

VOLUME VI - EVIDENCE

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

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MONDAY, AUGUST 17, 1998

(Court convened at 10:03 a.m. The defendant was present.
The jury was not present.)

MR. HATFIELD: Good morning, Your Honor.

THE COURT: Good morning.

MR. LLOYD: Good morning.

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

MR. PANOSH: Your Honor, two of our witnesses are
delayed because of a plane problem, and we're trying to
regroup.

THE COURT: Are you ready to proceed with
witnesses?

MR. PANOSH: We're ready to proceed at this time,
and hopefully they'll be coming in shortly.

THE COURT: All right.

(The jury entered the courtroom at 10:04 a.m.)

THE COURT: I'm very pleased to have the jury
panel back. I hope each of you had a nice weekend and
feeling okay. Anyone on the jury panel experiencing any
problems today that I should know about, if you'll raise
your hand, I'll be glad to talk with you about that.

Okay. The State ready to proceed?

MR. PANOSH: Yes.

THE COURT: Call your next witness, please.

MR. PANOSH: Ms. Jackson, please. Ms. Jackson, please, come up.

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

Q Would you state your name, please.

A Louise Jackson.

Q And Ms. Jackson, where are you employed?

A United States Navy, Camp Lejeune, North Carolina.

Q And specifically, what portion of the Navy are you assigned to? What is your duty station or assignment, please?

A HS Battalion, Second FSSG, the group chaplain's office.

Q And in your duties in the group chaplain's office, do you service Navy and Marine personnel?

A Yes.

Q And that's at Camp Lejeune, North Carolina?

A Yes.

Q In the course of your duties there at the group chaplain's office, did there come a time when you met or became familiar with the defendant, Ronnie Kimble?

A Yes.

Q Would you explain to the ladies and gentlemen of the jury how you came to know him.

A When I was assigned to Marine Corps base chaplain's office, at the time Lance Corporal Kimble was in the Marine

Corps, he came as a chaplain's assistant, to work at the base chaplain's office.

Q And in the course of those duties, how long did you know him? How many months?

A I guess it was maybe a year or a little over.

Q Did there come a time when you were aware of the fact that his sister-in-law had been killed?

A Yes.

Q And did there come a time when you heard him discussing that fact?

A Yes.

Q And what, if anything, do you recall the defendant saying in reference to the death of his sister-in-law?

A I had gone into another lady's office that I work with, and he was in there with her, and what I recall is that he had gone by to pick something up or drop something off, and that he was the last one to actually have seen her.

Q He was the last person to actually see who?

A His sister-in-law on that day.

Q Do you remember the details of that conversation? Do you remember any other details of that conversation?

A That he -- the -- where the sister-in-law had been in the room, and that there was a tool chest of something that was in the same area, and that perhaps somebody had come to rob the house, but something scared them off and they ran

out.

Q Do you remember when you heard him saying these things in relationship to her death?

A No, I do not recall that, when it was.

Q Was it -- could you give an estimate, whether it was weeks or months after the death?

A It had been months.

MR. PANOSH: May I approach the witness?

THE COURT: Yes.

(Mr. Panosh showed an exhibit to Mr. Lloyd. Mr. Panosh and Mr. Lloyd conferred.)

Q Did there come a time when you were interviewed by officers of the Guilford County Sheriff's Department and the State Bureau of Investigation?

A Yes.

Q And showing you now State's Number 104, did you give a statement to those officers?

A Yes.

Q Have you had a chance to review that statement, prior to your testimony?

A Yes.

Q And is that accurate?

A Yes.

MR. PANOSH: Your Honor, we'd seek to introduce State's 104.

MR. LLOYD: Well, we'd object strenuously, Your Honor. Her testimony speaks for herself. If Mr. Panosh wants to refresh her recollection of the statement, he's entitled to do that. But it's raw hearsay, and it -- it doesn't have anything to do what she's told this jury on the witness stand. Now, if there's anything in the statement that Mr. Panosh wants to bring out, if he wants to --

THE COURT: Let me see the statement, sir. Do you have a copy of the statement?

(The witness handed the exhibit to Mr. Panosh, and Mr. Panosh handed the exhibit to the Court. Time was allowed for the Court.)

THE COURT: Objection sustained.

MR. PANOSH: No further questions of this witness. Thank you.

THE COURT: You may cross-examine the witness.

MR. LLOYD: Thank you, Your Honor.

CROSS-EXAMINATION by MR. LLOYD:

Q Now, Ms. Jackson, you indicated on direct examination that you came into another lady's office, where you heard some sort of conversation between Ronnie Kimble and the other lady; is that right?

A Yes.

Q So you were basically not a party to this conversation, were you?

A No.

Q All right. So you were just sort of on the periphery overhearing the conversation; is that right?

A I was in the office, in the same office.

Q All right. And who was this individual that Ronnie Kimble was talking to?

A Ms. Kelly.

Q All right. And what is her first name?

A Natalie.

Q And of course, this conversation was not a big part of your day that day, was it?

A No.

Q All right. So you just sort of heard it in passing, and didn't even think it was very important at the time that you heard it, did you?

A Not that I didn't think it was important. It was just -- it piqued my curiosity.

Q All right. And you didn't -- it wasn't like you went straight back to your office and started writing up a description of the conversation or anything like that?

A No, I did not.

Q You just went about your duties as you always did that day, and did your job, didn't you?

A Yes.

Q Didn't even give the conversation much of a thought

after that?

A No.

Q Now, Ms. Kelly, you've said that -- I mean, excuse me, Ms. Jackson, you've said that this was some months after the death of Patricia Kimble, Ronnie Kimble's sister-in-law; is that right?

A Yes.

Q How long was it after you heard this conversation between Ms. Kelly and Ronnie Kimble that the officers came and interviewed you?

A Maybe a month or two.

Q All right. So it was somewhere around a month or two since the time you first heard the conversation?

A Yes.

Q And you never had written anything down about the conversation, had you?

A No.

Q Basically, you didn't really give it much thought, until the detectives or whoever it was that interviewed you talked to you about it; is that right?

A Yes.

Q All right.

MR. LLOYD: Your Honor, may I approach and just look at the exhibit that Mr. Panosh --

THE COURT: Yes, you may.

(Mr. Lloyd picked up the exhibit from the witness stand. Time was allowed for Mr. Lloyd. Mr. Lloyd placed the exhibit on the witness stand.)

Q Ms. Jackson, I ask you if you remember that the statement that you gave to the detectives was done on -- in early March of 1997?

MR. PANOSH: We object. We don't object to the statement coming in, but not piecemeal.

THE COURT: Sustained.

MR. LLOYD: I'm just asking about the time, Your Honor. I'm not asking about anything --

THE COURT: Overruled.

MR. LLOYD: -- in the statement.

THE COURT: Overruled.

You may answer that.

Q You can answer that, Ms. Jackson.

A Could you repeat it.

Q Did you give the statement to the detectives in early March of 1997?

A According to the paperwork that I've seen, it was dated March. Now, I don't recall the actual date that I was in there.

Q So if Patricia Kimble was murdered on October the 9th of 1995, that would have been more than a year after she had been murdered; is that right?

A That is correct.

Q All right. And as far as your recollection goes, when did you hear this conversation between Ronnie Kimble and Mrs. Kelly?

A I don't recall the date of when I actually heard that particular conversation.

Q You've indicated it was about a matter of months. Starting with the date of October 9, 1995, when Patricia Kimble was murdered, do you think that this conversation you overheard between Ronnie Kimble and Mrs. Kelly was by early 1996?

A No, I don't. Not '96. As I said, it was months after the death that I heard the conversation --

Q All right.

A -- with him and Mrs. Kelly. It was some months.

Q All right. And Mrs. Jackson, this individual that you've spoken of, this Natalie Kelly, does she work in the chaplain's office?

A Yes.

Q What is her job there?

A She's the fiscal clerk.

Q And what does that mean?

A She deals with the money for the chaplain's office.

Q Okay. So is she -- now, would she be in charge of payroll, for example?

A No, she is not in charge of payroll. The payroll for things that are dealing with the command religious program.

Q Okay. And if you know, Ms. Jackson, how long has Mrs. Kelly been there?

A I would say over 10 years.

Q All right. And is she a Marine or a Navy enlisted person, or is she a civilian employee?

A She's a civilian --

Q All right.

A -- employee.

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

REDIRECT EXAMINATION by MR. PANOSH:

Q Ma'am, do you recall if you were interviewed on one or more occasions?

A One.

Q And was that -- drawing your attention to the statements that you heard, that Mr. Kimble made, do you remember anything else about those statements? Let me just do something.

MR. PANOSH: May I approach, Your Honor?

THE COURT: Yes, sir.

MR. LLOYD: Your Honor, this is beyond the scope of cross-examination.

THE COURT: Overruled.

Q You said you do recall this statement?

A Yes.

Q Okay. Drawing your attention to the last paragraph of Page 1 and the first sentence of Page 2, would you review that, please.

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

A Okay.

Q Having reviewed that, do you recall anything else that Mr. Kimble said in reference to this incident?

A Well, it was a question that I had asked, due to the fact that he said that him and his brother had been asked questions by the police department pertaining to the murder, and that they didn't have anything to do with it. So I asked, you know, why would they be harassing them, and was there some large sum of insurance involved, and he stated no.

Q So you participated in the conversation and you actually asked questions and spoke to Mr. Kimble?

A I did.

Q And he stated there was no large amount of insurance?

A Yes.

MR. PANOSH: No further questions.

RE-CROSS-EXAMINATION by MR. LLOYD:

Q And Ms. Jackson, was Ms. Kelly present when this statement was supposedly made?

A Yes, she was.

Q So she would have heard that statement, if it had been made; is that correct?

A Yes.

Q And Ms. Jackson, you've indicated that you were the one who asked the question of Ronnie Kimble, was there a large sum of insurance --

A Yes.

Q -- is that right?

A Yes.

Q And this was something that just came to you in the course of this conversation; is that correct?

A With him saying that, you know, they had been asked questions by the police department, and, you know, they had nothing to do with it, so --

Q And so -- I didn't mean to cut you off. Do you have anything else to say?

A That was one of the questions that was raised in my mind, you know, as far as them being harassed by the police department and asking them questions, and they didn't have anything to do with it.

Q And so, you automatically assumed that the motive in this case was insurance; is that correct?

A Well, with harassment, being harassed by the police department, or whoever it was asking the questions.

Q And that immediately brought into your mind the motive of insurance money?

A Yes.

Q All right.

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

THE COURT: Step down, ma'am.

Next witness, please.

You may step down, Ms. Jackson.

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

THE COURT: Any objection?

MR. LLOYD: No objection, Your Honor.

THE COURT: You may be excused, Ms. Jackson.

(The witness left the witness stand.)

MR. PANOSH: The Court's indulgence.

(Time was allowed for Mr. Panosh.)

MR. PANOSH: Mr. Gary Reilly, please. Mr. Reilly.

(Gary Reilly was sworn.)

MR. PANOSH: Your Honor, we've had a short witness arrive. If we could take him before this witness, it would make things easier to --

THE COURT: You may step down, sir.

(Gary Reilly left the witness stand.)

MR. PANOSH: Corporal Dziadaszek, please.

JAMES ALLEN DZIADASZEK, II, being first duly sworn, testified as follows during DIRECT EXAMINATION by MR. PANOSH:

Q Would you state your name, sir.

A James Allen Dziadaszek, II.

Q And for the court reporter, would you mind spelling your last name.

A D-z-i-a-d-a-s-z-e-k.

Q And where are you presently working, sir?

A I'm unemployed.

Q Okay. What was your last source of employment?

A United States Marine Corps.

Q And when did you leave the U.S. Marine Corps?

A I left the United States Marine Corps the 14th of this month.

Q And you had served a four-year term; is that correct?

A Three years.

Q And in the three years that you were in the United States Marine Corps, what was your assignment?

A My original assignment was 0311, rifleman. Then I moved to an 0151, administrative clerk. And then I was a 4615. That is a reproduction specialist. Then a 3621, which is a motor mechanic.

Q But your basic training was as an infantryman; is that correct?

A Yes.

Q And were you last stationed at Camp Lejeune?

A Yes.

Q In the course of your duties, there come a time when you met the defendant, Ronnie Kimble?

A Yes, I have.

Q And how did you know Ronnie Kimble?

A He was my coworker at the base chaplain's office.

Q And for what period of time were you coworkers with him at the base chaplain's office?

A For -- I was stationed at the chaplain's office from about the 6th of December of '96 to April 22nd of '97.

Q And during that period of time, did you consider yourself to be a friend of Ronnie Kimble's?

A Yes, I did.

Q And during that period of time, did it come to your attention that his sister-in-law had been murdered?

A Yes.

Q And in the course of that, did there come a time when you and he had a discussion in reference to that murder?

A Yes.

Q And what, if anything, did he tell you?

A He told me that she -- that she was murdered, and there was times that he didn't know why he -- why he was being questioned, and -- Maybe if you asked me direct questions, maybe I could answer. But I --

Q All right.

A -- don't really know something off --

Q Now, in the course of your friendship with him, you came to Greensboro from time to time?

A Yes.

Q Was that before or after the murder?

A That was after.

Q And in the course of coming to Greensboro, you got to be friends with both he and his wife; is that correct?

A Yes.

Q And in fact, did there come a time when you met a young lady from Greensboro?

A Yes.

Q And you still have an acquaintanceship with her; is --

A Yes.

Q -- that correct? Now, drawing your attention to October the 9th of 1995 itself, you were not visiting in Greensboro during that time frame; is that correct?

A No.

Q Did there come a time after the death of Patricia Kimble when Ronnie Kimble told you about his activities on the day of October the 9th of 1995?

A Yes.

Q What did he tell you?

A He said that he was -- he was doing construction job for his brother. When he was done, he dropped off a vehicle at Ted's business, and he picked up his vehicle. And he had

many questions -- that there was -- Excuse me.

Q Let's go back to the first time he told you about this.

A Yes.

Q Prior to the time that you were interviewed by the Naval Intelligence officers and the members of the State Bureau of Investigation, what did he tell you about the events of his day on October the 9th?

A Okay. First time I talked to them, I asked -- I told them that Ronnie dropped off his vehicle at his brother's house.

Q And what time?

A Around 1600.

Q And what time is that, in civilian time, please?

A Civilian time, that's 4:00 in the afternoon.

Q And when you were first interviewed, do you remember if that was March the 4th of 1997?

A Yes.

Q And thereafter, did you have an occasion to speak to Ronnie Kimble?

A Yes.

Q And did you tell him that you had related to the Naval Intelligence investigator that you told them Ronnie dropped his brother's truck off at Ted's house at 4:00 p.m.?

A Yes.

Q And what did Ronnie say to you at that time?

A At that time, Ronnie was -- said, "What are you trying to do? Are you trying to get me convicted" or "the chamber," or something of that sort, "for I didn't drop it off at the house, I dropped it off at his business."

Q Now, you were interviewed then on March -- the following day, March the 5th; is that correct?

A Yes.

Q And on March the 5th of 1997, did you relate to officers of the Naval Criminal Investigation Service and the State Bureau of Investigation that Ronnie had -- what Ronnie had told you on March the 4th?

A Yes.

Q And what did you tell them?

A I told them that -- the NCIS agents asked me how -- what happened, and I told them that I told Ronnie that -- I told Ronnie that I told the NCIS agents that he put the vehicle in -- that he dropped the vehicle off at his brother's house. And then when I told them that, Ronnie said his statement, and then he said, "No. I dropped it off at the business." And that's just what I told the NCIS agents.

Q When Ronnie said, "No. I dropped it off at his business," what was he saying? What did he drop off?

A The truck, and he picked up his Camaro.

Q And if you know, when he said, "No. I dropped the truck off at his business," what business was he referring

to?

A Lyles -- the Lyles construction resale place, whatever it's called.

Q So after you explained to Ronnie what you had told the investigative services, he changed what he had told you and said that he had dropped the truck off at Lyles; is that correct?

A Yes.

Q As a result of that, were you interviewed again on March 19th of 1997?

A Yes.

Q And did you then speak to Special Agent Munroe from the Naval Intelligence Service and give him a statement in reference to what you've related?

A Yes.

Q And subsequently to that, did you have an occasion to talk to Special Agents Childrey of the State Bureau of Investigation and Sibert and relate the same information?

A Yes.

Q Now, how long have you been in Greensboro, sir?

A For this weekend? I really don't understand the question.

Q When did you arrive in Greensboro for this trial?

A I arrived in Greensboro on Saturday.

Q Okay. And where have you been staying during that

period of time?

A With the Wilsons.

Q And who are the Wilsons?

A Homer Wilson, Peggy Wilson and their daughter, Sherry Wilson.

Q And what is Ms. Wilson's relationship to the Kimbles?

A Friends of the family.

Q And during the period of time that you've been here waiting to testify, have you come into contact with anyone else?

A Mr. Hatfield, the defense -- the defendant's lawyer, and the defendant's parents.

Q Now, drawing your attention to that occasion on March the 4th of 1997, when you told Ronnie what you had told the investigators, is that the first time that he said to you that he had taken the truck to his brother's business at approximately 4:00 p.m.?

A I believe so.

Q Prior to that, when you discussed this situation, what did he tell you of his activities around 4:00 p.m. on October the 9th?

A That he dropped the vehicle off at the house and picked up his car, and that was it.

Q And that was at what time?

A At 4:00 p.m.

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

CROSS-EXAMINATION by MR. HATFIELD:

Q Mr. Dziadaszek, do you still consider yourself to be a friend of Ronnie Kimble's?

A Yes.

Q And do you consider yourself to be a very good friend of Sherry Wilson's?

A Yes.

Q And is it your observation and understanding that Sherry Wilson and her family are very good friends of Ronnie Kimble and the Stumps?

A Yes.

Q This is one of the hardest things you've ever had to do, isn't it?

A Close to it.

Q Now, the reason that you left the Marine Corps after three years is because you sustained a serious injury that hasn't quite healed; is that right?

A Yes.

Q And is that what you told me about the last time we talked?

A Yes.

Q And was that a broken ankle, that the Marine Corps was just not satisfied with the healing of it?

A Yes.

Q What is your long-term intention with regard to the military?

A I'm going to go to school, and hopefully in about five years, I can go to officer candidate school for either the Air Force or the Coast Guard.

Q So you're going to get a college education and go right back in the military; is that right?

A Try to, at least.

Q And if you can't get in the Marine Corps, you're going to go in some other branch?

A Yes.

Q Now, have you at any time ever made any notes about anything Ronnie Kimble said to you?

A No.

Q When you knew Ronnie, did you understand that his family, the members of his family, were being investigated for the death of Patricia?

A Yes.

Q Did Ronnie at any time in any way suggest to you that he had any involvement in that?

A No.

Q Did he at any time suggest to you that he did not have any involvement in it?

A No.

Q He just didn't comment on it; is that right?

A Right.

Q Now, what happened on March 4, 1997 down at Camp Lejeune, as far as Ronnie Kimble was concerned?

A I was interviewed by Naval Criminal Investigation Service.

Q And every other person that knew him was interviewed that day, too, weren't they?

A Yes.

Q Dozens of people were called out, weren't they?

A Yes.

Q And it was general knowledge in that chaplain's office, wasn't it?

A Yes.

MR. PANOSH: We'd object.

Q You knew it and --

THE COURT: Sustained.

Q You knew it and Ronnie Kimble knew it, didn't you?

A Yes.

Q Now, did you go to Ronnie and tell him that the Marine investigators and the other investigators from Guilford County were calling out all of his friends?

A Yes. Which he already knew.

Q And he already knew that. Now, did he actually ask you what you told the investigators?

A No.

Q Did you volunteer to him what you told the investigators?

A Yes.

Q And tell us again, what is it that you told Ronnie that you had told the investigators?

A I told Ronnie that evening, we were by the chow hall, and we were inside his truck, and I told him that I was interviewed by NCIS and then we went -- did an interview. I told them that he went to -- when he dropped off the vehicle, he dropped the vehicle off at Ted's house. And when I said that, Ronnie said no, it was at Ted's business, that's when he dropped it off.

Q All right. Now, what he was saying to you is that --

MR. PANOSH: We object, please.

THE COURT: Sustained.

Q Isn't it a fact --

THE COURT: Sustained as to form.

Q -- that he explained to you what he meant when he said "Ted's"?

A Yes.

Q What does he mean when he says "Ted's"?

MR. PANOSH: Object, please.

THE COURT: Sustained.

MR. HATFIELD: He's just testified to it, Your

Honor.

THE COURT: Sustained.

Q Did he explain to you what he means by "Ted's"?

A No, he didn't. Not at the time he didn't.

Q Do you now understand what he means by "Ted's"?

A Yes.

MR. PANOSH: Objection, please.

Q What does Ronnie --

THE COURT: Well, overruled.

Q What does Ronnie Kimble mean --

MR. PANOSH: We object, please.

THE COURT: Well, sustained as to form.

Q What is your understanding --

MR. PANOSH: Objection. Calls for hearsay.

THE COURT: Overruled.

MR. HATFIELD: Are we just going to have --

THE COURT: Overruled.

MR. HATFIELD: -- incessant interruptions?

THE COURT: Overruled.

MR. HATFIELD: It's his witness.

THE COURT: Overruled. You may ask the question.

Q What is meant by Ronnie when he refers to "Ted's"?

THE COURT: No. Sustained as to that. That's not the question.

Q Do you understand what Ronnie means --

THE COURT: Sustained.

Q -- to --

THE COURT: You may ask him what his understanding is, not what Ronnie's understanding is.

Q What is your understanding of what Ronnie means when he says "Ted's"?

A The business.

Q Now, who owned the house that Patricia Kimble died in?

A I do not know.

Q Do you know whether Ted had any ownership interest in that house?

A No, I didn't.

Q What is your understanding that Ronnie Kimble and his -- other members of his family mean when they say "Ted's and Patricia's"?

MR. PANOSH: Objection, please.

THE COURT: Sustained.

Q When Ronnie spoke to you on the evening of March 4th, did -- and he told you "What are you trying to do, get me convicted?" did he say -- what was his demeanor when he said that?

A I don't understand the question.

Q Well, how did he look? Was he happy or joking?

A Not really.

Q Was he alarmed?

A I'd say alarmed.

Q Didn't he say it in a joking way?

MR. PANOSH: Objection.

THE COURT: Sustained.

Q Can you characterize how he said it?

A The best way to describe, I believe, would be more of a shock. It was just something that he didn't expect to hear. And when he said it, it just came out, without even thinking it.

Q Now, do you know of your own knowledge where Ronnie Kimble was at 4:00 p.m. on October 9, 1995?

A Not for sure I don't.

Q Now, do you know whether or not and at what time this truck that -- Withdraw that question. Was it your understanding from things Ronnie told you that he was using his brother's truck that day?

A Yes.

Q Based on what Ronnie told you, what was he doing with the truck?

A If I recall correctly, I believe he was picking up building materials or something to do with a construction job that day.

Q Do you know what kind of building materials they were?

A No, I don't.

Q Because you'd never seen them, have you?

A No.

Q Now, do you know when Ronnie Kimble picked up the building materials?

A No, I don't.

Q Do you know what he did with the building materials?

A No, I don't.

Q Was his purpose to use those building materials at his mobile home?

A I don't know.

MR. PANOSH: Objection. He said he didn't know.

THE COURT: Sustained.

Q You don't know? So you have no idea where those building materials were gotten from or where they were delivered to?

A Correct.

