

NORTH CAROLINA
 GUILFORD COUNTY

IN THE GENERAL COURT OF JUSTICE
 SUPERIOR COURT DIVISION

FILE NOS. 97 CrS 39580
 97 CrS 23654
 98 CrS 23485

STATE OF NORTH CAROLINA)
)
 v.)
)
 RONNIE LEE KIMBLE,)
)
 Defendant.)

VOLUME XIV
TRIAL TRANSCRIPT

Transcript of proceedings taken in the General Court of Justice, Superior Court Division, Guilford County, Greensboro, North Carolina, on the 31st day of August, 1998, at the August 3, 1998, Regular Criminal Session, before the Honorable C. Preston Cornelius, Judge Presiding.

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FOURTEENTH DAY

August 31, 1998

(Met, pursuant to evening recess of August 28, 1998, at 9:47 a.m.)

THE COURT: Have the attorneys had an opportunity to look at the verdict sheets?

MR. PANOSH: Yes, Your Honor.

MR. LLOYD: Yes, Your Honor.

THE COURT: Any problems or anything -- any corrections that need to be made on those sheets?

MR. PANOSH: Your Honor, over the weekend, I gave it some thought, and I'm of the opinion that in regard to the arson that one of the things the jury has to find is that the arson and the murder were a part of a continuous transaction. If in fact they found that it was not part of a continuous transaction, then it should be submitted as second. And I believe it would be appropriate to submit it as first and second in order for there to be a correct charge to the jury.

Your Honor, I have prepared and given counsel a request for special instructions which does that, and I've got a copy there for Your Honor. I've also given you a request for a special instruction as to the murder, and that incorporates the information that we discussed in chambers Friday, specifically that was the

footnotes. The peremptory instruction that a .45-caliber weapon is a deadly weapon, and the information -- the case law that comes out of State v. Jaynes in reference to a continuous transaction.

THE COURT: Defense wish to be heard?

MR. LLOYD: Your Honor, I don't necessarily disagree with Mr. Panosh's interpretation of what the law says in this State v. Jaynes case. My only concern would be that it may unnecessarily complicate matters in this case. And I don't have a -- basically, Your Honor, I don't have a position on it one way or the other.

THE COURT: I'm not sure the Jaynes case is referring to arson.

MR. PANOSH: It does, Your Honor.

THE COURT: Sir?

MR. PANOSH: It does. I can hand it up.

THE COURT: I'm not talking about that. I'm talking about whether it refers to arson in regards to the arson charge. I understand the felony murder rule that it would have to be occupied at the time, but I'm not sure that the second-degree arson would be a proper charge.

MR. LLOYD: That was something that crossed my mind when I read it, Your Honor. If this case were just being tried for arson, I mean if that was the only thing

before the jury, but that there was some evidence of this murder, would it be proper under the Jaynes case to use it in this transaction. I just don't know, Your Honor. I tend to feel the same way you do.

MR. PANOSH: Your Honor, I think Jaynes specifically refers to arson. They say at page 274 -- this is 342 N.C. Our arson statute provides in pertinent part that there should be two degrees of arson as defined by common law. They go on to state for the purpose of arson, if one is occupied; if the interval between the mortal blow and the arson is short and the murder and arson constitute part of a continuous transaction; then they go on to give the facts of this particular case.

THE COURT: There's a three-and-a-half-hour delay between the death and arson in the Jaynes case, as I read it.

MR. PANOSH: Yes.

THE COURT: Certainly no three-and-a-half-hour delay in this case.

MR. PANOSH: No, Your Honor. There is -- all the evidence will indicate it was substantially less than that.

THE COURT: Out of an abundance of caution, I'll submit second-degree arson.

Have we agreed upon the -- where is Marsha? She needs to retype these verdict sheets as to arson.

MR. PANOSH: Your Honor, as to the murder charge, I note that I've left out a couple of words on the third full page. When it says returning to the elements of felony murder rule, you must find, second, that while committing arson, the defendant killed the victim as part of a continuous transaction. In other words, "with a deadly weapon" should be in there, according to the pattern.

THE COURT: Read it again.

MR. PANOSH: It says, second, while committing the arson, the defendant killed the victim as part of a continuous transaction with a deadly weapon.

THE COURT: Any other changes?

MR. PANOSH: Not that I'm aware of.

THE COURT: All right. Any pattern jury instructions requested by the State?

MR. PANOSH: There are no others. Is that what Your Honor asked?

THE COURT: Sir?

MR. PANOSH: Did you ask if there are others?

THE COURT: Yes, sir.

MR. PANOSH: There are no other requests.

THE COURT: I know we went over those in

chambers Friday, but for the benefit of the defendant I want to go over them again to make sure he understands exactly what instructions are to be given.

MR. PANOSH: Yes, sir.

THE COURT: Any other than the standard pattern jury instructions requested by the State other than the ones you submitted this morning?

MR. PANOSH: Your Honor, as to 206.18, conspiracy to commit murder, we would ask that the footnote there be incorporated: An agreement may be all written or established by certain acts.

THE COURT: Granted. Any others, sir?

MR. PANOSH: Not for the State, Your Honor.

THE COURT: On behalf of the defendant?

MR. LLOYD: Your Honor, I don't have my sheet where I marked, but basically --

THE COURT: I think motive; interested witnesses; immunity; photos; impeachment by prior statement; impeachment of a witness by prior record, Nichols; expert witnesses are the ones you gave me on Friday. Alibi.

MR. LLOYD: Alibi.

THE COURT: Others, sir?

MR. LLOYD: Burden of proof and reasonable doubt.

THE COURT: Granted. Credibility and the weight of the witness, weight of the evidence, and concluding instructions.

Any others, sir?

MR. LLOYD: And Your Honor indicated that it would be impeachment or corroboration by prior statement?

THE COURT: Yes, sir.

MR. LLOYD: You would give that 105 point --

THE COURT: Yes, sir.

MR. LLOYD: All right. I think that's all we talked about on Friday. That's all we request, Your Honor.

THE COURT: Mr. Panosh going to have the opening argument?

MR. PANOSH: Yes, sir.

THE COURT: Who is going to have the second argument?

MR. LLOYD: I will, Your Honor.

THE COURT: Then Mr. Hatfield. And then Mr. Panosh will have the final argument. Do two of them before lunch and the other two after lunch.

MR. LLOYD: Yes, sir.

THE COURT: I don't want to split them up is what I'm saying.

MR. LLOYD: Your Honor, there is one matter.

Your Honor instructed Mr. Panosh and I to try and see if we could redact the statements of Mr. Nichols. And Your Honor, I wanted to make it clear for purposes of the record we're not waiving any of our previous objections, Your Honor. As Your Honor well understands, we objected. But given the Court has indicated it's going to admit these statements, then to make the best that we possibly could in a situation, we, of course, entered into an agreement with Mr. Panosh that certain items would be redacted. Basically, Your Honor, Mr. Panosh and I were able to agree on everything with the exception of one statement. And this is in Rob Nichols' statement on April 18, 1997. It reads on page 4 of 6, Ted carried a Glock pistol with him all the time.

My notes -- may not sound like a big thing to Your Honor, but my notes indicate that what Mr. Nichols testified to was Ted carried a Glock pistol and a .22-caliber pistol. And there was nothing about with him all the time. But .22-caliber pistol came in there as well.

THE COURT: That's the 18th of April statement?

MR. LLOYD: Yes, sir. Page 4 of 6.

And my concern for that, Judge Cornelius, to put it in perspective, I would anticipate that one of the

arguments that Mr. Panosh makes is that this has significance, the fact that Ted carried the Glock with him all the time, that he would not have left it at home, and that he would have to have given that to Ronnie to commit the crime. So that's an important issue for us, Your Honor.

I'm not just picking hairs here. In the spirit of compromise, I think I did let in some of -- some statements that I wasn't at all sure that there had been any corroboration in the direct testimony. So that's why it's important to us, Judge.

And my notes directly indicate that. I have that written entry in my notes. That he carried the .22-caliber pistol as well, and there was nothing about with him all the time.

MR. PANOSH: Your Honor, whatever information Mr. Nichols had was in 1997, subsequent to the murder, therefore it cannot be argued that that is the Glock pistol that he had in his possession all the time prior to her murder. My notes specifically say that he said that Ted carried a Glock pistol all the time. At another point, he indicated he carried a .25 and a -- I believe it was a 9mm Glock at all times.

But in any event, that statement is consistent with the evidence as a whole. If you remember,

Ms. Murray also testified that the defendant -- codefendant Ted carried the pistol at all times. And he always kept it loaded.

MR. LLOYD: Well, if that's --

MR. PANOSH: And that was prior to the murder.

MR. LLOYD: If that's what the evidence says, Your Honor, Mr. Panosh is welcome to argue that Ms. Murray said that.

THE COURT: I don't have that statement in my notes where he carried it all the time. I think one of the witnesses did make the statement.

MR. LLOYD: What did Your Honor say?

THE COURT: I don't have Nichols saying he carried it all the time. Carried the Glock all the time. I think he carried the weapons and used them.

MR. LLOYD: Yes, sir.

THE COURT: Is that in the statement? Have we redacted that part?

MR. LLOYD: We've not redacted that one portion of the sentence. We redacted -- there's the rest of the sentence that we had in there that's been redacted, so we would have to redact that portion, Your Honor.

THE COURT: Redact that portion.

MR. PANOSH: Your Honor, I would suggest if we just redact the word "Glock," it would be consistent

with your notes that he carried a pistol all the time.

THE COURT: Mr. Lloyd?

MR. LLOYD: Well --

MR. PANOSH: And the clerk can do that.

MR. LLOYD: -- see, that's -- part of my argument was, Judge, number one, that there was this other pistol involved and there was nothing he testified to about all the time. That Rob Nichols testified about all the time. And we've got this same problem. What are we offering as evidence here? The testimony from the witness stand or these prior statements not sworn to and not subject to cross-examination? And obviously that's the problem.

THE COURT: Leave it out. Leave it out.

MR. PANOSH: Would you like the clerk to do it so we don't have any delay?

THE COURT: Yes. Please.

MR. PANOSH: Your Honor, the other matter that came to our attention on Friday is that there are certain photographs that are missing. Specifically, they are --

THE COURT: What do you mean missing?

MR. PANOSH: They're not here.

THE COURT: Where are they?

MR. PANOSH: State's Exhibits 68 through 71, the

autopsy photographs. I've sent someone to Chapel Hill to get copies. And as soon as we can get them here, I'd like the Court's permission to put them into the evidence.

THE COURT: Granted.

MR. HATFIELD: I think they should have to explain what happened to them, Your Honor.

THE COURT: If we could do that, we wouldn't be here asking about them.

THE CLERK: Ms. Chancellor took them off the witness stand with her and put them in a portfolio she had up there and I did not catch them.

MR. HATFIELD: So their witness took them away.

THE COURT: Which witness?

THE CLERK: Ms. Chancellor, the medical examiner.

MR. PANOSH: We don't know that. That's the most likely set of events.

THE COURT: Has she been contacted?

MR. PANOSH: I believe the photographs are on their way here now. I sent someone there first thing this morning.

THE COURT: All right.

MR. HATFIELD: Well, presumably, they'll establish that they're the very same photographs with

the identification.

THE COURT: You can look at them and tell.

We're all aware of which ones were the ones she testified from. I'll be glad to conduct a hearing if it becomes necessary to do that. But she can resolve it.

Any other matters we need to take care of?

The jury is all here?

MR. PANOSH: Could we take two minutes before we start?

THE COURT: Sure.

What kind of sign is on the back door?

We need to change it that nobody enters during argument when the arguments start.

If anyone needs to leave -- if you think you might have to go to the bathroom within the next hour, you need to leave now because you won't be allowed to leave once we start the arguments.

(Recess)

THE COURT: Most everyone back. All the jurors here?

THE BAILIFF: Yes, sir.

THE COURT: Any more bathroom people still outside?

Got one more coming in. One more outside coming in.

Okay. Lock the door. Bring them back.

(Jury present)

THE COURT: Very pleased to have the panel back.

I hope each of you had a nice weekend and is feeling okay. Anyone on the panel experiencing any problems today that I should know about, if you'll raise your hand, I'll be glad to talk with you about that.

As indicated to you on Friday, members of the jury, we're at the point in the trial where the attorneys are going to make their final arguments to you. You need to give them your full and complete attention as they make these final arguments. Please remember that the final arguments are not evidence in the case. It's merely contentions of things the attorneys contend that you should deliberate once you begin your deliberations. Please remember that they will not intentionally mislead you. They will simply be trying to recall the evidence.

Lock that door.

THE BAILIFF: It was locked. He unlocked it to get out.

THE COURT: They will not intentionally mislead you. If by chance they misstate something, members of the jury, or if your recollection of the evidence is different from theirs, the Court will instruct you that

is in fact true. The evidence is that prior to their marriage in 1993, Ted Kimble was dating not one, but two other women possibly at the same time he was seeing Patricia. That is two that we know. And that he asked or tried to get those women to marry him. In fact, then he tried to get one of them to go off and marry him secretly, just as he did with Patricia.

The evidence is clear that they were married in early '94. And by September of '94, knowing that Patricia had two life insurance policies, \$25,000 each, he gets her to take out a third life insurance policy, another twenty-five thousand, for a total of seventy-five thousand. And with double indemnity, one hundred fifty thousand. And he gets her to transfer him as beneficiary instead of her mother in one of those policies. And about this same time, in November of 1994, he's talking to a real estate company, saying what would it take, what would it take for me to purchase the land that Lyles sits on. And you heard Mr. Routh testify: We talked, there was no firm agreement, but the price range was mentioned at a hundred eighty-five to two hundred thousand. Two hundred thousand. Does that number sound familiar?

I submit and contend to you that Theodore Kimble was planning her murder. At the time he married her?

Perhaps. But certainly when he started bringing this insurance on her.

So in November of 1994, now she has three policies, total of seventy-five thousand. Double indemnity, a hundred fifty thousand. And in March of 1995, he goes to not one, but two other agents, looking for more insurance on Patricia. You heard Mr. Apple testify that he, representing Mass Mutual, filled out an application, I believe it was for a hundred thousand dollars, on Patricia. And Patricia showed up and refused to sign that application. Specifically said, I don't need more insurance. And Ted goes to State Farm and talks to them about another policy, knowing that Patricia, in March of 1995, had said she doesn't need insurance. And then September 12, 1995, just a few days before her death, what does he do? He contacts Mr. Jarrell, and says, I need an insurance policy. Another two hundred thousand dollars.

And ladies and gentlemen of the jury, the evidence is absolutely clear that he forged her signature. Patricia told her friends he forged her signature. Ted told the detectives he forged her signature. Now, ask yourself, ladies and gentlemen of the jury, why does a man need all that insurance on his wife? Why does he forge a signature? There's only one

reason: He's planning her death.

And then his conduct subsequent to her death.

Within three weeks he takes up with another woman.

Within three weeks he takes that woman back to the house and shows her that's where the body lied. No emotion.

But when he talks about the insurance money, and

Ms. McCloud, that's when he gets upset. They're not paying me my money.

Within days after her death, three days, he hires an attorney to file a demand on the insurance company. And you've seen it. You heard Mr. Hendrix and Ms. Miles -- Mize talk about it. He filed a demand on the insurance company, a demand for that two hundred thousand dollars. Even though he knew there was no blood test, he hired an attorney to get that money.

He called Mr. Sosnoff within three days of her death -- between her death and her funeral. He says, Mr. Sosnoff, I need that money. Process that claim. I need that \$25,000. And he gets so upset when he finds out that it's Mrs. Blakley's money and not his that he calls Mrs. Blakley and tries to convince her, Give me that money. Patricia meant it for me.

He goes out and takes the church's collection; spends it on a motorcycle.

There is no question this man planned her death.

There is no question that he is the only one who could profit from her death. And there is no question that he knew as the husband he would be a suspect. He would be the suspect, the first and primary suspect. So he had to have an alibi. So what does he do?

September 7th, he goes to Precision Fabrics, gets a second job. And you heard the testimony of Precision Fabrics' Mr. Beaupre. He said there was a week there he worked third shift; second week he was on training; on October 9, 1995, he was to begin his first -- his third week there, his first week on the three-to-eleven shift. He was supposed to report in at three, but he had an excuse and it was prearranged for him to report in at six. And Mr. Chambers said the same thing. Why?

Because Ted needed an airtight alibi for every minute of that day, so he could not be suspected in the murder. Because he knew she'd be killed when he came home that evening. He knew that the house would be set on fire. But he had no way of knowing when the police would find the fire, find the body, and assume the time of death. He had to have an iron clad alibi all the way up to about 8 when he called Reuben.

Remember what Reuben said to you? Reuben said the concern and worry in his voice transferred to

concern and worry on my part.

Baloney. Ted knew exactly what was going on. He was insistent. That's why he was so upset. He wanted Reuben to go find that fire. He wanted Reuben to go find that body. Because he didn't want to come home at 11 and find it himself. Because he knew he was the primary suspect and it wouldn't be good for him to be finding the body. So he planned her death. But he couldn't do it himself.

I told you when this trial began there was only one person he could turn to to commit this murder, and that was Ronnie. Ronnie Kimble. Ronnie Kimble, who, I will tell you now and again and again and again, has no alibi for the time of her death.

Of course, you heard later on talk about a hit man. But use your common sense, ladies and gentlemen of the jury. Hit men, if they exist, aren't cheap, and hit men don't work on credit. You're not going to find a hit man that's going to say I'll kill your wife, and when and if you get the insurance money I'll take a cut. The only person that's going to do that is Ronnie Kimble.

And there was a relationship between Ronnie and Ted, no matter how much he wants to protest it and say it wasn't true. Remember, by his own testimony, by

Ronnie's own testimony, on October 10, 1995, when they went to the Blakleys' residence, when Ted was to go 25, 30 minutes across town to get something, who went for emotional support? Not his father. Not Ronnie Kimble, Sr. Not Ted's mother, Edna Kimble. Ronnie Kimble went for emotional support.

Well, I submit and contend to you he did a lot more than emotional support. They did a little destroying of evidence. But Ronnie Kimble, through his own words, tells you he's the one that was close enough to Ted the day after the murder to provide emotional support.

And you've heard all this testimony about Joy Dyer. Remember, Ted Kimble is the one who said to Joy, You're not going to mess up my family. You're not going to ruin my family's reputation. Remember, Ronnie acted like he didn't know what to do and Ted steps up and shows his gun and says, You're not going to mess up my family. And within a week later, the next Saturday, Ronnie drives her for the abortion.

That's the kind of dominance, that's the kind of control Ted had over Ronnie. And don't you ever forget that Ted had that to use on Ronnie anytime he wanted to. He could reveal that information.

So Ronnie's the only person he could trust.

Ronnie has no alibi.

And then what happens on January 24, 1997?

Ronnie confesses. He confesses to his friend Mitch Whidden. And why did he pick Mitch Whidden? Why didn't he talk to any of those other people down there at the base? Why is it human nature you've got to unload things? I don't know. I do know that's the way people act, just like Ted told his best friend Mr. Pardee about the murder.

I submit and contend to you the reason he picked Mr. Whidden is because Mr. Whidden was no longer on the military base; he moved to Virginia; he was separate; it was unlikely that the law enforcement officers would find him and question him. This was a man that Ronnie could trust, Ronnie sought out and said, I need to tell you this.

This is a man who has given his entire life to God; who believes in the Bible; who stands by the Bible; who lives the Bible every day. And I tell you, ladies and gentlemen of the jury, that he would not stand before you, put his hand on that Bible, and bear false witness. No one on this earth could make Mitch Whidden do that.

And don't let Mr. Hatfield or Mr. Lloyd say, Well, this is just a mistake. Mr. Whidden just kind of

got things confused. He kind of twisted the dream into reality.

Because that's not what happened. Mitch Whidden said this was not a dream. There was no discussion of a dream until that second meeting down at Camp LeJeune. He told me he murdered his sister-in-law. And I became afraid. So afraid that I -- the first thing I did was I went to Jerry Falwell and asked him for advice. And I told Jerry Falwell the entire story. I got my sister to come down and bring me a gun so I could protect my family. I got my sister to help me get in to see Jerry Falwell because she and Jerry's daughter are closely associated.

He was scared. He was so scared he went to a motel that night. He was so scared that eventually he drops out of school and leaves the state and stays hidden. No one knows his location, not even law enforcement officers, only his attorney, until after Ronnie is arrested.

Now, don't forget, ladies and gentlemen of the jury, this happened at the end of January, 1997, exactly the same time that Ted is giving his confession to Mr. Pardee, saying, The police are closing in on me, but I've got an alibi.

Alibi for what?

Patricia's murder.

Did you do it?

No. But my brother Ronnie did it. He shot her, poured gasoline on her, and burned her in the house.

That's what I promised you, ladies and gentlemen of the jury, that the evidence would show when I started this case, and that's what the evidence does show. And there is nothing -- I will say again and again. There is nothing, no power on earth that could make Mitch Whidden appear before you and say anything but the truth.

The defense started this case, Mr. Hatfield made some promises to you too. He said he's going to show that there were burglars at her house that night.

MR. HATFIELD: Objection. I did not say that and I have a copy of my statement.

THE COURT: Remember, take your own recollection of the evidence.

MR. PANOSH: You recall what he said. There was someone at that house that night that broke in who was searching for love letters, photos, and money.

Have you seen any evidence of love letters, photos, and money?

You have certainly seen the money that was in this purse -- I believe it was \$280. You take your

recollection -- that they passed up on the way out. You've certainly seen that photograph of the master bedroom with a drawer pulled out with a folder laying open with cash that wasn't taken. You have certainly seen the videotape that showed you the stereo, the TV, and all the other valuables that were not taken. But you have not heard one shred of evidence that someone was in there that day to find love letters, photos, and money.

