

NORTH CAROLINA
 GUILFORD COUNTY

IN THE GENERAL COURT OF JUSTICE
 SUPERIOR COURT DIVISION

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

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

VOLUME XV
TRIAL TRANSCRIPT

Transcript of proceedings taken in the General Court of Justice, Superior Court Division, Guilford County, Greensboro, North Carolina, on the 1st day of September, 1998, at the August 3, 1998, Regular Criminal Session, before the Honorable C. Preston Cornelius, Judge Presiding.

PATRICIA JAEGER, RPR
 Official Court Reporter
 18th Judicial District
 Post Office Box 3008
 Greensboro, N. C. 27402-3008
 (336) 574-4345

Appearances:

RICHARD E. PANOSH

Assistant District Attorney

PO Box 10769

Greensboro, NC 27404

On behalf of the State of North Carolina

W. DAVID LLOYD, ESQUIRE

Suite 301

101 S. Elm Street

Greensboro, NC 27401

On behalf of the Defendant

JOHN B. HATFIELD, ESQUIRE

219 W. Washington Street

Greensboro, NC 27401

On behalf of the Defendant

I N D E XPage

JUDGE CORNELIUS' CHARGE TO THE JURY.....2899

FIFTEENTH DAY

September 1, 1998

(Met, pursuant to evening recess of August 31, 1998, at 9:38 a.m.)

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

MR. PANOSH: No, Your Honor.

MR. LLOYD: No, Your Honor.

THE COURT: The agreement -- immunity agreement between Nichols and -- let me see that.

MR. PANOSH: Between Pardee and the State.

THE COURT: Pardee. Excuse me.

Thank you.

MR. PANOSH: I believe both of them are in there, Your Honor.

THE COURT: Thank you.

Okay. Are there -- so there are no other matters to take care of before the jury is brought in?

MR. PANOSH: Was there an issue as to that particular charge, Your Honor?

THE COURT: I just wanted to make sure as to what it said --

MR. PANOSH: Yes, sir.

THE COURT: -- as to the probationary recommendation.

To those individuals in the courtroom, the Court will begin its charge as soon as the jury comes in. This charge will take maybe 15 minutes. It will be required that you remain in the courtroom during that 15-minute period. If you feel like you may need to step out during that 15-minute period, you probably need to step out now.

(Jury present)

THE COURT: Members of the jury, at this point the Court is about to begin its charge as to the law that you should apply in these matters. I speak fast and certainly not as clear as I should. If I speak too fast and not clear enough, if you'll just raise your hand, I'll be glad to slow down and go back over that portion of the charge again with you.

PLEASE GO TO THE NEXT PAGE FOR JUDGE CORNELIUS' CHARGE TO THE JURY.

JUDGE CORNELIUS' CHARGE TO THE JURY:

Now, members of the jury, all the evidence has been presented in the case of the State of North Carolina v. Ronnie Lee Kimble. It is now your duty to decide from this evidence what the facts are. You must then apply the law which I'm about to give to you to those facts. It is absolutely necessary that you understand and apply the law as I give it to you and not as you think it is or as you might like for it to be. This is very important because justice requires that each individual charged with the same offense be treated in the same way and have the same law applied to him.

The defendant in this case, Mr. Ronnie Lee Kimble, has entered pleas of not guilty. The fact that he has been charged is no evidence of guilt. Under our system of justice when a defendant pleads not guilty, he is not required to prove his innocence; he is presumed to be innocent. The State must prove to you that the defendant is guilty beyond a reasonable doubt.

A reasonable doubt is a doubt based on reason and common sense arising out of some or all of the evidence that has been presented or the lack or insufficiency of the evidence, as the case may be. Proof beyond a reasonable doubt is proof that fully satisfies or entirely convinces you of the defendant's

guilt.

Now, you are the sole judges of the credibility of each witness. You must decide for yourselves whether to believe the testimony of any witness. You may believe all, or any part, or none of what a witness has said on the witness stand. In determining whether to believe any witness, you should apply the same tests of truthfulness which you apply in your everyday affairs. As applied to this trial, these tests may include the opportunity of the witness to see, to hear, to know or remember the facts or occurrences about which a witness has testified; the manner and the appearance of the witness; any interest, bias or prejudice the witness may have; the apparent understanding and fairness of the witness; and whether the testimony of the witness is reasonable, and whether it's consistent with the other believable evidence in the case.

You are the sole judges of the weight to be given any evidence. By this, I mean that if you decide that certain evidence is believable, you must then determine the importance of that evidence in light of all the other believable evidence in the case.

You may find that a witness is interested in the outcome of this trial. In deciding whether or not to believe such a witness, you may take the interest of the

witness into account. If after doing so you believe his or her testimony in whole or in part, then you should treat what you believe the same as any other believable evidence in the case.

Now, proof of motive for a crime is permissible and often valuable but never essential for a conviction. If you are convinced beyond a reasonable doubt that the defendant committed the crime, the presence or absence of motive is immaterial. Motive may be shown by facts surrounding the act if they support a reasonable inference of motive. When thus proved, motive becomes a circumstance to be considered by you. The absence of motive is equally a circumstance to be considered on the side of innocence.

There is evidence which tends to show that witnesses -- two witnesses were testifying under a grant of immunity or an agreement -- it's not immunity. It was under an agreement with the prosecutor for a sentence reduction in return for his testimony -- Mr. Nichols. Mr. Patrick Pardee was to be recommended that he cooperated at the time his case was heard.

If you find that either one of these witnesses testified in whole or in part for this reason, you should examine their testimony with great care and caution in deciding whether or not to believe their

testimony here at trial. If after doing so you believe their testimony in whole or in part, then you should treat what you believe the same as any other believable evidence in the case.

