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REPORTER'S RECORD

VOLUME IV OF V

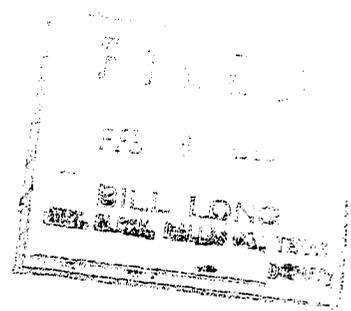
TRIAL COURT CAUSE NO. F96-02380-N

THE STATE OF TEXAS) IN THE DISTRICT COURT OF
VS.) DALLAS COUNTY, TEXAS
CHRISTOPHER RADKE) 195TH JUDICIAL DISTRICT

APPEARANCES:

HON. JOHN VANCE
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Dallas County, Texas
APPEARING FOR THE DEFENDANT

COPY

On the 27th through 30th days of October, 1997,
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:

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PERI K. STROMBERG, CSR

P R O C E E D I N G S

October 29, 1997

Dallas County, Texas

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

THE COURT: Ma'am, you're still under oath.

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

DIRECT EXAMINATIONBY MS. MCVEA:

Q. State your name for the Record, please.

A. Sherri Lynn Parker.

Q. Are you the same Sherri Lynn Parker that testified earlier in this cause?

A. Yes, ma'am.

Q. Since Diana Radke was your daughter, could you tell us whether she was right-handed or left-handed?

A. She was right-handed.

Q. Now, the Defendant was married to your

PERI K. STROMBERG, CSR

1 daughter for how long, approximately?

2 A. Almost two years.

3 Q. Almost two years. During that time did you
4 have occasion to observe him during different types of
5 activities, like writing or eating?

6 A. Yes, I did.

7 Q. Can you tell us, from what you observed, was
8 he right-handed or left-handed?

9 A. Chris is right-handed.

10 Q. Now, you testified previously that your
11 daughter had a child at the time of her death.

12 A. Yes, she did.

13 Q. And how old was that child at the time of your
14 daughter's death?

15 A. Sixteen months old.

16 Q. And his name was -- or is?

17 A. Zachary.

18 Q. Okay. Now, was Zachary there at the house on
19 the night of his mother's death?

20 A. Yes, he was.

21 Q. How do you know that?

22 A. From the police. They told me that he was in
23 his bedroom. But I also saw him outside with Chris's
24 parents in the car when we got there at the scene.

25 Q. Now, you said that you spoke to your daughter

1 the last time at approximately 8:15?

2 A. Um-hum, yes.

3 Q. And you said at that time you could hear your
4 grandson playing in the background?

5 A. Yes, I could.

6 Q. How did your daughter feel about your child?

7 A. She was crazy over him. She loved him very
8 much.

9 Q. Was he a source of happiness in her life?

10 A. Yes, he was.

11 MS. MCVEA: Pass the witness, Your
12 Honor.

13 MS. SHELTON: I don't have any
14 questions.

15 THE COURT: All right. Ma'am, you may
16 step down.

17 MS. MCVEA: State calls Tom Bevel.

18 THE COURT: Sir, did you take the oath
19 as a witness?

20 THE WITNESS: I have not, sir.

21 THE COURT: Please raise your right
22 hand.

23 (Witness sworn.)

24 THE WITNESS: I do.

25 TOM BEVEL,

PERI K. STROMBERG, CSR

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

5 DIRECT EXAMINATION

6 BY MS. MCVEA:

7 Q. Will you state your name for the Record, and
8 spell your last name for the Court Reporter.

9 A. Yes, ma'am. It is Tom Bevel, and that's
10 spelled B-e-v-e-l.

11 Q. Sir, what is your occupation?

12 A. I'm the owner of TBI, which is a consulting
13 and education company.

14 Q. Were you previously employed with a police
15 department?

16 A. Yes, ma'am. I served 27 years with the
17 Oklahoma City Police Department in Oklahoma City,
18 Oklahoma.

19 Q. Okay. And what was your range when you
20 retired, or did you retire?

21 A. Yes, ma'am. I retired approximately a year
22 and a half ago. I retired as a captain, and my
23 assignment at the time of retirement was person's
24 crimes: Homicide, robbery, missing persons, assault
25 cases, those areas.

PERI K. STROMBERG, CSR

1 Q. How many years experience do you have in
2 technical investigations?

3 A. Now approximately 23, 24.

4 Q. And when we speak of technical investigations,
5 what do we mean?

6 A. What we're referring to there is the
7 examination of a crime scene. Typically, the processing
8 photography, the measurements, the diagramming,
9 collection, finding the evidence, the preservation and
10 the analysis, thereof.

11 Q. Can you briefly discuss your educational
12 background and experience.

13 A. Okay. In the -- well, formerly, I have a BA
14 and an MA in college. In the police specialty areas,
15 the bloodstain pattern analysis area. The first 40-hour
16 course that I had was with Judy Hudson Buckner, which
17 was taught with the Orlando Florida Medical Examiner's
18 Office in Orlando, Florida. The next 40-hour course
19 that I had was at the Laboratory of Forensic Science in
20 Corning, New York. Then an additional 40-hour course,
21 again, in bloodstain pattern analysis, and that was at
22 the Corning College in Corning, New York. Additionally,
23 part of the study was done in London, England at
24 Scotland Yard. That was a six-week course. Then in
25 crime scene reconstruction, I have a month-long course

1 with the Central Police Institute in Oklahoma City,
2 which is a subsidiary of Oklahoma State University.
3 And, again, some others in that particular area.

4 Q. Do you belong to any professional societies
5 dealing with crime scene investigation?

6 A. Yes, ma'am. I'm the charter president for two
7 of those groups, one of them is the Association of Crime
8 Scene Reconstruction, and also the International
9 Association of bloodstain Pattern Analysts. I'm a
10 member of the Oklahoma division of the IAI, the past
11 president there, regional representative. I'm a member
12 of the International Association for Identification,
13 which is the national -- or actually international
14 chapter. I'm currently the regional representative and
15 on the editorial board of that particular group. I'm a
16 member of the American Academy of Forensic Science,
17 Southwest Association of Forensic Scientists, American
18 College of Forensic Examiners, and, again, some others.

19 Q. Have you written any articles or any books
20 with regard to -- well, have you written any articles
21 that have appeared in professional journals?

22 A. Yes, ma'am. I have approximately six articles
23 that have been published through peer review in
24 professional publications.

25 Q. Okay. Have you published anything else?

1 A. Yes, ma'am. I have a lab manual on bloodstain
2 pattern analysis and then also a book through CRC Press,
3 that the title of it is, Bloodstain Pattern Analysis,
4 subtitled: With an Introduction to Crime Scene
5 Reconstruction.

6 Q. Have you been accepted as an expert in a court
7 of law as a reconstruction expert?

8 A. Yes, ma'am, I have.

9 Q. Has the FBI referred any cases to you from
10 other agencies?

11 A. The FBI has referred approximately 11 cases
12 over the years, and then they also used me twice for
13 their cases that they were investigating.

14 Q. Has bloodstain pattern interpretation been
15 accepted in a court of law as a valid scientific
16 discipline?

17 A. Yes, ma'am, it has.

18 Q. Are there different types of bloodstain
19 patterns, and if so, please, explain.

20 A. Okay. Yes, ma'am, there are. One of the
21 first general areas that we try and identify in basic
22 categories is whether or not the blood is consistent
23 with a low or a medium or a high velocity occurrence.
24 And with that we're not talking about how fast the blood
25 is traveling in air, but rather the occurrence

1 separating it from the blood source.

2 Low velocity, by definition, is five feet per
3 second or less, usually associated with gravitational
4 pull. So if I had a cut on the end of my finger as the
5 blood is trying to adhere to the finger and as it is
6 building up in its actual weight, the gravity force is
7 trying to pull it away, and once it's able to overcome
8 the surface tension, which is what is actually holding
9 the blood onto the finger, it will break away and simply
10 fall straight downward. Normally, those will produce
11 about a 14- to 15-millimeter diameter bloodstain, if
12 they're falling from about the waist high or higher.
13 Generally, they will produce what is referred to as a
14 90-degree low velocity stain.

15 Once you get above the low velocity, you're
16 generally into the medium velocity range, or at the next
17 step. By definition, that is an occurrence separating
18 the blood from the blood source from five to 25 feet per
19 second, generally associated with a beating, in most
20 cases, such as, swinging an instrument or fist.

21 The next category is high velocity. This is
22 generally associated with firearms or high-speed
23 machinery. And we're talking about the way that the
24 blood actually looks. A very good rule of thumb is that
25 the greater the velocity separating the blood from the

1 blood source, the smaller the blood becomes.

2 And then there are a lot of subcategories in each
3 one of those.

4 Q. Okay. Such as?

5 A. For high velocity there is missing or atomized
6 blood, and then there is spatter, which is blood that is
7 above 1 millimeter in diameter.

8 For medium velocity you can have spatter; you can
9 have cast off stains, which is not too unusual, for
10 example, in a beating.

11 In the low velocity, you can have just simply
12 gravitational drops. You can have passive blood flows
13 due to gravitational pulling of the blood as it is
14 coming from the blood source. Blood pooling, blood
15 separation, serum separation, those sort of areas.

16 Q. What information can you obtain from studying
17 bloodstains at a crime scene?

18 A. You can generally identify some of the events
19 that occurred. And in some instances you can actually
20 sequence those, depending upon the bloodstains,
21 certainly, that are there.

22 Q. Can you determine number of blows or the
23 position of the victim at the time of an incident or
24 occurrence?

25 A. Yes, ma'am. You're able to tell the

1 directionality of the individual blow, the blood trail,
2 the position, quite frequently, of the victim at the
3 time that the blood was created. So, basically, as the
4 blood is found, you are able to include or exclude
5 certain possibilities of occurrences.

6 Q. How are you able to determine these type of
7 things?

8 A. Well, for example, in sequencing, if you have
9 somebody who is bleeding and leaving a blood trail, if
10 they pass through a door and they bleed on the
11 threshold, and then you find the door in a closed
12 position, well, obviously, the blood could not have
13 gotten underneath with the door in a closed position.
14 So that would be an example of sequencing. The person
15 that is bleeding going through the door, the door,
16 obviously, has to be open.

17 The minimum number of blows in a beating, as you
18 are swinging the instrument, once there is sufficient
19 blood present from the wound that is created, and it is
20 transferring in volume to the individual instrument,
21 either in the back swing or the forward swing, blood
22 will be cast off. And in identifying whichever is
23 greater in number, the back swing or the forward swing,
24 you will be able to identify a minimum number of blows
25 that would have been created in a beating.

1 Q. Mr. Bevel, did I contact you with regard to --
2 well, bloodstain evidence in this particular case?

3 A. Yes, ma'am, you did.

4 Q. Approximately, when did I do that?

5 A. In the beginning of August.

6 Q. Have you and I ever spoken or worked together
7 on any cases prior to that time?

8 A. No, ma'am.

9 Q. Have you ever worked for the Dallas County
10 District Attorney's Office before that date?

11 A. Yes, ma'am. The most recent case was in the
12 Darlie Routier case.

13 Q. Did I send you certain items for your review
14 with regard to this case?

15 A. Yes, ma'am, you did.

16 Q. What items did I send you?

17 A. There were 77 photographs, an autopsy report,
18 police reports, a 911 call, an interview with
19 Christopher Radke, and bloodstain angle impact
20 measurements done by a Texas Ranger.

21 Q. Okay. Did you actually go to the crime scene
22 located at 1001 Sunset in Garland, Texas?

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

24 Q. When did you do that?

25 A. That was on October the 27th, which would have

1 been Monday of this week.

2 Q. And was that home occupied by another family?

3 A. It was.

4 Q. Okay. As far as the layout of the house, and
5 since you've seen the crime scene photos, had anything
6 changed since the offense date?

7 A. The physical structure, no. Certainly there
8 was different furniture, but the physical structure
9 appeared to be the same as I had seen in the diagram and
10 the photographs.

11 Q. Okay. With regard to the bookcase, was that
12 the same?

13 A. Yes, ma'am.

14 Q. Okay. In fact, is that bookcase actually
15 built into the wall of the house?

16 A. That is correct.

17 Q. Now, from analyzing the photographs and the
18 other information that you were provided, were you able
19 to form an opinion as to the victim's position at the
20 time of the gunshot?

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

22 Q. Now, you indicated that you reviewed the
23 interview with Christopher Radke.

24 A. That is correct.

25 Q. Had you not reviewed that information, would

1 your position -- well, would your opinion change --
2 would it change as to the victim's position?

3 A. As to the victim's position, it had no
4 bearing.

5 Q. And you did say that you were aware that a
6 Ranger took the actual bloodstain angle measurements,
7 did you not?

8 A. That's correct.

9 Q. There were only four measurements or four
10 strings that were pulled. Was that an adequate amount
11 in order to get a good interpretation in this instance?

12 A. It would be the minimum number. As long as
13 they are not from the same area, as long as they are
14 scattered throughout the bloodstain scene, certainly it
15 would be adequate. It is the bare minimum, however.

16 Q. Now, you indicated that you were able to form
17 an opinion as to the victim's position at the time she
18 was shot in this particular case.

19 A. Yes, ma'am.

20 Q. Okay. What was her position at the time she
21 was shot?

22 A. The -- because the -- there is width to the
23 head -- what I'm talking about is the front of you of
24 the face. The front of you of the face would be
25 approximately 25 inches up from the floor or lower.

1 Q. And that's taking into consideration the width
2 of her head?

3 A. Yes, ma'am. Which would -- if you include the
4 width of her head, that is making the back of the head
5 closer to the floor than the 25 inches.

6 MS. MCVEA: Can I have the witness step
7 down for a moment.

8 A. (Witness complies.)

9 Q. (By Ms. McVea) Mr. Bevel, I'm showing you
10 what's been admitted into evidence as State's Exhibit
11 No. 55. Are you familiar with that photograph?

12 A. I am, ma'am.

13 Q. Can you go ahead and describe for the Court
14 the type of blood spatter that's depicted here in this
15 photograph?

16 A. Yes, ma'am. The blood that is on the front of
17 you of the built-in bookshelf is consistent with what
18 you would typically find from a gunshot. There are a
19 great number of stains that are very difficult to see --
20 in fact, I actually got a magnification out to even look
21 at this photograph -- that are approximately 1
22 millimeter and less, and then you have those that are
23 larger. You can see some directionality with what's
24 there, and also, certainly, some much larger stains than
25 the

1 1 millimeter.

2 Q. Now, you said that the victim's position had
3 to be approximately 25 inches between the floor -- I
4 mean, from the floor; is that what you said?

5 A. To the top portion of her face, yes.

6 Q. If we were using this bar here in front of you
7 of the Jury Box, approximately, and using this as a
8 reference as if it was the bookshelf --

9 A. Yes, ma'am.

10 Q. -- could you tell us approximately where her
11 head was at the time of the gunshot?

12 A. Okay. Her head would have been
13 approximately -- in other words, the top portion of her
14 face about in this area where my finger is. And the top
15 of the first shelf of the bookcase is located at this
16 location, so approximately right here.

17 Q. Okay. What is that location -- the
18 measurement, the top shelf of the bookcase?

19 A. It is 19 inches off the floor.

20 Q. Okay. And just for a reference, and we're
21 looking at State's Exhibit No. 55, what area are we
22 talking about?

23 A. Okay. The 19 inches would be right up to the
24 top edge of that first shelf, and then, obviously, the
25 25 inches would be above that.

1 Q. Okay. So using -- well, so her head had to be
2 in this position here?

3 A. Approximately in that position or a little bit
4 lower.

5 Q. Okay.

6 A. But that would have been -- the greatest
7 distance would have been approximately 25 inches.

8 Q. Now, was she in a reclining position or
9 sitting on her buttocks?

10 A. She would likely be actually between sitting
11 on her buttocks and an upright position; and certainly
12 she cannot be in a prone position, so she is somewhere
13 in between those two areas.

14 Q. You can go ahead and have a seat.

15 A. (Witness complies.)

16 Q. Mr. Bevel, what do you base your opinion on?

17 A. Several things. One, there are bloodstains
18 that are angular that are on the top shelf -- or excuse
19 me, the bottom shelf, as we're actually looking at it.
20 The top of the bottom shelf. Those elongated
21 bloodstains cannot get there with the victim having been
22 shot in a position that is lower than that particular
23 shelf. The head has to be at least -- the front of you
24 of the face has to be at least that position of about 19
25 inches.

1 And then when you start considering the other
2 bloodstains that they did string, giving a margin of
3 error for what was shown there, the range has to be
4 somewhere within about 25 inches up from the floor or
5 below. If you start getting much above the 25 inches,
6 then the bloodstains that are landing on the top of the
7 bottom shelf end up changing there angularity.

8 And also, if you look at the front of you of the
9 bottom portion just below the front of you shelf, the
10 bloodstain that is located at that particular position
11 also helps. As you become lower, you get more of the
12 blood that would be underneath the shelf. As you become
13 higher, you're able to actually clear that area and then
14 get the blood where it is located on the various parts
15 of the bookshelf.

16 Q. Did you examine any other items in connection
17 with this case?

18 A. Yes, ma'am. I looked at a pair of shoes and a
19 pair of Levi jeans that were green in color.

20 Q. When did you examine these items, and where
21 was that done?

22 A. That was also done on October the 27th of this
23 week. So, in other words, I examined the scene itself
24 and also left from the scene and went over to
25 S.W.I.F.S., Southwest Institute of Forensic Science,

1 where these items were located and examined there at
2 their lab.

3 Q. Did you notice any blood spatter on the shoes?

4 A. Yes, ma'am. There were two stains towards the
5 front of you toe area, and that would have been on the
6 right shoe. Both of these stains were approximately
7 1 millimeter in diameter, as far as the actual size.

8 There was also an area that had been cut out
9 that -- from a photograph you were able to identify as
10 being a transfer. In other words, the shoe came in
11 contact with a bloody object, and the bloody object
12 transferred blood onto the shoe, with a little bit of
13 lateral movement. That was pretty much -- pretty much
14 what was on the shoes that I was able to see at the
15 lab.

16 Q. Okay. I'm showing you what's been entered
17 into evidence as State's Exhibit No. 75. Are these the
18 shoes that you examined there at S.W.I.F.S. on the 27th
19 of October?

20 A. They are, yes, ma'am.

21 Q. Okay. And when you were talking about
22 transferred blood on the left shoe, is that the area
23 that was cut out here?

24 A. That is correct.

25 Q. Okay. By the way, what other areas here on

1 the shoes did you notice blood spatter?

2 A. Okay. On the right shoe, there's an area that
3 is immediately along the edge where the black rubber
4 ends up coming in contact with the brown material for
5 the shoe that is in this location, and there is one
6 immediately to the side of it that is almost to the
7 front of you toe that is in this location.

8 Q. Okay. How are you able to tell that? This is
9 kind of difficult with the naked eye.

10 A. You can see them with the unaided eye. You
11 kind of have to get the light just right. But I looked
12 at these with magnification, and also with cross
13 lighting, and the magnification was with a red cool
14 included in the magnification.

15 Q. Now, you said that you examined the jeans
16 that -- well, the Defendant's jeans, did you notice any
17 blood spatter on those jeans?

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

19 Q. Okay. Where did you notice and what type?

20 A. They're in multiple places. The primary area
21 would be the front of you left leg, and that's from an
22 area at approximately the upper portion of the waist, or
23 just below the waistband, actually, going all the way
24 down to the cuff on the left side of the jeans. There
25 are 12 individual stains there, and they range in size

1 from a 0.3 millimeter all the way up to a 3 millimeter.
2 Then if you go to the other leg, which, again, we're
3 still looking at the front of you of the jeans, there's
4 two additional stains, and they range in size from 1 to
5 a 0.8 millimeter. On the back side of the jeans, on the
6 left lower, there is a stain that's over towards the
7 side that is a 1-millimeter size. And then if you go to
8 the right side, the upper back, which is the back
9 pocket, there's a stain that is a 7-millimeter size. So
10 there's a total of 16 individual stains on the pants
11 themselves.

12 Q. I'm showing you what's been entered into
13 evidence as State's Exhibit No. 76. Are these the jeans
14 that you examined at S.W.I.F.S.?

15 A. That is correct, ma'am.

16 Q. Okay. And do they contain on them the stains
17 that you were referring to?

18 A. They do.

19 Q. Go ahead and step down.

20 A. (Witness complies.)

21 Q. Can you go ahead and identify the stains and
22 the type of stains that's depicted here on these jeans?

23 A. Yes, ma'am. The larger stain, with the
24 3 millimeter, is up in this area just below the top
25 waistband, and it is marked with an X outlining the

1 area.

2 Then there is a 2-millimeter stain immediately
3 below it, again, marked in black, felt-tip pen below the
4 first one that's 3 millimeters.

5 Coming down, a large area was cut out here, and
6 that was tested for blood.

7 The next stain is a 1.5 millimeter just below the
8 cutout area that was tested.

9 The next one is, again, below that, which is a 1
10 millimeter.

11 Coming down to just above the knee, we have a
12 1 millimeter at this location, again, outlined with a
13 felt-tip pen.

14 We have a 0.5 and a 0.8 side by side marked, again,
15 with a felt-tip pen.

16 A 1.8 millimeter that we're getting close to the
17 knee area.

18 The one below that is a 1.5 millimeter, then a
19 2 millimeter, a 2.5 millimeter; and then as we're going
20 below the jeans, we have a 0.5.

21 And then towards the cuff, a 1 millimeter, and then
22 a control that was cut out that does not have blood on
23 it.

24 On the opposed side, which is now the right leg, we
25 have an area -- I believe, it's going to be just below

1 the knee -- where we have a 1 millimeter, a
2 0.8 millimeter, and another area here that was
3 presumptively not positive for blood.

4 And then on the back, the large area is a
5 7 millimeter that obviously has something else mixed
6 with the blood, probably tissue. And then actually
7 these are being worn. This is somewhat to the side, but
8 it shows to be in the back, and that's a 1 millimeter
9 that is on the back of the left leg.

10 Q. Now, is this described as mist -- is this type
11 of bloodstain described as misting or spatter?

12 A. Well, there's two different divisions there,
13 actually. That that is less than 1 millimeter is
14 identified as either mist or atomized. That that is
15 above 1 millimeter is typically referred to as spatter.
16 In a high velocity occurrence, however, you don't have
17 just mist and you don't have just the larger stains, you
18 have a combination of varying sizes.

19 What we have there is consistent with a high
20 velocity occurrence, or the gunshot, but they are
21 varying sizes.

22 Q. Okay. You can have a seat.

23 A. (Witness complies.) This fell out, so I'm
24 just going to put it back in.

25 Q. Okay. Now, the measurements of these

1 bloodstains, did you actually do that, or was that
2 someone there at S.W.I.F.S.?

3 A. No, I did not measure the bloodstains at the
4 scene. The ones on the pants, now, I did measure those,
5 yes.

6 Q. Okay. Was that also done with an employee of
7 S.W.I.F.S.?

8 A. Serologist, Kathy Long, had also measured
9 those, yes.

10 Q. Okay. Now, looking at the pants with an
11 unaided eye, it's difficult to see the bloodstains. How
12 are you able to make that determination?

13 A. The larger ones you actually can see with the
14 unaided eye, but as you start approaching 1 millimeter
15 and less, it is quite difficult to see anything there.
16 I used what is referred to as a micromite, which is a
17 magnifying device that -- with a red cool -- that's
18 divided into one-tenth of 1 millimeter range. With
19 oblique lighting using the magnification, you are able
20 to see them without much difficulty at all.

21 Q. And also what else aided you in the
22 determination? Was a scientific test done on those
23 bloodstains?

24 A. The larger stains, there was a test done
25 confirmatory for blood. On some of the smaller stains,

1 just a presumptive test for blood.

2 Q. Now, you describe the blood spatter on the
3 shoes and on the jeans. What does that indicate to you?

4 A. The stains that are on the shoes and the
5 jeans, in conjunction it being worn by the same person
6 at the time of the occurrence, that is consistent with
7 the wearer being in a close proximity at the time of the
8 shooting, and they are certainly consistent with a high
9 velocity occurrence.

10 Q. Have you ever -- well, the blood spatter on
11 the jeans is mostly concentrated on the left leg; is
12 that right?

13 A. That is correct.

14 Q. Have you ever worked in cases in the past
15 where you've seen this type of blood spatter on a
16 suspect's pants?

17 A. Yes, ma'am. I've had a number of cases in the
18 past where the stains appeared basically in the same
19 distribution, same size, and specifically on one leg or
20 the other.

21 Q. Were you able to make -- establish with
22 reasonable certainty, or a reasonable amount of
23 scientific certainty, what had occurred in those cases?

24 A. In several of those cases, yes, ma'am, we
25 were.

1 Q. And can you go ahead and tell us what had
2 occurred.

3 A. Whenever you have a person that is firing a
4 firearm, whether it's a long rifle, or especially when
5 you get into a shotgun, typically the -- if they are
6 right-handed, the right leg will go back, and the left
7 leg will go forward. If they are left-handed, it's just
8 the opposite. The left leg will go back, and the right
9 leg will go forward. And the leg that is closest to the
10 blood source upon the impact will receive the greatest
11 majority of the individual bloodstains.

12 Q. Okay. If we had a victim and a suspect who
13 are involved in some type of hand -- close hand-to-hand
14 struggle over, for example, a weapon, okay, or a
15 shotgun, what type of spatter would you expect to get on
16 the suspect?

17 A. There are a lot of variables there, but if
18 they are in fairly close proximity, one to the other --
19 and, again, the victim's position ends up becoming quite
20 critical. If they are standing and they're fairly
21 close, the majority of the stains should be on the upper
22 torso, for example, the chest and shoulder area, again,
23 with that close proximity.

24 As you start getting farther away, then the
25 bloodstains, one, will become larger because the smaller

1 misting stains are overcome by air. And they will
2 generally go in a normal environment, such as this
3 Courtroom, about 46 inches in maximum, horizontal
4 distance. Now, what you will have, typically as they
5 get farther away, the bloodstains that actually reach
6 the clothing will become larger than the misting stains;
7 and those stains that are misting, typically will be
8 lower down. What is occurred is they are traveling
9 through air, air is resisting their flight path,
10 gravity, of course, is pulling them down, and they end
11 up doing kind of a parabolic arc. And if they land on
12 the target, for example, the jeans, then typically they
13 will be lower.

14 Q. What if there was a struggle between a victim
15 and a suspect over, let's say, a shotgun, and the two of
16 them were in the process of falling to the floor, or to
17 the ground, when the gun goes off, what type of spatter
18 would you expect to find on the suspect's clothing?

19 A. Again, we have to identify the distance
20 between the two players. The closer you are, the more
21 of the bloodstains, again, if the shot is to the face,
22 and, again, if they are face-to-face in the struggle.
23 Then the majority of the stains will typically be at
24 approximately the head/chest area of the person who is
25 not receiving the gunshot. The closer you are, the

1 fewer of them you would expect to find in a lower
2 location, for example, the front of you of the pants or
3 the shoes. The farther away you get, the greater that
4 possibility increases where you can actually get them
5 lower.

6 Q. Now, the spatter that you found in this
7 particular case with regard to the victim's position at
8 the time of the occurrence and the spatter that you
9 indicated on the Defendant's pants and shoes, is that
10 spatter consistent or inconsistent with a struggle
11 resulting in a fall when the occurrence --

12 A. Again, we have to identify where the two
13 people are located. It is consistent with the victim on
14 her buttocks in a semi-reclined position with the wearer
15 of the jeans in an upright position next to the victim
16 at the time of the shooting. The possibility, if we can
17 get them in, again, the approximate position that I just
18 described from a struggle, if that's how the position
19 ends up, then I can't say that's impossible.

20 Q. What you have determined here on the blood
21 spatter concerning the victim's position and the spatter
22 on the Defendant's clothing and shoes, what scenario is
23 more consistent with your findings?

24 A. The victim on her buttocks in a semi-reclined
25 position with the front of you of her face approximately

1 25 inches up from the floor, or possibly lower, with the
2 person wearing the jeans to her left side -- and that
3 would be her right side if we're looking at her in a
4 down position from the feet toward the head. But her
5 left side, in an upright position with the left leg
6 forward receiving the greatest percentage of the
7 bloodstains.

8 Q. Can you step down for a moment?

9 A. Yes, ma'am.

10 Q. Why don't you go ahead and demonstrate, for
11 example -- and I'll take the role of the victim and you
12 can be the suspect -- what do you think is the most
13 probable --

14 A. Just to demonstrate, we have looked at it, and
15 the shotgun is empty. Okay.

16 Q. Okay. Why don't I get on this side.

17 A. First, we're going to have to identify
18 approximately 25 inches for the top portion of your
19 head, so you're going to have to come down. Okay. It's
20 pretty close to right in there and to her left side,
21 and, again, the left leg forward, this certainly would
22 be a consistent occurrence here. And, of course, the
23 end of the shotgun has to be fairly close in contact
24 with the face.

25 Q. So the victim would have to either be trying

1 to come up at the time of the occurrence or going back?

2 A. One of those two, yes, ma'am.

3 Q. Okay. Now, taking into consideration the
4 relationship between the shotgun and the victim's face
5 at the time it was fired, can we still, using that same
6 demonstration, for example, keep the shotgun at the same
7 level as going from front of you to back, left to right,
8 and slightly upward?

9 A. Yes, ma'am, you can.

10 (Whereupon, there was a brief
11 pause in the proceedings.)

12 THE COURT: You may go ahead.

13 MS. MCVEA: Okay.

14 Q. (By Ms. McVea) I'm showing you what's been
15 entered into evidence as State's Exhibit 19. Are you
16 familiar with this photograph?

17 A. I am.

18 Q. Okay. Now, would you expect to find, if this
19 was a -- if the victim had committed suicide or a
20 self-inflicted gunshot wound without any help from
21 anyone else, would you expect to find the shotgun in
22 this position across the victim?

23 A. Given the position that she would have been in
24 with her head at the time of the actual shot, and she
25 is, in fact, doing the shooting herself, no, that is not

1 where I expect to find it.

