

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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P R O C E E D I N G S

1
2 THE COURT: This is a Writ of Habeas Corpus
3 hearing on Cause Number W96-02380-N(A), Christopher Radke,
4 R-a-d-k-e.

5 Go ahead, Mr. Tandy.

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

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

9 (Witness sworn by the Court.)

D I R E C T E X A M I N A T I O N

10
11 BY MR. TANDY:

12 Q. State your name, please, sir.

13 A. Robert Lee Caldwell, Jr.

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

16 A. I live in Collin County.

17 Q. And what is your relationship to Christopher
18 Radke?

19 A. I'm his stepfather.

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

21 A. June 6th will be 20 years.

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

25 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.

1 Q. I understand. And once you came into the case,
2 Mr. Courtney basically was de facto terminated, would that
3 be a fair statement?

4 A. Yes, sir. Not by me, because I wanted his
5 report. I knew he was good and I wanted to be able to get
6 it and I thought I would.

7 Q. Did the Court refuse to allow you to obtain his
8 report by paying Mr. --

9 A. By refusing to pay. I talked to Nelms back in
10 his office and he just told me I'd have to -- you know,
11 since I had been hired, I'd have to pay my own experts,
12 that he wasn't going to pay for that. Words to that
13 effect. I mean, he didn't pay for it and the Court will
14 recall that I did try, through an intermediary, to get the
15 report from him, to try to get him to come and testify. He
16 wouldn't even tell us what his findings were until he had
17 been paid. So it was just a blank wall.

18 I had very little money to work with in that
19 regard and I was faced with the dilemma of go ahead and pay
20 Courtney out of your own pocket, or pay him with what you
21 can get together, and then you don't know what he's going
22 to say or what he's done.

23 MR. TANDY: At this time I'll pass the
24 witness, Your Honor.

25 (No omission.)

CROSS-EXAMINATION

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BY MS. COATS:

Q. Ms. Shelton, did you move to impeach Judge Nelms?

A. It was too late, the case was already ongoing.

Q. There's no way you could move to recuse a judge after a case is underway?

A. I think that once you've done -- I mean, the time to recuse is before you make any other motion. That's the first motion you make and then a hearing has to be held on that. Once you get into it, I don't know of any grounds that you could bring forward to recuse a judge in the middle of a trial.

Q. Well, how long before the trial did Mr. Courtney's inaccessibility to you become apparent?

A. Oh, that was weeks before the trial.

Q. Weeks before the trial. Did you move to recuse the judge at that time?

A. No, I didn't.

Q. Did you move to withdraw your waiver of a jury?

A. No, I did not.

Q. Did you ever move to withdraw your waiver of a jury?

A. No, I didn't. What would we have done in front of a jury without an expert, a blood splatter expert.

1 Q. You went before a judge you believed hated you --

2 A. I knew he didn't like me very much, but I thought
3 he could rise above it. I mean, there are people I don't
4 like, but I don't do that to them, treat them that way in
5 the interest of justice, and the client, the defendant, the
6 people we deal with.

7 Q. Do you still practice in this court?

8 A. If I had a case in here I would come in here. I
9 pay taxes to pay for this place to run.

10 Q. Did you not hear my question? Do you still
11 practice in this court?

12 A. Yes.

13 Q. Before Judge Nelms?

14 A. At this time, unless there's something I don't
15 know.

16 Q. Have you ever moved to recuse him from any case?

17 A. No, not that -- I haven't been in here since --
18 I'm trying to think what year. I don't think any defendant
19 has hired me in this court since probably the year 2000.

20 Q. This trial occurred in 1996, right?

21 A. 1996, '97. I had a few pleas after that that
22 were in here, but I was already on-line in here and I came
23 in and took care of those, but I don't know that I did
24 anything major in here after that. I was very disappointed
25 at what had happened.

1 Q. Do you recall the bloody shirt issue being
2 introduced into evidence a day or two before --

3 A. The what?

4 Q. The Exhibit 31 we discussed, being introduced
5 into evidence without objection by a prior witness to the
6 expert witness?