Q And you also don't know what time they were delivered, do you?

A No, I don't.

Q Now, do you know where Patricia Kimble was at 1:45 p.m. on October 9, 1995?

A No, I don't.

Q Do you know whether Ronnie Kimble had already gotten rid of the truck and gotten back his own vehicle by 1:45 p.m. on --

A No, I don't.

Q -- October 9, 1995?

A No, I don't.

Q Now, after you talked to Ronnie on March 4th, after you talked with the investigators and then proceeded to talk to Ronnie later on, on March 4th, the investigators came back and talked to you on March 5th, didn't they?

A Yes, they did.

Q And did you tell them that you did not tell Ronnie that various of his coworkers were being interviewed by law enforcement?

A I don't understand the question.

Q Did you deny to the investigators that you had contacted Ronnie Kimble on March 4th, to advise him that Kimble's coworkers were interviewed by NIS?

A No, I didn't.

Q You did not deny that to them? Or which is it, did you deny it to them or did you -- what is it that you told them, when they saw you on March 5th? Did you tell them that you had told Ronnie that the investigators were interviewing all

--

A Yes --

Q -- his friends?

A -- I told them that.

Q You did tell them that? Did you tell the investigators on March 5th that Ronnie did not ask you about being

interviewed?

A Yes, sir, I told them that.

Q You did?

A That --

Q Was that a true statement when you made it?

A Yes, that Ronnie didn't ask.

Q Did not ask you about being interviewed?

A Right.

Q So, even though you indicated to Ronnie that you had told the investigators something about his activities that he didn't agree with --

A Right.

Q -- he didn't ask you anything else about the interview; is that right?

A Right.

Q But you told the investigators that you felt obligated to tell Ronnie what was going on behind his back; is that right?

A Right.

Q Now, the fact is, when you think about it now, and without looking at reports written by investigators on March 4th or March 5th or March 19th, you're really not sure what Ronnie told you, are you?

A Correct.

Q I'm correct that you're not sure, when you try to use

your own memory right now, what he told you? Aren't I correct?

A Yes.

Q Now, the investigators have talked to you quite a bit about this in the last few days, haven't they?

A Yes.

Q And they have asked you whether you've met with me, haven't they?

A Yes.

Q And they've asked you every word that I said, haven't they?

A Yes.

Q And they've tried to get you to say what my position is on Ronnie Kimble's case, haven't they?

MR. PANOSH: Object, please.

MR. HATFIELD: Well, it's simply true, Your Honor.

THE COURT: Sustained.

MR. HATFIELD: It's just a question.

THE COURT: Rephrase it.

Q What have they asked you about my activities in this case?

A They asked if -- who I've -- who I contacted with, and I told them that I was -- that I contacted with you. They asked what you said, and I said I really don't remember much of the conversation.

Q Most of it was just small talk, wasn't it?

A Yes. Just what I'm going to do when I get out of the service and what are my plans on basically for the future.

Q We talked very little about Ronnie Kimble's case, didn't we?

A Yes, we did.

Q Now, did you come in my office and sit in my den, with -- on the couches and chairs --

A Yes.

Q -- and talk to me for a little while? Did I at any time tell you what to say?

A No.

Q Has anybody for the prosecution's office told you what to say?

A No.

Q But they have reminded you repeatedly of your prior statements, haven't they?

A Yes.

Q Now, would it be fair to say that you felt pressured by them?

A Not really.

Q Now, Mr. Dziadaszek, did there come a time just a few days ago that you received notification from the State of North Carolina that you were under subpoena?

A That was about a month and a half ago, I believe,

roughly.

Q All right. And in connection with your subpoena, have you been contacted by a certain Mr. Siwinski in the District Attorney's Office?

A Yes.

Q Did Mr. Siwinski call you with reference to your subpoena and offer to --

MR. PANOSH: Object, please.

Q Tell the members of the jury what Mr. Siwinski said to you when he called you.

MR. PANOSH: Object, please.

THE COURT: Overruled.

A I really don't remember much that he told me. Just basically read off my statements, the ones I made, and told me -- told me to contact him when I come in Greensboro.

Q So Mr. Siwinski called you up and read you all your statements?

A Correct.

Q Did he promise to do anything with those statements?

A No.

Q Did he say he was going to send them to you?

A He said he was going to send them to me.

Q Did he ever send them to you?

A I haven't received them.

Q Did you give him an accurate address?

A Yes, I did.

Q Has your address been a problem in any of your other people that correspond with you?

A No, they haven't.

Q So did Mr. Siwinski tell you he would send you those written statements?

A Correct.

Q And he never did, did he?

A Correct.

Q Now, did he also tell you that he tried to telephone you?

A Yes.

Q Do you have any --

MR. PANOSH: We object. Relevance.

Q Of your own knowledge, has Mr. Siwin--

THE COURT: Sustained.

Q Did you receive telephone calls, other than the one you're talking about from Mr. Siwinski?

A Not from my personal phone.

Q Now, when Mr. Siwinski read you --

MR. PANOSH: We object, please.

THE COURT: Overruled.

Q When Mr. Siwinski read your statement of March 19, 1997, did he come to a paragraph that you notified him had no bearing on this case?

MR. PANOSH: Object, please.

THE COURT: Well, sustained.

Let me see the statement. Let me see the statement, Mr. Hatfield.

(Mr. Hatfield handed a document to the Court and indicated. Time was allowed for the Court.)

(The Court handed the document to Mr. Hatfield.)

THE COURT: Do you wish to question him, sir?

MR. HATFIELD: I'd like to show it to him and let him see if it refreshes his recollection.

MR. PANOSH: Your Honor, we don't object to the entire statements going in. We object to them coming in piecemeal.

Q Would you like to read this, please, to yourself.

(Mr. Hatfield handed a document to the witness. Time was allowed for the witness.)

A Yeah.

(The witness handed the document to Mr. Hatfield.)

Q Do you remember that statement?

A Yes, I do.

Q Now that you remember it, what do you remember about it?

A That --

MR. PANOSH: We object.

THE COURT: Sustained as to that particular

question.

Q Did Mr. Siwinski read you that paragraph?

MR. PANOSH: Object, please.

THE COURT: Sustained.

A Not that I recall.

THE COURT: Don't answer.

THE WITNESS: Oh.

MR. HATFIELD: Like to be heard outside the presence of the jury.

THE COURT: Well, unless you're going to put the entire statement in, I'm not going to let you piecemeal it. Objection sustained.

MR. HATFIELD: I'm not piecemealing it.

THE COURT: Well --

MR. HATFIELD: I'd like to have a voir dire on this point.

THE COURT: There's no voir dire on this point. It's irrelevant.

Next question.

Q Did you -- have you ever seen that statement before?

A No, I haven't, not until I seen it here. And I haven't heard that statement read -- they read it off to me.

Q Did I show you -- have you seen this statement that I showed you just now this morning in this courthouse, in the preparation of your testimony?

A No, I haven't.

Q At any time since you were subpoenaed, has anyone in the District Attorney's Office actually shown you your purported statement of March 21, 1997?

A No.

Q Is it your testimony that your only familiarity with this statement is Mr. Siwinski reading it to you over the telephone?

A Correct.

Q Based on your examination of this statement at the bench, is this the statement Mr. Siwinski read you over the telephone?

MR. PANOSH: We object, please.

THE COURT: Overruled.

A No, it's not.

Q Sir?

A No, it's not.

Q This is not the statement that Mr. Siwinski read you over the telephone?

A No.

Q Did you at some point in time tell investigators that you had been to Ronnie Kimble's residence on March 15, 1997?

MR. PANOSH: We object, please.

THE COURT: Overruled.

Q Did you tell them that?

A I really don't --

Q Sir?

A -- remember offhand.

Q I beg your pardon?

A Don't remember offhand if I did or didn't.

Q Did you go and see Sherry Wilson on March 15, 1997?

A If I was down here, I certainly did.

Q Sir?

A If I was down here, I did.

Q Did you tell the investigators that you had some conversation with --

MR. PANOSH: We object, please.

THE COURT: Well, what statement is it, Mr.

Hatfield? Have you got it marked? Is it marked? Is it an exhibit number?

MR. HATFIELD: Yes. This is the statement of

March 21, 19--

THE COURT: Well, is it marked with an exhibit

number?

MR. HATFIELD: No.

THE COURT: Mark it.

(Mr. Hatfield complied.)

MR. HATFIELD: If I could confer with counsel

momentarily.

THE COURT: All right, sir. What's the number you

placed on it?

MR. HATFIELD: Exhibit 1.

(Mr. Hatfield and Mr. Lloyd conferred.)

MR. HATFIELD: I'm ready to proceed, Your Honor.

THE COURT: All right, sir.

Q Mr. Dziadaszek, I showed you a minute ago what's now been marked for identification as Defendant's Exhibit 1. Did you see it?

A Yes.

Q And is this the first time you have ever laid eyes on this statement?

A No, it's not.

Q When did you previously see it?

A When I was in your office last weekend.

Q So you saw it in my office?

A Yes.

Q Will you tell the ladies and gentlemen of the jury the circumstances in which you saw this last week in my office.

MR. PANOSH: Object, please.

THE COURT: Overruled.

A That you -- we were talking, and you pulled out the statement. You read it off -- you started reading it off to me. And then when you got to the --

MR. PANOSH: We object. This calls for hearsay of counsel. It's inappropriate.

MR. HATFIELD: It's not about what I said. It's about the statement.

THE WITNESS: He read it off to me.

THE COURT: Wait a minute, sir.

Let me see both of the attorneys at the bench -- all three attorneys.

(The following proceedings were had by the Court and all three counsel at the bench, out of the hearing of the jury.) (Mr. Hatfield handed an exhibit to the Court, and Mr. Panosh handed an exhibit to the Court. Time was allowed for the Court.)

THE COURT: Are these the same statements, State's 107 and Defendant's 1?

MR. PANOSH: Yes, sir.

THE COURT: All right. What's the problem?

MR. PANOSH: Your Honor, we have two problems.

Number 1, Mr. Hatfield's trying to elicit hearsay statements of himself.

MR. HATFIELD: I'm not.

MR. PANOSH: Number 2, we feel that the statements -- each of the statements is admissible to corroborate or to impeach the witness for whichever reasons, and we don't object to any one of the three or all three of them being admitted, as long as they're admitted in whole, not piecemeal. And we certainly don't think it's appropriate

for Mr. Hatfield to be able to elicit what his statements or what his interpretation of the exhibit was to this witness in his office.

MR. HATFIELD: I can assure the Court that I have no intention of offering through this witness any statement that I made concerning this statement. That was not my purpose. The witness was trying to tell the circumstances of reading this. And I would like --

THE COURT: You can't have it both ways. There's damaging stuff in this first part here, about the gasoline receipt. And then you come over here and try to skip that paragraph.

MR. HATFIELD: I'm not trying to slip it in. The witness told me that he never said those things in that paragraph. Never, ever --

THE COURT: This paragraph --

MR. HATFIELD: -- at any time in life did he say those things, and yet, they're in his statement, which he did not write. That's all I want to prove, is that he didn't say those things. And I don't see why I have to be interrupted constantly and come up here to the bench --

THE COURT: Wait a minute.

MR. HATFIELD: -- and explain my tactics in cross-examination. This is just totally to the advantage of the other side.

THE COURT: Well, you're trying to prove a portion of the statement.

MR. HATFIELD: No. I'm trying to show that he never said that and that he was astonished when he heard it. But now I've totally given away my position.

THE COURT: Well, the statement itself, is a lot of damaging stuff in there. I can understand why you want to keep it out, but --

MR. HATFIELD: I don't --

THE COURT: -- I don't think you're able to put in portions of it, without putting the whole statement in.

MR. HATFIELD: The defendant has no burden of proof. The defendant has no burden of production. This is the State's case. I'm just trying to cross-examine their witness.

MR. PANOSH: Your Honor, our position is, Rule 106 specifically says if they get in part of it, we're going to move to admit the entire thing.

MR. HATFIELD: I'm not getting it in, I'm getting it out.

MR. LLOYD: Judge, let me clarify something. We're not trying to introduce this as an exhibit to go back for the jury, which is what Mr. Panosh seems to think. We're entitled to cross-examination -- to cross-examine him on portions of the statement. "Isn't it a fact, Mr.

Witness, that you told the investigators such and such?" Now, as I said earlier, Mr. Panosh is entitled, if he needs to refresh the witness's recollection, and the witness says he doesn't remember, he can show him the statement and refresh his recollection and get it out of him that way. But the wholesale introduction of the statements is entirely wrong. There is no hearsay statement -- hearsay exception that would cover that. And that would be entirely improper. If we were trying to get in the statement into evidence, yes, Mr. Panosh is right, then he would be allowed to get in the whole statement. If we just wanted to excerpt part of it. But that's not what we're -- we're doing this for purposes of impeachment. And if the -- Judge, if you want to --

THE COURT: How far do you want to go with it? What are you going to ask him?

MR. HATFIELD: Well, with all due respect, why do I have to describe my cross-examination, just because this guy enters objections?

THE COURT: We're at the bench, and I want to know, before I let it in -- rule it in or out.

MR. HATFIELD: Your Honor, it is this. There were two typewritten versions of that statement given in pretrial discovery. I gave one to Mr. Dziadaszek and I kept the other, in an effort to determine if we were looking at the

same document. I said, "I will read this to you. You track along and read the one that you have in your hand, and we'll see if they're the same." When we got to that paragraph, he said, "I never said that. That must be from somebody else's report." This is what I want to show by this line of cross-examination. And I do not -- I am not offering that statement into evidence in whole. I want to show the investigative techniques of where -- that we're dealing with and the attempt to put words in his mouth.

THE COURT: You may ask him those type of questions.

MR. HATFIELD: Well, I need to show -- I -- every time I open my mouth in this courtroom --

THE COURT: Well, there's --

MR. HATFIELD: -- there's an objection from the other side.

THE COURT: Don't get -- Jack, pace yourself. Don't get all bent out of shape here on Monday morning. What questions do you want to ask him?

MR. HATFIELD: Just what I told you. I said I want to demonstrate that he is -- that in reviewing that statement a week or so ago in my office, he notified me that the particular paragraph in question was never in any statement that he had ever given previously. That's what he told me.

(Time was allowed for the Court.)

MR. PANOSH: Your Honor, most of that paragraph that he's referring to calls for alleged hearsay statements of an attorney, not saying who it was, who advised someone, apparently this witness, that he didn't have to answer questions. It's just --

MR. HATFIELD: We are not doing this --

MR. PANOSH: It's all --

MR. HATFIELD: -- to prove the contents of the statement. We are doing this to prove that he never said those things. This is his statement and he never said them. I don't care what they are. He never said them.

MR. PANOSH: Well, the only way he's going to do that is by commenting on the truth or falsity of the statements of this attorney.

MR. HATFIELD: Then why don't we just fold our tent. Why should we cross-examine anybody?

MR. LLOYD: What Jack's saying is, it doesn't -- we're not trying to prove the truth of the matter asserted, that the attorney ever said that or didn't say that. We're saying that the witness never said it to investigators, investigators made it up whole cart and put in the statement. Either that or they got confused.

THE COURT: You may ask him if there's a portion of the statement that he did not make to the officers, and

he may answer that.

MR. HATFIELD: Thank you.

THE COURT: That's about as far as I'm going to let you go with it.

(Proceedings continued in open court.)

THE COURT: You may continue.

(The Court handed an exhibit to Mr. Hatfield and an exhibit to Mr. Panosh.)

MR. HATFIELD: I'm approaching the witness with --

THE COURT: All right.

MR. HATFIELD: -- Exhibit 1 defense.

Q Ask you to read every single word on this piece of paper to yourself.

(Time was allowed for the witness.)

Q Have you read the statement?

A Yes, I have.

Q Are you satisfied that you've had an opportunity to look at all of the printed material on both pages of the exhibit?

A Yes.

Q Have you ever seen that printed material before?

A Yes, I have.

Q When did you see it before?

A A couple minutes ago, when you gave it to me prior, and then in your office, about two or three weeks ago.

Q At whose office?

A Your office.

Q At my office?

A Yes.

Q So that statement was never given to you by the people who prepared it?

A No.

Q First time you ever saw it was when I showed it to you?

A Yes.

Q Now, when I showed it to you, did you, as you have just done in this courtroom, read every word?

A Yes.

Q What did you tell me after you read every word?

MR. PANOSH: Object.

THE COURT: Overruled.

A That there was a paragraph that I do not recall saying.

Q And which paragraph is that?

A Am I supposed to read it or --

Q Can you just tell the jury basically the contents of it?

A That I was at Kimble's residence this past weekend, 15 March, '97. I was with my girlfriend, Sherry. And that --

MR. PANOSH: We object to the hearsay portion, Your Honor.

THE COURT: Overruled.

A And that Kimble's father brought him and his wife to visit a lawyer regarding this case. And then the attorney advised that no one involved in the investigation had to answer questions that were irrelevant to the case. I was able -- I was unable to explain what that meant, but anyone questioned by investigators. I reported this to have an effect on his decision -- I reported that this did not affect my decision to talk with investigators and was willing to cooperate with the law-enforcement officials.

Q All right. Now, so you realized when you were sitting in my office and read this statement for the first time, that that paragraph was something that you had not said; is that right?

A Right.

Q Now, did you tell me then that this same document had been read to you by Mr. Siwinski --

MR. PANOSH: Object, please.

Q -- earlier?

THE COURT: Overruled.

A I -- it was -- contents were basically the same, but when Mr. Siwinski read me the document, I was on the phone for about five minutes listening to the document, and that paragraph did not sound familiar, what he read to me prior.

Q So when you -- so you had heard the paragraph a few days before you talked to me, when Mr. Siwinski talked to

you by phone; is that right?

A I heard the -- I heard all the statements, but that paragraph did not sound familiar.

Q Did you tell Mr. Siwinski that there was a paragraph in what he was reading you that didn't sound familiar?

A He didn't -- I didn't -- I don't recall being told that paragraph.

Q At any time since you received your subpoena, have you told any of these people on behalf of the prosecution that there was a paragraph in your alleged statement that was not yours?

A I didn't become -- I did not become aware of the statement until I was in your office --

Q And that --

A -- because I didn't see any of the -- because I didn't see any of the statements I made.

Q So at no time before you went to my office did you ever have a chance to review any of this?

A Right.

Q And even though Mr. Siwinski told you he was going to mail it to you, you never got it; is that right?

A That's correct.

Q Now, when you were in here this morning talking to investigators, did you tell them that there was a statement in there that you had never said?

A No, I didn't.

Q Now, did the investigators talk to you about perjury?

A Yes.

Q What did they say to you? Who spoke --

MR. PANOSH: Object.

Q -- to you about perjury?

THE COURT: Overruled.

MR. PANOSH: Object, please.

THE COURT: Overruled.

Q Who spoke to you about perjury, sir?

A I don't remember who told me this morning, but --

Q Was it Mr. Panosh?

A I believe all of them said it at one time or another just real briefly.

Q They were all talking to you about perjury; is that right?

A At one time or another, they did.

Q At one time or another on this day, in this building, representatives of the DA's Office talked to you about perjury; is that right?

A That's right.

Q Now, do you have any intention of committing perjury?

MR. PANOSH: Object.

THE COURT: Sustained.

Q Sir, you understand your responsibility, don't you?

MR. PANOSH: Object.

THE COURT: Sustained.

Q You understand your duty to testify truthfully, don't you?

MR. PANOSH: Objection, please.

THE COURT: Overruled.

A Yes.

Q So what precisely was said to you about perjury?

MR. PANOSH: Objection.

THE COURT: Sustained. Been over it.

Q You met Ronnie Kimble in December of what year?

A Of '96.

Q Now, do you know that that was more than a year after Patricia Kimble had died in October of 1995?

A Yes.

Q And the first time you ever met Ronnie Kimble was in December of 1996; is that right?

A Yes.

Q And you continued to know Ronnie Kimble until early April of 1997; is that right?

A Correct.

Q And then, he was arrested, and you and he went your separate ways; is that correct?

A Correct.

Q So you knew him, including the three months of January,

February and March and December, a total of a little less than four months; is that right?

A Yes.

Q Now, would it be fair to say that you and he became very good friends?

A Yes.

Q Did he do anything for you of a unique nature during that period?

MR. PANOSH: Object, please.

THE COURT: Overruled.

Q Did he?

A Yes.

MR. PANOSH: I'd like to be heard.

Q What did he --

THE COURT: Well --

Q -- do for you?

THE COURT: -- approach the bench.

MR. HATFIELD: One objection after another.

THE COURT: Wait a minute.

(The following proceedings were had by the Court and all three counsel at the bench, out of the hearing of the jury.)

THE COURT: I don't know what he's going to say.

I don't want to move the jury in and out of the courtroom. What's he going to say?

What's the objection?

MR. PANOSH: Your Honor, the objection is, this is going for a specific instance to prove good character.

MR. HATFIELD: No, it isn't.

MR. PANOSH: And I believe what they're --

THE COURT: What's your question?

MR. HATFIELD: "What did he do for you?"

THE COURT: Well, what did he do? What's he alleged to do?

MR. HATFIELD: He got him to accept Jesus as his personal savior and quit drinking. It doesn't have anything to do with Ronnie's character. It has to do with his character.

MR. PANOSH: Your Honor, the rules specifically state you can't go into specific instance to prove good character.

MR. HATFIELD: Huh-uh.

MR. PANOSH: And the only thing it could possibly be is to prove --

THE COURT: Well, I'm not going to let you get that in, if that's all he's going to say. I thought he was --

MR. HATFIELD: Your Honor, this is cross-examination. This is not --

THE COURT: Well, I'm not letting it in.

MR. HATFIELD: You have allowed every kind of

impression --

THE COURT: Well, I'm not letting that in. You can argue all you want to. I'm not going to let that in, because that's not what I thought you were going to say. I thought it was some deed he'd done for him.

MR. HATFIELD: It was. It was. He helped him the way most people never get a chance to help anybody.

THE COURT: Your client's a minister's son. He was thinking about going to the seminary.

MR. HATFIELD: He helped him quit drinking. He helped him quit drinking.

THE COURT: You may get that in.

MR. HATFIELD: Thank you.

MR. PANOSH: Your Honor, that would be a specific instance to prove good character. And there's a motion in limine as to character in this case. And if they're allowed to put in specific instances of good character like that --

THE COURT: You all opened the door.

MR. PANOSH: -- the State would be doing rebuttal.

MR. HATFIELD: That's not --

THE COURT: That's not --

MR. HATFIELD: That doesn't have to do with Ronnie Kimble's character. It has to do with his character.

MR. LLOYD: Well, we would argue that it shows a relationship between the two.

THE COURT: If you offer it for that purpose, I'll let you get it in. But otherwise, I'm not.

MR. HATFIELD: All right. Thank you.

MR. LLOYD: We'll be glad to have the Court instruct on that, but we're not offering it as to character evidence.

THE COURT: Proceed.

(Proceedings continued in open court.)

THE COURT: Members of the jury, this next question and answer will deal with the relationship between this witness and this defendant. It has absolutely nothing to do with character. It is not evidence of good or bad character.

Proceed.

MR. HATFIELD: Thank you, Your Honor.

Q When you were acquainted with Ronnie Kimble during this four-month period, did you have a drinking habit?

A Yes.

Q Briefly state to the jury what that was.

A Basically, I drank every almost every single day. And that was it.

Q And as a result of your friendship with Ronnie Kimble, did you change that habit?

