESS: No, they're all -- no,
15 well, if you want to consider the second one, but the
16 first one does not well show the neck wounds, because
17 of the angle of the head.

18 THE COURT: All right.

19 Q (By Gen. Blackburn) The first one shows
20 the -- clearly, the gunshot wound to the -- to the --

21 A Correct.

22 Q -- face?

23 A That's correct.

24 Q And this is before death, which is a
25 contact wound, and the other shows the multiple slash--

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A Correct.

Q -- slashes to the neck?

A And these are all after they've been cleaned up.

Q And you do have the other photographs that are not? I mean there are lots of other photographs --

A Oh, yes.

Q -- which we are not trying to introduce?

A Oh, yes.

(Photographs handed to the witness.)

THE WITNESS: All right.

Q (By Gen. Blackburn) And these are photographs of Jason, correct?

A All right. The photographs of Jason show a black eye and the fact that it is a fading black eye; it is not something that happened to him during the time immediately prior to his death.

Q And also in that photograph, I'm sorry, the pooling of the blood on one side, which would indicate --

A Yes.

Q -- that that was the side of the body--

1 A Left-sided rigor mortis; that's correct.

2 Q Okay. Which is the side that his body
3 was found on?

4 A He was lying left side down, that's
5 correct.

6 Q Okay. Which would indicate that he had
7 been in that position for at least how many hours?

8 A It can occur within minutes, but, in
9 him, the fact that it stayed put indicated that he had
10 been in that position for more than 12 hours.

11 THE COURT: Photo No. 1 shows what from
12 your perspective?

13 THE WITNESS: Shows the wound to the
14 left eye that's older. It's resolving --

15 THE COURT: You're not necessarily
16 relating that to this incident?

17 THE WITNESS: No, the livor mortis to
18 the left side of the face and a not very good
19 photograph of the neck wound.

20 GEN. BLACKBURN: I think the important
21 part of that photograph, Your Honor, is the fact that
22 it's the pooling of the blood that -- and that's the
23 side that he was found on, which would indicate in this
24 case that the body had to be in that position as she's
25 testified is 12 hours.

1 THE COURT: Okay.

2 THE WITNESS: Uh, huh.

3 THE COURT: Okay.

4 THE WITNESS: All right. The second
5 photograph shows the head with the chin tilted back to
6 show the extent of the wound that was the incised wound
7 beneath the left side of the jaw in front of the neck.

8 Q (By Gen. Blackburn) And does that show
9 that that wound occurred before or after death?

10 A This wound, in combination with the fact
11 that he was clothed, and the bloody shirt, indicates
12 that this was before death.

13 Q Before death?

14 A Yes, it does.

15 Q All right. And the other series of
16 photographs all relate to his hand; is that correct?

17 A That is correct.

18 Q And what, in terms of the group of
19 photographs, what do they illustrate?

20 A They indicate that he has multiple
21 slices to his hand, the majority of which are on the
22 palm side of the hand, very typical of defensive
23 wounds, where he was actually grabbing at a sharp
24 instrument, trying to keep it from inflicting injury.

25 Q And is that -- how many -- about how
many of those wounds are there or are there so many

1 it's hard to count?

2 A It's difficult to count. I can refer to
3 my chart. But first I have to pull it out.

4 To the right hand, there are a minimum
5 of 13 separate wounds, but there is one in particular
6 to the thumb that may have required more than one pass
7 through to have formed, and at the same time there are
8 two at the base of the middle two fingers that may have
9 been both formed at the same stroke.

10 Q Okay. So at least 13 and one that may
11 have required more and one less?

12 A Yes.

13 Q But in terms of --

14 A In round numbers, approximately 13.

15 Q And that would have been the number of
16 times that he would have to have grabbed at the knife
17 that many times?

18 A Correct.

19 Q All right. And --

20 A The --

21 Q I was just going to --

22 A That was the right hand. The left hand
23 shows an addition of two, three, at minimum three
24 strokes, if the tips of the fingers, palm side, were
25 made by one.

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Q And again, these are made prior to death?

A Yes, they are.

Q And also the photographs have been cleaned up?

A Yes, they have.

Q These photographs were taken after they were cleaned up?

A Yes.

Q All of these photographs?

A Yes.

GEN. BLACKBURN: Your Honor, that would be my offer of proof. You might want to look at those.

THE COURT: Mr. Dean?

MR. NEWMAN: Thank you.

GEN. BLACKBURN: Your Honor, I have -- I have some to illustrate to the Court, in addition, Dr. Harlan has all of her photographs, those that we do not intend to introduce, specifically, those are of the body that have not been cleaned up.

THE COURT: The ones you have here, if you want to, you can file them with the Court.

GEN. BLACKBURN: Uh --

THE COURT: Unless you have some other need for them.

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(State's Exhibit No. 31, four
(4) photographs, marked and
filed.)

GEN. BLACKBURN: If Mr. Newman can go
ahead.

MR. NEWMAN: With the Court's
permission, can I get a little closer to Dr. Harlan, so
that I can -- you don't mind --

THE WITNESS: Surely.

CROSS-EXAMINATION

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BY MR. NEWMAN:

Q Do you remember me?

A Yes, sir.

Q I think you referred to me as the not so handsome Paul Newman.

A Uh --

THE COURT: The not so handsome Paul Newman?

MR. NEWMAN: Yeah.

THE WITNESS: No, I was just hoping for the real, well-known one.

MR. NEWMAN: Okay. Okay.

Q (By Mr. Newman) In the photograph that is of Judy.

A Yes, sir.

Q The important part that you see on that photograph you indicated was that it was a close contact wound?

A That's correct.

Q And that it does show powder; is that correct?

A That is correct.

Q Okay. And if we were to stipulate that we do not oppose what you say and that is accurate, you

1 would have no problem in telling the jury that that was
2 a close contact wound; is that true?

3 A I can so tell the jury.

4 Q Okay. And I think that also that not
5 only do you have the photographs but you have charts
6 that show the location, you additionally have charts
7 that say it is a close contact wound.

8 A I don't believe the charts say that.

9 Q Do you have reports that say that?

10 A I do.

11 Q Okay. And what are these things back
12 here, do you know?

13 A I've not seen --

14 Q You haven't seen these charts of
15 diagrams?

16 A Not yet.

17 Q Okay. Have you been told that there are
18 charts and diagrams prepared?

19 A Yes, I have.

20 Q Okay. And those charts and diagrams, do
21 they show such things as defensive wounds or other
22 things that you could use in relating to the jury the
23 things that you're relating to them through these
24 photographs?

25 A It would be much more difficult because
they are my artist's renditions of these, which are not

1 precise and do not show such things as vital reactions.

2 Q Okay. But if we -- if we were to
3 stipulate that these photographs did show the vital
4 reaction, that means basically that they showed indicia
5 of that person when -- when these wounds occurred was
6 alive, I'm sure you could express that to the jury,
7 could you not?

8 A I could. Those photographs -- those
9 charts also are of a body chart that has face straight
10 on and face away, so it is much more difficult to show
11 such as a slice wound that extends across the midline
12 and up beneath the chin --

13 Q So --

14 A -- from those.

15 Q -- are you telling me that we have some
16 charts here that are almost life size, as far as full
17 body, to show the wounds?

18 A I -- I have been told that they are
19 blown-up versions of my body charts.

20 Q Oh, okay. And I think there's some
21 blown-up versions of the defensive wounds as well; is
22 that correct?

23 A May well be.

24 Q And as far as the puncture wounds, one
25 where it's clothed and one where it is unclothed, you

could describe that to the jury, could you not?

1
2 A I can try. The clothed one, in
3 particular, shows the scant amount of bleeding and the
4 fact that the injury to the shirt even is a very small
5 area as opposed to a knife type wound with a broader
6 blade. That's a puncture type wound.

7 Q Okay. But you could describe that?

8 A I can try.

9 Q Okay. If I could give you those back --

10 A Uh, huh.

11 Q -- Dr. Harlan. I hope I didn't get them
12 out of order. Now, in this particular wound, which
13 shows, I believe, the person you've identified as Chad
14 Burnett --

15 A Yeah.

16 Q -- the importance of that is the contact
17 wound; is that correct?

18 A The contact wound plus the response to
19 it of the left eye.

20 Q Okay. And that would indicate that he
21 was alive at the time; is that what your testimony
22 would be?

23 A That is correct.

24 Q And if we were to stipulate to that, you
25 could tell that to the jury?

A Yes, I can try.

1 Q Okay. And this particular wound which
2 appears to be what I would call a laceration to the
3 throat area, is that what that appears to be?

4 A Yes. This is the abrasions and
5 lacerations with multiple stroke edges.

6 Q Okay.

7 A To the throat.

8 Q Now, in that particular wound, you refer
9 to it as being somewhat distorted. When you were
10 referring to that, is that the wound had been pulled
11 apart to make it larger so you could get a better shot
12 of it?

13 A Well, it shows the wound better if you
14 can have a full face view of just the angle of the
15 wound. When you have the folds of the neck in the way,
16 the wound tends to disappear.

17 Q Okay. So you -- it was moved so that --
18 and it does make the wound gape open --

19 A I did turn his head to the right
20 somewhat.

21 Q Okay. All right. And if we were to
22 stipulate to what you found when you examined him, you
23 would be able to explain that to the jury as well,
24 wouldn't you?

25 A I will try.

1 Q Okay. And this -- I don't remember
2 exactly the importance of that one, if you could.

3 A This shows the gunshot wound to the
4 upper right shoulder, the gunshot wound to the right
5 chest, which is a contact wound, the stab wound which
6 appears as though an instrument such as a knife was
7 used on the right side of the chest, and then the
8 puncture wound, which looks as though a sharp-pointed
9 object that's -- that doesn't have a broad blade was
10 used.

11 Q Okay. And if those -- those wounds were
12 contested, would you agree with me that that would be a
13 -- would make a difference in your testimony, in that
14 you would need the photographs to show that to support
15 your testimony?

16 A I definitely would if it's--

17 Q Okay.

18 A -- contested.

19 Q And if they're not contested, the need
20 for them is less?

21 A That's for the Court to decide.

22 Q Okay. But you would not feel any
23 greater need because they weren't contested, that
24 would--

25 A It makes it a lot harder to describe,
but I can try.

1 Q Now, I notice that several times when
2 you had some difficulty in -- in maybe finding out
3 something about a wound, you referred to a chart or a
4 report; is that correct?

5 A That is correct.

6 Q Can you tell the Court how many pages is
7 in your report?

8 A Quite a few. On Jason, my report is --
9 a report page plus a seven-page narrative and outline
10 followed by three pages of charts.

11 Q Okay.

12 A On Chad, I have a header page and two-
13 page outline, no, three-page outline form, followed by
14 narrative of ten pages, eleven pages, excuse me, and
15 two charts.

16 Q Okay.

17 A And on Judith, I have a report page
18 followed by the outline of two pages, followed by
19 narrative through Page 9, which is an additional seven
20 pages from the outline, followed by two charts.

21 Q Okay. And when you refer to charts,
22 what are you -- are you referring to?

23 A This is a front and back view of the
24 body with the injuries indicated on there and labelling
25 and a diagram chart at which I tried to give an index

1 or tabular form, location of the injuries in height
2 above heel and the dimensions of the injuries.

3 Q On the one that you're looking at
4 presently, that actually shows, does it not, the -- the
5 pattern of the wound and gives you indications of how
6 long the wound is and things of that nature.

7 A As -- as good as I can do it, as well as
8 I can draw it, it does.

9 Q And would you mind showing the Court
10 that particular diagram?

11 (The witness hands diagram
12 to the Court.)

13
14 Q (By Mr. Newman) And also, would you
15 mind if the Court looked at the chart that I believe is
16 the next page before it.

17 A The next page. The -- the page
18 following.

19
20 (The witness hands diagram
21 to the Court.)

22
23 THE COURT: Okay.

24 Q (By Mr. Newman) And concerning the
25 other wounds on Chad, you'd have no trouble in

1 describing those wounds, in using both your charts
2 here, your multi-page reports and whatever
3 demonstrative evidence or charts that's out there; is
4 that correct?

5 A I can try. It -- it would take a little
6 longer.

7 Q All right. I'll give that back to you.
8 Okay. And I'll ask you, again, what was the
9 significance of that particular -- maybe I can get the
10 same sheet that--

11 A This shows the livor mortis, which is
12 fixed on the left side of Jason's head.

13 Q Okay. So the important part of that
14 would be that your testimony that probably the time of
15 death was somewhere around 12 hours previous to that
16 photograph?

17 A Minimum.

18 Q Okay. And if we stipulated to that,
19 you'd have no trouble in telling the jury that; is that
20 correct?

21 A I can try.

22 Q Okay. And the next wound, which is a
23 incised wound to the neck, the importance of that is to
24 demonstrate that it was before death or --

25

1 A That it was inflicted before death, and
2 that it goes all the way around from the right side of
3 the neck, the right side of the midline to the --
4 beyond the left ear.

5 Q Okay. And you could -- you could tell
6 the jury that that was before death and describe the
7 wound, could you not?

8 A I can try.

9 Q Okay.

10 A The previous photograph also showed the
11 black eye.

12 Q Okay. And the black eye was not at all
13 related to this event?

14 A It temporarily should not have been, no.

15 Q Okay. And the next one, I believe, is a
16 series of defensive wounds, as you have described them,
17 to the hands?

18 A That's correct.

19 Q Is that correct? And I think that you
20 have a blown-up chart showing the locations of those
21 wounds --

22 A Uh --

23 Q -- that have been prepared for you?

24 A I don't know. I haven't seen it.

25 Q Okay. Have you been told that you do
have one?

1 A I have now, yes.

2 Q Okay. So that chart is actually
3 larger than the picture by several multiplications,
4 isn't it?

5 A I don't know how large it is.

6 Q Okay. But just judging from the size of
7 it, you would have to assume so, wouldn't you?

8 A Yeah. It's -- it's a two-dimensional
9 rendition that shows better in three dimensions on
10 these photographs.

11 Q Okay. And Doctor, I would ask if you
12 would allow the Court to inspect your reports and to
13 show the Court that the great detail in which you have
14 prepared them.

15 A Okay.

16
17 (Reports handed to the Court.)

18
19 MR. NEWMAN: If I could one second, Your
20 Honor.

21
22 (Pause in the proceedings while
23 Mr. Newman confers with Mr. Dean.)
24
25

1 MR. NEWMAN: Again, I would like to
2 state for the record that there appears to be in the
3 courtroom several charts which appear to be in the size
4 of 4 by 6 that Ms. Harlan anticipates in using in her
5 testimony.

6 GEN. BLACKBURN: Your Honor, if I could
7 ask a couple of questions.

8 REDIRECT EXAMINATION

9 BY GEN. BLACKBURN:

10
11 Q Dr. Harlan, is there any way that a
12 drawing or a rendition or an explanation can show the
13 Ladies and Gentlemen of the Jury what you mean by why
14 the wounds were before or after death?

15 A It's very difficult.

16 Q Okay.

17 A I did not do color diagrams or anything
18 like that.

19 Q And that is one of the things that
20 you're looking at when you're looking at the wounds, is
21 it not?

22 A That's correct.

23 Q The hemorrhage part?

24 A That's correct, hemorrhage, erythema,
25 etc., meaning reddening.

1 Q And the contact wound, the difference
2 between a contact or near gunshot wound and a distant
3 gunshot wound is virtually impossible to explain, is it
4 not?

5 A I can try, but I'm not sure that it will
6 be understood.

7 Q Okay.

8 RECROSS-EXAMINATION

9 BY MR. NEWMAN:

10
11 Q Doctor, if there's no dispute as to
12 those issues, you would not feel the great need to
13 introduce those pictures, in other words, to bolster
14 your testimony, would you?

15 A It would be a lot simpler, but I would
16 try to do it without it, if -- if so ruled.

17 Q Okay.

18 GEN. BLACKBURN: Your Honor, these are
19 what I have and Dr. Harlan has some, but those would
20 clearly show the fact that they are not cleaned up.

21
22 (Photographs handed to the
23 Court.)
24
25

1 (State's Exhibit No. 30, four
2 (4) photographs, marked and filed.)

3
4 THE COURT: All right. Just file those
5 then.

6 Okay. General Blackburn, do you care to
7 be heard on this, briefly?

8 GEN. BLACKBURN: General Thurman
9 prepared the brief on this case, so I'll let him on
10 this issue.

11 GEN. THURMAN: If the Court, please, I
12 think it's clear here that these photographs are
13 relevant, they're not just being submitted in an
14 attempt to inflame the jury. They're relevant as to
15 the time of death as to certain wounds, whether or not
16 they were inflicted while the people were alive or
17 after death are relevant because of the type of weapon,
18 three different types of weapons, which Dr. Harlan will
19 be testifying about.

20 She'll be excluding certain knives that
21 were seen -- that were found at the scene as a
22 potential murder weapon, they would definitely assist
23 in that, in her explaining the different wounds and the
24 size of the knives and the edges of the knives, why
25 they could not have caused these particular wounds.
They're clear to show the defensive wounds which the

1 State's theory is in this case as to the hands.
2 They're also very important to show the contact shot
3 wounds in Chad's wounds and also the distant gunshot
4 wounds to explain the difference there. They're
5 relevant, obviously, to show premeditation, malice and
6 intent.

7 I just think that Dr. Harlan has clearly
8 stated that three different people and three different
9 types of wounds, and very complicated testimony we're
10 dealing with. And even though they say they will
11 stipulate to this, the ultimate decision has to be made
12 by the jury.

13 And as long as this State requires a
14 charge that when you hear an expert that is filled with
15 uncertainty and pitfalls and whatever it says, and
16 uncertainty, you know, it really cast doubts on an
17 expert and say you should consider their testimony in
18 determining what weight to give it, considering that.
19 So I think, obviously, with that type of charge, that
20 an expert has the right to demonstrate their findings
21 to the jury, instead of just saying, well, I thought
22 this was a contact wound, and the jurors can see the
23 powder, say I think, you know, this wound occurred
24 before death, they can see the bleeding, talking about
25 when it would have occurred, I just think these limited

1 number of photographs are relevant to assist her in her
2 testimony. I would point out to the Court, I think
3 it's on Page 6 with the brief that I submitted to the
4 Court where we've basically discussed cases that have
5 allowed it in just to corroborate medical testimony. I
6 think I cited four specific cases there. I would ask
7 the Court to consider those cases on Page 6 of our
8 brief.

9 I think under the rationale, although
10 the Banks case discussed the majority of the cases, I
11 think the standard has changed under the Rules to
12 substantial outweighing must be shown.

13 THE COURT: Okay. Mr. Newman.

14 MR. NEWMAN: Yes, Your Honor. Your
15 Honor, we would rely on the Banks case as well, but we
16 would additionally rely on the case of State vs.
17 Duncan, which is found at 698 S.W. 2d 63, a 1985 case,
18 which stood for the proposition that a photograph of a
19 throat wound which was taken after the body had been
20 cleaned was not necessary in view of the detailed
21 testimony of the medical examiner and should have been
22 excluded.

23 Your Honor, all the photographs here are
24 what we would commonly refer to as morgue photographs.
25 And we would ask the Court, based on the Banks, and
based on the rationale of State vs. Duncan, and based

1 on the case of Hawkins vs. State, found at 565 S.W. 2d
2 876, that the Court not allow those photographs in.

3 The Court is well aware that we are
4 willing to stipulate as to what Dr. Harlan has
5 testified to in this hearing. It is not a contested
6 issue.

7 THE COURT: Give me a copy of the brief
8 you've got there, Mr. Thurman, I've got it somewhere in
9 the file, but I wanted to look at it. It may be in my
10 office, on the desk in there.

11
12 (Brief handed to the Court.)

13
14 THE COURT: I have the case and the
15 brief, and it's somewhere between my desk and in here.

16 Okay. I think based on what I've heard
17 Dr. Harlan testify about, we have an issue, No. 1,
18 whether it's relevant to the matter that we're
19 considering. And they obviously are.

20 We then have the question of whether or
21 not the probative value outweighs the prejudicial
22 effect. I think based on what I've heard and what Dr.
23 Harlan has testified, she's the witness -- and I
24 understand what your point is, Mr. Newman, and she
25 could always have an alternative plan. She could

1 always, possibly, do something one way and maybe
2 another way, and possibly a third way, in showing what
3 she's attempting to show to the jury, I think.

4 Kayo, take them on to eat. Take them to
5 eat.

6
7 (WHEREUPON, at 4:56 p.m.,
8 the jury was sent to dinner,
9 and after which, the further
10 following proceedings were
11 had, to-wit:)

12
13 THE COURT: I believe that based on what
14 the Doctor has stated that because of the pictures,
15 I've looked at everyone of them, Judith Smith, having
16 to do with the gunshot wound to the neck, the razor to
17 the neck, the other distant gunshot wounds, the
18 puncture stab wounds, both the clothed and unclothed
19 chest in the pictures, the pictures of Chad Burnett as
20 to the gunshot wound to the face, looking at the
21 contact gunshot wounds near the eye, and also I think
22 there's a neck area there indicating before death -- I
23 don't need to go down all these things -- slice wounds
24 to the neck which she's talked about here and the vital
25 reaction, the right shoulder, two gunshot wounds, the
right side of the neck, four other separate gunshot

1 wounds and the vital reaction, different photo close
2 ups of the left side of the chest and the stab wounds,
3 I didn't start out to list all of these, but with
4 respect to Jason Burnett, the manner in which he was
5 laying and what that tells Dr. Gretel Harlan, and the
6 next wound before death, other photos of the hands that
7 I've looked up in a cleaned-up version as well as
8 before it was cleaned up, all of these pictures, in
9 this Court's opinion, have probative value that exceeds
10 the prejudicial effect.

11 And I think under the case law the
12 prejudicial effect should substantially outweigh any
13 probative value in order for the Court to keep these
14 pictures out of the jury's consideration, I think
15 they're relevant. I do not think they're merely for
16 the purpose of inflaming the jury. I think they go to
17 the time of death, they go to the type of weapons that
18 were used. I think also Mr. Thurman pointed this out
19 before the end of his statements there, that they also
20 go to premeditation, malice and intent because of the
21 multiplicity of these wounds in an obvious intent of
22 whoever was inflicting these wounds.

23 So the Court is of the opinion that
24 under the Banks case that we've already referred to
25 here, the case of Parks against the State, 542 S.W. 2d

1 855, the case of Ricky Joe Helton, which I looked over
2 earlier, that these pictures are going to be considered
3 by the jury. And they can give it whatever value they
4 think and weight they think it deserves. But I think
5 she will be allowed to testify in the manner that she
6 believes she can most effectively make the points that
7 she's attempting to make as the medical examiner. And
8 that's the judgment of the Court on this issue.

9 Now, having said that, we've taken more
10 time than I expected. What I think I'm going to do is
11 instead of bringing the jury down here now and dinner
12 is already ordered for 5:00 or 5:15, I've told Kayo
13 Smith to take the jury on to dinner. I would have
14 rather had all of this before dinner, I believe. But I
15 think given the situation I've got here, I think we'll
16 wait. So let's take a short break. And how long --
17 who is going to handle this? General Blackburn, how
18 long do you expect this witness to be along with the
19 cross-examination?

20 GEN. BLACKBURN: An hour, an hour and a
21 half.

22 THE COURT: All right. Then what I'm
23 going to do is this. I've changed it a little bit, the
24 game plan. We're going to go for just 30 minutes. I
25 don't intend to eat. If you want to eat in 30 minutes,
you can eat, but we'll be back at 5:30, assuming the

1 jury's finished eating. They've already started a few
2 minutes ago.

3 And then we're going to go with Dr.
4 Harlan, with her testimony, and then adjourn for the
5 night. I don't intend to get into any defense proof.
6 I hope your witnesses haven't been waiting around, but
7 I think it would be better for the jury -- by that time
8 it's going to be close to 7 o'clock. And then the
9 State -- will that be your last witness, General?

10 GEN. BLACKBURN: Yes, Your Honor. That
11 will be.

12 THE COURT: Okay. I think that's a
13 perfect time to stop. And Dr. Harlan, I appreciate
14 your patience. I know you've been here an hour, but if
15 you can just take about a 30-minute break.

16 THE WITNESS: Sure.

17 THE COURT: We'll come back with the
18 jury here. And so we'll be in recess until 5:30.

19 MR. NEWMAN: Your Honor, if I could, I
20 would like to for the record object on the basis of the
21 Fifth, Sixth, Tenth, Fourteenth Amendments of the U.S.
22 Constitution and the applicable Tennessee statues. And
23 I assume we can send the defense witnesses home at this
24 time, Your Honor?

25 THE COURT: Yes, you can.

1 MR. NEWMAN: Thank you.

2 THE COURT: And your objection is noted
3 and overruled, and we'll be in recess until --

4 MR. DEAN: Are we going to start
5 tomorrow at 9:00?

6 THE COURT: We're going to start
7 tomorrow morning at 9 o'clock, that's right. I need
8 some court officers, if you would help the defendant,
9 and let him come out and take a 30-minute break, and
10 we'll be back at 5:30.

11 (WHEREUPON, a short recess for
12 dinner was had, and after which,
13 Court reconvened, and the further
14 following proceedings were had,
15 to-wit:)

16
17 THE COURT: All right. Bring the jury
18 on in. Thank you, Dr. Harlan, for waiting.

19
20 (The witness retakes the stand.)

21
22 THE COURT: I think we have some items
23 that have been made exhibits that have never really
24 been passed --

25 GEN. BLACKBURN: Right.

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THE COURT: -- to the jury.

GEN. THURMAN: Your Honor, I've got them all stacked up, I think. Mr. Dean might want to look at them, but I think I've stacked up what we haven't passed.

THE COURT: So what we'll do tonight is to finish with Dr. Harlan and pass those things and adjourn for the night.

(WHEREUPON, the jury returned to open court at 5:38 p.m., and the further following proceedings were had, to-wit:)

THE COURT: I want to thank you for your patience. You may not realize it yet, but we're going to do just in kind of a different way of doing it about what I've already told you we were going to do. It's just kind of a different order of doing the same thing. In other words, I told you we were going to eat at 5 o'clock or something like that and then come back after that and have some more proof and so forth. And we got into something that was necessary to do for everybody concerned. And that's the reason we got a little slow before we had you back down here a little earlier. And

1 I want to thank you for your patience. What we're
2 going to do now, which is going to end up about the
3 same as I've already told you, we have one more witness
4 that we're going to hear from the State's case. Rather
5 than getting into any other proof tonight after this
6 witness, we're going to adjourn for the night. And it
7 will be sometime around 7 o'clock. You've been, like I
8 say, already, you know, very patient, attentive to
9 everything. You've had a long day. And I don't think
10 that going any later than that will serve any purpose.
11 So if you would go ahead, General Blackburn, with Dr.
12 Harlan.

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DIRECT EXAMINATION

BY GEN. BLACKBURN:

Q Please state your name.

A My name is Mona Gretel Case Harlan.

Q You might have to speak up, both of us have a tendency to talk a little low. What is your occupation?

A I am a licensed physician in the State of Tennessee, currently serving as an Assistant Davidson County Medical Examiner.

Q And what is your educational background?

A My educational background is that of high school, college, medical school, finishing in 1974. I did a pathology residency at the University of Tennessee in Memphis. I finished that in 1978, became anatomic and clinical board certified, worked as an Assistant Shelby County Medical Examiner while there, and worked as an Assistant Davidson County Medical Examiner part time beginning in the Fall of 1983 and full time beginning in May of 1986.

Q And as part of your duties as an Assistant Medical Examiner, are you required to do autopsies?

A I do autopsies, quite a few of them.

Q About how many?

1 A This year it's going to be about 200.

2 Q Okay. And during the course of that,
3 are you required to determine the cause of death?

4 A Yes, this is our primary reason for
5 doing the autopsy, is to determine the cause and manner
6 of death.

7 Q And as your job as an Assistant Medical
8 Examiner, are you also required to testify with regard
9 to the results?

10 A Yes, I am.

11 Q Okay. And have you been so qualified as
12 an expert in your field of forensic pathology?

13 A I have been qualified in courts in
14 Davidson County, additional counties in Tennessee and
15 in Kentucky, as an expert in forensic pathology.

16 GEN. BLACKBURN: Your Honor --

17 THE COURT: Excuse me just a minute.

18 I'm not sure -- my clerk has reminded me whether or not
19 Dr. Harlan was sworn in the presence of the jury?

20 THE WITNESS: I was not.

21 THE COURT: I think she wasn't. So let
22 me ask her now just for the purpose of the record and
23 for the jury's benefit if you would be sworn, Dr.
24 Harlan.

25

1 (The witness is sworn by the
2 Clerk.)

3
4 GEN. BLACKBURN: Your Honor, at this
5 time I'd offer Dr. Harlan as an expert in her field.

6 THE COURT: All right. Mr. Dean, do you
7 have any questions?

8 MR. DEAN: No problem.

9 THE COURT: Okay. Dr. Harlan has
10 testified as an expert in this Court a number of times.
11 And she will be allowed to testify today in her field.

12 GEN. BLACKBURN: Okay.

13 THE COURT: Okay. Go ahead.

14 Q (By Gen. Blackburn) Dr. Harlan, in
15 performing autopsies, would you just explain to the
16 Ladies and Gentlemen of the Jury exactly what -- what's
17 required or what you do during the course of that.

18 A Yes. An autopsy consists of several
19 phases. First, we try to view the body as soon as
20 possible after its discovery, take into account
21 surroundings, clothing, etc. We document our findings
22 with photographs. We then remove the clothing, weigh
23 and get a height of the body, examine externally for
24 any injuries present externally, and then do a complete
25 autopsy, in which we examine the contents of the head,
the neck, the chest and the abdomen.

1 With examination of the organs, we also
2 retain small pieces of the tissue, which we have made
3 into microscopic slides that we examine beneath the
4 microscope. In addition to that, we also take
5 pertinent samples for such things as cultures to see if
6 there are bacteria growing in cases in which we suspect
7 an infection and toxicology samples to determine what
8 drugs or alcohol or anything such as that are present
9 and to determine the blood type.

10 Q And during the course of all this, first
11 of all, are you required to do autopsies where the
12 cause of death is suspected to be a homicide?

13 A Yes, I am.

14 Q Okay. And that would be in all cases?

15 A In almost all cases.

16 Q In almost all cases. Let me direct your
17 attention to October the 2nd of 1989, and ask you if
18 you had an occasion to do -- to perform an autopsy on
19 the bodies of Judith Smith, Jason Burnett and Chad
20 Burnett?

21 A I performed autopsies on Judith Lynn
22 Warden Smith and -- beginning on October the 3rd at 5
23 p.m. I did an autopsy on Chad Altman Burnett
24 beginning October the 3rd at 11 a.m., and on Jason Don
25 Burnett, I did an autopsy beginning at 1:30 a.m., on

October the 4th.

1 Q Had you, though, been made aware of
2 their being deceased, though, on October the 2nd? Had
3 your office been notified of the discovery of their
4 bodies on October the 2nd?

5 A Yes, we had.

6 Q And had you or any individual of the
7 Medical Examiner's staff gone to the scene at 324 Lutie
8 Street?

9 A Yes, my husband Charles did.

10 Q And did you go to the scene at that
11 time?

12 A Not at that time.

13 Q Did you later go to the scene?

14 A I did go to the scene.

15 Q Okay. If you would, you indicated that
16 you did the autopsy on Judith Smith first; is that
17 correct?

18 A I believe I did the one on Chad Altman
19 Barnett or Burnett first. Yes.

20 Q Why don't we just take them in the order
21 that you did them.

22 A All right.

23 Q If you would, you indicated that the
24 first thing you do is you make a visual observation
25 analysis?

1 A Yes. I examine the body clothed,
2 unclothed, and photograph the body, make diagrams and
3 pertinent notes concerning my findings at that point.

4 Q All right. Describe when you first
5 viewed the body of Chad Burnett what you observed.

6 A On Chad Burnett, as I first examined
7 him, the body was still clothed, had quite a bit of
8 blood on the clothing. I charted what injuries I could
9 see easily with the body in that shape, weighed and
10 measured him, then removed the clothing, still charting
11 the body and then cleaned off the skin so that I could
12 get a better look at the wounds to the skin.

13 Q And what were the wounds that you
14 observed?

15 A He had several different types of
16 wounds. He had multiple gunshot wounds, one of which
17 that I called Gunshot Wound A, which was to the inner
18 edge of the left eyebrow. And it was a contact type of
19 gunshot wound, which shows a small bruising of the
20 orbit or orbital contusion beneath it.

21 Q Dr. Harlan, let me interrupt you. What
22 is a contact gunshot wound?

23 A A contact gunshot wound is a wound in
24 which the muzzle of the gun is against the skin's
25 surface.

1 Q Okay. So that the actual muzzle of it
2 would be pressed against the skin's surface.

3 A In Chad's case, it was against the
4 skin's surface but was not in tight contact.

5 Q Okay. And you can tell the difference?

6 A Yes, I can.

7 Q What was the next observation that you
8 noticed?

9 A I then examined the remainder of the
10 body and found another gunshot wound, which I called
11 Gunshot Wound B, which was to the right upper chest.
12 And it was also a contact gunshot wound. In addition
13 to this wound, which had no exit wound, nor did the
14 Gunshot Wound A, I discovered another gunshot wound to
15 the top of the right shoulder, which I called Gunshot
16 Wound C, which had an exit wound to the back of the
17 right shoulder, actually base of the neck area, which I
18 called Gunshot Wound D.

19 Gunshot Wound C was somewhat different
20 from the other two gunshot wounds, in that it was not
21 straight in, went at a -- a marked angle and did not
22 show obvious gross powder present.

