

1 IN THE DISTRICT COURT OF THE TWENTY-THIRD JUDICIAL DISTRICT  
2 SITTING WITHIN AND FOR LINCOLN COUNTY  
STATE OF OKLAHOMA

3 STATE OF OKLAHOMA, )  
4 )  
Plaintiff, )  
5 vs. ) Case No. CF-95-104  
6 JOSHUA D. STUMP, )  
7 )  
Defendant. )  
8

9 TRANSCRIPT OF PRELIMINARY HEARING

10 Held on: Friday, November 17, 1995, and  
Monday, December 4, 1995  
11  
12 Before: THE HONORABLE DAVID WELCH  
Associate District Judge  
13  
14

15 A P P E A R A N C E S

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1 IN THE DISTRICT COURT OF THE TWENTY-THIRD JUDICIAL DISTRICT  
2 SITTING WITHIN AND FOR LINCOLN COUNTY  
3 STATE OF OKLAHOMA

4 (The following proceedings were had on Friday,  
5 November 17, 1995, at 9:13 a.m.)

6 THE COURT: This next case is CF-95-104,  
7 State of Oklahoma v. Joshua D. Stump. Cause comes on for  
8 preliminary hearing on a charge of Murder in the First Degree.

9 State appears by Mr. Zimmerman. Mr. Barnett is not  
10 present, but I understand he's going to be lead counsel.

11 MR. ZIMMERMAN: Yes, he will, Judge.

12 THE COURT: And respondent -- or defendant appears  
13 and with Mr. David Ball.

14 Mr. Ball, there was a motion to endorse witnesses filed  
15 this morning. Did you get a copy of that?

16 MR. BALL: Yes, your Honor. I was handed a copy of  
17 it about 15 minutes ago.

18 THE COURT: And do you have any motions in the file?

19 MR. BALL: There's a motion to certify the defendant  
20 as a juvenile, which was filed September 8th, which I believe  
21 we would take up after the conclusion of the evidence.

22 (Mr. Barnett entered the courtroom.)

23 THE COURT: Do you have any other motions to present  
24 at this time?

25 MR. BALL: Yes, your Honor.

1 THE COURT: Go ahead. Let's hear what they are.

2 MR. BALL: Could I have just a moment with my  
3 client?

4 THE COURT: Certainly.

5 (Mr. Ball conferred with the defendant.)

6 MR. BARNETT: Judge, I have a copy of a motion to  
7 certify. Is that what you're looking for? I'm sorry.

8 THE COURT: I found that one. I just wanted to see  
9 if there are any other motions before we proceed.

10 MR. BARNETT: None that I'm aware of, Judge.

11 THE COURT: Is the state ready?

12 MR. BARNETT: Yes, your Honor.

13 (There was a pause in the proceedings.)

14 MR. BALL: Your Honor, out of an abundance of  
15 caution, because this may be moot after a bindover order is  
16 issued if that does occur in this cause, we would move to  
17 disqualify the district attorney from prosecuting this cause,  
18 because of the fact that this defendant is a ward of this Court  
19 in other causes of action that were brought here by the same  
20 district attorney.

21 And it's my understanding that there are some statements  
22 that may be offered into evidence, made while my client was  
23 still clearly a juvenile, prior to his being charged, which may  
24 be offered in this cause; and that, therefore, there's a  
25 conflict of interest for the district attorney to be

1 representing both the Department of Human Services while  
2 they're looking after the interest of this child and at the  
3 same time seeking to prosecute him for a death-penalty cause.

4 THE COURT: The state doesn't represent the  
5 Department of Human Services, not the district attorney. He  
6 prosecutes their cases. Motion overruled. They have their own  
7 lawyers to give them advice.

8 MR. BALL: I have no other further motions, your  
9 Honor.

10 THE COURT: And you are ready?

11 MR. BALL: Yes.

12 THE COURT: State calls first witness.

13 MR. BARNETT: Your Honor, I'd ask that the rule be  
14 invoked in this case.

15 THE COURT: The rule of sequestration is invoked. If  
16 you are a witness in this case or if you have been told that  
17 you will be a witness or a potential witness, don't leave now,  
18 but you must remain out of the courtroom while this hearing is  
19 ongoing, you must not discuss your testimony or the testimony  
20 of another witness.

21 If you do not abide by the rule, in other words, if you  
22 violate it and you go ahead and talk about this case or you  
23 talk about some other person's testimony in here, then you are  
24 subject to contempt of court and the party wishing to use you  
25 as a witness may not be able to do that.

1           If you are such a witness, you need to leave now. And the  
2 attorneys will be responsible for their own witnesses. If you  
3 are such a witness, exit the courtroom but remain in  
4 attendance.

5                         (Prospective witnesses exited the courtroom.)

6           MR. BARNETT: Your Honor, the state calls Nikki  
7 Cullum.

8                         (There was a pause in the proceedings.)

9           THE COURT: Would you go ahead and swear the  
10 witnesses today, Barbara, please.

11           THE CLERK: Raise your right hand, please.

12                         (Witness sworn.)

13   NIKKI CULLUM

14 called as a witness on behalf of the State of Oklahoma, after  
15 first being duly sworn, testified as follows:

16   DIRECT EXAMINATION

17 BY MR. BARNETT:

18 Q     Would you state your name, please.

19 A     Nikki Cullum.

20 Q     How old are you, Nikki?

21 A     Sixteen.

22 Q     Where do you live?

23 A     In Sparks.

24           THE COURT: Wait just a minute. I'm not getting it.  
25 Move up to the microphone and speak loudly, so we can

1 understand what you are saying. I got "Nikki," and that's  
2 about all I got.

3 Q (By Mr. Barnett) Would you repeat your name, please.

4 A Nikki Cullum.

5 Q And how old are you, Nikki?

6 A Sixteen.

7 Q And where do you live?

8 A In Sparks.

9 Q Is one of your parents here with you today?

10 A Yeah. My mom.

11 Q And you have an attorney in this case appointed, do you  
12 not?

13 A Yes.

14 Q Now, Wednesday you came to court before Judge Vassar. Do  
15 you remember that?

16 A Yes.

17 Q And we've talked about some -- a conditional grant of  
18 immunity for you; is that correct?

19 A Yes.

20 MR. BALL: Your Honor, I'd object to the leading form  
21 of the questioning.

22 THE COURT: Overruled at this point in time. These  
23 are preliminary foundational questions. If we get into  
24 something that's material to your case, go ahead. And if you  
25 think this is material, tell me how and I may change my mind.

- 1 But whether or not she's been granted immunity has nothing to  
2 do with preliminary hearing at this stage.
- 3 Q (By Mr. Barnett) Now, your attorney is here with you  
4 today also; is that correct?
- 5 A Yes.
- 6 Q Okay. Mr. Pat Thompson?
- 7 A Uh-huh.
- 8 Q And you've agreed to testify truthfully today; is that  
9 correct?
- 10 A Yes.
- 11 Q Do you know the defendant in this case, Josh Stump?
- 12 A Yes.
- 13 Q How long have you known Josh?
- 14 A Since -- I don't know. Several months.
- 15 Q Now, do you have any kind of relationship with him? Is he  
16 like a boyfriend or anything like that?
- 17 A No.
- 18 Q Just a friend?
- 19 A Yeah.
- 20 Q Did you ever attend school with him or anything like that?
- 21 A No.
- 22 Q Where did you know him?
- 23 A From just when we, like, hung out and stuff.
- 24 Q Okay. When was that?
- 25 A There wasn't very many times that we were together, you

1 know, around each other. But --

2 Q Okay. Where did Joshua live? Do you remember? Do you  
3 know?

4 A No, I don't know.

5 Q Okay. Did you know Robert Anderson?

6 A Yes.

7 Q How did you know Robert Anderson?

8 A I went to school with him.

9 Q And did you have any kind of relationship with him other  
10 than just a friend?

11 A No.

12 Q Now, were you with Robert Anderson and Josh Stump on the  
13 night of the 14th of July and into the morning of the 15th of  
14 July?

15 A Yes.

16 Q How did you happen to be with those two?

17 A We -- They called us from the pool to have them -- to take  
18 them something to eat.

19 Q And what -- where was this? Where did you first see those  
20 two, Robert and Josh?

21 A At Miguel's house.

22 Q And who is Miguel? What is his last name?

23 A Mendoza.

24 Q Where does Miguel Mendoza live, what community, what town?

25 A In Prague.

1 Q Now, you're from Sparks now. Did you ever live in Prague?

2 A I lived about seven miles from Prague before I moved to  
3 Sparks.

4 Q Did you go to Prague schools at that time?

5 A Uh-huh.

6 Q So prior to July, prior to that summer, were you going to  
7 Prague schools?

8 A Yes.

9 Q Was Josh in Prague schools at that time?

10 A No.

11 Q Did you ever attend school with Josh Stump?

12 A No.

13 Q Now, you said that they called you from the pool. Who  
14 else was with you?

15 A Just me and Misty and her little sister Anita.

16 Q What is Misty's last name?

17 A Vasquez.

18 Q Now, when is the first time that afternoon of the 14th  
19 that you saw Josh Stump and Robert Anderson?

20 A Probably about -- it was probably about three or so.

21 Q Okay. Prior to that date, the 14th, had you been with  
22 Josh Stump or Robert Anderson anytime that week, that you can  
23 recall?

24 A No.

25 Q Do you know whether or not Misty Vasquez and Robert or

1 Josh were boyfriend and girlfriend or anything like that?

2 A No, they weren't.

3 Q Okay. Just friends that kind of hung out together; is  
4 that right?

5 A Yeah.

6 MR. BALL: Objection. Leading.

7 THE COURT: Sustained.

8 Q (By Mr. Barnett) Now, where did you first see them, Josh  
9 and Robert?

10 A At Miguel's house.

11 Q And do you know what time that was or approximately what  
12 time that was?

13 A Well, we got to the pool about three. And then they  
14 called us not very long after we got there.

15 Q Okay. Do you know how they knew you were at the pool?

16 A No, I don't know.

17 Q And whose car were you in?

18 A We weren't. Misty's aunt dropped us off at the pool.

19 Q And how did you get over to Miguel's house?

20 A We walked.

21 Q Now, did you stay with them that whole afternoon, with  
22 Robert and Josh that whole afternoon?

23 A Yes.

24 Q What did you do that afternoon?

25 A We just listened to the stereo and talked and joked around

1 and stuff.

2 Q This was at Miguel's house?

3 A Uh-huh.

4 Q Was anybody drinking or anything like that that afternoon?

5 A No.

6 Q I mean, beer or alcohol or anything like that.

7 A No.

8 Q And any drugs being used that day?

9 A No.

10 Q Now, did you ever leave Miguel's house?

11 A Yeah. We left at like -- Misty's mom came and got us at  
12 seven, and we left and went and got ready to go out.

13 Q Now, where did you -- Did you go out again?

14 A That night?

15 Q That night.

16 A Yeah. We went to Misty's house and got ready. And then  
17 we came back about eight.

18 Q How did you get back to Miguel's house?

19 A One of them asked us to come back, I don't remember which  
20 one of them it was.

21 Q Okay. You mean, Robert or Josh?

22 A Yeah.

23 Q And you agreed to do that?

24 A Yeah.

25 Q And how did you get back over to Miguel's house?

- 1 A Misty had her mom's car.
- 2 Q What kind of car is that?
- 3 A A white Corsica.
- 4 Q Do you know how old it is or what year it is?
- 5 A It's a '94.
- 6 Q And how old is Misty?
- 7 A She's 17.
- 8 Q Who else was with you besides Misty?
- 9 A Anita.
- 10 Q And how old is she?
- 11 A Thirteen.
- 12 Q She's Misty's sister, younger sister?
- 13 A Yes.
- 14 Q Now, what did you do once you got back to Miguel's house  
15 this time?
- 16 A I don't even think we went in there. When we got there,  
17 they asked us if we wanted to go to the river, and we said  
18 yeah.
- 19 Q Was it still light?
- 20 A Yeah.
- 21 Q Eight o'clock or so, you said?
- 22 A Yeah.
- 23 Q Okay. What river did you go to?
- 24 A Oh, I don't know the name of it.
- 25 Q Where is it? Where is it located?

- 1 A It's going towards the interstate.
- 2 Q It's still in Lincoln County somewhere?
- 3 A Yeah.
- 4 Q Okay. And what did you do when you got to the river?
- 5 A We just -- They all went swimming. I didn't go swimming.
- 6 And not really nothing.
- 7 Q Okay. While you were at the river, did you see any kind
- 8 of weapon?
- 9 A Yeah. The gun.
- 10 Q Okay. And who had that gun?
- 11 A Who carried it?
- 12 Q Yes.
- 13 A When we got out of the car, I think Robert had it, because
- 14 it was under his seat.
- 15 Q Did you see Robert bring it out to the car?
- 16 A To the car?
- 17 Q Yes.
- 18 A Yeah.
- 19 Q And he brought it out of Miguel Mendoza's house?
- 20 A Yes.
- 21 Q And you saw it when he put it in the car?
- 22 A Yes.
- 23 Q Did you or anybody else say anything about that?
- 24 A No. Because it's not unusual to, like, go out to the
- 25 river and shoot.

- 1 Q What kind of gun was it?
- 2 A A shotgun.
- 3 Q Had you ever seen a shotgun before?
- 4 A Yes.
- 5 Q And anything unusual about this shotgun?
- 6 A It was sawed off.
- 7 Q Do you know what a sawed-off shotgun is?
- 8 A Now I do. I didn't then.
- 9 Q What did it look like?
- 10 A It was brown. And it looked just like a shotgun, but it
- 11 didn't have a barrel on it.
- 12 Q Did it have a shoulder grip on it?
- 13 A No.
- 14 Q Did it have kind of a pistol grip type of thing?
- 15 A I think.
- 16 Q Did you see any ammunition for that gun?
- 17 A Yeah. Shells.
- 18 Q Who had those?
- 19 A They were in a little bag.
- 20 Q Do you know who carried that bag?
- 21 A No. I can't remember.
- 22 Q Now, who drove you out to the river?
- 23 A Misty.
- 24 Q And how long did you stay out there?
- 25 A Probably about an hour, maybe an hour and a half.

- 1 Q Okay. While you were out there, did anybody fire that  
2 shotgun?
- 3 A Yeah.
- 4 Q Who fired that shotgun?
- 5 A They both did, shot at a cereal box.
- 6 Q Did anybody -- either one of them mention where they got  
7 that shotgun?
- 8 A Huh-uh.
- 9 Q Did you shoot it?
- 10 A No.
- 11 Q Did Ms. Vasquez shoot it?
- 12 A No.
- 13 Q So the girls -- The boys shot the shotgun, and the girls  
14 just watched?
- 15 A Yes.
- 16 MR. BALL: Objection. Leading.
- 17 THE COURT: Sustained.
- 18 Q (By Mr. Barnett) Did any of the girls shoot the shotgun?
- 19 A No.
- 20 Q Now, you stayed at the river about an hour, hour and a  
21 half?
- 22 A Uh-huh.
- 23 Q What did you do after that?
- 24 A We went down to the interstate to get something to drink.
- 25 Q And where was that? Do you recall?

- 1 A That we went to get something to drink?
- 2 Q Yes.
- 3 A At Love's.
- 4 Q How long did you stay there?
- 5 A Not very long. Just a few minutes.
- 6 Q What did you do with the shotgun -- Or what did they do  
7 with the shotgun while you were at Love's?
- 8 A It was under the seat.
- 9 Q Do you know whether or not it was loaded?
- 10 A I don't think it was.
- 11 Q Do you know how to load a shotgun?
- 12 A No.
- 13 Q Did they have any more shells?
- 14 A Yeah.
- 15 Q What did they do with those?
- 16 A There was one of them in a brown bag, and then they had  
17 enough to load the shotgun. And I don't know if they had any  
18 more.
- 19 Q Did you ever see them -- While you were in the car after  
20 you left the river, did you ever see them load the shotgun  
21 again?
- 22 A No.
- 23 Q And who had the shotgun when you were at Love's?
- 24 A When we were at Love's?
- 25 Q Yes.

- 1 A Nobody had it. But it was under Robert's seat, the front  
2 passenger's seat.
- 3 Q Who was driving at that time?
- 4 A Josh.
- 5 Q Did he drive from the time you left the river?
- 6 A Uh-huh.
- 7 Q And who else -- Where was everybody else seated in the  
8 car?
- 9 A Josh was driving. And Robert was in the passenger's seat  
10 -- front passenger's seat. And then Misty and Anita and then  
11 me were in the back.
- 12 Q Boys in the front, girls in the back?
- 13 A Uh-huh.
- 14 Q Now, how long did you stay at Love's?
- 15 A Just a few minutes.
- 16 Q Where did you go after that?
- 17 A We went to Seminole, I think. Yeah, to Seminole.
- 18 Q What did you do there?
- 19 A We just drove around and went down to the bowling alley.
- 20 Q Did you bowl?
- 21 A No.
- 22 Q What did you do there?
- 23 A We just played, like, video games. And they started to  
24 play a game of pool.
- 25 Q What did they do with the shotgun while you were at the

1 bowling alley?

2 A It was in the car, under the seat.

3 Q How about the shotgun shells?

4 A I don't know where they were.

5 Q Now, this evening, do you remember how Robert Anderson was  
6 dressed? Do you remember what he had on?

7 A Yeah. He had on some shorts, some long shorts. And I  
8 think he had a -- One of them had a navy blue shirt on. I  
9 think one had a navy blue one on and one had the black one.

10 Q And do you remember what Josh was wearing?

11 A Josh was wearing the black one -- the black shirt. I  
12 think it was a Mossimo shirt.

13 Q Did Josh or Robert tell you anything about what they had  
14 been up to that week preceding the time they saw you at Miguel  
15 Mendoza's house?

16 A No. Just that they had stayed in Shawnee, I think they  
17 said.

18 Q Do you know Robert Anderson's parents, know who they are?

19 A Yeah, I know who they are.

20 Q Do you know what Robert Anderson's status was at the time  
21 you saw him at Miguel's and at Love's and at the bowling alley?

22 MR. BALL: Objection to the form of the question.

23 THE COURT: Tell me what your objection is other than  
24 to the form. Why? I don't follow it.

25 MR. BALL: Well, what his status is, I object to the

1 form of the question. I don't know what --

2 THE COURT: You mean, it's vague?

3 MR. BALL: Yes.

4 THE COURT: Finish your question, and I'll see.

5 Q (By Mr. Barnett) His status, do you know whether he was a  
6 runaway -- living at home or a runaway?

7 A No. He didn't say anything about it.

8 THE COURT: Objection overruled.

9 Q (By Mr. Barnett) Now, do you know whether or not anybody  
10 was looking for Robert Anderson at that time?

11 A No.

12 Q Now, did Josh or Robert ever tell you where that shotgun  
13 came from?

14 A No.

15 Q Okay. Now, you were at the bowling alley. How long did  
16 you stay there?

17 A Probably about 30 to 45 minutes.

18 Q Where did you go after that?

19 A We went -- Then we cruised a couple of times. And then we  
20 went to Shawnee.

21 Q Where did you go in Shawnee?

22 A We drove up by the bowling alley and didn't see no one  
23 there hardly. Then we went and got some gas and something else  
24 to drink.

25 Q Who drove you over to Shawnee?

- 1 A Josh.
- 2 Q The same seating arrangement?
- 3 A Yeah.
- 4 Q Did that change very much at all?
- 5 A No.
- 6 Q Now, what time was it by the time you got to Shawnee?
- 7 A Probably about ten, a little after.
- 8 Q Now, was anybody expecting you or Misty back at any  
9 certain time that night?
- 10 A Yeah. Misty had to be home at twelve. And I was staying  
11 with her.
- 12 Q So what else did you do in Shawnee?
- 13 A Not really nothing. We just drove around.
- 14 Q Did Josh Stump --
- 15 THE COURT: Wait just a minute.  
16 Find a seat, sir.
- 17 MR. BARNETT: Could I have just a moment, Judge.  
18 (Mr. Barnett conferred with a woman in the gallery.)
- 19 MR. BALL: Your Honor, if I could have a moment?
- 20 THE COURT: Is it your witness?
- 21 MR. BALL: Yes.
- 22 THE COURT: Go ahead.
- 23 (Mr. Ball conferred with a woman in the gallery,  
24 after which she exited the courtroom.)
- 25 Q (By Mr. Barnett) During the course of this driving around

1 particularly in Shawnee, did Josh Stump ever talk to you about  
2 committing any kind of crime?

3 A No.

4 Q Did he ever mention anything about stealing anything?

5 MR. BALL: Objection. Leading.

6 THE COURT: Overruled.

7 A No, not at that time.

8 Q (By Mr. Barnett) Okay. Where did you go after you left  
9 the bowling alley?

10 A We drove around for a little while.

11 Q About how long?

12 A Not real long.

13 Q Okay. Where did you go after that?

14 A We went down by the Kettle and the Holiday Inn and stuff.

15 Q Okay. Was Josh still driving?

16 A Yes.

17 Q What did you do there?

18 A We went up to that little gas station right across the  
19 street from the Kettle, because Misty was going to call her  
20 mom.

21 Q Did she?

22 A No.

23 Q What did you do there at the gas station?

24 A We just sat there and talked.

25 Q Still in the same seats?

- 1 A Yes.
- 2 Q Okay. Did anybody take that shotgun out at all during  
3 this driving around?
- 4 A No.
- 5 Q It stayed under the seat?
- 6 A Yes.
- 7 Q What did you talk about at the gas station?
- 8 A Just we were talking about -- Because she was going to  
9 have to call her mom. I guess it was later than ten or so when  
10 we got to Shawnee, because we were going to be late. Even if  
11 we left then, we wouldn't get home on time. And her mom had  
12 told Josh earlier that anytime Misty was with him that if she's  
13 going to be late, just to call. So we started to call, but we  
14 didn't.
- 15 Q Where is that gas station in relationship to the Kettle  
16 Restaurant there in Shawnee?
- 17 A It's just right across from it.
- 18 Q Were you able to see the Kettle and the parking lot there?
- 19 A Yes.
- 20 Q Did you talk about or did Josh talk about anything that  
21 you were able to see in that parking lot?
- 22 A Robert mentioned that black car.
- 23 Q What kind of car was that?
- 24 A A Firebird.
- 25 Q Do you know what year it was or approximately?

1 A It was probably about a -- It was a new one, probably  
2 about a '95.

3 Q Okay. It looked good?

4 A Yeah.

5 Q And what did Robert say about that?

6 A He just said it was a nice car.

7 Q Did Josh Stump say anything about it?

8 A Not that I can remember. We went -- they drove by and  
9 they looked at it.

10 Q Did either one of them mention taking it?

11 A Right then, they were just talking about it. They weren't  
12 talking about taking the car, but they were talking about how  
13 the car looked.

14 Q And how did Josh Stump describe that car? Do you  
15 remember?

16 A I remember one -- I think they both liked it. But I  
17 remember one of them saying that they don't like the rims on it  
18 or something.

19 Q How long did they watch that car?

20 A Well, after we left the parking lot, after we drove and  
21 looked at it, we went back over to that gas station. And we  
22 saw them people coming out and getting into it.

23 Q What kind of people were they? Can you describe them?

24 A It was an older couple.

25 Q And did anybody -- either Josh or Robert say anything

1 about the couple?

2 A No.

3 Q Where were you when you first saw this couple?

4 A Back over at that gas station.

5 Q Had anybody -- either Josh or Robert mentioned taking that  
6 car, stealing that car?

7 MR. BALL: Objection. Leading.

8 THE COURT: Overruled.

9 Q (By Mr. Barnett) At that time did anybody -- either  
10 Robert or Josh mention stealing that car?

11 A I can't remember.

12 Q At any time did they -- either one of them mention  
13 stealing that car?

14 A Later they did.

15 Q How much later?

16 A Not very long. I think it was Robert that first said that  
17 that would be their car or something like that. I don't know.

18 Q Okay. Now, during the -- I asked you about drinking and  
19 drugs and things before. Between the time you left Seminole  
20 and the time you had this discussion about the car, had anybody  
21 been drinking or using drugs?

22 A No.

23 Q Now, were you still in the parking lot when Robert and  
24 Josh talked about this car, the parking lot --

25 A They said it was a -- When they were talking about it,

- 1 that it was a nice car and stuff, yeah.
- 2 Q What did Josh Stump do when that -- Did that car leave the  
3 parking lot there?
- 4 A Yes.
- 5 Q What did Josh Stump do when the car left?
- 6 A One of them said, "Let's follow" or something. And we  
7 left and followed them.
- 8 Q Did you or Misty say anything about that?
- 9 A No.
- 10 Q Who was driving?
- 11 A Josh.
- 12 Q Josh Stump?
- 13 A (Witness nodded.)
- 14 Q And where did you go? Do you know? Which direction?
- 15 A We went towards Meeker.
- 16 Q And did you stay right behind this car?
- 17 A Yes.
- 18 Q Did Josh or Robert say anything, during the time that you  
19 were following this car to Meeker, about what they were going  
20 to do?
- 21 A They started talking about taking the car.
- 22 Q What did they say?
- 23 A They just said that -- Well, I guess they were talking  
24 about leaving and not coming back. And --
- 25 Q Leaving?

1 A Leaving Prague and stuff and not ever coming back and  
2 stuff. And they said that would be the car, and they were  
3 going to take it.

4 Q Did Robert ever mention -- Robert Anderson ever mention  
5 that he was hiding out from his parents?

6 A No.

7 Q Do you remember -- Where did you go after you got to  
8 Meeker?

9 A We still followed them. We followed them through Meeker.

10 Q Okay. And this -- Do you know approximately what time it  
11 was by this time?

12 A It was getting close to midnight, I think. Because Misty  
13 had to be home.

14 Q And did you or did Misty say anything about, you know, "I  
15 need to go home"?

16 A She said that we were going to be late.

17 Q Did you do anything about that? Did she do anything about  
18 that?

19 A No.

20 Q Okay. So do you go on through Meeker then?

21 A Yes.

22 Q Do you know where you went after you got through Meeker?

23 A We went -- We just kept following them like towards  
24 Chandler, towards --

25 Q Were you a long way away from them or right up close

1 behind them?

2 A We weren't up close behind them.

3 Q Did Robert or Josh Stump say anything, after you got  
4 through Meeker, about what they were going to do about that  
5 car?

6 A Just the same thing.

7 Q What did they say?

8 A They just talked about that would be the car and taking  
9 that car and stuff.

10 Q Where did you go after you got through Meeker?

11 A We followed them out to where they turned off on a dirt  
12 road.

13 Q Do you know which -- Now, they're going from Meeker,  
14 headed kind of towards Chandler or Sparks?

15 A Uh-huh. Yeah.

16 Q Which direction did you turn off?

17 A They turned off right. And at first we turned off left.

18 Q And why did you do that? Do you know?

19 A I don't know. They just turned and pulled into a driveway  
20 and turned around and then kept following them.

21 Q Okay. Did Josh say anything -- any reason why he turned  
22 left?

23 A No.

24 Q How long did you go down that road off to the left?

25 A Not very far. There was a house right there, and we

1 A I don't really recall.

2 Q What did you do with that shotgun shell?

3 A I took it into evidence.

4 Q What did you do with it eventually?

5 A It was turned over to the OSBI.

6 Q Did you ask that they do some analysis on it?

7 A I believe Undersheriff Mathes did.

8 MR. BARNETT: Your Honor, I'd ask that State's  
9 Exhibit 1 be admitted.

10 MR. BALL: No objection.

11 THE COURT: Received.

12 (State's Exhibits 2 and 3 marked for identification.)

13 Q (By Mr. Barnett) Now, did you -- I'm going to hand you  
14 what's been marked State's Exhibits 2 and 3 for identification  
15 purposes. And ask you if you recognize those? Two being the  
16 longer shot and 3 being the closer shot.

17 A Yes, sir. That's the picture of the shotgun that was  
18 laying on the north side of the porch when I arrived on the  
19 scene.

20 Q Now, does that accurately reflect the condition of that  
21 shotgun when you initially saw it and ultimately retrieved it?

22 A Yes, sir.

23 MR. BARNETT: I'd ask that State's Exhibits 2 --

24 THE COURT: Wait just a minute.

25 If anybody else is going to leave, go ahead and leave.

1 But don't come back in except at a recess.

2 MR. BARNETT: I'd ask that State's Exhibits 2 and 3  
3 be admitted, Judge.

4 THE COURT: Any objection?

5 MR. BALL: I have one question to ask the witness,  
6 your Honor, if I could.

7 THE COURT: Go ahead.

8 VOIR DIRE EXAMINATION

9 BY MR. BALL:

10 Q On State's Exhibit 2, there's an area here that appears to  
11 be steps leading to the house. Is that the front or the back  
12 of the house?

13 A That's the front porch.

14 MR. BALL: No objections, your Honor.

15 THE COURT: Two and 3 received.

16 MR. BARNETT: Judge, if I could hang on to 3 for just  
17 a second.

18 THE COURT: Would you tell whoever it is that's  
19 coming and going to stay out until we take a recess. Once they  
20 leave, that's it.

21 (The bailiff exited the courtroom.)

22 DIRECT EXAMINATION (Continued)

23 BY MR. BARNETT:

24 Q On State's Exhibit 3, anything unusual about that shotgun?

25 A It's been modified. The shoulder stock has been sawed off

1 to a pistol grip and the barrel has been sawed off down to the  
2 magazine.

3 Q Based on your training and experience, is it your  
4 understanding as to whether or not that's a legal weapon in the  
5 state of Oklahoma?

6 A If it doesn't have a barrel length that exceeds 18 inches,  
7 then it's not legal in the state of Oklahoma. I'm not sure how  
8 long this one is.

9 Q Did you measure it or anything?

10 A No, sir, I didn't.

11 Q What did you do with this shotgun?

12 A It was taken into evidence and turned over to the OSBI.

13 (State's Exhibit 4 marked for identification.)

14 Q (By Mr. Barnett) I'm also going to show you what's been  
15 marked State's Exhibit 4 for identification purposes. And ask  
16 you if you recognize that?

17 A Yes, sir. That's the white male subject I found laying in  
18 the driveway.

19 Q And does that photograph accurately reflect the way he  
20 looked that evening when you found him?

21 A When we first got there, he was laying facedown.

22 (The bailiff returned to the courtroom.)

23 THE COURT: Excuse me just a minute.

24 The exception is Mr. Zimmerman.

25 THE BAILIFF: Yes. Thank you.

1 THE COURT: He told me he would be coming and going.  
2 Q (By Mr. Barnett) I'm sorry. When you first found him, he  
3 was facedown?  
4 A Yes, sir.  
5 Q And did you take some photographs of him in that position?  
6 A Yes, sir, I did.  
7 Q And do you know why he was rolled over?  
8 A He was rolled over to check for further -- by the medical  
9 people.  
10 Q And does this photograph accurately reflect the way he  
11 looked after he was rolled over?  
12 A Yes, sir.  
13 MR. BARNETT: Your Honor, I'd ask that State's  
14 Exhibit 4 be admitted also.  
15 MR. BALL: May I voir dire the witness?  
16 THE COURT: On the admissibility of the photograph  
17 only.  
18 MR. BALL: Right.  
19 VOIR DIRE EXAMINATION  
20 BY MR. BALL:  
21 Q Did you take any photographs of him before you rolled him  
22 over?  
23 A Yes, sir.  
24 Q Do you have those with you?  
25 A I don't have them --

1 THE COURT: Mr. Ball, I told you on the admissibility  
2 of this photograph only. If you have questions regarding its  
3 admissibility, you may voir dire. If you have other questions,  
4 you can do it on cross-examination.

5 MR. BALL: I have no further questions.

6 THE COURT: Do you have objection?

7 MR. BALL: No, your Honor.

8 THE COURT: Admitted.

9 Can I have No. 4, please.

10 Thank you.

11 (State's Exhibit 5 marked for identification.)

12 DIRECT EXAMINATION (Continued)

13 BY MR. BARNETT:

14 Q And also I'm going to show you State's Exhibit 5 for  
15 identification purposes. And ask you if you recognize that?

16 A Yes, sir. That's Ms. Knight, the way she was found on the  
17 living room floor.

18 Q And does that photograph accurately depict the scene, the  
19 way she was when you found her?

20 A Yes, sir.

21 Q And you took all of these photographs, I should add that.  
22 Is that correct as well?

23 A Yes, sir. I did.

24 MR. BARNETT: I'd ask that State's Exhibit 5 be  
25 admitted, Judge.

1 MR. BALL: No objection.

2 THE COURT: Admitted.

3 Q (By Mr. Barnett) Deputy Armitage, after you took the  
4 photos, gathered the evidence and had it submitted to OSBI for  
5 analysis, did you do anything else in this investigation?

6 A Not other than just assist with whatever needed be.

7 Q Did you interview any witnesses or anything like that?

8 A No, sir, I didn't.

9 Q Make any arrests?

10 A No, sir.

11 Q Take any statements from Josh Stump or anyone else  
12 concerning this case?

13 A No, sir.

14 MR. BARNETT: That's all I have, Judge.

15 THE COURT: Cross-examination.

16 We'll take a recess after this witness.

17 CROSS-EXAMINATION

18 BY MR. BALL:

19 Q Did you make any kind of report regarding your  
20 investigation?

21 A Yes, sir.

22 Q Is it a written report?

23 A Yes, sir.

24 Q Does the district attorney have a copy of that?

25 A Yes, sir, I believe so.

- 1 Q When you spoke to Mr. Moucka that he said they shot him,  
2 were those his exact words?
- 3 A I believe so. I'm not sure.
- 4 Q How many weapons did you find there at the scene?
- 5 A I found one shotgun outside and one pistol inside.
- 6 Q Okay. Did you determine who the owner of the pistol was?
- 7 A I believe the -- excuse me, the owner of the pistol was  
8 Mr. Knight -- or, I mean, excuse me, Mr. Moucka.
- 9 Q Okay. Did you learn who -- whether or not that weapon had  
10 been fired that evening?
- 11 A Yes, sir. It had.
- 12 Q Okay. Was it?
- 13 A Yes, sir, it had been.
- 14 Q And did you learn who fired that weapon?
- 15 A I believe Ms. Knight did.
- 16 Q Okay. Now, was that a .357?
- 17 A I believe it was. I'm not sure.
- 18 Q Okay. Did you find any other weapons besides the pistol  
19 and the shotgun?
- 20 A I didn't, no.
- 21 Q Did Mr. Moucka tell you whether or not both of the boys or  
22 they -- whoever they were, did he say whether or not both of  
23 them had weapons?
- 24 A He did not say to me.
- 25 Q Was he able to tell you who shot him?

- 1 A He just said "they," I believe is what he said. At that  
2 time he was doing good to say anything.
- 3 Q I understand. Now, did you talk with him afterwards?
- 4 A No, sir.
- 5 Q Did he seem pretty distraught?
- 6 A He just -- He was really pretty calm or seemed pretty calm  
7 for the condition he was in.
- 8 Q Was he able to describe what the person who shot him was  
9 wearing?
- 10 A He didn't describe it to me, no.
- 11 Q Did you ask him?
- 12 A I don't recall whether I asked him that or not. My main  
13 concern was to get him some help.
- 14 Q I understand. Do you know how many times that he was  
15 shot?
- 16 A No, sir, I don't.
- 17 Q Do you know how many shots were fired that evening?
- 18 A No, sir, I don't.
- 19 Q Do you know who fired the shots?
- 20 A Which shots?
- 21 Q Well, tell me what shots that you know of, that you've  
22 been able to ascertain were fired by who.
- 23 A To my understanding, Ms. Knight is the one that fired the  
24 pistol. As to who fired the shotgun, I don't know.
- 25 Q Based on what you found at the scene and your

1 investigation, as a law enforcement officer, have you formed an  
2 opinion about who fired the shotgun?

3 A No, sir, I haven't.

4 Q Did it appear likely that Robert Anderson might have fired  
5 the shotgun?

6 MR. BARNETT: Objection, your Honor. It calls for --

7 THE COURT: Speculative. Sustained.

8 Q (By Mr. Ball) Did you do any examination of Robert  
9 Anderson?

10 A What do you mean by "examination"?

11 Q Did you look him over?

12 A Yeah.

13 Q Okay. Are you the one that rolled him over? Or was that  
14 somebody else?

15 A I believe me and an ambulance attendant rolled him over.  
16 I'm not sure whether I did or someone else did.

17 Q Did you look at his hands?

18 A No, sir.

19 Q Okay. When you took the -- Did you take the shotgun into  
20 evidence?

21 A Yes, sir.

22 Q Okay. How did you do that?

23 A I carried it to my car and locked it up until the OSBI  
24 could arrive.

25 Q Now, how did you -- how did you carry it to your car? Did

- 1 you pick it up?
- 2 A With rubber gloves, yes, sir.
- 3 Q Okay. Where did you pick the gun up?
- 4 A By the handle and the stock.
- 5 Q Would that be the taped-up area that's depicted in that  
6 photograph?
- 7 A The pistol grip and wood slide action.
- 8 Q Would that have smudged any fingerprints that might have  
9 been present in that area?
- 10 A I don't believe so, with rubber gloves.
- 11 Q Do you have any training in fingerprint forensics?
- 12 A No, sir.
- 13 Q So if I understand you correctly, you picked that shotgun  
14 up like -- in the same manner that you would if you were going  
15 to operate the shotgun.
- 16 A No, sir.
- 17 Q Okay. Describe to me how you picked it up.
- 18 A Picked it up with two fingers on the ends -- on the end of  
19 the taped-up handle and two fingers on the end of the forearm.
- 20 Q Oh, okay. So you didn't grab it by the grip?
- 21 A No, sir.
- 22 Q What about the shotshells?
- 23 A They were picked up, I believe, with an ink pen.
- 24 Q Did you insert it in the open end --
- 25 A Yes, sir.

