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MR. BUTLER: If we do that, it gives them another opportunity to preview her entire testimony. They have got a transcript of her testimony in a previous trial. They know what it is going to be, and they can certainly make timely objections in front of the jury.

MR. VANCE: That is the purpose of why we want it done outside the presence of the jury because we are going to come to the same situation which we will have to object, the jury will be excused, and it is possible that they could hold that action against the Defendant.

THE COURT: All right, go ahead. Bring her in while they are out.

D O R O T H Y M I L E S, called as a witness on behalf of the State, having been duly sworn, testified as follows:

VOIR DIRE EXAMINATION

QUESTIONS BY MR. FEAZELL:

Q Ms. Miles, we are out of the presence of the jury because there has been an objection lodged to your testimony.

I intend to ask you questions about whether or not you know David and how long you knew him, that sort of thing, where you met him.

1 Then I am going to get down to some conversations
2 that you and David had together.

3 I believe, the first one was shortly after you
4 got out of the hospital around June 23rd of 1982.
5 Did you see David Spence then?

6 A Yes, sir.

7 Q And how is it that you came to see David?

8 A He came by the house to see how I was doing since
9 I had gotten out of the hospital.

10 Q Did you make plans to see each other again in the
11 near future?

12 A We were planning on having a 4th of July cookout
13 if I didn't stay too sick, but I was still too weak
14 and sick to have it. So we didn't have one.

15 Q So you did not, in fact, have it?

16 A No, sir.

17 Q All right. Okay, then I was going to ask you about
18 the frequency with which David came to your house.

19 A Just about every weekend.

20 Q Okay, did you see him, ma'am, during the last week
21 of July?

22 A Yes, sir.

23 Q And I believe, that visit was sometime during the
24 middle of the week, was it not?

25 A Yes, sir.

1 Q How is it that you came to see David, at that time?

2 A He came to the house and wanted to talk and wanted

3 to know if he could spend the night -- said he needed

4 a place to stay.

5 Q Okay, and did you let him?

6 A Yes, I did.

7 Q How was he acting?

8 A He was kind of jittery and nervous.

9 Q Was that the way David usually was, or was that

10 different behavior for him?

11 A For David, it was different because David is usually

12 just jolly and nonchalant.

13 Q So how was he acting, at that time?

14 A I would say kind of skiddish.

15 Q Okay, were you concerned about him, Ms. Miles?

16 A Yes, sir.

17 Q Did you say anything to him?

18 A I asked him what was wrong with him and why was he

19 acting so funny, and he said he was uptight because

20 he hadn't been sleeping very much.

21 Q Did he say why?

22 A He said because he had done something and had got

23 himself in trouble.

24 Q Okay, what happened next?

25 A I asked him what had he done this time. He was

1 always getting in trouble, and he said, "Nothing,
2 just forget it."
3 Q Okay, what did you do?
4 A I just let it drop. I figured if he was going to
5 tell me, he would tell me later.
6 Q So you did drop the subject, Ms. Miles, at that time?
7 A Yes, sir.
8 Q Okay, did you see David again in the middle of the
9 week about the second week of August?
10 A Somewhere around there.
11 Q How was he acting when he came over then?
12 A He was very nervous and depressed then.
13 Q Kind of moody?
14 A Yes, sir.
15 Q Were you concerned about his -- the way he was
16 acting, at that time?
17 A Yes, sir.
18 Q Did you feel like you needed to talk with him,
19 again?
20 A Yes, sir, but he just didn't talk.
21 Q What did you say to him?
22 A I asked him what he had done, and he said he had
23 done something bad.
24 Q Did you ask him what?
25 A I did, and he said he thought he had killed somebody,

1 and in turn, I asked him, "Well, David, don't you
 2 know whether you killed somebody or not?" He said,
 3 "Just forget it. Just drop it. Forget it."

4 Q Is that what you did?

5 A Yes, sir.

6 Q Why did you just drop it?

7 A It just made me feel kind of ill.

8 MR. FEAZELL: Okay, that is the
 9 substance of the testimony that we intend to go
 10 into, Your Honor, except for more background
 11 information about how well they knew each other and
 12 all the times Ms. Miles had an opportunity to observe
 13 David, his behavior over the years, and a little bit
 14 about their relationship.