7 A. I don't know what you're talking about exactly.
8 I'm sure you do and you're looking at something, but I
9 don't know exactly what time frame --

10 Q. Yes, I am looking at the record. The record
11 shows -- would you like me to show you?

12 A. I believe you just told me what --

13 Q. Exhibit 31 was introduced without objection
14 before the Court on the 27th, the first day of trial. The
15 expert testimony for a mistrial occurred, I believe, on the
16 29th. Can you explain why no objection was made at the
17 time it was actually entered into evidence?

18 A. Well, there was a lot of blood out there, a lot
19 of bloody clothing, and it was all, to the best of my
20 recollection, introduced around the same time, bloody
21 photographs. And I couldn't account for every single
22 piece, but when I became aware that that piece was not part
23 of the crime scene that night, and how will you know that
24 it wasn't until it comes up, then I did object to it, made
25 a motion for a mistrial.

1 Q. I'm sorry --

2 A. It surprised me.

3 Q. It surprised you when it was introduced --

4 A. When I became aware of what it was. Remember,
5 Mr. Radke was in custody and could only confer with me when
6 I went to the jail to talk to him or if he called me
7 collect. It wasn't like he could sit in my office and we
8 could sit around and pick through the evidence at night.
9 He was at a disadvantage. I believe it was through Mr.
10 Radke that I became aware that it was from the prior -- I
11 guess it was a prior assault or something, or his wife hit
12 him in the nose out there or some such thing.

13 Q. Do you recall that the State's expert was
14 recused -- not recused, recessed briefly in order to
15 examine the shirt once you made your motion?

16 A. The State, the government's witness?

17 Q. Yes.

18 A. I don't know what he did, but he came back and I
19 think he testified.

20 Q. Do you recall that he testified that the shirt
21 was not any part of the offense?

22 A. He said that he thought it wasn't because there
23 wasn't tissue or something in that particular blood or
24 something like that.

25 Q. Wouldn't that suggest that that shirt wasn't part

1 of the evidence?

2 A. I don't understand where this is going.

3 Q. That's okay. Can you answer the question?

4 A. Well, the shirt was brought down here for some
5 purpose and introduced, not by me but by the State, and if
6 you can just gather up anything you want to, whether it's
7 part of the evidence or not, and if the defense counsel
8 doesn't just know it, hey, that's all right, they didn't
9 figure out that it wasn't, so I'm going to just go ahead
10 and put this in, it will help me with the trier of fact. I
11 mean, if that's the way the show is being run, well, I
12 guess -- I mean, that's what happened

13 MS. COATS: Pass the witness.

14 MR. TANDY: We have no further questions of
15 this witness at this time, Your Honor.

16 THE COURT: Ms. Shelton, you can resume your
17 seat or leave or whatever you'd like.

18 MR. TANDY: I'd like to call Mr. Radke.

19 THE COURT: Same place over there.

20 (Witness sworn by the Court.)

21 DIRECT EXAMINATION

22 BY MR. TANDY:

23 Q. State your name, please, sir.

24 A. Christopher Eric Radke.

25 Q. Christopher, you're the same person that was

1 convicted in this court on the offense of murder; is that
2 correct?

3 A. Yes, sir.

4 Q. Christopher, on or about the 29th day of February
5 of the year 1996, did you have occasion to see your
6 stepfather at the scene of the event?

7 A. Yes, I did.

8 Q. And where was he during some portion of the
9 evening where you saw him? Was he in close proximity to
10 you?

11 A. About 10 to 15 feet away.

12 Q. And what was he doing at the time that you saw
13 him and he was 10 to 15 feet away?

14 A. He was trying to get me to talk to -- well, he
15 was trying to get the police to let me talk to my Aunt
16 Helen out there, the attorney.

17 Q. Okay. Now, did you know that she was on the
18 phone?

19 A. Yes, I did.

20 Q. Did you ever tell anybody during the course of
21 this evening, February the 29th of 1996, that you wanted to
22 talk to a lawyer?

23 A. Yes, I did.

24 Q. Did you ever tell anyone during the course of
25 that evening that you did not want to say anything to the

1 police officers until you talked to a lawyer?

2 A. I said I wanted to talk to my attorney.

3 Q. And what happened?

4 A. They wouldn't let me talk to one.

5 Q. And when did you make that request during the
6 course of that evening, Chris?

7 A. Right after the police read me my rights.

8 Q. And were these police officers in uniform or were
9 they in plain clothes, or who did you make that knowledge
10 known to?

