

REPORTER'S RECORD

VOLUME V OF V

TRIAL COURT CAUSE NO. F96-02380-N

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

\*\*\*\*\*  
8 APPEARANCES:

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

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13 Dallas County, Texas

and

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Dallas County, Texas  
17 APPEARING FOR THE STATE OF TEXAS

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Dallas County, Texas

and

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21 Attorney at Law  
Dallas County, Texas  
22 APPEARING FOR THE DEFENDANT

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



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## P R O C E E D I N G S

October 30, 1997

Dallas County, Texas

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

THE COURT: You may call your next  
witness.

Please raise your right hand.

(Witness sworn.)

THE WITNESS: I do.

JOSEPH NUNEZ,

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

DIRECT EXAMINATION

BY MR. STEINBECK:

Q. Please state your full name.

A. Joseph Henry Nunez.

Q. Where do you reside?

A. 7340 Skillman.

Q. Where are you employed?

A. Processors Unlimited.

1 Q. And do you know Chris Radke?

2 A. Yes.

3 Q. How do you know him?

4 A. I worked with him at Medaphis Physician  
5 Services.

6 Q. During what time frame?

7 A. From about August of '95 to March of '96.

8 Q. Did you get to know Chris very well there at  
9 work?

10 A. Yes.

11 Q. Okay. What about his wife Diana Radke?

12 A. Excuse me?

13 Q. Did you get to know his wife at all or have  
14 any interaction with her?

15 A. Not as much as I had with Chris. I knew her  
16 because I went over and met her a few times.

17 Q. All right. What interactions did you see her  
18 have with Chris?

19 A. What do you mean?

20 Q. Well, what did you see happen between Chris  
21 and Diana?

22 A. They argued. You know, she would call him a  
23 lot at work.

24 Q. How often would she call?

25 A. Boy, a lot. She paged his pager and cell

1 phone, and even in the office, she called him, I don't  
2 know, many, many times a day.

3 Q. And how would Chris respond to her constantly  
4 calling him?

5 A. Well, he was like, you know, what's up, you  
6 know, what do you need? And she would just call him all  
7 the time over anything, really.

8 Q. Did Chris ever get mad and yell at her on the  
9 phone or anything like that?

10 A. No, he never -- no, he never got angry and  
11 slammed the phone or anything.

12 Q. He always remained peaceful?

13 A. Yeah.

14 Q. And what was the response that he often told  
15 her before they hung up?

16 A. Well, you know, they would argue -- and I  
17 always kind of found it -- they always said, I love  
18 you. I mean, you know, I always thought it was weird to  
19 argue and then I love you.

20 Q. Was there a time -- tell the Judge about the  
21 time that you observed Chris looking through the phone  
22 book.

23 A. Chris came in one day, and he was just kind of  
24 upset, and he -- the first thing he did -- I was  
25 standing there processing the mail, and he got the phone

1 book and he started looking through the phone book for a  
2 defense attorney or a lawyer or whatever. And I go:  
3 What's wrong? And he goes: You know, I'm going to  
4 divorce Diana. She came home last night -- I came home  
5 last night, and she was threatening to kill herself, and  
6 I had to take the gun away from her. And I told him,  
7 you know, you need to get rid of that gun, but he said  
8 that he had to take the gun away from her because she  
9 was threatening.

10 Q. He was looking through a phone book you  
11 said --

12 A. Yes.

13 Q. -- to find a lawyer?

14 A. Yes.

15 Q. Do you know if he ever called a lawyer?

16 A. Yeah, he did call a lawyer. I don't know what  
17 happened after that. Obviously, they didn't divorce.

18 Q. What was Diana's reputation there at the  
19 workplace?

20 A. She had come up one time upset, and that's  
21 pretty much what everyone knew about her at work.  
22 They'd asked me, you know: What's up with Chris's  
23 wife? And, you know, I said: I don't know.

24 It wasn't a good reputation at work, but they  
25 didn't know her.

1 Q. Did Chris ever exhibit any kind of behavior  
2 other than peaceful behavior at work?

3 A. No. He was always peaceful. If anything, I  
4 was the one who got more upset than him over, you know,  
5 stuff that went on at work. I'd get mad, but Chris was  
6 always good about it.

7 Q. Are you married yourself?

8 A. Not anymore, no.

9 Q. How long were you employed there at that  
10 business?

11 A. Six years.

12 Q. Thank you.

13 MR. STEINBECK: Nothing further.

14 MS. MCVEA: I just have a few  
15 questions, Your Honor.

16 CROSS-EXAMINATION

17 BY MS. MCVEA:

18 Q. Would you consider yourself a good friend of  
19 the Defendant, Christopher Radke?

20 A. I got to be.

21 Q. Okay. And how often would you go to his  
22 house?

23 A. Less than a dozen times.

24 Q. So it's fair to say you socialized with him?

25 A. Yes.

1 Q. Okay. Now, you said that the Defendant told  
2 you that his wife threatened to kill herself with a gun;  
3 is that what you said?

4 A. Yes.

5 Q. When did he tell you this?

6 A. Approximately two weeks before, but not more  
7 than a month before it happened.

8 Q. Before Diana's death?

9 A. Yes.

10 Q. And you said in response to that, he was  
11 looking for a divorce attorney; is that what you  
12 testified to?

13 A. Yes.

14 Q. He wasn't looking for a doctor, correct?

15 A. No.

16 Q. At least what you could see, he was looking up  
17 divorce attorneys; is that correct?

18 A. Yes.

19 Q. He wasn't looking for a doctor?

20 A. No.

21 Q. He wasn't looking for a counselor, correct?

22 A. Not that I remember.

23 Q. Okay. Not that you could see?

24 A. No.

25 Q. He was looking for a divorce attorney,

1 correct?

2 A. Yes.

3 Q. Now, you didn't see her do this, did you?

4 A. No.

5 Q. So you're taking his word that she did this,  
6 correct?

7 A. Yes.

8 MS. MCVEA: That's all we have, Your  
9 Honor.

10 REDIRECT EXAMINATION

11 BY MR. STEINBECK:

12 Q. Did you ever remember having any conversations  
13 with Chris about in terms of getting back with Diana?

14 A. No. I don't understand: "the terms of getting  
15 back with Diana."

16 Q. Did you ever have any conversation about the  
17 follow-up of what they did to get back together?

18 A. Well, she -- I know another time she called up  
19 crying that, you know, she was upset, you know, I'm  
20 sorry, I'm sorry, that --

21 MS. MCVEA: Your Honor, I'm going to  
22 object. That's nonresponsive.

23 THE COURT: Sustained.

24 Q. (By Ms. McVea) Was there any conversations  
25 you had subsequent where you actually inquired about the

1 status of their relationship after that day that you  
2 learned that she had --

3 A. No.

4 Q. -- used the gun?

5 A. No.

6 Q. You guys weren't that close, were you?

7 A. Yeah, we were. It's just that I was having  
8 problems of my own, you know, and I was off in my own  
9 world, you know. I can't remember.

10 Q. Did you ever give any advice to Chris on what  
11 he should do about her?

12 A. Yeah.

13 Q. What was that?

14 A. I thought he should leave her.

15 Q. Thank you.

16 MR. STEINBECK: Nothing further.

17 MS. MCVEA: Nothing further, Your  
18 Honor.

19 THE COURT: All right, sir. You may  
20 step down.

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

24 THE COURT: Have you been sworn?

25 THE WITNESS: No, sir.

1 (Witness sworn.)

2 THE WITNESS: I do.

3 THOMAS GENISON,

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

8 DIRECT EXAMINATION

9 BY MR. STEINBECK:

10 Q. Please state your full name.

11 A. Thomas Henry Genison.

12 Q. Where do you reside?

13 A. Richardson, Texas.

14 Q. Your address?

15 A. 1706 Arvada, A-r-v-a-d-a.

16 Q. Where are you currently employed?

17 A. Duncan Donuts.

18 Q. And what store is that at?

19 A. It's in Plano at Coit and Park Lane.

20 Q. How long have you been employed there?

21 A. Almost a month.

22 Q. And can you tell us, Mr. Genison, how you know  
23 Mr. Radke.

24 A. An acquaintance friendship.

25 Q. How long have you known him?

1           A.    I think we've been friends for almost five  
2 years.

3           Q.    How did you get to know him?

4           A.    From my buddy Nick.  At his apartment, I met  
5 him.

6           Q.    Okay.  And what's Nick's last name?

7           A.    Earhart.

8           Q.    Did you get to know Chris quite well in those  
9 five years?

10          A.    Yeah.

11          Q.    Could you tell the Judge what kind of  
12 character Chris has for peacefulness.

13          A.    I've never seen him get violent or angry or  
14 anything.

15          Q.    Does he have any kind of mean streak in him at  
16 all?

17          A.    Not that I've ever seen.

18          Q.    And could you tell the Judge what you know  
19 about Chris and that gun that he had.

20          A.    He didn't want it in the house.  He wanted me  
21 to bring it to my house, to keep it at the house, at my  
22 house.  He didn't trust it being in the house.  He  
23 didn't want Diana having access to it.

24          Q.    What time frame was this?  Do you recall when  
25 she died?

1           A.    The first time he asked me to get it was two  
2 months earlier, a month.  And then about every time I  
3 saw him, he kept reminding me to come by the house and  
4 pick up the gun.  Come by the house and pick up this  
5 gun.

6           Q.    You were aware that Chris was on parole at  
7 that time?

8           A.    Yeah.

9           Q.    Did you ever come by to pick it up?

10          A.    No, I never got around to it.

11          Q.    Did you know or have personal knowledge as to  
12 why Chris wanted the gun out of the house?

13          A.    He said that Diana was suicidal, and that he  
14 didn't want her to harm herself.

15          Q.    Did you have any beliefs that that was  
16 accurate?

17          A.    No.  I mean, just what he had told me.

18          Q.    Did you personally observe Diana acting  
19 strange or --

20          A.    Yeah.  She always -- every time I saw her, she  
21 flipped her lid, went out of control, yelled.  She never  
22 tried to have a rational conversation, just always  
23 screaming and shouting.  I tried not to be around it as  
24 much as I could.  It was none of my business to stay  
25 around.

1 Q. How did Chris react to her behavior?

2 A. He tried to -- he just -- he always stayed  
3 very calm, from what I remember. If it got too out of  
4 hand, then, you know, he would leave with me or I would  
5 leave and he would leave at the same time, you know,  
6 from the house.

7 Q. Did you ever see Diana get physical?

8 A. Just throwing objects, throwing objects at us,  
9 me, him, and the car when we got into it and left one  
10 time on one occasion.

11 Q. What kind of object did she throw at you and  
12 Chris?

13 A. Anything she could find. Anything laying on  
14 the ground. Cans, pots, trash, whatever.

15 Q. Pots, you said?

16 A. Yeah, like floor pots.

17 Q. So stuff that could possibly create injury,  
18 injury?

19 A. Oh, yeah. Heavy stuff, ceramic pots, light  
20 stuff, cans, trash, trash bags, just screaming, flailing  
21 her arms, you know.

22 Q. And your testimony is that Chris always  
23 remained calm?

24 A. Always.

25 Q. Do you have any opinion as to what Chris had

1 in terms of care and love for Diana?

2 A. I know he loved her very dearly. I know he  
3 loved his son. He was kind of tormented over the  
4 situation and how she was always freaking out, but he  
5 couldn't leave her because he had a baby with her.

6 MS. MCVEA: I object, Your Honor, as  
7 nonresponsive.

8 THE COURT: Sustained.

9 A. He didn't want to leave his son.

10 MS. MCVEA: I object.

11 MR. STEINBECK: That's fine. Please  
12 don't answer the question.

13 Q. (By Mr. Steinbeck) In your opinion, was Chris  
14 faithful to her?

15 A. Yes.

16 Q. How did he seem to treat her?

17 A. I always saw him treating her good. I never  
18 saw him abuse her, not verbal or physical or anything.

19 Q. Thank you.

20 MR. STEINBECK: Nothing further.

21 CROSS-EXAMINATION

22 BY MS. MCVEA:

23 Q. Sir, how long have you and the Defendant been  
24 friends?

25 A. Almost five years.

1 Q. What's your date of birth?

2 A. 3/23/74.

3 Q. Okay. So is it true that back on -- in 1996  
4 you were convicted of theft check of over 20 in Criminal  
5 District Court No. 4, is that true, and you received  
6 probation?

7 A. It was over ten.

8 Q. Over ten. Is that true?

9 A. Yes.

10 Q. Okay.

11 A. Except to what --

12 Q. You answered the question. Thank you, sir.  
13 How often did you socialize with the Defendant?

14 A. Probably once a week.

15 Q. Okay.

16 A. Sometimes more. Sometimes at least once a  
17 week.

18 Q. Are you a married man?

19 A. No, ma'am.

20 Q. At the time you socialized with him, was he  
21 married, was Christopher Radke married?

22 A. I knew him before he was married, and --

23 Q. Well, after he was married, how often did you  
24 socialize with him?

25 A. About as frequently as before.

1 Q. So about once a week?

2 A. At least.

3 Q. Okay. And so would you go often to his home?

4 A. I tried not to go to his home because -- you  
5 know, as often as I could.

6 Q. Okay. But did you go to his home?

7 A. Yes.

8 Q. While he was married?

9 A. Yes.

10 Q. How often did do you that?

11 A. Maybe 20 or 30 times. I never went to their  
12 new house, only to the house --

13 Q. That they had before, they moved on Sunset?

14 A. It was off of Beltline and I-30.

15 Q. Okay. You said you went there at least 30  
16 times. So the time that he was married, how often, on  
17 average, did you go to his home?

18 A. Every now and then. I tried to leave some  
19 space for them because they were a young, married  
20 couple.

21 Q. Would you say once every two weeks, a couple  
22 of times a month?

23 A. Yeah, maybe two or three times a month, or  
24 sometimes I'd go there when she wasn't there. But for  
25 the most part, you know, I wouldn't go around when she

1 was.

2 Q. Well, the times that you went there, you said  
3 that you had seen Diana Radke, I guess to use your  
4 words, "flip her lid"?

5 A. Yeah. Every time.

6 Q. Okay. Could that be because you were over  
7 there and he had other friends over there, and she  
8 didn't want you-all there? Could that be part of it?

9 A. I was the only person present most of the  
10 times.

11 Q. Well, could it be that she flipped her lid  
12 because she didn't want you there?

13 A. Well, she would have been directing it towards  
14 me, wouldn't she?

15 Q. Well, maybe so, but maybe not. Maybe she was  
16 directing it towards him because she didn't want you  
17 over there.

18 A. Well --

19 Q. Is that a possibility?

20 A. Just as soon as she went -- flip --

21 Q. Just answer yes or no.

22 Is it a possibility?

23 A. Yes.

24 Q. Now, you said that you've never seen -- well,  
25 at least in your presence, you've never seen the

1 Defendant get violent --

2 A. Yes, ma'am.

3 Q. -- is that what you testified to?

4 A. Yes, ma'am.

5 Q. Okay. So you're not saying that he's never  
6 been violent or anything like that, are you, because you  
7 haven't been around him 24 hours a day or seven days a  
8 week?

9 A. Not in my presence.

10 Q. So just not in your presence?

11 A. Yes, ma'am.

12 Q. So you don't know what happened in that house  
13 after you would leave, do you?

14 A. No, ma'am.

15 Q. You weren't present there at 1001 Sunset on  
16 February the 29th, 1996, when Diana Radke was shot and  
17 killed, were you?

18 A. No, ma'am. I never went to that house.

19 Q. Okay. So you don't know what happened --

20 A. I don't even know where that house is.

21 Q. -- and you can't testify to that, correct?

22 A. Yes.

23 Q. Okay.

24 MS. MCVEA: That's all we have.

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REDIRECT EXAMINATION

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BY MR. STEINBECK:

Q. Tommy, you mentioned her flipping out. She wasn't flipping out as soon as you showed up, insinuating that you weren't welcome there; is that accurate?

A. Well, most of the times when I arrived, she was already flipping out. Like, previously, she had been going off her rocker. Then I remember on one occasion when she was friendly to me, but not more than 20 minutes; then she got real violent before I left.

Q. Did she ever say that you were welcome there at the house --

A. No.

Q. -- or ask you over, anything like that?

A. Well, I don't recall.

Q. Did you ever have an occasion to work with Chris or do odd jobs with him, part of that being in the context that you mentioned?

A. Pardon?

Q. Did you ever work with Chris or have any jobs with him?

A. Yes.

Q. Is that some of the contact you described that you had with Chris --

1 A. Yes. I helped --

2 Q. -- job oriented?

3 A. Only after we had a good friendship.

4 Q. What kind of work did you do with Chris?

5 A. I helped him at his mother's office a couple  
6 of times, and he got me a job interview with ceramic  
7 tiles, previous to that.

8 Q. So some association was not social but was  
9 actually work related?

10 A. No, it was -- our relationship was social, but  
11 when his mother had work to contract out to us, then he  
12 would, you know, invite me, because he knew I was a good  
13 worker.

14 Q. Thank you.

15 MR. STEINBECK: Nothing further.

16 MS. MCVEA: Nothing further, Your  
17 Honor.

18 THE COURT: All right. You may step  
19 down, sir.

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

23 MS. SHELTON: Excuse me, Your Honor.  
24 Mr. Maduka, who represents one of the gentleman who may  
25 be testifying later on this morning, is here, and, I

1 presume, to be present for his client.

2 May we speak to him for just a second and tell him  
3 what's going on?

4 THE COURT: Yes.

5 MS. SHELTON: Judge Nelms, we have a  
6 question from the Court. There are four of these men,  
7 and so far --

8 How many of the lawyers have we been able to  
9 contact?

10 MR. STEINBECK: Three.

11 MS. SHELTON: We have gotten three of  
12 them?

13 MR. STEINBECK: Yes.

14 MS. SHELTON: There's a fourth that we  
15 haven't been able to contact, but I think I know where I  
16 can find him. How do you want -- do you want all of  
17 them to be here when these --

18 THE COURT: I don't know who these  
19 people are you're speaking of.

20 MS. SHELTON: They are in custody, and  
21 they are charged with various offenses, as the Peavy  
22 witness was. And his attorney was here, and I don't  
23 know his name. It was the gray-haired man.

24 THE COURT: Well, it depends, I guess,  
25 on whether they have pending charges.

1 MS. SHELTON: They do.

2 THE COURT: And secondly, on whether  
3 they might make some admission of some new charge, and I  
4 have no way of knowing that. I would say in an  
5 abundance of caution that each one should have his  
6 attorney present.

7 MR. STEINBECK: There's one, Your  
8 Honor, that is pro se. He's stated that he got his  
9 other attorney fired, his Court-appointed attorney  
10 fired, and the Judge okayed him to go forward.

11 THE COURT: Well, if you bring him  
12 out, I'll be glad to admonish him and tell him I will  
13 appoint him an attorney.

14 MS. SHELTON: Well, then, we just  
15 wanted to get some clarification from you on how you  
16 wanted to handle it. But if they're not going to be --  
17 as Mr. Peavy, we couldn't go into his instant offense  
18 that was pending. None of their pending cases will be  
19 gone into, so I guess we're not going to have a  
20 problem. We can move along with them, then.

21 THE COURT: I will permit either side  
22 to elicit what their in jail for, how long they've been  
23 in jail, but not to go behind the offense.

24 MS. SHELTON: Thank you, Judge.

25 MS. MCVEA: Judge, may we approach for

1 a second?

2 (Off-the-record discussion.)

3 THE COURT: All right. Is this the  
4 gentleman that is pro se?

5 MR. STEINBECK: Yes, Your Honor.

6 THE COURT: Sir, what is your name?

7 THE WITNESS: Tony East.

8 THE COURT: All right. How do you  
9 spell your last name?

10 THE WITNESS: E-A-S-T.

11 THE COURT: E-S-T-E?

12 THE WITNESS: A-S-T.

13 THE COURT: East, like the direction?

14 THE WITNESS: Yes.

15 THE COURT: All right. Mr. East, you  
16 have been called as a witness in a murder trial in which  
17 Mr. Radke is the accused. I'm told by his attorneys and  
18 by the young lady who is the Prosecutor in your own  
19 case, who happens to be one of the lawyers in our case  
20 here, that you do not presently have an attorney; is  
21 that true?

22 THE WITNESS: Yes, sir.

23 THE COURT: All right. Is this  
24 because you didn't want an attorney, or you wanted one  
25 but you couldn't find one yet, or what is this situation

1 regarding you being represented?

2 THE WITNESS: Well, initially, I was  
3 represented by Ms. Tracy Holmes, which is --

4 THE COURT: The Public Defenders'  
5 Office?

6 THE WITNESS: Yes, sir, a  
7 Court-appointed attorney from the Public Defenders'  
8 Office. And I was dissatisfied with her representation,  
9 and I made an oral request to Judge Entz to be re -- be  
10 able to have --

11 THE COURT: Get a new lawyer?

12 THE WITNESS: Right, get a new  
13 lawyer.

14 THE COURT: And did he deny your  
15 request?

16 THE WITNESS: He denied my request.  
17 He said that I would have to either proceed pro se or  
18 continue retaining Ms. Holmes as my attorney.

19 THE COURT: So what is your plan now  
20 for representation?

21 THE WITNESS: I plan to represent  
22 myself.

23 THE COURT: All right. For the  
24 purposes of this hearing, if you wish, and for this  
25 hearing only, I can appoint a lawyer that you can

1 consult with. You understand that if you become a  
2 witness in the case and take the witness stand, that you  
3 will be asked questions. I'm not -- I can tell you in  
4 advance that I'm not going to permit the Prosecutors to  
5 question you at all about your own case, about any of  
6 the facts of your case or what led to you being charged  
7 or anything. So what they would want to question you  
8 about, I believe, is things that may have occurred in  
9 the jail.

10 Now, I don't know whether, in the jail, you have  
11 committed any offenses that you could be charged with.  
12 Only you would know that. If you wish to waive your  
13 rights and take the witness stand and give your  
14 testimony, those will be the ground rules. But if you  
15 make an admission of the commission of some offense that  
16 may have happened in the jail, then possibly that could  
17 be used as a basis for the Prosecution to use against  
18 you. If you've not done anything like that, you  
19 probably don't need to worry about it, because you're  
20 not going to admit it on the witness stand.

21 With respect to any commission of any offense in  
22 the jail, you could also invoke your Fifth Amendment  
23 right, and I would, if I saw that anything like that was  
24 happening, I would advise you. But if, for the purposes  
25 of the hearing, you would prefer to be represented by a

1 lawyer and consult with that lawyer during your  
2 testimony, I have no objection to doing that.

3 What would you rather do?

4 THE WITNESS: I will go ahead and  
5 proceed pro se.

6 THE COURT: Just by yourself?

7 THE WITNESS: Yes, sir.

8 THE COURT: All right. And if at any  
9 time you feel that you're being asked to reveal anything  
10 about any offense you might have committed in the jail,  
11 either a violation of jail rules or anything of that  
12 nature, if you will make it known to me, then I will see  
13 that that is not gone into.

14 THE WITNESS: Yes, sir.

15 THE COURT: All right. Raise your  
16 right hand and take the oath.

17 (Witness sworn.)

18 THE WITNESS: I do.

19 THE COURT: All right. You may take  
20 the witness stand.

21 TONY EAST,

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

DIRECT EXAMINATION

BY MR. STEINBECK:

Q. Mr. East, what are you currently accused of?

A. Aggravated assault with a deadly weapon.

Q. And how long have you been in Lew Sterrett?

A. Since April the 6th.

Q. Do you know Mr. Radke here?

A. Yes.

Q. Do you know him very well?

A. Not very well. I've known him for, I guess, about a month and a half.

Q. Do you also know a Carl Peavy?

A. Yes, sir.

Q. And did you have an occasion to talk to Carl Peavy?

A. Yes.

Q. What kind of things did you discuss?

A. Well, when I first met Carl Peavy, we discussed legal issues. At the time that I was moved in the same housing unit that he was moved in, that he was in, he was active in helping other inmates file motions and things of that nature on their own cases, their cases that they were confined on. And I had went to college at Missouri Community College for paralegal, and since we had that in common, we discussed a lot of legal

1 matters, and we became friends at that point. He would  
2 come to me for advice on different issues. He was  
3 working on a lot of other people's cases, and he wanted  
4 me and him to work together on the cases.

5 Q. Now, as far as him working on these cases, did  
6 you know how that came about? Were people seeking him  
7 out, or was he seeking them out for legal advice?

8 A. Well, he was basically doing it as a means of  
9 making money within the housing unit, because he wasn't  
10 receiving any money from his family or friends. His  
11 wife had divorced him, and he didn't have any money  
12 coming in from nowhere.

13 Q. But you know for a fact that he was getting  
14 paid to file motions and stuff on other people's cases?

15 A. Yes.

16 Q. And that's something that he was actively  
17 engaging --

18 MS. MCVEA: I'm going to object, Your  
19 Honor, to leading.

20 THE COURT: Sustained.

21 Q. (By Mr. Steinbeck) Did you become better  
22 friends with Chris or Carl Peavy?

23 A. Carl Peavy.

24 Q. Because you guys were cell mates a lot longer?

25 A. Well, no, it was because me and Carl had more

1 in common, and so we used to converse more and spend  
2 more time together. Actually, the only time I ever  
3 really spent time in the presence of Chris is during,  
4 like, we used to play spades and dominos and stuff like  
5 that. But other than that, we really wasn't that  
6 social.

7 Q. You didn't have one-on-one contact with Chris  
8 Radke?

9 A. Well, sometimes we did.

10 Q. But mostly it was Carl Peavy?

11 A. Yes, it was.

12 Q. Please tell the Judge what concern, if any,  
13 Carl expressed regarding his case.

14 MS. MCVEA: Your Honor, I object at  
15 this time. That's hearsay.

16 THE COURT: Sustained.

17 Q. (By Mr. Steinbeck) Did you have a  
18 conversation with Mr. Peavy about his case?

19 A. Yes.

20 Q. What was your impressions about his concern  
21 with his case?

22 MS. MCVEA: I'm going to object again  
23 to hearsay.

24 THE COURT: All right. Whose case are  
25 we talking about, Mr. Peavy's?

1 MR. STEINBECK: I'm asking his state of  
2 mind regarding Carl Peavy's concern about his case.

3 THE COURT: About his own case?

4 MR. STEINBECK: His state of mind about  
5 Carl Peavy's desperation involving his own case.

6 THE COURT: Well, I concede that  
7 Mr. Peavy is a desperate man. That is not an issue  
8 before the Court.

9 MR. STEINBECK: I'll move on, then,  
10 Your Honor. Thank you.

11 Q. (By Mr. Steinbeck) Were you aware of anything  
12 that Carl Peavy knew about Chris Radke's case?

13 A. Well --

14 Q. Did you ever have any conversation?

15 A. -- I know Carl Peavy spent a lot of time with  
16 discussing Chris's case. He was real -- in my opinion,  
17 he was kind of like obsessed with Chris's case, because  
18 he talked about it all the time. At one point he  
19 mentioned to me that he was --

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

22 THE COURT: What was your objection?  
23 It was hearsay?

24 MS. MCVEA: Yes, Your Honor.

25 THE COURT: Overruled. You may

1 continue.

2 A. Well, at one point he mentioned to me that he  
3 was thinking about testifying against Chris and lying on  
4 Chris.

5 Q. (By Mr. Steinbeck) Lying against Chris?

6 A. Lying on Chris to try to get probation,  
7 because he was on drugs when he was out on the street,  
8 and he was thinking about trying to get out and  
9 reestablish his family. He knew he was facing a lot of  
10 time in prison, and he was real concerned about that.

11 Q. So under no uncertain terms, you can recall  
12 him stating that he was going to lie on Chris Radke's  
13 case?

14 A. Yes, he did. He did state that he was  
15 thinking about it. But after he saw my expression,  
16 since me and him was friends and we had so much in  
17 common about the law, I thought -- I think he thought  
18 that I would agree with him. And after he saw my  
19 expression of disbelief and shock, he said that he was  
20 just thinking about it, that he would never do a thing  
21 like that.

22 Q. Did he -- did you observe him telling Chris  
23 that he could actually do the exact opposite, he could  
24 help him on his case?

25 A. Yes. At first, that's -- that's the basis of

1 him -- of his discussions with Chris. He had been  
2 trying to lead Chris on to believe that he could help  
3 him have the case resolved, to get a favorable decision  
4 in Chris's favor. And at one point I went down to  
5 Chris's cell one day, and I was going to ask him for a  
6 cup of coffee or something -- I forgot exactly what I  
7 was going to his cell for -- but when I went to his  
8 cell, Carl was down there going through his legal  
9 papers, and --

10 Q. Chris Radke's legal papers?

11 A. Right, Chris's legal papers.

12 Q. Okay.

13 A. And I didn't think nothing of it at the time  
14 because, you know, he was saying that he was trying to  
15 help Chris work on his case.

16 Q. I see.

17 A. But Chris wasn't in the cell, so --

18 Q. Where was Chris at?

19 A. I'm not sure. I think he was either in the  
20 shower or downstairs talking to one of his friends or  
21 something. But, you know, like I said, I didn't think  
22 nothing of it at the time, because he had been working  
23 on lot of people's case under the pretense that he was  
24 trying to help them. So I didn't think there was  
25 nothing wrong with it, because he had been talking to

1 Chris. But later on I found out that Chris had not  
2 given him consent to go through his legal papers.

3 Q. How was Chris's reaction to that when he found  
4 out?

5 A. Well, he didn't find out that I knew about  
6 this until after Carl Peavy had been moved out. And  
7 Chris found out that Peavy was testifying against him,  
8 and then I found out about it, and that's when I  
9 mentioned it to Chris that I had seen him one day going  
10 through his papers. And Chris told me that he didn't  
11 have no business going through his papers; that he  
12 hadn't given him consent to do that.

13 Q. Now, how did you know it was Chris's file?

14 A. Because I know what Chris's cell is. I know  
15 that he sleeps on the bottom. And he has this folder --  
16 he has these brown folders that he keeps his legal  
17 papers in, and he has these little things on them,  
18 little stickers; and that's the folders, the folders  
19 that he was going through.

20 Q. Okay.

21 A. They were sitting on the bottom bed. There's  
22 two beds in each cell, and he was sitting on the bottom  
23 bed with these folders.

24 Q. Now, do you know if Mr. Peavy was supposed to  
25 be having access to go into another cell?

1           A.    Well, we all go in and out of each other's  
2 cell, but we basically respect one another as far as --  
3 when we go into the cells, we usually go in there when  
4 the person who sleeps there is present. We don't just  
5 go into each other's cells without consent.

6           Q.    Now, you're agreeing to testify on all this  
7 even though you're facing your own charges?

8           A.    Yes.

9           Q.    And so you're even aware of the fact that the  
10 Prosecutor in this case is right before you here --

11          A.    Yes.

12          Q.    -- for your own case as well?

13          A.    Yes. Well, I wasn't aware of it until the  
14 Judge --

15          Q.    But you still want to testify as to the truth  
16 in this matter?

17          A.    Yes.

18          Q.    Despite the fact that the Prosecutor may  
19 resent you hurting her case against Mr. Radke; is that  
20 correct?

21          A.    Yes. I feel like -- well, personally for me,  
22 it's -- I think it's a matter of principles, because I  
23 know that the guy was trying to find a way to avoid  
24 going to prison. And I feel in my heart that he is  
25 lying. He had mentioned to me that he would be willing

1 to do anything to get off, to keep from going to prison  
2 and to try to save his family. He was really concerned  
3 about losing his family.

4 Q. Did you have an occasion to find out if  
5 Carl Peavy has a representation in the prison at all for  
6 truthfulness?

7 A. No. Not actually, no.

8 Q. You don't discuss that much with other people?

9 A. No.

10 Q. Okay. Thank you.

11 MR. STEINBECK: I have nothing further.

12 CROSS-EXAMINATION

13 BY MS. MCVEA:

14 Q. Sir, did you write a letter to the Defense  
15 Attorney, basically, about what you just testified to?

16 A. Yes.

17 MS. MCVEA: I'd like to see that  
18 letter, Your Honor.

19 (Whereupon, the letter was tendered  
20 to the State.)

21 MS. MCVEA: If I can have a moment,  
22 Your Honor, to read it.

23 (Whereupon, there was a brief  
24 pause in the proceedings.)

25 MS. MCVEA: Can we proceed, Your

1 Honor?

2 THE COURT: I beg your pardon?

3 MS. MCVEA: Can we proceed?

4 THE COURT: Yes, you may go ahead.

5 Q. (By Ms. McVea) So it is true that Mr. Peavy  
6 would help other inmates with regard to their cases?

7 A. Yes.

8 Q. Okay. And in order to help these inmates, he  
9 would have to talk to them, correct?

10 A. Yes.

11 Q. And did you say that you also helped inmates,  
12 too?

13 A. No.

14 Q. You never talked to other inmates about their  
15 cases?

16 A. No.

17 Q. Did you ever talk to Mr. Peavy about your  
18 case?

19 A. About my case?

20 Q. Correct.

21 A. Yes, we discussed my case at one time.

22 Q. Okay. Did you do that on more than one  
23 occasion?

24 A. No.

25 Q. Just one time?

1           A.    Yes, ma'am, just once.

2           Q.    Did he discuss his case with you?

3           A.    Yes.

4           Q.    So you're just here as a matter of principle;  
5 is that right?

6           A.    Yes.

7           Q.    No, sir.  You're just here because you're  
8 scared that Mr. Peavy is going to snitch on you,  
9 correct?

