

1 THE COURT: Dr. Butts, if you would, place your  
2 left hand on the Bible, raise your right, and listen to  
3 the clerk.

4 THE CLERK: You do swear that the evidence you  
5 shall give to the Court and this jury in this case now  
6 being tried shall be the truth, the whole truth, and  
7 nothing but the truth, so help you, God?

8 DR. BUTTS: I do.

9 THE COURT: You may have a seat.

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12 DR. JOHN BUTTS, having been first duly sworn by the  
13 Clerk, testified on **DIRECT EXAMINATION** by **MR. YATES:**

14 Q. (BY MR. YATES) State your name for the Court, please.

15 A. John D. Butts, B-U-T-T-S.

16 Q. How are you employed?

17 A. I'm employed as a forensic pathologist. I'm the Chief  
18 Medical Examiner for the State of North Carolina.

19 Q. How long have you been Chief Medical Examiner, Dr. Butts?

20 A. Since 1986.

21 Q. What qualifications do you have in your field?

22 A. I have an undergraduate degree in chemistry which I  
23 obtained from Duke in 1968. I attended medical school at  
24 Duke, graduated with my MD degree in 1972. I had three  
years training then in the field of anatomic and clinical

1 pathology, also at the Medical Center at Duke and then  
2 went to Chapel Hill where I did a year's training in  
3 forensic pathology with the Office of the Chief Medical  
4 Examiner. I finished my post-graduate training with  
5 another year of clinical pathology at the UNC School of  
6 Medicine, Department of Pathology, North Carolina  
7 Memorial Hospital. That was in 1977. When I finished my  
8 training, at that time I went on the staff of the Office  
9 of the Chief Medical Examiner as the Deputy. I served in  
10 that capacity until the end of November of 1986. That  
11 was eleven months as the acting Chief and then became  
12 full Chief in '87.

13 Q. You've testified as an expert in pathology a number of  
14 times, is that correct, Doctor?

15 A. Yes, sir.

16 Q. How many times, if you can tell me.

17 A. Over six hundred.

18 MR. YATES: The State would submit Dr. Butts as  
19 an expert in pathology.

20 THE COURT: Any voir dire?

21 MR. OLDHAM: No questions of Dr. Butts.

22 THE COURT: Okay. Thank you.

23 Q. (BY MR. YATES) Did -- Could you explain to the jury what  
24 pathology is and what you do in an autopsy?

25 A. Well, pathology is a branch of medicine that concerns

1           itself with how diseases are caused. My particular area  
2           of pathology, forensic pathology concerns itself with how  
3           the body is injured, particularly how the body receives  
4           injuries from what we call external forces or causes. A  
5           forensic pathologist generally works within a  
6           medical/legal death investigation system conducting  
7           inquiries into instances when people die suddenly and  
8           unexpectedly, either as a result of illnesses that  
9           haven't been previously diagnosed or when they die as a  
10          result of some type of injury or trauma. A pathologist  
11          has particular training in the area of injuries,  
12          understanding how injuries are caused. As part of our  
13          investigations, we often conduct autopsies of post-mortem  
14          examinations. These are -- This is basically the  
15          physical examination of someone who's died for the  
16          purpose of determining what injury or illness might have  
17          played a role in their death.

18    Q.    Did you have occasion or your office to examine the body  
19          of Christopher Gailey?

20    A.    Yes, sir.

21    Q.    And how was he identified to you?

22    A.    He was identified by Lieutenant McIver of the Randolph  
23          County Sheriff's Department.

24    Q.    Okay. And when did the Chief Medical Examiner's Office  
25          perform an autopsy on Mr. Gailey?

1 A. That was on July the 12<sup>th</sup> of 1999.

2 Q. And I believe you were there and another medical examiner  
3 I think helped perform the autopsy?

4 A. Yes, the actual physical examination was performed by Dr.  
5 Ross who was our trainee or Fellow that year, and I was  
6 present at the time.

7 Q. And I guess he is in Arizona or where is he?

8 A. He was in Arizona and now he's in Washington State.

9 Q. So the trainees are generally gone by the time, a year or  
10 two later?

11 A. Many times they take jobs in other states, yes, sir.

12 Q. And what, I believe you indicated, could you describe the  
13 decedent, the victim when he came into your office.

14 A. Whenever we received him he was partly clothed. He was  
15 not wearing a shirt, but we did describe him as wearing  
16 camouflaged pants, white socks, and black boots. We  
17 measured him to be about six foot in length and he  
18 weighed 170 pounds. His body was intact but he showed  
19 signs of early break down or decompositional change.

20 Q. And I believe he did have some facial hair, a beard and a  
21 mustache?

22 A. Yes, he had a trimmed beard and mustache.

23 Q. Okay. And did you further perform -- what did your  
24 autopsy of the deceased show, starting with the external  
25 injuries?

