CLERK
SUPREME COURT OF VIRGINIA
JAN 1978

IN THE

Supreme Court of Virginia

AT RICHMOND

770926

LUCILLE BYRD,

Appellant,

v.

THE LIFE INSURANCE COMPANY OF VIRGINIA,

Appellee.

APPENDIX

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VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF MARTINSVILLE

LUCILLE G. BYRD, Plaintiff, vs. THE LIFE INSURANCE COMPANY OF VIRGINIA, c/o William R. Shands, Jr. Registered Agent 6610 West Broad Street Richmond, Virginia 23230 Defendant.	)	MOTION FOR JUDGMENT

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff respectfully shows the following case:

1. Prior to February 15, 1976, and on said date, Gordon L. Byrd was insured under Group Policy #G-1125-10520 issued by the defendant to the Board of Trustees of the Virginia Supplemental Retirement System. The plaintiff, as wife of the insured, was a named beneficiary under said policy.

2. Among other things, the aforementioned policy provided for an accidental death benefit in the amount of Eighteen Thousand Dollars ($18,000.00) in the event the insured died as a result of injuries sustained solely through violent, external and accidental means. On or about February 15, 1976, the said Gordon L. Byrd sustained bodily injuries solely through violent, external and accidental means and died as a result thereof.

3. Notwithstanding demand for payment of the accidental death benefit, the defendant has failed and refused to honor its obligations under the policy of insurance hereinabove mentioned.

WHEREFORE, the plaintiff moves the Court for judgment against the defendant in the amount of Eighteen Thousand Dollars ($18,000.00), with interest as provided by law and her costs in this behalf expended.

LUCILLE G. BYRD

By /s/ Robert W. Mann
Of Counsel

Young, Kiser, Haskins & Mann, Ltd.
60 West Church Street
Martinsville, Virginia 24112

LAW OFFICES
YOUNG, KISER,
HASKINS & MANN,
LTD.

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF MARTINSVILLE

LUCILLE G. BYRD Plaintiff, VS: THE LIFE INSURANCE COMPANY OF VIRGINIA Defendant.	)	JUDGMENT ORDER

On the 4th day of March, 1977 came the parties by counsel and announced that they were ready for trial.

Thereupon came a jury of seven, to-wit:

1. Moses Dalton, Jr.
2. Julia M. Dillard
3. Ralph M. Doolin
4. Wiley Draper
5. Evangeline Hagood
6. Elizabeth M. Holsinger
7. Lawrence Mitchell

At the conclusion of the plaintiff's evidence the defendant moved the Court to strike the evidence of the plaintiff, which motion the Court overruled. At the conclusion of all of the evidence the defendant again moved the Court to strike the evidence of the plaintiff and also moved the Court for summary judgment for the defendant on the ground that under all of the evidence reasonable men could not differ that the death of the plaintiff's decedent had not been caused by "accidental means" within the meaning of the policy. The plaintiff also moved the Court to strike the evidence of the defendant and enter summary judgment for the plaintiff in the amount sued for.

Upon consideration the Court doth sustain the motion of the defendant for summary judgment and doth deny the motion of the plaintiff for summary judgment, and doth ADJUDGE and ORDER that the plaintiff recover nothing of the defendant. To this action of the Court the plaintiff noted her objection and exception.

OFFICES
E, JOYCE,
Y & STONE
. MAIN ST.
ILLE, VIRGINIA

The Clerk is directed to forthwith certify copies of this Order to either party in interest upon request therefor without charge.

ENTER: This 7th day of March, 1977.

/s/ Frank I. Richardson, Jr.
JUDGE

Entry requested by:

William F. Stone, Jr.
Counsel for defendant

Seen and objected to:

Counsel for plaintiff

LAW OFFICES
TONE, JOYCE,
RTHY & STONE
46 W. MAIN ST.
RTINSVILLE, VIRGINIA

ASSIGNMENTS OF ERROR

1. Plaintiff respectfully assigns as error Trial Court's action in sustaining the Defendant's Motion for Summary Judgment, thereby taking from the jury issue of whether Defendant sustained burden of overcoming presumption of "accidental death".

2. Plaintiff further assigns as error Trial Court's failure and refusal to enter Summary Judgment for the Plaintiff where the only reasonable inference from the evidence proves "accidental death".

A jury of seven was empaneled and duly sworn. All witnesses were called, duly sworn, and excluded from the courtroom. The court reporter was also duly sworn.

Opening statements were offered by counsel, and the following proceedings were had: (Pretrial motions are being omitted from this transcript.)

****

IN COURT:

MR. MANN: Your Honor, I ask this be marked as Plaintiff's Exhibit 1.

THE COURT: This is the stipulation?

MR. MANN: Yes sir.

THE COURT: Do you want it introduced, or just read into the evidence?

MR. MANN: I want it actually introduced, and read into the evidence.

MR. STONE: We have no objection . . . either way, Your Honor.

THE COURT: I will mark this as Plaintiff's Exhibit 1.

MR. MANN: Your Honor, and ladies and gentlemen of the jury, it is stipulated and agreed that on February 15, 1976, the named insured, Gordon Leon Byrd, sustained bodily injuries to the head, solely from a gunshot wound in the mouth, and that he died as a direct and sole result of such bodily injury, independently and exclusive of all other physical causes,

THE COURT: The stipulation is evidence that you can consider and take, along with all the other evidence in this case. On this particular stipulation, there is no contest between the plaintiff and defendant, and they have done this, rather have a doctor to come in and prove the very cause of death, since they agreed upon it, and you can take this, and consider it as evidence in this case. All right, Mr. Mann.

MR. MANN: Your Honor, we rest.

THE COURT: Mr. Stone?

MR. STONE: We would like to make a motion at this point.

(All motions and proceedings heard in chambers at this point in the trial, are being omitted from this transcript).

****

THE WITNESS, LUCILLE STANLEY, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. STONE:

Q. Would you please tell the Court and the jury your name, please?

A. Lucille Stanley.

Q. Where do you live?

A. Ridgeway.

Q. Now, Mrs. Stanley, did you know Gordon Leon Byrd?

A. Yes sir.

Q. And did you also, or do you now know Leonard Gray Nelson?

A. Yes sir.

Q. How long have you known Leonard, or Buster Nelson?

A. Oh, I would say about seven or eight years.

Q. And I believe Leonard Nelson and Buster Nelson are one and the same person . . . is that correct?

A. Yeah.

Q. How well have you known Buster Nelson over the last seven or eight years, that you have known him?

A. I knew him pretty well.

Q. Would you tell the jury what relationship you had, if any, with Mr. Nelson?

A. We lived together off and one.

Q. For how long a period of time?

A. Five or six years . . . something like that.

Q. Now, at some point in time, did you and Buster Nelson cease living together?

A. You mean quit living together?

Q. Yes ma'am.

A. Yeah.

Q. When was that?

A. Oh, I don't know. We hadn't lived together in over a year. When this had happened, we had just gotten back together, and I was staying up there some.

Q. When this happened, you and Buster Nelson had gotten back together?

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A. Yeah, but we weren't living together when the accident happened.

Q. All right . . . where were you living at that time?

A. I was living in Ridgeway.

Q. Where was he living?

A. He was living up there in the trialer.

Q. Now, when did you first meet Leon Byrd?

A. Him and Buster was friends, and he had been to the trailer with Buster, was the first time I had ever met him.

Q. I see . . . so, he had come up there to Buster's trailer, when you were staying up there, is that correct?

A. Yes sir.

Q. Now, at some point in time, did you and Leon Byrd develop a closer acquaintanceship?

A. Yes sir.

Q. And when did this occur?

A. I would say in January. I met him at Scott's Restaurant, and we was talking, and we just got together.

Q. All right, now, when you say January . . . what year are you speaking of?

A. '76.

Q. So, January of last year?

A. Yes sir.

1 Q. Now, after you did meet up there at Scott's
2 Restaurant, what happened, if anything, as far as the two of
3 you are concerned?
4 A. Nothing . . . we just talked, and he took me home,
5 and that was all.
6 Q. All right. What about in the several weeks
7 following that evening?
8 A. Well, he would come to the trailer, and we would
9 talk, and he would tell me his problems, and I would tell him
10 mine.
11 Q. Now, do you recall the night that this thing
12 happened, when Leon Byrd was killed?
13 A. Yes sir.
14 Q. Now, in the several weeks before that occurred,
15 how frequently were you seeing Leon Byrd, or he was coming
16 to see you?
17 A. We were . . . every night.
18 Q. All right, now, during these few weeks, when you
19 were seeing each other, were there any . . . did you have
20 any run-ins . . . either together or . . . did you have any
21 run-ins with Leonard or Buster Nelson?
22 A. Buster would call . . . make phone calls, and
23 make Leon mad, and he would call up on the job where Leon was
24 at, and try to get him fired, and telling tales . . . telling
25 things that ain't so.

1 MR. MANN: If the Court please, I will object to this.
2 I don't see how she could possibly have any firsthand knowledge
3 or anybody calling, on a job, or have firsthand knowledge of
4 calls made to another person, so I would ask this answer be
5 struck.
6 THE COURT: All right, I sustain the objection,
7 unless you can qualify her knowledge.
8 Q. Did you and Leon Byrd have any conversation
9 between yourselves about Leonard Nelson, and these telephone
10 calls?
11 A. Yes sir.
12 Q. Your Honor, I don't want to get into it if Mr.
13 Mann thinks it is objectionable. I would like to state my
14 reasons at this point, before I do get into it. I think the
15 fact that Leon Byrd is deceased . . . if he were here, would be
16 able to testify about it . . . we should allow his statements
17 to her to come in to show then, at the very least, his state
18 of mind, and therefore, we would like to pursue it further.
19 MR. MANN: Of course, the question, Your Honor,
20 would be the state of mind at the time this occurred, which
21 would be on February 15, 1976. It just occurs to me we would
22 be getting too far afield to get into it, but let him go ahead
23 and I will object to his specific questions.
24 THE COURT: It is difficult for me to anticipate
25 the evidence. I will say, Mr. Stone, you ask and Mr. Mann,

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you make your objections, and I will rule on them.

