you could make. The direct evidence is what? What you saw. moisture on the pavement. You didn't have to infer. You saw wet pavement in his example, didn't you? The direct evidence is what? What you heard on the rooftop, and you heard something there that sounded like water, isn't that true? That is what you heard. is direct evidence. What you saw. That is direct evidence. times a moist rain in the fall of the year or the spring has a certain aroma about it. He didn't put that in the example, but sometimes you can smell a fresh rain. Anyway, what other inferences could you make? Well, let's go with his example, as far as it went, and we get outside after hearing what we think is water on the roof, and it is, and we see the wet patio, and we assume it rained. there any other inference we could make by the Prosecutor's own example? Suppose we look next door to our neighbor, Mr. Brown, or Mr. Smith, and his dog is out in the back yard and he has got a big dog, and the dog is nipping at him, playing at him, jumping up and down on him, and he is holding a hose in his hand. You know what a hose is, don't you? Water comes out of a hose. It is obvious as you look at Mr. Brown, who is playing with his dog, that his hose has gone from the direction of where he was sprinkling to the top of your house. What inference can you make from that? Would you still think it rained? Anybody? You can't get out of your mind hearing water on the roof, but here is Mr. Brown's hose. That is consistent with what you heard, isn't it?

MR. HEAD: Your Honor, we are going to object only as to

the fact Defense counsel has not used all the facts I used in my circumstantial statement.

THE COURT: I think counsel can expand on the example.

I assume it is going to be tied into some question as far as voir dire.

MR. BOSTICK: Oh, yes. I would hope so. Thank you very much. So, before I was interrupted, we have got the hose in Mr. Brown's hand. It comes back to your mind you heard water on the roof. I think he said you look down and your pavement is wet. That is consistent with what? Not that it rained, but you can infer that the water came on the roof from what you heard and saw on the patio from Mr. Brown's hose. Isn't that true?

Now, when the information is read to you with respect to circumstantial evidence, will you take into consideration all that you hear in the way of that instruction? Will you all do that?

Do you know that you are not allowed to infer from an inference but you must infer or may infer an inference from a fact? Do you understand that? It is improper to base an inference on an inference. I think you also were told that if the circumstances create inferences that are equally consistent with either innocence or guilt, such inference must be resolved in favor of the accused's innocence. Does anybody have a problem with that? You can infer guilt or infer innocence. Where you are faced with that choice, what must you do? You must pick the innocence. Do you understand that? That makes sense, doesn't it? You went outside and saw Brown holding the hose that obviously sprayed the water on the roof and made the sound and

provided the moisture.

At this stage of the voir dire, I usually ask the question, and I see no reason why I shouldn't now, based upon all that you have heard and seen, is there any reason at all that each of you cannot render a fair and impartial decision based upon the evidence? Anybody? Is there any one of you who would not be satisfied with a juror with your same frame of mind as you sit there now? Did you hear the question? Do you understand it? Anybody that didn't understand that question? I assume that each and every one of you would be satisfied with a juror with the same frame of mind. Is that true?

Thank you, Your Honor. We pass for cause.

THE COURT: Thank you, Mr. Bostick. Would counsel approach the bench, please.

(Whereupon the following was had at the bench:)

THE COURT: If you are prepared, we can go forward. If not, I will give you a few minutes if you would like and then we can go right into the peremptory thing and get the jury. My basic question is would your schedules permit us going on the view this afternoon? Do you think two alternates is sufficient?

MR. LANGER: Yes.

MR. STEPHAN: How late is the view?

THE COURT: Anytime.

MR. STEPHAN: Do you have a docket call?

THE COURT: I do.

(Whereupon an off-the-record discussion was had.)

(Whereupon counsel returned to their respective tables.)

THE COURT: Ladies and gentlemen, we have concluded the voir dire process, the examination of the prospective jurors. There are going to be what are referred to in the law as peremptory challenges. These are excuses that counsel would make directed toward any particular juror for reasons that do not need to be disclosed as far as the record is concerned or have no particular legal basis connected with them, but they are provided in the law, and we are going to take a brief recess while counsel decide which, if any, of those peremptory challenges to exercise in this case. I would say before we do recess that if any of you are excused peremptorily, you should not in any way consider that as any personal action taken against you. It is merely counsel's opinion that you may be more suitable as a juror in some other kind of a case other than this one based on the examination that they made, and I know counsel appreclate your very attentive behavior and responses to their questions in the voir dire examination. So, with that explanation, we will take a 10- or 15-minute recess and ask that you all then return to the courtroom at that time.

(Whereupon a recess was had.)

(Whereupon court reconvened.)

THE COURT: Very well. Is counsel ready to proceed?

MR. HEAD: We are, Your Honor.

MR. BOSTICK: We are, Your Honor.

THE COURT: Any peremptory challenge for the State of

Ohio?

MR. HEAD: Thank you, Your Honor. With our thanks, we will excuse Juror No. 7, Mr. Morrow.

THE COURT: All right. Mr. Morrow, you are excused.

Thank you very much for attending these proceedings. We appreciate your efforts as a citizen.

THE BAILIFF: Doris Haines, please, Seat No. 7.

THE COURT: Very well. Any peremptory challenge for Defense?

MR. BOSTICK: If it please the Court, we would ask the Court to excuse Ms. Holtzman.

THE COURT: Ms. Holtzman, you are excused with the thanks of the Court.

THE BAILIFF: Wesley Ward, please.

THE COURT: The next peremptory challenge for the State of Ohio?

MR. HEAD: Thank you, Your Honor. With our thanks, we will excuse Ms. Harris.

THE COURT: Ms. Harris, you are excused. Thank you for participating.

THE BAILIFF: Sherry Neumaier, please.

THE COURT: The next peremptory challenge for Defense?

MR. BOSTICK: May we approach the bench?

THE COURT: Certainly.

(Whereupon the following was had at the bench:)

MR. BOSTICK: Your Honor, based upon the questioning of Mr. Ward by both the Prosecution and Defense, we would move that he be dismissed for cause.

MR. HEAD: Your Honor, we feel that the prospective juror, Mr. Ward, has answered all the questions satisfactorily. He indicated to the Court and counsel that he could be a fair and impartial juror.

THE COURT: The Court sympathizes with the Defendant's motion in this matter, but the juror has made the appropriate responses and the Court feels that it is without adequate justification to excuse the juror for cause. The request is overruled.

(Whereupon counsel returned to their respective tables.)

MR. STEPHAN: If it please the Court, Defense would ask
that Mr. Ward be excused.

THE COURT: Very well. Mr. Ward, you are excused, sir. Thank you very much for participating in these proceedings.

THE BAILIFF: James Griffith, please.

THE COURT: The next peremptory challenge for the State of Ohio?

MR. HEAD: Thank you, Your Honor. With our thanks, we would ask the Court to excuse Ms. Barbee.

THE COURT: Ms. Barbee, you are excused. Thank you very much for participating.

THE BAILIFF: William Morris, please.

THE COURT: The next peremptory challenge for Defense?

MR. STEPHAN: Could we have a moment, Your Honor?

THE COURT: You may.

