

IN THE DISTRICT COURT OF MAYES COUNTY,

FILED IN THE DISTRICT COURT
STATE OF OKLAHOMA. MAYES COUNTY, OKLAHOMA

SEP 27 1978

THE STATE OF OKLAHOMA,

Plaintiff,

-vs-

GENE LEROY HART,

Defendant.)

ELOISE CIST, Court Clerk
BY *Thyllis Tracey* Deputy

Case No. CRF-77-131
CRF-77-132
CRF-77-133

PRELIMINARY HEARING

VOLUME IV

Heard Before: Honorable Jess B. Clanton, Jr., Special Judge
June 12, 1978

A P P E A R A N C E S

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P R O C E E D I N G S

June 12, 1978

THE COURT: This is CRF-77-131, 132 and 133,
State of Oklahoma versus Gene Leroy Hart.

Let the record show the Defendant is present
with counsel. State is present. And where is Mr. Reimer?

MR. WISE: Mr. Reimer is being sought by the
bailiff, Your Honor.

THE COURT: Would you resume the stand, Mr. Reimer?
Had you finished your direct examination?

MR. WISE: We had, Your Honor.

DENNIS WAYNE REIMER,
having previously been sworn to testify the truth, the whole
truth and nothing but the truth, was called as a witness
and examination continued as follows:

CROSS EXAMINATION

BY MR. ISAACS:

Q Mr. Reimer, I believe you were being questioned
about some blood samples taken from the victims in these
cases, is that correct?

A I identified some blood samples, vials which they
were in.

Q Mr. Reimer, how many centimeters of blood did you
draw from each victim, or did Dr. Collins draw?

A I didn't draw any blood samples from the victims.

1 Q Who drew those?

2 A I'm not sure exactly who drew them.

3 Q How many centimeters did they draw?

4 A I don't know.

5 Q You had those in your possession, did you not?

6 A Yes, I did.

7 Q Did you later analyze that blood?

8 A I made some analysis on the blood samples.

9 Q When you draw blood samples from someone, how many
10 cubic centimeters of blood should you draw if you were going
11 to analyze it properly?

12 A It depends on how many analyses are going to be
13 made.

14 Q If you were going to make one analysis, how many
15 cubic centimeters of blood do you draw?

16 A I believe an A, B, O type could be determined by
17 one centimeter, cubic.

18 Q If you were going to make two tests, how many
19 centimeters do you need?

20 A What kind of tests?

21 Q If you were going to test the blood to identify
22 what type of blood it is, how many cubic centimeters of blood
23 do you need?

24 A Well, it depends on how many tests and what type
25 of tests.

1 Q You didn't understand my question, Mr. Reimer.
2 If you are going to test blood to determine the type, do you
3 know what type means when you are talking about blood?

4 A Yes, I know what type means.

5 Q All right. If you are going to analyze a specimen
6 and determine what type of blood it is, how many cubic
7 centimeters of blood do you draw from the subject?

8 A Just to determine A, B, O type or Rh type or --

9 Q We're going to determine A, B, O type of blood.

10 A I think you could get by with a minimum of one
11 cubic centimeter to determine A, B, O type.

12 Q If you're going to make a determination of a blood
13 group, how many cubic centimeters do you need?

14 A The blood type and the blood group would be synony-
15 mous.

16 Q Well, if you're going to decide what the Rh factor
17 in blood is, how many cubic centimeters do you need?

18 A I think you would need at least one more.

19 Q So we need two cubic centimeters, right?

20 A At least.

21 Q And you don't know how many cubic centimeters of
22 blood were drawn from each of these little girls?

23 A No, sir, I don't.

24 Q But you transported them, didn't you?

25 A Yes, I did.

1 day to take a sample from each vial?

2 A I didn't measure it.

3 Q Oh, you didn't?

4 A No, sir.

5 Q Do you keep records when you run a test on blood?

6 A Only as to the results of the examination.

7 Q Oh, I see. How long did you have the blood samples
8 out of the refrigerator the following day?

9 A I don't know exactly.

10 Q Will you give me an approximation to the best of
11 your recollection?

12 A Five minutes.

13 Q After drawing a small amount of blood from the
14 sample, you placed it back in the refrigerator, did you not?

15 A Yes, I did.

16 Q And how much later was it until that blood was
17 moved to another location or removed from the refrigerator?

18 A It was moved on the 20th of June, 1977.

19 Q And what type of anti-coagulant was used?

20 A None to my knowledge.

21 Q You had it in your possession, did you not?

22 A Yes, I did.

23 Q When you run a test on blood such as the one you
24 ran on the morning following the Medical Examiner's autopsy,
25 did you or did you not add an anti-coagulant?

1 A I did not.

2 Q Did you detect an anti-coagulant?

3 A I did not tests to make such determination.

4 Q Who took the sample to Oklahoma City after you
5 took it out of the refrigerator a week later?

6 A Transported to Oklahoma City by Terry Burgess.

7 Q Did he have to give you a receipt to remove that
8 from the refrigerator?

9 A No, sir.

10 Q Do you keep a log book of what happens to evidence,
11 what is done with evidence at the Tahlequah office where you
12 keep the blood?

13 A There is a log book there which reflects receipt
14 of evidence.

15 Q And is that evidence we're speaking about, the
16 whole blood taken from these three victims, entered into
17 that log book?

18 A Yes.

19 Q I believe you testified that you transported
20 vaginal swabs, oral swabs and anal swabs taken from these
21 three girls; is that correct?

22 A Yes, sir.

23 Q Were you present when the swabs were taken?

24 A I was in the Medical Examiner's Office.

25 Q Who handed them to you to take to the OSBI

1 Headquarters?

2 A David Hybarger.

3 Q Do you know where Hybarger got those samples?

4 A He got them from Dr. Hoffman.

5 Q Did you see him receive those from Dr. Hoffman?

6 A Not all of them.

7 Q Which ones didn't you see him receive?

8 A I'm not sure specifically which ones.

9 Q So we don't know know which ones Dr. Hoffman gave
10 Mr. Hybarger and which ones he gave you?

11 A Dr. Hoffman didn't give me any of them.

12 Q Well, Mr. Hybarger gave you some, didn't he?

13 A He gave me all of them.

14 Q And you don't know where Mr. Hybarger got all of
15 them?

16 A Not all of them.

17 Q Thank you. What's the purpose of taking an oral
18 swab from the victim of a homicide?

19 A To make tests upon it.

20 Q What kind of tests?

21 A Several tests can be made from it. One to deter-
22 mine secretor status of the victims; one to determine the
23 presence of other body fluids other than the saliva.

24 Q Mr. Reimer, was the Milner girl a secretant?

25 A I don't know.

1 Q Mr. Reimer, was the Guse girl a secretant?

2 A I don't know.

3 Q Was the Farmer girl a secretant?

4 A I don't know.

5 Q Did you at any time prepare any slides in reference
6 to the whole blood from any of the swabs taken from any of
7 the victims?

8 A Yes, I did.

9 Q When did you do that?

10 A On June 14th and 15th.

11 Q Will you tell me what type of slides you prepared
12 and how you prepared them?

13 A I made some slides from the swabs. I simply took
14 the swabs and placed them in a small test tube and placed a
15 small amount of saline upon the swabs and let them soak for
16 awhile and then placed a few drops of the saline from each
17 test tube onto the slide and let the slide dry, then stained
18 the slide and observed the slide under a microscope.

19 Q For what purpose?

20 A I was looking for presence of sperm.

21 Q And when you examined them under the microscope,
22 what did you see?

23 A I found no sperm.

24 Q You found none?

25 A I did not observe any.

1 Q Mr. Reimer, did you observe, under the microscope,
2 slides made from swabs taken from Doris Milner?

3 A Yes, I did.

4 Q And were there any sperm present in those slides?

5 A I did not observe any.

6 Q You didn't understand my question. You've got a
7 nasty habit of answering in a way that I didn't ask.

8 MR. WISE: If it please the Court, we would object
9 to him being argumentative with the witness.

10 THE COURT: Sustained.

11 Q Mr. Reimer, did you examine the slides made from
12 the swabs taken from Michelle Guse?

13 A Yes, sir, I examined the slides that I made.

14 Q Did you see any sperm?

15 A No, sir, I didn't see any.

16 Q Thank you. Did you examine the slides made from
17 the swabs taken from Lori Farmer?

18 A Yes, I did.

19 Q Did you see any sperm on those slides?

20 A No, sir, I didn't see any.

21 Q Now, was there any preservative -- I withdraw that.
22 That's the wrong word -- when you stain a slide, what agent
23 do you use, or what chemical, so that it's tinted?

24 A At that time, I was using a stain called a
25 Florence stain.

1 Q Florence stain? Are there any other stains that
2 you can use when you test the sample for spermatozoa?

3 A Yes, sir.

4 Q What are they?

5 A One is commonly called a "Christmas tree stain"
6 and the other is a fluorescent stain called "Auromine O",
7 I believe.

8 Q How do you spell that?

9 A I'm not sure.

10 Q Would you repeat it for me?

11 A Auromine O.

12 Q Any other tests that you use?

13 A Those are the only ones that I use and am familiar
14 with.

15 Q And what do you call the test that you use?

16 A I use the Florence stain.

17 Q Just the Florence stain?

18 A Yes, sir, I used that one and the Auromine O stain.

19 Q So you used two particular stains in attempting
20 to locate sperm; is that correct?

21 A Yes, sir, I did.

22 Q When you used the Auromine O stain and you viewed
23 the slide of the swab taken from Doris Milner, did you see
24 any sperm?

25 A I did not observe any.

1 Q So you didn't see any and the answer is no, isn'
2 it?

3 MR. WISE: If it please the Court, this is argu-
4 mentative again. He's asked and answered a question.

5 THE COURT: Sustained.

6 Q Now, Mr. Reimer, when you viewed the slide stained
7 with Auromine O of the swab taken from the Guse girl, did
8 you see any sperm?

9 A I didn't observe any, no.

10 Q When you viewed the slide stained with Auromine O
11 taken from the Farmer girl, did you observe any sperm?

12 A N o, sir, I didn't.

13 Q Did you group the blood on the Milner girl?

14 A Yes, sir.

15 Q What blood group?

16 A O.

17 Q Did you group the blood on the Guse girl?

18 A Yes, sir.

19 Q What blood group?

20 A O.

21 Q Did you group the blood on the Farmer girl?

22 A Yes, sir.

23 Q What blood group was that?

24 A O.

25 Q Tell us about blood grouping and how that is done?

1 A Blood grouping can be determined from the blood
2 cells, and the blood serum from an individual. Blood group,
3 A, B, O blood group, can be determined to be A, B, O or AB,
4 and its reaction to the antigens which are on the blood
5 cell and antibodies which are in the blood serum. These
6 can be determined by making a test with blood cells with a
7 commercially prepared antiserus and --

8 Q Commercially prepared what?

9 A Antiserus -- and the serum from the blood can be
10 typed, using known type blood cells.

11 Q Did you sub-group any of the blood taken from any
12 of the victims of these homicides?

13 A No, sir.

14 Q Is it possible to do that?

15 A Yes, sir.

16 Q Did anyone attempt to do that?

17 A I'm not fully aware of the attempts of other people
18 to group this blood.

19 Q So nobody reported to you any attempts to sub-group
20 the blood taken from the victims' bodies?

21 A I have no reports, no, sir.

22 Q What percentage of the population of the United
23 States has type "O" blood?

24 A Approximately 45 percent.

25 Q What percentage of the population of the United

1 States can be classified as what we call secretors?

2 A Approximately 80 percent.

3 Q Were you present when iodine vapors were used on
4 the bodies to attempt to lift latent fingerprints?

5 A I saw that, yes, sir.

6 Q Were any fingerprints lifted?

7 A I'm not sure whether a print was lifted or not.

8 Q Well, did someone mention to you there was a print?

9 A I think someone mentioned there were several
10 possible prints.

11 Q Did anybody photograph any of those possible prints?

12 A I'm not aware of any photographs made or attempted.

13 Q How do you lift a latent fingerprint from the body
14 of a victim in a homicide with an iodine vapor?

15 A I don't know.

16 Q You are not schooled in fingerprint technology?

17 A No, sir.

18 Q Did you visit Camp Scott on June 13th?

19 A Yes, sir.

20 Q What time did you arrive there?

21 A Approximately 10:00 o'clock, 10:15.

22 Q Who was with you?

23 A No one was with me.

24 Q Oh, there weren't?

25 A None came in the car with me.

1 Q You drove from Tahlequah down to Camp Scott?

2 A That's correct.

3 Q When you arrived, tell me what happened?

4 A I was taken to the scene of the crime. I observed
5 the bodies there.

6 Q Who took you down there, Mr. Reimer?

7 A I was just given directions from the gate to the
8 approximate scene. I drove there by myself.

9 Q When you got into the Kiowa Unit at Camp Scott,
10 where did you go?

11 A I drove down a little road there to where there was
12 a bunch of other cars parked and I parked my car and got out
13 and walked on down the road.

14 Q To what location?

15 A To the location approximately ten or fifteen yards
16 north of where the bodies were found.

17 Q What did you do when you arrived at that location?

18 A I spoke with Agent Carey Thurman for a moment.

19 Q And then what did you do?

20 A I waited until Ted Lempke arrived.

21 Q What did you see while you stood there for waiting
22 for Mr. Lempke?

23 A I walked over and observed the bodies, where they
24 were laying. I was taken over to the tent area and observed
25 the tent.

1 Q When you observed the bodies, describe for me what
2 you saw?

3 A I saw a body of a young black female laying at
4 the base of a tree.

5 MR. WISE: If it please the Court, we are going to
6 have to object that this line will be far out of the line of
7 cross examination; if I remember correctly, the direct
8 examination of Mr. Reimer was directed as to his activities,
9 autopsies at the Medical Examiner's Office and his collection
10 of evidence at that point. His examination at the scene of
11 this crime was never touched upon on direct.

12 THE COURT: Objection is sustained.

13 Q Mr. Reimer, did you, from the Medical Examiner's
14 Office receive some cord?

15 A Yes, sir.

16 Q Did that cord have some unusual knots in it?

17 A I made no observation of knots.

18 Q Who gave you the cord when you were at the Medical
19 Examiner's Office?

20 A The cord taken from the victims was removed by Dr.
21 Hoffman, and was simply dropped in a paper bag which was being
22 held there.

23 Q Did you transport that cord along with the blood
24 swabs to Tahlequah?

25 A The cord was given to Paul Boyd and he transported

1 it to Oklahoma City on that date.

2 Q Did you see tape removed from the shirt of one
3 of the little girls, the nightshirt that she was wearing?

4 A Yes, I did.

5 Q What was done with that?

6 A Nightshirt, the tape and everything attached to
7 it was simply cut and removed from the body and placed in a
8 paper sack. No attempt was made at that time to separate
9 any of those items.

10 Q Who was that given to?

11 A Paul Boyd.

12 Q Did you, at any time on the 14th of June, have the
13 tape or the cord in your possession?

14 A No.

15 Q Mr. Reimer, you're a chemist; is that correct?

16 A Yes, sir.

17 Q What texts do you consider authoritative in the
18 field of forensic chemistry?

19 A I've seen no book that I think would cover the
20 whole field of forensic chemistry, an authoritative book.

21 Q Well, do you think that the FBI Handbook of Forensic
22 Sciences is authoritative; this little beauty (indicating)?

23 A I don't know.

24 Q You never read it?

25 A No, sir.

1 Q Oh, what training have you had in the field of
2 forensic chemistry?

3 A My first six months of employ with the OSBI was
4 an on-the-job type training status. I have had training
5 from them.

6 Q When you were on the job, who was your teacher?

7 A Mel Hect.

8 Q Anybody else serve as a teacher for you during
9 the first six weeks or so, six months on the job?

10 A He was principally it.

11 Q How long have you been a chemist with the OSBI?

12 A Since September of 1974.

13 Q And before that, what did you do?

14 A I worked for the McAlester Police Department.

15 Q In what capacity?

16 A As a chemist and investigator.

17 Q And before that what is your background?

18 A I worked before that for McAlester Urban Renewal
19 Authority and before that, I worked for the United States
20 Air Force; before that, I was in college.

21 Q Which college?

22 A Called Southwestern Oklahoma State University, now.

23 Q Did you take a degree from that school?

24 A Yes, sir, I did.

25 Q What degree?

1 A Bachelor of Science.

2 Q In what field?

3 A Majored in chemistry.

4 Q So, in your opinion, there are no books that are
5 authoritative in the field of forensic chemistry; is that
6 correct?

7 A I don't think there's one that would be completely.

8 Q Have you written anything or published anything
9 in the field in which you work?

10 A No, sir.

11 Q Have you presented any papers at any seminars?

12 A No, sir.

13 Q Have you ever heard of a fellow by the name of
14 Andre Moenssens?

15 A I've heard the name.

16 Q Do you consider his text, Scientific Evidence in
17 Criminal Cases authoritative?

18 A No, sir.

19 Q You don't? Do you consider the FBI Bulletin
20 authoritative?

21 A The FBI Bulletin?

22 Q Yes, sir, you do get those, don't you?

23 A No, sir, I don't.

24 Q Don't?

25 A No, sir.

1 Q How about the Journal of Forensic Sciences?

2 A Yes, sir, I get those.

3 Q Do you consider that publication authoritative?

4 A I don't believe that could be authoritative.

5 Those articles printed in them are mostly research articles;
6 some of them are not proven.

7 Q Well, now, do you consider some of those articles
8 authoritative?

9 A Some could be.

10 Q Do you consider your college chemistry background
11 as a good background for a forensic investigator?

12 A Yes, sir, I consider it, my particular training,
13 a fairly good background, yes, sir.

14 Q What was the name of the textbooks you used in
15 courses on chemistry when you were in college?

16 A (No response.)

17 Q Just the ones you can remember?

18 A The only one I can remember right offhand is the
19 Organic Chemistry Textbook and it was Morrison and Boyd.

20 Q Have you ever had any criminal investigation
21 courses while you were in college?

22 A Yes, sir, I've taken criminal investigation courses
23 in college.

24 Q What book did you use in that course, if you
25 remember?

1 A I can't remember any of these specifics.

2 Q What year would that have been at Southwestern
3 State?

4 A I didn't take any at Southwestern State at all.
5 I've had them at Connors and at Northeastern.

6 Q What year at Connors did you take that criminal
7 investigation course?

8 A I believe that was in the spring of '75.

9 Q What year at Northeastern?

10 A Every year since I've been over there which would
11 have been the spring of -- Connors would have been the
12 spring of '74 and the spring and fall of '75; fall of '76
13 and the fall and spring of '70 and the fall of '77, spring
14 of '78 at Northeastern.

15 Q Are you working towards a Master's Degree?

16 A No, sir, they don't offer a Master's Degree.

17 Q Have you told me everything you know about the
18 blood you took from the little girls that you transported,
19 that was taken from the little girls on the 14th of June?

20 A Yes, sir.

21 Q Have you told me everything that you know about the
22 swabs and smears that you made from those swabs on the 14th
23 day of June?

24 A As best I can recall.

25 MR. ISAACS: I believe that's all, Judge.

1 THE COURT: Redirect?

2 MR. WISE: Yes.

3 REDIRECT EXAMINATION

4 BY MR. WISE:

5 Q Mr. Reimer, you indicated that you ran two tests.

6 One a Florence stain and one an Auro --

7 A Auromine O.

8 Q You did indicate there are numerous other stains;
9 is that correct?

10 A There are some other stains.

11 MR. ISAACS: Object, leading question.

12 THE COURT: Sustained.

13 MR. WISE: I'll rephrase the questions.

14 Q Are there other stains?

15 A Yes, sir.

16 Q You indicated at least one, I think, in your cross
17 examination; is that correct?

18 A Yes, sir.

19 Q Now, I'd also ask you, did you run what's know as
20 an acid phosphatase test on those slides?

21 A Acid Phosphatase?

22 Q Acid Phosphatase, all right.

23 A They were run from the soak-outs from the swabs.

24 Q What is the purpose of running that kind of test?

25 A This test is a detection for an enzyme called

1 phosphatase, which is present in most body fluids and seminal
2 fluids in a greater concentration.

3 Q And tell us, what is the heaviest concentrate of
4 seminal fluid that you know?

5 A The literature I've read indicates twenty to
6 four hundred times of the body fluids.

7 Q Is that from a male, the seminal fluids?

8 A Yes.

9 Q So, in other words, you are running this test to
10 determine if male seminal fluids are present; is that correct?

11 A It is a good indicator, but not a positive test.

12 Q All right. Tell me, did you run such a test on the
13 slides from the Milner girl?

14 A From the swabs.

15 Q Swabs from the Milner girl?

16 A Yes.

17 Q And can you tell us the results, please?

18 A I obtained a positive result from the vaginal
19 swab, negative from the oral and anus swab.

20 Q Did you run such a test on the Guse victim?

21 A Yes, I did.

22 Q Could you tell us the results of that, please?

23 A I obtained negative on the vaginal and oral swabs
24 and positive on the anal swab.

25 Q And did you run such a test on the Farmer victim?

1 A Yes, I did.

2 Q What were the results of those?

3 A The results from all three swabs were negative.

4 Q Now, you testified earlier that you forwarded all
5 of this material on the -- I believe the 29th; is that
6 correct?

7 A It was on the 20th.

8 Q On the 20th, to Oklahoma City. What was the pur-
9 pose of forwarding all this material on?

10 A For different examinations to be made.

11 Q And those additional examinations might involve
12 a great deal more sophisticated tests than what you ran?

13 A Yes, sir.

14 MR. WISE: I have no further questions.

15 CROSS EXAMINATION

16 BY MR. ISAACS:

17 Q Mr. Reimer, how long were the little girls under
18 the trees before they were moved?

19 MR. WISE: If it please the Court, this is an
20 improper cross-examination. We would object to, Your Honor.
21 This Defendant, or this witness has testified only as to
22 those things taking place at the autopsy. He's not an
23 authority or has testified on direct about anything.

24 MR. ISAACS: Judge, this is very proper because
25 Mr. Wise got up and opened the door on the tests of the acid

1 phosphatase and I'm going to show through cross examination
2 that acid phosphatase test could not be a test which the
3 results are scientifically such that they should be admitted
4 into evidence.

5 THE COURT: Well, the results are already into
6 evidence. He's testified to them.

7 MR. ISAACS: I'm always permitted to discredit
8 them, am I not; isn't that the purpose of cross examination?

9 THE COURT: Mr. Isaacs, I'm not here to answer
10 your questions.

11 MR. ISAACS: Yes, sir.

12 THE COURT: If your cross examination will go to
13 discredit the information brought out on redirect examina-
14 tion, then you may ask it. Ask your next question.

15 Q How long were they under the trees, Mr. Reimer?

16 MR. WISE: If it please the Court, we would object
17 to this question again. This is a question directed to as
18 to evidence, as to the scene of the crime and not from the
19 autopsy, the slides, the blood samples, et cetera, which
20 this witness has been testifying to.

