

REPORTER'S RECORD

VOLUME III OF V

TRIAL COURT CAUSE NO. F96-02380-N

1	THE STATE OF TEXAS)	IN THE DISTRICT COURT OF
2)	
3	VS.)	DALLAS COUNTY, TEXAS
4)	
5	CHRISTOPHER RADKE)	195TH JUDICIAL DISTRICT

8 APPEARANCES:

9 HON. JOHN VANCE
10 CRIMINAL DISTRICT ATTORNEY
Dallas County, Texas

11 MS. TERRI MCVEA
12 133 N. Industrial Blvd.
Frank Crowley Courts Bldg.
13 Dallas County, Texas

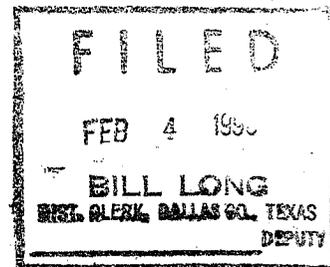
and

14 MS. KRISTINE SCHWAN
15 133 N. Industrial Blvd.
Frank Crowley Courts Bldg.
16 Dallas County, Texas
17 APPEARING FOR THE STATE OF TEXAS

18 MS. CATHERINE SHELTON
Attorney at Law
19 Dallas County, Texas

and

20 MR. CARL STEINBECK
21 Attorney at Law
Dallas County, Texas
22 APPEARING FOR THE DEFENDANT



COPY

23 *****
24 On the 27th through 30th days of October, 1997,
25 that the above-styled and -numbered cause came on to be
heard in the said Court, HONORABLE JOHN NELMS, Judge
Presiding, and the following proceedings were held, to
wit:

PERI K. STROMBERG, CSR

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P R O C E E D I N G S

October 28, 1997

Dallas County, Texas

(Whereupon, these proceedings took
place before Judge Nelms, as
follows:)

MS. MCVEA: Mr. Steinbeck is ready to
proceed.

THE COURT: Are you ready to proceed?

MR. STEINBECK: We can go ahead, Your
Honor.

THE COURT: Very well.

MS. MCVEA: State calls Officer Reed.

THE COURT: Have you been sworn, sir.

THE WITNESS: Yes, sir.

C.M. REED,

the witness hereinbefore named, being first duly
cautioned and sworn to testify the truth, the whole
truth, and nothing but the truth, testified on his oath,
as follows:

DIRECT EXAMINATION

BY MS. MCVEA:

Q. State your name for Record, please.

A. Officer CM Reed.

PERI K. STROMBERG, CSR

1 Q. And I can tell by your uniform that you're a
2 Garland police officer. How long have you been so
3 employed?

4 A. Approximately three years.

5 Q. Back on February 29th, 1996, were you employed
6 with the Garland Police Department?

7 A. Yes, ma'am.

8 Q. On that date around 9 p.m., were you on duty?

9 A. Yes, ma'am.

10 Q. Is that routine patrol?

11 A. Yes, ma'am.

12 Q. Were you on patrol alone, or did you have a
13 partner?

14 A. I had a partner.

15 Q. Your partner's name?

16 A. Officer Poteet.

17 Q. Did you receive a call to respond to 1001
18 Sunset in Garland?

19 A. Yes, ma'am.

20 Q. What was the nature of the call?

21 A. It was a gunshot wound, for a possible gunshot
22 wound.

23 Q. Okay. Once you got the call, did you respond
24 to that location?

25 A. Yes, ma'am.

1 Q. How long did it take you to get there?

2 A. Approximately three to five minutes.

3 Q. When you arrived on the scene, were the
4 paramedics still -- were the paramedics on the scene
5 also?

6 A. Yes, ma'am.

7 Q. Was the Garland Fire Department also present?

8 A. Yes, ma'am.

9 Q. When you arrived on the scene, what did you
10 observe?

11 A. The ambulance was directly in front of the
12 residence. There was a paramedic in the driveway,
13 another male in the driveway, and they were all -- the
14 lights were still on the ambulances.

15 Q. Did you notice anybody in particular?

16 A. Well, the paramedic was standing with the
17 subject. The male in the driveway didn't have a shirt
18 on, and he was yelling.

19 Q. Did you make contact at that time with that
20 male subject?

21 A. No, I didn't.

22 Q. Where did you go?

23 A. I went in the front door of the residence,
24 just not knowing the nature exactly of the call. I
25 wanted to make sure there was nobody armed or if we had

1 any suspects in the house.

2 Q. So did you go all the way into the home or
3 just the front of it?

4 A. I went to the front entrance area.

5 Q. And what did you observe?

6 A. I saw a white female lying on her back face up
7 with a massive wound to the facial area and a shotgun
8 lying next to her.

9 Q. Did you say lying next to her or lying on her?

10 A. Well, lying on her.

11 Q. Were there any other officers present in the
12 home at that time?

13 A. Officer Vornberg and Officer Poteet.

14 Q. Once you observed this -- well, did you closer
15 to check on the female?

16 A. I realized the paramedics were there, and they
17 weren't performing any, what I consider lifesaving -- I
18 don't know exactly what procedures they follow, but I
19 realized she was deceased, and I backed out of the
20 residence and went to contact the person in the
21 driveway.

22 Q. Who secured the scene?

23 A. Officer Vornberg and Officer Poteet.

24 Q. So you went back outside. Did you make
25 contact with the male subject that you first told us

1 about?

2 A. Yes, ma'am.

3 Q. And what was that person doing?

4 A. He was on a cordless telephone, and I really
5 couldn't make out what he was saying, but he was yelling
6 very loud, very animated.

7 Q. And did you ask the person what their name
8 was?

9 A. Yes.

10 Q. And how did they respond?

11 A. He said his name was Christopher Radke.

12 Q. Do you see Christopher Radke in the Courtroom
13 today?

14 A. Yes.

15 Q. Can you point to him and describe an article
16 of clothing.

17 A. He's to my left with a blue denim shirt on, a
18 long-sleeved shirt.

19 MS. MCVEA: Your Honor, let the Record
20 reflect that the witness has identified the Defendant in
21 open Court.

22 Q. (By Ms. McVea) Did you ask him any other
23 questions at that point?

24 A. I asked him what his relationship was or who
25 he was. He said he was the victim's husband.

1 Q. How was he dressed when you approached him?

2 A. He had jeans on and was shirtless.

3 Q. So a pair of jeans on. Do you remember the
4 color of the jeans? Were they blue jeans?

5 A. I think they were blue jeans.

6 Q. Okay. You said he had no shirt on?

7 A. No shirt.

8 Q. Was he making any kind of statement at this
9 point when you made contact with him initially?

10 A. I don't know what he was saying. He was very
11 loud, and I asked to speak to whoever he was speaking
12 with on the phone. I told him I needed to talk with
13 him, and he hung up the phone and handed it to me, so
14 there was no one there when he handed it to me.

15 Q. Okay. After that, did he -- was he making any
16 other statements not in response to any questions by
17 you?

18 A. Not at that time.

19 Q. What happened next?

20 A. After he said that he was her husband, I said
21 well, let's go to the ambulance. It was cold out. He
22 didn't have a shirt on. We can sit down, and maybe we
23 can talk about what happened and get you squared away as
24 far as anything you might need. So we walked to the
25 ambulance with the ambulance driver, or the paramedic

1 that was with him in the drive, and took a seat in the
2 ambulance.

3 Q. Now, at this point was he a suspect or under
4 arrest?

5 A. No.

6 Q. What did you believe you were investigating at
7 this point?

8 A. A suicide.

9 Q. Now, once you got to the ambulance, did you
10 ask him what happened?

11 A. Yes.

12 Q. What did he say?

13 A. He said that he been at a party at a friend's
14 house, and a friend of his had dropped him off, and he
15 walked in the front door, and she had shot herself at
16 that point.

17 Q. Did you ask him anything else?

18 A. I asked him if -- I said, so you actually saw
19 her shoot herself, and he said, yes. At that point I
20 called for a crisis counselor.

21 Q. Did you notice anything about the Defendant's
22 condition at this point?

23 A. I asked him -- I could smell alcohol. I asked
24 him if he had been drinking, and he said, no.

25 Q. Now, did you ask him any other questions at

1 this point?

2 A. I asked him -- I said, let me get this
3 straight, you actually -- or I said, let me get this
4 straight, what happened? And he said, I was asleep in
5 the bedroom, and I heard the gunshot, and it woke me
6 up. I went in the living room, and I saw her laying
7 there.

8 Q. Okay. Once he said that, what were you
9 thinking?

10 A. I was so surprised. I realized something was
11 wrong.

12 Q. Okay. At this point did he become a suspect
13 in your mind?

14 A. Yes.

15 Q. Was there another officer present at this
16 point?

17 A. Officer Lozada walked up at that point.

18 Q. So you heard two conflicting stories. What
19 type of time span are we talking about?

20 A. Probably within two minutes of having arrived
21 and having him seated in the ambulance.

22 Q. Okay. What did you do you at this point once
23 you heard the second story?

24 A. Officer Lozada was still standing outside the
25 ambulance. And I didn't go into detail because

1 Christopher was still sitting relatively close to me,
2 but I told Officer Lozada something was wrong. I said
3 there's -- that's what I said, there's something wrong
4 with this person's story. And he said, read him his
5 rights, so...

6 Q. Did you read him his rights?

7 A. Yes, ma'am.

8 Q. Did he indicate that he understood his rights?

9 A. Yes, ma'am.

10 Q. And did you continue to speak with the
11 Defendant?

12 A. Yes, ma'am.

13 Q. Now, after you spoke with him -- well, as you
14 were speaking with them, did his mood or his condition
15 change, as far as his demeanor is concerned?

16 A. He seemed to -- he was very defensive and very
17 agitated. He did a lot of yelling.

18 Q. Was he removed from the ambulance and taken
19 somewhere else?

20 A. Yes, ma'am.

21 Q. Where was that?

22 A. He was taken to a police car, my squad car.

23 Q. How long did you speak with him there at the
24 ambulance after you read him his rights?

25 A. Probably another two minutes, three minutes,

1 probably.

2 Q. At this point was the Defendant under arrest?

3 A. No.

4 Q. Was he handcuffed?

5 A. No, ma'am.

6 Q. Was he free to leave?

7 A. No, ma'am.

8 Q. Were you still conducting your investigation?

9 A. Yes, ma'am.

10 Q. Now, once he was at the police vehicle, did
11 anyone else approach you there?

12 A. I talked to Lieutenant Dietrich.

13 Q. After speaking with Lieutenant Dietrich, did
14 you ask the Defendant any further questions?

15 A. No, ma'am. He instructed me not to.

16 Q. Did anyone else approach you while you were
17 there at the police vehicle?

18 A. I believe Christopher's mother came up at one
19 point.

20 Q. A person who you believed to be the
21 Defendant's mother?

22 A. Yes, ma'am.

23 Q. Did you speak with her?

24 A. Yes.

25 Q. What did you tell her?

1 A. She asked if Chris -- Christopher was okay,
2 and I said he was fine. She asked to talk with him, and
3 I said she couldn't. She also asked if she needed to
4 call an attorney, and I told her that she could do that
5 if she wanted to, or she was free to do that.

6 Q. After that conversation with her, did you have
7 any further contact with her?

8 A. No, ma'am.

9 Q. At this point where exactly is Christopher
10 Radke?

11 A. In the back seat of my squad car.

12 Q. Did the Defendant, while he was there in the
13 back seat of your squad car, did he ever say that he
14 wanted an attorney?

15 A. No, ma'am.

16 Q. Now, before you placed him in the squad car,
17 did you pat him down for officer safety?

18 A. Yes, ma'am.

19 Q. And did that reveal anything in particular?

20 A. As I was patting him down, in his left front
21 pocket I felt a hard object. I didn't know if it was
22 possibly a weapon or a pocket knife. I removed it, and
23 it was a watch with a leather band, and it was broken in
24 a place where the band would be pinned to the watch.

25 Q. At this point is Mr. Radke under arrest?

1 A. No.

2 Q. Okay. Was he handcuffed at all?

3 A. No, ma'am.

4 Q. Now, while he was in the police vehicle, did
5 you also sit in the vehicle, too?

6 A. Yes, ma'am.

7 Q. And did you ask any questions of him at that
8 time?

9 A. No, ma'am.

10 Q. Did Mr. Radke make any statements not in
11 response to any questions by you?

12 A. He made numerous, numerous statements. He --
13 as a matter of fact, he never stopped talking.

14 Q. Can you tell us what he was saying?

15 A. He made a lot of statements about, like, as
16 far as him not supposed to even have a shotgun in the
17 house. He said that I'm on parole. You know, she did
18 this to herself, and now you're coming after me for it.
19 I should have listened to her brother. He told me -- he
20 used several expletives, but he said -- "He told me that
21 the fucking bitch was crazy. I should have listened to
22 him." He also told me at one point, or went on to say --
23 like I said, chronological order would be difficult
24 because he rambled a lot.

25 Q. Okay.

1 A. He asked to speak with his wife several
2 times. He asked, "Well, is she okay? Can I talk to my
3 wife? Why won't you let me talk to my wife?" And then
4 later he said, "Well, I know she's dead. Is she dead?"
5 He also told me at one point that she was on hype or
6 speed, is what he said, and she was on Prozac. And they
7 were experiencing marital problems also.

8 Q. Now, he told you-all this, and you weren't
9 asking any questions of him?

10 A. No, ma'am.

11 Q. Now did you get a good look at the Defendant?

12 A. Yes, ma'am.

13 Q. Did you notice anything in particular with
14 regard to his body or any injuries on his body?

15 A. He had some scratches on his back. There was
16 a scratch, I believe, on his right chest area. He also
17 had a scratch on his left wrist, just about where his
18 watch, I guess, would be.

19 Q. Did you notice anything about his knuckles?

20 A. No, I didn't.

21 Q. Did you notice anything on his clothing or his
22 shoes?

23 A. He had blood on his shoes.

24 Q. Did you notice any blood on his hands?

25 A. No, I didn't.

1 Q. While he was there at the police vehicle, was
2 his picture taken?

3 A. Yes, it was.

4 Q. And did he have handwipings done?

5 A. Yes, ma'am.

6 Q. Were you the one that transported the
7 Defendant to the Garland jail?

8 A. Yes, ma'am.

9 Q. So I take it at one point he was formally
10 arrested?

11 A. Yes, ma'am.

12 Q. Who instructed you to arrest the Defendant?

13 A. Lieutenant Dietrich.

14 Q. After he was taken to the jail, did you have
15 any further contact with him?

16 A. I collected property from him.

17 Q. Now, the watch you were talking about, did you
18 actually seize that watch and place it in property, or
19 did you turn it over to the P.E.S. officers?

20 A. I turned it over to the P.E.S. officers.

21 Q. Do you recall that person's name?

22 A. No. Well, Officer Rice was down at one
23 point.

24 Q. Okay. What part of Garland is 1001 Sunset
25 located?

1 A. Northeast area -- or the -- well, I guess it's
2 more of a central eastern, I guess, location.

3 Q. Are you familiar with that location?

4 A. That's not -- I am not familiar with it. It's
5 not my usual district or beat.

6 (Whereupon, State's Exhibit Nos. 13
7 and 14 were marked by the Court
8 Reporter.)

9 Q. (By Ms. McVea) Officer, I'm showing you
10 what's been marked for identification purposes as
11 State's Exhibit No. 13.

12 MR. STEINBECK: Your Honor, we'll
13 stipulate all photographs they want to introduce.

14 THE COURT: All right. You have no
15 objection to which ones?

16 MS. MCVEA: State's Exhibit No. 13 and
17 State's Exhibit No. 14.

18 (Whereupon, State's Exhibit Nos. 13
19 and 14 were offered into evidence.)

20 THE COURT: Defense has no objection to
21 those?

22 MR. STEINBECK: No.

23 THE COURT: They're admitted, then.

24 (Whereupon, State's Exhibit Nos. 13
25 and 14 were admitted into evidence.)

1 Q. (By Ms. McVea) Can you go ahead and identify
2 what State's Exhibit No. 13 is?

3 A. Yes, ma'am. That's the residence we responded
4 to on Sunset.

5 Q. Is that a photograph of 1001 Sunset in
6 Garland, Texas, Dallas County, State of Texas?

7 A. Yes, ma'am.

8 Q. Can you go ahead and identify what State's
9 Exhibit No. 14 is?

10 A. That's an earlier view of the area, the actual
11 1001 Sunset area.

12 Q. Can you go ahead and point out -- well, can
13 you go ahead and mark with this black marker the X
14 locating or showing the location of 1001 Sunset in this
15 photograph, State's Exhibit No. 14?

16 A. (Witness complies.)

17 Q. Okay. And what is the street adjacent to that
18 location?

19 A. The other street here?

20 MR. STEINBECK: Your Honor, I object to
21 relevance, what neighborhood this is in. I don't think
22 we're getting anywhere with that.

23 THE COURT: Overruled.

24 Q. (By Ms. McVea) What street is adjacent here,
25 running parallel to 1001 Sunset?

1 A. Actually, I don't recall. As I said, it's not
2 by normal beat.

3 Q. Okay. Right in front of the residence at
4 1001, is that Sunset Street?

5 A. Yes, ma'am.

6 Q. Okay.

7 (Whereupon, State's Exhibit No. 15
8 was marked by the Court Reporter.)

9 Q. (By Ms. McVea) Officer, I'm showing what's
10 been marked for identification purposes as State's
11 Exhibit No. 15. Do you recognize that item?

12 A. Yes.

13 Q. What is it?

14 MR. STEINBECK: We'll stipulate, Your
15 Honor.

16 THE COURT: Are you offering it?

17 MS. MCVEA: Yes, Your Honor.

18 (Whereupon, State's Exhibit No. 15
19 was offered into evidence.)

20 THE COURT: No objection?

21 MR. STEINBECK: No, Your Honor.

22 THE COURT: It's admitted.

23 (Whereupon, State's Exhibit No. 15
24 was admitted into evidence.)

25 Q. (By Ms. McVea) Is this the same watch or item

PERI K. STROMBERG, CSR

1 that you retrieved from the Defendant on the night in
2 question?

3 A. Yes, ma'am.

4 THE COURT: What's is the exhibit
5 number?

6 MS. MCVEA: No. 15, Your Honor.

7 THE COURT: Very well.

8 Q. (By Ms. McVea) Is it in the similar or same
9 condition?

10 A. Yes, ma'am.

11 Q. With a broken watch band?

12 A. Yes, ma'am.

13 Q. Do you recall what pocket you retrieved the
14 exhibit from, or the watch from?

15 A. I believe it was his left, front pocket.

16 MS. MCVEA: Do you actually want to see
17 this, Your Honor?

18 THE COURT: Yes.

19 MS. MCVEA: Pass the witness, Your
20 Honor.

21 CROSS-EXAMINATION

22 BY MR. STEINBECK:

23 Q. Officer, you'd agree with me when you first
24 noticed Mr. Radke and made impressions of him, he was in
25 a state of shock?

PERI K. STROMBERG, CSR

1 A. He was loud. I mean, he was yelling. I don't
2 know if -- I'm not sure clinically if I'd say he was in
3 shock.

4 Q. The paramedics yesterday testified that he was
5 in a state of shock.

6 MS. MCVEA: Your Honor, I'm going to
7 object. That's comparing testimony.

8 THE COURT: Sustained.

9 Q. (By Mr. Steinbeck) He was highly excited,
10 would you agree with me on that?

11 A. Yes, sir.

12 Q. Hysterical, would that be a proper term?

13 A. Yes, sir.

14 Q. And at the time you first approached him, he
15 would be -- you said he was on the cell phone, talking
16 loud on a cell phone, as well?

17 A. He was on either a cordless phone or a cell
18 phone one, yes, sir.

19 Q. You asked him to turn off the phone and speak
20 with you; is that correct?

21 A. I asked to speak to whomever he was speaking
22 to on the telephone, and he hung it up and handed the
23 phone to me. There was no one there, obviously.

24 Q. And after that you went over to the
25 paramedics' van there, correct?

1 A. Yes, sir.

2 Q. And you mentioned that he made some statements
3 there. As soon as you noticed the statements
4 conflicted, is it at that point you determined he was a
5 suspect, correct?

6 A. Yes, sir.

7 Q. And from that point on, he was not free to
8 leave; is that correct?

9 A. No, sir, he wasn't.

10 Q. And you read him his rights at that time; is
11 that your statement?

12 A. Yes, sir.

13 Q. Did you notice if he was under a state of
14 intoxication?

15 A. I smelled alcohol, yes, sir.

16 Q. He looked somewhat impaired, would you agree
17 with me on that?

18 A. Not other than, I just smelled the alcohol.

19 Q. Did you get up close to his face to smell it,
20 or could you smell it from a distance?

21 A. Once we were enclosed in the ambulance, I
22 could smell it then. We were probably two feet from
23 each other.

24 Q. Were his eyes blood shot, glassy?

25 A. I don't particularly recall his eyes.

1 Q. At that point was it your testimony that you
2 then brought him to the squad car, and you never
3 questioned him there in the ambulance?

4 A. After we were finished in the ambulance, yes,
5 sir, I walked him --

6 Q. You never asked him any questions in the
7 ambulance?

8 A. Yes, sir, I did.

9 Q. Why did you move him from the ambulance to the
10 squad car?

11 A. The ambulance had an open side door, and both
12 back doors were unlocked. He could get out if he wanted
13 to, and he wasn't free to leave.

14 Q. So you were going to hold him for further
15 questioning, isn't that correct?

16 A. I was detaining him until I was instructed
17 further.

18 Q. You knew he would be further questioned,
19 right?

20 A. I would assume.

21 Q. Do you recall family wanting to talk to him at
22 that time when he was standing outside the squad car?

23 A. Not while he was outside, no, sir.

24 Q. You don't?

25 A. No, sir.

1 Q. You don't recall family asking why they can't
2 talk to him if he's not under arrest or not a suspect?

3 A. No, sir, I don't recall them asking that.

4 Q. You don't recall them telling him to ask for a
5 lawyer and don't talk to the police?

6 MS. MCVEA: Your Honor, I'm going to
7 object. That's assuming facts not in evidence.

8 THE COURT: Sustained.

9 Q. (By Mr. Steinbeck) You didn't hear anything
10 about the family yelling; is that what your testimony
11 is?

12 A. The family yelling?

13 Q. Yeah.

14 A. No, sir.

15 Q. And wanting to talk to him?

16 A. Yes, they did want to talk to him.

17 Q. I'm sorry?

18 A. They did want to talk to him.

19 Q. Did they actually talk to him --

20 A. No, sir.

21 Q. -- from a distance?

22 A. No, sir.

23 Q. Did you ever see any police officers keeping
24 them from making close contact with him?

25 A. No, sir.

1 Q. You didn't see that?

2 A. I didn't see that.

3 Q. Was he right in your presence there the whole
4 time?

5 A. Yes. He was seated in the back of the squad
6 car.

7 Q. And during this time frame that you put him in
8 the car then -- what made you decide to put him in the
9 car?

10 A. The ambulance had an open side door, and the
11 back doors were open. Like I said, he could leave if he
12 wanted to; or if he attempted to, he could probably get
13 out of the ambulance.

14 Q. That wasn't the fact that the family was
15 telling him to make sure you ask for a lawyer, Chris?

16 MS. MCVEA: Your Honor, I'm going to
17 object again. It's assuming facts not in evidence.

18 THE COURT: Sustained.

19 Q. (By Mr. Steinbeck) During this -- during this
20 time, Officer, that you went to the house --

21 A. I'm sorry?

22 Q. During this time frame that you went into the
23 house, do you remember what you first said on Direct
24 Examination about where the gun was at?

25 A. It was lying -- I said next to her, but it was

1 lying across her, yes.

2 Q. You said it was lying next to the deceased,
3 correct?

4 A. Right.

5 Q. Do you remember what the Prosecutor then said?

6 A. She asked me if it was next to her or on her.

7 Q. And then your testimony changed, didn't it?

8 A. Yes.

9 Q. Did you have a chance to go over your
10 testimony with the Prosecutor?

11 A. Yes.

12 Q. When have you talked to her about this case?

13 A. I've talked to her probably on three separate
14 occasions prior to today.

15 Q. Did you talk to her today about it as well?

16 A. No.

17 Q. Any of the prosecutors?

18 A. No, sir.

19 Q. So you did have a chance -- you did know you
20 would be testifying about things such as where the
21 placement of the gun was; isn't that correct?

22 A. Yes, sir.

23 Q. At what point, Officer, were the handwipings
24 done on Mr. Radke?

25 A. After he was seated in the back of the squad

1 car.

2 Q. Who did that?

3 A. One of our forensic officers.

4 Q. And Mr. Radke was in a state of hysteria that
5 whole time; isn't that correct?

6 A. He would yell for a while, and then he'd calm
7 down and ask questions, and then he would yell again.
8 It was off and on, for lack of a better term.

9 Q. And at what point, Officer, was he formally
10 under arrest?

11 A. Lieutenant Dietrich came to the squad car and
12 said to go ahead and handcuff him and take him to the
13 station. At that point he was handcuffed and placed
14 under arrest.

15 Q. Did you happen to see any of the deceased
16 family there at the scene?

17 A. No, I didn't.

18 Q. Did they ever come up and talk to Mr. Radke or
19 anything or yell at him or anything?

20 A. No, sir.

21 Q. So you don't recall seeing them at all?

22 A. No, sir.

23 Q. Just his family members?

24 A. The lady that said that she was Christopher's
25 mother, yes.

1 MR. STEINBECK: Your Honor, I would
2 just make a motion to object to the statements of the
3 Defendant from the point that the officer started
4 questioning him when he heard two different versions.
5 Can I have a standing objection from this point further.

6 THE COURT: Well, if they are as a
7 result of interrogation, I think they would be
8 inadmissible. But if he makes statements that were not
9 the result of interrogation, I believe they would be
10 admissible. So you will have to establish whether
11 whatever he said was in answer to a question or whether
12 he just blurted it out.

13 MR. STEINBECK: Well, from the point,
14 Your Honor, there will be further evidence to show that
15 he asked for counsel. I'll just make that on the Record
16 now. At any point -- from the point that he was not
17 free to leave, at that point forward, the evidence will
18 show that Mr. Radke had asked for counsel.

19 THE COURT: Well, there is no evidence
20 of that point at this time.

21 MR. STEINBECK: I understand. My
22 standing objection, Your Honor, is from this point
23 forward in the questioning.

24 THE COURT: Well, you may object to any
25 of the statements that he makes. I'll have to rule on

1 them one at a time, finding out first whether or not
2 they were statements that he made that were not the
3 result of custodial interrogation. If they were, I
4 believe they're admissible.

5 MS. MCVEA: Your Honor, I just ask that
6 you reserve your ruling on that until you hear all of
7 the evidence. So my objection may be premature, but I'd
8 ask that you reserve judgement --

9 THE COURT: Very well.

10 MR. STEINBECK: -- until --

11 THE COURT: All right. I'll decide at
12 a later date whether it's admissible or not. I guess
13 you want to go into all those statements, or somebody
14 will. I have to hear them to rule on them anyway. So I
15 will not consider anything that I believe is not
16 admissible, and I will consider what I believe to be
17 admissible, and I will do my very best to explain which
18 is which.

19 MR. STEINBECK: Yes, Your Honor. Thank
20 you.

21 THE COURT: Okay.

22 MR. STEINBECK: Pass the witness.

23 MS. MCVEA: I have a few questions,
24 Your Honor.

25

REDIRECT EXAMINATION

1
2 BY MS. MCVEA:

3 Q. Officer, you said that the Defendant was --
4 when you first observed him, or while you had contact
5 with him, at times he was screaming and yelling and
6 acting hysterical; is that right?

7 A. Yes, ma'am.

8 Q. Now, did it appear to you that he was crying?

9 A. No, ma'am.

10 Q. When you observed his behavior, what did you
11 think in your mind?

12 A. My own personal thoughts is that it was
13 strange that he wasn't tearful or sorrowful that this
14 had happened.

15 Q. Did he seem sincere in how he was acting?

16 MR. STEINBECK: Objection, Your Honor.
17 She's trying to make the witness a lie detector,
18 essentially.

19 THE COURT: I sustain the objection.

20 Q. (By Ms. McVea) Okay. Well, I'll just come
21 out and ask: Did he appear to you to be faking it?

22 A. He seemed -- yes, ma'am, he seemed --

23 MR. STEINBECK: Objection, Your Honor
24 same question.

25 THE COURT: Sustained.

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1 Q. (By Ms. McVea) You said at times he would
2 yell and scream, and at other times he would be nice and
3 calm; is that what you testified to?

4 A. Yes, ma'am.

5 Q. Okay. The times that he would start yelling
6 and screaming, when would that occur? Would it occur
7 after you were asking questions of him, direct questions
8 of him?

9 MR. STEINBECK: Objection to leading,
10 Your Honor.

11 THE COURT: Sustained.

12 Q. (By Ms. McVea) Officer, explain to the Court
13 the times when he would yell and scream and be calm, and
14 then other times where he would start yelling and
15 screaming again.

16 A. At one point in the ambulance when he -- when
17 I initially asked him what happened, and he explained to
18 me he was dropped off by a friend, I asked him was -- is
19 your friend still here? Can I speak to him, or did he
20 leave? And he wouldn't answer. He hesitated and
21 started yelling, I can't believe she did this to me. I
22 can't believe she did this. He never would answer my
23 question. So it was the times after I asked him
24 something normally.

25 Q. Now, you said that you could detect the odor

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1 of alcohol on his person.

2 A. Yes, ma'am.

3 Q. Was he falling down drunk, in your opinion?

4 A. No, ma'am. From the time that I first
5 contacted him, he walked to the ambulance; and then only
6 after he was in there a few moments that I could smell
7 it. And we were enclosed, and I think that's why I
8 could smell it. But I didn't notice him staggering or
9 swaying. He was audible. I could understand everything
10 he said. No slurred speech or anything of that sort.

11 Q. So you would ask him questions, and he would
12 respond appropriately?

13 A. Yes, ma'am.

14 MS. MCVEA: That's all I have, Your
15 Honor. I'm sorry, Your Honor, I do have another
16 question, if I may.

17 THE COURT: Yes.

18 (Whereupon, State's Exhibit No. 16
19 was marked by the Court Reporter.)

20 Q. (By Ms. McVea) I'd like to offer State's
21 Exhibit No. 16 into evidence at this time.

22 (Whereupon, State's Exhibit No. 16
23 was offered into evidence.)

24 MR. STEINBECK: No objection.

25 THE COURT: Admitted.

PERI K. STROMBERG, CSR

1 (Whereupon, State's Exhibit No. 16
2 was admitted into evidence.)

3 Q. (By Ms. McVea) Officer, can you go ahead and
4 identify what State's Exhibit No. 16 is?

5 A. That's the state of the house and the -- what
6 I saw when I walked in, the female on the floor with a
7 shotgun across her.

8 Q. Okay. Is this how the scene appeared back on
9 the night in question?

10 A. Yes, ma'am.

11 Q. Okay. And is that where the shotgun was
12 located when you first entered the house?

13 A. Yes, ma'am.

14 Q. Okay. Now, there were some questions before
15 that the shotgun was lying beside her. Was that just a
16 mistake on your part?

17 A. That was a mistake, yes, ma'am.

18 Q. Is this exactly how the crime scene appeared
19 when you looked in the first time?

20 A. Yes, ma'am.

21 Q. Okay. And nothing was moved or anything like
22 that, to your knowledge?

23 A. Not to my knowledge.

24 Q. Okay.

25 MS. MCVEA: Pass the witness

PERI K. STROMBERG, CSR

RE-CROSS-EXAMINATION

1
2 BY MR. STEINBECK:

3 Q. Officer, you were only on the police force
4 for, what, a year or so when this happened?

5 A. Approximately, yes, sir.

6 Q. All right. Since that time you've seen a lot
7 of trauma occur with people that you've come across on
8 your job?

9 A. Traumatic events or injuries? I'm not sure
10 what you are asking.

11 Q. Trauma to people?

12 A. Yes, sir.

13 Q. You've seen people in state of shock and
14 whatnot, correct?

15 A. Possibly. I'm not really sure.

16 Q. You've never seen anyone you think might be in
17 a state of shock in the three years in law enforcement
18 as a patrol officer?