MR. STEPHAN: With the Court's indulgence, we would ask that Mr. William Morris be dismissed and excused.

THE COURT: Mr. Morris, you are excused. Thank you very much for participating.

THE BAILIFF: John Bloomstrom, please.

THE COURT: The next peremptory challenge for the State of Ohio?

MR. HEAD: One moment, Your Honor.

THE COURT: Very well.

MR. HEAD: Your Honor, with our thanks, we would ask the Court to excuse Ms. Brown, Juror No. 9.

THE COURT: Ms. Brown, you are excused. Thank you very much for participating.

THE BAILIFF: Carolyn Sue Basford, please.

THE COURT: The next peremptory challenge for Defense,

please?

MR. STEPHAN: Your Honor, Defense is well-satisfied with the jury as it is presently constituted.

THE COURT: You pass?

MR. STEPHAN: Yes.

THE COURT: Thank you. That concludes the peremptory challenges of the parties in this matter. Mr. Findlay, would you call -- I think we better have two alternates in this case.

MR. BOSTICK: Yes, Your Honor.

THE COURT: Would you call the one remaining lady and the next name or two on the list?

THE BAILIFF: Marie Ball and Carl Tobe, please.

THE COURT: Ms. Ball, would you take the seat right up here, please, next to Mr. Bloomstrom. We haven't addressed you personally. Your name is what?

MR. TOBE: Carl Tobe.

THE COURT: Mr. Tobe, have you heard all the questions that have been propounded to the members of the regular panel by both the Court and by counsel?

MR. TOBE: Yes, I have.

THE COURT: Have you made mental notes as to what your answers to all those questions would have been?

MR. TOBE: I believe so.

THE COURT: It would be quite a list, probably. The Court would ask you if your answer to any of the questions propounded would have varied in any material respect with the question propounded to any of the other jurors and the answer given by them.

MR. TOBE: No. sir.

THE COURT: You agree basically with everything that has been said in the courtroom?

MR. TOBE: Right.

THE COURT: Do you know of any reason why you could not act as a fair and impartial juror in this case?

MR. TOBE: No. sir.

THE COURT: All right. For both of you, for Ms. Fall and for you, sir, I would explain to you that the role of the alternate juror is a bit different than the role of a member of the regular panel. An alternate juror has to work just as hard at the case as a member of the regular panel, but if no misfortune befalls any of the members of the regular panel, then the alternate will not be called upon to deliberate and render a verdict. That does not alleviate the alternate from the obligation of paying extremely close attention, just as a regular member of the panel, to all the evidence presented in the case. Do both of you feel that you could fulfill that role in this case?

MS. BALL: Yes, sir.

MR. TOBE: Yes, sir.

THE COURT: Very well. Normally, we would select only one alternate but since the trial is expected to take a couple weeks, we are going to have both of you. I think we could probably make a seating arrangement that is more comfortable than where you are right now. Are you both able to hear all right from where you are?

MS. BALL: Yes, sir.

MR. TOBE: Yes, sir.

THE COURT: Good enough. Does counsel waive voir dire on Mr. Tobe?

MR. HEAD: Your Honor, I have a couple questions I'd like to ask.

THE COURT: All right. Counsel?

MR. BOSTICK: Likewise, Your Honor.

THE COURT: All right. Call another two names, please.

THE BAILIFF: Elizabeth Jump, please. Alan Weaver, please Is Elizabeth Jump in the courtroom?

THE COURT: Call the next name.

THE BAILIFF: It will be then Mr. Weaver and Catherine Kalman.

THE COURT: Let me ask the same series of questions I did of the other two individuals. Have you heard all of the questions propounded by the Court and counsel in this matter?

MR. WEAVER: Yes, sir.

MS. KALMAN: Yes, sir.

THE COURT: Have you made mental notes as to what your responses to those questions would have been?

MR. WEAVER: Yes, sir.

MS. KALMAN: Yes, sir.

THE COURT: How about those responses then; would they have varied in any material respect from those of the other members of the panel?

MR. WEAVER: No.

MS. KALMAN: There are so many I don't know if I recall all of them.

THE COURT: I don't remember them either. I was hoping that you did. Did you understand the role of the alternate juror in

a case like this?

MS. KALMAN: Yes.

THE COURT: Is it something you think you could do?

MS. KALMAN: Would we also be an alternate?

THE COURT: I don't know yet.

MS. KALMAN: I mean sit in on all the things?

THE COURT: Any problem with that?

MS. KALMAN: No.

THE COURT: Would you be a fair and impartial juror if you were called upon to serve as a regular member of the panel?

MS. KALMAN: Yes.

THE COURT: For you four people, I want you to stay for a minute. For the rest of you, I am going to excuse you from any further jury service in this case. I want to take this opportunity to thank you personally on behalf of the Court and on behalf of counsel for participating over these two days of voir dire examination. I hope you do not feel because you were not selected as jurors in this case that your time has been wasted in this procedure. If it were not for citizens like you who would take the time out of their daily lives to come down here and to offer to serve and participate in these voir dire examinations, we could not operate the system of justice that we operate here in Montgomery County, and I can tell you from direct personal experience in almost every other major metropolitan jurisdiction in Ohio that Montgomery County has by far the best system of justice in the State of Ohio, and it is

due in direct measure to citizens like yourselves. You have this

Court's sincere thanks and gratitude for your service. You are now
excused from any further service, and you may leave the courtroom.

I, frankly, would ask that you adhere as best you can to the Court's
admonition to you and the instructions that you have been under for
the last two days because this case does have some public notoriety
associated with it, and it is possible that some of you could be
contacted by members of the news media to share your impressions
with them. Frankly, until the case is over with, I'd just as soon
you didn't do that. But, you are free to follow your own conscience
in that regard. It may be that the case has generated enough interest
in your own mind to follow it in the media, and you are free to do
that at this point in time. With the thanks of the Court, then, the
rest of you in the back are excused.

Very well. Ladies and gentlemen, we are going to delay you a little bit more while we select the two alternates who will serve in this case. I also want to advise you of what the forthcoming schedule is. After we select the two alternates and you take your oath as jurors in this case, Mr. Findlay will orient you all to the jury room facility, which will be at least your daytime home for the next approximately two weeks. There are some badges that we ask that our jurors wear on the fifth floor because the Grand Jury is in session, and this is not exactly a private hallway. There are other people that use the hallway, so we want to make sure that you are properly identified as jurors in the case to make it easy for other

people to follow the Court's instructions as far as not discussing anything with you. Mr. Findlay will tell you all the rules that we have that are peculiar to this particular floor and this particular courtroom and how it is set up after we break. You will then be given a lengthy break because the Court has other business that is set for 1:30 and that will continue on for some period of time this afternoon. But, we are going to have you back in the courtroom. will ask that you come back because you are going to be taken on a view of some locations that are pertinent in the case. That will occur at approximately 3:45 or 4:00 o'clock this afternoon and will not take long, probably a half hour to 45 minutes at the most. Then, you will be brought back to the Courthouse and released for the day. On Wednesday, that is tomorrow, we will ask that you report to the jury room by 9:00 o'clock in the morning when we will have opening statements by counsel. We will then have a recess, again, because of other cases that have been previously calendared for 10:00 until 1:00 o'clock. At 1:00 o'clock, we will commence with the presentation of evidence in the case on Wednesday. That gives you a little bit of a scheduling outline for you to follow. If that seems a little choppy in this procedure, and this procedure has seemed choppy up to you now, that is because it is because we don't just have one case. We have to handle other cases that are assigned and require the Court's attention and counsel's attention, also.

