

NORTH CAROLINA  
GUILFORD COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
FILE NO. 97 CrS 23654  
FILE NO. 97 CrS 39580  
FILE NO. 98 CrS 23485

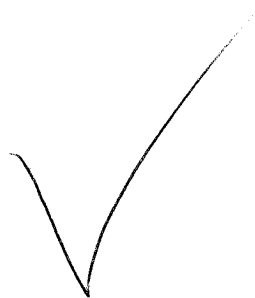
STATE OF NORTH CAROLINA )  
 )  
 v. )  
 )  
RONNIE LEE KIMBLE )

T R A N S C R I P T

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

A P P E A R A N C E S

Richard E. Panosh  
Assistant District Attorney  
Eighteenth Judicial District  
P.O. Box 2378  
Greensboro, North Carolina 27402  
on behalf of the State



HATFIELD & HATFIELD  
John B. Hatfield, Jr.  
Attorney at Law  
219 West Washington Street  
Greensboro, North Carolina 27401  
W. David Lloyd  
Attorney at Law  
101 South Elm Street  
Greensboro, North Carolina 27401  
on behalf of the Defendant

Reported by Marsha M. Garlick, RPR  
Official Superior Court Reporter  
Eighteenth Judicial District  
Greensboro, North Carolina 27402

WEDNESDAY, AUGUST 12, 1998

(Court convened at 9:34 a.m. The defendant was present. The jury was not present.)

THE COURT: Any matters we need to take care of before I bring the jury in?

MR. PANOSH: Two quick things, Your Honor. The clerk pointed out to me State's Number 3 has not been admitted. We move that at this time.

THE COURT: Which exhibit's that, sir?

MR. PANOSH: That's the memorandum of the telephone calls.

MR. HATFIELD: We --

THE COURT: That was not admitted. The Court will not admit that.

MR. PANOSH: Will not?

THE COURT: No, sir.

MR. PANOSH: Okay.

And we have a different tape player, and the tape's ready to go.

THE COURT: Okay.

(The jury entered the courtroom at 9:35 a.m.)

THE COURT: Very pleased to have the jury panel back. I hope each of you had a nice evening and feeling okay. Anyone experiencing any problems this morning that I should know about, if you'd raise your hand, I'll be glad to

talk with you about that.

I think we have a different machine, and we're going to try again on the video.

The State ready to proceed? Mr. Panosh, are you ready to proceed?

MR. PANOSH: Yes, sir.

THE COURT: Do you want to continue?

MR. PANOSH: Your Honor, we'd ask Mr. Ed Rich to return to the stand and narrate the video.

THE COURT: You're still under oath, sir.

(The witness, Edward Rich, and Mr. Panosh approached the television monitor, and the witness continued playing the videotape, State's Exhibit Number 48, to the jury.)

EDWARD RICH, having been previously duly sworn, testified as follows during CONTINUED REDIRECT EXAMINATION by MR. PANOSH:

A All right. This is the interior of the house, where the body was found, and showing again the burned and charred debris as it was present at the time.

That's the ladder over the hole that we talked about yesterday.

This is the master bedroom.

That's the master bath.

This is showing just an overall view of the master bath -- or bedroom. And that's the closet out of that same room.

This is actually the bedroom across the hall from the

master bedroom, at the end of that hall.

This is the same area, showing the materials that were in there was just in a disarray. All the files were open, pulled out. You can see everything's sort of strewn around. It's not organized.

Okay. This is the ceiling above the hall. This indicates to me that the fire was contained within that space. It did not, as we would normally consider a fire, ventilate or open up to the outside. It was well contained within this area.

THE WITNESS: I'm sorry. This is the first time I've ever used this machine. I hit the back-up button, rather than the pause again.

A Now, at this point, this is several hours into my arrival. A lot of investigative information has been looked at, as far as the fire scene, as to what had happened. But there is a need to remove the victim within this case at this point. The gentleman here to our back is the transport unit that will actually transport the body.

What we're going to do now is take whatever debris that is on top of the victim, and we're going to, what we call off-layer it. As things fall down and as things fall on top, that's a layering effect, so we're going to remove this. And this is a very slow process, and I'm not sure exactly how much time is on this, but it takes awhile. You

don't want to disturb anything. You want to see that everything is under normal conditions expected to be there. What we're looking for here is anything abnormal that shouldn't have been here, with the exception, of course, of the body.

Actually, at this point, we're actually looking for extension of the fire, as to how far it did extend, because it did extend laterally some, but it wasn't very much, two to three feet at the most, beyond the opening itself, which again, very concentrated, very locally-contained fire.

That's the ironing board that was at the closet just adjacent to the hallway, the laundry room area.

This is actually the body itself, this dark, charred area. (Indicated.) I know it's a little hard to pick out here. But this straight line is a duct, metal duct that is normally found in households for heating and air conditioning systems. The body is laying on top of the duct. So you can see all of this area in here on the floor. On the outside edges, you can see the extension of the fire.

This is actually a washer or a dryer that's laid down in the edge of the hole.

This is a -- the master bedroom's back this way. The kitchen and hall -- or the kitchen and living room is to the bottom of this particular photograph. (Indicated.) We're actually looking in a westward direction, down the hall.

We're going to take a sheet and lay over the body, so we're going to try and roll it over and protect it when we move this material out, so anything else won't fall down there and damage the body any more. As well as, we'll use that sheet later to help us remove the body.

This is ID Tech Roy Lindell who's there assisting with this operation.

If you can see this area right here, this is actually the floor support that supports the covering and the subflooring to a house. (Indicated.) This is what we call the floor joist. Right up under here, up under that floor joist, is actually a cinder block pillar, which they build up out of the ground, to hold and support the structure, the residence.

This item right here, this long pipe, is actually a PVC pipe that's been charred as a result of the fire. (Indicated.) You can see the distance here. This to me is a clue or a signal or a red flag, or whatever you want to describe, as something that, this distance is within this amount of space. (Indicated.) It's not very far at all. This is plumbing to the bathroom and the laundry room that was there. But yet, it was sufficient heat generated to char and to burn not just this one that we see here with the remains, but every one the entire length of that opening. But yet, it didn't burn the PVC pipe within two foot of it.

It charred it and discolored it, but it didn't burn it. And why? Heat rises.

Our objective at this point is to be sure and get all the parts.

Those flashes every once in a while, we're taking still photographs also at this point.

The body has been in fact rolled over onto the sheet now and we're removing it.

MR. LLOYD: Your Honor, we would renew our objections, that these pictures of the body being removed are simply to inflame the passions of the jury.

THE COURT: The Court's already ruled on that.

Mr. Panosh, if you'd stop it where the Court told you to stop it.

MR. PANOSH: Yes, sir.

A At this point, we're actually looking for anything that would help us identify who this is, jewelry, any type of clothing articles or pierced, you know, earrings of that type.

Q Okay. You can stop it and turn it off.

(The witness complied.)

(The witness returned to the witness stand.)

Q Can you step back before the jury.

MR. PANOSH: May he step before the jury, Your Honor?

THE COURT: You may.

(The witness approached the jury box.)

Q Showing you now what has been previously marked as State's Exhibit 17. Be careful not to turn your back on the jurors. Drawing your attention to this, what's that right here? (Indicated.)

A This is a firefighter that was standing on the floor.

Q All right. And the area immediately below his boots is what?

A Immediately below his boots is the charred debris of the floor that was still intact.

Q And this --

(The bailiff moved the television monitor unit to the side of the courtroom.)

MR. PANOSH: Before you take it out, we need to remove the tape, okay?

THE BAILIFF: That's fine.

MR. PANOSH: Thank you.

Q So this area between these two lines is what, sir?

A That's the floor joist that supports the subflooring in the house.

Q And this --

THE COURT: You might like to move down to the other side. The other jurors on the end can't see it.

MR. PANOSH: Yes. If it's all right, I'm going to



repeat it.

THE COURT: All right, sir. That's fine.

Q And this line that comes through here is what, sir?

(Indicated.)

A I'm having trouble focusing my bifocals. That's actually the metal duct work that's supporting the heating and air conditioning system.

Q Now, the two-by-tens that ran ran this way in that hallway; is that correct? (Indicated.)

A That would have been correct.

Q And there were a number of them across this opening; is that correct?

A That is correct.

Q And they're normally spaced 16 inches?

A That is correct.

Q And they were completely destroyed by the fire?

A Correct.

Q Come down here and please repeat your testimony. I'll just let you go through it.

A Okay.

(The witness moved to the other end of the jury box.)

A This is the firefighter who was standing. His back would have actually been to the kitchen. We're looking at the hallway, which would be to the west, to the rear master bedroom, down towards the living room and the kitchen. The

firefighter is actually standing on the floor of the hallway that is right at the point between the kitchen and -- I mean, excuse me, the living room and the hallway, where it begins. What he is standing on is the debris that has burned and fallen down, as well as the flooring beneath him is still supporting his weight. Beneath that is the actual interior structure of the residence that supports that full load, as well as him being on it.

Between this point of his foot and back beyond the photograph here, every 16 inches on center normally is a residential construction, those two-by-tens would have been there to support that same floor.

This shows the amount of -- and the degree at which the fire burned and the concentration of that fire, which is that immediate area, by being able to destroy those support structures. (Indicated.)

Q You can resume your seat. Thank you.

(The witness returned to the witness stand.)

Q But the two-by-ten that we saw the fireman standing on top of was not consumed?

A It was not consumed.

Q And the reason was?

A Simply by time and temperature, with this being the case, the amount of time and temperature it reached didn't totally consume it. You can see though that it was in the

immediate area of the fire, by the depth of charring, what we refer to as alligating. It's that rippling effect as to how combustible material actually is being destroyed by the heat of the fire.

Q And again, this would be examples -- example of the fact that the fire did not spread laterally; is that correct?

A No, sir. That acts as in fact a barrier, to keep the heat from being spread beyond that point. The heat would have had to go down and then back up and do that continuously.

Q When you were looking -- or showing the ladies and gentlemen of the jury the removal of the body, which way on the diagram were her feet pointed?

(The witness approached the diagram.)

Q And if you could pick up a red -- or I mean a, perhaps a blue marker and just do a stick figure, indicating where her feet and head were.

A Okay. The drawing indicates this is north and this is south. (Indicated.) Her head was laying towards the master bedroom area, with her feet extending from that, of course. (Drew on the diagram.)

Q Thank you, sir.

(The witness returned to the witness stand.)

Q At the point that you were showing the ladies and

gentlemen of the jury the ceiling above the hole, you said, "This indicates to me that the fire was contained." Would you explain that in more detail, please.

A The heat generated from a fire that's burning has a natural tendency to go up and out. As that effect or as that heat is being released from any point of the fire, it's going to have a fall-down effect, if it can't go on up into the atmosphere. Whatever obstruction would be in there would retain that heat and contain it, to the point that that material, whatever it be, whether it's the ceiling, whether it's the ceiling rafters, the insulation, or the roof itself, in fact, whatever point that gives way, as a result of the amount of temperature that's being generated from that fire, until it does do that, it's going to retain, it's going to suppress the heat. It's going to suppress the gases. It's going to actually do the reverse of the natural currents or the natural tendencies of the fire to occur. With combustible materials, it should -- as long as there's heat, fuel and oxygen, the fire will continue to burn. The amount and the degree in which those three elements will play into the fire will be the determining factor as to how long it will burn.

This fire did not penetrate the ceiling of this house. The ceiling was intact. The heat from the fire did penetrate the ceiling, through cracks, crevices, that

evolved as the process of the house being destroyed. The nails within or screws within the stud walls, the ceiling, act as a magnet, if you will, to conduct that heat transfer. Quite often, this is what we can have to cause a fire to extend beyond the room of origin, allowing that fire to continue to consume and burn, because it breaks that barrier, it breaks that shell, if you will, breaks it down.

This didn't happen here. Once that heat generated and once that heat built up, the pressure from the fire suppressed it, kept it low, kept it at a moderate, what I would consider to be a moderate level of temperature of burn, and actually in effect suppress the fire to the point that it was still burning. The fire burned from the point of ignition, until the point at which the fire department arrived to put it out, no question.

The degree of that burning, the amount of time and temperature that it took to do that burning, was quite a long period of time. The structure itself never ventilated, what we call ventilated to the atmosphere. A window didn't break out, a door didn't give away, those type of things which normally accelerate a fire, because you've got to have as much energy released as you do, to continue to burn.

That was what I meant by that statement.

MR. PANOSH: Thank you. No further questions.

THE COURT: Cross-examination?

MR. LLOYD: Thank you, Your Honor.

RE-CROSS-EXAMINATION by MR. LLOYD:

Q Inspector Rich, let me ask you some questions about something you testified to yesterday, when Mr. Panosh asked you. The rag that was found in State's Exhibit -- or is shown in State's Exhibits 67 and 66, did you check that rag for accelerants?

(Mr. Lloyd handed exhibits to the witness.)

A No, sir.

Q All right. And you indicated that, according to your theory, that the rag, if it were in contact with a burn, at some point it could have ignited and provided the ignition for the fire to start; is that correct?

A That is correct.

Q All right. Now, the rag, of course -- and if you could just hold it up to the jury and show the jury -- is located in the oven door; is that right?

A That is correct.

Q All right. And I believe you indicated that one of the knobs on the burners showed that it was in the on position; is that right?

A That's my understanding.

Q All right. And I show you what's been marked as State's Exhibit Number 64. And is that the knob that you're referring to? You can look at the other pictures, if you

want to get your bearings, Inspector Rich.

A Yeah, let me do that.

Q Yes. By all means.

(Time was allowed for the witness.)

A Yes, sir, it is.

Q All right. And that is the burner to the right rear unit, is it not?

A As we're standing facing the oven, yes, sir.

Q In fact, it says, and you can see it in the photograph, "Rear" underneath that picture of the knob itself, right?

A That is correct.

Q And it shows you a little -- there's a little diagram above the knob, which shows you that the burner that it relates to, and it's darkened, it's got a little grid, and shows you that we're talking about the right rear, as you're facing the stove; is that right?

A That's my understanding.

Q All right. And if you could just step down and show the jury this photograph, and indicate where the lettering that shows "Rear" is and the little diagram which shows that that would be the right rear.

(The witness approached the jury box.)

A This is the knob that's in question right at this point. (Indicated.) Beneath this, I know you can't see it, but I can read it, it says "Rear." And above that, there's

a little pictorial diagram, as to how the eyes of the stove that's laid out. And on that, I can see the four eyes, with one being dark or has a solid dot. The others are just simply a circle. To me, that says the eye is on, and would be an indicator as to which eye it was that was on.

(The witness moved to the other end of the jury box and indicated.)

Q Thank you, Inspector Rich.

(The witness returned to the witness stand.)

Q Now, Inspector Rich, you did not see any rag that led from the right rear burner to this rag that's shown on the stove door, did you? (Indicated.)

A No, sir.

Q All right. And you also did not -- you did not see any accelerant that was poured on the front of the stove door; is that correct?

A That is correct.

Q All right. And saw no evidence of any accelerant, a pour path or anything like that, on the door?

A No, sir.

Q All right. Or on the top of the stove unit --

A No, sir.

Q -- as well? Now, Inspector Rich, you're aware that it is a code requirement that hot water heaters be placed 18 inches above the floor of whatever -- for example, if



they're put in a garage, if a hot water heater is put in a garage, it's a code requirement that it be elevated 18 inches; is that right?

THE WITNESS: Your Honor, I need a point of clarification as to the definition of his garage.

Q All right. Well, you -- if you don't understand the question, I'll repeat it. Is it a code requirement that the hot water heater in say a garage area be located 18 inches off the floor?

A Are you speaking of residential?

Q Yes, sir, yes, sir, residential.

A I'm sorry. I do not have jurisdiction or knowledge as to the residential building code.

Q All right. Well, are you aware, Inspector Rich, that the purpose of that, if it is a code requirement, is so that gasoline fumes, if they're present, won't rise to the height where a pilot light might be, or a contact that kicks the hot water heater on might create a spark?

MR. PANOSH: Objection, please.

THE COURT: Overruled, if he knows.

A If I understand your question --

Q Yes, sir.

A -- with regards to the flammable vapors, and any electrical service within that space, that would be correct.

Q Okay. And the purpose in such a rule is so that you

won't have those flammable vapors being ignited by a pilot light or a contact switch that creates a spark; is that right?

A That is correct.

Q And you don't dispute that the code requires that that height be only 18 inches?

A No, sir.

Q All right. The code doesn't require that it be 30 inches or 36 inches, as far as you know?

A I really don't know what the residential code does require.

Q All right. Is there a similar requirement in the commercial code?

A Yes, sir, there is.

Q All right. And is that 18 inches in the commercial code?

A 18 inches minimum.

Q All right.

A You cannot place any electrical appliance within that space.

Q But if you did place it 18 inches, you would be within code?

A No, sir. You'd have to place it beyond the 18 inches.

Q That's what I mean.

A Oh.

Q If you placed it at 19 inches, for example --

A Theoretically, yes, sir.

Q -- you're within the code?

A Yes, sir.

Q And you don't have to move it up to 30 inches, do you?

A No, sir.

Q You don't have to move it up to the height of a stove, do you?

A Now, we are speaking with regards to electrical outlets?

Q Yes, sir.

A Yes, sir.

Q Anything that might create a spark?

A No, sir, not anything.

Q All right. Now, the couch that we've seen in several of the photographs, that had the gasoline poured straight over the top of it, didn't it?

A Yes, sir, it did.

Q All right. And you could see that by the burn pattern?

A That's correct.

Q And it went over the front of it and down the back of it; is that right?

A That's correct.

Q Now, Inspector Rich, in the course of your investigation, did you take note of any pry marks on the

kitchen door, around the door latch and the lock area?

A It was brought to my attention that there had been previous damage to that, yes.

Q And you noted that there were pry marks?

A I did not make a physical note of it. I do recall that, though.

Q All right. Do you recall seeing those yourself?

A Yes.

Q All right. And these are the kind of pry marks that would be, as far as you were concerned, they would be consistent with a chisel or a crowbar or a large screwdriver, if you remember, Inspector Rich?

A The floor -- the -- Excuse me. The door had damage to it. As to what could have caused it, I really don't know.

Q All right. Okay. Did you note damage marks to the doorjamb, as well?

A Yes.

Q All right. And those were visible to you?

A Yes.

Q All right. And those would have been consistent with some sort of prying or something of that sort?

A It would have had to have been, in my opinion.

Q All right. And you know, of course, Inspector Rich, and you've talked to the fire personnel who were first on the scene, they did not -- they just simply opened the door;

is that correct?

A That is correct.

Q All right. So these marks would have been consistent with some kind of forced entry?

A One could assume that.

Q All right. Now, in the video, we saw a tool chest, and that was located in the master bedroom, correct?

A No, sir.

Q All right. Where was that located, inspector?

A It was located in the bedroom across the hall from the master bedroom.

Q And that was a double-tiered tool chest, so that you had a bottom, and then a smaller chest on top of it?

A That is correct.

Q A large tool chest?

A Yes, sir.

Q Did you attempt to move that tool chest, Inspector Rich?

A Only from the standpoint of maybe moving it left to right or something to that nature.

Q But it was a heavy item, was it not?

A Oh, yes, definitely.

Q All right.

A It was what I would consider to be a commercial mechanics tool chest.

Q All right. Now, you indicated in your testimony yesterday that, in terms of how long the fire had burned before the fire department put it out, that in your opinion, the fire could have been burning for two hours; is that correct?

MR. PANOSH: Object.

THE COURT: Sustained.

Q Was that your opinion, that the fire burned for some two hours?

A I believe I said that the fire would have burned, in my opinion, anywhere from two to three hours and possibly longer.

Q All right. So -- I don't mean to try to limit you, I was just -- I just -- two to three hours is what you said, possibly longer?

A That's correct.

Q But that was your -- based on your investigation in this case?

A That's correct.

Q So it certainly wouldn't -- if it came to your attention that it could somehow be proved how long the fire burned, and it turned out it would be two hours, that's not inconsistent with your opinion, is it?

A No.

Q Okay. Now, you indicated yesterday, Inspector Rich,

that at the time the fire was burning when the fire department arrived, that was basically at a moderate level; is that correct? Is that a fair statement of what you said?

A That is correct.

Q All right. But there were flames present? You heard the testimony of Fireman Faulk, testified that he could see an area in the crawl space looked, I believe he described it as a campfire?

A I'm not sure what he described it as, but I remember the statement being made about the flames being visible.

Q All right.

MR. LLOYD: That's all I have, Your Honor.

FURTHER REDIRECT EXAMINATION by MR. PANOSH:

Q Sir, when you first inspected the stove, was the stove door open or closed?

A Closed.

Q In reference to the rag that you hypothesized may have been on the back burner, did it need an accelerant to ignite?

A No, sir.

Q Once it ignited, what would be left?

A Virtually nothing, because it would still be on top of the eye, and the eye would be in the on position, so it would have eventually been totally consumed.

Q And there would be some ash?

A Quite possible.

Q And that was in the area that was exposed to the fire hoses; is that correct?

A Oh, yes. That was in direct line of contact, as far as the entry of the fire service.

Q Now, you had a series of questions in reference to the code. Based upon the information elicited by counsel, is there anything that changes your opinion that these vapors could have banked up to the top of that stove?

A Absolutely not.

Q Would you explain why the code is 18 inches, if you know.

A Not in a residential, I'm not prepared to do that. I could address that from a commercial standpoint.

Q Please do.

A The 18 inches is in effect because of the history of the fire service experiencing fires within commercial garages, in which various flammable materials have been conducted. Quite often, we'll have mechanics that are using what we call the old trouble light. This is a single light unit that he or she is up there working on the car. Quite often this is a fuel with a flammable gasoline that he's involved with. We've actually had fires to have started from utilizing equipment like this. And therefore, the codes have been able to implement this level of protection



for that repair service person.

Because the nature and the characteristics of this flammable accelerant is in fact heavier than air, and the vapor densities will suppress any release, so that it has to go down, seek the lower level as to what area it's in, in this case, a garage floor. And as it does that, it spreads out laterally. This is something you and I can't see, but in fact, the vapors do do this. When it does this, it hits the walls of the surrounding area that the release has occurred in, and then it starts actually building back or banging back to the point it's still going to give off, that gasoline is minus 45 degrees. Nothing's going to stop that in this area.

So it's continuously releasing these vapors. And as long as this -- the liquid is there, it's going to continue to build. And 18 inches is actually a compromise, you know. The safest thing would be to just remove it, but that's not a practicality. But it's felt within that space that it's sufficient amount of time for any technician to be able to adequately clean up the spill or the liquid involved.

Q Or ventilate the area?

A Or ventilate the area, correct. You've got to remove those vapors. Those are the explosive things that cause fires.

Q You were asked about the doorjamb and the door, and you

indicated that it was brought to your attention that was previous damage. What did you mean?

A The reports that I recall were that the house had been reportedly broken into, by the previous records checks with the sheriff's department.

MR. PANOSH: May I approach?

Q You were asked about a tool chest and asked to describe the tool chest. Showing you State's 25, does that show a tool chest?

A Yes.

Q And what's on the bottom of the tool chest?

A I'm sorry, counsel?

Q What's at the bottom of the tool chest? Let me ask you this. Does it have wheels?

A Yes. I'm sorry.

Q All right.

A I took that to be a common known. It's one of those mechanic types you see in a commercial garage, that they roll around. There are in fact wheels attached to the chest.

Q Based upon your experience and your observations of that tool chest, would an average size individual have any difficulty moving it, regardless of how many tools were in it?

A No, not really.

MR. PANOSH: No further questions. Thank you, sir.

THE COURT: Additional questions, Mr. Lloyd?

MR. LLOYD: Yes, sir.

FURTHER RECROSS-EXAMINATION by MR. LLOYD:

Q Inspector Rich, an average size individual would certainly have problems moving it over a doorjamb, wouldn't they?

A Over a doorjamb?

Q Uh-huh.

A Those are pretty big castors. I'm sure they'd have -- you know, depending on how the load of the chest was --

Q Uh-huh.

A -- with tools. But an average size, in my opinion, could move it, certainly, over the doorjamb.

Q Well, there was a drop between the garage area and the main body of the house there at the kitchen door, was there not?

A There -- that is correct.

Q All right. Well, let me ask you more specifically. Average size individual, do you think he would have difficulty in moving, transversing that area through the kitchen door, out into the garage area?

A I would say so, yes.

Q All right. Now, you indicated that, according to your

theory, Detective Rich, that the banking of the gasoline could have taken place in this case and caused some sort of spontaneous ignition. When would that have taken -- how long, in your estimation, would that have taken, for that banking to take place?

A The gasoline is not the banking issue. Gasoline is the liquid that was poured on the --

Q Yes, sir.

A -- area. The vaporization --

Q Yes, sir.