10          A.    No.

11          Q.    Well, you already said you talked to him about  
12 your case.  You're just scared because you're afraid  
13 he's going to come to Court and snitch on you; isn't  
14 that true?

15          A.    No, ma'am.

16          Q.    Okay.  That would be a big motive to lie,  
17 wouldn't it?

18          A.    No.

19          Q.    Okay.

20          A.    He don't know anything about my case.

21          Q.    You answered the question.  Thank you, sir.  
22                You don't know if Mr. Peavy came to Court and lied  
23 or not, do you?

24          A.    Yes, I do know he lied.

25          Q.    No, you don't.  You weren't here, so how do

1 you know?

2 A. Well, I was -- from what I was told --

3 Q. You're just guessing, correct?

4 A. From what I was told, he lied.

5 Q. But you don't know. You don't know if what he  
6 said --

7 MS. SHELTON: Objection, Your Honor.  
8 Allow the witness to answer the questions.

9 THE COURT: Yes, please do.

10 MS. MCVEA: Okay.

11 Q. (By Ms. McVea) You don't know if what Mr.  
12 Peavy testified to was corroborated by all the other  
13 evidence; you don't know that, do you?

14 A. No.

15 MS. MCVEA: Pass the witness.

16 REDIRECT EXAMINATION

17 BY MR. STEINBECK:

18 Q. And you don't even know the fact that Mr.  
19 Peavy's statement doesn't even make sense, either; isn't  
20 that correct?

21 A. No.

22 Q. You just know exactly what Mr. Peavy told you,  
23 correct?

24 A. Yes.

25 Q. And you're willing to have this Prosecutor

1 retaliate against you for hurting this case?

2 MS. MCVEA: Your Honor, I object.

3 First of all, that's leading; and it's argumentative.

4 THE COURT: Sustained.

5 MR. STEINBECK: Nothing further, Your  
6 Honor.

7 MS. MCVEA: No other questions.

8 THE COURT: All right. Sir, you may  
9 step down.

10 (Whereupon, the witness was then  
11 excused and proceedings resumed, as  
12 follows:)

13 MR. STEINBECK: James Decker, please.

14 Your Honor, I spoke with Mr. Decker's attorney  
15 yesterday, a Public Defender, and he said I have the  
16 consent to call him as a witness. His case has already  
17 been taken care of.

18 THE COURT: All right. Sir, are you  
19 James Decker?

20 THE WITNESS: Yes, sir.

21 THE COURT: Mr. Decker, the Defense in  
22 this case, State versus Eric Radke, are calling you as a  
23 Defense witness. Because are you an inmate of the  
24 Dallas County Jail, I need to make certain you  
25 understand what your rights are.

1 THE WITNESS: Yes, sir.

2 THE COURT: First of all, are you -- is  
3 your case disposed of that you're in jail for?

4 THE WITNESS: Pardon, sir?

5 THE COURT: Is that case been disposed  
6 of?

7 THE WITNESS: Yes, sir.

8 THE COURT: All right. Are you serving  
9 a jail sentence or awaiting transfer to the  
10 penitentiary, or what is your situation?

11 THE WITNESS: Awaiting transfer to a  
12 rehab.

13 THE COURT: Rehab. Safe P or one of  
14 those -- some rehabilitation?

15 THE WITNESS: Yes, sir, a rehab center.

16 THE COURT: Do you have any pending  
17 cases?

18 THE WITNESS: No, sir.

19 THE COURT: All right. Once you've  
20 become a witness, of course, each side is entitled to  
21 ask you questions. I'm not going to permit the State to  
22 go into the details of your own case, although -- even  
23 though it's disposed, so that will not be a problem.

24 THE WITNESS: Yes, sir.

25 THE COURT: Your activities in the

1 jail, however, will be fair game for questioning, and if  
2 you have done any illegal activity in the jail, they may  
3 bring that up, ask you about it.

4 THE WITNESS: Yes, sir.

5 THE COURT: And you would be bound,  
6 being under oath, to tell the truth. So if you did  
7 anything in the jail that was illegal, you might reveal  
8 it here.

9 THE WITNESS: Yes, sir.

10 THE COURT: I don't know whether -- if  
11 you did anything in the first place, and if you did,  
12 whether it would be something that would be merely a  
13 violation of jails rules or would be a prosecutable  
14 offense under the penal laws of this State. If you have  
15 any reservations or doubts about this, I will appoint an  
16 attorney for you to counsel with you; or if you feel  
17 comfortable, you may go ahead and testify.

18 THE WITNESS: Yes, sir. I feel  
19 comfortable.

20 THE COURT: I just want to make certain  
21 that you understand what your rights are.

22 THE WITNESS: Yes, sir, I understand my  
23 rights, sir.

24 THE COURT: And do you wish to go ahead  
25 and testify without the benefit of an attorney?

1 THE WITNESS: Yes, sir, I do.

2 THE COURT: Please raise your right  
3 hand.

4 THE WITNESS: Yes, sir

5 (Witness sworn.)

6 THE WITNESS: I do.

7 THE COURT: You may put your hand down,  
8 and take the witness stand.

9 JAMES DECKER,

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

14 DIRECT EXAMINATION

15 BY MR. STEINBECK:

16 Q. Sir, do you know a Carl Peavy?

17 A. Yes, sir.

18 Q. How do you know him?

19 A. I know him through meeting him. And the cell  
20 block that we're in, he's been down to our cell before,  
21 and I've talked and seen him on the floor and things.

22 Q. How long a time frame are you talking about?

23 A. Well, sir, I believe it was only around five  
24 weeks' total time.

25 Q. Did you have much conversation with Mr. Peavy?

1           A.    Not very many conversations, sir.

2           Q.    Did you have any knowledge of him knowing  
3 about Chris Radke's case?

4           A.    Yes, sir.

5           Q.    What is that?

6           A.    Well, sir, he sat down in our cell and talked  
7 to me and my cell mate about him, and he mentioned that  
8 he was thinking about --

9                       MS. MCVEA:  Objection, Your Honor.  
10 That's hearsay.

11                      THE WITNESS:  Yes, ma'am.

12                      THE COURT:  Sustained.  Listen  
13 carefully to the questions, please.

14                      THE WITNESS:  Yes, sir.

15                      MR. STEINBECK:  Your Honor, this is in  
16 direct contradiction of the testimony of their witness,  
17 Mr. Peavy, and I'm offering it for non-hearsay purposes,  
18 as well.

19                      THE COURT:  All right.  Overrule the  
20 objection.  Go ahead.

21           A.    Repeat the question, please, sir.

22           Q.    Go ahead and answer the question.

23           A.    Well --

24                      MS. SHELTON:  He wants you to repeat  
25 it.

1           A.    I wanted to make sure of the question, sir.

2           Q.    (By Mr. Steinbeck) The question was: What  
3 was he telling you about things he would do in his case?

4           A.    Okay. Well, sir, he was very emotional at the  
5 time, and he was sitting there talking to my cell mate  
6 about his decision, and that he was worried about how  
7 long he was going to be going to jail for, and that he  
8 would do anything that he could do to keep from having  
9 to go that long to jail. And he also mentioned that he  
10 knew a lot about Chris's case, and that -- you know, I  
11 was sitting on the top bunk shaking my head, not  
12 believing that anyone could say these kinds of things  
13 about someone, that they would say this, that they would  
14 turn into a snitch. I couldn't believe it, you know.

15           So I was on my bunk reading. It wasn't my  
16 conversation. I wasn't concerned about what was going  
17 on. I didn't like the person to begin with. And he  
18 looked up at me and said: What do you think about it?  
19 I told him: Man, I just -- I can't believe this. You  
20 know, you're -- you know, I can't believe you'd do a  
21 thing like this. And then, you know, I quit talking to  
22 him, and I quit associating with him. I just, you  
23 know -- I just disrespected him as a person.

24           Q.    To clarify matters, are you talking about --  
25 he was talking about lying on Chris Radke's case?

1           A.    Yes, sir.  And he said he would do anything  
2 and was -- you know, I couldn't believe it.  You know,  
3 how could a man do this to another man, you know,  
4 especially, a --

5           Q.    Did he say why he would do that?

6           A.    Well, he said that he was going down for his  
7 third time, and that he had been in prison twice  
8 before.  He had been in trouble in prison, and he wasn't  
9 going to go.  He wanted to be out with his son.  He was  
10 talking about his son, and he did not want to go down to  
11 prison again.  He wanted to get out, get probation or  
12 anything that he could get.  He was talking a lot about  
13 probation.

14          Q.    That was his goal, in your mind?

15          A.    Yes, sir.  Yes, sir.

16          Q.    What was his reaction to your reaction, if any  
17 that you observed?

18          A.    He seemed, you know -- well, he was very  
19 emotional.  He started to cry because of what my cell  
20 mate said to him about --

21                   MS.  MCVEA:  Objection, Your Honor.  
22 That's hearsay.

23                   THE COURT:  Sustained.

24          A.    Okay.  He was very emotional.

25          Q.    (By Mr. Steinbeck)  Did you ever see Mr. Peavy

1 up here yesterday?

2 A. Not yesterday, sir.

3 Q. The day before?

4 A. Yes, sir, the day before, sir.

5 Q. How was his demeanor back there?

6 A. When we first saw him, he was rather cheerful  
7 until he recognized that there was more than -- you  
8 know, there was a couple of guys from the cellblock  
9 there. And then he got real scared or something, and he  
10 said that he -- I couldn't hear what he said, but he  
11 talked, and then they took him out.

12 Q. Do you know anything about his reputation in  
13 the jail there at all?

14 A. Well, sir, I've heard some things; but, sir, I  
15 don't check very much.

16 Q. What about his reputation?

17 A. Well, sir, he was a jailhouse lawyer, is more  
18 or less all you could say. He tried to start trouble  
19 with some of the, let's see, I guess it was black folks,  
20 you know. I don't know exactly how to say it, but he  
21 was trying to start trouble between us whites and blacks  
22 and trying to get us on his side so that we could cover  
23 for him. I just didn't like him. His personal  
24 character was just not very cool.

25 Q. So in other words, he was known as a

1 troublemaker?

2 A. Yes, sir.

3 Q. And is there any other things that he told you  
4 about his case?

5 MS. SHELTON: Who's case?

6 Q. (By Mr. Steinbeck) About Carl Peavy's case?

7 A. About Carl Peavy's case? He talked about  
8 it --

9 MS. MCVEA: I'm going to object, Your  
10 Honor. I don't think that's relevant, anything about  
11 his own case.

12 THE COURT: Sustained.

13 MR. STEINBECK: Your Honor, there's  
14 more to the motive, but I'll move on.

15 Nothing further. Thank you.

16 THE WITNESS: Thank you, sir.

17 CROSS-EXAMINATION

18 BY MS. MCVEA:

19 Q. Sir, I have a few questions for you.

20 A. Yes, ma'am.

21 Q. Did you say your case is disposed of?

22 A. Yes, ma'am.

23 Q. And what were you convicted of?

24 A. Aggravated assault with a deadly weapon.

25 Q. And you received some type of probated

1 sentence?

2 A. Yes, ma'am.

3 Q. And as a condition of probation, you're to go  
4 to, what is it, Safe P?

5 A. Pardon me, ma'am?

6 Q. Are you supposed to go to drug rehab?

7 A. Yes, ma'am, now.

8 Q. Now, you said that Mr. Peavy was kind of like  
9 a jailhouse lawyer?

10 A. Yes, ma'am.

11 Q. Is that what you testified to?

12 A. Yes, ma'am.

13 Q. So other inmates would come to him, and he  
14 would help them with their cases or help them file  
15 motions, do things of that nature?

16 A. Yes, ma'am, but they didn't come to him; he  
17 went to them.

18 Q. But regardless, they would come together?

19 A. Yes, ma'am.

20 Q. And he would do these things for them; is that  
21 right?

22 A. Yes, ma'am.

23 Q. Okay. So in order to help these inmates,  
24 would it be a fair statement that he would have to talk  
25 to them and discuss their cases with them, true?

1 A. Yes, ma'am.

2 Q. Okay.

3 A. I would assume so.

4 Q. Now, you said that you overheard a  
5 conversation while you were in your cell, and Mr. Peavy  
6 was saying he was going to lie on Chris Radke; is that  
7 what you testified to, basically?

8 A. Well, he didn't come out and say exactly that  
9 he was going to lie. He said he would say anything.

10 Q. Say anything. Okay. Including the truth?

11 A. Yes, ma'am, I would assume so.

12 Q. Okay. Now, it is true that when he saw you  
13 and the other inmates, the people that he once shared  
14 the same tank with, he got afraid?

15 A. Yes, ma'am. I would assume that was his  
16 response. He seemed --

17 Q. At least that's what it appeared to you to be,  
18 correct?

19 A. Yes, ma'am.

20 Q. Okay. So being a jailhouse snitch, that  
21 doesn't go over too well, does it?

22 A. No, ma'am.

23 Q. People can get hurt and killed doing that,  
24 couldn't they?

25 A. I believe he said before that he had been --

1 Q. No. What I'm asking is: People could get  
2 hurt or killed --

3 A. Yes, ma'am.

4 Q. -- doing something like that, correct?

5 A. Yes, ma'am. In my opinion they might be able  
6 to, yes, ma'am.

7 Q. Okay.

8 MS. MCVEA: That's all we have, Your  
9 Honor.

10 REDIRECT EXAMINATION

11 BY MR. STEINBECK:

12 Q. You mentioned something to the Prosecutor  
13 about him soliciting others --

14 A. Yes, sir.

15 Q. -- for help. Was he getting paid to do this?

16 A. Yes, sir.

17 Q. Inmates were paying him to --

18 A. Well, not cash, sir.

19 Q. How were they paying him?

20 A. Through buying him candy bars, pastries,  
21 potato chips, you know, that sort of thing, sir.

22 Q. So he was getting compensation --

23 A. Yes, sir.

24 Q. -- in some form for that?

25 A. Yes, sir.

1 Q. And what kind of work, actually, was he doing;  
2 was it just verbal or was it also --

3 A. No, sir. From what I had seen, sir, he was  
4 bringing in typed paperwork and looking up things in the  
5 lawbooks, sir.

6 Q. Okay.

7 A. I don't know much about that stuff, sir. I  
8 just -- all I did was saw some of the things he brought  
9 in.

10 Q. Do you know if he had a nickname at all?

11 A. Yes, sir.

12 Q. What was that?

13 A. "Perry" Peavy.

14 Q. Was that just by one person, or did a lot of  
15 people call him that?

16 A. A lot of people, sir.

17 Q. Thank you.

18 MR. STEINBECK: Nothing further.

19 MS. MCVEA: Nothing further, Your  
20 Honor.

21 THE COURT: All right. You may step  
22 down.

23 MR. STEINBECK: Mr. Joe Harvey,  
24 please.

25 (Whereupon, the witness was then

1                   excused and proceedings resumed, as  
2                   follows:)

3                   MR. STEINBECK: I need to put  
4 something on the Record for this witness, Your Honor.

5                   THE COURT: Very well.

6                   COURT REPORTER: Can I get your name,  
7 please?

8                   MR. MADUKA: Charles Maduka,  
9 M-a-d-u-k-a.

10                  THE COURT: Mr. Maduka, did you want  
11 to put it on the Record before I --

12                  MR. MADUKA: Yes, Your Honor.

13                  THE COURT: -- admonish him?

14                  MR. MADUKA: Yes, Your Honor.

15                  THE COURT: If you are, go ahead.

16                  MR. MADUKA: Sir, could you swear him  
17 in?

18                  THE COURT: Please raise your right  
19 hand and take the oath.

20                                 (Witness sworn.)

21                  THE WITNESS: Yes, sir.

22                  THE COURT: You may put your hand  
23 down.

24                  MR. MADUKA: Your name is Buddy  
25 Harvey; is that correct? Is that your full name?

1 THE WITNESS: Buddy Joe Harvey.

2 MR. MADUKA: Buddy Joe Harvey.

3 Now, I was appointed to represent you in the CDC  
4 No. 2; is that correct?

5 THE WITNESS: Yes.

6 MR. MADUKA: Okay. And you have not  
7 retained another lawyer; is that correct?

8 THE WITNESS: Correct.

9 MR. MADUKA: And you have a case  
10 pending; is that correct?

11 THE WITNESS: Correct.

12 MR. MADUKA: Okay. I was told -- I  
13 met you this morning and told you that I had received a  
14 call from a defense lawyer that is defending a person  
15 charged with murder in this Court; is that correct.

16 THE WITNESS: Correct.

17 MR. MADUKA: Okay. I also told you  
18 that they wanted to call you as a witness in this case.

19 THE WITNESS: Correct.

20 MR. MADUKA: And that I told them that  
21 I would -- without seeing you, that I would tell them  
22 no; is that correct?

23 THE WITNESS: Correct.

24 MR. MADUKA: And that I would like an  
25 opportunity to see them; is that correct.

1 THE WITNESS: Correct.

2 MR. MADUKA: And I have discussed --  
3 met with you at least twice today; is that correct?

4 THE WITNESS: Correct.

5 MR. MADUKA: And we discussed the  
6 extent of what you were going to testify to; is that  
7 correct?

8 THE WITNESS: Correct.

9 MR. MADUKA: Now, I admonished you  
10 about the risk that you're taking; is that correct?

11 THE WITNESS: Correct.

12 MR. MADUKA: And I also advised you  
13 that it would be my opinion that you invoke your Fifth  
14 Amendment right and not testify; is that correct?

15 THE WITNESS: Correct.

16 MR. MADUKA: And you're going to  
17 disregard that advice; is that correct?

18 THE WITNESS: Correct.

19 MR. MADUKA: And you understand that's  
20 my legal advice; is that correct?

21 THE WITNESS: Yes, sir.

22 MR. MADUKA: And you are willing to  
23 take the risk and testify --

24 THE WITNESS: Yes.

25 MR. MADUKA: -- against your lawyers

1 advice?

2 THE WITNESS: Yes.

3 MR. MADUKA: Okay. Nothing further,  
4 Your Honor.

5 THE COURT: All right. Sir, you  
6 understand that you do have a right to remain silent and  
7 not to give any testimony relative to any matter in  
8 which you may be the accused?

9 THE WITNESS: Yes, sir.

10 THE COURT: By taking the stand -- is  
11 your case a pending case?

12 THE WITNESS: Yes, sir.

13 THE COURT: All right. I will not  
14 permit the State to go into any of the facts of your  
15 case.

16 THE WITNESS: Thank you.

17 THE COURT: But it is possible that  
18 you could blurt something out that might be relative to  
19 your case in spite of that. Also, if you have committed  
20 any offenses while you have been an inmate of the Dallas  
21 County Jail, and you testify about those, they could  
22 possibly be the basis of some prosecution or --

23 THE WITNESS: Yes, sir.

24 THE COURT: -- of some discipline  
25 action by the sheriff if you have just violated a jail

1 rule.

2 THE WITNESS: I haven't.

3 THE COURT: All right. Well, do you  
4 understand what your rights are --

5 THE WITNESS: Yes, sir.

6 THE COURT: -- and you tell me that  
7 you do wish to go ahead and give your testimony?

8 THE WITNESS: Yes.

9 THE COURT: All right. Very well.

10 Take the witness stand.

11 JOE HARVEY,

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 MR. STEINBECK:

18 Q. Mr. Harvey, do you know a Carl Peavy?

19 A. Yes, sir.

20 Q. How do you know him?

21 A. He's an inmate that was in 4W10, which is the  
22 tank I'm in.

23 Q. And how long did you know him?

24 A. A month and a half, two months.

25 Q. And did you have any occasion to talk to him

1 about your case or his case?

2 A. He asked me if I was in a position to have him  
3 do some motion granting or grant -- get some motions  
4 filed for me, and I told him I was represented by an  
5 attorney.

6 Q. Okay.

7 A. But he did pursue the issue. I spoke with my  
8 attorney, and he asked me, he said: Did you get all the  
9 information that I told you to get from your attorney?  
10 I said: No, I got the information that my attorney told  
11 me I needed. So we dropped it at that.

12 He came back later, and he wanted to discuss it  
13 further, and he kind of upset me. He said: I can't  
14 talk to you because you get upset too easy. And I  
15 said: Well, don't talk to me then. I walked off.

16 Q. Was Mr. Peavy working on other cases, as well,  
17 to your knowledge?

18 A. Yes, sir. There were four other cases in our  
19 tank that he was working on. I don't know what he was  
20 doing on them, but he was going to the law library and  
21 writing motions.

22 Q. Was he getting any form of compensation for  
23 doing that, if you know?

24 A. Commissary. You know, hot chocolate,  
25 cigarettes, things of that nature.

1 Q. What interest at all did you think that Mr.  
2 Peavy had towards your case?

3 A. When I --

4 Q. Was it a casual interest or a strong interest  
5 or --

6 A. When I got through talking to my attorney, he  
7 gave me a copy of the police report, and Mr. Peavy  
8 wanted to look at the report. And he read the police  
9 report, and his exact words was: They're going to hang  
10 you, dog. I said: You know, they can't hang me for  
11 something I ain't done. He said: Well, speaking as a  
12 prosecutor would speak, he said, you're going down.

13 That also upset me.

14 Q. Did Mr. Peavy ever have an occasion to talk to  
15 you about him testifying or doing things to assist a  
16 prosecutor?

17 A. Sir, there's six white men in our tank.  
18 There's some Spanish, and there's some blacks. He  
19 didn't really correspond with the black people.

20 MS. MCVEA: Your Honor, I'm going to  
21 object. I believe that's nonresponsive to the  
22 question.

23 THE WITNESS: Well --

24 THE COURT: Overruled.

25 THE WITNESS: Thank you.

1           A.     He came into my cell with me and my cell mate,  
2 Jim Decker, and he said that he got some divorce papers  
3 from his wife. We felt bad for him, you know, getting  
4 divorced while you're in jail. He said: I've got to  
5 get out of here. I said: I don't know what to tell  
6 you; I'm not a lawyer. He said that he knew enough  
7 about different cases that he could turn things around  
8 and put it together and get his case -- not what you  
9 would say dismissed, but get his time reduced. He said  
10 he was looking at 25 years.

11           He said he had done been down two times. The last  
12 time he said he got shanked down there. He sat on our  
13 toilet. There ain't a lot of places to sit. He sat on  
14 the toilet, and he was crying, and we felt bad for him.  
15 And then about three weeks later, he told us that they  
16 appointed him a new attorney, and he was going through a  
17 drug rehab. We thought that was great. So --

18           Q.     (By Mr. Steinbeck) And he --

19           A.     Sir?

20           Q.     I'm sorry. Go ahead.

21           A.     He said: I'll get to see my little boy in  
22 three weeks. And we thought that was fantastic. They  
23 moved him off the tank, and we thought he was going to a  
24 drug rehab.

25           Q.     So he was telling you that he was going to the

1 pen; that there was no way out, and then all of the  
2 sudden things changed, and he moved from the cell and  
3 was told he was getting probation?

4 A. Yes, sir.

5 Q. Did you find out why all of the sudden he was  
6 granted this favorable treatment?

7 A. All he told us was he fired the attorney that  
8 was appointed to him. And then he got another  
9 Court-appointed attorney, and he said: This man is  
10 working for me. He said: In two months I'll be in drug  
11 rehab.

12 Q. And not going to the pen?

13 A. Exactly.

14 Q. Who was the first attorney that he had; do you  
15 know?

16 A. I don't have any idea. I don't get into other  
17 people's cases, because I'm not a lawyer.

18 Q. Now, did he talk about deal-cutting with the  
19 DA's office at all?

20 A. No, sir. He didn't so much specifically say  
21 the DA, but what he said was: If I can talk to the DA.  
22 He didn't say I can talk to the DA. He said: If I can  
23 talk to the DA. And the first thing we know, he's over  
24 there on the phone doing a lot of phone calls.

25 Q. In exchange for talking to the DA, what did he

1 want?

2 A. He wanted to keep from going to the  
3 penitentiary for 25 years.

4 Q. And what could he get the prosecutors?

5 A. According to his statement, he said that he  
6 knew enough about the cases of different inmates that he  
7 could fix it to where they could get a conviction,  
8 period.

9 Q. By him misrepresenting facts or what?

10 A. It's hard to tell if a man is going to lie to  
11 you or not. And this -- he seemed like a nice guy. But  
12 he said he knew enough about the cases, if he could talk  
13 to the DA, that he could fix it.

14 Q. Did he ever tell you that he would point-out  
15 lie to hurt someone?

16 A. I'm not going to sit here on the stand and  
17 say, yes, he said lie; or, no, he didn't say lie. That  
18 I can't say. He said that if he could talk to the DA.  
19 That's the key word, "if." But he said he could fix it.  
20 Now, how he would fix it, that I don't know.

21 Q. What kind of reputation did he have there?

22 A. He was a likeable guy.

23 Q. To you he was?

24 A. And he seemed very knowledgeable about the  
25 law.

1 Q. Did he have a nickname there?

2 A. We called him "Perry" Peavy. You know,  
3 like "Perry Mason" the attorney, we called him "Perry"  
4 Peavy.

5 Q. So more than just one person called him that?

6 A. Quite a few of us.

7 Q. Thank you.

8 MR. STEINBECK: Nothing further.

9 CROSS-EXAMINATION

10 BY MS. MCVEA:

11 Q. Sir, so it was common knowledge that Mr. Peavy  
12 would help other inmates with their cases?

13 A. Yes, ma'am.

14 Q. Okay. But you never discussed your case with  
15 him; is that correct?

16 A. He asked me what I was in there for, and I  
17 told him, and he said: Let me go to the law library and  
18 look up exactly what the definition of this is. I  
19 said: I have an attorney.

20 Q. Okay.

21 A. After I spoke with my attorney, he came down  
22 and he wanted to read the police report.

23 Q. Did you let him read the police report?

24 A. Yeah, that's fine with me. I don't care.

25 Q. After he read the police report, that's when

1 he made that comment to you?

2 A. Yes, ma'am. His exact words --

3 Q. Did you discuss the police report further with  
4 him?

5 A. No, ma'am.

6 Q. Okay. Now, you said that he told you -- or in  
7 your presence, he said that he had been to prison before  
8 and he was shanked; is that right?

9 A. He had been to prison twice, and the second  
10 time he was shanked.

11 Q. That was because he was labeled as a snitch;  
12 is that correct?

13 A. Yes, ma'am.

14 Q. Okay. Shank means to be stabbed; is that  
15 right?

16 A. Yeah. He had a place on him. You could tell  
17 where he had been stabbed.

18 Q. Okay.

19 A. He was very nervous about it.

20 Q. Okay.

21 A. I can understand that.

22 Q. Now, you said that he didn't say he was going  
23 to lie on other inmates if he could talk to the DA; he  
24 said he had enough information where he could help the  
25 DA, is that right, or get a conviction?

1 A. He could fix it.

2 Q. Fix it?

3 A. That's the word he used, "fix."

4 Q. But he never said he was going to lie?

5 A. He never said he wasn't either.

6 Q. But he never said he was, right?

7 A. Yes, ma'am.

8 Q. Could it be that he just said that he was  
9 getting probation to you and other inmates because he  
10 knew he was going to be testify in the case, and that  
11 would explain why he was being moved?

12 A. Yes, ma'am.

13 Q. Isn't that feasible?

14 A. (Witness nods head.)

15 Q. Are you saying, "yes"?

16 A. Yes, ma'am.

17 Q. She has to take it down.

18 A. I'm sorry.

19 MS. MCVEA: That's all we have, Your  
20 Honor.

21 MR. STEINBECK: Thank you. Nothing  
22 further.

23 THE COURT: All right. You may step  
24 down.

25 MR. MADUKA: Your Honor, may he be

1 excused?

2 THE COURT: Yes, sir.

3 (Whereupon, the witness was then  
4 excused and proceedings resumed, as  
5 follows:)

6 MS. SHELTON: Judge, for the Court's  
7 information, I went down and spoke briefly with  
8 Mr. Fred Tinsley, and I don't know, one of the gentlemen  
9 represented that Mr. Tinsley was their lawyer, and he  
10 said he just couldn't put it together. He said, no, I  
11 don't think I've been hired yet. So I don't know if the  
12 next man --

13 THE COURT: Is that the next witness?

14 MS. SHELTON: I think so, yes.

15 THE COURT: Well, he may be willing to  
16 testify without benefit of a lawyer. I'll ask him.

17 Sir, come up before the Bench, please. What's your  
18 name?

19 THE WITNESS: Joe Davis.

20 THE COURT: Mr. Davis, is your case a  
21 pending case, or has your case been disposed of?

22 THE WITNESS: It's on appeal.

23 THE COURT: It's on appeal.

24 THE WITNESS: Yes.

25 THE COURT: All right. Do you

1 presently have an attorney that is representing you?

2 THE WITNESS: Yes.

3 THE COURT: Who is that?

4 THE WITNESS: Fred Tinsley.

5 THE COURT: Defense Counsel told me  
6 that she had spoken to Mr. Tinsley and that he had not  
7 been paid a fee, and he did not think that he was  
8 representing you. Is that news to you or --

9 THE WITNESS: Yeah, it is. He was  
10 Court-appointed to me.

11 THE BAILIFF: What's your name, sir?

12 THE WITNESS: Joseph Davis.

13 THE BAILIFF: Okay. Tinsley --  
14 according to Sandra Tinsley, she's representing him on  
15 the final appeal.

16 THE COURT: All right.

17 THE BAILIFF: The attorney she had  
18 listed was a Louis Jackey.

19 THE COURT: I don't know who that would  
20 be.

21 Well, sir, if you are called as a defense witness,  
22 and that is their intent, I've already instructed the  
23 parties that I would not permit anyone to go into the  
24 facts of your own case, not at all. I mean, they can  
25 ask you what you were convicted of and maybe what

1 sentence you got, but beyond that, nothing more, not  
2 about the factual history of it.

3         So what you would be called upon to testify about  
4 would be things that had occurred in the Dallas County  
5 Jail during your stay there and perhaps conversations  
6 that you had with other people, things that you  
7 witnessed. Some of these things might possibly raise a  
8 question about whether you had violated either jail  
9 rules or the laws of the State of Texas. If it's the  
10 laws of the State of Texas, then you could be prosecuted  
11 on the basis of your testimony. If it's jail rules, you  
12 could be disciplined while you're in the jail for  
13 violation of those rules.

14         Now, I don't know whether you've done any of that  
15 or not. If you have, you may wish to be counseled,  
16 because you certainly can invoke your Fifth Amendment  
17 right to remain silent as it relates to those matters.  
18 If you feel the need to confer with a lawyer before  
19 making that decision, you may do so. I don't know  
20 whether we can find Mr. Tinsley or not. Now, I will not  
21 permit them to ask you questions about: Did you commit  
22 any acts against the law while you were in the jail, or  
23 did you violate the jail rules? But if you blurt it out  
24 or something, I can't stop you from doing that.

25         Do you understand what I'm talking?

1 THE WITNESS: Yes.

2 THE COURT: Do you want to testify or  
3 not?

4 THE WITNESS: Yes.

5 THE COURT: All right. If you think  
6 they're starting to reach some sensitive area that  
7 might -- where you might want to invoke your  
8 Fifth Amendment right to remain silent, then make it  
9 known to me, and I will not let them question you on  
10 that. All right?

11 THE WITNESS: Okay.

12 THE COURT: All right. Raise your  
13 right hand.

14 (Witness sworn.)

15 THE WITNESS: I do.

16 MR. STEINBECK: My understanding is  
17 that he has an appellate attorney --

18 THE COURT: Yes.

19 MR. STEINBECK: -- that we have not  
20 contacted yet?

21 MS. SHELTON: I have contacted him  
22 down in the cafeteria this morning in.

23 MR. STEINBECK: I thought it was a  
24 female lady, though. It was a female attorney's name  
25 that was mentioned.

1 THE COURT: Well, he thinks Mr. Tinsley  
2 is his attorney.

3 Is any female lawyer representing you?

4 THE WITNESS: No, sir.

5 MS. SHELTON: The female represented  
6 him in the trial, and Tinsley represents him on appeal.

7 MR. STEINBECK: Very well. Please have  
8 a seat.

9 THE COURT: Everybody understands the  
10 ground rules; he's not to be asked about any factual  
11 matters relating to his own case other than what he was  
12 convicted of and the sentence he might have received.

13 JOE DAVIS,  
14 the witness hereinbefore named, being first duly  
15 cautioned and sworn to testify the truth, the whole  
16 truth, and nothing but the truth, testified on his oath,  
17 as follows:

18 DIRECT EXAMINATION

19 BY MR. STEINBECK:

20 Q. Mr. Davis, how do you know a Carl Peavy?

21 A. I met him on the tank we was on.

22 Q. How long ago was that?

23 A. In August.

24 Q. And did you ever have an occasion to discuss  
25 legal issues with Mr. Peavy?

1 A. Yes.

2 Q. Tell us about that.

3 A. Well, we used to go back and forth to the law  
4 library together, and he was trying to find a case  
5 somewhere where he could get his case reduced down to a  
6 theft charge. So I had tried to help him on that, you  
7 know, looking in the penal code and stuff. He could  
8 never find it, so he gave up on it.