11 A. To a uniformed officer.

12 Q. And did they ever put you in any type of vehicle
13 that evening?

14 A. Yes, they did. They put me in a Garland squad
15 car.

16 Q. Did you ask them to talk to a lawyer again?

17 A. Yes, I did.

18 Q. And did they allow you to talk to a lawyer at any
19 point?

20 A. They acted like they didn't hear me, like they
21 ignored the request.

22 Q. Now, Chris, where did they take you after they
23 left the scene down there at your house?

24 A. They took me to the Garland Police Department.

25 Q. Did they ever talk to you down at the Garland

1 Police Department?

2 A. Yes, they did.

3 Q. Approximately for what period of time, do you
4 know? Was it just a few minutes, hours or --

5 A. Hours.

6 Q. And do you have any -- was there a clock
7 available where you could see when the questioning quit?

8 A. No.

9 Q. Chris, did you ever talk -- did you ever say
10 anything about a lawyer down there?

11 A. I did about three or four times.

12 Q. What did you say?

13 A. I asked them about a lawyer. I said, Where is my
14 lawyer? Do I get to speak to my lawyer? And they kept
15 interrogating me. Then I asked if I was being
16 tape-recorded because they acted like -- they kept
17 repeating themselves. And they said, oh, yeah, you're
18 being tape-recorded. And they stopped the interrogation
19 and then they informed me that I was being tape-recorded on
20 the second tape.

21 Q. Did you ever tell them that you would not
22 continue this conversation unless you had your lawyer
23 there?

24 A. I just said I wanted to speak to my lawyer.

25 Q. Before you continued?

1 A. I'm sure I did. I mean, I kept asking for a
2 lawyer. I wouldn't sign a waiver of my rights.

3 Q. And what kind of rights had you understood that
4 you had?

5 A. To speak to a lawyer.

6 Q. Then finally at trial -- do you recall making
7 some sort of statement down there that night at the police
8 station?

9 A. I remember they kept telling me that I was under
10 investigation of a homicide, murder, and all this and, you
11 know, I was scared to death. I wanted to put myself as far
12 away as possible. I said that I was in the other room when
13 I heard a gunshot go off.

14 Q. And why did you make any statement after you told
15 them you wanted to talk to your lawyer before you talked to
16 him?

17 A. Well, I figured, you know -- to tell you the
18 truth, you know, I was intoxicated at the time and I was
19 scared to death. They didn't give me a lawyer to begin
20 with. I kept asking for a lawyer. I didn't know what to
21 do. I said it out of fear.

22 Q. And you kept asking for your lawyer the entire
23 time that you were there?

24 A. Yes, I did.

25 Q. And that you had a lawyer from almost initially?

- 1 A. Yes, I did.
- 2 Q. And that was on the phone?
- 3 A. At the scene.
- 4 Q. And you were requesting to speak with her?
- 5 A. Yes.
- 6 Q. That was Ms. Bright --
- 7 A. Yes.
- 8 Q. -- that's testified here today; is that correct?
- 9 A. Yes.
- 10 Q. Did you ever have a lawyer come in to see you
11 before they finally took you to a cell or anything at the
12 Garland jail?
- 13 A. No.
- 14 Q. How long were you in jail in Garland?
- 15 A. Six days.
- 16 Q. What happened to you then?
- 17 A. On the sixth day they interrogated me again.
- 18 Q. Had you had a lawyer appointed to you at that
19 time?
- 20 A. No.
- 21 Q. Were you still asking for a lawyer?
- 22 A. Yes, I asked for a lawyer. I mean, I asked
23 again, you know. And then they offered -- then they wanted
24 me to sign my rights away.
- 25 Q. Was this the second time, six days later, that

1 they wanted you to sign your rights away?

2 A. Yes. This was the sixth -- no. They kept trying
3 every time they interrogated me, tried to get me to sign a
4 waiver form.

