

REPORTER'S RECORD  
VOLUME 1 OF 1  
CAUSE NO. W96-02380-N(A)

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EX PARTE ) IN THE DISTRICT COURT  
)  
) OF DALLAS COUNTY, TEXAS  
)  
CHRISTOPHER RADKE ) 195TH JUDICIAL DISTRICT

\*\*\*\*\*  
WRIT OF HABEAS CORPUS HEARING  
\*\*\*\*\*

On the 17th day of April, 2002, the following  
proceedings came on to be heard in the above-entitled and  
numbered cause before the Honorable Fred C. McDaniel,  
Magistrate, held in Dallas County, Texas:

Proceedings reported by machine shorthand.

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THE COURT: This is a Writ of Habeas Corpus hearing on Cause Number W96-02380-N(A), Christopher Radke, R-a-d-k-e.

Go ahead, Mr. Tandy.

MR. TANDY: I'd like to call Mr. Caldwell.

THE COURT: Mr. Caldwell, if you'll come up to that seat over there.

(Witness sworn by the Court.)

DIRECT EXAMINATION

BY MR. TANDY:

Q. State your name, please, sir.

A. Robert Lee Caldwell, Jr.

Q. Mr. Caldwell, I'll ask you, do you live here in Dallas County?

A. I live in Collin County.

Q. And what is your relationship to Christopher Radke?

A. I'm his stepfather.

Q. And how long have you been married to his mother?

A. June 6th will be 20 years.

Q. Back at the time -- you're familiar with Chris being charged, arrested and finally convicted of an offense of murder?

A. Yes.

1 Q. On the date in question of the murder case that  
2 happened, did you happen to be at the place that it had  
3 happened?

4 A. Shortly thereafter.

5 Q. Do you know what time, what month and year that  
6 was?

7 A. Gosh, I'm trying -- February, was it?

8 Q. Okay.

9 A. I don't remember the date, but it was February, I  
10 think, of '96.

11 Q. And where was that located?

12 A. In Garland.

13 Q. And was it in an apartment or a house?

14 A. It was a small house in Garland.

15 Q. And who was living in that house? Had you been  
16 to that house on previous occasions?

17 A. Several times.

18 Q. And was it a house that had a street in front of  
19 it or --

20 A. It was on the corner. It was a corner house. It  
21 had a driveway, a front garage and driveway.

22 Q. On the 29th day of February 1996, when you  
23 arrived there, what time of day was it?

24 A. 10:00, 10:30 at night -- 9:30, 10:00 o'clock at  
25 night. It was dark, after dark.

1 Q. And who was there?

2 A. All I saw was Chris outside and the grandbaby,  
3 the grandson.

4 Q. Was there anyone else there?

5 A. The police.

6 Q. Now, what had brought you to this place?

7 A. Chris had called us and told us that there had  
8 been an accident and please come quick. And Janie and I  
9 jumped out of our house, which was probably 15 minutes  
10 away, and went straight there.

11 Q. Where did you live at the time?

12 A. In the house we live in now, 3012 Warm Springs,  
13 Richardson, Texas.

14 Q. And you arrived there and what did you attempt to  
15 do when you arrived there?

16 A. The first thing we did, we saw the police holding  
17 the baby, and the first thing we did was get the baby and  
18 try to calm the baby down and -- I'm not -- what are you  
19 asking me?

20 Q. Would you tell us what you did upon arrival.

21 A. We mainly sat in the car for a few minutes. I  
22 asked the police what was going on, and they said they were  
23 questioning, trying to figure out all the facts, and they  
24 were questioning Chris and asked me to stay away. So we  
25 got the baby and went back to the car and waited for a

1 minute, and at that point we called two lawyers.

2 Q. Now, how long were you there before -- were you  
3 waiting there before you took the baby?

4 A. I wouldn't say it was more than ten -- that I  
5 took him home?

6 Q. No, that you took the baby.

7 A. I wouldn't say more than five or ten minutes  
8 before we got the baby.

9 Q. And how long were you there when they said they  
10 were questioning Chris?

11 A. Shortly thereafter. I don't remember exactly how  
12 many minutes, but it wasn't a half hour or an hour. It was  
13 very shortly thereafter.

14 Q. And where did they have Chris?

15 A. Had him standing in front of a police car  
16 handcuffed and standing on the easement in front of the  
17 house, the place between the grass and the sidewalk and the  
18 street.

19 Q. Did you have any sort of communication tool with  
20 you that day?

21 A. Yes, I did.

22 Q. What was it?

23 A. My cell phone.

24 Q. And did you have any occasion to use it that  
25 night?

1 A. Yes, I did.

2 Q. And what was the occasion to use it? Was it at  
3 that time that you used it while you were located at the  
4 residence?