9 Q. Now, Mr. Peavy represented to you that he had  
10 some kind of legal experience in his background?

11 A. He said he was a paralegal or something, a  
12 certified paralegal.

13 Q. Certified paralegal. Did you believe that?

14 A. Not afterwards. After we -- you know, after  
15 we started going to the law library. I said: No, man  
16 you're just joking.

17 Q. He didn't seem to know much about finding  
18 stuff?

19 A. No, he didn't.

20 Q. Did he ever discuss his case with you?

21 A. Yeah.

22 Q. What did he say?

23 MS. MCVEA: Your Honor, I'm going to  
24 object. That's certainly not relevant. I thought we  
25 couldn't go into Mr. Peavy's case. We can't go into any

1 of these gentlemen's cases.

2 MR. STEINBECK: I'll move on, Your  
3 Honor.

4 THE COURT: Very well.

5 Q. (By Mr. Steinbeck) Did Mr. Peavy -- did you  
6 form any impressions as to his degree of concern Mr.  
7 Peavy had on his case and what he was willing to do to  
8 get out of that jam?

9 A. Yeah.

10 Q. What was he willing to do?

11 A. Just about anything.

12 Q. How do you know that?

13 A. Well, he tried to, once, tell me how I could  
14 even get my case overturned, you know. I didn't know  
15 exactly who he was talking about, you know. He wanted  
16 me to conspire with him on somebody. He figured because  
17 my case was on appeal that maybe, you know, I could help  
18 him out, you know. I guess he figured two people were  
19 better than one. But, you know, when I found out what  
20 he was talking about, I kind of backed out of it.

21 Q. Did he make any promises to you?

22 A. I don't see how he could do anything for me.

23 Q. But did he make any promises to you?

24 A. Like getting me out?

25 Q. Yeah.

1           A.    Yeah.  He practically guaranteed he'd get my  
2 case overturned.

3           Q.    Now, did he have any -- did he have any  
4 information that you saw from other people's cases?

5           A.    Yeah, because he was working on other people's  
6 cases.

7           Q.    In exchange for compensation?

8           A.    Yeah, commissary and stuff like that.

9           Q.    Did he discuss crime scenes ever?

10          A.    Yeah.

11          Q.    What did he say about that?

12          A.    About making them, you know, like -- well, the  
13 way he told me, he could -- if he could get a person to  
14 tell him about a crime scene, he could make it  
15 consistent to some kind of shit that he -- I said:  Man,  
16 I don't want to hear it.  I'm not for sale.

17          Q.    Do you have any --

18          A.    I mean, it don't make -- you know, to me, I  
19 told him, I said -- I couldn't figure out who the hell  
20 he was talking about, so I said:  What do you mean  
21 "consistent"?  He started telling me:  Well, if a person  
22 told you so much about the crime, that if you could fill  
23 in, you know, these little pieces and shit like that,  
24 you can almost put yourself at the crime scene.  I said,  
25 yeah.  I mean, you know, I was just listening to him.

1 You know, I ain't going for this shit. But I guess,  
2 evidently, it's working.

3 Q. Did he ever tell you -- have a conversation  
4 with you about what the District Attorney's office would  
5 like to have?

6 A. Yeah. We all know what they want,  
7 convictions.

8 Q. What did he say about that?

9 A. He said he could get them one.

10 Q. Did you ever have an occasion to see any lists  
11 that he had?

12 A. I saw some names, but I don't remember who  
13 they were.

14 Q. Now, what -- did you ever have an occasion to  
15 discuss whether he was planning on testifying against  
16 people?

17 A. Yeah. He was trying to recruit some people.  
18 There were a couple more guys that he tried to get to go  
19 along with him on something, and I think one of them had  
20 been shipped, you know. But he couldn't get them to do  
21 it.

22 Q. What was he planning on doing; do you know?

23 A. What he's doing now, testifying.

24 Q. Was it your impression that he was going to  
25 testify to the truth or --

1           A.    Yeah.  I didn't think he was going to go  
2 through with it, but he is now.

3           Q.    I'm sorry?

4           A.    I didn't think he was going to do what he said  
5 he was going to do, but he's doing it now.  I mean, he's  
6 been in here.

7           Q.    Was it your impression he was planning on  
8 telling the truth or lying to help himself?

9           A.    I think he was doing -- I think he's lying.  I  
10 think this was the best case he had come up with, you  
11 know.

12          Q.    And was your impression, though, that he was  
13 planning on lying, based on the conversation, that he  
14 was going to lie in this case?

15          A.    Yeah, I think he was going to lie.

16          Q.    What did you tell him about that when you  
17 learned that?

18          A.    I didn't go along it.  I told him I didn't  
19 want any part of it.  I thought maybe he was just  
20 joking, you know.  I know he wanted to get out bad, and  
21 I know after he found out that his case wasn't what he  
22 thought it was -- he thought he could get it reduced  
23 down to a theft or something, you know.  And he found  
24 out he couldn't get it, you know.  So I know he wants to  
25 get out pretty damn bad.  I don't know to what extent

1 he's going --

2 Q. Do you know why he wants to get out, what he  
3 is wanting to do when he gets out?

4 A. He wants to get to his wife.

5 Q. Is there anything else that you know about?

6 A. I mean, you know, we talk about a lot of  
7 things up in the jailhouse, you know. He's got a drug  
8 habit and everything else, you know. So, I mean, man,  
9 you know, I can't tell if he wants to get to his family  
10 sometimes or if he's just wanting to get back out there  
11 and get high.

12 Q. Did he talk about wanting to get back and  
13 using drugs?

14 A. He talked about drugs as much as he do the law  
15 and his family.

16 Q. So he misses the drug scene?

17 A. Hum?

18 Q. He misses his drugs?

19 A. I would say he does.

20 Q. What did -- you told him something that made  
21 him -- or you told him something when he mentioned that  
22 he would -- will be testifying against people, and  
23 that's why he was going to lie. What did you tell him?

24 A. I can't understand.

25 Q. Did you tell Mr. Peavy something after he

1 learned that he was planning on testifying?

2 A. Oh. After I found out about what I thought he  
3 was going to do, I started telling people what he was up  
4 to. See, because I wasn't the only one he was trying to  
5 get to go along with this. Just the other ones just  
6 ain't came forward.

7 Q. So he was trying to recruit you to lie against  
8 people like Mr. Radke?

9 A. He was.

10 Q. To make stuff up?

11 A. Yeah.

12 Q. Okay. Now, right after you told other people,  
13 then soon after he was moved?

14 A. Yeah.

15 Q. Did he ever tell you about how his concerns  
16 about going to the pen were changed?

17 A. I heard something about him being in the pen,  
18 you know. I don't know nothing about it.

19 Q. Did you ever hear if his status from going to  
20 the pen was changed to probation at all?

21 A. Well, I didn't understand the question.

22 Q. Did his situation change? Was his situation  
23 changing, such as him going from the pen to instead  
24 going to rehab?

25 A. He come back one day. They got a church

1 service on the tank. He come back, went into the church  
2 service and told everybody that he was fixing to get  
3 probation and said he didn't have to do nothing to get  
4 it. I thought, hell, that's weird because he told me he  
5 had a court date at one time. I said: Damn, you're  
6 fixing to get out? So I said -- well, I started  
7 thinking about, you know, what he told me. I said,  
8 well, hell, maybe he did go down there and do that, you  
9 know. But you know, I mean, I don't know what he's up  
10 to, but I know he's up to something. He said he's going  
11 to get out, he's getting out.

12 Q. What was his reputation there in the cell?  
13 Was he a person people liked or was he --

14 A. Greedy.

15 Q. I'm sorry?

16 A. Greedy.

17 MS. SHELTON: Greedy.

18 Q. (By Mr. Steinbeck) Greedy.

19 MR. STEINBECK: Nothing further.

20 CROSS-EXAMINATION

21 BY MS. MCVEA:

22 Q. Sir, your last conviction was for what type of  
23 offense?

24 A. Burglary.

25 Q. And what type of sentence did you receive for

1 that?

2 A. Ten years.

3 Q. Ten years in prison; is that right?

4 A. Yes.

5 Q. Is that correct, sir?

6 A. Well, you convicted me on it.

7 Q. Excuse me?

8 A. I said, you were the one that convicted me for  
9 it.

10 Q. Are you saying that I was the Prosecutor on  
11 that case?

12 A. Yes, ma'am.

13 Q. I don't think so, sir.

14 A. I've got you on my paper.

15 Q. What?

16 A. On my brief.

17 Q. Okay. So were you aware that I was the  
18 Prosecutor on this particular case?

19 A. Not until a couple of days ago.

20 Q. Okay. Do you know what my name is?

21 A. McVea.

22 Q. Yeah.

23 A. Terri McVea.

24 Q. Okay. So you're probably pretty upset with  
25 me, hum?

1           A.    I don't even -- hey, you done your job, you  
2 know.  I'm trying to get back -- give it back to you  
3 though.

4           Q.    Okay.  But you're looking at me now, and  
5 you're probably thinking, well, I'm going to do whatever  
6 I can to help a fellow cell mate out?

7           A.    No.  I didn't know you was down here.

8           Q.    Okay.  You had no idea?

9           A.    No, ma'am.

10          Q.    Okay.  Now, did he say, Mr. Peavy, did he say  
11 that he was going to help the DA get a conviction by  
12 lying or telling the truth?

13          A.    Well --

14          Q.    Not what you think, what he said.

15          A.    Yeah.  Yeah, he said he would lie.

16          Q.    He said that?

17          A.    He will do anything.

18          Q.    Well, that's not what you just testified to.

19          A.    Yeah.

20          Q.    You said that he would just do anything.  You  
21 didn't say whether he was going to lie or tell the truth  
22 in order to get a conviction.  You said he would do  
23 anything.

24          A.    Yes, ma'am.

25          Q.    Okay.  So which one is it?

1 A. He'd lie and do anything else.

2 Q. Did he actually tell you that, that he would  
3 lie?

4 A. Yes, ma'am.

5 Q. Those words came out of his mouth?

6 A. Yes, ma'am. He tried to get me to go along  
7 with him.

8 Q. Okay. Well, you didn't testify to that just a  
9 minute ago during Direct, so you're changing your  
10 testimony.

11 A. I'm adding to it.

12 Q. Okay. Do you understand that you could be  
13 charged with perjury? You know what perjury is, don't  
14 you?

15 A. Yes, ma'am.

16 Q. Okay. Now, basically, you're telling this  
17 Court that Mr. Peavy is going around saying he's going  
18 to basically snitch out people in order to help his  
19 situation; is that what you're telling us?

20 A. Yes, ma'am.

21 Q. There in the jailhouse, he's going around  
22 telling all the inmates that he's going to snitch out  
23 people in order to help his situation?

24 A. The whole tank full of them over there.

25 Q. And did you discuss your case with him, too?

1 A. One time he interviewed a person in my cell.

2 Q. No. What I asked you, sir, is: Did you  
3 discuss your case with Mr. Peavy?

4 A. He didn't -- I let him read my briefs. He  
5 didn't seem like he knew too much about the law. He was  
6 telling me that he was a paralegal and all this kind of  
7 stuff.

8 Q. Okay. That's fine. So you discuss your case  
9 with him after --

10 A. Yes, ma'am.

11 Q. -- you've been convicted; is that right?

12 A. Yes, ma'am.

13 Q. Okay.

14 MS. MCVEA: That's all we have, Your  
15 Honor.

16 MR. STEINBECK: Nothing further, Your  
17 Honor.

18 THE COURT: All right. Sir, you may  
19 step down.

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

23 THE COURT: All right. Let's take a  
24 ten-minute recess.

25 (Whereupon, a recess was then

1 taken.)

2 THE COURT: All right. The Defense  
3 may call its next witness.

4 MR. STEINBECK: Yes, Your Honor.

5 MS. SHELTON: Before we get started,  
6 we'd like to bring it to the Court's attention that --  
7 and we don't want to, you know, just pick every John and  
8 Jill, but family members of the decedent are sitting in  
9 the Courtroom who are married to witnesses who are sworn  
10 in the case, and they have been observed going out and  
11 consulting with each other during breaks, and we're not  
12 complaining of it, but we do ask that some of our family  
13 members be released from the Rule who have already  
14 testified. Their family are sitting in here and  
15 husbands and wives of witnesses yet to testify on  
16 rebuttal --

17 THE COURT: Well, if you're certain  
18 you're not going to call them back for any purpose.

19 MS. SHELTON: If we go to punishment,  
20 I would.

21 THE COURT: Well, other than  
22 punishment.

23 MS. SHELTON: Okay. There are a  
24 couple that I wouldn't call.

25 THE COURT: Who did you want to come

1 back in?

2 MS. SHELTON: Tonya Johnson, who has  
3 spent most of the week down here, the blonde girl who  
4 has already testified with the short hair. Tonya  
5 Johnson would be one.

6 THE COURT: Is she a family member?

7 MS. SHELTON: No, she's not.

8 THE COURT: I'll permit the family  
9 members, but not just the witnesses, in general.

10 MS. SHELTON: Well, she's like one of  
11 his closest friends, and that's all. I'm not concerned  
12 about it, it's just that they're in here. I thought --

13 MS. MCVEA: Judge, for the Record,  
14 these witnesses have -- well, these people have never  
15 been witnesses, and they won't be witnesses.

16 THE COURT: Yeah. All right. Well,  
17 let's keep the Rule intact, then.

18 MS. MCVEA: Okay.

19 MATTHEW PHELPS,  
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 MR. STEINBECK:

1 Q. Please state your full name.

2 A. Michael Matthew Phelps, P-h-e-l-p-s.

3 Q. And what is your current address?

4 A. 2718 Pinewood.

5 Q. And how do you know Chris Radke?

6 A. I met him in high school, 9th grade.

7 Q. And which high school was that?

8 A. North Garland.

9 Q. Did you become friends with him, then, in high  
10 school?

11 A. Yes.

12 Q. And continued on through today?

13 A. Yes.

14 Q. What kinds of things did you do in high school  
15 with him to become friends?

16 A. Just -- we'd just hangout a lot together and,  
17 you know, ride bikes, do things, go out places.

18 Q. Did you get to know him very well --

19 A. Yeah.

20 Q. -- during this time frame?

21 A. Yes.

22 Q. Did you also know him during the time he was  
23 married to Diana Radke --

24 A. Yes, I did.

25 Q. -- and was seeing her?

1 A. Yes.

2 Q. What kind of interaction did you have with  
3 Chris at the time he was married to Diana?

4 A. I would see him occasionally, but not as much  
5 as I had before since he -- you know, since he was  
6 married. She didn't like me being around that much, so  
7 I couldn't spend as much time as I liked to with him.

8 Q. How often did you see him, then, say, per  
9 month or per week?

10 A. I'd say maybe, probably, once or twice a  
11 week. That was, you know, at the point where they were  
12 living at the house over by I-30.

13 Q. Okay. What would you-all do?

14 A. He would drive over there. He would, you  
15 know, come by my house while he was -- he worked as a  
16 courier, and sometimes he'd stop by whenever he had, you  
17 know, some extra time.

18 Q. Did you do much on nights, either during the  
19 week --

20 A. Not much.

21 Q. What did you observe, as far as Chris and his  
22 relationship with Diana?

23 A. As far as in what?

24 Q. What kind of relationship was that?

25 A. She seemed pretty unhappy with it.

1 Q. And how did Chris seem towards it?

2 A. He wanted to make it work.

3 Q. How do you know that?

4 A. He told me, you know, he wanted to make it  
5 work, before.

6 Q. Did Diana like you, in your opinion?

7 A. It's hard to tell. Sometimes she would act  
8 all right with me, and sometimes she would just blow up  
9 and, you know, want me to get out and leave. So, you  
10 know, it's kind of hard to say.

11 Q. Did you make any efforts to befriend her since  
12 she was married to one of your good friends?

13 A. Oh, yeah. I was kind to her, and I didn't --  
14 I wasn't mean to her or say bad things about her or to  
15 her or anything. I mean, I tried to be a friend to  
16 her.

17 Q. Did you ever have any good times with Diana  
18 around?

19 A. Yeah.

20 Q. You didn't feel like she didn't want you  
21 around at all?

22 A. Like I said, I mean, sometimes she would be  
23 okay with it, and other times she would just blow up and  
24 want me gone.

25 Q. Explain what you'd be doing when she would be

1 blowing up.

2 A. I mean, you know, I can't really remember  
3 doing anything out of the ordinary, just being there,  
4 you know. I think it's more just she didn't -- maybe  
5 she was jealous of my friendship with Chris. I'm not  
6 really sure why she would just, you know, blow up and  
7 get hysterical or --

8 Q. Did you ever see her friends over at the  
9 house?

10 A. Yes.

11 Q. Did she act this way around them, too?

12 A. I can remember one occasion where she did at a  
13 party that they were having.

14 Q. Tell us about that party.

15 A. We were -- I think a friend of Chris's, Joe  
16 Dingler, had come down from, I believe -- I don't  
17 remember where he lived. Maybe it was Tennessee. I'm  
18 not sure. And he had come to see him, and so Chris  
19 invited some friends, and she invited some friends. And  
20 we were there, and we were drinking and smoking pot, and  
21 then the next thing I know, she's going hysterical and  
22 kicking Chris's friends out and her friends out and  
23 wanted everyone gone. So, of course, we left, so ...

24 Q. Now, by "we were smoking pot," who did that  
25 include?

1           A.     Everyone at the party that I can recall. I  
2 mean, you know, I was, Chris was, Diana was, her brother  
3 was, Diana's friends were, Chris's friends were.

4           Q.     Now, Chris, he did use drugs on a regular  
5 basis, to your knowledge?

6           A.     Do what now?

7           Q.     Did he use regular drugs?

8           A.     I've seen him, you know -- I've seen all of  
9 them on a regular basis, then. I wasn't aware of much  
10 else, other than that.

11          Q.     How about Diana, were you aware of any  
12 other --

13          A.     I knew that she was taking, like, prescription  
14 pills, like Prozac and some other kind of -- like kind  
15 of a weight reduction kind of pill or something like  
16 that. I'd seen her smoke pot before.

17          Q.     Was there anything that led you to believe  
18 that she didn't like pot being smoked in the house?

19          A.     No.

20          Q.     Now, in relationship with Diana coming over  
21 there and you being a friend and whatnot, did she ever  
22 have an occasion to invite you to come over or anything?

23          A.     I don't really specifically remember her  
24 inviting me. You know, I'm sure there were times when  
25 Chris would call and invite me and say she doesn't mind

1 or something. But as far as, you know, her calling me  
2 up, I don't remember that happening.

3 Q. Was there any checking to see if she minded if  
4 you came over or whatnot?

5 A. Usually there was.

6 Q. As far as you, were you concerned about some  
7 kind of episode going down if you did come over?

8 A. A lot of times, yes. You know, that's why we  
9 would check, you know.

10 Q. Now, you mentioned one time getting thrown out  
11 from the house with all the other people at the party,  
12 including her friends. Was there any other time that  
13 you got thrown out, per se?

14 A. I don't know. I mean, there was times when  
15 she wouldn't want me to be there, and I'd just leave,  
16 you know, because, of course, you know, I don't want to  
17 be there around her when she's like that. But I'm sure  
18 there probably was other times when she didn't.

19 Q. Okay. Now, backing up to the time frame  
20 before Chris was married to her, what was your  
21 impressions of Diana's character at that time?

22 A. Before what now?

23 Q. Before Chris married her.

24 A. I didn't really know her that well then.

25 Q. From what you did know about her, did you have

1 any conversations with Chris about the advisability of  
2 marrying her?

3 A. I mean, I had heard bad things about her. You  
4 know, I didn't think it was probably a real good idea,  
5 but --

6 Q. Do you know why Chris decided to marry her  
7 despite some of the bad things?

8 A. He loved her. I mean, I guess that would be  
9 the reason.

10 Q. Did it appear to you that he loved her at all  
11 times?

12 A. Yes.

13 Q. How do you know that? What showed that he  
14 loved her?

15 A. You know, he -- he would buy flowers. I  
16 remember him buying her flowers before. I don't  
17 remember if it was for birthday or Valentine's Day or  
18 what. And he told me he loved her, and he loves his  
19 son, and he wanted to have a good marriage, you know,  
20 have a kid and raise his son.

21 Q. Tell us about any other occasions where you  
22 knew of Diana getting violent.

23 A. I can remember one incident where we were at  
24 Chris's house over off of 30. She was in the bedroom,  
25 and I was in the living room, and there's a small

1 hallway that's connecting the two, and Chris and I were  
2 leaving, and she got upset about that and said that she  
3 might as well be dead, and she might as well just kill  
4 herself. And that worried Chris, and he went in the  
5 bedroom to get the shotgun out of the house. And as he  
6 was coming out with it, she went at him and attacked  
7 him. And Chris was, you know, holding one arm up to try  
8 to block her, and he was holding the gun, you know, in  
9 the other hand away from her. And as she was coming at  
10 him and attacking him, he said: Here, Matt, take this.  
11 And he just tossed the gun over to me. And I took the  
12 gun and waited at the doorway, and Chris got away from  
13 her, and we took off in the car and left.

14 Q. Where was Chris at when you received the gun?

15 A. Where was he at?

16 Q. Yeah.

17 A. He was in the hallway.

18 Q. What did she do to him?

19 A. I can remember seeing her coming at him with a  
20 closed fist to hit him. I couldn't see where she hit  
21 him, because he was blocking the way. And my concern  
22 was to get the gun and get it away from that situation.

23 Q. How was her size in relation to Chris?

24 A. I'd say she was probably larger than he was,  
25 for sure.

1 Q. What kind of strength did she have?

2 A. I would say she was pretty strong.

3 Q. If you could, demonstrate that for us and for  
4 the Judge. Step down from there.

5 A. (Witness complies.)

6 Q. Assuming this here would represent the hallway  
7 wall --

8 A. Right.

9 Q. -- and the place you're seated represents the  
10 living room.

11 A. Okay.

12 Q. Assuming this area back here is the bedroom,  
13 where were you at?

14 A. I was in the living room when it started,  
15 right here. And Chris was facing the bedroom in the  
16 hallway. He came out with the gun and facing --

17 Q. Such as this?

18 A. Right.

19 Q. Okay. Where was -- where were they originally  
20 talking at or having the dispute?

21 A. Originally, when we were leaving, we were in  
22 the living room, but then he went into the bedroom to  
23 get the gun after she said that, you know, she wanted to  
24 kill herself, she might as well just kill herself.

25 Q. So he went into the bedroom and got the gun

1 from wherever --

2 A. Right, yeah.

3 Q. -- and as he was coming out, how was he  
4 holding the gun?

5 A. Well, she was, you know, arguing with him and  
6 yelling at him, and he had the gun like this. And she  
7 came at him, and he kind of put his arm up to block  
8 her. And she was trying to get the gun from him, and he  
9 said: Here, Matt, take it, as she was attacking him.  
10 And he just kind of tossed it to me, and I took it and  
11 waited at the doorway.

12 Q. Where was she at in the hallway?

13 A. Just coming at him.

14 Q. Standing from which direction?

15 A. From the bedroom.

16 Q. Okay.

17 A. Towards the living room.

18 Q. So Chris is leaving the bedroom, and she's in  
19 front of him?

20 A. She's coming at him trying to attack him,  
21 trying to get --

22 Q. If I'm Chris, where's Diana? Show me.

23 A. If you're Chris, Diana is where she is, and  
24 you're facing her.

25 Q. All right. And she's coming after me?

1 A. Yeah, with your arm up.

2 Q. Having the gun out like this?

3 A. Right. And he just kind of tosses it.

4 Q. How close are you to --

5 A. I mean, when I saw what was going on, I got  
6 closer, and Matt said: Here, take this. And I grabbed  
7 the gun and went by the doorway.

8 Q. Now, what kind of gun was that?

9 A. It was that gun.

10 Q. Very well. You can return to your seat,  
11 please.

12 A. (Witness complies.)

13 Q. What did you do once you got the gun, then?  
14 Where did you go?

15 A. I waited by the front door for Chris to come  
16 so we could get out of there.

17 Q. Okay. And Chris, it took him a moment,  
18 really, to get to you?

19 A. I mean, this all happened very fast. I don't  
20 know.

21 Q. But you saw Chris behind you, then?

22 A. Yeah. I mean, he got away right after I got  
23 to the doorway, so...

24 Q. How long was this before she actually died  
25 that night in February?

1           A.    I mean, it probably -- it might have been a  
2 month.  Maybe a month or a little longer.

3           Q.    Okay.

4           A.    I'm not certain, exactly, how long before.

5           Q.    Okay.  Where did you go after you left that  
6 door?

7           A.    I believe we went to my house to put it in the  
8 gun safe at home.  I believe we went to take the gun  
9 there --

10          Q.    Okay.

11          A.    -- to keep it, and I would keep it for him.

12          Q.    What did you -- what did she do, did she come  
13 out of the house at all when you were leaving?

14          A.    Yeah.  She followed us for a while.  And I  
15 think we just -- she just gave up or we out ran her or  
16 something.

17          Q.    So you had a high-speed getaway?

18          A.    No.  It wasn't like a high-speed getaway.

19          Q.    Okay.

20          A.    But we had a little head start on her.

21          Q.    What other occasions did you observe her  
22 having outbursts like that?

23          A.    I mean, she would get upset and argue.  I  
24 wouldn't see her actually get physical any other times,  
25 but she would get upset like that, you know.  I mean,

1 that was not an unusual thing, you know.

2 Q. Now, as far as the -- this gun that you  
3 pointed out, what do you know about that gun? When was  
4 it -- when did Chris have it, or how did he have it  
5 in -- do you know anything about that?

6 A. How he got it?

7 Q. Yeah.

8 A. At a friend of ours named Randy, he bought it  
9 from a guy named "Bear."

10 Q. And how long ago was that?

11 A. I would say it was probably at least three  
12 months before the incident. At least three, I would  
13 say, probably.

14 Q. As far back as how many, three to what?

15 A. I mean, three to five, maybe.

16 Q. Why did Chris get the gun, if you know?

17 A. You know, like I said, I've got a gun safe,  
18 and I had some guns, and my parents have some land in  
19 Sulfur Springs, and we go there and shoot, you know,  
20 target practice. We were talking about doing some bird  
21 hunting, so...

22 Q. Okay.

23 A. I had a 12-gauge that was my father's -- my  
24 grandfather's, excuse me, and it wouldn't -- it was an  
25 automatic, but it wouldn't fire automatic, and sometimes

1 it wouldn't fire, so, you know, I hadn't done any bird  
2 hunting before that, but --

3 Q. Do you know why the gun was in the house ever?

4 A. You know, my guess would be self-protection.

5 Q. Where was the gun normally kept?

6 A. In the house or --

7 Q. No. Where was the gun normally kept in that  
8 three-month time frame?

9 A. Most of that time it was at my house.

10 Q. And did you ever have an occasion prior to  
11 that time where there was any other incident with the  
12 gun?

13 A. Well, before that time, I had loaned him a .22  
14 rifle of mine, because shortly before, the house close  
15 to his had been broken into and that concerned him and  
16 worried him. I told him he could borrow my .22 rifle.  
17 And I can remember it was over there, and Chris was at  
18 my house, and she called, and I guess they had gotten in  
19 an argument and she threatened to kill herself. And I  
20 told Chris at that time that I wanted my gun out of  
21 there -- you know, out of there. I wanted my gun back  
22 so that she wouldn't use it, you know, to kill herself.  
23 I didn't want to be involved in anything like that.

24 Q. Where were you at now when she was talking  
25 about killing herself?

1 A. We were in my room in my house.

2 Q. Who did the call come from, do you know?

3 A. From Diana.

4 Q. Was anyone else there, such as her brother?

5 A. I don't remember her brother being there at  
6 that time.

7 Q. All right. But she called up, and what was  
8 Chris's reaction to that?

9 A. Just saying: Oh, my God, she's, you know,  
10 threatening to kill herself, you know. And I told him I  
11 wanted to get my gun out of there.

12 Q. Did you ever have an occasion to discuss  
13 anything about suicide with her brother?

14 A. Um-hum.

15 Q. When was that, and how did it come up?

16 A. I believe it was after the incident about  
17 the .22 rifle, and he said to take her seriously,  
18 because she's --

19 MS. MCVEA: I'm going to object, Your  
20 Honor. That's hearsay.

21 THE COURT: Sustained.

22 MR. STEINBECK: Your Honor, once  
23 again, this is direct contradictions to their  
24 prosecution witness, Michael Morrison, impeachment, and  
25 also admission by party opponent.

1 THE COURT: All right. Go ahead.

2 Q. (By Mr. Steinbeck) Please restate that.

3 A. He stated that to take that seriously, to take  
4 her threats seriously, because she'd attempted to commit  
5 suicide before.

6 Q. And how did he tell you this, in your  
7 presence?

8 A. Um-hum. I can remember him saying that.

9 Q. What was Chris's reaction when you told him  
10 that?

11 A. Just seemed kind of shocked, you know.

12 Q. Do you know if Chris had heard anything about  
13 any of her suicidal tendencies?

14 A. I think when -- what they were talking about  
15 is, when she tried to kill herself is, I think, was when  
16 her ex-husband had died in some accident. That's my  
17 understanding of it.

18 Q. What I'm asking you about is -- what I'm  
19 asking about is: Do you know if Chris knew anything  
20 about any suicidal tendencies before that occasion or  
21 her brother mentioned that?

22 A. I don't know if he knew about that or not. I  
23 mean, that's really about the first time I was really  
24 aware that that was a serious thing.

25 Q. Did you ever happen to notice any marks on

1 Diana's wrists?

2 A. No, I never really looked.

3 Q. Did you ever come to learn the means -- did  
4 you ever know the means that she attempted suicide from  
5 her brother?

6 A. I heard that she had tried to slit her wrists.

7 Q. That's what her brother told you?

8 A. Right.

9 Q. What was the reason for that, do you know?

10 A. It was my understanding that her previous  
11 husband had died in some accident, and she was upset  
12 about that.

13 Q. What was his name, do you remember?

14 A. Her previous husband?

15 Q. Yes.

16 A. No, I don't remember his name.

17 Q. Did you ever hear about any other form of  
18 suicides after her husband died or attempts?

19 A. Other than the slicing of the wrist, no?

20 Q. Yeah.

21 A. I wasn't aware of anything other than that.

22 Q. How about drug usage, were you ever aware of  
23 Diana using drugs?

24 A. I had heard that before, you know, when she  
25 was a dancer that she had done speed and pot, I'm sure,

1 at that point, too. But other than that, no.

2 Q. When you were at the house, was she engaged in  
3 drug use as well?

4 A. Just smoking pot. That's the only thing she  
5 ever did in front of me.

6 Q. I'm sorry?

7 A. The only thing she ever did in front of me was  
8 smoke pot.

9 Q. How often was she smoking pot?

10 A. I mean, just about every time that I was  
11 there, it was around.

12 Q. Did it appear that she had any objections to  
13 pot being smoked in the house?

14 A. Well, no. I mean, she was smoking it right  
15 there with us, so...

16 Q. Is there any other incidents that you're aware  
17 of, as far as conflicts or suicides or anything like  
18 that, with regard to Diana?

19 A. Other than the two instances I had said and  
20 the previous with the slicing of the wrist, no.

21 Q. How did she seem to respond to Chris?

22 A. Respond to him as far as?

23 Q. What was her demeanor towards Chris other than  
24 the times she's yelling at him and acting violent?

25 A. Other than those times?

1 Q. Yes.

2 A. Shy seemed fine with him, you know.

3 Q. So there were good times that they had that  
4 you saw --

5 A. Yes.

6 Q. -- where they both had love and affection for  
7 one another?

8 A. Yes.

9 Q. What -- did you have any occasion to know  
10 whether any disputes arose going to a concert, or what  
11 happened there?

12 A. Any disputes arose as far as what now?

13 Q. Do you remember anything about a dispute that  
14 arose with regard to a concert?

15 A. What was that last word?

16 Q. A concert.

17 A. Oh, yes. For Chris's birthday, I was going to  
18 take him out to a Jimmy Page and Robert Plant concert,  
19 and I can remember as we were leaving to go to that, she  
20 threw a big fit and started throwing stuff in the house,  
21 and we left.

22 Q. What things was she throwing?

23 A. Like pictures of her and Chris, you know, like  
24 that they had taken together and stuff like that.  
25 Pictures in nice frames, you know, that she was throwing

1 around. And so we left to go to the concert. We just  
2 got out of there quick. And as we were driving off in  
3 my truck, she came out of the house throwing stuff at  
4 us.

5 Q. Did you ever learn if she was on any drugs at  
6 that time?

7 A. I don't remember if she was or not.

8 Q. Now, did you have a -- during all this time  
9 that she's acting this way, how did Chris always  
10 respond?

11 A. He'd just try to calm her down.

12 Q. How would he try to calm her down?

13 A. Just say, you know, that he loved her; it was  
14 okay; that -- you know, just, anything he could do to  
15 try to get her calmed down, and that, you know, it  
16 wasn't that big of a deal.