23 Q Okay. So you've got the contact wound
24 to the -- to the face.

25 A Correct.

1 Q One to the chest area, and then the
2 other is not a contact wound?

3 A The other has to have been fired from
4 more than two feet away or had to have gone through
5 some other target first. And I did not find a defect
6 in his shirt to explain that.

7 Q So he had three separate gunshot wounds
8 to the body of Chad Burnett?

9 A We do.

10 Q What were the other -- the injuries that
11 you could observe?

12 A In addition to those wounds, he had
13 multiple stab wounds which were in three different
14 types. Some of these were stab wounds that
15 appeared to have been caused by something that was very
16 sharp and needle-like and elongated and had no side
17 edge to it, something such as an ice pick or an awl or
18 a -- something sharp and pointed. He had one such
19 wound at the chest, beneath the area where the
20 clavicles come toward the midline here (indicating on
21 self), and had a small trail-off from that, a little
22 abrasion down towards the right side.

23 He had multiple additional -- additional
24 small abrasions but none that were definitively made by
25 a puncture type instrument. In addition to these, he

1 had several stab wounds that were made by something
2 with a blade shape to it. One of these was in the --
3 what we call the lumbar area of the back, in the small
4 of the back, above the pelvis, in the midline, and was
5 orientated across or transverse in comparison to the
6 body.

7 Two others were just above and on either
8 side of the umbilicus or belly button, made with a
9 smiliar type of instrument, and a third type of injury
10 from a sharp object such as that was also present, but
11 this was a laceration type injury or series of
12 laceration type injuries to the neck. And in these
13 there were a small abrasion, superior, then a bigger
14 laceration or incision that had some frayed edges to
15 it. Then along its left edge it had another small,
16 what we call abrasion or scrape, and then beneath and
17 about mid-neck or high mid-neck an even larger area of
18 slashing type injury with edges on it that suggested
19 more than one cut.

20 Q Dr. Harlan, let me ask you this. After
21 you are making these visual observations, are you
22 documenting these on a chart in some manner?

23 A Yes, I did, at the -- at the autopsy,
24 document these on Special Chart 11, which is a form
25 that we use, and Special Chart 8, which is the second
form.

1 (Chart is brought to the front
2 of the jury box.)

3
4 Q (By Gen. Blackburn) Dr. Harlan, can you
5 look at this chart--

6 MR. NEWMAN: Your Honor, if I could
7 interrupt, with the Court's permission, could I move
8 around so that I could see?

9 THE COURT: Sure, move right over here
10 in this chair, if you want to.

11 Q (By Gen. Blackburn) And ask you if this
12 appears to be an enlargement of that chart that you
13 have prepared with regard to Chad Burnett?

14 A Yes, it is.

15 Q If you would, step down in front of the
16 chart and point out to the Ladies and Gentlemen of the
17 Jury the wounds that you've just been describing.

18
19 (WHEREUPON, the witness steps
20 down from the witness stand
21 and stands at the board.)

22
23 THE WITNESS: This is a separate chart
24 that I used that simply indicates the relative shapes
25 of the wounds, the size of the injuries. I try to

1 tabulate their inches above the heel. And Chad was a
2 total of 170 pounds, that is, 170.6 pounds, and 71
3 inches tall, which would be 5'11".

4 Q (By Gen. Blackburn) So both of these
5 charts are with regard to Chad Burnett, this being just
6 a documentation of the larger chart of the type of
7 wounds?

8 A Yes.

9 Q You use this in conjunction with that?
10 If we could scoot it over, to this side. Now, Dr.
11 Harlan, if you would, go through each one of the wounds
12 that you observed on Chad Burnett and just tell the
13 Ladies and Gentlemen of the Jury about each of them.

14 A The gunshot wounds are --

15 THE COURT: Dr. Harlan, would you like a
16 pointer?

17 THE WITNESS: -- not on this chart;
18 they're on this chart.

19 GEN. BLACKBURN: Do you need a pointer?

20 (The witness handed a pointer.)
21

22 THE WITNESS: The gunshot wound to the
23 inside of the left eyebrow is here (indicating on
24 diagram) and the small contusion is there (indicating
25 on diagram).

1 The gunshot wound at the end of the
2 shoulder went in here at an angle, is diagrammed here
3 (indicating on diagram), and exited in the back here
4 (indicating on diagram), making a small, irregular
5 slit. That's through the right shoulder. It did not
6 go across the midline. The gunshot wound that went
7 into the right chest, from front to back, basically,
8 and it had no corresponding exit wounds.

9 The sizes of the wounds are similar but
10 not exact. The minimal size, which is fairly
11 important, is .28 inches of Gunshot Wound B to the
12 chest.

13 Q (By Gen. Blackburn) And why is that
14 significant?

15 A Generally, a high speed projectile, like
16 a bullet, will make a hole similar in size to the
17 diameter of the bullet, unless it's going at an
18 unusual angle.

19 Q Okay. And what does this one tell you
20 about this particular kind of bullet?

21 A This -- this dimension here being a .28
22 inches tells me that it's a fairly small bullet.

23 Q And did you recover the bullet from
24 Gunshot Wound B?

25

1 A Yes, I did. I also recovered one from
2 Gunshot Wound A. After the gunshot wounds, I described
3 the puncture type wounds just below the base of the
4 throat here, which was designated Gunshot Wound HB --
5 or Stab Wound HH, which has a central hole or a little
6 bit eccentric hole and then kind of a tadpole type tail
7 going across. So it's made by a small puncture type
8 instrument.

9 The wounds to the neck are diagrammed
10 here (indicating on diagram). They were in more detail
11 and an abrasion which I didn't designate differently, a
12 small superficial laceration, which I designated II,
13 and then Laceration EE and SS, being a large
14 laceration. This one is .9 centimeter or .9 inches by
15 3.7 inches. This one is .85 inches, as the head is
16 turned slightly away, with length unaffected by that
17 motion of 4.1 inches and shows the regular edges
18 suggesting that there are multiple strokes involved, as
19 it does here (indicating on diagram).

20 Q Okay. Now, the irregular edged multiple
21 strokes of the cutting instrument?

22 A That's correct.

23 Q And this would have to be a sharp
24 instrument, such as a knife?

25 A This would have to be something with a
decent edge to it.

1 Q Can you tell whether or not it would
2 have a serrated edge or is it smooth or can you tell--

3 A I could not demonstrate any serrations
4 to it. Sometimes there can be serrations shown, not
5 always. I did not see any serrations in this. They're
6 usually found at the point type edges of the wound. I
7 did not find any abnormality to suggest that in any of
8 his wounds.

9 The stab wounds to the abdomen just
10 above and on either side of the belly button are
11 indicated on this chart as well.

12 And BB, which is to the right side, and
13 CC, which is to the left side, I've measured across the
14 midline here (indicating on diagram). Their
15 dimensions, they are open slightly. They do tend to
16 have kind of a flat edge on each at opposite sides.
17 This can occur with a knife that has a single edge. It
18 is not specific for that, because the side could be
19 duller on this side than on the other side. But the
20 length on this one is a .72 inches. The length on this
21 one is a .70 inches, which should, within a reasonable
22 tolerance, given that the skin is somewhat elastic, be
23 close to the measurement of the width of the blade that
24 inflicted.

25

1 Q Okay. And again, did you notice any
serrations on this?

2 A No, no serrations.

3 Q Okay.

4 A The stab wound to the back, the small of
5 the back, is here (indicating on diagram). That one I
6 designated JJ, and it is oriented across and again,
7 shows its blunter end here and the edge here
8 (indicating on diagram). These also have a bit of a
9 tail. Those kind of curve with an inward motion that's
10 slightly at a different angle from the outward motion,
11 that actually slices the edge of the wound in two
12 pieces.

13 Q Okay. So you can tell it goes in one
14 place and comes out another?

15 A Well, slightly different. It makes a
16 second small laceration as it comes out here
17 (indicating on diagram), because this is a wound that
18 goes basically inward on the body.

19 Stab Wound AA is back over here just at
20 the edge of the left nipple (indicating on diagram) and
21 has a small abrasion down from it.

22 Stab Wound AA is further over on the
23 left side of the body, shows maximum dimensions of 1.38
24 by 0.85 inches this direction (indicating on diagram),
25 which, again, is similar to our dimension here

1 (indicating on diagram) and is a bit wider. I think
2 that this knife actually did a bigger turn on being
3 pulled out, and may not have been placed directly in
4 and out, but instead may have moved slightly in the
5 skin.

6 Q Could that be either the object moving
7 or the -- Chad, himself, moving?

8 A Yes, and its location made it a little
9 more amenable to movement, because there are ribs
10 underneath there. So you're talking about glancing on
11 ribs, which are tougher tissues to get through than the
12 two on the abdomen.

13 Stab Wound DD here is way around on the
14 right side of the chest here (indicating on diagram).
15 And it's labelled here (indicating on diagram). And it
16 also shows a tadpole-type shape. It is vertical in
17 relationship to the body as opposed to these others,
18 which are oblique.

19 There is one other knife-type injury,
20 and that is Laceration GG. And the reason this is not
21 a stab wound is because of where it is. It's on the
22 left thumb here (indicating on diagram), and has sort
23 of a triangular tear in the skin. By its slice, it has
24 caused an action such as this (indicating) on the skin,
25 so that this is a loose flap of skin that's been raised

1 from where it was introduced. And as it slid across
2 got moved, okay?

3 This injury is suggestive of a
4 defensive type of wound, because it is at an area where
5 if one grabs for the blade, this would be pulled or
6 pushed through that area of laceration.

7 Q So that would indicate that Chad
8 Burnett was either, what, grabbing for the knife and
9 trying to keep it from doing that? Is that what you're
10 terming a defensive wound?

11 A Yes, a defensive wound means that he had
12 his thumb in the way of the sharp edge of the blade,
13 either trying to push, grab or some other motion. And
14 so this -- this wound was inflicted with the edge of
15 the blade.

16 Q How many different types of weapons can
17 -- just from looking at the wounds, can you say
18 inflicted the injuries to Chad Burnett?

19 A There would have to be a minimum of
20 three, the gun, which could be similar caliber in all
21 three wounds, a knife that had an edge to it, to cause
22 all of these and this as well, and then something
23 elongated and sharp without an edge to cause that.

24 Q Okay. So three different types of
25 weapons?

A Yes.

1 Q If you would, with regard to Gunshot
2 Wound A, when you were doing the autopsy, what sort of
3 organs did that gunshot wound penetrate?

4 A Gunshot Wound A is -- went through the
5 edge of the orbit at that point, broke the bone ahead
6 of it, went through the frontal -- what we call the
7 front part of the skull, the skull, and the temporal
8 skull, which is around the temporal lobe. It went from
9 front to back and really didn't go up or down as far as
10 his head was concerned. It may have gone up or down as
11 far as a floor was concerned, if the head had been
12 tilted. And it really did not go to the right or the
13 left, but, again, that may have been in relationship to
14 his body, because the head may have been turned
15 somewhat. I don't know. But at that wound, it caused
16 injury by the bullet going through the area and by bone
17 fragments being shoved away from the area by the broken
18 bone from the impact of the bullet that cause injuries
19 to the left bottom of the brain, the thinking part of
20 the brain, the middle of the right frontal lobe, in
21 other words, the whole left side of the thinking
22 portion of the brain or cerebrum, the inside of the
23 right lobe, and also caused bone fragment disruption of
24 the left internal carotid artery as it was coming up
25 through the skull. The left internal carotid artery in

1 Chad above and below the area of laceration and
2 disruption was a fairly good sized vessel. And he
3 would not have lived long after this artery was
4 destroyed.

5 The bone fragments also went into the
6 temporal lobe of the brain. The bullet itself and bone
7 fragments damaged the olfactory, which is the smelling
8 portion of the brain, left frontal lobe as well. And
9 as a consequence of these injuries to the brain and its
10 blood vessels, with hemorrhage, etc., the lungs started
11 to develop the edema, became filled up with fluid,
12 which occurs with penetrating injuries to the brain.

13 Q So, as a result of that, I mean this one
14 was a fatal wound?

15 A This wound was a fatal wound. You could
16 not even have a heart survive this from -- for very
17 long. The internal carotid artery is a major vessel
18 that is necessary, his thought processes, his control
19 of his bodily functions would have been ended with the
20 penetration of that -- of that artery.

21 Q The -- that's Gunshot Wound A?

22 A That's Gunshot Wound A.

23 Q What about Gunshot Wound B?

24 A Gunshot Wound B is the one to the right
25 chest. Again, it's the contact gunshot wound.

1 Q Again, the barrel of the gun and muzzle
2 being next to the skin?

3 A Correct. It went through the right
4 second rib and right intercostal space, second
5 intercostal, went through the right lung, went through
6 the back of the chest wall between the fifth and sixth
7 ribs and then became lodged beneath the skin, in the
8 back, 57 inches above the heel.

9 Gunshot Wound D is 56 inches above the
10 heel, so you can see it rose one inch in his body. It
11 was also very slightly, from right to left, meaning
12 that it went at some point at an angle, such as that
13 (indicating). But basically it went from front to
14 back.

15 Because of this wound, he not only bled
16 into the right side of the chest, approximately two
17 units worth, he also had the disruption of the lung and
18 the bleeding from that and with continuing to breathe,
19 so I do know that he was alive at this point. He
20 developed air around the lungs and into the skin, which
21 requires the pressure of continue to breathe or be
22 resuscitated. There -- the area around the gunshot
23 wound then felt like air-filled type fluid in the skin.

24 That's about it for Gunshot Wound B.
25

1 Q Could Gunshot Wound B, was that also a
2 fatal gunshot wound?

3 A Gunshot Wound B, if given long enough,
4 could have killed him by itself. He at -- you know,
5 initially, might have survived it had he had prompt
6 medical care at a trauma center, first-class trauma
7 center with transfusions, chest tubes, etc., but he did
8 live for a while with that wound, which was bleeding in
9 the chest and causing air build up in the chest, was
10 actually shoving the heart to the left and trying to
11 fill up the left side of the space with everything
12 being moved to the left, because the lung is deflating
13 and air is being lost into the chest and out into the
14 chest wall.

15 Q Gunshot Wound C, did it strike -- it's
16 an in-out motion?

17 A Gunshot Wound C, in an old western
18 terminology, would be considered a flesh wound. It did
19 bleed into the tissues. It was there while he was
20 alive. It was placed there while he was alive, but it
21 went in the front, came out the back and did not strike
22 a vital structure in passage. Okay? It did get
23 muscle, it did get skin, and it did get fat, but no
24 great big muscles and nothing major.

25 Q And a person could survive a Gunshot
Wound C?

1 A It would take major medical problems
2 to--

3 THE COURT: Hold on just a minute.

4 THE WITNESS: -- to die of Gunshot Wound
5 C.

6 THE COURT: Excuse me a minute. I think
7 one of the jurors needs to be excused just a moment, to
8 be excused a moment. So why we just let whoever that
9 juror is be excused, and we'll just wait here. I don't
10 want to embarrass whoever it is, go right ahead, Ms.
11 Montgomery. And you can go in my office. Mr.
12 Himmelberg will show you, and then we'll be back
13 whenever you get here.

14
15 (Juror No. 2 is excused and
16 then returns.)

17
18 THE COURT: Okay. Go ahead.

19 Q (By Gen. Blackburn) Okay. Dr. Harlan,
20 the --

21 A Gunshot Wound C, the only way he would
22 have died of Gunshot Wound C is if he had had long-
23 term complications like an infection that wasn't
24 controlled. So it would have taken almost no
25 medical care for him to have died.

1 Q And the damage done by the stab wound,
2 if you would, just describe each of the stab wounds.

3 A If we go in order on that chart, Stab
4 Wound AA, labelled that simply because I'd already used
5 A, B, C and D for the gunshot wounds. So we went for
6 double letters.

7 AA is just on the outside, anterior to
8 left nipple. It's 5.35 inches to the left side of the
9 midline. What it did was to go to maximal depth of 2.8
10 inches. And I measured this through the tissue and
11 into the left lung, which it did go into. And it went
12 basically from front to back and left to right, meaning
13 on him, approximately that angle (indicating). And
14 it's oriented vertically, vertically (indicating).

15 Q When you say a depth of 2.8 inches, what
16 does that tell you about the knife?

17 A The maximal depth of 2.8 inches tells me
18 that it requires a blade about 2 and a half inches long
19 to make it. If I have a blade with a hilt on it at 2
20 and a half inches, I can actually indent the skin
21 slightly if it's sharp enough and push it in slightly
22 further than that. So it would have required a minimum
23 blade of around two and a half inches.

24 Q So a minimum blade?

25 A Correct.

1 Stab Wound BB here is here on him
2 (indicating on diagram). This went into the abdomen,
3 went through the skin into the peritoneum, which is the
4 cavity around the gut, etc., and went into the right
5 anterior liver. Its maximal depth was 2.35 inches, so
6 it's slightly less deep than the first stab wound that
7 I showed you. It's going from front to back and
8 slightly from inferior to superior, which is angled
9 upwards.

10 The third stab wound is here (indicating
11 on diagram) and is also obliquely oriented; in other
12 words, it goes across like this (indicating on
13 diagram). And it's going through the abdominal wall,
14 it went through the front edge of the stomach. It did
15 not go out the back side of the stomach. And I don't
16 know how full his stomach was or how deep in the
17 stomach it went, but it did go into his stomach. So
18 its minimal depth is 1.8 inches. I can track it that
19 far in, but because it's going into a stomach bubble
20 and whatever else, I can't tell you how deep it went
21 after that hollow edge of the stomach there. It was
22 going from front to back, inferior to superior, and
23 from left to right. So it's all three things at the
24 same time. That's that one.

25

1 Stab Wound DD is to the right lateral
2 chest. That's the point up here, almost in the armpit
3 here. And that's got a maximal depth of 1.8 inches and
4 went from right to left, slightly from up to down, and
5 went from posterior to anterior. It came in from the
6 side like. At the point where this went into the chest
7 wall, it did not strike lung, and it's at an odd angle.
8 So I don't know if it didn't strike lung because the
9 lung was already being shoved over by the fact that it
10 had a gunshot wound and was, therefore, deflated, or if
11 it just missed the lung.

12 Stab Wound EE at the top of the two
13 bigger lacerations or slice wounds to the neck. And it
14 is not abundantly deep. It's 64 inches above the heel.
15 It's mostly to the midline and left and did cause
16 bleeding, but it did not get major life structures. It
17 did get small vessels, so it did bleed. So I know that
18 it was put there while he was alive.

19 This wound is the next big wound. It's
20 beneath the one I just described. It also had acute
21 hemorrhage to it.

22 Q When you're saying "acute hemorrhage",
23 that would be --

24 A Bleeding. So I do know that he was
25 alive on that one. He also was alive when the wound to
the left thumb was made. That also bled.

1 He -- the next wound was also a stab
2 wound, but it's a very small little hole. And that one
3 went only .3 inches deep, so we're dealing with a very
4 shallow wound, but then it's placed directly over the
5 sternum. The sternum is a very sturdy bone. It also
6 bled. It did show vital reaction. Stab Wound II, I
7 went back and charted this one, because it was a little
8 deeper than at first I had noted, but it's still
9 superficial, and it's between the other two major slice
10 wounds to the neck.

11 Stab Wound JJ is through skin and
12 skeletal muscle. That's diagrammed here and it's on
13 the back side here and it went to a depth of 2.9 inches
14 through skin, muscle, and in between the vertebral
15 processes. It's directed from front -- excuse me --
16 from back to front, slightly from his left to his right
17 and slightly from top to bottom. So it's approximately
18 at that angle (indicating). And that one also did
19 bleed. That was while he was alive.

20 Q Dr. Harlan, while you're down in front
21 of the jury, I'm going to hand you a series of
22 photographs and ask you to see if you can look at those
23 photographs and identify them?

24 A Yes, I can. These are all of Chad
25 Burnett.

1 Q If you would, take those
2 photographs--

3 MR. NEWMAN: Your Honor, excuse me.
4 For purpose of the record, now that Your Honor has had
5 a chance to see the chart, we renew our objections
6 concerning the photographs.

7 THE COURT: Okay. The Court will
8 overrule your objection. Go ahead.

9 Q (By Gen. Blackburn) Dr. Harlan, if you
10 would, take those photographs and turn around and
11 explain to the Ladies and Gentlemen of the Jury what
12 each one represents and what does that tell you about
13 those injuries.

14 A This is a photograph of Chad's face
15 (holding up photograph), which shows me several things,
16 the contact gunshot wound to the eyebrow is here
17 (indicating). There is bruising beneath it. It did
18 not take this long to kill him or this would have been
19 a much bigger bruise. There is some hemorrhage in the
20 neck involving these, not a marked amount. I might
21 have expected more bleeding had they been early in his
22 dying episode rather than late. So I think these are
23 probably late injuries.

24 Q What about the gunshot wound, can you
25 tell whether the gunshot wound came before, during or
after death?

1 A The gunshot wound came before death.

2 Q Okay. And that is by -- what is it
3 that--

4 A The bruise to the left eyelid here
5 (indicating on photograph).

6 The next photograph (holding up
7 photograph) is of Chad's neck and it shows several
8 things. These are the abrasions which are not very
9 deep. That's an abrasion and lacerations or slice type
10 wounds to the neck. And this photograph has been taken
11 with the head to show the wounds the best. In other
12 words, instead of the front or side, this has been
13 taken obliquely from wounds that are directly across
14 the neck here (indicating on photograph). Also, the
15 head has been turned to the right to allow me to show
16 their maximal depth, etc.

17 Q And can you tell from that whether or
18 not those wounds were before, during or after death?

19 A These are -- these do show some vital
20 reaction but not a marked amount. There is some
21 bleeding here, and it did slice blood vessels in the
22 neck, but not the major bleeding I'd expect if he were
23 a healthy individual at this point.

24 Q And how many different lacerations or
25 how many different cuts can you actually see in that

1 photograph?

2 A I can see a minimum of four, but this
3 one shows several edges on it. And instead of at --
4 well, with a knife that's being put into a tissue, you
5 can put it in and pull it out and have two different
6 edges on the sharper edge of the knife. In a wound
7 like this, pulling it across one time does not make two
8 tails on the wound. Instead, that's -- that's two
9 separate wounds. These did not line up in the skin
10 folds as one wound.

11 Q Okay. So that would mean that the knife
12 is going across the skin how many times?

13 A A minimum of two with this one, a
14 minimum of two at this one, one with that one, and one
15 with that one. So there were probably actually six
16 times across the neck.

17 Q Six times across the neck. And that's
18 what's demonstrated by this picture?

19 A Yes.

20 Q And this is while he is dying?

21 A This is while he is dying.

22 This photograph is of Chad's left thumb.
23 (Holding up photograph). And it shows how the injury
24 was inflicted by the -- by the drawing of the knife
25 across the finger there.

Q Okay. This is a defensive wound --

1 A That's the defensive wound.

2 This injury I did not yet talk about.

3 (Holding up photograph). This is an injury to the
4 upper left thigh. And again, this one did not cause
5 major injury. And I'd call it a superficial
6 laceration. I did not designate it with AA, BB, etc.
7 Basically, I was very tired of writing by that time.
8 And I'd come to the bottom of that page. So I,
9 instead, designated this as a superficial laceration,
10 meaning that it did no major damage and charted it as
11 being 29 and a half inches above the heel. That also
12 shows vital reaction and is transversely oriented. So
13 his leg would be like this (indicating), with the
14 number upside down.

15 Q When you say "vital reaction," meaning
16 it was --

17 A It was while he was alive. This may or
18 may not be a defensive wound. If he's trying to get
19 something in the way of a sharp object, that could have
20 occurred during the struggle. I don't know.

21 This is the wound to the back. (Holding
22 up photograph). If you're looking at it from his back,
23 it would be this way (indicating). And that is a stab
24 inward type wound to the small of the back. Again, it
25 shows vital reaction. It does show bleeding, etc.

1 There is a little reddening around the skin, around the
2 edges.

3 These are the two stab wounds to the
4 belly button area. (Holding up photograph). If I put
5 it like this, and you realize that I am taking a
6 photograph from his right, here is his belly button,
7 here is the taller or the higher of the stab wounds,
8 which is BB, here and here is CC, here (indicating on
9 diagram). We just use this thing here to show us
10 relative size. This is a centimeter ruler. And these
11 again are basically directed towards the inside of the
12 body. And they show the reddening of the edges of the
13 wounds as well.

14 Q Again, that -- he's alive?

15 A He was alive.

16 This is a photograph (holding up
17 photograph) of his chest. And I've taken it from the
18 left side, basically, to show stab wounds just to the
19 outside of his nipple, but it also shows a little
20 abrasion here that I did not separately chart as a stab
21 wound. It's just an abrasion. I don't know how it
22 occurred, but it's about the same age as all the other
23 injuries, but it didn't do any major damage. He also
24 has an abrasion here (indicating on photograph). I
25 think he had those -- no, he does have punctate
abrasions here, and I believe that's all.

1 He does have abrasions here, here, and
2 here (indicating) on the right shoulder area. I'll
3 show you those in a minute. This one does show, it's
4 from the right side, if he's lying down, which is how I
5 viewed him, it would be like, this is little abrasion
6 here (indicating). This is the puncture wound, it's a
7 closer puncture wound shot than the one I'm going to
8 show you in a minute, show a little tail off it, the
9 fact that it is a very round little hole rather than
10 being a slit-like hole here (indicating). This is a
11 relatively close-up shot of the Gunshot Wound B, but
12 I've taken it from across the body, it's over here on
13 the right side of the chest. And it shows a relatively
14 dense black color around the wound indicating the
15 deposition of powder because it's a contact nature.

16 Q All right. So this would show three
17 different types of weapons.

18 A Three different types of weapons --

19 Q And --

20 A -- in one photograph.

21 Q -- all of which were the injuries
22 inflicted prior to death?

23 A Prior to death.

24 Q All right. This is the last photograph.

25 This, again, if you imagine Chad -- it's difficult to

1 do it that way. Let's do it this way. These are some
2 abrasions, but the important things are the gunshot
3 wounds to the right chest. That's B.

4 Q The contact wound?

5 A The puncture wound. Yes. That would
6 be. The puncture wound here (indicating) with a little
7 tail on it, some scrapes there. And this is the wound
8 that went through muscle type tissue, in and out. And
9 here is the stab wound to the right side of the chest
10 (indicating).

11 Q So, again, that shows three different
12 types of weapons, the number of weapons, and also
13 before death?

14 A Before death.

15 Q All before death?

16 A (No response.)

17 Q What, Dr. Harlan, was the cause of death
18 of Chad Burnett?

19 A Because several of his stab wounds, if
20 given long enough, could have resulted in his death, I
21 listed his cause of death as being multiple gunshot
22 wounds and stab wounds. Several of the stab wounds
23 were deep enough that if given long enough they could
24 have led to his death. The gunshot wounds to the right
25 chest certainly could have caused his death. He was
probably in a weakened state by the time he received

1 the final gunshot wound, which was the gunshot wound to
2 the edge of the left eyebrow, which killed him rather
3 quickly.

4 Q So that he -- all of his injuries
5 occurred before death?

6 A All of his injuries occurred before
7 death.

8 Q Can you tell anything about from your
9 viewing of the body the time of death of Chad
10 Burnett?

11 A Chad, when initially viewed, by and
12 others was in rigor mortis, had fixed posterior livor
13 mortis, and had begun to show drying around the edges
14 of the wounds, etc. So he had been dead for more than
15 12 hours. If I tried to go back and -- and categorize
16 that further on him, I would say that it was probably
17 right around 12 hours at that time.

18 Q From when he was first viewed or longer?

19 A Uh --

20 Q Would it be consistent --

21 A From when I started the autopsy.

22 Q When the --

23 A No, excuse me, from when first viewed.

24 Q When -- would it be consistent with
25 being dead around 11:30 on October the 1st?

1 A Yes, it would.

2 Q So that's his time of death. During the
3 course of your autopsy, do you also look at the stomach
4 contents?

5 A Yes, I do.

6 Q And what were you able to determine
7 about the stomach contents of Chad Burnett?

8 A We actually weigh and measure our
9 stomach contents. And what we found was that he had in
10 his stomach 180 cc.'s dark green-black mush which you
11 couldn't see through. And it contained bits of onion,
12 cheese, green pepper, black olives, mushrooms and
13 pepperoni.

14 Q Would that be some of the ingredients of
15 a pizza?

16 A That sounds like a pizza supreme.

17 Q And based on what you could see, can you
18 tell anything about the time of death with regard to
19 looking at the stomach contents?

20 A I can tell that Chad ate within one hour
21 of the time that he died.

22 Q I think that's all I had with regard to
23 Chad.

24 GEN. BLACKBURN: Your Honor, at this
25 point I'm going to request that the photographs be made
an exhibit to our hearing and that the two charts be a

1 collective exhibit as to Chad Burnett.

2 THE COURT: Okay. The pictures will be
3 one collective exhibit and the diagrams will be another
4 collective exhibit as the next number as to Chad
5 Burnett.

6
7 (State's Exhibit No. 33,
8 photographs, marked and
9 filed.)

10
11 (State's Exhibit No. 34, two
12 (2) charts, marked and filed.)

13
14 Q (By Gen. Blackburn) Dr. Harlan, after
15 you did the autopsy with Chad Burnett, did you then do
16 an autopsy of Judith Smith?

17 A Yes, I did.

18 Q And what, if you would, in doing this,
19 do you recognize these two charts?

20 A Yes, I do.

21 Q And are these the charts that you made
22 with regard to the autopsy of Judith Lynn Smith?

23 A They are enlargements of those charts.

24 Q Would you just, either using the charts,
25 or explain your view of the body of Judith Smith.

1 A Okay. Let me make one note here. All
2 of the information, I believe, is on that one. There
3 is one -- a Special Chart 11 here. And the edges of
4 the abrasion here got cut off by our xerox machine's
5 copy.

6 All right. The wounds on Judith were a
7 gunshot wound, which was not contact, which did not
8 show near stippling, but instead showed that the muzzle
9 had to have been more than two feet from the left arm,
10 which entered the back side of the left arm and came
11 out the front side of the left arm. Those are
12 designated as Gunshot Wound B and Exit Wound C. This
13 did show vital reaction. She was alive when this
14 occurred. It did not lead to her death.

15 Q Let me stop you at this point. When
16 you're saying the back side of the arm, it would have
17 to be facing the --

18 A Anatomic -- anatomic position would
19 place that at the back side of the arm. That doesn't
20 mean that she was shot from the back. She could have
21 easily have been shot through the back side of the arm,
22 with her arms back side toward the gun, facing the gun.

23 Q Okay. So she could have had her -- like
24 her arm between the gun and the other parts of her
25 body?

 A That's correct.

1 Q Okay. Gunshot Wound A.

2 A Gunshot Wound A is at the top of the
3 neck. It does not show well on any of these diagrams
4 because this is a front and back shot. And this is a
5 side area, but it's approximately here (indicating on
6 self).

7 Gunshot Wound A, when -- especially when
8 compared to Gunshot Wound which is .24 by .24 inches is
9 somewhat bigger and shows a large amount of black color
10 around it, which is the powder burn. This is a gunshot
11 wound which would be described as being a near gunshot
12 wound, but I can qualify that a little bit further by
13 telling you that anything within two feet is considered
14 a near gunshot wound, because it will leave a spray of
15 black powder. This is considerably closer than that.
16 And while not immediately adjacent to the skin, has to
17 be very close to it, because this did not have the
18 stipple pattern around it that a further back gunshot
19 wound would show.

20 Q So on Chad we had contact wounds, we've
21 got the near gunshot wound and then the other --

22 A What we would classify as a distant
23 gunshot wound being more than two feet from the skin to
24 the muzzle.

25 Q This one was within two feet or closer?

1 A Definitely.

2 All right. Those were the gunshot
3 wounds. She also had a slice wound to the neck. Hers
4 is a bit different because instead of being over here
5 with the gunshot wound it's more on the right side of
6 the neck coming around to the midline. And this one on
7 her does not show even a degree of bleeding that those
8 on Chad showed. Now, I qualify that by saying "mild
9 hemorrhage." The amount of bleeding that was present
10 from this slice was about that that would be drained if
11 you slice something that's already dead or dying. So
12 circulation to the neck was not good at this point.
13 Her heart may have actually already stopped.

14 Q So these lacerations to her neck could
15 have been after death?

16 A At or after death.

17 The Stab Wound BB, again, is superficial
18 and it's here (indicating on diagram), and it's a
19 small, narrow wound, very similar to Chad's wound that
20 was here (indicating on diagram), but it was a little
21 further down and right here (indicating on diagram).

22 Stab Wound CC is, again, small and
23 round, superficial, and right there (indicating on
24 diagram). Stab Wounds DD and EE are, again, round.
25 This one (indicating on diagram) is only .08 inches
by .015 inches, but it is at a little bit of an

1 oblique angle causing that kind of ovoid or a
2 tadpole-type shaped wound there.

3 This one, again, is a puncture type
4 wound. The injuries that these cause internally were a
5 little interesting, too. The near gunshot wound to the
6 neck went through the skin, through the soft tissues in
7 the neck, through the C-3 vertebral discs, through the
8 cerebral -- through the cervical spinal cord, slicing
9 it into. And the bullet was recovered in the cervical
10 spinal canal. The bullet was at 59 inches above the
11 heel. The entry wound is at 60 inches above the hell.
12 The direction of the bullet went was from left to right
13 and from anterior to posterior. So we're talking at an
14 angle left to right and anterior to posterior, but not
15 downward or upward.

16 Q What would be the effect of this gunshot
17 wound?

18 A This gunshot wound, because of the
19 injury, which is a transection, a total separation of
20 the cervical spinal cord would have rendered her
21 incapable of moving her arms or legs at that point.