19 A. I've seen people upset. I don't think from
20 what I understand about shock conditions, no, I don't.

21 Q. Well, have you seen people that maybe are not
22 crying that you might think they should be crying?

23 A. Mr. Radke is the only one that comes to mind.

24 Q. That's the only time you've seen someone that
25 you thought should be crying that wasn't?

1 A. Yes, sir.

2 Q. So it's your belief that all men should cry
3 when faced with a death of a loved one?

4 A. No, sir.

5 Q. And you agree with me that Mr. Radke was
6 confused out there, disoriented?

7 A. Not that I could tell.

8 Q. Not that you could tell. And you'd agree with
9 me that people, when stopped by the police, can get
10 excited and can lie even when they've got nothing to
11 hide by virtue of a police officer with a gun and badge
12 being there?

13 THE COURT: Counsel, I find this
14 testimony -- or the questions and the testimony
15 unproductive. I believe no conclusions can be drawn one
16 way or the other about the state of mind of the
17 accused.

18 MR. STEINBECK: Very well, Your Honor.
19 Nothing further. Thank you.

20 MS. MCVEA: Nothing further, Your
21 Honor. State calls Emma Profit.

22 Your Honor, may this witness be excused, Officer
23 Reed?

24 THE COURT: Any objection to Officer
25 Reed being excused?

1 MR. STEINBECK: That's fine, Your
2 Honor.

3 THE COURT: You may be excused,
4 Officer.

5 THE WITNESS: Thank you, sir.

6 MR. STEINBECK: I'm sorry, Your Honor.
7 We need to have him remain.

8 THE COURT: He may not be excused?

9 MR. STEINBECK: I'm sorry.

10 MS. MCVEA: The State calls Emma
11 Profit. This witness has not been sworn.

12 THE COURT: Please raise your right
13 hand.

14 (Whereupon, the witness was duly
15 sworn by the Court.)

16 THE WITNESS: I do.

17 EMMA PROPHET,
18 the witness hereinbefore named, being first duly
19 cautioned and sworn to testify the truth, the whole
20 truth, and nothing but the truth, testified on her oath,
21 as follows:

22 DIRECT EXAMINATION

23 BY MCVEA:

24 Q. State your name for the Record, please, and
25 spell your last name for the Court Reporter.

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1 A. My name is Emma J. Prophet, last name spelled
2 P-R-O-P-H-E-T.

3 Q. Ma'am, how are you employed?

4 A. I'm an investigator for the Medical Examiner's
5 Office in Dallas County.

6 Q. And how long have you been so employed?

7 A. Seven years and one month.

8 Q. What are your -- briefly tell us what your
9 duties and responsibilities are.

10 A. My duties as an investigator are to do
11 preliminary investigation on all nonnatural deaths or
12 unintended deaths in the confines of Dallas County.

13 Q. Can you briefly tell us about your educational
14 background and experience.

15 A. I have a bachelor's degree in chemistry. I've
16 worked for five years as a forensic toxicologist. I
17 moved into working as a Medical Examiner investigator in
18 New Mexico, worked there for three years. I went to two
19 seminars -- two weekly seminars a year there. I came to
20 Dallas County. I have attended local and national
21 seminars on death investigation.

22 Q. Were you employed with the Dallas County
23 Medical Examiner's office back on February 29th, 1996?

24 A. Yes, ma'am.

25 Q. And on that date did you receive a call to

1 respond out to 1001 Sunset in Garland?

2 A. Yes, ma'am.

3 Q. What was the nature of the call?

4 A. When I received the call, it was called into
5 me as a shooting. I had -- that was the only
6 information I had, and when I arrived, the officers that
7 were managing the perimeter said that there was a woman
8 shot inside the residence.

9 Q. Do you do the pronouncing of death, on-scene
10 deaths?

11 A. Yes.

12 Q. Once you arrived at the location, what's the
13 first thing that you did?

14 A. First thing I always do is check with the
15 officers and let them know I'm there, give them my name
16 and badge number, and then I go in and do a preliminary
17 walk-through on the scene to make an assessment of what
18 evidence is there and check --

19 Q. Go ahead.

20 A. Check with the physical evidence officer for
21 the police department that's involved.

22 Q. Did you do so in this case?

23 A. Yes.

24 Q. Now, once you arrived at the location, you did
25 enter the residence?

1 A. Yes.

2 Q. Can you go ahead and describe what you saw.

3 A. I walked in the front door of the residence.
4 It was a modest, middle-class type house, and walking in
5 the front door, you walk into a large living room area,
6 and right there was the body of a white female laying on
7 the floor. She was laying on her back. Part of her
8 body was in the living room area, and part of it in the
9 dining area next to the kitchen.

10 Q. When you arrived on the scene, was the
11 Defendant -- well, I'm sorry -- was a suspect in custody
12 or in a police vehicle?

13 A. I was told there was a person that was being
14 questioned, but I never saw that person.

15 Q. Okay. Go ahead and describe what else you
16 noticed about the scene.

17 A. The woman was laying on her back. Her --
18 there was a 12-gauge shotgun across her chest with the
19 barrel up about head level, and the butt going off to
20 the left side of her body. She had an obvious defect to
21 her mouth caused by a weapon, like a shotgun, and
22 massive trauma on this side of her head with the blowout
23 of tissue and blood going out to her right.

24 Q. Did you take any measurements there at the
25 scene?

1 A. Yes, I did. I measured from her thumb, base
2 of her thumb to her chest to get a basic ball-park range
3 of length.

4 Q. Okay. And do you recall what that came out to
5 be?

6 A. Twenty-six inches.

7 Q. Did you also measure the barrel of the shotgun
8 to the trigger area?

9 A. Yes.

10 Q. Do you recall the measurement of that?

11 A. It was a little bit less, I believe.

12 Q. Now, initially, were you under the impression
13 that you were investigating a possible suicide?

14 A. The Garland police asked me when I walked in
15 to make an assessment of whether this was a suicide or
16 not. There were concerns that they had. And from what
17 my experience of doing cases, this immediately did not
18 fit the pattern of a suicide with a shotgun that I've
19 experienced.

20 Q. So did the scene look suspicious to you?

21 A. It was very suspicious to me.

22 Q. What did you base that on, some of the facts
23 you based that on?

24 A. Well, there's the basic pattern of my
25 experience with suicides with shotguns is that people

1 don't lie on the floor, first off. And it was obvious
2 by the blood splatter pattern that this -- she had to be
3 very close to or on the floor when the gun went off. A
4 shotgun, specifically a double-barrel, is very wieldy.
5 People want to support the butt end and not have it up
6 in the air above them. And the oblique angle by which
7 this weapon was fired would have meant that she would
8 have had to hold this weapon at a very awkward angle
9 while balancing it to be able to reach out and pull the
10 trigger. And so there would have been no support on the
11 butt end of the shotgun. With that kind of -- on a
12 12-gauge shotgun, it should not have been laying across
13 her chest. It should have been on the floor away from
14 her. It should have had quite a bit of kickback.

15 And also the blood splatters, the way it was on the
16 floor where it went out into a sharp V-shape and then
17 the spray on the mantel place, were high velocity, going
18 in drops that were going straight into the wall. They
19 weren't like someone at a higher angle where they would
20 be like little teardrops coming down. She also didn't
21 have any significant blood spray or tissue on her hands
22 and arms. And if she had had that gun in here to hold
23 that gun like that to her mouth and be able to pull the
24 trigger, her -- at least her right hand would have had
25 to be right next to her mouth, and it should have been

1 covered with blood and tissue.

2 Q. Okay. What if the person was trying to hold
3 the gun to her mouth, and in the course of a struggle,
4 would you still expect some type of blood splatter on
5 the hands?

6 A. Oh, yeah. A shotgun blast makes a big
7 displacement of all the blood and tissue in the area
8 where the shot occurs. Anything within a foot to 18
9 inches should have spray on it, and her hands really
10 didn't have any spray.

11 Q. Did you notice -- you said that you noticed
12 that she did not have blood on her hands. Was that your
13 testimony?

14 A. Very little. Very minimal.

15 Q. Did you notice any furniture being overturned
16 in the home?

17 A. Yeah. There was a chair in the living room
18 that had been knocked over.

19 (Whereupon, State's Exhibit No. 17
20 through 24 were marked by the Court
21 Reporter.)

22 MS. MCVEA: Any objection?

23 MR. STEINBECK: No objection, Your
24 Honor.

25 MS. MCVEA: Your Honor, I'd like to
PERI K. STROMBERG, CSR

1 offer into evidence at this time State's Exhibit No. 17
2 through 24.

3 (Whereupon, State's Exhibit Nos. 17
4 through 24 were offered into
5 evidence.)

6 THE COURT: There's no objection?

7 MR. STEINBECK: No, Your Honor.

8 THE COURT: They are admitted.

9 (Whereupon, State's Exhibit Nos. 17
10 through 24 were admitted into
11 evidence.)

12 Q. (By Ms. McVea) Ms. Prophet, I'm showing you
13 what's been entered into evidence at this time as
14 State's Exhibit Nos. 16 through 24. Will you go ahead
15 briefly and view those photographs.

16 A. (Witness complies.)

17 Q. Is that how the scene appeared to you when you
18 first went out to the location at 1001 Sunset?

19 A. Yes, ma'am.

20 Q. Can you just go ahead and describe for the
21 Court what's depicted here on State's Exhibit No. 16?

22 THE COURT: Would you mind coming over
23 in front of the Bench?

24 Q. Okay. Step down, please.

25 A. (Witness complies.)

1 Q. All right.

2 A. This is an angle, like you're coming in
3 through the front door, and there's a hall that goes
4 this way to the bedrooms, and then there's sofas and a
5 chair. This turned-over chair was there when I got
6 there and the stereo system or entertainment center.
7 This is like a mantel, a fireplace step-up, and she's
8 laying on the carpeting that goes out throughout the
9 living room area. Her legs are kind of in a different
10 area, like a dining room.

11 Q. Okay. Now, do you see the -- can you point
12 out for the Court the blood splatter that you were
13 describing?

14 A. This spray pattern here caught my attention
15 immediately because of the fact that the direction of
16 the spray is into it and not down. There is dripping,
17 but that's from gravity and not from the angle of it
18 coming down. And it appeared to me that she -- when
19 this woman -- when that wound occurred, she was down low
20 on the floor.

21 THE COURT: Excuse me. On State's
22 Exhibit 16, what was the highest level from -- or
23 highest altitude from the floor that you found any blood
24 or brain matter?

25 THE WITNESS: There is a little bit up
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1 here, but very minimal. There was spray going out in a
2 kind of a V shape in this direction, more higher above
3 her head, and I did find a tooth on the sofa that was
4 back up against this wall, but it all was kind of at
5 that -- all at that same level. It really did not go up
6 high.

7 MS. MCVEA: I think there's another
8 photograph here that addresses that.

9 THE COURT: All right.

10 Q. (By Ms. McVea) Can you go ahead and describe
11 the scene here in State's Exhibit No. 17 is?

12 A. This is blood tissues, some teeth and bones
13 that's above her more. Here's this object right here.
14 So you can kind of see that it goes out like this in a
15 V, a real sharp angle.

16 Q. And what's here depicted in State's Exhibit
17 No. 18?

18 A. This is another piece of brain that was up
19 above even a little further. This is the sofa.

20 Q. Is the sofa back towards this area here?

21 A. Right. The sofa is here, and this was like
22 right in front.

23 Q. And State's Exhibit No. 19?

24 A. Okay. This is the female, and you can see
25 where her -- part of her body is in the kitchen area.

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1 And the pattern of the spray went off like this. And
2 then this massive defect here, which is really oriented
3 towards the left side of her mouth, from what I could
4 see at the scene. And then it just discharged out of
5 her left side of her head.

6 THE COURT: Was the barrel of the gun
7 not in her mouth at the time she was shot?

8 THE WITNESS: From what I could tell at
9 the scene, it looked like it was a close contact wound.

10 THE COURT: Is that brain matter or
11 blood on the tile floor to the left?

12 THE WITNESS: This is brain matter.
13 There's just little pieces -- you can see little pieces
14 of brain, tissue and bone. As I remember, I was
15 confused at the scene a little bit because there was
16 wire in her mouth, and I couldn't figure out what it
17 was. I think she may have been wearing braces. But the
18 teeth had something on them that resembled braces.

19 Q. State's Exhibit No. 20, is that just a more
20 up-close shot?

21 A. Yeah. You can actually see the powder residue
22 here, like under the base of her lip, that was, for me,
23 consistent with a close range or contact range.

24 Q. And what's depicted here in State's Exhibit
25 No. 21?

1 A. This is the barrel of the shotgun laying
2 across her right shoulder.

3 Q. Okay.

4 A. Which, for me, was a little inconsistent in my
5 experience with shotguns, to have it just fall straight
6 down.

7 Q. And State's Exhibit No. 22?

8 A. This makes me look upside down.

9 Q. Okay. Is that --

10 A. And my orientation from this picture is
11 actually like that.

12 Q. I see. Okay.

13 A. It's from standing back here. This is her
14 right hand, and there really isn't any blood spray or
15 tissue on her hand.

16 Q. To the upper right of this photograph, is that
17 also brain matter?

18 A. Brain. All these little spots are either
19 skull fragments or brain. Yeah, that's right.

20 Q. And is that, State's Exhibit No. 23, just
21 another angle or shot of what you described?

22 A. Right. Right. What I was trying to do was
23 get the indication of how it kind of elevated upwards
24 from her position where it -- it appeared to me to be
25 somewhat oblique angled and upward, the trajectory, as

1 if the weapon had to be downward from her to cause it to
2 kind of go above her head. And also the -- this spray
3 pattern on that wall is pretty round drops. They do
4 have drops because of gravity pulling the liquid down,
5 but they're not the teardrop where somebody is up above
6 and it comes down.

7 Q. Okay. And State's Exhibit No. 24, what's
8 depicted in this photograph?

9 A. It's just an overall basic picture looking at
10 from where you're standing, kind of the dining
11 room/kitchen area.

12 Q. Okay.

13 MS. MCVEA: One moment, Your Honor.

14 THE COURT: Ms. Prophet, was any of
15 the shot itself found in the room?

16 THE WITNESS: I did not really concern
17 myself at the time of looking at it. If I saw any on
18 her, I was making sure it stayed with her. But I did
19 not see any shot out in the room. What my job is, is
20 the body, really, and that's where I try to confine
21 myself as much as possible.

22 MS. MCVEA: I'm sorry, Your Honor. I
23 didn't hear your question.

24 THE COURT: I was asking whether she
25 found any shot in the room, on the floor, or in the wall

1 or anywhere.

2 THE WITNESS: And I said that I
3 didn't -- I don't -- I didn't see any on her body, and I
4 did not look for any in the room. I was concerning
5 myself with her and the effect of the shot on her.

6 THE COURT: Ms. Prophet, would you be
7 able to demonstrate for the Court the approximate
8 position of the body and the gun at the time the shot
9 was fired using the front of the Jury Box as the wall
10 that is to the right hand of the deceased?

11 MS. MCVEA: If I may, Your Honor, I
12 think the State plans on having that type of evidence
13 before the Court through other witnesses. If you want
14 her to demonstrate, that's fine. We'll defer at --

15 THE COURT: Well, she has ventured an
16 opinion about it. If she would demonstrate, I'd like to
17 see if it's consistent with that of your other
18 witnesses, as well.

19 MS. MCVEA: Okay.

20 THE COURT: If you're able to do it.
21 If you're not, just tell me.

22 THE WITNESS: No, that's fine. From
23 what I could see, if the wall -- the distances, I don't
24 remember, because I didn't --

25 THE COURT: Get her the shotgun, if you

1 will, too.

2 MS. MCVEA: Okay.

3 MR. STEINBECK: We stipulate to that,
4 as well, Your Honor.

5 THE COURT: Beg your pardon?

6 MR. STEINBECK: We stipulate to that,
7 as well.

8 MS. MCVEA: We offer at this time
9 State's Exhibit No. 11.

10 (Whereupon, State's Exhibit No. 11
11 was offered into evidence.)

12 THE COURT: All right. State's Exhibit
13 No. 11 is admitted without objection.

14 (Whereupon, State's Exhibit No. 11
15 was admitted into evidence.)

16 THE WITNESS: May I use my jacket as
17 her head?

18 THE COURT: Yeah.

19 THE WITNESS: From my prospective, from
20 what I could tell by the blood spray pattern, the way it
21 arced out and that sharp V, that the weapon would have
22 had -- her head would have to be like within a foot or
23 so of the floor. It had to be very low. But the weapon
24 would have had to have come in at an -- if this was her
25 chin, it would have had to have come in at an

1 approximate angle like that.

2 THE COURT: At a time when the body was
3 in the same position that it is in the photograph; is
4 that what you're saying?

5 THE WITNESS: Approximately,
6 approximately.

7 THE COURT: Okay.

8 THE WITNESS: Because the -- from what
9 I could tell from my examination at the scene, it went
10 from center left out the ear -- right ear area. So it
11 had to go from front to slightly back, left to right.
12 So it appeared that it would have gone like this. And
13 for her to have held this weapon at this angle, or close
14 to that angle, and to receive such a shot, the gun
15 should not have been laying in a position like that
16 across her chest, because it would have had a lot of
17 weight on this end, and then the report back would have
18 caused it to jump back.

19 THE COURT: Well, can you show me how
20 she would have had to have held the rifle -- the shotgun
21 in order to discharge it against herself?

22 THE WITNESS: She would have had to do
23 something approximately like this. (Witness
24 demonstrates.)

25 THE COURT: Thank you. That's all I

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1 have.

2 While I still have the witness, Ms. Prophet, in
3 State's Exhibit No. 20, there's a pool of blood to the
4 right side of the head of the deceased, and her hair,
5 which is blonde, seems to trail out. Was the hair cut,
6 or is just part of it submerged in the blood pool?

7 THE WITNESS: It's submerged. The
8 blood, once it is out for a period of time, starts to
9 coagulate and get very gelatinous, so the hair was still
10 there, still attached to it.

11 THE COURT: Okay. That's what I wanted
12 to know. Thank you.

13 THE WITNESS: Yes.

14 MS. MCVEA: Just a few more questions,
15 Your Honor.

16 (Whereupon, State's Exhibit Nos. 25,
17 26 and 27 were marked by the Court
18 Reporter.)

19 MS. MCVEA: I'd like to offer into
20 evidence at this time State's Exhibit No. 25, 26
21 and 27.

22 (Whereupon, State's Exhibit Nos. 25,
23 26 and 27 were offered into
24 evidence.)

25 MR. STEINBECK: No objection.

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1 THE COURT: Admitted.

2 (Whereupon, State's Exhibit Nos. 25,
3 26 and 27 were admitted into
4 evidence.)

5 MS. MCVEA: Can I have the witness step
6 down?

7 A. (Witness complies.)

8 Q. (By Ms. McVea) Ms. Prophet, what is depicted
9 in State's Exhibit No. 25?

10 A. It's the decedent's left hand, and the trigger
11 area, and the butt area of the shotgun.

12 Q. Do you notice anything in particular with
13 regard to her hands?

14 A. Again, there's very little blood splatter.
15 There's a little bit of blood that you can see, but it's
16 very, very minimal compared to what would be if you're
17 up close to a wound that is created like that.

18 Q. State's Exhibit No. 26, is this just another
19 shot?

20 A. It's just another prospective of it.

21 Q. Did you notice anything about her fingernails?

22 A. They looked very nice. They didn't look torn
23 up or anything like that.

24 Q. You don't consider that a break or a chip in
25 her nail?

1 A. Well, there's a chip, but it's not torn off,
2 and it's -- there's a little bit of a chip on it, but
3 the fingernails are not broken like what I've seen in
4 massive, massive struggles where people are fighting
5 tremendously. They usually, the fingernails are broken
6 totally back.

7 Q. What you see here, is that consistent with a
8 minor struggle?

9 A. It could be a minor struggle, or she could
10 have hit her finger on a table, too, and broke that chip
11 off.

12 Q. Okay. Is that another photograph of that?

13 A. Right. That's the same hand. And you will
14 see, there's a little bit of blood here, but that's a
15 high -- kind of like a high arcing. It's not a drop
16 like if I had my hand here and the weapon went off.
17 There would be little dots, and that's a streak or a
18 teardrop shape.

19 Q. If she was trying to hold the weapon and
20 center it on her mouth with her right hand -- I'm sorry,
21 her left hand, would you expect more blood on her hand
22 than what's indicated here?

23 A. I would expect a lot more blood on both of her
24 hands.

25 Q. On both of her hands?

1 A. Yeah. From what I saw, it looked -- my
2 sentiment would have been that she would have held the
3 gun with her right hand and pulled the trigger with her
4 left, if this was -- if she was holding it like this in
5 a suicide attempt. Neither hand had --

6 THE COURT: Whether the wound was
7 self-inflicted or inflicted by another, would blood have
8 splattered in the direction of the butt of the gun?

9 THE WITNESS: It would spray in every
10 direction, but the majority of the blood would have gone
11 in the same direction as the wound was traveling in.

12 THE COURT: But some would have gone in
13 the opposite direction?

14 THE WITNESS: Right. It just sprays
15 everywhere. It becomes an aerosol. It just becomes
16 sprayed everywhere.

17 THE COURT: Okay.

18 MS. MCVEA: We pass the witness.

19 CROSS-EXAMINATION

20 BY MR. STEINBECK:

21 Q. Hello, ma'am.

22 A. Hi.

23 Q. I just have a few follow-up questions for
24 you.

25 A. Yes, sir.

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1 Q. You're not a homicide detective, are you?

2 A. No, sir.

3 Q. Do you consider yourself a blood splatter
4 expert?

5 A. I have an expertise of experience and
6 training. I do not work as a blood splatter expert.

7 Q. And you did measure the gun; is that correct?

8 A. That's correct.

9 Q. Would you mind measuring it for the Judge. I
10 have a tape measure here you can use.

11 A. Okay.

12 Q. If you could, give the Judge the measurements
13 from the barrel to the back of the first trigger --

14 A. (Witness complies.)

15 Q. -- with the gun in a loaded and locked
16 position, please.

17 A. (Witness complies.) Down to the first barrel
18 of the gun to the first trigger is 26 inches.

19 Q. Could you show the Judge the measurements,
20 please, so he can see as you're --

21 A. (Witness complies.)

22 Q. What is the reading to the trigger, 26 inches?

23 A. Twenty-six inches.

24 Q. Okay. How about the second trigger?

25 A. Twenty-seven --

1 Q. And how about --

2 A. -- and a quarter.

3 Q. -- the full length of the weapon?

4 A. It's 40 and three quarters.

5 Q. Thank you. Ma'am, you previously testified to
6 the fact that the weapon was fired very close to the
7 mouth --

8 A. Yeah.

9 Q. -- of the deceased and was fired maybe at an
10 upward angle to her right ear.

11 A. It appeared that the path the projectile took
12 was from left to right and from a little bit from front
13 to back.

14 Q. And if that was the angle of the barrel of the
15 weapon in relation to her head, are you able to say what
16 angle her head was in relation to the floor?

17 A. Oh, no, no. I can give you -- I mean, the
18 position that her head was when -- she didn't move much
19 after the weapon went off. It had to be very close to
20 what she was, but the -- to say conclusively exactly
21 where it was, I can't.

22 Q. So in other words -- in other words, when you
23 were out here demonstrating that the weapon was pointed
24 at this angle, that's just assuming the angle in
25 relation of her head to the barrel of the weapon,

1 correct?

2 A. It's assuming the relationship of the bullet
3 going through her head.

4 Q. In relation to her head, correct?

5 A. No. It has to do with the pattern of the path
6 of the bullet. If my head was down here, it would still
7 be at that angle.

8 Q. I understand. That's what I'm saying.

9 A. Yeah.

10 Q. But you're not testifying that the angle of
11 the bullet --

12 A. No, no. No.

13 Q. -- was to the floor?

14 A. No.

15 Q. So when you were showing the Judge that the
16 gun was up here like this pointing down, that's not what
17 you're saying is how the gun was actually held when it
18 was fired?

19 A. No. In my prospective she did not move much
20 once the weapon was fired. I can't say that it was an
21 inch or two to either side or an inch or two above the
22 floor, but it was very close to where she came to rest.

23 Q. Okay. Very well. But you can't testify
24 whether the gun was like this as opposed to down like
25 this; isn't that correct?

1 A. If it would have been down like that, she
2 would have much more likely have had a path that would
3 go out the top of her head.

4 Q. But you don't know the position of her head,
5 correct? If she was sitting down and trying to raise up
6 her head, that would be consistent with --

7 A. Let me try to picture what your scenario is,
8 okay. What you're saying is if her head was up, could
9 it -- the barrel of the gun --

10 Q. If she's sitting up when the gun's going off
11 and her head is tucked to her chin, her chin's tucked to
12 her chest --

13 A. You're saying that she was sitting on her
14 buttocks?

15 Q. Lying on her buttocks, lying on her back, and
16 sitting up when this went off.

17 A. Then the -- well, she had to be very close to
18 the floor. If she -- yeah.

19 Q. I understand. So picture this in your mind,
20 ma'am.

21 A. Okay.

22 Q. If she's laying down here right now trying to
23 sit up and her chin is tucked to her chest and she is
24 raising up off the floor --

25 A. Um-hum.

1 Q. -- that would be consistent with this angle
2 that you testified to for the shot to reflect up here on
3 her head; isn't that correct?

4 A. The butt would have to be a little bit higher
5 than you have it right now, and -- well, it might be
6 possible, but it would be very, very hard to reproduce
7 in that position, but it could be possible.

8 Q. Well, you don't know the -- since you're not
9 an expert on what happens to the blood after it leaves
10 the head --

11 A. Um-hum.

12 Q. -- you can't testify what angle her head was
13 in relation to the floor, correct?

14 A. From my experience and from my training, her
15 head had to be virtually on the floor for the blood
16 pattern to be the way it was. Anything is possible, and
17 it is very possible that it could be a different
18 scenario from what I saw. But from my experience, the
19 position of her head where it was at rest was very close
20 to where the shot went off.

21 Q. Would you be surprised if other experts have
22 testified that the angle is in an upward --

23 MS. MCVEA: Your Honor, I'm going to
24 object. No other expert has testified about the angle
25 of someone's head.

1 THE COURT: Overruled.

2 Q. (By Mr. Steinbeck) Would you be surprised if
3 other experts have testified that the angle of the
4 weapon was like this when it was fired?

5 A. No. I wouldn't be surprised that people have
6 their opinions.

7 Q. Okay. Well, they would have better expertise
8 in that type of testimony than you; isn't that correct?

9 A. Some do on testifying, yeah.

10 Q. Is that perhaps why the Prosecutor didn't ask
11 you those types of questions?

12 A. She has her reasons. I have no idea why she
13 asked me what she did or did not.

14 Q. Now, you mentioned some matters about spray on
15 the hands.

16 A. Correct.

17 Q. Now, it would be impossible for that type of
18 spray to reach her hands if she was holding the weapon
19 like this and someone's laying on top of her; isn't that
20 correct?

21 A. The --

22 Q. In other words, spray can't go through
23 someone's body.

24 A. Someone else, if someone else was laying on
25 top of her. But then also she wouldn't have the high

1 velocity drops that were on her wrists.

2 Q. Well, I'm not talking about her wrist, ma'am.
3 I'm talking about her hands. If there was some
4 separation between the two -- let's say there's two
5 people in close contact but not total compression
6 against each other, wouldn't that be consistent with
7 some of the shot being able to get in that space between
8 the bodies? After all, there would be a shot come
9 between the two bodies.

10 A. Right. The -- if her hands and part of her --
11 part of the velocity would have been -- or part of the
12 spray would have been on her hands or wrists, either
13 one. If she was covered up and something's blocking it,
14 then there's no way it's going to get on it.

15 Q. To get on where?

16 A. To get on her hands or her wrists.

17 Q. Well, if there's a weapon between -- that
18 weapon between two people --

19 A. Um-hum.

20 Q. -- and the hands are down lower, there is
21 going to get some of that spray on some part of the
22 hands and some part of the wrist, correct?

23 A. If there -- if something's blocking them, then
24 there's not going to be. If it's open, then there's
25 going to be spray on it from what's -- the aerosol

1 that's in the air that's coming down.

2 Q. What I'm saying, ma'am, and let me restate
3 this, is if I'm laying on top of someone, with this
4 coming between us --

5 A. Um-hum.

6 Q. -- their body is partially covering over the
7 weapon, although not totally. So if this weapon is
8 fired, there is going to be some spray, if this was in
9 my mouth. There's going to be some spray -- can't you
10 see that; it's hitting my hands -- even though there's a
11 body somewhat laying over the top of me.

12 A. Well, if there was a body laying over the top
13 of you --

14 Q. To some degree laying on top.

15 A. Okay. Whatever the degree of laying on top or
16 coverage, it would have protected the hands and wrists
17 from the spray.

18 Q. It depends, though, wouldn't you agree with
19 me, on how the hands are held and how close the bodies
20 are together or apart?

21 A. Oh, true.

22 Q. And the position of the hand on the gun,
23 correct?

24 A. True.

25 Q. So you have all these variables --

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1 A. Sure.

2 Q. -- that could be plausible, for instance, as
3 to why there's not spray, more spray, on the hands and
4 wrists, correct?

5 A. Correct.

6 Q. Thank you. Let me ask you, since you're not a
7 homicide detective and because you're not a, per se,
8 blood expert, blood spray expert, you're not able to --
9 you're not able to testify as to this -- whether this
10 type of scene is more consistent with a struggle as
11 opposed to a murder, correct?

12 A. The scene surrounding the person?

13 Q. I'm not talking about the scene surrounding.
14 I'm talking about just looking at the position of the
15 body and the angle of the gun.

16 A. Well, sir, I've done, over the last ten years,
17 an average of 120 suicides a year and about 100
18 homicides a year, and usually I can walk into a scene
19 and make a basic assessment of what I'm walking into
20 from the training I've received and my past experience.

21 Q. And the comments of the police, correct?

22 A. No.

23 Q. You don't take that into account at all in
24 formulating your opinion?

25 A. I have found that when I listen to what other

1 people's opinions are, that sways me, so I tend to try
2 to go in and be as nonpartial -- since I am not a police
3 officer, I'm there as a third-party, and I'm to go in
4 there and make an assessment on what I see.

5 Q. What I'm talking about, though, ma'am, is the
6 angle of the weapon. Would you agree with me that if
7 the angle of the weapon is low to the ground and upper
8 position, that's not a typical position of a homicide
9 case?

10 A. Low to the ground?

11 Q. And firing upward.

12 A. The typical suicide that I've dealt with, with
13 shotguns --

14 Q. I'm not talking about suicide, ma'am. I'm
15 talking about a struggle versus a homicide.

16 A. Okay. A struggle versus a homicide usually
17 are very, very -- it's hard.

18 THE COURT: Counselor, are you saying
19 that it's -- it could be a struggle or a suicide, but it
20 couldn't happen -- I mean, a struggle or a homicide, but
21 it could not be both? I'm not sure that I understand
22 what you're asking. Is that what you're inferring, that
23 it's one or the other? Both couldn't be present
24 simultaneously.

25 MR. STEINBECK: I understand, Your
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1 Honor, but --

2 THE WITNESS: If you're struggling over
3 a weapon and it discharges, whether you're struggling to
4 keep it away from you or struggling to keep it to you,
5 it's going to look like the same thing to anyone who
6 comes in afterwards.

7 Q. (By Mr. Steinbeck) So if there was a struggle
8 over the weapon and Mr. Radke was trying to pull the
9 weapon away from the deceased, that could be consistent
10 with what you saw there?

11 A. If there was a struggle over the weapon, I
12 would have a hard time understanding how it could be
13 that close of a contact. If I'm struggling over a
14 weapon -- if I'm struggling over a weapon, and I have
15 it, and I want -- I have it and I'm struggling and it
16 goes off, it would be more than likely a little bit
17 further away from me.

18 Q. Ma'am, that's just assuming one hypothetical
19 type of struggle, right? Are you talking about a gun
20 like this waved up here, correct?