A Yes, I did.

Q What did you do?

A I stopped drinking, and it was extremely easy.

Q Did you attribute your stopping drinking solely to your friendship with Ronnie?

A Pretty much.

Q Now, how long after you met Ronnie did you learn that his sister-in-law had been tragically murdered?

A I would say it was probably a month and a half after I met him.

Q So that would have been sometime in the middle of January of 1997?

A Yes.

Q And did you learn about it from Ronnie or from some other source?

A Through Ronnie.

Q And can you remember, based upon your recollections today, in this courtroom, while you're under oath, what he said to you about that?

A Not really.

Q Did he tell you whether or not he was a suspect?

A He said that he was -- he said that he was just being questioned a lot. And he felt that he was being a -- he felt he was being a suspect.

Q Because he was being questioned a lot?

A Yes.

Q Did he tell you any individual facts about Ms. Kimble's

murder that he knew?

A Facts that -- of the murder, just she was shot in the head and burned. That was basically all that he told me.

Q Did you -- did it come to your attention that any of your coworkers in the Marine Corps during that period of time also knew that Ronnie was under investigation?

A I really didn't pay attention if they knew it or if they didn't.

Q Did you know whether in January of 1997, whether Ronnie Kimble had already given detailed statements to investigative agents previous?

A I didn't know.

Q Did he tell you whether he had or not?

A No, he didn't.

Q So you do not know whether Mr. Kimble had already told investigators when he'd put a box truck a certain place and when he'd gone to a certain other place, do you?

A No.

Q Now, when the investigators came and spoke to you on March 4th, is that the first time that anyone other than Ronnie Kimble ever spoke to you about Patricia's death?

A That was the first time.

Q And did you understand that a whole bunch of people were being investigated that day?

A Yes.

Q Did you tell the investigators whether or not you had knowledge that might be of use to them, when they first began their interview of you?

A No.

Q Did the investigators tell you anything about their knowledge of the state of the investigation at that point in time?

A No.

Q Were you shown any pictures of Patricia's body?

A No.

Q Do you remember whether Detective Church participated in the interview?

A Not offhand.

Q Do you remember whether a man named Gregory Munroe participated in the --

A Yes, he did.

Q Huh?

A Yes.

Q He did?

A Yes.

Q Had you ever talked to Mr. Munroe before?

A Not before I --

Q When you --

A -- was questioned.

Q When you talked to Mr. Munroe on the 4th of March, how

many investigators were present?

A I believe there was two investigators and Mr. Munroe was present.

Q So there were two outside investigators and Mr. Munroe, who you knew to be a local naval man --

A Yes.

Q -- is that right?

A Yes.

Q Do you know the names of the two other investigators?

A Not offhand.

Q Now, when they came back to see you the following day, was it the same group?

A Not offhand, I don't remember.

Q Sir?

A Not offhand, I don't remember.

Q At that point in time, did anyone -- any of the investigators say anything to you about perjury?

A No.

Q Now, again, when they came to see you on March 19th of 1997, was it Mr. Munroe again?

A I don't remember.

Q Do you remember who else was there?

A No, I don't.

MR. HATFIELD: Thank you, Your Honor.

MR. PANOSH: May I --

THE COURT: Any additional --

MR. PANOSH: -- approach the witness?

THE COURT: -- questions, Mr. Panosh?

MR. PANOSH: Yes, please.

REDIRECT EXAMINATION by MR. PANOSH:

Q I show you now two pages which I've marked as Number 105. Would you review that, please.

A Yes, sir.

(Time was allowed for the witness.)

MR. HATFIELD: Could we have that identified for us?

MR. HATFIELD: Yeah. March 5.

(Further time was allowed for the witness.)

MR. PANOSH: May I approach?

Q Is the information in there accurate, sir?

A Sounds familiar. Reads familiar.

Q Is the --

MR. HATFIELD: I can't hear his answer.

A Yes.

Q Is the information in here accurate?

A Yes.

Q All right. I'm going to show you now State's Exhibit Number 106, which is the same as Defense Number 1. Do you want to review that, to make sure it's the same? Just compare them, please.

(Time was allowed for the witness.)

A Yes.

Q Okay. Now, I believe you said that there is information in here that is -- you don't recall saying?

A Right. This paragraph right here. (Indicated.)

Q Would you take this red pen and X through the information you don't recall saying.

(The witness complied.)

A Okay.

Q I believe you --

A Yeah.

(The witness complied further.)

Q All right.

A All right. This top one.

Q Okay. Wait a minute. Put your initials by the one you want to X out.

(The witness complied.)

Q And then put down "Not crossed out" there, please, so there's no issue.

(The witness complied.)

Q Thank you. Now, other than the paragraph that you've X'ed out, is the information in 106, which was previously Defendant's Number 1, is it accurate?

A Yes.

MR. HATFIELD: Objection.

THE COURT: Overruled.

MR. PANOSH: Seek to introduce 105 and 106.

MR. HATFIELD: Objection.

MR. LLOYD: Objection, Your Honor. Ask to be heard outside of the --

THE COURT: Sustained.

Q When you were being interviewed by the agents back in March and again today, did anybody ever ask you to tell anything but the truth?

A No. Just said, "Say the truth."

MR. PANOSH: No further questions.

RE-CROSS-EXAMINATION by MR. HATFIELD:

Q Same thing for me, right?

A Yes.

MR. HATFIELD: Thank you. No questions.

THE COURT: Step down, sir.

(The witness left the witness stand.)

MR. PANOSH: Your Honor, may he be excused or --

THE COURT: Any objection?

MR. HATFIELD: No objection.

MR. LLOYD: No objection.

THE COURT: Excused, sir.

Members of the jury, we'll take our morning recess. It'll be a 15-minute recess. At the end of the 15 minutes, please report to the jury room. Please remember

the jury responsibility sheet.

(The jury left the courtroom at 11:23 a.m.)

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

(A recess was taken at 11:24 a.m.)

(Court reconvened at 11:38 a.m. The defendant was present.

The jury was not present.)

THE COURT: Bring them in.

MR. PANOSH: Your Honor, before they bring them in, those last two exhibits are --

(The court reporter handed exhibits to Mr. Panosh.)

MR. PANOSH: Oh, thank you.

That's all.

(The jury entered the courtroom at 11:39 a.m.)

THE COURT: The State call its next witness, please.

MR. PANOSH: Yes. Special Agent Ford, please.

I'm sorry. Special Agent Reavis.

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

Q Agent, could you please state your name.

A Joseph D. Reavis.

Q And your occupation?

A I'm employed by the North Carolina State Bureau of Investigation as a forensic chemist.

Q In addition to the training you had to be a special agent, what, if any, specialized training did you have in reference to being a forensic chemist?

A After completing the special agent academy and basic law enforcement requirements by the SBI, I attended numerous training programs put on by the agents of the SBI in the field of forensic chemistry. I have been qualified in and have been tested in the areas of forensic hair examination and comparison, forensic arson debris analysis, and forensic controlled substance analysis.

In addition to those training programs, I've attended training put on by the Federal Bureau of Investigation at its training facility in Quantico, Virginia, by the Bureau of Alcohol, Tobacco and Firearms in Atlanta, Georgia, by the Southern Association of Forensic Scientists, and by the Federal Drug Enforcement Administration.

Q Have you been recognized as an expert in the field of forensic chemistry, specifically in the identification and comparison of human hairs?

A Yes.

Q How many times have you been recognized as an expert?

A Approximately 50 times.

MR. PANOSH: We'd tender him to the Court as an expert in forensic chemistry, specifically in reference to the identification of human hairs.

THE COURT: Do you wish to examine him as to his credentials?

MR. HATFIELD: No, Your Honor.

MR. LLOYD: We have no objection, Your Honor.

THE COURT: The Court finds this SBI Agent J.D. Reavis to be an expert in the field of forensic chemistry and hair -- human hair identification --

Q In the course of your --

THE COURT: -- and may express an opinion in that area.

MR. PANOSH: Sorry, Your Honor.

Q In the course of your duties, did there come a time when certain samples were submitted to you by the Guilford County Sheriff's Department in reference to the death of Patricia Gail Kimble?

A Yes.

Q And when did you receive those samples?

A As I recall, samples were submitted -- hairs from a weapon were submitted on October 12, 1995. There were additional submissions later, on November 21, 1995, of head hairs and pubic hairs, both coming from Patricia Kimble.

Q Were those hairs removed at autopsy?

A Yes, they were.

MR. PANOSH: May I approach the witness?

THE COURT: You may.

Q I show you what's been previously marked as State's Exhibits 86-A and 86-B. Is 86-A the known -- the questioned hair sample that was submitted to you?

A Yes.

Q And is 86-B the questioned -- the known head and pubic hairs of Patricia Kimble?

A Yes.

Q Can you open 86-A and tell the ladies and gentlemen of the jury exactly what was submitted to you.

(The witness complied.)

A State's Exhibit 86-A --

THE COURT: Wait just a minute.

(The Court conferred with the bailiff.)

THE COURT: You may continue.

A State's Exhibit 86-A contains a small evidence box that the hair was originally submitted to the laboratory in. I mounted it on a microscope slide to study it, and placed it in this slide mailer, and it remains with the evidence.

Q How many hairs did you mount?

A Just one.

Q How many were submitted to you?

A Just one.

Q And in the course of your comparison to the known head and pubic hair samples of Patricia Kimble, how did you perform your analysis?

A Hairs are compared in the laboratory using a comparison microscope. It's a light microscope that allows two different samples to be viewed at the same time. There's a light bridge across the top. It's a very complex optic arrangement, that allows us to view head hairs or pubic hairs, any known type of hair, with a questioned sample, side by side, under the same lighting conditions, under the same magnification. You get a view inside the microscope of actually two fields of view. You get the questioned on one side, you get the known on the other side.

Q And after making that comparison, what, if any, findings did you make?

A I found that the hair in State's Exhibit 86-A removed from the weapon was completely microscopically consistent with the hairs of Patricia Kimble.

Q And would you explain to the ladies and gentlemen of the jury what "microscopically consistent" means, in your specific field.

A Microscopically consistent means that in each area that I viewed, in each area of magnification, in each depth of field, every part of the hair is microscopically, or to my eye, consistent with the hairs of the victim. That does not preclude that someone else may have hair characteristics that are consistent with the victim. In my training and experience, I've only seen that one time. That is the basis

for the science that we do.

MR. PANOSH: May I approach the witness?

THE COURT: You may.

Q Now, agent, based upon your training and experience, and assuming that the hair was collected at approximately in the area where the G is located, in the master bedroom of Patricia Kimble's home, and assuming that the hair was located on or near the weapon, what, if any, conclusions can you draw? (Indicated on the diagram.)

A I don't think I can draw any conclusions. I wouldn't find it strange to find the victim's own hair in the victim's own residence.

MR. PANOSH: Thank you. No further questions.

MR. LLOYD: Just a couple, Your Honor.

CROSS-EXAMINATION by MR. LLOYD:

Q Agent Reavis, did you remove the hair from the weapon yourself?

A No.

Q All right. So you did not have contact with the weapon?

A No.

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

THE COURT: You can step down, sir.

(The witness left the witness stand.)

MR. PANOSH: Special Agent --

Your Honor, we'd seek to introduce as State's 107 the report detailing his findings.

MR. LLOYD: We'd object, Your Honor.

THE COURT: Overruled. The Court'll allow the introduction.

MR. PANOSH: Agent Ford, please.

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

Q State your name, please, sir.

A My name is Larry Ford.

Q And you're a special agent with the State Bureau of Investigation?

A Yes, sir.

Q In addition to your basic training, which enabled you to become a special agent, did you have further specific training in the field of forensic chemistry?

A Yes, sir, I do.

Q And would you detail that for the ladies and gentlemen of the jury, please.

A Yes. I have a bachelor's degree. I graduated from Appalachian State University in 1971. In the fall of 1971, I was hired by the SBI. I went through the SBI academy. It's a 500-hour course in criminal investigation. Upon completion of that, I was assigned to the Southern Piedmont District, for a period of a year and a half.

In February of 1973, I transferred to the Raleigh lab. I began my training at that time, and I have continued training to this day.

The area of training that I first began was in the examination of fire debris, and I completed that in 1973. I've been working arson cases, fire cases, since that date.

I've attended numerous seminars and schools throughout the state and the country. I'm a member of the Southern Association of Forensic Scientists, the American Academy of Forensic Sciences, International Association of Arson Investigators. I now train new employees. I teach in the SBI Academy and the North Carolina Justice Academy in fire investigation, fire and arson investigation.

I'm an assistant supervisor of the trace evidence section of the lab in Raleigh.

MR. PANOSH: We'd tender him as an expert in the field of forensic chemistry, specifically in the analysis of debris from arson.

THE COURT: Do you wish to examine his credentials?

MR. LLOYD: No, Your Honor.

THE COURT: The Court finds SBI Agent Larry Ford to be an expert in the field of forensic chemistry and arson analysis, by training, education and experience, and may express an opinion in that area.

Q In the course of your duties, sir, did there come a time when certain samples were submitted to you by the Guilford County Sheriff's Department in reference to the death of Patricia Gail Kimble?

A Yes, sir.

Q And what samples were submitted to you?

A I received samples on three different occasions. October the 10th, I received what was labeled as Item Number 1, which is a bag containing burned clothing. On October the 10th, I also received Items 1-A and 2-A, 1-A being a bag containing a red plastic gasoline can, containing liquid, and 2-A as a bag containing burned carpet and liquid.

On October the 12th, I received items -- received five items. Item Number 10 was a can containing foam padding debris, 11's a can containing foam padding debris, 12 was a can containing foam padding debris, 13 was double bags containing foam padding, and 14 was double bags containing foam padding.

Q And did you conduct an analysis, to determine whether or not those were accelerants?

A Yes, I did.

Q And did you conduct an analysis to determine whether the clothing and the padding debris had accelerants on them?

A Yes, sir.

Q What were the results of your analysis, please?

A Examination of Items Number 1, Number 2-A, Number 11 and Number 12 showed hydrocarbons in the range of residual gasoline. Number 1 was the burned clothing. Number 2-A was the burned carpet and liquid. Number 11 was the can containing foam padding debris. And Number 12 also was a can containing foam padding debris.

Q And in the course of your investigation, did you determine whether or not the liquid in the red plastic container was -- what the identity of that liquid was?

A Yes. Examination of Item Number 1-A, which was the red plastic gasoline can, contained gasoline.

Q And now, as to the accelerants that you found on each of the items, the clothing and the carpet and padding that you examined, did that also test consistent with the accelerant gasoline?

A Yes. There were three additional items. Item Number 10, which was the can containing foam padding debris, Number 13, which is the bags containing foam padding, and 14, which is a bag containing foam padding, each contained residual gasoline.

MR. PANOSH: May I approach?

(The Court nodded his head up and down.)

Q I show you then a report, Number 108. Does that detail your findings?

A This is the first page of the report that I issued.

Q I'm sorry. Two-page report?

A Yes, sir.

Q Okay.

(Mr. Panosh handed another document to the witness.)

Q Do those two pages detail your findings?

A Yes, sir.

MR. PANOSH: Seek to introduce Number 108 --

MR. LLOYD: Object, Your Honor.

MR. PANOSH: -- the two-page document.

THE COURT: Overruled. The Court'll allow the introduction of State's Exhibit 108.

MR. PANOSH: No further. Thank you.

THE COURT: Questions?

MR. LLOYD: Just a few questions, Your Honor.

CROSS-EXAMINATION by MR. LLOYD:

Q Agent Ford, you tested the clothing sample that you got and the carpet padding samples, and you determined that both of those samples had unburned gasoline residue still remaining in them; is that correct?

A Which specific items are you talking? Is this Item Number 1?

Q Well, let's take the clothing first.

A Okay.

Q And your tests indicated that that had residual gasoline left in the clothing; is that correct?

A It had hydrocarbons in the range of residual gasoline, that is correct.

Q All right. And when you say "hydrocarbons in the range of residual gasoline," that means basically that gasoline might have several different hydrocarbons in it, but that's consistent with what we normally refer to as gasoline; is that right?

A Well, the hydro-- there are numerous hydrocarbons. There are many, many, over 100 different hydrocarbons that make up gasoline. When gasoline begins to evaporate, it loses the most volatile components first, very much like gasoline that's left in the lawn mower over the winter, it won't -- the gasoline then changes form during that period of time. It is gasoline, but in correct terminology, it's residual gasoline. It still has components, but it doesn't have all the components of gasoline. And that's what I found in these samples, that it's residual gasoline.

Q All right. And Agent Ford, did you -- in the course of your examination of the clothing item, did you happen to smell it?

A Yes, sir, I did.

Q Did it smell like gasoline to you?

A Let me refer to what I've noted at the time.

(Time was allowed for the witness.)

A I was unable to detect any odor of gasoline when I --

when I did attempt to smell it.

Q Okay. That was on the clothing sample?

A That was on the clothing.

Q All right. Now, directing your attention to the carpet padding samples, you made a similar finding with respect to them, that you had these residual hydrocarbons that were consistent with gasoline; is that correct?

A There were hydrocarbons in some of them that had in the range of residual gasoline, and there was actually enough that I could identify as residual gasoline.

Q All right. But at least some of the samples that were submitted to you did in fact have those hydrocarbons that were consistent with gasoline?

A Well, they all had the hydrocarbons. Some of the testing allowed me to be more specific about what I reported. It's just a matter of terminology.

Q All right.

A They all -- they all had residual gasoline, basically, is what --

Q They all had residual gasoline?

A They all had --

Q All right.

A -- residual gasoline, except for the liquid sample, which was out the gasoline container.

Q And that had --

A Gasoline.

Q -- not just residual gasoline, but real gasoline?

A It had gasoline. It had not been evaporated. It showed very slight effects of gaso-- of evaporation, if any, or heating or burning. Actually, all heating or burning does is just, it increases the rate that the gasoline evaporates.

MR. LLOYD: That's all I have.

THE COURT: You may step down.

MR. PANOSH: If I could.

REDIRECT EXAMINATION by MR. PANOSH:

Q Agent, when you say "residual gasoline," are you indicating that you could identify the substance gasoline in there?

A Yes, sir.

Q And would you be more specific as to what you meant when you said that the gasoline changes its properties as it is burned.

A Gasoline has a very, very low flash point, which is the temperature at which it will ignite easily. That's why gasoline will -- runs very well in the car. It's why, if you have gasoline in your lawn mower, when it's fresh, you pull the starter and it starts very easily. Over a period of time, just from evaporation, from normal evaporation, the flash point rises, it will increase, and -- because you're

-- because the volatile components of things that make it have a low flash point evaporate away.

And this is what happens in a very slow process, such as sitting in a container or sitting in a gas can over a period of months. Or it can happen very rapidly, which is in a high temperature, such as in a fire. But you lose the volatile components, the things that make it have a low flash point very quickly when it evaporates, leaving the higher flash point or higher boiling point materials, that are still components of gasoline, but the material may have a flash point much, much higher than, say, minus 50 degrees, which is normal. It just changes the character of the product there. Still the components of gasoline are there, but it's changed over a period of time, because of the evaporation.

Q So if you find the components, you would say that's consistent with residual gasoline?

A That's correct.

MR. PANOSH: No further.

MR. LLOYD: No questions, Your Honor.

THE COURT: Step down, sir.

(The witness left the witness stand.)

THE COURT: Next witness, please.

MR. PANOSH: Yes, sir.

Mr. Reilly, please.

Your Honor, may the agent be released?

THE COURT: Any objection?

MR. LLOYD: No objection, Your Honor.

THE COURT: You may be excused, sir. The Court appreciates your attendance.

Next witness, please.

MR. PANOSH: Mr. Reilly, come up, please.

GARY REILLY, having been previously duly sworn, testified as follows during DIRECT EXAMINATION by MR. PANOSH:

Q Would you state your name, sir.

A Gary Reilly.

Q And Mr. Reilly, what is your occupation?

A I'm an investigator for Zurich Insurance Company.

Q And Zurich Insurance Company is owned by whom?

A Well, Maryland Insurance Group is the company that I worked for at the time of this incident, and they are owned by Zurich Insurance Company.

Q In the course of your duties, in October of 1995, did you undertake to investigate a house fire which occurred at Brandon Station Court in the city of Greensboro?

A That's correct.

Q And in the course of your duties, on October the 16th of 1995, did there come a time when you interviewed Mr. Ted Kimble?

A That's correct.

Q And did you reduce that interview to writing?

A Yes, sir, I did.

MR. LLOYD: Your Honor, may we approach?

THE COURT: Yes.

(The following proceedings were had by the Court and all three counsel at the bench, out of the hearing of the jury.)

MR. LLOYD: Judge, Mr. Panosh has just shown me an exhibit which is an interview of Ted Kimble. He's given us this in discovery, so I don't have any objections on that part of it. But he's got it marked as an exhibit, and I fear that he's going to do like the last ones and offer it for its admission. He certainly -- I mean, we would object for the record to statements of Ted Kimble coming in on this trial. But assuming that the Court is going to rule consistent with what it has in the past, and we don't abandon that objection, then obviously he can ask -- based on the Court's prior ruling, he can ask this witness questions about what Ted Kimble said to him, and this witness can respond. But when we get into the whole interview, Your Honor, that's certainly not admissible.

The real problem with it is, Judge, then in closing argument, Mr. Panosh is allowed to stand up and read from the interview verbatim, and the jury knows that, Your Honor, and they're going to put much more weight in that than they did to the witness's actual testimony, which is

the real evidence in this case.

I mean, certainly we're at a disadvantage in this case, because we don't have any basis to cross-examine the declarant, Ted Kimble, as to whether or not he said those things or what he meant when he said those things. We're -- and we're even at a further disadvantage, Your Honor, we can't cross-examine the transcript. So I've -- without abandoning the initial objection to the statements of Ted Kimble coming in, even through the witness on oral testimony, we certainly --

THE COURT: I don't know what's in the transcript either, so I'm at a disadvantage, too.

What's the line of questioning?

MR. PANOSH: Your Honor, it's a 40-page transcript, and it's taken seven days after the death of Patricia Kimble. And in that, Theodore Kimble goes through his day, and explains where he was, and never once mentions being with Ronnie Kimble. He never mentions that he had a brother, Ronnie Kimble. He goes through and identifies all the other members of his family, in-laws family, friends, associates, employees, but never once mentions Ronnie Kimble. The State's theory is that that's because he didn't want law-enforcement officers, this investigator included, from having their attention being drawn to Ronnie Kimble.

MR. LLOYD: The other thing I have a problem with,

Your Honor, if we're talking about the whole 40-page transcript coming in, it covers all sorts of things. I mean, it covers gratuitous comments between the witness and Ted Kimble about what you tell your wife and how you --

MR. PANOSH: Your Honor --

MR. LLOYD: -- can't please women.

MR. PANOSH: -- I could shortcut this. I'll do it question by question, if that's the way they prefer. But he can't be expected --

THE COURT: The Court'll sustain the objection to a question by question. The Court will -- I think what you've said is okay, if you don't go any further with it. (Proceedings continued in open court.)

Q (By Mr. Panosh) Showing you then State's Exhibit Number 109, do you recognize 109?

A That's correct.

Q What is that, sir?

A It's a recorded statement I took from Ted Kimble. It's a transcribed version of it.

Q What day did you take this statement, sir?

A October 16, 1995.

Q Where did you take it?

A At the -- at Ted -- at Ted Kimble's place of business, at the lumber yard. It was a small office, outside of his main office.