5 A. That's absolutely correct.

6 Q. And who did you call?

7 A. I called two people I know in Austin that are  
8 lawyers.

9 Q. And who would that be?

10 A. That would be Helen and Lew Bright.

11 Q. And would you tell me, are they attorneys?

12 A. Yes, they are.

13 Q. And what's your relationship to them?

14 A. Helen is my sister-in-law and Lew is her husband.

15 Q. Now, did you talk with them and tell them what?

16 A. I tried to explain to them, the best of my  
17 knowledge, what was going on. At that point in time we  
18 didn't know a lot. I thought and I'm sure -- I heard what  
19 I thought was the Miranda rights at that time being read to  
20 Chris and that's when we called the lawyers. We called  
21 Janie's sister and -- shall I go on?

22 Q. No, I'll ask you another question. Did they stay  
23 on the phone during the period of time that you were there,  
24 or did you call them more than one time?

25 A. No, they stayed on the phone constantly.



1 Q. How long was it from the time that they got on  
2 the phone until they terminated the conversation with  
3 whomever that they were talking to?

4 A. Well, they talked to only Janie and I. They  
5 weren't allowed to talk to Chris.

6 Q. Did they ever attempt to talk to Chris?

7 A. Yes.

8 Q. And how was that attempt made?

9 A. They asked me to take the phone over to the  
10 police and inform the police that I had a lawyer on the  
11 phone, and that he shouldn't say another word until he had  
12 an opportunity to talk to a lawyer.

13 Q. All right. Did Chris visit with them?

14 A. No.

15 Q. Why not?

16 A. They did not allow him to.

17 Q. Where was he when you tried to get that message  
18 to him?

19 A. The same place -- no. I believe he was sitting  
20 in the car at that point in time. They were taking  
21 evidence.

22 Q. What do you mean, they were taking --

23 A. They were dusting his hands.

24 Q. Was the door open or closed?

25 A. The door was open and they actually asked me to

1 leave or they threatened that they'd arrest me if I  
2 interfered.

3 Q. All right. Now, were you able to -- were they  
4 asking Chris any questions at this point?

5 A. Absolutely.

6 Q. Could you hear his response?

7 A. I heard him say, I want to talk to that lawyer.

8 Q. And did they allow him to talk to the lawyer  
9 then?

10 A. No, they did not.

11 Q. At any point during the time that you were there,  
12 from the time you arrived until you left, did you hear  
13 Chris say, I'll go ahead and let them talk to me without  
14 talking to that lawyer?

15 A. Absolutely not. As a matter of fact, it was the  
16 opposite.

17 Q. And what do you mean it was the opposite?

18 A. He wanted to talk to the lawyer. He didn't want  
19 to talk to them. They kept pressing.

20 Q. And what time did you leave, approximately?

21 A. God, it had to be around 11:30 or 12:00 that  
22 night.

23 Q. So you were there two hours or more?

24 A. At least, yeah.

25 Q. Did you ever talk to any of the law enforcement

1 officers that were there?

2 A. I asked them if he could talk to his lawyer on  
3 the phone and they denied that. They denied him that  
4 privilege.

5 Q. Do you know what agency they were from?

6 A. No. They were from the Garland Police  
7 Department, yes.

8 Q. Were there more than two officers there?

9 A. Absolutely. The house was flooded with officers.  
10 There were a ton of people there. There was a coroner car  
11 there.

12 Q. And when you left, had Chris talked with anyone?

13 A. Not other than the police.

14 Q. He had not talked to any lawyer?

15 A. No.

16 Q. Your sister-in-law or anyone else?

17 A. No.

18 Q. And you said both of them were lawyers that you  
19 had on the phone, who were you specifically talking to when  
20 they asked to talk to Chris?

21 A. I think both of them were on extensions, but  
22 mostly we were talking, I think, with Helen.

23 Q. And Helen was the one that asked to talk with  
24 Chris?

25 A. That's correct.

1 MR. TANDY: That's all the questions I have,  
2 Your Honor. Pass the witness.

3 CROSS-EXAMINATION

4 BY MS. COATS:

5 Q. Mr. Caldwell, did you hear the entire  
6 conversation between the officers and Chris?

7 A. No, not the entire conversation.

8 Q. Were you present at the trial?

9 A. Yes, I was outside. I was a possible witness and  
10 the rule was invoked.

11 Q. Are you aware of whether or not any statements  
12 taken as a result of the investigation were used at trial?

13 A. I'm not a lawyer. I didn't get to see the trial.

14 Q. And I think you just answered my next question,  
15 you're not a lawyer?

16 A. No.

17 Q. Do you understand all the rights that a person in  
18 the process of being arrested has?

19 A. Only what we all understand is that we all have a  
20 right to an attorney.

21 MS. COATS: I pass the witness.

22 MR. TANDY: That's all we have, Your Honor.

23 THE COURT: Mr. Caldwell, you can sit down  
24 again or leave or whatever you'd like to do.

25 MR. TANDY: I'd like to call Helen Bright.

(Witness sworn by the Court.)