21 A. A gun like that, it -- the weight on that
22 is -- it's such a heavy gun to have it -- from my
23 experience, I've not ever seen that, but anything is
24 possible.

25 Q. What I'm saying is, in your opinion it's

1 consistent with the evidence as if there was a struggle
2 over the weapon with the deceased holding the gun in
3 such a manner, and another individual came to her and
4 was trying to pull the gun away, and as they are falling
5 to the floor, the gun went off and discharged
6 accidentally, that would be consistent when what you saw
7 on the body there, correct?

8 A. The gun fell to the floor and went off?

9 Q. No. The bodies fall to the floor --

10 A. Fall to the floor, yes, sir.

11 Q. -- and the weapon between both individuals --
12 if both the individuals are grappling for the gun and
13 are fighting over the gun --

14 A. Um-hum.

15 Q. -- that would be consistent as if the gun
16 discharged as they are hitting the floor or once they
17 are on the floor; isn't that correct?

18 A. It could be possible. It was not what I felt
19 occurred, but it could be possible.

20 Q. Well, I'm talking only about the forensic
21 evidence. I'm not talking what you think happened at
22 the scene based on a knocked-over chair. I'm talking
23 about specific -- the angle of the gun and the angles of
24 the body, given that scenario I just described to you.
25 That would be consistent with the injury and the

1 spatters, correct?

2 A. The -- my assessment of the scene, what I saw
3 at the scene, it did not appear that way to me, but I'm
4 not saying that it could not have happened that way.

5 Q. Now, why couldn't it not have happened that
6 way?

7 A. Would could it not have happened that way?
8 From my experience, I do not think that she could have
9 held that shotgun at an angle away from her body to her
10 left without blood splatter on her hands.

11 Q. But you're also talking about, ma'am, the fact
12 that you're presuming her head in a certain position.
13 You're, again, going back to the hypothetical of the
14 weapon being in this relation to her head.

15 A. Even if she was like this -- even if she was
16 like this --

17 Q. With her chin --

18 A. -- with her chin down, one of her hands would
19 have had to have been up close to the end of the
20 barrel.

21 Q. Why would that have to be the case? What
22 difference would that make as far as whether it's
23 plausible for that angle for the gun to go off to be at
24 close --

25 A. It is -- the gun has to be held to the mouth

1 to cause a contact.

2 Q. Correct.

3 A. If I'm holding it down here, I don't have that
4 steady contact. If I'm holding it up here, I'm having
5 steady contact.

6 Q. Ma'am, how could you testify that the gun was
7 being held steady when it went off? You're an expert on
8 that?

9 A. If -- at contact range, usually the gun has to
10 be pressed against the skin. From my experience, that
11 blackening was fairly close contact or contact range.
12 It has to be held against the skin.

13 Q. Fairly close. And if this gun, if for a split
14 second, instant, would touch across my mouth, that's
15 enough to make that type of wound, correct?

16 A. It could.

17 Q. Just as any other type, correct?

18 A. It could. And -- but in my experience, I have
19 yet to see that. There's always a first time, but yet,
20 my prospective is that that usually doesn't happen.

21 Q. Even if they were falling and the weight of
22 the weapon was falling against her chin, that would be
23 consistent with what you described, correct?

24 A. It would have -- I would have envisioned a
25 much more upward movement of the bullet, but the gun

1 would have had to have been at an angle from her body.

2 Q. Well, could not her head have been like this
3 looking back to the floor to look to see where she's
4 falling? Isn't that what most people do when they are
5 falling down, they look back to the direction they're
6 falling?

7 A. If I'm having a struggle, I'm looking at what
8 I'm struggling with.

9 Q. If you're falling and hitting the floor, you
10 could possibly turn that way; plus also, if the barrel
11 of the gun was right at you at that time, you could
12 possibly turn, correct?

13 A. Be -- you could duck, I guess.

14 Q. Ducking and turning, or whatever, and some
15 kind of struggle, her falling and turning your head?

16 A. Yeah.

17 Q. All those could be consistent with a
18 struggle.

19 A. They could be, but it would not -- I would not
20 have anticipated the spray. I would have anticipated it
21 to be further above her head then, because her head --
22 the exiting is here.

23 Q. But you're not really an expert on that type
24 of spraying, though, are you?

25 A. Other than my ten years of experience.

1 THE COURT: Let's take about a
2 ten-minute recess.

3 I wanted to ask you, did you move the gun at all?

4 THE WITNESS: No, not until --

5 THE COURT: You didn't examine it?

6 THE WITNESS: No, I did. Once we had
7 finished taking the photographs and making measurements,
8 I picked the gun up. I unlocked the breach looking at
9 it and then took my measurement and helped the officers
10 at the scene.

11 THE COURT: How many spent shells were
12 in the gun?

13 THE WITNESS: There was one spent
14 shell.

15 THE COURT: Was there another shell, as
16 well?

17 THE WITNESS: I don't remember one, but
18 I don't remember that there was a second one or not, to
19 be honest.

20 THE COURT: All right. That's all I
21 wanted to ask. Thank you.

22 MS. MCVEA: Nothing further.

23 Q. (By Mr. Steinbeck) Ma'am, you weren't the
24 first one at the scene, correct?

25 A. That is correct.

1 Q. So other people could have moved the weapon?

2 A. When I arrived at the scene, I asked the
3 officers: Did anyone move this weapon? And they told
4 me, to their knowledge, it had not been moved. That's
5 the only knowledge I have about it.

6 MR. STEINBECK: Very well. Nothing
7 further, then.

8 THE COURT: All right. May this
9 witness be excused, then?

10 MR. STEINBECK: Yes, Your Honor.

11 MS. MCVEA: No objection.

12 THE COURT: All right. Ma'am, you may
13 be excused.

14 (Whereupon, the witness was then
15 excused and proceedings resumed, as
16 follows:)

17 THE COURT: A ten-minute recess, by
18 that clock.

19 (Whereupon, a recess was then
20 taken.)

21 MS. SHELTON: Judge, now that Ms. McVea
22 is back out, we were wondering when we should schedule
23 our experts because they have -- all have practices, all
24 three of them. We had two of them arriving today at
25 noon, and Mr. Vor Koper, who's already here, Charles Vor

1 Koper, is sitting in the front row. We had thought we
2 were going to be getting started pretty soon. Could we
3 find out --

4 THE COURT: The State had supplied the
5 Defense with a list of about 65 witnesses some weeks
6 ago. I mean --

7 MS. SHELTON: Yes.

8 THE COURT: -- it's pretty obvious that
9 after hearing eight witnesses, we have a few to go.

10 MS. SHELTON: The State had indicated
11 that she wasn't going to use all 65, only about 20 or
12 30.

13 THE COURT: That's a comfort.

14 MS. MCVEA: And that's become a little
15 less than that number, too, Your Honor.

16 THE COURT: Well, could you give her
17 any clue about when she might need to be ready to put on
18 her case?

19 MS. MCVEA: I'm thinking we should be
20 done today, depending how long Cross-Examination is and
21 things of that nature. I just anticipate --

22 THE COURT: Are you saying with another
23 20 witnesses or so we could be finished --

24 MS. MCVEA: Oh, I don't plan on calling
25 20 witnesses, Your Honor, in addition to what I've

1 already called.

2 THE COURT: I know, but 20 witnesses in
3 half a day? That's what we've got left, basically. How
4 is that possible? Twenty witnesses sounds to me like
5 two days, minimum.

6 MS. MCVEA: As I said, Your Honor, some
7 of these witnesses are very short. I feel that we
8 should be done with our case today, depending on if
9 we're able to get started right away and move things
10 along.

11 THE COURT: All right. It sounds like
12 she can give you a definite maybe about some time
13 tomorrow.

14 MS. SHELTON: So that we might be able
15 to start whenever you tell us to be here in the morning
16 with our case, roughly?

17 MS. MCVEA: I assume. I mean, it just
18 depends on what time we get done today. We should be
19 done with our case today, should be. If not, the first
20 thing in the morning.

21 THE COURT: I have to leave today by
22 5:00.

23 All right. Well, let's get underway, then. Call
24 your next witness.

25 MS. MCVEA: State calls Officer Rice.

PERI K. STROMBERG, CSR

1 THE COURT: Sir, have you been sworn?

2 THE WITNESS: Yes, sir.

3 THE COURT: All right. Please take the
4 witness stand.

5 BILL RICE,

6 the witness hereinbefore named, being first duly
7 cautioned and sworn to testify the truth, the whole
8 truth, and nothing but the truth, testified on his oath,
9 as follows:

10 DIRECT EXAMINATION

11 BY MS. MCVEA:

12 Q. State your name for the Record, and spell your
13 last name for the Court Reporter.

14 A. Bill Rice, R-i-c-e.

15 Q. How are you employed?

16 A. Forensic investigator for the City of Garland.

17 Q. And what are your duties and responsibilities?

18 A. The collection and preservation of physical
19 evidence.

20 Q. Okay. Are you a police officer?

21 A. No, ma'am.

22 Q. How long have you worked for the City of
23 Garland?

24 A. Approximately nine and a half years.

25 Q. And did you respond to the area of 1001 Sunset

1 in Garland, Texas on February 29th of 1996?

2 A. Yes, ma'am, I did.

3 Q. And what was the purpose of you responding to
4 that location?

5 A. A shooting.

6 Q. Were you going to collect and preserve
7 evidence?

8 A. Yes, ma'am.

9 Q. When you arrived there, what was the first
10 thing you did?

11 A. I went in, saw what the scene entailed, and
12 then I began to photograph the scene.

13 Q. Did you also speak with officers to find out
14 exactly what you had?

15 A. Yes.

16 Q. Was the crime scene also videotaped?

17 A. Yes, ma'am.

18 Q. And who videotaped the crime scene?

19 A. I did.

20 Q. Did you also collect evidence there at the
21 scene?

22 A. Yes, ma'am, I did.

23 (Whereupon, State's Exhibit No. 28
24 was marked by the Court Reporter.)

25 MS. MCVEA: This is a diagram of the

PERI K. STROMBERG, CSR

1 scene.

2 MR. STEINBECK: No objection, Your
3 Honor.

4 MS. MCVEA: We'd like to offer State's
5 Exhibit No. 28 into evidence.

6 (Whereupon, State's Exhibit No. 28
7 was offered into evidence.)

8 THE COURT: All right. It's admitted
9 without objection.

10 (Whereupon, State's Exhibit No. 28
11 was admitted into evidence.)

12 MS. MCVEA: Okay.

13 Q. (By Ms. McVea) Investigator Rice, is this a
14 diagram of the scene, 1001 Sunset?

15 A. Yes, ma'am.

16 Q. Was this prepared by you?

17 A. Yes, ma'am.

18 Q. Okay. It's not drawn to scale, is it?

19 A. No, ma'am.

20 Q. Will it assist you in giving your testimony?

21 A. Yes, it will.

22 Q. Okay. Officer, I don't know if you will be
23 able to answer this in chronological order or not, but
24 what's the first thing that you recall collecting there
25 at the scene, as far as physical evidence is concerned?

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1 A. I believe it was probably the shotgun.

2 Q. And from where did you recover it?

3 A. It was laying across the deceased body.

4 Q. And was that a double-barrel shotgun,
5 12-gauge?

6 A. Yes, ma'am.

7 MR. STEINBECK: Your Honor, we can
8 stipulate to all the evidence. We don't have any
9 problem with that. The manner in which it was received,
10 we don't have any problem.

11 THE COURT: Well, I don't know what
12 evidence -- or what it is she's going to offer.
13 Anything we can do to expedite it would be welcome.

14 MS. MCVEA: Okay.

15 (Whereupon, State's Exhibit Nos. 29,
16 30 and 31 were marked by the Court
17 Reporter.)

18 Q. (By Ms. McVea) Just so the Record is clear,
19 I'm showing you what's been entered into evidence as
20 State's Exhibit No. 11. Do you recognize this item?

21 A. Yes, ma'am, I do.

22 Q. Is that the same shotgun that you recovered at
23 the scene?

24 A. Yes, it is.

25 Q. Okay. I'm showing you what's been marked for

1 identification purposes as State's Exhibit No. 29. What
2 is this item?

3 A. Five, live 12-gauge rounds.

4 Q. From where were these items recovered?

5 A. The shelf over towards the bookshelves on the
6 north wall.

7 Q. What type of rounds are these?

8 A. Well, I don't know how to pronounce. It's
9 F-I-O-C-C-H-I.

10 Q. And you have four of those type of rounds?

11 A. Four of those and one Winchester.

12 MS. MCVEA: I'd like to offer into
13 evidence State's Exhibit No. 29.

14 (Whereupon, State's Exhibit No. 29
15 was offered into evidence.)

16 MR. STEINBECK: No objection.

17 THE COURT: Admitted.

18 (Whereupon, State's Exhibit No. 29
19 was admitted into evidence.)

20 Q. (By Ms. McVea) I'm showing you what's been
21 marked for identification purposes as State's Exhibit
22 No. 30. Do you recognize this item?

23 A. Yes.

24 Q. What is it?

25 A. Two 12-gauge rounds, one is expended and one

PERI K. STROMBERG, CSR

1 is live.

2 Q. The one expended, do you recall from which
3 barrel of the gun it was expended from?

4 A. The left barrel of the double-barrel shotgun.

5 Q. That's the area in which you recovered it --

6 A. Yes.

7 Q. -- the left barrel?

8 MS. MCVEA: I'd like to offer into
9 evidence State's Exhibit No. 30.

10 (Whereupon, State's Exhibit No. 30
11 was offered into evidence.)

12 MR. STEINBECK: No objection.

13 THE COURT: Admitted.

14 (Whereupon, State's Exhibit No. 30
15 was admitted into evidence.)

16 Q. (By Ms. McVea) I'm showing you what's been
17 marked for identification purposes as State's Exhibit
18 No. 31. Do you recognize that item?

19 A. Yes, ma'am. It's a T-shirt.

20 Q. Okay. From where was this item recovered?

21 A. It was in -- on top of the clothes basket just
22 right inside the master bedroom.

23 Q. Okay. There at the home at 1001 Sunset?

24 A. Yes, ma'am.

25 Q. Is it in similar or the same condition as it

1 was on the night that you recovered it?

2 A. It is similar. It has some cuttings out. I
3 think the lab probably did that.

4 Q. Okay.

5 MS. MCVEA: I'd like to offer State's
6 Exhibit No. 31 into evidence at this time.

7 (Whereupon, State's Exhibit No. 31
8 was offered into evidence.)

9 MR. STEINBECK: No objection, Your
10 Honor.

11 THE COURT: Admitted.

12 (Whereupon, State's Exhibit No. 31
13 was admitted into evidence.)

14 Q. (By Ms. McVea) Is there any of this evidence
15 you would like to see at this time, Your Honor?

16 THE COURT: Yes.

17 (Whereupon, the evidence was
18 tendered to the Court.)

19 Q. (By Ms. McVea) Did you also recover any
20 projectile there at the scene?

21 A. I believe there was some pellets recovered.

22 Q. Okay. Do you recall how many pellets that you
23 recovered there at the scene?

24 A. No, I don't.

25 Q. You did take those -- that item -- or those

1 items into evidence; is that right?

2 A. Yes.

3 Q. To your knowledge were they submitted to the
4 lab, along with other items that you testified to?

5 A. Yes, ma'am.

6 Q. Okay. Did you ever have any contact with the
7 Defendant there at the scene?

8 A. Yes. I saw him at the scene. I photographed
9 him at the scene.

10 Q. Okay.

11 A. Also at the police department I photographed
12 him.

13 Q. Was there also a tile casting that was
14 recovered there?

15 A. Yes, ma'am.

16 Q. What was the purpose of that?

17 A. That was to determine if the butt of the
18 shotgun had hit that linoleum tile.

19 Q. And this tile, was that in the living room
20 area?

21 A. It was -- well, the living room and the den
22 area was divided. Part of it was carpet and part of it
23 was linoleum, and I think towards her feet there was
24 linoleum, and that was on the linoleum part.

25 Q. Why don't you indicate here on State's Exhibit

1 No. 28 the area in which you recovered the -- did the
2 tile casting?

3 A. Okay. Right in here.

4 Q. Now, this is the kitchen and the dining room
5 area. Are we talking the area between the living area
6 and the dining room?

7 A. We were just off the carpet on the linoleum.

8 THE COURT: Ms. McVea, I have some
9 colored dots. It might be better if you could refer to
10 the color.

11 MS. MCVEA: Thank you, Your Honor.

12 Q. (By Ms. McVea) Go ahead and pick a color.

13 A. Right along in here.

14 Q. So you're referring to the yellow dot here on
15 State's Exhibit No. 28?

16 A. Yes, ma'am.

17 Q. Okay.

18 A. That's the microseal impression of that mark.

19 (Whereupon, State's Exhibit No. 32
20 was marked by the Court Reporter.)

21 Q. (By Ms. McVea) I'll show you what's been
22 marked for identification purposes as State's Exhibit
23 No. 32. Can you go ahead and identify for the Court
24 these items?

25 A. Yes. This is the piece of linoleum with the

1 mark on it, and this is a microseal impression of that
2 mark.

3 Q. Okay. And the purpose of collecting these
4 items were?

5 A. To send it to the lab to determine if the
6 shotgun butt made that impression on the linoleum.

7 Q. Okay.

8 MS. MCVEA: I'd like to offer into
9 evidence State's Exhibit No. 32.

10 (Whereupon, State's Exhibit No. 32
11 was offered into evidence.)

12 MR. STEINBECK: No objection, Your
13 Honor.

14 THE COURT: Admitted.

15 (Whereupon, State's Exhibit No. 32
16 was admitted into evidence.)

17 Q. (By Ms. McVea) Were there any bullets
18 actually recovered there at the scene?

19 A. No.

20 Q. Now, back at the station you said that you
21 collected further evidence. What was that?

22 A. The suspect's clothing. I received that from
23 Officer Reed who also photographed the suspect.

24 Q. And when you say his clothing, what exactly do
25 you mean?

1 A. His shoes, pants, underwear. I believe that's
2 all.

3 (Whereupon, State's Exhibit Nos. 33
4 through 47 were marked by the Court
5 Reporter.)

6 Q. (By Ms. McVea) Officer, I'm showing you
7 what's been marked for identification purposes as
8 State's Exhibit No. 33, 34, 35, 36, 37, 38, 39, 40, 41,
9 42, 43, 44, 45, 46, and 47. Are you familiar with the
10 locations and objects contained in these State's
11 Exhibits?

12 A. Yes, ma'am.

13 Q. Okay. Is this how they appeared back on
14 February 29th of 1996?

15 A. Yes, ma'am.

16 MR. STEINBECK: We stipulate, Your
17 Honor.

18 THE COURT: All right. You may offer
19 them.

20 MS. MCVEA: I'd like to offer into
21 evidence State's Exhibit No. 33 through 47.

22 (Whereupon, State's Exhibit Nos. 33
23 through 47 were offered into
24 evidence.)

25 MR. STEINBECK: No objection.

PERI K. STROMBERG, CSR

1 THE COURT: They're admitted.

2 (Whereupon, State's Exhibit Nos. 33
3 through 47 were admitted into
4 evidence.)

5 Q. (By Ms. McVea) Can you step down, please.

6 A. (Witness complies.)

7 Q. Investigator, here on State's Exhibit No. 33,
8 do you see the items that you recovered with regard to
9 the live rounds?

10 A. Yes, ma'am. There's the five shell casings
11 there.

12 Q. Okay. Is that State's Exhibit No. 34 just a
13 close-up view of those same items?

14 A. Yes.

15 Q. And what's depicted in State's Exhibit No. 35?

16 A. That's Mr. Radke at the scene.

17 Q. What was your purpose in taking this
18 particular photograph?

19 A. For any type of injuries on him.

20 Q. With regard to his chest area?

21 A. Right. He had a small mark right there.

22 Q. Okay. What about State's Exhibit No. 36?

23 A. A photograph of his hands to see if there's
24 anything on his hands.

25 Q. And State's Exhibit No. 37?

1 A. Same thing.

2 Q. Okay. Did you notice a scratch on his right
3 wrist -- I'm sorry, left wrist?

4 A. Yes. He had a small cut right there.

5 Q. And also red knuckles?

6 A. Yes.

7 Q. Okay. And State's Exhibit No. 38?

8 A. It's Mr. Radke's shoes.

9 Q. Okay. And are these the items that he was
10 wearing?

11 A. Yes.

12 Q. Okay. And are these the same items that you
13 testified to that you recovered there at the police
14 station?

15 A. Yes, ma'am.

16 Q. Now, State's Exhibit No. 39, what's depicted
17 there?

18 A. That's the shotgun when we opened it up and
19 took the photograph of it as it was.

20 Q. Okay. And you said which barrel had been --

21 A. The left barrel.

22 Q. The left barrel had the spent casing in it?

23 A. Yes, ma'am.

24 Q. Okay. And the right barrel had the live
25 round?

1 A. Yes, ma'am.

2 Q. Okay. What's depicted here?

3 A. Mr. Radke's watch with the band that was
4 broken on it.

5 THE COURT: Excuse me for
6 interrupting. Did you find the stem that connects
7 the --

8 THE WITNESS: The little pin?

9 THE COURT: Yeah.

10 THE WITNESS: I don't believe so, no,
11 sir.

12 THE COURT: Okay.

13 Q. (By Ms. McVea) State's Exhibit No. 41, is
14 this a photograph of Mr. Radke?

15 A. Yes, ma'am.

16 Q. Is that down at the jail?

17 A. Yes, ma'am.

18 Q. Okay. Again, are you taking a photograph to
19 depict his injuries?

20 A. Yes, ma'am.

21 Q. Okay. The same with State's Exhibit No. 42, a
22 picture of his hands?

23 A. Yes, ma'am.

24 Q. And State's Exhibit No. 43?

25 A. Any type of injuries to Mr. Radke.

1 Q. Now, is this some type of injury here, these
2 lines, red lines we see on his stomach here?

3 A. No. I think that's just from where's he's
4 been bending right there.

5 Q. Okay. What about State's Exhibit No. 44?

6 A. The marks on his back, red marks, scratch
7 marks, possibly.

8 Q. Okay. And State's Exhibit No. 45, is that a
9 photograph of his shoes?

10 A. His shoes, yes. They have some -- what looked
11 to be blood on them.

12 Q. Okay. Is that the same on State's Exhibit No.
13 46, a photograph of his shoes?

14 A. Yes, ma'am.

15 Q. Okay. Again, noticing blood on the side of
16 his shoes?

17 A. Yes.

18 Q. Okay. And State's Exhibit No. 47, is that
19 just another photograph of the shoes?

20 A. Yes, ma'am.

21 Q. Okay.

22 (Whereupon, the photographs were
23 tendered to the Judge.)

24 MR. STEINBECK: Can I see Exhibit 32?
25 I'd like to see that.

1 (Whereupon, Exhibit 32 was tendered
2 to the Defense.)

3 MS. MCVEA: Pass the witness, Your
4 Honor.

5 CROSS-EXAMINATION

6 BY MR. STEINBECK:

7 Q. Officer, this will be real fast. I just have
8 a follow-up here.

9 A. Yes, sir.

10 Q. I couldn't see what your testimony was to
11 these exhibits here. Are you saying that was a mold
12 taken from --

13 A. That's a mold taken from this.

14 Q. From that right there?

15 A. Yes, sir.

16 Q. Very well. Thank you.

17 MR. STEINBECK: Nothing further.

18 MS. MCVEA: Did you pass the witness?

19 MR. STEINBECK: Yes.

20 MS. MCVEA: Nothing fewer.

21 THE COURT: Officer, the indentation in
22 the linoleum --

23 THE WITNESS: Yes, sir.

24 THE COURT: -- what was the
25 significance of that? Assuming somebody had dropped the

1 butt of a gun on the floor, what --

2 THE WITNESS: Yeah. We thought, you
3 know, we were trying to do everything possible that we
4 could and to see -- determine, being that the gun was
5 laying across her, to see if for some reason that gun
6 had hit that floor, you know, prior to that or
7 something. Anyway, we sent that to the lab, and I
8 believe we got the return on it, and it did not match
9 that.

10 THE COURT: All right. Thank you.

11 MS. MCVEA: That's all we have, Your
12 Honor.

13 THE COURT: All right, sir. You're
14 finished with him?

15 MS. MCVEA: Yes.

16 THE COURT: You may be excused.

17 MS. MCVEA: State calls Larry Fletcher.

18 THE COURT: Wait a minute. I think
19 they may have another question.

20 MR. STEINBECK: One moment, Your
21 Honor.

22 Q. (By Mr. Steinbeck) Sir, I have one follow-up
23 unrelated to your Direct testimony.

24 A. Um-hum.

25 MS. SHELTON: Could we put this on the
PERI K. STROMBERG, CSR

1 Record?

2 THE COURT: I'm sorry?

3 MS. SHELTON: We wanted to put this
4 one certain thing on the Record, Your Honor. It has
5 nothing to do with his -- the testimony that he's just
6 finished with. If we could proceed now, it will take
7 about one minute.

8 THE COURT: Yeah. Go ahead.

9 Q. (By Mr. Steinbeck) Sir, did you eat lunch
10 here yesterday down --

11 A. Yes, sir, I did.

12 Q. And who did you have lunch with yesterday?

13 A. My supervisor.

14 Q. Who's that?

15 A. John Mowery.

16 Q. And who else?

17 A. The property supervisor, Peggy -- I can't
18 think of her name, her last name.

19 Q. Anyone else?

20 A. Detective Thompson came down there later.

21 Q. Okay. And was Detective Thompson wearing a
22 suit that day?

23 A. Yes, he was. I believe so, yes.

24 Q. Was he the only individual there in a suit?

25 A. No. My supervisor, Mowery, was wearing a

1 suit, too.

2 Q. Okay. And tell us about the conversation that
3 occurred about this case.

4 A. We didn't talk about the case. We were
5 talking about a case two weeks ago in which a Garland
6 officer was killed in.

7 Q. Tell us what conversation -- recite what was
8 said?

9 A. We were talking about that the Defendant in
10 that case had said he was accidentally -- he
11 accidentally had shot the officer, which was not true,
12 because he was shot with a pistol five times.

13 Q. In that particular case, was there
14 overwhelming evidence of guilt against the Defendant, in
15 your opinion?

16 A. In my opinion, yes, he was convicted of
17 capital murder.

18 Q. So it wouldn't have been accurate for one of
19 the witnesses there to say, I don't think he did it,
20 correct?

21 A. No. No.

22 MS. SHELTON: May I ask the officer a
23 question?

24 THE WITNESS: Yes, ma'am.

25 MS. SHELTON: It was related to us by

PERI K. STROMBERG, CSR

1 people who overheard you-all talking that one of you
2 gentlemen said: Well, I don't think he did it, but
3 stranger things have happened. And another gentleman
4 replied back to him: Well, he has an automatic right of
5 appeal. Later it was related to us by the Prosecutor
6 that she had spoken with you-all, and you-all related
7 you were talking about the Mosley murder --

8 THE WITNESS: Yes.

9 MS. SHELTON: -- the savage murder of
10 the Garland Officer.

11 THE WITNESS: Yes.

12 MS. SHELTON: Officer --

13 THE WITNESS: No one said he wasn't
14 guilty --

15 MS. SHELTON: -- did the
16 conversation --

17 THE COURT: Just one at a time, please.

18 THE WITNESS: No one said he was not
19 guilty, I assure you of that.

20 MS. SHELTON: But therefore, no one
21 would have been uttering these kinds of remarks about
22 the Mosley case, of all cases in the world.

23 THE WITNESS: That's the case we were
24 talking about. No, nobody would be saying he wasn't
25 guilty, no.

1 MS. SHELTON: So if those remarks were
2 uttered, it wasn't about Kenneth Mosley. Were those
3 remarks -- if they were uttered, they certainly wouldn't
4 have been --

5 THE WITNESS: Well, they weren't
6 uttered, is my problem with that.

7 MS. SHELTON: That's all.

8 MR. STEINBECK: Nothing further, Your
9 Honor.

10 THE COURT: All right, sir. You may
11 step down.

12 MS. MCVEA: State calls Larry Fletcher.

13 THE COURT: May this witness be
14 excused?

15 MS. MCVEA: No objections.

16 MS. SHELTON: Yes.

17 THE COURT: You may be excused.

18 THE WITNESS: Thank you.

19 (Whereupon, the witness was then
20 excused and proceedings resumed, as
21 follows:)

22 (Witness sworn.)

23 THE WITNESS: I do.

24 LARRY FLETCHER,
25 the witness hereinbefore named, being first duly

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1 cautioned and sworn to testify the truth, the whole
2 truth, and nothing but the truth, testified on his oath,
3 as follows:

4 DIRECT EXAMINATION

5 BY MS. MCVEA:

6 Q. State your name for the Record.

7 A. Larry Fletcher.

8 Q. By whom are you employed?

9 A. Dallas County Institute of Forensic Sciences
10 here in Dallas.

11 Q. What do you do for them?

12 A. I'm a firearm and tool mark examiner.

13 Q. And briefly discuss your background and
14 education and the position that you hold.

15 MS. SHELTON: Your Honor, we'll
16 stipulate to that.

17 MS. MCVEA: That's he is qualified?

18 MS. SHELTON: That if he is a firearms
19 examiner for whom he says he is, if that's what he does,
20 we'll stipulate to his qualifications.

21 THE COURT: Very well.

22 Q. (By Ms. McVea) Mr. Fletcher, did you receive
23 some items in order to do a tool mark and firearms
24 examination?

25 A. Yes.

1 Q. In connection with this particular case?

2 A. I'm sorry? I didn't hear.

3 Q. In connection with this particular case here
4 on trial?

5 A. Yes.

6 Q. And what items did you receive?

7 A. On March 1st, 1996, I received a 12-gauge
8 Savage double-barrel shotgun. I received a small piece
9 of flooring, some type of vinyl flooring. Some pellets
10 from the living room floor, on March 6, 1996, I received
11 from Dr. Spotswood some pellets and wads that were
12 recovered from the autopsy.

13 Q. Did you conduct an examination of the items
14 you just described?

15 A. Yes.

16 Q. And what were the results?

17 A. The item two shotgun was mechanically
18 functional. I tested the shotgun to receive some spent
19 shot shells for test purposes. I identified the
20 shotshell that was submitted and identified it as having
21 been fired from the left barrel of the shotgun. The
22 pellets that were identified -- excuse me, submitted by
23 the Medical Examiner's Office, were identified as either
24 aught or double aught sized lead buckshot. The wads
25 that were submitted were identified as being 12-gauge,

1 which is the same gauge as the shotgun.

2 Q. Okay. Could you tell from which barrel that
3 the shotgun had been fired?

4 A. Yes.

5 Q. What barrel was that?

6 A. The left barrel.

7 Q. Was that consistent with the casings that you
8 received?

9 A. I identified the spent shotshell as having
10 been fired from the left barrel of the shotgun.

11 Q. Okay. What were your results with regard to
12 the piece of flooring or tile that you received from the
13 Garland Police Department?

14 A. The tile, or the floor piece of flooring, had
15 some markings, and I was asked to determine if those
16 markings could have been made by possibly the shotgun.
17 I looked at the flooring and could not identify any of
18 the markings having been made by the shotgun.

19 Q. Okay. Did you determine what the trigger pull
20 was for the 12-gauge Savage double-barrel shotgun?

21 A. Yes.

22 Q. What was that?

23 A. The left barrel had seven to eight pounds, and
24 the right barrel or -- it was identified as having six
25 to seven pounds. This is a double-barrel shotgun in

1 which employs two sets of triggers -- or two triggers,
2 excuse me.