A -- that occurred as a result of that gasoline, what's commonly referred to as boiling off, is being given by the release of that liquid turning into a gas. That process is immediate, it's continuous, it never quits, until minus 45 degrees. So nowhere in this area is that not going to be the case. The amount of release would certainly be directly related to the amount of confinement. If it's in a tank, if it's in a can, if the lid's on it. As that area is involved size-wise would be more intense, more of a release. If you would spread this out, you spread a liquid out, so it's going to vaporize, it's going to turn into a gas much more readily, than if it were concentrated in a small container.

As far as a time frame within the fire being on top of the stove, and those gasoline vapors from the floor being released into that area, it's within minutes. It's

certainly not beyond hours. That's as close as I can give you.

Q All right. Well, Inspector Rich, let me ask you this. We're all clear on the concept that these gasoline vapors are heavier than air, right?

A I'm clear.

Q All right. And you've testified to that?

A Yes, sir.

Q All right. So is it your testimony then that, based on the gasoline that was poured on the floor, that these vapors would bank up to such an extent that they would reach the height of the burn within 10 minutes?

A With the area involved, 10 minutes might be a little soon. It should, in my opinion, take a little longer than 10 minutes.

Q So is it your testimony then that, even though these vapors are heavier than air, and their natural tendency is going to go sink to the bottom, that within 30 minutes, are they going to be banked up, according to your theory, sufficiently high to be at the same level as the top of the stove?

A I would think within that time frame, you're getting very, very close.

Q All right. So do you think it would take 30 minutes, according to your theory?

A It's possible.

Q All right. You do think it would take longer than 30 minutes?

A It's possible.

Q In your experience, not as a fire inspector, just as a homeowner, Inspector Rich, how long does it take a burner on a stove to reach red hot?

MR. PANOSH: Well, he should be asked as an expert, Your Honor.

MR. LLOYD: Well, I'll --

THE COURT: If he knows.

MR. LLOYD: If he knows.

THE WITNESS: I'm sorry. I didn't understand the ruling.

THE COURT: You may answer the question, if you have knowledge or have an opinion in that area.

A A matter of minutes.

Q All right.

MR. LLOYD: That's all I have, Your Honor.

THE COURT: You may step down, sir.

MR. PANOSH: May --

THE COURT: Members of the jury, you may stand and stretch a minute, if you'd like.

(The witness left the witness stand.)

MR. PANOSH: Your Honor, Dr. Chancellor is here in

regards to the autopsy. I'd like to take her out of order. And in that regard, counsel for the defendant and State have reached an agreement, a stipulation, that the body she examined was that of Patricia Gail Blakley, without going into the dental records and other items that are used to identify her.

MR. LLOYD: No objection.

THE COURT: Members of the jury, you may take that as being an admitted fact by both the State and the defense, that the body that was examined on that occasion was in fact Patricia.

MR. LLOYD: We so stipulate, Your Honor.

MR. PANOSH: Doctor.

THE COURT: This witness is being taken out of the normal sequence, for the convenience of the witness. Please remember that as you try to put the case together in your mind.

KAREN ELIZABETH CHANCELLOR, being first duly sworn, testified as follows during DIRECT EXAMINATION by MR.

PANOSH:

Q Would you state your name, please.

A Karen Elizabeth Chancellor.

Q And you are a doctor, a medical doctor; is that right, Dr. Chancellor?

A Yes, I am.

Q And where did you do your training, please?

A I did my medical school training at Duke University Medical School, where I graduated with my M.D. degree in 1985.

After graduating from medical school, I specialized in the area of pathology, which is the practice of diagnosing human diseases from examining the tissues and body fluids from persons. Those persons might be dead, or they might still be in the living state.

There are various types of pathologists. First I practiced general pathology, and I pursued that study at the University of Kentucky in Lexington, Kentucky. Then I came to Chapel Hill in 1990, where I continued in general pathology. And in the following year, July of 1991, I decided to practice forensic pathology and accepted a position with the Chief Medical Examiner's Office in Chapel Hill. I accepted the position of assistant chief medical examiner for the state of North Carolina.

As a forensic pathologist, my job is to determine the cause and manner of death in cases which fall into medicolegal jurisdiction in North Carolina. Those deaths are generally ones that are either homicides, accidents or suicides, or they might be suspicious deaths, or deaths in a young person that are unexpected.

I also have specialized training in the area of



neuropathology, which is the diagnosis of diseases that affect the brain and the spinal cord. I am Board certified in the areas of anatomic pathology, clinical pathology, forensic pathology, and neuropathology. I received my neuropathology training also at the University of North Carolina in Chapel Hill.

I have been in my present position as associate chief medical examiner for the state of North Carolina since July of 1995.

Q And, of course, you've been recognized as an expert in the field of forensic pathology on many occasions; is that right?

A Yes, I have.

Q And you've testified in state and federal court?

A I have testified in numerous state courts in North Carolina.

MR. PANOSH: Your Honor, we would tender her as an expert in the field of forensic pathology.

THE COURT: Do you wish to examine her credentials?

MR. LLOYD: No objection, Your Honor.

THE COURT: The Court finds Dr. Karen Chancellor to be an expert in the field of forensic pathology, and by education, training and experience, she may express an opinion in that area.

Proceed.

Q In the course of your duties on or about October the 10th of 1995, did you -- did your facility receive the body of Patricia Gail Blakley?

A Yes, we did.

Q And thereafter, did you conduct an autopsy?

A I did.

Q What date did you conduct the autopsy?

A October 10, 1995.

Q And when you received the body and began to conduct your autopsy, would you describe for the ladies and gentlemen of the jury your procedures.

A Well, an autopsy is the main tool that I use to determine the cause and manner of death. And that's what I conducted on Ms. Kimble's body on October 10th. This is an examination of the body after death has occurred.

The first part of my examination is looking at the outside of the body, noting certain physical characteristics, such as hair color, eye color, that sort of thing, and looking at the outside of the body for any evidence of injury or evidence of disease processes. And that's called the external examination portion of the autopsy. That's the first part.

Let's see. Would you like me to tell what I found on the external examination at this point?

Q Yes. Doctor, did you bring photographs with you of your autopsy?

A I did.

MR. PANOSH: May I approach the witness?

THE COURT: You may.

MR. LLOYD: Your Honor, if we may approach briefly.

THE COURT: Yes, sir.

MR. LLOYD: Well, maybe Mr. Panosh can alleviate the problem.

(Mr. Panosh showed exhibits to Mr. Lloyd and Mr. Hatfield.)

MR. LLOYD: Your Honor, at this point, we would renew our earlier objection.

MR. PANOSH: May I approach the witness?

THE COURT: Yes, sir.

MR. PANOSH: I'll pare them down.

Q Doctor, would you select from these photographs those that you feel are necessary for you to describe the course of your autopsy to the jury, and the least number, please.

(Mr. Panosh handed exhibits to the witness, and time was allowed for the witness.)

Q Would you please hand me the photographs you want to use.

(The witness complied.)

Q Is that basically the order you want them in?

A Yes, uh-huh.

MR. LLOYD: Your Honor, we'd simply ask that the Court view the photographs. If we could approach.

THE COURT: Well, I am in a position, if the doctor tells me that she's picked the ones she needs for her testimony.

MR. PANOSH: Your Honor, the doctor selected four photographs, 68 through 71, and I'll show them to counsel. (Mr. Panosh showed exhibits to Mr. Lloyd and Mr. Hatfield.)

MR. LLOYD: Judge, if we may just approach the bench for a minute.

THE COURT: Okay. Approach the bench, please. (The following proceedings were had by the Court and all three counsel at the bench, out of the hearing of the jury.) (Mr. Panosh showed the exhibits to the Court.)

THE COURT: Do you wish to be heard?

MR. LLOYD: Yes, sir, Your Honor. Your Honor, the ruling is discretionary with this Court. And, you know, we all know that whatever happens is going to be upheld. And I -- but my appeal to you is, these are gruesome photographs.

THE COURT: The crime is gruesome.

MR. LLOYD: Well, I understand that, Your Honor. We've had crime scene photographs. I just don't see why that we can't -- we're stipulating to the identification. There's no --

THE COURT: Does it show the gunshot wound to the head?

MR. PANOSH: Yes, sir.

THE COURT: The Court makes the following findings: That this is being conducted at the bench conference with the attorneys. The objection has been lodged. The Court's going to overrule the objection and find that Dr. Chancellor, the pathologist, has gone through a number of photographs, that she's picked four photographs which she's indicated that she would need to be able to illustrate and explain her testimony. The Court has looked at the photographs, and finds that the four photographs are illustrative of the condition of the body, also will be illustrative for the purpose of showing any wounds to the body that may have been the cause of death, and would find that the probative value would outweigh the prejudicial aspect of having the jury see these photographs, and will allow them to see the four photographs. Also, find that they're relevant.

(Proceedings continued in open court.)

MR. PANOSH: Your Honor, we'd seek to introduce into evidence 68 through 71 as the autopsy photographs the doctor's indicated illustrates her -- the course of her autopsy.

MR. LLOYD: Object on grounds previously raised,

Your Honor.

THE COURT: Overruled. The Court will allow the introduction of State's Exhibits 68 through 71.

Q (By Mr. Panosh) Doctor, would you feel comfortable stepping before the jury?

A Yes, I do.

MR. PANOSH: May she do that?

THE COURT: Yes.

Q Using those photographs, Dr. Chancellor, would you describe the examination of the body in the course of your autopsy.

(The witness approached the jury box.)

A Yes. I just finished describing to you the first part of the autopsy examination, which is the external examination. That's looking at the outside of the body. And here I have before you as what's labeled State's Exhibit 68. This is a photograph of Ms. Kimble's body as it appeared at the time of autopsy. In each of the photographs that you see, there's an autopsy number, A95-901. This allows me to identify this photograph as belonging to Patricia Kimble.

THE COURT: Dr. Chancellor, you'll need to move up and down in front of the jury box, so that all the jurors can see.

THE WITNESS: Yes, sir.

A What I'm showing you here in this State's Exhibit 68 is a photograph of Ms. Kimble's body. And you can see that it is severely charred. For purpose of orientation, I'm pointing with my index finger to her head. And this is one of her arms here. (Indicated.) This is the lower body. (Indicated.) It's severely burned.

I'll move over to the mid-portion of the jury.

(The witness moved to the center of the jury box.)

A And this is State's Exhibit 68, shows Ms. Kimble's body as it appeared at the time of autopsy. This is her head I'm pointing to. She's face up here. Her body is severely charred, especially the lower leg areas. (Indicated.) And also, the mid-portion of the body is severely charred. (Indicated.)

(The witness moved to the other end of the jury box.)

A State's Exhibit 68 shows Ms. Kimble's body at -- when I did the autopsy. She's lying face up. This is her head I'm pointing to with my index finger. This is her lower body and lower extremities which mostly -- or partially has been burned away. (Indicated.) See there's a severe amount of charring of the body, and that's exhibited here by the charred flesh. Also note that some of the skin is split in these photographs. And I'll show you that a little bit better in the next photograph, which is State's Exhibit 69. (Held up an exhibit.)

This is the photograph of her upper head and upper chest area. Again, it has a unique autopsy number, 95-901. And the photograph of her head and chest shows the charring of the right side of the face. Notice that the left side of the face, there is some sparing from the burning effect, and you can see some of her white skin that's not burned. Also notice that on this photograph, that the skin of the chest is split. This is an artifact that occurs when a body is burned. The skin becomes extremely dry and stretches so that it bursts. (Indicated.)

(The witness moved to the center of the jury box.)

A Okay. This is State's Exhibit 69. Shows the head and upper chest of Ms. Kimble. On the right side of the face, there is severe charring and blackening of the face. The left side of the face is somewhat spared from the burning. The upper part of the chest is also burned. And the skin is split apart, where the skin has burst from the drying.

(The witness moved to the other end of the jury box.)

A State's Exhibit 69 shows the head and upper chest of Ms. Kimble. The right side of the face is more charred than the left side. The left side has some sparing. The skin is still white and not blackened like the right side. Some of the skin is split, and this is an artifact of the burning.

State's Exhibit 70 is a photograph of the left side of Ms. Kimble's head. And for purposes of orientation, I'm



pointing to the front of her face with my index finger. This is her face and nose area. This is the back of her head. Much of the scalp hair has been burned away, although there is some scalp hair remaining that is somewhat singed. I'm pointing to with my index finger an entrance gunshot wound on the left side of the head. It's just behind the left ear. This is a round defect, a round opening, where a bullet entered her head, just behind the left ear. And you can see some hemorrhage or bleeding at that site. It's a round opening. It measured one-half inch in diameter.

(The witness moved to the center of the jury box.)

A Again, State's Exhibit Number 70. This is the left side of Ms. Kimble's head. You can see the front of her face I'm pointing to with my index finger. This is the back of her head. (Indicated.) Most of the scalp hair has been burned away. Some that remained is singed. I'm pointing to with my index finger the entrance gunshot wound on the left side of the head, just behind the left ear. It's a round opening, with bleeding at that site.

(The witness moved to the other end of the jury box.)

A This is State's Exhibit Number 70, and shows the left side of Ms. Kimble's head. This is the front of the face. (Indicated.) This is the back of the head. (Indicated.) And you can see some burning and charring of the flesh. Most of the scalp hair has been burned away. Some of it

remains. On the left side of the head, just behind the left ear, is a round gunshot wound entrance I'm pointing to with my finger. It's round and has some hemorrhage.

This is State's Exhibit 71, and shows the right side of Ms. Kimble's head. This is the front of the face.

(Indicated.) This is the back of the head I'm pointing to with my index finger. The right side shows more charring than the left. And notice there is some splitting of the skin on the right forehead area I'm pointing to here. There's also an area of splitting behind the right ear. This is the right ear. (Indicated.) There's some splitting here. And from this point, just underneath the scalp area, I recovered a bullet and fragments of bullet from the gunshot wound, just under this area of splitting of the skin. (Indicated.)

(The witness moved to the center of the jury box.)

A This is State's Exhibit Number 71. Shows the right side of Ms. Kimble's head. It is more charred than the left side. This is the front of her face. (Indicated.) This is the back of the head. (Indicated.) There is some splitting of the skin over the right forehead area. There's also splitting of the skin behind the right ear. And this is the point from which I recovered the bullet and fragments thereof.

(The witness moved to the other end of the jury box.)

A This is State's Exhibit Number 71. This shows the right side of Ms. Kimble's head. This is the front of her face. (Indicated.) This is the back of her head. (Indicated.) The black marks are the charring of the body. On the right side of the forehead, you can see some splitting of the skin. There's also an area of splitting and bulging of the skin behind the right ear. This is the point from which I recovered the bullet and fragments of bullet from the gunshot wound that entered on the left side.

Q Thank you.

(The witness returned to the witness stand.)

Q Now, doctor, on external examination, you noted that her weight was 101 pounds; is that correct?

A Yes.

Q What, if any, effect would the condition of her body have on that weight?

A Sometimes charred bodies can weigh less than the weight that the person weighed in life, because part of the body has burned away, and the tissues are very dried.

Q And doctor, I note that you didn't make an indication of her height. Is that -- why was that?

A Because her feet were partially burned away, and we could not get an accurate height of the body. Usually this is what is recorded as the height, but in this case, it was not -- could not be accurate.

Q Could you -- based upon your examination of the body, could you give the jury an estimate of her stature?

A I don't recall. I know it -- no effort was made to make an estimate of her stature.

Q You were able to measure the location of the wound in reference to the top of the head; is that correct?

A Yes.

Q And how far below the top of the head was the wound?

A The entrance gunshot wound on the left side of the head, behind the left ear, was located at a point that's four and a half inches from the top of her head and four inches from the anterior, front of the face.

Q Basically, pretty much centered on the skull?

A Well, if I could demonstrate on my own body. The location of the entrance wound would be approximately here, behind the ear, four inches from the top of the head and four inches from the front of the face. (Indicated.)

Q And the track of the wound was?

A The wound track went through the head, towards the right side of the head. It went from the left side of the head to the right. It did not have any significant deviation to the front or back of the head or any significant deviation up or down. It went from the left side to the right side of her head. And the track of this bullet was through the brain, through the, what's called the

left temporal lobe, through the brain stem, and then through the right temporal lobe of the brain.

Q Based upon your examination of the wound and the wound track, did you form an opinion as to -- Or let me ask you this. Would your opinion as to the location of the weapon be consistent with it being at approximately the height of the wound and parallel to the floor?

A The barrel of the gun that fired the wound (sic) that killed Ms. Kimble would be somewhat parallel with what I'm demonstrating here on my own head. I don't know how close it was to her head, but it would be in somewhat this alignment with respect to her head. (Demonstrated.)

Q And it would be essentially the height of the wound, is that correct, since there was no upward or downward track?

A I'm sorry. Would you repeat that.

Q It would be -- the gun would be at essentially the height of the wound, since there was no upward or downward track?

A Well, the gun would be held in relationship to her head in this position. (Demonstrated.) It might be further away, but it wouldn't be up like this, unless her head were turned this way. (Demonstrated.) In other words, I can make a statement about the relative position of the gun and the head.

Q Assuming the normal position of a person when they're

walking, it would be at essentially the height of the wound; is that correct?

A If her head was in a normal upright position when the gun was fired, then the gun would have had to be in this type position, apparently -- approximately horizontal with the ground. (Demonstrated.)

Q Now, one of the things that forensic pathologists can do on autopsy is to determine to some extent how close the weapon was at the time it was discharged, but you were unable to do that in this case; is that correct?

A That determination was made very difficult by the charring of the body. In other words, what we are looking for, as far as getting an estimate of how far the gun was from the body when it was fired, we were looking for evidence of gunshot residues on the body. These are particles of powder and other sooty residues which are discharged from the end of a gun when it's fired. Now, I did not find any of those residues on Ms. Kimble's body. However, her body was severely charred and it did make that examination difficult.

Q Now, at one point in your examination, you said, "Examination of the dura at this entrance point reveals the absence of soot stain." What did you mean by that?

A Well, when I do the internal part of the examination, I'm looking at the inside of the head. One part that I

examined is what's called the dura mater. It's a covering of the brain tissue, a very sort of thick, fibrous covering. And the bullet passed through the dura mater before it went through the brain. Now, if the bullet had been -- if -- I'm sorry. If the gun had been held in tight contact against the skin when it was fired, we might expect some sooty residues to be present within the wound track. And I also might expect there to be some sooty residues on the dura mater. I did not find any such residues inside the wound or on the dura mater or on the skull.

Q But based upon those observations, you can't consistently state the distance -- or you can't positively state the distance of the gun?

A I know that the wound -- the gun was not in tight contact with the head, but it may have been a very close range from the body, or it may have been a distance of some feet.

Q So your findings just simply say that it was not in physical contact with the skull at the time it was discharged?

A It was not -- most likely not in tight contact with the head at the time it was discharged.

Q And would you define "tight contact."

A Tight contact would mean right up against -- the end of the barrel would be right up against the head. (Indicated.)

Q In the course of your internal examination, were you able to determine whether there was any evidence of any type of sexual assault?

A We looked for evidence of sexual assault. I did not find any. I examined the external genitalia and internal genitalia of Ms. Kimble. I also collected swabs from the vaginal and rectal cavity, to look for the presence of spermatozoa. I did not find any of evidence of sexual assault.

Q Based on the nature of the wound and the extent of damage caused as a result of the wound, could you give an estimate as to how quickly death ensued after the wound was inflicted?

A After Ms. Kimble received this gunshot wound to the head, death would have ensued very rapidly. She would be immediately unconscious, and all signs of life, including respirations and heartbeats, would cease after a few seconds or a minute.

Q And you did do an examination of the lungs --

A Yes.

Q -- for the purpose of determining whether there was soot, evidence of smoke; is that correct?

A Yes.

Q And what did you find?

A I did not find the presence of any soot in the lungs or



in the trachea. When I examine any burned body, there are certain things that I look for, to determine whether the person was alive at the time of the fire or dead. One of those things is the presence of soot in the upper airways or lung tissue. If the person breathed in air that contained soot during a fire, I would expect to see those inside the lung or in the airway. I did not see those in Ms. Kimble's body.

Q And that would be consistent with death occurring prior to the burning?

A Yes.

Q Doctor, did you make any other significant findings in the course of your autopsy?

A No.

MR. PANOSH: Thank you, doctor.

THE COURT: Mr. Lloyd, do you wish to cross-examine her?

MR. LLOYD: Yes, sir, Your Honor.

THE COURT: All right, sir.

MR. LLOYD: Just a few questions.

CROSS-EXAMINATION by MR. LLOYD:

Q Dr. Chancellor, is it fair to say, consistent with your findings in this case, that death occurred before any burning of Patricia Kimble?

A Now -- yes, the death occurred before the burning of

her body.

Q All right. And I note on your autopsy report that you got an entry that there was less than five percent carbon monoxide present?

A Yes. We also look for the presence of carbon monoxide in the blood of any person who dies during a fire. One of the reasons we're looking for this is, also to tell us if the person was alive or dead. If the person was alive and breathed in air that contained carbon monoxide, which is a product of combustion in house fires, we would expect to see carbon monoxide in the blood. And we did not see it in Ms. Kimble's blood.

Q So that's consistent with death prior to the burning of the body?

A Yes, it is.

Q All right. And also, consistent with death prior to the existence of the house fire; is that correct?

A I -- no, I can't say that. It was -- her death occurred prior to the burning of her body.

Q Well, had there been a house fire -- and I know you don't know all the facts of the case, Dr. Chancellor. And had she been alive, then you would expect in those cases to see carbon monoxide present; is that right?

A If there is a house fire, we generally expect to see carbon monoxide present in the blood of persons present in

that house, yes.

Q And you didn't see that in this case?

A There was not carbon monoxide present.

Q And as you indicated on direct examination, death from a gunshot wound, as Ms. Kimble had in this case, would have been very rapid?

A Yes, it would have.

Q And unconsciousness, I believe you stated, would be that she would be immediately unconscious, as a result of this gunshot wound?

A Yes, she would.

Q All right. Now, you indicated that you checked for the evidence of sexual assault, and basically, you didn't find the presence of any sperm when you examined Ms. Kimble; is that correct?

A That is correct.

Q All right. And as you indicated on direct examination, in terms of the tilt of the gun that fired the fatal shot in this case, basically, that is going to be contingent on, among other things, the tilt of Ms. Kimble's head at this time; is that right?

A Yes. If I could clarify. I can make a statement about the position of the gun relative to the position of her head.

Q All right. And relative to the position of the head,

in other words, you could say, if her head were tilted this way, then the gun would have to be tilted in the same direction; is that correct? (Indicated.)

A Yes. If the -- when the gun was fired, the orientation of the barrel of the gun with respect to her head would have been such as I'm demonstrating now, with the barrel pointing from the left ear to the right ear. (Demonstrated.) If the head was in a different position, the gun would have had to have been at a different position also. (Demonstrated.)

Q All right. And that would be true on the opposite end of the spectrum, so that if her head were tilted this way, the gun would be tilted in a like manner? (Indicated.)

A Again, it would have to be pointed from her left ear to her right ear, no matter what the position of her head.

Q And all this is based on the fact that the wound track was basically straight across from the left to the right and did not deviate up or down; is that right?

A That's correct. The bullet traversed in a path from the left ear to just behind the right ear.

Q And you indicated that you checked the wound site for the presence of powder, sometimes called stippling; is that right?

A Yes.

Q Did not find it in this case?

A I did not find any powder stippling, although it's

possible that it could be obscured by charring of the body.

Q But you might expect to see it in a case where the proximity of the barrel was very close to the wound itself?

A Powder stippling is produced when the end of the barrel is close enough to the person who's been shot, such that powder particles are emitted from the end of the barrel and strike the skin near the gunshot wound. They form tiny, little pinpoint abrasions, and they're called stippling marks. So that's what I might expect to see on a body, if the barrel of the gun was held in a range of at least many inches away from the head. And I didn't find those marks on Ms. Kimble's body. However, her body was charred, and marks of such a nature might be obscured.

Q But you also checked inside the wound itself, did you not, Dr. Chancellor?

A Yes.

Q And that part inside the wound was not actually charred, was it?

A The inside of the head was not charred.

Q All right. And of course, the way -- a bullet with its shell casing, where the powder comes from, is behind the actual lead projectile, is it not?

A When a gun is fired, not only is the bullet released from the end of the barrel, but there's also sooty residues and products of combustion of the gunpowder and actually

particles of gunpowder itself.

Q But the actual projectile would be the first to go out of the barrel of the gun, and then the powder particles would follow along behind it; is that correct, Dr. Chancellor?

A If the gun is in normal working condition, that's true, the bullet should emerge first, and then later, the powder particles emerge.

Q So you would expect that the powder particles could come in and follow the bullet's path and come in behind the bullet and lodge inside the wound, if the barrel were close enough for it to do that?