- 1 Q -- and pick it up in that fashion?
- 2 A Yes, sir.
- 3 Q Now, how did you secure the scene?
- 4 A It was taped off with crime tape. Deputy Madden was at  
5 the driveway with instructions not to let anyone into the crime  
6 scene. Rusty Rogers taped off around the house. And we  
7 secured the scene until my boss and the OSBI could arrive.
- 8 Q Now, is Rusty Rogers a deputy?
- 9 A No, sir. He's an officer with the Meeker Police  
10 Department. And he is cross-commissioned with us, yes.
- 11 Q Okay. So there was you, Rusty Rogers, and Deputy Mike  
12 Madden?
- 13 A Yes, sir.
- 14 Q And then Undersheriff Mathes --
- 15 A Yes, sir. He arrived.
- 16 Q -- came on the scene later?
- 17 A Yes, sir.
- 18 Q When did the OSBI get there?
- 19 A Probably an hour and a half later. I'm not sure how long  
20 it was when they arrived or what time they arrived.
- 21 Q Now, when you say "an hour and a half," do you mean an  
22 hour and a half from the time that you got there or an hour and  
23 a half after you finished whatever -- securing the scene?
- 24 A I called them about ten minutes after I got there.
- 25 Q Okay. Do you recall who from the OSBI showed up to

1 assist?

2 A There were several of them. I'm not familiar with all of  
3 them.

4 Q Well, can you tell me who was there that you were familiar  
5 with?

6 A Jackie Johnson, Mike Collins, and I believe it was Tom  
7 Jordan.

8 Q So who actually worked the investigation of the scene?

9 A I guess you could say the OSBI did and we did too.

10 Q Okay. Is there some reason why you called the OSBI?

11 A Yes, sir. That's standard procedure for us.

12 Q Under what circumstances?

13 A Under homicide circumstances.

14 Q Anytime you have a homicide?

15 A Yes, sir.

16 Q When was that procedure enacted?

17 A As far as I know, it's been here since I have.

18 Q Okay. What evidence collection did you participate in  
19 besides the taking of these photographs, picking up the  
20 shotshells and the shotgun?

21 A I don't believe any.

22 Q Okay. Who got the pistol that you mentioned earlier?

23 A I collected it.

24 Q You got that too. Okay. And is my understanding correct  
25 that you did not do any subsequent interviews with Mr. Moucka?

- 1 A No, sir, I did not.
- 2 Q Okay. And have you had any other involvement with this  
3 case in any way?
- 4 A No, sir.
- 5 Q Have you been back to the Moucka residence since that  
6 evening?
- 7 A Yes, sir.
- 8 Q Okay. On how many occasions?
- 9 A I believe one.
- 10 Q Do you recall when that was?
- 11 A I believe it was a day or two after the incident.
- 12 Q Do you recall what time of day it was?
- 13 A No, sir.
- 14 Q Was it daytime or nighttime?
- 15 A It was daytime.
- 16 Q When you went back on that occasion, did you notice at  
17 that point whether or not you could see all the way down the  
18 driveway from the county road?
- 19 A No, sir, I didn't.
- 20 Q You did not notice?
- 21 A No, sir. I didn't notice.
- 22 Q You described the driveway as winding. Does that mean it  
23 has curves in it?
- 24 A Yes, sir.
- 25 Q Okay. Is it lined with trees?

1 A No, sir.

2 Q Are there trees present on either side of it?

3 A There's an alfalfa field on one side of it and a pasture  
4 on the other side.

5 MR. BALL: No further questions.

6 THE COURT: Redirect.

7 REDIRECT EXAMINATION

8 BY MR. BARNETT:

9 Q Deputy Armitage, counsel asked you about special handling  
10 of that shotgun. Do you recall whether or not the shotgun was  
11 still loaded?

12 A I believe it still had some shells in it, yes, sir.

13 Q Do you recall the -- Or did you determine the make and  
14 model of the shotgun or the shells that you found?

15 A Yeah. It was a Mossberg 12-gauge pump. Yes.

16 Q And the shells themselves?

17 A They were 12-gauge.

18 MR. BARNETT: I think that's all the questions I  
19 have, Judge.

20 THE COURT: All right. Are you on duty today?

21 A Yes, sir.

22 THE COURT: You're excused from appearance here.  
23 Just remain in radio contact, in case you're recalled.

24 A Okay. Thank you.

25 THE COURT: We'll take a recess of about 15 minutes.

1 (A brief recess was taken.)

2 THE COURT: I understand the state is going to recall  
3 a witness.

4 MR. ZIMMERMAN: That's correct, your Honor. At this  
5 time the state would recall Deputy David Armitage.

6 THE COURT: All right. If you will have him come in,  
7 please.

8 (State's Exhibit 6 marked for identification.)

9 THE COURT: You're under the same oath, sir. Have a  
10 seat in the witness chair.

11 (Witness complied.)

12 Q (By Mr. Zimmerman) Deputy Armitage, I'm going to hand you  
13 what has been previously marked for identification as State's  
14 Exhibit No. 6. And ask you if you could identify this for us,  
15 please?

16 A Yes, sir. This is the shotgun that was laying beside the  
17 porch at the Moucka residence.

18 Q And did you retrieve it from the scene of the crime?

19 A Yes, sir.

20 Q What did you do with it after you retrieved it from the  
21 scene of the crime?

22 A It was locked up --

23 THE COURT: Excuse me a minute. Our bailiff is just  
24 a little bit uneasy about that.

25 A I'm sorry.

1 Do what, now?

2 Q (By Mr. Zimmerman) What did you do with the gun after you  
3 took it into your possession?

4 A I locked it up in the patrol car -- or my patrol car and  
5 then turned it over to the OSBI.

6 Q Was it in your possession continuously until you turned it  
7 over to the bureau?

8 A Yes, sir.

9 Q And does it appear to be in approximately the same  
10 condition now as it did at the time you seized it from the  
11 porch?

12 A Yes, sir.

13 Q Okay. Thank you.

14 THE COURT: Offering it at this time?

15 MR. ZIMMERMAN: Just a moment, your Honor.

16 Q (By Mr. Zimmerman) I believe earlier you testified that  
17 the gun you seized was a Mossberg. Would you look at this  
18 weapon again and tell us what brand it is?

19 A This is a Western Field. It's a -- The only difference  
20 between this and a Mossberg is the name. They're the same  
21 pattern, the same design, the same action, same everything.

22 Q Western Field is a weapon made by -- is that a weapon --  
23 is that a trade name for a firearm that is sold by a mail-order  
24 company or something?

25 MR. BALL: Objection. Foundation.

1 MR. ZIMMERMAN: I'll withdraw the question and see if  
2 I can --

3 THE COURT: Sustained on leading.

4 Q (By Mr. Zimmerman) Deputy Armitage, could you account for  
5 the similarities between a Mossberg and a Western Field?

6 A Like I said, the only difference on the guns is the name.  
7 The design on the stock and everything is the same.

8 Q But is there any doubt in your mind that that's the gun  
9 you seized from the crime scene?

10 A No, sir, there's no doubt.

11 Q Thank you.

12 MR. ZIMMERMAN: We move to admit State's Exhibit 6 at  
13 this time.

14 MR. BALL: Where would the Court like for me to put  
15 this weapon?

16 THE COURT: Do you want a polite answer? Why don't  
17 we lay it crosswise in front of the -- on the reporter's table  
18 there, not pointed at anybody.

19 And do you have an objection?

20 MR. BALL: I presume I'll be able to cross-examine  
21 the witness on this redirect testimony.

22 THE COURT: Yes, sir.

23 MR. BALL: Okay. No objection.

24 THE COURT: Admitted.

25 Anything further by the state?

1                   MR. ZIMMERMAN: I'm sorry, Judge. No, your Honor. I  
2 have no further questions.

3                   THE COURT: All right.

4                                   RE-CROSS-EXAMINATION

5 BY MR. BALL:

6 Q     Deputy, what training do you have in shotgun  
7 identification?

8 A     Just the experience I've had with them.

9 Q     Okay. Could you tell us what your experience with  
10 shotguns is?

11 A     Only that I've owned several of them over the last 30  
12 years, I guess.

13 Q     Okay. Have you ever owned a Mossberg?

14 A     Yes, sir.

15 Q     Do you know what one looks like?

16 A     Yes, sir.

17 Q     Have you ever owned a Western Field?

18 A     No, sir.

19 Q     When did you learn the difference between a Western Field  
20 and a Mossberg?

21 A     A Western Field has been around for years.

22 Q     Okay. When did you learn about the distinction between a  
23 Western Field and a Mossberg?

24 A     What do you mean by "distinction"? The name?

25 Q     Counsel asked you some questions about this gun and about

1 Western Fields and about Mossbergs, and you answered as though  
2 you knew the difference between a Western Field and a  
3 Mossberg. My question to you is: When did you learn the  
4 differences between a Western Field and a Mossberg?

5 A The only difference between them is the name.

6 Q Okay. When did you learn that there were two different  
7 makes of guns?

8 A I've known that for years. But . . .

9 Q Did you know it at the time that you responded to the  
10 Moucka residence?

11 A No, sir. Do you mean --

12 Q Did you know that they were two makes of guns?

13 A Yeah.

14 Q You knew that at that time?

15 A Yes, sir.

16 MR. BALL: No further questions.

17 THE COURT: Before the conclusion of the preliminary  
18 hearing, the state will be ordered to supply photographs of the  
19 exhibit or its admissibility will be revoked, or photocopies or  
20 something that the reporter can keep besides the weapon.

21 MR. BARNETT: I understand, Judge.

22 THE COURT: Anything further on this witness?

23 MR. BARNETT: No, your Honor. Could I excuse him  
24 again? I'm sorry.

25 THE COURT: You'd better run this time. You're

1 excused. Thank you.

2 (Witness excused.)

3 MR. BARNETT: Ronald Jones.

4 (There was a pause in the proceedings.)

5 THE CLERK: Raise your right hand.

6 (Witness sworn.)

7 RONALD JONES

8 called as a witness on behalf of the State of Oklahoma, after  
9 first being duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. BARNETT:

12 Q Would you state your name, sir.

13 A My name is Ronald Jones.

14 Q What do you do, sir?

15 A I'm a firearm and toolmark examiner with the Oklahoma  
16 State Bureau of Investigation in Oklahoma City.

17 Q And how long have you been with the OSBI?

18 A I've been with the agency for just a little over 16 years.

19 Q In what capacities have you worked for the agency?

20 A I have worked in the trace laboratory section doing some  
21 paint and glass comparisons, fire debris analysis, things of  
22 that nature. I spent a couple of years doing controlled  
23 substances or drug testing. I've been doing the firearm  
24 comparisons for a little over 11 years.

25 Q Could you tell us a little bit about your training and

1 educational experience as it relates to your duties?

2 A I have a Bachelor of Science degree in Forensic Science or  
3 Criminalistics from Metropolitan State College in Denver,  
4 Colorado. I performed two periods of internship: one at the  
5 Denver Police Laboratory, one at the Colorado Bureau of  
6 Investigation Laboratory. I've had various courses at the FBI  
7 Academy in Quantico, Virginia.

8 And I've been a member of the Association of Firearm and  
9 Toolmark Examiners as well as had in-house training with  
10 qualified examiners.

11 Q And how long have you concentrated on the area of  
12 firearms?

13 A For about eleven and a half years.

14 Q And have you testified as an expert before in the state of  
15 Oklahoma or in federal courts as an expert in the area of  
16 firearms?

17 A Yes.

18 Q In what capacity?

19 A In what capacity?

20 Q Yes.

21 A As an expert witness in various identifications of  
22 bullets, cartridge cases, firearms, and things of that nature.

23 Q Approximately how many times, sir?

24 A In that area, 200, 225, somewhere in that neighborhood.

25 MR. BARNETT: Your Honor, I'd ask that Mr. Jones be

1 qualified as an expert on firearms and firearms -- ballistic  
2 analysis.

3 THE COURT: The witness has been tendered as an  
4 expert in that field. Do you wish to voir dire on his  
5 expertise?

6 MR. BALL: If it's limited to his expert as a  
7 ballistics technician, I have no objection to that.

8 THE COURT: He's been admitted as a firearm and  
9 toolmark examiner. Do you wish to voir dire on that?

10 MR. BALL: Your Honor, the state hasn't endorsed a  
11 firearm and toolmark examiner witness either by name or by job  
12 description.

13 THE COURT: Do you wish to endorse one at this time?

14 MR. BARNETT: I do, your Honor.

15 THE COURT: All right. This witness will be  
16 endorsed.

17 Now, do you wish to voir dire on firearm and toolmark  
18 qualifications of the witness?

19 MR. BALL: May I have a moment with my client, your  
20 Honor?

21 THE COURT: Yes.

22 (Mr. Ball conferred with the defendant.)

23 THE COURT: While he's doing that, for the record,  
24 I'm going to interlineate on the information that Ronald Jones  
25 is endorsed as a state witness.

1 MR. BARNETT: Judge, again, for the record, we -- at  
2 the time we submitted the information, we asked for an OSBI  
3 ballistics technician.

4 THE COURT: He's endorsed.

5 MR. BARNETT: Thank you.

6 (There was a pause in the proceedings.)

7 MR. BALL: Briefly, your Honor, yes, I'd like to voir  
8 dire the witness.

9 THE COURT: Go ahead.

10 VOIR DIRE EXAMINATION

11 BY MR. BALL:

12 Q Is there an association of firearm and toolmark examiners?

13 A Yes.

14 Q Okay. Are you a member of that association?

15 A Yes.

16 Q How long have you been a member of it?

17 A Probably about seven or eight years. I'm not certain of  
18 an exact date.

19 Q And what is the name of that association?

20 A The Association of Firearm and Toolmark Examiners.

21 Q Do they publish any type of a scholastic journal?

22 A Yes.

23 Q Okay. Have you ever been published in it?

24 A No.

25 Q Have you ever been published in any other journal or

1 scholarly publication relating to this field?

2 A No.

3 Q Does membership in this association require any type of a  
4 special license or anything?

5 A Not in terms of having to go and be licensed for anything,  
6 no.

7 Q Okay. Do you have any particular licenses in that regard,  
8 certifications, recognition by some board, or anything of that  
9 nature?

10 A Not other than being a practicing, full-time firearm and  
11 toolmark examiner for membership and then being a member of the  
12 organization, no.

13 Q Okay. Are there any standards or protocols that govern  
14 what type of people can hold themselves out as firearm and  
15 toolmark examiners?

16 A I'm not sure whether there are standards that necessarily  
17 hold out where someone would be prohibited from -- I guess  
18 anybody could call themselves that, as in, perhaps, many  
19 professions. There are standards for membership in the  
20 organization, things like that.

21 Q Have you ever been subject to any kind of discipline or  
22 censure from your employer or from this Association of Firearm  
23 and Toolmark Examiners or a court?

24 A No.

25 MR. BALL: I have no further questions on voir dire,

1 your Honor. But I would object to his being qualified as an  
2 expert.

3 THE COURT: Go ahead and tell me your argument.

4 MR. BALL: Well, by his own statement, your Honor,  
5 anybody can hold themselves out. There are no standards and  
6 protocols. There is no licensing board. There are no  
7 standards by which we can determine what is an expert. I  
8 believe on the information he's endorsed as a technician. And  
9 I think that allowing him to testify at anything beyond that  
10 level would be improper.

11 THE COURT: Objection overruled. The witness will be  
12 received as an expert in firearm and toolmark examination.

13 MR. BARNETT: Thank you, your Honor.

14 DIRECT EXAMINATION (Continued)

15 BY MR. BARNETT:

16 Q Mr. Jones, during the course of your -- Let me show you  
17 what's been marked State's Exhibit 6 for identification. And  
18 ask you if you've seen this or recognize that?

19 A Yes, I have.

20 Q And how do you recognize that, sir?

21 A I recognize the item number, case number, my initials on  
22 the tag, and the particular item and serial number on the  
23 firearm.

24 Q Now, did you bring this with you today from the OSBI lab?

25 A Yes, sir.

1 Q And we opened that in my office; is that correct?

2 A Yes.

3 Q Now, what was the condition of the weapon when you  
4 received it?

5 A Much as you see it there. It was in a -- oh, a couple of  
6 attached and taped paper sacks that enclosed the firearm in a  
7 sealed condition, as I received it.

8 Q And did there appear to be any tampering or anything like  
9 that with the weapon when you received it? Did the package  
10 appear to be tampered with?

11 A No.

12 Q What kind of analysis were you asked to do on this?

13 A I was asked to compare some shotshells submitted to me, to  
14 determine whether or not they were fired in that particular  
15 firearm.

16 Q And did you receive some shotshells with that weapon?

17 A Yes, sir.

18 Q What kind of shells were those?

19 A They were 12-gauge, Remington-Peters-brand, spent  
20 shotshells.

21 Q And this is a 12-gauge shotgun, I guess. Is that correct  
22 too?

23 A Yes.

24 Q And what kind of tests did you do?

25 A Initially, we, of course, fired the firearm. This allows

1 me to obtain known shotshells that I know, of course, were  
2 fired in the shotshell -- or in the shotgun, excuse me. I use  
3 what is called a comparison microscope to compare the scratches  
4 or impressions, if you will, that are on the breech area, on  
5 the firing-pin area of the unknown shotshells versus the  
6 knowns.

7 Using a microscope where I can see both, if I'm convinced  
8 that there's a sufficient matching of impressions, then I'm  
9 able to positively identify a shotshell to a shotgun.

10 Q Now, if I could, the unknowns at this point were the ones  
11 that you'd retrieved, the spent cartridges you retrieved; is  
12 that correct?

13 A Yes.

14 MR. BALL: Objection. Leading.

15 THE COURT: Overruled. Clarification of what was  
16 known and unknown.

17 Q (By Mr. Barnett) And the known shells, where did they  
18 come from?

19 A The ones that I would deem known were simply fired by me  
20 in that shotgun, ammunition that we have.

21 Q And what kind of comparisons did you make with those two  
22 then?

23 A We use a microscope that has two separate stages. I'm  
24 able to take, for instance, the unknown and put it on the left  
25 where I can see the firing-pin impression, the primer area.

1 I'm able to do the same thing on another stage, on the right,  
2 with a known shotshell. I have a circular field of view where  
3 I see with a split image the unknown and the known.

4 I'm looking for the various impression marks that are left  
5 by the firing pin, by the breech area of the shotgun when  
6 there's the recoil, when it fires. If I'm convinced that  
7 there's a sufficient matching of these striations or  
8 impressions, then I'm able to identify that particular  
9 shotshell.

10 Q Are those consistent enough -- Again, based on your  
11 experience, are those consistent enough that if they're fired  
12 from the same shotgun, you'd expect the shells to look alike?  
13 Is that correct?

14 A Yes.

15 Q Based on your examination of the shells in this case, what  
16 did you determine?

17 A The two shotshells that were submitted were fired in the  
18 shotgun that you handed me.

19 Q Did you receive any pellet type of ammunition?

20 A Yes. There were pellets -- Do you mean spent pellets or  
21 ammunition or --

22 Q Spent pellets.

23 A Yes, there were.

24 Q And were you able to make any specific findings as to what  
25 they were?

1 A Just to the extent that they were consistent with No. 6  
2 size birdshot.

3 Q And were the shell casings that you examined, were those  
4 also size 6?

5 A Yes.

6 Q What does size 6 mean, just briefly?

7 A It's a designation. There are a number of different  
8 numbers for sizing of shot from very small up to the larger  
9 buckshot. And they simply have a numerical designation that,  
10 if you look it up, allows you to gauge what you may be  
11 interested in using in terms of a very, very small pellet with  
12 a number of them versus a large pellet with fewer.

13 Q On that spectrum, where would size 6 shot fall?

14 A It's fairly small shot. For a shotgun, it would be around  
15 the fourth down from the smallest. It's not as small as you  
16 can get, but it is -- it's smaller than a BB. If you are  
17 familiar with a pellet gun or a BB gun, the size of a BB, it's  
18 smaller than that.

19 Q And what kind of -- You described it as birdshot. Is that  
20 fairly universal?

21 A Kind of a generic term, yes.

22 Q Okay. And were you able to tell whether or not those --  
23 Those pellets are consistent with what you've recovered from  
24 those other shells; is that what your testimony was? I'm  
25 sorry.

1 A I mentioned -- You asked me whether those other shells  
2 were -- They're labeled as No. 6. And that's what these were  
3 consistent with, the pellets that I had, yes, sir.

4 Q Okay.

5 MR. BARNETT: That's all I have, Judge.

6 THE COURT: Cross-examination.

7 CROSS-EXAMINATION

8 BY MR. BALL:

9 Q When you said that the shot that you had was labeled  
10 No. 6, what shot are you referring to?

11 A Okay. In reference -- I was more answering the question  
12 in reference to the -- I believe, the shotshells submitted to  
13 me. He asked what size. Those were labeled as size No. 6. So  
14 in reference to the question, I was answering in terms of what  
15 was labeled on the shotshells submitted to me, in that the shot  
16 pellets submitted were consistent with that size shot.

17 Q So you're telling me that the spent cartridges had a  
18 number 6 on them?

19 A Yes.

20 Q And that the spent shot that you examined appeared to be  
21 No. 6?

22 A That's correct. Yes.

23 Q Okay. What kind of shot did you shoot through the weapon?

24 A I shot a -- I don't know that I shot the same size shot  
25 necessarily. We're interested, of course, in this particular

1 instance in the firing-pin impression and things. I would have  
2 fired a comparable load and not necessarily the same shot.

3 Q Did the cartridges that you fired there in the lab -- were  
4 they of the same make as the spent cartridges that you  
5 examined?

6 A I believe they were. I didn't bring them with me. I  
7 believe they were.

8 Q Do you know? Or are you not sure?

9 A I can easily check on that for you. I don't -- I want to  
10 say it 100 percent. I try, generally, to use the same. I  
11 would be surprised if they weren't. But rather than say  
12 absolutely, I'll say I could check for you. I believe they  
13 are.

14 Q Okay. Would the type of primer being used in a shotshell  
15 have any affect on the impression that the firing pin would  
16 leave behind?

17 A It could, yes.

18 Q Did you identify what type of primer was used in the spent  
19 shotshell casing that you examined?

20 A What do you -- do you mean what type of -- I'm not sure I  
21 entirely understand the question in terms of "what type of  
22 primer."

23 Q You don't know what type of primer it was?

24 A Well, I'm not sure -- When you ask me what type, I mean,  
25 they were, obviously, 12-gauge shotshells. They had a proper

1 primer. And so you're asking me exactly what? I wasn't  
2 certain.

3 Q Okay. Were they 209s? Were they anvil types? What type  
4 of primer was it?

5 A It would be a typical American-loaded, boxer-style, if  
6 that means anything, type of primer with a percussion mixture  
7 on the inside, designed, of course, to ignite the shell when  
8 struck. But the specific type beyond to load them in a  
9 shotshell, I don't know.

10 Q So it was a boxer style, percussion mix; is that what you  
11 said?

12 A Well, yeah. They're designed, of course, to be struck by  
13 the firing pin. And they're, obviously, a size that you would  
14 load in a 12-gauge shotshell.

15 Q Did you conduct any examination of the primers in those  
16 spent shotshells?

17 A Other than to compare markings on them. As far as doing  
18 any research on the primers, no. I did a comparison of unknown  
19 to known, and the primer would be included in that.

20 Q Okay. When you say you compared the markings, did you  
21 extract the spent primer from the spent shell casing?

22 A No.

23 Q Did you view the interior of the shell casing?

24 A No.

25 Q So the -- So only the outside of the primer was visible to

1 your inspection; is that right?

2 A That's correct.

3 Q And if that primer had been of a different type than what  
4 you expected it to be, you wouldn't have known that, would you?

5 A It depends on what you mean by "a different type." It,  
6 obviously, was the type that would be loaded in a shotshell for  
7 12-gauge components, being a proper size, being a proper primer  
8 designed to detonate that type of shell. If you're talking  
9 about some kind of a hardness or something and there were some  
10 differences, I wouldn't necessarily know, no.

11 Q Have you had any experience with reloading?

12 A Yes.

13 Q Is Remington Peters a popular brand for reloading?

14 THE COURT: You're talking about the shotshell or the  
15 primer?

16 MR. BALL: Well, the shotshell that he had in  
17 question, I believe, he said was Remington Peters.

18 THE COURT: Well, are you talking about a Remington  
19 Peters shotshell or Remington Peters primers for reloading  
20 purposes?

21 Q (By Mr. Ball) Are Remington Peters shotshells popular for  
22 reloading?

23 A I suppose. I don't know numbers or figures. I would  
24 think that it would be reloaded by people, certainly.

25 Q Okay. Do you know, in fact, whether or not new shells

1 under the Peters name are even sold to the public?

2 A Without checking, I would hate to say. That would be  
3 easily researched. I could get back with you on that. But to  
4 say for certain -- Many brands are. But to say absolutely that  
5 they sell them for reloading, I'm not 100 percent certain  
6 without looking at it.

7 Q So if I -- if I suggested to you that Remington was the  
8 brand name for new component shells sold to the public and that  
9 Peters was the brand name for reloading supplies sold to  
10 reloaders, would you take issue with that?

11 MR. BARNETT: Judge, I'm just going to object as to  
12 the relevance of all of this. We're trying to figure out  
13 whether the -- The direct testimony was that the shells came  
14 out of this gun. And I don't know what Mr. Ball --

15 THE COURT: What's the relevance?

16 MR. BALL: The testimony was that the type of primer  
17 used could have a different affect on -- as to the imprint.

18 THE COURT: Well, what difference does it make with  
19 respect to your last question whether or not he would take  
20 issue with your statement?

21 MR. BALL: I'm trying to establish that --

22 THE COURT: Objection sustained.

23 MR. BALL: -- that these -- May I finish?

24 THE COURT: No. Move on. Objection sustained. Next  
25 question. I'm not limiting you from the area of

1 cross-examining his expertise. But there's no point in whether  
2 or not he takes issue with your statement. You can call  
3 another witness to take issue with what this witness says, if  
4 you choose, but you're not going to get to testify.

5 Q (By Mr. Ball) Did your examination reveal whether or not  
6 this shotshell had been reloaded?

7 A No.

8 Q The district attorney asked you about the condition of the  
9 gun when you brought it. And you said that it was wrapped in  
10 paper and tape?

11 A That's correct.

12 Q Okay. What kind of paper and what kind of tape?

13 A The best of my recollection, they were paper sacks. I can  
14 refer to my notes. They, often times, will take a couple of  
15 paper sacks and join them and tape them. And I don't know if  
16 it was a clear cellophane tape, that is common, with an  
17 ordinary brown paper sack. I could examine the package and  
18 tell you for certain. But that is what I recall. Let me refer  
19 to my notes on that.

20 Q Was that today?

21 A I brought it today, yes.

22 My notes reflect taped sacks as being the package.

23 MR. BARNETT: Judge, I have the package. And if  
24 counsel wants to look at it when we're finished, I'll be glad  
25 to show it to him.

1 THE COURT: Thank you.

2 Q (By Mr. Ball) If I understand your testimony, then, these  
3 are ordinary like grocery store sacks, paper sacks, brown paper  
4 sacks.

5 A I believe so, yes, sir.

6 Q And ordinary, nondescript tape?

7 A Perhaps. I don't recall whether it was -- Often times  
8 they use the red evidence tape, and sometimes they use  
9 cellophane tape. I don't recall. Again, we could easily --  
10 It's very available to look. I don't specifically recall  
11 exactly what the tape looked like.

12 Q Okay. And you indicated that you -- You had some 12-gauge  
13 Remington Peters shotshells that we discussed earlier. How  
14 many of those did you have?

15 A Two shotshells.

16 Q How many times did you fire this weapon?

17 A Three times.

18 Q Is that the standard number of times that you'd shoot a  
19 weapon?

20 A Generally, yes.

21 Q Did you conduct any other tests on this weapon?

22 A Other than the normal measurements of trigger pull,  
23 overall length, and barrel length, and things of that nature,  
24 no other actual testing.

25 Q Now, what kind of weapon is this specifically?

1 A Specifically, it's a 12-gauge, pump-action shotgun.

2 Q Okay. Does a pump-action shotgun of this type -- does it  
3 normally leave behind any type of powder residue on the hands  
4 of the person operating it?

5 A It could. Certainly by firing and extracting a shell and  
6 firing it, that's a possibility.

7 Q Is it also possible that it might not?

8 MR. BARNETT: Judge, I don't think this is his area  
9 of expertise. I'd object.

10 THE COURT: Sustained, unless you want to qualify  
11 him. He's been qualified as a firearm and toolmark examiner,  
12 not an expert in the area of residue left behind after firing a  
13 weapon, if you're trying to get into paraffin testing and that  
14 kind of thing.

15 MR. BALL: I thought this -- My understanding was he  
16 also was --

17 THE COURT: You're wrong. If you want to qualify  
18 him, go ahead. But do it as your witness. Right now, we're  
19 doing cross-examination on a firearm and toolmark examiner.

20 MR. BALL: No further questions.

21 THE COURT: Redirect.

22 MR. BARNETT: No other questions, Judge.

23 THE COURT: Does either of you wish this witness to  
24 remain?

25 Mr. Barnett?

1 MR. BARNETT: No, your Honor.

2 MR. BALL: Yes.

3 THE COURT: All right. Remain in attendance until  
4 discharged by Mr. Ball.

5 (Witness excused.)

6 MR. BARNETT: Clifton Anderson.

7 Do you want to go ahead, Judge? It may only take 15 or 20  
8 minutes.

9 THE COURT: Let's go ahead. Clifton Anderson.

10 (There was a pause in the proceedings.)

11 THE COURT: Be sworn by the clerk, please.

12 THE CLERK: Raise your right hand, please.

13 (Witness sworn.)

14 THE COURT: Would you have a seat in the witness  
15 chair, please.

16 (Witness complied.)

17 MR. BARNETT: Judge, before we start with  
18 Mr. Anderson, could I ask that Mr. Jones be excused? I know  
19 Mr. Ball has asked him to be here. But he's not subpoenaed any  
20 witnesses for this case. And Mr. Jones came here, and I agreed  
21 to get him on and get him out. And unless there's some reason  
22 that --

23 THE COURT: I'll hear your motion after this witness,  
24 before the lunch hour, hear why Mr. Ball wants him to remain.

25 MR. BARNETT: Thank you, Judge.

1                                    CLIFTON ANDERSON  
2    called as a witness on behalf of the State of Oklahoma, after  
3    first being duly sworn, testified as follows:

4                                    DIRECT EXAMINATION

5    BY MR. BARNETT:

6    Q    Would you state your name, sir.  
7    A    Clifton Anderson.  
8    Q    What do you do, sir?  
9    A    I work for Oklahoma National Guard.  
10   Q    In what capacity?  
11   A    I'm the officer in charge of the 1st Battalion, 160th  
12   Field Artillery here in Chandler.  
13   Q    And how long have you done that, sir?  
14   A    Ten years.  
15   Q    And where do you live, sir?  
16   A    Prague.  
17   Q    Did you know Robert Anderson?  
18   A    Yes. He was my son.  
19   Q    And how long have you lived over there in Prague with  
20   Robert?  
21   A    We moved back in August about two years ago, I believe.  
22   Q    Now, how old was Robert when he died?  
23   A    Seventeen.  
24   Q    And do you know Josh Stump?  
25   A    Yes.

1 Q How do you know Josh Stump?

2 A Robert had brought him home on Sunday, I believe it was,  
3 the 9th of July, introduced us to him as Brandon Smith, a  
4 newfound friend that was spending the summer with his aunt  
5 north of Prague.

6 Q Was it unusual for Robert to bring home people that were  
7 strangers to you?

8 A Yeah. To that degree, yes. It was normal for us for  
9 Robert to bring friends over to spend a night or the weekend;  
10 however, we'd stopped the practice in December or so, because  
11 of all the trouble we were having.

12 Q Were you having some trouble with Robert?

13 A We had quite a bit in terms of his behavior. He had had a  
14 couple of minor scrapes with the law, so to speak. He'd been  
15 in a fight and stole two Christmas trees as a prank and that  
16 sort of thing.

17 Q Now, other than the Christmas tree thing, what -- fights,  
18 anything? Was he ever arrested or anything like that?

19 A I don't believe he was ever arrested in the literal  
20 sense. He had got in a fight at the Save-A-Stop there in  
21 Prague in December. And the police chief had called home after  
22 Robert returned, and asked me to bring him back down and make a  
23 statement. But --

24 Q Any juvenile proceedings or any criminal-type proceedings  
25 ever instituted against Robert?

1 A We were pending one. We were scheduled to appear here on  
2 the 1st of August with regard to that fight that he had been  
3 involved in in December.

4 Q Now, you mentioned that you met Josh Stump. When did you  
5 learn his real identity?

6 A I came home from work on Monday, July 10th, and my wife  
7 was visibly upset. And she said she had received a phone call  
8 from a local lady telling her that the boy we thought was  
9 Brandon Smith was not, in fact, Brandon Smith but Josh Stump.  
10 Then I confronted the boys when they came home that evening.

11 Q Was Josh Stump staying at your house at that time?

12 A He had stayed Sunday night. Robert had asked if he could  
13 stay. And I asked the normal questions, "Does your aunt  
14 know?" I was given assurance that she did. And so he stayed  
15 there Sunday night. And he was scheduled to go back home that  
16 evening.

17 Q Did you know where he lived?

18 A We thought that he lived north of Prague with his aunt.  
19 We later found out that that was a fictitious deal. And I  
20 really don't know where the boy lived.

21 Q Now, when was this, again, sir? I'm sorry. The date  
22 that --

23 A The 10th. It would have been Monday, the 10th.

24 Q Of July?

25 A Yes, sir.

1 Q Did Robert ever leave home shortly after that?

2 A Yes. They had -- I told Josh that he couldn't stay. And  
3 -- But he said his -- Well, I was going to return him back to  
4 his aunt's house. And he indicated that -- You know, I just  
5 wasn't going to kick a 17-year-old kid out on the street ten  
6 miles from home or where I thought home was.

7 And he said his aunt was a nurse and worked in Oklahoma  
8 City and wouldn't be home until about eight o'clock -- or about  
9 nine o'clock. And we fed him supper. And I put them to work  
10 up at my in-laws' home that's right there by us on some roller  
11 skates.

12 And about 8:15, 8:30, Robert came back down to the house  
13 and asked me if he could take Josh home rather than me doing  
14 it. And I said no, I wanted to speak with his aunt. And he  
15 rustled around in the kitchen for a few minutes and went back  
16 out the door.

17 About 15 minutes later, my mother-in-law called and asked  
18 me where Robert and Josh were. I looked up where I had them  
19 working, and they were gone.

20 Q Okay. Now, you mentioned that -- Did you know how old  
21 Josh Stump was?

22 A I made the assumption he was 17.

23 Q School was out at this time, I guess.

24 A Yes, sir.

25 Q Okay. Now, you mentioned they were gone. Do you know

1 where they went?

2 A No. I made a quick pass around the neighborhood, you  
3 know, looking for them. And I thought they may have just  
4 wandered off. I drove around to Front Street. There was some  
5 teenagers lived on that street. And I made a quick pass  
6 looking for them, didn't see them.

7 I walked back in the front door. My wife indicated that  
8 her checkbook, some of her checks were gone, and her credit  
9 cards were gone. I went into my office, where I normally keep  
10 my checkbook and credit cards. My checkbook was still there,  
11 my wallet was still there, no cards missing. But the \$30 in  
12 cash I had was gone.

13 Q Now, again, what time of day was this, sir?

14 A It would have been, by that time, around nine, 9:15.

15 Q In the evening?

16 A In the evening, sir.

17 Q Do you know where Robert and Josh went?

18 A No.

19 Q Did you ever see him again?

20 A I didn't see Robert again until the funeral home a week  
21 later.

22 Q Do you know where they went?

23 A I believe now they went to a home there near the Catholic  
24 church where a young man named Miguel lives, something to that  
25 effect. But I only know that after the fact because of what

1 the OSBI told me.

2 Q Did Robert or Josh or someone use your credit cards  
3 without your authority?

4 A They didn't use the credit cards. We stopped those almost  
5 immediately. But they wrote \$725 worth of checks on my wife's  
6 account.

7 Q Do you know what kind of things they bought?

8 A No. They were all for cash. Some of them said "labor,"  
9 different things. But there again, I learned from the OSBI  
10 when they visited us Saturday, after Robert died, that they  
11 had, apparently, made a trip to Dillard's somewhere and bought  
12 some clothes and so forth.

13 Q Now, did you ever give Robert or Josh Stump authority to  
14 have any of that stuff?

15 A No.

16 Q I'm going to show you what's been marked State's Exhibit  
17 No. 6, sir. And ask you if you can identify this?

18 A That appears to be a shotgun that I had owned since about  
19 1972. It was taken from my home. It wasn't in this fashion,  
20 of course, when I had it.

21 Q I understand. When did you -- What makes you think it  
22 might be yours?

23 A There's some scratches here on the stock that are  
24 familiar. And then there would be some more back here on this  
25 stock had it still been there.

1 Q Now, when you purchased this gun and when you maintained  
2 it in your home, was it in this condition, sir?

3 A No.

4 Q Was it a full-length shotgun?

5 A It was a full-length shotgun with a modified choke and a  
6 normal stock.

7 Q And the primary purpose of it while it was in your  
8 household?

9 A Well, I hadn't used the gun in probably over a year. But  
10 I hunted for a little bit when I was younger, and a little clay  
11 pigeon shooting. The last time I actually used it was probably  
12 two years prior. I took Robert quail hunting in Shawnee, and  
13 he used that gun, as a matter of fact.

14 Q Now, did you also have some shotgun shells in your home,  
15 sir?

16 A Yes, sir. Had about a half a box.

17 Q And do you recall what size they were?

18 A No, I don't. They were quail or dove load, from what was  
19 on the box. I believe they were Remington. I purchased them  
20 at Wal-Mart.

21 Q And you mentioned that this gun became missing from your  
22 home. When was that, sir?

23 A It would have actually been around -- sometime between  
24 12:30 and one o'clock on the 12th of July.

25 Q Of this year?

1 A Yes, sir.

2 Q And how did you learn it became missing?

3 A I was sleeping. My wife was sleeping in the bedroom. I  
4 was sleeping in the den, where the telephone was. I wanted to  
5 be close in case we heard anything on Robert. About 12:30, the  
6 phone rang. A young woman identified herself as Susan Kerr,  
7 said she had just seen Robert down at the Love's at I-40 and  
8 Highway 99.