21 THE COURT: I'm inclined to sustain the objection.
22 Do you want to make an offer of proof, Mr. Isaacs?

23 MR. ISAACS: I am going to show that the bodies
24 were there for a long time and for tests of that nature to
25 be conclusive and scientific, that the bodies must be

1 preserved in a way and kept in a place where bacteria can't
2 get into the body. We know that bacteria was there. The
3 question is, how did that bacteria get in that particular
4 orifice on the girls that had a positive result from the
5 acid phosphatase test.

6 MR. WISE: If it please the Court, I am not going
7 to speak as a witness, I would only suggest to the Court
8 that there is a distinct difference between seminal fluid
9 and bacteria.

10 THE COURT: Objection will be overruled. You may
11 answer the question.

12 Q How long were they under the trees?

13 A I don't know how long they were there.

14 Q How long were they under the trees from 10:00
15 o'clock until they were removed?

16 A They were removed approximately 10:30.

17 Q It was hot out there, wasn't it?

18 A Yes, sir.

19 Q Flies were around, weren't they?

20 A Yes, sir.

21 Q Some of those flies were over the bodies; is that
22 not correct?

23 A Yes, sir.

24 Q Nobody touched the bodies, did they?

25 A Not until --

1 Q Nobody sprayed them to keep the flies off, did
2 they?

3 MR. WISE: If it please the Court, he is not
4 even allowing the witness to respond. He's giving his own
5 self-serving declaration.

6 THE COURT: Sustained. You are going to have to
7 give the witness a little more time to answer.

8 Q Nobody sprayed that area, did they?

9 A I didn't see nobody spray.

10 Q The reason you don't spray that area is because
11 you don't want to contaminate the investigation, do you?

12 A Yes, sir, that's logical.

13 MR. ISAACS: Judge, could we have a short recess?

14 THE COURT: For what purpose, Mr. Isaacs?

15 MR. WISE: If it please the Court, I would join in
16 that request.

17 THE COURT: We will take about a five or ten minute
18 recess.

19 (Following a ten minute recess, the proceedings
20 continues as follows:)

21 THE COURT: Excuse me, Mr. Isaacs, I think we were
22 on your cross examination.

23 Q Mr. Reimer, an acid phosphatase test, which is
24 negative, means that there is absolutely no semen present,
25 does it not?

1 A No, sir, it means there is no phosphatase present.

2 Q Well, if we don't get a positive reaction when
3 we run an acid phosphatase test, we know there is no semen
4 there; is that correct?

5 A No, sir.

6 Q Awhile ago, we were talking about the condition of
7 the bodies under the trees. There were a lot of flies out
8 there, were there not?

9 A Yes, sir.

10 Q Is it not correct that flies cause bacteria?

11 A I've always been raised by that assumption, yes,
12 sir.

13 Q Thank you. I believe you said that on the little
14 Farmer girl, there was no positive reaction to the acid
15 phosphatase test; is that correct?

16 A Not any that I ran.

17 Q Is it important that you use a freshly prepared
18 reagent when you run the acid phosphatase test?

19 A Not in my experience.

20 Q Oh, so you didn't use a freshly prepared reagent
21 when you ran that test?

22 A I'm not sure when the reagents that I used were
23 prepared.

24 Q Would it have been prepared within the week?

25 A No, sir.

1 Q Within the month?

2 A Possibly.

3 Q Is there any record of when you prepared those
4 reagents?

5 A No, sir, some of them are commercially obtained.

6 Q Can you tell me what the brand name of those
7 commercially prepared reagents are or is?

8 A No, sir; no, sir, I can't.

9 Q Did you use a filter paper?

10 A No.

11 Q There are a number of organisms, biological organ-
12 isms which can cause a positive reaction to the acid phos-
13 phatase testing, aren't there?

14 A I'm not specifically aware.

15 Q You're not?

16 A No, sir.

17 Q You did observe the bodies of the little girls,
18 did you not?

19 A I saw only one body. Two of them were in sleeping
20 bags.

21 Q Is it not correct that bacteria can cause a posi-
22 tive reaction to an acid phosphatase test?

23 A I don't know.

24 Q You don't?

25 A No, sir.

1 Q And you're a chemist employed by the OSBI to
2 testify as an expert witness; is that correct?

3 A Yes, sir.

4 Q And you don't know if bacteria will cause a
5 positive reaction to an acid phosphatase test?

6 A I said I don't know.

7 Q Will human milk cause a positive reaction?

8 A I don't know.

9 Q Human liver?

10 A I don't know.

11 Q Human urine?

12 A I don't know.

13 Q Human kidney?

14 A I don't know.

15 Q Red blood cells?

16 A Red blood cells can give a light reaction.

17 Q How about rice bran?

18 A I don't know.

19 Q Sweet almonds?

20 A I don't know.

21 Q Cauliflower?

22 A I don't know.

23 Q Brussels sprouts?

24 A I don't know.

25 Q Clover?

1 A I don't know.

2 Q Wheat?

3 A I don't know.

4 Q Garlic?

5 A I don't know.

6 Q Turnips?

7 A I don't know.

8 Q Raisens?

9 A I don't know.

10 Q Mango?

11 A I don't know.

12 Q Ginger?

13 A I don't know.

14 Q Fish?

15 A I don't know.

16 Q Dates?

17 A I don't know.

18 MR. ISAACS: That's all.

19 THE COURT: Redirect?

20 MR. WISE: We have no further redirect. Thank you,

1 (WHEREUPON, the witness was excused and withdrew
2 from the hearing room.)

3 MR. WISE: If it please the Court, the State would
4 next call Mr. Willis Ray Thompson.

5 Mr. Thompson, would you come forward and raise

1 (WHEREUPON, the witness was excused and withdrew
2 from the hearing room.)

3 MR. WISE: If it please the Court, the State would
4 next call Mr. Willis Ray Thompson.

5 Mr. Thompson, would you come forward and raise
6 your right hand to be sworn?

7 THE COURT: Do you swear to tell the truth, the
8 whole truth and nothing but the truth, so help you God?

9 THE WITNESS: Yes, I do.

10 WILLIS RAY THOMPSON,

11 called as a witness on behalf of the State, having been
12 first duly sworn, testifies as follows:

13 DIRECT EXAMINATION

14 BY MR. WISE:

15 Q Mr. Thompson, would you state your full name to
16 the Court and the record, please?

17 A Willis R. Thompson.

18 Q Where do you live, Mr. Thompson?

19 A I live south of Locust about three or four miles.

20 Q All right, do you own a place there, do you?

21 A Yes, I'm buying a place there.

22 Q Mr. Thompson, who is your father-in-law?

23 A John Colvin.

24 Q Mr. Thompson, do you enjoy hunting?

25 A Yes, sir, I do.

1 Q What do you hunt?

2 A Squirrel, deer, coon.

3 Q All right, sir. Mr. Thompson, in relationship to
4 Camp Scott, where is your home - the place you are buying?

5 A I live straight east of there. Probably -- well,
6 there is one place between us.

7 Q So it's just one property between you and Camp
8 Scott?

9 A Yes, forty acres.

10 Q So you know where Camp Scott is very well?

11 A Yes.

12 Q And where is your father-in-law's place in relation
13 to Camp Scott?

14 A It would be west and south - southwest of there.

15 Q Just a few miles?

16 A Yes.

17 Q Now, on the 16th day of June, 1977, did you go
18 hunting that day?

19 A Yes.

20 Q Did someone go with you?

21 A My brother-in-law, John Colvin.

22 Q And tell me, where did you go hunting?

23 A Well, first we went into -- that was early in the
24 morning and then we came back and we changed dogs and we
25 went to my father-in-law's place.

1 Q That's Mr. Colvin's place?

2 A Yes.

3 Q Where did you go -- where did you hunt after you
4 moved in on your father-in-law?

5 A Well, we started in walking on down the branch.

6 Q When you say a "branch", you're talking about a
7 creek bed?

8 A Yes, it's a creek bed.

9 Q Continue, please.

10 A From where we hit the creek bed, we went all the
11 way to Spring Creek and on the way to Spring Creek, we treed
12 one squirrel and a groundhog.

13 Q Let me interrupt just a second. So this branch
14 that you were hunting on and following does go into Spring
15 Creek?

16 A Yes, it does.

17 Q To your knowledge, does Spring Creek go through
18 the Girl Scout Camp?

19 A Yes.

20 Q All right, sir, continue.

21 A After we got to Spring Creek, we sat down and
22 smoked a cigarette and talked awhile. We turned and went
23 up over the bank, going towards the hillside. We was going
24 -- there's a road -- trailer road or whatever, runs along
25 the hillside and back toward the pickup to my father-in-law's

1 place. Instead of the dogs stopping when we got to the
2 trail they went on over the hill and dropped off the holler
3 and treed a squirrel, so we went up to where they were at
4 and come back down the branch and that's when we found this
5 sack of flour and where someone was living in a cave.

6 Q So you found a sack of flour and where somebody
7 was living in a cave?

8 A Yes, sir.

9 Q And you'd hunted that area before?

10 A Yes, but it had been the deer season before since
11 I'd been in there.

12 Q Do you know about a cave in that area?

13 A Yes.

14 Q You had seen it, I presume?

15 A Yes, I had, yes.

16 Q Ever taken shelter in it?

17 A Well, once, you know, if I was in there and it
18 was raining, well, I'd find someplace there or there's
19 other caves there.

20 Q Okay. Is there any other structures or anything
21 around there nearby?

22 A There's a small cellar near this one cave.

23 Q Now, when you say a "cellar" --

24 A A little house place is what it is.

25 Q Is it an old foundation or something?

1 A Yes, it's cement.

2 Q And a cellar, what kind of cellar, please?

3 A Well, it had a building built on top of it at one
4 time.

5 Q Would it have been a storm cellar?

6 A Yes.

7 Q Built out of what?

8 A Cement.

9 Q Where is it in relation to this cave?

10 A It's just up on the bank, probably thirty yards.

11 Q Okay. Now, was this branch running with water
12 that day?

13 A No.

14 Q Okay, where did you find this sack of flour you
15 testified to?

16 A It was on -- lying on some rocks, kind of back un-
17 der the rocks, right before you go into the entrance to the
18 cave.

19 Q Was it a sack like you buy at the grocery store?

20 A No, it wasn't. It was in a -- I believe two red
21 sacks like you buy a loaf of bread in.

22 Q Like empty bread sacks?

23 A Yes, sir.

24 Q Okay, when you saw or found this bread wrapper with
25 flour in it, what else happened?

1 A Well, I had two dogs with me that day that would
2 bite and both of them bristled up like there was someone
3 there.

4 Q You have had them long enough you could recognize
5 the signal?

6 A Yes.

7 Q What else happened?

8 A Well, we looked around into the cave.

9 Q Did you go in it?

10 A No.

11 Q Pretty good size cave?

12 A Well, it don't go back in very far, but it's pretty
13 good size.

14 Q Okay, continue.

15 A And I told Johnnie we ought to get out of there.

16 Q Why?

17 A Someone was watching us.

18 Q How do you know this?

19 A I've been in Vietnam, and I know the feeling.

20 Q Okay, continue.

21 A And we started to leave and we seen where someone
22 used the bathroom and there was a piece of newspaper laying
23 there that was used to wipe with.

24 Q So there was newspaper there where someone had
25 used it to wipe themselves after going to the bathroom?

1 A Yes.

2 Q And you saw the results of that there on the ground?

3 A Yes.

4 Q All right, did you look at that paper?

5 A At that time, no.

6 Q I mean, what kind of paper was it, something that

7 A It was newspaper.

8 Q Okay, then what did you do?

9 A We started back to the pickup and we stopped and
10 Johnnie looked -- I told him to look at the flour and he
11 asked me if I was still carrying it and I told him yes, and
12 he looked at it and we took it to the Girl Scout Camp.

13 Q At the Girl Scout Camp, there were authorities, I
14 presume?

15 A Yes.

16 Q And you came on in the camp?

17 A No, at that time we did not go into the camp.

18 Q And after that, did you take the authorities back
19 to that cave?

20 A Yes, sir.

21 Q Cellar?

22 A Yes, sir.

23 Q Can you tell me roughly what time of day was all
24 this?

25 A It was around 1:30, 2:00 o'clock, somewhere around

1 there.

2 Q In the afternoon?

3 A Yes, it was the afternoon.

4 Q Do you know any of the people that -- you know,
5 you went -- you testified that you went to the Girl Scout
6 Camp and saw some authority. Do you know any of the authori-
7 ties that went with you up to the cave?

8 A Well, I never knew them then, you know.

9 Q Do you know them now?

10 A Yes.

11 Q Who are they?

12 A One of them was Rice and I can't remember the
13 other guy's name but I know him when I see him.

14 Q What agency are they with, if you know?

15 A Sheriff's Department. I think one is from Chou-
16 teau and one from Adair; I'm not for sure about that.

17 Q Okay. But one of them's name is Rice, though?

18 A Yes.

19 Q Have you seen him around the courthouse here today?

20 A No.

21 MR. WISE: Your witness, counselor.

22 CROSS EXAMINATION

23 BY MR. ISAACS:

24 Q How far is it from Camp Scott to where you and Mr.
25 Colvin were hunting squirrels?

- 1 A Around the road?
- 2 Q Yes, sir.
- 3 A Oh, probably eight miles.
- 4 Q How far is it as the crow flies?
- 5 A Probably three and a half, four miles.
- 6 Q Mr. Thompson, do you know the family of Gene Leroy
- 7 Hart?
- 8 A No.
- 9 Q Do you know Bo Ballou?
- 10 A Yes, I know Bo.
- 11 Q Do you know Nancy Baker?
- 12 A No.
- 13 Q Millie Littleday?
- 14 A No.
- 15 Q Do you know Thurmond and Miller Johnson?
- 16 A No.
- 17 Q Do you know who used to live up there in the cellar
- 18 as a little boy some years ago?
- 19 A No, I don't.
- 20 Q Do you know anybody that lives just down the road
- 21 from where that cellar and that cave are?
- 22 A I know several people that live around there.
- 23 Q Does a lady by the name of Ballou live around down
- 24 below from the cellar and the cave?
- 25 A Yes, there's some Ballous that live down there.

1 Q All right, and there's a Ballou School out there,
2 too, isn't there?

3 A Yes.

4 Q And a Ballou Baptist Church?

5 A Yes.

6 Q You said you and Mr. Colvin went hunting; is that
7 correct?

8 A Yes.

9 Q And that you saw a sack of flour. Would you des-
10 cribe that sack of flour for me?

11 A It was in two red sacks and it was tied up in a
12 knot.

13 Q How much flour would you say was in the sacks?

14 A Oh, I don't -- it was just about that much in a
15 red sack.

16 MR. ISAACS: Could the record show that he's indi-
17 cating about six inches in a red sack - six inches of flour.

18 Q You said where someone was living in a cave. Would
19 you tell me why you have the opinion that someone was living
20 in that cave?

21 A Well, there was a lot of sign where someone had
22 been going in and out of the cave.

23 Q Like what?

24 A Where the ground was rubbed down and stuff. There
25 was tracks.

1 Q All right, did you see any item of personal prop-
2 erty in the cave?

3 A No.

4 Q Did you see anything other than the sack of flour,
5 pile of human excrement?

6 A Not at this time, no.

7 Q Describe for me more in detail where the human
8 excrement was in relationship to the cave down on a little
9 stream?

10 A It was probably -- it was eight or ten yards down
11 from the cave, straight west from the cave down the branch.

12 Q Straight west?

13 A Yes.

14 Q This newspaper that you said that was there by
15 the human excrement, would you describe it for me?

16 A It was just a piece of newspaper lying there by
17 it. It was wadded up.

18 Q All right, how big a wad was it?

19 A It wasn't very big.

20 Q Can you show me in your hand?

21 A Well --

22 Q About the size of your hand?

23 A About the size of my hand, yes.

24 Q You went up to -- what did you do with the newspaper?

25 A We didn't bother the newspaper.

1 Q How long were you there at the cave?

2 A Oh, maybe three to four minutes.

3 Q Then what did you do?

4 A We left, came to the Girl Scout Camp.

5 Q When you got up to the Girl Scout Camp, who did
6 you talk to?

7 A I don't remember his name.

8 Q Was it an OSBI Agent?

9 A No, it wasn't. It was -- he's a police officer
10 there at Locust Grove and we told him what we found and he
11 called down at the Girl Scout Camp.

12 Q Did anybody tell you at that time that that's
13 where Gene Hart used to live when he was a little boy?

14 A No.

15 Q Did anybody mention Gene Hart's name then?

16 A No.

17 Q During the time you were at the scout camp with
18 this bag of flour, did anybody mention Gene Hart's name?

19 A Not at this time, no.

20 Q And then what happened?

21 A We took the officers back down to where we found
22 the stuff, where we found the bread sacks.

23 Q Who went with you back down there?

24 A Down to the cave, it was Rice and another officer.

25 Q Would it be Charlie Newton of the Oklahoma Highway

1 Patrol -- big fellow?

2 A He's a big guy. I didn't think he was with the
3 Highway Patrol.

4 Q What happened when you got back to the cave?

5 A Well, we found several items.

6 Q What did you find?

7 A There was a bean flip.

8 Q What do you mean by "bean flip"?

9 A Well, some people call it a slingshot; one with
10 a fork on it.

11 Q What kind of fork did it have on it?

12 A I don't remember. I just remember it was a bean
13 flip.

14 Q Was it homemade or store bought?

15 A Well, you can make -- I don't remember whether it
16 was store bought or not but I remember there was a bean flip
17 there. It was broke. I didn't pay that much attention to it.

18 Q What kind of rubber did it have on it?

19 A It was a store bought rubber is what it was. I
20 remember that because it was broke.

21 Q What type of leather did it have on it for a holder
22 to fire your shot with?

23 A It was just a piece of leather. I couldn't tell
24 you what kind of leather or anything but it was a piece of
25 leather.

1 Q Who found that bean flip, Mr. Thompson?

2 A Johnnie.

3 Q Were you there when he found it?

4 A Yes.

5 Q Where was it found?

6 A By the cellar.

7 Q How far from the cellar?

8 A Oh, probably three or four foot.

9 Q Just laying out there on the ground?

10 A Yes.

11 Q In plain view?

12 A No -- I don't remember. I didn't find it. I
13 remember him.

14 Q Was anybody else there with you and Johnnie when
15 Johnnie found the bean flip?

16 A The officers.

17 Q Would that be Mr. Rise and Mr. Newton?

18 A Yes.

19 Q What else did you find up there?

20 A We found a pillowcase that had some groceries and
21 stuff in it.

22 Q What kind of pillowcase?

23 A White pillowcase.

24 Q Have a knot tied in it?

25 A No.

1 Q Anything holding it together?

2 A No.

3 Q What kind of groceries did it have in it?

4 A It had orange juice -- a can of orange juice and
5 I don't remember just all that was in it but I remember the
6 orange juice. There was some orange juice in it.

7 Q W. R., if you're going to hunt deer, you take
8 stuff to eat with you, don't you?

9 A I might take a candy bar or something like that.

10 Q Have you ever gone out and taken Beenie Weenies,
11 crackers and cheese when you're hunting deer?

12 A No.

13 Q Have you ever taken them out with you on a coon
14 hunt?

15 A No.

16 Q A lot of guys do, don't they?

17 A Yes, I imagine they do.

18 Q A lot of guys have little picnics when they go?

19 A I never had a picnic when I went hunting.

20 Q Lots of guys take along something to drink too,
21 don't they?

22 A Yes, I take a canteen a lot of times.

23 Q Some people take along something a little stronger
24 than a canteen?

25 A Yes.

1 Q Now, Mr. Thompson, did you see any beer bottles in
2 there?

3 A No.

4 Q Beer cans?

5 A No.

6 Q Did you see any bottles or cans of any type?

7 A Yes.

8 Q Tell me about those?

9 A There was a lot of cans laying around but I don't
10 remember what they was. They was, you know, these pop-top,
11 you know, different pops, some of them.

12 Q Is that a pretty good place to hunt when you are
13 going to go hunting?

14 A Yes, it is.

15 Q Pretty good place to hunt deer?

16 A Yes.

17 Q A lot of guys go there and hunt, don't they?

18 A (No response.)

19 Q Well, you've got to sneak around to get there,
20 don't you?

21 MR. WISE: If it please the Court, we ask that he
22 let the witness answer the questions.

23 THE COURT: Sustained.

24 A It's a pretty good place to hunt and it's pretty
25 hard to get to from some areas. There's not too many people

1 that hunt right in there.

2 Q So we can say that some of that stuff could have
3 been left there by hunters?

4 A Yes, we could.

5 Q Tell me, what else was in that pillow sack, Mr.
6 Thompson -- pillowcase, excuse me.

7 A All I remember is orange juice and there was some
8 canned stuff. I don't remember what it was.

9 Q Did you find anything else in the cellar-cave
10 vicinity?

11 A There was a pair of panties, in the cellar.

12 Q What kind of panties?

13 A They was red with black lace.

14 Q How big?

15 A I don't know. They weren't very big.

16 Q Were they small?

17 A Yes.

18 Q Like little girl's underwear?

19 A I don't know whether they would have been or not.

20 Q Who found those?

21 A One of the officers.

22 Q Which one?

23 A I believe it was Officer Rice.

24 Q When Officer Rice found those, were you present?

25 A Yes.

1 Q Anybody else present?

2 A Johnnie and the other officer.

3 Q What was done with the underwear that you found in
4 the cellar?

5 A We took -- they took them back to the Girl Scout
6 Camp.

7 Q Did you find anything else down in the cellar area?

8 A There was some pictures.

9 Q Who found those?

10 A I don't remember who found them.

11 Q Who called them to your attention?

12 A One of the officers and Johnnie, I believe.

13 Q Tell me where they were found?

14 A Right there on the outside of the cave.

15 Q How far from the cave?

16 A That was the cellar instead of the cave; I'm sorry.

17 Q The cellar?

18 A Yes.

19 Q Can you describe for me approximately how far from
20 the cellar they were?

21 A Approximately ten yards.

22 Q What direction?

23 A East.

24 Q That would put them down toward the cave on the
25 end of the slope?

1 A Yes.

2 Q Did you find anything else other than pictures and
3 bean flip and some panties and a sack of canned goods?

4 A There was a newspaper.

5 Q What kind of newspaper?

6 A I believe it was Tulsa.

7 Q Tulsa World?

8 A I don't remember.

9 Q What was done with that?

10 A The officers took it back to Camp Scott.

11 Q How about the human excrement?

12 A They took it back to Camp Scott.

13 Q Tell me how the human excrement was gathered as
14 evidence?

15 A It was on a -- you know, like when someone runs
16 for office and they've got these -- one of these stills? It
17 was put on a sheet of Sheriff Weaver's deal where he runs
18 for office.