3 Q. Okay. Now, the right trigger would expel the
4 right barrel, I assume?

5 A. The rear trigger would be expel -- or fire the
6 right barrel. The front finger would fire the left
7 barrel.

8 Q. Okay. Did you ultimately receive a spent
9 shotgun shell in connection with this case?

10 A. Yes.

11 Q. And when was that?

12 A. I received it on May 21st, 1996 --

13 Q. Okay.

14 A. -- along with an unfired shotshell and the
15 12-gauge double-barrel shotgun being resubmitted.

16 Q. And what was your results of your analysis at
17 that time?

18 A. Again, I identified that particular shotshell
19 as having been fired from the left barrel of the
20 shotgun.

21 Q. Mr. Fletcher, did you make any reports in
22 connection with your analysis?

23 A. I did.

24 (Whereupon, State's Exhibit Nos. 48,

25 49 and 50 were marked by the Court

1 Reporter.)

2 Q. (By Ms. McVea) Just so the Record will be
3 clear, Your Honor, can you just go ahead and identify
4 for the Record State's Exhibit No. -- what's been marked
5 as State Exhibit No. 48, 49 and 50.

6 A. These are copies of the reports that were
7 generated by myself during the examination of the
8 evidence.

9 MS. MCVEA: I'd like to offer into
10 evidence at this time State's Exhibit No. 48, 49
11 and 50.

12 (Whereupon, State's Exhibit Nos. 48,
13 49 and 50 were offered into
14 evidence.)

15 MR. STEINBECK: No objection, Your
16 Honor.

17 THE COURT: They are admitted.

18 (Whereupon, State's Exhibit Nos. 48,
19 49 and 50 were admitted into
20 evidence.)

21 Q. (By Ms. McVea) Okay. Mr. Fletcher, I'm
22 showing you what's been entered into evidence as State's
23 Exhibit No. 11. Do you recognize that item?

24 MR. STEINBECK: Again, Your Honor,
25 we'll stipulate.

1 THE COURT: All right. You agree this
2 is the weapon that was seized at the scene of the
3 alleged offense?

4 MR. STEINBECK: Yes, Your Honor.

5 THE COURT: Very well.

6 Q. (By Ms. McVea) And is that the same weapon
7 that you examined that you just testified to?

8 A. It is.

9 Q. Okay. Can you go ahead and then describe with
10 regard to the safety on that particular weapon?

11 A. This particular shotgun has a --

12 Q. Mr. Fletcher, why don't you step down in front
13 of the Bench.

14 A. (Witness complies.)

15 Q. This particular shotgun is a double-barrel
16 shotgun. It has, again, been identified as having two
17 triggers. The safety is a tang trigger, which is
18 located on the back portion of the receiver.

19 MS. SHELTON: Excuse me. I didn't hear
20 that. What trigger, a tang?

21 A. Tang, T-A-N-G, trigger -- excuse me, safety.
22 During the operation of the firearm, the safety must be
23 operated and has to be displaced each time the shotgun
24 must be fired. You can breach the weapon by the release
25 mechanism also located up on top of the receiver, which

1 also extracts the two shot shells when it's breached.

2 Q. So just to make sure that I understand you, if
3 the weapon is loaded and locked, the safety
4 automatically engages?

5 A. Correct.

6 Q. Okay. Now, did you say that the front
7 trigger --

8 A. The front trigger --

9 Q. Expels which barrel?

10 A. The right barrel -- I'm sorry, the right front
11 trigger fires the right barrel. The rear trigger fires
12 the left barrel. I think I had them reversed the first
13 time you asked me.

14 Q. Okay. Now, if one -- if a shot is expelled or
15 fired from this weapon, will the safety engage again or
16 it will not engage?

17 A. It will not.

18 Q. Okay.

19 A. Once the safety is disengaged or -- it will
20 fire, both barrels. It must reengage the safety for it
21 to operate.

22 Q. Okay.

23 THE COURT: Mr. Fletcher, I believe you
24 said that the right trigger fires the -- or the --
25 slightly to the right, is it not, and the front one --

1 THE WITNESS: That is correct.

2 THE COURT: And that fires the right
3 barrel.

4 THE WITNESS: It is.

5 THE COURT: And the back trigger --

6 THE WITNESS: Fires the left barrel.

7 THE COURT: -- fires the left barrel.

8 THE WITNESS: Right.

9 MS. SHELTON: I thought -- pardon me.

10 For clarification, I made notes while he was speaking.

11 The rear trigger fires the right, and the front
12 trigger --

13 THE WITNESS: Well, like I said, I made
14 a correction when I got the firearm.

15 MS. SHELTON: Oh, okay.

16 THE WITNESS: The first time I stated
17 that, that was incorrect.

18 MS. SHELTON: Pardon me, sir.

19 THE WITNESS: Okay.

20 Q. (By Ms. McVea) You said that the -- and I
21 hope I don't get mixed up here -- one of the barrels
22 had -- one of the triggers, rather, had a seven to eight
23 pound trigger pull; is that right?

24 A. That's correct. It's the left barrel.

25 Q. Okay. Is that within normal range?

1 A. For this particular shotgun, it is, or for
2 this particular manufacturer of shotgun, it is.

3 Q. And you said that the right barrel had a
4 six- to- seven-pound trigger pull; is that right?

5 A. That is correct.

6 Q. Is that also within normal range of that
7 particular shotgun?

8 A. It is.

9 Q. Have you ever heard of a term, "hair trigger"?

10 A. Yes.

11 Q. And exactly what does that mean?

12 A. The term, "hair trigger," is a term that a lot
13 of people use to indicate how easily or how light a
14 trigger pull is, how much pressure it actually takes to,
15 you know, pull the trigger. This usually is in the
16 range of about 12 ounces to 16 ounces per pound to pound
17 and a half of pressure.

18 MS. MCVEA: Pass the witness, Your
19 Honor.

20 CROSS-EXAMINATION

21 BY MR. STEINBECK:

22 Q. Sir, the shotgun shells, that was pellets,
23 correct, there wasn't any rifled slugs?

24 A. That is correct. They are pellets.

25 Q. Solely pellets and gun powder, correct?

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1 A. I'm sorry? I didn't hear.

2 Q. Those shells consist of solely gun powder and
3 pellets inside there, correct?

4 A. Which ones are you referring to, sir?

5 Q. The ones that you examined in this case.

6 A. I received a spent shotshell that -- which has
7 no pellets in it or powder.

8 Q. I understand, sir, but the one that did have
9 it in it is consistent with the one that was spent?

10 A. That is correct.

11 Q. And had no rifled slugs in it of any kind,
12 correct?

13 A. That is correct.

14 Q. And as to the safety mechanism, did you do any
15 kind of poundage estimation on that?

16 A. No.

17 Q. Is that sort of a trigger-type mechanism?

18 A. No, it's not.

19 Q. It's not easily moved?

20 A. It's not easily measured. I don't have the
21 mechanism to identify how much pressure it is to engage
22 it. It doesn't take much, but I have no way of
23 measuring it.

24 Q. Okay. If we were to take that weapon right
25 now and pull on the trigger, would we get an estimation

1 to experience how much pressure is actually needed
2 against each of those triggers?

3 A. Sure, if you want to.

4 Q. As well as the safety?

5 A. Yes.

6 Q. The actual safety mechanism that you spoke of
7 that's supposed to engage once the rifle is closed shut
8 and in a locked and loaded position, is that something
9 that you have tested to make sure it engages each time,
10 or is that something it's just supposed to do?

11 A. No. I engaged the safety and disengaged it
12 during my shooting, test firing, and the safety works.

13 Q. So did you ever try opening up the shotgun and
14 then closing it and then right away firing without
15 touching the safety at all?

16 A. Yes.

17 Q. If it was previously in an unlocked position?

18 A. I'm sorry? I can't hear you.

19 Q. If it was in a previously unlocked position, a
20 previously unsafe position, in a fire position?

21 A. If it was in the unlock position?

22 Q. If it was in an unlocked position and open,
23 and then you closed it and then fired it, did you do
24 that test?

25 THE COURT: I think he wants to know,
PERI K. STROMBERG, CSR

1 Mr. Fletcher, if the gun is off safety and you open it,
2 you break it, and then you close it back up, is it still
3 off safety?

4 THE WITNESS: It's still off safety --
5 it's still on safety, if you have a safety engaged --

6 Q. (By Mr. Steinbeck) That's not what I'm
7 asking, sir.

8 THE COURT: No? I give up.

9 MR. STEINBECK: You asked correctly.

10 THE COURT: Did I? Oh.

11 Q. (By Mr. Steinbeck) I think what the Judge and
12 I are asking is: If that weapon right now is on the
13 unlocked, unsafe mode --

14 A. Okay.

15 Q. -- and it's opened up --

16 A. Is it already open, or are you breaching it?

17 MS. SHELTON: You are breaching it.

18 Q. (By Mr. Steinbeck) It's breached.

19 A. No, that's not the same.

20 THE COURT: You are breaching it.

21 A. If it's breached, it means that it's already
22 open.

23 Q. (By Mr. Steinbeck) But you just breached it,
24 correct --

25 A. Okay.

1 Q. -- and then you stick a couple of shells in
2 there, you close it again without touching the safety --

3 A. Um-hum.

4 Q. -- and pull the trigger. Did you do that
5 test?

6 A. Yes.

7 Q. And what happens?

8 A. It didn't fire.

9 THE COURT: It does go on safety
10 automatically when you breach it?

11 THE WITNESS: Yes, sir.

12 Q. (By Mr. Steinbeck) Now --

13 MS. SHELTON: Could we see that?

14 Q. (By Mr. Steinbeck) Could you demonstrate that
15 for us, sir?

16 A. (Witness complies.)

17 Q. That should be able to be reenacted here in
18 the Courtroom, correct?

19 MS. SHELTON: May we watch just for
20 constructive purposes?

21 THE WITNESS: I just did it.

22 MS. SHELTON: All right. Take the
23 safety off. It's on now.

24 THE WITNESS: No, the safety's off.

25 MS. SHELTON: Okay. The safety is on

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1 now, right?

2 THE WITNESS: Yes.

3 MS. SHELTON: The safety is on now when
4 it's pushed down, so you can't fire. The safety's off.

5 THE WITNESS: I think you could have
6 fired it.

7 MS. SHELTON: Now, open this for me.
8 I'm not very used to guns.

9 MS. MCVEA: Your Honor, I'm going to
10 object at this time. I mean, at the beginning of
11 Cross-examination, one attorney was conducting the
12 examination, and now there's another, and we object.

13 THE COURT: Yes. I'm going to go ahead
14 and permit it this time, but from now on, one witness,
15 one attorney.

16 MS. SHELTON: Let Mr. Steinbeck do it.
17 He knows a lot more about guns than I do.

18 Q. (By Mr. Steinbeck) So it your testimony,
19 then, that if it's in an unlocked position right now and
20 there's shells in there, that it will not fire?

21 A. If it's on safe.

22 Q. Yeah. But if it's in an unlocked position and
23 it's stored this way and the weapon is grabbed --

24 A. If it's on the safe position, it will not
25 fire.

1 Q. That's right. Only if you breach it and then
2 reclose it, is it automatically going to go to the safe
3 mode, correct?

4 A. That's correct.

5 Q. So you could store this in an unsafe mode and
6 have it ready to fire immediately?

7 A. Only if the shotgun is loaded and the safety
8 is off will it be loaded and stored in an unsafe
9 condition.

10 Q. Thank you.

11 MR. STEINBECK: Would you like to see
12 this, Judge?

13 THE COURT: No.

14 MR. STEINBECK: Nothing further, Your
15 Honor.

16 MS. MCVEA: Briefly, Your Honor.

17 REDIRECT EXAMINATION

18 BY MS. MCVEA:

19 Q. Mr. Fletcher, did you bring with you to Court
20 the pellets that you examined in connection with this
21 case?

22 A. Yes, ma'am.

23 (Whereupon, State's Exhibit Nos. 51
24 and 52 were marked by the Court
25 Reporter.)

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1 Q. (By Ms. McVea) Are State's Exhibit No. 51 and
2 52 the items recovered at the time of the autopsy?

3 A. State's Exhibit No. 51 was recovered from the
4 autopsy. State's Exhibit No. 52 was recovered from the
5 scene, and in particular, the living room floor.

6 Q. Okay.

7 MS. MCVEA: I'd like to offer into
8 evidence at this time State's Exhibit No. 51 and 52.

9 (Whereupon, State's Exhibit Nos. 51
10 and 52 were offered into evidence.)

11 MR. STEINBECK: No objection.

12 THE COURT: Admitted.

13 (Whereupon, State's Exhibit Nos. 51
14 and 52 were admitted into evidence.)

15 MS. MCVEA: That's all I have.

16 THE COURT: That's all you have of this
17 witness?

18 MS. MCVEA: Yes.

19 THE COURT: Mr. Fletcher, how many
20 pellets would normally be found in one of these shells
21 like was in the gun?

22 THE WITNESS: This is a 12-gauge -- the
23 spent shotshell was a 12-gauge Winchester. It was
24 marked as a double aught buck. This particular
25 shotshell would have a -- it's a three-inch shell, so it

1 would have -- normally have 15 pellets.

2 THE COURT: Fifteen?

3 THE WITNESS: Yes, sir.

4 THE COURT: Thank you.

5 All right. May this witness be excused?

6 MS. MCVEA: No objections, Your Honor

7 THE COURT: All right. You may be
8 excused, Mr. Fletcher.

9 (Whereupon, the witness was then
10 excused and proceedings resumed, as
11 follows:)

12 THE COURT: Court is recessed for
13 lunch until 1:30.

14 (Whereupon, the lunch recess was
15 then taken.)

16 THE COURT: Ms. Shelton, is there
17 something you wish to put on the Record or request?

18 MS. SHELTON: Yes, sir, if I may. I
19 would like to ask the Court's permission, if it's
20 agreeable to all parties, to let my expert -- one of my
21 expert witnesses, Dr. Tim Braneman, who's a Ph.D.
22 psychologist and a forensic psychologist, to listen to
23 the testimony this afternoon of any -- not any expert
24 witnesses, as to ballistics or anything like that, but
25 any further reputation or fact-type witnesses, if there

1 are any, that the Prosecution has that will testify this
2 afternoon, if that would be all right.

3 THE COURT: Are there any other
4 witnesses, other than your experts, pathologists, people
5 like that?

6 MS. MCVEA: There is, Your Honor.

7 THE COURT: All right. Is that going
8 to be your next witness?

9 MS. MCVEA: No, Your Honor.

10 THE COURT: All right. Well, at such
11 time as a fact witness, that is -- of course, there are
12 no fact witnesses before the fact. They're all after
13 the fact but --

14 MS. SHELTON: Yes, sir.

15 THE COURT: -- for those -- that
16 testimony, I will permit your witness to be in the
17 Courtroom.

18 MS. SHELTON: Thank you, sir.

19 THE COURT: But he must step outside
20 now.

21 MS. SHELTON: Thank you, sir. We have
22 a forensic and crime scene expert appearing tomorrow,
23 and if there are any of that kind of testimony still
24 going on --

25 THE COURT: Then he may listen to the
PERI K. STROMBERG, CSR

1 expert testimony.

2 MS. MCVEA: Then I'd like for my expert
3 to listen to their expert also.

4 THE COURT: Very well.

5 All right. You may call your next witness.

6 MS. MCVEA: The State calls Richard
7 Shing.

8 THE COURT: Have you been sworn, sir?

9 THE WITNESS: No, sir, I haven't.

10 THE COURT: Please raise your right
11 hand.

12 (Witness sworn.)

13 THE WITNESS: I do.

14 RICHARD SHING,

15 the witness hereinbefore named, being first duly
16 cautioned and sworn to testify the truth, the whole
17 truth, and nothing but the truth, testified on his oath,
18 as follows:

19 DIRECT EXAMINATION

20 BY MS. MCVEA:

21 Q. State your name for the Record, and spell your
22 last name for the Court Reporter.

23 A. Richard Shing, S-h-i-n-g.

24 Q. And how are you employed?

25 A. I'm a Texas Ranger in the Texas Department of

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1 Public Safety.

2 Q. How long have you been so employed?

3 A. A little over 21 years.

4 Q. Were you employed with the Texas Rangers back
5 on March 5th, 1996?

6 A. I was.

7 MS. MCVEA: Can I have a moment, Your
8 Honor?

9 THE COURT: You may.

10 (Whereupon, there was a brief
11 pause in the proceedings.)

12 Q. (By Ms. McVea) Did you say that you were a
13 Texas Ranger?

14 A. That's correct.

15 Q. How long have you been a Texas Ranger?

16 A. I've been in the Department of Public Safety
17 21 years. I've been assigned to the Rangers division
18 since August '93.

19 Q. And what is your current rank or position?

20 A. Sergeant.

21 Q. And you are a certified peace officer in the
22 State of Texas?

23 A. I am.

24 Q. Did you receive some training or training in
25 bloodstain pattern interpretation?

1 A. I did.

2 Q. Was that educational hours, as well as
3 practical hours?

4 A. That's correct.

5 Q. How many hours did you receive?

6 A. My best recollection was 40.

7 Q. Now, on March the 5th of 1996, were you
8 contacted by Detective Thompson of the Garland Police
9 Department?

10 A. That's correct.

11 Q. And was that in regard to a questionable death
12 that occurred at 1001 Sunset in Garland, Texas?

13 A. That's correct.

14 Q. Did you actually go out to that location?

15 A. I did.

16 Q. Did you go out to that location at the same
17 day that he contacted you or a day or so later?

18 A. I think it might have been the next day, but
19 it was pretty quick. We could have met the next day.

20 Q. Now, you've reviewed some of the photographs
21 of the crime scene as it appeared on the night of the
22 offense; is that right?

23 A. That's correct.

24 Q. And when you responded to that location, did
25 you -- did the crime scene appear to be the same?

1 A. It did.

2 Q. Did it appear to be cleaned or anything like
3 that?

4 A. No, it didn't appear to be altered.

5 Q. Now, once you arrived at that location, what
6 did you observe?

7 A. It was obvious that there was some large
8 pooling of blood in the area and some evidence of blood
9 spatter and blood stains on a built-in type bookshelf
10 area.

11 Q. Now, Ranger, what was your purpose of being
12 there at the crime scene?

13 A. One of the criminal investigators that I work
14 with off and on out of Garland had called and asked me
15 to come and conduct some bloodstain interpretation from
16 the blood spatter and to help confirm a conclusion that
17 he was already dealing with or had reached in this case.

18 Q. Okay. What's the first thing you do when you
19 begin to measure or start a blood pattern analysis?

20 A. From what I was trained, the first thing you
21 do is, of course, take a general prospective, an
22 overview of the entire crime scene and determine the
23 directionality, the pattern, so forth, and then start
24 selecting how you want to start measuring and doing the
25 initial analysis or interpretation of what the

1 bloodstain is telling you.

2 Q. And did you choose or pick some blood stains
3 to measure?

4 A. Yes, I did.

5 Q. Were those blood stains in different areas of
6 the room or the bookshelves?

7 A. Yes, I did. They didn't want a complete
8 interpretation, but they just wanted to take a sampling;
9 and so I viewed the area and tried to take a random
10 sampling from different areas that would give us a kind
11 of a true picture of what the directionality may be and
12 the origin of the source.

13 Q. Once you choose your -- the stains that you're
14 going to, I guess, measure, what's the next thing that
15 you do?

16 A. Well, you then measure the bloodstain and
17 compute the angle at which it struck the target surface,
18 and then you begin to use a protractor, and you work
19 backwards from the angle of impact and try to locate the
20 source or the origin.

21 Q. Okay. What do you mean by the source or the
22 origin?

23 A. It's where the blood originated from, is
24 where -- I guess the best analogy I can put it to in
25 general terms is that it's much like working a traffic

1 accident. Once you get there and it's at zero, you see
2 the final resting, and then you work backwards to go see
3 how it happened. That's what you're basically doing
4 with a bloodstain. You see the final resting of the
5 bloodstain, and you work backwards to find out where it
6 came from using angles and stuff.

7 Q. Why did you choose the particular blood stains
8 that you did?

9 A. Because they didn't want a complete
10 interpretation; they just wanted me to do just a few to
11 help them feel comfortable in their theory of what
12 happened. I tried to pick one that would give us an
13 honest, random sampling, a true picture, I guess, so to
14 speak, of the directionality and the origin.

15 Q. And did you take measurements --

16 A. Yes.

17 Q. -- of this particular bloodstain? How many
18 did you choose?

19 A. We -- I chose four.

20 Q. Four.

21 A. Actually, I started measuring when I got to
22 four. I picked some, and they actually said that was
23 plenty for them, so I stopped at four.

24 (Whereupon, State's Exhibit No. 53
25 was marked by the Court Reporter.)

1 Q. (By Ms. McVea) I'm showing you what's been
2 marked for identification purposes as State's Exhibit
3 No. 53. Do you recognize this exhibit?

4 A. Yes.

5 Q. Okay. What is it?

6 A. It appears to be the measurements of the four
7 blood stains that I measured on that day and the
8 corresponding width and length and angles of which it
9 computed out to be.

10 Q. And this represents the measurements that you
11 took on the day in question; is that right?

12 A. That's correct.

13 Q. Okay. Now, is this done in your handwriting?

14 A. No. I actually -- because it requires both my
15 hands to make the measurements, one of the investigators
16 from Garland was writing down as I called out the
17 numbers. They were writing them down.

18 Q. Okay.

19 MS. MCVEA: I'd like to offer into
20 evidence at this time State's Exhibit No. 53.

21 (Whereupon, State's Exhibit No. 53
22 was offered into evidence.)

23 THE COURT: Any objection?

24 MR. STEINBECK: Just so they're not --
25 so they were verified at the scene by this witness, Your

PERI K. STROMBERG, CSR

1 Honor; otherwise, that could be hearsay.

2 Are they, in fact, accurate, is all I'm asking?

3 THE WITNESS: Yes, from my best
4 recollection.

5 MR. STEINBECK: No objection, Your
6 Honor.

7 THE COURT: It's admitted.

8 (Whereupon, State's Exhibit No. 53
9 was admitted into evidence.)

10 (Whereupon, State's Exhibit Nos. 54
11 through 68 were marked by the Court
12 Reporter.)

13 Q. (By Ms. McVea) I'm handing you what's been
14 marked for identification purposes as State's Exhibit
15 No. 54 through 68. You go through -- look through those
16 exhibits for me, please.

17 A. (Witness complies.)

18 Q. Do you recognize these photographs?

19 A. I do.

20 Q. And are they of the crime scene at 1001 Sunset
21 as it appeared on the date that you did your
22 measurement?

23 A. From my best recollection, it is.

24 MS. MCVEA: I'd like to offer into
25 evidence at this time State's Exhibit No. 54 through

1 68.

2 (Whereupon, State's Exhibit Nos. 54
3 through 68 were offered into
4 evidence.)

5 MR. STEINBECK: No objection.

6 THE COURT: They're admitted.

7 (Whereupon, State's Exhibit No. 54
8 through 68 were admitted into
9 evidence.)

10 Q. (By Ms. McVea) May I have the witness step
11 down.

12 A. (Witness complies.)

13 Q. Ranger, if you could, just tell the Court
14 what's depicted here in State's Exhibit No. 54.

15 A. This appears to be the built-in bookshelf
16 as -- the front door, as you walk into the residence,
17 the front door, this is the view you get as you enter
18 the main room.

19 Q. Is that how it appeared back on March the 5th
20 or 6th, or the day that you went out there and took the
21 measurements?

22 A. Yes. To the best of my recollection, it is.

23 Q. Is that just a close-up view of State's
24 Exhibit No. 55? Is that just a closer view of the
25 bookshelf area and the bloodstain there on the carpet?

1 A. Yes.

2 Q. And what's depicted here in State's Exhibit
3 No. 56?

4 A. It's a different perspective. It appears to
5 be from the front door, which would face this bookcase.
6 It appears to be from the kitchen area.

7 Q. Again, in State's Exhibit No. 57, what's
8 depicted in the photograph?

9 A. It's just a different angle of the last one.

10 Q. Okay. And does it show blood stains further
11 up in the bookcase?

12 A. It does.

13 Q. Again, State's Exhibit No. 58?

14 A. Again, the bookshelf and the bloodstain
15 pattern.

16 Q. Now, State's Exhibit No. 59, is that a
17 photograph of the living room area from the kitchen?

18 A. That's correct.

19 Q. What's depicted here in State's Exhibit No.
20 60?

21 A. This is one of the blood stains that I used
22 for measurement. It's this particular stain here.
23 It's -- unless you know what to look for, there's an
24 arrow that I drew pointing to that particular bloodstain
25 that I used for the measurements.

1 Q. What exactly is this ruler or protractor here
2 depicted by the bloodstain?

3 A. That is a reference ruler, so to speak, that
4 is used in forensic photography, or any photography, to
5 keep that picture in a true one-to-one ration so if you
6 blow it up or change the size of the picture, that the
7 stain would -- you can measure it from the picture. It
8 keeps it on a one-to-one reference.

9 Q. Now, can you tell by looking at State's
10 Exhibit No. 58 and 60 where this particular bloodstain
11 is located?

12 A. I can't really, to be honest, where it is. I
13 would -- it would be hard to say from this picture here.

14 Q. Okay.

15 A. There's not enough in this picture for me to
16 say.

17 Q. Okay. What's depicted here in State's Exhibit
18 No. 61?

19 A. Again, it's an arrow that I made of one of the
20 stains that I chose to make a measurement of, and I drew
21 the arrow there; and, of course, the ruler reference is,
22 again, there for the one-to-one prospective.

23 Q. But this is also on the bookshelf area?

24 A. That's correct. And, of course --

25 Q. And you can see the baby's picture, part of

1 it?

2 A. You can see that. And now that I can see that
3 picture, it would be like this. This is the picture
4 sitting down. It looks like it's going to be on the
5 flat portion there.

6 Q. Are you looking at State's Exhibit No. 58?

7 A. That appears to be the bottom part. That
8 bloodstain, apparently, was from this.

9 Q. And State's Exhibit No. 62, what's depicted in
10 that photograph?

11 A. And that is another bloodstain from a
12 different angle, but it appears, from the close
13 proximity to this other one, it's already been pulled
14 and measured, and the string's been pulled off of one of
15 them.

16 Q. Now, what exactly does that mean, "measured
17 and the strings have been pulled"? What does that mean?

18 A. What I'm trying to do is find the angle of
19 impact that the blood struck that target surface. And
20 you measure that and do some computations. You get the
21 angle at that hit, and then you pull the string using a
22 protractor. You measure the angle off the top of that
23 bloodstain, and you pull the string across, and that
24 gives you the angle at which that blood droplet struck
25 that target pattern.

1 Q. So do you put the end of the string right on
2 the bloodstain when you pull the string?

3 A. Actually, the string -- the protractor, I use
4 the protractor right above it, and I stretch the string
5 past that, giving me the proper angle at which I
6 computed that stain, and then I tie -- I have another
7 agent or another investigator tie the other end of the
8 string that the protractor is telling me it's that
9 angle. So example: If it's ten degrees, I would hold
10 the protractor over that bloodstain and have the string
11 cross the top of that bloodstain at ten degrees, and
12 then I would tape it down at both ends to maintain the
13 ten degree angle across that target surface.

14 Q. And what's depicted in State's Exhibit No. 63?

15 A. This is another bloodstain that struck the
16 shelf. And, again, I've got the arrow drawn here, and
17 then the ruler is there for reference. And, again, it's
18 another stain that we --

19 Q. Okay. Looking at State's Exhibit No. 56, can
20 you tell, approximately, where that particular stain is
21 located?

22 A. From this picture here, from what this picture
23 is showing me, it appears to be the same picture that's
24 on this second shelf. It looks like it's above these --
25 a stereo or a CD rack there.

1 Q. So that particular stain that you measured
2 would be in this area here?

3 A. It would appear to me that it would be this
4 one, or in that area, general location.

5 Q. Okay. And what's depicted here in State's
6 Exhibit No. 64?

7 A. That looks like, after all the strings have
8 been -- all the stains have been measured and computed,
9 the angles computed and the strings pulled off of
10 those. That's a picture of the angle at which the --
11 the computation showed me that that blood hit that
12 target surface.

13 Q. So you go from the bloodstain that's here and
14 the bookshelf area. And where do you pull -- where does
15 the string end?

16 A. Well, where the string ends is the -- only
17 taped or tied to, making sure that the angle here is
18 accurate, where these strings cross in this area; and if
19 we did a complete interpretation, it would be numerous
20 strings, maybe even a hundred or more across it. And
21 where the majority of them would cross is typically what
22 has been determined that the point of origin of that
23 blood source. So where you see these three strings or
24 the majority of these four, which would be these three,
25 given a plus or minus six inches either way, would give

1 you the point of origin of the blood source.

2 Q. Okay. And State's Exhibit No. 65 is another
3 angle of the strings you pulled?

4 A. That's correct.

5 Q. And is State's Exhibit No. 66 also just
6 another view of the strings that you pulled?

7 A. That's correct.

8 Q. Is that the same in State's Exhibit No. 67?

9 A. It appears to be so, or -- yes, ma'am.

10 Q. What's depicted in State's Exhibit No. 68?

11 A. That is one of the Garland investigators that
12 has -- appears to be holding a tape measure and trying
13 to get a measurement off of where these strings
14 intersect, which would probably be around this area
15 here. That's a white background. It's hard to say, but
16 I would -- it was just a little bit above the seat level
17 of that.

18 Q. Of the bookshelf?

19 A. Of the bookshelf, that built-in bookshelf.
20 From my best recollection, it was right at, probably, a
21 half a foot, maybe, and maybe a little more above that.

22 Q. Now, you didn't take down any measurements, as
23 far as --

24 A. No, they were doing that.

25 Q. Okay.

1 A. After I pulled the strings, they did the
2 measurements and the photographing. I didn't do any of
3 that.

4 Q. If we were trying to determine the point of
5 convergence or the point of origin, I mean, we wouldn't
6 measure at this point here where the investigator is,
7 would we?

8 A. That's -- that's probably either a bad picture
9 from where the picture was taken -- but if I was doing
10 this, I would hold the stick right where all these
11 strings cross, which the tape measure or the unit of
12 measure, I would put right behind where all the strings
13 were crossed.

14 Q. You can go ahead and have a seat.

15 A. (Witness complies.)

16 Q. Now, to get a really -- a real good
17 interpretation, should more strings have been pulled in
18 this instance?

19 A. If they had requested a complete
20 interpretation of that bloodstain pattern, it's not
21 unrealistic to have a hundred or more or 200 strings
22 pulled to give you -- and it depends on the bloodstain
23 pattern, but that's not unusual.

24 Q. Now, why was it not done, a completed
25 interpretation in this instance?

1 A. They didn't want that. They just wanted
2 something to help confirm what their investigation had
3 already led them to believe or their theories were.

4 Q. Okay. In retrospect, do you feel that more
5 strings should have been pulled in order to get a real
6 good interpretation?

7 A. To do an accurate or complete interpretation,
8 you would do as many bloodstain patterns or as many
9 blood stains that are -- that you can see to pull to get
10 a true picture.

11 Q. Now, the four strings that you pulled, they
12 were from different areas; is that right?

13 A. That's correct.

14 Q. Okay. And though you only pulled four, do you
15 feel pretty confident that point origin is consistent
16 with what you determined?

17 A. Well, I feel confident that -- the way I
18 measured them and how I pulled the strings to the angle
19 were accurate; and that because the majority of the
20 strings did cross, I feel confident that even if we had
21 pulled a hundred, that that would have been the general
22 area of origin, given the plus or minus six-inch
23 tolerance that we kind of use.

24 MS. MCVEA: Pass the witness, Your
25 Honor.

PERI K. STROMBERG, CSR

1 MR. STEINBECK: No questions, Your
2 Honor.

3 MS. SHELTON: Thank you.

4 THE COURT: Mr. Shing, is it only from
5 the elongated splatters that you're able to figure
6 direction, or can you do it from a droplet, as well?

7 THE WITNESS: Judge, yes, sir. You can
8 do it from any stain. A perfect circular droplet, when
9 you measure the width by the length, would give you a
10 one, which would give you a perfect 90-degree.

11 THE COURT: Um-hum.

12 THE WITNESS: So all blood stains can
13 be measured. The perfect, circular ones that come out
14 to a one, if you divide the width by the length, would
15 end up being a 90-degree impact angle, and that's why
16 the angular ones are giving you the directionality, as
17 well as the circular ones. But, yes, all blood stains
18 can be measured in giving you an angle.

19 THE COURT: So from your test here,
20 your study, what did you conclude was the height of the
21 source of the blood above the floor?

