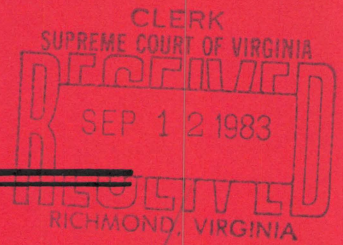


226 VA 565



IN THE
Supreme Court of Virginia
AT RICHMOND

RECORD NO. 822046

HOWARD RICHARD GOODEN,

Appellant,

v.

COMMONWEALTH OF VIRGINIA,

Appellee.

APPENDIX

J. RANDOLPH SMITH
HALFORD I. HAYES
8728 Forest Hill Avenue
P. O. Box 3265
Richmond, Virginia 23235

Counsel for Appellant

ROSCOE C. ROBERTS
Assistant Attorney General
Supreme Court Building
Richmond, Virginia 23219

Counsel for Appellee

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VIRGINIA: IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY,
February 16, 1982

COMMONWEALTH

V.

INDICTMENT


HOWARD RICHARD GOODEN

The grand jury charges that:

On or about the 16th day of November, 1981, in
the County aforesaid, Howard Richard Gooden did feloniously kill
and slay James Everette Wyant.

Virginia Code Section 18.2-36.

A True Bill.


Foreman

David I. Walsh
Commonwealth's Attorney

David L. Heilberg
Assistant Commonwealth's Attorney

Witness: D. COMER

VIRGINIA: IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY, May 5, 1982

COMMONWEALTH

V

HOWARD RICHARD GOODEN

(dob: 6/7/42)

On an indictment charging felony -
involuntary manslaughter (docket
#7584)

This 5th day of May, 1982, came the Commonwealth's Attorney, and the accused, Howard Richard Gooden, came pursuant to his recognizance, and by his retained counsel, J. Randolph Smith and Halford I. Hayes. Trial by jury having heretofore been waived, the Court this day proceeded to hear and determine the evidence herein without the intervention of a jury, as provided by law. Having heard the evidence of the Commonwealth, the accused, by counsel, moved the Court to strike said evidence, which motion the Court overruled, to which action of the Court, the accused by counsel, excepted. Having heard the evidence herein, the Court found the said Howard Richard Gooden guilty of involuntary manslaughter as charged in the indictment and ordered that this case be referred to the Probation Officer for this District for pre-sentence investigation and report. Sentencing is set for the 21st of June, 1982 at 9:30 a.m. Bail for the accused is continued to the 21st of June, 1982.

A TRUE COPY

ATTESTE:

, Deputy Clerk

WILLIAM C. DAVIS, JR.
13 Cone Street
Wellsboro, Pa.
16901

TELEPHONE:
717-724-3883

21 June 1982

Mr. Thomas Reznik
Probation & Parole Officer
District 39
1320 S. Main Street
Harrisonburg
VA 22801

JUN 23 1982

Dear Mr. Reznik:

This letter is in response to your telephone call of 18 June 1982, requesting information and comments from me about a reported firearms accident. From our conversation, I understand the relevant circumstances of the case to be as follows:

1. The rifle involved is a Marlin caliber .30-30, and the ammunition is of sporting type, with 170-grain expanding bullets.

2. The victim was at a horizontal range of approximately 638 yards from the gun, and situated on higher ground, about 40 feet vertically above the gun.

3. The bullet struck the victim in the right front region of the chest, about 16 inches below the level of the top of the head, passing through the chest and exiting at approximately the same height as the entrance wound, in the left rear region of the chest, thence through the left arm, but failing to penetrate the outside of the sleeve of the victim's garments, from which it was subsequently recovered.

4. The entrance wound was approximately 3/8 inch in diameter, and the exit wound not much larger.

5. The recovered bullet showed only minor deformation of the point, and had not expanded or "mushroomed" as is intended by its design.

6. The defendant in the case contends that he fired at a deer, at a range of about 75 yards, and hypothesizes that the bullet was deflected or ricocheted so as to strike the victim.

I have based my exterior-ballistic calculations on industry-standard data for the .30-30 cartridge loaded with 170-grain bullets, as published by the Sporting Arms and Ammunition Manufacturers' Institute (SAAMI), which indicates that the nominal muzzle velocity is 2200 feet per second (fps) when fired from a 24-inch barrel, and the standard ballistic coefficient (C1) is .25424. The standard trajectory calculations are conventionally based on sea-level altitude, and a temperature of 59°F. To show the small effects of ordinary departures from standard atmospheric conditions, however, I have also calculated trajectories for this cartridge for an altitude of 1000 feet, and a temperature of 40°F, including also an adjustment of 40 fps in muzzle velocity, which is appropriate because of the estimated difference due to the shorter (20-inch) barrel of a Marlin Model 336 carbine in comparison to the 24-inch test barrel used for SAAMI ballistics.

I inclose herewith a copy of my computer print-out for these exterior-ballistic calculations. The calculations are in agreement with data published by SAAMI and the major ammunition manufacturers for this cartridge out to a range of 500 yards, beyond which the SAAMI data do not extend.

I have also done additional calculations to determine the inclination or slope of the trajectory at the point of impact, given the circumstances as I understand them to be and explained above. These calculations indicate that the path of the bullet, at the point of impact, would have been very nearly horizontal, inclining downward at only about one degree.

I consider the following observations to be significant:

1. The calculated striking velocity of the bullet at 638 yards (approximately 950 fps) is consistent with the observation that the bullet did not expand in the intended manner. Rifle bullets of this type are designed and constructed so as to expand, but not disintegrate, at much shorter ranges and higher impact velocities, and they do not ordinarily expand at impact velocities as low as 1000 fps.
2. The calculated striking velocity is probably also consistent with the observed penetration, according to the autopsy report. Some specific experiments would be required to confirm this judgement for these particular circumstances, but my opinion based on general experience is that penetration of 12 to 18 inches in soft body tissue could reasonably be expected of an undeformed 170-grain .30-caliber bullet, in stable point-forward flight, at a striking velocity of 950 fps.

3.

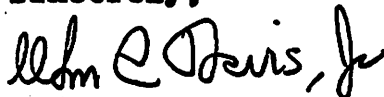
3. The calculated slope of the trajectory at the point of impact (approximately horizontal) is consistent with the reported location of the entrance and exit wounds at the same level in the victim's body.

4. The reported diameter of the entrance wound (approximately 3/8 inch) is consistent with the expected size of wound produced by a stable, undeformed, .30-caliber bullet, flying point-forward, as distinguished from a ricocheting bullet which would more probably be deformed and yawing in flight.

Based on these foregoing considerations, and my limited knowledge of the case, it is my opinion that the evidence is entirely consistent with the hypothesis that the bullet struck the victim at first impact, and less consistent with the hypothesis that it struck him while on a ricochet trajectory.

If I can be of further service to you, please call.

Sincerely,



Wm. C. Davis, Jr., P.E.

Incl: a/s

STANDARD TRAJECTORY FOR .30-30 WITH 170-GRAIN BULLET, FIRED FROM 24-INCH BARREL,
SEA LEVEL, 59 DEG-F

.30-30 - 170-GR
BULLET WEIGHT (GRS): 170 STD. BALLISTIC COEFFICIENT (C1): .25424
STANDARD METRO
MUZZLE VELOCITY (FPS): 2200
RANGE (YARDS): 638
REMAINING VELOCITY (FPS): 948
REMAINING ENERGY (FT-LBS): 339
TIME OF FLIGHT (SEC): 1.436
TOTAL DROP (INCHES): 308.5
MAX HEIGHT ABOVE SIGHT LINE (INCHES): 99.8
ELEVATION REQUIRED (MOA): 48.5
DEFLECTION FOR 10-MPH CROSSWIND (INCHES): 99.6

EXPECTED TRAJECTORY FOR .30-30 WITH 170-GRAIN BULLET, FIRED FROM 20-INCH BARREL
ALTITUDE 1000 FT, TEMPERATURE 40 DEG-F.

.30-30 - 170-GR
BULLET WEIGHT (GRS): 170 STD. BALLISTIC COEFFICIENT (C1): .25424
GUN ALTITUDE (FT): 1000 TEMPERATURE (DEG-F): 40
MUZZLE VELOCITY (FPS): 2160
RANGE (YARDS): 638
REMAINING VELOCITY (FPS): 940
REMAINING ENERGY (FT-LBS): 333
TIME OF FLIGHT (SEC): 1.459
TOTAL DROP (INCHES): 319.5
MAX HEIGHT ABOVE SIGHT LINE (INCHES): 103.1
ELEVATION REQUIRED (MOA): 50.2
DEFLECTION FOR 10-MPH CROSSWIND (INCHES): 100.9

BALLISTIC COEFFICIENT (C1): .25424 BULLET WEIGHT (GRS): 170
GUN ALTITUDE (FT): 1000 TEMPERATURE (DEG-F): 40

RANGE YARDS	REM VEL	REM ENERGY	TOTAL DROP	ELEV- ATION	MAX HEIGHT	DEFL. IN 10MPH WIND
0	2160	1761	0	0	-.9	0
50	2005	1518	1	3.7	0	.4
100	1857	1302	4.1	5	.7	1.8
150	1718	1114	9.8	7.1	2.3	4.5
200	1587	950	18.4	9.7	4.8	8.3
250	1464	809	30.4	12.5	8.3	13.3
300	1353	691	46.6	15.8	13.3	19.9
350	1254	594	67.5	19.6	19.8	27.9
400	1171	517	94.1	23.8	28.4	37.5
450	1102	459	127.1	28.4	39.1	48.5
500	1048	414	167.2	33.6	52.3	60.9
550	1003	380	215	39.2	68.1	74.5
600	965	352	270.9	45.3	86.8	89
650	932	328	335.9	51.8	108.7	104.7
700	903	307	409.7	58.7	133.7	121.3

JUN 23 1982

WCD Jr
6/20/82

VIRGINIA: IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY, August 16, 1982

COMMONWEALTH

V

HOWARD RICHARD GOODEN

(dob: 6/7/42)

On an indictment charging felony -
involuntary manslaughter (docket
#7584)

This 16th day of August, 1982, came the Commonwealth's Attorney, and the accused, Howard Richard Gooden, came pursuant to his recognizance, and by his retained counsel, J. Randolph Smith.. The defendant's motion to set aside the judgment of the Court on the grounds stated is overruled on the grounds that the motion was not timely made and that the matters were fully considered at the trial. Thereupon, the Probation Officer to whom this case was previously referred for pre-sentence investigation and report, filed such report in writing and was present in Court and subject to cross examination touching the same. The Court having previously heard the evidence herein and adjudged the said Howard Richard Gooden to be guilty as charged in the indictment, this day inquired of the accused if anything he had or knew to say before the Court pronounced sentence on him, and nothing being offered or alleged in delay thereof, it is the judgment of the Court that the Commonwealth recover of the said Howard Richard Gooden, and a fine in the amount of \$1,000.00 the costs incident to this prosecution/and that he be confined in jail for a period of six months. However, it appearing to the Court that it is compatible with the public interest so to do, execution of said sentence shall stand.

suspended for a period of five years from today, said suspension of sentence and probation being conditioned upon the defendant paying the fine and costs within ninety days from today; that he keep the peace and be of good behavior; that he not hunt with a firearm or have a firearm in his possession for any reason under any circumstances for five years from this date; and further that the weapon used be forfeited to the Commonwealth. The defendant will be on supervised probation until the costs and fine are paid, and thereafter on unsupervised probation. The defendant was remanded to the custody of the Probation Officer.

A TRUE COPY

ATTESTE:

Donna Turkhouse, Deputy Clerk

ASSIGNMENTS OF ERROR

1. The trial court erred in denying defendant's motion to strike the evidence at the conclusion of the Commonwealth's case in chief.

2. The trial court erred in finding that the evidence was sufficient to support a finding of guilty, and the verdict of the trial court is unsupported by the facts and the law.

* * *

COURT: This was P.M.?

A. P.M., yes sir.

Q. When you arrived there at the scene, what did you observe?

A. I observed a body laying off of what I--it was a right-of-way, Vepco's, on top of a knoll.

Q. You said off of the right-of-way?

A. It was right on the edge of a trail of what I considered a right-of-way for the power company.

Q. All right. I hand you what I have marked as Commonwealth Exhibit #1 for identification and ask you if you can identify the subject of that photograph?

A. Yes sir, that's James Wyant.

Q. All right. And where was this photograph taken?

A. That was taken at the scene.

Q. Where you found the . . .

A. Where we found him.

Q. Where you found Mr. Wyant?

A. Yes sir.

MR. WALSH: I would offer this into evidence as Commonwealth's Exhibit #1.

COURT: Do you wish to be heard, gentlemen?

MR. HAYES: No objection, Your Honor.

COURT: Commonwealth Exhibit #1 for identification is received in evidence.

1. Q. Now, let me hand you one other photograph, which I
2. will mark as Commonwealth's Exhibit #2, and ask you if you can
3. identify that particular photograph.

4. A. This is an aerial photograph of the scene where we
5. found the body of James Wyant.

6. Q. All right. Does that photograph show on there--I
7. believe this was taken at a subsequent date, is that correct?

8. A. Yes sir. It was taken a few days later.

9. Q. All right. Does that photograph show the area in
10. which you found Mr. Wyant?

11. A. Yes sir.

12. MR. WALSH: Does the Court have a grease pencil?

13. COURT: See if you can find it in my desk drawer,
14. Mr. Evans. Meanwhile, have you gentlemen seen Commonwealth
15. Exhibit #2 for identification?

16. MR. HAYES: Yes sir.

17. COURT: Do you wish to be heard?

18. MR. HAYES: No sir.

19. COURT: Commonwealth #2 for identification is
20. received in evidence.

21. Q. Sheriff, could you please indicate on that photograph
22. by placing a mark, a small "x", as to the location of the body?

23. A. This general vicinity appears to be where
24. we--somewhere along in this area is where we found the body.

25. Q. All right. This is where you placed a small "x" or

1. star?

2. A. Yes sir.

3. Q. So that we can get an orientation on this, where is
4. U. S. Route 340?

5. A. 340 parallels this road, which I consider runs north
6. and south.

7. Q. You're talking about the right-of-way?

8. A. The right-of-way, yes sir. And it comes up here and
9. then curves around, and of course eventually you come out right
10. on 340 at this. I came up this way and walked down this way.

11. Q. And which direction is south?

12. A. South is this direction (indicating).

13. COURT: I'll mark that, and I'll draw arrows
14. describing or showing the Sheriff's path.

15. A. Yes sir.

16. MR. WALSH: That's all the questions I have of
17. the Sheriff.

18. COURT: Do you wish to inquire, gentlemen?

19. MR. SMITH: Yes sir, I'd like to ask some
20. questions.

21.

22. Cross Examination by Mr. Smith:

23. Q. Sheriff, did your investigation indicate that Mr.
24. Wyant was found approximately 91.5 feet south of Pole 118.446?

25. A. I don't have the offense report here.

* * *

(Recess)

COURT: Can some exhibits be made part of the record at this time by agreement?

MR. WALSH: I think so, yes sir. Would you like to go ahead with yours and then I'll go with mine. I haven't had time to put labels on each of these.

MR. HAYES: Two surveys, and the surveyor is here and he'll identify them and explain them. I would mark those #1 and #2. They are the same thing, the only difference is that the horizontal scale on the second one is changed to a different figure. We couldn't use the enlargement horizontally or we'd have had paper over to the other end of the courtroom.

COURT: Then Defendant's Exhibits #1 and #2 are received in evidence. Will you be asking this witness questions about these exhibits?

MR. HAYES: Yes, Your Honor, we probably would.

COURT: Have you seen them?

MR. COMER: No sir, I haven't.

COURT: Well, I'll let him look at them. Defendant's Exhibits #1 and #2 are received in evidence.

MR. WALSH: Your Honor, the Commonwealth has four additional photographs. There is no objection to Commonwealth Exhibit #3, #4 and #5, which are photographs. I think there is a limited objection on #6.

MR. SMITH: Yes sir. The objection would be that

1. Q. Okay.

2. COURT: Well, #3, #4 and #5 have been received in
3. evidence, so I assume you gentlemen can stipulate that they are
4. a reasonably accurate representation of what they purport to
5. show.

6. MR. HAYES: Yes, Your Honor. We have no problems
7. with any of them.

8. Q. Let me hand you Commonwealth's Exhibit #3 and put it
9. up here so that both you and the Judge can see it. And if you
10. would please explain to the Judge the layout or what is shown
11. in the photograph for the purposes of orienting the Court.

12. A. This horizontal line right here represents the Vepco
13. right-of-way. And if you look closely you can see the
14. individual poles for the power lines. This curved line is
15. Route 340. This direction is basically north and this is
16. basically south.

17. COURT: All right, I've drawn an arrow to where
18. he has designated 340, and the first line he indicated is the
19. horizontal line at the approximate center of the photograph.

20. A. That's the Vepco right-of-way. This area, cleared
21. area over here, is West Side Sand and Gravel Company.

22. COURT: He is designating the lighter colored
23. area in the upper right-hand corner of the photograph.

24. A. This is the approximate location where the victim was
25. shot.

1. COURT: I'll draw an "x" at that location..

2. A. And . . .

3. COURT: When you say the victim was shot, I
4. assume you mean where the body was found.

5. A. Yes sir, where the body was found.

6. Q. All right. There are a number of light lines which go
7. up to or appear to cross the right-of-way. Could you tell the
8. Court what each one of those is?

9. A. Yes sir. These are fire roads or logging roads. They
10. are unpaved dirt roads which cross the power line. This is
11. one, this is one, this is one, and this is one. This line
12. right here is a creek bed.

13. COURT: All right, see if your pen will write on
14. the creek bed on the photograph. The witness has drawn a blue
15. line following the course of the creek bed.

16. Q. Now, on Defendant's Exhibits #1 and #2, on the cross
17. section of the diagram, on the lower half of each one of the
18. two exhibits, shows an incline, a very steep incline, and I
19. believe that--before getting right to that, the area on the
20. right-hand side of Defendant's Exhibit #2 is what area on the
21. photograph?

22. A. It's this area.

23. Q. So, they were actually taken in reverse order. Does
24. this bluff or steep incline, is that shown on that particular
25. photograph?

1. A. Yes, it is.

2. Q. Could you point it out?

3. A. This dark appearing jagged line on the photograph is
4. that steep bluff. It's shown right here (indicating).

5. Q. What is the approximate distance from the point where
6. the "x" is shown to the crossover which is on the far
7. right-hand side of the photograph?

8. A. I would think . . .

9. COURT: Let's suspend a minute. I understand
10. some spectators are coming into the courtroom.

11. Now, go ahead.

12. A. I would think that to be approximately five hundred
13. yards.

14. COURT: Now, what point are you indicating?

15. A. From the position where the--from the location where
16. the body was found, which is marked by the "x", to this
17. crossroad on the far right.

18. COURT: And I'll put a "y" there. So, your
19. estimate is that it's . . .

20. A. At least five hundred yards.

21. COURT: Five hundred yards from about "x" to "y".

22. A. Yes sir.

23. Q. Now, let me hand you Commonwealth Exhibit #4 and ask
24. you to point out what direction that particular photograph, in
25. comparison to Commonwealth's Exhibit #4, which direction that

1. shows.

2. A. (Witness examines photograph). This is looking down
3. on the same general area, and this crossroad right here will be
4. this crossroad marked "y".

5. COURT: All right, put the "y" on there.

6. Q. And where was Mr. Wyant's body found?

7. A. Mr. Wyant was found . . .

8. Q. Would it be up toward the top of the photograph?

9. A. Yes, it's going to be toward the top. (Witness marks
10. exhibit).

11. COURT: You marked that point with an "x" on
12. Commonwealth Exhibit #4.

13. A. Yes sir.

14. Q. Let me hand you Commonwealth Exhibit #5 and ask you to
15. tell the Court from where that photograph was taken and where
16. the focus of the camera was.

17. A. This photograph was taken from the spot where I was
18. shown the four cartridge cases on the ground. It's taken
19. looking approximately south along the power line. And it was
20. taken at this spot right here (indicating), this crossroads
21. right here.