15 MR. REAVES: Your Honor, we would
 16 again -- as to the statements made to Ms. Miles, we
 17 would object that they are hearsay and that there has
 18 not been a proper exception to the hearsay rule shown.

19 "I think I have done something
 20 wrong," certainly cannot be tied into this case and
 21 is very vague and may be an extraneous offense and
 22 may not even be related to this case.

23 The same with the statement
 24 "I think I killed somebody" is not tied into this
 25 case, not tied into three people but tied into one

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person, and it is just not specific enough to be a
declarations against interests in this case.

MR. FEAZELL: We disagree.

THE COURT: What is your argument?

MR. FEAZELL: Our argument, Judge,
is that it is a declaration not only against his
interests but the statement by the Defendant about
something that he had done that is shortly after the
time of the Lake murders.

I don't think it is incumbent
upon the State when a defendant makes an interest
against his own -- a declaration against his own
penal interests to have to prove that he hadn't been
out doing a bunch of other things.

We are not putting on evidence
that he has committed a bunch of other rapes or that
he had knifed anybody else or that he thinks he might
have killed anybody else.

We are trying this case. Both
of the statements, both that he made to Ms. Miles
and to Regina Rosenbaum are shortly after the --

THE COURT: What date? Do you
remember the date?

THE WITNESS: The date of what?

THE COURT: That he made the

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statement.

THE WITNESS: Once, it was about the last part of July, and then the other time was in about the middle of August.

THE COURT: Now, you said you all were talking one time about going to have a cookout for the 4th of July?

THE WITNESS: Yes, sir.

THE COURT: That would have been the end of June, right?

THE WITNESS: That wasn't when he made the statement.

MR. FEAZELL: That wasn't when he made the statement.

THE COURT: I know. I understand, but that was the first time he came by, right?

THE WITNESS: Yes, sir, in June. David had been coming to my house since March, but during this summer, he came more than he did earlier that year.

MR. FEAZELL: That was a starting point, Judge.

THE COURT: I understand. I am still trying to get some dates.

The next time he came by was when?

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THE WITNESS: He came by right after I got out of the hospital.

THE COURT: And when did you get out of the hospital?

THE WITNESS: June the 23rd.

THE COURT: All right.

THE WITNESS: And then from then on, just about every weekend, David was at my house.

THE COURT: What day was July 13, 1982?

MR. REAVES: Tuesday.

THE COURT: So would it have been the weekend after that? Is that what you are saying?

THE WITNESS: Yes, sir, he was at my house on that following Friday.

THE COURT: All right, do you all have any authority?

MR. VANCE: Judge, our position is if you ruled on Regina Rosenbaum, it is the same type situation.

She has not been able to pinpoint as to when this alleged -- and we are going to call it an extraneous offense for a better word -- occurred. It could have been 10 or 15 years ago.

MR. REAVES: This is even more

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ambiguous than the first one, Judge. "I think I had done something wrong" when she has admitted that in her opinion, he was always doing something wrong, it could have been anything.

MR. FEAZELL: I think, that can be cured by instructing the witness not to say that one part about "he was always getting in trouble."

MR. REAVES: Well, even so, Judge, the statement "I think I have done something wrong" could apply to many things -- not just these particular murders that we are talking about.

It is our position that the statement is not specific regarding this case.

It may not even be a declaration of interests. Just because he says it is a statement, "I did something wrong" isn't necessarily a declaration against penal interests.

MR. FEAZELL: It further goes to show his state of mind at the time, Your Honor.

THE COURT: This was how many days later? Tuesday to -- was it -- you say, a weekend, a Friday or a Saturday?

THE WITNESS: Friday night.

MR. FEAZELL: The statement we are primarily interested in is the one that was made

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during the midweek, the second week of August, which is when he said, "I think I killed somebody."

THE COURT: All right, objection sustained as to this witness' testimony. Do you all have any more available?

MR. FEAZELL: That is all we have got, Judge.

THE COURT: All right.

(Witness excused.)

THE COURT: What does the time frame look like so I can give the jurors a chance to get these things done?

MR. FEAZELL: We would recommend, if we could, Your Honor, starting at, say, 9:00 o'clock and having a full day.

THE COURT: All right, 9:00 o'clock is fine. Now, how long do you think you have tomorrow, witness-wise?

MR. FEAZELL: Sir?