2 Q. Okay. Why is that?

3 A. There is nobody on the opposing end, for
4 example, a shoulder, to absorb the kickback, and likely
5 the shotgun would have gone farther back and probably
6 off to her side. In this instance, it's actually having
7 to come forward as she is falling back, which is putting
8 her farther back from where the shotgun actually would
9 have been at the time of discharge.

10 Q. What if the victim was shot during a struggle,
11 would you expect to find the shotgun in that particular
12 position?

13 A. When you introduce an additional player, if
14 that person has their hands on the gun, then that
15 certainly can stop the weapon from going in the back
16 position. So it is certainly not impossible that they
17 could have stopped the weapon intentionally or
18 unintentionally. And the weapon could have landed in
19 that particular position, yes, ma'am.

20 Q. What if the victim had been moved after she --
21 after the occurrence, would you expect to find the
22 shotgun in that particular position?

23 A. In the particular position that it is
24 demonstrated, if the victim had been moved, I would not
25 anticipate it would be there, no.

1 Q. I'm showing you what's been entered into
2 evidence as State's Exhibit No. 20. Do you recognize
3 this exhibit?

4 A. I do.

5 Q. Okay. If the victim had been moved, let's
6 say, for example, by shaking, would you expect -- well,
7 first of all, would you expect this shotgun to be found
8 in this position?

9 A. No, I would not.

10 Q. Okay. Looking at this photograph and looking
11 at her injuries and the blood flow, would you -- do you
12 feel that in this instance the victim was moved after
13 the occurrence?

14 A. No, I don't. And that's for the reason of the
15 passive blood flows that are going down from the actual
16 wound site due to gravitational pull. If you alter her
17 head to where she's in some other position, or certainly
18 shaking, that will also alter the blood flow of the
19 passive blood flows, and they are very consistent with
20 her being in that position and just simply going
21 downward.

22 Q. And not having been moved at all?

23 A. That is correct.

24 MS. MCVEA: Pass the witness, Your
25 Honor.

CROSS-EXAMINATION

1
2 BY MR. STEINBECK:

3 Q. Morning, Mr. Bevel.

4 A. Good morning, sir.

5 Q. The issue about the gun being moved, that's
6 common in cases for people, such as the police or
7 paramedics, to move weapons like that around in your
8 experience?

9 A. I don't know that I'd say that it was common.
10 It certainly can happen, yes, sir.

11 Q. So anything about your testimony about the
12 position of the gun is subject to what you might have
13 been told, correct?

14 A. No. Really the basis of it is just simply as
15 the weapon is shown in the photograph. Now, if some
16 other person has moved that, I certainly have no
17 knowledge of that. That would be correct, sir.

18 Q. All your testimony about the suicide and that
19 not being consistent with suicide, that's all
20 speculation, assuming that the gun was not moved?

21 A. Well, speculation based upon how the gun is
22 found, yes.

23 Q. But you don't know whether it was found that
24 way for a fact, do you?

25 A. I can only go on the photography of it, that's

1 correct.

2 Q. Now, who did you contact here at S.W.I.F.S.?
3 Who did you actually speak with in connection with your
4 investigation?

5 A. When I went out there?

6 Q. At any point, who have you contacted?

7 A. Cathy Long was the person that had the pants
8 already -- and the shoes already laying out. Now,
9 somebody had called her, and I'm really not sure who
10 that was. It may have been a DA investigator. But by
11 the time that we got to the lab, met with Cathy, the
12 pants and the shoes were still in a sealed condition. I
13 unsealed the containers and examined them and then
14 resealed them at the end of that.

15 Q. Who else did you have contact with from
16 S.W.I.F.S.?

17 A. Well, I talked to a number of people there,
18 but not specifically about this case. If that's -- I'm
19 not sure if that answers your question directly, but --

20 Q. So the only one you talked to was Cathy Long
21 about the pants?

22 A. Directly, yes, sir. Now, there were some
23 other people in the immediate area that were working on
24 their own cases, I assume. One person was at lunch
25 eating at their desk. But as far as direct contact with

1 those people about this case, there wasn't any.

2 Q. So basically just consistent with what you
3 wrote down and testified to about the photographs,
4 autopsy report, police reports, bloodstain angle
5 measurements; is that correct?

6 A. I believe that's accurate.

7 Q. And going out to the scene?

8 A. Yes.

9 Q. There's nothing further you based your
10 opinions on.

11 Now, is there any other reports that you prepared
12 for anyone who are testifying here today?

13 A. No.

14 Q. This one that I have that's addressed to the
15 Prosecutor, that's --

16 A. Yeah. Dated October 9th, 1997.

17 Q. That's correct.

18 A. Okay. That is the only report that I have
19 prepared for this case.

20 Q. And in your report here, you mention that her
21 head was within six inches above or below the front of
22 you edge of the bottom shelf on the -- or on the
23 built-in wall unit?

24 A. Yes, sir. It's quite common to include a
25 range of possibilities, which is including a margin of

1 error, basically.

2 Q. So in that particular report, you're not
3 mentioning measurement from the floor at all, you're
4 basing it on measurements from the shelf; is that
5 correct?

6 A. Well, if you add 19 inches and then six, then
7 you're getting basically what I testified to
8 previously.

9 Q. Okay.

10 A. I don't come out and say it, but it's 19
11 inches plus six inches.

12 Q. Did you not have a 19-inch measurement at that
13 time on the shelf?

14 A. I think that it was included in some of the
15 reports, but I was not certainly satisfied or sure as to
16 what it was until I personally went out there.

17 Q. How many suicides cases have you investigated?

18 A. Over the course of my career, it's probably
19 going to be in the hundreds. I really don't know how
20 many.

21 Q. And shots to the face and mouth, they are
22 normally consistent with suicide; would you agree with
23 that?

24 A. Well, literature generally says that a female
25 will not shoot themselves in the face or the breasts;

1 however, I have, in fact, encountered some incidences
2 where that has occurred.

3 Q. And it could also occur by some act, such as a
4 struggle of a weapon, correct?

5 A. That can, certainly.

6 Q. That cannot be intentional suicide?

7 A. Yes, sir.

8 Q. So you never talked to the Medical Examiner in
9 this case at all?

10 A. I saw the Medical Examiner, but I did not
11 speak to the Medical Examiner, no.

12 Q. Is any of your opinions based on what you've
13 read about what the Defendant might have said?

14 A. There is a portion, yes, sir.

15 Q. And what portion is that?

16 A. The statement was made that --

17 Q. Without going into the statement, can you say
18 how that affected you?

19 A. Yes. I believe that it was a false statement.

20 Q. That's as far as the -- I'm not asking you to
21 testify as to the truth of any statement, sir. I'm
22 asking you, without taking into account any specifics of
23 what he said, does that change your forensic analysis of
24 it at all?

25 A. Depending upon which area you're referring to.

1 Q. Does it have anything to do with the position
2 of Diana Radke?

3 A. No, sir.

4 Q. And so the -- in your testimony about the
5 pants, that has nothing to do -- that's independent of
6 anything the Defendant might say?

7 A. As far as her -- okay. In relation to his
8 statement, yes, sir.

9 Q. Okay. So you can conduct your investigation
10 without having to look at the statement --

11 A. Yes, sir, I could. Yes, sir.

12 Q. -- of the defendant?

13 A. Yes.

14 Q. That wouldn't change anything? Your analysis
15 does not change, based on anything that the Defendant
16 says?

17 A. Only in one area.

18 Q. Okay. That's not what you're here for,
19 correct?

20 A. Correct.

21 Q. Now, the -- you mentioned the fact that Diana
22 Radke had her butt on the ground. Would you agree with
23 me it's possible that she could have been falling and
24 her butt had not quite yet reached the ground?

25 A. I can't rule that out as totally impossible,

1 no.

2 Q. And isn't it also true that the angle of the
3 shots went in an upward direction from the floor --

4 A. Yes, sir.

5 Q. -- consistent with the butt of the gun being
6 lower than the muzzle?

7 A. Or simply the head going back. The head has
8 quite a bit of movement. That certainly can alter the
9 shot path into it.

10 Q. So as far as you're concerned, the angle of
11 the weapon could have been angling lower at the butt,
12 higher up towards the face of the deceased as she's
13 falling at the angle you described, correct?

14 A. Mentally, I'm not following exactly what
15 you're saying.

16 Q. In other words, if Diana Radke was falling,
17 and the weapon was up to her mouth, and the barrel end
18 is right at her mouth, and the butt is lower by her
19 knees or by her groin area, that would be consistent
20 with what you observed, correct?

21 A. And, again, as long as the shotgun is
22 following, because it has to be --

23 Q. Exactly.

24 A. -- right, very close to the face.

25 Q. So in other words, if there was a struggle

1 there that was going on, and there's a fighting forth
2 and back of the weapon and pushing and whatnot going on,
3 and she fell, that is consistent with a gun going off as
4 she's about 25 inches off the floor?

5 A. Again, if the person on the other end of the
6 gun is not following. In other words, they have to
7 remain upright, then I couldn't rule that as totally
8 impossible.

9 Q. Okay. It is -- is it possible that they're --
10 they both could be falling and keeping their same
11 separate distance from each other; isn't that possible?

12 A. Well, again, the distance is quite critical
13 here. If you can get them in the same position that we
14 were demonstrating over here on the floor, and, you
15 know, he does not get any closer in this falling
16 position, again, I can't say that that is impossible.

17 Q. In fact, you cannot tell exactly how far apart
18 the top of his pants were, nor the bottom of his pants,
19 based on those bloodstains from her, in relation to her
20 body, correct?

21 A. I can give you a very accurate range, yes,
22 sir.

23 Q. A range. You cannot give an exact description
24 of where his leg was?

25 A. Well, I can tell you that it is -- the foot is

1 planted against the floor. The pants are in an upright
2 position, and the maximum distance that the missing
3 blood can go and land on the cuff area is approximately
4 four feet. So he certainly isn't dramatically farther
5 away than four feet, and he certainly is not
6 dramatically closer than four feet.

7 Q. What is the range there of distance?

8 A. Again, probably within, I would say, probably
9 six inches either side, even on that, because of the
10 misting stains having the inability to overcome the air
11 resistance on a horizontal plane, even with a parabolic
12 arc, which tends to allow them to go a little bit
13 farther, about 46 to 48 inches.

14 Q. What distance are you talking about, this
15 46 --

16 A. From the blood source to the blood landing on
17 the jeans, and specifically, when we're talking the 46,
18 48 inches, we're talking about the less than
19 1 millimeter, the 0.3 or 0.5 sized stains.

20 Q. So you're talking about two people that are
21 very close to each other.

22 A. Within that range, yes, sir.

23 Q. And how about the upper part of the pants?

24 A. The upper part, again, there are some larger
25 stains, again, within that range, because I don't have

1 the 0.3 and the 0.5 with which to make a determination.

2 Q. And the exact distance for that would be --
3 what was that? I'm sorry.

4 A. The only way that I'm able to really give a --
5 and it's not an exact distance -- but the only way I can
6 give a range of that 46, 48 inches is based upon the
7 misting stains. The larger stains can travel much, much
8 farther, and it's difficult to actually identify. But
9 there are other things that we're looking at here.
10 We're looking at, not only size, but area of coverage,
11 distribution; and what we've got basically is the bottom
12 cuff to the upper portion in that coverage. The closer
13 you get, the smaller that area of coverage typically
14 tend to be, and also the greater number of bloodstains.
15 So it's much, much more voluminous in numbers of
16 stains. The area of coverage is certainly much, much
17 easier to see, so that's also being taken into
18 consideration.

19 Q. Can you approximate a distance, like, maybe
20 where the pockets were in the front of you of the left,
21 in relation to this source, a distance there?

22 A. Again, without the misting stains there, I
23 really can't do that.

24 Q. And as far as the blood that's on the back of
25 the pants, that could be explained by the evidence being

1 folded and making contact with bigger spots on the front
2 of you, is that correct?

3 A. The area that's on the pocket, certainly
4 that's possible. The area that's on the left,
5 basically, side of the jeans, if you're canted somewhat,
6 it would be very, very easy, and it's not uncommon to
7 get bloodstains along that edge.

8 Q. How many cases have you investigated where
9 there was a struggle over a weapon, specifically, a
10 shotgun?

11 A. Specifically a shotgun? I'm really going to
12 have to think. I would say probably around 15 to maybe
13 20 in which that was either alleged or it actually did
14 occur.

15 Q. Now, your testimony then, Doctor -- excuse me,
16 Mr. Bevel, that it is possible that there could be a
17 falling situation by both the Defendant, as well as Ms.
18 Radke, in a situation with the weapon being between both
19 of them, correct?

20 A. Yes, sir. That is possible, provided the
21 distance is about what we were talking about, with him
22 in a standing position. What I would look for in that
23 instance is a greater preponderance of the bloodstains
24 probably about the waist and chest area. And, of
25 course, I don't know what was there because we don't

1 have a shirt, but based upon what's on the top of the
2 jeans, there apparently is not a great number that would
3 have been there.

4 Q. And if there's a shirt over -- covering that,
5 that could explain that as well?

6 A. Well, it would not have been covering the top
7 portion of the pants, or otherwise the stains wouldn't
8 have gotten there.

9 Q. You found the stains at the very top?

10 A. That's correct. Now, anything below where the
11 shirt would be hanging out, then, certainly.

12 Q. Now, the -- if you could please recover the
13 shotgun.

14 A. Yes, it's here.

15 Q. And step down from the witness stand.

16 A. Yes, sir.

17 Q. Assuming Ms. Shelton is Ms. Radke, if she
18 could get down to the floor --

19 MS. SHELTON: I'll be in the same
20 position as the Prosecutor.

21 A. Sure. The 25 inches is going to be
22 approximately where my fingers are, so you're going to
23 have to come back farther with your head. That's
24 approximately correct.

25 Q. (By Mr. Steinbeck) Okay. Now, I'll take the

1 ruler. Assuming she's in that position, could you show
2 how the -- how there could have been a fall there with
3 the weapon at her mouth, assuming her chin is down to
4 her -- or more down to her chest?

5 A. Farther down? Okay. If you lower your head
6 in this direction then -- or more, is what you're
7 saying, right --

8 Q. Yeah.

9 A. -- to be consistent with --

10 Q. Yes.

11 A. Okay.

12 Q. And the position of the Defendant is over
13 falling towards the person that's on the floor.

14 A. Well, if I'm following with her, and, again,
15 I'm assuming this is going to have to be back --

16 MS. SHELTON: But wait a minute. I've
17 got the weapon right here.

18 A. Okay. Assume that position holding the
19 weapon.

20 MS. SHELTON: You're grabbing.

21 THE COURT: Let's have one
22 cross-examiner, please.

23 A. Yes, ma'am. Who has the trigger?

24 MS. SHELTON: You do.

25 A. You do? Okay.

1 Q. (By Mr. Steinbeck) If she's 25 inches and
2 the --

3 A. Okay. You're going to have to come back up.

4 Q. The 25 inches of the barrel -- the angle of
5 the gun is upward at that point, right, when the shot is
6 fired?

7 A. In relation to the head.

8 Q. Yes.

9 MS. SHELTON: So this has to be up.

10 Q. (By Mr. Steinbeck) Depending on the --

11 A. What you have to do is lower your head --

12 COURT REPORTER: Can we all talk one
13 at a time.

14 MS. SHELTON: But then no lower than
15 24 --

16 THE WITNESS: Okay. Come closer to
17 the weapon with your head looking at it. Okay?

18 MS. SHELTON: Why not 40?

19 THE WITNESS: Well, that's what I'm
20 saying. You have to look closer, which you'd probably
21 have to release the trigger to get there.

22 MS. SHELTON: The butt has to come down
23 a little bit, doesn't it?

24 THE WITNESS: Well, it's in relation to
25 the head.

1 Q. (By Mr. Steinbeck) Mr. Bevel --

2 THE COURT: I want to make this very
3 clear, and I made it clear yesterday, that for the
4 Defense or for the Prosecution, there will be only one
5 examiner of each witness. We're not going to double
6 team them. Do we understand -- does everybody
7 understand what I'm saying?

8 MS. MCVEA: Yes, Your Honor.

9 MS. SHELTON: Yes, Your Honor.

10 THE COURT: Very well.

11 I believe, Mr. Steinbeck, that you are the
12 cross-examiner.

13 Q. (By Mr. Steinbeck) Mr. Bevel, is it not true
14 that if the position of Ms. Radke's head is such that
15 her chin is tucked more towards her chest and the angle
16 of the shot is upward, the barrel of that gun is going
17 to have to be lower than what you just showed, correct?

18 A. Than what I'm showing --

19 Q. Yes.

20 A. -- in this case. Again, it entirely depends
21 upon how far you lower the head.

22 Q. Okay. So if she lowers the head real far, the
23 farther the head is lowered, the closer the butt of the
24 gun is to the floor, correct?

25 A. Not necessarily, no. We're going to have --

1 the head is very moveable. We have to put that in
2 relation, also, to the trunk as to where it's located.
3 And what we're talking about, according to the Medical
4 Examiner, is basically from left to right, slightly
5 backward. And again --

6 MS. SHELTON: Would you break that
7 down?

8 THE WITNESS: I will once again, yes,
9 ma'am.

10 MS. SHELTON: All right.

11 A. Again, are you going to be holding the weapon
12 or not holding it?

13 MS. SHELTON: If I can point -- pardon
14 me, I can't speak.

15 THE COURT: Ms. Shelton --

16 MR. STEINBECK: I'll talk, Your Honor.
17 We'll do it that way.

18 THE COURT: One attorney will do the
19 speaking.

20 Q. (By Mr. Steinbeck) Assuming that Ms. Radke's
21 holding the weapon or some kind of struggle over the
22 weapon --

23 A. Yes, sir.

24 Q. -- there could be a struggle and a fall that
25 would be consistent with something like this falling

1 down and the gun going off at 25 inches off the floor of
2 her head, speaking in that manner, correct?

3 A. It is not impossible, no, sir.

4 Q. That could be consistent with what you --

5 A. It is -- it could be consistent with an
6 occurrence, but, again, if we are falling together, I'm
7 going to have to maintain almost that exact, correct
8 distance as if I'm standing beside it in an upright
9 position.

10 Q. You don't have anything to show that that
11 would be inconsistent?

12 A. I can't say that it is impossible.

13 Q. You don't have anything to show that that's
14 not possible, either, or probable?

15 A. Well, that's what I said. I can't say it's
16 impossible. My opinion is that it's improbable. Based
17 upon the distribution of those bloodstains as to where
18 they are, I am not going with her in the fall.

19 Q. But that's not a variation where she is
20 falling and pulling the gun, and he's trying to pull her
21 back up, correct?

22 A. And, again --

23 Q. And Ms. Radke is pulling --

24 A. -- point it at your face.

25 Q. And Ms. Radke has a hold of the end of the

1 barrel, and it's pointing down, and you're trying to
2 pull her back up.

3 A. Now, even at this position, and I don't know
4 the physical anatomy difference between height and
5 length of arms, but she's unable to hold the trigger and
6 get her face in the correct position.

7 Q. Well, as the Medical Examiner previously
8 testified --

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

11 THE COURT: Overruled.

12 Q. (By Mr. Steinbeck) Are you aware of that
13 fact, Mr. Bevel?

14 A. What.

15 Q. That the Medical Examiner testified that she
16 would be able to kill herself with that weapon?

17 MS. MCVEA: Your Honor, I'm going to
18 object. That's not what -- that's an unfair
19 characterization, a mischaracterization of the
20 testimony.

21 THE COURT: Sustained.

22 MR. STEINBECK: Your Honor, Ms. -- Dr.
23 Spotswood did testify that was possible that, based on
24 the measurement --

25 THE COURT: Well, why don't you ask it

1 as a hypothetical rather than just state what other
2 witnesses have said.

3 Q. (By Mr. Steinbeck) If there was testimony
4 about a Medical Examiner that the reach was very easily
5 done by Ms. Radke, to touch both of those triggers --

6 A. Um-hum.

7 Q. -- and assuming that Ms. Radke also had a hold
8 of the top portion of the weapon, it would be possible
9 also for Mr. Radke to be in this position where his legs
10 are upward but his hands are downwards; isn't that
11 possible?

12 A. I can't say that is impossible, no.

13 Q. That would be more consistent with your
14 findings on the leg, right?

15 A. I don't know that I can say that would be more
16 consistent, no, sir.

17 Q. But there's nothing more plausible or
18 explainable than that, correct, in your analysis?

19 A. Well, I think there is, yes, sir.

20 Q. Well, whether he's like this or like this, the
21 legs are still --

22 A. Okay. Look where -- which is closer, your
23 legs or your chest, in that area, to the blood source?
24 Which is closer?

25 Q. The chest is closer, correct.

1 A. And that's where all the blood should be.

2 Q. Yes. But you're not analyzing the top part of
3 his body, correct?

4 A. Only the top portion of the pants.

5 Q. So if he's got some kind of shirt on, that
6 could interfere with that, correct?

7 A. There could be some blood on the shirt, yes,
8 sir.

9 Q. But it all depends on whether he'd have a
10 shirt or not?

11 A. And I don't know that, no.

12 Q. Okay. Thank you.

13 MR. STEINBECK: Nothing further.

14 REDIRECT EXAMINATION

15 BY MS. MCVEA:

16 Q. Mr. Bevel, before you take a seat, what
17 scenario is more plausible and consistent with your
18 findings, based on your opinion?

19 A. With the bloodstain distribution and size on
20 the pants, from the bottom of the cuff up to the top,
21 there isn't anything on those pants that would indicate
22 that we have a large amount of bloodstains on the upper
23 chest area. If I am bending over, that puts my chest
24 closer to the blood source. It is my opinion that this
25 is more consistent, simply with me standing with your

1 head approximately at 25 inches up off the floor, which
2 is placing my chest higher, and it also puts a place to
3 put the end of the weapon. That is more consistent than
4 the demonstration that we just went through.

5 Q. So just to summarize, based on the
6 hypothetical that the Defense Attorney went over with
7 you, if that was the case, you would expect more
8 bloodstains or spatter or misting on the upper level, or
9 the shirt, if he had on a shirt?

10 A. It's going to go to that area of the body that
11 is closer to the proximity of the wound, yes, ma'am.

12 Q. Now, you said -- now, what if he did have on a
13 shirt, and, let's say, his shirt was out, would he still
14 get bloodstains on the top of the pants, as indicated
15 there?

16 A. No, ma'am. If it's buttoned and worn on the
17 outside. If it is unbuttoned, there is a possibility.

18 Q. Okay.

19 THE COURT: Has Mr. Bevel been shown
20 the shirt that was introduced into evidence?

21 MS. MCVEA: No, Your Honor.

22 THE COURT: Would it not be wise to
23 show him that shirt?

24 MR. STEINBECK: That's what I was
25 talking about with Ms. Shelton. We were going to ask

1 that, Your Honor. I believe the shirt is right --
2 somewhere up there.

3 (Whereupon, the shirt was shown to
4 the witness.)

5 Q. (By Ms. McVea) Mr. Bevel, I'm showing you
6 what's been entered into evidence as State's Exhibit
7 No. 31. Okay. Now, first of all, you don't know what
8 shirt this is or who was wearing the shirt or anything
9 like that; is that right?

10 A. That is correct.

11 Q. Okay. Just by looking at State's Exhibit
12 No. 31, what type of bloodstains do you see here?

13 A. Well, there's a combination of stains. The
14 largest stains are basically transferred. A few are
15 soaked. We also have blood spatter. And from what I
16 see, without measuring them, which is what I would
17 really have to do, I'm going to have to qualify those in
18 either the medium- to upper-velocity range.

19 Q. Is this, the bloodstains that you see here on
20 State's Exhibit No. 31, is that consistent with the
21 wearer having a -- perhaps a nosebleed or a bleeding
22 from the mouth?

23 A. I couldn't rule that out as a possibility,
24 no. And primarily because of the direction of some of
25 the stains. The stains are coming from this area, and

1 you can see the angularity. In other words, they're
2 going like this, for those that you can see
3 directionality. In fact, the majority of them are
4 coming from an upper location, going down.

5 Q. Okay. As if the wearer was wearing the shirt,
6 and perhaps had a nosebleed or a mouth bleed, and was
7 bleeding onto the shirt; is that consistent?

8 A. I can't rule that out, no.

9 Q. Okay. Is this the type of spatter that you
10 would expect if a person was holding a shotgun at the
11 time of the occurrence and the shotgun went off? Is
12 that consistent with high velocity blood spatter?

13 A. Again, without measuring it, I can't say that
14 that is not a possibility. What would have to occur is
15 that the wearer, to get the stains in the direction that
16 they're going, is going to have to be at a fairly acute
17 angle to the blood source, which would be consistent,
18 again, to the acute angle here. Like you were saying,
19 from a nosebleed, that certainly could be consistent,
20 that angle. Well, we're going to have to place this at
21 that same angle in order to get it from a possible
22 gunshot wound.

23 Am I allowed to ask if this is consistent -- this
24 has been tested with whose blood?

25 Q. With the victim's blood?

1 A. Victim's blood. Okay.

2 MS. MCVEA: Was there anything else,
3 Your Honor?

4 THE COURT: No.

5 MS. MCVEA: Pass the witness.

6 CROSS-EXAMINATION

7 BY MR. STEINBECK:

8 Q. Mr. Bevel, isn't it true that this is
9 consistent with the scenario I described?

10 A. I cannot rule that out as being impossible, I
11 sure can't.

12 Q. Well, this does help, what I was saying
13 earlier, to support my theory?

14 A. If that is the victim's blood, and it is from
15 this occurrence of the shooting, first of all, I'd like
16 to say that I should have been made aware of that.

17 Q. That's what my next question was, Mr. Bevel.

18 A. If that shirt is involved in this shooting,
19 then I cannot say that your scenario is impossible,
20 certainly, at all.

21 Q. Makes it more probable, correct?

22 A. That's what I was describing earlier as the
23 type of blood that I certainly would be looking for
24 towards the upper chest.

25 Q. This is exactly the type of evidence, then,

1 that I laid out to you, such as laying over. You said
2 there would be all kinds of blood, or a lot more blood,
3 on the shirt as opposed to the pants, correct?

4 A. I did say that, and I still stand by that.

5 Q. And that would be more consistent with him
6 falling forward -- or leaning forward as Diana Radke's
7 falling to the ground or at the ground?

8 A. If that shirt is involved, that certainly is a
9 possibility that I cannot exclude.

10 Q. Okay.

11 A. Understand why I'm saying that. I've not seen
12 this shirt.

13 Q. I understand.

14 THE COURT: Mr. Bevel, how long would
15 it take you and what kind of tools would you need to
16 make an examination of the shirt and render an opinion
17 in this case?

18 THE WITNESS: As to it being high
19 velocity? Only magnification with a strong light source
20 and probably no more than 30 minutes.

21 THE COURT: Can this be accomplished?

22 MS. MCVEA: No objection from the
23 State.

24 THE COURT: All right. Well, the Court
25 is being called on to find out whether a citizen is

1 guilty or not guilty of a very serious crime, one for
2 which he could spend many years in the penitentiary. I
3 would like to have all the evidence that is available in
4 making that decision. I don't know whose fault it is
5 that this shirt was not shown to Mr. Bevel, but it
6 should have been shown.

7 Mr. Bevel, I'm going to excuse you. I'll make the
8 arrangements necessary for him to have the equipment and
9 the time to check this. We'll recall him later.

10 MS. MCVEA: Okay, Your Honor. He was
11 going to be my last witness, Your Honor, so I'll go
12 ahead and --

13 THE COURT: All right. Turn him over
14 to whoever he needs, and let's get it done and get back
15 as soon as possible.

16 THE WITNESS: Yes, sir.

17 MR. STEINBECK: Your Honor, Ms. McVea,
18 I guess, is leaving to go upstairs to her office to have
19 this done, so I don't know if she's --

20 THE COURT: Well, let's take about a
21 15-minute recess.

22 (Whereupon, a recess was then
23 taken.)

24 MS. MCVEA: Judge, he's still making
25 the examination. He said it will probably take him

1 until 11:30.

2 THE COURT: Okay.

3 (Off-the-record discussion.)

4 THE COURT: Bring the Defendant in the
5 Courtroom.

6 (Whereupon, the Defendant was
7 brought into the Courtroom.)

8 THE COURT: All right. Ms. Shelton,
9 you may make your motion.

10 MS. SHELTON: Thank you, sir. And
11 with all due respect to the Court, I have to make this
12 motion. At this time, I'd like to move for a mistrial
13 based on failure to comply with our Brady Motion,
14 failure to comply with discovery, and prosecutorial
15 misconduct. Since the last recess, we've had a Bench
16 conference in which the Prosecutor has represented a
17 shirt that was delayed and proffered to her expert
18 Bevel. It was a shirt from several months precedent to
19 the death event on the night of February the 29th,
20 1996. However, it is highly unlikely that a shirt would
21 have been preserved in the house and found some three
22 months later with bloodstains on it. She did not offer
23 it into evidence as Exhibit No. 31 as the decedent's
24 shirt from a prior assault, and based on these facts and
25 others, we move for a mistrial at this time, Judge

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1 Nelms.

2 THE COURT: All right. Well, that
3 motion is overruled. I don't recall for what purpose
4 the shirt was offered, but it was just part of the
5 evidence of the case. I thought that it was the shirt
6 that the Defendant had worn. Maybe nobody else thought
7 that. I understand, from your standpoint, it was not.
8 I don't know whether -- or maybe you take the position
9 it was. I don't know, but that's something I'll have to
10 find out later. But I don't think you have the proper
11 grounds for mistrial.

12 MS. SHELTON: And I respect your
13 ruling, but I just wanted to add for the Record that
14 many -- there was a lot of blood out at that scene, and
15 since Mr. Bevel testified that there was blood on both
16 the front of you and the back of the pants, it is not
17 unlikely to believe that there could have been
18 transference to other objects out there. And a number
19 of things have been offered in by the State, the State
20 not even knowing the source or the causation for what
21 was placed on various objects. And because they don't
22 know, and they have proffered some of what they found to
23 their expert, nevertheless, I want to add this to my
24 urging for mistrial, which I know that you have denied.