22. COURT: Is that about where you found the
23. cartridges?

24. A. This is where the cartridge cases were shown to me,
25. and it is taken at this spot looking in this direction.

1. COURT: All right, put a "c" there. And
2. Commonwealth Exhibit #5 was taken from point "c" on
3. Commonwealth Exhibit #3 looking toward point "x"?

4. A. Yes sir.

5. Q. Is point "x" visible on that particular photograph?

6. A. No, it's not.

7. COURT: Let me ask you this. At the top of
8. Commonwealth Exhibit #5, do you see what I assume are power
9. poles?

10. A. Yes sir.

11. COURT: Could you estimate whether point "x"
12. would be in the vicinity of the first, second or third, and
13. possibly a fourth power pole on here?

14. A. Okay.

15. MR. WALSH: Perhaps, Your Honor, if we could have
16. the witness refer to this diagram, I think it would help.

17. COURT: Are these power poles?

18. A. Yes sir.

19. MR. WALSH: And the numbers for the power poles
20. are listed up here. The one at the top of the bluff is 443.

21. COURT: Is that the last one in this photograph?

22. MR. WALSH: That is the very first one, the
23. largest one that you see here.

24. Q. Let me ask the witness this. Is this the approximate
25. location of I guess generally what has been referred to as

1. south of 446, approximately ninety-one and a half feet south of
2. power pole 446?

3. A. Yes, that's right.

4. COURT: You say this first pole is . . .

5. A. 443.

6. COURT: 443. All right.

7. MR. WALSH: The next one would be 444.

8. COURT: Well, that will be in that exhibit, so
9. I'll just draw an arrow to that one as 443.

10. Q. Now, Detective Comer, let me hand you Commonwealth
11. Exhibit #6 for identification and ask you whether or not you
12. can recognize the subject of that particular photograph?

13. A. Yes, I can.

14. Q. You did not take that photograph, did you?

15. A. No, I didn't.

16. Q. Does that photograph accurately depict the scene which
17. it intends to show?

18. A. Yes, I believe it does.

19. Q. Now, where was that photograph taken from?

20. A. This photograph was taken from the approximate
21. position where the victim's body was found, which is marked
22. "x".

23. Q. And in what direction is the camera focused?

24. A. It is taken looking in the direction of generally
25. north along the Vepco power line.

1. taken from the location where the shell casings were found.

2. COURT: Can you locate on any of the other
3. exhibits the approximate location that you found the casings?

4. A. Yes sir, that was "c" on this.

5. COURT: That's the point that you've marked as
6. "c" on Commonwealth Exhibit #3.

7. A. Correct.

8. MR. HAYES: Your Honor, could we also get him to
9. mark them on Defendant's Exhibits #1 and #2? I think it would
10. be helpful for cross examination.

11. COURT: Are you able to do that?

12. A. I believe I will be. Okay, here's the pole, so they
13. would have been found twenty-seven feet in this direction,
14. approximately right here (indicating).

15. COURT: Okay, the witness has put an "x"--this is
16. north?

17. MR. WALSH: I think the other references so far,
18. Your Honor, have been just generally that this is north to the
19. left of the diagram and south is to the right of the diagram.

20. COURT: Then the witness has put an "x" in the
21. general area of pole number 442.

22. A. I'm sorry, I made a mistake. It's going to be this
23. way. I'm sorry.

24. COURT: For the record, the witness has
25. obliterated the first "x" and put in a second "x" and put his

1. initials by it.

2. Over how large an area did you find these shells?

3. A. When I arrived, Mr. Wyant, the gentleman who had
4. called me on the phone, had picked up two of the shells, the
5. cartridge cases, and left two of them on the ground. The two
6. that were on the ground were very close together.

7. MR. SMITH: Judge, I don't think unless he was
8. present when he picked it up . . .

9. MR. WALSH: Mr. Wyant will be here.

10. COURT: I'm not receiving the evidence of what
11. Wyant told him with respect to the truth of what was said.
12. Where did you find the two shells? Over how large an area?

13. A. Maybe in an area of a diameter of just several inches.

14. COURT: Very close together?

15. A. Very close together, yes sir.

16. COURT: You found two several inches apart in the
17. general vicinity of the point you marked with an "x" on
18. Defendant's Exhibit #1 or #2.

19. A. Yes.

20. COURT: Which one, Defendant's #1 or #2?

21. A. This is #2.

22. Q. How far off of the right-of-way did you find them when
23. you arrived there?

24. A. Just maybe a couple of feet.

25. MR. SMITH: Would that also be west of the

1. right-of-way?

2. A. West.

3. MR. SMITH: Generally west?

4. A. Yes.

5. Q. Now, Detective Comer, did you have occasion to go to
6. Chesterfield County in the investigation of this case?

7. A. Yes, I did.

8. Q. And what was your purpose in going there?

9. A. To interview Mr. Howard Gooden.

10. Q. And when was that that you had gone there?

11. A. That was on November 18th, 1981.

12. Q. November 18th?

13. A. Yes.

14. Q. Now, did you talk with the defendant?

15. A. Yes, I did.

16. Q. At that time.

17. A. Yes.

18. Q. And where was that that you talked to him?

19. A. I talked to him the first time at the Chesterfield
20. Police Department, and that was during the morning of November
21. 18th.

22. Q. And who was present when you talked with him?

23. A. The defendant, his attorney, Mr. Smith, and Detective
24. Friedline of the Chesterfield Police Department.

25. Q. How was it that you all were at the Chesterfield

1. Police Department?

2. A. We had made arrangements to meet there.

3. Q. With the defendants?

4. A. Yes.

5. Q. Now, was he in custody at this time?

6. A. No, he was not.

7. Q. What was your purpose in wanting to talk with the
8. defendant at that time?

9. A. We believed that either he or someone in his hunting
10. party may have known something about the death of the victim.

11. Q. So you were still investigating the situation at this
12. time?

13. A. Yes.

14. Q. Now, did he say anything to you about whether he had
15. been in the area hunting at that time?

16. A. Yes, he did.

17. Q. What did he say?

18. A. He told me that he had been in the area hunting along
19. with his brother-in-law, Mr. Billy Shifflett. He told me that
20. he had seen a deer cross the Vepco right-of-way, the cleared
21. right-of-way, about a hundred yards south of where he was
22. standing sometime before 5:00 P.M., and that he had shot at the
23. deer with a rifle.

24. Q. Did he say what kind of rifle he had?

25. A. He said it was the thirty caliber carbine.

1. COURT: I just want to be sure you said a hundred
2. yards and not a hundred feet, is that right?

3. A. Yes, a hundred yards.

4. Q. At that point did he try to describe to you where he
5. was?

6. A. Yes, he did.

7. Q. And what did he say?

8. A. I had drawn a rough sketch of the area and asked him
9. to show me his relative position on the sketch. And he said he
10. couldn't do it, he couldn't look at my sketch and do it, and he
11. turned the paper over and drew a partial sketch and indicated
12. his position on that sketch.

13. Q. All right.

14. MR. WALSH: Your Honor, I had not anticipated
15. using this, but I would ask that it be marked as Commonwealth
16. Exhibit #13 for identification at this point.

17. Q. Could you put your initials on the side of the paper
18. which you drew the diagram?

19. A. Okay.

20. Q. This is your diagram?

21. A. Yes.

22. Q. And on the other side of the paper is . . .

23. A. Mr. Gooden's diagram.

24. Q. All right. Now, in reference to Mr. Gooden's diagram,
25. did he explain to you what the various marks on the paper

1. indicated?

2. A. He briefly indicated that these small marks, these
3. dots, were the Vepco poles.

4. Q. The dots on the small side of the red margin is what
5. you're referring to that he pointed out were the Vepco poles.

6. A. Poles.

7. Q. And what were the other marks on there?

8. A. These two parallel lines at the top of the paper . . .

9. Q. Perhaps we should hold this up.

10. A. These are what he indicated to me as the poles. These
11. two parallel lines at the top of the paper he indicated to me
12. was the creek bed.

13. COURT: All right. The witness has indicated the
14. four very small circles or dots along the left-hand margin of
15. the paper as the poles, and the two parallel lines at the top
16. as the creek bed.

17. A. And he indicated his position as being where this
18. mark, this asterisk type mark is.

19. COURT: Where the crosshatched lines are.

20. A. And this would be generally south in this direction,
21. looking south along this.

22. COURT: So, south would be at the top of the
23. page?

24. A. Yes sir. Approximately south.

25. MR. WALSH: I would offer both sides of that

1. document into evidence.

2. COURT: Mark this side Commonwealth Exhibit #13.

3. Q. Detective, did the defendant turn over to you . . .

4. MR. SMITH: Judge, I would object. That's
5. leading, I believe.

6. MR. WALSH: Whether or not the defendant turned
7. over to him any firearms during that conversation?

8. COURT: Let me take care of this. Only the face
9. on which the exhibit label is of Commonwealth Exhibit #13 is
10. received in evidence. If this were a jury trial we'd have a
11. problem, but it's not a jury trial and the back is not received
12. in evidence.

13. Go ahead, Mr. Walsh.

14. Q. During your conversation with the defendant that
15. morning at the Chesterfield Police Department, did the
16. defendant give you, turn over to you, any firearms?

17. A. No, he did not at that time.

18. Q. Now, did you have a subsequent conversation?

19. A. Yes, I did, later that day.

20. Q. Or interview with the defendant?

21. A. Yes.

22. Q. When and where was that?

23. A. That was later in the same day in the law office of
24. Mr. Smith, and that was I think approximately 3:15 P.M. on the
25. same day, November 18th.

1. A. It's a Marlin .30-.30, thirty caliber lever action
2. rifle.

3. Q. Is that the firearm or the rifle which the defendant
4. turned over to you?

5. A. Yes, it is.

6. MR. WALSH: I offer this into evidence as
7. Commonwealth Exhibit #7, Your Honor.

8. COURT: Commonwealth #7 for identification is
9. received in evidence.

10. Q. And the other firearm which I have marked as
11. Commonwealth Exhibit #8, I ask you if you can identify this
12. particular firearm.

13. A. Yes sir, this is the firearm that was turned over to
14. me by Detective Friedline at the Chesterfield Police
15. Department.

16. Q. All right. Did you show that to the defendant?

17. A. I don't believe I did. This one also has my mark.

18. Q. All right, I'll hold off on that. What did you do
19. with those after--well, go ahead and continue with what the
20. defendant told you during that second interview that you had
21. with him on the 18th.

22. A. As I stated, his recollection of the events was
23. basically the same as he had told me during the first
24. interview, that he had been in the general area of the offense
25. hunting, that he had seen a deer run across the right-of-way

1. approximately a hundred yards away. He stated that he was
2. about fifty yards west of the--or generally west of the
3. right-of-way in the brushy area when he fired at the deer.

4. What he said he did, he saw the deer, he shot at it
5. once with the .30-.30 lever action rifle, he dropped that gun,
6. that rifle, and shot at the deer additionally three or four
7. times with the thirty caliber carbine. He further stated that
8. he felt that he had not hit the deer and that he did not know
9. that he had hit anything.

10. Q. Now, did you also during the course of your
11. investigation--well, let me do it this way. Let me hand you
12. what is marked Commonwealth Exhibit #9 for identification and
13. ask you if you had this in your possession.

14. A. Yes, I did.

15. Q. Can you tell us what that is?

16. A. This is the spent bullet that was recovered from the
17. victim during autopsy.

18. Q. Now, did you do anything after you obtained
19. Commonwealth's Exhibit #7 and Commonwealth's Exhibit #8 for
20. identification, Commonwealth's Exhibit #9 for identification,
21. and Commonwealth's Exhibit #10 for identification?

22. A. Yes, I did.

23. Q. What did you do with those items?

24. A. I hand carried them to the laboratory for comparison.

25. Q. And did you then receive an analysis or report of

1. Q. And sent to Richmond or hand carried to Richmond?

2. A. No, it was sent from the Medical Examiner's office in
3. Roanoke to the Sheriff's Department by certified mail.

4. Q. I'm sorry, I recall that in the report. It turned out
5. that Mr. Gooden was not violating any laws as far as hunting
6. with two rifles, was he?

7. A. No.

8. Q. Did you find any spent cartridges or casings for the
9. .30-.30?

10. A. No, I didn't.

11. Q. So, basically we have one round of the .30-.30 being
12. fired, the four carbine--there were four carbine casings found
13. near the easement, as you pointed out on Defendant's Exhibit
14. #2.

15. A. Yes.

16. Q. On the west side of--generally the west side of the
17. easement. When you arrived there you only saw two.

18. A. That's correct.

19. Q. Where were the other two, in Mr. Wyant's pocket?

20. A. I believe Mr. Wyant had them in his hand or his pocket
21. or someplace.

22. Q. And within two inches were these cartridges found?

23. A. Within several inches of each other.

24. Q. And Mr. Wyant indicated to you that all four of them
25. were found . . .

1. JAMES NELSON WYANT,
2. having been called as a witness, was duly sworn,
3. and testified as follows:
4.

5. Direct Examination by Mr. Walsh:

6. Q. State your name, please.

7. A. James Nelson Wyant.

8. Q. Are you any relation to the James Wyant who was killed
9. on November 16th, 1981?

10. A. I am his uncle, yes.

11. Q. You are his uncle?

12. A. Yes.

13. Q. Mr. Wyant, drawing your attention to the days
14. following the death of your nephew, did you have occasion to go
15. out into the area in which he was killed to look around the
16. area?

17. A. Yes sir.

18. Q. What were you looking for?

19. A. We were in there the day that Mr. Comer was looking
20. for evidence. And we had looked for shell casings, which we
21. didn't find the day that he was there. I went back about two
22. to three times later and looked. I don't remember the date,
23. but I found four casings.

24. Q. All right. Now, after you found these four casings,
25. what did you do with them?

1. A. I left them where they were, I came back and called
2. Mr. Comer.

3. Q. Did you leave all four of them there?

4. A. They were laying right at the opening. I had moved
5. two of them that was laying right in the tracks. I taken a
6. weed and stuck in the end of them, and moved them about three
7. foot about of the car tracks or the walking, where they come
8. through.

9. Q. Was this on the right-of-way?

10. A. Yes sir. It was a road that bears off the power line
11. and goes around and comes back on the power line. They were
12. right in that entrance.

13. Q. Okay. Let me hand you what is marked as Commonwealth
14. Exhibit #5, and ask you whether or not you recognize the
15. subject of this photograph?

16. A. Yes sir.

17. Q. Does this photograph show the area in which you found
18. those casings?

19. A. Well, I don't know exactly, but is this where James
20. was laying on the top? The casings were found on a road that
21. turns right, right in here I'd say (indicating).

22. Q. So, somewhere in the . . .

23. A. It don't show it on here.

24. Q. It doesn't show it on there.

25. A. Right, it's somewhere right in here (indicating).

1. Q. All right. Somewhere in this general area?

2. A. Yes.

3. Q. Now, the path, what appears to be a car path that goes
4. from the bottom left of the photograph toward the top center of
5. the photograph, do you know what that cleared area is?

6. A. You mean this that we're looking at here, or the one
7. that comes over here?

8. Q. No, the one that goes up from the bottom of the
9. photograph toward the top.

10. A. Yeah, it's all cleared.

11. Q. Is that the Vepco or the power line right-of-way?

12. A. Yes sir, it's the power line. I guess it would be.

13. Q. So, you're saying that the casings which you found
14. were off to the right-hand side of the right-of-way.

15. A. Right in this edge, right off of this, probably
16. eight--seven or eight feet, just as you turn.

17. Q. Now, it was seven or eight feet off of

18. A. That's a guess.

19. Q. Basically to the west of the right-of-way?

20. A. I guess it would be west. It would be right looking
21. up the power line.

22. Q. Now, over what--how close or how far apart were these
23. four casings from each other?

24. A. Approximately two foot.

25. Q. Approximately two feet?

1. A. Yes.

2. COURT: Would you repeat the question?

3. MR. WALSH: I asked him how far the casings were
4. from each other, what area they covered.

5. A. Approximately one to two foot, I'd say.

6. Q. Okay. Then you contacted Detective Comer?

7. A. Yes sir.

8. Q. And what did Detective Comer do with those casings?
9. Did he pick them up?

10. A. He taken them with him.

11. MR. WALSH: Answer any questions the defendant
12. may have.

13.

14. Cross Examination by Mr. Hayes:

15. Q. Mr. Wyant, you said you'd been back two or three times
16. to the area looking for the casings?

17. A. Yes sir.

18. Q. Had you searched all up and down the right-of-way
19. there?

20. A. Yes.

21. Q. Had you searched this particular area prior to the
22. date that you discovered the casings?

23. A. Not off to the right any, I would say no. Just right
24. on the power line. The casings had been run over by an
25. automobile, I presume, and was hard to see and were in some

1. grass that was there.

2. Q. Now, can you remember approximately how many days
3. later from the time that your nephew was killed that this
4. occurred, that you found them?

5. A. No, I don't, I wouldn't . . .

6. Q. Was it as much as a week?

7. A. It was probably within a week or less, maybe.

8. Q. Now, you testified a moment ago that when you did see
9. them you used a blade of grass and you moved two over?

10. A. That had been run over by a vehicle, and I taken a
11. stiff weed and lifted the two out of the dirt that had been
12. pressed down and saw they were thirty carbine casings.

13. Q. Now, when you first discovered them, is that when they
14. were within two feet of each other?

15. A. We looked--we found two and then looked more and found
16. the other two.

17. Q. The four that you looked at, could they all have been
18. laid, in the pattern that you found them, on the top of this
19. table in front of you?

20. A. Yes sir, close to it.

21. Q. And how much would you estimate that this table is
22. across here?

23. A. Approximately four foot.

24. Q. So, they all could have been laid in there.

25. A. At least, or close to it.

1. Q. And did you stay there with the casings or did you
2. leave the casings and go and call Detective Comer?

3. A. Yes sir, I moved the two out of the car tracks after I
4. found they were thirty carbine. I removed two of them about a
5. foot and laid them off the edge of the path.

6. Q. All right.

7. A. And I went and called Mr. Comer and went back. And I
8. told him that I had removed two of them and showed him exactly
9. where I had dug them up out of the ground where they had been
10. run over.

11. Q. Now, when Detective Comer met up with you, did you all
12. meet at that place or did you meet somewhere else and come up
13. there together? How did that happen?

14. A. I met Mr. Comer at the creek, I think it was, right
15. near the place.

16. Q. And you walked up there together?

17. A. Yes sir.

18. Q. And you pointed out the casings. And did he then pick
19. them up?

20. A. Well, we looked, we hadn't found--I think we found
21. maybe after he got there we had found one or two more, I'm not
22. sure. But I do know that he was there and he taken all four
23. casings.

24. Q. I just wanted to clear up one point. In other words,
25. before you called Detective Comer you had personally seen all

1. four of them, is that right?

2. A. No sir, I had found two casings.

3. Q. You had found two before you called him.

4. A. And then we found . . .

5. Q. "We" being you and Detective Comer together?

6. A. Me and my girlfriend.

7. Q. And your girlfriend and Detective Comer?

8. A. He come back--he met me there.

9. Q. I understand that, but what I'm trying to get at is,
10. had all four casings been discovered before Detective Comer got
11. to the scene or were some of them discovered after he got
12. there?

13. A. I'm not sure. But I do know that I called him. We
14. had looked at least twice there. I know we had found them and
15. kept looking. I don't remember if it was after he had come or
16. before that we found the last two casings. I'm not sure.

17. Q. This is conceivably as late as a week after this?

18. A. I couldn't be sure about that.

19. Q. Conceivably it could be a week later. Possible.

20. A. Possibly, but I don't know.

21. MR. HAYES: That's all the questions we have,
22. Your Honor.

23. COURT: Re-direct?

24. MR. WALSH: No sir.

25. COURT: You may step down. Call the next

1. witness.

2. MR. EVANS: Can this witness be excused, Your
3. Honor?

4. MR. WALSH: I believe so, yes.

5. COURT: All right, you are excused from further
6. attendance.

7. MR. WALSH: Robert Sipe. Your Honor, while we're
8. waiting for the next witness, the Commonwealth would offer into
9. evidence Commonwealth's Exhibit #11, which is the Report of
10. Autopsy prepared by Dr. Oxley.