22 Q In other words, she would have been
23 paralyzed from the neck down?

24 A That would have been instant paralysis.
25 She also had subdural hemorrhage in the area and

1 bleeding. She also had subarachnoid hemorrhage from it.
2 I doubt seriously if she would have been capable of
3 breathing at this point. If she did, it was not for
4 very long. There was some bleeding into the upper
5 airway, and it did not really get down far into the
6 lungs. So I think she may have had a few deep breaths,
7 and that's about it.

8 In -- in going through the neck and
9 being lodged in the canal, it went through the basilar
10 artery and left vertebral artery or actually lacerated
11 those arteries from the motion as it went past. That
12 caused bleeding inside the brain itself, caused a
13 hematoma of the left internal jugular vein in the neck.
14 That quickly ended her life.

15 Q What -- the -- how many different types
16 of weapons were used on Judith Smith?

17 A I doubt seriously if the puncture wounds
18 that were superficial here (indicating on diagram) were
19 made by a really, really sharp instrument capable of
20 giving the slice that we have here (indicating on
21 diagram). So I really believe that there are a gun and
22 two different types of instruments to make the stab and
23 slice shapes.

24 Q So, again, three different types of
25 weapons?

A Correct.

1 Q Can you state anything at all about the
2 -- the instrument that was capable of doing that
3 slicing -- slicing motion?
4 A Not very much. Again, I did not see
5 evidence for serration. And its depth of the slice
6 was .8 of an inch.
7 Q So no serration and -- but with regard
8 to the depth, it did not go very deep.
9 A It did not go very deep, but it should
10 have made more bleeding than it did, because .8 of an
11 inch is approximately that far (indicating with hands)
12 beneath the skin. And in the area that it went in,
13 there are plenty of smaller blood vessels that should
14 have been redder had the heart still been functioning.
15 Q And the puncture wounds were caused by
16 what kind of an instrument?
17 A Again, it's something with a sharp
18 point, like an ice pick, something similar to that.
19 Q Similar to ones that you observed on
20 Chad's body?
21 A Yes.
22 Q Was there any way to tell from your
23 observations whether or not the same instrument was
24 used on both Chad and Judith?
25

1 A Not precisely, but it appears likely. I
2 can find no dissimilarities.

3 Q The puncture wounds, were they made
4 before or after the death of Judith Smith?

5 A The puncture wounds charted here
6 (indicating on diagram), there was very, very little
7 bleeding. And particularly, on the one here, which I
8 diagrammed here (indicating on diagram). Stab Wound --
9 let's see, it's not BB. It's EE, here (indicating on
10 diagram). That wound went in a maximal depth of 2.20
11 inches. And it was going from front to back and a
12 little bit from bottom to top. And it went into the
13 right lobe of the liver, and yet, it caused no major
14 bleeding. A liver, when stuck, bleeds, remarkably.
15 This was capable of producing with these sized holes,
16 but at the same time it didn't bleed, so I believe that
17 Judith's heart had already stopped by the time that
18 this wound was administered.

19 Q Okay. So the puncture wounds are after
20 death?

21 A I do believe they are.

22 Q Dr. Harlan, let me hand you a series of
23 five photographs and ask you if you'd look at those and
24 see if you can recognize those.

25 A Yes, I do. I took these, and they are
all of Judith Smith. The first one is a photograph

1 showing the Gunshot Wound A, which is back here, in the
2 side of the neck just past the angle of the mandible.
3 And you can see the black coloration around it. You
4 can also see some red around it. That is vital
5 reaction.

6 Q Okay. Vital reaction, meaning she was
7 alive when this -- the gunshot wound --

8 A Yes.

9 The second photograph is of the right
10 side of her neck, taken from the right. (Holding up
11 photograph). This is her chin (indicating on
12 photograph). That's her left shoulder. She's in that
13 position, and it's obliquely orientated, and it is a
14 slice type wound. And there's very little bleeding.

15 Q Which would lead you to believe this is
16 after death?

17 A Yes.

18 Q And --

19 A At or after.

20 Q At or after death. Can you tell whether
21 or not there's one or two?

22 A On that particular one, I could not see
23 a good tail type edge at either end. That may have
24 been one. If it was not one, then the deeper cut had
25 to have been centrally placed and not involving the

skin.

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Q So one, maybe more?

A One, maybe more.

This photograph is of Judith's left elbow. (Holding up photograph). This shows the distant of entry gunshot wound to the back side of her arm and a little bruise above it.

This photograph I made before I took her shirt off. This is her left arm coming down this way (indicating on photograph), almost off the photograph. This is Stab Wound BB. And you can see a very small hole in the shirt. It shows that the shirt was also penetrated by whatever caused the puncture wounds. And that's all the bleeding that there was at a time between injury and when she was finally brought in to us.

Q Which would indicate, again, that it was--

A There is no indication there that her heart was beating.

Q So that --

A So that's about what would be soaked out by a blotter-type effect from the shirt from a puncture on someone that's dead.

This (holding up photograph) is the same wound as it looked after we took the shirt off. And

1 there's -- I mean it's very easy to overlook it. It's
2 a small, little hole there and no reddening around the
3 edge.

4 Q And what was the cause of death of
5 Judith Smith?

6 A I listed Judith's cause of death as
7 multiple gunshot wounds and stab wounds. Basically,
8 the gunshot wound that -- that ended her life was the
9 one to the angle of the jaw, upper neck here
10 (indicating on diagram).

11 Q So the main cause of death would be this
12 gunshot wound (indicating on diagram).

13 A That's correct.

14 Q Which caused the paralysis. And would
15 the time of her death be consistent with 11:20 or
16 before on October the 1st of 1989?

17 A Yes, it would.

18 Q And again, did you look at the contents
19 of -- of her stomach?

20 A Yes, I did. Hers was somewhat different
21 from that of Chad. Her stomach contained 570 cc.'s or
22 grams of orange-tan mush with green leafy vegetables,
23 sliced peaches, noodles, yellow cheese, orange grease,
24 bread, brown -- brown meat that was ground up, onion,
25 and tomato.

1 Q And what would that tell you about the
2 time of death with regard to when she had eaten?

3 A She had definitely eaten within the hour
4 of her death.

5 GEN. BLACKBURN: Your Honor, at this
6 point, I'd request that these photographs be made the
7 next exhibit and the two charts, be a collective
8 exhibit.

9 THE COURT: Again, the same way, be
10 collective, the pictures, and then the charts another
11 exhibit.

12 (State's Exhibit No. 35, five
13 (5) photographs, marked and
14 filed.)

15 (State's Exhibit No. 36, two
16 (2) charts, marked and filed.)

17 Q_ (By Gen. Blackburn) Dr. Harlan, after
18 you performed the autopsy on Chad and Judith Smith,
19 Chad Burnett, did you then perform an autopsy on
20 Jason Burnett?
21

22 A Yes, I did.

23 Q Okay. If you would, just describe his
24 injuries.
25

1 A If you'll look, we do have a chart
2 that's different from the other two. Basically, these
3 are the same two types of charts for him. Jason had no
4 gunshot wounds. Instead, he has all stab type wounds
5 and lacerating type stab wounds.

6 He had a few abrasions on the back of
7 the neck, some scars and other things, a yellow and
8 purple contusion of the left eye, which is something
9 that occurred prior to the episode leading to his
10 death. This would have required a day or more to have
11 shown that yellow-purple change. The contusion here
12 with the central abrasion, however, was -- the other
13 abrasion that's listed on here are also fresh.

14 What he had was a series of stab wounds.
15 Let me begin with A, which is the one to the left side
16 of his neck. And again, this stab wound is looked at
17 uneven and shows some change around it that just
18 suggests more than one motion back and forth. This one
19 is from the left, clear across the midline slightly on
20 the right, but more on the left than the right.

21 That one was directed inwards. It had a
22 maximal depth of half an inch and showed dimension of
23 6.2 inches by .65 inches. So it's over 6 inches long.
24 This one did bleed. He was still alive and still --
25 heart activity was going on when this occurred.

1 meaning it was angled upwards. And it was angled from
2 left to right. And it actually went across the midline
3 and into the back there (indicating on diagram). And
4 there was quite a bit of bleeding from it. He had two
5 shared wounds that could have caused all of the
6 bleeding that we saw.

7 And the next one is the one that could
8 also have been a fatal wound. That would could have
9 been fatal, and it would have taken him a matter of
10 minutes to die. The other wound, also, could have been
11 fatal and, again, would have taken a matter of minutes,
12 possibly half an hour to die.

13 Stab Wound C is a very long stab wound,
14 but even though it looks like a slice-type wound, it
15 has to have been done with major amount of depth to it.
16 So I believe it was from a raking motion, not of a
17 slice but instead of a knife put in and pulled.

18 Q And why is it that you think that?

19 A I think this because of its depth.

20 Q And what's that?

21 A Its minimal depth is 3.8 inches.

22 Q Minimal depth?

23 A Minimal depth.

24 Q And maximum depth?

25 A About that.

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Q What was actually --

A You can actually trace it that far.

Q What was the result of that particular raking motion?

A The result there is that it went into the abdomen, raked across and lacerated the left common iliac vein, which is the big vein coming up from the leg. It carries everything from the leg and part of the pelvis up into the inferior vena cava and also got the muscle that's attached to the backbone and had quite a bit of depth within that muscle. And the result of it not only was the bleeding that occurred, but the majority of the small bowel was exposed to that wound and made its way out of that wound.

Q That was as a result of the raking motion?

A No, it's a result of the big wound.

Q So it cut the muscle to the extent that the lower bowel came out?

A The upper bowel.

Q The upper bowel.

A The small bowel came out, yes.

The other wounds that he had were to the trunk. They're not as impressive. He had a Stab Wound D, here, (indicating on diagram), to the lower abdomen. And its minimal depth because it was between loops of

1 bowel, and we couldn't trace exactly how deep it went,
2 but was 1.2 inches. It did go into the peritoneum
3 cavity and did bleed in the issue around it.

4 Stab Wound E was to the right anterior
5 chest, here, (indicating on diagram), and its maximal
6 depth was 1.2 inches. Stab Wound E, again, is .44
7 by .25 inches. This is not a puncture. This on him
8 was some drying of the wounds prior to the fact of me
9 charting it, giving it a more ovoid appearance.

10 Q When you say "not a puncture", how many
11 types of instruments were used on Jason Burnett?

12 A Jason may have had all of his injuries
13 from one instrument. They were certainly all in the
14 classification that we would consider that of a knife.

15 Q Can you tell us anything about the
16 knife?

17 A It would had to have been fairly sharp.
18 It would had to have been fairly long. It could have
19 been something such as a barber's type razor. It could
20 have also been a sharpened cutting knife or a kitchen
21 knife that was very sharp.

22 Q A cutlery type knife?

23 A If it were sufficiently sharp.

24 Q Was there any evidence from your
25 observations of the wounds a serrated blade?

1 A No, there was no observations to
2 suggest serration. There is an unusual pattern to Stab
3 Wound D. And there is a little bit of a V-shape to it.
4 And I don't know whether this represents a second small
5 slice here and a bigger slice here and an instrument
6 that may have had a single edge for most of its blade
7 or not. But that does suggest that. And there was
8 some suggestion of that sort of thing with his
9 brother's wounds as well.

10 Q So from the suggestion of this wound and
11 some on Chad, you're saying that the same knife was
12 used?

13 A May well have been. And I really can't
14 tell whether it was a double-edged knife, a single-
15 edged knife with a partial double edge or just an awful
16 lot of activity with a single-edge knife.

17 Q When you say "a lot of activity," that
18 is movement?

19 A Yeah.

20 Q Either --

21 A Twisting.

22 Q That would be caused by either the
23 movement of the knife or the body on the knife?

24 A The movement of the boy or the movement
25 of the knife in relation to the movement.

1 In addition to those, we have another
2 chart here to show the injuries to Jason's hands. He
3 has on the back of his right hand a little laceration
4 here, but he also has a big laceration to the angle of
5 the thumb that shows it slightly here (indicating on
6 diagram). This is the right thumb on these two. This
7 is the left hand (indicating on diagram). And there is
8 a slice here that extends around onto the back side of
9 the hand slightly, and a slice here (indicating on
10 diagram). But the majority of the injuries are where
11 he can have gotten them by grabbing at the knife, at
12 the blade. And these three could have conceivably been
13 made by one stroke, if he had hold of it with his right
14 hand, left hand, excuse me, if he had hold of it
15 pulling, and there was force against those fingertips.

16 This represents the second one and this
17 a third one (indicating on diagram), or possibly more
18 than one. This could have been multiple times through
19 the thumb area there. I can't really tell.

20 The right hand -- I'm sorry, I don't
21 know whether he was right or lefthanded, but the right
22 hand sustained more injuries to the palm side. And
23 again, these were slices across the palm to the thumb,
24 little scrapes on the fingers, and bigger scrapes, and
25 a large scrape across the base of the knuckles. This

1 one -- these two did line up. This one didn't line up
2 quite as well, but could conceivably have been from
3 that. I tried to calculate how many times he would
4 have had to have grabbed the knife and had it removed
5 from his hand and grabbed the knife as it was coming
6 toward him in order to do those injuries. And you
7 really can't get a -- a really good number on it.
8 There -- it could range from about 10 to certainly more
9 than 13.

10 Q So 10 to 13 times that the knife would
11 have had to have enter the hand --

12 A Yes. If there is -- the reason my
13 estimate is a little lower than I think, because there
14 may have been a double-edged blade. And some of these
15 injuries may have occurred because the skin's being
16 folded up around something with two blades, edges.

17 Q What -- how do you classify these type
18 of wounds on Jason's hands?

19 A These injuries on Jason are quite
20 characteristic of what we see with defensive type
21 wounds. I'm assuming that he did not deliberately try
22 to grab something that sharp unless he needed to. So I
23 do think that these are -- are defensive type wounds.
24 They're not the sort of thing that one does to one's
25 self unless one's trying to protect one's self from a
sharp instrument.

1 Q The injuries to Jason in all of these,
2 were they before or after death?

3 A They are all before death.

4 Q And the hands and all. What was the
5 cause of his death?

6 A I classified his death as being due to
7 multiple stab wounds. To be a little more exact, he
8 died from quite a bit of bleeding. Two wounds, in
9 particular, could have led to his death much more
10 quickly. And those were the two that I showed you,
11 here and Stab Wound B (indicating on diagram),
12 because those did get major blood vessels. They did
13 get veins rather than arteries. And it takes a while
14 longer because they are not under pressure that an
15 artery is, in order to die.

16 Q All right. I'd hand you a series of six
17 photographs, and ask you to look at those and see if
18 you can identify them.

19 A Yes, I can.

20 Q If you would, please explain what each
21 one of them represents to the jury.

22 A Yes. This is (holding up photograph)
23 Jason's neck injury. This is the extent of the left
24 side of the neck. There's also -- you can see the
25 bruising of the eye that's beginning to fade. The

1 other important thing in this photograph is this purple
2 color. And the purple color here (indicating on
3 photograph) is not bruising, this big one. The purple
4 color here is because he was lying on his left side for
5 more than 12 hours before he was removed from his left
6 side.

7 Q So, if he were found on that left side--

8 A Yes.

9 Q -- or first observed by someone, he
10 would have had to have been on that left side --

11 A For more than 12 hours prior to being
12 moved. The reason for that is that livor mortis, which
13 is what this represents is pooling of the blood by
14 gravity. As it pools, it can be, if you roll the
15 person, then it will start pooling in the other
16 direction. It only begins to fix in the tissues at
17 approximately 12 hours. His, I think, had been more
18 than 12 hours because it did not move during the entire
19 time of the autopsy. Some of these photographs were
20 made more than a day later. He had been lying on his
21 back in our facility during that time and still has
22 this anterior left side pooling of the blood.

23 Q So that would tell you or would it tell
24 you that he had been laying on that left side prior to
25 being found at least -- or prior to being moved at
least if not more than 12 hours?

1 A Correct.

2 The second photograph shows that same
3 finding, but it also shows the extent of the wounds,
4 which comes from behind the left ear, clear across the
5 right midline. It also shows his shirt that he had on
6 with quite a bit of blood soaked into the shirt.

7 Q And what does that -- what does that
8 wound show you about whether or not that was before
9 death and can you tell --

10 A That -- that shows me that there is an
11 accentuation of the blood up here around the neck.
12 There is some pooling back here on the back of that.
13 And this shows me that he was alive and did bleed after
14 the injury to his neck.

15 Q And can you tell how many strokes that
16 that laceration made?

17 A That laceration has got some unusual
18 directional changes to it. And the right side of it,
19 in particular, has two little tails over there. So it
20 suggests at least three changes of direction across.

21 Q Would that be three different slices
22 that--

23 A It could be three different slices or it
24 may be going across it while moving.

25

1 Q It could be moving across it three times
2 without removing the blade?

3 A Yeah. Either three slices, probably in
4 this direction (indicating) or three times like that
5 (indicating).

6 Q But three separate movements?

7 A Correct.

8 Q On his neck.

9 A Correct.

10 The other photographs that I have are of
11 his hands to show what the diagram also attempts to
12 show, and that is, the injuries mostly to the palm side
13 of his hands. This is the back of his right hand. You
14 can see the injury to his right thumb and the small
15 injury to the back of the right thumb (holding up
16 photograph).

17 This one is of the palm side of the left
18 hand. The thumb is over here off the photograph
19 (holding up photograph). But it shows the slice marks
20 to the fingertips.

21 The next one (holding up photograph) is
22 the palm side of the right hand and shows the numerous
23 different slice marks across, basically, the right
24 hand. There's a little variation in angle. Some of
25 these are a little deeper. And some of them may have
been like this (indicating), others trying to grab

1 something aimed at or being pulled away from him.

2 Q Is this the hand that has a minimum of
3 ten to thirteen different --

4 A Right. And as I said, there could be
5 more than thirteen. I really can't tell, for instance,
6 how many times it may have gone through that same
7 slice.

8 The back of the left hand is shown in
9 that photograph (holding up photograph). To show that
10 two-tailed laceration there and the ones here
11 (indicating).

12 Q And what does the two-tailed
13 lacerations tell you?

14 A That tells me two different changes in
15 direction, being pulled through them twice, two
16 strokes.

17 GEN. BLACKBURN: Your Honor, again, I
18 would request that those pictures be made a collective
19 exhibit and the charts be a collective exhibit.

20 THE COURT: Okay.

21
22 (State's Collective Exhibit
23 No. 37, six (6) photographs,
24 marked and filed.)

25

1 (State's Collective Exhibit
2 No. 38, three (3) charts,
3 marked and filed.)

4 Q (By Gen. Blackburn) Take your seat,
5 Doctor.

6 A All right.

7
8 (WHEREUPON, the witness returns
9 to the witness stand.)

10
11 Q (By Gen. Blackburn) Dr. Harlan, can you
12 tell how long it had been since Jason Burnett had eaten
13 at the time of his death?

14 A Yes, I can, within limits. Within his
15 stomach, he, as his brother, had a -- a fairly full
16 stomach. He had 430 cc.'s of tan, thick mush with
17 yellow grease, sliced black olives, onions, mushrooms,
18 a small piece of paper that I'm still wondering about,
19 flat noodles, tomato and green pepper.

20 Q Would that also be ingredients of a
21 pizza?

22 A Part of them could well be the
23 ingredients of a pizza. I really don't know where he
24 got the flat noodles and I don't know if he just was
25 very hungry or how he got the piece of paper.

1 GEN. BLACKBURN: If I can have just a
2 minute.

3
4 (Pause in the proceedings while
5 Gen. Blackburn confers with
6 Gen. Thurman.)
7

8 Q (By Gen. Blackburn) Dr. Harlan, did you
9 have an occasion to, one, go to the -- 324 Lutie
10 Street?

11 A Yes, I did.

12 Q And in addition to that, did you also
13 look at some knives that were collected from 324 Lutie
14 Street?

15 A Yes, I did.

16 Q And when you looked at those knives,
17 were there any of those that could have been used to
18 cause any of the injuries that you saw?

19 A The knives themselves did not appear to
20 be very sharp. Several of them didn't have handles.
21 And it would have taken quite a bit of force to inflict
22 the majority of the injuries that I saw here. The one
23 thing that I have not seen is the implement that --
24 well, I haven't seen the implement that produced the
25 puncture injuries either, if one was collected.

1 Q Okay. Well, Dr. Harlan, I'll hand you
2 Exhibit No. -- have the court officer hand you
3 Exhibit No. 8, and ask you if you can look at that.

4 A All right. This could easily be the
5 instrument. It would certainly take something about
6 the size and sharpness of this. And that could be the
7 ones that produced the puncture wounds, particularly
8 the ones to the chest there.

9 Q So that awl that's been previously
10 identified could, in fact, have produced the
11 puncture wounds that you observed on both Judith Smith
12 and --

13 A Chad.

14 Q -- Chad?

15 A Yes.

16 Q Dr. Harlan, I'll have -- I'll hand you
17 what's previously been identified as Exhibit 30 for
18 identification only, and ask you if you would look at
19 that and see if you can identify that?

20 A Yes, I can.

21 Q And what is that?

22 A These are three bullet pouches that I
23 prepared of the three bullets that I removed from the
24 victims.

25 Q And they were removed from which
victims?

1 A From Judith and from Chad, two from
2 Chad.

3 GEN. BLACKBURN: Your Honor, I'd just
4 request that the Exhibit No. 30 be made an exhibit to
5 her testimony.

6 THE COURT: Let it be done. Hand those
7 over.

8 THE WITNESS: All right.

9 THE COURT: And those will be Exhibit
10 No. 30.

11
12 (State's Exhibit No. 30,
13 bullets, marked and filed.)
14

15 Q (By Gen. Blackburn) And Dr. Harlan, I'd
16 hand you Exhibit -- actually, it's a picture from
17 Exhibit 6, and ask you if you would look at that knife
18 and see if that's the type of instrument that could
19 have done the injuries that were to both the -- all the
20 victims?

21 A It does not appear to have been.

22 Q Okay.

23 A No.

24 Q That's more like a kitchen type knife?
25

1 A I would -- I would have to take that
2 home and sharpen it first.

3 GEN. BLACKBURN: If I can have just a
4 moment, Your Honor.

5 (Pause in the proceedings while
6 Gen. Blackburn confers with
7 Gen. Thurman.)

8
9 GEN. BLACKBURN: Your Honor, I don't
10 have any further questions of Dr. Harlan.

11 THE COURT: Mr. Newman.

12 MR. NEWMAN: Your Honor, if I could have
13 just a second, please.

14
15 (Pause in the proceedings while
16 Mr. Newman confers with Mr. Dean.)

17
18
19
20
21
22
23
24
25

1 CROSS-EXAMINATION

2 BY MR. NEWMAN:

3 Q How are you, Dr. Harlan?

4 A Fine.

5 Q You and I have talked before; is that
6 correct?

7 A Yes, sir; that is correct.

8 Q And I want to thank you for allowing me
9 to talk to you on that occasion. Were you requested as
10 part of your procedures to do any blood typing?

11 A As a part of our routine, we did. We
12 didn't have a separate request for that.

13 Q Okay. And do you have the capability of
14 testing for subgroups of blood?

15 A No, sir; I don't even have the
16 capability of testing for the ABO blood group and
17 instead we send those off to either the TBI or to the
18 Metro General Nashville Hospital.

19 Q And to the best of your knowledge, that
20 was not done in this case; is that correct?

21 A Well, yes, it was.

22 Q The subgrouping was?

23 A No, not the subgrouping.

24 Q Okay.

25 A No.

1 Q And does the TBI have that capability?
2 A I have never seen one done by them, so I
3 don't believe they do.
4 Q Thank you.
5 THE COURT: Anything further from the
6 State?
7 GEN. BLACKBURN: Nothing further from
8 the State, Your Honor.
9 THE COURT: Hold on just one minute.
10
11 (Pause in the proceedings while
12 Mr. Newman confers with Ms. Parsons.)
13
14 THE COURT: Thank you, Dr. Harlan.
15 THE WITNESS: May I be excused?
16 THE COURT: Yes, thank you for being
17 here.
18
19 (WITNESS EXCUSED)
20 *****
21
22 THE COURT: Anything further from the
23 State?
24 GEN. THURMAN: If the Court, please, we
25 are going to ask that the photographs be made an

1 exhibit to Dr. Harlan's testimony and be passed to the
2 jury, separated as to victims, and also the evidence
3 that's yet to be passed, which I think has been
4 accumulated right here on the corner, be passed after
5 those photographs are passed.

6 THE COURT: Okay.

7 GEN. THURMAN: Or Your Honor can wait
8 and do that in the morning.

9 THE COURT: No, I'd rather do it now,
10 while everything's fresh in folks' minds. Pass the
11 pictures first, since the doctor has just testified.
12 And when you pass all the pictures to all the jurors,
13 then we'll pass all the rest of the exhibits. And then
14 we'll adjourn for the night.

15 (WHEREUPON, State's Exhibits No.
16 33, 35, and 37 were passed to
17 the jury for their examination,
18 and after which, the further
19 following proceedings were had,
20 to-wit:)
21

22 GEN. THURMAN: All that evidence is on
23 the corner, Your Honor, please.

24 THE COURT: She needs the numbers as
25 you're passing it, is that what you're saying?

1 COURT OFFICER: (Nods affirmatively.)

2
3 (Pause in the proceedings while
4 the court officer confers with
5 the court reporter.)

6
7 (WHEREUPON, State's Exhibits No.
8 3, 12, 19, 21, 22, 23, 24, 26,
9 30 were passed to the jury for their
10 examination, and after which,
11 the further following proceedings
12 were had, to-wit:)

13
14 THE COURT: Okay. Mr. Thurman or
15 General Blackburn, do you have anything further?

16 GEN. THURMAN: Your Honor, please, and
17 Ladies and Gentlemen of the Jury, that's the State's
18 case in chief.

19
20 (THE STATE RESTS.)

21 *****

22
23 THE COURT: All right. Okay. Members
24 of the Jury, we're at the conclusion of the State's
25 proof. And we're a little later than I had told you

EXHIBIT 3

Office of the
District Attorney General

Criminal Division
20th Judicial District
Davidson County

Room 102
Metropolitan Courthouse
Nashville, TN 37201-5020

(615) 862-5500
FAX (615) 862-5599

August 13, 1990

Victor S. Johnson III
District Attorney General



Robert Kirchner
Chief of Police
Metropolitan Police Department
Metropolitan Justice Center
Nashville, Tennessee 37201

RE: State of Tennessee
vs.
Oscar Frank Smith
Case No: 89-F-1773
CPN: 89-254932, 89-255324 and
89-255325

Dear Chief Kirchner:

On July 25, 1990, Oscar Frank Smith was found guilty of three (3) counts of Murder in the First Degree by a jury in Division II of the Criminal Court for Davidson County. On July 26, 1990, the same jury sentenced the defendant to death in all three (3) counts. The victims in this case were Judith Smith and her two (2) children, Chad and Jason Burnett. They were found at their home at 324 Lutie Street on October 2, 1989. As you may recall, one of the children, Jason, placed a "911" call during the course of the murders on October 1, 1989 at approximately 11:22 P.M. The "911" call became an important piece of evidence against Mr. Smith.

Our purpose in writing is to advise you again of the hard work and dedication of all of the members of the Murder Squad and Major Crime Unit of the Identification Section. Their efforts changed a weak circumstantial case into a strong circumstantial case which left no doubt in the jury's minds that the defendant was the perpetrator of these horrible crimes. The case was assigned to Detective Terry McElroy; however, he received tremendous support from Detectives Mike Smith, Larry Flair, Bill Pridemore, Ed Moran, Grady Eleam, Pat Postiglione, Sgt. Robert Moore, and E.J. Bernard. Sgt. Johnny Hunter, of the ID Section using an alternative light source, was able to identify a bloody

007114

OSDA -020300-4554

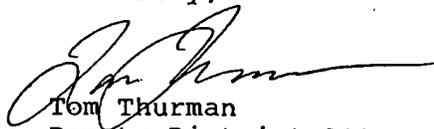
Chief Robert Kirchner
Chief of Police
RE: Oscar Frank Smith, 89-F-1773
August 13, 1990
Page Two

palm print placed on the bed sheet beside the body of Judith Smith as belonging to the defendant. The palm print was the most important piece of evidence presented to the jury, and Sgt. Hunter's articulate and professional testimony regarding his observations and opinions was very impressive to all courtroom observers, in addition to the jury.

Additional recognition should be given to Frank Leggett of the Communications Center for his assistance in locating the "911" call and his testimony regarding the recording system utilized by the Police Department.

We greatly appreciate being able to work with the officers from the initial crime scene to the verdict. Successful prosecution of dangerous offenders in difficult and complicated cases is a direct result of the cooperation between our office and the Police Department.

Sincerely,



Tom Thurman
Deputy District Attorney General



Cheryl Blackburn
Deputy District Attorney General

CB/rbd

007115

OSDA -020300-4555

EXHIBIT 4

March 30, 2022

Amy Harwell, Assistant Capital Habeas Unit Chief
Federal Public Defender's Office
Middle District of Tennessee
810 Broadway, Suite 200
Nashville, TN 37203

SERI M'5337'01
Agency Case No. 89-F-1773
Victims: Judy Smith
Chad Burnett
Jason Burnett
Suspect: Oscar Smith

Evidence Examination Report 2

Results Summary

1. Left Sleeve of White Sweater/Shirt (Item 15-1): Oscar Smith and Judy Smith could be included as contributors to the DNA results obtained from this item.
2. Right Sleeve of White Sweater/Shirt (Item 15-2): Judy Smith could be included as a contributor to the DNA results obtained from this item. Oscar Smith is excluded as a contributor to the DNA results from this item.
3. Shoulders of White Sweater/Shirt (Item 15-3): A major contributor (Unknown Contributor) is present in the DNA results from this item. Oscar Smith, Chad Burnette, Jason Burnette, and Judy Smith are excluded as the major contributor to the DNA results obtained from this item.
4. Front of Teal Tank Top (Item 16-1): Oscar Smith is excluded as a contributor to the DNA results from this item.
5. Left Sleeve of Teal Tank Top (Item 16-2): Chad Burnette could be included as a contributor to the DNA results obtained from this item. Oscar Smith, Jason Burnette, and Judy Smith are excluded as contributors to the DNA results obtained from this item.
6. Right Sleeve of Teal Tank Top (Item 16-3): DNA recovered from this item is too weak to interpret.
7. Awl Handle (Item 17-1): Chad Burnett could be included as a contributor to the DNA results obtained from this item. Oscar Smith, Jason Burnette, and Judy Smith are excluded as contributors to the DNA results obtained from this item.

Evidence Submission

Two items were submitted on January 25, 2022 by Alysandra Finn of the Federal Public Defender's Office in Nashville, Tennessee via Federal Express (2890 9200 8116). One item was submitted on January 26, 2022 by Alysandra Finn via Federal Express (2891 2932 0068). Four items were resubmitted on March 3, 2022 by the Federal Public Defender's Office in Nashville, Tennessee via Federal Express (2704 2436 3805). One item was resubmitted on March 4, 2022 by the Federal Public Defender's Office in Nashville, Tennessee via Federal Express (2704 1562 5473).

Requested Analysis

DNA analysis

Examination

Item 5: Head Hair from Chad Burnette: Many brown hairs.

- The root ends of nine hairs were sampled (Item 5-2).

Item 11: Blood from Oscar Smith: A swatch of cloth with three red/brown stains, one previously sampled.

- Portions of one of the previously sampled stains and one of the un-sampled stains were sampled and combined (Item 11-1).

Item 12: Blood from Chad Burnette: A swatch of cloth with three stains, two previously sampled.

- A portion of the one of the previously sampled stains was sampled (Item 12-1).
- Portions of each of the previously sampled stains were re-sampled and combined (Item 12-2).

Item 13: Blood from Jason Burnette: A swatch of cloth with three red/brown stains, two previously sampled.

- Portions of one of the previously sampled stains and one of the un-sampled stains were sampled and combined (Item 13-1).

Item 14: Blood from Judy Smith: A swatch of cloth with two previously sampled red/brown stains.

- A portion of the one of the previously sampled stains was sampled (Item 14-1).

Item 15: White Sweater/Shirt: An off-white long sleeve shirt with large red/brown stains.

- An unstained area on the left sleeve wrist/forearm was swabbed (Item 15-1).
- An unstained area on the right sleeve wrist/forearm was swabbed (Item 15-2).
- Unstained areas on both shoulders were swabbed (Item 15-3).

Item 16: Teal Tank Top: A blue/green tank top with brown stains and a "Summer Sailing" logo on the right chest area.

- o An unstained area on the front stomach was swabbed (Item 16-1).
- o An unstained area on the left shoulder strap was swabbed (Item 16-2).
- o An unstained area on the right shoulder strap was swabbed (Item 16-3).

Item 17: Awl: A gray stained wooden handled awl with a metal shaft.

- o The wooden handle was swabbed (Item 17-1).

Results and Conclusions

Note: The statistical calculations conducted by this laboratory assume that contributors to DNA mixtures are genetically unrelated. Due to the biological relationship of Chad Burnette and Jason Burnette to Judy Smith, mixture calculations for Chad Burnette and Jason Burnette are not reported.

1. Left Sleeve of the White Sweater/Shirt (Item 15-1):

- a. A weak and incomplete DNA mixture was obtained.
- b. The DNA mixture was interpreted as originating from three contributors with at least one male contributor and at least one female contributor, but no major discernable major contributor.
- c. The DNA results are at least 5 times more likely if they originated from Oscar Smith (Item 11-1) and two unknown, unrelated contributors than if they originated from three unknown, unrelated contributors. This likelihood ratio provides limited support for the inclusion of Oscar Smith to this mixture.
- d. The DNA results are at least 5.8 trillion times more likely if they originated from Judy Smith (Item 14-1) and two unknown, unrelated contributors than if they originated from three unknown, unrelated contributors. This likelihood ratio provides very strong support for the inclusion of Judy Smith to this mixture.