19 Q Pretty good place for it?

20 A I guess.

21 Q After they put it on Sheriff Weaver's poster, what
22 happened?

23 A They took it back to the camp -- Camp Scott.

24 Q And how did they transport the underwear?

25 A Plastic bag, I believe.

1 Q Did you see who touched the underwear?

2 A I don't think anyone touched it.

3 Q Could you give me an approximation of the size
4 of this underwear?

5 A No, I couldn't.

6 Q Would it fit on a woman?

7 A Yes.

8 MR. WISE: If it please the Court, the question
9 has been asked and answered several times.

10 MR. ISAACS: Well, he said it would fit on a
11 woman.

12 THE COURT: Objection is overruled. It's been
13 answered.

14 Q Would it fit on a big woman?

15 A No, I don't think so.

16 Q Have to be a smaller lady?

17 A Well, my wife is pretty good sized and I know she
18 couldn't wear them.

19 Q Well, Mr. Thompson, changing the subject back to
20 these canned goods. Who transported those back to the Girl
21 Scout Camp?

22 A The officer.

23 Q Which one of them transported them?

24 A Well, we all came out together, I believe the last
25 time.

1 Q Mr. Thompson, did you see anybody in the area
2 down there that date?

3 A No.

4 Q Did you see any men or women on the road, going
5 down to that area?

6 A Not that I can remember. We probably met several
7 cars but I don't remember.

8 Q Who owns that property where the items were found?

9 A I don't have any idea.

10 Q Can you tell me which day and what time they were
11 found?

12 A It was in June; it was the week after the girls
13 were killed, in the same week but it was later in the week,
14 either Thursday or Friday. I believe it was Thursday.

15 Q About what time of day was it when you and Mr.
16 Colvin found that stuff?

17 A It was in the afternoon; it was around 1:30 or
18 2:00 o'clock somewhere around then.

19 Q W. R., did you open those pictures up and look
20 at them?

21 A No, we did not.

22 Q What were the condition of those pictures?

23 A They were stuck together and wadded up.

24 Q Had it been raining?

25 A It had rained earlier in the week.

1 Q Had it rained that day?

2 A No, it was hot.

3 Q Were those pictures laying out in the open?

4 A Yes.

5 Q Were they out in a grassy area?

6 A It's not grassy; it's brushy.

7 Q It's got a lot of trees and thorny bushes and
8 stuff?

9 A Yes, it's got a lot of thorns and stuff.

10 Q Mr. Thompson, did you go inside the cellar out
11 there that date?

12 A Yes.

13 Q Did you look around?

14 A In the cellar?

15 Q Yes, sir.

16 A No. I just -- I did look around.

17 Q Did you see any other items of personal property
18 in the cellar?

19 A No, I did not.

20 Q Did you see any glasses in there?

21 A No, but I remember that there was a case that we
22 did find that day.

23 Q What kind of case?

24 A It was a brown kind of plastic deal that you carry
25 your glasses in.

1 Q Where was that found?

2 A On the outside.

3 Q Describe for me in direction and how far from the
4 cellar?

5 A Probably four or five foot from the cellar, east
6 of the cellar, between the cave and cellar.

7 Q Now, that little stream that runs in front of the
8 cellar, runs north and south, does it not?

9 A Yes, it does.

10 Q Did anybody bring in the police dogs down there to
11 trail somebody?

12 A The next day, I think.

13 Q Mr. Rice, the fellow that was down there with
14 you, lives just up the road from that area, doesn't he?

15 A He lives around there somewhere. I think he lives
16 around Chouteau.

17 Q Mr. Thompson, did your dogs trail or see anybody
18 out there?

19 A They acted like they did, acted like they sensed
20 someone.

21 Q Did you ever see any glasses that were reported
22 to be found in that area?

23 A I don't remember any glasses, no.

24 Q Mr. Colvin say anything about seeing some glasses?

25 A Not that I can remember.

1 Q That's the evidence that you fellows had -- I
2 mean --

3 A I don't remember.

4 Q The property that you had, whether it's evidence
5 or not, we don't know, do we?

6 A What, now?

7 Q That's the property you had, that you picked up
8 at the cellar that day?

9 A Yes.

10 MR. ISAACS: I think that's all, Judge.

11 THE COURT: Redirect?

12 REDIRECT EXAMINATION

13 BY MR. WISE:

14 Q The officers picked up several things while you
15 weren't there, did they not?

16 A Well, we were there but I don't remember every-
17 thing.

18 Q And one other question in response to Mr. Isaac's
19 question to you. I think you said it was about three and a
20 half miles as the crow flies from the cave up to the Girl
21 Scout Camp?

22 A Yes.

23 Q Would following Spring Creek be just about as the
24 crow flies?

25 A Yes, after you got to Spring Creek.

1 MR. WISE: No further questions.

2 THE COURT: Recross?

3 RECROSS EXAMINATION

4 BY MR. ISAACS:

5 Q Spring Creek doesn't run by the Girl Scout Camp,
6 does it?

7 A No, Snake Creek does.

8 Q Snake Creek does?

9 A And you have to go down to Snake Creek and over
10 to Spring Creek.

11 Q Mr. Thompson, during the time out there hunting
12 that morning, did you know whose property you were on
13 when you were there at the cellar?

14 A No.

15 MR. ISAACS: Thank you.

16 MR. WISE: We have no further redirect. And we'd
17 ask that this witness be finally excused so he can go back
18 to his normal life.

19 THE COURT: Any problem with that?

20 MR. ISAACS: No.

21 THE COURT: You are excused.

22 (WHEREUPON, the witness was excused and withdrew
23 from the hearing room.)

24 MR. FALLIS: The State would call Leon Rice.

25 THE COURT: Would you raise your right hand. Do

1 you swear to tell the truth, the whole truth and nothing but
2 the truth, so help you God?

3 THE WITNESS: I do.

4 LEON RICE,

5 called as a witness on behalf of the State, having been first
6 duly sworn, testifies as follows:

7 DIRECT EXAMINATION

8 BY MR. FALLIS:

9 Q State your name, please, sir.

10 A Leon Rice.

11 Q And your business, profession, or occupation, Mr.
12 Rice?

13 A I work for the Department of Public Safety, Lectro
14 Division and Highway Patrol.

15 Q How long have you been engaged in that particular
16 business or profession?

17 A Four years.

18 Q Were you so engaged during the month of June, 1977?

19 A Yes, sir.

20 Q Mr. Rice, directing your attention to June 16th of
21 1977, were you engaged as a patrolman?

22 A Yes, sir.

23 Q And do you recall what hours you worked that day?

24 A At that time, they were plenty long. I believe it
25 was from somewhere around 7:00 until late that afternoon.

1 Q And can you tell the Court if at any time during
2 that day you had a notation to meet a person by the name of
3 Willis Thompson?

4 A Yes, sir.

5 Q Do you recall where you first met that person?

6 A At Camp Scott.

7 Q And as a result of meeting Willis Thompson, did
8 you do anything?

9 A Yes, sir, we were told by our superiors to go down
10 with them, accompany them back to a place where they had
11 said they had found some of this stuff.

12 Q You say "we were told", who was with you?

13 A Charles Newton.

14 Q Who is Charles Newton?

15 A He is a Trooper out of Vinita District.

16 Q All right, did you and Trooper Newton go back with
17 these men?

18 A Yes, sir.

19 Q Can you generally describe for His Honor, where you
20 went?

21 A We left Camp Scott, we went south on 82 Highway,
22 down to the Earbob Road and went down the Earbob Road as --
23 I'm not sure just how far, and then we drove back in across
24 the field and went back and parked at a fence there and
25 walked on up to where these gentlemen had taken us. It's

1 probably off 82, probably been four mile or so, or five of
2 them blacktop.

3 Q Now, sir, this area where these men took you,
4 what did you observe, if anything, in the way of structures
5 or matters like that in the area?

6 A Well, where these gentlemen had taken us there was
7 a cellar and a cave at the area where they'd taken us.

8 Q Mr. Rice, I'll hand you, sir, what has been marked
9 for purposes of identification as State's Exhibit No. 64,
10 photograph. Would you examine that and tell His Honor if
11 you can recognize the subject matter of the photograph?

12 A Yes, sir, I do.

13 Q What is the subject matter, please?

14 A It is a cellar that we went up to that date.

15 Q Does the photograph correctly and accurately
16 depict the scene as it appeared to you on that date?

17 A Yes, sir.

18 Q Concerning the photograph marked for identifica-
19 tion purposes as State's Exhibit 65, would you examine that
20 photograph, please?

21 A (Witness complies.)

22 Q Do you recognize that matter?

23 A Yes, sir, that's the cellar.

24 Q That is the cellar?

25 A Yes, sir.

1 Q Does it correctly and accurately depict the
2 scene as it appeared that day?

3 A Yes, sir.

4 Q State's Exhibit No. 66, another photograph, sir,
5 would you examine it, please?

6 A (Witness complies.) Yes, sir, that's the
7 entrance to the cave there.

8 Q Now, this cave area, can you give His Honor some
9 indication as to where it was with relationship to the
10 cellar area?

11 A Facing north, it would have been just to the left
12 of the cellar. There is a small creek that runs down
13 through there which is dry and this cave would have been a
14 little bit to the left of the creek.

15 Q All right, sir, and State's Exhibit No. 67 and 68,
16 would you examine those two photographs, please?

17 A (Witness complies.) This is more photographs of
18 this cave, yes, sir.

19 Q Do those accurately and correctly depict the
20 scene as it appeared that day?

21 A Yes, sir.

22 MR. ISAACS: Judge, can I ask him one question on
23 voir dire?

24 THE COURT: Yes. Excuse me, Mr. Fallis. Are you
25 going to offer these?

1 MR. FALLIS: Yes, sir, Your Honor.

2 THE COURT: Why don't you ask your voir dire ques-
3 tion now.

4 VOIR DIRE EXAMINATION

5 BY MR. ISAACS:

6 Q Mr. Rice, what direction is this picture taken?

7 THE COURT: Refer to it by exhibit number.

8 Q Exhibit No. 66 -- 65, excuse me.

9 A The photographer would had to have been standing
10 on the west side of the cellar.

11 Q On the west side?

12 A Yes, sir.

13 MR. FALLIS: If it please the Court, we would
14 offer State's Exhibits 64 through 68, a series of photographs,
15 identified by Officer Rice.

16 THE COURT: Any objection.

17 MR. ISAACS: No objection.

18 THE COURT: Received.

19 DIRECT EXAMINATION (Resumed)

20 BY MR. FALLIS:

21 Q Mr. Rice, when you and Mr. Newton and these men
22 had arrived back at this location, did you engage in activity
23 while you were there?

24 A Yes, sir. We started looking around the area and
25 while looking around, they showed us the cave and cellar and

1 we saw down by the stream there at the cave, we saw a pair
2 of gloves laying there by the cave and we walked on down
3 and we saw some pieces of newspaper which had been wadded
4 up and we made a swing back up and we was just going over
5 the whole area and we saw different kinds of cans and items
6 laying around and we saw a bean flip and some pictures and
7 a piece of -- there was a piece of a roll of masking tape.

8 Q There was a piece of a roll of masking tape?

9 A Yes, sir, it looked like part of it had been used.
10 It wasn't a full roll, like normally they'd be pretty good
11 sized. It was just smaller.

12 Q Can you tell His Honor where the roll or piece of
13 the roll of masking tape was in relationship to either the
14 cellar or the cave?

15 A Facing north, it would have been to the left of
16 the cellar entrance.

17 Q In addition to the items of newspaper, the gloves,
18 the beanflip or sling-shot, the masking tape, were there any
19 other items that you observed or saw while you were there?

20 A I saw some pieces of some kind of round tubing; it
21 looked like rubber tubing laying there and I saw this white
22 sack - it appeared to be a pillowslip with canned and looked
23 like parts of old food containers and what-have-you in it.

24 Q Mr. Rice, I'll hand you what's heretofore been
25 marked as State's Exhibit No. 36. Would you examine the

1 items within this exhibit, please?

2 A (Witness complies.)

3 Q Do you recognize the items there in State's Exhibit
4 No. 36?

5 A Yes, sir.

6 Q What are those two items, please?

7 A They are two photographs which were found at the
8 cellar or out from the cellar there.

9 Q Out from the cellar?

10 A Yes, sir.

11 Q And who found those?

12 A Myself and Charlie Newton was walking around and
13 we both saw them and pointed them out and we later came back
14 and collected them.

15 Q All these items that you've been talking about,
16 you collected them?

17 A At a later, yes, uh-huh.

18 Q Are we talking about the same date or a different
19 date?

20 A Same date.

21 Q During this same trip?

22 A No. Well, yes, I stayed there, yes, sir, myself
23 it was, yes, sir.

24 Q Can you tell His Honor how you made this collection,
25 please?

1 A We went around and pointed out different items
2 that was lying on the ground and Mr. Thompson and I stayed
3 at the scene and Charlie Newton went back to camp to tell
4 them what we had found and they advised him to take some
5 boxes and sacks and for him and I to gather the evidence
6 or things we had found there and bring it back in.

7 Q I'll hand you, sir, what has been marked for
8 purposes of identification as State's Exhibit No. 70.
9 Would you examine the contents of that packet, please?

10 A (Witness complies.) That is the beanflip that
11 we picked up there that day.

12 Q How can you tell that that's the same bean flip
13 you picked up?

14 A It has my initials on it.

15 Q Did you place them on that day, sir?

16 A Yes, sir.

17 MR. FALLIS: And I'm one number out of order here,
18 Your Honor.

19 Q But I'll ask you, Mr. Rice, if you'll examine
20 what has been marked for identification purposes as State's
21 Exhibit No. 69. Can you examine marked Exhibit No. 69 and
22 tell His Honor if you have seen that particular item or
23 items before this date?

24 A Yes, sir, I have. That one has my initial on it.

25 Q Your initials are on it?

1 A Yes.

2 Q Would you tell His Honor where and when you first
3 saw that item?

4 A I saw it on our trip with Mr. Thompson and Trooper
5 Charlie Newton up there when they had taken us back over
6 to the cave and cellar and this here was down the creek just
7 a little bit from the cave there.

8 Q Down in the creek area?

9 A Would have been just a little to the left of the
10 creek area, down to the creek area, just right off the
11 creek area.

12 Q Now, you have another piece that came from Exhibit
13 No. 69; do you recognize that?

14 A Yes, sir, it's another piece of newspaper that
15 was taken out there that day.

16 Q How do you know that's the same that you saw there
17 that day?

18 A It has my initials on it also.

19 THE COURT: Mr. Fallis, so I won't become confused,
20 is 69 the one that he identified as the first piece of news-
21 paper?

22 MR. FALLIS: They were both marked together in
23 one big --

24 THE COURT: They're both in one? They both
25 constitute State's Exhibit 69?

1 MR. FALLIS: Yes, Your Honor.

2 Q Mr. Rice, I hand you what's been marked for iden-
3 tification purposes as State's Exhibit No. 71. Would you
4 examine that, please?

5 A (Witness complies.) Yes, sir, this is a pair of
6 gloves that was taken from right there at the big entrance
7 of the cave the same day.

8 Q All right, sir, and can you tell the Court how
9 you recognize these as being the same gloves?

10 A They also have my initials on them.

11 Q The "L. R." that I see on the palm?

12 A Yes, sir, and there's one on the other one.

13 Q Mr. Rice, the time you were there, I believe you
14 listed an item of sling-shot, observing masking tape, the
15 newspaper, the gloves, canned items, the photographs; were
16 there any other items that you recall?

17 A There was a glass case, like you put your glasses
18 in that we picked up.

19 Q Who picked that up?

20 A I'm not sure who picked it up. I remember seeing
21 it but as far as who picked it up, I don't remember.

22 Q And can you tell His Honor where the glasses case
23 was found with reference to the cave or the cellar area?

24 A I'm not really sure where they were laying.

25 Q Okay. How long did you remain there at the location,

1 Mr. Rice?

2 A Probably two, two and a half hours, all together.

3 Q Did any other officers arrive while you and Mr.
4 Newton and the two gentlemen were there performing duties
5 and activities as you have just described?

6 A Not at this time.

7 Q Okay. At any later time, did any officers arrive?

8 A No, sir.

9 Q Do you know a man by the name of Arthur Linville?

10 A Yes, sir, I do.

11 Q How do you know him?

12 A From working with him over at Camp Scott.

13 Q Could you tell His Honor if you had any kind of
14 communication after your visit to this location?

15 A Yes, sir, after we left this location, we went
16 back to Camp Scott at the trailer that the OSBI had set up
17 there and this is where I contacted Linville and we were
18 going through the items which we had brought back.

19 Q These items that you have identified here today?

20 A Yes, sir.

21 Q Who did you physically deliver these items to?

22 A Officer Linville.

23 Q Did you have any conversation with Mr. Linville
24 concerning the scene that you had been searching there?

25 A Pardon me?

1 Q Did you have any conversation with him about the
2 scene that you had been searching?

3 A Yes, sir, we did.

4 Q All right. Did Officer Linville remain in your
5 company at that time?

6 A Yes.

7 Q Did he ever leave your presence, sir?

8 A No.

9 Q Now, I want to place before you what has been
10 marked for purposes of identification as State's Exhibit
11 No. 72. Would you look at that item, please, and tell the
12 Court if you have seen that item or one like it before this
13 date?

14 A Yes, sir, I have seen one.

15 Q Can you tell His Honor when and where you saw that
16 item first?

17 A It was on the day that we went to the cave and
18 cellar with Mr. Thompson and the squirrel hunters. That is
19 the first time that I saw a roll of tape like that.

20 Q Is this the partial roll of masking tape that you
21 earlier described as being at the location?

22 A Yes, sir.

23 Q Mr. Rice, the glasses case, can you tell His Honor
24 if it was removed along with the other items?

25 A I'm sure that it was picked up at the same time.

1 Q When you went back to Camp Scott and you saw
2 Officer Linville, do you know if it was among the items
3 that was delivered to him?

4 A I'm just not sure. I remember seeing it, but I
5 don't remember.

6 MR. FALLIS: If it please the Court, in reference
7 to State's Exhibits No. 69, 70 and 71, we would not offer
8 them at this time, but would wait further identification
9 by appropriate officers.

10 THE COURT: All right.

11 CROSS EXAMINATION

12 BY MR. ISAACS:

13 Q Mr. Rice, how long have you lived in this area?

14 A All my life, sir.

15 Q Mr. Rice, are you a coon hunter?

16 A I've hunted some, yes, sir.

17 Q Are there a lot of coon hunters in the Locust
18 Grove area?

19 A Seems to be.

20 Q Do they hunt in the area around the Girl Scout
21 Camp and south of that area?

22 A All of that area down in there I have hunted.

23 Q That's a pretty good place to hunt?

24 A Yes, sir.

25 Q Lots of deer out there, aren't there?

1 A Yes, sir.

2 Q If you want to hunt out there, do you have to get
3 permission from anybody to go in there?

4 A Normally.

5 Q It's a good idea to get permission?

6 A Yes, sir.

7 Q But not everybody always gets permission, do they?

8 A No, sir.

9 Q I notice that sling-shot or beanflip, as Mr.
10 Thompson calls it, have you seen a beanflip like that before
11 -- in State's Exhibit No. 70?

12 A Yes, sir, I've made a few of them myself.

13 Q Do you have children, Mr. Rice?

14 A Yes, sir.

15 Q Do they make beanflips?

16 A Yes, sir.

17 Q And it is not uncommon to find beanflips like
18 that in this area, is it?

19 A I haven't seen one in awhile, just like that.

20 Q Now Mr. Rice, do you know any of the members of
21 Gene Leroy Hart's family?

22 A No, sir.

23 Q Do you have knowledge that Mr. Hart's family used
24 to live in the area of the cellar when he was a small boy?

25 A Just hearsay.

1 Q Well, it's a known fact, known throughout the
2 community that Mr. Hart used to live up there around that
3 cellar, isn't it?

4 A That I'm not sure of. Actually, I live across
5 the river from there. I'm not that sure.

6 Q And there are a lot of Mr. Hart's relatives live
7 in that area?

8 A Again, I've heard this.

9 Q This cave we've been talking about is really a
10 tunnel, isn't it; it has an opening on one end and then an
11 entranceway on the other way, doesn't it?

12 A Well, it's really a small cave; really. I don't
13 know.

14 Q But it has an entrance and an exit, doesn't it?

15 A Yes, sir, kind of makes a little circle. The
16 entrance is quite a bit larger than the exit.

17 Q A lot of snakes in that area?

18 A Yes.

19 Q A lot of scorpions?

20 A I'm not sure about that but I did see a lot of
21 snakes.

22 Q Any centipedes up in that area?

23 A No, sir.

24 Q Will you describe for me exactly where those gloves
25 were. If you were standing on top of the cellar up on the

1 side of the hill, would you describe how to get to the gloves?

2 A Okay, are you talking about if I was standing
3 on top of the cellar, how to -- where I first saw the
4 gloves?

5 Q Yes.

6 A Okay. If I was standing on top of the cellar,
7 they would have been to the west and you would either have
8 went back down south a little ways or north a little ways
9 and went down in the creek because there's kind of a bluff
10 there where the cave was and it is kind of briary and bushy
11 and you had to go up there and go down there that way.

12 Q About how far from the cellar were these gloves?

13 A Probably -- if you just went right through the
14 briars and everything, it would probably have been back near
15 the back back there; maybe not quite that far.

16 Q Do you know who owns that property?

17 A No, sir.

18 Q It is not uncommon for somebody to wear gloves
19 if they are out there chopping wood, is it?

20 A Some people do.

21 Q Some weekend woodsmen that come down from Tulsa
22 would need to wear gloves, wouldn't they?

23 A I never wear them myself. I'm sure some people
24 do, maybe.

25 Q Was there anything else lying there in the area

1 of these gloves that you found?

2 A Yes, sir, those pieces of newspaper were just
3 down a little bit south along the creekbed, where someone
4 had used the bathroom.

5 Q Are there any cans in that area?

6 A In this creekbed, I never noticed any. Most of
7 them though were up around the cellar or in the area up on
8 top of that.

9 Q Tell me where you found the gloves, would you
10 describe for me from the same vantage point, that being the
11 top of the cellar, how you would have to travel to find this
12 beanflip?

13 A If you had stepped off the cellar, you could have
14 went to it. There was a little larger tree just -- had been
15 to the left and kind of the front which --

16 Q North?

17 A North. Front would have been to the left of that
18 over there, not very far from it. It was a pretty close
19 shot.

20 Q Just a few feet from the cellar?

21 A Yeah, it wasn't very far.

22 Q Was there anything lying there in the area of the
23 beanflip?

24 A Well, real close there was the pictures and the
25 piece of tape. They were in the same -- pretty close same

1 area there.

2 Q Describe for me, from the top of the cellar, how
3 far it was to the pictures?

4 A Oh, you could have probably sat on the cellar and
5 threw them to where they was at. It wasn't too far. It
6 was about as far as from here to that table, it seemed like.