17 Q. Did he do much to defend himself on her verbal  
18 attacks or physical attacks?

19 A. He would try to just block her as far as  
20 physical.

21 Q. Did you see Chris ever lay a hand on Diana?

22 A. No.

23 Q. Do you think Chris would lay a hand on Diana?

24 A. No.

25 Q. Why is that?

1           A.    I've just never seen him violent.  I've never  
2 seen him hit anyone.

3           Q.    How was he around females during the whole  
4 time you've known him?

5           A.    Very cordial, very kind.

6           Q.    Did Chris have a reputation for peacefulness?

7           A.    As far as everyone I knew, yes.

8           Q.    What was Diana's reputation?

9           A.    Just kind of volatile.  I guess that's the  
10 right word.

11          Q.    Did you ever see him have an occasion to get  
12 in any fights in high school?

13          A.    No.

14          Q.    Did anyone ever try to hit him?

15          A.    I've never seen Chris in a fight.

16          Q.    Would Chris stick around, or would he leave  
17 when she started to get violent?

18          A.    He would leave.  As far as every time I was  
19 aware of, he would leave.

20          Q.    That was consistent behavior, he would leave?

21          A.    Yes.

22          Q.    Or try to diffuse it verbally?

23          A.    Yes.

24          Q.    Did he ever try to insight a verbal response  
25 out of her?

1 A. Try to get her angrier, you mean?

2 Q. Yeah.

3 A. No.

4 Q. Have you ever seen Chris have a mean streak in  
5 him?

6 A. No.

7 Q. But you have for Diana?

8 A. Yes.

9 Q. Now, when you -- did you ever see any injuries  
10 on Diana?

11 A. No.

12 Q. Did you ever see any marks on her body or  
13 anything?

14 A. No.

15 Q. Have you ever seen marks on Chris?

16 A. I've seen him have a black eye.

17 Q. That's during the time she had those violent  
18 outbursts?

19 A. Excuse me?

20 Q. Was that during the time frame she would have  
21 those outbursts?

22 A. It was from an outburst of hers, yes.

23 Q. But she didn't have any marks on her?

24 A. I'd never seen any, no.

25 Q. Did you ever advise Chris as to what he should

1 do about her?

2 A. I told him he should probably try to get away  
3 from her, that she wasn't --

4 Q. What did you mean by that?

5 A. To leave her? I mean --

6 Q. Temporarily or divorce?

7 A. I was -- I was talking about divorce.

8 Q. How did Chris feel about that?

9 A. I don't think he wanted to divorce her.

10 Q. He wanted to stick by her and work it out?

11 A. Yes.

12 Q. Did you -- did it appear as a love lesson in  
13 any way --

14 A. No.

15 Q. -- over time?

16 A. No.

17 Q. Now, did you know if he ever left her to try  
18 to get away and have things calm down?

19 A. I mean, when she would get violent, he would  
20 leave and let things cool off, and then he would go  
21 back.

22 Q. After that one assault thing you described  
23 with the shotgun and him trying to get out of the house,  
24 how long was he away then, do you know?

25 A. I don't know. I don't remember how long.

1 Q. Are you aware of an assault allegation she  
2 made once again Chris?

3 A. Yes, I'm aware of that.

4 Q. Do you know if he stayed in the house after  
5 that or not?

6 A. I believe he didn't. No, he had left and went  
7 to stay with another friend of his for at least a couple  
8 of days.

9 Q. Are you aware of Chris filing assault charges  
10 on her?

11 A. Yes.

12 Q. What was that time frame?

13 A. That was probably a month before the  
14 incident.

15 Q. Now, when you -- directing your attention to  
16 the 29th of February, '96, do you remember that day?

17 A. I remember parts of it.

18 Q. All right. Now, what were you doing that  
19 day?

20 A. I had spent the night at someone named Nikko's  
21 house, and Chris showed up there at approximately about  
22 11:00, I guess, that morning. And we had gone to a  
23 restaurant, I believe it's Kalentae's, to have some, I  
24 think, quesadillas and Margaritas. And we left from  
25 there and went to the liquor store and picked up some

1 Aftershock and went to Chris's house. He had some beer  
2 at their -- at the house, and we started doing shots and  
3 chasing it with Aftershock.

4 Q. Now, you had something to drink there at the  
5 Kalentae's, as well?

6 A. Some Swirl Margaritas.

7 Q. How many did you have, do you remember?

8 A. Two or three, at least, I would say.

9 Q. You and Chris had two or three Margaritas?

10 A. Um-hum.

11 Q. Were those alcoholic Margaritas?

12 A. Yes.

13 Q. So you got what kind of alcohol?

14 A. Aftershock.

15 Q. What kind of --

16 A. It's like a cinnamon schnapps.

17 Q. And you went to Chris's house after that, you  
18 stated?

19 A. Right.

20 Q. What did you do at Chris's house?

21 A. The only thing I remember doing there is  
22 drinking, drinking that Aftershock and the beer.

23 Q. Why can't you remember more?

24 A. I guess I blacked out from the alcohol. I  
25 don't know. I mean, I just don't remember anything.

1 Q. What do you recall drinking at the house  
2 besides that schnapps liquor? Was there anything else  
3 you drank?

4 A. Beer was the only other thing I can remember.

5 Q. Do you know how much you had to drink that  
6 day?

7 A. I have no idea.

8 Q. Do you know how you left?

9 A. Excuse me?

10 Q. Do you know how you left?

11 A. No.

12 Q. Do you know what's next? Do you remember  
13 after being at his house?

14 A. Being over at Nikko's apartment and Chris  
15 hitting me in the knee to kind of wake me up, and then I  
16 left there.

17 Q. What else happened that evening?

18 A. I went by a pool hall to visit a girl I knew  
19 there, and then I went home.

20 Q. So after you were at Nikko's for a while, you  
21 sobered up?

22 A. I sobered up enough, you know, to get home,  
23 and I went home.

24 Q. What happened -- now, was Chris at the house  
25 there with you?

1 A. At Nikko's house?

2 Q. Yes.

3 A. Yes.

4 Q. What was -- do you recall any other things  
5 that happened back at the house?

6 A. No, I don't recall.

7 Q. Was there anything -- did you have any  
8 occasion to do anything about the gun? Was there  
9 anything about the gun at the house?

10 A. At Nikko's house?

11 Q. No, back when you were at Chris's house.

12 A. I'm not understanding the question.

13 Q. Was there anything that you recall about the  
14 gun at his house?

15 A. I mean, I had known that she had got it back  
16 from the Garland Police, and it was there at the house  
17 again.

18 Q. Did that come up at all in any conversations  
19 or anything of that nature?

20 A. I can't remember.

21 Q. What did -- so back at Nikko's, Chris is there  
22 with you?

23 A. Right.

24 Q. What time is this?

25 A. This is like around 6:00.

1 Q. And what did you do after that?

2 A. After I left Nikko's?

3 Q. Yeah.

4 A. I went by the pool hall and saw that  
5 girlfriend of mine and went home.

6 Q. Later that night you got a call from Chris, I  
7 understand?

8 A. Right.

9 Q. What time was that?

10 A. It was real late at night, pretty late.

11 Q. How late?

12 A. 11:00 to midnight, probably, somewhere around  
13 there.

14 Q. How did he sound?

15 A. Scared, upset, in shock.

16 Q. Did he sound like he was sober or --

17 A. No.

18 Q. How did he sound?

19 A. He sounded like he was -- he sounded like he  
20 was impaired.

21 Q. What did you guys have to say to each other?

22 A. He just couldn't believe that Diana killed  
23 herself, and he couldn't believe, you know, what had  
24 gone on, you know, that they're trying to blame him for  
25 it.

1 Q. Did you -- did he ever tell you what happened  
2 inside that house?

3 A. He was kind of vague, just kind of said he,  
4 you know, went in and said he, you know, had gone in  
5 another room, and then the next thing he knows, you  
6 know, he hears a gunshot, and, you know, there she is  
7 dead.

8 Q. Did he seem like he was very coherent?

9 A. That first night?

10 Q. Did he seem coherent, like he knew what he  
11 was --

12 A. Not really.

13 Q. Was he able to get very specific like a sober  
14 person?

15 A. No.

16 Q. Did you think -- did he ever have any  
17 conversation with you after that?

18 A. He called after that a few times.

19 Q. Did you ever learn more about what happened  
20 that night?

21 A. It was my understanding that, you know, he  
22 went in, and an argument was started with Diana and him,  
23 and she had threatened to kill herself and got the  
24 12-gauge to do that. He went over there to try to get  
25 it from her, and there was a struggle over the gun; and

1 in that struggle, it went off.

2 Q. Was anything discussed as far as how the  
3 struggle went? Do you know any specifics?

4 A. That's it.

5 Q. Do you recall anymore specifics about the  
6 struggle? Did you inquire anymore?

7 A. No, I don't remember.

8 Q. When was this -- when was a time that you  
9 talked to him, the second time?

10 A. It was within, probably, that first week.

11 Q. Okay. And he was in jail, so he was  
12 presumably sober at that point?

13 A. Yeah, I would presume so.

14 Q. How did he feel about what had happened?

15 A. He felt bad. I mean, I remember in that first  
16 week, he, you know, was crying on the phone. He had  
17 lost his wife, and now they're trying to -- you know,  
18 the police are trying to blame him for doing that.

19 Q. How did he feel about the loss of Diana?

20 A. He was very upset about that.

21 Q. How much was he crying about that?

22 A. He was just bawling, you know.

23 Q. Was there any doubts in your mind that he  
24 still loved Diana?

25 A. No, there's no doubt.

1 Q. Did you ever have any conversation with Chris  
2 as far as how he got home that night --

3 A. No.

4 Q. -- after Nikko's?

5 A. He didn't remember. He didn't know.

6 Q. Do you know what ever happened to his car that  
7 night?

8 A. I don't know what happened to it, no.

9 Q. Where was the last place you knew his car was  
10 at?

11 A. The last place I remember his car being was us  
12 driving to his house in it.

13 Q. And after that, you don't know what happened?

14 A. I don't know.

15 Q. Did you ever know where the car was found?

16 A. It was found at Denny's up on, I believe, LBJ  
17 and Skillman, I believe.

18 Q. Were you aware of the condition of the car?

19 A. It had had two flat tires.

20 Q. Do you know if Chris knew how he got home that  
21 night?

22 A. I believe he said Nikko took him home.

23 Q. Do you believe Nikko took him?

24 A. Right.

25 Q. Did he know if Nikko took him?

1 A. I don't know if he did or not.

2 Q. Do you know if Chris knew where his car was  
3 at?

4 A. No, he didn't. I don't think. I don't  
5 remember -- I don't remember him telling me that.

6 Q. Did you have a conversation about him  
7 inquiring perhaps as to where his car was at?

8 A. I don't remember.

9 MR. STEINBECK: Thank you. Nothing  
10 further at this time.

11 CROSS-EXAMINATION

12 BY MS. MCVEA:

13 Q. Mr. Phelps, what's your occupation?

14 A. CT technologist and an x-ray technician.

15 Q. Where do you work?

16 A. I work at Baylor University Medical Center,  
17 Texas Oncology on Monday through Friday.

18 Q. You work where Monday through Friday?

19 A. Texas Oncology. It's a cancer center. It's  
20 Texas Oncology Physicians Association, which owns a  
21 place called Texas Diagnostic Imaging Center. It's  
22 actually on the Baylor campus.

23 Q. Now, you admitted that you spent a lot of time  
24 with the Defendant, correct?

25 A. Correct.

1 Q. A whole lot of time, true?

2 A. Over the years, yes.

3 Q. Okay. And, in fact, whenever Diana and Chris  
4 would go out anywhere, you would go along with them;  
5 isn't that true?

6 A. As far as where?

7 Q. Well, on a lot of occasions.

8 A. I had been out with them a few times.

9 Q. Okay. Would you consider the Defendant your  
10 best friend?

11 A. One of my best friends, yes.

12 Q. Now, your memory is pretty good today; is it  
13 not?

14 A. My what?

15 Q. Your memory.

16 A. Well, I don't know what "good" is.

17 Q. Well, you recall a lot of incidents involving  
18 Diana Radke, so your memory is pretty good today.

19 A. I remember certain things, yes.

20 Q. Okay. Do you remember talking with me and my  
21 investigator in the District Attorney's; do you recall  
22 that?

23 A. I remember I went and talked to you, yes.

24 Q. Okay. And do you remember how vague your  
25 memory was back then?

1           A.    You were asking specifics on things I couldn't  
2 remember.

3           Q.    Okay.  But you can remember them today.

4           A.    As far as what?

5           Q.    Well, we'll talk about that.

6           Do you recall me asking you whether or not you and  
7 the Defendant ever used drugs; do you remember that  
8 question?

9           A.    No, I don't.

10          Q.    You don't remember saying:  No, we did not?  
11 You don't recall that?

12          A.    No.

13          Q.    Okay.  Now, you said that the Defendant told  
14 you about an incident -- well, you were present also at  
15 an incident concerning Diana Radke when she was trying  
16 to kill herself, is that right, with that shotgun,  
17 State's Exhibit No. 11?

18          A.    What was the question again?

19          Q.    You said that you were present when Diana  
20 Radke threatened to kill herself; is that right?

21          A.    That's correct.

22          Q.    And she was trying to get the shotgun, which  
23 is State's Exhibit No. 11, right there before you.

24          A.    Right.

25          Q.    Do you see it there?

1 A. Yes.

2 Q. Okay. Did you tell me about that incident  
3 when you spoke with me?

4 A. Not that I can remember.

5 Q. Okay. No, you didn't tell me about that  
6 incident, did you?

7 A. Okay.

8 Q. Do you think that was important to let me know  
9 something like that?

10 A. You never asked that question.

11 Q. Okay. But, you know, you're here supporting  
12 your friend. You never did let me know -- I'm the  
13 Prosecutor on the case -- that she tried to kill herself  
14 before, did you?

15 A. I don't think you ever asked.

16 Q. Well, you know your friend has been sitting in  
17 jail almost two years, and he's saying that she killed  
18 herself. Do you think that might be important to let  
19 someone know that?

20 A. All, you know -- I was answering your  
21 question.

22 Q. You decided to wait until his trial, correct?

23 A. You asked me questions, and I answered them.

24 Q. No. As a matter of fact, you didn't answer  
25 them. With every question I asked, you said you didn't

1 remember; you don't recall.

2 A. Well, I'm sorry if I couldn't remember the  
3 questions you were asking.

4 Q. But you can remember them now, right?

5 A. I don't -- I don't, you know, remember --  
6 remembering the answer to the questions that you asked.  
7 I don't remember what the questions you asked there.

8 Q. So you practice selective memory whenever it  
9 serves your purpose.

10 A. That's not serving my purpose today.

11 Q. Well, yes, it is. It's your friend on trial,  
12 your best friend, your bud. You're here to support him,  
13 aren't you?

14 A. What question are you asking?

15 Q. You're here to support him, aren't you?

16 A. I'm here to support him. I'm here for a -- as  
17 a witness.

18 Q. In fact, you're willing to say anything in  
19 order to help him out.

20 A. Actually, I'm here because --

21 THE COURT: One at a time, please.

22 A. Actually, I'm here because you subpoenaed me  
23 and told me I needed to be here every day up until  
24 the --

25 Q. (By Ms. McVea) Well, even if I hadn't have

1 subpoenaed you, you would have been here, wouldn't you?

2 A. Probably.

3 Q. Now, you said that after that incident --

4 A. Which incident?

5 Q. I believe you said it's about the one where  
6 she tried to take the shotgun from Chris, and she was  
7 hitting at him, and he said: Hey, take the shotgun,  
8 Matt, and get out of here.

9 A. Right.

10 Q. That incident. You said it was about a month  
11 prior to her death?

12 A. A month or so, yeah.

13 Q. Okay.

14 A. I would guess.

15 Q. And you said that you took that shotgun and  
16 placed it in your safe; is that what you said?

17 A. At the time when he left there, yes.

18 Q. So the shotgun was removed from that house,  
19 taken to your house, and placed in your safe --

20 A. Right.

21 Q. -- or your parents' safe, correct?

22 A. Mine, yes.

23 Q. Okay. Did you tell the police about that  
24 incident after Diana Radke's death?

25 A. The police about what incident?

1 Q. About the incident we just talked about. Did  
2 you tell them about that?

3 A. I don't remember.

4 Q. You didn't think that was important for them  
5 to know?

6 A. I don't remember if I told them or not.

7 Q. Now, since we know that the gun ended up back  
8 at the house --

9 A. Right.

10 Q. -- how did it get there?

11 A. I would assume they came and got it.

12 Q. No. What I'm asking you is: How did the gun  
13 get from your house back to their house, Diana Radke's  
14 and Christopher Radke's house?

15 A. Like I said, I assume one of them came and  
16 picked it up from me.

17 Q. Well, it was probably the Defendant, right?

18 A. I can't -- I don't remember who came and got  
19 it.

20 Q. Diana Radke didn't like you, Mr. Phelps; you  
21 know that, don't you?

22 A. At times she did and at times she didn't.

23 Q. In fact, she couldn't stand you; isn't that  
24 true?

25 A. I don't know what she could stand.

1 Q. So you were telling me that it's a possibility  
2 that she went to your house and you gave her that gun  
3 back; is that what you're telling us?

4 A. That is a possibility, I would assume.

5 Q. Okay. You don't remember how they got the  
6 gun?

7 A. No.

8 Q. Now, you said that you loaned him your .22  
9 rifle; is that right?

10 A. That's correct.

11 Q. When did you do that?

12 A. Before he ever bought that 12-gauge.

13 Q. Okay. And as a matter of fact, you said that  
14 at that time, Chris told you that Diana tried to kill  
15 herself, and you were so concerned about that, that you  
16 told him to give me my rifle back?

17 A. That's correct.

18 Q. Okay. Because you didn't want anything to  
19 happen with that rifle concerning Diana, correct?

20 A. Correct.

21 Q. So it was important to you to remove that from  
22 the house, the rifle; is that true?

23 A. Yes.

24 Q. Now, on the date of the offense, February 29th  
25 of 1996, the Defendant was working when he came to get

1 you and Nikko; is that true?

2 A. I believe so.

3 Q. Okay. And he was working as a courier?

4 A. Right.

5 Q. And the two of you went to lunch -- well, the  
6 three of you went to lunch --

7 A. Right.

8 Q. -- and you had a lot to drink there; is that  
9 right?

10 A. Yeah, a few drinks, yes.

11 Q. And the Defendant drank something, too?

12 A. As far as I can remember, he did.

13 Q. Okay. And you're sure about going back to the  
14 house, the Defendant's house?

15 A. Um-hum.

16 Q. And then you said that you blacked out, and  
17 the next thing you remember is you're back at Nikko's  
18 apartment; is that right?

19 A. That's correct.

20 Q. Okay. Now, you said that you got a phone call  
21 about 11:30, and that's when the Defendant told you that  
22 Diana was dead and that he told you what happened,  
23 basically?

24 A. Well, his mom called first, and then he called  
25 later.

1 Q. Okay. And he told you that he comes home, he  
2 goes in the bedroom, hears a gunshot, walks into the  
3 living room, and there she was. Is that what he told  
4 you, basically?

5 A. As far as I can remember.

6 Q. Excuse me?

7 A. As far as I can remember.

8 Q. Okay.

9 A. He was pretty vague with it.

10 Q. And then you said later he called you either  
11 the next day or later on that week, he called you again,  
12 and that's when he said -- he told you something  
13 different, didn't he?

14 A. He said, I believe, something about a struggle  
15 with the gun. I don't remember exactly. I don't have  
16 the --

17 Q. Okay. And did that send up red flags in your  
18 mind that he told his best friend something different  
19 about what had happened?

20 A. Well, considering the condition he was in the  
21 first time, no.

22 Q. Okay. So you're saying he was just so drunk  
23 he didn't know what he was saying?

24 A. He was drunk; he was scared. You know --

25 Q. Mr. Phelps, the point is: He told you two

1 different stories about his wife's death?

2 A. Is that a question?

3 Q. Right, it is a question. He told you two  
4 different stories concerning his wife's death?

5 A. I would guess so, yes.

6 Q. Okay. Do you know how the gun got back from  
7 the police department?

8 A. It's my understanding that Diana picked it up  
9 from the police department.

10 Q. Okay. So we know of two occasions which the  
11 gun was removed from the home, correct?

12 A. Well --

13 Q. The one time it was in your home --

14 A. Right.

15 Q. -- and another time it was in the possession  
16 of the Garland Police Department; is that right?

17 A. That's what I've heard, about the Garland  
18 Police, yes.

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

21 THE COURT: All right. Court is  
22 recessed until 2:00 p.m.

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

25 THE COURT: Bring the Defendant in,

1 please.

2 MS. SHELTON: We have some things that  
3 have been stipulated to --

4 THE COURT: Well, let's get the  
5 Defendant in in any case.

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

8 THE COURT: All right. What was it  
9 you wanted to put on the Record?

10 (Whereupon, Defendant's Exhibit  
11 Nos. 4 and 5 were marked by the  
12 Court Reporter.)

13 MR. STEINBECK: Exhibit No. 4 and 5,  
14 Your Honor, which are the handwiping results from Diana  
15 and Christopher Radke.

16 MS. SHELTON: Was there something  
17 significant in those, Mr. Steinbeck, that you wanted the  
18 Record to reflect?

19 COURT REPORTER: You marked that one  
20 as 9.

21 MR. STEINBECK: Okay.

22 THE COURT: Was there any objection to  
23 those, State's Exhibit -- or Defense Exhibits 4 and 5.

24 MS. MCVEA: Can you just -- have they  
25 been identified for the Record? I didn't hear.

1 THE COURT: Well, Defense Exhibit  
2 No. 4 -- well, both of them are Southwestern Institute  
3 of Forensic Sciences' reports. One is on handwipings  
4 from the deceased, Diana Radke; the other from the  
5 Defendant, Christopher Radke, and both were negative.

6 (Whereupon, Defendant's Exhibit  
7 Nos. 4 and 5 were offered into  
8 evidence.)

9 MS. MCVEA: No objections.

10 THE COURT: All right. They're  
11 admitted.

12 (Whereupon, Defendant's Exhibit  
13 Nos. 4 and 5 were admitted into  
14 evidence.)

15 MR. STEINBECK: Just to qualify, there  
16 was some residue found on her hands, Your Honor, but  
17 none on his. There was a trace amount of barium.

18 THE COURT: I thought the letters were  
19 identical. Were they not?

20 MR. STEINBECK: No, Your Honor. There  
21 wasn't a recordable level, supposedly, on her, but there  
22 was some amounts on her. There was absolutely none on  
23 Mr. Radke.

24 THE COURT: All right.

25 (Whereupon, Defendant's Exhibit

1                   Nos. 6, 7, 8 and 9 were marked by  
2                   the Court Reporter.)

3                   MR. STEINBECK: The other exhibits,  
4 Your Honor, No. 6, is the inventory of recovered  
5 property showing that the shotgun, when taken on  
6 2/11/96, was filed under the name of Diana Radke, along  
7 with the 12-guage shells. And it was also picked up, on  
8 the last page, by Diana Morrison's signature.

9                   (Whereupon, Defendant's Exhibit  
10                   No. 6 was offered into evidence.)

11                   THE COURT: All right. Any objection  
12 to Defendant's Exhibit 6?

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

15                   THE COURT: It's admitted, as well.

16                   (Whereupon, Defendant's Exhibit  
17                   No. 6 was admitted into evidence.)

18                   MR. STEINBECK: No. 7, Your Honor, is  
19 a citizen complaint by Christopher Radke and his  
20 citation for assault issued against Diana Radke.

21                   (Whereupon, Defendant's Exhibit  
22                   No. 7 was offered into evidence.)

23                   THE COURT: Any objection?

24                   MS. MCVEA: No objections, Your  
25 Honor.

1 THE COURT: It's admitted.

2 (Whereupon, Defendant's Exhibit  
3 No. 7 was admitted into evidence.)

4 MR. STEINBECK: No. 8 shows that that  
5 was a pending case at the time of her death.

6 (Whereupon, Defendant's Exhibit  
7 No. 8 was offered into evidence.)

8 MS. MCVEA: No objection.

9 THE COURT: No. 8 is also admitted.

10 (Whereupon, Defendant's Exhibit  
11 No. 8 was admitted into evidence.)

12 MR. STEINBECK: No. 9 is the fact that  
13 there were no fingerprints found on the shotgun in  
14 question.

15 (Whereupon, Defendant's Exhibit  
16 No. 9 was offered into evidence.)

17 MS. SHELTON: I wanted to ask, while  
18 you're entering that, about the assault charge with the  
19 Garland Police. Is there, on the same page, she was  
20 asking about the recovery of a peace bond on the same  
21 day.

22 MS. MCVEA: No objections, Your Honor,  
23 on the last exhibit.

24 THE COURT: All right. No. 9 is also  
25 admitted, then.

1 (Whereupon, Defendant's Exhibit  
2 No. 9 was admitted into evidence.)

3 MS. SHELTON: Is there anything on  
4 there about the peace bond? Would you please check and  
5 see? Is there a peace bond?

6 THE COURT: All right. You may -- are  
7 you going to recall the last witness?

8 MR. STEINBECK: Yes, Your Honor.

9 THE COURT: All right.

10 Please take the stand. You're still under oath.

11 REDIRECT EXAMINATION

12 BY MR. STEINBECK:

13 Q. Mr. Phelps, who wore the pants in the  
14 relationship with Chris and Diana?

15 A. I would say Diana did.

16 Q. Did Chris have any problems with that?

17 A. He didn't seem to.

18 Q. And the Prosecutor was asking you some  
19 questions regarding why you didn't volunteer information  
20 at the time you were questioned over a year and a half  
21 ago. And perhaps, subsequently, is there anything  
22 that -- is there any reason you can think of as to why  
23 you would not have volunteered this suicide information?

24 A. I thought it was pretty much common knowledge  
25 by her family.

1 Q. How about the Radke family, as well?

2 A. I believe they knew about it also.

3 Q. Now, was there anything that was mentioned,  
4 perhaps by the Prosecutor, that also led you to believe  
5 that?

6 A. As far as --

7 Q. Was there anything that the Prosecutors could  
8 have told you to make you believe that you didn't need  
9 to think of information to volunteer?

10 MS. MCVEA: Your Honor, I'm going to  
11 object. That calls for a hearsay response.

12 THE COURT: I'm sorry. I guess I  
13 didn't understand the question.

14 A. I didn't either.

15 MR. STEINBECK: Your Honor, the  
16 question was: Is there anything else that could have  
17 transpired in the conversation with any DA that may have  
18 led to believe he didn't need to volunteer any  
19 information?

20 THE COURT: I overrule the object. He  
21 may answer.

22 A. I recall talking on the phone and one of them  
23 saying that they didn't want this case.

24 Q. (By Mr. Steinbeck) What was your impression  
25 based on that conversation?

1           A.    I was assuming that they didn't want to try to  
2 convict Chris of a murder when he was innocent.

3                   MR. STEINBECK: Thank you. Nothing  
4 further.

5                                   RECROSS-EXAMINATION

6 BY MS. MCVEA:

7           Q.    Who did you have this conversation with?

8           A.    You.

9           Q.    Now, Mr. Phelps, do you understand what  
10 perjury is?

11          A.    Yes.

12          Q.    You know good and dog gone well I didn't have  
13 that conversation with you.

14          A.    I remember a conversation on the phone. You  
15 told me you didn't want to take this case.

16          Q.    Well, you might have been smoking marijuana  
17 when you heard that conversation.

18                   MS. SHELTON: Objection, Your Honor.

19                   THE COURT: Yeah. Sustained. That's  
20 inappropriate.

21                   MS. MCVEA: Your Honor --

22          Q.    (By Ms. McVea) So you're telling me -- you're  
23 telling this Court right now that I told you  
24 point-blank: I didn't want this case --

25          A.    You told me --

1 Q. -- because I thought that Christopher Radke  
2 was innocent? Is that what you're testifying to? I  
3 want to be clear.

4 MR. STEINBECK: Objection, Your Honor.  
5 She's misstating what he stated.

6 THE COURT: Sustained. Repeat his  
7 statement exactly, if you wish to ask him: Did he say  
8 that?

9 Q. (By Ms. McVea) Well you go ahead and tell  
10 me. What did I say to you?

11 A. You said that you did not want this case.

12 Q. Because?

13 A. You didn't give a reason. I said I assumed  
14 that you didn't, because of --

15 Q. I don't believe that's what you just testified  
16 to a minute ago. Didn't you also add that I felt that  
17 he was innocent?

18 MR. STEINBECK: Your Honor, if we  
19 could have --

20 THE COURT: Excuse me.

21 A. I said that.

22 THE COURT: Just a moment, sir. Just  
23 a moment.

24 MR. STEINBECK: Your Honor, if you  
25 could ask -- perhaps if you recall, Your Honor, but

1 there's no question in my mind of what he did say. We  
2 should perhaps ask the Court Reporter to restate what he  
3 said.

4 THE COURT: All right. Read back the  
5 witness's answer to that question about the Prosecutor.

6 MR. STEINBECK: Actually be me, Your  
7 Honor.

8 THE COURT: Oh, it was by you? All  
9 right.

10 (Whereupon, the testimony was read  
11 back by the Court Reporter.)

12 Q. (By Ms. McVea) So no one actually said  
13 that. I didn't say that to you. That's what you -- you  
14 made an assumption; is that right?

15 A. All you said was that you didn't want the  
16 case.

17 Q. And then you made an summation on my part --  
18 on your part that I felt that Christopher Radke was  
19 innocent?

20 A. That's correct.

21 Q. Really?

22 A. That's correct.

23 Q. You said that you and Christopher went  
24 hunting; is that right?

25 A. No. I said that we had shot before. We were

1 planning on going hunting.

2 Q. Okay. How many times did you go out shooting?

3 A. I don't know.

4 Q. Few occasions or many occasions?

5 A. Few.

6 Q. Okay.

7 A. Few.

8 Q. And you've seen him shoot that shotgun,  
9 State's Exhibit No. 11, correct?

10 A. That's correct.

11 Q. And when's the last time you had seen him  
12 shoot it --

13 A. I don't remember.

14 Q. -- prior to the incident in question?

15 A. I don't remember. Within the time that he had  
16 the gun and before this incident.

17 Q. Okay. So you would say Christopher Radke is  
18 familiar with firearms?

19 A. I guess he's familiar enough to shoot a  
20 shotgun.

21 MS. MCVEA: That's all we have, Your  
22 Honor.

23 MR. STEINBECK: Nothing further, Your  
24 Honor.

25 THE COURT: All right. Sir, you may

1 step down.

2 (Whereupon, the witness was then  
3 excused and proceedings resumed, as  
4 follows:)

5 MR. STEINBECK: We'll call our next  
6 witness.

7 MS. SHELTON: The Defense calls  
8 Mr. Charles Vor Koper, V-O-R K-O-P-E-R. This is Mr.  
9 Vor Koper, and I don't believe he's previously been  
10 sworn.

11 THE COURT: All right. Sir, please  
12 raise your right hand.

13 (Witness sworn.)

14 THE WITNESS: I do.

15 THE COURT: You may put your hand  
16 down, and be seated on the witness stand.

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

22 DIRECT EXAMINATION

23 BY MS. SHELTON:

24 Q. Mr. Vor Koper, I believe your full name is  
25 Charles, C-H-A-R-L-E-S, Frederick, F-R-E-D-E-R-I-C-K,

1 Vor Koper; is that --

2 A. That's correct.

3 Q. -- pronounced correctly --

4 A. That's correct.

5 Q. -- Vor Koper, V-O-R K-O-P-E-R?

6 Sir, you and I have spoken not in any great depth  
7 before this hearing; is that correct?

8 A. That's correct.

9 Q. And we have briefly spoken saying that, well,  
10 we haven't spoken to each another; we're going to do our  
11 talking on the witness stand, words to that effect?

12 A. That's correct.

13 Q. Sir, how did you come to be -- to learn of the  
14 case of Christopher Radke?

15 A. I was approached by Martha Hollowell from the  
16 District Attorney's office in reference to this case.  
17 She was wanting to know, based on some documents that  
18 she provided me and some conversation, whether or not  
19 there was a possibility that Chris Radke killed herself.

20 Q. Would that be Diana Radke?

21 A. Diana Radke -- excuse me -- if she had killed  
22 herself, that's correct.

23 Q. And in line with this -- and sir, may I ask  
24 you first -- and I haven't asked you about your  
25 background -- for what reason would Ms. Hollowell be

1 calling you particularly? What do you do?

2 A. I'm a psychotherapist in private practice. I  
3 have a history in the community of being professionally  
4 interested in and writing about and concerned about the  
5 issue of suicide. I was at one time the director of the  
6 Dallas Suicide Prevention Center. I have a number of  
7 articles and a number of books, and have been an active  
8 participant in the American Association of Suicidology.