Q. All right . . . fine. Did you and Leon have some conversations between yourselves, about some calls that Leon . . .

A. Yes sir.

Q. And when did these conversations occur?

A. Well, every evening I would go pick him up, he would get in the car from work, you know, and tell me Buster had called up on the job, and told this and that, and tried to get him fired. I said, "Don't pay no attention to him" . . . I said, "He's always doing some stuff to spite" . . . I said, "Just don't pay no attention to him".

Q. Of course, I believe you said that you began seeing him, beginning in January of 1976, that first night you saw him at Scott's Restaurant, is that right?

A. Yes.

Q. And the night he was killed was about the middle of February, the next month?

A. Yes sir.

Q. Now, can you tell the Court and the jury whether there were any occasions when Buster Nelson actually came down to your trailer . . . to your home, when Leon was there also?

A. Yes sir.

Q. And can you tell approximately when this occurred?

A. I don't know . . . I would say maybe a couple of weeks . . .

A. Buster called down to the house, and wanted to speak to Leon, and I said, "What do you want with him", and he said, "I want to apologize to him for calling him a SOB", and I handed the phone to Leon, and they talked, and Leon didn't really accpet the apology, you know, and . . .

Q. What happened after that telephone conversation?

A. Tommy Stanley . . . his friend was there, and Leon told Tommy . . . he said, "Let's go up to Buster's", and I said, "No".

MR. MANN: I object to that.

Q. I believe it would be proper. It's a question of what he said . . . not really offered for proof.

THE COURT: I overrule your objection.

Q. All right, now, Leon said what to Tommy Stanley?

A. He told his friend . . . he said, "Me and Tommy is gonna' take your car, and go up to Buster's", and I said, "Tommy, don't go up to Buster's . . . it would be trouble", and Leon got mad, because I said that.

Q. So, what happened after that? Did Leon in fact leave, or did he stay at your place?

A. Three of us left.

Q. At some point, did Buster Nelson come down to your home, or to your trailer?

A. Yes sir.

Q. When was that?

A. It was about a couple of weeks before the accident, I would say.

Q. Was this the same evening of this telephone conversation?

A. I believe it was a telephone conversation that evening . . . yes sir.

Q. What happened when Buster Nelson came down to your trailer?

A. Well, he made a phone call first, and then in about twenty minutes, the car pulled up to the driveway, and I seen Buster coming up to the trailer, and I was scared, and I went into the bedroom, and I told Leon not to go to the door, and Leon told me, "Go to the door . . . go to the door", and Leon insisted, so I go to the door, and Buster was standing there at the door, and he just walks in, you know, and I have a grandson, and he was talking to him, and I went back in the bedroom because I was scared, and I come back out, and I asked Buster what he wanted, and he never did give me no answer, and he goes on out the door, and Leon told him . . . said, "You won't call me many SOB's", and Buster said, "Well, I'm sorry", and Buster walked out the door, and he said, "Leon, I'll see you later".

Q. Can you describe what tone of voice he used in making that last statement?

A. Well I would say he was angry.

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Q. And who was angry?

A. Buster was angry.

Q. I believe this shooting occurred on Sunday . . . a weekend?

A. Yes sir.

Q. Now, on the Friday night of that same weekend, had you and Leon been together?

A. Yeah.

Q. And, did anything occur that evening that involved Buster Nelson?

A. I can't recall right now . . . not unless it was some phone calls . . . some calls made to the house.

Q. Do you remember any phone calls that occurred that Friday evening?

A. Me and Leon had been to some of his friends' house that Friday night, and Leon was wanting to buy a gun, and him and this other friend went out somewhere. I didn't know at the time that he was going to buy a gun, but I found out later that he was. This other guy had a gun there, but he said it was too big . . . Leon said he wanted one that he could carry in his pocket, and I asked Leon what did he want with the gun, and he never did give me an answer.

Q. Well, was there a telephone conversation that occurred after . . .

A. After we got home . . . yes.

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Q. All right . . . what happened?

A. Well, Buster kept calling out there, and his girlfriend called out there to his house, and she said . . .

Q. Well, don't tell what she said. What happened as far as telephone calls between Leon and Buster?

A. Well, Leon and Buster had an argument over the phone, and Leon got the gun, and he was going out to Buster's, and I started crying, and I laid my head on his shoulder, and I pleaded and begged him not to go, and I said, "If you do, I'll start walking" . . .he was gonna' take my car . . . I would walk to Ridgeway, and I said, "I'll never speak to you again . . . there will be trouble", and I pleaded and begged him not to go, and he didn't go, and he thanked me the next morning, for not letting him go.

Q. Now what about Saturday night . . . did you see each other that night?

A. Yes sir.

Q. And did you go anywhere together?

A. Yes sir . . . went to "Goodtimes Express".

Q. All right, now, you mentioned at some point he acquired a gun. When was the first time you saw a gun that Leon had?

A. When was the first time I seen the gun?

Q. Yes ma'am.

A. It was the night that he got it, and he was going

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1 out to Buster's, and I pleaded and begged him not to go.

2 Q. That's the Friday night . . . the night before

3 you went to the "Goodtimes Express"?

4 A. I think it was during that week . . . I'm not

5 sure which night.

6 Q. What happened to this gun after that Friday

7 night . . . where was it placed?

8 A. Well, I don't know where it was at on Friday

9 night. On Saturday night, he put it in my car, and locked it

10 up.

11 Q. Now, on the next day . . . Sunday . . . the

12 night this shooting occurred . . . when did you first see

13 Leon that day, to the best of your recollection?

14 A. I picked him up, off the job.

15 Q. What time was that, approximately?

16 A. I would say a few minutes after 6:00.

17 Q. That was 6:00 o'clock in the evening?

18 A. Yes sir.

19 Q. And what did you all do?

20 A. Well, he got in the car, and he was mad, and

21 he was telling me about phone calls, you know, and he said he

22 was gonna' put a stop to these phone calls, and I said, "Don't

23 pay no attention to him . . . he's always doing something to

24 spite" . . . I said, "Don't let it get to you", and he said he

25 was gonna put a stop to it. I encouraged him, and I was

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trying to get him to go see his family.

Q. Where did you all go then, after you picked him up?

A. He stopped at Scott's Restaurant.

Q. Did you go inside?

A. No sir.

Q. How long was he in there?

A. Thirty or forty minutes.

Q. Then did he have anything with him when he came out?

A. A six pak.

Q. Where did you go then?

A. My trailer.

Q. And did you go inside, or remain out in the car?

A. Well, we stayed out in the car and talked, and I was encouraging him to go see his family, and he drank a couple of beers, and I told him to take my car, and go see his wife and his children, and he wanted me to go with him, and I told him no . . . that I wouldn't go.

Q. Now, during the time that you were traveling between Scott's Restaurant and your trailer, was anything unusual occurring?

A. Yeah. A truck fell in behind us and Leon thought somebody was following us, and he said, "There's a truck following us. Hand me the gun out of the dash", and I had

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1 forgot the gun was even there. I said, "The keys are in the
2 car, and I'll have to have the keys out of the car to unlock
3 the dash", which he done. So, when we pulled into the driveway,
4 a car pulled in behind us. I don't know who it was, and he
5 didn't either, so . . .
6 Q. Did Leon make any statement as to any suspicions
7 as to who he thought it was?
8 A. Yeah . . . he said he thought it was . . .
9 something about the truck that had been following his buddies
10 from up at Buster's . . . I never really did know what it was
11 all about.
12 Q. All right . . . so, what happened when you got
13 to the driveway?
14 A. He handed me the keys, and I unlocked the dash,
15 and handed him the gun, and we both got out to see who it was,
16 and it was some friends of my daughter, and the truck had went
17 on.
18 Q. And you sat there in the car?
19 A. Yeah, and Leon come in the house, and Leon picked
20 the telephone up and went in the bathroom, and called his
21 wife, and he was going to see his family.
22 Q. Did he in fact leave?
23 A. Yes.
24 Q. Now, did he return to your trailer that evening?
25 A. Yes sir.

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Q. All right, and how long was he gone?

A. I would say about forty-five minutes, but I'm not sure.

Q. And when he came back, what did you all do then?

A. We sat on the couch and talked with my daughter, and her friends, about thirty minutes or longer.

Q. Just go ahead and describe what happened during that evening . . . did you leave the trailer after that?

A. Yes.

Q. Where did you go?

A. To the 220 Truck Stop.

Q. And what happened there?

A. Leon wanted to go in and drink some beer, and I didn't want to go in, and he insisted, and would get mad if I didn't, and so I went in, and we sat there and drank some beer.

Q. All right . . . did you notice how much beer he had to drink?

A. I would say four to six beers, at the truck stop.

Q. All right, and this was in addition to what he had already drunk while you were in the car?

A. Yes.

Q. How many cans was that?

A. He drank two in the car, and when he got back

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1 from seeing his wife, the six-pak was empty.

2 Q. But you don't know who drank the other four?

3 A. No sir.

4 Q. Now, how long did you remain there at the 220 truck

5 stop?

6 A. I don't know. I would say a pretty good while.

7 Q. Can you make that more particular . . . was it

8 one-half hour, or two hours?

9 A. I would say an hour, or one and one-half . . . I'm

10 not sure.

11 Q. At some point, the two of you decided to leave

12 the 220 Truck Stop?

13 A. Yes.

14 Q. Did you discuss, before you got in the car,

15 where you were going to go?

16 A. Leon was standing talking to these two men, and

17 I was standing at the door, waiting and waiting, and I didn't

18 know what they were talking about, and I thought Leon must be

19 high, you know, and I would go on, and get in the car, and get

20 under the wheel, and I was gonna' drive, you know, and he was

21 drinking more than I did, and Leon come out to the door, and

22 he looked all right, and I said I was gonna' drive, and he said,

23 "Hell, no", and he pushed me over, and gets under the wheel.

24 Q. All right. Did he tell you where he was taking

25 you, or where you were going?

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A. No, but I just assumed we were going to his house. That's where we always went.

Q. All right, now, describe what happened, after you got in the car, and started to drive?

A. When I got in the car, and he was driving, I realized, you know, he drank more than I knew of, and he liked to have hit a couple of cars headon, and I grabbed the wheel, and tried, you know, to get him to let me drive, and he wouldn't do it.