Mr. Hatfield said this two hundred thousand dollars life insurance policy is just not accurate. Ted signed her name with her permission. And in fact there are documents that will show that she was drafting a will to take care of that two hundred thousand dollars.

Have you seen those documents?

I submit today you haven't seen those documents because they do not exist.

MR. HATFIELD: Objection.

MR. PANOSH: There are no documents that show she was drafting a will and going to dispose of some two hundred thousand dollars. None.

He told you that on that day Ronnie Kimble was at Lyles Building Supply, 3:25 and after, the time of the murder. He told you that he talked to customers. He told you that Billy Smith would testify to

corroborate that alibi.

MR. HATFIELD: Objection. That was not said in opening statement.

THE COURT: Don't interrupt, Mr. Hatfield.

Members of the jury, take your own recollection of the evidence when you begin your deliberations.

You may object but not interject the other things, Mr. Hatfield.

MR. HATFIELD: Yes, sir.

MR. PANOSH: He also told you that James Ogburn was there and saw the defendant and that James Ogburn may testify.

Have you heard from Billy Smith? Have you heard from James Ogburn? Have you heard from anyone who can support Ronnie's alibi? That was up to 5:40.

Of course, you heard from Mr. Stump who said about 5:50 -- excuse me, 4:50 to 5:00, he arrived. There's no question Ronnie has an alibi thereafter. But the time of the murder, ladies and gentlemen of the jury, is 4, 4:15. Because all the evidence shows Patricia left her work that day about 3:30, and she was planning to go and cut the grass. She was seen about 3:40. And you saw right there the location where she was seen. It's on this diagram.

Mr. Hatfield says it's not a complete diagram,

and I agree it's not a complete diagram, but it gives you a general feeling of where all the places are.

She was right here. Just ten, twelve, fifteen minutes away from her residence. And that sometime between 4, or maybe 4:15, if she had to run an errand, she returned to that residence. When she returned to that residence, there was something in that driveway, a vehicle she recognized, because she wouldn't have gone in if it wasn't a vehicle she recognized.

I contend and submit to you it was Ronnie's vehicle. The reason she pulled way to the left is because Ronnie's vehicle was to the right. She went into that residence expecting Ronnie to be there, in fact, filing some tools in that back toolbox, we'll never know. As she walks in, a bullet crashes through her skull. She's dead instantly.

The evidence is that Ronnie had no alibi for that period of time before the death at 4 or 4:15. He had plenty of time to get into this house. To get into this house and disarrange the master bedroom and the back bedroom. Not the kitchen, dining room, living room. The living room where all the valuables were, the stereo, the TV. Didn't toss any of the drawers in the kitchen. Why? Because he knew that Patricia would be walking in, walking this way, and he knew that she -- if

she saw some disorder in this area or this area, she might be alerted. And that's why he faked the disorder back in these bedrooms.

And all the law enforcement officers who testified told you that's exactly what it was. It was staged. It was just not believable.

He walked in and killed her. And he poured gasoline down. Probably used a timing device on the stove. If nothing else, tossed a match in as he left the door.

Mr. Hatfield will tell you again and again and again there was no odor of gasoline on him.

Ladies and gentlemen of the jury, you have to be kind of foolish -- when you're planning to dump 3, 4, 5 gallons of gasoline and light it on fire, you'd be kind of foolish to get gasoline on yourself because that might mean you'd go up too. Real foolish.

It is perfectly consistent with the fact that he didn't want to get injured, that he did not want to get caught with gasoline on his self, that he took the precautions to pour that gasoline carefully and not get gasoline on himself. The fact that he did or didn't have gasoline on himself means nothing except that anyone exercising caution would not get gasoline on themselves when they're ready to torch it.

In any event, there was no evidence to support any of the contentions Mr. Hatfield made to you on opening.

And later on we hear about this dream. Ronnie Kimble testified, I told my wife about that dream.

Did you ever hear Kimberly Kimble tell you about that when she was testifying?

I submit and contend to you you didn't because there was no dream. There was no dream until Ronnie knew he was caught that day on January 28th at Camp LeJeune and he had to figure out a way to weasel out of it. And he said, Well, maybe it was just a dream. Maybe it was just a dream.

Ladies and gentlemen of the jury, you're going to be submitted several issues. And the Court will instruct you on the law. This is my opportunity to go over the law with you. If at any time I say something that differs from what the Judge tells you later on, of course, take his statements of the law. But I submit and contend to you you must decide several issues, and the first is is the defendant guilty or not guilty of first-degree arson.

For the State to prove that he is guilty of first-degree arson, we must prove several things beyond a reasonable doubt. And let me talk to you about that

term reasonable doubt. Because in jury selection you heard someone say a reasonable doubt is something -- a doubt to which you can assign a reason. And that is not the law.

The Court will tell you that a reasonable doubt is a doubt based upon common sense and reason. And the courts, beyond what the Judge is going to tell you, went on to define that in a case called State v. Adams, 1994, from our Supreme Court.

It says, A reasonable doubt is not a mere possible, fanciful or academic doubt, nor is it proof beyond a shadow of a doubt, nor proof beyond all doubt, for there are few things in human existence that are beyond all doubt, nor is it a doubt suggested by the ingenuity of counsel or by your own mental ingenuity and not warranted by the testimony, nor is it a doubt borne of merciful inclination or disposition to permit the defendant to escape the penalty of law, nor is it a doubt suggested or prompted by sympathy for the defendant or those with whom he may be connected. A reasonable doubt is a sane, rational doubt, an honest substantial misgiving, one based on reason, common sense, fairly arising out of some or all of the evidence that has been presented, or the lack or insufficiency of the evidence, as the case may be.

Remember those words, ladies and gentlemen of the jury. Your duty is to determine whether the State has proved beyond a reasonable doubt each element. And a reasonable doubt is a sane, rational doubt, an honest doubt, a substantial misgiving, one based on reason and common sense.

And it is not a doubt to which you can assign a reason.

We must prove, first, the defendant burned a building, that is, a house located at 2401 Brandon Station Court; second, this building was a dwelling. We've proved both of those, I submit to you. Third, this house was a dwelling house of someone other than the defendant; that is, Patricia and Ted Kimble. And fourth, that the house was occupied when the defendant burned it. That is, some person was physically present at 2104 Brandon Station Court at the time of the burning.

Now, you may say, Well, that causes me a little problem, because I believe that the evidence shows Patricia was dead at the time that they burned the house. At the time that Ronnie burned the house.

And I submit and contend to you the law goes on and says occupied. For you to find that a dwelling was occupied, you must find that the murder and the arson

were so joined by time and circumstances as to be part of one continuous transaction.

In a case called State v. Jaynes, it says, Our arson statute provides in pertinent part there should be two degrees of arson as defined in the common law. If the dwelling burned was occupied at the time of the burning, the offense is arson in the first-degree. For the purpose of the arson statute, a dwelling is occupied if the interval between the mortal blow and the arson is short and the murder and arson constitute parts of a continuous transaction.

I submit and contend to you, ladies and gentlemen of the jury, that if you think about the law, this was a continuous transaction. She was killed and her body was burned almost immediately. And I know, ladies and gentlemen of the jury, a lot of time went by. I just ask you to remember the testimony of our experts. Our experts said -- first, what Mr. Rich said. That it's consistent with two hours or more. Mr. Webster says it is certainly more than two hours and is consistent with four or more hours of burning.

But what's more important is both of those experts agreed upon one thing. That this was an airtight house. That that gasoline was poured and torched and that there was very little oxygen there to

support that burning. And that the oxygen being depleted, fire fell down to a very intense, very low-burning fire, and burned for a long, long time. It burned through 2 x 10s, four of them, completely destroying them. It burned through a double 2 x 10 which was underneath those. Destroyed. That, ladies and gentlemen of the jury, takes a long time.

And I submit and contend to you that there was smoke smelled at 5:15 or 5:30, I believe it was, by the fireman. And he said that smoke was consistent with a structural fire. And the two neighbors, Mr. Fryar and Ms. Ransom, I believe it was, changed her name to Dickerson, said that between 6 and 6:30, they saw and smelled smoke.

And that's important, ladies and gentlemen of the jury, because when you look at these photographs -- and you cannot just look at this one. You can look at every one. If you look at the windows and the vents, there's no sign of smoke coming out. Except for State's Exhibit 52. State's Exhibit 52 clearly shows you that here on the back -- and this was taken the night of the fire -- there's one window. You remember the fireman said that's the window he broke out to look for the body. That's got smoke. There's a lot of smoke under each of these crawl space vents.

What that tells you, ladies and gentlemen of the jury, is that this was in fact a closed fire, that it could not progress like a normal fire, that it was pressurized, that the fire fell down and concentrated on her body, and not until it went through the floor and got oxygen from underneath did the smoke start to come out these vents. And that's what the fireman smelled at 5:30, and that's the smoke that the neighbors saw at 6 and 6:30.

Yes, I know there was a lot of time there, but if you listen to the experts, if you watch that demonstration, it's clear that those experts know what they're talking about. This fire burned for a long time. It takes a long time for a low-intensity fire to go through 2 x 10s. And then when it dropped to the floor, the crawl space, it still didn't shoot up. It never broke through the ceiling.

Mr. Webster says fire will not spread to an oxygen-deprived area. It just won't happen.

Mr. Rich says that entire house was pressurized, forcing the fire down. So the only burning that there really was after it dropped through that floor was around her body. The floor and the parts of 2 x 10s that were saturated with gas and her body. That's what burned. That's what caused all that smoke that came out

that was smelled at 5:30.

It's entirely consistent that she was killed at 4, 4:15, and her body was set on fire shortly thereafter. And the defendant had plenty of time to travel that 8.3 miles back to his house and be there at 4:50 or 5:00, when Mr. Stump saw him.

The State must prove to you beyond a reasonable doubt that that house was occupied. And remember occupied doesn't mean that she was alive. It means that the arson and the murder were so joined in time by circumstances as to be part of one continuous transaction.

And fifth, the defendant did so maliciously. This case is loaded with malice, ladies and gentlemen.

We must prove to you beyond a reasonable doubt that there was a conspiracy. You must find that he did conspire with Ted. We must prove that, first, the defendant and at least one other person, Theodore Kimble, entered into an agreement; and second, that agreement was to commit murder. Murder is the unlawful killing of another with malice.

Our courts have said in State v. Gibbs, it's also in our Supreme Court, A criminal conspiracy is an agreement between two or more persons to do an unlawful act or a lawful act with unlawful means. To constitute

a conspiracy it is not necessary the parties should have come together and agreed in express terms to unite for a common object. A mutual implied understanding is sufficient so far as the combination of conspiracy is concerned. The existence of a conspiracy may be established by direct or circumstantial evidence. In other words, we can show it, because both Ted and Ronnie said it existed, or we can show it through the circumstances of this case. However, direct proof of the charge of conspiracy is not essential for it is rarely obtainable. It may be and generally is established by a number of indefinite acts, each of which, standing alone, may have little weight, but taken collectively they point unerringly to the existence of a conspiracy.

And this was a conspiracy, ladies and gentlemen of the jury. And no, you didn't find any evidence -- there was no physical evidence at that scene to link Ronnie.

Why? Because they planned it. They're not going to plan to leave fingerprints. They're not going to plan to leave physical evidence. You heard the testimony of the law enforcement officers. They went through every part of that house. They went and fingerprinted the car. They went and fingerprinted the

boat that was in the boat house behind the house. They fingerprinted or tried to fingerprint the door. They did everything in there possible to try to determine whether or not there was physical evidence there. They collected hair -- specifically, one hair -- in that mess. You've seen that -- that fire. You've seen that -- how that house looked after it was done with all that insulation down. In that mess, they found one hair.

You heard him say -- Sergeant Lindell say that they were there Monday night, all day Tuesday, until 4:15 on Wednesday, looking for the evidence. They had the firemen come and look through the evidence handful by handful. They did a good job, ladies and gentlemen of the jury. And the reason that they didn't find any physical evidence is not because they didn't look. They looked. The reason they didn't find any physical evidence is because it was a plan. It was a conspiracy. Ronnie did not intend to leave evidence of his being there.

So ladies and gentlemen of the jury, we're going to show that there was an agreement to commit a murder and that they intended it to be carried out, and in fact it was carried out. And we can show that by direct evidence, by the statements of Ronnie, by the statements

of Ted, or by the circumstances here. All the information about the insurance; the fact that Ronnie did not have an alibi for that time frame.

The Court will go on to tell you again that you must find beyond a reasonable doubt that the State has proved to you that he is guilty of first-degree murder, and you can find that he is guilty of first-degree murder under one or two or both theories. That is, premeditation and deliberation. And there's no question here this was a premeditated, deliberate murder. Second, that it was in the course of a felony: Arson.

If you find that she died in the course of a felony -- and again, this is a continuous transaction theory. If you find that there was an arson associated with her death in such a short time, then he would be guilty of felony murder in addition to premeditation and deliberation.

The Court will tell you you may find the defendant guilty of first-degree murder on either or both of two theories. That is, the basis of malice, premeditation and deliberation or under the first-degree felony murder rule. First-degree murder on the basis of malice, premeditation and deliberation is the intentional and unlawful killing of a human being with malice and with premeditation and deliberation.

First-degree murder under the felony murder rule is the killing of a human being in the perpetration of a felony; in this case, arson.

The State must prove, first, that Ronnie Kimble intentionally and with malice killed Patricia. Malice means not only hatred, ill will or spite, it also means the condition of mind that prompts a person to take the life of another intentionally or intentionally inflicts a wound with a deadly weapon upon another which proximately results in her death without cause, justification, or excuse.

The Court will tell you that, second, the State must prove that the defendant's acts were the proximate cause of her death. And, of course, you've heard Dr. Chancellor say she died almost instantaneously.

And third, the defendant intended to kill her. An intent is an element that is seldom proved by direct evidence. It must ordinarily be proved by circumstances from which you may infer. An intent to kill may be inferred from the nature of the assault, the manner in which it was made, and the conduct of the parties or other relevant circumstances.

You can take into account the entire conspiracy to find that this was premeditated and deliberate and it was done with malice.

The Court will tell you also that you -- even if you find him guilty under that premeditation rule, you must go on and consider whether it was done in the course of a felony. And I submit and contend to you all the evidence is that he did in fact kill her and that thereafter he burned the house, and that was a felony.

Remember, for you to find the building was occupied, you must find the murder and the arson were joined by time and circumstances as to be one continuous transaction. It is not necessary that the arson comes ahead of the murder.

Ladies and gentlemen of the jury, you have heard the evidence in this case. This evidence clearly shows a conspiracy. Clearly shows a plan. Clearly shows that Ronnie Kimble was the only person that the defendant -- the codefendant Ted Kimble could turn to to commit the murder.

And then you heard the evidence from the State. And I submit and contend to you when Ronnie Kimble took that witness stand, he was not credible. He was not believable. Time after time, he just went too far to try to explain something. Time after time, he got caught in inconsistencies and little lies. And each and every one of you had a chance to see him, and you know that he was not credible. He was not believable.

And then the defense went into this attack on Detective Church and his investigation, none of which had any bearing on this case. They talked to you for hours and hours about April 1st, and how Ronnie was deprived of his rights.

First of all, he wasn't deprived of his rights; and secondly, even if he was, there was no confession during that period of time. It has no bearing on this case. Even Ronnie had to admit that in the middle of that a marine captain came in and advised him of his rights, the rights forms are there, including the rights to an attorney, but he wants you to believe that for 11 hours or 12 hours, whatever he said, he was held incommunicado and questioned. But he told you on the witness stand there was not one single question directed to him. All they asked him to do was listen.

And you heard Detective Church say that when that was done, when they finally got him back to Guilford County after the process at the marine base, after that four-hour trip, after that accident they had to pause for, after the two or three breaks they took, when they finally got him back here and advised him of his rights, he said, I do not want to talk. Detective Church said, That's the end of it. And as they're leaving, what did Ronnie say? Thank you. I don't hold

this against you. I know you're just doing your job.

Did you hear Ronnie take the witness stand and deny that? Never.

That's just an attack. That's just to take you off the track to try to make you think about something else instead of the evidence in this case.

And you heard this thing about Rodney Woodberry being a hit man. Ladies and gentlemen of the jury, it's clear that Rodney Woodberry is 30 odd miles away on October 9th. It is clear that Rodney Woodberry, on June of 1995, quit, left his employment at Lyles, and that Ted Kimble could not find him after that. Their own witness said that Ted kept coming around looking for Rodney. Their own witness said that in June of 1995, Ted cut off Rodney's pager. Ted cut off Rodney's pager.

Does that make sense to you? Because we know this murder was planned. We know it went back before June of '95, when he was trying to get all this insurance on her.

Does it make sense to you that he's conspiring with Mr. Woodberry? That he then cuts off the single most important and most immediate way that he can contact Mr. Woodberry? What does a pager cost? Four dollars a month? Five dollars a month?

Woodberry had nothing to do with this case.

Except, of course, Ted did talk to him about a hit man, and Ted did tell him if you're ever asked about Little Ronnie, you don't know anything about him. And Mr. Woodberry was scared of Ted, because he told Mr. Woodberry, just as he told the other people that he was associated with, about this high-powered five-thousand-dollar sniper rifle that he had that he could kill people a half mile away.

Mr. Woodberry brought in two alibi witnesses. That's what an alibi is. Other people come in and say he was somewhere else. He was in Graham that day.

Mr. Woodberry has nothing to do with this case. Again, they're trying to drag you off the track. Because if you stick to the track, ladies and gentlemen of the jury, there's only one person who had a motive to kill Patricia. And there's only one person that Ted could turn to to do the murder without any money up front.

And you know there was no money up front. Patricia watched every nickel and dime that went through the house. She knew that that insurance application was paid for by cash. There was no check. She knew where the money in that family was going.

Ted Kimble needed money, had no money to hire a hit man, so the only person he could turn to was his

brother Ronnie.

Carefully examine the State's case. Carefully examine the defense's case. Because I submit and contend to you we have proved -- we have met our burden as to each and every element, and they have not proved anything they said they were going to prove at the beginning of this case. Stick to the evidence.

Thank you.

THE COURT: Okay. We're going to take about a five-minute break. Those of you in the jury box, you may take about a five-minute recess to kind of refresh yourselves. If you'll go ahead and step out, please.

(Jury absent)

MR. PANOSH: Your Honor, we do have the -- we do have the autopsy photos. They still have the red stickers on them. Unless there's a need for further hearing, I'd like to put them into evidence.

THE COURT: Have you seen them, Gentlemen?

MR. LLOYD: No objection, Your Honor.

THE COURT: All right. Place them back in evidence.

We're going to take about a five-minute recess. Those of you in the courtroom, do not go back in the back halls. Do not use the back elevators. Stay out in the main areas. If I see you in that area, I'll cite

you for contempt while this jury is deliberating.

Five minutes.

(Recess)

THE COURT: The next argument will take approximately an hour also. If you need to leave during this hour period, you need to leave now. Because once the door is locked, you will not be allowed to leave or come in.

Are they bringing in the defendant, Mark?

THE BAILIFF: Yes, sir.

(Defendant present)

(Jury present)

THE COURT: At this point, members of the jury, Mr. Lloyd will have the opening argument on behalf of the defendant. Please extend to him the same courtesy that you extended Mr. Panosh.

You may address the jury on behalf of the defendant, Mr. Lloyd.

MR. LLOYD: Thank you, Your Honor.

Ladies and gentlemen of the jury, legally, this case couldn't be any simpler. And despite all Mr. Panosh's efforts to explain to you the law in this case, it simply boils down to one thing, and that is has the State convinced you beyond a reasonable doubt that Ronnie Kimble killed his sister-in-law Patricia Kimble?

And that is the legal essence of this case.

Now, I don't have any fancy phrases. I'm not as articulate as Johnny Cochran or someone like that. And you won't hear anything from me like if it doesn't fit, you must acquit. But I am going to tell you this. With every fiber of my being, I am going to convince you that Ronnie Kimble is innocent. And when I say innocent, I don't mean as pure as the driven snow. When I say innocent, I don't mean that he's perfect. But what I do mean is that he is innocent purely and simply because he did not commit this terrible crime.

Now, some of what I say may surprise you. I only ask that you listen to what I have to say to you and you think about it.

Now, you all promised that you would follow the law. And I know you will. Because I saw you on Friday as you sifted through all the evidence and all the exhibits in this case and how diligently you did that. And you took an oath at the start of these proceedings to do exactly that. And I will now hold you to that oath. And once again, I say to you that this case is simple. And the only real issue for you is has the State convinced you beyond a reasonable doubt that Ronnie Kimble killed Patricia Kimble?

Now, that statement, though it is simple, it is

acceptably complex. And remember this. It is the State who must prove to you. We bear no burden of proof in this case. And Judge Cornelius will instruct you on that. It is the State who bears the burden of proof here. And the standard is beyond a reasonable doubt.

Now, Judge Cornelius is going to instruct you fully on what beyond a reasonable doubt is. But he's going to tell you. And if his instruction differs from what I say or from what Mr. Panosh has told you, you take his instruction. But he will tell you that a reasonable doubt is one based on reason and common sense. It is one that fully satisfies and entirely convinces you. Proof beyond a reasonable doubt is proof that fully satisfies and entirely convinces you. And only you will ultimately be able to determine what that means in the context of this case.

Now, let's look just a minute at the presentation that the State has made in this case that Mr. Church and Mr. Panosh have presented to you. Now, the first thing I want to talk to you about is the conspiracy. Now, they have made a presentation and you have heard Mr. Panosh talk to you about the conspiracy that supposedly existed between Ted and Ronnie Kimble. But let's take that down. Let's look at the actual evidence of that in this case.