Q And did you record that and later have it transcribed?

A That's correct.

Q Now, I take it you can't remember every detail of that statement, of your own independent recollection?

A That's correct.

Q Drawing your attention then to State's Number 109, would you tell the ladies and gentlemen of the jury how you introduced yourself to Mr. Ted Kimble.

A Well, I told Mr. Kimble -- Let's see --

MR. LLOYD: Well, Your Honor, we'd object for the record as to statements of Ted Kimble coming out in this trial against his brother, Ronnie Kimble.

THE COURT: Again, remember, ladies and gentlemen of the jury, that these statements by Ted Kimble would not be admissible against this defendant, unless you should find that there was a conspiracy between Ted Kimble and Ronnie Kimble, and that these statements were in furtherance of that conspiracy.

Proceed.

THE WITNESS: Thank you, Your Honor.

A On the statement, I have -- I introduced myself as a Gary Reilly from Maryland Casualty Insurance Company.

Q And in the course of that first portion of the statement, were you able to identify who his wife was?

A That's correct.

Q Who was that?

A It's a Patricia Anne (sic) Blakley or Kimble.

Q Okay. And thereafter, were you able to determine who owned the address at 2104 Brandon Station Court, the subject of your investigation?

A That's correct.

Q Who owned it?

A Patricia G. Kimble.

Q And in the course of your interview, did you ask him how long they'd been married?

A Yes, sir, I did.

Q And what did he tell you?

A Been married for two years.

Q And did he tell you whether or not she owned the home prior to meeting -- to Ted Kimble meeting her?

A Yes, sir.

Q And what was that response?

A He advised that she had owned the house prior to him meeting her.

Q On Page 3 of your statement there, did there come a time when you asked him to give you a synopsis of his activities of October the 19th -- October the 9th of 1995?

A Yes, sir.

Q And what did he tell you?

A He indicated that he arrived at work at 8:00 o'clock in

the morning and left work at 5:30, work being the lumber yard. And he went over to his mother's house, to drop the dog off, and then responded to another job that he had, in which he arrived there at 6:00 o'clock at night.

Q Did he give you the name of that job?

A Yes, sir, he did.

Q And what was that name?

A Precision Fabrics.

Q And on Page 4, did he identify for you the lead man that could verify his arrival there?

A That's correct. Mike.

Q And on Page 4, did he -- did you ask him what the normal working hours were for Lyles Building Supply?

A Yes, sir, I did.

Q And what was the normal working business hours?

A It says they opened at -- on weekdays 8:00 to 5:30, and then on Sundays, 8:00 to 1:00 -- I'm sorry, Saturdays, 8:00 to 1:00.

Q And did he indicate what time he closed the business at Lyles, in order to go to his second job?

A Yes, sir. He said at 5:30.

Q On the top of Page 5, did you ask him who was present with him on that day?

A Yes, sir, I did.

Q And who did he identify?

A Subject by the name of James. There was two employees. One by the name of James. I think the other one was Steve. If I can find it in here.

(Time was allowed for the witness.)

Q Now, in the course of that interview, when he indicated to you who was present on October the 9th of 1995, did he ever indicate that his brother, Ronnie Kimble, was present?

A No, sir.

Q At the time that you were conducting this interview, were you aware that he had a brother?

A I don't believe so.

Q Now, in the course of your interview, on Page 5, did you ask him how he was notified of the fire?

A Yes, I did.

Q And what did he tell you?

A He indicated that he tried to page his wife, she wasn't returning his page, so he contacted his brother-in-law, and asked his brother-in-law to go by the house and see if everything was all right.

Q And on Page 6, did he identify his brother-in-law?

A Yes, sir, he did. It was --

Q Did he give you his brother-in-law's name?

A Reuben Blakley.

Q Did he give you the address or neighborhood that Mr. Blakley lived in?

A Yes, sir, he did.

Q Did he indicate to you how far Mr. Reuben Blakley's home was from the home that burned?

A Yes, sir. Approximately five miles.

Q Did he indicate to you who he spoke with, in addition to Reuben Blakley?

A Yes, sir. He indicated some people at work.

Q And at the time that he was notified of the fire, did he indicate who he spoke to besides Reuben Blakley?

A I'm sorry. One more time.

Q Page 6, in the middle of the page, when you're referring to who paged him, did he indicate who paged him?

A Yes, sir. He said his sister-in-law.

Q Okay. And did he also indicate to you that he spoke to his sister-in-law's mother?

A Yes, sir. Yes, sir. He said -- he said that he spoke to his sister-in-law's mother.

Q On Page 7 of your interview, did he identify for you who his father was --

A Yes, sir.

Q -- and where his father was on that day?

A Yes, sir.

Q And where did he indicate his father was on that day?

A Liberty Uni-- I think it was Liberty University, at a meeting.

Q Did you go on to ask him if he stored any flammables in the house, on Page 9?

A Yes, sir, I did.

Q And what did he tell you?

A He said not that he is aware of.

Q Did you then ask him if he had gasoline at the -- if he had gasoline at the house?

A Yes, sir. He indicated he did not.

Q And what did he say specifically?

A He said there was an empty five-gallon gas can found in the kitchen, which at one time was kept in the garage.

Q Did you ask him when he had last filled that particular gas can?

A Yes, sir. He said last month.

Q And on Page 10, did you again at the bottom of the page go into his working day?

A Yes, sir.

Q And what did he tell you?

A I asked him if he was working at the lumber yard until 5:30, and if he stayed there the whole time. He said yes, sir, he did. He indicated that he was there every minute, which was unusual, because normally he would be running around town picking up supplies, but on this particular day, because his father was out of town, he wanted -- he needed to stay near the shop. He had problems with people stealing

money from him, so he wanted to stay at the shop and keep an eye on things.

He also indicated that he usually goes to lunch with his wife, but could not do that on this particular day, because he had to stay at the shop. So he stayed there from 8:30 in the morning till 5:30.

Q On Page 11, did you then ask him about his regular employees?

A Yes, sir.

Q Who did you tell you were his regular employees?

A He said he has one at that time, who was Tim.

Q Did he indicate that he had another regular employee, on that same page?

A That's correct. Steve.

Q Did you ask him what his father's association was with the business?

A Yes, sir, I did.

Q And what did he tell you?

A He indicated that he just works for Ted part-time.

Q Did you ask him on Page 12 who he purchased the -- who the home was -- where Patricia lived was purchased from?

A Yes, I did.

Q And what did he tell you?

A He said a Bob Owenburg (sic).

Q On Page 13, did you make reference to his financial

condition?

A Yes, sir, I did.

Q And what did he tell you that was specifically owed on the house?

A He says he thinks he owes like -- Wait. I'm sorry.
(Time was allowed for the witness.)

A 58, 58,000.

Q And did he also tell you about an equity line or other financial infringements on the house?

A That's correct. He said he had a one-line equity established on the house.

Q Did he go on to tell you that he had recently purchased a timeshare with that equity?

A That's correct.

Q And did he indicate where that was?

A Where the timeshare was?

Q Yes.

A It was in Williamsburg.

Q On Page 14, did he give you the name of his -- the manager of the bank where he works -- where he deals at NationsBank?

A That's correct. Susan Kirkpatrick.

Q Did he also give you her telephone number?

A Yes, sir.

Q On Page 16, did he ask -- did you ask him how much he

paid for the timeshare?

A That's correct.

Q And what did he tell you?

A 15,000.

Q On Page 18, did he indicate to you -- excuse me, Page 17 and 18, did he indicate to you whether or not he had recently purchased a boat?

A Yes, he did.

Q And did he tell you what the price of the boat was, on Page 18? I'm sorry. Did he indicate to you that he purchased a Jeep on Page 18, to pull the boat, and did he indicate to you what the price of the Jeep was?

A Yes, he did. He said \$29,000.

Q And that was the purchase price for the Jeep; is that correct?

A That's correct.

Q On Page 23, did he identify his former boss to you?

A That's correct.

Q And did he give you his name, address and telephone number?

A Yes, sir, he did. He indicated Gary Lyles was his former boss.

Q On Page 24, did he indicate to you who his accountant was?

A That's correct.

Q Who was that?

A It's General Business Services. He referred me to a Joe Gessinger.

Q On Page 28, did you make reference to and question him about a notice that his insurance through your company was about to be cancelled?

A That's correct.

Q And did he indicate who his agent was?

A Yes, sir, he did.

Q And what was the name he gave you?

A Karen Hall.

Q Did he give you her telephone number?

A Yes, sir, he did.

Q On Page 30, did he indicate to you who his State Farm insurance agent was?

A Yes, sir.

Q And who was that?

A Charlie -- it might have been all he gave me.

(Time was allowed for the witness.)

Q And on Page 31, did he indicate to you the series of events which caused him to meet and eventually marry Patricia Blakley?

A That's correct.

Q And he indicated -- did he indicate to you on Page 32 about the fact that they had two separate weddings?

A That's correct.

Q And on Page 32, did he identify for you his pastor?

A That's correct.

Q On Page 33, did he relate to you who Patricia's friends were?

A Yes, sir, he did.

Q And did he give you specific names?

A Yes, sir, he did.

Q And again, on Page 36, did he give you the name and address of Reuben Blakley, telephone number?

A Yes, sir, he did.

Q And on Page 37, did he give you the name and address for Patricia Blakley's father, Richard Blakley?

A Yes, sir, he did.

Q Now, at any time in that 40-page interview, did he mention to you the fact that he had a brother --

MR. HATFIELD: Objection.

Q -- Ronnie Kimble?

THE COURT: Overruled.

A There was a mention that he had a brother. It didn't mention the name.

Q Where was the mention of his brother in that transcript?

(Time was allowed for the witness.)

A Okay. It was on Page 7, three-quarters of the way

down, where I asked -- I asked Ted if -- who was with him at the fire scene, and also throughout the night. And he gave me -- he -- basically he started off by saying family members. And then I asked him to be more specific, and he indicated that -- he said his dad was out of town at a job at the university. His father'd gotten in about 4:00 in the morning, "but my mother, her brother, sister, my brother, my mother, and all them had all been arranged. They congregated there from," I guess at the house. From there, they went to the church to pray. And then he indicated there were about 100 people at the church that stayed with him until 4:00 in the morning. That was the only --

Q After the reference to his brother, did he identify him in any way for you?

A No, he did not.

Q And when he was describing the course of his activities on October the 9th of 1995, did he indicate to you that his brother was at his business --

A No, he did not.

Q -- on any or several occasions?

A No, he did not.

Q Now, what, if anything, did you find to be unusual about the course of this interview?

MR. HATFIELD: Objection.

MR. LLOYD: Objection, Your Honor.

THE COURT: Sustained.

Q Drawing your attention to Page 16 and the middle of the page, when you are talking about the cost of the timeshare, what, if anything, did you note about the demeanor of Ron-- of Ted Kimble when he was talking about that subject?

A I'm not -- can you repeat that again.

Q Page 16, about the middle of the page, when you were talking about the timeshare, what, if anything, did your report note about Ted Kimble's demeanor when he was answering that question? I believe the question was, "It's a double timeshare?"

A We was -- he was pretty relaxed about the whole -- throughout the whole statement, he was pretty relaxed and pretty calm.

Q Does the transcript indicate he was laughing?

A Yes, it does. A couple times throughout the statement, as well.

Q Drawing your attention to Page 18, at the top, when he was making reference to his Jeep, what do your notes of the transcript reflect as to his demeanor?

A He -- it indicates that he laughed when we were talking about buying the Jeep to pull the boat.

Q Drawing your attention to Page 24, when he was making reference to his General Business Services accountant, what does it indicate about his demeanor?

A Again, he was laughing.

Q Page 30, when he was referring to first meeting Patricia, what was his demeanor?

A Laughing.

Q And on Page 38, when he was making reference to not attending his dad's church, what was his demeanor?

A Again, he was laughing.

Q In the course of your investigation, did there come a time when it was requested that he submit to you a proof of loss statement -- or submit to your company, rather, a proof of loss?

A That's correct.

Q And what is a proof of loss?

A It's a document that -- in which he's requested to document everything that he owned at the time the fire occurred and lost as a result of the fire.

THE COURT: Let me stop you right there, Mr. Panosh. Is this a good stopping point for you?

MR. PANOSH: That's fine, Your Honor.

THE COURT: All right.

You may step down, Mr. Reilly.

THE WITNESS: Thank you, Your Honor.

(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 remember the instructions on your jury responsibility sheet.

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

Everyone remain seated, while the jury leaves first.

(The jury left the courtroom at 12:30 p.m.)

THE COURT: Declare a recess, sheriff.

(A recess was taken at 12:31 p.m.)

(Court reconvened at 2:01 p.m. The defendant was present. The jury was not present.)

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

MR. PANOSH: No, Your Honor.

THE COURT: Okay.

(The jury entered the courtroom at 2:02 p.m.)

THE COURT: The witness will come back to the witness stand, please, Mr. Reilly.

(The witness returned to the witness stand.)

THE COURT: Nice to have the panel back. I hope you had a nice lunch and feeling okay. Anyone experiencing any problems this afternoon, if you'll raise your hand, I'll be glad to talk with you about it.

You may continue your examination of the witness, Mr. Panosh.

MR. PANOSH: Thank you.

CONTINUED DIRECT EXAMINATION by MR. PANOSH:

Q Mr. Reilly, before we broke, I asked you what a proof of loss was. Did you get a chance to tell the jury what a proof of loss is?

A Yes, sir. A proof of loss is the -- a list of items that the insured had claimed that he lost as a result of the fire.

Q And in the course of this investigation, was it required that Theodore Kimble file with your company a proof of loss?

A That's correct.

(Mr. Panosh showed an exhibit to Mr. Lloyd.)

Q Showing you now what's been marked as State's Exhibit Number 110, do you recognize that, sir?

A Yes, sir.

Q Is that the proof of loss filed by Theodore Kimble on or about January the -- what date was it in '96?

A January 19, 1996. Yes, it is, sir.

Q And does it consist of 84 pages, plus supporting documents?

A Yes, sir, it does.

Q And there's also a letter to Ms. Bartello of your company; is that correct?

A Yes, sir, it is.

MR. PANOSH: Your Honor, we'd seek to introduce

Number 110.

MR. LLOYD: We object, Your Honor.

THE COURT: The basis of the objection?

MR. LLOYD: Well, I'd ask to be heard outside the presence of the jury, Your Honor, either at the bench or whatever Your Honor prefers.

MR. PANOSH: Let me start over.

THE COURT: All right, sir.

Q Are these records kept in the ordinary course of your business?

A Yes, sir, it is.

Q And as a part of this investigation, was a subpoena directed to your company to bring those documents here?

A Yes, sir, it was.

Q And were they brought here under that subpoena?

A Yes, sir.

MR. PANOSH: We'd tender them as routine business records.

MR. LLOYD: Your Honor, still request to be heard outside the presence of the jury.

(The following proceedings were had by the Court and all three counsel at the bench, out of the hearing of the jury.)

THE COURT: All right.

MR. LLOYD: Judge, once again, the basis of my objection is, we don't have a chance to cross-examine Ted

Kimble or whoever else filled that out.

THE COURT: They've already testified to the amount of the claims. Just what's in this --

MR. LLOYD: Well, what's the relevance of it then?

THE COURT: I'll have to look at it.

(Mr. Panosh handed the exhibit to the Court.)

MR. LLOYD: As I recall, the insurance company executive -- or the insurance company person testified that they had paid out on the claim \$53,000 or something like that. My recollection --

THE COURT: Is that related to any of the matters in here?

MR. PANOSH: Yes. The relevance is that if you look on about the third page, there's a summary, right here. (Indicated.) His residence is worth about 60 to 70 thousand dollars. The entire contents is probably 60 to 70 thousand dollars. And he files a claim of \$247,000.

MR. HATFIELD: What did Ronnie have to do with this claim?

MR. PANOSH: This case is all about his attempts to obtain monies as a result of Patricia's death. And this just is more and more part of that overall conspiracy to defraud insurance companies as a result of her death.

THE COURT: All these are signed by Ted?

MR. PANOSH: Signed by Ted, yes, sir.

THE COURT: Overruled.

Proceed.

(Proceedings continued in open court.)

Q Showing you then State's Exhibit Number 110 --

MR. PANOSH: Your Honor, we'd move that to be introduced.

THE COURT: The Court'll --

MR. LLOYD: Object, Your Honor.

THE COURT: The Court'll allow the introduction of State's Exhibit Number 110. I would instruct the jury that this piece of evidence that's coming in in regards to Ted Kimble, and you must not consider it against Ronnie Kimble, unless you find the State established beyond a reasonable doubt that there was a conspiracy and that Ronnie and Ted Kimble were co-conspirators, and it would be relevant only for that purpose against Ronnie Kimble.

Q Now, in the course of your duties, did you request from Theodore Kimble certain financial statements?

A That's correct.

Q And is one of them his tax returns?

A That's correct.

Q Showing you then State's Exhibit Number 111.

MR. LLOYD: Your Honor, we'd anticipate that it would be moved for admission, and would object at this time.

THE COURT: Overruled.

Q And is State's Exhibit Number 111 the 1995 tax returns of Theodore Kimble, as submitted to your company, at the request of your company's attorneys?

A That's correct.

MR. PANOSH: We'd seek to introduce Number 111.

THE COURT: The Court'll --

MR. LLOYD: Objection, Your Honor.

THE COURT: -- allow the introduction.

Q Now, in the course of your investigation, did you prepare a report, sir?

A Yes, sir, I did.

Q And in the report, does it detail your meeting with him on October the 16th?

A Yes, sir.

Q And as a result of your interview, does your report indicate what steps you took to follow up his -- the statements he made to you?

A Yes, sir.

Q Specifically, what did you do?

A After I met with Mr. Kimble, I obtained a financial release from Mr. Kimble and went to the various banking institutions and spoke with the bank managers there. And I also spoke with some of the people that he had named in his statement, his brother-in-law and people of those nature.

Q On the second page of your report, did you identify the

persons that he --

MR. LLOYD: Well, Your Honor, I must object to this constantly referring back to the report. He can ask the witness questions. He can testify to what he did. But this reference to the report is completely irrelevant. I don't know what he put in the report.

THE COURT: Have you been furnished a copy of the report, sir?

MR. LLOYD: We may have it, Your Honor, this report. I don't know.

MR. PANOSH: I can get him another copy real quick, Your Honor.

MR. LLOYD: But, Your Honor, if he stated in the report that the moon is made of green cheese, would we allow that testimony into court here?

THE COURT: The Court --

MR. LLOYD: I mean, certainly Mr. Panosh is entitled to ask him questions. If he doesn't remember and he says he doesn't remember, he can refresh his recollection by referring to the report. But that's all that the report serves to do, Your Honor.

THE COURT: Overruled.

MR. PANOSH: Do you want my copy?

(Mr. Lloyd shook his head from side to side.)

Q Did you detail the persons that Theodore Kimble

identified as the persons that would support his statement on October the 16th?

A Yes, sir.

Q And who did you detail as persons that he indicated would support his statement?

A James Ogburn, O-g-b-u-r-n, supposed to be a co-employee who worked with Ted; Ron Kimble, Ted's father; Reuben Blakley, Ted's brother-in-law; and Mike Chambers, Ted's supervisor at Precision Fabrics.

Q As a result of the information that you received from Mr. Kimble, did you on October the 16th begin to interview the people that he made reference to?

A That's correct.

Q And who did you interview on October the 16th?

A I interviewed Reuben Blakley, Ted's brother-in-law; Mike Chambers, Ted's supervisor at Precision Fabrics; James Ogburn, the co-employee. And I believe that's -- Let me see here.

(Time was allowed for the witness.)

A I also interviewed many of the -- Susan Kirkpatrick, the branch manager from NationsBank; Marie Brown, the secretary at the South Elm Street Baptist Church; a Gail Stone.

Q Is that one of the individuals that Theodore Kimble identified to you as being a friend of Patricia's?

A That's correct. Supposedly, Patricia lived with Gail before Ted and Gail got together -- or Ted and Patricia got together.

I also interviewed a coworker of Patricia's at Cinnamon Ridge Apartments; and Bill Hawkins, who's the maintenance man for Cinnamon Ridge Apartments.

Q And was that based upon information that Theodore Kimble gave you?

A That's correct, based on in the statement, he had indicated that Patricia was supposed to leave work early, in order to cut the grass.

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

CROSS-EXAMINATION by MR. HATFIELD:

Q Mr. Reilly, you have a very large notebook up there. Is that your case file in the Theodore Kimble matter?

A Yes, sir.

Q Mr. Reilly, you are a trained investigator in the insurance industry, aren't you?

A Yes, sir.

Q And it was your assignment by your company to learn all the relevant details of the claim that was being made in the aftermath of Patricia's death and the fire, by Ted Kimble, weren't you?

A Yes, sir.

Q Now, if you had determined that Mr. Kimble had

intentionally burned the dwelling, would that have had any bearing on whether Maryland Casualty would pay the claim?

A Yes, sir.

Q So, among other things, since there was a fire, it was your intention to determine if that fire had been intentionally set by the insured or someone acting at his direction; is that right?

A That's correct.

Q Now, ultimately, the claim was paid, wasn't it?

A Yes, sir.

Q And that is in large part because you did not determine that Ted Kimble was responsible for burning his insured premises; isn't that right?

A That's correct.

Q But you certainly made a very thorough evaluation of the situation before that claim was paid, didn't you?

A Yes, sir. Based on the information I had, yes, sir.

Q Well, you had as much information as you cared to ask for; isn't that right?

A That's correct.

Q No one stopped you from asking questions, did they?

A No, sir.

Q And didn't everyone who you wanted to talk to eventually talk to you?

A Yes, sir.

Q Including Ted Kimble?

A Yes, sir.

Q Now, after you completed your examination of Mr. Kimble on October 16, 1995, you had the transcript of that meeting typed up, didn't you?

A Yes, sir.

Q Did that meeting take place at Lyles Building Supply out on West Lee Street in Greensboro?

A Yes, sir, it did.

Q And I believe you kept a tape running the entire meeting; is that correct?

A Yes, sir.

Q And every time the tape changed, you so indicated with a new recitation of basically the rules of the game for the new tape, didn't you?

A Yes, sir.

Q And Ted acknowledged on every tape that you made that he understood he was being taped and what the purpose of the interview was?

A That's correct.

Q But that interview was not under oath, was it?

A No, sir, it was not.

Q And you had not asked Ted Kimble to swear to tell the truth or to certify at the end of his statement that he had told the truth, had you?

A If you don't mind, let me just check.

(Time was allowed for the witness.)

A No, sir, I did not have him swear to tell me the truth or confirm that he had told me the truth at the end of the statement.

Q So he did not at any time certify under pain of perjury or other civil sanctions that he in fact was telling the truth, did he?

A No, he did not.

Q On the other hand, part of your task was to judge his demeanor and to try to determine if he was being honest with you in the questions that you asked; isn't that right?

A Yes, sir.

Q And you did make a judgment along those lines, didn't you?

A I can't -- I don't want to say I made a judgment based on whether or not he was telling me the truth, because I can only go by whatever facts I determine from his statement, and then verify the facts that he gives me, before I can determine whether or not he's telling me the truth. So, you know, I hesitate to answer that I made judgment in reference to whether or not he was being truthful at the time I took the statement.

Q All right. Now, would you tell the members of the jury, other than arson, which you've already mentioned, what

other factors might have contributed to Maryland Casualty not having been ultimately obligated to pay Mr. Kimble's claim. Could there have been another factor that would have deprived him of the right to collect proceeds?