Q. Did he make any statement to you, when you tried to grab the wheel?

A. Yes . . . he said if I didn't "quit and leave him alone, he was gonna' knock my damn head off".

Q. All right, now, as you left the main road, and started up the road to where you assumed you were going, just describe to the jury what happened?

A. Going up the road, he told me, "I got something to tell you, but you will start bitching and raising hell", and I said, "No, I won't" . . . I said, "I never have, have I", and he said, "I'll tell you when I get home" . . . I thought that's what he said, but when he gets to the road to turn down to Buster's, he just swerves the car around, and I didn't know he was gonna' turn in . . . and I panicked and I'm scared, and I don't know what's going on, and I said, "Where are you going", and he said, "To Buster's", and I said, "No, you're not either",

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1 and I grabbed the wheel, and the keys, and I done everything
2 I could to stop him, and I couldn't stop him.
3 Q. Just go ahead and tell us what happened?
4 A. I told him . . . I said, "Leon, if you go up there,
5 and say anything, Buster is jealous, and he'll kill you", and
6 he said, "If Buster kills me, Turkey will kill him". So,
7 we pulled in the driveway.
8 Q. Now, when he said "Turkey", do you know who he
9 was referring to?
10 A. Yeah . . . Danny Byrd is his brother.
11 Q. His nickname is "Turkey"?
12 A. Yes sir, and we pulled into the driveway, and
13 I held onto Leon's arm, and begged him not to go in, but he
14 went in anyway.
15 Q. All right, now, did you go in with him?
16 A. No . . . later.
17 Q. All right . . . just go ahead and describe what
18 happened, after Leon went on into the trailer?
19 A. Well, he went into the trailer, and he stood a
20 little bit, and he was standing at the door, and he said,
21 "Honey, come on in", and I assumed that Buster had invited me
22 in, and everything was going to be all right, so I went in
23 and sat down on the couch, and Buster was sitting in the chair,
24 by the window, and Leon went to the bathroom, and when he come
25 out of the bathroom, he had a gun in his left hand, and went

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to the kitchen sink, and he lays it on the kitchen sink.

Q. Was any comment made about the gun by anybody there?

A. Not that I recall.

Q. All right, so what happened then?

A. Well, him and Buster stood at the sink, and they had a drink together, and Leon asked Buster about the phone calls, and Buster denied 'em, and Leon said, "You're just telling a damn lie. I talked to you on the phone", and Buster still denied the phone calls.

Q. Just go ahead and describe what happened as the events worked up until the shooting occurred?

A. Well, after they had some words at the kitchen sink, Buster comes back and sits in the chair by the window, and I'm sitting on the couch, and Leon comes and sits on the couch beside me, and Leon asked Buster about the phone call he made to my daughter. Buster called down there, and told my daughter that him and Lucille Byrd was together, and they was gonna' get us, and stuff like this, you know.

Q. Without saying what your daughter told you, what happened after they talked about this phone call to your daughter?

A. Buster denied it, and Leon was cursing, and Buster looked up and give Leon a mean look, and I sensed there was gonna' be trouble, you know, so I start out the trailer

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door, and when he did, Buster stops me, and puts his arm around my back, and said, "You're not going nowhere", and Leon has got up, and standing by the kitchen sink at this time, and Leon said, "Take your damn hands off her", and Buster grabs the shotgun and points it at Leon, and said, "I'd just as soon kill you, as I had to look at you", and Leon grabs the shotgun and pushed . . . they didn't exactly wrestle, but Leon was pushing Buster back to the chair to take the shotgun away from him, and I sat down on the couch, and the gun was going everywhere, and I was afraid this was going to go off and shoot somebody, so I go to the car.

Q. Now, at some point, did you return to the trailer?

A. Yes sir.

Q. And why did you return?

A. Leon called me.

Q. What happened after you got back inside?

A. He said, "Where is the other shotgun", and I didn't say anything . . . I was scared to. I pointed . . . I seen the gun sitting beside the Frigidaire, and I pointed to the Frigidaire, and he has the .45 in his left hand, and he has the shotgun in his right hand, and the other shotgun was sitting beside the Frigidaire. He picks 'em up, and he unloads 'em . . . breaks 'em down, and he lays this .45 on the coffee table, and he unloads the shotguns. He said to Buster, "We're leaving now, and if you start shooting, I'm gonna' come

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back", and I told Leon that if he didn't come on, I was gonna leave him.

Q. All right, now, did you in fact leave the trailer again?

A. Yes. I went to the car, and I got in, and turned the car around, and I was going to leave.

Q. What did Leon do as you were leaving the trailer?

A. Well, at one point he started, you know, to come on . . . he was standing in the doorway, and had the gun in his left hand, and doing like this (illustrating with hands), and he was talking to Buster with the gun. I don't know what he was saying. I do recall . . . he told Buster . . . he said, "You better not put your damn hands on her no more". He was standing in the doorway . . . Buster was sitting in the chair.

Q. I'm sorry . . . I didn't understand the last part of what you said?

A. I said while he was standing in the doorway there, with the gun in his hand, talking to Buster . . . Buster was sitting in the chair, and Leon was standing in the doorway. Leon told Buster . . . he said, "You better not put your damn hands on her".

Q. Now, what happened . . . you were out in the car at this time?

A. Yeah . . . I had turned the car around, and I was facing the road, and I heard a commotion, and I looked back.

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and Buster come to the trailer door, and hangs over the trailer door, and he said, "I need some air", and I heard Leon say, "Oh, it ain't a damn thing wrong with you", and so I just glanced back to the road, and I had the car running, and the lights on, and I wanted to leave, and when Buster turned around, I heard two shots.

Q. All right, now, did you then go back in the trailer, after hearing the shots?

A. Yes sir. Buster comes to the door, and he has got the gun in his hand, and swinging it like this (illustrating), and said, "Get in here . . . get in here. I killed him. He come up here to kill me, and I killed him".

Q. All right, now, where was Leon at this time?

A. He was laying in the trailer floor.

Q. Did you see a gun that Leon brought up there with him?

A. Yes sir.

Q. And where was that?

A. It was laying somewhere around his feet . . . somewhere.

Q. At Leon's feet?

A. Yes sir.

Q. Okay . . . what happened after that?

A. Well, I was wanting to get Leon to the hospital to try to save his life, and I told Buster, "We've got to call

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the rescue squad, and Buster said, "Hell no" . . . said, "I've killed him", and so I reached down, and I checked Leon's pulse, and breathing, and he was living at this time, and so I still insisted on calling the rescue squad, and Buster said, "Hell no. He come up here to kill me, and I killed him", you know. I told Buster, "I don't everything I could to stop him from coming up here, and I couldn't", and finally he insisted on me calling the rescue squad, and I called the law.

Q. And then subsequently both the law officer and the rescue squad got there?

A. Yes sir.

Q. Now, before this night occurred, had you and Leon ever had any conversation about Buster Nelson and the relationship he had with guns?

A. Yes sir . . . many times.

MR. MANN: If the Court please, I object to that question without a better foundation than that. You are relating . . . we are talking about the statements attributed to the decedent, and I haven't objected to them, but still, without laying a better foundation than that . . . when and where, and under what circumstances, I would object to any further questions along those lines.

THE COURT: He just asked her of her own knowledge, whether she knew of this gentleman and his affiliation with guns.

1 Q. Well, Your Honor, I'm more interested really in
2 what Leon Byrd knew, and I would urge that what the jury has to
3 consider is all of the circumstances surrounding this thing.
4 Not what just occurred on this particular night, but these
5 series of events and discussions that took place over the month
6 or five or six weeks that Leon and Mrs. Stanley were seeing
7 each other, and his death occurred.
8 THE COURT: All right. I will overrule the objection
9 then.
10 Q. All right, Mrs. Stanley, I will try to repeat
11 the question . . . maybe a little different wording. On this
12 . . . do you recall any specific occasions when you and Leon
13 had any conversation about Buster Nelson, and the guns and
14 weapons?
15 A. Yes sir. We had many conversations about them.
16 I told Leon what type person Buster was, and that he carried
17 a gun, you know, and not to fool with him, and he told me he
18 already knew what type person Buster was, and knew he carried
19 a gun. He said him and his friends was up there one night,
20 and Buster had pulled a gun on some of his friends, or something.
21 MR. MANN: I object to that, if Your Honor please.
22 Q. Your Honor, I think that the state of mind of
23 Leon Byrd is one of the crucial points in this case.
24 THE COURT: All right . . . I'll overrule the
25 objection.

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1 Q. Now, after you and Leon got up to the trailer,
2 and before the shooting occurred, I believe I understood you to
3 testify that Leon accused Buster, or Leonard, of making these
4 phone calls, and Buster denied them?
5 A. Yeah.
6 Q. What response, if any, did Leon make to those
7 denials? What did he say . . . do you recall?
8 A. He would just call Buster "a damn lie", and he
9 said, "I talked to you", and Buster would still deny it, and
10 say he didn't make the phone calls.
11 Q. Can you tell the jury, if you know . . . did Buster
12 Nelson have any reputation in the community in which he resided
13 and in the community in which he lived up there, about his
14 peacefulness, or lack of peacefulness, or violence or
15 lack of violence?
16 A. Well, everybody knew Buster carried a gun.
17 Every law in Henry County, and everybody knew Buster carried
18 a gun. He carried two at the time, sometimes. Leon knew he
19 carried a gun.
20 MR. MANN: If Your Honor please, I have to object
21 to that, and ask that it be struck. The proper question is
22 going to be, if she knew the reputation of Buster, with
23 regard to peacefulness, and if she knows, she can state whether
24 it was good or bad, and I don't think she can testify that
25 everybody knew, and every law in Henry County knew, and

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everything else about it. If she knows his reputation, she can state whether it is good or bad.

Q. All right. Did Leonard have any reputation for peacefulness in the community in which he lived?

MR. MANN: Well, I would ask the jury be instructed to disregard her last answer.

THE COURT: All right. I think I can tell the jury to disregard that all the law enforcement agencies, etc., knew that Buster carried a gun. There has been no foundation laid by the defendant to show that this witness had actual knowledge of that. I will ask you ladies and gentlemen to disregard that statement.

