

REPORTER'S RECORD
VOLUME 3 OF 6 VOLUMES
TRIAL COURT CAUSE NO. 0836979A and 0836985A

THE STATE OF TEXAS	X	IN THE DISTRICT COURT
VS.	X	TARRANT COUNTY, TEXAS
BARTON R. GAINES	X	213TH JUDICIAL DISTRICT

TRIAL ON THE MERITS AND PUNISHMENT PHASE

On December 10, 2002, the following proceedings came on to be heard in the above-entitled and numbered cause before the Honorable Robert K. Gill, Judge presiding, held in Fort Worth, Tarrant County, Texas.

Proceedings reported by computerized stenotype machine.

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VS. X TARRANT COUNTY, TEXAS

BARTON RAY GAINES X 213TH JUDICIAL DISTRICT

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On the 10th day of December, 2002, the following proceedings came on to be heard in the above-entitled and -numbered cause before the Honorable Bob Gill, Judge presiding, held in Fort Worth, Tarrant County, Texas:

Proceedings reported by computerized stenotype Machine; Reporter's Record produced by Computer-Assisted Transcription.

STEVE SCHILLER, Texas CSR No. 4665
Official Court Reporter
213th Judicial District Court
Tarrant County, Texas

1 which is their opportunity to outline to you the facts
2 they feel they will prove in their portion of the trial of
3 the case.

4 After the opening statements, the State is
5 allowed to call any witnesses they wish to call. After
6 that, the Defense is given an opportunity to present any
7 witnesses they wish to call. After each side has
8 presented everything that they wish, they will rest and
9 close. And at that point I have to prepare a document
10 called the Court's Charge which contains all the law that
11 you will follow during your deliberations.

12 That Charge is then read to you in open
13 court. Following the reading of the Charge, then each
14 side is allowed to make a summation arguing to you what
15 they feel they have proven during the trial of the case;
16 and after the summations, the case is yours for
17 deliberations.

18 The law applicable to the case will be
19 contained in the written Court's Charge and in any
20 instructions I give you during the course of trial, and it
21 is your duty to follow all such instructions.

22 No statement, ruling, remark, or facial
23 expression I may make during the course of testimony is
24 intended to indicate my opinion as to what you should
25 believe or how you should decide any of the issues in the

PROCEEDINGS

(December 10, 2002)

(Morning Session:)

MS. HARTMANN: The State has one issue it
would like to take up. There was a witness who was under
subpoena who has not appeared, and we would like a writ of
attachment to be issued.

THE COURT: So ordered. Anything else?

MS. HARTMANN: That's all from the State,

Your Honor.

MR. MINICK: Nothing from the Defense, Your
Honor.

THE COURT: We are ready.

(Jury present)

THE COURT: Good morning, ladies and
gentlemen of the jury. We are ready to start the trial.

I need to place you under oath as jurors.

(Jury sworn)

THE COURT: Now, the case is going to
proceed in the following order. I have a few more
instructions to read to you, and following that, the State
is going to read the indictment and the Defendant is going
to enter his plea to the indictment.

After that, each side is allowed to make an
opening statement, first the State, then the Defense,

1 case.

2 It is your duty to resolve the factual
3 issues in the case. To this end, you must decide upon the
4 believability of the evidence and its weight and value.
5 The evidence that you are to consider consists of the
6 testimony of witnesses and the exhibits admitted into
7 evidence. You are allowed to make reasonable inferences
8 arising from the evidence, but you must not engage in
9 guesswork or speculation.

10 The admission of evidence is governed by
11 rules of law. From time to time, it may be the duty of
12 the attorneys to make objections based on rules of law,
13 and it is my duty as Judge to rule on those legal issues.
14 Because these are legal issues, you must not concern
15 yourself with the objections or the Court's reasons for
16 these rulings.

17 You must not consider questions to which an
18 objection was sustained or testimony or exhibits that have
19 been ordered stricken.

20 The opening statements, questions and
21 closing arguments of the attorneys are not evidence. The
22 purpose of questions is to elicit evidence from the
23 witness. The purpose of opening statements and closing
24 arguments are to assist you, if they do, in understanding
25 the law and applying the evidence to the law during your

1 deliberations.
 2 You must not be influenced in any degree by
 3 any personal feeling of sympathy for or prejudice
 4 against the State or the Defendant in this case, for each
 5 is entitled to the same fair and impartial consideration.
 6 The State may read the indictments.
 7 (Indictment No. 0836979A read by Mr. Foran)
 8 (Indictment No. 0836985A read by Mr. Foran)
 9 THE COURT: Mr. Gaines, to Indictment
 10 No. 0836979 charging you with the offense of aggravated
 11 robbery with a deadly weapon, you may plead guilty or not
 12 guilty.
 13 THE DEFENDANT: Guilty, Your Honor.
 14 THE COURT: And to Cause No. 0836985
 15 charging you with the offense of aggravated robbery with a
 16 deadly weapon, you may plead guilty or not guilty.
 17 THE DEFENDANT: Guilty, Your Honor.
 18 THE COURT: You may be seated. Does the
 19 State wish to make an opening statement?
 20 MS. HARTMANN: Yes, Your Honor.
 21 THE COURT: You may proceed.
 22 STATE'S OPENING STATEMENT
 23 MS. HARTMANN: May it please the Court
 24 Good morning.
 25 Members of the jury, you just heard the

1 Barton and a couple of his friends, Stacy Tucker and
 2 Daniel Aranda. It was decided they would go to Benbrook
 3 Lake and hang out.
 4 And they went to Benbrook Lake and it was
 5 pretty cold, and so they decided to go to another location
 6 here in Tarrant County known amongst the kids and young
 7 adults as the Rice Paddy. We expect you are going to hear
 8 that that is an area located off of old Crowley Road in an
 9 area that's been developed with some new houses and that
 10 there was a hangout spot out there for young adults to go,
 11 get away from their parents, get away from other people
 12 and still hang out and be who they were; and that on that
 13 evening, Barton Gaines and his friends Jason Tucker and
 14 Daniel Aranda met Mindy Keisel and Tara Green and another
 15 young lady named Cody at the Rice Paddy after they had
 16 been to Benbrook Lake.
 17 And they were out there hanging out. We
 18 anticipate you are also going to be hearing that two young
 19 men came to the Rice Paddy, and those are the two
 20 complainants in these cases, Andrew Horvath and Michael
 21 Williams. Neither one of those young men knew Barton
 22 Gaines and didn't really know the girls.
 23 Drove up. There was some conversation,
 24 introductions going on. And we anticipate that you are
 25 going to hear that because there was a joint being passed

1 Defendant Barton Gaines enter a plea of guilty to each of
 2 the two aggravated robbery cases that we have charged him
 3 with.
 4 So what is the next step? While the
 5 Defendant's plea of guilty is entered, the next step is to
 6 determine what the proper punishment is for the Defendant
 7 Barton Gaines under the facts of this case.
 8 We anticipate that you are going to be
 9 hearing the State of Texas' case as if there had been a
 10 plea of not guilty because it is important for you to hear
 11 all of the evidence, to hear exactly what happened and who
 12 it happened to and what the consequences were so that you
 13 can use those facts to help make your determination about
 14 what is appropriate.
 15 We anticipate that you are going to be
 16 hearing about the evening hours of February 21 of this
 17 year. You are going to be meeting a series of young
 18 adults, people that were friends of Barton Gaines and a
 19 couple of people that just met him that night.
 20 We anticipate you are going to be hearing
 21 from a couple of young ladies Mindy Keisel and Tara Green.
 22 And they are going to be able to tell you that they have
 23 known Barton Gaines for some period of time, gone to
 24 school with him, socialized with him.
 25 And that on February 21 they ran into

1 around amongst some of the young adults, that the
 2 Defendant, Barton Gaines, approached Michael Williams and
 3 wanted to know if Michael could find a pound of marijuana
 4 for him to buy.
 5 And you are going to hear that Michael
 6 knows people who sell marijuana. And he was able to set
 7 up a buy for Barton Gaines. And he said, "Hey, I have got
 8 a friend. I think he's got some. Why don't you follow me
 9 over to where he's located."
 10 So Andrew Horvath and Michael Williams
 11 drove off in their vehicle followed by the Defendant,
 12 Barton Gaines, in his truck along with two friends Jason
 13 Tucker and Daniel Aranda.
 14 They pull out on Crowley Road and got to
 15 the intersection of Sycamore School Road. And there is a
 16 Wal-Mart located on Sycamore School Road. And the
 17 Defendant, Barton Gaines, pulled in front of Michael
 18 Williams and Andy Horvath and indicated they were to
 19 follow him.
 20 And even though that was not the way to
 21 where Michael Williams was going to take Barton Gaines and
 22 his buddies, they went and followed. They went to
 23 Wal-Mart on Sycamore School Road, and we anticipate that
 24 you are going to hear that Barton Gaines and his buddies
 25 told Andrew and Mike, "We are going in and get some beer.

1 I am going in to get some beer; be right back."

2 And so Mike and Andrew wait in the parking
3 lot in their vehicle while Barton went into Wal-Mart. We
4 anticipate you will hear that he did not go in there to
5 buy beer; that what he, in fact, went in there to do was
6 to purchase shotgun shells, slugs and double aught
7 buckshot.

8 And we anticipate that you are going to
9 hear that he returned back to his truck, got back in his
10 truck and drove back on Sycamore School Road, came back
11 the way they had just come, got back onto Crowley Road;
12 and you are going to hear that Crowley Road goes under 20
13 and turns into James Avenue.

14 You are going to hear that Michael Williams
15 at this point was back in the lead, that he was taking
16 Barton Gaines over to where he could get some marijuana
17 for him.

18 You will hear they ended up over at
19 Peppertree Acres housing area at Southcrest and James.
20 They pulled into the housing area. You will see pictures
21 of exactly what it looks like out there. They pulled in
22 and parked. Barton Gaines was with his buddies in his
23 truck and Mike and Andrew were in Andrew's car.

24 They parked, and Mike Williams gets out of
25 the vehicle, gets out of Andrew's vehicle, and he goes up

1 a ways up and around the corner to where his source is.

2 And he comes back and he tells Barton
3 Gaines, "He doesn't have a pound. He doesn't have any."
4 And you are going to hear that Barton Gaines got upset
5 about that and began to make Mike raise up his shirt and
6 see if he was some type of undercover officer. And he got
7 upset. And you are going to hear that he and his buddies
8 jumped Michael Williams and Andrew Horvath there in the
9 parking lot and physically began to beat on them and
10 demand the money and the wallet.

11 You will hear these two young men began
12 pulling things out of their pockets. You are going to see
13 pictures, pictures of where the items landed in the middle
14 of the road. They're pulling everything out of their
15 pockets to get these guys off of them.

16 You are going to hear that Michael is
17 getting the idea this is a real bad situation and he
18 begins to run. He begins to try and run out of that
19 housing area. You will hear at this point Andrew is on
20 the ground and that the Defendant had pulled out a
21 shotgun, and that's why Michael had taken off running.

22 You are going to hear that Barton Gaines
23 pulls a shotgun, the shotgun they stopped at Wal-Mart to
24 get ammunition for, out of his truck. You will hear that
25 Mike starts running because this situation is getting

1 really bad.

2 You are going to hear that as Mike was
3 running out of the Peppertree Acres Apartments or housing
4 area, he heard a shot, and he felt himself being hit. And
5 he kept on running. And finally he ended up in a small
6 convenience store that's just around the corner bleeding
7 and asking for help.

8 And you are going to hear from Andrew that
9 as he lay on the ground with his arms up in a posture,
10 "Hey, you know, I'm just laying here; I'm not going to
11 give you any fight, any trouble," he was shot as he was
12 laying on the ground by Barton Gaines. And you are going
13 to hear about his injuries.

14 And you will hear from Andrew how he was
15 able to get across that housing area to the apartments and
16 get the attention of someone in that apartment. And you
17 will hear from that person whose name is Gerardo Molino.
18 He might not be the type of witness that you might not
19 normally associate with, but he will tell you what he saw
20 that night and what he heard and what he did.

21 We anticipate you are going to be seeing
22 pictures from that scene and exactly what it looked like
23 after Barton Gaines shot two people.

24 We anticipate that you are going to be
25 hearing from Mindy and Tara statements that Barton Gaines

1 made after this offense that very night when he met up
2 with them again.

3 We anticipate we are going to be able to
4 tell you how he was acting and how he was behaving after
5 this offense and what he said to them about this offense.

6 We anticipate, ladies and gentlemen of the
7 jury, that you are going to be hearing from a number of
8 other individuals from Hood County and Erath County, and
9 they are going to be able to come in and tell you about
10 their contact with Barton Gaines on February 23, not even
11 two days after. We anticipate they are going to be able
12 to tell you about what happened to them when they ran into
13 Barton Gaines as well.

14 We anticipate they are going to be able to
15 tell you that late on the night or early on the morning of
16 February 23, they were on their way back home to
17 Stephenville after being in Fort Worth for a birthday
18 party, a group of young people, and that as they were in
19 their truck, they saw a truck ahead of them flashing their
20 lights and they stopped to be good Samaritans and see if
21 someone needed help.

22 We anticipate they are going to be able to
23 tell you that Barton Gaines got out of the truck and said
24 he needed some help with some tools with some engine
25 trouble and that these young people didn't have any tools

1 and as they got in their vehicle and started to leave,
 2 they hear a gunshot. We anticipate you are going to hear
 3 from yet another victim of Barton Gaines who was shot
 4 while he was in a truck trying to get home, a passenger.
 5 We anticipate you are going to hear that a fragment from
 6 the ammunition used in that shooting was furnished to the
 7 crime lab and was matched to a weapon that was seized from
 8 this Defendant's truck, an SKS rifle.

9 Ladies and gentlemen, there is going to be
 10 a lot of testimony from a lot of witnesses, and we ask
 11 that you please, please pay attention. It is very, very
 12 important that you do hear everything in this case. At
 13 the conclusion of all the testimony, we will be back up
 14 again arguing to you what we think is the appropriate
 15 punishment. Thank you.

16 THE COURT: Does the Defense wish to make
 17 an opening statement?

18 MR. WESTFALL: Yes, Your Honor.

19 THE COURT: Proceed.

20 **DEFENDANT'S OPENING STATEMENT**

21 MR. MINICK: Ladies and gentlemen, for the
 22 few days before and the hours after this happened, Bart
 23 Gaines was in a manic episode in an incredibly wild state
 24 of mind, and that was caused by a drug that had been
 25 prescribed to him. I don't disagree with virtually

1 anything Michelle just told y'all, but I want to show you
 2 what I also anticipate the evidence will show in addition
 3 to that.

4 Bart was born October 25, 1982. That
 5 makes him 20 years old right now. His mother -- I want to
 6 introduce you to the people you will hear about and
 7 possibly hear from. His mother, Melissa Adams, his father
 8 Barton Gaines, Jr., you won't hear from him because he was
 9 killed in a motorcycle wreck. His stepfather is Corey
 10 Adams, grandparents on both sides Jimmy and Judy Gaines,
 11 they both are deceased. They both committed suicide.

12 **MS. HARTMANN: Excuse me, Your Honor. I'm**
 13 **going to object at this point to improper opening**
 14 **statement.**

15 **THE COURT: Overruled.**

16 MR. MINICK: And then Gayle and Dub Meador
 17 who are his grandparents on his mother's side. Dub is
 18 also deceased. His girlfriend is Tiffany Phillips.

19 Bart in his normal state is shy, retiring,
 20 very modest, soft spoken, gullible. He believes what his
 21 friends tell him. He has a low average IQ in the low to
 22 mid 80s. He's been in special education since he was a
 23 fairly small child, and he -- a year or two years ago was
 24 diagnosed as having severe ADD, which has gone untreated
 25 his entire life.

1 He has had drug problems, particularly
 2 marijuana, since he was 13 years old, and you will hear
 3 about that. In fact, this night they were all doing
 4 drugs.

5 In December of 2001, Bart is having trouble
 6 holding a job. He will fill out applications, he will
 7 fill them out wrong, and they won't give him a job; or he
 8 gets a job, and within a week they fire him because he
 9 can't figure it out because he's dyslexic and has ADD. He
 10 goes to work at Albertson's and can't get the job right,
 11 so they let him go.

12 His grandmother and his mother take him to
 13 the Texas Rehabilitation Commission, which is a place
 14 where you go when you -- it is a public entity where you
 15 go to try to learn job skills and get whatever psychiatric
 16 treatment you may need in order to hold a job.

17 And they go there, and two psychiatrists
 18 examine Bart. One is a Ph.D. type psychologist. He
 19 diagnoses Bart as ADD/ADHD. This is the first time Bart
 20 has been diagnosed as that. Even though you will hear
 21 about his school career and see it was pretty evident.

22 Another psych, who was a D.O. psychiatrist,
 23 diagnoses Bart as having depression and puts him on Paxil,
 24 a description of 20 milligrams a day of Paxil.

25 These doctors don't talk to each other.

1 There's no evidence that they ever looked at each other's
 2 reports. And this doctor who prescribed the Paxil just
 3 did so. There wasn't any counseling or anything that went
 4 along with that.

5 Real quickly, Paxil is what's called a
 6 selective serotonin reuptake inhibitor. That's a
 7 scientific term. What it essentially does is it changes
 8 the chemicals --

9 MS. HARTMANN: I'm going to object to the
 10 argumentative nature of defense counsel's opening
 11 statement.

12 THE COURT: Overruled.

13 MR. MINICK: Serotonin is what's called a
 14 neurotransmitter, and it is something that is necessary
 15 for the electrical impulses to go through the brain, which
 16 causes all the muscles to work and everything else. These
 17 electrical impulses have to pass through the brain.

18 If there is a decrease in the amount of
 19 serotonin, the theory is you can become depressed. If
 20 there is an increased amount of serotonin above what is
 21 normal, then other things happen. Hypomania, mania,
 22 aggression.

23 And so it has to be right, and it should be
 24 followed up on by the doctor. And ADD/ADHD is actually
 25 one of the risk factors involved if a person has ADD or

1 ADHD, you ought not prescribe it.

2 In January of 2002, this year, Bart is --
3 by the end of December he has a job on an assembly line
4 that he seems to be getting the hang of. He's working,
5 he's coming home, he's staying home, and he's making his
6 own lunches, doing things that seem responsible.

7 Now, this is a kid that since he was 13
8 years old has smoked pot a lot. He has been defiant with
9 his parents, he has dropped out of school in the 9th
10 grade, and the fact that he is doing all of these things
11 is very encouraging to his parents.

12 Bart's mother was trying to figure out a
13 way to get the Paxil paid for because Bart is over 18 and
14 can't be on his stepfather's insurance anymore. So she is
15 trying to get the Texas Rehabilitation Commission to pay
16 for the Paxil.

17 In the meantime, Bart's stepfather is also
18 on Paxil on the exact same dosage, 20 milligrams. So what
19 Missy does is start giving Bart Corey's Paxil according to
20 the prescription that Dr. Ouseph wrote. And ultimately
21 his prescription gets filled, but that is after this
22 time. He takes it in the morning. She dispenses it to
23 him, and he takes it every morning without fail.

24 Two weeks later things begin to change.
25 Bart is doing great in the beginning. But the first week

1 of February Bart breaks up with his girlfriend, Tiffany.
2 Now, February 14 Bart has a date with a new girl, a girl
3 named Crystal. He seems very nervous, he seems very
4 happy; but Missy, his mother, chalks this up to the new
5 date, being nervous, and he's happy.

6 February 15 Bart goes to the bank and
7 consolidates his loans, which is a big deal because Bart
8 has trouble writing checks. Now he's taking care of some
9 of his business. He's very happy. His mother chalks that
10 up to Bart's feeling responsible and his self-esteem is
11 coming back. And everything just seems really good.

12 But the very next day, Bart is sitting in a
13 chair pulling on his hair and obsessing about Tiffany.
14 He's in this endless loop, and he can't get out of it.
15 He's at the house and his stepfather and his mother are
16 there, and she says, "Bart, what's wrong?"

17 He's obsessing about Tiffany. Tiffany,
18 Tiffany, Tiffany. And his friends are calling him
19 saying, you know, she's sleeping, and these things are
20 driving him nuts.

21 His legs are bouncing up and down, he's
22 pulling on his hair until it is sticking straight up. He
23 at one point becomes obsessed with the fact that he might
24 have an STD, sexually transmitted disease, from Tiffany,
25 and then he asks his mother to actually examine his penis

1 to see.

2 And he's starting to talk fast and he's
3 starting to talk a little bit louder. Sunday, February 17
4 Bart shows up at church where Tiffany and her aunt are.
5 Bart is fidgeting, his legs are bouncing. He's whispering
6 real loud, won't shut up, finally has to leave the church.

7 He then comes home, gets all the quarters
8 that he can find and goes to the car wash and washes his
9 truck for over an hour. Then he comes home, pulls out the
10 hose and goes and washes his truck again. And then he
11 washes his truck again.

12 Then Bart comes in and cleans up the garage
13 so that it looks like the aisles at Wal-Mart. The floor
14 apparently was so mopped clean that you could eat off of
15 it. And then he goes and does the same thing with the
16 porch. And then for the rest of the evening until he goes
17 to bed, he alternates between vigorously lifting weights
18 and going in and watching TV and going back and forth.
19 Lift weights, watch TV; Lift weights, watch TV, until he
20 goes to bed.

21 The next thing he gets up and goes to
22 work. He works early in the morning like at 6:00 a.m. He
23 gets off work, and the next time his mother hears from
24 him, he's in **Discount Tires**. He's trying to buy a set of
25 \$3000 rims to go on his truck. And he needs help filling

1 out the application because applications are hard for Bart
2 to fill out.

3 He's saying, "Mom, help me fill out this
4 application."

5 She's saying, "Bart, why are you doing
6 this? You just consolidated your loan on Friday. Why are
7 you wanting to go \$3,000 in debt for rims?"

8 Well, he persists and he does it, but they
9 turn down his application. So he doesn't get the rims
10 because he couldn't qualify for credit.

11 He comes home and for the rest of the
12 evening alternates virtually in 15-minute intervals
13 between vigorously lifting weights and watching TV until
14 he goes to bed.

15 The next day, Tuesday, what does Bart do?
16 The exact same thing to a T. Goes to work, goes to
17 **Discount Tires**, comes home, lifts weights, watches TV and
18 goes to bed in virtually 15-minute intervals. At one
19 point his mother walks in and he's working out in his room
20 after he's gone to bed with one of those wheel things.

21 Wednesday, the exact same thing all over
22 again. It's like Groundhog Day. Monday, Tuesday,
23 Wednesday, the exact same thing. Wednesday is the last
24 time that his parents saw him until Saturday morning.

25 By Wednesday, Bart's speaking loudly, he's

1 speaking fast, he is obsessing, his speech is slurred.
 2 Instead of being shy, he's very grandiose. And he has
 3 become profane, and his eyes have gotten real wide so you
 4 can see the whites around his colored part.

5 On Thursday, Bart shoots Andrew Horvath
 6 and Michael Williams during the drug transaction that the
 7 prosecutor told y'all about.

8 Friday Bart is even wilder. He calls his
 9 mother and he talks about all the ho's that he's got.
 10 "I've just got ho's hanging all over me." And this is --
 11 his mother will testify that's not something Bart would
 12 usually be saying, to say the least.

13 Saturday about 3:00 a.m. is when Bart
 14 shoots at these guys near Granbury and then goes to
 15 Tiffany's house and walks in like he owns the place, walks
 16 in like he lives there. And they are broken up, and he
 17 just sits down and acts very strangely.

18 But then he goes home for the first time
 19 since Wednesday, and he's got this truck full of stolen
 20 tools. So his mother gets up early and goes and sees
 21 these tools and comes and pounds on the door when Bart is
 22 taking a shower.

23 Bart comes out into the garage -- this is a
 24 guy who apparently didn't -- he is very modest, wouldn't
 25 let anybody in the bathroom. When he's in the shower even

1 behind a curtain, you couldn't come in and brush your
 2 teeth because it would drive him nuts because he was so
 3 modest.

4 He comes into the garage wearing a towel
 5 like a loincloth, a real skimpy towel like Ted Nugent.
 6 His eyes again are like saucers. He's talking very loud
 7 and slurry. His mom says, "Bart, where did these tools
 8 come from?"

9 And he says real loud, "Five-finger
 10 discount, Mom." He's nuts.

11 That night Bart is arrested. Bart Gaines
 12 was out of his mind. Now, Bart has pled guilty to two
 13 indictments of aggravated robbery. And it is true it is
 14 y'all's job to set the punishment in this case, and we
 15 will make our arguments as well. But all of the evidence
 16 taken together I believe will show you that Bart Gaines
 17 was not Bart Gaines during that entire week. He was in a
 18 manic, crazy state of mind, and that was caused by Paxil.
 19 Thank you.

20 THE COURT: Both sides who have any
 21 witnesses who are present come in and be sworn in.

22 MS. HARTMANN: The State does. The State
 23 invokes the Rule.

24 MR. MINICK: Defense has no witnesses in
 25 the courtroom, Your Honor.

1 THE COURT: If you're going to testify,
 2 please raise your right hand.

3 (Witnesses sworn)

4 THE COURT: If everybody would please state
 5 their name for the record, starting over here, ma'am.

6 THE WITNESS: William Noah.

7 THE WITNESS: Mindy Keisel.

8 THE WITNESS: Tara Green.

9 THE WITNESS: Gerardo Moreno.

10 THE WITNESS: Andrew Horvath.

11 THE WITNESS: Michael Williams.

12 THE COURT: The Rule has been called for.

13 That means unless you are testifying, you are to remain
 14 outside the courtroom and outside the hearing of any
 15 witness who is testifying. While you are waiting to
 16 testify and after you testify, you cannot discuss your
 17 testimony with any other witness or allow any other
 18 witness to discuss their testimony with you.

19 Who will be the State's first witness?

20 MS. HARTMANN: Officer Noah.

21 THE COURT: Officer Noah, please come up to
 22 the witness stand; everyone else please retire to the
 23 hallway.

24 Whereupon,

25 WILLIAM NOAH,

1 having been first duly sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY MS. HARTMANN:

4 Q. Would you please introduce yourself to the
 5 members of the jury.

6 A. Officer W. J. Noah with the Fort Worth Police
 7 Department.

8 Q. How long have you been a police officer for the
 9 City of Fort Worth.

10 A. Going on 11 years now.

11 Q. What is your current assignment?

12 A. I'm assigned to the South Division, John
 13 District, Fort Worth, second shift.

14 Q. What boundaries does that encompass?

15 A. From roughly -- a little south of the hospital
 16 district, south until you go out of the city. It follows
 17 Berry east as far as about Riverside.

18 Q. Are you a certified peace officer?

19 A. Yes, ma'am.

20 Q. Can you tell the jury were you assigned to that
 21 same area of town back in February of this year?

22 A. I was.

23 Q. Do you recall the hours or shift that you
 24 worked?

25 A. I was working second shift as I am now.

1 Q. What are the hours of the second shift?

2 A. 2:30 to 10:30 p.m.

3 Q. Directing your attention to somewhere around
4 9:00 p.m. on February 21st of this year, were you
5 dispatched out to a location for shots fired?

6 A. I was.

7 Q. What location were you sent to?

8 A. It was the apartment complex there -- I don't
9 recall the exact address -- off of something Crest.

10 Q. Southcrest?

11 A. Southcrest, yes.

12 Q. Is that the Peppertree Acres complex?

13 A. Correct.

14 Q. Is that like a housing -- a government
15 housing-type complex area?

16 A. I am not sure of that. It is an older apartment
17 complex.

18 Q. All right. Is it off of Southcrest and James?

19 A. Correct.

20 Q. Were you riding -- were you in a marked patrol
21 vehicle?

22 A. I was.

23 Q. Were you alone or did you have a partner?

24 A. I was alone.

25 Q. When you got to that location, where

1 type of weapon had been used in this offense?

2 A. He stated to me that he was shot with a shotgun.

3 Q. And is there a type of ammunition that the --
4 that can be used by a shotgun that would cause multiple
5 injuries that you observed on this young man?

6 A. Any type of shotgun ammunition would do that.

7 The entry wound that I saw was consistent with like
8 buckshot, which is a large-caliber projectile. Fewer of
9 them in the round, but they are larger. They put a hole
10 about the size of a nine millimeter.

11 Q. Are you pretty familiar with a cartridge of
12 double-aught buckshot?

13 A. Yes.

14 Q. As far as how it is made up inside that
15 cartridge?

16 A. In layman's terms, yeah.

17 Q. Could you explain that to the jury? Describe
18 exactly what double-aught buckshot ammunition is,
19 basically.

20 A. As I said, the rounds inside are in different
21 sizes. Bird shot, for instance, would be a lot smaller
22 pellet and there would be a lot more of them. You have a
23 primer, then powder, then there is a wadding and then the
24 projectile.

25 Double-aught buck is -- they're larger than

1 specifically did you go?

2 A. I didn't make it all the way to the offense
3 location. I was flagged down at the corner of James where
4 one of the victims was lying on the sidewalk of the Lucky
5 Mart store, I think it is called.

6 Q. Is that a convenience store?

7 A. Right.

8 Q. Was there a crowd around this person or were
9 they by themselves?

10 A. There wasn't a crowd. There were a couple of
11 people around him, I think the store clerk and people like
12 that.

13 Q. Was this a young man?

14 A. Young man, correct.

15 Q. And what were you able to observe about his
16 physical appearance?

17 A. They had removed his clothing so you could see
18 what appeared to be bullet injury wounds in his arm and
19 shoulder. He was in quite a bit of pain and he was cold.
20 It was rather cold outside, and I couldn't interview him
21 very well. But that was my initial observation of him.

22 Q. You said it appeared that he had multiple
23 gunshot wounds?

24 A. I saw two.

25 Q. Did you ever have any information about what

1 BB's about like ball bearing size. I think there are nine
2 -- nine of them that are in there. So when the round goes
3 off, it is basically like nine bullets projecting out. Of
4 course, the closer you are, the closer they stay together.
5 If you are farther away, they spread more.

6 Q. So actually, in one double-aught buckshot
7 cartridge there are going to be nine projectiles that are
8 being sent out of that shotgun?

9 A. Correct.

10 Q. Did you ever make it over to the Peppertree
11 Acres apartment?

12 A. I did after the victim had been removed from the
13 store there, I did make the crime scene location.

14 Q. And were you able to get a look at the crime
15 scene location?

16 A. I did.

17 MS. HARTMANN: May I approach the witness?

18 THE COURT: Yes.

19 Q. (BY MS. HARTMANN) Officer, I am going to show
20 you what has been previously marked for identification
21 purposes as State's Exhibit 20 and 22. I will ask you to
22 look at those.

23 A. (Witness complies.)

24 Q. And do you recognize what's depicted in State's
25 20 and 22?

1 A. I do.
 2 Q. And do they fairly and accurately depict the
 3 area to which you were dispatched to on the evening hours
 4 of February 21 of 2002?
 5 A. Yeah, they do.
 6 Q. State's Exhibit No. 20, does that depict the
 7 convenience store that you found this male victim at?
 8 A. It does.
 9 Q. State's Exhibit 22, does that depict some
 10 pictures of Peppertree Acres Apartments and how they
 11 appear?
 12 A. It does.
 13 MS. HARTMANN: At this time the State would
 14 offer State's 20 and 22.
 15 MR. MINICK: I have no objection, Your
 16 Honor.
 17 THE COURT: 20 and 22 are admitted.
 18 (State's Exhibit Nos. 20 and 22 received)
 19 Q. (BY MS. HARTMANN) I am showing you what's been
 20 marked for identification purposes as State's Exhibit 11,
 21 12 -- do you recognize what's depicted in those exhibits?
 22 A. I do. That's the crime scene location.
 23 Q. Do State's Exhibit 11 and 12 fairly and
 24 accurately depict the scene as you saw it back on the 21st
 25 of February?