9 So I got up, put my clothes on. My wife had gotten up by  
10 that time. I told her she had seen Robert at Love's. I hopped  
11 in my pickup, drove on to Love's, got there. And he wasn't  
12 there.

13 Q Did you take your wife with you?

14 A No, sir.

15 Q Since he and Josh had left your home, had you been looking  
16 for Robert?

17 A Yes.

18 Q When you returned to your home, were you able to tell  
19 whether or not someone else had been there?

20 A When I came back home, I believe I passed -- I passed  
21 three cars on the way to Love's. And I thought, well, maybe I  
22 passed him in transit. It's on the other end of town. I swung  
23 back around. After I went inside there and checked, he wasn't  
24 there. I made a pass through town, and then I went home. My  
25 wife was in the den. She was actually standing in the window

1 when I came home. But --

2 Q What time was this, sir? I'm sorry.

3 A It would have been around one.

4 Q In the morning?

5 A Yes. By that time. And I walked in the den. The door  
6 between the den and the utility room was open. There was a  
7 torn box, and the shotgun shells were laying there in the  
8 floor. And my wife was in tears. I finally managed to get her  
9 to explain.

10 Apparently, Robert had called soon after I had left, said  
11 he was at Save, and asked her to come and get -- Save-A-Stop  
12 there in Prague, and asked her to come and get him. She went  
13 to get him. He wasn't there. When she came home, it was  
14 obvious someone had been in the house.

15 And I went back, checked the locker where I kept the  
16 shotgun. It was gone.

17 Q Any other weapons missing?

18 A No. It was the only weapon I had in the house at the  
19 time.

20 Q All right, sir. And other than the shotgun shells and  
21 that shotgun, anything else missing from your home?

22 A A brown bag that Robert normally kept his clothes in, and  
23 some of Robert's clothes. Though I didn't know it at the time,  
24 my checkbook had been taken and an Army-issued sleeping bag had  
25 been taken.

1 Q All right, sir. Did you report those stolen items to the  
2 police?

3 A Yes, I did. Immediately.

4 Q When did you do that? I'm sorry.

5 A Well, I went and got in my pickup. And I was really  
6 angry. So I was trying -- kind of halfway looking for him and  
7 looking for the police. In the process, I got up to the  
8 stoplight and I noticed a police car go by with its lights on.  
9 So I followed the police car. It went to a residence there on  
10 the west edge of Prague.

11 I found Gary Watts, an officer I knew. I told him what  
12 had happened. And he asked me to go to the police department  
13 and make a statement. And I did that.

14 Q This was at two o'clock in the morning or before sometime?

15 A Yeah. It was almost immediately afterwards.

16 Q All right, sir. And did you ever recover that shotgun?

17 A No, sir.

18 Q Ever see it until today?

19 A No.

20 Q And you mentioned that you attended Robert's funeral. And  
21 without going into any of those details, do you know how he  
22 died?

23 A Only from what -- It just happened out that the OSBI agent  
24 that worked the case was my wife's cousin -- or he's my wife's  
25 cousin. He and another officer came to the house.

1 Q Is that Mike Collins?

2 A Yes. It would have been Saturday morning. And informed  
3 us that Robert had been killed in this -- they thought at the  
4 time an attempted robbery, a residence by Meeker.

5 Q Is the person that we've talked about as being Josh Stump  
6 or -- Brandon Smith; is that the name?

7 A That was the original name he gave me, yes, sir.

8 Q The person that left with your son the last time you saw  
9 him alive, is he present in the courtroom?

10 A Yes, sir, he is.

11 Q Could you point him out, please?

12 A He's sitting over there in the black shirt.

13 MR. BARNETT: I'd ask the record to reflect he's  
14 identified the defendant, your Honor.

15 THE COURT: The record does.

16 MR. BARNETT: That's all I have, Judge.

17 THE COURT: Cross-examination.

18 CROSS-EXAMINATION

19 BY MR. BALL:

20 Q On what day was this when your wife said Robert called  
21 from Save-A-Stop?

22 A It would have been the 12th of July, sir.

23 Q Now, your testimony about learning that this fellow  
24 Brandon Smith was somebody else and you were going to take him  
25 home and the boys left, was that all on July the 10th?

- 1 A Yes, sir.
- 2 Q Okay. And that was a Monday?
- 3 A Yes, sir.
- 4 Q Was it nine o'clock in the evening when they took off?
- 5 A Somewhere between about 8:15 and nine o'clock. I wasn't  
6 watching the clock to be specific. But it was in that time  
7 frame.
- 8 Q What time of day was this when Robert called your wife and  
9 she went to go get him?
- 10 A It would have been like at one o'clock -- between 12:30  
11 and one o'clock in the morning. Like 0100 or --
- 12 Q Okay. After midnight?
- 13 A After midnight, sir. That's why it was the 12th instead  
14 of the 11th.
- 15 Q Now, where were you when all this -- when Robert called  
16 your wife on the phone?
- 17 A I was on my way to Love's. I was in my pickup, going  
18 towards Love's Country Store.
- 19 Q Okay. So if I understand this correctly, when -- what,  
20 about --
- 21 A Twelve-thirty --
- 22 Q -- twenty-eight, 29 hours after the boys took off, you got  
23 a phone call that he was at Love's, and you went to go get him?
- 24 A Yes, sir.
- 25 Q She got the phone call that he was at Save-A-Stop, and she

1 went to go get him?

2 A Yes, sir.

3 Q And while you were both gone, somebody came in the house  
4 and took the gun and the shells?

5 A That's accurate, sir.

6 Q Okay. Did the house show any evidence of having been  
7 broken into?

8 A No. It's not normal that we lock our home if we're in  
9 Prague. It's not uncommon for us to leave it. And we had left  
10 the house unlocked in case Robert returned on his own.

11 Q Who was it that called and said that he was at Love's?

12 A It was a young woman who identified herself as Susan  
13 Kerr. I've never talked to the young woman to know if it was  
14 her or not.

15 Q Do you know Susan Kerr?

16 A No, sir.

17 Q Do you know who Susan Kerr is?

18 A Yes. She's a young woman that lives locally in the Prague  
19 area.

20 Q Is she a teenager?

21 A Yes, sir. Or early twenties. I don't know. It's kind of  
22 hard for me to tell anymore.

23 Q I hate to ask you about this, sir, but I have to.

24 A All right.

25 Q When did the trouble with Josh -- or excuse me. The

1 trouble that Robert had that you told the district attorney  
2 about, when did that begin?

3 A We had trouble with him almost from the time he started  
4 school in Prague. He had not attended Prague High School the  
5 previous year that we lived there. He went to a Christian  
6 school in Shawnee.

7 Q When was that? When did he start attending Prague?

8 A That would have been in August of '94. August or  
9 somewhere in there.

10 Q You said he stole a couple of Christmas trees. Would that  
11 have been around Christmas?

12 A Yes, sir. I believe somewhere near the week of the 5th.  
13 I was at Fort Hood, Texas, at the time is the reason I recall  
14 it being that period.

15 Q Okay. And you indicated that he had one juvenile  
16 proceeding that was pending --

17 A Yes, sir.

18 Q -- at the time that he passed away. Did he have any other  
19 juvenile proceedings prior to that time?

20 A Well, we'd -- He had been involved with some Prague boys  
21 that went to Meeker and went to a private residence and they  
22 had -- a fight ensued between the father of some teenage boy  
23 and another young man that was with Robert. And we had done an  
24 intake, I believe they call it, with DHS on that. And Robert,  
25 other than driving the car, had not really done anything.

1 Q Okay. Did he have any problems in municipal court?

2 A Well, he had a lot of traffic tickets. He -- I think he  
3 was up to seven. We appeared before you, appeared before his  
4 Honor here on a traffic ticket, Seminole, Tecumseh, and then  
5 one in Meeker.

6 MR. BALL: I have no further questions, your Honor.

7 THE COURT: Redirect by the state.

8 MR. BARNETT: No other questions, Judge.

9 THE COURT: Mr. Barnett, do you wish this witness to  
10 remain?

11 MR. BARNETT: No, your Honor.

12 THE COURT: Mr. Ball?

13 MR. BALL: No, your Honor.

14 THE COURT: You are excused from your attendance here  
15 today. Thank you for your appearance.

16 A Am I allowed to sit in here and listen?

17 THE COURT: At this point in time, yes, sir. You are  
18 excused. You may stay as you choose and go as you choose.  
19 You're subject to the same rules as the other witnesses. Come  
20 and leave at recesses.

21 A Yes, sir. Thank you.

22 (Witness excused.)

23 THE COURT: Okay. And we'll be in recess except for  
24 the purpose of hearing the state's motions. If the witnesses  
25 want to -- I mean, if the spectators want to come and go, they

1 can.

2 MR. BARNETT: What time should we reconvene, Judge?

3 THE COURT: I don't know. We'll find out how long  
4 your motion takes.

5 MR. BARNETT: It will be just very brief, Judge.

6 Judge, I'd move the Court to order -- to allow Ron Jones  
7 to be excused from further attendance in these proceedings.  
8 Mr. Jones came at my request. I called him this morning, asked  
9 him if he could be here this morning. And I promised him as  
10 much as I could that I would put him on and get him released to  
11 attend to other business.

12 Mr. Ball has -- or I will give him a copy of Mr. Jones'  
13 report, that lists all of this information. And I wouldn't  
14 have called him if I didn't think he already had it.

15 Have you got one now?

16 MR. BALL: Yeah. I've got it.

17 MR. BARNETT: And during -- Shortly after Mr. Jones  
18 left, I asked Mr. Ball if there was some information -- or what  
19 he wanted to do with Mr. Jones by recalling him. And  
20 Mr. Ball's reply was, "Anything I want." So I think this is  
21 pure harassment on the part of defense counsel at this point to  
22 keep him here.

23 Mr. Ball didn't even know that Ron Jones was a witness in  
24 this case. He had an extensive cross-examination that covered  
25 a lot of material that was certainly not on direct. I don't

1 see any purpose in maintaining him here other than, perhaps,  
2 harassing him. And there's certainly no indication that he  
3 will use him on his portion of the case.

4 THE COURT: Mr. Ball, response.

5 MR. BALL: Your Honor, I have every intention of  
6 calling him briefly. And I think the Court already knows what  
7 it is I'm going to ask him about. And I need to make him my  
8 witness to do so. And, you know, the --

9 MR. BARNETT: Judge, the Court may know, but I don't.

10 THE COURT: Wait just a minute. So that I don't have  
11 to guess and speculate, what do you intend to call him for?

12 MR. BALL: I want to ask him about whether or not he  
13 has any expertise in gunshot residue. He was listed on the  
14 information as a ballistics expert. I'm of the opinion that  
15 gunshot residue falls within the rubric of ballistics. And I'm  
16 going to ask him about that and whether or not shotguns in  
17 general leave that kind of residue behind and whether or not he  
18 knows whether or not this one would.

19 THE COURT: Have you subpoenaed him?

20 MR. BALL: No, I have not, your Honor. But I didn't  
21 have his name.

22 THE COURT: So would it be anything other than pure  
23 discovery? In other words, what will it do with respect to my  
24 determination of probable cause? What do you anticipate to  
25 show from him?

1           MR. BALL: The state showed me yesterday, I emphasize  
2 yesterday, a report from the OSBI lab that they intend to  
3 introduce. I don't know if they are going to call the witness  
4 or not. I don't know if they're going to introduce the report  
5 or not. But it's relevant to what was contained in that report  
6 that I saw. And I want to ask this witness about it.

7           THE COURT: What will his testimony tend to show me  
8 as to whether or not there is probable cause or not? Let us  
9 say that he is an expert in firearms residue. What will that  
10 show me?

11           MR. BALL: It may show that there's not probable  
12 cause to believe that the defendant committed the crime.

13           THE COURT: How?

14           MR. BALL: It relates to this other evidence that I  
15 don't know whether or not the state is going to show.

16           THE COURT: I don't know what you're talking about.  
17 You're leaving me in the dark. If you want to use this  
18 witness, you'd better tell me how. What other evidence? And  
19 how is it going to all fit together? What are you trying to  
20 show?

21           MR. BALL: Okay. All right. The evidence would be  
22 as to whether or not there was any gunpowder residue on the  
23 hands of the decedent Robert Anderson. That is the evidence  
24 that I anticipate the state may try to show.

25           THE COURT: Okay. Let me just ask the state.

1 Do you have any -- Do you have any indication that there's  
2 ever been a paraffin test or any nitrate residue test of any  
3 kind on the decedent?

4 MR. BARNETT: Yes, your Honor. And if I could expand  
5 just a moment. I got this Wednesday by fax from OSBI that  
6 there was a gunshot residue test performed on Robert Anderson.  
7 It was performed by Keith Ferrell, a criminologist. I gave  
8 Mr. Ball a copy of that test and told him because it was not  
9 within the five days and because there's some other tests I  
10 wanted to have run, I was not planning on introducing that.

11 And Keith Ferrell is the criminologist who did the gunshot  
12 residue test. I don't think Ron Jones knows anything about  
13 it. And I think this is a pure fishing expedition on his part  
14 at this point.

15 MR. BALL: Judge, it's not fishing. It's extremely  
16 relevant as to whether the district attorney may or may not  
17 seek to file a bill of particulars. My client's life could  
18 depend on this.

19 THE COURT: Will Mr. Jones talk to Mr. Ball during  
20 the recess?

21 MR. BARNETT: Certainly. I'm sure he will. I mean,  
22 I'll certainly encourage him to.

23 THE COURT: Let's talk in the next ten minutes. And  
24 you find out whether or not he knows anything or not and tell  
25 me what it is. And we'll decide whether or not to keep him

1 here to testify.

2 MR. BALL: Thank you, your Honor.

3 THE COURT: Okay. We'll be in recess.

4 MR. BARNETT: Thank you, Judge.

5 THE COURT: I'll stay here until 12:30 to hear from  
6 him. If I haven't heard from Mr. Ball by 12:30, the witness is  
7 excused.

8 (A brief recess was taken.)

9 THE COURT: All right. Back on the record in  
10 CF-95-104 after our short recess for counsel to determine  
11 whether or not he's going to need to call the witness. He's  
12 told me that he will.

13 And we'll go ahead and let you make further record as to  
14 why you need to call him and what questions you intend to ask.  
15 And I'll determine then whether or not he has to stay.

16 MR. BALL: Your Honor, I intend to ask him about  
17 whether or not -- first, whether or not he has experience --

18 THE COURT: Okay. Well, do you think he does?

19 MR. BALL: I think he has --

20 THE COURT: He said he has that expertise?

21 MR. BALL: Yes. He has that expertise to determine  
22 whether or not -- dealing with gunpowder residue. And what I  
23 want to ask him about is whether or not this type of weapon  
24 would necessarily leave gunpowder residue on --

25 THE COURT: Okay. Does he know the answer to that?

1 This is in the --

2 MR. BALL: Yes, he does.

3 THE COURT: -- nature of an offer of proof, really.

4 MR. BALL: Yes.

5 THE COURT: You expect his testimony to be that he is  
6 an expert, then, in the field of trace or residue analysis left  
7 by the firing of a firearm and that he will be able to tell you  
8 whether or not a shotgun of this nature will leave a residue on  
9 the -- on someone if he fires the gun?

10 MR. BALL: Whether or not it's possible, yes.

11 MR. BARNETT: Judge --

12 MR. BALL: His answer --

13 THE COURT: Well, what do you think he's going to  
14 say, yes or no?

15 MR. BALL: He's going to say it's possible that that  
16 weapon could be fired and not leave residue on the hands of the  
17 person operating it.

18 THE COURT: Okay. Mr. Barnett.

19 MR. BARNETT: Judge, I'm not sure if he qualifies  
20 actually as an expert. And I hate to get into the position of  
21 challenging the expertise of one of my own witnesses. But this  
22 is not his field. I think what he -- And I understand that's a  
23 part of what he talked to him about. He says he has worked  
24 around, he's somewhat familiar with the characteristics. He's  
25 not done any testing on that weapon, he's not examined any of

1 the evidence in this case as it relates to gunshot residue.  
2 Keith Ferrell has. He's submitted a report. And just for the  
3 record, the report says that there is no gunshot residue on the  
4 hands of the person he identified. I guess that's what --

5 MR. BALL: I object to the district attorney offering  
6 the contents of the report. I think that's improper at this  
7 stage.

8 MR. BARNETT: Well, I mean --

9 THE COURT: No. We're arguing over whether or not  
10 this is going to mean anything to me. And if there is no  
11 residue on one of the decedents -- Is this Mr. Anderson you're  
12 talking about?

13 MR. BARNETT: Yes, sir.

14 THE COURT: Then what does it prove if a person could  
15 possibly fire this weapon and there be no residue?

16 MR. BALL: It could -- Well, the state may seek to  
17 show -- the state may seek to show that my client shot the  
18 weapon and file a bill of particulars. Because as I understand  
19 it right now, they don't have any aggravators. But they may if  
20 this is allowed to go like this. And I --

21 THE COURT: How will that prove -- How will the state  
22 be able to do that from his testimony that it might possibly  
23 not leave residue?

24 MR. BALL: Because then it's still within the realm  
25 of distinct possibility that Robert Anderson, the deceased boy,

1 was the shooter, which is our understanding of the facts and  
2 has been our understanding of the facts until yesterday. And  
3 it makes a big difference in the potential outcome of this  
4 case.

5 THE COURT: Okay. Is Mr. Jones available right now?

6 MR. BARNETT: He is, Judge.

7 THE COURT: Are you willing to allow him to go out of  
8 time?

9 And, Mr. Ball, are you willing to put him on out of time?

10 MR. BALL: I am, your Honor.

11 THE COURT: All right. Call him in. And we'll see  
12 if he can qualify him -- or if Mr. Ball can qualify him as an  
13 expert in that field. If he can, we'll hear the testimony and  
14 we'll get him out of the courtroom.

15 Go ahead, if you need to make further record.

16 MR. BARNETT: Judge, if at all possible, I'm going to  
17 take some pictures as soon as I can get to that weapon.

18 THE COURT: You can do it while we're waiting.

19 MR. BARNETT: And I would like to release that to  
20 Mr. Jones.

21 THE COURT: Why don't you get your photographs, then,  
22 beforehand.

23 (Witness Ronald Jones entered the courtroom.)

24 THE COURT: Come on in, Mr. Jones, and have a seat on  
25 the witness chair. You're under the same oath.

1 Mr. Barnett is going to take a few pictures here before  
2 testimony.

3 A Okay.

4 THE COURT: He wants to be able to release the weapon  
5 back to you.

6 A Okay.

7 (There was a pause in the proceedings.)

8 MR. BARNETT: Thank you, Judge.

9 THE COURT: All right. As I told you, you're under  
10 the same oath. Mr. Ball is adopting you as his witness.  
11 Mr. Barnett has agreed to go ahead and have this testimony out  
12 of turn so that you can get back to your office.

13 A Yes, your Honor.

14 THE COURT: Go ahead, Mr. Ball.

15 MR. BALL: Your Honor, I'd move to incorporate the  
16 testimony that was previously offered by this defendant (sic)  
17 on the state's case.

18 THE COURT: Incorporate it for what?

19 MR. BALL: So that I don't have to go through all of  
20 his -- where he works and how long he's been there.

21 THE COURT: Does the state stipulate that --

22 MR. BARNETT: Judge, if he wants to qualify him as an  
23 expert on this particular area, I'll stipulate to where he  
24 works and what he does, that he's a firearm and toolmark  
25 expert. But that's about all.

1 THE COURT: Okay. We'll take note of his testimony  
2 as the state qualified him as an expert witness in firearm and  
3 toolmark identification or analysis.

4 MR. BARNETT: I'd certainly stipulate to that, Judge,  
5 or that portion.

6 THE COURT: Okay.

7 RONALD JONES

8 called as a witness on behalf of the Defendant, having  
9 previously been duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. BALL:

12 Q In the performance of your duties as a firearms and  
13 toolmark examiner, do you have reason -- or excuse me, do you  
14 have occasion to study the effect known as gunpowder residue  
15 that sometimes occurs on the discharge of weapons?

16 A Yes.

17 MR. BALL: Your Honor, I'd move to qualify him as an  
18 expert in that limited area.

19 MR. BARNETT: Judge, I don't think there's a  
20 foundation yet.

21 THE COURT: Denied.

22 MR. BALL: Okay.

23 Q (By Mr. Ball) What training do you have regarding the  
24 deposit of gunpowder residue on the shooter?

25 A Direct training in that specifically would be more my --

1 my training would be more along the lines of distance  
2 determination in regard to muzzle-to-garment distance. So the  
3 discharge that a firearm leaves as it gets closer or further  
4 from a target is more along the lines of my expertise.

5 I have sent off a number of hand swabbings in the past,  
6 before our laboratory analyzed for hand residue, those kind of  
7 things, to the FBI for their analysis. So I'm familiar enough  
8 with its -- how it's deposited and things of that nature.

9 Q You've collected samples and sent them off to the FBI for  
10 analysis?

11 A I haven't actually done the collection, generally. That's  
12 something that was sent to us previously and we would forward  
13 that off for their analysis and reports in that regard.

14 Q Are you familiar with the process?

15 A Yes.

16 Q Are you familiar with the phenomenon that occurs that  
17 we're discussing and how it occurs?

18 A Yes.

19 Q And is that based on your training and experience over the  
20 last 16 years as a firearms and toolmark examiner?

21 A Yes, sir.

22 MR. BALL: Your Honor, I'd move to qualify the  
23 witness as an expert as it relates to the phenomenon of the  
24 deposit of gunpowder residue on the operator of a firearm.

25 MR. BARNETT: Judge, I'd still object as to the

1 foundation. And if the Court wants to consider that, I'd like  
2 to voir dire.

3 THE COURT: You may voir dire.

4 VOIR DIRE EXAMINATION

5 BY MR. BARNETT:

6 Q Mr. Jones, have you had any specific training on that area  
7 of gunshot residue?

8 A I've had some of the lecture at the FBI on its -- how it  
9 is deposited and left, methods of deposit, things of that  
10 nature.

11 Q And have you -- say, in the last -- How long have you been  
12 a firearm and toolmark examiner?

13 A About eleven and a half years.

14 Q In the last eleven and a half years, have you ever been  
15 called upon to conduct any gunshot residue testing on a  
16 person's hands?

17 A I have been called upon to look and examine visually some  
18 of the swabs that were taken and things. To actually  
19 chemically do the process that they do, no.

20 Q And during the past few years, have you ever testified as  
21 an expert on gunshot residue on a person's hands?

22 A As far as an analysis for its presence or something?

23 Q Yes, sir.

24 A No.

25 Q And who is the primary lab -- OSBI lab technician or

1 expert as far as doing that kind of testing and analysis?

2 A Keith Ferrell.

3 Q Have you seen his report in this case?

4 A No.

5 Q And I certainly appreciate your expertise in the area that  
6 you've testified in. But do you have anything other than a  
7 very well-educated and, perhaps, knowledgeable opinion about  
8 what Mr. Ball wants to ask you about?

9 A Just other than I consider myself knowledgeable on its  
10 method of deposit, which goes along with how firearms function,  
11 how ammunition discharges, things of that nature. Its actual  
12 analysis for the elements or that type of thing is not  
13 something that I've trained in.

14 Q And do you consider yourself an expert on gunshot residue  
15 testing and analysis -- other than the gathering that you've  
16 already talked about, the analysis of gunshot residue on a  
17 person's hands? Do you consider yourself to be qualified as an  
18 expert in that field?

19 A Beyond merely looking at something -- I can identify  
20 visually powder or microscopically. Beyond that, the testing  
21 that they do, no.

22 Q Okay. So your expertise, then, would be limited to if you  
23 looked at a person's hands what you might be able, because of  
24 so much you've seen, to visually determine whether or not  
25 there's some gunshot residue; is that correct?

1 A That would be correct, yes.

2 Q But as far as the technical analysis that Keith Ferrell  
3 and someone else might do, you have not done that or would not  
4 necessarily have that specific expertise?

5 A That is correct.

6 MR. BARNETT: That's all I have, Judge.

7 THE COURT: The witness will be received as an expert  
8 in the method of deposit of residues from firing firearms and  
9 the function of firearms in that deposit.

10 MR. BALL: Thank you, your Honor.

11 DIRECT EXAMINATION (Continued)

12 BY MR. BALL:

13 Q Now, Mr. Jones --

14 THE COURT: Keep it to that issue.

15 MR. BALL: I will.

16 Q (By Mr. Ball) Is it possible that this type of weapon  
17 that you've testified about today can be fired and not leave  
18 gunpowder residue deposits on the person shooting it?

19 A That would be possible.

20 Q Did you conduct any tests on this specific weapon to see  
21 whether or not it did?

22 A No.

23 MR. BALL: I have no further questions.

24 THE COURT: Cross by the state.

25 MR. BARNETT: No other questions, Judge -- or no

1 questions.

2 THE COURT: All right. You're excused from  
3 attendance. Thank you.

4 A Thank you, sir.

5 THE COURT: We'll recess. Now that we know how long  
6 it's going to be --

7 MR. BARNETT: Judge, if these photos turn out, could  
8 I have --

9 THE COURT: Well, let's look at the photographs first  
10 and make a record and see whether or not they're acceptable to  
11 Mr. Ball as well.

12 MR. BARNETT: I'm going to take another one. And if  
13 they're acceptable, then I'll --

14 THE COURT: For purposes of preliminary hearing  
15 record.

16 MR. BALL: Take a shot of it like that, Barney.

17 MR. BARNETT: From which way? This way?

18 MR. BALL: If you don't mind, I'll operate the  
19 camera.

20 (There was a pause in the proceedings.)

21 MR. BARNETT: Do you want to look at these, Judge,  
22 and see if they're satisfactory?

23 THE COURT: No. Thank you. As soon as that other  
24 one comes out, let's mark them as -- Is the firearm 6?

25 MR. BARNETT: Yes, sir.

1 THE COURT: Let's mark them as 6-A, -B, -C, and -D.  
2 MR. BARNETT: All right, sir.  
3 THE COURT: And for the record, the firearm will be  
4 released, then, to Mr. Ron Jones.  
5 A Yes, sir.  
6 (State's Exhibits 6-A, 6-B, 6-C, and 6-D marked for  
7 identification.)  
8 THE COURT: And 6-A, -B, -C, and -D will be  
9 substituted for Exhibit 6. The original exhibit subject to  
10 inspection by defense counsel on his motion.  
11 MR. BARNETT: Yes, sir. Can he be excused, Judge?  
12 THE COURT: Oh, yes.  
13 A And take this with me?  
14 THE COURT: Yes, sir.  
15 (Witness excused.)  
16 THE COURT: We'll be in recess.  
17 (The noon recess was taken.)  
18 THE COURT: CF-95-104, State v. Stump. Back on the  
19 record after noon recess.  
20 State calls next witness.  
21 MR. BARNETT: Miguel Mendoza.  
22 THE COURT: The record should reflect defendant and  
23 counsel present as well.  
24 (There was a pause in the proceedings.)  
25 THE CLERK: Raise your right hand, please.

1 (Witness sworn.)

2 MIGUEL MENDOZA

3 called as a witness on behalf of the State of Oklahoma, after  
4 first being duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. BARNETT:

7 Q Would you state your name, sir.

8 A Miguel Alvares Mendoza.

9 Q Where do you live, sir?

10 A Prague.

11 Q How long have you lived in Prague?

12 A Approximately five years.

13 Q And what do you do, sir?

14 A I'm an oil field worker.

15 Q Are you currently employed?

16 A Yes.

17 Q And do you know the defendant in this case, Josh Stump?

18 A Yes.

19 Q How long have you known him?

20 A A few years.

21 Q And in what capacity? How do you know Josh Stump?

22 A I met him through his older brother Brandon.

23 Q And is he just a friend? Or do you work with him or  
24 something?

25 A No. He's a friend.

- 1 Q Has he ever stayed with you?
- 2 A Yeah. Yes.
- 3 Q And did you know -- When did he stay with you?
- 4 A I don't recall. It's been a while.
- 5 Q Do you know Robert Anderson?
- 6 A Yes.
- 7 Q Okay. Did Robert Anderson ever stay with you?
- 8 A Yes.
- 9 Q Did Robert and Josh stay with you at the same time at any  
10 particular time?
- 11 A Yes.
- 12 Q Okay. Would that have been sometime this summer?
- 13 A Yes.
- 14 Q How long did they stay at your house?
- 15 A It was an off-and-on thing. It was about, give or take, a  
16 week or two.
- 17 Q And does anyone else live with you?
- 18 A At the moment?
- 19 Q During the summer.
- 20 A No.
- 21 Q And your home was there in Prague; is that correct?
- 22 A Yes.
- 23 Q Okay. Is that an apartment there?
- 24 A It was a house.
- 25 Q Okay. While Robert Anderson and Josh Stump stayed with

1 you, did you charge them any rent or anything like that? Or  
2 did you just --

3 A No. I just let them stay with me.

4 Q Now, during the time that they were there, did you have  
5 occasion -- did you have occasion -- I'm going to show you  
6 what's been marked as State's Exhibit 3. And ask you if you  
7 recognize what's in that picture?

8 A Yeah.

9 Q Okay. And how -- Mr. Mendoza, she's writing down  
10 everything you're saying. So if you would say yes or no --

11 A Yes.

12 Q -- it would help her write it down. Thank you.

13 How do you recognize that, sir?

14 A Robert brought it over to my house.

15 Q Was that while he was staying with you?

16 A Yeah.

17 Q Okay. And was it in that condition when you first saw it?

18 A I don't think so. I don't -- It's been a while.

19 Q Do you remember it ever having a long barrel and a stock,  
20 a shoulder stock?

21 A It might have. I'm not really sure.

22 Q Do you know how it came to be modified like that?

23 MR. BALL: Objection, your Honor.

24 THE COURT: Overruled.

25 If you know, you can answer.

1 A I figure maybe --

2 THE COURT: No, not what you figure. Whether you  
3 know or don't know.

4 A No, I don't know.

5 Q (By Mr. Barnett) Did Josh Stump ever tell you how it got  
6 that way?

7 MR. BALL: Asked and answered.

8 THE COURT: Overruled.

9 A No.

10 Q (By Mr. Barnett) Now, did Robert Anderson ever tell you  
11 how it got that way?

12 MR. BALL: Same objection.

13 THE COURT: Overruled.

14 A I don't remember. He might have.

15 Q (By Mr. Barnett) And was it in your house?

16 A Excuse me?

17 Q Was that gun in your house at any time?

18 A It was there for a little bit, yes.

19 Q What time period are we talking about, Mr. Mendoza? How  
20 long a time period?

21 A I would say, a couple of hours, three hours. Not very  
22 long.

23 Q Okay. Do you recall when that might have been or what  
24 day?

25 A Maybe the second or third day they were with me.

1 Q Would this have been sometime -- And let's just try to pin  
2 this down a little bit, if we can. Do you remember the time --  
3 Do you know that Robert Anderson has been killed?

4 A Yes.

5 Q Do you remember about the time that he died?

6 A It was on a Friday, I think.

7 Q Well, regardless, do you remember --

8 A Yes.

9 Q If we use that point in time as a reference, how many days  
10 prior to that did you see that shotgun?

11 A I'd say, about three. Two or three.

12 Q And that was there at your house?

13 A Yes.

14 Q Okay. And did he keep it there at your house?

15 A No.

16 Q Where did he keep it? Do you know?

17 A I have no idea.

18 Q Now, they stayed at your house. Did they have a vehicle?

19 A No. They had transportation, off and on, from different  
20 friends.

21 Q Did Robert Anderson and Josh Stump usually -- while they  
22 were staying at your house, did they usually go places  
23 together?

24 A Yes.

25 Q Did you ever see one without the other during that period

1 they were staying at your house?

2 A Yes.

3 Q And when you would see them -- one or both of them with  
4 that shotgun, who usually had it?

5 A Robert.

6 Q Do you know where it came from?

7 A No.

8 Q Do you remember making a statement at the Prague Police  
9 Department on the 15th of July concerning this shotgun?

10 A Yes.

11 Q Do you recall writing out a statement at that time?

12 A Well, I was half asleep. Yes.

13 MR. BALL: Your Honor, I'd object as to relevance,  
14 where the district attorney is going with all of this.

15 MR. BARNETT: Judge, I'm -- a little bit impeachment,  
16 I think, of this witness as to what he's been told about the  
17 shotgun. I think he's made a prior inconsistent statement.

18 MR. BALL: And I'd like to know what relevance that  
19 has to do with this case.

20 THE COURT: Objection overruled.

21 Q (By Mr. Barnett) Do you recall making a statement,  
22 writing out a statement to the Prague Police?

23 A Yeah.

24 Q And do you recall in that statement saying "Josh told me  
25 they had sawed the barrel off the gun"? Do you remember saying

1 that?

2 A No.

3 Q Okay. Now, when was the last time you saw Josh and Robert  
4 Anderson?

5 A I would say, it was about Friday morning.

6 Q Friday morning before -- Again, using the time that you  
7 know that Robert Anderson was killed.

8 A Yeah. Same one.

9 Q Okay. That would have been the last time you saw him?

10 A Yeah.

11 Q Where was that?

12 A At my house.

13 Q What were they doing, anything unusual?

14 A No.

15 Q Had either Josh Stump or Robert Anderson talked to you  
16 about what they were going to do with that shotgun?

17 A No.

18 Q Did they ever give you any indication that they were going  
19 to commit any kind of crime with that shotgun?

20 A No.

21 Q Did you ever see them fire that shotgun?

22 A No.

23 Q Did you ever see any ammunition for that shotgun?

24 A No.

25 Q When they left, do you know how they left your house?

- 1 A I have no idea. They were still asleep when I left.
- 2 Q Did you go to work or something?
- 3 A No. I went to my girlfriend's house.
- 4 Q And when you came back, they were gone?
- 5 A Yes.
- 6 Q Okay. And was that the last time you saw them?
- 7 A That morning.
- 8 Q Did you have any other communications with them that
- 9 evening?
- 10 A No.
- 11 Q Did they ever call you or talk -- Did they ever talk to
- 12 you?
- 13 A No.
- 14 Q And you wouldn't know whether they called you or not?
- 15 A No.
- 16 Q Do you have a phone at your residence?
- 17 A Where I'm staying at now, yes.
- 18 Q No. I mean, when --
- 19 A Then, yes, I had a phone.
- 20 Q What was your phone number at that time?
- 21 A 3405.
- 22 Q 3405?
- 23 A 567.
- 24 THE COURT: 567-3405?
- 25 A Yes.

- 1 Q (By Mr. Barnett) And did Robert Anderson and Josh Stump  
2 know that number?
- 3 A They should have, yes.
- 4 Q Have you talked to them on the phone before, either one of  
5 them?
- 6 A Yes.
- 7 Q Is that -- What kind of phone is that? Do you know? What  
8 kind of phone is it, just a regular phone?
- 9 A Just a regular phone, yes.
- 10 Q Do you have a cellular phone of any kind?
- 11 A No.
- 12 Q So that's a phone that's permanent to your residence? I  
13 guess is what I'm trying to --
- 14 A Yes.
- 15 Q Have you -- And you had no contact with either Josh Stump  
16 or Robert Anderson after they left your home that evening --
- 17 A No.
- 18 Q -- or that morning, I'm sorry, whenever they left?
- 19 A No.
- 20 Q Okay. Do you know any reason why they might try to call  
21 you on the evening that they left?
- 22 A Not that I would know.
- 23 Q Did you know whether or not they might come back?
- 24 A I figured they probably would, since they were staying  
25 with me, you know.

1 Q Did Josh Stump or Robert Anderson ever talk to you about  
2 some credit cards and some blank checks they had in their  
3 possession?

4 A Yes.

5 Q Who talked to you about that?

6 A Robert did.

7 Q Robert?

8 A Yes.

9 Q When did he talk to you about that?

10 A It was probably the first day that he came over.

11 Q Did you know that Robert was hiding out from his dad and  
12 mom?

13 A Yes.

14 Q And Robert and Josh were friends of yours; is that right?

15 A Yes.

16 Q And you helped them; is that a fair statement?

17 A Yes. I was helping them out.

18 Q Now, did Robert tell you what he was going to do with  
19 those checks or credit cards?

20 A No. Just, you know, go on a spending spree, I guess, is  
21 pretty much what he said.

22 Q Do you know whether or not he did that?

23 A I'm pretty sure he did, yes.

24 Q In fact, you went with them, didn't you --

25 A Yes.

- 1 Q -- to Oklahoma City? Is that correct?
- 2 A Yes.
- 3 Q Did -- Robert bought himself some stuff; is that right?
- 4 A Yes.
- 5 Q Did he buy anything for Josh?
- 6 A He might have. I think he did.
- 7 Q Did Robert or Josh give you anything?
- 8 A No.
- 9 Q You just kind of went along for the ride?
- 10 A Well, yeah. And Robert bought me a pair of shorts,
- 11 because we were supposed to go swimming or something.
- 12 Q Other than that, you didn't benefit from any of those
- 13 checks or credit cards that Robert had with him; is that
- 14 correct?
- 15 A No.
- 16 Q Is it correct?
- 17 A Yeah.
- 18 Q It's a bad question.
- 19 A Yeah.
- 20 Q And -- So after -- When was this shopping spree, do you
- 21 recall, in relationship to Robert's death?
- 22 A I would say, three days before.
- 23 Q Did Robert help you out or Josh help you out with anything
- 24 around the house as far as money for food or anything?
- 25 A No.

1 Q Do you know whether or not either one of them had any  
2 money --

3 A No.

4 Q -- other than what they were able to get from these  
5 checks?

6 A Not that I know of.

7 Q And do you know whether or not either one of them had a  
8 car?

9 A No.

10 Q They didn't?

11 A They didn't have a car.

12 Q Did either one of them talk to you about leaving the state  
13 of Oklahoma -- or leaving Prague and possibly the state of  
14 Oklahoma and going somewhere else?