You said you had some additional questions, Mr. Head. You may proceed.

MR. HEAD: Thank you, Your Honor. Mr. Tobe, you heard what the State of Ohio's burden of proof is in this case, did you not?

MR. TOBE: Yes.

MR. HEAD: Any problem with that concept?

MR. TOBE: No.

MR. HEAD: Did you hear Mr. Bostick describe that as an

MR. TOBE: Yes.

MR. HEAD: You understand that is his definition of it?

MR. TOBE: Right.

MR. HEAD: Not necessarily what other people think.

MR. TOBE: Right.

MR. HEAD: Did you hear my example of circumstantial

evidence?

awesome burden?

MR. TOBE: Right.

MR. HEAD: Did you hear Mr. Bostick's alternative theory?

MR. TOBE: Right.

MR. HEAD: Did you notice that Mr. Bostick didn't indicate to you that there was wetness all over the street, in the grass, as well as the patio area?

MR. TOBE: Yes.

MR. HEAD: And also there was the sound of thunder?

MR. TOBE: Right.

MR. HEAD: Do you have any problems with circumstantial

evidence?

MR. TOBE: No, sir.

MR. HEAD: Do you understand that one can be convicted solely on circumstantial evidence?

MR. TOBE: Right.

MR. HEAD: The fact that we don't have an eyewitness to the case who will be testifying in the case, does that disturb you at all?

MR. TOBE: No, sir.

MR. HEAD: I will ask Alan Weaver, is that right?

MR. WEAVER: Yes, sir.

MR. HEAD: Without asking the same questions, would your answers be the same as Mr. Tobe's?

MR. WEAVER: Yes, they would.

MR. HEAD: Are you Catherine Kalman?

MS. KALMAN: Yes.

MR. HEAD: I will ask you the same question. Would your answers be any different than Mr. Tobe's?

MS. KALMAN: No.

MR. HEAD: If you are chosen to serve as an alternate juror, you can listen to all the evidence even though there is a good chance you won't be able to deliberate the case?

MS. KALMAN: Yes, I can.

MR. HEAD: Very well. Thank you very much. Pass for cause.

THE COURT: Thank you. Mr. Bostick?

MR. BOSTICK: Yes, Your Honor. Mr. Tobe, you heard me ask some of the other jurors about their spare time?

MR. TOBE: Right.

MR. BOSTICK: Let me do that with you, is that all right?
How long have you lived in our County?

MR. TOBE: Twenty-seven years.

MR. BOSTICK: And before then?

MR. TOBE: Mercer.

MR. BOSTICK: Beg pardon?

MR. TOBE: Mercer County.

MR. BOSTICK: You have been with Delco how long, sir?

MR. TOBE: Two and a half years.

MR. BOSTICK: And before then?

MR. TOBE: In my own business.

MR. BOSTICK: May I ask what your business was?

MR. TOBE: Sales; Machine Services, Inc.

MR. BOSTICK: Did you hire other people in your own

business?

MR. TOBE: Right.

MR. BOSTICK: How many employees did you have?

MR. TOBE: A maximum of 27.

MR. BOSTICK: Twenty-seven?

MR. TOBE: Right.

MR. BOSTICK: Your son is a student where, sir?

MR. TOBE: Chaminade-Julienne.

MR. BOSTICK: Is Mrs. Tobe a housewife?

MR. TOBE: A housewife.

MR. BOSTICK: What do you do in your spare time, if you have any?

MR. TOBE: Fishing, if I get a chance.

MR. BOSTICK: Do you belong to any organizations or clubs?

MR. TOBE: No.

MR. BOSTICK: Mr. Weaver, you have lived in the County about all of your life, have you?

MR. WEAVER: Yes, sir.

MR. BOSTICK: How long have you been with your present employer?

MR. WEAVER: About a year and a half.

MR. BOSTICK: And before then?

MR. WEAVER: A book store.

MR. BOSTICK: You and your wife have a small baby, do you?

MR. WEAVER: Right.

MR. BOSTICK: Your wife has been with Winters Bank how

long now?

MR. WEAVER: Approximately three years.

MR. BOSTICK: About three years. What does she do there?

MR. WEAVER: She works in the department that handles

stocks and bonds.

MR. BOSTICK: Your spare-time activities are what, sir?

MR. WEAVER: Watching television and fixing the house up

and taking care of the baby.

MR. BOSTICK: Do you have a special preference of television programs?

MR. WEAVER: Oh, something light and comedy.

MR. BOSTICK: I am with you. Ms. Kalman?

MS. KALMAN: Yes.

MR. BOSTICK: You have lived in the County a number of years, have you?

MS. KALMAN: Yes.

MR. BOSTICK: And before then?

MS. KALMAN: Mercer County.

MR. BOSTICK: Did you know the gentleman over there?

MS. KALMAN: No.

MR. BOSTICK: Let me ask you three people is there any reason at all you couldn't sit on this jury and be a fair and impartial juror?

MR. TOBE: Not that I know of.

MR. WEAVER: No.

MS. KALMAN: No.

MR. BOSTICK: You wouldn't hesitate to return a verdict of not guilty if the evidence so showed?

MS. KALMAN: Right.

MR. BOSTICK: The nature of this terrible, terrible thing, does that turn you off with respect to receiving evidence, being fair and impartial?

MR. TOBE: No, I wouldn't say it would.

MR. BOSTICK: You haven't made any judgment calls, have you?

MR. TOBE: No.

MR. BOSTICK: Let me ask you this. You heard the questions as we went through them. You probably won't remember them all. I wouldn't, either. But, the point I want to ask you is did anything stick out in your mind that you should call to our attention at this time?

MR. TOBE: The only thing I know is no more than did I walk in the house last night and my wife says, you've got such and such a case. It was in the paper. She read it.

MR. BOSTICK: But you didn't?

MR. TOBE: No.

MR. BOSTICK: Let me ask you this. Any reason at all you couldn't sit as a fair and impartial juror? You said no, all three of you. Would all three of you be satisfied with jurors of your same frame of mind? Did you understand the question?

MS. KALMAN: I don't think I did.

MR. BOSTICK: Taking your frame of mind right now, your attitude, would you be satisfied with a juror with the same frame of mind?

MS. KALMAN: Yes.

MR. BOSTICK: Would you be satisfied?

MR. WEAVER: Yes.

MR. TOBE: Yes.

MR. BOSTICK: Pass for cause. Thank you.

THE COURT: Thank you. Any peremptory challenge for the State of Ohio?

MR. HEAD: We will pass peremptorily.

THE COURT: Defense?