1 A. They do.
 2 MS. HARTMANN: The State would offer
 3 State's Exhibit 11 and 12.
 4 MR. MINICK: No objection, Your Honor.
 5 THE COURT: 11 and 12 are admitted.
 6 (State's Exhibits 11-12 received.)
 7 MS. HARTMANN: With permission of the
 8 Court, may the witness step down and publish these to the
 9 jury?
 10 THE COURT: He may.
 11 Q. (BY MS. HARTMANN) I will put you on my right
 12 side so you'll be facing the court reporter. So speak up
 13 so he can hear you.
 14 A. All right.
 15 Q. We are going to start off with State's 20. And
 16 what is depicted in State's 20?
 17 A. You want me to tell you what's depicted?
 18 Q. Tell the jury what's depicted in State's 20.
 19 A. That's the Lucky Stop convenience store that's
 20 located at the corner of James and Southcrest. That's
 21 where the first victim I found was in that parking lot.
 22 Q. Was he up close to the store or in the parking
 23 lot itself?
 24 A. On the sidewalk right next to the door of the
 25 store.

1 Q. You said it looked like there were some people
 2 trying to help him?
 3 A. I think the FD was already working when I got
 4 there.
 5 Q. State's Exhibit No. 22, take a look at that.
 6 A. Okay.
 7 Q. And tell the jury what is depicted in those
 8 pictures.
 9 A. That's the Peppertree Apartments where the
 10 offense occurred.
 11 Q. When you are saying apartments, I guess it's not
 12 the traditional sense of stacked, three levels --
 13 A. No. They are more like four-plexes or something
 14 like that.
 15 Q. Okay. State's Exhibit No. 11 --
 16 A. Okay.
 17 Q. -- and State's Exhibit No. 12, tell the jury
 18 what those depict.
 19 A. Those are the areas of crime scene kind of in
 20 reverse order. This area over here is where the offense
 21 actually occurred, near the car, and this is up here
 22 where one of the witness's residence was. One of the
 23 victims ran up there.
 24 Q. Were there other police officers dispatched out
 25 to the scene or was it just you?

1 A. There are other officers.
 2 Q. Is it fair to say there were quite a number of
 3 other officers?
 4 A. By the time we got it all together, there were
 5 probably six or seven officers there.
 6 Q. Okay. Go ahead and take a seat.
 7 (Witness complies)
 8 Q. Was there an officer that was in charge of
 9 securing the scene?
 10 A. Yeah, Officer --
 11 Q. Would that be Officer Romero?
 12 A. Correct.
 13 Q. What does that mean concerning the scene?
 14 A. Well, upon arrival to a situation like that, it
 15 is important to protect all the evidence and everything
 16 that's in the vicinity and secure any witnesses that we
 17 may have. And that's what her role was basically when she
 18 arrived at the apartments. I think she beat me there by a
 19 minute or two and unaware of the victim at the store.
 20 Q. Did you ever see a second victim?
 21 A. Didn't see him, no.
 22 Q. Did you hear that there was a second victim?
 23 A. I did hear of the second victim, but like I
 24 said, I didn't make it there before they were already
 25 transported from the apartment.

1 Q. When you say "transferred," would that have been
2 by ambulance?
3 A. By ambulance, yes.
4 Q. And the young man that was there at the
5 convenience store, was he transported by ambulance?
6 A. Yes, ma'am.
7 Q. Did they both go to the hospital?
8 A. They did, separate hospitals.
9 Q. Let me ask you this: Jumping back for just a
10 moment, you said you had received information from a young
11 man at the convenience store that he'd been shot with a
12 shotgun?
13 A. Yes, ma'am.
14 Q. Is a shotgun a deadly weapon?
15 A. Yes.
16 Q. Is it capable of causing death?
17 A. Yes.
18 Q. Is it capable of causing bodily injury and
19 serious bodily injury?
20 A. Yes.
21 Q. The location that you were dispatched out to
22 there at Southcrest and James, the Peppertree Acres
23 Apartments and that convenience store, is that an area
24 located in Tarrant County, Texas?
25 A. It is.

1 MS. HARTMANN: We pass this witness, Your
2 Honor.
3 CROSS-EXAMINATION
4 BY MR. MINICK:
5 Q. Officer Noah, when you got to Lucky Stop, what
6 position was the young man in? Was he laying down,
7 standing up, sitting down?
8 A. He was laying down.
9 MR. MINICK: That's all, Your Honor.
10 MS. HARTMANN: We have nothing further.
11 THE COURT: You may step down, sir.
12 MS. HARTMANN: May the witness be excused?
13 MR. MINICK: No objection.
14 THE COURT: He may.
15 MS. HARTMANN: The State calls Officer
16 Romero.
17 Whereupon,
18 ROBERTA ROMERO,
19 having been first duly sworn, testified as follows:
20 DIRECT EXAMINATION
21 BY MS. HARTMANN:
22 Q. Officer Romero, could you introduce yourself to
23 the members of the jury?
24 A. My name is Roberta Romero.
25 Q. How are you employed?

1 A. By the department of -- Fort Worth Police
2 Department.
3 Q. How long have you been a police officer?
4 A. Five years.
5 Q. Are you a certified peace officer?
6 A. Correct.
7 Q. What is your current duty assignment?
8 A. Patrol officer.
9 Q. For what part of town?
10 A. South Fort Worth.
11 Q. Does that area contain the roads of James,
12 Crowley Road and Southcrest?
13 A. Correct.
14 Q. Directing your attention back to February 21 of
15 this year, were you so employed as a police officer and
16 working that particular part of Fort Worth?
17 A. Yes.
18 Q. At about 9:00 p.m. were you dispatched out to a
19 location off of James Avenue and Southcrest?
20 A. Yes, I was.
21 Q. On that particular night, were you alone or did
22 you have a partner?
23 A. I was alone.
24 Q. Were you in a marked police car?
25 A. Yes, I was.

1 Q. When you got out to that location, where did you
2 go?
3 A. I went to the parking lot of the Peppertree
4 Apartments.
5 Q. And when you got there, what was going on at
6 that point?
7 A. When I got there, MedStar and fire department
8 were there. We were trying to locate -- I didn't know at
9 the time there was two people shot. We were trying to
10 locate one person, which I couldn't locate him. I didn't
11 know Medstar had him already inside the truck.
12 Q. So when you got to the shooting location, one of
13 the victims were already loaded up into MedStar?
14 A. Yes.
15 Q. In the ambulance?
16 A. Yes.
17 Q. Did you understand there was a second victim at
18 a closer but separate location?
19 A. Yes, I found out later.
20 Q. What was your primary responsibility there at
21 the Peppertree Acres Apartments?
22 A. I was there for -- to help to do the crime
23 scene, put the tape on there to make sure nobody went into
24 the crime scene.
25 Q. Were you there to kind of control people that

1 live there from coming up and trying to find out what had
 2 happened and walking through the crime scene?
 3 A. Yes.
 4 Q. And you said something about putting up tape.
 5 Is that like what we see on TV?
 6 A. Yes, place tape, yellow.
 7 Q. Okay. And were you in charge of kind of
 8 monitoring the scene?
 9 A. The crime scene, yes.
 10 MS. HARTMANN: May I approach the witness?
 11 THE COURT: Yes.
 12 Q. (BY MS. HARTMANN) I am showing you what's been
 13 admitted into evidence as State's Exhibit No. 11, 12 and
 14 22. Would you take a look at those, please?
 15 A. (Witness complies)
 16 Q. Do you recognize what's depicted in those
 17 exhibits?
 18 A. Yes.
 19 Q. State's Exhibit 22, is that the Peppertree Acres
 20 Apartments that you responded to?
 21 A. Yes.
 22 Q. Obviously these pictures were taken in the day.
 23 Was it nighttime when you were there? Was it dark?
 24 A. Those pictures were.
 25 Q. When those pictures were taken, was it daytime?

1 A. Yes.
 2 Q. State's Exhibit 11 and 12, are these pictures of
 3 the crime scene?
 4 A. Yes.
 5 Q. As you observed them?
 6 A. Yes.
 7 Q. We see in some of them there is some crime scene
 8 tape. Were you responsible for putting that up?
 9 A. Yes.
 10 Q. Looking at what's been marked for identification
 11 purposes as State's Exhibit 13, 14 and 15 and ask you to
 12 take a look at those, please.
 13 A. (Witness complies)
 14 Q. Do you recognize what's depicted in State's
 15 Exhibit 13, 14 and 15?
 16 A. Yes.
 17 Q. Are they pictures of the crime scene?
 18 A. Yes.
 19 Q. Out at Peppertree Acres Apartments?
 20 A. Yes.
 21 Q. Do they fairly and accurately depict what you
 22 personally observed that night when you got out there?
 23 A. Yes.
 24 Q. State would offer State's 13, 14 and 15.
 25 MR. MINICK: No objection, Your Honor.

1 THE COURT: 13, 14 and 15 are admitted.
 2 Q. (BY MS. HARTMANN) State's Exhibit 13, for the
 3 record, what does that show?
 4 A. A shell of a shotgun.
 5 Q. A shell of a shotgun?
 6 A. Yes.
 7 Q. And there is an orange cone depicted. What's
 8 the purpose of the orange cone?
 9 A. That's to show that there is evidence there.
 10 Q. Okay. Marking of the evidence?
 11 A. Yes.
 12 Q. All right. And the casing, does it look pretty
 13 crumpled?
 14 A. Yes.
 15 Q. Does it look like it's been run over?
 16 A. Probably has.
 17 Q. State's Exhibit No. 14, for the record, what's
 18 depicted in those -- the pictures on State's 14?
 19 A. The same.
 20 Q. Is that the same shotgun shell casing?
 21 A. No.
 22 Q. Different one?
 23 A. Yes.
 24 Q. Is this one in a little bit better shape?
 25 A. Yes.

1 Q. Is it also marked by an orange cone?
 2 A. Yes.
 3 Q. Why do you put those orange cones out there to
 4 mark evidence?
 5 A. So nobody will step on them or move them.
 6 Q. Okay. State's Exhibit 15 for purposes of the
 7 record, what is depicted on that exhibit?
 8 A. That's the part of a casing of a shotgun.
 9 Q. Okay.
 10 MS. HARTMANN: Permission to publish to the
 11 jury by handing it to them?
 12 THE COURT: You may.
 13 MS. HARTMANN: The State would pass the
 14 witness.
 15 MR. MINICK: No questions, Your Honor.
 16 THE COURT: You may step down, ma'am.
 17 MS. HARTMANN: May the witness be excused?
 18 MR. MINICK: No objection from the defense.
 19 THE COURT: She may.
 20 MR. FORAN: The State calls Gerardo
 21 Moreno.
 22 Whereupon,
 23 GERARDO MORENO,
 24 having been first duly sworn, testified as follows:
 25 DIRECT EXAMINATION

1 BY MR. FORAN:

2 Q. Would you tell the jury your name.

3 A. Gerardo Moreno.

4 Q. Mr. Moreno, how old a man are you?

5 A. Excuse me?

6 Q. How old are you?

7 A. 17.

8 Q. Are you in school right now?

9 A. No.

10 Q. Are you working?

11 A. Yes.

12 Q. Where are you working?

13 A. (Inaudible)

14 Q. I want to draw your attention back to February
15 21 of this year. Okay? What were you doing in the early
16 evening hours that day?

17 A. It was at night. I was in the house and --

18 Q. Where do you live?

19 A. On South Side.

20 Q. At the Peppertree --

21 A. Yes.

22 Q. -- Apartments? Is that here in Fort Worth,
23 Tarrant --

24 A. Yes.

25 Q. -- County, Texas?

1 Q. Did you think much of hearing one shot?

2 A. No. I just heard one shot, and I thought it was
3 just normal because I was used to hearing shots in my
4 apartment. So I heard two more shots, and then I heard
5 like a car peel out.

6 Q. Did you see which car peeled out?

7 A. No. Then I went outside, and then there was
8 this Caucasian that was running around.

9 Q. Where is he going?

10 A. He was just like running around like in the
11 parking lot. Then he seen me and then he came toward me.

12 Q. What did you think when he was coming toward
13 you?

14 A. I said -- I told him to get off my porch.

15 Q. Why did you tell him to get off your porch?

16 A. Because the cops were going to be messing with
17 me.

18 Q. You didn't want to be involved?

19 A. No.

20 Q. When he wouldn't leave, what did you do?

21 A. I just tried to get him in the grass because he
22 was getting blood on the cement.

23 Q. Did he get in the grass?

24 A. Then he got on the grass. He laid there and
25 then he laid back.

1 A. Yes.

2 Q. Be sure and let me finish the question because
3 this gentleman right in front of you, he's typing down
4 everything we say. Okay?

5 That evening who was at home with you?

6 A. Just me, my brother and my mom.

7 Q. And what is your brother's name?

8 A. Ramone.

9 Q. How old is Ramone?

10 A. 13.

11 Q. 18?

12 A. 13.

13 Q. And your mom, what is her name?

14 A. Lydia.

15 Q. And that evening, did you stay in the house or
16 did you go outside?

17 A. I was outside using the phone, and then I seen
18 this little car -- this little vehicle pull up, and then
19 like five, ten minutes later, I seen this truck pull up.

20 Q. Did you stay out there the whole time?

21 A. No.

22 Q. Okay. What did you do?

23 A. Then after that I was using the phone, and then
24 I went in the house, and then I went to the restroom while
25 I was in the house, and I heard one shot.

1 Q. Did you call the police?

2 A. My mom did.

3 Q. Your mother did?

4 A. Yes.

5 Q. I want to show you what's been marked as State's
6 Exhibit No. 22. Do you recognize the pictures shown in
7 there?

8 A. I recognize the pictures.

9 Q. Is that the Peppertree Apartments?

10 A. Yes.

11 Q. That's where you lived back on February 21 of
12 this year?

13 A. Yes.

14 Q. Now, let me show you what's been marked as
15 State's Exhibit No. 11. Do you recognize the pictures
16 there?

17 A. Yes.

18 Q. Does that show your apartment, 5211?

19 A. Yes.

20 Q. The picture in the upper right corner -- who are
21 the two people standing in that picture?

22 A. My mom and my stepdad.

23 Q. Had your stepdad come home while all of this was
24 going on?

25 A. Yeah, because my mom -- she came over to see

1 what was going on, and he was already there on --
 2 Q. The yellow tape and the cone, that was put up by
 3 the police?
 4 A. Yes, sir.
 5 Q. This -- what is this in the -- on the sidewalk?
 6 A. That's where the dude -- he was running around
 7 the porch, the cement. I told him to get on the grass, so
 8 he just laid in the middle of the grass.
 9 Q. Is that where he was bleeding?
 10 A. Yeah.
 11 Q. Let me show you State's Exhibit No. 12. Do you
 12 recognize those pictures?
 13 A. Yes.
 14 Q. What are those pictures of?
 15 A. Blood --
 16 Q. Does it also show the parking lot?
 17 A. Yes.
 18 Q. This's right there at the Peppertree Apartments?
 19 A. Yes.
 20 Q. Is that the parking lot that the small car had
 21 pulled into?
 22 A. Yes.
 23 Q. And does it appear to have the same trail of
 24 blood like by your apartment?
 25 A. Yes.

1 Q. Did you talk to the police that night?
 2 A. Yes.
 3 Q. Tell them what you knew?
 4 A. Yes.
 5 Q. Other than telling the guy to get into the grass
 6 and your mother calling the police, did you have a
 7 conversation with him or did you just leave him alone?
 8 A. I was just like -- what happened and he couldn't
 9 talk. He was just like, "I got shot. I got shot."
 10 Q. Was he pretty upset?
 11 A. He was just like -- he was hurt. That's it.
 12 That's all he could say.
 13 Q. Was it a loud voice that he was telling you this
 14 in or was he kind of quiet about it?
 15 A. He was like trying to talk. He was hurting.
 16 Q. How long after your mother called the police did
 17 the police show up?
 18 A. Probably like five minutes later, something like
 19 that.
 20 Q. They were there pretty quick?
 21 A. Yeah.
 22 Q. Did you stay outside and watch them set up the
 23 crime scene and -- excuse me -- put up the tape for the
 24 crime scene and that sort of stuff?
 25 A. Well, outside when they were putting up the

1 tape?
 2 Q. Yes.
 3 A. Yes.
 4 Q. Did you see the ambulance take the victim away?
 5 A. I don't remember that.
 6 Q. Okay. Now, I want to go back just a minute to
 7 when you first heard these shots. You were inside the
 8 house?
 9 A. Yes.
 10 Q. How many shots did you hear?
 11 A. First I heard one, and then a couple of minutes
 12 later, not many, but like a couple seconds later I heard
 13 two more shots.
 14 Q. Were they spaced out?
 15 A. Were they spaced out? I don't understand.
 16 Q. Describe for me how they --
 17 A. First one I heard like "boom." And then I
 18 didn't pay attention to it or like whatever. And then I
 19 heard like two more shots, and that's when I heard like a
 20 car peeling out. That's when I knew something was going
 21 on. When I went outside, there were no cars. All I heard
 22 was the car peeling out and the dude running around.
 23 Q. Okay.
 24 MR. FORAN: Pass the witness.
 25 MR. MINICK: We have no questions, Your

1 Honor.
 2 THE COURT: You may step down, sir.
 3 MS. HARTMANN: May the witness be excused?
 4 THE COURT: He may.
 5 MS. HARTMANN: We call Michael Williams.
 6 Whereupon,
 7 MICHAEL WILLIAMS,
 8 having been first duly sworn, testified as follows:
 9 DIRECT EXAMINATION
 10 BY MS. HARTMANN:
 11 Q. Could you introduce yourself to the members of
 12 the jury?
 13 A. My name is Michael Williams. I'm 18.
 14 Q. Where do you live?
 15 A. I live off Cypress Springs on Hulen.
 16 Q. Are you in school currently?
 17 A. I started back to go to CLC this January after
 18 the semester ends to finish my high school diploma. I am
 19 lacking 2 1/2 credits from last year.
 20 Q. You said you are going back to CLC?
 21 A. Crowley Learning Center.
 22 Q. So that starts back up in January?
 23 A. Yes, ma'am.
 24 Q. Directing your attention back to February of
 25 this year, were you in school back in the spring?

- 1 A. Yes, ma'am.
- 2 Q. What school did you attend?
- 3 A. In the spring? From January to March I was in
- 4 Crowley Alternative Schools. A school for kids who got in trouble in regular school. Right before he was shot he got sent
- 5 Q. Okay.
- 6 A. From March to the rest of year I went back to there
- 7 Crowley High School.
- 8 Q. Okay. And what year or grade were you in back
- 9 in the spring?
- 10 A. I was a senior last year.
- 11 Q. Where were you living back in the spring of this
- 12 year?
- 13 A. I was living with my dad in Crowley off of
- 14 Willow Street.
- 15 Q. Off of what street?
- 16 A. Willow.
- 17 Q. Off of Willow Street?
- 18 A. Yes, ma'am.
- 19 Q. Do you know somebody named Andrew Horvath?
- 20 A. Yes, ma'am.
- 21 Q. Or Andy.
- 22 A. Yes, ma'am.
- 23 Q. Is he a friend of yours?
- 24 A. Yes, ma'am.
- 25 Q. Was he with you on February 21 of this year?

- 1 A. Yes, ma'am.
- 2 Q. I want to direct your attention to about 6:00 or
- 3 7:00 p.m. on that day. Are you with me?
- 4 A. Yes, ma'am.
- 5 Q. Did you or Andy go out to an area off of Crowley
- 6 Road that -- I guess kind of a local hangout for young
- 7 adults?
- 8 A. Yes, ma'am.
- 9 Q. Does that area have a nickname amongst --
- 10 A. I have always called it the smokehouse because
- 11 we just used to go there and smoke, basically.
- 12 Q. Can you describe what the area was like back in
- 13 February of this year?
- 14 A. It hasn't really changed all that much, but it's
- 15 basically a new housing development, and they have one
- 16 road that -- it is a corner house and it has a street
- 17 going down it, and the street's like paved maybe a quarter
- 18 of a mile and then it is about maybe half a mile unpaved
- 19 road that goes into like a little pond. It's really out
- 20 in the middle of nowhere. Nothing there really.
- 21 Q. I guess they are building some new housing out
- 22 there --
- 23 A. They haven't made the houses out there yet.
- 24 They're still just now starting to build houses.
- 25 Q. And why did you and Andy decide to go out there

- 1 that evening?
- 2 A. It was a little usual. I had rolled a blunt,
- 3 and we went out there to smoke.
- 4 Q. What is a blunt?
- 5 A. It's tobacco and pot kind of like a cigar. You
- 6 just use tobacco and pot.
- 7 Q. So it looked like --
- 8 A. A marijuana cigar, basically.
- 9 Q. A marijuana cigar?
- 10 A. Yes, ma'am.
- 11 Q. Was anybody with you and Andrew when you went
- 12 out to this particular location?
- 13 A. No. Just me and Andy.
- 14 Q. When you got out there, were you the only one
- 15 out in that area? And hence their camp successfully penetrated his camp. They had him eating
- 16 A. No, there was quite a few people out there on the
- 17 actually. Kind of surprised me. I had never seen that palm of their
- 18 many people out there. hand.
- 19 Q. About how many people were out there when you
- 20 and Andy drove up?
- 21 A. Seven to nine. There were quite a few. They
- 22 had a car -- they were riding around on a dirt trail. Not
- 23 really sure what they were doing. Probably something nefarious, or so he would appear, right?
- 24 Q. When you and Andy get out there, there's already
- 25 some other folks out there?

- 1 A. Yes. Basically doing the same thing we're
- 2 doing. Not smoking. Drinking or whatever.
- 3 Q. Were there people out there drinking alcohol?
- 4 A. Yes, ma'am.
- 5 Q. Were they people about your age?
- 6 A. Yes, ma'am.
- 7 Q. Did you or Andy talk with anybody when you were
- 8 out there?
- 9 A. Yes, ma'am. We were sitting in the car smoking,
- 10 and I'm not sure -- I don't quite remember exactly how we
- 11 initiated conversation. I think I had a lighter or --
- 12 I'm not quite exactly sure, but we somehow started
- 13 talking, and then they basically came to about -- we were
- 14 smoking pot, so we obviously knew where we could find it,
- 15 and they asked us if we could find a pound.
- 16 Q. Okay. Let me back up. Whose car were you in?
- 17 A. In Andy's car. They flipped this whole SOB on its head. Mike went from trying to be the big shot in front of
- 18 Q. Was Andy driving? Tarah & Mindy to cautiously sitting in his car, slightly annoyed.
- 19 A. Yes, ma'am. It was an old Datsun.
- 20 Q. You say they came up and initiated conversation.
- 21 When you say "they," who are you talking about?
- 22 A. Barton And Jason and that Daniel guy. I don't
- 23 remember his name. I never really knew his name. I just
- 24 refer to him as Daniel.
- 25 Q. Barton Gaines, Jason Tucker and Daniel Aranda?

1 A. Yes, ma'am. And I saw two people from school.
 2 I didn't personally know them, but I had always seen them
 3 at school.
 4 Q. Male or female?
 5 A. Female.
 6 Q. Do you know their names?
 7 A. Mindy -- I know Mindy now because she knows my
 8 friend Paul. I'm not sure of the other girl's name.
 9 Q. Is her name Tara?
 10 A. Yeah, Tara Green.
 11 Q. They were out there as well?
 12 A. Yes, ma'am.
 13 Q. Did they come up and participate -- let me
 14 finish my question. Eager to clear them, right?
 15 Did they come up and participate in the
 16 conversation that you were having with Barton and his
 17 friend?
 18 A. Briefly. Very briefly. It was basically --
 19 they were leaving, and they were going to do their own
 20 thing, I guess. He sounds unsure himself why he was doing it
 21 Q. The blunt that you had, were you and Andy
 22 smoking it?
 23 A. Yes, ma'am.
 24 Q. Did that blunt get passed over to Barton or
 25 Jason or Daniel?

1 A. I think Daniel, and I think Jason -- I don't
 2 think Bart did, actually. And he feared I'd call him on it. He
 3 Q. All right. And so while the conversation is knew only
 4 taking place, are you and Andy still inside of Andy's car the girls
 5 or had y'all gotten out? it. smoked
 6 A. No. We had gotten out and we were just standing
 7 around and talking.
 8 Q. Do you know what kind of vehicle Bart Gaines and
 9 his friends were in?
 10 A. It was a gold -- I think it was a gold and
 11 silver looking Chevy. I haven't seen very many cars like
 12 it on the road.
 13 Q. Was it a car or truck?
 14 A. A truck.
 15 Q. Who brought up the idea of you trying to locate
 16 some marijuana?
 17 A. I was asked about it, if I knew where to find
 18 any.
 19 Q. Who asked you about it?
 20 A. It was either Bart or one of the other two. I
 21 think it was Bart. I'm pretty sure it was Bart actually.
 22 Q. You have been mentioning the name Bart. Do you
 23 see anybody in the courtroom that you recognize to be the
 24 Bart that was out at the particular location that night?
 25 A. Yes, ma'am.

1 Q. Can you describe where he's located and
 2 something that he's wearing? As were Foran, Westfall, &
 3 A. He's wearing a tie and coat. He's sitting three
 4 people down to you, to your left.
 5 Q. Is he the third person or fourth person?
 6 A. The fourth person. 1. Hartmann, 2. Foran, 3. Westfall, & 4
 7 MS. HARTMANN: Your Honor, at this time may Minick. I was the fifth person.
 8 the record reflect that the witness has identified the
 9 Defendant.
 10 THE COURT: It will.
 11 Q. (BY MS. HARTMANN) So your recollection is that
 12 it was Bart that was asking you where --
 13 A. Yes, ma'am, but it is not crystal clear, you
 14 know.
 15 Q. Okay.
 16 A. From what I remember, I do believe it was him.
 17 Q. What was the request that was made, the question
 18 that was asked?
 19 A. "Do you know where to get a pound?"
 20 Q. Did you, in fact, know where you might be able
 21 to get a pound of marijuana --
 22 A. I had never bought a pound before then, but I
 23 had bought like a quarter pound, so I figured if he's got
 24 a quarter of a pound he probably can get more.
 25 Q. So what did you do about seeing if you could

1 locate -- got Paul to call his friend to call Mike's dealer.
 2 A. I used Bart's phone and tried paging the guy
 3 that I usually get weed from, and he didn't answer. So I
 4 called my friend Paul and his friend called him and then
 5 he had talked to him and he told me what was going on,
 6 that we were going to stop by there and get some weed off
 7 him basically. And he said basically just go on down
 8 there.
 9 Q. You knew where Paul was located, where he lived?
 10 A. Edgecliff Village.
 11 Q. Let me -- let me ask you this. The place where
 12 you were going to be going to buy the marijuana, where was
 13 that location?
 14 A. Off of James.
 15 Q. Is it Peppertree Acres Apartments?
 16 A. Yes, ma'am.
 17 Q. Did you tell Barton or Jason or Daniel Aranda
 18 what the address -- how they can get to where the
 19 marijuana was?
 20 A. No, ma'am. After I used his phone and after I
 21 talked to Paul, we had got in and we started driving down
 22 Crowley Road Towards 20. And Bart's truck got in front of
 23 us, so -- it's not hard to pass a 20-year-old Datsun. He
 24 got in front of us and he turned left on Sycamore and he
 25 went to a Wal-Mart.

1 Q. Let me stop you right there. You and Andy are
2 in Andy's car?

3 A. Yes, ma'am.

4 Q. And Barton is in his truck?

5 A. Yes, ma'am.

6 Q. Is Jason and Daniel with him?

7 A. Yes, ma'am.

8 Q. Where are Mindy and Tara?

9 A. They had went their own way. After I got off

10 the phone, they left and then we left right after that.

11 Q. So you said that you started driving off and --

12 A. As we were going down Crowley Road before we got
13 to Sycamore School Road they got in front of us and turned
14 left. We followed them into Wal-Mart and then stopped
15 right in front of --

16 Q. Let me stop you there. I know it's sometimes
17 close to -- we have to do this by question and answer,
18 okay?

19 A. That's fine. I'm sorry.

20 Q. That's okay.

21 Was there an agreement made before you-all
22 got into your vehicle and started driving off that he was
23 going to follow you?

24 A. Yes, ma'am.

25 Q. Okay. And did you get to where Crowley and

1 Q. So Bart Drives to the Wal-Mart on Sycamore
2 School Road?

3 A. Yes, ma'am.

4 Q. Do you follow?

5 A. Yes.

6 Q. Is Andy driving or are you driving?

7 A. Andy is driving.

8 Q. When you get to the Wal-Mart parking lot, what
9 takes place there?

10 A. Bart says he will go inside to buy beer and say
11 hi to one of his friends. We sat there and he left his
12 truck right at the door --

13 Q. Let me stop you there and ask you, did Jason and
14 Daniel get out of the truck with him?

15 A. No, ma'am. It was just Bart.

16 Q. What happened next?

17 A. Well, he -- we were stopped right in front of
18 Wal-Mart doors, and then a security guard -- like after
19 sitting there for about two or three minutes, a security
20 guard came up to us, gray-looking guy with glasses, older,
21 and he asked us to move our vehicles. So Andy and I went
22 and parked and then just kept on circling around looking
23 for Bart.

24 Q. About how long did you-all wait before Bart came
25 out of Wal-Mart?

1 Sycamore School Road intersect and at some point he gets
2 in front of you?

3 A. Yes, ma'am.

4 Q. Did he do anything with his vehicle like flash
5 his lights?

6 A. I think he flashed his lights actually. Yeah, I
7 remember him flashing his lights because Andy and I were
8 smoking on that blunt and I remember putting it out and
9 seeing a flash from the rear-view mirror.

10 Q. Did he pull in front of you?

11 A. Yes, ma'am.

12 Q. Did he lean out of the window or did you just
13 assume that he wanted you to follow him?

14 A. We assumed.

15 Q. If you had been going to go to where you are
16 going to buy the weed, would you have turned down Sycamore
17 School Road or continued driving --

18 A. Continued driving until you go past 20 until you
19 hit James. And right after James you take a left at Lucky
20 Stop --

21 Q. Would it be fair to say that the Wal-Mart on
22 Sycamore School Road would have been out of the way?

23 A. Yes, ma'am, very much so.

24 Q. A detour?

25 A. Yes, ma'am.

1 A. Not too long, five or six minutes maybe.

2 Q. You said Bart told you he was going in to get
3 beer. How did he tell you that? Was he out of his truck
4 or was he still in his truck?

5 A. Yeah. Andy rolled down his window. We were
6 asking what we were doing. We just assumed that they
7 wanted us to follow them.

8 Q. You were like, hey, what's going on? And he
9 tells you, I'm going to get some beer?

10 A. He didn't tell me. He told Andy. I didn't talk
11 to him.

12 Q. Were you in the car with Andy?

13 A. Yes, ma'am.

14 Q. Did you hear him say I'm going in to get beer?

15 A. Yes, ma'am.

16 Q. When Bart comes back out, could you see anything
17 in his hands at that point?

18 A. No, ma'am.

19 Q. Was it because he didn't have anything or
20 because there was something between you and him that
21 obstructed your view?