22 THE WITNESS: I don't -- I didn't
23 record the measurement. They did in theirs. I don't
24 have it in my memory, but I remember it was just
25 slightly above that level of -- it was around two foot,

1 Judge, from my best recollection. And it was just above
2 that seat level, just about half a foot.

3 THE COURT: All right. And what degree
4 of confidence do you have in the results of this test?

5 THE WITNESS: I have seen it used in
6 different occasions, and I feel very strongly about it,
7 and we'll use it in other cases in the future.

8 THE COURT: Well, I meant in this
9 particular test where you had four droplets that you
10 tested from.

11 THE WITNESS: I feel that it is an
12 accurate picture, even though if I had done a complete
13 interpretation, I would have pulled more strings, but I
14 stopped on the request. But I feel because three of the
15 four crossed, I feel confident that the origin of the
16 source was accurate.

17 THE COURT: All right. That's all I
18 have.

19 Any other questions?

20 MS. MCVEA: Nothing further, Your
21 Honor.

22 THE COURT: May this witness be
23 excused?

24 MS. MCVEA: No objections.

25 MR. STEINBECK: Temporarily excused,

1 Your Honor, subject to recall. If we could have his
2 pager number or some way of contacting him.

3 THE COURT: Sir, would you leave a
4 number where you may be reached or a pager?

5 THE WITNESS: Yes, Judge.

6 THE COURT: But you will be free to go
7 now.

8 THE WITNESS: Thank you.

9 MS. MCVEA: Judge, if I may have a
10 moment; I need to make sure the next witness is here.

11 (Whereupon, there was a brief
12 pause in the proceedings.)

13 MS. MCVEA: State calls Dr. Spotswood.
14 (Witness sworn.)

15 THE WITNESS: I do.

16 MS. SHELTON: Judge Nelms, since she is
17 one of their -- is going to possibly opine on certain
18 aspects of the case, that she is a doctor, is aware of,
19 might we ask that our expert come back in the
20 Courtroom?

21 THE COURT: Yes.

22 You may begin.

23 MS. MCVEA: All right. You may begin.

24 SHEILA SPOTSWOOD,
25 the witness hereinbefore named, being first duly

PERI K. STROMBERG, CSR

1 cautioned and sworn to testify the truth, the whole
2 truth, and nothing but the truth, testified on her oath,
3 as follows:

4 DIRECT EXAMINATION

5 BY MS. MCVEA:

6 Q. Please state your name for the Record,
7 please.

8 A. My name is Sheila Spotswood.

9 Q. Will you spell your last name for the Court
10 Reporter, please.

11 A. S-p-o-t-s-w-o-o-d.

12 Q. Ma'am, how are you employed?

13 A. I'm a Medical Examiner for Dallas County.

14 Q. And how long have you been so employed?

15 A. About six years.

16 Q. And can you just briefly discuss your
17 educational background and experience in the position
18 you hold?

19 A. Yes. I went to college, and then I went to
20 medical school here at the University of Texas
21 Southwestern Medical School. After graduating from
22 medical school, I did a four-year pathology residency
23 training in Dallas at Methodist Medical Center. After
24 that I did a one-year fellowship in the area of forensic
25 pathology. And I've taken and passed the board

1 examinations in anatomic, clinical and forensic
2 pathology.

3 Q. Are you a licensed physician here in the State
4 of Texas?

5 A. Yes.

6 Q. Now, your duties as a Medical Examiner, do
7 they include performing autopsies?

8 A. Yes.

9 Q. You have done this many times?

10 A. Yes, I have.

11 Q. Did you perform an autopsy on a white female
12 back on March the 1st of 1996 around 10 o'clock in the
13 morning?

14 A. Yes, I did.

15 Q. And was that person's name Diana Lynn Radke?

16 A. Yes.

17 Q. Did you assign a case number to that
18 particular case?

19 A. Yes, we did.

20 Q. What was the number?

21 A. It was the case number 0722 for the year 1996.

22 Q. Is that a unique case number?

23 A. Yes, it is.

24 Q. Okay. As part of your internal examine -- I'm
25 sorry, external exam, did you take a photograph of the

1 body?

2 A. Yes.

3 Q. I'm showing you what's been entered into
4 evidence as State's Exhibit No. 3. Do you recognize
5 that exhibit?

6 A. Yes, I do.

7 Q. Okay. What's the case number on that exhibit?

8 A. 96-0722.

9 Q. Okay. Is that person Diana Lynn Radke?

10 A. Yes. I have her only as Diana Radke. I'm not
11 certain about the middle name, but it's Diana Radke.

12 Q. As far as your external exam and internal
13 examination, did you take other photographs of the body?

14 A. Yes.

15 Q. What did your external examination reveal?

16 A. Primarily that she had a shotgun wound of her
17 head.

18 Q. Okay. Could you tell from your examination
19 where the shotgun wound entered the body?

20 A. Yes.

21 Q. Okay. And where was that?

22 A. It entered in the front of the face on the
23 mouth.

24 Q. And was that a contact wound or not?

25 A. It was contact.

1 Q. Why do you say that?

2 A. The wound was round. If you look at the
3 photograph, you will see a large, gaping wound. But
4 when we put it back together, we approximated the wound
5 is round. So for a shotgun, that tells us, at least
6 very close, that the pellets haven't started to spread
7 yet. And then the wound margins had an abrasion and had
8 soot consistent with the muzzle of the gun actually
9 touching the skin.

10 Q. Were there any indications of stippling on
11 the -- in the area of the injury?

12 A. No.

13 Q. And what does soot on that area indicate to
14 you?

15 A. Soot indicates that it -- well, it depends on
16 how much soot there is and where it is. It indicates
17 there was soot inside the wound and just at the wound
18 margins. It indicates that it was contact. There was
19 one additional area of soot where it leaked out onto the
20 skin on the chin.

21 Q. Did you recover anything from the body?

22 A. Yes.

23 Q. And what was that?

24 A. Multiple buckshot pellets and wadding
25 material.

1 Q. Was that submitted to the firearms and tool
2 mark examiners for further examination?

3 A. Yes, it was, yes.

4 Q. Was there a partial exit wound to that injury?

5 A. Yes.

6 Q. And where was that, and can you describe it?

7 A. That was on the right side of her head. It
8 was centered in this area on the top of the right ear,
9 but it was a large split, like defects involving the
10 right side of the head.

11 Q. Can you tell us what the pathway of the
12 projectile was?

13 A. Yes. It was primarily from front to back, but
14 it was also left to right and slightly upward.

15 Q. Now, you said that the range of fire was
16 contact?

17 A. Yes.

18 Q. Did you also obtain handwashes and other
19 evidence at this time?

20 A. Yes, I did.

21 Q. What other evidence did you obtain?

22 A. We obtained handwashings, samples of her head
23 hair, fingernail clippings, and blood.

24 Q. Were those items also submitted to the lab for
25 analysis?

1 A. Yes, they were.

2 Q. Are there any other injuries to the body that
3 you noted?

4 A. Yes.

5 Q. Can you go ahead and identify those injuries
6 and explain them?

7 A. Yes. There were a few small scattered
8 contusions or bruises. One of these is on the right
9 arm, and it appeared to be a little older and resolving,
10 had yellow-green color. And then there were
11 fresh-looking bruises on the front of the right thigh,
12 the front of the right leg, and the front of the left
13 leg. There was also a small chip off of one of her
14 fingernails.

15 Q. And which fingernail was that, off of what
16 hand?

17 A. It was the left, third finger.

18 Q. Now, you describe the wound to the right arm
19 as revolving and modeled, I believe?

20 A. Yes, I did, in the report.

21 Q. What exactly does that mean?

22 A. By resolving, I just mean that it's showing
23 some signs of healing. It's not a fresh bruise. That's
24 because of the yellow-green color.

25 And modeled is referring to the pattern of color.

1 It's not a solid, uniform color. Some areas are a
2 little more yellow, some green, a blotchy pattern.

3 Q. Did you also conduct an internal examination?

4 A. Yes.

5 Q. What did that reveal?

6 A. As far as the shotgun wound, it revealed
7 extensive damage to the head with fractures and damage
8 to the brain, and this is where I recovered the buckshot
9 pellets and the wadding. And then as far as the rest of
10 her body, it revealed no other internal injuries and no
11 disease.

12 Q. So basically, this individual was a healthy
13 individual?

14 A. As far as I could tell, yes.

15 Q. Was the toxicology examination also done?

16 A. Yes.

17 Q. What did that reveal?

18 A. It revealed some medications, fluoxetine and
19 norfluoxetine, which is a metabolite or a breakdown
20 product in the body of the fluoxetine. It also revealed
21 phentermine and fenfluramine. No alcohol and no other
22 drugs.

23 Q. Okay. With regard to the first drug that you
24 mentioned, fluoxetine, what is another name for that
25 particular drug?

1 A. It's known by the brand name Prozac. I don't
2 know if that's the only brand available of it or not.

3 Q. And what amounts were in her body at the time
4 of her death?

5 A. The measured amount of fluoxetine, or the
6 Prozac, is .27 milligrams per liter. And .13 milligrams
7 per liter of the metabolite, norfluoxetine.

8 Q. Is that within normal limits of -- for that
9 type of drug?

10 A. Yes. It's within, what we call, therapeutic
11 range for someone who's on the medication.

12 Q. What is the phentermine and fenfluramine?

13 A. Those are -- they're levels.

14 Q. Will what exactly is that?

15 A. Those are both commonly used as diet drugs. I
16 don't know a lot about their chemical class or what they
17 are exactly.

18 Q. Okay. Are they also none by, basically,
19 Fen-Phen?

20 A. Fen-Phen, yes.

21 Q. And what about the levels in her body at the
22 time of her death, with regard to those drugs?

23 A. Those levels are not high. They are new
24 enough that I don't have a very good therapeutic range
25 for them, but they're within the range of what we see in

1 other cases of people who are on them.

2 Q. Now, you said that her toxicology result was
3 negative for alcohol and negative for other drugs; is
4 that right?

5 A. Yes.

6 Q. Doctor, what was the cause of death of Diana
7 Radke?

8 A. Her cause of death was a shotgun wound of the
9 head.

10 Q. Was her body weighed and measured --

11 A. Yes.

12 Q. -- part of the examination?

13 A. Yes, it was.

14 Q. Okay. What was her height?

15 A. We measured her to be 66, or five foot, six
16 inches long.

17 Q. What was her weight?

18 A. One hundred sixty-three pounds.

19 Q. As part of your examination, did you notice
20 anything in particular about her teeth?

21 A. She had natural teeth, and she had braces.

22 Q. With regards to identifying marks and scars,
23 did you, besides the ones that you just talked about,
24 did you notice any other scars on her body, in
25 particular on her arms?

1 A. Yes, I did.

2 Q. Would you go ahead and state where you found
3 them?

4 A. Yes. On the front or the palmar side of the
5 left forearm and wrist, there were three linear scars
6 oriented lengthwise, like up and down on the arm. There
7 was a single, smaller, linear scar on the back of the
8 right hand.

9 Q. Doctor, you've already testified to what the
10 cause of death was for Diana Radke. What was the manner
11 of death?

12 A. Homicide.

13 Q. And what do you base your opinion upon?

14 A. As to the manner of death?

15 Q. Yes, ma'am.

16 A. I based it on the findings from my examination
17 and from the investigative report that was given to me
18 regarding the circumstances.

19 Q. Doctor, with this type of wound that this
20 person experienced, would that type of wound be
21 consistent with suicide, if it was -- she was found
22 under different circumstances?

23 A. Yes, it could.

24 (Whereupon, State's Exhibit No. 69
25 was marked by the Court Reporter.)

1 Q. (By Ms. McVea) Doctor, I'm handing you what's
2 been marked for identification purposes as State's
3 Exhibit No. 69. Do you recognize that exhibit?

4 A. Yes, I do.

5 Q. What is it?

6 A. This is a copy of the autopsy report on Diana
7 Radke.

8 Q. Okay. A copy made by you?

9 A. Yes. Well, I didn't actually make the Xerox,
10 but it's a copy of my report which I made.

11 Q. Okay. And does it contain information that
12 you just testified to?

13 A. Yes.

14 MS. MCVEA: I'd like to offer into
15 evidence at this time State's Exhibit No. 69.

16 (Whereupon, State's Exhibit No. 69
17 was offered into evidence.)

18 MR. STEINBECK: No objection.

19 THE COURT: It's admitted.

20 (Whereupon, State's Exhibit No. 69
21 was admitted into evidence.)

22 Q. (By Ms. McVea) Doctor, can you step down for
23 a moment, please.

24 A. (Witness complies.)

25 Q. Can you go ahead and demonstrate, I guess, the

1 trajectory of the gunshot wound using me as a --

2 A. On you?

3 Q. On me.

4 A. Yes. Could I use the pen just as a pointer?

5 Q. That's fine.

6 A. It's primarily from front to back centered on
7 the mouth, but it's also left to right through you, as
8 the victim, and slightly upwards, so it would be
9 something like this.

10 Q. Okay. And are you referring to the position
11 of the weapon or the position of the victim's head at
12 the time she received the wound?

13 A. I'm referring to the position of the victim's
14 head and the weapon relative to each other, not where
15 the victim was exactly, just where she was relative to
16 that gun.

17 Q. Did you take any measurements of the victim's
18 body?

19 A. Yes.

20 Q. Did you take specifically any measurements of
21 her arm length?

22 A. Yes, I did.

23 Q. Do you recall which arm length -- which arm
24 that you measured?

25 A. I have it drawn on my autopsy notes as being

1 on the right arm.

2 Q. And for what area of the body did you start
3 the measurement, and what area of the body did you end
4 the measurement?

5 A. I measured from the distal joint, the joint
6 nearest the finger tip on the right index or second
7 finger. From that point to the top of her shoulder to
8 approximately the middle of her shoulder.

9 Q. And what was that measurement?

10 A. Twenty-seven inches.

11 (Whereupon, State's Exhibit Nos. 70
12 through 74 were marked by the Court
13 Reporter.)

14 Q. (By Ms. McVea) Okay. Doctor, I'm handing you
15 what's been marked for identification purposes as
16 State's Exhibit No. 70, 71, 72, 73 and 74. Do you
17 recognize these exhibits?

18 A. Let me just take another look. Yes, I do.

19 Q. Are they photographs of the body -- that were
20 taken of the body of Diana Radke at the time of her
21 autopsy?

22 A. Yes, they are.

23 Q. Is that how her body appeared at the time of
24 her autopsy?

25 A. Yes.

1 MS. MCVEA: I'd like to offer into
2 evidence at this time State's Exhibit No. 70
3 through 74.

4 (Whereupon, State's Exhibit Nos. 70
5 through 74 were offered into
6 evidence.)

7 MR. STEINBECK: No objection.

8 THE COURT: They're admitted.

9 (Whereupon, State's Exhibit Nos. 70
10 through 74 were admitted into
11 evidence.)

12 Q. (By Ms. McVea) Can you step down, please.

13 A. (Witness complies.)

14 Q. Can you go ahead and explain to the Court what
15 is depicted here in State's Exhibit No. 70?

16 A. Yes. This is what we just call our overall
17 front view. It's showing the top half of Ms. Radke's
18 body after we've cleaned her and undressed her.

19 Q. And do you see there the injuries that you
20 described to the Court a few minutes ago?

21 A. Yes. The bruise on the right arm is visible
22 here, and it looks like -- it's faint in this picture,
23 but it looks like the bruise on the front of the right
24 thigh is also here.

25 Q. Did you describe the injury to her left wrist

1 area or left arm?

2 A. I did not, no.

3 Q. And State's Exhibit No. 72, can you go ahead
4 and show for the Court what's depicted in this
5 particular photograph?

6 A. That's a closer-up view showing the front of
7 her head showing specifically the shotgun wound that's
8 centered here on the mouth, and then there's partial
9 exits or other wounds here on the right side of the head
10 and on the forehead.

11 THE COURT: That is an exit wound on
12 the forehead?

13 THE WITNESS: Not an exit. It's just a
14 wound from the expansion of the head when all the gases
15 have gone through. It's more of an explosive.

16 THE COURT: Kind of an eruption.

17 Q. (By Ms. McVea) You talked a little bit about
18 that you saw soot on the mouth area. Can you see that
19 here in State's Exhibit No. 72?

20 A. The only part I can see here for sure is not
21 at the wound margin itself, but the margins of the wound
22 are difficult to even pick out in here. We had to pull
23 them back together to examine them. I think this
24 blackening right here is probably soot at the wound
25 margin. And then down here there's some soot. This is

1 the one that's not actually at the margin of the wounds,
2 but it's down farther on the chin.

3 Q. You said that injuries centered on the mouth,
4 and then going from left to right and exited on the
5 right side of the head; is that right?

6 A. Most of it actually did not exit; it was still
7 inside. But we recovered some of the pellets back in
8 this area on the back, right side of the head and along
9 just through the tracking of the wound.

10 Q. State's Exhibit No. 71?

11 A. This is the cleaned-up view of the lower,
12 front half of her body showing -- the only thing really
13 showing here are these small bruises on the legs. It's
14 hard to make out some of them exactly.

15 Q. Okay. State's Exhibit No. 73, what are we
16 looking at here?

17 A. This is a close-up view of the wound on the
18 mouth. This is the soot that I was referring to that's
19 not at the immediate margin. It's a little bit away
20 from the margin of the wound. Here's some of the
21 abrasion and scraping of the skin, and this is the soot
22 that's right at the wound margin. I can see soot inside
23 the wound here, too. Some of these black areas are soot
24 inside the wound. And these are the braces on the teeth
25 up here.

1 Q. Okay. And what are we looking at in State's
2 Exhibit No. 74.

3 A. This is a close-up. It's hard to orient, but
4 it looks like it goes this way because this is that soot
5 on the chin, again. So this should be the upper part of
6 the face here. This would be going down to the neck.
7 This is some of the lips right here. These are the
8 margins of the wounds where they almost pull together.
9 You can see in some areas there's abrasion and in some
10 areas there's soot.

11 Q. Go ahead and have a seat.

12 A. (Witness complies.)

13 Q. Now, you said that the manner of death was
14 homicide.

15 A. Yes.

16 Q. What exactly in specific detail that you --
17 the factors you took into consideration when you made
18 that determination?

19 A. I considered all the information that I had
20 been given and what I had found from the autopsy.

21 Q. What type of information?

22 A. From the autopsy, the wound, of course; and
23 then the fact that she had these scars on the wrists
24 that don't -- they're not definite, but they suggest a
25 form of suicide attempt. The history that I've been

1 given included that, by the time the report was even
2 called into us by the police, the person who found her
3 had had at least three different versions about what
4 happened. And then early -- I'm sorry, later in the
5 night, but still before I ever arrived in the building,
6 we got another call from the police that the husband who
7 found her was found to have brain and blood on the top
8 of his shoes and not on the bottom of his shoes. And
9 then later in the day, after I did the autopsy exam, I
10 talked with the same investigator, Thompson, who told me
11 another story, at least a fourth story, from this person
12 who found her who gave another story, and none of them
13 fit what I saw on the body and then what I saw in the
14 scene photographs and what our field investigator told
15 me that she had seen at the scene. Did you want the
16 specific stories?

17 Q. No.

18 THE COURT: Doctor, eliminating the
19 hearsay, can you tell from the body alone that it was
20 homicide?

21 THE WITNESS: Not from the body alone,
22 no.

23 THE COURT: Given that you know the
24 height of the deceased, you know the entry, point of
25 entry of the wound, the point of exit, we know the type

1 of weapon that was used -- would somebody show her the
2 shotgun.

3 (Whereupon, the State showed the
4 witness the shotgun.)

5 THE COURT: Would not the weapon itself
6 have to be pointed in a direction so that the missile
7 would enter the mouth and exit the side of the head?
8 Would it not -- all of it not have to be in a straight
9 line for that to occur?

10 THE WITNESS: I guess I don't
11 understand your question exactly.

12 THE COURT: Well, I'm saying, you have
13 a long barrel weapon that discharges some shot. The
14 shot enters the mouth and comes out just above the ear.
15 If you drew a line from the exit to the entrance and
16 into the barrel of that gun, would it not all have to
17 line up?

18 THE WITNESS: Yes, it would.

19 THE COURT: I mean, it doesn't shoot
20 around a corner or anything.

21 THE WITNESS: No. And those items
22 there that you mentioned, where the pellets were
23 recovered and the partial exit and the entrance and the
24 gun, they have to line up in a straight line.

25 THE COURT: All right. So assume that

1 all of that lines up, and then if you could, for a
2 hypothetical, assume that the -- at least the exit wound
3 of the head was approximately two feet above the
4 ground. Do you understand what I'm saying?

5 THE WITNESS: Yes.

6 THE COURT: Can you suggest any manner
7 in which this might have occurred, the position of the
8 body at the time of the shooting?

9 THE WITNESS: What position she might
10 be in?

11 THE COURT: Yes. She's obviously at 66
12 inches. She was not standing erect, was she, when she
13 was shot?

14 THE WITNESS: No. But the positions
15 are still really almost infinite. All I can say is the
16 gun's position relative to her, which is this straight
17 line. And then according to the scene, the information
18 and photographs said it was low down on the floor, near
19 the floor, but not whether she's sitting or falling or
20 getting up or bending over or anything like that. I
21 couldn't say. Just so that you can position her head
22 low enough there to fit with the blood at the scene and
23 the wound.

24 THE COURT: Well, you can eliminate
25 that she was standing, can you do that?

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1 THE WITNESS: Yes.

2 THE COURT: If she were kneeling, how
3 high would her head be above the floor, a person of this
4 height, approximately?

5 THE WITNESS: If she were --

6 THE COURT: If she were on her knee.

7 THE WITNESS: Well, there's different
8 ways. She could be kneeling, crouched way down or
9 kneeling full upright.

10 THE COURT: Let's say upright for
11 starters.

12 THE WITNESS: I think that I would have
13 to get out a ruler and estimate. But just knowing how
14 she looked and the average person, it would be higher
15 than it looked like it was at the scene.

16 THE COURT: So these factors that we
17 have mentioned, the fact that the exit wound appears to
18 have been somewhere about two feet off the ground, the
19 exit wound itself, the entry wound and the muzzle of the
20 gun does not suggest to you any scenario of what -- how
21 she was shot?

22 THE WITNESS: No.

23 THE COURT: All right. Thank you.

24 MS. MCVEA: We have nothing further,
25 Your Honor. Pass the witness.

PERI K. STROMBERG, CSR

CROSS-EXAMINATION

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BY MR. STEINBECK:

Q. Hi, Doctor. I'm Carl Steinbeck. We spoke with each other on the phone the other day.

A. Yes.

Q. I just have a few follow-ups for you. As far as the bruising, you mentioned some bruises or contusions being a little bit colored or aged, in other words?

A. Yes.

Q. And some others were more fresh. But you can't determine a date of those bruises; isn't that correct?

A. No, I can't.

Q. And the -- as far as the cause of death, you mentioned that was the shotgun, correct?

A. Yes.

Q. And as far as the manner of this death, you ruled that a homicide. And you have several different options. You have natural accidents, suicide, homicide or undetermined, correct?

A. Yes.

Q. And when you looked at this case, isn't it true that you basically relied, to rule out homicide, solely on what the officers told you that Mr. Radke

1 said, correct?

2 A. Not solely. But very heavily on that, yes.

3 Q. In fact, if that -- if you had not had
4 evidence of Mr. Radke's words, you would have thought,
5 when first looking at this somebody, this was a suicide,
6 correct?

7 A. I would have, yes.

8 Q. This is the way most suicides look, right --

9 A. Well --

10 Q. -- if they're involving a shotgun?

11 A. It's pretty typical for a suicide, being
12 contact range and involving the head.

13 Q. Sure. And you state that it was -- there was
14 a contact wound. The actual exact angle, you're not
15 able to determine?

16 A. Not exactly, no.

17 Q. So you mentioned to the Judge the exit wound,
18 but you're not even -- you can't specify exactly which
19 angle, with any certain degree of reliability, the exact
20 angle of that gun to her mouth, correct?

21 A. Not exactly to within a few degrees, no.

22 Q. So there's several -- it's sort of a wide
23 range. If the gun was to her lips, for example, there's
24 sort of a wide scope of range that the gun could have
25 been at when it went off?

1 A. There is some range. It's not as wide as what
2 you're indicating there with the pen, because some of
3 those are actually going off to the right, some to the
4 left and some down. I know that it's mostly front to
5 back. It's a little bit to -- left to right and a
6 little bit upward, but there's some range in there,
7 yes.

8 Q. Okay. And the -- as far as testing for drugs,
9 you test for every possible drug for the body?

10 A. Not every possible drug. We do a screen and
11 identify anything that is present and identifiable.
12 Some medications that are therapeutic and in very low
13 levels, we will not pick up. And then there's a couple
14 of other substances that we don't pick up unless
15 specifically looked for.

16 Q. Including illegal circumstances?

17 A. LSD is one.

18 Q. Because --

19 A. But cocaine, marijuana, morphine, heroin,
20 those things would have been detected if they were
21 there.

22 Q. But there's other illegal drugs you do not
23 test?

24 A. Yes.

25 Q. What are some other type drugs, besides LSD?

1 A. LSD is the only one I'm aware of. There is a
2 possibility of some type of, what they call, designer
3 drugs.

4 Q. Like Ecstasy or stuff like that?

5 A. I think Ecstasy would be picked up, but things
6 like that where they're new and difficult to identify.
7 But then we should still pick up something, and they
8 would say unidentifiable substance.

9 MR. STEINBECK: Nothing further. Thank
10 you.

11 MS. MCVEA: A couple of questions, Your
12 Honor.

13 REDIRECT EXAMINATION

14 BY MS. MCVEA:

15 Q. Doctor, you said that Diana Radke died from
16 being shot with a firearm; is that correct?

17 A. Yes.

18 Q. Okay. Is a firearm a deadly weapon?

19 A. Yes, it is.

20 Q. Doctor, if --

21 Janet, do you mind standing here a minute.

22 Doctor, if the injury that you described -- the
23 injury that you described, would it be consistent if
24 someone was standing over the victim and had the shotgun
25 at her mouth slightly upward? Would it create that type

1 of injury that you just described? Is that consistent?

2 A. Yes, it is.

3 Q. Okay. Is it also consistent that if there was
4 some type of struggle with the shotgun and -- or would
5 it be consistent if there was some kind of struggle with
6 the shotgun, as long as the shotgun was held straight as
7 you once described in your testimony?

8 A. As long as the shotgun is in a position so
9 that it's going to be going in an angle that I talked
10 about, front to back, left to right, and slightly
11 upward.

12 Q. Okay.

13 A. Yes.

14 Q. So even if it was a struggle, the shotgun
15 would have to be held in that particular angle, which is
16 a straight line; is that right?

17 A. Yes.

18 Q. Okay.

19 MS. MCVEA: That's all we have, Your
20 Honor.

21 RE-CROSS-EXAMINATION

22 BY MR. STEINBECK:

23 Q. Doctor, based on that depiction there just
24 made, that's not consistent with what the Judge asked
25 you about her head two feet off the ground, correct? In

1 other words, that lady that was demonstrating the
2 deceased was laying with her head flat on the ground,
3 correct?

4 A. In one of those demonstrations, she was, yes.
5 I think the other was higher up.

6 Q. Well, how high was her head on the second
7 demonstration? Perhaps I didn't see that.

8 A. The first one, I don't remember how far they
9 went with the demonstration, but she started off in a
10 sitting position, and then -- and then she was on the
11 floor in the demonstration, too.

12 Q. The gun wasn't aimed at her when she was
13 sitting against the wall.

14 A. Okay. Then when she was on the floor, that's
15 not consistent with what the Judge said about her head
16 being two feet up, but I've never said that her head was
17 two feet up. What I was asked was if the wound on her
18 body would be consistent with that, and it would.

19 Q. Basically, ma'am, then, you have no idea how
20 she was situated on the floor or in her room when she
21 died, correct?

22 A. Only that she was very low somewhere to the
23 floor or on the floor, but not exactly how high. And in
24 what position, no, I don't know.

25 Q. As far as that goes, she could have had the

1 gun in her hand --

2 A. Yes.

3 Q. -- at that point --

4 A. Yes.

5 Q. -- pulling the trigger?

6 A. As far as the wound is concerned, sir, yes.

7 Q. And her body lengths and all that kind of
8 stuff, correct?

9 A. Yes.

10 Q. Such as in a suicide, correct?

11 A. Yes.

12 MR. STEINBECK: Thank you. I have
13 nothing further.

14 MS. MCVEA: Again, nothing further,
15 Your Honor.

16 THE COURT: You may step down, Miss.

17 MS. MCVEA: May this witness be
18 excused?

19 THE COURT: Beg pardon?

20 MS. MCVEA: May this witness be
21 excused?

22 THE COURT: Any objection?

23 MR. STEINBECK: Subject to recall, Your
24 Honor. I have Dr. Spotswood's work number.

25 Do you have a pager, ma'am?

1 THE WITNESS: No, I don't, but I'll be
2 at that work number.

3 THE COURT: All right. You may be
4 excused, Doctor.

5 (Whereupon, the witness was then
6 excused and proceedings resumed, as
7 follows:)

8 THE WITNESS: Thank you.

9 MS. MCVEA: Carolyn VanWinkle.

10 THE COURT: Please raise your right
11 hand.

12 (Witness sworn.)

13 THE WITNESS: I do.

14 MS. MCVEA: Could I have a moment, Your
15 Honor?

16 THE COURT: Yes.

17 CAROLYN VANWINKLE,
18 the witness hereinbefore named, being first duly
19 cautioned and sworn to testify the truth, the whole
20 truth, and nothing but the truth, testified on her oath,
21 as follows:

22 DIRECT EXAMINATION

23 BY MS. MCVEA:

24 Q. State your name for the Record, please.

25 A. Carolyn VanWinkle.

PERI K. STROMBERG, CSR

1 Q. Ma'am, how are you employed?

2 A. I'm here in Dallas at the Institute of
3 Forensic Sciences in the DNA laboratory.

4 Q. Okay. Are you a DNA analyst?

5 A. I am.

6 Q. Just briefly go over your educational
7 background and training for the position you hold.

8 A. Yes. I have a Bachelor of Science degree, and
9 I'm a registered medical endocrinologist with the
10 American Society of Clinical Pathologists. I'm also a
11 registered specialist in blood bank technology with the
12 American Association of Blood Banks, specifically in the
13 area of DNA training. I've had training at the FBI
14 Academy in Virginia, also training in cell mark, one of
15 the first laboratories in this country to do the DNA
16 testing procedures. I've also had occasion to work on
17 the standards at the National Institute of Standards and
18 Technology in Gaithersburg, Maryland, the standards used
19 for DNA testing across the country. I've attended
20 numerous symposium workshops and continuing education
21 for the last five years, specifically in DNA and
22 analytical evidence.

23 Q. Can you explain briefly what DNA is, and what
24 does DNA stand for?

25 A. Yes. DNA stands for deoxyribonucleic acid.

1 It's actually the genetic building blocks, as you will,
2 of all living things. It's packaged in the chromosomes
3 of which we, as human beings, have 23 pair.

4 Approximately half of our DNA is inherited from our
5 mother and approximately half from our father. And the
6 reason that it's used for forensics is that, other than
7 identical twins, no two individuals will have the exact
8 same configuration of DNA. That's --

9 Q. Are there two types of DNA testing the
10 laboratory uses?

11 A. Yes. The two types used are called
12 restriction fragment length polymorphism, what we term
13 RFLP, and polymerase chain reaction, PCR.

14 Q. And what type of testing or what type of
15 sample do you need in order to use RFLP?

16 A. RFLP testing is the most designating testing
17 used at this time, and it requires a fairly large sample
18 of DNA. The DNA itself must be relatively intact or not
19 degraded DNA. If we do not have a sufficient quantity
20 for the RFLP type testing, then we can proceed and do
21 the PCR testing. And what that testing entails is an
22 amplification or copying of a particular region of DNA
23 that we're interested in and then typing and determining
24 the genetic markers in that reaction.

