

1 questions tendered and all of the responses made by Dr.  
2 Jolliff.

3 THE COURT: All right.

4 I will do that.

5 MR. HUNT: Thank you, Your Honor.

6 THE COURT: All right.

7 If you will, bring in the jury.

8 (Whereupon, the jury was returned to  
9 (the courtroom and the trial continued  
10 (in the presence and hearing of the  
11 (jury as follows, to-wit:

12 THE COURT: Call your next witness.

13 MR. HUNT: Your Honor, prior to the calling of  
14 the next witness, I would like to make it clear to the  
15 jury and to the Court, that I am again requesting that  
16 the Court take judicial knowledge of all of the objec-  
17 tions that we made yesterday in Chambers to the testimony  
18 of Dr. Jolliff, and ask that the Court would give me a  
19 running bill of exception, or a running bill on those  
20 matters, so that I don't have to interrupt every question  
21 and every response of this witness, in order to properly  
22 object to that. I would ask the Court to do that.

23 THE COURT: All right.

24 And I grant it.

25 MR. HUNT: Thank you, Your Honor.

THE COURT: Okay.

1 MR. FEAZELL: The State calls Dr. James  
2 Jolliff.

3 THE COURT: Come right up here, Dr. Jolliff.  
4 Have a seat. You have already been sworn.

5 DR. JAMES JOLLIFF

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

9 FURTHER REDIRECT EXAMINATION

10 BY MR. FEAZELL:

11 Q For the record, your name is Dr. James Jolliff?

12 A Yes.

13 Q And will you spell your last name, please, sir, for the  
14 Court Reporter.

15 A J-o-l-l-i-f-f.

16 Q Where do you reside, Dr. Jolliff? What city?

17 A Waco.

18 Q The City of Waco. And how are you employed, or what  
19 profession are you in?

20 A I'm self-employed, in the practice of general psychiatry?

21 Q General psychiatry. Is that also here in Waco?

22 A Yes.

23 Q What hospitals, if any, are you associated with?

24 A Hillcrest Hospital, Providence Hospital, Brazos Center  
25 for Psychiatry.

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Q Okay. Doctor, if you would, just briefly give the jury the benefit of some of your credentials, your background and your training.

A After graduating from college, I spent eight years in Cleveland, Ohio, University Hospitals of Cleveland, in medical school, internship and residency. Then two years as Staff Psychiatrist at the Naval Hospital in San Diego, California. I have been in private practice of psychiatry here in Waco for 18 years. I teach at Baylor University in the graduate department. I'm on the faculty of the Baylor College of Medicine in Houston. I have written some articles and a book and done some teaching tapes. Past President of the McLennan County Medical Society, Past President of the Providence Hospital Medical Staff, current President of the Brazos Center for Psychiatry Staff.

Q Okay, You said you have been practicing psychiatry here in the City of Waco for 18 years?

A Yes.

Q All right. Have you ever had an occasion, Dr. Jolliff, to testify in court before?

A Yes.

Q Many occasions or few occasions?

A It depends on what one would call "many" or "few." I

1  
2 mentioned, I have testified in the neighborhood of 20  
3 times.

4 Q All right. And have all of those been criminal cases?

5 A About ten of those have been Capital Murder cases.

6 Q Okay. And in the 18 years, Doctor, you have been a  
7 practicing psychiatrist in McLennan County, how many  
8 times have you testified for the prosecution?

9 A Three times, all of those back in the late '60's.

10 Q Okay. So, only three times, and those in the late '60's.  
11 So, this case here would be the fourth time?

12 A Yes.

13 Q Dr. Jolliff, have you ever had the occasion to meet a  
14 man by the name of David Wayne Spence?

15 A Yes. I did a psychiatric evaluation on Mr. Spence on  
16 April 7th of 1983.

17 Q All right. Do you recognize Mr. Spence in the courtroom  
18 here today?

19 A Yes. Second from the left at the table.

20 MR. FEAZELL: Your Honor, if the record could  
21 indicate, that Dr. Jolliff has pointed out the Defendant?

22 THE COURT: The record will so reflect.

23 MR. FEAZELL: Thank you, Your Honor.

24 BY MR. FEAZELL:

25 Q Dr. Jolliff, before you gave the mental -- what did you

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call it, "Mental Status Examination"?

A Yes. I call it a "Psychiatric Evaluation." Mental Status Exam is part of that.

Q Okay. Before you gave the examination to Mr. Spence, did you advise Mr. Spence that he had any rights?

A Yes. I advised him of his rights. And, also, he had seen -- or, rather, I had seen the certificate from the magistrate, who had also administered his rights.

Q So, you were also aware that the Judge had warned him --

A Yes.

Q -- right before you talked to him, as well?

A But I repeated it in my first sentence to him.

Q Okay. Do you remember telling him that anything could be used against him in a court of law, and that sort of thing?

A That is what I said.

Q That he didn't have to talk to you?

A I didn't say those specific words.

Q Okay. But something to that effect.

A He had actually requested to talk to me. So, the issue of didn't have to talk to me didn't come up. I said, for legal purposes, that anything that he said --

Q All right.

A Might be used against him in a court of law.

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Q Okay, That was in addition to the rights on the form sheet that you had seen that had been given to him by the Judge?

A Yes.