Q. Mrs. Stanley, the question I am asking you is whether Buster Nelson had any general reputation in the community in which he lived, as far as peacefulness was concerned?

A. Well, the onliest way I know to answer that is everybody knew he had a gun, and nobody would fool with him, and people knew he was violent.

Q. People knew he was what, did you say?

A. Violent, you know . . . that's the onliest way I know to answer it.

Q. All right . . . I believe that's all the questions I have.

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CROSS EXAMINATION BY MR. MANN:

Q. Mrs. Stanley, you testified that you had some apprehension about Leon going to Buster's, and you have testified that he suddenly swerved, and said he was going up there. When he made that swerve to go to Buster's, didn't he say to you that, "I'm going up there to get a drink . .. going up to Buster's to get a drink"?

A. When he swerved the car, and I asked him where he was going, and he said he was going to Buster's, and I said, "What for", and he said, "To get a drink".

Q. "Going up there to get me a drink"?

A. Yes.

Q. And you were still, of course, scared, because of what you knew about Buster?

A. Yes.

Q. But, as far as Leon was concerned, his avowed purpose for going up there, was to get him a drink?

A. Yes sir.

Q. And there was nothing unusual at all about him going to Buster and drinking with Buster, was it?

A. No sir.

Q. He did it all the time?

A. Not all the time, but he had done it occasionally because I've seen him there.

Q. Okay . . . they were good buddies and good drinking buddies?

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A. I couldn't really answer that.

Q. You don't know whether they were good buddies or not?

A. No . . . not really, I don't, because . . .

Q. And even though you had told him . . . I believe you stated on a previous occasion that Leon just wouldn't believe that Buster was the kind of person that you told him that he was. Do you remember saying that?

A. Yeah.

Q. So, really, Leon said, "I'm going there to get me a drink", and even though you protested, Leon said he was going up to see his buddy, and get a drink?

A. Yeah.

Q. And when he arrived, Buster was awake . . . wasn't he?

A. Awake?

Q. Awake . . . yes?

A. Yes sir.

Q. And the lights were on in the trailer?

A. Yes sir.

Q. And when Leon started to get out, Buster came to the door, and there was a friendly greeting between the two of them?

A. Yes sir.

Q. Nothing harsh said at that point, and no threats

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made in any way whatsoever?

A. No sir.

Q. And I assume that you were naturally relieved about that . . . I'm sure you weren't completely to the point you didn't have some apprehension, but you were relieved to see that when they met each other, they were friendly?

A. Yeah.

Q. And there was a friendly greeting, and Buster invited the two of you in for a drink, didn't he?

A. Now, I don't recall that.

Q. Well, did he invite Leon in?

A. Yes.

Q. And Leon went in?

A. Yes sir.

Q. Still, no threats or cursing or anything . . . it was all friendly at this point?

A. As far as I know.

Q. Leon, to your knowledge, did not have a gun, at that time? You didn't see any gun on Leon?

A. No, I didn't.

Q. And he certainly didn't have one in his hand, did he?

A. No sir.

Q. And how long . . . when Leon disappeared into the trailer, did you stay seated in the car then, or did you get out?

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1 A. When he first went in, I stayed in the car, and
2 I went in later.
3 Q. Now, when he first went in, did they leave the
4 door open? Could you see or hear what was going on in there?
5 A. I could see. I didn't hear. I didn't pay any
6 attention to what was going on . . . I was too scared.
7 Q. Well, what did you see from where you were sitting
8 in the car . . . after they went in, tell us what you saw?
9 A. Well, I didn't really see anything. Leon was
10 standing at the door, and I thought they had some words, and
11 Buster was sitting in the chair.
12 Q. But, they were friendly words at that time,
13 weren't they?
14 A. I don't know what was said at that time.
15 Q. Well, I mean after that, you've already testified
16 that they invited you to come in, and you assumed everything
17 was all right?
18 A. Yeah.
19 Q. So, you didn't know anything to the contrary,
20 other than it was friendly words that they had at the door?
21 A. Right.
22 Q. Now, did Leon ever actually ever get out of your
23 sight, while you were in the car? Did he disappear into the
24 trailer, and get where you couldn't see them, and disappear,
25 or were they there where you could see them?

1 A. I think I saw 'em at all times.

2 Q. And there was nothing unusual going on, in any

3 way, was there?

4 A. No.

5 Q. Now, I know you have testified to this, but I've

6 forgotten. Which one of the two fellows actually called to

7 you and said, "Come on in"?

8 A. Leon.

9 Q. And how long had he been in the trailer before

10 he called to you?

11 A. I would say . . .he had just stepped inside the

12 door, and they had a few words . . . I don't know what was said,

13 but just a few minutes.

14 Q. Well, I know this is very difficult, but I'm

15 going to ask you to be a little more specific, if you can.

16 When you say a few minutes . . . that's actually one hundred

17 eighty seconds, if you're talking about three minutes. Was it

18 just long enough for him to go to the door and greet Buster,

19 and they had a couple of words, whether friendly or not, and

20 then turned around, and tell you to come on in, or was there a

21 long conversation there?

22 A. I would say it was about five minutes.

23 Q. Five minutes?

24 A. Yes . . . that's what I would say.

25 Q. That they stood there and talked?

1 A. Yes.

2 Q. And at the conclusion of that, Leon asked you to

3 come on in, and I believe your testimony was that you assumed

4 that everything was all right?

5 A. Yes.

6 Q. At this point, you certainly hadn't seen a gun

7 on anyone, had you?

8 A. No sir.

9 Q. And so then you entered the trailer, and every-

10 thing still seemed to be friendly between the two, at that point.

11 As soon as you entered . . . you didn't walk in in the middle

12 of a big argument?

13 A. No.

14 Q. If you had, you would have turned around, and

15 gone back out? The atmosphere was friendly enough that you

16 were able to go in and sit down?

17 A. Right.

18 Q. And you sat down on a sofa, and Buster sat down

19 in the chair?

20 A. Yes sir.

21 Q. And Leon, as I understand your testimony, went

22 directly to the restroom?

23 A. Yes sir.

24 Q. And did you then testify that when he came back,

25 he had a pistol and laid it down on the counter or something?

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A. Yes.

Q. And nothing was said about the pistol?

A. Not that I recall . . . no.

Q. And that's the first time that you had seen the pistol?

A. Yes.

Q. And the first time you were aware that Leon even had a pistol there in the premises?

A. Right.

Q. Well, when he laid it down, he laid it down in a peaceful manner, didn't he? He didn't threaten with it, or anything like that?

A. No. I took it that he laid it down in a peaceful manner . . . yeah.

Q. The manner in which he laid it down was one that convinced you that he didn't want any trouble?

A. Right.

Q. And he laid the pistol down, and there was no comment made about it, one way or the other?

A. Not that I recall.

Q. By Leon . . . Leon didn't say anything about it?

A. No.

Q. Do you recall whether Buster Nelson acknowledged having seen the pistol in any way, shape or form?

A. Yeah. Buster seen him lay the pistol on the sink.

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1 Q. Did he make any comment?

2 A. It seemed like he did, but I can't remember,
3 and it seemed like he said something . . . "What are you
4 doing", or something . . . I'm not sure what he said.

5 Q. So, Buster knew it was there, and knew he had
6 laid it down, and he saw the manner in which he laid it down,
7 the same as you did? He was there to see everything that you
8 saw about it?

9 A. Yeah.

10 Q. And then Leon . . . if I recall your testimony
11 correctly . . . mixed drinks there at the sink?

12 A. Yeah. Him and Buster had a drink there at the
13 sink, the best I can remember.

14 Q. And while they were . . . at some point in time
15 . . . I know it is difficult to place this exactly . . . but,
16 then arguments over the telephone calls started? Now, were
17 they seated at that time, or were they standing up?

18 A. Well, at one point they were standing there, and
19 at one point they were seated.

20 Q. Do you recall which occurred first?

21 A. One time they had a argument at the kitchen sink
22 about phone calls, and Buster denied 'em, and after we all
23 sat down, Leon asked him about the call that Buster had made
24 to my daughter, and Buster denied that.

25 Q. Now, all the time they were arguing, the gun was

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1 laying there, and Leon didn't make any attempt to go after
2 the pistol, or reach for it, or anything like that, did he?
3 A. No sir.
4 Q. The pistol really . . . after he had peacefully
5 laid it down, never really came into play again, until after
6 Buster reached for the shotgun, did it?
7 A. Right.
8 Q. Now, I believe I recall you testifying that during
9 one of the arguments then, you saw Buster give Leon a mean
10 look?
11 A. Yes.
12 Q. What was Leon doing then?
13 A. He was talking in a high tone of voice . . . he
14 was angry, and he was asking Buster about the phone calls,
15 and he was angry because Buster was denying it.
16 Q. In other words, is that about the time that Leon
17 Byrd made the statement such as you attribute to him . . .
18 "Well, you know I talked to you . . . why did you deny it"?
19 A. No. They were at the sink then.
20 Q. Okay . . . excuse me?
21 A. Leon told Buster when he was making the phone
22 call to my daughter . . . he said, "Don't be calling Vickie
23 and upsetting her. She can't help what me and her mama does".
24 Q. Okay. When Buster gave him this mean look, was
25 Buster seated or standing?

A. Seated.

Q. And Leon was seated or standing?

A. Seated.

Q. Who got up first?

A. I did . . . let's see . . . I did. I started out the trailer door. I said there was going to be trouble.

Q. And then Buster stopped you?

A. Yes.

Q. Buster was mad at that time, wasn't he?

A. Yes, but during this, Leon had went to the kitchen sink.

Q. But he was at the sink, fixing him a drink, wasn't he?

A. Yes.

Q. He wasn't over there fooling with the pistol at all, was he?

A. No.

Q. And hadn't made any attempt to get the pistol?

A. No.

Q. Hadn't said anything about the pistol or hadn't reached for it, or made any attempt to get the pistol at all, had he?

A. Not that I recall . . . no.

Q. And in the meantime, you were trying to leave, and Buster was saying, "You're not going any 'D' place", and holding you?

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A. Right.