15 A No.

16 MR. BARNETT: I think that's all I have, Judge.

17 THE COURT: Cross.

18 CROSS-EXAMINATION

19 BY MR. BALL:

20 Q Back in July, did you have an answering machine at your  
21 home?

22 A No.

23 Q You didn't have one on your telephone?

24 A No, not that I know.

25 Q The district attorney asked you if there was any mention

1 of checks or credit cards that Robert had. Did he tell you who  
2 those belonged to?

3 A Yeah.

4 Q Who did they belong to?

5 A His dad. His mom and dad.

6 Q Did he indicate to you whether or not he had permission to  
7 have those?

8 A No.

9 Q He didn't tell you?

10 A No.

11 Q So for all you knew, he did have permission to have those?

12 A Yes.

13 MR. BALL: No further questions.

14 THE COURT: Any redirect by the state?

15 MR. BARNETT: No, your Honor.

16 THE COURT: May the witness be excused, Mr. Barnett?

17 MR. BARNETT: Yes, sir.

18 THE COURT: Mr. Ball?

19 MR. BALL: Yes. Although I'd like to tell him how he  
20 can -- I'd like to give him my card. That's all.

21 THE COURT: You're excused from appearance. If you  
22 desire to wait around and get Mr. Ball's card, you can.

23 (Witness excused.)

24 THE COURT: Next witness.

25 MR. BARNETT: Mr. Moucka.

1 (There was a pause in the proceedings.)  
2 MR. BARNETT: Judge, we will have a momentary delay.  
3 Our timing is not very good. He'll be here in just a moment.  
4 THE COURT: Last witness?  
5 MR. BARNETT: Next to the last. The last one will be  
6 very brief.  
7 THE COURT: Is there a problem with the order of  
8 witnesses that we can't take the next to the last one -- or the  
9 last one, I mean, instead?  
10 MR. BARNETT: No.  
11 THE COURT: Let's take them up while we're waiting on  
12 the other one, then.  
13 MR. BARNETT: Jackie Johnson.  
14 THE COURT: If there's not a problem with the --  
15 MR. BARNETT: I don't think there will be, Judge.  
16 THE COURT: Be sworn, please.  
17 (Witness sworn.)  
18 THE COURT: Have a seat in the witness chair, please.  
19 (Witness complied.)  
20 THE COURT: If you get into a foundational problem or  
21 area, I'll allow you to recall her if it's necessary to put on  
22 the other witness first.  
23 MR. BARNETT: All right, sir.  
24 - - -  
25

1                                    JACKIE JOHNSON  
2    called as a witness on behalf of the State of Oklahoma, after  
3    first being duly sworn, testified as follows:

4                                    DIRECT EXAMINATION

5    BY MR. BARNETT:

6    Q    Would you state your name, please.

7    A    Jackie Johnson.

8    Q    What do you do, ma'am?

9    A    I'm an investigator for the Oklahoma State Bureau of  
10    Investigation.

11   Q    And how long have you done that?

12   A    Nineteen years.

13   Q    Could you tell us a little bit about your training and  
14    experience in law enforcement?

15   A    I began as an Agent I and received the basic training at  
16    our academy, a four-month academy of investigations, how to  
17    conduct investigations. And I went into general assignment for  
18    one year, which meant I did general investigations. Then I  
19    went into what we call intelligence division, where I remained  
20    for a few years.

21            Then I went into a management position over information  
22    services. And then I went into the fugitive unit. And then in  
23    1985, I returned back to general investigations.

24   Q    Okay. Do you have any particular training and experience  
25    in crime scene investigation and particularly as to crime scene

1 -- leading crime scene investigations?

2 A Yes.

3 Q Okay. What would that consist of?

4 A I've received over -- last count was over 1400 hours of  
5 specialized training in those areas. I attended the -- it was  
6 a three-week course from the Southern Police Institute on  
7 homicide investigations. On a yearly basis, I attend a crime  
8 scene reconstruction seminar and training period. I receive  
9 training in interrogations and interviews. It's just a  
10 continuous, ongoing training period.

11 Q What were your duties with the OSBI around the 15th of  
12 July of this year?

13 A As an investigator.

14 Q Did you have occasion to assist Lincoln County law  
15 enforcement officials with a homicide that occurred in Lincoln  
16 County?

17 A Yes.

18 Q When did you first learn about that?

19 A I don't remember the specific time that I received the  
20 call at the house. But I was called by our communications  
21 center and was told that we had a homicide in Lincoln County.  
22 And I responded.

23 Q Okay. And was that at the Moucka residence?

24 A Yes.

25 Q And did you take anybody with you or did anybody meet you

1 there from the OSBI?

2 A Yes.

3 Q And who would that be?

4 A Mike Collins, Special Agent Mike Collins; Deputy Inspector  
5 Tom Jordan. And then later, we were joined with the  
6 criminalist and the crime scene people.

7 Q Can you describe to us basically the crime scene as you  
8 saw it pulling into this residence?

9 A When I arrived, I went down the dirt road approaching the  
10 residence, the trailer. And on the dirt road, on what we  
11 called a low-water bridge was a white male laying facedown.  
12 And then I went on to the crime scene, the trailer -- the  
13 second crime scene, the trailer, and went in through the back  
14 door and found a white female laying in the living room.

15 Q I'm going to show you what's been marked State's Exhibits  
16 4 and 5. And ask you if you recognize those?

17 A Yes. Exhibit No. 4 would be of the young man that was  
18 laying on the low-water bridge. And No. 5 would be of the lady  
19 laying in the living room.

20 Q Now, did you subsequently identify each of those persons?

21 A Yes.

22 Q Could you tell us who they are?

23 A Number 4, the young man, is Robert Anderson. And No. 5,  
24 the lady, was Katharina Knight.

25 Q Now, what was the -- Anyone else there? I'm sorry.

1 Anyone else there at the residence when you got there?

2 A Yes.

3 Q Okay. Who was that?

4 A The undersheriff, Undersheriff Duane Mathes; Deputy David  
5 Armitage; Deputy Mike Madden; and Meeker Police Officer  
6 Rogers. And they were on the scene, yes.

7 Q Now, was the owner of the house or the owner of that  
8 mobile home, was he there?

9 A No.

10 Q He had been transported by that time; is that correct?

11 A Yes, that is correct.

12 Q Now, did you determine who that was?

13 A Yes.

14 Q Who was that?

15 A It would be Hubert Moucka.

16 Q And where did he go?

17 A It was my understanding he was Medi-Flighted out. I did  
18 not really know to what hospital until the following day.

19 Q Could you tell us a little bit about the crime scene at  
20 the -- from, say, the trailer or the mobile home door into the  
21 living room area where you found Ms. Knight?

22 A When I arrived, the front door -- the wooden door was open  
23 to the inside and the screen door was -- aluminum door was open  
24 to the outside on the porch.

25 Q Okay. And what was the condition of that door?

1 A The aluminum door had -- the glass had been blown out of  
2 it.

3 Q Did you see any weapons there on the outside of the  
4 building?

5 A No, I did not.

6 Q Did you see any weapons inside the building?

7 A Yes, I did.

8 Q What was that?

9 A It was a pistol.

10 Q And do you recall what kind?

11 A I believe it was a Smith & Wesson.

12 Q Okay. Model or make? Do you know what kind it was or  
13 what caliber it was?

14 A I have to correct myself. They had removed the pistol by  
15 the time I arrived. What I'm thinking of is the gun case that  
16 was in the bedroom.

17 Q Now, what did you do next at the crime scene?

18 A We started -- We requested the assistance. We did the  
19 actual crime scene process of photographing and gathering  
20 evidence and trying to get a positive identification on  
21 Mr. Anderson. That took us a little bit.

22 Q And how did you do that?

23 A We did that -- Deputy Armitage told us of Mr. Moucka  
24 writing a telephone number down that had been called by the  
25 subjects. And we identified that telephone number, traced it

1 to Miguel Mendoza's house. And we also had taken a Polaroid  
2 photograph of Mr. Anderson. And Mike Collins, one of our  
3 agents, who it turned out is his cousin, took the photograph  
4 for identification purposes. And then he communicated back to  
5 me that this was Robert Anderson.

6 Q Once you learned the identity of Robert Anderson, did that  
7 give you any insight into who else might be involved in this?

8 A Yes.

9 Q And how was that?

10 A Through, I believe, the interview with Mr. Mendoza,  
11 possibly through the interview with Mr. Anderson, we were  
12 advised and told that a Joshua Stump was running with Robert  
13 Anderson.

14 Q And once Joshua Stump was developed as a suspect in this  
15 case, who else did you interview?

16 A We -- I did not conduct any further interviews until later  
17 on in the day.

18 Q Okay. And did you ever have occasion to come into contact  
19 with and interview Josh Stump?

20 A Yes.

21 Q When was that?

22 A That was July 15th, later on in the evening, around seven  
23 o'clock.

24 Q And where did that occur?

25 A In Prague.

1 Q And what were the circumstances of that interview? Could  
2 you tell us how that came to happen?

3 A He was located at a residence by Prague Lake. He was  
4 placed under arrest and brought to the -- transported to the  
5 Lincoln County Sheriff's Office. And we conducted an interview  
6 with Mr. Stump at that point.

7 Q Now, you mentioned that you first became involved in this  
8 crime early on the 15th. How early are we talking about?

9 A I arrived on the scene at four in the morning.

10 Q And how long was it before you talked to Josh Stump on  
11 that same day?

12 A Around seven that evening is when he was arrested. And  
13 the actual interview, we started at around nine o'clock.

14 Q Now, the person that you interviewed and the person that  
15 we've talked about as Josh Stump, is he present in the  
16 courtroom today?

17 A Yes, he is.

18 Q And could you point him out, please?

19 A He's sitting at the defense table, with the black shirt  
20 on.

21 MR. BARNETT: I'd ask the record to reflect she's  
22 identified the defendant, your Honor.

23 THE COURT: The record does.

24 Q (By Mr. Barnett) Now, under what circumstances or  
25 conditions did you interview Josh Stump? Was anyone else

1 present?

2 A Yes. Deputy Inspector Tom Jordan, DHS Workers Kephart and  
3 Cloke.

4 Q And why were DHS Workers Kephart and Cloke there?

5 A Because we had been told that Mr. Stump was a ward of the  
6 state, and we wanted the DHS workers who were his caseworkers  
7 present.

8 Q And did they -- Ms. Cloke and Ms. Kephart acknowledge that  
9 they did have custody -- DHS did have custody of Josh Stump?

10 A Yes.

11 Q And did they consent to you conducting this interview?

12 A Yes.

13 Q And did you advise Mr. Stump of his rights?

14 A Yes.

15 Q And did he acknowledge those rights?

16 A Yes.

17 Q And did he appear to understand those?

18 A Yes.

19 Q And how do you normally advise someone of their  
20 constitutional rights?

21 A I read to him from a piece of paper that has those -- the  
22 Miranda rights listed.

23 Q Did he sign anything?

24 A Yes.

25 Q Okay. And did he acknowledge at that time that he

1 understood each and every one of those rights?

2 A Yes.

3 Q Did he appear to be impaired in any way?

4 A No.

5 Q And did he appear to voluntarily -- know that this was a  
6 voluntary statement on his part if he wanted to talk to you?

7 A Yes.

8 Q And did he initially agree to talk to you?

9 A No.

10 Q And what did you do at that point?

11 A Terminated the interview.

12 Q Approximately how long was it between the time you  
13 initially advised him and the time you terminated the  
14 interview? How long did you talk to him?

15 A About five minutes.

16 Q And during the course of that time, did you form an  
17 opinion as to his ability to understand, comprehend, know what  
18 his rights were?

19 A Yes.

20 Q And did he indicate to you why he did not want to talk to  
21 you?

22 A Yes.

23 Q What did he say?

24 A He said he wanted an attorney.

25 Q Okay. And at that point did you stop?

- 1 A Yes.
- 2 Q Did you have occasion to talk to him again?
- 3 A Yes.
- 4 Q And when was that?
- 5 A Approximately around ten to -- ten minutes later.
- 6 Q Okay. And where were you at that point?
- 7 A Still at the sheriff's office.
- 8 Q Okay. Here in Lincoln County?
- 9 A Yes.
- 10 Q And what -- Who initiated this second conversation?
- 11 A The jailer Patti Mathes came back in and said that
- 12 Mr. Stump really did want to speak with us at the time.
- 13 Q And what did you do when you heard this information?
- 14 A We brought him back in. And we Mirandized him again and
- 15 tried to make perfectly clear of his rights and to make sure
- 16 that he was there voluntarily.
- 17 Q Now, was Ms. Cloke and Ms. Kephart there at this second
- 18 interview?
- 19 A Yes.
- 20 Q Okay. Now, you said "Mirandized." Did you read him his
- 21 rights again?
- 22 A Yes.
- 23 Q Each and every one of them?
- 24 A Yes.
- 25 Q As to his right to remain silent and right to an attorney?

1 A Yes.

2 Q And the fact that evidence could be used against him if he  
3 made a statement?

4 A Yes.

5 Q Did he acknowledge those rights?

6 A Yes.

7 Q Did you talk to him about his right to have an attorney  
8 present?

9 A Yes.

10 Q And did he indicate whether or not he wanted an attorney  
11 present at this second --

12 A At this second one, no. He was willing to speak to us.

13 Q Did he indicate to you why he might have not wanted to  
14 talk to you the first time?

15 A No.

16 Q During this second interview, did he appear to make his  
17 statements to you voluntarily and freely?

18 A Yes.

19 Q Did he seem to be under any kind of -- Well, other than  
20 being in jail and under the circumstances, did he seem to be  
21 under any kind of undue influence or pressures?

22 A No.

23 Q Did he appear to be knowledgeable for his age and  
24 experience level, a knowledgeable and intelligent person?

25 MR. BALL: Objection as to foundation.

- 1 THE COURT: Overruled.
- 2 A Yes.
- 3 Q (By Mr. Barnett) Now, during the second interview, were  
4 his guardians present?
- 5 A Yes.
- 6 Q And did they understand, as far as you know -- Did you  
7 explain their rights to them that they could exercise on his  
8 behalf?
- 9 A Yes.
- 10 Q Okay. Now, how old is Josh Stump -- or how old was he at  
11 the time you interviewed him?
- 12 A Seventeen.
- 13 Q And do you recall his date of birth?
- 14 A January 29, 1978.
- 15 Q Now, do you know how long he had been in DHS custody?
- 16 A No, I do not.
- 17 Q Did either Ms. Kephart or Ms. Cloke indicate to you any  
18 objections to conducting this second interview?
- 19 A No.
- 20 Q Okay. And did Josh Stump indicate he had any reservations  
21 about talking to you this second time?
- 22 A No.
- 23 Q And he did appear to want to talk to you without an  
24 attorney present during this second interview?
- 25 A Yes.

1 Q Now, did Josh Stump relate to you the events of -- a  
2 version of the events of that evening?

3 MR. BALL: Objection. Motion to suppress.

4 THE COURT: What's your motion?

5 MR. BALL: Move to suppress the statements made by  
6 Joshua Stump at this point, made at the jail, in custody, under  
7 arrest, while he was a ward of the state, having already  
8 demanded to see counsel and -- Well, I'm actually arguing, your  
9 Honor. But --

10 THE COURT: I want to know what your motion is, in  
11 other words, what grounds or ground.

12 MR. BALL: That the statements made were clearly  
13 custodial statements at the point --

14 THE COURT: Is your ground that he wasn't properly  
15 Mirandized?

16 MR. BALL: My ground is that his consent either was  
17 not knowingly and voluntarily made, or in the -- alternatively,  
18 was made under coercion.

19 THE COURT: All right. There's been a motion to  
20 suppress filed on the grounds the statements were not  
21 voluntary, and made under coercion.

22 You may step down, ma'am.

23 (Witness excused.)

24 THE COURT: And the defendant can call his first  
25 witness on the motion to suppress.

1 MR. BALL: Your Honor, I would call Jean Cloke.

2 (There was a pause in the proceedings.)

3 THE COURT: Come up and be sworn by the clerk,

4 please, then have a seat in the witness chair.

5 THE CLERK: Raise your right hand.

6 (Witness sworn.)

7 JEAN CLOKE

8 called as a witness on behalf of the Defendant, after first

9 being duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. BALL:

12 Q Would you state your name, please.

13 A My name is Gloria Jean Cloke.

14 Q All right. And, Ms. Cloke, where are you employed?

15 A DHS, Child Welfare.

16 Q And what is your position there?

17 A I'm the treatment supervisor.

18 Q How long have you been employed in that capacity?

19 A I've been supervisor in Lincoln County for 13 months.

20 Q Do you deal with juveniles?

21 A Yes, sir.

22 Q What kind of juveniles do you deal with?

23 A Deprived, abused, neglected children.

24 Q Are you familiar with the case of Joshua Stump?

25 A Your Honor, the information I'm being asked to disclose is

1 confidential, pursuant to --

2 THE COURT: No, it isn't, ma'am. He just asked you  
3 if you're familiar with it or not. He's not asked you to  
4 disclose anything else yet. Just answer yes or no.

5 A Yes, sir.

6 Q (By Mr. Ball) Okay. On or about July 15, 1995, was Josh  
7 Stump a ward of the state?

8 THE COURT: What's the relevance?

9 MR. BALL: As to the motion to suppress, your Honor?

10 THE COURT: Yes. Your ground was it wasn't voluntary  
11 and consensual.

12 MR. BALL: Or knowing.

13 THE COURT: Yes. What's the relevance as to whose  
14 custody he was in?

15 MR. BALL: Well, he's a juvenile at the time, your  
16 Honor.

17 THE COURT: No, sir. I'm sorry. He's charged with  
18 murder. And this statute with respect to his parent being  
19 present does not apply.

20 MR. BALL: Your Honor, my understanding of "charge"  
21 is that a charge is instituted when the information is filed.  
22 And the information wasn't filed at this point. He wasn't  
23 charged. He was under arrest.

24 THE COURT: If that's -- But you didn't make that as  
25 your ground. And now are you changing your motion to suppress?

1 Is it on the ground that --

2 MR. BALL: He was a juvenile at the time -- Yes.  
3 That under the law, he was a juvenile at the time that these --  
4 that these statements were taken from him, that he had not been  
5 charged; and that under the statute, he's still -- at the time  
6 these statements were made, he was still a juvenile.

7 THE COURT: We'll hear your legal argument on that.  
8 Just stand by. And then we'll hear from the state. On a  
9 reverse certification case, go ahead and tell me.

10 MR. BALL: Your Honor, the statute states --

11 THE COURT: I know what the statute says. Tell me  
12 what case law you have that says whether the police can  
13 interrogate him or not as an adult.

14 MR. BALL: Your Honor, I'm relying on the statute,  
15 that he wasn't charged at this time.

16 THE COURT: Okay. That's all you have.

17 Mr. Barnett.

18 MR. BARNETT: Judge, I don't have any authority  
19 either way, to be honest. I think under -- At least I haven't  
20 had a chance to look it up. I'm not sure. I think for -- what  
21 we did was -- or what happened was in an overabundance of  
22 caution. I don't know they were absolutely necessary to be  
23 there. But once they learned that he was in DHS custody, we  
24 had --

25 THE COURT: To save some problems with

1 confidentiality, will you stipulate that he was in the state's  
2 custody?

3 MR. BARNETT: Yes.

4 THE COURT: All right. Now, do you want to go ahead  
5 on your areas with respect to whether or not it was voluntary  
6 and consensual? And then we'll argue the legality of the other  
7 area later, whether or not he could be questioned.

8 MR. BALL: Okay.

9 THE COURT: He, apparently, has a parent or custodian  
10 present anyway. And I guess all we have to do now is find out  
11 whether or not they consented and then find out whether he  
12 consents.

13 MR. BALL: Okay.

14 Q (By Mr. Ball) Was Josh Stump in DHS custody at that time?

15 THE COURT: There's been a stipulation that he was.  
16 Now go ahead with your next question.

17 MR. BALL: All right.

18 Q (By Mr. Ball) Under what -- Okay. Were you present at  
19 the Lincoln County Jail on or about the 15th day of July?

20 A Yes, sir, I was.

21 Q All right. And what were the circumstances of your being  
22 there?

23 A Your Honor --

24 THE COURT: He asked you why you were there. Answer  
25 the question.

1 A Your Honor, some of this may fall into confidential child  
2 welfare records.

3 THE COURT: That does not. Why you were there does  
4 not. Somebody had either asked you to appear there, or you had  
5 just walked in the door, something happened, or you had been  
6 arrested. You can just tell him why you were there.

7 A We had been notified that Josh had been involved in some  
8 -- we weren't real sure what, a possible shooting, and that as  
9 his guardians we needed to be there. So we went down to take  
10 them a picture and to be present.

11 Q (By Mr. Ball) Okay. Were you asked to give consent on  
12 his behalf for him to answer questions by law enforcement  
13 officials?

14 A No, we were not asked to give consent.

15 Q Did you know whether or not, in fact, Josh Stump had an  
16 attorney?

17 A He has an attorney -- or he had an attorney on the  
18 juvenile -- on the deprived case. But at that time, no, we  
19 didn't have an attorney on any criminal matter.

20 Q But insofar as his --

21 THE COURT: Now, we're going to get into an area that  
22 may be confidential and isn't relevant. I'll tell you right  
23 now and we'll read into the record that he has an attorney  
24 appointed in a pending deprived case but not in a criminal case  
25 at that point in time, to my knowledge, unless you have some

1 knowledge of an appointment in a criminal case. I'm trying to  
2 solve her problem here without taking an undue length of time.

3 Q (By Mr. Ball) Did you attempt to contact his attorney?

4 A At that point, no, we didn't. Because we weren't real  
5 sure what was going on.

6 THE COURT: That's just a yes or a no.

7 Q (By Mr. Ball) Okay. And did you consult with an attorney  
8 before advising Josh as to whether or not he ought to talk with  
9 the OSBI agent?

10 THE COURT: Yes or no.

11 A No.

12 Q (By Mr. Ball) Did you speak with any member of the  
13 district attorney's office?

14 A I briefly talked to Sheila Kirk.

15 Q Okay. Did she advise you that it would be all right if  
16 Josh went ahead and spoke with the OSBI?

17 A Yes. She indicated that it would -- that it would be all  
18 right.

19 Q Have you ever dealt with this kind of situation before?

20 A Absolutely not.

21 Q Do you have familiarity with how to proceed in this type  
22 of dilemma?

23 A No.

24 Q Did you know that Josh had asked to speak to an attorney?

25 A No, I didn't.

1 Q I asked you earlier if you gave consent. Did someone give  
2 consent on Josh's behalf?

3 A We were never really asked for consent.

4 Q Did you really have any idea what was going on?

5 A Somewhat.

6 Q Were you aware of the possibilities of what could happen  
7 to Josh at that point?

8 A Yes. We -- To a certain extent.

9 Q Did you talk to Josh before he talked to the law  
10 enforcement officials?

11 A No.

12 MR. BALL: I have no further questions.

13 THE COURT: Mr. Barnett.

14 CROSS-EXAMINATION

15 BY MR. BARNETT:

16 Q How long have you been a supervisor with DHS?

17 MR. BALL: Asked and answered.

18 THE COURT: Overruled.

19 You didn't ask it, Mr. Barnett. If we're going to go on  
20 that ground, I'd have to stop half of Mr. Ball's questions.

21 A Thirteen months.

22 Q (By Mr. Barnett) And have you had any special training in  
23 that?

24 A Yes, sir.

25 Q Did anybody ever talk to you about questioning juveniles

1 in -- law enforcement officials questioning juveniles?

2 A We have very little training in that area, because it's  
3 usually very different circumstances when law enforcement is  
4 involved in one of our cases.

5 Q Does Ms. Kephart have any training or experience, to your  
6 knowledge --

7 MR. BALL: Beyond the scope of cross, your Honor --  
8 or beyond the scope of direct, your Honor.

9 THE COURT: Who, Mr. Barnett, with respect to the  
10 training?

11 MR. BARNETT: Ms. Kephart.

12 THE COURT: Sustained.

13 Q (By Mr. Barnett) Were you present when Jackie Johnson --  
14 Do you know Jackie Johnson? Do you remember her?

15 A Yes.

16 Q Okay. You were there at the jail that night; is that  
17 correct?

18 A Yes.

19 Q Why did you come?

20 A Because a child in our custody was being sought in a  
21 criminal matter. And as his guardians, we felt it our  
22 responsibility to be there.

23 Q Who else was there with you?

24 A Rebecca Kephart.

25 Q Who is she in relationship to Josh Stump?

1 A She is his social worker.

2 Q Now, were you present when Ms. Johnson did her interview  
3 -- her first interview of Joshua Stump?

4 A Yes.

5 Q Do you recall the gist of that interview? Do you recall  
6 what happened?

7 A Yes. Most of it.

8 Q But you've mentioned to Mr. Ball that you don't recall --  
9 or don't recall him asking -- Josh asking for an attorney; is  
10 that correct?

11 A Not prior to that. I don't know whether he -- I was not  
12 aware of it. During that conversation at one point, yes, he  
13 did.

14 Q Okay. So were you in the room the whole time when Jackie  
15 Johnson and the other agent were talking to Josh Stump?

16 A Yes.

17 Q And if Josh Stump said when asked -- Do you recall this  
18 particular portion of the dialogue:

19 "JOHNSON: Okay. Do you want to continue talking to us at  
20 this time?

21 "STUMP: No, I don't.

22 "JOHNSON: You don't. Why is that?

23 "Because I have the right to remain silent.

24 "Okay. So at this time you do not want to talk to us?

25 "STUMP: No."

- 1           And do you recall that particular dialogue?
- 2    A    Uh-huh.  Yes, sir.
- 3    Q    Now, he didn't say anything about a lawyer at that time,
- 4    did he?
- 5    A    Not in that dialogue.
- 6    Q    Okay.  He indicated he wanted to remain silent; is that
- 7    your understanding of what he said?
- 8    A    Yes.
- 9    Q    He didn't want to make a statement?
- 10   A    No.
- 11   Q    During that first portion of the interview, did he ever
- 12   say -- did you ever hear him say anything about a lawyer?
- 13   A    I don't recall specifically.
- 14   Q    Okay.  And while -- Did you go back, Ms. Cloke, for this
- 15   second interview?  Did you --
- 16   A    We remained in the room during the interim.  And I was
- 17   present for the second one also.
- 18   Q    And who was in the room with you during that interim
- 19   period?
- 20   A    I believe it was the same people: Rebecca Kephart and then
- 21   the officers.
- 22   Q    At any time did Josh Stump leave?
- 23   A    Yes, he did.
- 24   Q    Okay.  And he came back in later?
- 25   A    Yes.

- 1 Q Did you talk to him before he came back in?
- 2 A No.
- 3 Q He just came back in?
- 4 A Yes.
- 5 Q And at that point was he willing to make a statement?
- 6 A Yes.
- 7 Q And at that point did he -- was he advised of his rights
- 8 again?
- 9 A Yes.
- 10 Q Are you familiar with what some people call Mirandizing
- 11 and other people call the constitutional rights? Are you
- 12 familiar with those? Do you know what those are?
- 13 A Yes.
- 14 Q Have you had some training as to what those are?
- 15 A No. Just general knowledge.
- 16 Q Okay. Now, did Ms. -- Do you recall Ms. Johnson reading
- 17 those rights to Josh Stump?
- 18 A Yes.
- 19 Q And do you recall her asking Josh Stump if he understood
- 20 those rights?
- 21 A Yes.
- 22 Q And did she explain them to you as well?
- 23 A I don't believe she specifically addressed us. But she
- 24 did explain them to Josh.
- 25 Q And did you understand them?

1 A Yes.

2 Q And Ms. Kephart, was she there also?

3 A Yes.

4 Q Did Josh ask you for any kind of opinion as to whether or  
5 not he should talk to OSBI?

6 A He did not ask our opinion, but we did address him on the  
7 matter.

8 Q So you suggested he -- something to him?

9 A Uh-huh.

10 MR. BALL: Objection. Leading.

11 THE COURT: Overruled, Mr. Ball. She just said she  
12 did.

13 MR. BALL: Withdrawn.

14 THE COURT: Perhaps Mr. Barnett shouldn't be  
15 repeating the answers. But I'm not going to sustain the  
16 objection.

17 Q (By Mr. Barnett) Did you talk to him at all about whether  
18 it would be good for him to do this or not, to make a  
19 statement?

20 A We advised him to talk to an attorney. Yes.

21 Q You advised him to talk to an attorney?

22 A Becky did and I did.

23 Q Okay. And was this before the first or the second  
24 interview?

25 A The first, I think.

1 Q Okay. And what did Josh say?

2 A He didn't really respond.

3 Q But did he -- I mean, that night, did he appear to be --  
4 these two interviews, did he appear to be incapacitated in any  
5 way?

6 A He appeared tired and stressed.

7 Q Had you seen him before that night, personally?

8 A Yes.

9 Q Okay. How many times?

10 A I'm not sure. I've known Josh off and on for about two  
11 years probably, maybe three.

12 Q Okay. Were you a worker before you became a supervisor?

13 A Yes, sir.

14 Q Now, what -- During that second interview, was he  
15 handcuffed? Do you recall?

16 A I don't recall.

17 Q Was he coerced? Were you able to see whether or not there  
18 was anyone -- any coercion used on him to --

19 MR. BALL: Beyond the scope of direct examination.

20 THE COURT: Overruled.

21 Q (By Mr. Barnett) Did anybody force him to testify -- or  
22 to make that statement, rather?

23 A No.

24 Q Did you know that all of this was being recorded  
25 somewhere?

- 1 A Yes, I did.
- 2 Q Both interviews?
- 3 A Yes.
- 4 Q And did Josh -- Do you know whether or not Josh knew they  
5 were being recorded?
- 6 A Yes. He did.
- 7 Q Did you see Josh Stump sign anything that indicated he  
8 understood his rights?
- 9 A Yes. I believe Jackie had him sign something.
- 10 Q And would that have been during the first or the second  
11 interview or both, if you know?
- 12 A I don't recall.
- 13 Q Now, when he came back in for that second interview, same  
14 people present?
- 15 A Yes.
- 16 Q And do you recall Ms. Johnson saying, "Are you in here on  
17 your own free will? Did we make you come back?"  
18 And Josh Stump saying, "No. I'm in here on my own free  
19 will."
- 20 Ms. Johnson said, "Okay. Who did you tell you wanted to  
21 talk" -- "talk to us?"  
22 "The bailiff, or whatever she is."  
23 Does that sound right? Do you remember that?
- 24 A Yes, sir.
- 25 Q Okay. Were you present when Josh talked to this bailiff,

1 or jailer, whoever?

2 A No.

3 Q When he came back in and -- this second time, did Josh  
4 Stump appear to be willing to -- to revoke that request to  
5 remain silent, and to talk to Ms. Johnson?

6 MR. BALL: Objection. Foundation. Calls for  
7 speculation.

8 THE COURT: Sustained, unless she can say what he  
9 looked like --

10 Q (By Mr. Barnett) Did he --

11 THE COURT: -- how he appeared.

12 MR. BARNETT: I understand. It was a bad question.

13 Q (By Mr. Barnett) Any hesitation on his part to speak to  
14 Ms. Johnson at that second interview?

15 A No, I don't believe so.

16 Q Do you know how long a period of time elapsed between the  
17 time he was taken away and the time he returned to make that  
18 second interview?

19 A Five to ten minutes.

20 Q Were you able to see if there were any injuries or  
21 anything to him? Did he appear to be beaten up or anything in  
22 the interim to talk to us?

23 A I didn't observe anything like that.

24 Q Did Josh Stump ask -- did he know that you and Becky were  
25 -- the relationship that you had with the Department of Human

- 1 Services, that you were his guardians or custodians?
- 2 A Yes.
- 3 Q Did he indicate he wanted to talk to you about anything
- 4 before he made this second statement?
- 5 A No.
- 6 Q Did he ask to speak to anyone in DHS, a worker, or anyone?
- 7 A No.
- 8 Q Prior to making this second statement is what I'm talking
- 9 about. Did he ask to -- Did he ask to -- either of you to get
- 10 ahold of a lawyer for him or anything?
- 11 A Not that I'm aware of.
- 12 Q Did he ask you to get ahold of his mom or dad or anybody?
- 13 A No.
- 14 Q Did he indicate that he needed to have anyone help him
- 15 make -- he wanted somebody to help him make this big decision
- 16 about whether or not to talk to Ms. Johnson?
- 17 A No.
- 18 Q And did you -- Prior to that second interview, did you
- 19 talk to him again about what he should do as far as a lawyer
- 20 and remaining silent or any of those things?
- 21 A Would you repeat that?
- 22 Q Prior to that second interview, did you talk to Josh again
- 23 about getting a lawyer or remaining silent? Did you talk to
- 24 him about those things?
- 25 A I did not.

1 Q Okay. Did you have the opportunity? I mean, if he had  
2 asked to talk to you, would you have had the opportunity to do  
3 that?

4 A I have no way to know.

5 Q Did Ms. Johnson or Mr. Jordan or any of the other agents  
6 that were in the area, did they make you feel or did you feel  
7 uncomfortable or coerced into doing any of this?

8 A No. We just felt totally out of our element.

9 Q And I understand. You primarily work on the welfare side;  
10 is that correct?

11 A Yes.

12 Q And not used to being involved in criminal type of  
13 investigations; is that a fair statement?

14 A Right.

15 MR. BARNETT: I think that's all I have, Judge.

16 THE COURT: Redirect.

17 REDIRECT EXAMINATION

18 BY MR. BALL:

19 Q You told counsel that Josh looked tired and stressed?

20 A Yes. He did.

21 Q Okay. Was that before or after he was taken out of the  
22 room for that ten-minute period of time?

23 A I would say, during the whole time.

24 Q Did he look more so the second time?

25 A He looked more scared the second time.

1 Q Thank you.

2 MR. BALL: No further questions.

3 THE COURT: Do you wish this witness to remain,

4 Mr. Ball?

5 MR. BALL: Not for the preliminary hearing, Judge. I  
6 do have a motion to -- on the certification.

7 THE COURT: He wants you to remain in attendance.

8 Thank you. You'll just have to remain outside.

9 (Witness excused.)

10 THE COURT: Next witness.

11 MR. BALL: No further witnesses on the motion to  
12 suppress.

13 THE COURT: Any further evidence by the defendant on  
14 the motion to suppress?

15 MR. BALL: No, your Honor.

16 THE COURT: All right. Evidence by the state on the  
17 motion. You can either recall Ms. Joyner with respect to what  
18 you want to present or call other witnesses.

19 MR. BARNETT: I'll call Ms. Johnson, Judge.

20 THE COURT: I don't know why I called her Joyner.  
21 Is that the runner, Jackie Joyner?

22 JACKIE JOHNSON: That's the runner.

23 THE COURT: Okay. Have a seat on the witness chair,  
24 please.

25 (Witness complied.)

JACKIE JOHNSON

1  
2 called as a witness on behalf of the State of Oklahoma, having  
3 previously been duly sworn, testified as follows:

DIRECT EXAMINATION

4  
5 BY MR. BARNETT:

6 Q Ms. Johnson, you've heard Ms. Cloke's testimony. And some  
7 of the notes from your -- Your interview was transcribed, was  
8 it not?

9 A Yes.

10 Q And the questions that I -- or the statements that I  
11 presented to Ms. Cloke, do those fairly and accurately reflect  
12 what was in your interview?

13 A Yes.

14 Q Now, in fact, Josh Stump did not during that first  
15 interview ask for a lawyer, did he?

16 A No.

17 Q He did, in fact, ask to remain silent; is that correct?

18 A Yes.

19 Q And you honored that request; is that right?

20 A Yes.

21 Q And since we're in a motion to suppress, I'll probably  
22 have to ask you again. Who initiated that second interview?

23 A Joshua Stump.

24 Q And did he indicate that he no longer wished to remain  
25 silent?

1 A He indicated that he --

2 Q That he wanted to talk to you?

3 A -- that he wanted to talk.

4 Q And did you -- At that point did you readvise him of his  
5 Miranda rights?

6 A Yes.

7 Q And did you do that fully? How did you do it?

8 A I read the sheet that has the rights printed and requested  
9 that he sign it, which he did. And I think -- I don't know how  
10 many more times we questioned him again to make positively sure  
11 that he understood his rights.

12 Q Now, do you recall exactly what you said to him?

13 A No, not exactly.

14 Q If you looked at your interview notes, would that assist  
15 you --

16 A Yes.

17 Q -- refresh your memory as to what you advised him?

18 Does that look like the right place? You might check.

19 THE COURT: You can read that to yourself and see  
20 whether or not you can recollect verbatim whether or not you  
21 said those things. And then Mr. Barnett can ask you again  
22 whether or not you remember. If you still have no  
23 recollection, we'll see whether or not it's your past  
24 recollection recorded or not.

25 MR. BARNETT: It's good that there's some things

1 preserved in the law that are still tricky.

2 THE COURT: Not just anybody can do this, right?

3 MR. BARNETT: That's right.

4 A Yes.

5 Q (By Mr. Barnett) Is your memory refreshed to the point  
6 that you could verbatim tell us what you told Josh Stump that  
7 night --

8 THE COURT: Without looking at your notes.

9 Q (By Mr. Barnett) -- without looking at your notes?

10 A Yes.

11 Q You could tell us verbatim what you told him?

12 A No, not verbatim I couldn't.

13 Q Okay. Is there a document, or perhaps that one you have  
14 there, that would -- that might be an accurate transcription of  
15 what you said that night?

16 A Yes.

17 Q And has that document been transcribed by someone who had  
18 access to the tape? Is that correct?

19 A Yes.

20 Q And is it an accurate transcription of what you -- what  
21 statements or what rights you advised Mr. Stump of?

22 A Yes.

23 Q And is that a more accurate -- that transcription a more  
24 accurate reflection of what you said than what you could  
25 remember verbatim?