22 A. He didn't have any beer. It's pretty hard to
23 miss beer in your hand out of the store.

24 Q. Does he get back in his truck?

25 A. Yes, ma'am.

i.e., the parking lot was packed full of cars and they were in the back. He's probably referring to the video he seen after the fact.

Was it their phone?

1 Q. What happens at that point?
 2 A. He gets back in the truck and then he follows us
 3 down and basically we just go to the apartments and then I
 4 --
 5 Q. Let me stop you there. Did Andy get back in the
 6 lead again? i.e., we've been down this road before.
You can't say the way you really took.
 7 A. Yes, ma'am.
 8 Q. You go back in the direction that you had come?
 9 A. No. We went back towards where we were going.
 10 Basically just made -- Hartmann: You dense idiot. You can't say that!
Mike: Why can't I just tell the truth?
 11 Q. Did you trace your way back -- Sycamore School
 12 Road back to Crowley Road?
 13 A. Yes, ma'am.
 14 Q. And then proceeded on Crowley Road?
 15 A. Yes, ma'am.
 16 Q. And does Crowley Road eventually intersect with
 17 Interstate 20?
 18 A. Yes, ma'am, at the bridge.
 19 Q. Interstate 20 goes over Crowley?
 20 A. Then it turns into James.
 21 Q. Crowley Road does?
 22 A. Yes, ma'am.
 23 Q. And is it fairly close from 20 and James that
 24 Peppertree Acres Apartments are located?
 25 A. Probably about a mile and a half, not too far

1 actually.
 2 Q. When you get to the Peppertree Acres Apartments,
 3 what happens at that point?
 4 A. Well, I had talked to Bart and he said he wanted
 5 a pound. So we talked basically on the other side of the
 6 apartment complex because I didn't want anyone to know who
 7 this guy is or -- so I talked down there -- I talked to
 8 Bart before I went, and he said he wanted a pound. So I
 9 told him I could get a price and come back. And so I went
 10 and got a price and I figured out that all he had there
 11 was QP.
 12 Q. What is QP?
 13 A. A quarter pound. All he had was a quarter
 14 pound, and if I wanted a pound I would have to go to
 15 Northside.
 16 Q. Let me stop you there and back up. When you get
 17 to the Peppertree Apartments, you have a conversation with
 18 Bart, the Defendant?
 19 A. Yes, ma'am.
 20 Q. When you were talking to him at that point and
 21 you had been talking to him earlier in the evening, did he
 22 seem excessively fidgety?
 23 A. Didn't really notice anything strange about him.
 24 But then again, I was high, so I probably wouldn't be on
 25 my guard or noticing anything irregular about him.

1 Q. Do you think you would notice extreme behavior
 2 from him?
 3 A. No, he didn't -- no, he seemed like a normal
 4 person.
 5 Q. He seemed normal to you?
 6 A. He seemed normal enough to me.
 7 Q. Was he pulling on his hair?
 8 A. Not that I had seen.
 9 Q. Was he bouncing his legs?
 10 A. Not that I remember seeing.
 11 Q. Was he twitching?
 12 A. I don't remember seeing any of that. I only saw
 13 him briefly that night.
 14 Q. And your observations of him --
 15 A. Every time I saw him, I was like -- the time I
 16 remember most is when he was sitting in his truck and I
 17 was standing outside talking to him.
 18 Q. Okay.
 19 A. The only thing that stands out in my mind is
 20 that he's sitting up like straight and usually people
 21 don't sit up straight in their cars. It kind of threw me
 22 off.
 23 Q. Because he was sitting up straight?
 24 A. He was sitting forward, like leaning up.
 25 Q. All right. But he seemed pretty normal to you?

1 A. Yes, ma'am.
 2 Q. So you go to your source, and they have only got
 3 a quarter pound of marijuana?
 4 A. Yes, ma'am.
 5 Q. What do you do at that point?
 6 A. I go back to Bart's truck. I went back and
 7 forth to Bart's truck talking about prices. I went like
 8 twice maybe, and the third time I came back he started
 9 bringing up stuff like, you know -- I told him I couldn't
 10 get a pound, so they were asking me if I could just get a
 11 few ounces, and I said that's fine because I needed the
 12 money. Basically, he just kept on -- I remember he kept
 13 on asking me -- he wants to see it. All right. Let me
 14 see this and I will give you the money. I said, I don't
 15 have it. I have to get your money to go get it.
 16 Q. He wanted to see the marijuana first?
 17 A. Yes, ma'am. That's when I say that something
 18 was a little off. After he said he wanted to see it a few
 19 times, he just out of nowhere, it's like, yeah, you
 20 weren't with the cops or anything, blah, blah, blah, and
 21 he picked up my shirt and like felt down to about my waist
 22 area basically to see if he could find any weapons on me.
 23 Q. Any weapons?
 24 A. Yes, ma'am.
 25 Q. Okay.

1 A. But he said that he would -- something about a
2 wire for the police or something, and I was 17 at the
3 time.

4 Q. So this happened after you had made several
5 trips back and forth kind of in the negotiation type
6 stage?

7 A. Yes, ma'am, getting all the information from the
8 two people.

9 Q. Let me ask you this: Bart is asking you, "I
10 want this weed," or marijuana or whatever he's calling it.
11 Did he ever show you his money?

12 A. No, ma'am.

13 Q. Did you ever see any money on him?

14 A. No, ma'am.

15 Q. Did he ever pull out his wallet and say, look,
16 this is what I've got and how much will it get me?

17 A. No, ma'am.

18 Q. How many trips did you end up making back and
19 forth before he starts asking you to -- you know, pulling
20 up your shirt and wondering if you were a police officer?

21 A. Three.

22 Q. Three trips?

23 A. Yes, ma'am.

24 Q. And up until that third time, did everything
25 seem to be normal?

1 get his money first. He jumped out of his car, and I just
2 remember hearing several times, give me your wallet. And
3 then I was crowned in the head with a shotgun three times
4 maybe. I have like two visible scars on my head now.

5 Q. Slow down. Let me backtrack for a minute. Who
6 had the shotgun?

7 A. Bart.

8 Q. Where did he get it from?

9 A. When he got out of his truck, he pulled it from
10 behind him, I believe.

11 Q. Do you think that might have accounted for the
12 way he was sitting in the truck?

13 A. Yes, ma'am. That's what I believe personally.

14 Q. Because he had that shotgun wedged in the seat
15 with him?

16 A. Yes, ma'am.

17 Q. And you said that he hit you with a shotgun. Do
18 know what part of the shotgun he hit you with?

19 A. The barrel.

20 Q. And can you demonstrate how he was holding the
21 weapon?

22 A. (Witness complies)

23 Q. He had both hands on it?

24 A. Yes, ma'am, from what I remember.

25 Q. Where is Andy at this point?

1 A. It seemed to be a little bit normal, but I just
2 kind of have a feeling now that I look back like something
3 was off.

4 Q. About the situation?

5 A. Yes, ma'am.

6 Q. Okay. Had you known Bart Gaines prior to this
7 evening?

8 A. No, ma'am. I had met him that evening,
9 actually, but my friends knew him.

10 Q. But you didn't know him?

11 A. No, ma'am. Not personally.

12 Q. So after your third trip, pulling up your
13 shirt -- did he pat you down?

14 A. Yes, ma'am.

15 Q. What are his friends doing?

16 A. They're sitting beside him in the truck.

17 Q. What are you doing when he starts pulling up
18 your shirt and patting on your body?

19 A. I did like this because I had nothing to hide.
20 I figured, you know -- I should have thought more about it
21 at the time. I figured I have nothing really to hide.

22 I'm not trying to hurt anybody or trying to scam anything
23 away, so I didn't care.

24 Q. What happened next?

25 A. After he asked me to see it, I told him I had to

1 A. Andy was standing in front of the truck when I
2 went to his window and talked to him right before it
3 happened. And then as soon as Bart jumped out, the other
4 two guys went around -- one guy -- I'm not sure at this
5 point.

6 The more I think about it, these two guys,
7 the more I had it confused in my mind, like the blurrier
8 it gets. I'm not sure if it was Jason or the other guy.
9 I'm not sure who went where. One went behind Bart and the
10 other one went in front of the truck to Andy.

11 Q. When you said a moment ago there was a voice
12 saying, give me your wallet --

13 A. Yes, ma'am. That started as soon as he got out
14 of the truck. That's all I remember hearing.

15 Q. As soon as who got out of the truck?

16 A. Bart. As soon as Bart got out of his truck and
17 the other two, I also remember them saying that --

18 Q. Was it all three of them demanding your wallet?

19 A. Yes, ma'am. I think I remember Jason said, give
20 him your wallet. That's the only thing different that I
21 remember.

22 Q. Did you hear Bart say, give me your wallet?

23 A. Yes, ma'am, clearly.

24 Q. Did he say it once or more than once?

25 A. More than once.

1 Q. What kind of voice was he using?
 2 A. Demanding.
 3 Q. Can you demonstrate for the jury?
 4 A. I would rather not, actually. My throat is a
 5 little -- I have somewhat of a cold.
 6 Q. Can you try?
 7 A. Sure. "Give me your fucking wallet." basically
 8 is what I remember clearly hearing him say.
 9 Q. Did he say it in that tone of voice or was it
 10 louder?
 11 A. It was louder.
 12 Q. And when he said for you to give him your
 13 fucking wallet, what did you do?
 14 A. I emptied out my front two pockets and didn't
 15 have really anything of value on me actually. I had no
 16 money in my wallet, but I just emptied out my front two
 17 pockets while Andy was emptying out his pockets.
 18 Meanwhile, as we were emptying out our pockets, before and
 19 after that we are getting hit on.
 20 Q. So you're getting hit on --
 21 A. I was crowned and punched in the ribs. Andy
 22 got his lip busted pretty bad and got beat up pretty bad
 23 before he got shot.
 24 Q. Was it just Bart that was beating you-all up or
 25 was it his two buddies also?

1 was doing. Everyone was looking at Andy.
 2 Q. Where is Andy at this point?
 3 A. Andy is still in front of the truck.
 4 Q. Standing up, on the ground?
 5 A. On the ground -- I remember he was standing up
 6 when I looked at him, and as I was running I remember
 7 he -- I remember seeing him on the ground clearly.
 8 Q. Why did you start running?
 9 A. I was afraid. I just heard a voice in my head
 10 that said get away.
 11 Q. That shotgun that Barton hit you with and had,
 12 did that cause you to -- did you feel threatened that you
 13 could possibly have bodily injury or death?
 14 A. Sure. I had plenty of bodily injury without
 15 getting shot. I was supposed to get stitches the night I
 16 went into the hospital, but they were too concerned about
 17 the gunshot wounds to stitch up my head and they waited
 18 more than 24 hours.
 19 Q. Let me take you back to when you were running.
 20 A. Okay.
 21 Q. Andy at this point is on the ground?
 22 A. Somewhere in the process of me running is when
 23 Andy goes to the ground from what I remember.
 24 Q. What direction do you start running?
 25 A. I start running towards Lucky Stop, which

1 A. It was Bart and one of the other witnesses that
 2 physically harmed me. I am not sure which one of the
 3 other ones it was because at that point is when I lose
 4 track of who was where. Bart was right in front of me
 5 with the shotgun.
 6 Q. You say you got crowned when Bart hit you with
 7 the shotgun?
 8 A. Yes, ma'am.
 9 Q. Were you also hit in your face?
 10 A. Yes, ma'am.
 11 Q. Was that done with a fist or with a shotgun?
 12 A. Fist.
 13 Q. Do you know whose fist it was?
 14 A. No, ma'am.
 15 Q. Did you know whether it was one of the -- do you
 16 know whether it was Barton or Jason or Daniel?
 17 A. Who punched me?
 18 Q. Yes.
 19 A. No, ma'am. I'm not sure.
 20 Q. Was it one of the three?
 21 A. I know it was Bart because he started -- he --
 22 he looked over at Andy and he started moving away. And I
 23 noticed he was hitting in the side of the face. I
 24 remember after I got hit, I looked around for half a
 25 second, maybe, and no one was paying attention to what I

1 basically -- it is hard to explain.
 2 Q. Okay.
 3 A. But see like -- see that chalkboard right there
 4 is this guy's apartment. We were parked right here maybe
 5 a quarter mile away. And our trucks and cars are facing
 6 inward. And Eddie was right here. Here's the truck and I
 7 was right here. There is a New Lucky Stop right here and
 8 the road goes up like this and then here is James right
 9 here, and here is the road to James and I basically ran
 10 through those roads and got --
 11 Q. Did you run out of Peppertree Acres complex --
 12 A. Yes, ma'am.
 13 Q. -- and out onto James Street where the New Lucky
 14 Stop is?
 15 A. Yes, ma'am.
 16 Q. While you were running, did you hear or feel
 17 anything?
 18 A. While I was running, I remember trying to get
 19 to -- it was a dumpster with a wooden thing around -- a
 20 wooden fence around it. It was odd. It was catty-
 21 corner. Right before I got to it, I remember seeing it
 22 like right in front of me, and I just heard boom. And I
 23 felt like from here down, I just grabbed my arm and kept
 24 on running.
 25 Q. You indicated the part that --

1 A. It was my left shoulder from like my shoulder
 2 down to my face, I just grabbed it like this and held it.
 3 Q. It went numb?
 4 A. Yes, ma'am.
 5 Q. You said you heard a boom?
 6 A. Yes, ma'am. I heard a gunshot.
 7 Q. And you kept running?
 8 A. Yes, ma'am.
 9 Q. And you ended up there at the convenience store?
 10 A. Yes, ma'am.
 11 Q. Were you bleeding?
 12 A. Yes, ma'am. Blood was actually dripping all
 13 over my face and was dripping on the floor. From my
 14 elbow -- I didn't even realize I was shot in the back
 15 until -- I went into the New Lucky Stop and they gave me
 16 some napkins and they told me to wait outside for the
 17 police. And some lady called the police, and a black
 18 woman was comforting me and -- excuse me.
 19 Q. Okay.
 20 A. I remember waiting for the police and I was -- I
 21 didn't even know I was shot in the shoulder until I sat
 22 down and I kind of felt -- as I was sitting there feeling,
 23 sort of turning my arm and shoulder. And then I felt
 24 something dripping off my back and I didn't know what it
 25 was. And I asked the lady to pull up my shirt and she

1 told me I had been shot in the back.
 2 Q. So this lady called 911 for you and kind of
 3 stayed with you and comforted you?
 4 A. Yes, ma'am. Until the paramedics got there and
 5 the police.
 6 Q. Were you loaded up into the ambulance?
 7 A. Yes, ma'am.
 8 Q. Do you remember which hospital you were taken
 9 to?
 10 A. Har --
 11 Q. Was it Harris?
 12 A. I wanted to say Huguley because I was just
 13 treated there for my hand.
 14 Q. Was it Harris?
 15 A. Yes, ma'am.
 16 Q. Were you in some pain, a lot of pain?
 17 A. I don't know. I really wouldn't describe pain
 18 before being shot because that's like childbirth pain. It
 19 hurts.
 20 Q. Pretty bad?
 21 A. Worst pain I have known, and I have had broken
 22 bones and all kinds of things happen to me.
 23 Q. Okay. Where exactly did you have injuries?
 24 Where exactly did you --
 25 A. It entered through my elbow here and came out

1 about right here, and I blew out some tips of my elbow and
 2 fractured my elbow. I still have a bullet in my back
 3 right now. They would have taken the bullet out -- Ardy
 4 got all his bullets taken out. They wouldn't take all my
 5 bullets out because it was like actually inside the bone
 6 and they said you'd have to remove scar tissue and it
 7 would mess up my shoulder even more if I got it removed.
 8 Q. How long were you in the hospital?
 9 A. Three and a half, four days before I got out.
 10 Q. When you got out, did you have to have any type
 11 of like cast or --
 12 A. Yes, ma'am. I was in a sling for six weeks with
 13 my elbow. I had bandages to change and showering was
 14 painful, cleaning cuts and shotgun wounds is not something
 15 you want to do for six weeks straight after something like
 16 that happens to you.
 17 Q. Do you still today have -- well, let me ask you
 18 this. Have you lost anything that you had before this all
 19 happened as far as your ability to do things with that
 20 particular arm or side?
 21 A. Sure. My shoulder is still like -- did you hear
 22 the pop just now? Anyone? It does that now. It aches
 23 really bad in the cold. I have to make sure I keep my
 24 chest and upper body warm. If it gets really cold it will
 25 start swelling and it really hurts.

1 Q. What about the dexterity with your fingers?
 2 A. I am so glad it happened to my left hand. It is
 3 not -- something wrong with it because I play guitar, and
 4 music is basically my life. If I would have lost that, I
 5 don't know what I would have done.
 6 Q. Did you have some concerns at the time that you
 7 might not have feeling in your left hand?
 8 A. Sure. I heard that Andy didn't have any feeling
 9 in his hand.
 10 Q. Okay. Do you have any problems with headaches?
 11 A. Headaches come and go with the pain as it comes
 12 to my shoulder when it gets cold outside. The worst thing
 13 about it since then besides the fact of physical pain is
 14 basically just sitting in bed at night just looking up at
 15 the ceiling having nothing to think about but what
 16 happened and how things went wrong and how you wish you
 17 could have changed them. You replay in your head for the
 18 last ten months.
 19 Q. Okay.
 20 MS. HARTMANN: May I approach the witness?
 21 THE COURT: Yes.
 22 Q. (BY MS. HARTMANN) I am going to show you what's
 23 been marked for identification purposes as State's
 24 Exhibits 23 and 24 and ask you to take a look at those.
 25 Do you recognize what's depicted in each of those

1 exhibits?

2 A. Yes, ma'am.

3 Q. And does it appear to be --

4 A. That's where we were that night. That's right
5 off -- yes, ma'am. That's it.

6 Q. What was your nickname for it?

7 A. The smokehouse.

8 Q. Okay. Do State's Exhibit 23 and 24 depict the
9 smokehouse spot?

10 A. Yes, ma'am.

11 Q. Are those actual aerial photos taken from the
12 air?

13 A. Yes.

14 Q. Are you able to see this? Do you remember that
15 being out there that night?

16 A. Yes, ma'am. It been out there since I can
17 remember.

18 Q. Are you able to see, I guess, an improved road
19 that turns into a dirt road?

20 A. Yes.

21 Q. The State would offer State's Exhibit 23 and
22 24.

23 MR. MINICK: No objection, Your Honor.

24 THE COURT: 23 and 24 are admitted.

25 (State's Exhibit Nos. 23-24 received)

1 MR. MINICK: No objection, Your Honor.

2 THE COURT: 19 is admitted.

3 MS. HARTMANN: With permission of the

4 Court, may the witness step down and publish these to the
5 jury?

6 THE COURT: You may.

7 Q. (BY MS. HARTMANN) I will ask you to step down,
8 please, and I will ask you to stand to my right so that
9 you are facing the court reporter. You need to speak up.

10 And State's Exhibit No. 23, is this the --

11 A. The smokehouse spot.

12 Q. Smokehouse spot. And State's Exhibit 24, is
13 that the same --

14 A. Yes, ma'am.

15 Q. -- location?

16 A. Different picture.

17 Q. And looks like there is some housing back off to
18 the side. Was that out there at that time?

19 A. This wasn't there. This back here and this
20 building and the house right there was last I remember.

21 Q. A lot of houses that are depicted at the top
22 maybe weren't there back in February?

23 A. Yes, ma'am, a few of them.

24 Q. I want to show you State's Exhibit No. 25, and I
25 am going to ask you do you think you can name off who

1 Q. (BY MS. HARTMANN) I am showing you what's been
2 marked for identification purposes as State's Exhibit No.
3 25, ask you to take a look at that. Does that depict a
4 number of people?

5 A. Yes, ma'am.

6 Q. Do you recognize those people?

7 A. Yes, ma'am.

8 Q. And does this picture fairly and accurately
9 represent the way these people appeared back on February
10 21 of this year?

11 A. Yes, ma'am.

12 MS. HARTMANN: state would offer State's
13 Exhibit 25.

14 MR. MINICK: No objection, Your Honor.

15 THE COURT: 25 is admitted.

16 Q. (BY MS. HARTMANN) Showing you what's been
17 marked for identification purposes as State's Exhibit No.
18 19. Ask you take a look at those pictures.

19 Do you recognize those pictures?

20 A. Yes, ma'am.

21 Q. Do they fairly and accurately depict yourself
22 back on February 21 of 2002 after this offense?

23 A. Yes, ma'am.

24 MS. HARTMANN: state would offer State's
25 Exhibit 19.

1 these people are in this picture?

2 A. Yes, ma'am.

3 Q. Starting with the young lady down here at the
4 bottom in the red, who is that?

5 A. Mindy.

6 Q. That's Mindy?

7 A. Yes, ma'am.

8 Q. And the person here in the white, black and red
9 stripes, young man here?

10 A. Bart.

11 Q. These young ladies here in the gray sweatshirt.

12 A. Tara.

13 Q. The young man in the orange, is that Jason?

14 A. Yes, ma'am.

15 Q. The young man here in the Cowboys jacket?

16 A. Daniel. That's actually Andy's jacket.

17 Q. The jacket that Daniel is wearing was Andy's
18 jacket?

19 A. Yes, ma'am. After we got out of the car, we
20 were both wearing jackets, and he asked us to use one
21 because he was cold.

22 Q. Andy let him use the jacket?

23 A. Sure.

24 Q. Is this how these people appeared when you were
25 there at the smoke out place on February 21?

1 A. Yes, ma'am.
 2 Q. Was this picture actually taken when you were
 3 out there?
 4 A. Yes, ma'am.
 5 Q. Did you take the picture or did somebody else?
 6 A. I don't remember taking the picture.
 7 Q. Were there other people out there?
 8 A. Yes, ma'am. How in the hell were Mindy, Jason, &
 9 Q. Okay. Finally, State's Exhibit No. 19, are you able to convince Mike to take up
 10 those pictures of you in the hospital? After all, they did try to
 11 A. Yes, ma'am. kill him. Diplomacy & intimidation?
 12 Q. And do some of the pictures depict the wound you
 13 received when Bart hit you in the head with the shotgun?
 14 A. You can see that scar, but I still have another
 15 one right there. But it shows most of it.
 16 Q. Okay. You can take your seat.
 17 A. (Witness complies)
 18 Q. I want to show you what's marked for
 19 identification purposes as State's Exhibit No. 16 and ask
 20 you to take a look at that. Do you recognize what's
 21 depicted in State's 16?
 22 A. Yes, ma'am. Those are the apartments that we
 23 were at that night.
 24 Q. The Peppertree Acres Apartments?
 25 A. Yes, ma'am.

1 Q. Does it show the general layout?
 2 A. Yes, ma'am. We were somewhere by this car.
 3 Q. Let me stop you right there. Does it fairly and
 4 accurately look like --
 5 A. Sure. It looks like we are right there looking
 6 at it.
 7 MS. HARTMANN: State would offer State's
 8 Exhibit 16.
 9 MR. MINICK: No objection.
 10 THE COURT: 16 is admitted..
 11 MS. HARTMANN: May the witness step down
 12 and publish to the jury?
 13 THE COURT: He may.
 14 Q. (BY MS. HARTMANN) Can you point out -- is it
 15 visible in State's 16 where Andy had parked his Datsun?
 16 A. We had parked side by side, and we were
 17 somewhere around where the car was. I think we were a
 18 little bit farther down.
 19 Q. Is that silver or white?
 20 A. Yes, ma'am.
 21 Q. And you said that you-all had parked next to
 22 each other?
 23 A. Yes, ma'am.
 24 Q. So Bart pulled up right adjacent to you or a
 25 space over or --

1 A. He was to the right. A few spaces to the right.
 2 Q. Did he pull up in the next parking space or a
 3 couple of spaces down?
 4 A. I think maybe one space over.
 5 Q. So was there an empty space between you or
 6 another car?
 7 A. I am pretty sure there was an empty space. It
 8 is not really that clear to me.
 9 Q. Are you able to see the general area in which
 10 the person you were going to buy the weed from lived?
 11 A. No, ma'am.
 12 Q. Can you point to the direction in which you
 13 would have to go to get there?
 14 A. (Witness complies)
 15 Q. Back this way?
 16 A. Completely the opposite way.
 17 Q. You were telling the jury about -- let me switch
 18 sides again -- the dumpster. Do you see the dumpster that
 19 you -- is it down there where the school bus is?
 20 A. Right here.
 21 Q. Okay. Right here where my finger is?
 22 A. Yes, ma'am.
 23 Q. Step back just a second.
 24 A. Sure.
 25 Q. Is that dumpster there as you leave the

1 Peppertree Acres area?
 2 A. Yes, ma'am.
 3 Q. All right. Go ahead and take your seat. Thank
 4 you.
 5 A. (Witness complies)
 6 Q. I am showing you State's Exhibit No. 20. Do you
 7 recognize that?
 8 A. Yes, ma'am.
 9 Q. Is that the convenience store that you ran to?
 10 A. Yes, ma'am.
 11 Q. And the --
 12 A. I was seated -- after I left the New Lucky Stop,
 13 I was seated to the right of the pay phone and I just sat
 14 down on the pavement. That woman brought me a water and
 15 just sat there with me.
 16 Q. And the -- as you are looking at State's 20, the
 17 bottom right, did that show, I guess, the exit or entrance
 18 into Peppertree Acres Apartments?
 19 A. Yes, ma'am.
 20 Q. Okay.
 21 MS. HARTMANN: May I have just a moment,
 22 Your Honor?
 23 (Pause in the proceedings)
 24 Q. (BY MS. HARTMANN) Do you remember, Michael,
 25 what you pulled out of your pockets -- you said you know

1 you didn't have any money in your wallet. Did you have a
2 wallet?

3 A. Yes, ma'am.

4 Q. Did you pull a wallet out?

5 A. No, ma'am.

6 Q. What did you pull out?

7 A. I think I just had like a small bag of pot in my
8 pocket. I didn't have anything -- a card or two with some
9 phone numbers was all I had in my wallet -- or in my
10 pocket.

11 Q. Did you have a wallet on you?

12 A. Yes, ma'am.

13 Q. Did you pull it out?

14 A. No, ma'am.

15 Q. Why?

16 A. Before I could pull it out there was too much
17 traffic, and I got away before I had to give my wallet
18 up.

19 Q. Did Andy pull anything out of his pocket?

20 A. Yes, ma'am. Andy pulled out a lot of things.
21 He pulled out, like, some scales, his wallet, a bag. He
22 had quite a few things in his pockets.

23 Q. What is he doing with these things he's pulling
24 out of his pocket?

25 A. I wasn't looking at him when he was doing it.

1 Actually I knew what was in his pockets.

2 Q. Okay.

3 A. We had been hanging out with each other all
4 night.

5 Q. Okay.

6 A. He was behind me when that was happening, and I
7 didn't get to see -- I'm not sure what he did with them.

8 Q. Okay.

9 MS. HARTMANN: Pass the witness, Your
10 Honor.

11 THE COURT: Ladies and gentlemen of the
12 jury, let's take our morning stretch break. Please retire
13 to the jury room. And while you're back there, remember
14 and follow your instructions.

15 THE COURT: Are both sides ready for the
16 jury?

17 MS. HARTMANN: State's ready, Your Honor.
18 (Jury present)

19 CROSS-EXAMINATION

20 BY MR. WESTFALL:

21 Q. Mr. Williams, I am Greg Westfall.

22 A. Nice to meet you.

23 Q. What happened to your right hand? Did you break
24 your finger?

25 A. I have got a boxer's fracture. It is this bone

1 right here in your hand and it is fractured.

2 Q. Boxer's fracture. Could you pull that mike just
3 a little bit closer?

4 A. Is that better?

5 Q. Yes. When did that happen?

6 A. About -- it was the 16th of last month.

7 Q. Now, this shotgun that got pulled out of the
8 truck --

9 A. Yes, sir.

10 Q. -- are you absolutely certain that it was
11 sitting on the seat of the truck?

12 A. There is no really way I could have actually
13 seen through Barton and saw through the other guy sitting
14 on the bench to see the gun. But from what I remember,
15 when he stepped out of the truck, he pulled it from behind
16 him, behind the seat. It might have been in between the
17 crack or it might have been in the crevice of the seat and
18 all sitting upright. I'm not sure. You'd have to ask
19 them. I really wouldn't know.

20 Q. Do you remember exactly what you told the
21 police? The time you added to your affidavit the identification
(fabricated the date).

22 A. I have talked to the police several times. What
23 time would you be referring to?

24 Q. The time when you told them where the gun was.

25 Do you remember exactly where you told them where it was?

1 A. What I remember is, I remember it being in the
2 crevice. That's what I personally believe happened.

3 MR. WESTFALL: Your Honor, may I approach?

4 THE COURT: Yes.

5 Q. (BY MR. WESTFALL) I am showing you your
6 statement that you gave to the police on the 23rd of
7 February of this year. I have underlined a little part.
8 Could you take a look at that?

9 A. Sure. The more I thought about it and went
10 back, the more blurry it gets to me. I was almost certain
11 right after it happened that Jason was behind Bart. More
12 that I have thought about that --

13 Q. Hold on one second. You told the police that
14 the gun was under the seat, didn't you?

15 A. Yes, sir.

16 Q. Tell me again what that blunt is.

17 A. It is a marijuana cigar.

18 Q. And you and Andrew Horvath were smoking a blunt
19 down at the smoking place -- or the smokehouse?

20 A. Smokehouse spot, yes, sir.

21 Q. Marijuana has a distinctive smell. You can tell
22 the difference between marijuana and like a cigarette or a
23 pipe. Isn't that true?

24 A. Yes, sir.

25 Q. And when you are -- when you're down there, the

1 smokehouse pond smoking this blunt, these people that are
 2 there that are in that photograph, they know that you-all
 3 are smoking a blunt?
 4 A. True. A few of them did it.
 5 Q. Yeah. One or more of them came up and shared
 6 the blunt with you-all? And that was the closest West-
 7 A. True. fall every got to ever questioning
 8 Q. You have done, I guess, these sort of drug their story.
 9 transactions before?
 10 A. Well --
 11 Q. Gotten drugs for somebody else --
 12 A. I had actually never done this particularly
 13 before. What I used to do personally, my friend and I
 14 would go in on a quarter pound and then we would run
 15 around to all our friends for about two days straight and
 16 get rid of every last piece of marijuana that we had.
 17 Q. Have you ever had anybody think that you were an
 18 undercover cop?
 19 A. No, sir, not that I'm aware of.
 20 MR. MINICK: That's all, Your Honor.
 21 Thank you. Take care of yourself.
 22 MS. HARTMANN: The State has nothing
 23 further.
 24 THE COURT: You may step down, sir.
 25 MS. HARTMANN: May this witness be excused?