A If during the process of the claim, he committed insurance fraud in any way, it would void out his policy and limit our ability to pay, I guess. If he committed the arson, or if he co-conspired (phon.) with somebody, in order to commit the arson, if he had anything to do with the arson itself, then we wouldn't be responsible.

Q So, if after you investigated this claim, you determined that there was substantial evidence that he had committed arson, you would have recommended to your company not to pay the claim?

A That's correct.

Q And during the course of your investigation, if you thought there was substantial reason to believe that he was in some way misleading the company or otherwise attempting to defraud the company, you would also advise the company not to pay; is that right?

A I only hesitate because it's -- because it is an arson investigation, with a high exposure, and because of the situations that involved it, there is -- there are circumstances that we would pay a portion, even though we felt like there might have been some type of fraud involved.

I'm -- obviously, if we felt -- if we proved that he burned his house down, we wouldn't have made a payment. On the other hand, if during the process of the claim, he submitted a document that may have been altered or may have been a fraudulent document, in some situations, we may deny the whole claim, based on that one document.

In this particular situation, things could have arose that we might have had a right to deny the claim, but we chose not to, based on the circumstances involved.

Q All right. Now, when you finished doing this interview that you've been testifying to, who typed it up?

A A company, a transcription company.

Q So you had nothing to do with actually putting the words on the paper?

A No, sir, I did not.

Q So you're not the one who put "Laughs" in parentheses here and there through the -- this thing --

A No --

Q -- are you?

A No, sir, I did not.

Q And so, when Mr. Panosh asked you, did he laugh at a certain point in time, that would have been because the stenographer had put the word "Laughed" in parentheses; is that right?

A Yes, sir.

Q Now, in fact, you would not characterize Mr. Kimble's attitude during this meeting as flip or nonchalant or anything like that, would you?

A He wasn't flip. I guess nonchalant is relative. I'm

--

Q Well, he didn't burst out laughing at inappropriate times, did he?

A No.

Q Wouldn't it be fair to say that the laughter that's recorded in the transcript is basically a sort of a laughter where nervous facts are concerned, such as wanting to go to a church where people were younger, rather than the old crowd that went to his father's church, those kinds of things?

A I don't know if it would be nervous. I mean, that was the period of time that he laughed. I don't -- I have no way to know if it was out of nervousness or --

Q Did you feel that he was showing disrespect toward anyone living or dead when he laughed?

A I don't -- no.

Q Now, you were asked about a proof of loss, and it was admitted into evidence, but whether that proof of loss was allowed by the company was not your decision, was it?

A I'm sorry? I'm sorry?

Q You have said that there's a proof of loss that's been

admitted into evidence that was kept in the usual course of business at Maryland Casualty, haven't you?

A Yes, sir.

Q And it was admitted, after you identified it, into evidence, wasn't it?

A Yes, sir.

Q But it wasn't allowed because of any decision that you made, was it?

A No.

Q You didn't approve this claim and you didn't disapprove this claim, did you?

A That's correct.

Q What you did was, submit the information that you were able to gather to your superiors, and they made the call, as to whether to pay the claim?

A Right. We had conferences, but you're right.

Q Now, when you did make your report, you reported that there was no indication of arson, didn't you?

A Pardon me?

Q You reported that you couldn't demonstrate that arson -- that Ted was responsible for burning the property, didn't you?

A You asked two questions. I didn't say anything about whether or not there was an arson or not an arson. I mean, I think it was understood that it was an arson that burned

the house down. I did report that I had no evidence that Ted burned the house down.

Q Now, did you make any effort to actually determine Ted Kimble's whereabouts on October 9, 1995, other than just ask him?

A Ted Kimble's, yes, sir.

Q What else did you do, besides ask Ted Kimble?

A Well, after I took the statement, I gave him an opportunity to tell me everybody that -- to list the people that he had spoke to during that day, that he was with during that period of time, so that I could confirm what he was telling me as being truthful.

Q Now --

A And he did, he listed two employees that he was with, that worked for the lumber yard. And then he told me that he went to his mother's house to drop the dog off, and then he went over to his shop at the fabric warehouse. And he gave me the list of all the supervisors and the people he spoke to there.

Q Did you --

A I did follow up, by talking to the two employees that he worked with, because they're the ones that gave me the name for Lyles. And then I followed up by talking to the employees at the fabric shop, because they were the ones that he listed as being witnesses to where he was at after

6:00 o'clock at night.

Q And after you talked to the people at the fabric company, did you decide that he had in fact been at the fabric company that day?

A That's correct.

Q Do you know what time he arrived?

A I -- without looking at the statement, I believe it was 6:00 o'clock. It confirmed the information he had given me.

Q And after talking to a couple of his coworkers, you were satisfied that he spent the day at his business premises; is that correct?

A That's correct.

Q And so, you did not feel that there was any cause to pursue the question of whether or not Mr. Kimble himself had had some hand in the arson that had been done at his wife's house?

A Well, not necessarily some hand in it, but did he physically do it, at that point in time, I felt like he could not have physically done it himself, because I verified that he was at -- I verified his presence from 8:00 o'clock in the morning to at least 8:00 o'clock at night.

Q Well, did you talk to Mr. Ogburn at his place of employment?

A Was it James Ogburn?

Q Yeah.

A I have to look at my notes. I know I spoke to two of Ted's employees, but I'm not sure exactly which two it was.

Q Did you talk to a middle-aged black gentleman --

A Yes, sir, I did.

Q -- named Mr. Ogburn?

A Okay. Yes, sir, I did.

Q Did Mr. Ogburn tell you that during a substantial part of the day --

MR. PANOSH: We'd object, please.

MR. HATFIELD: Well, it's part of his report.

It's kept in the routine course of business.

THE COURT: Sustained.

Q After talking to Mr. Ogburn, you concluded that Ted Kimble had not been away from the business at any time; is that right?

A Yes, sir.

Q Now, did you talk to Steve Swaney?

A I'm not sure. Can I look at my report?

Q It's up to you.

(Time was allowed for the witness.)

A I'm not sure. It's not in my report. I'm not sure if I did or not.

Q So the only person who was an employee at Lyles who you talked to was Mr. Ogburn?

A Yes, sir.

Q And as for -- and tell me again, you do not know whether Mr. Ogburn spent the whole day at Lyles or not --

MR. PANOSH: Objection, please.

Q -- based on your interview with him?

MR. PANOSH: Object, please.

THE COURT: Sustained to the form.

Q Did you ascertain from Mr. Ogburn whether he had an opportunity to observe Ted Kimble throughout the period of time from the early morning hours through approximately 5:30 or 6:00 p.m. that night?

A I remember that after talking -- Mr. Ogburn being the middle-aged black gentleman, I do remember speaking to him, and I do remember that after having a conversation with him, I was satisfied that Ted was at Lyles throughout the day.

Q But after having the conversation with Mr. Ogburn, were you satisfied --

MR. PANOSH: We object, please.

MR. HATFIELD: object before I ask the question.

MR. PANOSH: Object.

THE COURT: Sustained.

MR. HATFIELD: May I ask the question?

THE COURT: Rephrase it.

Q After you talked to Mr. Ogburn, were you satisfied that Mr. Ogburn had been continuously in a position to observe Ted Kimble throughout the entire day or not?

A Yeah. Unfortunately, I don't have -- I can't find -- I can't find the part of my statement where -- in my report where I spoke to Mr. Ogburn. So I'm not sure.

I was satisfied when I got finished speaking to him that Mr. Kimble was at the location, because that when I -- when I left Lyles that particular day, I was satisfied that the information he had given me concerning the people who he had spoke to while at Lyles confirmed that he was at Lyles from 8:00 o'clock in the morning till 5:30 at night, so I knew -- because he had -- he had people to document his presence during that period of time, I didn't have any additional need to confirm any more information on his presence between 8:00 o'clock and 5:30.

Q Well, who documented his presence?

A Well, obviously the people who he -- whose name he gave me. I knew that James Ogburn was one of them.

Q His dad was one of them, wasn't he? Mr. Ron Kimble, Sr. was one of them, wasn't he?

A Well, he couldn't, because he wasn't there on the -- on the day it happened, according to Ted. He was at a convention up in Liberty University, I believe.

Q Well --

A And he confirmed that himself, when I spoke to him at a later date. So his dad was not one that would confirm that Ted was at Lyles the entire day.

Q Well, you have a report up there that's about three inches thick. Somewhere in that report, do you have the information of who were able to verify to you, to your satisfaction, that Ted Kimble was there all day?

(Time was allowed for the witness.)

A No, I don't have it written down. I don't have it documented in my report.

Q Now, during your interview of Ted Kimble on October 16, 1995, you asked the questions, didn't you?

A Yes, sir.

Q And as you have already testified, on Page 7, you asked the question "Were you at your house?" And the answer was "Yes." And then you asked "Is there any particular family member," and there was a pause, and then you said, "I mean, your family or your wife's family, what, like your brother, your father?" And then Ted Kimble answered the question, didn't he?

A Yes, sir.

Q Now, as a result of his answer to that question, did you understand that he had a brother?

A I'm not sure. I mean, I would think so.

Q Well, he said, "My brother, my mother and all of them had been arranged. They congregated there." You understood he had a brother, didn't you?

A Well, I would think I would, sure. I mean, I didn't

follow up by asking questions about the brother or the sister or anything, but --

Q Then you asked -- All right. Then after he --

MR. PANOSH: May he finish, please?

THE COURT: Finish your answer, sir.

MR. HATFIELD: I believe he did finish.

THE COURT: Have you finished?

THE WITNESS: Uh-huh.

THE COURT: Proceed.

Q You then asked, was any of her family members there, as well, didn't you?

A Yes, sir.

Q So you were satisfied that you knew who the members -- direct members of Ted's family were, now you wanted to know if Patricia's family were represented, didn't you?

A Yes, sir.

Q And you received a satisfactory answer to that question, didn't you?

A Right.

Q Now, going back to Page 37, you asked Ted Kimble to basically identify his father-in-law to you, and he identified Richard Blakley and told you he lives in Pleasant Garden, didn't he?

A Yes, sir.

Q So that was in -- his furnishing you with the

information Richard Blakley being his father-in-law was in response to your question, wasn't it?

A Yes, sir.

Q And you -- on the previous page, Page 36, you asked him about her brother, and you got some feedback from him, didn't you?

A Yes, sir, I did.

Q And when you asked her -- asked about whether -- who some of Patricia's friends were, on Page 34, you got the name Gail Stine, or actually it probably was Stone; isn't that a fact?

A Yes, sir.

Q And had you wanted to talk to Gail Stone, I believe it is, you could have done so, couldn't you?

A Yes, sir.

Q And when you asked about another close friend of Patricia's, on Page 33, you were told the answer was Melissa, weren't you?

A Yes, sir.

Q And when you wanted to know the status of Patricia's parents' marriage, you found out that they were divorced, on Page 32, didn't you?

A Yes, sir.

Q And you found out the circumstances of their getting married more or less in secret up from Danville, Virginia,

didn't you?

A Yes, sir.

Q And that was in response to your question?

A Yes, sir.

Q And you found out that -- on Page 30 that she was a couple of years older than Ted, didn't you?

A Yes, sir.

Q And you found out who Karen Hall, one of the insurance agents, was, didn't you?

A Uh-huh. Yes, sir.

Q And it was because you asked, wasn't it?

A Yes, sir.

Q You asked him about business records, and he told you that he had an accountant, he identified that accountant, didn't he?

A Yes, sir.

Q Then you asked him about owning a timeshare, and he told you all about it, right?

A Uh-huh. Yes, sir.

Q As much as you wanted to know?

A Uh-huh. Yes, sir.

Q And in fact, he was very relaxed while he was telling you about that, wasn't he?

A Yes, sir.

Q Said he was afraid he sounded like a salesman?

A Correct.

Q And on Page 11, when you asked him if he had any regular employees, he told you he had a person named Tim, didn't he?

A Yes, sir.

Q What did you do to ascertain Tim's last name?

A I'm not sure.

Q All right. And he told you about an employee named Steve, didn't he?

A Yes, sir.

Q And if I tell you Steve's name was Swaney, that doesn't ring a bell, because you didn't do anything to find out who Steve was, did you?

A I don't know what I did to find out who Steve was. Remember, this report's not a final report, either.

Q So the fact is, with almost no exception that you can think of right this minute, he asked (sic) every single question that you asked him in 40 pages of transcript, didn't he?

A He answered, yes, sir.

Q Now, as a result of these 40 pages of transcript, on the 7th day of March, 1996, Ted Kimble gave a sworn statement to lawyers, didn't he?

A That's correct.

Q Now, do you have the deposition that he gave on that

date in your file there?

A No, I don't.

Q But that deposition is also kept in the usual course of business for the purposes of this type of claims adjustment, isn't it?

A It is. We didn't have it with our file.

Q Now, are you familiar with the contents of that deposition?

A No, I'm not.

Q Do you know whether or not there are references in there --

MR. PANOSH: We object.

Q -- to Ronnie Kimble?

MR. PANOSH: He's stated that he's not familiar.

THE COURT: Sustained.

Q After submitting your report, and after a deposition of Ted Kimble was taken on the 7th day of March, 1996, at a law office in Greensboro, did you have occasion to read that deposition?

A No, I did not.

Q Did you have occasion to be told by anyone in the course of business at Maryland Casualty what some of the contents of that deposition were?

A Yes.

Q Who told you what the contents of that deposition were?

A Marie Bartello would be the one that would have gave me.

Q So, before the deposition was taken, Maryland Casualty was undecided as to whether to pay the claim; isn't that right?

A There was some concerns that needed to be addressed, yes, sir.

Q But those concerns didn't have to do with whether Ted Kimble was involved in arson, did they?

A They obviously had something to do with whether or not he was involved in it. There was no direct question as to whether or not he did it, or conspired to do it, but there was questions as to whether or not he was involved in it.

Q Isn't it a fact that Ms. Bartello's claims were more oriented to whether or not some of the property loss claims had been somewhat exaggerated?

A That's correct.

Q And really, the issue of arson was history at that point?

A Well, it was never history, but it wasn't addressed.

Q Now, did Marie Bartello at any time tell you that as a result of her knowledge of the contents of that deposition, that Ron Kimble might --

MR. PANOSH: We object, please.

THE COURT: Sustained.

MR. HATFIELD: Your Honor, it's kept in the usual course of the business, and he relied upon it.

MR. PANOSH: Well, that's not the test.

THE COURT: Sustained.

Q As a result of your discussions with Ms. Bartello, did you at any time go back to the Greensboro area and try to meet Ronnie Kimble?

A No, I did not.

Q Now, were you aware that one of the questions having to do --

MR. PANOSH: We object, please.

MR. HATFIELD: Like to ask the question.

THE COURT: Let him finish the question.

Q Were you aware that one of the questions, when the matter was on Ms. Bartello's desk, had to do with appropriate reimbursement to Ted Kimble for basically loss of use or for a substitute dwelling place, while repairs were being made? Are you aware of that?

A Yes, sir.

Q And do you recall that Mr. Kimble had proposed --

MR. PANOSH: We object, please.

Q -- that he be --

MR. HATFIELD: Your Honor, it's in all these records they --

MR. PANOSH: Your Honor, there are three Mr.

Kimbles.

Q Are you aware that Mr. Kimble had proposed --

THE COURT: Which Kimble, sir?

MR. HATFIELD: Excuse me?

THE COURT: Which Kimble?

MR. HATFIELD: Ted Kimble.

THE COURT: All right, sir.

Q -- that Ted Kimble had proposed to be given reimbursement along the lines of what it would take for him to rent and live in his parents' house?

A That was -- that was one of the issues of concern, because when it was presented to us, it wasn't his parents' house. When it was presented to us, it was a place that he found, that he needed -- he wanted to rent, but he wanted to get authority from us to rent it, because of the amount of money. And he said he needed a place like that, because that's what he was used to living in before the fire occurred. He never said anything about it being his father's place or that he was already living in the place.

Q And so, where did he -- once you looked into this, where did he tell you his parents were going to live, while he lived in their house?

A I think it was his sister's trailer.

Q His sister-in-law's trailer?

A No, not his sister-in-law's trailer.

Q Isn't it a fact that he suggested that he would live in Ronnie Kimble's trailer?

MR. PANOSH: Object, please.

THE COURT: Sustained.

MR. HATFIELD: Well, it's cross-examination.

THE COURT: Well, which one are you referring to, Ted Kimble?

MR. HATFIELD: Well, excuse me. I didn't know it was unclear.

Q Didn't Ted Kimble indicate that he wanted to live in his parents' house, and be paid an appropriate rent for a three-bedroom house with a carport, but that -- and when he was asked where his parents proposed to live, they were going to go live at Ronnie Kimble's trailer, while he was in the Marine Corps? Didn't Ted Kimble propose that?

A When it was first presented to us, it wasn't that. When it was first presented to us, it was a place that he found, Ted found, and he wanted to get authority to rent it, as being an individual dwelling. It wasn't until we looked into it and found out that it was his father's place and he was already living there, that we took issue with it, because obviously he was concealing this information.

Once I took issue with it and I talked to Ted about it, both Ted and his father confirmed that his father was going to move out and Ted was going to move in. And his father

and I believe his mother was going to live at a trailer. Now, it was my understanding that it was his sister's trailer. But I never followed up on it, because his father was right there, supporting the fact that he was giving up his house so that Ted could move into it, and he was going to move to this trailer. So I never pursued that any further.

Q So you didn't try to find out whose trailer it was?

A It was pretty much a moot point. The fact was, he was renting it -- according to his father, he was going to move out and rent his -- rent that place to his father.

Q Have you read the deposition that Ms. Bartello took of Ted Kimble?

MR. PANOSH: Your Honor, this has been asked and answered.

MR. HATFIELD: I'd like to ask him --

THE COURT: Overruled.

MR. HATFIELD: -- and see if it refreshes his recollection.

A I did not read the -- no, sir.

Q You did not read this? (Indicated.)

A The examination under oath?

Q Yeah.

A Huh-uh.

Q You didn't read it?

A Huh-uh.

Q Are you familiar with its contents?

A No, I didn't read it, so I'm not familiar with its contents.

Q Okay. Pretty thick thing, isn't it?

MR. PANOSH: We object to questions --

THE COURT: Sustained.

MR. PANOSH: -- when he said he's not read it.

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

Q This is a sworn statement of Ted Kimble, isn't it?

A That's correct.

Q With all of the indices of reliability --

MR. PANOSH: We object, please.

THE COURT: Sustained.

Q Now, when you questioned Ted Kimble about gas, gasoline on the premises, and he admitted to you that there had been a gasoline container in the carport, did he do that? Did he admit that to you?

A He said the garage, I believe, yes, sir.

Q In the garage?

A (The witness nodded his head up and down.)

Q You didn't feel that he had been misleading to you, when he said there wasn't any gasoline in the house, did you?

A Again, I mean, when I take that statement, I don't -- I don't make a judgment based on what he tells me. I make a judgment based on what I can investigate and confirm.

Q And along those lines, did you talk to any of the firefighters or their supervisors, concerning their conclusions about this fire in the aftermath, when you were checking it out?

A I did, yes, sir.

Q Do you remember who you talked to?

A No.

Q Did you know that the -- that there had been a gas can or gas container that had been found inside the house, with most of its contents poured out?

A Yes, sir.

Q And did you know that the initial impression that the fire experts had was that gasoline had been used as an accelerant to cause the fire?

A Yes, sir.

Q So you were fully satisfied, based on just a very brief investigation, that this house had been set on fire unlawfully by some person; is that right?

A That's correct.

Q But once you talked to Ted Kimble up at his business, and heard his explanations for his whereabouts on October 10th, you basically just dropped the idea that he was in any

way accountable for the arson, didn't you?

MR. PANOSH: Object, please.

THE COURT: Sustained.

Q You just -- you didn't pursue him as a likely cause of the arson, after you talked to him on the 16th, did you?

A I investigated the statement he gave me. I checked his whereabouts and confirmed that he was at Lyles and that he was at Precision Fabrics, so that I felt, after that part of my investigation, that he didn't physically set the house on fire, yes, sir.

Q Did you make any attempt to determine what the distance is between Lyles Building Supply and Brandon Station Court?

A I remember I did, but I didn't write it down.

Q Are you from this area?

A No.

Q Where is your home?

A I'm up 30 miles north of Baltimore, Maryland.

Q Had you ever been in Greensboro before?

A Not before -- I have since, but not before this incident.

Q When you were down here to take his statement on the 16th, how many days did you spend in this area to do that?

A It was two, I believe. I believe it was two, two days the first time. I was down here three times after that, or two or three times after that.

Q And you were only down here one time where your task was to interview Ted Kimble?

A Well, I came back again and interviewed him again, when the --

Q And you interviewed him another time?

A When the rental -- the rental issue came up.

Q The rental issue over the house?

A That's correct.

Q Now, did you fly down here from the Baltimore area?

A That's correct.

Q And did you rent a car when you got here?

A Yes, sir.

Q Did you have anybody with you that knew our streets and highways better than you did?

A No.

Q So you never made an effort to determine what the most efficient route over roads between Lyles and Brandon Station Court actually is, did you?

A No.

Q And you don't know how long it would take someone like Ted Kimble to drive home, torch his house and kill his wife, and drive back again, do you?

A No.

Q Would you rule out the possibility that it could take 35 minutes?

MR. PANOSH: Object. He just said he didn't know.

THE COURT: Sustained.

Q So based on your investigation, you have absolutely no idea within what time frame the arsonist, if that arsonist left Lyles and went to Brandon Station Court, how long it would take, do you?

A No.

Q Now, based on what the fire marshals and other investigators told you, do you have any idea how long the perpetrator would have been inside Brandon Station Court, in order to do his misdeeds?

MR. PANOSH: Objection.

THE COURT: Sustained.

Q Well, you're an expert fire -- insurance investigator, aren't you?

A Insurance, yes, sir.

Q Well, one of the huge areas of casualty insurance is fire loss prevention, isn't it?

A Yes, sir.

Q You've investigated fire loss claims before, haven't you?

A Yes, sir.

Q Based on what you know about how this fire was done, and the other crimes that were committed in Patricia Kimble's house, how long would it have taken the

perpetrator, from the time he entered the house, to the time he left the house, to do this?

A No --

MR. PANOSH: Object.

THE COURT: Sustained.

MR. HATFIELD: Your Honor, why can't he answer?

He's an expert.

THE COURT: He's not been qualified as an expert at this point.

Q Do you have an opinion of that?

MR. PANOSH: Objection.

THE COURT: Overruled, if he's got an opinion.

A No. I'm not a fire investigator.

Q Well, can you tell me how long it takes to shoot a woman, pour gasoline on her body, light it and leave?

A No.

MR. PANOSH: We'd object, please.

THE COURT: Sustained.

MR. HATFIELD: I don't have any further questions.

THE COURT: Mr. Panosh?

REDIRECT EXAMINATION by MR. PANOSH:

Q At one point you were asked if you indeed made a recommendation to your company about settlement. Did you make a recommendation?

A Yes, probably.

Q And do you remember what that recommendation was?

A Well, I told them that at this point, we didn't have anything to prove that Ted actually did anything, so we had to make some type of settlement.

Q You were asked in reference to the notations on the transcript about laughter. Did you personally observe that conduct on the part of Ted Kimble?

A Yes, sir.

Q And do you recall that?

A Yes, sir.