25 THE COURT: Yes. And I continue to do
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1 so, but I note your exception.

2 What says the State?

3 MS. MCVEA: Your Honor, the witness is
4 still examining the shirt, and once -- he said he should
5 be done around 11:30.

6 THE COURT: All right. Well, let's --
7 are you going to rest?

8 MS. MCVEA: Well, as soon as this
9 particular issue is cleared up, yes.

10 THE COURT: I will permit you to reopen
11 when that evidence becomes available. I don't want to
12 hold up the trial.

13 MS. MCVEA: Right.

14 THE COURT: Is that the only thing you
15 intend to do?

16 MS. MCVEA: Right, Your Honor.

17 THE COURT: Are you ready to go
18 forward?

19 MS. SHELTON: Judge, I will be ready.
20 Do I understand your ruling in regard to these matters
21 to be that she cannot reopen the whole case and go back
22 to the alleged assault and bring all that in again and
23 start that?

24 THE COURT: Well, I'll permit her to
25 explain the shirt. It needs to be explained on the

1 Record, I believe, and not just at a Bench conference.

2 MS. SHELTON: But through expert
3 witnesses rather than, perhaps, people who came and left
4 the hospital a year and a half ago?

5 THE COURT: Well, I'm not going to
6 limit her on how she can prove it. She can -- maybe she
7 can't prove it. I don't know whose blood is on the
8 shirt. I think there was some evidence that it was that
9 of the deceased. I don't know whether she was wearing
10 the shirt at the time of some alleged assault. I don't
11 know how long ago that assault might have happened, if
12 there was an assault. I think it's a matter that needs
13 to be cleared up, and I'll let them make the necessary
14 prove to do that, if they can.

15 MS. SHELTON: Thank you, Your Honor.

16 THE COURT: All right. Subject to the
17 Court's ruling, does the State rest?

18 MS. MCVEA: Yes, Your Honor.

19 THE COURT: All right. What says the
20 Defense?

21 MS. SHELTON: We call our first
22 witness. The Defense calls Ms. Janie Caldwell.

23 THE COURT: This lady's been sworn?

24 MS. SHELTON: Yes, sir, she has.

25 THE COURT: Take the witness stand.

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1 MS. SHELTON: Before she begins, I
2 would like to, since they have rested, make a motion.
3 Since the State has rested, and it's now appropriate for
4 me to make a motion for a directed verdict, I'm going to
5 make that motion also, Judge.

6 THE COURT: That motion is denied.

7 JANIE CALDWELL,
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 her oath,
11 as follows:

12 DIRECT EXAMINATION

13 BY MS. SHELTON:

14 Q. Ms. Caldwell, would you state your name,
15 please, for the Record.

16 A. My name is Janie Caldwell.

17 Q. Is that J-a-n-i-e?

18 A. J-a-n-i-e.

19 Q. C-a-l-d-w-e-l-l?

20 A. That's correct.

21 Q. And how are you related to Christopher Radke?

22 A. I am his mother.

23 Q. And Ms. Caldwell, who are you married to?

24 A. Robert, or Bobby, Caldwell.

25 Q. And what is his relation to Christopher Radke?

1 A. Stepfather.

2 Q. Who is Mr. Radke's father? That's Billy
3 Radke, correct?

4 A. Yes.

5 Q. I would like to take your mind back to that
6 time period when Christopher, your son, first became
7 acquainted with Diana Morrison. Do you recall when that
8 was?

9 A. It was in -- it was probably towards the end
10 of '93 or the beginning of '94 -- I can't remember exact
11 dates -- that he told me he was seeing someone, and her
12 name was Diana.

13 Q. And if Ms. Diana Morrison Radke was deceased
14 at the end of February, 1996, then that would place
15 her -- the duration of her relationship with him -- at,
16 what, about two years, three years?

17 A. Yeah, two to three years.

18 Q. Only if you know, do you have any idea how he
19 came to meet her?

20 A. He was living with a friend and his
21 grandmother, Aunt Bee, and apparently they knew her, and
22 they met at that -- at her house or something. There
23 was a gathering.

24 Q. At a social gathering?

25 A. Right.

1 Q. Okay. Not at a place of business, but a
2 social gathering?

3 A. Right.

4 Q. Okay. And he dated this young woman?

5 A. Yes, he told me he was seeing her.

6 Q. When did he first bring her around to the
7 house, your house?

8 A. Not until after I -- he told me that he had --
9 that she was pregnant.

10 Q. And then what did he indicate after you found
11 out that he believed she was pregnant? What did he
12 indicate was going to happen next, if anything?

13 A. Well, he said he didn't know, you know, since
14 they hadn't really dated very long, what -- if they were
15 going to continue dating, or if they were going to get
16 married, or -- and I recommended not getting married
17 since they hadn't had a long relationship because
18 that's -- that's not healthy for the baby if it didn't
19 work out. And I recommended her having an abortion at
20 that time.

21 Q. And we all know now that did not happen.
22 Subsequently, what did happen?

23 A. Well, he came and told me that he wanted to do
24 the right thing and marry her, and I go, well, do you
25 know anything about this girl? And he says, a little

1 bit. And I go, well, what does she do for a living?
2 And he came and went back, and he told me that she
3 was -- he really didn't -- didn't want to tell me, and I
4 go, well, what does she do? And he says, well, she's a
5 topless dancer. And I go, I really don't approve of the
6 marriage. You know, that's trouble marrying into. I
7 was real upset at that point. That's a white trash
8 family. And I did not want them to get married.

9 Q. Now, Ms. Caldwell, prior to this time when
10 your son -- back when your son was a senior in high
11 school -- and I believe we've talked before, certainly
12 on numerous occasions -- he went to Garland High School,
13 correct?

14 A. Right.

15 Q. That he had gotten into some trouble with
16 drugs there, correct?

17 A. Right.

18 Q. Okay. He and some other students had been
19 stung, or whatever, in an undercover operation, and he
20 had, in fact, delivered, I think, LSD to an undercover
21 person, correct?

22 A. Right.

23 Q. Okay. And then right after that when he
24 finished high school, all in this time period or
25 several-month period or whatever it was, he was

1 subsequently found in possession of the drug Ecstasy.
2 You are aware of that?

3 A. Right.

4 Q. Okay. And that he was going to be placed --

5 MS. MCVEA: Your Honor, I'm going to
6 object at this time to the leading.

7 THE COURT: Sustained. Do not lead.

8 Q. (By Ms. Shelton) Okay. At that time did some
9 criminal problems develop from this episode?

10 A. Right.

11 Q. And do you know what happened at that time, at
12 that point?

13 A. At that point he was still a senior in high
14 school and --

15 Q. Did he go to prison? Did he go into a rehab?
16 What did he do?

17 A. He served some time, and then when he came
18 out, I put him in a rehab center.

19 Q. In a what?

20 A. A rehab center.

21 Q. For how long was that?

22 A. Thirty days.

23 Q. And then it was sometime after this that he
24 met Ms. Radke?

25 A. That's correct. Of course, yes.

1 Q. Had you-all had any trouble with him since
2 after that happened? I mean, did he get into anymore
3 trouble?

4 A. He was doing real well. I was hoping he would
5 go to college and get started that way.

6 Q. When he indicated that he was going to marry
7 Ms. Radke, was he working?

8 A. Yes. He had -- I'm trying to think where he
9 was working at. I mean, during that time -- I mean,
10 just through high school, I know he was working at
11 Calloway's and Wolfe Nursery. He liked working in the
12 outdoors.

13 Q. But then when he married Ms. Morrison, did he
14 come to work somewhere else, get a better job?

15 A. Yes. He went to work at a tile place.

16 Q. If you know, was he making pretty decent money
17 at that time period?

18 A. He was making more than he was before and with
19 benefits, and he was trying real hard.

20 Q. And did he move in with his wife and begin to
21 support his family?

22 A. Yes.

23 Q. And did he make it possible for her, to the
24 best of your knowledge, to not work after he married
25 her?

1 A. He tried his best, but, of course, he worked
2 real hard, and I know that there was some money
3 situations, because I would help them out. I would
4 bring them groceries and help as much as I could.

5 Q. Ms. Caldwell, you, of course, presumably, you
6 met Ms. Diana Morrison when she married your son and
7 knew her afterwards. Did you visit with them, and did
8 you get to know her?

9 A. I tried to get to know her. She -- I worked a
10 lot during this period. I was having a lot of things
11 going on at work, but I would have them over
12 occasionally. During the pregnancy, I gave them a
13 wedding shower with the -- for the -- with the family.
14 She was, you know, pretty big, so I just had family
15 there. And then I never really got close. Every time
16 they came over, I would be in the kitchen cooking and
17 whatever, and she stayed in the other room with the
18 other people.

19 Q. Did you do your best, or are you satisfied
20 that you did your best to try to make her feel
21 comfortable and a part of the family?

22 A. Yes.

23 Q. Would you characterize -- and I realize the
24 marriage didn't last but something under two years, a
25 year and a half -- but would you characterize, during

1 that time period starting at the beginning and coming
2 forward in time, characterize that relationship, that
3 marriage or relationship, between Christopher and Diana
4 for us?

5 A. Well, I kind of -- once she had the baby, I
6 saw her -- both of them a lot more. Diana needed me to
7 baby-sit a lot on weekends. I did as much as I could.

8 Q. Why did she need you to baby-sit on the
9 weekends?

10 A. Basically she wanted to go party.

11 Q. Okay.

12 A. And so I did probably once, sometimes twice a
13 month. Some months it just kind of depended on how it
14 went. And she would usually bring Zachary over. She
15 wasn't real clean. I mean, when she would come over, I
16 would go: Do you have clean clothes? Sometimes she
17 did, and sometimes she didn't. And I always kept extra
18 at the house. So we would talk about it. I would help
19 her along. You know, you need to sterilize the
20 bottles. You have to have these clean. And so I tried
21 to be a mother-type, as I know having the first baby she
22 maybe didn't know how to take care of a baby and the
23 normal mother-type part. That's how my acquaintance
24 with her was. As far as talking a lot, I mean, she'd
25 been there a little bit and then leave. Chris, a lot of

1 times, would just pick up Zachary, or both of them would
2 come over and we'd visit, and --

3 Q. Did Chris appear to love his child and his
4 wife?

5 A. Oh, yeah. He did his best, and he loved
6 Zachary.

7 Q. But then, did the marriage, was it happy, or
8 did it go sour, or what happened?

9 A. There were good times. From the beginning, I
10 think it was real good. I mean, they both worked at
11 it. And, of course, having a new baby, they both loved
12 the baby. I didn't go to their house too much, mainly
13 for like birthdays, and, you know, some holidays.

14 Q. Is there a point at which you began to hear
15 laments and complaints from these young people or one or
16 both of them that things were not going well or that you
17 began to become aware of trouble?

18 A. Diana would call me quite a bit during this
19 period of time. What happened was Chris -- I know they
20 needed more money, so we had an opening at the office,
21 and Chris applied for it, and he was hired doing career
22 work and mail room, and that way I saw more of Chris.
23 He would come -- he came to me several times.

24 Q. What is that office, what business is that?

25 A. It's a medical billing service.

1 Q. But you said mail and courier work. Did he
2 pick up or make deposits?

3 A. Yes. He did depositing, courier to the banks,
4 picked up from doctor's offices and hospitals. He had a
5 schedule and a routine that he worked. First thing in
6 the morning it was working in the mail room: Opening
7 mail, distributing mail around the office.

8 Q. Then he did courier work the rest of the day?

9 A. Right.

10 Q. Did he sometimes -- in fact, didn't he often
11 work overtime?

12 A. Yes.

13 Q. About in this time period, you said you began
14 to receive phone calls from Diana. Were these phone
15 calls of happiness, or complaints, or how would you
16 characterize them?

17 A. Well, she would call me up and she'd go:
18 Well, Chris isn't at home. Where is he at? I'd tell
19 her he doesn't work for me, that he works at the
20 office. I don't know his exact schedule and what time
21 he gets off. But apparently, you know, she was a lot of
22 times real mad that he wasn't at home.

23 Q. Did this -- was this a progressive thing, her
24 phone calls and her being mad? Did it get worse, or did
25 it get better? Did it resolve itself?

1 A. It got worse, because she would even call me
2 on weekends. She would be searching for him and looking
3 for him. And she -- sometimes she was -- she would cry,
4 and sometimes she would be okay, that she just wanted to
5 know where he was at. A lot of times he was at the
6 house visiting me. And sometimes when he left, he'd
7 say, well, I'm going to go visit Matt, which is down the
8 street, and he would tell me where he was at, and so I
9 would tell her.

10 Q. Is that Matt Phelps, his friend from, what,
11 high school or junior high?

12 A. Yes.

13 Q. So he would tell you where he was, but
14 sometimes his wife, apparently, at least, she would
15 represent to you that she couldn't find him?

16 A. Right.

17 Q. Okay. Did she ever come over to the house
18 looking him?

19 A. No.

20 Q. Did she ever have an occasion to call you-all,
21 that is, yourself and your husband or members of your
22 family, over to their place incident to any of this
23 phone calling or looking him?

24 A. No. She came to the office one time.

25 Q. Your office?

1 A. My office.

2 Q. And I presume the place where Chris was also
3 employed?

4 A. Right.

5 Q. And what happened on that occasion?

6 A. She -- I didn't see when she first walked in,
7 but I had about -- I had two supervisors come to me and
8 say: There's a problem here in the office, and Chris's
9 wife is here, and we can't get her to leave. And I go:
10 What do you mean you can't get her to leave? Well,
11 she's creating a scene and yelling.

12 MS. MCVEA: I'm going to object, Your
13 Honor, to hearsay.

14 THE COURT: Sustained.

15 MS. SHELTON: I'm sorry, Judge. The
16 door opened and I couldn't hear you.

17 THE COURT: I sustained her objection
18 about hearsay.

19 Q. (By Ms. Shelton) Okay. Ma'am, if you will
20 not say exactly what they said, but relate simply what
21 you learned from these supervisors.

22 A. Okay. This is what the supervisors told me --

23 Q. You can't say what they told you. You just
24 have to say what you learned from them, what you became
25 aware of from their approaching you.

1 A. Okay. Well, they approached me at the office,
2 and so I go, okay, you know -- so I went with them, and
3 by that time, they got her down to the lobby.

4 Q. Was she very excited when you first saw her?
5 Did she appear to be very excited or upset?

6 A. Yes.

7 Q. Okay. And was she speaking or crying out or
8 saying anything in this excitement?

9 A. When I first saw her, they were leaving the
10 lobby, and they were outside of the building, and --

11 Q. Who is they?

12 A. Chris and Diana.

13 Q. So he had come forward and was taking her out
14 of the building?

15 A. Right. Well, there were a couple of other
16 employees with them trying --

17 Q. Escorting them out?

18 A. Right, escorting them out.

19 Q. And Then what happened?

20 A. And I -- when I first walked up, Diana had
21 Chris and was pushing him by his arms and holding his
22 arms. And I said: Diana, this is not the place to make
23 a scene. This is where we work. I need you to leave.
24 And she started -- she was yelling. She goes: I want
25 to talk to Chris. He didn't come home when he was

1 supposed to come home. And I said: Diana, please leave
2 or I will have to call the police. And so at that point
3 she turned around and got in her car and squealed off
4 and almost hit a couple of other cars leaving the
5 parking lot.

6 Q. Did she have Zachary with her?

7 A. No.

8 Q. Do you know where he was?

9 A. Baby-sitter.

10 Q. If you know, basically, her excited complaint
11 was he did not come home at the time he was supposed to?

12 A. Right.

13 Q. Not that he didn't come home at all, but he
14 didn't come home at the time he was supposed to?

15 A. Right.

16 Q. Now, ma'am, you testified that your son would
17 come over to your house, and that you-all maintained a
18 friendly mother/son relation, and he would tell you his
19 doings, where he was going, and you'd see him leave the
20 house and go down the street to his friend's house?

21 MS. MCVEA: Your Honor, I object. This
22 is leading.

23 THE COURT: Sustained.

24 Q. (By Ms. Shelton) Can you say, to the best of
25 your knowledge, do you know if he was running around on

1 Diana or seeing other women, or did you ever become
2 aware of that?

3 A. No.

4 Q. To the best of your knowledge, would you
5 characterize him as unfaithful, faithful, fair to
6 midland, what?

7 A. I would characterize him as a faithful
8 husband. He did have friends that he hung around with.
9 I've never seen him with any other girls, or even around
10 the office, because our office was nothing but, I would
11 say, women that worked there. And he never was with any
12 of them.

13 Q. And you never saw him except with male
14 friends?

15 A. That's right.

16 Q. And going back earlier than this relationship
17 with Diana in his dating of girls, would he date girls
18 for just once or twice and then not ever see them again,
19 or would he date girls for a few months, or would he
20 date them for years? How was he?

21 A. He usually liked to have a steady girlfriend.
22 During senior high school, he had one, I believe, almost
23 the whole year.

24 Q. Okay. And did he date people, then, fairly
25 consistently for -- if he liked them -- for a long

1 period of time?

2 A. Yes.

3 Q. Did he express to you, or did he appear to
4 become upset with these visitations at work and the
5 phone calling and the outrages that were going on?

6 A. Yeah. He came to me several times: You know,
7 I don't know what to do. Because she would call the
8 office quite a bit looking for him. And I even told the
9 operator: If she calls, don't put the calls through, I
10 said, because we have to work here. And I, of course,
11 didn't tolerate a lot of personal calls at the office.

12 Q. Ma'am, are you saying that the calls were so
13 frequent that they were hurting his employment or that
14 they could -- they had that distinct potential to do so?

15 A. Yes, because the supervisor he reported to,
16 she told me that --

17 Q. You can't say what she told you.

18 A. Okay.

19 Q. What did she make known to you?

20 A. She made it known that he was receiving quite
21 a few personal phone calls.

22 Q. And did he indicate anything to you during --
23 or did she, during this time period -- was there
24 anything about marriage counseling or that he wanted her
25 to go to marriage counseling?

1 A. Yes. There was one incident where Chris came
2 to me, and this -- I can't remember the time or month or
3 date, but he came to me with -- showing me scratches on
4 his arms. And he said that, last night, he was real
5 upset, and he didn't know if he was able to work that
6 day, that she had tried to kill herself with a gun, and
7 Zachary was sitting on her lap. And Matt and him, I
8 think, had gone hunting that weekend, and he left his
9 stuff in their garage.

10 Q. Who left whose gun in whose garage?

11 A. I'm not for sure --

12 Q. Was it Matt's gun?

13 A. I'm not for sure which person it was.

14 Q. Ma'am, since you brought this up, let me ask
15 you a direct question at this point: Are you aware in
16 the past, or were you aware, of any kind of a gun
17 incident with Diana prior to the one that occurred on
18 the day of her death?

19 A. Yes.

20 Q. Okay. Would you relate for us what that
21 incident was?

22 A. That's where Chris came and told me at the
23 office the night before where she tried to kill herself,
24 and he did take the gun away from her that night.

25 Q. And about when was that?

1 A. Let's see, I'm trying to think. It had -- it
2 was probably about a month or two before the incident.
3 I can't remember which month it was.

4 Q. Do you know if it was a .22 rifle or a
5 shotgun?

6 A. It was a -- I don't remember which one he told
7 me. I basically was very upset. That's when he told me
8 that Mike told him that --

9 Q. Mike Morrison?

10 A. Mike Morrison told him that Diana had tried to
11 kill herself.

12 MS. MCVEA: Objection, Your Honor.
13 That's hearsay.

14 THE COURT: Sustained.

15 Q. (By Ms. Shelton) Mike Morrison was his
16 brother-in-law; is that correct?

17 A. Right.

18 Q. Okay. Did Chris apparently have some feeling
19 or understanding from some source that her suicide
20 threats were real?

21 MS. MCVEA: Your Honor, I'm going to
22 object. That calls for a hearsay response, and we
23 object.

24 THE COURT: Sustained.

25 Q. (By Ms. Shelton) Did he feel that -- did

1 Chris feel that her suicide threats were not real?

2 A. He felt -- he was really bothered by it and
3 didn't know what to do, and he felt that they were very
4 real and was concerned.

5 Q. After he checked some things out, did he come
6 to believe that those threats were, in fact, quite
7 serious?

8 MS. MCVEA: I'm going to object, again,
9 to leading.

10 THE COURT: Sustained.

11 Q. (By Ms. Shelton) Did he come to believe or
12 did he express to you feelings that indicated that, at
13 some point, he began to feel that these threats were
14 serious?

15 A. Yes.

16 Q. He did take her threats seriously?

17 A. Yes.

18 Q. Okay. And he was presumably trying to do the
19 best he could to --

20 MS. MCVEA: Objection, Your Honor.
21 That's leading.

22 THE COURT: No, that's testifying.

23 MS. MCVEA: That --

24 THE COURT: I sustain the objection.

25 MS. SHELTON: I forgot what I said.

1 THE COURT: Well, you presumed
2 something. When you presume, you testify.

3 (Whereupon, the requested
4 testimony was read back by the
5 Court Reporter.)

6 Q. (By Ms. Shelton) You mentioned that there had
7 been -- that he had talked to you about marriage
8 counseling --

9 A. Yes.

10 Q. -- for Diana. Was he trying to get this at
11 this time period?

12 A. They were having -- this is when they started
13 having problems, marital problems, and I even
14 recommended marriage counseling; and on her end, maybe
15 some type of psychiatric counseling. And he said he's
16 going -- he's talking with her about it. And they even
17 agreed together that they were going to start marriage
18 counseling. That's what he told me.

19 Q. Now, after the birth of Zachary -- and, of
20 course, you previously had testified that you met this
21 young lady after she was pregnant, so you don't know
22 what she looked like; you didn't know what she looked
23 like when she wasn't pregnant -- but after the birth of
24 Zachary, did she appear to gain a great deal of weight
25 or have more weight on her than she wanted or felt

1 comfortable with?

2 A. She gained, I could tell, quite a bit of
3 weight during the pregnancy, and she didn't lose the
4 weight after the pregnancy.

5 Q. At some point do you know, or do you have any
6 knowledge, of her going to a diet doctor or some doctor
7 to get some diet pills?

8 A. Yes. She told me -- I mean, when we met at
9 the house one time, she said she was taking diet pills,
10 and I asked her what kind, and she said -- she told me
11 the names were, I think, something like Fen-Phen; and
12 then there was another one that went with it to help her
13 sleep at night, then.

14 Q. A sleeping medication of some sort?

15 A. Right.

16 Q. Did she also mention Prozac?

17 A. Yes. And I was real concerned at that time.
18 I said: You know, you can't take that kind of stuff
19 together. I mean -- and I was real concerned about her
20 not eating. I said: You know, it's not healthy to lose
21 weight that fast. When you go off of it, you'll just
22 gain it right back. She told me she was taking Prozac
23 because she was depressed, and then taking the Fen-Phen
24 to lose weight. And I was real concerned.

25 Q. Now, you knew her after she married your son,

1 and you testified just a few minutes ago about an
2 incident where she came out to the office, the place of
3 business, and caused an excited scene out there and was
4 yelling that he hadn't come -- Chris hadn't come home at
5 the time that he was supposed to. Was she taking the
6 diet pills at this time? Do you know if she was taking
7 those?

8 A. Yes.

9 Q. She was. So this was close to the end?

10 A. Yes.

11 Q. All right. Did her personality -- the one
12 that you knew, anyway -- appear to get worse or undergo
13 some kind of stress or change when she started taking
14 these medications, or was it always like this? I don't
15 know. You knew her.

16 A. It got worse because she started calling me
17 more often. More depressed, I guess, and crying more.

18 Q. Did Diana -- and you heard about this incident
19 with the gun from Chris, that he had to take the gun
20 away from her -- did Diana ever give her side of events,
21 why they had to have a gun around, or did she ever
22 indicate to you why they had to have a gun in the house,
23 if she did?

24 A. She told me -- I didn't -- I don't like -- I
25 have guns in the house, but I don't approve of guns in

1 the house loaded or anything. Chris --

2 Q. Who said: I don't approve of guns in the
3 house?

4 A. I told them. I said: I don't approve of a
5 gun in the house.

6 Q. Well, what did she say to you about having a
7 gun in the house?

8 A. She said at the point where they lived, she
9 would like -- she wanted that gun for -- she was afraid
10 because there were some gangs around in the area and for
11 self-protection. That's what she wanted it there for.

12 Q. Gangs in the area?

13 A. Um-hum.

14 Q. And she didn't say anything to you about
15 wanting the gun to give it to her father to put in his
16 gun collection?

17 A. No.

18 Q. Or wanting the gun to have it so they would
19 have something to sell?

20 A. No.

21 Q. But wanting it because there were gangs in the
22 area?

23 MS. MCVEA: Your Honor, I'm going to
24 object. The Defense Counsel is testifying for this
25 witness. I ask that she ask questions and receive a

1 response.

2 THE COURT: Sustained.

3 Q. (By Ms. Shelton) Ms. Caldwell, you did not
4 feel comfortable with them having a gun in the house?

5 A. Right. I told them that.

6 Q. Okay.

7 A. Both of them.

8 Q. And after you found out from your son about
9 her threatening to kill herself with the gun, did you
10 feel less comfortable or more?

11 A. Oh, yes. I was -- I did not want them to have
12 a gun in the house.

13 Q. Were there any other instances, besides the
14 one in the parking lot, that stand out in your mind as
15 particularly unusual or bizarre where you may have had
16 to go to Chris and Diana's residence or intervene
17 between them in arguments or where she would call family
18 members? Do you recall anything of that sort?

19 A. There was one time she called me wanting me to
20 come over to the hospital. She said she had fallen and
21 had a couple of stitches in her mouth and wanted me to
22 come to the hospital. And I had Zachary at the time,
23 and we were just walking out the door to meet some
24 family to go out to eat, and I told her as soon as we
25 got back. She said her mother was on her way, too. I

1 said, you really don't need me. And she goes, no, not
2 really. And I said, I'll call you as soon as we get
3 home, and I'll just keep Zachary again, if that will
4 help. She goes, that would. So I called her when I got
5 home, and she said she was fine.

6 Q. And she -- did she relate to you -- she said
7 she had fallen; is that what you said?

8 A. Um-hum.

9 Q. She didn't say anything else happened?

10 A. No.

11 Q. She just wanted you to come to the hospital?

12 A. Right.

13 Q. And was there ever an occasion -- pardon me,
14 just a moment.

15 Did you ever -- you say you had Zachary with you
16 that evening. Presumably you'd either go and pick him
17 up, or somebody would bring him to you, or you'd drop
18 him off back there, right?

19 A. Yeah.

20 MS. MCVEA: Your Honor, I'm going to
21 object to Counsel continually leading and testifying.
22 We object.

23 THE COURT: I sustain the objection.

24 Q. (By Ms. Shelton) You had interactions with
25 your son and his wife?

1 A. Yes.

2 Q. Did you go to their house?

3 A. That night?

4 Q. Did you ever go to their house any time?

5 A. Yes.

6 Q. Okay. Did you ever go over there and see any
7 of these displays, like the one that was made out in the
8 parking lot?

9 A. No. Basically when we went over to their
10 house, she always had people there, her friends. It was
11 always a birthday party or something. I didn't go over
12 there too often. I did one time. It was just -- Chris
13 was at home, and he was cleaning house. It was -- it
14 looked like a tornado hit it. She wasn't a very good
15 housekeeper.

16 Q. This was Christmas -- the last Christmas
17 before she died or the one before that?

18 A. The last time I went there to their house?

19 Q. You said it was Christmastime, and he was
20 cleaning the house.

21 A. Yeah. He was cleaning it. It was before --
22 it was probably the last time I was over there.

23 Q. Okay.

24 A. Now, that was -- well, no. I'm trying to
25 think which date. I'm not for sure what the question

1 was.

2 Q. You said that you had gone over to the house,
3 and Chris was cleaning the house. It was around
4 Christmastime?

5 A. Yeah, this is before they moved. Now, I --

6 Q. Before they moved to Sunset?

7 A. Right. Now, I did go to Sunset -- the last
8 time I was at their house, I took Zachary back there.
9 That's when they were moving into the house.

10 Q. The day after you got this phone call from the
11 hospital from Diana, or wherever she was, in an
12 emergency room, and you had testified that you had
13 Zachary with you, when did you drop Zachary off at their
14 house?

15 A. The next afternoon.

16 Q. What did you see at the house when you dropped
17 him off, if anything?

18 A. Oh, there were boxes all over the place. It
19 was -- she was cleaning, unpacking type things and --

20 Q. Was there anyone there with her?

21 A. Her cousin. I think her cousin was there.

22 Q. A male or a female cousin?

23 A. Female.

24 Q. Did she introduce the cousin to you?

25 A. Yes, but I don't remember her name.

1 Q. Could the name have been Jana Hesselbacher?

2 A. Yes, that was it.

3 Q. And were they doing anything, besides cleaning
4 and unpacking boxes?

5 A. Diana was upset because Chris didn't wasn't at
6 home.

7 Q. This was in the daytime or nighttime?

8 A. This was in the daytime.

9 Q. Okay. And you both worked at the same place,
10 you and Chris, and you testified to that --

11 A. Right.

12 Q. -- and presumably he was at work?

13 A. This was on a Saturday, I think.

14 Q. Let me take you to the night or the evening of
15 February the 29th, the last day that Diana was alive.

16 Would you tell me, tell us, what happened that
17 night and what time it happened at when you first became
18 aware that something had happened?

19 A. I had -- actually, the phone rang, and my
20 daughter -- stepdaughter upstairs answered the phone.

21 Q. Who is that?

22 A. Robin.

23 Q. Robin Caldwell?

24 A. Caldwell. And she ran down the stairs, and
25 she said: Janie, Chris is on the phone --

1 Q. Was she very excited?

2 A. Yeah. Janie, Chris is on the phone. He's got
3 to talk to you. And I picked up the phone, and Chris
4 was -- I would say hysterical, because he could barely
5 talk. And he says: Mom, Diana blew off her head. I
6 can't -- I don't know what to do.