MR. STEPHAN: Your Honor, we pass. We are satisfied.

and Mr. Weaver, you are going to now be excused, along with the other people that left the courtroom, for the balance of the trial with the same admonition that I gave the other people and also with the same degree of thanks that I gave the other people for your participation in this process. Thank you very much. Mr. Findlay, would you give the oath to the prospective jurors?

(Whereupon the jury was sworn.)

THE COURT: The last thing I am going to say to you, well, two things because I will not probably be addressing you the balance of the day even though you have some other duties to attend to, is to give you your recess admonition which, by the end of the two weeks, you will have memorized better than I, I am sure, and also to advise you as to how you are to conduct yourselves while you are visiting the locations this afternoon that you will be taken to. I will do that part first.

This afternoon, you are going to be taken to some locations that are involved in this case. You will remain together under the

supervision of the Bailiff of this court, Mr. Findlay, until you are returned to the Courthouse and released by him this afternoon.

Counsel and the parties in this case may accompany you on the view, but they may not discuss this case or demonstrate anything relating to it to you. Only the Bailiff may call your attention to certain objects or areas that are requested of him by counsel. What you observe on these locations and at the scene is not evidence. The conditions may have changed since the time of the events in this case. The evidence as to the physical appearance of the scene must come to you from testimony from the witness stand or through the Exhibits which are admitted. The sole purpose of this view of these locations is to help you understand the evidence as it is presented to you during the trial.

with those instructions, I am going to give you the recess admonition once more, and then you can go and get lunch. Do not discuss this case among yourselves or with anyone else. Do not permit anyone to discuss this case with you or to discuss it in your presence. Do not form or express any opinion on this case until it is finally submitted to you. You may explain this rule to any of your family or your friends. When your jury service is completed, you will be released from this instruction. At that time, you may discuss the case and your experiences as a juror, but, of course, you are not required to do so. Until that moment, you must control any desire that you have to discuss this case both here and outside the courtroom. Do not talk with the attorneys, the parties, or the

witnesses during the trial of this case. Likewise, these individuals should not talk with you. If anyone should attempt to discuss this case with you, report the incident to the Court through Mr. Findlay or Mrs. Maynard at your earliest opportunity. Do not investigate or attempt to obtain any additional information about this case outside the courtroom. As I have told you before and I will remind you again, it is quite likely this case will be the subject of news broadcasts or of news writings in the newspapers, and I instruct you that you are not to read, view, or listen to any accounts in the newspaper, radio, or television on the subject of this trial. Further, do not let anyone read to you or even comment to you about any such news accounts. If you should acquire any information through this means, please report that to Mr. Findlay or Mrs. Maynard as soon as practical, and that will be dealt with then subsequently by the Court. If any personal problems arise, utilize the same procedure.

With that explanation, then, is there anything further by counsel?

MR. HEAD: Not on the part of the State, Judge. Thank you.

MR. BOSTICK: No, Your Honor. Thank you.

THE COURT: I am going to release you into the custody of Mr. Findlay and ask that you report back to your jury room at 4:00 p.m. (Whereupon a recess was had.)

July 21, 1982

(Whereupon the following was had in chambers:)

THE COURT: The record should indicate we are in chambers.

the Defendant's presence having been waived by counsel.

MR. STEPHAN: So waived.

THE COURT: For the purpose of discussion on the motion previously made by the State of Ohio in limine in reference to a juvenile by the name of Michael Johnson who has been charged similarly to the Defendant in this case but in Juvenile Court, said charges being pending at the present time, the motion being directed toward prohibiting any line of inquiry or examination or offer of proof in relation to the fact that said juvenile is charged and said charges are pending in Juvenile Court. Is that a fair statement?

MR. LANGER: Or considered a suspect by the police or

MR. LANGER: Or considered a suspect by the police or the Prosecution.

THE COURT: Does counsel wish to address this matter?

MR. STEPHAN: Judge, our position is that we feel that

it is fair to comment on Michael Johnson's status as a suspect

throughout the proceedings, just as it would be fair to inquire of

any witness as to whether or not other parties may have been suspects

at one time or another. We feel handcuffed by a motion that would

prevent us from stating whether or not he is a suspect.

MR. LANGER: If I might respond. Certainly, the Defense can present evidence from which they can argue in closing that he should also be considered by the jury to be a suspect in this case, but the belief of the police or the State that Michael Johnson is a suspect is identical on the fact that charges were filed against him. Our belief is not evidence, and the fact that charges have been filed

is not evidence, evidence of Johnson's guilt or evidence of this Defendant's innocence.

THE COURT: That is true.

MR. STEPHAN: Once again, I am not arguing with the Prosecution that the evidence of his arrest and detaining him in Juvenile Court should not be commented on in this trial, but I don't know that Defense should be restricted any further than that.

MR. BOSTICK: For the record, we do feel such a restriction, to implement what fellow counsel has said, would deny the Defendant of a fair trial and would deny him himself of the effective use of counsel as provided by the Constitution.

MR. STEPHAN: I believe, Judge, that the motion of the Prosecutor as to how far we are to be limited may be premature. We don't know what the evidence will be. We don't know what questions we are going to ask. We don't know the status as a suspect Michael Johnson might be. To contain us at this point may deny our client a fair trial.

Stephan's comment to the effect that I don't know the context in which this evidence is going to arise at this point, whether there would be something presented by the State in chief or on direct, being subject to cross examination. Not knowing exactly how any of this issue would arise makes it difficult to rule or to announce any type of decision counsel could easily follow so, consequently, the Court is reluctant to make such a decision. But, the Court does feel

that there is at least one area that it is confident in ruling upon, that counsel can follow and adhere to, and that is -- actually, probably two areas. The first being the question of any statements made by the juvenile, who is obviously not and cannot be forced to be a witness in this case because of his Fifth Amendment Right, that no comment should be made on the fact that he has made a statement, either exculpatory or inculpatory or the nature of evidence in that regard because to do so would bring those matters into this trial which are not, in this Court's opinion, material and not really competent evidence for presentment in this trial. That is number one. I think that is something counsel can steer clear of. That is fairly clear. Number two, the fact of these, whatever they may be, and this Court really doesn't know exactly what the charges are that have been filed against the juvenile in Juvenile Court, and an examination into what those specific charges are, is, according to the case law submitted to the Court by the Prosecution, quite likely not relevant to this inquiry and, consequently, not admissible evidence. Even if it would be relevant, it may be, under Rule 403, of such a nature as to be too confusing for the jury to handle and properly excludable by the trial court anyway. That is not to suggest -- those two rulings by the Court are not to suggest, however, that Michael Johnson's involvement and evidence of his involvement in the case is in any way precluded or foreclosed from inquiry by counsel. If the ruling of the Court in this regard is a little unclear, it is because nothing has been offered, no questions asked, and no statement made

against which the Court can rule, based on the rule of evidence this morning. Is counsel satisfied there is adequate guidelines for counsel to follow?

MR. HEAD: We believe so.

MR. BOSTICK: Yes, sir.

MR. HEAD: We would move that Detective Mullins be designated as the State's representative.