1 THE COURT: He may.
 2 MR. FORAN: We call Andrew Horvath.
 3 Whereupon,
 4 ANDREW HORVATH,
 5 having been first duly sworn, testified as follows:
 6 DIRECT EXAMINATION
 7 BY MR. FORAN:
 8 Q. Tell the jury your name.
 9 A. My name is Andrew Horvath.
 10 Q. How old are you?
 11 A. I'm 17.
 12 Q. And do you live here in Fort Worth?
 13 A. I live in Fort Worth but over by Crowley.
 14 Q. Okay. Did your mother come with you today?
 15 A. Yes.
 16 Q. Did you know the gentleman that just left the
 17 courtroom?
 18 A. Yes.
 19 Q. Who was that?
 20 A. Mike Williams.
 21 Q. Is he a friend of yours?
 22 A. Yes.
 23 Q. How long have you been friends?
 24 A. Not that long. Maybe a year or so now.
 25 Q. Okay. When -- I want to draw your attention

1 back to February 21 of this year. Were you and Michael
 2 together?
 3 A. Yes.
 4 Q. Why don't you adjust that microphone a little
 5 bit because these people over here have to hear everything
 6 you're saying. And be sure to give spoken answers because
 7 the gentleman in front of you is taking town everything
 8 you are saying. Okay?
 9 A. Yes, sir.
 10 Q. Now, on February 21 how long would you have
 11 known Michael approximately?
 12 A. Maybe two months, about that.
 13 Q. Were you in school at that time?
 14 A. Yes.
 15 Q. What year were you in?
 16 A. I was a junior that year.
 17 Q. So you are senior this year?
 18 A. Yes.
 19 Q. And had you been together with Michael most of
 20 the day?
 21 A. Most of the day I had.
 22 Q. Had you gone to school that day?
 23 A. I think -- okay. I don't remember if it was a
 24 school day or weekend.
 25 Q. Okay.

1 A. I'm not sure about that. But I was with him
 2 most of the day, just like hanging out with people.
 3 Q. Do you remember about what time the two of you
 4 got together?
 5 A. About 4:00 or 5:00 --
 6 Q. Did you and Michael go anywhere together that
 7 evening?
 8 A. Yes.
 9 Q. Where did you guys go to?
 10 A. We went out to a field out in Crowley.
 11 Q. Who was driving?
 12 A. I was.
 13 Q. What kind of car do you drive?
 14 A. Brown 1977 Datsun.
 15 Q. Is that an automobile or a truck?
 16 A. It is a car.
 17 Q. Was anybody with you?
 18 A. Just Mike and me.
 19 Q. And you were driving?
 20 A. Yes.
 21 Q. And this place that you went to, do y'all call
 22 it anything?
 23 A. I didn't -- I haven't been there very many
 24 times.
 25 Q. But --

1 A. I didn't know what it was called or that it had
 2 a name.
 3 Q. Just someplace you would go to?
 4 A. Yeah.
 5 Q. When you arrived there, were there any people
 6 there?
 7 A. Yes, there were five people there.
 8 Q. Were they all men, all women?
 9 A. No. There was three guys and two girls.
 10 Q. Did you know anybody?
 11 A. I didn't know any of them except Mike.
 12 Q. When you got there, did you stay inside of your
 13 car or did you get out?
 14 A. I got out and just hung out there for a while.
 15 Q. What were you guys doing?
 16 A. We were rolling a blunt.
 17 Q. Were y'all smoking it?
 18 A. Yes.
 19 Q. And did you share it with anybody?
 20 A. We smoked it, and whoever wanted to share it got
 21 a hit, but --
 22 Q. When you say they got a hit --
 23 A. They got to smoke some.
 24 Q. Be sure to let me finish any question because he
 25 can't take down both of us at the same time.

1 you go from there?
 2 A. We weren't -- from there we were driving off to
 3 Mike's friend's house.
 4 Q. Was Mike giving the directions?
 5 A. Yes.
 6 Q. Where is the truck?
 7 A. The truck is following us.
 8 Q. What road are you on?
 9 A. Crowley Road.
 10 Q. Are you going north or south on Crowley?
 11 A. Going away from Crowley. I'm not sure but I
 12 think south.
 13 Q. Are you headed back toward Fort Worth?
 14 A. Yes. Towards Edgecliff.
 15 Q. Is that by 820 or Highway 20?
 16 A. I think Highway 20 crosses Edgecliff.
 17 Q. Okay. Did you get to Edgecliff or did you stop?
 18 A. No -- well, we went to Wal-Mart before we went
 19 to -- got to Edgecliff.
 20 Q. Why did you go to Wal-Mart?
 21 A. They pulled up next to us and said follow us to
 22 Wal-Mart. I want to get some more beer.
 23 Q. Who said that?
 24 A. The guys that were driving -- Bart.
 25 Q. Bart? Got to be specific, right, despite memory.

1 A. I'm sorry.
 2 Q. So you were sharing with Michael; is that right?
 3 A. Yes.
 4 Q. And then some of these other people also shared
 5 it with you?
 6 A. I don't think so, no. I don't think they
 7 actually smoked any of it. Foran trying hard to bend his testimony, right?
 8 Q. You don't recall them doing it? And that was the extent of Mike & Andy's communication on that issue. They couldn't get any closer to the same
 9 A. I don't think they smoked any of it.
 10 Q. Was anyone drinking out there?
 11 A. Yes.
 12 Q. Who was drinking?
 13 A. The three guys were drinking and mudding,
 14 driving out in the field. page.
 15 Q. Were the girls drinking?
 16 A. I don't -- no, they weren't drinking.
 17 Q. Did you stay there for a while?
 18 A. For a little while, yes.
 19 Q. Did you guys eventually leave?
 20 A. Yes.
 21 Q. Who left?
 22 A. Me and Mike left in my car, and the three guys
 23 left in a silver truck. And I didn't see where the two
 24 girls left. We left first.
 25 Q. When you were driving out of there, where did

1 A. Yeah.
 2 Q. Now, were some pictures taken out there that
 3 evening?
 4 A. Yes.
 5 Q. Do you recall who took the pictures?
 6 A. I don't know who was taking the pictures.
 7 Q. Let me back up a minute. When you were at the
 8 smokeout place, were y'all wearing jackets?
 9 A. I was wearing a jacket and I think most of us
 10 were.
 11 Q. Was it pretty cool out that evening?
 12 A. It was chilly.
 13 Q. Did you have an extra jacket with you?
 14 A. Some extra jackets in my car.
 15 Q. Did anyone borrow a jacket?
 16 A. Yes.
 17 Q. Who borrowed a jacket?
 18 A. The Mexican guy. I'm not sure --
 19 Q. You hadn't met those guys before?
 20 A. I hadn't met them.
 21 Q. Let me show you what's been marked as State's
 22 Exhibit 23 and 24. Do you recognize the area shown in
 23 there, these aerial pictures?
 24 A. Yeah.
 25 Q. Is that a yes?

- 1 A. Yes.
- 2 Q. Is that the area you guys were smoking at?
- 3 A. Yes.
- 4 Q. While you were out there, some pictures were
- 5 taken -- let me show you what's been marked as Exhibit 25.
- 6 Do you recognize those pictures?
- 7 A. Yes.
- 8 Q. Does that show the three men and the two girls
- 9 that you met?
- 10 A. Yes.
- 11 Q. This individual here on the left is wearing a
- 12 jacket -- a blue jacket? This was their stumbling
- 13 A. Yes. block. Andy. Andy's jacket.
- 14 Q. You're right, I guess. Is that your jacket?
- 15 A. Yes. I let him borrow the jacket.
- 16 Q. And the -- after you guys got back into the car,
- 17 did you -- and you drove to Wal-Mart. How long were you
- 18 at Wal-Mart?
- 19 A. 15, 20 minutes, not that long.
- 20 Q. Did you stay right up by the door or did you
- 21 park?
- 22 A. We started out -- we stayed up by the door at
- 23 first and then the security guard told us if we were going
- 24 to be there for another few minutes, we had to park our
- 25 cars someplace else.

- 1 Q. Did you park the car --
- 2 A. I moved my car back to the end of the parking
- 3 lot and the silver truck pulled up a few minutes later.
- 4 Q. Now, the truck -- did the -- all the people stay
- 5 in the truck or did some of them get out?
- 6 A. The driver got out and went inside to Wal-Mart,
- 7 but the other two people stayed in.
- 8 Q. Did you see the driver come back out?
- 9 A. No.
- 10 Q. The person that you know as the driver you
- 11 referred to him as Bart earlier, do you see that person in
- 12 the courtroom today?
- 13 A. I don't have my glasses on. I can't really see
- 14 very well.
- 15 Q. You didn't bring your glasses with you?
- 16 A. I forgot them.
- 17 Q. Okay.
- 18 MR. FORAN: Well, I tell you what. May I
- 19 have the witness step down?
- 20 THE COURT: You may.
- 21 Q. (BY MR. FORAN) How bad is your eyesight?
- 22 A. I can see people, but I can't tell details on
- 23 the face.
- 24 Q. At this distance can you?
- 25 A. I can see --

- 1 Q. Can you see everyone at these two tables now?
- 2 A. Yes.
- 3 Q. Do you recognize anybody at these two tables
- 4 from that evening?
- 5 A. I think that's Bart.
- 6 Q. You are pointing --
- 7 A. Which person?
- 8 Q. Next to the officer.
- 9 A. The guy next to the officer?
- 10 Q. Okay. Why don't you have a seat.
- 11 Andrew, when they came to the -- when the
- 12 people pulled up back next to you in the parking lot, was
- 13 everyone back in the truck?
- 14 A. Yes.
- 15 Q. What did you do from there?
- 16 A. He came to the car and got in and let's go. So
- 17 Mike started giving me more directions back over to the --
- 18 they started following us again back to the neighborhood
- 19 that we were originally going to.
- 20 Q. Did you get back on Crowley Road?
- 21 A. Yes. Why's he got to lead him around like a bull with a ring in his
- 22 nose for helping facilitate a drug deal, right?
- 23 Q. Before we go any further, had Mike explained to
- 24 you why you were going to go see this friend of his?
- 25 A. He said he was going to get him -- doing them a
- favor. I was thinking, okay, he's going to get him a dime

- 1 or something or a small amount of marijuana.
- 2 Q. When you originally left the smokeout place, did
- 3 you know that?
- 4 A. I had no clue what we were doing and I learned
- 5 that we were going to get him something at Wal-Mart in the
- 6 parking lot. I didn't know what was going on until up to
- 7 that point that there was going to be -- that he was going
- 8 to get him anything.
- 9 Q. But you knew at that point --
- 10 A. I thought we were going to get like just a
- 11 little bit.
- 12 Q. But you went ahead and drove him over down
- 13 Crowley Road to where it turns into James Street; is that
- 14 right? And he led him around like a bull with a ring
- 15 A. Yes. in his nose.
- 16 Q. Did y'all go into some apartments there?
- 17 A. I stayed in my car and Mike got out and said,
- 18 all right. I'll be right back.
- 19 Q. While you were sitting in your car, where was
- 20 the truck?
- 21 A. Truck was to my left.
- 22 Q. Okay. So were y'all waiting for Mike?
- 23 A. Yes.
- 24 Q. Does Mike eventually come back?
- 25 A. Mike comes back and goes to the truck, and then

1 he goes back in and comes back out. And then he -- he
 2 comes back to the truck and lifts up his shirt because
 3 they are yelling at him or something. I come over and try
 4 and see what's going on --
 5 Q. Hold on. When he finally comes back, they end
 6 up lifting up his shirt and they're yelling at him.
 7 A. Yes.
 8 Q. So you get out of the car?
 9 A. I get out of the car and walk over there and see
 10 what's going on.
 11 Q. Where do you walk to?
 12 A. I walk around the front of the truck and over to
 13 the driver's side.
 14 Q. Could you see what's going on then?
 15 A. No. I just see that they are yelling at him,
 16 and I lift up my shirt because they are yelling at me now
 17 too.
 18 Q. Are these people still in the vehicle?
 19 A. Right now they are.
 20 Q. Do they stay in the vehicle?
 21 A. They get out when I come over there.
 22 Q. And do they all come talk to you or do they all
 23 talk to Mike?
 24 A. No, they -- Bart and the guy that was sitting in
 25 the middle, they get out -- the only two people I see was

1 doing most of this. Jason Tucker was the guy sitting in
 2 the middle hit me in the face.
 3 Q. Now, all of these guys that get out, are they
 4 all yelling?
 5 A. Yes. I didn't really see --
 6 Q. You are not sure where he was at?
 7 A. I'm not sure where he was at. I am not sure
 8 where he was at.
 9 Q. The person you know as Bart -- let me have you
 10 look at State's Exhibit 25. Which one is he in State's
 11 Exhibit No. 25?
 12 A. That's Bart.
 13 Q. You are pointing to the --
 14 A. The guy in the red, black and white.
 15 Q. Okay. Now, who is Jason?
 16 A. The guy in the orange.
 17 Q. In the orange shirt?
 18 A. Yes.
 19 Q. Okay. Bart is talking to Mike?
 20 A. Mike.
 21 Q. Or yelling at Mike. This guy is yelling at you?
 22 A. Punches me in the face and knocks me down.
 23 Q. Okay. Are they yelling at you for any
 24 particular reason?
 25 A. They are saying, give me your wallet.

1 Q. Do you give them your wallet?
 2 A. Yes, I give them my wallet.
 3 Q. Did you feel like you had any choice?
 4 A. They pointed a shotgun at me, so I gave them my
 5 wallet.
 6 Q. Did you feel threatened at that time?
 7 A. Yes.
 8 Q. What did you think was going to happen?
 9 A. I was hoping I wouldn't get shot, but I really
 10 had no clue what was going on.
 11 Q. Okay. Do you hear other voices yelling?
 12 A. I kind of hear Bart yelling at Mike and see over
 13 Jason's shoulder hitting him with the barrel of the gun.
 14 Q. Is he standing in front of Mike hitting him with
 15 the barrel of the shotgun?
 16 A. Yeah, Michael kind of pushed him up against the
 17 truck.
 18 Q. Where is he hitting him with the shotgun?
 19 A. Just in the head.
 20 Q. Then what happens?
 21 A. Then I don't really see anything because he --
 22 Bart comes over and points the gun at me and goes to get
 23 his wallet.
 24 Q. He tells them to get your wallet?
 25 A. Yes.

1 Q. What do they say?
 2 A. I have already gotten it.
 3 Q. Who says that?
 4 A. Jason. He says I have already got it.
 5 Q. Then what happened?
 6 A. Then they get back from the truck and pull out.
 7 Q. Now, before they pull out, are you still
 8 standing up?
 9 A. No. I am still lying down. I'm trying not to
 10 appear threatened.
 11 Q. Now, how are you trying not to appear
 12 threatened?
 13 A. Raising my arm up like that, just saying, don't
 14 shoot me. I'm not violent.
 15 Q. Where is Mike?
 16 A. I think Mike had ran off after he got hit on the
 17 head.
 18 Q. You didn't see him run off?
 19 A. I didn't see him actually run off, but he wasn't
 20 there after they moved out of the way and get back in the
 21 truck.
 22 Q. What happened next?
 23 A. They pulled out and they shoot me.
 24 Q. When you say "they shoot you" --
 25 A. I didn't see the gun actually pointed at me. It

1 was just pointed out the window of the truck and I just --
 2 the driver's side -- on my side basically. He pulled out
 3 like the -- the driver's side was right there.
 4 Q. The driver's side was closest to you?
 5 A. Was closest to me and the window was down. Then
 6 they shoot me and drive off and chase after Mike. And I'm
 7 just standing around with my jacket.
 8 Q. After you had been shot -- the only person you
 9 saw with a shotgun that evening, was that Bart?
 10 A. That was Bart.
 11 Q. After you had been shot, what did you do?
 12 A. I kind of staggered around and pulled off my
 13 jacket and started yelling for help and somebody to help
 14 me.
 15 Q. Did anybody help you?
 16 A. The guy across the street, he was on an ankle
 17 monitor and he said, hey, I can't come over and help you.
 18 Come over here and I will call 911. So I walked across
 19 the street and --
 20 Q. Let me show you what's been marked as State's
 21 Exhibit No. 12. Do you recognize that area that's shown
 22 in there?
 23 A. Yeah -- yes.
 24 Q. Is that your jacket on the ground?
 25 A. Yes.

1 Q. Can you see your vehicle anywhere in there?
 2 A. Yes, right there.
 3 Q. Is it the one at the end of the road?
 4 A. No, it is that first one right there.
 5 Q. Okay.
 6 A. Yeah, I guess --
 7 MR. FORAN: Can I have the witness step
 8 down?
 9 THE COURT: Yes.
 10 Q. (BY MR. FORAN) Why don't you step down here.
 11 A. (Witness complies)
 12 Q. Why don't you point to which car is yours.
 13 A. That one.
 14 Q. And to these jurors over here?
 15 A. The brown one right there with the rust spot
 16 right there.
 17 Q. Okay.
 18 A. The brown one.
 19 Q. And the jacket on the sidewalk?
 20 A. Right. That's my jacket.
 21 Q. And the blood, that's from you?
 22 A. Yes.
 23 Q. Okay. State's Exhibit No. 11, do you recognize
 24 that?
 25 A. Yeah.

1 Q. Is that the apartment you went to?
 2 A. I think so.
 3 Q. You are not sure?
 4 A. If it was across the street from that --
 5 Q. Okay. Why don't you have a seat.
 6 Andrew, when you got over to that apartment
 7 and were talking to that guy, what did you tell him?
 8 A. Huh?
 9 Q. What did you tell him when you got over there?
 10 Did you ask him for anything?
 11 A. I asked him to call the police. I didn't really
 12 remember talking to him that much.
 13 Q. What did he tell you?
 14 A. He asked me to move off his sidewalk and onto
 15 the grass.
 16 Q. Why was that?
 17 A. Because I was leaving a bloodstain on the
 18 sidewalk there.
 19 Q. Do you know whether he ever called the police
 20 or --
 21 A. The ambulance came, so someone did.
 22 Q. And then the ambulance took you to JPS?
 23 A. After stopping at the New Lucky Stop. They
 24 stopped there. I didn't know what for. And then they
 25 drove me to JPS.

1 Q. Okay. Now, when you were first talking to the
 2 police, you didn't tell them about going to help these
 3 guys buy any drugs, did you?
 4 A. No.
 5 Q. That came out later?
 6 A. Yes.
 7 Q. When you got to the hospital, can you tell the
 8 jury where you were shot?
 9 A. I was shot in my right arm right up here.
 10 Q. How many times?
 11 A. Five in and out bullet holes. I have a total of
 12 14 bullet holes in and out, and I still have two bullets
 13 in my arm until about around the end of the summer.
 14 Q. Did it damage any bones?
 15 A. It fractured my elbow.
 16 Q. Are you indicating your elbow?
 17 A. Right below my elbow. And I had nerve damage
 18 and I still can't feel right here in my thumb.
 19 Q. Are you getting therapy?
 20 A. I got finished with my therapy.
 21 Q. Has that helped much?
 22 A. It helped quite a bit. I wasn't able to lift my
 23 wrist at all before the therapy.
 24 Q. Do they expect you to regain feeling of your
 25 thumb and your --

1 A. The back of my hand.
 2 Q. The back of your hand?
 3 A. No.
 4 Q. Okay. Let me show you what's been marked as
 5 State's Exhibit No. 18. Do you recognize that?
 6 A. Yes.
 7 Q. Is that you?
 8 A. Yes.
 9 Q. Is that after your treatment?
 10 A. Yes.
 11 Q. Okay.
 12 MR. FORAN: Your Honor, we tender State's
 13 Exhibit No. 18.
 14 MR. MINICK: No objection.
 15 THE COURT: State's Exhibit 18 is admitted.
 16 MR. FORAN: May I publish it by handling it
 17 to the jury?
 18 THE COURT: Yes.
 19 Q. (BY MR. FORAN) Now, did you hear any of the
 20 other shots or just the one shot?
 21 A. I just heard one shot. I wasn't really thinking
 22 very clearly after the one shot that got me.
 23 Q. Okay.
 24 MR. FORAN: We pass the witness.
 25 CROSS-EXAMINATION

1 BY MR. WESTFALL:
 2 Q. Mr. Horvath, I'm Greg Westfall. The shotgun
 3 shot that hit you, is it all located in your shoulder --
 4 A. It is all right here.
 5 Q. In your upper arm?
 6 A. In my upper arm. I had a bullet hole right
 7 there, but other than that one it is just from here up.
 8 Q. So all of the damage was done to your arm?
 9 A. Yes.
 10 Q. Did you -- prior to this night, did you know any
 11 of the guys in that photograph?
 12 A. No.
 13 MR. WESTFALL: Your Honor, may I approach
 14 the witness?
 15 THE COURT: Yes.
 16 Q. (BY MR. WESTFALL) These folks here in this
 17 picture, you didn't know any of these guys?
 18 A. No, I didn't.
 19 Q. So you have -- after this night learned the
 20 names of these people?
 21 A. Yes.
 22 Q. And did you -- when you are at the apartments
 23 over there, did you see who actually lifted Michael's
 24 shirt?
 25 A. I didn't -- I saw Mike kind of lifted his

1 shirt. They were yelling at him to lift up his shirt.
 2 Q. Did you hear who exactly was yelling at him to
 3 lift up his shirt?
 4 A. No, not exactly.
 5 Q. So when you say they were doing that, you heard
 6 a voice yelling, but you can't really can't tell the jury
 7 who?
 8 A. I heard somebody from the car yelling to lift up
 9 your shirt.
 10 MR. WESTFALL: Thank you. No further
 11 questions, Your Honor.
 12 REDIRECT EXAMINATION
 13 BY MR. FORAN:
 14 Q. Mr. Horvath, where was Mike standing when this
 15 person was yelling at him to lift up his shirt?
 16 A. Right at the window of the driver's side door.
 17 Q. Who was driving?
 18 A. Barton Gaines.
 19 Q. When you were asked about did you know any of
 20 these guys beforehand, you didn't know any of them, right?
 21 A. Right.
 22 Q. Were they acting strangely?
 23 A. Not really. They were drinking, so if they were
 24 I kind of -- they were drinking so --
 25 Q. Do you remember them acting --

1 A. I didn't remember them acting strange at all.
 2 Q. Did the driver, Mr. Gaines, was he acting angry?
 3 A. No.
 4 Q. Upset?
 5 A. He didn't -- he didn't seem in a bad mood or
 6 anything.
 7 Q. He didn't have any uncontrollable --
 8 MR. WESTFALL: Object to the leading, Your
 9 Honor.
 10 THE COURT: Overruled.
 11 Q. (BY MR. FORAN) Did he have any uncontrollable
 12 twitching?
 13 A. Not that I noticed.
 14 Q. Was he pulling at his hair?
 15 A. I really wasn't talking to him very much.
 16 Q. If, in fact, he was exhibiting any behavior like
 17 that, do you think you might have noticed?
 18 A. Probably not. I wasn't really thinking I needed
 19 to watch these guys carefully. I was just hanging out.
 20 Q. So there was nothing in their behavior that made
 21 you concerned?
 22 A. I wasn't tense --
 23 Q. Those injuries that you have, did they leave
 24 some scarring?
 25 A. Yes.

1 Q. Could you roll up your sleeve and show it to the
 2 jury?
 3 A. (Witness complies)
 4 Q. Can you step down, please?
 5 A. (Witness complies)
 6 Q. Okay. And walk down here. On the top part of
 7 your biceps you have three scars; is that right?
 8 A. Yes.
 9 Q. Plus another scar here in the crook of your
 10 elbow?
 11 A. Here.
 12 Q. And if you could turn to the back so you don't
 13 have to twist it over -- there are some of the other
 14 scars; is that correct?
 15 A. Yes.
 16 Q. That's all as a result of being shot that
 17 evening.
 18 A. Yes.
 19 Q. Thank you.
 20 MR. FORAN: No further questions.
 21 MR. WESTFALL: No further questions, Your
 22 Honor.
 23 THE COURT: You may step down, sir.
 24 MS. HARTMANN: May the witness be excused?
 25 MR. WESTFALL: No objection.

1 they keep. I keep specific cases that I have worked.
 2 Q. What area do your responsibilities and duties
 3 cover as far as in the Texas area?
 4 A. I have seven stores in this area, in Fort Worth
 5 and then the surrounding area. Basically just going into
 6 the stores and do my job.
 7 Q. What particular Wal-Mart stores here in Fort
 8 Worth do you supervise?
 9 A. The Hulen store, the McCart store, one on Cherry
 10 Lane. I guess that one is considered White Settlement,
 11 Lake Worth.
 12 Q. The store off of McCart, is that the
 13 intersection of McCart and Sycamore School Road?
 14 A. Yes.
 15 Q. Did I ask you to review some items prior to
 16 coming to court to testify?
 17 A. Basically what was faxed to me is what I looked
 18 at, and I also went back to the store and recovered the
 19 videotape to refresh my memory. I had seen it prior but
 20 that was it.
 21 Q. And the information that was faxed over to you,
 22 what did that information concern?
 23 A. Basically the detail tape of the transaction
 24 that was made that night.
 25 Q. And the transaction -- information you were

1 MS. HARTMANN: May we approach?
 2 (Off the record conference at the bench)
 3 (Pause in the proceedings)
 4 MR. FORAN: Your Honor, the State would
 5 call Mary Rivas as a witness.
 6 (Witness Sworn)
 7 Whereupon,
 8 **MARY ALICE RIVAS,**
 9 having been first duly sworn, testified as follows:
 10 DIRECT EXAMINATION
 11 BY MS. HARTMANN:
 12 Q. Would you state your name for the record.
 13 A. Mary Alice Rivas.
 14 Q. How are you employed?
 15 A. I'm employed with Wal-Mart.
 16 Q. What particular job do you have with Wal-Mart?
 17 A. I am assistant loss prevention supervisor.
 18 Q. What are your duties and responsibilities?
 19 A. Basically anything that has to do with losses
 20 from the stores, whether internal theft, external theft,
 21 anything that would pertain to loss by theft, I get
 22 involved with.
 23 Q. Are you the custodian of records for the
 24 Wal-Mart stores here in this area?
 25 A. Each store has its own individual tape logs that

1 specifically looking at, what was the date of that
 2 transaction?
 3 A. Can I look?
 4 Q. Sure. You need that to refresh your memory?
 5 A. Yes. 2-21-02.
 6 Q. Of this year?
 7 A. Yes.
 8 Q. Do you have information that details that
 9 transaction, which store it took place?
 10 A. Yes. 2978, which is the McCart store.
 11 Q. Is that the one off of McCart and Sycamore
 12 School Road?
 13 A. Yes, it is.
 14 Q. Does the transaction information indicate
 15 what -- in what part of what department of Wal-Mart that
 16 transaction took place in?
 17 A. Register number would be 78, and that is located
 18 in sporting goods.
 19 Q. Is -- let me ask you this. Did Wal-Mart sell
 20 ammunition for shotguns?
 21 A. Yes.
 22 Q. Did they sell slugs?
 23 A. Yes.
 24 Q. Shotgun slugs.
 25 Did they sell double-aught buckshot?

1 A. Yes.
 2 Q. Can you tell from the transaction information
 3 that you have before you -- can you identify what
 4 specifically was purchased?
 5 A. Yes. It says right here.
 6 Q. How can you tell? Is there a code?
 7 A. There is a bar code that was scanned. When you
 8 go to the register, there is a bar code and it indicates
 9 that on the receipt.
 10 Q. For the particular transaction I asked you to
 11 focus on, can you tell what specifically was purchased?
 12 A. A 12-gauge buck for \$3.94, a 12-gauge slug for
 13 2.64.
 14 Q. When you say 2.64, is that \$2.64?
 15 A. Yes.
 16 Q. And the other number was \$3.94?
 17 A. Yes.
 18 Q. Does it also give a time for that transaction?
 19 A. 2036.
 20 Q. Is that military time?
 21 A. Yes, which would be 8:36, I believe.
 22 Q. P.m.?
 23 A. Yes.
 24 Q. Is that yes?
 25 A. Yes.

1 THE COURT: Yes.
 2 Q. (BY MS. HARTMANN) Ms. Rivas, are there copies
 3 of the transaction you have been testifying about? Were
 4 there copies made of the original, I guess, Wal-Mart
 5 security videotape?
 6 A. Yes, there was.
 7 Q. To give to the police department?
 8 A. Yes.
 9 Q. And any other agencies that were involved in any
 10 subsequent investigations?
 11 A. Yes. We kept a copy at the store level.
 12 Q. And you said yourself that's what you reviewed?
 13 A. Yes.
 14 MS. HARTMANN: Your Honor, at this time
 15 State would offer State's 34.
 16 MR. MINICK: No objection.
 17 THE COURT: 34 is admitted.
 18 MS. HARTMANN: We ask that it be published
 19 to the jury.
 20 THE COURT: It may.
 21 (State's Exhibit No. 34 published to
 22 the jury)
 23 Q. (BY MS. HARTMANN) Ms. Rivas, you said that you
 24 had a chance to review that videotape. Do you recognize
 25 the employee in there?

1 Q. Okay. You said that you had a chance to look at
 2 the video that is associated with that particular
 3 transaction that I just asked you questions about.
 4 A. Yes.
 5 Q. How is it that Wal-Mart -- strike that. Let me
 6 ask you this. Does Wal-Mart have video cameras for that
 7 store?
 8 A. Yes.
 9 Q. Is it one of those types of cameras that focuses
 10 on one area or different parts of the store or how does
 11 that work?
 12 A. Our cameras are basically stationary.
 13 Q. Okay. Is there a camera located at the entrance
 14 and exits?
 15 A. Yes.
 16 Q. At the Wal-Mart at Sycamore School Road and
 17 McCart?
 18 A. Yes.
 19 Q. Is there a camera that's located -- that capture
 20 transactions that take place in the sporting goods
 21 department?
 22 A. Yes.
 23 Q. At that particular Wal-Mart?
 24 A. Yes.
 25 MS. HARTMANN: May I approach the witness?

1 A. Yes.
 2 Q. Is that act Aftab Ahmed?
 3 A. Yes.
 4 Q. And the principle portion of that tape shows Mr.
 5 Ahmed helping a customer that's wearing a white colored
 6 top?
 7 A. Yes.
 8 Q. A young man?
 9 A. Yes.
 10 Q. Does it appear that that young man at some point
 11 goes behind the counter to help the Wal-Mart employee
 12 locate what he's looking for specifically?
 13 A. Yes.
 14 Q. The transaction in which the individual in the
 15 video is purchasing ammunition, were you able to pull the
 16 tape for that transaction?
 17 A. Yes.
 18 Q. And did you bring a copy of it with you here
 19 today?
 20 A. A copy of the tape?
 21 Q. The transaction.
 22 A. Yes.
 23 MS. HARTMANN: May I approach?
 24 THE COURT: Yes.
 25 Q. (BY MS. HARTMANN) I am showing you what's been

1 marked for identification purposes as State's Exhibit No.
 2 35. Do you recognize that?
 3 A. Yes.
 4 Q. Is that a copy of the transaction relevant to
 5 the videotape that we have just seen?
 6 A. Yes, it is.
 7 Q. Did you -- there is some, I guess, Wal-Mart
 8 pricing stickers. Did you put those on?
 9 A. Yes, I did.
 10 Q. Why did you do that?
 11 A. To note specifically what those items were.
 12 Q. The bar coding?
 13 A. Yes, that's the numbering that we go by.
 14 MS. HARTMANN: The State would offer
 15 State's 35.
 16 MR. MINICK: No objection.
 17 THE COURT: 35 is admitted.
 18 Q. (BY MS. HARTMANN) Does State's Exhibit 35, does
 19 that discuss whether any beer was purchased?
 20 A. No.
 21 Q. Was there anything other than ammunition for a
 22 12-gauge shotgun purchased?
 23 A. Just those two items.
 24 MS. HARTMANN: Pass the witness.
 25 MR. MINICK: No questions, Your Honor.