11. COURT: Do you wish to be heard, gentlemen?

12. MR. HAYES: No, Your Honor.

13. COURT: Then Commonwealth Exhibit #11 for
14. identification, the Report of Autopsy, is received in evidence.

15.

16.

17.

18.

19.

20.

21.

22.

23.

24.

25.

ROBERT EUGENE SIPE,

having been called as a witness, was duly sworn, and testified as follows:

Direct Examination by Mr. Walsh:

Q. Would you state your name, please.

A. Robert Eugene Sipe.

Q. How old are you, Robert?

A. Thirteen.

Q. Okay. Robert, are you any relation to James Wyant, the young man that was . . .

A. Just by marriage.

Q. Pardon?

A. Just by marriage.

Q. He is your brother-in-law?

A. Yes.

Q. He was married to your sister?

A. Yes.

Q. Now, Robert, let me draw your attention to the 16th of November of last year, and ask you whether or not you were on that day out hunting with your brother-in-law, James Wyant?

A. What now?

Q. Back in November of last year did you have occasion to go hunting with James Wyant, your brother-in-law?

A. Yeah.

1. Q. Where were you--what area were you hunting in?

2. A. On the power lines.

3. Q. Okay. What time did you start hunting that day?

4. A. It was about . . .

5. Q. Early in the morning?

6. A. Yeah.

7. Q. How long did you hunt?

8. A. Until that evening.

9. Q. Until that evening. Now, what happened near the end
10. of the day on that day that you were hunting with your
11. brother-in-law?

12. A. I don't understand what you mean.

13. Q. All right, did something happen to your
14. brother-in-law?

15. A. Yeah.

16. Q. What happened to him?

17. A. Well, we was sitting right there at that big hill, and
18. then we came back to the power lines, and he stopped to look
19. over into the thickets, he thought he heard a deer. And then
20. they started shooting and he fell to the ground. He hollered,
21. "Don't shoot no more," and then after he hollered that they
22. shot one more time and it went past my ear.

23. Q. Now, how many shots did you hear at this time?

24. A. About five.

25. Q. About five?

1. A. Four or five.

2. Q. Okay, now, what were you and James doing at the time
3. you heard the shots?

4. A. We was standing at the power lines looking over, we
5. thought we heard a deer over in the thickets.

6. Q. All right. Which direction were you facing? Were you
7. facing up or down the power line?

8. A. Out toward the highway.

9. Q. Out toward the highway?

10. A. Yes.

11. Q. You mean 340?

12. A. Yes.

13. Q. Okay. Let me show you Commonwealth's Exhibit #3,
14. Robert, which is an aerial photograph of the area. At this
15. point this curved line toward the top of the photograph has
16. been identified as Route 340. Could you point out here
17. approximately where you remember having been at that time?

18. A. Let's see.

19. Q. And the straight line through the center of the
20. photograph is the power line.

21. A. We was about along in here somewhere.

22. Q. Along over toward the left-hand side of the
23. photograph? On this side?

24. A. I'm not sure.

25. Q. Okay. Now, James' body was found at this point, or at

1. least that has been identified as being the location. Now,
2. which direction were you and--were you and James standing
3. still?

4. A. Yeah.

5. Q. And in which direction were you facing? In which
6. direction were you looking?

7. A. Out towards the highway.

8. Q. Towards what would be the top of this photograph?

9. A. Yeah.

10. Q. Okay, and as you were standing there, did you see any
11. other person or people around?

12. A. After they shot, down at the--where it's a road
13. crossing. They were coming across.

14. Q. Okay. Prior to the shots, did you see anybody else in
15. the area where you were, other than James?

16. A. No.

17. Q. Did you see anybody else up or down the power line, or
18. were you looking?

19. A. No.

20. Q. Now, where were you specifically in relation to James
21. when you heard the shot? Were you next to him, behind him, in
22. front of him, where?

23. A. Right over to his right.

24. Q. To his right?

25. A. Yeah.

1. Q. About how far away were you from him?

2. A. I don't know, about two or three feet, something like
3. that.

4. Q. Okay. You heard James say something. How many shots
5. had you heard prior to James saying what you testified that he
6. said?

7. A. How many shots before he said it?

8. Q. Yes.

9. A. I don't know, about one or two, something like that,
10. three.

11. Q. How many after you heard him say that?

12. A. I don't know, about two shots, something like that.

13. Q. After you heard him say don't shoot any more, what
14. happened to him? What did he do?

15. A. He just fell to his knees and then he just laid his
16. head over and just laid down.

17. Q. Okay. Now, what did you do after that happened?

18. A. After they stopped shooting I ran back and got these
19. two Shifflett boys.

20. Q. Where were they?

21. A. They was back behind us, over in the--up on that other
22. road.

23. Q. Let me again refer you to Commonwealth's Exhibit #3.
24. Which direction from the "x"?

25. A. Back behind us. One of them was on this side

1. (indicating), was his little brother, and the other one was on
2. the other side.

3. Q. So, they were I guess, in effect, what we've referred
4. to as south of your position. And along the power line?

5. A. Yeah.

6. Q. Which Shiffletts were those, do you remember? Do you
7. know their names?

8. A. No.

9. Q. What did you do after you got them? Did you run up to
10. them, or what did you do?

11. A. I ran.

12. Q. Okay, and what did you do when you got up there?

13. A. I told them that my buddy got shot, and they came down
14. to him.

15. Q. Down back to the position where you were?

16. A. Yes.

17. Q. And then what did you do after that?

18. A. They checked his pulse and they said he was dead, and
19. then we went down to that house and they called the rescue
20. squad and everything.

21. Q. Did you see anybody else? Did you go with the
22. Shiffletts?

23. A. Yeah.

24. Q. Which direction did you go?

25. A. We went back behind us out toward 340.

1. Q. In relation to the power line, did you go along the
2. power line or away from it, or what?

3. A. No, we went away from it.

4. Q. Did you see anybody after the shots were fired, other
5. than the Shiffletts?

6. A. Yeah, we seen two people down at the end of the power
7. line. They was kind of walking fast across.

8. Q. When you say the end of the power line, what are you
9. referring to? What do you mean by the end of the power line?

10. A. Out--well, I don't know how to say it.

11. Q. Let me again show you Commonwealth Exhibit #3.

12. A. Like down at this end (indicating).

13. Q. Toward where the "y" is?

14. A. Yeah.

15. Q. How many people did you see down there?

16. A. Two.

17. Q. And what were they doing when you saw them down there?

18. A. They was walking fast across the road.

19. Q. What do you mean across the road, which road? Can you
20. point out on the photograph which direction they were going?

21. A. They was going out towards the highway. It was like a
22. little road like out through there.

23. Q. They were crossing the power line?

24. A. Yeah.

25. Q. The right-of-way?

1. A. Yeah.

2. Q. Again, this is 340, and they were going in a direction
3. toward 340?

4. A. Yeah.

5. Q. All right, and where were you when you saw this?

6. A. After I got the Shifflett boys and we came down there,
7. we seen them. And one of them came back to where he had his
8. truck parked.

9. Q. But you say you got the Shifflett boys and you came
10. back. Where did you go back to?

11. A. To James. To where James was.

12. Q. All right, so you saw the two people down near where
13. the "y" is located from the position where James was?

14. A. Yeah.

15. Q. Now, and you said you saw one of them going up toward
16. his truck. Whose truck are you talking about?

17. A. I seen one, it might have been two. One of these
18. Shifflett boys' truck. He had his truck parked down there.

19. Q. Okay. Now, who was with you when you saw all of this?

20. A. Me and those two Shifflett boys and their other
21. younger brother.

22. Q. What did you all do after you saw those two persons
23. down there?

24. A. We went on back out to the house and called.

25. Q. At the time you heard the shots that were fired, did

1. you hear anything other than the sound that the rifle makes
2. when a bullet is fired from it?

3. A. No.

4. Q. Did you hear anything . . .

5. COURT: Was your answer no?

6. A. Yes.

7. COURT: The answer to the previous question was
8. no.

9. Q. Did you hear anything hitting the ground in your area
10. where you were?

11. A. No.

12. Q. What were you wearing at this time, when you were out
13. hunting with James?

14. A. I had an orange hat and a big orange coat.

15. Q. Okay. What was James wearing?

16. A. He had a coat on with two orange handkerchiefs like
17. hanging down, tied up here (indicating).

18. Q. What, one in front and one in back?

19. A. Yes.

20. Q. Did he have anything on his head?

21. A. Yeah, he had a red hat on.

22. Q. A red hat?

23. A. Yes.

24. Q. Now, when you and James were standing there, do you
25. recall what--did you have a rifle with you?

1. A. Yeah, I had a .410.

2. Q. A .410 shotgun?

3. A. Yeah.

4. Q. What did James have?

5. A. He had a twelve gauge, I believe it was.

6. Q. Okay. Do you recall how you were holding your
7. shotgun at that time, when you were standing there right before
8. the shot.

9. A. I was just--I just had it in my hand and he had his up
10. over his shoulders like.

11. Q. You had yours with the barrel down toward the ground?

12. A. Yeah.

13. Q. With your hand down by your side?

14. A. Yeah.

15. Q. And James had his how?

16. A. He had it over his shoulder like.

17. Q. Was the barrel sticking up in the air?

18. A. Yeah.

19. Q. Do you know how tall you are, Robert?

20. A. No.

21. COURT: Stand up.

22. A. (Witness stands).

23. COURT: 5'4"? If that's acceptable, gentlemen?

24. MR. HAYES: Yes sir.

25. Q. Did you hear any noise or sound near your head at the

1. time of the shooting?

2. A. No. I only heard it when the bullet went past my ear.
3. It was a wheezing like.

4. Q. A what?

5. A. It wheezed past my ear when the bullet went past my
6. ear.

7. Q. Okay. Was this before or after James fell to the
8. ground?

9. A. After.

10. COURT: After?

11. A. Yes.

12. MR. WALSH: That's all I have.

13. COURT: The defendant may inquire.

14.

15. Cross Examination by Mr. Hayes:

16. Q. Robert, this was pretty scary, wasn't it?

17. A. Yes.

18. Q. From the time that you heard the first shot until the
19. time that you testified that you think something whizzed past
20. your ear, can you tell us, was that in seconds or minutes that
21. all that transpired?

22. A. Just in seconds.

23. Q. In seconds. Less than a minute before all of it had
24. happened?

25. A. Yeah.

1. Q. I want to get straight where you were standing and
2. where the young man that was killed was standing. If you'll
3. refer once again to Plaintiff's Exhibit #3. You testified that
4. you all were in the power line earlier?

5. A. Yeah.

6. Q. In other words, it was pretty clear where you were
7. standing?

8. A. Yeah.

9. Q. And you were facing to the highway?

10. A. Yeah.

11. Q. Which in Defendant's Exhibit #3 is to the top of the
12. photograph, you're facing this direction.

13. A. Yeah.

14. Q. To your right is sort of downhill along the power
15. line, is that correct?

16. A. Yeah.

17. Q. The power line goes off and starts slanting down.

18. A. Yeah.

19. Q. Which side of the Wyant young man were you on? Were
20. you on the uphill side or the downhill side? Or were you
21. beside him at all?

22. A. I don't get you, what . . .

23. Q. All right. If I standing here represent young Mr.
24. Wyant, were you on his right-hand, which would have been
25. between him and downhill, or were you over by his left side,

1. which would have been . . .

2. A. Right, I was on his right.

3. Q. You were on his right, so you were downhill from him?

4. A. Yeah.

5. Q. Could you tell where the shots came from?

6. A. It was kind of out in front of us. I don't really

7. know.

8. Q. Could you tell from the sound that they were some

9. distance away or reasonably close?

10. A. I don't know.

11. Q. From your own experience of listening to gun shots out

12. in the woods, could you tell that?

13. A. It was kind of close like.

14. Q. Kind of close?

15. A. Yeah.

16. Q. Now, you were facing out to the highway so that both

17. of you had your shoulders pointed to the downhill side and the

18. uphill side, is that right?

19. A. He was standing right like--if the power line goes

20. like that, he was standing sideways on it.

21. Q. All right, and he had these red bandannas on the front

22. and the back?

23. A. Yeah.

24. Q. Robert, did you hear any other whizzing noises like

25. the one you described going past your ear?

1. A. No.

2. Q. Is it possible that the whizzing noise that you heard
3. was also the shot that struck your buddy?

4. A. I don't know.

5. Q. Could it have been?

6. A. I don't know.

7. Q. You're not sure whether it was or not?

8. A. No.

9. Q. You heard perhaps four or five shots?

10. A. Yeah.

11. Q. Did you drop to the ground also?

12. A. Yes.

13. Q. After you hit the ground, did you hear any more shots?

14. A. One more.

15. Q. One more. But all this was less than a minute you
16. said?

17. A. Yeah.

18. Q. Robert, did you realize when you dropped to the ground
19. that your buddy had been shot?

20. A. Yeah.

21. Q. When you stood up, did you stand up right away?

22. A. No, I waited to see if they'd quit shooting.

23. Q. That's understandable. Do you know how long you
24. waited? Was it a matter of once again seconds, or was it a
25. matter of minutes?

1. A. A couple minutes.

2. Q. When you stood up, did you look down the power lines
3. to see if you saw where the shots might be coming from?

4. A. No, I just jumped up and ran back to them, because we
5. seen them when we came in.

6. Q. So you didn't look to see if there was anybody down
7. there that might have been firing the shots?

8. A. No.

9. Q. You ran towards the Shiffletts. How far away in terms
10. of yards like on a football field were the Shiffletts away from
11. you?

12. A. I don't know, about a hundred yards, something like
13. that.

14. Q. The whole length of a football field?

15. A. Something like that.

16. Q. And you ran up to them and told them that your buddy
17. had been shot, is that right?

18. A. Yeah.

19. Q. Did you all run back or did you walk back?

20. A. We rushed back.

21. Q. Kind of trotted along, perhaps?

22. A. Yeah.

23. Q. All right. Can you tell me how long it might have
24. taken now from the time that you dropped to the ground until
25. you got back with the Shifflett brothers to where young Mr.

1. Wyant was? Could it have been as much as five minutes?

2. A. It was about two or three minutes.

3. Q. Now, you testified a moment ago that you laid on the
4. ground about two minutes.

5. A. Yeah, but after I got up it took me about two or three
6. minutes to get up to them.

7. Q. To get up to the Shiffletts?

8. A. Yeah.

9. Q. And get them back?

10. A. Yeah.

11. Q. So, maybe five minutes altogether?

12. A. Yeah.

13. Q. From the time you dropped to the ground?

14. A. Yeah.

15. Q. And then they examined young Mr. Wyant and told you
16. that they thought he was dead?

17. A. Yeah.

18. Q. And you all headed immediately to make a telephone
19. call?

20. A. Yeah.

21. Q. Did you look around then to see if you saw anybody?

22. A. Yeah, that's when we looked around and we seen two
23. people going across the road down at the end of the power line.

24. Q. So, you were standing right by the body when you first
25. saw the two people that you have described as walking fast, is

1. that correct?
2. A. Yes.
3. Q. How far away were they in terms of football fields?
4. A. I don't know.
5. Q. Were they all the way down to the bottom?
6. A. Yeah.
7. Q. Do you know where the creek bed is down there?
8. A. Yeah.
9. Q. Were they on your side of the creek bed or the other
10. side, or could you tell?
11. A. I don't know, I couldn't hardly tell.
12. Q. Were they close to the creek bed?
13. A. They was pretty close to it, I believe.
14. Q. Now, is that--you saw them then, then you all went to
15. make the telephone call, is that correct?
16. A. Yeah.
17. Q. And when you went to make the telephone call you saw
18. them again?
19. A. No, we didn't see them--we only seen them once, that's
20. all.
21. Q. You only saw them one time and that's when you were
22. standing by the body and they were down at the bottom of the
23. hill?
24. A. Yeah.
25. Q. Could you tell who those people were?

1. A. No.

2. Q. They were too far away?

3. A. Yeah.

4. MR. HAYES: That's all the questions we have,
5. Your Honor.

6. COURT: Re-direct?

7.

8. Re-Direct Examination by Mr. Walsh:

9. Q. Did you have any problem telling or being able to tell
10. that what you saw off in the distance were people?

11. A. What now?

12. Q. You said you saw two people walking across the
13. right-of-way along that crossover. You didn't have any trouble
14. distinguishing that they were, in fact, people rather than a
15. deer.

16. A. No.

17. MR. WALSH: That's all of this witness.

18. COURT: Re-cross?

19. MR. HAYES: No re-cross, Your Honor.

20.

21. Examination by the Court:

22. Q. In the minute or so before you heard the shots or
23. while you were hearing the shots, did you see any deer anywhere
24. close to you?

25. A. No.

1. COURT: Any further questions?

2. MR. WALSH: No, Your Honor.

3. COURT: You may step down. Call your next
4. witness.

5. MR. WALSH: Larry Shifflett.

6. COURT: Do you wish to excuse this young man?

7. MR. WALSH: I'm not sure at this point.

8. MR. HAYES: Your Honor, there's only one thing,
9. there's a little bit of conflict in his testimony that the
10. Court may have noted. First he talked about going somewhere
11. and then seeing the two people, and the second time only--so,
12. it may be that if he were reserved, because as these other
13. people testify, we may need him.

14. COURT: You'll have to wait outside until you are
15. excused then, young man.

16.

17.

18.

19.

20.

21.

22.

23.

24.

25.

LARRY SHIFFLETT,

having been called as a witness, was duly sworn, and testified as follows:

Direct Examination by Mr. Walsh:

Q. State your name, please.

A. Larry Shifflett.

Q. Larry, let me draw your attention to last November 16th of 1981. Did you have occasion to be out hunting on that day?

A. Yeah, I did.

Q. Were you with other people in a hunting party?

A. Yeah, I was with two brothers.

Q. Okay, and who were they?

A. Jerry Shifflett and Kendall Shifflett.

Q. All right, and what area were you hunting in?

A. Up on 340 across from West Sand and Gravel.

Q. Were you along the--I believe there's a Vepco power line going up through that area?

A. Yeah, right.

Q. Were you up in that location?

A. Right.

Q. Now, do you know Robert Sipe, the boy that just testified?

A. Yes sir.

1. Q. Did you see him that afternoon?

2. A. Yes, I did.

3. Q. What were the circumstances of seeing him?

4. A. Well, we had went in about three o'clock. We had
5. drove a spot right down just on top of the hill. We left from
6. there and we went up the power line along where Sipe was laying
7. and I left my brother, my younger one. The other brother that
8. was with me, he went in just this side of that, went in and sat
9. down. I went on over the hill out the power line to a hollow
10. there and I talked to Wayne Sipe. I don't know, fifteen or
11. twenty minutes I come back and I thought, you know, too many on
12. the power line, somebody might get shot. So I told them, I
13. said, "Come on, let's get off the power line here a little
14. bit." So I left there and went up maybe a hundred,
15. seventy-five to a hundred yards, and left my brother and I
16. walked on out another little road there.

17. Well, we was sitting there maybe a half an hour and we
18. heard somebody holler. I figured maybe somebody had killed a
19. deer and was excited about it. Well, it got louder and he
20. started down toward us, he come louder to us. So, he was
21. hollering, "Help," he said, "Somebody shot my buddy."

22. Q. This is Robert Sipe that was saying that?

23. A. Right.

24. Q. Okay.

25. A. So, I run on up there, come on down and told Kendall

1. to come on and run up to where James was laying. And I checked
2. him, checked his arm and checked his neck, and there was no
3. pulse, he was dead.

4. Q. Now, just prior to that time that you heard Robert,
5. had you heard any shots?

6. A. I heard five shots.

7. Q. From the time that you heard those shots, what time
8. elapsed until you got down to where James was?

9. A. Very little. I'd say less than a minute.

10. Q. Less than a minute?

11. A. Yes.

12. Q. What did you do after you got down to where James was
13. lying?

14. A. I walked up to James and I looked at him, and I
15. thought, "Well, he's dead," but I wanted to make sure. I
16. checked his arm, I checked his neck, to see if there was any
17. pulse. There wasn't any.

