

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 )  
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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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THURSDAY, AUGUST 13, 1998

(Court convened at 9:35 a.m. The defendant was present.  
The jury was not present.)

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

MR. PANOSH: Your Honor, in looking at the schedule, it would appear we're going to get to a matter next week that -- in which we'll have to know whether Theodore Kimble is exercising privilege or not. I think the best time to do that would be sometime tomorrow, either first thing or about the time you let the jury go.

THE COURT: I'd say we do it between 12:00 and 1:00.

MR. PANOSH: All right.

MR. HATFIELD: Your Honor, could I --

THE COURT: Yes.

MR. HATFIELD: -- comment on that? Your Honor, I think that we need the weekend to evaluate the situation with Kimble's -- Theodore Kimble's counsel, and to assess the situation at that point in time. Because they do respect the input that we may have on that subject.

THE COURT: As long as it doesn't put the State at a great disadvantage, because they got witnesses to schedule in here on Monday, and if they don't know before Monday, then it's going to be difficult for them. You ought to be

able to make that decision between now and 1:00 o'clock on Friday.

MR. HATFIELD: Well, I can tell you that I'm not prepared to make that decision, and I've spent 15 months on this case. And one of the major problems with that decision is that we don't have access to Ted Kimble, and it may be that his counsel would allow us to meet freely with him, but up to now, that has not been afforded us.

THE COURT: Well --

MR. HATFIELD: I don't think that we should have to sacrifice, so that the State can plan its case. They've not shared any of their plans with us.

MR. PANOSH: Your Honor, that's not accurate. I arranged for a meeting between Ted and Ronnie and their counsel in my office on the Friday preceding the trial. That's Number 1. Number 2, it's not Mr. Hatfield's decision, it's counsel for Theodore Kimble, and they've told me that they've made a decision and that they have discussed it with their client. And I think it will be -- it's going to make things run a lot smoother next week if we know which witnesses we need and in which order.

THE COURT: All right. Now, I'm going to tentatively schedule it for tomorrow between 12:00 and 1:00 and we'll hear it during that period of time.

MR. HATFIELD: Well, if I may --

THE COURT: Or he needs to be available.

MR. HATFIELD: If I may say this. First of all, the meeting on Friday did not include myself and did not include one of the other lawyers who represents Ted Kimble. And the purpose of that meeting was not to determine whether they were going to exercise the Fifth.

Now, the second point is this. Regardless of what Mr. Panosh thinks that Theodore Kimble's counsel have told him, we have been reliably informed that no decision has been made. So --

THE COURT: I'm saying, make it between now and 1:00 o'clock tomorrow.

MR. HATFIELD: Why do we have to make that decision?

THE COURT: You don't have to make it. His counsel is the one that's going to have to make that decision.

MR. HATFIELD: Your Honor, I just don't understand why North Carolina gets to determine the time frame on this, instead of the defendant's --

THE COURT: The State of North Carolina is not determining the time. I'm the judge in this case, and I'm trying to move this case along as quickly as I can. They told me it was going to take five to six weeks, and I'm trying to get it in within less than that time, if we

possibly can. They've got witnesses scheduled, and the State's indicated they may finish their evidence by Monday, and they need to know which witness to get in here and which not to get in here, based on whether or not he's going to in fact testify or invoke his privilege. And his lawyers know that. They can make that decision between now and noon tomorrow.

MR. HATFIELD: Your Honor, if they finish next Monday, we'll have Major League baseball next week. There's no possibility that they're going to finish on Monday. I just counted the witnesses.

THE COURT: I don't know whether they will or not. I'm going to hold them to the fire, and they're going to -- you know, we're going to try to move along as best we can.

MR. PANOSH: Your Honor, I didn't predict next Monday. I'm sorry to mislead you.

THE COURT: I'm sorry. Well, I thought when we were talking yesterday, I understood next Monday.

MR. HATFIELD: Your Honor, the modified potential witness list has almost exactly 100 witnesses on it.

THE COURT: Well, I'm inclined --

MR. HATFIELD: That is just theirs.

THE COURT: Well --

MR. HATFIELD: And they've only called 20 of them.

THE COURT: Some of them may be short witnesses,

some may be long. It's going to take awhile.

MR. HATFIELD: Your Honor, they spent yesterday putting witnesses on --

THE COURT: Well, we've wasted time right now talking about it. Let's move along.

MR. HATFIELD: Well, I just think that if -- that the Court should open the door --

THE COURT: I can always start court at 9:00 o'clock, and I can always go to 6:00 o'clock, I can work on Friday, and I can work on Saturday. Now, we can take it either way you want to do it. I'm trying to keep the jury fresh, keep the case moving along as best I can. And I've given you what I thought was a time frame to move within, and I'm hopeful we can do that. If we can't, then I'll speed it up or slow it down or whatever it needs to take to keep this jury fresh and focused.

Bring them in.

Come back to the witness stand, please.

Bring the witness back up to the witness stand,

Mr. Panosh.

MR. PANOSH: Mr. Lindell. Sergeant Lindell.

(The witness, Roy Lindell, returned to the witness stand.)

(The jury entered the courtroom at 9:40 a.m.)

THE COURT: Pleased to have the panel back. I hope each of you had a nice evening and are 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 to you about that.

JUROR NUMBER 12, MR. MAJORS: I don't have a problem --

THE COURT: Yes, sir.

MR. MAJORS: -- but we want to know if it's possible if we could bring -- make notes out here.

THE COURT: You may do that, yes, you may take notes. I would caution you, however, that just because one juror's taking notes, the rest of you should not sit back and relax, because we used to have a rule that if one -- if anybody objected, they could not take the notes in the jury deliberations, because it would give someone an unfair advantage. Someone may sit there and say, "Well, he's taking good notes" or "she's taking good notes. I can relax, and she'll get it down, he'll get it down." They may get it wrong, just as the court reporter or the Court could get it wrong. So you need to listen and make your own determination of what the facts are, and not rely upon someone's taking notes. You certainly may take notes, and that's no problem. If you need paper or pens, I'll be glad to provide them to you. Do you need that, sir?

MR. MAJORS: We can -- I guess we can bring our own note pads.

THE COURT: No. We'd be glad -- we've got enough here to provide you with those, for those of you that would like to take some notes.

Any other questions or problems today?

(The clerk handed note pads and pens to the bailiff.)

THE COURT: All of you may not want to take notes, but if you'd like to take some notes, the court officer will pass out a pad here and some pens, and kind of leave it up to you, if you want to do that.

(The bailiff handed note pads and pens to some jurors.)

THE COURT: Ready to proceed?

MR. PANOSH: Thank you. May I approach?

THE COURT: Yes, you may.

ROY LINDELL, having been previously duly sworn, testified as follows during CONTINUED DIRECT EXAMINATION by MR. PANOSH:

Q Showing you then State's Exhibit 100. You previously testified that one of the first things done by the evidence collection team was to put up a tape indicating the crime scene area?

A Yes, I did.

Q Does Number 100 show that original tape?

A Yes, it does.

Q Now, you've also made reference to a picnic table area. Was that outside the tape?

A Yes, it was.



Q Using the diagram, can you give the jury a general idea of where the picnic table was.

(The witness approached the diagram.)

A This being the front of the house, the picnic table was down in this area. (Indicated.)

Q Off the diagram?

A Off the diagram, actually.

Q Have a seat. Thank you.

(The witness returned to the witness stand.)

Q Now, what, if anything, was the area of the picnic tables used for during the evidence collection process and the -- first of all, the firefighting process and then the evidence collection process?

A Whenever we needed to share information, we went outside the crime scene area, the secure area. We tried to keep the crime scene area as free from anybody being in there, unless they had something to do with the crime scene. The picnic table was used as an area to share information and a logical plan that we would continue on with the investigation.

Q All right. And during the time that the fire was being put out and immediately thereafter, there were a number of civilians in that area, as is depicted in State's Number 100; is that correct?

A Yes, there was.

MR. PANOSH: We'd seek to introduce Number 100.

THE COURT: The Court'll allow the introduction of State's Exhibit Number 100.

Q In the course of your duties, sir, did there come a time when you were able to determine the location of the Subaru in the driveway?

A Yes.

Q And how did you do that?

A Took a measurement.

Q What were the measurements, sir? How did you take them?

A Let me refer to my note here. Just one second.

(Time was allowed for the witness.)

A On the left side of the gravel driveway, 24 feet, five inches from the passenger side front bumper, the front edge of the -- to the front edge of the cement garage floor was the victim's vehicle.

Q All right. Would you show the -- on the diagram where you started your measurement at the edge of the garage door.

(The witness approached the diagram.)

A It would be this edge right here where the cement was.

(Indicated.)

Q And the vehicle was then 24 and a half feet back --

A Correct.

Q -- or 24 feet, five inches back?

A Correct.

Q Thank you. Have a seat.

(The witness returned to the witness stand.)

Q When you examined the vehicle, what did you note about the vehicle?

A The keys were in the ignition. Her purse was on the passenger seat, on the floor portion of the passenger seat. We opened the trunk. There were several items that were large boards, I guess you refer to them as cardboard, that were used for -- just display type stuff.

Q All right. And the condition of the windows?

A The windows were up.

Q And the condition of the doors?

A The doors were unlocked.

Q They were closed but unlocked?

A Yes, sir.

Q Did you then examine the garage door that led into the kitchen?

A Yes, I did.

Q And what did you find?

A You mean the door --

Q Specifically, what observations did you make in regard to the doorknob and the dead bolt?

A Okay. The dead bolt was not -- had not been used. In other words, it had not been locked. There was a sheer

curtain -- the door was a solid glass door, with a wood frame around the glass. There was a sheer curtain on the inside. There was a mark of the latch part on the curtain. We processed the door, using fluorescent red powder and ultraviolet light, for latent fingerprints, both sides of it, and the doorknob.

Q Were you able to find any fingerprints?

A We found a little bit of ridge detail, but it wasn't sufficient enough to do an examination or do a comparison.

Q Now, when you say "ultraviolet light," what are you talking about?

A UV light, something would be similar to a black light that you -- it fluoresces the fingerprint powder.

Q And what other process did you use, to try and locate fingerprints?

A What they call Redwop. It's red powder, and it fluoresces under ultraviolet light.

Q And you made a note as to the location and the size of the pry marks on that door; is that correct?

A Yes.

Q And what was that note?

A The pry marks were not deep and appeared to be a one-half inch flat pry bar. It's just a dull, flat object.

Q Did you also examine the location where the gas can had been and measure the distance from the door?

A Yes, I did.

Q And what was the distance from the kitchen door to the location where the gas can was?

A It'll be on the drawing.

Q Okay. Is that three foot, three inches?

A Correction. It's not on the drawing. It would be about three feet, three inches.

Q Well, drawing your attention to your notes, did you measure it and make a specific note of what the distance was?

A Yes, I did.

Q And what was the distance from the kitchen door --

A Three foot --

Q -- to the location --

A -- three inches inside from the garage door entrance.

Q And that was three foot, three inches?

A Correct.

Q Did you also locate the keys, or were those located by somebody in your presence --

A Yes, they were.

Q -- the keys on the kitchen floor?

A Yes.

Q Do you know the location of those keys?

A They were found on the floor, on the left side of the sink, approximately one foot out from the floor base.

Q And can you indicate on the diagram where the sink is.  
(The witness approached the diagram.)

A The sink is in this area right here, and they were found approximately right there. (Indicated.)

Q All right. Would you pick up something and put a K there, for keys.

(The witness complied.)

(The witness returned to the witness stand.)

Q Now, when you moved to the back bedrooms and you examined -- or first of all, when you examined the first bedroom on the right there, were you able to determine whether or not the items in that bedroom were disturbed?

A No items appeared to be disturbed.

Q No items disturbed?

A No.

Q When you went to the back bedrooms, what did you observe?

A The bedroom on the right had a tool chest. As soon as you walked in, it was sort of catty-corner across. Appeared to have been moved out into the room a little bit. There was some other items that were moved around, some drawers.

Q And when you went to the second bedroom, which has been marked the master bedroom, what did you observe?

A The master bedroom, upon entering the room, to the far

left back wall, there was a tall chest, which would be like similar to a sock chest or lingerie chest. These drawers were stacked on top one another very neatly. There was a bureau on the left wall on the right side. The drawers on that, some of them were pulled out. Some of the drawers appeared to be thrown across the room and items just kind of haphazardly just tossed around.

Q And you've been processing crime scenes for how many years?

A I've been with the sheriff's department since 1974 --

MR. HATFIELD: Objection. That's not responsive.

A -- processing crime scenes.

THE COURT: Overruled.

Q You've been -- All right. And based upon your training and experience in processing crime scenes, what was unusual about this particular master bedroom?

A The mattress and everything, on first look at it, just initially appeared that it was really overdone, it was to extreme, in relation to the rest of the house. There just was too much. It was -- it just looked too convincing, that the perpetrator had tried to stage a break-in.

Q In the course of your investigation of the weapon -- Do you see the weapon there, sir?

A Yes, sir.

Q I believe it's 84.

A Right.

Q Did you unload it or cause it to be unloaded?

A We did unload it, but not at that particular time.

Q Okay. I believe you noted the number of bullets on the bottom of Page 3 of your report. Would you tell the ladies and gentlemen of the jury how the weapon was loaded, when you finally unloaded it.

A There was one shell in the chamber. In the magazine, there were -- Just a second. I need to look at this.

(Time was allowed for the witness.)

A And 12 unfired cartridges in the magazine.

Q All right. There were 11 in the magazine and one in the barrel; is that correct?

MR. LLOYD: Objection, Your Honor.

THE COURT: Sustained.

Q Referring to your notes, how many were in the magazine and how many in the barrel?

A There was one in the barrel and 11 in the magazine.

Q Now, of the 11 -- Excuse me.

MR. PANOSH: May I approach?

THE COURT: You may.

Q Showing you then Number 85, is that the one that was taken from the barrel?

A Yes, it is.

Q Showing you then 84-D, is that the magazine that was



taken from the gun and the rounds from that magazine?

A Yes. Those are 11 rounds from the magazine.

Q And of those 11 rounds, how many did you submit to the SBI for testing?

A We submitted two of the 11 rounds to the State Bureau for testing.

Q And those were consumed in the testing, and therefore

--

MR. HATFIELD: Objection. This has all been told before by other witnesses.

THE COURT: Overruled.

Q -- therefore, they're not present?

A Correct.

Q In the course of your examination of the gun and the area of the gun, did you recover certain hair?

A We recovered a black hair from the barrel of the weapon.

Q And did you submit that to the SBI?

A Yes, it was.

Q Now, in the course of your examination of the rooms, did you take or cause to be taken certain carpet samples?

A Yes, we did.

Q And where were they taken from?

A They were taken from the dining room area, or the front room facing the house.

Q And what was done with those carpet samples?

A They were sent to the State Bureau for analysis.

Q What type of analysis was requested?

A For an accelerant, to determine what kind of an accelerant may possibly be in them.

Q Now, in the course of your examination of State's Exhibit Number 84, the weapon, what did you do besides unload it?

A We did a visual view under a magnifier, using a high intensity light, to see if there was any fingerprints on it. The condition of the weapon didn't permit us to go ahead and process it at that time, and we didn't want to do anything to disturb anything that might have any other evidentiary value to it.

Q When you say the condition of the weapon didn't permit you to process it, what do you mean?

A There was a, like a film on it, from the condensation from the fire. And we weren't down to the bare metal. It wasn't permissible for us to do any processing on it.

Q And when you say "processing," you mean apply fingerprint dust?

A Correct.

Q And the purpose of examining under high light was what, please?

A Under using a high intensity light, such as an

Omnichrome or a machine of this nature, where you have high -- different nanometers of light would reflect if there was a fingerprint there.

Q Were you able to find any fingerprints on that weapon?

A No, we were not.

Q Thereafter, you submitted the weapon to the State Bureau of Investigation for testing; is that correct?

A That's correct.

MR. PANOSH: No further questions.

CROSS-EXAMINATION by MR. HATFIELD:

Q Mr. Lindell, you said you'd covered quite a few crime scenes over the years; is that correct?

A Yes, sir.

Q Have you covered crime scenes where there's been a fire?

A Yes, sir.

Q Have you in the course of your duties had to go into a crime scene after the firefighters had already been there?

A Yes, sir.

Q The firefighters are always going to lift up mattresses and springs and -- to determine whether anyone's underneath, aren't they?

A Maybe not in all instances.

Q Most instances, though; isn't that right?

A Possibly.

Q In a fire situation, the available air and breathable air would be as close to the ground as possible, won't it?

A Reasonably.

Q And so, people trapped in fire situations will frequently crawl, in order to get the only air that's available to them, won't they?

A Possibly.

Q And they also might crawl under a bed, in order to protect themselves from falling debris, out of desperation; isn't that so?

A Perhaps.

Q So no firefighter would go into a fire scene without lifting up mattresses and springs, to see if anybody had crawled underneath; isn't that right, Mr. Lindell?

A Not necessarily, but possibly.

Q So when you looked at the room, the master bedroom, and saw that the mattress and springs had been turned over, you knew the firefighters had done that, didn't you?

A No, I did not.

Q Did it occur to you that they might have done that?

A They didn't go that -- in talking with the firefighters, they didn't go that far, once there was not a fire in that back room. There was condensation in that back room. Once they discovered what had occurred, they pretty much backed out of that area.

Q So when you went into the room later, when everything had cooled off, and saw the mattresses turned over, you thought the perpetrator had done that; is that right?

A Basing on just what I told you, yes.

Q And you thought those perpetrators had done it in order to fake a breaking and entering of some kind; is that right?

A Well, to the structure, that the boxes were so neatly stacked and other items were thrown. There was -- on top of the mattresses, there was a drawer placed on one of the mattresses. If these had been thrown around, this drawer wouldn't have been in that natural state on top of the mattress --

Q But Mr. --

A -- by firefighters.

Q -- Mr. Lindell, you really don't know whether the firefighters and other emergency personnel who were in there before you had moved any of that stuff, do you?

A If they would have moved something, they wouldn't have put it -- placed it back on top of the mattress.

Q So you know what's in the minds of the emergency personnel, and you know what's in the mind of the perpetrators; is that right?

MR. PANOSH: We object, please.

THE COURT: Sustained.

Q The fact is, you don't know what either one of those

individuals who were in that room prior to you's intentions were at any time when they touched anything; isn't that right?

MR. PANOSH: We object.

THE COURT: Well, sustained to the form of the question.

Q You don't know what the perpetrators' intentions were, if they moved any of the things that you believed were moved, do you?

A No.

Q And you don't know what the firefighters' and other emergency personnel's intentions were, because you were not present; isn't that right?

A Correct.

Q Did you say "correct"?

A But the stacking of the drawers in such a manner, and the throwing of some of the drawers and the articles inside, gave indication that it was to an extreme, which we hadn't occurred in any of the crimes in that vicinity like that.

Q Now, you don't know what may have been concealed in that room that you -- that your agents never found, do you?

A That our agents never found?

Q Yeah, that any of the emergency and investigative people who came in didn't find. You don't know what was --

A True.

Q -- taken by the perpetrators, do you?

A True.

Q Now, do you remember the way the dresser was constructed?

A Yes.

Q Did it have separations between the drawer spaces?

A Yes.

Q So, a person wishing to conceal photographs, letters, money, could have placed it under the drawer?

MR. PANOSH: Objection. Speculation.

MR. HATFIELD: It's not speculation. It's his observation of the drawer and --

THE COURT: Overruled.

You may answer.

MR. HATFIELD: Thank you.

A That's true. But there was also a drawer that had money in plain view.

Q How much money was that?

A I did not count it. It was in an envelope.

Q You don't know whether it was \$5,500 or \$5.50, do you?

A There were several bills.

Q Were they \$1 bills or \$100 bills?

A I could not tell you that.

Q You actually didn't count money that was found in there?

A I don't recall. No, I do not.

Q Now, your answer is, yes, it would have been possible to conceal papers, photographs or money between the drawers; isn't that right?

A Yes.

Q And the only way to find that would have been to fully remove the drawer; isn't that right?

A A lot of the drawers on the bureau weren't totally removed. Some of them were halfway pulled out.

Q But you just told the jury that what you thought was so suspicious is, the drawers were pulled out and neatly stacked. That's what you said on direct examination.

MR. PANOSH: Object to arguing with the witness.

THE COURT: Sustained.

Q Didn't you say on direct examination that what made you suspicious was, the drawers were pulled out and neatly stacked?

A What I said was, there was a chest on the left wall. That chest had several drawers. Those drawers were taken out -- were taken out and neatly stacked. On the bureau, on the right side of the left wall, some of the drawers were pulled out partially, and other drawers were thrown across the room.

Q When did you form the suspicion that the arrangement of the items in that room when you first went into that room



and observed them indicated that the perpetrators had tried to fake a B&E? When did you first arrive at that conclusion?

A After looking at it for several minutes.

Q Did you write that conclusion in your investigative report?

A Yes.

Q Do you have it with you?

A Yes.

Q Can you show me the line where you reported that the arrangement of the drawers and other items found in the room indicated that the perpetrators were trying to deceive the investigators?

A Yes.

Q Would you read that line to the jury.

A Should I read that paragraph?

Q Yes, sir.

A "In viewing the scene from the point of initial breaking and entering, with intentions of larceny, it is important to note that none of the crime scene technicians that responded to any calls which have resembled the manner in which a drawer has been pulled out and placed or thrown in such a fashion, nor have the mattresses been moved with so much effort as to make it almost appear very convincing what might have occurred. Only two rooms were targeted.

And the value of the property for the involvement does not relate to any instances we have on file at that particular time or now."

Q So this was a committee decision that you just simply wrote up in your report; is that right?

A That was my opinion.

Q But you based -- wasn't your first sentence that none of the crime scene investigators had seen a B&E previously that looked like this?

A After talking to the other crime scene techs and to the district officers in the district, we had not had anything like that occur, no.

Q So you didn't know whether any items of value had been taken from the house, and you still don't know it today, do you?

A Only what the family would have reported to have missed.

Q And you based the committee decision that you wrote up in your report on two facts: one, that the drawers were neatly stacked; isn't that right?

A Some of the drawers.

Q And two, that the drawers were strewn wildly around the room; isn't that right?

A Part of it.

Q So you had two completely mutually exclusive reasons

for arriving at the same conclusion, didn't you?

A The mattresses, and also, that no other rooms were tampered with or targeted, except for, the other bedroom had a little bit of moving around.

Q All right. So you say none of the other rooms were tampered with, but then immediately you have to correct that, because you remember the tool chest, don't you?

A Right.

Q Now, the tool chest was tampered with, wasn't it?

A The box wasn't -- didn't appear to even been opened.

Q But the tool chest was tampered with, wasn't it?

A I didn't say it was tampered with. I said it was partially out in the room. It might have been there while they lived there.

Q Okay. So there's no evidence that the perpetrators moved the tool chest, is there?

A No.

Q Because if they had moved the tool chest, you would have been able to tell from the smoke and other debris that was left by the fire, wouldn't you?

A Correct.

Q And you say that the tool chest had not in any way been tampered with, in terms of the various drawers being open or anything like that?

A There was a desk in that room that had some drawers

open.

Q So the same pattern of looking for things in those two rooms continued into the second bedroom; is that right?

A Correct.

Q Now, was it your observation that none of the clothes in the closet of the master bedroom were tampered with in any way that you could tell?

A No.

Q Was that your -- they had not been tampered with in any way --

A No.

Q -- is that right? Well, doesn't that confirm in your mind the fact that the perpetrators were looking for some kind of thing that could be concealed in a drawer or under a drawer, since that's really the only thing the perpetrators disturbed?

A If there were perpetrators, I don't know what the perpetrators might have been looking for.

Q Now, you took a picture of the location of that gas can, didn't you?

A Yes, I did.

Q But you knew that that gas can had been found by Guilford County investigators out in the carport, didn't you?

A Yes.

Q And you had to ask around, to find out which firefighter had removed it earlier, didn't you?

A Correct.

Q So this photograph that you took and so meticulously measured the location of was completely contrived, wasn't it?

MR. PANOSH: Objection.

THE COURT: Sustained.

Q Did you tell Mr. Panosh a minute ago that the gas can was three feet and three inches from some cabinet or side of the room?

A Yes, I did.

Q But that three feet and three inches reflects only your best estimate of where somebody had found it the day before; isn't that right?

A Correct.

Q So the three feet, three inches is just a guess, isn't it?

A No.

Q What is it, if it's not a guess?

A The actual photograph where the gas can was moved from shows the location of the pour spout and how it was actually placed on the floor.

Q Showing the pour spout to have been deformed by the heat of the fire?

A Correct.

Q Was the gas can itself deformed by the heat of the fire?

A Yes.

Q And yet it --

A Well, the gas -- let me -- let me back up. The gas can itself was not deformed, but from the heat that was generated, you could see where the pour spout was in relation to the area on the -- on the floor --

Q Did you --

A -- as to which way the pour spout was pointed in direction to the floor.

Q What does that mean, "which way the pour spout was pointed"?

A That means that you could put it back in that location and put the pour spout in the proper location that it would have been originally found.

Q Was the pour spout located on the pour lines that are indicated on the drawing behind you?

A No.