1 Q. Would you tell the jury your name.
 2 A. Weldon Wallles.
 3 Q. How are you employed?
 4 A. Police officer for the City of Fort Worth.
 5 Q. What is your current assignment?
 6 A. I work in the crime scene investigation unit.
 7 Q. How long have you worked for City of Fort Worth?
 8 A. Since 1986.
 9 Q. How long have you worked for crime scene?
 10 A. Since about 1989.
 11 Q. Prior to today on February 21, 2002, were you
 12 dispatched to investigate a crime scene?
 13 A. Yes, sir.
 14 Q. Where were you dispatched to?
 15 A. 5217 Southcrest Court.
 16 Q. Is that location here in Fort Worth, Tarrant
 17 County, Texas?
 18 A. Yes, sir.
 19 Q. When you arrived there, did you speak to the
 20 officers on the scene?
 21 A. Yes, sir.
 22 Q. After speaking with the officers, did you then
 23 survey the scene?
 24 A. Yes, sir.
 25 Q. Would you describe for the jury what you did in

1 THE COURT: You may step down, ma'am.
 2 Ladies and gentlemen, we will break for
 3 lunch at this point. We'll break for an hour until 1:00
 4 o'clock. Please meet the bailiffs outside the courtroom
 5 doors before 1:00 o'clock and please remember to follow
 6 your instructions. Have a good lunch.
 7 MS. HARTMANN: Your Honor, may the witness
 8 be excused?
 9 THE COURT: She may.
 10 MS. HARTMANN: Thank you.
 11 (Jury not present)
 12 (Recess for lunch)
 13 (Afternoon session:)
 14 (Jury not present)
 15 THE COURT: Defense ready?
 16 MR. MINICK: Defense is ready, Your Honor.
 17 (Jury Present)
 18 THE COURT: Good afternoon, ladies and
 19 gentlemen.
 20 (Witness Sworn)
 21 Whereupon,
 22 WELDON WALLEES,
 23 having been first duly sworn, testified as follows:
 24 DIRECT EXAMINATION
 25 BY MR. FORAN:

1 your investigation initially?
 2 A. Initially I met with the officers and spoke with
 3 them about the type of call it was, and then I made
 4 observations of the scene, took some notes, some
 5 photographs and later collected some evidence.
 6 Q. Did you also prepare a sketch?
 7 A. Yes, sir.
 8 Q. From that sketch did you later make a diagram in
 9 preparation for your testimony today?
 10 A. Yes, sir.
 11 Q. In addition to making these observations, you
 12 mentioned you took some photographs?
 13 A. Yes, sir.
 14 Q. Why did you take the photographs?
 15 A. To be able to relay the scene later so persons
 16 could understand what was there.
 17 Q. Let me show you what's been marked as State's
 18 Exhibits 1 through 15. Have you had an opportunity to
 19 review these exhibits?
 20 A. Yes, sir, I have.
 21 Q. Are these photographs of the crime scene as it
 22 existed back on February 21, 2002?
 23 A. Yes, sir.
 24 Q. Do they fairly and accurately depict the
 25 evidence displayed in those photographs as you observed

1 them back on February 21, 2002?

2 A. Yes, sir.

3 MR. FORAN: Your Honor, at this time we'd
4 tender State's Exhibits 1 through 10 and move their
5 admission.

6 MR. WESTFALL: No objection, Your Honor.

7 THE COURT: No. 1 through 10 are admitted.

8 (State's Exhibit Nos. 1-10 received)

9 Q. (BY MR. FORAN) After taking the photographs,
10 did you then start collecting items of evidence?

11 A. Yes, sir.

12 Q. Did you find pieces of evidence that related to
13 a firearm?

14 A. Yes, sir.

15 Q. What sort of evidence did you find?

16 A. Firearms evidence relating to shotgun shells
17 and shotguns.

18 Q. How many items did you find that related to a
19 shotgun?

20 A. Approximately six items.

21 Q. Did you find any plastic shot cups?

22 A. Yes, sir.

23 Q. How many of those did you find?

24 A. Three.

25 Q. Did you collect those items?

1 Q. Let me show you what's been previously marked as
2 State's Exhibits 26-A and 26 and Exhibit 28 and 28-A as
3 well as 29 and 29-A. Do you recognize those items?

4 A. Yes, sir.

5 Q. Exhibits 26-A, 28-A, 29-A, are those the
6 evidence envelopes that you were talking about?

7 A. Yes, sir.

8 Q. Now, when you placed those in the envelopes, did
9 you just place them free and not inside any sort of
10 container?

11 A. Yes, sir.

12 Q. Today for court did we place the items that were
13 in those envelopes in a plastic bag and relabel them?

14 A. Yes, sir.

15 Q. Okay. Now, the marking -- the preprinted labels
16 on the front, are those something that you put on there?

17 A. Yes, sir.

18 Q. Does each case that you work have a unique
19 service number?

20 A. Yes, sir.

21 Q. And what was that service number in this case?

22 A. 02132262.

23 Q. Okay. In addition to placing the service
24 number, do you put the offense number and victim if you
25 know it?

1 A. Yes.

2 Q. Did you find my fired shotgun shells?

3 A. Yes, sir.

4 Q. How many of those?

5 A. Two.

6 Q. Did you find any other items that relate to
7 shotgun shells?

8 A. Yes, sir.

9 Q. What was that?

10 A. It was a red piece of circular plastic.

11 Q. What did you do with those items after
12 photographing there at the scene?

13 A. They were collected and later submitted to our
14 property room.

15 Q. Could you describe for the jury the process in
16 which you go about collecting these items and what you do
17 with them?

18 A. First I photograph the items and collect them
19 and place them in evidence envelopes. Those envelopes are
20 then sent to our property room which is a secure
21 facility. The items are held there until further testing
22 or they are needed for court.

23 Q. Now, with regard to your Item No. 1 and No. 2
24 were those the shot cups?

25 A. Yes, sir.

1 A. Yes, sir.

2 Q. And you put something additional on there. Is
3 it a photograph or digital photograph of the items
4 collected?

5 A. Yes, sir.

6 Q. And then Exhibits 26 was inside 26-A, 28, 28-A
7 and 29, 29-A; is that right?

8 A. That's correct.

9 Q. Other than being inside these plastic bags, are
10 they in substantially the same condition as they were when
11 you collected them back on February 21 of 2002?

12 A. Yes, sir.

13 MR. FORAN: At this time we'd offer 26-A,
14 28-A and 29-A for the record only and 26, 28, 29 for all
15 purposes.

16 MR. MINICK: No objection, Your Honor.

17 THE COURT: 26, 28, and 29-A are admitted
18 for the record, 26, 28 and 29 for all purposes.

19 (State's Exhibit Nos. 26, 28, 29 received)

20 Q. (BY MR. FORAN) Now, you also mentioned that
21 you had recovered several fired shotgun shells; is that
22 right?

23 A. Yes, sir.

24 Q. Let me show you what's been marked as Exhibit
25 27-A and 30-A as well as the contents, 27 and 30. Do you

1 recognize those items?

2 A. Yes.

3 Q. Do these envelopes in 27-A and 30-A also contain
4 the same unique service number as well as offense number,
5 location and the digital pictures?

6 A. Yes, sir.

7 Q. Do you also sign these or in some way mark these
8 to show that it was you that handled them?

9 A. Yes, sir.

10 Q. What are your initials that you put on them?

11 A. W or ww.

12 Q. For Weldon Walles or Walles?

13 A. Yes, sir.

14 Q. And Exhibits 27 and 30 we removed from the
15 envelopes today and placed them inside of a plastic
16 baggie; is that right?

17 A. Yes, sir.

18 Q. And other than placing them in the plastic
19 baggie, are they still **substantially in the same condition**
20 they were when you collected them on February 21, 2002?

21 A. Yes, sir.

22 MR. FORAN: Your Honor, at this time we'd
23 offer 27-A and 30-A for the record and 27 and 30 for all
24 purposes.

25 MR. MINICK: No objection, Your Honor.

1 record; 31 for all purposes.

2 (State's Exhibit 31 received)

3 Q. (BY MR. FORAN) We also talked about a diagram
4 that you had prepared earlier. Do you recognize what's
5 contained in State's Exhibit No. 27?

6 A. Yes, sir.

7 Q. Is it a diagram that you prepared?

8 A. Yes, sir.

9 Q. It is not to scale, is it?

10 A. No, sir.

11 Q. And would it aid you in explaining the evidence
12 that you collected?

13 A. Yes, sir.

14 Q. In addition, you put a ledger on there
15 enumerating all the items that you collected as well as
16 some digital photos?

17 A. Yes, sir.

18 Q. And next to it you placed small blue dots?

19 A. Yes, sir.

20 Q. And those dots relate to the State's exhibits
21 that we just talked about?

22 A. That's correct.

23 MR. FORAN: We'd move to admission of
24 State's Exhibit No. 17.

25 MR. MINICK: No objection, Your Honor.

1 THE COURT: 27-A and 30-A for the record
2 and 27 and 30 for all purposes.

3 (State's Exhibit Nos. 27 and 30 received)

4 Q. (BY MR. FORAN) **Exhibit 31 and Exhibit 31-A, is**
5 **that your Item No. 13?**

6 A. Yes, sir.

7 Q. What is that?

8 A. That's the **round piece of red plastic** that I
9 collected from the street.

10 Q. Is that usually associated with a **shotgun shell?**

11 A. Yes, sir.

12 Q. 31-A, again, is the evidence envelope?

13 A. Yes, sir.

14 Q. Same unique service number, your initials --

15 A. Yes, sir.

16 Q. And 31, other than being placed in a plastic
17 envelope, is it in the same condition as when you observed
18 it back on February 21, 2002?

19 A. Yes, sir.

20 Q. In fact, you can see your initials ww on the --

21 A. Yes, sir.

22 MR. FORAN: Offer 31-A for the record only;
23 31 for all purposes.

24 MR. MINICK: No objection.

25 THE COURT: 31-A is admitted for the

1 THE COURT: state's Exhibit 17 is admitted.

2 (State's Exhibit 17 received)

3 Q. (BY MR. FORAN) All right. Weldon, why don't
4 you step down and we'll talk a little bit about the
5 exhibits that you collected.

6 Now, I'll tell you what -- sorry. I'll go
7 ahead and hold the poster. And beginning with the
8 photographs, would you relate them to the diagram that you
9 prepared for trial today and first by identifying the
10 exhibit you are talking about and what it contains?

11 A. Okay. This State's Exhibit No. 1 is a
12 photograph depicting a pocket knife located on a street
13 area. It would be No. 4 on the diagram.

14 State's Exhibit No. 2 is a photograph
15 depicting a light stanchion that's also on the street. It
16 would be No. 3 in the diagram.

17 State's Exhibit No. 3 is a photograph
18 depicting a shot cup, be No. 2 on the diagram.

19 Q. What does a shot cup do?

20 A. It basically holds the pellets which are in the
21 shotgun shell.

22 State's Exhibit No. 4 is a photograph
23 depicting a set of scales, small pocket scales, which
24 would be No. 5 on the diagram.

25 Q. And that's used for weighing something?

1 A. Yes, sir.

2 State's Exhibit No. 5 is a photograph
3 depicting a small Carmex lip balm container, which is also
4 located on the street.

5 State's Exhibit No. 6 is two photographs.
6 The first photograph is exhibiting a blue jacket on the
7 street -- sorry -- on the west side of the parking lot,
8 and the other photograph is a photograph depicting
9 evidence in Item No. 8 to be the small items which were
10 located on the west side of the parking lot off of here.

11 State's Exhibit No. 7, two photographs
12 depicting Item No. 1 on the diagram. The first photograph
13 is a photograph showing the general location of where the
14 object was located, and the second photograph is a
15 photograph depicting close-ups of Item No. 1 which is a
16 shot cup.

17 State's Exhibit No. 8 is a photograph
18 depicting Items No. 10 and 11 in the photograph, two fired
19 shotgun shells.

20 State's Exhibit No. 9 is a general
21 photograph showing items 3 and 4 in the diagram.

22 State's Exhibit No. 10, two photographs.
23 The first photograph is a general view of where Item No.
24 9, a shot cup, was located in the parking lot underneath a
25 car, and the second photograph is a close-up of where the

1 lot, No. 13.

2 Q. Okay. Let me hand you what's been marked as
3 State's Exhibits -- of course -- 26 and 29 and ask you to
4 relate those -- first of all, what they are and relate
5 them to your diagram.

6 A. State's 26 and 29 are the shot cups that I
7 mentioned earlier. State's Exhibit 29 would be Item 2,
8 which would be located on this part of the diagram; and
9 State's Exhibit 26 is Item No. 9, which would be located
10 on this part of the diagram.

11 Q. Let me show you Item No. 28. Is that the other
12 shot cup?

13 A. Yes, sir. State's Exhibit 28 is Item No. 1 in
14 the diagram, to be located at the lower part of the
15 diagram.

16 Q. And Exhibits 27 and 30.

17 A. State's Exhibit 27 is a shotgun shell which
18 relates to No. 10 on the diagram, this portion of the
19 diagram. And State's Exhibit No. 30 relates to No. 11
20 here on the top portion of the diagram also.

21 Q. You can have a seat.

22 A. (Witness complies)

23 Q. Now, you have investigated a lot of crime
24 scenes?

25 A. Yes, sir.

1 shot cup was located under the car.

2 Q. So you have at least three shot cups; is that
3 correct?

4 A. Yes.

5 Q. And you only found two fired shells?

6 A. Yes, sir.

7 Q. Is it possible the other shell remained in the
8 weapon?

9 A. Yes, sir.

10 Q. Now, beginning with State's Exhibit No. 13, what
11 do those depict?

12 A. State's Exhibit No. 13 is two photographs. The
13 first photograph is a general photograph depicting Item
14 No. 10 in the diagram; and the second photograph is a
15 close-up of that item.

16 Q. Now, in State's Exhibit No. 13, Item 10 is kind
17 of battered. Is that a fair description?

18 A. Yes, sir. Okay. State's Exhibit No. 14, two
19 photographs depicting Item No. 11 in the photograph.
20 First photograph -- I mean, in the diagram. First
21 photograph is a general view of that item; and the second
22 photograph is a close-up of that item.

23 Q. Let me hand you your Item No. 13 and State's
24 Exhibit No. 31. Where was that located in the diagram?

25 A. It was located in this portion of the parking

1 Q. Is a gun in your experience a firearm?

2 A. Yes, sir.

3 Q. Is it a deadly weapon?

4 A. Yes, sir.

5 Q. Is the use of double-aught buck -- first of all,
6 there's different types of shells that can be used in a
7 shotgun; is that right?

8 A. Yes, sir.

9 Q. Same as bird shot?

10 A. Yes, sir.

11 Q. And it goes on up to buckshot as well as slugs?

12 A. Yes, sir.

13 Q. If you use buckshot when shooting a person, is
14 that capable of killing someone?

15 A. Yes, sir.

16 Q. Or slugs?

17 A. Yes, sir.

18 Q. While you were out there at the scene, you
19 recovered two shotgun shells and shot cups, right?

20 A. Yes, sir.

21 Q. Did you ever recover any weapon at the scene
22 that was associated with the rifle to your knowledge?

23 A. No, sir.

24 MR. FORAN: Pass the witness.

25 MR. MINICK: No questions.

1 THE COURT: You may step down, sir.
 2 MR. FORAN: Your Honor, may this officer be
 3 excused?
 4 THE COURT: He may.
 5 MR. FORAN: We'd call Officer Gass.
 6 Whereupon,
 7 PATRICK GASS,
 8 having been first duly sworn, testified as follows:
 9 DIRECT EXAMINATION
 10 BY MR. FORAN:
 11 Q. Would you tell the jury your name?
 12 A. Patrick Gass.
 13 Q. How are you employed?
 14 A. I am an officer with the Fort Worth Police
 15 Department.
 16 Q. How long have you been a peace officer?
 17 A. 17 years.
 18 Q. How long have you been with Fort Worth?
 19 A. 12 years.
 20 Q. And what is your current assignment with the
 21 Fort Worth Police Department?
 22 A. I am assigned to the crime scene search unit.
 23 Q. How long have you been a crime scene officer?
 24 A. A little over five years.
 25 Q. Okay. Now, I want to draw your attention to a

1 Q. Okay. What kind of firearm did you find?
 2 A. An SKS rifle.
 3 Q. What is that?
 4 A. It is a military-style rifle, what you would
 5 call an assault rifle.
 6 Q. In this version, is it a semi-automatic?
 7 A. I believe so. I don't know. I didn't check for
 8 that.
 9 Q. Was this weapon loaded when you found it?
 10 A. Yes, it was.
 11 Q. Okay. Did you recover any ammunition from it?
 12 A. Yes. To clarify, there was a live round in the
 13 magazine, and there were some other live rounds not in the
 14 magazine.
 15 Q. Okay.
 16 A. There was not a round in the chamber of the
 17 weapon.
 18 Q. Okay.
 19 A. So the magazine was loaded.
 20 Q. Now, this is a rifle. It's not a shotgun; is
 21 that right?
 22 A. That's right.
 23 Q. Did you recover any ammunition for a shotgun?
 24 A. Yes, I did.
 25 Q. What did you recover?

1 search that you conducted on February 28, 2002. Do you
 2 recall that?
 3 A. Yes, sir.
 4 Q. And were you directed to search a pickup truck?
 5 A. Yes, I was.
 6 Q. Okay. And did that investigation have a
 7 particular offense number assigned to it?
 8 A. Yes, it does.
 9 Q. What number was that?
 10 A. It was 02132262.
 11 Q. What sort of vehicle was that?
 12 A. It was a gray 2000 Chevrolet pickup truck.
 13 Q. Did it have the license plate still attached to
 14 it?
 15 A. Yes. 4 King William George 64.
 16 Q. What did you do when you went to conduct that
 17 search?
 18 A. I was dispatched to the Fort Worth PD auto
 19 pound, and when I arrived there I met with Detective Smith
 20 and we went to the secured bay where the vehicle was
 21 locked up and she directed me to photograph the vehicle.
 22 And we conducted the search and collected some evidence.
 23 Q. Okay. Now, among the evidence you collected,
 24 did you find any firearms?
 25 A. Yes, I did.

1 A. One live 12-gauge slug shot shell.
 2 Q. A slug is different than a buckshot, is it not?
 3 A. Yes.
 4 Q. What's the difference?
 5 A. A slug is one large projectile, and it fires out
 6 of a shotgun similar to a rifle. It is normally used for
 7 like deer hunting as opposed to buckshot or shots used for
 8 other types of things which would be several smaller
 9 projectiles contained.
 10 Q. A slug is going to be just one shot -- if I were
 11 to fire at a target there will be just one shot?
 12 A. Right.
 13 Q. If I were using double-aught buck, there would
 14 be multiple wounds or multiple entries if I were firing at
 15 it?
 16 A. It would be multiple projectiles, yes.
 17 Q. Depending on how far away I was, the spread?
 18 A. Right.
 19 Q. Let me show you what's been previously marked as
 20 State's Exhibit No. 32. Do you recognize that?
 21 A. Yes, I do.
 22 Q. And is that where you placed the ammunition or
 23 ammo that you found in the vehicle?
 24 A. Right. That would have contained evidence items
 25 2, 3, 4, 5 and 6.

1 Q. Okay. And what are your evidence items 2, 3, 5,
2 4 and 6?

3 A. No. 2 was a live cartridge which came from the
4 magazine. That was the Winchester 762539, and then 3, 4
5 and 5 are the same thing, the Winchester live cartridge,
6 the same caliber and No. 6 was the live shotgun shell.

7 Q. Okay. Now, let me show you what's been marked
8 as State's Exhibit 32-A through E. Okay?

9 A. Okay.

10 Q. When you placed these items in there, did you
11 put them in separate small plastic bags?

12 A. Yes.

13 Q. Did you label them, each item?

14 A. Yes. They'll have a number on them.

15 Q. Let me hand you 32-A through 32-E.

16 A. Okay.

17 Q. And ask you if you recognize what's contained in
18 those baggies -- or in those exhibits.

19 A. Yes, I do.

20 Q. Are those the items that you removed on February
21 28, 2002?

22 A. Yes, they are.

23 Q. This is under the direction of Detective Smith?

24 A. That's right.

25 Q. Other than being in those plastic bags -- they

1 Q. (BY MR. FORAN) Let me show you what's been
2 marked as State's Exhibit 35. Do you recognize that?

3 A. Yes. That's the pickup truck.

4 Q. Does that accurately reflect how it looked from
5 the front vantage and back vantage point as you observed
6 it on February 28 of 2002?

7 A. Yeah. It is the same pickup truck. When I
8 observed it, it was in the secured bay.

9 Q. It has the same license number?

10 A. That's right. No. 4 King William George 64.

11 MR. FORAN: Your Honor, we tender State's
12 Exhibit No. 35 and move its admission.

13 MR. MINICK: No objection, Your Honor.

14 Q. (BY MR. FORAN) Let's do this again. I've
15 previously shown you State's Exhibit No. 35, which we
16 labeled as State's Exhibit 37. Is that the same photo we
17 have been talking about?

18 A. Yes.

19 MR. FORAN: We'd offer State's Exhibit 37.

20 MR. MINICK: No objection, Your Honor.

21 THE COURT: 37 is admitted.

22 Q. (BY MR. FORAN) Let me show you what's been
23 marked as State's Exhibit No. 36-A.

24 Do you recognize State's Exhibit No. 36?

25 A. Yes.

1 have also been processed, I guess -- they have got the red
2 crime lab tape on them?

3 A. Yes -- yes.

4 Q. Okay. Does that indicate to you that it has
5 gone up to the crime lab?

6 A. That's correct.

7 Q. Okay.

8 A. And it's got their initials.

9 MR. FORAN: Your Honor, at this time we'd
10 offer 32-A through 32-E.

11 MR. MINICK: The ammunition.

12 MR. WESTFALL: Your Honor, may I approach
13 for just one second?

14 THE COURT: You may.

15 MR. WESTFALL: Is that 32-A through E in
16 your hand?

17 MR. FORAN: Right.

18 MR. MINICK: No objection.

19 THE COURT: 32-A through E are admitted.

20 MR. FORAN: And we'd offer Exhibit 32 for
21 the record only.

22 MR. MINICK: No objection.

23 THE COURT: 32 is admitted for the record
24 only.

25 (State's Exhibit No. 32 received)

1 Q. How is it that you recognize that?

2 A. Right now I believe it is in the package that I
3 submitted with my signature and my markings. Do you want
4 me to take it out of the package?

5 Q. First of all, the markings that you have there
6 across the top, are those your initials?

7 A. Yes. Those are my initials and my department
8 number and department ID number, and then my writing on
9 the evidence transfer stamp that we put on the package
10 that --

11 Q. Do y'all also put the same unique service number
12 on there?

13 A. Right. The same service number and what's
14 contained in the package.

15 Q. And that's State's Exhibit No. 36-A?

16 A. Yes.

17 Q. What did you use that package for?

18 A. This package was used to contain all the
19 firearms or ballistics ammunition evidence I collected
20 from the --

21 Q. As well as the F heads?

22 A. Right, firearm.

23 Q. Do you recognize the weapon contained in State's
24 Exhibit No. 36-A?

25 A. I will need to take it out.

1 Q. Okay. Officer, if you could check and make sure
2 that it is not loaded.

3 A. Yes, it is clear. It has my initials inside.

4 Q. And I guess somebody has fingerprinted it since
5 then; is that correct?

6 A. Yes, it appears so.

7 Q. Other than the fingerprinting, does it look to
8 be in the same condition as it was when you collected it
9 on February 28, 2002?

10 A. Yes.

11 MR. FORAN: Your Honor, at this time we'd
12 move the admission of State's Exhibit No. 36-A for the
13 record only and State's Exhibit 36 for all purposes.

14 MR. WESTFALL: No objection.

15 THE COURT: 36-A is admitted for the
16 record; 36 for all purposes.

17 MR. FORAN: If I could have the witness
18 step down.

19 THE COURT: You may.

20 (State's Exhibit No. 36 received)

21 Q. (BY MR. FORAN) First of all, let me hand you
22 32-A through E. Could you explain to the jury what each
23 exhibit is and where you collected it from. Do you need
24 your report?

25 Let me get that.

1 tool box, the rifle.

2 D was my Evidence Item No. 5, another live
3 cartridge, 762 by 39 from the tool box, underneath that
4 rifle. And 32-E was my Evidence Item No. 6 which is the
5 live shot shell, a federal 12-gauge slug.

6 Q. And the last one, 32-E, you would fire that from
7 a 12-gauge shotgun; is that correct?

8 A. Right.

9 MR. FORAN: Pass the witness.

10 **CROSS-EXAMINATION**

11 BY MR. WESTFALL:

12 Q. Officer Gass, do you have any way of knowing who
13 actually owns that gun?

14 A. I don't know.

15 Q. Is that something that you-all -- I guess it is
16 something y'all try to find out. But in this case, did
17 you try to find out who owns the gun, if the gun is
18 registered to somebody? And why not?

19 A. No, that's not something crime scene would be
20 responsible for.

21 MR. MINICK: Thank you. That's all we
22 have.

23 MR. FORAN: May this witness be excused?

24 THE COURT: He may. You may step down,
25 please.

1 A. Did you want me to start with 1?

2 Q. Yes.

3 A. That -- this was my Evidence Item No. 1, which
4 is the SKS and I collected that from the tool box that was
5 found in the bed of the gray Chevrolet pickup truck, from
6 this chrome tool box.

7 32-A was my No. 3, which was a live
8 cartridge 762 by 39 which was collected from the tool box
9 underneath the rifle.

10 Q. Okay.

11 A. 32-B is my Evidence Item No. 2, which is a live
12 cartridge 762 by 39 collected from the magazine --

13 Q. Which portion is the magazine?

14 A. This is the magazine.

15 Q. Can you remove that and then load it back into
16 the weapon?

17 A. I'm not sure exactly how the SKS -- I believe
18 that's a permanently attached magazine. I am not sure how
19 it loads.

20 Q. That's how you removed it from --

21 A. I removed this, yes, from the magazine. This
22 was first up. It was the only round in the magazine.

23 Q. Okay.

24 A. And then 32-C is my Evidence Item No. 4, which
25 was another live cartridge 762 by 39. That was from the

1 MS. HARTMANN: The State calls Detective
2 Smith.

3 Whereupon,

4 **—CHARLOTTE SMITH,**

5 having been first duly sworn, testified as follows:

6 **DIRECT EXAMINATION**

7 BY MS. HARTMANN:

8 Q. Would you introduce yourself to the members of
9 the jury, please.

10 A. I'm Detective Charlotte Smith with the Fort
11 Worth Police Department.

12 Q. What are your specific duties with the Fort
13 Worth Police Department?

14 A. I am presently assigned to the violent personal
15 crime section, sexual assault division.

16 Q. Back in February of this year, were you assigned
17 to that same unit or a different unit?

18 A. I was assigned to the south criminal
19 investigations division.

20 Q. Are you currently a certified peace officer?

21 A. I am.

22 Q. When you were assigned to the south criminal
23 investigation division back in February, what were your
24 duties with that particular division?

25 A. Investigating most of the crime happening in the

1 A. No, ma'am.
 2 Q. Are you working?
 3 A. No, ma'am.
 4 Q. Are you kind of in transition?
 5 A. Yeah.
 6 Q. All right. Are you finished with high school?
 7 A. Yes, ma'am.
 8 Q. Did you graduate?
 9 A. Uh-huh -- I mean yes.
 10 Q. That's okay. What school did you graduate from?
 11 A. Crowley High School.
 12 Q. Did you graduate from that school this past
 13 year?
 14 A. Yes.
 15 Q. The past spring?
 16 A. Yes.
 17 Q. Do you live here in Tarrant County?
 18 A. Yeah.
 19 Q. Okay. I want to ask you if you know an
 20 individual by the name of Barton Gaines.
 21 A. Yes.
 22 Q. How do you know Bart?
 23 A. Through my friend, and I used to be good friends
 24 with him.
 25 Q. You used to be good friends with Bart?

1 A. She's one of my good friends.
 2 Q. Did she also know Bart?
 3 A. Yes.
 4 Q. Directing your attention specifically to
 5 February 21 of this year, were you and Tara and another
 6 young lady by the name of Cody Morris out and about
 7 together?
 8 A. Yes.
 9 Q. Did y'all have school that day?
 10 A. Yes.
 11 Q. So after school did y'all get together?
 12 A. Yeah.
 13 Q. What did y'all do first?
 14 A. We went by Jason Tucker's house and then I went
 15 to the mall.
 16 Q. Where does Jason Tucker live?
 17 A. On Water Street in Crowley.
 18 Q. Did you see Jason Tucker there?
 19 A. Yes.
 20 Q. Did you see anybody else there that you knew?
 21 A. Yes.
 22 Q. Who all did you see there?
 23 A. Bart and Daniel.
 24 Q. Are you talking about Barton Gaines?
 25 A. And Barton and Daniel Aranda.

1 A. Uh-huh.
 2 Q. Is that yes?
 3 A. Yes, ma'am.
 4 Q. When is the first time you met Bart? How long
 5 have you known him?
 6 A. I had a class with him eighth grade.
 7 Q. So since you were how old -- how old were you in
 8 eighth grade?
 9 A. 13, 14.
 10 Q. Okay. So you have known him for a number of
 11 years?
 12 A. Uh-huh.
 13 Q. Is that yes?
 14 A. Yes.
 15 Q. Okay. Would it be pretty normal or had it been
 16 normal up until this past spring that you would socialize
 17 and see Bart out with other people?
 18 A. Yeah.
 19 Q. Did y'all ever date?
 20 A. No.
 21 Q. Just kind of ran around as friends?
 22 A. Yes.
 23 Q. Do you know somebody by the name of Tara Green?
 24 A. Yes.
 25 Q. How do you know Tara?

1 Q. Were there other people there or just them?
 2 A. I don't specifically remember anybody else being
 3 there.
 4 Q. Did you-all stop and visit or did you pass by
 5 and see them or how did that happen?
 6 A. We stopped and talked to them for a minute, and
 7 agreed to meet up with them later after we got back from
 8 the mall.
 9 Q. Okay. And were they out of the house when this
 10 conversation took place or did it take place inside?
 11 A. Outside.
 12 Q. Did you and the two other young ladies, did
 13 you-all go to the mall?
 14 A. Yes.
 15 Q. Which mall did you go to?
 16 A. Hulen.
 17 Q. What did you do there?
 18 A. Just walked around the mall.
 19 Q. Did you eventually hook back up or get back in
 20 touch with Bart and Jason and Daniel?
 21 A. Yes.
 22 Q. How did that happen?
 23 A. Tara called Bart's cell phone.
 24 Q. While you were at the mall?
 25 A. I believe it was after we had left the mall.

- 1 Q. Okay. Was there an agreement for you-all to
- 2 meet up?
- 3 A. Yes.
- 4 Q. Were you-all supposed to meet?
- 5 A. Yes.
- 6 Q. Did you-all do that?
- 7 A. Yes.
- 8 Q. Are you-all in one vehicle, you-all being the
- 9 girls?
- 10 A. Yes.
- 11 Q. Who's driving?
- 12 A. Tara.
- 13 Q. When you get out to Benbrook Lake, is Bart and
- 14 Jason and Daniel already there?
- 15 A. Yes.
- 16 Q. Were there other people there?
- 17 A. Yes.
- 18 Q. Other people that you knew?
- 19 A. Yeah, other people that I knew.
- 20 Q. About how long were you-all out at Benbrook
- 21 Lake?
- 22 A. I would say total of 15 minutes.
- 23 Q. Okay. Anything unusual happen out there at
- 24 Benbrook?
- 25 A. No.

