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2 MR. BUTLER: Judge, we're ready for the jury.

3 THE COURT: All right.

4 (Whereupon, the jury was brought into
5 (the courtroom, and the trial con-
6 (tinued in the presence and hearing
7 (of the jury as follows, to-wit:

8 THE COURT: All right, does the State have
9 other additional evidence on punishment?

10 MR. BUTLER: Yes, Your Honor. We do.

11 THE COURT: Call your witness.

12 MR. BUTLER: Dennis Kidwell.

13 THE COURT: Dennis Kidwell.

14 Raise your right hand.

15 (Whereupon, the witness was sworn.

16 THE COURT: Have a seat.

17 MR. BUTLER: May we proceed, Your Honor?

18 THE COURT: Yes.

19 DENNIS KIDWELL

20 called as a witness on behalf of the State of Texas, and
21 having been first sworn, testified as follows, to-wit:

22 DIRECT EXAMINATION

23 BY MR. BUTLER:

24 Q State your name, please, for the record.

25 A Dennis Kidwell.

Q How are you employed, sir?

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A Sergeant with the Waco Police Department.

O Sergeant Kidwell, how long have you been employed in that capacity?

A I have been with the Police Department for 19 years.

O And do your duties include the identification, classification or comparison of fingerprints?

A Yes. They do.

O What is your training and experience in that field, please, sir?

A I have attended two identification officer schools with the Department of Public Safety in Austin. I also have attended an advanced latent fingerprint school, also with DPS in Austin. I attended the 101st Session of the FBI National Academy, in which part of my studies there were advanced latent fingerprints.

O Okay. And in the course and scope of your employment, have you had an occasion to classify or identify fingerprints on few or many occasions?

A On many occasions.

O Is it possible to take a fingerprint, or a set of fingerprints of known origin, and compare them to an unknown print, or a print of an individual, and determine whether or not they belong to the same person?

A Yes. It is.

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Q Have you made few or many such comparisons?

A I've made many comparisons.

Q In your experience, have you ever known more than one individual to have identical or the same fingerprints?

A No. I have not.

Q Let me show you what has been marked for identification purposes as State's Exhibit No. 97, and ask you if you can identify that, please?

A Yes. I can.

Q All right. What is it, please?

MR. FULLER: Your Honor, I object to that question, and any answer which the witness might have in response thereto, for the same, that the particular instrument of which Counsel is referring, which Officer Kidwell has indicated that he can identify, has never been delivered to the Defendant or his attorneys, and that the Defendant and his attorneys are thereby surprised. There has never been any attempt to comply with Section 3 of Article 37.31a of Vernon's Annotated Statutes. Such constitutes complete hearsay. And, further, the instruments contained in that record are invalid, in that the instruments in there are not signed, in accordance with Article 42.01 of the Code of Criminal Procedure.

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THE COURT: Overruled.

MR. BUTLER: Your Honor, I would like to state for the record, that this has been part of the record for months, at their own request.

THE COURT: All right, sir.

BY MR. BUTLER:

O Would you state, please, for the jury, what State's Exhibit No. 97 is?

A This is a penitentiary --

MR. FULLER: Your Honor, I would object to that question, and at this time, move for a mistrial, on the same basis. This article and this instrument did not comply, in any way, with Article 37.31a, Section 3 of Vernon's Annotated Statutes. It's hearsay and the instruments contained in there are void and invalid on their face, because they're not signed, in compliance with 42.01 of the Code of Criminal Procedure.

THE COURT: Overrule the objection.

MR. FULLER: Further, Your Honor, the matters contained in those instruments are void, for the reason that the indictment, information, complaints, upon which the same are based, fails to allege an offense.

THE COURT: Overruled.

MR. FULLER: We object to the Court's ruling.

1 THE COURT: All right.

2 BY MR. BUTLER:

3 Q All right, would you state, please, what those are.

4 MR. FULLER: Your Honor, I'm going to object
5 again to the question posed to Officer Kidwell, on the
6 same grounds. It does not comply with Article 37.31a.
7 It is hearsay. The matters contained in there are void,
8 for the reason that they fail to allege an offense. The
9 instruments contained in there are not signed, in
10 accordance with the Code of Criminal Procedure. It
11 violates Defendant's rights to the Sixth and Fourteenth
12 Amendments.

13 THE COURT: Overruled.

14 BY MR. BUTLER:

15 Q Officer Kidwell, would you tell the jury what that
16 exhibit is, please.

17 MR. FULLER: Your Honor, I will object and
18 again move for a mistrial, on the same basis previously
19 set forth to the Court.