MR. BOSTICK: We object. I have been looking for years, and I have found no basis for such a designation. Detective Mullins is a nice fellow. We became acquainted on the bus ride, but we feel that he should not be allowed to so sit.

THE COURT: Is Detective Mullins anticipated to be your first witness?

MR. HEAD: No, Your Honor.

MR. LANGER: No.

MR. BOSTICK: He will be called to testify, Your Honor, by the State, who joined with Defense for a separation of witnesses. That is the basis of our objection.

MR. LANGER: I might represent to the Court that the State's case is extremely complex and while Mr. Head and I are confident we have a full grasp of all the facts of the case, Detective Mullins beyond question knows the case better than he or I knows it, and he is a necessary aid to us to fully, adequately prosecute this case.

MR. BOSTICK: We would take the same stand with respect

to any number of witnesses; namely, the young Defendant's father. He would aid the Defense.

MR. LANGER: I will add this. One of the things Detective Mullins testifies to is the statement of the Defendant. Of course, under the corpus delicti rule, we couldn't introduce the Defendant's statement as the first item of evidence in the trial.

THE COURT: The Court only knowing that the witness list that was read to the jury is quite extensive can extrapolate from that to get to the point to say the case is probably at least administratively complicated and so as to require some assistance in that regard. However, the Court is sympathetic with the motion insofar as any sensitive part of the detective's testimony would be concerned as it relates to perhaps the testimony of other witnesses. So, the Court is going to overrule the motion at this time, but the Court will allow counsel to raise the objection again at times in which it thinks that the separation order would be particularly relevant vis-a-vis the detective's testimony. The Court has no idea what the testimony of the detective would be and how it would overlap or in other ways coincide with the testimony of other witnesses. I am assuming with most of the lay witnesses, testimony of the detective wouldn't have much bearing on that one way or the other. It might in some other aspects. In instances, if counsel can raise specific objections and specific reasons for the separation of the witness, at that point the Court will entertain that.

MR. HEAD: To clear the record, the State had moved for

Detective Mullins as our representative, which was objected to. You overruled the motion?

THE COURT: I sustained the motion and overrule the objection.

MR. BOSTICK: We would then move that Detective Mullins be required to testify, if at all, following the testimony of the Coroner.

MR. LANGER: I object to that. I think the Prosecutor has a right to construct its case in the manner it considers most effective. In our judgment, Detective Mullins' testimony would be not as effectively understood by the jury so early on in the State's case. There are a lot of predicates that have to be laid before he testifies. I object to that.

THE COURT: That motion is overruled.

MR. STEPHAN: One last motion. Defense would move to strike the abduction count for lack of particularity. Specifically, no identity is given to the alleged corpse. We would move to strike on the basis of that.

THE COURT: No what?

MR. STEPHAN: No identity is given to the alleged corpse in the indictment. On the basis of lack of identity for that corpse, recognizing that corpse is then and there not a human living being, but for the lack of specificity and particularity in that particular count, we would move to have it stricken.

THE COURT: You are talking about the abuse count or the

kidnapping?

MR. STEPHAN: The abuse of corpse, in the original indictment prior to the amendment.

THE COURT: Well, the Court will overrule the motion. It feels adequate that the indictment read as a whole gives adequate notice to the Defendant of the nature and quality of the charge, and the required specificity under the Code is present. Overruled.

(Whereupon court reconvened.)

and gentlemen, before we hear the opening statements of counsel and begin to take evidence in this case, I think it might be helpful if you were to have some preliminary instructions to follow while you are listening to and considering the evidence that you will hear.

Later, after you hear all of the evidence and the closing arguments of counsel, I will give you further instructions covering additional law which you are to follow in this case.

As I have instructed you before, it is the duty of the Judge to instruct you in the law and it is your duty to follow the law both as I state it to you now and at the conclusion of all of the evidence. First of all, it is your exclusive duty to decide all the questions of fact that are submitted to you. In connection with this duty, you must determine the effect and the value of the evidence presented. You must not be influenced in your decision by sympathy, prejudice, or passion toward any party, witnesses, or attorney in this case.

If, in these instructions, or in the instructions that I give you at the conclusion of the evidence, any principle is repeated or stated in some varying way. I want to assure you that no emphasis is intended thereon and none must be inferred by you. Therefore, don't single out any particular sentence or individual point of law or instruction that I give you and ignore the others. You are, rather, to consider all of my instructions as a whole and consider each instruction in relation to the others that I give you. The fact that I am giving you some of these instructions now and some I will give you at the conclusion of the evidence has no significance as to their relative importance.

The attorneys for the parties will have active roles in the trial of this case. They will make opening statements to you, they will question the witnesses, and they will make objections. Finally, they will argue the case as the last step before you hear my final instructions and commence your deliberations. Remember that the attorneys are not witnesses, and since it is your duty to decide this case solely on the evidence which you see or hear from the witness stand, you must not consider as evidence any statement of any attorney made during the trial. There is an exception to this and, that is, if the attorneys agree on any particular fact, such agreement or admission may be brought to your attention, and it will then be your duty, upon the Court's telling you so, to regard that fact as having been conclusively proved without the necessity of any further evidence on that point. If a question is asked and an

objection to the question is sustained, you will not hear the answer to that question and you must not speculate as to what that answer might have been or the reason for that objection. If an answer is given to a question and the Court then grants a motion to strike out the answer, you are to simply disregard both the question and the answer and not consider them for any purpose. Remember, a question in and of itself is not evidence. It may be considered by you only as it applies some meaning to the answer by way of testimony from the witness.

I have told you already the distinction between direct evidence and circumstantial evidence and I will not further instruct you on those points at this time.

As jurors, you have the sole and exclusive duty to decide the credibility of the witnesses who will testify in this case. This simply means that it is you who must decide whether to believe or disbelieve a particular witness and how much weight, if any, to give to the testimony of each witness. In determining these questions, you should apply the tests of truthfulness which you apply in your daily lives. These tests include the appearance of each witness on the witness stand; the witness' manner of testifying; the reasonableness of the witness' testimony; the opportunity that the witness had to see, hear, and know the things concerning which he testifies; the witness' accuracy of memory; his frankness or lack of it; his intelligence; interest; and bias, if any; together with all the facts and circumstances which surround the witness' testimony. Applying these

tests, you will assign to the testimony of each witness such weight as you deem proper. You are not required to believe the testimony of any witness simply because it was given under oath. You may believe or disbelieve all or any part of the testimony of any witness. You should not decide any issue of fact merely on the basis of the number of witnesses who testify on each side of an issue. Rather, the final test in judging the evidence should be on the force and weight of the evidence regardless of the number of witnesses on each The testimony of one witness which is believed by you is sufficient to prove any fact. You are certainly aware of the fact that two persons who are witnesses to an incident may often see or hear it differently. In considering discrepancies in a witness' testimony, you may consider whether such discrepancy concerns an important factor or a trivial one and whether the discrepancies are of such a nature as to cause you to disbelieve all or part of the testimony of that witness. If you conclude that a witness has willfully lied in his testimony as to a material fact, you may certainly then distrust all of that witness' testimony and would have the right to reject that testimony unless, from all of the other evidence, you believe that the probability of truth favors the witness' testimony in other particulars.