1 A Definitely.

2 MR. BARNETT: Your Honor, I'd ask that she be allowed  
3 to read that into the record.

4 MR. BALL: I object.

5 THE COURT: Tell me your objection.

6 MR. BALL: This transcript was not taken, as I  
7 understand her testimony, by a stenographer. There wasn't a  
8 stenographer there present. We don't know what the distance of  
9 the tape recorder was, the things --

10 THE COURT: Have you heard the tape recording?

11 MR. BALL: No, I have not.

12 THE COURT: Sustained. It's not the best evidence,  
13 past recollection. The recording is apparently on a tape  
14 recorder.

15 Q (By Mr. Barnett) Now, do you recall the gist of --

16 THE COURT: You may be able to qualify it another  
17 way.

18 Q (By Mr. Barnett) Do you have that tape with you?

19 A No, I do not.

20 Q Okay. Do you have access to that tape?

21 A Yes, I do.

22 Q Where is it?

23 A It's in Oklahoma City.

24 Q Have you reviewed the tape in connection with this  
25 transcript and determined whether or not this transcript is

1 accurate?

2 A Yes, I did.

3 Q And is that transcript an accurate, correct, detailed  
4 transcription of the tape itself?

5 A Yes.

6 MR. BARNETT: Your Honor, I'd ask that she be allowed  
7 to read this into the record.

8 THE COURT: Will you either mark or copy the pages  
9 that you're interested in and have those marked and re-ask her  
10 another question about those particular pages. Then when you  
11 offer it, we'll see where we go.

12 MR. BARNETT: I will, Judge. If I could have just a  
13 moment?

14 THE COURT: Certainly. We'll take about a ten-minute  
15 recess.

16 (A brief recess was taken.)

17 Q (By Mr. Barnett) Ms. Johnson, if we could back up for  
18 just a little bit. What time did you terminate that first  
19 interview?

20 A At 9:55, 2155.

21 Q And approximately how long was it between the time you  
22 terminated that one and the time of the second interview?

23 A About 15 minutes.

24 (State's Exhibit 7 marked for identification.)

25 Q (By Mr. Barnett) I'm going to show you what is marked

1 State's Exhibit 7 for identification, a copy of it. Do you  
2 recognize that copy?

3 A Yes.

4 Q How do you recognize that?

5 A This is the piece of paper that I had mentioned earlier  
6 that I read the rights waiver -- or the rights, advise a person  
7 of their rights. And this is the one that I used on July 15th.

8 Q Okay. With Joshua Stump?

9 A Yes.

10 Q What time did you use this particular form?

11 A Excuse me?

12 Q What time of --

13 A At 2210, which would be 10:10.

14 Q Okay. Fifteen minutes or so after you terminated that  
15 first interview?

16 A Yes.

17 Q Okay. And does this copy accurately reflect the original?

18 A Yes.

19 Q Is the original in your possession, part of your original  
20 file?

21 A Yes.

22 Q Is it a true and correct copy of the original of that  
23 instrument?

24 A Yes.

25 MR. BARNETT: Your Honor, I'd ask that State's

1 Exhibit 7 be admitted.

2 MR. BALL: I'd object on the basis that it was not  
3 supplied to counsel five days prior to the preliminary hearing.

4 THE COURT: Overruled on that basis, objection  
5 overruled. And No. 7 admitted.

6 MR. BARNETT: Judge, could I hold on to that for just  
7 a second after you look at it?

8 THE COURT: Let me look at it. And then I'll give it  
9 back to Ms. Johnson-Joyner.

10 A Not another name to carry around.

11 THE COURT: Go ahead, Mr. Barnett.

12 Q (By Mr. Barnett) Now, as to this form that's in front of  
13 you, State's Exhibit 7, indicating "Your Rights," is this a  
14 copy of the form that you used with Joshua Stump that night?

15 A Yes.

16 Q And did you witness his signature, as indicated here by  
17 your signature?

18 A Yes.

19 Q I can't -- Is that "Thomas Jordan"? Is that the second  
20 signature?

21 A Yes. "Thomas Jordan."

22 Q And he's also an OSBI agent; is that correct?

23 A Deputy inspector, yes.

24 Q And "Rebecca Kephart"?

25 A Rebecca Kephart was with the DHS, his caseworker.

1 Q And did you go over each one of these enumerated items in  
2 Exhibit 7 individually with Joshua Stump?

3 A Yes.

4 Q And did he acknowledge that he understood each of those  
5 enumerated areas at that time?

6 A Yes.

7 Q And following that acknowledgment, did he indicate that he  
8 understood each one of those rights?

9 A Yes.

10 Q And did he waive his right to remain silent and agree to  
11 speak to you at that point?

12 A Yes.

13 MR. BARNETT: Your Honor, that's all I have.

14 CROSS-EXAMINATION

15 BY MR. BALL:

16 Q Now, were you present when Jean Cloke or Rebecca Kephart  
17 spoke with Josh?

18 A Yes.

19 Q Okay. Did you hear Jean Cloke tell Josh that she thought  
20 he needed a lawyer?

21 A No.

22 Q Did you hear her testify earlier?

23 A Yes.

24 Q Okay. Do you take issue with her previous testimony in  
25 that regard?

1 A No.

2 Q Okay. So is it possible that she told him that she  
3 thought he needed a lawyer and you didn't hear that?

4 THE COURT: That's what she said, that she didn't  
5 hear it.

6 Q (By Mr. Ball) And in sum total, is it fair to say that he  
7 didn't want to talk to you, and 15 minutes later after having  
8 left the room that he came back and did talk to you?

9 A He said he didn't want to speak with us. Fifteen minutes  
10 later, yes, he wanted to speak with us.

11 Q Okay. And did he appear to be pale or nervous at that  
12 point?

13 A Which point?

14 Q The second time.

15 A No.

16 Q Did he appear to be scared?

17 A No.

18 Q Have you ever met him before?

19 A No.

20 MR. BALL: No further questions.

21 THE COURT: Mr. Barnett, further questions of this  
22 witness for the motion to suppress?

23 MR. BARNETT: No. No other questions on the motion  
24 to suppress.

25 THE COURT: All right. You may step down. After the

1 motion, you may have to tell us some of this stuff again, if  
2 there's no stipulation.

3 (Witness excused.)

4 MR. BARNETT: I don't have any other evidence, Judge.

5 THE COURT: State rests.

6 We'll hear argument now on two issues: voluntariness of  
7 the statement and whether or not he had to have a guardian or  
8 custodian present. And then whether -- I guess, whether or not  
9 they consented to the interview if they had to be present. I  
10 suppose, three issues, two steps to the second one.

11 MR. BALL: Your Honor, under the facts here, it's  
12 apparent that what happened was my client was, indeed, under  
13 arrest. The statements made were at the Lincoln County Jail,  
14 or the sheriff's office. And on direct testimony -- on the  
15 earlier direct testimony, Ms. Johnson indicated he was under  
16 arrest, which, in fact, he was.

17 He was not charged at this point, the information has not  
18 been filed; therefore, he was still a juvenile, under the laws  
19 of the State of Oklahoma. The evidence -- the uncontroverted  
20 evidence was that the Department of Human Services was  
21 contacted regarding the fact that Josh was in custody.

22 And Ms. Cloke testified that she contacted Sheila Kirk,  
23 assistant district attorney, and was told to come on down and  
24 that it would be okay for Josh to talk. They knew that Josh  
25 had a lawyer. Jean Cloke said that she thought that Josh ought

1 to talk to his lawyer.

2 Josh remained silent after the first interview. He came  
3 back 15 minutes later. And by Jean Cloke's testimony, who --  
4 She knows Josh. She knows what he looks like. She knows him  
5 better than Ms. Johnson does. He appeared to be scared, he  
6 appeared to be nervous, and he appeared to be more so when he  
7 came back that second time.

8 It's clear that he wanted to talk to a lawyer and he  
9 wanted to remain silent and that a voluntary, informed, and  
10 knowing waiver was not properly executed by him or by his  
11 guardian; and therefore, the motion to suppress should be  
12 sustained.

13 THE COURT: Mr. Barnett or Mr. Zimmerman.

14 MR. BARNETT: Judge, I think the motion to suppress  
15 should be overruled. And since they have renumbered Title 10,  
16 I'm a little lost as to exactly where the provision is on  
17 children charged -- or 16- and 17-year-olds charged with this  
18 type of crime. The renumbering has thrown me off.

19 I'll just say that it's my recollection of that statute,  
20 without being able to quote you the subparagraph, that  
21 juveniles charged -- who are 16 or 17 charged with a homicide,  
22 murder, manslaughter in the first degree are afforded all the  
23 constitutional rights of an adult. As I recall that statute,  
24 it doesn't say anything about -- specifically about those  
25 juveniles needing an adult or a guardian or parent with them at

1 any kind of custodial hearing.

2 Now, the other section that deals with custodial  
3 interrogation of children indicates that during any custodial  
4 type of interrogation of a juvenile, a parent, guardian, or  
5 some other custodial type of person in relationship to this  
6 child shall be present and that -- before any questioning is  
7 done.

8 In an overabundance, perhaps, of caution, the agents at  
9 that time, realizing that Josh Stump was in the custody of the  
10 Department of Human Services on the welfare side, contacted  
11 DHS, asked for some help from their office. Ms. Cloke and  
12 Ms. Kephart came to the sheriff's office. They were present  
13 when Josh Stump made this statement. And the --

14 (Mr. Zimmerman handed instrument to Mr. Barnett.)

15 MR. BARNETT: Thank you.

16 THE COURT: Has it changed, 1104.2C?

17 MR. BARNETT: No. No. And B says: "Any person 13,  
18 14, or 15 years of age" -- Well, no. As to 16- and  
19 17-year-olds, no, Judge, it hasn't. "Upon the arrest and  
20 detention, such accused person shall have all the statutory and  
21 constitutional rights and protections of an adult." And that  
22 is paragraph C.

23 It's unclear, I think, to me -- And I'm not aware of any  
24 cases, Judge, that make the distinction that separate out the  
25 16- and 17-years-olds in custodial situations where they're --

1 they're either treated without -- not like a child and where  
2 they are.

3 In this case we had some representatives who were the  
4 guardians of Josh Stump, the custodial -- standing in for the  
5 parents. They were there. They advised him to get a lawyer.  
6 And he didn't -- did not avail himself of that.

7 And the other distinction that needs to be made, Judge, is  
8 that Josh Stump terminated that first interview because he  
9 wanted to remain silent. At no time during that first  
10 interview did he invoke his right to an attorney. And as the  
11 Court well knows, this is a two-pronged right, the right to  
12 invoke silence and the right to seek counsel. At no time did  
13 -- even after being advised at least two times did Josh Stump  
14 indicate he wanted to talk to a lawyer.

15 And counsel is right in that he represented him at some  
16 juvenile proceeding in the past. There's been no evidence that  
17 Josh Stump knew he had a lawyer. The only evidence that's been  
18 introduced on the motion to suppress is that Josh Stump didn't  
19 want a lawyer. We have his signed statement that he was  
20 advised of his rights, doesn't want an attorney, wants to make  
21 a statement, wants to cooperate. No indication that he was  
22 coerced in any way.

23 He may have been tired. But at 2210, 10:15 or so in the  
24 evening for a 17-year-old kid, I don't expect him to be -- or a  
25 young man, I don't expect him to be just completely wrung out.

1 I think his statement -- Or Ms. Johnson's observations of him  
2 was that he was coherent, appeared to be -- make an intelligent  
3 waiver of his rights and make a voluntary statement, being  
4 fully advised at least twice of what those rights were. I  
5 think the statement is freely and voluntarily given.

6 Whether or not the workers -- the caseworkers, the social  
7 workers who were there were even necessary, I don't know. They  
8 were there, so we'll just deal with that as a fact. They  
9 advised him to seek counsel. He declined to do that. So at  
10 least now on Jackie Johnson's part, at least twice she told him  
11 he could have a lawyer if he wanted one.

12 Ms. Cloke said she thought he ought to talk to one. He  
13 declined to do that on at least three occasions, and made a  
14 statement which we want to introduce. And he signed a written  
15 waiver, which the Court has before it. I don't know how much  
16 more he can go to the extreme to acknowledge that he knows what  
17 his rights are, waive his right to silence. And he never ever  
18 during any of this invoked his right to an attorney.

19 And I'd ask the Court to overrule this motion.

20 MR. BALL: Judge, you know, we're being told here  
21 about an abundance of caution. It looks to me like the state  
22 tried to trip him up. And my recollection of Ms. Johnson's  
23 testimony before the motion to suppress was -- And I may be  
24 wrong, but I thought she said that Josh said he wanted to see a  
25 lawyer. And on the motion suppress she didn't testify to that,

1 but I thought she did on the case in chief.

2 But I do know that Jean Cloke said that Josh needed a  
3 lawyer. And we know this much, Josh definitely indicated he  
4 did not want to talk after that -- when this first interview  
5 took place. And we submit to the Court that he did invoke his  
6 right to counsel, that he was advised of it and he stood on  
7 that.

8 Furthermore, we're -- Again, we're told about this  
9 abundance of caution. They knew that he had a lawyer. They  
10 never called him up. They could have very easily picked up the  
11 phone and gotten ahold of me and said, "Hey, you know, the  
12 district attorney is telling us that maybe this kid ought to go  
13 ahead and talk in a case that the district attorney is  
14 prosecuting."

15 Now, there were no exigent circumstances. There was no  
16 reason why that this questioning had to take place at this  
17 particular moment. The testimony was this thing started Friday  
18 evening at midnight, one o'clock. We've had testimony about  
19 that. And then at the time of this first and second interview,  
20 it's the following Saturday, in the evening, at 2200 hours.  
21 I'd say that Josh Stump had been through quite a lot at that  
22 point, based on the testimony that was offered here.

23 And again, I go back to the word "charged" has legal  
24 significance. And that's what the statute says, "charged." He  
25 was not charged; and therefore, he was still a juvenile. He's

1 under the age of 18. We know what a juvenile is.

2 And the motion to suppress should be sustained.

3 THE COURT: The prohibition against custodial  
4 interrogation of children without a parent or guardian present  
5 does not apply in this situation. This is a reverse  
6 certification offense. The child was under arrest and in  
7 detention. The accused, according to the statute, then has the  
8 rights of an adult.

9 So the question is whether or not he understood his rights  
10 and whether he voluntarily waived them. It's absolutely clear  
11 that he understood his rights in this particular case, because  
12 he exercised his right to remain silent once. And that, to me,  
13 means he really knew what he was doing. A lot of adults don't  
14 do that.

15 And second, there is no showing that the state improperly  
16 reinitiated an interview. To the contrary, Ms. Johnson says  
17 that Stump reinitiated the interview. No indication that he  
18 was browbeaten or forced to make a statement. I think all of  
19 the evidence is to the contrary.

20 The motion to suppress will be overruled.

21 If you will resume the witness stand, you can tell us what  
22 his statement was now.

23 (Witness Jackie Johnson resumed the witness stand.)

24 THE COURT: You'll have your exception.

25 MR. BARNETT: Judge, I would ask that the Court

1 incorporate that portion -- well, all of the motion to suppress  
2 into the preliminary hearing proceeding, primarily for the  
3 purpose of establishing the validity of the statement. And I'd  
4 ask the Court --

5 THE COURT: Any objection for the purpose of  
6 voluntariness?

7 MR. BALL: I've fought it once, Judge. I still have  
8 the same objection as I've previously stated.

9 THE COURT: Well, I understand you have that  
10 objection. But do you have any objection to reincorporating  
11 that testimony without her saying it over again?

12 MR. BALL: No, Judge.

13 THE COURT: All right. We'll proceed and take the  
14 testimony given on the motion to suppress as having been  
15 produced at the preliminary hearing, in front of the examining  
16 magistrate, for purposes of the determination of probable  
17 cause, voluntariness of confession, etc.

18 MR. BARNETT: Thank you, your Honor.

19 JACKIE JOHNSON

20 called as a witness on behalf of the State of Oklahoma, having  
21 previously been duly sworn, testified as follows:

22 DIRECT EXAMINATION (Continued)

23 BY MR. BARNETT:

24 Q Now, when you talked to Josh Stump this second time, did  
25 you talk about the incident that occurred at the Moucka

1 residence?

2 A Yes.

3 Q How did you get into that discussion?

4 A I don't remember -- I just asked him to explain what  
5 happened at the residence.

6 Q Okay. Did he seem to indicate -- Or did he indicate to  
7 you that he knew what you were talking about?

8 A Yes.

9 Q What did Josh Stump tell you about -- well, first of all,  
10 his educational background? Do you recall?

11 A I don't believe he graduated from school. But he said he  
12 was capable of reading and writing.

13 Q Okay. Did he seem like a normal, intelligent -- for that  
14 age, an intelligent person?

15 A Oh, yes.

16 Q Okay. Now, able to communicate effectively with you?

17 A Yes.

18 Q Okay. How did he describe -- Let's just start with the  
19 events that led up to -- preceding what we know now was this  
20 car-sighting in Shawnee. What did he tell you about that?

21 A He went through -- He started with that they met with the  
22 girls, the Vasquez girls and then Cullum. And they were in  
23 Misty's -- Is that correct?

24 Q Misty's.

25 A -- Misty Vasquez's car and that they drove to Seminole, I

1 believe, first or either Shawnee and then they went to Seminole  
2 and then drove back to Shawnee. And then they were at  
3 -- they were just kind of riding around, I believe. And they  
4 saw -- They pulled into the service station to use the phone.  
5 And while they were there, they saw a car that they thought was  
6 real sharp looking over at the Kettle.

7 Q Okay. Now, prior to taking Josh Stump's statement, have  
8 you talked to Misty Vasquez and Nikki Cullum?

9 A I had spoken just briefly with Misty Vasquez.

10 Q And at that point did you have some idea of the scenerio  
11 that you were expecting from Josh Stump?

12 A No, I really didn't.

13 Q Okay. So after seeing -- What did he indicate they did --  
14 Did he indicate who was with him? Did Josh Stump indicate who  
15 was with him?

16 A Yes.

17 Q Who was that?

18 A Misty Vasquez and her sister Anita Jo, I believe, and then  
19 Nikki Cullum and then Robert Anderson and himself.

20 Q Did he indicate whose vehicle they were in?

21 A Yes.

22 Q Whose was that?

23 A Misty Vasquez's.

24 Q And did he indicate who was driving?

25 A Yes.

- 1 Q Okay. Who?
- 2 A He was driving.
- 3 Q Now, you've got us up to the Kettle Restaurant there in  
4 Shawnee. Is everything up to that point that Josh Stump told  
5 you consistent with what you knew from Misty Vasquez?
- 6 A At that point, no, it was not.
- 7 Q Okay. But you hadn't talked to Misty; is that right?
- 8 A I had spoken with Misty, but it was a different story.
- 9 Q Okay. Now, what -- what did you -- What happened from the  
10 -- this car-sighting at the Kettle? What did Josh tell you  
11 happened then?
- 12 A They waited. They decided that they'd like to have the  
13 car.
- 14 Q Okay. Now, who is "they"?
- 15 A Robert and Josh decided that they'd like to have the car.  
16 And they waited until they saw who came out of the restaurant  
17 and got in the car.
- 18 Q And did they -- Did Josh tell you who he saw get in the  
19 car?
- 20 A Yes.
- 21 Q Who was that?
- 22 A An older couple.
- 23 Q Is that the way he described them to you?
- 24 A I don't remember the specific words. But it was --
- 25 Q Okay. And what happened after that, after they saw this

- 1 couple get into the car?
- 2 A Then they started following them.
- 3 Q Did Josh tell you why they were following this car?
- 4 A Just that they were going to take the car.
- 5 Q Did he indicate to you whether or not he and Robert were
- 6 armed?
- 7 A Yes.
- 8 Q Okay. What did he indicate they were armed with?
- 9 A That they had a shotgun.
- 10 Q Did he indicate it was a regular shotgun?
- 11 A No.
- 12 Q What kind of shotgun was it?
- 13 A It was a sawed-off shotgun.
- 14 Q Did he indicate who had that shotgun?
- 15 A Yes.
- 16 Q Who was that?
- 17 A Robert Anderson.
- 18 Q Did he indicate where the shotgun was in the car?
- 19 A I don't remember if he did.
- 20 Q Did he indicate what the girls were doing during the
- 21 course of all this ride?
- 22 A Just -- No, not really. Just in the back seat.
- 23 Q Now, did he indicate who was driving the vehicle when they
- 24 began to follow this other car that they liked?
- 25 A Yes.

- 1 Q Who was that?
- 2 A Josh. Josh Stump.
- 3 Q And did he indicate to you where they went?
- 4 A Yes.
- 5 Q Where did he tell you they went?
- 6 A They followed them north on Highway 18.
- 7 Q Which would lead them to where?
- 8 A Well, ultimately -- I'm sorry, I don't know if you go  
9 through Meeker or not. I don't think you do. Ultimately, you  
10 end up in Chandler. So --
- 11 Q Okay. Now, where did they end up, according to Josh?
- 12 A Ultimately, at the residence of the people that were  
13 driving the car.
- 14 Q Did he indicate -- Did Josh indicate to you whether or not  
15 he knew these people?
- 16 A Yes. He indicated that he did not know those people.
- 17 Q And what happened -- What did Josh tell you happened after  
18 they -- the people who were in that Firebird got home?
- 19 A They drove on past the driveway to the residence. They  
20 went about -- oh, about a mile further north and stopped the  
21 car and got out.
- 22 Q Did Josh Stump indicate to you during his statement why  
23 they got out of the car at that point?
- 24 A Yes.
- 25 Q What was that?

- 1 A They were going to go up to the house and see if they  
2 could steal anything.
- 3 Q Is that pretty much his words?
- 4 A Yes.
- 5 Q Did Josh Stump indicate to you whether or not they took  
6 that shotgun?
- 7 A Yes.
- 8 Q And what did he say about the shotgun?
- 9 A He said Robert was carrying the shotgun.
- 10 Q Where did they go, according to Josh?
- 11 A Up to the residence.
- 12 Q What -- According to his statement, what did they do once  
13 they got there?
- 14 A The dogs started -- They were just going to see what they  
15 could steal. And --
- 16 Q Are those pretty much Josh's words?
- 17 A Yes.
- 18 Q Okay.
- 19 A And the dogs started barking, which alerted -- must have  
20 alerted the people inside the trailer, because the outside  
21 lights came on.
- 22 Q Okay. Now, at this point you've talked about a trailer  
23 and some dogs and some vehicles. Is that consistent enough  
24 with what you were aware of the crime scene to convince you  
25 that Josh Stump was there at that point?

1 A Yes.

2 Q Now, what else did he tell you about the events of that  
3 evening after that?

4 A They decided to go to the door and ask to use the phone  
5 and use the story that their car had broken down.

6 Q Now, by -- Is this Robert and Josh?

7 A Yes.

8 Q Now, what did he tell you they did then?

9 A They went to the door. And a man responded to the door.  
10 And they asked to use the phone, said that their car was broken  
11 down and asked to use the phone. And Josh Stump made a  
12 telephone call and advised the gentleman that the line was busy  
13 and that he --

14 Q This is Josh Stump?

15 A This is still -- this is, yes, Stump. Josh said that the  
16 line was busy and that he couldn't get through. And they asked  
17 the gentleman for, I think -- I don't know if they asked or if  
18 Mr. -- the gentleman, Mr. Moucka, volunteered the oil. So  
19 Mr. Moucka got them some oil.

20 Q Okay. What did Josh Stump tell you they did then?

21 A They left. They started walking back down the road.

22 Q Did Josh Stump indicate to you, during this visit to the  
23 -- this mobile home, where the shotgun was?

24 A Yes.

25 Q Where was it?

- 1 A They had left it on the -- what I referred to earlier as  
2 the low-water bridge.
- 3 Q Did they -- one or either of them retrieve that shotgun --
- 4 A Yes.
- 5 Q -- according to Josh Stump?
- 6 A Yes.
- 7 Q And when was that?
- 8 A They had gone back to that area, and Robert Anderson  
9 picked up the gun.
- 10 Q And again, this is what Josh Stump is telling you?
- 11 A Yes.
- 12 Q What happened next?
- 13 A Josh remained at the low-water bridge, and Robert Anderson  
14 went to the front door again.
- 15 Q And this is according to what Josh Stump told you?
- 16 A That's correct.
- 17 Q And what did he tell you happened? What is the next thing  
18 that happened, according to his statement?
- 19 A He heard gunshots. And then he saw Robert jump or fall,  
20 he wasn't certain, off the front porch and come running towards  
21 him.
- 22 Q And did he hear -- Was he able -- Was Josh Stump able to  
23 distinguish those shots? Did he know a shotgun shot from a  
24 pistol shot? Or --
- 25 A He was able to --

1 MR. BALL: Objection. Calls for speculation.  
2 THE COURT: You may answer if he stated such.  
3 A He said that he was very familiar with guns and that he  
4 was aware that there was a shotgun being fired and a pistol  
5 being fired.  
6 Q (By Mr. Barnett) Now, did he indicate how many shots he  
7 heard?  
8 A Just what he thought. But he really wasn't sure how many  
9 on each.  
10 Q And he indicated he saw Robert Anderson jump or fall off  
11 the porch. And then what did he say happened?  
12 A Robert started running back towards him.  
13 Q And what did Josh tell you happened next?  
14 A Robert said, "The motherfucker shot me," and dropped.  
15 Q And was that -- Did he indicate where he dropped? Did  
16 Josh indicate where he dropped?  
17 A Yes, he did. But I don't remember exactly what he said.  
18 But it was close to where he was at on the bridge.  
19 Q And was that consistent with what you had seen at the  
20 crime scene as far as Robert Anderson being -- his location?  
21 A Yes.  
22 Q So at that point did you believe that at least Josh Stump  
23 knew where Robert Anderson had died?  
24 A Yes.  
25 Q What else did Josh Stump tell you about the events of that

1 evening?

2 A That because the man was still shooting, that that scared  
3 him, so he started running.

4 Q Did he indicate -- Did Josh Stump indicate to you whether  
5 or not he knew the man had been injured?

6 A Yes.

7 Q What did he say about the man that lived at that house?

8 A That his hand had been shot.

9 Q Do you know whether or not that had -- By the time you did  
10 this interview, do you know whether or not that had been made  
11 -- made the news or made the TV or radio or newspapers?

12 A I don't believe it had. But I just really can't testify  
13 that it had not.

14 Q Well, I just -- If you know.

15 A Yeah.

16 Q Okay. Now, what -- After Josh Stump saw that Robert had  
17 fallen, did Josh Stump indicate to you whether or not he knew  
18 Anderson was dead?

19 A I don't know if he knew if Robert was dead or not. I  
20 don't remember what he said.

21 Q What did Josh Stump tell you he did then?

22 A He just started running.

23 Q Did he ever indicate to you whether or not he ever caught  
24 up with Misty or any of the girls?

25 A He said that he did not -- purposely did not go back to

1 the girls.

2 Q Where did he go? Did he tell you?

3 A He just started running back to Prague.

4 Q Did he indicate to you how he was going to take that car?

5 A Yes.

6 Q Okay. And what did he indicate he was going to do?

7 A He said that they -- that he had the capability of  
8 hot-wiring a vehicle, but that if necessary, that they would  
9 use the gun to get the keys.

10 Q And he seemed to -- Did he indicate to you that he and  
11 Robert Anderson had apparently talked about that at some point?

12 A I would say so, yes.

13 MR. BALL: Objection. Leading.

14 THE COURT: Sustained.

15 Q (By Mr. Barnett) Did he -- Did you get the impression  
16 from Joshua Stump's statement that he and Robert Anderson had  
17 talked about that?

18 A Yes.

19 Q Now, did he indicate to you what -- Did Josh Stump  
20 indicate to you what they were going to do with that car?

21 A No. Just take it.

22 Q Did you talk to Josh Stump about any of his history with  
23 weapons and guns?

24 A Yes.

25 Q And what was the gist of that conversation?

1 A That he was very familiar with guns.

2 Q Did he talk to you about his prior involvement with law  
3 enforcement and weapons at all?

4 A No.

5 Q Did he indicate to you whether or not he had fired that  
6 shotgun sometime during that -- the course of that day?

7 A Yes.

8 Q What was the -- What did he tell you about that?

9 A That they had -- Robert and Josh had -- while they were at  
10 the river had fired the shotgun.

11 Q And what was -- Was that in response to a question of  
12 yours about fingerprints on the shotgun?

13 MR. BALL: Objection. Leading.

14 THE COURT: Sustained.

15 Q (By Mr. Barnett) Did you talk to him about the  
16 fingerprints being on the shotgun?

17 A Yes.

18 Q Okay. And what was his response?

19 A That there could be his -- His fingerprints could be on  
20 there, because he had shot the weapon at the river.

21 Q Did he indicate -- Did Josh Stump indicate to you how that  
22 shotgun got to be the way it was, how it got sawed off?

23 A Yes.

24 Q How?

25 A That they had -- Robert and Josh had sawed off the barrel

1 with a hacksaw out at the river.

2 Q Did he still have that hacksaw? Do you remember?

3 A No.

4 Q And did Josh seem to know where that shotgun had come  
5 from?

6 A Yes.

7 Q Where did it come from, according to Josh Stump?

8 A Yes.

9 Q What did he say about it?

10 A From Robert's parents' house, the Andersons' house.

11 Q Was Josh Stump familiar with the operation -- or indicate  
12 in his statement that he was familiar with the operation of  
13 that shotgun?

14 A Yes.

15 Q Did Josh Stump indicate to you, other than the theft of  
16 the vehicle and the use of this firearm, what they were going  
17 to do that night at the Moucka residence?

18 A Just take the car.

19 Q Did Josh Stump indicate to you, during the course of this  
20 interview, that he knew the difference between right and wrong?

21 A Yes.

22 Q And what did he indicate?

23 A That he did know the difference.

24 MR. BARNETT: Judge, that's all I have at this time.

25 THE COURT: Cross-examination.

CROSS-EXAMINATION1  
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BY MR. BALL:

Q In Josh's statement to you -- Well, let me back up. You testified that Misty's statements were inconsistent with Josh's statements. In what way?

A I had interviewed Misty earlier, and she had denied even being there and being involved.

Q Anything else?

A I don't remember any more specific thing.

Q Now, you testified that Josh told you that they wanted the car. Did he say that Robert wanted the car or that he wanted the car or that they both wanted the car?

A He said they wanted the car.

Q Okay. Do you recall his exact words?

A No.

Q Did he say, "I wanted the car"?

A He said they wanted the car.

Q Okay. Did he say who "they" were?

A Well, since it was Robert -- No, he didn't say who "they" were.

Q And he indicated to you that Robert had the gun; is that correct?

A Yes.

Q Did he tell you whether or not that he knew that Robert had the gun when they got out of the car at the Moucka

1 residence?

2 A Yes.

3 Q Okay. What did he say?

4 A He said Robert had the gun when they got out of the car at  
5 the Moucka residence.

6 Q Did he say to you whether or not he knew Robert had the  
7 gun at the time they got out of the car at the Moucka  
8 residence?

9 A Yes.

10 Q He did. Okay. Do you recall how -- how he said that?

11 A No, I don't recall how he said that.

12 Q Is it possible that maybe you're assuming that he knew  
13 that he had the gun at the time they got out of the car?

14 A I asked him who was carrying the gun when they got out of  
15 the car. And he responded "Robert."

16 Q Okay. So -- Now, you asked him this after the shooting  
17 took place; is that correct?

18 MR. BARNETT: Judge, I object. She couldn't ask him  
19 very well before the shooting.

20 THE COURT: Sustained.

21 Q (By Mr. Ball) All right. My point exactly. So  
22 therefore, he already knew that -- who would have had the gun  
23 at that point, wouldn't he?

24 A At what point, sir?

25 Q At the time you were asking him the question, he knew who

1 had the gun?

2 MR. BARNETT: Judge, I'm lost.

3 THE COURT: It's argumentative. Sustained.

4 Q (By Mr. Ball) Did you ask him whether or not they talked  
5 about taking the gun up to the Moucka residence before they  
6 actually went up there, like had they planned this?

7 A I didn't ask him that specific question, no.

8 Q Okay. Based on your interview, is it possible that Joshua  
9 Stump did not know that Robert Anderson had the gun until they  
10 got up to the low-water bridge?

11 A No. I don't believe that.

12 Q Okay. Can you tell me why it's not possible?

13 A Because he told me that when they got out of the car  
14 Robert Stump had the gun, the shotgun.

15 Q You mean, Robert Anderson?

16 A I'm sorry. Yes. Robert Anderson had the gun.

17 Q Okay. But did you ask him specifically if he knew that at  
18 that time?

19 A I asked him who had the gun. And he said when they got  
20 out of the vehicle Robert Anderson had the gun. Therefore, I  
21 would assume that he knew that Robert Anderson had the gun.

22 Q Okay, ma'am. So therefore, if your assumption was  
23 incorrect, is it possible that he didn't know that Robert  
24 Anderson had the gun until they got to the low-water bridge?

25 A I don't think if he --

1 Q Yes or no.

2 A If he did not know, it would not have been possible for  
3 him to tell me that. You asked me if it was possible. It  
4 would not have been possible for him to not know that and say  
5 that.

6 Q I'll move on.

7 A Thank you.

8 Q He did indicate to you that he stayed behind at the  
9 low-water bridge when Anderson went back the second time,  
10 didn't he?

11 A Yes, he did.

12 Q Did he indicate to you whether or not he was going to  
13 participate in any kind of armed robbery?

14 A No, he did not.

15 Q Now, you said on direct examination that they would use  
16 the gun to get the car if they had to. Did he say that Robert  
17 would use the gun to get the car if he had to?

18 A No, sir. I think what I said was they'd use the gun to  
19 get the keys.

20 Q Okay. Did he say that Robert would use the gun to get the  
21 keys?

22 A No, sir. He just said they would use the keys to get the  
23 -- the gun to get the keys.

24 Q He said "we" or "they" or who?

25 A He said they would use --

1 Q They.

2 A -- the gun to get the keys.

3 Q That was his word?

4 A Yes.

5 Q Did he tell you why he'd stayed back at the low-water  
6 bridge when Robert Anderson went back to the house?

7 A No.

8 Q Did you ask him?

9 A I don't remember if I asked him why he stayed there or  
10 not.

11 Q Now, you do have a tape recording of this interview?

12 A Yes, sir.

13 Q Okay. And would that -- Does the district attorney have a  
14 copy of that?

15 A Of the tape?

16 Q Yes.

17 A I'm sorry, I don't remember if I provided him a copy of  
18 the tape or not.

19 Q Okay. Could you make that available to the district  
20 attorney?

21 A Yes, sir.

22 MR. BALL: No further questions.

23 THE COURT: Redirect by the state?

24 MR. BARNETT: No other questions at this time,  
25 Judge. But I may --

1           THE COURT: Well, she's your representative at the  
2 table.  
3           You may step down. Thank you.  
4 A       Thank you.  
5           (Witness excused.)  
6           MR. BARNETT: Mr. Moucka.  
7           THE COURT: This will probably be the last witness  
8 for the day. If you all have other witnesses that you want to  
9 reappear, Mr. Barnett --  
10          MR. BARNETT: No, Judge.  
11          MR. BALL: Judge, if I could tell the DHS people that  
12 they can leave.  
13          THE COURT: Do you want them to contact you? What do  
14 you want to tell them?  
15          MR. BALL: If I understood you correctly, this is  
16 probably the last witness.  
17          THE COURT: For the day.  
18          MR. BALL: Yeah, for today. So I could go ahead and  
19 tell them to leave?  
20          THE COURT: You may do that. If you want to tell  
21 them to keep themselves aware of the continuance, you can tell  
22 them that too. But if you want to wait and have them ordered  
23 back in here to reappear, we'll see.  
24          MR. BARNETT: Do we have a date yet?  
25          THE COURT: No, we don't.

1 MR. BALL: I'll be glad to tell them when the next  
2 date is, Judge.

3 THE COURT: Okay. Just tell them they have to take  
4 note of the continuance, and they can call up here and find out  
5 when it is.

6 (Mr. Ball exited the courtroom.)

7 THE COURT: Raise your hand to be sworn, please, by  
8 the clerk.

9 (Witness sworn.)

10 THE COURT: Have a seat right here in the witness  
11 chair, please, sir.

12 (Witness complied.)

13 MR. BARNETT: I guess we have to wait on Mr. Ball.

14 (Mr. Ball returned to the courtroom.)

15 THE COURT: Mr. Ball is present. Go ahead with your  
16 first question.

17 HUBERT MOUCKA

18 called as a witness on behalf of the State of Oklahoma, after  
19 first being duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. BARNETT:

22 Q State your name, sir.

23 A Hubert Moucka.

24 Q Where do you live, sir?

25 A North of Meeker.

- 1 Q How long have you lived there, sir?
- 2 A Since '87.
- 3 Q And what do you do, sir?
- 4 A Retired from farm.
- 5 Q I'm sorry? Retired from --
- 6 A Retired from the civil service and farm.
- 7 Q All right, sir. And if I could, what is your age, sir?
- 8 A Age?
- 9 Q Yes, sir.
- 10 A Legal age.
- 11 Q Fair enough. Fair enough. Sir, do you know Katharina
- 12 Knight?
- 13 A It's what?
- 14 Q Do you know Ms. Knight?
- 15 A Yes. Yes.
- 16 Q And how long had you known her?
- 17 A About seven months, I guess.
- 18 Q And were you with her on the evening of the 14th, into the
- 19 morning hours of the 15th of July of this year?
- 20 A Yes.
- 21 Q And was she at your residence there in Meeker?
- 22 A Yes.
- 23 Q Okay. And did you go to Shawnee that night?
- 24 A Yes.
- 25 Q Did you have some dinner or something there?