9 Q. Sir, have you done some actual in-the-field  
10 work with suicide prevention or analysis?

11 A. Both on the telephone and in my office, yes.

12 Q. And where have you done that?

13 A. In my office and on the telephone at the  
14 Suicide Prevention Center.

15 Q. Is that here in Dallas, Texas?

16 A. Yes.

17 Q. Would you tell us what previous professional  
18 licensures or degrees you hold?

19 A. My professional degree is a master of science  
20 in social work. I have three licenses in Texas. One is  
21 a licensed master social worker, ACP; and the second is  
22 a licensed professional counselor, and the third is a  
23 licensed marriage and family therapist.

24 Q. Are you on a -- and I don't know exactly how  
25 this works -- contract list with the Dallas County, or

1 do they contract with you to consult with them on cases  
2 or --

3 A. No.

4 Q. Do you know how Ms. Hollowell found you?

5 A. Well, the rumor I heard, and she did not say  
6 this directly, but that someone that she knew knew about  
7 me as an expert in suicide.

8 Q. Are you aware that Ms. Hollowell's husband is  
9 a physician?

10 A. I've heard this, yes.

11 Q. Did you publish an article with Charles Petty  
12 in about the area of 1980: Suicide from the  
13 Investigator's Point of View and Modern Legal Medicine  
14 and Forensic Science?

15 A. Yes.

16 Q. Did you also do a study: Teen Suicide, a  
17 Tragic Waste, and Our Troubled Teens, a Generation at  
18 Risk, Chemical People 2, a Study Guide for a Generation  
19 at Risk, which was a documentary serious produced by QED  
20 Pittsburgh for the public television channel?

21 A. Yes, I did.

22 Q. Did you also write an article or do a  
23 presentation: Self-Mutilators and the Self-Harm  
24 Syndrome, presented to a group of volunteers who  
25 apparently deal with suicidal people?

1 A. Yes, at Contact 214; yes, I did.

2 Q. And did you also do a presentation:  
3 Comparison of Risk Factors, Suicide and Compulsive  
4 Gambling, a presentation at the American Association of  
5 Suicidology at St. Louis, Missouri; did do you that?

6 A. Yes.

7 Q. That's yours?

8 A. Yes.

9 Q. And you've done numerous presentations all  
10 over Texas and the United States on suicide prevention,  
11 analysis, factors, scoring, for about how many years,  
12 sir, about 25 years, it looks like here?

13 A. About that, yes.

14 MS. SHELTON: I don't want to enter  
15 this into evidence, but -- and I presume the Prosecution  
16 has a copy of Mr. Vor Koper's resume. Would you care to  
17 see this, Judge, or just take Judicial Notice of it?

18 THE COURT: Let's see.

19 MS. SHELTON: If you care to have it  
20 for any reason at all.

21 THE COURT: All right. I'll take  
22 Judicial Notice of it.

23 MS. SHELTON: That it is extensive,  
24 and he's been in practice since the late '60's.

25 THE WITNESS: That's right.

1 Q. (By Ms. Shelton) Mr. Vor Koper, you have told  
2 us that Ms. Hollowell contacted you and provided you  
3 with -- well, there was some conversations with her,  
4 presumably?

5 A. Yes.

6 Q. And then she gave you some written materials  
7 to analyze, and then she gave you some police reports,  
8 and you say -- also information gained by Ms. Hollowell  
9 herself, she passed on to you?

10 A. Yes.

11 Q. And, presumably, would you depict this for us,  
12 this conversation with Ms. Hollowell; and if there was  
13 more than one conversation, let us know that, too, the  
14 initial conversation you had with her, and then what  
15 came next, and what she asked you to do, and how you did  
16 it?

17 A. Okay.

18 MS. MCVEA: Your Honor, I'm going to  
19 object. That calls for hearsay.

20 THE COURT: Overruled.

21 Q. (By Ms. Shelton) I'm sorry, sir, if you  
22 would -- because I was not present at your meeting with  
23 Ms. Hollowell, who contacted you, I presume, on the  
24 telephone --

25 A. Yes.

1 Q. -- did you have all your conferences on the  
2 telephone?

3 A. No.

4 Q. Would you begin by depicting the first  
5 conference that you had with her, what you were asked to  
6 do, employed to do, and then what materials you were  
7 provided with? And would you depict these with a little  
8 more detail, and then tell us what you actually did?  
9 And I presume you reported back to Ms. Hollowell; in  
10 fact, I know you did, because you issued a written  
11 report. Just tell us what you did.

12 A. Yes. She had asked me to -- on the telephone  
13 and subsequently came to my office -- discuss this  
14 situation. We met for 45 minutes to an hour, is my  
15 recollection, and she described some issues that she was  
16 aware of the case. She provided me with some letters  
17 that Ms. Radke had given -- had written to her husband  
18 and also some notes that a friend of Ms. Radke had  
19 written about and for her. And yet, she also provided  
20 me with a copy of the police reports from the Garland  
21 Police Department.

22 In the conversation, she was wanting to know from  
23 me what was the likelihood that this person might have  
24 killed herself, might have committed suicide.

25 Q. Sir, might you, yourself, reasonably deduce or

1 surmise at that point that there was some doubt in Ms.  
2 Hollowell's mind of whether or not this young lady  
3 killed herself?

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

6 THE COURT: Sustained.

7 Q. (By Ms. Shelton) Did she indicate that she  
8 had any -- go ahead and continue, sir. You got the  
9 materials, and then what did you do?

10 A. She got the materials, and then what I spent  
11 some time thinking and looking through the materials  
12 that I had available to me to see if there was some  
13 criteria that I might use to assess a level of suicide  
14 risk. What I had already known was that there were a  
15 number of these kind of scales available. I choice the  
16 two scales that I knew to be based on the highest level  
17 of research and experience. One was the scale developed  
18 by the Los Angeles Suicide Prevention Center, which was  
19 the first and most prestigious of the crisis suicide  
20 prevention centers in the country, and that they use to  
21 assess suicide risk over the telephone.

22 The second one was developed by Dr. Jerome Motto,  
23 who is a lead researcher who is a teaching  
24 psychiatrist -- a teaching psychiatrist and researcher  
25 at the University of California School of Medicine in

1 San Francisco, who developed a suicide risk assessment  
2 scale. Probable the most rigorously researched  
3 assessment scale to my knowledge in the country.

4 I decided that these two instruments had both the  
5 prestige, and I happened to know the people personally  
6 who were involved in the development of these and  
7 thought that they would be credible instruments to use.  
8 So what I did was to go through the materials provided  
9 for me and the information Ms. Hollowell mentioned to  
10 me, in our conversations, and made an assessment using  
11 these instruments based on the materials I had in front  
12 of me. And then I provided for her and Fax'ed and  
13 mailed these materials to her, indicating in the Motto  
14 scale, the California Risk Assessment Scale, as I recall  
15 the title -- I think that's the exact language -- that  
16 according to this scale, she had a moderate risk of  
17 suicide.

18 On the Los Angeles Suicide Prevention Center scale,  
19 it indicated that she had a higher risk for suicide.  
20 Reading the notes and with the information that I had,  
21 it was difficult to respond to every item on each one of  
22 these scales that I would have been able to do had I met  
23 this person face to face or over the telephone.

24 So what I did was, based on what I had, to make a  
25 guess about many of these items, and make that

1 assessment based on those guesses.

2 Q. Sir, you only had available -- to the best of  
3 your knowledge --

4 A. Yes.

5 Q. -- you only had available materials that Ms.  
6 Hollowell gave to you --

7 A. Provided me, yes.

8 Q. -- and information that she gave you  
9 verbally --

10 A. Yes.

11 Q. -- presumably, from the Prosecution's file.  
12 It certainly wasn't from mine.

13 A. Yes.

14 Q. Because I didn't consult with you, did I?

15 A. You did not.

16 Q. And you were not given any names to contact  
17 any witnesses of mine, and you weren't able to do  
18 anything like that?

19 A. I talked to no one except Ms. Hollowell.

20 Q. Okay. And you only had notes that were  
21 proffered from her?

22 A. That's correct.

23 Q. Have you brought a copy of your report with  
24 you to Court today, sir?

25 A. Yes, I do have that.

1 Q. This is the only copy you have with you?

2 A. I have one backup copy with me.

3 Q. All right. Good. Could I introduce this into  
4 evidence?

5 A. Yes, you may.

6 MS. SHELTON: Would you please mark  
7 this.

8 Q. (By Ms. Shelton) Pardon me. I didn't mean to  
9 take your handwriting notes. In fact -- this is your  
10 complete report?

11 A. Yes.

12 Q. Okay.

13 MS. SHELTON: Would you mark this for  
14 me, please.

15 And, Judge, I am covering this with a sheet that he  
16 didn't bring with him, which he transmitted to me that  
17 has his name on it. There's nothing of any  
18 significance, just his name and telephone number for the  
19 Court's convenience.

20 Can you mark this as Defense Exhibit whatever it  
21 is? I'm not sure which one it is.

22 COURT REPORTER: You'll have to stop  
23 talking so I can mark it.

24 MS. SHELTON: Oh, I'm so sorry.

25 COURT REPORTER: Thank you.

1 (Whereupon, Defendant's Exhibit  
2 No. 10 was marked by the  
3 Court Reporter.)

4 MS. SHELTON: Let the Record reflect  
5 this is a copy of a report that I got from the  
6 Prosecution, not from Mr. Vor Koper.

7 (Whereupon, Defendant's Exhibit  
8 No. 10 was offered into evidence.)

9 MS. MCVEA: No objections.

10 THE COURT: All right. It's  
11 admitted. You offered it already or --

12 MS. SHELTON: Defense 10.

13 MS. MCVEA: No objections.

14 THE COURT: It's admitted.

15 (Whereupon, Defendant's Exhibit  
16 No. 10 was admitted into evidence.)

17 Q. (By Ms. Shelton) Mr. Vor Koper, if you would  
18 look on the first page of your report, and I'm not going  
19 to go through all these scales with you, because they  
20 don't mean just a whole lot to me, and it's rather slow  
21 reading, but they're there for the Judge, who has more  
22 experience than I do in these matters, to look over if  
23 he chooses to.

24 Would you read the last paragraph of the first page  
25 of your report?

1           A.    My comments -- beginning with my comments,  
2 that page?

3           Q.    Would you read the comments that you made back  
4 on or about March the 3rd, 1997?

5           A.    Yes.  The last paragraph?

6           Q.    Would you read it all?

7           A.    Okay.

8            "To make a realistic assessment of the level of  
9 suicidal risk of Diana Radke prior to her death on  
10 2/29/96 is difficult because this clinician had no  
11 direct contact with Ms. Radke.  What I had available to  
12 me was the police reports, copies of letters Ms. Radke  
13 wrote to her husband, and copies of a series of notes  
14 written by a friend of Ms. Radke, plus the information  
15 gained by the attorneys from the District Attorney,  
16 Martha Hollowell, J.B.

17           However, in the attempt to provide an objective  
18 rationale for a retrospective assessment, I have used  
19 two instruments, which are respected in the field of  
20 suicidology, as evidenced by their inclusion in the book  
21 entitled: The Suicide Patient, Clinical and Legal  
22 Standards of Care, by Bruce Bongar, Ph.D., Washington,  
23 D.C., American Psychological Association, 1991."

24           Q.    And, sir, let me interrupt you.  The next few  
25 paragraphs describe the two scales that you used?

1 A. Yes.

2 Q. And rather than go over that again, would you  
3 skip to the last paragraph?

4 A. Okay.

5 "These two scales scored retrospectively indicates  
6 to this clinician that Ms. Radke was significantly at  
7 risk for suicide. From my understanding of the events  
8 that resulted in her death, whether she did, in fact,  
9 place the shotgun in her mouth and fire the weapon or  
10 whether the gun was an object in the struggle between  
11 her and her husband firing and killing her, cannot be  
12 determined from my analysis and the information  
13 available to me.

14 Q. Thank you, sir. Then you were -- you had two  
15 things here to look at: Whether or not she did place  
16 the shotgun in her mouth and fire the weapon committing  
17 suicide, or whether it was an inadvertent act when she  
18 struggled with her husband over a firearm, thereby,  
19 accidentally killing herself. Whatever happened, you  
20 don't know which happened?

21 A. I have no knowledge of that, no.

22 Q. So it was either a struggle or a suicide --

23 A. Yes.

24 Q. -- in your mind?

25 A. Yes.

1 Q. -- from what you were presented by the ADA,  
2 Ms. Martha Hollowell?

3 A. That's correct.

4 Q. Have you spoken to the DA prior to this  
5 hearing since this report was made -- or let me draw  
6 your attention to the several weeks before this trial.  
7 Has anyone from the District Attorney's office called  
8 you in the couple of weeks or three weeks preceding this  
9 case?

10 A. Yes. There was one phone call, and my  
11 recollection of that phone call was that they were  
12 indicating that they had not an interest -- they did not  
13 have an interest in calling me as a witness, was the  
14 content of that phone call.

15 Q. Did anyone from the District Attorney's office  
16 call you and indicate to you that someone from the  
17 Defense might be calling you up?

18 A. Yes.

19 Q. Okay. Did they -- was that a warning, an  
20 admonition, did they just say anything beyond that, or  
21 how did they say that?

22 A. My recollection is that I -- let me put it  
23 another way: I did not remember taking it as an  
24 admonition or warning. It was just a statement that  
25 this might happen.

1 Q. They just called you up to let you know?

2 A. Yes.

3 Q. Mr. Vor Koper, let me present to you, if I  
4 may, a hypothetical. You had certain information  
5 concerning Diana Radke, and now let me present to you a  
6 hypothetical that is not Diana Radke, necessarily:

7 Given that a young woman is -- has slashed her  
8 wrists at the age of 14 years because she didn't want to  
9 go live in another town with her biological father.

10 Given that a young woman has a history of abortive  
11 relationships that don't end happily.

12 Given that a young woman has a love relationship  
13 that ends in the death of the partner through tragic  
14 means, an accident.

15 Given that a young woman says that this was the  
16 love of her life and misses this person every day and  
17 wishes he were still with her.

18 Given that a young woman goes to work in sexually  
19 oriented businesses, specifically the topless bars, and  
20 works in them for several years in her early 20's and on  
21 into her mid- to late-20's.

22 Given that a young woman becomes pregnant by a  
23 young man several years younger than herself and enters  
24 into a marriage made under duress because of the  
25 pregnancy and sets up a house under this duress, and

1 that the young woman does not have a happy time with  
2 it.

3         Given that she gains a great deal of weight after  
4 the pregnancy and continues to keep this weight on her  
5 after the birth of the child, almost a 30-percent to  
6 40-percent increase in her body mass, and this is during  
7 this childbearing and thereafter.

8         Given that 15 months after the birth of the child  
9 she has not lost this weight.

10         Given that she is used to receiving adulation due  
11 to her body shape and image, and she's able to present  
12 to a public forum and entertainment forum and be  
13 complemented on it, and she cannot do this anymore.

14         Given that she goes to a doctor, a doctor who  
15 treats these girls as a large part of his practice that  
16 work in this industry, and asks for Prozac because she's  
17 feeling malaise and depression.

18         Given that she also comes back in a couple of weeks  
19 and asks for Fen-Phen, Phentermine and Fenfluramine, I  
20 believe it is, diet pills and receives them in a normal  
21 dosage for her height and weight, which is at that time  
22 about five six and about 200 pounds.

23         Given that she takes these meds together, Prozac,  
24 Fen-Phen, and that further she comes back in and says  
25 that she, after a while, while she's taking these

1 medications, that she's having a hard time sleeping, and  
2 that she's then prescribed a sleeping medication called  
3 Desyrel, at either 100 or 200 milligrams, and is told  
4 that she may take a part of each of these pills, a third  
5 of it, or all of it, depending on what she needs.

6 Given that associates and social contacts of the  
7 young woman report that she is sleepless; that she is  
8 jittery; that she is laughing inappropriately in  
9 circumstances where other persons wouldn't be laughing.

10 Given that in the last three or four months of her  
11 life, while she's on these pills, that on at least two  
12 separate occasions, which are a matter of Record, she  
13 tries to get a hold of or tries to -- or does, in fact,  
14 brandish a firearm saying that she's going to kill  
15 herself. On one occasion, a rifle; and on another, she  
16 fights over a shotgun, which she says she's going to try  
17 to kill herself.

18 Given that in both of these occasions she does not  
19 succeed and that they are taken away from her, or  
20 wrested away from her, or taken where she cannot get at  
21 them.

22 Given that there was a shotgun in this young  
23 woman's house prior to her death, because given that,  
24 this young woman does, in fact, die.

25 Given that she is very unhappy with her husband not

1 coming home at night and with her entire life  
2 situation.

3 At what risk for suicide would you place this  
4 hypothetical person?

5 A. High.

6 Q. Given that the young woman is found in her  
7 home on her living room floor, much in the manner as  
8 this young woman was found -- and I'm talking about the  
9 hypothetical, not this young woman -- but that she's  
10 found in a position like this with her husband running  
11 hysterically about, crying, telling inconsistent  
12 statements about what happened to her, semi-intoxicated,  
13 all these givens, can you opine what might or what  
14 probably happened to such a hypothetical young woman who  
15 did all these things and had all these things happen to  
16 her, and then the police come to her house and find her  
17 dead in a position like that?

18 A. As a clinician, I could say that this person  
19 was at very high risk for suicide. As a clinician, I  
20 cannot attest to what really happened, because that's  
21 out of my area of expertise.

22 Q. No, sir.

23 A. Precisely.

24 Q. No, sir, no one but the two people there knew  
25 what happened.

1           A.    Or nor am I qualified as a Medical Examiner to  
2 examine crime scenes.

3           Q.    And tell what a cause of death was?

4           A.    That's right.

5           Q.    But given that the cause of death was a  
6 shotgun wound to the face, to the head -- have you  
7 viewed scenes of suicides? I'm sure in your work --

8           A.    Yes, I have.

9           Q.    Given that the hypothetical young woman had a  
10 contact wound exactly like that one with powder burns  
11 and residue around the mouth, with a small, circular  
12 opening there, cylindrical rather than blown out, and  
13 that the passage was -- began there and went through  
14 there, given all that, would that comport with a bungle?

15          A.    Given that that was comported with some  
16 activity on her part that would wind up in her death.  
17 Again, I'm hesitant --

18          Q.    You don't know if it's a suicide?

19          A.    -- I hesitate to say that since that's not my  
20 area of expertise. What is clear is that in the best  
21 model that I know about from -- you describe a woman who  
22 has high -- what we call as high perturbation, her whole  
23 life-style was disturbed. A lot of disturbances were  
24 going on. There was the press of some event in her life  
25 that generated a high level of energy and excitement, in

1 the negative sense of that word, and a high level of  
2 personal pain. This is a model that was developed by  
3 Edwin Schneidman, one of the fathers of suicidology in  
4 this country. He says that it's at the moment when  
5 those three factors come together that the person is  
6 most likely to act on being at suicidal risk.

7 Q. What are those three factors, again, sir?

8 A. Pain, press, perturbation.

9 Q. Per --

10 A. Perturbation, P-E-R-T-U-R-B-A-T-I-O-N.

11 Q. Would you tell me what that means?

12 A. What that means is: A life-style of high  
13 levels of disturbance, the absence of getting one's  
14 needs met, especially psychological needs met, a lot of  
15 at risk and dangerous life behaviors, a history of  
16 suicide attempt, or suicide ideation, is one example of  
17 perturbation. It has to do with that whole set of being  
18 disturbed and out of easiness with one's life.

19 Q. Sir, you have just said that you're not a  
20 coroner or a person who goes to crime scenes.

21 A. Yes.

22 Q. But back to the hypothetical, say given that  
23 one of the foremost homicide detectives in North Texas,  
24 if not the foremost, would indicate on hearing the same  
25 hypothetical, or would opine, that he had never seen a

1 murder scene that comported with these facts and that  
2 this would make history, would you agree or disagree  
3 with what he had to say, viewing this picture, which  
4 would be exactly the same as the hypothetical?

5 A. I would trust his expertise in that. From my  
6 subjective judgment, it would seem like that would be  
7 the case.

8 Q. Thank you, sir.

9 MS. SHELTON: Pass the witness.

10 CROSS-EXAMINATION

11 BY MS. MCVEA:

12 Q. My name is Terri McVea. I believe I was the  
13 one that contacted you.

14 A. Yes. That's right. I remember your name.

15 Q. Do you recall that?

16 A. Yes.

17 Q. Okay. In fact, I informed you that I probably  
18 wouldn't call you as a witness, but most assuredly, the  
19 Defense would, probably; wouldn't they?

20 A. Yes.

21 Q. Okay. Now, you didn't know Diana Radke,  
22 correct?

23 A. Not at all.

24 Q. And you never met her; is that true?

25 A. That's correct.

1 Q. Okay. Now, some of the information that you  
2 gathered, or was given to you or provided for you to  
3 complete this assessment, some of this information you  
4 had to guess at; is that true?

5 A. Some, yes.

6 Q. In order to complete the assessment, correct?

7 A. Yes.

8 Q. Now, in this assessment, your purpose was to  
9 determine whether or not she was -- whether she was  
10 suicidal, not that she actually committed suicide,  
11 correct?

12 A. That's correct.

13 Q. Okay. Now, isn't it true that any one of us  
14 could actually take either one of these two assessment  
15 tests, and we could be found at high risk, correct?

16 A. That's correct.

17 Q. Okay. And just because people are at high  
18 risk for suicide doesn't mean they actually commit  
19 suicide, true?

20 A. That's correct.

21 Q. Is it usual or unusual for a female to kill  
22 herself with a shotgun blast to the face?

23 A. The research that I'm aware of says that  
24 across the United States, it is rare for females to kill  
25 themselves with firearms; however, in the Dallas, Texas

1 area, this part of the State of Texas, that is not  
2 uncommon. The rate of male-to-female suicide attempts  
3 using guns is about equal, according to the last  
4 research I have read on that subject.

5 Q. Would that include shotguns, specifically, or  
6 are we just talking firearms in general?

7 A. The research is determining using firearms.

8 Q. Okay.

9 A. Yes.

10 Q. So what about shotguns, is that still kind of  
11 unusual for a female to kill herself in that manner?

12 A. I can't -- I don't know.

13 Q. Okay. The research doesn't break down the  
14 difference between shotguns and other firearms?

15 A. What I've read does not.

16 Q. Okay. Is it usual or unusual for a female to  
17 kill herself with her child present?

18 MS. SHELTON: Objection,  
19 mischaracterization of what we have in evidence. The  
20 child was apparently asleep in the other room when the  
21 people arrived?

22 THE COURT: Overruled.

23 A. The question, please.

24 Q. (By Ms. McVea) Is it usual or unusual, in  
25 your experience, for a female to kill herself in the

1 presence of her child or with her child in the home?

2 A. In my experience, I've seen it about equally  
3 both ways.

4 Q. As you said, you're not a crime scene  
5 specialist or a coroner or anything like that; you're  
6 just basically just giving us your best guess --

7 A. My clinical judgment.

8 Q. -- as to whether or not this young woman was  
9 suicidal; is that right?

10 A. That's correct.

11 Q. And you're not here saying that the Defendant  
12 here didn't kill her on that night, correct?

13 A. I can't judge that.

14 Q. Absolutely.

15 MS. MCVEA: Thank you. Nothing  
16 further.

17 REDIRECT EXAMINATION

18 BY MS. SHELTON:

19 Q. Mr. Vor Koper, you stated that, whether or not  
20 a child is present in the house or children are present  
21 in the house, you've seen it equally both ways?

22 A. Yes.

23 Q. In fact, sometimes -- could I go a little  
24 further with that in my questioning and ask you:  
25 Sometimes when there are children present when the

1 person who is undergoing the, I believe you said, the  
2 trilogy of pain, press and perturbation, and it reaches  
3 its, I guess, high point there, sometimes when there are  
4 children present, the individual, the woman kills them,  
5 too; isn't that true?

6 A. Well --

7 Q. Takes them with her rather than leave them  
8 behind?

9 A. I have seen some research that doesn't point  
10 in that direction. I have heard of stories like that.

11 Q. But, I mean, the woman will kill herself and  
12 her children, this suicide person will kill themselves  
13 and their children?

14 A. I've heard incidents like that.

15 Q. Sometimes the children are present.

16 A. I have heard of incidents like that. I have  
17 not seen research indicating the rate where that occurs,  
18 but I've heard of incidents like that.

19 Q. How would you characterize a scene like that  
20 where a woman commits -- kills her children first and  
21 then kills herself? Is that -- that's not a garden  
22 variety suicide, or what is it?

23 A. In my -- to my knowledge, no.

24 Q. Could you classify that?

25 A. Yes. As an -- I'm hesitating a little bit

1 because --

2 Q. Let me give you some additional factors,  
3 then.

4 A. Yes.

5 Q. Say the scene is present that there's a  
6 parent, a female parent, who has killed her child or  
7 children, and then killed herself. Let me present to  
8 you some hypothetical that that's occurred:

9 That you subsequently find out that, while she's  
10 had some lifelong problems with pain and perturbation,  
11 that this time the press comes on her, and that she may  
12 be under the influence of a recent birth of a child that  
13 she has not really recovered mentally, emotionally and  
14 physically from that birth; that she may be suffering  
15 some form of postpartum depression, and, additionally,  
16 that she may be under the influence of medications that  
17 are mood altering.

18 What would you expect to see here, or how would you  
19 classify a suicide/homicide like that?

20 A. Okay. There's another factor that was not in  
21 your list that I see as very high in the category of  
22 factors involved, and that is that people in a suicidal  
23 crisis exhibit high levels of disassociation. What that  
24 means is that they lose consciousness of where they are,  
25 who's around them. They have no sense of time, space or

1 anything else. They are only focused, and exclusively  
2 focused, on what their feelings are and what their  
3 thoughts are at the time. And their thought processes  
4 are highly constricted to those few subjects, which  
5 means that they are not aware of their circumstances or  
6 surroundings. So whether or not a child is there or not  
7 is frequently irrelevant to the person who is in that  
8 kind of suicidal state. They don't know that the child  
9 is there, in fact.

10 Q. And, in fact, we have seen some -- let me  
11 further factor in borderline personality disorder in our  
12 hypothetical. Suppose this young woman had been  
13 diagnosed by a clinician with borderline personality  
14 disorder, would your assessment of the --

15 A. The risk would go up as more lethal.

16 Q. And suppose --

17 MS. SHELTON: And I presume he's an  
18 expert, Judge Nelms, as the Prosecution contacted him as  
19 such. Might I present to him, since he wasn't present  
20 at the Courtroom when Dr. Branaman was here last, might  
21 I present to him Dr. Branaman's conclusion?

22 MS. MCVEA: Your Honor --

23 MS. SHELTON: Might that be acceptable  
24 to the Court?

25 MS. MCVEA: No. We object, Your

1 Honor.

2 THE COURT: What would be the purpose  
3 of doing that? Since he was not there, he's not going  
4 to know --

5 MS. SHELTON: He couldn't hear the  
6 evidence.

7 THE COURT: -- whether anybody else's  
8 conclusion is correct or not.

9 MS. SHELTON: All right. I withdraw  
10 the question.

11 Q. (By Ms. Shelton) In fact, sometimes,  
12 continuing with our hypothetical, people with this  
13 borderline personality disorder where they seek  
14 attention and have to have constant reinforcement,  
15 sometimes they don't kill themselves but they kill their  
16 children, and then say, well, they don't know how it  
17 happened, or somebody must have broken into the house  
18 or --

19 A. That's common.

20 Q. -- the "Boogie Man" did it or something?

21 A. That's common.

22 Q. And they really don't know, because they were  
23 so fixated on their ideation?

24 A. That's correct.

25 Q. So this could have gone either way, couldn't

1 it; besides the woman killing herself, she could have  
2 killed her child or children. This can happen,  
3 depending on the press that's on her, the pain that's on  
4 her, and the kind of perturbation she has?

5 A. That's right.

6 Q. And finally, referring one more time to your  
7 report, all you can conclude is whether she did, in  
8 fact, place the shotgun in her mouth and fire the  
9 weapon, or whether the gun was an object in the struggle  
10 between her and her husband. That's -- you don't know.

11 A. That fact, I have no way of assessing that.  
12 Based on my experience and expertise, all I can say is  
13 that she, from what I was given to her, was at high risk  
14 for suicide, or at least moderate risk for suicide.

15 Q. Thank you, sir.

16 MS. SHELTON: Pass the witness.

17 MS. MCVEA: Nothing further, Your  
18 Honor.

19 THE COURT: All right. Sir, you may  
20 step down.

21 THE WITNESS: Thank you.

22 (Whereupon, the witness was then  
23 excused and proceedings resumed, as  
24 follows:)

25 MS. SHELTON: Judge, we'd like about

1 ten minutes before you let us --

2 THE COURT: I'm sorry?

3 MS. SHELTON: We would like about ten  
4 minutes before -- if you're going to let us argue. Are  
5 you going to allow us to argue?

6 THE COURT: I don't know whether  
7 you're resting or --

8 MS. SHELTON: We're finished. We're  
9 resting.

10 THE COURT: All right. Defense  
11 rests.

12 What says the State?

13 MS. MCVEA: Can we have just a second,  
14 Your Honor?

15 (Whereupon, there was a brief  
16 pause in the proceedings.)

17 MS. MCVEA: We close, Your Honor.

18 THE COURT: All right. Does the  
19 Defense close?

20 MS. SHELTON: We do, sir, close.

21 THE COURT: Close the testimony.

22 I will give both sides until -- let's call it 3:15  
23 for argument.

24 MS. MCVEA: Okay, Your Honor.

25 THE COURT: How long will each side

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 here in the Courtroom.

2 Judge, I first would like to ask you to look at the  
3 witnesses on both sides, the character witnesses  
4 specifically; that is, people who didn't know anything,  
5 they didn't know what happened, but they got on the  
6 witness stand and they said what they thought of either  
7 Christopher Radke or Diana Morrison Radke. First, I'd  
8 like you to look at their witnesses and what their  
9 comportment was. Basically, and I'm not factoring in  
10 the mother of the deceased here, she's in a class by  
11 herself as the mother of the deceased, Diana, but I'm  
12 talking about the other ones that got on the witness  
13 stand who knew Diana. Butter wouldn't have melted in  
14 their mouths. According to them, Diana had no problems,  
15 except the only problem in her life was Christopher  
16 himself. For Diana, life was good. She was laid back,  
17 a wonderful person, and never had any kind of problems  
18 at all. They were all her associates, pre-Chris, and  
19 they all got on the witness stand and showed what they  
20 were, and, of course, you're going to make your own  
21 reflection and assessment of what kind of people they  
22 were and how they measured up.

23 Consider Chris's character witnesses. And, again,  
24 we know that everyone's mother has good to say about  
25 them, but consider the comportment of his mother; of her

1 sister, his aunt Helen Bright; of the rest of his  
2 friends who got on the witness stand. And there were  
3 numerous people out here, family members, immediate  
4 family members, who didn't get on the witness stand in  
5 the interest of time. After all, they knew nothing;  
6 they weren't there. They just know that they love their  
7 relative, their brother, their son, their stepson.  
8 Think about the young people who got on the witness  
9 stand who knew Chris and what their comportment was. If  
10 they had smoked pot when they were younger or they used  
11 drugs as a youth and gotten into problems with it, they  
12 had admitted that. They're people who are used to  
13 carrying on their activities in the light of day and  
14 having people see what they do, so they're used to being  
15 a little more frank and open about it. And I'd ask you  
16 to think about that. Contrast them, for example, with  
17 one particular witness that stands out in my mind on the  
18 Prosecution side, and that was Samantha, the former  
19 dancer. This was a young female who acted as though she  
20 would be shocked and offended by any activity that  
21 couldn't have been conducted at a Baptist social. And  
22 that was her comportment.

23 Leaving all those people aside who really knew  
24 nothing about what happened that night, let's look at  
25 one of the two people who did, and that is Diana. If

1 she was here today, if Diana Morrison Radke could come  
2 here today and talk to us and come into this trial, I  
3 wonder what she would say? Well, this is what I think  
4 she would say, and I think this is what she'd want us to  
5 know: That she never intended to end up looking like  
6 this on the floor with her face blown away. She wanted  
7 to look like this other pretty picture of her, which  
8 you've seen there with her son. She never intended for  
9 this to happen that night. And she would be wanting to  
10 tell us that she was mad at her husband and had a reason  
11 to be. But once again, he didn't get home until 8:30 at  
12 night; that he came in intoxicated and wouldn't listen  
13 to her. He walked out in the kitchen to get whatever he  
14 did, went out to get something to eat, and was drunk on  
15 top of it; that she screamed at him, and he wouldn't  
16 listen to her, he was insensitive to her needs, and that  
17 she was just trying to get his attention. All she was  
18 ever trying to do with Chris was to get his attention.  
19 He didn't give her enough attention. This is what this  
20 is about. Because, finally, how could he? He was  
21 only -- he was an audience of one. Recall her mother.  
22 Her mother couldn't give her enough attention. She cut  
23 her wrists, not to kill herself, her mother said, but  
24 specifically, the lady said, she did it to get my  
25 attention. And then she got my attention and everything

1 was all right.