Q. And suddenly, without warning, Buster reached and grabbed the shotgun?

A. Yes.

Q. And he pointed the shotgun at Leon Byrd?

A. Yes.

Q. And you described it . . . can you describe to the Court and to the jury what he did with that shotgun?

A. Buster grabbed the shotgun, and he pointed it at Leon, and what made Buster grab the shotgun . . . Leon told Buster to "take his damn hands off me", and when I started out the door, and he stopped me, Leon told Buster . . . he said, "Take your damn hands off her", and so Buster grabs the shotgun, and points it at Leon and said . . .

Q. How did he point it?

A. Just jumps like a wild man, and just reached up and grabs it, and points it at him.

Q. How close was he to Buster at that time?

A. Buster was standing about in the doorway of the trailer, and Leon was standing at about the kitchen sink.

Q. Well, I mean how close . . . for example, if you are Buster and I am Leon . . . how . . .

A. Go on back (stopping at a point) . . . about like that.

Q. At that point, when Buster grabbed the shotgun

1 and pointed it directly at him?

2 A. Yes.

3 Q. Was it loaded?

4 A. Yes . . . I guess. I don't know.

5 Q. What did he say to him when he pointed the shotgun

6 at him?

7 A. He said, "I would just as soon to kill you, as

8 I had to look at you".

9 Q. Buster said that to Leon?

10 A. Yes.

11 Q. And Leon was unarmed?

12 A. Yes.

13 Q. And hadn't made any effort to pick his pistol up?

14 A. Not that I recall.

15 Q. And what happened, after Buster pointed the shotgun

16 at him in that manner?

17 A. Leon grabs the gun, and they wrestle back in the

18 chair, and Leon was trying to take it away from him.

19 Q. And you left?

20 A. Yeah . . . went to the car.

21 Q. And you did not enter the trailer, or re-enter

22 the trailer again, until Leon had successfully taken the weapon

23 away from Buster, is that correct?

24 A. Right.

25 Q. And what caused you to go back inside the trailer?

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A. Leon come to the door, and hollered and asked me to come in.

Q. What did he say to you?

A. He asked what he did with the other shotgun, and I didn't say anything, but I looked around, and seen it sitting beside the Frigidaire, and I pointed where it was at.

Q. Was Buster sitting down at this time?

A. Yes.

Q. And Leon . . . what did Leon have in his hands at this time?

A. He had the .45 in his left hand, and the shotgun in his right hand.

Q. You don't know at what point in time he picked the .45 up?

A. No.

Q. The .45 now . . . are you describing the weapon that Leon had laid down on the table?

A. Yes sir.

Q. And what was he doing to the shotgun that he had in his hand?

A. He was unloading it. He was breaking it down like that, and unloading it.

Q. Taking all the bullets out of it?

A. The shells or whatever it was.

Q. And then he asked you about the other gun that

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was there . . . where was it?

A. Yes.

Q. And what did he do with it?

A. He had sit it beside the Frigidaire.

Q. You mean Buster had?

A. One of 'em did. I don't know.

Q. Well, one of them did . . . well, what did Leon do with it, after you pointed it out to him?

A. He had the .45 in his left hand, and he laid the .45 on the coffee table, and he had both shotguns in his hand, and unloaded the guns, and he told Buster that we was leaving, and he said, "If you start shooting, I will come back."

Q. You are talling this Court and this jury that he had unloaded every gun there, that was in sight, that Buster had?

A. He was unloading 'em . . . I didn't stand there and watch him unload 'em, but he was breaking 'em down.

Q. And Leon said to Buster, "We are leaving. Just let us alone"?

A. No, he didn't say, "Let us alone". He said, "We're leaving. If you start shooting, I'm coming back".

Q. But he did avow his intent that he was leaving? From what you saw about the whole thing, you drew the conclusion that Leon wasn't looking for any trouble, didn't you?

A. Well, that's the impression he gave me. I don't

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1 know. I didn't see that much of it. I was in the car most
2 of the time. I just don't know.
3 Q. So, Leon told him that he was leaving, and you
4 thought that they were leaving . . . is that right?
5 A. They were leaving?
6 Q. You and Leon were leaving . . . you thought
7 Leon was leaving, didn't you?
8 A. Well, kind'a . . . I told him if he didn't come
9 on, I was gonna leave him, and at one point he started . . .
10 Q. And you left to get in the car?
11 A. At one point, he started to come on, and something
12 changed his mind . . . I don't know what it was.
13 Q. You don't know what changed his mind?
14 A. No sir.
15 Q. You were in the car at that time?
16 A. Right.
17 Q. And then you described a situation where you say
18 that Buster was at the door . . . excuse me . . . I'm sorry . .
19 that Leon was at the door, and you describe it like he was
20 talking with a pistol?
21 A. Yes.
22 Q. He wasn't necessarily threatening with a pistol,
23 was he? He could well have been just talking with it, like
24 people talk with a pencil or anything else?
25 A. I don't know. I was in the car, and Buster was

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1 sitting in the chair, and Leon was in the doorway, and Leon
2 had the gun, doing like this (illustrating with hands), and
3 I don't know if he was talking or threatening or what he was
4 doing.
5 Q. He wasn't aiming it at anybody in particular?
6 A. Yes . . . he was pointing it towards Buster,
7 as he was talking.
8 Q. Doing like this (illustrating), as he was talking?
9 A. Yes . . . pointing it at Buster, doing like
10 this (illustrating), and he would occasionally take a step
11 up to Buster.
12 Q. And he was at the door at this time . . . is that
13 correct?
14 A. Well, when he was in the door . . . he was kind'a
15 walking back and forth. I could see him in the doorway.
16 Q. He had his hand on the door?
17 A. No. The trailer door was open at all times . . .
18 it never was closed.
19 Q. How close was Leon to the door at this time?
20 A. He was not standing right in the doorway, but
21 in front of the door. I could see him fairly good.
22 Q. Could you also see Buster?
23 A. Yes. He was sitting in the chair by the window.
24 I could see Buster, sitting in the chair, by the window.
25 Q. And then what happened?

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A. Well, Leon had the gun in his left hand, and Buster was sitting in the chair, and they was arguing. I don't know what was said, but Leon was pointing . . . he would walk up to Buster, and point the gun.

Q. Well, let me ask you this . . . is the next event that you related to us . . . is this when you saw Buster come over to the trailer door, and say he needed some air?

A. No. I had turned the car around then, and then I heard a commotion and I looked back, and Buster comes to the trailer door, and said, "I need some air".

Q. And where was Leon then?

A. He was standing kind'a back behind Buster. I could see him . . . kind'a to the side . . . about where he was when he was shot.

Q. He didn't have the gun pointed at him then, did he?

A. He had it in his hand . . . he didn't have it pointed at him.

Q. Are you sure? Didn't you previously testify you didn't see the gun at that time?

A. Well, the best I can remember is that he had the gun in his hand.

Q. At the time that Buster was at the door . . . wanting air?

A. Well, see Leon was kind'a standing to the side a little, you know.

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1 Q. You are just assuming that he had it in his hand?
2 You didn't see it, did you? Can you actually tell this Court
3 and this jury that you saw the weapon in Leon's hand, at that
4 time?
5 A. Well, to be honest, I would have to say no. I
6 was assuming, because he had it standing in the doorway.
7 Q. Can you give us a little better description of
8 what Buster Nelson did when he came to the door? Did he put
9 his hands on the door, and lean out like that (indicating)?
10 A. Yes sir.
11 Q. And said, "I've got to get some air", and I believe
12 you attributed to Leon a statement at that time, "Oh Buster,
13 it ain't nothing wrong with you"?
14 A. "Ain't a damn thing wrong with you", is what he
15 said.
16 Q. Am I correct that as soon as Buster turned around,
17 then you heard two shots?
18 A. Yes.
19 Q. Did you see the shooting?
20 A. No sir.
21 Q. Now, I don't want you to tell us what you assumed,
22 and what you figured and all that, but I want you to tell us
23 exactly what you saw or didn't see, with respect to whether or
24 not Buster Nelson had a gun on his person, or in his pocket,
25 at any time prior to this shooting?

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A. I don't know.

Q. You didn't see it?

A. No sir.

Q. And it was never mentioned?

A. No sir.

Q. So as far as you were concerned, from what you saw, and what you heard, Buster had no guns other than the two shotguns that Leon Byrd had unloaded?

A. Right.

Q. I know you're trying, Mrs. Stanley, and I appreciate your efforts to tell us the best you can, but I do want to call your attention to page forty-three of some previous evidence, with respect to whether or not you saw this gun, and I want to ask you if you recall making this answer to this statement: "Well, now, wasn't Leon standing in the door at this time, too? Did Leon ever get out of the doorway after you left to go to the car" . . . "When Buster come to the door and said 'I need some air', I heard Leon say, 'Oh, Buster it ain't a damn thing wrong with you', and the best I remember Leon was kind'a standing behind him, to the side a little" . . . question, "Did he have a gun on him at that time" . . . "Who" . question, "Leon" . . . answer, "If he did, I didn't see it". Do you remember giving that answer to that question?

A. Yes.

Q. And the more you think about it, that's the same answer you would give today, isn't it?

A. Yes.

Q. What size man was Leon Byrd?

A. He was tall, but he was slim.

Q. Would you say he would weigh one hundred fifty pounds?

A. I dont know . . . I would say maybe one hundred fifty or one hundred sixty . . . I don't know.

Q. Is it fair to say that the last point of the argument was that Leon was talking with the gun and leaving?

A. Yes.

Q. Attempting to leave?

A. Yes.

Q. Just one further question, Mrs. Stanley, and I appreciate your bearing with us . . . maybe two questions. After you heard the shots, and Buster called you back in . . . I believe you said he came to the door, and said, "Get in here"?

A. Yes.

Q. And you observed Leon laying there on the floor?

A. Yes.

Q. Could you tell where he was shot?

A. No.

Q. Was he bleeding from the mouth?

A. Yes.

Q. Were there any bullet holes or entrance wounds or any external wounds, on his face, at all?

A. No.

Q. Nothing other than the blood coming out of his mouth?

A. Right.

Q. And you wanted to call the rescue squad and Buster's initial reaction was, "Let him die"?

A. Well, he said at first he was dead, you know, and I checked him, and said he wasn't dead, and I said, "We've got to call the rescue squad", and Buster said, "No, he come up here to kill me, and I killed him", and so finally . . .