18. Q. How long did you--did you just stay there after that,
19. or did you go somewhere?

20. A. No, I walked on maybe ten yards on down. I knowed
21. where my other brother was. And he hadn't come out.

22. Q. Now, ten yards on down . . .

23. A. On down north, going north.

24. Q. Okay, along the power line?

25. A. Right, on the power line. And I hollered for him, he

1. said, "What do you want?" I said, "Come here," I said,
2. "Somebody has been shot." He came to me.

3. Q. Okay, now which brother was that?

4. A. That was Jerry.

5. Q. Jerry?

6. A. Right.

7. Q. That was on the other side of James from where you had
8. originally been, is that correct?

9. A. Right.

10. Q. While you were going down toward the spot where your
11. brother was, or afterwards, did you see any other persons along
12. the power line?

13. A. The only person, I seen two people running on down
14. over the--in the hollow. I seen them take off and start
15. running about the middle of the hollow through there.

16. Q. All right. Let me show you Commonwealth's Exhibit #6
17. and ask you if you can recognize the subject of that
18. photograph. Is this the power line right-of-way?

19. A. Yeah.

20. Q. That this all happened on?

21. A. Yeah.

22. Q. Okay. Now, it has earlier been identified that this
23. photograph was taken from the--at least the approximate
24. location where James was found.

25. A. Okay.

1. Q. Now, you said you saw two persons down in the hollow.
2. Can you point to the approximate location?

3. A. All right, I went on down here. This is on up on the
4. hill more or less where you can't see through here. You can
5. see--or, I can show you. On down here there's two roads that
6. come together. One goes here and one goes over the bank, kind
7. of parallel, side by side. And right down here it's a road
8. that goes up through here.

9. Q. Let me--maybe if we can use Defendant's Exhibit #2,
10. which shows the power line, the right-of-way. This is the
11. location up at this end that is this point on the photograph
12. where James--approximately where James was, and this photograph
13. looks down this direction.

14. A. Okay.

15. Q. Here is the stream bed at this point.

16. A. Okay.

17. Q. Now, pointing on--if you can, using this Defendant's
18. Exhibit #2, could you point to the approximate location or
19. where you recall . . .

20. A. Okay, this is the stream.

21. Q. Yes, this is the stream.

22. A. Okay, this is a hill, and is this before it breaks
23. over the hill here?

24. Q. The break comes right at this point.

25. A. Okay. I'd say along in here. There's a road that

1. bears off that way, and it's along in here. Right there at
2. that road is where I seen the movement. It's before you get to
3. the stream.

4. Q. Okay, now, how many people did you see in this
5. location?

6. A. I seen two.

7. Q. You saw two?

8. A. Two people.

9. Q. Which direction were they going?

10. A. They were headed north. Headed on out toward the
11. stream. My truck was setting right along in here.

12. Q. I guess the best thing to do is if you would mark #2
13. where you saw, originally saw the two persons.

14. A. Okay, I'd say . . .

15. MR. SMITH: Your Honor, maybe he ought to have
16. it explained to him that this is a vertical, and it might help
17. him a little more . . .

18. MR. WALSH: This is a crosscut section of the
19. whole.

20. MR. SMITH: An exaggerated vertical.

21. A. Okay. This is the stream and this is the power line
22. coming straight through, right?

23. Q. Right.

24. A. I'd say somewhere along in here (indicating).

25. Q. Okay, just put the number "two", and then put an arrow

1. in the direction in which you saw them move.

2. A. They were going this way (indicating). They were
3. going north.

4. Q. Now, did you have a car or a jeep or . . .

5. A. Right, I had my truck.

6. Q. Your truck?

7. A. Right.

8. Q. Where was that parked?

9. A. It was parked right along in here.

10. Q. Just on the other side of the stream?

11. A. Yeah.

12. Q. Okay. How long did you observe these two persons
13. after you first saw them move?

14. A. I don't know, I'd say in the neighborhood of maybe a
15. half a minute to a minute.

16. Q. All right.

17. A. They were moving toward here, they went past the
18. stream, they went past my truck and went up here, right there
19. at the road. They turned, they looked back, they started back,
20. to come back to my truck. And that's when we was going to go
21. out and I was going to get the law. So, I said, when they
22. turned to come back, I said, "Well, it might be more trouble,
23. let's go on out the other way." So, we did.

24. Q. Now, were you able to recognize who those two persons
25. were or get a description of them?

1. A. No, it was too far.

2. MR. WALSH: Answer any questions the defense may
3. have.

4.

5. Cross Examination by Mr. Smith:

6. Q. Mr. Shifflett, let me ask you this. You came to the
7. hunting area there with two brothers, is that correct?

8. A. Yes.

9. Q. That would be Jerry and Kendall?

10. A. Right.

11. Q. And I take it you parked the truck right along that
12. power line, is that right?

13. A. Right.

14. Q. That's on the east side of it.

15. A. Right.

16. Q. So, you and your brother Jerry and Kendall must have
17. walked up the power line.

18. A. Right.

19. Q. To find a position from which you could hunt or stand.

20. A. Right.

21. Q. And along the walk you ran into a Wayne Sipe, who was
22. also hunting, is that correct?

23. A. No, wait a minute now. When we first went in, we went
24. in and we went up to the top of the hill, it's a section there
25. we drove at. I drove. We went up, turned left there and went

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1. up there.

2. Q. Why don't you explain that to me, I'm not sure I
3. follow that.

4. A. Okay, we went here, and you said the hill was along
5. here, is that right?

6. Q. Yes, right before this pole.

7. A. This road, there's a road that turns and goes up
8. through here. Okay, it's a section right here and it goes on
9. back, and my two brothers was up here and I drove up, drove the
10. thicket, went through there and drove up through there toward
11. them.

12. Then we left from there and come on up. And right
13. along in here (indicating) I left Kendall. And my brother, he
14. left, right along in there and went back in here, along in
15. there..

16. Q. Kendall--approximately where was Kendall along the
17. power line?

18. A. Kendall was right where James fell.

19. Q. That's where he was before you placed him?

20. A. That's right. I placed him there, and then I come
21. back and got him, and we went on above there.

22. Q. All right. Approximately how far from where Mr. Wyant
23. was shot was Kendall?

24. A. About seventy-five yards.

25. Q. Which side of the easement were you on?

1. A. He was on this side (indicating).

2. Q. He was on this side of the easement?

3. A. The east side.

4. Q. About seventy-five yards up. How far up were you from
5. your brother Kendall?

6. A. No, Kendall was--I'd say Kendall was a hundred yards.
7. I was about seventy-five yards from Kendall. Me and Kendall
8. was--I'd keep him within seeing distance of me, because he was
9. young.

10. Q. So, I take it Kendall was about one hundred yards from
11. where Mr. Wyant was found?

12. A. Right.

13. Q. And you were about seventy-five yards further up?

14. A. Right.

15. Q. A total about a hundred and seventy-five yards?

16. A. Right.

17. Q. And your brother, Jerry, was on this side?

18. A. Right, he was behind him. He came in, it's kind of a
19. cleared spot here, and it's cleared through here. He come in
20. and went up here (indicating).

21. Q. He was up in here about how many yards?

22. A. Behind him, I'd say . . .

23. Q. Was he across the easement from your brother, Kendall,
24. who was about a hundred yards from where Mr. Wyant was found.

25. A. Right. Kendall was up in more or less here

1. (indicating). Winnie was more or less right behind him.

2. Q. And Mr. Wayne Sipe was also in the general area, he
3. was located . . .

4. A. He was way on up in here.

5. Q. He was further up?

6. A. Right. He'd have been two or three hundred yards
7. above there.

8. Q. Two or three hundred yards above you.

9. A. From where James was laying.

10. Q. Then Mr. Wyant, of course, was hunting with Mr. Robert
11. Sipe.

12. A. Yes.

13. Q. Did you ever see those two before the unfortunate
14. incident?

15. A. James and Robert?

16. Q. Yes.

17. A. No.

18. Q. You did not see them?

19. A. No.

20. Q. Who else did you see besides Mr. Sipe and Mr. Wyant--
21. Wayne Sipe, Robert Sipe, Mr. Wyant and your brothers, who else
22. did you see prior to the shooting.

23. A. Nobody.

24. Q. Were there reports that there were plenty of deer in
25. this particular area that day?

1. A. I had hunted in there that morning, and I was hunting
2. the same spot, and I didn't see nothing.

3. Q. Weren't there a lot of different vehicles parked along
4. those dirt roads that come in off of Route 340? Weren't there
5. different vehicles or cars parked there?

6. A. Well, see, I came in and on down below it was a couple
7. of vehicles. But that morning it had been a few hunters. That
8. morning I met a couple colored guys in there. I talked to
9. four.

10. Q. You did speak with four of them?

11. A. I spoke with four and that one colored guy said it was
12. one above him, so I guess it was five.

13. Q. How many different vehicles were parked along the dirt
14. roads here hunting in this general area?

15. A. I don't know.

16. Q. So, you heard some shots, you then saw Mr. Robert Sipe
17. come up to you and indicate that his buddy was shot.

18. A. Right.

19. Q. And you went back down with him to see Mr. Wyant.

20. A. That's correct.

21. Q. I believe you testified that the time between the
22. shots and the time you got to Mr. Wyant was about one minute or
23. two minutes?

24. A. I'd say somewhere in that area. It wasn't very much
25. time lapse. Very little.

1. Q. Mr. Shifflett, I take it this was not your first time
2. hunting, the day of the incident was not your first time you
3. had gone out hunting, is that correct?

4. A. I've hunted since I was about twelve or thirteen years
5. old.

6. Q. Did you feel that the number of people that you saw,
7. including your party and the other people, and from looking at
8. the other vehicles that were perhaps empty along the dirt road,
9. that it was a dangerous situation there possibly for a hunter?
10. Was this the first day of deer season too?

11. A. Right.

12. Q. Did you feel a little danger? I think you said
13. something about that.

14. A. Well, there was quite a few in there. I don't like to
15. hunt on the power line because it's a straight shot. And if
16. something crosses there, if somebody is sitting there, they're
17. going to shoot down the power line. And it is dangerous.

18. Q. It's also possible for a high caliber bullet to travel
19. a great distance. You know, without running into a tree and
20. stopping it, it's possible that, I guess obviously, that in an
21. open area a high powered bullet can go a ways.

22. A. Yeah, it could.

23. MR. SMITH: That's all, Your Honor. Thank you.

24. COURT: Re-direct?

25. MR. WALSH: No sir.

1. COURT: Call your next witness.

2. MR. WALSH: Your Honor, could I have a five
3. minute recess at this point?

4. COURT: If the next witness will be very long, we
5. may as well take a recess for lunch at this time.

6. MR. WALSH: I would ask for that at this point,
7. if there's no objection from the defense.

8. COURT: Then let's recess for lunch.

9. (Luncheon Recess)

10.

11. COURT: The Commonwealth may call its next
12. witness.

13. MR. WALSH: Your Honor, at this time the
14. Commonwealth would rest its case in chief.

15. COURT: The Commonwealth rests, gentlemen.

16. MR. SMITH: Judge, we'd like to make a motion to
17. strike the evidence. If this is what the Commonwealth has got
18. to offer to prove beyond a reasonable doubt that Richard Gooden
19. not only fired this weapon, which we do not dispute, it was his
20. projectile that hit Mr. Wyant; but they have failed to show
21. that it was wanton and willful. We've got here an open area,
22. the power line, and some great distance, as a matter of fact.
23. There's no dispute as to exactly where the body was found and
24. there is some evidence of where Mr. Gooden may have fired the
25. weapon. If we looked on the schematic diagram, it's quite far.

1. Not only that, Judge,.but it's much lower in elevation from
2. where the body was found, we've got a precipice in between
3. those two locations.

4. As a matter of fact, Detective Comer has already
5. indicated while identifying the photograph taken from where the
6. shells were allegedly found, that you could not even see Mr.
7. Wyant at that location because of the rise in the hill. I
8. think our exaggerated vertical schematic will show that. But
9. you cannot even see Mr. Wyant. So I'm not sure what the theory
10. of the Commonwealth is. Apparently Mr. Gooden fired a weapon
11. at a deer and somehow . . .

12. COURT: What evidence is there of that?

13. MR. SMITH: That Mr. Gooden fired the weapon?

14. COURT: At a deer.

15. MR. SMITH: His statement, Judge. He's already
16. made that statement to the detective, that's already in
17. evidence. And that has not been refuted either by any witness
18. of the Commonwealth. That he fired at a deer and somehow the
19. bullet does travel a great distance and strike Mr. Wyant. Now,
20. we're not sure how it traveled that far, maybe it was the open
21. area, it obviously was projected somewhat high, it possibly
22. could have been a ricochet. You've got the bullet itself, we
23. can look at that. It's distorted. I'm sure that you would
24. have some distortion whenever it strikes any object, but
25. unfortunately it struck Mr. Wyant.

1. It's extremely tragic, but we're not sure how
2. that projectile got up that high. It could have been a
3. ricochet off of a wire perhaps, one of the telephone poles.
4. We've got those obstructions that the photographs clearly
5. demonstrate.

6. But at this point the Commonwealth's evidence
7. must show beyond a reasonable doubt that Mr. Gooden was not
8. simply negligent, he was also grossly, wantonly and willfully
9. negligent, and exposed life in the area to dangers. And I
10. don't think the evidence shows that.

11. Judge, on that basis I really feel that this is
12. the type of a case that might better be suited for a civil
13. trial. I don't think it rises to a criminal level, one that
14. would result in Mr. Gooden being convicted of a felony and
15. exposed to a penitentiary sentence. And I just feel like
16. they've failed in their burden of proof to show beyond a
17. reasonable doubt that he was grossly and wantonly negligent.

18. COURT: Mr. Walsh?

19. MR. WALSH: Your Honor, there's no question in
20. this case that the defendant was the one that fired the weapon
21. which, the bullet which ultimately struck Mr. Wyant and killed
22. him. This is a case which involves the use of a deadly weapon.
23. The testimony has been that it was during hunting season when
24. there were a number of people in the area, and I think even one
25. of the witnesses testified that it was, in effect, a dangerous

1. situation. And that is something that the defendant needs
2. to--or anybody that is out there needs to take note of in
3. handling and firing firearms in the direction where people are.

4. The area in which the defendant said he was in
5. talking with Officer Comer, the area in which the shells were
6. found, and all the evidence so far, point to the conclusion
7. that the defendant was firing up the power line right-of-way
8. where Mr. Wyant and young Robert Sipe were. The fact that Mr.
9. Sipe testified that there were no deer or he did not observe
10. any deer in the area right before the shots, the fact that it
11. was a deadly weapon that was used in committing this offense,
12. all have to be taken into consideration along with all of the
13. other evidence that was presented before the Court.

14. For the Court to make its decision at this point,
15. I submit that the standard of care that the defendant used
16. because of the fact that there was the use of a deadly weapon
17. shows that his actions were grossly, culpably and wantonly
18. negligent.

19. COURT: Mr. Smith, Mr. Hayes?

20. MR. HAYES: Yes, Your Honor. If Your Honor
21. please, the Court of course is bound to take the Commonwealth's
22. evidence in its best light. We submit that in this particular
23. situation they are saying that because this gentleman fired
24. five times in a hunting situation, that that amounts to gross
25. negligence. And we submit that there is no Virginia law on the

1. area in terms of hunting accidents and whether you fire two
2. times or ten times or whatever, that in itself creates an
3. inherently dangerous situation.

4. We submit that the only evidence that the
5. Commonwealth has that the Court can rely on in this particular
6. case is the fact that the defendant did fire the weapon, one
7. weapon once, the other weapon four times, and one of the
8. bullets unfortunately struck Mr. Wyant. There is no evidence
9. that the Court can even impute that he was doing anything other
10. than firing at what he thought was a deer approximately a
11. hundred yards away from him. He could not even see these young
12. men where they were up the hill.

13. It's a tragic, unfortunate situation, a one in a
14. million perhaps type of shot that took Mr. Wyant's life, but it
15. does not rise to a criminal action. And we submit that the
16. Court should in fact, strike the evidence.

17. COURT: We do not have any forensic evidence with
18. respect to the distance from the deceased at which the shot was
19. fired. From the nature of the injury and the path of the
20. bullet we do have the evidence that the bullet apparently went
21. through the body of the deceased and the bullet was found
22. adjacent to the exit wound caught between the skin and the
23. t-shirt, indicating that the resistance of the body was
24. sufficient to stop the speed of the bullet.

25. MR. WALSH: Yes sir.

1. COURT: I do note that the autopsy report shows
2. that there is a fracture of the right third rib by a bullet.
3. And there is no expert testimony with respect to whether the
4. distortion of the bullet at its velocity could have been caused
5. by the resistance it met when it struck the rib rather than by
6. a ricochet. But is that a conclusion that the trier of fact
7. could draw without expert testimony?

8. MR. WALSH: No sir.

9. COURT: We also do not have any expert testimony
10. with respect to the nature of the bullet that this was and what
11. resistance it would take to cause it to be deformed.

12. But I have no other evidence in that regard
13. except that, as counsel for the defendant has pointed out, he
14. was hunting deer. So, presumably at this stage of the evidence
15. he was using a rifle that was designed to kill deer and using
16. bullets that were designed to kill deer. And I have no other
17. evidence except that. So, the motion is overruled and your
18. exception is noted.

19. MR. SMITH: Mr. Gary Judd.
20.
21.
22.
23.
24.
25.

GARY A. JUDD,

having been called as a witness, was duly sworn, and testified as follows:

Direct Examination by Mr. Smith:

Q. Mr. Judd, your full name is Gary--what is your middle initial?

A. Gary A. Judd.

Q. And you are employed as a surveyor with Owens and Associates?

A. That's right.

Q. That's here in Harrisonburg, Virginia?

A. Correct.

Q. How long have you been employed with Owens and Associates?

A. I'd say for the past four and a half years.

Q. Are you a certified surveyor?

A. Yes, I am.

Q. For the State of Virginia?

A. Yes sir.

Q. Have you worked--how many years have you worked as a certified surveyor with Owens and Associates?

A. Well, actually just for the last four or four and a half years. Actually I've been certified since 1974.

Q. Were you involved in some of the surveying of the

1. Coors property?

2. A. Yes.

3. COURT: Do you concede the witness'
4. qualifications, Mr. Walsh?

5. MR. WALSH: Yes sir.

6. MR. SMITH: Thank you, Judge.

7. Q. Before you here is a schematic labeled Defendant's
8. Exhibit #2 and another one under it, Defendant's Exhibit #1.
9. Was this schematic prepared by you and were the measurements
10. taken by you prior to the drawing of the schematic?

11. A. Yes, they were.

12. MR. SMITH: I believe, Judge, this has already
13. been identified as to the location of the power line.

14. Q. Now, we have here on Defendant's Exhibit #2 what
15. appears to be an exaggerated vertical scale. Could you explain
16. to the Court the difference between the horizontal scale and
17. the vertical scale and why it was drawn this way as opposed to
18. the other schematic labeled Defendant's Exhibit #1?

19. A. Okay, the scale here on top gives you a good
20. representation of what it actually physically looks like in the
21. field. You have a drop off here, you have the stream, which
22. gives you a good depression. If you look at that and you look
23. at this, you see where the stream is almost flat. Here you've
24. got at least a twenty foot steep bank, it's almost straight up.
25. Physically there in the field, when you look at it on here, you

1. know, it's a little rise and that's about all you see.

2. Q. Let me ask this. I don't want to interrupt, but
3. explain the numerical difference in the scales of these two.

4. A. Okay, as far as the length from one end to the other,
5. they are the same scale. The vertical scale--well, the
6. horizontal scale is one inch equals to sixty feet. The
7. vertical scale is one inch to ten feet, which that emphasizes
8. your vertical dimensions out in the field.

9. Q. Is it customary to do that?

10. A. Yes, it is. That's customary practice for all
11. surveying.

12. Q. And on this one here we have even scaled with the
13. vertical and horizontal, one inch equals sixty feet for both,
14. is that correct?