Q And based upon your recollections of his demeanor, was that consistent with someone who had just lost his life -- his wife --

MR. HATFIELD: Objection.

Q -- about seven days --

MR. HATFIELD: That doesn't ask him for an observation of demeanor. That asks him to make some sort of judgment.

THE COURT: Sustained.

Q Have you had an occasion to interview other people who have lost their loved ones through recent death?

A Yes.

MR. HATFIELD: Objection.

THE COURT: Overruled.

Q How many times?

A I'm not sure.

Q Many times or just a few?

A Just a few.

Q Based upon those observations, and your observations of Ted Kimble at the time he was telling you these things, what, if any, opinions did you form?

MR. HATFIELD: Objection.

THE COURT: Overruled.

A He was much more relaxed than I was used to.

Q You were asked about the rental agreement, and you said that when it was presented to you, it was presented in a different light. Would you give the details of the way it was -- that rental agreement was originally presented to you.

MR. HATFIELD: Object, unless he says who he -- who presented it.

THE COURT: Overruled.

A Marie Bartello presented it to me. The claim rep presented it to me. And she indicated that --

MR. HATFIELD: Objection. She hasn't testified.

THE COURT: Sustained.

Q In the course of your investigation, did you determine the facts under which the original claim for rental was presented to your company?

A Yes, sir.

Q And did you do that through interviews?

A Yes, sir.

Q And what were the original facts that were presented to your company?

MR. HATFIELD: Objection, unless he says who he interviewed.

THE COURT: Overruled.

A Originally, it was in -- it was presented to my company as being a place that Ted found, that he wanted to move into. I believe it was \$1,200 a month. But he justified that by saying that he was -- it was the type of housing that he was used to, at Patricia's house, and he felt that he should be compensated, so that he could live the same lifestyle that he was living with at Patricia's house.

Q And who was he renting from, in the original information?

A In -- from the rental?

Q Yes.

A It was a company.

(Time was allowed for the witness.)

A Okay. I'm sorry. It was called Ray Hunt's Tax and Account Services.

MR. HATFIELD: Object and move to strike.

THE COURT: Overruled.

MR. HATFIELD: That has nothing to do with this

case.

THE COURT: Well, overruled at this point.

Q Did you say Ronald Fields?

A It was Ray Hunt's Tax --

MR. HATFIELD: Objection.

THE COURT: Sustained.

Q What was the name you said?

A It was Ray Hunt's Tax and Account Services, Jennifer Hall.

Q Okay. And in the course of your investigation, did you speak to Jennifer Hall?

A Yes, I did.

Q And was it her residence that was proposed to be rented to Ted Kimble?

A No, it was not.

Q Can you explain to the ladies and gentlemen of the jury your findings.

MR. HATFIELD: Objection. That's the same thing as testify to what she said.

THE COURT: Overruled.

A She indicated that she had nothing to do with the dwelling --

MR. HATFIELD: Object. It's --

THE COURT: Overruled.

Proceed. Move on.

A She indicated that she had nothing to do with the dwelling, that she was in the rental business, of renting houses and so forth. And Ted approached her and asked her to draw up a deed, or a rental agreement, to show that Ted was renting a property through her agency, and the amount of money per month that he would be paying would reflect, I think it was \$1,200 a month, and that it was through her that he found this rental property, and he would be renting this house through her and her agency. And she indicated that she knew that it was the father's place, and she knew that it was a document that was not a valid document, it was not an accurate document.

MR. HATFIELD: Objection.

THE COURT: Sustained.

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

MR. HATFIELD: Nothing further.

THE COURT: Step down, sir.

THE WITNESS: Thank you, Your Honor.

(The witness left the witness stand.)

THE COURT: We're going to take the afternoon recess, let the jury stretch a moment. It'll be a 15-minute recess. Please remember the Court's instructions.

Everyone remain seated while the jury leaves.

(The jury left the courtroom at 3:00 o'clock p.m.)

THE COURT: Court will be in recess 15 minutes.

(A recess was taken at 3:00 o'clock p.m.)

(Court reconvened at 3:20 p.m. The defendant was present.

The jury was not present.)

(The jury entered the courtroom at 3:21 p.m.)

THE COURT: The State call its next witness,
please.

MR. PANOSH: Yes, sir.

Mr. Hendrix, please.

THOMAS M. HENDRIX, being first duly sworn, testified as
follows during DIRECT EXAMINATION by MR. PANOSH:

Q Would you state your name, please.

A My name is Thomas M. Hendrix.

Q And your occupation, sir?

A I'm associate general counsel for the Life Insurance
Company of Georgia and the Southland Life Insurance Company.

Q You're an attorney by training; is that correct?

A Yes, I am.

Q And in the course of your duties, do you have access to
the records of Life of Georgia?

A Yes, I do.

Q And did there come a time when Life of Georgia took
over Southland Life Insurance Company?

A Life of Georgia's parent company purchased the Southland
Life, so that Southland Life and Life of Georgia are what you

you might call sister companies.

Q In any event, you represent both of those companies; is that correct?

A That is correct.

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

MR. PANOSH: May I approach the witness, please?

Q Drawing your attention then to State's Exhibit Number 2 through 2-D, would you refer to those, please. Do you recognize those as part of your company's business records?

A Yes, I do.

Q And would you identify those for the ladies and gentlemen of the jury, please.

A These several pages constitute an application for life insurance.

Q And on whose life, please?

A Patricia G. Kimble.

Q Okay. And the date of that application and the amount?

A The date of the application is September 12, 1995. The amount of insurance requested is \$200,000.

Q And do you recognize Mr. Jarrell's signature thereon as one of your agents?

A Mr. Jarrell is one of the company's agents. I would not otherwise know his signature, per se.

Q Showing you then State's Exhibits 2-E, F and G, do you recognize those documents as coming from your -- the records

of your company?

A Yes, I do.

Q And would you please identify State's Exhibit 2-F.

A 2-F?

Q The first one.

A 2-E?

Q 2-E.

MR. LLOYD: Well, Your Honor, if we could be heard at the bench.

THE COURT: Yes, sir.

(The witness handed exhibits to Mr. Panosh.)

(The following proceedings were had by the Court and all three counsel at the bench, out of the hearing of the jury.)

THE COURT: All right.

(Mr. Panosh handed exhibits to the Court.)

MR. LLOYD: Judge, one of these is a letter from Steve Bowden, an attorney here in town. The other one is another letter from the company, I'm assuming back to him. I don't know what relevance the letter from Steve Bowden, the attorney, has, especially here in Ronnie Kimble's case. And I don't know what the correspondence back from the company -- sure, they have massive files on I'm sure every one of their insureds. That doesn't mean that it's all admissible in court.

(Time was allowed for the Court.)

(The Court handed the exhibits to Mr. Panosh.)

THE COURT: It's already in evidence, about her blood type and profile.

MR. LLOYD: Well, I'm not so concerned about her blood type and profile, but if it's already in evidence, then what's the purpose of putting this in?

THE COURT: It's just correspondence showing he made a claim on the \$200,000 policy. I think they're entitled to show that, since one of the aggravating factors is pecuniary gain. And this witness can identify it, and whether they can proceed.

MR. LLOYD: Well, if we're just talking about the aggravating factor, Your Honor, wouldn't that more properly come in in the second phase of the trial?

THE COURT: They got to make the case --

MR. LLOYD: Well, I understand that.

THE COURT: -- that she was killed, and motive, as to motive.

Anything you want to put on the record, Mr. Panosh?

MR. PANOSH: Your Honor, that's exactly what -- it's a notice of claim and demand payment by Theodore Kimble three days after she's dead, on the conditional receipt, which is the \$200,000 policy, which was not issued, and Life of Georgia's response, saying why they're not going to pay

it.

THE COURT: The State's entitled to put that in.

MR. LLOYD: Okay.

THE COURT: Overruled.

MR. LLOYD: Would you give them the instruction,

Your Honor?

(Proceedings continued in open court.)

THE COURT: Members of the jury, this evidence, the Court again reminds you that you shall not consider this evidence against Ronnie Kimble unless you first find that there was a conspiracy and that Ted and Ronnie Kimble were co-conspirators, and if you find that, then this evidence will be relevant as to Ronnie Kimble, as well.

Proceed.

(Mr. Panosh handed exhibits to the witness.)

Q Would you identify, first of all, 2-E.

A 2-E is an inquiry from an attorney by the name of Steve Bowden, on October 12, 1995, furnishing notice to Life of Georgia, notice of a claim and a demand for payment, with regard to the death of Patricia Kimble, and inquiry about insurance that was in progress, for which there was a conditional receipt had been issued.

Q Is that State's Exhibit 2 that I've previously showed you?

A This is 2-E.

Q All right. Does that refer to the policy for the application for \$200,000, which is State's Exhibit 2 I've previously showed you?

A Well, it relates to a conditional receipt that was recently given for a new insurance policy.

Q And thereafter, what is 2-F?

A 2-F is a response to Mr. Bowden, and that response does say that a \$200,000 application for insurance had been placed on the life of Mrs. Kimble, on September the 12th, but the company had not been able to make an underwriting decision on that case, because there were underwriting requirements which had not yet been completed.

Q And what is 2-G?

A 2-G is a notice from the company's underwriting department that goes to its district office, in which it relates to the district office that it has determined it will be unable to reach a final decision on this application, and this is because the death of Ms. Kimble had occurred before a blood profile test that was a part of the application requirement could be accomplished, and since that was not accomplished, the company was treating this as a withdrawal, and that the money that had been submitted to the company as a deposit for the premium was to be returned.

Q And again, this relates back to State's Exhibit 2, the application for the \$200,000 policy?

A Yes.

Q Now, that policy was never in effect; is that correct?

A That's correct. It never became effective.

Q But --

MR. PANOSH: May I approach?

THE COURT: Yes.

Q -- your company did have various policies on Patricia Kimble; is that correct?

A Yes.

MR. PANOSH: Your Honor, we'd seek to introduce into evidence 2-E, F and G.

THE COURT: The Court'll allow the introduction.

MR. LLOYD: Object for the record, Your Honor.

THE COURT: Overruled.

Q Showing you now what's been marked for identification as State's Exhibit 112, which is a 12-page document, can you tell the ladies and gentlemen of the jury what State's Number 112 is.

A This is the file of Southland Life Insurance Company for a \$1,000 policy that insured the life of Ms. Kimble.

Q Who is the beneficiary?

A The beneficiary of this policy was Ms. Sheila E. Blakley, who is the mother of the insured.

Q And was that paid?

A I beg your pardon?

Q Was that paid as a result of her death?

A The company has paid the \$1,000 to Ms. Blakley. This policy also includes an accidental death benefit, which when the matters relating to our insurance are concluded will also pay an additional \$1,000 for the accidental death.

Q Okay. Thank you. Showing you now 113, which consists of 50 pages, what is 113?

A 113 is another policy file for the Southland Life Insurance Company for a policy which insured Ms. Patricia G. Blakley Kimble. This policy is for \$25,000. It also includes a \$25,000 accidental death benefit.

Q Total of?

A Total of \$50,000.

Q And showing you 113-A, is that the rider that you've made reference to, accidental --

A That's the --

Q -- death rider?

A -- accidental death rider, yes.

Q Showing you 113-B, a two-page document, what is that, please?

A This is a part of what we call the proof of death or the claim for life insurance, which consists of a copy of the death certificate and a claimant statement, which has been submitted by Mr. Ted Kimble.

Q And he asked for payment on that claim; is that

correct?

A Yes.

Q What date?

A This is on the 19th day of October, 1995.

Q Okay. And 113-C, what is that, please?

A 113-C is what's called a declaration -- well, it's a multipurpose form, but in this instance, it makes a declaration that this particular policy has been lost and was not available at the time the claim was being filed. Ordinarily, a policy is returned, together with a death certificate and a claimant statement. Policy for one reason or another apparently was not available when they filed the claim, so they executed a form which said the policy had been lost.

Q And that also was executed on what date?

A October 19, 1995.

Q By whom?

A That is by Ted Kimble.

Q Showing you then Number 114, which is a 10-page document, is that a Life of Georgia insurance policy?

A Yes, it is. This is a copy of the company's file for a Life of Georgia insurance policy, yes, sir.

Q And the insured is?

A The insured is Patricia G. Kimble.

Q And the beneficiary is?

A The primary beneficiary is Mr. Theodore M. Kimble, and a contingent beneficiary, Ms. Sheila E. Blakley.

Q And the amount of that policy, please?

A This policy is also for \$25,000.

Q And showing you then 114-A, is that another accidental rider -- accidental death rider?

A Yes, it is.

Q Making the total policy is what?

A The total would be a total of \$50,000.

Q Showing you 114-B, what is 114-B?

A 114-B is another copy of the claimant statement or proof of death, making claim under this Life of Georgia policy.

Q Who claimed this \$50,000 policy?

A Ted Kimble.

Q And what date?

A On October 19, 1995.

Q Showing you 114-C, what is that, please?

A 114-C is a similar multipurpose form, which again indicates that -- well, this one is asking for a request of a -- of a policy certificate, which suggests to us that the policy is not available, and it was not submitted as a part of the claim.

Q Okay. And again, that's dated October the 19th, by Mr. Kimble, Ted Kimble?

A By Mr. Ted Kimble on October 19, 1995.

MR. PANOSH: Your Honor, we'd seek to introduce into evidence 112, the \$1,000 policy; 113 and -- through 113-C, the first \$25,000 policy; 114 through 114-C, the second \$25,000 policy.

THE COURT: The Court'll allow the introduction of State's Exhibits 112, 113 through A, B and C and 114 through 114-C.

MR. LLOYD: Object for the record, Your Honor.

THE COURT: Overruled.

Q The total amount of insurance then on the life of Patricia Kimble through your company on the date of her death, October the 9th of 1995, was what, please?

A It would be \$102,000.

Q And \$2,000 would have been going to Ms. Blakley, her mother; is that correct?

A That is correct.

Q And the other \$100,000 would have been designated to which beneficiary?

A It would -- the primary beneficiary would have been Ted Kimble.

Q And that's not taking into account the \$200,000 which was not placed into effect?

A That is correct.

MR. PANOSH: No further questions. Thank you,

sir.

MR. LLOYD: I don't have any questions of this witness, Your Honor.

THE COURT: You may step down, sir.

(The witness left the witness stand.)

MR. PANOSH: Ms. Mize, please. Ms. Wanda Mize, please come up.

WANDA JEAN MIZE, being first duly sworn, testified as follows during DIRECT EXAMINATION by MR. PANOSH:

Q Would you state your name, please.

A Wanda Jean Mize.

Q Ms. Mize, where do you work?

A I work for Life of Georgia and for Southland Life.

Q And your position with Life of Georgia is?

A I'm a senior claims examiner in the individual life claims department.

Q And are part of your duties to handle telephone inquiries by individuals who are customers of those two insurance companies?

A Yes, sir.

Q On or about May the 7th of 1996, did you receive a telephone conversation from Mr. Theodore Kimble?

A Yes, I did.

Q Would you relate that to the jury, please.

MR. LLOYD: Object, Your Honor.

THE COURT: Overruled.

Q Tell the jury what you remember.

A Just that the phone call, the basis was to check the status of the claim, and to tell us that he was now cleared as a suspect, and that we should go ahead and process the claim at that point.

Q And the claim referred to the \$100,000 insurance that Mr. Hendrix just previously testified to?

A Yes, sir.

Q What action did you take?

A At that point, told him that we would have to verify that with the sheriff's department in Guilford County.

Q And what action did you take, please?

A Then I turned around and called the investigator that I had talked to before, and left him a voice mail message to call me back and let me know where the investigation stood.

Q And did he eventually call you back?

A Yes, he did.

Q As a result of the information received, did you pay the claims?

A No, sir.

MR. PANOSH: No further questions.

MR. LLOYD: No questions, Your Honor.

THE COURT: Step down, ma'am.

MR. PANOSH: Your Honor, we'd ask that Ms. Mize

and Mr. Hendrix be excused, so they can return to their duties.

THE COURT: Any objection?

MR. LLOYD: No objection, Your Honor.

THE COURT: You may be excused.

(The witness left the witness stand.)

MR. PANOSH: Mr. Nicholes, please.

MR. LLOYD: Your Honor, Mr. Nicholes was the subject of a motion that we had in this case, and we'd ask that we be heard on that outside the presence of the jury.

THE COURT: All right.

Members of the jury, if you'll step in the jury room, please.

(The jury left the courtroom at 3:42 p.m.)

MR. LLOYD: Judge Cornelius, if Your Honor will recall, Mr. Nicholes and Mr. Pardee were specifically named in a motion in limine that we filed. Basically, though I can't actually forecast what Mr. Nicholes is going to say, he's going to testify as to statements that Ted Kimble made to him.

Now, just to give Your Honor a little bit of background here, Mr. Nicholes, Mr. Pardee and Ted Kimble were involved in a theft ring, Your Honor, where they stole building materials from house sites that were under construction. If I'm not mistaken, they stole items from

Home Depot and Northern Hydraulics. These items were in some cases later resold through Ted Kimble's business.

Mr. Nicholes is testifying under an agreement with the State. So is Mr. Pardee. If -- well, Ted Kimble has already pled guilty to the bulk of these charges, I think to all of them, as far as I know, though there may be a couple that he didn't plead to, but I'm not sure about that.

One of the things that concerns me, Your Honor, is, first of all, we've got the whole backdrop of this theft ring that pretty much has to come out, in terms of any sort of cross-examination we might do on either one of these witnesses. I just don't think we can not get into that area. And that's a problem in and of itself.

But the big problem we go back to once again is that Ted Kimble has, as Your Honor well knows, has asserted the Fifth Amendment. We don't have any basis for cross-examining him. And we've got what we feel like is a very difficult confrontation issue here. Both of these witnesses, as I understand it, are going to testify to some damaging alleged admissions that Ted Kimble gave to them, but also concerned Ronnie Kimble. In the case of Patrick Pardee, I don't have my -- all my notes in front of me, but in the case of Patrick Pardee, a sort of companion witness to Mr. Nicholes here, he makes a statement to the effect that Ted Kimble says to Patrick Pardee something along the

lines of "I had an alibi. I got the job at Precision Fabrics as an alibi." He then goes on to say that -- some statement sort of where he doesn't really admit that he was directly responsible for Patricia's death, but basically puts it off onto his brother, Ronnie, says that Ronnie was the one that killed her, shot her and poured gasoline on her body and burned her up.

Now, the problem I have with that, Your Honor, is at least in part that that statement Mr. Pardee makes is a very self-serving statement. And I know that Mr. Panosh is going to argue that -- he's already advanced his theory before when we talked about this, that this comes in under, if not co-conspirator admissions, then under some hearsay exception. And the problem I have with it, Judge, is that, we've got to -- it's at least in part a self-serving statement. He's putting the blame for the actual death of his wife onto his brother, Ronnie. And I think we have to scrutinize those kinds of statements very closely. They don't bear any sort of indicia of reliability that you would normally consider in a "confession." So that's a -- I think that's what -- that's what distinguishes our fact situation from the cases that Mr. Panosh has cited in the past, the Westbrooks case and any others.

That and the fact, Judge, that we're not trying Ted Kimble here. We're trying Ronnie Kimble. And we cannot

lose sight of that. And we're the ones -- Ronnie Kimble is the one with the confrontation rights. And I think with respect to Mr. Nicholes and Mr. Pardee, that we're simply being denied confrontation. I don't see how these statements can be in furtherance of the conspiracy. Even if Mr. Panosh is able to argue successfully that they're during the course of the conspiracy, they're certainly not in furtherance of the conspiracy, Your Honor.

Mr. Panosh at one point advanced the theory that went something along the lines of the fact that he was telling -- he was -- Ted Kimble was telling Rob Nicholes and Patrick Pardee these facts about Patricia's death to make them afraid of him, so that they would not give any damaging information against him. Well, of course, the problem with that, Your Honor, is, I think that goes to a whole different conspiracy. You got to remember that there's no question that Rob Nicholes and Patrick Pardee and Ted Kimble were involved in a conspiracy to steal items from residences, building materials, and these other items. So that just -- I think that is a -- while a very creative argument, it just doesn't go to the point here, Your Honor.

These statements are not in any way in furtherance of the conspiracy. So they don't qualify under a co-conspirator exception, and they don't qualify under any other exception. An admission against penal interest, as

Your Honor well knows, you have to find that the declarant is unavailable.

Now, I will concede that based on the case law, when somebody asserts the Fifth Amendment privilege, that's enough to qualify as being unavailable. The problem is, that particular exception, Your Honor, there's a caveat in criminal cases, and that particular exception it's 804(b)(3), if I'm not mistaken. And if Your Honor will bear with me, since my memory is not as good as it ought to be. (Time was allowed for Mr. Lloyd.)

MR. LLOYD: It's contained under the statement against interest. And it says, "A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject him to civil or criminal liability ... A statement tending to expose declarant to criminal liability is not admissible in a criminal case unless corroborating circumstances clearly indicate the trustworthiness of the statement." And I think that's exactly what we don't have here, Your Honor. I think we have self-serving statements by Ted Kimble which essentially implicates his brother, Ronnie Kimble.

And I think the exception itself specifies that we've got to have this indicia of reliability, which we don't have. The confrontation clause itself, when it talks

about a firmly-rooted hearsay exception, what it's basically talking about is reliability, Your Honor. And that's exactly what we do not have in this situation. It doesn't qualify, at least as far as the confrontation clause is concerned, under the catchall. The last one, where they talk about guarantees of trustworthiness, which is the same thing.

And of course, Your Honor needs to take -- keep in mind that the catchall exceptions under 803 and 804, neither one of them are considered firmly-rooted hearsay exceptions. But that doesn't end the inquiry, Judge Cornelius. What we have to do is, we have to determine whether or not these statements are reliable, and they are anything but reliable. I mean, even granted, if you assume in the light most favorable to the State, you've got basically two codefendants here, one not on trial with the other, making a self-serving statement, where he lays off the blame on his -- on the defendant at trial. And that's precisely the kind of situation that the rules and all the case law seeks to avoid.

I would cite Your Honor to a U.S. Supreme Court case. The case preceded the Bruton case. It is Alabama v. Douglas. And in that case, Your Honor, you had what I think is an analogous situation to ours. You had a codefendant who had already been tried, but his case was pending on

appeal. And he had made a statement to investigators, wherein he admitted his guilt, just as -- in part just as Ted Kimble is, but he also said that the codefendant was the one who shot the guard. This wasn't a death case, this was an armed robbery case. And in that case, the court said, even though Alabama said that they were concerned about the confrontation issue, even in Alabama, Your Honor, but how they got around it, the Alabama court got around it by saying that the lawyers had waived the objection when they didn't object specifically to each and every comment as the district attorney read his statement to him.

So you've got the defendant who's already been convicted up on the stand. He reads -- he pleads the Fifth. The DA starts, "Isn't it a fact, Mr. Witness, that you said such and such?" And he gets it in that way. Of course, after each statement that the DA read to him, the defendant takes the Fifth, the earlier defendant. And the U.S. Supreme Court said that you can't do that. There is no confrontation. They analyzed it on confrontation grounds, and that's how they excluded it.

And if you would, Your Honor, I have that case here, and if you'll just bear with me for a minute, I will hand it up.

(Mr. Lloyd handed documents to the Court, and time was allowed for the Court.)

THE COURT: Mr. Panosh?