DIRECT EXAMINATION

BY MS. BRIGHT:

Q. Ms. Bright, would you state your name for the record, please?

A. My name is Helen Bright.

Q. And where do you reside?

A. 6504 Betty Cook in Austin, Texas.

Q. Are you an attorney licensed in the State of Texas?

A. Yes, sir, I am.

Q. On the night of the 29th of February 1996, were you on the phone with Mr. Caldwell?

A. Yes, sir, I was.

Q. And do you recall why you were on the phone with him?

A. I received a call from Mr. Caldwell indicating that he was at Chris Radke's house, that there had been some accident that had occurred, that it appeared that Chris was being interrogated by the police and he was asking for my advice.

Q. Did you ask to speak with Chris?

A. I did ask to speak with Chris.

Q. Did you speak with Chris?

A. No, sir, I was not allowed to.

1 Q. Did you ever hear Chris say, while you were on  
2 the telephone, that he wanted to speak with you?

3 A. No, sir.

4 Q. But you were on the phone at the time during the  
5 course of the investigation from what you understood?

6 A. From what I understood, he was in the car with  
7 police officers at the time.

8 Q. And did you request Mr. Caldwell to take the  
9 phone to him?

10 A. Several times. He was asked to take the  
11 telephone to Chris and also to tell Chris not to talk until  
12 he had the opportunity to confer with an attorney.

13 MR. TANDY: That's all the questions I have.  
14 I'll pass the witness.

15 CROSS-EXAMINATION

16 BY MS. COATS:

17 Q. Ms. Bright, you're an attorney?

18 A. Yes.

19 Q. Where do you work?

20 A. I work for the Office of General Counsel for the  
21 University of Texas system.

22 Q. Is that where you were working at the time?

23 A. Yes, ma'am.

24 Q. Does your employment with the University of Texas  
25 allow you to represent criminal defendants?

1 A. It allows me to do work for family members upon  
2 approval.

3 Q. At this time did you have approval?

4 A. No.

5 Q. And were you acting as Mr. Radke's attorney?

6 A. I was his attorney.

7 Q. You were his attorney?

8 A. Yes.

9 Q. Without approval?

10 A. All I had to do was seek approval, and since it  
11 was an emergency situation, I did not request that.

12 Q. Did you go to Garland and actually visit with Mr.  
13 Radke while he was being processed in the police  
14 department?

15 A. No, I did not.

16 Q. Did you have any other action on the case?

17 A. No. He had a different attorney at that time.

18 MS. COATS: Pass the witness.

19 MR. TANDY: That's all the questions I have.

20 THE COURT: At one time you represented Mr.  
21 Radke then in this case?

22 THE WITNESS: Only whenever we received the  
23 telephone call. Basically I was there with my husband, who  
24 had practiced criminal law before. They were asking for  
25 advice and basically we were attempting to get information

1 to him as to what to do and how to respond to the police  
2 officers.

3 THE COURT: So you considered yourself  
4 representing him at that time?

5 THE WITNESS: Yes, sir, I did.

6 THE COURT: When did you cease representing  
7 him?

8 THE WITNESS: Whenever he obtained counsel  
9 through other sources.

10 THE COURT: I'll pass.

11 MR. TANDY: That's all we have, Your Honor.

12 THE COURT: You can also sit down or stay or  
13 whatever you'd like to do.

14 MR. TANDY: I call Catherine Shelton.

15 THE COURT: As an officer of the court, do  
16 you-all waive swearing her in?

17 MR. TANDY: I do, Your Honor.

18 MS. COATS: Yes, Your Honor.

19 DIRECT EXAMINATION

20 BY MR. TANDY:

21 Q. State your name, please, ma'am.

22 A. Catherine Shelton. C-a-t-h-e-r-i-n-e  
23 S-h-e-l-t-o-n. That's Mrs. Catherine Shelton.

24 Q. Ms. Shelton, what is your job or occupation?

25 A. I'm an attorney.



1 Q. And how long have you practiced law?

2 A. In Dallas, about 14 years. I was licensed in  
3 1977.

4 Q. Do you practice in the field of criminal law?

5 A. Just about solely.

6 Q. And how long have you been doing that?

7 A. Probably 16, 17 years.

8 Q. And you've tried all types of criminal cases?

9 A. Yes, except tax cases.

10 Q. Do you practice in the federal court --

11 A. Yes.

12 Q. -- as well as the state court?

13 A. I do.

14 Q. Do you know Christopher Radke?

15 A. I do.

16 Q. How do you know Christopher Radke?

17 A. I represented him in the case that we're all  
18 here on today that came out of the 195th Criminal District  
19 Court.