7 And he -- he -- he couldn't hardly talk. It was --
8 I couldn't -- and then, of course, I go -- he said: I
9 don't know what to do. So I go, I'm coming; I'll be
10 right there. So immediately, I -- my husband and I got
11 in the car and drove to their house.

12 Q. And when you got there, what did you see, if
13 anything?

14 A. When we first drove up, of course, I got out
15 immediately, and the police were putting the crime scene
16 tape up. And Chris was standing there outside of the
17 police car handcuffed, and so I went up to him
18 immediately --

19 Q. He was outside the police car?

20 A. Yes.

21 Q. Okay.

22 A. -- to give him a hug because he was so upset.
23 He was crying, and he -- he couldn't -- he couldn't even
24 talk.

25 Q. Was he shouting and screaming and yelling, or

1 was he crying?

2 A. Crying. And he said: Oh, my God. I can't --
3 I don't know what's going on. And he -- he was -- he
4 was more, I guess, out of it, hysterical-type.

5 Q. Okay.

6 A. And, of course, I tried to give him some
7 support, and then the police told us we had to leave,
8 and we couldn't get near him, and that we had to stand
9 across the street.

10 Q. Who told you this, if you know?

11 A. The Garland Police.

12 Q. They told you that you could not get near him?

13 A. Right.

14 Q. Okay. And did you try to say anything else to
15 Chris, or did you try to continue to converse with him
16 or --

17 A. Yes. At that point -- actually, at that
18 point, I talked to the police, and I go: Well, what's
19 going on? And they said --

20 Q. Not what they said, but what they made you
21 aware of.

22 A. Okay. They told -- or the police told me
23 that --

24 Q. They didn't tell you -- you can't say what
25 they told you.

1 A. Oh, okay.

2 Q. Say what you learned from the police, what
3 they -- what did you learn, if anything, when you asked
4 the police what's going on?

5 MS. MCVEA: Your Honor, I'm going to
6 object. This is hearsay.

7 A. Nothing.

8 THE COURT: Sustained.

9 A. The police --

10 THE COURT: Sustained, ma'am. You may
11 not answer the question.

12 A. Oh, okay.

13 Q. (By Ms. Shelton) Ms. Caldwell, did you find
14 out anything? You were urged to get away from him, or
15 pushed away, or were you?

16 A. Yes. Well, I was pushed away, and my husband
17 was, too.

18 Q. Okay. Did you do anything -- next, what did
19 you do? What did you do then?

20 A. We called my sister, which is an attorney,
21 and --

22 Q. What is her name?

23 A. Helen Bright.

24 Q. Okay.

25 A. And her husband is also an attorney.

1 Q. What is his name?

2 A. Lou Bright.

3 Q. Lou Bright?

4 A. Right.

5 Q. And where did the Bright's live?

6 A. In Austin.

7 Q. You called your attorney sister in Austin,
8 Texas?

9 A. Yes.

10 Q. And what happened? What physically did you do
11 then? How did you call her, on a cell phone or what?

12 A. We had a cell phone.

13 Q. What did you physically do next? I presume
14 you were excited at this time period.

15 A. Yes. We called her and asked her, you, know
16 what do we do? I mean, they won't allow us to get near
17 Chris. And they go: Well --

18 Q. Without saying what your sister told you, what
19 did you do next?

20 A. We took the phone over to the car and said:
21 We have an attorney on the phone that needs to talk to
22 Chris. And --

23 Q. Would the police let him talk to the attorney?

24 A. They told -- they told us -- I was in the
25 car -- my husband walked across the street -- with the

1 windows down. I -- he walked over there, and they
2 both -- they basically told him to --

3 MS. MCVEA: Your Honor, I'm going to
4 object to hearsay.

5 THE WITNESS: Okay.

6 THE COURT: Sustained.

7 MS. SHELTON: Well, it's an admission
8 by a party opponent who offered to show the effect on
9 the listener, and I think it would come in that way.

10 THE COURT: The question is what that
11 you wish to ask?

12 MS. SHELTON: What did the police tell
13 you when you tried to proffer the telephone with the
14 attorney on it, Helen Bright?

15 THE COURT: I'll permit her to say.

16 A. He was told to leave or he will be arrested.

17 Q. (By Ms. Shelton) And is that your husband who
18 was told to leave or he would be arrested?

19 A. Yes.

20 Q. All right. Did you hear, then, in this
21 excitement, either from your son, or the police, or
22 anyone, could you hear anyone say anything out or next?
23 Did they --

24 A. At that point --

25 Q. -- do any act?

1 A. At that point, my husband said: Chris --

2 MS. MCVEA: I'm going to object, Your
3 Honor. That's certainly hearsay.

4 THE WITNESS: I heard it.

5 THE COURT: Overruled.

6 Q. (By Ms. Shelton) What did your husband say?

7 A. My husband said: Chris, the attorney on the
8 phone said don't say a word and ask for your lawyer.

9 Q. This was before he was driven off from the
10 scene?

11 A. Right.

12 Q. Okay. And then presumably he was driven off
13 from the scene, correct?

14 A. They sat there for a while. They put him
15 inside the car, and we were all sitting there for like a
16 half an hour.

17 Q. Now, at the scene, besides the police, did you
18 see Diana Morrison's family arrive?

19 A. Yes.

20 Q. And who all did you see of her family whom you
21 recognized?

22 A. Her mother, Sherri; her stepfather, and Mike.

23 Q. Mike Morrison?

24 A. Mike Morrison, correct.

25 Q. All right. And how did -- without going into

1 what he said, how did Mike Morrison appear? Was he
2 upset, or was he resigned, or was he calm? How was he?

3 A. They were all calm. I had Zachary at the
4 time.

5 Q. With you?

6 A. With me in the car because it was cold that
7 night.

8 Q. Did they -- did it appear to you -- you said
9 they appeared to be calm. Did they appear to be
10 resigned to her apparent suicide?

11 MS. MCVEA: Your Honor, I'm going to
12 object. That calls for speculation.

13 THE COURT: Sustained.

14 Q. (By Ms. Shelton) Did they express any
15 excitement at the scene?

16 A. No.

17 Q. Okay. Did they seem to be shocked by what had
18 happened?

19 A. Her mother was -- she said that she had high
20 blood pressure.

21 MS. MCVEA: I'm going to object, Your
22 Honor, to hearsay.

23 Q. (By Ms. Shelton) You can't say what anybody
24 says.

25 A. Okay.

1 THE COURT: Sustained.

2 Q. (By Ms. Shelton) Did she appear -- did they
3 appear -- did her mother appear to be excited at the
4 scene?

5 A. No. She was just -- she was crying.

6 Q. Did her brother appear to be excited, Mike
7 Morrison?

8 A. No. He would walk up and down the sidewalk.

9 Q. Did they go into the house?

10 A. No one was allowed to go near the house.

11 Q. Okay. Did you think you had -- that you --
12 did you believe, on that evening when you were out there
13 and you met up with the Morrison family, that you and
14 they had an understanding as to what had happened?

15 A. We didn't talk in detail about what happened.
16 We gave each other hugs, and, you know, basically said,
17 I'm really sorry. What's going on here? This is a
18 tragedy and --

19 Q. Did they agree with you or disagree with you?

20 A. They agreed with me.

21 Q. So they were, apparently, not under the
22 impression that Christopher had murdered his wife that
23 evening?

24 MS. MCVEA: Your Honor, I'm going to
25 object at this time. First of all, it's leading, and

PERI K. STROMBERG, CSR

1 Counsel is testifying again.

2 THE COURT: Sustained.

3 What family thought about whether it was murder or
4 suicide is actually not very relevant to the decision
5 that I have to make.

6 Q. (By Ms. Shelton) But they were not -- did not
7 appear surprised at what had happened?

8 A. No.

9 Q. Just sad?

10 A. Yes.

11 Q. Did they stay long at the scene, or did you
12 leave with Zachary first, or did they leave first, or
13 who left?

14 A. We left first. Well, she was upset, and she
15 needed comforting, and she asked --

16 Q. Who is "she"?

17 A. Sherri, Diana's mother.

18 Q. Sherri Parker?

19 A. Parker. -- asked me if I -- since I'm working
20 and she's not working, and she needs the comfort, can
21 she take Zachary with her that night. And I told her,
22 yes, and I'll call her tomorrow. I called her the next
23 day, and she said: Zachary is doing fine. I have
24 family coming into town. Can I keep him longer? And I
25 said, well, you know, I would like to spend time, too,

1 but, you know -- and I felt -- I know the pain. I'm
2 sure I don't know the pain, but I can imagine the pain
3 she was going through losing a daughter.

4 Q. And you-all were talking back and forth on the
5 phone. Not going into what you said, but apparently,
6 everyone, although you didn't know them well, everyone
7 was getting along pretty well at this time period?

8 A. Right.

9 Q. And then I presume there was a funeral --

10 A. Yes.

11 Q. -- a funeral ceremony?

12 A. Yes.

13 Q. And the Morrison's attended?

14 A. Yes.

15 Q. And you attended?

16 A. Yes.

17 Q. And did Chris attend?

18 A. No.

19 Q. Why not?

20 A. He was in jail.

21 Q. Were they excited at the funeral, or sad,

22 or --

23 A. They were sad.

24 Q. Did they make any excited utterances or
25 accusations or anything?

1 A. No.

2 Q. Ms. Caldwell, you know your son as well as
3 anyone in the world, is that true? I mean, your his
4 mother.

5 A. Yes.

6 Q. Would you characterize for us, prior to the
7 marriage to Diana as a young man, an adolescent, and
8 then after his marriage to her, was he an emotional guy,
9 the kind of guy that blows his top easily or gets --

10 A. During the years of raising him, I didn't have
11 any problems with him at school. He was always -- he
12 passed.

13 Q. Was there fighting at school?

14 A. No, there was no fighting.

15 Q. Was there physicality or physical acting out?

16 A. No. He always got along very well. All the
17 teachers always loved him.

18 Q. Now, as a young man, and I realize he's not
19 very old today, but I'm talking to -- about 19, 20, on
20 up to when he married Diana, which was about at 22 or
21 23, was he -- would you characterize him as calm, as
22 excitable, as -- what was his personality?

23 A. His personality still was good. He tried real
24 hard. I would say he --

25 Q. Well, ma'am, let me ask you this: Did it take

1 very little to excite him, or did it take a lot to
2 excite him?

3 A. It took quite a bit.

4 Q. And some of these altercations with Diana,
5 like the parking lot incident at the work, and other
6 incidents when she would call you on the telephone, did
7 Chris become enraged or start screaming at her when she
8 had precipitated these incidents, or how did he behave?

9 A. At the office when she finally left, he came
10 to me and he said: Thank you, Mom, for --

11 Q. Not what he said. How did he behave?

12 A. He was calm.

13 Q. Was he angry; was he confrontational with her?

14 A. He did not say anything to her. He just said,
15 Diana, please leave. You're embarrassing me.

16 Q. Would you characterize his personality, then,
17 as excitable or not excitable?

18 A. He was more --

19 Q. Not how he acted on that occasion, but
20 totally, just his personality as a young man. Was he an
21 excitable person, was he a non-excitable --

22 A. He got excited. He had a good attitude.

23 Q. He got excited about what?

24 A. More happy-type excitable.

25 Q. But, I mean, was he easily roused to anger?

1 A. Oh, no. I didn't have a problem with anger
2 with him.

3 Q. In fact, when she was striking him out there,
4 shoving and pushing him, did he do anything back at all
5 or just exit the building with her?

6 A. He didn't do anything. His hands were at his
7 side.

8 Q. Did you ever see him strike Diana?

9 A. No.

10 Q. Did you ever know of him striking any other
11 woman?

12 A. No.

13 Q. Did you -- when he was a young boy growing up,
14 did you have interaction with him and tell him about
15 striking women or having talks with him?

16 A. Oh, yes.

17 Q. And what were those?

18 A. Oh, growing up, of course, you know, I tried
19 to develop a good, moral structure for my children. We
20 went to church. At an early age, he went to CCD
21 classes.

22 Q. What is that?

23 A. Catholic classes for church.

24 Q. So he went to religious training?

25 A. Yes.

1 Q. Was he, to the best of your knowledge,
2 respectful of women?

3 A. Yes.

4 Q. And when he made a young woman pregnant, even
5 though she was several years older than he --

6 MS. MCVEA: Your Honor, I'm going to
7 object, again, that Counsel is testifying for the
8 witness.

9 THE COURT: Sustained.

10 Q. (By Ms. Shelton) And when he got older and
11 married a woman, it was because she was pregnant, you
12 related to us?

13 A. Yes.

14 Q. And he wanted to do the right thing?

15 A. Right.

16 MS. SHELTON: Pass the witness.

17 THE COURT: It's almost 12:00. Let's
18 go ahead and break for lunch and come back at 1:30.

19 (Whereupon, the lunch recess was
20 then taken.)

21 MS. SHELTON: Might we allow them to
22 remain in the Courtroom, because they're going to be --
23 we hope testifying this afternoon, and we can get them
24 in and out of here.

25 THE COURT: Yes. Let's inform the
PERI K. STROMBERG, CSR

1 Prosecutor of it.

2 MS. SHELTON: Might Mr. Parker get some
3 things from evidence to examine, to do an examination of
4 his own? It might save us some time, if that would be
5 okay.

6 THE COURT: Well, what evidence would
7 you want him to look at.

8 MS. SHELTON: He would like to see the
9 diagrams of the -- of the things that Ranger Shing
10 prepared and also that Mr. Tom Bevel prepared, like the
11 diagrams and the photographs of their -- that relate to
12 the professional --

13 THE COURT: Mr. Parker is a
14 polygraph --

15 MS. SHELTON: No. He is -- was a
16 homicide detective, and he runs an enterprise of his own
17 now.

18 THE COURT: Oh, I see. Yeah. Well,
19 you --

20 MS. SHELTON: He contracts out to
21 various police departments, and he did the --

22 THE COURT: Yes. He may view the
23 evidence, then.

24 MS. SHELTON: May he view the
25 evidence, then?

1 THE COURT: Yes.

2 MS. SHELTON: I don't think you-all
3 know each other. If I could introduce Mr. Parker.

4 THE COURT: How are you?

5 MS. SHELTON: You know Judge John
6 Nelms.

7 THE COURT: Nice to meet you.

8 Let's do it as quickly as possible, please.

9 (Whereupon, there was a brief
10 pause in the proceedings.)

11 THE COURT: Let's proceed.

12 MS. SHELTON: I had passed the
13 witness, Judge Nelms, when we broke.

14 THE COURT: Very well.

15 MS. SHELTON: If the State would like
16 to reserve her cross-examination later, we could get
17 right on with our expert right now.

18 MS. MCVEA: I won't take very long,
19 Your Honor.

20 THE COURT: Very well.

21 CROSS-EXAMINATION

22 BY MS. MCVEA:

23 Q. Ma'am, I just have a few questions for you.
24 What is your age, ma'am?

25 A. Forty-four.

1 Q. And what's your date of birth?

2 A. 6/1/53.

3 Q. And what company do you work for?

4 A. Medaphis, M-e-d-a-p-h-i-s.

5 Q. What type of company is that?

6 A. A medical billing company.

7 Q. Is that your company?

8 A. No.

9 Q. And what is your position there?

10 A. I'm -- right now, I'm director of operation
11 support.

12 Q. Do you have any type of medical training? Are
13 you a nurse or a physician?

14 A. No.

15 Q. You didn't want your son to marry Diana Radke;
16 is that right?

17 A. That's correct.

18 Q. Is that because she came from a "white trash"
19 family?

20 A. No. They --

21 Q. That was your words, wasn't it, ma'am, when
22 you testified --

23 A. That was one of them.

24 Q. -- on Direct, correct?

25 A. Part of it.

1 Q. Well, that's what you said, isn't it?

2 A. Part of that is true. That was not all of the
3 reason.

4 Q. Okay. That was your characterization, that
5 she came from a white trash family, was it not?

6 A. With her history that I was told.

7 Q. No. What I'm asking you: Was that your
8 characterization, that she came from a white trash
9 family; is that true?

10 A. After I heard she was a topless dancer.

11 Q. So did you know her family?

12 A. No, I didn't know them at that point.

13 Q. So you based, basically, on part -- in part
14 because she was a topless dancer?

15 A. Right.

16 Q. Okay. And your son wants to marry a topless
17 dancer, so what does that say about him?

18 A. He was doing the right thing, because I raised
19 him with good morals.

20 Q. And that was the right thing, to marry a
21 topless dancer?

22 A. I'm not saying it was the right thing. For
23 him, it was his decision and not one that I approved of.

24 Q. Okay. So you admit that you did raise your
25 son the right way, taught him right from wrong?

1 A. I tried the best I could.

2 Q. But he got arrested for selling drugs, and
3 he's been to prison, correct?

4 A. Yes.

5 Q. Now, you say your son gets Diana pregnant,
6 and, in your words, he does the right thing, he marries
7 her; is that right?

8 A. I didn't say he does the right thing. That
9 was his decision.

10 Q. Okay. So he marries her.

11 A. Yes.

12 Q. And who was Christopher's -- your son, who is
13 his biological father?

14 A. As far as I knew, it was Ron Gardner.

15 Q. Ron who?

16 A. Ron Gardner. There were never any blood tests
17 or anything, so I couldn't say for sure.

18 Q. Okay. So when was it that you married Billy
19 Radke?

20 MS. SHELTON: Excuse me. Objection,
21 Your Honor, as to when she married her first husband. I
22 just don't understand.

23 THE COURT: Sustained. What is the
24 relevancy, really, of all this testimony?

25 MS. MCVEA: Okay. Your Honor, I'll

1 move on.

2 Q. (By Ms. McVea) Now, you said that, under
3 Direct, that you wanted Diana to have an abortion --

4 A. Yes.

5 Q. -- is that right?

6 A. Yes.

7 Q. Okay. And we're talking about your grandson,
8 Zachary, here?

9 A. Well, this was before him.

10 Q. Right. I understand that, but that's what
11 we're talking about here; is that true?

12 A. Well, with her in the type of business she was
13 in and Chris not making a lot of money, how are they
14 going to raise a baby?

15 Q. So you thought that the best thing to do is
16 for her to have an abortion?

17 A. That's right.

18 Q. Now, you said that there was an incident at
19 work where Diana was looking for Chris, and she causes a
20 disturbance; is that right?

21 A. Yes.

22 Q. Do you remember when that happened?

23 A. I don't know the exact date. I'd have to go
24 back in the file, because it was documented in the
25 files.

1 Q. Do you know how that happened -- how long had
2 that occurred before Diana's death?

3 A. I would say probably two months.

4 Q. Now, you say that she came up to the job
5 looking for Chris; is that right?

6 A. Yes.

7 Q. And he wasn't around a lot, was he?

8 A. No, not -- he was.

9 MS. SHELTON: Objection, Your Honor.
10 That's a very nebulous question: He wasn't around a
11 lot. Around where? At work? I don't understand.

12 THE COURT: I sustain the objection.

13 Q. (By Ms. McVea) Okay. Well, as a matter of
14 fact, your son didn't stay at home too much. He liked
15 to hangout with his friends; isn't that true?

16 A. I don't know that.

17 Q. Okay. Well, wouldn't it get you upset if you
18 were at home with a baby and your husband wasn't around?

19 A. I can't answer that. I don't know.

20 Q. Well, I'm just asking in your opinion.
21 Wouldn't that make you upset if you were at home with a
22 baby and your husband was always gone or disappeared and
23 never would come home or came home at different times?

24 A. It kind of depends upon the circumstances,
25 whether he was working or --

1 Q. Well, let's say you don't know where he is.
2 Would that cause you some concern, get you upset?

3 A. It might. I don't know how I would react.

4 Q. But because of Diana's reaction, you feel that
5 she's just out of her mind?

6 A. For one incident, I really think she was.

7 Q. Okay. You said that she was always calling
8 you. Why was she always calling you?

9 A. Because a lot of times Chris was at my house.

10 Q. Okay. So she was calling you looking for
11 Chris?

12 A. Right.

13 Q. Looking for her husband, the father of her
14 child, correct?

15 A. I suppose so, yes.

16 Q. Now, you said that -- directing your attention
17 to February 29th of 1996, and after you got the phone
18 call from Chris -- you said that -- what was his words
19 again? She blew her head off; is that what he told you?

20 A. Something like that.

21 Q. He didn't use any profanity when he said that
22 to you?

23 A. No.

24 Q. You don't recall that?

25 A. No.

1 Q. How soon was it -- well, how long did it take
2 you to get to 1001 Sunset?

3 A. From where we lived and they lived, it was
4 probably 15 to 20 minutes, something like that.

5 Q. Okay. So when you arrived there, the police
6 were already there and paramedics and all those
7 individuals, correct?

8 A. Yes.

9 Q. Now, your son didn't ask you to call an
10 attorney, you just took it upon yourself to do so; is
11 that right?

12 A. He was appointed a court-appointed attorney.

13 Q. No. What I'm asking you is -- I'm talking
14 about February the 29th of 1996 -- your son didn't ask
15 you: Hey, mom call me an attorney. He didn't say that,
16 you just did it on your own; is that right?

17 A. I was refused to talk to him, so, yes, I did
18 it on my own.

19 Q. No. Well, what I'm asking you is: Did he
20 tell you to call an attorney?

21 A. Did he tell me?

22 Q. Yes, ma'am.

23 A. No, he didn't.

24 Q. You just did that on your own; is that right?

25 A. Yes.

1 Q. Now, you said that you were aware that Diana
2 took Prozac and the Fen-Phen pills, the diet pills --

3 A. Yes.

4 Q. -- correct?

5 You said, in your opinion, you felt that those
6 drugs shouldn't be mixed --

7 A. That's right.

8 Q. -- is that right?

9 A. Yes.

10 Q. Okay. You were aware she was under a doctor's
11 care, weren't you?

12 A. She told me two different doctors gave her
13 those two different pills.

14 Q. Okay. But she was under a doctor's care,
15 correct?

16 A. I suppose she was.

17 Q. As far as your understanding?

18 A. Right.

19 Q. Now, you said that your son mentioned an
20 incident involving a gun and Diana. When was that?
21 When did he tell you about that?

22 A. This was before, probably about -- it's hard,
23 as far as time frame. I would say maybe a month before
24 the incident of the time she came up to the office.

25 Q. Okay. So we're talking about, what, three

1 months prior to her death, approximately?

2 A. Yeah.

3 Q. Did that incident involve the shotgun?

4 A. No.

5 Q. And you said that you heard that, and you were
6 really concerned. Did you do anything about it?

7 A. I basically said: You shouldn't have any guns
8 in the house. I said that she needs to see a doctor. I
9 basically -- and I also told Chris that he needs to
10 leave her because she's very unstable.

11 Q. Okay. Did you do anything with regard to,
12 since she's so unstable and she's taking care of your
13 grandson, did you do anything about that?

14 A. There's nothing I could do.

15 Q. Did you advise your son: Hey, you need to
16 leave her and take your son?

17 A. Yes.

18 Q. But he didn't do that, did he?

19 A. He said he cared for her and was wanting to
20 help her.

21 Q. Now, you know your son's in a lot of trouble
22 right now, correct?

23 A. Yes.

24 Q. And you love your son and you want the best
25 for him?

1 A. I always have.

2 Q. Okay. And you're willing to sit here and
3 bad-mouth Diana if that's going to help his situation.

4 MS. SHELTON: Objection, Your Honor,
5 characterizing her as bad-mouthing someone. Her
6 testimony.

7 THE COURT: Sustained.

8 MS. MCVEA: That's all we have, Your
9 Honor.

10 THE COURT: Any further questions?

11 MS. SHELTON: No further questions.

12 THE COURT: All right. Ma'am, you may
13 step down.

14 MS. SHELTON: We have one other witness
15 who has flown up here from Austin that will be on the
16 stand in three minutes. She's got to go back tonight.
17 If I could call her. Her name is Helen Bright.

18 (Whereupon, there was a brief
19 recess in the proceedings.)

20 MS. SHELTON: We are calling Helen
21 Bright. I don't recall if she's previously been sworn.

22 THE WITNESS: I have not been sworn in.

23 THE COURT: Please raise your right
24 hand.

25 (Witness sworn.)

1 THE WITNESS: Yes, I do.

2 THE COURT: Thank you. You may take
3 the witness stand.

4 HELEN BRIGHT,
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 her oath,
8 as follows:

9 DIRECT EXAMINATION

10 BY MS. SHELTON:

11 Q. It is Mrs. Bright, correct?

12 A. That's correct.

13 Q. And Mrs. Bright, what is your profession or
14 occupation?

15 A. I'm an attorney with the office of general
16 counsel for the University of Texas system.

17 Q. Where do you practice for them?

18 A. In Austin, Texas.

19 Q. And how are you related to Christopher Radke?

20 A. Chris is my nephew.

21 Q. I would like to take you back to -- and I
22 might ask: Where did you practice or where were you
23 employed before you worked for the University of Texas
24 at Austin?

25 A. I was with the office of the Attorney General

1 for the State of Texas for three years.

2 Q. On or about the night of the 29th of February,
3 1996, did you receive a telephone call from Dallas?

4 A. Yes, ma'am.

5 Q. In that telephone call, was it made known to
6 you, or did you believe in your capacity as an attorney,
7 that you were being asked to render some legal advice?

8 A. Yes, ma'am.

9 Q. And what was that advice in relation to?

10 A. It was in relation to an incident that
11 occurred in Dallas. Evidently, there was a death that
12 was involved. My husband is also a lawyer and had
13 practiced criminal law several years. We were under the
14 impression, after talking with the individuals on the
15 telephone, that Christopher might be questioned
16 concerning this incident, and we attempted to talk to
17 him and to advise him at that time.

18 Q. Were you aware, or did you know, of what was
19 on the other end of that telephone line, what scene that
20 was at?

21 A. Yes. It was -- Bob Caldwell and Janie
22 Caldwell, who is my sister, had a cell telephone at the
23 residence. Evidently --

24 Q. At the crime scene.

25 A. At the --

1 Q. Alleged crime scene.

2 A. At the accident scene. And evidently, Chris
3 was being questioned by the police officers at that
4 time. And that was the information that we received.

5 Q. And again, what advice did you attempt to
6 render to Christopher?

7 A. We attempted to talk to him. Several times we
8 communicated: Bob, would you please take the telephone
9 to Chris. Would you tell him and the officers that his
10 lawyers would like to talk to him.

11 Not once were we able to get to Chris.

12 Q. How long did this go on?

13 A. I would say it would be no more than ten
14 minutes.

15 Q. Were you aware at any time -- and only if you
16 were aware in this talking on the cellular phone to
17 Dallas, Texas -- if Mr. Radke was, in fact, indicating
18 to people that he wanted to talk to an attorney, either
19 to his parents or whoever was standing by the car
20 window?

21 A. I could only overhear what Bob Caldwell had to
22 say when he would -- was talking to the officers
23 saying: This is the telephone. I'm trying to get to
24 Chris. And that's the only thing that I was able to
25 hear on the line.

1 Q. And you attempted to render, through the
2 intermediary of the cell phone and through the
3 brother-in-law and the police car window, advice to
4 Christopher Radke --

5 MS. MCVEA: Your Honor, I'm going to
6 object at this time. It's leading, and also Defense
7 Counsel is testifying.

8 MS. SHELTON: That's all I have from
9 this witness.

10 CROSS-EXAMINATION

11 BY MS. MCVEA:

12 Q. Ma'am, who was it that contacted you over the
13 telephone?

14 A. I picked up the line; it was Bob Caldwell.

15 Q. So you didn't talk to Christopher Radke; is
16 that right?

17 A. No, ma'am, they would not allow that.

18 Q. Well, but you didn't talk to him; is that
19 correct?

20 A. That is correct.

21 Q. So Christopher Radke wasn't the one that
22 picked up the phone and contacted you, it was --

23 A. That's correct.

24 Q. -- Bob Caldwell?

25 A. That's correct.

1 MS. MCVEA: That's all we have, Your
2 Honor.

3 THE COURT: Any further questions?

4 MS. SHELTON: No further questions.

5 THE COURT: Ma'am, you may be excused.

6 THE WITNESS: Thank you.

7 MS. SHELTON: May she remain in the
8 Courtroom. She has nothing else to say.

9 THE COURT: Any objection?

10 MS. MCVEA: Your Honor, yes, we do
11 object, because she is a family member. She may relay
12 some information that might be critical to other family
13 members, and we ask that she remain outside.

14 THE COURT: Very well. The Rule is
15 invoked. Ma'am, you may not be in the Courtroom.

16 MS. SHELTON: If I might have just a
17 moment, Judge Nelms.

18 MR. STEINBECK: I'll call a character
19 witness, Your Honor. I can knock it out real fast, if
20 that's all right.

21 THE COURT: Miss, have you been sworn?

22 THE WITNESS: Yes, sir.

23 TONYA JOHNSTON,
24 the witness hereinbefore named, being first duly
25 cautioned and sworn to testify the truth, the whole

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1 truth, and nothing but the truth, testified on her oath,
2 as follows:

3 DIRECT EXAMINATION

4 BY MR. STEINBECK:

5 Q. Please state your full name and address for
6 the Record.

7 A. Tonya Raye Johnston, 2616 Newcastle Drive,
8 Carrollton, Texas 75007.

9 Q. Tonya, what is your current occupation?

10 A. Currently, I am technical support for ICL,
11 International Computer Limited.

12 Q. And tell us how you know Chris Radke.

13 A. I had met him with an ex-boyfriend of mine a
14 few years ago. He's a friend of mine.

15 Q. All right. And you got to know him better
16 over the years?

17 A. Yes.

18 Q. And you feel like you know him fairly well?

19 A. Yes, sir, I do.

20 Q. And did you ever come to know his wife, Diana
21 Radke?

22 A. Yes.

23 Q. How did you get to know her, what
24 interaction?

25 A. Every time I had gone over there, she was

1 always present.