15. A. That's correct.

16. Q. And you were requested to do both so that we might
17. look at the vertical with the same scale.

18. A. Right. One gives you a good emphasis on the vertical,
19. the other gives you a good emphasis on the distance or the
20. horizontal between the two persons.

21. Q. And these do accurately within the realm of your
22. measurements reflect what this area looks like from the
23. horizontal and vertical, does it not?

24. A. Yes, they do.

25. Q. Now, you took some measurements. One measurement,

1. there's one here that's got indicated, I believe, 91.5 feet
2. from pole number 118.446 going generally south, at this point
3. right here, is that correct?

4. A. Correct.

5. Q. And that was identified to you on the field as being
6. apparently where the victim, James Wyant, was located.

7. A. That's correct.

8. Q. After he was shot. You've got another point back here
9. with a little "x" and we have a notation here. It says
10. approximate location of Richard Gooden. How was this "x" point
11. arrived at? Who pointed that out to you?

12. A. That was actually shown to me by Richard Gooden
13. himself.

14. Q. Was he present with you and with myself?

15. A. Yes.

16. Q. All right. And another "x" here and it's the
17. approximate location of the deer. Is that correct? Was that
18. pointed out by Mr. Richard Gooden also?

19. A. Yes, it was.

20. Q. Now, did you measure the distance between Richard
21. Gooden's approximate location here and here, to the location
22. where Mr. Wyant was found, which is 91.5 feet south of this
23. pole?

24. A. Yes, we did.

25. Q. What was that distance?

1. A. It's 1,908.98 feet.

2. Q. Is that almost seven football fields in length?

3. A. Yes, that's . . .

4. Q. Six and a half football fields in length?

5. A. Yes, it is.

6. COURT: Well, now, how many feet?

7. A. It's 1,908.

8. COURT: Oh, 1,908. I thought you said a thousand
9. and eight.

10. Q. Would that also be about thirty-six percent of a mile?

11. A. Yes, it would.

12. Q. Let me ask you to do something. We have some marks on
13. this exhibit right here, we've got this mark here labeled
14. "D.C." with an "x", you've got another mark labeled "2". Is
15. this an "x" or is . . .

16. MR. WALSH: No, that's an arrow showing the
17. direction of travel.

18. Q. Oh, direction of travel. Could you measure with your
19. instrument there the approximate distance between this "x" and
20. this point here where Mr. Wyant was found.

21. A. Okay.

22. Q. If you would, I think we could measure from the center
23. of the easement.

24. MR. SMITH: Did we get a determination of exactly
25. how many feet off the easement?

1. MR. WALSH: My recollection is he said seven or
2. eight feet.

3. Q. All right, well, just, I think it would be from the
4. middle point.

5. A. Somewhere right in here then. Let's see. Okay,
6. you're talking about 1,290 feet.

7. Q. Twelve hundred and ninety feet.

8. A. Correct.

9. COURT: Is that from where the casings were found
10. to where the body was found?

11. MR. SMITH: Yes, Judge. I think that this "x"
12. would indicate the approximate location of the casings that
13. were found.

14. Q. Would you describe just briefly the terrain
15. characteristics of this area. I mean the size, type of trees,
16. their density, just briefly if you would.

17. A. Well, the vertical scale on this gives you a pretty
18. good idea of what it looks like. Of course, you've got the
19. dirt road coming through here approximately where the deer was,
20. and then after that, at this pole, there's a big drop off.
21. And, of course, it continues down until it drops off again.
22. That one there (indicating). And then the second drop off you
23. come down to a stream bed. And, of course, it comes back up
24. and then it sort of flattens out and goes down to another
25. stream bed. Let's see, what you're talking about is somewhere

1. about right in here in a flat spot. Actually about halfway
2. between the two streams.

3. Q. Isn't this a dried up small branch? Is there running
4. water there?

5. A. There was running water there the day I was there.

6. Q. The day you were there?

7. A. Right, just trickling through. Right, just a small
8. branch.

9. Q. The main stream that you saw was right here?

10. A. That's correct. And then after the small branch you
11. come to a very steep bank. It's almost impossible to climb up.
12. It's almost straight up. Then once you get up on the top of
13. that, it's still fairly rough up and down. Of course, our
14. lines don't show all the little small depressions or rises, but
15. this is the major features of what it actually looks like. Of
16. course, you have a small dip here, there's a gully that runs
17. through this area, and then after you get up onto this spot
18. here and where Mr. Wyant was, it's basically flat.

19. Q. It's flat, but is it gradually rising?

20. A. Right, yes. It's gradually rising, but it's sort of a
21. flat surface.

22. Q. No dips.

23. A. Right. And, of course, throughout the whole area
24. there's scattered brush. The tallest brush is more up in this
25. area where Mr. Wyant's body was found.

1. Q. Would you describe the density or the height of this
2. brush?

3. A. Some of it is well over my head. Most of it, I would
4. say, ranges three to four feet. It is not very dense but, you
5. know, it's scattered.

6. Q. Scattered brush. How tall are you?

7. A. I'm 5'10½".

8. Q. Now, we've got little--what appear to be little
9. drawings of men on the exaggerated vertical, on Exhibit #2, and
10. also on Exhibit #1 we have other drawings, and they appear to
11. represent Mr. Wyant at the southern end and at generally the
12. northern end Mr. Gooden and also a deer. On this even scaled
13. vertical schematic, Exhibit #1, is this approximately--if you
14. were looking back at this, at the even scale, is this
15. approximately what a man would look like if you were some
16. distance away? Would this man look--well, what I'm getting at
17. is, is the height of this figure here and this figure here, the
18. same in scale as the distance, the horizontal distance?

19. A. Correct. Yes, it is.

20. Q. And is it also true here at the vertical, is it
21. related to the horizontal here, except that it's six times
22. higher.

23. A. Right. Correct.

24. Q. And this is really exaggerated. One other thing I
25. want to ask you and that is, if you were in Mr. Wyant's

1. position, and someone, I believe the defendant is
2. approximately six foot tall, six foot or six one, right at six
3. feet; if you were observing from his point of view let's say a
4. six foot measure and looked down and had to go over the bluff,
5. go over this bluff, what area would be shielded from view as
6. far as you could tell from this diagram, this schematic
7. diagram?

8. A. Okay, from where he was standing, everything from here
9. (indicating) to about right here would be--there's no way you
10. would see anyone. Because I actually did that myself. I
11. walked between these positions and I couldn't see anyone up
12. here.

13. Q. How many times have you been on the location?

14. A. I've been there twice.

15. Q. All right. So, anybody between this--I guess you're
16. talking about the rise right below here.

17. A. Right.

18. Q. From this point until you got to the top of the bluff,
19. you would not be able to see a six foot object at Mr. Wyant's
20. location.

21. A. No.

22. Q. Going back to this location here where it's marked
23. "D.C." on Exhibit #2, if you were right on the edge of this
24. easement area, could you see any six foot object, an object six
25. feet high, in the location of where Mr. Wyant was found?

1. A. No, there's no way.

2. MR. SMITH: That's all, Judge.

3. COURT: Mr. Walsh.

4.

5. Cross Examination by Mr. Walsh:

6. Q. From this location back north of I believe it's pole
7. number 440, if you were standing back on this side of pole 440,
8. you could then see up to the location where Mr. Wyant's body
9. was found.

10. A. Yes, you could.

11. Q. All right. Now, you've got a vertical scale of one
12. inch equals ten feet. Is this, with that scale, an accurate
13. stick figure of a man?

14. A. Yes, that man is six feet tall at a scale of one inch
15. to ten feet.

16. Q. And the same with the stick figure where Mr. Wyant's
17. body was found.

18. A. Right.

19. Q. What about the size of the stick figure of the deer?

20. A. That's approximate, assuming that the deer was about
21. three and a half feet to shoulder high.

22. Q. So, the straight line which is the dotted line
23. apparently upon which you based your measurement of nineteen
24. hundred plus feet, would that be an accurate line of sight from
25. a person six feet standing at approximately pole 439 to

1. ninety-one feet south of 446?

2. A. Yes, it would.

3. MR. WALSH: That's all I have.

4.

5. Re-Direct Examination by Mr. Smith:

6. Q. This dotted line is really what you might call an
7. eyeball shot to this point, is that correct?

8. A. Correct.

9. Q. The actual distance is based on not that dotted line,
10. but really based on the horizontal distance between this point
11. where Mr. Gooden was to where Mr. Wyant was, is that correct?

12. A. Yes, it is.

13. Q. It's really this length, not taking into account the
14. elevation; in other words, we're not looking at the hypotenuse
15. here at the triangle, you're measuring it from the . . .

16. A. Yes, but it makes very little difference.

17. Q. At that distance it makes very little difference?

18. A. Right.

19. Q. One other thing, just for clarification, Judge, if I
20. may ask, this path here we have, identify this path, if you
21. would.

22. A. Actually there are two paths, but I didn't follow
23. either one of them out very far. Actually where Richard was
24. standing, approximately where he told us he was standing, there
25. is a very, very small path, almost a deer trail, coming out of

1. there. This path over here is fairly wide. It's eight or ten
2. feet. Of course, it's in and out, but it's a wider path.
3. That's the reason I showed that on there.

4. MR. SMITH: That's all I have.

5. COURT: Mr. Walsh.

6. MR. WALSH: That's all.

7.

8. Examination by the Court:

9. Q. Assuming that the shot was fired from where your
10. little man is holding the gun that I'm going to make "A", and
11. assuming further that the shot struck something up here where
12. you have this little man that I'm going to mark "B". Is the
13. dotted line that you have drawn from A to B a straight line?

14. A. Yes, it is.

15. Q. So, the barrel of the rifle would be some six or eight
16. inches below eye level.

17. A. Yes, if you were looking at it that way.

18. Q. So, if point A to point B is a straight line, would
19. not point B be in the line of sight from point A?

20. A. Yes, it would.

21. MR. SMITH: If I may along that same line.

22.

23. Re-Direct Examination by Mr. Smith:

24. Q. Were you able to, when you were in the field at this
25. location where Mr. Gooden was, were you able to set up anything

1. or have another person stand up here at all and be able to see
2. this person? Could you see over that distance, taking into
3. account the terrain itself and any obstructions? Could you
4. identify what you were seeing at that distance?

5. A. Yes, you could identify that you could see a person
6. that far away. But it would be hard to say, you know. The day
7. that we were there, it was sort of cloudy and rainy, and our
8. people had on dark clothing, and it was very hard to see at
9. that distance.

10. Q. Is it better visibility looking from where Mr. Wyant
11. was back toward Mr. Gooden, as opposed to looking the other
12. way?

13. A. It was better looking from B to A than it was from A
14. to B, because of the brush, the scattered brush around point B.

15. COURT: Wouldn't the brush be the same looking
16. from either way?

17. A. No, because one way you're looking--the brush is right
18. in front of you and you can see past that better. But if you
19. go down at the other, at point A and look back, then everything
20. is all sort of obscured.

21. Q. You're saying the brush would tend to diffuse the
22. image because the image was right within the brush?

23. A. Right, it's within the brush.

24. Q. As opposed to being in the clear.

25. A. Right.

1. MR. SMITH: That's all..

2.

3. Re-Cross Examination by Mr. Walsh:

4. Q. Let me ask you this. What days were you there?

5. A. Well, let's see

6. Q. I believe you said that was done April 26th of this
7. year.

8. A. Correct. We were there just a couple of days before
9. the date of those drawings.

10. Q. That was just less than a month ago, or two weeks ago.

11. A. Correct.

12. Q. Or one week ago. You were not there last fall?

13. A. No, I wasn't.

14. Q. So, the brush that you saw was the brush that was
15. there this spring.

16. A. Correct.

17. MR. WALSH: That's all I have.

18.

19. Examination by the Court:

20. Q. Assuming again that the shot was fired from point A
21. and it struck point B about five feet above ground level. Have
22. you measured the angle of your line from A to B from
23. horizontal?

24. A. No sir, I can't give you that at this time.

25. Q. Can you estimate that angle?

1. A. I believe it's somewhere around twenty-seven degrees.
2. I can give you the height between the two points of where Mr.
3. Gooden says he was and where the body was found, it's 41.9 feet
4. difference in elevation.

5. Q. But assuming that the shot was fired from point A, the
6. shot would have had to have traveled at an angle of--did you
7. say twenty-nine--about twenty-nine degrees?

8. A. No, twenty-seven degrees. That would be in a straight
9. line from one point to the other.

10. COURT: Any further questions, gentlemen?

11. MR. SMITH: No, Judge.

12. MR. WALSH: No sir.

13. COURT: Thank you, sir. Call your next witness.

14. MR. SMITH: I would like to call Richard Gooden.
15.
16.
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24.
25.

1. HOWARD RICHARD GOODEN,
2. having been called as a witness, was duly sworn, and
3. testified as follows:
4.

5. Direct Examination by Mr. Smith:

6. Q. State your full name, please.

7. A. Howard Richard Gooden.

8. Q. Are you from this county originally, Rockingham
9. County?

10. A. Yes sir.

11. Q. You were raised in this County, I take it, is that
12. right?

13. A. Yes, I'm from the Elkton area.

14. Q. And you currently reside in Richmond, Virginia with
15. your wife and children?

16. A. Yes sir.

17. Q. And you are gainfully employed?

18. A. Yes sir.

19. Q. Do you come back to this area from time to time, and
20. if you do, what causes you to come back to this area?

21. A. I have a lot of relatives here, like my mother and
22. father for one.

23. Q. All right. Do you normally come back during hunting
24. season to hunt in Rockingham County?

25. A. Yes.

1. Q. How many years have you been hunting?

2. A. Oh, twenty-five to thirty I'd say.

3. Q. Do you normally hunt every season?

4. A. Yes.

5. Q. How many days per season do you hunt?

6. A. In Rockingham County I only hunt one or two days.

7. I usually come up the first day or the second day. Sometimes I
8. come back for Thanksgiving.

9. Q. Okay, you were hunting on November 16th in Rockingham
10. County at this location depicted by the survey, were you not?

11. A. Yes sir.

12. Q. You were hunting in either Chesterfield or Powhatan
13. the next day, were you not?

14. A. I was hunting in Powhatan County the next day.

15. Q. All right. What happened that day after you were
16. hunting that drew your attention back to the day before?

17. A. Well, when I came in from hunting that afternoon, at
18. approximately three o'clock in the afternoon, I found out that
19. Detective Friedline from Chesterfield County had been by my
20. house with some questions that he'd got from Detective Comer,
21. from him.

22. Q. Was anything turned over to him as a result of his
23. questioning?

24. A. Friedline?

25. Q. Yes.

1. A. I turned over the carbine.

2. Q. Why did you turn over the carbine?

3. A. Well, he was looking for a carbine with a banana clip
4. in it. He asked me did I own one, and I said yes. And I said,
5. "I've got it in the truck with me. I've been hunting with it
6. today." So he asked me could he hold it, and I said sure.

7. Q. You told him you were hunting with that carbine that
8. day also, this is Tuesday, November 17th, is that correct?

9. A. Yes.

10. Q. At that time did he request that you turn over any
11. other weapons to him?

12. A. No.

13. Q. All right. The next day, of course, you met with
14. Detective Friedline and Detective Comer and myself, and you
15. were sitting here and you heard what the detective said, and
16. was that generally accurate as far as your knowledge as to the
17. discussion that morning?

18. A. Yes sir.

19. Q. We met again later on that afternoon, this is the
20. second day after the incident, and at that point, after your
21. discussion with me about more about what the investigation
22. involved, the other weapon, the .30-.30 lever action was turned
23. over to Detective Comer in my office along with the bullets.

24. A. Right.

25. Q. The bullets were similar to the ones you used Monday.

1. A. Right.

2. Q. Your stories varied in one respect that day, and that
3. was in the morning you had indicated that you had your carbine.
4. Did anybody ask you that morning whether you had a second
5. rifle?

6. A. No.

7. Q. Subsequent to our discussion in private we had a
8. second meeting, you gave them the other one.

9. A. Yes sir.

10. Q. They were looking for a weapon that shot approximately
11. a thirty caliber, is that correct?

12. A. Right.

13. Q. Both of those weapons shoot approximately a thirty
14. caliber, do they not?

15. A. Right.

16. Q. The difference basically is that in the .30-.30 it's
17. got more powder reaction, it's more of a high powered rifle,
18. more high powered than the thirty caliber, is that correct?

19. A. Yes sir.

20. Q. Why were you reluctant to volunteer information about
21. the second weapon?

22. A. Well, because I didn't think I had nothing to worry
23. about, you know. I didn't know I had shot anyone. So, I had
24. nothing to hide.

25. Q. Okay. But what about the second weapon, did you . .

1. A. Have doubts about that?

2. Q. Well, doubts about the second weapon, whether or not
3. it was legal to hunt with two guns.

4. A. Well, I didn't know what the game laws was on carrying
5. two weapons. So, I was not asked about two weapons, so I
6. didn't volunteer the two weapons until that afternoon.

7. Q. You were hunting with Billy Shifflett, is that
8. correct?

9. A. We was hunting in the same area, yeah.

10. Q. The same area. You drove to the same general area in
11. one vehicle?

12. A. Right.

13. Q. Explain to the Court, if you would, what you did that
14. day--well, explain to the Court what time you arrived at this
15. area on November 16th, how you came into the area and what you
16. and Billy Shifflett did once you stopped your vehicle where you
17. started walking.

18. A. Show them on here?

19. Q. Yes, show them on this schematic, which is Defendant's
20. Exhibit #2, the top schematic. Now, keep in mind that this
21. does not show the entire area.

22. A. Right.

23. Q. But it does have some of the landmarks.

24. A. Well, we got there approximately four o'clock.

25. There's three roads, which it don't show, on 340--well, here's

1. 340 over here. There's three roads leading off. One at the
2. top of the hill, one in the middle, and then one down here
3. close to the, going by the stream, which would be this road
4. (indicating).

5. I pulled the truck off 340 into the middle road, dirt
6. road, went up about halfway and the road runs out and there's
7. nothing but brush then. Which I guess the truck was
8. approximately two hundred yards, I'd say, off of 340.

9. Q. These would be dirt roads?

10. A. They're dirt roads. I parked the truck. Billy
11. Shifflett got out and headed to the left, which would be north.
12. I went straight on up through here and came out someplace
13. roughly in this area. I had no more and got there, in fact, I
14. was on the edge of the power line, and I seen a deer coming out
15. approximately here.

16. Q. Let me ask you this . . .

17. COURT: Does he want to mark that?

18. MR. SMITH: Yes, Judge.

19. Q. Put a mark where you--well, let me ask you this.
20. There are two "x's" here. Are these two "x's" the approximate
21. locations of where you were.

22. A. Yes.

23. Q. Just draw an arrow pointing to each "x".

24. A. (Witness draws on exhibit).

25. Q. All right. Go ahead.

1. A. When I got up here to the line, I said a deer come out
2. on here. I had my .30-.30 Marlin, which is lever action, and I
3. cocked the handle back and I shot one time. Apparently I
4. missed. The deer took off. I laid the gun down on the ground
5. because I had my carbine, which was fully automatic--well, not
6. fully, semi-automatic, and I shot approximately three or four
7. times at the deer when he run through here. And the last time
8. I seen him, he had cut through this brush here, someplace in
9. this vicinity.

10. Q. Make another arrow, if you would, where the deer was.

11. A. It would be approximately in this area I would say.

12. Q. Did you lose visual contact with the deer at that
13. point?

14. A. Yeah, from there I did.

15. Q. All right. How much time elapsed between the first
16. time you fired the .30-.30 and the last time you fired the
17. thirty caliber carbine?

18. A. How much time? Probably fifteen or twenty seconds.

19. Q. What happened after that? What did you do after that?

20. A. After I shot at the deer?

21. Q. Yes.

22. A. Well, I walked up this way a little ways in here and
23. looked. I didn't see anything, I didn't see no blood or
24. anything. And so it was getting late, you know . . .