- 1 A. Yes.
- 2 Q. And I mean, is that kind of a hangout spot?
- 3 A. Yes. Note in her affidavit Jake & Rocky were gone by the time Mike & Andy showed up.
- 4 Q. And who all from your group -- who all ended up
- 5 out there at the Rice Paddy as you call it?
- 6 A. Me, Tara, Daniel, Jason, Bart, Jake and a guy
- 7 Rocky, and I think that was all.
- 8 Q. Okay. And Jason and Rocky, were they in the
- 9 same vehicle with Bart and Jason and Daniel?
- 10 A. No.
- 11 Q. Separate vehicles?
- 12 A. Yes.
- 13 Q. So were there three sets of vehicles out there?
- 14 A. Yes.
- 15 Q. All right. When you all three -- I guess three
- 16 sets of you-all got out there, were there any other people
- 17 out there at that time?
- 18 A. No.
- 19 Q. Did some people eventually arrive out there?
- 20 A. Yes.
- 21 Q. One car, two cars?
- 22 A. One.
- 23 Q. One? And was there -- was there more than one
- 24 person in the car that arrived?
- 25 A. Yes.

- 1 Q. Anybody acting unusual?
- 2 A. No.
- 3 Q. Okay. After you-all -- did you-all decide then
- 4 to leave Benbrook Lake?
- 5 A. Yes.
- 6 Q. Was there a reason?
- 7 A. It was really cold right by the water, so we
- 8 wanted to go somewhere else.
- 9 Q. Where did y'all decide to go?
- 10 A. A place that we called the Rice Paddy.
- 11 Q. Where is that located?
- 12 A. It is in Crowley kind of behind the skating
- 13 rink.
- 14 Q. Is it off Crowley Road?
- 15 A. Yes, ma'am.
- 16 Q. Can you describe -- let me ask you this. The
- 17 road leading out to this area, is it improved or
- 18 unimproved?
- 19 A. It was a dirt road where they were building
- 20 houses and stuff.
- 21 Q. Was there a pond of water out there or not?
- 22 A. Yes.
- 23 Q. There was?
- 24 A. Yes.
- 25 Q. Okay. Had you ever been out there before?

- 1 Q. How many?
- 2 A. Two.
- 3 Q. Did you know either one of those two people?
- 4 A. I knew one of them.
- 5 Q. Do you know that person's name or did you just
- 6 recognize him?
- 7 A. His name was Mike.
- 8 Q. How did you recognize him?
- 9 A. One morning me and my friend Jennifer had picked
- 10 him up for school because he was walking. So I picked him
- 11 up and took him to school because I knew he went to school
- 12 with me.
- 13 Q. Did you recognize the person with him?
- 14 A. No.
- 15 Q. Was it a guy or a girl?
- 16 A. A guy.
- 17 Q. When they pull up, I guess there is now four
- 18 vehicles out there? Don't sound so sure, does she? She knows she's suborning perjury.
- 19 A. Yes.
- 20 Q. What goes on at that point?
- 21 A. They got out and Bart had walked over to the car
- 22 and started talking to them. And me and Tara walked over
- 23 there to see who they were, and we started talking to them
- 24 and they hung out with us a little bit.
- 25 Q. While y'all are hanging out, is everyone acting

1 okay?
 2 A. Yes.
 3 Q. Everyone being normal, so to speak?
 4 A. Uh-huh.
 5 Q. Anybody acting unusual?
 6 A. No.
 7 Q. Okay. Did you see whether or not Bart had a
 8 conversation with Mike and the young man that was in the
 9 car with Mike?
 10 A. Yes.
 11 Q. Were you able to hear that conversation or did
 12 you just see it take place?
 13 A. Part of it. I didn't hear all of it.
 14 Q. Okay. Did you hear whether or not Bart was
 15 asking anything of Mike?
 16 A. Yes.
 17 Q. What did you hear him ask him about?
 18 A. If he knew where he could get a pound or some
 19 Ecstasy or anything like that.
 20 Q. Okay. And did it appear that Mike was I guess
 21 talking -- replying to his question about --
 22 A. Yes.
 23 Q. Okay. Did you participate in that conversation
 24 at all? Oh! no. Only everything she could do to help
 25 A. No. coax Mike into supplying Jason a pound.

1 A. No.
 2 Q. Did you and Tara want to go with them?
 3 A. No. 9 pm curfew, Hartmann.
 4 Q. You just decided to remain there?
 5 A. Yes.
 6 Q. Did Mike and his friend -- did Mike and his
 7 friend leave?
 8 A. Yes.
 9 Q. And did Bart and Jason and Daniel leave at the
 10 same time?
 11 A. Yes.
 12 Q. Did they kind of caravan out, so to speak?
 13 A. Yes.
 14 Q. And we have been talking about Bart, the person
 15 that you have known since 8th grade and that went out
 16 there to the Rice Paddy with you. Do you see anyone here
 17 today in the courtroom that you recognize to be that
 18 person?
 19 A. Yes.
 20 Q. Could you tell us where he's located and tell us
 21 something that he's wearing?
 22 A. Right there with the maroon tie.
 23 Q. If I am number one, two, three, four and five,
 24 what number would he be?
 25 A. Five.

1 Q. What did you do?
 2 A. Me and Tara just kind of stood back and didn't
 3 enter into the conversation at all.
 4 Q. Did you want to be any part of it?
 5 A. No.
 6 Q. Or it just really wasn't any of your business?
 7 A. It just really wasn't any of my business.
 8 Q. About how long did Mike and his friend and Bart
 9 and Jason and Daniel hang out there?
 10 A. Probably 15 or 20 minutes.
 11 Q. Did they appear to be getting along?
 12 A. Yes.
 13 Q. Did anyone in that group act up or act bizarre
 14 to you?
 15 A. I thought that it was awkward of Bart to ask a
 16 random person where he could get a pound or something like
 17 that. I thought that was awkward.
 18 Q. Did they eventually decide to leave the area?
 19 A. Yes.
 20 Q. Were you asked if you wanted to go?
 21 A. Yes.
 22 Q. Who asked you?
 23 A. I'm not really sure which one, Jason, Bart or
 24 Daniel. wasn't so easy with the accused present; i.e.,
 25 Q. It wasn't Mike or Andrew, though? before it was me in her affidavit.

1 MS. HARTMANN: Your Honor, at this time
 2 would the record reflect this witness identified the
 3 Defendant?
 4 THE COURT: It will.
 5 Q. (BY MS. HARTMANN) How long do you and Tara and,
 6 I guess, Cody stay there at the Rice Paddy after they
 7 leave?
 8 A. Five to ten minutes, just waiting for the other
 9 people to come back.
 10 Q. Had they left at some point?
 11 A. Yes.
 12 Q. To do what?
 13 A. Go to Sonic and get something to eat.
 14 Q. Is this Rocky and --
 15 A. Jake.
 16 Q. So they had driven up with you-all and left and
 17 you and Tara decided to wait? Did this so-called other bunch who
 18 A. Yes. was supposedly there ever return
 19 Q. Did you-all eventually leave the Rice Paddy
 20 area?
 21 A. Yes.
 22 Q. Once you left, did you or Tara decide to try and
 23 get in touch with Bart over the cell phone?
 24 A. Yes.
 25 Q. Why was that?

- 1 A. Tara just wanted to know what he was doing and
2 where he was at.
- 3 Q. Did you have some concerns about the situation?
4 A. Yeah.
- 5 Q. And what were those concerns?
6 A. Just that they -- I mean, I thought they were
7 going to jump them or beat them up -- the two guys. I was
8 worried about that.
- 9 Q. You were worried about Mike and his friend being
10 jumped and beaten up?
11 A. Uh-huh.
- 12 Q. Is that Yes?
13 A. Yes.
- 14 Q. Was Tara able to get in touch with Bart?
15 A. Yes.
- 16 Q. Is that with a cell phone while y'all were
17 driving?
18 A. Yes.
- 19 Q. When y'all left the Rice Paddy, where did you go
20 at that point?
21 A. To take Cody home.
- 22 Q. Was there anybody else with y'all?
23 A. No.
- 24 Q. Just you, Tara and Cody?
25 A. Yes.

- 1 Q. Did Cody go into her house?
2 A. Yes.
- 3 Q. What happened at that point?
4 A. We told them to follow us to Conoco and then
5 back to Tara's house.
- 6 Q. Did y'all go to Conoco?
7 A. Yes.
- 8 Q. And then go to Tara's house?
9 A. Yes.
- 10 Q. Did Bart follow you-all?
11 A. Yes.
- 12 Q. Was Jason and Daniel still in Bart's truck with
13 them?
14 A. Yes.
- 15 Q. Let me ask you this. When you were at Cody's
16 house -- strike that.
17 When you got to Tara's house, did the guys
18 all get out of Bart's truck and come inside as well?
19 A. Yes.
- 20 Q. So it was you and Tara and then Bart, Jason and
21 Daniel at Tara's house?
22 A. Yes.
- 23 Q. Did you notice anything unusual about Daniel?
24 A. Yes.
- 25 Q. What did you notice unusual about him?

- 1 Q. Did you make it to Cody's house?
2 A. Yes.
- 3 Q. And dropped her off?
4 A. Yes.
- 5 Q. About how long was it -- strike that.
6 You said that after Bart and his friend and
7 Mike and his friend left, y'all stayed there about 15 to
8 20 minutes?
9 A. Five to ten.
- 10 Q. How long did it take to get to Cody's house?
11 A. Three to five minutes.
- 12 Q. Did y'all go anywhere in between?
13 A. No. Yeah. They picked up some meth.
- 14 Q. You noticed -- when you were at Cody's house,
15 did you see anybody else that you recognized?
16 A. Yes.
- 17 Q. Who did you see?
18 A. Bart, Jason and Daniel pulled up behind us while
19 we were dropping her off.
- 20 Q. What type of vehicle were they in?
21 A. A truck.
- 22 Q. Who did that truck belong to?
23 A. Bart.
- 24 Q. Was he driving?
25 A. Yes.

- 1 A. His hand was bleeding and he was real upset and
2 not acting normal.
- 3 Q. Okay. And you said his hand was bleeding. Did
4 it appear to be wounded?
5 A. Yes.
- 6 Q. A fresh wound?
7 A. Yes.
- 8 Q. Did you ever actually see the wound?
9 A. Yes.
- 10 Q. Could you describe how it appeared?
11 A. A small cut. I washed it off for him.
- 12 Q. Where was it located on his hand?
13 A. I'm thinking about right here, but I am not
14 completely sure.
- 15 Q. Close to the knuckles between the knuckles and
16 the wrist?
17 A. Yes.
- 18 Q. On the top of the hand?
19 A. Yes.
- 20 Q. Or the outside of the hand?
21 A. Yes.
- 22 Q. And washed it off for him?
23 A. Yes.
- 24 Q. And you said that he was acting upset?
25 A. Yes.

- 1 Q. How was he acting upset?
 2 A. He just looked like real scared.
 3 Q. Okay.
 4 A. Basically.
 5 Q. How did Jason appear to be?
 6 A. He appeared to be scared too.
 7 Q. What was it about Jason that led you to believe
 8 he was acting scared?
 9 A. They were kind of pacing back and forth and kept
 10 talking about how they wanted to go home and they wanted
 11 to leave.
 12 Q. And were you and Tara asking them what was
 13 wrong? You mean they knew that the
 14 A. Yes. heat was on but I (Bart) did not?
 15 Q. How was Bart behaving?
 16 A. Not -- not any different really.
 17 Q. He just seemed pretty normal to you?
 18 A. Yes.
 19 Q. Same old Bart?
 20 A. Yes.
 21 Q. Did -- did Daniel and Jason eventually end up
 22 going home?
 23 A. Yes.
 24 Q. How did they get home?
 25 A. Tara.

- 1 Q. Did she drive them home?
 2 A. Yes.
 3 Q. Did you and Bart go with them or stay at Tara's
 4 house?
 5 A. We stayed at Tara's.
 6 Q. All right. Did Tara return back to her house?
 7 A. Yes.
 8 Q. What happened between the three of y'all?
 9 A. We sat down and started talking, and me and Tara
 10 were asking them -- asking Bart what happened.
 11 Q. Okay.
 12 A. And asking him why Jason and Daniel were so
 13 upset. And at first he wouldn't tell us anything. And
 14 then he said he shot two people.
 15 Q. Before he told you anything, did he ask you not
 16 to tell?
 17 A. Yes.
 18 Q. Did he ask you to swear not to tell?
 19 A. Yes.
 20 Q. And then I guess you and Tara said, okay, fine,
 21 we swear we won't tell anybody, and what did he say he had
 22 done?
 23 A. He said that they robbed Mike and Andy and that
 24 he shot them and left them for dead.
 25 Q. Did he say what he had gotten out of it?

- 1 A. A lottery ticket.
 2 Q. Did he say whether or not they had any money?
 3 A. No.
 4 Q. Did you see the lottery ticket? Did he show it
 5 to you?
 6 A. Yes.
 7 Q. When he was telling you what he had done, what
 8 was his behavior like?
 9 A. Normal as if it wasn't a big deal.
 10 Q. Did he tell you how it felt to him to have done
 11 this?
 12 A. Like it was a thrill, like it was a rush.
 13 Q. What happened after he told you about this?
 14 A. He went to sleep.
 15 Q. Was that a normal thing for him to stay over at
 16 Tara's house?
 17 A. Yes.
 18 Q. Do you know why?
 19 A. Him and Tara were very close.
 20 Q. Good friends?
 21 A. Uh-huh.
 22 Q. Were they dating?
 23 A. No.
 24 Q. Just good friends.
 25 A. Yes.

- 1 Q. And so that wasn't in and of itself unusual for
 2 him to have spent the night?
 3 A. No.
 4 Q. Did they sleep in separate bedrooms?
 5 A. No.
 6 Q. They slept in the same bedroom?
 7 A. Yes.
 8 Q. After he told you what he had done, did he go to
 9 sleep? Did he stay up? What did he do?
 10 A. Went to sleep.
 11 Q. What did you and Tara do?
 12 A. We stayed up for a little bit talking a little
 13 bit.
 14 Q. Did y'all ever pick up the phone and call the
 15 police? Why'd they have to go & lord that over
 16 A. No. their heads again, right? You already had
 17 Q. Did you ever initially tell your parents? them there.
 18 A. No.
 19 Q. Did you have some concerns or thoughts that Bart
 20 might try and leave the area?
 21 A. Yes.
 22 Q. Did you spend the night there at Tara's house
 23 there that night?
 24 A. Yes.
 25 Q. And the next day, I guess, did y'all go to

1 school or what happened?
 2 A. Yes, we got up and went to school.
 3 Q. Once you got to school the next day, were you
 4 hearing things from other students that led you to be
 5 concerned about people finding out that you knew some
 6 things about what had happened?
 7 A. Yes.
 8 Q. Meanwhile was Bart still communicating with you
 9 and Tara?
 10 A. Yes.
 11 Q. How was he doing that?
 12 A. Calling our house.
 13 Q. Calling your house?
 14 A. Yes.
 15 Q. How frequently was he calling?
 16 A. I would say probably every hour or hour and a
 17 half.
 18 Q. What was he wanting to know?
 19 A. If I had heard anything -- if I had heard
 20 anything about what had happened the night before.
 21 Q. Okay. And did he -- did you tell him some of
 22 the things you were hearing at school?
 23 A. Yes.
 24 Q. Did you tell him about your concern about your
 25 name being brought up as far as having knowledge of what

1 A. Yes.
 2 Q. Is that the same detective that came and visited
 3 with you?
 4 A. Yes.
 5 Q. At some point does your mom find out that you
 6 know more than what you are telling?
 7 A. Yes. Right, like she didn't go over to Jason's that
 8 Q. And do you-all get back in touch with Detective first
 9 Smith and let her know that you have additional day to
 10 information? discuss what they were going to do.
 11 A. Yes.
 12 Q. And does Detective Smith come and take a
 13 statement from you?
 14 A. Yes.
 15 MS. HARTMANN: May I approach the witness?
 16 THE COURT: Yes.
 17 Q. (BY MS. HARTMANN) I am going to show you
 18 State's Exhibit No. 25 and ask you if you recognize that
 19 photograph.
 20 A. Yes.
 21 Q. When was -- the photograph in State's Exhibit
 22 No. 25, when was that taken?
 23 A. That night with Mike and Andy.
 24 Q. Was it taken on February 21, 2002?
 25 A. Yes.

1 happened and who had done it?
 2 A. Yes.
 3 Q. Did you discuss those things with Bart, the
 4 Defendant?
 5 A. Yes.
 6 Q. Did he ask you to do anything with regard to
 7 telling or not telling police or anybody else the
 8 information?
 9 A. Yes.
 10 Q. What did he tell you?
 11 A. To make up three names or say I didn't know who
 12 they were.
 13 Q. Were you going to do that?
 14 A. No.
 15 Q. Did you tell him you weren't going to lie for
 16 him?
 17 A. Yes.
 18 Q. At some point, did Detective Smith come and see
 19 you?
 20 A. Yes.
 21 Q. Did you recognize the lady detective that was
 22 sitting back there?
 23 A. Yes.
 24 Q. Not here in the courtroom but in the back where
 25 you have been waiting?

1 Q. Was it taken out there at the Rice Paddy?
 2 A. Yes.
 3 Q. Do you know if it was taken before or after Mike
 4 and Andy showed up? Oh-how they must've wanted to say
 5 A. After. after, but for Mindy's red herring reference to the
 6 Q. So they were out there? pictures while they delivered Foran's
 7 A. Yes. self-engineered mental state
 8 Q. Do you know who took the picture?
 9 A. No. It might have been Cody because she's not
 10 in it. Hence, they had to do some engineering of themselves to
 11 Q. Who are all the people in State's 25? support their
 12 A. Bart, Tara, Jason, Daniel and me. story they
 13 Q. Is that you down there on the left? weren't involved in
 14 A. Yes. the drug deal.
 15 Q. You had a different hair color then?
 16 A. Yes.
 17 Q. And who is this that I have my finger on here?
 18 A. Bart.
 19 Q. He's in the green-colored shirt?
 20 A. Yes.
 21 Q. Same person as the Defendant?
 22 A. Yes.
 23 Q. The young lady above you?
 24 A. Tara.
 25 Q. The young man in the orange?

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1 A. Jason.
 2 Q. The young man in the cowboy jacket?
 3 A. Yes.
 4 Q. Did Detective Smith give you an opportunity to
 5 look at a security video from a Wal-Mart?
 6 A. Yes.
 7 Q. And did that video show Bart?
 8 A. Yes.
 9 Q. How did recognize him?
 10 A. His body language, the way he walked and carried
 11 himself.
 12 Q. Okay. How about the way he was dressed?
 13 A. And he had the sweater on.
 14 Q. The sweater with the three kind of layered
 15 colors?
 16 A. Yes.
 17 Q. All right. And do you recall what basically
 18 just in general what he's doing in that video?
 19 A. He goes behind the counter to get bullets for
 20 his shotgun.
 21 Q. Let me ask you this: When you were out at the
 22 Rice Paddy before Mike and Andrew showed up, did Bart have
 23 the shotgun out?
 24 A. Yes.
 25 Q. Was he shooting it off?

1 his clothing?
 2 A. Yes.
 3 Q. And the way he walks?
 4 A. Yes.
 5 MS. HARTMANN: We pass the witness at
 6 this time, Your Honor.
 7 CROSS-EXAMINATION
 8 BY MR. WESTFALL:
 9 Q. I am Greg Westfall. Are you doing okay?
 10 A. Yes.
 11 Q. When was it that you first met Bart?
 12 A. In the 8th grade.
 13 Q. Where were you?
 14 A. I had a class with him.
 15 Q. Was it during a regular semester?
 16 A. Yes.
 17 Q. Where was that?
 18 A. At H.F. Stephens Middle School.
 19 Q. Would you please do me a favor and pull that
 20 microphone a little closer?
 21 A. (Witness complies)
 22 Q. Where is H.F. Stephens Middle School?
 23 A. On Crowley Road.
 24 Q. On Crowley Road?
 25 A. Yes.

1 A. Yes.
 2 Q. Was it being passed around or was he the only
 3 one or how did that work or do you know?
 4 A. I don't remember. I am pretty sure there was
 5 more than him that shot it. That Jason or Daniel were
 6 shooting. And here we've an about-face. And no
 7 Q. Just like shooting up in the air? cross hereto.
 8 A. Yes.
 9 Q. All right.
 10 MS. HARTMANN: Your Honor, may I approach
 11 the video and move the TV up?
 12 THE COURT: Yes.
 13 Q. (BY MS. HARTMANN) If I showed you a video, do
 14 you think you could recognize if it is the same one that
 15 Detective Smith showed you?
 16 A. Yes.
 17 Q. Okay.
 18 (Videotape)
 19 Q. I'm showing you what's been admitted into
 20 evidence as State's Exhibit No. 34. Do you recognize the
 21 individual who just walked up?
 22 A. Yes.
 23 Q. Who is that?
 24 A. Bart.
 25 Q. Okay. You said you recognized him because of

1 Q. And you were in the 8th grade?
 2 A. Yes.
 3 Q. What class was it?
 4 A. A reading improvement class.
 5 Q. Were you and Bart in there the whole semester?
 6 A. I believe.
 7 Q. How did you first meet him? I know y'all had a
 8 class, but what were the circumstances that you fist met?
 9 A. I'm not sure about the first time we met, but we
 10 had mutual friends.
 11 Q. Did you start kind of spending time around Bart
 12 at that time?
 13 A. Yes.
 14 Q. Did you like Bart?
 15 A. As a friend, yes.
 16 Q. I didn't mean as a boyfriend -- but as a friend,
 17 you --
 18 A. Yes.
 19 Q. What was it about Bart that you liked?
 20 A. He was just funny and fun to be around.
 21 Q. What else? Tell me about Bart in the 8th grade.
 22 A. I really didn't hang out with him exactly in the
 23 8th grade. It was probably a couple months after that.
 24 Because he was just a real relaxed person and a lot of fun
 25 to be around. I don't really know how to explain it.

1 Q. He was laid back?
 2 A. Yes.
 3 Q. Do you know whether or not he did well in
 4 school?
 5 A. No.
 6 Q. Has there ever been a time when you were around
 7 him like daily?
 8 A. Can you rephrase that?
 9 Q. Was there ever a time when you were around Bart
 10 every single day?
 11 A. No.
 12 Q. Between 8th grade and now, when do you think
 13 would have been the period that you spent the most time on
 14 a week-to-week basis around Bart?
 15 A. I would say whenever I was in the 10th grade or
 16 11th.
 17 Q. So four years or so ago?
 18 A. Yes.
 19 Q. And this night that you saw Bart, how long had
 20 it been before that the last time you had seen Bart?
 21 A. I'm not sure.
 22 Q. It would have been --
 23 A. Just a couple of days probably.
 24 Q. So Thursday night -- we have got Thursday night
 25 and the week prior we've got -- last Thursday night is

1 Valentine's day. How long do you think it would have been
 2 between this Thursday night that this all happened and the
 3 last time you had seen Bart before then?
 4 A. A day or two.
 5 Q. But you are not really sure?
 6 A. No.
 7 Q. Jason Tucker -- you are friends with Jason also,
 8 right?
 9 A. Yes.
 10 Q. And Jason is an intelligent guy, isn't he?
 11 A. Yes.
 12 Q. In the 10th and 11th grade when you were hanging
 13 around in this circle of friends that included Bart, when
 14 you were spending most time around Bart, was he still the
 15 relaxed Bart you had known back in 8th grade?
 16 A. Yes.
 17 MR. WESTFALL: May I have one moment?
 18 THE COURT: Yes.
 19 (Pause in the proceedings)
 20 Q. (BY MR. WESTFALL) NOW, in phrasing his request
 21 to you about the police --
 22 A. I'm sorry.
 23 Q. Bart was saying let me know if the police call.
 24 What he said was if things are getting hot, let me know.
 25 Is that what he said?

1 A. Yes.
 2 Q. And he thought your mother actually wanted to
 3 talk to him.
 4 A. Yes.
 5 Q. Which was not true.
 6 A. No.
 7 MR. WESTFALL: That's all, Your Honor.
 8 Thank you.
 9 MS. HARTMANN: May I have just a moment,
 10 Your Honor?
 11 THE COURT: Yes.
 12 (Pause in the proceedings)
 13 MS. HARTMANN: We have nothing further,
 14 Your Honor.
 15 THE COURT: You may step down, ma'am.
 16 MS. HARTMANN: May this witness be excused?
 17 THE COURT: She may.
 18 MR. FORAN: Call Tara Green.
 19 Whereupon,
 20 TARA GREEN,
 21 having been first duly sworn, testified as follows:
 22 DIRECT EXAMINATION
 23 BY MR. FORAN:
 24 Q. Would you tell the jury your name?
 25 A. Tara Green.

1 Q. Ms. Green, are you in high school?
 2 A. Uh-huh.
 3 Q. Is that a yes?
 4 A. Yes.
 5 Q. This guy right here right in front of you is
 6 going to take down everything you say, so you have to give
 7 spoken answers. All right?
 8 A. (No audible response)
 9 Q. Did you know the young lady that just left?
 10 A. Uh-huh, yes.
 11 Q. Who is that?
 12 A. Mindy Keisel.
 13 Q. Is she a friend of yours?
 14 A. Yes.
 15 Q. Do you guys spend a lot of time together?
 16 A. Yes.
 17 Q. How long have you known Mindy?
 18 A. A couple of years. I will say maybe three, four
 19 years.
 20 Q. Were you and Mindy hanging out together back on
 21 Thursday, February 21st of this year?
 22 A. Yes.
 23 Q. And do you know someone named Cody?
 24 A. Yes.
 25 Q. Whose Cody?

1 A. She's another one of our friends.
 2 Q. Was she with you that day?
 3 A. Yes.
 4 Q. Had y'all gone to school?
 5 A. Yeah, I think we went to school.
 6 Q. Later that afternoon, were the three of you
 7 hanging out?
 8 A. Yes.
 9 Q. What were you doing?
 10 A. First we -- we were just hanging out at first,
 11 just trying to figure out something to do. We were going
 12 to go get something to eat at the mall.
 13 Q. Did you go straight to the mall or did you go
 14 somewhere else?
 15 A. I drove -- I was going to go get my jacket from
 16 my boyfriend's house and I drove by Jason Tucker's.
 17 Q. Where does your boyfriend live?
 18 A. He live off of Race Street in Crowley.
 19 Q. In Crowley, Texas?
 20 A. Yes.
 21 Q. Was Jason Tucker living nearby?
 22 A. You have to turn on Jason's street to get to my
 23 boyfriend's house.
 24 Q. When you passed Jason's house, did you see
 25 anybody there?

1 A. Yes.
 2 Q. Who did you see there?
 3 A. I saw Jason and Bart and Jason's brother was out
 4 there.
 5 Q. When you are referring to Bart, who are you
 6 referring to?
 7 A. Barton Ray Gaines.
 8 Q. Have you known Bart very long?
 9 A. Yes.
 10 Q. How long have you known Bart?
 11 A. Three, four years.
 12 Q. Okay. Are you good friends?
 13 A. Yes.
 14 Q. Okay. Now, when you saw the two of them out
 15 there on the porch, did you stop and talk or did you
 16 continue on to your boyfriend's house?
 17 A. I stopped and talked to him.
 18 Q. Did you talk about your plans for the rest of
 19 the day?
 20 A. Yeah.
 21 Q. Did they tell you what they were going to be up
 22 to?
 23 A. Yes.
 24 Q. All right. Where were you planning to go?
 25 A. At the moment we were going to go to the mall

1 and get something to eat, and then we planned to meet up
 2 with them afterwards.
 3 Q. Where were they going?
 4 A. To the lake.
 5 Q. Did you go to the mall and eat?
 6 A. Yeah.
 7 Q. Did you later go to the lake?
 8 A. Yes.
 9 Q. Okay. Were there a few people out there or a
 10 lot of people?
 11 A. There were three cars out there and quite a few
 12 people, but I didn't know all of them.
 13 Q. Did you stay at the lake very long?
 14 A. For about 30 minutes.
 15 Q. Was it warm out there or cold?
 16 A. Cold.
 17 Q. Okay. Did you decide to go somewhere else?
 18 A. Yes.
 19 Q. Where did you go?
 20 A. A place called the Rice Paddy.
 21 Q. Was it just going to be you and Mindy or were
 22 other people going to be there?
 23 A. Everyone that was at the lake followed us out
 24 there.
 25 Q. When you got there, who was there?

1 A. All of us, Mindy and Cody, Bart and Jason and
 2 Daniel, and then the other people that were with them
 3 that -- I don't know their names.
 4 Q. Was anybody named Jake there?
 5 A. Yeah.
 6 Q. Who's Jake?
 7 A. He's another one of our friends.
 8 Q. While you guys were out there, did you stay
 9 there very long?
 10 A. We stayed there about an hour, hour and a half.
 11 Q. Did other people show up that you didn't know?
 12 A. Yes.
 13 Q. And what kind of -- were they driving a -- what
 14 type of vehicle were they driving? Do you remember?
 15 A. I don't know what kind it was, but it was an
 16 older car.
 17 Q. Was it a small one?
 18 A. Uh-huh.
 19 Q. Is that yes? And now they were still there when
 20 A. Yes. Mike & Andy showed up.
 21 Q. Okay. When they arrived, who was still there?
 22 ★ A. The same one that was there -- those were the
 23 same people that were all there.
 24 Q. Were you taking some pictures while you were out
 25 there?

1 A. Yes.

2 Q. While you were there with Barton and Jason --

3 Jason who?

4 A. Tucker.

5 Q. Daniel, you mentioned. Who's Daniel?

6 A. I don't know his last name.

7 Q. Was he someone relatively new that you had met?

8 A. Yes.

9 Q. Okay. In that other older car, how many people

10 were in there?

11 A. Two.

12 Q. Have you seen those two guys here today?

13 A. Yes.

14 Q. Okay. Did you talk to them?

15 A. Not really. Me and Mindy walked up to the car

16 just to see if we knew them, and she knew one of them.

17 But I didn't know them so I didn't really talk to them

18 that much. No, you only coaxed him into serving you up a

19 Q. Did you hear them talking to Bart? pound of marihuana.

20 A. I didn't hear what they were talking about, but

21 they were talking.

22 Q. Okay. Now, did you hear Bart asking them for

23 anything?

24 A. He asked for a pound of weed.

25 Q. And you heard him ask -- did that -- did you

1 find that unusual?

2 A. Yeah.

3 Q. Why did you find it unusual?

4 A. Because I just had a feeling that -- I don't

5 know because he didn't know him.

6 Q. It was odd to be asking strangers?

7 A. (No response) incredible; and they know it.

8 Q. Is that a yes?

9 A. Yes.

10 Q. Let me show you what's been marked as State's

11 Exhibit No. 25. Do you recognize that?

12 A. Yes.

13 Q. Is that a picture of you and Mindy and Bart and

14 Jason and Daniel?

15 A. Yes.

16 Q. Okay. Is that how Bart looked that evening?

17 A. Yes.

18 Q. Okay. Tara, how long did they stay, the three

19 of them stay with you and Mindy there before they left?

20 A. Who, the --

21 Q. The three of them, Daniel, Jason and Bart.

22 A. Probably about 30 minutes.

23 Q. When they left, did anyone else leave?

24 A. (No response) in the flash of a pan, her dope

25 Q. Who left? (meth) escapade materialized in her mind..

1 A. The other two.

2 Q. The other two guys?

3 A. Yes.

4 Q. Yes? Were you worried?

5 A. (Witness nods head)

6 Q. Did you do anything about it? Did you call

7 them?