7 MR. ISAACS: Let the record show ten feet.

8 Q Were these pictures in an open area?

9 A Yes, sir, there was some grass and I think a
10 few briars there.

11 Q Who is the first person that found the pictures?

12 A Myself and Charlie Newton was just walking along
13 together and both of us seen them about the same time.

14 Q Tell me what kind of cans were up in the area of
15 the cellar?

16 A Oh, there were some vienna sausage cans; there
17 was a Prince Albert can which had Band-aids and matches in it;
18 and there were -- I remember an orange juice can. I believe
19 it was Awake or something like that, just an orange juice
20 can.

21 Q Were there any other cans in that area?

22 A There were some larger cans, you know, like maybe
23 they had contained food but there was no identification on
24 it. You know, they were just food cans, some of them looked
25 like they had been kind of burned or something, you know,

1 like when you take a coffee pot and heat water, there was
2 some smoke, a little bit. They didn't have no identifica-
3 tion on it.

4 Q Did you collect those?

5 A There was some few cans that was collected, yes.
6 I know there was one or two of those, I think, yes, and
7 there was, I think, brought back two or three of those
8 little vienna sausage cans.

9 Q Did you bring back any other cans?

10 A Brought back that Prince Albert can with the matches
11 and Band-aids in it.

12 Q Where was the Prince Albert can in reference to
13 the top of the cellar?

14 A Facing north, it would have been to your right.

15 Q How far?

16 A Oh, probably ten or fifteen foot, somewhere along
17 in there.

18 Q The roll of masking tape was found how far from
19 the cellar, standing on top of the cellar?

20 A Oh, I'd say probably seven, eight foot.

21 Q Which direction?

22 A That would have been to the left or to the north-
23 west.

24 Q You say you found some pieces of tubing?

25 A I said there was little rubber - round rubber,

1 stretch rubber.

2 Q Would that have been like the tubing off the
3 sling-shot?

4 A Yes.

5 Q How many pieces?

6 A There were several pieces. I don't remember
7 exactly how many.

8 Q What did you do with those?

9 A We also picked them up and taken them back with
10 us.

11 Q Where were they found?

12 A I can't remember the exact place where they were
13 laying.

14 Q Were they inside the cellar or outside?

15 A No, sir; they were outside.

16 Q Did you find those?

17 A I'm not sure about those, sir.

18 Q Where was the pillowslip when you got up in the
19 cellar area?

20 A Okay. It was also. It had been just about
21 straight north of where you walk down there, the door of
22 the cellar and it was in the same -- there was some briars
23 down there. It was kind of a little old dim trail that led
24 up to a fence back up there and it was laying to your left
25 and then north of the cellar.

1 Q Did you find any ladies underwear in the cellar?

2 A Yes, sir.

3 Q Describe those for me.

4 A They were a pair of bikini panties and they were
5 red with black on them.

6 Q Were they cotton or nylon?

7 A They were nylon.

8 Q Did you make a note of the size of that underwear?

9 A No, sir.

10 Q What was done with the ladies underwear?

11 A They were also taken back into the trailer -- OSBI
12 trailer.

13 Q Did you find any glasses in the area of the cellar?

14 A In this glasses case there was some glasses but
15 I don't know what they looked like or anything.

16 Q Did you take them out and look at them?

17 A No, sir.

18 Q Did anybody ever identify those as coming from the
19 Camp Scott area?

20 A That, I'm not sure about. I'm sure someone did
21 when we got back in because all of this stuff was collected
22 and taken back in.

23 Q When you went out there to collect evidence, you
24 said Mr. Newton was with you?

25 A Yes, sir.

1 Q W. R. Thompson and Mr. John Colvin; is that cor-
2 rect?

3 A Yes, sir.

4 Q Tell me how you and Mr. Newton came to be the ones
5 sent out to the cellar area to pick up this evidence or
6 investigate a possibility of somebody being in there?

7 A Well, it was left up to captain and lieutenants
8 and they were just to go around and pick out ones to send
9 different places. We were going numerous places during
10 this occasion and it was either Captain Mitzer or Lieutenant
11 Dean Neal that sent us on this mission.

12 Q Where else had you and Mr. Newton been?

13 A Where else have we been?

14 Q Yes, sir.

15 A We had - myself, I had been north of a place over
16 there and back west of what they call "Sam's Corner". We
17 walked an area back out in this area.

18 Q Did you find any of the evidence in that area
19 that --

20 MR. WISE: If it please the Court, we would object
21 to this line of questioning on the grounds that it is outside
22 the scope of direct examination. We are getting far afield
23 from either the cave or the Camp Scott area.

24 THE COURT: Mr. Isaacs, I am going to let you
25 continue with this line of questioning, only if you intend

1 to compare items found in one place with another to see if
2 there was any mix-up about where items are found. I'll
3 allow a couple of more questions along that line.

4 Q Did you find any items of evidence?

5 A Well, basically, what people would -- you know,
6 they would pass word on to some of the officers, get us
7 word down there that maybe there would be a cave somewhere.
8 A lot of times, we wouldn't find anything but we went on a
9 lot of these missions, you know, where we'd find a small
10 cave. Maybe there wasn't one at all, but we checked all
11 these things out, you know, as people come and go. That is
12 basically what we done running around.

13 Q Did you find any P. A. cans in the other places?

14 A I didn't see anything up there where we went that
15 day.

16 Q Did you find any other Beanie Weenie cans?

17 A Oh, I seen some cans in a trash pile alongside of
18 a little old road.

19 Q Quite a bit of trash in the Camp Scott area,
20 isn't there and that's because they've got a lot of summer-
21 time visitors there?

22 A I didn't -- right there in the camp, I didn't see
23 a whole lot of, you know, cans that I remember.

24 Q Well, at the Twin Bridges area, there is a lot of
25 trash in that area from littering?

1 A There would be some, yes, sir.

2 Q Would there be a lot of campers in there in the
3 summertime?

4 A No, not so much campers. They come down and swim
5 and go back to the house, most of them.

6 Q Would you say hundreds of people come through
7 the area in the summertime?

8 A I am sure that would be correct.

9 Q Thousands?

10 A Well, I don't know about thousands, but I know
11 there is several people that go down there and swim.

12 Q Now this cellar is only a few hundred feet from
13 Spring Creek, is it not?

14 A I'm not familiar with the creek; I know there is a
15 creek there but now what creek it was, I wouldn't -- in
16 comparison to where it runs or anything like that, I wouldn't
17 be real sure.

18 Q You knew where that cellar was and where that cave
19 was before this, did you not?

20 A No, sir.

21 Q You've never been there before?

22 A No, sir.

23 Q A lot of people in the area know about it, don't
24 they?

25 A I'm sure they do.

1 Q A lot of hunters go up there, probably?

2 A That, I couldn't say because I'm not that.

3 Q Did anybody find any masking tape in any other
4 location on any of these hunts that you went on with law
5 enforcement officers?

6 A Not to my knowledge, sir.

7 Q Did anybody find any pieces of tubing or sling-
8 shots similar to the one we have here?

9 A Not to my knowledge.

10 Q Could you describe for me the contents of the
11 pillowslip?

12 A They was a -- I remember there was an orange juice
13 can in there and there was several other cans and there was
14 another small can. The best I remember it wasn't open but
15 it didn't have a label on it. It was just another one of
16 those little pop-top cans, but I can't remember -- I don't
17 remember what it was.

18 Q Mr. Rice, you don't know who put those gloves
19 there, do you?

20 A No, sir.

21 Q You don't know who put those cans, P. A. can and
22 other cans, do you?

23 A No, sir.

24 Q You don't know who put the bean-flip there, do
25 you?

1 A No, sir.

2 Q You don't know who put the masking tape there,
3 either, do you?

4 A No, sir.

5 Q Don't know who put any piece of tubing there?

6 A No, sir.

7 Q Don't know who put the pillowslip there?

8 A No, sir.

9 Q Or the photograph?

10 A No.

11 Q Mr. Rice, what was the condition of the ground
12 that morning out there around the cellar?

13 A It was dry. It was when I was there.

14 Q Had it been raining the previous day?

15 A No, sir, not that I remember.

16 Q Have you told me everything you know about your
17 involvement in the search of the area of the cellar and the
18 cave?

19 A That's about all that I was, you know, around --
20 walked around the area and then, of course, we went back
21 out but that's basically all I know about the area, just
22 the immediate area where we were taken by Mr. Thompson.

23 MR. ISAACS: Thank you.

24 THE COURT: Redirect?

25 MR. FALLIS: I beg the Court's indulgence. We do

1 not have possession of these and I'm going to go --

2 REDIRECT EXAMINATION

3 BY MR. FALLIS:

4 Q Mr. Rice, I'll hand you what's been marked for
5 purposes of identification as State's Exhibit No. 73. Would
6 you examine that item, please?

7 A (Witness complies.)

8 Q Can you tell His Honor, if you have seen that item
9 before this day?

10 A Yes, sir, I have. This is the glass case that
11 was picked up on the same day.

12 Q There appear to be items in the glasses case. I
13 notice you looked inside. Do you recognize as to whether
14 that does appear the same type of contents you had seen in
15 the glasses case on the 16th of June?

16 A It looks similar. I never removed them from the
17 case.

18 Q Your initials are on this?

19 A Yes, sir.

20 Q Where did you turn this to, please?

21 A Also it was brought back in and returned to the
22 trailer there, the OSBI trailer.

23 Q Mr. Rice, is this cave and cellar area visible
24 from the road -- from the road you drive down there?

25 A No, sir.

1 Q And how far would you estimate this cave-cellar
2 area to be from that road?

3 A If you went right straight through the woods, it
4 would probably be about -- oh, to the blacktop, probably
5 maybe a mile or so, right, straight -- right straight through
6 it. But the way we went around, it seemed like it took a
7 long time to get there, back up to the field.

8 MR. FALLIS: Thank you. No other questions.

9 RECROSS EXAMINATION

10 BY MR. ISAACS:

11 Q Mr. Rice, a mile which direction, sir?

12 A Pardon me, sir?

13 Q A mile in which direction?

14 A That would be -- well, if you were standing at the
15 back of the cellar which would be south, right straight
16 through there south, that would be, to my knowledge now, I'm
17 not sure. It seems to me that was about a mile to where we
18 came in.

19 Q Well, it would be closer to come in from the east,
20 wouldn't it?

21 A I don't know, sir. That was the only way that we
22 would come across that field and that was the only way that
23 I was ever in there.

24 Q The trail you mentioned earlier, did that appear to
25 be a well worn trail?

1 A It was a trail used by something, whether it was
2 a varmint or what-have-you, deer, I'm not sure but there was
3 some kind of a little trail.

4 Q Which direction did that run from the cellar? Did
5 it run in a westerly direction?

6 A No. You're standing at the front of the cellar
7 which you would be facing the north, the thing would kind of
8 take off and been to your right and kind of up through a
9 fence there. It would be back to the -- well, it would have
10 been the north, kind of swung to the northeast there just a
11 little bit.

12 Q Northeast?

13 A It would have been straight up from the cellar.

14 Q There is an old well just down from the cellar
15 there, too, isn't there?

16 A I have no idea. I just went to the fence and
17 there's a fence up there and that's as far as I went.

18 MR. ISAACS: Thank you.

19 MR. FALLIS: No other questions, Your Honor.

20 THE COURT: You may step down.

21 (WHEREUPON, the witness was excused and withdrew
22 from the hearing room.)

23 MR. WISE: We'd make the usual request that he
24 be excused.

25 THE COURT: Any problem with that?

1 MR. ISAACS: Well, we might want to call him later.

2 THE COURT: All right. You have an agreement with
3 the Oklahoma Highway Patrol, don't you?

4 MR. ISAACS: Yes.

5 THE COURT: You're excused, subject to that agree-
6 ment.

7 MR. FALLIS: If it please the Court, may I request
8 to the Court that we take our noon recess a little early
9 today and perhaps come back a little earlier?

10 THE COURT: All right. Why don't we break for lunch
11 at this time and I'd like to take up again at 1:00 p. m.
12 So if any spectators want back in this courtroom, show up
13 about 12:45 and we'll break for lunch at this time.

14 (Following a lunch recess, the proceedings continued
15 as follows:)

16 AFTERNOON SESSION

17 THE COURT: Call your next witness.

18 MR. FALLIS: The State would call Agent Linville,
19 Art Linville.

20 THE COURT: You were sworn earlier in this case?

21 THE WITNESS: Yes, Your Honor.

22 ARTHUR LINVILLE,

23 having previously been sworn, was called as a witness on
24 behalf of the State, and further testifies as follows:

25 DIRECT EXAMINATION

1 BY MR. FALLIS:

2 Q State your name to the Court, please?

3 A Arthur Linville.

4 Q You are the same Arthur Linville who earlier
5 testified in this case?

6 A Yes, I am.

7 Q And you have been previously sworn and are under
8 oath.

9 A Yes, sir.

10 Q Mr. Linville, I want to direct your attention to
11 the date of June 16th, 1977, and ask you if you had an
12 occasion at any time during that day to meet a person by
13 the name of Leon Rice?

14 A Yes, sir, I did.

15 Q Would you tell His Honor, where were you when you
16 first met that person?

17 A Yes, sir, I was at the campsite near the edge of
18 a bus which we brought in to use as headquarters and there's
19 a tree right near there and I met him there.

20 Q Were you carrying out any duties as an Agent with
21 the Oklahoma State Bureau of Investigation on that date?

22 A Yes, sir.

23 Q What type of duties were you conducting that
24 particular date, sir?

25 A General investigation. I was assisting and

1 conducting interviews and we, as I recall, I had just got
2 off the phone with the Deputy Director of the OSBI, when I
3 walked out and Mr. Rice walked up to me.

4 Q Were there any persons in your presence besides
5 Mr. Rice at that time?

6 A Yes, sir, there was Charlie Newton and I'm sure
7 one or two other individuals. I don't recall at this time.

8 Q Charlie Newton, is he a man with a law enforcement
9 agency?

10 A Yes, sir, he's an Oklahoma Highway Patrol Trooper,
11 as is Mr. Rice.

12 Q Now, when you saw this Mr. Rice, did you make any
13 observations?

14 A Yes, sir. Mr. Rice had several cardboard boxes
15 containing various items. These items included foodstuffs,
16 cans - I recall an empty bottle. In a white sack, there
17 were spoiled cans of orange juice, as I recall, and numerous
18 other items including a sling shot, glasses and photographs.
19 There were some ladies underwear, red with black trim --
20 just numerous items.

21 Q Sir, the orange juice that you have reference to,
22 you say it was spoiled?

23 A Yes, sir.

24 Q Is this a frozen type of concentrate orange juice
25 or different type of can?

1 A It's a frozen type of concentrate.

2 Q All right, sir. Agent, I place before you what has
3 been marked for purposes of identification as State's
4 Exhibit No. 69. Would you examine that exhibit, please?

5 A Yes, sir.

6 Q And can you tell the Court if you have seen that
7 before this date?

8 A Yes, sir.

9 Q And can you tell the Court when and where you first
10 saw that item?

11 A I first saw this item -- actually, there was two
12 pieces of newspaper. These were included in the items I
13 previously mentioned that Mr. Rice had in his possession.

14 Q Now, do those items of newspaper appear in the same
15 condition as when you first observed them with Mr. Rice?

16 A No, sir.

17 Q In what manner are they different?

18 A Predominantly, discoloration of this newspaper.

19 Q Do you know of your own knowledge what caused
20 the discoloration?

21 A Yes, sir.

22 Q What was that, please?

23 A It's a chemical we refer to as an anhydrant. It
24 is used in an attempt to bring out fingerprints.

25 Q I hand you what has been marked for identification

1 purposes as State's Exhibit No. 70. Will you examine that,
2 please?

3 A Yes, sir.

4 Q Would you look at the content and tell the Court
5 if you have seen the objects therein before this date?

6 A Yes, sir, I have.

7 Q And tell His Honor when and where you first saw
8 that?

9 A On the 16th day of June, 1977, at the same loca-
10 tion in the boxes containing items which were transported to
11 me by Mr. Rice.

12 Q With reference to State's Exhibit No. 71, a pair
13 of gloves, have you seen those before this date?

14 A Yes, sir.

15 Q When and where, please?

16 A June 16, 1977, at the Camp Scott location.

17 Q And can you tell the Court, sir, if that particular
18 exhibit was likewise in Mr. Rice's possession or some other
19 person's possession?

20 A No, sir. As I recall, I obtained this on that date
21 but I obtained it myself at the cave-site after a conversa-
22 tion with Mr. Rice.

23 Q All right, sir.

24 A As a result of that conversation.

25 Q State's Exhibit No. 73, can you tell His Honor if

1 you have seen that item before this date?

2 A Yes, sir, I have.

3 Q When and where, please?

4 A On the same date, June 16th, 1977, at the location
5 where Mr. Rice gave the items to me.

6 Q And I notice you have taken from that particular
7 exhibit, what appears to be a portion of a pair of glasses;
8 is that correct?

9 A Yes, sir.

10 Q Can you tell His Honor -- and now, you've taken
11 more than one piece there. Those appear to be broken; is
12 that correct?

13 A Yes, sir.

14 Q Is that the same condition they were in when you
15 first observed them on the day of June 16, 1977?

16 A Yes, sir.

17 Q All right, sir. And finally, sir, State's Exhibit
18 No. 36, would you examine the contents of that packet?

19 A Yes, sir.

20 Q Have you seen that item before this date?

21 A Yes, sir, I have.

22 Q Can you tell His Honor when and where?

23 A Yes, sir, at the Camp Scott location, near the bus
24 on June 16th, 1977.

25 Q Now, Agent Linville, I notice there are some small

1 holes in the two pictures that are making up State's Exhibit
2 No. 36. Do you see what I'm talking about?

3 A Yes, sir.

4 Q Can you tell His Honor if those holes were in those
5 pictures at the time you first observed them?

6 A They were not.

7 Q Do you know how they got there?

8 A Yes, sir.

9 Q How did they get there?

10 A Janice Davis removed portions of these for analysis.

11 Q I'll hand you, sir, five photographs marked
12 State's Exhibits No. 64 through 68, which I believe have
13 been previously introduced. Could you look at those briefly,
14 please?

15 A (Witness complies.) Yes, sir.

16 Q Can you tell His Honor if you can recognize the
17 subject matter of those photographs, State's Exhibits that
18 you are looking at?

19 A Yes, sir, I do.

20 Q What is that, please?

21 A This is representative, these photographs, of a
22 cave and a cellar nearby, the location of which I accompanied
23 Highway Patrol Trooper Charlie Newton to and was represented
24 to me as the location where the items were found.

25 Q Now, sir, you say you accompanied Officer Newton

1 there?

2 A Yes, sir.

3 Q Was that before or after you had obtained from
4 Mr. Rice the items that you have identified here?

5 A After.

6 Q And how long afterwards was it that you actually
7 accompanied Trooper Newton to that location?

8 A I'd say a matter of thirty minutes.

9 Q Did any persons besides yourself and Trooper New-
10 ton go to that location?

11 A Yes, sir, there was another agent of the OSBI; if
12 I recall correctly, it was Agent Gary Brewer.

13 Q All right, and how long did you remain in the area
14 of this particular location depicted in those photographs?

15 A I remained there or two of us remained there,
16 Charlie Newton left, we remained there at least forty-five
17 minutes.

18 Q Did you, or anybody in your presence, recover or
19 pick up any other items that you consider of importance in
20 your work in this matter?

21 A Yes, sir, I did.

22 Q Would you tell His Honor, what, if anything, you
23 picked up?

24 A I picked up a roll of masking tape.

25 Q Agent Linville, I'll hand you what has been marked

1 for purposes of identification as State's Exhibit No. 72.

2 Will you examine that, please?

3 A Yes, sir.

4 Q Will you tell His Honor when and where you first
5 saw that item?

6 A Yes, sir, I first saw this item on June 16, 1977,
7 at the cave-site depicted in the previous photograph.

8 Q And how do you know that is the same roll or partial
9 roll of masking tape?

10 A I placed my initials and the date on there, ADL
11 6-16-77.

12 Q Now, is this item, State's Exhibit No. 72, does it
13 appear to you to be exactly as it appeared to you on that
14 date of June 16th when you first saw it?

15 A No, sir.

16 Q In what manner was it different and if so, explain
17 to His Honor?

18 A There is a discoloration on the inside contributed
19 because of an anhydant. This is the pinkish color, which it
20 was not and, of course, it had no initials, not mine or
21 anyone else's. It did not have this white tag, the exhibit
22 tag. It was just rolled up without any marking on it, lying
23 in the grass.

24 Q Was there anything else that you observed about
25 that at that time, sir?

1 A Yes, sir.

2 Q Would you tell His Honor what that was?

3 A Yes, sir, there was also a small piece of green
4 plastic stuck on the side, on the edge of the tape.

5 Q Is there anything within your human experiences
6 that you can associate that green plastic with?

7 A Yes, sir.

8 Q Would you tell His Honor what that would be, please?

9 A It was the same color and general consistency of
10 the green plastic I had previously seen on Monday.

11 Q Where had you seen that?

12 A At Camp Scott. It was attached to a red flashlight
13 near where the bodies were found.

14 Q Mr. Linville, these items, the tape, the gloves,
15 the sling-shot, the glasses and the case, the newspaper --
16 all these items, can you tell His Honor what, if anything,
17 you did with them?

18 A Yes, sir. I submitted them, with the exception of
19 one item, I submitted all those items with the Oklahoma State
20 Bureau of Investigation Laboratory in Oklahoma City. The
21 pair of glasses I gave to another agent and he submitted it.

22 Q Which agent?

23 A Ted Lempke.

24 Q Concerning the photographs, I don't think I included
25 them in my enumeration of the items, what was done with those,

1 if anything?

2 A Sir, I kept the photographs on my person. By that
3 I mean in my pocket continuously until the 18th, at which
4 time I submitted them to Bruce Plank at the laboratory in
5 Oklahoma City, along with the other items that I submitted
6 but I kept them on me in the meantime because I showed the
7 photographs to numerous people.

8 Q Now, Mr. Linville, at the time you and Oklahoma
9 Highway Patrol Trooper Newton went back to this location
10 and I believe you said there might have been another agent
11 with you?

12 A Yes, sir.

13 Q Did you observe or see any other people around
14 this area?

15 A No, sir.

16 Q Can you generally describe the area for, first of
17 all, as to its accessibility from any roadway or road or
18 highway in the area?

19 A It's not accessible. The only way that I was
20 successful was either by hiking into this location by foot
21 or by a four-wheel drive vehicle. A two-wheel drive vehicle
22 could not possibly get to that location.