Q So the pour spout bears no relationship to the red pour lines that are illustrated?

A No.

Q It does not bear any relationship?

A I don't under-- You're confusing the question.

Q Well, would you look at the drawing behind you.

A Uh-huh.

Q Was the pour spout touching that red line?

A No.

Q So what's the significance of the location of the pour spout?

A Every gas can -- most gas cans have a pour spout. On the floor, you could see the, more or less the picture of where the gas can was sitting, and also, it showed a picture of the direction that the pour spout was.

Q Did you explain the significance of the location of the pour spout?

A It's not so much the significance to the location of the pour spout as it is that you could put it back in that location.

Q Did you say a minute ago that the gas can itself was not deformed by the heat of the fire?

A No, not to any great extent.

Q Isn't it significantly misshapen?

A Yes.

Q Well, how do you think it got that way?

A From heat.

Q Now, the gas can contained a quantity of gasoline, didn't it?

A Approximately one gallon in volume.

Q So this perpetrator or perpetrators didn't pour out all the gasoline?

A No.

Q What was the capacity of the gas can?

A It was five gallon.

Q Do you know whether the plastic of the pour spout is the same type of plastic as the plastic of the gas can?

A No, I don't.

Q Of course, it's flexible, isn't it?

A Fairly rigid.

Q But it -- you can aim it, you can bend it into the shape desired, so that you can use the gas can to fill up smaller tanks; isn't that right?

A It's a fairly rigid pour spout.

Q But it could have a different temperature at which it melts and deforms than the can itself, couldn't it?

A It's possible.

Q Now, the firefighter who originally observed the gas can, did you personally talk to that firefighter?

A I don't recall that.

Q So you have no direct firsthand knowledge of where that gas can was or how -- what temperatures were involved, or anything else when it was found, do you?

A At crime scene -- crime scene technician Brian Yarborough was the one that initially had control of that



gas can.

Q Now, he's already testified --

A Yes.

Q -- hasn't he? And he really went in that back room where the mattresses were turned over before you did, didn't he?

A Correct.

Q Now, you say the dead bolt was not locked in the kitchen door, don't you?

A Correct.

Q Do you know where the key to that dead bolt is?

A No, I do not.

Q Did you ever locate that key?

A I don't recall.

Q Now, you did testify just a few minutes ago, when Mr. Panosh asked you some questions, that you -- that some keys were found in the kitchen; is that right?

A Correct.

Q And you found them?

A Correct.

Q And you took pains to say where they were found?

A Correct.

Q What does that mean?

A We documented where they were found in the kitchen.

Q What does that mean?

MR. PANOSH: We object.

THE COURT: Overruled.

A We made a note of where they were found in the kitchen.

Q What does where they were found mean?

MR. PANOSH: We object.

THE COURT: Sustained. He's answered.

Q Does it have any probative value?

MR. PANOSH: Objection.

THE COURT: Sustained.

Q Did you take any of those keys and try them in the locks of the house?

A I personally did not, no.

Q But you've already answered that you did not locate the key to the dead bolt. Are you saying that among those keys was no key for the dead bolt?

A I'm not saying that.

Q Are you just saying that you don't know?

A I don't know.

Q So you found some keys, and you don't know what they were for?

A They are house keys.

Q Are they house keys to Patricia Kimble's house?

A That question should be asked to the investigating detective.

Q I thought you were the highest-ranking evidence

specialist on this case.

A Yes, I am.

Q Wouldn't it be appropriate for me to ask you, since you're the one that came in here and told the jury that you'd found the keys?

A I don't recall checking the keys to the door.

Q Now, you said that you examined the Subaru.

A Yes.

Q And you found a key in the ignition?

A Correct.

Q Did you dust that key for fingerprints?

A No, we did not.

Q Did you examine the keys that you found in the kitchen, to see if they contained a key to the Subaru?

A I did not do that, no.

Q This is my last question on the subject of the keys. Is it fair to say that you have no idea if there are any locks anywhere on earth that any of those keys fit?

A Repeat that again.

Q Do you have any idea whether there are any locks on earth that any of those keys that you found in Patricia's kitchen fit?

A Information was relayed to me that --

Q Excuse me. Do you have any knowledge of your own?

A No. No.

MR. PANOSH: He is answering the question, Your Honor. Could he please?

THE COURT: He's answered. Move on.

A Information was --

THE COURT: You answered. You've answered no, as I understand your answer.

A No.

THE COURT: If you need to explain that answer, you may do that.

A Information was relayed to me that those keys did fit some locks.

Q Who related that information to you?

A I believe it was Detective Jim Church.

Q Did he tell you whose locks they fit?

A There on the premises, house.

Q There on the premises?

A The house, the house door keys.

Q Are we playing a game?

MR. PANOSH: Objection.

THE COURT: Sustained.

Q Do you know --

MR. PANOSH: We'd object, please. Like to be heard.

Q I asked --

THE COURT: Sustained.

Q I asked you --

MR. PANOSH: We object to this.

MR. HATFIELD: He's going to object before I ask the question.

THE COURT: Let him finish the question, sir.

Q I asked you if those keys fit any lock on the premises, and you said you didn't know.

MR. PANOSH: We object.

THE COURT: He's answered. That's correct.

Q Didn't you say that, sir?

A Yes.

Q But in fact, you did know, didn't you?

A I did not myself check any of the keys to the locks, no.

Q But you knew the answer to the question that I asked you, didn't you?

A I said I had information.

Q And you chose not to give it to me?

MR. PANOSH: We object.

THE COURT: Objection sustained.

Disregard that, members of the jury.

Q Now that we know that you knew --

MR. PANOSH: We object.

THE COURT: Sustained. That's not what he said, sir.

Q Inasmuch as those keys do fit locks on the premises, which locks on the premises do they fit?

A I do not know.

Q Were they keys that belonged to Patricia?

A They were found on the floor.

Q Did you take possession of them?

A Yes, I did.

Q Have you had continuous possession of them ever since?

A Yes, we have.

Q Then you would know, sir, would you not, if those keys were shown to any of Patricia's relatives, in order to ascertain whether they were her keys? Wouldn't you know that?

A I did not handle that part of the investigation.

Q Well, you're the evidence custodian, aren't you?

MR. PANOSH: We object to him arguing with the witness.

THE COURT: Sustained. I believe he said that Officer Church is the one that handled that part. Move on.

Q You're the evidence custodian, aren't you?

A No. I'm supervisor of the evidence section.

Q Do you have anything in your records to indicate that those keys were ever taken out of your custody by Officer Church, so that he could use them for investigative purposes?

A That would have to be through the evidence control officer.

Q So is your answer that you don't know?

A That's correct.

Q Well, you do have some information from Mr. Church. Do you know by some other means --

MR. PANOSH: We object, Your Honor. Mr. Church is going to testify.

THE COURT: Sustained.

MR. PANOSH: He can address the question of the keys.

THE COURT: Proceed. Move along.

Q Did Mr. Church tell you --

MR. PANOSH: We object to hearsay.

MR. HATFIELD: Object to hearsay?

THE COURT: Overruled.

Q Did Mr. Church tell you that he took those keys and showed them to some relatives, to ascertain if they belonged to Patricia?

MR. PANOSH: We object.

THE COURT: Members of the jury --

You may answer, if you know, sir.

A I'm not sure.

THE COURT: He's answered.

Q All right. Now, let's go to the door and then let's

finish. Sorry for taking so long.

MR. HATFIELD: Excuse me. May I talk to my counsel before I proceed?

THE COURT: Yes, you may do that.

(Mr. Hatfield and Mr. Lloyd conferred.)

MR. HATFIELD: Your Honor, maybe two or three more topics. I promise it'll just take a moment.

THE COURT: All right, sir.

MR. HATFIELD: Are you ready, Madam Reporter? Are you ready?

THE COURT REPORTER: Yes, sir.

Q Mr. Lindell, you examined the back door of the house, which leads from the carport into the kitchen, didn't you?

A Correct.

Q And you ascertained what you've already said about the bolt, dead bolt?

A Correct.

Q Did you notice that the doorjamb, the frame of the door against which the lock strikes, had damage to it?

A I do not recall, unless it's in photographs.

Q You do not recall?

A No.

Q Now, did you subject the door to the intense light you were telling about earlier?

A Correct.



Q Under that intense light, could you tell whether there was a footprint, where a perpetrator or intruder had kicked that door open?

A No.

Q If an individual had kicked that door open, under your intense light scrutiny, you would have seen the footprint, wouldn't you?

A Not necessarily.

Q Could you tell whether that door had been forced open on October 9, 1995, from your direct observations?

A No.

Q Now, with regard to the gun that you've described that was found, were you personally present when the Glock pistol was found?

A Yes.

Q And you examined it and saw that it was covered with film and dirt from the fire?

A Yes.

Q You sent it to the SBI lab for ballistics analysis, didn't you?

A Correct.

Q But you did not send it for a fingerprint analysis, did you?

A No.

Q Why, when you assumed that this was the murder weapon,

did you not try to get experts in North Carolina, or even the FBI, to ascertain whether there were fingerprints on that gun?

A We had already done an examination under -- our own examination under light. We left it up to their discretion.

Q So you examined it when it was covered with dirt from the fire, didn't you?

A Correct.

Q And you knew that the gun had a film of dirt over it, didn't you?

A Correct.

Q And you made your local analysis for fingerprints and could find none; is that right?

A Correct.

Q So that was the end of the matter, as far as you were concerned?

A No. I said we left it to the discretion of the State Bureau.

Q Don't you know that in 1998 in this country, that there are amazing methods of determining the location and existence of latent fingerprints?

A Yes, I do.

Q And aren't there laboratories that go beyond the capacity that you have over here on Sycamore Street?

A Yes, I do.

Q Why did you not try to use science, Twentieth Century science, to find latent prints on that gun?

A As I said, we went ahead and did an initial examination and left it to the discretion of the state.

MR. HATFIELD: No further questions.

THE COURT: Mr. Panosh, any additional questions?

MR. PANOSH: Yes, please.

REDIRECT EXAMINATION by MR. PANOSH:

Q In examining those drawers that you've previously talked about, and the cases of the drawers, the cabinets themselves, did you see any indications of tape or any type of hidden compartments that could have contained or held things of value?

A No, I did not.

Q In the -- in your experience and training, would you have expected to see some residuals of tape, if there had been something taped or secured to the bottom of those drawers?

MR. HATFIELD: Objection. Would he see tape?

THE COURT: Sustained.

Q Now, when you were asked about the door that is between the garage and the kitchen, was there any indication to you of forced entry, other than what you've already testified to the pry marks?

A No, there were -- no, there was not.

Q Was the observations -- were your observations of that door consistent with a door that had been kicked open?

A It was a full glass door. No.

Q Now, explain to the ladies and gentlemen of the jury what would have happened to any fingerprints under the dirt, if the dirt was removed from that gun.

A Because of so much condensation and a fingerprint being made almost entirely of 90 percent water, which also includes fat, amino acids and salts, in order to clean the surface down to get to a fingerprint, you would first see something visible, probably under any intense light, and the ridge detail would -- from the heat and everything, the ridge detail would break down that fingerprint, because of the -- so much substance being of water.

Q And if you removed the dirt that you observed on the gun, what would have happened to any potential fingerprints?

A You also will remove the fingerprint.

Q And I take it you have specialized training in the field of fingerprint analysis?

A Yes, I have.

Q And was that with the FBI?

A Yes. I had four and a half years Department of Justice.

Q And during those four and a half years at the Department of Justice, you worked in fingerprints; is that

right?

A Yes, I did.

MR. PANOSH: No further.

MR. HATFIELD: Could I just --

THE COURT: In those limited areas, you may question him.

RE-CROSS-EXAMINATION by MR. HATFIELD:

Q When did you have your four and a half years with the Department of Justice? Can you remember?

A December 1969, July 1973. Then I was one year with the State Bureau in Raleigh.

Q So you had your training 25, 30 years ago, didn't you?

A Yes, I did.

Q You think there's been any advancements in science in the last 25 years in the area of fingerprint technology?

A There's not as far as looking at ridge detail, no.

Q You could have sent that gun, you could have very carefully handled that gun, very carefully packaged it, and sent it to the best crime lab in this land, and let them decide if they could find latent prints under that dirt, couldn't you?

A I told you, we examined it, using light, sent it to the state, and left it to their discretion.

Q How many -- well, that's not exactly correct, is it? You sent it to the state --

MR. PANOSH: We object, Your Honor. That's beyond the scope.

THE COURT: Sustained.

Q You sent it to the state for ballistics examination, didn't you?

MR. PANOSH: Object.

THE COURT: Sustained. He's answered it, Mr. Hatfield. We've been over it.

Q You used Sycamore Street science, didn't you?

MR. PANOSH: We object.

THE COURT: Sustained.

MR. PANOSH: Ask the question and any inference therefrom be stricken.

THE COURT: Disregard that, members of the jury.

Q You used local practices and procedures at the local Guilford County Sheriff's Department to evaluate whether it was possible to retrieve prints from that gun, and your own knowledge and experience, based on courses you took 25 to 29 years ago, in order to make that decision?

A No, I did not.

Q Well, then, what --

MR. PANOSH: We object. He's been over this and over it.

MR. HATFIELD: Well, Your Honor, you know --

THE COURT: One more time.

MR. HATFIELD: -- this is the gun --

THE COURT: Go ahead, sir.

MR. HATFIELD: -- that killed the victim.

THE COURT: Sit down.

MR. HATFIELD: Thank you.

THE COURT: Ask your question.

Q What other information --

MR. PANOSH: We've been over --

Q What other information did you use?

MR. HATFIELD: Your Honor, with regard --

THE COURT: Well, both of you just --

MR. HATFIELD: -- to this lawyer --

THE COURT: Both of you just pace yourselves and get on with the job that you're here to do.

MR. HATFIELD: All right. I don't have any further questions then --

THE COURT: Step down, sir.

MR. HATFIELD: -- on this matter.

THE COURT: Step down, sir.

MR. PANOSH: The next witness will be about five minutes, Your Honor.

THE COURT: I'm going to let the jury stand and stretch. They need to stretch.

(The witness left the witness stand.)

MR. HATFIELD: Your Honor, may I be excused to the

bathroom?

THE COURT: Sir?

MR. HATFIELD: Can I go to the bathroom?

THE COURT: Yes, you may.

(Mr. Hatfield left the courtroom at 10:31 a.m. and returned to the courtroom at 10:33 a.m.)

THE COURT: Call your next witness, please.

MR. PANOSH: Mr. Stonesifer, please.

JAMES GARRETT STONESIFER, being first duly sworn, testified as follows during DIRECT EXAMINATION by MR. PANOSH:

Q State your name and your occupation, please, sir.

A My name is James Garrett Stonesifer. I'm a fire inspector with the Guilford County Fire Marshal's Office.

Q In the course of your duties, did you respond out to the scene on Brandon Station Court?

A Yes, I did.

Q And in the course of your duties, were you assigned to search the hole where the body was -- after the body was removed?

A Yes, I was.

Q And you recovered the knife which has previously been put in evidence; is that correct?

A Yes, I was.

Q And in addition to that, you searched for a shell casing or any other evidence; is that correct?



A Yes, sir.

Q Were you able to find any of those things?

A No, we were not.

Q And thereafter, did you assist in removing the carpet samples and transporting them to the State Bureau of Investigation?

A I transported one carpet sample and the gasoline can to the State Bureau of Investigation.

Q Would you explain how you package carpet samples after it's removed.

A I did not package the initial carpet samples, but the two that we did take, once we determined where we were going to take the samples from, we cut the sample of carpet out and the padding out, placed them in a vinyl bag, taped the vinyl bag shut, removed our rubber gloves, and sealed the vinyl bag for shipment to the SBI lab.

MR. PANOSH: No further questions.

MR. LLOYD: Just a few, Your Honor.

CROSS-EXAMINATION by MR. LLOYD:

Q Mr. Stonesifer, you found the knife that's been previously identified down inside the hole, where the body was found; is that correct?

A Yes, I did.

Q All right. Do you recall what part of the hole that you found it in?

A Yes, sir.

Q Was it -- where in the hole was it?

A May I use the diagram?

Q Yes, sir.

(The witness approached the diagram.)

A It was toward the front of the hole, toward the victim's -- where the victim's feet would have been.

(Indicated.)

Q All right.

A Just under the ledge of the hole.

(The witness returned to the witness stand.)

Q And there was debris and other matter around it?

A Yes, sir.

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

THE COURT: Step down, sir.

Next witness, please.

(The witness left the witness stand.)

MR. PANOSH: Mrs. Coble, please.

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

Q Would you state your name, please.

A Helen Coble.

Q Ms. Helen Coble, where do you live?

A 5440 N.C. 22, Pleasant Garden.

Q And you say "N.C.," you're talking about Highway 22?

A Yes, sir, I am.

Q Do you know the location on Brandon Station Court where this fire occurred back on October the 9th?

A Yes, I do.

Q And that's fairly close to your house; is that right?

A Pretty well close, yes.

Q On that day, October the 9th of 1995, you found out about the fire when you heard the fire trucks; is that right?

A That's right.

Q Okay. And after that, the sheriff's officers came out and investigated you; is that right?

A That's right. Uh-huh.

Q They asked you questions about what you heard that day?

A That's right. Uh-huh.

Q Did you hear anything unusual on that day?

A No, I didn't.

Q And you live at that residence with your husband, George; is that right?

A Repeat that, please.

Q You live there with your husband?

A Yes, I do, uh-huh.

Q Were you and your husband burning trash that day?

A No, we wasn't.

MR. PANOSH: No further questions. Thank you,

ma'am.

CROSS-EXAMINATION by MR. HATFIELD:

Q Ms. Coble, do you live in the house basically behind Patricia Kimble's house?

A Well, there's a field and some woods between us.

Q And the field's owned by you and your husband, isn't it?

A I can't hear you too good.

Q I'm sorry.

A Uh-huh.

Q The field belongs to you and your husband, doesn't it?

A Yes, uh-huh.

Q And there is a road for tractors and garden equipment

--

A Yes, that's right.

Q -- that runs along the edge of that --

A Uh-huh.

Q -- road; isn't that right? Is that -- am I right about that? Don't you have a road, a dirt road?

A Oh, yes, we do, uh-huh.

Q And the dirt road goes between your -- you and your husband's field --

A That's right.

Q -- and the --

A Uh-huh.

Q -- land owned by Patricia Kimble; is that correct?

A Yes, we do, uh-huh.

Q And you and your husband have a shed, like a tobacco barn, back on the corner of your property, don't you?

A That doesn't belong to us, the tobacco barn doesn't.

Q Okay. Don't you have a utility shed or a --

A We have a barn.

Q A barn?

A Almost down to the railroad tracks.

Q Now, isn't it a fact that you and your husband heard gunshots from time to time in that area?

A At times, we did, but we didn't think it was anything to have sound like -- kind of sound like a -- they was just practicing, you know, I mean, target shooting.

Q Do you know who the people were who were --

A No --

Q -- doing that?

A -- I do not know who was doing it.

Q And didn't you also have trouble with people using your barn without your permission?

A Well, they would go over across the railroad in cars and come out, and we wouldn't know who they were.

Q That happened all the time, didn't it?

A Well, off and on, yes, uh-huh.

Q Now, did your husband finally put a wire or a chain up

across your dirt road, to keep --

A He put a "No Trespassing" sign up, yes, uh-huh.

Q And did that help any?

A It -- yes, uh-huh.

Q Now, you never knew Patricia Kimble, did you?

A Sir?

Q Did you know Patricia Kimble?

A I met each one of them one time. That's all.

Q You --

A We didn't really know them.

Q Okay. So you met Theodore Kimble, also?

A Met who?

Q Did you meet her husband, Theodore?

A Yes, one time.

Q And what was the circumstances of that?

A He wanted to know who owned some land across the railroad.

Q Were you able to tell him?

A Yes, we told him.

MR. HATFIELD: Thank you very much.

REDIRECT EXAMINATION by MR. PANOSH:

Q Ma'am, did any of that stuff that Mr. Hatfield made reference to --

MR. HATFIELD: Objection to --

THE COURT: Sustained.

MR. HATFIELD: -- characterizing it --

THE COURT: Sustained.

Q Did any of the events that Mr. Hatfield made reference to, did that happen on October the 9th, the day of the fire?

A Happen when?

Q The day that you heard the fire trucks going to Patricia Kimble's house?

A It was that night when the house was on fire, we heard the fire trucks going in.

Q But Mr. Hatfield made reference to people going across your land. Was that on the same day?

A No, no, it wasn't, uh-huh.

MR. PANOSH: No further questions.

THE COURT: Step down, ma'am. Watch your step. You may step down. Ms. Coble, you may step down. (The witness left the witness stand.)

THE COURT: Next witness, please.

MR. PANOSH: Mr. Fryar, please.

PAUL STEVEN FRYAR, being first duly sworn, testified as follows during DIRECT EXAMINATION by MR. PANOSH:

Q Would you state your name, please, sir.

A Paul Steven Fryar.

Q Mr. Fryar, do you live in the vicinity of Patricia Kimble's home on Brandon Station Court?

A I don't currently, but I did at the time of the murder.

Q And going back to that particular day, do you remember where you were?

A About 6:00 o'clock, I took my daughter to cheerleading practice at the local community center, which is about three or four minutes away, and dropped her off and returned home. And I proceeded to get some lawn equipment out. I was doing some aerating and reseeding in my yard, both the side and front yard.

Q So when you were in your yard, it was sometime after 6:00?

A Probably between 6:15 on, I was in the yard.

Q And what, if anything, did you notice at that time?

A When I was in the side yard, which faces Highway 22, which is the street between my house and the Kimbles', I noticed in the clearing between their house and the Cobles' house some low smoke, hovering above the ground, four or five feet.

Q And it's -- and you said this is approximately 6:15 or 6:30?

A Well, it takes three or four minutes to drive to the community center and three or four minutes back, so by the time I got the equipment out, it would probably be after 6:15, possibly even 6:30.

Q And did you take any action in reference to that smoke that you saw in the field between Patricia's house and the



Kimbles' (sic)?

A No, because the smoke was kind of light in nature, and it was just sort of drifting. I assumed someone was burning trash. It didn't resemble a house fire.

Q And in addition to seeing it, could you smell it?

A No.

MR. PANOSH: No further questions. Thank you.

MR. LLOYD: Just a few, Your Honor.

CROSS-EXAMINATION by MR. LLOYD:

Q Mr. Fryar, you indicated that you had taken your daughter somewhere at 6:00 o'clock; is that right?

A She has cheerleading -- or had cheerleading practice at 6:00 o'clock.

Q All right. So she had to be there at 6:00?

A Right.

Q All right. So you took her there, and you said it just took a few minutes?

A Right.

Q But then you drove straight back to your house?

A That's correct.

Q All right. So you would have gotten back to your house just a few minutes after 6:00; is that right?

A That's correct.

Q All right. And so, then you went to doing your yard work?

A That's correct.

Q All right. And did you notice any cars pull into Brandon Station Court while you were out there mowing your yard?

A No, I did not.

Q Did not notice any?

A No.

Q And could not smell any smoke?

A No.

Q Didn't notice any smell of any sort?

A No. All I saw -- I just witnessed the smoke. There was no smell.

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

THE COURT: Step down, sir.

Next witness, please.

MR. PANOSH: If I may, Your Honor.

REDIRECT EXAMINATION by MR. PANOSH:

Q Sir --

A Yes.

Q -- is the entrance from Brandon Station Court visible to you from your home?

A Yes, it is.

MR. PANOSH: No further questions.

THE COURT: Step down, sir.

(The witness left the witness stand.)

THE COURT: Next witness, please.

MR. PANOSH: Ms. Dickerson, please.

NATTLIE COOPER DICKERSON, being first duly sworn, testified as follows during DIRECT EXAMINATION by MR. PANOSH:

Q Your name is -- if you'd state your name, please.

A Nattlie Cooper Dickerson.

Q Okay. And drawing your attention to October the 9th of 1995, did you live in the vicinity of Brandon Station Court?

A Yes.

Q And about how close did you live?

A I'm 2202 Brandon Station Road, which is two houses.

Q Okay. Highway 22 separates your home from --

A Uh-huh.

Q -- the court?

A Yes.

Q And you were working on that particular day; is that correct?

A That's correct.

MR. HATFIELD: I'm sorry. I couldn't hear, for the people coughing.

THE COURT: Repeat your answer, please, Ms. Dickerson.

Q Were you working on that particular day?

A Yes, sir.

Q And about what time did you get home?

A It was around 6:00 o'clock.

Q And after you got home, did you make any observations or notice anything?

A Not until I went out on my deck, to start the grill. And when I was coming back around, to go back into the house, I looked over, and above the trees, you could just see a light, smoky haze.

Q And when you say you looked over, where did you look over?

A Toward where Patricia Kimble's home was, but you couldn't see the home at all from my house. It looked like --

Q So --

A -- somebody was maybe burning leaves. It was just a haze over the trees, real light haze.

Q So the house on Brandon Station Court itself is obscured by trees?

A Yes, sir.

MR. PANOSH: No further questions. Thank you.

CROSS-EXAMINATION by MR. LLOYD:

Q Ms. Dickerson, were you able to see the entrance to Brandon Station Court at that time?