MR. PANOSH: Your Honor, Mr. Lloyd's statement of the facts are essentially correct. After the death of Patricia Kimble, the codefendant, Theodore Kimble, entered into a conspiracy with Mr. Nicholes and a separate but overlapping conspiracy with Mr. Pardee to go out and steal property. As a result of that, he was charged with approximately 30 breaking and entries and larcenies. Most of these were from homes under construction and businesses under construction. And that is the nature of the relationship of this witness to Mr. Theodore Kimble. We don't intend to get into great detail about that. I would agree that at some point in cross-examination, counsel would have the right to inquire as to the details of that, if they feel it's appropriate for impeachment of this particular individual.

We need to establish that he had a relationship with Theodore Kimble, because, among other things, Theodore Kimble told this witness that if this witness went to the police about the activities they were involved in, he would kill him. That this witness will testify that Ted always carried a Glock pistol; that this witness can testify that he saw some media account of the death on the one-year anniversary, and thereafter, he approached Ted and confronted him and asked him if he had anything to do with

it, and he said, "Yes, I did. Now are you happy?" And the witness later asked him how it was accomplished. He said, "Ask me no questions and I'll tell you no lies."

He went on to say at a later time he had forged his wife's signature on the insurance policy, that he was angry about not getting the money. He elaborated that it was because she hadn't taken the physical. He bragged about the fact that law-enforcement officers can't arrest him. If they had anything on him, they would have arrested him already, that the law was too dumb to figure out what had happened, because he reported some jewelry taken, but in reality, none had been taken.

On another occasion, he did admit that he had -- he was responsible for the death of his wife, but again told the witness not to ask any more, and thereafter threatened that if he told, he would kill this witness, and he said, "As you already know, I won't get caught."

At one point, he was -- in admitting what he had done, he admitted that he was involved in his wife's murder. He said that the witness didn't understand, and he started crying and said that when he was a little boy, that his father had beat him and his mother.

The witness also told -- Ted also told the witness that he wouldn't make a very good criminal, because he opened his mouth too much. And there were similar threats

to the witness, if in fact he revealed the information.

May I approach?

(Mr. Panosh handed a book to the Court.)

MR. PANOSH: In State v. Barnes, Your Honor, this same issue came up. In that particular case, one of the codefendants made a statement to a witness, or made a series of statements to the witness that said it was a three-person secret. And Your Honor, I'm reading now from the decision at Page -- I believe it's the bottom of 215, where they start saying, "With respect to Blakney's statements, he said that it was a three-person secret, and we F blank, blank, blank upped the police." They found that these statements did fall within the 804(b)(3) exception, which is a statement against penal interest.

Now, Your Honor, we would submit that the statements of Theodore Kimble are definitely statements against penal interest. He is admitting that he is responsible for the death of his wife. I can't imagine any statement that is more clearly against penal interest.

And then, Your Honor, we have a lot of evidence which you've heard over the past ten days. First of all, we have the statement of Mitch Whidden, which clearly tells Your Honor what the scope of the conspiracy was, that Ronnie and Ted entered into this conspiracy to kill her for insurance money. And we have all this insurance

information, that he tried to file a \$200,000 application on her just before her death, that there was \$100,000 in effect on her, that she made all these statements to her friends that she didn't understand why he was acting this way, why he wanted all this money. There was ample insurance coverage, she didn't understand why he wanted more insurance coverage. And the court -- those are the corroborating circumstances that we show that this is clearly under 803 -- 804(3) -- excuse me, (b)(3), a statement which tends to expose the declarant to criminal liability and which has indications of trustworthiness through the other evidence the State has presented.

I've held these statements to toward the end of our case, so Your Honor could see the whole picture here, and that we would submit this is ample indications of trustworthiness.

In Barnes, they went on to hold that those statements were also admissible in the course of the conspiracy. So we would ask Your Honor to consider and rule that they're admissible, not only as a declaration against penal interest, but also a statement in the course of the conspiracy.

Now, the North Carolina law is not real -- there's not a great deal of law in North Carolina about conspiracy, but when you find a case, as in the decision I've handed up

before you, the Barnes, they always refer back to the federal decisions. And as you start to research the federal decisions, you found that they continually say that the scope of a conspiracy should be broadly interpreted.

In a 1994 decision called U.S. v. McMauney, it's before the Eighth Circuit, they specifically said that this type of statement should be allowed and that the exception should be broadly interpreted.

In U.S. v. Carr, another Eighth Circuit decision from 1995, they said simply the description of the crime could be admitted. The defendant in the case said, "This is just a narrative. The co-conspirator was just talking about what happened. It wasn't in furtherance of the conspiracy." And in Carr, they said a description of the crime is admissible.

In U.S. v. Shores, a First Circuit decision from 1994, they said that statements made to a third party are in furtherance of the conspiracy if they seek to involve a third party, or in any way cause the third party to assist in the conspiracy. And when Ted tells this witness, "If you go to the police with what you know, I'll kill you," those are statements intended to assist in the conspiracy and intended to cover up the conspiracy.

In U.S. v. Escobedo, a 1994 decision from the Eighth Circuit, any statements which tend to identify a

co-conspirator is admissible.

In U.S. v. Powers, from the Seventh Circuit in 1996, they said the statement need not be made exclusively or even primarily in furtherance of the conspiracy. Statements made in an attempt to get more information about the government's conduct and seizing the guns and the narcotics in this particular case were statements that should be admissible as part of the conspiracy.

And also in that case, they said statements made to co-conspirators to frighten them and keep them in line were also admissible.

In Bazemore, which is the Eleventh Circuit, from 1994, that's Georgia, they again say there has to be a liberal standard applied to determine whether statements are made in furtherance of the conspiracy. And in that particular case, one of the co-conspirators said that the other co-conspirator had committed the murder. And his statements were, "Jimbo had gotten down. Jimbo had graduated." And they held that that was within the course of the conspiracy, because it was intended -- tended to identify Jimbo, that is, the defendant, as being the person who had committed the murder.

In State v. Walls, which is from our D.C. circuit, 1995, statements of a witness simply giving background information about other co-conspirators was admissible.

And in that case, they have a long discussion, in which they talk about the course of the conspiracy. They say, "The conspiracy exists until each of the co-conspirators has withdrawn and shown their affirmative attempts to withdraw, or until all the co-conspirators are in custody and there can no longer be a conspiracy." And I believe that is the law as adopted in North Carolina. As long as there is one or more conspirators at large who can act in furtherance of the conspiracy, it is still in the course of the conspiracy.

There are more decisions from the Eighth Circuit and the Tenth Circuit, and I could go on through all of those, but Your Honor, we submit that the case that we handed you, Barnes, clearly shows that these are admissible, because they are declarations against penal interest, he's admitting a murder, and they're corroborated by every other piece of evidence we've put before Your Honor.

MR. LLOYD: Judge, if I could just address a couple of things that Mr. Panosh said very briefly. First of all, Your Honor, the real test here is not in the course of the conspiracy, it's whether or not these statements are in furtherance of the conspiracy. And that's the test that Mr. Panosh can't pass. And he said something about these threats that Ted Kimble allegedly made to the witness, but Your Honor, those go to the theft conspiracy. They don't go to the murder conspiracy. He wasn't telling Mr. Nicholes or

Mr. Pardee "I'm going to kill you if you say anything about the murder conspiracy." He's saying, "I'm going to kill you if you go to the police with any evidence on this theft conspiracy." And that's borne out completely by their statements.

So that's the real sticking point, as far as the admission of these statements go.

And I would say, Your Honor, finally in closing, just to make it clear to the Court, Mr. Pardee, at least given his statement that Mr. Panosh has given to us, would say this: He would say that he was talking to Ted Kimble, and he said Ted said he -- said that he thought that law enforcement was closing in on him. He said that he had gotten a part-time job at Precision Fabrics so he would have an alibi. "I asked him" -- this is Mr. Pardee -- "I asked him, 'An alibi for what?' He answered, 'For Patricia's death.' I asked him if he killed Patricia and he said, 'No. Ronnie did it.'" And Your Honor, that's a very difficult statement for us. I mean, we don't have any confrontation against Ted Kimble. He's asserted his Fifth Amendment privilege, as he has every right to do. And we're simply left out in the cold, when it comes to exposing to the jury the nature and why he would make such a statement, if in fact he did.

So I would ask Your Honor to consider all that and

rule the evidence of both Mr. Nicholes and Mr. Pardee inadmissible.

THE COURT: The prejudicial aspects, the probative versus prejudicial, would not apply to this defendant, it would apply to Ted Kimble, the statements that are being made, so it's a weighing process that --

MR. LLOYD: Well, Your Honor, we did raise that in our original motion in limine, and we're not abandoning that. I haven't argued it. But I think certainly there's -- all evidence has to be filtered through that sieve. I don't think it's our strongest argument here, because I don't think this evidence is --

THE COURT: Is your argument based on confrontation? Is that what you're basing it on?

MR. LLOYD: Yes, sir, primarily on the confrontation, and the fact that it's hearsay. We don't think that it qualifies under any exception to the hearsay rule. We don't think it qualifies under the co-conspirator. We don't think it qualifies as an admission against penal interest, not under the standards set. And then finally, Your Honor, under confrontation. And then we think it fails on a 403 analysis.

Thank you.

THE COURT: What other statements did he make in regards to Ronnie Kimble? Any?

MR. PANOSH: The statements made by Theodore Kimble to this witness did not involve Ronnie.

THE COURT: None at all?

MR. PANOSH: Well, there was one about Ronnie had an alibi, but I don't seek to introduce that.

THE COURT: And the limit of your examination of this witness as to the conspiracy that he and Ted had with regards to stealing property with a third party?

MR. PANOSH: I'm going to make that very brief, just to establish the relationship.

THE COURT: Is that the extent of how far you intend to go with that?

MR. PANOSH: I'll ask him whether he --

THE COURT: You're not contending that Ronnie was a co-conspirator in that theft ring, are you?

MR. PANOSH: No, Your Honor. I think that's totally separate. I think that simply shows the relationship of this witness to Theodore Kimble and why he would take -- undertake to trust him or undertake to tell him these things.

MR. LLOYD: And Your Honor, of course, as we've stated earlier, we feel like we have to get into that, in terms of cross-examination, because he is testifying pursuant to a plea agreement, and the plea agreement encompasses those charges that he incurred as a result of

being in the theft ring with Ted Kimble.

THE COURT: You will cross-examine him on that, I'm sure, as to credibility.

MR. PANOSH: But, Your Honor, we refer you back to the Shores, the 1994 decision, when they say what is in furtherance of conspiracy, and they say if it seeks to involve a third party, or in any way to assist in the conspiracy. And by telling him not to go to the police with the information he has about the murder, that is soliciting him not to -- that is soliciting him to assist in the conspiracy. And as the decisions have said, it doesn't have to be strictly in furtherance of the conspiracy, it's any conduct which is intended to promote the conspiratorial objectives. And that certainly is -- keeping it from the police would be intending to promote the conspiratorial objectives. But I think our strongest exception is here definitely a declaration against penal interest and definitely corroborated by other evidence.

THE COURT: Okay. The Court's going to find that based upon the statements made to the Court, without the Court having heard the evidence -- and I don't know what the synopsis of the evidence will be as regards to this particular witness -- would find that these statements are being admitted as exception to the hearsay rule under the 804(b)(3) exception, statements against interest, that at

the time the statement was made, that it tended to subject the declarant, Ted Kimble, to criminal liability, and that there is -- the State has presented corroborating evidence or circumstances indicating the trustworthiness of this particular statement, that it would also come under another exception, that the statement is offered as evidence of a material fact in regards to conspiracy, and the statement is more probative on the point which is offered in other evidence which the proponent can't procure through reasonable efforts, in that the defendant Ted Kimble has exercised his Fifth Amendment rights. The general purpose of these rules and the interest of justice will best be served by the admission of this statement into evidence. The Court will also admit it under the conspirator theory, in that these statements tended to assist and promote the furtherance of the conspiracy through conduct and words. The Court'll allow the admission.

Bring them back.

(The jury entered the courtroom at 4:17 p.m.)

THE COURT: You may proceed.

ROBERT H. NICHOLAS, being first duly sworn, testified as follows during DIRECT EXAMINATION by MR. PANOSH:

Q Would you state your name for the ladies and gentlemen of the jury, please.

A Robert H. Nicholes.

Q And Mr. Nicholes, do you know Theodore Kimble?

A Yes, I do.

Q How do you know Theodore Kimble?

A He was my employer at Lyles Building Materials.

Q Would you keep your voice up when you speak, please.

A Yes, sir.

Q When did you start to work for Ted Kimble?

A I believe it was September. It was in correlation to me starting with school.

Q And this was subsequent to the death of Patricia Kimble?

A Yes.

Q In addition to working with him -- or describe your duties at your place of employment, Lyles.

A Stacking of lumber, building dog houses, storage buildings, assisting customers with loading of lumber, shingles, building materials, etc.

Q And how long did you work at Lyles for Ted Kimble?

A I worked there from the beginning of September, till April 1, 1997.

Q So September of '96 through April of '97?

A Yes, sir.

Q And were you a full-time employee?

A No, I was not. I was a part-time employee. I was -- one of the reasons I worked there, Ted had given me the

opportunity to be able to come and work in between classes. I was in my last semester at UNCG. And it was, you know, within two blocks of the school, so I could come up there and work.

Q Now, did there come a time when your relationship with Theodore Kimble went on to other matters?

A Yes, there was.

Q Would you briefly describe that for the ladies and gentlemen of the jury.

A We just -- we became closer and confided in each other certain things that had happened in our lives. And we began stealing lumber and materials from job sites.

Q And when this lumber -- how was this lumber or materials from job sites stolen?

A It was loaded up into trailers and trucks and vans of -- that were Ted's.

Q And who participated in that?

A Myself, Ted and Patrick Pardee.

Q And was Pardee with you on all these occasions or some of them?

A No, sir, he was -- just some of them. There's some where we were all together, some maybe where they were all together, some where Ted was alone.

Q What was -- what happened to the building materials and lumber that was stolen?

A A lot of the building materials were resold on the premises. Others, there was a storage trailer across the street that was rented by Ted, and he had had the blueprints for a home that he was going to build, and was taking the materials in order to build a home. He was filling up the trailer with the materials he needed.

Q Were there any of the materials that were sold from Lyles?

A That were stolen that were resold?

Q Yes.

A Yes, sir.

Q And as a result of your conduct, you have been charged; is that correct?

A Yes, I have.

Q And you've been charged with multiple counts of breaking and entry and larceny; is that correct?

A Yes, 28, 30.

(Mr. Panosh showed an exhibit to Mr. Lloyd.)

Q And did there come a time when you reached an agreement with the State of North Carolina?

A Yes.

MR. PANOSH: May I approach the witness?

THE COURT: You may.

Q I show you Number 115. Would you look at that, please.

A Yes.

Q What is 115? First of all, do you recognize your signature on the second page?

A Yes, I do.

Q Is 115 an agreement to testify in this case?

A Yes, it is.

Q And did you have an attorney to prepare that agreement?

A Yes, I did.

MR. PANOSH: Your Honor, we'd seek to introduce into evidence 115.

THE COURT: The Court'll allow the introduction of Exhibit 115.

Q What is the date of that agreement?

A April 18, 1997.

Q On April the 18th and subsequent to that date, did you -- were you interviewed by officers of the Guilford County Sheriff's Department?

A Yes, I was.

Q And also the State Bureau of Investigation?

A Yes.

Q And did you give them information pertaining to the theft that you were involved in?

A Yes, I did.

Q In the course of the time that you knew Theodore Kimble, did there come a time when you became aware of the fact that his wife had been killed?

A Yes.

Q Would you explain that to the jury.

A As Ted and I during this theft ring, I guess, for lack of better words, we became very close. We were with each other from, you know, 7:00 o'clock at night until 3:00, 4:00, 5:00 in the morning sometimes. He would say that he was spending the night at Patrick's, tell his parents that, and then we'd really all be out at night. We -- I guess we got to a point where we had confided enough, and I'm -- I mean, I've done a lot of things that I'm not really proud of. I've made some mistakes. But we began to get to a point where Ted really confided in me and I guess began to trust me or needed someone to talk to.

And October -- my birthday is October 8, so I can recollect the day pretty well, the -- it was near the anniversary of Patricia's death, and the news crews came around. And that was the first time I learned of it, was about a month after I started working there. And as the months progressed, when we got closer, more towards November, December, I was interested and heard more about it, and had asked questions, just for my own well-being, and I'd become close with Ted. And I hindered him and asked him a lot of questions. And at first, you know, "I have an alibi. No, I didn't," and --

MR. LLOYD: Well, object for the record, Your

Honor, as to what Ted Kimble said on those occasions.

THE COURT: Objection's overruled.

Again, members of the jury, the Court would caution and admonish you that you should not -- that this evidence is being offered for the purpose of statements that Ted Kimble may have made. They may not be considered against Ronnie Kimble, unless you find that he was part of a conspiracy and was a co-conspirator with Ted Kimble, and only under those circumstances or under that finding by you beyond a reasonable doubt there was a conspiracy would they be admissible and be considered against this defendant, Ronnie Kimble.

Proceed.

A The evening in particular, it was actually late evening, night, Ted and I were in his white box truck, heading out to a job site, to get some materials. And I flat out asked him "Did you have anything to do with -- or did you kill Patricia, or kill your wife?" And he said no. And then I asked if he had anything to do with it, and he said yes, he did. And it's -- a lot happened that night, as far as that, but he said yes, he did. He -- I continued to ask questions, and he kind of danced around it, but said, you know, "Ask me no questions and I'll tell you no lies." And I continued to ask. And then I was threatened to be quiet about it, and I would be killed if I ever said

anything.

He then began to -- he was very upset and hysterical and crying, saying I didn't understand, and went on to a 20-minute discussion on Ted as a child. His father drank a lot, and that's one reason he didn't want me to drink -- me to drink at all. His father drank a lot and would hit him and his brother and his mom. And told me, you know, the stories like that. And then it just kind of ended.

Q In the course of discussing the situation, did you ever make reference to the life insurance policy?

A Yes, we had -- we had discussed it.

Q What did he tell you?

A He -- in regards to the insurance policy, he said something to the effect of, that he was mad because he wasn't getting any money, because she hadn't taken a physical.

Q Did he ever discuss or make reference to the life insurance application?

A In reference to, he had forged an application signature.

Q What do you mean?

A He had signed his wife's name.

Q When you said he threatened you, specifically what did he say?

A Specifically, he told me that if I ever went and told

everyone, that he would kill me, and that I should know that he could get away with it.

Q What did he say about that?

A He just -- I mean, if -- he just told me -- I mean, he could -- he'd get away with it. If the law hadn't caught him now, you know, they're obviously not going to come after him. It was a good year later.

Q During the period of time that you were with him, did you ever see him carrying a gun?

A At all times. He carried either a Glock pistol, or he had a small, I believe it was a .25-caliber that he would carry. One of the two were with him I'd say 90 percent of the time. Whenever we went out at night or anything like that, he carried it.

Q Did he make any statements to you in reference to law enforcement's ability to apprehend him?

A He said that they couldn't. If they had anything on him, that they would have picked him up already.

Q Did he make any statements to you in reference to what, if anything, was taken at the time of her death?

A He had -- he had talked about, this was in the same -- along the same conversation as how stupid the law was, that they had -- no one even realized that stuff that was put down as stolen was never even taken.

Q Did you know James Ogburn?

A Yes.

Q Who is James Ogburn?

A James Ogburn is another one of Ted's employees, my coworker.

Q Did you discuss this matter with James Ogburn?

A Yes, I did.

Q Did he make any statements to you about keeping your mouth shut?

A Is that Ted Kimble you're --

Q Yes.

A -- referring to? Yes.

Q What did he say?

A I was -- again, I was told to keep my mouth shut, or I was -- my life was threatened.

Q When you say your life was threatened, what do you mean?

A That he would kill me. And it was on -- it was on several occasions, and that was in -- you know, in correlation with always having the gun around.

Q Besides the gun, did he have any other objects that he showed you?

A A silencer, miscellaneous rifles, I mean, several guns, rifles, his Glock, the small gun, the silencer, small explosives and whatnot.

Q In your presence, did he make threats toward any other

person?

A Mr. Church.

Q Who's that?

A Jim Church sitting next to you, the investigating officer.

Q Detective Church?

A Yes, Detective Church.

Q What, if anything, did he say about Detective Church?

A It was -- when we are talking, it was -- Ted had told me that Mr. Church was following him around everywhere, going around, talking bad about him, had gone to his girlfriend's house, who was Rhonda, and told her parents that she was dating a murderer, and was very upset about it, and said that if he kept it up, that he was going to kill him.

Q He was going to do what?

A That he was going to kill Detective Church.

Q Now, on this occasion, when you got in trouble, was this the first time that you've been involved in criminal activity?

A No, it's not.

Q Have you been convicted of other criminal matters?

A Yes, I have.

Q Would you tell the jury about that, please.

A I have been convicted of, in California, knowledge of

stolen property, and fighting in public. And here, in Greensboro, solicitation to commit embezzlement, and I have a larceny charge.

Q And all those are misdemeanors?

A Yes.

Q Now, have you ever been convicted of a felony?

A I have not been convicted of a felony.

Q Now, prior to reaching the information -- the agreement that is State's Exhibit Number 15 (sic), what have you done in reference to law-enforcement officers, and specifically, Detective Church?

A I'm not following.

Q Well, let me ask you this. Just read the State's -- the agreement, please.

A Starting with "That the defendant," or --

Q "The parties agree." The very first line, please.

A "The parties to this criminal action hereby stipulate and agree to the following facts:

"That the defendant is charged with several counts of breaking and entry and larceny, may be charged with related offenses, which are also property crimes.

"That the defendant has offered and agreed to testify in regard to the death of Patricia Kimble and to the involvement of Theodore Kimble in various crimes related to breaking and entry and larcenies. That the defendant has

been interviewed by his attorney and stated that he has information to offer in these cases, and that said information directly points to the guilt of Theodore Kimble, Ronnie Kimble or Patrick Pardee and is direct and personal knowledge of the type that North Carolina can use in its prosecution of Theodore Kimble, Ronnie Kimble or Patrick Pardee.

"Based upon the foregoing facts, the State of North Carolina hereby agrees that in the event that the defendant, Robert H. Nicholes, agrees to cooperate with officers of the Guilford County Sheriff's Department and the Greensboro Police Department and testifies, if called upon, in a truthful manner, consistent with previous statements to the Guilford County Sheriff's Department and the Greensboro Police Department, the State of North Carolina will recommend that he receive a probationary sentence.

"In return, the defendant agrees, Robert H. Nicholes, that he will voluntarily appear and testify in any trial related to the death of Patricia Kimble.

"That he will voluntarily appear and testify in any trial related to the breaking and entry and larceny crimes involving Theodore Kimble or Patrick Roy Pardee.

"That said testimony shall be truthful, complete, and not inconsistent with prior statements of the defendant to the Greensboro Police Department.

"The defendant, Robert H. Nicholes, understands that if he fails to cooperate as set forth in his (sic) agreement by (sic) the State of North Carolina shall have the option of moving to set aside this plea agreement and prosecute the defendant to the fullest extent allowed by the law. That the defendant consents and agrees that the State of North Carolina shall have the right to move to set aside his plea agreement and sentence, in the event that the defendant willfully fails to comply with this agreement.

"Further, the defendant, Robert H. Nicholes, agrees to take a polygraph or participate in other law-enforcement activities designed to corroborate his testimony.