25 Q. What can DNA help us determine?

1 A. It can -- it primarily benefits for criminal
2 investigation, its exclusionary power. It's extremely
3 likely to exclude a falsely accused individual, and
4 barring that, it will, to a high degree of accuracy,
5 link a suspect to an evidentiary sample.

6 Q. And was DNA testing done in this particular
7 case with the Diana Radke/Christopher Radke case?

8 A. It was.

9 Q. Okay. And what type of test was done on what
10 type of evidence or what evidence?

11 A. There were several items of evidence that were
12 tested. Both the PCR type testing and RFLP testing was
13 done.

14 Q. With regard to the PCR, what items were
15 tested?

16 A. There was some fingernail clippings that were
17 tested from the autopsy, and also from evidence
18 submitted, there was stains on a T-shirt and on a pair
19 of boots, both of which were done by PCR methods.

20 Q. And were you able to get an autopsy blood
21 sample from the victim in this case?

22 A. Yes.

23 Q. And what was her genetic marker?

24 A. As far as the PCR type testing that was done,
25 there were six different genetic markers that were

1 determined in the PCR system.

2 Q. And were you able to get a blood sample from
3 Christopher Radke?

4 A. Yes.

5 Q. And when was that done?

6 A. When was the sample drawn --

7 Q. Yes, ma'am.

8 A. -- on him? That sample was taken on February
9 10th of '97.

10 Q. Were you able to pull genetic markers from
11 that sample?

12 A. Yes.

13 Q. Now, you said that you -- PCR -- the PCR test
14 was conducted on the T-shirt, the boots and the
15 fingernail clippings; is that correct?

16 A. That's correct.

17 Q. What were the results with regard to the
18 T-shirt?

19 A. Also the stain on the T-shirt did have RFLP
20 testing also, and only one of the low side, the RFLP low
21 side, provided results on that particular sample. And
22 the stain itself was matching the results on the autopsy
23 blood sample from Diana Radke and did not -- and the
24 blood sample from Christopher Radke was excluded as the
25 source of that stain.

1 Q. Okay. And that's on the T-shirt; is that
2 right?

3 A. That's correct.

4 Q. What about the boots?

5 A. On the boots?

6 Q. And these were the boots of Christopher Radke;
7 is that your understanding?

8 A. There are -- our item 8 boot, yes. The types
9 that were obtained on the boots was the DQ alpha and
10 poly marker type, the PCR type testing; and the source
11 of the autopsy blood sample was a possible contributor
12 of the DNA detected and not the blood sample from
13 Christopher Radke.

14 Q. Were you able to determine any DNA from the
15 fingernail clippings?

16 A. Yes.

17 Q. And what was the source?

18 A. One sample in particular yielded DQ alpha and
19 poly marker. These results, again, were the PCR type
20 analyses. And the autopsy blood sample, again, was a
21 potential contributor of those types and not any other
22 blood sample that was tested.

23 Q. Just so that I can understand you, the source
24 of the blood on the T-shirt was Diana Radke; is that
25 correct?

1 A. It was consistent with her type, yes.

2 Q. And the source of the blood on the Defendant's
3 boots was also consistent with Diana Radke's --

4 A. Autopsy blood sample, that's correct.

5 Q. And the sources of blood samples from the
6 fingernail clippings also comes back to Diana Radke?

7 A. That's correct.

8 Q. With regard to the pants of the Defendant,
9 what type of tests were done on that item?

10 A. They were submitted for the analysis or
11 determination of whether blood was present on them.

12 Q. Okay.

13 A. And this pants were looked at for stains,
14 stains were documented by our chemical tests.

15 Q. And then was the result of -- came back human
16 blood?

17 A. There was a stain that was retrieved.

18 Q. Now, if blood -- so blood was present on the
19 pants?

20 A. The presumptive test for blood was positive.
21 It was determined to be human in origin, and one of the
22 stains was typed with enzyme typing, in particular. I
23 have to go run a PGM, which were two additional
24 serological markers.

25 Q. So once the presumption test comes back, the

1 human blood, is there additional tests that you do at
2 that point?

3 A. If there is a sufficient stain, yes.

4 Q. Is that the enzyme testing that you just
5 testified to?

6 A. That's correct.

7 Q. Was that done in this particular case?

8 A. It was.

9 Q. Okay. With regard to that particular test,
10 the enzyme testing, what items was tested in addition to
11 the pants?

12 A. For the enzyme testing, the stain from the
13 T-shirt was tested, as was the sample from the autopsy
14 blood. Also a stain from the boot and the shirt.

15 Q. With regard to the pants, what was the result?

16 A. The type obtained on -- the enzyme type
17 obtained on the stain from the pants was consistent with
18 the type obtained from the autopsy blood sample and not
19 other types obtained from Christopher Radke.

20 Q. Now, there are two types of enzymes, is that
21 right, PGM and HP?

22 A. That's correct.

23 Q. With regard to PGM, what is the victim's
24 genetic marker?

25 A. The victim is PGM type one plus.

1 Q. And with regard to the HP testing, what was
2 the victim's genetic marker?

3 A. The autopsy blood sample was haptoglobin type
4 two.

5 Q. And the PGM, what was the Defendant's genetic
6 marker?

7 A. He was A type one minus one plus.

8 Q. And with regard to PGM, what was his genetic
9 marker?

10 A. The haptoglobin -- the PGM was the one minus
11 one plus. The haptoglobin is a two one.

12 Q. So with regard to the enzyme tests on -- the
13 victim's blood was on the pants, the T-shirt, the boots;
14 is that right?

15 A. The types obtained were consistent with that,
16 yes.

17 (Whereupon, State's Exhibit No. 75
18 and 76 were marked by the Court
19 Reporter.)

20 Q. (By Ms. McVea) I'll show you what's been
21 marked for identification purposes as State's Exhibit
22 No. 75. Contained in State's Exhibit No. 75, can you
23 identify the object?

24 A. Yes.

25 Q. What are they?

1 A. They have a unique identification number in
2 there. The boots are Item No. 8 from which stains were
3 retrieved and the PCR enzyme testing was done.

4 MR. STEINBECK: We'll stipulate, Your
5 Honor.

6 MS. MCVEA: I'd like to offer into
7 evidence as State's Exhibit No. 75.

8 (Whereupon, State's Exhibit No. 75
9 was offered into evidence.)

10 MR. STEINBECK: No objection.

11 THE COURT: Admitted.

12 (Whereupon, State's Exhibit No. 75
13 was admitted into evidence.)

14 Q. (By Ms. McVea) State's Exhibit No. 76
15 contained therein, and what's been identified as State's
16 Exhibit No. 76, can you go ahead and identify the items?

17 MR. STEINBECK: Stipulate, Your Honor.

18 MS. MCVEA: I'd like to offer into
19 evidence at this time State's Exhibit No. 76.

20 (Whereupon, State's Exhibit No. 76
21 was offered into evidence.)

22 MR. STEINBECK: No objection.

23 THE COURT: Admitted.

24 (Whereupon, State's Exhibit No. 76
25 was admitted into evidence.)

1 Q. (By Ms. McVea) Can you just identify the
2 items?

3 A. Yes. These, again, are the jeans concerning
4 this case number.

5 Q. Okay. And also underwear and a pair of socks,
6 and some money contained in the plastic envelope?

7 A. That's correct.

8 Q. Okay. On State's Exhibit No. 76, there are a
9 lot of markings on this exhibit. Can you go ahead and
10 explain to the Court what they represent?

11 A. That's correct. The squares, inside each of
12 the squares, there's a small area that is measured in
13 diameter, and it was an area that was positive with our
14 blood testing, the agent.

15 Q. And all these areas that are indicated here,
16 is that -- are these -- all these areas positive for
17 blood?

18 A. I believe at the bottom there is a control
19 area marked as C. The other areas are positive for
20 blood.

21 Q. Okay. And is there also an area on the back
22 of State's Exhibit No. 76, and what's included in
23 State's Exhibit No. 76, that's positive for blood?

24 A. That's correct.

25 Q. Okay. Were there reports generated

1 corresponding to the analysis conducted on these items
2 you just testified?

3 A. There were.

4 (Whereupon, State's Exhibit Nos. 77
5 through 80 were marked by the
6 Court Reporter.)

7 Q. (By Ms. McVea) I'm showing you what's been
8 marked for identification purposes as State's Exhibit
9 No. 77, 78, 79, and 80. Go ahead and identify each one
10 of these exhibits, please.

11 A. The item No. 78 contains two individual
12 reports issued concerning this case.

13 Q. You mean item No. 77?

14 A. State's Exhibit No. 77, yes. And the others
15 are additional reports concerning this particular case.

16 Q. Okay.

17 MS. MCVEA: I'd like to offer into
18 evidence at this time State's Exhibit 77 through 80, I
19 believe.

20 (Whereupon, State's Exhibit Nos. 77
21 through 80 were offered into
22 evidence.)

23 MR. STEINBECK: No objection, Your
24 Honor. If I could have a copy of Exhibit 80.

25 THE COURT: Admitted.

PERI K. STROMBERG, CSR

1 (Whereupon, State's Exhibit Nos. 77
2 through 80 were admitted into
3 evidence.)

4 MS. MCVEA: Pass the witness.

5 CROSS-EXAMINATION

6 BY MR. STEINBECK:

7 Q. Ma'am, the basis of your testimony is that,
8 essentially, all the blood that you found was from Diana
9 Radke; is that correct?

10 A. The testing that was done on the items that we
11 talked about, every type that was obtained was
12 consistent with her type --

13 Q. And so --

14 A. -- was consistent with her type.

15 Q. And so with the fingernails and all that done,
16 Mr. Radke's blood was found?

17 A. That's correct.

18 Q. And is it correct to say that with the
19 enzymes, you have to do that type of testing when
20 there's not enough blood to find DNA?

21 A. No. The enzymes are usually a preliminary
22 test that may be done in the event that there's enough
23 sample and the sample is relatively well preserved. It
24 has to -- both of those have to occur for us to be able
25 to do the enzyme typing.

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1 Q. But that's not as accurate as DNA, though?

2 A. It's not as discriminating as DNA. It
3 obviously can exclude a portion of the population based
4 on the types that are obtained.

5 Q. Is there any other reports, ma'am, that you
6 have that I haven't seen admitted?

7 A. How many reports do you have?

8 Q. Do you have any other reports or
9 documentation? I believe there was something else I had
10 seen that I haven't seen before.

11 A. You should have five reports.

12 Q. I've seen those five reports. How about your
13 diagrams? Do you mind if I look at your notes?

14 (Whereupon, the attorney reviewed
15 the notes of the doctor.)

16 Q. (By Mr. Steinbeck) Referring to this diagram
17 here, ma'am, the -- for those pants there depicted,
18 those are the pants in question, correct?

19 A. They are. They are the pants -- they were
20 looked at on April 17th of '96 by the analysts, yes.

21 Q. And what do those notes there depict?

22 A. It's his findings on looking at and analyzing
23 the stains from those pants.

24 Q. Were those found before or after your testing?

25 A. I personally did no testing of my own in this

1 case. I reviewed all the DNA analysis and the
2 statistics.

3 Q. So you never -- you never abstracted the --
4 any of the blood from the pants yourself?

5 A. No.

6 Q. Who did that?

7 A. From the pants' stain, at this point, as far
8 as the testing on these stains, were done by an analyst
9 at the time, which was John Planz, a serologist, on
10 April 17th of '96.

11 Q. During that time there -- could you tell the
12 Judge what is shown there on the pants?

13 A. He has documented the stain on the left leg
14 area, the stain that was cut out from the pants itself.

15 Q. All right. Then on the later one, they show
16 more blood stains on the pants, correct, on this one
17 here?

18 A. That's correct.

19 Q. And why is that?

20 A. The item was resubmitted and relooked at
21 microscopically for stains.

22 Q. So initially there was only just these two
23 specks on the front knee and one down at the bottom?

24 A. That's his notation on what he did, yes.

25 Q. Did you look at those notes to formulate your

1 opinions, ma'am?

2 A. What opinion is that?

3 Q. For testifying here today.

4 A. I looked at the whole file, both sets of
5 notes, yes.

6 Q. Part of your reports. Do you mind if I show
7 this to the Judge?

8 A. No.

9 MS. MCVEA: Can I take a look at it,
10 please?

11 (Whereupon, the report was shown to
12 the Prosecutor.)

13 MS. MCVEA: Sir, can I take the -- Your
14 Honor, may I take the witness on Voir Dire?

15 THE COURT: Yes.

16 (Whereupon, Defendant's Exhibit
17 No. 1 was marked by the Court
18 Reporter.)

19 VOIR DIRE EXAMINATION

20 BY MS. MCVEA:

21 Q. Is this part of the record of the Southwestern
22 Institute of Forensic Sciences?

23 A. It is.

24 MS. MCVEA: Okay. No objections.

25 THE COURT: Are you offering this as an

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1 exhibit or what?

2 MR. STEINBECK: Just the portion here,
3 Your Honor.

4 (Whereupon, Defendant's Exhibit
5 No. 1 was offered into evidence.)

6 THE COURT: Miss, is that your only
7 copy of the report?

8 THE WITNESS: That's the original.

9 THE COURT: Do you have a copy?

10 THE WITNESS: I don't have a copy of
11 that form, no.

12 THE COURT: Well, I assume you want the
13 original to keep?

14 THE WITNESS: Yes.

15 THE COURT: All right. Well, let me
16 look at it, and then we can make a copy, which will be
17 introduced into evidence as, what, Defense Exhibit,
18 what?

19 MR. STEINBECK: No. 1, Your Honor.

20 THE COURT: No. 1. All right. It's
21 admitted.

22 (Whereupon, Defendant's Exhibit
23 No. 1 was admitted into evidence.)

24 MR. STEINBECK: Thank you. That's all
25 I have.

1 MS. MCVEA: Nothing further, Your
2 Honor.

3 THE COURT: May this witness be
4 excused?

5 MS. MCVEA: Yes, Your Honor.

6 MR. STEINBECK: Subject to recall, Your
7 Honor. If we could have a pager.

8 THE COURT: All right. Miss, you may
9 be excused subject to recall.

10 (Whereupon, the witness was then
11 excused and proceedings resumed, as
12 follows:)

13 MS. MCVEA: Approach for a second, Your
14 Honor.

15 (Off-the-record discussion.)

16 THE COURT: Let's take a ten-minute
17 break.

18 (Whereupon, a recess was then taken,
19 after which proceedings resumed as
20 follows:)

21 THE BAILIFF: Ready, Judge?

22 THE COURT: Yes. Raise your right
23 hand, please, and take the oath as a witness.

24 (Witness sworn.)

25 THE COURT: Sir, you are wearing the

1 white uniform of a Dallas County Jail inmate. Would you
2 tell me your name.

3 THE WITNESS: Carl Paul Peavy.

4 THE COURT: All right. Mr. Peavy,
5 have you been convicted of an offense that you're in
6 jail for, or are you awaiting trial for an offense that
7 you are in jail for?

8 THE WITNESS: I am still awaiting
9 trial

10 THE COURT: Is your attorney present?

11 THE WITNESS: Yes, he is.

12 THE COURT: All right. Is that Mr.
13 Mike Byck?

14 THE WITNESS: You bet, yes, sir

15 THE COURT: Okay. Mr. Byck, I take it
16 you have conferred with your client. Is there any
17 reason he should not give testimony here today?

18 MR. BYCK: As long as it does not
19 concern the offense for which he is charged, which I
20 believe it will not concern, then there is no reason
21 that this Defendant should not testify as to the truth.

22 THE COURT: Very well. If any
23 questions are asked that you think do pertain to his own
24 case, then you may enter an objection --

25 MR. BYCK: I thank the Court.

1 THE COURT: -- on his behalf.

2 All right. Any other statements?

3 MR. STEINBECK: Your Honor, I believe
4 that denies us the 6th Amendment right to
5 cross-examination and confrontation of witnesses. That
6 shows his motive, which is a pertinent area to
7 cross-examine someone pursuant to the Supreme Court
8 case --

9 THE COURT: I'm sorry. What denies
10 you the right to cross-examine him?

11 MR. STEINBECK: If he's going to be
12 invoking his rights on motive, such as the crime he
13 committed for which he's incarcerated for.

14 THE COURT: Well, I'll permit you to
15 go into his motivation. He doesn't -- I don't think the
16 facts of his case are relevant. If some deal has been
17 offered him by the State, some consideration for his
18 testimony, you may go into that. I don't see any point
19 in trying his case here.

20 MR. STEINBECK: And it may not be an
21 issue, Your Honor, but I'm just raising that objection.

22 THE COURT: Well, if it is, raise it
23 at the appropriate time.

24 All right. You may go ahead.

25 MS. MCVEA: Thank you, Your Honor.

1 convictions, do you not?

2 A. Yes, I do.

3 Q. And those two prior felony convictions
4 resulted in penitentiary time?

5 A. Yes, ma'am.

6 Q. What was your first conviction for?

7 A. Theft.

8 Q. Okay. And how much time did you spend in the
9 penitentiary?

10 A. I was given a 3-year sentence, and altogether
11 with County time and T.D.C. time, which is prison, I
12 believe it was about four and a half months.

13 Q. And did that offense arise out of Harris
14 County?

15 A. That is correct.

16 Q. Now, your second felony conviction was when?

17 A. As in what year?

18 Q. Yes.

19 A. I believe it was '89 or '90. It was more
20 along the line of '90, because I got out in '91.

21 Q. What type of offense was that for?

22 A. It was also for theft.

23 Q. And what was the prison sentence that you
24 received?

25 A. It was a plea bargain of eight years.

1 Q. Did that also arise out of Harris County?

2 A. That is correct.

3 Q. On your current case, when were you arrested?

4 A. It was the Father's Day weekend. I believe it
5 was either Saturday night or Sunday morning, early.

6 Q. Sometime in June of this year?

7 A. That is correct.

8 Q. Now, when you were first brought to jail, did
9 you spend some time in the medical ward?

10 A. Yes, I did.

11 Q. And after that, were you sent to a regular
12 tank?

13 A. Yes, I was.

14 Q. Did you eventually -- were you eventually
15 assigned to the same tank as the Defendant now on trial,
16 Christopher Radke?

17 A. Yes, ma'am, I was.

18 Q. And do you see Christopher Radke in the
19 Courtroom today?

20 A. Yes, I do.

21 Q. Can you point to him and describe an article
22 of clothing?

23 A. He's there wearing a blue oxford.

24 MS. MCVEA: Your Honor, let the Record
25 reflect that the witness has identified the Defendant in

1 open Court.

2 Q. (By Ms. McVea) Do you recall the tank number
3 that you were assigned to with the Defendant?

4 A. I believe it was 4W10.

5 Q. Do you recall when you were assigned to that
6 particular tank, approximately?

7 A. It was the Friday prior to Labor Day weekend,
8 I believe.

9 Q. Now, when you were first assigned to that
10 tank, were you and the Defendant cell mates?

11 A. No, we were not.

12 Q. But did you -- had you met one another?

13 A. Within probably the first couple of hours,
14 yes.

15 Q. Did there come a time that you became cell
16 mates?

17 A. Yes, there was.

18 Q. Do you know when that occurred?

19 A. I would probably have to say, approximately, a
20 week, maybe; maybe ten days tops, when he invited me to
21 move into his cell.

22 Q. Now, since you shared the same cell, would you
23 say you became -- I won't say friends -- but got to know
24 one another?

25 A. I would say friends, yes. And yes, to answer

1 your question, we did get to know each other.

2 Q. Did each of you talk about your respective
3 cases with one another?

4 A. Yes, we did.

5 Q. And each time you discussed that case, was
6 more and more detail revealed on both sides?

7 A. Yes, ma'am.

8 Q. Now, at first when the Defendant discussed
9 this case with you, did he tell you what happened?

10 A. Yes, ma'am, he did. The description of the
11 case was more or less generic. And what I mean by
12 generic was, just the key events, the fact that he, in
13 his version at the time when he was telling me, was that
14 he had gotten into an altercation with his wife, who was
15 attempting a suicide, and they wrestled with the gun and
16 he got -- she got shot.

17 Q. Did he also maintain his innocence?

18 A. In the beginning, yes, ma'am.

19 Q. Now, prior to being in jail with the
20 Defendant, did you know him?

21 A. No, I did not know him.

22 Q. The Complaining Witness in this case is Diana
23 Radke. Had you ever met her before?

24 A. Yes, ma'am.

25 Q. Did you know her by a different name?

1 A. I knew her by a -- what I would call a stage
2 name or her actual given name, which was Diana Morrison.

3 Q. What was her stage name, if you recall?

4 A. Destiny.

5 Q. Was she a dancer?

6 A. I can't say that for sure. From Chris's
7 description she was, but when I met her at a club called
8 Dreams, which is on Industrial here in Dallas, we spoke
9 for probably a good six hours in the evening when I was
10 at that club. My wife and I were separated at the time,
11 and I was at that club for exactly what that club is
12 there for.

13 Q. Is that a topless club?

14 A. Yes, ma'am, it is.

15 Q. Do you recall approximately when you met her?

16 A. It was some years ago. The exact year -- I
17 cannot tell you exactly, no, ma'am.

18 Q. Could it be the early '90's or --

19 A. Yes, definitely the early '90's.

20 Q. Did there come a time that -- let me just
21 clarify one thing. You said that you met her. Did the
22 two of you become friends or anything like that?

23 A. No, we didn't become friends, but she shared
24 things with me that most people don't. We were
25 drinking. She didn't dance the entire time I was

1 there. She spent the entire time speaking to me. And
2 she shared a few events that were taking place in her
3 life similar to mine. And, again, I don't say that we
4 were friends, but I say that we were sharing things that
5 friends would share.

6 Q. Well, let me ask you this: Did you just meet
7 her once and talk to her once, and was that it?

8 A. That is correct.

9 Q. Did there come a time that the Defendant
10 talked about his case, and he told you something
11 different than what he had said to you before?

12 A. Yes.

13 Q. And what did he say?

14 A. It -- it began on an evening in which Chris
15 and I had made a bag of "hooch," which is actually
16 wine.

17 Q. Okay. Are you talking about homemade liquor?

18 A. Yes.

19 Q. While you are there at the jail?

20 A. Yes.

21 Q. Okay. Continue.

22 A. We started to drink after the rap time or
23 after the doors had closed. We were a little nervous
24 because there's a lot of activity in the tank next to
25 ours. So we decided to go ahead and drink. We probably

1 got three 16- or 18- ounce jars -- which is a peanut
2 butter jar that we had in the tank -- drank a piece, and
3 he began to share things with me about his case, and he
4 was eluding to things that I finally had to point-blank
5 ask him. I said: What is it you're trying to tell me?

6 Q. So go ahead and tell us what he said to you.

7 A. May I have some water, please? I'm sorry.

8 What he actually told me was that he was kind of in
9 a place where he needed to talk to somebody, because he
10 and I were sharing a lot about missing his wife, Diana,
11 and me missing my wife, Debra. One thing led to
12 another. I shared a few things about my son. His son
13 is named Zachary, as well as mine. They are pretty
14 close to the same age, if I'm not mistaken.

15 And he said: You know, I just need to tell you
16 something.

17 I said: What, Chris? What is it that you're
18 trying to say?

19 He said: You know, what happened with my wife is
20 not exactly the way it went down.

21 And I said: Well, I was pretty -- pretty amazed
22 that it went down the way you explained it to have gone
23 down, but what is it you want to tell me?

24 He says: Well, she had a lot of problems with
25 Prozac and a lot of other problems with methamphetamines

1 and using drugs and one thing after another, you know.

2 And I said: What kind of problems did you have?
3 What is it you're trying to tell me? At this point I'm
4 pretty nervous, because I'm not sure what he wants to
5 tell me.

6 Q. Did he finally tell you what happened the
7 night his wife died?

8 A. Yes. He had come home. She was, in his
9 description, somewhat out of it. She was on the floor.
10 There was some pills laying around. There was a shotgun
11 out. And he was tired of -- and I don't know if I can
12 say it, but I mean, what exactly --

13 Q. We're all adults here. Go ahead and just say
14 it.

15 A. What exactly -- what he said was that he was
16 just tired of her shit. She had tried this suicide
17 attempt before. She had called him on the phone once
18 before threatening to kill herself, and he'd come home
19 and hears this thing. Again, he's tired of it. You
20 just don't know her like I know her.

21 I said: Well, Chris, the description of this, you
22 know, woman that you give me is definitely different
23 than the woman that I knew, or that I've known. What is
24 it, again, you're trying to say?

25 He says: Well, I just -- I just -- I was just

1 tired of her shit. And I was just -- I was finished,
2 and I'm done with it. And there's a lot of things about
3 our marriage you don't know.

4 And I said: Again, Chris, for the last time, what
5 is it that you're trying to tell me?

6 And point-blank he said: I did it. I took the
7 shotgun, and I took it and I laid it across her
8 perpendicular.

9 He used the term "perpendicular," which is not
10 exact. I mean, perpendicular is not the way he
11 described it physically.

12 And he pulled the trigger.

13 Q. Did he say where he placed the shotgun?

14 A. In her mouth, or near it, actually.

15 Q. Did he describe to you the position in which
16 the Complainant, or Diana Radke, was in at the time she
17 was shot?

18 A. He didn't use the term I'm going to use, but
19 her -- his description would be that she was prone on
20 the floor; she was laying down.

21 Q. Do you remember, approximately, when this
22 conversation took place?

23 A. Between Chris and I?

24 Q. Right.

25 A. Yes, I do. I can't give you the specific

1 date, and the reason for that is I just don't know the
2 specific date, but I can tell you an exact occurrence,
3 which can be verified probably by the Dallas County
4 Sheriff's Department. That evening in 9 tank, somebody
5 got hurt bad. Somebody either got stabbed or they got
6 in a fight, two Hispanics, or we call them Chicanos.
7 And they took one out. They even had the Dallas crime
8 scene people come in and were taking photographs over on
9 9 tank, which would be 9 -- or 4W9. That event,
10 whatever date that is, will be the exact evening in
11 which we drank and had our conversation.

12 Q. Okay. Was it one of the reasons why you drank
13 which had -- because of the activity occurring in
14 9 tank?

15 A. It's not the reason why we chose to drink, you
16 know. Because we were making the hooch, not because,
17 you know. We were -- we were making the hooch to drink
18 because -- well, why anybody would want to drink. We
19 drank because of the activity, yes, that was going on,
20 for fear that they would come in and search our tank, if
21 that answers your question. It prompted to go ahead and
22 to drink. It didn't -- it was not the reason to drink,
23 if that makes any sense.

24 Q. Okay. I understand. Did he tell you anything
25 else about the night his wife died at this time?

1 A. Yeah. He mentioned that he had ran out in the
2 front yard, was hollering and yelling about him saying
3 that he had killed his wife. Oh, my God, oh, my God, I
4 killed my wife.

5 He also explained that after he was arrested, that
6 he had called his mother-in-law. I said, now, that was
7 pretty stupid, Chris. Why would you call your
8 mother-in-law? I said, from my experience -- my
9 mother-in-law and I don't get along, so certainly at
10 that point when you tell her what had happened, would
11 not have gone over very big. But yet, why didn't you
12 call 911 first? He said he was in a state of panic. He
13 wasn't sure.

14 And then when he went further into the story about
15 after he had got arrested and was taken into custody by
16 the Garland Police Department, he had gave three
17 different versions of the story trying to further
18 complicate the issues.

19 Q. Did he use a particular term with regard to
20 the Garland Police Department?

21 A. Something to the effect about being -- again,
22 I guess we're all adults -- being fuck-ups.

23 Q. That's how he described the Garland Police
24 Department?

25 A. Pretty much. He had -- his description of his

1 experience with the Garland Police, he had had another
2 run-in with them, him and Diana. He had pushed her down
3 some stairs, and there was an assault or something that
4 was still pending. They had taken the shotgun once
5 before. She went down there and got it back. So Chris
6 has had some other troubles, from his explanation, and I
7 guess he just didn't get along with Garland cops. I
8 don't get along with them either. I mean, don't get me
9 wrong. Every time I go through there, I have tickets
10 so, but --

11 Q. Just a minute. Did he go into any type of
12 detail with regard to the manner in which his wife died
13 in an effort to cover up the crime?

14 A. To cover it up?

15 Q. Correct.

16 A. Other than his description of how it happened,
17 which was totally bogus compared to what had been told
18 to me.

19 Q. Well, did he tell you anything about --

20 A. Yeah. He told me --

21 MR. STEINBECK: Objection, Your Honor;
22 leading.

23 THE COURT: Yeah. Don't lead.

24 A. He told me that he was telling them in the
25 final version of it, the --

1 Q. (By Ms. McVea) Let me stop you right there,
2 Mr. Peavy. Maybe I'm not making my point clear.

3 The Defendant, basically, you say, confessed to
4 you --

5 A. Okay.

6 Q. -- in killing his wife --

7 A. That is true.

8 Q. -- is that what you testified to?

9 A. That is true.

10 Q. Did he say anything else about that event in
11 an effort to try to mislead the police or cover up this
12 crime?

13 MR. STEINBECK: Objection; leading,
14 Your Honor.

15 THE COURT: Overruled.

16 A. Yes, he did.

17 Q. (By Ms. McVea) What did he say?

18 A. He told me that he told the police that he had
19 wrestled with her and that she was attempting a suicide,
20 threatening to kill herself, and that the gun
21 accidentally went off.

22 Q. Did he say anything to you with regard to
23 where he placed the gun?

24 A. Yes. Yes. He placed the gun on -- not on her
25 but above her. And what I mean is, if I can be so

1 descriptive: Is this would be the body, or her, and he
2 placed the gun in this direction over her. He also
3 explained about being like that and wrestling with that,
4 that there would be gun powder residue on his hands and
5 within ten feet of himself and some other things, and
6 that's how he could help explain why he had gun powder
7 residue on him.

8 Q. Did he say anything to you with regard to
9 trying to make it look like a suicide?

10 A. I don't remember. I mean, I'm not sure I
11 understand. Other than his description of all these
12 different stories, yes. He also stated that there was
13 pills laying out.

14 Q. Okay. That's fine.

15 (Whereupon, State's Exhibit No. 81
16 was marked by the Court Reporter.)

17 Q. (By Ms. McVea) I'll show you what's been
18 marked for identification purposes as State's Exhibit
19 No. 81. Do you recognize this document?

20 A. Yes, I do.

21 Q. What is it?

22 A. It's a statement that I wrote in front of you
23 in a Courtroom similar to this.

24 Q. Okay. Is this statement in your handwriting?

25 A. Absolutely, except for the top words here and

1 the beginning, like, before me, B.K. Baldwin. But the
2 handwriting is mine and my signature.

3 Q. I understand. Okay. As you look through each
4 page of the statement, is it all in your handwriting?

5 A. Absolutely.

6 Q. And is this signed at the bottom -- at the
7 conclusion of the statement, is it signed at the bottom
8 by you?

9 A. Yes.

10 Q. And is that your signature?

11 A. Absolutely.

12 Q. I want you to briefly read through this
13 statement to yourself.

14 A. (Witness complies.) That is pretty much
15 exactly what I'm saying.

16 Q. Okay. Now, you said that the two of you were
17 drinking. Were you intoxicated?

18 A. No.

19 Q. Was he intoxicated?

20 A. No.

21 Q. Now, since you were his cell mate, did you
22 look through any of his personal items?

23 A. No.

24 Q. All the information that you testified to, is
25 that what he told you directly?

1 A. Yes.

2 Q. How did you get in contact with the District
3 Attorney's office, specifically with me?

4 A. Through Mr. Byck.

5 Q. Are you referring to your Defense Attorney,
6 Michael Byck?

7 A. Yes, ma'am.

8 Q. How many times did we discuss this case --

9 A. Three times.

10 Q. -- the two of us?

11 A. Three times.

12 Q. Okay. The first occasion, who was present?

13 A. It was Mr. Byck, yourself, and the black
14 gentleman sitting right behind you, I believe.

15 Q. Okay.

16 A. I don't remember your names.

17 Q. The person identified is an investigator with
18 the District Attorney's Office?

19 A. Yes. He did tell me he was.

20 Q. And on the second occasion we met, who was
21 present?

22 A. It was you and Mr. Byck.

23 Q. Okay.

24 A. Mr. Byck was not there. I'm sorry. You told
25 me that he said it was okay to speak. And it was you

1 and some other heavy-set investigator. I apologize.