A No, not from the back deck.

Q All right. And as far as the time is concerned, you get home from work generally speaking on a regular basis at

about 6:00 p.m.; is that right?

A Yes, sir --

Q All right.

A -- back at that time.

Q And so, there would have been some time before you went out on your deck; is that right?

A Correct.

Q All right. And it was when you went out on your deck that you noticed this smoke?

A Yes, sir.

Q All right.

MR. LLOYD: I don't have anything else, Your Honor.

THE COURT: You may step down, Ms. Dickerson.

Watch your step, ma'am.

(The witness left the witness stand.)

MR. PANOSH: The next witness will be extensive.

If you'd like to --

THE COURT: Okay. We'll take a break at this point.

Members of the jury, we're going to take our morning recess. It's going to be a 15-minute recess period. Please remember the juror responsibility sheets that you signed.

At the end of the 15-minute period, please report to the jury room.

Everyone remain seated, while the jury leaves.

(The jury left the courtroom at 10:48 a.m.)

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

(A recess was taken at 10:49 a.m.)

(Court reconvened at 11:05 a.m. The defendant was not present. The jury was not present.)

(The defendant entered the courtroom at 11:06 a.m.)

THE COURT: Mr. Hatfield, are you ready to proceed?

MR. HATFIELD: Yes, sir.

THE COURT: Bring them back.

(The jury entered the courtroom at 11:07 a.m.)

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

MR. PANOSH: Janet Blakley, please. Janet, please come up.

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

Q Would you state your name, please.

A Janet Blakley.

Q And Ms. Blakley, how are you related to the deceased, Patricia Kimble?

A She is, from what I understand, my second cousin. My father and Patricia's father are first cousins, and I've

always been told she was my second cousin.

Q And growing up, did you and she know each other?

A Yes.

Q And did you live in the same general neighbor?

A Uh-huh, next door to each other.

Q And you were approximately the same age as she was?

A She was, I believe, a few years older than me, three or four years.

Q Did there come a time when you met Theodore Kimble?

A Yes, there was.

Q And how did you meet Theodore Kimble?

A I met -- Is it okay if I refer to him as Ted?

Q Sure.

A Okay. I met Ted my senior year in high school, from my best friend, which was Joy Hedgecock.

Q And that would have been what year, please?

A I graduated high school in 1992.

Q After you met Ted, did you begin to date him?

A Yes, sometime after that.

Q And how long did you date Theodore Kimble, Ted Kimble?

A I dated Ted steadily for right around two years, and then off and on a year and a half after that, so three and a half years altogether.

Q And during that last portion of the -- your acquaintanceship with him, where were you living?

A I was living at college at Wingate University. That's east of Charlotte.

Q Did there come a time when you and he stopped seeing each other?

A Yes, there was.

Q Would you tell the ladies and gentlemen of the jury when that was, please.

A It's hard for me to remember, and so -- because it is over such a long span. To the best of my knowledge, I -- we quit seeing each other -- we got engaged, and we quit seeing each other, I believe it was in October of my sophomore year, so that's October of 1993. And we didn't see each other for a while. I started seeing him again that July, after I came back home from school.

Q That would have been July of what year?

A Of -- that would be 1994.

Q And you said just prior to your breaking up, you had been engaged?

A Yes. We broke off the engagement.

Q About October of '93?

A To the best of my knowledge.

Q Did there come a time when it came to your attention that he was engaged to Patricia Kimble?

A I was -- it was Thanksgiving -- it was the -- it was Thanksgiving Day at church.



Q Of 1993?

A What year it was, I -- I'm sorry. I don't know the time. The times all run together.

Q All right.

A I know what happened, but --

Q How long after you broke up with him was it that you realized or heard at your church he was engaged to Patricia?

MR. HATFIELD: Objection. She was trying to answer another question.

THE COURT: Overruled.

Proceed.

A And what was the question again, please?

Q How long was it after you were engaged and you broke up, did you realize that he was engaged to Patricia, in weeks or months?

A Okay. We started dating again in July. And he called me two weeks before that Thanksgiving Day and told me he decided to date someone else. And I asked him who, and he told me it was Patricia. And I told him I had -- I had assumed that's who it was. And I showed up at South Elm Street Baptist Church that Sunday, and the pastor of the church announced their engagement. And that's how I found out about them being engaged.

Q So it was basically within two weeks of your stopping seeing him --

A Uh-huh.

Q -- that you realized he was engaged?

A Right.

MR. HATFIELD: Objection. That is not correct. To lead the witness into incorrect statements, I object to.

THE COURT: Well, let her clarify it.

Is that a correct statement, ma'am?

A What was your question again?

Q It's basically two weeks after you stopped seeing him that you realized he was engaged to Patricia?

A I -- he called me at school, at Wingate, and told me he had decided to start dating Patricia. And I went home for Thanksgiving and went to church, and the pastor announced in the church that they were engaged. And that's when I found out about them being engaged.

Q And the telephone call was how long -- approximately how long before you went home?

A Approximately two weeks. He called me after that and would still tell me things that -- like he liked me and --

MR. HATFIELD: Objection. Outside the scope.

THE COURT: Sustained.

Q Did you have further conversations with him?

A Yes, I did, after that.

Q And this was after Patricia's engagement?

A After the engagement? Yes, but brief --

Q Okay.

A -- brief conversations.

Q And would you describe those conversations, please.

A I was -- asked me how I was doing.

MR. LLOYD: Well, objection, Your Honor. I still fail to see the relevance of what this has to do with the trial at hand. It is a hearsay statement. It does not qualify under any of the exceptions that I'm aware of.

THE COURT: Sustained.

Q After those telephone contacts that you and he had, did you have further contact with he or Patricia?

A Yes, yes, I did.

Q And would you describe that to the jury, please.

A It was brief conversations with Ted. And Patricia, we went on a retreat, it was at Easter, and I had a chance to speak with her some on that retreat. I tried to talk to her about Ted, and she --

MR. HATFIELD: Objection, what she said to --

THE COURT: Sustained.

A -- she would not --

THE COURT: Proceed.

A She would not --

MR. HATFIELD: Objection.

THE COURT: Just don't say what she said. You may tell what she did or what you said or did.

THE WITNESS: Okay.

A I tried to speak to her about Ted and their relationship, in regards to my relationship I had had with Ted.

MR. HATFIELD: Objection. This is completely irrelevant.

THE COURT: Overruled.

Q Let me ask you this. Were you able to speak to her about that?

A About Ted?

Q Yes.

A She wouldn't listen to me.

MR. HATFIELD: Objection. Move to strike.

A She would not give --

THE COURT: Sustained.

Disregard it, members of the jury.

Q During the period of time that you and Theodore Kimble were acquainted and you were dating, did he give you any items of jewelry?

MR. HATFIELD: Objection. That's irrelevant.

MR. PANOSH: Try to tie it up real quickly, Your Honor.

THE COURT: Overruled.

A Yes, he did. He gave me two bracelets, a diamond ring and a necklace.

Q And after you stopped dating, did it come to your attention what became of those items?

MR. HATFIELD: Objection.

THE COURT: Overruled.

A One of the bracelets, he gave to his grandmother. And I have the other bracelet and the diamond ring that he gave me. That's not the engagement ring that he gave me. That's another ring. And I also have the herringbone necklace that he gave me.

MR. HATFIELD: Objection. Move to strike. It's not tied up.

THE COURT: Overruled. Denied.

Q During the period of time that you and he were together, was -- where was he working?

MR. HATFIELD: Objection. It's not --

A At Lyles Building Material. At Lyles --

THE COURT: Overruled.

A -- Building Material.

Q And did it come to your attention -- did any unusual events come to your attention during the period of time that you and he were dating?

MR. HATFIELD: Objection. First of all, we don't know what that period of time is, because this witness is completely incapable of even telling the year. And it's irrelevant.

THE COURT: Overruled.

Members of the jury, let me caution you about the testimony that relates to Ted Kimble. One of the cases against this defendant is a charge of conspiracy. And the State of North Carolina must satisfy you beyond a reasonable doubt that there was a conspiracy. And if you find that there was a conspiracy beyond a reasonable doubt, then statements made by a co-conspirator would be evidence that you could consider against this defendant. And so, you must take it in that context, of whether or not the State can satisfy you beyond a reasonable doubt whether there was a conspiracy. And if they do not do that, then these statements made by Ted would not be considered by you.

Do you understand that?

(Jurors nodded their head up and down.)

THE COURT: Okay. Proceed.

Q Would you tell the Court -- the members of the jury about any unusual events during the period of time that you and he were dating.

MR. HATFIELD: Objection. That is a totally improper question.

THE COURT: Overruled.

Proceed.

A There was several cases, one of which, whenever he was working at Lyles, he was on -- supposed to be on medical

leave, and he was in a car accident.

MR. HATFIELD: Objection.

THE COURT: Overruled.

A He was in a car accident. And he was in the process of wanting to collect from an insurance company, and also working for Gary Lyles, the owner of Lyles Building Material.

MR. HATFIELD: Your Honor, could we be heard outside the presence of the jury?

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

(The jury left the courtroom at 11:20 a.m.)

THE COURT: All right, sir.

MR. HATFIELD: Your Honor, in the first place, I have tried to take as careful notes as possible, and I would say to the Court that this witness has no idea whether she's talking about events in 1993 or 1994 or any other time.

THE COURT: Well, what's the basis of your objection to this testimony about him making an --

MR. HATFIELD: She is --

THE COURT: -- accident claim?

MR. HATFIELD: She is going to tell that he made a claim for property damage. She has no specific information. I can't imagine what relevance that would have, either to his case or to Ronnie Kimble's case.

THE COURT: Is that the basis of your objection, sir?

MR. HATFIELD: Also, it has no relevance to any potential conspiracy that the State may be trying to establish, because if you ask her -- if you have a momentary voir dire now and ask her if Ronnie Kimble in any way was involved in any of this, the answer will be no. So it doesn't show a course of conduct. It doesn't show a pattern. It doesn't lead to the proof of a conspiracy. It's remote in time. It's not relevant. And its prejudicial effect is very likely to outweigh -- I don't think it has any probative value, but if it does, if I just am blind and can't see, and if it does have probative value, then I would say that its prejudicial effect outweighs that. This is -- they -- this lady doesn't like this man, because she didn't get to marry him. And she wants to come in here and smear him. And if it were his trial, I wouldn't be addressing the Court, but it's Ronnie Kimble's trial, and Ronnie Kimble, as she will tell you in a voir dire, has nothing to do with any of this.

THE COURT: How is it relevant, Mr. Panosh?

MR. PANOSH: Your Honor, she's going to tell about three specific incidents of insurance fraud which she observed of her own -- directly observed. Your Honor, it's relevant, because the conspiracy here is to kill Patricia



Kimble and to get the insurance money. This shows a pattern of conduct on the part of Ted, which is part -- as we've indicated, we have to show the motive and the ability of Ted to conceive this crime, if we're going to convict Ronnie.

THE COURT: What are the three instances she's going to testify about, sir?

MR. PANOSH: Your Honor, she's already talked about him working when he was trying to claim that he was disabled. And she's going to talk about the fact that she was present and observed Ted Kimble purposely damage an Isuzu, by making large scratches on the truck and then filing an insurance claim. Stated that he wanted to damage the Isuzu because he wanted the insurance company to reimburse him, because he wanted a new paint job. She indicated to him that that was wrong and that he did it anyway and it didn't seem to bother him.

Also, during the course of their relationship, he purchased a Chevrolet Camaro and stated that the -- he reported the stereo equipment stolen from that, when in fact, it wasn't stolen, and after the insurance settlement, he subsequently reinstalled the equipment. And she was told and has personal knowledge that he broke into his own vehicle and removed the stereo equipment while it was stationary at the parking lot of Lyles, and thereafter, as I said, he submitted an insurance claim.

MR. HATFIELD: Your Honor, before you decide, could I just say one thing about that?

THE COURT: Well, let Mr. Panosh finish first --

MR. HATFIELD: Yes, sir.

THE COURT: -- and then I'll hear you, sir.

MR. HATFIELD: I thought --

THE COURT: Anything else, Mr. Panosh?

MR. PANOSH: Yes. Thereafter, that same vehicle was sold to another individual, Mr. Scott Shepherd, and there was a subsequent conduct on the part of Kimble and Shepherd in removing the stereo equipment again and claiming insurance again.

As long as we're in a voir dire, Your Honor, I'll tell you that we also intend to elicit from her that Theodore Kimble told her that he was aware of the fact that Lyles, that is, Gary Lyles, would never sell the business to him unless and until he got married. And that goes into the fact that shortly after he breaks up, he gets engaged -- after he breaks up with this young lady, he gets engaged to Patricia, and immediately thereafter, is able to purchase the business, because he can now say that he is married and has a stable home life.

MR. HATFIELD: May I address before --

THE COURT: Wait just a minute and see is he finished, before you start.

Mr. Lyles is going to be a witness in this case?

MR. PANOSH: Yes, sir. This afternoon.

THE COURT: Is this testimony going to be offered for the purpose of corroborating his testimony, about him not willing to sell the business until Kimble had married?

MR. PANOSH: Mr. Lyles will say that that was his feelings, that he doesn't recall ever specifically telling Ted Kimble that, but that it was a fact.

THE COURT: Now, Mr. Hatfield.

MR. HATFIELD: Your Honor, now that we know that she is going to offer that piece of hearsay on the part of Mr. --

MR. PANOSH: It's not hearsay.

MR. HATFIELD: -- Kimble --

MR. PANOSH: It's a statement of co-conspirator.

MR. HATFIELD: Your Honor, it's not a statement of a co-conspirator, because it's irrelevant and totally unrelated to any conspiracy that they are endeavoring to prove. It also is highly speculative. Mr. Lyles has been asked repeatedly about this by the investigators, and every time he's been asked, he's given a slightly different answer.

It is not clear that Ted Kimble set out upon a conspiracy that included the following: Number 1, to lure an unsuspecting woman like Patricia into marriage; Number 2,

to then use that marriage to allow him to buy Lyles Building Supply; Number 3, to put insurance on her life; and Number 4, to kill her, so that he would be able to own the business and be free again. That's not the conspiracy they're trying to prove.

So Mr. Lyles' speculation or his vague feeling that he would feel better about selling his business to Theodore Kimble if Theodore Kimble were married has nothing to do with furtherance of the conspiracy. And her vague feeling that Ted told her that his reason for marrying Patricia Blakley was not love, but was to induce Gary Lyles to sell him the business, is also not furtherance of the conspiracy, unless and until Mr. Panosh can show that Theodore Kimble formed the intention to kill Patricia before he even married her. And I don't think that they believe that, and I don't think they have any proof of it, and I don't think it's part of the conspiracy.

So, all this is, is a woman scorned, who now wishes to say bad things about Theodore Kimble. And that's her privilege. But she shouldn't be able to say them in Ronnie Kimble's trial, when they are irrelevant and they are hearsay. And they're not "not hearsay" because they're statements of a conspirator, because whatever Ted's intentions with regard to Patricia and marriage, there's no evidence that he had formulated a conspiracy with Ronnie

Kimble to kill her. There's not even any evidence that he had secretly in his own heart wanted to kill her.

This is exactly the kind of evidence that shouldn't come in. And especially when you consider that the source cannot document anything she's saying.

And to go to the insurance stuff, she now wants to tell you, or the jury, that she knows about these various schemes to collect insurance. But there's no documentation to support any of that. It's just as possible that she misunderstood the situation.

And Ted's propensity to break the law and to be dishonest is also not in furtherance of this particular conspiracy in any way, shape or form, Your Honor. This is -- they just want to make Ted Kimble look bad, and they want to let this woman who doesn't like him come in here and use her bad feelings toward him to advance the case against Ronnie Kimble. But it has nothing to do with any agreement that the State will ever hope to prove between Ted Kimble and Ronnie Kimble.

So we really would hope that the Court will simply let her tell the limited story that she can tell about her knowledge of Patricia and Ted's relationship within the scope that the Court has already established, and then let her step down.

(Time was allowed for the Court.)

THE COURT: Okay. The Court's going to --  
Do you wish to be heard?

MR. PANOSH: The only thing I want to say is, Your Honor, there have been a number of witnesses. They have been able to elicit from them the outward appearance of this loving relationship between Patricia and Theodore Kimble, and we should be allowed to put on evidence to rebut that.

THE COURT: The Court's going to overrule the objection, find that the evidence is being offered for the purpose of showing a plan, motive or design for the ability of pattern of conduct -- or the ability to carry out a pattern of conduct, and would find that the probative value outweighs any prejudicial value that might be attached to the testimony.

Bring them back.

(The jury entered the courtroom at 11:31 a.m.)

THE COURT: Okay. Again, members of the jury, I would instruct you that one of the charges against Ronnie Kimble is a charge of conspiracy. These statements made by Ted Kimble are being offered for the purpose of -- in regards to that conspiracy. The State has to satisfy you beyond a reasonable doubt there was a conspiracy. And if the State meets that burden, then you may consider these statements made by Ted Kimble, if you find that they were in furtherance of the conspiracy. If you find that there was

no conspiracy, or if you find that these statements are not relevant for that purpose, then you would disregard them and not consider these statements made by Ted Kimble.

Do you understand that?

(Jurors nodded their head up and down.)

THE COURT: Okay. Proceed.

CONTINUED DIRECT EXAMINATION by MR. PANOSH:

Q Ma'am, you started to answer a question, about the fact that --

MR. HATFIELD: Objection. Ask that he just --

THE COURT: Proceed.

MR. HATFIELD: -- renew it.

THE COURT: Overruled.

Proceed.

Q Well, let me restate the question. What, if any, unusual events occurred during the time that you and Ted Kimble were dating?

MR. HATFIELD: Objection. It's way too broad.

THE COURT: Overruled.

Proceed.

A I was speaking about him being in an accident, Ted Kimble being in an accident, and he was working for Gary Lyles, at Lyles Building Material. And he was supposed to be on disability, from the doctor's orders. He was supposed to be out of work. And he was working for Gary anyway. He

was doing this in the case to --

MR. HATFIELD: Objection to what he was --

THE COURT: Overruled.

A He was doing this in the case to have money, you know, now, to pay his bills, and to go on with his life, but also to collect a larger sum of money from the insurance company later down the road, whenever he settled with the insurance company from the accident.

Q Were there further incidents?

A He -- also one evening, he parked his car outside of Lyles Building Material --

THE WITNESS: May I have some water, please?

THE COURT: Yes, you may.

(The bailiff handed a cup of water to the witness, and time was allowed for the witness.)

A Okay. One evening, he parked his car, it was a Camaro, a white Camaro, and he explained to me what he was -- his intentions were. And what he did is, he rolled the window down on the driver's side, just enough to fit his fingertips in. And he told me that he was going to steal the stereo equipment out of his own car, in order to get reimbursed for better stereo equipment out of his own car. And what he did -- I didn't actually see him do it --

MR. HATFIELD: Object and ask that she not be permitted to tell any more about this fantasy. She saw



nothing, Your Honor.

THE COURT: Is it based on what you saw, ma'am, or what he told you?

THE WITNESS: I saw, after the stereo equipment was stolen, he brought me back into the car and showed me what he did.

THE COURT: Overruled.

Proceed.

A He -- after -- as I was telling the judge, he did not let me be present there, and I didn't want to be. After he broke the window, he put his fingers in and broke the window out of the driver's side door. And he pulled the radio out of the car and cut the wires, as well as the woofers, the base speakers in the back of the car, the Iroc, and cut the wires there, too.

He -- as he was showing me, he explained to me exactly what he did. And later, after he reported it to the insurance company, he placed some of the stereo equipment back in the car.

There was also another time where he was at -- when he was living at his trailer on Hemphill Road, which is in Julian --

MR. HATFIELD: Object, Your Honor. And just briefly, couldn't we ask her to show the time frame to some

--

THE COURT: Sustained.

MR. HATFIELD: -- extent.

THE COURT: Lay a foundation, Mr. Panosh, as to time.

Q Do you know approximately what year this was, this incident that you're relating that when he was living in Julian in his trailer?

A The year was 1992.

Q And do you know if it was summertime or wintertime or --

A There were still leaves on the trees.

Q It was in the autumn then?

A As to whether the leaves had started turning or not -- I know -- I know there -- it was still pleasant outside.

Q So late summer or --

A Uh-huh.

Q -- early fall --

A Uh-huh.

Q -- of 1992?

A Uh-huh.

Q Would you tell the ladies and gentlemen of the jury what happened, when he was living at that residence in Julian.

A Yes. He scratched -- had a little scratch on the front part of his truck, where he had ran under the little shed

that he parked the vehicle under. And he proceeded to take a key and scratch all the sides of the truck and the hood, in order to collect from the insurance company again the money to have the whole truck painted, so he wouldn't have that small scratch on his vehicle.

Q Were there further incidents?

A There was another instance of planned theft, with another gentleman. His name was Scott Shepherd.

MR. HATFIELD: Your Honor, I can't hear her. I'm sorry.

THE WITNESS: I'm sorry.

THE COURT: A little bit louder --

THE WITNESS: Yes.

THE COURT: -- please, Ms. Blakley.

A There was also another instance of theft with Scott Shepherd. Scott Shepherd had just sold his vehicle. It was a black -- it was either a Camaro, Iroc, Firebird. It was -- it was a sports car. And the gentleman that Scott sold the car to wanted to keep the stereo equipment in the car. Scott sold him this -- the car with the stereo equipment in the car, and Scott kept one of the remotes, the battery-operated remotes to the vehicle, because he still wanted the stereo equipment out.

He told Ted about the -- what he wanted to do, and Ted agreed to go with Scott and take the stereo equipment out of

the car. The car was parked right outside of the gentleman's girlfriend's house. They -- Scott unlocked the car, and Ted stole all the stuff out of the car. And he -- Ted actually ended up putting part of the speakers back in the car that he stole from this other gentleman. That was part of the agreement between Scott and Ted, that Ted would get part of the stuff and Scott would get part of it.

Q During the period of time that you were dating him, and especially during the period of time that you and he were engaged, what, if anything, did he tell you in reference to his plans regarding Lyles Building Supply?

MR. HATFIELD: Objection.

MR. LLOYD: Objection, Your Honor.

THE COURT: Sustained.

Don't answer.

Q Don't answer that right now.

A Oh, okay.

Q Did there come a time when you learned any information in regard to his plans in regard to Lyles?

MR. HATFIELD: Objection.

THE COURT: Overruled.

Members of the jury, this testimony is being offered for purpose of corroborating the testimony of a later witness. It'll be for you to say and determine whether it does in fact so corroborate that witness's

testimony. It's not being offered for the truth or falsity of the statement, but whether in fact there was such a statement made.

MR. HATFIELD: Would you also give an instruction on conspiracy, Your Honor?

THE COURT: Yes.

Again, remember that the testimony of this witness related in regard to the statements made or conduct by Ted Kimble may not be considered against Ronnie Kimble, unless you find that the State has proved to you beyond a reasonable doubt that there was a conspiracy, and that this -- these statements were part of a design or pattern or motive to commit those types of offenses, or the ability to commit those type -- that type offense.

Proceed.

Q You can answer the question.

A Can you repeat it, please.

Q Okay. Did there come a time when you learned about his -- Theodore Kimble's plans in reference to Lyles?

A Yes, there was.

Q Would you tell the jury about that, please.

A Yes. Ted had worked for Lyles Building Material for quite some time. And Lyles had told Ted that he wanted to further Ted, also, and at one time give Ted the business -- or actually sell it to him. And Gary encouraged highly for

Ted to get married. He felt that if Ted were married, it would --

MR. HATFIELD: Objection. He might be able to --

THE COURT: Sustained to what he --

MR. HATFIELD: Thank you.

THE COURT: -- may have felt.

Q During the period of time that Theodore Kimble was dating Patricia, and up until the time of the marriage, what, if anything, did you notice about her?

MR. HATFIELD: Objection.

THE COURT: Overruled.

MR. HATFIELD: Unless they specify what time frame that was.

THE COURT: Establish a time frame, Mr. Panosh.

MR. PANOSH: Yes, sir.

Q From the time that you learned that Ted Kimble was dating Patricia, up until the time of their marriage in May of '94, what, if anything, did you notice about her?

A I was not aware that he was dating her --

MR. HATFIELD: Objection.

A -- before they got married.

MR. HATFIELD: That's it.

THE COURT: Sustained.

Q From the point that you were aware that they were married, what did you notice?

A Can you explain?

Q About Patricia physically.

A To the point before they were married, what did I notice?

Q During that period of time, yes.

MR. HATFIELD: Objection. I think he asked her after they were married.

THE COURT: Sustained.

Q Did there come a time when you noticed certain changes in Patricia?

MR. HATFIELD: Objection. He's already said the time frame.

THE COURT: Overruled.

Answer.

A There was a time where Ted moved in with Patricia on a roommate basis, for pay, to help her, as far as, she actually collected rent from him. And he needed a place to live. And so, they moved in -- he moved in with her on a roommate basis. And that's all I was ever told it was, until several months down the road, and then I was told that he was seeing her.

MR. HATFIELD: Objection.

MR. LLOYD: Well, objection.

THE COURT: Sustained.

Q Without stating what you were told --

A Okay.