"The defendant, Robert H. Nicholes, understands that he must be totally truthful in his cooperation with the State of North Carolina, that if the defendant, Robert H. Nicholes, lies or intentionally omits or mistates the facts of the death of Patricia Kimble, or his knowledge of the facts leading up to the death of Patricia Kimble, or if he refuses to testify or intentionally submits false testimony, the State of North Carolina will not be bound by this agreement, and that the State of North Carolina will use his statements to prosecute him to the fullest extent of the law.

"The defendant understands that this agreement is limited to property crimes, and that if in the course of the

investigation, it is determined that he has participated as a principal or an accessory in any crime against a person, this agreement does not protect the defendant from prosecution for that crime against a person. Further, if in the course of the investigation it is determined that he has participated as a principal or an accessory in any crime against a person, his statements and any information gained or uncovered as a result of this (sic) statement can be used to prosecute him to the fullest extent of the law.

"Further, this agreement only binds the District Attorney's Office of Guilford County and is not intended to bind or affect or hinder the decision of any other prosecutorial agency, state or federal, to indict and prosecute the defendant, Robert H. Nicholes, and that this agreement does not prohibit said prosecution.

"This 18th day of April, 1997," and signed --

Q Now --

A Yes.

Q -- in there, it's made reference to your cooperation with the Greensboro Police Department. What was that in regard to?

A The Greensboro Police Department in regards to the materials that were taken.

Q Did some of those offenses occur in the city of Greensboro?

A Yes.

Q As a result of that, did you meet with Detective Kasey of the Greensboro Police Department?

A Yes, I did.

Q And did you show her the locations?

A I did.

Q As a result of your efforts, was there certain property recovered?

A Yes, there was a lot of it recovered.

MR. PANOSH: No further questions.

THE COURT: You may cross-examine the witness.

MR. LLOYD: Thank you, Your Honor.

CROSS-EXAMINATION by MR. LLOYD:

Q Now, Mr. Pardee --

THE COURT: Mr. Nicholes.

Q Excuse me. Mr. Nicholes. You've just gone over the deal that you and your attorney worked out with the State of North Carolina, in exchange for your testimony; is that correct?

A Yes.

Q And basically -- Well, let me ask you this, Mr. Pardee (sic). You were charged with how many counts of theft or larceny or breaking or entering? How many felonies as a result of the theft conspiracy ring involving you and Ted Kimble and Patrick Pardee?

A To my count, it's 25 total.

Q 25?

A 19 B&E, six larceny.

Q All right. And had you not -- and those are all felony charges, are they not?

A Those are felony charges.

Q All right. And had you not worked out a deal, you were aware that those are all Class H felonies and you could have gotten at least, depending on your record, but assuming the very best, that none of your record came in, you could have gotten at least five to six months for each one of those felonies, could you not?

A Yes, I could have.

Q And if you had been convicted of all 28 of them or however many it was, the judge could have given you six months on each one, to run consecutively, one after another?

A Yes, sir.

Q So, conservatively, Mr. Nicholes, you were facing possibility of some 14 years in prison for your actions in the theft ring with Ted Kimble and Patrick Pardee, were you not?

A It was a possibility.

Q All right. And you talked to your lawyer?

A Yes.

Q All right. And you and your lawyer negotiated this

deal, the one you've just referred to, with the State of North Carolina, didn't you?

A Yes.

Q All right. And the fact of the matter is, Mr. Pardee -- Mr. Nicholes. Excuse me. I apologize. -- Mr. Nicholes, that if Mr. Panosh is satisfied with your testimony, you will get probation in these offenses, and you will not serve one single day of time; is that correct?

A According to the agreement, that is correct.

Q All right. And in terms of the agreement and what you must do, you have to testify consistent with your previous statements; is that correct?

A Correct.

Q And that's set out in the agreement as you read, that if you're called upon to testify, you must testify consistent with your earlier statements?

A Correct.

Q Now, when you were arrested in this case, Mr. Nicholes, did you post a bond?

A I don't recall.

Q All right. Well, let me ask you this, Mr. Nicholes. You're not in jail awaiting trial or the disposition of these 28 felonies that you've referred to earlier, are you?

A No, I'm not.

Q All right. So you're out of jail?

A Yes.

Q All right. So at some point, you were arrested; is that right?

A Yes.

Q And how long did you spend in jail, before you were released?

A I didn't spend any time.

Q You did not spend any time?

A No, sir.

Q So was that because the magistrate didn't set a bond in your case, even though you were charged with 28 felonies?

A No. I believe the agreement came with -- the original charge was three felonies, and I agreed to tell everything I knew. It didn't go in the order you're referring to.

Q All right.

A I was charged with three, and then I admitted to the rest of it and everything else I knew, because until Ted was put in jail, I didn't have a chance.

Q So you actually worked out your deal before you were even arrested; is that right?

A No. I had -- I had told additional -- had told additional -- yeah, I'd agreed to disclose information that I knew before I'd actually signed an agreement. And that was stuff I had discussed with Detective Church.

Q All right. So you talked to Detective Church about

that; is that right?

A Yes, it is.

Q And he assured you that if you told him what he wanted to hear, you wouldn't spend any time in jail, you wouldn't be arrested on this charge?

A That's not true. I did not -- I was not offered any agreement in regards to me not serving any time until I had talked to Mr. Panosh.

Q All right. Well, Detective Church told you that he'd help you out, didn't he?

A Yes.

Q All right. And he didn't serve an arrest warrant on you and take you across the street and bring you before the magistrate at that time, before he took you over to talk to Mr. Panosh, did he?

A No. It wasn't his case.

Q Well, the police officers in charge of the case didn't serve a warrant on you and take you across the street to the magistrate?

A Yes, they did.

Q All right. But you were not required to post a bond; is that right?

A No, I wasn't.

Q All right. And Mr. Nicholes, isn't it true that Detective Church talked to the magistrate, in terms of your

bond?

A I don't know.

Q All right.

A I did not have much relation with Mr. Church.

Q But at any rate, you were not -- even though you were arrested on three felonies --

A Uh-huh.

Q -- you were not put in jail, and you were not required to post a bond at that time; is that right?

A No, I wasn't. No, I wasn't.

Q Now, you indicated earlier that -- Well, let me ask you this, Mr. Nicholes. When you talked to Detective Church, did you have a lawyer at that time?

A No.

Q All right. So this was something that you and Detective Church worked out; is that right?

A We didn't work out anything. I told him what I knew.

Q Okay.

A I was in a situation where I couldn't just come out and announce this to the world.

Q All right. So you talked to Detective Church at that time, and he told you that he would help you out; is that right?

A It's his job. Yes.

Q His job is not --

A His job is --

Q -- to arrest people --

MR. PANOSH: We'd object to his arguing with the witness, please.

THE COURT: Overruled. He's clarifying his answer.

Q Is his job not to arrest people and bring them to justice?

A That was not his case. It was his job to find the murderer of Patricia Kimble, and that's what he was doing, through me.

Q All right. So even though this wasn't his case, he talked to you?

A Yes.

Q And he told you he'd help you, right?

A Yes. I came to them, though. It was before any of this, before any of this. The 20-- the 25 additional larcenies came because I told where the materials were. I didn't want part of it anymore, as of Ted being arrested on April 1. I came to the police. I'm the one that told them what was going on. It was not --

Q Okay.

A -- vice versa.

Q So -- and Mr. Nicholes, the reason you came to the police at this time and told them about the 28 -- to some 28

break-ins and larcenies is because you were a good citizen?

A No. It was because Ted had been arrested, and I didn't have to worry about him killing me.

Q Well, Mr. Nicholes, if you had gone to Detective Church prior to that time, and told him what you knew, don't you think that Detective Church would have offered you protection at that time?

MR. PANOSH: Object to speculation.

THE COURT: Sustained to the form.

MR. LLOYD: All right.

Q Well, Detective Church would have offered you protection at that time, wouldn't he?

A I don't know that. It had been a year, and there hadn't been an arrest. I'm not willing to risk my family's life or my life on speculation, whether Detective Church can help me.

Q Well, you certainly could have gone to Detective Church prior to that time and told him what you knew, and asked him if he would offer you protection at that time, or if he would arrest Ted Kimble and put him in jail, so you wouldn't have to worry about it; couldn't you have done that, Mr. Nicholes?

A I was in fear.

Q But you could have done that, you could have gone to Detective Church. Were you worried that Detective Church

was going to run to Ted Kimble and say that "Rob Nicholes is ratting on you"? Is that what you were worried about, Mr. Nicholes?

A Not at all. I feared for my life.

Q All right. But you certainly could have done that, and asked Detective Church if he would offer you protection, or arrest Ted Kimble and put him in jail?

MR. PANOSH: Object. I believe he's answered.

THE COURT: Overruled.

You may answer that.

A Not without knowing 100 percent that something would be done. Like I said, I'm not willing to gamble my life on that. I know what I knew. I know what was told to me. And I wasn't willing to go and risk my life on that. I was threatened. I wasn't going to do that.

Q Well, you certainly didn't think that when you gave that information to Detective Church, that he was going to turn around and run to Ted Kimble and tell him that "Rob Nicholes had given me this information," did you?

A No.

Q Now, you indicated on direct examination that you had convictions in California for what you referred to as knowledge of stolen property?

A Yes.

Q Is that basically, Mr. Nicholes, that you received

stolen property, knowing that it was stolen?

A Yes.

Q All right. And did you work out a deal on that case, with the District Attorney's Office there?

A No, sir. I served 90 days.

Q All right. Did you plead guilty to that charge --

A Yes, I did.

Q -- or did you --

A I've made mistakes, and I feel bad about it, but I tell the truth.

Q Well, in connection with your 90-day plea, what I'm asking you, Mr. Nicholes, is --

MR. PANOSH: We object.

MR. LLOYD: Well --

MR. PANOSH: He's answered --

THE COURT: Overruled.

MR. PANOSH: -- about his prior criminal history.

THE COURT: Finish your question, sir.

MR. LLOYD: Thank you, Your Honor.

Q In connection with this knowledge of stolen property that you pled guilty to in California, my question to you, Mr. Nicholes, you said you did a 90-day sentence upon a guilty plea. State of California give you anything in exchange for your guilty plea?

MR. PANOSH: We object.

THE COURT: Overruled.

A No.

Q Were you represented by a lawyer in that case?

MR. PANOSH: We object. Details of this prior conviction are not appropriate.

THE COURT: Overruled.

A The question --

Q Did you have a lawyer in the California case?

A Yes, I did.

Q All right. So is what you're telling the members of the jury is that your lawyer didn't do anything for you, that you just pled guilty and you got 90 days?

MR. PANOSH: Object, please.

THE COURT: Sustained.

Q Mr. Nicholes, isn't it a fact that that charge was reduced from a felony charge to a misdemeanor charge?

MR. PANOSH: We object, please.

THE COURT: Overruled.

You may answer.

A I don't remember what the original charge I was arrested for was.

Q Well, you got something from the state of California, in exchange for your guilty plea; your lawyer did something for you in that case, didn't he?

A I'm sure.

Q All right.

A I was 19 years old.

Q All right.

A I mean, it's hard to -- it was something to that effect, when the actual charge or the actual situation arose. It's hard to remember. It's, you know, going on eight, nine years ago.

Q Okay. And your lawyer got the charge reduced from a felony down to a misdemeanor?

MR. PANOSH: Objection.

THE COURT: Overruled, if he knows.

A I've answered that. Yeah, that's his job.

Q All right. So that is in fact what happened?

A It's in fact what happened.

Q All right. Now, this charge of solicitation to commit embezzlement, was that here in Greensboro or was that in California?

A That was here --

MR. PANOSH: We object.

A -- in Greensboro.

MR. PANOSH: Rule 609.

THE COURT: Overruled.

Q You can answer the question.

A That was here in Greensboro.

Q All right. Did you have a lawyer in that situation?

A Yes, I did.

Q All right. And in that situation, Mr. Nicholes, did you work out an agreement with the State of North Carolina?

A Yes, I did.

Q All right. And was that charge reduced from a felony charge down to a misdemeanor charge?

A Yes, it was.

Q So, Mr. Nicholes, you're well-versed in how to make deals with the State, aren't you?

A No. I'm well-versed on how to tell the truth, when I've done something wrong. That's what I'm well-versed on. It's not being versed, it's telling the truth. I said I've made mistakes and I'm not proud of it --

Q Well --

A -- but admit it and deal with it.

Q You certainly had this information for a considerable period of time that you've testified to, haven't you, Mr. Nicholes?

A Not really. In the whole scheme of things, no, it's not a long time.

Q Well, you -- I believe you indicated to Mr. Panosh that as far as the thefts were concerned, you got started in December of 1996 --

A Yes.

Q -- is that right?

A Uh-huh.

Q All right. And the thefts were ongoing through January and February?

A Yes.

Q All right.

A That's three months.

Q Okay. So you had that knowledge at that time?

A Yes.

Q You could have come forward with that knowledge at that time?

A Not when a man had told me he had had his wife killed, and my life was threatened, no, I couldn't. What don't you understand about that? I couldn't. I was -- I was threatened. My life was threatened. I had nowhere to go. If he wasn't arrested, what would make me think that what I say is going to change anything? Nothing.

Q You could have gone to Detective Church or whoever was the -- you found out was the lead investigator in the case. You'd researched this case, didn't you?

A Sure.

Q All right. You could have gone to the lead investigator, which you knew to be Detective Church --

A Sure.

Q -- given him this information, and he could have arrested Ted Kimble?

A I didn't know that, and it wasn't worth -- I mean, it wasn't worth it to me to find out. The minute -- the morning that Ted was arrested, I told everything that I knew about everything, because I knew that I was covered. I wasn't going to risk my life. I've got two little girls and a wife that I've got to protect, too.

Q In fact, Mr. Nicholes, you knew -- you had figured out the system here, and you knew you could parlay information to save your own skin --

A That's not true.

Q -- as long as you told the authorities what they wanted to hear; isn't that right, Mr. Nicholes?

A That's not true. I came to them. Before I was offered an agreement, I offered information. That was the whole reason the truck and all the goods were found, was before I signed anything on April 1. This agreement is April 18th. Everything was taken care of before this agreement was even signed, and that was when I knew I was going to probably serve 10 years in jail.

Q So you knew early on that you were looking at a whole --

A Sure.

Q -- armload of time here, didn't you?

A Uh-huh. Sure did.

Q Now, Mr. Nicholes, going back to your activities in the

theft ring, you -- what did you get out of the theft ring?

A A ruined life. I mean, look where I am.

Q Well, let me ask you this, Mr. Nicholes. Did you get anything else out of it besides a ruined life, such as money or goods or --

A I was compensated for my time.

Q Well, what was your pay rate at Lyles Building Supply?

A \$6.50 an hour.

Q Are you saying that Ted Kimble paid you at the rate of \$6.50 per hour when you went out on these theft excursions?

A I don't recall what it was.

Q Well, you told investigators that the first time you went out with Ted Kimble, that he paid you \$300?

A Right. But if you also read the first time I went out, I was told it was legitimate. Ted told me that we were going up -- going to pick up materials that were his. He called me at 3:00 in the morning, to go help him, when it was snowing. That was before there was any knowledge that any of these materials were stolen.

Q Okay. So your testimony is, the first time you went out with Ted Kimble, that you thought it was legitimate?

A There was a number of times before I figured out what was going on, yes.

Q All right. And Mr. Nicholes, Ted Kimble called you at 3:00 a.m.; is that right?

A Approximately, yes.

Q All right. And he told you -- what did he tell you at that time?

A Asked me to -- or asked -- said he needed some help and to meet him at the shop.

Q Okay. Did you not think it was a little odd that you were meeting at 3:00 o'clock in the morning?

A Sure. But at the time, he was my boss and he was my friend.

Q Okay. And --

A Wasn't an -- I mean, it wasn't an odd request. Ted, you know, liked people to do favors for him and help him out. And he treated me well.

Q All right. Well, prior to this time, had he ever called you up at 3:00 o'clock in the morning and asked you to come down to the shop and help him out?

A No.

Q Was Patrick Pardee down at the shop at that -- on that occasion?

A No.

Q All right. So it was just you and Ted?

A Yes.

Q And what did Ted -- when you got down to Lyles, what did Ted say to you?

A I don't remember exactly. Something to the effect, we

needed to go pick up some doors and windows.

Q Okay. Did you say something to Ted at that time about the fact that it was 3:00 o'clock in the morning, and you thought that was a little bit odd time to go to be picking up doors and windows?

A No.

Q Didn't say anything to him?

A Huh-uh.

Q Did you in fact go and pick up doors and windows?

A I drove there. I didn't pick up anything.

Q All right.

A I had to actually study for a Spanish test that night, while in the car, while we was up there.

Q Okay. So you just drove the truck?

A Yeah. I mean, I helped him -- what the situation was, and I guess I -- I mean, he went up there and had to take out some screws and whatnot. I helped him load the windows afterwards into the truck.

Q Okay.

A That's what I was there for. He couldn't carry them by himself.

Q All right. So they were too heavy to be carried by themselves?

A Sure. Right.

Q But before he got the windows to the truck, he had to

remove some screws, to get the windows out of the house; is that right?

A Uh-huh.

Q And what about the doors, Mr. Nicholes? Did he have to remove any screws or any hinge pins or anything like that, to get the doors?

A Yes.

Q All right. So, while you were studying for your Spanish test real hard at that time, you noticed him moving the -- removing the screws and the hinge pins?

A No. When I picked up the windows -- if you know anything about windows, you have a replacement window and you have windows with nailing fins. When we got them into the car, they had obviously been nailed into the house.

Q Okay.

A And that's how I know that. That's what I do for a living. I'm in home improvements.

Q Okay.

A I mean, I knew that. I was working at Lyles Building Material.

Q So you were well-versed in construction techniques, and you knew all about installing windows and how to frame a house basically --

A No.

Q -- and that sort of thing?

A Well, well-versed isn't it. It's not -- doesn't take rocket science to know that a nail's been put in a window and whether it's a brand new window from Home Depot.

Q Okay.

A That's not being well-versed.

Q So you were sitting out in front of some residential section. Where was this, Mr. Nicholes?

A It's off of Brassfield Street --

Q Okay.

A -- Brassfield Road.

Q Was this near Bryan Boulevard?

A Close to.

Q Okay. Was it an upscale residential section?

A Yes.

Q All right. And there were a number of houses under construction in that section?

A Several.

Q All right. And since you know about home improvements, Mr. Nicholes, what would you estimate the value of these doors and windows was?

A Several thousand dollars.

Q So they were expensive doors and windows --

A Uh-huh.

Q -- is that right? Did you question Ted Kimble about the nails that had been removed?

A No, not that night, I didn't.

Q All right.

A He just said that it was -- that what had come up was, on the first several occasions, you know, knowing builders and whatnot. And there was some stuff, there was some lumber that was legitimately acquired through these means. Sometimes builders will purchase special-order items that aren't right or aren't correct, and they're already paid for, they need to get the other items, so they would sell them. And oftentimes, people would come in and sell, you know, brand new windows to Ted. And, you know, there is -- I mean, at the time, I didn't know anything, in regards to anything different. I mean, there -- sure, there was new windows, and people would bring in lumber that was left over from a building site and whatnot to Lyles. That's what Lyles is about --

Q All right. Did you --

A -- selling materials.

Q I didn't mean to cut you off, Mr. Nicholes. Do you need to say anything more in your answer?

A No. I'm fine.

Q But had you ever been out to a residential site with Ted Kimble, to pick up any building materials from a residential site?

A Yes. We had -- we had picked up two-by-fours before,

and had a billed receipt for them for that.

Q Was somebody present then?

A Yes. I mean, we had receipts and everything. And we had showed Ted's dad everything, because he was concerned about it, at first.

Q So on those occasions, you went out to a residential site, and Ted actually paid for the materials, he paid the job superintendent or the foreman --

A Right.

Q -- whoever it was?

A Correct.

Q But on this occasion, Mr. Nicholes, this was at 3:00 o'clock in the morning; is that right?

A Approximately 3:00 o'clock in the morning, yes.

Q All right. And after you got these items loaded up in the truck, Ted -- did Ted Kimble pay you the \$300 when you got back to Lyles, or did he pay you then?

A I don't remember. It may have been within the next couple days. I'm really --

Q All right.

A -- not sure. I don't recall.

Q And how long did that take, Mr. Nicholes?

A What, to load the doors and windows.

Q Yes, sir. Well, the whole thing, the trip from Lyles and back to Lyles.

A Three and a half, four hours.

Q Okay. But if you'd gotten paid at your normal rate, you would have gotten a little bit under \$30; is that right?

A Correct.

Q Okay. Now, you said earlier that you did this several times, before you realized that Ted Kimble was stealing these items; is that right?

A I don't remember the amount of times or anything like that, but it was -- it was all in -- I mean, everything was so where, you know, when we were out doing this stuff and we became closer, and he was inviting, you know, my wife and child and myself out to dinner and everything, just became close, and then, you know, I was told about Patricia, and I mean, everything just came into line at one time. I mean, I feel I was manipulated. I feel that it was all set up to be like this.

Q Well, do you feel like Ted Kimble tricked you, by telling you that, when you went out that first time, and any subsequent times, that this was a legitimate trip, where he was just going to get some doors and windows that he'd already paid you -- that he had already paid for?

A I don't know what I was feeling at the time. I mean, -- I mean, I don't -- I don't know how to address that.

THE COURT: I hate to interrupt you at this point. How much longer are you going to be with this witness?

MR. LLOYD: Awhile, Your Honor.

THE COURT: You may step down, sir. You may step down, Mr. Nicholes.

THE WITNESS: Me?

THE COURT: Yes.

(The witness left the witness stand.)

THE COURT: Members of the jury, we'll take our evening recess. You'll need to be back in the morning at 9:30. Please report to the jury room. Again, remember your jury responsibility sheets.

Have a nice evening. I'll see you in the morning.

(The jury left the courtroom at 5:03 p.m.)

THE COURT: Any other matters before the evening recess?

MR. PANOSH: No.

MR. LLOYD: No, Your Honor.

THE COURT: 9:30 in the morning, sheriff.

(A recess was taken at 5:04 p.m., until 9:30 a.m. Tuesday, August 18, 1998.)

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113-B. Claim for Life Insurance	1002	1005
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114-A. Accidental Death Rider	1004	1005
114-B. Copy of Claimant Statement	1004	1005
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115. Agreement - State v. Nicholes	1030	1030

DEFENDANT'S EXHIBIT

1. Statement of James Dziadaszek	895	---
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** Duplicate Exhibit Numbers

NORTH CAROLINA
GUILFORD COUNTY

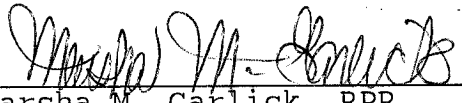
IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 97 CrS 23654
FILE NO. 97 CrS 39580
FILE NO. 98 CrS 23485

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

C E R T I F I C A T E

I, Marsha M. Garlick, Official Superior Court Reporter, Eighteenth Judicial District, do hereby certify that the foregoing 211 pages constitutes the complete and accurate transcript of my stenograph notes of the proceedings in this matter on August 17, 1998, at the August 3, 1998 Regular Criminal Session of Superior Court, Guilford County, North Carolina, and were transcribed by me personally.

This the 30th day of November, 1998.



Marsha M. Garlick, RPR
Official Superior Court Reporter

Transcript Ordered: September 8, 1998

Transcript Delivered: December 8, 1998