Now, the first thing that comes to my mind, and probably yours, is there's some phone calls that Mr. Panosh introduced late in the case that supposedly were from Lyles Building Supplies down there to Camp LeJeune to several numbers that Ronnie identified on the witness stand. But you'll remember the important thing about that is that Ronnie told you his father and his mother frequently called him down at Lyles. And that we have no knowledge -- there is no evidence that Ted made those calls. There's absolutely no scintilla of evidence that Ted made those calls. Any number of people could have made those calls. Those calls were from a cell phone account that was billed to Lyles Building Supplies. Any number of people could have had phone -- phones that were attached to that account. Any number of people -- including Ronnie's father, Ronnie's mother -- could have had phone calls or phones that were attached to that account.

Now, if you believe Joy Dyer, then -- there's been some testimony about the fact that Ronnie and Ted at some point years ago went out shooting together. I suppose, in the light most favorable to the State of North Carolina, that that is some sort of evidence of something between Ted and Ronnie. There's some evidence that Ronnie came to Ted's wedding. That Ronnie was in

Ted's wedding. But, folks, ask yourself this: These two young men are brothers. You can't choose your relatives. You may be able to choose your friends, but you can't choose your relatives. And the fact of the matter is they were brothers. They did live together under the same roof. They went to school together, basically. They went to church together. They did any number of things that any normal family does together, and certainly there is going to be contact. And I know with the collective wisdom of this jury that all 12 of you have -- there's someone on this panel who has siblings that he or she is close to and siblings that you're not so close to. And we all know about that from our experiences in life.

And certainly there's some evidence that Ronnie on occasion worked for Ted. We're not denying that. But I'll say this to you. There was certainly no partnership here. Ronnie was working for Ted.

Now, what I found far more telling than anything else on the issue of conspiracy was this little receipt here from Atlantic Mobile Home. And this, you'll recall, is what Ronnie identified as the receipt for the underpinning. It comes to \$328.98, October 9, 1995, the very day Patricia was murdered, as Ronnie testified. It's billed to Lyles Building Materials and Salvage,

Incorporated.

Well, you might say that certainly supports Mr. Panosh's theory that there was something going on between these two brothers. But you'll recall Ronnie's testimony how he frequently got things at Lyles. Certainly, he admitted that he got the pickets for installing the underpinning at his house from Lyles. He got that treated wood.

But here's the real point. Remember that Ronnie told you that he made subtractions as he paid off the bill. You'll see down here there's another writing in another hand, made in a black pen, minus \$90.50, bringing the account to this. Minus fifty, and so forth, down that way.

And let's -- ask yourselves this, ladies and gentlemen of the jury: If Ronnie Kimble really conspired with Ted Kimble and carried out this murder of Ted's wife for him, and that the agreement was that he was going to get \$20,000, Ronnie was supposed to get \$20,000, or whatever it was, for killing Patricia Kimble, why in the world would he worry about paying off a debt of \$328.98 if Ted owed him \$20,000? A debt that was incurred on the very day that Patricia died. Does that make any sense? Does that raise a reasonable doubt?

When you think about this, when you think about the conspiracy, and the fact that Mr. Panosh bears the burden of proof to prove to you a conspiracy in this case, are you fully satisfied? Are you entirely convinced? Or would, in fact, if you had owed someone or if someone had owed you \$20,000 and you had a debt for \$300, don't you think you would have said, Well, I'm not going to pay you that back. You owe me \$20,000. Why am I going to worry about \$300?

But the fact of the matter is, ladies and gentlemen, there is no evidence, there is not one scintilla of evidence, that Ted ever paid Ronnie anything; that there was any money exchanged in this case.

And why is that significant?

Now, Mr. Panosh has said, Well, Ted never collected on the insurance. There was two hundred thousand dollars worth of insurance, but it wasn't in effect, because Patricia hadn't had the physical.

Well, that's true. But remember this: First of all, Ted goes out and buys a very expensive motorcycle shortly after Patricia's death. And secondly, he does collect.

Remember the testimony about how he collected some \$50,000 -- there was a fifty-thousand-dollar

pay-out on the belongings in the house. And that money went to Ted.

Now, don't you think that if Ronnie had been the one to do the dirty work in this case, had been the one that killed Patricia, don't you think he would have stepped forward and demanded some of that money? It may not have been the whole twenty thousand. And if that was the case, don't you think there would have been some evidence of that exchange of money between Ted and Ronnie? And even -- even -- if there wasn't any evidence of a direct exchange of money, don't you think there would have been some evidence of Ronnie having done something with this large sum of cash that he got?

And when you think about all that, when you think about that conspiracy element of this case, are you fully satisfied? Are you entirely convinced?

Now, let's look at another part of the whole conspiracy argument that Mr. Panosh and Mr. Church have put forward here.

And remember, part of this, part of this whole conspiracy plan, the grand plan here, is that Ted has an alibi at Precision Fabrics. Indeed, all the evidence in this case would suggest that Ted Kimble in fact got this job at Precision Fabrics for the sole purpose -- you heard the testimony of Pardee or Nichols. I can't

remember which. But got this job at Precision Fabrics to afford him an alibi, to give him an alibi, so that when Patricia died -- and this is the very same thing that Mr. Panosh just got through arguing to you. When Patricia was killed, he would have an iron clad alibi. And the significant thing about this was remember he got the job somewhere in early September, or whatever it was, very shortly before Patricia was killed, and then -- and then he never went back, basically. That was all the evidence in the case. He never went back after October the 9th. And if his sole purpose was to do that -- remember, when he started to work on his new job, the three-to-eleven shift, so he would be covered from three in the afternoon until eleven. And if that's the case, and Ronnie is his man, then you've heard all the evidence that's been presented by the State. They maintain that the murder happened at four, which dissolves Ted's alibi. Why in the world, if Ronnie is the man to do this for Ted, does Ted ruin his own alibi?

It just doesn't make sense. It raises a reasonable doubt. And I'll have more to say on that later on. And Mr. Hatfield will have some more to say about it.

But the bottom line here is why in the world would Ted have Ronnie kill Patricia at four in the

afternoon when the sole purpose of getting the job at Precision was to give him an alibi and he didn't have it? Remember, he didn't go to work at Precision until 6 that night, or 6:15, or 6:20, whenever it was. But at any rate, he wasn't covered at 4 in the afternoon. And if Ronnie Kimble had been Ted's agent in this case, he never would have had Ronnie kill Patricia at somewhere around 4:00.

Now, there are real conspiracies in this case. And you've seen them. You've seen Patrick Pardee and Rob Nichols. They testified to you from that witness stand. And they told you about a real conspiracy here. They told you about going out and robbing people, stealing from them, going out to these houses and everything. And I won't go into that in detail. Mr. Hatfield is going to cover that for us. But the point is that's the way conspiracies work. And you saw all about that. And you also saw -- remember the testimony that Rob Nichols told how he was paid \$300. There's evidence in these real conspiracies that not only was he paid \$300, but there's a whole trailer full of stolen goods. And that's the real hard evidence of a real conspiracy.

What did Mr. Panosh and Mr. Church -- what have they presented to you as far as real physical evidence

of any sort of conspiracy in this case? The only thing that comes to my mind are these possible phone calls. There is absolutely no evidence of any money changing hands between Ted and Ronnie or any evidence that Ronnie came into money. Certainly, Ronnie sold plasma, gathered cans, and went out on the firing range, as Mr. Panosh went to great lengths to point out, claiming that it was some sort of federal offense.

And I'm going to tell you something, ladies and gentlemen of the jury. I think any corporal in the Marine Corps who has a wife who lives off of base is going to need some extra money. Was Ronnie any exception to that? Certainly not. We could all use some extra money. But the important thing to compare it to, did Ronnie and Kim go out and buy a boat like Ted and Patricia had? Did they buy a brand new Jeep to pull that boat? Did they live -- did they buy a condominium in Virginia? Did they live well beyond their means or live any kind of extravagant lifestyle? The fact of the matter is they didn't. And when you think about it, does it have any significance as to whether or not Ronnie sold plasma, gathered up cans, and gathered up brass shell casings? No.

If you're talking about a motive such as Ted had, then you've seen the evidence of that kind of

thing. You've seen how someone like Ted over extends himself, buys all these things, very materialistic, and has to have money. Ronnie doesn't fall into that category. He's just like most of all of us when we were starting out in life. Sure, he needed some money. But don't we all at that stage in our lives?

Now, let me talk to you just for a minute about Mr. Mitch Whidden, because you will remember the next part of Mr. Panosh's -- Mr. Church's presentation to you, as far as Ronnie Kimble was concerned, was basically the testimony of Mitch Whidden. And it's pretty obvious what their presentation here is. That Ronnie confessed to Mitch Whidden. And as soon as you say that, it just jumps out at you.

Mr. Panosh tried to address it to you just a few moments ago. Why in the world does Ronnie confess to Mitch Whidden? Because let's look at the real facts in this case, ladies and gentlemen of the jury. Let's look at what it was really like. What the relationship between Ronnie and Mitch Whidden was. The fact of the matter, Mr. Panosh characterized it as a friendship. I don't think that's accurate. They were buddies in the Marine Corps. That's all they were. Pure and simple.

You heard the testimony. There's no disputing the fact that Mitch Whidden knew Ronnie for some four to

five months. That they shot pool together. These two young men were in the Marine Corps. They had some minor shared interests. But these weren't bosom buddies. Even these weren't just buddies. They were casual buddies.

About once a week, maybe twice a week during the course of this time, Ronnie would run into Mitch Whidden. They would shoot pool. Neither one had ever met the other one's wife. I mean what kind of deep friendship is this? These were just two kids who were thrown together in the Marine Corps, and they kind of hit it off for want of somebody else being around. And that's basically all it is.

And so you've got to ask yourself why in the world does Ronnie pick Mitch Whidden to confess to? And the big thing that jumps out at me is why not Father Soutiere. Here is a man that Ronnie obviously admired. Here is an ordained Catholic priest. One of the head chaplains in the division where Ronnie worked. Ronnie knew that everything he said to Father Soutiere was absolutely privileged. Here's a man that Ronnie went in to see on a regular basis; that he prayed with. Here's a man that he certainly talked to about things that were troubling him.

If you've got this burning desire that you have

to unburden yourself, that you have to confess, why not do it to Father Soutiere? Isn't he the perfect one? Whatever you tell him is absolutely privileged. It will go with him to his grave.

And yet, that never happened. There wasn't even a hint of that. And what Mr. Panosh and Mr. Church want you to believe is that Ronnie Kimble picked Mitch Whidden over Father Soutiere.

Now, Ronnie said on the stand, when Mr. Panosh asked him a question about why Mitch Whidden would come down here, he said, Well, I'm not going to call Mitch Whidden a liar. Maybe he did it because he was too proud to admit that he had made a mistake.

I don't know that I would be so charitable about Mitch Whidden as Ronnie was. But I am going to tell you this: Mitch Whidden was absolutely and irrevocably wrong about what he told you happened on that night in January between him and Ronnie.

Now, I will grant you that getting to the heart of what motivates Mitch Whidden is complex. And the truth is we may never, never, entirely know what motivates Mitch Whidden. But Mitch, in essence, made a moral judgment and a moral commitment, early on, while Ronnie was still at Camp LeJeune. And that was that he determined at that time that Ronnie Kimble was guilty.

And you'll remember that Mitch admitted that Ronnie had talked to him about the case down at Camp LeJeune. And Mitch, the way he -- and the reason we know that he made this moral commitment and moral judgment on Ronnie, that Ronnie was guilty at Camp LeJeune, the reason we know that, is not by what Mitch says, because he denied that on the witness stand, he categorically denied it, but by his actions.

And one of the most important things, one of the first things that comes to mind is that when he talks about this gas receipt. Remember, Mitch Whidden told you about the gas receipt that Ronnie had. He told you that Ronnie told him -- this was down at Camp LeJeune -- that Ronnie had a gas receipt that showed he was across town. And what does Mitch conclude from that? Mitch Whidden concludes from that, Well, that didn't convince me very much, because anybody could get a gas receipt.

Now, that shows two things about Mitch's thinking. And this is all down at Camp LeJeune. First of all, he got the facts hopelessly balled up. Because Ronnie Kimble never told anybody that he had a gas receipt that showed he was on the other side of town at the time of the murder. And you know that because of the facts of this case. I don't need to go into detail on that. Ronnie was indeed concerned about the gas

receipt. And as he admitted on the stand, he talked about the gas receipt at times to people down at Camp LeJeune. He was concerned because the gas receipt -- he had left the gas receipt in the box truck. And he was concerned, first of all, because the investigators had not come down and questioned him about it. But he was concerned that it had his signature on it. And that somehow the investigators, as indeed they did, would twist that around and use it against him. Make him a suspect with it.

But first of all, the important thing here is Mitch Whidden gets the facts balled up, but it shows something else. It shows something even more important. It shows that indeed Mitch had already made -- before he ever left Camp LeJeune, had already made this moral commitment and moral judgment that in fact Ronnie was guilty.

You'll recall that Mitch told you basically that after he heard the story from Ronnie Kimble down at Camp LeJeune, he told you that he felt like Ted Kimble was guilty, but he didn't think that Ronnie Kimble was guilty. And the fact of the matter is, I submit to you, ladies and gentlemen of the jury, he thought they were both guilty. Because in Mitch's way of looking -- his moralistic way of looking at the universe, good people

don't have brothers who murder their wives, shoot them in the head and burn up the dwelling in order to collect the insurance money. And that just shows you how Mitch was thinking at this time.

And maybe when you saw Mitch Whidden on the stand, maybe you thought he was earnest. Certainly, you thought he was moral. Remember when he talks about how Leviticus backs him up. He goes back to the Bible to justify his thinking in this case.

But I submit to you, ladies and gentlemen of the jury, that history is littered with people who think that way. That, in fact, people, when they make a moral judgment and commitment, that it is much stronger than just making any kind of commitment based on objective facts without a moral component. And that when you think about back in the time of Galileo and Copernicus and how they were persecuted because they had the audacity to suggest that the scientific and religious community was wrong because in fact the earth was not the center of the universe; that the sun and the stars did not revolve around the earth.

And why were they persecuted for those -- those beliefs? Not because it upset the status quo in the scientific community, but because it upset the church and their moral commitment to the fact that God has put

us at the center of the universe. And that's why they were persecuted. And those, doubtless, were earnest, moral people.

And if you stop and think about it, have you ever wondered how in this day and age it is so difficult for us to believe that the Salem witchcraft trials are a part of our history of this great country. And I submit to you because of the same kind of earnest, moral commitment and judgment, which once you make that commitment and it leads down that path, there is no turning back.

And I ask you, ladies and gentlemen of the jury, do not let Mr. Church who's made a rush to judgment on a professional level, do not let Mitch Whidden who has made a rush to judgment on a moral level, do not let Mr. Panosh who has made a rush to judgment on a professional level --

MR. PANOSH: Object, Your Honor.

THE COURT: Sustained. Disregard that, members of the jury.

MR. LLOYD: Do not let them usurp your duty in this case. You are the 12 members. You -- Mr. Panosh is the prosecution; Mr. Church is the prosecution; Mitch Whidden is the prosecution. But you are in fact the judges in this case; the jury in this case. Do not let

them take that away from you.

Now, let me talk to you -- I touched on the fact that Mitch Whidden had already made his conclusion concerning Ronnie's guilt before he ever left Camp LeJeune, before he ever came up to Liberty Bible College when he still knew Ronnie Kimble down at Camp LeJeune.

And there's another way we know that. And that is through the testimony of Mitch's wife Debra Whidden. And you remember, she got up on the stand, Debra was very emotional. And she told you how that morning when Ronnie Kimble and his wife Kim left, that Saturday morning, she was not up to see them off, but she noticed that Mitch was all out of sorts. And she asked him, you know, what's wrong. Well, she didn't -- let me take that back. She didn't ask him what's wrong. She said, first of all, is Ronnie coming to school up here? Do you think Ronnie is coming to school up here? And Mitch's response was no. And don't ask me anything more about it. And she says to you -- remember how I asked her on cross-examination, there was some long period of time, she told you how well she knew Mitch Whidden, how well she knew her husband, but at some point without any further conversation on this issue, without anything else transpiring between the two of them, she told you that she simply divined that Ronnie Kimble had killed

his sister-in-law, and said to Mitch, I know what's bothering you. Ronnie admitted to you, he confessed to you that he killed his sister-in-law. And supposedly it went from there.

And why is that important? Because it shows that Debra Whidden already thought Ronnie Kimble was guilty of killing his sister-in-law. And where does she get all of her knowledge about this case, about the circumstances surrounding Debra Whidden's death -- I mean, excuse me, Patricia Kimble's death? She gets it from her husband Mitch.

She talked about yes, they had talked about it. Mitch would come home and talk to her when they were down at Camp LeJeune. That's where she gets it all. And any opinion on the guilt of Ronnie Kimble has to come from Mitch Whidden, her husband. That's how she -- get it -- she got it, and that's how we know that before Mitch ever left Camp LeJeune he had formed that opinion. And once he looks through those guilt-colored glasses, if you will, everything he sees in this case is twisted and contorted into what he ultimately testifies to here.

Now, remember Debra Whidden, before I forget it, she does testify to some other things. And I'm sure Mr. Panosh will talk to you about this. She says that

Ronnie told -- during the dinner that Ronnie talked about a haunted past. You recall Kim Kimble didn't -- Ronnie's wife didn't remember anything about that statement. And maybe a statement like that sort of goes past, past you and you miss it, but would she have missed what Debra Whidden told you next? Which was that she said that Ronnie told Mitch, I want to talk to you alone. Without -- outside the presence of the two wives.

Now, Kim Kimble would have remembered that. But she definitely does not remember that. You heard her testimony. She didn't hear any such statement.

Now, let's look a little more closely at Mitch Whidden's testimony here. You remember Mr. Hatfield asked him, Did you and Ronnie Kimble talk about dreams when you went upstairs to do your Bible study? And remember what his response was? Oh, no. We didn't talk about any dreams. Started off talking about the Bible and then Ronnie confessed to me, but we didn't talk about any dreams.

But remember what he does have to admit to Mr. Hatfield. And that is, when Mr. Hatfield asked him about that very unusual dream that Mitch Whidden had, he says, Yes, in fact, I had that. Remember the dream was about Mitch thinking that -- dreaming that a man had

molested some little girl, I believe he said. And there was more to it, but you take your own memories of that. But it affected him a great deal. It woke him up. He was very upset about it. Didn't sleep for the rest of the night.

How does Mr. Hatfield know about that? He knows about it because, in fact, Mitch Whidden did talk to Ronnie Kimble about that dream. And he talked to him about that dream that night when they were upstairs. And you can almost see -- it's almost as if we can go back and reconstruct everything, because they started talking about the Bible. There was some talk of the Apocrypha. And the Bible is literally littered with dream interpretation. There are all sorts of talk about how dreams foretell the future. How they foretell the personalities or sort of the biography of people. And we all know that. And I'm sure you-all know it better than I do.

But you can almost see how the conversation goes from the Apocrypha to dreams, and the logical impression is in fact Ronnie makes what Mitch interprets to be this very damaging admission. That, on top of what Mitch already believes, which is Ronnie is guilty of murder. That belief that he formed way back then when he was still at Camp LeJeune.

Now, I'd like to just sort of ask you a question. Mitch's testimony about the actual events that Ronnie supposedly told him in confession to him about Patricia's death simply lacks detail. And when it did, when it did supply detail, it was wrong. You will recall what Mitch said that Ronnie told him. He said Ronnie told him that he didn't know where the gun was.

Well, think about that statement for a second. Clearly, all the evidence in this case shows that that's the murder weapon right there. I'm not going to dispute that. Mr. Hatfield is not going to dispute that. The question is who used it. But that was virtually common knowledge in this case. And why would Ronnie Kimble have told him -- if he was going to confess to murder, why does he tell him something that's simply not true? I don't know where the murder weapon is.

Of course, if Ronnie had done it, he would know exactly where the murder weapon was. In fact, most of Julian probably knew where the murder weapon was. It was found in the house. And that was the murder weapon.

So, you see, Mitch doesn't get it right. Ronnie never said that to him. He supplied that detail himself to justify what he was saying to you.

Now, let's look at the February 3rd statement that Mitch Whidden gave to all of these people. This is

it right here. State's Exhibit No. 130. Very recognizable because it's blue. And this is the one that he gave at the lawyer's offices in Lynchburg on February 3rd, not long after Ronnie had supposedly confessed to him up there in the upstairs of the apartment and very shortly after he had gone down to Camp LeJeune.

Now, let's talk about just some of the things that Mitch says in there that don't square with what he told you on the witness stand.

Now, he says -- in the February 3rd statement, he says that when I went down to see Ronnie at Camp LeJeune, he says, I told him to give me a call. And it's right here in this statement. I won't read it word for word, but it's in there. I told -- I told Ronnie to give me a call if he needed to talk to me further.

Remember what he said on the witness stand when Mr. Hatfield asked him about that? He denied it. Oh, no. I never told him that when I went down to Camp LeJeune.

Why does he deny it? Because it shows that he didn't go down there -- well, it shows, first of all, it's inconsistent with Mitch's whole explanation, which was that he was afraid of Ronnie, and he was going down there to get Ronnie to turn himself in. It's

inconsistent with that. You don't tell somebody, Give me a call, if you're concerned.