This concludes my preliminary instructions of law to you, and I hope that will be of some assistance while you are listening to and considering the evidence in this case. At this point in time, counsel for the parties are going to give you opening statements.

Again, I would remind you that the opening statements of counsel as well as the closing arguments are not evidence. Opening statements are designed to assist you by presenting to you an outline, if you will, or a table of contents of what the attorneys for the parties believe that the evidence will show in the case.

With that instruction, then, opening statement, Mr. Langer?

会 会 会

MR. LANGER: Thank you, Your Honor. May it please the Court. Mr. Head. Mr. Bostick. Mr. Staphen. Ladies and Gentlemen of the Jury. Good morning. My name, once again, is Dennis Langer. I am an Assistant Montgomery County Prosecuting Attorney and I, along with Bob Head, will be prosecuting this case. I might also introduce at the prosecutor's table Bill Mullins, Detective Bill Mullins, who is the detective from Moraine who has been on this case since the very beginning.

As you know, the Montgomery County Grand Jury has returned an indictment against this Defendant, Keith Wampler, and it charges him with having committed four crimes against 13 year old David Rowell. First, that he abducted that boy, restrained him by force or threat of force. Second, he raped him, anally raped him. Third, he murdered him by strangulation. And, fourth, he abused the corpse by cutting off his genitals. These are the crimes for which this Defendant has been charged, and now in the course of this trial Bob Head and I will present evidence which will convince you beyond any reasonable doubt that this Defendant is guilty of those crimes.

An opening statement, as Judge Kessler has mentioned, gives us the opportunity to sort of clue you in on how we are going to go about proving this Defendant's guilt beyond any reasonable doubt. I suppose if there were one initial point I might make about the State's case, I think Bob has sort of already forewarned you, the State's case is not a simple case. It is quite the contrary. It is rather complex. Bob has told you, and he meant it, this is not a case that

is going to be handed to you on a silver platter. There are going to be many, many details that you are going to hear during the course of our case. A lot of the details at the time you hear them from the witnesses will, at the time, seem to be minor or perhaps insignificant; yet leter on, as you get further into the case and as you get into deliberation, those minor details will turn out to be rather crucial details in deciding this Defendant's guilt. That is the sort of case that you are going to be receiving in this courtroom, and you are going to have to be I guess human sponges, taking in every bit of the testimony, every bit of the evidence you hear in the courtroom in order to make a fair and an accurate decision in this case.

Let me sort of give you, as Judge Kessler ascribed, a broad outline of the State's case. I certainly cannot get into all the details, but I sort of want to give you a broad description of the State's case.

The evidence will, of course, relate to a central figure, David Rowell. David Rowell's formal name was Robert David Rowell. He was 13 years old, a seventh grade student at Van Buren Junior High. David was the son of Myrtle and Bobby Rowell. They lived in that house on Kreitzer that you were shown. He lived there with his parents and his brother, his 15 year old brother Michael Rowell, and 10 year old sister Krista. If there is one physical feature that anyone who knew David Rowell would immediately describe, the first thing that comes to their mind would be his size. The evidence will be that David Rowell weighed 65 pounds. He was four and a half feet

tall. If he were standing in this courtroom right now in front of me, he would come up to here (indicating) about on the front of me. He wore size 3D shoes. On the day of his death, he was 13 years old, but he looked nine years old; and perhaps because of his smallness in comparison to other boys his age David compensated, I suppose, by sometimes perhaps talking too much, talking bigger than he was, and that was one of the characteristics of David that this Defendant — that annoyed this Defendant. He considered the Defendant (sic) a pest. That is going to be the evidence, and quite simply he didn't like David Rowell.

Now, this Defendant on the date in question was 16 years old, and he lived in that trailer on Cozy Lane that you were taken into. Despite the appearance of it yesterday, he lived in that trailer alone with his father. His parents had been divorced for some time; and this Defendant, in comparison to the victim, was a much larger individual.

On Friday, February 5, the evidence will indicate that that was a cold day, a frigid day. The temperature as the evening developed dropped down into the single digits, and it snowed during that part of the day. It snowed until about 10:00 o'clock. By the way, that is one of those minor details which will be important, the time that it stopped snowing, one of the factors that you will have to consider in determining the time of death which the coroner estimated at approximately 1:00 A.M. Saturday Morning, February 6. But, we are getting a little bit ahead of ourselves.

Friday, February 5, 4:30 or about 5:00 o'clock P.M., Michael Rowell, the brother of David, walks over to the Defendant's trailer. This Defendant was a friend of Michael but was no friend of David. Michael walks over to the Defendant's trailer, and the Defendant is home alone and, in fact, his father is in Waynesville, Ohio, and is there that entire night. He never comes back until the next day. He leaves his son there alone. Michael Rowell and this Defendant watch TV and they also have a couple drinks, Vodka and grapefruit juice. About a half hour later, little David comes knocking at the door, looking for his brother. He comes into the trailer. Sits on the couch there in the living room, and it is there in the living room area that this Defendant and Michael Rowell get into a wrestling match and the Defendant gets a little bit rough and strikes a low blow to Mike. Mike, naturally, is upset and he leaves the trailer; runs from the trailer in anger, and he runs to a friend's trailer, a friend by the name of Lisa Collins. Then you have sort of a bizarre The Defendant runs after Michael without a shirt on. is freezing weather. He is seen running after or running from the trailer without a shirt on. The last time that Michael Rowell sees his brother alive is when he saw David sitting there on the couch inside the trailer of the Defendant. But, David didn't remain there. After his brother had run out of the trailer and the Defendant ran after him without a shirt on, David walks to the Shipmans' trailer. That was the black and white trailer on the other side of Cozy Lane that you were shown. In that trailer lived Mr. and Mrs. Shipman and

their sons, James Shipman, 15 years old, and little Joey Shipman, eight years old. David walks over there and has a brief conversation with Joey and Jim Shipman. He gets a cigarette from Jim. The very last person other than the Defendant, the very last person to see little David alive is little Joey Shipman. He will testify that he saw David walk back to the trailer of the Defendant.

We move up to 7:00 o'clock. Michael Rowell returns home, and Mr. and Mrs. Shipman (sic) are naturally concerned that David isn't with him. Then begins the night long search for David. That family looks everywhere for David. Every conceivable place they think he might be in that area they check out. They check all around the trailer park. They go over to the Moraine Civic Center, which you saw. On that night, there was a movie, Benji. They play movies for free for kids in that area. He wasn't there. Mr. Rowell goes all the way up to the Dayton Mall on the off chance somehow Mike (sic) might have gone to the Dayton Mall. He's not up there. One of the places checked by Mike Rowell is the Defendant's trailer, and he goes back to the trailer at about 7:30 or so and asks Keith if he had seen the Defendant (sic) — had seen David, and the Defendant lied. He said the last time he saw him he was over on the Shipmans' patio.

The evening wore on and eventually the Rowells called the police and filed a missing person's report with the description, and the police join in on the search, looking for a boy of that description. They can't find him that evening.