2 Q. How often did you go visit them?

3 A. Occasionally.

4 Q. Did you see more of Chris before or after he
5 was married?

6 A. After. I never knew him prior to.

7 Q. Okay. And what -- can you describe to the
8 Judge what kind of episodes occurred there?

9 A. Well --

10 Q. Or any other place where you saw him and
11 Diana?

12 A. There were many times where she would blow up
13 at Chris for almost no reason. She would throw temper
14 tantrums. There were many times where I'd seen her
15 shove him into the wall, get angry over nothing,
16 really. Just very emotional.

17 Q. What kind of shoving? Can you describe that
18 better to the Judge?

19 A. Yeah. There was a time -- it was the first
20 day I had met Chris, and the party we were at, I mean,
21 everything was going fine for a while, but she got upset
22 over something -- I don't recall what that was -- but
23 she had stormed into the bedroom and slammed the door
24 shut. And then afterwards when Chris went to go and see
25 what was wrong with her, she had shoved him out of the

1 room and shoved him into the wall, I mean, with
2 everything she had. And then she went and ran out of
3 the door, ran out the front of you door.

4 Q. What was the reason she was mad, do you know?

5 A. I honestly don't know. I sat there stunned.
6 I mean, this was the first time I had seen her.

7 Q. What were other people's reactions there that
8 night?

9 A. Her friends that were with her had ran out the
10 door with her. As for Chris, I mean, he went out to see
11 what was wrong, to see if he could calm her down. But
12 honestly, we were pretty shocked, didn't know what to
13 do.

14 Q. How was Chris reacting to her violent
15 episodes?

16 A. He would normally not make excuses for her,
17 but he would react very passively. I mean, he would
18 always go to calm her down. But, I mean, he never
19 treated her bad or anything. He always made sure she
20 was okay but usually said she was in one of her moods,
21 and that was really it.

22 Q. Did you ever have occasion to see her brother
23 there, Michael Morrison?

24 A. No.

25 Q. Did you ever have an occasion to witness her

1 taking any kind of drugs, illegal drugs or prescription
2 drugs, anything of that nature?

3 A. Yes, sir.

4 Q. What did you observe?

5 A. She had smoked pot with me. I'd seen her take
6 her prescription medication. There were times where she
7 had been on Ecstasy, on rohypnols, and she always had a
8 wine cooler or something in her hand every time I was
9 there.

10 Q. I understand you're a former drug abuser
11 yourself?

12 A. Yes, sir.

13 Q. Were you using drugs during that time?

14 A. Yes, sir, I was.

15 Q. When had you stopped using drugs?

16 A. A little over a year ago.

17 Q. And what did you notice with Diana's behavior
18 when she was taking those kind of drugs?

19 A. She appeared very hyper, very angry most of
20 the time. Violent, almost. I mean, just very wound up.

21 Q. Did you find her to be predictable at all?

22 A. Not that I'm aware of.

23 Q. What about -- did you have any impression as
24 to her happiness or state of depression or anything like
25 that?

1 A. She didn't seem very happy any of the times I
2 was there. She seemed fairly depressed, but that's only
3 because I saw a bit of myself in her.

4 Q. I understand you've taken those same kind of
5 drugs as she has and same combinations.

6 A. Yes, sir.

7 Q. Could you please describe to the Judge what
8 that does to you psychologically?

9 MS. MCVEA: Your Honor, I'm going to
10 object at this time. These are two different
11 individuals, and I don't believe she's qualified to
12 testify how drugs affected Ms. Radke.

13 THE COURT: Sustained.

14 Q. (By Mr. Steinbeck) What -- how did Chris act
15 around her or the other people in the house when they
16 had the parties and she acted this way?

17 A. He would normally not make a very big deal
18 about it. He just said she was going through, you know,
19 one of her moods or whatever, and that was it.

20 Q. Do you have any impressions as to whether
21 Chris cared about her and loved her?

22 A. I know he did.

23 Q. How do you know that?

24 A. He had told me. He had always loved her. He
25 would always try, you know, to put arms around her and

1 be there for her.

2 Q. So despite her problems, he still was there by
3 her side?

4 A. Yes.

5 Q. Was there any other episodes you can recall
6 that you can tell the Judge, Ms. Johnston?

7 A. There was one other time. We, my ex-boyfriend
8 and I, had stopped by impromptu before Diana had come
9 home from work, and we were just all hanging out and
10 watching television for a while, and then we were about
11 to leave and Diana had come home, and she was incredibly
12 upset that there were people over, and she ran in
13 through the front of you door. I'm not sure exactly how
14 much time had passed, but we had decided to leave, and
15 she had stormed out of the door, slammed the door, of
16 course, shouted some obscenities towards Chris, got into
17 her car, and sped off. And there's almost a bump, like
18 a very sharp bump, in the parking lot where he lived,
19 and she had -- didn't even slow down, nothing. She just
20 took off and spun her tires and left.

21 Q. In your opinion, is Chris a peaceful person?

22 A. Yes.

23 Q. If someone else said that he had been violent
24 before, would you believe that?

25 A. No.

1 Q. And do you have an opinion as to how Chris was
2 with regard to faithfulness towards her?

3 A. One hundred percent, as far as I know.

4 Q. He wasn't looking or interested in other
5 women, from what you observed?

6 A. No, he was not.

7 MR. STEINBECK: Thank you. Pass the
8 witness.

9 CROSS-EXAMINATION

10 BY MS. SCHWAN:

11 Q. Ms. Johnston, how long have you been abusing
12 drugs?

13 A. Probably about two years.

14 Q. From when to when?

15 A. I honestly don't recall, but I know I have
16 been clean for a little over a year now.

17 Q. So you're saying you've been clear for a year
18 now, and Diana Radke has been dead a year; is that
19 correct?

20 A. That's correct.

21 Q. So a lot of the time you're telling us, this
22 is during the time you were abusing drugs, isn't it?

23 A. Yes, ma'am.

24 Q. And you're here today to tell us about how
25 Diana Radke acted, when you just admitted that you were

1 abusing drugs, and, in fact, smoking pot along with her?

2 A. Yes, I was smoking pot with her.

3 Q. But you're here to tell us that you were in
4 the right frame of mind to tell us how she acted; is
5 that what you're saying?

6 A. Yes, ma'am.

7 Q. What kind of drugs did you use?

8 A. I smoked pot.

9 Q. What else?

10 A. I don't recall really doing anything else.

11 Q. What about -- well, were you just telling the
12 Defense Attorney on Direct that you were using Ecstasy?

13 A. No, ma'am, I was not.

14 Q. Well, you said that you used some of the same
15 drugs she did. What drugs were those you've used?

16 A. I had only smoked pot with Ms. Radke, but I
17 had witnessed her doing other drugs.

18 Q. Now, during some of these violent episodes
19 you've seen, did you ever call the police?

20 A. No, ma'am.

21 Q. Ma'am, you've gone to visit the Defendant in
22 jail how many times?

23 A. Many times.

24 Q. What is your relationship with the Defendant
25 now?

1 A. We are strictly friends.

2 Q. You've been going to see him in jail; is that
3 correct?

4 A. That's correct.

5 Q. When's the last time you saw him?

6 A. I honestly don't recall. Maybe a moment ago.
7 Maybe longer.

8 Q. Can you tell us how often he calls you on the
9 phone?

10 A. Maybe once a week, once every two weeks.

11 Q. Since he's been in jail?

12 A. That's correct.

13 Q. Okay. Now, you said that he's a peaceful
14 person. Did you know at one point he took a bat and
15 went through the house and busted a bunch of furniture;
16 did you know that?

17 A. No, ma'am, I did not.

18 Q. Would you think a person who does that, would
19 you consider that to be violent?

20 A. I wouldn't -- I don't know. I don't know the
21 circumstances behind that.

22 Q. Well, let me just ask you in general: If you
23 had heard about a person who had a bat and went around
24 and just started banging up furniture, do you consider
25 that to be a peaceful and law-abiding person, just in

1 general?

2 A. If they had reason to do that, yes. I would
3 still believe them to.

4 Q. So you'd base your opinion on whether a person
5 is nonviolent and a law-abiding person, thinking
6 something like that, in certain circumstances, would be
7 fine; is that correct?

8 A. Yes.

9 Q. So the crowd you run in, that would be
10 something that would be fine?

11 A. I can't answer --

12 Q. Could possibly be accepted?

13 A. I can't answer for other people.

14 Q. In what you know, that's something that could
15 be accepted?

16 A. I don't know what my friends would think.

17 Q. Did you know that he, on a previous occasion,
18 had busted Diana Radke's lip?

19 A. No, ma'am, I did not.

20 Q. Did you know there were witnesses who were
21 there and saw that?

22 A. No.

23 MS. SHELTON: Objection, Your Honor, to
24 her depicting the previous witness's testimony to this
25 witness. There has been no testimony of anyone there

1 who saw anyone but her in the lip.

2 THE COURT: Sustained.

3 Q. (By Ms. Schwan) Ma'am, would you consider
4 that a violent or abusive person, a person who busts
5 another person's lip for no reason?

6 A. Yes.

7 Q. Ma'am, let me ask you one more question: Were
8 you present on February 29th, 1996, between the hours of
9 8:30 and 9:00, on Sunset where the Complaining Witness
10 and the Defendant lived; were you present at that
11 address?

12 A. I don't believe so, that I was present there.
13 No, I don't think so.

14 MS. SCHWAN: Pass the witness.

15 REDIRECT EXAMINATION

16 BY MR. STEINBECK:

17 Q. The other drugs you talked about with
18 Diana --

19 A. Yes.

20 Q. -- using, what kind of drugs are those that
21 are prescription?

22 A. I'm sorry?

23 Q. Did you mention -- could you mention what kind
24 of prescription drugs those are?

25 A. What kinds were antidepressants and the

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1 Fen-Phen, which is stimulants.

2 Q. Including Prozac?

3 A. Prozac has been known to make people lose
4 weight, and usually --

5 MS. SCHWAN: Your Honor, I'll object
6 to that. She's not a medical doctor of what Prozac can
7 do.

8 THE COURT: Sustained.

9 Q. (By Mr. Steinbeck) Did you ever see her take
10 Prozac or have Prozac lying around?

11 A. She had it lying around, yes.

12 MR. STEINBECK: Thank you. Nothing
13 further.

14 MS. SCHWAN: Nothing.

15 THE COURT: All right. Miss, you may
16 step down.

17 MS. SHELTON: Judge, I'd like to call
18 as our next witness Mr. Bill Parker. He has not been
19 sworn.

20 THE COURT: Very well.

21 MS. SHELTON: And he has not been
22 sworn.

23 THE COURT: Please raise your right
24 hand.

25 (Witness sworn.)

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1 THE WITNESS: I do.

2 THE COURT: Thank you.

3 MS. MCVEA: Your Honor, can the State
4 have permission to have our experts sit in through his
5 testimony?

6 THE COURT: Yes.

7 MS. SHELTON: Do you want me to go
8 ahead and have him state his name for the Record?

9 THE COURT: Yes, ma'am.

10 BILL PARKER,
11 the witness hereinbefore named, being first duly
12 cautioned and sworn to testify the truth, the whole
13 truth, and nothing but the truth, testified on his oath,
14 as follows:

15 DIRECT EXAMINATION

16 BY MS. SHELTON:

17 Q. Sir, would you state your name for the Record,
18 please.

19 A. Bill Parker.

20 Q. Mr. Parker, how are you employed?

21 A. I'm self-employed. I own a small business. I
22 do investigations and polygraph tests, consult with
23 government agencies.

24 Q. What is the name of your company?

25 A. Parker, Jones Incorporated.

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1 Q. And as a part of your work there, do you-all
2 contract to various government agencies and sometimes
3 police departments to perform homicide investigations
4 and other types of investigations for them when they
5 don't have the manpower or the --

6 A. Yes, ma'am, we do.

7 Q. -- funding to do that?

8 Could we ask you to give us your background
9 experience.

10 A. I worked for the Dallas Police Department from
11 1964 until retirement in 1986. I had a variety of
12 assignments there.

13 Q. Excuse me, sir. That microphone doesn't
14 appear to be on. I know you have a cold.

15 MS. SHELTON: If I might approach the
16 witness. I just can't --

17 COURT REPORTER: You can't do anything
18 to it. He just needs to scoot up.

19 A. How is that?

20 Q. (By Ms. Shelton) Much better.

21 A. I worked for the Dallas Police Department from
22 1964 until retirement in 1986. I had a variety of
23 assignments there. The last part, 1973 through 1986, I
24 was a sergeant in the Homicide Unit.

25 Q. And in that capacity, as a sergeant in the

1 homicide and working in the homicide division from '73
2 through '86, could you tell us about, approximately, how
3 many homicides or unexplained death scenes did you go?
4 How many of these did you --

5 A. Well, as a matter of terminology, from our
6 prospective, they're always unexplained deaths until
7 part of the task is done to make that determination.
8 I'd say a conservative figure would be 500 a year.

9 Q. How many?

10 A. Five hundred a year would be a very
11 conservative figure.

12 Q. And how did those, say, if there were 500 a
13 year or more, how did those shake out? What did they
14 turn out to be?

15 A. Well, we're averaging a considerable period of
16 time. But that's what you're asking me to do is average
17 it?

18 Q. Yes, sir.

19 A. Probably average 300 -- around 300 murders a
20 year, 100 or two suicides, some accidental deaths, such
21 as accidental shootings.

22 Q. And incident to the case that is in trial
23 today, the Christopher Radke case, didn't I ask you to
24 examine some diagrams and some reports and some physical
25 evidence, those diagrams and reports having been

1 generated by a Ranger Shing, S-H-I-N-G, of the Texas
2 Rangers, and also having been generated by Mr. Tom
3 Bevel, who has previously testified as a blood spatter
4 expert here?

5 A. Yes, ma'am.

6 Q. And there were other -- would you describe
7 what else you looked at besides their reports?

8 A. I looked at several crime scene photos and
9 diagrams. I examined the shotgun here to my left. I
10 looked at the autopsy report, probable cause affidavits
11 in this case, and some laboratory test reports.

12 Q. And did you also have an opportunity, before
13 you got on the witness stand today, to speak with Mr.
14 Christopher Radke sitting here?

15 A. Yes, this afternoon.

16 Q. In fact, you were able to speak with him part
17 of the time with me present and part of the time with me
18 not present?

19 A. That's correct.

20 Q. And so based on the physical evidence and the
21 diagrams and the reports that you've examined of expert
22 witnesses and police officers who were at the scene,
23 probable cause affidavits, and speaking with Mr. Radke,
24 this pretty much covers everything that you've been able
25 to look at --

1 A. Yes.

2 Q. -- or examined --

3 A. I think that's everything.

4 Q. -- physical. Now, you weren't able to go to
5 the crime scene on the night in question.

6 A. No.

7 Q. You didn't go out there on the 29th of
8 February.

9 A. No, I've never been out there.

10 Q. Okay. And if I told that the other experts
11 had not been able to be out there on the 29th of
12 February, but were only able to go sometime afterwards,
13 perhaps months afterwards or examine diagrams or
14 photographs, that wouldn't disturb you in any way?

15 A. No, it wouldn't disturb me.

16 Q. Sometimes that has to be done?

17 A. I'm sorry?

18 Q. Sometimes it has to be done that way?

19 A. Oh, absolutely.

20 Q. And in your present capacity as a consultant,
21 since you are now retired as a law officer, have you
22 been, on occasion, hired to do homicide investigations
23 for police departments or participate in them?

24 A. Yes, I have.

25 Q. And are you familiar with the Garland Police

1 Department?

2 A. Yes, I am, somewhat.

3 Q. All right. It's -- some of its structure.
4 And you're aware that they're not a large department
5 like D.P.D.?

6 A. Not -- no, they're not, compared to Dallas.
7 They're large compared to some of the other cities
8 clustering around Dallas.

9 Q. But it wouldn't be unusual for them to try to
10 retain the opinion of someone, like Ranger Shing or
11 someone like that, to assist them in their homicide
12 investigation, because they are a smaller department,
13 and they might need some assistance?

14 A. Yeah. I don't think that would be uncommon at
15 all. That's not even uncommon among larger agencies to
16 do that as well.

17 Q. To bring in a consultant if there's something
18 questionable that they don't feel clear or solid about?

19 A. Sure.

20 Q. Okay. And, in fact, you've assisted
21 departments to do that very thing yourself?

22 A. I have, yes.

23 Q. And, sir, you -- I don't mean to go over all
24 of your battles and medals, but you did work in the
25 Darlie Routier investigation, didn't you?

1 A. Yes, I did.

2 Q. Without going into what you did, you were
3 retained by, wasn't it, the Rowlett Police in that
4 investigation?

5 A. Yes, ma'am.

6 Q. Now, looking at -- back at, from your viewing
7 of the photographs of the death scene and the physical
8 evidence that you've seen, that includes everything that
9 came out of the death scene that's been presented into
10 evidence here today, and you've had a chance to look at
11 the basic evidence: the gun, the clothing, things like
12 that, photographs. You've seen what was supposed to
13 have gone down.

14 Is this a typical death scene? Is it classic,
15 typical, bizarre? How would you typify this in your
16 experience?

17 A. Well, it seems somewhat bizarre to me, in the
18 sense that the posturing would certainly be relative,
19 about the posturing of the victim's body. It's a most
20 unusual posturing position for a homicide. And that --

21 Q. In what sense, sir?

22 A. It's been my experience that most cases, when
23 one person shoots another, the person doing the shooting
24 normally has command and control of the weapon, and
25 they'll posture themselves in a different manner. They

1 won't lay down on the floor. This appears to me that
2 the victim -- it's pretty obvious to me that the
3 victim's head was no more than a couple of feet above
4 the floor from the debris there. I find that very
5 unusual.

6 Q. And you have viewed photographs of --

7 MS. SHELTON: Might I approach the
8 witness?

9 Q. (By Ms. Shelton) You have viewed photographs
10 of the head of the deceased, and you can see on the
11 photographs the point of entry of the force, slightly to
12 the left of the center of the mouth, and it is a
13 circular wound, as a previous witness --

14 A. Yes, ma'am. What I'm trying to say, though,
15 is -- maybe I didn't make myself clear, then. See, what
16 I find bizarre about this is the victim's head had to be
17 relatively close to the floor; thus, the weapon had to
18 be relatively close to the floor, which would mean
19 they're either sitting -- laying very close to the
20 floor, both the victim -- and if another person shot
21 her, they would have to be laying also on the floor, at
22 a very close proximity to the floor. It's uncommon.

23 Q. And so when the second party is introduced,
24 besides the victim, any second party, presumably, if
25 there's some allegation of wrongdoing on that party's

1 part, placing them in a situation where they're both
2 either entering a prone position or in a prone position
3 or perhaps falling, this is, to you, unusual or --

4 A. Well, yeah. I don't see any indication she's
5 in a prone position. It looks like she's flat on her
6 back to me.

7 Q. Previous testimony from Ranger Shing and also
8 from Mr. Bevel has been that --

9 MS. MCVEA: Your Honor, I'm going to
10 object at this time to comparison of testimony.

11 MS. SHELTON: Well, her expert is
12 sitting in to hear his testimony. Can I not tell him
13 what their expert testified to?

14 THE COURT: You may not. Sustain the
15 objection.

16 Q. (By Ms. Shelton) May I present to you a
17 hypothetical, then.

18 If it has been hypothesized that the victim's head
19 was either 24 inches from the floor, based on the blood
20 spatter pattern, or in the alternative, between 18 and
21 30 inches from the floor --

22 MS. MCVEA: Your Honor, I'm going to
23 object at this time. That's a mischaracterization of
24 the evidence. I believe he testified to something
25 different.

1 THE COURT: I believe she's giving a
2 hypothetical and not --

3 MS. MCVEA: Based on the hypothetical
4 in Court.

5 THE COURT: Well, she can give any
6 hypothetical that she wishes. I overrule the
7 objection.

8 MS. MCVEA: Okay.

9 Q. (By Ms. Shelton) Let me present to you a
10 hypothetical.

11 If, say, the head of the deceased was either about
12 24 inches from the floor or an alternative hypothetical
13 being that her head was within 24 inches of the floor,
14 give or take six inches in either direction, what -- how
15 would this add up to the either typical or atypical or
16 bizarre characterization of this scene in this case, or
17 in any case, pardon me? What could you deduce from
18 that? What could you surmise in hearing that the
19 victim's head was either of those distances from the
20 floor, either between 18 and 30 inches from the floor at
21 the point of --

22 A. Well, you could --

23 Q. -- entry?

24 A. You could -- if you could make some deduction
25 of this hypothetical from the angle of the projectile

1 and the debris from the wound --

2 Q. Say hypothetically -- say that the wound --

3 THE COURT: He hadn't finished his
4 answer, I don't believe, or...

5 A. I think we could draw some conclusions, some
6 safe conclusions, within certain margins about the
7 posture position of the victim.

8 Q. Which would be?

9 A. Well, he'd had to be sitting or in a position
10 with some awkward position, such as -- if we also saw
11 from this hypothetical the passive blood flow from the
12 victim's head, appears to be undisturbed and no impact,
13 from the splatters there, we could assume that she
14 was -- it's a pretty reasonable assumption that she's
15 in, basically, like a sitting position, with the head
16 more than about 18 inches above the floor, in my view,
17 and fall to the floor, from her sitting up and falling
18 directly back.

19 Q. Okay. Now, in this case, looking at the
20 photograph there, the shotgun placement being at the
21 left margin of the mouth and slightly above the chin and
22 there being powder around the wound that's a contact
23 wound, what would you surmise from that? We're
24 considering everything here: a suicide, homicide, a
25 struggle gone wrong. What about this contact wound to

1 the left side of the mouth?

2 A. Well, certainly, from a contact wound, it's a
3 very safe assumption. Based on what I see there and the
4 autopsy report, I think it's a very safe assumption that
5 the muzzle of that weapon was either pressed directly
6 against her mouth or very, very close to it.

7 Q. And if there were powder inside her mouth?

8 A. Well, the same conclusion. It's going to be
9 contact, or very, very close to contact.

10 Q. Sir, let's just talk about the use of a
11 shotgun. We know that you've examined the pictures.
12 This is a female victim, you know that. What about the
13 use of a shotgun to commit suicide by a female? Do you
14 have any experience with that? Is this a weapon of
15 choice or --

16 A. Not in my experience. It would be unusual.

17 Q. Have you seen it?

18 A. Not that I recall, no.

19 Q. And you can say, specifically, that you have
20 never seen it, in an instance like this, placed over to
21 the, what, side of the mouth?

22 A. I've seen many suicides and homicides
23 involving shotguns, wounds of this nature, and --

24 Q. And you're familiar with blood -- go ahead. I
25 cut in.

1 A. And I don't recall. I may have seen some
2 females, but I don't recall that.

3 Q. And you're familiar with such things as blood
4 splatter and blow-back from wounds and --

5 A. Yes, ma'am.

6 Q. -- things of that nature. Would you discuss
7 that for us.

8 A. Well, there's a -- I'm not a ballistic expert,
9 but I've had some training in that area. I've seen a
10 considerable amount of these firsthand. There's quite a
11 bit of gas pressure coming out of the muzzle of that
12 weapon. And we'll get what's referred to as a blow-back
13 on the entrance side of the wound, particularly that
14 close range, and it will discharge debris in both
15 directions. If it penetrates the body, you see,
16 obviously, debris from the exit side, and you see what's
17 referred to as blow-back: blood, tissue, things of that
18 sort, from the entrance side of the wound.

19 Q. From your examination of the photographs of
20 the head of the deceased, Diana Radke, can you determine
21 yourself, from your examination of those photographs and
22 from the coroner's report and the diagrams you've looked
23 at, the angle of that wound or how that shotgun was even
24 at her mouth?

25 A. Well, of course, I don't know which way the

1 head was turned at that precise moment, but it appears
2 obvious that it entered the left corner of her mouth.
3 It appears to be traveling slightly upward and slightly
4 to the rear from left to right, slightly upward.

5 Q. Sir, you said: I don't know the way -- how
6 her head was turned at that time.

7 A. Well, in relation to the debris, there's no
8 way of knowing that.

9 Q. So you would not know unless could --

10 A. In terms of how it passed through her body,
11 there's -- it's pretty obvious it entered from the left
12 corner of the mouth, traveling slightly upward and
13 slightly to the rear.

14 Q. And so you can say, certainly, while you
15 can -- the direction of the wound is apparent that the
16 way her head was turned exactly or at what moment would
17 have to be known before you could say with any certainty
18 what the position of the shotgun was?

19 A. I think before you could put a fine point on
20 it, yes. But you can certainly draw a general
21 conclusion observing the debris in relation to the angle
22 of that wound, of course.

23 Q. Could you, from your examination of the
24 materials, opine as to how that gun would have been
25 placed to get that kind of splatter that you saw against

1 those bookcases that were depicted -- the bookcases in
2 the room where the spatter was present?

3 A. I'm not sure -- clear on what you're asking
4 me. I'm sorry.

5 Q. In relation to between the floor where she
6 came to rest and from looking at the diagrams of the --
7 or pardon me, the photographs of the bookcase --

8 A. Okay.

9 Q. And for the Record, these are the same
10 photographs that the Prosecutor -- we got these
11 photographs from the Prosecution. Subsequently, a
12 number of these were introduced into evidence, so they
13 are simply our set. He's looking at the same. Are
14 these the same bookcases that you see in these
15 exhibits?

16 A. It appear to be, yes.

17 Q. Can you get any idea, from looking at the
18 bookcases and the blood splatter here, where that
19 shotgun was in relation to her head when the -- can you
20 tell?

21 A. Yeah. I think you can draw a pretty safe
22 conclusion within a certain margin. The --

23 MS. MCVEA: Your Honor, I'm going to
24 object at this time. Counsel is referring to items that
25 aren't introduced into evidence. Just to make this

1 clear --

2 MS. SHELTON: We'll use the exhibits.

3 MS. MCVEA: I'm going to object at
4 this time.

5 THE COURT: I sustain the objection.
6 Are you going to proffer them --

7 MS. SHELTON: We'll use the exhibit
8 photographs.

9 THE COURT: Have they been marked
10 for --

11 MS. SHELTON: Yes, they have. I'm
12 going to use State's Exhibit 64, 65 --

13 THE COURT: Well, those are already in
14 evidence, are they not?

15 MS. SHELTON: Yes.

16 THE COURT: Are you showing additional
17 photographs that are not in evidence?

18 MS. SHELTON: I'm showing the same
19 ones, but they weren't marked as State's Exhibits, but
20 I'll show these.

21 THE COURT: Well, anything that you
22 show him, let's mark as an exhibit so that it can be
23 referred to. And then you may offer any of these
24 photographs that you wish. If they're already in
25 evidence, then he may draw his conclusions from them.

1 MS. SHELTON: Okay.

2 Q. (By Ms. Shelton) State's Exhibit 33, a full
3 view. State's Exhibit 16, the same full view, but
4 further back, slightly different angle. State's
5 Exhibit 24, a different angle on the bookcases.

6 A. Yes. Are you asking me: Did I draw a
7 conclusion?

8 Q. Can you draw a conclusion as to the position
9 of the shotgun?

10 A. Yes.

11 Q. I think the shotgun is going to be against the
12 victim's mouth. For example, where she's laying here, I
13 would assume, and it's pretty obvious from the debris,
14 that her head was probably facing the direction of the
15 photographer that's here. The shotgun is going to be
16 aimed -- not laying across her body, but somewhat in
17 that direction -- and obviously, against her mouth at
18 the time it discharged.

19 A. Thank you, sir.

20 MS. SHELTON: Let the Record
21 reflect -- would you like to have Mr. Parker approach
22 the Bench since you couldn't see any of that, Judge?

23 May the Record reflect -- would you mind stepping
24 down.

25 THE COURT: I'm familiar with the
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1 photographs, I understand what he said.

2 MS. SHELTON: Okay.

3 Q. (By Ms. Shelton) For the Record, Mr. Parker,
4 have you examined other photographs of the same -- same
5 crime -- alleged crime scene, have you not?

6 A. Yes, I've looked at --

7 Q. Depicting the bookcases?

8 A. I've looked at all these exhibits here and all
9 the photographs here in the Courtroom.

10 Q. What -- and I know you've seen different
11 scenarios, basically, three: Either homicide, suicide
12 or accident. I don't know what else it could be besides
13 these three, unless it were some sort of disaster. From
14 all of this examination, is this scenario most
15 consistent within your expertise and experience?

16 A. Well, based on all the information that I've
17 heard and I've gathered in concluding my conversations
18 with him --

19 Q. Yes, sir.

20 A. -- it's my opinion that there was a struggle
21 over that gun. And somewhere between falling to the
22 floor, there around about the floor, the gun
23 discharged.

24 Q. You have read Chris Radke's various
25 statements, and there were several, to the Garland

1 police officers who investigated this event?

2 A. Yes, ma'am. As I recall, they referred to it
3 several times during the probable cause affidavit.

4 Q. And those are inconsistent with each other; is
5 that correct? In other words, he gave several versions
6 of events?

7 A. I think they characterized them in enough
8 detail that you could -- I could contrast and compare
9 the different stories, the only version that he made
10 different stories, different statements.

11 Q. And in other words, they -- until they got
12 something from him that was consistent with what they
13 believed happened, they were pressing him, from what you
14 could see, from --

15 MS. MCVEA: Your Honor, I'm going to
16 object at this time. It's leading, and also Defense
17 Counsel is testifying for the witness.

18 THE COURT: Sustained.

19 Q. (By Ms. Shelton) Sir, if you were not at this
20 scene, but if you were at an unexplained death scene,
21 and there was a second person there who was allegedly
22 present at the time of the death of the victim, would it
23 not be your procedure to keep talking to that individual
24 to try to find out what happened; and if they didn't
25 tell you something that comported with your experience,

1 wouldn't you continue to question them?

2 A. I would certainly try, yes. If they were
3 telling me something that didn't seem to comport with
4 the physical evidence there, I certainly would, of
5 course.

6 Q. And certainly until they asked for an
7 attorney?

8 A. Yes.

9 Q. And if you factor out Chris Radke's statements
10 to the police, which didn't make a lot of sense,
11 apparently, to them or to each other, the statements, if
12 you take out Chris Radke's statements, what have you got
13 here? Do you have enough to form a conclusion that a
14 murder has been committed from the physical evidence?