1 A. Well, the major findings were the presence of several  
2 gunshot wounds, specifically he had a wound of entrance  
3 in his right back or shoulder area on the back of the  
4 body. And related to that wound of entrance there were  
5 five separate exit wounds in the front part of his right  
6 chest. That is to say in this case a charge of buckshot,  
7 shotgun wound where it entered in his back as a single  
8 mass of pellets, and then five of the pellets had exited  
9 out the front part of his body with three remaining  
10 embedded in his tissues.

11 On his right leg, if I might stand a second, we  
12 found another wound, shotgun wound, this time it was  
13 birdshot, not buckshot, which had struck him on the inner  
14 surface of the right knee leg area with the shot coming  
15 up and causing extensive damage to the tissues mainly of  
16 the thigh area.

17 Q. And did you find any other significant injuries to the --  
18 to Mr. Gailey?

19 A. The only other injury noted, there was bruise on the  
20 right back.

21 Q. Okay. Did you in your office make some photographs of  
22 the injuries to the deceased?

23 A. Yes. Photographs are taken to document the appearance of  
24 the wounds that I just described to you.

25 MR. YATES: Approach the witness, Your Honor?

1 THE COURT: Yes, sir.

2 Q. (BY MR. YATES) I hand to you what's marked for  
3 identification purposes State's Exhibit Number Seventy-  
4 Five and ask if you can identify State's Exhibit Number  
5 Seventy-Five.

6 A. Yes, sir, I can.

7 Q. What is State's Exhibit Number Seventy-Five?

8 A. State's Exhibit Seventy-Five is a close-up photograph  
9 that illustrates the wound of entrance, the shotgun wound  
10 of entrance in his right back area.

11 Q. Okay. Hand you what's marked for identification purposes  
12 State's Exhibit Seventy-Seven and ask if you can identify  
13 State's Exhibit Number Seventy-Seven.

14 A. Yes, sir.

15 Q. What is State's Exhibit Number Seventy-Seven?

16 A. State's Exhibit Number Seventy-Seven is a photograph that  
17 shows a portion of the right front of the chest, the  
18 upper area, it shows part of the neck and the chin, and  
19 it shows the five wounds of exit that were present there  
20 where pellets or buckshot had advanced completely through  
21 his body, left the body.

22 Q. Hand you what's marked for identification purposes  
23 State's Exhibit Number Seventy-Nine and ask if you can  
24 identify State's Exhibit Number Seventy-Nine.

25 A. Yes, sir, I can.

1 Q. What is State's Exhibit Number Seventy-Nine?

2 A. State's Exhibit Number Seventy-Nine is a photograph that  
3 shows the shotgun wound of the right knee area, right  
4 leg.

5 Q. Can you use these photographs to illustrate your  
6 testimony here in court today?

7 A. I can.

8 MR. YATES: State would move to introduce  
9 State's Exhibit Number --

10 Q. (BY MR. YATES) Are they fair and accurate  
11 representations of the body of Christopher Gailey as it  
12 appeared to you on July 12<sup>th</sup>, 1999?

13 A. They are.

14 MR. YATES: State would move to introduce  
15 Seventy-Five, Seventy-Seven, and Seventy-Nine, I believe.

16 THE COURT: Introduced for illustrative  
17 purposes and admitted for that purpose.

18 MR. YATES: I would ask for Dr. Butts to step  
19 down in front of the jury and point out the entrance and  
20 exit wounds and the knee injury.

21 THE COURT: You may.

22 *(Dr. Butts steps out of the witness stand and stands*  
23 *down in front of the jury box.)*

24 Q. (BY MR. YATES) Dr. Butts, if you would take State's  
25 Exhibit Number Seventy-Five and if you could point out

1 the entrance wounds and show them on your body.

2 A. Yes, sir. State's Exhibit Number Seventy-Five is a  
3 photograph that illustrates the wound of entrance on the  
4 right posterior shoulder or back area. Approximately  
5 where I am pointing now on my body. It's a rounded hole.  
6 There's a lot of discoloration around it, and this is the  
7 result of decomposition, the superficial layers of skin  
8 are absent or like kind of reddish, and there are a  
9 number of small white particle-like objects in the  
10 photograph, and those are insect larvae.

11 Q. Hand you what's marked State's Seventy-Seven. Would you  
12 show the exit wounds.

13 A. State's Exhibit Seventy-Seven is a photograph that shows  
14 the front part of the right upper chest area. It shows  
15 five defects or holes in the skin where shotgun pellets,  
16 in this case buckshot, have exited the body. And where  
17 there is some discoloration around the wound and small  
18 insect larvae are visible again and are all part of the  
19 decomposition process. His chin is up in the left-hand  
20 corner.