23 Q Can you describe the location in reference to
24 visibility from any roadway or highway in the area?

25 A It's not visible.

1 Q All right.

2 A It's not visible from the field nearby.

3 Q Agent Linville, I'll hand you, sir, what has been
4 marked for purposes of identification, first of all, State's
5 Exhibit No. 37, and would you advise the Court if you have
6 seen that item before this date, please?

7 A Yes, sir, I have.

8 Q Tell the Court when and where you first saw the
9 item?

10 A Would have been on the 13th day of June, 1977,
11 at the Camp Scott location. It was attached at the time to
12 the red flashlight and green plastic material. This was
13 the tape that wrapped it to.

14 Q And did you have anything to do with this parti-
15 cular item insofar as the chain of custody of that property?

16 A Yes, sir, only in the sense that I submitted the
17 flashlight with this item attached.

18 Q And that was attached to it?

19 A Yes, sir.

20 Q All right, sir, concerning State's Exhibit No. 39,
21 can you examine the contents of that envelope and tell the
22 Court if you have seen that before this date?

23 A Yes, sir.

24 Q Tell His Honor when and where you first saw that?

25 A Yes, sir. This was the plastic attached to the

1 flashlight by that tape.

2 Q All right, and did you, sir, as an Agent with
3 the Bureau, have anything to do with the chain of custody
4 of that item?

5 A Yes, sir, while it was still attached to the flash-
6 light, I submitted the flashlight, plastic cape and tape --
7 oh, pardon me -- the plastic and the tape to the laboratory.

8 MR. FALLIS: No other questions. Thank you very
9 much.

10 CROSS EXAMINATION

11 BY MR. ISAACS:

12 Q Agent Linville, what day are we talking about?
13 I'm kind of confused.

14 A On what?

15 Q On the date you submitted this evidence, trans-
16 mitted it from the area of the cave?

17 A Oh, from the area of the cave, I submitted it on
18 the 18th day of June, 1977.

19 Q Was it found on the 17th?

20 A It was found on the 16th.

21 Q 16th?

22 A Yes, sir.

23 Q Okay. You made a technical examination report I
24 have here. It says that on the 18th of '77, Arthur Linville
25 submitted the following items: One roll of masking tape -

1 that would be the masking tape we're talking about?

2 A Yes, sir.

3 Q Green plastic material removed from No. P-1.

4 P-1 is noted here as being the masking tape?

5 A Yes, sir.

6 Q Where is that piece of plastic material which was
7 removed from the masking tape?

8 A The prosecution has it.

9 Q P-1, a piece of plastic found near a crowbar and
10 bottle. Where was the crowbar?

11 A Sir, the crowbar was southwest of the tents - of
12 the tent location along the fence line. If I'm correct, it
13 would be.

14 Q That would be on John Cavalier's property?

15 A I don't know the property. It's just on the other
16 side of it, if I'm not mistaken, sir. It actually, it was
17 found on the campsite property, the other side of the fence.

18 Q All right. I wasn't sure whether that was found
19 by the cave or over by the camp. Would you step down and
20 show us on the diagram where approximately that crowbar
21 would be from Tent No. 1?

22 A Sir, the diagram wouldn't show it. It would be
23 further due west on a line headed toward a north-south road.

24 Q Now when we say due west, we're talking about the
25 top of this map?

1 A Yes, sir.

2 Q How far from Tent No. 1 was that crowbar found,
3 just estimate?

4 A I didn't personally measure it and I would have to
5 guess but I would guess at a couple of hundred yards.

6 Q I see that also under No. Q-1 of the technical
7 report, Lab No. S-77-332, that there was a beer bottle
8 found near the crowbar and piece of plastic?

9 A There were three beer bottles.

10 Q What kind of beer bottles?

11 A Pabst Blue Ribbon.

12 Q What was done with those beer bottles?

13 A I maintained possession of them and submitted
14 them on the 18th day of June, 1977.

15 Q Were the beer bottles dusted for fingerprints?

16 A Not in my presence but I certainly requested that
17 they be done so and I'm sure they were.

18 Q Were any prints found on the beer bottles?

19 A Not to my knowledge.

20 Q Any fingerprints found on the piece of plastic?

21 A No, sir.

22 Q Was the piece of plastic sticking in the roll of
23 masking tape large enough to contain a fingerprint, not hav-
24 ing seen it?

25 A It would be large enough conceivably to contain a

1 portion, not a whole fingerprint, no.

2 Q What size is it?

3 A Sir, if I recall correctly, approximately one-fourth
4 of an inch diameter small.

5 Q On this technical examination report, Lab No.
6 S-77-332, Item No. R-1 is listed as a crowbar found behind
7 Camp Scott. Are we talking about the same crowbar that was
8 found along the fence?

9 A Yes, sir.

10 Q On the same technical report, S-1, piece of news-
11 paper with fecal type material. Is that the piece of
12 newspaper that you picked up over in the cave area from one
13 of the highway patrolmen?

14 A I did not pick it up from the cave area. I
15 received it from a highway patrolman at the camp. And you
16 are correct, it is one of those.

17 Q And you transported it back to the lab?

18 A Yes, sir.

19 Q Were there two pieces of newspaper with fecal mater-
20 ial?

21 A Yes, sir. There was one with a large quantity
22 and one appeared to have been used to wipe with.

23 Q Each one of those pieces is contained in the
24 evidence here?

25 A Yes, sir.

1 Q Any time before June 16th, did you hear the name
2 Gene Leroy Hart mentioned?

3 A Yes, sir, I mentioned Mr. Hart's name on numerous
4 occasions on the 13th, the first day I was there.

5 Q And where did you get the information that Mr.
6 Hart was involved with this homicide at Camp Scott?

7 A As a result of the information I gained, sir,
8 concerning black duct tape and cord having been used previous-
9 ly to tie victims by Mr. Hart.

10 Q Who told you that?

11 A There was a local officer and the first time I
12 heard that, I, of course, corroborated it with other officers.
13 But I think the first time was from Highway Patrol Trooper
14 Newton, if I'm not mistaken.

15 Q Charlie Newton?

16 A Yes, sir.

17 Q Did he tell you that he saw that?

18 A He told me that he was aware of it and I further
19 investigated it by obtaining a previous case file involving
20 that particular case, photographs and stuff.

21 Q What were the names of the victims of those charges
22 in 1966?

23 A Sir, I don't have their names at my disposal or in
24 my mind right now but I have got them in the report. I can
25 get them for you.

1 Q Will you give me those names?

2 A I certainly would.

3 Q Thank you. Now, on the morning of the 13th at the
4 Girl Scout Camp, who was the first person that mentioned
5 Gene Leroy Hart's name?

6 A It would be, in my mind, Mr. Newton, to me, because
7 we were talking in terms of the modus operandi or the
8 method of operation and he brought up the similarity between
9 the black duct tape and the cord.

10 Q All right. Now on the morning of June 14th, did
11 anybody mention Gene Leroy Hart's name?

12 A I'm trying to think where I was on the 14th. The
13 name may have come up, sir, but I don't remember anyone
14 specific.

15 Q But his name was brought up on the 13th, 14th,
16 15th, 16th, 17th and 18th; right?

17 A Yes, sir.

18 Q It is a well known fact that Gene Leroy Hart's
19 family lives in this area, is it not?

20 A Yes, sir.

21 Q And you were basing your assumptions as your
22 foundations for this investigation were based upon factors
23 of which you have no personal knowledge; is that correct?

24 A Sir, from the investigative standpoint --

25 Q No, Mr. Linville --

1 A No, it's not correct.

2 Q Mr. Linville, you missed my question. Your founda-
3 tion for this investigation came to you from a conversation
4 with Mr. Newton; is that correct?

5 A Which I corroborated; yes, sir.

6 Q And your corroboration was through a written
7 report; is that not correct?

8 A Yes, sir.

9 Q And therefore, you have no personal knowledge
10 as to whether or not those girls were actually bound; is
11 that correct?

12 A Only my investigative knowledge, personal knowledge.

13 Q So you're relying upon what we call in the busi-
14 ness "hearsay evidence"; is that correct?

15 A No, sir. No, sir, not at all.

16 Q Well, it's a written report, isn't it?

17 A It is a legal document.

18 Q What's legal about it; it's not admitted into
19 a court of law?

20 A It was at that time.

21 MR. FALLIS: If it please the Court, we would
22 object to the argument with the witness. He may inquire of
23 the witness but arguing is improper.

24 THE COURT: Sustained. I think he answered your
25 question. Would you repeat your answer? I'm not sure I

1 heard it.

2 A (By Mr. Linville) I said it was at the time.

3 THE COURT: Go ahead, Mr. Isaacs.

4 Q Now Mr. Linville, you weren't there and you did
5 not see the two ladies; did you?

6 A That's exactly right.

7 Q And you don't know whether their hands were bound
8 with tape or cord or not?

9 A Yes, sir, I do.

10 Q Oh, you do? You saw it?

11 A I have seen photographs of it.

12 Q Photographs of what?

13 A Of one of the victims, one of the females with a
14 black tape around the hands and cord.

15 Q You don't know who put it there?

16 A That is correct.

17 Q You don't know who the woman was in the picture,
18 do you?

19 A I don't know her name now but I do have --

20 Q But you've got it in your report?

21 A Yes, sir.

22 Q And who had possession of these photographs and
23 pictures of the tape and cord?

24 A I have possession of one photograph, sir, and of
25 course, the case file, I suppose would be in the file of the

1 District Attorney's Office in Mayes County.

2 Q Did you ever see a copy of that photograph in
3 Mr. Wise's possession?

4 A Sir, if I recall correctly, I asked Mr. Wise for
5 the case file and this is where I obtained the photograph
6 and it would have been from their files but I asked them
7 for that.

8 Q When did you obtain a copy of those reports?

9 A It would have been either the 14th or 15th, one
10 of those two days.

11 Q Who was the Prosecuting Attorney at the time those
12 charges were filed?

13 A I don't recall.

14 Q Did you talk to any of the victims of those
15 charges in 1966?

16 A I have not personally.

17 Q Did anybody talk to them?

18 A No, sir.

19 Q Did anybody whose a member of the Oklahoma State
20 Bureau of Investigation speak to those women?

21 A The assignment has been given to an agent to do
22 exactly that. As of this date, it has not been done, sir.

23 Q Oh, I see. Now, back over there at the cave,
24 you said that there were several cans of spoiled orange
25 juice. What brand were those orange juice cans?

1 A Sir, as I recall, it was obliterated to the point
2 you couldn't tell. The cardboard, it was all soaked, had
3 a very foul odor.

4 Q Did it appear that those orange juice cans had
5 been there for any particular length of time?

6 A I couldn't estimate the length of time on that.

7 Q Was there any dust on the cans?

8 A No, they was damp; they was moist when I saw them,
9 sir.

10 Q What size were the ladies underwear that you found
11 there in the cellar?

12 A They were adults.

13 Q Do you know what size?

14 A No, sir, I don't recall. In fact, I don't believe
15 there was a size on it but in examining it, they appear to
16 be an adult size.

17 Q Were any fingerprints lifted from the newspaper
18 that had fecal material on it?

19 A Not to my knowledge.

20 Q Did anybody lift any fingerprints from any cans
21 contained in that pillowcase?

22 A Certainly no attempt was made from the pillowcase
23 because they were soaking wet. The other cans and dry
24 material attempts were made and they were unsuccessful.

25 Q Now, there are a lot of cans up there in the cellar

1 cave area, are there not?

2 A There weren't when I went there.

3 Q When you went up there, did you see any shotgun
4 shells?

5 A I don't know, sir.

6 Q .22 shells?

7 A No, sir.

8 Q How about a box of .22 shells?

9 A No, sir, I didn't see it. There may have been
10 but I saw nothing like that.

11 Q Did you search the area thoroughly?

12 A Not really. My purpose in going there was not to
13 search it. I looked around the area. I knew that it had
14 already been searched by troopers and they had brought back
15 most of the items. I did find the gloves and found the
16 masking tape and that's all I recall. It was fairly tho-
17 rough but not really extensive, no, sir.

18 Q You testified you didn't see anyone on the way
19 down there?

20 A That's correct.

21 Q Did you see any hitchhikers?

22 A No, sir.

23 Q Did anybody get any fingerprints off the masking
24 tape?

25 A Not to my knowledge, no, sir.

1 Q You said you gave the glasses to Mr. Lempke?

2 A Yes, sir.

3 Q Were those sunglasses dusted for fingerprints?

4 A Yes, sir, previous to doing that.

5 Q Did anybody get any fingerprints off of that?

6 A No, sir, none of the material that came from the
7 cave, to my knowledge, has any prints or that they recovered.

8 Q They have prints on them but they are not identi-
9 fiable?

10 A No, sir, they may not even have a print. I don't
11 think we even got a print from it. I don't think we were
12 successful in obtaining a print, identifiable or not identi-
13 fiable.

14 Q Have you lived around here?

15 A No, sir.

16 Q Do you hunt?

17 A Used to on occasion.

18 Q When you hunt, did you take things to eat with
19 you so if you got hungry, you didn't have to go into town
20 to buy something to eat?

21 A Oh, I have taken candy or a small lunch, something
22 like that before, yes, sir.

23 Q And it's not unusual in an area that's hunted for
24 a lot of cans and garbage to be found, is it?

25 A Oh, I take issue with you on a lot of cans and

1 garbage. I would say that occasionally you might find
2 something in an area, not all together.

3 Q I agree. That's a bit strong. Now back in the
4 scout camp, did anybody find any pieces of newspaper?

5 A I didn't and I don't --

6 Q Anybody to your knowledge?

7 A No, sir, not to my knowledge.

8 Q Mr. Linville, were there any fingerprints on the
9 crowbar?

10 A No, sir.

11 Q Have you told me everything you know about what
12 happened on the 14th, 15th, 16th, 17, 18th?

13 A No.

14 Q What else?

15 A Oh, I did numerous other duties, sir, as far as
16 interviewing people. I obtained, for instance, a photograph
17 from Mr. Hart's mother of his ex-wife, I collected other
18 evidence at the scene of a reported burglary of the Shroffs
19 -- Jack Shroff residence.

20 Q Let me ask you about that. Did you go to Mrs.
21 Hart's residence to see her about Gene Leroy Hart -- Mrs.
22 Buckskin?

23 A Yes, sir, I did.

24 Q Was that when she was living out in the country?

25 A I don't know where she lives now. Wherever she

1 was living on that date, it was near the camp area.

2 Q She lived about a mile from the scout camp area?

3 A Yes, sir.

4 Q Did you talk to her there in her home?

5 A Yes, sir.

6 Q And she gave you that picture of Miss Dawson, is
7 that correct?

8 A Yes, sir.

9 Q Do you have that picture now?

10 A I don't have that on me but we have it in file,
11 yes, sir.

12 Q And what else did you ask Mrs. Buckskin when you
13 were there that day?

14 A As I recall, I asked her the whereabouts of her
15 son and she mentioned -- told me something about the last
16 time she had heard from her son was several months ago in
17 a letter or whatever, but that's all. I really was trying
18 to ascertain his location and that's all I remember.

19 Q Was anybody present when you had that conversation
20 with her?

21 A Sir, I believe there was two individuals present.
22 One, if I recall correctly would be her son and the other, I
23 think, a cousin to Mr. Hart.

24 Q What else did you talk to her about?

25 A That's all that I recall.

1 Q Did you talk to her about anything back in 1966?

2 A No, I don't believe I brought that incident up
3 with her. I may have, but I don't recall doing so.

4 Q Did you make a report about that conversation with
5 Mrs. Buckskin, Gene Hart's mother?

6 A Yes, sir.

7 Q You would have mentioned in your report any inter-
8 view you had with her, would you not?

9 A Well, if I would have treated it as an actual
10 interview, eliciting information from her, yes, sir. I
11 would either have it in a formal report or in my personal
12 notes.

13 Q What else did you do on those dates, Agent Linville?
14 I believe you said you investigated a burglary at Mr. Shroff's
15 house?

16 MR. FALLIS: If it please the Court, we'll object
17 to that as going outside the scope totally of direct examina-
18 tion.

19 THE COURT: Objection is sustained.

20 MR. ISAACS: I'll ask you that later.

21 THE COURT: Is there any redirect?

22 MR. FALLIS: If it please the Court, no additional
23 questions of the witness.

24 THE COURT: You may step down. We'll take a ten
25 minute recess.

1 (WHEREUPON, the witness was excused and withdrew
2 from the hearing room.)

3 (Following a ten minute recess, proceedings
4 continued as follows:)

5 MR. WISE: If it please the Court, State would
6 next call Susan Emery.

7 THE COURT: Would you raise your right hand. Do
8 you swear to tell the truth, the whole truth and nothing
9 but the truth, so help you God?

10 THE WITNESS: Yes, I do.

11 SUSAN MARIE EMERY,
12 called as a witness on behalf of the State, having been
13 first duly sworn, testifies as follows:

14 DIRECT EXAMINATION

15 BY MR. WISE:

16 Q Susan, would you state your full name for the
17 record and the Judge, please?

18 A Susan Marie Emery, E-M-E-R-Y.

19 Q What is your occupation?

20 A I am a student.

21 Q Susan, in the summer of 1977, were you employed
22 by the Magic Empire Council of Girl Scouts?

23 A Yes, I was.

24 Q What was your capacity, Susan?

25 A I was Unit Leader.

- 1 Q And where was that at, what camp?
- 2 A Camp Scott.
- 3 Q Had you attended Camp Scott before?
- 4 A As a camper before, ten years before.
- 5 Q All right. And now, Susan, as a counselor, which
- 6 camp unit were you assigned to?
- 7 A Kiowa.
- 8 Q And can you tell me who the other two counselors
- 9 were, please?
- 10 A Dee Elder and Carla Wilhite.
- 11 Q All right. Now Susan, did you go to the pre-camp
- 12 camp out that most of the counselors I understand went to?
- 13 A Yes, I did.
- 14 Q And on that weekend break, or the Saturday before
- 15 the camp started, what did you do?
- 16 A I went home.
- 17 Q Where is home?
- 18 A Tulsa.
- 19 Q And then when did you return back to Camp Scott?
- 20 A About Sunday afternoon, 12:00 o'clock, 12:45.
- 21 Q Now, Susan, subsequent to your arriving at camp,
- 22 did you get yourself set up in the counselor's tent as far
- 23 as making it your home for the next few weeks?
- 24 A Yes, pretty much so.
- 25 Q I'm going to call your attention to this diagram.

1 It's just an isolated drawing. This is supposed to be a
2 drawing of the tent itself with the front door pointing down;
3 all right? So this would be the front step. Where was your
4 cot?

5 A It's accurately marked.

6 Q The one with the "S" on it over here on the side?

7 A Yes.

8 Q All right. Now, Susan, can you tell me, there
9 with your cot as the evening -- let's bring ourselves on up
10 to the evening. What would have been in and about your cot
11 in the way of housekeeping units and things you had brought
12 with you or set up to maintain your --

13 A Around my cot?

14 Q Yes, did you have laundry baskets or anything
15 that -- what did you have?

16 A I had a foot locker under my bed.

17 Q Okay.

18 A I had a cardboard box next to my bed. I had a
19 laundry basket under it and I kept my purse right under
20 there, under my pillow almost, under the bed.

21 Q Would you describe that purse to me, please?

22 A It's a blue denim purse. I made it from blue jeans
23 legs. I had sewed it myself.

24 Q So it would be about --

25 A It's about a foot wide and single edge bottom on it.

1 Q Was it the kind you carry in your hand or over
2 your shoulder?

3 A Over your shoulder.

4 Q Would you tell me, please, what was basically
5 contained in the purse?

6 A Oh, I had some money; I had my sunglasses; I had
7 a billfold with pictures in it and probably some comb or a
8 brush and that kind of thing.

9 Q Now, was that purse with you when you retired the
10 night on June 12th, 1977 -- that was Sunday night?

11 A Yes, because I had my medicine in there.

12 Q Let me ask you, Susan, when did you come back to
13 that tent to check your belongings after that?

14 A Not until the morning of the 14th.

15 Q And you came in with the authorities, back into
16 the tent; is that correct?

17 A Right.

18 Q When you came back on the 14th to inventory, as
19 they asked you to do, I believe; is that correct?

20 A That's right.

21 Q Where was your purse?

22 A Gone.

23 Q To this day, have you found it?

24 A I've not been told, no.

25 Q Now, Susan, you mentioned as a part of the contents

1 of that purse, a pair of sunglasses; is that correct?

2 A Right.

3 Q Would you tell me more specifically, Susan, about
4 how you acquired these glasses and what they looked like
5 and what they were carried in, et cetera?

6 A Okay. I had two pairs of sunglasses. One of which
7 -- one of which pair I had lost the day before so I had
8 these glasses. They had a brown top and they were blue on
9 the bottom with gold frames. I had stuck them in a second
10 case which I had gotten off another pair of glasses, which
11 was a tan case.

12 Q So let me understand you. The case and the glasses
13 weren't mates; in other words, you hadn't gotten them togeth-
14 er?

15 A That's right.

16 Q Where had the case come from?

17 A From another pair of sunglasses that I had.

18 Q That you had lost?

19 A Yes.

20 Q Was there anything distinctive about that case?
21 Can you describe it to me?

22 A It was a tan, with the fold across the top and it
23 was a little bit wider at the top than it was at the bottom.
24 It had "Made in Korea" on the bottom. It was just a plain
25 old plastic case.

1 Q All right. I'll hand you what has been marked as
2 State's Exhibit No. 73, and ask you to examine that carefully.
3 Does that look familiar to you or do you identify it?

4 A Yes, it does.

5 Q With regards to the case, is that -- tell us where
6 you have seen that case before?

7 A I had it on -- these sunglasses in it and I had
8 bought another pair in these.

9 Q Is that the same? Where did you last see State's
10 Exhibit No. 73 before?

11 A It was in my purse.

12 Q Now you have taken out a pair of what looks like
13 a portion of a pair of glasses. Do those look familiar to
14 you, please?

15 A Yes, sir, they do. I've never seen a pair like
16 that before.

17 Q Where did you buy those?

18 A Oh, like K-Mart or Target in Tulsa.

19 Q How long had you had them?

20 A Oh, about a week.

21 Q And were they in that condition when you left them
22 in your purse that night?

23 A No, they weren't.

24 Q Were they in a perfectly normal condition?

25 A Yes, sir.

1 Q You have described them as being two different
2 colors on the lenses?

3 A Right, see brown on top and blue on bottom.

4 Q I see, thank you. Now Susan, with regards to some
5 of the other housekeeping things you had there, did you have
6 some -- I know you had - obviously laundry and sheets, pillow-
7 cases, towels, et cetera. Did you have a towel there that
8 had become kind of used by all in the tent?

9 A Since it was raining the night before, we had
10 pulled out a couple of towels and mine was laid at the front
11 of the tent so we could leave our boots on and stuff like
12 that when we walked into our tent that night.

13 Q Okay. Did you have any reason, Susan -- and answer
14 this -- give it some thought -- did you have any reason to
15 have used that towel to take care of any child that had been
16 injured or bloody nosed or anything of that nature?