15 A. No.

16 Q. In fact, what is your gut reaction as to what
17 happened on this evening from all this evidence you've
18 seen?

19 A. I think there was a struggle between these two
20 people over that gun, and while struggling to the floor,
21 one or both of them pulled the trigger.

22 Q. You have seen some evidence or heard that the
23 second person at the scene, Mr. Radke, was -- had been
24 drinking. If you factor that in, factor in this husband
25 returning -- let me present to you a hypothetical, if I

1 may.

2 Let me present to you a hypothetical, if I may.
3 That you have a wife, a woman who has a baby that's 16
4 months old; that she has a history, an unusual history
5 of employment as a lady who worked in a sexually
6 oriented business; that in the past, she had
7 experimented with narcotic drugs; that she had married
8 her husband under the duress of pregnancy; that she had
9 had a stormy relationship with her husband; and that
10 further, she had gained a great deal of weight after the
11 birth of her only child; and that she was taking
12 Fen-Phen, Prozac, and a sleeping medication, at least,
13 that we know of in the last three or four months of her
14 life; that she had a history of confrontive behavior
15 with her husband; that she had a history of confronting
16 her husband on at least two occasions with a weapon, a
17 firearm; that she had a history of confronting her
18 husband repeatedly and demanding that he respond to her;
19 that further, she had a history from the time of her
20 adolescence of perhaps self-mutilating or self-injury
21 type activities to gain the attention of parents; that
22 further, she exhibited, on numerous occasions, violent
23 and histrionic behavior; that at this point in her
24 existence, overweight, taking several medications, and a
25 marriage that, to her, is unhappy; that given her

1 husband comes home late, that she brings out a gun, that
2 her husband is intoxicated; that he does not pay
3 attention to her; that the attempt to gain attention
4 escalates into a firearm brandishing; can you form a
5 conclusion, if there's a struggle over the gun and the
6 woman is shot, as to what happened?

7 A. Well, that's quite a bit to gather in there,
8 but the history of that, certainly you could draw a
9 conclusion to that. But I draw my conclusions based
10 primarily on what I can see here and those reports I've
11 read and my conversation with Mr. Radke.

12 Q. And So you base your conclusion on --

13 A. Yes, ma'am. Those other factors, you know,
14 maybe be enlightening to some, but not towards my
15 opinion a great deal.

16 Q. Would they be enlightening to police officers
17 if they had been able to find these things out before
18 they put charges on an individual and help them form the
19 conclusion as to what happened, if they didn't know from
20 the physical evidence?

21 A. Possibly so.

22 Q. But are you saying then, finally, that from
23 the physical evidence that you have viewed, that this
24 does not appear to be a homicide scene or a suicide?

25 A. Not on the information that I have reviewed

1 and what I have observed, no. It --

2 Q. Does it appear to be an actual, completed
3 suicide?

4 A. If I may finish, please.

5 Q. Certainly.

6 A. It could be, but I don't see any evidence of
7 that. I don't see any strong evidence. This a very
8 atypical, weird scenario for a murder, based on my
9 experience. I'm not saying that it can't be, but I
10 don't see any strong evidence of that. As you said,
11 take away the statements Mr. Radke made to the police
12 officers that aren't consistent with the facts out
13 there, it certainly would make me very suspicious. But
14 based on the evidence that I see here, no, I don't see
15 any strong evidence of that.

16 Q. Thank you, sir.

17 MS. SHELTON: Pass the witness.

18 CROSS-EXAMINATION

19 BY MS. MCVEA:

20 Q. Sir, just a few questions for you.

21 You said that you based your opinion on the photos
22 that you reviewed here in Court; is that right?

23 A. That's correct.

24 Q. Okay. And also the statements that the
25 Defendant made to the police, is that also correct, or

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1 some of the statements that he made?

2 A. No.

3 Q. No? No statements he made to the police?

4 A. I don't think the question makes sense to me.
5 I'm sorry.

6 Q. Okay. Did you base your opinion on any
7 statements that the Defendant made to the police; that's
8 what I'm asking?

9 A. No.

10 Q. And you base your opinion upon the
11 conversation with the Defendant; is that correct?

12 A. To some degree, yes.

13 Q. And you base your opinion upon the diagrams
14 that you reviewed here in Court?

15 A. Yes, ma'am.

16 Q. Okay. Did you also take into consideration
17 the clothing that the Defendant was wearing at the time
18 of the occurrence?

19 A. In what respect?

20 Q. Well, with respect to whether blood was on
21 that clothing.

22 A. Yes.

23 Q. You took that into consideration?

24 A. Yes, ma'am.

25 Q. Okay. Did you take into consideration the

1 shoes that he was wearing?

2 A. Yes, ma'am.

3 Q. And so you're telling us now, just so that I'm
4 clear, that you do not believe this was a homicide?

5 A. I'm saying it could be, but I don't see any
6 firm evidence here that it is, no.

7 Q. Did you go out to the crime scene at 1001
8 Sunset in Garland?

9 A. No, ma'am. As testified, I've never been out
10 there.

11 Q. You said that you were a police officer for
12 several years; is that correct?

13 A. That's correct.

14 Q. Okay. Would it arouse your suspicion if you
15 went to an unexplained death scene and you spoke to an
16 individual that was present at the time of the
17 unexplained death, and they gave you three or four
18 different versions as to what happened within a short
19 period of time?

20 A. Absolutely.

21 Q. Okay. So you're not telling us here in Court
22 today that absolutely Diana Radke was not murdered?

23 A. That's correct.

24 Q. Okay.

25 MS. MCVEA: That's all we have, Your

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1 Honor.

2 REDIRECT EXAMINATION

3 BY MS. SHELTON:

4 Q. Sir, you're not telling us absolutely that she
5 wasn't murdered, but do you have any opinion as to
6 probability that whether or not she was murdered?

7 A. Well, if I might explain. I don't see any
8 firm evidence here. Let me illustrate it with an
9 example, if I may. To use the extreme: If the person
10 was shot -- this lady was shot in the back with a
11 shotgun, she couldn't -- it's physically impossible for
12 her to do that, so, obviously, this is a murder I'm
13 seeing. I don't see anything here that is a firm and
14 absolute indication of a murder.

15 Q. And further, sir, in your experience as a
16 police officer for many years, isn't it -- it's not
17 uncommon for persons, when confronted by the police or
18 questioned by the police, to lie to the police, who, in
19 fact, haven't done anything?

20 A. No, that's not uncommon at all, no, ma'am.

21 Q. If you knew hypothetically that an individual
22 was on parole and involved in a horrific death scene,
23 would it seem strange to you or unusual that that person
24 might try to distance themselves from the event? It was
25 an accident, anyway, and simply say they weren't there,

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1 or they didn't know it, or they weren't in the United
2 States at the time, or any such foolish story, out of
3 fear and trepidation of the police and what might happen
4 to them?

5 A. I think, under those circumstances, they
6 certainly have more fear of being involved, but -- yeah
7 I can understand that.

8 Q. And hypothetically, if such an individual were
9 to tell one story at the crime scene -- or alleged crime
10 scene, ask for an attorney, and then over hours and
11 hours of questioning, when counsel were denied to them,
12 would it be unusual for them, in an attempt to resolve
13 events or satisfy the police, to try to tell something
14 that would comport with what happened, even if no crime
15 occurred, just to simply extricate themselves from that
16 terrible position of being in the custody of the police?

17 A. Sure. I've seen it.

18 Q. Where they try to satisfy the police.

19 A. Sure. I've seen it happen many times.

20 Q. Sir, one last thing: You've looked at the
21 photographs of Ms. Radke's head, and you can see the
22 direction of the fire going in here and out here. Would
23 you mind showing us the direction of the weapon to
24 produce -- you don't know the placement of her head,
25 you've already testified, but what would be -- all other

1 things being equal, and that they weren't standing up or
2 lying down, but what would have to be the direction of
3 the shotgun to produce that wound?

4 A. Well, if we're dealing with this wall at the
5 bookcase, for example --

6 Q. Yes, sir.

7 A. -- if that debris -- and it appears from the
8 photographs that I've seen, and not being there, it
9 starts about six inches from the floor to the lowest
10 part. I see -- seen some drops that run down, but
11 basically, about six inches. And then it gets thinner
12 as it goes higher, so, apparently, there's somewhat of
13 an angle there. So that tells me -- I think I'm
14 answering the question here, is if the victim's head is
15 at this level, for example, without having a ruler here,
16 this end of the weapon has got to be somewhat lower. So
17 that's very close to the ground. Again, what I'm saying
18 is, this is a very awkward position to get in to shoot
19 somebody.

20 Q. To execute someone?

21 A. Yes, ma'am.

22 Q. But you wouldn't expect to see the butt lower
23 and the barrel pointing up?

24 A. I would expect to see it in this case because
25 of the debris pattern. It appears to me that there's a

1 slightly upper angle and also an upper angle on the
2 wound.

3 Q. Would this indicate to you that the person on
4 the other end of that gun down there, the second person,
5 didn't have total control or control of the instrument
6 of death --

7 A. Well --

8 Q. -- the fact that it's pointing upward?

9 A. Well, that's hard to say, because -- well, my
10 opinion is that it's somewhat more of an angle like this
11 to the wall. I don't think it was perpendicular to the
12 wall or parallel to the wall. I think it's at somewhat
13 of an angle, using this as that bookcase wall. It would
14 be something just about like so.

15 Q. Have you ever seen -- thank you, sir.

16 Have you ever seen a murder scene with a wound like
17 this one? In the thousands that you've been at, have
18 you ever seen a scene like this that was murder?

19 A. No. I've seen a lot of people put it down on
20 the ground and shot and a lot of shots standing up, but
21 I've never had an occasion to have a murder victim in
22 such an odd posture.

23 Q. In other words, you've seen people on the
24 ground who were shot, but the other person was standing
25 over them --

1 A. Um-hum.

2 Q. -- to kill them?

3 A. Yes. Normally, if they're in command of that
4 weapon, they'll get, you know, into a common firing
5 position --

6 Q. Okay.

7 A. -- that would have advantage. I'm not saying
8 it's impossible. I'm just saying, in my experience,
9 it's very unusual.

10 Q. In fact, sir, you've never seen it?

11 A. I've never seen it nor read about it, anything
12 that would comport with a situation of this nature.

13 Q. In any of the literature, you've never read
14 about it?

15 A. No, ma'am.

16 Q. This would be a history-maker here?

17 A. To me, yes, it would.

18 MS. SHELTON: Pass the witness.

19 MS. MCVEA: One moment, Your Honor.

20 (Whereupon, there was a brief
21 pause in the proceedings.)

22 MS. MCVEA: No questions, Your Honor.

23 THE COURT: All right. May this
24 witness be excused?

25 MS. SHELTON: Yes, sir.

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1 DELORES GARCIA,
2 the witness hereinbefore named, being first duly
3 cautioned and sworn to testify the truth, the whole
4 truth, and nothing but the truth, testified on her oath,
5 as follows:

6 DIRECT EXAMINATION

7 BY MR. STEINBECK:

8 Q. Ma'am, where are you employed?

9 A. Mamvis.

10 Q. And how long have you been working there?

11 A. Eleven years.

12 THE COURT: Would you get the witness'
13 name? I didn't hear it.

14 Q. (By Mr. Steinbeck) Please state your name.

15 A. Delores Garcia.

16 Q. And what is your address, ma'am?

17 A. My home address?

18 Q. Yes.

19 A. 575 Northfork Road, Royse City, Texas, 75189.

20 Q. Thank you. And did you have an occasion there
21 to come to know a Christopher Radke?

22 A. Yes, sir, I worked with Chris.

23 Q. During that time frame, did you get to know
24 him and work with him?

25 A. I'm going to say for about four to six months

1 THE COURT: All right. You may be
2 excused.

3 THE WITNESS: Thank you, Your Honor.

4 (Whereupon, the witness was then
5 excused and proceedings resumed, as
6 follows:)

7 MS. SHELTON: Could he remain for a
8 while and listen to Mr. Bevel, if he's going to get back
9 on the stand?

10 THE COURT: Yes.

11 MS. SHELTON: Since Mr. Bevel has to
12 leave, we don't want to tie up Mr. Parker either.

13 THE COURT: Very well.

14 MS. SHELTON: Mr. Bevel is going to
15 get on the stand, in other words, again, and I want
16 to --

17 THE COURT: Did you want to call him
18 out of order?

19 MS. MCVEA: Well, I don't want to call
20 him first, Your Honor, but I'm ready to proceed.

21 THE COURT: Very well.

22 (Witness sworn.)

23 THE WITNESS: Yes, sir, I do.

24 THE COURT: You may put your hand down
25 and be seated on the witness stand.

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1 that I worked with him.

2 Q. And what time frame?

3 A. What do you mean what time frame?

4 Q. Year.

5 A. Oh. I've been there 11 years. I think he
6 worked there about six months, four to six months.

7 Q. Do you remember which year he worked there?

8 A. Oh, '96.

9 Q. Okay. And did you have an occasion to see him
10 interact with his wife at any time there?

11 A. I've seen his wife twice.

12 Q. What happened at those occasions?

13 A. The first occasion it was -- she had the baby
14 there, and she was very quiet. The second time that I
15 come in contact with her was she was just in a rage, a
16 total rage. There was no way he could have gotten away
17 from her if he wanted to.

18 Q. Describe what happened.

19 A. Well, I didn't see a whole lot. I heard a
20 commotion in the break room, which the door comes out to
21 the hallway. I sit at the end of the hall. She was
22 right on his heels, and he was going down the stairwell
23 to get away from her. And I could not understand what
24 she was saying, because she was just -- it was so loud
25 that I couldn't make out what she was mad about.

1 Q. Did you see them move at all throughout the
2 building?

3 A. Excuse me?

4 Q. Did they move at all throughout the building,
5 or did they stay there in the break room?

6 A. Every step. Well, what I saw was they were
7 coming from the break room, down the hall, down to the
8 stairwell, because everywhere he went, she was right
9 there on his heels.

10 Q. So he was trying to get away from her?

11 A. Yes.

12 Q. And what was she saying as she was following
13 him?

14 A. I couldn't make out what she was saying. She
15 was just -- it was just so loud and just so fast that I
16 could not make out any particular words that she was
17 saying.

18 Q. How did Chris look and seem to react to her
19 outburst like that?

20 A. He was just calm. I mean, he didn't say
21 anything to her that I heard him say. He was just
22 trying to be as calm as he could be. He walked down the
23 stairwell. I learned later that my supervisor had to go
24 down and ask her to leave the premises.

25 Q. Have you ever seen Chris raise his voice

1 there?

2 A. No, sir.

3 Q. Now, your business has mostly females employed
4 there; is that correct?

5 A. Yes, sir.

6 Q. And how did Chris interact with the females
7 there?

8 A. Well, he was good with everybody there. He
9 was one of us, I guess, because he -- we never heard him
10 get out of line or anything.

11 Q. What kind of regard did he have for women
12 there that you observed?

13 A. He was very respectful, very respectful.

14 Q. Did he have a representation for that as well?

15 A. Yes, very much so.

16 Q. Did you ever seen any kind of mean streak or
17 temper streak or anything in Chris Radke at all?

18 A. No, sir, I never have.

19 Q. How about any phone calling, did you have an
20 occasion to ever --

21 A. I can recall one incident that I had walked
22 into the mail room, which Chris worked, to either drop
23 off something or to pick up something. I noticed the
24 phone was laying on the table, the desk. I didn't say
25 anything. And you could just hear somebody just

1 jabbering, you know, screaming and hollering. And Chris
2 just -- he just went on about his business until she was
3 finished, I suppose. I didn't stick around. I went on
4 out.

5 Q. So Chris did not yell back at the phone?

6 A. No. He wasn't even talking to her. She was
7 just --

8 Q. And what kind of -- how would you characterize
9 Chris as a person?

10 A. How would I characterize him?

11 Q. Yes.

12 A. He's been very respectful around women.

13 Everybody seems to get along with Chris. I've never
14 heard him say anything bad about anybody, even his
15 wife. I've never heard him speak bad about anybody.

16 Q. Would you believe it if someone made an
17 accusation against Chris of violence that had a motive
18 to lie?

19 A. Would I believe what, now?

20 Q. Would you believe someone that came forward
21 and said Chris, at one point, was violent or something,
22 would you believe that, if you also knew that person had
23 a motive to lie?

24 A. I've never seen any reason to give -- for him
25 to give me a reason to ever feel like he would be

1 violent. You know, I've only been around him at work,
2 and he's always been very calm and collected.

3 Q. So if the Prosecutor told you about some
4 allegation that he once took a baseball bat to some of
5 the furniture in the house --

6 A. I don't know about that.

7 Q. Okay. So that doesn't sound like the Chris
8 Radke you know?

9 A. It doesn't sound like Chris Radke, no.

10 Q. Thank you, ma'am.

11 MR. STEINBECK: Nothing further.

12 CROSS-EXAMINATION

13 BY MS. MCVEA:

14 Q. Ma'am, I just have a few questions for you.

15 Would you agree with me that sometimes people act
16 one way at one place and they act differently at another
17 place? Would you agree with that?

18 A. Yes, they do.

19 Q. Okay. Specifically when he comes to work,
20 would you agree with that?

21 A. No.

22 Q. Okay. You feel like people act the same way
23 as they do at work as they would at home or other
24 settings?

25 A. Possibly, yes.

1 Q. Well, before, you said, no; but now, it's
2 possible?

3 A. Well, a character -- I mean, I'm the same
4 anywhere. I'm the same at home; I'm the same at work.

5 Q. Okay. But that's you. Would you agree that
6 some people may act differently away from work as they
7 would at work?

8 A. I don't know.

9 Q. Now, you weren't present there at 1001 Sunset
10 where Diana Radke was shot and killed back on February
11 the 29th of 1996. You weren't there, were you?

12 A. No.

13 Q. So you don't know what happened, do you?

14 A. No.

15 MS. MCVEA: That's all we have.

16 MR. STEINBECK: Nothing further, Your
17 Honor.

18 THE COURT: You may step down, ma'am.

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

22 THE COURT: Have you been sworn,
23 ma'am?

24 THE WITNESS: No.

25 THE COURT: Please raise your right

1 hand.

2 (Witness sworn.)

3 THE WITNESS: Yes, I do.

4 THE COURT: Thank you. Be seated on
5 the witness stand.

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

11 DIRECT EXAMINATION

12 BY MR. STEINBECK:

13 Q. Please spell your full name, ma'am, for the
14 Record.

15 A. Lisa, L-i-s-a, Applegate, A-p-p-l-e-g-a-t-e.

16 Q. What's your current address?

17 A. 13319 Pandora Circle, Dallas, Texas 75238.

18 Q. I see you're pregnant. Are you currently
19 employed, ma'am?

20 A. I'm on maternity leave.

21 Q. Okay. Where do you normally work?

22 A. GTE Directories.

23 THE COURT: Miss, you're very
24 soft-spoken. Would you mind leaning forward and
25 speaking a little more loudly and into the microphone?

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1 THE WITNESS: Okay

2 THE COURT: Thank you.

3 Q. (By Mr. Steinbeck) Do you know Chris Radke
4 here?

5 A. Yeah, he's my brother.

6 Q. And is he your younger or older brother?

7 A. He's a year older than I am.

8 Q. And did you have occasion to know his wife,
9 Diana Radke?

10 A. Yes, I did.

11 Q. And what kind of interaction did you have with
12 her?

13 A. I mean, it was fairly limited. We saw her at
14 family, you know, occasions. The family gets together
15 quite a bit, but Christmas, Thanksgiving, New Year's
16 Eve, stuff like that.

17 Q. And what kind of contact did you have with her
18 or interaction did you have with Diana? Did you get to
19 know anything about her, her behavior, habits?

20 A. I only talked with her on the phone a couple
21 of times, but I don't know understand what you mean by
22 habits. I mean --

23 Q. Did she talk to you ever about using
24 prescription drugs?

25 A. Yeah. My grandparents, I had planned a 50th

1 wedding anniversary for them on March 2nd of '96, and we
2 sent out memory cards to everybody that was on the guest
3 list to return back to the book dealer. And I hadn't
4 gotten one back from her yet, so I called her the week
5 before and asked her about it to make sure they were
6 going to be there. It was a surprise party. And she
7 had mentioned that she was -- had lost a lot of weight,
8 and she had known that I was interested in losing
9 weight. She told me she was on a diet; it was Fastin
10 and Pondermine. And she told me about a doctor she was
11 seeing. His name was Steve Bander in Sachse, and she
12 gave me a lot of information. I was going to check into
13 it, because, apparently, it had been really successful.
14 But she had lost, she told me, over 40 pounds since
15 Christmas, around in there. And she said that -- she
16 said that they were -- they worked really well, but she
17 almost bragged, kind of, and it scared me, to be honest;
18 that they were legal speed and downers. And she had
19 told me that she took more than what the doctor
20 prescribed.

21 MS. MCVEA: I'm going to object at this
22 time, Your Honor. First of all, this is hearsay, and we
23 object.

24 THE COURT: Overruled.

25 Q. (By Mr. Steinbeck) Please continue.

1 A. She also told me that she was on Prozac at the
2 time, as well. But she told me that you build up a
3 tolerance to the drugs or something, but she said that
4 she took a lot more than she was supposed to, but her
5 doctor was still prescribing them, and that if I
6 didn't -- she said her insurance covered it, and that
7 she could get more from him if she needed to that she
8 could give to me. I mean, she even offered that.

9 Q. Without you going through a prescription?

10 A. Yeah.

11 Q. It was prescribed that many, according to what
12 she told you?

13 A. I don't know. I asked my doctor about it,
14 and --

15 MS. MCVEA: Your Honor, I object. I
16 believe now --

17 THE COURT: Sustained.

18 Q. (By Mr. Steinbeck) How did -- how did she --
19 did you ever have occasion to see her get physical with
20 Chris?

21 A. Well, I don't think she was ever afraid of him
22 by any means. She was bigger than he was. Chris has
23 never been a violent person. I've grown up with him my
24 whole life, and he and I have had some pretty heated
25 arguments. I mean, when we were kids, being a year

1 apart, we had some pretty big fights, and he never, ever
2 was somebody to raise a hand to any of us girls. I
3 means, he was always very protective of us, if
4 anything. But, no, she was -- she almost was always
5 angry with him. She in no way was afraid of him, and in
6 no way -- she never acted like she was.

7 Q. Did you ever have an occasion to know about
8 males trying to start things with Chris, how he
9 responded?

10 A. Yeah. I mean, the only -- no, I mean, I
11 never -- I never saw him get violent with anybody. I
12 mean, really. He and my dad would talk sometimes, but
13 nothing ever came of it. I mean, he's always been very
14 kindhearted and gentle, as far as I'm concerned.

15 Q. Was Chris a happy-go-lucky guy?

16 A. Yeah.

17 Q. How would you describe him?

18 A. I'd say he's good-hearted. He means well, he
19 really does.

20 Q. How about Diana?

21 A. From what I knew of her, she seemed -- she
22 was -- she was controlling. She was always wanting --
23 telling Chris what to do, and if he did something she
24 didn't like, she was very, very ready to tell everybody
25 she didn't like it. And there was a time we all went to

1 church in November one year, and Chris had -- I think he
2 pierced his tongue or something, and she was extremely
3 angry about it, and she had told everybody. We kind of
4 laughed it off, but she practically threw a fit in the
5 middle of an argument in front of you of everybody. She
6 was real mad.

7 Q. How did -- you mentioned that you had some
8 other sisters and whatnot. Did Chris ever have some
9 kind of protective role over you-all, if anyone tried to
10 mess with you in any way?

11 A. I lived with my dad for a couple of months
12 when I was in high school. I went to Berkner, where
13 Chris was also in school, and he was always protective
14 of us, but, then, especially of me. I mean, he was very
15 quick to tell me who -- you know, who I should talk to,
16 who I shouldn't talk to and be careful of, and if
17 anybody -- you know, I mean, he's always been protective
18 of us, if that's what you mean. I mean, all of us.

19 Q. And did she ever mention her prior common-law
20 husband to you?

21 A. Yeah. She -- it was a New Year's Eve party
22 after a cousin of ours had been killed in a car wreck,
23 and we were all together one Christmas. And at New
24 Year's Eve we were all at my uncle's friend's house, and
25 we had been drinking, and she had told me that, you

1 know, that she would always care about him, and that she
2 was broken hearted, and that she had wished that she had
3 been -- she wished she could be with him. I mean, it
4 was sad. She was very in love with him, I think, yeah.

5 Q. Was Chris in love with her?

6 A. Diana? Yeah.

7 Q. How could you tell?

8 A. Because Chris never, ever did that much for a
9 woman before. I mean, he had had girlfriends, but I
10 mean, he did more for her and treated her better than I
11 had ever seen him treat any other woman. I mean, there
12 were times that they didn't get along, but there were
13 also times that you could tell that they cared about
14 each other. I mean, it was obvious at times, too, as
15 with all couples, I think.

16 Q. Thank you.

17 MR. STEINBECK: No further questions.

18 MS. MCVEA: No questions for the
19 Defendant's sister, Your Honor.

20 THE COURT: Ma'am, you may step down.

21 THE WITNESS: Thanks.

22 (Whereupon, the witness was then
23 excused and proceedings resumed, as
24 follows:)

25 MS. MCVEA: At this time, the State

1 would like to reopen, Your Honor.

2 MS. SHELTON: Mr. Bevel was going --
3 pardon me.

4 THE COURT: I told them they could
5 reopen relating to the shirt. I assume that's what this
6 witness is related to.

7 MS. MCVEA: Correct, Your Honor.
8 May I proceed?

9 THE COURT: Yes.

10 SHERRI PARKER,
11 the witness hereinbefore named, being previously
12 cautioned and sworn to testify the truth, the whole
13 truth, and nothing but the truth, testified on her oath,
14 as follows:

15 DIRECT EXAMINATION

16 BY MS. MCVEA:

17 Q. State your name for the Record, ma'am.

18 A. Sherri Lynn Parker.

19 Q. And are you the same Sherri Lynn Parker that
20 testified previously in this matter?

21 A. Yes, I am.

22 Q. Now, I'm going to direct your attention back
23 to February the 10th of 1996, approximately two and a
24 half weeks before your daughter's death. Do you recall
25 that day?

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1 A. Yes, I do.

2 Q. Okay. And is it true that you went to the
3 hospital after she contacted you?

4 A. Yes, I did.

5 Q. Okay. Now, you've already testified that your
6 daughter had been injured; is that right?

7 A. Yes.

8 Q. When you arrived there, had she been bleeding
9 or was she bleeding?

10 A. Yes, she was.

11 Q. Do you remember what she was wearing?

12 A. She was wearing a light, peach-colored
13 T-shirt. It was a T-shirt.

14 Q. Okay. Did you notice any blood on that
15 T-shirt?

16 A. She had blood all over the front of you of
17 it.

18 Q. I'm showing you what's been entered into
19 evidence as State's Exhibit No. 31. Do you recognize
20 this T-shirt?

21 A. That's the T-shirt she had on.

22 Q. Is that the T-shirt she was wearing at the
23 time of -- you met her at the hospital and she was
24 bleeding?

25 A. Yes, it is.

1 Q. Okay. And did she have blood over the front
2 of you of the T-shirt as it appears here?

3 A. Yes, she did.

4 Q. At the time of the assault, she was living at
5 1001 Sunset; is that right?

6 A. Yes, she was.

7 MS. MCVEA: Pass the witness, Your
8 Honor.

9 MR. STEINBECK: No questions, ma'am.
10 Thank you.

11 THE COURT: All right. You may step
12 down.

13 THE WITNESS: Thank you.

14 MS. MCVEA: State calls officer --
15 Investigator Mowery.

16 THE COURT: Have you been sworn?

17 THE WITNESS: Yes, sir, I have.

18 THE COURT: Okay.

19 JOHN MOWERY,
20 the witness hereinbefore named, being first duly
21 cautioned and sworn to testify the truth, the whole
22 truth, and nothing but the truth, testified on his oath,
23 as follows:

24 DIRECT EXAMINATION

25 BY MS. MCVEA:

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1 Q. State your name for the Record, and spell your
2 last name for the Court Reporter.

3 A. John E. Mowery, M-O-W-E-R-Y.

4 Q. Sir, by whom are you employed?

5 A. Garland Police Department.

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

7 A. I've been with them three years.

8 Q. And what do you do for the Garland Police
9 Department?

10 A. I'm a supervisor of the Forensic Investigation
11 Unit.

12 Q. Are you a peace officer?

13 A. No, ma'am.

14 Q. Now, I'm going to direct your attention to
15 February the 29th of 1996. Did you have occasion to
16 respond to a location at 1001 Sunset in Garland, Dallas
17 County, State of Texas?

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

19 Q. Were you working at that time?

20 A. No, ma'am, I was off duty.

21 Q. Do you recall, approximately, what time you
22 got the call to respond to that location?

23 A. Sometime after 9:00, and I arrived, roughly,
24 around 9:30.

25 Q. Okay. Officer -- I'm sorry, Mr. Mowery, did

1 you make contact with other officers there at the scene?

2 A. Yes, I did.

3 Q. And that was for the purpose of -- and was
4 your purpose there at the scene to collect evidence and
5 supervise the collection of physical evidence?

6 A. Yes, it was.

7 Q. Okay. Did you have an occasion -- well, was
8 the home searched?

9 A. Yes, sir -- yes, ma'am, excuse me.

10 Q. And process of physical evidence?

11 A. Yes, ma'am.

12 Q. Did you find or locate any other blood in any
13 area, other than there in the living room where the
14 Complainant was?