2. Right Sleeve of the White Sweater/Shirt (Item 15-2):

- a. A weak and incomplete DNA mixture was obtained.
- b. The DNA mixture was interpreted as originating from two contributors with at least one male contributor and at least one female contributor, but no major discernable major contributor.
- c. Oscar Smith is excluded as a contributor to the DNA mixture from this item.
- d. The DNA results are at least 61 quadrillion times more likely if they originated from Judy Smith and one unknown, unrelated contributor than if they originated from two unknown, unrelated contributors. This likelihood ratio provides very strong support for the inclusion of Judy Smith to this mixture.

3. Shoulders of the White Sweater/Shirt (Item 15-3):
 - a. A DNA mixture was obtained.
 - b. The DNA mixture was interpreted as originating from two contributors with a major contributor (Unknown Contributor) and at least one male contributor.
 - c. The Unknown Contributor appears to be genetically related to Oscar Smith and Judy Smith. Using Caucasian allele frequencies, a parentage calculation shows that the profile of the Unknown Contributor is at least 15 quadrillion times more likely if it originated from a biological offspring of Oscar Smith and Judy Smith than if it originated from an unrelated Caucasian individual. In other words the probability of parentage is greater than 99.9999%
 - d. Oscar Smith, Judy Smith, Chad Burnette, and Jason Burnette are excluded as the major contributor.

4. Front of the Teal Tank Top (Item 16-1):
 - a. A weak and incomplete male DNA profile was obtained from this item.
 - b. Oscar Smith is excluded as a contributor to the DNA results from this item.
 - c. The detected alleles for this item are consistent with both Chad Burnette and Jason Burnette.
 - d. Judy Smith is excluded as a contributor to the DNA results obtained from this item.

5. Left Sleeve Strap of the Teal Tank Top (Item 16-2):
 - a. A single source, male DNA profile was obtained from this item.
 - b. Chad Burnette could be included as a contributor to this profile. The chance that a randomly selected, unrelated person would have the same profile is approximately 1 in 141 quintillion.
 - c. Oscar Smith, Jason Burnette, and Judy Smith are all excluded as contributors to the DNA results obtained from this item.

6. Right Sleeve Strap of the Teal Tank Top (Item 16-3):
 - a. The results obtained from this item are unsuitable for interpretation.

7. Awl Handle (Item 17-1):
 - a. A DNA mixture was obtained.
 - b. The DNA mixture was interpreted as originating from two contributors with a major male contributor. Chad Burnette could be the major contributor to this mixture. The chance that a randomly selected, unrelated person would have the same profile as the major contributor is approximately 1 in 4 octillion.
 - c. Oscar Smith, Jason Burnette, and Judy Smith are all excluded as contributors to the DNA results obtained from this item.
 - d. The minor portion of the mixture is suitable for comparison.

Recommendation

The results from the following items are suitable for comparison should a person of interest arise:

Awl Handle (Item 17-1)

Globalfiler™ Results

Item No.	5-2	11-1	12-2	13-1	14-1
Description	Hair – Chad Burnette	Blood – Oscar Smith	Blood – Chad Burnette	Blood – Jason Burnette	Blood - Judith Smith
D3S1358	15,16	17,18	15,16	15,16	15,18
vWA	15,19	15,16	15,19	16,19	16,19
D16S539	9,11	12	9,11	11	9,11
CSF1PO	[10,11]	10,12	10,11	10,11	10
TPOX	NR	8,11	8	8,11	8,11
Y-indel	2	2	2	2	NR
AMEL	X,Y	X,Y	X,Y	X,Y	X,X
D8S1179	10,13	13	10,13	10,13	13,14
D21S11	29,30	28,30	29,30	29,30	29,31.2
D18S51	15,16	15,16	15,16	15,16	16
DYS391	NR	11	10	10	NR
D2S441	10,11.3	10,11.3	10,11.3	10,11.3	11,11.3
D19S433	13,16	13,16	13,16	12,13	12,13
TH01	9.3	8,9.3	9.3	9.3	9.3
FGA	19,20	19,25	19,20	19,20	20,25
D22S1045	14,15	14,15	14,15	14,16	14,16
D5S818	10,12	12,13	10,12	10,12	11,12
D13S317	9,12	8,10	9,12	9,11	11,12
D7S820	12[10]	9,11	10,12	10,11	11,12
SE33	18,26.2	20,30.2	18,26.2	18,26.2	17,26.2
D10S1248	13,15	13	13,15	13,15	13,15
D1S1656	15.3,17.3	16.3,17	15.3,17.3	13,15.3	15,15.3
D12S391	18,20	18,23	18,20	18,23	20,23
D2S1338	NR	19,20	19,20	19,25	19,25

KEY:

X,X Female DNA.

X,Y Male DNA.

NR No Results.

[] Below Stochastic.

All control samples typed as expected.

Globalfiler™ Results

Item No.	15-1	15-2	15-3	16-1	16-2	16-3	17-1
Description	White Shirt Left Sleeve	White Shirt Right Sleeve	White Shirt Shoulders	Teal Tank Top Front	Teal Tank Top Left Strap	Teal Tank Top Right Strap	Awl Handle
D3S1358	15,18[17]	15>18[16,17]	15,18[16]	NR	15,16	NR	15,16[18]
vWA	[15,16,17,19]	16,19[15,17]	15[19]	NR	19[15]	NR	15,19[17]
D16S539	[9]	[9,11,12,13]	[11,12]	NR	[9]	NR	9,11
CSF1PO	NR	[10]	[10]	NR	NR	NR	10,11
TPOX	NR	NR	NR	NR	NR	NR	8
Y-indel	[2]	2	2	2	2	NR	2
AMEL	X[Y]	X(Y)	X(Y)	NR	X,Y	NR	X,Y
D8S1179	13,14[12]	13,14[10,12]	13,14	NR	10,13	NR	10,13[11,14]
D21S11	[29]	[28,29,30,31.2]	[29,30,31.2]	[29]	[29,30]	NR	29,30
D18S51	[16]	[14]	[16]	NR	NR	NR	15,16
DYS391	NR	NR	NR	NR	NR	NR	10
D2S441	11,11.3(10)[14]	11,11.3(10)	10,11.3(11)	[10,11.3]	10,11.3	NR	10,11.3(11)
D19S433	12,13[14,16]	12,13(14)[16]	13,14(12)[16]	[13]	13,16	NR	13,16(14,15.2)
TH01	9.3	9.3[7,9]	8,9.3	NR	[9.3]	NR	9.3
FGA	20[19,25]	20,25[19,21]	19,20[25]	NR	19[20]	NR	19,20[22]
D22S1045	14,16[15]	14,16(15)	14,16	NR	14,15	[15]	14,15[16,17]
D5S818	12[11]	11,12	11>13[10,12]	[10]	10,12	NR	10,12[11]
D13S317	[11,12]	11[12]	11[10,12]	NR	[9,12]	NR	9,12
D7S820	[11]	[10,11,12]	[11,12]	NR	NR	NR	10,12
SE33	NR	[26.2]	[17,20]	NR	[18,26.2]	NR	18,26.2
D10S1248	13>15	13,15[14]	13,15	[15]	13,15	NR	13,15
D1S1656	[15.3]	15[13,15.3,17.3]	16.3[15.3]	NR	[15.3,17.3]	NR	15.3,17.3
D12S391	[23]	[23]	[20,23]	NR	NR	NR	18,20
D2S1338	NR	[18,19,25]	NR	NR	[19]	NR	19,20

KEY:

- X,X Female DNA.
- X,Y Male DNA.
- NR No Results.
- <&> Below 60% Primary.
- () Below 40% Primary.
- [] Below Stochastic.

All control samples typed as expected.

Laboratory Activity Dates

Start Date: 2/16/2022
End Date: 3/29/2022

Evidence Disposition

The evidence will be returned. SERI will retain any remaining DNA extracts.

DocuSigned by:
PH
90D3D73465AB477... 3/30/2022

Technical Reviewer

DocuSigned by:
Gary C. Harmor
860F625BC1C5401...

Gary C. Harmor
Chief Forensic DNA Analyst

TECHNICAL NOTES

1. Short Tandem Repeat (STR) DNA can be amplified using the Polymerase Chain Reaction (PCR) method. The Applied Biosystems™ Globalfiler™ PCR amplification kit detects twenty-one STR genetic markers, two gender markers (Amelogenin and Y-indel), and one Y-chromosome STR genetic marker (DYS391). Amelogenin, Y-indel and DYS391 are not included in any statistical calculations. The Federal Bureau of Investigation required that Forensic DNA testing laboratories start using the required 20 core loci by January 1, 2017. SERI chose and adopted the Globalfiler™ PCR Amplification Kit to comply.
2. Random Match Probability (RMP) is a population frequency statistic that is based on the allele frequencies from a population database. This lab uses the published population database from Applied Biosystems Globalfiler™ PCR Amplification Kit User Guide.
3. Probabilistic genotyping (PG) refers to the use of biological modeling, statistical theory, computer algorithms, and probability distributions to calculate likelihood ratios (LRs) and/or infer genotypes for the DNA typing results in accordance with the FBI's Quality Assurance Standards for Forensic DNA Testing Laboratories. PG is a tool to assist in the interpretation of forensic DNA typing results. LR is the ratio of two probabilities of the same event under different and mutually exclusive hypothesis; typically the numerator contains the prosecution's hypothesis (e.g. the mixture is a combination of the victim's and suspect's DNA profiles) and the denominator contains the defense's hypothesis (e.g. the mixture is a combination of the victim and an unknown individual). The results are expressed as a number that infers which hypothesis is more likely. While the calculations utilize forensic DNA population database frequencies, a calculated LR is not frequency data, but an estimation of the probability of one hypothesis over the other. SERI started using a semi-continuous PG software program (eDNA Bullet) in 2018. In 2022 SERI began using a fully continuous PG software program (Bullet Proof Sentry).
4. Likelihood ratios assess the support of two mutually exclusive events (i.e. Person X is included in this mixture versus Person X is not included in this mixture). The results are expressed as a number that indicates which scenario is more likely. The significance of the likelihood ratio can also be assessed using the following table:

Likelihood Ratio Value	Verbal scale for evidence interpretation
LR > 1,000,000	Very strong support for the inclusion hypothesis
10,000 < LR < 999,999	Strong support for the inclusion hypothesis
100 < LR < 9,999	Moderate support for the inclusion hypothesis
2 < LR < 99	Limited support for the inclusion hypothesis
0.01 < LR < 1.99	Results are uninformative for either inclusion or exclusion
LR ≤ 0.01	Person of Interest is excluded as a contributor to the mixture

EXHIBIT 5

FILED

IN THE CRIMINAL COURT FOR DAVIDSON COUNTY, TENNESSEE

THE TWENTIETH JUDICIAL DISTRICT AM 11:21

1
2 STATE OF TENNESSEE,)
3 Appellee,)
4 vs.)
5 OSCAR FRANKLIN SMITH,)
6 Appellant.)

JOSE TORRENCE, CLERK
[Signature] D.C.

CASE NO. 89-F-1773

FILED
AUG 5 1991
A. B. NEIL, JR., CLERK

7 TRANSCRIPT OF THE EVIDENCE

8 Volume XIV of XXII Volumes

9
10 THE HONORABLE J. RANDALL WYATT, JR., PRESIDING JUDGE

11 APPEARANCES

12 FOR THE APPELLEE:

13 MR. THOMAS THURMAN
14 MS. CHERYL BLACKBURN
15 ASSISTANT DISTRICT ATTORNEYS GENERAL
16 102 Metropolitan Courthouse
17 Nashville, TN 37201

18 FOR THE APPELLANT:

19 MR. KARL F. DEAN
20 PUBLIC DEFENDER
21 1202 Stahlman Building
22 Nashville, TN

23 MR. J. PAUL NEWMAN
24 MS. MARY PARSONS
25 ASSISTANT PUBLIC DEFENDERS
1202 Stahlman Building
Nashville, TN 37201

Prepared by: Penny F. Underwood
Official Court Reporter
State of Tennessee
604 Metropolitan Courthouse
Nashville, TN 37201

1 special, unusual technique that he's used here, I think
2 we can -- we can get into it briefly as to whether or
3 not he should testify on that particular technique.

4 REDIRECT EXAMINATION

5 BY GEN. BLACKBURN:

6
7 Q Sergeant Hunter, how long have you been
8 in the Identification Section?

9 A I've been in the Identification Section,
10 it will be 14 years in December.

11 Q And what sort of training have you had
12 in the Identification -- and specifically, into latent
13 prints area?

14 A In latent prints I've completed the
15 Institute of Applied Science. I've also been to the
16 FBI Academy and completed the Administrative Advanced
17 Latent Fingerprint School.

18 I've also had numerous other seminars
19 that had to do with latent prints and other crime scene
20 type work. I've also -- last -- in 1988 I was trained
21 in the use of the laser and the alternate light source,
22 which is the type of development that we have here
23 today in this particular case. I might say -- I might
24 say, if I may, that the -- the laser -- the light
25 source was what was used. And the light source has no

1 effect or does not alter a print in any way. It does
2 not even touch the material that the print is on. The
3 only thing it does is shine -- shine a light on it.
4 And by the use of filters, it enhances that print.

5 Q Okay. When you say "enhance that
6 print," what is it exactly that you do?

7 A By enhancing a print, the only thing
8 you're doing is making the ridge detail more visible
9 and taking the background out.

10 Q And so, actually, the alternate light
11 source or a laser that was used in this case, when you
12 said you had some training with this, what type of
13 training did you have with the laser?

14 A This training was given by the
15 manufacturer that was -- sold the laser to us. I also
16 received some training at the FBI Academy about the use
17 of the laser.

18 Q And the alternate light source, what
19 exactly is the alternate light source?

20 A The alternate light source is similar to
21 a laser. It's just a very bright light that is, by the
22 use of filters, it shows -- it makes fingerprints on
23 items contrast better to photography. It doesn't
24 really alter anything. It's just a bright light, using
25 different colored filters.

Q All right. And actually, what are you
1 doing -- what exactly did you make your match with, is
2 it with the actual sheet itself or what do these
3 techniques to enable you to make a match between the
4 print on the sheet and Mr. Smith's controlled prints?

A Okay. The only thing I did is like we
5 normally do anyway, I took a photograph of the actual
6 print on the sheet. And I compared that photograph to
7 the photograph of the controlled prints.
8

9 Q Okay. So the photograph was made while
10 the alternate light source or laser was on?

11 A That's --

12 Q Using all these filters?

13 A That's correct.

14 Q You photographed the sheet. Then you
15 take that photograph and make the match. Is that -- is
16 that your testimony?

17 A That's correct.

18 Q Now, Sergeant Hunter, you are a
19 Certified Latent Print Examiner; is that correct?

20 A That's correct.

21 Q And how long have you been a
22 Certified Latent Print Examiner?

23 A Since 1982.

24 Q And what does it take to become a
25 Certified Latent Print Examiner?

1 A It takes three years of being a full-
2 time latent examiner plus passing the boards,
3 examination, which is the International
4 Association for Identification.

5 Q And you have to be retested every so
6 often?

7 A You have to be, yes, ma'am, you have to
8 be -- you don't have to be retested, but you have to --
9 the certification is only for a certain period of time.
10 And if they haven't had any bad reports on your work,
11 then they recertify you.

12 Q And have you been recertified during
13 this period of time?

14 A Yes, ma'am; every three years.

15 Q And how often have you been called upon
16 to testify in courts, specifically, the Courts of
17 Davidson County as a Certified Latent Print Examiner?

18 A Hundreds of times.

19 Q Have you always been qualified as an
20 expert in your area?

21 A Always.

22 Q Have you also testified with regard to
23 the use of a laser?

24 A I testified -- yes, ma'am; I have.
25

1 Q And in addition to that, do you belong
to any professional organizations?

2 A Yes, I belong to the International
3 Association for Identification, also the International
4 Association for Bloodstain Analysts.

5 Q And have you published with regard to
6 the use of some techniques with latent fingerprints?

7 A Yes, I've published an article in the
8 International Association of Forensic Scientists
9 Journal last year, on a new technique for lifting
10 latent prints.

11 Q And how many latent -- Certified
12 Latent Print Examiners are there in the State of
13 Tennessee?

14 A When I was certified, there was only
15 three. Today there's five.

16 Q And that's throughout the entire State
17 of Tennessee?

18 A That's correct.

19 GEN. BLACKBURN: Those would be my
20 questions, Your Honor.

21 THE COURT: Okay. Mr. Dean.
22
23
24
25

1 RE-CROSS-EXAMINATION

2 BY MR. DEAN:

3 Q Sergeant Hunter, this -- this laser that
4 was used to, I guess, to enhance -- for enhancement
5 purposes?

6 A There wasn't a laser used in this
7 particular case. It was an alternate light source,
8 which is --

9 Q An alternate light source?

10 A Which is similar to a laser. What the
11 difference is the laser is a much more intense light
12 than the alternate light source. The alternate light
13 source is just a very bright light bulb that is shined
14 through filters, which change the wave length of those
15 filters to cause the enhancement of a print. Nothing
16 actually touches the actual print.

17 Q And my understanding is that the
18 training you received to operate, it's a machine device
19 that you use, the training you received came from the
20 manufacturer?

21 A Well, it came from the manufacturer.
22 And the individual that done the training, he was also
23 a police officer that used this particular instrument.

24 Q But who -- who was the manufacturer of
25 this device?

1 A Omni -- Omni Print, I believe, is the
2 name of the company.

3 Q Okay. And they hire these police
4 officers to train other officers?

5 A He's a consultant for the company; yes,
6 sir.

7 Q And the people who are trained are the
8 people whose departments purchase this machine.

9 A That's correct.

10 Q Now, you mentioned that you received
11 some training on this from the FBI Academy.

12 A They demonstrated the laser, not the
13 alternate light source. When I was trained by the FBI,
14 the alternate light source had not been developed at
15 that time.

16 Q So in terms of the alternate light
17 source and the technique used in this case, you
18 received no FBI training?

19 A That's correct.

20 Q All right. Did you receive --

21 A But it's similar is what I'm trying to
22 say. The laser and the alternate light source is a
23 similar type of light.

24 Q All right. And the alternate light
25 source, did you receive ever any training from the TBI,

if they do such a thing?

1 A No, sir; they don't have one.

2 Q All right. And prior to this case, or
3 prior to what may happen here, have you ever testified
4 regarding the use of an alternate light source in a
5 case here in Davidson County?

6 A No, sir.

7 Q All right. Have you ever been found to
8 be an expert by a court here in Davidson County on the
9 use of the alternative light source?

10 A No, sir.

11 Q How long ago was it that you received
12 the training from the manufacturer's representative on
13 the alternate light source?

14 A That was in August of 1888 -- 1988.

15 Q Okay. 1988?

16 A (No response.)

17 Q And how long has the department owned
18 the machine?

19 A Since then. We bought it at that time.

20 Q And has there been a reason why is
21 hasn't been used until this point or it hasn't come up
22 or--

23 A We use the alternate light source quite
24 a bit, along with the laser. This is just one case
25 where we used it. It benefited us in the development

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of the print or the enhancement of the print.

Q Ms. Blackburn asked you about your certification. When were you last certified? What was the date? Do you recall?

A I don't remember my last certification date. I was initially certified in July -- June 1st of 1982. And I -- you're certified every three years.

Q Okay. And that didn't involve anything with the alternative light source?

A No.

Q In terms of your past work in -- in the area of -- as a fingerprint examiner or latent examiner, have you ever made a false identification?

A No, I have not.

Q Okay.

THE COURT: All right. Do you care to be heard, Mr. Dean?

MR. DEAN: Well --

THE COURT: Or General Blackburn, do you care to be heard?

GEN. BLACKBURN: Well, Your Honor, I think the fact that he used a specific technique goes towards the weight of his testimony, clearly, not to admissibility. He is here as a certified latent print expert, talking about latent prints and as a

1 always, but 99.5 percent moisture. Now, the reason I
2 said not always is sometimes a fingerprint is an
3 impression made by other things that we call
4 contaminants. Sometimes you might have ink on your
5 hands. Sometimes you might have blood on your hands.
6 Sometimes you might have other substances on your hands
7 that will also make an impression.

8 Now, a person's fingers, the palms of
9 their hands, and the bottom of their feet, the skin is
10 different than the skin on the rest of their body.
11 There is very small ridges on your hands. And these
12 ridges run parallel to one another, but they're not
13 always constant. Sometimes they'll stop; sometimes
14 they'll divide into two; sometimes they'll open up and
15 close back. These are all what we call points of
16 identification. And according to the location and the
17 type of the point of identification on a person's hands
18 is how we make a positive identification when we find a
19 chance print or a latent print on a crime scene. We
20 compare that latent print and those points of
21 identification to the points of identification in the
22 known prints.

23 Q And how is it that you can tell between
24 people? How can you tell it belongs to one person and
25 not another?

1 A Well, the same person will have the same
2 point of identifications in their prints, all being of
3 the same general location, the same unit relationship
4 to one another and the same type of points. If there
5 is a different person, he wouldn't have or she wouldn't
6 have the points of identification in the same
7 locations.

8 Q So then every fingerprint is unique to
9 every individual?

10 A That's correct. There's never been two
11 fingerprints or palm prints found to be one in the same
12 except the one that made it.

13 Q With regard to fingerprints, do -- are
14 each of our ten fingers have the same kind of print or
15 can you tell even between fingers?

16 A They can have -- they can have the same
17 type of patterns, but they'll never be the same, not
18 even one portion would not be the same as another
19 portion.

20 Q Okay. So that you could even tell, if
21 you've only got, say, a one finger or even one section
22 of the palm, you could even tell where it came from?

23 A That's correct.

24 Q Now, how is it that you go about -- how
25 do you know who to compare it to?

1 A Well, there's several different ways.
2 If we have a -- someone in mind, and we have known
3 prints on file or can get known prints, we can compare
4 those known prints to the latent print that we found at
5 the crime scene. Other times we do computer scans and
6 -- and come up with suspects like that.

7 Q Well, I guess the question is, can you
8 tell just by looking at a fingerprint who it belongs
9 to?

10 A No, you cannot.

11 Q You have to have a comparison?

12 A You have to have someone to compare it
13 to, yes.

14 Q Now, Sergeant Hunter, I believe your
15 testimony in talking about the bed sheet --

16 A That's correct.

17 Q When you observed the bed sheet on
18 October the 2nd and the print, what did you notice
19 about the print on October the 2nd?

20 A Well, the only thing I could really
21 notice about the print on October the 2nd was it -- I
22 could tell it was made by a person's hand. Apparently,
23 or I thought that it was made with blood, the
24 impression, it was made with blood at that time. I had
25 that bed sheet collected and placed into evidence.

1 Q When you say "placed into evidence",
2 where was that bed sheet put?

3 A Well, it was put into our Property and
4 Evidence Room, where we put all our evidence.

5 Q And did you have -- or did you at some
6 other point take that bed sheet out and look at it
7 again?

8 A That's correct. On January the 29th, as
9 I was reviewing evidence in -- on this particular case,
10 I took that bed sheet out. And when I looked at the
11 bed sheet, by this time I already realized that the
12 defendant in this case had two missing fingers. It
13 wasn't evident to me the night that it happened that
14 the impression on the bed sheet was missing two
15 fingers. And I didn't remember it, but when I pulled
16 it out, it was very obvious to me that there was two
17 fingers missing in the impression on the left hand,
18 just like the defendant had two missing fingers on his
19 hand.

20
21 (Pause in the proceedings while
22 Gen. Blackburn shows sheet to
23 defense counsel.)
24
25

1 Q (By Gen. Blackburn) Sergeant Hunter,
2 let me have Mr. Jones hand you this and see if you can
3 identify it?

4 A Yes, I can.

5 Q And what is that?

6 A This is the sheet that was collected
7 October the 2nd, the same bed sheet that I took out of
8 the Property Room for re-evaluation January the 29th.

9 Q Now, if you would, just step down in
10 front of the Ladies and Gentlemen of the Jury, and show
11 them what you mean by the two missing fingers on that.

12
13 (WHEREUPON, the witness steps
14 down from the witness stand
15 and stands at the jury box.)

16
17 THE WITNESS: I placed the bed sheet in
18 this plastic bag in a way that you can actually see the
19 palm print, the left palm print impression on this
20 particular sheet. Again the palm print would be in
21 this location like this (indicating). There is nothing
22 in here, in the immediate area that would indicate that
23 there was no fingers present to leave an impression
24 there, only the two outside fingers are there. The
25 thumb print is right in here (indicating). You can see

1 the indication here, this extraction here would serve
2 -- is where we sent it to the State Lab to make sure
3 that it was human blood that made this print.

4 GEN. BLACKBURN: Your Honor --

5 Q (By Gen. Blackburn) I have two
6 photographs before we do this. If you would, take
7 these photographs of the body of Ms. Smith and the
8 sheet and sort of demonstrate to the Ladies and
9 Gentlemen of the jury exactly what could be found in
10 that photograph.

11 A Okay. You notice the palm print that
12 I've got my thumb on here --

13 Q You might have to walk across.

14 A It's in this position. You can see the
15 fingers pointing down and the thumb pointing towards
16 her arm.

17 Q Tell you what you might need to do is,
18 is this red -- take this marker and make a circle
19 around that palm print on the sheet.

20 A (The witness so did.)

21 Q And in these two photographs also.

22 A (The witness so did.)

23 (WHEREUPON, the witness returns
24 to the witness stand.)
25

1 Q Okay. Sergeant Hunter, after you
2 observed this impression that appears to be missing two
3 fingers, what did you do?

4 A After I observed that it was missing two
5 fingers or it at least appeared that way. Of course,
6 that's good class evidence, but that's not a positive
7 identification.

8 Q When you say "class evidence," what --
9 what are you referring to?

10 A Okay. When we talk about class
11 evidence, we're talking about one thing being similar
12 to another one, not a positive identification. The
13 only way you can have a positive identification in
14 fingerprints or palm prints is the points of
15 identification have to match.

16 Usually, on cloth, it's very difficult
17 to ever be able to see the points of identification.
18 In this case, though, the transfer medium was not
19 perspiration as it is in normal prints, it was actual
20 blood, something that we had tested to make sure that
21 it was blood. That made the ridges appear where we
22 could actually see them. In photographing this print,
23 with the use of a light source that we have, I was able
24 to actually contrast the ridges, the points of
25 identification to the background, enabling me to be

able to identify this palm print to the defendant.

1 Q When you say -- what did you do to go
2 about, what is the exact procedure you used to go about
3 identifying this palm print?

4 A The exact procedure to identify the palm
5 print is, like I said, you have to match up the points
6 of identification. After the photograph was made, the
7 point --

8 Q Let me stop you at that point. How did
9 you go about making the photograph? I mean what kind
10 of -- you mentioned something about a light source.

11 A Okay. The photograph was made with the
12 use, first of all, of a Polaroid camera, which is made
13 for evidence, made for taking photographs of evidence.
14 And it was aided by a alternate light source that we
15 have. And what that does is actually light up the
16 evidence itself and contrast one item or one part of
17 that particular evidence with another. In other words,
18 the ridges that we were looking at that we normally
19 have in ink, that we normally take in ink, in this
20 case, is in blood. Well, what the light source
21 actually does, it just enhances the ridges and takes
22 the background out, where you can actually make an
23 identification this way. It can be made even without
24 the light source, but this just helps us demonstrate
25 what we are actually seeing.

1 Q Okay. And does this light source in any
2 way alter the print?

3 A No. The light source never even touches
4 the print other than the light that hits it.

5 Q So it doesn't alter or change the print
6 in any way?

7 A No way at all.

8 Q How do you go about, then, matching up a
9 impression or the ridges of a questioned print or a
10 latent print with that known individual? How do you do
11 that?

12 A Okay. Again, we take the points of
13 identification within the latent print, the print on
14 the sheet.

15 And we compare those points of
16 identification with a known person's palm print. These
17 points of identification will have to be in the same
18 location on the palm print. They'll have to be the
19 same type. And they'll have to be the same unit
20 relationship, one to another. What I mean by unit
21 relationship is we have a -- what we call a ridge
22 ending at one position in the latent print, if we
23 found two ridges in between that particular point of
24 identification to the next point of identification, you
25 should always have the same in the non-print. This --

1 this is something we go through back and forth until we
2 find all the points of identification within the latent
3 print, the unknown print, comparing it to the known
4 print. And if all those points of identification are
5 the same, there is no doubt that it is a positive
6 identification.

7 Q In this particular case, did you take
8 the photograph of the palm print, and did you compare
9 it to the defendant's palm print?

10 A I did.

11 Q Okay. And what was your conclusion with
12 regard to that?

13 A My conclusion is the impression on the
14 bed sheet found to be made with human blood is one in
15 the same with the controlled print of the defendant.

16 Q And that would be of Oscar Frank Smith?

17 A That's correct.

18 Q And is he present in the courtroom?

19 A Yes, he is.

20 Q Okay. Where is he? Would you point to
21 him.

22 A Sitting right between the counselors
23 (indicating the defendant).

24 Q Okay.

25 GEN. BLACKBURN: Your Honor, if the
record could reflect he has identified the defendant.

1 Q (By Gen. Blackburn) And you, yourself,
2 took those controlled prints; is that correct?

3 A That I did.

4 Q All right. Sergeant Hunter, can you --
5 is there any way you can demonstrate to the Ladies and
6 Gentlemen of the Jury exactly how you go about making
7 the match?

8 A Certainly. I have a chart made out that
9 I'll demonstrate that with.

10 GEN. BLACKBURN: Your Honor, if he could
11 step down.

12 THE COURT: You can step down, Sergeant.

13 (WHEREUPON, the witness steps
14 down from the witness stand
15 and stands at the jury box.)
16

17 THE WITNESS: Okay. First of all,
18 there's two charts here. The top chart is a
19 photographic representation of, first of all, a palm
20 print impression on the sheet, the one you saw on the
21 sheet a minute ago. This is that palm print
22 impression. This palm print impression is the
23 controlled print. This is the photograph of the palm
24 print that I took from the defendant. You will notice
25

1 the immediate area between the fingers on this one;
2 you'll notice the intermediate area between the fingers
3 on this one. This, again, is the extraction that was
4 taken at the State Lab by the serologist to make the
5 determination that it was human blood that this
6 particular print was made from. What we do in making a
7 positive identification is we take a portion of this
8 print as we do a portion of this print in the same
9 location, and we photographically enlarge both of those
10 portions.

11 In this case, this particular portion
12 right here was taken. You can see the large spot of
13 blood here in reference to the large spot here. This
14 is much larger. It's increased about eight times in
15 its actual size. We do the same thing with this
16 portion of the palm print here, increase it,
17 photographically, this way.

18 The latent palm print, again, is a palm
19 print that was found on the sheet. The inked palm
20 print is a controlled print taken from the control
21 card. The numbers around the prints are all the same,
22 one through twelve. Each one of these numbers indicate
23 a point of identification.

24 As you've noted, I've put four that the
25 ridges run parallel to each other, but sometimes
they'll break into two ridges, they'll separate into

1 two, something we call a bifurcation, or they'll
2 sometimes end, and the ridges around them will converge
3 together. Sometimes you'll have just a very small
4 ridge or short ridge or a ridge dot. These are all
5 points of identification.

6 And the reason they are points of
7 identification is because they're permanent. Ridge
8 formations forms about three to four months of fetal
9 life. And they will always stay the same through a
10 person's life, until decomposition after death. They
11 never change except in size. We have tested this
12 through children right after they're born, all the way
13 up until the time of death. And they'll always be the
14 same.

15 - Okay. To start with, when you're making
16 a positive identification, you always start with the
17 latent print. The latent print is the print found on
18 the crime scene.

19 If you'll notice the dark lines. I hope
20 you can see them in this particular print. They're not
21 as strong as these because they were just a chance
22 print. It wasn't planned to be there. These lines run
23 across. They also run across down in here. You can
24 see the texture of the sheet in this photograph. These
25 particular lines run, starting right here with No. 1,

1 we have found the same points of identification in the
2 controlled print. The point of identification here is
3 the ridge ending. That ridge runs along here and just
4 suddenly ends. You can tell that by the outer ridges
5 that's running parallel to it, and then it converges
6 right past it.

7 If you look at this ridge, and come
8 over here and look at this one, you find the very same
9 thing. If you count that ridge, you have one
10 intervening ridge, and you come over to your right and
11 you find the same thing on this particular ridge.
12 You'll have a ridge ending in a different direction.
13 If you move from that particular ridge down, you'll
14 have one, two, three four points of identification
15 down, and you'll have what we call a bifurcation. This
16 particular ridge runs right along here, and it
17 separates into two ridges. If you come back over here
18 and count down, one, two, three, four, you'll have the
19 very same thing.

20 Let's go back to the latent print now
21 and come back to that particular three point of
22 identification, and you come down one ridge, and you'll
23 have a faint -- the faint ridge running and it closes
24 into that ridge. Again, you have a bifurcation,
25 another point of identification. And if you come back
to the controlled print, you'll have the very same

1 thing, coming down to the next bifurcation. They're
2 the same distance apart. They're the same types of
3 points of identification. They're in the same general
4 area, and they have the same unit relationship to one
5 another.

6 If you started from No. 4, which is a
7 bifurcation, and if you count over, one, two, three,
8 four, you'd have a ridge ending, running upwards. It
9 ends this way (indicating on diagram). You can see the
10 ridges around it converge. If you come back to this
11 way -- this particular controlled print, the print
12 taken from here, you'll have the very same thing,
13 you'll have the ridge ending, and you'll have the
14 ridges converging around them. The same thing if you
15 go from point to point, all over this particular print,
16 they will always be the same. They'll always have the
17 same number of ridges in between them. They'll always
18 be the same type. And they'll always be in the same
19 general location.