A Sooty residues would be deposited on the inside of the wound track only if the end of the barrel of the gun were held in tight contact with the skin. In other words, only if the end of the barrel were up against this point on Ms. Kimble's head, behind the left ear, would there be sooty residues on the inside. (Indicated.)

MR. LLOYD: Thank you, Dr. Chancellor. That's all I have.

THE COURT: You may step down, doctor.

REDIRECT EXAMINATION by MR. PANOSH:

Q Doctor -- if I -- just one point of clarification. When you indicated with your hand that the gun was in this position, you were in no way indicating that that was the

distance from the head to the gun?

A No, not at all. I am only indicating a relative position of the gun, with respect to her head. I don't know if the gun were held this close or this close or further. (Indicated.) But it would have been in alignment from her left ear to her right ear.

MR. PANOSH: Thank you.

THE COURT: You may step down, Dr. Chancellor.

THE WITNESS: Thank you, Your Honor.

(The witness left the witness stand.)

MR. PANOSH: May she be excused, Your Honor?

THE COURT: Any objection, gentlemen?

MR. LLOYD: No objection, Your Honor.

THE COURT: You may be excused.

THE WITNESS: Thank you.

MR. PANOSH: Did you want to do another witness?

THE COURT: No. We'll do it after the break.

MR. PANOSH: Yes, sir.

THE COURT: We're going to take our morning recess, members of the jury. It'll be a 15-minute recess. Please report to the jury room at the end of the 15-minute period. Again, remember the juror responsibility sheet and your instructions.

You may now take your morning recess of 15 minutes.

(The jury left the courtroom at 11:00 o'clock a.m.)

THE COURT: You may declare a 15-minute recess, sheriff.

(A recess was taken at 11:00 o'clock a.m.)

(Court reconvened at 11:23 a.m. The defendant was present. The jury was not present.)

MR. PANOSH: Before you bring them in, the next witness would involve a demonstration. The demonstration will take three to five minutes. Counsel has previewed it. It's a demonstration of what happens when fire is in a contained area, and the fact that the fire is suppressed.

THE COURT: Well, he's not going to set the courtroom on fire, is he?

MR. PANOSH: No, sir. We've tested it in this courtroom and it does not set off the fire alarm.

THE COURT: All right.

MR. LLOYD: Your Honor, in light of the way Mr. Panosh handled the video the first time, I think we'd better require more into this.

THE COURT: For what, sir?

MR. LLOYD: I'm just teasing. I've seen it, Your Honor, and it's not dangerous.

THE COURT: Bring them in.

(The jury entered the courtroom at 11:24 a.m.)

THE COURT: The State call its next witness,



please.

MR. PANOSH: Special Agent Webster, please.

JERRY D. WEBSTER, being first duly sworn, testified as follows during DIRECT EXAMINATION by MR. PANOSH:

Q State your name, please.

A My name is Jerry D. Webster.

Q And you're a special agent with the State Bureau of Investigation; is that correct?

A That's correct.

Q How long have you been a special agent with the State Bureau of Investigation?

A I've been employed by the State Bureau of Investigation since March 11, 1974.

Q And in the course of your training, from 1974 until 1989, you were trained as a special agent; is that correct?

A Yes, that's correct.

Q In 1989, did you specialize in any particular fields?

A I actually began a specialty in the field of arson and fire investigation in 1985, and my training in arson investigation actually began then.

Q All right. Would you detail your training in arson investigation beginning in 1985.

A Beginning in early 1985, I began attending a number of training sessions, the first of which was a basic firefighter training course conducted by the Wilmington Fire

Department. I was assigned to the Wilmington area at that time, and I had most of my training there.

Since that time, I have attended the National Fire Academy's basic arson detection course, which was a total of 32 classroom hours. I attended several courses conducted by the United States Bureau of Alcohol, Tobacco and Firearms, including arson for profit, advanced arson for profit, advanced explosives investigation training, advanced cause and origin in courtroom techniques training.

I have also attended at least once a year, and most of the time twice a year, training conferences and training seminars conducted by the International Association of Arson Investigators. The North Carolina chapter of the International Association of Arson Investigators is responsible for most of the training in fire investigation that is conducted in North Carolina. They conduct training conferences and training seminars at least twice annually, and I've attended at least one of those every year since 1985.

I have also attended courses offered by the State Bureau of Investigation in intermediate and advanced arson investigation, as well as other training seminars across the country.

Q And have you been recognized as an expert in the field of arson investigation in the state courts?

A Yes, I have. I've been qualified as an expert in the field of arson investigation and testified as such in approximately 15 courtrooms, both state and federal.

MR. PANOSH: We would tender him as an expert in the field of arson investigation.

MR. HATFIELD: No objection.

THE COURT: The Court finds Officer Webster or Jerry Webster to be an expert in the field of arson and fire investigation, and by training, education and experience, he may express an opinion in that area.

Q In addition to your training in the field of arson investigation, you're also a certified dog handler; is that correct?

A That's correct.

Q And what type of dog do you have?

MR. HATFIELD: Objection, as irrelevant.

A The State Bureau of --

THE COURT: Sustained.

How is it relevant, sir?

MR. PANOSH: It's used in arson investigation.

THE COURT: Is it in this case?

MR. PANOSH: Yes.

THE COURT: Overruled.

A The State Bureau of Investigation employs a number of arson detection or accelerant detection canines, there are a

total of four in the state, under the ownership of the State Bureau of Investigation at this time. In November of 19-- of last year, I obtained and successfully completed the training --

MR. HATFIELD: Objection. It's after the time that the incident took place.

THE COURT: Sustained.

Q At the time that you investigated this crime, were you using an arson dog?

A At the time of this investigation, an accelerant detection canine was used by another handler, not myself.

Q On or about October the 9th of 1995, did you respond to Brandon Station Court at the request of the Guilford County Sheriff's Department, to assist in an arson investigation?

A Yes. I was contacted and responded on October 11, 1995.

Q And when you arrived at the scene on October the 11th of 1995, the firefighting procedures were completed and there'd been some degree of cleanup done; is that correct?

A Yes, that's correct.

Q Would you tell the ladies and gentlemen of the jury how you went about your investigation on October the 11th.

A I arrived at the scene of this fire at approximately 3:00 o'clock in the afternoon of the 11th of October. I met with fire prevention inspector Ed Rich and fire inspector Ed

Harris, who were at the scene at that time, received a cursory briefing of the events that had occurred prior to my arrival there, and also received some information about the fire investigation efforts that had been conducted, up to the time of my arrival. I then was requested to begin my own investigation for specific purposes, and conducted an investigation there at the scene, using the techniques which I have been trained and qualified to use.

Primarily, what I did there at the scene was, begin by looking at the outside of the -- of the residence, observing the residence itself, the type of structure that was there, the environment, the fact that it was in a wooded area. I walked all the way around the outside of the house, looking at the house, looking at the doors and windows, looking at the roof, and making observations of different things, including smoke -- the appearance of some smoke staining that was, I believe, above one window, and some smoke staining which had occurred at some of the crawl space vents.

I then continued my investigation, by entering the front door of the house and looking at whatever I could see, once I walked inside the house. I might add that my investigation consisted primarily of looking, looking around, taking mental notes and some physical notes about the things that I actually saw, as I went through -- as I

went around the house and through the house.

I walked in the front door, looked around there. And the front door allowed me access to the living room area. I looked at the living room area. I looked at the glass. I looked at the furniture. I then walked through the living room and into the kitchen area, and conducted an observation there of the fire damage, the heat damage and the smoke damage.

I then observed the fire damage in the hallway of the -- of the residence, the hallway which led actually from the living room and kitchen area into the bedroom or sleeping area of the house. It was there that I noticed a very large hole in the floor in the hallway. There was some fire damage around the hole and against the walls and in different parts of the area immediately surrounding the hole. I was able to step or make my way across the hole there in the floor and looked in all of the bedrooms of the house and looked in the bathroom, making particular -- taking particular notice of the, again, the heat damage, the smoke damage and the fire damage that I could see as I went through the house.

I concluded my investigation or my examination of the inside of the house, by returning from the sleeping area back to the -- back to the area in the hallway where the hole was.

Q And in the course of your investigation, did you interview persons who'd been at the fire scene prior to you, specifically Ed Rich, Harris?

A Yes. Well, I didn't conduct a formal interview as law-enforcement techniques dictate. I did receive what I considered to be a briefing about the fire, the time that it had occurred, and some of the information that Inspector Rich had gained.

If I may explain, though. There was very little information shared about Inspector Rich's findings. There are reasons, including ethical reasons, for not discussing specific findings of one investigator with another. It's important that if a second investigator is called to a scene, that he be able to conduct an investigation in a fair and impartial way, without receiving a tremendous amount of information from the former investigators. It allows him to conduct an investigation, as I said, in a fair and impartial way and make his conclusions based on his own findings, and not the findings of someone else.

Q And based upon those findings, what conclusion or conclusions did you draw in regard to the fire that occurred on October the 9th of 1995 at Brandon Station Court?

MR. HATFIELD: Objection. He should state his findings before he states his conclusion.

THE COURT: Overruled.

A If I may explain. The specific reason that I was there was to try to examine the scene and form an opinion that was satisfactory to myself, about how long this fire had burned. After conducting my investigation, my observations and my mental and physical notes, I was able to form an opinion satisfactory to myself about the time that -- the length of time that this fire probably burned.

Q And what was that opinion?

A It's my opinion that this fire burned in what I would best describe as an open-burning state, that is, open fire, open flame, visible flame, burned furiously because of the quantity of gasoline that was there, for a very short period of time.

After the oxygen in the house was consumed by this furious-burning state, the fire was reduced to a smolder. There was not enough air or oxygen, that is, in the atmosphere inside the house to support this open-burning state. What little material was ignited by the gasoline burning was reduced to a smoldering state, glowing embers, like a cigarette head, like hot coal -- or like coals from a fireplace, with no open flame. This type of smoldering burning, in my opinion, continued in this house for a period in excess of two hours.

And if I may further explain in excess of two hours. This fire could have burned for what I believe to be an



indefinite period in excess of two hours, from the time that the oxygen in the house was depleted below that which would support combustion.

Q Did you make further findings as to what occurred at or about the time that the fire burned through the flooring?

A This smoldering state, the glowing embers that were left after the oxygen level was reduced, continued for an indefinite period of time. The smoldering took place primarily in the hallway. This would involve carpeting, it would involve the flooring, it would involve the subflooring, and the smoldering would continue and did continue in this case, until the smoldering actually burned through the flooring. It was at that time that the oxygen from the floor -- from the crawl space and from the crawl space vents gave this smoldering fire a resupply of oxygen. The fire then would -- then developed from the smoldering state back into an open-burning state, and this open burning was the reason for the -- primary reason for the damage that took place below the floor level.

Once the fire in its smoldering state got a resupply of oxygen, and open burning took place, this open burning took place primarily at floor level and below. It is known that fire will not extend into or travel into an area where there is not enough oxygen to support combustion. So even though there was open burning taking place at floor level and below

floor level, this fire did not then spread back into the house and consume the majority of the -- or damage the majority of the items and the articles in the house that were -- that were damaged by the smoke and the heat and the flames. This burning continued in an open-burning state there at and below floor level, until the fire was extinguished by the firefighters.

Q In your examination of the hole and the areas surrounding the hole, were there particular items or objects that came to your attention that were relevant to your findings?

A The -- it was the absence of items that attracted my attention, more than the presence of items. I was particularly -- I took particular note of the fact that floor joists, that is, the beams that support your flooring in a house, in and around this hole, were completely burned away. These floor joists are large timbers. In this particular case, the boards were measured -- or commonly -- the common measurement referenced there is a two-by-ten. The board is slightly less than two inches wide or two inches thick and slightly less than 10 inches wide. In this particular area, there were four of these two-by-ten floor joists burned completely away, or at least at the time that I was there and examined the area, there was -- there was nothing left of these floor joists. They were completely

gone.

There's also a beam under the house that I think is referred to as a central beam. It's one very large board or two very large boards that are sandwiched or nailed together, that run the full length or the full width of the house. And in this particular case, there was a central beam that measured two-by-twelve. It was severely damaged and burned completely through in one -- in one spot, as I recall. The considerable amount of fire damage at and below floor level indicated that there had been quite a bit of burning that took place in the open-burning state beneath the floor.

Q Would you contrast that to the items that you found or observed around the hole above floor level.

A Again, of particular interest I thought in this -- in this fire was the relative lack of fire damage above the hole. Even though there had been a hole burned in the floor, which measured in excess of six inches in -- six feet in diameter, and everything beneath that hole was completely burned away, completely destroyed, there were items which were readily combustible, such as baseboard molding, carpeting, subflooring and other construction items, that were right at even at the lip of the hole, right at the opening of the hole, that were not damaged at all, relatively speaking, as far as the fire is concerned. There

was some charring that took place above the hole. But by and large, the -- even the baseboard molding right at the edge of the hole was not damaged.

Again, this supported my opinion that most of the fire damage had occurred at and below floor level and had occurred only after the fire had received a resupply of oxygen.

Q Now, based upon your observations of this particular fire scene, were you able to form an opinion satisfactory to yourself whether this was an accidental or a set fire?

A Yes, I was.

Q And what was that opinion?

A It was my opinion that this fire was deliberately set. As I examined the area there, I detected the odor of a flammable liquid, which I suspected to have been gasoline. I noticed, as far as the electrical wiring is concerned, that there was little or no electrical wiring, no electrical receptacles, in the immediate vicinity of the -- of the hole that had been burned in the floor.

I also noticed fire damage in other parts of the house, including the living room and the kitchen, which displayed what fire investigators call fire patterns, that is, patterns of discoloration or charring or blistering that are caused by fire. And I noticed fire patterns in the living room and in the kitchen, which were consistent in appearance

with fire patterns that are generated by the burning of a -- of flammable or an ignitable liquid on the surface, including blistering on the flooring in the kitchen, some burning that took place on the -- on the sofa in the living room and on the carpet in the living room, that were clear indications that a liquid had been poured across these areas and had burned to some extent.

It was those factors that supported my opinion that this fire was in fact deliberately set.

Q Now, are you familiar with the characteristics of flammable liquids such as gasoline, and specifically gasoline?

A Yes.

Q Would you explain to the ladies and gentlemen of the jury what happens when a flammable liquid and particularly gasoline is poured over a large area. And drawing your attention to the blackboard, is that red area essentially where you saw the pour pattern?

A Yes, it is. Gasoline is a petroleum product. It's a liquid. It is -- the weight of gasoline, the specific gravity of gasoline, that is, the overall weight of gasoline, is lighter than water.

Gasoline is a product which gives off vapors continuously, until the temperature of the gasoline reaches 45 degrees below zero. So at any temperature above 45

degrees below zero, gasoline is actively and continuously giving off vapors. Those vapors, when mixed with the proper supply of oxygen, form a combustible mixture. There are statistics that are called lower explosive limits and upper explosive limits that deal with the quantity or the percentage of gasoline mixed with oxygen that is required to support open combustion. All of us deal with the products of incomplete combustion with our cars, when they have ignition problems or when you have fuel supply problems.

In this particular case, the gasoline that was poured in this house continuously gave off vapors, until they -- the vapors were ignited or consumed by the fire. Gasoline vapors are about three or four times heavier than air. Therefore, gasoline vapors, when they're in an open space, will have a tendency to sink to the lowest level in the compartment. In a house, if there's gasoline poured in a house, the gasoline vapors will remain at floor level. But because gasoline is continuously giving off vapors, these vapors will remain at lower levels, but they will continually build in quantity. And so, in a house or any kind of a confined space, where there's no ventilation, where the doors and windows are shut, the vapors in a house will continually build up, as if you're filling up a glass or filling up a bottle with liquid, and the level of these vapors will continue to rise. The vapors will remain

relatively stable in the house, unless there's a window or door open, and the vapors will be stirred around and moved around from place to place by air currents. Essentially, though, in a confined space, the vapors will remain at lower levels, and because gasoline is continually vaporizing, these level of vapors will rise.

Q And based upon your observations of the house, what conclusions did you reach as to whether -- as to the degree of airtightness of this particular building?

A One of my observations, of course, was the status of the windows and doors in the house, and that was one of the questions that I could have answered for me in Mr. Rich's briefing. And it was discovered by firefighters, I believe, upon their arrival, that all the doors and windows were closed in this house. I noticed that the windows were of a design which is consistent with modern construction, as well as the doors, and I believe that the house would have been relatively airtight. Airtight is a -- it's probably an overstatement, because no window or door is totally airtight, but much more secure than older construction, and capable of shielding the average house or contemporary house from heat and cold and the air circulation from the outside.

Q Now, sir, I believe you've prepared a demonstration for the ladies and gentlemen of the jury, to demonstrate the characteristics of gasoline and what happens in a particular

situation; is that correct?

A Yes.

MR. PANOSH: Your Honor, we'd ask the Court's permission to do the demonstration.

THE COURT: You may do the demonstration.

THE WITNESS: May I come down?

THE COURT: Yes, sir.

Q And would you please narrate the demonstration as you go along.

(The witness approached the demonstration setup.)

A In order to -- Excuse me.

(The witness moved to the other side of the demonstration setup.)

A In order to prevent anyone from being unnerved or frightened by the demonstration, what I intend to do is, to demonstrate the flammable properties of gasoline. And we're going to be dealing with a very small explosion, if you will. And all of this is going to be confined inside this metal box. The box lid is probably not going to blow off, and it's not -- it may cause some smoke to occur, but not enough smoke to activate the smoke alarms.

What I will do is, place a small quantity of gasoline inside this box. And then, there's a little trap door on the front of the box, which I will open. The gasoline vapors that will be given off by the gasoline in the box



will then flow out of this little trap door and flow down the ramp, giving an indication of the fact that gasoline vapors are heavier than air.

The gasoline vapors will travel down this ramp. And I have a little candle at the bottom of the ramp, which will ignite the gasoline vapors. You'll then see the -- a flame which will appear at the candle, and the flame then will travel back up the ramp and into the box, where the gasoline vapors that are inside the box will ignite. There'll be a rushing noise. There's not going to be a big bang. But you'll see flames shoot out the front of the little trap door and maybe some at the top.

In any event, the whole idea behind my opinion is the fact that in this house, there was not enough air to support combustion after the gasoline that was there completely depleted or deprived the atmosphere of enough oxygen to support combustion.

Our breathing air contains approximately 21 percent oxygen. It requires an atmosphere of 16 percent or greater of oxygen in the atmosphere to support combustion. So in this house, once the level of oxygen dropped only five percent, this fire would stop burning in an open-burning state and be reduced to a smoldering state. Any fuel, when it's mixed with the proper amount of oxygen, will burn and usually burn completely. And I can demonstrate that by

using a piece of toilet paper and just burning it here.  
(The witness conducted a demonstration.)

A And you can see that it'll burn completely away to nothing. Just a tiny bit of ash.

But if you take this same toilet paper and put it inside this container. I'll use about five sheets, I believe.

(The witness conducted a demonstration.)

A Well, I can see by the candle flame that there's a considerable draft. Vapors, although heavier than air, can be disturbed by the heating and air conditioning system in a room. So if this demonstration happens to fail because of the vapors being stirred away from the ramp, I can still ignite the vapors at any point on the ramp and give you the same demonstration.

I'll apply a small quantity of gasoline that amounts to about two ounces to the inside of the container.

(The witness conducted a demonstration.)

A Open the trap door.

(The witness continued conducting the demonstration.)

A And even though we have a large amount of smoke, the toilet paper that's inside here is still pretty much intact. The edges of it are burned a bit, but essentially undamaged, because there's just not enough air in here to continue to allow the flame to burn and consume all the fuel.

It may repeat itself. I'm not sure.

(Time was allowed.)

(The witness conducted a demonstration.)

A And even after a second burn, there's still plenty of toilet paper left. Some it doesn't -- hasn't been burned at all. There's plenty of gasoline here, though.

That's the demonstration.

Q Have a seat.

(The witness returned to the witness stand.)

MR. PANOSH: May I approach?

THE COURT: Yes, sir.

Q Agent Webster, I'm going to hand you several photographs.

MR. PANOSH: We would ask the Court's permission to have him step before the jury.

THE COURT: You may step before the jury.

(The witness approached the jury box.)

Q Drawing your attention to State's Exhibits 50 and 51, do you see the pour pattern that you've referred to in those photographs?

A Yes, I do.

Q And would you show that to the ladies and gentlemen of the jury, and make reference to the sticker number, please.

A I'll show State's Exhibit Number 50, which is a photograph of the kitchen area, taken from a doorway that

separates the kitchen from the garage. On the floor here, there's quite a bit of discoloration. The blackness that is seen on the floor -- the blackness that's seen on the floor there is -- are soot deposits and fire damage caused by a liquid laying on the floor, specifically in this case, gasoline laying on the floor and burning.

(The witness moved to the other end of the jury box.)

A The floor's damaged.

(The witness held up an exhibit.)

A The other photograph, State's Exhibit Number 51, is a picture with considerable -- considerably greater amount of the light shown on the -- in the same area. The picture's taken from approximately the same location and again shows the floor of the kitchen. And where my index finger is now, this -- the discoloration on the floor here is what I call a fire pattern. It is the discoloration caused by the burning of gasoline on the floor. The darker discoloration on the kitchen floor here that I'm pointing to is a discoloration that's caused by gasoline burning on the floor.

Q Now, drawing your attention to these two areas, first of all, these chairs, and secondly, this wooden cabinetry that was immediately in the area of the pour pattern, what, if any, damage did you observe on those wooden objects?

A This is of particular note, in that the fact that -- because of the fact that there was gasoline burning on the

floor here that caused the discoloration on the floor, and yet there is only some slight damage because of soot deposits, a soot discoloration on the -- on the chair legs in the same area where the gasoline's burning.

(The witness moved to the other end of the jury box.)

A There's some discoloration on the chair legs from the soot, caused by the burning gasoline, but there's no charring or there's no real -- there's no burning there. And the cabinet, the kitchen cabinet that is on the other side of the photograph, is not even discolored.

Q And this would have been an area where you've described the burning to be intense?

A It's one of the -- one of the areas where the -- at least in the initial stages of the fire, when there was enough air there, the type of burning would have been intense.

Q But of what duration?

A Well, extremely short duration.

Q And would that support the fact that there is little or no damage to those wooden objects?

A Yes, it does.

Q Showing you again State's Exhibits 53 and 54, and drawing particular attention to 53, do you see a pour pattern on the couch?

A Yes, I do. State's Exhibit Number 53 is a photograph

that was taken in the living room of this house. If I may point out that in this photograph, the carpeting that is directly in front of the -- of the couch here has been pulled or peeled back. On the couch, though, there is a discoloration, a blackness, which is -- which is actually a burned area that I'm pointing to now, that is a fire pattern that was created by the burning of gasoline on the couch. (The witness moved to the other end of the jury box and indicated.)

A This --

Q Drawing -- Go ahead.

A I'm sorry. May I continue?

(Mr. Panosh nodded his head up and down.)

A This pattern from the top of the couch to the bottom of the couch continues over onto the carpeting. And in this -- in this photograph, there is a -- in the photograph, it looks pink. There's a plastic cone with a Number 1 on the cone that is placed on the floor and immediately in front of the couch. I think that's an indicator of the -- of an item of physical evidence that was collected there.

In this area, and on the back of the carpet that's been peeled back, again, fire patterns are visible that were caused by the burning of gasoline, both on the couch and the carpet.

(The witness moved to the other end of the jury box.)

Q Drawing your attention to this portion of the couch right here, in the vicinity of the pour pattern and to the right of the pour pattern, what, if any, damage did you observe on that area? (Indicated.)

A The area that's been pointed out is this area that I'm -- that I'm showing with my index finger now, the edge or the extreme right-hand portion of the couch in the photograph that is unburned. It doesn't even -- it doesn't appear in the photograph to be discolored by soot or any type of heat damage or fire damage at all.

Q And based upon your observations of that couch, what type of material was that? Was it cloth?

A The sofa was, I believe, a nylon upholstery with a foam padding. (Held up an exhibit.)

Q And could you explain to the ladies and gentlemen of the jury why there'd be significant damage in the area of the pour pattern, but no or very little damage in the area immediately next to it.

A Again, in this -- in this house, the gasoline burned furious, probably as gasoline normally would in normal circumstances, until the fire burned out all the air. And in this particular case, the fire did not burn long enough for there to be any significant damage in any area, except where the gasoline was. If there had been an unlimited supply of oxygen, the heat from the burning gasoline would

ignite other materials in the immediate vicinity, again, provided there's enough air there. In this particular case, the gasoline and the area which the gasoline was in immediate contact with suffered all the damage, and the area outside of where the gasoline was suffered little or no damage.

Q Did you examine this carpeting?

A Only visually.

Q Okay. You can resume your seat. Thank you, sir.

(The witness returned to the witness stand.)

Q Now, in the course of your experience and training in investigating arsons, have you investigated similar type crime scenes?