In fact, remember what he said then -- and look at the detail in this statement. It's not -- it's not like just it was a mistake on the part of Agent Pendergrass. He told you he was the only one taking notes and that was his only job. There's detail in there too. Because Mitch claims that Ronnie says, No, I can't -- I can't give you a call because my phone is bugged. He puts this kind of detail in. That's the kind of corroborating detail that shows you that what he said on February 3rd, doesn't square with what he told you on the witness stand. And that's important because he can't get his story straight. Because now what he's telling you on the witness stand, what he said earlier, doesn't square. It doesn't add up. You don't have this fear element.

And before I forget it, one of the first things that jumps out at me when we're talking about what happened when Mitch Whidden went down to see Ronnie Kimble at Camp LeJeune, remember what Mitch's response was? Mitch said that when he came down and he basically confronted Ronnie down there at Camp LeJeune, and Ronnie said to him, Well, it was a -- it must have been a dream, because I don't remember it now.

And what's significant about that, ladies and gentlemen of the jury? It's significant because Mitch doesn't confront Ronnie at that point. I mean, if you believe Mitch's testimony and if he's telling you the truth, I submit to you that the first thing he would have said to Ronnie Kimble at that time was, You weren't telling me about some dream up there in Lynchburg. You were telling me -- you admitted to me that you murdered your sister-in-law. You told me that flat out. We weren't talking about some sort of dream.

Mitch doesn't say that. Remember? Mitch says, Well, you'll know it's not a dream if your brother pays you some money.

Now, why would he say that? Why would he give Ronnie that response if, in fact, there wasn't a dream component to this whole thing? And why does he go down there? Why does he go down to Camp LeJeune to talk to Ronnie in the first place?

He says -- at one point, he says in his February 3rd statement -- of course, he denies it later on -- he went down there to get Ronnie to turn himself in. But in the February 3rd statement, he says, I went down there to try to talk him out of committing suicide. I was concerned that he was going to commit suicide. Well, he can't get his story straight.

But I submit to you, ladies and gentlemen of the jury, he went down there to nail this thing down in his own mind. Was Ronnie talking about a dream or was he telling him the truth? Or was he telling him fact? And he went down there one last time to confirm it. And even though Ronnie doesn't confirm it, even by Mitch Whidden's testimony, Mitch has still made this moral commitment, this moral judgment, and it doesn't make any difference.

Now, I want to just touch briefly on it because I know Mr. Panosh is going to mention it again. You heard the testimony of Jerry Falwell and Mitch's wife. Dr. Falwell comes in here. Of course, he has that marvelous charismatic presence. That beautiful voice. And I just ask you to remember this: Jerry Falwell doesn't have any independent knowledge of anything that happened in this case. All he is giving you is what Mitch Whidden related to him. And just remember that when you think about it -- about him.

And basically the same thing is true of Mitch Whidden's wife Debra. She was very emotional. She doesn't have any independent knowledge of anything that's happened in this case with the exception of what she told you -- what she claimed had transpired at dinner or on the way back home. She gets everything

she's gotten in this case from Mitch Whidden.

And there are other witnesses that fall in that category. You'll remember Ms. Cato Jackson. She's the one that works down there at Camp LeJeune. I believe she was Navy personnel. But at any rate, she's in the military. And she told you that what Ronnie Kimble had said that time in Natalie Kelly's office was that he was the last person to see Patricia Kimble alive.

Well, I'm going to tell you something, ladies and gentlemen of the jury, there's only one person in this courtroom who has ever made that statement that Ronnie Kimble was the last one to see Patricia Kimble alive. And he sits right over here: Detective Jim Church. And he was the one who went down there to Camp LeJeune and sowed those poisonous seeds to reap this rotten fruit. Because you heard the testimony of Natalie Kelly. And she told you that statement didn't come from Ronnie Kimble.

And if you think about it just for a second, ladies and gentlemen of the jury, that is an admission of guilt. Pure and simple. And why in the world would Ronnie Kimble be running around Camp LeJeune -- it's a stretch to believe he goes up there and confesses to Mitch Whidden, but why in the world would he be running around Camp LeJeune saying, I'm the last person to see

my sister-in-law alive, because that says right there, I'm the one who killed her. He never said that.

You heard Natalie Kelly set the record straight on that. She told you Detective Church was the one that told that to her at the very end of the interview with her. He was trying to sow those poisonous seeds. And this is what you get when you do that. And it's rotten. Because you get somebody like Ms. Jackson who doesn't know any better, who's allowed after a while to come back, and what she thinks she heard, and she gets up there and tells that from the witness stand. But that is nothing more than the rotten fruit that Detective Church has reaped in this case.

And you'll remember Natalie Kelly telling you about all the other things. And thank God, ladies and gentlemen of the jury, she had the foresight, or maybe it's just luck, to take her husband's advice and write this stuff down. Shortly after the interview, she wrote down what she had told Detective Church and the other investigators in this case. And you'll remember those things. You'll remember how, among other things, that they said that Ronnie had -- she had told them that Ronnie had shot -- that the victim had been shot in the head in this case. She never said that. And that's important because that was -- that was not common

knowledge. That was knowledge only to the police in this case. And rest assured if Ms. Kelly had not had the foresight to take those notes and be sure of that, that you would have -- and she could have been twisted around and made to say what Mr. Church wanted her to say, you would have heard some testimony from her, well, yeah, I think Ronnie Kimble said that the victim was shot in the head in this case. And that would have been important, because that knowledge was discerned only to the police officers in this case. And there were other comments that they mangled and twisted around. There was something about the tool chest. And you'll recall how she set the record straight on all of that.

Now, I don't make any apologies for Ronnie Kimble. I'm going to tell you right now he's not perfect. He got up on that witness stand, and he spent basically a day and a half up there. And his life was scrutinized in detail that I think few of our lives will ever be, at least in a public place like that. And just like Ronnie Kimble, our alibi in this case is not perfect, and I'm going to be the first one to admit it to you. But let me ask you this, ladies and gentlemen of the jury: If Ronnie Kimble was going to make up an alibi, was just going to make it up out of whole cloth to cover himself, don't you think he could have done a

little bit better job? I mean how hard would it have been for James Stump to come in here, for Judy Stump, Kim Kimble to come in here and lie for the one that they love --

MR. PANOSH: Objection.

THE COURT: Sustained.

MR. LLOYD: -- to lie for Ronnie Kimble?

MR. PANOSH: Ask that be stricken.

THE COURT: Disregard it, members of the jury.

MR. LLOYD: All that James Stump has to say, ladies and gentlemen of the jury, if you want a perfect alibi in this case, instead of seeing Ronnie Kimble at ten minutes till five, as he testified that he did, all he's got to say to you is well --

MR. PANOSH: We object to this argument.

THE COURT: Sustained.

MR. LLOYD: Because ladies and gentlemen of the jury, we didn't present a perfect alibi. And James Stump told you the truth, and Kim Kimble told you the truth, and Judy Stump told you the truth, and Ronnie Kimble told you the truth. And it's not perfect. I'll be the first one to admit it. But don't you think that given the fact that you saw Ronnie Kimble -- and you saw how emotional he was on that stand. You saw the first day when he started talking about minor things such as

when his family moved when he was ten years old, when his dad got the call to the ministry, he got all choked up and teary.

Now, do you honestly think that Ronnie Kimble could have shot his sister-in-law in the head at 4 or 4:15 or 4:30, or whatever it's supposed to be, driven back to his house, taken off his shirt and started putting up underpinning when James Stump shows up and not show one scintilla of emotion about all those terrible things that he had done? Do you think he's that kind of individual? You saw him on the stand. You had a chance to judge him.

I submit to you there's -- there's just simply no way. And you heard James Stump's testimony about that.

Now, I ask you to think about something else when you're considering the fact that our alibi isn't perfect here. If you had a holiday on Columbus Day, some holiday that's not observed by everyone, and your spouse was basically at work, do you think you could account for your total whereabouts for the entire day? I submit to you that's consistent with what really happened with the truth. No, Ronnie -- we didn't try to enter a whole bunch of witnesses here to tell you all about that. But Ronnie told you about it. He told you

where it was. You had a chance to judge him. You had a chance to judge his credibility in this case.

And before I leave this subject, let me say to you once again, in fact, we have presented evidence of alibi in this case. You've heard the testimony of Ronnie Kimble. You've heard the testimony of James Stump and Judy and his wife Kim. But that doesn't relieve the State of North Carolina of their burden in this case. They still have the burden. Even though we presented evidence of where Ronnie was throughout the course of the day, they still have the burden to show you, to prove to you beyond a reasonable doubt that Ronnie was where they say he was at the time they say he was. And Judge Cornelius will instruct you on that.

Now, I submit to you, ladies and gentlemen of the jury, Ronnie is not perfect. And our defense in this case is not perfect. But you've had a chance to judge him. You've had a chance to judge our presentation here. And Ronnie is innocent. And we have shown through our defense that Ronnie is innocent.

Now, logically, there are four possible scenarios here. Just strip it down and look at the facts of this case and consider it logically. And that is, number one, that Ted killed Patricia himself; number two, that Ted got somebody else other than Ronnie to

kill Patricia; number three, that Patricia came into the house and surprised someone who was burglarizing it and was killed as a result of that; and number four, that Ted hired Ronnie to kill Patricia and in fact Ronnie did it.

Now, the most likely of those scenarios, I submit to you, is that Ted killed Patricia himself. He certainly had the means. Mr. Panosh has expended a week proving that he had the motive. Mr. Hatfield will talk to you at greater length. And I submit the critical factor here is that he had the opportunity, and in fact he did have the opportunity. That he could have easily left Lyles, driven to Patricia's house, to his own house, and killed her there, and come back to Lyles, closed up shop, and gone on to his job at Precision Fabrics.

And one of the things that I want you to consider in this whole thing, go back to the fact that Ted established the job at Precision Fabrics for one reason alone. It was not to make extra money. We all know that. It was to establish his alibi. But that alibi doesn't hold until six o'clock only. And so something happened. Things didn't go as Ted wanted them to go. And, in fact, he had to carry out the murder here.

Now, I won't say anything about that anymore.

The one thing that I would like to talk to you about is Rodney Woodberry. And I'm just going to touch briefly on this. I see my time is running short.

One thing, Mr. Woodberry -- and you'll see it in this affidavit here, unless you believe that everything Mr. Woodberry said in his affidavit. He says in here that he left -- on or about August 4, 1995, I ended my full-time employment with Lyles Building Materials.

So, in fact, it wasn't in June, as Mr. Panosh told you. At least if you believe that affidavit. He left in August.

And I want you to think, ladies and gentlemen of the jury, I want you to think about the evidence we've presented on Rodney Woodberry. Look at that affidavit. For someone who really didn't have anything to do with Patricia's death, at least according to him, he writes in here -- the affidavit is typed out beforehand, but on the day that he obviously signed it, and he initials it, he writes in here, On the day of Patricia Kimble's death, October 9, 1995, I was at my residence in Graham. No. 24: At approximately 6:30 p.m., I went to Carolina Careers on Maple Avenue.

Well, for someone who doesn't have anything at all to do with Patricia's death, who really doesn't know

anything about it, he sure goes to a lot of trouble to establish his alibi. Even way back then when that affidavit was done. And that was done months and months before -- I believe, if I'm not mistaken, it was done in March of 1996, long before he ever came in and testified in this case.

And think about what Laura Shepard told you. That Rodney Woodberry woke her up, crying, early in the morning. She's got the details. About 5 a.m. That Woodberry was crying. That he said, I've done something that I may get the death penalty for. And remember there's this whole conversation -- this is not something that Laura Shepard made up about a whole cloth. He asked her would you come to visit me in prison. She tells him no. I don't imagine he expected that response. But he holds out the final carrot to her: Well, I'm going to be coming into some money. Even though I'm in prison, I'm going to be coming into some money.

And I ask you to think about that. Doesn't that have the ring of truth? That whole scenario? All those details? Think about that when you consider this case.

Now, Mr. Panosh's witnesses almost -- he talks about establishing an alibi for Rodney Woodberry. Well, correct me if I'm wrong, ladies and gentlemen of the

jury, and by all means, you take your recollection of the evidence, but I remember -- one of the witnesses that I remember that came in here for Rodney Woodberry to establish his alibi was Mrs. Heath, his neighbor. And after she got through testifying on direct examination, I thought her testimony was basically yes, Rodney Woodberry was with me that whole afternoon of October 9th. But you remember when I cross-examined her, she said no, no, that's not true. I didn't say that. I said, Well, he came out and he normally met his children, at whatever time it was. 3 o'clock, or whatever. But I'm not saying that I saw him on that afternoon.

So now you've got the alibi for Rodney Woodberry is his girlfriend. I've even forgotten what her name was. But you'll remember the first words out of Rodney Woodberry's mouth virtually was that Laura Shepard is a liar. Just not true. And you remember in the course of that, he told you about well, she made up this pregnancy. And it had been such an elaborate ruse with her, that she even made me go to the doctor for her pregnancy.

Now, on the surface of that statement, that sounds a little bit odd to me in the first place. Why would the father have to go with the mother to the

doctor? The fact of the matter is it was exactly what Laura Shepard told you. Rodney Woodberry had given her a sexually-transmitted disease, and that's why she made him go to the doctor. And they can -- they can parade every single disgruntled family member for Rodney Woodberry up here to say that Laura Shepard is not worthy of your belief just as Rodney Shepard's girlfriend did -- I mean Rodney Woodberry's girlfriend did. But it doesn't alter the fact that she got up there and she gave you sufficient corroborating details to show you that she was telling the truth.

And if Rodney Woodberry wasn't Ted's man in this case, certainly there were calls. There were a lot of calls. Now, Mr. Panosh has already implied to you he was looking for him; he couldn't find him. But he was looking for him after Patricia's death. He needed to clear up some things. There's no evidence that he couldn't find him at all. He just came by looking for him. Maybe he had seen him on other occasions. In fact, maybe Rodney Woodberry was not the triggerman in this case. Maybe, in fact, he got someone for Ted Kimble, and that's his significance in this case.

Now, as I said, Mr. Hatfield is going to cover some of this material. I'm not going to dwell on it. I'm not going to dwell further on that. But I do want

to talk to you for just a moment -- I told you where I stand on this. I do want to talk to you about Patricia surprising someone. Surprising a burglar, if you will. Because let's just look at what happens here.

First of all, Patricia comes home. Now, Mr. Church and Mr. Panosh want you to believe that it's 4:00 or shortly thereafter. The fact of the matter is, ladies and gentlemen of the jury, we don't know when it was. And we'll just never know that fact. But she comes back. Now, she leaves her keys and her purse in the car. Leaves the key in the ignition. Leaves her purse in the car.

And Mr. Panosh made a big to-do about the fact that the burglar did not get her money out of the purse. I submit to you there's a good reason for that. Because the burglar was surprised in what he was doing. And then he had to commit this terrible crime. And once he did that, burglary was the furthest thing from his mind. Once he did that, once he killed her, then he's got -- he knows he's got to get out of there. He's got to set fire to this place and get the hell out of there. He's not worried about sticking around to get a few little odds and ends that he can on this break-in. He's got something much more serious to deal with. He's got murder to deal with.

But at any rate, let's go back to Patricia. She left her keys -- key in the car, left her purse in the car. Now, what does that show? Maybe she's just coming in, and she's getting ready to go out again. We don't know. But she does take her own keys, her own house keys up to the door. And maybe it's at that time that she realizes that the dead bolt is unlocked. And we know she took her own keys because they were found inside on the kitchen floor. She thinks to herself, Well, I thought I locked the dead bolt this morning, but maybe I didn't. And she's concerned. But she's not really worried. She doesn't really suspect a break-in is taking place. But she's got some concerns. This has just sort of raised a little red flag. So to assure herself, she goes over and she gets this knife. Comes in, sets her keys down, gets this knife right here. She walks down the hallway, or whatever it is, with the knife just to assure herself. She doesn't really think there's going to be any problem but, you know, just because I thought that I locked the door, the dead bolt. I've forgotten to lock it before and this is probably the same thing, but I'll just pick up this knife and that will protect me. She goes down the hall. Maybe -- as Mr. Panosh has already suggested to you, maybe the shot was fired from the bathroom. We don't know. Maybe

she confronted the burglar.

Because you'll remember the testimony of the medical examiner in this case was that you couldn't tell what the angle of the shot was. It all had to do with how her head was. And so we don't know. But at any rate, she gets shot. She's there in the hall. And the knife falls down and she falls on top of it. Burglar doesn't even notice it. He grabs the gasoline that's handy out there. He pours gas on the body, he makes that trail that you've seen up there, he sets fire to it, and he just leaves pronto.

Now, as far as this looking like a staged break-in and why wasn't there -- wasn't there -- weren't there items pulled out in the other part of the house, I submit to you that it would be perfectly logical for the burglar to go to the back bedrooms and start back there.

And why didn't he take the things in the drawers and everything?

Well, I submit to you because he was interrupted. He didn't get to do what he wanted to do. Because Patricia came back. And that's why he had to leave. And he had to leave it all then. I mean he wasn't -- he wasn't -- the last thing on his mind was getting loot out of this job. What he wanted to do was

get away from here as fast as he could.

Now, finally, Mr. Panosh will argue again to you after Mr. Hatfield has argued. We will have no chance to give you any further argument after that. And it will be your duty at that time to scrutinize the evidence, to scrutinize the arguments, to consider everything. And I ask only of you this: That for every argument Mr. Panosh puts forth that you ask yourself am I fully satisfied, am I entirely convinced, or does this evidence or this argument, the arguments made by me or Mr. Hatfield, raise a reasonable doubt in this case?

If there's something that makes you hesitate, some evidence, some lack of evidence that makes you pause or makes you hesitate, that raises a reasonable doubt. And do not -- do not -- let Mr. Church, Mr. Panosh, whose role in this case is to prosecute, do not let them usurp your duty in this case. You are the judges in this case. You are the jury in this case.

Now, each of you promised me in jury selection that if the State failed to convince you beyond a reasonable doubt, you would come back into this courtroom and announce your verdict of not guilty. And I now hold you to that oath and ask you to do just that.

Thank you.

THE COURT: Again, please remember, ladies and

gentlemen of the jury, that the arguments of the two attorneys that you've heard are not evidence in the case. They're merely contentions of things the attorneys contend you should discuss and deliberate once you begin deliberations.

We're going to take our luncheon recess at this point. You'll need to be back at 2:00. Please report back to the jury room. Be very careful that you remember the Court's instructions. Do not discuss this case among yourselves, with your family or friends, or allow anyone to talk to you about the case or talk about the case in your presence. Do not read, listen, or watch any news media accounts of the trial, if such will be available to you. Please remember the instructions on your responsibility sheet.

Have a nice lunch. I'll see you at two.

(Jury absent)

THE COURT: As soon as an officer notifies the Court that they've cleared the elevators, I'll let you take your lunch break also, but everyone remain seated until that happens.

Okay. We'll be in recess until 2 p.m., Sheriff.

(Luncheon recess)

AFTERNOON SESSION

THE COURT: Are there any matters we need to

take care of before I bring the jury in for the final jury arguments?

MR. PANOSH: No, Your Honor.

THE COURT: Again, I remind those people that are here in the audience the doors will be shut. You will not be allowed to leave during the argument. Once the argument is over with, then we'll take a break before the second argument. So if you need to step out, you need to do that now. Otherwise, you're going to be with us for the hour or whatever it takes.

Bring them back.

(Jury present)

THE COURT: Very pleased to have the panel back. Hope each of you had a nice lunch and are feeling okay. Anyone who is experiencing any problems this afternoon I should know about, if you'd raise your hand, I'll be glad to talk with you about that.

As you remember, ladies and gentlemen of the jury, we have the final two arguments. Mr. Hatfield will have the first argument. It will be on behalf of the defendant. You may address the jury.

MR. HATFIELD: Thank you, Your Honor.

Judge Cornelius, Mr. Panosh, Mr. Lloyd, ladies and gentlemen: I truly apologize for taking your time like this. You've already shown tremendous attention to

everything that's been said this morning and probably everything that's been said that needs to be said. I've been working on this case for almost 17 months and I have thought about it day and night, and I have some ideas about it which I want to try to share with you. Although, I'm sure mostly you know what I'm going to say and mostly you've already seen anything that I might try to point out to you about this case.

Ladies and gentlemen, you were told at the beginning that this was a conspiracy case. And you were told that the State was going to prove it. They promised they would prove it. And in connection with their promise to prove that it was a conspiracy, they were provisionally allowed to tell you many, many things that Ted Kimble supposedly said. But almost every time that a witness was allowed to tell you something that Ted Kimble supposedly said, you were cautioned by the Court that you were only being given that information with the understanding that at some point a conspiracy would be proven. And that if a conspiracy between Ted Kimble and Ronnie Kimble wasn't proven, then all of that testimony should be disregarded.

Now, we can't disregard the things we've heard, because we're only human. And, you know, if we hear a thing that sticks in our minds, even if we know that we

should not consider it as a factor, we're probably going to remember it anyway. So I'll just say to you that I hope that you will first determine whether you think there was any conspiracy whatsoever between these two young men. And then if you can't do that, I think you have to sweep aside the many, many things that you've heard from Ted Kimble.

Now, just like lawyers think that these final arguments are important, and really they're probably not, lawyers also think that their cross-examination of witnesses is important. They just believe that. Because how else are you going to see that they're doing their job if they don't come in here and ask a lot of questions of the witnesses to try to show that they know everything the witnesses already said and they've already thought about this whole case. And really, you know, lawyers are full of words, full of hot air. They do like to show off their petty little skills with wordsmanship, and I'm probably the worst. So I know I've asked some people some questions on the witness stand, and probably asked too many questions on the witness stand, but once in a while the truth comes through because someone who is making an assertion in court is forced to clarify that assertion or to put it in perspective, or to explain what they meant. And then

if you're the listener, you think, hmm, when I first heard that, I thought it meant one thing, but now that I've heard a couple of more questions, I'm starting to think it might have meant another thing. And I'll give you an example of what I mean, ladies and gentlemen, because you have already seen on Friday, when you read all of the exhibits that are over here on the table -- no. Pardon me. You did not see it. You will see it for the first time sometime today or whenever you request it, the written statements of a guy named Rob Nichols.