25. Q. It was getting light?

1. A. It was getting late.

2. Q. Late.

3. A. Late in the afternoon. So, I walked back out pretty
4. much the same way I came in. I went back out here, come down
5. through here, hoping I could see the deer again, because he
6. went down through here, in the brush as I walked out. I never
7. seen him. So, when I got over to where we had the truck
8. parked, Billy Shifflett was coming out from that direction, and
9. he asked me did I see anything, and I said, "Yeah, I shot at a
10. deer." And that was about it. We got in the truck and left.

11. Q. How much time elapsed between the time you shot at the
12. deer and when you started back into the woods from the easement
13. area?

14. A. Oh, I'd say it was probably ten minutes.

15. Q. Was Billy Shifflett with you at that time?

16. A. You mean when I left here?

17. Q. Yes.

18. A. No.

19. Q. From the time you first got to the easement area,
20. walked up from your vehicle, until you started back away from
21. the easement back into the woods. Was he with you during that
22. period of time?

23. A. No.

24. Q. Approximately how far was he from you?

25. A. Well, I really don't know how far he went this way,

1. but it would have to have been a few hundred yards.

2. Q. He was generally north but never--are you saying he
3. went generally . . .

4. A. He was like back over in here. He went straight--he
5. went like halfway from where we had the truck and made a left,
6. which is north. I went straight up to the power line, which I
7. guess it's approximately four hundred yards between 340 and the
8. power line; four to five hundred yards, I guess.

9. Q. Was Billy Shifflett ever with you on that power line?

10. A. No.

11. Q. Not on that day.

12. A. No.

13. Q. Had he ever been with you on that power line any other
14. day?

15. A. No, not that I know of, not unless it was years ago.

16. Q. Do you hunt with him often or just occasionally?

17. A. I usually hunt with him some when I come up here,
18. yeah. Sometime during the day we will get together, you know,
19. be hunting together.

20. Q. What kind of rifle does he carry with him?

21. A. Thirty aught six.

22. Q. What did you hear, if anything, right after you shot?

23. A. What did I hear?

24. Q. Did you hear any voices?

25. A. No.

1. Q. Any strange noise of any sort?

2. A. No sir.

3. Q. Did you see anybody else on that power line?

4. A. I can't say directly on the power line, no. I seen
5. some people as I was walking out, I seen other people.

6. Q. You saw people?

7. A. Yes.

8. Q. How many other vehicles were parked in those dirt
9. roads that led up from 340 that you saw?

10. A. You mean the dirt roads themselves or along 340?

11. Q. Either along 340 or parked on the dirt roads.

12. A. I would say approximately ten or fifteen vehicles.

13. Q. And were those vehicles parked there, from what you
14. were able to discern, were they there because hunters were
15. there?

16. A. Yeah, I'm sure that's what all of them were doing
17. there, they were there to hunt.

18. Q. You come from the area right up the road, don't you?
19. A few miles up.

20. A. Where I'm from?

21. Q. Where you're from.

22. A. Approximately three miles north of that.

23. Q. You're familiar with this area, are you not?

24. A. Yes sir.

25. Q. Is this a popular place to hunt deer?

1. A. Pretty much. And I had heard that day that it was a
2. lot of deer being seen in there, and that's the reason I went
3. up there that afternoon.

4. Q. All right. Who else did you see in that area before
5. you left?

6. A. You mean that I knew?

7. Q. Well, how many did you see, and of those people that
8. you saw how many did you know in that hunting area.

9. A. Oh, I didn't really know them.

10. Q. About how many did you see?

11. A. But I seen, I guess, five or six when I was walking
12. out. You know, there was a couple of people out at the road.

13. Q. Let me ask you this, why did you leave?

14. A. Why did I leave?

15. Q. Why did you leave after shooting at the deer?

16. A. Because it was getting close to dark.

17. Q. Do you know approximately what time it was?

18. A. I'm guessing probably five o'clock approximately. I
19. couldn't say for sure.

20. Q. This is on November 16th, is that correct?

21. A. Yes sir.

22. Q. And at that time we were not using Daylight Savings
23. Time, is that correct?

24. A. No.

25. MR. SMITH: Judge, that's all.

1. COURT: The Commonwealth may inquire.

2.

3. Cross Examination by Mr. Walsh:

4. Q. Mr. Gooden, hadn't you made arrangements to stay down
5. here to hunt for several days this year, this past hunting
6. season?

7. A. No sir.

8. Q. That's not true?

9. A. No.

10. Q. Now, you said you arrived at this area shown by those
11. two diagrams about what time?

12. A. What time in the afternoon?

13. Q. Yes.

14. A. Approximately four o'clock.

15. Q. About four o'clock?

16. A. Approximately that.

17. Q. You and Billy Shifflett drove into the area.

18. A. Drove in, yeah.

19. Q. Got out of your truck, he went one direction and you
20. went another direction.

21. A. Right.

22. Q. How far away from the power line did you park the
23. truck, what was the distance?

24. A. Probably two hundred yards, I'd say.

25. Q. Two hundred yards. Okay, you walked directly from

1. your truck up toward the power lines?

2. A. Right.

3. Q. Okay, along a path, and then through some brush to get
4. to the power lines.

5. A. It was real thick brush going through there, yes.

6. Q. Okay. And as soon as you got to the power line you
7. saw this deer.

8. A. Right.

9. Q. Okay, how far in front of you was it from you?

10. A. How far was the deer from me?

11. Q. Yes.

12. A. Probably seventy-five yards, or something like that.

13. Q. Okay. It was just standing there?

14. A. He was walking out to the edge of the brush there.

15. Q. He was walking about from the brush into the . . .

16. A. Starting into the clearing, but he hadn't got into the
17. clearing yet.

18. Q. And that's when you fired one shot?

19. A. Yes.

20. Q. You were on the--you were facing I guess generally
21. south? You were facing along the power line.

22. A. South, right.

23. Q. And you were basically on the right-hand side or the
24. west side of the . . .

25. A. I was on the west side.

1. Q. Of the power line right-of-way. And the deer was on
2. the opposite side about seventy-five yards down the
3. right-of-way?

4. A. Right.

5. Q. So, you took the shot diagonally across the power line
6. right-of-way.

7. A. Right.

8. Q. And then you dropped your .30-.30 and took your
9. carbine and shot a number of times?

10. A. Yes.

11. Q. And when you were doing that, where was the deer?

12. A. Well, I laid the .30-.30 down, I didn't drop it.

13. Q. Okay.

14. A. I laid it down. And by that time the deer was coming
15. into the other side of the--starting into the other side of the
16. thickets when I shot at him approximately three or four times,
17. whatever it was.

18. Q. So, he was on the same side of the right-of-way as
19. you were at that point.

20. A. Right.

21. Q. When you started firing the carbine.

22. A. When I started firing the carbine he was.

23. Q. And that took a matter of seconds from the time you
24. first saw the deer until you stopped firing, is that correct?

25. A. Yes, seconds, yes.

1. Q. Just a matter of seconds.

2. A. Yes.

3. Q. Okay, and then you walked back into the brush in hopes
4. to find the deer back in the brush.

5. A. No, not at that moment. I walked up to where
6. this--about where this dirt road is at, and looked along there
7. to see whether I could see any blood.

8. Q. Where the deer had been, you mean?

9. A. Where the deer had been. Which I didn't find any. So
10. then I went back down, walked back down through the brush
11. hoping to see him back in there, which I didn't.

12. Q. And how long were you out on the right-of-way then?

13. A. On the right-of-way itself?

14. Q. Yes.

15. A. Probably ten or fifteen minutes.

16. Q. Okay. And then you went back into the brush, looked
17. around in there, and then went to your truck?

18. A. Right.

19. Q. Shifflett was coming back toward the truck at that
20. time?

21. A. He was coming back, right, at that time.

22. Q. Okay. And then you all left?

23. A. Yeah, a few minutes later. We stood there and talked
24. for a minute and left.

25. Q. And you went back to Richmond that night?

1. A. Later that night I did.

2. Q. Okay. What time, about what time did you leave?

3. MR. SMITH: Judge, I would object to that. I'm
4. not sure of the relevancy of this. I'm not sure where it's
5. going.

6. COURT: Well, we'll see.

7. MR. SMITH: In time it's not relevant, Your
8. Honor.

9. COURT: The objection is overruled.

10. Q. About what time did you leave?

11. A. Approximately ten o'clock or something like that.

12. Q. Now, you said that you turned over the carbine to
13. Detective Friedline on I believe it was the day following this
14. incident, on the 17th.

15. A. The next afternoon. Detective Brooks, his name has
16. not been brought up, he was there first at the Chesterfield
17. Courthouse. I went down. Friedline came in later and took
18. over then. But when Friedline came through the door, he said,
19. "Did he turn in a carbine with a banana clip?"

20. Q. You turned over the carbine to Detective Friedline on
21. the 17th?

22. A. Yes, it was on Tuesday, Tuesday afternoon, Tuesday
23. evening.

24. Q. Okay. And then you met with Detective Comer and
25. Detective Friedline in the presence of your attorney on the

1. morning of the 18th?

2. A. Right. I think it was nine or nine-thirty that
3. morning, Wednesday morning.

4. Q. Now, during that first--you had two conversations with
5. Detective Comer that day.

6. A. Yes.

7. Q. One in the morning at the police department, and the
8. second one at your attorney's office in the afternoon, is that
9. correct?

10. A. Yes sir.

11. Q. During the first meeting at the police department, did
12. not Detective Comer tell you at that point that it was not a
13. carbine that he was looking for?

14. A. I don't recall that, no.

15. Q. You don't recall?

16. A. No.

17. Q. All right. It could have been during that
18. conversation that he said something about that?

19. A. That he wasn't looking for a carbine?

20. Q. That he was not looking for a carbine.

21. A. No, I don't think so.

22. Q. You don't believe that he did?

23. A. No, I don't remember him saying anything like that.

24. Q. All right. But it was after that meeting that you
25. had with Detective Comer that you made everybody aware that you

1. also had a .30-.30?

2. A. That afternoon.

3. Q. Rifle with you the day you were hunting.

4. A. Right.

5. Q. And turned it over at the end of the second meeting?

6. A. Right, that afternoon in J. R. Smith's office.

7. Q. Again, during the first meeting at the police
8. department, was there any, to your recollection, was there any
9. conversation about the police obtaining a search warrant?

10. A. No.

11. Q. There was not?

12. A. Well, they didn't need one.

13. Q. Now, do you remember during the two conversations that
14. you had with Detective Comer you told him that you were fifty
15. yards west of the right-of-way when you fired at the deer.

16. A. Yes, and I think that was where I was guessing. And
17. since then I went back to the area and I found it was more like
18. fifty feet rather than fifty yards.

19. Q. You're saying you were fifty feet off of the
20. right-of-way?

21. A. Well, when I say off of the right-of-way, I'm counting
22. from the middle of the right-of-way. That's what I meant when
23. I said fifty yards, when I told Detective Comer to start with.
24. I didn't state which side of the right-of-way or anything, but
25. I was counting by the lines and the poles and so forth as being

1. off of the light line. I wasn't talking about the whole
2. easement.

3. Q. Well, the easement or right-of-way, the width of it is
4. not that great, is it? Not that large, not that wide.

5. A. I don't know, seventy-five feet or so, I reckon.

6. Q. So today you're saying that you were actually on the
7. edge of the right-of-way though.

8. A. No, I didn't say I was on the edge. I was back into
9. the brush just a little, but I said I was approximately fifty
10. feet--when I said off of it, I'm counting the line, I'm not
11. counting the side of the easement, where it starts. When I
12. said I was off the power line, that's what I'm counting, the
13. poles, the middle of the right-of-way.

14. Q. You're saying you were fifty feet from the line of the
15. poles?

16. A. Right.

17. Q. But you were in the clearing now?

18. A. It was--I don't follow you.

19. Q. Well, you were in the clearing on either side of
20. the--that goes along the length of the poles, is that correct?

21. A. If you're starting with the brush and all here, I was
22. just where the "x" is pointing, approximately in here.

23. Q. All right.

24. A. I didn't, you know, make no notes when I was out there
25. in the woods hunting to really remember the exact spot where I

1. was at. You know.

2. Q. But you indicated that where this "x" is, is the
3. approximate location of where you were.

4. A. That's approximately.

5. Q. And the "x" near the dirt road is where you said the
6. deer was.

7. A. Approximately, right.

8. MR. WALSH: That's all.

9. COURT: Re-direct?

10.

11. Re-Direct Examination by Mr. Smith:

12. Q. When you spoke with Detective Comer and Friedline and
13. I was with you, you had problems locating yourself, did you
14. not?

15. A. Yes, I did.

16. Q. Where you were with relationship to the stream, is
17. that correct?

18. A. Yes.

19. Q. As a matter of fact, Detective Comer drew a diagram
20. and you actually had to turn it over and draw a rough one
21. yourself.

22. A. Yeah because, like I said, it looked like to me it was
23. backwards to me, the way he was drawing it.

24. Q. And I believe that has been introduced into evidence.

25. COURT: Do you want to receive the other side in

1. evidence?

2. MR. SMITH: No, Judge, that's all I needed to do.

3. COURT: That's Commonwealth #13.

4. Q. But regardless of whether you indicated fifty yards or
5. fifty feet, you went back to the scene and you tried to
6. reconstruct where you actually were.

7. A. Right.

8. Q. On the ground.

9. A. Right.

10. Q. And this "x" which has an arrow pointing to it on
11. Exhibit #2, is approximately--is that your exact position or
12. just your approximate position?

13. A. That's my approximate. There's no way I could know
14. for sure, to get it down, you know.

15. Q. You don't really know exactly where you were, you just
16. know that you were on this side of the road, the road and the
17. stream.

18. A. Right.

19. Q. You were not on the other side, as far as you can
20. remember.

21. A. Right.

22. Q. Back to these weapons. In our conversation on the
23. 17th, in your conversation with Detective Brooks and Friedline
24. on the 17th, and our conversation on the 18th, you indicated no
25. one said anything about search warrants. Is that right?

1. A. Right. I don't remember nothing.

2. Q. You never did tell Detective Friedline, Detective
3. Comer, Detective Brooks or anyone else that you had not one
4. .30-.30 but two .30-.30's.

5. A. I've got two .30-.30's.

6. Q. You own two of them and they are very similar, are
7. they not?

8. A. That's a Marlin, which Winchester made it. And then I
9. have a Winchester .30-.30. Both of them are lever actions.

10. Q. Both lever actions, both made by Winchester.

11. A. Made by Winchester.

12. Q. The same caliber, the same bullet.

13. A. Right.

14. Q. You own two of those guns and both are operational.

15. A. Right.

16. Q. Are they both in similar condition as the weapon you
17. turned over?

18. A. Yes.

19. Q. You voluntarily turned over the weapon you had.

20. A. The one that I was hunting with. I could have turned
21. over the other .30-.30. But I had nothing to hide.

22. Q. At that time when you turned this over did you
23. realize--you knew the investigation was about Mr. Wyant being
24. unfortunately killed.

25. A. Yes.

1. Q. Did you have any idea even then that that bullet that
2. they recovered would match your weapon?

3. A. No, I had no idea. I wasn't even worried about it,
4. you know.

5. Q. You saw other hunters in the area, didn't you?

6. A. Other hunters, yes.

7. Q. And before you left there was no sign of any
8. disturbance or any unusual things happening when you left.

9. A. None that I seen.

10. MR. SMITH: That's all.

11. COURT: Re-cross, Mr. Walsh?

12. MR. WALSH: No sir.

13. COURT: You may step down. Call your next
14. witness.

15. MR. SMITH: Judge, we rest.

16. COURT: Rebuttal, Mr. Walsh?

17. MR. WALSH: Yes sir, I call Detective Comer.
18.
19.
20.
21.
22.
23.
24.
25.

* * *

1. gence--what I am trying to get across to the Court is that be-
2. cause it is a firearm, a deadly weapon that is being used, and
3. the circumstances under which it is used, one has to be extra-
4. ordinarily careful in the use of a firearm. not to be even
5. negligent; but recklessness in the use of a firearm, it would
6. seem to me, would constitute at least gross, culpable and wanton
7. negligence. And that's the point that I was trying to get at.
8. Here where the defendant fires up a slope where persons are
9. visible, and everybody testified, everybody that was called
10. to testify that had been down there, Mr. Judd, Detective Comer,
11. and so on, all said that it was apparent that you could see a
12. person standing where Mr. Wyant met his death. And I submit
13. that that is based on even the defendant's testimony as to
14. where he was. There is no--other than that, of course, there
15. is no specific evidence as to his location.

16. The defendant says he was along that slope, and
17. he is tied to that evidence.

18. COURT: Thank you, gentlemen. I'll take a brief
19. recess. I want to review these cases, then I will announce my
20. decision shortly.

21. (Recess)

22.
23. COURT: All right, thank you, gentlemen. From
24. the standpoint of the Court it might have been better if this
25. case were decided by a verdict by a jury simply because a jury

1. does not have to explain its verdict; you can't ask a jury to
2. explain its verdict. But I think it is my obligation to discuss
3. the law and the facts of the case and articulate for the record
4. the Court's decision and the reasons for the Court's decision.

5. This is not a case of intentional homicide, it is
6. a case of involuntary manslaughter. For the defendant to be
7. guilty of involuntary manslaughter, the Commonwealth has to
8. prove beyond a reasonable doubt that the defendant killed the
9. person named in the indictment and that the killing, although
10. unintended, was the direct result of negligence so great as to
11. show a reckless disregard of human life. Or, expressed in
12. other terms, that the killing, although unintended, was the
13. direct result of the--in the context of this case, the unlawful
14. performance of a lawful act accompanied by carelessness so great
15. as to show a reckless disregard of human life.

16. For the offense to constitute manslaughter when
17. it's based on the improper performance of a lawful act, the
18. defendant's negligence must be gross enough to indicate a
19. callous disregard of human life.

20. Of course, it is established, without any ques-
21. tion, that the defendant fired the shot that resulted in the
22. death of the deceased. The question that the Court has to
23. determine is whether his actions at that time constituted
24. carelessness so great as to show a reckless disregard of human
25. life.

1. This is a negligence case. It is not a civil
2. negligence case, it is a criminal negligence case. It is
3. elementary in the law of negligence that the degree of care to
4. be exercised must be commensurate with the risk. If the risk
5. of injury and the risk of severe bodily harm or death are
6. small, then a lesser degree of care is required than if the
7. risks of injury are great and if the injury that might result
8. are serious. To put it very simply, you have to use--I won't
9. say you have to use--a greater degree of care is required in
10. the use of a high powered rifle than in the use of a sling
11. shot. And what might be ordinary negligence or might even be
12. negligence in the use of a sling shot, might constitute gross
13. negligence in the use of a high powered rifle.

14. Now, the Court does not have, and if the Court
15. did have it would not be appropriate for the Court to consider
16. any expertise in ballistics or forensic pathology. So, the
17. findings of fact that I will make are not based on any
18. expertise in those fields, but are lay impressions from the
19. evidence.

20. First, I have to find as a fact that the
21. defendant's version of how this occurred is incredible. If we
22. adopt Defendant's Exhibit #2 in the light even most favorable
23. to the defendant, he was shooting at a deer that was somewhat
24. at a lower level than he was. But the evidence is for him to
25. strike the deceased he was shooting upward at an angle, ac-

1. cording to the surveyor, an angle of about twenty-seven degrees
2. above horizontal. If he were shooting at the deer, he would
3. have been shooting at least horizontally, and very likely at a
4. downward angle. So, if he shot at an upward angle, he--perhaps
5. as his counsel suggested, he was shooting excitedly, and I'll
6. get back to that later. But he could not have been shooting
7. down at the deer and shot up at an angle of twenty-seven degrees.
8. I also have not overlooked the autopsy report that says, "The
9. wound path is from left to right without significant upward or
10. downward deviation." We don't know whether the pathologist was
11. looking with any degree of particularity or whether anyone
12. would be concerned with any specific angle of the wound. And,
13. also, I note that there is a fracture of the right third rib
14. by a bullet. He doesn't say whether it was in the front or in
15. the back. But certainly the bullet could have been deformed
16. by the impact with the rib and after the bullet struck the body,
17. and especially if it struck an anterior rib the path of the
18. bullet might very well have been deflected and the angle of
19. the path of the bullet would not be of any probative value with
20. respect to the angle from which the shot was fired when it
21. entered the body.