Q -- did there come a time when you noticed that -- certain physical changes about Patricia?

A Physical changes, as in --

MR. HATFIELD: Objection.

Q Appearance.

THE COURT: Overruled.

A Appearance. She -- when Ted first met her, she was quite overweight. And he --

MR. HATFIELD: Objection, Your Honor.

THE COURT: Sustained.

Q All right.

A She was --

THE COURT: Don't answer, ma'am.

THE WITNESS: Okay.

Q You can stop, please.

MR. PANOSH: No further questions. Thank you, ma'am.

CROSS-EXAMINATION by MR. HATFIELD:

Q Was it your testimony that you were a senior in high school in 1992?

A Yes, it is.

Q Do you remember what year you graduated from high school? Was that June of 1992 or May of 1992?

A It was May of 1992.



Q And during your senior year in high school, were you dating Ted?

A Uh-huh. Yes.

Q Did you consider him to be a steady boyfriend at that time?

A Yes, I did.

Q So, even though you were a senior in high school, this was what you would call a serious relationship?

A Uh-huh.

Q Did you at that time plan on going to college?

A Yes, I did.

Q And did you plan on going to college outside of the Greensboro area?

A Uh-huh. Yes.

Q So you knew in 1992 that you would be moving some distance away to attend college; is that right?

A Yes.

Q Had you decided what college you wanted to go to?

A Yes.

Q So you already knew it was Wingate?

A Uh-huh.

Q When you -- did you go to college in September of 1992 and begin your school year then, right after high school?

A Yes.

Q While you were at Wingate, did you continue to date

Ted?

A Yes.

Q Even though you were -- how far is Wingate from Greensboro?

A It's two hours.

Q Did he come to visit you there?

A Yes, he did.

Q And did you consider yourself to be still more or less going steady with him?

A Uh-huh. Yes.

Q Now, you said that in 1992, while the leaves were on the trees, that Ted had a scratch on his truck; is that right?

A Yes.

Q So that would have been either the summer or the fall of 1992?

A Uh-huh.

Q And that was the summer and fall between your graduation from high school and your commencement at Wingate in probably September of 1992; is that right?

A Yes.

Q So were you already at Wingate when the incident involving the scratch on the truck took place?

A I can't remember.

Q Now, you say that he accidentally damaged his truck,

because he ran into a shed of some sort?

A Yes, he did.

Q Were you with him when that happened?

A Yes, I was.

Q Was it truly an accident?

A Yes, it was.

Q And then, was that a -- what kind of vehicle was that?

A It was a blue Isuzu truck.

Q Was it brand new?

A He purchased it new.

Q When?

A Right after he wrecked his Conquest.

Q Did he make an insurance collection on the wreck of his Conquest?

A Yes, he did.

Q That accident was not his fault in any way, was it?

A He had two accidents in the Conquest. One was his fault, and one, someone else hit him.

Q The second accident that -- in which the car was total loss, was not his fault, was it?

A No, it wasn't.

Q So, Ted, while you were a senior in high school, wrecked his Conquest through the fault of another driver and collected the insurance proceeds for that, didn't he?

A He had already wrecked it enough to total it, and he

was still driving it.

Q And then there was another wreck?

A And then there was another wreck. And that's when he went ahead and totaled it out.

Q And the insurance company paid that claim, didn't they?

A Yes, they did.

Q And you did not feel that Ted had engaged in any wrongdoing in that, did you?

A No, he didn't.

Q And with the proceeds from the insurance company of the final wreck of the Conquest, he bought the Isuzu truck?

A Yes.

Q And then, through no fault of his own, he scratched the hood in your presence; is that right?

A Yes, he did.

Q And then you say that he put other scratches on the vehicle, so he could get a new paint job; is that right?

A Yes.

Q Did you see him do that?

A Yes.

Q Did you tell him not to?

A He did it. He was just -- he just did it.

Q But I didn't ask you what he did. You've already said that. I asked you what you did. Did you tell him not to?

A No, I didn't.

Q Did you tell him that's morally wrong?

A No, I didn't.

Q Now, do you -- were you at Wingate College when the insurance company made its arrangements with Ted concerning that?

A I don't recall.

Q Did you go with Ted to the insurance adjuster, to talk about those scratches on the car?

A No, I did not.

Q Were you involved with him in any way when he notified the insurance company?

A No, I did not. No, I wasn't.

Q Now, when did he finally repaint the Isuzu?

A When he got permission from the insurance company to do so.

Q And when was that?

A After the time he'd scratched the vehicle.

Q You were off at college, weren't you?

A I've already told you, I don't know.

Q So later on, you noticed that his Isuzu was freshly painted; is that correct?

A Yes.

Q And you just assumed that the insurance company paid for the paint job, didn't you?

A I did not assume that. That's what was explained to

me.

Q So Ted told you that the insurance company agreed to repaint it?

A Yes.

Q Do you know whether the insurance company would have agreed to repaint it, just based on the scratch on the hood?

A They wouldn't have agreed to paint the whole entire truck.

Q Did you talk to him about that?

A No, I did not.

Q Now, before you told the jury about the Isuzu truck in 1992, you told the jury about Ted in your presence planning to park his car at Lyles Building Supply, rolling the window down slightly, pulling the window out of the window frame of the door, and reaching in and taking the stereo and cutting the wires, didn't you?

A Yes, I did.

Q Now, in relationship to the summer of 1992, when you graduated from high school and went off to Wingate College in the fall, when did that happen?

A It happened after the incident with his truck.

Q So you were already off at Wingate at that time; is that right?

A Yes, I was.

Q Were you home on a vacation?

A I cannot recall whether I was home on a vacation or whether -- as far as a college break, or whether I was just home for the weekend.

Q Well, maybe you weren't home at all? Maybe you just heard about this?

A No. I -- I was present.

Q Did you consider him to be your boyfriend when this happened?

A Yes, I did.

Q Did you still consider him to be your steady boyfriend?

A Yes, I did.

Q So you already knew, from the events involving the Isuzu truck, that Ted was capable of dishonesty, didn't you?

A Yes.

Q And then, at some time that you can't remember, you say that he intentionally took a stereo out of his car, in your -- with your knowledge; is that right?

A Yes, he did.

Q And you understood that he was dishonest about that; is that right?

A Uh-huh. Yes.

Q Now, did you hear him communicate with any insurance adjusters about getting another stereo?

A No, I did not.

Q Did you hear him talk to any police officers about

filing a report for malicious damage to property or theft?

A No, I did not.

Q So he did not in your presence take any steps to collect anything for that stereo, did he?

A Not in my presence.

Q And you were spending at least nine months a year off at Wingate College, weren't you?

A Approximately.

Q Weren't you? Well, didn't you go --

A Uh-huh.

Q Didn't you graduate from Wingate?

A Yes, I did.

Q Four years?

A Actually, five.

Q Did you subsequently -- what kind of vehicle was this, a white Camaro?

A Yes.

Q Do you remember what year it was?

A No, I don't remember the year. It was an Iroc.

Q Was it something that he obtained after he got rid of the Isuzu truck?

A Yes. He totaled the Isuzu truck from falling asleep.

Q I'm sorry. People are coughing.

A Okay.

Q He totaled --



A He totaled the Isuzu truck from falling asleep, and that's when he got the Iroc.

Q Was he given an insurance settlement for the Isuzu truck?

A I don't remember.

Q In any event, the destruction of the Isuzu truck in an accident was not the result of any intentional behavior on his part, was it?

A Correct.

Q And you don't know whether he was able to get insurance for that?

A I don't know. I can make assumptions, but he didn't really -- I don't know.

Q But he was your steady boyfriend, wasn't he?

A Yes.

Q You were going steady?

A Uh-huh.

Q Do you know how he managed to purchase this Iroc?

A Other than making assumptions, no.

Q No?

A Other than --

Q Other than --

A Other than making the assumptions.

Q Now, you stated that during the period of time that Ted Kimble was working for Gary Lyles, he had an accident; is

that right? This is related to the disability?

A Uh-huh. Yes.

Q What kind of -- was that one of the automobile accidents that you've already described?

A That was the accident with the Conquest, that where someone had hit him, and it was a -- a no fault accident to him.

Q It was -- in other words, it was not Ted's fault?

A Correct.

Q Now, this would have taken place before the Isuzu and before the Camaro Iroc?

A Yes.

Q And the Isuzu was in his possession the summer you graduated from high school, which was 1992; is that right?

A Yes.

Q So the Conquest was a car that he had while you were still a high school student in Guilford County?

A Yes.

Q And the Conquest was wrecked through no fault of Ted's; is that right?

A The second time, yes.

Q And you're saying that he collected disability?

A Uh-huh.

Q From whom did he collect disability?

A He sued the person that hit him in the accident, to --

Q Did he win that suit?

A Yes, he did.

Q So he didn't collect disability, he tried to collect damages from the person who caused the accident; is that right?

A Yes, that's -- that would be a more correct answer.

Q Well, you understand that in normal speech, the word "disability" suggests payments through the Social Security system, for people's inability to work through no fault of their own? Don't you understand that?

MR. PANOSH: Object, please.

THE COURT: Sustained.

Q What do you understand disability to be?

A Disability would be what you had just said, through the -- through the Social Security system.

Q So when you said "disability" a little while ago, that was not what you meant, was it?

A That's correct.

Q That's correct? I'm correct?

A I -- when I spoke of disability, I was speaking of him having to sue another individual for the accident that he had had in his Conquest, to collect a sum of money off of that.

Q Now, was that suit handled by a lawyer?

A Yes, it was.

Q Did you have any participation in discussions with the lawyer?

A No. I felt like that wasn't my business.

Q And you were just a high school girl at that time, weren't you?

A Yes, I was.

Q This was no concern of yours, was it?

A It wasn't my business.

Q Now, what you're really telling this jury is, is that after he was injured, through no fault of his own, and that car was demolished by another driver, that he continued to work at Gary Lyles' business, right?

A Yes, he did.

Q Now, Gary Lyles knew that Ted had been in the accident, didn't he?

A Yes, he did.

Q Everybody that knew Ted knew he'd been in the accident; isn't that right?

A I can't answer for everybody else.

Q But in any event, what you're saying is, is that you think that he had his lawyer try to collect for lost wages, when in fact he was working? That's what you really mean, isn't it?

A That's correct.

Q And you think that's dishonest, don't you?

A Well, making a statement that is not true, I consider dishonest.

Q But you never heard him make a statement concerning that, did you?

A He just explained to me what he was doing. I physically did not hear that.

Q So what did he tell you he was doing?

A He explained to me that he was working for Gary Lyles, while he was suing this other individual, and making it appear that he was actually not able to work.

Q So Gary was paying him under the table, wasn't he?

MR. PANOSH: We object.

THE COURT: Sustained.

Q He was receiving cash from Gary, but he wasn't on the books; isn't that what you understood it to be?

A Yes, I did.

Q So Gary was just as equally to blame as Ted, wasn't he?

MR. PANOSH: Objection.

THE COURT: Sustained.

Q Gary had just as much knowledge of this as Ted did, didn't he?

A Yes.

Q And so did you?

A I was brought into it, yes.

Q Did you tell your mom and dad about that?

A I cannot recall whether I did or not.

Q And yet, after these three specific acts of dishonesty, in your opinion, you still continued to go steady with him, didn't you?

A Yes, I did.

Q Now, you say that somebody named Scott Shepherd was also dishonest, wasn't he?

A Yes, he was.

Q Is there any way that you could tell us when this incident with Scott Shepherd happened?

A All I can tell you is, is it was during the summer. Whether I was on -- in between college, or whether I was on a break from my college classes, or whether I was in between high school and college. As I say, I know it happened during the summer.

Q But you told us that he had this Iroc during the interim between your graduation from high school and your commencement at Wingate, didn't you?

A But he didn't steal the -- the one that involved Scott Shepherd was out of Scott Shepherd's car that --

Q So that was another one? Okay. Sorry. Go ahead. I didn't mean to interrupt you.

A That was -- the stuff that was stolen out of Scott's -- that dealt with Scott Shepherd was out of a car that Scott had sold to another gentleman.

Q So that was another Iroc altogether, it's just a coincidence Ted had an Iroc at one time, but what you're talking about is Scott Shepherd's Iroc?

A I don't know whether it was an Iroc or Firebird or Camaro. I just know it was a sports car.

Q Some kind of a sporty --

A Right.

Q -- American production car?

A Right.

Q And it belonged to Scott; is that right?

A Yes.

Q Now, you said that Scott had agreed with another person to sell him the Iroc; is that right?

A Scott, yes, had sold the Iroc to another individual.

Q But Scott kept --

A Or it wasn't an Iroc. I don't know what it was, but -- as far as a Firebird, Camaro or Iroc.

Q But Scott kept the remote-control device that would -- what would that do, change the stations?

A No. It was a remote control to unlock the doors and for the security system on the car.

Q So when he turned the car over to another buyer, he just kept the way of getting in and out of the car in his own possession?

A There were two remotes.

Q He kept one of them?

A He just -- he just kept one of the remotes.

Q So, now, he could go and open the car anytime he wanted to, and presumably the person who bought it from him didn't know?

A Correct.

Q This was Scott's dishonesty, wasn't it?

A Yes.

Q But you say that at some point, Ted agreed to assist Scott in, after the car had been transferred to another owner, and going over there and stealing back some of the equipment out of it; is that right?

A Yes.

Q Were you there when this happened?

A I was not present when they stole the materials out of the car.

Q You just heard them talking about it?

A Ted showed me the materials that they had received out of the car.

Q And were you a student at Wingate at that time?

A I just know it was during the summer. I can't tell you whether I was a student or not.

Q All right. Anyway, you -- did you continue to go to Wingate each semester as the normal years unfold, and you stayed there; you didn't have any interruptions in your



college experience?

A No, I did not.

Q And you continued to date Ted until October of 1993; is that right?

A It was October of my sophomore year, so that would be 1993.

Q And at that point in time, you were actually engaged to be married to him; is that correct?

A Uh-huh.

Q So, even though you knew about all these instances of dishonesty, none of that deterred you from your desire to marry him in the future, did it?

A No, it did not.

Q And never, not one time, did you tell him not to do those things, did you?

A I questioned him, as far as stealing the materials out of --

Q Did you ever say to him, "Ted --"

MR. PANOSH: May she finish, please?

THE COURT: Finish your answer.

MR. HATFIELD: I'm not intentionally interrupting her.

THE COURT: All right. Let her finish.

A I questioned him, as far as him stealing the material out of -- out of the vehicles, the stereo equipment out of

the vehicles.

Q So the one way that he finally seemed to have gone over the hill, in your opinion, was this business with this Scott Shepherd individual; is that right?

A It wasn't just the business with Scott Shepherd. It was stealing material out of -- out of his car, as well as Scott's. I questioned him and we spoke about it, and had pretty much decided not to -- not to -- he had decided not to further that part of the theft. And then he said, just one last time with Scott. And then he decided not to do it again. And that to my knowledge is all that I know about it.

Q So he reformed?

A To my knowledge, that's what he had explained to me, and we had spoke about, that he wasn't going to steal the equipment out of vehicles anymore.

Q Do you know when it was that he told you that he was going to quit stealing?

A It was an ongoing thing. It was more than one time that he told me he was going to quit.

Q Did you believe him?

A Yes, I did.

Q And so, you continued to be engaged to him, until October of '93?

A Correct.

Q And what caused you to stop dating him in October of '93?

A We had decided that things just were not working out, as far as a long-distance relationship.

Q He had his girlfriends back in Greensboro, and you had your admirers up in Wingate, right?

MR. PANOSH: We'd object.

THE COURT: Overruled.

A I can't make assumptions about his girlfriends. I didn't know.

Q Well, then, what was the reason that you and he decided to break up? You told us about it earlier.

A He had -- the reason we decided to break up was because we weren't able to see each other and communicate with each other on a daily basis, and it made it hard on the relationship. And that's the reason we broke the relationship off in October.

Q But then again, when you got home in the summertime in '94, there you were back with him again, weren't you?

A I came back in May, and I was determined not to see him. And July was -- I had -- I had just by chance ran into him, and he said, "Well, let's just go out one time, one last time." And that one last time ended up, I started seeing him again.

Q And you believe that was July of 1994?

A Uh-huh. Yes.

Q And then, in November of 1994, according to your testimony, you found out at church that he was engaged to marry Patricia; is that right?

A Yes. Thanksgiving Day.

Q And that hurt your feelings deeply, didn't it?

A I was upset. I didn't understand the logics behind why would he start seeing her, when I felt like he still loved me.

Q And you loved him, didn't you?

A Yes, I did love him at one time.

Q You loved him then, didn't you?

A Yes, I did.

Q And you felt that she was an unattractive, plain girl, and you couldn't understand why he would prefer her to you; isn't that right?

A I never said that she was unattractive or plain.

Q But you couldn't understand why he preferred her to you, could you?

A The reasoning behind the time frame, I did not understand.

Q Did you subsequently learn that he in fact married her in December of that year?

A It was sometime after that, that I had learned.

Actually, I believe I learned about that after her death.

Q That really made you mad, didn't it?

A No, it didn't make me mad. He had tried to do the same thing to me.

Q But then, in fact, when you found out when they were really married, you realized that he had been calling you up and leading you on, while he was in fact legally married to Patricia; isn't that right?

A No.

Q You didn't know that?

A He didn't call me after -- he called me two or three times after he told me he had started dating Patricia.

Q But after that --

A And then --

Q -- you went to church on Thanksgiving Day, and the pastor announced the engagement, he still called you up, didn't he?

A No, he didn't.

MR. HATFIELD: Thank you very much, Your Honor.

REDIRECT EXAMINATION by MR. PANOSH:

Q When you said, "He tried to do the same thing to me," what did you mean?

A He tried to get me to marry him secretively, and I wouldn't do it, because I felt that he would make me quit school and come home to live with him. I wanted to finish my education. I felt like that was very valuable. And I

told him, if he really loved me, that he would wait to marry me, until I finished school.

MR. PANOSH: No further.

MR. HATFIELD: Nothing further. Thank you.

THE COURT: You may step down, Ms. Blakley.

MR. PANOSH: Ms. Murray, please.

THE COURT: Wait just a minute.

Step down, ma'am.

(The witness left the witness stand.)

THE COURT: Members of the jury, as to this witness's testimony, the Court again wants to admonish you that you should consider this evidence only if the State of North Carolina has satisfied you beyond a reasonable doubt that there was a conspiracy, that Ted and Ronnie were co-conspirators, and this evidence would be only considered for the purposes of determining the pattern of conduct or motive or ability to carry out the conspiracy.

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

Q State your name, please.

A I'm Kimberly Murray.

Q And did you know Ted Kimble for a period of time in the '92 to '93 range?

A Yes, I did.

Q And at that time, you were Kimberly Palmer; is that

correct?

A Yes.

Q Would you explain to the ladies and gentlemen of the jury how you met Ted Kimble.

A I met him at South Elm Street Baptist Church in the singles group.

Q When was that?

A Winter 1991, 1992.

Q Okay. And after you met him, did there come a time when -- first of all, did you know Patricia Blakley at that time?

A Yes, I did.

Q How did you know Patricia?

A Patricia and I were in church together, and we had a very close relationship. We were prayer partners.

Q Did there come a time when it came to your attention that Patricia was dating Ted Kimble? Or let me ask it this way.

MR. HATFIELD: Objection. He's asked a perfectly good question, and she's trying to answer it.

THE COURT: Well, she's not answered it. He can rephrase it.

You may rephrase it, sir.

Q Did there come a time when you started to date Ted Kimble?

A Yes.

Q Would you tell the ladies and gentlemen of the jury when that was.

A The end of February 1993, into May of 1993.

Q And at that time, where were you living?

A Cinnamon Ridge Apartments.

Q And at that time, were you friends with Patricia?

A Very close friends.

Q And at that time, was she part of the management there?

A She was the manager.

Q And how was it that you started to date Ted Kimble?

A There can be a little explanation here. I don't know how much to say up front. We began dating when he persistently -- after he persistently asked me to go out with him.

Q And at that time, were you aware whether or not he had a relationship with Patricia Blakley?

A Only as friends, was my understanding.

Q And before you started dating him, did you have a discussion with Patricia Blakley?

A Several.

Q And what were those discussions about?

MR. LLOYD: Well, objection, Your Honor.

Q Without stating what she said, what were those discussions about?



MR. LLOYD: Well, Judge --

THE COURT: Well, sustained.

MR. LLOYD: -- I question the relevancy of --

THE COURT: Sustained.

MR. LLOYD: -- of all this testimony.

THE COURT: Members of the jury, you may go ahead

and take your lunch break. Be back at 2:00 o'clock.

Remember the instructions the Court has previously given you with the jury responsibility sheet.

(The jury left the courtroom at 12:17 p.m.)

THE COURT: All right. The Court's at a disadvantage. I don't know what the witness is going to say, Mr. Panosh. What's her testimony going to be?

MR. PANOSH: Your Honor, her testimony is going to be that during approximately the same time frame he was trying to secretly marry the last witness, Janet Blakley, he was dating her, and asked her to marry him. And this --

THE COURT: How does this fit in with the conspiracy theory, ability or motive or pattern of conduct?

MR. PANOSH: It doesn't fit into that.

THE COURT: All right.

MR. PANOSH: It fits into --

THE COURT: How is it relevant then?

MR. PANOSH: It shows that Ted Kimble is looking for someone to marry him, so that he can get this business.

It shows that the loving relationship that they try to bring out was not in fact what it appeared to be. This man was just looking for anyone he could find to marry him, so that he could move on and get this business. And as I said, this occurred shortly after she says no to him, there's the announcement of the engagement to Patricia. Then she has some observations about what Ted did after the death of Patricia.

THE COURT: Well, what are those observations going to be? I mean, while the jury's out, I need to know.

MR. PANOSH: That shortly after the death of Patricia, he started dating a young lady by the name of Rhonda and gave Patricia's jewelry to Rhonda; that shortly after the death, he talked about and did purchase an expensive motorcycle and a motorcycle helmet. And that ties into what he did with the money that he collected from the church, after her death.

MR. HATFIELD: If Your Honor please, with all due respect to this lady -- and I do not wish to be offensive -- some men find it advantageous to make women think they're really, really interested in them, because you can get closer to them that way. That he was interested in this young lady or any other young lady has no bearing on this case. Now, we already know he bought a motorcycle, and I suppose if she thinks he -- if she saw him with his

motorcycle after Patricia died, she can say that. But I don't think that her testimony along the lines Mr. Panosh said has any relevance at all. Particularly in light of the fact that, as I say once again, this is a trial of Ronnie Kimble, and such blandishments offered to attractive young women simply has nothing to do with any alleged conspiracy.

MR. LLOYD: Judge, if I could just say one thing. My problem is, if you buy Mr. Panosh's theory, then it's almost as if Ted Kimble planned to kill his wife before he ever married her, because that's the time frame we're talking about here. This was before the marriage ever took place. And I -- so what we have here, Your Honor, is that Ted Kimble was a two-timer, that he was a lady's man, but what does that have to do with Ronnie Kimble? And I think we've just got to ask some --

THE COURT: Well, it's got --

MR. LLOYD: -- very basic questions.

THE COURT: -- that's got to be in some furtherance of the conspiracy --

MR. LLOYD: Yes, sir.

THE COURT: -- is the pattern of conduct or ability to carry out the conspiracy. That's the problem the Court's having.

Mr. Panosh, I don't -- are you going to have some witness that's going to say that the only reason that the

business was sold to him was because he was married?

MR. PANOSH: The witness will say that he would not have sold the business to Theodore Kimble unless he was married and stable.

MR. HATFIELD: That's not exactly right.

THE COURT: Well, I don't know what the witness is going to say. Is the sole purpose of this witness's testimony just to show that there was a relationship between the two of them during this period of time? Did he make any statements to her, or how does it fit in with his ability to carry out the conspiracy or pattern of conduct that may have led to the ability to carry it out?

MR. PANOSH: He did make certain statements to her, Your Honor. He demonstrated to her that particular weapon, State's Exhibit 84.

THE COURT: All right. That's relevant.

MR. PANOSH: And she testifies that he carried it all the time, with his -- during the period of time that she knew him.

THE COURT: That would be relevant. What else, sir?

MR. PANOSH: That would be the only things, other than what I've already gone into.

THE COURT: The Court's going to restrict it to those things the Court would consider to be relevant, and

that -- I've indicated those two parts would be relevant. And the probative value would outweigh any prejudicial aspects to it. I'll let you establish that there was -- that he was also seeing her during that period of time, to that extent. But any further than that, I'm not -- I'm inclined to sustain the objection.

MR. PANOSH: The marriage proposition would be inappropriate?

THE COURT: What time -- was this before he became engaged to Janet Blakley or after he was engaged to her or before he married Pat -- Patricia?

MR. PANOSH: It was before he married Patricia and shortly before Patricia and he became -- started dating and became engaged.

VOIR DIRE EXAMINATION by MR. PANOSH:

Q Can you give us the date -- or the month, please, that he asked you to marry him.

A We started -- we started dating the middle -- toward the end of February.

THE COURT: Through May of '93 is what she's testified to previously.

THE WITNESS: I testified, I believe, that we dated from the end of --

THE COURT: February.

THE WITNESS: -- February to --

THE COURT: May.