This has been a long trial and some of you may have forgotten Mr. Nichols. He came in here after three and a half or four years at UNCG, told us he came from a prominent family, a high-placed dad, that he was married, needed to make a little extra money to put himself through college and take care of his wife. You know. The usual bit. The usual excuses. And his statements were permitted by the Court into evidence for the purpose of corroborating what he said on the witness stand if you think it does corroborate what he says on the witness stand. Once again, comes in with a proviso, very similar to Ted's statements that come in with a proviso.

Mr. Nichols has a memorable quote in here. He

says -- he's talking to Ted. Of course, they've been out stealing in the middle of the night numerous times. And, of course, Mr. Nichols has said that he didn't really know it was stealing at first. It's really pretty good reading here if you get a chance.

Mr. Nichols claims that the first time he went out with Ted it was early in the morning. It was snowing. And when he means early in the morning, ladies and gentlemen, it is after every other living soul has gone to bed. They're talking 2 and 3 a.m.

He said Ted got out of the car and went over and removed a couple of two-thousand-dollar doors from a nice house in Brassfield, and then they loaded those up. Two-thousand-dollar doors. Then they went back and got some windows. I don't know how much those cost. And then they -- it finally took them two or three loads to get this stuff away. Mr. Nichols said that time he didn't realize it was stealing. He thought this was legit. But later when he went on similar forays, around 20 or 25 of them, he began to understand that there might be something questionable about this behavior.

So he started asking Ted personal questions. And he was interested in whether Ted had had anything to do with the demise of Patricia.

Now, Rob Nichols did not know Ted Kimble at any

time when Ted was married to Patricia or when any preparations were made for insurance policies or anything else having to do with the life of Patricia. Mr. Nichols came on the scene later.

He says he asked Ted these questions, and Ted said, Ask me no questions, and I'll tell you no lies. And as a result of this, Mr. Nichols says in these interesting documents, that he concluded that Ted had something to do with the death of Patricia. Ask me no questions, and I will tell you no lies.

Now, I don't know what that phrase means to each of you, but to me it means something along the lines of none of your business, or shut up, because I'm not going to talk about anything like that with you. That's not what Mr. Nichols concluded. And somehow Mr. Nichols was able to sell his conclusions to the sheriff's department of Guilford County, because in a series of interviews, the first beginning on April 18, 1997, and marked State's Exhibit 121, this is the -- on page 5 of 6 pages, in State's Exhibit 121: I asked Ted if he said -- had anything to do with his wife's death. And he wouldn't say anything. So I asked him again and again over a few months. And Ted told me, quote, Yes, I did. And now are you happy? I asked him if he was involved, and Ted said, quote, Ask me no questions, and

I'll tell you no lies.

I hope that you will give some thought to this in light of what might happen if someone interested in Ronnie Kimble's well-being were to have a chance to cross-examine Ted Kimble who is the person who supposedly made that statement. Do you really think that Ted Kimble would say, Yes, I was admitting that I had something to do with Patricia's death. I just wanted to shut him up, so I thought I'd go ahead and tell him I killed her. So I said -- didn't want to, you know, act like I was mad or anything, so I said, Ask me no questions, I'll tell you no lies.

I don't think so, ladies and gentlemen. That is a tortured piece of quotation that probably doesn't mean what it is offered to you as meaning. It probably means something else. And if there had been a right of confrontation between Ronnie Kimble and Ted Kimble, you probably would know that that was not truly an admission of anything.

Now, these statements go on and on. And at some point, I'm sorry to say, you may feel that you have to read these statements of Rob Nichols. But let me tell you something about these statements. I read them very carefully this morning. There is not one word in any of those statements about Ronnie Kimble. So remember,

ladies and gentlemen, the first thing the State has to do is prove that there was a conspiracy between Ted Kimble and Ronnie Kimble to do something that Ted Kimble wanted done. This kind of stuff -- Rob Nichols' written statements -- is offered to prove that. But Rob Nichols didn't know Ted Kimble when Patricia died and didn't know Ted Kimble when Ted formulated whatever terrible plans he had for Patricia's demise, and didn't know Ronnie Kimble, and never heard Ted and Ronnie Kimble talk about anything. Not a thing. He didn't even hear them have a casual conversation.

Now, where is the conspiracy, ladies and gentlemen? Where is the threshold proof of a conspiracy which the Judge has told you again and again you must be satisfied exists before you consider any of the things that Ted Kimble said?

Now, while we're talking about Rob Nichols, let's move to Patrick Pardee. I'll show you something interesting.

Take a look at 148-A, ladies and gentlemen, when you're reviewing the evidence. It's a picture of the wedding party when Patricia and Ted celebrated, memorialized their marriage. Of course, they had gotten married the previous December, and this memorialization took place a few months later over at Ron Kimble, Sr.'s,

church over at Monnett Road. And who do you suppose is in this picture? Mr. Patrick Pardee, beloved member of the wedding. A person, ladies and gentlemen, who, without having any thought that he was under investigation for anything, told Melanie Oxendine, Do you think that I would have continued to be friends with Ted Kimble for one moment if I had thought he had anything to do with Patricia's death.

Poor Melanie Oxendine was just a bar tender, ladies and gentlemen. She was not an SBI agent. She was not a detective with some 20 years experience. She just heard what the guy said. He had no way of anticipating that what he was saying to Melanie would eventually make its way into a courtroom and be formalized by being told to you under oath. Is it possible that Melanie Oxendine, who has absolutely no interest in this case, would come forward and tell you something like that if it weren't true?

It is these kinds of statements that people make that are not formed and shaped and put together under the pressure of an investigation for numerous B&E's that could result in several years in prison. It is these kinds of spontaneous utterances that people make in their day-to-day life that do have a ring of truth.

Now, in a little while, I have to sit down. I

can tell by some of you, your eyes, you wish it were in five minutes. And I'm sorry. I apologize. In a little while, I will have to sit down. And after I sit down, someone from the State will probably tell you Melanie Oxendine, she goes to visit Ted Kimble practically every week. She's part of his crowd. Don't believe a word she said. Because this is smear every witness that we don't like.

MR. PANOSH: Objection.

THE COURT: Sustained. Disregard that.

MR. HATFIELD: That's what's done here, ladies and gentlemen.

MR. PANOSH: We'd ask that that last comment be stricken.

THE COURT: Strike it, members of the jury.

MR. HATFIELD: This is discredit what you don't like and credit what serves your purpose.

For example, we have four criminals who visited us here in the last two weeks. Four splendid criminals. Probably the most charming and probably the most believable is Jeff Clark. He's already got 20 years. He knows nobody can help him. So I suspect that to at least some extent he tells it like it is.

Another interesting criminal who paid us a visit here is Mr. Rodney Woodberry. He's probably not going

to get any time because of anything that's happened in connection with these proceedings or the events that were -- went down before these proceedings.

And then there's Patrick Pardee, ladies and gentlemen, acknowledged to have participated in five, six, seven, eight, ten, twelve, fifteen B&E's in the middle of the night, stealing building materials, stealing generators, stealing go-carts; taking these things off to use as your own personal property; running the whole gamut from luxury items to stuff that only a builder who knew how to install it would need.

And then there's Rob Nichols. Rob Nichols. Who, if justice had been done, would be a three-time loser right now.

MR. PANOSH: We object, Your Honor.

MR. HATFIELD: Rob Nichols worked and made a deal with the law enforcement authorities in California and wiggled out of felony charges. He came in here in Greensboro with felony charges unrelated to his activities with Ted Kimble. Wiggled out again. And now he has felony charges, numbering some 25 to 30, stealing thousands of dollars of building materials every night that he went out. And probably, ladies and gentlemen, throwing the beer cans out the window. Because he did admit that, although Ted didn't like to drink, he always

drank a little bit as he went on these forays.

Well, just like Rodney Woodberry, ladies and gentlemen, Patrick Pardee and Rob Nichols won't go to jail. They had something better than gold. They had something better than a good lawyer. They had words. Words that could be used in this forum to prove murder.

Now, they never said anything about those words before April 1, 1997, when Ted Kimble was arrested and placed in jail without bond for murder charges. They didn't call the police and say I'm terribly afraid of this man, and I'm also terribly ashamed of what I've done, and I'd like to tell you the truth about it. They didn't do any of that. Because they were desperately hoping against hope that they would somehow wiggle out. And, ladies and gentlemen, they did.

When you look at the sequence of statements that were given by Rob Nichols, it's quite interesting. First, he gave a statement on April 18th, said nothing about Ronnie Kimble or any involvement that Ronnie Kimble might have in murder. He really is just putting his toe in the water, ladies and gentlemen, and seeing whether he wants to make the plunge. This is the time when he says, Ask me no questions, and I'll tell you no lies is what Ted Kimble told me, but I knew he really meant murder.

Then on May 16th, a month later, his -- he perfects his line. He's closing on these guys now. There's going to be a deal that doesn't require him to spend a day in prison. And this is so good that it's too good to be true. And he comes back on May 19th, and again meets with Mr. Church, talks about gun silencers that Ted had. Said Ted told him that he, Rob, wouldn't make a good criminal because he opened his mouth too much. Talks about how Ted made him do these things. Ted made him get up in the middle of the night, buy a few cans of beer, and go out and circulate in the nicer neighborhoods of Guilford County where the better houses are being built and steal the expensive building materials.

Ladies and gentlemen, that's what makes inflation. It's not the bankers with the high interest rates. It's the shoplifters and thieves who take things that are not theirs and cause the price for honest people to be raised.

Ladies and gentlemen, you're going to hear a lot after I sit down about how Ronnie Kimble is lacking in believability. Even though Ronnie Kimble spent almost eight and a half hours on the witness stand in front of you and talked about his life in every aspect that he was asked about, including things that he should not

have been asked about.

Ladies and gentlemen, I want you to think for a second about where Ronnie Kimble is coming from. Patricia Kimble died on October 9, 1995. It will be almost three full years that she has been dead when we proceed to have ended this case. It's coming on September in a few days, as soon as we get to October -- we're only about five or six weeks away from the third anniversary of her death.

Ronnie Kimble had to have known that his brother was a suspect from the very beginning, because there was so much activity surrounding his brother. And even on October 30th, which is only three weeks after Patricia died, naval investigators were requested to sit down with Ronnie in Camp LeJeune and ask him all about what he knew about that, what he had been doing on those days, and so forth.

And ladies and gentlemen, I do not believe that there has been any evidence put before you that would indicate that the statement that Ronnie made to this Agent Monroe on October 30, 1995, was lacking in candor or that any of the facts stated by Ronnie were any different than what he told you about this case now. So there's been no change. But he has known that he was under a cloud of suspicion. And in November of

that year, you will recall from Mr. Church being on the witness stand, Mr. Church went out and told Ted that Ronnie was the last person to see Patricia alive. A statement that we have tried to evaluate in several different contexts since then.

Ronnie knew that he was a suspect. Again, it was not enough to give a statement to Mr. Monroe. He was asked to give a statement to Mr. DeBerry, and then another statement, and then another statement, and then on and on and on. Simultaneously with that, some of his friends like Neil Silverthorne were also being questioned.

I can tell you, ladies and gentlemen, that when you've done nothing wrong and your friends are being asked serious questions about murder, you have to notice and it has to bother you. That's not a sign of guilt, ladies and gentlemen. Not being comfortable being investigated, not being comfortable being the target of an investigation is just good self-protection. It's just the normal way that any rational person would behave. People don't like to have the finger of accusation pointed at them, and Ronnie understood very well that he was being accused of things that he had no hand in.

And in addition to the straight-ahead

accusations that were being made about him were the backhanded accusations, like circulating information that he was the last person to see Patricia alive when there was no foundation for that statement. And yet we have seen from Ms. Kelly how horribly misleading that was. So misleading that she personally was outraged at what was being done to confuse the issue. And it did have an amazing bad effect because look what RPI Cato Jackson concluded: Absolutely the wrong thing. And came in here and testified to it. Not knowing that a better, more reliable witness was waiting in the wings to let us know what kind of an investigation Ronnie Kimble was dealing with.

Now, by June of 1996, ladies and gentlemen, there was another cycle of rumor circulated about Ronnie Kimble. This time it was based on the erroneous supposition that someone had seen Ronnie Kimble --

MR. PANOSH: Objection.

MR. HATFIELD: -- near --

MR. PANOSH: Objection.

THE COURT: Sustained.

MR. HATFIELD: Your Honor, I'd like to be heard outside the presence of the jury. This is clearly in evidence. I got it out of Church and a number of others. Request a hearing.

THE COURT: Members of the jury, step out a moment, please.

(Jury absent)

MR. PANOSH: May I approach?

MR. HATFIELD: I'd like to know what's been handed to the Court.

MR. PANOSH: Transcript of the Court's order.

MR. HATFIELD: We have a new rule now where the Court considers things that --

THE COURT: No. You may come look at it.

MR. PANOSH: I've provided counsel with a copy.

THE COURT: You have a copy, sir?

MR. HATFIELD: No, I don't. I don't even know what it is.

THE COURT: It needs to be stapled.

MR. PANOSH: Mr. Lloyd, do you have a copy? Did I give you a copy?

MR. LLOYD: Mr. Panosh gave me a copy, Your Honor.

MR. HATFIELD: This is not based on Tammy Patton. This is based on statements that Mr. Church made to numerous suspects which he admitted on cross-examination. This has nothing to do with Tammy Patton. Tammy Patton is not a witness in this case. And we are the ones who vigorously argued that nothing,

no inference of any kind should be drawn from anything having to do with Tammy Patton because they didn't call her as a witness. However, the fact that Mr. Church repeatedly advised people he was interviewing that he had -- and including the defendant himself -- that he had a witness that identified the defendant at approximately 6:20 p.m., and since the witness told such important witnesses as Mitch Whidden that he had allegedly been sighted at the scene, we feel that it is a legitimate issue to discuss in front of the jury. This has nothing to do with Tammy Patton.

THE COURT: Wish to be heard, Mr. Panosh?

MR. PANOSH: My recollection is there was no evidence of this until Detective Church was testifying. It was brought out on cross-examination. The State asked to be allowed to offer specific evidence in regard to that. Your Honor said we could not. There was an agreement by counsel that it would not be referred to in argument, and that was Your Honor's order.

MR. HATFIELD: I want to be heard before you make any decision. That is not the case.

THE COURT: What's the argument you wish to make, Mr. Hatfield?

MR. HATFIELD: Your Honor, this is the argument I wish to make. Mr. Panosh marked for identification

some sort of a photo lineup and attempted to use it in the case when the only link that that photo lineup had to the case was that one Tammy Patton had reviewed it with an uncertain outcome. Our objection to Mr. Panosh being allowed to show those photographs was only partly sustained, and the Court went ahead and let the exhibit be marked for identification, but then precluded any further discussion of Tammy Patton, which was exactly right, because Tammy Patton has not been a witness in this case. Either side could have changed that situation entirely by calling Tammy Patton as a witness. That has nothing to do with Mr. Church admitting that he suspected that Ronnie Kimble had been seen at the location of Brandon Station Court at 6:20 p.m., on October 9th, and that he had told numerous people about that. And this is so critical to the case that it made its way into Mitch Whidden's view of the case. And when Mitch Whidden talked to Mr. Panosh on July 28th, he talked about that in his conversation with Mr. Panosh over the telephone which -- the substance of which was later disclosed to us.

THE COURT: I just want to know what's in evidence. That's the only thing you can argue before the jury is what's in evidence.

MR. HATFIELD: What's in evidence is

Mr. Church's admission that he asked the defendant and others whether or not Ronnie Kimble had been -- that he told Ronnie Kimble and that he told others that Ronnie Kimble had been sighted near the premises at 6:20 p.m. Just because they didn't prove that has nothing to do with whether or not Mr. Church said it. And all I want to do is talk about the fact that Mr. Church said it.

This interruption is coldly calculated to ruin my summation.

THE COURT: Wait a minute. Cool off. Settle down.

MR. HATFIELD: Well, this is how we waste 45 minutes so he gets to argue tomorrow.

THE COURT: I've got the door open back there. I can send you out for a while if I need to, but just -- I want you to control yourself.

Mr. Panosh, I believe there was testimony to that effect.

MR. PANOSH: There was testimony about an identification. And the State had a perfect explanation. We wanted to get into it and explain it and, Your Honor, we were cut off by an objection, and you ruled that we could not get into it. And counsel at that time agreed at the bench they would not get into this whole 6:20 thing.

MR. HATFIELD: No.

MR. PANOSH: Mr. Hatfield says Ronnie Kimble was told that he was identified at 6:20. I don't recall him testifying to that. Others were told that. I don't recall others testifying to that.

THE COURT: I think -- the evidence I heard he was in the vicinity of the area sometime or another.

MR. PANOSH: Yes. And that was on cross-examination through Mr. Church. But there's a whole -- you know, there's 6:20 and there's 7:20, and there's a whole range, and we could have very easily explained that if we would have been allowed to do that.

MR. HATFIELD: No, Your Honor. They did not offer live testimony.

THE COURT: Let Mr. Panosh finish, then I'll hear your statement.

MR. PANOSH: We were cut off. And we didn't object to being cut off because the agreement at the bench was it would not be gone into on argument, and Your Honor's order was it would not be gone into on argument. Now, he's absolutely right when he says Tammy Patton could be called by either side. If they wanted this evidence in, all they had to do was call her. They didn't do that, because what they want to do is rely upon some innuendo based upon questions to Detective

Church that we were not able to explore and find out. And no, there was never any evidence as to the specifics of the identification. If there was evidence, the identification would have been dated and timed.

MR. HATFIELD: May I respond?

THE COURT: Yes, you may.

MR. HATFIELD: Your Honor, if they had offered Tammy Patton, there would have been no objection. What they offered was a photo lineup that had -- was not -- did not illustrate anybody's testimony. And, unbelievably, that somehow was permitted to be used in the presence of the jury. Upon our objection, it was agreed that there would be no arguments one way or the other about Tammy Patton, not about the widely-held and circulated accusation that Jim Church originated. And he didn't make it up. He had a good faith basis for going and telling the defendant and others who cared about the defendant and those who did not care about the defendant that he had been sighted there at 6:20 p.m. And this was the thing that was so disturbing to Ronnie Kimble that occasionally he told his friends about it. And those people -- Dziadaszck's testimony makes reference to this sort of thing. Mitch Whidden's testimony makes reference to this sort of thing. I can't understand why we're wasting my summation time

talking about this and then Mr. Panosh will claim that he gets to sum up tomorrow after the jury --

THE COURT: No. We're all going to do it today. If we're here till midnight, we're going to do it today. Let's get that straight.

MR. HATFIELD: Thank you.

MR. PANOSH: First he's saying Tammy Patton's information shouldn't come in, but now he just admitted he wants to bring it in through the back door.

MR. HATFIELD: It is not Tammy Patton's information. It is Church's information.

THE COURT: Well, that's the backhanded way of saying it.

MR. HATFIELD: No. Church didn't tell anybody it was Tammy Patton. They tried to conceal her in --

THE COURT: You may argue and refer to Mr. Church having referred to witnesses saying that he was in the area at that time.

MR. HATFIELD: I may?

THE COURT: That's the extent of it, sir.

MR. HATFIELD: Thank you.

THE COURT: I've already ruled on the other part.

MR. HATFIELD: Yes, sir.

THE COURT: Bring them back.

(Jury present)

THE COURT: You may continue your argument,

Mr. Hatfield.

MR. HATFIELD: Thank you, Your Honor.

Ladies and gentlemen, Mr. Church alerted Ronnie Kimble and others that he suspected that Ronnie Kimble had been seen in the vicinity of Brandon Station Court at 6:20 p.m., on October 9th. Ronnie Kimble knew he had not been. It is these kinds of accusations swirling around the young man that are going to affect the way he handles himself as he deals with the problem. It is not a simple matter to be suspected of murder. And if you are innocent of that murder, then you must do everything in your power to defend yourself.

Now, Ronnie Kimble's way of defending himself, I submit to you, was to again and again and again cooperate with the investigators and show unflinching goodwill toward the people who were basically trying to take his liberty away from him. Even on the day that he was arrested, on October 1st -- on April 1, 1997, after being with various investigators, the naval people in the early part of the morning, Detective Church for the remainder of the morning, and all afternoon, through 7:00 at night, after it was all over with and he told them that he didn't want to say a word to them about

this case, he shook hands with them and said that there was no hard feelings, he knew they were just doing their job. Unfailing goodwill.

When his friend Jim Dziadaszck on March 4, 1997 -- was interviewed both on March 4th and March 5th. As soon as the investigators found out that Jim went back and saw Ronnie on the evening of the 4th, they went running back to see Mr. Dziadaszck on the 5th, to see if anything had been said. And what was said was absolutely faultless.

Ronnie asked him what he said, responded that it wasn't exactly his recollection, but did not, did not, ladies and gentlemen, try to urge Mr. Dziadaszck in any way to change what he had said to the investigators or not to talk to them further. And the next day, when the investigators came back, they talked to him again. This happened again and again.

Ladies and gentlemen, every time Church and Pendergrass went to see James and Judy Stump, they were welcomed into their home. There were conversations there. There was hospitality. Kim Kimble, the same thing, who at one point Detective Church didn't even really know who Kim Kimble was. He couldn't recognize her. But whenever they sought information about this case, they got full cooperation from Ronnie Kimble and

his immediate family.