17 A None.

18 Q There was no reason for that towel to have blood
19 on it to your knowledge; is that correct?

20 A Yeah.

21 Q Where was that towel when you saw it last?

22 A It was draped over the edge of the tent, right
23 there in front of Carla's bed.

24 Q Would you just step up and point to that for us,
25 just so that we'll understand.

1 A It was right here (indicating).

2 Q Thank you very much, Susan. You may resume the
3 stand.

4 MR. WISE: I have no further questions. Your
5 witness counselor.

6 CROSS EXAMINATION

7 BY MR. ISAACS:

8 Q Miss Emery, during the orientation period that
9 preceded the opening of the Girl Scout Camp, did anything
10 unusual happen to you?

11 A To me?

12 Q Yes, ma'am?

13 A No.

14 Q Did anybody report any theft of any item during
15 that period of time?

16 A Not that I can recall.

17 Q Anybody report any intruders at the Girl Scout
18 Camp?

19 A Not that I recall.

20 Q Do you recall something about a tent being torn or
21 slashed?

22 A Two -- two tents.

23 Q When was that?

24 A One tent was slashed when we came during the week
25 and it was small.

1 Q And which tent was that, if you know?

2 A I can't remember which was which. The other tent
3 had a flap slashed off of it. I believe that was Tent 5
4 -- completely.

5 Q In the Kiowa Unit?

6 A During the weekend that we were gone.

7 Q Were both of these in the Kiowa Unit?

8 A Yes, they were.

9 Q During the orientation week, what type of activi-
10 ties were you involved in?

11 A We had a lot of orientation type stuff. We sat
12 around and talked about different things, talked about
13 first aid, talked about the games, talked about the activi-
14 ties we had, type of rules we had -- just general stuff.

15 Q Did you have a knot tying class?

16 A Pardon me?

17 Q Knot tying class?

18 A No.

19 Q You don't recall the class?

20 A Wait a minute. We had a general orientation where
21 a couple of us did learn how to. We had -- yeah, we had a
22 camp craft activity and part of that was tying knots.

23 Q Was everybody required to attend classes?

24 A I don't recall.

25 Q How many years have you been a counselor at Camp

1 A I don't know.

2 Q You saw it in the counselor's tent?

3 A When?

4 Q Sunday afternoon?

5 A No, I only saw it in Dee's hand.

6 Q Where was Dee when you saw it?

7 A We were checking in the girls.

8 Q Up in the main area of the camp?

9 A Right.

10 Q Tell me what happened on Sunday afternoon when
11 you came back to Camp Scott?

12 A Well, I got there about 12:00 o'clock. My fiance
13 was with me.

14 Q What's his name?

15 A Randy Harden.

16 Q What did you do then?

17 A We took a real short hike down the creek and back.
18 As the girls drove up in the bus -- he was gone by then --
19 we checked in the girls.

20 Q Did you happen to see anybody down by the creek?

21 A No.

22 Q Which creek did you go to?

23 A Spring Creek, just right down --

24 Q And that's on the east side of the scout camp, is
25 it not?

1 A I don't know my directions that well.

2 Q Would that be the one just down the hill from the
3 Great Hall?

4 A We didn't go down that far, but it's the same
5 creek.

6 Q All right. After you and Randy had gone down the
7 creek on a little hike and Randy had left, what happened?

8 A The girls came on the bus as they were supposed
9 to and we checked them all in. As soon as we got them
10 all together, we took them down to the unit.

11 Q After you took them down to the unit and they were
12 settled in, what happened?

13 A We got them ready to go to dinner.

14 Q Was it raining then?

15 A Not yet.

16 Q What time did it start raining?

17 A Oh, 6:30, it was after they had finished dinner.

18 It was when they were singing on the front porch.

19 Q Tell me the procedure you went through when you
20 took them out of the Kiowa Unit up to the Great Hall for
21 dinner?

22 A They buddied up and we had sent four girls up
23 ahead as hoppers, which is waiters for the tables, and Dee
24 had gone up with them and then, about fifteen minutes later,
25 we got all the rest of the girls in buddies and took them

1 up there and one counselor was in front and I was in the
2 back.

3 Q Was there anybody left in the Kiowa Unit for
4 security purposes?

5 A No.

6 Q Do you know Mr. Woodward?

7 A Yes.

8 Q Is Mr. Woodward the only security-type personnel
9 for the camp?

10 A I didn't know anything about security.

11 Q What are the rules and regulations for counselors
12 who come in late at night and are locked out? Is there any
13 particular way you can get the key to unlock the gate?

14 A No.

15 Q Who has a key to the gate?

16 A It's up in the main office.

17 Q Is that the only key that you know about?

18 A That's the only key that I know of.

19 Q If somebody's locked out of Camp Scott, there's
20 no other way that they can get in there, other than that
21 key at the main office to your knowledge?

22 A To my knowledge.

23 Q After you had eaten your evening meal, what happen-
24 ed?

25 A It started raining and so we started bringing the

1 girls back over there. We had a head count. I had one
2 girl that was taking medication. I had to take her so
3 Dee and Carla took the rest of the girls to the unit and
4 about fifteen minutes later, I came back to the unit and
5 the girls were already drying off and everything like that.
6 So I went in and got changed -- I put my girl in her tent
7 and then went in and dried and got changed a little bit and
8 then we shared going around and checking on the tents and
9 giving the girls activities, this type of thing.

10 Q About what time was this?

11 A It was after we had a girl meeting in the middle.

12 Q Can you put an approximate time on it?

13 A Okay. All this was going on until about 8:00 or
14 8:30. We got the girls in the tents by about 9:00.

15 Q Was it still raining?

16 A No.

17 Q What did you do then?

18 A We put them to bed and then I went back up to the
19 counselor's tent, then went to the staff house because I
20 wasn't on duty that night.

21 Q Who was on duty?

22 A Dee Elder.

23 Q Dee and Carla stayed down in Kiowa Unit?

24 A Right.

25 Q You went up to the staff house?

1 A Yes.

2 Q Who did you meet with at the staff house?

3 A Just anyone who was there.

4 Q What did you do up there?

5 A Just sat around and talked, mainly. It had been
6 a pretty busy day.

7 Q After you had been to the staff house, what time
8 did you return back to the Kiowa Unit?

9 A About ten o'clock.

10 Q You got back to the Kiowa Unit, what did you do?

11 A Well, there was a couple of the CIT's in there,
12 so they visited but they left about fifteen minutes.

13 Q What was their names?

14 A I don't know. I didn't know anybody well enough
15 by then.

16 Q Who were they visiting?

17 A Dee and Carla.

18 Q After they left, what happened?

19 A I went to bed.

20 Q And what -- can you give me an approximate time
21 you went to bed?

22 A 10:30.

23 Q This towel that we've been talking about, was it
24 on the front of the tent at that time?

25 A I can't recall that.

1 Q What is the next thing you remember after you
2 went to bed?

3 A The alarm going off at 6:00 o'clock in the morning.

4 Q Did you get up immediately?

5 A I just kind of groaned and rolled over.

6 Q Carla got up?

7 A Right. I heard her messing around with her stuff
8 and I heard her leave.

9 Q How many showers are in the Kiowa Unit?

10 A There is only one.

11 Q Cold water?

12 A Yes.

13 Q Only?

14 A Right.

15 Q Where do you go if you want to take a hot water
16 shower?

17 A Staff house.

18 Q How far is that?

19 A About a hundred and fifty yards.

20 Q If you want to take a hot water shower, what time
21 do you have to get up?

22 A Any time you want.

23 Q Since that's the only one, it's crowded, isn't it?

24 A If you wait until about 8:00 o'clock or so, but we
25 had to have the girls out of bed by 6:30, so if you were

1 going to get them up, you'd have to have it -- you'd have
2 to be up by 6:00 or 6:30.

3 Q Did you hear anything else after you heard Carla
4 moving around in the tent?

5 A Until when?

6 Q Oh, until she came back?

7 A No.

8 Q What did you do while she was gone?

9 A I went back to sleep.

10 Q When Carla came back, what happened?

11 A She said, "Dee, there's something out there. We
12 need to count the girls."

13 Q What did you do?

14 A Carla and I started -- I got up and put on a
15 pair of rain boots and my glasses and --

16 Q Excuse me for interrupting. You say rain boots.
17 Would you describe the soles on those rain boots?

18 A Just ridges; straight across.

19 Q Do you know what brand they were?

20 A I have no idea. I had them at home.

21 Q After Carla and Dee had gone out, what did you do?

22 A I went with Carla.

23 Q Where did you go?

24 A Tent 1.

25 Q What did you do at Tent 1?

1 A We checked to see if all the girls were there.
2 We got to about Tent 3.

3 Q At that time, were you aware that some girls were
4 missing?

5 A No. Carla had not said anything.

6 Q Then what happened?

7 A Dee had started at Tent 7. We had started at
8 both ends and we were going to meet in the middle and she
9 said that three girls were missing and Carla and I went
10 directly over there.

11 Q Over to Tent 7?

12 A Yes.

13 Q What did you do then?

14 A We opened the tent flap.

15 Q What did you see when you opened it?

16 A There was no girls in there. There was blood on
17 the bed and blood on the floor.

18 Q Puddle of blood?

19 A Yes.

20 Q What did you do then?

21 A The first thing I thought was that one of the girls
22 started her period in the middle of the night and had gotten
23 scared and was going to take off to find the nurse and that
24 was the only thing I could think of. I was scared to death.

25 Q Then what did you do?

1 A I went down the road to see the pile of sleeping
2 bags that Carla had said something about and I came upon the
3 one body.

4 Q Who was with you when you did that?

5 A Nobody.

6 Q Was anybody there with the bodies when you walked
7 up?

8 A No.

9 Q And what did you do after you saw the body?

10 A Well, I was real stunned and I turned around and
11 walked a couple of steps the other direction, back towards
12 the unit and then I screamed.

13 Q Let me ask you this, when you viewed the body, how
14 close were you to the body?

15 A I -- close enough to see what it was. I knew
16 myself better than to get too close.

17 Q Would you tell me to the best of your recollection
18 what you saw around the bodies there?

19 A Nothing.

20 Q After you backed off and went back toward --I
21 don't want to -- I want you to tell me what you did when you
22 backed off?

23 A I went back towards the unit and I screamed.

24 Q And then what happened?

25 A Dee ran up and she put her hand around my mouth and

1 she said, "Susan, the girls." As if, you know, "Susan,
2 you've got to be quiet, we're going to scare the little
3 girls."

4 Q Then what did you do?

5 A I calmed down and this is where I have a very
6 hazy recollection. I know what happened, but I don't know
7 the order. I went in and I changed into my tennis shoes and
8 I put my contacts in.

9 Q Yes, sir, what type -- let me interrupt you just
10 a second -- what type of tennis shoes did you have out there?

11 A We bought them at Penney's, I think.

12 Q Can you describe the sole?

13 A No, just a typical tennis shoes bottom, no design.

14 Q Then what did you do?

15 A I went back out to the body.

16 Q Was there anybody out with the bodies at the time
17 when you came back to them after changing clothes?

18 A I don't remember whether they were there when I
19 got back or whether they came while I was there but I think
20 they were there when I got back. Mary Ann was there, the
21 nurse.

22 Q Mary Ann and who else?

23 A And then Barbara and Richard Day drove up, as I
24 was there.

25 Q So there were four of you there?

1 A As far as I can remember.

2 Q Can you estimate the time when the four of you
3 were there with the bodies?

4 A (No response.)

5 Q You got up at 6:00 o'clock?

6 A That whole thing happened in about fifteen minutes.
7 It was very fast.

8 Q All right, then what happened? We could say it
9 was about 6:15 then, can't we?

10 A No, closer to --

11 Q Pardon?

12 A Closer to 6:30.

13 Q Okay. Then what happened?

14 A I stood there and I waited. Richard -- I believe
15 Mary Ann and Richard both checked the pulses -- the pulse
16 and I got sick for a minute and had to stand back.

17 Q How close were you to the body at that time?

18 A Oh, within two feet.

19 Q Did you see anything beside them then?

20 A No.

21 Q Then, what did you do?

22 A Okay. When Richard and Barbara were there, I did
23 go over to the sleeping bag. At this time, we did not know
24 what had happened to the other two girls, so I picked up one
25 sleeping bag and then I picked up the other and there was

1 something in the bottom of them and I set them right back
2 down.

3 Q Then what did you do?

4 A I believe at that time I returned to the unit and
5 we decided we'd better pull our girls out real fast because
6 we knew people would be coming. So Carla got out and she
7 yelled and hollered at the girls and told them they were
8 already five minutes late and that they'd better get them-
9 selves out there fast and that we were going to take an
10 early morning hike since they were running late. And then
11 they came out there and they were there within five or
12 ten minutes and we took them back behind, next to the latrine
13 and then around and through the Quapaw Unit.

14 Q Miss Emery, had you missed your purse at that time?

15 A No, I didn't.

16 Q Did you look for it?

17 A No.

18 Q You don't know if it was gone at that time or not?

19 A Right.

20 Q What happened next after you took the girls out?

21 A We took them out to look outpost and we played
22 games with them. We tried to keep them occupied. They rang
23 the Great Bell which would summon the rest of the girls away
24 from the unit.

25 Q Miss Emery, let me back up just a moment. At any

1 time before you took the little girls from the Kiowa Unit,
2 did you go back and look in Tent 7?

3 A No.

4 Q At any time after you took the little girls out
5 of the Kiowa Unit, did you go back and look at Tent 7?

6 A After we took the girls out of Kiowa, we didn't
7 go back until the next day.

8 Q Well, the floor had been removed the next day. Did
9 you see that?

10 A No.

11 Q Did anybody make any statements to you about the
12 puddle of blood having been wiped up on the morning of the
13 13th?

14 A No.

15 Q What is the next thing that happened after you
16 left the Kiowa Unit and took the little girls up and had
17 exercises for them to keep them occupied?

18 A We -- the rest of the camp started coming up and
19 at this point, hardly anybody else knew what happened, least
20 of all, the little girls. They left that day without ever
21 knowing and we got breakfast ready and they ate breakfast.

22 Q After they had eaten breakfast, did anybody from
23 any law enforcement agency contact you or interview you?

24 A No.

25 Q Did somebody later on that day interview you from

1 a law enforcement agency?

2 A Yes.

3 Q Who was that?

4 A I believe it was an assistant from the D. A.'s
5 Office. It was a woman. I don't remember her name.

6 Q Mrs. Hough?

7 A A blonde?

8 Q Yes, ma'am?

9 A Okay, that's her then.

10 Q Okay, what did she ask you about the case?

11 A She just asked me about what I'd seen and what
12 happened.

13 Q Did you tell her what you have told us right here
14 today?

15 A Yes.

16 Q After that interview, what happened?

17 A Our little girls were asked, by threes, I believe,
18 and then they were split off and got in the infirmary -- by
19 the OSBI and by Mrs. Hough, if that's who it is.

20 Q Were you present when those little girls were
21 questioned?

22 A Pardon?

23 Q Were you present during any of it?

24 A No.

25 Q What happened after they spoke to the little girls?

1 A We took them back. Okay, at this time, we had
2 taken our girls over to the craft hut, because the rest of
3 the camp was getting ready to go to Spring Creek -- to get
4 the girls, the campers, out of the area but our girls were
5 taken to the craft hut which is just maybe one hundred yards
6 from the Great Hall and they were making crafts and stuff
7 like that and we just took them out by trees and assists
8 were there helping us out, watching over the girls, when we
9 had to go talk and stuff like that.

10 Q About what time of day was this?

11 A I believe this was about 8:00 o'clock on.

12 Q Well, I thought we were talking about the after-
13 noon. What time of day did you have the interview with Mrs.
14 Hough, yours personally?

15 A We went first.

16 Q You were the first one?

17 A Dee and I and Carla.

18 Q Can you give me an approximate time?

19 A No, I don't know.

20 Q Before lunch or after lunch?

21 A Before lunch.

22 Q These afternoon interviews with the little campers
23 in the Kiowa Unit, what time did they occur?

24 A Before and after lunch, very near to the lunch
25 hour.

1 Q Did any of the little girls report to you about
2 seeing any strange people in the Kiowa Unit?

3 A No.

4 Q Did you see any strangers in the Kiowa Unit?

5 A There was one visitor there. Her name was Minon.
6 She was a friend of Dee's and Carla's.

7 Q I'm talking about someone other than a camp
8 counselor?

9 A No, oh, no.

10 Q After the little girls had been interviewed by
11 Mrs. Hough, what happened?

12 A Okay. This was about 2:00 o'clock and the other
13 campers had come back from Spring Creek and we told the
14 girls that there had been an accident and that's all we
15 told them and that they had to leave and they had to leave
16 their things in the unit but the rest of the campers had
17 gone back to their tents and packed up and the buses came
18 and picked up all the girls, including the Kiowa girls. This
19 was probably 3:00 o'clock in the afternoon.

20 Q And after the little girls left camp, did you leave?

21 A No, we had to stick around a little while. I think
22 I left at about 5:00.

23 Q For what reason?

24 A To talk to more agents.

25 Q Who did you talk to?

1 A I talked to a lot of people.

2 Q Did you tell them the same thing you've told us
3 here today?

4 A Everything.

5 Q Did you tell them about the puddle of blood you
6 saw in the tent?

7 A Yes.

8 Q Did you tell them about what you saw near the
9 bodies?

10 A I didn't see anything.

11 Q And after you had that interview with the agents,
12 what did you do?

13 A I got -- let's see, I left with Anna Lawless.

14 Q Anna Lawless?

15 A Yes.

16 Q Where did you and Miss Lawless go, Miss Emery?

17 A Back to Tulsa.

18 Q Were you later contacted by any law enforcement
19 agency concerning the homicides at Camp Scott?

20 A Oh, yes.

21 Q When was that?

22 A The next day they called me right as I was going
23 to go out for lunch with Randy's mother, about going back
24 to Camp Scott to pick up my belongings.

25 Q Did you go back?

1 A Yes, I did.

2 Q When you went back to Camp Scott, tell me what
3 happened?

4 A We were taken down to our tent with an enforcement
5 agent - law enforcement agent.

6 Q Do you remember the names of the men who took you
7 to your tent?

8 A No, I don't.

9 Q What happened at your tent?

10 A We were told to inventory our stuff, find out
11 if anything had been taken and to pack up our stuff to go
12 and our girls were also there. They had been taken back by
13 bus and were also told the same thing.

14 Q When you got back to the tent and inventoried your
15 property, what did you find had been taken?

16 A My purse.

17 Q And everything in it you have described?

18 A Right.

19 Q Was anything said about the towel hanging over the
20 front of your tent?

21 A I believe we found it there.

22 Q Did anybody say anything about it being used to
23 wipe up blood?

24 A I remember seeing it with blood on it. Nobody
25 said how it --

1 Q You saw it with blood on it?

2 A Yes.

3 Q I've forgotten, who owned the towel?

4 A I did.

5 Q It was your towel?

6 A Yes.

7 Q What was done with the towel?

8 A The agent took it.

9 Q Mrs. Hough take it?

10 A Pardon?

11 Q Did Mrs. Hough take it?

12 A She wasn't down there.

13 Q Oh, was Miss Wilhite with you?

14 A Both of them were with me.

15 Q So the three of you went to the tent and picked up
16 your belongings at the same time?

17 A Yes.

18 Q Did anybody mention to you anything about some
19 glasses and a glasses case being taken from Carla Wilhite?

20 A Yes.

21 Q Who mentioned that to you?

22 A I don't remember. I think Carla did because we
23 were all in the tent inventorying stuff and I believe she
24 said her glasses had been taken.

25 Q From her crate in the tent?

1 Q Fingerprints?

2 A Yes.

3 Q And when were those taken, Miss Emery?

4 A The third day.

5 Q Do you know the name of the man who took your
6 fingerprints?

7 A No, I don't.

8 Q On the third day, did you have -- were you inter-
9 viewed for any purpose?

10 A Yes, I was.

11 Q In reference to what?

12 A That's what I was just talking about.

13 Q Did they ask you about your sex life?

14 MR. WISE: If it please the Court, we are going to
15 object to this line of questioning. It serves no purpose
16 except to harrass the witness. She's already answered the
17 question.

18 MR. ISAACS: I'm not trying to harrass anybody,
19 Judge.

20 THE COURT: Is that your only objection, Mr. Wise?

21 MR. WISE: The question has been previously asked
22 and answered, Your Honor.

23 THE COURT: Objection is overruled. You may answer
24 yes or no.

25 A (By Miss Emery) What was the question?

1 Q Did they ask you about your sex life?

2 A A little.

3 Q Did they ask you about your preference of sex,
4 male or female?

5 MR. WISE: If it please the Court, I make my same
6 objection. It is intended only for the purposes of harrass-
7 ment and embarrassment to this witness.

8 THE COURT: Sustained.

9 Q Now Miss Emery, after you had been interviewed the
10 third day, did anybody contact you at a later date in
11 reference to the homicides at Camp Scott?

12 A Yes.

13 Q Who was that?

14 A Mrs. Hough.

15 Q When was that?

16 A Within a few days afterwards.

17 Q For what purpose?

18 A They wanted me to describe my sunglasses.

19 Q Did you describe them?

20 A Yes.

21 Q Did they tell you they had found them?

22 A Not at that point.

23 Q Did they want you to come and look at a pair of
24 sunglasses?

25 A No, they came over the next morning.

1 Q Is that the same pair of sunglasses that Mr. Wise
2 showed you a little earlier?

3 A Yes.

4 Q Did anybody ever ask you about any bootprints?

5 A Yes.

6 Q Did they show you any pictures of any footprint?

7 A Yes, a hand drawn one.

8 Q Do you know anybody that owns a pair of boots like
9 that that was at Camp Scott?

10 A Boots like what?

11 Q Like the one in the picture?

12 A No.

13 Q Did they show you the picture of the bloody foot-
14 print taken out of one of the tents?

15 A No.

16 Q Did they show you a pair of tennis shoes and ask
17 you if you could identify those tennis shoes?

18 A About two months ago.

19 Q When -- two months ago would have been -- what's
20 today -- about April 12th?

21 A Roughly. I don't remember the exact time.

22 Q Where were you when that was done?

23 A I was in Oklahoma City.

24 Q Who showed you these?

25 A An OSBI Agent.

1 Q Did they show you any other items of evidence
2 which they had gathered and ask you to identify them?

3 A They had a picture of a girl but they had told me
4 that was already identified.

5 Q Do you know the girl?

6 A No.

7 Q Do you know where the picture came from?

8 A No.

9 Q Did they have any other items?

10 A No.

11 Q Did anybody interview about any other matter
12 pertaining to the homicides at Camp Scott?

13 A Not that I can recall.

14 Q Have you told me everything you know about the
15 matter?

16 A Yes.

17 MR. ISAACS: One moment, Your Honor.

18 Q Miss Emery, on the morning of the 13th of June,
19 where did you keep your tennis shoes?

20 A Under my bed.

21 Q And your rain boots?

22 A Down at the foot of my bed because they were wet.

23 Q Where did you keep your brush and comb?

24 A Either in my purse or on my orange crate; I don't
25 remember which.

1 Q Did you put your nightclothes in the orange crate
2 or in some type of duffel bag or something?

3 A I wore a tee shirt.

4 Q Where's the usual place that you keep your purse?

5 A Under my bed, under, just right close to the --
6 can I point on the --

7 Q Would you step down and show me on the front of
8 this diagram? This is the front of the tent, being the
9 bottom diagram of the tent.