2 Her behavior is consistent. It was consistent from  
3 the time she was 14 years old, which is all I know of  
4 her, and all I can comment on. She consistently got  
5 physical, tried to provoke confrontations. It never,  
6 never worked with Chris. Whatever happened with her  
7 previous boyfriends and her prior dead husband, we don't  
8 know. But with Chris, it never, never worked.

9 Now, the Prosecution is trying to hang their hat on  
10 something else besides consistency, and they want you to  
11 believe that on this one occasion, against all logic and  
12 all the weight of the prior evidence, that things went  
13 down differently than they had ever gone down before.  
14 That on this one night, Diana was not ranting, raving,  
15 roaring, running around saying, please, pay attention to  
16 me. I'm going to kill myself, and I might as well be  
17 dead and buried. On this night, it was different. And  
18 Chris, Mr. Laid Back, Mr. Quiet, Mr. Kid, came in that  
19 night, a roaring monster, and killed his wife. I don't  
20 think that happened.

21 Diana's story is really a sad story. She was quite  
22 a pretty young woman from that picture of her with her  
23 child. Apparently, when she wanted to have, she could  
24 have a very nice personality, or maybe not when she  
25 wanted to have one, but when she was able to have one.

1 She was certainly able to have a nice enough personality  
2 to fascinate and intrigue this young boy here so that he  
3 loved her. He wanted to marry her, a girl he didn't  
4 really know that well. He knew she had worked in the  
5 topless bars, but she was pregnant with his child. His  
6 mother said, well -- she was stumbling for this -- I  
7 tried to give him good morals; I tried to -- what she  
8 might have been trying to say was: I tried to make him  
9 sensitive to other people's needs, imputed him to do the  
10 right thing, even if it was in the wrong situation.  
11 Well, he put himself into the wrong situation, true  
12 enough, but it takes two. He did this; he engendered  
13 the child. But then he tried to do the right thing; he  
14 married the young lady. He tried to make a life with  
15 her, but he could never fill the immense emptiness that  
16 was inside of her.

17 He told his friends: Well, I love her. I love  
18 her. He still does today. He still loves her. He  
19 still wishes that it had happened differently that  
20 night. Now, when he grew burdened by it, not knowing  
21 what to do next, and she wouldn't go into counseling at  
22 the end, he tried a couple of brief separations. But it  
23 never worked. She was always calling him to come back,  
24 coming to his work, calling him and paging him, calling  
25 his relatives, calling his friends, roaring until he

1 came back. She had been abandoned in the worst way  
2 before by Daniel Zimbleman, her first husband, the most  
3 terrible abandonment: sudden death. She didn't want to  
4 be abandoned again. This was certainly -- would have  
5 been a crueller abandonment.

6 Remember Dr. Branaman's testimony on the stand, and  
7 I'm not going to recapitulate that, but when he  
8 characterized borderline personality disorder and that  
9 escalation of means to get attention, any means,  
10 finally, even lethal means, given the displays of  
11 weapons, things that he had inputted into his report  
12 before he got on the stand and gave his testimony.

13 Recall two people from the same time frame right  
14 before her death, Matt Phelps and Joseph Nunez. They  
15 didn't even know each other. They both had only in  
16 common that they both knew him. They didn't even run in  
17 the same circles. One knew him from work and another  
18 knew him socially from the time he was in the 9th  
19 grade. They both heard about gun incidents with Diana.  
20 They both heard about these incidents within those last  
21 two or three months. He told his friends he loved her,  
22 and he acted like it. He worked and he supported his  
23 family. But finally, even he at the end, while she was  
24 under the diet pills and everything else that was coming  
25 down on her, the pain, the stress, the heartache, the

1 emptiness, even he had to file assault charges against  
2 her after she blacked his eye. Her violent acts were  
3 escalating in those last months. The drugs were  
4 pounding in her. She didn't need to be taking them, and  
5 the charges were pending against her when she died.

6 Recall her charges against him, allegedly, that he  
7 split her lip. She told three different sets of people  
8 the same thing. She told the people at the hospital  
9 that she had fallen down and done it to herself. She  
10 told the family violence counselor, Amy Wheat, that she  
11 had fallen and cut her lip, I believe it says in there,  
12 on a car bumper. And also the only witness to the  
13 incident who testified here, Tommy Butcher, said that's  
14 what happened; that she fell down and cut her lip on a  
15 car bumper. Now, who assaulted who? She's told three  
16 different sets of people who aren't connected with each  
17 other, the DA's office, Tommy Butcher has seen it with  
18 his own eyes; and over at the hospital, she writes down  
19 a report over there. It's only when Chris doesn't come  
20 to the hospital that she files and then she drops  
21 assault charges because she knows it's not true.

22 The photos, Your Honor. You can look at those  
23 photos, I know, and see what happened. When Spotswood  
24 was on the stand, the Medical Examiner, Medical Examiner  
25 Spotswood, she said: But for his inconsistent

1 statements that night, she would not have ruled it a  
2 homicide. That was the only thing that threw it in that  
3 direction.

4 Recall the Prosecution experts, the people who  
5 testified for the Prosecution: Ranger Shing and Mr.  
6 Bevel. Now, I got the distinct impression, when Ranger  
7 Shing was on the stand, that he wasn't -- while he felt  
8 competent with his own skills, that he wasn't totally  
9 and completely satisfied with the way things had shaken  
10 out. And while, Judge, I know that you can review the  
11 testimony yourself and don't need me to help it, I just  
12 want to point to three places in his testimony where he  
13 said the same thing three times. Initially, he said:  
14 They didn't want a complete interpretation, so I did a  
15 random sampling of stains. And then he said: They  
16 didn't want a complete interpretation, but a random  
17 sampling that would support their theory. I stopped at  
18 four. And then finally, he says: It would have been  
19 realistic to have strung -- and I don't know how to put  
20 it -- a hundred or more strings, and then why this  
21 wasn't done. They didn't want that. They only wanted  
22 to confirm what their investigation led them to  
23 believe.

24 Now, the Prosecution, I don't know if they had to  
25 put Ranger Shing on or they couldn't have got Mr. Bevel

1 there to the scene to do his study of the crime scene.  
2 They had to use Ranger Shing's strings. They had to use  
3 his preservation of the crime scene, or they couldn't go  
4 to Bevel; otherwise, I would submit that Ranger Shing  
5 didn't help them at all, not a bit.

6 Mr. Bevel, they had to go outside the State of  
7 Texas to find a blood splatter expert. There's Irving  
8 Stone up here; there are other blood splatter experts in  
9 Texas that I'm sure the Court is familiar with, but they  
10 had to fly somebody in from out of State. I wonder if  
11 we were able to look into the Prosecution's file, and  
12 it's not in evidence, I wonder if there was some way  
13 that we could discover just how many people they called  
14 to get them.

15 MS. MCVEA: Your Honor, I object;  
16 that's argument outside the Record.

17 THE COURT: Sustained.

18 MS. SHELTON: I withdraw that.

19 But they found Mr. Bevel, and they brought him  
20 here. And he was doing pretty good, and he was there  
21 and going along, and going through the evidence; and he  
22 had to reach the same conclusion as Mr. Shing did about  
23 the distance above the floor where the head was  
24 positioned, although Mr. Shing said he would have given  
25 it six inches more or less either way. So they were

1 both at about two feet, but it could have been a foot  
2 and half, and it could have been two and a half feet.

3         What about Bevel and the shirt? Well, he was  
4 thrown by that when that shirt was mentioned by the  
5 Court, I might add, first, before Mr. Steinbeck  
6 mentioned it. Because if there had been a bloody shirt,  
7 he said, well, he couldn't have reached the same  
8 conclusions. Subsequently, it turned out, that wasn't  
9 the bloody shirt. It wasn't the bloody shirt that -- it  
10 wasn't the bloody shirt that was linked directly to  
11 Christopher Radke, but the Prosecution put on some  
12 evidence linking it to Diana Radke and the prior  
13 occasion where she cut her lip on the car bumper. I  
14 wonder when the officer -- and I can't recall his  
15 name -- came out there and found the shirt, and he said  
16 he found it in the clothes basket, a bloody shirt, he  
17 thought he had the shirt, Judge. I believe he did. And  
18 he stopped right there. The Garland Police Department  
19 doesn't have a homicide division. That's why they had  
20 to call in consultants outside of Mr. Shing and others,  
21 and that's habitual for small departments to do it. But  
22 he stopped at the bloody shirt that he thought was the  
23 right shirt.

24         Where was Christopher Radke's shirt? Why didn't he  
25 have a shirt on when the paramedics got there? Why was

1 he running around without a shirt on and a pair of green  
2 pants on? What horrific thing was the matter with that  
3 shirt that he had to take it off his body and stand out  
4 there in the February wind without a shirt on? I submit  
5 that if they hadn't found that first bloody shirt in  
6 that basket, that they would have looked on and found  
7 something else. Well, the crime scene is gone now. All  
8 the clothes are out of the house, and the place is,  
9 presumably, in the hands of other persons. But where is  
10 Christopher Radke's shirt? I don't know. And they  
11 don't know either, and Mr. Bevel didn't get all the  
12 evidence to make his analysis from.

13 Dr. Branaman: A troubled young woman with a mental  
14 illness. Now, what else can I say? I'm not going to  
15 recapitulate his testimony.

16 Charles Vor Koper, whom the Prosecution called  
17 themselves. Ms. Martha Hollowell, who was not here  
18 today, but is a fine lawyer, is known to the Court; is  
19 known to me personally as a very fine lawyer; a very  
20 intelligent young woman whom I have great professional  
21 respect for, tried to cover the basis see felt needed to  
22 be covered. She called Charles Vor Koper, the foremost  
23 suicide expert up here in North Texas and known all over  
24 the United States, and asked him on the basis of her,  
25 what she had learned from her witnesses and her witness

1 assessments, to predicate what he thought -- some sort  
2 of opinion on what he thought from what she had from the  
3 Prosecution's witnesses and evidence. You heard what he  
4 said, Judge. You heard what he said. He had two  
5 possible conclusions in that Vor Koper report. And this  
6 is what he's getting from Ms. Hollowell: From my  
7 understanding of the events that resulted in her death,  
8 whether she did, in fact, place the shotgun in her mouth  
9 and fire at the weapon or whether the gun was an object  
10 in the struggle between her and her husband firing and  
11 killing her, it cannot be determined from my analysis of  
12 the information available to me. All he was getting --  
13 all the input he got, only gave him this.

14 Now, finally, we don't, obviously, have the money  
15 the State of Texas had. We can't fly in people from out  
16 of State. We don't have those kinds of funds. So we  
17 had to present people who lived, resided all here, as  
18 all of our people did who were not fact witnesses or  
19 character witnesses, in the Dallas County area. We  
20 brought you Dr. Tim Branaman. We brought you the  
21 Prosecution's expert, Charles Vor Koper. We also  
22 brought you Bill Parker, who is known in this area as  
23 running a large consulting business for law  
24 enforcement. He has about eight former detectives on  
25 his staff and law enforcement people who do both

1 polygraphs and do contract investigations for other  
2 agencies. He allowed that he had, in fact, investigated  
3 as the interrogator for the Rowlett Police, the Darlie  
4 Routier case. These are the kinds of cases that Mr.  
5 Parker is hired on as a homicide investigator and  
6 interrogator, and that is the capacity in which we hired  
7 him and brought him here before the Court, because we  
8 had to find someone from the area, and we picked the  
9 best that we could get, and that was Mr. Parker.

10 I would like to ask you this, Judge, and the  
11 Prosecutors are here in the room: I don't know if  
12 you've ever seen Mr. Parker testify back when he was on  
13 the homicide and was a sergeant on the homicide, but I  
14 would submit that you have not seen him testify very  
15 often for the Defense as a homicide investigator because  
16 he doesn't do that. That isn't what he does. His  
17 contracts come from the State, from police departments,  
18 from municipalities, and he is very well satisfied to be  
19 identified on that side. He will do polygraphs for the  
20 Defense, as well as the State, and does many of those.  
21 But how often have you seen Mr. Parker get on the  
22 witness stand for the Defense? I haven't ever heard of  
23 him doing it, except once before.

24 What does he say? What did he say? He looked at  
25 the experts' opinions that the Prosecutor put on. He

1 looked at photographs. He looked at Ranger Shing's  
2 strings crossing. He examined the Defendant and talked  
3 to him firsthand and asked him the questions that he  
4 wanted, to satisfy himself. He looked at all of the  
5 evidence they had. And this is the first time he has  
6 ever seen -- this man who has investigated 6,000  
7 homicide cases -- he says it's the first time in that,  
8 or in any of the literature he's read, in any of the  
9 literature he's read, that this case, something like  
10 this, would equal a murder.

11 In other words, if a murder went down this way, if  
12 this is a murder, then we're making history here. Now,  
13 Judge, if making history is what he would think we're  
14 making, I would submit that that is certainly a  
15 reasonable doubt. Thank you.

16 THE COURT: Ms. McVea.

17 MS. MCVEA: May it please the Court.

18 THE COURT: All right. The Defense  
19 used 18 minutes and 35 seconds. I will give you equal  
20 time.

21 MS. MCVEA: Thank you, Your Honor.

22 Your Honor, we have proven this case to you beyond  
23 a reasonable doubt. When you consider the credible  
24 evidence, you come to only one reasonable conclusion.  
25 We know that we have two individuals here that came from

1 troubled backgrounds. I don't think that can be  
2 contested. But when you consider the credible evidence,  
3 I believe that one of those individuals pulls herself  
4 together, was making changes in her life. But the other  
5 one hadn't, and he was causing problems in her life.

6 We have proven prior acts of violence, one that had  
7 occurred approximately two weeks before Diana Radke's  
8 death. We have the Defendant that actually admitted to  
9 committing that offense, busting her in her mouth, to  
10 Mike Morrison.

11 MS. SHELTON: I object to that. He  
12 didn't admit to busting her in the mouth.

13 THE COURT: Well --

14 MS. MCVEA: This is argument, Your  
15 Honor.

16 THE COURT: Overrule the objection. Go  
17 ahead.

18 MS. MCVEA: He called them. Mike  
19 Morrison contacted him and told him: Hey, your wife is  
20 in the hospital. What was his response? Yeah, I know;  
21 I did it. In other words, I'm the one that put her  
22 there.

23 She was very -- the next day he shows up at the  
24 house banging on the door trying to get in, yelling and  
25 screaming that he wants his gun, wants his clothes. The

1 Complainant was very afraid. You heard Samantha Mayer.  
2 She said: I had never seen her like that before. She  
3 was terrified. You heard from the police officers.  
4 They testified to the same thing. She was afraid of  
5 him. And she told them police: Take this weapon.  
6 Please take it out of the house, because I'm afraid he's  
7 going to use it on me. And two weeks later she's dead.

8 Now, Diana Radke wasn't clairvoyant. It's a  
9 reasonable deduction from the evidence that he had  
10 threatened her with that weapon before. And, yes, she  
11 went back and got that weapon, and that was a fatal  
12 mistake. You heard her family; she was afraid of guns.  
13 And even though she got that weapon back, Your Honor, I  
14 submit to you that she got it back at the request of the  
15 Defendant. He pressured her into getting the weapon  
16 back. You heard from Don Mayer. He said he was bugging  
17 him about it. I've got to get that gun back. I've got  
18 to get it back. If she was so suicidal, why would he  
19 want that weapon in his house? Why? Why didn't he  
20 demand that it stay away? You heard from his witness,  
21 Mr. Phelps. Apparently, she tried to commit suicide or  
22 tried to take the weapon about two months prior to her  
23 actual death. The weapon was left at his house, his  
24 friend's house. But somehow it ended back up back at  
25 1001 Sunset. And I submit to you it was because the

1 Defendant wanted it there.

2           You also heard from Donald Mayer when he said:  
3 Man, why don't you get your life together? Why don't  
4 you work on your marriage. Either divorce her or work  
5 it out. And what was his response to that? I ought to  
6 just kill the bitch and get it over with.

7           Now, the Defense brings you a psychologist who had  
8 never met Diana Radke, never spoke to any of her members  
9 of her family, or her friends, or her coworkers; and  
10 he's able to say she's suffers from a personality  
11 disorder. I submit to you there's probably a lot of  
12 people in this Courtroom that suffer from personality  
13 disorders. It doesn't mean that they are suicidal.

14           Just because a suicide expert is able to look at  
15 some test, an assessment test, and rule that Diana Radke  
16 was at a high risk for suicide, doesn't mean she wasn't  
17 murdered. Most of us -- most of us, in our high-risk  
18 professions, probably could take the same test and come  
19 to the same conclusion that we're at high risk.

20           I submit to you, when you consider the credible  
21 evidence of the Complainant Diana Radke; that she was in  
22 a new house; that she had a little baby; that she was in  
23 a marriage; that she had a good job; and that I submit  
24 she was losing weight, which she wanted to do; and I  
25 submit to you that she was not suicidal.

1           We also know that 30 minutes prior to the event,  
2 that her child was up and playing. You heard from her  
3 mother. She had just talked to her. She talked to her  
4 at approximately 8:15 that night. And we know at 8:45  
5 the Defendant was calling at home talking to Mike  
6 Morrison and telling him, in tender terms, that his  
7 sister was dead.

8           One other thing I wanted to point out, Your Honor:  
9 She's so suicidal three days prior to her death that she  
10 was getting birth control pills. She was not suicidal.  
11 But the Defense wants you to believe that she was out of  
12 her mind. Within a 35-minute time, she just decides  
13 that I'm just going to end it all.

14           Well, I submit to you that if she committed suicide  
15 or if this was an accident, why didn't the Defendant  
16 call the police? He called his brother-in-law. He  
17 called his mother. Well, how come he couldn't dial 911  
18 and call the police and let them know: Oh, my God, my  
19 wife just killed herself; oh, my God, it's an accident?  
20 Because he needed time to get his tale, his lie,  
21 together.

22           He was seen screaming in the front yard. You heard  
23 from Constable Edwards. He was saying: Oh, my God.  
24 Oh, my God. I killed her. She's dead.

25           Well, Your Honor, I guess he really hadn't thought

1 that out. He hadn't thought -- he hadn't come up with a  
2 story quite yet. Did he tell the police that? Did he  
3 say: Oh, my God, I killed her? I mean, she was trying  
4 to kill herself, and I was trying to get the gun away  
5 from her, and it went off. And oh, my God, it's just an  
6 accident.

7 No, he didn't say that. What did he say? What did  
8 he tell the paramedics? What did he tell the police?  
9 We were coming home from a friend's house. We come home  
10 separately. She walks in, and she shoots herself. A  
11 minute later, what does he say? I'm in bed, and I hear  
12 a gunshot, and I go in the living room, and there she  
13 is.

14 I guess he hadn't quite thought it out, yet. That  
15 has nothing to do with an accident.

16 What do we do -- what we do know is that the  
17 Defendant and the Complainant probably had a fight that  
18 night. I think the evidence shows that. She had broken  
19 fingernails. He had scratches on his body, and his  
20 knuckles were red. I submit to you that he knocked her  
21 down in a fight, and as she was sitting up or recoiling  
22 back because of that shotgun, he put that gun to her  
23 mouth and he pulled the trigger. And he laid it across  
24 her body in an effort to cover up his crime.

25 He weaves his tale of lies. Whatever the police

1 would buy, whatever to try to get him out of this  
2 situation; and that's what he's trying to do right now,  
3 Your Honor.

4 And I also submit to you: When you look at the  
5 photographs of Christopher Radke's body when this  
6 occurrence happened, there's a red mark on his chest.  
7 And I submit to you that that could come from the recoil  
8 of firing a weapon. We all know that he's  
9 right-handed.

10 MS. SHELTON: Judge, I object to that.  
11 That scratch on his chest, that was not characterized  
12 that way in the evidence.

13 THE COURT: Well, she can draw her on  
14 conclusion from it. Overruled.

15 MS. MCVEA: The Defendant's version of  
16 a struggle with Diana Radke is inconsistent with the  
17 physical evidence. It's just not plausible. Our expert  
18 took the time to carefully examine all the evidence. He  
19 went out to the scene; he took measurements; he looked  
20 at all the reports, and he made a report of his own.  
21 Unlike their expert, who walks into Court, looks at some  
22 photographs, looks at some reports, and then renders  
23 their opinion within a matter of minutes. And I respect  
24 Mr. Parker, but in this instance, he's not credible.  
25 And I think if he had carefully considered the evidence,

1 he would have come to a different conclusion.

2 And we also know that that shirt was not as -- was  
3 not involved in this occurrence. You heard from Mr.  
4 Bevel. The Court must take into consideration, just  
5 like the Medical Examiner, must take into consideration  
6 all the factors available. You must take into  
7 consideration the Defendant's inconsistent statements.  
8 You have to consider that. You have to consider the  
9 angle of the weapon, the trajectory of the bullet, the  
10 blood spatter on his clothing, and the Complainant's  
11 position at the time of the occurrence. And you can  
12 only come to one conclusion, Your Honor.

13 Additionally, Your Honor, we know that, from the  
14 measurements done by the Medical Examiner, that Diana  
15 Radke's arm was, approximately, from her shoulder to her  
16 index finger, was approximately 26 inches long.

17 MS. SHELTON: That is --

18 MS. MCVEA: I'm sorry, approximately  
19 27 inches long. And we know that the barrel of the gun  
20 is 26 inches long. But I submit to you, if you try to  
21 hold that gun in the position in which the Defense is  
22 trying to say this occurrence happened, there is no way  
23 that she can hold that weapon in that position at that  
24 angle and hold that weapon and put her finger around the  
25 trigger.

1 MS. SHELTON: Objection, Your Honor;  
2 that is a mischaracterization of the evidence.

3 THE COURT: Well, she can make  
4 reasonable deductions from the evidence. Overruled.

5 MS. MCVEA: Another thing you have to  
6 consider, Your Honor, is Mr. Bevel's testimony. Now, I  
7 feel that his testimony was critical and very credible.

8 The Defendant's pants had blood spatter on them,  
9 the type of blood spatter that someone would get if they  
10 were holding a shotgun, standing over the Complainant,  
11 and firing that weapon. If there was a struggle, it  
12 would be a different type of blood spatter.

13 Another thing, Your Honor, if there was a struggle  
14 and if he was trying to save his wife's life or trying  
15 to get the weapon away from her, I submit to you why he  
16 would be grabbing the barrel of the gun, and we wouldn't  
17 be here today.

18 About Mr. Peavy, Your Honor, the MA. We all know  
19 that MA's talk. They shouldn't, but they do. And Mr.  
20 Peavy, I submit to you, is very familiar with very  
21 minute details of this case. And I submit to you that  
22 he gained that knowledge directly from the killer,  
23 nowhere else. They have -- they want you to believe  
24 that he's in the jailhouse saying he's going to testify  
25 and snitch on somebody. That just doesn't even make

1 sense, Your Honor. What Mr. Peavy said corroborates the  
2 physical evidence in this case, and I submit to you, you  
3 should believe him, because he is credible.

4 I submit to you, Your Honor, the bottom line here  
5 is: You would have to put full faith and belief in the  
6 Defendant with his inconsistent statements in order to  
7 find him not guilty. And you would have to disregard  
8 the credible evidence that's been provided to you.

9 The evidence shows that he's guilty. The State has  
10 proven that he's guilty, and I'm going to ask at this  
11 time that you find him guilty.

12 THE COURT: I have to say that the  
13 character evidence on behalf of both of the individuals  
14 involved in this case was of very little help in  
15 deciding the case. Frankly, I have placed very little  
16 value on it. I think it would suffice to say that  
17 neither party has possessed all those qualities that are  
18 most admired in our society, which is not to say that  
19 both of them or either of them did not possess some  
20 redeeming social qualities. But these people lived,  
21 basically, on the edge of life, using drugs, fighting.  
22 I found nobody in the case totally virtuous.

23 To me, the physical evidence of the case spoke more  
24 loudly, that is, the physical evidence, the factual  
25 evidence. Somebody wrote a long time ago that one

1 picture is worth 10,000 words. Frankly, in this  
2 particular case, I would say one picture is worth 20,000  
3 words.

4 The evidence suggests to me that a fight either  
5 preceded or was contemporaneous with the shooting. And  
6 when I say that, there was a large, overturned chair in  
7 the room where Ms. Radke was shot. There were fresh  
8 contusions on her right thigh and both of her legs. The  
9 Defendant's watchband was broken and in his pocket.  
10 There were fresh contusions on his left wrists, his  
11 right chest, his neck and back, and the knuckles of both  
12 hands were reddened.

13 I believe that the deceased, when shot, either was  
14 falling or was already in a kneeling, sitting, or prone  
15 position on the floor. It has been commented on by  
16 several of the witnesses that women rarely commit  
17 suicide by shotgun. Not to say that women are more vein  
18 creatures than men, but women of our society generally  
19 are fearful of guns. The deceased, according to her  
20 sister, hated guns. She asked the police to remove that  
21 gun after the prior domestic fights, saying she didn't  
22 want it in her home and that she was afraid of her  
23 husband; that he would kill her with it. And then she  
24 explained when she picked it up at the police department  
25 that she wanted it at his request so that it could be

1 sold.

2 Now, the actual physical evidence, mostly from the  
3 photographs, suggests that -- well, let me say first  
4 what this evidence is before what it suggests. There is  
5 the angle of the entrance and the exit wounds. An entry  
6 in the corner of the mouth and going back upwards and, I  
7 believe, to the left slightly. There is the position of  
8 those wounds relative to the blood spatters. She  
9 obviously had the back of her head within some close  
10 distance of the bookcase. There were blood spatters,  
11 bone, and tissue fragments on that bookcase, on the  
12 wall, and on the floor.

13 Considering the fact that the entry wound was a  
14 contact wound, the gun was right up against her mouth.  
15 And the dimensions of that gun, it was 40 and three  
16 quarter inches long. I don't know how much it weighed.  
17 I would estimate in the neighborhood of ten pounds.  
18 That shotgun was more or less vertical to the plane of  
19 her face at the moment that it was fired.

20 And then there is the fact that the lack -- there  
21 was a lack of blow-back blood and tissue on the hands of  
22 the deceased. It is difficult to imagine how she might  
23 have been able to hold that shotgun without one hand, at  
24 least, close to the muzzle of it, and that hand would  
25 surely have received some of the blow-back. There was

1 nothing on either of her hands.

2 I believe that all of this physical evidence  
3 combines to prove beyond a reasonable doubt that the  
4 deceased did not commit suicide. If she had killed  
5 herself, is it likely that this gun would have fallen  
6 across her chest where it was found? I believe that the  
7 recoil would have sent it flying, and it would have  
8 landed some distance from her body. I think it follows  
9 that if she did not kill herself, she was killed by  
10 another who was holding the shotgun. Who would that  
11 be? There can be no doubt that it was the Defendant,  
12 Christopher Radke.

13 He told others on the telephone and in person that  
14 he was present when she died. He had blood and tissue  
15 of the deceased on his pants and his shoes. His  
16 neighbor, the Dallas County Constable heard the  
17 Defendant in the front yard shouting that he had killed  
18 his wife. And finally, he was the only living person at  
19 the house when the police arrived.

20 Did he behave like an innocent man? I believe that  
21 he did not. He gave conflicting accounts of what had  
22 happened. In one account, he was asleep when it  
23 happened and heard the gunshot, walked into the living  
24 room, and saw her lying on the floor. And in the other,  
25 he said he had been to a party at a friend's house, and

1 as he walked in the door, she shot herself.

2 Now, I don't know whether he was outside before the  
3 shooting or in the bedroom before the shooting, but if  
4 he was outside, it was cold, very cold, according to the  
5 evidence. It appears that he either removed and hid his  
6 shirt, which almost certainly would have had some of the  
7 blood spatterings on it, or he had no shirt and he  
8 washed his upper body, if it was unclothed at the time  
9 of the shooting. His hands also should have shown some  
10 of the blood spattering and tissue, and also it would  
11 have shown that he had recently discharged a gun. But  
12 his hands, his chest, were all completely clean. It  
13 appears from this, and I think it is a reasonable  
14 deduction from the evidence, that he had taken the time  
15 to clean himself before the arrival of the police.

16 He did not call 911 to seek emergency medical aid  
17 or to report the shooting. When might it have been  
18 reported had her brother not done it? We don't know.

19 And finally, he evidently placed the gun on the  
20 body to suggest suicide to those who would come to  
21 investigate.

22 As to the jail witnesses, chief among them Mr.  
23 Peavy, but also for the witnesses who were called to  
24 controvert his testimony, there was not enough  
25 credibility in the whole bunch of them to fill a

1 thimble, and I am not considering for any purpose Mr.  
2 Peavy's testimony or the testimony of the other  
3 inmates.

4 Mr. Radke, would you rise.

5 (Defendant complies.)

6 THE COURT: Christopher Eric Radke, the  
7 Court finds you guilty of the murder of Diana Radke, as  
8 charged in the Indictment.

9 Will either side have additional evidence?

10 MS. MCVEA: The punishment, Your Honor,  
11 yes, we do.

12 THE COURT: All right. Very well. You  
13 may be seated, please.

14 The State may arraign the Defendant.

15 MS. MCVEA: Certainly.

16 MS. SHELTON: Judge, I wonder if we  
17 might -- if it might please the Court, since we're so  
18 close to the closing hour, that we might continue this  
19 in the morning?

20 THE COURT: Well, we're not so close to  
21 closing hour. We have -- is there any other reason --

22 MS. SHELTON: Well --

23 THE COURT: -- other than time? Is  
24 there something that you needed to do or wished to do to  
25 prepare to go forward?

1 MS. SHELTON: Well, I'd like to prepare  
2 my witnesses for punishment. I had not anticipated  
3 calling them.

4 THE COURT: Well, I have other cases  
5 set for trial tomorrow. Let's press on.

6 MS. MCVEA: The Grand Jurors aforesaid  
7 do present -- further present upon their oaths that  
8 prior to the commission of the aforesaid offense by the  
9 said Christopher Eric Radke, to-wit: on the 23rd day of  
10 January, A.D., 1992, in the Criminal District Court  
11 No. 5 of Dallas County, Texas, Cause No. F91-36660-UL,  
12 on the docket of said court, the said Christopher Eric  
13 Radke, under the name of Christopher Eric Radke, was  
14 duly and legally convicted in said last named Court of a  
15 felony, to-wit: possession of a controlled substance,  
16 as charged in the Indictment, and upon an Indictment  
17 then legally pending in said last named Court, at which  
18 said Court had jurisdiction and said conviction was a  
19 final conviction, and was a conviction for an offense  
20 committed by him, the said Christopher Eric Radke, prior  
21 to the commission of the offense hereinbefore charged  
22 against him as set forth in the first paragraph hereof.  
23 Against the peace and dignity of the State, signed John  
24 Vance, Criminal District Attorney of Dallas County,  
25 Texas, and signed by the Foreman of the Grand Jury.

1 THE COURT: Mr. Radke, what is your  
2 plea to the enhancement paragraph, true or not true?

3 THE DEFENDANT: What's that, Your  
4 Honor?

5 THE COURT: Is your plea to the  
6 enhancement paragraph true, meaning you are the same  
7 person convicted of the prior felony offense, or are you  
8 pleading not true?

9 MS. SHELTON: We're pleading not  
10 true.

11 THE COURT: Very well.

12 MS. SHELTON: She'll have to get  
13 somebody to prove it up.

14 THE COURT: Okay.

15 MS. MCVEA: Your Honor, then we're  
16 going to ask for a few minutes to get Mr. Thompson or  
17 someone else from DSO personnel in order to fingerprint  
18 Mr. Radke so we can prove up the enhancement  
19 paragraphs.

20 THE COURT: Are you not -- are they  
21 not here or --

22 MS. MCVEA: No, Your Honor, they're  
23 not, but it doesn't take long for them. They're  
24 expecting this, so it shouldn't take long.

25 THE COURT: All right.

1 (Whereupon, a short recess was then  
2 taken.)

3 MS. MCVEA: Your Honor, I can have  
4 co-counsel make arrangements, and I can go on.

5 THE COURT: Please do.

6 MS. SHELTON: Judge, they are in no  
7 condition -- I guess they're in no condition, Mr.  
8 Radke's family. I don't have any witnesses.

9 MR. STEINBECK: Your Honor, I could  
10 call them, but we're just going to be wasting our time  
11 due to their crying.

12 THE COURT: Well, they had better pull  
13 themselves together if they want to testify on his  
14 behalf. I understand their being upset, but I have to  
15 press forward. I cannot run the Court at their  
16 convenience.

17 MR. STEINBECK: I'm saying I can call  
18 them, Your Honor, but he also has a right to have  
19 evidence presented.

20 THE COURT: Well, he has a right. Are  
21 there witnesses that you intended to call that are not  
22 here?

23 MR. STEINBECK: No, Your Honor.

24 THE COURT: Well, if the witnesses are  
25 here, they can testify.

1 MR. STEINBECK: I understand. What  
2 I'm saying is: If I have questions I want to elicit  
3 from them, due to their crying and whatnot, I'm not able  
4 to ask questions due to their crying, and we'd be  
5 wasting your time.