20 Q. And who was the judge in that at that time that  
21 you tried the case?

22 A. John Nelms.

23 Q. Okay. Now, Ms. Shelton, did you try the case to  
24 a jury or a judge?

25 A. To the Court.

1 Q. And was that -- for what reason did you do that?

2 A. Well, there were several reasons, but I based my  
3 ultimate and final decision, the deciding factor was due  
4 to, and I couldn't tell you how many times we talked with  
5 Nelms back in his office, but -- I mean, I'm sure you know,  
6 you practice criminal law yourself, a judge can lead you to  
7 believe that you can go ahead and try it to the Court when  
8 they say something like, well, why don't you try this to me  
9 or blah, blah, blah, et cetera.

10 And based on that, something he said, or more  
11 than one thing, I decided to go ahead and try the case to  
12 him for the reason that Mr. Radke had had some problems in  
13 the past. We couldn't explain the incident any other way  
14 than for him to get on the witness stand and tell what  
15 happened, tell a reasonable story, tell of his initial fear  
16 out there at the scene, because of his prior parole and the  
17 other things that were troubling him. And we really didn't  
18 want to put him in front of a jury, but we would have, had  
19 we known some other things.

20 Q. Like what other things?

21 A. Well, I didn't realize at that time, I knew there  
22 was some animus on the part of Judge Nelms toward me, but I  
23 didn't realize just how deep that ran.

24 Q. And what was that animus?

25 MS. COATS: Your Honor, I'd like to object.

1 This is way outside the frame of the application for the  
2 Writ of Habeas Corpus. The State resents being blindsided.

3 THE WITNESS: Well, this is well-known that  
4 Nelms hates me.

5 MR. TANDY: Well, Judge, it's really not.  
6 We think we should be able to develop Ms. Shelton's whole  
7 experience in this case so that she can tell about her  
8 actions in this case.

9 MS. COATS: Your Honor, they have raised  
10 ineffective assistance of counsel, they have not raised  
11 judicial misconduct or any inference to it.

12 MR. TANDY: If that has something to do with  
13 it, that almost is a hand and glove type situation. If she  
14 knew -- we should be able to develop that to see if she  
15 knew something about Judge Nelms that would make that  
16 ineffective, Your Honor.

17 THE COURT: Well, on the point of being  
18 blindsided, if we're talking about judicial misconduct, the  
19 answer is there's nothing in the writ about that. If we're  
20 talking about Ms. Shelton's reasons for trying it to Judge  
21 Nelms or subsequently regretting what she did, I think  
22 that's relevant.

23 MR. TANDY: That's what we're talking --

24 THE COURT: Just try to stay within that  
25 parameter.

1 MR. TANDY: Yes, sir, that's all we're  
2 trying to do.

3 THE COURT: So I guess that's overruled.

4 Q. Would you tell us what that animus was, Ms.  
5 Shelton?

6 A. Well, without going too far into the midst of  
7 the past, but to one particular incident, I think it  
8 stemmed from that, and this was back when Nelms was running  
9 against Judge Jerry Birdwell, who formerly had the bench in  
10 the 195th. And as I recall, Nelms was back in the district  
11 attorney's office again after having failed in private  
12 practice again and he came up and asked me for some money  
13 for his campaign.

14 Well, I'm not a Republican but that wasn't the  
15 reason I didn't want to give Nelms any money. I told him  
16 why I wasn't going to give him any money, because he was  
17 whatever. I wrote him a letter about it later on, that he  
18 was incompetent as a lawyer and certainly how could he even  
19 expect to run for judge. And I thought Birdwell was a  
20 pretty good judge and decided not to give Nelms any money.

21 But anybody who knows me knows that if I'm quiet,  
22 then maybe they won't know what I'm thinking, but if I  
23 start talking, I'll say exactly what's on my mind  
24 without -- usually without holding very much back. Unless  
25 it's like an old lady or a child or somebody who's at a

1 disadvantage, I'll tell a person exactly what I think.