A Yes, I have.

Q And specifically, have you investigated crime scenes where a large amount of gasoline was used and causing a hole into the floor?

A Yes, I have.

Q And based upon the examination of the witnesses in those particular crimes, have you been able to determine how long they were in the smoldering state, before they burst into full combustion?

MR. HATFIELD: Objection.

THE COURT: Overruled.

MR. HATFIELD: Your Honor, I don't think he should



be able to base an opinion on the witnesses who are not before the Court. Apparently the question is, based on the examination of other witnesses and other fires, what does he know. That has nothing to do with this case.

THE COURT: Overruled.

A It's been my experience in three other fires prior to this one, and one fire after this one, that fairly significant quantities, that is, a gallon or more of gasoline, was introduced into a house, poured on the floor, all the doors and windows were closed, and the gasoline was ignited. The gasoline in these -- in these two fires prior to this fire burned holes in the floor, one of them as -- one of them four feet in diameter. The house was severely damaged by smoke and some heat, but the burning was confined to the hole in the floor and the area immediately surrounding that.

In one fire in Roxboro, North Carolina --

MR. HATFIELD: Objection.

THE COURT: Sustained.

Q Based upon your experience in investigating those particular arsons, did they assist you in developing your time frame in this particular case?

MR. HATFIELD: Objection.

THE COURT: Overruled.

A The two fires that I investigated prior to this one --

MR. HATFIELD: Objection. The only conceivable answer would be "Yes" or "No."

THE COURT: Overruled.

Proceed.

A The fires that I investigated prior to this one did assist me or support me in formulating my opinion as to --

MR. HATFIELD: And those are irrelevant, Your Honor.

THE COURT: Overruled.

Proceed.

Q And in reference to the one in -- as you've described as it being in Roxboro that supported your opinion, how long did that fire go on?

MR. HATFIELD: Objection. The Court's already ruled on the Roxboro.

THE COURT: Sustained.

Q Based upon your findings and conclusions in this particular case, is there anything that you found in your examination of this arson that would -- Well, let me strike that, please. Give the ladies and gentlemen of the jury your best opinion as to the duration of the burn in this particular case, based upon your training and experience, from the time it was ignited, until the time that the fire officials put it out.

A I am not able to give an estimate of the amount of

time, the precise amount of time, give or take any number of hours, about the length of time that this fire burned, from the time that it was first ignited, to the time that the fire department arrived and extinguished the fire. It's my opinion that this fire did indeed burn longer than two hours.

MR. HATFIELD: Objection and move to strike. He says he cannot form any opinion, then he gives the exact opinion Mr. Panosh wants.

THE COURT: Sustained.

Q Could you put outside parameters on the length of the burn of this particular fire?

MR. HATFIELD: Objection.

THE COURT: Overruled.

A No, sir.

Q Anything in your findings that would be inconsistent with this fire burning for a period of time of four hours?

MR. HATFIELD: Objection.

THE COURT: Overruled.

A I believe this fire could have burned for four hours or more.

MR. PANOSH: No further questions. Thank you, sir.

(Mr. Hatfield approached a sheet of paper posted beside the diagram and wrote on the sheet of paper.)

CROSS-EXAMINATION by MR. HATFIELD:

Q Mr. Webster, do you see the three words that I wrote on the board up there?

A Yes.

Q Do you know what those three words signify?

A Are you referring -- May I ask a question?

Q Do you know what those words mean, in the context of your specialty as an arson investigator?

A Yes.

Q What do they mean?

A Well, they're the primary ingredients or the primary requirements, the presence of which are required in order to support combustion.

Q And every second- or third- or fourth-grade student in this country, as well as every highly-trained expert in the field such as yours, knows those three elements, don't they?

A In some form, yes, probably.

Q No fire can exist without the presence of those three elements?

A That's correct.

Q Now, gasoline is a petroleum distillate, isn't it?

A Yes.

Q And by a petroleum distillate, we mean a distilled form of oil, don't we?

A Yes.

Q Just as distilled water is a distilled form of natural water, having some particles and elements removed from it; is that right?

A Yes.

Q So distilled water is a purer form of natural water, isn't it?

A Yes.

Q And gasoline is a purer form of the natural petroleum that is found in the earth or under the sea, isn't it?

A It's not a purified form of crude oil, no. It is a -- it's a compound that is resulted from the distillation of crude oil, but not -- it doesn't pure -- doesn't make crude oil any purer.

Q But it's a refined form of crude oil, isn't it?

A Crude oil goes through what is called a refining process, to arrive at gasoline, among other things, yes.

Q Now, are you familiar with how gasoline reacts to various materials, such as cotton or wool or polyester?

A I'm not sure I understand your term "react."

Q Well, a material such as cotton or wool will readily absorb gasoline, won't they?

A That's correct.

Q Just as your toilet paper readily absorbed gasoline?

A Yes.

Q Polyester fibers may be less absorbent of gasoline;

isn't that right?

A Depending upon the form involved, yes.

Q The polyester fibers that the upholstery on the couch in question were made of would be less likely to absorb gasoline than cotton or wool, wouldn't they?

A No.

Q They would be equally so?

A Several different factors would cause the absorbency to vary.

Q Now, would linoleum or vinyl flooring be more or less likely to absorb petroleum than some kind of woven floor covering?

A I would think less likely.

Q Now, certainly the first word up there, "fuel," is the same as gasoline, isn't it?

A Well, in this -- in this case, in this -- in this setting, gasoline is a fuel, yes.

Q But gasoline itself is not the component that burns, when we say that there was a fire of gasoline, is it?

A It is the vapors, it is gasoline which is converted to a vapor or gaseous state, yes.

Q Now, you have three little, enclosed containers on the desk there next to your demonstration, don't you?

A Yes.

Q And at least one of those and maybe all of them contain

gasoline, don't they?

A That's correct.

Q And the lids are firmly screwed on?

A Yes.

Q So that the process of vaporization of the gasoline contained within those cans has stopped, or at least all but a very minute amount has stopped, hasn't it?

A Yes.

Q So that if you left those cans that way for 10 years, they might literally be dry by that time?

A Depending upon the condition of the container, yes.

Q And how tightly the lid actually sealed the container?

A Yes.

Q But if we came back here four weeks from now in this trial, they probably would contain just about as much liquid as they do today?

A Probably so.

Q Now, when gasoline is not contained, that is, when it's in the open atmosphere, then the process of vaporization or evaporation begins, unless the temperature is below 45 degrees below Fahrenheit; isn't that right?

A Yes.

Q So when you pour gasoline out on a surface from a container, it immediately begins to vaporize, doesn't it?

A Yes.

Q But it will vaporize at a different rate, if you pour it out on some nonporous floor substance, such as polished cement or vinyl, than if you pour it out on just a thin but very tightly-woven carpet?

A No.

Q It will -- then what's your answer?

A Gasoline will not vaporize at a different rate if it's poured out on linoleum, versus poured out on a carpet.

Q All right.

A It will vaporize at the same rate. The vaporization will be affected by factors such as temperature, barometric pressure and -- well, those are the two primary factors that affect vaporization.

Q So the arsonist who went into Patricia's house and poured gasoline around, it would not have made any difference whether that arsonist poured the vapors over a carpet in the living room that might be similar to this, or a nonporous substance, such as a floor in a kitchen, in your opinion, am I right?

A I'm not sure I understand your question.

Q Well, part of the house had carpet and part of the house had vinyl flooring and part of the house had wooden flooring, didn't it?

A Yes.

Q And the pattern that's behind you on the drawing in



red, the pour pattern, covered all of those three substances and maybe even more substances; isn't that right?

A Yes.

Q But your statement of a moment ago is that, regardless of which of those substances the fuel was poured on, that it would evaporate at approximately the same rate?

A I would expect it to, yes.

Q All right. Now, as it evaporates, of course, you stated that the vapor would be heavier than air?

A Yes.

Q Whereas in actuality, gasoline itself is lighter than water?

A Yes.

Q And the vapor -- would the rate of evaporation depend upon the ambient temperature in the room?

A It can be one of the factors, yes.

Q So that as the temperature approached 45 degrees below zero, the rate would be very slow, whereas as it approached the temperature of the ignition of gasoline, the rate of evaporation would be very rapid?

A I would expect that to be true, yes.

Q But here we're dealing with something in the middle range?

A Yes.

Q Now, you said you examined the outside of the house and

looked at all the openings in the house, and by that I mean, the windows and the doors?

A Yes.

Q And you only found one window knocked out?

A I didn't state that, but I believe that's -- I believe that's my recollection.

Q And that -- it appeared that that window had been probably knocked out by a firefighter, rather than by the arsonist, due to the traces of smoke around it on the outside?

A I don't remember.

Q Well, then, if you don't remember, you don't know whether that window was knocked out before the arsonist did his work, do you?

A I certainly -- it's my opinion that it certainly was not done at that time.

Q But your opinion's not based on any fact, because you don't know?

A My opinion is based on my observations.

Q If the window was knocked out before the arsonist did his work, then there would have been a ready source of oxygen within the house; isn't that right?

A Yes.

Q So, having that window secured before he went to work, it helps your theory --

A That's correct.

Q -- doesn't it? But you don't have any facts to support that part of it?

A Other than what firefighters -- or -- other than what firefighters told Inspector Rich and what Inspector Rich told me.

Q So to that extent, your opinion rests upon your observations, plus what you've heard from Rich and Harris and others?

A That's correct.

Q Did you hear the condition of the back door that leads from the carport into the kitchen area, what was that condition?

A That -- I believe that -- I believe I recall -- or I recall that that door was closed.

Q It was closed when the firefighter arrived?

A I believe so. And there was a curtain -- or the curtain that was on the door was trapped between -- well, trapped by the door. There was a portion of the curtain that was trapped by the door as it was closed.

Q In other words, the curtain was hung on the inside of the door?

A That's correct. The inside of the door -- well, the door had windows, and there was some type of a curtain hung on the back of the door.

Q And it was a loose probably translucent fabric?

A Yes. As I recall, I think a term was sheer or a very -- a very light weave cloth, yes.

Q But part of the curtain was outside the door?

A It's my recollection that the lower portion of the -- of the curtain towards the bottom and towards the door facing or the outside portion of the door away from the hinges was trapped --

Q Now --

A -- by the door.

Q -- based on your expertise -- and it certainly is impressive in your resume -- what would have caused that sheer curtain to be outside the door?

A Well, there are any number of things that could have caused that.

Q Would you tell the jury what those things are.

A Curtain could have been caught by anyone closing the door at some -- at some great speed, I suppose. It could have been trapped by the door. Essentially, it could have been trapped by the door as the -- because of the force of the ignition of the gasoline closing the door with some speed. I suppose that's where you're -- that's what you're asking.

Q Well, thank you. That is what I'm asking. The one valid theory for why some of the curtain was outside the

door is, because the force of the glass with the ignition of the gasoline vapors would have both forced the door closed and blown the curtain toward the outside of the house before the door firmly closed?

A Well, I wouldn't call it a blast, but the force of the initial ignition of the gasoline vapors.

Q Well, certainly, sir -- I don't want to argue with you, but I don't know why you wouldn't call it a blast, when you just demonstrated a blast in your box here, with a very, very small quantity of gasoline, you showed exactly what happens when a small quantity of gasoline vapors liquefied and a blast ensues.

A Well, I'm sorry, sir, but as an investigator, I define a blast in a considerably different way.

Q What would you call the rapid combustion that you showed the jury in the box?

A Exactly that, a rapid combustion, not an explosion or blast.

Q You have studied post-blast investigation, though, haven't you?

A Yes, I have.

Q Back in March of '98 --

A And since then.

Q -- not too long ago?

A And prior --

Q Now --

A -- to that. I'm sorry.

Q What we saw in the box there -- And by the way, what are the dimensions of that box, approximately?

A It's approximately a six-inch cube.

Q So that would make it a half of a cubic square -- a cubic foot or cubic -- yes, a cubic foot?

A Yes, roughly.

Q Do you know how many cubic feet the area of the kitchen and hall comprised?

A No.

Q You'd have to multiply its lateral dimensions plus its height -- with its height, in order to determine the cubic area, wouldn't you?

A Yes.

Q But needless to say, the cubic area of even a moderate size room like that kitchen is literally vast, compared to that little thing there, isn't it?

A Yes.

Q And yet, since you don't know how much fuel was poured out in the kitchen, it's entirely possible that the initial blast in the kitchen was just as furious -- or excuse me. I don't -- I'm sorry for using the word "blast" -- that the initial ignition was just as furious as the ignition you demonstrated to the jury, but on a much larger scale?

A Could have been, yes.

Q We just don't know, because you don't know how much fuel the arsonist had when he poured fuel around that house, do you?

A There were only estimates, I think.

Q Well, but no one knows who the arsonist was, do they?

MR. PANOSH: Objection.

THE COURT: Sustained.

Q You don't know who the arsonist was, do you?

MR. PANOSH: Objection.

THE COURT: Sustained.

Q Did any of the firefighters identify the arsonist to you?

MR. PANOSH: Objection.

THE COURT: Sustained.

Q You also do not know what quantity of fuel the arsonist employed in this fire, do you?

A As I said, they're only estimates.

Q But the estimates in the aftermath would have to be based in part on the duration of the fire, wouldn't they?

A I don't think so.

Q If you knew the duration of the fire, then you could more properly estimate the quantity of gasoline that was used to fuel the fire, couldn't you?

A I don't believe so.

Q Just as, if you knew the quantity of the fuel, you could estimate the duration; isn't that right?

A If the gasoline was the only thing burning, there are some formulas that would give some idea about the duration of a -- of the gasoline burning in an open-burning state with an unlimited supply of oxygen. However, in this case, I don't believe that's possible.

Q But that's exactly what you showed the jury when you walked around in front of them with the pictures, you showed in the kitchen area particularly places where the gasoline fuel burned but did no appreciable damage to the structure of the house; isn't that right?

A Yes.

Q So what you demonstrated to them was a fire that consisted of the fuel gasoline, which eventually went out?

A Yes.

Q And unless you know how much fuel was there, you can't estimate its duration?

A As I said, the only way you can accurately calculate the duration of the burning of the fuel is if you have that fuel and that fuel alone burning.

Q But in -- you showed the jury pictures that showed that the house itself did not contribute any fuel to the fire, you particularly showed them cabinets which were smutted and soiled with smoke, but which had not been consumed by the



fire. So none of the things you showed the jury in the picture fulfilled the first requirement of the fire, which is fuel?

A Well, sir, my observation included the burning of about a six-foot diameter hole in the floor.

Q Well, that was -- I thought you showed the jury pictures of the kitchen area.

A That's correct, but I also testified that there were additional -- there were things in the house that burned in addition to the gasoline.

Q Now, in the case of the six-foot hole with the double support joist through the middle, that was -- that you said was some two-by-twelve, but didn't you really mean that it was two two-by-tens nailed together or attached together?

A Possibly.

Q So you had a double beam running through the middle, and you also had several other two-by-ten floor joists running through that six-foot opening?

A That's correct.

Q And those joists were consumed entirely, weren't they?

A I believe so, yes, sir.

Q Up to the perimeter of the hole?

A Yes.

Q And of course, the subfloor, which would probably consisted either of heavy gauge plywood or sheets of rough

wood about an inch thick and five or six inches wide, wouldn't that be a subfloor, typical subfloor?

A Five-eighths of an inch thick and four-by-eight sheets, four foot by eight foot sheets, yes.

Q Fairly rough material, just to add structural rigidity to the floor?

A Yes, sir.

Q Then there would be some finished material, hardwood or something like that on top?

A Or padding and carpet -- or carpet padding and carpet, yes.

Q Do you know what this floor consisted of?

A The flooring at -- where the hole was; is that -- is that what you're referring to?

Q Yes.

A That was -- the flooring there was carpet, the carpet padding, and a subflooring, which consisted of the five-eighths of an inch subfloorboards, yes.

Q Do you know whether the joists underneath were made of pine or oak?

A They were pine.

Q That would have burned much more rapidly than some other woods like oak, wouldn't it?

A Not necessarily. There are several factors that would influence the burning rate, including moisture and age.

Q Did you make an attempt to evaluate those factors of moisture and age, so that you could determine the duration of the fire?

A No.

Q Now, as for the carpet, what was it made out of?

A I don't know.

Q So, therefore, you cannot factor in its burn rate for the purposes of determining the duration?

A No.

Q And you also, as we said a minute ago, don't know whether that window that you found that was knocked out was knocked out by the arsonist or knocked out by a firefighter?

A Only by what I was told and my observations of the inside of the house.

Q But you did already say that you just don't know?

A I think I said I didn't remember.

Q Now, if the kitchen door that leads to the carport was open when the arsonist walked around the inside of the house, pouring gasoline out on the floor, and if the arsonist then devised a means of igniting the gasoline, and left, and the door remained open, then when the mode of ignition caused the fire, there would have been an instantaneous flare-up, similar to the one you demonstrated in the box in front of the jury, wouldn't there?

A I would expect something like that, yes, sir.

Q And that instantaneous flare-up could have very rapidly pushed the door of the carport into a closed position, leaving some of the curtain, since the curtain's lighter than the door, it would have been blown by the force outside the door, and that would have been exactly what the firefighters found, wouldn't it?

A That's one possibility, yes.

Q Now, if that's what happened, and if the door was open when the gasoline was poured around, then the banking effect that was described earlier in these proceedings by Mr. Rich could not have occurred, because as you said in your testimony, you won't have banking if there's an open door where the fuel can -- fuel vapor can go out; isn't that right?

A That's correct.

Q Now, if you took this interesting device that you brought to the court today and reversed it, that is, if you -- if the channel steel were -- had a little hinge on it, and you could put the box at the bottom and the candle at the top, it wouldn't make any difference how much gasoline vapor you put in that box, it would never ignite from the flame of that candle, would it?

A In this environment, probably not.

Q Right. Now, equally so, in this environment, if you poured out five gallons of gasoline on this floor, you --

this room is too big and there are too many openings in it for there to ever be any banking effect that would carry the fuel vapors up as high as the level of the top of that table; isn't that right?

A With the heating and ventilation system in effect here, sir, I wouldn't want to take that chance.

Q Well, we've -- none of us would want to be here if five gallons of gasoline were poured out on this floor. We wouldn't want to take the chance. But the fact is that from a scientific point of view, if five gallons of gasoline were poured out on this floor, and it wouldn't matter whether it was on a porous floor, like this carpet, or a more durable or less porous floor, because the evaporation rate would be the same, and it would begin to give off fuel -- fumes or vapors that are heavier than air, so those would spread out all over the floor, wouldn't they?

A Yes.

Q But they would not in any sense go higher than 18 inches, would they?

A Looking about the courtroom, I would expect the vapors from that quantity of gasoline to spread out over the floor and possibly build up to the height of a doorway, probably. And there are open doors at the back of the courtroom here. I would expect the vapors to be carried in that direction as they -- as they generated.

Q They would never build up to a height in here of 18 inches, would they?

A I don't know.

Q Aren't you familiar with the fact that industrial and residential building codes require that the ignition systems on water heaters be located 18 inches above the floor?

A No.

Q You're not aware of that?

A I -- as far as ignition systems such as the -- as the pilot light on a gas water heater is concerned, I know the one in my house is certainly not 18 inches above the floor.

Q If it's placed in an area where -- such as a carport, or if it's in a kitchen itself, isn't it a fact it has to be located 18 inches above the floor?

A I'm not familiar with building codes, sir. I just know where mine is and it's not that far up.

Q Now, if -- the average home where people have lawns and lawn mowers and things, usually the average homeowner of that type stores some gasoline around their house, don't they?

A Yes.

Q And there are specifications for the kinds of containers that such gasoline can be kept in safely; isn't that right?

A Yes.

Q But even so, it's possible for children or other individuals to make mistakes and to spill gasoline around the home, isn't it?

A Yes.

Q So there are precautionary requirements in the building code to prevent there being sources of ignition close to the floor level, because that's where those vapors would accumulate; isn't that right?

MR. PANOSH: Objection. He just said he doesn't know.

THE COURT: Sustained.

Q But it is true that vapors will accumulate close to the floor level, isn't it?

A Yes.

Q Now, were you asked in the course of your expert evaluation of this fire scene to determine whether or not somehow this arsonist could have had a delayed ignition of the gasoline that he poured out, by somehow utilizing the electric stove?

A I was not asked to determine that, but my -- but I did observe or -- was with other investigators when this was discovered, yes.

Q What was discovered?

A There was a small piece of cloth that was caught by the oven door. I believe that piece of cloth is in evidence.

In any event, there was a small piece of cloth that was caught by the oven door, and there were some ashes that were possibly remnants of that cloth or remains of that cloth that were up on top of the stove. And that caused me, once I observed that, that caused me to more carefully observe the controls -- the buttons on the stove, and one of the but-- one of the controls on the stove was found to be in an on position.

(Mr. Hatfield approached the exhibit table, and time was allowed for Mr. Hatfield.)

THE COURT: How much longer are you going to be with the witness, Mr. Hatfield?

MR. HATFIELD: Sir?

THE COURT: How much longer are you going to examine the witness?

MR. HATFIELD: I hope just a couple -- well, it might be longer than that, because I've got to find some exhibits. It won't be long, but it might be 20 minutes.

THE COURT: Well, we're not going to wait that long for lunch.

You may step down, Mr. Webster.

(The witness left the witness stand.)

THE COURT: Members of the jury, we're going to take our lunch recess. You'll need to be back at 2:00 o'clock. Please report to the jury room. Please remember



the instructions or obligations on the jury responsibility sheet.

Have a nice lunch. I'll see you at 2:00.

Everyone remain seated while the jury leaves.

(The jury left the courtroom at 12:37 p.m.)

THE COURT: You may declare a recess until 2:00 p.m., sheriff.

(A recess was taken at 12:37 p.m.)

(Court reconvened at 2:06 p.m. The defendant was present. The jury was not present.)

THE COURT: Let me see the lawyers up here just a moment.

(All three counsel conferred with the Court at the bench.)

THE COURT: Bring them back.

(The jury entered the courtroom at 2:07 p.m.)

THE COURT: Hope you had a nice lunch and are feeling okay. Anyone having any problems this afternoon that I should know about, if you'll raise your hand, I'll be glad to talk with you about it.

Okay. If the witness would return to the witness stand, please.

(The witness, Jerry D. Webster, returned to the witness stand.)

THE COURT: Mr. Webster, you're still under oath. You may continue with cross-examination, Mr.

Hatfield.

MR. HATFIELD: All right. Thank you.

CONTINUED CROSS-EXAMINATION by MR. HATFIELD:

Q Mr. Webster, I'm sorry I'm taking so long. I'll try to cover a couple of topics and wrap it up. Mr. Webster, do you know from your observations whether there was a heating and air conditioning system in the house?

A Yes, there was.

Q What did you observe?

A To the best of my recollection, there was a heat pump installed in the house. The heating and air conditioning system would be a closed system, that is, the air that is moved about in the house is moved about by an air handler or a fan that just recirculates the air that's in the house. There's no -- there's no cold air or no air brought in from the outside to feed the heating and air conditioning system.

Q Do you know where the so-called air return was located in the house?

A Yes.

Q Where was that?

A It was on a wall, pretty much at floor level, and it was in the hallway, just directly above the hole in the floor that was burned by the fire.

Q Now, what is the purpose of an air return?

A An air return is the -- essentially the air intake for

the heating and air conditioning system. It is -- in this particular case, as in most houses, it's a -- it's a hole in the wall that is attached by duct work to the heating and air conditioning system air handler.

Q And had you finished? I didn't mean to interrupt you.

A That's pretty much it.

Q Which direction does the air flow in an air return?

A Well, it flows from the outside of the return to the inside or towards the -- towards the air handler.

Q So, whether the air handler is in its air conditioning mode or its heating mode, it always pumps air in the same direction; is that right?

A That's correct.

Q And would that direction be through the duct work to various rooms?

A Yes.

Q And then through the rooms themselves, either heating and (sic) cooling?

A Yes.

Q And then some of that air would go into the air return --

A Yes.

Q -- and go back through the same cycle; is that correct?

A Yes.

Q Now, you stated that you looked at the windows, and

other than the broken window, which has already been talked about, the other windows were of reasonable and modern quality; is that true?

A Yes.

Q That means that they were relatively airtight, compared to windows of 100 years ago?

A Yes.

Q Probably some sort of system of plastic runners on the sides, to keep them stable and tight, or do you know?

A That's modern construction. I didn't pay that much attention to the windows that were in this house. That's what --

Q But even a well-built house with all the windows and doors closed has plenty of air in it, doesn't it?

A Yes.

Q And people live all the time in houses that have every single window and door closed most of the time, don't they?

A Yes.

Q And they manage to breathe?

A Yes.

Q And some people smoke and their cigarettes stay lit?

A Yes.

Q And fires in the fireplace burn and so forth; isn't that true?

A Yes.