20 By examining this print, we found 15
21 points of comparison, 15 points of identification.
22 There were no dissimilarities that was not explainable.
23 This print was made by the same hand that made this
24 one.

25 Q Before you leave, let me ask a question.

1 This right here on this, the photograph of the palm
print impression --

2 A That's correct.

3 Q Is this the photograph that was made
4 with the alternate light source?

5 A No.

6 Q It is not?

7 A No. Normal lighting made this one.

8 Q Now, when you made a comparison, though,
9 were you comparing it to -- you were using the
10 photograph made by the alternate light source and
11 comparing it to this side? I guess the question is you
12 weren't using something of this size, were you?

13 A No, I was using actual size.

14 Q Okay. So the actual size is how you
15 make the comparison?

16 A That's correct.

17 Q Is there any particular number of points
18 that one has to have before you, as a Certified Latent
19 Print Examiner, would call a match a match?

20 A There's no number of points that you
21 actually need for comparison. That's totally up to the
22 independent examiner. The question was asked of the
23 FBI or this question was asked to the FBI, how many do
24 you need to make a positive identification. They
25 usually make their identifications around eight points.

1 Anything over eight points is more than they need.

2 Q Okay. And you had 15 points?

3 A That's correct.

4 Q Okay. And if you had come across a
5 point that did not match, what would -- what would your
6 conclusion have been?

7 A If there a point there that was not
8 explainable, it did not match, it wouldn't be the same.

9 Q Okay. Let me get to this sheet. Now,
10 in looking at this print right here (indicating), what
11 is this -- it looks almost like -- that it's somewhat
12 different from this impression over here. What is this
13 right here?

14 A The void right here is caused by a fold
15 in the sheet. If you look at the crime scene
16 photographs, you can see that fold in the sheet. What
17 happened was that fold, when the hand was placed down,
18 the fold folded, and you only got an impression here
19 and here (indicating). This was an area below the
20 actual surface. When the hand was picked back up, the
21 fold came back open.

22 Q Okay. So that's what makes that sort of
23 gap right here, which you can find in the sheet?

24 A Right here (indicating), yes, ma'am.

25 Q Okay. And that's caused by the fold in

the sheet that --

1 A That's correct.

2 Q Which you have pointed out on the crime
3 scene photographs?

4 A That's correct.

5 Q In your opinion, then, Sergeant Hunter,
6 this palm print impression belongs to Oscar Franklin
7 Smith?

8 A There's no doubt, it does.

9 Q Okay. Thank you.

10

11 (WHEREUPON, the witness returns
12 to the witness stand.)

13

14 GEN. BLACKBURN: Your Honor, I would
15 request that the sheet be made an exhibit, 15, and the
16 -- these two charts be 16 and 17. One is called the
17 palm print impression on the sheet, and the other one
18 would be the blow up.

19 THE COURT: All right. Let that be
20 marked.

21 GEN. BLACKBURN: I think they can be
22 separate, and they need to be passed to the jury.

23

24 (State's Exhibit No. 15,
25 sheet, marked and filed.)

EXHIBIT 6

COPY

2

IN THE CRIMINAL COURT FOR DAVIDSON COUNTY, TENNESSEE

AT NASHVILLE, TENNESSEE

STATE OF TENNESSEE,)

VS.)

OSCAR FRANK SMITH)

CASE NO. 89-F-1773

TRANSCRIPT OF THE EVIDENCE

Volume I of I Volume

APPEARANCES

FILED
JAN 14 2022
Clerk of the Appellate Courts
Rec'd By _____

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FILED
Davidson County
Criminal Court Clerk

JAN 03 2022

BY _____
Deputy Clerk

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1 IN THE CRIMINAL COURT FOR DAVIDSON COUNTY, TENNESSEE
2 AT NASHVILLE, TENNESSEE

3 STATE OF TENNESSEE)
4 VS.) CASE NO. 89-F-1773
5 OSCAR FRANK SMITH)

6 This case came on to be heard and was heard
7 on the 23rd day of July, 1990, before the Honorable J.
8 Randall Wyatt, Jr., Judge, holding the Criminal Court,
9 Division II, for Davidson County, at Nashville, Tennessee,
10 and the following is a transcript of the opening statements,
11 final argument in the guilt phase of the case and the
12 opening statements and final arguents in the penalty phase
13 of the case, that was had and entered of record, to-wit:
14

15 THE COURT: Okay. General Thurman, do you
16 care to make an opening statement?

17 GENERAL THURMAN: Yes, Your Honor.

18 Good morning, Ladies and Gentlemen. I'm glad
19 to see you made it through the weekend and are back here,
20 ready to hear the proof and deliberate this case. You 14
21 people that are here have received probably the highest call
22 that you can have as a citizen other than possibly serving
23 in the armed forces, but you 14 received the call and have
24 come here and to deliberate, hear evidence, and judge
25

1 another person, decide guilt or innocence, possibly decide
2 life or death. It will be a very hard and a very difficult
3 week.

4 Mr. Dean said this case was tragic. And it
5 is a tragedy. It's a tragedy for Judith Lynn Smith. It's a
6 tragedy for her two young sons who won't be able to live to
7 adulthood, but it's also a brutal, senseless killing of
8 innocent human beings. It's a slaughter that occurred, not
9 in Africa, not in the Middle East, but right here in
10 Nashville, Davidson County. And you, Ladies and Gentlemen,
11 will sit here this week, and you will hear proof that will
12 affect you, as a juror, as an individual. You'll hear proof
13 that you will carry with you for the rest of your life.

14 You will hear proof that Oscar Franklin
15 Smith, he worked at Service Maintenance Corporation. And
16 he'd previously been married and had two children.

17 You will hear that Judith Lynn Smith had
18 previously been married on two occasions. The first
19 marriage, she had two boys, Chad and Jason Burnett. Their
20 father was Steven, and was introduced to you during voir
21 dire. And she worked at the Waffle House. And in 1985, she
22 met Mr. Smith. They were married that same year. And they
23 lived, for the most part, in Robertson County in a trailer,
24 Mrs. Smith's farm. They were in California for a while, but
25 they came back here, lived in that trailer. But during the

1 marriage there were two twin boys born. But, in June, 1989,
2 the marriage had gone bad. And Ms. Smith and the two young
3 boys left that trailer with nothing but the clothes on their
4 back. She called her sister. They were picked up. They
5 went over and stayed for a while with her brother and sister
6 for a few weeks. And she was able to get this house on
7 Lutie Street. And during part of that time she also stayed
8 in a shelter during this period of time of the separation.
9 Back to the incident in June, 1989, a divorce was filed,
10 that pending a divorce Ms. Smith was given temporary custody
11 of the two twins. Mr. Smith was given visitation rights.
12 During this period of time, there were continual threats by
13 Mr. Smith on the life of Judy Smith and her children. And
14 Mr. Smith even attempted to hire individuals to kill her and
15 her two sons. And during this period of time, Judy Smith
16 had met another man, Billy Fields. They'd been friends.
17 They became romantically involved at the time.

18 It was a turbulent time in that there was a
19 custody fight over the two twins. Mr. Smith, in his
20 attempts to talk to people and find out who he could get to
21 kill his wife, he was unsuccessful. He had some insurance
22 on her and the her children, which is interesting, \$88,000
23 with three different companies. We'll ask you to consider
24 that. What was strange about that insurance is he was the
25 person that benefitted if there was a death of Judy Smith or

1 either one of her sons, Chad or Jason, but if he died, his
2 mother got the proceeds, not his family, but his mother. He
3 kept this insurance in effect even though they were getting
4 a divorce, on these two children that weren't his, he kept
5 that insurance. Then he made the conscious decision, when
6 he couldn't find someone else to do this dirty work for him,
7 that he would kill. There wouldn't be a custody fight. He
8 would get money. That would solve all this problems. He
9 would get the twins. He would get back at his wife for
10 leaving him. He would get back at his wife for seeing
11 another man. And he would benefit. So he made the
12 conscious decision to kill, come up with a plan that would
13 allow him to perform the perfect crime, get rid of all his
14 problems, take out all his anger and to benefit,
15 financially.

16 He waited for the right time. It came on
17 Friday, December the 3rd. He was informed by his employers
18 that he worked as a mechanic on machines and that there was
19 a need for him to go to Morehead, Kentucky, to work on a
20 machine on Monday. He said, yeah, can I leave on Sunday
21 night, which was unusual? Why would he want to leave on
22 Sunday night. He wasn't required to leave on Sunday night.
23 The way it normally works is he would leave on Monday, drive
24 -- do the work, and he would drive back and spend the night.
25 He was paid for driving on company time, but he volunteered

1 to leave Sunday night. Well, okay, if that's what you want
2 to do. Morehead, Kentucky, a four and a half hour drive.
3 So he knew on Friday, he talked to his boss, he cleared it
4 with them to leave on Sunday night.

5 He had visitation on alternate weekends with
6 the twins. He'd been picking them up over at Judy Smith's
7 parents' house. On this occasion, Judy Smith agreed to meet
8 him. She was in bad financial shape, her car wasn't
9 running. She agreed to talk to Mr. Smith. He was going to
10 assist here with getting a car. She made the fatal mistake
11 to think that maybe it wasn't as bad as she thought. She
12 spent the day with him, went to the Waffle House and had
13 coffee, went to the Goldrush and ate. The boys babysitted
14 for the twins. They got back around 9:30 or 10:00 that
15 night. Mr. Smith told her he was off Monday, and he would
16 keep the twins when she was at work, because he knew he had
17 to get those twins out of that house before he killed. He
18 got the twins, drove back to Robertson County, dropped them
19 off at his parents, and left on his trip to Morehead,
20 Kentucky, supposedly, but he didn't go straight to Morehead,
21 Kentucky. He drove back to the house on Lutie Street. And
22 there Chad Burnett was writing a letter to his girlfriend
23 and talking to her on the phone later that night. Judy
24 Smith was writing a letter to Billy Fields, the man she was
25 seeing.

1 And we will never know whether he fixed the
2 door to get in or whether she let him in. There was no
3 forced entry. No one broke the door down. He came in. And
4 he had taken three weapons with him, a .22 pistol, a buck
5 knife, which he carried frequently, and what's called an
6 awl, which is like an ice pick, which is a leatherworking
7 tool. Mr. Smith was a leatherworking expert, had a lot of
8 tools. He built belts and holsters. And he took those
9 three items with him.

10 He came in and confronted Judy Smith. She
11 raised her hand. He shot her through the arm. He then shot
12 her through the spine, paralyzing her. She went down on the
13 bed, not dead, paralyzed, laying on the bed. Chad, the
14 other son, came to his mother's rescue, came from the other
15 room. We'll never know exactly what happened, but he was
16 shot. He was shot through the lung. I think he was shot
17 first through the lung and then he tried to flee, tried to
18 get into another room of the house, possibly get out the
19 back door, but he didn't make it. He was chased down. A
20 struggle ensued. He was stabbed numerous times with a buck
21 knife in the chest.

22 Jason Burnett didn't flee the house. He
23 tried to defend his brother, tried to defend his mother, 13
24 years old. When he wasn't successful in getting Mr. Smith
25 off of his brother, he called 911. And you will hear that

1 tape. He called 911, attempting to get help, very briefly.
2 Mr. Smith saw he was on the phone, because the phone was
3 right there in the kitchen where he was stabbing Chad
4 Burnett. And he went after Jason, left Chad, shot, stabbed,
5 and went after Jason, 13 years of age, chased him in the
6 front room where his mother's body was, where she was still
7 laying there, paralyzed, probably hearing what's happening
8 to her two children. And there Jason put up a strong fight
9 against a buck knife, his fingers were basically severed
10 from defending himself. And then he was gutted with a buck
11 knife, so that his entrails come out into his own hands.
12 He's left to lay there and die, but that wasn't enough.

13 Mr. Smith then goes back to his wife, to make
14 sure she's dead. She is dead, by then. He cuts her throat.
15 He takes the awl, the ice pick type instrument, and stabs
16 her in the chest after she's dead. And then he goes back to
17 Jason who's not dead. He cuts his throat. He still doesn't
18 kill him. He just cuts his throat and leaves him there. He
19 bleeds to death. He then takes his weapons back in through
20 the kitchen, to go out the back door.

21 Chad Burnett is not dead. He's been stabbed
22 severely. He's been shot. So he cuts his throat four
23 times. He's still not dead, so he takes his trusty .22,
24 holds it to his chest, against his chest, and pulls the
25 trigger, the .22 he chose because it makes no noise, which

1 you'll hear probably in the neighborhood. But that's not
2 good enough either. Then he takes the .22 and puts it to
3 his forehead, and he pulls the trigger.

4 That was the slaughter that was committed in
5 this case. Mr. Smith then leaves. Where he goes then,
6 we're not sure, somewhere to dispose of the weapon. He
7 leaves his awl there. He leaves it -- he left it right
8 there beside Chad's body. We don't know where he went to
9 get rid of his weapons or the clothes he had on.

10 And then he drives to Morehead, Kentucky.
11 And sure enough, he was there about 8 o'clock -- between 8
12 and 9 o'clock their time, between 7:00 and 8:00, our time,
13 and does his job. He works on a machine. He comes back
14 home and goes to sleep.

15 The bodies have been found. The police
16 responded to the 911 call, but when they got there Mr. Smith
17 left, the lights were on, no one responded. They knocked on
18 the door, looked around the side of the house. They assumed
19 it was just a prank call. And they left.

20 The next afternoon young Michael Price, who
21 was the cousin to Chad and Jason Burnett, was walking home
22 from school. And everyday Chad would meet him to help him
23 across the street because he was seven years old. And it
24 was dangerous for him to cross the street. And his mother
25 worried, so Chad would go up and help him everyday. That

1 day Chad Burnett couldn't help him. He goes to the house to
2 find out what's wrong. And he finds the back doors open.
3 He knocks on the front, and he can hear noise of the hair
4 dryer. He enters through the back and walks in and sees
5 Jason laying in the front room with his back to him, blood.
6 He's only seven. He doesn't really comprehend what's going
7 on. He thinks maybe Jason's sick. He can't get Jason up.
8 So he goes back out and sees a woman on the street, but he
9 doesn't really explain to her what's going on. He talks to
10 another child.

11 Eventually, he calls his mother and says that
12 his cousin's sick, and he can't get him up. His mother
13 works at Woodlawn, which is not far from there. And she
14 jumps in her car and comes to the scene. She walks in and
15 sees her sister and her two nephews dead. Of course, she
16 becomes hysterical. Paramedics are called. Of course,
17 there's nothing they can do. They've been dead for hours
18 and hours and hours. This is 4 o'clock, the next day.

19 The police come and do what they do at crime
20 scenes. You'll hear all about that. And right away the
21 police find out they need to talk to Oscar Frank Smith.
22 First, they've got to find out where the twins are. They
23 don't have an idea, because she has custody of them. And
24 they want to find out where Mr. Smith is. So they radio
25 ahead to Robertson County and request assistance in locating

1 Mr. Smith and the twins. And Robertson County verifies the
2 twins are there. And they request them to talk to Mr. Smith
3 and to tell him that Nashville, Davidson County, the police
4 want to talk to you.

5 Detective Bennett from Robertson County goes
6 out there and talks to Mr. Smith, and says Nashville,
7 Davidson County, police want to talk to you. He doesn't
8 say, why, what about? Okay. He gets him in the squad car
9 and takes him over. And then he meets with Detective Mike
10 Smith and Detective E. J. Bernard. He's extremely nervous,
11 chain smoking. And they question him.

12 And he tells them, yes, I was with Judy
13 Smith, I left her around 9:30. I got home around 10:00, and
14 I left sometime between 10:00 and 10:30, went to Morehead,
15 Kentucky. It was extremely foggy, took me seven hours to
16 drive it. That's basically what I did. And I forgot -- the
17 reason I've got the twins is because I forgot I had to go to
18 Morehead, Kentucky. And I thought I was going to be off.
19 That was basically what he told the police. What was
20 interesting about the interview, though, is where he made
21 his mistake, he never asked them why they were there. He
22 never asked them, what are you questioning me for, why do
23 you want to know, what's happened? He didn't do that. And
24 he used the past tense several times in talking about his
25 wife. He said, we were going to get back together, we were

1 going to work it out. We were going to do this, we were
2 going to do that. The police noted that. Here's a man that
3 never asked why they're questioning him, and started talking
4 -- even though there's no way he knows his wife's been dead
5 other than he's killed her. They don't tell him. It's
6 shortly after the bodies have been found, and he uses the
7 past tense.

8 And then some 20 minutes after the interview,
9 he says, by the way, why are you questioning me? The
10 Detectives tell him. He says, oh, no, God, it can't be.
11 The Detectives go out of the room. And one of the
12 Detectives observes him then smoking a cigarette and blowing
13 -- rubbing -- getting smoke on his finger and rubbing it in
14 his eye, attempting to make himself cry. And even after the
15 police tell him why they're there, he never asks why, how
16 they were killed, when they were killed, anything about it,
17 because he doesn't have to, because he knows.

18 The police search his trailer, search his
19 car. Of course, they find no evidence. And that's
20 significant that they don't find any weapons. What they do
21 find is some leatherworking tools because he works in
22 leather. And there's no awl in there, which is what you use
23 to make a belt like that. There's not an awl there. One
24 would expect that. And they find a holster, but there's no
25 pistol, the holster where a .22 pistol had been, but there's

1 no longer a .22 pistol there. They find .22 shells on the
2 floor of the trailer, but there's no .22 pistol. They find
3 no buck knife either, one that he commonly carries.

4 In their investigation, as you will hear, we
5 will prove that Mr. Smith had a .22 pistol, prove that he
6 had a buck knife.

7 It's a strong circumstantial case. You've
8 got motive. His wife leaves him, is seeing another man,
9 getting custody of their twins, \$88,000, motive. He's got
10 opportunity. And the only person -- the last person who's
11 seen with the victim alive is Mr. Smith. No forced entry.
12 Must have known the person. Got him in possession of all
13 three weapons that fit those used in the murder. You've got
14 his behavior when he's questioned by the police, using the
15 past tense, not asking why. You've got his unusual
16 behavior about leaving town in the middle of the night to
17 drive to Morehead, Kentucky, when he doesn't have to. It's
18 a strong circumstantial case, where you can logically infer
19 that Mr. Smith is guilty. But that's not all the proof,
20 Ladies and Gentlemen, because Mr. Smith made three very big
21 mistakes in his little attempt to commit the perfect crime.
22 He parked his car in front of the house. And a witness saw
23 it. It's a very distinctive car. It looks like an old
24 police car. The witness saw it during the period of time
25 Mr. Smith says he was driving to Kentucky, during the period

1 of time when these murders were committed. The call came in
2 at 11:22. His car was seen there, and he says he's already
3 left between 10:00 and 10:30 for Morehead, Kentucky.

4 His other mistake was he let Jason get on the
5 phone. And it wasn't just a mere phone call. It was taped.
6 Not only can you hear Jason but you can hear Chad on it.
7 And you will hear his voice. And even though he's dead, and
8 he can't come to this witness stand, you will hear him
9 testify. And he'll tell you who killed him because you can
10 hear him being killed. And I submit you will hear on that
11 tape the name "Frank," because that's what they all called
12 him was Frank. You will hear him saying, "Frank, no, God,
13 help us," as he's being killed, Ladies and Gentlemen. And
14 he will be able to testify in this Court, even though he's
15 dead.

16 And then you'll hear his third fatal mistake.
17 He planned against it. He wore gloves, but he had two
18 fingers missing on his left hand, his two middle fingers.
19 And that glove doesn't stay on very good. And sometime
20 during the altercation, probably with Jason, when Jason was
21 in there trying to fight him off with his knife, and he was
22 slicing his fingers and his tendons, he lost that left
23 glove. And it fell right there by Jason's body. And he got
24 blood all over his left hand. And then when he went back,
25 his wife laying across the bed, he cut her throat, from left

1 to right. And the way he did that is he bent over like this
2 (indicating), took the knife and cut, using his right hand.
3 And he left his palm print, in blood, right by his wife's
4 body. And you can see it. You can see the two fingers
5 missing. And you'll hear a certified fingerprint expert
6 come in here and tell you they were able to lift the print
7 from that sheet and to match it to Oscar Frank Smith. And
8 he'd just as soon signed his name, Ladies and Gentlemen,
9 when he left his bloody palm print beside his wife's body.

10 That's the proof you will hear in this case,
11 Ladies and Gentlemen, and there will be no question at the
12 end of this proof that Oscar Frank Smith's plan, his little
13 perfect crime fell apart. And we'll prove to you beyond a
14 reasonable doubt to a moral certainty he's guilty of
15 premeditated murder in the first degree. And we will ask
16 you to return that verdict.

17 Thank you.

18 MS. PARSONS: If it please the Court, Ladies
19 and Gentlemen of the Jury, my name is Mary Parsons. And I
20 haven't had a chance to speak to you yet, but I'll be brief,
21 in any event.

22 First of all, I would like to thank you all
23 for your time in serving on this Jury. We realize that all
24 of you have had to make personal sacrifices to be here
25 today. And we do appreciate it.

1 As the State -- as the prosecution, in
2 this case, has stated, the evidence in this case is
3 circumstantial. There's no direct evidence in this case
4 that links Mr. Smith with these crimes. The Judge will tell
5 you at the close of all the proof how to consider
6 circumstantial evidence and the weight it should be given.

7 Oscar Franklin Smith was born in 1950 to
8 Florence and Oscar Earl Smith. He is the oldest of seven
9 children. He was previously married and had two children by
10 that marriage. He has a 17-year old daughter named Laura.
11 And he has a 14-year old son, Merle, who is severely
12 mentally handicapped. During this time, Mr. Smith worked
13 for Maintenance Service Corporation, and at one point
14 stopped for a while and took a job with a trucking company.
15 And it was during this time that he met Judith Smith. They
16 were married in 1985 and had twin sons in 1986. And at some
17 point, Mr. Smith went back to his job at Maintenance
18 Service Corporation. At the time of Judy's death, they were
19 still married, but they were separated. Mr. Smith was still
20 living in the trailer in Robertson County on his parents'
21 property. This trailer was in Pleasantview, Tennessee, in a
22 very remote country area, about a 30 or 40-minute drive from
23 where Mr. Smith lived on Lutie Street.

24 You will hear from family members that he was
25 at the trailer, preparing to leave for Morehead, Kentucky,

1 to go to the job the next day. And you will hear from
2 people from Morehead about his arrival and the job that he
3 performed there. When he returned from Morehead, the police
4 came and questioned him. The media questioned him. It was
5 obvious that he was a suspect at that time.

6 He continued to live at the same place, and
7 he continued to work in the same place. He cooperated with
8 the police and provided fingerprints, hair samples, both.
9 During this time, his job took him on at least one occasion
10 out of state. He went out of state. He performed his job,
11 and he came back. During all this time, he knew he was a
12 suspect. He didn't try to run. He stayed --

13 GENERAL THURMAN: If the Court, please, I'm
14 going to object to relevance as to that. I don't think
15 that's relevant at all about his behavior after the crime.
16 I've got some case law if Your Honor wants to hear it.

17 THE COURT: I think you can limit that a
18 little bit and get back to what basically the purpose of the
19 opening statement rather than something after it. Go ahead,
20 please.

21 MS. PARSONS: Yes, Your Honor. He stayed at
22 the same home and at the same job.

23 As we said before, this case was based on
24 circumstantial evidence. All we can ask is that you listen
25 carefully to all the evidence in this case, listen to the

1 facts as we present to you, and we are confident that at the
2 end of this trial, you will return a verdict of not guilty
3 on all counts for Oscar Franklin Smith.

4 Thank you.

5 * * * * *

6
7 The following is a transcript of the closing
8 argument of counsel, to-wit:
9

10 THE COURT: Go ahead, General Blackburn.

11 GENERAL BLACKBURN: Ladies and Gentlemen of
12 the Jury, this is the time of which the attorneys argue
13 their theories of the case to you. As General Thurman and
14 Mr. Dean pointed out in voir dire, in terms of what to
15 expect after we argue, the Judge will give you the Charge
16 that applies and the law that applies in this case.
17

18 Before we get started I wanted to thank you
19 on behalf of the State of Tennessee for your attentiveness
20 and for sitting through this experience.

21 As General Thurman told you in his opening
22 statement that you have had a duty call, and you are in no
23 -- there will be no more difficult situation that you will
24 ever face as men and women of this community. This not only
25 is a difficult time to have to judge someone, but it is

1 probably one of the most horrible cases that anybody in this
2 courthouse has ever been associated with. General Thurman
3 and I, between us, have almost a quarter of a century of
4 experience in prosecuting criminal cases. And I can assure
5 that as representatives of the State of Tennessee we have
6 never seen nor will we ever see any situation that exists as
7 in this case.

8 There have been times that I know that there
9 have been questions that have been asked and evidence that
10 you have heard that have been graphic and very difficult for
11 you to hear. I apologize to you for that, but there were
12 reasons we had to ask those questions. The burden is on the
13 State of Tennessee to prove to you beyond a reasonable doubt
14 not only that this defendant is the one who killed Judy,
15 Chad and Jason, but that it was done premeditatedly. So if
16 any of the information was difficult, it was done for a
17 reason. We did not do that just to inflame you or to make
18 you feel sorry for the victims. His Honor will charge you
19 that you are to judge this case on its merits, not just
20 because it is probably one of the most tragic situations
21 that you will ever, ever hear about. But, given that, you
22 also are -- are reasonable human beings. All that's being
23 asked of you is to apply your common sense to the law and
24 the facts that are in this case and come out with a just,
25 fair decision, and that the burden is on the State of

1 Tennessee. And we welcome that burden in this case, but our
2 burden is prove to you beyond a reasonable doubt, not to an
3 absolute certainty, but beyond a reasonable doubt of the
4 guilt of this defendant.

5 The first thing that I think that you, as
6 jurors, need to do is to sit down and see what the charge
7 is, what the charges are in this case, and then to separate
8 them out as to victims, because you must arrive at a
9 decision as to all three victims, separately, that is, as to
10 Judith Smith and Chad Burnett and as to Jason Burnett. And
11 you must look at the evidence, though it is intertwined,
12 individually, as to each charge and as to each count of the
13 indictment.

14 His Honor will charge you, however, with
15 regard to count -- the counts with Chad and Jason, where
16 they are alleging both premeditated and felony murder, that
17 in your decision that your verdict can be reached as to only
18 one of those, so that you will come back with only three
19 verdicts, if you were to find him guilty of murder in the
20 first degree, you would have to choose. But the charge
21 covers that. But premeditated murder is the murder that the
22 defendant, in this case, the State is alleging that Oscar
23 Frank Smith, that the defendant killed willfully,
24 deliberately, premeditatedly, and maliciously. Those terms
25 are defined. Willfully, that he intended the act.

1 Deliberately, that it was done with malice. And malice is
2 defined as both direct malice and indirect or exp' ss
3 malice and -- and implied malice. Malice can be implied by
4 the use of a weapon. It can be implied by the number of
5 blows, but malice is a wicked or maligne spirit, either
6 toward this individual or to society, in general. And the
7 Charge will define that to you.

8 Premeditation is that the intent, the intent
9 to kill these individuals was formed priop to the act, not
10 for any period of time, but that it was prior to the act.
11 And additionally, the -- the premeditation is something that
12 is a plan that has been formed out, even though the person
13 may be angry or whatever he's -- when he's planned it, so
14 long as the plan is there, and he intends to kill, he can
15 still be very angry about it.

16 I want you to go with me again back through
17 some of this evidence. And I don't want to belabor it.
18 You-all have been very attentive and have heard everything
19 that's said, but there have been crucial things that each
20 witness has had to say that I think or the State feels that
21 you need to remember in terms of reaching your verdict, and
22 especially as to premeditation in this case. If, by any
23 chance, I misstate a fact that you remember differently,
24 rely on your memory. I certainly heard things but please
25 rely on your memory. And it is not my intention to misstate

1 things.

2 The State's position in this case is that you
3 can find premeditation as to all three victims and the
4 identity of the person who killed them, that being Oscar
5 Frank Smith. And you have to go no further than the walls
6 of 324 Lutie Street. You can look at the crime scene, as it
7 is, and determine who killed those people. You don't have
8 to go beyond the walls of that building. You can just go
9 with me through the crime scene. And as Sergeant Hunter
10 described to you and the other people that found these
11 victims, there was no forced entry in this house. What does
12 that tell you? No forced entry would indicate that Judy,
13 Chad and Jason knew these people or they let them in, this
14 person in. No force, was not a stranger to come to this
15 house.

16 As you come in the door, you will -- to the
17 bedroom to the left, you find the body of Jason and Judy
18 Smith. Jason, his back, at that time, is to the door.
19 There is a large amount of blood here (indicating on
20 diagram). He is in a -- a state. He has incredible
21 injuries to his hand. His intestines are coming out. He is
22 stabbed. He is -- he is absolutely brutalized, but he's at
23 the foot of the bed. There's a bullet hole over here
24 (indicating on diagram). Judy Smith is laying here
25 (indicating on diagram), on the bed. She's shot in the

1 neck. And she's fallen right where she's shot. Remember
2 what Dr. Harlan said. She's paralyzed. So as soon as Judy
3 Smith is shot, she falls, she can't move. And she falls on
4 that bed. And next to her is a palm print, in blood. And
5 we'll talk about that later. But as you go back out of this
6 crime scene, there are bullet holes here (indicating on
7 diagram) and there's bloodsplatter, as you go in this
8 direction (indicating on diagram). And as you will recall,
9 Sergeant Hunter saying, the bloodsplatter is leading in the
10 direction of the kitchen. There's bullet holes. And
11 projectiles are recovered.

12 And then you go to the kitchen. And in the
13 kitchen, you find a telephone on the refrigerator. The
14 telephone has Jason's fingerprints on it, if you recall.
15 You find Chad's body. He is shot, he is stabbed. The awl
16 is here (indicating on diagram), the instrument for the
17 puncture wounds to both Chad and Judith Smith. The table
18 leg, the table leg that has Jason's fingerprints on it. The
19 table is -- the whole room is a wreck.

20 There's a bloody footprint on this wall over
21 here (indicating on diagram). He is shot, a contact shot,
22 right to the head. He's shot, also, a contact wound to the
23 chest. And he is stabbed innumerable times, both with a
24 long knife of a certain length, as you heard Dr. Harlan
25 testify to. And then there's blood here in the sink. The

1 blood that has been analyzed by the State Lab indicates that
2 the PGM type, that blood belongs to the victim. And the
3 bloody palm print couldn't be typed because there was no
4 desire to destroy that print, but what -- and then further
5 on into Chad's room you find a letter that's partially
6 written, the light on in his room. So what does this tell
7 you about what happened to these individuals.

8 In addition, combine what Dr. Harlan told you
9 about the type of the wounds and whether or not these wounds
10 were inflicted either before death, during death, or after
11 death.

12 The State would submit to you that Judith
13 Smith was killed first. She takes a shot to the arm, which
14 is probably a defensive wound somewhere in this bedroom
15 (indicating on diagram). And she is immediately shot.
16 Chad is probably in his bedroom writing a letter to his
17 girlfriend. Chad and Jason, both, are very protective of
18 their mother. You've heard that. They come in this
19 direction (indicating on diagram). Now, there's another
20 bullet hole over here (indicating on diagram). And remember
21 Chad is also shot in a through and through wound. And then
22 there is sort of this chase on into the kitchen. There's a
23 chase. There's an injured party going this direction. And
24 they're being shot at. And there is bloodsplatter.
25

1 And then you have this horrible, horrible
2 scene in the kitchen, where the table is torn apart -- the
3 table leg. And you heard the phone call. Jason makes that
4 phone call. And in the background is Chad. Chad is in the
5 background when this is all occurring. Why is that
6 consistent with everything we know? And that is, the
7 fingerprints of Jason are on that telephone. They're on the
8 receiver. His fingerprints are on the table leg. Jason
9 probably tried to help out his brother to the point he knew
10 he couldn't, when -- when all this was going on.

11 And Chad was a big boy. Chad is a lot bigger
12 than Oscar Frank Smith. But Oscar Frank Smith was armed
13 with three kinds of weapons. He was armed with a gun. He
14 was armed with an awl and a very sharp knife. And he is
15 slicing away. And Chad gets on the phone and tries to call
16 for help. And at some point, Mr. Smith goes after him,
17 chases him back into this bedroom. Now, the question is was
18 -- was Jason going for life or was he going to check on his
19 mother or what? Because remember he's got her hair in his
20 hand, too. And Jason ends up here (indicating on diagram),
21 being killed.

22 And then what happens is that after all of
23 this, Jason somehow manages to get this person's gloves off
24 of him. And a glove, a lefthanded glove is found over here
25 (indicating on diagram). And then Judith Smith is stabbed

1 and her throat is slit after she's dead. So we have a
2 person who has lost his lefthanded glove, coming over and
3 leaving a -- a left palm print right there (indicating on
4 diagram), while he's slicing Judy Smith's neck.

5 And then they go to the bathroom and then
6 they leave.

7 Now, what all do you know about that crime
8 scene? You know that bloody palm print belongs to this man
9 right here (indicating the defendant). There is no
10 question. This man right here (indicating the defendant).
11 The State would submit to you that you can look at the
12 pictures. And you can look -- anybody can look at this and
13 tell this is a picture -- this is a palm print of someone
14 who is missing two fingers. That doesn't take an expert to
15 determine that at all. There are two fingers missing. And
16 it just happens that they are what Sergeant Hunter would
17 call them, the 8, 9 finger. It's going to be your ring
18 finger and the middle finger. That's what's missing,
19 right here (indicating). And it's totally -- it's not just
20 partially missing. And it's not a print that's put down
21 like this (indicating). It's not somebody just doing that.
22 And why do we know that? Well, look at the prints. If
23 those were -- if the other two fingers were bent back, that
24 wouldn't be there. That would not be there at all, because
25 those two fingers would cover that up. If you were to do

1 this, see, that would do that (indicating). In addition to
2 that, you would only get the tips of these two fingers.
3 This tells you that this print belongs to somebody who is
4 missing those two fingers. And then Sergeant Hunter tells
5 you there's no question that this belongs to that man,
6 right there (indicating the defendant), Oscar Franklin
7 Smith.