Now, several photographs have been introduced into evidence in this case for the purpose of illustrating or explaining the testimony of the witnesses. These photographs may not be considered by you for any other purpose.

There were photographs and video introduced into evidence in this case. Some of these photographs and video may be considered by you as evidence of facts it illustrates or shows.

In this case, you've heard evidence from witnesses who have testified as an expert witness. An expert witness is permitted to testify in the form of an opinion in a field where he or she purports to have specialized skill or knowledge. As I've instructed you, you are the sole judge of the credibility of each witness and the weight to be given to each witness' testimony. In making this determination as to the testimony of an expert witness, you should consider, in addition to the other tests of credibility and weight, the witness' training, qualifications and experience, or lack thereof; the reasons, if any, given for the

opinion; and whether the opinion is supported by facts which you find from the evidence; and whether the opinion is reasonable; and whether it's consistent with the other believable evidence in the case.

You should consider the opinion of an expert witness, but you are not bound by it. In other words, you are not required to accept an expert witness' opinion to the exclusion of facts and circumstances disclosed by other testimony.

When evidence has been received tending to show at an earlier time a witness made a statement which may be consistent or which may conflict with his testimony at this trial, you must not consider such earlier statement as evidence of the truth of what was said at that earlier time because it was not made under oath at this trial. If you believe that such earlier statement was made and that it is consistent or does conflict with the testimony of the witness at this trial, then you may consider this together with all other facts and circumstances bearing upon the witness' truthfulness in deciding whether you will believe or disbelieve his or her testimony at this trial.

When evidence has been received tending to show that the witness, Robert Nichols, has been convicted of criminal charges, you may consider this evidence for one

purpose only. If, considering the nature of the crimes, you believe this bears upon truthfulness, then you may consider it together with all other facts and circumstances bearing upon the witness' truthfulness in deciding whether you believe or disbelieve his testimony at this trial. Except as it may bear upon this decision, this evidence may not be considered by you in your determination of any facts in this case.

The defendant, Ronnie Lee Kimble, contends that he was at some other place at the time the offense is alleged to have taken place. This is known as an alibi. The word "alibi" simply means somewhere else. The burden of proving an alibi does not rest upon the defendant. To establish the defendant's guilt, the State must prove beyond a reasonable doubt that the defendant was present at and participated in the crime charged. The defendant's contention that he was not present and did not participate is simply a denial of facts essential to the State's case. Therefore, I charge that if upon considering all the evidence in the case, including the evidence with respect to alibi, you have a reasonable doubt as to the defendant's presence at or participation in the crime charged, then you must find him not guilty.

Now, as you know, members of the jury, there

were three separate cases: the offense of first-degree murder, the offense of arson, and the offense of conspiracy to commit murder. I'll go over each one of these three offenses with you.

Now, in the event the defendant is convicted of murder in the first-degree, the Court will conduct a separate sentencing proceeding to determine whether the defendant should be sentenced to death or life imprisonment without parole. This proceeding may be conducted before you or it may be conducted before another jury. It will be conducted, if necessary, as soon as practical after any guilty -- any verdict of guilty of first-degree murder is returned. If that time comes, you will receive separate sentencing instructions. However, at this time your only concern is to determine whether the defendant is guilty of the crime charged or any lesser included offense about which you will be instructed.

The defendant has been accused of first-degree murder. And under the law and the evidence in this case, it is your duty to return one of the following verdicts: Guilty of first-degree murder or not guilty.

You may find the defendant guilty of first-degree murder on either or both of two theories. That is, on the basis of malice, premeditation and

deliberation, or under the first-degree felony murder rule.

First-degree murder on the basis of malice, premeditation and deliberation is the intentional and unlawful killing of a human being with malice and with premeditation and deliberation.

First-degree murder under the first-degree felony murder rule is the killing of a human being in the perpetration of arson.

Now, I charge for you to find the defendant guilty of first degree murder on the basis of malice, premeditation and deliberation, the State must prove five things beyond a reasonable doubt:

First, that the defendant intentionally and with malice killed the victim with a deadly weapon. Malice means not only hatred, ill will or spite, as it is ordinarily understood, to be sure, that is malice, but it also means that condition of the mind that prompts a person to take the life of another intentionally or to intentionally inflict a wound with a deadly weapon upon another which proximately results in her death without just cause, excuse or justification.

If the State proves beyond a reasonable doubt that the defendant intentionally killed the victim with a deadly weapon or intentionally killed, inflicted -- or

intentionally inflicted a wound upon the victim with a deadly weapon that proximately caused her death, you may infer, first, that the killing was unlawful; and second, that it was done with malice. But you are not compelled to do so. You may consider the inference along with all other facts and circumstances in determining whether the killing was unlawful and whether it was done with malice. A .45-caliber pistol is a deadly weapon.

Second, the State must prove that the defendant's act was a proximate cause of the victim's death. A proximate cause is a real cause, a cause without which the victim's death would not have occurred.

Third, that the defendant intended to kill the victim. Intent is a mental attitude seldom provable by direct evidence. It must ordinarily be proved by circumstances from which it may be inferred. An intent to kill may be inferred from the nature of the assault, the manner in which it was made, the conduct of the parties and other relevant circumstances.

Fourth, that the defendant acted after premeditation. That is, that he formed the intent to kill the victim over some period of time, however short, before he acted.

And fifth, that the defendant acted with

deliberation, which means that he acted while he was in a cool state of mind. This does not mean that there had to be a total absence of passion or emotion. If the intent to kill was formed with a fixed purpose not under the influence of some suddenly aroused violent passion, it is immaterial that the defendant was in a state of passion or excited when the intent was carried into effect.