THE WITNESS: -- the beginning of May. He proposed to me at the end of the second week that we dated.

Q So it would have been late February?

A Early March, probably.

THE COURT: That's a --

Q Of 1993?

THE COURT: -- year before he married her.

A And this was the week after he bought me a gun.

MR. HATFIELD: I thought sauce for the goose was sauce for the gander. He's a bad guy if he has a gun. She's a good girl if she has a gun.

MR. PANOSH: Well, we didn't intend to bring in the gun.

THE WITNESS: I apologize.

MR. PANOSH: We intend to bring in the gun that he possessed and that he showed her.

THE COURT: The Court will let you -- the Court would allow you to establish the relationship, find that to be relevant, for the purposes of, if the jury should find it's part of a conduct or motive or ability to carry out the conspiracy, that they may consider it. The Court will find that that would be relevant. You may proceed with that.

MR. PANOSH: Yes, sir.

THE COURT: Other than that, I'm going to keep it

out.

MR. PANOSH: You're going to allow me to get into the gun?

THE COURT: Sir?

MR. PANOSH: You'll allow me to get into the gun?

THE COURT: Yes. The gun was involved in the --

MR. PANOSH: Yes.

THE COURT: -- murder, yes -- in the death.

MR. LLOYD: Your Honor, we respect the Court's ruling, but we would ask additionally that if the Court is inclined to do that, to give the instructions once again --

THE COURT: All right.

MR. LLOYD: -- in addition.

THE COURT: If you'll write out an instruction different from the one that I --

MR. LLOYD: Well, I don't have any objections with the instructions the Court's given. Those are fine. I'm just asking for them again.

THE COURT: I'll be glad to do that.

MR. HATFIELD: All right. Thank you, Your Honor.

THE COURT: Any other matters before the recess?

MR. PANOSH: No, Your Honor.

THE COURT: 2:00 o'clock, sheriff.

(The witness left the witness stand.)

(A recess was taken at 12:26 p.m.)

(Court reconvened at 2:03 p.m. The defendant was present. The jury was not present.)

MR. PANOSH: Your Honor, checking the exhibits, I noticed that 52 has not been admitted. I've showed it to counsel.

Do you oppose it being introduced?

MR. LLOYD: No.

MR. PANOSH: It's a picture of the house, specifically the crawl space and vents.

THE COURT: All right, sir.

Any other matters before we bring the jury in?

Ms. Murray, if you'd come back to the witness stand, please, ma'am. You're still under oath.

(The witness returned to the witness stand.)

(The jury entered the courtroom at 2:03 p.m.)

THE COURT: I'm pleased to have the panel back. I hope you had a nice lunch and feeling okay. Anyone having any problems this afternoon that I should know about, if you'll raise your hand.

The State ready to proceed?

MR. PANOSH: Yes, sir.

CONTINUED DIRECT EXAMINATION by MR. PANOSH:

Q Ms. Murray, then drawing your attention to that period of time in 1993 when you were seeing Ted Kimble, I believe you said it was from February to May of 1993, did it come to



your attention that he possessed a handgun?

A Yes.

Q How did it come to your attention?

A We were sitting in his little gray car, and he pulled it out of the driver's side pocket.

Q And thereafter, did you see that gun on other occasions?

A Yes.

Q Would you explain that.

A Yes. He took me out to Calipers or Calibers, whatever it is, out there at the airport, and we were target practicing.

Q And during the period of time that you and he were at Calipers (sic), did you use that particular weapon?

A Yes.

Q Could you describe that weapon?

A It was a rather large gun, what I would consider a large gun, handgun, and yet it was lightweight. It was -- it had a magazine that would -- you'd push the magazine up through the bottom of the gun. And it had a laser sight or some -- whatever you call it, that little red light that shines on your target. He had told me that a lot of it was plastic, and that's what made it so light, only a portion of it was metal.

MR. PANOSH: May I approach the witness?

THE COURT: You may.

Q Showing you now State's Exhibit 84, do you recognize -- 84-A. Do you recognize this weapon?

A It looks like the gun that I probably shot there.

Q So you can't say for certain it's the same one, but it appears the same?

A Yes. Is this a Glock? He called it a Glock. Is this what you call a Glock? I don't know. Anyway, I know he said it was a Glock gun, whatever that is.

Q Would you pick it up and examine it.

(The witness complied.)

Q Does it -- You said you shot it. Does it feel the same as it --

A Yeah. It's -- I mean, it looks like it would weigh a lot more, but it's very light. And it -- I remember him showing me how to use the sight up here, but then it had a red light, too, that he turned on somehow. (Indicated.) But the magazine would go up in the bottom like this.

(Indicated.)

Q Now, based upon your acquaintanceship with Theodore Kimble and the time that you spent with him, how often did he carry that gun with him?

A Constantly. He -- the day that he showed it to me in the car, in fact, he commented that he always carried it, and he always kept it loaded with a certain kind of bullet,

hollow point, I think, hollow-point bullets.

MR. PANOSH: No further. Thank you, ma'am.

CROSS-EXAMINATION by MR. LLOYD:

Q Your relationship with Ted Kimble lasted a little over two months; is that correct?

A Yes, sir.

Q You indicated that you started dating him at the end of February, and you had broken up with him by early May; is that right?

A Yes, sir. By the early May to the middle of May.

Q All right. And Ms. Murray, you didn't date -- you didn't go out on dates with Ted Kimble every night, did you?

A No, sir.

Q Okay. Was this relationship mainly where you dated on the weekends?

A We saw each other usually through the week. Your question, I believe, was, did we go out --

Q Uh-huh.

A -- every night. No, we did not go out every night, but we saw each other pretty much every night.

Q For that period of time when you were dating; is that right?

A More so probably toward the end of March and April and the beginning of May.

Q So that's when you saw the most of each other?

A Yes. The relationship matured to a point where we wanted to see each other more often.

Q So at first you didn't see each other as often as you did at that period of time?

A Right.

Q And you say that you went out to a shooting gallery at some point with Ted; is that right?

A Yes, sir.

Q Had you expressed an interest in learning how to shoot or shooting?

A No, sir.

Q All right. But you nevertheless went with Ted?

A Yes, sir.

Q All right. And it wasn't something where you said, "Well, I'm -- gee, I'm afraid of guns, and I don't want to go shooting"?

A No, I did not say that.

Q All right.

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

THE COURT: Come down.

REDIRECT EXAMINATION by MR. PANOSH:

Q Could you explain to the ladies and gentlemen of the jury why you went with him on that occasion?

A I'm sorry. Could you --

Q Could you explain to the ladies and gentlemen of the

jury why you went with him on that occasion when you used the weapon?

A The first week that we dated, Ted bought me a handgun. And I had never owned a handgun and didn't know what to do with it, how to use it. His comment to me was, "You're single. You're living alone. You need a weapon to protect yourself." And I said, "Well, I don't even know how to shoot it." So he told me that he wanted to take me out to Calipers or Calibers. Which is it, so I'll know, Calibers or Calipers?

Q The shooting range.

A The shooting range. He took me out there, to show me how to shoot the gun. And he bought me a little box of hollow-point bullets. And he basically took me out there to show me how to shoot the gun and what it would feel like to shoot it. And I didn't do so well with my gun, because it was pretty heavy. But I shot his gun, and everything was -- I did real well with shooting his gun.

MR. PANOSH: Thank you.

THE COURT: Additional questions, Mr. Lloyd?

MR. LLOYD: Just a few questions.

RE-CROSS-EXAMINATION by MR. LLOYD:

Q Ms. Murray, did you go out there again to shoot?

A No, sir. I went that one time.

Q But the gun was purchased for your safety; is that

correct?

A Ted purchased me the gun, and that's what he -- that's the excuse he gave me.

Q Well, you kept the gun, didn't you?

A Yes.

Q All right. Did you use it for your own safety?

A I left it in the box, put away. Really, if someone were to come in, I could not have probably gotten to it, to protect myself.

Q But Ted didn't take the gun back from you, did he?

A No.

Q All right.

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

THE COURT: Step down, ma'am.

(The witness left the witness stand.)

THE COURT: Next witness, please.

MR. PANOSH: Ms. Cherry, please.

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

Q Would you state your name, please.

A Linda Cherry.

MR. PANOSH: Your Honor, this witness's testimony would go to one of the motions in limine. I wanted to alert counsel.

THE COURT: All right, sir.

MR. LLOYD: If that's the case, Your Honor, I think it would be appropriate that we find out what the witness would say outside the presence of the jury.

THE COURT: All right.

Members of the jury, if you'd step in the jury room, please.

(The jury left the courtroom at 2:14 p.m.)

THE COURT: All right, sir.

VOIR DIRE EXAMINATION by MR. PANOSH:

Q Did you know Patricia Kimble prior to her death?

A Yes.

Q And what was the nature of your acquaintanceship?

A We were good friends from church. We were in the same Sunday school class, and became pretty close several months before the death.

Q Okay. And shortly before her death, did you have conversations with her in regards to her marriage?

A Yes, I did.

Q Would you relate those to the Court, please.

THE COURT: Well, how soon in the relationship were they, Mr. Panosh?

Q Would you -- could you tell when these conversations occurred.

A Probably -- it was between two to three weeks before her death.

Q And was there one conversation or more than one?

A There was more than one, but one really that more stood out to be what alarmed me.

Q Would you tell the Court what you remember of those conversations.

A She had called. We had spoke on the phone for quite a long time. As anybody that knows Patricia knows, she loves to speak on the phone. She was very concerned about the state of her marriage. And we talked at some length. And she was very emotional on the phone. And she stated that she didn't understand what was happening in their marriage. She felt that Ted didn't want to spend time with her anymore. And she had made the statement to me that she had asked him one night, "Well, Ted, why did you even marry me?" And his comment was, "So that I could share a bed with you."

Q Did she give you other specific examples of what was concerning her about her marriage?

A Yes. She had stated that he would -- that he had been acting differently, that he -- he didn't want to spend time anymore, that there was -- the time that he spent with her was with other couples and other people, as well, that she really missed having one-on-one with him, that even when they would go to the lake, it was with other people, she couldn't really have time with just him. And she didn't understand why he didn't want to spend time with her



anymore.

She stated that his attitudes and mannerisms had changed, that he -- that there were times where he would get agitated very easily. She commented that he had used language that she had not heard him use, mentioning profanity. Things of that nature.

Q Did she make specific references to their financial condition?

A She stated -- she stated that their finances were such that he did not need a second job. She made it very clear to me that she absolutely did not like the fact that he had a second job. One of which, it took away time from their time together, and that he -- that every time she wanted -- she had asked him to quit, and he said, "Well, no. I'm making a lot of extra money, and this is good. I want this extra money." And she -- to her, she didn't understand that, because Patricia was the kind of person, she was content with what God had already blessed her with, and she didn't seem -- she didn't feel that he was.

Q Did she make specific reference to a motorcycle?

A She said that she absolutely didn't want him to have one, and that he really wanted one. But that -- she really only mentioned that on that one occasion.

Q Did she make references to other expenditures that she felt were unnecessary or inappropriate?

A She mentioned the Jeep that had been purchased. She said they already had automobiles and didn't understand why they needed another one. There again, she didn't say that she didn't enjoy that, she just -- there again, she was content with what she had then, and she just didn't understand why he wanted to have more and have more.

She also made reference to the boat, and she did very much enjoy the boat that they had. She enjoyed that very much. But at the same time, again, it was a -- it was not a necessity, and it took away time that she could have with him alone. Because the boat brought about -- she commented that they were at the lake constantly, which she again loved, but that there were so many other people around, that she just didn't have any time with him.

Q When she had this conversation with you about the boat, what was her demeanor or attitude?

A She wasn't overly upset about the boat.

Q Did she speak to you in regard to the fact that her home had been broken into?

A Yeah, she had mentioned that.

Q What, if anything, did she say in regard to that?

A Just basically that it did concern her, and that it scared her. But she didn't go into any details or any length about that.

Q Did she indicate what, if any, action had been taken in

regard to the breaking and entries?

A I'm sorry. Excuse me?

Q Did she indicate what they had done after the breaking and entries, in that regard?

A She had stated that Ted had installed this major big dead bolt that nobody could break into. But aside from that, that was it. That was all she said to me personally.

Q Did you have an occasion to talk to Ted Kimble after Patricia's death?

A A couple of -- very briefly.

Q Okay. In regard -- do you recall a specific conversation at the Rock-Ola?

A Yes.

Q Would you tell the Court about that.

A The -- it was pretty much a tradition in our Sunday school class that generally on the last Sunday night of the month, sometimes it was the Sunday night before that, we would go out to eat. Most of the time, it was Rock-Ola. And at that -- at that point, it was Rock-Ola. It was -- basically what we did is, we celebrated the birthdays of the people in that class who had a birthday that month.

And it was two to three weeks after her death when we had this particular dinner, and he came. He sat right beside my husband, which was sitting to my right. And he was very openly talking about his plans for building another

house. My husband is a designer draftsman, and he start-- he -- Ted took a Rock-Ola napkin, turned it over on the back, and started drawing a sketch of this rather large two-story house, of what he wanted. And he told my husband that he wanted -- he might call him sometime to help him -- help him with the design, which he in fact did not call. He did not follow up with that.

But I felt it was very strange that he was drawing -- you know, why this person who was now single would need such a grand home. I mean, he -- it was -- he was talking about, he -- the different features that he wanted and so forth. And it was just odd for that to take place so soon after his wife's death.

MR. PANOSH: Your Honor, that would be the substance of her testimony. Thank you.

THE COURT: Do you wish to be heard, or do you wish --

MR. LLOYD: Yes, Your Honor.

THE COURT: -- to examine the witness?

MR. LLOYD: Well, I don't know that examination of the witness is necessary in this case, Your Honor. I think to save time, I'll just forgo that. I think we'll accept what she said at face value.

I note that throughout, the only thing the witness has said concerning Patricia Kimble's then existing mental

or emotional condition is, that she said at some point -- well, she said she wasn't overly upset. My notes don't indicate outside of that, that there was anything. Now, maybe there was something. But the rest of this concerns this phone conversation, where Patricia is relating concerns, beliefs she has about why her marriage is not to her satisfaction at this time.

And once again, Judge Cornelius, I have a very hard time, first of all, seeing how that is relevant to Ronnie Kimble's case. It is obviously hearsay. The fact that she feels like her marriage is strained or is not going the way she wants it, basically what the witness has related is that Ted is not spending enough time with her.

This comment about -- Ted's comment about "So I could share a bed with you," in response to her question, "Well, why did you marry me?" Judge, that has absolutely nothing to do with any alleged conspiracy in this case, and it is simply not relevant in Ronnie Kimble's case. The only thing it does is show, if Ted -- if the jury believes that Ted made the statement, he's a cad or a bad individual, a bad person, but it doesn't go to show any sort of conspiracy between Ted and Ronnie Kimble to kill Patricia Kimble.

I just think the relevancy here is tenuous at best. I mean, even if you accept relevancy as a fact having any tendency to prove the matter at issue, it's got to fail

under a 403 test, Your Honor. I mean, how is that statement -- if we look at it from the co-conspirator's exception, how is it in the course of and in the furtherance of the conspiracy? It just fails on all grounds, Judge. It just doesn't work.

And the rest of the statements that Patricia is supposed to have made in all these -- in this phone conversation is basically just talking about specifically what the rule itself, the rule on then existing mental or emotional condition, rules out. It's a recitation basically about her beliefs. It's statements about her beliefs. And the rule is clear on that. It says that's not admissible.

So I just -- I think once again, it is -- what it boils down to is a character smear on Ted Kimble that somehow Mr. Panosh hopes to -- will rub off on our client, because he's Ted Kimble's brother. And that's the only relevancy that I can see to any of this, Your Honor. I just -- I don't think any of it qualifies.

THE COURT: All right. How is it relevant to the conspiracy theory, Mr. Panosh?

MR. PANOSH: Your Honor, we don't submit that it's relevant to the conspiracy theory. This is -- these are statements of the deceased. And we're relying upon 803(3), the exception providing for statements of declarant's then existing state of mind, and as stated in State v.

Westbrooks, at --

THE COURT: I'll grant you that's to emotional state or feelings about her marriage, but how in the world does it fit in about building a new home?

MR. PANOSH: Well, I put that in, in case Your Honor wanted to exclude it, and if that's your ruling, I don't have any problem with that. But it is certainly inconsistent with a person who is grieving and looking to live by himself.

I think that the statements of the declarant -- or the deceased are admissible under the Westbrooks decision. In that case, they said that the defendant contended that statements were facts, rather than a state of mind, and the defendant contends that the state of mind is not relevant under the Hardy test, which I believe is the case that counsel has cited. And they went on to hold, the victim's statement to his sister that he was depressed, lonely and upset about his finances were statements indicating his mental condition. Similarly, the victim's statements to his father about feelings toward his marriage and to the defendant expressed his state of mind.

They went on to cite Stager. And in Stager, they introduced evidence of telephone bills and other specific things that were concerning the victim. The victim's statements about telephone calls and bills from creditors he

knew nothing about, and the defendant's role in his financial situation were admissible.

And then they -- lastly, they go on and say, in addition, statements concerning the status of the marriage between the victim and defendant were admissible to contradict the defendant's contention at trial that she and the victim had no marital problems.

Your Honor, I think you've seen from cross-examination that the defense is trying to paint this as a harmonious marriage, and I would submit that it is admissible both as statements of the deceased under Westbrooks and also to rebut their contention that it is -- that it's a harmonious marriage. If you'd like --

THE COURT: I've got Westbrooks.

MR. PANOSH: All right.

THE COURT: I tried the case.

MR. LLOYD: Your Honor, if I can just address the part about rebutting that it's a harmonious marriage.

THE COURT: Well, I think that's a rule of evidence, if it was -- if you do present evidence that it was --

MR. LLOYD: Well, we haven't presented evidence.

THE COURT: That's what I'm saying. It's not --

MR. LLOYD: Thank you --

THE COURT: -- relevant at this point.



MR. LLOYD: -- Your Honor.

MR. PANOSH: Your Honor, I know that they have.

Through at least two witnesses on cross-examination, they brought out that it was a harmonious marriage, that these two people were touching each other, to the point where it was embarrassing to those witnesses, that it was a very affectionate marriage. And since they brought it out on cross-examination, we should be able to bring it out at this point and not have to wait for rebuttal. Thank you.

THE COURT: Well --

MR. LLOYD: Your Honor, I would point out once again, we didn't call those witnesses. We were merely seeking to cross-examine them, based on statements they made on direct examination.

THE COURT: The Court's going to rule that certain statements made to this witness will be admissible under the 802 -- 803 hearsay rule, under the number 3, existing mental or emotional state, that she may testify as to the victim's emotional state or her feelings or her perceptions about the marriage, but that she may not testify as to "Why did you marry me?" or any testimony about him wanting to build a new house after the death. The Court will exclude those. Allow the others. Will find that their probative value would outweigh any prejudicial aspect it might have and -- again, to this defendant. Some of these may be relevant to the

trial of Ted Kimble, but not as to this defendant.

MR. PANOSH: May I approach the witness and explain your ruling, so that we won't have a --

THE COURT: Yes, you may do that.

MR. HATFIELD: Your Honor, I think you've explained it.

THE COURT: He can talk to the witness and --

MR. HATFIELD: While she's on the stand?

MR. PANOSH: I'll do it in open court, if that helps counsel.

In your answers, would you please not refer to the fact that she stated to you that she wanted -- that he married her only to share her bed. And would you not -- please not refer to the house plans that occurred at the Rock-Ola.

THE WITNESS: All right.

THE COURT: Bring them back.

(The jury entered the courtroom at 2:32 p.m.)

THE COURT: You may continue with the examination, Mr. Panosh.

CONTINUED DIRECT EXAMINATION by MR. PANOSH:

Q Ms. Cherry, would you please -- you indicated that you knew Patricia Kimble; is that correct?

A Yes.

Q How did you know Patricia?

A I knew her from South Elm Street Baptist Church. We were in the same Sunday school class. We had become very close several months before her death.

Q And so, you knew her in the period of time basically 1995 up to her death?

A Well, prior -- we basically met each -- we met each other years before that, but we became close -- well, we became close the summer of -- we were at a beach retreat and became very close several months before her death. We were friends before that, but we became very close friends several months before her death.

Q And in the nature of your friendship, did she call you from time to time and discuss personal matters?

A Yes. Often.

Q Drawing your attention then to the two or three weeks preceding her death, did she contact you in reference -- and speak to you on the telephone?

A Yes, she did.

Q And what, if anything, did she tell you in reference to the status of her marriage at that time?

MR. LLOYD: Object for the record, Your Honor.

THE COURT: Overruled.

Proceed.

A She was very concerned about the state of her marriage and very concerned of the lack of time that Ted wanted to

spend with her, private time with just the two of them, one-on-one time. Was very concerned about things that she had seen change in him, attitude change, temperament change, being very agitated and very easily testy, as you could say, started changing -- his language started changing, started using words such as profanity that she had never heard him use before. And it really concerned her that she felt her husband was basically changing. And she didn't understand that -- you know, he was not -- changing in a way that she didn't know -- I don't know what word that -- that she was -- he was not what he used to be.

Q Did she make statements to you in regard to their financial condition?

A Yes.

Q What did she tell you?

A She felt that financially, they were fine, and they did not -- she was very adamant about the second job that he was currently working. She did not want him working a second job. They did -- she told me specifically they didn't need the extra money. They -- she told me that she wanted him home at night, that she wanted to spend time with him, as any newlywed would, but that he was determined he wanted to make that extra money. And he wanted that second -- he wanted to keep that second job, you know, regardless of the fact that he wasn't with his wife, he wanted to keep that

second job, to make that money.

Q Did she discuss with you plans on the part of Theodore Kimble to buy a motorcycle?

A She did.

Q What did she say?

A She just stated very adamantly that she did not want him to own a motorcycle, that she -- I mean, basically because it was dangerous and because it was just absolutely not a necessity.

Q And at the conclusion of that conversation, what, if anything, did she ask you to do?

A I'm sorry? Excuse me?

Q At the conclusion of that conversation, what did she ask you to do?

A What did she ask me to do?

Q Uh-huh.

A I don't understand the question.

Q Did there come a time when she asked you to pray for her marriage?

A Oh, yes.

MR. LLOYD: Well, objection --

A I thought you --

MR. LLOYD: -- Your Honor.

A -- meant actions. I'm sorry.

THE COURT: Sustained.

MR. LLOYD: Ask the jury to disregard the question and any answer.

THE COURT: Disregard the question, members of the jury.

Q In the course of your conversations with her prior to her death, did she discuss the breaking and entries that occurred at her home?

A Yes, she did.

Q What did she tell you?

A She was very concerned about that, but that Ted had purchased a, she described it as just a huge dead bolt that nobody could break into.

Q Did she make any further statements to you in that regard?

A No, sir. No, sir.

MR. PANOSH: The Court's indulgence for a moment.

(Time was allowed for Mr. Panosh.)

MR. PANOSH: No further questions. Thank you, ma'am.

THE COURT: Do you wish to cross-examine the witness?

MR. HATFIELD: No, thank you, Your Honor.

THE COURT: Step down, ma'am.

(The witness left the witness stand.)

THE COURT: You may stand and stretch, if you'd

like, members of the jury.

MR. PANOSH: Ms. Young. Stephanie Young.

Ms. Dudley.

CARA DUDLEY, being first duly sworn, testified as follows

during DIRECT EXAMINATION by MR. PANOSH:

Q Would you state your name, please.

A Cara Dudley.

MR. PANOSH: Your Honor, this witness also is covered by the motion in limine.

THE COURT: All right.

Members of the jury, you need to step out again, please.

(The jury left the courtroom at 2:40 p.m.)

THE COURT: All right, sir.

VOIR DIRE EXAMINATION by MR. PANOSH:

Q Were you acquainted with Patricia Kimble before her death?

A Yes, sir.

Q How did you know her?

A We met in the fall of '91 at church. We became good friends. When I married in '92, she was in my wedding. And when she got married, I was her matron of honor.

Q And that would have been May of '94; is that right?

A When they married?

Q Yes.

A In the -- in the church wedding, yes. But they had actually married earlier.

Q Did there come a time in the weeks preceding, two or three weeks preceding her death, when Patricia Kimble called you or spoke to you?

A Yes. We talked frequently, and there were several conversations in the weeks preceding her death.

Q And in one of those -- does one of those conversations stand out in your mind?

A Yes.

Q Would you relate that to the Court, please.

A She called one evening. Her voice was shaky. She wanted me to know -- she was very upset. In case anything strange ever happened to her, she wanted me to know that she had discovered by accident that Ted had taken out a large insurance policy on her, without her knowledge. She said, "I did not sign it. He must have forged my name." And she said, "I know of no checks that have been written to pay for such a policy, that he must have paid cash for the policy."

She did not understand why he wanted such money -- so much money. They already had some insurance. She felt that that was very adequate, that all of this extra was -- she just couldn't understand why he wanted so much. She kept saying he would have so much money left over, even after everything was paid off, that he would just have this large



sum of money, and she just could not understand why he wanted so much.

Q Did she also talk to you, make specific reference to a motorcycle?