- 1 A Yes.
- 2 Q What did you do in Shawnee?
- 3 A We went to the VFW dance and we left there about 10:30,  
4 and then we stopped to eat.
- 5 Q And where did you eat, sir?
- 6 A At the Kettle.
- 7 Q What kind of vehicle were you driving that evening, sir?
- 8 A A '94 Pontiac Firebird.
- 9 Q Do you work on vehicles also, sir?
- 10 A Uh-huh.
- 11 Q Is that -- Have you worked on that particular vehicle?
- 12 A Have I worked on that one?
- 13 Q Yes.
- 14 A No, sir.
- 15 Q Was it customized in any way?
- 16 A Just what they did at the factory or Hudiburg's, tinted  
17 the windows and different things.
- 18 Q Yes, sir. And on the evening of the 14th, did it appear  
19 to be a relatively new car?
- 20 A Yes.
- 21 Q Good condition?
- 22 A Yes.
- 23 Q Okay. And you maintained it in a good condition?
- 24 A Right.
- 25 Q Now, you and Ms. Knight had dinner at the Kettle.

- 1 Approximately what time did you leave, sir?
- 2 A It must have been about 11:15.
- 3 Q And where did you go?
- 4 A To my residence.
- 5 Q How do you get to your residence from the Kettle?
- 6 A Go ten miles north to Meeker and then four miles north of
- 7 Meeker and then a mile and a half east and then a half north.
- 8 Q Is that fairly remote? It sounds -- Is it a remote area,
- 9 sir?
- 10 A Yes.
- 11 Q Is it still in Lincoln County?
- 12 A Yes.
- 13 Q Now, approximately what time did you arrive home?
- 14 A I'd say, about fifteen till twelve.
- 15 Q And on the ride home, did you notice anything unusual
- 16 about that trip?
- 17 A No, sir.
- 18 Q Specifically, did you notice anybody following you?
- 19 A No, sir. Not until after we turned off the highway.
- 20 Q What did you notice at that point?
- 21 A Headlights behind us.
- 22 Q Could you see what kind of vehicle it was?
- 23 A No, sir.
- 24 Q When you turned off the highway there, is it unusual -- Do
- 25 you have many neighbors past that turnoff off of 18?

1 A No, sir. Not that many.

2 Q So at that time of night, would it strike you as odd that  
3 someone would be turning there at the same time you were?

4 A Yes.

5 Q What did you do at that point, if anything, once you  
6 realized that that car turned behind you?

7 A Well, I mentioned to Kitty I was kind of concerned about  
8 that car after I turned off the blacktop road, that the car had  
9 turned also.

10 Q Now, Kitty --

11 A And she said, "Well, it's probably just someone that lives  
12 down here."

13 Q Okay. Now, by "Kitty," you mean Ms. Knight?

14 A Yes.

15 Q And did you know most of your neighbors down in that  
16 neighborhood?

17 A Yes.

18 Q Could you tell at that point who it was at all?

19 A No, sir.

20 Q What did you do then?

21 A Well, we turned off the road then. I live about a quarter  
22 of a mile off the road, my house.

23 Q And it sat back from the road?

24 A Yes. I have 80 acres. And I have to go to the other end  
25 of my place where the house is.

- 1 Q Do you have a gate across your drive there?
- 2 A Yeah. It's a cattle guard.
- 3 Q Is it an open gate?
- 4 A Yes.
- 5 Q But it has a cattle guard?
- 6 A Uh-huh.
- 7 Q And did you go on up to your house that evening?
- 8 A Yes.
- 9 Q Approximately what time was it by the time you actually  
10 got home that evening?
- 11 A I'd say it was closer to twelve.
- 12 Q And what did you do once you and Ms. Knight returned to  
13 your home?
- 14 A Well, I -- We just went into the house. And when we were  
15 at the dance, I was -- the bottom of my foot was hurting. And  
16 so I pulled off my shoe, and I was there at the kitchen table.  
17 And she picked a piece of glass out of my foot. And then we  
18 was sitting there. And then about that time, I heard someone  
19 knocking on the door.
- 20 Q Now, when you turned off into your drive, did you see any  
21 cars behind you at all?
- 22 A Oh, yes.
- 23 Q How far back was it? Could you tell?
- 24 A Probably like a quarter of a mile or a half a quarter.
- 25 Q After you turned into your driveway, did you see where

- 1 that car went?
- 2 A Yes.
- 3 Q Where did it go, sir?
- 4 A It went on down the road.
- 5 Q Did you ever see that car again?
- 6 A No, sir.
- 7 Q Okay. Now, could you tell who was in it?
- 8 A No.
- 9 Q Now, you mentioned that you and Kitty were at your -- in  
10 your kitchen area?
- 11 A Uh-huh.
- 12 Q Is this -- Could you describe for the Judge briefly your  
13 home there? It's a mobile home; is that correct?
- 14 A Mobile home, yes.
- 15 Q And could you just describe it, the size and number of  
16 rooms, things like that?
- 17 A Well, it was a two-bedroom and a kitchen and living room.  
18 It was a 12-by-60 trailer, older trailer.
- 19 Q What kind of door did you have on the front door?
- 20 A Had a storm door and then a regular aluminum door, I guess  
21 you'd call it.
- 22 Q Where did you park that Firebird in relationship to that  
23 front door, sir, that night?
- 24 A At the south end of the trailer.
- 25 Q Would that be away from the entrance?

1 A Yeah. The entrance is like the middle of the trailer, on  
2 the east side. And I parked the car about the beginning of the  
3 trailer, on the south side.

4 Q If someone was coming onto your property from the drive,  
5 would they have to walk by your door to get to that car?

6 A Oh, yes.

7 Q Okay. Now, you mentioned that you and Ms. Knight were in  
8 your home there when someone knocked on the door. What did you  
9 do then?

10 A I went to the door.

11 Q Okay. And who was there?

12 A There was two boys.

13 Q Is -- What did they want? Did they tell you?

14 A Yeah. They said when they come across the bridge south of  
15 my place that they must have knocked a hole in their oil pan or  
16 something, because the oil light kept coming on.

17 Q And can you describe these two boys?

18 A Well, they was about 6-foot tall. And one was  
19 black-headed with kind of short hair. And the other one had  
20 longer hair, I'd say, down to about kind of -- drooped down to  
21 about his ears.

22 Q And do you recall what they were wearing or generally what  
23 they were wearing?

24 A Shorts and kind of just a -- I think, a tank top.

25 Q Okay. Did you talk to either or both of them?

- 1 A Did what?
- 2 Q Did you talk to both of them?
- 3 A Well, I didn't really talk to them. They just, you know,  
4 wanted to use the phone.
- 5 Q Okay. Did you let them use your phone?
- 6 A Yes.
- 7 Q Did you let them into your home?
- 8 A No.
- 9 Q How did you let them use the phone?
- 10 A I just stepped back and got the phone off the table and  
11 opened the door just enough to hand the phone out.
- 12 Q Is it a cordless-type phone? Or is it a --
- 13 A No.
- 14 Q It's a regular phone?
- 15 A With a long cord on it. I had to bring both pieces out.
- 16 Q So you brought the whole phone out?
- 17 A Uh-huh.
- 18 Q All right, sir. And do you recall which -- Do you recall  
19 which one you gave it to, which one you gave the phone to?
- 20 A Well, it would be the one with the shorter hair.
- 21 Q Okay. Did one of them have a very-short-on-the-sides  
22 haircut?
- 23 A Yeah.
- 24 Q Okay. And what did he do?
- 25 A He wanted to use the phone. So I gave him the phone. And

1 I said, "Well, in the area that I live, it's all long  
2 distance."

3 He said, "Well, I've got a calling card." He said, "I'll  
4 use it."

5 Q Did you see a calling card?

6 A No.

7 Q Did he appear to enter a calling-card code and number?

8 A Yes. I think so, yeah.

9 Q Do you have any mechanisms on your phone to -- automatic  
10 redial or anything like that?

11 A Yes.

12 Q Now, did he reach anyone? Or did he appear to reach  
13 anyone?

14 A No. He said that no one answered.

15 Q Okay.

16 A And he told the other guy something, I don't remember what  
17 it was, said -- wondered if they could get someone else to come  
18 out or pick up the car or something.

19 Q Did they indicate to you whether or not there was anyone  
20 else with them?

21 A No.

22 Q Okay. Did they -- Neither one of them said anything about  
23 girlfriends with them or anything like that?

24 A No. He just said it was a girlfriend's car and he didn't  
25 want to burn the engine up or something in it.

1 Q Okay. They didn't tell you that there might be some other  
2 people around?

3 A Huh-uh.

4 Q Okay. Now, did you have a conversation with both of the  
5 boys at some point at this time?

6 A No, not really.

7 Q Primarily, the shorter-haired one, is that who you talked  
8 to?

9 A Yeah. They were both -- One was on the steps that goes  
10 into the trailer, and the other one was standing down on the  
11 ground.

12 Q Okay. Now, how large is that -- We have a photo. How  
13 large is that front porch of yours, approximately?

14 A Oh, just very small. About --

15 Q Six feet across or so?

16 A No. No. It was probably 3-foot across.

17 Q Okay. So it would be kind of awkward for two 6-foot --

18 A Yeah.

19 Q -- young men to stand up there? Okay. Now, did you give  
20 them some oil?

21 A Yes.

22 Q Okay. How did you -- Where did you go to get that oil?

23 A I first walked out to the pickup. I thought I had some  
24 oil in the pickup. And I went out there and I didn't have  
25 any. So then I opened the shop and went in there and got a

1 quart of oil.

2 Q How far is your shop from your house?

3 A About 10 or 15 feet.

4 Q Did you notice whether or not either one of these young  
5 men appeared to be armed? Did you notice any weapons?

6 A No.

7 Q Would you have gone out there if you would have noticed  
8 any? I'm sure you wouldn't.

9 A No, I wouldn't have.

10 Q Did you have any weapons in your house?

11 A Yes.

12 Q And what kind of weapon did you have?

13 A I have a number of shotguns and rifles and a pistol.

14 Q Now, after you gave them the oil, what did these young men  
15 do?

16 A They left.

17 Q Did you see them walk away?

18 A Do what?

19 Q Did you see them walk away, sir?

20 A Yes. Uh-huh.

21 Q And what did you do?

22 A When they walked away, they was probably -- I don't know,  
23 15, 20 feet from the house. The car was sitting there with the  
24 keys in it. So I thought, Well, I left them keys in the car.  
25 So I went out and got the keys, and then I locked it.

- 1 Q Okay. Now, you're talking about your Firebird; is that  
2 right?
- 3 A Uh-huh.
- 4 Q Okay. And so you locked up your Firebird. And then what  
5 did you do?
- 6 A I went back into the house.
- 7 Q And was Ms. Knight still there?
- 8 A Yes.
- 9 Q Had she been able to watch you, observe you?
- 10 A Yes. When I went out to the pickup and the shop, she  
11 stepped out on the porch with a flashlight and was shining it  
12 toward the pickup and the shop.
- 13 Q She was kind of looking out for you?
- 14 A Uh-huh.
- 15 Q Now, what did you do once you got back into the house?
- 16 A She kind of got suspicious. And she said, "Well, let's  
17 push the redial and see if they really called a number." So we  
18 did.
- 19 Q What did you learn from that?
- 20 A Well, the operator come on when we pushed the redial and  
21 something was mentioned about if she would place that call  
22 again. She said no, unless we could give the person's name  
23 that was on the card. Well, we didn't know it. Which she did  
24 give us the number that they called.
- 25 Q Okay. Did you write that down?

1 A Uh-huh.

2 Q Why did you have the presence of mind to write that down?

3 A I don't know. Kitty was suspicious, but I wasn't really  
4 at that point.

5 Q Okay. And what did you do then?

6 A Let's see. After that, she said, "Well, it's possible  
7 that them boys are up to something."

8 And I said, "No. They used their calling card and  
9 everything." I said, "If they was up to something, they  
10 wouldn't have used their calling card, you know, and all that."

11 And she said, "Well, just in case they do," she said,  
12 "don't you have a pistol?"

13 And I said, "Yes. It's in the bedroom." So I went and  
14 got the pistol and seen that it was -- it was loaded.

15 Q What kind of pistol was this, sir?

16 A A .357.

17 Q And did you -- It was fully loaded?

18 A Uh-huh.

19 Q And did Ms. Knight know how to use a pistol?

20 A Well, down at her place, she was bothered with coyotes,  
21 and she had a pistol and -- a .22. And I showed her down there  
22 how to shoot the pistol. And she never had had a gun in her  
23 hands before. But --

24 Q And did you show her how to use that .357?

25 A Yeah. I told her you just have to pull the trigger on it,

1 because it's a -- I guess you call it a double action.

2 Q Yes, sir. And were you able to see where these boys went  
3 at that point?

4 A No.

5 Q Did you take a look to see where they might be?

6 A No.

7 Q Did they come back?

8 A Yes.

9 Q When they came back the second time, who came to the  
10 door? I mean, which of the boys came to your door?

11 A The one that used the phone the first time, the one with  
12 the shorter hair.

13 Q Okay. And where was the other boy?

14 A I didn't see him at that time, when I handed the phone  
15 out.

16 Q And you couldn't see the other one?

17 A Huh-uh.

18 Q And what did the boy -- the second time, what did he want?

19 A He wanted to -- Well, when he -- He approached the  
20 trailer. I heard the dogs barking. And so -- We had all of  
21 the lights off. And I looked out the kitchen window. And I  
22 could see -- I heard the dogs barking. And I seen one guy  
23 coming up toward the trailer, so then I turned the porch light  
24 on and stuck my head out.

25 And he said, "Well, that oil didn't take care of the

- 1 problems." He said, "Would you go with me?"
- 2 Q Mr. Moucka, I'm going to hand you what's been marked  
3 State's Exhibit No. 4 for identification. And ask you if you  
4 recognize this picture -- recognize the person in that picture?
- 5 A Yeah. He'd be the one that used the phone.
- 6 Q Okay. That's one of the boys who was on your front porch?
- 7 A Uh-huh.
- 8 Q Is he the one that used the phone the first time or the  
9 second time or both times?
- 10 A Both times.
- 11 Q Now, while -- Did the boy who was using the phone call  
12 anyone? Or did he appear --
- 13 A The second time?
- 14 Q Yes, sir.
- 15 A No, he didn't call anyone.
- 16 Q What happened next?
- 17 A Well, as soon as I -- I just cracked the door and I handed  
18 the phone with the -- it was still in the cradle on the phone,  
19 and I handed him that. At that time, the other person just  
20 busted through the door with a shotgun and right in my face.
- 21 Q And did you see where he was, sir, where this second  
22 person came from?
- 23 A No.
- 24 Q Did you get a look at his face?
- 25 A Yes.

1 Q Well, let me ask you this -- Let me retract that  
2 question. Was it the same person that was with the person that  
3 was using the phone before?

4 A Yes.

5 Q Now, he stuck a shotgun in your face. He actually broke  
6 it through the glass window?

7 A Yes.

8 Q Did you get a look at the shotgun?

9 A I could see the walnut -- shiny walnut on the gun is all I  
10 could see.

11 Q You're familiar with rifles and shotguns. Is there any  
12 doubt in your mind that it was a shotgun?

13 A No. No, there wasn't any doubt in my mind. I could tell  
14 by that long wooden stock that it had to be a shotgun.

15 Q Now, he poked it through the glass. Did he say anything?

16 A Yes. He said, "This is a holdup, you m.f."

17 Q Did he actually say something other than "m.f."? I assume  
18 you're being polite for the Court.

19 A Yeah. "Motherfucker."

20 Q And what did he do then? What happened next, that you  
21 remember?

22 A I -- When he come with it -- with that gun in my face, I  
23 took both hands and pushed it sideways. And we kind of  
24 turned. And then all at once, I fell over to my right. And he  
25 shot, you know, at the time that we were -- I was struggling

1 with him with the gun, the shotgun.

2 Q And your hand was pretty much over the barrel of that  
3 shotgun; is that correct?

4 A It had to be, yeah.

5 Q I'm sorry. I know this is difficult. And you've -- Were  
6 you still conscious at that time that you fell? Do you recall?

7 A Yes.

8 Q What happened next, that you remember?

9 A Well, just as I fell -- I was down on my hands -- I heard  
10 a shot, another shot. And I thought the guy was shooting me in  
11 the back, because I just knew at any time, you know, I was  
12 going to feel the pellets. But nothing hit me.

13 Q Okay. But you did hear another shotgun blast?

14 A Yes. Yeah. Just after I heard that one, there was like  
15 four or five continuous shots.

16 Q Okay. Now, you're in a small -- relatively small mobile  
17 home.

18 A Right.

19 Q And the noise must have been deafening.

20 A Right.

21 Q Is that correct?

22 A Right.

23 Q What -- Did you see this person come into your home with  
24 the shotgun?

25 A Yes.

1 Q Did he come past you?

2 A Well, he come through the door. And I was right there at  
3 the door, because I had just handed the phone. So I was right  
4 there at the door when he come in.

5 Q So you kind of fell away and -- but were near the -- still  
6 near the door?

7 A Yes.

8 Q Okay. And you saw this person with the shotgun come in?

9 A Yes.

10 Q Okay. What's the next thing you remember?

11 A That's when I fell over and fell to the side. Then I  
12 heard all of those shots. And then I was laying right -- I  
13 turned around, I guess, because I was laying right there at the  
14 door where you go out. And about that time, Kitty come up  
15 there and laid down beside me. And I didn't know if them guys  
16 were still out there or what.

17 Q I understand. And Kitty came up beside you; is that what  
18 you said?

19 A Yeah. She laid down there.

20 Q And did you see her or know whether or not she fired her  
21 weapon?

22 A No, I didn't know.

23 Q Okay. Had you later learned that she did?

24 A Yes.

25 Q You didn't fire any weapons there, did you?

1 A No.

2 Q Did Ms. Knight say anything before she died?

3 A She was saying something. But I was so -- I don't know.

4 I couldn't tell you what she said.

5 Q I understand, sir. I know this is very difficult, and  
6 I'll try not to make this any more. But did you -- when she  
7 came over to you, could you tell she had been hurt?

8 A No.

9 Q Did she say anything specific to you about -- Do you  
10 remember talking to her?

11 A No, I don't.

12 Q And --

13 A I do remember that she had laid down there. I told her to  
14 -- I said, "Fire again." She still had the gun in her left  
15 hand. And I said, "Fire again. Them bastards may still be out  
16 there." And she shot again, you know, just out the front door,  
17 because we was about three feet from the door.

18 Q And what is the next thing you remember, sir?

19 A Let's see. I picked the gun up and went -- walked into  
20 the kitchen. I was going to look out the window to see if I  
21 could see them. And then I -- I passed out. I fell against  
22 the microwave. And then I come to. And I got some water and I  
23 was washing my -- blood was on my glasses and I couldn't see.  
24 And I tried to clean my glasses. And then I got up and I got a  
25 towel and wrapped around my arm because it was bleeding so

1 bad. And then I thought, Well, I've got to get to the phone.  
2 So I walked back into the living room. And the phone was there  
3 in the -- between the door and the little porch.

4 Q Pretty much where you last remember seeing it?

5 A Yeah.

6 Q Okay. And what did you do at that point?

7 A I picked it up. And we had -- I had my daughters and son,  
8 different ones, you know, you just punch in --

9 Q Speed dial.

10 A So I had the receiver -- put the receiver to my ear. And  
11 I could hear a dial tone. I said, "Boy, I'm in luck," you  
12 know. So I punched the button, and it was my -- one of my  
13 daughters in Harrah.

14 Q Did you tell her basically what had happened?

15 A Well, it rung about two or three times. And according to  
16 my telephone bill, that was at 12:28 -- 12:38, I believe. And  
17 I didn't come to until after one o'clock. Because I made the  
18 second call to my daughter in Shawnee, and that's when -- that  
19 was at four minutes after one. And she notified the police.  
20 And I don't know what time they got there after that. I think  
21 they got there at like 1:30 or 1:25 or so.

22 Q Were you able to talk to the police when they got there,  
23 someone?

24 A Uh-huh.

25 Q Now, were you taken to the hospital from there?

1 A Uh-huh.

2 Q Okay. Now, you were shot in the hand and you actually  
3 lost your hand; is that correct?

4 A Uh-huh.

5 Q Any other injuries to you?

6 A Just pellets in my face and chest and the left arm.

7 Q Certainly, if you hadn't gotten to that phone, do you  
8 believe that you would have bled to death?

9 A Yes.

10 Q Did you -- After you tried to call, did you -- were you  
11 able to tell what Ms. Knight's condition was?

12 A No. I just told my daughter that we'd both been shot.

13 Q Do you know when she died?

14 A No.

15 Q But when you left her on the -- When you got up to get the  
16 phone and call for help, do you know whether or not she was  
17 still alive at that point?

18 A Yes.

19 Q Was she?

20 A Yes.

21 Q Now, did she say anything to you about her injuries? Did  
22 she indicate how bad she was hurt?

23 A I don't remember her saying.

24 Q Now, you've been treated at the hospital and you have an  
25 artificial hand; is that correct?

1 A Uh-huh.

2 Q Have you been able to regain any of your livelihood? I  
3 know you're retired. But you work on cars and things like  
4 that?

5 A And farm. Yeah. I do farm work. I have cattle and put  
6 up hay and everything.

7 Q Now, is the other -- You've seen the picture of this boy.  
8 Is that -- Was that taken in your driveway? Is that correct?

9 A Yes.

10 Q The picture I showed you that --

11 A Yeah.

12 Q -- the boy that's dead. Is the other person that was  
13 on your porch and the other person who did this to you and  
14 Ms. Knight, is he present in the courtroom?

15 A Yes.

16 Q Could you point him out, please?

17 A Yes.

18 Q Could you describe what he's wearing?

19 A A black sweater.

20 MR. BARNETT: I'd ask the record to reflect he's  
21 identified the defendant.

22 MR. BALL: May I voir dire the witness, your Honor?

23 THE COURT: On what ground?

24 MR. BALL: Identification.

25 MR. BARNETT: Judge, I'm finished, if he wants to

1 cross-examine.

2 THE COURT: You're finished with this witness?

3 MR. BARNETT: Yes.

4 THE COURT: All right. As far as identification, the  
5 record will reflect that he pointed out the defendant in this  
6 particular case. And then we'll see whether or not the  
7 identification -- Well, that's a trial issue anyway.

8 MR. BARNETT: Sir?

9 THE COURT: It's a trial issue anyway.  
10 Go ahead.

11 CROSS-EXAMINATION

12 BY MR. BALL:

13 Q Mr. Moucka, you pointed over at this young man over here  
14 to my left. Have you ever met him before July 15th?

15 A Before July 15th?

16 Q Yes.

17 A No.

18 Q Do you recall -- Let me make sure I understand your  
19 testimony correctly. The boy in the photograph that you've  
20 identified is the one that used the telephone?

21 A Yes.

22 Q Okay. So did he speak to you both times, this boy in the  
23 photograph?

24 A Yes.

25 Q Okay. Did you have any conversations with this second

1 boy?

2 A No. I didn't have a conversation with either one of them,  
3 as far as that goes.

4 Q Now, this all happened at nighttime; is that correct?

5 A Right.

6 Q Okay. How long of a look did you get at these two boys?

7 A They was around there -- Well, I walked out to the pickup  
8 to get the oil and then the car -- the shop to get the oil. So  
9 I don't know. Three or four minutes, five minutes.

10 Q Now, this was outside. Was the area lit or unlit?

11 A Porch light and then a yard light.

12 Q Okay. Now, you testified on direct that you didn't see  
13 the second boy when they came back up the driveway; is that  
14 correct?

15 A Right.

16 Q And you looked out the window and you saw one coming back  
17 up before he rang the -- or knocked on the door; is that right?

18 A Yes.

19 Q Okay. When the shooting commenced, did you get a look at  
20 who was in the house at that point?

21 A Yes.

22 Q Okay. Who was in the house at that point?

23 A The guy over there.

24 Q Are you sure about that?

25 A Yes.

- 1 Q Where was the other boy?
- 2 A On the steps.
- 3 Q Is there any possible doubt in your mind about that?
- 4 A No, sir.
- 5 Q So who had the gun?
- 6 A This guy over there.
- 7 Q Now, you testified about Kitty.
- 8 A Yes.
- 9 Q Okay. What was her occupation?
- 10 A She was working at a church. I guess it's kind of a
- 11 resort where people come there and boy scouts and different
- 12 ones come there. She was a cook in the kitchen -- or over the
- 13 kitchen and a cook, I guess you'd say.
- 14 Q Counsel asked you some questions about her familiarity
- 15 with guns. I wasn't clear on your answer. Did you ever go
- 16 shooting weapons with her?
- 17 A No. Just at her house, shot the .22 pistol and a .22
- 18 rifle.
- 19 Q Okay. Did she shoot the coyotes with a pistol?
- 20 A They were coming up -- Oh, I don't know about the pistol.
- 21 But she said the coyotes was coming up to the house, and she
- 22 just wanted to shoot to scare them away not to kill them.
- 23 MR. BALL: No further questions.
- 24 THE COURT: Redirect?
- 25 MR. BARNETT: Just briefly, Judge.



1 someone indicates that they're going to recall you as a  
2 witness. And if that's the case, you will have to remain under  
3 the rule. But otherwise, you're excused. All right?

4 A Thank you.

5 THE COURT: Thank you, sir.

6 (Witness excused.)

7 THE COURT: Do you have anything else --

8 MR. BARNETT: I have two exhibits to offer, Judge.

9 THE COURT: Exhibits. All right.

10 (State's Exhibits 8 and 9 marked for identification.)

11 MR. BARNETT: Judge, I'd offer State's Exhibit 8 and  
12 State's Exhibit 9.

13 State's Exhibit 8 is a certified copy of a report from the  
14 Office of the Chief Medical Examiner on Katharina Knight,  
15 indicating cause of death. I believe counsel --

16 THE COURT: Unless you-all just really want to have  
17 the report in, I -- And you can, I suppose. But is there a  
18 stipulation as to the cause of the death?

19 MR. BALL: We'll stipulate, Judge.

20 THE COURT: Cause of death was what?

21 MR. BALL: Shotgun wound to the chest and abdomen.

22 THE COURT: As to whom?

23 MR. BALL: As to Katharina Knight.

24 THE COURT: Mr. Barnett, do you still want it in?

25 MR. BARNETT: I'd like to have it in, Judge, since

1 I've already marked it. I'm sorry.

2 THE COURT: All right. We'll see if there's an  
3 objection.

4 Take your time, Mr. Ball. Look it over and see whether or  
5 not you have objection. I presume you've been provided a copy  
6 prior to this date.

7 MR. BALL: I believe I have, Judge.

8 THE COURT: Okay. While you're looking at that, I'm  
9 going to go get my calendar. And I'll be right back.

10 (The Court exited and returned to the courtroom.)

11 THE COURT: Any objection?

12 MR. BALL: No, your Honor.

13 THE COURT: And that's 8 and 9 both?

14 MR. BALL: I haven't seen 9.

15 MR. BARNETT: Judge, 9 is a --

16 THE COURT: I thought you had two of them.

17 MR. BARNETT: I do, Judge. Number 9 is the Office of  
18 Chief Medical Examiner's report on Robert Anderson. I'd just  
19 offer it the same -- I think he has a copy of that.

20 Don't you?

21 MR. BALL: I don't have a copy of this one, your  
22 Honor. I would have an objection to it on the basis that it  
23 hasn't been supplied to me within five days of the hearing.

24 THE COURT: I don't know that it's relevant either.  
25 What's the relevance at this preliminary hearing?

1 MR. BARNETT: Other than -- None, possibly, Judge,  
2 other than it shows that the other person in this crime is  
3 deceased. And --

4 THE COURT: I think I've got that from -- Objection  
5 sustained. I've got that from Deputy Armitage.

6 MR. BARNETT: I'll leave it and ask permission to  
7 withdraw it when I'm done.

8 THE COURT: So 8 is received  
9 Does the state have anything further?

10 MR. BARNETT: Judge, no. But if the Court is going  
11 to recess, I may hold off on resting, if you have no  
12 objection. I have been down this road before and learned it's  
13 not to my advantage to do that. But I don't have any other  
14 witnesses.

15 THE COURT: Okay. At this time, that you know of.  
16 I'm going to continue the case. You indicate to me from your  
17 statement that right now you don't believe you have any other  
18 witnesses and the time required on your part of the case will  
19 be zero.

20 MR. BARNETT: Yes, sir.

21 THE COURT: Mr. Ball, you have a motion. If your  
22 motion -- Tell me how long your motion will take and then how  
23 long you'll take if the motion is overruled. I need to get  
24 some idea as to time.

25 MR. BALL: I think a half a day ought to be plenty to

1 wrap this thing up, Judge.

2 THE COURT: Okay. I'll start looking.

3 (There was a pause in the proceedings.)

4 THE COURT: I don't have anything marked on Monday  
5 afternoon the 27th, but I think I set something. What about  
6 Monday afternoon the 4th? That's going to make it a long day  
7 for us. But --

8 MR. BARNETT: The 4th of --

9 THE COURT: -- December.

10 MR. BARNETT: Judge, I'll be out of town. I would  
11 prefer to do this myself, if I could, if it's not a burden to  
12 Mr. Ball and the Court. That week, I'll be gone to a  
13 conference. Any other time would be fine.

14 THE COURT: Can Ms. Kirk handle the arraignment  
15 docket on the afternoon of the 13th of December?

16 MR. BARNETT: Certainly.

17 THE COURT: Or can you have someone else here on  
18 that?

19 MR. ZIMMERMAN: Judge, we'd like to move this along  
20 as promptly as possible. I could be here on December 4th in  
21 Mr. Barnett's stead to wrap this matter up, if that's all right  
22 with the Court.

23 THE COURT: It's all right with me.

24 Mr. Barnett?

25 MR. BARNETT: Sure.

1 THE COURT: I don't suppose you're going to argue  
2 with him. Are you?

3 MR. BARNETT: I'll be glad to have the help.

4 THE COURT: All right.

5 MR. BALL: Judge, does your calendar -- I grabbed the  
6 wrong book. Does your calendar show that I'm going to be here  
7 on that day?

8 THE COURT: It shows I have a Lowe certification  
9 hearing that morning, but I do not show the lawyer on it.

10 MR. BALL: Is that -- May I approach?

11 THE COURT: Sure.

12 MR. BALL: Is that a Brandon Lowe?

13 THE COURT: I don't know. It's L-o-w-e.

14 MR. BALL: I thought I had a juvenile by that name.

15 THE COURT: This would be a juvenile. I don't  
16 certify adults unless it's reverse.

17 MR. BALL: You don't know what it is?

18 MR. BARNETT: I can't think of it.

19 MR. BALL: Are you wanting to set it the afternoon of  
20 the 4th?

21 THE COURT: Yes.

22 MR. BALL: I think that's fine, Judge. If I could  
23 call my office before we leave the courthouse.

24 THE COURT: Let's take a recess. Call your office.  
25 Are there any witnesses that the state wants ordered back

1 at this time?

2 MR. BARNETT: No, your Honor.

3 THE COURT: Any witnesses the defense wants ordered  
4 back?

5 MR. BALL: No, your Honor.

6 THE COURT: We'll be in recess until you tell me  
7 whether or not the 4th is going to be a good day. Do we have  
8 bail fixed on your client or is it no bail?

9 MR. BALL: It has not been fixed.

10 THE COURT: Right now there's no bail. All right.  
11 He'll be remanded to custody. And unless you tell him  
12 otherwise, the continuation of the preliminary hearing will be  
13 Monday, December 4th, at 1:30.

14 And we'll be in recess.

15 MR. BARNETT: Thank you, Judge.

16 THE COURT: Mr. Barnett and Mr. Zimmerman, would you  
17 all remain to make sure it's going to be the 4th? And if not,  
18 we'll fix another date in chambers.

19 MR. ZIMMERMAN: If I may, Judge, I'll go ahead and  
20 call my office in Shawnee and have them clear my calendar that  
21 afternoon.

22 THE COURT: All right.

23 (Proceedings recessed until December 4, 1995.)

24 - - -

25

1 (The following proceedings were had on Monday,  
2 December 4, 1995, at 1:38 p.m.)

3 THE COURT: This is CF-95-104, State v. Joshua Stump.

4 He's present with his attorney, Mr. Ball.

5 State is present by Mr. Zimmerman. And state continues  
6 with preliminary hearing.

7 Is the state ready to continue?

8 MR. ZIMMERMAN: Your Honor, at this time the state  
9 would rest its portion of preliminary hearing.

10 THE COURT: State rests.

11 Mr. Ball.

12 MR. BALL: Your Honor, at this stage I have filed a  
13 motion to certify the defendant as a juvenile. And if my  
14 reading of the statute is correct, we would go into that before  
15 we proceed any further on the preliminary hearing.

16 THE COURT: Are you ready?

17 MR. BALL: On that motion?

18 THE COURT: Yes.

19 MR. BALL: On that motion, yes, Judge.

20 THE COURT: All right. Go ahead and proceed.

21 MR. BALL: I would call Rebecca Kephart.

22 (There was a pause in the proceedings.)

23 THE COURT: Would you go ahead and swear the  
24 witnesses, Barbara, please.

25 THE CLERK: Raise your right hand.

1 (Witness sworn.)

2 MR. BALL: Judge, I don't know if this is necessary  
3 at this stage, but there's a person in here that I may need to  
4 call as a witness, but it doesn't have anything to do with the  
5 motion itself. Should I go ahead and have her excluded, since  
6 the rule is invoked?

7 THE COURT: Well, each of you is responsible for your  
8 own witnesses, as we told you at the last hearing.

9 (Mr. Ball exited and returned to the courtroom.)

10 REBECCA KEPHART

11 called as a witness on behalf of the Defendant, after first  
12 being duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. BALL:

15 Q Would you state your name, please.

16 A Rebecca Lynn Kephart.

17 Q And how are you employed?

18 A I'm employed by the Lincoln County Child Welfare Office.

19 Q And, Ms. Kephart, are you familiar with Joshua Stump?

20 A Yes, I am.

21 Q All right. What is it that you do for the Lincoln County  
22 Child Welfare Office?

23 A I'm a treatment caseworker.

24 Q And what do you do in the course of your duties?

25 A I work with children who have been taken into state's

1 custody due to deprivation or neglect by their parents.

2 Q Have you come in contact with Joshua Stump as a result of  
3 your job duties?

4 A Yes. And I think this is the point where I'm supposed to  
5 refer to the Judge and say that the information I'm being asked  
6 to disclose is confidential and can only be released by a  
7 judge's order.

8 THE COURT: That information is not confidential.  
9 You may answer the question.

10 A Yes.

11 THE COURT: You may have to raise that at a later  
12 point. But this has nothing to do with your records.

13 A Yes.

14 THE COURT: Also, since it is the child inquiring, he  
15 has a right to inquire of his own records at any time. And  
16 you'll be directed to answer all questions. We'll just head  
17 that off to start with.

18 A Okay.

19 MR. BALL: Thank you, Judge.

20 Q (By Mr. Ball) Could you tell us how it was that you came  
21 into contact with Joshua Stump?

22 A I personally came into contact with Joshua Stump on  
23 December 8, 1994. And he was taken into state's custody  
24 August 27, 1991.

25 Q August 27, 1991?

- 1 A Yes, sir.
- 2 Q And when did you become his caseworker?
- 3 A November of 1994. And he was AWOL at that time.
- 4 Q And is it correct that Joshua Stump is an adjudicated  
5 deprived child as defined by the laws of the State of Oklahoma?
- 6 A Yes, he is.
- 7 Q And could you tell us anything about -- Well, have you had  
8 any opportunity to talk with Josh and get to know him any way?
- 9 A Yes, I have.
- 10 Q And could you tell us what the nature of the deprived  
11 adjudication was?
- 12 A Abandonment.
- 13 Q Okay. By his parents?
- 14 A Yes.
- 15 Q Okay. How old was Josh when this abandonment occurred?
- 16 A He was thirteen and a half.
- 17 Q Was he abandoned in Lincoln County?
- 18 A Yes.
- 19 Q Okay. Could you tell us, in a nutshell, how that  
20 happened?
- 21 A As I am aware of through the case narrative, Joshua was  
22 placed in the custody of his paternal grandmother by his  
23 mother. But the paternal grandmother then moved off, leaving  
24 Josh and his older brother alone. And he lived for a while  
25 also with a neighbor during that time. And the state was --

1 Child Welfare Office was notified. And we did an investigation  
2 and picked up both Joshua and his older brother.

3 Q Have you had an opportunity to familiarize yourself with  
4 Joshua Stump's case and his personality?

5 A Yes.

6 Q And is Joshua Stump a violent person?

7 A He has not shown any violence towards me in my working  
8 with him. He has had some delinquent behavior since his being  
9 brought into custody.

10 Q Now, by "delinquent behavior," that's a pretty broad  
11 term. Has he ever been charged with assault and battery?

12 A No.

13 Q Do you know whether or not he's ever been charged in any  
14 type of crime against another person?

15 A No, he has not.

16 Q Did he -- You said he wasn't hostile?

17 A Violent.

18 Q Did you know him to have a tendency for violence or  
19 hostility?

20 A No.

21 Q Tell me about what happened to Josh in the course of his  
22 treatment plan. I understand it started when he was thirteen  
23 and a half.

24 A Yes.

25 Q Could you walk us from August 27th up to July 15, 1995?

1 Tell us what happened.

2 A I can give you some of the high points. He was  
3 adjudicated --

4 THE COURT: Wait just a minute. Are you reading from  
5 records? Or do you know this or remember this?

6 A I am reading from a chronological note that I took from  
7 the case narrative.

8 THE COURT: I'm not going to just let her read  
9 stuff. You'll have to get at it another way, either offer the  
10 records or do something else. But she's not just going to read  
11 records.

12 Q (By Mr. Ball) What kind of treatment was Josh given in  
13 the course of his custody with the Department of Human  
14 Services?

15 A He was provided counseling.

16 Q Can you tell me for what?

17 A For the help of dealing with the abandonment issues that  
18 he had.

19 Q Okay.

20 A And he was placed in foster homes in order to receive a  
21 family-like setting in which to grow up. He was provided  
22 medical care treatment as needed. He was assured access to  
23 public schools, whatever type of educational services he may  
24 need.

25 Q Now, earlier you indicated that Josh was never violent

1 towards you.