Q. You, of course, told Buster at that time that he didn't come up there to kill him?

A. Well, I told Buster that I done everything I could to stop him from coming up there. I didn't see no reason to . . .

Q. Well, you didn't acknowledge that Leon Byrd went up there to kill him, did you?

A. No.

Q. And later on, after the police had left, Buster Nelson asked you about going to see his lawyer, with him?

A. No. I left while the police was there.

Q. No. I'm talking about two or three days later?

A. Yes . . . in a telephone conversation . . . yes.

Q. And you said to him that you weren't going . . . that he had pulled the gun first?

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A. Yes.

Q. So you said, "Buster, you pulled the gun on him first"?

A. Yes.

Q. And he wanted to know whether or not you had told the law about that?

A. Yes.

Q. That's all I have, Your Honor.

****

REDIRECT EXAMINATION BY MR.STONE:

Q. Mrs. Stanley, was there some . . . at some point during this evening, when this argument was taking place, was there some attempt made by Buster to get out of his chair that he was sitting in . . . some attempt that was resisted?

A. I don't remember . . . I can't . . . I don't . . .

Q. Do you remember any physical contact between Leon and Buster, other than this particular fight that they had, over the shotgun, which Buster grabbed?

A. They just had some words, you know. I don't quite understand what you mean . . . what you're saying.

Q. Now, the second time that you left the trailer, and Leon said, "I've unloaded the guns, and we're leaving, but if you start shooting, I'm coming back", was there anything at that point, as far as you could determine, that would have kept Leon from leaving at the same time you did?

A. No.

Q. For some reason . . . you don't know why, he remained in the trailer, after you left?

A. Yes.

Q. Now, you testified you and Leon had talked some number of times about Buster, and I will ask you more specifically . . . within the week preceding this night that this death occurred, had you told Leon about Buster's nature . . . what kind of person he was?

A. Well, Leon knew Buster's nature . . . because he told me he did.

MR. MANN: I object to that, if the Court please.

THE COURT: All right . . . just answer Mr. Stone's question.

Q. I will ask you again . . . you were starting to say what Leon told you about it . . . what did he say about it?

A. Well, he knew that Buster carried a gun.

MR. MANN: I object to that, if the Court please.

Q. Not what he knew, but what he said?

A. What he said about Buster?

Q. Right.

A. Well, he just said he knew Buster carried a gun, and he knew what type of person he was, and he said, "I could tell you a whole lot", and I never did ask him what he meant by that.

Q. All right.

****

RECROSS EXAMINATION BY MR. MANN:

Q. Mrs. Stanley, on your direct testimony, you testified at one time about Buster had come down there to the house, and you were afraid to go to the door, but Leon insisted on going to the door anyway?

A. Well, Leon come in there and told me to go to the door, you know. I went in the bedroom, and Leon said, "Go on to the door", and come in there and told me that, and I went to the door.

Q. Right, and earlier in your testimony . . . back in your deposition, and I refer you to page forty-seven and forty-eight, you made this statement . . . "Leon just didn't believe that Buster was the type of person that I told him he was" . . . didn't you?

A. Well . . .

Q. Next question . . . "Why do you say that" . . . "He acted like he didn't think Buster would hurt him, and I tried to tell him"?

A. Yeah . . . that's true, but . . .

Q. Now, you said that?

A. Yeah, I said that.

Q. And in fact, when Leon said that he was going up to Buster's to get a drink, he also made the statement . . .

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"Buster ain't gonna kill me" . . . didn't he?

A. Yeah, I believe he did.

Q. All right . . . no further questions.

****

RE-REDIRECT EXAMINATION BY MR. STONE:

Q. But then after he said that, he said, "If he does, Turkey will kill him", didn't he?

A. Yes.

****

RE-RECROSS EXAMINATION BY MR. MANN:

Q. You don't know whether that was before or after . you don't know which of those two statements. . .

A. I would have to say . . . I would have to say it was after.

Q. What was after?

A. When Leon said he was going to go get a drink . . that Buster won't going to kill him, and I told him he would, and he said, "If he does, my brother, Turkey, will kill him".

Q. All right . . . no further questions.

THE WITNESS STANDS ASIDE.

****

A recess was taken at this point in the evidence, and the following proceedings were heard:

****

THE WITNESS, LEONARD GRAY NELSON, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. STONE:

Q. Would you please state for the Court and jury, your name, please?

A. Leonard Nelson.

Q. Where do you live, Mr. Nelson?

A. I live at Druid Lane, in Martinsville.

Q. Who do you live there with?

A. My mother.

Q. Now, Mr. Nelson, you recall this night in February of 1976, when Leon Byrd and Lucille Stanley came up to your trailer?

A. Yes sir.

Q. Had you known Leon Byrd before this evening?

A. Yes sir.

Q. And, of course, you had known Lucille Stanley too?

A. Yes sir.

Q. Now, can you just tell the jury and the Court exactly, to the best of your recollection, what happened that evening, after they came up there to your trailer?

A. It was about 11:00 or 12:00 . . . between 11:00 and 12:00 I believe it was.

Q. Is that at night, you're talking about?

A. Yes . . . nighttime . . . and I was in the bed, and

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I heard a car come up through the driveway, and I got up and put my pants on, and a gun in my pocket, and went to the door, and it was Leon had done got out of the car, and I motioned to him, and told him to come on in.

Q. Had you been expecting him? Had you invited him to come up there?

A. No.

Q. So, you saw him out there, and told him to come on in?

A. Yeah . . . I told him to come in.

Q. All right . . . what happened . . . did anybody come in?

A. Yeah. He come on in and I said, "Have a drink, Leon", and I sat back down in the chair when he first came in, and I asked him to have a drink, and I was aiming to get up, and he turned around and kicked me in the stomach, and knocked me back down in the chair, and jerked the gun out, and wanted to know what I had been talking about him, and I said, "I ain't said nothing about you, Leon", and he said, "Yes you have too", and he started cussing, and about that time Lucille walked in, and I got up, and when I got up, there was a shotgun sitting there beside the door, and I reached to grab it, and Leon kicked it out of my hand, and said, "You didn't make it, did you", and grabbed it, and unbridged it, and throwed it . . . I had two guns sitting there . . . throwed the shells out of it,

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and throwed it down on the couch, and Lucille run out the door, and I said, "Man, don't shoot me", and I said, "Let's have a drink", and I got back up . . . I was already up, and I said, "Let's have us a drink", and about that time, Lucille cranked the car up, and Leon backed over to the door, and looked out the door, and when he looked out the door, and when he turned back, I shot him.

Q. What did you shoot him with?

A. A .38 Smith and Wesson.

Q. Where did that come from?

A. I got it from . . . I don't know what boy had it. You mean where . . . it come out of my pocket.

Q. You had it in your pocket previously?

A. Yeah.

Q. Now, what did Leon have at that time, if anything? Was Leon armed?

A. Yeah . . . he had a pistol in his hand.

Q. Now, can you tell the Court and jury exactly what conversation took place, before this shooting?

A. He just jumped on me, and said I had been calling him . . . talking about him.

Q. Well, can you tell the jury, just the best of your recollection, what actual words were said?

A. Most of it was cussing.

Q. Well, what about right before you shot him?

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1 What was the substance of your argument or discussion, at
2 that point?
3 A. We didn't have no argument.
4 Q. Were you talking at all?
5 A. No. I was just begging him not to shoot me is
6 all.
7 Q. Now, as I understand your testimony, you indicated
8 that this first time that you say he struck you . . . that was
9 before Lucille Stanley came into the trailer?
10 A. Yeah.
11 Q. And what exactly was it that he said . . . did he
12 accuse you or something?
13 A. He accused me of talking about him, and accused
14 me of calling on his job . . . said I had been calling him on
15 his job, and telling stuff on him.
16 Q. Did you admit or deny that?
17 A. I denied it, because I hadn't done it.
18 Q. Now, when was the first point that you saw, or
19 became aware that Leon had a gun?
20 A. When he pulled it out.
21 Q. And when was that?
22 A. That was when . . . after he kicked me in the
23 stomach.
24 Q. And what did you do immediately after you say
25 that he kicked you in the stomach? What did you do then?

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A. I got up again, and Lucille come in about that time, and I was getting up, and I grabbed that shotgun and he kicked it out of my hand.

Q. What was the last thing that he said to you that you recall?

A. I don't recall . . . it was all cussing. He called me everything in the book.

Q. What was he doing immediately before you shot him, with your gun?

A. He had his gun pointed at me, and I thought he was gonna' shoot me.

Q. Now, I believe you said that right before the shooting occurred, Lucille Stanley had gone out to the car, and gotten in the car . . . is that right?

A. Yeah.

Q. And this was after Leon had unloaded these two rifles, or shot guns, and . . .

MR. MANN: If Your Honor please, I believe he's leading the witness too much to be his own witness.

THE COURT: All right . . . I sustain that.

Q. Well, you testified at some point, that Leon unloaded these shotguns and rifles?

A. Yeah, he did.

Q. When did he do that?

A. When I grabbed it, and he knocked me back in the

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chair twice . . . when I grabbed the shotgun, and he said, "You didn't make it, did you", and he kicked it with his foot, and he had the gun in his hand, and he unloaded the shotgun.

Q. All right, now, where was Lucille Stanley at that time?

A. She was sitting on the couch.

Q. What did she do?

A. Jumped up and run.

Q. All right, now, did Leon say anything then?

A. He was making so much fuss . . . he won't doing no talking . . . most of it was cussing.

Q. Where was he standing?

A. You mean when he was cussing?

Q. Yes.

A. He was standing about in the middle of the trailer.

Q. Now, after he unloaded these two rifles or shotguns, what did he do immediately after doing that?

A. He was standing there, with a gun on me, cussing me.

Q. Did he make any statements to you that you recall, other than the fact that he was cursing you?

A. Only when he said I had been talking about him, and calling his job, is all.

Q. Now, Mr. Nelson, how long had you known Lucille Stanley?

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A. Approximately ten years, or more.