A Yes. She was upset because Ted wanted to buy something again, something more, this motorcycle. She didn't understand why a married man wanted a motorcycle to cruise High Point Road with. She just didn't think that was something, because he wanted to go cruising High Point Road, and she just didn't understand why a married man would want to do something like that. That was just not a married thing to do.

Q Did she indicate to you whether or not she would allow him to purchase it?

A She indicated that he had gotten the second job so that he could buy a motorcycle. He wanted the extra money, so that he could buy the motorcycle.

Q Other than characterizing her voice as shaking, what did you determine -- or what did you perceive about her demeanor?

A She was scared. She did state she didn't want to believe that he would do anything to her, but she just didn't know. She just wanted someone to know what she had found out, in case, as she had stated to me, anything strange ever happened to her.

MR. PANOSH: That would be the substance, Your Honor.

THE COURT: Do you wish to cross-examine the witness, Mr. Lloyd?

MR. LLOYD: No, Your Honor.

THE COURT: Do you wish to be heard?

MR. LLOYD: Just very briefly, Judge.

Judge, I made all the arguments before, we've all heard them, and I'm not going to replew that ground. One thing I would like to say to the Court that I probably didn't say before, that maybe I should have, it is very difficult for us, in the situation of defending Ronnie Kimble, when all these hearsay statements come up, which basically concern Ted Kimble. They don't have anything to do with us. And that's one of the problems these particular witnesses pose for us. And that's why it's distinguishable from these cases that Mr. Panosh has cited. We're talking -- those statements went directly to the defendant at trial. We don't have that situation here, Your Honor. And I would reiterate -- I'm not going to replew the ground we've already been over, but I would ask the Court to consider it. And it puts us in virtually an impossible situation here, because we represent Ronnie Kimble, we don't represent Ted Kimble.

THE COURT: Mr. Panosh?

MR. PANOSH: Your Honor, I made all the arguments before. We think it's extremely important to our case. We have to show a motive on the part of Ted, to show that he convinced this man to pull the trigger. And this definitely goes to his motive. It's admissible as to her state of mind.

THE COURT: Okay. The Court's going to find that the statements made by Cara Dudley are admissible under the hearsay exception under Rule 803(3), existing mental state. These conversations were two to three weeks prior to the death, that they involved an emotional state of the victim, and her feelings, the fact that she was scared. And this is admissible, in that the Court finds the probative value would outweigh any prejudicial value. I will, however, instruct the court (sic) about they must consider this only in the event that there is a -- the State has proven beyond a reasonable doubt there is a conspiracy and this defendant was part of that conspiracy.

Bring them back.

(The jury entered the courtroom at 2:46 p.m.)

THE COURT: Members of the jury, the Court will caution you about the testimony of this witness, from the standpoint that her testimony may involve statements made by Ted Kimble, and the Court would again remind you that these statements would only be considered against this defendant

in the event that you should find the State has established beyond a reasonable doubt that there was a conspiracy, and that Ted Kimble and this defendant were co-conspirators. Otherwise, you're not to consider this against this defendant, if you do not find the conspiracy beyond a reasonable doubt. And that's the extent that I can tell you about it right now.

Proceed.

CONTINUED DIRECT EXAMINATION by MR. PANOSH:

Q Ms. Dudley, did you know Patricia Kimble prior to her death?

A Yes, sir.

Q How did you meet her?

A We met in the fall of '91 at South Elm Street Baptist Church. We became good friends. When I married in '92, she was in my wedding. And when she married, her church wedding, in May of '95, I believe --

Q '94.

A '94. I was her matron -- or maid of -- matron, yes. I was married then, matron. And we talked quite frequently. We were very close friends.

Q In the two to three weeks preceding her death, did there come a time when she called you on the telephone?

A Yes, sir.

Q And of those telephone conversations, is there one that

stands out in your mind?

A Yes, sir.

Q Would you tell the ladies and gentlemen of the jury about that telephone conversation.

A She called me, and she wanted me to know that in case anything strange ever happened to her, that she had discovered by accident about a large insurance policy that Ted had taken out on her. Her voice was shaky, as mine is now, when she was relaying this to me. She just wanted someone to know, in case anything strange happened to her, that this large policy had been taken out. She did not understand why he wanted such a large policy, they already had insurance. She said he would have so much money left over, even after everything was paid off, if he got this large policy, which he had done, taken out. She said, "I never signed anything. He must have forged my name." She said, "He must have paid cash for the policy," also. She did not know of any checks that had been written to pay for such a policy. She just did not understand why he wanted so much money, to have so much money, if something ever happened to her. They, she already felt, had adequate insurance.

Q Did she state to you whether or not -- how this information caused her to feel?

A She was very upset. She did not want to believe that

Ted would do anything to her, because she loved him so much. But she just didn't know -- she just didn't know what to believe. And she just wanted to make sure that someone knew what was going on, in case anything strange, as she stated, ever happened to her.

Q Other than describing her voice as shaking, could you describe her demeanor.

A She was upset. She just -- I think she couldn't believe it. She just could not believe what was going on. She was definitely trying not to cry. She was trying to make sure I understood everything she was telling me.

Q In the course of that conversation, did she discuss with you the -- a motorcycle?

A That same week we had talked, she was -- she didn't -- again, Ted had gotten a second job. He wanted -- apparently, part of it was to use the money he had got at the second job to buy a motorcycle. She didn't understand why he wanted a motorcycle to go cruising High Point Road, because married men don't do that kind of a thing. She just -- she didn't understand why he wanted that motorcycle.

Q She said that she had discovered it by accident. Did she say how she discovered it?

A The insurance man had called her. She had thought at the beginning of the conversation that it was about, she mentioned dental insurance, that they had taken out some

other insurance. But come to find out, within the conversation she had with --

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

THE COURT: Sustained.

MR. PANOSH: No further questions. Thank you, ma'am.

CROSS-EXAMINATION by MR. HATFIELD:

Q Ms. Dudley --

A Yes, sir.

Q -- how long have you been married?

A Six years on Saturday.

Q And I believe you said that Patricia was married in May of 1994?

A Her church wedding was then, but they were actually married secretly in December the year before.

Q You participated in the church wedding?

A Yes, sir.

Q But you didn't know anything about the secret wedding in Danville, Virginia, did you?

A No, I did know about it. She told me Christmas Eve the -- after the wedding.

Q So just a few days after the secret wedding, she told you?

A Yes, she did.

Q Did you tell anybody else?

A My mother and my husband.

Q Was the understanding to keep it a --

A Yes.

Q -- relative secret?

A I did encourage her to tell her family. I thought she needed to go ahead and get it out in the open. But she did not choose to do so.

Q Do you know why she and Ted got married in December secretly?

A I questioned her on that. She said that they thought it would be good for taxes.

Q So Patricia was a very business oriented and conservative young woman about money?

A Yes, she was.

Q And yet, she was also very successful, wasn't she?

A I'm sorry. I don't understand.

Q Well, I'm sorry. She was pretty successful with money, too, wasn't she?

A Yes, she was. She did quite well with it.

Q And you say that in your conversations with her shortly before she died, that she indicated that she and Ted had no financial problem?

A No, they did not have financial problems.

Q And your impression was that her belief was, they could easily live within the means that they had; is that right?



A Within, yes.

Q And therefore, that she couldn't understand why Ted would want this part-time job that would keep him away from home in the evening?

A Correct.

Q Do you know when he began that part-time job?

A I'm not sure, sir.

Q Well, even after he got the job, he and Patricia continued to take their weekend trips, didn't they?

A I don't know when he took the job, so I don't know what occurred after -- you know, during the time period he had the job.

Q But isn't it a fact that Ted and Patricia took many weekend trips?

A Oh, during the time, yes, that they were married, they took --

Q During the time they were married?

A Yes.

Q Both church-related trips, on retreats and things --

A Uh-huh.

Q -- of that sort --

A Yes.

Q -- and just entertainment trips to Williamsburg and things like that?

A I remember mostly she talking about Florida, going to

Disney.

Q Do you know how many times she and Ted did that?

A I would like to -- I think there were probably about two times. I'm not really sure.

Q Did Patricia tell you that she bought a timeshare house up in Williamsburg, Virginia?

A No, sir, she never told me that.

Q She never told you that?

A No, sir.

Q Did you know that she and Ted had gone up there on several occasions?

A I did not always know where they were going. I knew they went on trips.

Q Did you know that even before she married Ted, that Williamsburg was one of her favorite places to visit?

A I don't remember her stating that.

Q Did you know her when she bought her house on Brandon Station Court?

A Ever since I knew her, she had that home.

Q And of course, that was her home in her own name, and not in Ted's name, wasn't it?

A She owned it before they married, so I assumed it was in her name.

Q Did you know that she borrowed a large sum of money against that house to buy this timeshare apartment up in

Williamsburg?

A No, sir, I did not know that.

Q Did she ever complain to you about this Jeep Cherokee that she and Ted bought?

A All that she ever stated about the Cherokee was, she didn't understand why Ted had to have so many options on it. There were like, I think she said somewhere in the range of almost \$4,000 of options that he had to have on this Jeep.

Q So he was the more flamboyant, and she was the more conservative?

A Yes, sir.

Q Now, but about the boat, she loved it, didn't she?

A They -- yeah, and they loved going with the -- they went out a lot on it.

Q So she spent a lot of time with Ted, even though he did have this part-time job at Precision?

A They spent a lot of time, especially with the church groups, together with the church groups. There were a lot of gatherings at their home. When they had a -- we had lake trips with the church, I'm sure the boat and them -- they went on it all together.

Q Without talking about anything that she may have said to you, I would just like to know if she ever discussed any of her personal relationships with people she knew before she married Ted.

A Are you referring to any type of boyfriend?

Q Did she -- I don't want you to tell about it, I just want to know if she had -- if she discussed her concerns at any time in earlier years.

A I never knew her to date anyone, except for Ted.

Q And other than the time you're talking about, a couple of weeks before she died in September of 1995, did she ever have a telephone conversation with you where she'd seemed emotional and upset?

A Well, she died in October.

Q I'm sorry?

A You said September. She died in October.

Q Yeah, she died in October.

A Oh.

Q She talked to you in September of 1995 on the telephone?

A Yes. Okay.

Q Other than that particular telephone call that you've already told about --

A Uh-huh.

Q -- were there any other telephone calls where she was really upset?

A She was upset at one point, she called, when we were talking, that somebody had come by Lyles and had offered some stereo equipment for sale for a very few hundred

dollars, and Ted had told her about it, and she told Ted, "Don't buy it. It's got to be stolen. There's no way you get all this stereo equipment for free --" or for, not free, what she considered free, but for just a couple hundred dollars. But he gave the money to one of the gentlemen that worked there at Lyles, sent him to get the equipment. Ted told Patricia and Patricia told me that the guy went there, gave the person the money that was supposed to go get this equipment for exchange, but the guy never showed back up.

Q So Ted was a fool and just lost his money?

MR. PANOSH: We'd object, please.

THE COURT: Sustained.

Q The upshot of your story is, Ted lost his money; is that right?

A In the end, he ended up with nothing, yes.

Q He ended up with nothing?

A Yes.

Q But what I was asking you about was, whether on any other occasion, except that one time in September of 1995, when you were talking to Patricia on the telephone, did she seem emotional and upset.

A Well, that conversation I just told you about, she was upset with Ted at that point.

Q So she was upset with Ted at that time because he had lost several hundred dollars?

A Her main upset with him was that he was getting involved in something that she considered that would be illegal, buying stolen merchandise.

Q And when was that conversation?

A It was in -- within the last two or three weeks before she died, also. Because the night she called, Ted was at his job. So I'm thinking it was sometime in those last couple of weeks or month -- maybe a month. I'm not sure.

Q So in the conversation about the stereo equipment, was Patricia crying?

A No, she was not crying. She was upset, though, you could tell. She had a heated voice, and she was --

Q Well, was she upset because she was a good and sensible business manager, and she just didn't like to see money lost unnecessarily?

A She was mostly upset about the fact that what he was involved in was what she felt was illegal. I think she was most upset by that fact, more than the money.

Q So she was disappointed in what she found out about his character?

A Yes, sir.

Q Now, when she called in this time in September, what time of day was it?

A It was evening.

Q Did she call you or did you call her?

A She called me.

Q Were you alone?

A No. I was at home with my husband and son.

Q How long did you and she talk?

A It was not a very long conversation. Probably 15, 20 minutes.

Q Did she launch right into her talk about Ted, or did she talk about other things?

A Pretty much went right into that.

Q After you hung up the phone, did you feel that you should maybe talk to somebody about Patricia?

A I told my husband. And then several days later, I told my mother, also, because I was concerned.

Q Did you tell your pastor?

A No, I did not.

Q Did you mention this conversation to Patricia again?

A We never had the opportunity to speak alone about it.

Q But she was virtually your best friend.

A She was one of my closest friends. But we did not have an opportunity to speak alone about it after that conversation.

Q But Ted was at Precision every week night. You could have called her any week night.

A Sir, I have a full-time job, a husband and a child. My evenings are -- were very busy. At the time, I was

pregnant, too. So I had a lot going on in my life and was not able to probably keep up with her like I should have, especially after that conversation. I will regret that always.

Q Now that the terrible thing has happened to Patricia, it seems awful that you didn't follow up, doesn't it?

A Thank you for pointing that out again, sir.

Q I'm not trying to -- I'm trying to do my job in this courtroom. I'm not trying to hurt your feelings.

MR. PANOSH: Object to the comments of counsel.

THE COURT: Sustained. Don't make any comments, Mr. Hatfield. Just ask your questions.

Q You were very busy during that time. Did you -- was there anything about your activities that would let you help us know when in September this happened?

A It would have been very late in September. The night she called, I was installing carpet in my bathroom. That carpet had been purchased several weeks earlier from Piedmont Salvage. And it was about three weeks, because I wasn't feeling real good at that point in the pregnancy. And that night she called, I was in the bathroom installing the carpet.

I also a couple days later told my mother. And then a couple of days after that, my mother left on a cruise. And when she returned, she returned the day of the funeral -- or



the memorial service at church.

Q So how long was the cruise?

A It was a week.

Q So this call would have been perhaps two weeks before Patricia died or --

A About ten days when I talked to my mother. So it was probably three days before that, so 13, 14 days before her death. I'm not specific of the actual date, but that's --

Q Did you stay in touch with Patricia's relatives after she passed away?

A We've seen each other at church quite frequently.

Q Don't you know that there was no insurance policy on her life?

MR. PANOSH: We object, please.

THE COURT: Sustained.

Q What information do you have about whether there actually was an insurance policy on her life?

A That it -- I had known through the testimony that I've heard of --

MR. PANOSH: Well, we --

A -- and through the newspaper --

MR. PANOSH: Object to what happened in the newspaper, please.

THE COURT: Sustained.

Q Don't you know, and didn't you know before this trial

started, that there never was an insurance policy?

MR. PANOSH: Objection.

THE COURT: Sustained.

MR. HATFIELD: May I take one moment?

THE COURT: Yes, sir.

(Time was allowed for Mr. Hatfield.)

Q You said that Patricia was opposed to her husband getting a motorcycle?

A Uh-huh.

Q But her basis for that was, she just thought motorcycles were dangerous; isn't that right?

A She thought they were dangerous, and she didn't understand why he needed something. They just -- they had the boat, they had the new Jeep. It was just another expenditure that he was making, that he may -- spent money quite frequently, that that bothered her.

Q But she also told you that they had adequate money and didn't need more money?

A She felt like they did not need any more money. But the fact is that Ted wanted to purchase more.

Q Wasn't it -- wasn't the matter of the motorcycle settled because they bought the Cherokee, with the --

A I'm not --

Q -- understanding that --

A -- aware of that.

Q -- he would forget about the motorcycle?

A I've never heard that stated.

Q Are you sure that on that conversation a couple of weeks before she died, she was talking about the motorcycle?

A I'm sorry. I'm --

Q Are you sure that on that one conversation in September, a few days before your mom went on her cruise, that Patricia was actually talking about the motorcycle?

A The few days before the cruise was when I told my mother about the conversation I'd had about the insurance policy with --

Q All right.

A -- with Patricia.

Q But isn't it possible that your recollections of Patricia's opposition to Ted buying a motorcycle go back quite a bit further?

A I don't believe so, sir. It was just -- it was a conversation -- a conversation right prior to the conversation in regards to the insurance.

Q So you're saying that she told you that she had gotten word from an insurance man that a policy was being negotiated for or purchased on her life? You did say that, didn't you?

A She had -- well, when he called, he began talking about a policy, and she thought it was the dental, but somewhere

within the conversation, it came to her knowledge that it was not the dental that he was speaking of, that it was a large insurance -- life insurance policy.

Q Right. And what I'm asking you is, isn't it possible that she just made no reference to a motorcycle when she was saying these things to you that day, that the motorcycle was

--

A No, sir. No.

Q She was not?

A She was definitely talking about an insurance policy.

Q I understand she was talking about an insurance policy.

Are you sure she was talking about a motorcycle?

A The prior conversation before that? Yes, sir.

Q Now, you said that she mentioned to you that there'd been break-ins at her house?

A Yes.

Q How many break-ins at her house had there been, of your knowledge?

A I believe there were two.

Q Was she married to Ted when both of those took place?

A I believe they were both before her marriage.

Q So, once Ted moved in with her, he took steps to protect the house from further break-ins?

A I'm not sure -- I know he had helped put a lock back on at one point. I don't know what other steps he took.

Q Do you know whether they bought a burglar alarm system?

A I don't know anything of that.

Q Do you know whether Patricia was actively involved in the management of Lyles, the building business?

A She had done the books at one time, but Ted had kind of pushed her out of doing the books.

Q But she had something to do with helping to purchase it, didn't she?

A Lyles? The little bit I know about the purchase of it was that her -- his parents, I believe, had taken out like a second mortgage, to help them purchase the business.

Q Do you know whether Patricia had made any arrangements with the insurance man to make sure there was insurance to cover those debts?

A I know nothing of that.

Q So, even though you and she were best friends, you really didn't discuss the Kimble finances, did you?

A Not about the business or anything like that, no, sir.

Q Do you know whether, after you had your conversation with Patricia about the insurance, that maybe she confronted her husband, Ted, and that they had some conversations about that themselves?

A I don't know what occurred after that. I never did get to speak with her again on the policy in any way, shape or form.

MR. HATFIELD: Thank you very much.

THE COURT: Step down, ma'am.

(The witness left the witness stand.)

THE COURT: Next witness, please.

You may stand and stretch, members of the jury.

MR. PANOSH: Ms. Rose Lyles, please.

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

Q Would you state your name, please.

A My name is Rose Lyles.

MR. LLOYD: Your, Honor I think this falls into the same category as the witnesses before this.

THE COURT: All right.

MR. LLOYD: However Your Honor wants to handle it.

THE COURT: Members of the jury, you may take your recess. It may be a little longer than 15 minutes. Do not come back in the back hall until the court officer lets you come in. Does everyone understand?

(Jurors nodded their head up and down.)

(The jury left the courtroom at 3:09 p.m.)

THE COURT: All right. You may proceed.

MR. PANOSH: Yes, sir.

VOIR DIRE EXAMINATION by MR. PANOSH:

Q Ms. Lyles, you currently reside at Long Beach, North Carolina; is that right?

A That's correct.

Q How long have you lived there?

A Since 1994 permanently. Off and on before that. Were down vacations or when we could get away.

Q And before that, did you reside in Greensboro?

A That's -- in Julian.

Q Julian. And your husband ran Lyles Building Supply; is that correct?

A That's correct.

Q And in the course of that business, he hired Theodore Kimble?

A He did.

Q And in knowing Theodore Kimble, you came to know Patricia Kimble; is that correct?

A That's correct.

Q And you did various things with Patricia Kimble; is that correct?

A Well, as --

Q Well, let me ask you this. Were you scheduled to go on a retreat --

A We were.

Q -- the weekend after her death?

A That's correct, uh-huh.

Q Did there come a time in the week or two weeks prior to her death when she called you at your residence in Long

Beach?

A She did.

Q Would you tell the Court about that, please.

A She called one day, it was approximately a week or so before, and she had wanted to talk to my husband. He was a good advisor to her. And I told her he wasn't there. And she said -- I said, "Well, Patricia, is everything all right?" And she started crying. And she cried and she cried. And I cried with her, not knowing why. And I said, "What in the world is wrong?" And she said, "Rose, Ted is not the man that I married." And I said, "What do you mean?" And she said, "All he cares about is money." She said, "I was going through a drawer and I found a life insurance policy that he had forged my name on."

Then she cried some more. And I cried some more with her. And she said, she said, "I'll tell you," she said, "Rose, I'm so afraid." She said, "When I go to bed at night, I don't know if I'll wake up in the morning or not."

And I can honestly tell you, I have never heard such fear in a voice as I heard in that girl's voice that day.

Shortly after that conversation, she calmed down. And my husband did come in and he talked with her.

(Ms. Sheila Blakley was crying.)

Q In the course of that conversation, did you discuss anything else?



A She said that they had ordered a car --

THE COURT: That's all right. The jury's not in here. She may express her emotions.

A She said that they -- Ted had ordered a car that had -- which they didn't need, and had about \$5,000 worth of extras on it, that were of no real value to them, except -- that were available.

Q Did she speak about anything else?

A She said that Ted slept with a gun under his pillow at night.

Q And I take it this conversation took a substantial period of time, because she was crying?

A She was crying.

Q Okay.

A And I was in shock, I tell -- you know, Ted Kimble is the last person in this world that I would have ever thought would have done anything harmful to anybody. And it was -- I was having a hard time understanding, through her -- through her tears, how it could be the same boy that we'd known as practically our own for so many years. But then when I heard that girl -- the fear in her, and the angst that was in her voice, I realized that she's right, that he was not the man that she had married.

Q Other than the things she stated and the crying, did you -- did anything else occur during that conversation?

A We talked about meeting at Ridgecrest --

Q That was the --

A -- on Friday.

Q That was the retreat on the following weekend?

A That's the retreat, uh-huh. It would be the first time that we had been, but it would have been the third time for Patricia and Ted to go, since they were married.

Q Other than --

A She made all the arrangements.

Q Other than that, did you talk about anything else? Let me ask you this. At the conclusion of that conversation, did your husband come in and did you give the phone to him?

A That's correct. That's correct.

Q All right.

MR. PANOSH: No further on voir dire, Your Honor.

THE COURT: Do you wish to examine the witness?

MR. LLOYD: No, Your Honor.

THE COURT: Do you wish to be heard?

MR. PANOSH: No, Your Honor.

MR. LLOYD: Just briefly, Judge Cornelius. We got

a couple of new wrinkles here. I would -- I'm not going to replot the ground that we've already gone over. But the witness stated that the witness realized at some point, based on the tone of Patricia's voice, that she was right, and that Ted was not the man that she married. And that's

what the witness's statement was. Obviously, that's an improper statement. The witness is giving an opinion about what Patricia said. Now, certainly that part that was elicited on voir dire is improper to put before the jury, and she can't comment on the truth or the veracity of this out-of-court statement.

THE COURT: You're not saying that Patricia can't say that?

MR. LLOYD: Well, no.

THE COURT: You mean, this statement --

MR. LLOYD: Well, that is my position, Your Honor. I don't want to give up that position. But the witness said something, in addition to that. She said --

THE COURT: I agree with you.

MR. LLOYD: All right.

THE COURT: I understand what you've said.

MR. LLOYD: All right. And the one different thing is that, we've got a fact here that I'd ask Your Honor to consider, that the -- Patricia said that Ted slept with a gun under the pillow. Specifically, without abandoning any of my earlier objections, I would ask Your Honor to give that careful consideration.

And Judge Cornelius, and finally, we would ask again for the instruction, and ask that the instruction include all the evidence from the witness, not just Ted's

statements. Because all of this, according to Mr. Panosh's own theory, goes to his conspiracy theory. So we would ask that you give that instruction before the witness testifies, that all the evidence she's testifying here to should be only considered if the State proved beyond a reasonable doubt that there in fact did exist a conspiracy in this case.

THE COURT: The State wish to be heard?

MR. PANOSH: We wouldn't be eliciting this witness's feelings. We feel that the fact there was a gun under the bed is a specific fact which induced the fear -- under the pillow of the bed, and therefore, under Westbrooks, is admissible.

THE COURT: The Court will overrule the objection and rule that this witness's testimony will be -- is relevant and would come within the exception to the hearsay rule under 803(3), in that it expresses emotional or existing mental state of the victim, and that this witness may testify as to those statements that she was afraid, that she was upset, crying. And she may also testify about the life insurance policy, such that that's the theory of the State's case, that it was for pecuniary gain. And as to the gun being under the pillow, the Court will allow that in, based on the fact that it is relevant to the case and would be also within the existing mental or emotional state, in

that she was fearful on the occasion.

I will not allow the witness to testify as to her opinion of Ted, but she may express an opinion as to what -- I mean, she may express that the victim -- I mean -- yeah, the victim, Pat, had told her about him not being the person that she married. That's relevant and pertinent. And the Court will find that the probative value would outweigh any prejudicial aspects it might pose. And I'll give the instruction requested about the co-conspirator.

What else, sir?

MR. PANOSH: The next witness is Mr. Lyles. He picks up the phone after her. Did you want to get into that in the absence of the jury at this time?