21 Q. Okay. Hand you what's marked State's Exhibit Number  
22 Seventy-Nine showing the knee injury.

23 A. State's Exhibit Seventy-Nine is a photograph that shows  
24 the area around the right knee, the medial or inner  
25 surface, and it shows a large gaping wound of entrance.



1 This is a gunshot rather than a buckshot shotgun wound.

2 There's a large irregular or central area, and then  
3 there's some surrounding satellite wounds where portions  
4 of this shot have separated from the main mass, and this  
5 shot has spread towards the upper body, the pellets going  
6 back up into the leg and ending up in the thigh area.  
7 Satellite spread.

8 Q. Okay. Thank you, Dr. Butts.

9 *(Dr. Butts returned to the witness stand.)*

10 Q. (BY MR. YATES) After doing the external injuries, did  
11 you then make an internal examination of the body,  
12 particularly these wounds?

13 A. Yes, sir.

14 Q. What was the results of the internal examination?

15 A. Well, the internal examination revealed that the wound of  
16 the shoulder area had damaged the lung and some large  
17 blood vessels running up towards the right arm.

18 The examination of the leg wound revealed damage to  
19 major blood vessels supplying blood to that leg as well  
20 as damage to muscle and other related tissues. Birdshot  
21 pellets were recovered from the leg wound as well as  
22 fragments of the shotgun wadding. As I mentioned  
23 earlier, three buckshot pellets were recovered from the  
24 chest as well as some fragments of the wadding as well.

25 Q. Did you recover some wadding or was it a wadding inside

- 1 the wound in the --
- 2 A. Wadding was recovered from both wounds, yes, sir.
- 3 Q. Was there a spread pattern in the wound to the shoulder?
- 4 A. No. The pellets again when they struck the body were
- 5 traveling as a single mass. They had not yet begun to
- 6 spread.
- 7 Q. So would that tell you anything about the distance of the
- 8 shots?
- 9 A. Yes.
- 10 Q. What would that tell you?
- 11 A. It indicates that it was quite close, within a matter of
- 12 a foot or so.
- 13 Q. And the injuries to the knee, do you have -- in looking
- 14 at the pellets, do you have any idea about the distance
- 15 of that wound?
- 16 A. Yes.
- 17 Q. What would that be?
- 18 A. The pellets had begun to spread which would indicate a
- 19 somewhat greater distance versus the one in the shoulder,
- 20 so it was some yards away. I have to, again, the only
- 21 one would could accurately judge the distances in either
- 22 of these cases would be to take the actual gun with the
- 23 ammunition used and do test firings. But my distances
- 24 are approximate.
- 25 Q. Okay. And do you have an opinion satisfactory to

1           yourself as to the cause of death of Christopher Gailey?

2   A.    Yes, sir.

3   Q.    And what would that be?  What was the cause of death of  
4           Christopher Gailey in your opinion?

5   A.    He died as a result of the shotgun wounds he received.

6   Q.    The -- Would it be possibly, those are wounds that would  
7           not cause immediate death, is that a fair statement, Dr.  
8           Butts?

9   A.    In my opinion they would not necessarily cause immediate  
10          death or incapac -- well, incapacitation, yes, sir.

11  Q.    And the wound to the knee, would that probably cause any  
12          incapacitation as far as being able to --

13  A.    Yes, sir.  In my opinion he would not have been able to  
14          move that leg, stand following the infliction of that  
15          wound.

16  Q.    And -- That's all.  Your witness.  Dr. Butts, did you --  
17          at the autopsy was some items of clothing and that type  
18          of thing taken for the Sheriff's Department?

19  A.    Yes.  A number of items were turned over to McIver.

20  Q.    Lanny McIver?

21  A.    Yes.

22  Q.    And do you know what those items are in your notes today?

23  A.    Yes, sir.

24  Q.    What items were turned over to Lanny McIver?

25  A.    We turned over the necklace he was wearing, his glasses,

1 pants, wadding from the right shoulder wound, the  
2 buckshot, three buckshots that we recovered from the  
3 shoulder wound, then the wadding from the thigh wound or  
4 knee wound, and birdshot samples from the thigh or knee  
5 wound, as well as a sample of blood from the chest  
6 cavity.

7 Q. Let me ask you. Were any bones broke when that went in  
8 his shoulder into the chest area?

9 A. Yes, sir. There was some damage to the ribs, I believe.

10 Q. Would that be a very painful injury?

11 MR. OLDHAM: Objection.

12 THE COURT: Well, if he knows.

13 Q. (BY MR. YATES) If you know?

14 A. I have an opinion.

15 Q. What is your opinion, Dr. Butts?

16 A. Yes, sir, gunshot wounds are painful if the individual's  
17 conscious.

18 Q. I believe that's all.

19 THE COURT: Any cross examination?

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21 \*\*\*\*\*

22 **CROSS EXAMINATION of DR. JOHN D. BUTTS by MR. OLDHAM:**

23 Q. (BY MR. OLDHAM) Good morning, Dr. Butts. How are you?

24 A. All right, sir.

25 Q. Dr. Butts, you indicated in your report, did you not,

1 that with regards to the shoulder wound in the back  
2 shoulder, there was no soot or powder detected around or  
3 in that particular wound.