2 And I told Judge Nelms what I thought and he  
3 proceeded to demonstrate his animus towards me on almost  
4 every occasion that I was around him, with the exception of  
5 throwing out a few crumbs every now and then of  
6 congeniality. He really did put it to my clients.

7 Q. Did Mr. Radke, as you stated a moment ago, he had  
8 to explain what happened in this case?

9 A. He had to.

10 Q. And did he testify in this case?

11 A. Yes, he did.

12 Q. Was he cross-examined in this case?

13 A. Yes, he was.

14 Q. Was he cross-examined by the State and was he  
15 cross-examined in regard to the statements that were  
16 conflicting?

17 A. If you look at the record, which I don't have a  
18 copy of, it should reflect -- and I don't know who the  
19 court reporter was at that time.

20 THE WITNESS: Pardon me, what is your name,  
21 ma'am?

22 THE REPORTER: Barbara McCormick.

23 THE COURT: It wasn't her.

24 A. I don't know who it was, but if it was Peri  
25 Stromberg, I don't know what was in that record to tell you

1 the truth. I've seen some of her records. There was --  
2 you know, they told me he was a liar. He told one story  
3 one time and one another, couldn't get his story straight.  
4 Yes, they brought that in to the best of my recollection.

5 Q. Okay. And the record does reflect that those  
6 statements were made at the police station, some of those  
7 statements were; is that correct?

8 A. To the Garland police.

9 Q. Were certain statements, prior inconsistent  
10 statements to other --

11 A. To the best of my recollection, yes. I'd have to  
12 look at her version of the transcript to really tell you  
13 that. I don't want to say something that -- that was  
14 something we were concerned about, Mr. Tandy, and he had to  
15 testify to tell what happened out at that house.  
16 Otherwise, you could not explain the unusual pattern of the  
17 blood splatter and that they were falling actually when the  
18 gun discharged.

19 And I might add that you were going into that in  
20 your motion here, and I don't know if you planned to get  
21 into it, but the guy from DPS who was the Texas Ranger,  
22 told me on his way out the door that the Garland police  
23 wouldn't let him finish getting his strings on the blood  
24 splatter for whatever that was worth to me.

25 Q. Tell the Court what you're talking about in

*Richard Sching*

1 regard to strings.

2 A. What they do, and I know that Mr. McDaniel knows  
3 this being a veteran criminal lawyer, they go out to the  
4 scene, that is, the blood splatter person, and they may or  
5 may not be an expert, but they string these strings from  
6 the point where the splatter is to where the direction of  
7 how it got there. And then when you put the strings out,  
8 you'll see where the weapon was that -- you know, you have  
9 to see it. Sometimes it looks like DNA or something, a  
10 whole roomful of strings, but it shows where the person was  
11 when the wound was inflicted.

12 And what this Ranger told me out in the hall  
13 outside this courtroom door was that the Garland police, at  
14 a certain point, stopped him and did not let him finish his  
15 job of putting up the strings, for whatever that was worth  
16 to me. And he kind of tipped his hat like -- and I don't  
17 know what was in the man's mind, but I've never had a  
18 State's witness stop me and tell me something like that  
19 before who was an active peace officer.

20 In other words, they didn't want to see where the  
21 weapon was, the Garland police. They just wanted it to be  
22 the way they wanted it to be and so it was.

23 Q. Did Christopher Radke, did he hire a blood  
24 expert?

25 A. No, he did not. At the time I was retained, he

1 had had an appointed lawyer prior to me and the State  
2 had -- well, the Bench, Nelms, had appointed Max Courtney  
3 as a blood splatter expert.

4 Q. And Max Courtney is a forensic --

5 A. Yes, he's a forensic person out of Fort Worth.

6 Q. And Mr. Courtney, did he ever testify?

7 A. No, he did not.

8 Q. And why did he not testify?

9 A. Well, he wasn't paid and Judge Nelms decided that  
10 since Christopher's family had hired me, they could afford  
11 to pay Courtney or hire their own expert, and he would not  
12 authorize the funds to pay Courtney. And I was just blown  
13 away by that because I knew for other attorneys' witnesses  
14 when they were hired -- but this was when, you know, it  
15 started to become clear to me that his animus -- he didn't  
16 care about Christopher Radke one way or the other. It was  
17 me that the Court didn't like.

18 THE COURT: Let's go off the record.

19 (Brief recess.)

20 THE COURT: We're back on the record.

21 Q. Now, Ms. Shelton, as you have testified earlier  
22 in this case, you did not use Mr. Courtney because he would  
23 not come because you have not been able to pay him?