2 Q. Was that also in open Court with other
3 bailiffs and Court personnel, right?

4 A. You bet. You bet. It was at a table similar
5 to that.

6 Q. And the third time that we spoke, who was
7 present?

8 A. The third time we spoke, it was you and Mr.
9 Byck only. We were in the holdover right on the other
10 side of that door.

11 Q. Do you have an agreement, either expressed or
12 implied, with the District Attorney's office concerning
13 your current charges?

14 A. Absolutely not.

15 Q. Do you have any type of secret agreement or
16 arrangement with the District Attorney's office with
17 regard to leniency or reduced charges or possible
18 dismissal?

19 A. No, I do not.

20 Q. Why are you testifying, Mr. Peavy?

21 A. Because it is the absolute correct truth, and
22 the thing to do.

23 Q. Are you hoping for some type of consideration?

24 A. I'd be lying if I told you no, but I was
25 looking for that in the beginning. I was looking for

1 some sort of plea bargain, anyway. But it's my third
2 offense, and I'm not expecting anything other than
3 what's going to take place.

4 Q. When you say your third offense, you're saying
5 that you've had two prior pen trips and you're an
6 habitual criminal?

7 A. I don't think I'm habitual, but that's what
8 I'm labeled.

9 Q. Right. And you understand you may not get any
10 type of consideration, and there's a good chance you
11 might not?

12 A. I have not been made any promises, and I
13 probably will not get anything out of this.

14 Q. Okay. And you decided to testify anyway?

15 A. Yes, I did. I'd also like to state that I
16 didn't tell anybody other than myself. My own family
17 doesn't know I'm up here.

18 Q. Now, what you're doing right now doesn't go
19 over too well in the inmate population, does it?

20 A. No. If my -- no. It's basically signing my
21 own death warrant.

22 Q. Are you afraid?

23 A. I am afraid for myself from multitudes, not
24 from one-on-one confrontation. I can manage myself.
25 But, no, I don't -- I am afraid.

1 Q. Have you expressed that to me on many
2 occasions?

3 A. Yes. Thanks to you-all, I got moved. I'm
4 still in the general population, though. I'm not by
5 myself. I can't do -- I can't handle that.

6 Q. Mr. Peavy, were you threatened in any kind of
7 way or coerced in order to come forward and testify?

8 A. No.

9 MS. MCVEA: Pass the witness, Your
10 Honor.

11 CROSS-EXAMINATION

12 BY MR. STEINBECK:

13 Q. If I can see the notes, please, of what you're
14 referring to.

15 A. (Witness complies.)

16 Q. You're drinking a lot of water there, Mr.
17 Peavy, aren't you?

18 A. I'm a little nervous, yes, sir.

19 MS. SHELTON: Could we have a copy of
20 this statement that's now been introduced into
21 evidence?

22 COURT REPORTER: It's not in evidence.

23 MS. MCVEA: It's not in evidence.

24 MS. SHELTON: Oh, I thought it was in
25 evidence.

1 Q. (By Mr. Steinbeck) When was it, Mr. Peavy,
2 that you first came to meet Chris Radke?

3 A. It would be a couple of hours prior or just
4 after arriving on 4W10, which would be the Friday prior
5 to Labor Day weekend.

6 Q. And that's in July.

7 A. July?

8 Q. When did you arrive there?

9 A. Labor Day weekend.

10 Q. Okay.

11 A. That would be the first of September,
12 correct?

13 Q. Now, during this time that you met with Mr.
14 Radke, you were in there for a burglary, isn't that
15 correct, a robbery of a convenience store?

16 A. It would be robbery of a convenience store,
17 yes. I haven't --

18 MR. BYCK: The offense was robbery,
19 Your Honor. We would object to any further discussion
20 of the offense. Counsel well knows and understands what
21 the ground rules are that the Court set out. We will
22 not have this Defendant discuss anything else except the
23 offense, the title of the offense, and that's it.

24 THE COURT: Yes. I sustain that
25 objection.

1 MR. STEINBECK: Your Honor, pursuant to
2 my previous motion, I believe I can go into the facts
3 surrounding that case without him having to even admit
4 that he did the crime or not. I'm just asking to find
5 out what evidence is against him.

6 THE COURT: What would that have any
7 relevancy to? I mean, he's charged with robbery; he's a
8 third-time offender. He may or may not be convicted. I
9 don't know. But I'm not interested in the facts of that
10 case, and I don't see how that would have any effect on
11 his testimony.

12 MR. STEINBECK: The way it ties in,
13 Your Honor, is the fact that he knows he's on film. He
14 knows he has no defense for the case. He knows the only
15 way out of going to the pen is to come forward as an
16 important witness in a murder case. That's how it ties
17 altogether, Your Honor.

18 MR. BYCK: All of which I respectfully
19 submit to the Court are assumptions by counsel that he
20 knows not of any independent information. He is not
21 privy to facts of the cases discussed with me by my
22 client, and very frankly, Your Honor, my client's
23 constitutional privileges outweigh and overcome whatever
24 Constitutional claim he's made.

25 THE COURT: Yes, sir. My ruling is

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1 that you may not go into the facts of his case. Robbery
2 habitual is bad enough, I take it, to show that he might
3 have some motivation to fabricate testimony.

4 MR. STEINBECK: Very well. May I note
5 my objection, Your Honor?

6 THE COURT: It's noted.

7 Q. (By Mr. Steinbeck) Were you aware of that
8 ahead of time, Mr. Peavy, that I wouldn't be able to go
9 into this kind of questioning?

10 A. Can you make your question more clear?

11 Q. Were you aware of that ahead of time, that
12 when you came here to testify in Court today, I probably
13 wouldn't be able to go into the --

14 MR. BYCK: Your Honor, I object.
15 That's attorney/client privilege.

16 MS. MCVEA: Your Honor, I object. That
17 is --

18 THE WITNESS: I'm not an attorney. I
19 wouldn't know?

20 THE COURT: Yes. I sustain the
21 objection.

22 MR. BYCK: We'd ask that the
23 Defendant's responses, if any were reported by the Court
24 Reporter, be stricken from the Record.

25 THE COURT: Well, there's nothing in
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1 there that needs to be stricken.

2 MR. BYCK: I thank the Court.

3 THE COURT: I overrule that objection.

4 Go ahead.

5 Q. (By Mr. Steinbeck) Do you have a
6 Court-appointed attorney in this case?

7 MS. MCVEA: Your Honor, I'm going to
8 object. That's certainly not relevant.

9 THE COURT: What is the relevancy of
10 that?

11 MR. STEINBECK: I'll move on, Your
12 Honor.

13 Q. (By Mr. Steinbeck) Mr. Peavy, you talked to
14 Chris about the case. He was concerned about the loss
15 of his wife; isn't that correct? He talked about how he
16 loved her and missed her, things of that nature?

17 A. No.

18 Q. He didn't?

19 A. No. To me, he didn't.

20 Q. So everyone else -- so everyone else said --
21 he talked to all the other people that --

22 MS. MCVEA: Your Honor, I'm going to
23 object. That's assuming facts not in evidence.

24 THE COURT: Sustained.

25 Q. (By Mr. Steinbeck) So when you first met

1 Chris, you first brought up the thing about inquiring
2 why he was in there; isn't that correct?

3 A. Pardon me? State that --

4 Q. You wanted to find information about Mr.
5 Radke's case, correct?

6 A. No, I did not.

7 Q. You didn't?

8 A. No.

9 Q. What's your nickname down there, Mr. Peavy?

10 A. Nickname?

11 Q. Yes.

12 A. The only nickname I've ever been given is when
13 I was on 6E2, which was an all-black tank, and I was
14 called "Polar Bear."

15 Q. Since that time you've not been called "Perry"
16 Peavy?

17 A. That was a -- probably in the last 48 hours
18 that I was on 4W10. That was something that Joe
19 Harvey -- his middle nickname is "Buddy" -- that's
20 something he began to call me, because I did help people
21 who asked me to help them with their cases.

22 Q. You were looking for people to help out,
23 correct?

24 A. No, I was not.

25 Q. You were not?

1 A. Hum-um.

2 Q. And you, in fact, went around trying to look
3 at other people's files; isn't that correct?

4 A. That is not a fact, no.

5 Q. In fact, you've seen Chris Radke's file,
6 haven't you?

7 A. Chris Radke's file? What do you mean by
8 referring to his file?

9 Q. The file he carries around with him.

10 A. I've seen a brown folder, yes.

11 Q. You've looked through there, haven't you?

12 A. I have not.

13 Q. That's how you were able to find out the
14 specifics of the allegations against him, isn't that
15 correct, Mr. Peavy?

16 A. That is incorrect.

17 Q. It is? Is it your testimony you've never seen
18 any documents pertaining to this case?

19 A. I have never seen any charging instrument. I
20 have not seen any police reports.

21 Q. Answer the question.

22 MS. MCVEA: Your Honor, I object.

23 A. I thought it was --

24 THE COURT: Just a moment. I believe
25 he is answering the question, Counsel.

1 A. I have not -- again, I restate -- seen any
2 charging instrument, nor any police report. The only
3 thing I've seen that came out of a folder similar to
4 that are motions that were filed by other inmates that
5 he had roomed with or himself in association with
6 probably their cases. I have never seen any motions or
7 any, again, documents pertaining specifically to his
8 case.

9 Q. (By Mr. Steinbeck) So you don't recall a time
10 that -- when you woke up one morning and were sitting on
11 the toilet reading his file --

12 A. No.

13 Q. -- and then he woke up and found you doing
14 that and told you to get out of his file?

15 A. That, again, would be a complete fabrication
16 on whoever has told you that.

17 Q. Is that why you found it so funny just now?

18 A. Yes.

19 Q. Because it's just a lie?

20 A. It is a fabrication.

21 Q. Are you sure?

22 A. I have been on the toilet before.

23 Q. And during this time frame, that you talked
24 about you and Mr. Radke making some kind of alcohol.

25 A. That's correct.

1 Q. And did you have any problem with making
2 alcohol with Mr. Radke?

3 A. Did I have any problem with it?

4 Q. Who made it, you or him?

5 A. Mostly him, but I helped gather fruit.

6 Q. And that's something you want to testify
7 against Mr. Radke also, perhaps on sentencing, is that
8 correct, if we go to sentencing?

9 A. It's not my particular interest what happens
10 to Chris, other than I tell the truth.

11 Q. That's all you care about is telling the
12 truth?

13 A. That is correct.

14 Q. And you're concerned about coming forth with
15 this evidence that they, otherwise, may not have against
16 Mr. Radke, being the DA?

17 A. I'm not sure. Can you restate that or re --
18 yeah, restate that.

19 Q. Your whole reason for being here is not to
20 expect to get any favors, but you're trying to do this
21 out of the goodness of your heart, is that what you're
22 saying?

23 A. That's correct.

24 Q. It's not because you're concerned about going
25 to the pen?

1 A. I've been there twice. I'm not scared to go
2 back. I'm only concerned about a large amount of time.
3 But my case carries 25 to life, if convicted, if I'm
4 indicted with paragraphs of my previous convictions.

5 Q. Does your indictment contain all those
6 paragraphs right now?

7 MR. BYCK: To which we'll object, Your
8 Honor. Matter of public record. Counsel can discover
9 that for himself. I invoke the attorney/client
10 privilege.

11 THE COURT: Well, if he -- I don't see
12 that that's covered by privilege if it's a matter of
13 public record. I'll permit him to answer, if he knows.

14 Are you under indictment?

15 THE WITNESS: Yes, I am.

16 THE COURT: Did they indict you with
17 two paragraphs?

18 THE WITNESS: No, they have not.

19 Q. (By Mr. Steinbeck) What's your full legal
20 name and date of birth, Mr. Peavy?

21 A. Carl Paul Peavy.

22 Q. Do you know your case number in Judge Entz's
23 Court?

24 A. I know it's Judge Entz, 194th, but I don't
25 know the cause or the case number.

1 Q. So during this time frame, Mr. Peavy, that
2 you're in there and you have this alcohol with
3 Mr. Radke -- excuse me one moment.

4 What was your date of birth?

5 A. 12/29/64.

6 Q. During this time that you drank some alcohol
7 with Mr. Radke -- how did you make alcohol in there?

8 A. Well, you take all the fruits you can gather
9 that's not cooked and sugar -- we can't get sugar on the
10 north tower, but you can buy peanut patties or anything
11 that contains a great amount of sugar, perhaps even some
12 of the tea that comes up, because it's got real sugar in
13 it. You can taste the difference between it and
14 Sweet'N Low. You mix it and let it ferment in a bag to
15 the point in which you get sour. I mean, this kind of
16 stuff is pretty common knowledge. You either know it or
17 read about it.

18 Q. And is that commonly done there in the jail?

19 A. That's the first time I've ever seen it done.
20 I've seen it done in prison.

21 Q. Now, you said you had a wife and a kid?

22 A. I certainly do.

23 Q. And where do they reside?

24 MS. MCVEA: Your Honor, I'm going to
25 object at this time. That's certainly not relevant.

1 THE COURT: Sustained.

2 MR. STEINBECK: Your Honor, I have --
3 I'd like to cross-examine him on the fact that he's
4 stated that he's willing to do anything to get back to
5 his wife and child. I'd like to inquire into that, the
6 fact he does have a wife and a child.

7 THE COURT: I'm sorry. Are you saying
8 he doesn't have a wife and child?

9 MR. STEINBECK: If he does have a wife
10 and child, the fact that he made those statements and
11 his attachment to --

12 THE COURT: That he would like to get
13 back to them?

14 MR. STEINBECK: Yeah.

15 THE COURT: Is that not almost a
16 given? I mean, hope springs eternal. I'm sure he's
17 hoping the District Attorney is never going to indict
18 him for the other offenses. I'm sure that he's hoping
19 that he will curry favor with them. He has every motive
20 in the world to lie. The question is: Is he lying? I
21 mean, this is open and obvious, and I have to decide
22 whether he is lying. He certainly has the motive, and
23 that's a given.

24 MR. STEINBECK: Very well, Your Honor.

25 Q. (By Mr. Steinbeck) So this time that Mr.

1 Radke supposedly told you this confession, you're
2 sitting there with the hopes of getting more information
3 out of him, perhaps, weren't you, if this really
4 happened?

5 A. No.

6 Q. You must have been just so happy that you now
7 have some evidence to help you out in your case.

8 A. Without being belligerent, actually, I was
9 quite dumbfounded, maybe a little bit scared.

10 Q. Oh, you were. Why were you scared, Mr. Peavy?

11 A. Because I've already been through this type of
12 selling or quartering when I was in prison before. I
13 had a cell mate -- his name was Steven Sayes -- he had
14 supposedly hammered his wife to death. And for general
15 purposes of sleeping, I had to believe that he was
16 innocent. I'd like to have believed that Chris was
17 innocent, too, but the facts are what they are. And at
18 that point, the next given opportunity, I left living
19 with Chris to go back downstairs to live with someone
20 else.

21 Q. Well, Mr. Peavy, have you ever testified or
22 brought forth evidence against another inmate before?

23 A. Nope.

24 Q. You haven't? You've never told people here
25 that you were a snitch at T.D.C. and got stabbed for

1 that?

2 A. Nope.

3 Q. That's not true?

4 A. Nope. I was stabbed in T.D.C., but it was not
5 because I was a snitch. It was because my celly took
6 \$15 of my money and went down the run. Do you want me
7 to continue to elaborate?

8 Q. No, that's fine, Mr. Peavy.

9 A. Okay.

10 Q. Mr. Peavy, the -- do you know a
11 Mr. James Decker?

12 A. James Decker, would that be Joe "Buddy"
13 Harvey's celly?

14 Q. I'm asking you the question.

15 A. I'm pretty sure that's who it is. Yes, I know
16 James Decker.

17 Q. Anthony Mimms?

18 A. Yes.

19 Q. And Tony East?

20 A. Tony East, yeah.

21 Q. And Mr. Robertson?

22 A. First name?

23 Q. You don't know Robertson, then, is that what
24 your testimony is? He seems to know you very well.

25 A. I don't know a lot of people by their last

1 name, but maybe perhaps their first.

2 Q. How about Arthur?

3 A. Arthur, I know Arthur. King James, we call
4 him.

5 Q. How about Mr. Joe Moffit?

6 A. Joe Moffit? Yes, I know Joe Moffit.

7 Q. How about Joseph Davis?

8 A. Joe, yeah.

9 Q. Now, you told Mr. Radke all about your case.
10 I'm going to ask you some specifics about it.

11 A. Pardon me?

12 Q. You told Mr. Radke somewhat about your case,
13 did you not?

14 A. Pretty much.

15 Q. You told him everything?

16 A. Pretty much.

17 Q. You did? Did Mr. Radke look at your file at
18 all?

19 A. I don't know. He never saw my indictment,
20 no. Not by my knowledge, I'll make that point very
21 clear.

22 Q. Now, before you went to -- before you came
23 here, you were in the hospital, were you not?

24 A. For a short period, yes.

25 Q. Because you were in a car crash?

1 MS. MCVEA: Your Honor, I'm going to
2 object again. It's not relevant. It's going into facts
3 of the case.

4 THE COURT: Sustained.

5 Q. (By Mr. Steinbeck) Did you ever talk to Mr.
6 Radke about helping his case -- with his case, excuse
7 me?

8 A. Helping him with his case?

9 Q. Yeah. Did you ever come in and say, I'll help
10 you out in your case?

11 A. I never came to him like that, no. I told him
12 that if there was anything ever I could do for him,
13 prior to him telling me this information, whatever I
14 could help him do, I would.

15 Q. You also knew the times Mr. Radke was in
16 contact with me, correct?

17 A. I'm not sure I understand your question. I
18 knew he had an attorney.

19 Q. And you knew he had frequent contact with me,
20 correct?

21 A. No, I did not know he had frequent contact.
22 The only time I'd ever seen him prior to, I guess, when
23 he told me what he told me, his confession, I'd never
24 had personal knowledge he had ever called his attorney.
25 The only time I ever knew he was calling his attorney,

1 if I'm not mistaken, was the day or two before I was
2 actually removed from 4W10.

3 Q. Well, you knew my name, Mr. Carl Steinbeck,
4 correct?

5 A. I've only heard your first name, but I did not
6 know that was you. I've heard your first name as Carl,
7 yes.

8 Q. And you talked to him about wanting to hire me
9 as an attorney, correct?

10 A. I didn't talk to him about hiring you. I
11 talked to -- and if that's Catherine Shelton, then
12 hopefully if I could -- if she could come help me get
13 out of jail.

14 Q. You were constantly talking to him, saying you
15 wanted Ms. Shelton to come see you or talk to you?

16 A. I asked him that whenever he talked with you
17 guys to see if she would come up to speak with me.

18 Q. Did it ever happen?

19 A. No, it did not. Like many other attorneys who
20 wanted money, too, like Harry Zimmerman, Lenny Taylor
21 out of Carrollton, they all wanted to come see me, but
22 for a fee or if I had money, and I do not have money to
23 hire Ms. Shelton.

24 Q. So you have a Court-appointed attorney?

25 MR. BYCK: Again, we'll object, Your

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1 Honor, relevancy.

2 THE COURT: Sustained.

3 Q. (By Mr. Steinbeck) Were you happy with your
4 legal advice?

5 MR. BYCK: Again, we'll object, Your
6 Honor.

7 THE COURT: What is the purpose of all
8 this, Mr. Steinbeck?

9 MR. STEINBECK: I'll move on.

10 Q. (By Mr. Steinbeck) Mr. Peavy, let's talk
11 about your case here a minute. When was your case set
12 for trial?

13 MR. BYCK: We'll object to anything
14 connected with the discussion of his case, Your Honor.

15 THE COURT: Well, anything that might
16 be of public record, I don't think, would be an invasion
17 of the attorney/client privilege. I overrule that
18 objection.

19 MR. BYCK: It is not an invasion, Your
20 Honor; however, it is a shallow trick by Counsel,
21 because the case has never been set for trial.

22 THE COURT: Well, then that would be
23 the answer to the question, that it has not been set for
24 trial.

25 MR. STEINBECK: I'm sorry, Your Honor?

1 THE COURT: The Court has already
2 conceded the man has a motive to lie.

3 MR. STEINBECK: Very well.

4 MS. SHELTON: Could we just ask the
5 Court to take judicial knowledge of the two docket
6 sheets from your Court and Judge Entz's where his case
7 tracks this one repeatedly, and the last time it was set
8 for a plea was right after this case was set for trial
9 and then was continued on.

10 THE COURT: Well, let me see the docket
11 sheets.

12 MS. SHELTON: And there's a
13 reindictment of my client's case, but this is -- the
14 last setting was the 28th on one and the 29th on the
15 other. To me that looks like a while for a robbery case
16 to continue on and on.

17 MR. BYCK: Objection to sidebar remark.

18 THE COURT: You haven't seen any other
19 cases on my docket. All right. This is carrying coals
20 to Newcastle. The Court has already said the man has a
21 motive to lie. That does not prove that he has lied.
22 That will come from some other corner and not just
23 beating a dead horse.

24 MR. STEINBECK: I can wrap it up with
25 this, Your Honor.

1 Q. (By Mr. Steinbeck) Mr. Peavy, isn't it true
2 that you talked to Chris Radke here about how you were
3 going to -- you're desperate enough to testify against
4 someone to get time cut on your sentence?

5 A. No, I did not.

6 Q. You never said that to him or anyone else?

7 A. No, I did not.

8 Q. You basically told him that you were going to
9 lie to some other inmate to try to get a better deal?

10 A. That is incorrect.

11 Q. How about Fred Johnson's case, weren't you
12 talking to him about lying on Fred Johnson?

13 A. Fred Johnson? Can you be more specific of who
14 Fred Johnson may be?

15 Q. The guy taking the psychiatric medication.

16 A. The guy taking the psychiatric medication?
17 Hold on. Was he living with us on the 4W10? I really
18 don't remember who Fred Johnson is. Freddy Johnson. I
19 know exactly who you're talking about, "Sugar Britches."
20 I know exactly who you're speaking about. I know
21 exactly who you're speaking about. His case -- do you
22 want me to go into it? Go ahead?

23 Q. Go ahead.

24 A. His case, when it was described to me in
25 Chris's cell unsolicited by me, he just began to speak

1 about it. It ran somewhat parallel with someone else
2 who was accused on 6E2 of a murder. His nickname
3 was "Heathcliff," who was on 6E2. They ran quite
4 parallel. I confronted Freddy Johnson, Fred Johnson,
5 and I confronted him and asked him: Did this person
6 that supposedly died in your case happen to be -- it was
7 a nickname of somebody, and right now it leaves me,
8 because the description of both the crimes were so
9 similar. It was done with a -- it was alleged to be
10 done with a .22 caliber weapon. Freddy seemed to
11 display homosexual tendencies, or mannerisms, if you
12 will; and I know that's a judgment on my part, but
13 that's why I called him -- I called him "Frenchie",
14 actually, but "Sugar Britches" is another good word for
15 him, the way he acted. Be that as it may, those cases
16 ran quite similar. That is the -- to the extent that I
17 discussed Freddy Johnson's case with him.

18 It became a misunderstanding by a guy named Twong,
19 who what we call in the jailhouse, "cranked" up the idea
20 that perhaps I was a snitch and told Reginald Willis,
21 who was also on 4W10 accused of a capital murder, and
22 Reginald Willis came down to the day room, looked me
23 dead in the eye, and he ain't as big as a gumdrop, and
24 asked me: What do you know about South Dallas? And I
25 said, I'm not sure what you're talking about. I'm

1 watching television. I'm not sure what you're talking
2 about.

3 MS. MCVEA: Your Honor, I'm going to
4 object at this time to the narrative form of the
5 response.

6 THE WITNESS: I'm sorry.

7 THE COURT: Well, it's not extremely
8 informative.

9 THE COURT: Sustained.

10 A. But anyway, I guess to cut to the chase is --

11 Q. (By Mr. Steinbeck) You can stop, Mr. Peavy.

12 A. Okay.

13 Q. The point being, I mentioned that name, and it
14 took you a while to even think of who this person is,
15 and all of the sudden you're able to ramble on and on
16 talking about the facts about this person.

17 A. Rambling is your choice. I don't think I'm
18 rambling. I'm just trying to be specific.

19 Q. Sure. And Mr. Radke, at that point, told you
20 that you were a pretty sick bastard, or words to that
21 effect, correct?

22 A. No. He'd be point-blank lying if he told you
23 that.

24 Q. Oh, really.

25 A. Because if he ever called me that, we would

1 have had a difference of opinion at that point.

2 Q. And after that, Chris told Reginald about what
3 you were planning on doing, correct?

4 A. I don't know what Chris told.

5 Q. And that got back to you? And then you
6 threatened -- you threatened Chris Radke after that,
7 didn't you --

8 A. No, I did not.

9 Q. -- because you didn't want to be stabbed again
10 in prison, correct?

11 A. No, I did not.

12 Q. Isn't it true you also told Mr. Harvey that --
13 as well as other people -- that you were willing to work
14 on their cases in exchange for commissary by filing
15 motions and sending letters to judges and parole boards?

16 A. My specific statement to anybody that I helped
17 with their cases, filing motions, were that if they gave
18 me what I would like as a gift, I would help them;
19 because if I accepted the exchange, money or commissary,
20 it could be construed that I was trying to practice as
21 an attorney.

22 Q. Okay.

23 A. And I'm already in enough trouble as it is.

24 Q. And the stuff you said about Mr. Radke, that
25 about: Yeah, I killed her; I killed her, you didn't

1 happen to see that right here on his notes, here right
2 at the top of his notebook in his file, did you?

3 A. I never looked through Chris' stuff.

4 Q. Is that why you're closing your eyes a lot
5 when I ask you those type of questions?

6 A. No. I'm frustrated with your line of
7 questioning.

8 Q. Are you, Mr. Peavy? Mr. Peavy, isn't it true
9 that you're hoping to cut a great deal here with the DA?

10 A. No, I'm not hoping for a great deal.

11 Q. And if you have a deal before you testify,
12 then it might look like that's the reason you're saying
13 this testimony?

14 A. Repeat that again.

15 Q. Isn't it true that if you had a deal struck
16 beforehand, then it could be argued that you have a
17 reason to lie? But this way, by having to deal with
18 after the fact, there is no reason to lie?

19 A. Again --

20 MS. MCVEA: Your Honor, I'm going to
21 object to that, Your Honor. That's implying that we
22 have a deal, and there's no deal.

23 Q. (By Mr. Steinbeck) I'm not talking about the
24 Prosecutor's actions; I'm talking about your actions,
25 Mr. Peavy. You expect to confer some kind of benefit

1 here by testifying today; isn't that true?

2 A. I'd be lying to you if I didn't have hope for
3 that, but I had hoped for that when I first walked into
4 the Courtroom when Mr. Byck was assigned as my second
5 attorney, and he said: You're looking at 15, and if you
6 were -- anyway, who wouldn't be hoping for something.
7 But I would -- but at the same level, the hope is still
8 there.

9 Q. And so you, who were otherwise doomed to the
10 T.D.C., just happened to strike gold with Mr. Radke by
11 having him confess in front of you?

12 A. I don't consider myself doomed to T.D.C. until
13 that Judge throws -- my Judge throws his hammer down and
14 throws the sentence, because I'm fighting for mine.

15 Q. So you have a good shot of beating the wrap?

16 MR. BYCK: We'll object, Your Honor,
17 as comparative chances.

18 THE COURT: Sustained.

19 MR. STEINBECK: Nothing further, Your
20 Honor.

21 MS. MCVEA: We have nothing further,
22 Your Honor.

23 THE COURT: Let me ask you, Mr. Peavy:
24 Were any details at all of this alleged offense related
25 to you, either by the District Attorney's office or a

1 member of its staff, before you wrote your version that,
2 I think, has not been introduced into evidence, but has
3 been referred to?

4 THE WITNESS: No, sir.

5 THE COURT: Nobody told you anything
6 about the case other than Mr. Radke?

7 THE WITNESS: That is correct.

8 THE COURT: Are you presently informing
9 or have you informed on any other inmates in the Dallas
10 County Jail?

11 THE WITNESS: No, sir, never.

12 THE COURT: Do you know if Mr. Radke
13 confided in any other inmates about his case, the true
14 facts of the case?

15 THE WITNESS: No, I do not know that he
16 ever confided true facts. I know that he did confide
17 the same -- similar events to other people that have
18 gone on to T.D.C., or have gotten out, or even still
19 remaining living with him and they were with me, if I'm
20 answering completely for you.

21 THE COURT: That's all I have. Thank
22 you. Any other questions?

23 MS. MCVEA: None from the State.

24 THE COURT: All right. Return Mr.
25 Peavy.

1 MR. STEINBECK: One moment, Your
2 Honor.

3 CROSS-EXAMINATION CONTINUED

4 BY MR. STEINBECK:

5 Q. So basically, Mr. Peavy, during the short
6 time you knew him, you were able to get Mr. Radke to
7 confess to the crime; is that your testimony?

8 A. No. I never got him to do it; he did it on
9 his own. You just had to be there.

10 Q. And it had nothing to do with knowing Ms.
11 Radke on this case?

12 A. Are you just posing that as an alternative
13 part of the question? I'm not sure I understand your
14 question.

15 Q. Isn't it true you happened to learn about all
16 this information about Ms. Radke from other inmates who
17 knew about her dancing there at Dreams?

18 A. No. We have further connections that we all
19 knew each other, and I never knew of Ms. Morrison, or
20 Radke's death, until Chris told me about his death -- or
21 her death specifically, which was the same line of story
22 that he told everybody else, until the night he told me
23 his confession.

24 Q. Did you know any other witnesses who appeared
25 for the Prosecution?

1 A. Did I know any of the other witnesses who
2 appeared for the Prosecution?

3 Q. Um-hum.

4 A. I don't know them personally.

5 Q. Samantha Mayer or Don Mayer, do you know any
6 of those people?

7 A. No.

8 Q. And Mr. Peavy, isn't it true that, once you
9 looked at the file of Mr. Radke, you were volunteering
10 information and telling him that he should -- that that
11 would be the Prosecutors' theory of the case?

12 A. One, I never looked at his file. Two, it is
13 not true. And three, I advised him a couple of times
14 that he better consider the Prosecution's line if he's
15 going to continue with his particular version of the
16 story.

17 Q. And you told him that the Prosecutors' theory
18 in the case would be that: He walked in there -- his
19 wife was laying on the floor -- he walked in there,
20 pulled the gun out and shot her. That's what the theory
21 of the Prosecutor would be, correct?

22 A. I would have never had knowledge of that,
23 because I never talked to the Prosecutor about the case
24 until we spoke for the first time. I wouldn't know her
25 theory unless she told it to me, and why would she share

1 that with me.

2 Q. Well, unless you read the file, correct?

3 A. I never read the file.

4 Q. And isn't it true, then, that you offered to
5 be a witness against Diana Radke; do you remember
6 telling Chris that?

7 A. Can you say that one more time?

8 Q. Do you remember offering to testify in Chris's
9 case for him against Diana's character?

10 A. He asked me to speak about Diana's character,
11 and I told him that I couldn't, because I only knew her
12 for about six hours. What can I say?

13 Q. So you didn't volunteer that information?

14 A. Volunteer what information?

15 Q. To Chris about being willing to testify for
16 him in this case?

17 A. No. He asked. He said: Would you be willing
18 to say she worked at Destiny? I said, sure, why not. I
19 mean, because as far as I knew, she did. She posed
20 herself as a dancer that evening, but she did not dance.