15 A. No, ma'am, I did not.

16 Q. Okay. And did you have occasion to go to the
17 bedroom of that residence?

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

19 Q. Okay. And did you find or recover anything in
20 particular?

21 A. I recovered a peach-colored ladies T-shirt, a
22 pullover-type shirt, from the clothes hamper.

23 Q. And did you actually take that T-shirt and put
24 it into property or take it into evidence?

25 A. No, ma'am. I contacted Investigator Bill

1 Rice, who was at the scene conducting the actual
2 investigation, and he collected it.

3 Q. Now, when you saw this T-shirt, was it --
4 where was it again?

5 A. It was in the clothes hamper.

6 Q. Was it right on top, or were there a couple of
7 items?

8 A. There were a couple times on top. It was
9 sticking out just a little bit.

10 Q. Okay. And what directed your attention to
11 that T-shirt?

12 A. It appeared to have -- what appeared to me to
13 be blood on it.

14 Q. Okay. And can you describe the blood?

15 A. It appeared to be blood, a brownish,
16 redish-colored; dried blood, as opposed to a fresh, wet
17 blood.

18 Q. I'm showing you what's been entered into
19 evidence as State's Exhibit No. 31. Do you recognize
20 this exhibit?

21 A. Yes, ma'am. That's the T-shirt.

22 Q. Is that the T-shirt that you recovered that
23 night?

24 A. Yes, ma'am.

25 Q. And is it in the same or similar condition as

1 it was on that night?

2 A. Pretty much. I think it's got some holes in
3 it that weren't in there at the time.

4 Q. Okay.

5 MS. MCVEA: Pass the witness.

6 MS. SHELTON: I don't have any
7 questions for Investigator Mowery.

8 THE COURT: Mr. Mowery, were you
9 searching the residence, or were you just a custodian of
10 whatever was found by someone else?

11 THE WITNESS: I was part of the
12 investigative team that was looking through the
13 residence for additional evidence.

14 THE COURT: Did you ever find a man's
15 shirt with blood on it?

16 THE WITNESS: No, sir, I did not.

17 THE COURT: Did you look for one?

18 THE WITNESS: Yes, sir.

19 THE COURT: Thank you.

20 CROSS-EXAMINATION

21 BY MS. SHELTON:

22 Q. One more question: Was Mr. Radke wearing a
23 shirt when you arrived?

24 A. When I first saw Mr. Radke, he was in the
25 jail. I did not see him at the scene. He was outside

1 when I arrived.

2 Q. He was outside at the scene?

3 A. When I arrived, yes, ma'am. He was out by one
4 of the patrol cars, I was told. I never saw Mr. Radke
5 at the scene.

6 Q. Did you see a shirtless man at the scene?

7 A. I don't remember, ma'am. I went in the house
8 pretty quick after I arrived. And the first time I
9 remember seeing Mr. Radke was when there was some
10 photographs taken down at the jail.

11 Q. Might I show you what has been marked for
12 evidence as State's Exhibit 76, on which there are some
13 bloodstains. Are they dried?

14 A. Are they dried? They are now, yes, ma'am.

15 Q. Are they dried? But are they dried?

16 A. Yeah, they're dried.

17 Q. Are the stains on that shirt dried?

18 A. Yes, ma'am.

19 Q. Thank you.

20 MS. SHELTON: That's all I have.

21 MS. MCVEA: Nothing further, Your
22 Honor.

23 THE COURT: You may step down.

24 May this witness be excused?

25 MS. SHELTON: Yes, sir.

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1 MS. MCVEA: Yes, sir.

2 THE COURT: You may be excused, Mr.
3 Mowery.

4 MS. MCVEA: State calls Tom Bevel.

5 TOM BEVEL,

6 the witness hereinbefore named, being previously
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, please.

13 A. Yes. Tom Bevel.

14 Q. Are you the same Tom Bevel that testified
15 previous in this matter?

16 A. I am.

17 Q. Mr. Bevel, did you have an opportunity to
18 examine -- well, what's before you right there as
19 State's Exhibit No. --

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

21 COURT REPORTER: 31.

22 Q. (By Ms. McVea) State's Exhibit No. 31, did
23 you have an opportunity to examine it?

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

25 Q. And what did your examination reveal?

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1 A. That there are a number of different types of
2 stains that are on the shirt, and they include:
3 Transfers, blood drops, some smearing of some of the
4 bloodstains. Some of them are very directional. There
5 are a number of stains that are in the -- meeting the
6 high-velocity range, and I looked at 283 stains to
7 ascertain the measurement of them.

8 Q. And based on your examination of those
9 bloodstains, how would you characterize them?

10 A. Well, they are from a medium- to high-velocity
11 occurrence.

12 One of the questions I was asked previously is
13 whether or not they could be from a nosebleed. The
14 blood only dripping from the nose, I would say that that
15 would not characterize what is on here. The stains are
16 broken up to approximately a 1-millimeter diameter,
17 however, and some of them, they were even smaller than
18 that. It certainly is consistent with what is referred
19 to as an expectorant blood, which is blood that's in the
20 air passages of the mouth or the nose, and then they are
21 being forced out forcefully in the way of trying to
22 clear the air passage or sneeze or a very forceful gag
23 or cough. That is certainly consistent with what's on
24 the shirt.

25 Q. Now, I guess one of the ultimate questions we

1 need to ask you is: Can you tell by your examination
2 whether or not that shirt was involved in the occurrence
3 now on trial?

4 A. I certainly can. This shirt had nothing
5 whatsoever to do with the shooting.

6 Q. Okay. Why do you say that?

7 A. Almost all of the stains that are on the pants
8 are mixed with tissue. And that's not uncommon when you
9 have such a disruptive wound as we do to the face of the
10 victim. There's not a single stain on the shirt that
11 has any tissue that's mixed in with the blood. It's
12 more from blood that is not a disruptive wound, just
13 simply a bleeding wound.

14 Q. Just so that we can be clear, State's Exhibit
15 No. 31 is the same shirt that you examined; is that
16 right?

17 A. That is correct.

18 Q. Okay. Can you go ahead -- can you go ahead
19 and step down.

20 A. (Witness complies.)

21 Q. Can you go ahead and describe for the Court
22 the different type of bloodstains that you just
23 testified to?

24 A. Yes. The one that is directly up by the
25 collar is a soaked bloodstain. It's also diluted. It's

1 had water or something else that's come in contact with
2 it. The stains that are a little bit larger, such as
3 this one, and then as you especially get down to the
4 bottom, are very consistent with blood that is
5 dripping. The blood that is broken up in this area
6 right in here is consistent with what we refer to as the
7 medium- to high-velocity type of blood, such as a
8 forceful cough or gag or a clearing of the nose. That
9 is very likely what is producing that.

10 The other stains, for the most part, are just
11 simply blood transfers and soaks and smears where this
12 has come in contact with something that is bloody. It
13 could very easily have been used to bring up, for
14 example, to the -- if you have blood around the mouth or
15 the nose, to wipe it.

16 And then we also have some of the larger stains
17 that are over in this area and also on the sleeves;
18 however, the directionality of those are all leading
19 back to this particular area.

20 Q. So is this item, the bloodstains on this
21 particular item, consistent with someone having a wound
22 to their mouth --

23 A. As long as --

24 Q. -- that's dripping or bleeding onto the shirt?

25 A. Yes. As long as they are also forcefully

1 expelling blood that's accumulated in the mouth, not
2 just simply dripping.

3 Q. Okay. As if the person is coughing?

4 A. That could very easily produce this, yes.

5 Q. And you can testify with a reasonable amount
6 of scientific certainty that this particular item,
7 State's Exhibit No. 31, was not involved in the shooting
8 on February the 29th of 1996?

9 A. I'm certain of that.

10 Q. Okay. Have a seat.

11 A. (Witness complies.)

12 Q. Can you just briefly tell us a little bit
13 about the properties of blood and how long blood takes
14 to dry?

15 A. Well, there's a lot of variables there. For
16 example, if we had what is considered to be a normal
17 blood droplet that's about .05 milliliters in volume that
18 was to drip down onto the podium here, that would easily
19 dry in this environment in less than 30 minutes.

20 Now, you take that same volume of blood and you
21 place it on something like a cotton T-shirt, because the
22 surface area is spread over a larger area as it's
23 absorbed into the T-shirt, that will likely dry in
24 considerably less time than that. You take that same
25 T-shirt and then you protect it from natural air flow,

1 then that will reduce the time that it is -- that it can
2 dry. Likewise, if you take that same T-shirt and put it
3 not only in air flow but direct sunlight, it will dry
4 quicker. So there's a lot of variables there.

5 Q. Now, you've examined State's Exhibit No. 33 --
6 I'm sorry, 31, and, for example, if that T-shirt was
7 found in a laundry basket, okay, with that type of a
8 blood pattern as you just described, how long would you
9 expect, in that type of environment, for that blood to
10 dry?

11 A. Assuming that the T-shirt is placed in the
12 laundry basket while it is still wet or shortly after
13 the blood got there.

14 Q. Correct.

15 A. Are other items covering --

16 Q. Okay.

17 A. -- that particular T-shirt?

18 Q. We can add those factors?

19 A. You have to look at those particular factors.
20 If it's simply laying on top, it would dry the same
21 there as if it was laying out on the table top
22 somewhere.

23 Q. Let's say there were other items on top of
24 that T-shirt and other items on the bottom of it --

25 A. Okay. If the --

1 Q. -- or at the bottom.

2 A. -- air flow is restricted, it will take a
3 longer period of time for it to dry.

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

6 CROSS-EXAMINATION

7 BY MR. STEINBECK:

8 Q. So as to a shirt, with respect to Christopher
9 Radke, you don't have anything to analyze for your
10 testimony; is that correct?

11 A. The only thing I was provided with was the
12 T-shirt that we've looked at in question, so I don't
13 have anything other than that.

14 MR. STEINBECK: Nothing further.

15 THE COURT: Mr. Bevel, if a second
16 person was involved in the shooting of the deceased,
17 under the scenario that you illustrated in front of you
18 of the Jury Box earlier, would you expect any of this
19 blow-back blood or tissue to be on the shirt of that
20 person?

21 THE WITNESS: Yes, sir, I certainly
22 would.

23 THE COURT: Is it possible there would
24 be none?

25 THE WITNESS: There's always that

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1 possibility, but you have to consider what you do have.
2 And since there is blood on the pants, I would certainly
3 expect to find some on a shirt. What would be important
4 there is how much. If it's a tremendous amount, then
5 that changes the position that they possibly could be
6 in.

7 THE COURT: Thank you.

8 MS. MCVEA: Nothing further.

9 THE COURT: All right. You may step
10 down.

11 THE WITNESS: Thank you, sir.

12 MS. MCVEA: Your Honor, we rest.

13 MS. SHELTON: Judge Nelms, again, I
14 would make a Motion for Directed Verdict or Instructed
15 Verdict based on the fact that the State may have made a
16 prima fascia case. I don't know if they have or
17 haven't, but they haven't presented enough evidence to
18 substantiate a verdict based, first, on a prima fascia
19 case. There's not enough additional for that. I first
20 argue that they haven't made a prima fascia case; and,
21 second, I argue, if they have made it, there's still not
22 enough evidence to support a verdict at this point.

23 THE COURT: All right. That Motion is
24 denied. You may call your next witness.

25 MS. SHELTON: At this time, the Defense

1 would call Dr. Tim Branaman.

2 THE COURT: Sir, you did take the oath
3 earlier, did you not?

4 THE WITNESS: No, I did not.

5 THE COURT: You did not? Please raise
6 your right hand.

7 (Witness sworn.)

8 THE WITNESS: I do.

9 THE COURT: You may put your hand
10 down.

11 TIMOTHY BRANAMAN,
12 the witness hereinbefore named, being first duly
13 cautioned and sworn to testify the truth, the whole
14 truth, and nothing but the truth, testified on his oath,
15 as follows:

16 DIRECT EXAMINATION

17 BY MS. SHELTON:

18 Q. Dr. Branaman, your name for the Record would
19 be Timothy, T-I-M-O-T-H-Y, Branaman, B-R-A-N-A-M-A-N?

20 A. That's correct.

21 Q. And that's Ph.D.?

22 A. Yes.

23 Q. Dr. Branaman, how are you employed?

24 A. I'm in private practice. I have a part of a
25 group psychological practice.

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1 Q. And, sir, for the Judge, would you please give
2 us your training and expertise.

3 A. I have an undergraduate degree and a bachelor
4 of science degree from the University of Texas at Austin
5 in 1970. I have a master's degree in counseling from
6 the University of North Texas in 1973. I have a second
7 master's degree in psychology in 1978 from Texas A & M
8 University Commerce, which was formally East Texas State
9 University. And then in 1981, I obtained my doctoral
10 degree in psychology from Texas A & M University
11 Commerce. My --

12 Q. The professional training that you have had in
13 your areas of expertise, if you can give us some of that
14 after school.

15 A. Following -- following my academic training, I
16 was involved in an internship that was in a hospital
17 setting. Initially, I was -- worked there in a chemical
18 dependency treatment center. Following the completion
19 of that, I continued working that field. Actually, I
20 had begun my experience in that field of chemical
21 dependency in about 1978. I continued to work there at
22 the hospital. I was a department head for the chemical
23 dependency treatment center for a period of time
24 following the completion of my doctoral degree and
25 following my licensure as a psychologist.

1 I went into private practice in 1984. I continued
2 my relationship with that facility, as well as a number
3 of other chemical dependency treatment facilities in
4 consulting capacities, as well as working in a general,
5 private practice.

6 Q. Sir, you have been contacted by me to analyze
7 certain statements and evidence and talk to people
8 involved in this prosecution, which you understand to be
9 the Christopher Aaron Radke case; is that correct?

10 A. Yes, I have been.

11 Q. And would you tell the Court, basically,
12 without -- you don't have to go into it a great deal --
13 but, basically, the types of persons you have contacted
14 to talk to regarding this matter so that you might form
15 an opinion?

16 A. I have spoken with friends of Mr. Radke. I
17 have spoken with family members of Mr. Radke. I had an
18 opportunity to speak briefly with Mr. Radke, himself,
19 yesterday. And then I have reviewed documents and
20 records and notes pertaining to the case.

21 Q. Sir, did you also have proffered to you by me
22 various medical reports and offense reports of assaults,
23 one alleged to be by -- against Diana Radke herself?

24 A. Yes, I did.

25 Q. Things of that nature. And incident to the

1 latter, that is an alleged assault involving Diana Radke
2 as a victim, and I'm not talking about her death, but a
3 prior alleged assault, did you have the opportunity to
4 review some records from the family violence counselor
5 in the District Attorney's office?

6 A. Yes, I did.

7 Q. And did you review also some medical records
8 from a doctor of osteopathy, a Dr. Steven Bander, I
9 believe it was, a prescribing doctor of some medication
10 for Ms. Radke?

11 A. I reviewed his office notes.

12 Q. And do you have copies of those notes with
13 you?

14 A. Yes, I believe so.

15 Q. That is Dr. Bander's notes?

16 A. Yes.

17 Q. And also the notes of the family violence
18 counselor for the District Attorney's office?

19 A. Yes.

20 Q. I have Doctor Bander's notes here.

21 THE COURT: Ms. Shelton, it is unclear
22 to me at this point in what area of expertise the doctor
23 is about to testify. Could you possibly clear that up?

24 MS. SHELTON: Yes, sir. He's going to
25 testify, having viewed Ms. Radke's medical records and

1 other records of her activities that are both written
2 and oral depictions of her -- both her behavior, her
3 background, her previous alleged injuries, and medical
4 problems, as to Ms. Radke herself. He's not going to be
5 opining on an ultimate issue in this case. He doesn't
6 know anything about that.

7 THE COURT: Well, I mean, is he going
8 to tell me she's a mixed-up -- was a mixed-up young
9 woman? Is that basically the bottom line?

10 MS. SHELTON: Well, Judge Nelms, the
11 bottom line is that she did have a psychological
12 personality disorder that was rather noteworthy, and I
13 was going to elicit that from him.

14 THE COURT: All right. Well, proceed.

15 MS. SHELTON: Just a lot of -- sir, if
16 you'll permit me to say for the Record, it's not just a
17 lot of gossip from one side to the other, but a
18 compassionate analysis of this young woman's history and
19 life.

20 THE WITNESS: I am having difficulty
21 finding the copy of the family violence. Oh, here it
22 is.

23 Q. (By Ms. Shelton) Would that be Amy Wheat?

24 A. Yes.

25 Q. Dr. Branaman, you also were proffered some

1 photographs, both of the -- of Ms. Diana Morrison Radke
2 alive and photographs of her body after she was
3 deceased; is that correct? You have seen some
4 photographs --

5 A. I've seen photographs, I believe, that have
6 all been deceased.

7 Q. I'd like to draw your attention to one of
8 them, if I may. I direct your attention, Dr. Branaman,
9 to what has been marked as State's Exhibit 6. And I
10 show the Court that it was introduced as a depiction of
11 Ms. Radke's left arm while she was alive.

12 And I direct your attention further to the scars on
13 the forearm here, going this direction?

14 A. Yes.

15 Q. These are -- have you seen this photograph
16 before?

17 A. Yes, I have. I did not recall at the time you
18 asked me.

19 Q. And did you have an opportunity to learn what
20 caused those scars on her forearm, what was reported to
21 have caused those scars?

22 A. My understanding, they were from a gash that
23 she inflicted herself during her, I believe, early
24 teenage years in the presence of her parents.

25 Q. And further, did you learn that she, according

1 to her mother or according to the way she got the scar
2 was that, she did not want to go live with her father in
3 Levelland, and she was wanting her mother's attention,
4 so she cut her arm, slashed her wrist?

5 MS. MCVEA: Your Honor, I'm going to
6 object at this time as leading. Also, Defense Counsel
7 is testifying.

8 THE COURT: Overruled.

9 A. That was my understanding.

10 Q. (By Ms. Shelton) Sir, coming forward from the
11 infliction of those wounds at age 14, and you having
12 learned some other things about Ms. Radke's history,
13 both medical and psychological from interviewing
14 witnesses, from looking at medical records and diagrams,
15 would you please, if you can, typify some of her
16 behavior for us based on all of these factors?

17 A. Well, I think the thing that's remarkable
18 about the wound that I see reflected in the scars on her
19 arm is her, evidently, early propensity for intense,
20 dramatic, reactive behavior, as well as the potential,
21 obviously, demonstrated in the photograph, for violently
22 self-inflicting a wound to herself. I don't know what
23 her intention was at the time, whether it was suicidal
24 or whether it was melodramatic, but the wounds could
25 have, obviously, been potentially lethal.

1 Q. Are you familiar with the impact of the
2 directionality of those wounds up and down
3 longitudinally rather than across the wrists --

4 A. Yes.

5 Q. -- and what the import would be that she made
6 the longitudinal slashes?

7 A. Well, certainly, that potentially is a more
8 lethal type of wound than --

9 Q. Which is the more lethal type?

10 A. The longitudinal slash, because it has the
11 potential for opening up an artery in a way that can't
12 be sutured.

13 Q. And so if a person were seeking to really harm
14 themselves and wanted to cut their veins, they'd do it
15 the longitudinal way rather than across?

16 A. They might well do that.

17 Q. Sir, are you acquainted with or do you know
18 personally or the work and reputation of Charles Vor
19 Koper, V-o-r K-o-p-e-r?

20 A. Yes, I do.

21 Q. And have I not proffered to you a report from
22 Doctor -- he's not a doctor, but from Mr. Vor Koper
23 prior to this hearing?

24 A. Yes, you have.

25 Q. And who do you understand him to be, and how

1 do you understand, from speaking to him personally, that
2 report to have been generated?

3 A. He is a licensed social worker. I came to
4 originally know him by, I believe, he was previously an
5 executive director for one of the original suicide
6 prevention centers in Dallas. He's well known in the
7 mental health field. I have known him, or of him, for
8 years. The report that I reviewed, I understand, was
9 generated by him in response to a request from, I
10 believe, the District Attorney's office and asked him to
11 evaluate the propensity of Diana Radke for suicidal
12 behavior.

13 Q. And based on -- and I'm not asking you to
14 opine as to his conclusions -- but based on the report
15 that you saw, and that is what he did, prepared a report
16 and did some scoring that you would be familiar with, he
17 did what the District Attorney -- what he said the
18 District Attorney asked him to do?

19 A. That's correct.

20 Q. You have also seen some physician notes, that
21 is of doctor of osteopathy, Dr. Steven Bander, at the
22 Lakepointe Medical Clinic, which indicates, during a
23 very short period of time, about three months, that
24 Diana Radke came to that clinic wanting to lose weight,
25 complaining of several things, but one of them was her

1 desire to lose weight. Have you had -- you've looked at
2 those notes, and do you have them there with you before
3 you?

4 A. Yes, I do.

5 Q. Would you review those notes here again and
6 tell us, from your opinion and viewpoint, what those
7 notes equate with, the type of personality?

8 A. Well, what's notable to start with is she went
9 in initially and was prescribed Prozac, which is an
10 antidepressant medication, basically complaining of
11 difficulty sleeping and having no energy during the
12 day. At that time, which was -- I'm sorry, she
13 initially went in on the 14th of December, that's
14 correct, and making the complaints that I just
15 mentioned, also noting that she had gained 40 to 50
16 pounds during the past 14 months, and that she might
17 have a tendency towards nervous eating and had been
18 under a lot of stress, had been malaised, which is
19 another way of expressing being lethargic, possibly some
20 indications of depression.

21 She, on that particular date, was prescribed a low
22 dosage, in my experience of working with physicians, of
23 Prozac, ten milligrams; but then she was seen again
24 approximately a week later on the 20th and came back in
25 and commented at the time in being interested in a

1 weight management program, and she was started at that
2 time on the medications, Fastin and Pondermine, which
3 are being used frequently with regard to medicated
4 weight reduction. She was continued on the Prozac, as
5 well.

6 She continued to be seen approximately once a week
7 to every two weeks over the next couple of months. She
8 reported, subsequently, having some trouble sleeping.
9 Of course, she had initially reported some difficulty
10 sleeping when she went in, but apparently this
11 increased, which would not be an unusual side effect of
12 the medications, which were stimulant medications.

13 She subsequently was prescribed on the 29th of '96,
14 January 29th, 1996, a dosage of Desyrel, which is an
15 antidepressant medication. It is -- it however -- it
16 was -- appears to have been prescribed here for purposes
17 of sedation, because it's a moderately sedating
18 antidepressant. She was prescribed a dosage of 50
19 milligrams, and to take it up to 100 milligrams, as
20 needed for sleep, because she was having some
21 significant sleep disturbance. And she stated
22 thereabouts at that time that she was getting only two
23 to three hours of sleep a night.

24 Her weight was dropping significantly, and I
25 believe over the course of the time from when she first

1 went into see Dr. Bander on December the 14th, until the
2 time of her death, she had, I believe, lost about 30
3 pounds, I believe, is what --

4 Q. Could she have lost about 40 pounds?

5 A. Somewhere in that.

6 Q. Looking back, if he said 193 when she started,
7 and, I think --

8 A. I believe that the autopsy report had
9 indicated 163 or four pounds, but somewhere around 30 to
10 40 pounds. A large weight loss over, what,
11 approximately December, January, February; a two- and a
12 half-month period.

13 Q. If her physician, Dr. Bander's colleague,
14 represented that when she came in she initially weighed
15 over 200, and she had lost weight down to 163 in less
16 than two and a half months, that would be a pretty good
17 weight loss, wouldn't it?

18 A. That would be an extraordinary weight loss.

19 Q. And you see the notes in front of you, Dr.
20 Branaman, where the doctors are saying, as she loses
21 weight rapidly: Impression: excellent progress on
22 weight management. She's certainly losing weight
23 excellently?

24 A. Yes.

25 Q. But what effect is this dosage -- this

1 continued dosage of Fen-Phen having on Ms. Radke in
2 conjunction with the Prozac and the other, Desyrel,
3 and --

4 A. One of the things that I noted earlier was
5 that the two medications that are referred to as
6 Fen-Phen are stimulant medications. One is an
7 anorexiant and one is a stimulant. Basically they have
8 some similarities in characteristics, as well as
9 differences. One, the medication that is brand named
10 Fastin, is essentially very similar to an amphetamine
11 stimulant in going to activate the central nervous
12 system. The Physicians' Desk Reference, which is the
13 pharmaceutical reference for prescriptions of side
14 effects and counter indications for medications
15 indicates that with Fastin, there's a potential for
16 substance -- a development of substance dependence. It
17 shouldn't be used with somebody with a substance abuse
18 history; that it can cause agitation, and it can develop
19 a substance dependency. And that as the person develops
20 a tolerance for it, that -- it -- instead of increasing
21 the dosing level to get more effect, that this should be
22 managed.

23 The medication, Pondermine, the other of the two
24 medications, functions a little differently. One of the
25 potential side effects noted with the Physicians' Desk

1 Reference is potential exacerbation or causation of
2 depression associated with this particular medication.

3 Q. Pondermine potentially causing the
4 exacerbation or increase of depression would not be a
5 drug of choice for a lady who came in and reported
6 malaise, and problems of depression, and postpartum
7 depression, and perhaps depression in the marriage; it
8 would not be the drug of choice?

9 A. In terms of what I understand about Diana
10 Radke's history, in terms of my experience, I don't
11 think that those medications would have been the drug of
12 choice in any case.

13 Q. And isn't it true, Doctor, in reference to the
14 PDR, which any physician or health care practitioner, as
15 yourself, can make -- like yourself can make, that
16 possibly, from what you see with her dosage and from the
17 autopsy, and if you have -- well, from the chemistry
18 that you have printed out from Dr. Bander, that she had
19 reached potentially toxic levels, I believe you told me,
20 on this medication, on the Pondermine and Fastin?

21 A. I had indicated that there was a potential for
22 that. I don't recall seeing anything in -- and I
23 certainly wouldn't testify to the lab report.

24 Q. You don't know if it -- how it was affecting
25 her, but there was --

1 A. In terms of what -- of the side effects
2 associated with this medication, is the potential for a
3 personality change, aggressive behavior, and so forth,
4 and those were some of the things that I was noting in
5 my review of records and in looking at Ms. Radke's
6 history that suggested that, at the least, she was not
7 responding to the medication in the way that was a
8 constructive one, and at the worst, she may have, as
9 many persons with substance abuse histories are prone to
10 do, have been doubling up on her dosing levels, and,
11 therefore, may have been at a toxic level.

12 Q. Sir, if people were, on one hand, who dealt
13 with Ms. Radke, a person's representative, there was
14 nothing unusual in her behavior during that time period
15 when she was taking these medications, that is, perhaps
16 people who were close to her or saw her intermittently,
17 if they were to represent that her personality did not
18 change, that would have some effect on your professional
19 opinion, wouldn't it, and certainly it would have to be
20 inputted?

21 A. That they --

22 Q. The personality didn't change, that nothing
23 was wrong; that would be something you would consider?

24 A. Well, certainly I would consider it.

25 Q. Not alone, but --

1 A. Yes.

2 Q. -- in connection with other factors?

3 Let me draw your attention to the written report of
4 the District Attorney's social worker, or a family
5 violence counselor, that is, Amy Wheat?

6 A. Yes.

7 Q. And I think you said you have that report
8 there with you?

9 A. I do.

10 Q. The report dated 2/20 of '96?

11 A. Yes.

12 MS. MCVEA: Your Honor, if Counsel is
13 going to refer to a report, I ask that it be marked in
14 the Record to be clear.

15 THE COURT: Yes, marked as an
16 exhibit.

17 MS. SHELTON: Mark this as Defense
18 Exhibit 1, please, ma'am.

19 COURT REPORTER: This will be Defense
20 Exhibit No. 2.

21 MS. SHELTON: No. 2, I'm sorry.

22 (Whereupon, Defendant's Exhibit
23 No. 2 was marked by the Court
24 Reporter.)

25 Q. (By Ms. Shelton) Dr. Branaman, let me just

1 show you what's been marked as Defendant's Exhibit 2.

2 Does that appear to be a copy of the very same
3 report from Ms. Amy Wheat, who works for the District
4 Attorney's office, that you have here in front of you, a
5 form apparently that they use, that contains some 28
6 questions?

7 A. Yes.

8 Q. Okay. From reading Ms. Wheat's report, what
9 do you understand this is about, briefly, and what
10 conclusion or observation does she make about Ms.
11 Radke's apparent being on something and use of meds?

12 MS. MCVEA: I'm going to object at this
13 time, Your Honor. That question calls for hearsay.

14 THE COURT: Sustained.

15 Q. (By Ms. McVea) Does -- would you examine the
16 report, Doctor? I believe you've already read it.

17 A. Yes.

18 Q. I've given this to you prior to this hearing,
19 haven't I?

20 A. Yes, you have.

21 Q. And this is one of the things you looked at,
22 one of the items that you looked at, in forming an
23 assessment, a personality assessment, of Diana Radke,
24 isn't it?

25 A. Yes, it is.

1 Q. And doesn't the report indicate that -- don't
2 you get an impression from this report that Ms. Radke
3 was using a substance?

4 MS. MCVEA: Your Honor, I'm going to
5 object, again. It calls for hearsay.

6 THE COURT: Sustained.

7 Q. (By Ms. Shelton) Doctor, do you normally look
8 at things like this to form an opinion? Would you rely
9 on something like this to form an opinion?

10 A. I would incorporate it into my opinion, yes.

11 Q. And have you incorporated it into your
12 opinion?

13 A. Yes, I have.

14 MS. SHELTON: May he opine based on
15 this report, Judge Nelms?

16 THE COURT: Based on --

17 MS. SHELTON: On this report, which
18 I've offered.

19 COURT REPORTER: It's not offered.

20 MS. SHELTON: I haven't given it to
21 the Prosecutor.

22 THE COURT: Let her see it.

23 MS. MCVEA: Your Honor, we object.
24 This is hearsay.

25 THE COURT: Sustained.

1 MS. SHELTON: I'll reserve it, and I
2 suppose -- present it through Ms. Wheat.

3 Q. (By Ms. Shelton) If it were reported to you
4 by me or some other witness that Ms. Radke were having
5 problems, visible problems, while she was using the
6 medication, you would use that to form a basis for your
7 opinion?