5 Q. Was that during the six days that you were
6 there?

7 A. Yes.

8 Q. Did you keep -- during these six days, did you
9 keep asking for a lawyer?

10 A. Off and on I did during the interrogation.

11 Q. Did you ever see a lawyer during those six days?

12 A. No, I didn't.

13 Q. But you were not afraid to continue to ask; is
14 that correct?

15 A. No. I kept asking, you know, What about my
16 lawyer?

17 Q. Was it the same police officer that kept
18 questioning you?

19 A. There was like two of them.

20 Q. But were they the same ones every day?

21 A. I believe so, yeah.

22 Q. So it wasn't somebody new that you hadn't seen
23 before about asking for a lawyer, was it?

24 A. No, they were the same. Thompson was one of
25 them.

1 Q. When you told these law enforcement officers
2 something, was it in reply to the question that they asked?

3 A. Yes.

4 Q. Did they always initiate the communication with
5 you? They came in and talked to you, didn't they?

6 A. Yes, pulled me out of my cell.

7 Q. You didn't ever call up and say, hey, Mr. Jailer,
8 I want you to bring somebody in here, I want to talk to
9 them, did you?

10 A. No.

11 Q. They always came to you?

12 A. Yes.

13 Q. Did they pull you out of your cell each and every
14 time?

15 A. Yes.

16 Q. Did they question you and continue to tape you?
17 Do you know whether that was happening?

18 A. I know I was being taped -- the first time I
19 didn't know I was being taped. The second time, after I
20 inquired about it, is whenever I realized I was being
21 taped. After that, they let me know I was being taped.

22 Q. So they taped you each and every day that you
23 were there in the Garland jail that they questioned you?

24 A. I believe they did. I mean, they said they did,
25 I don't know if they taped it or not.

1 Q. You don't know if they did or not, but that's
2 what they told you?

3 A. Yes.

4 Q. During any of this point at all, did you sign a
5 confession?

6 A. No.

7 Q. Did you make any type of written statement?

8 A. No.

9 Q. Did you sign a waiver of rights of any type
10 during that period of time?

11 A. No, I did not.

12 Q. What would they say when you said, I want to see
13 my lawyer?

14 A. Act like I didn't even -- they'd go back to
15 asking questions that didn't even relate to any of this.

16 Q. But anything you did say was in response to what
17 they asked you?

18 A. Yes.

19 MR. TANDY: That's all the questions I have.
20 I'll pass the witness, Your Honor.

21 CROSS-EXAMINATION

22 BY MS. COATS:

23 Q. Mr. Radke, do you recall when the police came
24 out to the scene, making any statements prior to being
25 given the Miranda? Do you recall much of that night at

1 all?

2 A. I do, but bits and pieces. I mean, I was -- it
3 was pretty traumatic.

4 Q. I'm sure it was. So if an officer testified that
5 you gave inconsistent statements while they were still
6 thinking this was a suicide, would that be --

7 A. They started -- they read me my rights. Then
8 they started asking questions, that's when I asked for a
9 lawyer.

10 Q. Did you ever talk before they read you your
11 rights?

12 A. Not that I recall, no.

13 Q. Do you remember exactly what questions they asked
14 you?

15 A. No, I don't. Remember, this was six years ago
16 and this is so traumatic. I remember -- I don't remember
17 what they were asking me. I just remember they were
18 reading me my rights and I kept asking about my wife, if
19 she was all right.

20 Q. Do you remember shouting that she killed herself?

21 A. No.

22 Q. Do you remember telling somebody that you were
23 in the next room?

24 A. Yeah, I said that at the police station. I
25 believe I said that.

1 Q. Do you recall saying that at the scene?

2 A. No.

3 Q. Do you recall saying at the scene that you walked
4 in the door and she shot herself?

5 A. I think I did say that.

6 Q. At that time?

7 A. I believe I did.

8 Q. And then your testimony at trial was that you two
9 struggled with the gun and it went off?

10 A. Yeah.

11 Q. Did any of these tapes that were supposedly made
12 get played at trial?

13 A. No.

14 MS. COATS: Pass the witness.

15 MR. TANDY: I'm sorry, did you pass the
16 witness?

17 MS. COATS: Yes, I did.

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

19 THE COURT: Mr. Radke, you can sit down
20 again next to your counsel.

21 MR. TANDY: May we have just a moment, Your
22 Honor?

23 THE COURT: Yes.

24 MR. TANDY: We rest, Your Honor.

25 MS. COATS: The State would like to call

1 Honorable Judge Nelms.

2 MR. TANDY: Judge, one other thing we'd like
3 to do, we'd like to introduce for the record the Statement
4 of Facts in this case, that the Court take judicial notice
5 of that.