20 THE COURT: Overruled.

21 MR. FULLER: Your Honor, can I have a running
22 bill to these line of questions?

23 THE COURT: For the objections you have stated;
24 yes, sir.
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BY MR. BUTLER:

O State what that is, please.

A This is a penitentiary package.

O All right. Now, have you had an occasion to take the fingerprints of this Defendant on trial?

A Yes, I have.

O And did you bring that card with you?

A Yes. I did.

MR. BUTLER: Mark that.

(Whereupon, the instrument herein-
(after described was identified as
(State's Exhibit No. 98.

BY MR. BUTLER:

O All right, Sergeant, let me show you what has been marked for identification purposes as State's Exhibit No. 98, and ask you if you can identify that, please?

A Yes. I can.

O What is it?

A It is a set of inked fingerprints, which I took this morning.

O All right. Who did you take those fingerprints from?

A David Wayne Spence.

O Is he present in the courtroom today?

A Yes. He is.

O Would you identify him, please, for the jury?

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A Yes. He is the man sitting in the grey striped coat, second from the end of the table.

MR. BUTLER: Your Honor, may the record reflect that the witness has identified the Defendant?

THE COURT: The record will so reflect.

BY MR. BUTLER:

Q Has that card been in your possession since you took those fingerprints from the Defendant this morning?

A Yes. It has been.

Q Have you had an occasion to compare the fingerprints in State's Exhibit No. 98, which is the fingerprint card, and State's Exhibit No. 97, I believe it is, which is the pen pack?

A Yes. I have.

Q Did you -- would you describe for the jury the comparison examination that you made concerning those two exhibits?

A Exhibit 98 is an inked impressions of ten fingers which have been rolled onto the card. Down at the bottom, again, of the ten fingers, which have been pressed on the card. In 97, there is a copy of a similar fingerprint card, in which prints were taken in the same manner. On the tips of the fingers, are ridges which form patterns. These patterns, when ink is applied to them and then transferred to a card, are transferred the

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same as they are on the fingertips. And by examining these patterns on the card, I am able to determine the pattern types and other things that happened within the fingerprint, to allow me to identify them.

Q To your knowledge, has medical science ever uncovered two individuals with the same fingerprints?

A They have not.

Q Does this apply from finger to finger, as well as individual to individual?

A Yes. That's true.

Q In other words, there has never been, to medical science, a fingerprint duplicated anywhere?

A There has not, to my knowledge.

Q Based on your comparison examination that you performed on those two exhibits, do you have an opinion as to whether or not the prints on both of them were made by the same individual?

A Yes. I do.

Q And what is that opinion, please?

A The prints in State's Exhibit 97 are of the same person whose prints I made this morning, David Wayne Spence.

Q In your opinion, could the prints in State's Exhibit 97, that pen pack, have been made by any other individual except David Wayne Spence?

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A They could not have been.

MR. BUTLER: Your Honor, at this time, we would offer what has been marked for identification purposes as State's Exhibit 97 and State's Exhibit 98 into evidence.

THE COURT: All right, sir.

MR. HUNT: Your Honor, we would object, on the same basis that you have permitted us a running bill.

THE COURT: All right.

I overrule that objection. State's Exhibits 97 and 98 are admitted.

(Whereupon, the instruments above (referred to were received in evidence (as State's Exhibits 97 and 98, and (copies of the same appear in this (record at the pages shown in the (Index hereof.

BY MR. BUTLER:

Q All right, would you tell the jury what State's Exhibit 97 reflects, please, sir?

A State's Exhibit 97 contains a certification page, as the front page. It also contains a Judgment and Sentence bearing the name of the Defendant, David Wayne Spence, and the offense Robbery by Threats, which he was sentenced to not less than two years nor more than four years.

Q Does it reflect the sentence date on that?

A Date of sentence was April 14, 1980.

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MR. BUTLER: We pass the witness, Your Honor.

MR. HUNT: We have no questions, Your Honor.

THE COURT: You may step down, sir.

Call your next witness.

MR. BUTLER: Melissa Sims.

MR. HUNT: Your Honor, as the witness is approaching the witness stand, I would object to any testimony relative to the general character of David Spence from this witness, on the basis that any question and responses are a violation of David Spence's Sixth, Eighth and Fourteenth Amendment rights to due process and the confrontation of witnesses and cruel and unusual punishment. I would object to any testimony, on that basis.

THE COURT: I overrule the objections.

Ms. Sims, you have already been sworn. If you will, just have a seat, ma'am.

MELISSA SIMS

recalled as a witness on behalf of the State of Texas, and having been previously sworn, testified further, as follows, to-wit:

DIRECT EXAMINATION

BY MR. BUTLER:

Q State your name, please.