Now, ladies and gentlemen, when Ronnie was finally arrested on April 1, 1997, he was locked up in the Guilford County jail across the street, and he has been there ever since. He has been on suicide watch. He has been in close confinement. He has been essentially in solitary confinement. He can't see his wife, his mom, his mother-in-law, except through glass. He can't hear their natural voices. He has to communicate with them over a telephone. That's where he's been for the last 17 months. The only thing that he has been able to think about --

MR. PANOSH: We object, please.

MR. HATFIELD: -- is --

THE COURT: Sustained as to what he was thinking about.

MR. HATFIELD: The only thing -- the only human contact that I'm aware of that he's had --

MR. PANOSH: Object. None of this is in evidence.

THE COURT: Sustained.

MR. HATFIELD: -- has been the preparation --

MR. PANOSH: Objection, please.

THE COURT: Sustained.

MR. HATFIELD: -- of his case.

Can I talk about the preparation of his case?

THE COURT: You may talk about the evidence and the law. That's what you may talk about in the arguments, sir.

MR. HATFIELD: So you know where he's been. One day he gets to put a suit on and come in here and take the witness stand and talk to you about the most important things that are involved in his life.

Now, he didn't have to take the witness stand, ladies and gentlemen. He has an absolute right not to. And if he had not taken the witness stand, we would be entitled to have the Judge tell you that he doesn't have to testify in this case. And we tell you that he has no burden of proof in this case. But he has chosen to address you. And he knew before he ever had a chance to step up on that witness stand that things that had no bearing on this case were going to be brought out. For example, whatever it was that went on between him and Joy Hedgecock Dyer. We didn't put her on the witness stand first, ladies and gentlemen. She was called there by the State of North Carolina. For what purpose? To let him know that a mistake that he had made back five or six years ago was going to be paraded out in this courtroom and used hopefully to affect your judgment of his credibility. Why was she brought here? Why did we

have to listen to her accounts of having chosen to have an abortion several years ago.

Ladies and gentlemen, you know that there is no abortion clinic that does not require the young lady who is submitting --

MR. PANOSH: Objection, please.

MR. HATFIELD: -- to that procedure --

MR. PANOSH: Object, please.

THE COURT: Overruled.

MR. HATFIELD: -- to sign papers indicating that she understands what is going on, proving what her age is, showing that this is a knowing and a voluntary decision. They don't make those decisions because the boyfriend asks them to, ladies and gentlemen. They make those decisions because the young women who are directly affected ask them to make those decisions.

Now, personally, I think such decisions are highly regrettable. And I hope that no one in my family has to make a decision like abortion. Ever. But on the other hand, I know that many people do have to make that decision, and that's their business, ladies and gentlemen. So how did it become our business that Ronnie Kimble and a young lady who apparently, when cross-examined, admitted she had had some sort of an illicit relationship with Ted Kimble? Is that what this

is all about? Is that what this is really all about? Or is it that she's now willing to say that she was afraid of him, because after they broke up he went over to her business, and she thinks she saw him showing his .22 rifle that she had used target practicing and shooting out in the woods.

You know, when you first met her, ladies and gentlemen, she told some story about Ted and Ronnie shooting a pistol at a paper target. By the end of your relationship with her, you found out it was she and Ronnie who had gone out target shooting in the fields around her house. What is the probative value of any of that, if not to smear a nice young man who Father Soutiere called a very good marine; who Natalie Kelly called a very good marine?

What a horrible situation. You are indicted because you have a brother. The proof against you is mounted through your former girlfriends, even girlfriends that you haven't even seen in five or six years. You don't put your character in evidence, ladies and gentlemen, but it doesn't make any difference. Because you are accused of all kinds of questionable behavior. Pointing guns at people and intimidating people. We see this stream of intimidation through here. It's impossible for Mr. Pendergrass and

Mr. Church to interview a witness without them declaring themselves to be absolutely terrified.

Read Rob Nichols' stuff. This guy is a senior in college going to a public university that we support with our tax dollars, paying his way through there by stealing, and explaining his behavior by saying that he's terrified. Patrick Pardee says he's terrified. Rodney Woodberry, he says he's terrified. The only one that didn't say he was terrified is that Jeff fella. What was his name? It's hard to remember him. Jeff Clark. Probably the only honest one in the bunch. Because he already got his time.

Now, do you think, ladies and gentlemen, that if Mr. Church had shown Jeff Clark pictures of Patricia looking beautiful as a bride and pictures of her charred and horribly mutilated body, do you think Detective Church would have put that in his report? You think he would have? Because it's not in there. But after Jeff Clark finished testifying, Mr. Church took the witness stand, and he never denied that he had said those things to Jeff Clark.

So we see what you do with criminals in order to get them to say what you want them to say to help your case.

You have been told, ladies and gentlemen, that

Ronnie Kimble and Ted Kimble engaged in a conspiracy, and in fact you can't consider anything Ted said unless you believe that. And in connection with that, we have Exhibits 145 and 149. 145 are the phone numbers that Ronnie Kimble basically said that he could remember from his time at Camp LeJeune while he was being investigated. And I'll make it easy for you, if I may, ladies and gentlemen. I was studying this this morning. Three of these numbers have a 451 prefix, that is, the first three numbers, and one of them has a 577. Now, here are the cellular phone records of Ted's pocket telephone. And these cellular phone records are billable to Lyles Building Supply. And they apparently run from either 9/18 -- I see a phone call on September 18th. Then I see a series of phone calls from October 11th. There are quite a few calls on October 11th; October 12th. Then it goes through -- 12, 13, 15, 16, 17, so forth, through the month of October. And this is all 1995.

So we know, ladies and gentlemen, from looking at these billing records, that this is -- this reflects telephone activity on Ted Kimble's pocket telephone during the time and around the time that Patricia died. And we're thinking about this. Is there evidence of a really close relationship between Ted and Ronnie Kimble

from which we might be able to infer that there's some kind of a conspiracy between these guys?

So you take the 451 and the 577 and you start going through these numbers. And you'll never find a single call except on one day. October 30, 1995, there were, as was shown to you in earlier proceedings, a few calls. And Ronnie Kimble said some of those calls were made to me by my dad, and I can't say positively that my brother didn't call me later on that day too.

Okay. There may have been some calls on that particular day, but there weren't any calls on any other day. So if these guys are coconspirators, ladies and gentlemen, when did they do their coconspiring? They have no relationship at all. And we know it. And it's not Ronnie Kimble's lawyers' job to prove that they do not have a relationship. It's the State of North Carolina's job to prove that they do have a relationship.

Now, they start with a tremendous advantage. They start with brothers. Only two years apart. So you say well, you know, they must be joined at the hip. Only where is the evidence of that? Ronnie Kimble in no way -- there's nobody who says that Ronnie Kimble participated in the conspiracy to steal building materials that Rob Nichols, Patrick Pardee, James Ogburn

and Ted Kimble participated in. Nobody has ever said that.

Now, if these kids are -- if these brothers are criminals, both, then surely they would have continued their criminal activity and Ronnie would have at least had knowledge or at least have somehow benefited from some of this stolen goods. Nobody, the investigators who investigated it, the participants, nobody has ever said that Ronnie had anything to do with all of that stealing that went on.

For almost a year, Ronnie was on float in the Marine Corps. He was in the Mediterranean and places like that. There is no evidence, ladies and gentlemen, of any communications between these two young men.

After I sit down, a great deal will be made of the fact that the family of Ted Kimble decided to schedule some sort of a memorial to a celebration of marriage of Patricia Gail Blakley and Theodore Mead Kimble. And there are literally dozens -- I haven't counted them, ladies and gentlemen. Perhaps 12, 15, 18, 20 people participating in this ceremony. The best man, Gary Lyles. Other close friends. Patrick Pardee. A guy named James Day. Ronnie Kimble was put down here as an usher, ladies and gentlemen. Probably because at the time this was printed no one was really sure whether he

was going to be able to make it or not. And so his name is included just so he wouldn't be left out. And as he says, he really was afraid that Patricia might think he was somehow trying to upstage her if he wore his uniform. He wasn't sure he was supposed to do that.

Okay. He didn't immediately remember his involvement in that wedding. Of course, it wasn't really a wedding either. The wedding had happened the previous December.

How important is that, ladies and gentlemen? How important is that when there is not one single telephone call between Ted Kimble and Ronnie Kimble between the time that Patricia died and several months later except on that one day when -- I'll concede this to you. I'll bet Ted Kimble wanted to know what Officer Monroe had said to Ronnie, not particularly what Ronnie had said to Officer Monroe. So I don't doubt that Ted Kimble wanted to know something about what was happening in this investigation. He may have put a call in there. But that doesn't show a conspiracy.

Did Ronnie initiate the call? How long did the call last? Who was talking on the call? You don't have any information about those things. But when you look at those billing records, look at how there are no calls for weeks before and for weeks thereafter.

Ladies and gentlemen, just a little while ago in this courtroom Mr. Panosh said to you -- and I wrote this down very carefully -- Ted needed an airtight alibi. Mr. Panosh again said, Ted needed an iron clad alibi. Mr. Panosh said again, He knew he was the primary suspect. And again, Mr. Panosh said, Hit men don't work on credit.

Now, ladies and gentlemen, I believe it is also apparent to all of you that there are no eyewitnesses in this case and no direct evidence that Ronnie Kimble did anything unlawful at any time. So what we have is a circumstantial evidence case. And in a circumstance -- and it's not impossible for a person to be convicted of murder based on circumstantial evidence. Indeed, in order to do so, you simply have to establish the three primary elements: Motive, means, and opportunity. Those three elements, ladies and gentlemen, can, under certain circumstances, add up to murder. And you don't have to have somebody see it happen.

Now, unfortunately, the history of the United States is a violent history. And in every community all through the ages there has been murder. This country has had many murders. And many, many murders have gone through our court system. Some of the greatest people who have ever lived in this country have been the

victims of murder.

When John Wilkes Booth killed Abraham Lincoln, there was direct evidence. Mr. Booth slipped in behind Mr. Lincoln with a small gun, pointed it at his head, shot him, jumped off the balcony, landed on the stage, fractured his leg and limped away. A few days later he was found in a farm house not too many miles away with a broken leg. Direct evidence of murder.

When John F. Kennedy was murdered, it was not so easy. The best that could ever be done was to make a circumstantial evidence case against Lee Harvey Oswald. And they began with motive, and they proceeded through means, and they focused on opportunity. And eventually they satisfied many, many people in this country that they had the murderer. Maybe not the only murderer, but one of the murderers.

Ladies and gentlemen, the State was allowed to put on its evidence in this case for nine full days. And during that nine days, they proved that Ted Kimble had a powerful motive to murder his wife Patricia. It would have -- it would take a lawyer with blinders and with myopia not to see it. The case is there. I say this with sadness, because I know that there are people in this room who love Ted Kimble and who hope for the best for him. Like his mom and dad. And his brother.

But we -- this is a murder trial, ladies and gentlemen. And I can't talk junk to you. It's there. The motive is past any doubt. And the means, ladies and gentlemen, is equally past any doubt.

We did get ballistics tests. There were lots of test results we did not get. But we got ballistics tests. And it doesn't matter whether we did or didn't. It's better that we did. In all probability, the projectile that killed Patricia came from the gun that's over here in evidence. In all probability, that gun was owned by Ted Kimble. Ted Kimble has got a problem. Did Ted Kimble have opportunity, ladies and gentlemen?

At 3:20 p.m., on October 9, 1995, Ted Kimble called his wife Patricia. Nancy Young was sitting by and heard the phone conversation. There is no doubt that the person calling was Ted, and there is no doubt that Patricia responded in a cheerful way, and there's no doubt that about ten minutes later at about 3:30, Patricia Kimble left her office with the intention of going home to mow the lawn.

Around 15 minutes later, or even less than that, Patricia was seen on Randleman Road in Greensboro driving north. And -- correct me if I'm wrong, but this is my recollection -- the person who saw her turned off and merged into I-85, and her vehicle continued

straight.

Ladies and gentlemen, Nancy Young does not know where Patricia was going, because she didn't tell us in her testimony. Only Ted Kimble knows where Patricia was going at a quarter of four on the 9th of October, because he's the only one who talked with her.

Now, many of us are married, or we have companions that we spend a lot of time with. If your companion says, As soon as I leave the office, I'm going to stop by Harris Teeter and get some vegetables, we'll have a meal, you can calculate how long that's going to take. And that means to you, I'm coming home but it still may be 45 minutes, or something along those lines. Patricia Kimble undoubtedly said something to Ted Kimble at 20 minutes after 3 on the day she died that let him know exactly where she was going.

Ladies and gentlemen, at 6:20 p.m., there's little doubt that Ted Kimble walked into Precision Fabrics and spoke to his coworker and got on the job. Three hours in which Ted Kimble is totally unaccounted for.

Ladies and gentlemen, Detective Church testified in this case, and he told us that he knew who was at Lyles on the 9th of October of 1995, between noon and 5 p.m. And when he was specifically asked that

question, he named the six people who I have listed here on this piece of paper: Ted Kimble, Patricia Kimble, Ronnie Kimble, Steve Swaney, James Ogburn and Billy Smith. Any one of these people could, if available, perhaps account for Ted Kimble's activities between 3:20 p.m. and 6:20 p.m.

But as you know, ladies and gentlemen, most of these people can't help us. Ted is unavailable, although some of his words have been allowed in. Patricia is unavailable. Ronnie Kimble has already testified. No one seemed to care when vigorously cross-examining Ronnie Kimble what he knew about the whereabouts of his brother. Steve Swaney is unreliable. Detective Church told you that. He's just not worth listening to about serious matters. Therefore, he's not available. James Ogburn is part of the stealing conspiracy. Even with all of the pressure that we've seen can be used against these criminals, it wasn't enough to bring him in here. So he's not here. And Billy Smith, who knows?

Ronnie Kimble doesn't have the burden of proof, ladies and gentlemen. It is the law of this land that he does not have the burden of bringing forth any evidence in order to prove or disprove the guilt of others or his own innocence. The State always has the

burden of proof and it never leaves them, regardless, in this kind of a criminal case.

We don't know where Ted Kimble was for those three hours.

Now, ladies and gentlemen, there are things about this case that are deeply troubling, because they reveal to us the perspective that law enforcement had on their case.

Take, for example, Defendant's Exhibit 119, a map that does not contain anywhere on it the location of Lyles Building Supply, even though the victim and the two accused were known to be at Lyles Building Supply between noon and 5 p.m., on the day this horrible crime occurred. Where -- why is Lyles not on this map which was prepared by Mr. Church in the early stages of this case? It was not presented by me. I'm sorry, ladies and gentlemen. It's not a trick. I didn't do this to lure a detective into foolishness. Where is Lyles?

I asked Mr. Church, during the first day I had the opportunity to cross-examine him, if he knew what the direct -- best and most efficient direct route from Lyles Building Supply to Brandon Station Court was and he didn't. I also asked him how long does it take to drive that. He didn't. And I also asked him what the distance was. Didn't know that either.

Like I said, in another five or six weeks, this crime will be three years old and it's still not solved. Fortunately, Detective Church is an intelligent man, and during the recess that night between my questions in the afternoon and my questions the following morning, Mr. Church went out and traced those distances. And he found that it was approximately 12 and a half or 13 miles between Lyles and Brandon Station Court, and that it could be driven in 18 minutes. He found that out because I asked him to. He was not asked by Mr. Panosh to find that out.

Ladies and gentlemen, when you think about what happened to Patricia, it couldn't have taken more than a minute or two for this horrible deed to be done. I don't pretend to know what happened to her in detail. But I can guess, ladies and gentlemen, that the person who murdered her probably stood in this bathroom with a gun in his hand, such as the gun illustrated over there. And that as she walked by, she received a slug in the side of her head which killed her instantly.

Now, I don't know whether, as Mr. Lloyd suggested, she had that knife in her hand. I can't think of any other reason that it would have been found under her body, somewhat burned. I don't know. But I think that the bullet entering the left side of her head

strongly suggests that she was shot as she walked past here by a shooter who basically had his -- the gun up at basically the level of her head. And probably the muzzle of the gun was three or four or five or six feet from her head and she probably never knew what hit her.

Now, if the perpetrator had entered the house minutes before Patricia and if, as was speculated earlier in these -- on this day of summations, she found the door unlocked, because she did have this dead bolt, then perhaps the perpetrator only had to wait two or three minutes. And having shot her and her dying instantly, he could have quickly grabbed the gas can from the carport, come in and sloshed it on her body, trailed it back out in the manner that those trail marks indicate, and tossed a match around the door. The force of the -- and those experts, don't think that they don't know some facts about fires. Those experts are bound to be right. That there was a huge flare as that highly flammable gasoline and the fumes emitted from it ignited. And of course, as they said, it blew the door shut. When it blew the door shut, part of the curtain went around the edge of the door and the door slammed from the shut, and there weren't very many other sources of air in the house. And probably, just as Mr. Panosh argued earlier in the day, and as the experts suggested,

probably the fire burned rather slowly. Who can quarrel with that?

How much time did it take this perpetrator? Two minutes? Three minutes? Four minutes? Ladies and gentlemen, if you add 18 minutes to 18 minutes, you get 36 minutes. And if you give the perpetrator four minutes to murder Patricia, you've got 40 minutes.

Ted Kimble only needed to be away from Lyles for 40 minutes. And there is nobody who can account for his whereabouts at any time between approximately 3:30 and approximately 6:20, when he showed up at Precision Fabrics.

Motive, means, and opportunity. That's how you prove a case of circumstantial evidence of murder.

They spent more time with Rodney Woodberry's half-baked alibi than they did trying to satisfy you that the perpetrator of this crime was not the one they suspected all along. Why did they do that, ladies and gentlemen?

You know, ladies and gentlemen, when the State undertakes to prove murder by circumstantial evidence, then we have to look at the various theories that are consistent with the evidence, and if we've got two theories, we've got a problem. That's what's wrong with circumstantial evidence. It was okay, I guess, when Lee

Harvey Oswald who, of course, was dead by that time was receiving the blame for the killing of John F. Kennedy. But ladies and gentlemen, circumstantial evidence doesn't work very well when there are two or three equally believable and equally rational theories that hook up to the same evidence.

So, ladies and gentlemen, if all of the evidence in the case says that Ted Kimble had a huge motive to kill this unfortunate woman, that she was killed with his gun, and that he had a 3-hour window of opportunity on the day she died when no living soul can account for his whereabouts, how can you rule him out? And why would anyone bother to try to put together a case against Ronnie Kimble when you have such a good case against Ted Kimble? Why?

Ladies and gentlemen, how many mistakes are you going to let North Carolina make in one case? I told you in the beginning of this case that this was not going to be a case about science. This case could have happened -- somebody this morning -- David Lloyd said something about the Salem witch trials which happened in the 17th Century in Massachusetts. And you know, that's not the dark ages, ladies and gentlemen. There are beautiful houses that you can visit in New England right now that were standing when those terrible witch trials

were going on. It's not that long ago.

But they didn't have science, ladies and gentlemen. Not like we do. Only where is the science in this case? There isn't any. It's 1998, and there's -- no door has been closed. No fact has been established by the simple use of science.

North Carolina is the tenth strongest economy in the United States. We have a fantastic university system; an incredible science lab with more than a few locations around the State. Fingerprints: None identifying any suspect. Fingerprints: No tests performed on the murder weapon.

Ladies and gentlemen, that's unbelievable. You know. If a mad man goes in a museum and throws acid on a gorgeous painting from hundreds of years ago, a painting from the Renaissance, it can sometimes be repaired. In the art restoration world, you can take years of grime and dirt from the era when churches were lit with beeswax candles and the smoke went streaming up and covered these beautiful paintings. They can remove that dirt and expose a painting that was made a hundred- or a hundred and fifty or even three hundred years ago as it looked when the artist finished. And yet, nothing was done with that gun to determine whose fingerprints were on it. They shined it under a bright light.

Mr. Lindell took his last training about fingerprint analysis in the 1960's and hadn't been back. That was a mistake, ladies and gentlemen. What if only Ted's prints were on that gun? Don't you think we could have avoided all this?

Arson analysis. They don't know what time that fire was set. I'm not knocking them. They just don't know. I don't know either.

Fire could have burned from two to four or more hours. I'm sure that's true. In the end of this case when there was almost nothing left to be said, Mr. Pendergrass said, I'm satisfied that Patricia died around 4 p.m. So I asked him a couple of questions about that. And he opened it up to between 4 and 5. And I asked him a couple of more questions about that. And we got it opened to between 4 and 6. And that's the truth. It is between 4 and 6. Only we don't know it's 4 any more than we don't know it's 6. We don't know.

You know. If I'm out on the high seas in a life raft, there's no sense in me paddling in a certain direction, because I don't know where land is. What good is it going to do me to paddle? It's just going to wear me out. What good does it do us to talk about what time that fire was set or whether it was ignited by some kind of tricky device that involved the stove? It

doesn't help us understand this case any better.

Ted Kimble had two offices, and he was frequently in them. And let me tell you something, ladies and gentlemen -- of course, the autopsy doesn't help us either. We just don't know when this poor woman died.

Ted Kimble had two offices. He had numerous telephones. He was -- he had numerous vehicles. And he was his own boss. And he could forego a couple of sales of building materials in order to be off that lot for 40 minutes in order to go and take care of this business himself. He could have done that, and he probably did do that. And we're all here for naught.