2 A Right.

3 Q Was he violent towards anybody else, that you were aware  
4 of?

5 A I'm aware that he had squabbles and fights with kids at  
6 school, kids in the area.

7 Q Okay. Were these the ordinary type of school-yard fights  
8 that kids are prone to get into, or was this something of a  
9 more serious nature?

10 A I do not know.

11 Q Was it serious enough that you felt it necessary to alter  
12 your treatment plan in any way?

13 A No.

14 Q Or your predecessor, whoever was --

15 A No. I don't believe they altered it.

16 Q He wasn't sent to counseling for dealing with aggression  
17 or hostility or anything like that?

18 A He never received that type of treatment.

19 Q How did Josh respond to the treatment that he did receive?

20 A He did not cooperate with any type of counseling. The  
21 counselor from Red Rock that he was seeing, he didn't really  
22 want to talk to them. He didn't open up very much, didn't  
23 cooperate really with any type of counseling that was  
24 provided.

25 Q And do you know why?

1 A From talking with Josh on various times, just mainly  
2 because he didn't want to talk to counselors. He didn't mind  
3 talking to myself or his previous caseworker. But as far as  
4 any type of counselors, he didn't want to talk to those people.

5 Q Did Josh deal with any kind of rejection in the foster  
6 homes or in the public schools or any of the places that he was  
7 put in the course of DHS custody?

8 A What do you mean did he deal with it?

9 Q Well, was he welcomed with open arms? Or did he have some  
10 problems? People, were they glad to see him or did they not  
11 want anything to do with him because of who or what he was?

12 MR. ZIMMERMAN: Your Honor, I'm going to have to  
13 object at this point. I fail to see the relevance of this line  
14 of questioning on the --

15 THE COURT: Sustained. It's overly broad as well.  
16 What people? Who? How? Why? And what does it have to do  
17 with the case? Sustained, in short.

18 Q (By Mr. Ball) Were you in contact with -- Let me back  
19 up. Where was he sent to school?

20 A He attended Prague Public Schools. He attended Meeker  
21 Public School and Wellston Public School.

22 Q Okay. So he went to three different schools in three  
23 different years?

24 A He was attending Prague school for, I believe, about a  
25 year and a half until he was expelled from there.

- 1 Q Do you know why he was expelled?
- 2 A Due to a gun-at-school incident.
- 3 Q Was there a juvenile case filed as a result or a  
4 delinquency-type action filed as a result of that?
- 5 A Not from the first -- Not from that incident, no.
- 6 Q Do you know why?
- 7 A No, sir.
- 8 Q Was there some other incident with a gun at school?
- 9 A Yes, there was.
- 10 Q Okay. Where did that take place?
- 11 A That was also at Prague school. And that was in April of  
12 1994.
- 13 Q Was he enrolled in Prague school at that time?
- 14 A Yes, he was.
- 15 Q When was he expelled for this first incident?
- 16 A For the March of '93 incident?
- 17 Q That's what I wanted to know. March of '93?
- 18 A Yes.
- 19 Q So I take it they let him back in, and then something  
20 happened in April of '94?
- 21 A Yeah. April of '94 was the second incident. On the first  
22 incident, he was expelled for the remainder of the school year  
23 and he was to complete his school assignments at home.
- 24 Q But to your knowledge, there wasn't any type of a juvenile  
25 delinquency case filed as a result of that first incident, in

1 March of 1993?

2 A To my knowledge, there was not.

3 Q Okay. Was there one filed as a result of the April 1994  
4 incident?

5 A Yes, there was.

6 Q Okay. And what was the result of that juvenile delinquent  
7 action?

8 A There was a deferred prosecution agreement made.

9 Q Okay. What does that mean?

10 A I'm not certain. Except that he received 100 hours of  
11 community service. And if he completed that time in his  
12 probation time, I believe, that charge would be dropped, is my  
13 understanding. That may or may not be correct, but that's my  
14 understanding.

15 Q Do you know what the status of that case is?

16 A I believe it is still pending.

17 Q If I told you it had been dismissed, would you take issue  
18 with that?

19 A I had not been -- I would say that I had not been notified  
20 that it had been dismissed. I know that was a discussion after  
21 the last hearing was continued.

22 Q Did you see Josh as being any type of an at-risk child?

23 A Yes.

24 Q And what was done as a result of that?

25 A Are you inquiring as to being delinquent at risk?

1 Q Well, okay. Let me ask you about that. What was done --  
2 Was he delinquent at risk?

3 A Yes.

4 Q Okay. And could you tell us why?

5 A Well, due to the gun incidents, he needed to have a  
6 juvenile hearing. And it was never held. He was AWOL at the  
7 time of the hearings.

8 Q Could he have benefited from some treatment through a  
9 juvenile delinquency action?

10 A Possibly.

11 Q Did the department know that at the time?

12 A Yes.

13 Q And did the department take any action in that regard?

14 A To seek that type of treatment?

15 Q Yes.

16 A We couldn't seek that type of treatment without a  
17 delinquent petition being filed and a hearing being held.

18 Q And that wasn't done, was it?

19 A No.

20 Q Do you know why the department didn't do anything about  
21 him to try to head these problems off that you just talked  
22 about?

23 A Well, all we did was refer that action to the D.A. The  
24 D.A. is the one that files those petitions. And the Juvenile  
25 Services Unit seeks delinquent hearings.

1 Q Now, by "Juvenile Services Unit," do you mean what is now  
2 the Office of Juvenile Affairs or Justice?

3 A Yes.

4 Q Okay. And is that a different -- or was that a different  
5 department within the department --

6 A Yes.

7 Q -- that you're not employed by?

8 A Yes.

9 Q Okay. And did you or your supervisors, back when these  
10 matters were going on, have any control over what JSU did with  
11 Joshua Stump?

12 A No.

13 Q Did you-all make any type of inquiry of JSU as to why  
14 these delinquency proceedings were not pursued?

15 A I think that they were pursued. But due to court dates  
16 and things of that nature, whenever a hearing time would come  
17 up, Josh was not present.

18 Q Well, he was present in court in 1995 prior to this  
19 incident that we're here for today, wasn't he?

20 A Yeah. We hadn't gotten that far.

21 Q Okay. And the opportunity was certainly there at that  
22 point to take action regarding him, wasn't there?

23 A Yes. That was May 18th.

24 Q And did you or your supervisor or anybody that you work  
25 with tell JSU that Josh was really in need of some intervention

1 at that point?

2 A Yes.

3 Q And what, in fact, happened when he was in court then?

4 A On May 18th?

5 Q Yes.

6 A The hearing was continued.

7 Q And do you know what ultimately happened to that case?

8 A That's the one I was saying earlier, I don't know what has  
9 happened to that. To my understanding, it had been continued  
10 to June 23rd. And . . .

11 Q But again, that's a matter that's within JSU's  
12 jurisdiction and not yours; is that right?

13 A That's correct.

14 Q And if I told you that on July 20, 1995, that matter was,  
15 in fact, dismissed, you wouldn't take issue with that?

16 A No. It's entirely possible.

17 Q Was that case JFJ-94-46?

18 A I do not know the case number.

19 MR. ZIMMERMAN: Judge, we'll stipulate that the case  
20 was dismissed after we filed a murder charge against him.

21 THE COURT: Are you going to accept or offer a  
22 stipulation?

23 MR. BALL: It's not specific enough, Judge.

24 THE COURT: He won't accept your stipulation.

25 MR. BALL: May I approach the witness?

1 THE COURT: Go ahead.

2 Q (By Mr. Ball) Ma'am, have you ever seen this document  
3 before?

4 A No.

5 Q Did -- How many times did your agency have discussions  
6 with JSU regarding what you thought should be done with Joshua  
7 Stump?

8 A It would be difficult for me to count the number of times  
9 I had conversations with the JSU worker. But it would be  
10 numerous times from the date of that hearing in November of '94  
11 until July of '95, numerous conversations.

12 Q And were you encouraged by those conversations with --  
13 about whatever actions that JSU was telling you that they were  
14 going to do?

15 A I knew that they were doing what they could to pursue a  
16 delinquent type of adjudication.

17 Q You said that Josh didn't like talking to counselors. Was  
18 he totally unresponsive to treatment?

19 A Pretty much, yes.

20 Q Nothing that you-all did for him did him any good at all?

21 A As much as I would hate to admit that, it didn't seem to.

22 Q Ms. Kephart, did the Department of Human Services give up  
23 on Josh Stump?

24 A No.

25 Q Did JSU give up on Josh Stump?

1 A I can't answer that.

2 MR. BALL: No further questions.

3 THE COURT: Cross.

4 MR. ZIMMERMAN: Thank you, your Honor.

5 CROSS-EXAMINATION

6 BY MR. ZIMMERMAN:

7 Q Ms. Kephart, you were asked on direct examination whether  
8 Mr. Stump, to your knowledge, had ever been violent or  
9 threatened violence towards anyone. And I believe your answer  
10 to that question was that he had never been violent around  
11 you. Now, are you aware of threats of violence Mr. Stump has  
12 made, before these killings on July 15th of this year, to  
13 members of his family?

14 MR. BALL: Objection. Beyond the scope of direct.

15 THE COURT: Overruled. You've opened the area.

16 A Yes.

17 Q (By Mr. Zimmerman) Would you tell the Court what those  
18 are, please, ma'am?

19 A I was informed by family members that Joshua was very  
20 upset and was making violent remarks and threats towards his  
21 father after his brother's death in March of 1995.

22 Q Isn't it a fact that he threatened to kill his father?

23 MR. BALL: Objection. Leading.

24 MR. ZIMMERMAN: This is cross-examination, Counsel.

25 MR. BALL: Yes.

1 THE COURT: Overruled.

2 MR. BALL: Objection withdrawn.

3 A Yes.

4 Q (By Mr. Zimmerman) And isn't it also true that he  
5 threatened to kill his mother then or do her harm?

6 A I was informed of that, yes. That's what I was told.

7 Q All right. Now, you were also asked about whether  
8 Mr. Stump benefited, I believe, from any of these counseling  
9 sessions or from the opportunities that -- or the treatment --  
10 I'm sorry. I believe the question was whether or not Mr. Stump  
11 benefited from any of the treatment alternatives that DHS  
12 attempted to make available. And I believe your answer was,  
13 sadly enough, no.

14 Now, isn't it a fact that during a good while, a good  
15 period of the time that Mr. Stump was legally in department  
16 custody, that he was on AWOL status?

17 A Yes.

18 Q And tell the Court, please, how many different times  
19 Mr. Stump was AWOL from department custody during the four  
20 years that he was in the department's custody.

21 MR. BALL: Objection. Beyond the scope of direct.

22 THE COURT: I don't remember a specific question, but  
23 I do remember the answer somewhere. You will be allowed to  
24 inquire. Overruled.

25 A Seven.

1 Q (By Mr. Zimmerman) Seven times. In fact, he was AWOL  
2 when the last hearing was scheduled on the delinquency  
3 petition, wasn't he?

4 A He was present at the May 18th delinquent adjudication  
5 hearing.

6 Q Right. And the June 23rd hearing?

7 A He was AWOL.

8 Q He was AWOL. And where was he AWOL from?

9 A The Hope House Shelter in Shawnee.

10 Q Okay. Isn't it true, Ms. Kephart, that Mr. Stump himself  
11 called you on the telephone and you told him to turn himself in  
12 at the time?

13 A Yes.

14 Q And what was his response to that?

15 A No, he wouldn't come in.

16 Q Okay. Now, then, Ms. Kephart, you were asked if you were  
17 thoroughly familiar with Mr. Stump's file and so forth. How  
18 many times has Mr. Stump been involved in incidents involving  
19 firearms in schools?

20 MR. BALL: Objection. Foundation.

21 THE COURT: You may answer, if you know.

22 A Twice.

23 Q (By Mr. Zimmerman) All right. And how many times before  
24 these killings has Mr. Stump been involved in incidents  
25 involving stolen automobiles?

1 MR. BALL: Objection. Beyond the scope of direct.

2 THE COURT: Overruled. Basically, you've asked her  
3 questions which were about his prior record. And I'm going to  
4 allow it.

5 If you know the answer. If you don't know, tell the  
6 lawyers that you don't know.

7 A That I know of --

8 Q (By Mr. Zimmerman) Yes, ma'am.

9 A -- twice.

10 Q All right. Now, you were asked, I believe, ma'am, if  
11 you've had occasion -- specifically, if you've had occasion not  
12 only to learn of the facts in Mr. Stump's file but also to  
13 become familiar with his personality. And I believe your  
14 answer to that question was yes.

15 A Yes.

16 Q All right. Now, since these killings, have you had an  
17 opportunity to visit with Mr. Stump?

18 A Yes.

19 Q Ms. Kephart, at any time since these killings has  
20 Mr. Stump indicated to you in any manner at all any remorse  
21 whatsoever for these killings?

22 MR. BALL: Objection, your Honor. That's completely  
23 beyond the scope of direct examination.

24 MR. ZIMMERMAN: May I respond, Judge?

25 THE COURT: Go ahead.

1           MR. ZIMMERMAN: Counsel inquired as to whether or not  
2 this witness has become familiar with his personality.  
3 Certainly one trait of his personality is whether or not he has  
4 shown remorse over something of this nature. I don't know why  
5 he asked the question about his personality and how familiar  
6 this witness is, but I think I'm entitled to inquire into any  
7 aspect of his personality about which this witness has  
8 knowledge.

9           MR. BALL: Judge, it's also completely irrelevant,  
10 because this isn't a sentencing hearing.

11           THE COURT: I'm going to sustain it on grounds of  
12 relevance. I don't see what it has to do with the four subject  
13 areas. But let me reread them.

14           Objection overruled. It goes as to No. 4. It is beyond  
15 the scope specifically. Rather than recall the witness, if  
16 you'll make your questions in the form of direct examination on  
17 that particular subject area.

18           MR. ZIMMERMAN: All right, your Honor.

19           THE COURT: In other words, adopt her as your witness  
20 at this point in time rather than recall her.

21           MR. ZIMMERMAN: Yes, sir.

22 Q       (By Mr. Zimmerman) Ms. Kephart, do you have an opinion --  
23 Well, let me rephrase it. Based upon your conversations with  
24 Mr. Stump since these killings, can you tell the Court whether  
25 Mr. Stump has exhibited any form of remorse about the killings?

1 A Based strictly on our conversations, I cannot.

2 THE COURT: Okay. Now, that was a yes or a no.

3 A Sorry. No.

4 Q (By Mr. Zimmerman) You can't tell the Court or you can?

5 A Oh, yes, I can.

6 Q Okay. And what is -- what were your observations, ma'am?

7 A That in our conversations, there was no mentioning of  
8 remorse.

9 Q All right. Now, then, Ms. Kephart, also based upon your  
10 conversations with Mr. Stump as well as your familiarity with  
11 his past history, do you have an opinion as to whether Joshua  
12 Stump constitutes a continuing threat to society if he were  
13 processed through the juvenile system?

14 MR. BALL: Objection, your Honor. Qualification of  
15 the witness.

16 THE COURT: Overruled.

17 A Would you ask me that again, please?

18 Q (By Mr. Zimmerman) Yes, ma'am. Based upon your  
19 conversations with Mr. Stump as well as your familiarity with  
20 his background and his file, do you have an opinion as to  
21 whether Mr. Stump would constitute a continuing threat to  
22 society if he were left within the juvenile system?

23 A That's --

24 THE COURT: Do you understand the question is not  
25 whether or not he will or won't but whether or not you have an

1 opinion? And he's not asking you what that opinion is.

2 A Yes, I have an opinion.

3 Q (By Mr. Zimmerman) Okay. Now, for the second part of the  
4 question, what is that opinion?

5 A That Joshua needs a great deal of treatment or he could be  
6 a continuing threat to society.

7 Q All right. Now, my question to you now, ma'am, is this:  
8 Other than those alternatives which DHS has pursued in the  
9 past, specifically the deprived adjudication, the consideration  
10 of an INT adjudication, and the attempt at a juvenile  
11 adjudication, and the treatment that flows from each one of  
12 those, what is left for DHS to offer Joshua Stump?

13 MR. BALL: Objection. Qualifications of the witness.

14 THE COURT: Sustained if you're moving to the area of  
15 what is available through the Office of Juvenile Affairs. But  
16 if you'll limit it to what she has available in Child Welfare,  
17 she may answer.

18 Q (By Mr. Zimmerman) What is left for Child Welfare to  
19 offer Joshua Stump at this point in time?

20 A Nothing.

21 MR. ZIMMERMAN: That's all I have of this witness.

22 Thank you, Judge.

23 THE COURT: Redirect.

24 - - -

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REDIRECT EXAMINATION1  
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BY MR. BALL:

Q Is Child Welfare set up to treat delinquent juveniles?

A No.

Q So in point of fact, there never was any treatment available for Joshua Stump's delinquency or alleged delinquency within your office, was there?

A Not within my office.

Q Counsel asked you whether or not Joshua Stump expressed remorse. Did you testify -- Excuse me. Let me back up. Have you ever advised Joshua Stump not to talk about the facts of this case without having a lawyer?

MR. ZIMMERMAN: Your Honor, I'm going to object. That's totally irrelevant to this proceeding. The Court has already decided that issue.

MR. BALL: It's very relevant, Judge, as to whether or not he's expressed remorse. She's told him not to talk.

THE COURT: Well, you're presuming that's what she's told him.

MR. BALL: Yes, your Honor. The question is relevant.

THE COURT: Objection overruled.

A Yes, I have.

Q (By Mr. Ball) Okay. And did he, in fact, at some point exercise that right to remain silent?

1 A Would you ask me that again?

2 Q Did he at some point exercise the right to remain silent?  
3 Have you ever seen him refuse to talk about this case?

4 A I did at one point.

5 Q Okay. And, ma'am, is it your understanding that Josh was  
6 not the shooter, in the first place, to be a person expressing  
7 remorse?

8 MR. ZIMMERMAN: Your Honor, I'm going to object to  
9 the form of that question.

10 THE COURT: Sustained.

11 Q (By Mr. Ball) Counsel asked you whether or not you had an  
12 opinion as to whether my client would constitute a continuing  
13 threat. Without having a determination as to whether or not  
14 he, in fact, did what he's charged with, is he a threat to  
15 society at this point? Or do we know?

16 A Based on what I do know of Joshua's previous activities  
17 over the last four years, I believe he is a threat.

18 Q And can you tell me a threat in what way? What level?  
19 How? How is he a threat?

20 A He has very little impulse control, if any. He has  
21 violent outbursts.

22 Q And what do you mean by that? Do you mean shouting? Or  
23 do you mean striking people?

24 A Striking things and --

25 Q Inanimate objects?

- 1 A Yeah. And he has been involved in numerous fights, the  
2 stolen car incidents.
- 3 Q Was anyone sent to the hospital as a result of these  
4 fights?
- 5 A Not to my knowledge.
- 6 Q Were any of these fights anything beyond typical  
7 school-yard fights?
- 8 A I don't know what the basis of them was. They were just  
9 fights that Joshua told me about after they had occurred.
- 10 Q So he told you about them?
- 11 A Yes. Breaking out windows with his fists. I believe he's  
12 a threat to himself. I believe he could be a threat to his  
13 family or anyone else who he perceived as a threat.
- 14 Q Counsel asked you whether or not Josh threatened to kill  
15 his father after his brother's death. Do you know anything  
16 about the alleged involvement of his father in his brother's  
17 death?
- 18 A I know what the police report said and I know what Josh  
19 told me.
- 20 Q Ma'am, are you aware of the fact that charges are pending  
21 in the State of Arkansas against Joshua Stump's father for the  
22 killing of Joshua Stump's brother?
- 23 A Yes.
- 24 Q And are you aware of whether or not Joshua Stump is aware  
25 of that?

1 A Yes. He is.

2 Q To your knowledge, has Joshua Stump ever acted on any of  
3 those -- on either one of those threats?

4 A To my knowledge, he has not.

5 Q So would it be fair to say he does have some impulse  
6 control?

7 A I suppose, yes.

8 MR. BALL: No further questions.

9 THE COURT: All right. You may step down.

10 MR. BALL: I call Cosby Clark.

11 THE COURT: Do you wish this witness to remain?

12 MR. ZIMMERMAN: I do not, Judge.

13 THE COURT: You're excused from attendance. Thank  
14 you.

15 (Witness excused.)

16 THE COURT: You'll have to act as your own bailiff.

17 (Mr. Ball exited and returned to the courtroom.)

18 MR. BALL: Judge, Mr. Clark is not in the hall.

19 We're making a call for him. Could we take a brief recess?

20 THE COURT: Call your next witness. We will take the  
21 ones that are here.

22 MR. BALL: I have no further witnesses on the motion,  
23 your Honor.

24 THE COURT: Okay. Then we'll take a short recess.

25 MR. BALL: Thank you.

1 (A brief recess was taken.)  
2 THE COURT: Back on the record after recess.  
3 Respondent present. And counsel calls last witness, Cosby  
4 Clark.  
5 (There was a pause in the proceedings.)  
6 THE CLERK: Mr. Clark, raise your right hand.  
7 (Witness sworn.)  
8 THE COURT: Have a seat, please.  
9 (Witness complied.)  
10 THE COURT: And, Counsel, before you begin, have you  
11 excused -- The witnesses that were excused, are they excused  
12 from the rule, those that have been excused from attendance?  
13 MR. BALL: Yes.  
14 THE COURT: Mr. Zimmerman?  
15 MR. ZIMMERMAN: Yes, sir.  
16 THE COURT: Okay. Thank you.  
17 COSBY CLARK  
18 called as a witness on behalf of the Defendant, after first  
19 being duly sworn, testified as follows:  
20 DIRECT EXAMINATION  
21 BY MR. BALL:  
22 Q Would you state your name, please.  
23 A Cosby Edward Clark, Jr.  
24 Q And, Mr. Clark, how are you employed?  
25 A I'm employed with the Lincoln County Juvenile Services

1 Unit.

2 Q And where were you employed -- You answered JSU?

3 A Yes. Yes, I did.

4 Q Okay. Have they undergone a name change?

5 A That will suffice.

6 Q Okay. It's good enough for me. Are you familiar with  
7 Joshua Stump?

8 A I have some familiarity with him, yes.

9 Q Okay. And could you tell me how it is that you're  
10 familiar with him?

11 A He first came to our attention in April of '94.

12 Q For what?

13 A It was reported by the Prague Police and the Prague  
14 schools that he was in possession of a weapon in and on school  
15 property.

16 Q And what happened as a result of this report?

17 A He was placed on a one-year deferred prosecution agreement  
18 and required to do 100 hours of community service.

19 Q Had Mr. Stump ever had any previous contacts with JSU?

20 A Not to my knowledge.

21 Q If he had had such prior contacts, would you have  
22 knowledge of that?

23 A More than likely.

24 Q Okay. Did you prepare a collection of all records  
25 regarding Joshua Stump in the course of your duties for this

1 case?

2 A Would you restate the question, please?

3 Q Did you make -- Pursuant -- Arising out of this case, did  
4 you make available to counsel Joshua Stump's complete juvenile  
5 record?

6 A Yes, sir, I did.

7 Q Did you perform that yourself?

8 A Yes.

9 Q If there had been any prior or other contacts with JSU,  
10 would you have been made aware of that in the course of doing  
11 that report?

12 A Yes.

13 Q Okay. How did Joshua's one-year deferred probation go?

14 A It, essentially, lasted two months, and at that time he  
15 violated the terms of his deferred prosecution agreement. And  
16 I asked or recommended to the district attorney that a petition  
17 be filed for that violation.

18 Q Was that done?

19 A Yes, it was accomplished.

20 Q And was Joshua Stump, in fact, declared a delinquent as a  
21 result of that case?

22 A No, sir, he was not.

23 Q Okay. Can you tell me why?

24 A The incident for which he is on trial now occurred prior  
25 to his adjudication date, and the district attorney dismissed

1 that petition.

2 Q Okay. When was the original petition filed in this  
3 juvenile matter?

4 A I do not recall that information. It is in the file  
5 that's available to you.

6 Q Does September '94 sound about right?

7 A Yes.

8 Q And was Joshua Stump in court between September of 1994  
9 and July 15, 1995?

10 A He did make an initial appearance on that petition.

11 Q Have you had any contact with Child Welfare regarding  
12 Joshua Stump?

13 A Yes. I've had some.

14 Q What did they -- Did they make any recommendations to you  
15 on Josh?

16 A What situation?

17 Q Well, did they tell you what they thought he needed?

18 A When?

19 Q I suppose, prior to filing the petition or after filing  
20 the petition. Did Child Welfare express concerns to you about  
21 their ability to meaningfully give treatment to Joshua Stump?

22 A Child Welfare and JSU coordinated throughout most of the  
23 time frames that you're talking about in order to provide the  
24 most effective services we could.

25 Q Was Joshua Stump ever held in juvenile detention?

1 A Not in this state.

2 Q Does this state have juvenile detention facilities?

3 A Yes, we do.

4 Q Did JSU take any action to intervene in Joshua Stump's  
5 life between September of 1994 and July of 1995?

6 A I don't know the exact time frames. But when he was  
7 available and not in some other state or AWOL, we worked and  
8 visited with him.

9 Q Did you take any kind of action to intervene in his  
10 life?

11 MR. ZIMMERMAN: Your Honor, objection. Asked and  
12 answered.

13 THE COURT: Sustained.

14 Q (By Mr. Ball) So basically, you just talked with him a  
15 few times; is that it?

16 A That could be one way of phrasing that, yes.

17 Q Okay. You didn't lock him up?

18 A No.

19 Q Did the system give up on Joshua Stump?

20 A No.

21 Q What does the department have to show that they did not?

22 A We offered to him every available service that he was  
23 eligible for at his level of involvement.

24 Q I'm confused a little bit by your answer. He was, in  
25 fact, eligible for detention and adjudication as a deprived

1 child, wasn't he?

2 A I can't answer to the deprived situation.

3 Q I said "deprived"; I meant "delinquent." He was eligible  
4 for that, wasn't he?

5 A The --

6 Q It's a yes-or-no question.

7 A Beg your pardon?

8 Q That's a yes-or-no question. Was he eligible for  
9 detention and to be adjudicated a delinquent child, given the  
10 level of --

11 THE COURT: That's a two-part question. One at a  
12 time. First of all, Mr. Ball, which one would you like first?

13 Q (By Mr. Ball) Was he eligible for detention?

14 A No.

15 Q Why not?

16 A He did not meet the criteria established by Title 10.

17 Q Title 10 doesn't allow for the detention of runaways?

18 A There's some possibility. And I think, if you'll recall,  
19 we -- you were involved in some of those discussions with the  
20 district attorney.

21 Q And, in fact, nothing was done to pursue punitive action  
22 or rehabilitative action in Joshua Stump's case beyond just  
23 talking to him about it, was there?

24 A No.

25 MR. BALL: No further questions.

1 THE COURT: Mr. Zimmerman.

2 CROSS-EXAMINATION

3 BY MR. ZIMMERMAN:

4 Q Mr. Clark, you testified that Mr. Stump first came to  
5 JSU's attention in April of '94 for possessing a weapon on  
6 school property?

7 A Yes.

8 Q What kind of weapon was that, sir?

9 A I don't recall the exact weapon. It was a pistol.

10 Q A pistol?

11 A Yes.

12 Q Okay. And he was placed on a deferred prosecution  
13 agreement, which he violated some two months into it; is that  
14 correct?

15 A Yes.

16 Q And is it not a fact, sir, that the reason Mr. Stump was  
17 never adjudicated delinquent is because between the time of his  
18 initial appearance and the time of the adjudication hearing  
19 these crimes were committed?

20 A Yes.

21 MR. BALL: Objection, your Honor.

22 THE COURT: What's your objection?

23 MR. BALL: There were numerous dates said in this.

24 And the way the question -- It's overly broad. I object to the  
25 form of the question.

1           THE COURT: Overruled. You can do redirect and  
2 further qualify it, if you choose, or explain it.

3 Q    (By Mr. Zimmerman) Well, let me just ask you this: On  
4 the date of Mr. Stump's adjudication hearing, was he here?

5 A    No, sir.

6 Q    Where was he, Mr. Clark?

7 A    He has been AWOL a considerable amount of the time. And  
8 he was either in Arkansas or he was in Colorado or he may have  
9 even been in Michigan, the Illinois area.

10 Q   But in any case, to your knowledge, he was outside of the  
11 state of Oklahoma; is that correct?

12 A    Yes. Yes.

13 Q    All right. Did he have your permission to be outside of  
14 the state of Oklahoma?

15 A    No, sir.

16 Q    Did he ever ask you before he left whether he had your  
17 permission to leave the state?

18 A    No, sir.

19 Q    Okay. Now, defense counsel asked you if JSU ever  
20 attempted to intervene in his life between September of '94 and  
21 July 15th of '95. You, at least, were instrumental in  
22 obtaining a pickup order for Mr. Stump, were you not?

23 A    Yes. And I was in consult with Child Welfare.

24 Q    Okay. And was that during the time period between  
25 September of '94 and July of '95?

1 A Yes. Yes.

2 Q Okay. Now, you've also testified that Mr. Stump was  
3 offered every available service by your agency at each of his  
4 different levels of involvement. Given Mr. Stump's past  
5 history and his -- I believe the fact that he'll be 18 in  
6 January, is there anything that your agency has left to offer  
7 Mr. Stump which hasn't already been offered by way of  
8 treatment?

9 A For his existing situation, or should he be adjudicated a  
10 delinquent child for this offense?

11 Q Well, if he were adjudicated a delinquent child.

12 A There is the Rader Treatment Facility, which, if ordered  
13 by the Court, can work with him until the age of 19.

14 Q And he would be locked in the Rader Treatment Facility; is  
15 that correct?

16 A Yes. It's a secure facility.

17 Q Okay. And what if the Rader Treatment Facility doesn't  
18 have any beds, Mr. Clark?

19 MR. BALL: Objection, your Honor. Calls for  
20 speculation.

21 THE COURT: Overruled. I'll take judicial knowledge  
22 that it often times does not have sufficient beds.

23 A He would be detained in a detention center until a bed was  
24 available for him.

25 Q (By Mr. Zimmerman) Okay. And is that the only --

1 basically, the only treatment option left with Mr. Stump?

2 A Yes.

3 Q Detention and continuous counseling; is that right?

4 A And at the Rader Treatment Center or some secure facility,  
5 yeah.

6 Q Okay. I take it by that, then, that you mean releasing  
7 Mr. Stump to a parent or foster parents or something of this  
8 nature is no longer an option in your opinion.

9 MR. BALL: Objection. Beyond the scope of direct.

10 THE COURT: Just a minute.

11 Overruled. It goes to Item No. 4, prospects for adequate  
12 protection of the public.

13 A I would not recommend a foster care situation.

14 Q (By Mr. Zimmerman) Would you recommend any situation  
15 other than detention?

16 A No, sir.

17 MR. ZIMMERMAN: That's all. Thank you, your Honor.

18 THE COURT: Redirect.

19 REDIRECT EXAMINATION

20 BY MR. BALL:

21 Q Mr. Clark, in point of fact, Joshua Stump was eligible to  
22 be adjudicated a delinquent child; is that right?

23 A Yes.

24 Q And under the law, it is possible that he could be  
25 confined at Rader until he reaches his 19th birthday; is that

1 correct?

2 A Yes.

3 Q Could Joshua Stump have been held in detention prior to  
4 June 15, 1995, on this case JF-94-46? Could he have been  
5 detained?

6 A That's the current case?

7 Q I'm referring to the juvenile delinquent case. Could he  
8 have been detained on that case?

9 A It's, theoretically, possible but not probable.

10 Q But it is allowable under the law?

11 A As I understand it.

12 Q And it was not attempted, was it? Either it was or it  
13 wasn't.

14 A It did not go to court.

15 Q In point of fact, the system gave up on Josh Stump.

16 MR. ZIMMERMAN: Your Honor, I object to the form of  
17 the question.

18 THE COURT: Sustained. It's argumentative.

19 MR. BALL: No further questions, your Honor.

20 MR. ZIMMERMAN: May I inquire on one brief question  
21 of this witness, Judge?

22 THE COURT: Tell me what it is, and I'll see.

23 MR. ZIMMERMAN: Well, to clarify the record, your  
24 Honor, my question simply would be: Is it not a fact that the  
25 reason that he was not adjudicated and was not detained because

1 he was AWOL up until the time these crimes were committed and  
2 the OSBI arrested him?

3 THE COURT: I'm not going to allow you to reopen.  
4 You've covered that area before. You can recall him as your  
5 witness, if you choose, later. But it's beyond --

6 MR. ZIMMERMAN: Yes, Judge.

7 MR. BALL: The movant rests.

8 THE COURT: You may step down. You're excused from  
9 attendance unless one of these two lawyers tells me now you  
10 need to remain.

11 Mr. Zimmerman?

12 MR. ZIMMERMAN: No, your Honor.

13 THE COURT: Mr. Ball?

14 MR. BALL: No.

15 THE COURT: You're excused. Thank you. That means  
16 you can also remain in the courtroom.

17 (Witness excused.)

18 THE COURT: You rest on the motion?

19 MR. BALL: Rest on the motion.

20 THE COURT: All right. Your evidence on the motion.

21 MR. ZIMMERMAN: Your Honor, I have no witnesses to  
22 call at this time. I would simply ask that the Court go ahead  
23 and take judicial notice of the testimony which occurred at the  
24 preliminary hearing phase of this matter, and we'd incorporate  
25 the same into the motion for certification portion of the

1 hearing.

2 THE COURT: All right. Do you wish to make a record  
3 on that?

4 MR. BALL: May I have a moment, your Honor?

5 THE COURT: Yes.

6 (Mr. Ball conferred with the defendant.)

7 MR. BALL: Judge, I don't think that's proper. And  
8 we're going to object to counsel proceeding in that fashion.

9 THE COURT: Objection overruled. I'm going to  
10 consider the evidence that has been adduced to this point  
11 throughout all of these proceedings.

12 And did you say you rest, Mr. Zimmerman?

13 MR. ZIMMERMAN: Yes. I'm sorry.

14 THE COURT: Okay. Argument.

15 It's your motion. You have the burden.

16 MR. BALL: Your Honor, what, in fact, has happened in  
17 this case is that Joshua Stump was abandoned by his mother, was  
18 subsequently abandoned by his grandmother, and has now been  
19 abandoned by the state. And what the state seeks to do here in  
20 this cause is to be rewarded for having given up on Joshua  
21 Stump.

22 And I would urge the Court that it's my understanding,  
23 under the laws of this state, that even though Rader does get  
24 clogged, that's not supposed to be an issue in making our  
25 determination. The fact of the matter is, under the laws of

1 this state, he was eligible for detention. He could have been  
2 held. He was in court in May. He could have been held.

3 We could have had an adjudication that he was a delinquent  
4 child. But the state chose not to offer treatment to him,  
5 because it was just too difficult. It was too much trouble.  
6 They didn't want to bother with it. And now they want to send  
7 him down the river. They should not be rewarded for their  
8 dilatory efforts.

9 MR. ZIMMERMAN: Court please, I believe the Court has  
10 before it, your Honor, evidence that this particular crime was  
11 committed at least in a violent and premeditated manner if not  
12 aggressive and willful. And the Court is all too painfully  
13 aware of the fact that this offense was against persons,  
14 certainly more than one in this case.

15 And insofar as Mr. Stump's previous record and past  
16 history is concerned, it is one that, while sad, is  
17 illustrative of a young man who when offered alternatives  
18 simply didn't stick around long enough to take advantage of  
19 them. He was AWOL some seven-odd times, according to the one  
20 lady's testimony here today. That history is also interspersed  
21 with crimes against property and also crimes involving  
22 firearms.

23 The only other element, as I understand the law, for the  
24 Court to consider in a reserve certification situation is  
25 whether or not the public will be adequately protected if

1 Mr. Stump is processed through the juvenile system. To that we  
2 would simply say that that probably -- no, not probably, that  
3 the juvenile system, for all the resources it has available,  
4 has virtually exhausted itself on Mr. Stump.

5 Both of these witnesses, one of them testified that in her  
6 opinion, based upon his past history and what she knows of him,  
7 he would clearly constitute a continuing threat to society  
8 unless he were detained and locked up. And that is simply one  
9 element for the Court to consider, Judge.

10 And I beg the Court's indulgence of having reiterated  
11 these four factors. But I know that those are the things that  
12 the Court does have to address, at least if not specifically  
13 each one of them in detail, then certainly be guided by those  
14 four. None of them are mutually exclusive.

15 In this particular case, the state's position is very  
16 simple: This particular offense was committed in an adult  
17 manner by someone who but for approximately three months' time  
18 would be 18 years of age right now, or will be in January. One  
19 person is dead. One person has become a single amputee as a  
20 consequence of Mr. Stump's conduct. This was committed over a  
21 set of car keys. It is not our belief that the public will be  
22 adequately protected if Mr. Stump is processed through the  
23 juvenile system.

24 Lastly, your Honor, and for the record, I don't believe  
25 that there is anyone in this courtroom any more disappointed or

1 heartsick over the fact that we are here on this case than  
2 Mr. Clark and Ms. Kephart and myself. Be that as it may, the  
3 reality is that before the state had an opportunity to fully  
4 try to extricate Mr. Stump from the problems that he was  
5 involved in, he himself voluntarily and willfully left the  
6 jurisdiction of this Court for parts unknown before the state  
7 could get to him. And in that interim, these murders  
8 resulted.

9 As a result of his own acts he's sitting in this  
10 courtroom, not as a result of his mother, grandmother, or the  
11 State of Oklahoma. And we'd ask that the Court deny their  
12 motion and bind him over to stand trial for First-Degree  
13 Murder.

14 THE COURT: Mr. Ball.

15 MR. BALL: Judge, if he was AWOL seven times, that  
16 means he was picked up six. They had him. They didn't do  
17 anything with him. And in point of fact, I don't understand  
18 what the district attorney is talking about about crimes  
19 against property. I wasn't aware that there was any evidence  
20 introduced that he had done anything like that or crimes  
21 against other people.