8 A. (Witness nods head)

9 Q. Who did you call?)

10 A. I called Bart.

11 Q. What did Bart tell you when you called him?

12 A. He said he was at Wal-Mart.

13 Q. Did he tell you why he was at Wal-Mart?

14 A. He said he was getting shotgun shells.

15 Q. Did that upset you?

16 A. (Witness nods head)

17 Q. Is that a yes?

18 A. Yes.

19 Q. Are you all right?

20 A. (Witness nods head)

21 Q. Did you ask him why he was getting the shells?

22 A. Yes.

23 Q. What did he tell you?

24 A. He said in case anything happens these are his

25 protection. far stretch from "in case they're strapped." a little tug here and the whole thing was likely to come apart at the seam.

1 Q. Up until that point that they left, were they

2 all acting pretty normal?

3 A. Yes.

4 Q. Nothing out of the ordinary other than that

5 question about a pound?

6 A. Yes.

7 Q. Yes. Did you try calling Bart again?

8 A. Well -- Caught in your own lie lately, or there lie foisted upon you by Foran through Charla?

9 Q. Or did he call you?

10 A. I only talked to him once while they were gone.

11 Q. While they were gone, you only talked to him

12 once? Foran caught it, by Westfall let it sail on by without even so much as a second glance. Some lawyer.

13 A. Uh-huh.

14 Q. Well, did you see them again that evening?

15 A. Yes.

16 Q. Where did you see them?

17 A. Whenever we left the Rice Paddy we were taking

18 Cody home and he was driving behind us -- never mind.

19 Q. Did you take Cody back home?

20 A. Uh-huh.

21 Q. Is that a yes? Thou shalt not bear false witness (Exodus 20:16).

22 A. Yes.

23 Q. When you got to Cody's house, did you see

24 anybody else over there?

25 A. Me and Bart pull up with Jason and Daniel.

- 1 Q. Was there something different about Daniel than
2 when he left the Rice Paddy?
3 A. Yes.
4 Q. What was different about Daniel?
5 A. His hand was bleeding.
6 Q. He wasn't injured before he left, was he?
7 A. No.
8 Q. Okay. Now, did you stay at Cody's house or did
9 you go someplace else?
10 A. We left and we went to a gas station.
11 Q. Did they follow you there?
12 A. Yes.
13 Q. After you -- did you leave the gas station?
14 A. Yes.
15 Q. Where did you go from there?
16 A. We went to my house.
17 Q. When you got to your house -- did you stay
18 outside or did you go inside?
19 A. We went inside.
20 Q. When you say "we," who went inside?
21 A. Me, Mindy, Bart, Jason and Daniel.
22 Q. Did you stay there the rest of the evening or
23 did some people leave?
24 A. Daniel and Jason left.
25 Q. How did they leave?

- 1 A. I gave them a ride home.
2 Q. Did they have much to say?
3 A. No.
4 Q. Can you describe for the jury how they were
5 acting?
6 A. They were just -- I could tell something
7 happened by the way they were acting, but they were just
8 kind of being quiet.
9 Q. Why is it that you gave them a ride home instead
10 of Bart? I mean, after all, he had his truck there.
11 A. Because -- I don't remember. I think they just
12 asked me to give them a ride home and I gave them a ride.
13 Q. They asked you but not Bart?
14 A. Yeah.
15 Q. Okay. After you got back to your house, who was
16 still there?
17 A. Me, Bart and Mindy.
18 Q. Okay. Did y'all talk?
19 A. Yes.
20 Q. Who else was in the house?
21 A. My family. My mom and dad were asleep, and my
22 sister was asleep.
23 Q. When it's you, Bart and Mindy, what did you talk
24 about?
25 A. We asked him what happened.

- 1 Q. Did he tell you right away?
2 A. Not right away.
3 Q. Did you talk a little bit more about it?
4 A. We were just kind of like asking him -- bugging
5 him to tell us, I guess you could say.
6 Q. Did he finally tell you?
7 A. Yes.
8 Q. Was that after you agreed not to tell anyone?
9 A. Yes.
10 Q. What did he tell you?
11 A. He said that he shot two people.
12 Q. What did he think had happened to those people
13 after he shot them?
14 A. He thought that they were dead.
15 Q. What was his demeanor? How was he behaving?
16 A. He was just being kind of -- he didn't talk
17 to -- he was just acting normal, I guess --
18 Q. He didn't seem upset?
19 A. No.
20 Q. Is that a no?
21 A. No.
22 Q. Okay. Now, did Bart go home that evening?
23 A. No.
24 Q. Okay. Did he spend the evening?
25 A. Yes.

- 1 Q. Did you get your mother's permission for him to
2 spend the evening?
3 A. No.
4 Q. Who else spent the evening?
5 A. Mindy.
6 Q. Okay. And did he leave the next morning?
7 A. Yes.
8 Q. And did you guys go to school the next day?
9 A. Yes.
10 Q. Okay. Later that day, did you talk to Mindy?
11 A. Yes.
12 Q. Now, you didn't call anybody to report this, did
13 you?
14 A. No.
15 Q. Did later you and Mindy talk?
16 A. Yes. Astute.
17 Q. Okay. Were -- did you become concerned that
18 people would know that you knew something about it?
19 A. Yeah. We knew that they knew who we were.
20 Q. Did you talk to Bart later that day about what
21 had happened?
22 A. Yes.
23 Q. And when you talked to Bart, did he talk to you
24 about what to say if people asked you?
25 A. Yes.

1 Q. What did he tell you?
 2 A. He said not to say anything.
 3 Q. Did he tell you to lie?
 4 A. Yes.
 5 Q. Did he also tell you how to tell the story?
 6 A. He just said not to say anything.
 7 Q. He didn't tell you to use three fake names for
 8 him and Daniel and Jason?
 9 A. I don't remember that.
 10 Q. Do you remember him telling you that?
 11 A. Uh-huh.
 12 Q. Did that upset you that he wanted you to lie?
 13 A. It put me in an awkward position.
 14 Q. Did you later meet with the detective and talk
 15 to her?
 16 A. Yes.
 17 Q. Okay. Did you view a videotape of Bart in the
 18 store?
 19 A. Yes.
 20 Q. And did you recognize Bart from the videotape?
 21 A. Yes.
 22 Q. How did you recognize him?
 23 A. Because I know him and I know what he looks like
 24 and how he walks and everything. I could tell that it was
 25 him.

1 Q. Did the clothing appear to be the same as what
 2 he was wearing that evening?
 3 A. Yes.
 4 Q. Did you view it up at the police station or
 5 where did you view it?
 6 A. At Mindy's house.
 7 Q. Did you view it with Mindy or after Mindy?
 8 A. With Mindy.
 9 Q. So you got to see the videotape at the same
 10 time?
 11 A. Yes.
 12 Q. Okay. Now, I want to back up just a minute
 13 because there was something I wanted to ask you about when
 14 you were out at the Rice Paddy.
 15 Did you ever see Bart with a weapon out
 16 there? Note how Foran eased into it. He had to coax
 17 A. Yes. Tarah from him to they to "maybe" Jason "too" See,
 18 Q. What did you see him with? he could've done it without Hartmann, his patsy (at
 19 A. A shotgun. least until Sharen Wilson
 20 Q. What were they doing with it? took over).
 21 A. They shot it off in the air.
 22 Q. When you say "they," was it just Bart or was it
 23 the other people?
 24 A. I think Jason and --
 25 Q. Jason maybe too?

1 A. (No response)
 2 Q. Had you seen Bart with that shotgun before?
 3 A. Yes.
 4 Q. So it was his weapon, right?
 5 A. Yes.
 6 Q. Now, when you guys got to the gas station -- is
 7 that the Conoco over there?
 8 A. Yes.
 9 Q. Did you see Bart doing anything with some
 10 property?
 11 A. Yes. He had a wallet.
 12 Q. What was he doing with it?
 13 A. Looking through it.
 14 Q. Okay. Did you see any of the items in it?
 15 A. A lottery ticket.
 16 Q. Anything else?
 17 A. No.
 18 Q. When you were at your house did you see that
 19 wallet again or did you see a different one?
 20 A. I think it was the same one.
 21 Q. What was he doing with it there?
 22 A. He was -- he did something with the lottery
 23 ticket.
 24 Q. Okay. Now, you gave a statement to Detective
 25 Smith back on February 24 of this year; is that right?

1 A. Yes.
 2 Q. First of all, it was a pretty long one, wasn't
 3 it?
 4 A. Yes.
 5 Q. Does that look like your signature?
 6 A. Yes.
 7 Q. I want to show you something and I want you to
 8 read this paragraph to yourself. And then I want to ask
 9 you if that refreshes your memory about your attempting to
 10 get hold of Bart.
 11 A. (Witness complies)
 12 Q. Do you remember trying to get hold of Bart?
 13 A. Yes.
 14 Q. Okay. And then the phone cut off. Did you try
 15 calling him back?
 16 A. Yes.
 17 Q. Did that refresh your memory?
 18 A. Yes.
 19 Q. After you tried calling him back, were you able
 20 to get hold of him?
 21 A. No.
 22 Q. Did he finally call you back?
 23 A. Whenever we were pulling up to Cody's he was
 24 behind me, he called back.
 25 Q. Did you ask him what happened?

If nobody noticed it, Foran was able to push back the origin of this suborned perjury back onto Charla, but overlooked she more than suggested the origin originated with him in her police report where she said she talked to him about tighning the reins around intent (culpability).
 Nothing to see here folks. Keep moving. Move along.

1 A. Not yet because we were just like right down the
2 street from where we were about to stop. So I waited and
3 we pulled up to Cody's house.

4 Q. Let me show you this last sentence.

5 A. Okay.

6 Q. Do you remember telling the police that he
7 called you back after about 20 minutes and he said they
8 didn't have nothing?

9 A. Yes.

10 Q. Okay.

11 MR. FORAN: Pass the witness.

12 **CROSS-EXAMINATION**

13 BY MR. WESTFALL:

14 Q. Tara, my name is Greg Westfall. When did you
15 first meet Bart? The first time ever.

16 A. I remember seeing him around the school. We had
17 lived in the same town, so I had seen him -- I think the
18 first time I really met him was when he and his
19 ex-girlfriend became friends.

20 Q. Who was his ex-girlfriend?

21 A. (Inaudible)

22 Q. When would this have been?

23 A. Maybe three, four years ago.

24 Q. What school would it have been at?

25 A. What school --

1 Q. Yeah. What school?

2 A. Crowley High School.

3 Q. Is that where you met him the first time was at
4 Crowley High School?

5 A. No. He wasn't going to school whenever I met
6 him.

7 Q. So he was already out of school. He quit school
8 in the ninth grade.

9 A. Yes.

10 Q. What did Bart look like? What does Bart look
11 like the first time you see him or when you first get to
12 know him? What does he look like?

13 A. Tall guy, dark hair and dark eyes kind of built
14 big or tall. Not like heavy, but --

15 Q. And did you become friends with him?

16 A. Yes.

17 Q. What is it about Bart that makes you want to be
18 friends with him?

19 A. Because he was really nice. He was a sweet guy.

20 Q. What else?

21 A. I was friends with him because he was sweet and
22 real -- there really isn't any other reason why I became
23 friends with him.

24 Q. Was he shy or was he outgoing?

25 A. He was kind of shy sometimes, but after you got

1 to know him he wasn't really shy.

2 Q. But he was shy with strangers?

3 A. Yes.

4 Q. Did he seem kind-hearted?

5 A. Yeah.

6 Q. When would you hang around with Bart during the
7 time you were talking about? Do you hang around with him
8 during the day? Do you hang around with him at night?

9 A. Yes.

10 Q. Both?

11 A. Yes.

12 Q. And is Bart working during this time?

13 A. He had a couple of jobs, but mostly he just --

14 he worked with his stepdad every once in a while. He
15 never had a specific job for a long period of time.

16 Q. Did you know him to have several jobs for short
17 periods of time?

18 A. Yeah.

19 Q. What does his stepfather do?

20 A. He's got his own moving company.

21 Q. So during this time Bart is helping him.

22 A. Yes.

23 Q. Can you tell me about Bart's family? Who all is
24 in the family?

25 A. He lives with his mom and his dad, stepdad,

1 Cory.

2 Q. What is his mom's name?

3 A. Missy.

4 Q. What is she like?

5 A. She was real nice too.

6 Q. And does Bart have any kind of brothers or
7 sisters?

8 A. No.

9 Q. Are there any other kids that live in the house?

10 A. His stepbrother.

11 Q. Cory's son?

12 A. Yes.

13 Q. And you never have dated Bart.

14 A. No.

15 Q. Until this happened, did you continue to hang
16 out with Bart a lot?

17 A. After this happened or --

18 Q. No, until this happened.

19 A. Yeah. We always hung out a lot.

20 Q. I'm sorry?

21 A. Yeah, we always hung out.

22 Q. And were y'all close like you would share
23 stories with each other and talking about your feelings?

24 A. Yes.

25 Q. Are those the kind of talks y'all had?

1 A. Yes.
 2 Q. And before this happened if one word has to come
 3 to your mind that you would use to describe Bart, what
 4 would it be?
 5 A. A good person because he was always good to me.
 6 Q. Now, you told the police that Bart had been
 7 acting strange lately before this happened. Do you still
 8 believe that now?
 9 A. Yes.
 10 Q. In fact, you said he had been acting really
 11 strange lately. And it was your impression that night
 12 that he was insane. I just want to ask you if -- I mean,
 13 this deal about -- first of all, Bart shooting two people,
 14 Bart shooting three people. Is that the Bart that you
 15 knew?
 16 A. No.
 17 Q. Bart saying things like "at least I got a
 18 lottery ticket out of it." Is that the Bart that you used
 19 to know?
 20 A. No.
 21 Q. Bart acting like nothing had happened after he
 22 shoots two people. Is that the Bart that you had known?
 23 A. No.
 24 Q. And the fact that Bart shoots two people, comes
 25 over to your house -- first of all, he came into your

1 A. I never seen Brett -- he never told me
 2 anything -- Uh! oh! They're on to me, she must've thought!
 3 Q. There were lot of folks that went out and shot
 4 guns at this Rice Paddy place?
 5 A. Yes.
 6 Q. And Brett had guns also?
 7 A. Yes.
 8 MR. WESTFALL: I'll pass the witness.
 9 MR. FORAN: No further questions.
 10 THE COURT: You may step down, ma'am.
 11 Ladies and gentlemen, let's take a stretch
 12 break. Would you please retire to the jury room.
 13 Remember and follow your instructions.
 14 (Jury not present)
 15 (Jury present)
 16 MS. HARTMANN: Steven Ancira.
 17 THE COURT: Mr. Ancira, please come up to
 18 the witness stand. Everyone else, please retire out to
 19 the hallway.
 20 Whereupon,
 21 STEVEN ANCIRA,
 22 having been first duly sworn, testified as follows:
 23 DIRECT EXAMINATION
 24 BY MS. HARTMANN:
 25 Q. Would you introduce yourself to the members of

1 house like he just owned the place, didn't he?
 2 A. He came in my house a lot.
 3 Q. But apparently he just assumed he was going to
 4 be able to sleep there, just acting like he didn't need
 5 permission or anything.
 6 A. Yes.
 7 Q. And then goes to sleep --
 8 A. Yes.
 9 Q. -- after shooting two people. Is that the Bart
 10 that you knew even a few weeks before this happened?
 11 A. No.
 12 Q. You have also known Jason Tucker.
 13 A. Yes.
 14 Q. And he is an intelligent guy, wouldn't you
 15 agree?
 16 A. He's intelligent?
 17 Q. Yeah, he's smart, on the ball.
 18 A. I mean, I don't know what kind of grades he made
 19 in school or anything.
 20 Q. How does he seem when you are talking to him?
 21 A. He was a good friend of mine too.
 22 Q. Well, let me ask you -- Brett Tucker. You know
 23 Brett Tucker, right?
 24 A. Yes.
 25 Q. This SKS here, isn't that Brett's gun?

1 the jury?
 2 A. My name is Steven.
 3 Q. What is your last name?
 4 A. Ancira.
 5 Q. How old are you?
 6 A. 22.
 7 Q. What county do you live in?
 8 A. Right now, Erath.
 9 Q. And where is Erath County in relation to Tarrant
 10 County?
 11 A. I guess it is Hood in between them.
 12 Q. North, south, east or west?
 13 A. Probably more west, southwest.
 14 Q. And do you work or go to school?
 15 A. I work, yes, ma'am.
 16 Q. Where do you work?
 17 A. I work for Encore. It is just since TXU
 18 deregulated. This is another branch.
 19 Q. So you work for a power company?
 20 A. Yes, ma'am, the electric company.
 21 Q. Are you married?
 22 A. Yes, ma'am.
 23 Q. What is your wife's name?
 24 A. Janet.
 25 Q. How old is she?

- 1 A. She's 24.
 2 Q. Does she work or go to school?
 3 A. She goes to school and works.
 4 Q. Where does she go to school?
 5 A. Tarlton State University.
 6 Q. What does she do for a living? What type of job
 7 does she have?
 8 A. She's a pharmacy tech.
 9 Q. I'm going to direct your attention -- first of
 10 all, let me ask you this. Did you drive in from
 11 Stephenville -- where did you say that you lived?
 12 A. I live in Morgan Mill. It is a small town
 13 outside Stephenville.
 14 Q. How long a drive is Morgan Mill to here in Fort
 15 Worth?
 16 A. It is about an hour and a half or hour and 45
 17 minutes.
 18 Q. I want to direct your attention back to February
 19 23 of this year, first hours of the morning. I guess that
 20 evening before had you been here in Fort Worth?
 21 A. Yes, ma'am.
 22 Q. And why were you in Fort Worth, I guess, on the
 23 evening of the 22nd of February?
 24 A. We were in Fort Worth for a buddy's birthday
 25 party.

- 1 Q. You say we. Was there people more than you --
 2 A. Yes, ma'am. It was my wife and I and Rick -- or
 3 Richard and another guy named Joel and Greg. That's who
 4 rode up there with me.
 5 Q. Okay.
 6 A. And we met other people up there.
 7 Q. What is Greg's last name?
 8 A. Peterson.
 9 Q. What is Rick or Richard's last name?
 10 A. Weaver.
 11 Q. Is Mr. Weaver the other gentleman that was sworn
 12 in?
 13 A. Yes.
 14 Q. And the young lady, was that your wife?
 15 A. Yes.
 16 Q. You all rode together to come to Fort Worth that
 17 night?
 18 A. Yes, ma'am.
 19 Q. And who was driving?
 20 A. I was.
 21 Q. And what type of vehicle were you in?
 22 A. I was in a four-door 626 Mazda. It's a '96.
 23 Q. How many people were in there, about five of
 24 you?
 25 A. Yes.

- 1 Q. Was it pretty packed?
 2 A. Not too bad.
 3 Q. All right. Did you-all go to the birthday party
 4 the evening of the 22nd?
 5 A. Yes, ma'am.
 6 Q. Did you decide to drive and get back home after
 7 the party?
 8 A. Yes, ma'am.
 9 Q. And does Mr. Peterson and Mr. Weaver and you
 10 said Joel. What is Joel's last name?
 11 A. Chandler.
 12 Q. Do they also live in Morgan Mill?
 13 A. No, ma'am. They live in Stephenville.
 14 Q. Were you going to just drop them off on your way
 15 through?
 16 A. Yes, ma'am.
 17 Q. When you-all were on your way back, was it the
 18 same people coming back as had ridden over?
 19 A. Yes, ma'am.
 20 Q. And were you driving?
 21 A. Yes, ma'am.
 22 Q. Can you tell us where, I guess, these other
 23 people were located in the car?
 24 A. Right behind me, which, of course, I was
 25 driving. Behind me was Greg Peterson and in the middle

- 1 was Richard and Joel on the other side. So Joel was right
 2 behind the passenger.
 3 Q. And Mr. Weaver was --
 4 A. In the middle.
 5 Q. Middle of the back seat?
 6 A. Yes, ma'am.
 7 Q. Who was sitting up in the right front passenger?
 8 A. My wife.
 9 Q. Riding shotgun?
 10 A. Yes, ma'am.
 11 Q. What road, I guess, did you take if you were
 12 returning from Fort Worth and going to Stephenville or
 13 Morgan Mill?
 14 A. There are two different routes. 377 is what we
 15 took.
 16 Q. That night you were on 377?
 17 A. Yes, ma'am.
 18 Q. At some point while you-all are traveling on
 19 377, did you come upon or see a vehicle that kind of drew
 20 your attention?
 21 A. Yes, ma'am.
 22 Q. Approximately where was that that this happened?
 23 A. It was at -- it was headed towards Stephenville
 24 from Granbury between Granbury and Tolar.
 25 Q. That particular location, do you know that to be

1 in Hood County, Texas?
 2 A. Yes, ma'am.
 3 Q. What was it that initially drew your attention
 4 to this vehicle?
 5 A. The flashing -- he had his emergency lights on
 6 and was flashing his low beam, high beam light.
 7 Q. Was he traveling in the same direction as you or
 8 opposite?
 9 A. Opposite.
 10 Q. Was he actually traveling or was he stationary?
 11 A. No, he was traveling.
 12 Q. The high beams and low beams were going off and
 13 on?
 14 A. Yes, ma'am.
 15 Q. Did he have his flashers on?
 16 A. Yes, ma'am.
 17 Q. The road was -- there on 377 is it just one
 18 lane either way or --
 19 A. Part of the way it is one way. I ended up
 20 turning around behind him. And as I left, it turned into
 21 two lanes.
 22 Q. Why did you turn around behind this vehicle?
 23 A. Well, as he was traveling coming down -- of
 24 course, I saw the beams -- the lights flashing, and I
 25 thought it was the volunteer fire department from Tolar.

1 I slowed down and pulled over a little bit to the right
 2 because it turned into two lanes. I noticed that he came
 3 to a stop and thinking that he needed help, I just pulled
 4 around behind him.
 5 Q. So your initial thought it was some type of
 6 emergency fire department vehicle?
 7 A. Yes, ma'am.
 8 Q. Driven by some type of volunteer or something?
 9 A. Yes, ma'am.
 10 Q. Were you pulled over initially maybe to get out
 11 of the way?
 12 A. Yes, ma'am.
 13 Q. Once you pulled over, you noticed that this
 14 vehicle stopped?
 15 A. Yes, ma'am.
 16 Q. And then you -- maybe --
 17 A. Yes, ma'am.
 18 Q. You came up behind it?
 19 A. Yes, ma'am.
 20 Q. What type of vehicle was it as far as was it a
 21 car, a truck, a van?
 22 A. It was a truck.
 23 Q. All right. Did you pull up right behind?
 24 A. With a little bit of space, yes, ma'am.
 25 Q. Okay. And once you stopped your vehicle -- let

1 me ask you this: Were any of the people in your car, your
 2 wife and Mr. Chandler, Mr. Weaver and Mr. Peterson, were
 3 they awake? Were they asleep? A combination?
 4 A. Joel and Rick were asleep. My wife might have
 5 been dozing off. I really wasn't for sure. I was really
 6 talking to Greg behind me, so I know he was awake.
 7 Q. When you pulled up behind the truck, what
 8 happened at that point?
 9 A. I got out and he was already out of the truck.
 10 Q. You are saying he. Was it a man?
 11 A. Yes, ma'am.
 12 Q. Did you notice anybody else in the truck?
 13 A. Yes, ma'am.
 14 Q. How many other people did you see in the truck?
 15 A. Just one.
 16 Q. Could you tell if that person was male or
 17 female?
 18 A. I assumed she was a female.
 19 Q. It looked like a female to you?
 20 A. Yes, ma'am.
 21 Q. Did you just see them from the back or side or
 22 front?
 23 A. It was like half the top of her head is what I
 24 saw.
 25 Q. Okay.

1 A. She was just peeking over the passenger seat.
 2 Q. So the person that you believed to be a female,
 3 was she turned and peeking over?
 4 A. Yes, ma'am.
 5 Q. To see, I guess, looking in the direction you
 6 were coming from?
 7 A. Uh-huh.
 8 Q. Is that yes?
 9 A. Yes, ma'am.
 10 Q. When the man got out of the truck, what happened
 11 at that point?
 12 A. As he got out of the truck, I got out of the car
 13 and I asked him, you know, if I could help or anything.
 14 He said he needed tools for engine work. I told him I
 15 didn't have any tools, and he just kind of walked off to
 16 the back of the truck.
 17 Q. What did you do at that point?
 18 A. I told him sorry. I couldn't help or anything.
 19 I just went and sat in my car.
 20 Q. Did you get back in your car?
 21 A. Yes, ma'am.
 22 Q. Shut the door?
 23 A. Yes, ma'am.
 24 Q. What did you do at that point?
 25 A. Pretty much drove off. We were watching what he

1 was doing. He was attempting to get into his tool box of
 2 his truck.
 3 Q. Was there a visible tool box in the bed of his
 4 pickup?
 5 A. Yes, ma'am.
 6 Q. Was it a big tool box or small tool box?
 7 A. It was a big tool box.
 8 Q. Did it go the entire length of the bed,
 9 widthwise?
 10 A. Yes, ma'am.
 11 Q. What color was it?
 12 A. Chrome.
 13 Q. Kind of a silver color?
 14 A. Yes, ma'am.
 15 Q. All right. What did you do at that point when
 16 you see him in the bed of the truck messing around with
 17 the tool box?
 18 A. He wasn't in his tool box just yet.
 19 Q. Okay. What happened?
 20 A. I was debating on stopping or going, but he
 21 ended up taking off. I just had -- I left enough space
 22 between us so I could just turn around and head out.
 23 Q. Did you do that?
 24 A. Yes, ma'am.
 25 Q. Did you do kind of another U-turn to go back in

1 the direction you had originally been traveling?
 2 A. Yes, ma'am.
 3 Q. At some point as you are pulling out or getting
 4 yourself turned around, did you hear or notice anything
 5 out of the ordinary?
 6 A. Yes, ma'am.
 7 Q. What was that?
 8 A. The first hit was what I thought was a rock or
 9 something being thrown at the car because it hit that back
 10 window.
 11 Q. What did it sound like?
 12 A. A loud ping, like as if a rock hit you, I mean
 13 just real loud.
 14 Q. Okay.
 15 A. It was what the -- the bullet had ricocheted off
 16 that back window. Right after that there was like a slam
 17 against metal as if I just closed the trunk.
 18 Q. What is the next -- are you -- do you think it
 19 is rocks at this point or bullets --
 20 A. I first thought it was rocks because of the
 21 window. I just didn't -- as sound travels, of course, you
 22 are going to see it hit before you hear it.
 23 Q. Okay.
 24 A. So I thought it was rocks and then as we heard
 25 the metal, that slam sound, I looked back and Rick had

1 just -- his back was arched. He was just hit and they.
 2 pushed him over. He was hit.
 3 Q. Was he bleeding?
 4 A. Not a lot. We had a buddy of mine assisting
 5 there, and he had put pressure on it.
 6 Q. Was it Joel --
 7 A. It was Greg.
 8 Q. Okay. And so at that point, what are you doing?
 9 A. Hauling tail into Tolar.
 10 Q. Tolar is a little city off --
 11 A. Just a little bitty town with one convenience
 12 store.
 13 Q. Does anyone in the car have a cell phone?
 14 A. Yes.
 15 Q. Did somebody get a cell phone out?
 16 A. Yes, ma'am.
 17 Q. Does somebody call 911?
 18 A. Yes, ma'am.
 19 Q. Who was that?
 20 A. Joel called the first time and told -- we were
 21 trying to explain what happened, told them we were headed
 22 to the convenience store.
 23 Q. Okay. You said Joel called the first time. Was
 24 there a second 911 call made?
 25 A. I made the second one. I think we lost

1 connection and so I called them back to let them know what
 2 was going on.
 3 Q. Did you eventually get to Tolar?
 4 A. Yes, ma'am.
 5 Q. About how long a drive was it to get there?
 6 A. It didn't take couple of minutes. I was
 7 traveling pretty fast. I wasn't going to stick around.
 8 Q. Did you make it to the one convenience store
 9 there in Tolar?
 10 A. Yes, ma'am.
 11 Q. How long was it before help arrived?
 12 A. It wasn't five, ten minutes. It arrived pretty
 13 quick.
 14 Q. Who all arrived?
 15 A. First it was the volunteer fire department and
 16 the paramedics. They showed up.
 17 Q. Okay.
 18 A. And then I guess some trooper showed up or
 19 sheriff's department.
 20 Q. Were they performing -- the paramedics
 21 performing first aid for Mr. Weaver?
 22 A. Yes, ma'am.
 23 Q. Did they get a CareFlite helicopter in?
 24 A. Yes, ma'am.
 25 Q. Was he CareFlited out of there in a helicopter?

1 A. Yes, ma'am.
 2 Q. After this all happened, did you ever have an
 3 opportunity to either go through your car intentionally
 4 looking for anything or did you happen to come upon
 5 something that you thought might be related to what had
 6 happened in the early morning hours of February 23rd of
 7 this year?
 8 A. I went looking for something. Nothing was
 9 found. We looked -- of course, the bottom of the trunk
 10 and the only fragments of the bullet was in my friend --
 11 or was in Rick, and something was missing and it was the
 12 main bullet.
 13 Q. Did you ever find anything in your car?
 14 A. Yes, ma'am.
 15 Q. What did you find?
 16 A. Pretty much the bullet.
 17 Q. Where exactly did you find it?
 18 A. It was stuck to the hard plastic in the back
 19 seat.
 20 Q. Okay. Did you get it out?
 21 A. Yes, ma'am.
 22 Q. And were you able to -- let me ask you this.
 23 When did you find the bullet, the projectile?
 24 A. It was a month or two later --
 25 Q. After this all happened?

1 A. Yes, ma'am.
 2 Q. Okay. Were you able to turn that item over to
 3 two investigators for the District Attorney's, Office Don
 4 Hubbard and Juan DeLeon?
 5 A. Yes, ma'am.
 6 Q. Was that done within the last couple of weeks?
 7 A. Yes, ma'am.
 8 MS. HARTMANN: May I approach the witness?
 9 THE COURT: Yes.
 10 Q. (BY MS. HARTMANN) I am going to show you what's
 11 been marked for identification purposes as State's Exhibit
 12 No. 33 and ask you to take a look at that.
 13 Do you recognize the item contained in
 14 State's Exhibit No. 33 as something that you turned over
 15 to Mr. Juan DeLeon and Mr. Don Hubbard.
 16 A. Yes, ma'am.
 17 Q. Did you only turn one item over to Mr. Hubbard
 18 and Mr. DeLeon?
 19 A. Yes, ma'am.
 20 Q. Was that one item the bullet that you recovered
 21 out of your vehicle?
 22 A. Yes, ma'am..
 23 MS. HARTMANN: Pass the witness.
 24 MR. MINICK: No questions, Judge.
 25 THE COURT: You may step down, sir.

1 MS. HARTMANN: State calls Richard Weaver.
 2 Whereupon,
 3 RICHARD WEAVER,
 4 having been first duly sworn, testified as follows:
 5 DIRECT EXAMINATION
 6 BY MS. HARTMANN:
 7 Q. State your name for the record.
 8 A. Richard Lee Weaver.
 9 Q. How old are you, Mr. Weaver?
 10 A. 22.
 11 Q. Do you work, go to school, what?
 12 A. Work part time, going to Tarlton State
 13 University.
 14 Q. What type of work do you do?
 15 A. I work at a physical therapy center.
 16 Q. Do you know the gentleman that just left the
 17 courtroom?
 18 A. Yes.
 19 Q. And do you know his wife Janet?
 20 A. Yes, ma'am.
 21 Q. Are you all friends?
 22 A. Yes, ma'am.
 23 Q. Do you all live in the same general area?
 24 A. Yes, ma'am.
 25 Q. Where do you live? What town?