8 MS. MCVEA: Your Honor, I'm going to
9 object again. That calls for a hearsay response, and we
10 object?

11 THE COURT: What -- if he's not going
12 to use hearsay to form an opinion, what is he going to
13 use?

14 MS. MCVEA: Well, we object that
15 Defense Counsel is feeding this witness information;
16 that's what we object to.

17 THE COURT: Well, if you do it in the
18 form of a hypothetical, you may do so.

19 MS. SHELTON: I can do that, Judge,
20 but their expert witnesses relied on hearsay from the
21 Prosecutor and from third- and fourth-hand transferences
22 of evidence out at the scene and handwritten notes, and
23 they used that evidence to predicate their opinions.

24 THE COURT: Tell me again what specific
25 evidence you wish to predicate his opinion on.

1 MS. SHELTON: Okay. This is a report
2 dated 2/20 of '96 generated by the District Attorney's
3 office and turned over to me during discovery prior to
4 the start-up of this trial. It is from Ms. Amy Wheat,
5 who's the family violence counselor down there. It is
6 in her -- totally in her handwriting on a District
7 Attorney's office form. In this, she indicates, that
8 is, Ms. Wheat indicates --

9 MS. MCVEA: Your Honor, I'm going to
10 object again at this time, since we --

11 MS. SHELTON: If could have --

12 THE COURT: Just a moment. One of you
13 at a time, please.

14 Finish your statement.

15 MS. SHELTON: The proffer of the
16 evidence that I would like to present -- and if the
17 Court does not except it, then I understand if you'll
18 tell me that you don't want it -- in which she notices
19 the decedent, at that time alive, her jumping around in
20 hyperactivity, bouncing around, and asked her, she said
21 point-blank: Are you taking any kind of medication?
22 And then Ms. Radke says: Yes, that she's on diet
23 pills.

24 THE COURT: All right. Is this witness
25 going to be available at a later time or either side

1 intending to call this witness?

2 MS. MCVEA: Your Honor, just so we're
3 clear here, Amy Wheat is not a family violence
4 counselor. She's just an intern that interviews -- or
5 even a volunteer that interviews victims that are
6 requesting the charges, pending charges, be dropped,
7 which that's what the position is. She's probably just
8 a college student.

9 THE COURT: All right. Well, I
10 overrule the objection. Go ahead.

11 MS. SHELTON: Thank you.

12 Q. (By Ms. Shelton) You had an opportunity to
13 examine Ms. Wheat's report and see what her physical
14 eye-to-eye observations of Ms. Radke were?

15 A. Yes, I did.

16 Q. And what were those observations? What did
17 she think or write?

18 A. She noticed that she was really jumpy and
19 laughing a lot, which in terms of my evaluation and
20 review, was consistent with other data; that, certainly,
21 with the use of the medication, it was consistent with
22 her insomnia and the problems -- with the problems with
23 sleep that she had reported. And apparently, it was
24 notable enough that the interviewer inquired about it
25 and noted that she apparently had been on some, quote,

1 diet pills recently. So it seemed to be evident in her
2 behavior, even maybe to an untrained observer.

3 Q. And this was on February the 20th --

4 A. Yes.

5 Q. -- of 1996?

6 A. Yes.

7 Q. And you understand the date of death to be
8 nine days later?

9 A. That's right.

10 Q. Were you able to, from your review of the
11 medical records, interviews with friends, family,
12 talking to Mr. Vor Koper, who was retained by the
13 District Attorney's office to do an analysis for them as
14 an expert witness, Ms. Wheat's civilian eyewitness
15 report, were you able to form an opinion as to a
16 personality disorder, if any? Also, in putting her
17 employment in a sexually-oriented business for several
18 years prior to her death, I would like to input that,
19 too, and you are aware of that.

20 Were you able to form an opinion as to any
21 personality disorder that Ms. Radke may have had?

22 A. Yes, I was.

23 Q. And what is that opinion?

24 A. Well, taking those factors that you just
25 mentioned into consideration, as well as her longer-term

1 history that we discussed previously, I believe that she
2 suffered from an unstable personality disorder, which
3 there are several varieties of unstable personality
4 disorders; but the one that was -- seemed to be most
5 prominent, in terms of the data that I had available to
6 me, was borderline personality disorder.

7 Q. Would you tell us what that is?

8 A. Borderline personality disorder is one of the
9 class of personality disorders that's characterized by
10 dramatic acting out. Persons with these disorders have
11 severe problems with attachment to others, as well as
12 trust. They tend to be very -- the professional term
13 would be emotionally labile. Their mood changes quickly
14 and dramatically.

15 Q. I was going to ask what that meant, labile.

16 A. Their mood changes quickly and dramatically.
17 They often are manipulative in terms of attempting to
18 control the environment because of their fear of
19 abandonment. The person has a disturbed sense of self,
20 and they have a high need for validation from their
21 environment. When you noted the sexually-oriented
22 business, many young women -- and I suppose young men as
23 well -- who might be involved in such a business, have
24 borderline or have personality disorders of this general
25 variety, and many have borderline personality disorders

1 because that's one of the ways of validating their sense
2 of value --

3 Q. Or worth?

4 A. -- to others and having contact with others
5 and being affirmed by others.

6 Q. Doctor, might I interject at this point a
7 query regarding that employment, and nobody's impugning
8 the morality or immorality of it, but perhaps while such
9 personality were engaged in that business, in the
10 sexually-oriented business, where they were on display
11 and being -- receiving adulation and admiration for
12 their beauty or handsomeness, at that time they might be
13 functioning better if they -- perhaps, is that a
14 possibility, or that might be a satisfying --

15 A. It would be.

16 Q. -- situation and environment for a personality
17 that is unusual and requires that kind of validation?

18 A. Yes. At with -- probably with most of us, we
19 see professions that are an in-service of our
20 personality and that fit in some way. And --

21 Q. Such as a -- someone might seek an occupation
22 as a combat commander and want to go into theaters of
23 war. That would predicate a certain type of personality
24 like --

25 A. Or that somebody who's analytical might want

1 to be an attorney or --

2 Q. Or speaking of the former, the combat
3 gentleman, or perhaps --

4 THE COURT: Anybody that says: Judge
5 is in contempt.

6 MS. SHELTON: I was going to say that,
7 Judge. I was going to say -- or who would -- what kind
8 of personality would want to become a District Court
9 Judgeship.

10 Q. (By Ms. Shelton) That would predicate the
11 certain kind of personality that would be willing to go
12 into those situations, would it not?

13 A. Our personality has a bearing on that, which
14 we choose to do.

15 Q. You prepared a review of -- a report for me,
16 which you gave me before this hearing --

17 A. Yes.

18 Q. -- did you not, Dr. Branaman?

19 A. Yes.

20 (Whereupon, Defendant's Exhibit
21 No. 3 was marked by the Court
22 Reporter.)

23 MS. SHELTON: May I approach the
24 witness?

25 Q. (By Ms. Shelton) I offer you what's been

1 marked as Defense Exhibit 3. Is this that self same
2 report entitled, "Review of Records"?

3 A. Yes.

4 Q. Okay. And it is not signed by you, is it, but
5 it is your report?

6 A. Yes.

7 MS. SHELTON: Let the Record reflect
8 that I'm offering the Prosecutor at this time my expert
9 witness, Dr. Tim Branaman's report.

10 (Whereupon, Defendant's Exhibit
11 No. 3 was offered into evidence.)

12 MS. MCVEA: No objections, Your Honor.

13 THE COURT: Is it offered?

14 MS. SHELTON: I ask that it be
15 admitted.

16 THE COURT: It's admitted.

17 (Whereupon, Defendant's Exhibit
18 No. 3 was admitted into evidence.)

19 Q. (By Ms. Shelton) Dr. Branaman, referring back
20 to your report, so that we might more quickly and
21 expeditiously get through your testimony, I'd like to
22 ask you some questions based on this report. On page 2,
23 you have subsection indications of BPD. What does that
24 mean?

25 A. Borderline personality disorder.

1 Q. And what are some of those indications as
2 related to either in general or as related to Diana
3 Radke or both?

4 A. What I was doing was reviewing for myself here
5 the -- some of the criteria from the diagnostic and
6 statistics manual, version four, DSM-IV, which --

7 Q. DSM-IV being?

8 A. Which is a -- published by the American
9 Psychiatric Association and is a standard reference list
10 for diagnostic criteria associated with psychological
11 disorders.

12 Q. And it is the benchmark reference book?

13 A. It is one of them, yes. It's the primary one,
14 yes.

15 Q. And --

16 A. So I'm referencing here those characteristics
17 for which I believe that there was evidence that
18 supported the presence of these behaviors that are
19 consistent with borderline personality disorder. And
20 the -- I believe it's five characteristics that are
21 required to make the diagnosis, I believe, that I can --

22 Q. How many did you find?

23 A. Seven, I believe, there.

24 Q. And I note one of the seven, the last one,
25 being chronic feelings of emptiness, and you have

1 supported that by several conclusions, and what would
2 those be?

3 A. Well, one -- and notice that with the first
4 one there, weight gain associated with feelings, I put a
5 question mark after that. I put a question mark after
6 it, because I obviously didn't have the opportunity to
7 interview Ms. Radke. But in my experience in working
8 with clients with chronic feelings of emptiness and
9 sadness, they often have disturbances in eating
10 patterns, so I -- my experience suggests that her weight
11 gain may have been associated with this particular
12 symptom behavior.

13 Her interaction with her spouse suggested to me low
14 self-esteem, and her sense of helplessness and
15 hopelessness was one of the things that had been noted
16 in the report by Charles Vor Koper,
17 which --

18 Q. And that's the Prosecution report?

19 A. Yes.

20 -- which it --

21 MS. MCVEA: I object to that
22 characterization. It is not the Prosecution report.

23 MS. SHELTON: I'm sorry. The report
24 that --

25 THE COURT: Sustained.

1 MS. SHELTON: I'm sorry. If I might
2 rephrase. Pardon me, Judge.

3 Q. (By Ms. Shelton) The report that had been
4 generated at the request of the Prosecution --

5 A. Yes.

6 Q. -- but was subsequently not adopted, we
7 presume?

8 MS. MCVEA: Your Honor, I'm going to
9 object to sidebar.

10 THE COURT: Sustained.

11 Q. (By Ms. Shelton) The weight gain that Ms.
12 Radke experienced, if you were told that she had never
13 had a weight gain like this as an adult person, and
14 certainly weighing over 200 pounds when you're five
15 feet, six inches tall, you would agree with me that
16 that's quite a bit for a lady?

17 A. Yes.

18 Q. That, previously, she was able to receive some
19 sort of self-esteem and reinforcement through her
20 employment in -- and it is, according to the city code,
21 a sexually-oriented business, but it could be construed
22 as some kind of, perhaps, show business, you know, being
23 out there on show in front of you some public, anyway,
24 that was giving you approbation and applause and telling
25 you that you were great. Losing that ability to do that

1 due to that weight gain, or losing that ability to do
2 that due to the pregnancy, or whatever reason that you
3 couldn't do that anymore, would that cause some of the
4 chronic -- some of the feeling of emptiness to
5 intensify, or would that be a factor that we would put
6 in, her loss of that employment?

7 A. Certainly. One of the things with borderline
8 personality disorders are: Prone to risk-taking;
9 they're prone to substance abuse. And part of the
10 function that risk-taking behavior serves and substance
11 abuse behavior serves is to distract the individual from
12 their feelings of emptiness and into helping them to
13 feel stimulated and alive. And if her profession was
14 one of the things that served that purpose, she would
15 certainly have been missing it; as well as, certainly,
16 it's normal and natural for female patients that I work
17 with, who go through pregnancies, to experience a lot of
18 distress over body change as a result, and normal
19 result, of pregnancy. But in a profession where a body
20 shape and size is critical, it's going to impact a
21 person in their view of themselves in relationship to
22 the world and to others more dramatically.

23 Q. And, sir, while I realize you may have some of
24 these come to your practice, these young ladies that
25 work in this industry, certainly for a lady five feet,

1 six inches tall, to dance in these clubs, a weight of no
2 more than 125 or 130 pounds would be tolerated, would it
3 not, from the ladies that you've seen come into your
4 office who have experienced problems or --

5 MS. MCVEA: Your Honor, I object. I
6 don't believe that's relevant to the issue at hand.

7 THE COURT: Overruled.

8 Q. (By Ms. Shelton) I'm not suggesting your
9 practice is a preponderance of these people, but you
10 must have knowledge of body shape and what is
11 appropriate in our culture.

12 A. Well, the individuals that I have worked with,
13 body shape is important. There's a place for everyone.
14 And so body size, large women dance as well as smaller
15 and petite women, but this particular lady had
16 obviously -- had a significant weight gain that probably
17 was initially associated with her pregnancy, but she
18 had -- her weight had continued to go up, and she had
19 had difficulty, obviously, taking it off and had
20 retained it after the child was born, so this would seem
21 to have complicated things with regard to her work, as
22 well as weight gain as associated with dysthymic type of
23 depression, which is a chronic and neurotic variety of
24 depression that is in place for an extended period of
25 time.

1 Q. And looking at item Number 3, or the third
2 item; it's not enumerated: Recurrent suicidal behavior,
3 gestures, threats, or self-mutilating behavior. You've
4 listed under there: As an adolescent. This is
5 presumably in reference to the slashing of her arms at
6 age 14, the photograph that you have up there that's
7 evidentiary.

8 Her threats that you were told about as an adult
9 and her suicidal gestures as an adult, are those the
10 constructs that you used in picking that out as one of
11 the factor indicators of the BPD --

12 A. Yes.

13 Q. -- that's what supports it?

14 Could you expound on that just a little bit, those
15 suicidal threats, gestures, behavior that you were told
16 about?

17 A. Well, with regard to the adolescent incident,
18 again, I think that from the scar that I saw in the
19 picture, as well as the circumstances, that it sounded
20 like that that occurred -- in my understanding, it was
21 with a broken piece of glass. I'm not sure if that was
22 a mirror or some other type of piece of glass. This
23 was, obviously, a dramatic situation; that the person
24 had to be very intense; and whether it was a matter
25 of -- for attention or to kill herself, I don't know.

1 Q. Conjoined with her threats as an adult and her
2 suicidal gestures as an adult, what would you opine?

3 A. Well, it's certainly consistent with
4 borderline personality disorder, which involves not only
5 suicidal behavior, but self-mutilating behavior. And
6 oftentimes with a borderline personality disorder, what
7 starts out as an attempt for attention and effort to
8 manipulate and control the environment and the people
9 around them who are important to them, sometimes turns
10 into a fatal accident.

11 Q. And, sir, let me ask you: A person who makes
12 suicidal gestures, such as the slashing of the arms, the
13 pointing of a gun at oneself, they don't necessarily
14 mean to commit suicide; they don't want to commit
15 suicide, necessarily, just because they do those things?

16 A. Not necessarily.

17 Q. In fact, they may only be trying to tell the
18 human beings around them, the people around them, that
19 they desperately want them to pay some intense attention
20 to them at that moment, and that they are willing to use
21 any means, even lethal means, to get that attention?

22 A. Yes.

23 Q. That they will literally -- they will kill
24 themselves, is what they are saying, if they don't get
25 that attention?

1 A. They are saying that -- oftentimes saying it
2 with words as well as with gestures.

3 Q. And they don't mean to kill themselves at all?

4 A. Oftentimes.

5 Q. Back to your observations, which are on your,
6 really, your next to last page, as one of the persons
7 you interviewed -- and I see that you interviewed quite
8 a few, including, I believe, you interviewed Chris Radke
9 himself --

10 A. Yes.

11 Q. -- is that correct?

12 A. Yes.

13 Q. Skipping down there to: Indications and DR
14 history of unstable personality.

15 I see that you interviewed Tommy Butcher, one Tommy
16 Butcher?

17 A. Yes, I did.

18 Q. And you learned from him that about a month
19 before the death, that Mr. Radke had gone home and found
20 Ms. Radke with a gun and threatening to kill herself,
21 and he had to take it away from her; that she had been
22 putting it up like she was going to shoot herself.

23 And this is what he reported to Mr. Butcher a month
24 before her death?

25 A. That's correct.

1 Q. Is that what Mr. Butcher told you?

2 A. Yes.

3 Q. Doctor, you've told us what -- about Ms.
4 Radke's psychological condition and her disorder before
5 her death. She had that disorder, certainly, before she
6 met and married Mr. Radke; would that be your
7 professional opinion?

8 A. Yes.

9 Q. It's not one that developed later in life?

10 A. No.

11 Q. It's one that develops early and, if
12 untreated, can grow?

13 A. Personality disorder and borderline
14 personality disorder is thought to begin to develop
15 during the attachment phase, which is during the early
16 childhood years.

17 Q. Subsequent to meeting and marrying Mr. Radke,
18 the relationship with him -- and you've been able to
19 talk to numerous persons about that relationship -- did
20 it help or exacerbate her condition? Did it make it --
21 could it have been better for her, or did it make things
22 worse? Based on what you know of Mr. Radke, his
23 intermittent substance abuse, immaturity?

24 A. It appeared, from looking at notes of the
25 deceased, that when it was good, it was real good, and

1 when it was bad, it was terrible, which is also
2 consistent with the kind of personality features that I
3 have described. But in terms of this person's seeming
4 need for attention and the disturbed sense of self, in
5 terms of what Mr. Radke was dealing with and his
6 tendency to want to spend time with friends and not
7 being at home as often as his wife would have liked,
8 probably intensified the dynamics of that relationship.
9 It's a pattern that I frequently see with couples I work
10 with when I'm doing couple counseling.

11 Q. You do couple therapy?

12 A. Yes.

13 Q. And what you've related to me is that one will
14 be the preeminent one, and one will be the one that
15 retreats away. In this case, haven't you -- haven't you
16 opined that he distanced and tried to withdraw, and she
17 pursued, that this was their relationship?

18 A. From the interviews that I've conducted, it's
19 been my impression that Mr. Radke is more passive, and
20 that his way of coping with conflict is to distance
21 himself, generally, from it. Although in terms of his
22 relationship with Diana Radke, she, at times, made it
23 very difficult for him to do that. And consistent with
24 borderline or unstable personality disorder, the
25 individual -- one person may be distancing and the other

1 person pursuing, because, I mean, it's -- they
2 experience it as a life-and-death matter; that this
3 other person can't leave because they're critical to
4 them.

5 Q. And the other person, in fact, not having the
6 personality disorder, wouldn't understand and would only
7 seek to retreat more, not understanding or comprehending
8 the effect they were having on the individual that was
9 suffering?

10 A. Generally, when the persons that I work with
11 are caught up in that situation, they don't have any
12 insight into what's happening. It's just happening.

13 Q. And certainly, a 24- or 25-year-old male with
14 no training, a young boy, wouldn't know how to deal with
15 this?

16 A. No.

17 Q. And even if he, in fact -- you've interviewed
18 numerous witnesses concerning his feelings towards her.
19 Even if he, in fact, loved her or expressed love and did
20 work very hard to support her; and, in fact, to do that,
21 came home every night and spent the night in the house,
22 with the exception of, perhaps, a few nights out after
23 major fights, this just wouldn't be enough, this
24 hard-working husband who told her he loved her and was
25 proud of her and the baby?

1 A. Sometimes, with this type of disorder, nothing
2 is ever enough. And I would also note that part of
3 this, as I think I previously noted, was the
4 exacerbation of these kind of characteristics by the
5 effects of the medication that she was taking, which is
6 a stimulant.

7 Q. So, sir, we have all these witnesses saying
8 that she would pursue him and follow him to places of --
9 his place of business, confront him at male friend's
10 houses, fall off of porches, according to what she
11 reports herself to the family violence counselor, and
12 cut her lip chasing him in a car. All these witnesses
13 attesting to her obsession with having to have him there
14 with her on this occasion, February the 29th, 1996, what
15 you have heard of the night in question, is it
16 consistent with what you've told us; that if she were to
17 approach him on this night, it would be
18 confrontational --

19 A. Well --

20 Q. -- had he not come home on time?

21 A. That's what I would expect, and I think
22 that's -- in terms of what I reviewed, that's what the
23 data I've reviewed supports.

24 Q. If, in fact, he had come home under the
25 influence of alcohol, heavily under the influence; if he

1 had come home late; if it had been in the record that
2 she had been calling around trying to find him earlier
3 in the evening; if, in fact, she was as upset or -- on
4 this occasion as she had been on others; if, in fact, on
5 other occasions she had pulled out weapons and
6 confronted him saying she was going to take her own
7 life; if, on this occasion -- and I'm presenting to you
8 a hypothetical -- a young woman like this were to take
9 out a weapon, and her inebriated spouse would not hear
10 her, would not pay attention to her, would not respond
11 to her shouts or her cries; and further, that she would
12 brandish the weapon; and then we all have seen the
13 results, that Ms. Radke is dead now, and we're sitting
14 here in a murder trial; on this occasion, could you
15 present to us an opinion that it just didn't work out,
16 her display on this occasion?

17 A. Yes. I think that that would have been a
18 circumstance not dissimilar probably to many that they
19 had experienced before where the husband would have come
20 home, would have been confronted by, perhaps, an
21 appropriately or inappropriately upset, angry spouse.
22 But in this particular instance, one in which the
23 behavior was accelerated by the prescription medication,
24 which were stimulants, and which can contribute to
25 aggression and violence, and may well have been

1 physically confrontive of him; based on previous
2 history, it would seem to me that he would have been
3 likely to have withdrawn and attempted to disengage,
4 which would have escalated the situation.

5 I think that since -- what I had seen with
6 borderline clients is when they are kind of ratcheting
7 up to the level of behavior; that since a weapon had
8 apparently been used in threats previously, that efforts
9 at this time might have been more dramatic.

10 Q. Due to the medication?

11 A. Due to -- well, due to the medication, and due
12 to the personality disorder, because --

13 Q. The fact that she was rationing upward?

14 A. What hadn't worked -- what hadn't -- what had
15 been done previously hadn't been sufficient, so with a
16 combination of the stimulant medication and personality
17 disorder, it would be more likely that the efforts would
18 have been more dramatic in terms of using the weapon to
19 get attention.

20 Q. And finally --

21 MS. SHELTON: I'm wrapping up now,
22 Judge.

23 Q. (By Ms. Shelton) If a person were trying to
24 get someone's attention and they used something like
25 this -- and I'm sure you've heard about this in your

1 practice. We've talked about one spouse getting out a
2 gun, not to threaten the other, but to: By, God, you're
3 not listening to me, or whatever you related to me, is
4 it usually the male gets out the gun because the wife
5 isn't listening to them and they've just got to be able
6 to overpower her, or is it equally divided between both
7 partners, or is it usually the female, or is there a
8 balance either way?

9 A. In the -- with the persons that I work with,
10 generally with the males getting out the gun, it would
11 be more likely to be a threat towards the -- towards the
12 wife, as opposed to towards themselves; whereas, a wife
13 using it, it could be either. But generally, in my
14 experience, it's more often a self-threat.

15 Q. And so with the female, it may be more often a
16 melodrama-type presentation. And one that is not
17 anticipated will go -- that would go to such a hideous
18 conclusion as falling to the floor and having your head
19 blown apart when you're two feet from the floor, that
20 doesn't usually happen?

21 A. Not usually. Not in my experience.

22 Q. All right. Thank you.

23 MS. SHELTON: Pass the witness.

24 MS. MCVEA: Briefly, Your Honor.

25

CROSS-EXAMINATION

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BY MS. MCVEA:

Q. Doctor, have you ever met with Diana Radke or had any contact with her at all?

A. No.

Q. Okay. So all the information that you learned about this case or about Diana Radke came from the Defense; is that correct?

A. Or my direct contact with the persons that I mentioned.

Q. Okay. The people that you interviewed, which the Defense provided those names and addresses for you; is that right?

A. Correct.

MS. SHELTON: Objection, Your Honor. The Prosecution provided Mr. Charles Vor Koper the counselor's name, and I indirectly provided that to them.

THE COURT: What is the objection?

MS. SHELTON: She's saying that all of the information was Defense generated; that -- and Mr. Vor Koper was anticipated as being their expert.

THE COURT: Well, I sustain the objection.

Q. (By Ms. McVea) Sir, have you ever spoken with

1 me or anyone from the District Attorney's office?

2 A. No.

3 Q. Okay. And did I ever provide you with any
4 information, me to you directly, concerning this case?

5 A. No.

6 Q. Okay. Have you ever talked to Diana Radke's
7 family or her friends when you were developing this
8 opinion about her?

9 A. I have not spoken with her family. I've
10 spoken to persons who were acquaintances of her. I
11 don't know that she would have considered them,
12 necessarily, friends or not. I don't know.

13 Q. So you didn't talk to her mother, did you?

14 A. No.

15 Q. You didn't talk to her father?

16 A. No.

17 Q. Or her brother?

18 A. No.

19 Q. Or any of her coworkers?

20 A. No.

21 Q. Okay. But you did base your opinion upon your
22 conversations of other things, from the Defendant's
23 family, correct?

24 A. In part, yes.

25 Q. Okay. And his relatives, his family, his

1 coworkers, correct?

2 A. They had some relationship to him, yes.

3 Q. Okay. And you took everything that they said
4 about Diana Radke as being true and correct, true?

5 A. No, I wouldn't say so. I was looking for
6 consistency. I'm a pretty cynical guy, and I don't
7 generally take everything as true that somebody says.
8 But I was looking to validate it in terms of consistency
9 that I found between the reports.

10 Q. Well, don't you think that their opinion might
11 be a little bias as their loved one is on trial for
12 murder?

13 A. I think that they certainly look at it from a
14 different prospective than the family members of the
15 deceased would, yes.

16 Q. Okay. If you talked to the victim's family of
17 Diana Radke and found out certain things like she was
18 happy with her job; that she was happy with her baby;
19 that she was doing really well at her job; that she was
20 happy she was losing weight, might your opinion change
21 about her?

22 A. That's not consistent with what I saw in the
23 physicians' notes and Diana Radke's disclosure with
24 regard to herself, so probably not.

25 Q. Okay. Now, you said that -- or we all know

1 that Diana Radke was prescribed Prozac; is that right?

2 A. Yes.

3 Q. Okay. And Prozac is commonly prescribed,
4 isn't it?

5 A. Yes.

6 Q. And it's commonly used for treating mild
7 depression, correct?

8 A. Mild or serious, yes.

9 Q. Okay. Depending on the dosage; is that right?

10 A. Right.

11 Q. How many patients have you diagnosed with a
12 personality disorder without even meeting with them?

13 A. I -- what I -- I wouldn't -- none. And I
14 would not say that I'm diagnosing Ms. Radke; I'm
15 pointing out things that are consistent with that.

16 Q. Well, you're representing to the Court that
17 she had some type of personality disorder; isn't that
18 true?

19 A. I'm representing to the Court that, in terms
20 of the data that I have at hand, that what I see that's
21 consistent with that personality disorder, that would
22 suggest that possibility, yes.

23 Q. Okay. Now, you're not saying to the Court
24 today that Christopher Radke is not guilty of murder;
25 that's not your purpose today?

1 A. I wasn't there. I don't know.

2 Q. Okay.

3 MS. MCVEA: That's all we have.

4 THE COURT: Dr. Branaman, you aren't
5 saying that a person with this personality disorder, or
6 whatever it, cannot be murdered.

7 THE WITNESS: Certainly not.

8 THE COURT: Let me ask you this: Is
9 it possible that a person with a personality disorder,
10 such as you have described, may be much more aggravating
11 a person than one who is, for want of a better word,
12 normal?

13 THE WITNESS: Yes.

14 THE COURT: And that such a person
15 might be more likely to insight the kind of high feeling
16 that sometimes precedes murder?

17 THE WITNESS: There is that
18 potential.

19 THE COURT: All right. I'm going
20 to -- do you have any more examination?

21 MS. SHELTON: Yes, I do have a couple
22 more.

23 THE COURT: A couple more. I'm going
24 to be leaving here in about no less than about six
25 minutes.

1 MS. SHELTON: Okay.

2 REDIRECT EXAMINATION

3 BY MS. SHELTON:

4 Q. In your gathering of information concerning
5 this situation and events and personalities involved,
6 was there anything, including your interview with social
7 acquaintances of both Diana Radke and Christopher Radke,
8 that indicated to you that Chris Radke displayed a
9 violent or confrontational-type or aggravated --

10 A. I inquired --

11 Q. -- physically abusive personality disorder?

12 A. -- even prior -- in terms of his history, his
13 developmental history, his -- how he interacted with
14 peers and coming up through school, and as well as in
15 the workplace, I found nothing that indicated that.

16 Q. And so summing up: You take her high-risk
17 life-style, the staging of dramatic events, the
18 confrontation syndrome, the unusual occupation or
19 advocacy she had followed and been happy in, her
20 personality, her suicide attempts and threats of same,
21 the gun waving on prior occasions, do you still stand by
22 your opinion that she is -- did have a borderline
23 personality disorder?

24 A. Everything that I see suggests that strongly.

25 Q. And sometimes these histrionic demonstrations,

1 or wrist slashings, or self-poisonings, or pulling out
2 of guns, sometimes these events go wrong, and the person
3 actually does get to a point they never intended;
4 doesn't that happen?

5 A. That's correct.

6 Q. And then everyone is upset, including
7 surviving family and spouse?

8 A. Yes.

9 Q. Of course, nobody understands what happened,
10 and everybody tries to explain it afterwards.

11 Do you think if Ms. Radke had treatment starting
12 back when she was 14 years old, maybe we wouldn't be
13 here today? I know that's not maybe a fair question,
14 but --

15 A. It's possible, although -- it's possible.
16 This type of personality disorder, in terms of the
17 persons that I've worked with, persons often have
18 chronic difficulties throughout the years. But at the
19 same time, they can learn to manage them and moderate
20 their emotions differently.

21 Q. And certainly giving them Fenfluramine and
22 Phentermine when they're in the grip of all of this is
23 not an indicative form of therapy?

24 A. I think that that was the accelerant on the
25 fire.

1 Q. Thank you, sir.

2 MS. MCVEA: Nothing further.

3 THE COURT: All right. Court is
4 adjourned until 9:15 in the morning.

5 (Whereupon, the proceedings recessed
6 for the day, resuming on October 30,
7 A.D. 1997, as reflected in the
8 next-numbered volume.)

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1 STATE OF TEXAS)

2 COUNTY OF DALLAS)

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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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195th Judicial District Court
Dallas County, Texas
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