10 A Okay. This is the end of the tent here. I had it
11 right about here. I had a crate here. It would have been
12 within access to my hand.

13 Q Could you just draw an arrow right there and
14 write "purse" or just draw a line?

15 A (Witness complied.)

16 Q When you went back to the tent on Wednesday morn-
17 ing or Tuesday morning --

18 A Tuesday.

19 Q -- Tuesday morning, did you notice anything unusual
20 about the tent flap on the side that you slept?

21 A No.

22 MR. ISAACS: I think that's all I have of this
23 witness.

24 THE COURT: Redirect?

25 MR. WISE: Just a moment, Your Honor.

REDIRECT EXAMINATION

BY MR. WISE:

Q Miss Emery, you just got through testifying and making this mark. Was this flap on this side loose?

A Open. It was open.

Q In other words, it was loose?

A It was loose, that's right, because it had rained the night before. You always unloosen the sides.

Q It was down, but not tied down; is that what you are saying?

A Right. That's right.

Q So if I was standing right here, I could just reach my arm underneath your bed?

A Yes.

MR. WISE: If it please the Court, comes now the State of Oklahoma, and respectfully submits to the Court State's Exhibit No. 73 into evidence.

THE COURT: Does that exhibit include the glasses or is it just the glasses case?

MR. WISE: No, it's a glass case and it includes the glasses that are contained therein.

MR. ISAACS: Judge, I don't think we have any objection.

THE COURT: Received.

MR. WISE: We'd have no further redirect, Your Honor.

1 THE COURT: Any further cross examination on the
2 tant flap?

3 MR. ISAACS: No, sir.

4 THE COURT: You may step down.

5 MR. WISE: We would ask that she be permanently
6 excused, so that she may get back to her normal livelihood.

7 THE COURT: All right.

8 (WHEREUPON, the witness was excused and withdrew
9 from the hearing room.)

10 MR. WISE: If it please the Court, State would
11 next call Mr. Larry Dry.

12 MR. ISAACS: Judge, could we take a short recess?

13 THE COURT: If you don't mind, Mr. Isaacs, I think
14 we ought to take a five minute recess. This will probably
15 be a long witness.

16 MR. WISE: Okay.

17 (Following a five minute recess, the proceedings
18 continued as follows:)

19 THE COURT: Call your next witness.

20 MR. WISE: State would next call Mr. Larry Dry.

21 THE COURT: Mr. Dry, raise your right hand. Do you
22 swear to tell the truth, the whole truth and nothing but the
23 truth, so help you God?

24 THE WITNESS: I do.
25

1 LARRY DRY,

2 called as a witness on behalf of the State, having been
3 first duly sworn, testifies as follows:

4 DIRECT EXAMINATION

5 BY MR. WISE:

6 Q Mr. Dry, would you state your full name?

7 MR. ISAACS: Just a moment, Judge. Before he asks
8 any questions, I would like to voir dire the witness.

9 THE COURT: Regarding what, Mr. Isaacs?

10 MR. ISAACS: Regarding communications out of
11 court with other witnesses in this case, which is a violation
12 of the Rule of Sequestration of Witnesses.

13 THE COURT: All right, you may inquire.

14 VOIR DIRE EXAMINATION

15 BY MR. ISAACS:

16 Q Mr. Dry, have you talked to anybody about this
17 case since you've been in this county?

18 A As to who do you refer?

19 Q Anybody? Do you know what anybody means?

20 A Yes, sir.

21 Q Have you talked to anybody?

22 A Yes.

23 Q Who?

24 A My family.

25 Q Have you talked to Mr. Weaver?

1 A Yes, sir.

2 Q Mr. Weaver is a witness in this case, isn't he?

3 A Yes, sir, I guess. I have no idea.

4 Q How many times have you talked to Mr. Weaver?

5 A Pertaining to the case?

6 Q Yes?

7 A None.

8 Q Did Mr. Weaver take you out of jail?

9 A At what time?

10 Q Any time since you've been back in Mayes County?

11 A Yes, sir.

12 Q When?

13 A To talk to different people.

14 Q Who are they?

15 A Just different people.

16 Q Do you know what the word "who" means?

17 A Yes.

18 Q Have they got a name?

19 A Some I know; some I don't.

20 Q Tell us the names you know.

21 A Sid Wise.

22 Q Who else?

23 A The lawyer there.

24 Q Which one?

25 A Sorry, I don't --

1 Q Mr. Fallis?

2 A Fallis, and this gentleman here.

3 Q The fellow in the blue coat?

4 A Yes.

5 Q Have you talked to anybody else at this table?

6 A Carey, the OSBI Agent.

7 Q He is a witness, too, isn't he?

8 A I have no idea.

9 Q You don't know?

10 A No, sir.

11 Q Have you talked to anybody else since you've been
12 here in Mayes County?

13 A I've talked to numerous people since I've been in
14 Mayes County.

15 Q Who else?

16 A I have no idea.

17 Q Did they take you out of jail and take you some-
18 place?

19 A To different jails, yes.

20 Q Did they ever take you out in the country?

21 A Yes.

22 Q Where?

23 A Around Mockingbird Hill.

24 Q Where's that located?

25 A South of Locust Grove.

1 Q Who was out there?

2 A Uh --

3 MR. WISE: If it please the Court, at this point
4 I would certainly object that Mockingbird Hill certainly
5 is not relevant to the matters at hand or any of the evidence
6 that has been introduced to date.

7 THE COURT: Objection is sustained.

8 Q Did you talk to any persons other than the people
9 that were with you at the Mockingbird Hill?

10 MR. WISE: If it please the Court, we just had our
11 objection sustained if I understood the order.

12 MR. ISAACS: Judge, this is the voir dire of the
13 witness. What I want to know is who he talked to as a
14 witness. We already know he's talked to Mr. Weaver and he
15 has talked to Mr. Thurman.

16 THE COURT: Why don't you just ask him who he's
17 talked to. Let him list the names.

18 Q Who have you talked to?

19 A Like I said, I don't remember who all I've talked
20 to.

21 Q Tell me the ones you remember.

22 A I have.

23 MR. WISE: If it please the Court, the question
24 has been asked and answered, to my knowledge.

25 THE COURT: Sustained.

1 Q Have you talked to any of Mr. Weaver's deputies
2 about the case?

3 A About the case in general?

4 Q Yes.

5 A No.

6 Q Have you talked to Mr. Weaver's deputies about
7 Gene Hart?

8 A No. Only that if I was an associate with him and
9 the matters pertaining to the escape and about the case,
10 no.

11 Q You talked to them about the matters that you are
12 going to testify about here today, haven't you?

13 A I talked to Mr. Wise, Mr. Fallis and this gentleman
14 here about the case.

15 Q This fellow back here in the yellow; right?

16 A No, this man (indicating).

17 Q Have you talked to Mr. Weaver about anything to do
18 with the case?

19 A No.

20 Q Have you talked to anybody with the OSBI about
21 this case?

22 A About the case?

23 Q Yes, sir.

24 A Yes.

25 Q Talked to them about any pictures?

1 A About some pictures?

2 Q Yes.

3 A I was asked about some pictures, yes.

4 Q Have you talked to a fellow by the name of Ralph
5 Marsh, after you were in jail up in Delaware County last
6 week?

7 MR. WISE: If it please the Court, we would again
8 enter an objection that this is far afield of the evidence
9 of the matters before this Court.

10 THE COURT: Is Mr. Marsh an endorsed witness?

11 MR. WISE: No, he is not.

12 THE COURT: Objection is sustained.

13 Q Have you talked to any other newspaper personnel?

14 A No, sir.

15 MR. WISE: If it please the Court, at this point,
16 we would ask that this line of questioning be evaded. He
17 has certainly had adequate time to voir dire as he indicated
18 this witness.

19 THE COURT: A couple of more questions, Mr. Isaacs,
20 and then we need to get on with direct examination.

21 Q Mr. Dry, just a moment ago, I went back into the
22 Judge's chambers and asked to speak with you before you
23 testified.

24 A Yes, sir.

25 Q And Mr. Wise went down to his office and picked you

1 up and brought you back down there. What did Mr. Wise tell
2 you to say to me when you walked into that Judge's office?

3 A He said it was up to my discretion whether I should
4 talk to you or not.

5 Q He told you that you didn't have to, didn't he?

6 A Yes, sir.

7 Q He told you you'd probably be better off if you
8 didn't?

9 A No, sir.

10 Q He didn't?

11 A No, sir.

12 Q What else did he tell you?

13 A Nothing, only that you was wanting to talk to me.

14 MR. ISAACS: Judge, for the reason that he spoke
15 with Mr. Thurman about this case and Mr. Weaver about pic-
16 tures, we would move at this time to suppress any of his
17 testimony.

18 THE COURT: Motion is denied. It would go to the
19 weight of his testimony, not as to the admissibility. You
20 make ask direct examination questions, Mr. Wise.

21 DIRECT EXAMINATION (Resumed)

22 BY MR. WISE:

23 Q I believe my question was interrupted. Would you
24 state your full name, please?

25 A Larry Gene Dry.

1 Q And Mr. Dry, have you known Mr. Gene Leroy Hart?

2 A Yes, sir.

3 Q For how long a period of time?

4 A Oh, not very long.

5 Q You say not very long?

6 A No, sir.

7 Q How many years would you say you've known him?

8 A Known of him?

9 Q Known him.

10 A Just knowing him personally?

11 Q Yes.

12 A About eight.

13 Q About eight years?

14 A Yes.

15 Q All right, sir, and did you and he -- were you and
16 he confined in the Mayes County Jail in 1973?

17 A Yes, sir.

18 Q And subsequently, did you escape from that jail in
19 1973?

20 A Yes, sir.

21 Q With Mr. Hart?

22 A Yes, sir.

23 Q All right, sir. Now, after you escaped from the
24 Mayes County Jail with Mr. Hart, did the two of you continue
25 to run together?

1 A Yes, sir.

2 Q Live together?

3 A Yes.

4 Q Where at?

5 A In the woods.

6 Q All right, sir, what did you seek or where did you
7 get such shelter?

8 A In different locations.

9 Q Okay, was it a home or house or what?

10 A Caves and cellars.

11 Q Okay, can you tell me about a cave or cellar,
12 please, where?

13 A I don't know. There was one cellar south of
14 Locust that we stayed in and --

15 Q Okay.

16 A -- another one by Strang that we stayed in.

17 Q By Spring Creek?

18 A Strang.

19 Q Strang? Okay. In regards to the one south of
20 Locust, how would you describe it? How would you get there
21 or how would you put it on the map?

22 A Approximately a mile, three-quarters of a mile
23 south of Twin Bridges.

24 Q Is this, you say, a cellar or a cave?

25 A A cellar and a cave, both.

1 Q A cellar and a cave, both? All right. Describe
2 the cellar to me, if you will?

3 A It's sitting approximately thirty feet up on a
4 hillside and I believe there was a foundation, looked like
5 the cellar had been built underneath the house and the front
6 steps had come out over the cellar.

7 Q Now, did you spend time -- in the place you've
8 just described, did you spend time there with Mr. Hart?

9 A Yes, sir.

10 Q When?

11 A During our escape period in '73.

12 Q Subsequent to September of '73?

13 A Yes, sir.

14 Q Did Mr. Hart ever tell you how he got to know that
15 place so well?

16 MR. ISAACS: Judge, we'll stipulate that he lived
17 there for six years when he was a small boy.

18 MR. WISE: Thank you, counselor. We will accept
19 that stipulation.

20 THE COURT: It is so noted.

21 Q Tell me where is the relationship to the cave with
22 the cellar?

23 A Approximately 150 yards.

24 Q Which direction?

25 A Down by the creek.

1 Q Is it a running creek or a Spring Creek?

2 A Yes, it is a branch off of Spring Creek, runs into
3 Spring Creek.

4 Q Tell me about the cave; describe it to the best
5 of your ability?

6 A Oh, it's just -- I don't know, just a cave.

7 Q Is it a stand-up cave or a crawl-in cave?

8 A It was just something that we could use to get
9 out of the rain. It had a rear exit to it.

10 Q Okay. I'll hand you what has been previously
11 marked as State's Exhibit No. 65. Do you recognize that,
12 Mr. Dry?

13 A Yes, sir.

14 Q What is that?

15 A This is the cellar on the hillside that I was
16 referring to awhile ago.

17 Q And I'll hand you what has been marked as State's
18 Exhibit No. 66. Can you identify that?

19 A Yes, sir.

20 Q What is that?

21 A That's the cave down by the creek.

22 Q All right, sir, is that the entrance to it?

23 A Yes, sir.

24 Q And I'll hand you what has been marked as State's
25 Exhibit No. 67. Can you make that one out?

1 A Yes, sir.

2 Q What is that, sir?

3 A That's the cave in general.

4 Q Okay. That's the inside kind of view? Inside of
5 the case?

6 A Yes, sir.

7 Q Now, tell me, Mr. Dry, do you know where the
8 Girl Scout Camp is?

9 A Yes, sir.

10 Q How far as the crow flies would it be from that
11 cave and that cellar up to the scout camp?

12 A Approximately three and a half to four miles.

13 Q How would you go there?

14 A Walk.

15 Q Had you and Mr. Hart ever done that?

16 A Upon occasions that passed by, yes.

17 Q How long, if your memory tells us, how long did
18 it take you all to get from that cave and cellar up to
19 where you'd be level or the same as the Girl Scout Camp
20 there?

21 A It would vary from an hour and a half to two hours,
22 depending upon the way of travel.

23 Q Now, while you were living -- how long do you
24 suppose you stayed in this cave and cellar with Mr. Hart
25 when you all escaped from the Mayes County Jail?

1 A That is hard to determine.

2 Q Was it several days, several weeks, several months?

3 A Several months.

4 Q Now, when you were living in the cave under these
5 circumstances, did you ever get any warm meals or hot meals
6 other than what you could cook over a fire?

7 A Yes, sir.

8 Q What, people would invite you in?

9 A Yes, sir.

10 Q On one of those occasions, did you go to someone's
11 home with Mr. Hart and spend an evening meal and did Mr.
12 Hart get some of his belongings?

13 A Yes, sir.

14 Q Where was that -- no, I mean when was that?

15 A October of '73.

16 Q October of '73. What time did you get back to
17 the cave?

18 A Late in the night, around ten or eleven.

19 Q Tell me about the next day; what did you do the
20 next day?

21 A The next day?

22 Q Yes.

23 A Nothing, just sat around up there on the cellar
24 and killed time.

25 Q Did you ever talk about these things he brought

1 back with him?

2 A Oh, we talked about different things. We talked
3 about his appeal --

4 THE COURT: I didn't hear the answer.

5 MR. WISE: Appeal.

6 A About our escape, what we planned to do and stuff
7 like that.

8 Q And continue. What happened after that?

9 A After that?

10 Q Yeah, while you were talking about it, what came
11 out of that conversation?

12 A Oh, nothing. I glanced over some papers he had
13 and some pictures that was there.

14 Q All right, what all was in this packet that you
15 looked into? Was this with Mr. Hart's knowledge and consent?

16 A I'm sure he knew I was looking over the papers,
17 yes.

18 Q What did you see or observe?

19 A Nothing that was real important, to my knowledge,
20 at the time.

21 Q Okay, what was it in there?

22 A I don't know; I don't know what you --

23 Q Well, you said an appeal. Was there any papers
24 in there about an appeal?

25 A Yes, there were some papers concerning his case.

1 Q Did you get a chance to read those over?

2 A Yes.

3 Q Were there some other personal papers in there,
4 odds and ends and things?

5 A I don't know.

6 Q You said photos?

7 A Yes.

8 Q What photos, if any, did you see?

9 A Just family pictures and stuff like that.

10 Q Do you remember some of them specifically that
11 you were personally acquainted with?

12 A Yes, I knew some that one of a girl that I knew.

13 Q That you dated?

14 A Yeah, but I feel was irrelevant to this case, though.

15 Q But that picture was among these things?

16 A Yes.

17 Q Was there some pictures other than the ones you
18 just mentioned?

19 A Yes.

20 Q I'll now hand you what has been previously marked
21 as State's Exhibit No. 36-A and 36-B, and ask you, Mr. Dry,
22 to look at those very carefully and tell me, have you ever
23 seen those before?

24 A Yes.

25 Q Where at?

1 A With the pictures that Gene had.

2 Q Up there in that cave?

3 A I've seen pictures that look like these. To say
4 that these are them, I can't, because those were newer.

5 Q And when was that, again, please?

6 A October of '73.

7 MR. WISE: If it please the Court, comes now the
8 State of Oklahoma, and respectfully requests that State's
9 Exhibit No. 36, which contains 36-A and 36-B be introduced
10 into evidence.

11 THE COURT: Any objection, Mr. Isaacs?

12 MR. ISAACS: I don't know, Judge. This is the
13 first time that I have looked at the real deal. No objection,
14 Judge.

15 THE COURT: Received. 36, 36-A, 36-B.

16 Q Now, let me ask you, Mr. Dry, during this time
17 that you were living with Mr. Hart in these caves and
18 cellars, et cetera, can you tell me, what was his vision or
19 eyesight like?

20 MR. ISAACS: Judge, we'll stipulate he's got
21 bad eyesight and wears glasses.

22 MR. WISE: If it please the Court, we ask the
23 witness be allowed to respond.

24 THE COURT: Very well.

25 Q You may answer the question, Mr. Dry.

1 A He is night blind.

2 Q Excuse me?

3 A He's night blind.

4 Q Night blind. Would you elaborate a little? What
5 do you mean by being night blind?

6 A It's hard for him to see in the dark without his
7 glasses.

8 Q Did this cause him a good deal of problems or not?

9 A Yes, sir.

10 Q Would you explain how?

11 A Upon occasion, he lost his glasses and, you know,
12 it was pretty hard for him to see at night as we were going
13 through the woods and things.

14 Q What did you do?

15 A Well, I just kind of led the way, then.

16 Q Okay. Now, recognizing that you had to -- I don't
17 know how to tactfully put this -- kind of live off the land,
18 were there ever occasions when you were in other people's
19 home -- were you ever in other people's homes during this
20 period?

21 A Yes, sir.

22 Q When you were in other people's homes during this
23 period, did this have any effect upon his activities when
24 you were in those strange homes?

25 A No, other than he tried to find a pair of glasses

1 maybe that would help.

2 Q Was he always looking for a pair of glasses?

3 A Not always, but he was, something; you know, if he
4 saw a pair, he'd kind of look through them to see if they
5 would help.

6 Q Did he ever take any of them with him?

7 A On a couple of occasions, yes.

8 Q What if, on the first glance, they didn't seem to
9 help, would he still take them with him?

10 A Yes.

11 Q Why?

12 A Because he was night blind. He -- he wouldn't
13 really know whether they helped or not until dark.

14 Q Now, let me ask you, during the period of several
15 months that you testified to that the two of you were living
16 and running together, did you ever see his conduct around
17 little girls?

18 A I don't know what you mean.

19 Q Well, did you ever have an occasion to see him
20 when both of you were in the presence of, or at least within
21 observation of some small children, particularly little girls
22 and see any unusual reaction on his part?

23 A Yes, upon different occasions.

24 Q Would you give me an example of one of those occa-
25 sions?

1 A On an occasion around Spring Creek.

2 Q Where along Spring Creek? Could you be more
3 specific?

4 A The exact location, no, but --

5 Q Can you give me a land mark? You know, there's
6 various places.

7 A Around Twin Bridges.

8 Q Around Twin Bridges. Okay. Can you give me an
9 idea around what month of the year?

10 A October.

11 Q Of what year, still '73?

12 A 1973.

13 Q Excuse me. Continue, please. So we're in October
14 of '73, around Twin Bridges; is that correct?

15 A Yes, sir.

16 Q Continue. What did you see or observe?

17 A Well, really, it wasn't nothing, you know. We
18 sat on a bank one time on a little hillside, watching some
19 kids play in some water.

20 Q How old were those children?

21 A Oh, ranging from the age of approximately fourteen
22 around to about seven.

23 Q Were they male or female?

24 A One male and the rest female.

25 Q What happened after that?

1 A Nothing. We just passed time, like I said, talk-
2 ing, carrying on and discussing our woes over one girl in
3 particular and there was an argument.

4 Q How old was the girl in particular?

5 A Uh --

6 Q Your guess?

7 A I can't say that and be sure but I would guess
8 about thirteen, maybe younger.

9 Q Had she developed yet as a young lady or was she
10 still a child?

11 A She was on her way.

12 Q She was not the youngest there?

13 A No.

14 Q There were some older more developed children
15 there?

16 A Yes, one.

17 Q Continue, please. What was the discussion; what
18 happened after that?

19 A Well, there was, like I told you, a discussion,
20 we got into it over what me and him wanted and then it all
21 ended up into an argument.

22 Q What was the argument over?

23 A (No response.)

24 Q We're all over twenty-one.

25 A It was over the -- whether we should do something

1 to one of them or not.

2 Q And we're speaking specifically of the younger
3 girl?

4 A Yes.

5 Q And what did you eventually do?

6 A Nothing. The argument was aroused over what we
7 should do and what we shouldn't do.

8 Q Which side were you taking?

9 A I shouldn't.

10 Q And how did you end the argument?

11 A With a shotgun.

12 Q You had a gun with you at the time?

13 A Yes, sir.

14 Q Did you put the gun on Gene Leroy Hart to stop
15 his progress?

16 A No, sir, I held the gun in my hand.

17 Q And threatened him?

18 A Yes, sir.

19 Q Now, let me ask you one other further question.
20 Have you ever heard from your former cellmate and running
21 mate, Gene Leroy Hart, since June of 1977?

22 A I received three letters while I was in Granite
23 Reformatory that I believe did come from Gene Leroy Hart,
24 yes.

25 Q Where were you in June of 1977?

1 A In June of 1977, I was in Granite Reformatory.

2 Q And were you in Granite Reformatory through
3 August, September, October, et cetera?

4 A Yes, sir.

5 Q And tell me, when did you receive these letters
6 subsequent to June 16th or June 13th of 1977, that you
7 believe were from Mr. Hart? When did you get them?