Neither premeditation nor deliberation is usually susceptible by direct proof. They may be proved by circumstances from which they may be inferred, such as the lack of provocation by the victim, conduct of the defendant before, during, and after the killing, the brutal or vicious circumstances of the killing, or the manner in which the killing was done.

I further charge that for you to find the defendant guilty of first-degree murder under the first-degree felony murder rule, the State must prove three things beyond a reasonable doubt:

First, that the defendant committed arson. And for you to find that the defendant committed arson, the State must prove five things beyond a reasonable doubt:

First, that the defendant burned a building, a house located at 2104 Brandon Station Court in Guilford County.

Second, that this house was a dwelling house. A dwelling house is a house that is inhabited, that is, a house that is a permanent, temporary or seasonal residence of some person.

Third, that this house was a dwelling house of someone other than the defendant.

Fourth, that this house was occupied when the defendant burned it; that is, that some person was physically present in the home at 2104 Brandon Station Court at the time of the burning. And in order for you to find that the defendant -- that the dwelling house was occupied, you must find that the murder and arson were so joined by time and circumstances as to be part of one continuous transaction.

And fifth, that the defendant did so maliciously. That is, that he intentionally and without justification or excuse burned a house located at 2104 Brandon Station Court.

Now, returning to the other elements of felony murder rule, you must further find as the second element that while committing arson, the defendant killed the victim as part of a continuous transaction with a deadly weapon.

And third, that the defendant's act was a proximate cause of the victim's death. A proximate

cause is a real cause, a cause without which the victim's death would not have occurred.

So I charge that if you find from the evidence beyond a reasonable doubt that on or about the alleged date that the defendant intentionally killed the victim with a deadly weapon, and that this proximately caused the victim's death, and that the defendant intended to kill the victim, and that he acted with malice and premeditation and with deliberation, it would be your duty to return a verdict of guilty of first-degree murder on the basis of malice, premeditation and deliberation.

However, if you do not so find or have a reasonable doubt as to one or more of these things, you will not return a verdict of guilty of first-degree murder on the basis of malice, premeditation and deliberation.

Whether or not you find the defendant guilty of first-degree murder on the basis of malice, premeditation and deliberation, you must also consider whether he is guilty of first-degree murder under the first-degree felony murder rule.

As to the felony murder rule charge that I have -- that if you find from the evidence beyond a reasonable doubt that on or about August -- October 9,

excuse me, October 9, 1995, the defendant burned a house located at 2104 Brandon Station Court, that this house was a dwelling house, that it was a dwelling house of some person other than the defendant, that someone was physically present in the house located at 2104 Brandon Station Court when the defendant burned it, and that the defendant burned the house maliciously, that is, while committing said arson, that is, as part of one continuous transaction, the defendant killed the victim, and that the defendant's act was a proximate cause of the victim's death, it would be your duty to return a verdict of guilty of first-degree murder under the felony murder rule.

However, if you do not so find or have a reasonable doubt as to one or more of these things, you will not return a verdict of guilty of first-degree murder under the first-degree felony murder rule.

If you do not find the defendant guilty of first-degree murder on the basis of malice, premeditation and deliberation, and if you do not find him guilty of first-degree murder under the felony murder rule, then you will return a verdict of not guilty as to the first-degree murder charge.

The defendant has been accused of first-degree arson. Under the law and the evidence in this case, it

is your duty to return one of the following verdicts:
Guilty of first-degree arson, or guilty of second-degree
arson, or not guilty.

Now, I charge for you to find the defendant
guilty of first-degree arson, the State must prove five
things beyond a reasonable doubt:

First, that the defendant burned a building, a
house located at 2104 Brandon Station Court in Guilford
County.

Second, that this building was a dwelling house.
A dwelling house is a house that is inhabited, that is,
a house that is a permanent, temporary or seasonal
residence of some person.

Third, that this house was the dwelling house of
someone other than the defendant.

Fourth, that this house was occupied when the
defendant burned it. That is, that some person was
physically present in the house at 2104 Brandon Station
Court at the time of the burning. And in order for you
to find that the dwelling house was occupied, you must
find that the murder and arson were so joined by time
and circumstances as to be one -- be part of one
continuous transaction.

And fifth, that the defendant did so
maliciously. That is, that he intentionally, without

justification or excuse, burned a house located at 2104 Brandon Station Court.

So I charge that if you find from the evidence beyond a reasonable doubt that on or about October 9, 1995, the defendant burned a house located at 2104 Brandon Station Court, and that this house was a dwelling house, and that it was a dwelling house of some person other than the defendant, that someone was physically present in the house located at 2104 Brandon Station Court when the defendant burned it, and that the defendant burned the house maliciously, then it would be your duty to return a verdict of guilty of first-degree arson.

However, if you do not so find or if you have a reasonable doubt as to one or more of these things, you will not return a verdict of guilty of first-degree arson.

If you do not find the defendant guilty of first-degree arson, you must determine whether he is guilty of second-degree arson. Second-degree arson differs from first-degree arson only in that the State need not prove that the house at 2104 Brandon Station Court was occupied at the time it was burned.

So I charge that if you find from the evidence beyond a reasonable doubt that on or about the alleged

date that the defendant burned a house at 2104 Brandon Station Court, and that this house was a dwelling house, and that it was a dwelling house of some person other than the defendant, and that the defendant burned the house at 2104 Brandon Station Court maliciously, then it would be your duty to return a verdict of guilty of second-degree arson.

However, if you do not so find or if you have a reasonable doubt as to one or more of these things, then you will return a verdict of not guilty as to the arson charge.

The defendant has been accused of conspiracy to commit murder. And I charge for you to find the defendant guilty of conspiracy to commit murder, the State must prove three things beyond a reasonable doubt:

First, that the defendant and at least one other person entered into an agreement. The agreement may be -- may take the form of a written or spoken words or may be established by certain acts of a mutual understanding between the two individuals.