24 A. I couldn't pay him, no.

25 Q. And what was his position, what was he going to



1 examine or testify to had you been able to pay him?

2 A. He did not tell me. He said that if I wanted to  
3 know what his report was, he was going to have to be paid.

4 Q. What was he hired for, do you know?

5 A. I believe blood splatter, and he could have been  
6 used for something else, but it was primarily that as I  
7 recall.

8 Q. Now, these statements that --

9 A. I don't blame Mr. Courtney. I mean, he has a  
10 right to be paid and he was hired with the anticipation  
11 that he was going to be paid by the Court and then the rug  
12 was pulled out from under him and there was nobody to pay  
13 him.

14 Q. When you heard these statements that were made at  
15 the police station that were introduced at trial, do you  
16 recall those?

17 A. I don't recall all of the statements.

18 Q. But you recall statements being used during the  
19 course of the trial --

20 A. Right, I don't argue with that.

21 Q. -- that were made at the police station?

22 A. Right. I don't argue with that, that they were,  
23 yes.

24 Q. And the record reflects the same. Did you ever  
25 file a motion to suppress those statements?

1           A.    Without looking at the -- I don't have my file  
2 anymore. I sent it over to your office in its entirety  
3 without copying it, and I believe that I did. I certainly  
4 would have.

5           Q.    Did you have a hearing on that?

6           A.    We had a pretrial hearing.

7           Q.    Did you have a hearing on the motion to suppress?

8           A.    We would have had a hearing on all motions, and  
9 because this was in front of the Bench, of course, he was  
10 going to hear what the statements were as the trier of fact  
11 because he was also the trier of law, and they got in.

12          Q.    Were you aware at the time of the pretrial that  
13 Mr. Radke was requesting that during the time of his  
14 interrogation not to speak with the police and that he had  
15 requested at the scene not to speak with the police and  
16 that he had also been advised that his aunt was on the  
17 phone?

18          A.    Yes, I did know that.

19          Q.    And were you aware that Mr. Radke had not talked  
20 to his aunt after it had been requested?

21          A.    I was aware that they wouldn't let him talk to  
22 his aunt.

23          Q.    Did you talk to any of the law enforcement  
24 officers that were there that night when that request was  
25 made to talk with Mr. Radke?

1           A.    As I recollect, we didn't really have the money  
2 for an investigator to do everything that an investigator  
3 should have done. That was another thing that we couldn't  
4 get from the Court. And, no, we didn't get to talk to them  
5 except in the courtroom.

6           Q.    And did you cross-examine them in regard to the  
7 fact of their not allowing Mr. Radke to speak to his  
8 attorney?

9           A.    Either I did or my associate did who tried the  
10 case with me.

11          Q.    Someone from your office --

12          A.    Yes.

13          Q.    -- or someone assisting you in the case did that?

14          A.    Yes.

15          Q.    And did you point that out to the Court during  
16 your closing argument or some point during the course of  
17 the trial?

18          A.    As to closing argument, I don't recollect that at  
19 all. I couldn't tell you one way or the other. But I'm  
20 sure there was some discussion about it, which would have  
21 been at the level of an argument when it wasn't kept out,  
22 I think. I haven't seen the record.

23          Q.    Were you aware that Mr. Radke had requested not  
24 to talk with the law enforcement officers at the station,  
25 at the Garland police Station without an attorney?

1           A. Truthfully, it's been a few years since this  
2 happened and I was -- what I'm aware of is that the first  
3 thing right out of the bag I heard about this case was that  
4 he had been trying to talk to a lawyer, or that a lawyer  
5 had been trying to talk to him and that he had not been  
6 allowed to talk to a lawyer, that the Garland police had  
7 sequestered him and questioned him both at the scene and I  
8 suppose down at the police station. I don't recollect as  
9 far as where they questioned him, but they did do that.

10           Q. Did the officers that questioned him that night,  
11 did they testify in the case?

12           A. I can't recollect who all testified in the case.  
13 You'll have to tell me who they were from the transcript.

14           Q. If I gave you the names, would you then recognize  
15 that?

16           A. I don't know, honestly. I don't want to say  
17 something that I don't know, that I think may have  
18 happened. I just don't remember.

19           Q. The prior inconsistent statements that we have  
20 talked about previously in this testimony, you are aware of  
21 those, are you not?

22           A. Yes. That he was afraid when it first happened,  
23 that he was stunned about it, that is Mr. Radke. There was  
24 a struggle over the gun. This wasn't the first time this  
25 had happened, that Mrs. Radke had brought out a gun. And I

1 believe we had a psychologist testify who was a board  
2 certified forensic psychologist, concerning her state of  
3 mind, her mental illness, her medical records.