Q. All right, and what relationship had you had with her during this time?

A. I married her.

Q. Actual marriage ceremony?

A. Yes sir.

Q. So, how long did she live with you?

A. About seven years.

Q. And when did you all stop living together?

A. I think it was about in November.

Q. November of what year, now?

A. '76 . . . no . . . yeah . . . '76.

Q. The shooting occurred in February of 1976.

A. '75 . . . that's right.

Q. Now, during the time that Mrs. Stanley, or Mrs. Nelson had lived up there with you, had you known Leon during that time?

A. Yeah.

Q. How well had you known him?

A. I knew him real well. We done things together, and I used to buy my gas from him, and done business with him at the service station, and everything.

Q. Can you tell the jury whether or not he had ever visited you previously, up there in your trailer?

A. Yeah.

1 Q. Had he ever been up there with Mrs. Stanley or
2 Mrs. Nelson with him?
3 A. He had been . . . yeah, I guess he had . . . yeah.
4 Q. Now, at some point after you and Mrs. Stanley
5 quit living together, did you become aware, or learn that she
6 and Leon were seeing each other?
7 A. Yeah.
8 Q. Do you recall when, approximately, you learned
9 that . . . do you recall?
10 A. No. I can't say the date. I went down to her
11 trailer to get some tax papers, and he was down there at that
12 time.
13 Q. Did you and Leon have any words about this,
14 either over the telephone or personally, about that?
15 A. No. I called him one time, and was sort'a
16 mad, and we had a few words, and I come to myself, and said it
17 won't his fault, and I called and apologized to him.
18 Q. Did he accept your apology?
19 A. No. He just said, "I'll see you".
20 Q. Do you recall whether or not you had had any
21 words, or talked together, on this same weekend that this
22 happened?
23 A. No.
24 Q. You don't think you had?
25 A. No.

Q. All right. I think that's all I have. Please answer Mr. Mann.

****

CROSS EXAMINATION BY MR. MANN:

Q. Mr. Nelson, you have testified that during the course of the time that you knew Lucille Stanley, that you married her. Just as a matter of record, it was also true I believe that . . . whether you knew it or not is immaterial, but really, she was already married, and had not gotten a divorce?

A. Yeah.

Q. Did you learn that . . . did you later find that out to be true?

A. Yeah.

Q. I take it from your testimony, that you and Leon Byrd, over the course of years, had been just good buddies?

A. Sure had.

Q. Good drinking buddies?

A. Yeah.

Q. Good working buddies, and just good buddies in general?

A. Sure had.

Q. And after you found out that he had been seeing Lucille Stanley, the woman that you were close to for a number of years, if I understand what you are testifying to, that you

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1 got upset about it, and called him, and had some argument,
2 but later, because of the long-term relationship that you had
3 had with Leon Byrd, that you felt it was appropriate to call
4 him and apologize?
5 A. Yes sir.
6 Q. And that's what you did?
7 A. Yes sir.
8 Q. You called him back and said, "Good buddy, I'm
9 sorry for what I said. It ain't your fault. You didn't have
10 to put a chain around her and drag her", and you apologized?
11 A. Sure did.
12 Q. And he just said, "Okay. I'll see you later",
13 and after that, when you awakened on that occasion on February
14 15, and saw Leon out there, you weren't really surprised, in
15 any way, were you?
16 A. No . . . no.
17 Q. Because he had come up there to drink with you
18 on many occasions, hadn't he?
19 A. Yeah.
20 Q. And you thought maybe he came to get a drink on
21 that occasion?
22 A. Yes sir.
23 Q. And you had already apologized and you certainly
24 weren't mad at him at that time?
25 A. No sir.

1 Q. And he certainly didn't have any reason to be
2 afraid of you, did he?
3 A. No sir.
4 Q. And I believe you have testified that when you
5 heard the car coming, that you got a pistol . . . or you put
6 on your trousers and got a pistol . . . however you said it.
7 Am I correct that when you did that, you didn't know who was
8 out there?
9 A. No. I didn't know who was out there.
10 Q. You didn't know who was out there, when you put
11 your pistol in your trousers?
12 A. No.
13 Q. In other words, you didn't get your pistol out
14 because Leon was coming?
15 A. No.
16 Q. And if you had known Leon was coming, you probably
17 wouldn't have gotten the pistol, would you?
18 A. Well, it's almost . . . it's a habit, everytime
19 I get up, I put it in my pocket.
20 Q. If you did it, it was from force of habit, and not
21 because you wanted to do anything to Leon?
22 A. That's right.
23 Q. Now, if I understand your testimony correctly,
24 you testified that just as soon as Leon Byrd got inside of your
25 trailer, he turned on you, and kicked you and drew a pistol and
started threatening you?

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A. Yes sir.

Q. And he was doing that when Lucille Nelson came in?

A. Yes sir.

Q. Did she come in on her own volition, or did somebody call for her to come in?

A. Well, I had done told 'em both to come in. I just motioned for 'em to come in. Nobody didn't call for her, after Leon had come in.

Q. In other words, when you saw who it was, you went out in a very friendly manner, and said to both of them, to come on in?

A. Yes. I didn't speak either one of 'em's name?

Q. And at that point, there was no inkling of any trouble at all, was there?

A. No . . . no indeed.

Q. And the first trouble was, as you testified, when he kicked you in the stomach as soon as he got in the trailer?

A. Yes sir.

Q. And whipped the gun out at that time?

A. Yes sir.

Q. Did he have the gun out when Lucille came in?

A. Yes sir.

Q. And was threatening you with it then?

A. Yes sir.

1 Q. I believe you testified that you tried to get
2 hold of your shotgun, and never did get hold of it . . . is
3 that what you said?
4 A. I grabbed it . . . yeah . . . I grabbed at it,
5 but he kicked it out of my hand.
6 Q. Did you ever get it and point it at Leon?
7 A. No. No, I didn't.
8 Q. Did you ever say to Leon, "I just as soon kill
9 you, as look at you", while you were pointing the gun at him?
10 A. No, indeed . . . I didn't have no gun.
11 Q. If anybody testified to that, they would be lying,
12 wouldn't they?
13 A. Sure would.
14 Q. Did you ever see Leon go to the bathroom and come
15 back, and peacefully lay the pistol down on the cabinet?
16 A. No sir.
17 Q. If anybody testified to that, she would be lying?
18 A. Sure would.
19 Q. After you tried to get the shotgun, and he kicked
20 it away from you, and then he was unloading it, and holding
21 the pistol in his hand at the same time?
22 A. Yes sir.
23 Q. How was he able to break down that shotgun, and
24 hold the pistol at the same time?
25 A. He had the gun in his left hand, and he broke it

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down, and the shells pop out of it when he bridged it down.

Q. He completely unloaded it?

A. Yeah . . . they popped out in the floor.

Q. Did he also completely unload the other gun that was there?

A. Yeah.

Q. So there were only two guns that were there that he knew anything about, and he unloaded both of them?

A. Yes.

Q. And up until the very time that he was shot, he never knew that you had another pistol in your pocket, did he?

A. No sir.

Q. No way he could possibly have known that, from anything that was said or done there?

A. No sir.

Q. He was holding the gun on you, if I understand your testimony correctly?

A. Yes sir.

Q. And he turned his head when Lucille Stanley was outside blowing the horn, and he turned his head, and you suddenly reached for your pistol . . . were you seated or standing?

A. Standing.

Q. You were standing up. How far away from him?

A. I would say about seven feet, more or less.

1 Q. If you would picture maybe that . . .

2 A. Maybe about right there, like me and you . . .

3 about seven feet.

4 Q. About like this (indicating)?

5 A. Yeah.

6 Q. And he turned his head?

7 A. Yes sir.

8 Q. Just to look outside, at the horn?

9 A. Yes sir.

10 Q. How long did he keep his head turned . . . did

11 he say anything out the window?

12 A. He throwed his hand out for her to wait. I didn't

13 hear no horn, and she cranked the car up, and I didn't hear

14 no horn, and he turned and throwed his hand out the door, and

15 I don't know if he said anything or not.

16 Q. Then he turned right back?

17 A. Right . . . turned right back.

18 Q. And how long did that take . . . just a matter of

19 seconds?

20 A. Just a matter of seconds . . . yeah.

21 Q. Would it be about like he was standing there . . .

22 which hand did he have the gun in?

23 A. He had the gun in his right hand when I shot him.

24 Q. Do you know whether he is right-handed or left-

25 handed?

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A. I don't know, but he come out with his left hand.

Q. During this time that he was pointing it at you . . . during the time that you described to us, was he threatening you with his left or right?

A. It was in his left hand.

Q. And at the time that you shot him, he transferred it to his right hand?

A. Yeah. When he backed up to the door, he changed it then.

Q. Was he talking to you and doing the pistol like this (indicating)?

A. Yes . . . talking to me and cussing.

Q. He had it in his non-shooting hand?

A. I don't know if he was left or right-handed.

Q. You don't know?

A. No.

Q. You had never shot a weapon with him?

A. No.

Q. But in any event, he had it in the other hand from the one that you were afraid that he was going to shoot you with, because previously, when he was threatening you, it had been with his left hand?

A. In the left hand . . . yeah.

Q. So then he stuck his right hand . . . his left hand . . . he put the gun in his right hand, and stuck his

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1 left hand out the door, and motioned to Lucille or something?

2 A. Yes . . . he just turned around and looked out

3 the door.

4 Q. Was it about that quick?

5 A. Yeah.

6 Q. And in that period of time, you pulled the pistol

7 out of your pocket?

8 A. Yeah.

9 Q. And shot him?

10 A. Right.

11 Q. When did you first realize, or when did it occur

12 to you that you had a pistol in your pocket?

13 A. After I done got up. I was sitting in the chair,

14 and didn't realize I had it, I was so scared.

15 Q. You mean as he was in the door, about to leave?

16 A. No . . . yeah . . . about the time he was aiming

17 to leave, I realized I had it in my pocket . . . when he backed

18 up to the door.

19 Q. And when he put the pistol in his right hand?

20 A. Yeah.

21 Q. And so then you stood up, and you stood up really

22 before you realized that you had it in your pocket, is that

23 what you're saying?

24 A. Well, I was already standing up, but when he backed

25 up to the door, and turned, and looked out the door, that's when

I got it.

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Q. Well, I'm not making myself very clear, and I apologize for that, but it was just a second or two before you shot him that you remembered that you had a pistol in your pocket?