And second, that the agreement was to commit murder. And murder is the unlawful killing of another with malice.

And third, that the defendant and at least one other person intended that this agreement would be

carried out at the time it was made.

So I charge if you find from the evidence beyond a reasonable doubt that on or about the alleged date that the defendant conspired with another to commit murder, and that the defendant and at least one other person intended at that time that the murder be committed, then it would be your duty to return a verdict of guilty as charged.

However, if you do not so find or if you have a reasonable doubt as to one or more of these things then it would be your duty to return a verdict of not guilty as to the conspiracy to commit murder charge.

Now, members of the jury, you've heard the evidence; you've heard the arguments of counsel for the State and for the defendant. The Court has not summarized the evidence in this case. It is your duty to remember the evidence whether it's been called to your attention or not; and if your recollection of the evidence differs from that of the district attorney or the defense attorneys, you are to rely solely upon your own recollection of the evidence in your deliberations.

I have not reviewed the contentions for the State nor the defendant, but it is your duty not only to consider all the evidence, but also to consider the arguments, the contentions and positions urged by the

state's attorney and the defense attorneys in their speeches to you, and any other contention that arises from the evidence and to weigh them in the light of your common sense and as best you can to determine the truth in these matters.

The law, as it should, requires that the presiding judge is to be impartial. You are not to draw any inference from any ruling that I've made, or inflection in my voice or expression on my face, or any question I've asked a witness or anything else that I may have said or done in this trial, that I have an opinion or intimated an opinion, as to whether any part of the evidence should be believed or disbelieved, as to whether any fact has or has not been proved, or as to what your findings ought to be in these matters. It is your exclusive province as members of the jury to find the true facts in this case and render a verdict reflecting the truth as you find it to be.

I instruct you that a verdict is not a verdict until all 12 jurors agree unanimously as to what your decision shall be. You may not render a verdict by a majority vote.

Now, when you retire to the jury room, your first order of business is to select your foreperson, someone to lead your deliberations. Once you've done

that, please wait until you receive the verdict sheets from the court officer. After you receive the verdict sheets from the court officer, then you may begin your deliberations. And when you reach unanimous verdicts, please knock on the door and the court officer will bring you into the courtroom to pronounce that verdict.

At this time, the three alternate jurors just remain seated as the 12 jurors leave. At this time, you may retire to the jury room to select your foreperson.

(Jury absent. 10:01 a.m.)

THE COURT: The three alternate jurors, we're going have to ask you also to go into a different room and remain until the Court summons you. Please do not discuss this case during the time that you're in that room. So if you'll go with the officer. Find a room to place the alternates in, please.

(Three alternate jurors absent)

THE COURT: Are there any additions or corrections to the Court's charge on behalf of the State?

MR. PANOSH: No. Thank you.

THE COURT: On behalf of the defendant?

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

When Your Honor gave the instruction on impeachment by prior conviction, Your Honor specifically mentioned Rob

Nichols. Certainly, that would apply to him, but there were also others. Rodney Woodberry comes to mind. I just didn't want the jury to get the idea that only applied to that witness.

THE COURT: Be glad to bring them back. Any other, sir?

MR. LLOYD: No, sir, Your Honor.

THE COURT: I thought I was referring to the proof of crime. I believe Nichols is the only one that had the criminal record. But you want the one on impeachment by a prior statement? Is that the one, sir?

MR. LLOYD: No, sir. I'm talking about impeachment by prior record. And I thought Rodney Woodberry admitted on the stand --

THE COURT: I believe you're right. I believe he did admit it.

Is that the one you wish, sir? Prior record proof of crime?

MR. LLOYD: Yes, sir.

THE COURT: Okay. Not the impeachment by prior statement?

MR. LLOYD: No, sir. Not impeachment by prior statement.

THE COURT: All right. If you'll bring those 12 back and the other jurors, please.

(All jurors present. 10:04 a.m.)

THE COURT: Members of the jury, I want to clarify one point that I may have not covered quite as well as I should have. And this does -- this is involved in impeachment of a witness by proof of a prior crime.

When evidence has been received tending to show that a witness has been convicted of criminal charges, you may consider this evidence for one purpose only. If, considering the nature of the crimes, you believe that this bears upon truthfulness, then you may consider it together with all other facts and circumstances bearing upon the witness' truthfulness in deciding whether you believe or disbelieve his testimony at this trial. Except as it may bear upon this decision, this evidence may not be considered by you in your determination of any fact in this case.

I think when I gave that to you, I may have said Rob Nichols. And I think Mr. Woodberry also may have had a criminal record. But use your own recollection. And any witnesses who may have had a criminal record, please remember this instruction I've given you in regards to their testimony. You understand that?

Okay. The 12 jurors may return to the jury room.

(Jury absent. 10:05 a.m.)

THE COURT: I think the three alternates -- I believe they're going to put you in a better room back here. Softer chairs, anyway.

(Three alternate jurors absent. 10:05 a.m.)

THE COURT: Did that instruction satisfy the defense?

MR. LLOYD: Yes, Your Honor.

THE COURT: Any other instruction or corrections by the State or defense?

MR. PANOSH: No, Your Honor.

MR. LLOYD: No, Your Honor.

THE COURT: Okay. All right. Court will stand at ease until the jury returns.

Let me clear up one thing. If the jury requests the evidence, any objection to the evidence going in the jury room?

MR. PANOSH: Your Honor, we have no objection, depending on the request. We may ask that all evidence of a certain category go back, not just specific items. But we have no general objection.

THE COURT: Defense?