6 THE COURT: So you're introducing or I'm
7 taking judicial notice of it?

8 MR. TANDY: We want to send it, make sure
9 that the court gets it, the Court of Criminal Appeals.

10 THE COURT: So you want that to be an
11 exhibit?

12 MR. TANDY: Yes, sir.

13 (Exhibit Number 1 was marked.)

14 THE COURT: As an attorney and the real
15 judge of this court, do you-all waive swearing him in?

16 THE WITNESS: I prefer -- I thank you for
17 the courtesy, I would rather be sworn.

18 (Witness sworn by the Court.)

19 DIRECT EXAMINATION

20 BY MS. COATS:

21 Q. Would you please state your name for the record?

22 A. My name is John Nelms.

23 Q. And what's your profession?

24 A. I'm the judge of this court.

25 Q. How long have you been judge of this court?

1 A. Almost nine and a half years. And I have
2 laryngitis.

3 Q. Are you familiar with Catherine Shelton?

4 A. Yes.

5 Q. When you were running to become judge of this
6 court, did you ever solicit campaign contributions from
7 Catherine Shelton?

8 MR. TANDY: Judge, we're going to object to
9 that. That has absolutely no relevance in this case at
10 all.

11 THE COURT: You brought it up. Overruled.

12 A. I did not.

13 Q. How many cases has Ms. Shelton tried before you
14 on the bench?

15 A. I think she has only tried one case and I don't
16 think she has had more than three cases in my court in
17 those nine and a half years, at least not to my
18 recollection.

19 Q. Do you have any animosity towards Ms. Shelton?

20 A. None.

21 Q. Do you recall the case, the murder case involving
22 Christopher Radke?

23 A. I remember parts of it.

24 Q. Do you recall having any animosity towards either
25 the defendant or his attorney during that case?

1 A. I have none.

2 Q. Did Catherine Shelton ever request you be recused
3 from a case?

4 A. Not to my knowledge.

5 Q. Do you recall her ever expressing any displeasure
6 with you as the Court in this case?

7 A. Not until after the trial was over. I would have
8 recused myself, but I can't even say it's policy, because I
9 don't think I've ever been asked to recuse myself but once.
10 But anybody, any of the defendants in my court, if they
11 don't want me to hear the case, I would recuse myself.

12 Q. To your knowledge, would there have been any
13 reason for you to recuse yourself?

14 A. No.

15 MS. COATS: I'll pass the witness.

16 MR. TANDY: I have no questions.

17 THE COURT: Thank you, Judge.

18 THE WITNESS: Thank you.

19 THE COURT: You're still on.

20 MS. COATS: The State rests, Your Honor.

21 MR. TANDY: There's one more witness, Your
22 Honor. I need to reopen. I need to cover one area. This
23 will take us about two minutes. Mr. Caldwell.

24 THE COURT: Mr. Caldwell, you do know that
25 you're still under oath?

1 THE WITNESS: Yes.

2 REDIRECT EXAMINATION

3 BY MR. TANDY:

4 Q. Mr. Caldwell, did you ever go to the Garland
5 police station?

6 A. Yes, sir.

7 Q. And when did you go to the Garland police
8 station?

9 A. As I recall, it was within a couple of days of
10 Chris' arrest. It might have been the next day or the day
11 after that.

12 Q. But it was within 48, 72 hours?

13 A. Absolutely.

14 Q. Did you see Chris?

15 A. No, we weren't allowed to see him at that point.

16 Q. Did you talk to anyone?

17 A. We did talk to Detective Thompson, yes. Janie
18 and I were together that day.

19 Q. Janie, being your wife?

20 A. Chris' mother, right.

21 Q. And that's Christopher's mother?

22 A. That's correct.

23 Q. Did you talk to anyone about Chris having a
24 lawyer?

25 A. Well, I asked why he didn't have a lawyer and why

1 he wasn't allowed to talk to a lawyer that night, and
2 Thompson just kept referring to the fact, well, if he
3 doesn't have anything to hide, he doesn't need a lawyer.

4 Q. Who was Thompson?

5 A. He was the detective, I think, on that case. I
6 seem to remember that's the correct name, but he was the
7 detective, plain clothes detective down there.