22. Also, we do not have any expert testimony with
23. respect to the muzzle velocity and the distance at which a
24. missile from this rifle would travel. But it seems to be
25. apparent that the missile was maintaining--perhaps it wasn't

1. maintaining its initial muzzle velocity, but since it had enough
2. velocity to completely traverse the body, though it was stopped
3. by the clothing on the outside, the missile apparently was on
4. its initial course, on a straight line. Whether it was the
5. straight line described in Defendant's Exhibit #2 or not is
6. not completely clear from the evidence. But the missile was
7. apparently not on its downward trajectory after it was losing
8. velocity. And certainly that was not a theory advanced by the
9. defendant.

10. So, we have here a situation in which we have an
11. individual who has been hunting for many years. While there is
12. no evidence with respect to how much he knew about firearms or
13. about this specific firearm, he had some experience as a hunter.
14. He was using a firearm that he had for the purpose and apparent-
15. ly was a high powered rifle and a rifle with enough power to
16. kill large game, because that was the reason he had it there.
17. It was on the first day of hunting season. According to the
18. testimony of the defendant he saw ten or fifteen vehicles park-
19. ed in the area and he knew that they were all hunting. So,
20. this area was fairly teeming with hunters. Now, it in my view,
21. and I think it's appropriate for the Court to make this finding
22. of fact as a fact finder. When an individual is a hunter, in
23. the exercise of slight care, he has the duty to know the range
24. of the weapon that he is using. (And in the exercise of slight
25. care he has the duty to ascertain that there is no human within

1. the range of his weapon and within his line of fire. And if
2. that individual shoots blindly without first ascertaining that
3. he can shoot without endangering human life, then he is failing
4. to exercise such slight care that it constitutes such gross
5. negligence that his actions amount to a callous disregard of
6. human life.) And if an individual has a high powered rifle, and
7. even if he becomes excited and shoots in the general direction
8. of anything he thinks or he hears--thinks he hears or thinks he
9. sees moving, if he fails to exercise slight care to ascertain
10. that he can do so with safety, especially when he knows that
11. there are other people in the area, that there are other people
12. within the range of fire, that there are other people who might
13. be struck by a wild bullet, by a bullet that misses its target,
14. that a bullet even goes somewhere that he doesn't expect it to
15. go, it is within the range of foreseeability that a high power-
16. ed bullet under those circumstances, especially when the woods
17. are almost crowded with people, demonstrates such a lack of
18. care that it is a callous disregard of human life. And to
19. shoot a high powered rifle under these circumstances, in my
20. view, is equivalent to driving an automobile ninety miles an
21. hour blindfolded down a crowded street.)

22. You know that the risk is great, you know that
23. somebody can be killed if an errant shot does not hit its tar-
24. get. And for one to do that simply shows that one is out for
25. whatever pleasure they get from the sport of shooting, and they

1. are doing it with no regard for the safety, for the well being,
2. for the other people who have an equal right to be where they
3. are. And here we have a young man who was wearing a--I think
4. the evidence showed he had a red bandanna pinned to the front
5. and on the back of his shirt. He was wearing a red hat. His
6. companion was similarly attired. And if he had looked, he
7. certainly would have been able to see; which means that he
8. either didn't look or he didn't see or he didn't care to look
9. within what he should have known was the range of the fire of
10. the weapon that he was discharging. And when an individual
11. does that, it is the failure to exercise such slight degree of
12. care that amounts to negligence so great as to show a disregard
13. of human life. And his conduct, in my view, was carelessness
14. so great as to show a callous disregard for the life of other
15. persons who may have been in the woods, which he had every
16. reason to know were in the woods. And he had to shoot this
17. high powered rifle not caring whether anybody was hit or not.
18. And that is what gross negligence is, and that's what a callous
19. disregard for life is, is failure to exercise the degree of
20. care that is commensurate with the high risk of death or
21. serious bodily harm.

22. Howard Richard Gooden, stand. Do you have any-
23. thing to say in your own behalf before judgment of this court
24. is pronounced?

25. MR. GOODEN: No sir.

1. COURT: In accordance with the evidence, it is
2. the judgment of this Court that you are guilty of involuntary
3. manslaughter as charged in the indictment. You may be seated.

4. What is the bail in this case, Mr. Walsh?

5. MR. WALSH: I don't recall right offhand, Your
6. Honor.

7. MR. GOODEN: Five thousand.

8. COURT: With surety?

9. MR. WALSH: With surety, yes sir.

10. COURT: Is the bail adequate?

11. MR. WALSH: I believe so, yes sir.

12. COURT: Mr. Gooden--well, his counsel may answer.
13. You indicated in your opening statement that he was regularly
14. employed.

15. MR. SMITH: Yes sir, he is.

16. COURT: What kind of work does he do?

17. MR. SMITH: He's a subcontractor, he works in
18. tile laying, and he's heavily employed, he's got plenty of jobs
19. to do. He's got a wife and four children. And I can tell you,
20. as an officer of the Court, he's a good citizen back in Rich-
21. mond and he's had no problems there.

22. COURT: Has he ever been convicted of a felony?

23. MR. SMITH: No sir.

24. COURT: All right. And has he ever been convict-
25. ed of any offense involving the use of a firearm?

1. MR. SMITH: No.

2. COURT: Before fixing sentence the case will be
3. referred to the Probation and Parole Officer of this District
4. for a pre-sentence investigation and report. I would think the
5. report could probably be ready by the 21st of June. So, senten-
6. cing will be set for the 21st of June and the defendant's bail
7. is continued to the 21st of June at 9:30.

8. Thank you, gentlemen.

9. (End of Hearing)

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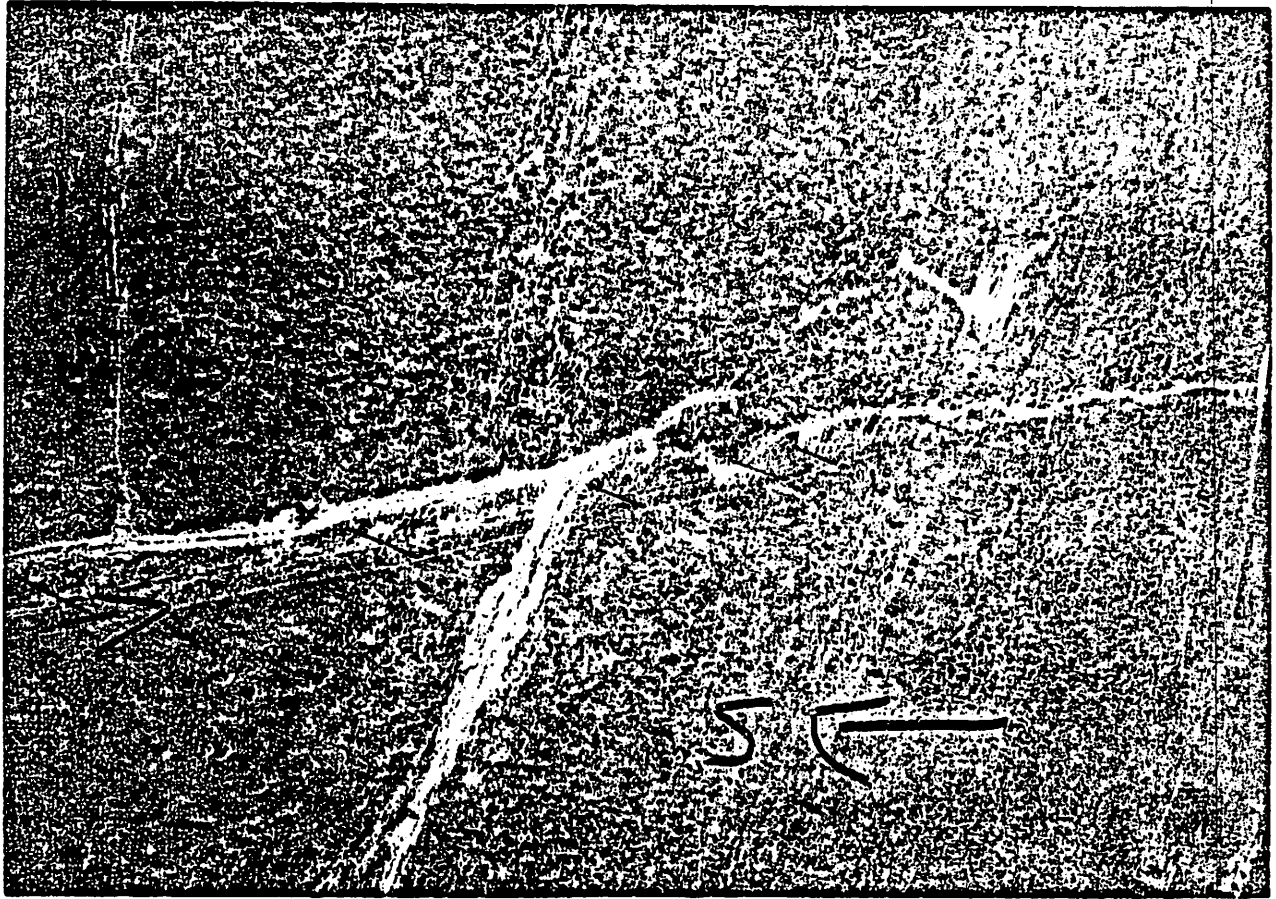
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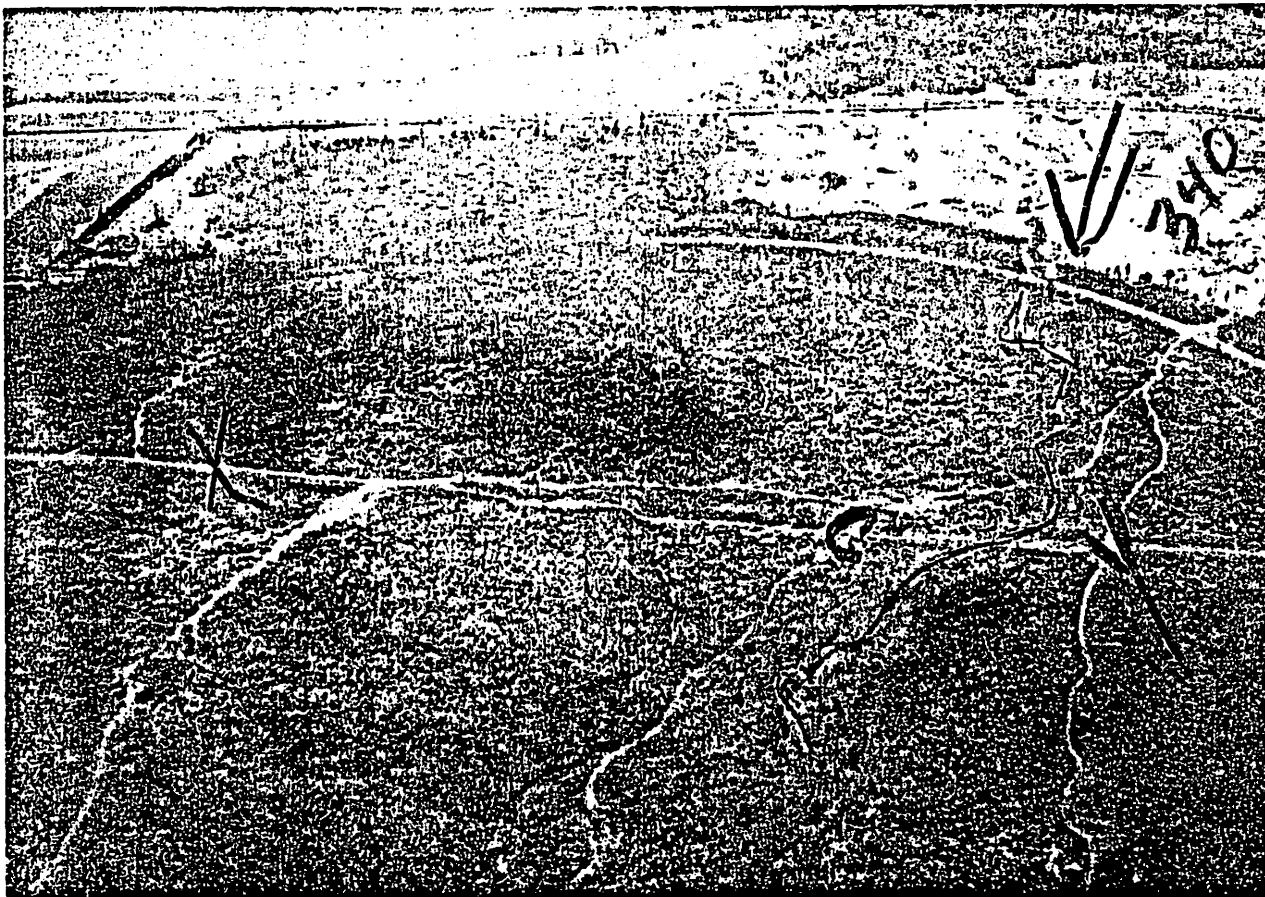
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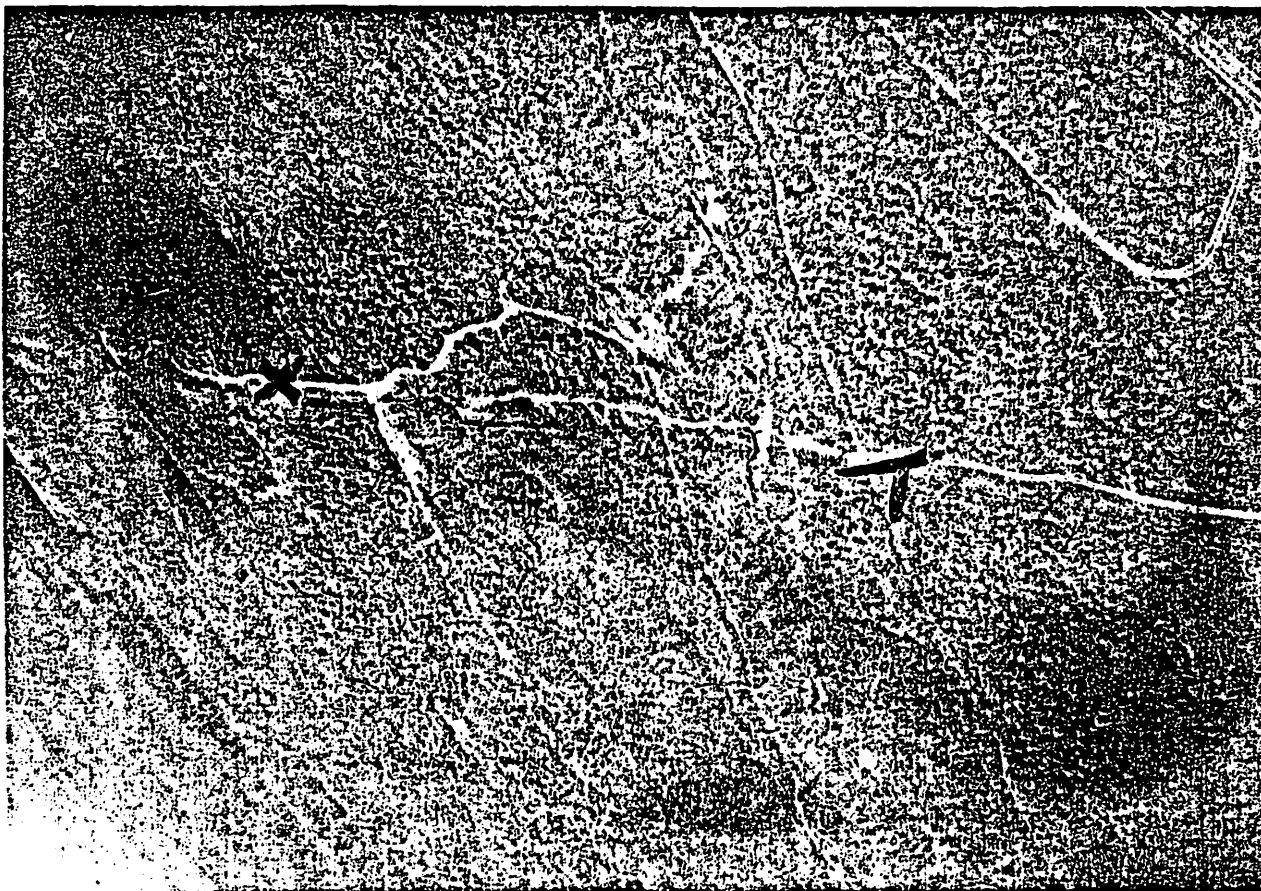
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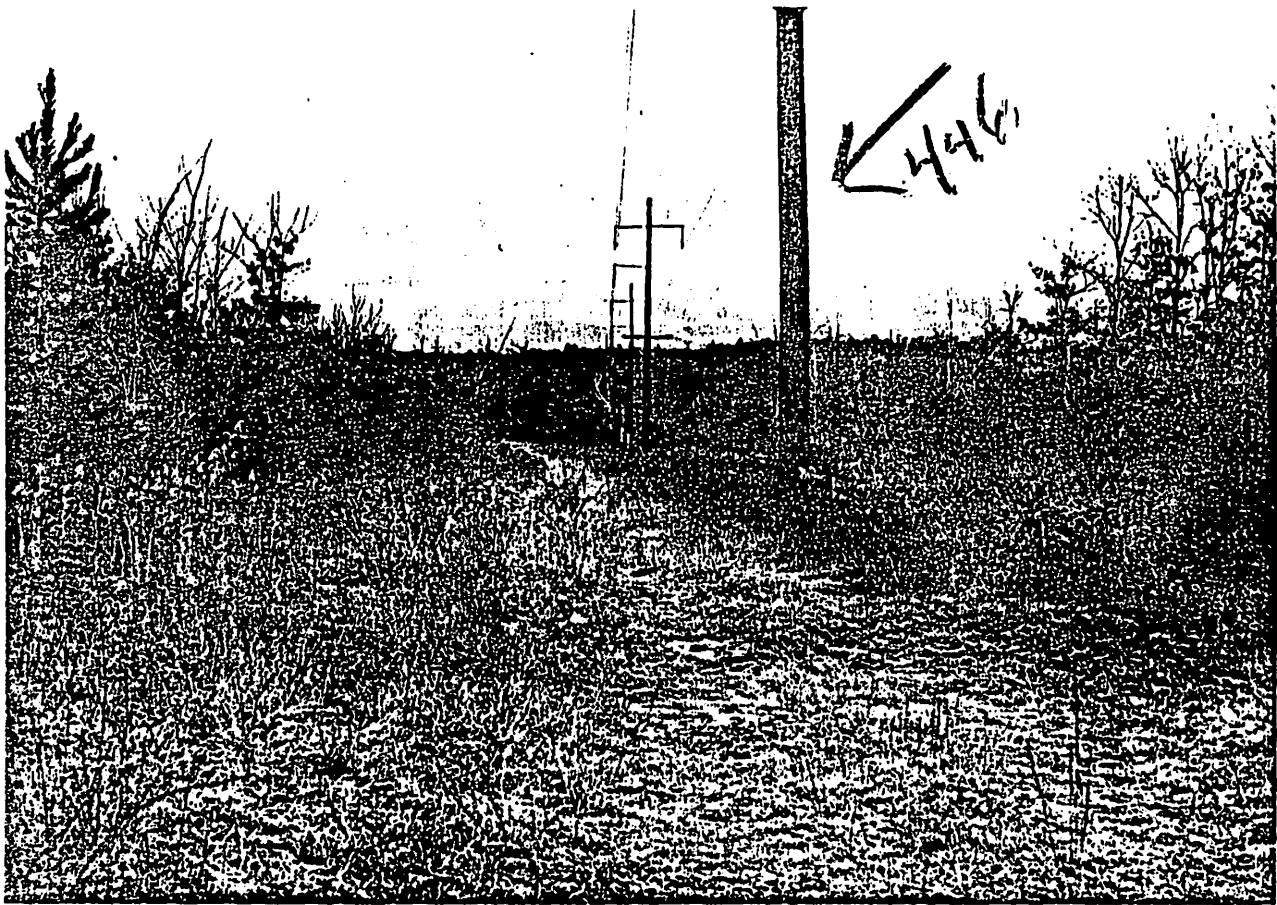
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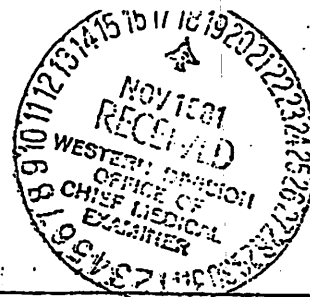
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DEPARTMENT OF HEALTH
OFFICE OF THE CHIEF MEDICAL EXAMINER

WESTERN DISTRICT
920 SOUTH JEFFERSON STREET, ROOM 301
ROANOKE, VIRGINIA 24016
PHONE: (703) 982-7290

REPORT OF AUTOPSY



Autopsy No. W-370-81
Date 11/17/81
Time 3:00 PM

DECEDENT JAMES WYANT
First Middle Type of Death: Violent or unnatural
Means: Shotgun

Autopsy Authorized by: W. P. Fletcher, M. D., Rockingham County

Body Identified by: Dr. Fletcher and Morgue Tag
Persons Present at Autopsy: Dr. Oxley Mr. Berger

Rigor: complete generalized jaw _____ neck _____ arms _____ legs _____
Livor: color absent distribution: _____
Age 20 Race White Sex Male Length 73" weight 165 Eyes brown Pupils: R 0.4 L 0.4
Hair Dk. brown Mustache Yes Beard Yes Circumcised Yes Body Heat Absent

Clothing, Personal Effects; External wounds, scars, tattoos, other identifying features:

The body is well developed, well nourished, and clothed in a camouflage jacket, green sweater, blue plaid flannel shirt, white T-shirt, thermal underwear, blue jeans and high-top boots. There is a bullet hole in the jacket in the right upper chest. There is no gunshot residue present on the fabric. There are corresponding bullet holes in the flannel shirt and T-shirt. There is a red bandanna handkerchief pinned to the coat with safety pins. The clothing is not remarkable and is released with the body. There is a gunshot wound in the right upper chest of the body and an exit wound on the postero-lateral aspect of the left upper arm which will be separately described. There is a bullet adjacent to the exit wound caught between the skin and the T-shirt. There are several small abrasions on the bridge of the nose. There is no other evidence of recent injury.