Q Cooking can be done, all of that stuff?

A Yes.

Q So a house is very far from airtight, even under ideal conditions, isn't it?

A Yes.

Q And in this case, based on your evaluation of the house after the fire and after all the destruction that the fire entailed, it still appeared to you to be a relatively secure house?

A Yes.

Q Now, do you know whether the air handler was running at the time that the fire took place?

A No, I don't.

Q Did you take time to examine the air return, in order to determine whether it had become charred inside or whether smoke and the like had emitted from the fire into the air return?

A No, I didn't. I --

Q Now -- Okay. Excuse me.

A Excuse me. If I may explain.

Q Yes, sir.

A I did examine the grill, the outside of the cold air return, or the air return. And I also examined a number of the heating vents or heating and air conditioning vents in the house. They were not discolored. They didn't show any

soot deposits or give me any reason to investigate the system further.

Q So you talked to no firefighters or others that were on the scene before you, who indicated to you that the system was running when the first emergency personnel arrived --

A No --

Q -- at that location?

A -- I didn't.

Q Now, an air return -- the air circulation system that you're describing is by no means airtight, is it?

A I'm really not qualified to answer that question.

Q Well, it consists of duct work in the overhead part of the house and probably in the crawl space, doesn't it?

A Yes.

Q And most of that duct work is customarily sealed with this duct tape that everybody's familiar with, strong canvas sticky tape?

A Yes.

Q But after a while, some of that tape pulls away from the joints and the joints leak, don't they?

A I suppose so, after a while, yes.

Q So the air return would have provided an ideal source of possible oxygen for the fire, wouldn't it?

A I don't believe so, sir.

Q Well, you don't know whether it was running, you don't

know whether the system was running while the fire was burning?

A That's right.

Q Certainly if the system was running while the fire was burning, it would have been an ideal source of air, wouldn't it?

A No, sir. It's -- as I said, it's a closed system. It's merely recirculating the air that's available in the house. It's not bringing in any fresh air.

Q But it's a closed system with a high degree of potential for leaks, isn't it?

A I don't think so, sir, but I'm really not qualified to answer that.

Q And part of the system runs under the house, where there's much more air available, due to the open vents around the foundation?

A That's correct.

Q Now, when you spoke before lunch about the floor and the location where the six-foot hole was, you've already talked about the joists. Tell us again what the composition of the floor itself was.

A It's my recollection that the floor was carpet with carpet padding and then a subfloor consisting of -- consisting of, I believe, five-eighth inch thick boards that would be four feet by eight feet in their original size, cut

to the configuration of the -- of the house or the components to which it's attached.

Q So underneath Patricia's body was five-eighths of plywood, some carpet pad and some composition carpet?

A I don't know what was underneath her body, sir.

Q Well, would there -- when you inspected the floor, did you see any other components of the floor, from those that I have just mentioned?

A No.

Q Now, assuming that she -- that the fire was started with the intention of destroying her body, then the arsonist would have poured gasoline down upon her body, wouldn't he?

A I'm really not willing to make that assumption at this point, sir.

Q Well, you do believe that the source of this -- the primary fuel for this fire was gasoline?

A Yes.

Q And you saw pour marks, indicating that the gasoline was poured everywhere that it was located, didn't you?

A Yes.

Q Well, then, don't you know it was poured on her body?

A Yes.

Q And don't you know that it saturated her clothes?

A I believe so, yes.

Q And don't you know that it saturated the carpet and the



carpet pad where she lay?

A I do know that, yes.

Q And of course, underneath the carpet and the carpet pad and her body was five-eighths of plywood, wasn't it?

A I don't recall that it was plywood, but it was some type of wood, yes.

Q And the plywood consists of a lamination of crude pieces of wood with glue in between?

A Yes.

Q And the glue also qualifies as a fuel, doesn't it?

A No.

Q Glue burns, doesn't it?

A No, sir. It is the carriers, the vehicles that suspend the glue in solution that burn.

Q All right. Once those have evaporated, do they evaporate in their entirety, or is there some flammability to the plywood?

A Well, there's combustibility to the plywood, but as far as the glue or the vehicles that carry the glue, they're pretty much gone.

Q All right. Now, what about the composition of the carpet? Did you analyze it for combustibility?

A No.

Q Then you don't know whether it was a high combustion carpet or a fire retardant carpet, do you?

A No.

Q Well, when a liquid such as gasoline is poured upon a carpet, you stated earlier that the evaporation rate would be the same, whether it was a nonporous floor, such as vinyl or linoleum, or whether it was carpet; didn't you say that earlier?

A It would be essentially the same, yes.

Q But the fact is that the surface of the carpet is infinitely more complex than a flat surface, isn't it?

A That's correct.

Q And all the surfaces of those threads and the knots and the gaps in between could hold fuel, couldn't they?

A Yes.

Q And they would expose more fuel to the atmosphere, wouldn't they?

A I don't know.

Q And the creation of the flammable gas, as Mr. Rich called it, is a process of evaporation, isn't it?

A Yes.

Q So the more surfaces you have, the greater evaporation potential you have, don't you?

A In -- generally speaking, yes.

Q So the fact is that a porous carpet would both trap more liquid gasoline and expose more gasoline to the evaporation process than a nonporous, flat floor, wouldn't

it?

A I think it would probably trap more gasoline, but I'm not sure that it would expose more gasoline to the -- to vaporization.

Q Now, if the arsonist's goal primarily was to destroy the body of Patricia, so that no one would know she had been murdered, then he would have poured a good deal of gasoline on the location where the body was, wouldn't he?

A I'm not willing -- I'm not ready to make that assumption, sir. I don't know what the arsonist's state of mind or intentions were.

Q In any event, in your experience over these numerous years that you've talked about in your resume, that's what you've studied all along, isn't it?

A One of the many things, yes. Most --

Q So the arsonist, if his goal was to destroy the body, he would have poured more fuel there, wouldn't he?

MR. PANOSH: Objection. Asked and answered.

THE COURT: Sustained.

Q Well, in any event, that's where the most intense fire burned, wasn't it?

A Given the lack of oxygen that the -- that condition resulting from the burning of the gasoline that was in the house, that is where the most intense fire did occur, yes.

Q Well, I don't know how you can talk about an intense

fire when you talk about lack of oxygen, because as you know from the formula on the board, you have to have both oxygen and fuel. If you don't have one or you don't have the other, you have no fire.

MR. PANOSH: Objection to arguing with the witness.

MR. HATFIELD: It's not arguing. It's stating a point.

THE COURT: Move along.

Q Right?

THE COURT: Move along. We've been over it.

A The fire at the -- in the hole -- that was at the hole in the floor did eventually receive a resupply of oxygen and thus burned more intensely.

Q But you don't know whether it was getting a supply of oxygen all along through the air return, also, do you?

A The air return does not provide additional oxygen to that environment, sir.

Q Well, it would if it was a leaky system, wouldn't it?

MR. PANOSH: We object. We've been over it.

THE COURT: Sustained.

MR. HATFIELD: Your Honor, I don't ever object to the prosecutor's questions.

THE COURT: Well, move along. We've been over it. He's answered that question.

MR. HATFIELD: I have no further questions.

THE COURT: All right.

Step down, sir.

MR. PANOSH: Thank you, sir.

(The witness left the witness stand.)

THE COURT: Next witness, please.

MR. PANOSH: Mr. Yarborough, please.

BRIAN YARBOROUGH, being first duly sworn, testified as follows during DIRECT EXAMINATION by MR. PANOSH:

Q Would you state your name, sir.

A My name is Brian Yarborough.

Q And your occupation, sir?

A I'm a crime scene technician with the Guilford County Sheriff's Department.

Q On October the 9th of 1995, did you respond to Brandon Station Court?

A Yes, I did.

Q For what purpose?

A There was a call of a fire and possible dead body investigation, or DBI, and crime scene technicians are required to respond to those calls.

Q And when you arrived there, what was the status of the building?

A The status of the building was, the fire was, to my understanding, under control. There were no flames coming

out of it. And fire and the emergency personnel had responded already. And the crime scene had been taped off with barrier tape.

Q And what was your duties?

A To evaluate, assess the crime scene, to photograph, video, general -- those are my general duties at just about any call.

Q And in reference to State's Exhibit 48, the videotape the jury's already seen, did you shoot that?

A Yes, sir, I did.

Q Did there come a time when you took certain photographs?

A Yes, sir. I took a number of photographs.

Q Specifically in reference to --

MR. PANOSH: May I approach?

THE COURT: Yes.

MR. HATFIELD: Objection. It's redundant. We've seen so many photographs. We all know what happened.

THE COURT: Proceed.

Q Specifically, in reference to the back bedroom area, did you take certain photographs of the weapon?

A Yes, sir, I did.

Q I'll show you now what's previously been introduced as 57 through 60. Do those show the weapon that you photographed?

1 A Yes, sir, they do.

2 Q And would you go to the diagram, please, and indicate  
3 the location of the weapon where you photographed it.

4 A Yes.

5 (The witness approached the diagram.)

6 A The weapon was found in the back left bedroom. If  
7 you're standing here in the hallway, facing the back of the  
8 hallway, the weapon was found in this area, right here, near  
9 the door. (Indicated.)

10 Q Could you -- I believe there's already been a mark put  
11 up there --

12 A Yes, sir.

13 Q -- of the gun?

14 A There's a G right there in the general area.

15 Q Is that the appropriate area?

16 A Yes, sir.

17 Q Okay. You may have a seat. Thank you.

18 (The witness returned to the witness stand.)

19 Q When you first observed the weapon, was it in plain  
20 view or was it covered?

21 A The weapon was covered.

22 Q How was it covered?

23 A It was covered with a pillow.

24 Q Did you photograph the pillow, as you observed the  
25 weapon?

1 A Yes, sir, I did.

2 Q Was the weapon totally covered or partially covered?

3 A It was partially covered. Maybe just a little bit of  
4 the handle was out initially.

5 Q And then did you take a series of photographs as you  
6 removed the pillow and exposed the weapon?

7 A Yes, I did.

8 Q Do the photographs also show the holster for the  
9 weapon?

10 A I took photographs of the weapon, and 57 and 59 depict  
11 the holster.

12 Q Did you go on to photograph the -- some of the bedroom  
13 drawers?

14 A Yes, sir, I did.

15 Q Showing you now what's been marked for identification  
16 as State's Exhibits 72 through 77, what do they show,  
17 please?

18 A 72 depicts a nightstand and the headboard, and items on  
19 the headboard and nightstand. Also looks to be linen and  
20 bed coverings. 73 depicts a drawer from the nightstand. 74  
21 depicts a drawer partially pulled out of the dresser. 75 is  
22 a drawer that looks to be also from the dresser.

23 Q And when you say "the dresser," what piece of furniture  
24 are you referring to?

25 A There was a dresser -- well, the dresser of the master



1 bedroom.

2 Q Okay. Now, do you see the drawer that has the magazine  
3 clip in it in the photograph?

4 MR. PANOSH: First of all, Your Honor, we seek to  
5 introduce 72 through 75 (sic).

6 THE COURT: The Court'll allow the introduction of  
7 State's Exhibits 72 through 77. Was it 75?

8 MR. PANOSH: I believe it goes up to 77, Your  
9 Honor.

10 Q Is that right, sir?

11 THE COURT: I have --

12 A 77.

13 THE COURT: I have 77.

14 Q Do you see the photograph of the drawer that has the  
15 pistol clip in it or magazine?

16 A Yes, sir, I do.

17 Q And what is that, what number?

18 A What exhibit?

19 Q Yes, exhibit number.

20 A That's 73.

21 Q Okay. And where did exhibit -- the drawer that's in 73  
22 come from?

23 A The drawer out of Number 73, Exhibit 73, came from the  
24 nightstand, I believe, in Exhibit 72.

25 Q Okay. And what other objects are depicted in there,

1 besides the clip or a magazine for a weapon?

2 A There looks to be batteries, pens and pencils, what  
3 looks to be a checkbook, and some type of holder, pouch,  
4 whatever, with what looks to be cash in it.

5 Q You mean, U.S. currency?

6 A U.S. currency, yes.

7 Q Now, what condition was that drawer in when you first  
8 found it?

9 A The drawer was sitting on the floor, and it was in  
10 fairly good condition, good as in, the items weren't burned,  
11 they weren't charred, there was nothing on them, there was  
12 -- you could tell what they were. You could recognize them.

13 Q Now, did you collect the evidence that was photographed  
14 in those --

15 A No --

16 Q -- photographs?

17 A No, sir, I didn't.

18 Q Whose responsibility was that?

19 A At some point during the investigation, my supervisor,  
20 Sergeant Lindell, was called, and another crime scene  
21 technician was also called. I turned the crime scene over  
22 to him and most of the evidence -- most of the items were  
23 collected by them.

24 Q Now, based upon your observations of the drawers in  
25 that master bedroom, did you come to any conclusions?

1 A Yes, sir, I did.

2 Q And what were those conclusions?

3 A The drawers of the dressers --

4 MR. LLOYD: Well, object, Your Honor. He's not  
5 entitled to give his conclusions in this case. He can state  
6 --

7 THE COURT: Sustained.

8 MR. LLOYD: -- what he saw and he did.

9 THE COURT: Sustained.

10 Q How long have you been a crime scene technician?

11 A I've been in law enforcement for 11 years. I've been a  
12 crime scene technician for a total of four years with the  
13 Guilford County Sheriff's Department.

14 Q Okay. And in the course of your duties over those 11  
15 years, how many crime scenes have you been to?

16 A Almost 1,000.

17 Q And in each -- and over the past four years, when  
18 you've responded to crime scenes, has it been your  
19 responsibility to photograph and collect evidence?

20 A Photograph, collect evidence, evaluate the scene, and  
21 lift latent evidence -- fingerprints, things of that nature,  
22 document them.

23 Q Do you have specialized training in photographing crime  
24 scenes?

25 A I've been to numerous classes and seminars pertaining

1 to crime scene photography, crime scene documentation,  
2 preservation and collection of evidence, both since I've  
3 been employed by the Guilford County Sheriff's Department  
4 and before that, when I was in the U.S. Army.

5 Q And have you had specialized training in lifting  
6 fingerprints?

7 A Yes, sir, I have.

8 MR. PANOSH: Your Honor, we'd tender him as an  
9 expert in the field of crime scene identification and  
10 evidence collection.

11 MR. LLOYD: Well, Your Honor, I don't have any  
12 doubt that he doesn't have a wide range of experience in  
13 this field, but I think what Mr. Panosh is going to start  
14 asking him is, conclusions on not how you take photographs,  
15 how you lift prints, or something like that, but something  
16 far more reaching than that, and I don't think that's a  
17 proper area for him to give an opinion and a conclusion on,  
18 Your Honor.

19 THE COURT: The Court'll find Officer B.C.  
20 Yarborough to be an expert in the field of crime scene  
21 technician, by training, education and experience, and may  
22 express an opinion in that area.

23 Q Now, based upon your training and experience, what  
24 specific observations did you make in reference to the  
25 drawers that were in that master bedroom where you collected

1 and photographed evidence?

2 A The drawers in the master bedroom, both the dresser  
3 drawers and the nightstand drawers, had been taken out of  
4 their respective dresser or nightstand. They had been taken  
5 out. Some were dumped over and some had been stacked up.  
6 That seemed to be unusual to me, because I've responded to  
7 different types of burglaries and break-ins, and in my  
8 experience, it's just --

9 MR. LLOYD: Objection, Your Honor.

10 THE COURT: Overruled.

11 A -- in my experience, it's just extremely unusual for a  
12 person to take the time to -- a perpetrator, a thief or  
13 someone like that --

14 MR. HATFIELD: Objection. Generalizing about  
15 other crimes --

16 THE COURT: Well, sustained.

17 MR. HATFIELD: -- other criminals.

18 Q Without generalizing about other crimes and criminals,  
19 what was unusual in the -- your observations of the drawer?

20 A The drawers had been stacked. The drawers had been --  
21 had their contents dumped over, and the drawers were placed  
22 on the floor, and to me, that was unusual.

23 Q Did you make specific observations in reference to the  
24 bed?

25 A The observation that I made of the bed was that it

1     seemed to have been turned over and some of the linen had  
2     been knocked off of it.

3             MR. PANOSH: May I approach?

4             THE COURT: You may.

5     Q     Also in the course of your duties, did you photograph a  
6     certain gas can?

7     A     Yes, sir, I did.

8     Q     Showing you now two photographs, 78 and 79, do you  
9     recognize those?

10    A     Yes, sir, I do.

11    Q     What are those?

12    A     This is a photograph of the gas can that had been  
13    removed from the crime scene.

14    Q     Okay.

15             MR. PANOSH: We'd seek to introduce 78 and 79.

16             THE COURT: The Court'll allow the introduction of  
17    State's Exhibits 78 and 79.

18    Q     Can you show the ladies and gentlemen of the jury  
19    approximately where you collected that on the diagram.

20    A     Yes.

21    (The witness approached the diagram.)

22    A     By the time I got to the crime scene, fire personnel  
23    and initial response -- responding officer were there before  
24    me. And fire department personnel had found the gas can,  
25    and for safety purposes, they had moved it into the garage

1 here. (Indicated.) And initially, I found it here, where  
2 they had placed it in the -- in the garage. (Indicated.)

3 Q And where did you actually photograph it?

4 A I removed the gas can from here, and what I had done  
5 was, as I said before, the -- there was -- there was barrier  
6 tape, to protect the crime scene that was set up by the  
7 officer. What I did was, I made another area inside the  
8 barrier tape that he had put up, with more barrier tape, and  
9 I placed the gas can as evidence inside there, to get it out  
10 of this area. (Indicated.) And I photographed it there on  
11 the ground.

12 Q And did you collect that item, the gas can?

13 A Yes, sir, I did.

14 Q You may have a seat.

15 (The witness returned to the witness stand.)

16 Q What did you do with the gas can after you collected  
17 it?

18 A After I collected the gas can, it was just placed into  
19 evidence. I collected it and placed it into evidence.

20 Q And eventually, was it submitted to the State Bureau of  
21 Investigation for analysis of the liquid inside?

22 A Yes, sir.

23 MR. PANOSH: Your Honor, we'd like to omit  
24 bringing the gas can into court because of the odors, unless  
25 counsel feels it's necessary.

1           MR. LLOYD: Well, we don't have any special desire  
2 to bring it in. If he can describe the gas can, that would  
3 be -- how big was it, was it a two-gallon can, was it three-  
4 gallon, was it five-gallon, or whatever.

5           THE COURT: You may have the witness describe.

6 Q       Other than what's shown in the photograph, what do you  
7 recall of the gas can?

8 A       It was large. It was, I think, a five-gallon gas can.  
9 It was red. There was a spout on it, a pour spout on it.  
10 And the pour spout was -- the gas can looked to be in  
11 somewhat good condition, except for the pour spout, and the  
12 pour spout was melted. It was -- all of it was made of  
13 plastic, and the pour spout had melted.

14 Q       And when you lifted the gas can to move it, were you  
15 able to determine whether or not there was liquid in it?

16 A       Yes, sir, there was liquid in it.

17 Q       Based upon your observations and dealings in lifting  
18 it, could you tell whether it was half full, a third full,  
19 or make an estimate?

20 A       It was not full. There was a noticeable amount in  
21 there, but exactly how much, I can't really say. But there  
22 was a noticeable amount of liquid in there.

23 Q       Thank you. Did there come a time when you turned your  
24 attention to an area behind the house, where there was a  
25 shed?



1 A Yes, sir.

2 Q And what was the purpose of that?

3 A At a point during the investigation, I turned the crime  
4 scene over to my supervisor. He got to the crime scene and  
5 I turned it over to him. We immediately went to the  
6 exterior of the house and started in the -- at the exterior  
7 and worked our way in. There was a shed or -- there was a  
8 boat -- we called -- we referred to it as boathouse, that  
9 was at the rear of the house, and we started our  
10 investigation there.

11 Q And showing you State's Exhibits that I put up there, I  
12 believe it's 80, 81 and 82; is that correct?

13 A Yes, sir.

14 Q What do they depict?

15 A 80 depicts a boat under a shed. 81 depicts what looks  
16 to be a partial hand or palm print. And 82 depicts partial  
17 hand or palm prints also on the -- 81 and 82 are on the  
18 surface of the boat.

19 Q In the course of your investigation, did you develop  
20 those latent prints on the boat?

21 A Myself and Sergeant Lindell did. I photographed them.

22 Q And later on, were they transferred to tape and  
23 collected by yourself?

24 A After photographing them, I believe Sergeant Lindell  
25 lifted them and collected them.

1 Q For the purpose of comparing them to potential other  
2 fingerprints; is that correct?

3 A That's correct.

4 MR. PANOSH: We'd seek to introduce 80, 81 and 82.

5 THE COURT: The Court'll allow the introduction of  
6 State's Exhibits 81 -- 80, 81 and 82.

7 Q In the course of your investigation, did you make  
8 certain observations and photograph the door that went from  
9 the garage to the kitchen area?

10 A Yes, sir, I did.

11 Q Showing you 8 and 9, would you look at those, please.

12 A Yes, sir.

13 Q What are 8 and 9?

14 A 8 and 9 are a picture of I believe it's called a  
15 doorjamb, the side of the door, where the dead bolt comes  
16 out of the door, and the doorknob. That's 8. And Number 9  
17 is the doorjamb itself and damage to the doorjamb.

18 Q And in addition to photographing them, did you observe  
19 the door? What was the condition of the door?

20 A The door had remains of smoke and soot on it. The door  
21 itself was -- the dead bolt of the door and the doorjamb  
22 here looked to be in good condition, but the door frame has  
23 been damaged and looks to be something torn away from the  
24 door frame here. (Indicated.)

25 Q Did you note or observe any pry marks?

1 A Yes, sir. There are pry marks right -- I think this is  
2 the rubber lining of the door frame, and there look to be  
3 pry marks right there in front of -- in front of where the  
4 door's damaged.

5 Q Is that at the doorknob?

6 A That would be at the doorknob, yes.

7 Q Were you able to secure that door?

8 A No, sir, I didn't secure the door.

9 Q And I believe in the course of your duties, you also  
10 made certain photographs that the jury's already seen of the  
11 inside of the residence, including the pour patterns; is  
12 that correct?

13 A That's correct.

14 Q Other than the gas can, did you collect any physical  
15 evidence?

16 A Other than the gas can, no, sir, I did not. I  
17 collected only that.

18 Q Did you collect or note the number of shells that were  
19 in the magazines?

20 A No, sir, I did not.

21 MR. PANOSH: May I approach?

22 THE COURT: You may.

23 Q Is it in your report, sir?

24 (Mr. Panosh handed a document to the witness.)

25 A Yes, sir. That's part of my -- here's my observation.

1 (Indicated.)

2 Q Okay.

3 A Yeah, that's mine.

4 Q And drawing your attention to the -- to this paragraph  
5 about the master bedroom. (Indicated.)

6 (Time was allowed for the witness.)

7 A Yes.

8 Q What did you do in reference to the magazine?

9 A I photographed the magazine.

10 Q Okay. In the course of preparing your report, did you  
11 note in your report the number of shells or bullets that  
12 were in each magazine?

13 A No, sir, I didn't -- I didn't do that. That was --  
14 that was done by Sergeant Lindell --

15 Q Okay.

16 A -- or other people in the lab.

17 Q Is it reflected in your report there, sir?

18 A Yes, it's reflected in this report here.

19 MR. LLOYD: We object to something that's  
20 reflected in the report. He says he didn't make a note of  
21 it.

22 THE COURT: Sustained.

23 Q I take it then your report contains information that  
24 you gained from the other officers?

25 A That's correct.

1 Q Okay.

2 (The witness handed the document to Mr. Panosh.)

3 Q In the course of your duties, did you make observations  
4 in regard to the front door of the residence?

5 A Yes.

6 Q Tell the ladies and gentlemen of the jury what you  
7 observed.

8 A When I got to the scene, I was pointed in the direction  
9 of the front door by the first responding officer and fire  
10 personnel. The front door was constructed of wood, and a  
11 panel of the front door had been knocked out. And you could  
12 see inside the residence.

13 Q And based upon your investigation, was that done by the  
14 fire people, fighting the fire?

15 A To the best of my recollection, yes, sir, it was done  
16 by the fire personnel.

17 Q In the course of your investigation, did you note and  
18 photograph a Subaru Legacy that was parked in the driveway?

19 A Yes, sir, I did.

20 Q And specifically, what did you observe about the  
21 Subaru?

22 A If I can refer to my report. Subaru was gray in color.  
23 North Carolina registration, North Carolina tag EPL-9771. I  
24 documented the VIN off of it and where it was parked in the  
25 -- in the driveway.

1 Q And where was it parked in the driveway, sir?

2 A It was parked directly in front of the garage, on the  
3 gravel portion of the driveway. (Indicated on the diagram.)