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1 'AWAY'  
4 A. We could not see any, no, sir.

5 Q. And therefore you indicated on the report there was none  
6 detected, is that right?

7 A. That's correct.

8 Q. Okay. Now, do you recall talking with me back on  
9 February 9 of 1901 (SIC)?

10 A. No, sir.

11 Q. You do not recall talking to me?

12 A. Not in 1901.

13 Q. 2001. Excuse me. Not 1901. I'm sorry. 2001.

14 A. At last, I'm afraid that in going back to 2001 and I  
15 probably don't recall exactly either.

16 Q. Okay. But you recall us talking?

17 A. We could have. I don't remember precisely.

18 Q. Okay. And do you recall indicating to me at that time  
19 that the more serious injury was the wound to the back of  
20 the shoulder, which you've designated as Gunshot Wound  
21 Number One?

22 A. Yes, sir. Again, I don't recall the conversation, but  
23 that certainly is -- I certainly agree with that.

24 Q. Okay. And you've testified today, have you not, that  
25 that caused injury to the lung and to arteries in the

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1 area of the body located where the wound came in?

2 A. Yes, sir.

3 Q. And do you recall indicating to me back at the time that  
4 that injury was such that death would follow relatively  
5 quickly?

6 A. Yes, sir, I agree.

7 Q. Okay. So it would be your opinion that somebody who had  
8 been inflicted with that type of wound would not survive  
9 for a period of an hour or two hours?

10 A. It would be extremely unlikely in my opinion, yes, sir.

11 Q. It would be a matter of minutes?

12 A. It would be, in my opinion, more likely to cause  
13 unconsciousness within a matter of minutes rather than  
14 hours, yes, sir.

15 Q. Okay. Because of the presence of large arteries in that  
16 area?

17 A. Yes, there would be extensive bleeding as well as damage  
18 to the lung.

19 Q. Okay. And you said it would be your opinion that it  
20 would cause that person more likely than not to go into a  
21 state of unconsciousness?

22 A. At some point in time, yes, sir.

23 Q. Yes, sir. Now, Dr. Butts, did you also, as a part of the  
24 examination, determine the blood ethanol of the deceased?

25 A. An alcohol test was run on the sample of blood obtained

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1 from his chest cavity.

2 Q. Okay. And what was the results of that test on that  
3 sample?

4 A. We found a level of alcohol of twenty milligrams per  
5 deciliter, that's the equivalent of .02 on the  
6 breathalyzer scale.

7 Q. Okay. So you determined the presence of alcohol was in  
8 the blood system, is that what you're saying?

9 A. There was alcohol present in that sample, but the blood  
10 was no longer in the system. It was free in the body  
11 cavity because there was no blood left in his system.  
12 And this level of alcohol is very low and it could be  
13 accounted for just be decomposition itself.

~~\*~~ 14 Q. Okay. Now, were you asked by law enforcement officers to  
15 conduct any tests for controlled substances?

~~\*~~ 16 A. Not to my knowledge.

17 Q. Do you normally do that as a practice unless such a  
18 request is made of you?

19 A. No, sir, we would not do so unless a specific request had  
20 been made.

21 Q. Okay. Is there anywhere on this report that indicates  
22 that was not done?

23 A. I'm sorry?

24 Q. Is there some indication that it was not requested or it  
25 was not done on your report?

1 A. Well, there's no indication it was done, so I would then  
2 presume that it wasn't requested.

3 Q. Okay. Do you have any knowledge that any such request  
4 was made in this case?

5 A. Not to my recollection, no, sir.

6 Q. And you of course have reviewed your notes before coming  
7 here today to testify and you've not found any indication  
8 that such a request was made?

9 A. No, sir, I did not see anything in the copies of the  
10 reports of autopsy, medical examiner's report, and the  
11 like, yes, sir.

12 Q. Thank you, Dr. Butts. I have no further questions.

13 THE COURT: Any redirect?

14 MR. YATES: No, Your Honor. I would ask that  
15 Dr. Butts be excused.

16 THE COURT: Any objections?

17 MR. OLDHAM: No objections, Your Honor.

18 THE COURT: You may go, sir. Thank you.

19 *(Witness is excused from the witness stand.)*

20 THE COURT: Is the State ready to call its next  
21 witness?

22 MS. ALLEN: State would call Mr. Thomas McIver.

23 THE COURT: Mr. McIver, if you would come up,  
24 please. Watch your step as you come up on the witness  
25 stand. When you get there if you would please place your