8 A One come in August and the other come around
9 October and the last, I believe, about the last of November.

10 Q How do you know they were from -- were they signed?

11 A No, sir.

12 Q How do you know they were from Gene Leroy Hart?

13 A I took them to be from Mr. Hart because of the
14 incidents that had happened, crimes that had happened.

15 Q That you committed together?

16 A Yes, that no other person I felt knew about except
17 me and Gene Leroy Hart.

18 Q All right, sir, what did the letters say?

19 A To recall from word to word, I can't do that but
20 I can --

21 Q Just generally, please.

22 A They said that if I was to help anyone locate him
23 or knew his whereabouts or told where he might possibly be,
24 then he knew where my wife and my daughter were in Vinita
25 and that it would be pretty easy to get to them, to my

1 daughter in specific.

2 Q To your daughter in specific?

3 A Yes.

4 Q Mr. Dry, did he ever make any allusions about
5 your daughter in specific and any other victims of crimes?

6 A Only that -- no, he said -- if I recall right, he
7 said something about it would be easy to do it because you
8 can look around and see what's already been done.

9 MR. WISE: Your witness, counselor.

10 CROSS EXAMINATION

11 BY MR. ISAACS:

12 Q Mr. Dry, where are those letters?

13 A My ex-wife has them.

14 Q I didn't catch that, she has them or had them?

15 A Has them.

16 Q Where is your ex-wife?

17 A Vinita.

18 Q Have you turned those over to anybody for examina-
19 tion?

20 A No, sir, I haven't tried to get ahold of them.

21 Q You don't know who wrote those letters, do you?

22 A No, sir.

23 Q Now, Mr. Dry, isn't it true that you did not become
24 acquainted with Gene Leroy Hart until 1973, over here in the
25 Mayes County Jail?

1 A No, sir.

2 Q Well, you knew who he was but you'd never talked
3 to him?

4 A Yes, sir, I had talked to him, much, no.

5 Q But you didn't become acquainted with him on a
6 personal basis until you got in the jail, did you?

7 A No, sir.

8 Q You testified that you were down at this cave by
9 the cellar. Do you know your directions pretty well?

10 A Fairly well, yes.

11 Q Which direction does the cave face?

12 A The cave?

13 Q Yes, sir.

14 A Faces the north.

15 Q Runs north and south. Have you been there recently?

16 A No, sir, I haven't been there since 1973.

17 Q You said that Gene Leroy Hart was in that cave with
18 you for two or three months? Is that correct?

19 A No, sir, I never said Gene Leroy Hart was in the
20 cave with me. I said we were around there together.

21 Q Well, isn't it true that Gene Leroy Hart didn't
22 stay in that cave longer than a day or two at any time?

23 A Yes, sir.

24 Q Gene Leroy Hart doesn't like to stay out there in
25 caves, does he?

1 A No, sir.

2 Q And he's not the rugged woodsman that you are, is
3 he?

4 A I'm not no woodsman.

5 Q Gene likes to go in and take a bath, doesn't he?

6 A I have no idea.

7 Q He doesn't like to be dirty, does he?

8 A I have no idea.

9 Q And he likes to eat?

10 A Every man does.

11 Q Well, Gene likes to eat a little more than a
12 normal person, doesn't he?

13 A I don't know. He never ate no more than I did.

14 Q Whose house did you go to in October of 1973 when
15 you got a meal?

16 A (No response.)

17 Q Take all the time you need. We've got until the
18 banker comes. Whose house did you go to when you got a meal?

19 A One of Gene's relatives.

20 Q Do you know the name of that relative?

21 A Yes, sir.

22 Q What is the name?

23 A Annie Ballou.

24 Q And where is Annie Ballou's house located?

25 A By Ballou Schoolhouse, south of Locust Grove.

1 Q Who was there when you went there?

2 A Numerous people.

3 Q Do you know their names?

4 A I don't remember everybody that was there, no.

5 Q How many?

6 A I don't know.

7 Q You said you had been in other people's homes.

8 What are their names?

9 A David Ballou.

10 Q Who else?

11 A I don't know.

12 Q You said you got these letters in June, August,
13 October and November; is that correct?

14 A No, sir.

15 Q Correct me.

16 A I said August, October and November.

17 Q What was the postmark on those letters?

18 A Sallisaw.

19 Q And about what time of month did you receive the
20 August letter?

21 A I'm not sure.

22 Q What time of month did you receive the October
23 letter?

24 A I'm not sure neither.

25 Q The November letter?

1 A Last of the month.

2 Q Were they handwritten or typed?

3 A Printed.

4 Q Printed?

5 A Yes, sir.

6 Q Back there in 1973, you were how old, Mr. Dry?

7 A About twenty-two, twenty-three.

8 Q So you have known Gene Leroy Hart personally for
9 about seven years; is that a safe assumption?

10 A Personally about four.

11 Q Okay. Then sometime this year you wrote to the
12 Oklahoma State Bureau of Investigation, didn't you?

13 A Yes.

14 Q Did you write the Oklahoma State Bureau of Investi-
15 gation?

16 A Yes.

17 Q What did you tell them?

18 A Is that irrelevant to this case that I should
19 answer that?

20 Q Mr. Dry, if it is irrelevant, I am sure Mr. Wise
21 and Mr. Fallis will object and the Judge will rule. That's
22 what they are here for.

23 MR. WISE: If it please the Court, we would object
24 to anything that deals with letters being written outside
25 the scope of this examination.

1 THE COURT: Sustained. Outside the scope of
2 direct examination.

3 MR. ISAACS: Judge, this goes with an interest in
4 the outcome. I submit I should be permitted to cross exa-
5 mine because he's got a stake in the outcome of this and
6 that letter is the foundation for the stake in the outcome.

7 MR. WISE: We would renew our objection, Your
8 Honor.

9 THE COURT: Objection is sustained. You may call
10 him as your own witness at a later date, if you wish.

11 MR. ISAACS: Judge, it goes to the credibility
12 of his testimony is what I'm trying to say and he's got an
13 interest in the outcome, falls clearly within that pidgeon-
14 hole. Exception. Therefore, I should be permitted to
15 cross-examine him on what his interest is in the outcome of
16 this litigation.

17 THE COURT: Well, I'll let you ask him that ques-
18 tion.

19 Q Okay, Mr. Dry, is it not true that you wrote to the
20 OSBI, saying that you would try to help them find Gene Leroy
21 Hart?

22 MR. WISE: To which we would object again, Your
23 Honor, on the same grounds as to the prior question. Just
24 coming in the back door.

25 THE COURT: Sustained.

1 A To my testimony in this case?

2 Q Yes?

3 A No.

4 Q They told you if you would help them find Gene
5 Leroy Hart, they would get you out of prison, didn't they?

6 A That's not my testimony in this case.

7 Q You've had a little trouble since that time, haven't
8 you?

9 MR. WISE: If it please the Court, that's improp-
10 per. He's referring to --

11 MR. ISAACS: That's proper and he knows it is.

12 MR. WISE: If it please the Court --

13 THE COURT: Just a moment. What is your objection,
14 Mr. Wise?

15 MR. WISE: If it please the Court, this man is
16 now attempting to ask questions of this witness regarding
17 other matters and other crimes outside the scope of this
18 hearing.

19 MR. ISAACS: Scope has nothing to do with it, Judge.
20 This is the first time I've cross-examined the witness and
21 not been outside the scope, but he hasn't said anything.

22 MR. WISE: If Mr. Isaacs has been out of law school
23 the three and a half years he claims, he knows the proper
24 way to ask a question as to the integrity or the veracity of
25 a witness and it's a specific line of questions and this is

1 not a proper way to get at it, Your Honor.

2 THE COURT: Objection is sustained. Mr. Isaacs,
3 you may ask him any question about what he's been promised
4 in return for his testimony today but I think this other
5 thing is a collateral matter.

6 MR. ISAACS: Judge, I beg the Court to leave me
7 an exception in the record, so I can take this matter up at
8 a later date.

9 THE COURT: Well, inasmuch as I don't know what
10 his testimony would be, I'm only ruling on the information
11 I have, Mr. Isaacs.

12 MR. ISAACS: Judge, I'll make an offer of proof
13 that if he was permitted to testify that he made this
14 statement to Ralph Marsh of the Tulsa Tribune.

15 MR. WISE: If it please the Court, excuse me,
16 Your Honor.

17 THE COURT: Just a moment.

18 MR. WISE: Are we going to allow hearsay from the
19 newspapers to be introduced into this court and become a
20 part of the record to which we object.

21 MR. ISAACS: He has to deny it before I can call
22 this witness and discredit him, Judge.

23 THE COURT: Gentlemen, I can't listen to both of
24 you at once. Mr. Isaacs, were you going to make an offer of
25 proof?

1 MR. ISAACS: Thank you. Yes, sir. May I make it
2 at this time?

3 THE COURT: Yes.

4 MR. WISE: If it please the Court, we would object
5 to - if his offer of proof involves the reading from a
6 newspaper which is hearsay, may we make that objection, Your
7 Honor, before he's permitted to read from a newspaper into
8 this court record?

9 THE COURT: Objection is overruled, Mr. Wise. What
10 is your offer of proof, Mr. Isaacs?

11 MR. ISAACS: Can I read it into the record now,
12 Judge?

13 THE COURT: Just tell me what you expect his
14 testimony to be if he were permitted to testify.

15 MR. ISAACS: Larry Dry will testify that the --
16 some State Agency told me that I would get a parole if I
17 were able to catch Gene Leroy Hart. Further, that the
18 record shows that he signed out of the Granite Reformatory
19 on the 28th by Governor Boren after - after the classifica-
20 tion people had refused to sign him to the Community Treat-
21 ment Center at Muskogee. Further, that he was denied parole
22 and that the OSBI then appealed to Governor Boren and Gover-
23 nor Boren let Dry out on parole.

24 I've got some more questions, Judge.

25 MR. WISE: If it please the Court, we would ask

1 that the Court rule at this offer, -- so alleged offer just
2 made by worthy counsel does not go to the question which
3 he has propounded to the witness. That the question which
4 the Court has already ruled on has been sustained as to
5 what he is attempting to introduce. The Court has ruled
6 that he may continue questioning as to whether any promises
7 were made for his testimony here today. And to that only,
8 and then, what he's attempting to read into the record has
9 nothing whatsoever to do with that.

10 MR. ISAACS: Motive, Judge.

11 THE COURT: Mr. Isaacs, I am going to sustain the
12 objection but I'm going to allow you to ask questions about
13 whether he has been promised anything or whether he has
14 received anything in exchange for his testimony today. If
15 you have any other questions along that line, you may ask
16 them at this time.

17 Q (By Mr. Isaacs) Did you send a letter to anybody
18 else, Mr. Dry?

19 A No.

20 Q Did a newspaper reporter interview you in the
21 Delaware County Jail?

22 A A newspaper reporter tried to interview me, yeah.

23 Q When was that?

24 MR. WISE: If it please the Court, a newspaper
25 writer's interview of this witness is totally irrelevant and

1 immaterial and again, hearsay.

2 MR. ISAACS: Judge, it's not an out of court
3 statement. I'm not offering it to prove the truth of any-
4 thing. I asked him if somebody interviewed him and that's
5 a proper question and he received it and he can testify
6 about it.

7 THE COURT: It's a proper question if the other
8 person is a witness in this case. You may ask him the name
9 of the person that you think interviewed him.

10 Q What was the name of the man that interviewed you,
11 Mr. Dry?

12 A I have no idea.

13 Q Now, when you are in prison out there at the
14 Granite Reformatory, did you get newspapers?

15 A Yes, sir.

16 Q Get the Daily Oklahoman?

17 A Yes, sir.

18 Q Did you get the Hobart -- is it the Kiowa County
19 Democrat or the Hobart Democrat?

20 A Newspapers come into the joint out there all the
21 time but I never received one myself.

22 Q But you had them available to you and you could
23 read?

24 A Yes, sir.

25 Q And you knew about the Camp Scott homicides, did you

1 not?

2 A Yes, sir.

3 Q You knew about them a long time before anybody
4 ever contacted you or you contacted anybody, didn't you?

5 A No, sir.

6 Q You didn't?

7 A No, sir.

8 Q Well, you were reading about them in the newspaper
9 and you heard about them from your family and friends, didn't
10 you?

11 A Yes, sir.

12 Q And I imagine, I just say that I'm pretty sure
13 that those pictures in the newspaper didn't refresh your
14 recollection as to something you saw, did they, Mr. Dry?

15 A I felt they had no bearing upon what I saw, no.

16 Q And therefore, the newspapers didn't help you
17 identify some pictures?

18 A No, sir.

19 Q But you wrote this letter to the OSBI after those
20 pictures were found, didn't you?

21 A Yes, sir.

22 Q And that was after those pictures had been in the
23 newspapers several times, wasn't it?

24 A Yes, sir.

25 Q So you're here telling us that in 1973 when Gene

1 Hart broke out of the Mayes County Jail, he stopped by
2 Sheriff Weaver's Office and picked up those pictures?

3 A Am I telling you that?

4 Q Yes, sir.

5 A No, sir.

6 Q Thank you. You do paint -- sniff paint?

7 A Sniff paint, yes, I have upon occasions.

8 Q Do you do dope?

9 A No, sir.

10 Q How many times have you sniffed paint, Mr. Dry?

11 A My recollection, I don't know.

12 Q Back up there in the Delaware County Jail, did you
13 ever talk to Mr. Wise?

14 A Yes, sir.

15 Q When did you talk to him?

16 A A brief time down in the courtroom, some time maybe
17 last week or the week before. I have no idea.

18 Q Think back and try to give me a pinpoint date?

19 A I think it was week ago last Monday or Tuesday.

20 Q Did Mr. Wise talk to you about coming here to
21 testify?

22 A No, sir, he asked me some questions and I answered
23 them to the best of my ability.

24 Q Who was with Mr. Wise?

25 A Mr. Fallis and this gentleman here (indicating).

1 Q Would you indicate by the color of the clothing
2 which gentleman you are referring to?

3 A The man in the blue coat.

4 Q How long were they up there, Mr. Dry?

5 A I'm not sure.

6 Q Did they all come up together?

7 A Yes, sir.

8 Q Are you charged with a crime up there in Delaware
9 County?

10 MR. WISE: If it please the Court, we would object
11 again on the same grounds. He knows that's an improper
12 question and he should know the proper way to approach it.

13 MR. ISAACS: I submit that Mr. Wise ought to read
14 the case of The United States Supreme Court called Davis
15 against Alaska, Judge. It involves a juvenile who was on
16 probation, the very issue came before the United States
17 Supreme Court was whether or not it was proper to question
18 a witness about being on probation and the Court ruled that
19 anytime a man is being threatened with prosecution or revoca-
20 tion of some type of probationary, since that shows he has
21 an interest in the outcome, a stake in the outcome of the
22 question, is proper to deny that question is denial of the
23 confrontation right guaranteed Sixth Amendment. I rest my
24 case.

25 THE COURT: Do you have that case?

1 MR. ISAACS: I can go in there and get it.

2 THE COURT: Go get it.

3 MR. ISAACS: Thank you. Judge, I'm sorry it took
4 me so long. I was looking in the wrong book.

5 THE COURT: Thank you. Objection is overruled.
6 Do you want to rephrase the question or have the reporter
7 read it back?

8 MR. ISAACS: I think I can rephrase it. Thank
9 you, Judge.

10 THE COURT: You might want to show that to Mr.
11 Wise.

12 MR. WISE: If it please the Court --

13 THE COURT: By way of explanation, Mr. Wise, I
14 feel that the case is pertinent in that it allows cross
15 examination be liberally construed to include motivational
16 factors as part of the confrontation right.

17 MR. WISE: Motivational factors?

18 THE COURT: Motivational factors for testifying.

19 MR. WISE: Now, if it please the Court, we appre-
20 ciate fully that if someone is on a probationary status and
21 they commit a subsequent crime, that is totally relevant to
22 their present status and it is an inducement to them as to
23 whether or not they remain or they are revoked from their
24 parole status. In the instance at hand, it's my understand-
25 ing from the questions that are being directed from Mr. Isaacs

1 that he is not alluding to either the probationary status
2 that this individual is on nor is he alluding to his testi-
3 mony frankly in this court today, but to something outside
4 his testimony in court today. We appreciate that if he
5 wants to ask questions as to whether any promises were made
6 for his testimony in today's case, that's relevant but not
7 as to regarding something that may have happened in another
8 county or another place at a different time. That's not
9 relevant to this case at all and that is what our objection
10 is to.

11 THE COURT: Well, that's why I overruled your
12 objection. I think if you'll look at that case, you'll
13 see this question is probative.

14 MR. WISE: Very well.

15 THE COURT: Do you want to rephrase that question,
16 Mr. Isaacs?

17 Q (By Mr. Isaacs) Mr. Dry, are you charged with a
18 crime in Delaware County Jail at this time?

19 A Yes, sir.

20 Q More than one crime?

21 A Yes.

22 Q More than two crimes?

23 A No, sir.

24 Q Has an application been filed to revoke your
25 parole?

1 A No, sir.

2 Q It hasn't?

3 A No, sir, not to my knowledge.

4 Q You're up there on an armed robbery charge?

5 A Yes, sir.

6 Q What else?

7 A Second Degree Burglary.

8 Q What else?

9 A That's it.

10 Q Have they filed Contributing to the Delinquency of
11 a Minor on you yet?

12 A No, sir.

13 Q Are they going to file that charge?

14 A This is the first I've heard of it.

15 Q Well, there was a young boy with you.

16 MR. FALLIS: If it please the Court, excuse me.

17 Q When you pulled the armed robbery, was there not?

18 MR. FALLIS: If it please the Court, excuse me.

19 I appreciate that we have an order --

20 THE COURT: What is your objection?

21 MR. FALLIS: My objection is based upon the grounds
22 that this far exceeds the authority the Court authorized
23 counsel to inquire as to motives. Counsel has injected his
24 own thoughts -- are they going to -- he calls for a conclu-
25 sion on this particular individual. He has no way of knowing.

1 Secondly, it's also certainly making reference
2 to matters not before the Court at this time.

3 THE COURT: That objection is sustained. Ask
4 your next question, Mr. Isaacs.

5 Q (By Mr. Isaacs) Mr. Dry, when Mr. Wise talked to
6 you up there, did he tell you he was running for the Attor-
7 ney General's Office?

8 MR. WISE: To which I would have to object.

9 THE COURT: Objection is sustained.

10 MR. ISAACS: Judge, I think it would go to show
11 that Mr. Wise could help this man later on if he was elected.

12 THE COURT: The objection is sustained, Mr.
13 Isaacs; that's interesting but not very probative.

14 Q Did Mr. Wise tell you he was running for an
15 office at all?

16 A No, sir.

17 Q Did Mr. Fallis say anything about running for
18 office?

19 A No, sir.

20 Q State whether or not it's true that you stole some
21 Social Security checks from your parents?

22 A No, sir.

23 Q State whether or not it's true that you burglarized
24 the place belonging to John Burrows and took a shotgun loaded
25 with coats and coins?

1 A To my knowledge, I don't know who that could be.

2 Q State whether or not you've ever broke into your
3 brother's house and stole a television without telling him
4 about it?

5 A No, sir.

6 Q Now, you've got a nice criminal record, Mr. Dry.
7 Let me go over it and see if I can get it right; okay.

8 You've been convicted of attempted burglary and
9 that was in September of 1970; is that correct?

10 A Right.

11 Q You were convicted of Second Degree Burglary in
12 February of 1974; is that correct?

13 A Correct.

14 Q And you were convicted of Larceny of an Automobile
15 in February of '74; is that correct?

16 A Yes, sir.

17 Q You were also convicted of injuring a public
18 building in February of '74; is that correct?

19 A Yes, sir.

20 Q And isn't it true you were convicted of escape
21 from the County Jail in February of 1974?

22 A Yes, sir.

23 Q And then, before that, you were convicted of
24 malicious mischief; is that correct?

25 A Malicious Mischief?

1 Q That was after that, wasn't it, in December of
2 '74, you were convicted for the crime of Malicious Mischief
3 -- paint sniffing; is that it?

4 A In December of '74?

5 Q Yes, sir?

6 A No, sir.

7 Q Well, let's see, you've been convicted of Public
8 Drunk in '69 twice; is that correct?

9 A Yes, sir.

10 Q And Public Drunk in '72; is that correct?

11 A Probably; I have no way of knowing.

12 Q And you don't remember. Have you had any convic-
13 tions in any other case, Mr. Dry?

14 A Yes, sir.

15 Q What are those?

16 A Second Degree Burglary.

17 Q Which county?

18 A Craig County.

19 Q Any other convictions?

20 A Yes, sir.

21 Q Tell me about them.

22 A Larceny of an Auto.

23 Q Where was that?

24 A Craig County.

25 Q Any other?

1 A No, sir -- yes, sir.

2 Q Where was that, Mr. Dry?

3 A Cleveland County.

4 Q For what?

5 A Escape from the penal institution.

6 Q Any others come to your mind at this time?

7 A No, sir.

8 Q You were also convicted of driving while intoxica-
9 ted in '73, weren't you?

10 A (No response.)

11 Q March?

12 A Might have been.

13 Q You've just had so many of them you can't keep
14 track, can you?

15 A Probably right.

16 Q You'd do just about anything to keep them from
17 sending you to the penitentiary for life, wouldn't you?

18 A No, sir.

19 Q That includes getting on the witness stand and
20 telling a fabricated lie?

21 A No, sir.

22 MR. ISAACS: Thank you.

23 THE COURT: Anything else, Mr. Isaacs?

24 MR. ISAACS: We'll let him go for now.

25 THE COURT: Redirect?

REDIRECT EXAMINATION

BY MR. WISE:

Q If I understand you, Mr. Dry, you have acknowledged all these crimes Mr. Isaacs has named off; is that right?

A Yes, sir.

Q And this Defendant ran with you?

A On some of the crimes, yes.

MR. WISE: I have no further questions. Thank you.

THE COURT: Anything else, Mr. Isaacs?

MR. ISAACS: No.

THE COURT: Mr. Wise, the status of this witness is a material witness and bond has been set. Do you wish him to remain in this status or not?

MR. WISE: If it please the Court, we would simply ask that he be remanded back to the care of the Mayes County Sheriff.

THE COURT: Is there a date that you would like him to be ordered back in case he posts bond?

MR. WISE: Not at this time, we don't. No, we don't, Your Honor.

THE COURT: The witness is placed in the custody of the Mayes County Sheriff until he posts bond, until further Order of the Court.

MR. WISE: If it please the Court, our next witness --

1 we didn't expect to be through so early. I don't know if
2 he's in the wings or not. May we have a short recess?

3 THE COURT: Ten minutes.

4 (Following a ten minute recess, the proceedings
5 continue as follows:)

6 THE COURT: It is now close to 4:30 p. m. We will
7 recess and resume in the morning at 9:45 a. m. Court is
8 adjourned at this time.

9 (WHEREUPON, the cause in hearing was recessed until
10 9:45 a. m., on the 13th day of June, 1978.)