4 Q To the left or right or in the middle, do you recall?

5 A More so to the left, if you're standing looking at the  
6 house.

7 Q And did you record how many feet it was from the  
8 vehicle to the garage floor itself?

9 A No, sir, I did not. I think one of the other  
10 responding officers may have, but I didn't.

11 Q In the course of your investigation, did you look at  
12 that first bedroom on the right there, on the lower portion  
13 of the diagram?

14 A Yes, sir.

15 Q And what, if anything, did you note in there?

16 A In my opinion, the note that I made of the --

17 MR. LLOYD: Well, object, Your Honor.

18 THE COURT: Overruled.

19 Q Don't give us your opinion. Just tell us what you  
20 observed, please.

21 A Yes, sir. I observed that the bedroom had sustained  
22 fire damage and smoke damage, and just very -- less fire and  
23 smoke damage than the other bedroom did.

24 Q And in regard to the condition of the room inside, did  
25 you make any observations as you did in the other rooms?

1 A I just observed that it was -- the door was open and it  
2 was -- sustained just a slightly less damage, slightly less  
3 smoke and water damage than the other bedrooms did. That's  
4 really about it.

5 Q All right.

6 MR. PANOSH: May I approach?

7 THE COURT: Yes.

8 (Mr. Panosh indicated on a document.)

9 Q What was the condition of the furniture and contents of  
10 that first bedroom?

11 A The first bedroom was -- the furniture was undisturbed.  
12 It had not been overturned. It had not been gone through.  
13 There was no damage to any furniture. It was undisturbed.

14 Q And you were present and assisted in the photographing  
15 and the removal of the body; is that correct?

16 A Yes, sir.

17 Q In the course of your investigation, were there other  
18 latent fingerprints that were lifted, to your knowledge?

19 A To my knowledge, the -- there were fingerprints lifted  
20 from the boat, the surface of the boat, and from the Subaru  
21 that was parked in the driveway.

22 Q Do you remember which portion of the Subaru was used to  
23 obtain fingerprints?

24 A I'm not exactly sure, no.

25 MR. PANOSH: All right. Thank you, sir. No

1 further questions.

2 THE COURT: Mr. Lloyd?

3 MR. LLOYD: Thank you, Your Honor.

4 CROSS-EXAMINATION by MR. LLOYD:

5 Q Mr. Yarborough, directing your attention to the master  
6 bedroom, you said that various drawers had been taken out of  
7 the dresser and nightstand --

8 A Yes, sir.

9 Q -- is that correct?

10 A That's correct.

11 Q And you said that they were placed on the floor; is  
12 that right?

13 A That's correct. They looked --

14 Q All right.

15 A -- to have been placed, some were stacked, on the  
16 floor.

17 Q All right. And you said in your opinion, that was  
18 unusual?

19 A Yes, sir.

20 Q All right. And you said also that the -- I believe you  
21 indicated that the mattress had been lifted up at some  
22 point?

23 A Mattress looked to have been lifted up and turned over,  
24 off of the bed frame itself, yeah.

25 Q As if someone were looking for, say, money underneath



1 the mattress?

2 A That was hard to determine, because the fire department  
3 had entered through that room, and I never ascertained  
4 whether or not they had come into the room and looked for  
5 persons under the bed or looked for people or, in their  
6 search, moved the bed, or the perpetrators did it.

7 Q All right. But assuming that it was not the firemen  
8 who did that, that it was the perpetrator, the way you found  
9 the mattress would be consistent with someone looking under  
10 the mattress for money perhaps?

11 A Someone having overturned the mattress, yes, sir.

12 Q All right. And the fact that the drawers were placed  
13 on the floor and the contents emptied out would be  
14 consistent with someone looking for money or other  
15 valuables, jewels, jewelry, whatever; it would be consistent  
16 with that, wouldn't it?

17 A No, sir, it really wasn't. The items that had been  
18 dumped from the drawers were practically undisturbed. They  
19 were simply on the floor. Ransacking or searching for  
20 something usually entails moving clothes aside, moving items  
21 aside. These items hadn't been moved aside. The drawers  
22 hadn't been strewn about. They were just stacked or laid on  
23 the floor. The items on the drawers were either untouched,  
24 undisturbed, or dumped out next to the drawer.

25 Q Well, certainly if the perpetrator dumped the contents

1 of the drawer on the floor, you could -- that would be a  
2 quick way to see everything that was in the drawer, a quick  
3 way to see what was on the bottom, wouldn't it be?

4 A It would be a quick way to see what was in the drawer,  
5 but it would be inconsistent with taking the time to stack  
6 the drawers or place the drawers on the floor.

7 Q Well, there was certainly a limited amount of floor  
8 space, was there not?

9 A Yes, there was a limited amount of -- there was  
10 furniture in there --

11 Q Yeah.

12 A -- which is -- yes, uh-huh.

13 Q So when you took one drawer out and then you took  
14 another one, you had the problem of, what did you do with  
15 the drawers, and if you stacked them one on top of the  
16 other, you would then have space to take out another drawer,  
17 put it over here? (Indicated.)

18 A Yes, sir, that could happen. But there again, they  
19 would not have -- none of the drawers or the contents of the  
20 drawers were disturbed, and those that were disturbed hadn't  
21 been gone through. They were just on the floor or the items  
22 still intact in the floor, stacked up.

23 Q Well, certainly if the perpetrator was looking for a  
24 large item, such as a jewelry chest or box, you would be  
25 able to determine if that was in the drawer, would you not

1 --

2 A Not --

3 Q -- by quickly taking the drawer out?

4 A No, sir, because some of the drawers were not  
5 disturbed. There were still items in the drawer, maybe one  
6 or two inches thick. If you simply took the drawers out and  
7 looked at them, you couldn't tell what was under the items  
8 that were on top.

9 MR. LLOYD: If I may approach, Your Honor.

10 THE COURT: You may.

11 Q Do you have those pictures in front of you, Mr.  
12 Yarborough?

13 A Yes, sir. Here's the series that he handed me here.  
14 (The witness handed exhibits to Mr. Lloyd.)

15 Q Now, Officer Yarborough, showing you what's been marked  
16 as State's Exhibit Number 73, that is a drawer that has been  
17 removed, is it not?

18 A That's correct.

19 Q All right. And although there are still items in the  
20 drawer, if there were a larger item, such as a jewelry  
21 chest, or a large jewelry box, you would be able to see it,  
22 without disturbing any of those items, wouldn't you?

23 A Yes, sir.

24 Q All right. And if you could just hold that picture up  
25 to the jury, so they would know what we were talking about.

1 (The witness complied.)

2 Q Thank you, Officer Yarborough. Now, showing you what's  
3 been marked as State's Exhibit 76, that shows at least two  
4 drawers which have been taken fully out; is that right?

5 A Yes, sir, that's correct.

6 Q And the first drawer in the foreground of that picture  
7 does not have anything in it; is that correct?

8 A In the foreground? No, that --

9 Q Yes.

10 A -- doesn't have anything in it.

11 Q All right. So either those contents were removed, or  
12 it simply didn't have anything in it to begin with; is that  
13 right?

14 A As far as I can tell, yes.

15 Q All right. And the second drawer has only a small  
16 number of items in it?

17 A It has items in it. Exactly how many, I can't tell.

18 Q Well, it's not filled?

19 A It's not filled, no.

20 Q All right. And if you could just hold that up and show  
21 it to the jury.

22 A This is the drawer that's -- (Indicated.)

23 Q And certainly you would be able to see any large items,  
24 even in that second drawer, would you not, such as a jewelry  
25 chest?

1 A Yes, sir.

2 Q All right. And showing you what's been marked as  
3 State's Exhibit Number 74, that indicates drawers which have  
4 been opened, or at least one drawer -- shows one drawer  
5 that's open but still in the dresser; is that right?

6 A It's partially still in the dresser, yes.

7 Q All right. And then there are other drawers that are,  
8 as you indicated, stacked?

9 A That's correct.

10 Q And those drawers basically hold clothing or appear to  
11 hold clothing; is that --

12 A Clothing. There -- yes, sir.

13 Q Articles of attire, some type of attire?

14 A Correct.

15 Q All right. And it would be difficult to tell whether  
16 someone had actually gone through those clothing items or  
17 not, would it not?

18 A The drawer to the right, it's difficult to tell. The  
19 drawer to the left, it's still in the dresser. This portion  
20 of it looks somewhat undisturbed and looks like it's just  
21 been pulled out.

22 Q Well, certainly -- if you could hold it up for the  
23 jury, Agent Yarborough.

24 (The witness complied.)

25 Q Certainly if I were the perpetrator, I could have run

1 my hand through that drawer that's still in the dresser and  
2 moved things about and satisfied myself that there wasn't a  
3 large item, such as a jewelry chest in there, could I not?

4 A That is possible. Nothing was -- hardly anything was  
5 disturbed, but that's possible.

6 Q Thank you. And Officer Yarborough, it is possible for  
7 people to hide items underneath a drawer, back up in the  
8 casing of a dresser, is it not?

9 A That's possible, yes.

10 Q And the only way that you could determine whether  
11 something was hidden in that fashion would be to actually  
12 take the drawer out --

13 A Yes, sir.

14 Q -- inspect it?

15 A Yes, sir.

16 Q Officer Yarborough, did you assist in gathering as  
17 evidence any keys that were found on the outside of the  
18 house?

19 A No, sir, I didn't assist in that.

20 MR. LLOYD: That's all I have, Your Honor.

21 THE COURT: Step down, sir.

22 MR. PANOSH: May I, Your Honor?

23 THE COURT: Yes, sir.

24 REDIRECT EXAMINATION by MR. PANOSH:

25 Q You've been asked if what you observed was consistent

1 with someone looking for something of value. Showing you 72  
2 and the enlargement, 73, what is that item that they didn't  
3 take? (Indicated.)

4 A That is cash, U.S. currency.

5 Q And what is the item next to it?

6 A That is a holster for a magazine, I think.

7 Q Okay. And do those things have value?

8 A Yes, sir, they have value.

9 Q Drawing your attention to that magazine, does that have  
10 value?

11 A Yes, sir, it does.

12 Q Drawing your attention to State's Exhibit 58 and the  
13 other items that show -- Or excuse me. Let's go with 60,  
14 that shows the pistol. Does that pistol have value?

15 A Yes, sir, it does.

16 Q Is that any particular type of pistol, if you know,  
17 sir?

18 A It looks to be a semiautomatic type pistol. The  
19 caliber and type, I don't know.

20 Q Does it have any kind of attachment?

21 A Yes, sir, it does.

22 Q What's that?

23 A It looks to be some type of sighting device, like --  
24 that's used to point a person clearer to a sight, or clearer  
25 to the target that they're trying to shoot at, and it's

1 mounted up under the -- up under the barrel of the pistol.

2 Q Referred to as a laser sight?

3 A Yes, sir.

4 Q Does that laser sight and that weapon have value?

5 A Yes, sir, it does.

6 MR. PANOSH: No further.

7 THE COURT: Additional questions, Mr. Lloyd?

8 MR. LLOYD: Just a few, Your Honor.

9 RE-CROSS-EXAMINATION by MR. LLOYD:

10 Q Did you inventory the amount of cash Mr. Panosh  
11 indicated in the picture he just showed you?

12 A No, sir. I documented with video and photographs.

13 Q At any rate, based on your observation, that was not a  
14 large amount of cash, was it?

15 A I don't know exactly how much it was.

16 Q And Mr. Panosh asked you about a magazine, and he is  
17 talking about a -- essentially a clip --

18 A Yes, sir.

19 Q -- is that right, a pistol clip?

20 A Right.

21 Q And that would have value to someone who owned that  
22 particular type of gun, would it not?

23 A Yes, sir. Say it would have value to someone that  
24 wanted a clip or wanted the bullets inside.

25 Q That wanted that particular type of clip?



1 A I would assume so, yes. I don't know why anyone would  
2 take it, but it does have value.

3 Q All right.

4 MR. LLOYD: That's all I have, Your Honor.

5 THE COURT: Step down, sir.

6 (The witness left the witness stand.)

7 MR. PANOSH: S.G. Cross, please.

8 THE COURT: I'm sorry?

9 MR. PANOSH: S.G. Cross is the next witness.

10 THE COURT: You may stand and stretch, members of  
11 the jury, if you'd like.

12 STORMY CROSS, being first duly sworn, testified as follows  
13 during DIRECT EXAMINATION by MR. PANOSH:

14 Q Would you state your name, please.

15 A Stormy Cross.

16 Q Okay. Ma'am, if you could keep your voice up, so that  
17 the folks at this end of the jury box can hear you, I'd  
18 appreciate it.

19 A Yes, sir.

20 Q Your name again?

21 A Stormy Cross.

22 Q And your occupation?

23 A I'm a crime scene technician with the Guilford County  
24 Sheriff's Department.

25 Q How long have you been a crime scene technician?

1 A Four years with Guilford County and four years with  
2 High Point P.D.

3 MR. HATFIELD: I could not hear the last.

4 A Four years --

5 MR. PANOSH: Four years Guilford County and four  
6 years High Point.

7 Q In the course of your duties, did there come a time  
8 when you responded to Brandon Station Court?

9 A Yes, I did.

10 Q And what were your official duties when you arrived at  
11 Brandon Station Court?

12 A When I first arrived there, Brian Yarborough and my  
13 sergeant, Sergeant Lindell, were already on the scene, and  
14 Sergeant Lindell briefed me as to what had already been done  
15 at the scene.

16 Q And what were you assigned to do?

17 A The first thing that I did was a walk-through with  
18 Sergeant Lindell, to find out what had already been done and  
19 to view the scene for myself. And then basically what I did  
20 after that was videotape several items of interest outside  
21 of the crime scene, and also did some latent fingerprint  
22 work and some still photographs.

23 Q Drawing your attention first of all to the latent  
24 fingerprint work that you did, where did you collect those  
25 latent fingerprints?

1 A We processed the point of entry, the kitchen door, and  
2 the doorknob with fluorescent powder and UV lights. Those  
3 were photographed, because they could not be readily lifted  
4 and then compared. We also did some fingerprint work on  
5 Patricia's vehicle outside and lifted, I believe I lifted  
6 eight or nine latents from her vehicle.

7 Q Did you participate in the lifting of the latent prints  
8 from the boat?

9 A No, sir, I did not.

10 (Mr. Panosh showed an exhibit to Mr. Lloyd.)

11 Q I'm going to show you now State's Exhibit 83. Would  
12 you take a look at that, please. What is that, please?

13 A This is an envelope for latent prints.

14 Q Okay. And do you recognize your handwriting on there?

15 A Yes, I do.

16 Q Okay. And what is contained in State's Exhibit 83,  
17 please?

18 A These would be latent fingerprint cards.

19 Q And would you hand me the first latent fingerprint  
20 card, please.

21 (The witness complied.)

22 Q And that is 83-A. Can you indicate where 83-A came  
23 from, that latent print?

24 A Yes. It came from the rear passenger side of the boat,  
25 inside, just above the seat cushion.

1 Q And the next print, please, 83-B, where did that come  
2 from?

3 (The witness handed the exhibit to Mr. Panosh.)

4 A This one came from the outside of the back passenger  
5 window on the driver's side of the victim's vehicle.

6 Q 83-C?

7 (The witness handed the exhibit to Mr. Panosh.)

8 A From the inside front passenger window of the victim's  
9 vehicle.

10 Q And the next one, please.

11 (The witness handed the exhibit to Mr. Panosh.)

12 Q 83-D, please.

13 A Inside the driver's window of the victim's vehicle.

14 Q 83-E?

15 (The witness handed the exhibit to Mr. Panosh.)

16 A From the boat, the rear passenger inside, along the  
17 side of the boat, just above the seat cushion.

18 Q 83-F?

19 (The witness handed the exhibit to Mr. Panosh.)

20 A Also from the boat, the rear passenger side, the top  
21 right along the side of the boat seat.

22 Q 83-G?

23 (The witness handed the exhibit to Mr. Panosh.)

24 A From the top of the roof, the front passenger side, and  
25 the molding of the windshield on the front passenger side.

1 Q 83-H?

2 (The witness handed the exhibit to Mr. Panosh.)

3 A From the outside of the front passenger window.

4 Q Again on the Subaru?

5 A Yes, sir, the vehicle.

6 Q 83-I?

7 (The witness handed the exhibit to Mr. Panosh.)

8 A From the -- Number 3 from the trunk on the left side,  
9 and Number 4 from the middle of the trunk of the victim's  
10 vehicle.

11 MR. PANOSH: Your Honor, we'd seek to introduce  
12 83, the container, with 83-A through I, the latent prints.

13 THE COURT: The Court'll allow the --

14 MR. HATFIELD: Objection. There's no bearing on  
15 this case.

16 THE COURT: The Court'll allow the introduction of  
17 83-A through 83-I.

18 Q After you obtained those latent fingerprints, what did  
19 you do with them?

20 A They were placed into an envelope. I usually do that  
21 at the scene, and go ahead and at least put the address of  
22 the call down, and then later on, back in the lab, they were  
23 -- the rest of the cards on the back were filled out, as far  
24 as the victim's name and type of crime.

25 Q Eventually, were they submitted to Doreen Huntington

1 for analysis?

2 A Yes, they were.

3 Q What did you do next in the course of your duties?

4 A After that, we found some tire tracks that were in the  
5 cul-de-sac near the residence. Those were videotaped, and  
6 then they were measured. And we also found some footprints  
7 and tire tracks within the driveway between the yard and the  
8 boathouse, and those were photographed by videotape, as well  
9 as measured.

10 Q Were those the type of footprints that could be casted?

11 A No, sir, they were not.

12 Q Were they unique enough to be used for an  
13 identification?

14 A I believe the detail probably could have been enough  
15 for an identification. That's why they were photographed.

16 Q Okay.

17 A I would have to see them, to refresh my memory as to  
18 how clear they were.

19 Q And after you did that work on the outside of the  
20 house, what did you do next?

21 A The next thing we did back inside the house was, Fire  
22 Inspector Eddie Harris asked me to help him select some  
23 samples to send to the SBI for analysis, as far as whether  
24 or not an accelerant had been used.

25 Q Okay.

1 MR. LLOYD: Excuse me. I didn't hear the last of  
2 that response, Your Honor.

3 A We collected samples, to test for accelerants.

4 Q And were those samples submitted to the SBI?

5 A Yes, they were.

6 MR. PANOSH: Again, Your Honor, because of the  
7 volatile nature of them, we're not going to bring them in,  
8 unless counsel requires them.

9 MR. LLOYD: We do not, Your Honor.

10 THE COURT: You may proceed.

11 MR. PANOSH: Thank you.

12 Q After you obtained those samples, what did you collect?

13 A Do you want me to just give you a list of the items  
14 that I collected?

15 Q Yes.

16 A I collected a Glock 21 handgun from the master bedroom.

17 Q All right. Let's stop there for a moment.

18 A Okay.

19 Q Showing you State's Exhibit 84, is that the Glock that  
20 you collected?

21 A I would have to open it up.

22 (Mr. Panosh handed a knife to the witness, and the witness  
23 opened up the exhibit.)

24 Q You're removing from box 84 what?

25 A Item Number 15.

1 Q Okay. And let's label that as 84-A. What is 84-A?

2 A 84-A is a bag that holds a handgun.

3 Q And where did you collect that handgun?

4 A This was from the master bedroom on the floor.

5 Q Approximately the location where the G is? (Indicated  
6 on the diagram.)

7 A Yes, sir.

8 Q Okay. Are there other items in 84?

9 A Item Number 6.

10 Q And what is that?

11 A These are bullet jacket and metal fragments.

12 Q Taken from the victim?

13 A Yes, sir.

14 Q Label that as 84-B. Are there other items?

15 A There's 16, Item Number 16, which are cartridges for  
16 weapon testing, and Item Number 17, which is cartridges for  
17 the weapon tested.

18 Q All right. I'm labeling that 84-C. Did you collect  
19 this from the bedroom area?

20 A I'm sorry?

21 Q The cartridges from the bedroom area?

22 A I believe the cartridges were taken from the magazine  
23 of the Glock.

24 Q Okay. And the magazine was where?

25 A In the -- in the handgun.



1 Q Is there another item?

2 A No, sir.

3 MR. PANOSH: Your Honor, we'd seek to introduce 84  
4 and its contents, the gun, the magazine, and the bullets,  
5 and the projectile recovered from the victim.

6 THE COURT: The Court'll allow the introduction of  
7 State's Exhibits 84, 84-A, B and C.

8 Q What was the next item that you collected, please?

9 A There was also a cartridge, a .45 cartridge from the  
10 barrel of the Glock handgun and several hairs, both white  
11 and dark, from the barrel of the handgun; a red fireplace  
12 lighter that was found on the --

13 Q Okay. Hold on, please.

14 A I'm sorry.

15 Q Now, drawing your attention to the hairs that you  
16 mentioned, were they sent to the SBI?

17 A I don't have the control form in front of me. If I  
18 could get a copy of that, I could tell you.

19 Q Showing you then State's Exhibit 85, is this the item  
20 that you've described as the bullet that was in the chamber  
21 of the weapon?

22 A Yes, sir, it is.

23 Q Okay. Showing you 86, do you recognize that?

24 A This is an envelope, returning items from the SBI.

25 Q Would you open it, please.

1 (The witness complied.)

2 Q And what is in 86?

3 A Item Number 18, debris and hair from the surface of the  
4 weapon.

5 Q Okay. We're going to label that as 86-A. What else is  
6 in there?

7 A Item Number 8, which -- plucked hairs from the scalp of  
8 the victim. And Number 9, Item Number 9 is also plucked  
9 hair, pubic hair from the victim.

10 Q Okay.

11 MR. PANOSH: Your Honor, we'd seek to introduce  
12 into evidence 85, the bullet from the chamber; 86 and its  
13 contents, which are the hairs from the scene and the hairs  
14 from the victim.

15 THE COURT: The Court'll allow the introduction of  
16 State's Exhibits 85, 86-A, B and C.

17 Q What was the next item you collected, please?

18 A A red fireplace lighter from the floor of the living  
19 room, just to the right of the fireplace.

20 Q And the next item?

21 A A tan telephone answering machine from the kitchen  
22 floor, with --

23 Q And the next item?

24 A Keys from the kitchen floor.

25 Q Showing you then what I've marked as 87, what is 87?

1 A 87 is Item Number 34, which are the keys from the  
2 kitchen floor.

3 Q In the course of your responsibilities, did you  
4 photograph those keys?

5 A I'm not sure if I photographed the keys or if Sergeant  
6 Lindell photographed those keys.

7 Q Okay. Drawing your attention to 49, does that show the  
8 location of the kitchen floor where those keys in 87 were  
9 recovered?

10 A Can I open it up?

11 Q Okay. Do you need to, to answer the question?

12 A Yeah.

13 Q Okay. Go ahead.

14 (The witness complied.)

15 A Yes, sir.

16 Q Okay.

17 MR. PANOSH: Seek to introduce 87, the keys that  
18 were found on the kitchen floor.

19 THE COURT: The Court'll allow the introduction of  
20 State's Exhibit Number 87.

21 Q What was the next item you collected, please?

22 A The purse from the Subaru.

23 Q Showing you then Item Number 80-- or Exhibit 88, could  
24 you tell the ladies and gentlemen of the jury what that is.

25 (Mr. Panosh opened up the bag.)

1 A That is the victim's purse from the vehicle, the  
2 Subaru.

3 MR. PANOSH: Seek to introduce 88.

4 THE COURT: The Court'll allow the introduction of  
5 State's Exhibit Number 88.

6 Q What was the next thing you recovered?

7 A The contents from the front passenger seat of the  
8 Subaru, the glove box, console and console tray, as well as  
9 the inside the driver's door, the contents that were in  
10 those areas.

11 Q And what was the next thing you recovered?

12 A Those were all the items that I recovered.

13 Q Okay. After recovering those items and packaging them,  
14 what action did you take in the course of the investigation?

15 A As far as evidence?

16 Q Yes, please.

17 A I took all those items back with me. Sergeant Lindell  
18 also collected some evidence. And it was all transported  
19 back to the lab. Photographs were taken, a video was taken,  
20 also.

21 Q Did you collect any other items there?

22 A No, sir.

23 Q You've previously indicated that you collected State's  
24 Exhibit --

25 MR. PANOSH: Madam Clerk, what number did I give

1 the gun?