6 THE COURT: Well, do the best you  
7 can. That's all I can tell you.

8 MS. SHELTON: Your Honor, I'm sure  
9 you've dealt with this before, Judge, and I'm sure you  
10 can understand what they're crying is about anyway.

11 THE COURT: I understand.

12 MS. MCVEA: Your Honor, State calls  
13 Neil Morrison.

14 NEIL MORRISON,  
15 the witness hereinbefore named, being first duly  
16 cautioned and sworn to testify the truth, the whole  
17 truth, and nothing but the truth, testified on his oath,  
18 as follows:

19 DIRECT EXAMINATION

20 BY MS. MCVEA:

21 Q. Sir, state your name for the Record, and spell  
22 your last name for the Court Reporter.

23 A. My name is Neil John Morrison,  
24 M-o-r-r-i-s-o-n.

25 Q. Okay. And Mr. Morrison, was Diana Radke your

1 daughter?

2 A. Yes, she was.

3 Q. Now, you know that the Defendant here,  
4 Christopher Radke, has been found guilty of the offense  
5 of murder; is that right?

6 A. Yes, I do.

7 Q. Now, your daughter, at the time of her death,  
8 had a child; is that right?

9 A. Yes, she did.

10 Q. What is that child's name?

11 A. Zachary.

12 Q. And what is his age now?

13 A. He's three.

14 Q. Where does Zachary live now?

15 A. He lives with me. I adopted him.

16 Q. Are you currently married, Mr. Morrison?

17 A. Yes, I am.

18 Q. And what's your wife's name?

19 A. Nancy.

20 Q. And has Zachary lived with you since the death  
21 of his mother?

22 A. Yes, ma'am.

23 Q. Now, you said that you legally adopted  
24 Zachary; is that right?

25 A. Yes, I did, in Dallas County, Texas.

1 Q. Now, soon after the event took place, how old  
2 was Zachary?

3 A. Zachary was 16 months.

4 Q. And what was his demeanor, if you could tell  
5 us, soon thereafter the event?

6 A. I think Zachary was in the house. I think  
7 Zachary -- I know he was in the house, but I think  
8 Zachary was in the living room. I really do.

9 Q. Why do you say that, Mr. Morrison?

10 A. That little boy tried to tell me. He couldn't  
11 talk, but he made gestures, and he tried to tell me.  
12 And the psychologist that we went to see, Dr. Marianne  
13 Shaw, for our adoption proceeding, said that he had been  
14 traumatized.

15 Q. Okay.

16 A. I really believe that little boy was in the  
17 room.

18 Q. Mr. Morrison, did Zachary have trouble  
19 sleeping?

20 A. Yes, he did. Yes.

21 Q. Was he experiencing nightmares?

22 A. Yes.

23 Q. How is he doing now?

24 A. He's doing much, much better now. Much  
25 better.

1 Q. As a matter of fact, he just celebrated a  
2 birthday, didn't he?

3 A. Yes, he did, on the 18th.

4 Q. Mr. Morrison, how has your daughter's death  
5 affected you and the other members of your family?

6 A. I loved my daughter very much, Judge. My  
7 wife -- my ex-wife and my son did, and her little boy is  
8 not going to get to see his mother. It doesn't get any  
9 worse than that.

10 Q. Mr. Morrison, what would you like to see  
11 happen --

12 A. I'd like to see --

13 Q. -- as far as punishment is concerned?

14 A. I'd like to see him locked up for the rest of  
15 his life so that he can't do this to anyone else, and he  
16 can't get out and try to be around Zachary. That's what  
17 we want.

18 Q. I understand.

19 MS. MCVEA: Pass the witness.

20 CROSS-EXAMINATION

21 BY MS. SHELTON:

22 Q. Mr. Morrison, is your grandson with you now?

23 A. With me now?

24 Q. I mean, is he residing with you?

25 A. Yes.

1 Q. Is your grandson residing with you?

2 A. Yes, he lives with me now, yes.

3 Q. And haven't you caused Mr. Radke to be sued  
4 and served in jail with a lawsuit over an insurance  
5 policy that your daughter had?

6 MS. MCVEA: Your Honor, I object. It's  
7 not relevant.

8 A. Yes, I have.

9 THE COURT: Overruled.

10 A. Yes, I have.

11 Q. (By Ms. Shelton) And, in fact, if you-all had  
12 not prevailed today, then he would have gotten out of  
13 jail, and presumably would have wanted to see his son,  
14 and maybe you wouldn't have gotten your hands on that  
15 insurance policy, right?

16 A. That money is put in a trust fund for  
17 Zachary.

18 Q. You don't have the money. How could it be put  
19 in a trust fund?

20 A. The money is set up to go in a trust fund for  
21 Zachary.

22 MS. SHELTON: Nothing further.

23 THE COURT: I believe she turned the  
24 witness over to you.

25 MS. MCVEA: Oh, I'm sorry.

1           We have nothing further, Your Honor.

2                   THE COURT: All right. You may step  
3 down, sir.

4                   THE WITNESS: Thank you.

5                           (Whereupon, the witness was then  
6 excused and proceedings resumed, as  
7 follows:)

8                   MS. MCVEA: And, Your Honor, we're  
9 just going to prove up the prior penitentiary trip, and  
10 then the State will rest.

11                   THE COURT: All right. Let's take a  
12 ten-minute recess.

13                           (Whereupon, a recess was then  
14 taken.)

15                   MS. MCVEA: Your Honor, State rests on  
16 punishment. And we'd also like -- before we rest, we'd  
17 like to reoffer all the evidence that the Court heard  
18 during the guilt/innocence phase of the trial.

19           We rest on punishment.

20                   THE COURT: Very well.

21                           JANIE CALDWELL,  
22 the witness hereinbefore named, being previously  
23 cautioned and sworn to testify the truth, the whole  
24 truth, and nothing but the truth, testified on her oath,  
25 as follows:

DIRECT EXAMINATION1  
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BY MR. STEINBECK:

Q. Ma'am, are you the same Janie Caldwell that testified earlier in this case?

A. Yes.

Q. Ma'am, you are the mother of Chris Radke?

A. Yes.

Q. Ma'am, how did Chris Radke grow up as a child? Could you get into some more factors concerning his childhood development?

A. When he was around nine years old, I got a divorce from my first husband, and I married my second husband shortly after that. And we were married about a year, and my second husband got into drugs, and I had -- he was in the music business, and there was a lot of it around.

Q. I'm sorry. Who was using drugs?

A. My husband.

Q. What was his -- what's his name?

A. Bobby Caldwell.

Q. What kind of drugs was he using?

A. Mainly cocaine.

Q. I'm sorry?

A. Cocaine.

Q. Cocaine. Was this being used around Chris?

1           A.    As far as I know.  I was at work, and yeah,  
2 I'm sure it was.  He had knowledge of it.

3           Q.    And how old was Chris at this time?

4           A.    Probably about 12.

5           Q.    Do you believe that had something to do with  
6 Chris getting involved with drugs?

7           A.    Yes.

8           Q.    What age do you believe Chris started using  
9 drugs?

10          A.    Probably 12.

11          Q.    Twelve years old?

12          A.    Yes.

13          Q.    In the house?

14          A.    Yes.

15          Q.    Did this continue through his --

16          A.    It continued for a while, and I was -- I sent  
17 my son to my sister to live for a couple of years so  
18 that I could get my husband off drugs.  And I tried to  
19 get him straightened out, because I couldn't deal with  
20 both at the same time.  And I blame myself a lot for  
21 that.

22          Q.    Why do you blame yourself, ma'am?

23          A.    Because I allowed it in the house.  I didn't  
24 do something about it sooner.  I think that's what  
25 started Chris with the drug problem.  I was hoping my

1 sister could help him, and I'm sure it did, but he had  
2 already got the habit.

3 Q. Do you feel like Chris is addicted to using  
4 drugs?

5 A. Yes. I had him in a rehab center when he came  
6 back with me.

7 Q. That was a short rehab time frame, just a  
8 30-day one?

9 A. Yes. That's all we could afford at the time.

10 Q. Okay. What type of person has Chris been  
11 towards his family this whole time?

12 A. He's always been real good with me. I mean, I  
13 didn't have problems with him in school. The teachers  
14 all liked him. He did pass. He was never a violent  
15 person. He was always very quiet. And I mean, he -- I  
16 mean, I didn't have problems with Chris, besides the  
17 drugs.

18 Q. Do you feel like Chris had significant  
19 development and how to interact with other women?

20 A. Yes. He had good relationships off and on  
21 during the years with women. I mean, they came to the  
22 house.

23 Q. The things that we heard about Diana, which we  
24 had to bring out in this trial, is that consistent with  
25 the type of women Chris normally dated or hung out with?

1           A.    No, no.  I hate to say -- I mean, I know  
2 Diana's mother and my grandbaby, but this never would  
3 have happened if he wouldn't have met her.  But, I mean,  
4 because I never had problems with girlfriends.

5           Q.    They did have their problems, correct  
6 interacting?

7           A.    No.

8           Q.    But with Diana, he did have his problems with  
9 her, correct?

10          A.    Yes.

11          Q.    And neither one of them were faultless,  
12 correct?

13          A.    Pardon?

14          Q.    Neither one of them were faultless at this,  
15 correct?

16          A.    No.  I mean --

17          Q.    Chris could have handled things better, as  
18 well?

19          A.    Sure.  I mean, with the drugs and counseling  
20 and --

21          Q.    You're aware of the fact that Chris did want  
22 to have marital counseling with Diana before this  
23 happened?

24          A.    Yeah.  I mean --

25          Q.    Why did that not ever come about to your

1 knowledge?

2 A. Probably because of money. And, I mean, there  
3 was always money problems, and -- I don't know. I'm  
4 sorry.

5 Q. Ma'am, the Judge has convicted Chris of  
6 murder. How do you feel about that?

7 A. I'm shocked. I never did think -- I mean, I  
8 know my son growing up. I know he would never do  
9 anything like this.

10 Q. You do respect the fact the Judge ruled what  
11 he believed in his heart was accurate?

12 A. Yes. I mean, I respect the Judge and his  
13 decision. He's --

14 Q. What good things can you tell about Chris to  
15 the Judge as to why it could be mitigation towards his  
16 sentence that he's going to be contemplating?

17 A. He's not -- I mean, he's never been a violent  
18 person in society. I know he's got a drug problem.  
19 That was my problem with him growing up.

20 Q. Do you feel this will now give Chris the  
21 incentive he needs to really deal with his drug problem,  
22 if he gets proper treatment?

23 A. Yeah, if he got proper treatment. I tried my  
24 best with money and helping him as a mother, and I guess  
25 it wasn't enough. If the Judge can look at that and

1 have some leniency on him, and help him in that  
2 direction.

3 Q. Ma'am, you have several children younger than  
4 Chris?

5 A. Yes. I have a daughter, 14.

6 Q. What's her name?

7 A. Reneé Caldwell.

8 Q. Okay.

9 A. She loves her brother. I mean, I don't know  
10 what this is going to do to her.

11 Q. Are you going to be able to afford counseling  
12 for her, ma'am?

13 A. I'm going to have to.

14 Q. How has she dealt with this since this  
15 happened, given the fact that --

16 A. The school has been putting her in counseling,  
17 counseling at school, and helping her that way.

18 Q. Has she been adversely affected just by virtue  
19 of Chris awaiting almost two years to go to trial?

20 A. Oh, yeah. Well, her grades are not what they  
21 used to be. She -- when we come and visit him, I mean,  
22 she cries and just prays a lot for him.

23 Q. How has she acted since hearing the verdict?

24 A. She's really hysterical. I don't know how I'm  
25 going to deal with her tonight.

1 Q. Ma'am, is there anything else you'd like to  
2 tell the Judge before he determines his sentence?

3 A. All I can do is to pray that you would have  
4 mercy on him and just help him. Because if you give him  
5 a long sentence, I'll be dead before he gets out, and I  
6 don't know if I can handle that.

7 Q. Is there something else, ma'am?

8 A. I will accept whatever judgment that you can  
9 hand down, but I just plead for mercy.

10 Q. Ma'am, there's one other loss I'd like to have  
11 you share with the Judge, and that's involving Zachary.  
12 I'd like you to tell what loss has impacted your family  
13 so far?

14 A. Well, I've also lost my grandbaby in this. I  
15 haven't seen him in over a year, and that's a tragedy in  
16 itself, too.

17 Q. Have you been allowed access to see Zachary?

18 A. Well, when I call, they are real cold, and  
19 they won't respond. And, of course, to get grandparent  
20 rights, then there's another trial there.

21 Q. Is that something you haven't been able to  
22 afford --

23 A. That's correct.

24 Q. -- someone to obtain grandparent visitation  
25 rights?

1           A.     That's correct.  That's -- I would -- if  
2 there's anything, I'd like to have those, so I can at  
3 least see my grandbaby.

4           Q.     How did Zachary get along with Chris?

5           A.     Chris was a good father.  Zachary loved him.

6           Q.     How did they interact?

7           A.     They played together, and Chris took care of  
8 him, and he was a loving father.

9           Q.     How did Zachary feel to have his dad around?

10          A.     He always loved him.  He always loved his  
11 father, always.

12          Q.     Do you know if he's been able to have any  
13 contact with Chris?

14          A.     No.  They took the baby.  The night it  
15 happened, they took the baby and wouldn't allow us to  
16 see him since.  I had one visitation during the custody  
17 battle, and that was it.

18          Q.     Is there any hopes, ma'am, that you think you  
19 can work this out without going through legal battles to  
20 see Zachary --

21          A.     I don't know.

22          Q.     -- especially now with the verdict?

23          A.     I don't know if they will be civil enough to  
24 deal with me.  They haven't been since.

25          Q.     Are you willing to be amicable towards them to

1 try to do this for the benefit of Zachary?

2 A. I have always been.

3 Q. Thank you, ma'am.

4 MS. MCVEA: No questions, Your Honor?

5 MR. STEINBECK: You may step down

6 ma'am.

7 THE COURT: Just a moment. Ma'am, I  
8 understand your disbelief that your son could have  
9 committed this offense. I'm a parent myself, and I feel  
10 sympathy for you and your family; however, my job is to  
11 do justice. Like an umpire in a baseball game, I call  
12 the balls and the strikes as I see them. So as a  
13 parent, I know that when our children leave us, that we  
14 probably suffer more than they do for their own failures  
15 and mistakes. So I do sympathize with you. And  
16 although I have absolutely no power over Diana's parents  
17 and her child, I think the humane thing to do would be  
18 to allow this lady to see that child on some regular  
19 basis, and I would strongly recommend it. I don't think  
20 that you can fault or should fault a mother for  
21 believing in her son.

22 You may step down.

23 (Whereupon, the witness was then  
24 excused and proceedings resumed, as  
25 follows:)

1 BILLY RADKE,  
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 his oath,  
5 as follows:

6 DIRECT EXAMINATION

7 BY MR. STEINBECK:

8 Q. Mr. Radke, you've been previously sworn; is  
9 that correct?

10 A. Yes. Yes, sir.

11 Q. Mr. Radke, you're the natural father of, or  
12 known to be the natural father, of Mr. Radke?

13 A. Yes.

14 Q. And you've been there with Chris since birth;  
15 is that correct?

16 A. Yes.

17 Q. And at what point did you divorce your wife  
18 Janie at that time?

19 A. After ten years of marriage.

20 Q. And how did the divorce affect Chris?

21 A. Well, I think that's what caused him to get  
22 off into drugs and get off on the wrong track.

23 Q. Are you aware of the fact that Bob Caldwell  
24 introduced Chris to drugs?

25 A. Yes.

1 Q. Were you able to have as much contact with  
2 Chris once the separation occurred --

3 A. Well --

4 Q. -- between you and Janie?

5 A. -- I didn't have as much contact, no.

6 Q. So you were not able to provide the --  
7 probably the adequate amount of parenting or mentorship  
8 necessary?

9 A. Day-to-day, no.

10 Q. Combining that also with the peer pressure  
11 that people now have in the junior highs and high  
12 schools?

13 A. Yes.

14 Q. Do you think that combined to fuel the  
15 problems Chris was experiencing?

16 A. Yes.

17 Q. Have you tried to maintain a constant, close  
18 relationship with Chris ever since then?

19 A. Yes, I have.

20 Q. How do you feel about the fact that Chris has  
21 never had extensive drug treatment for his problem?

22 A. Well, he's had some, but I wish there had been  
23 more. Just --

24 Q. Has Chris ever had any kind of psychological  
25 counseling to help him deal with the adjustment

1 disorders that he faced in this family dynamics?

2 A. We took him once for some counseling.

3 Q. And was just for a short time?

4 A. For a short time.

5 Q. What has Chris been going through ever since  
6 this happened that night, from your contacts with him?

7 A. It's -- he's, you know, just really been, you  
8 know, so upset, and he's -- he, you know, really misses  
9 his wife, and his son, and contact with his family.  
10 It's just, you know, torn him up. It's torn up the  
11 whole family.

12 Q. What do you think the fact that he's now  
13 convicted of the charge will do to him?

14 A. I just can't believe it's true. It's  
15 unbelievable.

16 Q. Sir --

17 A. He's such a sweet kid.

18 Q. Do you think the Judge should consider giving  
19 Chris great leniency?

20 A. Yes, I do.

21 Q. Do you think Chris is a person who will now --  
22 do you think Chris will have the incentive to try to  
23 change things in his life if he's released?

24 A. I'm sure he will. I'm sure.

25 Q. What assurances can you give the Judge that

1 you will be there to help make sure Chris stays away  
2 from people that are perhaps bad influences on him?

3 A. I've turned my life around so much, and I  
4 know, I've been through the things, some of the things  
5 that Chris has been through. And I've gotten a lot  
6 closer to the Lord. I'm in church all the time, and  
7 involved. And if he'd just follow my footsteps, I know  
8 I can help. I can help him.

9 Q. Is Chris a person who's generally tried to  
10 always work and have a job, or has he been the kind of  
11 guy to lay around the house and not work?

12 A. Chris has always been willing to help and, you  
13 know, work. He's just a real good boy.

14 Q. Do you feel Chris is a danger to society at  
15 all?

16 A. I don't think he is. I don't think Chris is  
17 any danger to anyone.

18 Q. Sir, I understand you've not had any access to  
19 Zachary since that night in question.

20 A. I've had limited -- very limited access to  
21 Zachary.

22 Q. How has that affected you?

23 A. Oh, I enjoyed so much being a grandfather. It  
24 was taken away.

25 Q. So you've lost basically your son and your

1 grandson since that night?

2 A. Lost him. Lost them.

3 Q. Do you have any last words to say to the Judge  
4 to consider as to why he should be favorable towards  
5 Chris in his sentence?

6 A. I know there was some wrong here, but let's  
7 not try to correct one wrong with another wrong and take  
8 away his life, put him in prison for the rest of his  
9 life. He's got so much to give to his family. And he's  
10 just -- it would be such a waste, such a waste. Give me  
11 some time with my son.

12 MR. STEINBECK: Thank you, sir.  
13 Nothing further.

14 MS. MCVEA: No questions, Your Honor.

15 THE COURT: All right. Sir, you may  
16 step down.

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

20 THE COURT: Were you sworn.

21 THE WITNESS: No.

22 THE COURT: Okay.

23 (Witness sworn.)

24 THE WITNESS: I do.

25 RENEE CALDWELL,

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 her oath,  
4 as follows:

5 DIRECT EXAMINATION

6 BY MR. STEINBECK:

7 Q. Please state your full name.

8 A. Renee Marie Caldwell.

9 Q. And where do you live, please?

10 A. Richardson, Texas.

11 Q. Are you the younger sister of Chris here?

12 A. Yes, sir.

13 Q. How old are you?

14 A. I'm 14 by actually -- 14 about a month ago.

15 Q. And what school do you go to?

16 A. Bowman Middle School.

17 Q. What type of brother has Chris been to you?

18 A. Chris has been nothing but a caring and loving  
19 brother all my life. I can't remember when he never  
20 wanted to give me a hug, when he wasn't there for me. I  
21 mean, he always wanted to talk to me in some form. I  
22 mean, yeah, there were times he would kid -- and, you  
23 know, any older brother or older sister does that -- but  
24 he cared for me.

25 Q. How close are you to Chris?

1           A.     Extremely close.

2           Q.     What is the fact that he's been incarcerated  
3 since early '96, how has that affected you and also  
4 knowing he was pending the murder charge?

5           A.     I just -- ever since he was in there, I've  
6 been, you know -- I've been praying. Every night I pray  
7 the rosary twice, one for my family and one for him,  
8 specifically. I pray everything twice. And my life has  
9 just been in shambles. I can't do anything anymore.  
10 I'm too worried that it will affect him if I'm known.  
11 You know, I can't tell anybody about my life. I can't  
12 go meet people, because I'm scared that they'll find out  
13 what happened to Chris. And I'm -- I mean, I'm not  
14 afraid to tell people that -- you know, I just -- I  
15 mean, I'm afraid that people will, you know, be scared  
16 of me because of him, and I don't like that.

17          Q.     Do you think the Judge has any reason to  
18 believe that Chris will hurt anyone in the future?

19          A.     Please restate the question.

20          Q.     Do you believe that Chris is a danger in the  
21 future to society?

22          A.     No, I don't.

23          Q.     Has Chris been affected adversely by what  
24 happened that night?

25          A.     Yeah. I mean, he's -- every once -- like a

1 lot, he like breaks down, and he's like, oh, God, I miss  
2 her. I love her. Why did this have to happen to me?  
3 He just misses her.

4 Q. How did you get along with Zachary?

5 A. Me and Zachary were really close. I miss  
6 Zachary. I pray for Zachary, too. Me and Zachary got  
7 along really well.

8 Q. What do you think -- effect that has had on  
9 you, the fact that you lost all that quality time with  
10 Chris, as well as Zachary?

11 A. I cry. I cry that I can't hug my brother, as  
12 well as my nephew. I cry that I can't be with my nephew  
13 or my brother. If I can't be with my brother, then I  
14 want my nephew to hug. I want just one of them. And if  
15 I was lucky, I would get both of them.

16 Q. Is there anything you would like to say to the  
17 Diana Morrison family?

18 A. I'm sorry that this had to happen to you-all,  
19 and I'm really, really sorry that it did. And my  
20 brother, I know he didn't do this. You may think he  
21 did, but he didn't. And I love my brother, but I wasn't  
22 there, so I can't say anything, but I'm just really  
23 sorry that it happened. I hope I can see Zachary again  
24 sometime.

25 Q. Now, the Judge has to determine what is an

1 appropriate sentence, so the lesser the sentence, the  
2 sooner you could see Chris, and perhaps sooner you could  
3 also see Zachary. What else do you have to say to the  
4 Judge to -- before he determines Chris's sentence?

5 A. I beg you, please, don't -- please don't do  
6 this, Judge. I really, for the last year and a half,  
7 wanted to hug my brother. I've wanted to hug him and  
8 say it's finally over. I've really wanted to do that,  
9 but I haven't been able to do it. And I really want to  
10 hug him now, but I know I can't. Because I don't know  
11 if it will work or not. I just -- I want him to get out  
12 sooner so that I can hug him sooner, and I at least want  
13 him to see my graduation, if not my career, and how my  
14 life is going. I don't want him to stay in there for  
15 life or anything. Because I had a friend, her name was  
16 Danelle Stole, and I don't know if this is appropriate  
17 or not, but she was Darlie Routier's sister, and it just  
18 tore her up. And I don't -- I don't know what's going  
19 to happen to me. I don't know if it will be worse or  
20 less or what, but right now what I'm feeling is worse.

21 Q. So for your sake, and perhaps Zachary's sake,  
22 are you asking the Judge for extreme leniency?

23 A. Yes.

24 MR. STEINBECK: Thank you. Nothing  
25 further.

1 MS. MCVEA: No questions, Your Honor.

2 THE COURT: You may step down. You  
3 may also hug your brother, if you would like.

4 (Whereupon, there was a brief  
5 pause in the proceedings.)

6 (Whereupon, the witness was then  
7 excused and proceedings resumed, as  
8 follows:)

9 THE COURT: Miss, have you taken the  
10 oath?

11 THE WITNESS: Yes.

12 ROBIN CALDWELL,  
13 the witness hereinbefore named, being first duly  
14 cautioned and sworn to testify the truth, the whole  
15 truth, and nothing but the truth, testified on her oath,  
16 as follows:

17 DIRECT EXAMINATION

18 BY MR. STEINBECK:

19 Q. Please state your name.

20 A. Robin Lynn Caldwell.

21 Q. Robin, how old are you?

22 A. I'm 18 years old.

23 Q. You're the sister of Chris?

24 A. Yes.

25 Q. And please tell the Judge what kind of brother

1 Chris has been to you and how close your relationship  
2 has been?

3 A. Well, I've never lived exactly with Chris, but  
4 every visit I've ever had, he's always -- we've always  
5 been close together, and I've spent many summers  
6 together when he lived with my parents. And he was  
7 always a really great brother to me and a really great  
8 person. I know he's had problems, but I've never  
9 considered him anything like this. Regardless of what  
10 the Court has decided, I still don't believe it, and I  
11 still have faith in him. He's always been a good  
12 brother and a good person, in my eyes.

13 Q. Did you also know his son Zachary?

14 A. Yes, I know Zachary.

15 Q. How much interaction did you have with him?

16 A. Every visit. When I very first moved here, it  
17 was about four months before all this happened, and I  
18 spent a lot of time over there with Zachary. I would  
19 see Zachary come over. We'd always have a lot of family  
20 gatherings, and Zachary would always be there. I would  
21 see him often. I miss him, just like everybody else in  
22 my family does. We haven't gotten to see him at all in  
23 the last year and eight months.

24 Q. How did Zachary feel with his father being  
25 around?

1           A.    He was always a happy little baby.  He was  
2 always loved by Chris.  I never saw any harshness  
3 towards Zachary by either parent.

4           Q.    How is the loss of Zachary and not being with  
5 Chris affected you?

6           A.    It's been really hard.  We all miss Chris.  We  
7 all miss Zachary.  I know that Zachary meant the world  
8 to Chris.

9           Q.    Have you gone to any counseling?

10          A.    Have I?

11          Q.    Yes.

12          A.    No, I haven't.

13          Q.    How does Chris feel about the loss of his  
14 wife?

15          A.    I know that the several times that I've spoken  
16 to Chris in jail and when I've come to see him and  
17 spoken to him on the phone calls, he's never said  
18 anything except for how much he misses her.

19          Q.    He's never said anything bad about Diana?

20          A.    I've never, ever heard him saying anything bad  
21 about Diana.

22          Q.    What do you think this has done to Chris --

23          A.    Well --

24          Q.    -- now the fact that he stands convicted of  
25 murder?

1           A.    I can't imagine losing somebody close to me  
2 and being accused of killing them also, all in the same  
3 week and year, and being punished for something and  
4 having to deal with the heartache of it.  I know it's  
5 probably torn him up completely.

6           Q.    Do you believe that Chris should be given a  
7 light sentence for what he's been convicted?

8           A.    I don't believe Chris should be given any  
9 sentence at all.  But, yes, I do think that anything he  
10 is given shouldn't be heavy, not just because he's my  
11 brother, but because of all the evidence that I've heard  
12 and all of the things that I've gathered to my own, you  
13 know, from whether it be physical or whether it be, you  
14 know, just -- you know, just hearsay or whatever.  I  
15 know my brother very well, and I think, yes, he should  
16 be given a light sentence.

17          Q.    Is there anything that you'd like to say to  
18 the Morrison family?

19          A.    I'd like to apologize that this had to happen  
20 to you, and this all -- all this shouldn't have never  
21 happened.  And I'm sorry for your losses, as well as I'm  
22 sorry for everyone's losses today, and a month -- a year  
23 and eight months ago.  I'm sorry that you are grieving.

24          Q.    Would you like to be in good terms with them  
25 so that Zachary can have as much of a salvageable family

1 as possible?

2 A. I've never had harsh words with any of you,  
3 and I've never felt harsh words for any of you. But,  
4 yes, I would like to see my nephew.

5 Q. You understand the Judge ruled on the evidence  
6 as best he saw it, and you don't hold it against the  
7 Judge that he did this to you, and you understand that  
8 he had to do what he -- called it the way he saw it?

9 A. I wasn't in here to hear any of it, so I'm  
10 sure that he made the best judgment that he could  
11 possibly make on the evidence provided.

12 Q. The Judge still has the decision to make on  
13 sentence. Is there anything else that you would like to  
14 tell him to consider in Chris's favor as to why he  
15 should be given a lesser sentence?

16 A. I know that you didn't look at all the  
17 people's testimony, the character witnesses, as much as  
18 the evidence; but when considering this, I hope that you  
19 do. I ask that you especially listen to Chris's friends  
20 and, you know, his family that testified to him being a  
21 good person, because he is. And regardless of what  
22 happened that night, Chris is not a murderer.

23 MR. STEINBECK: Thank you. Nothing  
24 further.

25 MS. MCVEA: No questions, Your Honor.

1 THE COURT: All right. Miss, you may  
2 step down.

3 (Whereupon, the witness was then  
4 excused and proceedings resumed, as  
5 follows:)

6 MS. SHELTON: We'd like to call Mr.  
7 Radke himself, Christopher.

8 THE COURT: Very well. Mr. Radke,  
9 raise your right hand and take the oath.

10 (Defendant sworn.)

11 CHRISTOPHER ERIC RADKE,  
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. Mr. Radke, that's R-a-d-k-e. I realize it's  
19 been a long year and half, and what we're here for right  
20 now is to decide how much longer it's going to be. The  
21 Judge has to decide that. What we're trying to do is  
22 give him some evidence so that he can make a decision  
23 that hopefully we can live with.

24 Let me take you back to the time of your previous  
25 trouble with the law. That was about drugs, wasn't it?

1 A. Yes, ma'am.

2 Q. And you were, basically, not able to stop  
3 taking drugs of some kind at one time or another; is  
4 that correct?

5 A. No, I wasn't. No.

6 Q. And everybody in high school was using and  
7 passing on drugs, and you became a part of it all  
8 because of your own involvement, correct?

9 A. Yes, ma'am.

10 Q. And you were -- you had your case over in  
11 Judge Pat McDowell's Court; is that correct?

12 A. Yes, ma'am.

13 Q. And you didn't know anything about Judge  
14 McDowell, just you knew that you came in there and got a  
15 probation, and then you had dirty UA's, and then you  
16 went back in and had some more trouble, and then you --  
17 your Court-appointed lawyer, whatever, plea bargained  
18 for a penitentiary sentence; is that correct?

19 A. Yes, ma'am.

20 Q. But you didn't commit any new offenses while  
21 you were on probation, did you, other than having dirty  
22 UA's?

23 A. Yes, I did.

24 Q. But, I mean, you didn't go out and rob anybody  
25 anything?

1 A. No, ma'am.

2 Q. Other than drugs, you didn't commit any new  
3 offenses, correct?

4 A. No, ma'am.

5 Q. Your only problems were with drugs?

6 A. Yes, ma'am.

7 Q. So when you got -- the UA's themselves are a  
8 possession; is that correct? Do you understand that?  
9 Like when you --

10 A. Yes.

11 Q. -- have it in your body?

12 A. Yes.

13 Q. And subsequently, after getting a couple more  
14 UA's, you got another possession charge put on you; is  
15 that correct?

16 A. Yes.

17 Q. All right. And they were trying to get your  
18 attention, but you didn't know you could go into Judge  
19 McDowell. You've since learned that, that Judge  
20 McDowell would have worked with you, wouldn't he?

21 A. Yes. If I would have known Judge McDowell,  
22 I'm sure he would have worked with me and put me in a  
23 special treatment center that I needed.

24 Q. A lot of boys go to Wilmer. A lot of boys go  
25 to Safe P, and you never got anything like that, did

1 you? All you got was a penitentiary sentence?

2 A. That's -- I never got any treatment. I was  
3 only offered, by the Court-appointed attorney, you know,  
4 five years.

5 Q. And there are boys out on the street, and  
6 certainly you've been in jail with them, who have done  
7 robberies and all kinds of things, this, that and other  
8 things, and some of those guys are getting into  
9 treatment centers, aren't they?

10 A. Yes, they are.

11 Q. And there was no reason for a young man in  
12 your position not to be able to go in there to the Court  
13 and ask for some mercy. You've since learned you could  
14 have done that?

15 A. Yes. Yes, I realize that now.

16 Q. That Judge McDowell was a very fair individual  
17 when he was on the Bench?

18 A. Yes, he was.

19 Q. Now, because of that acceptance of that  
20 penitentiary sentence, in a sense, while Judge Nelms has  
21 to make a decision, his hands are, in just some degree,  
22 tied?

23 A. Yes.

24 Q. So there's nothing he can do in regard to a  
25 floor on your sentence. And you understand the effect

1 of it on this hearing and what may come out of it, we've  
2 talked about that?

3 A. Yes, ma'am.

4 Q. Let me ask you: Do you regret coming into  
5 that house that night so intoxicated that you didn't  
6 know what was going on or how --

7 A. Yes. I shouldn't even have come home really.  
8 I should have just stayed --

9 Q. Stayed at a friend's house?

10 A. Stayed at a friend's house. I shouldn't  
11 have --

12 Q. Why did you go home?

13 A. I shouldn't have -- whenever we were supposed  
14 to be seeking counsel, marriage counseling, I shouldn't  
15 have moved back in the house until I -- we started  
16 going, and we got things back to the way they were.