A. Yes sir.

Q. And prior to that, you hadn't made any statement about having it there, and you hadn't pointed to it, and you hadn't tried to get it, or anything else?

A. No sir.

Q. And there was absolutely no way he knew that you had it?

A. No sir.

Q. In fact, every gun he thought you had from everything that had been done there, he had unloaded?

A. Yeah.

Q. And if he had had time to look, he would have been mighty surprised to have turned around and seen you with a pistol, wouldn't he?

A. Yes sir.

Q. That's all, Your Honor.

****

MR. STONE: I have no further questions, Your Honor.

****

EXAMINATION BY THE COURT:

THE COURT: You said you put this pistol in your pocket when you got up?

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A. Yes sir.

Q. Why did you do that?

A. I had a habit of doing that, living up there by myself . . .nobody around.

Q. How long had you been doing that?

A. Oh, a long time.

Q. Now, you also said that he unloaded the shotguns. What was done with the shells?

A. Throwed 'em out . . . they popped out on the floor, and rolled up under the couch and on the floor.

Q. Did you have any other shells in the trailer?

A. Yes.

Q. All right . . . that's all the questions I have.

****

REDIRECT EXAMINATION BY MR. STONE:

Q. I do have one other question. Mr. Nelson, you testified that you weren't surprised at Leon coming up to your trailer for a drink . . . he had done that before. Can you tell us whether you were surprised when he came up there, bringing Mrs. Stanley?

A. Well, to tell you the truth, I didn't pay any attention to 'em being together. I done forgot all about 'em being together . . . I didn't pay any attention.

Q. I have no other questions.

****

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RECROSS EXAMINATION BY MR. MANN:

Q. Mr. Nelson, can you tell us what kind of trousers you had on?

A. No sir.

Q. Were they just regular slacks?

A. Yeah . . . just regular old polyester pants.

Q. They weren't big, baggy, bib-overalls or anything like that?

A. No sir.

Q. Just a regular pair of trousers?

A. Yes sir.

Q. And the pistol you were carrying was obviously hidden from sight? You had it completely in your pocket?

A. Yes sir.

Q. No further questions.

THE WITNESS STANDS ASIDE.

****

MR. STONE: That would be the evidence for the defendant, Your Honor.

THE COURT: All right . . . does the plaintiff rest?

MR. MANN: No further evidence, Your Honor.

****

Court was adjourned for the lunch recess at this point, after which the following proceedings were had:

****

1 evidence. I don't know what his intentions were.

2 MR. MANN: The evidence was that he laid it down in a

3 peaceful manner. So, he started an argument . . . just because

4 he started an argument . . . this puts us back in the assault

5 situation . . . that doesn't mean you have to foresee you are

6 going to get shot. The cases are voluminous. . . even if you

7 were the aggressor, and there was an argument, and you withdraw

8 from the affray.

9 THE COURT: The only thing that bothers me is taking

10 this from the jury at this point . . .this is the way I feel,

11 and I think I will sustain the motion for the summary judgment.

12 I think in taking everything together, that it was very danger-

13 ous for Byrd to go to that house, and do what he did, when he

14 got there, and he should have been aware that he was placing

15 his life in some jeopardy, because of what he knew, so we will

16 note your exception in the record, and as I say, I am reluctant

17 to take it from the jury at this point, and this is the way I

18 feel, and I guess I have to rule the way I feel.

19 MR. MANN: For the purpose of the record and possible

20 appeal on it, I will also move for summary judgment on behalf

21 of the plaintiff, and the same reasons would apply that have

22 applied to the argument in Mr. Stone's motion.

23 THE COURT: I will overrule that for the same reason

24 that I granted the other.

25 **********

1 IN COURT:

2 THE COURT: Ladies and gentlemen, while we have been
3 apart, counsel have made certain motions, and we have argued
4 those motions in chambers, and a motion for summary judgment
5 was made on behalf of the defendant, and I have sustained that
6 motion, in that I have ruled that as a matter of law, that
7 reasonable men could not disagree on the interpretation of the
8 evidence before you. Now, I told you at the outset of this
9 trial that the Court had the responsibility to decide all
10 matters of law, and the jury had the responsibility to decide
11 all matters of fact. In my sustaining the summary judgment,
12 I have said in essence that there is no conflict in fact,
13 substantial enough for the jury to consider . . . that
14 reasonable men could not differ . . . reasonable men or reason-
15 able women could not differ on the evidence that has been
16 presented. Now for your benefit, let me reason with you some-
17 what as to how I reached that conclusion. Since you've been
18 here all day, and listened to the evidence, I think I should
19 share with you my thoughts along these lines. Accident, as
20 defined, and as used in the insurance policy of double indemnity
21 that we are talking about today, is defined as follows: "An
22 event that takes place without one's foresight or expectation.
23 An undesigned, sudden, unexpected event . . . chance, contin-
24 gency . . . ultimate an undesigned, an unforeseen occurrence,
25 of an afflicted or unfortunate character . . . casualty,

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1 mishap as to die by accident", and we will go on to read,
2 "The general accepted rule is that death or injury does not
3 result from accident or accidental means within the terms of an
4 accidental policy, where it is the natural result of the
5 insured's voluntary act, unaccompanied by anything unforeseen
6 except death or injury". Now, I will read a little further
7 as to the law in this matter: "Where the policy insures against
8 loss of life through accidental means, the principle seems
9 generally upheld that if death of the insured, although in a
10 sense unforeseen and unexpected, results directly from the
11 insured's voluntary act, or an aggressive misconduct, or where
12 the insured culpably provokes the act, which caused the injury
13 and death, it is not death by accidental means, even though
14 the results may be such as to constitute an accidental injury",
15 and then one more phrase of law: "In accord with this principle,
16 it is generally held that if the insured voluntarily provokes
17 or is the aggressor in an encounter, and knows or under the
18 circumstances should reasonably anticipate that he would be
19 in danger of death or great bodily harm as the natural or probable
20 consequence of his act, or course of action, his death or injury
21 is not caused by accident, within the meaning of the policy".
22 Now, as I have construed the evidence, there is some conflict
23 in the evidence of Mrs. Stanley and Mr. Nelson. But, I think
24 I can say that there is no conflict that on the night of this
25 situation, that Mrs. Stanley was with Mr. Byrd . . . that he

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1 had been drinking, and that she felt he had drank too much
2 by the way he had driven the car. They were driving down the
3 road, and she had no knowledge of where they were going, and when
4 they passed by the driveway, to go to Nelson's trailer, he
5 suddenly swerved and went up the driveway. Mrs. Stanley
6 testified at that time she was afraid and frightened, and she
7 asked him where he was going, and he said that he was going
8 to Nelson's trailer. She told him not to go there . . . that
9 harm would come to him, and that he shouldn't go there, and
10 begged him not to go there, and he said, "I'm going to get a
11 drink", and then she said something about, "You're liable to
12 get killed if you go there", and he said, "If Buster kills me,
13 my brother will take care of him" or something to that regard,
14 so then they got to the trailer, and it has been put into
15 evidence that Buster Nelson was a man of violent nature . . . the
16 he had guns and carried guns, and that this was his general
17 reputation in the community, and the decedent, Byrd, knew or
18 should have known of that, and he goes into the trailer. Well,
19 when we get him going into the trailer, we get two different
20 versions . . . one from Mrs. Stanley and one from Buster
21 Nelson. But, be that as it may, I realize that is conflicting,
22 but I have felt from the evidence that due to the fact that
23 Leon Byrd was going or living with Mrs. Stanley, who had formerly
24 lived with Buster Nelson, that there had developed bad blood
25 between the two . . . that there had been telephone conversation-

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1 and Mrs. Stanley testified, which is undenied, that when she
2 picked up Leon Byrd at work that night, he was upset and mad
3 at a telephone conversation that he had received that day while
4 at work, and he proceeded to drink beer. I think he bought a
5 six-pak, and he drank two in the car, and then you heard Mrs.
6 Stanley say how many he drank in the truck stop . . . it was four
7 or six . . . but he had a number of beers. And after they
8 got into the trailer, the evidence is undisputed that it was Byrd
9 who began to argue about the telephone conversation. Now,
10 Byrd had purchased a gun some days before this, according to the
11 evidence, and he went to the trailer, which is another man's
12 home, with that weapon, and he took that weapon in the house
13 with him, and then he began to argue about the telephone
14 conversations, and the argument proceeded to get hotter and
15 hotter, and then we get into the situation as to the shotgun,
16 and we have a conflict on how Nelson picked it up, and so forth.
17 But, be that as it may, when we get down to the final shooting
18 . . . here was Leon Byrd, and he had a pistol holding it on
19 Buster Nelson. He was talking with it to him, and he was waving
20 the pistol, and it was in his direction, and pointed in his
21 direction, and while this transaction was going on, Buster
22 Nelson takes a pistol out of his pocket, and shoots him. Now,
23 the Court feels that Leon Byrd . . . when he went to the other
24 man's house . . . that he was going with his ex-wife or his
25 commonlaw wife, or whoever she was, or whatever relationship

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they had . . . that they had had ill feelings over her, and he saw fit to take her with him up to that trailer . . . that any reasonable, normal person, should have known or knew that it was likely to be trouble, and when he goes into the other man's house, who he knows is a man of violent nature, and a man who has guns, and takes a gun into that house, the Court feels he has placed himself into a position that he either knew or should have known that injury or death could result from such action, and in that event, that is no accident, under the double indemnity policy. So, now, ladies and gentlemen, that's the way I see this case. You may agree with me or you may not, but I have taken this case from you, and I have decided it, and I have ruled in favor of the defendant.

****

CERTIFICATE

The foregoing transcript of oral evidence and other incidents of trial, recorded on March 4, 1977, in the Circuit Court for the City of Martinsville, Virginia, was stenographica- recorded by and transcribed by the undersigned court reporter, who was first duly sworn, according to law. I hereby certify this is a true transcript, and that as of this 16th day of April, 1977, I have filed with the Clerk, Jesse D. Clift, Clerk of said Court, by mail, a true copy of the transcript, and have mailed a copy to Mr. Robert W. Mann, Counsel for Plaintiff