MR. LLOYD: Well, Your Honor, we -- Mr. Hatfield and I discussed it. We probably would object. One of my concerns -- this doesn't cover all of our concerns --

is, for example, the statements of Mr. Clark. My recollection is that there was a great deal of material in his statements which he simply denied having made. And I'm not so sure that we don't get in the same situation that we had in Hunt too. I see there's some double hearsay. At any rate, Your Honor, after Mr. Hatfield and I discussed it, I think we would object to the exhibits going back.

THE COURT: Well, the alternative is to bring them in the courtroom and let them examine them here in the courtroom in the presence of everyone else.

MR. LLOYD: Well, maybe if that's the alternative, then -- if Your Honor would indulge me to just take a look at the evidence --

THE COURT: They've already been introduced into evidence. The jury has already looked at them.

MR. LLOYD: I understand that.

THE COURT: Just a question of whether they want to look at them further. I'll be glad to bring them in the courtroom and let them look at them here in the courtroom if that would satisfy the defense.

MR. LLOYD: Well, we would prefer that they just look at them in the courtroom.

THE COURT: All right, sir. The Court will stand at ease until the jury returns.

(Verdict sheets delivered to the jury.

10:09 a.m.)

(Court at ease)

THE COURT: Let me see the attorneys at the bench for a moment.

You can go ahead and let the jury take a ten-minute break.

(Jury recess. 10:50 a.m.)

THE COURT: Someone trying to locate Mr. Lloyd?

MR. HATFIELD: I have no idea where he is. I would be glad to go look for him.

(Mr. Lloyd present)

THE COURT: Okay. The jury has made a request of the Court and I've marked it as Court Exhibit No. 1. They'd like the affidavits or statements from Nichols, Pardee, Ted Kimble, Jerry Clark, Mitch Whidden, Debra Whidden, Jim Stump, and Kim Kimble. They'd also like the photographs of the outside of the house. I don't know of any statements that Ted Kimble made. Do we have any statement or affidavit from him in evidence?

MR. PANOSH: Your Honor, we moved to introduce -
109. I believe the objection was sustained.

THE COURT: We have the affidavits for Nichols, Pardee, Clark, Whidden, Whidden, Stump and Kim Kimble?

MR. PANOSH: Your Honor, I've placed on your

bench the ones that I could find. That's it --

THE COURT: Right here. Does the --

MR. PANOSH: To my knowledge, Mr. Stump's affidavit was not introduced nor was there a statement from Mrs. Kimberly Kimble.

MR. LLOYD: Mr. Pardee -- my recollection is there was no statement from him. Is that correct, Mr. Panosh?

MR. PANOSH: The agreement.

MR. LLOYD: The agreement.

MR. HATFIELD: Could we approach and just look at what you have, Your Honor?

THE COURT: Yes, you may.

MR. HATFIELD: Go down here to the end and just take a look at it.

THE COURT: Photographs of the house are in here?

MR. PANOSH: There are lots of photographs of the house, Your Honor. Do you want me to pull them all out?

THE COURT: It just says photos of the outside of the house.

MR. PANOSH: All right.

MR. HATFIELD: Your Honor, one problem is these things have been highlighted.

MR. PANOSH: I can undo that. Which one is highlighted?

MR. HATFIELD: All of the Clark ones.

MR. PANOSH: I can undo that.

THE COURT: They've read them anyway. Haven't they already read them?

MR. PANOSH: Yes, sir.

THE COURT: Didn't they see all the exhibits in the jury box?

MR. PANOSH: Yes, sir.

MR. HATFIELD: I don't think that it's proper to have them highlighted.

THE COURT: Well, he can change that if that's a problem.

MR. PANOSH: Your Honor, I can also make multiple copies so that it doesn't take as long for the jurors to look at them.

THE COURT: That would be helpful.

MR. HATFIELD: Your Honor, may we confer in the conference room just for a minute and then we'll try to have a unified position?

THE COURT: Yes, sir.

MR. HATFIELD: I mean I don't think we're holding the Court up, if he's going to make copies of all these things.

THE COURT: All right, sir. Go ahead and do it.

MR. PANOSH: You want me to make copies while you're out? Mr. Hatfield?

MR. HATFIELD: Yes, sir.

MR. PANOSH: You want me to make copies while you're out?

THE COURT: Do you want him to go ahead and make copies?

MR. LLOYD: Yes, sir. Sure.

MR. HATFIELD: Yes. We do not want anything that's been highlighted submitted to the jury.

THE COURT: All right. He's going to take care of that.

MR. PANOSH: How many copies do you want? Twelve, Your Honor?

THE COURT: Yes. One for each one.

(Court at ease)

(Mr. Panosh absent)

THE COURT: As soon as we get Mr. Panosh back, we'll deal with this matter.

(Mr. Panosh present)

MR. PANOSH: Your Honor, for the record, I have made 12 copies of every item that Your Honor tentatively referred to except for the highlighted testimony or statement of Mitch Whidden. In that case, I made 13

copies.

THE COURT: Since you were out of the courtroom, the Court has had a second request of the jury. They'd like the gas receipt, Winn-Dixie cancelled check, and they'd like Ronnie's statement of testimony. Do we have a statement from Ronnie?

MR. PANOSH: Not that's introduced. There's no gas receipt to my knowledge.

THE COURT: Testimony, of course, would be in the discretion of the Court. The Court will explain to the jury we have a different court reporter. It would be almost impossible or difficult to go back and type all this up in the midst of this trial. But if they could direct the Court to certain portions of it, I'd try to instruct if I can.

MR. PANOSH: Your Honor, we'd ask since these items are redacted that the Court give some suitable explanation.

THE COURT: In what respect, sir?

THE BAILIFF: They wanted to know if I knocked. I said no.

THE COURT: First, let me clear up a few things. Any objection to them having the gas receipt and Winn-Dixie cancelled check?

MR. PANOSH: Your Honor, there is no gas receipt

that I'm aware of.