8 If you look at the pictures, you can tell,
9 also, that this print could only have been put there after
10 Judy Smith's body fell. And how is it that you can tell
11 that? By the folds in the bed. Her body, when she went
12 limp, when she fell, she caused those folds in that sheet.
13 The folds were caused by when her body fell down. And
14 that's obvious from the pictures. See the weight of her
15 arms and the way it is; it's caused by the weight of her
16 body. And the fold that show up in this was there when the
17 palm print went down (indicating on photograph). And the
18 fold was caused by the weight of Judy Smith's body. So that
19 means the palm print had to go down there after she -- her
20 body fell. And it's in blood; it's in blood. And her
21 throat is slit on this side, because it's put down there by
22 a person who hates her so much, that not only is he going to
23 kill her, he's going to mutilate her body after she's dead,
24 and he's going to make sure she's dead. And he's going to
25 go back through there after he's done what he's done to

1 Jason and take care of Judy again, go back and take care of
2 Chad -- Chad again and leave and go home. You don't have to
3 get outside of the four walls of that place to see who did
4 this and that it was done premeditatedly, maliciously,
5 willfully, and deliberately.

6 And how is that we can say it's
7 premeditatedly? Well, Oscar Frank Smith, when he
8 decided to kill Judy Smith, first of all, made sure those
9 twins weren't there. When he made sure the twins weren't --
10 he also knew that Chad and Jason were going to be there.
11 And he also knew how protective Chad and Jason were of their
12 mother. He knew that Chad was a sophomore. He is a big
13 boy. You heard Dr. Harlan talk about his size.

14 You've got to be armed, and you've got to be
15 armed with something that's deadly, that can take somebody
16 out right away, a gun, a sharp knife. And you're going to
17 have to plan to kill him, because Chad and Jason are not
18 going to let somebody harm their mother. So you have to
19 plan to kill all three of them. It's just as simple as
20 that. You don't even have to get to the circumstantial
21 evidence of all the statements that Oscar Frank Smith has
22 made in this particular case in order to get to the
23 premeditation.

24 Now, the defendant has made much of
25 circumstantial evidence; that is, if there is any weak link

1 in the chain, you must find the defendant not guilty. Is
2 there a weak link in this chain? You have a bloody palm
3 print that could only have been put there by the defendant
4 during the course of the murder. And it belongs to Oscar
5 Frank Smith. You have statements that he made starting back
6 in 1988 about how he wanted his wife killed. You have the
7 indications that not only from Shelia Duncan, that not only
8 did he want his wife killed, he was going to kill Chad and
9 Jason because she took better care of them than she took
10 care of his twins. You have all these statements and all of
11 his behavior. This is a man -- this is a man who sends a
12 woman out, throws her out of his house with not anything but
13 the clothes on her back, and her two kids, not a car, not
14 anything. And he is too ashamed to admit he cried.

15 Ladies and Gentlemen of the Jury, if you can
16 hear this situation and be ashamed to admit you cried, that
17 is an individual who is cold and could, in fact, do what you
18 heard happened at 324 Lutie Street.

19 But look at all of the other circumstances,
20 besides the threats, his attempts to hire people to kill his
21 wife. Mr. Merritt, you heard what he said. You have
22 somebody -- and I don't want the twins hurt, I just want
23 Chad and Jason. And the insurance, what is the -- what was
24 the value of the insurance? What was important? In 1985,
25 Mr. Smith does have insurance on all of them. He has

1 \$10,000, \$4,000, and \$4,000, paid monthly, paid up 'till
2 1989, September, 1989. But remember -- remember he was
3 talking to Jerry Williams in 1988, and he said, I can get
4 a-hold of some money, kill my wife. Circumstance, this is a
5 circumstance. At what point he starts taking out policies
6 of these type of values. Ladies and Gentlemen, on March the
7 6th of 1989, he takes out a policy worth \$20,000 on Judy,
8 Chad and Jason. Now, of course, there are other children,
9 but on these kids, \$10,000 on each of them, \$20,000 on her.
10 Four months. A circumstance, another circumstance. He did
11 not go back to United Insurance. Why didn't he just up the
12 coverage on United? He goes to a different agency. He goes
13 over to American General. That's on March the 6th of 1989.

14 And on February the 2nd of 1989, he's been to
15 Liberty Insurance, another circumstance, another insurance
16 company. Why didn't he just go back to United? Why didn't
17 he just deal with somebody he's been dealing with since
18 1985? No, he goes to an even different company. \$20,000 on
19 Judy, \$5,000 on the kids. Oscar Frank Smith had a total
20 value on the life of Judy Smith of \$50,000, \$19,000 on each
21 of the children. His total is \$88,000 that he thought could
22 collect and has tried to collect on the lives of these three
23 people. \$88,000.

24 Remember he told Mr. Williams, I can get some
25 money, I can help you out. He tells Ray Merritt, he'll pay

1 -- he'll pay \$20,000 because he knows and this is just
2 weeks, months before -- before it actually happens. He
3 knows that he can get \$88,000. Of course, he can come up
4 with \$20,000. That's a circumstance, and that's something
5 that we, the State is asking you to consider as
6 premeditation because when he couldn't get someone to kill
7 his wife, he killed her himself and -- and the two kids.

8 The custody of the twins, he was angry over
9 that. There was a battle going on for the custody of the
10 twins. For whatever reason, Mr. Smith wanted those twins.
11 And you heard the lawyer testify that that was the sticking
12 bone, that that was the sticking point in this relationship.
13 That's a circumstance.

14 The fact that there were three weapons used,
15 three weapons. That's a circumstance that goes to not only
16 the identity of the killer, it goes to premeditation, the
17 use of three different weapons to kill somebody. You intend
18 to kill. Also, the interesting choice, a man who has a .22,
19 to go shooting with a .22 on July the 3rd of 1989 with Mr.
20 Watts. He shoots that. It's his baby, this .22 pistol,
21 this western style gun. It's his baby. Recall what Mr.
22 Watts said. Of course, Mr. Smith told you he didn't have
23 one. He has a holster, a .22 style gun. And it just so
24 happens he has -- and these people, Judy and Chad are shot
25 with a .22. That's a circumstance.

1 Mr. Smith likes to work with leather. He
2 happens to have a whole bunch of leatherworking tools but
3 just doesn't happen to have an awl. And what do you find at
4 the crime scene? You find an awl. And how are these people
5 killed? With an awl. And it just so happens he's missing
6 an awl from that. That's a circumstance to look at.

7 And the knife, the knife that he doesn't
8 wear, that people have said he wears. A knife, and they are
9 sliced up. What else is interesting about that
10 circumstance? Remember some of the threats he made? And
11 remember -- remember the observations that people made of
12 Judy Smith when she came back in August? The red marks on
13 her neck. The red marks on her neck. And what happens to
14 Judy Smith? She just happens to have her throat slashed.
15 Just happens to have her throat slashed. And she also just
16 happens to get shot. Remember the threat that Shelie
17 Gunther overheard.

18 Those are the type of things that you need to
19 consider, both in premeditation, and in the identity of the
20 person who did this horrible, horrible act, and then the
21 number and nature of the wounds. All that's important in
22 determining whether or not it's premeditated and malicious,
23 willful and deliberate.

24 I submit to you that once you look at all of
25 those things, you have no doubt in your mind, not a -- not a

1 reasonable doubt, you will have no doubt in your mind that
2 these murders are premeditated, first degree murders, and
3 that they were committed by Oscar Frank Smith.

4 Now, the defense had made a lot of the fact
5 that they were seeing each other on a Sunday, that they were
6 getting back together. Well, Ladies and Gentlemen of the
7 Jury, we have come out of the 18th century as far as
8 domestic violence. We no longer believe that women have any
9 particular way they react in this type of a situation. That
10 is, just because she is seeing him again on this Sunday
11 doesn't mean that she was getting back together with him.
12 He wants you to believe that he wouldn't have any reason to
13 kill her, but maybe, just maybe, Judy Smith is desperate.
14 She has no money, she has a car that doesn't work. She's
15 having to work as a waitress. She's got four kids. She's
16 got twins, young twins. She's had to beg, borrow and steal
17 stuff from her family in order to live because this man
18 threw her out of the house with nothing, with nothing.
19 Maybe she just needed to see if she could get some money
20 from him. Maybe she thought she could control the
21 situation that day. Maybe she thought -- nobody knows how
22 women, there is no set pattern of how you react in a
23 situation like this. Maybe she thought, well, he's
24 threatened so many times, he'll never do it. We don't know.
25 But do not get sucked into the theory that just because

1 she's saw him that day, that he didn't have violence in his
2 mind. Maybe, just maybe he was setting it up. Maybe he
3 just wanted to see if he was going to be able to get those
4 twins back. He had planned to kill her, if he couldn't get
5 those twins back, and maybe he just wanted to try it the
6 last time. Maybe he's the one that was acting nice for a
7 change because he had gotten his plan together, but don't
8 believe that domestic violence cases have any particular way
9 of operating. Consider all the facts and circumstances.

10 The defense would have you believe that just
11 because Sergeant Hunter did not make his identification for
12 some months, that this isn't his palm print. You have heard
13 no explanation of how his palm print got on that sheet on
14 blood. The only explanation you have is that it was done
15 there during the commission of the murder and that it's his.
16 Sergeant Hunter told you, we got the sheet, we put it in the
17 Property Room, I went back and I looked at it. That doesn't
18 make it change. It doesn't mean it's not his. Just because
19 it wasn't found right away, that's nothing.

20 His alibi. His alibi. That's where you get
21 down to the issue of the credibility of the witnesses, the
22 weighing process again. Just because one person says I
23 wasn't there, and another person says you were, your -- your
24 job doesn't start there. You've got to weigh. You've got
25 to look at this person, and you've got to say, what have you

1 got to gain for this? What was their demeanor when they
2 testified for you, that sort of thing? Did they look you in
3 the eye?

4 Oscar Frank Smith told you he had never
5 called the Waffle House where Judith Smith worked, he had
6 never threatened her, but yet you all saw Shelia Gunther.
7 Was that woman not telling you the truth? She is still
8 scared to death of this man. Was she not believable? Weigh
9 her credibility. She was afraid to even come in here and
10 testify. Was she making that up? That's for you to
11 determine.

12 What about Mr. Merritt? Weigh the
13 witnesses. Weigh Sergeant Hunter versus Oscar Frank Smith.
14 And not only that, you've got to weigh Chad Burnett against
15 Oscar Frank Smith because you heard that tape.

16 It's real interesting, when you look at this
17 case, you kind of have to ask yourself why didn't Jason run
18 out that back door and save himself? And that gets to you
19 more than anything, doesn't it? Why didn't Jason just run
20 out that back door? Because this man was busy with Chad, he
21 could have just run out that back door. The State doesn't
22 have an answer for you on that. Nobody does. I mean nobody
23 knows what a 13-year old is going to do in this situation.
24 But I can tell you this. Jason speaks to you. If it
25 weren't for Jason, we wouldn't have that telephone call.

1 Jason knew to call 911. And if it wasn't for Chad, we
2 wouldn't have that words on that tape. And if wasn't for
3 Judy Smith, this body Mr. Smith decided to mutilate, we
4 wouldn't have that bloody palm print. I can't tell you why
5 Jason didn't run out the back door. I wish he had. I wish
6 we were trying that case that Mr. Smith referred to when he
7 was on the witness stand. It would be nice to be trying
8 those cases of those warrants in some other county, but we
9 can't. Why can't we? Because he killed the victims. It
10 would be real nice, and Mr. Thurman and I would have loved
11 to have tried that case, but we can't do that. We're having
12 to try this case.

13 And Ladies and Gentlemen of the Jury, once
14 you look at all the evidence in this case, all the
15 circumstantial evidence, you can have no doubt, absolutely
16 no doubt at all that Oscar Franklin Smith killed Judy Smith.
17 He killed Chad Burnett. He killed Jason Burnett. He killed
18 them premeditatedly, willfully, deliberately. He did it on
19 October the 1st of 1989, and he wanted to kill all three of
20 them. And he's not sorry. He sat there in that witness
21 stand and said, I'm ashamed to admit I cried.

22 Thank you.

23 THE COURT: Okay. Ladies and Gentlemen,
24 we're going to go to supper now. Like I told you, it's
25 5:30, we're going to get back at a quarter after 6:00, and

1 remind you again, still, do not discuss anything about the
2 case here. You'll have your time to do that. So I'll see
3 you at 15 after 6:00.

4 (WHEREUPON, the Jury retired from
5 open court at 5:25 p.m., and after
6 which, the further following
7 proceedings were had, to-wit:)

8
9 THE COURT: Okay. We'll be in recess until
10 6:15.

11
12 (WHEREUPON, the dinner recess
13 was had, and after which, Court
14 reconvened, and the further
15 following proceedings
16 were had, to-wit:)

17
18 THE COURT: Are you ready, Mr. Newman or Mr.
19 Dean?

20 MR. NEWMAN: Yes, Your Honor.

21 THE COURT: Okay. Bring the Jury in, Les.
22
23
24
25

1 (WHEREUPON, the Jury returned to
2 open court at 6:22 p.m., and the
3 further following proceedings
4 were had, to-wit:)

5 THE COURT: Everybody's here. And Mr.
6 Newman, is it you?

7 MR. NEWMAN: Yes, Your Honor.

8 THE COURT: Go ahead, please.

9 MR. NEWMAN: Ladies and Gentlemen of the
10 Jury, I have just a few brief statements for you. First of
11 all, before I begin I want to express my sympathy to Judy
12 Smith's family, Jason Burnett and Chad Burnett's family as
13 well. Everyone at the defense table is very sorry for that
14 tragic loss. I also want to thank each and everyone of you
15 for being here, for being willing to participate in this and
16 for being willing to sit and listen to the proof for the
17 last few days. Anything that I might say in my closing, as
18 General Blackburn has told you earlier, is just my theories
19 of the case, just as hers is just theories of the case. We
20 want to judge the case, however, not on theory but on facts
21 and evidence from the witness stand. We want you also to
22 realize that although this is a case involving anger,
23 involving emotion when you hear the proof, that this is a
24 case of evidence. That's your purpose here is to judge the
25

evidence.

1
2 You might be impressed by the numbers of
3 witnesses, be impressed by what the witnesses say. In the
4 beginning of this case, you heard what was called the
5 opening statements. And in the opening statements, each
6 side has the opportunity to explain to you what they thought
7 the proof would be. I want to go over with you what the
8 State said their proof would be in the opening statement and
9 have you judge the evidence and see if they did what they
10 told you they would say. They said this would be a case
11 where they would prove Mr. Smith's motives, they would prove
12 that he had the necessary weapons and they would prove
13 behavior consistent with him being guilty of these tragic
14 offenses.

15 Let's look first at motive. The State -- the
16 prosecution wants you to believe that the motive for this
17 murder was either the custody of the twins, the insurance
18 benefits, the pending warrants. And let's take those one at
19 a time.

20 Let's first look at the custody of the twins
21 issue. Mr. Smith testified -- he told you about the custody
22 of the twins. He gave you his state of mind or he let you
23 know that he was concerned about that custody battle,
24 because it was his belief that the marriage to him with
25 Judith Smith was illegal, the Las Vegas divorce was null and

1 void, and that he had an opportunity to get custody of his
2 children.

3 As far as the insurance, I think the most
4 significant thing from the insurance is that when the State
5 was bringing forth the proof to you, they only told you half
6 the picture. They didn't tell you what the whole picture
7 was. We have Mr. Dean to thank for that. He was the one
8 who brought forth the evidence that all of the people were
9 covered, that the circumstances surrounding it, and he also
10 brought out the fact that these policies had lapsed on
11 occasions and were over five years old in some occasions.
12 And I remember also what Ms. Florence Smith said, remember
13 what Ms. Smith said as far as the reason that she was named
14 as the beneficiary of the insurance policies. Also,
15 remember what she said about the other family members where
16 she was beneficiary, not just to the grandchildren -- the
17 children of Frank Smith but to her other sons, as well. So
18 this was not unusual. And remember what Ms. Smith and Mr.
19 Smith testified to about how this came about, about how Judy
20 Smith and Frank Oscar Smith sat down and discussed this, and
21 that was what they both agreed on to do.

22 As far as the warrants which the State is
23 alleging as a possible motive, you have to again look at Mr.
24 Smith's state of mind. How do those warrants affect him?
25 Mr. Smith knows best how his state of mind was. He told you

1 how he felt. He told you he was not afraid of the charges.
2 Once you remember this, and Ms. Marian Woods, when she
3 testified that on October 1st, 1989, that they came into her
4 flower shop and that she sold to Mr. Smith these flowers you
5 see in the picture for her and that Ms. Smith, at that time,
6 obviously, thought enough of them to take them home, to cut
7 the ends off of them, and to put them in a vase. Ask
8 yourself, is that consistent with a woman who was wanting to
9 put her husband in the penitentiary?

10 The State also told you in their opening
11 statements that they would prove that the weapons involved
12 belonged to Mr. Oscar Frank Smith. One of the weapons here,
13 the one that you've seen so much is the awl. Ladies and
14 Gentlemen of the Jury, not one person took that stand
15 throughout the course of this trial and told you they had
16 ever seen Mr. Smith with this awl. Another thing, and you
17 can see it for yourself, was dusted for fingerprints.
18 Ladies and Gentlemen, if Mr. Smith's fingerprints had been
19 on this awl, you would have heard about it.

20 You also heard from his co-workers and
21 family concerning his leatherwork. And they told you that
22 he used prepunched articles. Not one of his co-workers, not
23 one of his family ever told you that he used that awl. We
24 had the lady from the tannery, and if you'll remember the
25 questions asked by Mr. Dean of her, asking if there was

1 anything in Mr. Smith's leatherwork kit that could be used
2 to pierce leather. She told you no. I ask you, look at
3 this. Mr. Smith testified about those, carefully and
4 pointed. Ask yourself, could you punch leather with that
5 (indicating)? Could you poke a hole in something leather?
6 And what about this?

7 Now, let's talk about the .22 caliber pistol.
8 Well, first of all, it's another one of the State's
9 theories. If you'll remember, the State's own witness, the
10 TBI inspector, Mr. Tommy Heflin, he testified on direct
11 examination that it could have been a pistol, but then he
12 also testified on cross-examination that it could have been
13 a rifle. And again, I suggest to you the State only told
14 you half the story. I want you to remember and look for
15 yourself at this particular shell (indicating). This is a
16 shell that was recovered from Lutie Street. This is a
17 shell, the State wants you to believe, ties Mr. Smith to the
18 crime scene. What did Mr. Heflin tell you about this shell?
19 He told you that it didn't, and that's the State's own
20 witness.

21 You remember the tennis shoe issue where they
22 brought Detective Flair up here. And I -- I'm still
23 wondering, and I like Detective Flair, don't get me wrong,
24 but I'm still wondering why they brought him up here to tell
25 you that his involvement in the case was that he went out to

1 Pleasantview, Tennessee, picked up a shoe, brought it back
2 to the State Lab, that had nothing to do with the case. It
3 makes me wonder, however, if the State intended to pass this
4 to you. I want you to look carefully at it. Look carefully
5 at the red substance. If I had not brought it out, do you
6 think the State would have told you that this was not blood?

7 Concerning the knife, what did Dr. Harlan
8 tell us concerning the knife? Dr. Harlan said the knife
9 probably had a blade of longer than five inches. What she
10 didn't tell you was that this knife was the knife, because
11 it wasn't. This was the knife that the police department
12 came out to on October the 2nd or October the 3rd and
13 retrieved from Mr. Smith's house. And what did they do with
14 the knife? They examined it. What did they examine it for?
15 Blood. What was the result? Well, they didn't tell you,
16 did they, but you know that if there'd been blood on this
17 knife, you would have heard about it. And what did they do
18 with the knife after the examination? Gave it back to Mr.
19 Smith.

20 Now, as far as the behavior, which was
21 another thing the State said they would prove to you, their
22 behavior consisted of Mr. Smith using what they referred to
23 as "past tense." Remember Detective Bernard's testimony
24 where he said that he said that Mr. Smith that we were
25 getting along fine, we were going to a counsellor and then

1 remembered the last statement, "we are going to a
2 counsellor." Why is that significant? It's significant
3 because you need to remember the testimony of Mr. Clinton
4 Curtis. What did Mr. Curtis tell you when he talked to Mr.
5 Smith at Morehead, Kentucky, the next day? That Mr. Smith
6 told him, I'm anxious to go home, I want to go to see the
7 marriage counsellor. Is that a man who is talking in the
8 past tense?

9 One of the other things that the State has
10 stressed heavily is the smoke in the eyes incident. You've
11 heard what Detective Smith said. Detective Smith said that
12 when he told Mr. Oscar Frank Smith about the death of his
13 wife and two stepchildren, that there were tears in his
14 eyes. Is that what Detective Bernard told you? Why is it
15 different.

16 And they say that he never asked, why am I
17 being questioned, why do you-all want to talk to me? What
18 did Laura Smith say? What did the Detective that went to
19 that house in Pleasantview tell you? That he didn't know,
20 the Detective didn't know why the Metro Police wanted to
21 talk to him. Ms. Laura Smith said, I asked, and they
22 wouldn't tell me.

23 The State also called this the perfect crime.
24 But they said there were three mistakes. They said, No. 1,
25 that the car was parked in front of the home. Was Mr. Smith

1 ever there? Yes, he told you he was there and left sometime
2 around 9:30 to 9:50. Who places the car there at any other
3 time? Mr. Abston, remember that testimony? Mr. Abston was
4 a friend of the family. And when he first talked to the
5 police, he told the Detectives, I saw the car somewhere
6 between 10:30 and 11:00 o'clock. And then when he takes the
7 witness stand, what does he say? 11:15. He's moved it 15
8 minutes closer to the murder. And when you ask him to
9 describe the car, which he described in detail, what did he
10 miss? The most significant thing when you're looking at the
11 back of the car, the trailer hitch. No mention of that, and
12 he told you he didn't remember seeing it.

13 Let's talk briefly now about the phone call.
14 First of all, what you heard was an enhanced tape. You
15 didn't hear the original. And if you recall in the opening
16 statement, the prosecution planted the seed and told you
17 what they wanted you to hear. And then if that wasn't
18 enough, they gave you a script to go by. They didn't let
19 you listen for yourself. They didn't trust you to make up
20 your own mind.

21 I want to talk now about the palm print.
22 That is one of the strange things in the case. Sergeant
23 Hunter told you that on October the 2nd, when he went out
24 there, the palm print was obvious to him. And on October
25 the 2nd, some few hours later, what did he do? He went out

1 and he fingerprinted Mr. Smith. For some reason, he
2 fingerprinted him a second time, October 3rd.

3 Four months later, after all the Detectives
4 had been working on the case for four months, four months
5 later he reports that he's got a fingerprint. Ladies and
6 Gentlemen, the Judge will tell you how to consider expert
7 testimony and recall also that this was the first time that
8 this particular method had been used. This was the first
9 time that Sergeant Hunter had ever testified about the use
10 of the alternative light system in this particular case for
11 fingerprints.

12 Here's another interesting thing. The
13 State's theory, again, is that Mr. Smith went in to 324
14 Lutie Street wearing this glove on his left hand and that
15 after he had done all the things they have accused him of,
16 that somehow he lost the glove, and that the last thing he
17 did was to cut Judy Smith's throat. What do we know about
18 the glove? Remember Mr. Watts' testimony that whenever
19 Oscar Frank Smith had a glove, the first thing he would do,
20 and he asked him to do it on occasion, is to cut the two
21 fingers out, because he didn't have fingers there. Also,
22 this glove was tested. If there had been any blood on this
23 glove, then you would have heard about it. But the State
24 wishes you to believe that he was wearing gloves, and that's
25 their explanation for there only being one fingerprint of

1 Mr. Smith's in the entire house. Also, Mr. Smith, on
2 October 2nd or October 3rd, showed the police the clothes
3 that he was wearing. The police tested those clothes. If
4 there had been any blood or any other evidence that tied
5 those clothes to the crime, you would have heard about them.
6 And Ladies and Gentlemen, you haven't.

7 Let's stop talking about the State's case for
8 just a minute, and let's talk about the defense in this
9 case. The defense is one of physical impossibility, is what
10 we call it. It was physical impossible for Mr. Smith to be
11 in Pleasantview, Tennessee, after 11 o'clock and be at Lutie
12 Street at 11:22. Give or take variances in the testimony of
13 the witnesses who were five or ten minutes apart that he was
14 there until 11 o'clock or 11:15, it would be physically
15 impossible for him to be at Lutie Street at 11:22 p.m. Who
16 said that he was there? Well, Mr. Dean covered that in voir
17 dire. And he asked you if you were being asked, where were
18 you at 11:22 at night, who would be the witnesses who could
19 come in and tell you where you were? It would be your
20 family. And that's the situation here. You've heard from
21 Mrs. Florence Smith, the mother, you've heard from Mr. Oscar
22 Smith, the father, you've heard from Laura Smith, the
23 daughter, and you've heard from Kathy Alexander. Ladies and
24 Gentlemen of the Jury, if you believe only one of them, then
25 you can't find him guilty, because if you believe their

1 testimony of just one, that he was there after 11 o'clock,
2 it is physically impossible for him to be on Lutie Street at
3 11:22.

4 I told you I was going to be brief. I hope I
5 have been. I want to thank all of you for your willingness
6 to participate and for the attention that you've paid
7 everybody concerned. I'm going to have to sit down now in a
8 minute. Mr. Thurman is going to stand up, and he's going to
9 tell you why you can disregard everything that I've told
10 you, but I want you to please consider these things. I want
11 you to remember that you are the judges of the proof in this
12 case and that you are to receive any expert testimony just
13 as Judge Wyatt will instruct you, with caution. Hold the
14 prosecution to proof beyond a reasonable doubt to a moral
15 certainty. And remember if, during your deliberations or
16 while you're deliberating, you conclude that the State has
17 not proven to you beyond a reasonable doubt and to a
18 moral certainty that Oscar Franklin Smith was not in
19 Pleasantview after 11 o'clock, you must come back with a
20 verdict of not guilty.

21 Thank you.

22 GENERAL THURMAN: If it please the Court,
23 Ladies and Gentlemen of the Jury, I would also like to take
24 this opportunity to thank you again for your patience, your
25 diligence, you've had to move in and out, up and down, a

1 lot. You each have been very diligent and very attentive,
2 as well you should in this case, but we do appreciate it. I
3 think you now know a little more of what I was talking about
4 in my opening statement about how this is an extremely high
5 calling for you, as an individual person, to sit on a case
6 of this nature and hear this proof. I wish I hadn't been at
7 the scene. I wish I didn't have to try this case. I wish
8 you didn't have to sit through this, but you twelve
9 citizens of this community made that sacrifice to come
10 forward and do your duty and listen to this evidence, as
11 horrible as it may be, and return a verdict. That is all
12 that we're asking you to do in this case.

13 What are the issues? That's normally what I
14 stand up here and talk about. Mr. Newman says that side of
15 the table expresses sympathy for families. And of course,
16 we all do, with the exception of maybe one person in this
17 courtroom. That's not the issue. What is the issue? Is
18 there any issue that this was premeditated, first degree
19 murder? No. They don't challenge that fact. Is there any
20 question that these people were killed with premeditation,
21 design to kill was done prior, three weapons, multiple
22 wounds, go back, cut their throats. There's no issue. What
23 is the issue? Well, there's only one, really. Do you
24 believe Oscar Frank Smith? That's the only issue in this
25 case. Do you believe him versus the State's witnesses,

1 which he says practically everyone who took that stand, and
2 he doesn't know why, lied?

3 First, he talks about motive, Mr. Newman
4 does. Oh, the State said they were going to prove motive,
5 but in the mind of Mr. Smith there wasn't any motive, he
6 wasn't upset because his wife had left him or he'd run her
7 off, she was seeing another man. He wasn't upset about
8 those twins, about getting custody. He wasn't upset about
9 these warrants, where he could go to prison. He wasn't
10 interested in getting \$88,000 and getting rid of all of his
11 problems, getting custody of his twins, getting rid of his
12 wife, getting his vengeance and getting rich at the same
13 time. That wasn't in his mind. He talks about those
14 flowers, the last witness. They usually save their best for
15 last. And I said, God, what is this woman? I've never seen
16 her before. She says she sold her some flowers. And is
17 that the action of a woman that wants her husband to go to
18 the penitentiary? Is that the action of a woman that's
19 getting ready to die? Look at the whole scenario. The
20 woman's been abused before, threatened. She's had to go out
21 with nothing. She has four children to take care of on a
22 salary at the Waffle House, what support Mr. Smith deems
23 appropriate to give her. Her car won't run. What situation
24 is that woman in? Just like hundreds and hundreds and
25 hundreds of other women who get in the same situation with

1 domestic violence. She tries to compromise. She hopes he
2 won't carry out his threats. She hopes she can mediate the
3 situation a little bit. She hopes that he will continue to
4 give her money. She needs it desperately and not harm her
5 or her children. She made a crucial mistake. And look at
6 the facts of those days, that day, about this man who's
7 already set up his little trip out of town. He's already
8 planned. He takes her around and feeds her her last meal
9 and gives her flowers, knowing all well what he's getting
10 ready to do. What kind of mind are we dealing with?

11 He said we didn't prove weapons. Well, we
12 had a person testify under oath July the 3rd he shot a .22
13 western revolver owned by this man, and he shot it, too.
14 And it was in this holster. And what do we find in his
15 trailer? An empty holster with .22 caliber ammunition.
16 Sure, it wasn't the same shells that he used. He's not that
17 stupid, but it shows that there was a .22 weapon in there
18 consistent with what Mr. Watts says. He's not going to
19 bring it back with him, the person that plans a crime like
20 this. You can bet that weapon is at the bottom of the river
21 or somewhere along with the knife and the clothes.

22 And the awl, well, I didn't see him use it.
23 He didn't carry these around with him at work. What was
24 that testimony about? That the killer used a
25 leatherworking tool. Mr. Smith just happens to be in the

1 leatherwork. And that's one of the most common tools you
2 can have. Yes, Ms. Davis, who's been in the field for 18
3 years, that I would expect anyone to have an awl that's got
4 that. It just happens to be the hobby of Mr. Smith. It
5 seems to be the same one as their killer. The knife, that
6 old rusty pocket knife. I never wore one on my side. Mr.
7 Roberts is wrong, Mr. Abston is wrong, Mr. Watts is wrong.
8 And then what does his own witnesses tell you? Mr.
9 Sergeant, his buddy, he's been on trips with. He said, yes,
10 he had a buck knife at his house. What does the lady from
11 the Goldrush say? Well, yes, I remember he had something on
12 his belt. He said, I don't own a beeper. What do you think
13 that was? It's his trusty buck knife and his pouch, the one
14 that's at the bottom of the river with the pistol.

15 He talks about his behavior. Oh, it's not
16 unusual. You heard his testimony. Well, I might use the
17 past tense. I'm not very articulate. You ask him a
18 question, and he's still talking five minutes later. And he
19 hasn't answered it. He's pretty articulate. He made a
20 mistake. He was under pressure. He was playing out his
21 game, and he didn't pick up on it.

22 And then probably the most incredible about
23 his testimony -- talk about his behavior, let's talk about
24 it. You're sitting there with two Detectives from another
25 town that are questioning you about your whereabouts. And

1 you don't bother to say, well, what's this about? What do
2 you want to know? What am I a suspect for? He doesn't tell
3 them that. And they talk to him and talk to him. And then
4 they tell him that his wife and two stepchildren have been
5 murdered. What would your reaction be? A little watery
6 eyes? Do you think you might say how, when? Have you
7 caught the person? Take me to them. Something. He didn't
8 have an answer. All he wanted to do was to go home and go
9 to bed, since he was worn out. He did a lot of work over at
10 324 Lutie and then having to drive all the way to Kentucky.
11 Is that behavior of someone who loved Judith Lynn Smith,
12 Chad and Jason Burnett?

13 Look at his behavior. Look at it on the
14 witness stand. They talk about, well, Clinton Curtis, he's
15 up there, talking about he wants to get back and go to a
16 marriage counsellor and he wants to do this and that. Do
17 you go into an out of state -- some person you've known or
18 met in your life and start talking about that? Only if you
19 have goal in mind. That's established, your alibi. But
20 then he slipped, they triggered his mind, they just happened
21 to be talking about a mass murderer at McDonald's.
22 Everybody's talking about how terrible that is. Not Mr.
23 Smith. He says, well, anybody at this table could do that.
24 With his warped sense of thinking, they probably could. Is
25 that a normal comment you make around strangers you've only

met? Saying any of us here could do that?

1
2 Talk about Mr. Abston, oh, look at him. Have
3 you ever seen a more credible person? Over there after
4 church eating with his in-laws. And sure, he told the
5 police it was about 10:30, around 11:00. I mean it's not
6 that important to him. And he said, well, it could have
7 been 11:15. We sit around after we eat, and we talk. I
8 know it was 10:30 when I looked at the clock. And we sat
9 around and we talked, and we talked. And I don't know. It
10 was 11:00, 11:15. It was after 10:30, when Mr. Smith says
11 he was in good old Robertson County, unusual car to drive,
12 he missed the trailer hitch driving down there at 11 o'clock
13 at night and look over and sees an old trooper car, crown
14 Victoria, LTD, but he didn't see the trailer hitch, the most
15 important part of a car. So now, I guess our killer just
16 happens to drive the same type of car Mr. Smith did, in
17 other words, there's two.