PATHOLOGICAL DIAGNOSES

1. Gunshot wound of chest with perforation of both lungs and aorta.
2. Hemothorax and hemopericardium.
3. Abrasions of nose.



5/5/82
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Cause of Death:

Gunshot wound to the chest.

Provisional Report _____
Final Report XX

The facts stated herein are true and correct to the best of my knowledge and belief.

11/18/81
Date Signed

CHRV

Place of Autopsy

David W. Oxley
Signature of Pathologist

David W. Oxley, M. D.

NOV 23 1981
A COPY TESTED
Deputy Chief Medical Examiner

GROSS DESCRIPTION

The body is opened in the usual Y-shaped manner. There is approximately 2000 cc. of blood in each pleural cavity. There is approximately 400 cc. of blood in the pericardial sac. The peritoneal cavity is dry.

HEART: Weighs 300 grams. There is a bullet track passing across the descending aorta below the pericardial reflection causing intrapericardial hemorrhage. There are no other valve or chamber lesions. The coronary arteries show no pathologic changes.

LUNGS: Combined weight 500 grams. The organs are pinkish-tan and well aerated. There are bullet tracks passing from right to left across the right upper lobe and across the upper lobe causing extensive intraparenchymal and intrapleural hemorrhage. The tracheo-bronchial systems are not remarkable.

LIVER: Weighs 1350 grams. No pathologic changes.

GALLBLADDER: Not remarkable.

SPLEEN: Weighs 280 grams. No pathologic changes.

KIDNEYS: Combined weight 300 grams. No pathologic changes.

ADRENALS: Not remarkable.

PANCREAS: Not remarkable.

GI TRACT: The stomach is empty. The remainder of the GI tract is not remarkable.

URINARY BLADDER: Empty.

NECK ORGANS: Intact with no airway obstruction.

BRAIN: Weighs 1550 grams. Sagittal and coronal sections show no discrete lesions and there is no evidence of injury.

The skull, vertebrae, and pelvis are intact. There is a fracture of the right 3rd rib by a bullet.

OTHER LABORATORY PROCEDURES:

TOXICOLOGY ☐BACTERIOLOGY ☐DENTAL CHART ☐X-RAY ☐FINGER-PRINT ☐PHOTOGRAPHY ☐SEROLOGY ☐FORENSIC SCIENCE ☐

DISPOSITION OF EVIDENCE

TYPE (Clothing, Bullets, Etc.)	NAME OF RECIPIENT	ADDRESS	OFFICIAL TITLE	DATE
cc: Autopsy	Dr. Fletcher	11/19/81		

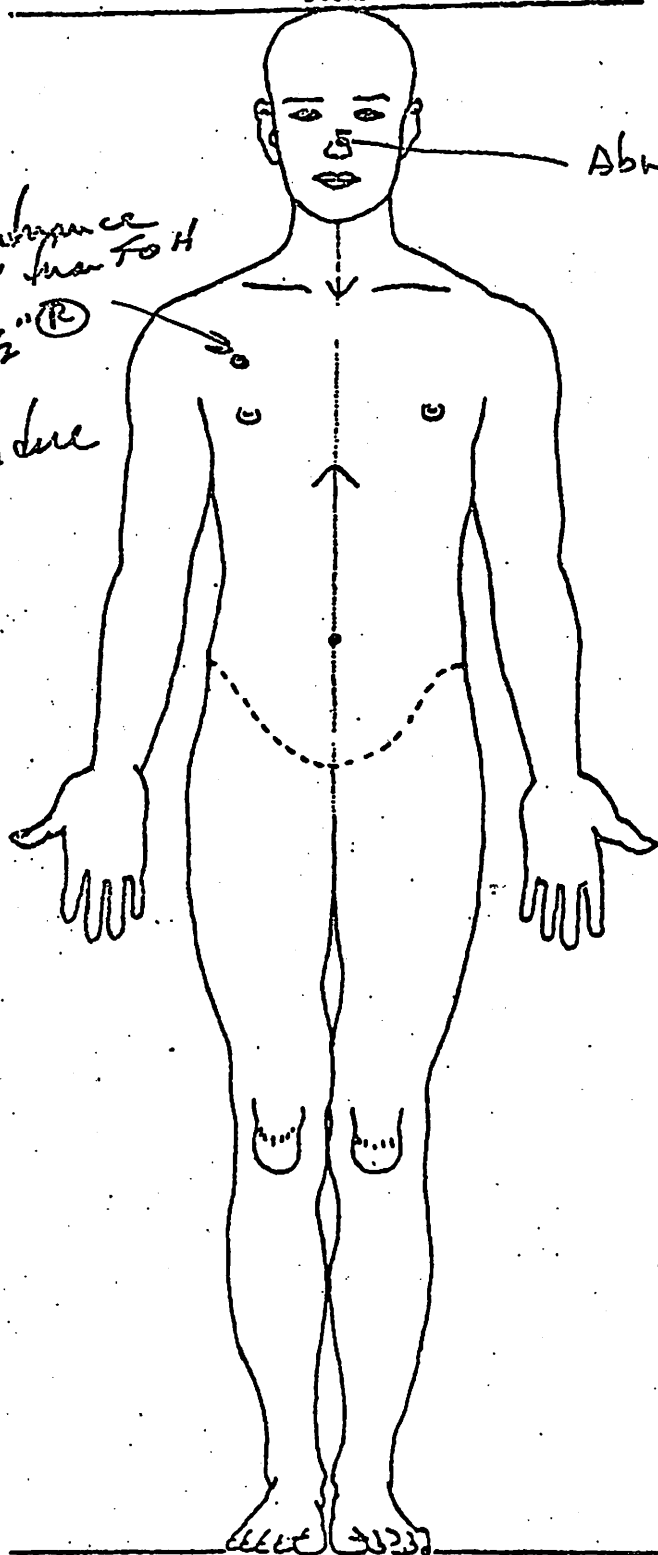
DESCRIPTION OF FATAL WOUND

The entry wound is located on the right upper chest 16 inches from the top of the head and $4\frac{1}{2}$ inches to the right. The wound is $\frac{3}{8}$ inch in diameter. There is no gunshot residue on the skin or overlying clothing. The wound path is from right to left and backward without significant upward or downward deviation. The bullet passes across the chest passing through both lungs and through the thoracic aorta exiting the posterior aspect of the left upper arm 16 inches from the top of the head and 5 inches below the shoulder. The bullet is trapped between the T-shirt and skin and is a jacketed rifle bullet which appears to be of approximately .30 caliber. The bullet is marked with the letter "W" for identification.

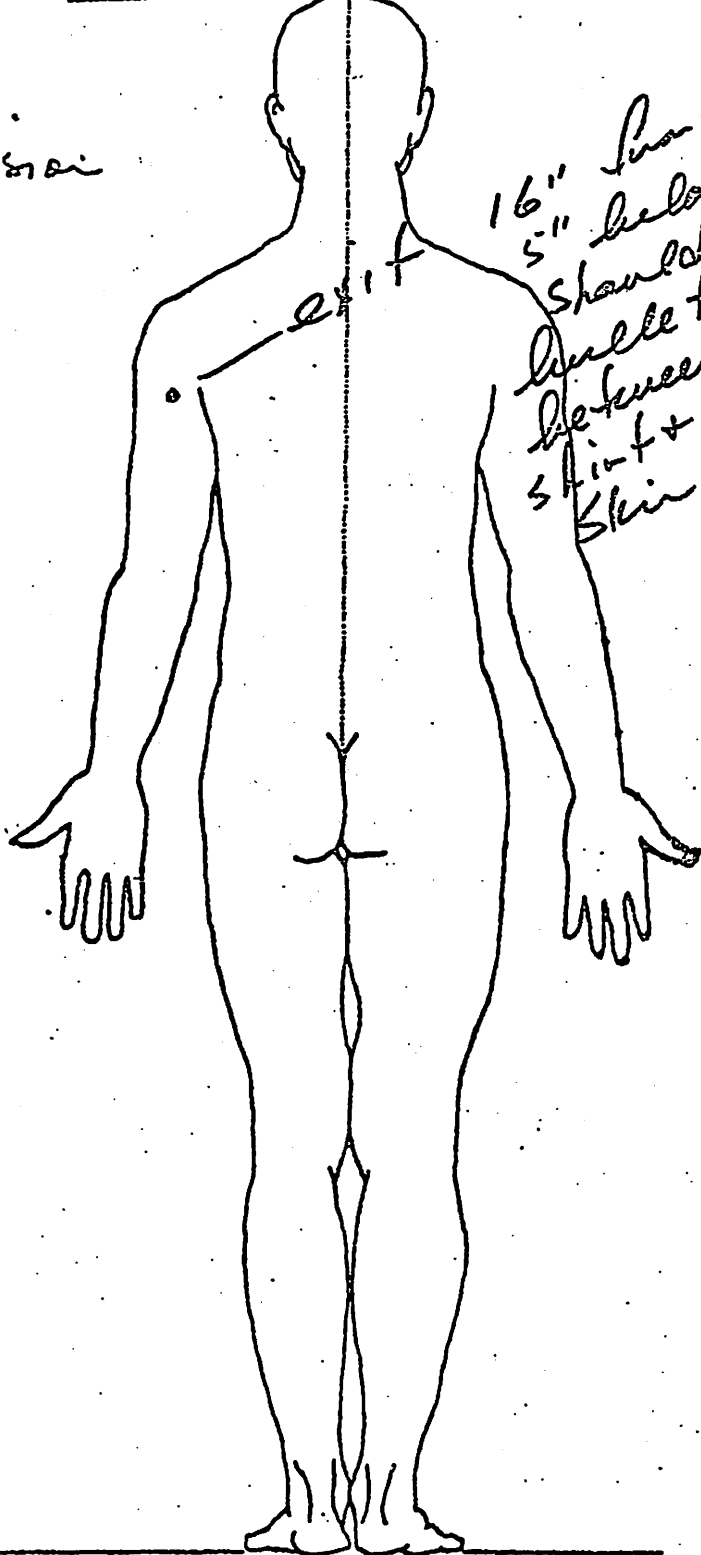
BODY DIAGRAM

Front

Back



Abdomen



Decedent's Height 73 inches

Name James Wyatt
Examined By [Signature]

Date 11/17/81

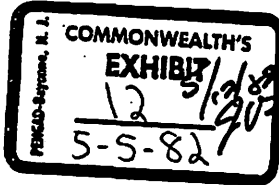
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COMMONWEALTH OF VIRGINIA
OFFICE OF THE CHIEF MEDICAL EXAMINER
CME Form-131

W-370-81



Commonwealth of Virginia
Department of General Services
Division of Consolidated Laboratory Services
BUREAU OF FORENSIC SCIENCE



December 16, 1981

CERTIFICATE OF ANALYSIS

Central Laboratory
P. O. Box 999
Richmond, Virginia 23208

Tel. No. (804) 786-4707

TO: Sheriff
Rockingham County Sheriff's Department
60 Graham Street
Harrisonburg, VA 22801

Attention: Detective Daniel G. Comer

Your Case # 81-5232

FS Lab # 81-4255
81W-2450

Victim(s): WYANT, James Everett

Examiner: Cleon C. Mauer

Suspect(s): GOODEN, Howard Richard

Date Received 11-20-81
11-24-81

Evidence Submitted By: Detective Daniel G. Comer
& U.S. Certified Mail #P27 1428483

Submitted By: Detective Daniel G. Comer on 11-20-81

Item A. One (1) Marlin 30-30 Winchester, Model 336, Lever-action Rifle,
Serial Number 23121173.

Item B. One (1) U.S. Military (IBM) 30 Carbine, M1, Auto-loading Carbine,
Serial Number 60995 with magazine containing cartridges.

Item C. One (1) bullet recovered from victim.

Filed in the Clerk's Office
Rockingham County, Va.

Item D. One (1) cartridge.

Submitted By: U.S. Certified Mail Number P27 1428483

Item E. Four (4) cartridge cases.

DEC 21 1981
Donna Funkhouser Deputy Clerk

RESULTS OF EXAMINATION:

Examination of Items A and B revealed them to be in mechanical operating condition with their safety features functioning properly.

IN FUTURE CORRESPONDENCE REFERENCE THIS MATTER PLEASE REFER TO THE FS LAB # ABOVE

RESULTS OF EXAMINATION: (CONT.)

The 30 Caliber semi-jacketed bullet, Item C, was identified as having been fired from the Item A rifle.

The Remington-Peters 30-30 Winchester cartridge, Item D, is the type designed for use in a firearm such as the Item A rifle, and contains a 30 Caliber semi-jacketed bullet similar to the Item C bullet.

Examination of Item E revealed it to consist of four (4) Winchester-Western 30 Carbine cartridge cases. These cartridge cases were identified as having been fired in the Item B Carbine.

An ejection pattern was fired using Winchester-Western 30 Carbine ammunition and the Item B Carbine positioned approximately five (5) feet from the floor. A diagram of this pattern is attached to the original of this report.

The submitted items will be returned to the Western Regional Laboratory, Roanoke, Virginia, where they may be obtained by the submitting officer.

Enclosure: One (1) ejection pattern diagram
cc: Dr. David W. Oxley (W-370-81)
cc: Western Regional Laboratory
CCM:ceb

STATE OF VIRGINIA
CITY/COUNTY OF Richmond to-wit:

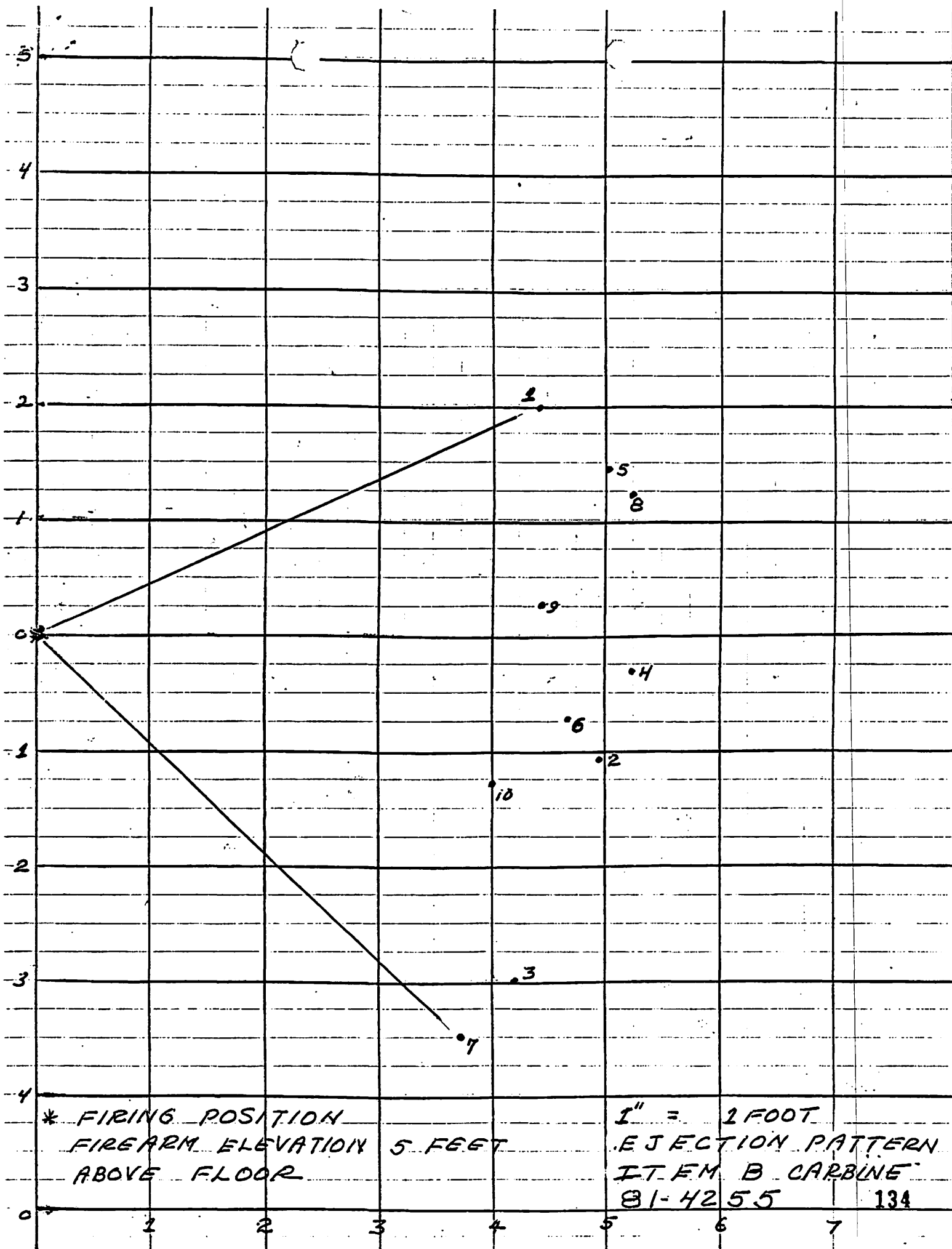
Cleon C. Mauer

THIS day personally appeared before me, Catherine E. Bersik, a notary public, in and for said city/county in the Commonwealth of Virginia, Cleon C. Mauer, who signed the foregoing Certificate of Analysis, before me, and after being duly sworn, made oath (1) that he performed the analysis and/or examination the results of which are herein contained, (2) that said analysis and/or examination was performed in a laboratory operated by the Division of Consolidated Laboratory Services of the Commonwealth or authorized by such Division to conduct such analysis and/or examination and (3) that this Certificate of Analysis is true and correct.

Given under my hand this 17 day of December, 19 81.

Catherine E. Bersik Notary Public

My commission expires February 12, 1983



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COMMONWEALTH'S
EXHIBIT
13
5-5-82

2/2

17th April

D_{6C}