MR. LLOYD: We've got a gas receipt. You know. If what they're referring to is the fact that Ronnie -- it came out in the testimony -- placed the gas receipt on the seat of the box truck. But there is a receipt from Atlantic Mobile Homes where Ronnie had purchased the underpinning. They may be referring to that, Your Honor. We don't have any objections to either one of those going back.

MR. PANOSH: Well, they didn't request it.

THE COURT: The other exhibits -- you have any objection to them taking those to the jury room?

MR. LLOYD: No. Without waiving our previous objections, we have no objection to it.

THE COURT: Taking them to the jury room?

MR. HATFIELD: They'll take the copies? Is that --

THE COURT: Yes. That's what they'll take in. Have you got the original off of each one of them?

MR. PANOSH: They're on the top, Your Honor. There was one statement that was identified as being the blue statement. Since they won't be getting that, Your Honor might want to make reference to that. Specifically, Your Honor, State's Exhibit 130. At least one of the attorneys referred to it as being the blue

exhibit, and it's no longer blue. So you might want to --

THE COURT: Okay.

MR. PANOSH: -- explain that.

THE COURT: These are the photographs too.

MR. HATFIELD: What did they request? If they didn't request the blue statement, I see no reason to --

THE COURT: They requested the statements from Nichols, Pardee, Jerry Clark, Mitch Whidden, Debra Whidden, Jim Stump, and Kim Kimble. You told me there is no statement from Ted Kimble. There is no statement from Jim Stump or Kim Kimble in evidence other than what their testimony was; is that correct?

MR. LLOYD: That's correct, Your Honor.

THE COURT: All right. Need to get the alternates in first. Then bring the 12.

MR. PANOSH: Your Honor, since the State did offer the statement of Debra Whidden and since it did go to corroborate her and since the jury has specifically requested it, we would ask you to reconsider your ruling and admit it.

THE COURT: Denied.

(All jurors present. 11:27 a.m.)

THE COURT: Members of the jury, you've made certain requests of the Court, and the Court has marked

those requests as Court Exhibit No. 1 and Court Exhibit No. 2. The reason for the delay, we've been trying to make copies so each of you would have a copy of those particular exhibits to kind of help you somewhat. That's the reason for the delay of getting you in the courtroom here.

A couple of things. First, you requested Ronnie's statement and testimony. Is that one of the requests you made?

And the Court instructs you that this is a discretionary part on the part of the Court. I think you realize we have a different court reporter. The court reporter that took that testimony is not here. This court reporter can read her notes, but it is not as easy if the normal reporter is here. That testimony is rather lengthy. It would take a while for the court reporter to go back and reconstruct that and have those typed out so that you can have it, so the Court is going to exercise its discretion and not provide that for you. However, if you can direct the Court's attention to certain portions of that testimony, I'll try to provide that portion for you. You understand that?

The other thing was the gas receipt. There is no gas receipt in evidence. It was not placed in evidence. There was a receipt for the underlining for

the trailer. If that's the receipt you want, I can provide that for you.

The Winn-Dixie cancelled check, we will provide that for you.

The affidavits and the -- Court Exhibit No. 1, you requested the statements or affidavits from Nichols, Pardee, Jerry Clark, Mitch Whidden, Debra Whidden, and you requested three other statements or affidavits, and the statement -- there is no statement from Ted Kimble, there is no statement from Jim Stump or Kim Kimble introduced into evidence. You'll have to take their testimony as you heard it here in the courtroom. The other statements, I'm going to provide them for you.

Please notice that the color is different because we had to reprint them and some portions were redacted or kept out and that was ruled on by the Court before you ever saw the exhibits anyway. So you understand that as to why they may not be blue -- be white rather than blue, because of the photocopies?

And the other item you requested was photographs of the outside of the house.

Is that your request?

Okay. At this point, the court officer will provide those exhibits for you. You may take them with you into the jury room.

If you'll pass those out please, Mark, at this time.

MR. LLOYD: Your Honor, may we approach?

THE COURT: Yes, sir.

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

THE COURT: What's the problem?

MR. LLOYD: There is no problem, Judge.

I'd just like to ask the Court to consider giving the corroborating statement instruction, because I don't want them to get the impression that these are the statements -- as the instruction says, these are considered only for the purpose of corroborating or impeaching a witness, if it so does, and they're not for the truth asserted because they were not made under oath at the time. And I don't want them to get the impression that these are -- they should take what the statement says over their recollection of what the witness actually testified in Court. I think that's very misleading.

THE COURT: Mr. Panosh?

MR. PANOSH: If Your Honor feels it's appropriate to give an instruction, fine. One thing I would ask is you said -- I don't know if you intended to say it or not -- there were no statements as to some of these people. There were statements. They just weren't introduced. If you could make that clear.

THE COURT: I'll do that.

(Open court resumed)

THE COURT: I indicated to you there were no statements as to certain people. There were statements, but they were not introduced as evidence in this case. You understand that? And you must use their testimony here in the courtroom. You must also remember that these statements -- some of these statements were not made in the courtroom under oath and they're being used for corroborative purposes.

In other words, it would be for you to say and determine whether or not those statements do in fact corroborate that witness' testimony that you heard here in the courtroom. They're not being offered for the truth or falsity of the statement, but whether in fact they did make that statement on the occasion.

You understand that?

Is that sufficient, Mr. Lloyd?

MR. LLOYD: I think, Your Honor. Yes.

THE COURT: Mr. Panosh?

MR. PANOSH: Is there an impeachment portion to that?

THE COURT: Pardon?

MR. PANOSH: Did you want to add an impeachment portion to that?

THE COURT: No, sir. I already previously covered that.

So the court officer will pass those out to you. Once we get them all passed out, then you may take those and go into the jury room and continue deliberations.