Nine o'clock, these are approximate times, 9:00 o'clock 15 year

old Jim Shipman and Joey, tagging along with his older brother, and 17 year old Ted Ritchie, and another teenager by the name of Mike Johnson, 14 years old, show up at the Defendant's trailer, and they are admitted into the trailer by the Defendant, and all of them except for little Joey have beer.

Jim Shipman, Joey's brother, has by that time had a little bit too much to drink, and he goes back into the middle bedroom, which you saw yesterday, the Defendant's bedroom, and lies down for 30 or 40 minutes.

All of those boys are in that trailer, and none of them see into the back bedroom, the father's bedroom. The door to that bedroom was closed that entire time. None see or hear David inside that trailer, but none of them see the entire trailer. They all leave about 11:00 o'clock.

We shift to the next day, Saturday, February 6. Mr. Rowell is continuing his search for his son. About 3:00 o'clock or 3:30 in the afternoon -- I am not quite sure of the time -- Mr. Rowell is now searching in that field you yourself walked into yesterday, when he happens upon a sight that will haunt him for the rest of his life. He discovers the nude, naked body of his young son lying in a thorn bush. He called the police. The police come to the scene and, of course, quarter off the area so any evidence that might be there will not be tampered with. They further look at the body, and on top of the face of little David is a supermarket bag, and they open the bag and find a gruesome sight. The genitals of the boy are inside the

paper bag.

The body is taken to the coroner's office. The next day, Sunday, not Saturday but Sunday, about 9:00 o'clock in the morning the coroner conducts the autopsy, Dr. Donald Shaffer. He will be our first witness this afternoon. Dr. Donald Shaffer conducts the autopsy, and he makes the following findings. He says David Rowell died as a result of strangulation, and he will show you the evidence for that, at about 1:00 o'clock in the morning February 6, give or take two hours either way. You may have a misconception that a coroner can give an exact estimate of time of death, but unless there is a witness observing it, it is an approximate science. He finds evidence of a gag in David's mouth in the form of hemorrhages inside or on the gums of the boy. He finds evidence of anal rape in the form of injuries to the anus, fresh injuries to the anus. covered bruises that were sustained before death about the head and on the body of David. He discovers scratches which were sustained after death. He examines the genitals and he examines the wound where the genitals should have been, and he reaches the definite conclusion that the genitals were amputated after death. He will tell you why he can say that; and he also finds alcohol in the blood stream of David Rowell.

Now, a murder case isn't like any other sort of criminal case. In any other sort of criminal case, the victim can testify. But, not in a murder case. Therefore, it is in a circumstantial manner that the truth has to be arrived at. I think that is abundantly

clear to you by now.

MR. BOSTICK: We object, Your Honor. This is patently argumentative and improper at this time in opening statement.

THE COURT: It is getting perhaps a bit argumentative. We will overrule the objection on the basis that this may be a predicate to some other aspect of what the evidence will show.

MR. LANGER: Yes. What I am leading to is the circumstantial evidence in this case from which you will reach your conclusion. You are going to hear testimony about a path of footprints. You are going to hear testimony about a towel with blood on it out in that field, recovered out in the field; a toilet seat cover recovered in the field; fibers recovered from the clothing of David. And his clothing, by the way, was in a separate supermarket bag some feet away from the body. Fibers found in the shoe and on the clothing Trace evidence found on his body by the coroner. Blood stains on the door of the Defendant's -- on that table. that table you saw inside just as you are looking out the door to the left.of the table? Blood stains on that table, and a lot of other evidence and testimony relating to this Defendant; and the Defendant's own statement which, while he denies any involvement in this, he makes a rather significant admission. You will hear that. And all of this evidence together with your reason and common sense will lead you to two conclusions. Number one, that the abduction, the rape, the murder, and the mutilation happened inside that Defendant's trailer. There will be no question about that.

two, beyond any reasonable doubt, you are going to conclude, based on the evidence, that this Defendant is guilty of those crimes. And after you hear all the evidence, Bob Head and I are going to ask you to return the verdict which the nation and law and justice require, a verdict of guilty.

Thank you.

THE COURT: Thank you, Mr. Langer. Opening statement, Mr. Stephen?

MR. STEPHAN: Thank you, Your Honor. May it please the Court. Ladies and Gentlemen of the Jury. Honorable Prosecutors. Detective Mullins. Mr. Bostick, and Keith Wampler. I pause for a moment because we have just heard a very gruesome story, one that even in your wildest imagination you wouldn't want to contrive. But, as the Judge has instructed you and as Mr. Langer has admitted, an opening statement is simply our perception of what the evidence is going to show; and you know that when you see a fact or you hear something or you observe something, it may be perceived differently than from what someone else may hear, see, or perceive it to be. My point is that in most situations in life there is going to be more than one side to a story, and you have just heard one side of the story. That is, the prosecution's side of the story. But, there is another side to this story. That is, the Defendant's side to this story.

Let me tell you a little bit about the Defendant. Charles Keith Wampler is a 16 year old young man, and he lived in that trailer court,

and he knew this boy that you are going to hear about during the testimony, but he didn't know him that well and he didn't know these other boys that well. He was friendly with some of them, but the evidence is not going to show that he was that well acquainted with them.

I believe that the prosecution would like you to believe after they have submitted to you all their evidence that Keith Wampler planned this out and calculated the strangulation and the murder and the rape and the abduction of this poor young boy, and they are going to attempt to zero in with their evidence on Keith Wampler. But, Ladies and Gentlemen, let me ask you to remember this. They have a burden of proof, and Keith Wampler wears a robe of innocence, and he wears that robe of innocence throughout the presentation of their evidence, no matter what it might be.

That robe of innocence developed back in Old English Law. They called it the King's Robe. The reason they called it the King's Robe was because of the power and authority and importance that a king's robe meant. And he wears that robe. And so as you listen to these sordid, gruesome and awful facts the prosecution is going to put before you, don't look at Keith Wampler and say, well, he must have done it.

MR. LANGER: I am sorry to interrupt, but I will have to object.

THE COURT: If you could, confine the opening statement to what you believe the evidence will show, Mr. Stephen.

MR. STEPHAN: Thank you, Your Honor.

THE COURT: Thank you.

MR. STEPHAN: As I stated, the evidence that the prosecution is going to put before you is going to be gruesome and awful. No question about it. Mr. Langer is going to show you a picture of this young boy's genitals that were cut off. He is going to show you a picture of what he looked like when he was found in the field. He is going to show you evidence by photographs of anal rape. He is going to show you bruises and lacerations. That is all very, very terrible. But, Keith Wampler wears that King's Robe, and don't distort your function because you will tend to look at him and say, how could he have done that? He wears that robe throughout the trial.

Mr. Langer got up here and talked to you about facts of the case. What I'd like to do is approach it as a who, what, when, where and why and how presentation. There are certain things that are not in dispute. When did this occur? Well, this crime, this series of crimes occurred sometime during the afternoon of February 5 and through the evening and into the next day of February 6. Mr. Langer is perfectly correct.

The best we can give you are approximate times because we don't know any more. That is not in dispute as to when it occurred. The evidence will establish that.