THE COURT: Witnesses -- do you have a full day scheduled?

MR. FEAZELL: Yes, sir.

MR. VANCE: There could be a possibility we have got to litigate the teeth. They won't tell us. So I don't know, but we have still

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got that out-of-court hearing sometime. As soon as they bring the dentist, that is what we have got to do.

THE COURT: You mean, when the witness gets here or a matter of law?

MR. VANCE: A matter of law.

THE COURT: Let us do it this afternoon.

MR. VANCE: We don't have the dentists.

THE COURT: That is what I asked you. Do you need the witness?

MR. VANCE: Yes, plus, they have the order in Waco that we have got to have here as evidence.

THE COURT: What order?

MR. VANCE: The order requiring him to give a sample of his teeth, and we haven't even had an opportunity to see it yet.

THE COURT: That hasn't already been done?

MR. BUTLER: What do you mean "hasn't been done"?

MR. VANCE: We haven't seen it.

MR. BUTLER: It was in evidence

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in the other case. That is where they found it. It was in the pretrial.

MR. VANCE: We still -- I haven't seen a copy of it.

MR. REAVES: You withheld a ruling on it, Judge, until the doctors were here.

THE COURT: Are you talking about the imprint?

MR. VANCE: I'm talking about -- yes, the imprint.

THE COURT: What is the order you are talking about?

MR. VANCE: The order ordering the Defendant to give his imprint.

THE COURT: We have already done that.

MR. VANCE: No, we haven't.

MR. REAVES: He has already given his print.

MR. VANCE: We are arguing the Fourth Amendment question that is in the file that ties in -- once that is resolved, then the odontologist and everything else falls into place.

THE COURT: Well, what will it take to get the order down here?

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MR. BUTLER: Judge, we will have it here in the morning.

THE COURT: All right, when is the witness going to be here?

MR. VANCE: I don't know. They won't tell us.

MR. BUTLER: Judge, I don't understand the purpose of needing Dr. Campbell here for that.

THE COURT: For the Fourth Amendment, we don't need the dentist here.

MR. BUTLER: The question is whether or not they were taken and whether or not a search warrant was required to take it. We don't need the dentist or odontologist or anybody.

THE COURT: Let us do it this afternoon.

MR. VANCE: We need the search warrant because we haven't seen it, and we don't know what it says.

MR. BUTLER: There was no search warrant or nothing but an order directing the sheriff's office to take an impression of the Defendant's teeth.

THE COURT: Is the evidentiary order pursuant to The Code of Criminal Procedure,

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right?

MR. VANCE: We don't know. It might be like Escamilla. Who knows?

THE COURT: Well, Escamilla is an old shoe, now. That is why we have the statute. If we didn't, Escamilla never would have resulted the way it did.

MR. VANCE: We can't attack the order until I have seen it, and it won't take 30 minutes.

MR. BUTLER: We don't have a copy. We were just made aware yesterday that they wanted to go through this hearing.

MR. VANCE: It won't take 30 minutes, Judge. We have already briefed the law, and the brief is already in the file. We have just got to put on a short bit of evidence.

THE COURT: Let me get them out of this little room.

(Whereupon the jury returned into the courtroom and the following proceedings took place:

THE COURT: Ladies and gentlemen of the jury, a matter of law has come up, and we are at a point to where we won't have other witnesses available this afternoon.

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We are going to try to get a lot of things done that we didn't anticipate, and it won't necessitate your presence.

We will start at 9:00 in the morning. We can't start at 8:00 because we have a Grand Jury panel coming in, and hope to fill up tomorrow and try to catch up.

We hit a few things that were unexpected, but I think, it is going to -- we will end up saving some time because of this time that we are going to need to take, but remember the instructions of the Court, and come at 9:00 in the morning, and hopefully, we will be able to run pretty smoothly.

This way, you will be able to get to your meeting in plenty of time, won't you, Ms. Williams?

(Whereupon the jury retired from the courtroom and the following proceedings took place out of their presence and hearing:

THE COURT: Let us start at 9:00 in the morning, and you get that order so we can look at it and see where we go.

Now, what other matters of law are we going to need to try to do?

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MR. REAVES: The hypnotically enhanced testimony is the only one we have, Judge.

MR. VANCE: If we get to it, we don't even know.

THE COURT: All right, see you all in the morning.