THE BAILIFF: Do you want the originals to stay here?

THE COURT: Yes. Just the photocopies. I think he's made 12. The ones with the stickers will stay. The others will go.

Did someone get the Winn-Dixie cancelled check in that group? They can take them with them and pass them out back there in the jury room.

MR. PANOSH: Give it to the bailiff?

THE COURT: Yes, sir. And the photographs. You have the photographs of the house? They were in the

file.

THE BAILIFF: I have the photographs here.

THE COURT: You have them there?

THE BAILIFF: Yes, sir.

THE COURT: All right. Let them take those to the jury room.

You may now return to the jury room and continue your deliberations. The three alternates just remain in the courtroom for the moment.

(Jury absent. 11:32 a.m.)

THE COURT: Okay. The three alternates, if you'll go back to the room you've been occupying, please.

(Three alternate jurors absent. 11:34 a.m.)

THE COURT: The Court will stand at ease until the jury returns.

(Court at ease)

THE BAILIFF: He wanted to know could they take their lunch break.

THE COURT: Yes. Bring them back in the courtroom. Bring the alternates in first. Get the defendant here.

(Defendant present)

(Three alternate jurors present. 12:28 p.m.)

THE COURT: Do you have an envelope?

THE CLERK: Yes. The bailiff has them.

(Jury present. 12:29 a.m.)

THE COURT: Okay. Would the jury foreperson please identify herself or himself.

Okay. Mr. Lewey -- is that right --

JURY FOREPERSON: Yes, sir.

THE COURT: -- you're the foreman?

You need to give him that envelope. If you'll put the verdict sheets in that envelope, please. Are they back in the jury room?

JURY FOREPERSON: We've not reached a verdict yet, sir.

THE COURT: Okay. So there's nothing on the verdict sheets? Okay. On any one of the three charges?

JURY FOREPERSON: No, sir.

THE COURT: Members of the jury, at this point the Court instructs you that you should stop your deliberations. Do not begin again until I've brought you back into the courtroom, reassembled you, and sent you back into the jury room. Does everyone understand that? Do not discuss it among yourselves or try to talk about it among yourselves at any point.

Go ahead and take your lunch break. You want to take the full hour and a half today? Is that helpful to you?

JURY FOREPERSON: Yes. Please.

THE COURT: Okay. Let you take the full hour and a half. You need to be back at two o'clock. Those of you that are on the panel, go back into the jury room. The other three jurors, alternate jurors, if you'll just go to your room that you've been occupying. I know some of the alternate jurors requested whether or not you-all could have lunch together. There's nothing wrong with that. Just make sure nobody discusses the case.

Does everyone understand that?

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

(All jurors absent. 12:30 p.m.)

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

(Luncheon recess)

AFTERNOON SESSION

THE COURT: Mr. Hatfield here?

MR. LLOYD: Your Honor, I'd be glad to step outside. I haven't seen him.

(Mr. Lloyd left the courtroom and ultimately returned.)

THE COURT: Did you find him?

MR. LLOYD: I didn't see him, Your Honor. I didn't go look --

THE COURT: All 12 back?

THE BAILIFF: Yes.

THE COURT: Three alternates back?

THE BAILIFF: Yes, sir.

THE COURT: Thank you.

(Defendant present)

THE COURT: Do you care to proceed without him, Mr. Lloyd?

MR. LLOYD: That's fine, Your Honor. I don't have any problem with that.

THE COURT: All right. Bring them out.

(Jury present. 2:03 p.m.)

THE COURT: Pleased to have the jury panel back. I hope each of you are feeling okay and having no problems.

Once you return to the jury room, Mr. Lewey, you may reassemble the jury in the jury room. Once you've reassembled the group, then you may again resume your deliberations. Once you've reached a unanimous verdict, please knock on the door.

(Jury absent. 2:04 p.m.)

THE COURT: Let me see the attorneys at the bench about an administrative matter, please.

(Side-bar conference)

THE COURT: At the bench conference, it was

discussed by the Court and attorneys involved that we have three alternate jurors who have been isolated throughout this trial and the consensus of the defense attorney and the State's attorney and the Court was that we could release these three alternate jurors, that they would not be able to participate in the guilt phase of this trial; if there is a sentencing phase, then they would be available and they could be brought back for that phase.

Is that correct for the State?

MR. PANOSH: Yes, sir.

THE COURT: For the defense?

MR. LLOYD: Yes, sir, Your Honor.

THE COURT: We need to get their phone numbers.

If you'll bring the jury alternates down, please. Put them on standby.

THE CLERK: Your Honor, I still have their phone numbers on the juror responsibility sheet.

THE COURT: Okay.

(Mr. Hatfield entered the courtroom.)

MR. HATFIELD: I apologize. I've been in the elevator for about four or five minutes.

THE COURT: Middle elevator?

MR. HATFIELD: Sir?

THE COURT: Middle elevator?

MR. HATFIELD: Yes.

THE COURT: The one that's broken. You didn't break it, did you?

MR. HATFIELD: No, sir. Did kick it, though, a couple of times.

(Alternate jurors present. 2:10 p.m.)

THE COURT: Okay. The three alternate jurors, Ms. Griggs, Ms. Caldwell, Ms. Burnett, you will not be participating in this phase of the trial, the guilt/innocence phase. If there is a second phase, then you will be again seated as an alternate juror in that phase. You understand that?

And I'm going to let you go home for the evening. You will not have to stay here. If you want to stay, you're certainly welcome to do that. But otherwise, you're going to be released until this phase is completed. We have your phone number. The clerk will call you and inform you as to when you need to be back, if at all. You understand that?