4 And we knew that Mr. Radke, certainly myself and  
5 my co-counsel knew that he was afraid at the scene. This  
6 doesn't happen every day that your wife's life has ended in  
7 such a bloody fashion out there with your child sleeping in  
8 the next room.

9 So, yes, I was aware of when he first told the  
10 police, that that was out of fear.

11 Q. Were you aware that Mr. Radke gave a confession  
12 at any point after he had obtained legal counsel?

13 A. No, he didn't.

14 Q. So the only time that he could have given a  
15 statement from your recollection --

16 A. And I wasn't there, you know.

17 Q. I understand. But there was no evidence of a  
18 confession --

19 A. No.

20 Q. -- that was introduced in the trial of this case  
21 that we're here on today?

22 A. No, sir.

23 Q. The only time there could have been prior  
24 inconsistent statements made is after he was in detention  
25 or custody; is that not true?

1           A.    That is correct.  And that's exactly what they  
2  allege happened and used against him.

3           Q.    And who used that against him?

4           A.    Garland police did, the government did.  That was  
5  the whole idea.  I mean, that's how it goes.

6           Q.    And when you say the whole idea, being what?

7           A.    To keep him away from a lawyer.  They knew he was  
8  debilitated, they could see that.  They knew he was afraid,  
9  in shock, upset.  He was worried about his child certainly.  
10  He told me that later, but worried about what had happened.  
11  He loved his wife.  They took advantage of everything they  
12  could, pressed every button, kept him away from a lawyer.

13          Q.    Now, Ms. Shelton, when Chris took the stand and  
14  they were questioning him about the prior inconsistent  
15  statements that he made, do you recall that?

16          A.    I really do not, but I have no reason to think,  
17  although I'm just opining here, you've got the transcript,  
18  that he would not have explained it -- certainly I wouldn't  
19  have allowed him to explain it on the witness stand any  
20  other way than he explained it to me.  He was afraid when  
21  they first came to the scene.

22          Q.    Now, did you object to their using the prior  
23  inconsistent statements at trial?

24          A.    Either my associate, who was Carl Steinbeck, or  
25  myself would have objected.  And he has tried several

1 thousand criminal cases so he was not incompetent, the  
2 person who tried the case with me.

3 Q. So when I say you, I mean not you specifically,  
4 but --

5 A. The defense.

6 Q. -- your side of the case.

7 A. Right.

8 Q. When you questioned the police officers in regard  
9 to the prior inconsistent statements, did they admit that  
10 these were obtained during the course of questioning him at  
11 the Garland police station?

12 A. With the qualification that they always say,  
13 well, he wanted to talk, this is what he wanted, whatever  
14 statement they proffered or offered, that he had said to  
15 them. That would have been the proffering predicate, well,  
16 this is what Mr. Radke wanted to tell us.

17 Q. The question was, did they tell you that this was  
18 a result of the questioning that they made to Christopher  
19 Radke at the Garland police station?

20 A. I understand your question and I know what you're  
21 saying, and I can't say that they told me that, but I knew  
22 that from the answers that they made. I can't recall  
23 exactly how they put it.

24 Q. All right.

25 A. But that's consistent with how they put it.

1 Q. Now, during the course of this trial, did you  
2 become aware that the State had not furnished all the  
3 evidence in this case to you pursuant to your Brady motion?

4 A. Yes, I did.

5 Q. And what was it that the State excluded from your  
6 review?

7 A. A bloody shirt, a blood-stained shirt.

8 Q. What role did the blood-stained shirt have in the  
9 State's evidence that they presented?

10 A. I can't recall exactly how it was used, but it  
11 wasn't used -- what's the right word. It wasn't presented  
12 as what it really was.

13 Q. What happened when you requested -- when you  
14 found out that the State had not furnished you, as required  
15 under Brady versus Maryland, what did you do?

16 A. Well, I made some outcry about it and ultimately  
17 I didn't know what else to do. I made a motion for a  
18 mistrial and it was not granted.

19 Q. Did you have the time -- I think the record  
20 reflects that when you made this --

21 A. Mr. Tandy, I was stunned by it. I mean, I didn't  
22 know what to do. I just was really surprised. And I have  
23 read your motion and I saw from the court reporter's record  
24 what the judge said. Well, it's just whatever he says.  
25 It's just okay, I mean, although he didn't say that



1 exactly. And I was left standing there like a fool.