18 Talk about this glove, about it doesn't have
19 any blood on it. Nobody says he had that on the entire time
20 of the murder. There's no way for us to know. But then Mr.
21 Newman says, that's the way State explains only one palm
22 print, only one bloody palm print. How many do we have to
23 have? How many bloody palm prints do we have to have of
24 Oscar Frank Smith laying beside the body? It only takes
25 one, Ladies and Gentlemen.

1 The tennis shoes, oh, the State brought these
2 tennis shoes in here that are burned, and we don't know why.
3 And they were going to mislead you and say there's blood on
4 there. Well, did you hear the expert testify. We put on
5 things as part of the investigations that are done. That's
6 our job to show that they do all this stuff. Some of it
7 doesn't pan out. And we put it on. And the TBI expert said
8 no, there was no blood. And he said, well, I don't know why
9 they're doing that, you know. He -- he wasn't wearing those
10 shoes, if you believe him, but we find it a little bit
11 unusual that you find a tennis shoe burned out back and
12 another one in the trailer. That's somewhat strange. I
13 don't know if they were worn or not. There's no way to
14 tell, because if you burn something up, you can't find blood
15 on it. But that was the investigation done by the police.
16 And we reported what we did.

17 Then he talks about his clothes. They didn't
18 find any blood on his clothes. And why was that? Because
19 we didn't find his clothes. They're going on the assumption
20 that Mr. Smith marches in there and says this is -- these
21 are the clothes I wore. Well, we didn't have a witness that
22 could specifically say what clothes he wore except their own
23 witness. He said -- at first, she tried to say, well, yeah,
24 that could be the shirt but then I said, well, you told me
25 it was red plaid, like a cowboy shirt, not a white dress

1 shirt. She said, yeah, it -- it did have red in it. That
2 shirt doesn't have red in it. It's not the shirt he was
3 wearing. Do you think he's going to give us the shirt he
4 was wearing? Of course not. Because it's right there with
5 the gun, right there with the buck knife. Why didn't he get
6 all this blood all over him, they say? Well, what did you
7 hear about that? You heard the killer washed his hands, to
8 start with. Sure, there was a lot of blood here. When you
9 bleed out, when you're gutted, and you're shot and stabbed
10 in the chest, there's a lot of blood, but it's not right
11 there when you're doing it. It bleeds for a long period of
12 time. He washed his hands. And then what was the
13 interesting piece of evidence from Mr. Merritt? I went by
14 his work stand on Friday, after everything was closed, after
15 he's made his plans to go out of town. Here's this large
16 roll of plastic. It wasn't supposed to be there at his work
17 station, the kind you just cut off, the thing we cover to
18 keep from getting dirt and things on the machine. Now, what
19 do you think he did with that? He put it in his car and sat
20 on it. No, we didn't find blood in his car, because, it was
21 well planned. He set all that, wraps up his weapons and his
22 clothes, and disposes of it, all part of the plan.

23 Then I guess it comes down to it, the alibi.
24 You heard -- he discussed this the year before the crime
25 with Mr. Williams about that that was the way to do it, kill

1 your wife, have an alibi. Have an alibi. He had trouble
2 deciding what his alibi was earlier. And now, when the
3 police get there, he said, yeah, he wants to get there,
4 yeah, I got home about 10:00, and I left about 10:30, on his
5 way to Kentucky. He didn't know at that time maybe just
6 exactly what time the crime was because it hadn't been
7 found. He didn't know they could put the exact time on the
8 crime, so he was on his way to Kentucky. That was his
9 defense. And his mother said, oh, yeah, it was 10:00. He
10 came in and changed his clothes, and he was gone. You heard
11 her testimony. Now, it's stretched all the way to 11:25.
12 Everybody says 11:25, 11:25, because that's the time of the
13 murder, 11:20. So let's stretch it, because he knew it's
14 hard to stretch from 10:30 'till 7:00 in the morning to
15 Morehead, Kentucky, when it takes four and a half hours to
16 drive up there.

17 And he knew he was in trouble with those
18 receipts he'd shown the police. That's really interesting
19 about how you get a receipt in the middle of the toll road
20 before midnight and the other four are after midnight and
21 how he was going to say, well, I got there before midnight,
22 150 miles away. Who knows where he was Saturday night? I
23 have my theory, that he drove up there and got some toll
24 receipts and he was going to use that one. Then he figured
25 out he was in trouble because of Eastern Standard Time.

1 Then he figured out he was in trouble because he kept the
2 middle toll. He wants you to think it was a mistake that at
3 one end they don't make mistakes and the middle they did. I
4 don't know. Those receipts can show nothing other than
5 somebody travelled up that road, and he's saying he's got
6 one before midnight on October the 1st, which, of course, is
7 impossible with his testimony and with this crime. But his
8 alibi fell apart.

9 And you heard the testimony. And you heard
10 it. They weren't certain about anything the day before, the
11 day after, you know, some had the dog, some didn't. Some of
12 them went to Eat at Poor Folks. Some of them went to eat at
13 Bonanza's. Some of them went to wrestling. They were all
14 over the place, but, boy, when it came down to that night,
15 it was bam, bam, bam, bam, bam. Even his Dad who has some
16 problems, he says, only missed it a month. He said he
17 hadn't talked to anybody about this. You could tell from
18 his testimony. You ask him one question. Well, he got
19 home, went in the trailer, got his kids, went down, came
20 back, we talked, he left. It was 11:25. I looked at my
21 watch. You ask him anything else, he doesn't have a clue
22 which month it was, what planet he was on, but he didn't
23 talk to anybody about it.

24 Then his poor daughter, Laura, comes in here,
25 lives with the parents. No other means of support but AFDC.

1 And who knows what she thinks. Her father is facing the
2 death penalty. Maybe you stretch it to 11:15. Maybe she
3 believes that. Who knows?

4 There are two types of alibis committed by
5 defendants often. And that's really the easiest defense to
6 come up with, to get somebody to say you weren't there.
7 Oscar Frank Smith was well aware of that, as you heard him
8 tell Mr. Williams. And you have one where people just don't
9 tell the truth. They have a bias in the case. And they
10 don't tell the truth. And there's what's called the
11 transposed alibi. And that's an alibi where people think
12 what they're testifying to is truthful, but they stretch it,
13 well, yeah, I really don't remember it, but if you say it
14 was 11:15, it was probably 11:15. I don't remember. You
15 know, I remember it was Friday night. If you say it was
16 that Friday night, it was that Friday night. It's probably
17 a little of both in this. The thing you have to see is
18 within 24 hours of the crime Oscar Frank Smith was
19 questioned. He's questioned that afternoon about what time
20 he left, the very night before. And he says 10:30. His
21 mother is questioned. And she says, clearly, he got there.
22 The first time she says 10:15, and then he changes clothes
23 and leaves. And then she comes up and makes a point to talk
24 to the Detectives and says, no, it was at least ten before
25 10:00 or no later than ten after, and he got dressed. She

1 wanted him to be in Kentucky. That was the focus at that
2 point.

3 But you know -- and then you heard his
4 sister, Mrs. Alexander, really, their car drove up about
5 10:15. But what was important about her testimony? Well,
6 Mr. Smith is telling it took so long because of the fog.
7 Well, you saw the records. Sure, there was some fog around
8 the places. You saw the visibility in Nashville. Until
9 approximately 3:00 in the morning there was no fog, 8 to 10
10 miles. You saw the visibility in Lexington, Kentucky.
11 There was no fog until 9:00 in the morning. And then you
12 heard Ms. Alexander. You know, everybody else was saying,
13 oh, it was so foggy, I was scared, I couldn't see anything
14 out there. It was so foggy. And Mr. Smith and his
15 daughter and Florence, but then you hear Ms. Alexander, and
16 she says, oh, there was a little fog over the farm. And
17 then what's important about her testimony, she says, oh,
18 we're way back in this trailer, the furthest one back. And
19 these headlights shine right in our trailer. We're way back
20 from the road. And if it's that heavy fog, do you think
21 that light would shine that far? There wasn't any heavy
22 fog.

23 He had to cover a period of time, Ladies and
24 Gentlemen. He had to give himself an excuse of why it took
25 him that long. Because he was somewhere he wasn't supposed

1 to be. People get confused. People make mistakes and
2 people lie. Palm prints don't. There's no mistake in any
3 palm prints. Palm prints don't lie.

4 Let's talk about the palm prints. Mr. Newman
5 says, that's a strange thing. And he wants to talk about
6 Sergeant Hunter, didn't look at it for a while, but that's
7 explained to you. You saw the photographs taken that night.
8 That palm print was there. You've got the sheet right
9 there. And what relevance it has that it was put in the
10 Property Room until Sergeant Hunter got it out to go back
11 over the evidence. This isn't the only homicide in
12 Nashville. And he's a busy man. And he found it, brought
13 it, using an alternate light source. That's not something
14 from outer space. He said, I've used it hundreds of times.
15 I haven't testified about it because nobody's gone to trial
16 when I lifted a fingerprint or a palm print like that. No
17 different than using powder, ninhydrin. It's a technique.
18 It doesn't change the print. It doesn't change the print.
19 And you heard his testimony, Certified Fingerprint Expert.
20 He's testified as an expert hundreds of times in Court.
21 He's had training. Training as a teacher. And he told you
22 that that palm print is human blood. And it couldn't be
23 tested any further to show whose blood, because we have to
24 preserve it for you, as a Jury, to see with your naked eye,
25 with two fingers missing, and for any expert that wanted to

1 look at that palm print to be able to do that. We can't
2 destroy significant evidence like that for another expert
3 that would have a right to come in and look at that and
4 dispute Sergeant Hunter. But that's not been done.
5 Qualified as a Certified Fingerprint Expert. He's testified
6 before you that without question that is the fingerprint and
7 palm print of Oscar Frank Smith. And you've seen it with
8 your naked eye, unrebutted. And listen to the charge of the
9 law that Judge Wyatt tells you. You can convict on that
10 alone, if it's not explained to you how it got there. If
11 you feel that it was placed there at the time of the crime,
12 you can convict on that alone. You don't have to in this
13 case, but the fingerprint testimony is that strong.

14 Let's talk about the tape. He says the State
15 comes up here and gives you a transcript. Well, who gave
16 you the transcript? It was Cheryl Dalton, the person who
17 heard this tape, heard it live on the phone and who
18 listened to that tape over and over and over again, and
19 decided that was what you heard. That was given to you as
20 an aid to you, not to tell you what the tape was saying, not
21 to say you have to find this, but to aid you in listening to
22 the tape. He talks about an enhanced tape. Well, you heard
23 what Ms. Kohus testified about. All she does is filter out
24 background noise. She doesn't change anything. "Frank, no,
25 God help us." If you didn't hear that, then you disregard

1 the transcript, but I submit, Ladies and Gentlemen, each and
2 everyone of you on that Jury heard "Frank." The only person
3 they knew named "Frank".

4 Now, you are the sole judges of the
5 credibility in this case. That's your main function as a
6 juror. And it's very important in this case, as in all
7 cases. You sit in that chair and you judge those witnesses
8 and what weight to give their testimony. Judge Wyatt is
9 going to give you instructions and listen carefully. And
10 one of the things he's going to tell you to look for is
11 motive not to tell the truth. Who in this courtroom faces
12 the death penalty? Only one person, Oscar Frank Smith. Who
13 has the strongest motive not to tell the truth? Who has a
14 bias? The people closest to him, his family. Look at that.
15 Look at what was reasonable about what these people
16 testified to. Was his testimony reasonable? Is it
17 reasonable that all these citizens are going to come in here
18 and lie? What do they have to gain by committing a felony
19 on that stand? Do they have any bias? And look at prior
20 inconsistent statements. Who made prior inconsistent
21 statements? Oscar Frank Smith, his mother.

22 If you do that, what you'll find in this
23 evidence is that there's only one man who had a motive to
24 kill those three people, divorce, custody, warrants,
25 insurance money. There's only one man who continually

1 threatened these people. There was only one man who
2 assaulted them. There was only man who tried to hire two
3 people to kill them. There was only one man who planned to
4 be out of town and got his twins on Monday, even though he
5 was going to Morehead, Kentucky. There was only one man's
6 car that was seen at the scene of the crime during the
7 crime, only one man's palm print beside Judy Smith's body.
8 There's only one man's name on that tape. Oscar Frank
9 Smith.

10 You look at that evidence, and all you can
11 find that this was a cold-blooded plot hatched over a long
12 period of time. His anger simmered. It exploded in June.
13 It exploded in August until it finally exploded with cool
14 purpose. He said he doesn't like to show his emotions, keep
15 them intact. He didn't like to show his hate, his anger.
16 He can coolly go in and kill three people. And he can leave
17 Springfield, Cooper-Nicholson Road, at 10:30 and drive in 26
18 minutes to Lutie Street, easy, kill and be in Kentucky at 7
19 o'clock with no problem. He can still have two hours to
20 dispose of the evidence and do whatever he had to do.

21 That's the proof you've heard, Ladies and
22 Gentlemen. And I submit to you that there's only one
23 verdict that you, as a member of this community, a civilized
24 society can return. There's only one verdict that's true
25 and just in this case. There's only one verdict to right a

1 terrible wrong, three terrible wrongs that have been done in
2 our community. There's only one verdict that can vindicate
3 the heroic of those two young boys who lost their lives
4 defending their mother. And that's guilty of premeditated,
5 first degree murder.

6 Thank you.

7 * * * * *

8
9
10 The following is a transcript of the opening
11 statements and closing arguments in the Sentencing Phase of
12 the trial, had and entered of record, to-wit:

13
14 THE COURT: So we're down to the next stage
15 of these proceedings. And this is the Sentencing Stage.
16 And Mr. Thurman, do you care to make an opening statement--

17 GENERAL THURMAN: Just briefly --

18 THE COURT: -- for the State?

19 GENERAL THURMAN: -- Your Honor.

20 Good morning, Ladies and Gentlemen. I hope
21 each of you were able to get some rest last night, as we
22 start into the second phase of this trial called the
23 Penalty Phase. That's the one we discussed with each of you
24 individually last week. This is the phase where you twelve
25 individuals of this community have to make a decision as to

1 whether Oscar Franklin Smith should receive the death
2 penalth for killing Judith Lynn Smith, whether he should
3 receive the death penalty for killing Chad Burnett, and
4 whether he should receive the death penalty for killing
5 Jason Burnett.

6 In this phase, you can consider all of the
7 evidence that you've heard the past three days in the
8 courtroom as to the guilt or -- as to the guilt phase. You
9 can consider everything you've heard both for an
10 aggravating circumstance or any mitigation on behalf of Mr.
11 Smith. Also, the State is allowed to bring in additional
12 proof to prove specific aggravating circumstances under the
13 law. The defense is also allowed to put on proof of
14 anything they can argue which is mitigation on behalf of Mr.
15 Smith.

16 At the conclusion of that proof, you will
17 hear arguments from both sides again, just like you did in
18 the other phase. And then the Judge will give you the
19 charge on the law in the State of Tennessee. I think we
20 explained that to each of you at length when we questioned
21 you last week, when we told you the reality of the
22 situation, that you could be in this situation today, facing
23 this very seriously important decision. The law is clear.
24 The State has to prove beyond a reasonable doubt to a moral
25 certainty one aggravating factor. These are factors that

1 are set out by the Legislature in this State to say if one
2 of these factors is present in a case involving murder,
3 first degree, then the death penalty can be imposed. If the
4 State fails to prove to each of you beyond a reasonable
5 doubt and to a moral certainty that one of these factors
6 exist, then you must return a life sentence. And each case
7 is individual as to each victim. You must consider each
8 case individually. If the State does prove to you one or
9 more of these aggravating factors exist and you find there's
10 no mitigation in this record on behalf of Oscar Franklin
11 Smith, then it's your duty and your obligation as a juror to
12 return a verdict of death.

13 If you find some mitigation in your mind as
14 to Mr. Smith, then you have to assess individually the
15 weight, the weight that you give the aggravating factor as
16 proven by the State and assess a weight for any mitigation
17 on behalf of Mr. Smith and weigh that in your mind. And if
18 you decide that the aggravating factors proven by the State
19 of Tennessee outweigh any mitigation on behalf of Mr. Smith,
20 then your verdict has to be death.

21 On the other hand, if you find that the
22 mitigation on behalf of Mr. Smith is equal to, in weight,
23 the weight of the aggravating factors or weighs more, then
24 your verdict must be life. And again, you decide each case,
25 individually.

1 The proof in this matter the State will --
2 let me get the charge just briefly. The State is alleging
3 in this particular case, Ladies and Gentlemen, that four of
4 those aggravating factors set out by the Legislature in this
5 State are present. First, this defendant committed mass
6 murder, which is defined as the killing of three or more
7 people in this state during a period of 48 months. I submit
8 there's no question about that aggravating factor, as you
9 returned those verdicts late last night.

10 Second, this factor applies to all three
11 victims, the second factor applies only to Chad and Jason
12 Burnett in this case. The murder was committed for the
13 purpose of avoiding, interfering with, or preventing a
14 lawful arrest or prosecution of the defendant or another.
15 That aggravating factor is there when you kill witnesses.
16 The State's theory is that's what Chad and Jason Burnett
17 were. They had to be killed for Mr. Smith to accomplish
18 this crime and attempt to get away with it. They were
19 killed for the purpose of him avoiding lawful arrest in this
20 particular case.

21 The third one also applies only to Chad and
22 Jason Burnett. And that's that this murder was committed
23 while the defendant, Mr. Smith, was engaged in committing or
24 was an accomplice in the commission of or was attempting to
25 commit or fleeing after commission of attempting to commit

1 first degree murder. Again, Chad and Jason Burnett were
2 killed during the commission of Mr. Smith killing his wife,
3 Judith Lynn Smith.

4 And the fourth factor, the murder was
5 especially heinous, atrocious and cruel, and it involved
6 torture or depravity of mind.

7 The State feels that at the close of all the
8 proof that we will have proven not one of these factors but
9 all four beyond a reasonable doubt, and that these factors
10 are entitled to a heavy weight in your analysis of the
11 proof.

12 The defense can put on proof of mitigation,
13 things that they can ask you to consider in sentencing Mr.
14 Smith to a life sentence. And it's your individual decision
15 whether you accept that as mitigation. Just because proof
16 is put on does not mean that's mitigation. You must decide
17 what's mitigation. And you must decide how much weight to
18 give that mitigation.

19 Ladies and Gentlemen, I submit to you that at
20 the close of the proof in this phase there will be no
21 question the State has proven these aggravating factors and
22 that their weight is much more than any mitigation on behalf
23 of Mr. Smith. And it will be your duty and your obligation
24 as a juror to apply the law that each of you said you could
25 last week and return that verdict of death by electrocution

1 for the death of Judith Lynn Smith and return that verdict
2 of death by electrocution for the death of Chad Burnett and
3 return that verdict of death by electrocution for Jason
4 Burnett.

5 Thank you.

6 THE COURT: Okay. Mr. Dean.

7 MR. DEAN: Your Honor, I'd ask that that
8 exhibit be removed and if we could bring out the board and
9 turn it around.

10 (Pause in the proceedings
11 while the board is moved
12 by a court officer.)
13

14 MR. DEAN: Yes, that's fine.

15 Ladies and Gentlemen of the Jury, for most of
16 yesterday I was quiet, didn't participate in much and didn't
17 have a lot to say. We are now into another part of the
18 trial. And I will have a lot to say. I will be doing a lot
19 in this part of the trial.

20 First of all, because I was silent during
21 yesterday's closing arguments, I didn't have an opportunity
22 to thank you all for your participation in this process.
23 Here it is July, when many people are on vacations and doing
24 things with their families, and I know this is a difficult
25

1 thing for you to go through, in that you've had to stop here
2 now to address really the pains of other people, Judith
3 Smith, Chad and Jason Burnett, their families. And I guess
4 your own pain is as human beings, as you confront something
5 that you probably never envisioned you would ever have to
6 confront. And this is, indeed, an odd situation for an
7 attorney to be in, because it is not a time where I can talk
8 about my client's presumption of innocence and the State's
9 having to come in and prove a case. You deliberated last
10 night. You returned a verdict. I accept your verdict and I
11 commend you for your conscientious work as a juror.

12 This is a different stage of the trial. This
13 is a totally unique sort of proceeding. This is not, as we
14 talked about in voir dire, a matter of numbers, a matter of
15 just totally figures up, and adding them up and see what the
16 higher number. This is where the human element, the values,
17 the conscience of the jurors enter into this portion of the
18 trial.

19 As you recall, the State is required to prove
20 beyond a reasonable doubt the presence of at least one
21 aggravating circumstance. Mr. Thurman has mentioned that he
22 intends to prove four here. If he proves the presence of at
23 least one of those factors beyond a reasonable doubt to a
24 moral certainty, you can then consider any mitigation proof
25 that is put on by the defendant, Mr. Smith, through his

1 attorneys. And just so we're clear from the beginning about
2 what mitigation is or what our proof will show to you, is
3 mitigation is not an excuse. I am not going to stand up
4 here and talk to you and give you excuses for Mr. Smith. I
5 am not going to try to justify what has happened here.
6 You've already imposed three verdicts of murder in the first
7 degree. The only thing to be determine is whether Mr. Smith
8 receives life sentences and dies in the penitentiary or dies
9 in the electric chair. Excuse, you won't hear that from us.
10 And that is not what mitigation means, and the Court will
11 instruct you so. You will also not hear that mitigation
12 from our proof means forgiveness. I would submit that
13 forgiveness for what you have convicted Mr. Smith of is not
14 something that anybody in this courtroom and anybody on this
15 planet has the power to bestow. What the proof will
16 indicate is that mitigation is a reason, a reason in
17 choosing between those two severe punishments, life in the
18 penitentiary and death by electrocution, that life is the
19 appropriate choice.

20 And our proof will come from family and
21 friends, acquaintance and mental health people. And we will
22 be asking you to give value to that sort of testimony, to
23 give value for those reasons of choosing life over death.
24 And this is where it becomes more personal than the run of
25 the mill trials, this is where this is unusual, because you

1 have to give your value from your experiences and whatever
2 has made you the person you are, you would attach value, if
3 you find mitigation, to that mitigation. And then you
4 determine, based on your values whether that mitigation
5 outweighs the aggravating factors that have been proven to
6 you beyond a reasonable doubt. And if you believe, based on
7 your values, the person you are, the things you brought into
8 this courtroom, that the reasons for life imprisonment
9 outweigh the reasons for death by electrocution, then it's
10 your obligation to return a verdict for life imprisonment on
11 all three of the victims. If you do that, you'll not be
12 saying, Mr. Smith, we forgive you, Mr. Smith, we excuse you,
13 gee, Mr. Smith, you've got a clever lawyer or clever lawyers
14 and we -- your actions were justified. If you do that,
15 you'll be saying your values, the person you are, believes
16 the punishment of life imprisonment which can be given on
17 each one of the three counts that you convicted him of
18 outweighs death by electrocution.

19 * * * * *

1 The following is a transcript of the closing
2 argument of both sides in the Sentencing Phase of the trial,
3 to-wit:

4 THE COURT: Ms. -- General Blackburn.

5 GENERAL BLACKBURN: Ladies and Gentlemen of
6 the Jury, I want to thank you again for your attention.
7 It's been a difficult day for you. And now is the the time
8 that the -- it's the time for you to begin your
9 deliberations is coming. The thing that we talked about
10 last week, in terms of what you are to do as individuals of
11 a Jury, you must determine whether or not Oscar Franklin
12 Smith should receive death by electrocution in this case or
13 a life sentence.

14 In this particular phase, the law is very
15 clear and very spelled out as to what you must do. And we
16 talked about that last week, but the important thing that we
17 must consider and you must consider, again, is to come to a
18 fair and just verdict in this case, based on all the facts
19 and all the circumstances. We are here about 324 Lutie
20 Street. We're here about Judith Lynn Smith, Chad Burnett
21 and Jason Burnett. And we are here about the defendant.
22 And it's imprtant that we get back to that issue and
23 determine what punishment he deserves for those three
24 murders.
25

1 The State has alleged the four aggravating
2 circumstances that you are to consider. And remember that
3 it's the burden of the State of Tennessee to have prove to
4 you beyond a reasonable doubt the existence of at least one
5 of these aggravating circumstances before you can consider
6 death by electrocution. We must have put on proof at some
7 point during the trial on in the Sentencing Phase to prove
8 one of these beyond a reasonable doubt. Then you must
9 consider and weigh whether or not there is any mitigating
10 factors that you must consider and then you weigh them. How
11 you weigh them is up to you, as a Jury, as individuals, as
12 citizens of Davidson County, what weight you give these
13 factors. And if you determine that there is no mitigation
14 and that we have proven beyond a reasonable doubt any one of
15 these aggravating factors, it would be your duty, as a
16 juror, to return a verdict of death in this case. It is up
17 to you determine whether or not there's any mitigation here.
18 It is up to you determine whether or not we have proven
19 these.

20 Let us look at the factors we have alleged.
21 One would be that the defendant committed mass murder, which
22 is defined by the statute in Tennessee as murder of three or
23 more persons within -- within the State of Tennessee, within
24 a period of 48 months and perpetrated in a similar fashion,
25 in a common scheme or plan. You heard proof this morning,

1 and based on your verdict last night that Oscar Franklin
2 Smith committed three murders within the State of Tennessee,
3 within 48 hours, within -- perpetrated in a similar fashion
4 or common scheme or plan. You heard that proof based on the
5 verdict that you all reached last night.

6 The second aggravating factor has to do with
7 the murder was committed for the purpose of avoiding,
8 interfering with, or preventing a lawful arrest or
9 prosecution of a defendant of another -- or another. This
10 factor relates only to Chad and Jason Burnett. One relates
11 to all three of them.

12 Factor No. 3 is that the murder was
13 committed while the defendant was engaged in committing or
14 was an accomplice in the commission or was attempting to
15 commit or was fleeing after committing or attempting to
16 commit a first degree murder. This, again, No. 3 applies
17 only to Chad and Jason Burnett.

18 No. 4, that the murder was especially
19 heinous, atrocious or cruel, and that it involved torture or
20 depravity of mind. And again, this is a factor, No. 4,
21 which would apply to all three victims. The Charge will
22 define for you the terms "heinous, atrocious, and cruel," in
23 that it involved torture or depravity of mind. And I
24 believe that His Honor will charge you that heinous involves
25 grossly wicked or reprehensible acts, odious, vile. That's

1 the term for heinous. Atrocious is evil cruel, monstrous,
2 and especially bad. Cruel is disposed to inflict pain,
3 suffering, the causing of suffering. Torture is the
4 infliction of severe physical or mental pain upon the victim
5 while he or she remains alive or conscious. Depravity of
6 mind is moral corruption, wicked, or perverse acts. And
7 when you read these definitions with regard to Factor No. 4,
8 you can have no other conclusion but this is the type of
9 case for what that factor was meant for.

10 At this point, I would like for you to --
11 when you read your verdict, you must reach a verdict on each
12 victim separately, Judy Smith, Chad Burnett, and Jason
13 Burden. With regard to Factor 1, Judy Smith, has the State
14 proven to you beyond a reasonable doubt Factor No. 1 of mass
15 murder? Well, you heard the proof in the record with regard
16 to that, whether or not the State has proven that factor.
17 As with regard to No. 4, what is the proof that you've heard
18 whether or not this murder was especially heinous, atrocious
19 cruel in that it involved torture or depravity of mind? You
20 must consider all the facts that you have heard all week.
21 And it certainly is not my intention to belabor the cruelty
22 of these acts. However, keeping in mind the State of
23 Tennessee must prove to you beyond a reasonable doubt that
24 these factors exist.
25

1 Judy Smith was shot in the neck, and you
2 heard Dr. Harlan testify that she was conscious for probably
3 -- or at least alive for probably up to six months. As she
4 lay dying, she'd already been shot in the arm, she knew what
5 was coming. As she lay dying, she could hear, she couldn't
6 move because she was paralyzed, but she could, no doubt,
7 hear and blink her eyes and know that her children were
8 being killed. That's what you call cruel, heinous,
9 atrocious torture, depravity of mind, for Judy Smith to have
10 to lay there, totally unable to move, knowing that her two
11 children are being killed by Oscar Franklin Smith. The
12 State would submit to you that we have proven that factor
13 beyond a reasonable doubt.

14 With regard to Chad and Jason, as to counts
15 or Factors 2 and 3, that the murder was committed for the
16 prupose of avoiding, interfering with or preventing a lawful
17 arrest, what is more obvious than the fact that Oscar
18 Franklin Smith went to that home. He basically wanted to
19 kill Judy, but he knew that when he went to 324 Lutie Street
20 that he had to kill Chad and Jason also. And why? Because
21 he knew they were going to interfere with him, that they
22 were going to protect their mother, that they also would be
23 -- he had to kill her, they would be alive to say he did it,
24 because remember he was trying to -- to plan the perfect
25 murder. He sets up this alibi. He -- all this, so, why on

1 earth would he leave Chad and Jason alive? He couldn't do
2 that. He couldn't afford to do that. The murder was
3 committed for the purpose of avoiding, interfering with or
4 preventing a lawful arrest. And there is one other thing
5 that you must keep remembering is that telephone call.
6 Oscar Franklin Smith knew that Chad -- that Jason was on
7 that telephone to the police. And he had to kill them. He
8 had to prevent his arrest. He had to prevent that
9 prosecution.

10 The State would submit we have proven to you
11 beyond a reasonable doubt No. 2 with regard to Chad and
12 Jason.

13 As to No. 3, the murder was committed while
14 he was engaged in committing or an accomplice or attempting
15 to commit another first degree murder, and that, again,
16 applies because he killed those two during the course of
17 killing Judith Smith. And you have heard the proof on that.

18 Factor No 4 as to Chad and Jason, again, Chad
19 was an individual who, obviously, jumped up from his bed to
20 come to the rescue of his mother, who was writing a letter
21 to his girlfriend, Christy, and probably hears the defendant
22 come in or however he got into that house, maybe hears the
23 first shot. Maybe he just hears him. He runs into that
24 bedroom. Whether or not he gets shot in that -- in the
25 front bedroom, it's somewhat unclear, but we do know that

1 someone other than Judy Smith is injured running in the
2 direction of the kitchen. Chad is being chased by the
3 defendant. And there is an incredible, horrible struggle in
4 that kitchen. He is stabbed. He is shot. And you heard
5 what Dr. Harlan said as the length of his life, 12 to 15
6 minutes. He is having a hard time breathing. And then he
7 gets shot in the head which ended his life. Chad Burnett
8 knew when he was dying that, one, his mother was either dead
9 or dying. He was being mutilated by Oscar Franklin Smith.
10 And he lay there, bleeding and dying until he got shot with
11 a contact wound to the head. That is especially heinous,
12 atrocious and cruel, that it involved torture or depravity
13 of mind.

14 And then we get to Jason. Jason, and you
15 heard Dr. Harlan talk about Jason's death. He fought off
16 Oscar Franklin Smith with his hands. That didn't work. He
17 was stabbed, and he was bleeding. He bled to death. And he
18 bled to death, knowing that his mother was dead. He bled to
19 death knowing that his brother was dying or dead. He met
20 his death, holding onto his stomach which this man had
21 sliced, and it took him 15 to 20 minutes to bleed to death,
22 laying there, 13 years old, 127 pounds. And you heard his
23 voice, and you heard the desperation. But he went to his
24 death, he couldn't even get to his mother who was laying
25 just on the bed on the other side of him. Heinous,

1 atrocious, cruel. Involved torture or depravity of mind.
2 Jason Burnett could be no more -- there is no question and
3 no doubt that the State has proven to you beyond a
4 reasonable doubt that his murder falls into that category,
5 as do all three of them, because they all three knew what
6 was coming. They were tortured and they had to die knowing
7 what had happened to them by a man who had chased them out
8 of the house. They had nothing but the clothes on their
9 back.

10 Now, Mr. Dean will get up here and talk about
11 the mitigating factors and the things that you are to
12 consider that would lead you to give Mr. Smith the
13 punishment of life in the penitentiary.

14 The mitigation of working, supporting his
15 family, the mitigation of an individual who -- and you heard
16 testimony with regard to whether or not he has suffered from
17 some mental disease or defect, mental distress. It's up to
18 you to determine whether or not that existed, whether or not
19 that's a mitigation in this factor. But you also heard
20 proof that he doesn't think so. He doesn't think he was
21 mentally ill or had any sort of mental disease at that time.
22 He doesn't think so. This is a man who thinks the rules are
23 for him to make, the world's rules don't apply to him. And
24 you have to weigh that. You have to weigh everything you've
25 heard.

1 And I would submit to you that after you have
2 heard the arguments in this case and after you have weighed
3 everything and look at the evidence, that there is no
4 mitigation that can outweigh the torture, the atrocity that
5 happened out on 324 Lutie Street. What mitigation could
6 anybody think of that would outweigh what Jason Burnett went
7 through when he did this?

8 Thank you.

9 THE COURT: Mr. Dean.

10 MR. DEAN: Ladies and Gentlemen of the Jury,
11 Oscar Franklin is going to die in the penitentiary. There's
12 no question about that. The only issue that's left for you
13 to decide is when he's going to die. Is he going to die a
14 natural death in the penitentiary or he going to die after
15 being placed in the electric chair and electrocuted? And
16 the decision really boils down to is who's going to decide
17 when he dies. Does he die when God decides when he dies or
18 does he die when you decide? I can't -- I'm not going to
19 concede the aggravating factors in this case. I can't
20 concede anything, but I also acknowledge that I am not able
21 to persuade you to disregard the photographs you've seen and
22 disregard the tape you've heard and disregard Dr. Harlan's
23 testimony and put all of that enormous sadness, that
24 enormous tragedy out of your minds and consider this case
25 solely upon the mitigation proof. I can't do that. And I

won't even try. And I'll leave that to you.