Ladies and gentlemen, as has already been stated, Ted Kimble located this job at Precision Fabrics because he needed an alibi to cover the time that he was going to engineer the death of his wife. And he was operating within a very narrow framed reference. Because, as was pointed out by Mr. Lloyd this morning, one of the more significant policies of insurance that Ted Kimble stood to benefit from was the Maryland Casualty policy on the premises, and he had a right to the proceeds of some of that. The part not covered by the mortgage he had a right to, because he was a joint -- he wasn't an owner, but he lived there. And

they understood that when the policy was created. And the policy was worth \$16,000 in living expenses that he collected and over \$50,000 in compensation for personal property, and he and Patricia had received word that that policy was going to expire on the 30th of October of the year in which Patricia died. So poor Ted found himself jammed up. He couldn't wait for all of the various variables to fall into place.

You ask yourself -- I know you have, even though I'm sure that you're much nicer, all of you, than us lawyers are. I'm sure you've asked yourselves how could he have applied for this two-hundred-thousand-dollar policy with Mr. Jarrell and been so stupid?

Because, ladies and gentlemen, it's really not fair to Ted. I don't know why he's deserving of any fairness. But, you know, it doesn't do him justice. He didn't think there was a two-hundred-thousand-dollar policy on her life I don't think. There's no evidence that he thought it. He knew he was just trying to reserve a policy. He knew it wouldn't be active unless the physical was taken and the blood test was taken and all of that. I don't know how he got a lawyer to write a demand letter. I don't have any burden of proof in this case, ladies and gentlemen. If we want to know why the lawyer wrote a demand letter to Mr. Jarrell's

insurance company, let's bring the lawyer in here and ask him. Otherwise, it's not something that Ronnie Kimble has to prove to you.

Ted knew the casualty insurance on the house was going to be gone on October 30th, and he couldn't bear that job at Precision Fabrics. He couldn't bear the thought of going over there and working for 6.45 or \$7 an hour until the wee hours of the morning in a glue-filled environment where they were gluing layers of material to each other. That wasn't his thing. This guy drives a Jeep Cherokee and has a boat and has a vacation house in Williamsburg. People that have those kinds of possessions, ladies and gentlemen, do not have second jobs at basically chemical factories where you have to smell that terrible glue. And he never worked there.

He didn't have an alibi, ladies and gentlemen. If he had arranged for the death of Patricia through his brother or through a hit man, then he would have been at that Precision Fabrics job at 3 o'clock. He would have been there. Then he would have had a perfect alibi. He didn't have an alibi. He didn't go in until 6:20. He left that opening. He had to leave that opening. Because he couldn't get anybody to do this horrible thing. Nobody. Not his brother, not Rodney Woodberry,

not anybody else. He had to do it himself.

Now, what's the story on Rodney Woodberry?

Surely, you don't think that after Rodney quit his job that Ted was going to continue to pay for his beeper. Obviously, the beeper was a means of sending messages to people while they were working for the business either out on the lot or running an errand. You know. If you terminate your employee, then you terminate the benefits that go with the employment, and obviously there's no reason to suppose that Ted would continue paying for Rodney's beeper. Ted's problem with Rodney was exactly what Rodney said. That Ted had demonstrated a terrible bad temper toward Patricia in Rodney's presence.

Now, you know, he may have demonstrated a terrible bad temper toward Patricia in front of those people like Mr. Swaney and Mr. Ogburn, and people like that too. I don't know. All I know is Rodney Woodberry said that on several occasions Ted said, I wish she were dead. I wish I hadn't married her. I wish I could strangle her. I wish I had a hit man. And I say that he did think that somehow Rodney could have plugged him into a hit man. Because Rodney had a drug conviction.

MR. PANOSH: Objection.

THE COURT: Sustained.

MR. HATFIELD: Rodney could have been the kind

of guy who knew where you find people like that. And it doesn't matter whether Rodney succeeded, because basically I'm satisfied that Rodney is a very unreliable human being. But I'm also satisfied that Ted asked him where he could find a hit man.

Don't look at what Rodney says, ladies and gentlemen, because he's one of the four criminals. You can't really believe a word he says. But look at what he does. And what he does is this: As soon as he reads about or hears on the TV news about Patricia being dead, he makes himself scarce. And what happens? Ted continually tries to call Rodney through every means available.

Now, to a great extent we only know of the numerous calls that were made to Laura Shepard. But we don't know about those calls solely because Laura Shepard says so. We know about them because Detectives Church and Pendergrass found her phone number in Ted's phone records and went out there to say to her why is this guy who we suspect of murder calling your number all the time? And she says he's desperately trying to find Rodney Woodberry. So we watch what Rodney does and not what Rodney says.

What does Rodney do? He does everything in his power to avoid Ted. And then when he can't avoid the

police, he starts dealing with them and telling them whatever they want to know. So that in the end he made a whole series of statements, none of which has any believability at all, because every statement was different. And they were giving him an opportunity to clear himself. That's what Mr. Church said. And he -- like Mr. Pardee and Mr. Nichols, he managed to stay out of some of the trouble he might have been able to be in.

I don't say that he was the hit man. I say it's absolutely true that Ted asked him about a hit man and then after Ted took care of the business himself that he recognized that Rodney was going to probably break down and tell somebody, and so he had to go and talk to Rodney. He was simply covering his tracks.

This is a very sad and distressing case. Because a Christmas present should have been given to Ted Kimble. On December 24, 1995, he should have been handed warrants for murder. Let him prove where he was. Because as we now know, there would be no proof forthcoming.

A terrible potential mistake has been made here in which a young man's life has basically been ruined. He's lost his career in the Marine Corps. And as Father Soutiere said, he was a good marine. He's lost his wife, unless she changes her mind, because they've just

been separated too long and too many things have happened.

MR. PANOSH: Object. There's no evidence of that.

THE COURT: Sustained.

MR. HATFIELD: Well, she's divorcing him. I believe there's evidence of that.

THE COURT: There's evidence of that, sir.

MR. HATFIELD: She's divorcing him, ladies and gentlemen. Let's hope it doesn't go through.

He's lost his brother. And his family will never, never be the same. Life will never be the same.

The people here in this room who love Patricia, my heart goes out to them, because they too have been asked to support a prosecution which is wide of the mark. It's a circumstantial evidence case. And the facts as you have been presented them are just as consistent with Ted's guilt as they are of anybody else. Much more so.

Ronnie Kimble has no motive. And even though, when I sit down, you will be told numerous petty examples of how Ronnie Kimble didn't handle himself just perfectly on the stand. But think about where he's coming from. And think about a 26-year-old trying to defend himself against skilled prosecutors in a court of

law. It's not so easy.

Was he too confident on the witness stand? Well, that's about all he's got going for him at this point is his Marine pride. Because everything else has been taken from him.

Did some of his answers seem too pat? Well, he hadn't had anything to think about but this case. Sure, he's thought about all these things. They're all he has to think about.

Have mercy on this young man, ladies and gentlemen, because he didn't do this crime. Make the prosecutors bring Ted in here as they should have done. If he were in here now, things might be different.

Thank you.

THE COURT: Members of the jury, we're going to allow you to take about a ten-minute recess to kind of refresh yourselves before final argument. Please, again, remember do not discuss the case among yourselves. Keep an open mind. You have not heard the final argument or the Court's instructions as to the law.

Everyone remain seated while the jury leaves.

(Jury absent)

THE COURT: Ten-minute recess.

(Recess)

(Jury present)

THE COURT: At this point, members of the jury, Mr. Panosh will have the final argument on behalf of the people of North Carolina.

You may address the jury.

MR. PANOSH: Thank you.

Ladies and gentlemen of the jury, Mr. Hatfield had some pretty disparaging remarks to say about lawyers. And I don't want you to think that when I'm pointing out a few things that I'm in any way saying anything disparaging about Mr. Hatfield or Mr. Lloyd, because they simply made mistakes.

Both of them said to you that Ted Kimble got \$50,000 as a result of this insurance claim. I'm sorry. That's not true. You have in front of you State's Exhibits 104 and 105 which are the estate of Patricia Kimble. If you look in these, there is a statement indicating exactly what money went in and what money went out, and I believe there's actually cancelled checks. And you'll see here that there was a \$52,606 payment and a \$53,417 payment, and both of them went to Cathe Henderson, an attorney who represents the estate. And there are dispersals. She keeps an accurate record of everything that goes in and everything that goes out. And there are no dispersals to Ted Kimble. None. He

didn't get that money. The reason he didn't get that money is because it's in the estate of Patricia Kimble. And it will stay there until the estate is closed. And the estate will never be closed until the guilt of Theodore Kimble is decided, because he is one of the people who can take from that estate, and until it's decided that he is not responsible for her death, he will not be able to take from that estate. So Mr. Hatfield and Mr. Lloyd just made a mistake. They weren't trying to deceive you.

Mr. Hatfield says to you this case is simple. Theodore Kimble murdered her. Should have been served with a warrant right away. He had no alibi.

Ladies and gentlemen of the jury, I want you to remember the evidence, because there was a fella that testified by the name of Gary Reilly. You remember Mr. Gary Reilly? He testified that he took a 40-page statement from Theodore Kimble about his whereabouts on October 9, 1995. A 40-page statement. And he covered from 8:30 to 5:30, when he closed Lyles, to 6, when he got to Precision, and after that.

And remember, it wasn't 6:20, when he got to Precision. Mr. Chambers, who was his lead man, testified and said it was 6:00 when he got to Precision. I looked at my watch. And Mr. Reilly said I interviewed

the people, including Mr. Chambers and the other people at Precision, and verified that he was there at 6.

MR. HATFIELD: Objection. He did not say that.

THE COURT: Take your own recollection of the evidence, members of the jury.

MR. PANOSH: And a fella by the name of Jim Church testified -- or the other thing that Mr. Reilly said was that he allowed Theodore Kimble to list every person he came into contact with on that day. And you'll remember the list. He said there was the employee, Mr. Ogburn; the employer, Mr. Swaney; and the customers that he remembered; the bankers; his father; his mother; everybody he came into contact. He said his father wasn't there because his father was at Lynchburg University. And Gary Reilly said that he went and he interviewed each one of those people.

MR. HATFIELD: Objection. He missed some of them.

THE COURT: Overruled. Take your own recollection of the evidence, members of the jury.

MR. PANOSH: And verified that he was there from 8:30 to 5:30.

And do you remember what Ronnie Kimble said? Ronnie Kimble said that he was there until 4:15, and Ted was in the office.

Mr. Ogburn was interviewed. Mr. Swaney was interviewed. And there was another interview. You remember that? Detective Church told you about it. Mr. Reilly told you about it. Ted's mother. Remember? Because at 5:30, he couldn't just go to Precision Fabrics. He had to drop off the dog with his mother.

So I guess this is a backwards rush, a negative rush to judgment. You heard Mr. Lloyd say it was a rush to judgment against Ronnie. I guess this was a negative rush against Ted. Because, gee, if it was so simple, if there was no alibi, don't you think Mr. Church would have gone out and arrested him real quick? I mean didn't Mr. Church recognize this was his gun; he's the one that had the motive. If he didn't have this airtight alibi, don't you think Mr. Church would have arrested him right then and there?

Of course, he would have. This 40-page statement is important, ladies and gentlemen of the jury. It's important because Theodore Kimble was interviewed on October 16th, just seven days after the death of his wife, and was allowed to spell out his activities minute by minute. And you heard who he listed. Bill Harris. Precision Fabrics.

MR. LLOYD: Well, objection, Your Honor. Not for the truth of the matter asserted. Statement made

out of court, not under oath.

THE COURT: Sustained.

MR. PANOSH: You have heard his testimony. He listed everybody he came into contact with except Ronnie Kimble. Never in 40 pages did he list Ronnie Kimble by name. There was one time when he said my brother -- no name -- my brother was there at the fire. That's all he ever said.

Why, ladies and gentlemen of the jury? Because on that day he knew that Gary Reilly was going to go to each and every one of the people he had talked to, each and every one of the people that Ted listed, and follow up, and follow up on what Ted told them. And he didn't want -- he desperately did not want Mr. Reilly to come into contact with Ronnie Kimble. Why? Because Ronnie Kimble wasn't doing so well.

Do you remember the testimony of Mr. Stump? Mr. Stump said yes, in fact I was with him that night. He was doing just fine.

And then I showed him an affidavit he gave in December of 1996. And in that affidavit he said Ronnie Kimble was terribly upset, he was crying, he was -- seemed to be grief stricken.

He didn't remember that the first time he testified until he looked at his statement from December

of '96. And then he remembered it.

That's why Theodore Kimble did not want to mention Ronnie. Because he knew Ronnie wasn't handling the murder very well. If Mr. Stump knew it, Theodore Kimble knew it. And he knew that if that insurance investigator or anybody else found Ronnie, that Ronnie might -- Ronnie just might say something that would implicate the two of them.

Ronnie Kimble testified. And he said, I was upset. I was outraged by the sheriff's department. They had had that receipt, and they never came and talked to me. That bothered me.

Remember him saying that?

But he was in town on October the 9th, the day of her death; October the 10th; 11th; 12th; 13th; 14th; and Sunday, the 15th. Didn't go back to work until the 16th, that Monday. He was in town each and every one of those days.

I asked Mr. Stump, Well, was he working on that underpinning?

No. I don't know what he was doing.

Ask yourself, ladies and gentlemen of the jury, if you were at your sister-in-law's home the day that she was brutally murdered, the day that her body in her home was set on fire, is there anything in the world

that would stop you from going to the police and saying this happened, this is what I saw, this is what I didn't see?

No.

There's only one reason that man, Ronnie Kimble, did not go to the Guilford County Sheriff's Department: Because he knew he wanted to slip out of town and be gone.

You remember much, much later Mr. Charles Dunn testified -- and I don't remember what he was testifying about, but he was here to say I am Ronnie Kimble's best friend. And I think he was telling about sometime when they went shooting together. And maybe about this abortion.

I said to him, Did you learn of Patricia's death?

Yes, I did.

Did you learn it from Ronnie?

No, I didn't. I didn't even know he was in town that weekend.

Ronnie's best friend didn't know he was in town that weekend.

Ronnie leaves without seeing the police. Ted never mentioned that Ronnie was with him at 7:00 in the morning when he picked up the truck, at 9 or 10 when he

picked up the pickets, right after that when he came back for the gas, and then again at 3 o'clock, until 4:15. He never mentioned that.

You have to remember, ladies and gentlemen of the jury, Ted is Ronnie's alibi. And Ronnie is Ted's alibi. Why would Ted be keeping that quiet? Why would he not be saying hey, I can tell you all about my day. My brother was with me this time, this time, this time, and this time. Why did he never tell Detective Church that? Why did -- when Detective Church finally confronted him, why did he say I was scared?

He was scared all right. He was scared that Detective Church would get ahold of Ronnie and he would talk to Ronnie and Ronnie would say something that would lead them to suspect Ronnie and Ted. And you bet'cha, there's telephone calls on here. And I had -- first of all, I asked him, I said, Did your brother ever call you at Camp LeJeune?

Nope. Brother never called me.

I brought up a piece of paper and said list these numbers. You recognize these numbers?

Oh, yeah. Those are the base chaplain -- base barracks. I recognize all those numbers.

Didn't you, in fact, get calls from Ted on that day, October 30, 1995, the day that NIS was interviewing

you?

Nope. That must have been my mother and father.

Well, look here. It's in the afternoon and then it's again in the evening. Who called you?

Well, maybe it was Ted. Yes. I think maybe he did call me.

Mr. Hatfield said I wouldn't be the least bit surprised if Ted didn't call him on that day.

Why was he calling him, ladies and gentlemen of the jury? He was calling to make sure that information didn't come out, information about their conspiracy.

And there was a conspiracy in this case, no matter what Mr. Lloyd says to you. Mr. Lloyd says with every fiber of my being, I believe he's not guilty. Well, ladies and gentlemen of the jury, it is improper for me to stand here and say what I believe.

MR. LLOYD: Well, objection, Your Honor. That's not what I said.

THE COURT: Well, sustained. Take your own recollection of the evidence, members of the jury.

MR. PANOSH: It is improper for any attorney to submit his opinion. You're the ones to decide the guilt or innocence.

MR. LLOYD: Your Honor, let the record note that what I said that I was going to convince them that

Ronnie Kimble was not guilty.

THE COURT: Take your own recollection of the evidence, members of the jury.

MR. PANOSH: He went on to say that those telephone calls, there was no evidence that Ted made those calls to Ronnie. But you remember what Ronnie said? Ted may have called. I just don't remember. Yes, we may have discussed it. We did -- I think we may have talked in the evening.

Mr. Lloyd said, Well, it could have been the mother. It could have been Edna Kimble. It could have been Ronnie Kimble.

Again, have you heard from Edna Kimble or Ronnie Kimble to say they did in fact make those calls? I contend to you you didn't, because that was part of the conspiracy. That was something they wanted to cover up.

And we heard a little bit about Joy Dyer. Joy Dyer came in here and she testified. Mr. Hatfield said the only reason we brought her in was to smear Ronnie Kimble's name and reputation. But you remember the testimony, ladies and gentlemen of the jury. She got up there, and I asked her a very few limited questions, and those questions were designed to say yes, I knew Ronnie; yes, I dated Ronnie; and yes, about in 1992, I remember Ronnie and Ted, and I remember them coming and target

practicing with this pistol, or a pistol like this, with a laser sight in my yard. That's the only reason she was here. We didn't bring her here to smear anything. It was through cross-examination and the direct examination of Ronnie Kimble that all the romantic information came out about the pregnancy and the abortion.

And yes, that is important, ladies and gentlemen of the jury, because it conclusively shows -- it conclusively shows -- that there was a relationship between Ted and Ronnie. And when Ronnie got in trouble, Ted is the one that stepped in. And Ted said you're going to -- not going to embarrass my family.

Now, ladies and gentlemen of the jury, this is the murder weapon. I submit to you I don't believe that they're contesting that anymore. Mr. Hatfield said science was not used. Science was not used to get the fingerprints, or we would have known only Ted's fingerprints were on there.

Well, first of all, at some point Ted's fingerprints were on there. I'll admit that. That doesn't mean somebody else with a glove could not have touched that. And secondly, I want you to look at these keys. Because this gun has been cleaned. You'll remember Mr. Ware said before I did my analysis I

cleaned this gun, because I couldn't fire it until it had been cleaned.

Look at these keys that went through a fire. This is the condition that gun was in or worse. You've seen the photographs. Remember the explanation you heard of fingerprints from Ms. Huntington and Sergeant Lindell. Fingerprints are moisture left on a surface. How could any moisture be left to be detected on that surface when it's covered with grit and soot from the fire? How could any fingerprints be lifted from this particular gun?

And these keys are important too, ladies and gentlemen of the jury. Very important. Because Mr. Hatfield or Mr. Lloyd, one of them, argued Patricia came home that day and used her keys to get into her house and left them in her kitchen.

And I submit and contend to you there is no evidence of that. These are her keys. They were left in the ignition of her car. These also belong to that household. No question about it. They're identical. You can compare the keys. For example, you can compare the Subaru keys. They're exactly the same. But Patricia didn't need these keys that day. Somebody else needed keys to move the truck. Somebody else had access to the keys. And I submit and contend to you that yes,

they were found in the kitchen. I submit and contend to you yes, they were probably laying on the countertop. And I submit and contend to you that when the firemen came in there, they said the heat was so intense they opened that big nozzle and they sprayed, and that's how they got from the countertop to the floor. And I submit and contend to you it makes no sense for Patricia to have these exact same keys in her car in the ignition and then use those keys.

I submit and contend to you that those keys and this gun came from Lyles Building Supply, and Ronnie was there on one of those trips that he made to Lyles Building Supply. Probably early in that morning. He needed tools. He didn't need a saw. This is the tool he needed. This is the tool he needed to get in.

Because the evidence is absolutely clear that this poor young lady was deathly afraid of another breaking and entry. And when she left that house that morning, that dead bolt was locked. Because she was afraid. She had had two breaking and enterings in her house. She's not going to leave that house empty and unlocked. She locked that dead bolt. And when she came home, ladies and gentlemen of the jury, she didn't remove these keys from the ignition, because she didn't need them. She knew Ronnie was there. Ronnie's vehicle

was right there in the driveway. That's what I submit and contend to you.

And when Ms. Dyer testified about the shooting, it was relevant, because it was in 1992, which seems like a long time ago now. But remember this murder occurred in 1995. So it was within a three-year time span.

And Mr. Hatfield made a big thing. He said, Well, you know, they're going to make it look like they tricked -- like my client wasn't telling the truth about this wedding picture.

And I submit and contend to you it's true. He was not telling the truth. He was up there and he said, time and time and time again, We weren't close. And on direct examination he said, I wasn't even in the wedding.

So on cross-examination, I came back and said, Were you in the wedding?

No. I wasn't in the wedding.

So I picked up this photograph and started to go over to Mr. Lloyd and show him what I was going to give him. He says, Let me correct myself. I was in the wedding. There, there, that's my picture. He said, But it was a last-minute thing. It was done at the last minute. They just decided to have me -- unless you've

got a printed announcement there, well, I guess then it was planned.

This young man does not know the truth. He certainly didn't tell you the truth.

What did he tell you about pornography? What did he tell you about pornography? He made that speech all by himself. He said pornography, I can't stand it. I can't abide it. I won't have it around me. I don't let my roommates have it. I told them if I see it around, I'm going to destroy it. Don't have it around me.

And after the break, I said, Now, do you remember that speech?

Yes. It wasn't true. I do struggle with pornography. I have had it in the past. And it's a temptation to me.

Another little lie that he got caught in.

It's about the same time he was telling you about how he is faithful to his wife who he has no secrets from; his wife who he says he told about the dream; he told about this dream about Patricia's death. Did you hear Kimberly Kimble say she was told about the dream? She didn't. The dream is the whole defense here, ladies and gentlemen of the jury. If Kimberly Kimble knew about the dream, she would have told you.