17 Q. All right. And --

18 A. Or the way they were -- should be, normal.

19 Q. Right. And prior to Diana's death, that you  
20 had said that you were moving out if you-all couldn't go  
21 for marriage counseling; is that correct?

22 A. Yes. I said: If we don't go to marriage  
23 counseling, we need to go our separate ways. And I told  
24 her that I would still pay child support, and I would  
25 support her in any decision that she decided to make.

1 Q. You still loved her, didn't you?

2 A. Yes, I did.

3 Q. Why did you love her?

4 A. Because she was the mother of my child, and I  
5 married her.

6 Q. Did you love her for herself, too?

7 A. I loved her very much.

8 Q. Towards the end, there was quite a bit of  
9 drinking on your part, much more so than there had ever  
10 been in your life, wasn't there?

11 A. Yes, I drank.

12 Q. And you drank because it helped you to sleep  
13 at night, didn't it --

14 A. Yes.

15 Q. -- and what would go on there?

16 A. Yes.

17 Q. You could just come in and didn't have to care  
18 about the screaming, and you'd go to sleep and stay that  
19 way in a stupor, correct? That's what you told me.

20 A. Yes.

21 Q. Okay. You didn't have to hear what she had to  
22 say and the screaming and everything?

23 A. Yes.

24 Q. Well, on this night, if you hadn't been  
25 intoxicated, you would have been able to deal with

1 Diana, as you had in the past, and make sure that she  
2 didn't kill herself or scream or run around the house or  
3 whatever she was going to do. You could have done  
4 better that night?

5 MS. MCVEA: Your Honor, I'm just going  
6 to have to object to leading.

7 THE COURT: Yeah. Sustained.

8 Q. (By Ms. Shelton) Do you feel if you weren't  
9 intoxicated that night, the night would have had a  
10 different outcome?

11 A. Yes. I believe I could have got the gun away  
12 from her instead of struggling over the gun.

13 Q. And a shotgun is a terrible thing to struggle  
14 over, isn't it?

15 A. Yes, it is.

16 Q. All right. And a very lethal weapon. You saw  
17 it again here in the Courtroom?

18 A. Yes.

19 Q. And probably it shouldn't have been in that  
20 house at all?

21 A. No. I was trying to get the gun out of the  
22 house. And I just -- I was afraid to drive with it in  
23 my car, because I didn't want to get stopped by the  
24 police. And you know, it's a felony for me to carry  
25 around a firearm, and I was trying to get people to come

1 and get it, but no one would really come and get it.

2 Q. Okay. Because people were tired of what was  
3 going on over there?

4 A. Yeah. And you know, about getting it back  
5 from the Garland police station, we spent -- we were  
6 behind on bills, and we needed a refrigerator. I had  
7 somebody that wanted to buy the gun, and we were going  
8 to sell the gun so we could get a refrigerator and help  
9 pay some of the bills and to get rid of it.

10 Q. That was true about selling the gun?

11 A. Yes.

12 Q. You intended to?

13 A. Yes.

14 Q. You just wish that it had been sold sooner,  
15 don't you?

16 A. I wish -- yes.

17 Q. And you miss -- you've told me that you miss  
18 Diana. Would you tell the Judge about that?

19 A. Yes, Your Honor. I understand that I wasn't  
20 the best husband anyone could be. You know, I tried  
21 supporting Diana as much as I could. Whenever I met  
22 her, I knew she had problems. And I was there for her.  
23 I went to her ex-husband's grave with her, and I grieved  
24 with her. I feel that she had -- I gave her something  
25 that she needed, and she gave me something that I

1 needed. And I was, you know -- I don't normally go out  
2 with too many women in my life. I usually have long  
3 relationships. And Diana needed a -- she needed  
4 somebody to know how she felt and to be with her all the  
5 time. And at that time in my life, I was able to be  
6 with her a lot and care for her and give her the needs  
7 she needed, and she did the same for me. You know, I  
8 needed somebody there, too. And things were going  
9 pretty good for the early stage in our relationship, and  
10 she did get --

11 Q. But then the baby was born?

12 A. Yes. She got pregnant.

13 Q. But the baby was born. She got pregnant, the  
14 baby was born, and things changed?

15 A. Things started changing while she was  
16 pregnant, but things dramatically changed while -- after  
17 the baby was born, yes. And I didn't know how to really  
18 handle any of the situations. I've learned of her  
19 suicide problems. And she talked about it -- talked  
20 about killing herself with me. And I've never been  
21 around anybody suicidal or anything, and I just -- if I  
22 knew what I know now, I could have dealt with this  
23 situation a lot --

24 Q. If you had heard some of what Dr. Branaman had  
25 to say to you back there in the holding area and what

1 you heard out here on witness stand, you would have  
2 understood a little bit better, and you would have dealt  
3 with things better than you did, because you certainly  
4 didn't getting drunk, come home late at the night and --

5 MS. MCVEA: Your Honor, I object to  
6 leading.

7 THE COURT: Please don't lead, Ms.  
8 Shelton.

9 A. Yes, I --

10 MS. MCVEA: Objection, Your Honor;  
11 nonresponsive.

12 THE COURT: Yes. Listen for your  
13 attorney's questions, please.

14 Q. (By Ms. Shelton) What would you have done if  
15 you had had the benefit of some counseling, like you and  
16 Diana were trying to seek there in the last few weeks of  
17 her life?

18 THE COURT: Excuse me for interrupting  
19 you, Ms. Shelton. You may put on any evidence you wish,  
20 but what I really want to hear is: How the shooting  
21 happened, and did he have any remorse for what he did.

22 Q. (By Ms. Shelton) Do you feel remorse for  
23 being there in that condition, grappling with her over  
24 the gun the way it's been described? Do you feel,  
25 looking at those pictures and knowing every day that

1 that woman is dead, do you feel -- what do you feel?

2 A. Of course I feel horrible. I am at a loss.  
3 And I know her family. The time that I've got to spend  
4 with their family, I've enjoyed their company, getting  
5 to know them. We got along. I understand, after this  
6 happened, how they would hate my guts and would want me  
7 to have a life sentence and never want me to see Zachary  
8 again. I can understand that. I feel really, really  
9 horrible about this tragedy that has happened, and I  
10 just -- I understand how you might feel. I can't say I  
11 know how you feel. All I can say is, I feel that I have  
12 lost half of my soul as well. Diana was -- Diana was --  
13 I loved Diana. I wouldn't have married her if I didn't  
14 love her, and I wouldn't have stayed with her as long as  
15 I did if I didn't love her.

16 Q. Mr. Radke, if it were possible, going to the  
17 issue of feeling bad and remorse, would you trade places  
18 with Diana if she could be alive today and be with  
19 Zachary? Would you want it to have turned out  
20 differently?

21 A. I don't -- I mean, I don't -- I never wish  
22 anyone to die at all. I've never wished anyone any  
23 harm. I would rather her be alive than me right now.

24 Q. Thank you.

25 MS. SHELTON: I don't know that he can

1 express anymore --

2 A. I don't know how to express -- what was the  
3 question again?

4 Q. (By Ms. Shelton) That's all I was asking  
5 you. That's enough. Thank you.

6 MS. SHELTON: Pass the witness.

7 CROSS-EXAMINATION

8 BY MS. MCVEA:

9 Q. Mr. Radke, you have been convicted on two  
10 occasions, or two felony offenses, one in 1991  
11 and '92; is that right?

12 A. Yes, ma'am.

13 MS. SHELTON: I think he's only been  
14 convicted of the one in 1991.

15 THE COURT: He just said yes. I don't  
16 know which it is, but --

17 THE DEFENDANT: Well, I --

18 Q. (By Ms. McVea) Mr. Radke, you were convicted  
19 of delivery of a controlled substance, LSD; is that  
20 true?

21 A. Is that what it says in that paragraph?

22 Q. You don't know what you've been convicted of?

23 A. I know I was given probation, and I violated  
24 the probation.

25 Q. Right. And you were convicted of delivery of

1 a controlled substance; is that right?

2 A. Yes, in high school.

3 Q. Okay. And you were also convicted of  
4 possession of a controlled substance; is that also true?

5 A. Yes. Right around --

6 Q. For those two offenses, you received a  
7 five-year prison sentence, correct?

8 A. Yes, ma'am.

9 Q. Okay.

10 A. They ran concurrently.

11 Q. Now, you said you loved her so much that you  
12 put a shotgun to her mouth and you pulled the trigger.  
13 That's really love, isn't it?

14 A. I never put a shotgun to her mouth and pulled  
15 the trigger.

16 Q. Now, back in December of 1995, you took -- you  
17 pushed her down, didn't you?

18 A. No, I did not.

19 Q. And you took a baseball bat and you broke up  
20 the furniture in the house; isn't that true?

21 A. We didn't have a baseball bat in the house.  
22 It was in --

23 Q. Sir, yes or no; is it true or is it not true?

24 A. I don't recall that incident. I remember --

25 Q. Okay. I guess you might have been under the

1 influence when that happened.

2 THE COURT: Let him finish his answer,  
3 please.

4 A. I remember us arguing. She was wondering what  
5 I bought her, and she had all these presents already  
6 wrapped, and it was getting close to Christmas, or it  
7 was something along that lines, and yes, I got angry. I  
8 mean, I had presents for her, but I didn't have them  
9 wrapped yet. And I don't remember taking a baseball bat  
10 to the furniture, but I remember --

11 Q. (By Ms. McVea) So you did go into a rage,  
12 didn't you?

13 A. I didn't go into a rage, like fighting or  
14 anything like that. Like I said, I really don't recall  
15 that incident too well.

16 Q. Because you were under the influence, weren't  
17 you?

18 A. It's possible.

19 Q. Now, your friend Matt testified and told the  
20 Court about an incident involving Diana and that  
21 shotgun.

22 A. Yes.

23 Q. The same one that you used to kill her. Now,  
24 you said that you gave the shotgun to Matt so he could  
25 place it in his safe; is that true?

1           A.    Yes.  I've given it to Matt.

2           Q.    Okay.  Now, how in the world did that shotgun  
3 gun get back into your house?

4           A.    Well, after we went out and -- went out to his  
5 land, the shotgun was with us.  And from what I -- my  
6 best recollection is that we left it.  We dropped off  
7 the gun at the house and --

8           Q.    Are you referring to your house?

9           A.    Yes.

10          Q.    Okay.

11          A.    And I think we went somewhere else.  We didn't  
12 go straight to his house.  We just didn't want it in the  
13 vehicle with us.

14          Q.    Okay.  So you admit that you got the shotgun  
15 from Matt after it was taken out of your house with your  
16 so-called suicidal wife?

17          A.    Repeat the question, please.

18          Q.    Well, you're the one that put the shotgun back  
19 into the house.  You were the one that brought it back  
20 into the house, correct?

21          A.    I don't remember who brought it in the house.  
22 I just know that we -- that's one of the occasions when  
23 the shotgun was in the house.  It was from after we took  
24 it to the land and brought it back.

25          Q.    Okay.  So you were the one that brought the

1 shotgun back to the house, correct?

2 A. I don't remember who carried the shotgun in  
3 the house.

4 Q. Okay. So you're saying Diana went out to the  
5 car after you hunted and took it into the house?

6 A. No. She wasn't the one that brought it in. I  
7 don't know if I brought it in or Matt brought it in.  
8 I'm not sure.

9 Q. And somehow it got there because of you?

10 A. Yes.

11 Q. Now, isn't it true that on February the 10th  
12 of 1996, the date that your wife was injured and was at  
13 the hospital, you were the cause of that injury, weren't  
14 you?

15 A. No, I was not.

16 Q. So you deny that, too, hum?

17 A. I'm not denying anything. I'm telling you  
18 that I was not the cause of that incident.

19 Q. Okay. Now, you said that -- let's go back to  
20 February the 29th of 1996, the date that your wife was  
21 shot and killed. Are you telling the Court that she was  
22 trying to commit suicide?

23 A. No. She was threatening to commit suicide.  
24 She said -- she said: I ought to just end my life. I  
25 ought to just end my life. You wouldn't care anyways.

1 And I told her to put down the gun. And she wouldn't  
2 put down the gun, so I walked over there, and I grabbed  
3 the gun, and I tried getting it away from her, and I  
4 like tried to pry it away from her, and we were falling  
5 to the ground. And after we hit the ground, I was -- my  
6 head was like up by her stomach, and I was on my -- I  
7 don't know. I can't really say what position I was in.  
8 I was more like on my side or stomach. And I had my  
9 hand on the stock, and I was -- we were tugging back and  
10 forth on the gun, and it was like within a split second  
11 when we were tugging on the gun back and forth, I heard  
12 a pop, and I looked up and I -- I lost it.

13 Q. Okay. Now, you told the police something a  
14 little different, didn't you?

15 A. Yes, I did.

16 Q. In fact -- as a matter of fact, you told them  
17 about three or four different versions about what had  
18 occurred; isn't that true?

19 A. Well, at that point in time, I --

20 Q. You can answer yes or no. Did you or did you  
21 not?

22 A. Yes, I told them some different versions.

23 Q. In fact, one version you told was that she  
24 just committed suicide, and you weren't even in the  
25 room. You said that, didn't you?

1           A.    I guess I did.  Things were so -- just -- I  
2 was hysterical.  I mean, I'm -- I could have said that.  
3 I don't really recall saying that.

4           Q.    Another version you said was that the two of  
5 you were struggling over the gun, and the gun goes off  
6 while you were standing, and she hits the floor.  Do you  
7 remember saying that?

8           A.    No, I don't.

9           Q.    You don't remember telling that to Detective  
10 Thompson when you were in custody?

11          A.    Like I said, things were just -- I was just so  
12 much devastated and shocked, I'm not for sure what I  
13 said.

14          Q.    Well, Mr. Radke, we're not talking about the  
15 first night when it happened.  We're talking about the  
16 second time you were interviewed.  You don't remember  
17 telling Detective Thompson that?

18          A.    I believe the second time I was interviewed  
19 was within like five or six hours after the incident.

20          Q.    Okay.

21          A.    I was pretty shook up.

22          Q.    So you were still shook up, and you just  
23 didn't realize what you were saying?

24          A.    I didn't realize what was really happening to  
25 me or happening at all.

1           Q.    Then later, a couple of days, you came up with  
2 the story that the two of you were struggling, after  
3 Detective Thompson told you your story wasn't going to  
4 fly. Do you remember that? That was about five days  
5 after Diana Radke was shot and killed.

6           A.    Well, see, what happened was -- is, I  
7 figured -- it was kind of across my mind where, like,  
8 you know, it didn't matter what the -- what I say,  
9 they're going to charge my anyways.

10          Q.    So that's why you figured you were going to  
11 tell more lies?

12          A.    No. I mean, I just didn't understand what was  
13 going on. I asked for an attorney. They wouldn't give  
14 me an attorney. My wife has just been shot, and I have  
15 been drinking while I'm on parole, and there's a gun  
16 involved. You know, how am I going to explain this  
17 situation? You know, I panicked. I didn't know what to  
18 do.

19          Q.    Well, Mr. Radke, that last day that you talked  
20 to Detective Thompson, do you remember telling him that,  
21 at that point, that the two of you struggled, and then  
22 the gun went off as you were falling to the floor? Do  
23 you remember that?

24          A.    I don't know if I specified falling to the  
25 floor or if we -- I didn't -- I don't think I specified

1 how the gun -- what position the gun was or we were when  
2 the gun went off.

3 Q. Do you remember the child custody hearing when  
4 you testified?

5 A. Yes.

6 Q. You weren't stressed out or upset or anything  
7 like that during that hearing, were you?

8 A. Well, yes, ma'am, I was.

9 Q. Well, it was about three months after the  
10 event, and you weren't still upset about your wife's  
11 death, were you?

12 A. Very much so.

13 Q. Okay. But you were able to explain yourself  
14 and answer appropriately the questions that were posed  
15 to you, weren't you?

16 A. I tried the best I could.

17 Q. And at that hearing, you came up with a  
18 different version, didn't you?

19 A. Not that I recall. I don't remember what I  
20 said.

21 Q. Okay. Well, let me try to remind you. You  
22 said that the two of you were struggling, you fall to  
23 the ground, and when you hit the ground or hit the  
24 floor, that's when the gun goes off. Do you remember  
25 saying that?

1           A.     That sounds about right, but my hand was on  
2 the stock of that gun when it went off, and I remember  
3 trying to pull it away from her.

4           Q.     Okay. So her hand was on the trigger; is that  
5 what you're telling us?

6           A.     I don't know who's -- I mean, I didn't pull  
7 the trigger. My hand was on the stock of the gun. I  
8 know that. And --

9           Q.     So if your hand wasn't on the trigger, your  
10 finger wasn't on the trigger, then I guess her finger  
11 had to be on the trigger?

12          A.     I suppose so.

13          Q.     So now today in Court you're telling us that  
14 the two of you were struggling, you hit the floor, and  
15 then while you're there at the floor, you start grabbing  
16 the shotgun, and then it goes off?

17                   MS. SHELTON: Objection. That's not  
18 what he has said at all. He said it only took a few  
19 seconds for this to happen, and the scenario that the  
20 Prosecutor is going into is taking minutes.

21                   THE COURT: Overruled.

22          Q.     (By Ms. McVea) You just testified to that,  
23 Mr. Radke, don't you remember?

24          A.     I said it was like a split second of tugging  
25 on the gun that I remember, and then I heard a pop, and

1 I looked up and I saw my wife.

2 Q. While you were there on the floor, correct?

3 A. Yes. I remember her laying on the floor.

4 Q. Okay. So I guess you're here asking for  
5 mercy, hum?

6 A. Well, of course I am. I mean, I've just  
7 been --

8 Q. Do you think you deserve mercy for what you  
9 did to Diana Radke?

10 A. The only thing that I didn't do for Diana  
11 Radke was be there whenever -- at times that I should  
12 have. I admit that I wasn't the greatest husband, and  
13 this is horrible of what has happened. I couldn't -- I  
14 can't believe this has happened, and I still can't  
15 believe this has happened.

16 Q. Well, we know it's horrible, Mr. Radke.  
17 You're the one that did it.

18 A. I did not do this.

19 Q. Well, you have been found guilty of it.

20 A. I understand that.

21 MS. MCVEA: Pass the witness, Your  
22 Honor.

23 REDIRECT EXAMINATION

24 BY MS. SHELTON:

25 Q. Mr. Radke, on a previous occasion, somewhat

1 distant from this occasion, you indicated to me, didn't  
2 you, that the last glimpse you had of Diana's face in  
3 life was one in which you saw her throat swollen, the  
4 muscles of her throat standing out and her chin  
5 doubled --

6 A. Yes.

7 Q. -- over, and you were --

8 A. Yes.

9 Q. -- previously just had your head against your  
10 stomach, whether you-all were falling or had fallen, but  
11 you saw her neck straining and head pulling up --

12 A. Yes.

13 Q. -- as if to get up --

14 A. Yes.

15 Q. -- straining?

16 A. Yes. Trying to --

17 Q. And that was the very last --

18 A. She was pulling the gun towards her, and I was  
19 pulling it towards me. And I remember it was kind of  
20 like a couple of tugs on both ends of our struggle, and  
21 it was like a split second, and I heard a pop, and I  
22 looked up, and I see her face like that, and I --

23 Q. You saw her face turn black, that's what you  
24 told me?

25 A. It looked black. Her eyes, I mean, were down

1 on her face some, and her nose was --

2 Q. Mr. Radke, don't go back over that again,  
3 please.

4 Earlier in the day when you had taken a break  
5 between jobs at work, you had gone over to a friend's  
6 house, or you were out in the front yard over there, who  
7 was all present with you--all were wrestling?

8 A. At my house?

9 Q. Oh, it was at your house, then. They all came  
10 over to your house that day, this day of her death?

11 A. Yes.

12 Q. They were wrestling in the front yard; is that  
13 correct?

14 A. Yes, we were wrestling around.

15 Q. Who was there?

16 A. Matt and Nikko.

17 Q. Nikko who?

18 A. Nemesio Ponce.

19 Q. Okay. Is Nemesio Ponce, did you see his name  
20 on the witness list for the Prosecution?

21 A. Yes.

22 Q. Okay. But he never got on the witness stand,  
23 did he?

24 A. No, ma'am.

25 Q. Okay. And at some point, did -- in wrestling

1 with whoever it was over there, did your shirt get torn  
2 off, and did one of the persons there scratch you on the  
3 chest?

4 A. Like I said, I never said anything -- what I'm  
5 trying to say is: I don't know how that mark got there  
6 on the chest -- on my chest. It could have been from us  
7 wrestling around the couple of times we did that day,  
8 because we do get -- we do wrestle around pretty rough  
9 together. It could have been from the muzzle of the  
10 shotgun. I don't know.

11 Q. Okay.

12 A. I'd like to say it was from the muzzle of the  
13 shotgun, but I'm not for sure, and --

14 Q. But you don't know which it was?

15 A. I don't know how the -- how it got there.

16 Q. You'd like to say it was from the muzzle of  
17 the shotgun so that you could say everything that  
18 everybody here wanted you to say, but you don't really  
19 know how it got there?

20 A. I don't know how it got there.

21 Q. And you were intoxicated when you arrived  
22 home?

23 A. Yes, ma'am.

24 Q. And somebody had to drive you home?

25 A. Yes.

1 Q. That you had hit the wheels of your car  
2 against the curb on the way home, and they had gone  
3 flat, correct, or whatever happened, where the car was  
4 parked and the wheels were flat, correct?

5 A. Yes.

6 Q. Okay. And you had to get a ride home. Do you  
7 know who brought you home?

8 A. Yes.

9 Q. How do you know?

10 A. Because I remember on my cellular phone bill,  
11 too, that it even confirms it, I was supposed to meet  
12 Nikko at Denny's to have some coffee and give him some  
13 money, and the last time I talked to him was -- I paged  
14 him at 8:13, and I believe -- and the -- I got a call  
15 back at 8:29, and I left.

16 Q. From him?

17 A. From -- I believe it was from him, yes.

18 Q. And you left in his company and in his red  
19 car?

20 A. Yes.

21 Q. And you looked in -- down at the carpet on the  
22 way --

23 A. On the red floorboard, so, I mean --

24 Q. Did he tell you later that he had brought you  
25 home when you called him from jail?

1           A.    Not that I recall.  I mean --

2           Q.    And you understand that he was present outside  
3 the Courtroom door, Mr. Ponce, but that he had his  
4 attorney with him, Mr. George Milner, III, and it was  
5 your understanding, and I made this --

6                       MS. MCVEA:  Your Honor, I'm going to  
7 object.  This is leading, and counsel is testifying.

8                       THE COURT:  Sustained.

9           Q.    (By Ms. Shelton)  What is your understanding  
10 as to why Mr. Ponce didn't testify or didn't want to get  
11 on the witness stand?

12           A.    From my understanding is that he was on -- he  
13 was on parole, too, and the Prosecutors were trying to  
14 get him revoked on his parole because we were hanging  
15 around.  He was with me that day, and we were both on  
16 parole, and he wouldn't admit that he was with me.  He  
17 drove me home.

18           Q.    And further, did you learn from me that he  
19 didn't want to get on the witness stand because the  
20 Prosecutor here said that she was going to put him at  
21 the scene of the murder, at a killing?

22                       MS. MCVEA:  Your Honor, I'm going to  
23 object again.  This is leading, and also the Defense  
24 Counsel is testifying.

25                       THE COURT:  Sustained.

1           Q.    (By Ms. Shelton) Before this incident, have  
2 you ever caused any injury, physical, intentional, to  
3 any human being before what happened to Diana, her  
4 death?

5           A.    The only time that I -- the last time I've  
6 gotten into a fight would probably be about sixth grade.

7           Q.    And if the Judge would not put you in the  
8 penitentiary for the rest of your life for this offense,  
9 and would let you out at some reasonable length of time  
10 when you could take on the life of a human being again,  
11 would you ever be around a human being where you caused  
12 their injury or death, certainly, by any means?

13          A.    Be around -- can you --

14          Q.    Would you ever do anything to any human being?

15          A.    I've never, ever planned on doing anything  
16 violent to anybody. I've always put myself away from  
17 violence. My dad taught me --

18          Q.    Your original father? Let me ask you: Do you  
19 feel remorse for what happened to Diana on this night?

20          A.    Yes.

21          Q.    Do you wish that you would have done  
22 differently?

23          A.    Yes. I wish I would have -- a lot of things  
24 would have been done differently. I wish --

25          Q.    And do you miss your son Zachary?

1           A.    Yes, I do.

2           Q.    And would you like to see him before you're an  
3 old man?

4           A.    Yes.

5           Q.    Okay.

6                        MS. SHELTON:  That's all I have from  
7 this witness.

8                        MS. MCVEA:  Nothing further, Your  
9 Honor.

10                      THE COURT:  You may step down.

11                      MR. STEINBECK:  One more, Your Honor.

12                      THE COURT:  All right.  This will be  
13 the last one, please.

14                                BRIAN WELLS,  
15 the witness hereinbefore named, being first duly  
16 cautioned and sworn to testify the truth, the whole  
17 truth, and nothing but the truth, testified on his oath,  
18 as follows:

19                                        DIRECT EXAMINATION

20           BY MR. STEINBECK:

21                      Q.    Please state your name for the Record.

22                      A.    Brian Wells.

23                      Q.    And how do you know Chris Radke?

24                      A.    I've known him for 17 years.

25                      Q.    How did you come to know him?

1           A.    I lived approximately two or three blocks away  
2 from him.

3           Q.    So you were one of his closest friends growing  
4 up?

5           A.    Yes.

6           Q.    Were around Chris at the time he got involved  
7 in drugs at an early age?

8           A.    Yes, sir.

9           Q.    What age was that, to your recollection?

10          A.    For him or for me?

11          Q.    Both.

12          A.    About 12 or 13.

13          Q.    How old were you at the time?

14          A.    I was about 13.

15          Q.    And how did Chris get introduced to drugs, do  
16 you know?

17          A.    I think it was at home.

18          Q.    At home. Did he introduce drugs to you, or  
19 were you already on drugs at the time?

20          A.    We experienced them at the same time, I think.

21          Q.    What -- how did drugs affect your life growing  
22 up knowing Chris?

23          A.    Could you repeat that?

24          Q.    How did the drugs affect you, the drug use  
25 affect you and your relationship with Chris?

1           A.    How did they affect me?  We --

2                           THE COURT:  Is this really relevant,  
3 how it affected him?

4                           MR. STEINBECK:  I'll move on, Your  
5 Honor.

6           Q.    (By Mr. Steinbeck)  What can you say as far as  
7 Chris as a person?  You've known him for 17 years.  What  
8 can you say about him as a person?

9           A.    He's a very good person.  If he wasn't, then  
10 he wouldn't be my friend.

11          Q.    I'd like you to tell the Judge what happened  
12 to make you get off drugs?

13          A.    I had a job at a print shop.  I worked around  
14 heavy machinery.  We had an insurance policy that if you  
15 were ever injured, you had to urinate into a cup, and it  
16 wasn't worth losing everything for that.  That started  
17 it.  I worked with a guy on the press who talked to me  
18 about Christ.  I went to his church, and I found Jesus  
19 there.

20          Q.    I understand that you have also -- you're a  
21 church-attending person now?

22          A.    Yes.

23          Q.    And that helps you stay sober off of any  
24 illegal drugs and whatnot?

25          A.    Yes, sir.

1 Q. Did you ever invite Chris to your church?

2 A. Yes, sir.

3 Q. Did he ever come?

4 A. He did.

5 Q. And did he continue to come to your church?

6 A. He came a few times.

7 Q. Have you sort of loss contact with Chris over  
8 the years that he was married to Diana?

9 A. Somewhat.

10 Q. What assurances can you give the Judge of what  
11 contact you will have with Chris in the future? I guess  
12 if I could back up a minute, tell the Judge what you're  
13 studying for right now?

14 A. I attend Dallas Christian College, and I'm  
15 studying to go into youth ministry or pastoral ministry.

16 Q. So you'd also be counseling individuals and  
17 youths with problems?

18 A. Most definitely.

19 Q. People like Chris at a younger age?

20 A. Anybody who needs it.

21 Q. And would you be willing to provide help,  
22 counseling and whatnot, and be a friend for Chris when  
23 he comes out so he's not being around people that use  
24 drugs?

25 A. Absolutely.

1 Q. Do you think there's hope for Chris to return  
2 to society and become a productive member?

3 A. I think there's hope for anyone.

4 Q. What can you tell the Judge, as far as any  
5 factors to consider for leniency, and that's my last  
6 question?

7 A. I'm sorry. Could you repeat it?

8 Q. Is there anything else you'd like to tell the  
9 Judge to consider for leniency in Chris's sentence?

10 A. I think that if Jesus can turn anybody -- if  
11 he can turn me around, then he can turn anyone around,  
12 no matter what they've done. God saves to the  
13 uttermost.

14 Q. Are you willing to do whatever it takes to  
15 help Chris?

16 A. I am.

17 Q. Thank you.

18 MR. STEINBECK: Nothing further.

19 MS. MCVEA: No questions, Your Honor.

20 THE COURT: All right. Sir, you may  
21 step down.

22 (Whereupon, the witness was then  
23 excused and proceedings resumed, as  
24 follows:)

25 MR. STEINBECK: We rest, Your Honor.

1 MS. MCVEA: Close, Your Honor.

2 THE COURT: Did both sides close?

3 MR. STEINBECK: Yes, Your Honor.

4 THE COURT: Any argument of counsel?

5 MS. MCVEA: We waive opening and  
6 reserve right to close.

7 MS. SHELTON: We would ask for, based  
8 on his really prior lack of any real substantial --  
9 although it's there procedurally -- but a substantial  
10 criminal record, comparative to the rest of the  
11 population, that this is his big event here, what he's  
12 here for this week. We ask that if you would consider  
13 him in the light, the setting that he comes from, what  
14 his background is, that his only encounter with the law  
15 has been through drugs, and if you could possibly  
16 consider those things and the comportment that his  
17 family and he conceded on the witness stand. If you can  
18 give him the minimal sentence, that's what we're asking  
19 for.

20 MS. MCVEA: Your Honor, what is a life  
21 worth? Any life? Now, Diana Radke may have had her  
22 problems during her life, but I argue that she put her  
23 life together, I would say. I mean, she was married;  
24 she had a child; she had a good job. She had the  
25 things -- and a new home -- and she had the things that

1 most of us strive for and hope for. She only had one  
2 problem, she was married to the wrong man. Because of  
3 that error, she's no longer with us. And I do feel for  
4 the Radke family, but they still have their loved one.  
5 They can look at him; they can talk to him; they can see  
6 him.

7 But what about the Morrison family? Her parents no  
8 longer have a daughter. Her brother no longer has a  
9 sister. And most importantly, there's a child that no  
10 longer has his mother.

11 Don't lose sight of the fact that this was a  
12 cold-blooded murder. The pictures alone are enough to  
13 give anyone a lifetime of nightmares. The last thing  
14 that young woman saw was the man that promised to love  
15 and cherish her, and he was about to take her life.  
16 Then he tries to come in here, even today, Your Honor,  
17 and he tells one lie, after another, after another, to  
18 cover up this horrendous act. But the Court saw the  
19 truth, and now we ask the Court to see justice, not  
20 mercy. This case demands the maximum penalty allowed  
21 under the law. Justice demands it. We respectfully ask  
22 for it. Life imprisonment and a \$10,000 fine.

23 THE COURT: All right. Will you rise,  
24 please, Mr. Radke.

25 Mr. Radke, whatever sentence that I may impose on

1 you today, and it can be anywhere between five years and  
2 99 years in the penitentiary, or a life sentence, you  
3 will come out of prison as a relatively young man, even  
4 if I gave you the longest sentence. Your wife, Diana  
5 Radke, on the other hand, is going to be dead forever.  
6 I think there is but one sentence which is appropriate  
7 to such an offense.

8         It is the order, judgment and decree of the Court  
9 that you be taken by the sheriff of Dallas County, by  
10 him safely kept and turned over to an authorized  
11 receiving agent for the Institutional Division of the  
12 Texas Department of Criminal Justice, wherein you shall  
13 be confined for life. Your sentence begins today, but  
14 you are credited with all of your back time in custody.

15         If you wish to appeal your conviction, you must  
16 either file a Motion for New Trial or give Notice of  
17 Appeal within 30 days of today. If you are unable to  
18 afford an attorney or a copy of the transcript of these  
19 proceedings, which would be necessary to an appeal, I  
20 will see that you receive either or both at the State's  
21 expense.

22         That concludes this trial.

23                                 (Whereupon, the trial was  
24                                 concluded.)

25

1 STATE OF TEXAS )

2 COUNTY OF DALLAS )

3

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

13 I further certify that this transcription of the  
14 proceedings truly and correctly reflects the exhibits,  
15 if any, offered by the respective parties.

16 WITNESS my hand this the 3<sup>rd</sup> day of February  
17 1998.

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PERI K. STROMBERG,  
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