1
2 But what I think this case is about at this
3 stage -- like I said earlier, I was silent yesterday, for
4 most of yesterday, but I've got some things to say today. I
5 think this stage of the case is about not what happened at
6 Lutie Street. You've decided that yesterday. You decided
7 that he was guilty of three counts of First Degree Murder.
8 That's three life sentences that's facing the death
9 penalty. You decided that yesterday. What this is about is
10 values. And it's the values that make you different than
11 Oscar Franklin Smith.

12 One of the things that I can't do in this
13 proceeding or that Mr. Newman couldn't do yesterday is we
14 can never talk last. The talking has to end at some point
15 and the lawyers have to sit down. But what I don't want to
16 not say to you is this. This process, in terms of the
17 values that I don't want you to use in this case is to
18 accept the values of this man. I can't -- I won't say to
19 you that the punishment of this man by electrocuting him in
20 the electric chair would be morally comparable in any sense
21 to what happened to Jason and Chad or to what happened to
22 Judy Smith. I -- I won't argue that, but I'm asking you to
23 have a higher value, and I know some of you have that or
24 most have it or all of you have that. Killing this man is
25 not going to undo the wrong that you have convicted him of.

1 Taking his life is not going to take away the pain that
2 Jason Burnett experienced. It's not going to return Chad
3 Burnett to life. And it's not going to return Judy Smith to
4 life.

5 I think you probably have two concerns at
6 this point. The first one is you want Mr. Smith to be
7 appropriately punished for what he has done. And that you
8 also want our community to be protected from Mr. Smith.
9 There's no dispute I wouldn't think that by giving the man
10 three life sentences that this community is going to be
11 protected from him. He will not do what he has been
12 convicted of in this courtroom again. He will spend the
13 rest of his life in the penitentiary.

14 The next issue is what is the appropriate
15 punishment? And that's where we turn to the mitigation
16 factors. Again, let me remind you that mitigation is not an
17 excuse. We are not trying to excuse Mr. Smith's behavior.
18 We are not trying to do anything like that. Mitigation is
19 not forgiveness. We're not asking you to forgive this.
20 Mitigation is not making you like him. I'm not asking you
21 to like him. I'm not asking you -- our mental health
22 testimony, I'm not asking you to give some big liberal
23 theory that all his problems are from his childhood and this
24 excuses it, and we should just say, sorry, Mr. Smith, for
25 the inconvenience of having a trial here. We're not saying

1 that at all. What we're saying is that what we've
2 presented to you today is enough to make you make a decision
3 for life over death.

4 What type of mitigation have you heard?
5 You've heard mitigation from his family, from work, from
6 mental health people. And how do you weigh that? The State
7 has argued that you can never -- that mitigation can never
8 outweigh what happened to the three victims in this case.
9 That, alone, I would agree can. But what makes the
10 mitigation so powerful and why I would stand up here and
11 talk about it is because you decide with your values what
12 weight to give to that mitigation. Assume Mr. Smith, by
13 returning your sentences, your verdict, murder in the first
14 degree, three times, is in the penitentiary for the rest of
15 his life. Okay. I'm concerned about public safety. I'm
16 concerned about my family, my child. You're concerned about
17 yours. He's gone, for good. That concern is taken care of.
18 You know, what -- consider the values when you look at the
19 mitigation. What -- what values are there that would
20 outweigh the aggravated factors? Well, the value, I think,
21 of life and love.

22 I'm not telling you to like Mr. Smith's
23 family or to think that his mother deserves some special
24 treatment that other mothers don't -- don't receive, but his
25 mother is the person who will visit him in the penitentiary,

1 who will gain something from having contact with her son.
2 His daughter will continue, as she has since he's been
3 incarcerated, since November of last year, will continue to
4 visit him, continued to interact with her father, continue
5 to seek his advice. I'm not saying, you know, his advice is
6 something that has to -- that is so important that we just
7 can't afford to go on without it, but it's important to his
8 daughter. His son, his retarded son, will have those brief
9 moments when he can visit his father, when he can see his
10 father, and it will mean something to him, something that he
11 can never express. And when his retarded son holds up a
12 picture that he's drawn or holds up -- or hugs his father's
13 picture at home, there's at least the assurance that at some
14 point that boy is going to see his father. I think that
15 value -- that value of -- of life and love is an important
16 value and that brings something to this family mitigation.
17 And you may say, well, then how is he punished if he gets
18 this sentence? Well, a life sentence, you know, in this
19 context, it sounds like a piece of cake, like, you know,
20 you're bestowing a favor upon somebody. A life sentence is
21 punishment. You know, when I'm -- 20 years from now, I'm
22 going to be 54, and maybe I'll be in another line of work.
23 Mr. Smith will be in the penitentiary. When I'm -- 20 years
24 from now, when my little boy is getting married, I'm going
25 to go to the wedding. When his grandson or granddaughter

1 gets married, he's going to be in the penitentiary. When
2 his -- when his mother dies, and she's going to die, he's
3 going to be in the penitentiary. When his father dies, he's
4 going to be in the penitentiary. When something goes wrong
5 in his daughter's life, he's going to be in the
6 penitentiary. When his motehr dies and his father dies and
7 something goes wrong in his daughter's life, and he's got a
8 retarded son that's 30 years old, and there's nobody else to
9 take care of him, and all he can do is sit around in his
10 cell and worry about that boy, what's going to happen to
11 him, he'll be sitting in the penitentiary. And he'll be
12 sitting in a little cell. And that's punishment.

13 You all believe that Mr. Smith is guilty of
14 these crimes beyond a reasonable doubt to a moral certainty.
15 And as I told you this morning, we accept your verdict, but
16 you -- think how, based on Dr. Blair's testimony that some
17 paranoid, delusional person sitting around in his cell for
18 these crimes, how that's going to affect him. The
19 punishment he's going to inflict on himself is going to be
20 enormous. He's not going to walk down the street. He's
21 sitting in the penitentiary. I submit that -- that is
22 punishment.

23 This stage of the trial is different, as I
24 said before. You all promised during voir dire -- you
25 promised when you took your oath as jurors that you would

1 weigh -- if you found aggravating factors to be present, you
2 would weigh the mitigation proof against those. If you
3 found them to be equal, you would return verdicts of life.
4 If you found mitigation to outweigh it, you would return
5 verdicts of life. And that's beyond a reasonable doubt. If
6 you were going to return a death sentence just because you
7 convicted somebody of first degree murder, you couldn't have
8 sat on this Jury.

9 Now, the Judge is going to instruct you
10 regarding -- concerning mitigating factors. The Judge is
11 going to instruct you that you can consider the fact that
12 Mr. Smith does not have a history of -- a significant
13 history of prior criminal activity. The only criminal
14 activity that you've heard about have been the two warrants
15 that -- from Robertson County. And then when Dr. Blair
16 testified today, we've heard about two other warrants that
17 were apparently -- did not result in convictions. They
18 were misdemeanors and one misdemeanor conviction for
19 assault. The Court will instruct you that you can consider
20 that he has no prior significant criminal history. The
21 Court will instruct you that you can consider that Oscar
22 Frank Smith's emotional condition, that he may have suffered
23 from some sort of extreme emotional or mental disturbance.

24 The State's response to this is obvious. The
25 State is going to say, well, you didn't hear that from us

1 but Oscar Frank Smith. Oscar Franklin Smith told you that
2 he was in Plainview or Pleasantview or in Kentucky at the
3 time of these -- these crimes.

4 He did not tell you that he had an insanity
5 defense. I'll be the first to acknowledge that. But when
6 Dr. Blair got involved in this case she found not something
7 that she just made up, she found going back through his
8 records that the paranoid aspect of him was found as early
9 as 1983. She found it again. She tested him. She found
10 that his father was paranoid schizophrenic and that that is
11 possibly hereditary. She found that this man showed in the
12 testing and in the observation she had and the seven
13 different times she talked to him for hours at a time that
14 he showed signs of being delusional. And I would submit to
15 you that just as lay persons, you heard the proof in this
16 case. And I think you know where Dr. Blair was coming from
17 when she said I talked to him about the proof in this case.
18 And he kept saying, blah, blah, blah. And at some point,
19 after seven visits or so, it appears to be delusional. And
20 I think Dr. Morgan's response to that was, well, he was
21 totally reality based. I mean how reality based is it when
22 someone's talking to you about your case and raising some
23 sort of mental health issue in your defense, but this person
24 -- the evidence that was against him, when you returned your
25 verdict in an about last night, says, well, you know, I

1 don't want to get into the insanity thing, I won't be able
2 to get a loan for a house. You know, is that reality. You
3 know, common sense tells you that's -- that's a wacky
4 answer.

5 And to cut through all the rigmarole of the
6 different mental health stuff, I mean you look at his family
7 background. I mean just to put it bluntly, the apple
8 doesn't fall far from the tree. The man comes from a
9 dysfunctional family. And that is why he is what he is
10 today. And I'm not -- again, I'm not saying excuse him, I'm
11 not saying justify his conduct. I'm not saying apologize to
12 him. I'm not saying like him. I'm saying punish him, but
13 punish him with life and not death.

14 Mr. Thurman in his very first remarks said,
15 in this trial, said this sounds like something that happens
16 in the Middle East or Africa or Asia. Well, this isn't
17 Africa or Asia or the Middle East. It's the United States.
18 And this is a civilized world. Be civilized, but don't be
19 like him. Give meaning to value of life. Give meaning to
20 his family you've seen. Give meaning to -- to his friends
21 who thought he was a good worker. And give meaning to his
22 problems.

23 Let me just say a few things about a couple
24 of the witnesses who testified for us. Why did I put on
25 Stacy Tate, Joan Marks and then Mr. Abernathy and then,

1 actually, an inmate from the -- the penitentiary? Why?
2 Because I think it's a legitimate issue to you about
3 whether this man would be a threat to other people while in
4 the penitentiary. Give him a life sentence, he spends the
5 rest of his life out there, that's a legitimate concern.
6 And I think it's a legitimate value that you can consider in
7 terms of mitigation. And the proof is -- Ms. Tate says he
8 was never a man with problems, is not aggressive. He was on
9 situations in an overcrowded cell where a normal person or a
10 normal person in that context would have reacted and he
11 didn't. Joan Marks said the same thing. The State tried to
12 raise an issue about burning toilet paper and razor blades.
13 And then you look into it a little, and you go out in the
14 context of people who know about it, and what do they say?
15 So that all was nothing. Had nothing to do -- this red
16 herring about crosses and razors endangering people. A
17 razor was used to cut off an area, so the water would go
18 down the drain. He's not a threat to anybody in that
19 context. And Jerrell Livingston, we call in a guy from the
20 penitentiary who's known him from serving -- from being up
21 there with him for a few months on the third floor of the
22 Justice Center. He can do alright out there, he says. I
23 know him, he was not aggressive over here, didn't have any
24 management problems or discipline problems. And I've been
25 out at the penitentiary, and I know he'll be alright. So

1 that -- that concern of yours is, hopefully, removed.

2 This is the portion of the trial where you're
3 supposed to -- this particular type of trial where you're
4 preparing for, you read a lot of things, you look at things,
5 and you try to find some words of wisdom that have been
6 written and try to impress the Jury with that or make
7 yourself sound more profound, but I -- I didn't -- the more
8 I read, the more confused I got. But I -- I would ask you
9 to consider a couple of things. You know, the Old
10 Testament says, "Thou shalt not kill." There's no
11 qualifier on that. It does not say thou shalt not kill
12 unless the State has shown blah, blah, blah. And that is a
13 value. And that is a value I submit that is part of each
14 and everyone of your backgrounds and fundamentals. I'd ask
15 you to use that value in considering the proof.

16 The New Testament talks about forgiveness.
17 It talks about mercy. I've already told you I think
18 forgiveness is beyond anyone on this planet. But the
19 New Testament gives you values. And you can look to the
20 words of Jesus in the New Testament as to what he would say
21 about this. And that's a value.

22 Finally, I'm not going to talk forever, and
23 I'm not going to get down on my knees and beg. I'm not
24 going to cry, and I'm not going to do anything that I think
25 to try to be overemotional. I've got to be myself, but I

1 can't stress enough to you that this case is fundamentally
2 important, and your decision is fundamentally important
3 because it is one about values. And if you bring back a
4 value saying kill Mr. Smith because he did wrong, then it
5 just goes on. And I'm saying let your values be better than
6 Mr. Smith, be better than the people who are sentenced to
7 life out there at the penitentiary and say lock him up for
8 the rest of his life, denying him all the things he's going
9 to be denied is enough. In the final analysis, Mr. Smith,
10 we are better than you are. The final analysis, this is a
11 civilized society despite aberrations. In the final
12 analysis, we are safe from you now. And that is something
13 that you can do, something you can look anybody in the face
14 later on and say, we did it because we're protected and my
15 values and believing in life and believing in what I believe
16 in call to me to do this.

17 And if you make a mistake in this case,
18 you're going to think about this case no matter what
19 happens here again. And I will and everybody involved in it
20 will, whether it's two days from now or two weeks from now
21 or 20 years from now, when you're driving down the road and
22 you see something in the newspaper and you see something on
23 tv, this one's going to come back on all of us. But if you
24 have a question about what you did, err on the side of the
25 positive values. Don't err on the side of the value of

1 death that you can never bring back.

2 Now, the verdict in this case must
3 represent the individual verdict of each juror. The Court
4 will instruct you that you are to deliberate, to reach a
5 verdict, but you are not to do so just to reach a verdict.
6 It must be an individual verdict. It must represent each of
7 your consciences and each of your values. And I'm asking
8 you to tell this man that life imprisonment three times for
9 the life of Jason Burnett, Chad Burnett, and Judith Smith.
10 You can say to him by saying that, Mr. Smith, killing you
11 won't return them. If it did, it's a different issue.
12 Killing you is only going to debase us, and locking you up
13 for three life sentences is going to protect us. We've done
14 our duty. We've done justice. And sir, you are punished.

15 Thank you.

16 THE COURT: Mr. Thurman.

17 GENERAL THURMAN: Thank you, Your Honor.

18 I need that chart, please.

19
20 (Pause in the proceedings
21 while the board is moved by
22 a court officer.)

23
24 GENERAL THURMAN: Ladies and Gentlemen, at
25 this time, I would like to begin and take this opportunity

1 to thank you for your service and your faithfulness in
2 what's turned into somewhat of an endurance contest for all
3 of us. It's the last time anyone will get to address you
4 from the State of Tennessee, from either side. And all the
5 lawyers really appreciate you doing your civic duty in this
6 very serious case.

7 You know the law. It's been hammered into
8 your head time and time again. The State must prove one or
9 more aggravating circumstances. If we do, and you decide
10 whether there's any mitigation. If there's none, your
11 verdict must be death. If there's mitigation, but it's
12 outweighed by these aggravating factors, your verdict must
13 be death. If it's equal to or outweighs the aggravating
14 factors, your verdict must be life.

15 Mr. Dean didn't talk about the
16 aggravating circumstances, because it's really nothing to
17 talk about, because they've all been proven beyond a
18 reasonable doubt and to a moral certainty. You proved this
19 one last night at 9 o'clock when you returned a verdict of
20 guilty of Murder in the First Degree, three counts.

21 Is there any question Judy Smith was the
22 target and the one that was threatened repeatedly, the one
23 who has the greatest anger and hate for, but he knew he had
24 to take out her two sons. They were both witnesses in those
25 warrants pending against him. And they were witnesses to

1 him killing his wife. They had to be killed to help prevent
2 a lawful arrest of him and attempt to escape with his
3 attempt of the perfect crime. If there's any question that
4 Chad and Jason Burnett were killed during the commission of
5 him killing his target, Judith Lynn Smith, there's none.

6 The murder was especially heinous, atrocious,
7 and cruel in that it involved torture and depravity of mind.
8 And could any person on this earth stand here and tell you
9 the testimony that you've heard that this case does not
10 involve depravity of mind, especially heinous, atrocious and
11 cruel. They cannot. And you attach weight to these. And
12 do you think killing three people is entitled to a lot of
13 weight? I believe so. Do you think -- the Legislature says
14 if you kill someone, a witness, we're not going to encourage
15 that, are we? If you go in and do an armed robbery, you
16 kill all the witnesses, we're not going to encourage that.
17 You must give weight to this one. If you kill someone in
18 commission of another felony, that's, again, to discourage
19 the violence, the useless death that you saw in this case.
20 And then the heaviest of all, and the factor that outweighs
21 anything else in this case, the heinous, atrocious, and
22 cruel behavior of Oscar Frank Smith.

23 Now, what does Mr. Dean tell you?
24 Evidently, he's a mind reader. He says that Oscar Franklin
25 Smith will spend his life in prison. Evidently, he's never

1 heard of escape. He
2 will spend the rest of
3 and tells you Oscar F
4 That the person that
5 calculating, will never
6 face of this earth th

7 He tel
8 Franklin Smith will b
9 don't do your duty an
10 case on the evidence,
11 talks about high valu
12 here. And we know a
13 high values, each of
14 values to this man.
15 value human life, val
16 Ladies and Gentlemen,
17 value the law and the

18 He qu
19 the Bible. The Bibl
20 areas of the Bible, "
21 tooth." You're fami
22 a lot about capital
23 you know, capital pur
24 rules. It's the law
25

1 heard of escape. He can't stand here and tell you that he
2 will spend the rest of his life in prison. He stands here
3 and tells you Oscar Franklin Smith will not kill again.
4 That the person that did three brutal murders, coolly,
5 calculating, will never kill again. Is there anyone on the
6 face of this earth that can tell you that?

7 He tells you that 20, 30 years Oscar
8 Franklin Smith will be in the penitentiary, maybe. If you
9 don't do your duty and comply with your oath and decide the
10 case on the evidence, he might be. I don't think so. He
11 talks about high values. We've been together for two weeks
12 here. And we know a lot about you. And clearly, you have
13 high values, each of you. There's no way to compare your
14 values to this man. But you also, in those high values,
15 value human life, value the life of children. And I hope,
16 Ladies and Gentlemen, those higher values will have you
17 value the law and the oath that you took.

18 He quoted the Bible. You're familiar with
19 the Bible. The Bible talks about capital punishment in many
20 areas of the Bible, "an eye for an eye, a tooth for a
21 tooth." You're familiar with the Bible. You know it talks
22 a lot about capital punishment, "Thou shalt not kill." And
23 you know, capital punishment is not a violation of religious
24 rules. It's the law in the State.
25

1 Now, let's talk about the mitigation Mr. Dean
2 discussed. The mitigation that you are supposed to consider
3 that will outweigh these four factors. He says mitigation
4 is not in dispute, it's not justification. Well, it's
5 justification not to give him the death penalty. The reason
6 he says that is because there is no justification for this
7 crime. There is no excuse for this crime. It's beyond
8 comprehension of a civilized society. He could be a good
9 inmate. You've heard from a convicted child abuser. You've
10 heard from a man who'd never been in the penitentiary who
11 thought he would fit in good, that he would be a good
12 inmate. That's entitled to a lot of weight. We don't know
13 that. A good inmate. Give that what weight you feel it's
14 justified, based on that testimony.

15 The Court will tell you to look at his work
16 record. If you feel that's mitigation, consider it. The
17 man works some. I mean it's hard to get to be 39, 40 years
18 old and not have a job sometime in life. He worked as a
19 truck driver, machinist, worked in a slaughterhouse before.
20 He's been in the Marines for a few months, worked there, and
21 in jail for 11 months and 29 days, had attendance problems
22 at work. You've heard the testimony. Consider that. What
23 weight is that entitled to? The man can fix a machine.
24 Weigh that against Chad and Jason Burnett.
25

1 His mental condition. That's interesting.
2 Listen to the Judge's Charge. Extreme mental or emotional
3 disturbance at the time of the crime. Did anyone say
4 anything about extreme emotional disturbance, mental
5 disturbance at the time of the crime? This Dr. Blair, their
6 expert, said she didn't have an opinion. She didn't really
7 know anything about it. The other two, the psychiatrists,
8 said, no, he's just slightly paranoid, but no mental
9 illness, back in '83, depressed a little bit, but it wasn't
10 psychotic paranoia. It's just -- you know, a lot of people
11 are walking around like that. Dr. Morgan says there's
12 nothing wrong with this man. Oscar Frank Smith, obviously,
13 is the one who knows. He didn't tell you he was operating
14 under any extreme emotional disturbance or extreme mental
15 disturbance. What about the lady at the flower shop? Did
16 she tell you he was? What about the people that saw him at
17 the Waffle House? What about the people in Kentucky, when
18 he was up there at 7 o'clock, fixing this machine, strange
19 mental disturbance, emotional disturbance? That book she
20 talked about, I guarantee you they could find three or four
21 things on me. I mean you look at what was actually said.
22 Mental illness? No. Paranoid, not psychotic, no mental
23 illness, smoking too much, depressed, Dr. Blair, paranoid
24 with anti-social aspect. What does that mean? It just
25 means that they've had other criminal acts in their

1 background that can't be explained by mental illness. She
2 came up with the same exact thing. Yes, he's a little
3 paranoid. And you all know people like that, that are
4 suspicious, don't trust people or get angry at the
5 slightest thing, making mountains out of molehills, hold
6 grudges. That hit home, didn't it?

7 Mental illness? It's not there, Ladies and
8 Gentlemen. What you saw is cold, calculated, premeditated,
9 planned, carried out, coolly. Emotional disturbance?
10 Taking Judith Lynn Smith out and buying her a last meal and
11 buying her flowers? His perverse way of preparing her for
12 death. No weight there.

13 Lack of prior criminal activity. He served
14 11-29 for assault, had two other scrapes with the law. She
15 didn't remember what they were. One had to do with weapons.
16 Had two felony warrants pending at the time of their death.
17 A regular Boy Scout. You weigh that with these four
18 aggravating circumstances, Ladies and Gentlemen.

19 And his family. Everyone has a family. And
20 it's unfortunate that he has the two children. The twins
21 aren't an issue. They're not with him. But he has two
22 children, Laura and Merle. And you heard a lot of
23 testimony about Merle. But when you look at the bottom
24 line, what happens? He got married to a girl who was 13 and
25 had two children. The marriage broke up. And what did he

1 do? Dumped them on his mother and father to raise and to
2 have custody. And why? Because he didn't have any
3 parental skills. He didn't have the coping mechanism to
4 raise children. So they were raised by their grandparents.
5 And you heard all this testimony about Merle. And it's
6 tragic. It is. But what interaction does he have with
7 Merle. You heard the testimony. I mean he didn't go to the
8 doctor when he was evaluated. He went once to his school.
9 You heard the testimony. Merle doesn't even realize what's
10 going on. He knows there's some kind of disturbance in the
11 family, but he -- you heard the testimony about him, with
12 this picture. But he didn't raise these children. And you
13 know, it's interesting to me that they would argue that
14 children are mitigating circumstances in this case. Because
15 his children are alive.

16 Laura, 18 years of age, had the joy of having
17 a child. Chad and Jason Burnett will never feel that joy.
18 Merle hugging the photograph of his dad. Chad and Jason
19 Burnett will never hug their dad. They'll never live to be
20 18, because their life is forfeited for no reason, other
21 than hate.

22 And you heard the tape. Both of those boys
23 calling for truth, calling for justice. I've heard that
24 tape a hundred times, probably. I still sit at my desk when
25 I hear it and say, why didn't you run? Why didn't you,

1 Jason? Because he was a hero. Chad was a hero. They chose
2 to die defending each other and their mother rather than
3 escape. And you consider the pain and the agony that they
4 went through.

5 And you want to talk about weight, you want
6 to talk about mitigation. What in this world that Oscar
7 Frank Smith could outweigh Judy Smith's pain and anguish as
8 she lay shot and dying, knowing that her decision to marry
9 Oscar Franklin Smith not only cost her her life but laying
10 there, hearing her children being butchered, laying there,
11 maybe still alive, while her throat is cut. What could
12 outweigh that? What in this world could outweigh, what
13 could mitigate Chad Burnett in that kitchen with those stab
14 wounds all over her, blood filling up in his lungs. Dr.
15 Harlan described him trying to grab, there's nothing you can
16 do. As the life was choked out of him, six to eight, ten
17 minutes while he's in there while Oscar Franklin Smith is
18 doing his other dirty work, before he comes back, you heard
19 him. "God help me." Maybe God helped him when he sent
20 Oscar Frank Smith back on his way out to stick that gun on
21 his forehead and pull the trigger, so that he didn't have to
22 suffer anymore. What could outweigh that?

23 And you tell me what on God's earth could
24 outweigh those 15 minutes of Jason Burnett's life, when he
25 lay on that floor, grasping his own insides, as all the

1 blood in his body drained out a few feet from his mother,
2 knowing that his mother's dead, his brother's dead, knowing
3 he'll never see his loved ones again. What do you think
4 went through that youngster's mind for 15 minutes as he lay
5 dying? He had a minute for every year he'd lived to
6 reflect, Ladies and Gentlemen, to reflect on life, to feel
7 the pain.

8 Now, is fixing a machine, is being a good
9 inmate, only being arrested five or six times in your life
10 outweigh that? Is there anything you, as a civilized human
11 being, can think of that can mitigate Jason Burnett? That,
12 alone, Ladies and Gentlemen, outweighs anything on behalf of
13 Oscar Franklin Smith. You can forget these three. Right
14 there. And I'm standing before you on behalf of Judith Lynn
15 Smith, Chad and Jason Burnett, and the family. And I'm not
16 asking you to decide this case on sympathy. It's too late.
17 We can't bring them back, like Mr. Dean says. The only
18 person who could have had sympathy is sitting right here. I
19 don't think he even knows what the word means. But you
20 decide the case on the evidence. I'm not asking you to
21 decide it on sympathy, but what I am asking you on behalf of
22 them and their family is justice, to right the terrible
23 wrong that's been done in this community, justice. Justice,
24 and start the healing, the wounds of this community, that's
25 caused by the heinous, atrocious and cruel acts of this man.

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Justice can start the healing, the wounds of this family.
And justice is one verdict, death by electrocution of Oscar
Franklin Smith. And I'm asking you jurors to show the same
courage that Jason and Chad Burnett showed. And that's the
courage to do your duty. That's the courage to comply with
your oath, as you each said you would. And if you do that,
there's only one verdict that justice demands. And I ask
you to return that verdict.

Thank you.

- - - - END OF REQUESTED TRANSCRIPT OF THE EVIDENCE - - - -

CERTIFICATE

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I, the undersigned, Penny F. Underwood, Official Court Reporter for the Twentieth Judicial District of the State of Tennessee, do hereby certify that the foregoing is a true, accurate and complete transcript to the best of my knowledge and ability of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Criminal Court, Division II, for Davidson County, at Nashville, Tennessee, on the 23rd, 25th, and 26th days of July, 1990.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

This the 10th day of October, 1995.



Penny F. Underwood
Official Court Reporter
State of Tennessee

EXHIBIT 7

SUPPLEMENT REPORT CRM 104		METROPOLITAN POLICE DEPARTMENT Nashville, Tennessee		1. ARRESTEE, COMPLAINT, DRIVER & VICTIM SMITH, JUDITH	2. ARREST NO.	3. COMPLAINT NO. 89-254932
<input type="checkbox"/> FORM USED AS CONTINUATION SHEET FOR CURRENT REPORT				<input checked="" type="checkbox"/> FORM USED TO REPORT FOLLOWUP INVESTIGATION OR SUPPLEMENTAL INFORMATION		
4. EXTRA COPIES	5. PAGE NO. 1 OF 1	6. TRAFFIC CITATION NO.	8. OFFENSE AND CLASSIFICATION HOMICIDE - MURDER		CHARGED? <input type="checkbox"/> YES	
7. KIND OF REPORT CONTINUED <input type="checkbox"/> OFFENSE <input type="checkbox"/> TRAFFIC ACCIDENT <input type="checkbox"/> ARREST <input checked="" type="checkbox"/> FOLLOWUP OR SUPPLEMENTAL			10. STATUS: <input type="checkbox"/> UNFOUNDED <input type="checkbox"/> CLEARED <input checked="" type="checkbox"/> NOT CLEARED	11. MULTIPLE CLEAR-UP* (LIST OTHER COMPLAINT NOS. IN NARRATIVE) <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		
9. OFFENSE OR CHARGE			12. FURTHER POLICE ACTION AND REPORT REQUIRED? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		13. VALUE OF PROPERTY RECOVERED N/A	
INSTRUCTIONS FOR FOLLOWUP OR SUPPLEMENTAL USAGE. UNDER NARRATIVE, RECORD ALL DEVELOPMENTS IN THE CASE SUBSEQUENT TO LAST REPORT. DESCRIBE AND RECORD VALUE OF ANY PROPERTY RECOVERED. NAMES AND ARREST NUMBERS OF ANY PERSONS ARRESTED. EXPLAIN ANY OFFENSE CLASSIFICATION CHANGE. CLEARLY SHOW DISPOSITION OF RECOVERED PROPERTY AND INVENTORY NO.						

AS OF JAN. 30TH, 1990 THE FINAL ANALYSIS OF THE LATENT FINGERPRINTS FROM THIS CASE WILL BE AS FOLLOWS:

ONE LATENT FINGERPRINT (#1 FINGER) IDENTIFIED TO JUDITH SMITH RECOVERED FROM THE PLAYROOM WALL.

ONE LATENT PALMPRINT (RIGHT PALM) IDENTIFIED TO CHAD BURNETT RECOVERED FROM THE BATHTUB

ONE LATENT PALMPRINT (RIGHT PALM) IDENTIFIED TO CHAD BURNETT RECOVERED FROM BATHROOM TOILET

ONE LATENT FINGERPRINT (#6 FINGER) IDENTIFIED TO CHAD BURNETT RECOVERED FROM THE EAST WALL OF BEDROOM

ONE LATENT FINGERPRINT (#8 FINGER) IDENTIFIED TO JASON BURNETT RECOVERED FROM TABLE LEG OF KITCHEN TABLE

ONE LATENT FINGERPRINT (#9 FINGER) IDENTIFIED TO JASON BURNETT RECOVERED FROM TABLE LEG OF KITCHEN TABLE

ONE LATENT FINGERPRINT (#8 FINGER) IDENTIFIED TO JASON BURNETT RECOVERED FROM TELEPHONE RECEIVER IN THE KITCHEN

ONE LATENT FINGERPRINTS (#1 FINGER) IDENTIFIED TO JASON BURNETT RECOVERED FROM TELEPHONE BASE FORCIBLY REMOVED FROM THE KITCHEN WALL

ONE LATENT FINGERPRINT (#3 FINGER) IDENTIFIED TO JASON BURNETT RECOVERED FROM THE BATHROOM MIRROR

ONE LATENT FINGERPRINT (#4 FINGER) IDENTIFIED TO JASON BURNETT RECOVERED FROM THE BATHROOM MIRROR

ONE LATENT FINGERPRINT (#3 FINGER) IDENTIFIED TO JASON BURNETT RECOVERED FROM THE KITCHEN CABINET

ONE LATENT PALMPRINT (LEFT PALM) IDENTIFIED TO JASON BURNETT RECOVERED FROM THE BATHROOM MIRROR

ONE LATENT PALMPRINT (LEFT PALM) (IN BLOOD) IDENTIFIED TO OSCAR F. SMITH FROM BEDSHEET BESIDE JUDITH SMITH, VICTIM

THIRTY LATENT FINGERPRINTS WERE EXAMINED AND FOUND TO BE OF NO IDENTIFIABLE VALUE.

ONE IDENTIFIABLE LATENT ON A DOOR FRAME BETWEEN THE LIVINGROOM AND THE DEN HAS NOT BEEN IDENTIFIED

14. DATE/TIME REPRODUCED	15. REPORTING OFFICER <i>Sgt. A. Hunter</i>	SERIAL	DATE/TIME 1-30-90	16. SUPERVISING OFFICER <i>Sgt. J. Hunter</i>	SERIAL	DATE/TIME	17. REVIEWER
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EXHIBIT 8



CERTIFICATE OF ACCREDITATION

The ANSI National Accreditation Board

Hereby attests that

Serological Research Institute
3053 Research Drive, Richmond, California 94806 USA

Fulfills the requirements of

ISO/IEC 17025:2017
ANAB Forensic Testing & Calibration AR 3125:2019
FBI Quality Assurance Standards for Forensic DNA Testing Laboratories:2020

In the field of

Forensic Testing

This certificate is valid only when accompanied by a current scope of accreditation document.
The current scope of accreditation can be verified at www.anab.org.


Pamela L. Sale, Vice President, Forensics

Expiry Date: 31 July 2023
Certificate Number FT-0014





ANSI National Accreditation Board

**SCOPE OF ACCREDITATION TO:
ISO/IEC 17025:2017
ANAB Forensic Testing & Calibration AR 3125:2019
FBI Quality Assurance Standards for Forensic DNA Testing Laboratories:2020**

Serological Research Institute

3053 Research Drive
Richmond, California 94806 USA

FORENSIC TESTING

Expiry Date: 31 July 2023

Certificate Number: FT-0014

Discipline: Biology		
Component/Parameter	Item	Key Equipment/Technology
DNA Profile Determination	Mitochondrial Short Tandem Repeat (STR) Y-Short Tandem Repeat (Y-STR) DQ Alpha (HLA-DQA1)	Capillary Electrophoresis
Physical Comparison	DNA Profile	Software Program
Qualitative Determination	Body Fluid Epithelial Cell	Chemical General Microscopy Immunoassay

When published on a forensic service provider's Scope of Accreditation, ANAB has confirmed the competence required to develop and validate methods and perform on-going quality assurance for accredited activities. For a listed component/parameter, the forensic service provider may add or modify methods for activities without formal notice to ANAB for items and key equipment/technology listed. Contact the forensic service provider for information on the method utilized for accredited work.

Pamela L. Sale
Vice President, Forensics