It's very important that you not discuss the case with your family, friends, among yourselves or anyone that you come in contact with; that you not read, watch, listen to any news media accounts; not attempt to do any investigation or research on your own. Do not talk with the attorneys, parties, witnesses, spectators

or allow them to talk to you or in your presence about the case, because you might have to step in and be an active part of the sentencing phase, if in fact we get to that stage. You understand that?

So you're free to go for the afternoon. Be very careful and have a nice evening.

(Three alternate jurors absent. 2:11 p.m.)

(Judge stepped from the bench and ultimately returned)

THE COURT: Okay. Court will stand at ease until the jury returns. I believe the State may have another matter it wishes to take care of?

MR. PANOSH: Yes.

THE COURT: I'll be glad to help you.

MR. PANOSH: I don't believe counsel is here, but he said sometime around 2 or 3.

THE COURT: I'll be glad to help you when that comes.

(Court at ease)

THE COURT: I'm going to let them take about a five-minute recess.

THE BAILIFF: Excuse me, sir?

THE COURT: They may take a ten-minute recess. No. They can just go ahead and take a recess. All of them out?

THE BAILIFF: No, sir.

THE COURT: Mr. Johnson, is your client here?

Ready to deal with him?

MR. PANOSH: We're almost finished with the paperwork, Your Honor.

THE COURT: All right.

THE BAILIFF: They informed me they're going to stay in there, Judge.

THE COURT: Okay. That's fine.

MR. PANOSH: Your Honor, the easiest would be for me to do -- finish the paperwork during the break and right after the break do it then, if it please the Court.

THE COURT: That's fine.

The jurors have requested the receipt from the Atlantic Mobile Home Supplies. Is that here?

If you'll get that, please, Mr. Lloyd.

MR. PANOSH: It's in the defense exhibit folder.

THE COURT: Any objection to the jurors taking it into the jury room?

MR. PANOSH: No, Your Honor.

THE COURT: You may give this to them when they all return to the jury room.

All 12 back?

THE BAILIFF: No, sir.

THE COURT: Let me see Mr. Hatfield on a personal matter.

(Mr. Hatfield approached the bench)

THE BAILIFF: They're all back, Judge.

THE COURT: All right. They may begin their deliberations again.

(Jury resumed deliberations. 3:30 p.m.)

(Court at ease)

(Whereupon, unrelated matters were heard.)

(Defendant present)

(Jury present. 4:05 p.m.)

THE COURT: Mr. Lewey, as jury foreman, you've sent a request to the Court and the Court has marked this as Court Exhibit No. 4. And in this request, you indicate that you would like to have Ronnie Kimble's account of where he was on the day of October 9, 1995, and Mr. Panosh's cross-examination of each particular response. Is that your question, sir?

JURY FOREPERSON: Yes, sir.

THE COURT: Again, members of the jury, the Court is going to exercise its discretion in this matter because of the fact that we do have a separate court reporter. The other court reporter is not available. And this court reporter can read her notes somewhat, but it would be difficult for her to try to reconstruct her

notes at this particular point. And the testimony that you want, Mr. Kimble's testimony, was over a period of a day and a half, probably. There was direct examination also by his counsel, and then you would have a cross-examination by Mr. Panosh. And Mr. Panosh's cross-examination, it was not all on one point; there were different points that he cross-examined him on. It would be a difficult process for the court reporter to get this available to you within the next few hours.

I'm going to ask that you use your collective judgment or collective reasoning as to what you heard here in the courtroom under oath. The court reporter is human like everybody else. She may have gotten it wrong. So you must try as best you can, the 12 of you, to use your collective remembrance of what happened and what was testified to. And if you're still having difficulty with it, the Court will try at some point -- if it becomes necessary, and you cannot reconstruct what the testimony was, I will try to get the other court reporter to return and get her notes and get those to you.

Yes?

JUROR #8: That's already been tried. That's the reason we resulted to requesting it. We've gone over and over and recollections are not clicking.

JUROR #12: We're not going to get anywhere without it.

THE COURT: You want his entire testimony? Is that what you wish?

JURY FOREPERSON: Just the account of his whereabouts that day. The cross-examination. We were trying to narrow it down so it would be less material for the Court.

THE COURT: Is Marsha available tomorrow, if you know, P.J.?

THE COURT REPORTER: She can probably get -- I can probably get up with her at least somewhere between now and tonight.

THE COURT: All right. That being the -- can you deal with the other matters or is this necessary to get at this point?

JURY FOREPERSON: At this point it seems to be a crucial thing for us.

THE COURT: All right. The Court will allow you to take the evening recess. You'll have to come back in the morning at 9:30. Stop your deliberations. Do not begin again until the Court reassembles and you're brought back into the courtroom. Do not attempt to go out and do any investigation or research on your own. Do not read, watch or listen to any news media accounts.

Remember the other instructions on the juror responsibility sheet.

You may retire for the evening. I'll see you in the morning at 9:30.

Mr. Lewey, you need to bring the verdict sheet, put it in the envelope, seal it up and sign your name across the seal, please, and give it to the court officer.

(Jury absent. 4:10 p.m.)

(Defendant absent. 4:11 p.m.)

THE COURT: For the benefit of the attorneys, the court reporter is going to contact Marsha, and they'll see between the two of them whether they can reconstruct her notes into a written transcript the testimony the jury has requested overnight.

MR. LLOYD: Does your Honor contemplate the entire testimony?

THE COURT: No, sir. Just what they've asked for.

MR. LLOYD: Okay. As I understand it, what they asked for was --

THE COURT: His whereabouts on that day.

MR. LLOYD: That would include whatever portion of direct that would cover?

THE COURT: That would be correct.

Recess until 9:30 in the morning, Sheriff.

(Whereupon, an evening recess was taken at 4:20 p.m., to resume proceedings on September 2, 1998, at 9:30 a.m.)