I came back to him, I said, You mean you told her?

Yes, I did.

When did you tell her?

I don't recall.

What did you tell her?

I don't remember.

Did you tell her details?

I don't -- I didn't tell her details. I just said it was a dream about Patricia. Or Patricia's death, I think he said.

And then I asked him, Is this your book, 138?

Yes, it is.

Are these pictures that you had in that book?

Yes, they are.

Are they your wife?

No. They're Janet Smith.

But he wanted you to believe that he was a loving wife -- husband, they had a good marital relationship, and he didn't keep secrets from his wife.

Now, there's something you should have noticed -- here, ladies and gentlemen of the jury. You have heard two witnesses -- Father Soutiere and Ms. Kelly. Ms. Kelly who said she's a surrogate mother to him. Both of them said one thing about his character. He's a

good Marine.

Have you heard one single witness take the witness stand and say, I've known Ronnie Kimble for five years, ten years, fifteen years; he's credible, believable, of good character? Anything along those lines? Not subject to violence. Have you heard one?

MR. LLOYD: Objection, Your Honor. There's no evidence of that one way or the other.

THE COURT: Overruled. Comment on the evidence.

MR. PANOSH: Have you heard one character witness come in for Ronnie Kimble?

I submit and contend to you you have not. And you can consider absence of character evidence --

MR. HATFIELD: Objection. That is not the law.

MR. PANOSH: -- when you're determining --

THE COURT: Members of the jury, you will take your own recollection of the evidence during your deliberations.

MR. PANOSH: -- whether you believe him or whether he could commit this type of crime.

Ask yourselves, ladies and gentlemen of the jury, if I, if I was falsely accused of a crime, how many character witnesses could I bring in?

Let's see. There would be my minister, my teachers, my neighbors --

MR. LLOYD: Objection, Your Honor. Improper argument.

THE COURT: Overruled.

MR. PANOSH: Have you seen those people?

There's a reason, ladies and gentlemen of the jury.

And you heard I believe Mr. Lloyd say that Father Soutiere was here for a reason. He was here to say that Ronnie did not confess to him and therefore he is not guilty.

Well, that's such a strange argument. I'm not sure how to address it. But, first of all, if Ronnie did confess to him, he certainly could not come in here and tell you about it. And if Ronnie did confess to six other preachers on the base, they could not come in here and tell you about it. So what does it mean?

It means that he didn't go to Father Soutiere, because Father Soutiere was a Catholic priest and he was a Baptist. Baptists don't believe in the Pope. They don't believe in confession. If a Baptist is going to seek forgiveness, he's going to seek it from his God. And he's going to go and talk to another Baptist: Mr. Whidden.

And Mr. Lloyd said that Ronnie did not -- did not -- call Mitch Whidden a liar. But I submit and contend to you, again and again, he did. He said Mitch

Whidden is deceitful.

There are multiple levels here. First, he says Mitch Whidden told you a lie when he said I confessed this murder to you -- to him. Then he says Mitch Whidden told you a lie when the next day he said he wanted me to leave, because really Mitch --

MR. LLOYD: Objection, Your Honor. He did not testify to that.

THE COURT: Members of the jury, again, take your own recollection of the evidence.

MR. PANOSH: Mitch Whidden wanted us to stay. He was practically begging us to stay. And Debra Whidden -- Debra Whidden is also not telling you the truth, because he never made the statement that he had a haunted past. And he never said to her, I wouldn't be so sure about that, in a very serious manner, when she said, Well, we've all done things we regret in our past.

And then Mr. Lloyd said, Well, you know, it doesn't make sense that he went down to Camp LeJeune, and when Ronnie said to him it was just a dream, he didn't confront him.

Well, ask yourselves, members of the jury, why did Mitch Whidden go there? He told you he went there because he was concerned about this suicide thing. He

told you he went there to get him to turn himself in.
And all of a sudden --

MR. LLOYD: Objection, Your Honor. He never said he went down there about suicide.

THE COURT: Again, members of the jury, you will take your own recollection of the evidence when you begin your deliberations.

MR. PANOSH: And when Ronnie says it was all a dream, no, he didn't confront him. Are you going to confront a murderer and say, You confess to me? Common sense says that's the time you walk away. You can't help this man. You can't talk him out of suicide. You can't talk him into turning himself in. And that's exactly what Mitch Whidden did.

And they said we didn't bring in a whole bunch of witnesses to tell you that they might know something. Well, ladies and gentlemen of the jury, I say again and again, these witnesses are important. Because Ronnie Kimble took that witness stand and he says that he was there on three occasions. He was at Lyles. And every time, he talks to Mr. Ogburn, and he talks to Mr. Ogburn about selling him his car, the last thing he did when he left that day. And Mr. Ogburn would be a one-hundred-percent alibi, because we all agree that if Mr. Ogburn was talking to him here at 4:15, then he couldn't be

over there killing Patricia Kimble at the same time. And yes, it is important they didn't bring in Mr. Ogburn or Mr. Smith, or any other people they said they were going to bring in.

MR. HATFIELD: We never said we were going to bring those in. I have my statement. I would like it read to the jury again.

THE COURT: Mr. Hatfield, just sit down. Cool off.

Members of the jury, again, take your own recollection of the statements made by the attorneys and the evidence that's been presented to you.

MR. PANOSH: They want you to believe that there are four theories here. Actually, there's five, because Mr. Hatfield came up with a new one. That -- well, I think there were four theories: Ted did it, a burglar did it, Ted hired somebody to do it, or Ronnie did it. Isn't it amazing that they would give you that option?

Ladies and gentlemen of the jury, this was not a burglary. First of all, you know that Patricia was afraid of burglars, and she had her house broken into twice. She wouldn't go into this dwelling knowing that it was being broken into. And if there was a burglar back here in this back bedroom, you know where he would have gone. He would have gone right out that window,

and all she would have seen were the back of his heels as he was disappearing into the woods. You know that this woman would not have gone and armed herself with a kitchen knife to go and confront a burglar. And you know it didn't happen that way, because if she was confronting someone with a kitchen knife, she wouldn't have been shot in the side of the head. This was not a burglary.

They passed up the money that was in the master bedroom, the stereo, the TV, the purse, the pager, all the money that was in there, the portable compressor that was in the garage. This was not a burglary. And the most important thing that they passed up was this gun. This gun is worth a lot of money on the street. If this burglar was so desperate that he had to kill, then he probably would have hung onto this gun because he might have to kill again. And certainly he would be able to sell this thing for a couple of hundred dollars on the street.

It doesn't make sense. The reason it doesn't make sense is, just as the officers told you, this was not a burglary.

And a burglar would not have burned that house. There would have been no reason for him to burn that house. That house was burned for one simple reason. It

was part of Theodore Kimble's attempt to defraud insurance companies.

Here is his proof of loss, ladies and gentlemen of the jury. Remember, this is an 80-thousand-dollar house. Remember, it's got approximately \$60,000 worth of property in it.

What does he claim? \$247,842 in loss.

The reason that house was burned was so that he could continue his insurance fraud.

This is what he stood to gain, ladies and gentlemen of the jury: There was twenty-five thousand from her work; twenty-five thousand that she had originally; another twenty-five thousand that she got after she married Ted. Each of these had a double indemnity. Just before her death, he applied for another two hundred thousand dollars. And yes, he thought he was going to get it because that's why he hired an attorney. And he also expected to get, based upon his proof of loss, another two hundred forty thousand -- forty-seven thousand dollars. Of course, he'd have to pay off the mortgage, seventy-nine thousand, but he would still have lots and lots of money. And he would still have his cars paid for, free and clear. That was the motive for this killing.

Kimberly Kimble testified. And I submit and

contend to you when she testified, the first thing she said -- and she said it four times in her testimony -- was Ronnie was a procrastinator. Ronnie didn't get things done. But you remember what she said in direct testimony? Ronnie got up at 7:00 in the morning, Ronnie went to get that truck, and he was going to go and work on that underpinning that day. It doesn't sound like a procrastinator to me.

Do you remember when she testified, she said just two weeks ago I was asked about this and I said I don't remember anything about that time frame, but since then I've had a chance to talk with my mother and now it's all come back to me.

You remember what she testified? She said that I was with my -- with Ronnie all that night and that we went out and we went to the supermarket, and we saw Ms. Williford.

And again I say to you where is Ms. Williford?

And what did we do? We went and bought stuffed flounder -- two stuffed flounders and some potato tots I think she said. She bought a meal for that hungry marine for \$4.06. Ladies and gentlemen of the jury, if she can buy a meal for the two of them for \$4.06, then the Marine Corps needs her because they'd love to be able to feed people for that amount of money. It didn't

1 happen. She simply was not telling you the truth.

2 The reason that Ms. Williford isn't here is
3 because Ms. Williford didn't see Ronnie that day. And
4 if in fact Ronnie was seen in the area of the fire, it's
5 quite possible that it was because he was not with
6 Kimberly, as she said, because this, if anything, is a
7 meal for one, not a meal for two.

8 And she wanted you to believe that Debra -- that
9 she was with Debra Whidden every minute of the time and
10 that Debra Whidden -- when she said that Ronnie told her
11 that he had a haunted past that Debra Whidden was not
12 telling you the truth. This is -- she went on to say
13 that they have a wonderful relationship, but they are
14 getting divorced.

15 Mr. Stump testified. And Mr. Stump, if you
16 remember, said that Ronnie is the closest thing I've
17 ever had to a son, and he wanted to push the time back
18 that he saw him. He wanted to say, well, it was closer
19 to quarter to five. But when shown his affidavit, his
20 affidavit clearly says 4:50 to 5:00. He wanted to tell
21 you that he did not -- that Ronnie was not upset that
22 night. But when he was shown his affidavit he had to
23 admit that Ronnie was upset that day.

24 MR. LLOYD: Well, objection, Your Honor. It
25 doesn't refer to that time period.

THE COURT: Again, members of the jury, take your own recollection of the evidence.

MR. PANOSH: That night.

And then Ronnie Kimble was asked about these records. These records which he said -- first of all, he said when he applied he put down that he didn't have periods of unconsciousness; that he had never been a sleepwalker. And he wanted to say to you, when I pointed that out to him, that first of all that was a mistake, somebody else must have told him to do it, or maybe he was just answering the question in the alternative. All these things just tell you, ladies and gentlemen of the jury, he was not telling you the truth.

He wants to tell you that they weren't close. Well, ladies and gentlemen of the jury, I point out to you that they were close. They worked together. It was back at that time, back in 1991, when they took care of Ronnie's problem together. Ronnie got his building supplies through his brother, his gravel, his timbers, the skirting for his house. He borrowed his trailer. He borrowed his truck. He must have borrowed his truck more than once, because he said he knew the truck needed to be warmed up. He went there and blew leaves on at least one occasion for his brother. And most

importantly of all, ladies and gentlemen of the jury, on October 10, 1995, when Ted made that trip that he needed a flashlight for to go back to Lyles Building Supply, he went with him. It wasn't Edna. It wasn't Ronnie, Sr. It was Ronnie Kimble that went with him. He went with him because they were going there, I submit and contend to you, to destroy evidence. Not to get rid of some pornography. He wants you to believe that they drove 25 minutes there and 25 minutes back and did not discuss anything. He had no idea what was going on except Ted was looking for some records. He wants you to believe that they drove 25 minutes there and they were thwarted by the fact that the flashlight didn't work. He wants you to believe that then Ted went and got some box with some pornography and threw it away.

Ladies and gentlemen of the jury, the reason they were together that day was because they were discussing the murder and discussing how they were going to get away and probably they needed a flashlight to go and find and destroy some evidence.

And then October 30th, when NIS is interviewing him, again there are telephone calls.

And then you heard him tell you about the dream. Not a lot of dreams, just one dream. He started off by saying I don't dream a lot and I don't remember the

dreams but I remember this particular dream. And what I was telling Mitch Whidden about was a dream.

Ladies and gentlemen of the jury, Mitch Whidden specifically told you that Ronnie Kimble was talking about suicide. You don't talk about suicide over a dream. You just don't.

Ronnie Kimble was undergoing all this analysis. He went to a psychiatrist. He went to a sleep therapist. He didn't tell anybody about that dream. And I submit and contend to you he certainly did not tell his wife about that dream.

And then on cross-examination, he said something that was just totally incredible. He said that when we were discussing it, I told Mitch that part of the dream was the \$20-thousand reward. I told Mitch that part of the dream was the \$20-thousand reward. And then at Camp LeJeune, Mitch said to me, Well, if you go and ask your brother for the reward, you'll know it wasn't a dream.

Does that make sense to you, ladies and gentlemen of the jury? I asked him that three times to try and pin him down. He said yes, we were talking about the reward money.

What happened, ladies and gentlemen of the jury, was not reward money. What happened was that Ronnie Kimble told Mitch Whidden that he had in fact killed his

sister-in-law. He had done it for greed, he expected to be paid by his brother, and he had not been paid. There was no money mentioned. He had not been paid. And that's why Mitch Whidden said to him, Go to your brother, and if he gives you the money, you'll know it wasn't a dream. That makes sense. And what Ronnie was trying to tell you does not make sense.

You know. It's just so implicit in their defense is that Mitch Whidden is telling you a lie. Now he is lying to you. He is not making this up. I mean he is not misunderstanding this. He is making it up.

Mr. Hatfield said that Mitch formed his opinion before he left the Marine Corps.

I've got to ask you, ladies and gentlemen of the jury, if it's all a lie, if Ronnie Kimble did not tell Mitch Whidden that he had killed his sister-in-law, if Mitch made it up, how could he know when he made it up in January of 1997, that Ronnie Kimble has no alibi for the period of time that she was killed? How could he know that at about the same time in Greensboro, Patrick Pardee was being told by Theodore Kimble that he had in fact killed -- had his wife killed and that Ronnie had killed her, and that Ronnie had shot her and Ronnie had poured gasoline on her.

Ladies and gentlemen of the jury, Patrick Pardee is a very important witness in this case. Because between Patrick Pardee and the statements he made to you about what Ted Kimble told him, the conspiracy is established. There is an agreement -- it's 115. Excuse me. 116 -- that has to do with Patrick Pardee. And I would ask that you take this back and read it. Because what it says to you, ladies and gentlemen of the jury, is that before he made any kind of a deal -- months before he made any kind of a deal with the State, he told about the breaking and entries that he was involved in. He helped them recover property. He pointed out where the breaking and entries occurred and where other property was stored hidden around the county so they could recover it. And most important of all, it says that it is the understanding of the parties that the defendant, through counsel, will at the appropriate time request the sentencing Court to consider the First Offender Program for the defendant Pardee if he is eligible.

He's a first offender, ladies and gentlemen of the jury. That's what it says. If you use your common sense, on April 1, 1997, when Mr. Pardee was arrested, if he had done nothing at all, being a first offender, what would he have gotten? Probation.

MR. LLOYD: Well, objection, Your Honor.

MR. PANOSH: Just exactly what he got.

THE COURT: Sustained.

MR. PANOSH: If you use your common sense, ladies and gentlemen of the jury, if he went and pointed out where all this property was recovered, what would he have gotten? And I submit and contend to you he would not have gotten one shred of a better deal than he got because he testified.

MR. LLOYD: Objection, Your Honor. Absolutely no evidence of that.

THE COURT: Sustained. Disregard that, members of the jury.

MR. PANOSH: You can take this agreement and you can read it, you can go through it carefully, and I submit and contend to you there's nothing in here that would make Mr. Patrick Pardee tell you anything but the truth.

Ladies and gentlemen of the jury, the State's case is very, very simple. These two brothers conspired to commit this murder, they did commit this murder, and they committed it for money. Patrick Pardee told you that. He took the witness stand and told you that Theodore Kimble admitted to him that Ronnie Kimble, his brother, had committed the murder. And he had no reason

to lie. And by that, and by that alone, you should be able to convict Ronnie Kimble.

Mitch Whidden, who is a clergyman, took the witness stand and said that I really liked Ronnie Kimble, I invited him into my home, I had nothing against him, and he told me that he killed Patricia Kimble. He told me he killed his sister-in-law. And I became so afraid that I went to Jerry Falwell, and I told Jerry Falwell. Jerry Falwell referred me to an attorney, and the attorney got an agreement to protect my family. And then I told the law enforcement officers. And I'm here today to tell you that he confessed to me that he killed his sister-in-law. Mitch Whidden had no reason to lie.

And you've heard about Leviticus, ladies and gentlemen of the jury. You heard Mr. Lloyd make reference to it.

It says in Chapter 5 --

MR. LLOYD: I would object to this, Your Honor. It purports to be evidence because it's something that Mitch Whidden referred to.

THE COURT: Overruled.

MR. PANOSH: It says in Chapter 5, If any person refuses to give information which as a witness of something he has seen or learned, he has been adjured to

give and thus commits a sin and has to bear guilt.

Leviticus had nothing to do with what Ronnie Kimble said. Leviticus deals with the duty of Mitch Whidden to come forward. And you've heard about these other readings. The Catholic readings that the priest referred to.

And in those Catholic readings in the book of --

MR. LLOYD: Well, objection to this, Your Honor.

THE COURT: Overruled.

MR. LLOYD: Highly improper.

MR. PANOSH: In the book of Sirach which is one of the readings that he identified as being part of the group that is left out of the Baptist Bible, it says, Chapter 34, Trust in the Lord and not in dreams. Empty and false are the hopes of the senseless and fools are born aloft by dreams. Like a man who catches that shadows or chases the wind is the one who believes in dreams. What is seen in dreams is to reality what the reflection of a face is to the face itself. Can the unclean produce the clean? Can a liar ever speak the truth? Divinations, omens and dreams are all unreal. What you already expect the mind depicts. Unless it be a vision specially sent from the most high, fix not your heart on it for dreams have led many astray and those who believe in them have perished.

Believe in the Lord, trust in the Lord, and not in dreams.

Mitch Whidden lives by this book.

MR. HATFIELD: Objection. There's not a shred of evidence he lives by that book.

THE COURT: Take your own recollection of the evidence, members of the jury.

MR. PANOSH: He lives by the Bible. He said he studied that particular passage. And there is nothing in that Bible anywhere that says that you can bear false witness. There is nothing in that Bible that says you can rely upon dreams. He studied that and he knew that he should trust in the Lord and not in dreams. And there was no way he would come before this jury and say that in fact Ronnie Kimble told me he committed this murder when it was just a dream.

Ladies and gentlemen of the jury, this was a conspiracy. That's why there's no evidence. There's no physical evidence there. Ted Kimble has been ruled out. The motive was money. There was no one Ted Kimble could go to to get this thing done on credit without payment - except Ronnie. Ronnie was in town. But he denied it. He never told anyone about it. Ted Kimble knew he was in town, but he never told anyone about it. They got together on October 10th, and they got together later

when Ms. McCloud was there.

Do you remember that conversation? Ms. McCloud said that she was at Theodore Kimble's home; Theodore was living then with his parents; that there was a telephone call; that it was Ronnie; that Ted got upset. That they got in the car and they drove over to the Stumps' residence, and there was a conversation. And Ted said, You stay in the car. You stay there. And she saw the conversation, but she couldn't hear it.

This was just months after -- this was November. Just a few weeks after the death of Patricia. And she saw the two brothers being animated and being upset.

When Ronnie Kimble testified, he said it didn't happen that way. First of all, I don't recall calling my brother. Secondly, he came in and he visited for a while, and then I just walked him to the car, and I might have gotten upset because he had a girlfriend already.

Ladies and gentlemen of the jury, that conversation was part of the conspiracy. Everything in this case, ladies and gentlemen of the jury, points to a conspiracy, points to these two brothers acting together, and there is nothing before you to say that Mitch Whidden or Patrick Pardee would lie.

You must believe them, ladies and gentlemen of

the jury, because they had no reason, no motivation to lie. And if you believe them, you must find him guilty of arson, of murder, and conspiracy to murder. Because that day, ladies and gentlemen of the jury, Ronnie Kimble, not for money, but for the promise of money, went into Patricia Kimble's home, and turned that home into a crematory. We cannot allow that. We cannot allow that.

THE COURT: Again, members of the jury, you'll take your own recollection of the evidence when you begin your deliberations. This completes the arguments. And due to the nature of the time, the Court will not have adequate time to make the charge as to the law and give you an opportunity to deliberate, so we'll do that in the morning when you return at 9:30.

Be very careful at this point that you do not discuss this case with anyone or allow anyone to talk to you about the case or talk about the case in your presence. Do not attempt to go out and visit the scene or do any research or investigation on your own. Do not read, watch, listen to any news or media accounts.

Does everyone understand those instructions?

Have a restful night, and I'll see you in the morning at 9:30.

You may let the press representative out. You

may let the press representative out. The media.

(Jury absent)

THE COURT: Anyone that's in the media may leave. The rest of you will have to wait until the jury clears the building.

As soon as the jury clears the elevators, I'll have the bailiffs to excuse you. Please just be patient for the next few minutes.

Let me see the attorneys up here a minute.

(The following side-bar conference was held out of the hearing and presence of the jury:)

THE COURT: I was just complimenting counsel on their arguments. You both did a good job on your arguments.

MR. LLOYD: Your Honor, how long will the charge take?

THE COURT: It won't take 15, 20 minutes.

MR. HATFIELD: Going to begin at 9:30?

THE COURT: Yes.

(Open court resumed)

THE COURT: All right. You may declare a recess until 9:30 in the morning, Sheriff.

(Whereupon, an evening recess was taken at 4:47 p.m., to resume proceedings on September 1, 1998, at 9:30 a.m.)