21 Q. And that's what gave you the idea to become an
22 important witness in this case; isn't that a fact, Mr.
23 Peavy?

24 A. No. I never knew that I would become an
25 important witness in this case.

1 MR. STEINBECK: Nothing further, Your
2 Honor.

3 MS. MCVEA: Nothing further.

4 THE COURT: All right. Return him to
5 the holdover, please.

6 MR. BYCK: Your Honor, may this witness
7 be excused?

8 THE COURT: This witness?

9 MR. BYCK: Yes, this witness.

10 THE COURT: No. He's going to the
11 holdover.

12 MR. BYCK: May I be excused?

13 THE COURT: You may be excused.

14 MR. BYCK: Will the Court inform me if
15 this witnesses is called again?

16 THE COURT: Certainly.

17 MR. BYCK: I thank the Court.

18 THE COURT: Thank you for being here,
19 Mr. Byck.

20 MR. BYCK: Your welcome, Your Honor.

21 (Whereupon, the witness was then
22 excused and proceedings resumed, as
23 follows:)

24 MS. MCVEA: State calls Donald Mayer.

25 THE COURT: Sir, have you been sworn?

1 THE WITNESS: Yes, sir.

2 THE COURT: All right. Please take the
3 witness stand.

4 DONALD MAYER,
5 the witness hereinbefore named, being first duly
6 cautioned and sworn to testify the truth, the whole
7 truth, and nothing but the truth, testified on his oath,
8 as follows:

9 DIRECT EXAMINATION

10 BY MS. MCVEA:

11 Q. State your name for the Record, and spell your
12 last name for the Court Reporter.

13 A. Donald Mayer, M-a-y-e-r.

14 Q. Sir, how are you employed?

15 A. I work at a dealership.

16 Q. Are you married to a person by the name of
17 Samantha Mayer?

18 A. Yes, ma'am.

19 Q. Do you know -- did you know an individual by
20 the name of Diana Radke?

21 A. Yes.

22 Q. Do you know an individual named Christopher
23 Radke?

24 A. Yes.

25 Q. Do you see him in the Courtroom today?

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1 A. Yes, I do.

2 Q. Will you point to him and describe an article
3 of clothing?

4 A. He's wearing a gray/blue shirt.

5 MS. MCVEA: Let the Record reflect the
6 witness has identified the Defendant in open Court.

7 Q. (By Ms. McVea) Sir, how did you know Diana
8 and Christopher Radke?

9 A. I met Diana before I met Chris probably four
10 years ago.

11 Q. Was she a friend of your wife's?

12 A. Not at the time that I met her. She was
13 dating a friend of mine.

14 Q. Okay. Now, how is it that you came to know
15 Christopher Radke?

16 A. Through Diana.

17 Q. So Samantha, your wife, and Diana were
18 friends; is that fair to say?

19 A. Yeah.

20 Q. Now, I'm going to direct your attention to
21 approximately two weeks prior to Diana Radke's death on
22 February 29th, 1996. Was the Defendant at your home?

23 A. Yes, ma'am.

24 Q. And did you have a conversation with him?

25 A. Yes.

1 Q. And was that conversation about his marriage
2 to Diana Radke?

3 A. Yes.

4 Q. How would you describe their marriage?

5 A. In the latter stages, real rocky.

6 Q. Did you tell the Defendant at that time
7 anything in particular regarding his marriage?

8 A. Yeah. I told him he needed to think about
9 what's going on and either get a divorce or get his
10 marriage right, get it straight and go on.

11 Q. And what was his response to that?

12 A. He said something to the fact that I'll just
13 kill the bitch and get it over with.

14 MS. SHELTON: Objection; hearsay.

15 MS. MCVEA: That's a statement by the
16 Defendant.

17 THE COURT: Yes. Overruled.

18 Q. (By Ms. McVea) Just so we'll be clear, what
19 did he say?

20 A. He said: I ought to just kill the bitch and
21 get it over with.

22 Q. How did you respond to that?

23 A. I said: Come on, Chris. I don't know why
24 you're saying something like that. You know better than
25 to talk -- say stuff like that.

1 Q. When he said it, did he look like he was
2 joking or playing around?

3 A. Well, you know, it's hard to say.

4 Q. Well, did he have a grin on his face?

5 A. No.

6 Q. Were you aware that the Defendant had a
7 shotgun in his home?

8 A. I was aware he had a shotgun, yes.

9 Q. Did you have a conversation concerning that
10 shotgun after it was taken by the Garland Police
11 Department?

12 A. Yeah. Yes, ma'am.

13 Q. Did you have -- the subject of that
14 conversation, did you have it on more than one
15 occasion --

16 A. Yes.

17 Q. -- about the shotgun?

18 A. Yeah.

19 Q. What was the gist of the conversation?

20 A. I told him he needed to -- I asked him why he
21 had the shotgun, and why he needed a shotgun in the
22 house. And, you know, I told him -- I was wondering if
23 he was hunting with that shotgun, you know. But I told
24 him that I didn't keep guns in the house because of my
25 child. I have child in the house. I told him that a

1 shotgun should not be in the house with a child. No gun
2 should be in the house with a child around.

3 MS. SHELTON: Objection to the
4 relevancy of his rambling on about -- a speech on
5 shotguns and whether they should be in the house.

6 THE COURT: Overruled.

7 Q. (By Ms. McVea) Go ahead and continue.

8 A. And that was basically -- I just told him he
9 didn't need a shotgun in the house. I was wondering why
10 he was wanting to get the shotgun back from the police
11 department.

12 Q. Okay.

13 A. I didn't understand that.

14 Q. And why did he want to get the shotgun back
15 from the police department?

16 A. I don't know.

17 Q. Did he relate that to you on more than one
18 occasion?

19 A. A couple, two or three times. He just wanted
20 the gun back.

21 Q. Did he have a great desire or concern about
22 getting the shotgun back?

23 A. Yes. Yes.

24 MS. MCVEA: Pass the witness.

25 CROSS-EXAMINATION

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1 BY MS. SHELTON:

2 Q. Did Diana ever say anything to you, that is,
3 Diana Morrison, about committing suicide?

4 A. No, ma'am, she sure didn't.

5 MS. SHELTON: May I approach the
6 witness?

7 THE COURT: Yes.

8 Q. (By Ms. Shelton) Mr. Mayer, would you take a
9 look at this, please?

10 A. Yes.

11 Q. What does this say right down here, does it
12 say Donald Mayer up here?

13 MS. MCVEA: Your Honor, I'm going to
14 object. Counsel is reading from a document that's not
15 admitted into evidence, and we object. This is hearsay.

16 THE COURT: Well, I'll permit him to
17 read it. I don't know what it is.

18 MS. MCVEA: She's having him read it
19 out loud.

20 THE COURT: Not out loud. Don't have
21 him read it out loud.

22 Q. (By Ms. Shelton) Take a look at this. Do you
23 recognize that?

24 A. I sure don't.

25 Q. That's not a statement you made to Detective

1 Thompson of the Garland Police?

2 A. Not that I remember.

3 Q. So you deny that you made this statement?

4 A. I don't remember that.

5 Q. If Detective Thompson said, and I quote, that
6 Don said that I --

7 MS. MCVEA: Your Honor, I'm going to
8 object. Counsel --

9 THE COURT: Sustained.

10 MS. MCVEA: -- is reading from a
11 document not in evidence.

12 THE COURT: Sustained.

13 MS. SHELTON: That's -- I don't have
14 any further questions of this witness.

15 MS. MCVEA: Nothing further, Your
16 Honor.

17 THE COURT: You may step down.

18 MS. MCVEA: State calls Gary Edwards.

19 MS. SHELTON: Judge, what's the
20 relevance of these witnesses? If Mr. Edwards is -- if
21 this is more of just the same cumulative bad acts on the
22 part of Chris, but no allegation of murder, we're --

23 THE COURT: Well, I assume the
24 relevancy of the last witness was that the Defendant
25 said, either facetiously or seriously, that he ought to

1 kill the bitch, that which is of some relevancy in a
2 murder case. Some of the other testimony was certainly
3 irrelevant.

4 Sir, were you sworn as a witness?

5 THE WITNESS: Yes, sir, I was.

6 THE COURT: Okay.

7 GARY EDWARDS,

8 the witness hereinbefore named, being first duly
9 cautioned and sworn to testify the truth, the whole
10 truth, and nothing but the truth, testified on his oath,
11 as follows:

12 DIRECT EXAMINATION

13 BY MS. MCVEA:

14 Q. State your name for the Record, please.

15 A. Gary Edwards.

16 Q. Sir, by whom are you employed?

17 A. Dallas County Constable, Precinct 3.

18 Q. Were you employed with the Constable's office
19 back on February 29th of 1996?

20 A. Yes, ma'am, I was.

21 Q. Were you Diana and Christopher Radke's
22 neighbors?

23 A. Yes, ma'am.

24 Q. In relation to their home, where did you live?

25 A. Directly across the street.

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1 Q. And we're talking about the location of 1001
2 Sunset in Garland?

3 A. That would be their residence. I was at 1002.

4 Q. Have you ever met them formerly?

5 A. No, ma'am.

6 Q. Two weeks prior to Diana Radke's death, did
7 the police respond to that home there at 1001 Sunset?

8 A. Yes, ma'am, they did.

9 Q. At that time did you have any contact with
10 Christopher Radke or Diana Radke?

11 A. I didn't with them.

12 Q. Now I'm going to direct your attention to
13 February 29th of 1996, around 9 p.m. Were you at home?

14 A. Yes, ma'am, I was.

15 Q. What were you doing?

16 A. Watching T.V. with my family.

17 Q. Was there also a young lady there that was
18 seeing your son at that time?

19 A. Yes, ma'am.

20 Q. And her name?

21 A. Shannon Powell.

22 Q. While you were watching television, did you
23 hear police sirens or fire truck sirens?

24 A. Fire truck.

25 Q. And in response to that, what did you do?

1 A. Whenever I heard them shut their sirens off,
2 before they approached our residence, approached our
3 neighborhood, I heard the low rumble of a fire truck
4 that I felt like was looking for an address, and I ran
5 out the front door.

6 Q. What did you see?

7 A. Mr. Radke exiting his house and holding his
8 arms out like that (demonstrating) saying: Oh, my God;
9 oh, my God; I've killed her; she's dead.

10 Q. Where was he when you saw him?

11 A. He was walking towards the center of his front
12 yard.

13 Q. And where were you?

14 A. In the center of my front yard.

15 Q. Okay. And when he said this, was he saying it
16 kind of low, or was he yelling?

17 A. He was yelling it out.

18 Q. Did he say it more than once, to your
19 knowledge?

20 A. Just the one time.

21 Q. Can you describe what he had on?

22 A. He appeared to have -- it was a dark outside,
23 but he appeared to have blue jeans, or dark jean-type
24 pants, and no shirt on.

25 Q. Did you see anything in his hands?

1 A. No, ma'am. His hands were open.

2 Q. Do you see the person that you later came to
3 know as Christopher Radke in the Courtroom today?

4 A. Yes, ma'am, I do.

5 Q. Will you point to him and describe an article
6 of clothing?

7 A. He's wearing a long-sleeved, medium blue
8 shirt.

9 MS. MCVEA: Your Honor, I'd like the
10 Record to reflect that the witness has identified the
11 Defendant in open Court.

12 Q. (By Ms. McVea) Is that the same individual
13 you saw yelling and screaming and saying: Oh, my God;
14 oh, my God; I've killed her; she's dead?

15 A. Yes, ma'am.

16 Q. Did the police finally show up and the
17 paramedics?

18 A. The fire truck showed up almost simultaneous
19 to my going out there.

20 Q. Did you talk to the police that night, Mr.
21 Edwards?

22 A. No, ma'am.

23 Q. Why not?

24 A. When they responded a couple of weeks earlier,
25 I had walked down my sidewalk to the squad that was

1 parked in front of me, and I showed the officer my badge
2 and asked him if there was anything going on in my
3 neighborhood I needed to know about, and he was short
4 with me. Whenever he told me that -- he explained to me
5 it was a domestic situation. And so after that -- after
6 him being less than courteous, I felt like if they
7 wanted to know anything from me, they'd come to me.

8 Q. So you were just expecting the police to
9 contact you?

10 A. Yes, ma'am.

11 Q. Okay. Did someone ever contact you from the
12 police department --

13 A. Not --

14 Q. -- about the information that you just
15 testified to?

16 A. I called them.

17 Q. Did you speak with Detective Thompson
18 eventually?

19 A. Keith Thompson; that's correct.

20 Q. Do you remember, approximately, when you
21 reported what you heard the Defendant say to Detective
22 Thompson?

23 A. It was several days after the incident.

24 MS. MCVEA: That's all we have, Your
25 Honor. Pass the witness.

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CROSS-EXAMINATION

1
2 BY MS. SHELTON:

3 Q. Deputy Edwards, did anyone come out of the
4 house that night saying that they had murdered someone
5 or I murdered someone?

6 A. Murdered, using that word? No, ma'am, not
7 using that term.

8 Q. So you don't know if the killing of a human
9 being referred to an accident, a suicide, or a murder?

10 A. No, ma'am, I did not.

11 Q. All right. You stated just what you knew and
12 that was all you knew, and --

13 A. Yes, ma'am.

14 Q. -- and it wasn't anything else? Thank you,
15 sir.

16 MS. SHELTON: That's all.

17 THE COURT: All right. You may step
18 down. May this witness be excused?

19 MS. MCVEA: Yes, Your Honor.

20 MS. SHELTON: Yes.

21 THE COURT: You may be excused, sir.
22 Thank you.

23 (Whereupon, the witness was then
24 excused and proceedings resumed, as
25 follows:)

1 MS. MCVEA: Your Honor, I have one
2 witness left, and that's the blood spatter expert. I'm
3 sure his testimony is going to take a while. If you'd
4 like, we can get started, or if you want to just start
5 in the morning, he'll be ready to go. He will be the
6 last one.

7 MR. STEINBECK: Your Honor, as I
8 previously told the Prosecutor, I have two Defense
9 witnesses that must get back to work, otherwise, their
10 jobs are in jeopardy. I believe we can wrap those up by
11 5:00, so if we could just bottom line and have --

12 MS. MCVEA: That's fine with me, Your
13 Honor.

14 MR. STEINBECK: I appreciate that.

15 THE COURT: All right. Well, go ahead
16 and put your last witness on. Is that what you're
17 saying?

18 MS. MCVEA: No.

19 MR. STEINBECK: No. Could we go out
20 of order and call our witnesses?

21 THE COURT: Are your witnesses long
22 witnesses --

23 MR. STEINBECK: No, Your Honor, like I
24 say, I'll let you get out of here.

25 THE COURT: Because I have to be gone

1 by 5:00. All right. If the Prosecution has no
2 objection, you may call them.

3 THE COURT: All right. Sir, have you
4 been sworn in?

5 THE WITNESS: No, sir, I haven't.

6 THE COURT: Please raise your right
7 hand.

8 (Witness sworn.)

1 Radke?

2 A. Yes, I do.

3 Q. How do you know him?

4 A. I went to school with him, and paled around
5 with him for years.

6 Q. And when's the last time you had seen Chris
7 Radke?

8 A. Two months before the date in question. For
9 Christmas I had come in from Tennessee to visit my
10 mother and to see all my old school buddies, and I went
11 over and visited Chris, you know, for Christmas.

12 Q. Since you knew Chris in high school, what was
13 his reputation in high school, as far as peacefulness?

14 A. He was a good guy, you know -- you know, he --
15 you know, we paled around and went to class together,
16 you know. You know, just average two guys, you know,
17 two boys.

18 Q. Did he have a peaceful disposition in high
19 school?

20 A. Yes.

21 Q. Did he ever create any kind of fights or --

22 A. Oh, no, no.

1 knew him?

2 A. Like they should be treated. You know, just
3 good, you know, politeness. You know, gentlemanly
4 gestures, I guess, you could call it.

5 Q. Did you get to know his wife, Diana Radke, at
6 all?

7 A. Briefly, that one night that -- or the weekend
8 that I was in town for Christmas.

9 Q. Please tell the Judge about that weekend
10 night.

11 A. Well, it was kind of an odd night. Chris and

1 A. Right, threw them out, too.

2 Q. What was everyone's reaction to this?

3 A. Just awe, you know, just speechless. You
4 know, nobody knew what to think, because there was no --
5 there was no reason for it, you know. If -- if somebody
6 would have spilled a beer, you know, or ripped a couch
7 or something, yeah, there would be a reason for it. But
8 it was just all of the sudden, you know, just a flick of
9 the light switch and just everything went nuts.

10 Q. Was there any drugs being used in that house?

11 A. A little bit of pot smoking, but that was it.
12 You know, drinking beer, you know.

13 Q. What was Diana doing in regards to the drugs?

14 A. Same thing.

15 Q. She didn't have a problem with drugs being in
16 the house?

17 A. Oh, no.

18 MS. MCVEA: Your Honor, I'm going to
19 object. It calls for speculation.

20 THE COURT: Sustained.

21 MR. STEINBECK: I'm sorry, Your Honor.
22 I didn't hear what the objection was.

23 THE COURT: I sustained the objection.
24 It was -- calls for speculation: Did she have a problem
25 with drugs in her house? There's no way he could

1 probably know that.

2 THE WITNESS: Your Honor, she was
3 smoking it.

4 Q. (By Mr. Steinbeck) I'll rephrase the
5 question.

6 Did it appear that Diana had any dislike of drugs
7 being in the house?

8 A. No, because she was smoking the pot, too. I
9 would think that she wouldn't -- wouldn't object to it
10 if she was smoking it, too.

11 Q. Do you recall her brother being there at all?

12 A. In all honesty, there were, you know, probably
13 about ten or 15 people there that I didn't know. Since,
14 you know, I've been living in Tennessee, I didn't
15 know -- I just knew basically my friends, you know. You
16 know, there were a few people that, you know, were there
17 and I was introduced to, but, you know, I was pretty
18 much, you know, hi, how are you doing, politely, and,
19 you know, just going about my business.

20 Q. Did in fact everyone have to leave?

21 A. Yes. Yes. Everybody was run out of the
22 house.

23 Q. How fast did everyone leave?

24 A. Well, at first everybody kind of took it as a
25 joke, but then as Diana escalated in a threatening tone,

1 everybody got out pretty quick.

2 Q. So even her own friends weren't able to
3 control her?

4 A. Oh, no. No.

5 Q. So you didn't have much contact with them
6 other than that?

7 A. No. I went back to Tennessee, and that was
8 about it. You know, I visited an apartment a long time
9 ago at first when we went -- you know, I had met Diana
10 once before that, you know, but that was -- you know,
11 the encounter was so brief that I didn't even, you know,
12 take it into anything.

13 Q. How was Chris's reaction, given the fact this
14 party he was trying to throw for you is now all of the
15 sudden wiped out in a matter of minutes?

16 A. He was just about as shocked as the rest of
17 us, if not more, you know. I just -- the whole incident
18 was just kind of a -- you know, everybody is just
19 laughing and having a good time, and then all of a
20 sudden: Everybody's got to get out; I'm calling the
21 police; get out of my house. And you know, we're just
22 wondering why. You know, there was no -- there was no
23 reason for it or anything like that. And Chris was kind
24 of, you know, trying to calm her down. You know, what's
25 going on? You know, what's wrong? You know, we

1 don't -- there's no reason to throw everybody out. You
2 know, what's the problem? Why -- you know, what's
3 happened? And you know, we never could get an answer.

4 MR. STEINBECK: Thank you. Nothing
5 further.

6 CROSS-EXAMINATION

7 BY MS. MCVEA:

8 Q. Sir, I just have a couple of questions.

9 A. All right.

10 Q. Maybe she had a reason and you just didn't
11 know about it. Could that be fair to say?

12 A. I guess it would be fair, but the tone of
13 voice that she was taking --

14 Q. Let me ask the questions. Thank you, sir.

15 Now, you said that she said: Get out of the house;
16 I'm going to call the police.

17 Maybe that was the reason why she wanted you out of
18 the house. Maybe you were doing something in there
19 illegal, for example, using drugs; is that a fair
20 statement?

21 A. Well, when she was using them, too? Why would
22 she call the police on her --

23 Q. Well, that's her house.

24 A. Okay.

25 Q. Right? Were you using drugs also?

1 A. Yes, I was smoking pot, yes.

2 Q. Okay. Well, maybe she didn't want all those
3 dope smokers in her house.

4 A. Well --

5 Q. Have you ever thought about that?

6 A. You could say that, yes, if you want to.

7 Q. You're just saying out of the blue she wants
8 everybody out of her house, and you just -- and all you
9 dope smokers don't know anything about it?

10 A. Right.

11 MS. MCVEA: That's all we have, Your
12 Honor.

13 MR. STEINBECK: Nothing further, Your
14 Honor.

15 THE COURT: All right, sir. You may
16 step down.

17 May this witness be excused?

18 MR. STEINBECK: Yes, Your Honor.

19 MS. MCVEA: No objection.

20 THE COURT: You may be excused, sir.

21 (Whereupon, the witness was then
22 excused and proceedings resumed, as
23 follows:)

24 THE COURT: Sir, have you been sworn as
25 a witness?

1 THE WITNESS: Yes, sir.

2 TOMMY BUTCHER,

3 the witness hereinbefore named, being first duly
4 cautioned and sworn to testify the truth, the whole
5 truth, and nothing but the truth, testified on his oath,
6 as follows:

7 DIRECT EXAMINATION

8 BY MR. STEINBECK:

9 Q. Please state your full name and address for
10 the Record.

11 A. Thomas W. Butcher at 2215 Marsh Lane,
12 apartment 4114.

13 Q. Tommy, you've known Chris Radke since 1988?

14 A. Yes.

15 Q. How old are you right now?

16 A. Twenty-three.

17 Q. And how did you come to know Chris?

18 A. Through junior high, through friends that we
19 had known in the past that knew each other, just through
20 access.

21 Q. And did you have much association with him
22 during the time he was associated with Diana Radke, came
23 to marry her?

24 A. Yes. I did.

1 A. Through Chris.

2 Q. And what kind of interaction did you have with
3 both of them at that time?

4 A. After they got married, I didn't have as much
5 interaction with Chris after they did as before, because
6 she didn't like his friends coming over. She didn't --
7 she basically didn't want anybody coming over except for
8 her friends.

9 Q. And what would happen if you would come over

1 came straight in and ripped the mini blinds straight off
2 the door. She starting yelling at Chris. She pushed
3 him, swung at him. The whole time he just kept trying
4 to calm her down. When she left, she was still in such
5 a fit of rage, she walked out the door and tripped on
6 the stairs and hit her lip on a car bumper and then took
7 off.

8 Q. Did Chris ever respond with any kind of
9 actions, other than trying to calm her down?

10 A. Nothing other than: I love you; please calm
11 down. Calm down, honey. Honey, please calm down.

12 Q. What was her response to that?

13 A. She got madder.

14 Q. She got madder?

15 A. Yes, she did.

16 Q. Did you form an opinion as to her mental
17 status?

18 A. Excuse me?

19 Q. Did you form an opinion as to the mental
20 status of Diana?

21 A. Did I?

22 Q. Yes.

23 A. Very unstable, I would say.

24 MS. MCVEA: I'm going to object, Your
25 Honor. This witness is not qualified to give that type

1 of opinion.

2 THE COURT: Sustained.

3 Q. (By Mr. Steinbeck) What did you think of
4 Diana?

5 A. What did I think of her?

6 Q. Um-hum.

7 A. I thought she wasn't a very nice person. I
8 thought she, basically, was a pretty mean person. She
9 didn't -- I'd say she was unstable.

10 Q. Now, you mentioned her physically abusing
11 Chris.

12 A. Yes.

13 Q. By doing what?

14 A. She pushed him into a wall. She did
15 physically also swing at him at that one party.

16 Q. Did she connect with him?

17 A. Yes.

18 Q. Did you form an opinion as to how Chris felt
19 about her?

20 A. Chris loved her, and he loved his son.

21 Q. Despite those faults and the way she treated
22 him?

23 A. Yes.

24 Q. What did -- did you ever have an occasion to
25 observe Diana use drugs?

1 A. I used them with her.

2 Q. I'm sorry?

3 A. I used them with her.

4 Q. What type of drugs did you use with her?

5 A. Marijuana, and I also drank with her, and I've
6 also heard her on occasions talk about how she tripped
7 Ecstasy.

8 Q. Did you have any knowledge of any other
9 medications or drugs she was on?

10 A. I knew she was on Prozac, and she was also on
11 diet pills at this time.

12 Q. Did you ever have an occasion to see Chris
13 getting in a confrontation with males and her responding
14 to that?

15 A. I've seen Chris be hit directly in the face by
16 somebody and turn around and walk away.

17 Q. Is that a peaceful, loving man?

18 A. I'd say that's very peaceful.

19 Q. Do you believe it would be in or out of
20 character for Chris to want to assault someone or even
21 kill someone, especially his wife?

22 A. Very out of character.

23 MS. MCVEA: I'm going to object to
24 that. Your Honor.

1 A. That's correct.

1 MS. MCVEA: Goes to ultimate issues.

2 MS. MCVEA: Objection.

3 THE COURT: I sustain the objection.

4 Q. (By Mr. Steinbeck) How would you characterize
5 Chris?

6 A. Peaceful, loving. He's always there for his
7 friends. Anybody that he knew as an acquaintance, if
8 they have needed any help, he was always right there.
9 He was the first person to offer help for them. I
10 consider him one of my best friends.

11 Q. Thank you.

12 MR. STEINBECK: I have nothing further.

13 CROSS-EXAMINATION

14 BY MS. MCVEA:

15 Q. So, he's one of your best friends; is that
16 right?

17 A. Yes, ma'am.

18 Q. So you're down here just to say he's just a
19 great guy?

20 A. Yes, ma'am.

21 Q. In your opinion.

22 A. My opinion and many others.

23 Q. Now, you said that you really didn't get to
24 know him too much after -- or hung around him too
25 much after he got married to Diana; is that right?

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1 A. That's correct.

2 Q. So you don't know what was going on behind
3 those closed doors. You don't know if he was beating
4 her every day, do you?

5 A. Does anybody?

6 Q. No. I'm asking you.

7 A. I don't know.

8 Q. You don't know that, do you?

9 A. No, I do not, for sure.

10 Q. Now, you said that you were present when Diana
11 ran and tripped over some stairs and hit a bumper of a
12 car.

13 A. Yes, I was.

14 Q. Where did this occur?

15 A. On a house off of State Street in Garland.

16 Q. Whose house?

17 A. I don't know the people's house. They were
18 friends of Chris and Diana's. I don't know the name of
19 the people. It was my second time over there.

20 Q. And when did this happen?

21 A. Approximately -- probably around October,
22 November. I don't know the exact date.

23 Q. October or November of what year?

24 A. It would have been -- I was -- I believe it
25 was 1994 or '95.

1 Q. Okay. And was Diana Radke injured?

2 A. She hit her lip, yes.

3 Q. Did you see her injury?

4 A. Yeah. Well, did I see her lip? No. She
5 stormed off. But I saw her hit her face.

6 Q. Do you know if she went to the hospital?

7 A. No.

8 Q. Are you sure this happened around October
9 of '94?

10 A. I said I don't know the exact date.

11 Q. Well, somewhere around then?

12 A. Around then.

13 Q. Okay. Now, you said that you used drugs with
14 Diana. Did you use drugs with Christopher?

15 A. Yes. I used drugs with both of them.

16 Q. Okay. So you're a drug user?

17 A. No, not anymore.

18 Q. But you were?

19 A. Yes, I was.

20 Q. Okay. And you said that she would go into
21 rages, and, I guess, Diana Radke was real scary, as far
22 as you were concerned?

23 A. Real scared or scary?

24 Q. Scary.

25 A. Yes, she was scary.

1 Q. And I'm sure that's because you and all the
2 other folks that hung out with the Defendant were over
3 at her house?

4 A. Yeah, plus her friends.

5 Q. Okay. But we're talking about his friends.

6 A. Yes.

7 Q. Did you know or had you heard about the time
8 that the Defendant took a baseball bat and broke up some
9 furniture in his own home?

10 A. I never heard of that incident.

11 Q. Have you heard about that?

12 A. No.

13 Q. Would you think that someone who would do
14 something like would be kind of violent?

15 A. It depends.

16 Q. Oh, it depends. You don't think taking a
17 baseball bat and breaking up some furniture is not
18 violent or unstable?

19 A. Like I said, I didn't hear about the incident,
20 so --

21 Q. No. I'm asking your opinion this time, sir.

22 A. My opinion?

23 Q. Right.

24 A. Well, probably.

25 Q. Oh, you think someone like that is just

1 normal?

2 A. I don't know the circumstances.

3 Q. I'm asking you: Do you think for someone to
4 take a baseball bat and break up some furniture, do you
5 think that person is normal?

6 A. No.

7 Q. You hadn't heard about Christopher doing that,
8 had you?

9 A. No.

10 Q. But he's still peaceful and law-abiding, as
11 far as you're concerned?

12 A. Yes, because I've never heard about that.

13 Q. Okay.

14 MS. MCVEA: That's all we have, Your
15 Honor.

16 MR. STEINBECK: Just one follow-up,
17 Your Honor.

18 REDIRECT EXAMINATION

19 BY MR. STEINBECK:

20 Q. Could you be wrong on the year that --

21 A. I could be. Like I said, I mean, I don't know
22 an exact date on that. I do not remember an exact date.

23 Q. And if there was a Michael Morrison that
24 testified earlier that --

25 MS. MCVEA: I'm going to object, Your

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1 Honor. That's comparing testimony.

2 THE COURT: Well, that's what it sounds
3 like it's going to be, although I didn't hear testimony
4 compared. Sustained.

5 Q. (By Mr. Steinbeck) Do you know a Michael
6 Morrison?

7 A. Yes, I do.

8 Q. Was he at these parties?

9 A. Yes, he was.

10 Q. What was he doing there?

11 A. Smoking pot with us and drinking with us.

12 Q. He was?

13 A. Yes, he was.

14 Q. Are you sure he wasn't objecting, telling
15 people to get out of there, that he didn't like drugs in
16 the house or anything like that?

17 A. The only time he objected is when we skipped
18 him.

19 Q. Was when what?

20 A. We skipped him.

21 Q. "Skipped him," what do you mean by that?

22 A. Wouldn't pass him the pipe.

23 Q. Then he would get mad about that?

24 A. Yeah.

25 Q. How did he seem to get along with Chris?

1 A. When I was over there, he got along great with
2 Chris.

3 Q. And what was your impressions of Michael
4 Morrison?

5 A. I only saw him a few times, and it was when
6 they were partying. I mean, I didn't really have an
7 opinion or an objection of him. I wasn't an enemy, and
8 I wasn't a friend.

9 Q. What was his reaction to his sister when she
10 acted this way?

11 A. I don't really remember him reacting at all,
12 because like I said, I didn't really pay much attention
13 to him.

14 Q. Very well. Thank you.

15 MR. STEINBECK: Nothing further.

16 MS. MCVEA: Nothing further, Your
17 Honor.

18 THE COURT: All right, sir. You may
19 step down.

20 May he be excused?

21 MS. MCVEA: Sure.

22 MR. STEINBECK: Yes, Your Honor.

23 THE COURT: You may be excused.

24 THE WITNESS: Thank you.

25 (Whereupon, the witness was then

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1 excused and proceedings resumed, as
2 follows:)

3 THE COURT: All right. The Court will
4 adjourn for the day. I'll ask everybody to be back at
5 9:15 in the morning, by that clock, everybody.

6 MS. SHELTON: Judge, may I ask: Are we
7 going to start our -- the State has concluded its
8 case, and --

9 THE COURT: Well, they haven't
10 announced.

11 MS. SHELTON: I just wanted to know.

12 THE COURT: Are you resting your case
13 yet, or do you have other witnesses, Ms. McVea?

14 MS. MCVEA: We have another witness,
15 Your Honor, possibly two.

16 THE COURT: One or possibly two.

17 MS. MCVEA: Yes, Your Honor.

18 THE COURT: All right. It looks like
19 10:00 in the morning.

20 MS. SHELTON: So we should be ready
21 to -- about 10:00?

22 THE COURT: About then.

23 (Whereupon, the proceedings recessed
24 for the day, resuming on October 29,
25 A.D. 1997, as reflected in the

next-numbered volume.)

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1 STATE OF TEXAS)

2 COUNTY OF DALLAS)

3

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

13 I further certify that this transcription of the
14 proceedings truly and correctly reflects the exhibits,
15 if any, offered by the respective parties.

16 WITNESS my hand this the 3rd day of February
17 1998.

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Peri K. Stromberg
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