1 A. I live in Stephenville.
 2 Q. What county is that located in?
 3 A. Erath County.
 4 Q. I want to direct your attention back to the
 5 evening hours of the 22nd of February of this year into
 6 the early morning hours of the 23rd. Had a group of you
 7 all come here to Fort Worth for a birthday party?
 8 A. Yes, ma'am. One of my friends had a birthday
 9 party, so we came for him.
 10 Q. Was it you and Steven Ancira and Greg Peterson
 11 and Joel Chandler?
 12 A. Yes, ma'am.
 13 Q. And yourself?
 14 A. Yes.
 15 Q. Did you-all ride in one vehicle?
 16 A. Yes, ma'am.
 17 Q. Who was that that was driving?
 18 A. Steven Ancira.
 19 Q. Did you-all go to a party?
 20 A. Yes, ma'am.
 21 Q. Did you decide to return back to Stephenville
 22 and Morgan Mill area?
 23 A. Yes, ma'am.
 24 Q. Do you recall where you were located in Mr.
 25 Ancira's car on the way back to Stephenville?

1 A. I was sitting in the middle of the back seat
2 between Joel and Greg.
3 Q. Are Joel and Greg as tall and big as you are?
4 A. Yeah. Joel is about my size and Greg is a
5 little bit smaller, not much smaller.
6 Q. Were y'all kind of packed in there?
7 A. Yeah, a little bit.
8 Q. At some point -- let me ask you this: Were you
9 awake the entire time or did you fall sleep at some point?
10 A. I fell asleep and Joel was right beside me. We
11 both fell asleep on the way home.
12 Q. Did anything wake you up before you were able to
13 get home?
14 A. Well, we were going and all of a sudden I felt
15 like I had been punched in the kidneys or in the back and
16 I went forward. And I woke up and Greg was sitting beside
17 me, and he said Rick's been shot. I didn't believe it at
18 first because nobody thinks they're going to wake up with
19 a bullet in their back. And that's how I woke up right
20 then.
21 Q. Did you eventually feel any type of pain?
22 A. Yeah. I mean, it just felt like somebody
23 punched me real hard in the back and --
24 Q. What part of your back?
25 A. On the left side right below my shoulder blade.

1 Q. Below your shoulder blade?
2 A. Yes, ma'am.
3 Q. What happened at that point when you discover
4 you had been shot?
5 A. Greg laid down over on top of Joel, and he got
6 on top of me and was putting pressure on my back, and we
7 got on Joel's cell phone and called 911. We were in
8 between Bluff Dale and Tolar or right before Tolar. We
9 called 911 and they said meet us in Tolar, so Steven sped
10 off and the paramedics met us there at that gas station
11 out there in Tolar.
12 Q. Okay.
13 A. From there the paramedics got me. I tried to
14 get up and walk to the car but they made me lay down
15 inside the car, put me on the back board and put me in the
16 ambulance. They gave me some pain medicine then, I
17 believe.
18 Q. Were you taken to a hospital at that point?
19 A. Well, they told me they called CareFlite. I
20 didn't want to go at first, but they talked me into it
21 saying this could be pretty bad. So we went to the Tolar
22 football field, and CareFlite came there and CareFlite
23 picked me up. From there we went to Harris downtown.
24 Q. Harris Methodist here in Fort Worth?
25 A. Yes, ma'am.

1 Q. How long were you in Harris Methodist?
2 A. I believe I got there around 4:00 probably and I
3 left around 7:30 or 8:00 the next morning.
4 Q. The injury that you received from being shot,
5 did that cause you pain or any discomfort?
6 A. For about two weeks it was real tender. I
7 couldn't do anything. I missed a week of work because I
8 really couldn't work with any patients or anything because
9 I was either on pain medicine or just laid up. My back
10 where it had gone up to muscles, any time I tried to use
11 my left arm, it caused a lot of pain.
12 Q. So the actual injury itself, did that cause you
13 physical pain or discomfort?
14 A. Yes.
15 Q. Do you know whether or not they were able to
16 conclude that your injury was as a result of being shot?
17 A. Yeah. They tried to dig the bullet out, but it
18 was too deep. They said it would do more damage to try
19 and cut me open and get the bullet out -- actually, it was
20 part of the bullet, fragments were in my back. But they
21 would do more damage trying to get them out than it would
22 to leave them in there and let it heal over.
23 Q. So you still have fragments in your back?
24 A. Yes, ma'am.
25 Q. All right. And you go by either Rick or

1 Richard?
2 A. Most of my friends call me Rick.
3 Q. Your given name is Richard?
4 A. Yes, ma'am.
5 Q. All right.
6 MS. HARTMANN: Pass the witness.
7 CROSS-EXAMINATION
8 BY MR. WESTFALL:
9 Q. Rick, I'm Greg Westfall. Have you otherwise
10 made a full recovery after that two weeks?
11 A. Yes, sir.
12 MR. WESTFALL: Thank you.
13 MS. HARTMANN: No further questions.
14 THE COURT: You may step down, sir.
15 MS. HARTMANN: May the witness be excused?
16 THE COURT: He may.
17 MS. HARTMANN: The State would call Jan
18 Ancira.
19 Whereupon,
20 JAN ANCIRA,
21 having been first duly sworn, testified as follows:
22 DIRECT EXAMINATION
23 BY MS. HARTMANN:
24 Q. State your name for the record, please.
25 A. Jan Ancira.

1 Q. How old are you?
 2 A. I'm 25.
 3 Q. Are you married?
 4 A. Yes.
 5 Q. To whom are you married?
 6 A. To Steven Ancira.
 7 Q. Is he the gentleman seated back here?
 8 A. Yes.
 9 Q. Where do you live?
 10 A. In Morgan Mill.
 11 Q. What county is that?
 12 A. Erath.
 13 Q. I want to direct your attention back to the date
 14 of February 22nd and 23rd of this year. Did you and your
 15 husband and some friends have an occasion to come here to
 16 Fort Worth for a party?
 17 A. Yes.
 18 Q. Whose vehicle did you come in?
 19 A. My husband's.
 20 Q. How many in all, I guess, were in that vehicle?
 21 A. Five.
 22 Q. Who all was there?
 23 A. There was me, my husband up front, and it was
 24 Rick and Greg and Joel in the back.
 25 Q. Okay. You say Rick. You are talking about Mr.

1 Weaver who is also here in the courtroom?
 2 A. Yes.
 3 Q. You-all went to the party, I guess?
 4 A. Yes.
 5 Q. Did you decide to return back home to
 6 Stephenville and Morgan Mill and where everyone else
 7 lived?
 8 A. Yes.
 9 Q. On the return home, were you-all traveling on
 10 377?
 11 A. Yes.
 12 Q. And who was driving?
 13 A. My husband.
 14 Q. Were you awake the entire time or --
 15 A. Yes.
 16 Q. -- were you asleep?
 17 A. I was awake for most of the time, and then I did
 18 fall sleep couple of times. It was kind of on and off.
 19 Q. Kind of dozing?
 20 A. Yes.
 21 Q. At some point, do you know whether or not your
 22 husband slowed down and actually turned the vehicle that
 23 you-all were in around?
 24 A. Yes.
 25 Q. Were you awake at that point --

1 A. I was awake by that point, yes.
 2 Q. And what did you believe the situation to be,
 3 the reason why he was turning around and reversing
 4 direction, I guess?
 5 A. We both saw the oncoming truck, and it was
 6 flashing lights and had his emergency lights on, so I
 7 thought that it was a real emergency, something really
 8 bad. So that's when we stopped or slowed down to stop and
 9 then turned around.
 10 Q. Okay. And when you stopped and turned around,
 11 what did you see at that point?
 12 A. We were behind the back of the truck.
 13 Q. Did you actually come to a stop?
 14 A. Yes.
 15 Q. Were you able to see -- let me ask you this.
 16 Did anybody get out of that truck?
 17 A. Yes.
 18 Q. And was that one person or more than one?
 19 A. It was just one.
 20 Q. And male or female?
 21 A. It was a male.
 22 Q. Did you see or could you tell whether or not
 23 there was anybody else in the truck?
 24 A. I could not tell.
 25 Q. Okay. The person that got out, when they got

1 out of the truck, where did they go?
 2 A. He came up to the driver's side of our car.
 3 Q. Did your husband get out of the car?
 4 A. Yes. He stepped out and he was right by the
 5 driver's -- at the door.
 6 Q. Were you able to get a **good look** at the person
 7 who had gotten out of the truck and came up to your
 8 vehicle?
 9 A. Yes.
 10 Q. Do you see anybody here today in the courtroom
 11 that you recognize to be that individual that got out of
 12 that pickup truck?
 13 A. Yes.
 14 Q. Can you point to that person and describe where
 15 they are seated or standing, wherever they are in the
 16 courtroom and something they are wearing?
 17 A. Right over there at the end wearing a suit.
 18 Q. **If I am Person 1, 2, 3, 4, 5 and the man in the**
 19 **uniform is 6, what number would he be?**
 20 A. No. 5.
 21 MS. HARTMANN: May the record reflect that
 22 the witness has identified the Defendant?
 23 THE COURT: it will.
 24 Q. (BY MS. HARTMANN) Did your husband and the man
 25 you have just identified, did they have a conversation?

1 A. Yes.
 2 Q. Were you able to hear the conversation?
 3 A. Briefly, not very much of it.
 4 Q. How long did the conversation last?
 5 A. I would say it was a few seconds maybe, at least
 6 ten seconds.
 7 Q. Once the conversation ended, where did your
 8 husband go?
 9 A. He got back into the car.
 10 Q. Where did the Defendant go?
 11 A. He started to proceed to back of the truck to
 12 the tailgate.
 13 Q. Tailgate section?
 14 A. Yes.
 15 Q. Was it up or down?
 16 A. Think it was down. I can't remember.
 17 Q. Did you see what the Defendant did at the
 18 tailgate section of his truck?
 19 A. He got around to the back and went to the tool
 20 box.
 21 Q. Describe for us, please, the tool box that's in
 22 the back of the pickup.
 23 A. It was a big metal tool box. It was mounted
 24 onto the back of the truck. The handles were on the back
 25 of the tool box. They weren't on the side, they were on

1 the back. And it was -- had a little diamond shapes -- I
 2 don't know and it was silver.
 3 Q. Okay. And did he do anything with this tool box
 4 or just go in the general direction of it?
 5 A. Just started to get into it.
 6 Q. At this point are you all stationary in your car
 7 or starting to leave?
 8 A. We are starting to leave as he gets into the
 9 tool box.
 10 Q. What's the next thing that you see?
 11 A. As my husband turned around, just the road in
 12 front of us.
 13 Q. What happens next?
 14 A. I hear a loud pop and I thought it was something
 15 with the back tire on the passenger side, and then I hear
 16 more sound after that and realized that it was gunfire.
 17 Q. Okay. And at some point did it become apparent
 18 that somebody in the car has been hit or hurt?
 19 A. Not right at that second.
 20 Q. Okay. When did that become apparent?
 21 A. It was probably a few seconds later that we
 22 realized that.
 23 Q. Who was hurt?
 24 A. It was Rick.
 25 Q. Is that Mr. Weaver?

1 A. Yes.
 2 Q. Did y'all get Mr. Weaver some help that evening?
 3 A. Yes.
 4 MS. HARTMANN: Pass the witness.
 5 CROSS-EXAMINATION
 6 BY MR. WESTFALL:
 7 Q. I'm Greg Westfall. This person that you saw out
 8 there, he appeared to you to be staggering around?
 9 A. Right.
 10 MR. WESTFALL: May I pull the board out,
 11 Your Honor?
 12 THE COURT: Yes.
 13 MR. WESTFALL: Maybe I can do it without
 14 it.
 15 Q. (BY MR. WESTFALL) Are you-all going west -- are
 16 y'all driving west and the truck is stopped facing east?
 17 A. I don't know the directions.
 18 Q. Where were you coming in and where were you
 19 going?
 20 A. We were coming from Fort Worth and going back
 21 towards Stephenville.
 22 Q. So you are going generally west?
 23 A. Correct.
 24 Q. When you pulled up behind the truck, when Steven
 25 pulled up behind the truck, did he pull up directly behind

1 the truck like this.
 2 A. It was behind the truck.
 3 Q. How much distance do you think there was between
 4 you-all and the truck?
 5 A. There was maybe just a few feet. There wasn't
 6 too much distance between the truck and the car.
 7 Q. And this is a section of the highway, so I
 8 imagine there weren't street lights?
 9 A. I don't think there were. I don't remember.
 10 Q. Would it be safe to say the only lighting out
 11 there was coming from y'all's headlights?
 12 A. Yes.
 13 Q. Did you know there was another person in the
 14 truck?
 15 A. I didn't realize at first, no.
 16 Q. So whoever was in the truck that was a passenger
 17 didn't get out and walk around or anything?
 18 A. No, they didn't get out of the truck.
 19 Q. And where were you sitting in your car?
 20 A. I was in the passenger seat. What's he getting at? Was
 21 Q. In the front seat? she perjuring herself about
 22 A. Yes. being in the front-seat?
 23 Q. So as you-all are sitting there in the front
 24 seat behind this truck, you can't see a passenger in
 25 there?

1 A. No, I could not, but I wasn't focused on the
2 passenger, only the truck itself.

3 Q. Right. When you-all pulled out to turn around,
4 how did you do it? Did you back up and then cross the
5 street and go back this way?

6 A. I think we just -- I don't think -- I think we
7 just kind of drove on.

8 Q. Just kind of pulled out and then hung a U-turn
9 at some point up here.

10 A. We didn't really back up. We just kind of
11 turned from there.

12 Q. Okay.

13 A. We didn't drive straight past the truck. We
14 just turned around there.

15 Q. So you never really did drive past the truck.
16 You had your car here, here's the truck and you-all just
17 went like this?

18 A. It may have gone like -- we didn't pass the
19 truck totally, that I remember.

20 Q. Okay. Thank you.

21 MR. WESTFALL: Thank you, Your Honor, pass
22 the witness.

23 REDIRECT EXAMINATION

24 BY MS. HARTMANN:

25 Q. Just very briefly. In regards to something Mr.

1 Q. How long were you with the Fort Worth Police
2 Department?

3 A. For about eight years.

4 Q. Were you an investigator with Fort Worth?

5 A. Yes, sir.

6 Q. How many of those years were you an
7 investigator?

8 A. Six years.

9 Q. And you worked a number of specialized units
10 before coming to the District Attorney's Office?

11 A. Yes, sir.

12 Q. In the case on trial here, did you have an
13 opportunity to meet with the Anciras?

14 A. Yes, I did.

15 Q. Did they give you any evidence prior to trial?

16 A. Yes, they did.

17 Q. Let me show you what's been marked as State's
18 Exhibit 33-A and State's Exhibit No. 33 and ask you if you
19 recognize those items.

20 A. Yes, sir, I do.

21 Q. Is Exhibit 33-A the evidence envelope that you
22 placed the items of evidence that you collected from the
23 Anciras?

24 A. Yes, sir.

25 Q. What was that piece of evidence?

1 Westfall asked you about his client's appearance that
2 night staggering, did you think he was drunk?

3 A. Yes.

4 MS. HARTMANN: Pass the witness.

5 MR. WESTFALL: Nothing further.

6 MS. HARTMANN: May the witness be excused?

7 THE COURT: She may.

8 MR. FORAN: We'll call Juan DeLeon.

9 (Witness Sworn)

10 Whereupon,

11 JUAN DeLEON,

12 having been first duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. FORAN:

15 Q. Would you tell the jury your name.

16 A. My name is Juan DeLeon.

17 Q. How are you employed?

18 A. I am an investigator with the Tarrant County
19 District Attorney's Office.

20 Q. How long have you been an investigator with the
21 District Attorney's office?

22 A. 21 years.

23 Q. Prior to that, did you serve as a police officer
24 anywhere?

25 A. Yes, sir, Fort Worth Police Department.

1 A. It was a bullet fragment.

2 Q. And State's Exhibit No. 33, does that contain
3 the bullet fragment?

4 A. Yes, sir.

5 Q. After collecting it from them, what did you do
6 with it?

7 A. After collecting it from them, I sealed it along
8 with Investigator Hubbard. We sealed it in that envelope
9 and then it was brought to the Tarrant County DA's office.

10 Q. Did you take it anywhere for testing?

11 A. Yes.

12 Q. Where did you take it to?

13 A. We took it to the Fort Worth Police Department
14 crime lab.

15 MR. FORAN: Your Honor, at this time we'd
16 offer Exhibit 33-A for the record only and Exhibit 33 for
17 all purposes.

18 MR. WESTFALL: No objection, Your Honor.

19 THE COURT: 33-A is admitted for the
20 record; 33 for all purposes.

21 MR. FORAN: We pass the witness.

22 MR. WESTFALL: No questions. Incredible!

23 THE COURT: You may step down, sir. Thank
24 you.

25 MR. FORAN: Your Honor, we need to check on

1 the presence of another witness.

2 THE COURT: All right.

3 (Pause in the proceedings)

4 MR. FORAN: May we approach?

5 (Off the record)

6 We call Ron Fazzio.

7 (Witness Sworn)

8 Whereupon,

9 RONALD FAZZIO,

10 having been first duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. FORAN:

13 Q. Tell the jury your name, sir.

14 A. Ronald Thomas Fazzio.

15 Q. How are you employed?

16 A. I am senior forensic firearms examiner for the
17 City of Fort Worth Police Department crime lab.

18 Q. How long have you worked for them?

19 A. I have been with the Fort Worth Police
20 Department nearly four years. Before that I was with the
21 Tarrant County Medical Examiner's Office for approximately
22 2 1/2 years.

23 Q. Do you have a military background also?

24 A. Yes. I was the unit armour for U.S. Army
25 Reserves for approximately five years.

1 was recovered at crime scene or in an autopsy and

2 determine if those are from the same origin, that is it

3 was recovered from the crime scene or autopsy, was fired
4 from that weapon.

5 Q. Now, let's begin with the items -- I guess --
6 you prepared a report?

7 A. Yes, sir.

8 Q. Beginning with the items submitted by Officer
9 Walles. Let me show you what's been marked 27 and 27-A
10 through 31-A and 31. And I am going to ask you to examine
11 these items and tell us whether or not you recognize
12 those.

13 A. (Witness complies) I do.

14 Q. These items -- did you perform an examination of
15 these items?

16 A. All with the exception of State's Exhibits 31-A.

17 Q. Or State's Exhibit No. 30?

18 A. I'm sorry, 31.

19 Q. First of all, what is State's Exhibit No. 30?

20 A. 31.

21 Q. Is it 31?

22 A. Yes, sir.

23 Q. What is State's Exhibit No. 31?

24 A. State's Exhibit No. 31 is apparently a plastic
25 button that may have been part of a shotgun cartridge.

1 Q. In this case offense number 02132262, were you
2 called upon to examine some evidence?

3 A. Yes, I was.

4 Q. Okay. Did you assign -- or did the crime lab
5 assign a unique lab number for that particular case?

6 A. Yes.

7 Q. What is that?

8 A. 0201071.

9 Q. Could you describe for the jury how you go about
10 examining firearm evidence such as spent shell casings and
11 bullet fragments?

12 A. If I am asked to look solely at a bullet
13 fragment or a cartridge case, I would look at several
14 things. If I am asked to compare, for instance, two
15 different cartridge cases from two different scenes, I
16 would look at different sets of marks, all the flats,
17 individual characteristics. They would allow me to
18 determine whether or not these cartridge cases came from
19 the same gun. The same happens with bullets or bullet
20 fragments.

21 If I have a gun, I can give that gun a
22 weapons mechanical evaluation, determine whether or not
23 that weapon is functioning properly, test fire that
24 weapon, collect the test fires, put my individual marks on
25 those test fires and compare those to the evidence that

1 Q. This -- all right. Let me show you what's

2 marked as State's Exhibits 26, 28, and 29 and ask you what
3 those are.

4 A. State's Exhibits 28, 26 and 29 are shot wads --
5 plastic shot wads.

6 Q. What is the purpose of a shot wad?

7 A. Its purpose is to hold the shot, that is the
8 pellet that's in the shot shell together as it travels
9 down the barrel. Not only will it hold it together as it
10 goes through the barrel, it also provides a sealing for
11 the gasses so that it won't -- the gases will not escape
12 around the wad column and basically melt or fuse the
13 pellets together.

14 Q. Generally how is a shotgun shell constructed?

15 A. A typical shotgun shell is constructed of
16 pellets, sometimes a slug, the wad that contains those
17 pellets or slug, another wad that may go over the powder,
18 the plastic case, what looks like a brass head but is
19 actually steel, the primer and maybe an overshot wadding
20 that would keep the shot in place, but that's not always
21 necessarily there.

22 Q. Does the pellets, do they vary in size?

23 A. Yes, they do.

24 Q. What do they range in?

25 A. Sometimes as small as a pellet of dust.

1 Typically pellets that are used for snake shot. Typically
2 sporting pellets will go down to the size of the head of a
3 pin, all the way up to triple-aught buck, which is about
4 .36 inches in diameter.

5 Q. Generally how many pellets are in a shell
6 casing?

7 A. Depends whether or not that shell casing is a
8 magnum or not. But a 12-gauge, nonmagnum will have nine
9 double-aught buck pellets.

10 Q. Let me show you what's been marked as State's
11 Exhibit No. 30 and State's Exhibit No. 27. Do you
12 recognize those items?

13 A. Yes, I do.

14 Q. And what are they?

15 A. These are two shot shells that I examined in the
16 course of my examination.

17 Q. What can you tell from your -- just your visual
18 examination?

19 A. That these are two fired federal premium
20 double-aught buck shotgun shells.

21 Q. Okay. And those would have nine large pellets
22 that you are talking about?

23 A. I believe this is not a magnum loading, which
24 means it should have nine.

25 Q. Now, State's Exhibit No. 26 --

1 gun, a fingerprint, if you will, of that gun that will
2 remain on that cartridge to cartridge to cartridge to
3 cartridge.

4 Q. Let me show you what's been marked as State's
5 Exhibit No. 32-A through 32-E and State's Exhibit No. 33,
6 and as well as State's Exhibit No. 36. You know that's
7 fingerprint powder, so --

8 Now, 32-A through 32-E, those contain a
9 number of 47.62 times 39 cartridge ammo, right?

10 A. Yes. Those contain 47.62 millimeter by 39
11 millimeter cartridge.

12 Q. As well as one federal 12-gauge slug cartridge?

13 A. Yes.

14 Q. Okay. Now, Exhibit No. 33 is a bullet fragment?

15 A. Yes, it is.

16 Q. When you were processing these items, the
17 cartridges and the slug as well as the SKS, did you
18 process it for fingerprints?

19 A. Yes, I did.

20 Q. Did you find any usable fingerprints?

21 A. No, I did not.

22 Q. Did you also process the two shotgun shells that
23 we were talking about earlier?

24 A. Yes, I did.

25 Q. Did you find any usable prints there?

1 A. 27.

2 Q. That's in a much more damaging condition than
3 this; is that right?

4 A. Yes, it is.

5 Q. State's Exhibit No. 30?

6 A. Yes.

7 Q. Were you able to compare the two?

8 A. Yes, I was.

9 Q. Were you able to draw any conclusions?

10 A. State's Exhibit -- that was 30?

11 Q. Yes.

12 A. And State's Exhibit 27 were fired from the same
13 firearm.

14 Q. How did you determine that?

15 A. Once again, I looked at the class and individual
16 characteristics. This time it was on the cartridge case.
17 That is the markings that are left by the firing pin and
18 the breech face. When a cartridge, any cartridge, whether
19 it's a shotgun cartridge or a handgun cartridge, is
20 ignited, within the gun is literally stamped against every
21 interior surface of that gun, the chamber, the breech face
22 marks, firing pin marks. There's up to 11 areas that I
23 have to look at.

24 When it is stamped on there, it will pick
25 up unique characteristics, unique characteristics of that

1 A. No, I did not. What, like the test fire?

2 Q. Did you make an examination of the shot -- the
3 bullet fragments and compare it to this particular SKS?

4 A. Yes.

5 Q. Tell the jury how you went about doing that?

6 A. Like I said before, the first thing I did was do
7 a visual and mechanical examination of the firearm. That
8 is after I fingerprinted the firearm. I wanted to make
9 sure the firearm was functioning properly, it won't
10 actually go full auto, the safe hadn't been modified. I
11 then take that firearm and test fire it into what's
12 basically a giant tank of water. I'll flood the cartridge
13 cases just using a (inaudible), I'll collect bullets from
14 that tank of water.

15 I'll label those with my unique mark that I
16 know that's a test fire that came from this gun, place it
17 in its own separate packaging. Then I would take the
18 evidence in this case, State's Exhibit 33, and I will use
19 that and look at that through the comparison microscope.
20 All a comparison microscope is is two microscopes that are
21 bridged together optically to allow me to look at both at
22 the same time.

23 As the bullet passes down the rifle of the
24 barrel, it picks up the individual stria from the axons
25 that are inside this barrel. When it exits that, it will

1 retain those marks. Bullet after bullet after bullet will
 2 retain those marks, a bar code, if you will, of what's
 3 inside this barrel. If I can match up those individual
 4 stria from one to the other, I know that it came from this
 5 particular firearm.

6 Q. So that's your conclusion about Exhibit No. 33?

7 A. Yes.

8 Q. Now, let's look at Item 2 in -- among the
 9 cartridge -- the live cartridges, State's Exhibit No.
 10 32-B. Now, did you -- was there anything forensically
 11 significant about that cartridge when you examined it?

12 A. Yes, State's Exhibit 32-B, my Item 2, showed
 13 signs of being chambered in the firearm and having a light
 14 firing pin hole.

15 Q. What does that mean?

16 A. That means for some reason the firing pin broke
 17 forth and struck this cartridge, but not hard enough to
 18 make a primer and make the gun go off.

19 Q. Did you actually see it?

20 A. Yes.

21 Q. Visually?

22 A. Yes.

23 Q. Without a microscope?

24 A. Yes.

25 Q. Step down here, please.

1 Q. Now, double aught buck which you described
 2 earlier, whether it's a magnum charge or whether it's the
 3 other type of cartridge, shooting say, for example, nine
 4 projectiles, that might leave multiple entry wounds?

5 A. Depending on the distance, the intermediate
 6 targets, it is designed to leave multiple wound tracks.

7 Q. Something like State's Exhibit No. 32-E could
 8 not be fired out of a weapon like State's Exhibit No. 36?

9 A. Out of the SKS? No, it could not.

10 Q. Now, State's Exhibit No. 33, the fragment that
 11 you examined and compared to the SKS, the fact that it
 12 says small, that doesn't prevent an identification, does
 13 it?

14 A. No. I have seen matches made literally a
 15 fraction of a millimeter in size with a great match back.
 16 I have seen entire bullets that looked pristine that were
 17 unusable for forensic quality.

18 MR. FORAN: Pass the witness.

19 CROSS-EXAMINATION

20 BY MR. WESTFALL:

21 Q. Ron, how are you doing?

22 A. Okay. I think my throat is a little scratchy.

23 Q. Do you need some water? Are you kidding me?

24 A. No.

25 Q. Generally speaking, the further you are away

1 A. (Witness complies)

2 Q. Why don't you remove it from this package.

3 A. Okay.

4 Q. Indicate to the jury where you can see that.

5 A. (Witness complies)

6 Q. Be sure and show it to the folks on the back row
 7 also.

8 A. In addition to that, there were chamber marks
 9 on the cartridge case itself.

10 Q. And chamber marks are left from the weapon
 11 itself?

12 A. That's correct.

13 Q. Now, do -- does this -- your opinion was that
 14 this particular cartridge matched back to this SKS having
 15 been in there at some point?

16 A. That cartridge had been chambered in that
 17 particular SKS at one particular point.

18 Q. Now, we have talked about this 12-gauge slug now
 19 that just shoots one projectile; is that right?

20 A. That's correct.

21 Q. And upon hitting a person, something would leave
 22 like multiple entry wounds?

23 A. No.

24 Q. Does it leave a single wound?

25 A. Yes.

1 from a shotgun the bigger the spread of the pellets is
 2 going to be?

3 A. Yes.

4 Q. Is there any way to know a number of feet away
 5 from a shotgun how big the spread is going to be if you
 6 don't have the shotgun? Can you estimate?

7 A. You can do an estimation, yes, sir. There are a
 8 lot of variables. The biggest problem is that you don't
 9 know the length of the barrel. That will have a big
 10 effect on how much the pattern spreads. With buckshot --
 11 also -- excuse me, let me back up. The constriction or
 12 the choke on the end of the barrel will also have some
 13 effect on that. We don't know if we don't have the gun.

14 Q. Right.

15 A. With buckshot, it is a little easier because we
 16 have far fewer pellets. If you're dealing with something,
 17 for instance, like bird shot, there are a lot more
 18 variables involved in that, and it would be difficult to
 19 estimate or even guess.

20 MR. MINICK: Thank you, Your Honor.

21 REDIRECT EXAMINATION

22 BY MR. FORAN:

23 Q. I guess we'll just follow up on that. Obviously
 24 you need the weapon, is that correct, to get an accurate
 25 estimation.

1 A. Yes.
 2 Q. But generally speaking, when you are talking
 3 about double-aught buck and say you are shooting at a
 4 target no bigger than my arm and you hit it with five of
 5 the pellets, are you relatively close?

6 A. The -- I would imagine if you are talking about
 7 three-inch target or four-inch target.

8 Q. Say, for example, from about here on my shoulder
 9 to down to my elbow, that range.

10 A. That would have to be fairly close. It couldn't
 11 be a distance shot. That is, depends if the barrel is
 12 sawed off or not, if it's a full-choke barrel. It would
 13 have to be fairly close, well within visual range.

14 Q. Looking right at it?

15 A. I couldn't imagine it being more than, I would
 16 say, 20 yards at that point. Even with a full
 17 constriction, it would be pretty far spread out.

18 MR. FORAN: Pass the witness.

19 MR. MINICK: Nothing further, Your Honor.

20 THE COURT: You may step down, sir.

21 THE WITNESS: Thank you, Your Honor.

22 MS. HARTMANN: Your Honor, the State of
 23 Texas rests.

24 THE COURT: Ladies and gentlemen, this is a
 25 good place to break for the evening. We'll be back at

1 STATE OF TEXAS I
 2 COUNTY OF TARRANT I
 3 I, Steve Schiller, Official Court Reporter for the
 4 213th District Court of Tarrant County, Texas, do hereby
 5 certify that the above and foregoing contains a true and
 6 correct transcription of all portions of evidence and
 7 other proceedings requested in writing by counsel for the
 8 parties to be included in this volume of the Reporter's
 9 Record, in the above-styled and numbered cause, all of
 10 which occurred in open court or in chambers and were
 11 reported by me.
 12 I further certify that this Reporter's Record of the
 13 proceedings truly and correctly reflects the exhibits, if
 14 any, admitted by the respective parties.

15
 16 WITNESS MY OFFICIAL HAND this the 10th day of April,
 17 2003.



21 STEVE SCHILLER, CSR
 22 Official Court Reporter
 23 213th District Court
 401 West Belknap
 Fort Worth, Texas 76196
 (817) 884-2687
 State Certification No. 4665
 24
 25 Certification Expires: 12-31-03

1 9:00 o'clock tomorrow morning. We'll be in recess until
 2 that point. Please remember and follow your instructions.
 3 And again, meet the bailiffs just outside the courtroom
 4 door about 9:00 o'clock tomorrow morning. Have a good
 5 evening.

6 (Jury not present)

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