The evidence is also going to establish what occurred, and he listed the crimes for you and I am not going to belabor that point.

We know what happened. They found this young boy's body, and we are

able to tell what happened to him.

But, there are some things in dispute. Mr. Langer says the evidence is going to show that this crime and this series of crimes occurred in Keith Wampler's trailer. The evidence is not going to show that. They are not going to be able to sustain their burden of proof on that fact.

We go to the next question. Who did this awful thing? We know who the accused is. The evidence is going to show that Keith Wampler has been arrested and charged and indicted, just as occurs in every criminal case, and the result in him being the accused in this case and the evidence is going to show that. But, the evidence is not going to show that he committed these crimes.

And, Ladies and Gentlemen, why, why did this happen? We don't know why it happened because the evidence is going to show Keith Wampler didn't do it. And, Ladies and Gentlemen, the evidence is going to show that they can't prove to you who did it. This is not mere legal rhetoric that I am trying to get to you. He sits there with the King's Robe on, and they have to prove — and that is the cornerstone of this defense. This man is innocent. They have to prove who did it, and they can't, and the evidence will bear that out.

Let's talk about that time frame that Mr. Langer made reference to. At about 4:00 to 4:30, the older Rowell boy went to Keith's trailer. The evidence will show that. Either at the same time or shortly thereafter, the younger boy, the victim, David, went to Keith

Wampler's trailer. There is going to be some dispute, as the evidence will show, as to why the older boy left the trailer. Mr. Langer wants you to believe that Keith Wampler delivered a low blow. I am not sure what that means, but that is what he says the evidence is going to show. In any event, the older Rowell boy left the trailer. went after him. The evidence will show that he went after him to find out why he was leaving. The evidence will further show, and you are going to hear this evidence, Ladies and Gentlemen, from a statement that was given by Keith Wampler, a statement voluntarily given to Detective Mullins at the time of his arrest, the evidence is going to show from Keith's own mouth that the younger boy, the victim, left right after the brother. And there is proof of that. Mr. Langer told you what the proof is. He went to Joey Shipman's house, right across the driveway that separates Keith's trailer from the black and white trailer you saw yesterday, the Shipmans' trailer. That is where the boy was last seen, and that is where the boy was last seen by this Defendant.

Now, how are we going to fill the gap between 5:30 Friday,

February 5, and late in the afternoon or sometime in the afternoon on

Saturday when poor Mr. Rowell finds his son's body in the field? We

can fill the gap. The evidence is going to show from Keith's own

statement that was given to Detective Mullins right at the time of

the arrest, I stayed home. I didn't go anyplace. I went to bed.

These boys came over at 9:00 o'clock and we sat around and drank beer,

these four other boys; the two Shipman boys, Michael Johnson and Ted

Ritchie. They came over and had a little get together there. They drank some beer. At 11:00 o'clock, those boys left. Keith went on to bed. He got a portable television, took it in the very back room of the trailer, set it up on a little shelf, turned on the electric blanket that his father slept with because it was a terribly cold night, and I don't imagine those trailers heat up so well. So, he took the TV and blanket and went to sleep in the back bedroom. That is where he was at 1:00 o'clock in the morning. We don't know where David Rowell was, and they can't tell you.

Keith's statement is going to be played for you here on a tape recorder. That is part of the evidence. He is going to tell you what he did that night. He was asleep.

We can't tell you, Ladies and Gentlemen, what happened to this poor boy, the victim, they found in the field, but we can tell you one thing. The evidence will show you Keith Wampler did not commit this series of crimes and that he stands upon his plea of not guilty today, as he has ever since the first moment the police made contact with him. And the evidence will show they first saw him February 6, probably within minutes of after when the body was discovered. And he told them then, I didn't do it. He told them later when they arrested him, I didn't do it. Yet, they want you to believe at this point, after they put this admittedly difficult case before you, that you should find him guilty. But, he is still wearing the King's Robe.

We are not before you today nor will we be before you for the

balance of this trial to deny the strangulation and mutilation and abuse of that body, that poor boy's body. That is not our purpose. Our purpose is, though, to have you draw the distinction between the actual crime itself, the tragedy, and who they have charged with it. Keith Wampler didn't do this terrible crime. He is innocent of it, and there is no proof beyond a reasonable doubt before you to change your mind from that. The prosecutors are in a terrible predicament because they don't have a lot of proof.

MR. LANGER: Objection, Your Honor.

THE COURT: Sustained. If you could, confine your comments to what you believe your evidence will show, please.

MR. STEPHAN: Ladies and Gentlemen, you will have a wealth of information placed before you by the evidence, and there will be many details, as Mr. Langer pointed out, that will be crucial. We would ask you to watch those details just as closely as he does because those details are very important.

The evidence is going to show you that the crime occurred, but we submit that the evidence will not show you that Keith Wampler committed these crimes.

Let me conclude by saying this. At the end of the trial, after you have heard and received all of the evidence and after the Judge has instructed you, we suggest to you that you are going to entertain several reasonable doubts, and many of those reasonable doubts are going to be conclusive doubts. And if at the close of the evidence and the instructions of the Court, you have those conclusive doubts,

Ladies and Gentlemen, you know what your duty is, what your burden is, and that is to return a verdict of not guilty. After you have heard all the evidence and after you have heard the instructions, we believe in and we trust in the fairness and impartiality that you all exhibited during voir dire, and we ask you to come in with a verdict of not guilty.

Thank you. Thank you, Your Honor.

THE COURT: Thank you, Mr. Stephan. Ladies and Gentlemen, as I indicated yesterday I think it was, due to other commitments that the Court had made previous to scheduling this trial, we are going to adjourn now and will make this kind of an extended luncheon recess for you. What time did we say we were going to resume, 1:00 o'clock?

MR. HEAD: Around 1:00 or 1:15.

THE COURT: Is 1:00 o'clock sufficient, counsel?

MR. BOSTICK: Fine.

THE COURT: If you could make arrangements to return and be available in the jury room at 1:00 o'clock, we will try to commence the trial at 1:00 P.M. Case is adjourned.

* * * * *

(Whereupon the following was had in chambers:)

(Whereupon State's Exhibits la through li, 2a through 21. and 3 through 7 were marked for identification.)

chambers, out of the presence of the jury, all parties and counsel being present along with the State's witness, Dr. Schaffer from the Montgomery County Coroner's Office for the purpose of reviewing certain photographic slides intended to be offered as Exhibits in the case to allow counsel to object, if they wish to, and state those opinions out of the presence of the jury and get rulings thereon.

MR. LANGER: Exhibit la, Your Honor.

THE COURT: Exhibit la, any objection?

MR. STEPHAN: No objection.

THE COURT: All right.

MR. LANGER: Exhibit 1b.

THE COURT: Any objection?

MR. STEPHAN: No objection.

THE COURT: All right.

MR. LANGER: Exhibit lc.

THE COURT: Any objection?

MR. STEPHAN: No objection.

MR. LANGER: Exhibit ld.

THE COURT: Any objection?

MR. BOSTICK: Your Honor, we do object to ld. We feel