22 And as far as this case is concerned, I can assure the  
23 Court that if an adjudicated delinquent -- should he be  
24 adjudicated delinquent in this case and convicted of having  
25 committed the offense of First-Degree Murder, that they can

1 find some way to deal with him within the juvenile justice  
2 system. I mean, they've got to, or else there isn't a juvenile  
3 justice system. And no one has come into court to suggest  
4 that.

5 In point of fact, I stand on my previous argument. They  
6 had the chance to do something with him, they chose not to do  
7 so, and now they want to shuck the blame all off onto this  
8 boy.

9 THE COURT: Victim Moucka's testimony was not only  
10 spellbinding, it's compelling. If this defendant committed the  
11 crime as Moucka said, there is probably no period of time of  
12 confinement which will protect the public from him. I've  
13 considered all four grounds in the statute in addition to this  
14 last particular ground I spoke to specifically. And the motion  
15 for certification as a child is denied.

16 Are you ready to proceed?

17 MR. BALL: Yes, your Honor. I would call Kelly  
18 George. I believe he's sitting right out here.

19 (There was a pause in the proceedings.)

20 THE COURT: Be sworn by the clerk, please, then have  
21 a seat in the witness chair.

22 (Witness sworn.)

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KELLY GEORGE

called as a witness on behalf of the Defendant, after first being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BALL:

Q State your name for the record, please.

A Kelly George.

Q And, Mr. George, how are you employed?

A I'm a lawyer for Abel, Musser, Sokolosky & Associates in Oklahoma City.

Q Okay. And how long have you been employed in that capacity?

A I've been there about a year and a half. I think my first day was April of '94.

Q And are you acquainted with Hubert Moucka?

A Yes.

Q Have you been retained to represent Mr. Moucka in a civil action?

A I have.

Q Okay. And are you appearing here today under force of a subpoena duces tecum?

A Yes. I wouldn't be here otherwise.

Q I don't doubt that, Counsel. Did you bring any of the papers with you that I have requested?

A Right. The subpoena asked for documents that might be --

1 I forget just exactly how the subpoena read. But I brought  
2 what I thought were responsive documents. I've got two.

3 MR. BALL: May I approach the witness, your Honor?

4 THE COURT: Why? You ask some more questions first.  
5 I don't know if he's going to claim privilege or not.

6 Q (By Mr. Ball) What are the documents you have there in  
7 front of you?

8 A The first document is a letter that I prepared -- I  
9 dictated, and my legal assistant typed it up. And it was sent  
10 to an investigator that I retained to do some work on the civil  
11 case.

12 The other document is a memo to the file, which is -- I  
13 dictate into a tape recorder the contents of conversations  
14 sometimes or just thoughts that I have. And that's what this  
15 is, a memo to the file after a conversation with someone at the  
16 D.A.'s office.

17 Those are the only two documents that I thought were  
18 responsive to the subpoena.

19 Q All right.

20 MR. BALL: Your Honor, I'd offer Defendant's -- I'm  
21 not sure what number we're up to.

22 THE COURT: You have none.

23 MR. BALL: -- 1 and 2.

24 MR. ZIMMERMAN: Judge, may I voir dire this witness  
25 for a moment, please?

1 THE COURT: Yes. On those two exhibits.

2 MR. ZIMMERMAN: Yes, sir. I understand.

3 THE COURT: And I don't know that you need to inspect  
4 them either until we get a determination of what they really  
5 are, as far as whether they're communications with his client  
6 or work product or what.

7 VOIR DIRE EXAMINATION

8 BY MR. ZIMMERMAN:

9 Q Mr. George, regarding the first document, the letter from  
10 you, I believe, to one of your investigators --

11 A Yes.

12 Q -- does that contain material in it which resulted from a  
13 communication between you and your client?

14 A I don't believe that it does. In any event, the letter  
15 was written to a third party. And I don't believe there is any  
16 privilege which attaches to this letter, and I'm not claiming  
17 privilege.

18 Q Does it contain any statements or ascribe any statements  
19 in there of persons other than you?

20 A There is a statement in here, a conclusory statement in  
21 this letter that I had to have information from someone to have  
22 written, to have made this statement.

23 Q And that person is not here in court today, are they?

24 A I don't know who the person is. It's not in my memory  
25 where I got the information that went into this letter.

1 There's one sentence in the letter that is conclusory in  
2 nature. From whom the information came, I have no way of  
3 knowing.

4 Q All right. And regarding the second matter, the memo to  
5 the file following a conversation with someone in the district  
6 attorney's office, does that letter, likewise, have in it  
7 material which would be ascribed to someone other than  
8 yourself?

9 A I don't believe it does. And as to the memo to the file,  
10 there may be something in it that would arguably be work  
11 product. But I'm not going to assert any privilege of any kind  
12 to this memorandum either.

13 THE COURT: As far as I'm concerned, then, now both  
14 counsel can look at them. I was only trying to protect the  
15 lawyer-client relationship.

16 A I appreciate that.

17 MR. ZIMMERMAN: As to the letter, the first  
18 instrument, your Honor, it contains a conclusory statement  
19 that's attributable to someone other than the declarant. We  
20 would object to its admissibility on the basis of it being  
21 hearsay.

22 As to the second one, I don't know, because I haven't seen  
23 it yet.

24 THE COURT: You're both welcome to look at them.  
25 And then we'll hear your argument as to why they're

1 relevant.

2 For the record, the letter to the investigator will be  
3 marked by the reporter in a moment as Defendant's 1, the memo  
4 to the file as Defendant's 2.

5 MR. ZIMMERMAN: We would, likewise, have a similar  
6 objection to the memo as containing hearsay, your Honor.

7 THE COURT: Mr. Ball.

8 MR. BALL: Your Honor, I believe that these are  
9 certainly admissible for the purposes of impeaching the  
10 testimony of Mr. Moucka. And they also -- It certainly can't  
11 be hearsay by counsel, because he's here and subject to  
12 cross-examination.

13 And if the statements are attributable to Mr. Moucka, then  
14 they're admissible here for me to have the opportunity to rebut  
15 the testimony he previously had offered.

16 THE COURT: With respect to your direct -- And I  
17 haven't seen the contents. But with respect to directly  
18 impeaching Mr. Moucka, how?

19 MR. BALL: Well, it depends on who the remarks are  
20 attributable to. If I understood --

21 THE COURT: Okay. And he doesn't remember.

22 MR. BALL: Okay.

23 THE COURT: So how? I'm willing to listen to the  
24 argument as to how it might --

25 MR. BALL: Can I have a moment, your Honor?

1 THE COURT: Other than he's hired a lawyer to sue  
2 somebody. And it may say who he's decided to sue, I don't  
3 know. And he may not have done that. I thought that's what he  
4 said.

5 MR. BALL: Judge, this could be an inconsistent  
6 statement attributable to Moucka.

7 THE COURT: Let me see it.

8 (Defendant's Exhibits 1 and 2 marked for  
9 identification.)

10 THE COURT: Number 2 denied admission. Number 1  
11 denied admission. Not relevant to preliminary hearing.

12 Is it agreeable with the district attorney and with  
13 defense counsel if copies are made of the originals, and the  
14 originals -- copies be retained by the court reporter, and the  
15 originals sent back to counsel for his file?

16 MR. ZIMMERMAN: Yes, your Honor.

17 MR. BALL: Yes, your Honor

18 THE COURT: Okay. When you're excused, if you will  
19 take those with you across the hall to the clerk's office and  
20 tell her we need copies. And she'll make -- And ask her to  
21 make three copies. Then if you would bring those back in here,  
22 I'd appreciate it. And you can keep your originals in your  
23 file.

24 A I'll do that, your Honor.

25 THE COURT: Thank you.

1 Go ahead.

2 DIRECT EXAMINATION (Continued)

3 BY MR. BALL:

4 Q Mr. George, has anyone ever told you that Joshua Stump was  
5 the shooter in this case?

6 MR. ZIMMERMAN: Objection, your Honor. Whatever  
7 someone may have told him is hearsay.

8 THE COURT: Sustained.

9 Q (By Mr. Ball) Did Hubert Moucka tell you that Joshua  
10 Stump was the shooter?

11 MR. ZIMMERMAN: Same objection, Judge. Mr. Moucka is  
12 here to be cross-examined.

13 MR. BALL: Admissible as an inconsistent statement,  
14 your Honor.

15 THE COURT: If he said that, yes. Overruled.

16 A Did Mr. Moucka tell me that Joshua Stump was the shooter?

17 Q (By Mr. Ball) Yes.

18 A I have no memory of him telling me that.

19 Q Okay. And I don't know if I asked you this earlier: Is  
20 there a possible civil suit for the recovery of monetary  
21 damages arising out of this case?

22 MR. ZIMMERMAN: Objection. Irrelevant.

23 THE COURT: Overruled. Goes to motive of the  
24 witness. Not this witness, but the previous witness. And not  
25 the previous witness, Mr. Moucka. I'll get it right.

1 A Yes, there is a civil suit.

2 Q (By Mr. Ball) And would you view that, in your  
3 professional experience, as being a relevant and important  
4 point for counsel to know as this civil suit is being  
5 prosecuted?

6 MR. ZIMMERMAN: Objection. That has no relevance to  
7 this particular proceeding, your Honor.

8 THE COURT: Sustained. It doesn't tend to show  
9 whether or not a crime was committed or whether or not there's  
10 probable cause.

11 Q (By Mr. Ball) Did Hubert Moucka ever describe the shooter  
12 to you?

13 A Mr. Moucka described in general terms the two individuals  
14 just by saying that they were two young kids. There were no --  
15 There was no description that differentiated one from the  
16 other.

17 MR. BALL: No further questions.

18 THE COURT: Cross by Mr. Zimmerman.

19 MR. ZIMMERMAN: None, your Honor.

20 THE COURT: No questions.

21 The witness is excused from attendance, provided you go  
22 ahead and do what I asked you to earlier. Thank you. And I  
23 appreciate that. You're not required to do it. I just -- It  
24 will help us along.

25 A Thank you, Judge.

1 THE COURT: Thank you, sir.  
2 (Witness excused.)  
3 THE COURT: Defense's next.  
4 MR. BALL: I would call Hubert Moucka.  
5 THE COURT: You'll have to be your own bailiff  
6 again.  
7 (There was a pause in the proceedings.)  
8 THE COURT: Please be sworn by the clerk. She's  
9 right over here. If you'll face her and raise your hand,  
10 please.  
11 (Witness sworn.)  
12 THE COURT: Have a seat right up here, please.  
13 (Witness complied.)  
14 THE COURT: Your witness, Mr. Ball.  
15 HUBERT MOUCKA  
16 called as a witness on behalf of the Defendant after first  
17 being duly sworn, testified as follows:  
18 DIRECT EXAMINATION  
19 BY MR. BALL:  
20 Q Would you state your name, please.  
21 A Hubert Moucka.  
22 Q And, Mr. Moucka, have you testified previously in this  
23 cause?  
24 A Yes.  
25 Q And did you do so under oath?

- 1 A Yes.
- 2 Q Were all the answers you gave true and correct?
- 3 A Yes.
- 4 Q Now, back when we last conducted this hearing, I believe  
5 you testified that Kitty worked at a church. Is that accurate?
- 6 A A cook at a church.
- 7 Q Okay. And I believe you also told me that Kitty had asked  
8 you to show her how to use a firearm. Is that right?
- 9 A Uh-huh.
- 10 Q Did she not know how to handle a firearm?
- 11 A No.
- 12 Q Now, she was your fiancée; is that right?
- 13 A Right.
- 14 Q Had you-all set a wedding date yet?
- 15 A No.
- 16 Q Now, prior to your testimony at the last hearing, did  
17 anyone tell you how to testify or answer these questions?
- 18 A No.
- 19 Q The D.A. didn't do that?
- 20 A No.
- 21 Q Nobody else did that?
- 22 A No.
- 23 Q Have you ever served in the military?
- 24 A Yes.
- 25 Q Are you familiar with the rank of master sergeant?

1 A Yes.

2 Q Is that what's known as a career rank?

3 A Well, yes, I would think so.

4 Q Do you have to be in the military for quite some time to  
5 attain that rank?

6 A Yes.

7 Q And is master sergeant ever abbreviated as "MSGT" by the  
8 military?

9 A I don't remember.

10 MR. ZIMMERMAN: Your Honor, at this time I'd  
11 interpose an objection. I fail to see the relevance of what  
12 the rank of master sergeant is --

13 MR. BALL: I'll get there, Judge.

14 THE COURT: Tell me what you're doing now.

15 MR. BALL: On the next question, I'll be there.

16 THE COURT: Okay. You've got his last answer.

17 Q (By Mr. Ball) Now, the coroner's report says -- Which has  
18 been admitted into evidence -- that Ms. Knight's occupation was  
19 retired military. How come you didn't tell us that?

20 MR. ZIMMERMAN: Your Honor, I object. Counsel is  
21 badgering the witness. That is the most preposterous,  
22 irrelevant question --

23 THE COURT: Sustained. It's argumentative. The form  
24 of the question was argumentative.

25 MR. BALL: May I approach the witness, your Honor?

1 THE COURT: Sure.

2 Q (By Mr. Ball) Have you ever seen this before, Mr. Moucka?

3 A No.

4 Q Now, I'm pointing at a photocopy of some type of  
5 identification card; is that correct?

6 A I would assume. I don't know.

7 Q Is that what it appears to be?

8 A Yes.

9 Q And is there a photograph on that identification card?

10 A Is there a photograph there?

11 Q Yes.

12 A Yes.

13 Q And are you able to read the name down here on it?

14 THE COURT: Don't read it to us. Just tell us  
15 whether you're able to or not.

16 A No. I see "MSGT" is all I can see.

17 Q (By Mr. Ball) Can you see "K-n-i-g-h-t" right there?

18 THE COURT: Mr. Ball, where are you headed? He says  
19 he doesn't recognize it. If you're going to offer it, you get  
20 some witness that does and then offer it. Or if you can tell  
21 me where you're headed with it and I'll let you reopen on it.  
22 I don't see the point.

23 Q (By Mr. Ball) Does that appear to be Kitty's Knight -- or  
24 Kitty's picture on that identification card?

25 A No.

1 Q It doesn't?

2 A Not to me.

3 MR. ZIMMERMAN: Your Honor, may I see what it is  
4 we're referring to, otherwise have it admitted into evidence,  
5 one or the other?

6 MR. BALL: Right here, Counsel. I got it from you.

7 Q (By Mr. Ball) So if I told you that Kitty Knight was a  
8 retired military master sergeant, would this come as a complete  
9 surprise --

10 MR. BALL: Please.

11 THE COURT: Any more outbursts -- That's twice. The  
12 third time, you're all going outside. Be quiet.

13 Q (By Mr. Ball) Would that come as a surprise to you?

14 A Yes.

15 MR. ZIMMERMAN: Objection. Irrelevant.

16 THE COURT: Sustained.

17 You need not answer.

18 Answer stricken.

19 Q (By Mr. Ball) Now, you previously --

20 THE COURT: And let me explain. It was as to the  
21 form of the question, not necessarily its content. But you  
22 started that with "if I told you" so and so.

23 Q (By Mr. Ball) Okay. Was Kitty Knight ever in the  
24 military?

25 A No, not to my knowledge.

- 1 Q Now, you previously testified that you liked to work on  
2 cars, didn't you?
- 3 A Uh-huh.
- 4 Q Okay. Do you usually wear glasses?
- 5 A Yes.
- 6 Q Okay. Do you recall talking to the Oklahoma State Bureau  
7 of Investigation about this case?
- 8 A Yes.
- 9 Q Do you remember how many times you talked to them?
- 10 A Twice, I think.
- 11 Q Do you recall whether or not you performed some type of a  
12 photo lineup identification for the OSBI?
- 13 A No.
- 14 Q You don't recall doing that?
- 15 A No.
- 16 Q Do you remember telling the OSBI that you weren't wearing  
17 your glasses when you went out with the boys that night?
- 18 A No.
- 19 Q You don't remember telling them that?
- 20 A No.
- 21 Q Do you remember -- I'm asking you now. Do you remember  
22 whether or not you were wearing your glasses when you went out  
23 with the boys that night?
- 24 A Do I remember?
- 25 Q Yes.

- 1 A I don't remember.
- 2 Q Do you remember whether or not you got anything out of the  
3 pickup that night?
- 4 A Yes.
- 5 Q What did you get out of the pickup?
- 6 A It was a quart of transmission fluid.
- 7 Q And what were you looking for when you pulled that quart  
8 of transmission fluid out of the pickup?
- 9 A A quart of oil.
- 10 Q Okay. And that's why you had to go to the barn; is that  
11 right --
- 12 A Uh-huh.
- 13 Q -- to find the oil?
- 14 A Yes.
- 15 Q Do you remember telling the OSBI about that?
- 16 A Yes.
- 17 Q Do you remember telling the OSBI you were not able to read  
18 that quart of -- that quart of liquid in your hands because you  
19 didn't have your glasses on that evening?
- 20 A I don't remember. I could have.
- 21 Q Could have. Now, you previously testified that you  
22 distinguished these two boys by the length of their hair,  
23 didn't you?
- 24 A Yes.
- 25 Q Were you aware that less than ten minutes prior to your

1 first encounter with these boys that they were seen by someone  
2 else wearing bandannas on their head?

3 A No.

4 MR. ZIMMERMAN: Your Honor, I'm going to object to  
5 that question. There's been absolutely no -- That question  
6 assumes facts not in evidence, at least that I recall.

7 THE COURT: Sustained.

8 Q (By Mr. Ball) Well, did anyone tell you that the boys  
9 were wearing bandannas that night?

10 A No.

11 Q Were they wearing bandannas when you saw them?

12 A No.

13 Q So if they'd been wearing them earlier, they must have  
14 taken them off right before you -- or before you saw them; is  
15 that right?

16 A If they had them on, I assume that's what they done.

17 Q Have you talked with anybody about the injuries sustained  
18 by Robert Anderson?

19 A Yes.

20 Q Okay. And do you know how many injuries he received?

21 A I don't understand the question.

22 Q How many times was he shot with the gun?

23 A How many times he shot the gun?

24 Q How many times was he shot with a gun?

25 A Oh. I don't know.

1 Q You don't know?

2 A No.

3 Q Do you know whether or not Joshua Stump was shot with a  
4 gun?

5 A No.

6 Q Does that mean, no, you don't know or, no, he wasn't shot  
7 with a gun?

8 A No, I didn't know. No.

9 Q Okay. Do you have an attorney that you've hired in a  
10 civil suit?

11 A Yes.

12 Q And did you know that he contacted me within two weeks of  
13 the shooting?

14 A No.

15 Q Okay. So he didn't tell you anything about that?

16 A (Witness shook head.)

17 Q Did he tell you anything about any conversations with me  
18 prior to preliminary hearing?

19 MR. ZIMMERMAN: Your Honor, I object.

20 A No.

21 MR. ZIMMERMAN: It's irrelevant, any conversation  
22 Mr. Ball may have had with the attorney.

23 THE COURT: Sustained, Mr. Ball, unless you can show  
24 some relevance. And his answer was no, he doesn't recall  
25 anyway.

1           And while I'm talking, I'm going to reverse my ruling on  
2 the bandanna question. I recall now that there was a state's  
3 witness that said the boys were wearing rags.

4           MR. BALL: Thank you, your Honor.

5           THE COURT: If the state has a different objection  
6 when the question is raised again, we'll reconsider. But there  
7 was a fact in evidence.

8 Q       (By Mr. Ball) Did you ever tell your attorney who the  
9 shooter was?

10          MR. ZIMMERMAN: Objection. It calls for privileged  
11 communication with his attorney.

12          MR. BALL: He's not the proper party to raise the  
13 privilege, your Honor.

14          MR. ZIMMERMAN: Well, if the client can't, who can,  
15 Judge?

16          THE COURT: Objection overruled. Mr. Ball is  
17 correct. The client hasn't raised it.

18 Q       (By Mr. Ball) Did you tell your attorney who did the  
19 shooting?

20 A       No.

21 Q       So you didn't tell him that Joshua Stump did the shooting?

22 A       No.

23 Q       Why?

24 A       I don't remember him asking.

25 Q       Did you think that might be an important point in the

1 civil lawsuit to tell him who shot you?  
2 A He didn't ask me, so I didn't tell him.  
3 Q Did you have any discussions with the district attorney  
4 about testifying, prior to the preliminary hearing the last --  
5 last time we held it?  
6 A Would you repeat the question?  
7 Q Did you have any discussions with the district attorney  
8 about testifying, prior to our last preliminary hearing?  
9 THE COURT: And let me interrupt. When he says  
10 "district attorney," he probably also means assistants. And  
11 then --  
12 Q (By Mr. Ball) The district attorney's office.  
13 THE COURT: Or do you mean the district attorney  
14 himself?  
15 MR. BALL: The district attorney or his office.  
16 THE COURT: Okay. Do you understand the question  
17 now?  
18 A Yes.  
19 THE COURT: Okay. He's referring to more than the  
20 one attorney sitting over here right now.  
21 A Now, on discussion, does he -- does he mean, did we --  
22 THE COURT: Did you talk about the case?  
23 A Very little, yeah.  
24 Q (By Mr. Ball) Did they ever show you a copy of what's  
25 known as a felony information in this case?

- 1 A No.
- 2 Q They didn't show you the charges against this boy over  
3 here?
- 4 A I don't remember them showing me.
- 5 Q And did they talk with you at all about what happened on  
6 July 15th?
- 7 A Very little, yes. Yeah.
- 8 Q Did you tell them that Joshua Stump was the shooter?
- 9 A I don't remember.
- 10 Q Do you think that they might would recall something like  
11 that, might have noticed something like that?
- 12 A I don't recall.
- 13 Q You couldn't see those boys that evening, could you,  
14 Mr. Moucka?
- 15 A I seen the one that come in the door.
- 16 Q But you couldn't see -- You couldn't identify him if he  
17 was here right now, could you?
- 18 A I could by his long hair.
- 19 Q That's presuming he wasn't wearing a bandanna; is that  
20 right?
- 21 A I don't know anything about a bandanna.
- 22 Q And you don't remember telling the OSBI that you weren't  
23 able to see -- you weren't able to tell the difference between  
24 motor oil and hydraulic transmission fluid that night; is that  
25 right?

1 A That's right.

2 Q You don't remember that. And just so I'm sure, who made  
3 that telephone call?

4 A Whomever -- Excuse me. Whoever left his number with the  
5 calling card.

6 Q I'm asking you: Which of the two boys made that telephone  
7 call?

8 A I'd say the one with the short haircut.

9 Q And you're sure about that?

10 A Yes.

11 MR. BALL: No further questions.

12 THE COURT: Mr. Zimmerman.

13 MR. ZIMMERMAN: No questions.

14 THE COURT: You may step down. You are excused from  
15 attendance. You may remain in the courtroom, if you choose.

16 (Witness excused.)

17 THE COURT: Next witness.

18 MR. BALL: I'll call Celia Card.

19 Oh, before I do, I have to inform the Court that Ms. Card  
20 was present at the last preliminary hearing. And I would  
21 advise the Court that she did not hear any testimony over the  
22 areas that I want to ask her about. I was --

23 THE COURT: Well, I won't know that or not. We'll  
24 see whether the district attorney raises an objection to a  
25 violation of the rule and then hear evidence on what she heard

1 and didn't hear.

2 MR. BALL: And before that happens, I want to further  
3 advise the Court that the reason that that did occur is because  
4 we were completely surprised by the testimony that occurred at  
5 the end of the day the last time we had prelim. And the  
6 purpose -- and that I'm here to address that. And it's my  
7 understanding that she has not -- there's not a violation as to  
8 that subject matter.

9 THE COURT: I don't know if there is or isn't. Call  
10 your witness.

11 (Mr. Ball exited the courtroom, and returned with  
12 witness Celia Card.)

13 THE COURT: Raise your hand and be sworn by the  
14 clerk, please.

15 (Witness sworn.)

16 THE COURT: Go ahead, Mr. Ball.

17 CELIA CARD

18 called as a witness on behalf of the Defendant, after first  
19 being duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. BALL:

22 Q Would you state your name, please.

23 A Celia Card.

24 Q Ms. Card, how are you employed?

25 A I'm an English teacher and a reading specialist for the

1 Prague Public Schools.

2 Q And how long have you been a school teacher there at  
3 Prague?

4 A At Prague, six years.

5 Q Are you acquainted with Josh Stump?

6 A Yes, sir.

7 Q And how is it that you're acquainted with him?

8 A Joshua was my student.

9 Q Did you have any relationship beyond the normal  
10 teacher-student relationship with Joshua Stump?

11 A Yes, sir.

12 Q Okay. Could you tell us what that was?

13 A During the time Joshua was my student, our principal asked  
14 us to take students who were considered to be at risk and adopt  
15 them and try to do some things with them that might encourage  
16 their behavior changes, promote a change in their grades, and  
17 hopefully effect a change just in general in their appearance  
18 and cooperation in the classroom. And I chose to adopt Joshua  
19 at that time.

20 Q As an at-risk student?

21 A As an at-risk student, yes, sir.

22 Q Okay. Thank you. And when did that take place?

23 A During his seventh-grade year. And it continued into his  
24 eighth-grade year until he left school.

25 Q Did you continue to have contact with Josh after he left

1 school?

2 A Yes, sir. At his discretion. When he contacted me, yes.

3 Q Did you ever do anything that would enable him to contact  
4 you?

5 A Yes, sir, I did.

6 Q What did you do to help him contact you?

7 A I gave Joshua access to my calling card, so that he could  
8 call me anytime he needed me. He was never in physical  
9 possession of the card. I gave him the telephone number on a  
10 piece of paper that he carries in his wallet.

11 Q Did you give permission to use this card to anybody else  
12 besides Josh?

13 A No, sir.

14 Q Did you ever give permission specifically to use this card  
15 to Robert Anderson?

16 A No, sir.

17 Q Do you have any reason to believe that Robert Anderson was  
18 using this calling card?

19 A No, sir.

20 Q And what is that number?

21 A My telephone number is area code (405) 275-4608. The  
22 credit card has been canceled for some time, and I cannot -- I  
23 no longer remember the PIN number on it. I don't know. I  
24 don't use it.

25 Q But would the first ten digits of the calling card be the

1 same as those digits?

2 A Yes, sir.

3 Q (405) 275-4608?

4 A Yes, sir.

5 Q Okay. Thank you.

6 MR. BALL: No further questions.

7 THE COURT: Mr. Zimmerman.

8 MR. ZIMMERMAN: No questions.

9 THE COURT: You may step down. You're excused from  
10 attendance. Thank you.

11 A May I stay as a spectator?

12 THE COURT: Yes, ma'am.

13 (Witness excused.)

14 MR. BALL: I call Jackie Johnson.

15 THE COURT: Come up and be sworn by the clerk,  
16 please.

17 (Witness sworn.)

18 JACKIE JOHNSON

19 called as a witness on behalf of the Defendant, after first  
20 being duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. BALL:

23 Q Would you state your name, please.

24 A Jackie Johnson.

25 Q And have you previously testified in this case?

1 A Yes.

2 Q And if I asked you all of those background questions,  
3 would your answers be the same?

4 A Yes.

5 Q You, in fact, are the reporting agent in this case, right?

6 A Case agent, yes.

7 Q Okay. Did you prepare a report in this case?

8 A Yes.

9 MR. BALL: May I approach the witness?

10 THE COURT: Why?

11 MR. BALL: To see if she can identify this.

12 THE COURT: Are you going to be offering it?

13 MR. BALL: I'm going to offer a portion of it.

14 There's no need to offer the whole thing, if counsel doesn't  
15 have any objection to me going ahead and taking it out now.

16 MR. ZIMMERMAN: I don't have any objection, Judge.

17 THE COURT: Is it something that can't be offered by  
18 way of testimony?

19 MR. BALL: Judge, it's a page --

20 MR. ZIMMERMAN: We might be willing to stipulate to  
21 this, Judge, if I know what it is we're going into.

22 THE COURT: See what counsel will do.

23 MR. BALL: Your Honor, I'd offer to stipulate that as  
24 a result of the OSBI's investigation an identification card  
25 from the United States Air Force, Department of Defense,

1 bearing a photograph of a female, bearing the name Katharina  
2 Knight was found by the OSBI, and that said identification card  
3 appears in their report.

4 MR. ZIMMERMAN: We'll stipulate, Judge.

5 MR. BALL: Okay.

6 MR. ZIMMERMAN: We'd also add to that stipulation  
7 that the card, likewise, bears the description, grade, and name  
8 of sponsor Master Sergeant Jacky R. Knight, who was  
9 Ms. Knight's deceased husband.

10 THE COURT: Counterstipulation -- First stipulation  
11 received by the Court.

12 Mr. Ball, there's been a counterstipulation.

13 MR. BALL: Judge, since I can't read it, I can't --

14 MR. ZIMMERMAN: We have the original, Judge. Perhaps  
15 that would assist counsel.

16 (A brief discussion ensued between counsel.)

17 THE COURT: Mr. Ball?

18 MR. BALL: I'll accept the counterstipulation as  
19 well.

20 THE COURT: Stipulation received.

21 MR. BALL: No further questions.

22 THE COURT: Mr. Zimmerman?

23 MR. ZIMMERMAN: No, your Honor.

24 THE COURT: Step down, please. Thank you.

25 (Witness excused.)

1 MR. BALL: No further witnesses.

2 THE COURT: Defense rests.

3 MR. ZIMMERMAN: State calls no rebuttal witnesses,  
4 your Honor.

5 THE COURT: No rebuttal witnesses. All right.

6 MR. BALL: Objection, your Honor. I'm not sure  
7 that's proper in this proceeding.

8 THE COURT: Anything further for the record?

9 MR. BALL: No.

10 THE COURT: All right. Do the parties wish to be  
11 heard?

12 Mr. Zimmerman?

13 MR. ZIMMERMAN: Your Honor, I believe the state has  
14 demonstrated beyond any doubt that a crime was committed in  
15 this county against Kitty Knight and Hubert Moucka on  
16 July 15, 1995. I think the state has also met its burden in  
17 demonstrating that there's probable cause to believe that the  
18 defendant, Joshua Stump, committed that crime.

19 We would ask that the defendant be bound over to stand  
20 trial for First-Degree Murder and an arraignment date be set,  
21 if the Court please.

22 MR. BALL: Your Honor, I appreciate learning at this  
23 stage -- I guess that's why we have preliminary hearings --  
24 that Ms. Knight herself was not a master sergeant. But it  
25 doesn't change the fact that her deceased husband was.

1           In point of fact, the testimony offered by Mr. Moucka is  
2 the only testimony that can bind this defendant over on the  
3 charge as set forth in the felony information. An information  
4 which, I might add, charges that Mr. Anderson, not Mr. Stump,  
5 was the shooter plainly on its face. In point of fact, your  
6 Honor, Mr. Moucka's testimony here is unreliable. It is  
7 completely unreliable. It's biased. And the Court cannot --  
8 should not consider it in making its ruling.

9           First of all, Ms. Knight was familiar with the operation  
10 of weapons. She had to be. The evidence shown here is that a  
11 revolver with six spent shell casings was loaded by Mr. Moucka  
12 prior to the shootout. Mr. Moucka testified he saw to it that  
13 that weapon was loaded and gave it to Kitty. And on the report  
14 that was offered, it's on the OSBI's lab report from the  
15 firearms expert, there were six spent shell casings.

16           THE COURT: Wait just a minute. What report are we  
17 talking about? A technical examination report. I thought you  
18 meant Ms. Johnson's report.

19           MR. BALL: Yes.

20           THE COURT: All right. Okay. I just have to follow  
21 you is all.

22           MR. BALL: Mr. Moucka's testimony was, was that that  
23 sixth shot was fired after the boys ran off. And what we know  
24 here -- what we do know is that Joshua Stump wasn't hit at  
25 all. And we know that Robert Anderson was hit twice, two out

1 of five bullets hit Robert Anderson.

2 We know that Mr. Moucka testified that the front stoop  
3 leading up into the mobile home was too small for the two  
4 adults to comfortably stand on it and operate the door, because  
5 he testified to that. And yet he says that when the second boy  
6 went up, the other one just burst in out of nowhere on that  
7 crowded front stoop. It couldn't have happened. It didn't  
8 happen that way.

9 He wasn't wearing his glasses that night. He couldn't see  
10 who this was. He, a self-admitted person familiar with  
11 mechanics and mechanical knowledge, couldn't tell the  
12 difference between transmission fluid and motor oil, but he's  
13 able to say in open court that this boy was the one who shot  
14 his hand off and killed Katharina Knight. It did not happen.  
15 It did not happen.

16 In point of fact, we're not able to pinpoint why  
17 Mr. Moucka's testimony is different from what he told his  
18 lawyer, but we know that it is. And that begs the question:  
19 Why wouldn't he tell his own lawyer in a civil suit? He's  
20 trying to collect money. It just flies against the obvious,  
21 that he would tell his own civil lawyer who shot him and who  
22 shot Katharina Knight.

23 And the only time that we've had this identification is in  
24 this courtroom. The inconsistencies are too numerous to be  
25 ignored. Mr. Moucka went through what is undoubtedly the most

1 stressful and traumatic experience anybody, anybody could  
2 possibly undergo and survive it. And it happened that fast,  
3 particularly the second incident.

4 He testified, when we were here last time, he saw one boy  
5 walking across the yard. He turned off the interior light so  
6 he could see more clearly outside where the porch light and  
7 yard light were burning, and he saw one boy walking back  
8 towards the house. And that's when he gave Katharina Knight  
9 the gun and they were ready. They knew something was wrong.

10 And in point of fact, your Honor, Anderson came back  
11 alone, just like Jackie Johnson related Joshua Stump's  
12 statement to her. He went back alone and he got off two shots  
13 total. And six were fired by Katharina Knight, total of five  
14 in the volley. But my client is here alive. And if Katharina  
15 Knight had the opportunity to point that gun and fire at Joshua  
16 Stump holding the gun, as Mr. Moucka said, he'd be dead.  
17 There's no doubt about it. He'd be dead, because somebody is.

18 There's not sufficient evidence if you take out Moucka's  
19 testimony to bind my client over on Murder in the First  
20 Degree.

21 And there's the matter of the telephone call. Jackie  
22 Johnson testified that Joshua Stump told her he made the  
23 telephone call. We know what the number is. We know who made  
24 the phone call. It was Joshua Stump. Joshua Stump went up  
25 there with Robert Anderson. And when the lights came on and

1 the dogs began to bark, they went up to the front door and they  
2 told Mr. Moucka, "We've got car trouble. Can we borrow the  
3 phone?"

4 And Joshua Stump, not Robert Anderson, made that telephone  
5 call, because Joshua Stump was the one with the telephone  
6 card. And that's how he got arrested. That's how they traced  
7 this whole thing back was through Miguel Mendoza, because that  
8 was the telephone number that was called. The redial was hit  
9 by Mr. Moucka after the shooting -- No. No. It was before the  
10 shooting but after the first contact with the boys.

11 And what had happened was Miguel Mendoza's number was  
12 called by him, not by Anderson, and then they left. My client  
13 abandoned any intent to participate in any crime at that  
14 point. And all we have is the testimony of a man, traumatized  
15 as he is, who didn't have but seconds to see who got him. And  
16 he's wrong. And not only is he wrong, he's biased. And now he  
17 has the opportunity to even the score for what's happened, an  
18 understandable human response. But, Judge, it's no way for us  
19 to conduct justice.

20 The Court must dismiss the charge of Murder in the First  
21 Degree.

22 THE COURT: I find the crime of Murder in the First  
23 Degree has been committed in this county; there's probable  
24 cause to believe this defendant, Joshua Stump, committed the  
25 same. He will be ordered to stand trial on that charge;

1 ordered to appear for arraignment on the 13th of January at  
2 1:30 p.m.

3 Whether the state chooses to proceed against him as a  
4 principle or as the -- Sorry. What I mean to say is whether  
5 you choose to amend your information is up to the state. It  
6 can be amended at any time prior to arraignment without leave  
7 of the court.

8 MR. BALL: The 13th of January at 1:30?

9 THE COURT: Did I say "January"? December. I'm  
10 sorry. My error. We just changed months. I don't have to go  
11 a month ahead.

12 You're going to be here, aren't you?

13 MR. BALL: Yes, your Honor.

14 THE COURT: Okay. If either of you needs a different  
15 date, tell me now and I can arrange it.

16 MR. ZIMMERMAN: No. That's satisfactory, Judge.

17 MR. BALL: No. That's fine.

18 THE COURT: All right. He'll be remanded to custody.

19 (Proceedings concluded at 3:51 p.m.)  
20  
21  
22  
23  
24  
25

1 IN THE DISTRICT COURT OF THE TWENTY-THIRD JUDICIAL DISTRICT  
2 SITTING WITHIN AND FOR LINCOLN COUNTY  
3 STATE OF OKLAHOMA

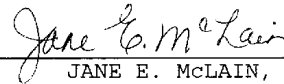
3 STATE OF OKLAHOMA, )  
4 )  
4 Plaintiff, )  
5 vs. ) Case No. CF-95-104  
6 JOSHUA D. STUMP, )  
7 )  
7 Defendant. )  
8 \_\_\_\_\_ )

9 C E R T I F I C A T E

10 I, Jane E. McLain, hereby certify that I am a duly  
11 appointed, qualified and acting Official District Court  
12 Reporter for the 23rd Judicial District Sitting in Lincoln  
13 County, Oklahoma.

14 I further certify that the foregoing 318 pages is a  
15 true and correct transcript of the preliminary hearing had in  
16 the above-styled cause on November 17, 1995, and December 4,  
17 1995; and that said transcript is a true and correct  
18 transcription of my stenographic notes; and that I am not  
19 related to nor attorney for either of said parties nor  
20 otherwise interested in the event of said action.

21 WITNESS my hand and seal this 23rd day of  
22 September, 2002.

23  
24 

JANE E. McLAIN, CSR

Jane E. McLain  
Oklahoma Certified Shorthand Reporter  
Certificate No. 01303  
Exp. Date: December 31, 2002