THE COURT: Well, yes, we need to do it, but I'd like to take a break, too.

MR. PANOSH: Yes, sir. Whatever you say.

MR. HATFIELD: Your Honor --

THE COURT: Bring him up.

MR. HATFIELD: -- we would accept essentially the same ruling on Mr. Lyles, just to save time, and --

THE COURT: All right, sir.

MR. HATFIELD: -- don't wish to be heard.

THE COURT: Appreciate that.

You may step down for the break.

We'll take about a 10-minute break.

(The witness left the witness stand.)

(A recess was taken at 3:20 p.m.)

(Court reconvened at 3:32 p.m. The defendant was present.

The jury was not present.)

(The jury entered the courtroom at 3:33 p.m.)

(The witness returned to the witness stand.)

THE COURT: Okay. You may continue.

MR. PANOSH: Okay.

CONTINUED DIRECT EXAMINATION by MR. PANOSH:

Q Ms. Lyles, did you know Patricia Kimble before her death?

A I did.

Q Can you explain how you got to know her.

A I got to know her through Ted. And when I would go up to the business, when -- before Gary sold it, she frequently was there. Not frequently. She -- some of the time, she would be there when I was there.

Q Did you need some water, ma'am?

A I just put in a cough drop. Sorry.

Q Okay. You indicated that you would go to the business?

A Uh-huh.

Q What business is that, ma'am?

A Lyles Building Material.

Q And "before Gary sold it," Gary would be whom, please?

A Gary what?

Q Who is Gary that you referred to?

A My husband, Gary Lyles.

Q So you and your husband owned Lyles Building Supply before it was sold?

A Yes.

Q And how did you meet Theodore Kimble, Ted Kimble?

A We met at church.

Q And did there come a time when he became employed for your husband at Lyles?

A He did.

Q And in the course of your acquaintanceship with him, you met Patricia; is that correct?

A That's correct.

Q Did you meet her before or after the marriage?

A Before.

Q Now, drawing your attention to the one- to two-week period before her death, did there come a time when she called you?

A Yes, there did.

Q And you were at your residence, and where is your residence, please?

A At Long Beach, North Carolina.

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

A Patricia called one day right around lunchtime. She

wanted to speak to my husband. He was not there. And so, I said, "Well, how are you doing, Patricia?" And she started crying. She cried and she cried and she cried. And I cried, too, not knowing what I was crying about or she was crying about. I said, "What in the world is wrong?" And she said, "Rose," she said, "Ted is not the man that I married." And I said, "Well, in what respect?" She said, "All he cares about is money, money." She said he had bought a car that they didn't need, that had \$5,000 worth of extras on it that were not really needed.

And then she started crying harder, and then she said, "Rose, I found an insurance policy, and Ted forged my name on it, a life insurance policy." She said that Ted sleeps with a gun under his pillow at night. And she said that she didn't know when she woke up -- if she would wake up in the morning or not when she went to bed at night.

And I can tell you honestly, I have never heard such fear in anybody's voice in all my life. And I hope I never do again. She was really so afraid.

We talked about, we had planned to take a marriage retreat. She and Ted in fact had talked us into it. And we were to leave -- meet them at Ridgecrest, at a Baptist retreat, on Friday, before she -- the Friday after she was killed. And we had talked about that. And about that time, my husband came in, and so he talked to her from there on.



Q Did you ever get an opportunity to speak to her again?

A The Saturday before, before she died, she called that morning, wanting to know the price of something. She was working up at the business and didn't know the -- I don't know if Ted was there or not, but she needed to know the price of something, and I didn't know. And Gary wasn't there. So she was -- wanted to get the telephone number of our nephew, who has a building supply business in High Point. And we didn't have time for conversation, because Saturday mornings are pretty busy at a building materials business.

MR. PANOSH: No further questions. Thank you, ma'am.

CROSS-EXAMINATION by MR. LLOYD:

Q Ms. Lyles, you say that Patricia called you the Saturday before she died?

A She called to get a price.

Q That's right.

A Uh-huh.

Q And she talked to you at that point?

A She talked to me. Gary was not at home.

Q And that would have been how long after this first conversation that you've referred to?

A Maybe a week or less.

Q She did not voice any concerns at that time, did she?

A Didn't have time to. It was strictly business. I just gave her Ricky's number and that was all.

Q Well, my question to you is, did she voice any of the concerns that she had in the first conversation?

A No.

MR. LLOYD: The defendant Ronnie Kimble would have no further questions, Your Honor.

THE COURT: You may step down, Ms. Lyles. Watch your step, please.

(The witness left the witness stand.)

THE COURT: Next witness, please.

MR. PANOSH: Paul Lyles, please. Gary Paul Lyles.

GARY PAUL LYLES, being first duly sworn, testified as follows during DIRECT EXAMINATION by MR. PANOSH:

Q Would you state your name, sir.

A Gary Paul Lyles.

Q And Mr. Lyles, you're the husband of Rose Lyles that just testified; is that right?

A I am.

Q And you live in Long Beach; is that correct?

A That's correct.

Q Prior to moving to Long Beach, you lived in the Julian area; is that correct?

A That's correct.

Q And you ran Lyles Building Supply?

A I did. I started it and ran it.

Q Now, in the course of running that particular business, there came a time when you hired Ted Kimble; is that correct?

A That's correct.

Q And what were his duties there at the business?

A Well, I hired him before he was 16, and he just cleaned up a little bit, picked up trash, and things of that nature. But he stayed with me. In fact, I guess I was the only employer he ever had, real employer, until I left the business. And he gradually worked his way up, until he could do about anything there. You know, as he matured and gained experience, his duties increased and -- along with his salary, of course.

Q Did there come a time when you met Patricia, through him?

A Yes.

Q And did you develop a personal relationship with Patricia that was separate from your relationship with --

A I did.

Q And what was that?

A Loved her. Wonderful, wonderful, wonderful girl.

Q And from time to time, did she turn to you for advice?

A She did.

Q And in that vein, did she call you on the day, as your

wife has previously discussed?

A She did.

Q And tell the ladies and gentlemen of the jury about that conversation, please.

MR. LLOYD: Object for the record, Your Honor. We're not asking for a voir dire.

THE COURT: Overruled.

A She had -- when I came in, she was talking to my wife, and my wife sort of motioned, said, "I'm glad you're here." Said, "He's coming in the door." And she handed me the phone, and she said, "Patricia's upset." And, you know, I set down and started talking with her. And she proceeded to tell me that Ted had taken out a large insurance policy on her, and she didn't think they needed it. And I agreed with her. And I proceeded to tell her that Ted needed one, and he had one on him, because he might leave her some day and get out and get killed and leave her with two or three babies to raise, but didn't apply to him, and he didn't need any -- she didn't need any more insurance. She had plenty. And she said, "Well, we discussed it. We talked about it. And I thought we had settled it. I thought it was done. And then I find out that he went and took it out without my knowledge."

And she said, "He wants to buy a motorcycle." Oh, my. You know, I -- I'm very sensible and logical and

conservative, and I just -- I was just dismayed about this. And I said, "Why in the world does he want a motorcycle?" She said, "He wants to ride up and down High Point Road, like he did when he was single." And she said, "I want you to talk with him." And I said, "I need to talk with him."

And she proceeded to tell me about buying the car. She said, "Well, we -- yeah, you could make an argument that we could use a car, but we didn't need all that extra stuff. He spent thousands and -- \$5,000 on things we didn't need, added on to that car." And I -- you know, like I say, I was a little dismayed about that, too. And I told her, she said, "I want you to talk with him," and I said, "I'll be glad to talk with him. And I probably need to talk with him." I've treated Ted like a son, and I looked upon him as a son. He'd been with me for years. And I watched him grow up. And I knew him before he went to work for me. I don't know, he was probably 12 or 13 when I first met him. So I felt like sort of a father figure to him. He and I had a -- had a great relationship. I loaned him money. Anytime he ever came to me for anything that I could do, I did it. So I said, "Sure, I'll be glad to talk with him." And she said -- I said, "Well, you know, we're going up to that thing in a couple of weeks, up in Asheville," and she said -- well, it was Black Mountain. She said, "Yeah. Yeah." I said, "I'll talk to him." And she said, "Okay. I want you to

talk with him." And we sort of left it with that.

Q Did she indicate to you anything about him changing over the weeks before her death?

A Yes, she did. She told me, she said, "He's not the man I married." And she did tell me he slept with a, I thought she said he slept with a gun under the bed, but it may have been under the pillow, but I remembered under the bed, but I'm not sure of that. That's been a good while, remember. And she did say all he thinks about's money.

Q Did she make any statement to you about whether or not she signed the insurance policy application?

A Oh. She did not. She said she did not and would not. And I said, "Don't." She said she thought that was settled, until she found out he had taken the policy out, is the way that she put it to me, without her knowledge.

Q Now, earlier you testified that you were aware of the fact that Ted Kimble had insurance?

A Yes.

Q And would you explain that, please.

A Well, when he worked for me -- well, remember, Ted was a -- was a teenager growing up, and I didn't think he handled his money well. I was very tickled that he married Patricia, because she was so logical and sensible and -- you know. In fact, the first time he introduced her to me, he said, "I know you're going to like her. She owns her own

home." And I said, "Yeah. She's smart enough to have her own home." But anyway, I took out a key man insurance policy on Ted, and I think it started out at like \$100,000. And I paid that. And if you paid it several years, it gradually would sort of pay itself with the dividends. And if you continued to pay it, it could evolve on up into considerably more money. It could practically double over the years. And I paid it up until the time I sold Ted the business, encouraged him to keep it, as protection for his future wife and children, and/or as a retirement, because it would -- it would -- eventually, when he got 60, 65 years old, it would be worth some money.

Q You'd indicated you did sell him the business. When did that occur?

A Oh, my.

Q Approximately.

A Well, about a year before Patricia died.

Q Do you remember when it was, in relationship to their marriage?

A In relationship to their marriage?

Q Yes.

A I sold them the business -- sold Ted the business after he and Patricia had their legal ceremony.

Q The one in Virginia?

A The one in Virginia. And I probably encouraged that.

In fact, they told me they were going to get married, and I told them maybe they ought to consider going ahead and doing it before the year changed, for tax purposes. Of course, I'm not a tax advisor and I didn't know. I don't think it really helped them. But anyway, I did tell them that. And I knew about it.

Q Would you have considered selling the business to him, if he was not married?

MR. HATFIELD: Objection. Calls for speculation.

Q Let me rephrase that.

THE COURT: Sustained as to the way it's phrased.

Q Was the fact that he was married, was that one of the factors you took into consideration, in determining whether you would sell him the business?

A Absolutely.

Q Now, when you sold him the business, you sold him the physical assets; is that correct?

A Yes.

Q Did you sell him the land?

A No, I did not. We -- the land was leased.

Q And who was the land leased from?

A A Mr. -- oh, God -- Glascock. But we got it through Robins & Weill, the people that handled it. I never actually talked to Mr. Glascock but a couple of times. Robins & Weill was our contact. That's who we paid our rent



to and --

Q And you possessed the land on a lease basis?

A On a lease basis, that's correct.

Q Was it a long-term lease?

A Started out a long-term. When I sold the business to Ted, it had a, I'd say two, two and a half years to run, something like that. I don't remember exactly. But I do remember he had some time.

Q So you would have sold it to him about the first part of '94?

A Oh, it was in the -- in the spring, I guess, yeah. It's about right.

Q If they got married December of '93, it would have been the spring of '94; is that correct?

A Yeah.

Q And the lease had two and a half years to run?

A I'm guesstimating that. That's a reasonably close estimate.

MR. PANOSH: Thank you. No further.

CROSS-EXAMINATION by MR. HATFIELD:

Q Mr. Lyles, you said you loved Ted like a son?

A I did.

Q And of course, you told the jury you loved Patricia, too?

A I did.

Q And you knew Ted from the time he was 14 or 15 years old?

A Probably before that. I don't remember. But he went to work for me before he was 16.

Q And you -- Let's see.

A On a part-time basis.

Q I'm sorry. I --

A When he went to work for me, it was part-time. He was still in school, and he was working some in the evenings and Saturdays.

Q Were you involved in Monnett Road Baptist Church?

A Yes, sir.

Q So you knew his dad and his mom?

A That's where I met Ted.

Q When did you first meet Patricia?

A You know, I've been trying to remember that, and I'm not sure. I'm not sure if I met her at our church and he brought her to church one night, or that she came by the business. I just can't remember for sure.

Q Did you meet her very significantly before you found out they were interested in getting married?

A Oh, yes. Oh, yes. When I met her, they were friends, they said.

Q And you couldn't see any romantic potential there, they just were friends?

A Couldn't see any romantic potential on Ted's part, but on her part, I could.

Q It was pretty clear she admired and liked him?

A Absolutely.

Q Now, you made a distinction, you didn't condition selling your business upon Ted getting married, you simply wouldn't have considered selling it to him unless he was married?

A That's correct.

Q Have I stated that correctly?

A That's correct.

Q Is that because you had misgivings about Ted's honesty and reliability, or because you thought he was just a little -- still a little too immature?

A I would say I had misgivings about his maturity and business handling, before he married.

Q You knew that he had no money of his own to buy the business from you, because you --

A I did.

Q And you knew approximately what your selling price would be?

A I did.

Q And that was in the neighborhood of \$50,000?

A Correct.

Q And as you were already asked, the sale would basically

entail allowing him to make his own deal with the Glascock family or Robins & Weill about the land, and you'd sell him the inventory and the goodwill, whatever else there was there; is that right?

A That's basically correct. He had awhile for the lease to go, but yes.

Q Now, when did you first take the key man policy out on Ted?

A I don't remember. Probably at least two or three years before.

Q Was this because you -- by that time, you'd become so dependent on his help, that if he -- something happened to him, you really did need -- you were the beneficiary of it, weren't you?

A The company would have -- was the beneficiary. Well, yes, yes, to some extent, but primarily, it was for Ted's benefit.

Q What was the payoff amount on that policy?

A You mean if --

Q If he died.

A Immediately like \$100,000, I believe is what it started out at.

Q Did he know about that policy?

A Oh, sure.

Q Did he know what the purpose of it was?

A I didn't tell him when I took it out, but after a year or two, I did.

Q Well, the -- even on a young and healthy man, \$100,000 life insurance policy's not cheap, is it?

A Six, seven hundred dollars a year. It wasn't much.

Q This is a whole life policy that built --

A Uh-huh.

Q -- rather than just term insurance?

A Yeah. It was a key man policy, and it did build up, and it would pay dividends.

Q And he -- the purpose of it then that he was a key man to the company?

A That was part of the purpose. But really, a good portion of the purpose was that I was trying to look after Ted.

Q So, even though your company which you owned wholly and completely yourself was the beneficiary, you wanted to teach him habits of practical business planning and thrift and all of that?

A Absolutely.

Q Did you feel he was learning those?

A I did. I did.

Q Was your arrangement with him that he was paid by check for his earnings?

A Oh, yeah.

Q And he had a W-2 and --

A Oh, sure.

Q -- and at the end of the year --

A Our company was incorporated.

Q And your company had an accountant?

A I got a check from the company, too, you know, yes.

Q Around the time -- around 1992, do you recall Ted being in an auto accident, where a car he owned was demolished?

A I remember him being in an automobile accident that was demolished. I'm not sure exactly it was '92, but could have been.

Q Did he miss work as a result of any injuries he sustained in that?

A I believe he missed some, yes.

Q Was there a period of time there where he was paid off the books, so to speak?

A I paid Ted out of my pocket, yes.

Q Did you have any idea that he would represent to the company that was going to have to pay the claim that he had been out of work?

A I don't recall that. I don't recall that. He was not out of work -- well, he was out of work maybe a week or so. I can't remember. You -- we're talking six years, and --

Q Even during the week that he was out of work, did he get paid out-of-pocket?

A I paid him out of my pocket.

Q What was your purpose in doing that?

MR. PANOSH: We object. He's answered all this.

THE COURT: Overruled.

Q What was your purpose in paying him?

A Because I thought so much of him, and I felt like he needed the money. And I didn't want him to be without money.

Q So the way your company was set up, you got paid if you worked, so --

A Yes, but -- yes, yes, at that time, that's probably true.

Q Did he ask you to give him some sort of letter or any other indicator that he hadn't worked during that period --

A I don't --

Q -- for him to turn in to insurance?

A I don't remember that. I just don't remember it.

Q Did anyone ever suggest to you or bring to your attention that he tried to exaggerate his claim that time for lost wages or whatever?

A I don't remember if anybody did. I don't recall.

Q Did you --

A No law enforcement or anybody of that nature would have done it.

Q Did you know his girlfriend, Janet Blakley, at that

time?

A I knew Janet, yes.

Q Did she ever indicate to you that she thought he --

MR. PANOSH: We object, please.

Q Did Janet point out to you that Ted was trying to collect insurance money --

THE COURT: Overruled.

Q -- when he was actually working?

A I don't remember that. Certainly do not.

Q During that period, did you have any indication that Ted was dishonest?

A Are you talking about with my business? Absolutely not. I trusted Ted. He had a key to my truck, to my business, to my house.

Q Well, I think it almost goes without saying that you would not have sold him the business if you had any doubts?

A That is correct.

Q After you sold the business, did -- was it your understanding that Patricia was an equal partner in the acquisition of the business, in terms of liability for the unpaid balance and that sort of thing? Was she involved?

A That was not my understanding, no.

Q So, half of the purchase price was paid up front, with the assistance of Ted's parents?

A Correct.



Q And the other half was secured by you?

A (The witness nodded his head up and down.)

Q Did you require Patricia's signature on that obligation?

A I didn't require it, but then I didn't handle the actual paperwork, so I'm not sure if she signed it or not, to be perfectly honest with you.

Q Did she take an active part in running the business?

A She did to start with, because she was doing the books, yes. In fact, I encouraged Ted to have her to do the books, because I felt she was more capable and competent in that area than Ted.

Q Now, when you got -- when your wife picked up the call from Patricia in September of 1995 and you heard the complaints about the Jeep Cherokee, had you known that they had purchased a Jeep Cherokee?

A I'm not sure. To be perfectly honest with you, I don't pay any attention to vehicles, and I know that's hard for a lot of people to believe, but I don't.

Q Had Patricia indicated she had misgivings about that purchase before at any time?

A I don't recall her, but then, remember, I don't know -- I don't remember when I had spoken to her prior to that, because we were living at the beach, and had been for, I don't know, a year maybe. So my interaction with both of

them was very limited.

Q When you received your monthly check from Ted, or from the business, did it always come on a regular basis?

A Yes.

Q Do you remember who signed the check?

A I do not.

Q Did you ever at any time, between your sale of the business to Ted and Patricia, and Patricia's death, did you ever have to call up and ask for your payment to be sent to you?

A No.

Q Were you aware that Ted and Patricia had bought a boat, to use on the lakes around this part of the country?

A I was after the fact.

Q Did your conservative nature cause you to question that?

A My conservative nature caused me to question it, and my conservative nature probably caused Ted not to tell me for several weeks after he bought it.

Q So you would have been --

A My reaction was, "Why did you buy a boat?" or something to that effect.

Q Did you know anything about buying a vacation apartment up in Williamsburg, Virginia?

A No, sir.

Q I suppose your conservative nature would have a problem with that, too?

A Absolutely.

Q Being an old-time resident of the beach, you don't think much of timeshares?

A No, sir.

Q Is this pattern of vacation houses and boats and Jeeps and motorcycles, is that just what young people do this day and age?

MR. PANOSH: We object, please.

THE COURT: Sustained.

Q Is that the behavior of spendthrifts?

MR. PANOSH: Object, please.

THE COURT: Sustained.

Q Do you think that the probable earnings that Ted was able to have from that business would support those kinds of purchases?

A You mean, in conjunction with his wife's salary?

Q Yes, sir.

A I suppose. I -- they would have come a lot nearer doing it, if he'd have let her handle the money.

Q Well, if you -- if your purpose in acquiring the key man policy some years ago in the amount of \$100,000 was to show Ted the value of investing and planning, wasn't it that he simply learned the lesson, if he was inquiring into the

purchase of insurance later on? Wasn't he just following your advice?

A Well, when I took out that policy, to my knowledge, he didn't have any more insurance. Okay? So had he had 20 or 30 or 40 or 50 thousand dollars, I probably would not have taken that out. I did it for several reasons: one, to teach him the lesson; two, to protect him. But you could say indirectly, maybe to some extent, but I would not have taken a policy out under the circumstances that he was doing.

Q Do you feel that there's more value in a policy on a male wage earner in a family's life than there is on a female wage earner in a family's life?

A Between those two, absolutely.

Q So it was in Patricia's interest to have some insurance on Ted's life, but not in Ted's interest to have insurance on Patricia's life?

A No, I wouldn't say that. Patricia had a policy where she worked. She told me she had a policy. Had adequate, plenty of insurance, she said.

Q So she was covered sufficiently?

A She said so.

Q And the legitimate -- Ted's legitimate goal would have been for him to be covered sufficiently, and then that ends it?

MR. PANOSH: Object, please.

Q Is that your opinion, sir?

THE COURT: Sustained to the form.

Q But you did comment earlier that you didn't want to see her caught with two or three babies and Ted go out there and something happen to him and he's out of the picture and she's left with two or three babies and possibly not being able to operate the business?

A Correct.

Q And that would have been the purpose of insurance on his life?

A Part of the purpose, but --

Q But --

A -- I have stated my reasons for the policy, you know, was they covered several things, partly money management, building a retirement, and protection for the future family. He wasn't even married then when I took it out, I don't believe.

Q So he had no dependents then, yet it was appropriate to put a policy on him?

A I didn't understand.

Q He had no dependents at the time?

A I don't think so, no.

Q Well, dependents in the sense of taxes, that is, people that you're --

A He didn't have a wife and children then. But I --

knowing the nature of young people, I assumed he would.

Q But you did say that this key man policy was such that it would eventually earn enough to virtually pay the premiums and it would build itself?

A According to the agent, yes.

Q Now, do you know whether the policy that Ted was planning on taking out on Patricia's life was also a whole life policy?

A I know nothing of the policy but what she told me.

Q You never talked to Mr. Jarrell or any of the experts involved in that?

A I don't know who Mr. Jarrell is.

Q Do you know whether, after she died, there was a policy on her life?

A Are you talking about where she worked?

Q No, I'm talking about the policy she called up and discussed with your wife and you.

A Oh, no, I don't know.

Q You don't know?

A I would have no way of knowing that there was or was not. I only know what she told me.

Q And you were not there that last Saturday, when Patricia called your house to ask about --

A Correct.

Q -- the selling price of an item?

A That's correct. I probably could have told her, if I'd been there.

Q And you were going to sort of take Ted to the woodshed when you got up to Black Mountain?

A Well, yes, I was certainly going to scold him, was my intentions. He wouldn't probably have listened to me, but I would have scolded him, absolutely.

MR. HATFIELD: Thank you very much.

THE COURT: You may step down, Mr. Lyles.

(The witness left the witness stand.)

THE COURT: Members of the jury, the Court would caution you and admonish you that you should not consider the evidence of Rose and Gary Lyles against Ronnie Kimble, unless you find there was a conspiracy and that Ted and Ronnie Kimble were co-conspirators.

Next witness, please.

MR. PANOSH: Mr. Beaupre, please.

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

Q Would you state your name, sir.

A Brian Beaupre.

Q And your occupation, sir?

A Human resource manager for Precision Fabrics.

Q And Precision Fabrics is what, sir?

A It's a textile company.

Q And in the course of your duties, are you responsible for the employment records of the various employees of Precision Fabrics?

A Yes, I am.

Q And approximately how many employees do you have?

A 250.

Q And in the course of your duties, did you receive a subpoena to bring to court the records of Theodore Kimble?

A Yes, I did.

MR. PANOSH: May I approach?

THE COURT: You may.

Q I show you what's been previously marked as State's Exhibit Number 101. Can you look at that, please.

(Time was allowed for the witness.)

Q After reviewing 101, are those the records -- or is that a copy of the records of Precision Fabrics as they apply to Theodore Kimble?

A Yes.

Q And are those maintained in the routine course of business?

A Yes.

MR. PANOSH: Your Honor, we'd seek to introduce 101.

THE COURT: The Court'll allow the introduction --

MR. LLOYD: Objection, Your Honor.



THE COURT: The basis of the objection?

MR. LLOYD: Judge, first of all, we represent Ronnie Kimble, once again. These are Ted Kimble's business records. I don't know what they contain, in terms of Ted.

THE COURT: Have you had --

MR. LLOYD: There's nothing in there about Ronnie Kimble.

THE COURT: Have you had an opportunity to look at them, Mr. Lloyd?

MR. LLOYD: We've had plenty of opportunity to look at them, Your Honor. But I have never talked to Ted Kimble. I don't know anything about him. If Mr. Panosh wants to ask the personnel director questions about Ted Kimble, I'm perfectly satisfied to sit here and respond to cross-examination. I can't cross-examine those records. And basically, I'm not in a position to make a decision on what -- they're just simply not relevant to the case, Your Honor. There are letters in there from the company to Ted.

MR. PANOSH: May we --

MR. LLOYD: What relevance --

MR. PANOSH: May we approach?

THE COURT: Yes, please.