2 Q. Did the Court allow that evidence to be  
3 introduced after you made the objection?

4 A. Well, the Court was the trier of fact as well as  
5 the trier of law, and he knew what it was. I can't -- I  
6 think it was introduced, but I'm not going to say that it  
7 had exhibit number -- I don't have the transcript and I  
8 don't know exactly.

9 Q. I notice that in the transcript it was State's  
10 Exhibit Number 31.

11 A. I won't argue with that. I don't know why I  
12 would have objected if, you know, they hadn't proffered it  
13 or brought it about at some later time. I could be wrong  
14 about this and if I'm wrong, the record will reflect that,  
15 but initially I didn't get the shirt. But then it seemed  
16 like things weren't going well at a certain point for the  
17 State and then the shirt appeared out of nowhere. And I  
18 had to grapple with it. I didn't know what it was until  
19 Mr. Radke told me.

20 Q. At this particular time, how many criminal cases  
21 had you tried approximately?

22 A. Maybe, I don't know, a hundred.

23 Q. Did the State have a Mr. Bevel testify for them?

24 A. The name seems familiar as an expert witness.

25 Q. Did they have a blood splatter expert?

1 A. Yes.

2 Q. Did he have any part to play in this evidence  
3 that had been withheld from you by being allowed to examine  
4 and ultimately testify about that?

5 A. Could you permit me just a moment?

6 Q. Yes.

7 A. If I'm thinking of the right guy, I'm trying to  
8 picture Bevel in my mind after these four or five years,  
9 he got to testify as to what his opinion was and we didn't  
10 have anybody really who was worth anything to testify.

11 Q. This Mr. Parker that you used, why did you use  
12 him?

13 A. Well, I didn't have any money for an investigator  
14 and I didn't have any money for a blood splatter expert,  
15 and Mr. Parker, at that time was like, you know, offering  
16 his services for everything. He told me he was a blood  
17 splatter expert because he had been with the Dallas police  
18 and on homicide for a number of years.

19 Q. Did you pay Mr. Parker?

20 A. No, not for that.

21 Q. Was he just doing this pro bono?

22 A. I don't know what he was doing it for. I didn't  
23 know at that time anyway what he was doing it for, to  
24 ingratiate himself.

25 Q. Did you later learn what he was doing it for?

1 A. As I said, to ingratiate himself.

2 Q. And who was he ingratiating himself to?

3 A. To me. He told me he could do anything. He was  
4 just the greatest living policeman on earth. He knew  
5 everything and he was the DA's choice as a polygrapher down  
6 here. And I believe he's still on the polygrapher's list,  
7 that he was featured in the newspapers in Dallas as just  
8 the super cop, super witness on any subject.

9 Q. Was he able to testify as to the blood splatter?

10 A. I don't know if he was or he wasn't because I'm  
11 not a blood splatter expert, but I recall Nelms making some  
12 crack about him afterwards. I don't know if they knew each  
13 other or not.

14 Q. What was the crack that he made?

15 A. I don't know if it was on the record or not, but  
16 I think he might have said it in the end when he was,  
17 Nelms, summing up the evidence as he had heard it. And he  
18 said that this expert was no expert at all or something  
19 like that. That's about what he said.

20 I think if we had been allowed to have an expert,  
21 Max Courtney, who's known to be good at what he does, and  
22 if that Ranger had been allowed to finish his strings out  
23 there in that house out in Garland, this case would have  
24 had a different result, even in front of a jury.

25 Q. Mr. Courtney did not testify because he had not

1     been paid?

2           A.     That's correct.  And I don't blame him for that.

3           Q.     I understand that.

4           A.     He said you can subpoena me if you want to, but,  
5     I mean, I never subpoena an unwilling witness, an expert,  
6     to testify without having been paid.

7           Q.     Had he done the examination on what he had been  
8     forwarded in this case?

9           A.     I believe he had.  You'd have to ask him that.

10          Q.     Did you ever ask him that?

11          A.     I don't recall what I asked him.  I think that I  
12     didn't talk to him directly, I think my co-counsel did, but  
13     he had done some work and he wanted to be paid for it.  And  
14     he wasn't going to testify or surrender a report without  
15     receiving value for his service, and that's reasonable.

16          Q.     I understand that.  But do you know whether or  
17     not that he'd ever done the splatter study or whether he  
18     had not done the splatter study?

19          A.     I do not know of my own personal knowledge.

20          Q.     And who was he hired by if he was not hired by  
21     you?

22          A.     He was hired by a precedent attorney who had been  
23     on the case and Mr. Courtney was -- I guess it was  
24     represented to him that he was going to be paid by the  
25     State.  The precedent defense attorney.