8 Q. And were you aware that Chris did not have a
9 lawyer for several days thereafter?

10 A. Absolutely.

11 Q. And you had gone down there to ask specifically
12 about Chris having a lawyer?

13 A. Yes. We wanted to know what was happening. We
14 couldn't get any information. We went down to find out
15 what was happening with our son.

16 Q. And you talked to Mr. Thompson on at least that
17 occasion?

18 A. At least that occasion. I think a couple of
19 occasions after that.

20 Q. And was it in regard to much the same issue?

21 A. Absolutely. He just kept saying if he doesn't
22 have anything to hide, he doesn't have any reason to have a
23 lawyer. If he's innocent, he has no reason to have a
24 lawyer.

25 Q. During any period of this time did Chris

1 communicate with you?

2 A. I think he may have called his mother.

3 Q. And during that period of time were you aware
4 that Chris was wanting a lawyer?

5 A. Absolutely. Absolutely.

6 MR. TANDY: That's all the questions I have.
7 I'll pass the witness, Your Honor.

8 MS. COATS: I have nothing further, Your
9 Honor.

10 THE COURT: Okay. He did not have an
11 attorney or he had Ms. Bright for an attorney?

12 THE WITNESS: Well, Ms. Bright was not
13 allowed to talk with him. She was an initial -- she was a
14 lawyer, her husband was a lawyer. We knew he had
15 experience in criminal cases. We were just trying to give
16 Chris the proper advice as parents. And we weren't allowed
17 to talk to him and they were not allowed to talk to him.
18 He kept asking to talk to his lawyer.

19 THE COURT: So as far as you knew, Ms.
20 Bright, at one time, represented him or never represented
21 him?

22 THE WITNESS: She would have if she'd have
23 been able to talk to him, absolutely.

24 THE COURT: That means she never represented
25 him or she did represent him?

1 THE WITNESS: Well, she was representing
2 him that night, but they wouldn't allow him to talk to her.

3 THE COURT: So she represented him the night
4 of the arrest. At which point in time did she cease
5 representing him?

6 THE WITNESS: I guess when they hired the
7 Court-appointed lawyer.

8 THE COURT: Which was when?

9 THE WITNESS: I'm not sure. I don't
10 remember.

11 THE COURT: So between the time of the
12 arrest and Ms. Shelton's representation, the beginning of
13 Ms. Shelton's representation, he was represented by Ms.
14 Bright?

15 THE WITNESS: No, that's incorrect. There
16 was a Court-appointed lawyer in between those two.

17 THE COURT: Between the night of the arrest
18 and the appointment of the attorney, he was represented by
19 Ms. Bright?

20 THE WITNESS: As far as we're concerned,
21 yes, sir.

22 THE COURT: What efforts did Ms. Bright ever
23 make to contact him?

24 THE WITNESS: We had made several efforts by
25 phone.

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THE COURT: How about in person?

THE WITNESS: She lives in Austin. That would have been very hard.

THE COURT: But she was representing him, correct?

THE WITNESS: Right.

THE COURT: She never traveled up here to see her client?

THE WITNESS: I don't recall.

THE COURT: I'll pass.

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

MS. COATS: The State rests, Your Honor.

THE COURT: Close the hearing.

(End of proceedings.)

1 STATE OF TEXAS)

2 COUNTY OF DALLAS)

3 I, Barbara J. McCormick, Deputy Official Court
4 Reporter in and for the 195th Judicial District Court of
5 Dallas County, Texas, do hereby certify that the above and
6 foregoing contains a true and correct transcription of all
7 portions of evidence and other proceedings requested in
8 writing by counsel for the parties to be included in this
9 volume of the Reporter's Record, in the above-styled and
10 numbered cause, all of which occurred in open court or in
11 chambers and were reported by me.

12 I further certify that this Reporter's Record of the
13 proceedings truly and correctly reflects the exhibits, if
14 any, admitted by the respective parties.

15 I further certify that the total cost for the
16 preparation of this Reporter's Record is \$807.25 and was
17 paid/will be paid by Dallas County.

18 WITNESS MY OFFICIAL HAND this the 9th day of
19 May, 2002.

21

Barbara J. McCormick

BARBARA J. McCORMICK

22

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