(The witness handed an exhibit 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: What is the relevance of these records?

MR. PANOSH: Your Honor, these are going to show the fact that he was employed and the period of his employment. And I provided counsel with a copy of these, and I told them if there was anything in this packet that he disapproves of or doesn't want in, I'll probably take it out. Shouldn't be no big contention. It just shows that he was employed, that he applied for employment --

MR. HATFIELD: Stipulate he was employed.

MR. LLOYD: I don't --

MR. PANOSH: -- September the 18th, and it shows his work history up until October the 9th. The date of the death on October the 9th, he was there from approximately 6:00 p.m. until he learned of the fire. And thereafter, he did not go back to work, and eventually, he was terminated as a mutual decision.

THE COURT: What's wrong with that, gentlemen?

MR. LLOYD: Well, because the records have a great deal more in it than that, Your Honor.

MR. PANOSH: Well, if there's something in there that you don't want, I'll take it out.

MR. LLOYD: What I'm saying is, I represent Ronnie Kimble, I don't represent Ted Kimble. I don't -- I'm not in a position to say whether it's damaging, it's hurtful.

THE COURT: I think they're entitled to show his employment --

MR. LLOYD: Well --

THE COURT: -- where he was at.

MR. LLOYD: -- why didn't he just ask the man a couple of questions about that? We're going to get the jury --

THE COURT: You're going to ask him anyway, aren't you? Let's see what's in there, what's in there that's objectionable.

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

MR. HATFIELD: Well, one thing that's objectionable is trying to show through these records what time he was at work, because they don't show what time he was at work. And there's considerable conflict about what time he went to work, or even whether he went to work. This is a wrong way to establish Ted Kimble's activities on October 9, 1995. It's totally misleading, and we can't cross-examine it. It's not even consistent with other evidence that Mr. Panosh has disclosed. The gate at the business did not operate on that day. He banged on the door, to get let into work. Those payroll records don't mean anything, in terms of where he actually was on October 9th.

THE COURT: It shows he wasn't there.

(Further time was allowed for the Court.)

THE COURT: I'll limit it to the extent of his employment, the days he was there, and that's the extent of it, when he was employed and when he was terminated and what days he was there and when he was -- left on the job.

MR. PANOSH: All right.

THE COURT: Leave the other out.

MR. HATFIELD: But Your Honor, we don't accept that these records are --

THE COURT: Well, this witness is going to either -- under his control and authority or not. He's the personnel director, isn't he?

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

MR. HATFIELD: But if you admit the record, then

--

THE COURT: I'm not going to admit the record. I'm just going to let him testify about it.

MR. HATFIELD: Okay. Thank you.

MR. PANOSH: Okay.

(Proceedings continued in open court.)

THE COURT: Exhibit 101 is withdrawn by the State; is that correct, Mr. Panosh?

MR. PANOSH: Yes, Your Honor.

THE COURT: All right.

Q (By Mr. Panosh) You did bring with you copies of the employment records of Mr. Theodore Kimble?

A Yes.

Q Based upon those records and your position as personnel director, can you tell the ladies and gentlemen of the jury when he applied for work at Precision Fabrics.

A He applied on September 7, 1995.

Q And when was the date that he began working there?

A 9/18 of '95.

Q And based upon those records, what was his position and his salary?

A He was a frame operator in the lamination department on second shift. And his salary was \$6.65 per hour.

Q \$6.65?

A Per hour.

Q And when you say "second shift," you're referring to what hours, please?

A 3:00 p.m. to 11:00.

Q Now, when he began employment on September the 18th, would he have been working the 3:00 to 11:00 shift?

A Yes.

Q Was there a period of training prior to actually assuming the 3:00 to 11:00 shift, or could you tell from the records?

A According to the records, looked like he was in

orientation for one week, which would have been on first shift.

Q And first shift would be roughly what?

A 7:00 a.m. to 3:00 p.m.

Q And your work week goes from Monday to Friday; is that correct?

A That's correct.

Q September the 18th would have been his first Monday at work, and that would have been orientation week?

A No. He actually was in orientation, according to this, Monday, October 2nd, to Friday, October 6th.

Q After October the 6th, being a Friday, when would his next day of work be?

A Monday, the 9th.

Q Do your records reflect whether or not he reported to work on Monday, the 9th?

A He did report to work. He only worked three and a half hours that day.

Q And can you tell from your records what hours those were?

A No, I could not.

Q After October the 9th, did he report to work again?

A No, he did not.

Q Did there come a time when he was terminated?

A Yes.

Q And when was he actually terminated?

A 11/27th of '95.

Q Between October the 9th and November the 27th, was he an active employee?

A Yes. He was on leave.

Q So was that paid leave?

A No, it's not.

Q Under your employment system, who has the responsibility of noting the actual time that people come and go from their duty stations?

A The supervisor.

Q And that's -- is that the person who's referred to as the lead man?

A No. There actually is a supervisor and a lead man. The supervisor's supposed to record the time.

Q Is there an entry for October the 9th by the supervisor?

A Just on his attendance record that I have here, it's three and a half hours.

Q So they've entered the total number of hours, but not the beginning and ending time?

A That's correct.

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

Q Showing you what I've now labeled as Number 101, two

pages, are you familiar with those two pages?

A Yes, I am.

Q And are those explanations of benefits?

A Yes.

Q And it's basically a check list; is that correct?

A The first sheet is.

Q And on the second sheet of 101, does it indicate the benefits that the employee Ted Kimble elected to take?

A That's on his dismissal, his termination date. It's election of benefit for medical insurance.

Q And do you see it there?

A Yeah.

Q Okay. What type of insurance is it?

A Medical, medical and dental.

Q So that indicates that he applied for and received medical and dental coverage?

A Actually, he was offered medical and dental on his termination date. You're offered coverage for 18 months. That's all this form says, that he's been offered COBRA benefits.

MR. PANOSH: May I approach?

THE COURT: Yes.

(Time was allowed for Mr. Panosh to review the exhibit.)

Q So it doesn't indicate whether or not he accepted it?

A That's correct.



MR. PANOSH: Your Honor, we would not tender 101.  
That's all the questions of this witness.

MR. LLOYD: No questions, Your Honor.

THE COURT: You may step down, sir.

(The witness left the witness stand.)

THE COURT: You may stand and stretch, members of  
the jury.

MR. PANOSH: Michael Chambers.

MICHAEL FAYNE CHAMBERS, being first duly sworn, testified as  
follows during DIRECT EXAMINATION by MR. PANOSH:

Q Would you state your name, sir.

A Michael Fayne Chambers.

Q Mr. Chambers, going back to October the 9th of 1995,  
were you employed at Precision Fabrics?

A Yes.

Q And what position did you have at that time?

A I was a shift lead man on the lamination department.

Q Okay. When you speak, if you could speak loud enough  
so these folks down here can hear you. What was your  
position?

A I was a lead man on the second shift in the lamination  
department.

Q And in the course of your duties, did you know Theodore  
Kimble?

A Yes.

Q And was he scheduled to work on that particular night?

A Yes.

Q Did there come a time when you observed him there at Precision Fabrics --

A On that --

Q -- or when you saw him at Precision Fabrics?

A Yes.

Q Tell the jury about that, please.

A And you're referring to the 9th?

Q The night of the fire and --

A Okay. I saw Ted coming in during a changeover that the machine was making, a process change. And at that time, most of the employees in that department were doing a changeover with the glue adhesives. When Ted entered the building, I was going to the office. I did not talk to him when he came in.

Q And approximately what time was it that you saw him going in -- or coming into the business?

A At roughly 6:00 o'clock.

Q And after 6:00 o'clock on that particular night, did you see him again?

A Yes.

Q And describe the fact -- describe the circumstances under which you saw him, please.

A It was one room -- the lamination is in one room, and

just going in and around the machine, I worked with Ted that night.

Q Did there come a time when you were aware of the fact that he left?

A Yes.

Q What do you recall about that?

A A call came in, and at that time, I was in the office. Doug Reed took the call. Was notified that his house was on fire. Doug told Ted that he could leave. Minutes after that, I came from the office, and I was notified that Ted had just left, due to his house being on fire.

Q Had you seen him between those two occasions, in the evening? Had you seen him between 6:00 o'clock and the time you were notified he left?

A Yes, on the machine.

Q Did you have a conversation with him?

A I'm sure we spoke, but I --

Q And did you indicate the time that he left, approximately?

A We kept -- the supervisors in the other departments kept it under glass, as being -- they listed hours daily. In our department, we didn't have a shift supervisor, so I entered the time in a log book.

Q What time did he leave?

A I can't remember.

Q But it was after notification of the house fire?

A Yes.

MR. PANOSH: No further questions.

(The witness began to leave the witness stand.)

THE COURT: Wait a minute, sir. Wait, sir.

Cross-examination?

CROSS-EXAMINATION by MR. HATFIELD:

Q Mr. Chambers, how old are you, sir?

A 28.

Q And how long have you worked at Precision Fabrics?

A I had been working there roughly a year, maybe a year and a half, when Ted started working.

Q And you were working in the lamination department?

A Yes.

Q Is the machinery noisy there?

A Doesn't require earplugs. It makes some noise from the drives and the rolls turning, but not real noisy.

Q Can you hear people, your coworkers, if they use a normal tone of voice?

A Yes.

Q Is the work involving glues and laminates and chemicals likely to hurt your skin?

A At temperature, it can hurt you.

Q If you're working with heat?

A Yes.

Q It's very --

A The glue has to be --

Q I'm sorry.

A The glue has to be brought up to a certain temperature, to be put onto the fabric, so just the heat of the glue is -- can be dangerous.

Q Do you wear protective gloves?

A Yes, during changeovers.

Q Were you wearing those at that -- on that occasion?

A When he entered the building, certain members that were changing from one style of glue to another, is required to wear safety glasses and gloves up to the elbow, and an apron that covers legs and chest.

Q I notice that you're wearing a wristwatch. Do you wear a wristwatch when you're working?

A Yes. Well, some --

Q Were you able to see your wristwatch that -- on that particular shift?

A Sir?

Q Could you see -- did you have your watch on that --

A Yes.

Q -- day?

A Yes.

Q Did you actually look at either your clock, your watch or a clock, as Ted Kimble came into the business?

A Yes.

Q You did?

A Yes.

Q Did you write down anywhere what time he came in, since you were sort of acting in that capacity?

A No, I don't write down a minute time, and they don't punch a clock.

Q Then how do you know he came in at 6:00 p.m.?

A I remember rough -- I remember what time we went down for the changeover, and actually, that time would be entered on the production sheet.

Q So you're really being logical about it and thinking about when you -- he came in, in relationship to the work you were doing; is that right?

A Yes.

Q Is it possible he could have come in, say, at 6:15 or 6:20?

A Yes.

Q Do you know where he had been previously?

A Yes.

Q Where had he been?

A I don't know for sure, but on that day, I knew Ted had scheduled to come in late.

Q Do you know -- had he scheduled that with you?

A Yes.

Q Is that -- would it be right to say that you gave him permission to come in late?

A Yes.

Q Now, is there a gatekeeper or anybody or a guard for the outside of the plant, who keeps track of the comings and goings of people?

A No.

Q Is there any way, independent of your recollection, that we would know what time Ted Kimble came to work that night?

A By the -- if the gate is working, somebody may have checked their time when they opened the gate, or if someone else saw him come in. But no records.

Q Unfortunately, the gate was not working, was it?

A No.

Q So the only way that we know when Ted Kimble came to work that night is based on your recollection?

A Mine and others in the area that were there.

Q And yours is, it could have been 6:00, could have been 6:20?

A 6:00, 6:15, maybe a few minutes before 6:00.

Q Did he -- could you tell anything about his appearance when he came in?

A No. I mean, I saw him coming towards the machine, and he was dressed like normal. I was walking towards the

office at that time.

Q Did he seem out of breath or excited?

A No.

Q Did he make any apologies for coming in late?

A I didn't talk to him until maybe 20 minutes later.

Q Did you smell the odor of gasoline on his clothes?

A No.

Q Did you see him leave the work site and go and use the telephone?

A On that particular night, I can't remember.

Q You did not see him on that particular night?

A I can't remember. But he did use the phone on a daily basis in the break room.

Q And do you think he used the phone excessively?

A No. Normally on break.

Q And that was fine --

A Yes.

Q -- as far as normal practices in that particular work site?

A Yes.

MR. HATFIELD: All right. Thank you.

THE COURT: Step down, sir.

(The witness left the witness stand.)

MR. PANOSH: Stephanie Young.

STEPHANIE YOUNG PADGETT, being first duly sworn, testified



as follows during DIRECT EXAMINATION by MR. PANOSH:

Q Would you state your name, please.

A Stephanie Young Padgett.

Q And Ms. Padgett, there was a Nancy Young that testified earlier in the proceedings.

A Yes.

Q Is that your mother?

A Yes.

Q And as a result of your relationship with your mother, did you go to Cinnamon Ridge Apartments from time to time?

A Yes, I did.

Q And when you went there, did you meet Patricia Kimble?

A Yes. I had known her before that, however.

MR. LLOYD: Your Honor, this is a similar situation to what we've had earlier.

THE COURT: Approach the bench.

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

THE COURT: Her name is not on the witness list.

MR. PANOSH: Should be. I'm not sure if I put it under maiden or married.

MR. LLOYD: Probably under Young, Your Honor.

MR. PANOSH: Yeah. There it is. (Indicated.) She's gotten married since.

THE COURT: All right. Is that the basis of the

objection or --

MR. LLOYD: No, sir.

THE COURT: All right. What is it?

MR. LLOYD: This is the -- apparently, these are going to be more statements by the victim.

THE COURT: What's she going to say?

MR. PANOSH: She's going to say that she had a conversation with her, again, very shortly before she died. She said that Patricia told her that they were -- they, being her and Ted, were about to lose it.

THE COURT: I'm sorry. About to lose what?

MR. PANOSH: The lumber yard. That the lease was up, and they had to come up with a large amount of money, and that they might have to have an auction to sell the business. And that that was the reason that Ted had taken the part-time job, or one of the reasons.

THE COURT: Is she the only witness that's going to testify to something like that, or do you have other witnesses?

MR. PANOSH: That's the only witness.

THE COURT: Do you have any evidence that the company was in financial difficulty?

MR. PANOSH: Just -- this is it.

THE COURT: When did this conversation take place?

MR. PANOSH: I want to say it was the week before,

but it was certainly within two weeks.

THE COURT: What's the basis for it? I mean, what exception do you claim it comes under?

MR. PANOSH: Impressions of the victim.

(Time was allowed for Mr. Panosh.)

MR. PANOSH: Oh, here it is. Friday, October the 6th.

THE COURT: This was at the yard sale?

MR. PANOSH: No. This was at Cinnamon Ridge, at where she worked.

THE COURT: This witness, how does she fit into Cinnamon Ridge? Is she a resident?

MR. PANOSH: Her mother also works there. Her mother --

THE COURT: Her mother testified.

MR. PANOSH: -- testified previously.

THE COURT: Did the mother not hear it?

MR. PANOSH: No.

THE COURT: Was she there?

MR. PANOSH: I don't know. I'd have to ask her that. I talked to the mother and she didn't confirm that.

MR. LLOYD: Of course, the problem, Judge, for us is, now we've gotten basically a contradictory statement to what's testified to earlier. I mean, the other witnesses are saying Patricia said that they were financially secure,

that Ted didn't need to take a job. How do we cross-examine all this stuff? I mean, we've talked about the individual hearsay exceptions, and our position is, it doesn't fit. It's not then existing mental or emotional condition. It's a statement of fact. But it's not a fact, based on what the other --

THE COURT: I'm going to exclude it as to this defendant.

MR. PANOSH: All right.

(Proceedings continued in open court.)

MR. PANOSH: Your Honor, we'd withdraw this witness. Thank you.

THE COURT: You may step down, Ms. Young.

(The witness left the witness stand.)

MR. PANOSH: Ms. Dyer, please. Come up.

MR. LLOYD: Your Honor, may we approach? We'd request a voir dire on this witness.

MR. PANOSH: This is not going to be within the motion for limine.

THE COURT: How long is the voir dire going to take?

MR. PANOSH: Your Honor, it isn't going to be necessary. This is not covered by the motion in limine.

THE COURT: Sir?

MR. PANOSH: This witness's testimony is not

covered by the motion in limine.

THE COURT: Proceed.

JOY HEDGECOCK DYER, being first duly sworn, testified as follows during DIRECT EXAMINATION by MR. PANOSH:

Q State your name, please.

A Joy Hedgecock Dyer.

Q And are you familiar with Janet Blakley?

A Yes, sir.

Q And in the course of your acquaintanceship with Janet Blakley, did there come a time when you introduced Theodore Kimble to --

A Yes, sir.

Q -- you introduced the two?

A Yes, sir.

Q And are you also acquainted with Ronnie Kimble?

A Yes, sir.

Q And in the course of your acquaintanceship with Ronnie Kimble, did you and he date for a period of time?

A Yes, sir.

Q Now, in the course of your acquaintanceship with Ted and Ronnie Kimble, did there ever come a time when Theodore Kimble showed you a particular gun?

A Yes, sir.

Q Would you describe that, please.

A It was a black gun --

Q Could you keep your voice up.

A Yes, sir. It was a black gun with a -- with a scope.

MR. HATFIELD: I can't hear this witness.

THE COURT: A little bit louder, please, Ms.

Hedge-- or --

A I said, it was a black gun, just --

Q And is this the gun that -- where were you when you saw this?

A I was at Patricia house.

Q Did there come a time when that gun was brought to your house, in reference to target practice?

A Yes, sir.

Q Okay. Would you describe that, please.

A Ted had come over to the house and asked if he could shoot the gun. We was in my mom's front yard. We had took a cardboard -- cut out a piece of cardboard, set it to the side, and was shooting the gun.

Q What do you remember about that particular gun?

A It had a laser scope, like a red, red beam.

Q How frequently did Ted carry that gun?

A I wouldn't know.

Q Did you date Ronnie Kimble before or after he joined the Marine Corps?

A Before.

Q And after he joined the Marine Corps, did there come a

time when you had any further contact with him?

A Yes. He --

Q When was that?

A He had come to my mother house when I was engaged to my ex-husband at the time. He had ran from his mother house across the field through the woods, to come and see me.

Q And how do you know he was in the Marine Corps at that time?

A He had on his uniform.

Q Do you know approximately when it was that you saw Ted with that particular gun -- or Ted and Ronnie with that particular gun?

MR. HATFIELD: Objection. That's not what she testified to.

THE COURT: Sustained.

Q Drawing your attention to the time that they were target practicing, who was present?

A Ted and Ronnie.

Q And when was that?

A In '92 or '93.

Q Okay.

MR. PANOSH: Thank you. No further questions.

MR. HATFIELD: May I take a minute to --

THE COURT: Wait a minute, ma'am.

MR. HATFIELD: Could I confer with counsel, before

I --

THE COURT: Yes, you may.

(Mr. Hatfield and Mr. Lloyd conferred.)

MR. HATFIELD: No questions. Thank you, Judge.

THE COURT: You may step down, Ms. Hedgecock.

(The witness left the witness stand.)

MR. PANOSH: We'd recall Reuben Blakley for a limited purpose.

MR. HATFIELD: Object.

THE COURT: Overruled.

MR. PANOSH: May I approach the witness?

THE COURT: Mr. Blakley, the Court will remind you you're still under oath, sir.

(Mr. Panosh placed exhibits on the witness stand.)

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

Q Mr. Blakley, you've previously testified that you were the first person to arrive and discover the fire?

A Yes, sir.

Q When you walked around the house, as you've previously testified to, would you tell the ladies and gentlemen of the jury whether the windows were open or closed.

A All the windows were closed and all the doors were closed.

Q And during the period of time that the -- there were



firefighters there, and were there civilian personnel that also came throughout the evening?

A Yes.

Q And are you familiar with the area where the picnic tables are?

A Yes, I am.

Q Do you know if any of the civilians who were present were congregating in that area of the picnic tables?

A Yes, several. That's where most of us congregated, was around the picnic table and gazebo area.

Q And you were waiting for the result of the firefighting efforts?

A Yes.

Q Now, drawing your attention to the photographs that I've shown you, State's Exhibits 8 and 9, do you see those?

A Yes, sir.

Q Those show the door between the kitchen and the garage; is that correct?

A That's correct.

Q Are you familiar with that door prior to the fire, and the condition of that door prior to the fire?

A Yes, I am.

Q And what do you base that familiarity on?

A Base it on several times going in and out of the door. But more specifically, I -- probably two to three years

before Patricia died, I had to break into that door myself, to let her in, because she had locked her keys in the house.

Q Now, drawing your attention to the door and how it existed in the days prior to the fire, do you see any new damage on that door?

A It -- both pictures look as if it was the week prior when I talked with Patricia. I had a conversation with Patricia and Ted both at the luau on September 30th about the door, and Patricia expressed concern to me that Ted needed to fix the door, because it was -- needed to be secured a little better than it was.

Q Now, you indicated at one time you actually forced entry to that door?

A Yes, sir.

Q At the time, was the dead bolt in place?

A Yes. Yes, sir, it was. But at that time, she frequently did not lock the dead bolt.

Q Okay. And you're aware of the fact that there were breaking and entries?

A Yes, sir. That -- the breaking and enterings were after the time I'd broken into the -- or forced entry or whatever into the door. And after the breaking and enterings, she had a lot more caution about locking the dead bolt. And I would say every time she left the house, she was sure that both dead bolts on the front and garage door,

they were secure and locked.

MR. PANOSH: No further questions.

CROSS-EXAMINATION by MR. HATFIELD:

Q So you're saying that you assume that after those break-ins, every time she'd come and go, she'd use that dead bolt?

A That was common practice, yes, sir.

Q Was the dead bolt used on October 9, 1995?

A The dead bolt was unlocked when the firemen arrived.

Q How do you account for that?

A Because they opened the door and walked right in. I was the --

Q Who did?

A The firemen. I was behind them when they went in.

Q So who unlocked it that day?

A I do not know. I wasn't there.

Q Are you assuming that Patricia locked it that morning?

A Yes, sir.

Q Are you familiar with the keys that were found in the kitchen, after the fire?

A I have not seen those keys.

Q If the dead bolt was not locked on the morning of October 9th, how easily would it have been to get through that door?

A Much easier than if the dead bolt was locked. You

could take a screwdriver of sorts, maybe get in it.

Q Or just push it hard?

A I don't know about push it hard. Maybe a little more effort than that.

Q It's a glass door anyway, isn't it?

A Most of it. It's got a wood frame around it.

Q So anybody who wanted to get into the house and didn't care whether they did damage could just knock the glass out, couldn't they?

A Sure.

Q Or knock anything else out, couldn't they?

A Sure.

Q But on the occasion when you came and touched the door and found it warm, do you know whether that dead bolt was in place then?

A I did not try to open the door, so, no, I do not.

Q So you're just making an assumption that she locked it in the morning, and/or that it was unlocked later, aren't you?

A Yes.

Q Now, there was no power on and no lights on -- well, the power may have been on, but there were no lights on in that house when you got there around 8:30 and walked around the house, was there?

A That's correct.

Q So how could you tell whether any of the windows on the back side of the house were broken or not?

A I looked at every window and every door as I went around the house, because I was looking for maybe evidence where one of them would have been open, where she -- somebody or her may have tried to get out.

Q So what did you use to see them?

A My eyes.

Q Well, wasn't it dark?

A It was not dark enough to where I could not see if the window was open.

Q Do you know whether the air conditioning system was on?

A It was not running when I went around the house, no, sir.

Q But you -- that would mean the condenser on the outside of the house wasn't blowing?

A Correct.

Q But if the air handler, if it was on fan, you wouldn't have known that, would you?

A I believe the way their heating system was arranged, that the fan was connected with the outside unit, so I could have heard it, if I'd walked around the house.

Q Was smoke coming out of the vents for the crawl space?

A I do not remember much amount of smoke. I remember smelling smoke, and I remember looking under there and

seeing flames underneath the house.

Q That was when you opened the crawl space door?

A Yes, I did that, also. I also could see flames through the foundation vents.

MR. HATFIELD: Thank you.

THE COURT: Step down, sir.

MR. PANOSH: May we approach on a scheduling matter?

THE COURT: Yes, you may.

(The witness left the witness stand.)

(Counsel conferred with the Court at the bench.)

THE COURT: Well, I want to thank you for your patience. I know it's been a long four days for you, and you've been good about being here on time and been very attentive. We're moving much faster than we anticipated, so we're going to give you tomorrow afternoon off and kindly let you take care of some personal matters that I'm sure you probably have not been able to do since you've been here in jury service. Our schedule is to start in the morning at 9:30 and we'll go until 12:00, or maybe a little bit after 12:00, depending upon the witnesses' testimony. But you'll have tomorrow afternoon off, and we'll not resume again until Monday of next week. Does everyone understand that? So if you've got weekend plans, you can go ahead and kind of schedule it and take care of it.

Again, remember the Court's instructions about the jury responsibility sheet. Have a nice evening. I'll see you in the morning at 9:30.

(The jury left the courtroom at 4:52 p.m.)

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

(A recess was taken at 4:53 p.m., until 9:30 a.m. Friday, August 14, 1998.)

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