2 THE CLERK: 84-A.

3 MR. PANOSH: Thank you.

4 Q -- 84-A; is that correct?

5 A Yes, sir.

6 Q And when you collected 84-A, did it have -- was it  
7 loaded?

8 A Yes, sir. There was a magazine also in the gun.

9 Q Okay.

10 MR. PANOSH: Have I used 84-D?

11 THE CLERK: No, sir.

12 MR. PANOSH: Okay.

13 Q Showing you then this item, 84-D, what is this, please?

14 A I believe this is the magazine from the -- from the  
15 Glock.

16 Q And what's in the box in 84-D?

17 A These are the cartridges from the magazine. Capacity  
18 -- has 13 it can hold in there.

19 Q Okay. And when you examined the gun, did you -- were  
20 you responsible for removing the bullets?

21 A I do not recall if I actually made the gun safe or  
22 Sergeant Lindell did.

23 Q Okay. Eventually, did you count the number of rounds  
24 that were in the clip?

25 A Yes, sir.

1 Q How many rounds were in the clip?

2 A There were 11 in the magazine clip.

3 Q 11 rounds in the magazine, and there was one in the  
4 barrel; is that correct?

5 A Yes, sir.

6 Q And the capacity is what, please?

7 A 13.

8 Q Did you collect anything else? (Indicated.)

9 A Two loose keys from the front yard were also found.  
10 And another loose key was found right near that one, also in  
11 the front yard, by the picnic table. These were documented,  
12 as far as being photographed. They were also then -- we  
13 tried to get latents from that, by using a portable Super  
14 Glue gun, and then dusting it with black powder. There were  
15 no latents found on those keys.

16 Q What was the approximate location that you found those  
17 keys?

18 A They were found approximately two feet from the picnic  
19 table.

20 Q Where was the picnic table located?

21 A The picnic table was outside of our barrier tape,  
22 towards the -- in the front yard, I would say maybe 10, 15  
23 feet from the road. It's a --

24 Q When you say --

25 A -- pretty good-sized yard.

1 Q -- "outside the barrier tape," what do you mean?

2 A The barrier tape that had been placed around the crime  
3 scene.

4 Q During the evening hours of October the 9th when you  
5 were present, were there civilians, that is, non law-  
6 enforcement people, in that area?

7 A By the picnic table?

8 Q Yes.

9 A Yes, sir. I was there on the 10th.

10 Q I'm sorry. When you were there, there were civilians

11 --

12 A Yes.

13 Q -- non law-enforcement people, around that area?

14 A Yes, sir.

15 (Mr. Panosh showed an exhibit to Mr. Lloyd.)

16 Q Showing you then State's Exhibit 89, are those the  
17 loose keys that you've previously described?

18 A I believe so. Can I open the box?

19 Q Sure.

20 (The witness complied.)

21 A Yes, sir, they are.

22 Q Okay. Now, I'd like to go back to the --

23 MR. PANOSH: Your Honor, could we introduce 89,  
24 please?

25 THE COURT: The Court'll allow the introduction of

1 Exhibit Number 89.

2 Q I'd like to go back to the clip. I think I made a  
3 mistake. Showing you what we previously referred to as  
4 84-D, and showing you this bag, which one came out of the  
5 gun?

6 A This one here, Item Number 22 or 23. It's the magazine  
7 from the .45. This is the spare magazine. (Indicated.)

8 Q Okay.

9 MR. PANOSH: Your Honor, can I correct that?

10 MR. HATFIELD: I'm sorry, Judge. I could not hear  
11 the last thing she said.

12 THE COURT: Repeat it, please.

13 Q All right.

14 A The magazine --

15 Q All right. Showing you Item 22 and 23, where did this  
16 come from?

17 A This is the magazine from the .45. And this is the  
18 spare magazine. (Indicated.)

19 MR. PANOSH: Can I --

20 THE COURT: 84-D is the spare magazine?

21 MR. PANOSH: Could I correct it, just make it --

22 THE COURT: Yes, sir.

23 MR. PANOSH: -- put 84-D on the correct one?

24 THE COURT: All right.

25 (Mr. Panosh remarked an exhibit.)



1 Exhibit Number 89.

2 Q I'd like to go back to the clip. I think I made a  
3 mistake. Showing you what we previously referred to as  
4 84-D, and showing you this bag, which one came out of the  
5 gun?

6 A This one here, Item Number 22 or 23. It's the magazine  
7 from the .45. This is the spare magazine. (Indicated.)

8 Q Okay.

9 MR. PANOSH: Your Honor, can I correct that?

10 MR. HATFIELD: I'm sorry, Judge. I could not hear  
11 the last thing she said.

12 THE COURT: Repeat it, please.

13 Q All right.

14 A The magazine --

15 Q All right. Showing you Item 22 and 23, where did this  
16 come from?

17 A This is the magazine from the .45. And this is the  
18 spare magazine. (Indicated.)

19 MR. PANOSH: Can I --

20 THE COURT: 84-D is the spare magazine?

21 MR. PANOSH: Could I correct it, just make it --

22 THE COURT: Yes, sir.

23 MR. PANOSH: -- put 84-D on the correct one?

24 THE COURT: All right.

25 (Mr. Panosh remarked an exhibit.)

1 Q Three. Did you try those keys in any of the doors to  
2 Patricia Kimble's house?

3 A Yes, we did.

4 Q All right. And the pistol, the Glock pistol, what did  
5 you do with that, after you collected it?

6 A Once all the items were collected, they were taken back  
7 to the lab and secured in the processing room, for either  
8 further processing or for packaging and placing into a  
9 locker or packaging and sending to the SBI.

10 Q And once it went to the SBI, you didn't have any  
11 control over it when it was there, did you?

12 A No, sir.

13 Q All right. And the keys on the kitchen floor, did you  
14 try those keys, as well?

15 A I did not personally try them, no.

16 MR. LLOYD: That's all I have, Your Honor.

17 THE COURT: You may step down.

18 REDIRECT EXAMINATION by MR. PANOSH:

19 Q What were the results of the keys that you tried?

20 A They were negative. None of the keys fit any of the  
21 doors.

22 Q The doors of Patricia Kimble's house?

23 A Yes, sir.

24 Q Did you check the front and back?

25 A Yes, sir. All the doors were checked.

1 MR. PANOSH: No further. Thank you.

2 THE COURT: You may step down, Ms. Cross.

3 (The witness left the witness stand.)

4 THE COURT: We're going to take our afternoon  
5 recess, members of the jury. Please remember the jury  
6 responsibility sheet.

7 (The jury left the courtroom at 3:29 p.m.)

8 THE COURT: 15 minutes, sheriff.

9 (A recess was taken at 3:30 p.m.)

10 (Court reconvened at 3:48 p.m. The defendant was present.  
11 The jury was not present.)

12 (The jury entered the courtroom at 3:49 p.m.)

13 THE COURT: Call your next witness, please, Mr.  
14 Panosh.

15 MR. PANOSH: Yes, sir.

16 Special Agent Ware, please.

17 PETER DOUGLAS WARE, being first duly sworn, testified as  
18 follows during DIRECT EXAMINATION by MR. PANOSH:

19 Q Would you state your name, sir.

20 A Peter Douglas Ware, W-a-r-e.

21 Q And you're a special agent with the State Bureau of  
22 Investigation?

23 A Yes, sir.

24 Q How long have you been with the State Bureau of  
25 Investigation?

1 A Approximately nine years.

2 Q In addition to the normal training that you received in  
3 order to become a special agent, did you receive specialized  
4 training?

5 A Yes, sir.

6 Q In what field?

7 A Forensic firearm and toolmark examination.

8 Q Would you state for the ladies and gentlemen of the  
9 jury your background and training in forensics firearm and  
10 toolmark examination.

11 A Yes. I have a Bachelor of Science degree from  
12 Glenville State College in Glenville, West Virginia. And  
13 prior to my employment with the State Bureau of  
14 Investigation, I was employed by the Federal Bureau of  
15 Investigation in Washington, D.C., in their laboratory, at  
16 which time I underwent training in the areas of toolmark  
17 identification and physical match identification.

18 In August of 1989, I began my employment with the State  
19 Bureau of Investigation, and underwent a two-year training  
20 program specifically for the area of forensic firearm and  
21 toolmark identification, using the AFTE, which is the  
22 Association of Firearm and Toolmark Examiner's guidelines  
23 for their training program. This includes such areas as  
24 ammunition identification, firearms identification, the  
25 mechanics and safety systems of firearms, internal, external

1 and terminal ballistics, toolmark identification,  
2 microscopy, gunshot residue, and pellet pattern distance  
3 determination, and so forth.

4 In addition to this training program, I've also  
5 attended various firearms manufacturing facilities, to see  
6 the weapons being manufactured. And I'm also a certified  
7 armer for various firearms manufacturers.

8 And that's the extent of my training at this point as  
9 it deals with forensic firearms identification.

10 Q And in the course of your duties with the State Bureau  
11 of Investigation, have you testified as an expert?

12 A Yes, sir, I have.

13 Q And have you been recognized in state courts?

14 A Yes, sir.

15 MR. LLOYD: We'll stipulate that he's an expert,  
16 qualified to give opinions in firearms identification, Your  
17 Honor.

18 THE COURT: All right. The Court finds the  
19 witness, P.D. Ware, is an expert in the field of firearms  
20 identification and toolmark identification, and may express  
21 an opinion in those areas, based on training, education and  
22 experience.

23 Q Agent Ware, in the course of your duties, did there  
24 come a time on or about October the 10th when the weapon  
25 which is State's Exhibit 84 was submitted to you?

1 A Yes, sir. It was submitted to the SBI laboratory on  
2 October 10, 1995.

3 Q And can you identify the type of weapon that is?

4 A Yes, sir, I can.

5 Q What type weapon is it?

6 A It is a Glock caliber .45 auto semiautomatic pistol.

7 Q Is there anything unusual or different about this  
8 particular weapon?

9 A Other than having a laser sight attached to it, there's  
10 nothing unusual, except for the condition it was in when it  
11 was submitted.

12 Q What condition was it in?

13 A It had some soot and ashes and debris that had adhered  
14 to the weapon itself. And I had to clean the weapon, prior  
15 to test firing it.

16 Q Would you explain briefly what a laser sight is.

17 A A laser sight simply is an apparatus designed to aid  
18 the shooter in aiming the weapon more quickly than your  
19 conventional sight. And it's simply a small attachment that  
20 attaches to the weapon in some manner, that has a -- some  
21 type of power source, a battery, that projects a laser beam,  
22 a very small red dot in the direction that you would be  
23 aiming the weapon, and allows the shooter to pick up that  
24 dot quicker than conventional sights during the firing  
25 process.

1 Q What is the purpose of having that type of a sight?

2 A So that you can see it in low light or dark scenarios.

3 Q And what is the difference in using a weapon with a  
4 laser sight as compared to using a weapon without one?

5 A There's basically no difference, except for, it allows  
6 the shooter to acquire the area where the projectile is  
7 supposed to strike usually faster than a conventional sight  
8 would.

9 Q More accurately?

10 A Not necessarily more accurately, but quicker.

11 Q Essentially, where you see the red dot is about where  
12 the bullet's going to go?

13 A Yes, sir.

14 Q In the course of examining State's Exhibit 84, what did  
15 you do?

16 A After cleaning off the weapon, I then did a standard  
17 function test, which is a test to determine that the -- it  
18 was safe to test fire the weapon. After I did that, I then  
19 test fired the weapon, using two of the rounds that were  
20 submitted also to the laboratory.

21 Once I test fired the weapon and recovered those  
22 cartridge cases and projectiles from the weapon, I compared  
23 them to each other on what is referred to as a comparison  
24 microscope. And a comparison microscope is basically a  
25 standard microscope with two separate stages that will allow

1 you to view two different items side by side, in the same  
2 viewfinder or view-- viewing apparatus, so that you can see  
3 the two separate items side by side.

4 Q Let me ask you this. You said that you test fired two  
5 of the rounds submitted. Submitted by whom?

6 A They were submitted -- they were submitted on October  
7 12, 1995 to the SBI laboratory by a L.A. Lindell, I believe  
8 it is, from the Guilford County Sheriff's Department.

9 Q And what type of rounds were submitted to you on  
10 October the 12th by Sergeant Lindell?

11 A There were two Remington caliber .45 auto cartridges  
12 and two Federal caliber .45 auto cartridges.

13 Q And which ones did you test fire?

14 A I test fired the Remington cartridges, which was their  
15 Item Number 16.

16 Q Why did you select the Remington to test fire?

17 A I selected the Remington to test fire because of a  
18 spent projectile bullet jacket and deformed bullet fragment  
19 that was submitted to me was of Remington manufacture.

20 Q Looking at 84-B there, should be in front of you, is  
21 that the expended projectile that was submitted to you from  
22 the medical examiner's office?

23 A Yes, sir, it is.

24 Q And in the course of your observation of 84-B, were you  
25 able to determine what manufacturer it was?



1 A Yes, sir.

2 Q What manufacturer was it?

3 A It's a Remington.

4 Q In addition to being a Remington, did it have any  
5 further designation that you were able to determine?

6 A Yes. It's referred to as a Golden Saber projectile.

7 Q What are the specifics or -- of a Golden Saber  
8 projectile?

9 A A Golden Saber projectile is simply a line of  
10 ammunition that Remington manufactures that uses a brass  
11 material, instead of a copper material for the jacket. And  
12 it also uses a, what they refer to as driving band  
13 technology, which simply means the diameter at the base of  
14 the bullet is wider than it is further up the bullet, and  
15 it's the only area of the -- of the bullet that comes in  
16 contact with the interior of the weapon, the barrel, once  
17 it's -- when it's being fired. And it's patented, and  
18 they're the only manufacturer that manufactures this type of  
19 ammunition.

20 Q And you were able to specifically identify the expended  
21 projectile as a Golden Saber; is that right?

22 A Yes, that's correct.

23 Q And after you fired the two Golden Sabers that were  
24 submitted to you by the State -- by the Guilford County  
25 Sheriff's Department, Sergeant Lindell, what comparison were

1 you able to make?

2 A I compared those tests to each other. And after I  
3 compared them to each other, then I compared them to the  
4 fired projectile, State's Exhibit 84-B.

5 Q And what were your results?

6 A That State's Exhibit 84-B has the same class  
7 characteristics and a few microscopic similarities to the  
8 test bullets that I had fired from K-1, which is the Glock  
9 pistol. When I refer to class characteristics, that simply  
10 means it's the same caliber, it had the same number of lands  
11 and groove impressions and the same type of land and groove  
12 impressions as the test bullets fired from the weapon. And  
13 there was some microscopic similarities or some striations  
14 on the test fires that were also on the questioned bullet.  
15 However, there was an insufficient number or quality of  
16 detail to conclusively determine that it was fired from that  
17 weapon.

18 Q Under normal circumstances, are you able to make a  
19 positive identification, if you have a weapon and the  
20 projectile that was fired from it?

21 A In some cases, not in all cases.

22 Q And what factor or factors determines whether you can  
23 make a positive identification?

24 A The type of ammunition that's fired, as well as the  
25 condition of the weapon, and the type of weapon it is.

1 Q Does the condition of the recovered projectile also  
2 come into play?

3 A Yes, sir, it does.

4 Q In regard to the recovered projectile in this case,  
5 State's Exhibit 85, what condition was it in?

6 A When it was originally submitted, State's Exhibit 84-B  
7 had some organic matter and blood on it. I cleaned that  
8 off. It's -- it is deformed and disfigured in some manner.  
9 And the lead core or center of the bullet is separate from  
10 the jacket material.

11 Q Is it your opinion then that State's Exhibit 84-B and  
12 the markings on it are consistent with State's Exhibit 84,  
13 and that 84-B could have been fired from 84?

14 A State's Exhibit 84-B could have been fired from State's  
15 Exhibit 84-A, yes, sir.

16 Q And there were no markings that eliminated it?

17 A No, sir, there was no markings to eliminate it.

18 Q In addition to that, the ammunition is the same  
19 manufacture and model type?

20 A Yes. It's the same manufactured ammunition and the  
21 same design as the two other cartridges that were submitted,  
22 yes, sir.

23 Q Would you please examine State's Exhibit 85. It's that  
24 little pill box there. What is that?

25 A State's Exhibit Number 85 is a small, white pill box

1 that contains a Remington caliber .45 auto Golden Saber  
2 cartridge.

3 Q And is that consistent with the other ammunition you've  
4 tested?

5 A Yes, sir, it is.

6 MR. PANOSH: May I approach?

7 THE COURT: Yes, sir.

8 Q Showing you State's 91, does that -- is this a report  
9 detailing your results and findings?

10 A Yes, sir, it is.

11 MR. PANOSH: Your Honor, we'd seek to introduce  
12 91, and have no further questions.

13 THE COURT: The Court'll allow the introduction --

14 MR. LLOYD: Object to the introduction of the  
15 report, Your Honor. The report -- he's testified. The  
16 report is clearly hearsay.

17 THE COURT: Overruled.

18 MR. LLOYD: We can't subject the report to cross-  
19 examination.

20 THE COURT: Well, you can examine him on it.

21 CROSS-EXAMINATION by MR. LLOYD:

22 Q Agent Ware, in your report, you state that you cannot  
23 conclusively say that the bullet submitted to you by the  
24 medical examiner's office was fired from the Glock pistol;  
25 is that correct?

1 A Yes, sir, that's correct.

2 Q So your testimony before this jury here is that while  
3 there were some characteristics, I believe you said, that  
4 were similar, you cannot say that in your opinion, this  
5 bullet was fired -- the bullet you got from the medical  
6 examiner's office was fired from the Glock pistol; is that  
7 right?

8 A Yes, sir, that's correct. I cannot say conclusively  
9 that that projectile was fired from that weapon.

10 Q Now, Agent Ware, does the Glock pistol have what is  
11 known in the forensic firearms trade as polygonal lands and  
12 grooves?

13 A Yes, sir, it has -- it contains polygonal rifling.

14 Q And there are other manufacturers who have polygonal  
15 lands and grooves, are there not?

16 A There is some other manufacturers that do make  
17 polygonal rifling, yes, sir.

18 Q All right. Are you aware of which ones those are?

19 A H&K or Heckler and Koch, or Coach (phon.) or Cock  
20 (phon.), however you want to pronounce it, manufactures  
21 firearms with polygonal rifle. The Glocks do. And I'm  
22 unaware of any other major manufacturers at this time that  
23 are making any --

24 Q Are you aware --

25 A -- handguns with polygonal rifling.

1 Q Are you aware that Taurus manufactures a pistol line  
2 with polygonal lands and grooves?

3 A I'm aware that they manufacture -- they were  
4 manufacturing one in caliber .380 auto, but I was unaware  
5 that they were manufacturing it in other calibers.

6 Q And the bullets from the medical examiner's office that  
7 you examined did exhibit these polygonal lands and grooves

8 --

9 A Yes, sir, they do.

10 Q -- is that correct? All right. Of course, those  
11 polygonal lands and grooves would be consistent with the  
12 other manufacturers you've already mentioned, the Heck (sic)  
13 manufacturer and Koch manufacturer?

14 A Yes, sir. They both manufacture firearms with  
15 polygonal rifling, with six impressions with the right-hand  
16 direction of twist. The H&K also manufactures some with, I  
17 believe it's four groove impressions with the right-hand  
18 direction of twist.

19 Q Now, as you indicated on direct examination, the --  
20 essentially the -- any advantage that a laser sight might  
21 have over a regular sighting system is that it's more  
22 quickly; is that correct?

23 A Yes, sir. Basically, it's -- for most individuals,  
24 it's quicker, and it allows you to utilize the weapon in low  
25 light or nighttime conditions, without having to rely on the

1 conventional sights.

2 Q And of course, the purpose of any sight or any sighting  
3 system is to get the bullet to go where you want it to; is  
4 that correct?

5 A Yes, sir, that's correct.

6 Q Now, was the Glock pistol that you examined, after you  
7 examined it or before you examined it, did anyone at the SBI  
8 examine it for latent prints, to your knowledge?

9 A I received the Glock pistol, State's Exhibit 84-A, from  
10 Special Agent Brenda Bisette in the -- from the serology  
11 section at that time. I'm unaware of whether or not it went  
12 to the latent evidence section before that.

13 Q So you had gotten it from another SBI agent in the  
14 serology section of the SBI; is that right?

15 A Yes, sir, that's correct.

16 Q And did you send it to the latent print section after  
17 you got through with it?

18 A No, sir.

19 Q All right.

20 MR. LLOYD: That's all I have, Your Honor.

21 THE COURT: Step down, sir.

22 MR. PANOSH: May I, please, Your Honor?

23 THE COURT: Yes.

24 REDIRECT EXAMINATION by MR. PANOSH:

25 Q You indicated Heckler and Koch is one manufacturer?

1 A Yes, sir.

2 Q And Glock is the other?

3 A Yes, sir.

4 Q So there's only two; is that correct?

5 A It's the only two that I'm aware of. Aside from the  
6 Taurus and the .380 auto, I'm unaware that they are  
7 manufacturing a line in other calibers with polygonal  
8 rifling.

9 Q And the reason that you didn't send this for  
10 fingerprint analysis is, because you cleaned it; is that  
11 correct?

12 A Yes, sir, that's correct. Normally if it goes for  
13 fingerprint analysis, it would go there before it would be  
14 received by myself.

15 Q What, if any, characteristics that you observed on this  
16 weapon that would have prevented it from being analyzed for  
17 fingerprints when you received it?

18 A Well, I'm not qualified to say why it wouldn't have  
19 fingerprints on it, but it was covered with some soot --

20 MR. LLOYD: Well, then, objection, Your Honor.  
21 He's not qualified to --

22 THE COURT: Overruled as to what he saw.

23 A The weapon was covered with some soot and ash material.

24 MR. PANOSH: No further questions.

25 MR. LLOYD: All right. Just a couple, Your Honor.



1 THE COURT: All right.

2 RE-CROSS-EXAMINATION by MR. LLOYD:

3 Q Agent Ware, you certainly, before you examined the gun,  
4 you could have taken it over to the latent print section and  
5 asked them to check it for latent prints, couldn't you?

6 A Yes, sir. If it had been requested of me, I would have.

7 Q Okay. But it was not requested of you?

8 A No, sir.

9 Q And the requests come from the submitting agency, in  
10 other words, in this case, the Guilford County Sheriff's  
11 Department; is that right?

12 A Yes, sir.

13 Q All right.

14 MR. LLOYD: Thank you very much, Agent Ware.

15 THE COURT: Step down, sir.

16 (The witness left the witness stand.)

17 THE COURT: Stand and stretch if you'd like,  
18 members of the jury.

19 Next witness, please.

20 MR. PANOSH: Ms. Bisette. Agent Bisette,  
21 please.

22 BRENDA BISSETTE, being first duly sworn, testified as  
23 follows during DIRECT EXAMINATION by MR. PANOSH:

24 Q State your name, please.

25 A Brenda Bisette.

1 Q You're a special agent with the State Bureau of  
2 Investigation; is that correct?

3 A That's correct.

4 Q How long have you been with the State Bureau of  
5 Investigation?

6 A 20 years.

7 Q Do you have a subspecialty, in addition to being a  
8 special agent?

9 A Yes. I'm assigned to the crime laboratory in the  
10 molecular genetic section, where I perform forensic serology  
11 analysis, which deals with the identification of blood and  
12 body fluids. And presently I'm assigned to the DNA unit.

13 Q And what specialized training do you have in the field  
14 of forensic serology?

15 A Since joining the SBI, I've undergone an extensive  
16 training program, both in the areas of forensic serology and  
17 DNA analysis. I've also taken graduate courses in the area  
18 of molecular genetics, and attended various symposiums and  
19 workshops related to the field of forensic serology and DNA  
20 analysis.

21 Q And you have an undergraduate degree; is that correct?

22 A I have a Bachelor of Science degree in medical  
23 technology from the University of North Carolina at  
24 Greensboro. I did my clinical training in medical  
25 technology at the UNC School of Medicine and North Carolina

1 Memorial Hospital in Chapel Hill. And I am also a  
2 registered medical technologist with the American Society of  
3 Clinical Pathologists.

4 MR. LLOYD: Your Honor, we'll stipulate that she's  
5 an expert in forensic serology.

6 THE COURT: Okay. Based upon the stipulation, the  
7 Court finds Officer Bissette to be an expert in the field of  
8 forensic serology and may, by training, education and  
9 experience, may express an opinion in that area.

10 Q Ma'am, on or about October the 10th of 1995, did you  
11 have submitted to you certain rectal swabs, vaginal swabs,  
12 smears and liquid blood samples taken from the victim in  
13 this case, from the autopsy from the medical examiner's  
14 office?

15 A That's correct.

16 Q And what analysis did you do on those rectal and  
17 vaginal swabs and smears?

18 A I stained the -- both the rectal and the vaginal  
19 smears, examined those under a microscope, to determine the  
20 presence of spermatozoa. I found none to be present. I  
21 also did chemical testing of the vaginal and rectal swabs,  
22 to determine the presence of semen, and found none to be  
23 present.

24 Q And in the course of your duties, were you submitted  
25 State's Exhibit 84, the gun that's in front of you?

1 A That's correct.

2 Q And was that on or about October the 12th?

3 A That's correct.

4 Q And what were you asked to do in reference to the  
5 weapon?

6 A I was asked to examine this weapon for the presence of  
7 blood, both visually and chemically. I failed to detect  
8 blood.

9 Q And what portion or portions of the weapon did you  
10 analyze?

11 A I analyzed the barrel, and then I chemically tested the  
12 entire weapon.

13 Q And that includes the --

14 MR. PANOSH: May I approach, Your Honor?

15 THE COURT: Yes.

16 (Mr. Panosh picked up an exhibit and demonstrated.)

17 Q When you refer to the barrel, does that include the  
18 slide mechanism?

19 A Yes.

20 Q And you tested that portion of the weapon that would  
21 normally be exposed at the time it's fired?

22 A That's correct.

23 Q And your results are negative; is that correct?

24 A That is correct.

25 Q Showing you 92 and 93, are these the reports that

1 detail your examination and conclusions?

2 A State's Exhibit 92 and State's Exhibit 93 are reports  
3 which I prepared in reference to this case and to the  
4 results that I've just testified to.

5 MR. PANOSH: Seek to introduce them. No further  
6 questions.

7 MR. LLOYD: Objection, Your Honor.

8 THE COURT: Overruled. The Court'll allow the  
9 introduction of State's Exhibits 92 and 93.

10 MR. LLOYD: No questions, Your Honor.

11 THE COURT: Step down, ma'am. Watch your step.  
12 (The witness left the witness stand.)

13 THE COURT: Next witness, please.

14 MR. PANOSH: John Byrd, please.

15 JOHN BYRD, being first duly sworn, testified as follows  
16 during DIRECT EXAMINATION by MR. PANOSH:

17 Q Would you state your name, sir.

18 A My name is John Byrd, B-y-r-d.

19 Q And you're a special agent with the State Bureau of  
20 Investigation; is that correct?

21 A Yes, sir.

22 Q Do you have a specialty with the State Bureau of  
23 Investigation?

24 A Yes, I do. My specialty is a forensic impressions  
25 analyst. I'm a latent print analyst. In other words, I

1 look at fingerprints and palm prints.

2 MR. HATFIELD: It's no big deal, but is he on the  
3 witness list?

4 THE COURT: He's not on mine.

5 MR. PANOSH: Your Honor, I can explain.

6 THE COURT: Well, approach the bench a minute.

7 (The following proceedings were had by the Court and all  
8 three counsel at the bench, out of the hearing of the jury.)

9 MR. PANOSH: The gasoline was tested -- the  
10 gasoline can was tested for fingerprints by Agent Stills,  
11 who is deceased. And until just the other day, that we  
12 weren't aware of who they would send to testify as to this  
13 in his place. The fingerprint analysis was negative.

14 THE COURT: Is that the only thing he's going to  
15 testify to --

16 MR. PANOSH: Yeah.

17 THE COURT: -- just the gas can?

18 MR. PANOSH: The gas can, and fingerprints were  
19 negative.

20 THE COURT: And he was -- did he do the report?

21 MR. PANOSH: He's testifying to the report of the  
22 deceased agent.

23 THE COURT: All right.

24 I'm going to allow it in, gentlemen. I don't  
25 think it hurts you either way.

1 (Proceedings continued in open court.)

2 Q (By Mr. Panosh) Agent Byrd, have you been recognized  
3 as an expert in the field of fingerprint analysis and  
4 comparison?

5 A Yes, I have.

6 MR. PANOSH: We'd submit him as an expert, Your  
7 Honor.

8 MR. LLOYD: No objection, Your Honor.

9 THE COURT: Based upon the stipulation, the Court  
10 finds the witness, John Byrd, to be an expert in the field  
11 of latent print identification, and by training, education  
12 and experience, may express an opinion in that area.

13 Q Now, on or about October the 10th of 1995, was a red  
14 plastic gasoline can submitted to the State Bureau of  
15 Investigation for fingerprint analysis?

16 A Yes, it was.

17 Q And who did the fingerprint analysis?

18 A The agent who completed the analysis was Roger Stills,  
19 S-t-i-l-l-s.

20 Q And it's my understanding he's deceased; is that  
21 correct?

22 A Yes, sir, he is.

23 Q And based upon his reports, were you able to determine  
24 -- was the State Bureau of Investigation able to determine  
25 whether or not there were latent prints on the gasoline can

1 submitted?

2 A Yes, he did.

3 Q And what did he determine?

4 A There were no latent prints obtained from the item, the  
5 red plastic gas can.

6 Q Showing you 94, does that report detail his findings?

7 A Yes, it does.

8 MR. PANOSH: We'd seek to introduce 94. And no  
9 further questions.

10 THE COURT: The Court'll allow the introduction of  
11 State's Exhibit Number 94.

12 MR. HATFIELD: No questions.

13 MR. LLOYD: No questions.

14 THE COURT: You may step down, sir.

15 (The witness left the witness stand.)

16 THE COURT: Next witness, please.

17 MR. PANOSH: Your Honor, we'd ask that the agents  
18 be released, so that they can return to their duties.

19 THE COURT: Any objection?

20 MR. LLOYD: No objection.

21 THE COURT: You may be excused. The Court  
22 appreciates your attendance. Have a good day.

23 DOREEN HUNTINGTON, being first duly sworn, testified as  
24 follows during DIRECT EXAMINATION by MR. PANOSH:

25 Q Would you state your name, please.



1 A Doreen Huntington.

2 Q And you're employed with the Guilford County Sheriff's  
3 Department; is that correct?

4 A Yes.

5 Q And your specialty is?

6 A Latent print examiner and AFIS examiner.

7 Q What training do you have to be a latent print  
8 examiner?

9 A I have a Bachelor of Arts degree from the Ohio State  
10 University in criminology and criminal justice. I have  
11 attended the 40-hour latent fingerprint course given by the  
12 Federal Bureau of Investigation. I've also attended the  
13 120-hour administrative advanced latent fingerprint course  
14 given at the FBI Academy in Quantico, Virginia. I have  
15 taught numerous courses to local agencies concerning  
16 fingerprint evidence, processing, classification. And I've  
17 also attended numerous seminars and training sessions in my  
18 field.

19 Q Have you previously been recognized as an expert in the  
20 field of latent print examination?

21 A Yes, I have.

22 MR. PANOSH: Your Honor, we'd tender her to the  
23 Court as an expert.

24 THE COURT: Do you wish to examine her  
25 credentials, gentlemen?

1 MR. LLOYD: No. We stipulate that she's qualified  
2 to give opinions in the field of latent fingerprints.

3 THE COURT: The Court finds Ms. Huntington to be  
4 an expert in the field of latent print identification, by  
5 training, education and experience, and may express an  
6 opinion in that area.

7 Q Drawing your attention then to the exhibits that I've  
8 placed before you, which are State's Exhibits 83-A through  
9 I, and specifically picking up 83-A, what is 83-A?

10 A 83-A is a latent lift card containing one latent lift  
11 print.

12 Q What is a latent lift card?

13 A When a crime scene is processed for any fingerprints,  
14 the crime scene is processed, the tape is laid on the  
15 fingerprint, and then the tape is placed on the lift card.  
16 And this lift card is just a white card, where the lift  
17 itself is placed, here's the edge of the tape, from the  
18 lift. (Indicated.) And on the back is information  
19 concerning the lift itself, such as the case name, the  
20 victim's name, where it was lifted from, date and time, and  
21 the person who lifted it.

22 Q What is 83-B?

23 A It is also a latent lift card containing two separate  
24 lifts.

25 Q Going back to 83-A, where was it taken from?

1 A 83-A was taken from the rear passenger side boat,  
2 inside, above seat cushion.

3 Q And where was 83-B taken from?

4 A The back passenger window, driver's side. Excuse me.  
5 The outside back passenger window, driver's side.

6 Q 83-C, please?

7 A Is from the inside front passenger window.

8 Q 83-D?

9 A Is from the inside driver's window.

10 Q Is this again a fingerprint?

11 A Fingerprint lift card containing one latent print lift.

12 Q And 83-E?

13 A Is a lift card containing one fingerprint lift, lifted  
14 from the boat, rear passenger inside, alongside of boat,  
15 above seat cushion.

16 Q In the course of your duties as a fingerprint analyst,  
17 where you submitted the known fingerprints of Patricia  
18 Kimble, Ronnie Kimble and Theodore Kimble?

19 A I was submitted the fingerprints of Ronnie and Theodore  
20 Kimble, but not of Patricia Kimble. There were no  
21 fingerprints obtained from her.

22 Q And were you able to determine whether or not the  
23 latent fingerprints that were lifted from the boat and the  
24 vehicle, and that have been labeled 83-A through 83-E, were  
25 those of Ronnie or Theodore Kimble?

1 A No, they're not.

2 Q Were the results of your analysis that they were not  
3 their prints, or were the results inconclusive?

4 A Of the -- from State's Exhibits 83-A through E, there  
5 was three fingerprints and three palm prints of value. Wait  
6 a minute. Excuse me. Let me make sure I have the right --  
7 (Time was allowed for the witness.)

8 A Well, of the exhibits you've mentioned, Exhibit 83-A  
9 and 83-B, one fingerprint of value was lifted from 83-A.  
10 The other ones, 83-B, C, D and E, do not contain any  
11 fingerprints of value.

12 Q What do you mean by "of value"?

13 A When I make a comparison, I have to have certain  
14 characteristics in that fingerprint to be of value. I have  
15 to have enough detail of the fingerprint, in order to make a  
16 comparison. On these lifts, 83-- I just wanted to make  
17 sure I've got these right. 83-B, C, D and E, there was  
18 actual lifts done, but either the fingerprints were smudged  
19 or there were not enough detail in order for me to make a  
20 comparison.

21 Q There were insufficient characteristics on each print  
22 to make an identification?

23 A Correct.

24 Q And in regard to the one latent print that was of  
25 value, were you able to determine whether or not it was a

1 print of Ronnie or Theodore Kimble?

2 A Excuse me. I was distracted. Could you repeat that,  
3 please.

4 Q With regard to the one latent print that you determined  
5 to be of value, did it turn out to be the print of Ronnie or  
6 Theodore Kimble?

7 A No, it did not.

8 Q Did you also submit that particular print to the AFIS  
9 system?

10 A No. I submitted the print from Exhibit 83-H to the  
11 AFIS system.

12 Q And what is the AFIS system?

13 A AFIS is a computer. And AFIS stands for Automated  
14 Fingerprint Identification System. And essentially what it  
15 is, it's a computer system that the database consists of all  
16 the inked 10-print cards of anyone who has been arrested in  
17 the state of North Carolina. They are entered into the  
18 database, are computerized, encoded into a database. Then  
19 what I can -- am capable of doing, what AFIS is capable of  
20 doing is, taking a fingerprint from a crime scene, encoding  
21 it in a similar way with the characteristics of that  
22 fingerprint. Then you ask the computer system to do a  
23 search of the database, trying -- attempting to get a match  
24 from the fingerprint from the crime scene, against the  
25 database of the state -- from the state of North Carolina.

1 Q And what were the results of that AFIS search?

2 A When I submitted this fingerprint through the computer  
3 for a search, when I submit it, I ask for a certain number  
4 of respondents back. The computer gives me back its best  
5 guess. Then I have to go in, it takes a human person to go  
6 in and actually compare the latent print from the crime  
7 scene to the inked fingerprint that the computer is  
8 submitting as its best guess. In this case, I did not have  
9 a positive match. There was no matching impression found.

10 Q So is it fair to say that of the fingerprints, the  
11 latent fingerprints that were recovered at the crime scene,  
12 you were unable to link any of those latent fingerprints to  
13 any particular individual?

14 A Correct.

15 MR. PANOSH: No further questions. Thank you.

16 MR. LLOYD: Just a couple, Your Honor.

17 CROSS-EXAMINATION by MR. LLOYD:

18 Q Officer Huntington, you did not submit print 83-A to  
19 the computerized system, did you?

20 A No, I did not. It was not -- the computer has to have  
21 -- I don't know how to explain this. The computer can only  
22 see certain parts of a fingerprint. For instance, it can't  
23 -- it cannot -- you cannot submit palm prints through the  
24 system. And it has to have a sufficient number of points.  
25 And it's based really on my experience and my experience

1 with fingerprints and my experience with AFIS. And in my  
2 opinion, this fingerprint itself was identifiable, but was  
3 not of sufficient quality to be submitted through the AFIS  
4 computer.

5 Q So you yourself deemed it of insufficient quality to  
6 submit it to the computerized system?

7 A Right. It's identifiable, but it is not -- it was not  
8 good enough to submit through the computer for a search.

9 MR. LLOYD: That's all I have, Your Honor.

10 THE COURT: Step down, ma'am.

11 Stand and stretch, if you'd like.

12 Next witness, please.

13 (The witness left the witness stand.)

14 MR. PANOSH: Sergeant Lindell, please.

15 The Court's indulgence for a moment.

16 (Time was allowed for Mr. Panosh.)

17 ROY LINDELL, being first duly sworn, testified as follows  
18 during DIRECT EXAMINATION by MR. PANOSH:

19 Q Would you state your name, please.

20 A Roy Lindell.

21 Q And you're a sergeant with the Guilford County  
22 Sheriff's Department; is that correct?

23 A Yes, sir.

24 Q And your specific duties are what?

25 A I'm in charge of the evidence section and the crime lab

1 section for the Guilford County Sheriff's Department.

2 Q In the course of your duties, have you received  
3 specialized training, sir?

4 A Yes, I have.

5 Q And what was that specialized training?

6 A I received specialized training in blood splatter  
7 analysis, photography, latent print examination, homicide  
8 investigations, various school seminars that I've attended  
9 throughout the years.

10 Q And in order to be the supervisor, you have to be  
11 proficient in all of the areas of evidence collection; is  
12 that correct?

13 A Yes, sir.

14 Q In the course of your duties, did you respond to  
15 Brandon Station Court on the evening of October the 9th of  
16 1995?

17 A Yes, I did.

18 Q And why were you responding there, sir?

19 A I got a request from crime scene technician Brian  
20 Yarborough. He needed assistance at a crime scene on  
21 Brandon Station Court.

22 Q When you arrived there, what did you see?

23 A I arrived at 21-- or I was notified at 2150, and I  
24 arrived at 112 hours. We had the Pleasant Garden Fire  
25 Department there. Crime scene technician Brian Yarborough



1 and other investigators were there, starting to investigate  
2 the crime that had occurred there.

3 Q At this time, was the fire extinguished?

4 A At this time, the fire was extinguished.

5 Q Was the fire department still at the scene?

6 A Yes, the fire department was still at the scene.

7 Q And who else was there besides the law-enforcement  
8 officials that you made reference to?

9 A We had the Pleasant Garden Fire -- Pleasant Garden Fire  
10 Department; Captain Clark; Lieutenant Bryant, which is our  
11 special operations, which is a division that I am assigned  
12 to. Detectives were there. Fire investigators were there  
13 from Guilford County.

14 Q Were there civilians, non law-enforcement individuals?

15 A There were no civilian law-enforcement individuals  
16 (sic) inside the crime scene, other than volunteer fire  
17 department.

18 Q Okay. There were persons outside the crime scene tape?

19 A Yes, there were.

20 Q Approximately how many?

21 A Under a dozen.

22 Q And again, what time did you arrive there?

23 A I arrived at 1:12 Tuesday, which was October --

24 Q And what did you do in the course of your duties, sir?

25 A -- October 10, 1995. Initially was to establish that

1 the crime scene was secure. We broadened the area and  
2 placed crime scene up and pushed everything back further.  
3 After that, was to get together with everybody that was  
4 there and to have a meeting, to see what everybody's  
5 objective was, to try to coincide everybody's efforts, so we  
6 could work together and not work independently with the fire  
7 department, the detectives, and with the crime scene that we  
8 were working.

9 Q When you said you broadened the area, what do you mean?

10 A We actually closed off Brandon Station Court. There's  
11 a road that leads up to what is called the cul-de-sac. The  
12 location -- there is only one house located on that road,  
13 and we actually closed off the road, to where you just  
14 couldn't get into that whole area.

15 Q And after meeting with the various personnel and  
16 assigning duties, what action did you take?

17 A I took a general walk through the residence, and I  
18 walked around the curtilage or the outer part of the house,  
19 to take a view with crime scene technician Brian Yarborough.

20 Q And tell the ladies and gentlemen of the jury about  
21 your observations and findings.

22 A In viewing the residence, there was one bedroom window  
23 that was out, which I understood from Brian Yar--

24 MR. HATFIELD: Objection to what he understood.

25 THE COURT: Sustained.

1 Q What did you do? What did you do inside the residence?

2 A Inside the residence?

3 Q Yes.

4 A Viewed the general damage that was done to the  
5 residence, in relation to what the officer had informed me  
6 what he had noticed and what he had observed.

7 Q After viewing the area, did you set about collecting  
8 evidence?

9 A We next started taking photographs. There was -- the  
10 victim was in the hallway. Before we started doing  
11 anything, we -- I figured it best to go ahead and take  
12 photographs from underneath from the crawl space, crawled  
13 underneath the crawl space and took photographs, showing the  
14 position of the victim's body. At that point, then we  
15 started going back through and we had to have some time for  
16 the area to cool down. It's relatively warm, because of the  
17 fire and water and everything that was there.

18 Then we started an outside search. We went to a  
19 boathouse, which was to the back of the residence. Also was  
20 a shed back there. Started looking around for any evidence  
21 or anything that might be unusual, a general search, a  
22 little bit more detailed search than what was done initially  
23 at the scene.

24 Q In the course of your duties, did there come to light  
25 that there were certain footprints?

1 A We found some footprints around the boathouse. We  
2 later determined that those footprints were from the initial  
3 officer who was on the scene.

4 Q In the course of your duties, did you supervise the  
5 fingerprint taking that we've already heard about the  
6 boathouse?

7 A Yes. I actually did the dusting on the boat itself and  
8 lifted the prints. Crime scene technician Brian Yarborough  
9 photographed those.

10 Q And what did you do next in the course of your  
11 investigation?

12 A After we went around the outside of the house and  
13 everything else, then we went inside and started to proceed  
14 to uncover and try to find what evidence that we could  
15 reveal the crime scene.

16 Q All right. What did you do?

17 A Generally, we took detailed pictures in color of all  
18 areas that were pertinent to the investigation, and the back  
19 bedrooms, the front room, the kitchen. We were starting to  
20 be concerned about pour patterns. And different areas of  
21 evidence were brought to our attention, the weapon and  
22 everything, which was collected at that time.

23 Q And did you collect anything in regard to the weapon?

24 A The holster. There -- I don't have -- when we collect  
25 an item of evidence in our department, the one that seals

1 the bag is the one that does the actual collection. Those  
2 initials that are on the actual seal is the one that does  
3 the collection.

4 Q All right. Showing you State's Exhibit 95, is this the  
5 holster that you collected?

6 A Yes, it is. It was resealed by Stormy Cross on 10/10/  
7 95.

8 Q And in the course of your duties, did you collect  
9 anything else from that back bedroom area?

10 A You're going to have to bring to my attention  
11 specifically what you're speaking of.

12 (Mr. Panosh showed exhibits to Mr. Lloyd and to Mr.  
13 Hatfield.)

14 Q Drawing your attention then to State's Exhibit 96, did  
15 you recover this particular item?

16 A The ignition key to victim's vehicles -- to victim's  
17 vehicle, yes, I did.

18 Q All right. And State's Exhibit 97, an empty box of  
19 Winchester bullets, did you recover those?

20 A Yes, I did.

21 Q Where did you recover those?

22 A This was given -- this was located on top of the chest  
23 in the right -- in the -- Excuse me. This was located on  
24 top of the tool box in the bedroom that faced the front of  
25 the house at the back.

1 Q Okay. State's Exhibit 98, did you recover that, sir?

2 A Yes, I did. This was a Remington Golden Saber box and  
3 shells, which was recovered from the bedroom, underneath the  
4 headboard portion of the bed.

5 Q Are you referring to the master bedroom?

6 A As the back bedroom.

7 (The witness approached the diagram.)

8 Q Which room, please?

9 A This bedroom right here. (Indicated.)

10 Q All right.

11 (The witness returned to the witness stand.)

12 Q In the course of your investigation, did you recover  
13 State's Exhibit Number 99, Item 30?

14 A Yes, I did. This was recovered by Garrett Stonesifer  
15 with the fire investigator's office. He brought this to my  
16 attention. I collected it.

17 Q Okay. And where was that collected, State's Exhibit  
18 99?

19 A This was in the hall, where the victim's body was  
20 found.

21 Q Was it collected at approximately the same time that  
22 the victim's body was found or later?

23 A Much later. It was --

24 MR. PANOSH: Your Honor, we'd seek to introduce 95  
25 through 99.

1 THE COURT: The Court'll allow the introduction of  
2 State's Exhibits 95 through 99.

3 Q Now, in the course of your duties, did you supervise  
4 Mr. Stonesifer and others in attempting to collect evidence  
5 from the area of the hole where the body was found, after  
6 the body was removed?

7 A Yes, I did.

8 Q How was that done?

9 A I remained on the scene from Monday, October 9, 1995 --  
10 or correction, Tuesday, the 10th of October, from 1:12 in  
11 the morning, until Wednesday at 415 hours, when we secured  
12 the scene. I thought it necessary we kept a crime scene  
13 individual there while we rotated other crime scene  
14 technicians in. That way, we was able to keep the crime  
15 scene secured, and also to have a flow of information from  
16 one crime scene technician to another, and also to  
17 coordinate any information or anything that might have  
18 happened during the investigation of the crime.

19 Q And how was the hole area searched?

20 A The hole area was searched by layering it, what we  
21 called layering it, taking it off in different layers, one  
22 piece at a time, looking at each individual piece. We were  
23 specifically looking for anything that would be out of  
24 ordinary, a shell casing or anything of that nature.

25 Q And when that search was completed, was there anything

1 found, other than the knife that's previously been  
2 identified and marked?

3 A No.

4 Q Any shell casings recovered from the hole?

5 A No shell casings.

6 Q All right. Drawing your attention to the diagram  
7 there, and the bathroom that is right above what has been  
8 designated as the area of the hole --

9 A Uh-huh.

10 Q -- did you search that particular bathroom?

11 (The witness approached the diagram.)

12 A Yes, I did, this area right here. (Indicated.)

13 Q You can have a seat, sir.

14 A Uh-huh.

15 (The witness returned to the witness stand.)

16 Q And that's depicted in State's Exhibit 16; is that  
17 correct, sir?

18 (Mr. Panosh handed an exhibit to the witness.)

19 A Yes, it is.

20 Q How did you conduct a search as to the bathroom,  
21 State's Exhibit 16?

22 A We started in a clockwise fashion from the left wall  
23 and went around, looking at visually everything that we  
24 could see, and then taking all the items that had fallen  
25 down from the -- the insulation and everything that had



1 fallen down, removing those individually, and then looking  
2 through them. Then after doing that clockwise search, we  
3 did a counterclockwise search of that area, and did not  
4 reveal anything.

5 Q Now, that area was covered with some amount of  
6 insulation and other debris; is that correct?

7 A Yes, it was.

8 Q And you removed that?

9 A We didn't remove it from the bathroom. We moved it to  
10 one area that had already been searched.

11 Q Would you explain that, please.

12 A If you're searching in a clockwise fashion, you clear  
13 that area off, and then you move to another area, and then  
14 you put everything back in that area, and you continue in a  
15 clockwise fashion, till you get everything completely  
16 cleared around to the right. And then you're coming back  
17 and look again, to see if there's anything you might have  
18 missed or look at other areas you might have missed.

19 Q In this particular case, did you begin by searching the  
20 bathtub?

21 A The bathtub was more into the search.

22 Q Okay.

23 A It was later into the search. It was about midway.

24 Q But you did search the bathtub and the entire bathroom?

25 A Yes, I did.

1 Q And were you able to find any shell casings?

2 A No shell casings, no.

3 Q Did you find or recover any evidence from that area?

4 A Not that I'm aware of at this time, no.

5 MR. PANOSH: Your Honor, we've actually progressed  
6 further than we expected today, and this is the last witness  
7 we have, but there might be some details I've overlooked  
8 that I need to get into with him in the morning.

9 THE COURT: All right. We'll take the --

10 You may step down, sir.

11 (The witness left the witness stand.)

12 THE COURT: Members of the jury, we're going to  
13 take our evening recess. You'll need to be back in the  
14 morning at 9:30. Please report to the jury room. Again,  
15 remember the jury responsibility sheet.

16 Have a nice evening. I'll see you in the morning.

17 (The jury left the courtroom at 4:50 p.m.)

18 THE COURT: Let me see the attorneys at the bench  
19 on an administrative matter, please.

20 (All three counsel conferred with the Court at the bench.)

21 THE COURT: Recess until 9:30 in the morning,  
22 sheriff.

23 (A recess was taken at 4:52 p.m. until 9:30 a.m. Thursday,  
24 August 13, 1998.)

25 \* \* \* \* \*

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