Q All right. This session that you had with Mr. Spence, what was the approximate duration? How long was that?

A About two hours.

Q Two hours. Is that, as far as psychological, psychiatric examinations go, is that an adequate time, a lengthy time, a short time? How would you describe that?

A That is probably the longest time I have spent with anyone in a single session in a number of years, ten or 15 years. It's a little bit like a mechanic, can tell very quickly the difference between a transmission problem and a motor problem. The average driver may not know, but when you have had experience and training in a field, it ordinarily does not take a long time.

Q All right. Doctor, during the two-hour session that you had with Mr. Spence, did you draw any conclusions, or come to any opinions, or make any kind of diagnosis concerning Mr. Spence?

A Yes, sir. I felt that his diagnosis was antisocial personality. There are several other terms for that, they're essentially synonymous. An old term is "psycho-

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path." It's not used very much except in lay terms any more. "Antisocial personality" is sometimes used in very nearly the same thing, or "sociopathic personality."

Q Okay.

A All of these are essentially interchangeable.

Q And what was the first word you used?

A "Antisocial personality disorder."

Q All right. What are some of the characteristics, Doctor, of an antisocial personality disorder?

A We start with what we think to be the cause. And then there is so much evidence of it in a person who has this. And that is the lack of development of conscience, to the extent that the usual person has the ability to feel guilty about something they have done. Most of it --

Q So, an antisocial personality would not feel guilty about wrong things they had done?

A Certainly not to the extent that a "normal" person would.

Q Okay.

A There is a lot of impulsivity, acting on what wants to do, rather than what is right or wrong. Not caring about the effects on the victim, not thinking ahead to the consequences of the action on the person themselves. Continual involvement in all kinds of behavior that society calls "bad," lying, cheating, manipulating, and

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then, of course, the possibility of stealing and acts of violence.

Q All right. So, all of the things that society would consider bad, an antisocial personality person could do those things and not feel too guilty about it?

A That is correct. Absence of remorse, is perhaps the chief characteristic that comes through to the interviewer, in talking to someone with this disorder.

Q Okay. In talking with Mr. Spence, these characteristics of the antisocial personality that you have described, do those fit the Defendant here?

A They were present to a very marked degree and with uniformity.

Q What does that mean, "to a marked degree and with uniformity"?

A There's been a common way of referring to the degree of things in our country lately. We have talked about so many things on a scale of one to ten, whether it be duty, or badness, or whatever. I would say on a scale of one to ten, Mr. Spence is a ten.

Q All right. You mean, with a ten being the worst?

A The worst.

Q Okay. Sir, from your evaluation, did you determine whether or not Mr. Spence -- I'm trying to find the

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right word -- whether he is insane, or crazy, or anything like that?

A This is really what I was asked to determine, and the purpose of the evaluation, because there had been some discussion about whether he might have a complex personality that split into different parts at different times.

Q Uh-huh.

A That's, at times, called "multiple personality" or "a dissociative state," that sort of thing. I found no evidence of that. He had some obsessions and compulsions and rituals, which are all things that many people have. He had some superstitions, but certainly nothing that would make me classify him in any psychotic disorder. "Psychotic" is the condition, a lay term for that would be "crazy." He was not crazy or out of his head.

Q Okay. So, then, in pure layman's terms, what you're telling us, that he's not crazy, just mean?

A I guess so. Yes.

Q Okay. Here's what I'm trying to get to, from a psychiatric and legal sense, Doctor, would Mr. Spence be responsible for his actions?

A Yes.

Q Would a person with the characteristics that you have just described, be capable of, say, lying, and capable of

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say, committing murder?

A Not only capable of it, but he demonstrated lying to me clearly in the interview. He described having lied to get out of trouble in a previous instance, and not only seemed rather pleased with himself, but had no awareness that he was telling me something that most of us would not volunteer in a bragging way, that we had lied and got away with something and thought that was just fine.

Q Okay. Now, I think you might have touched on this briefly earlier, but what about, did you make any determination as to Mr. Spence's feelings toward others, his ability to be loyal to other people, to care about other people?

A Yes. There was quite a bit of that in the interview. And it was amazing to me how utterly absence any concern for other people was apparent. I asked him four times, four separate times during the course of the interview, if he felt bad, as I did, that if he did not commit the murders, the murderer may still be on the street, and that the lives of other people might be in jeopardy? Each of the four separate times, he totally evaded answering that question with, yes, that would be terrible, or, you know, I certainly feel sorry for the victims or any potential victims, anything that a normal caring person

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2 would have responded with. Each of the four times, his  
3 response was to tell me that he didn't do it and he  
4 wouldn't want to be punished and it wouldn't be fair if  
5 he was punished, if he was. And this is characteristic  
6 of the disorder, always me, me, me, me, I, I, I. Never  
7 the ability to even give lip service to the poor victims,  
8 I'm so sorry, you know, I certainly wouldn't want some-  
9 body to be out there that might kill more innocent  
10 people. It was only turning it around into me, me, me.

11 Q Now, Doctor, from your interview and from everything you  
12 observed with Mr. Spence, were you able to form an  
13 opinion as to whether -- and I'm just asking, were you  
14 able to form an opinion -- as to whether there is a  
15 probability that David Wayne Spence would commit criminal  
16 acts of violence that would constitute a continuing  
17 threat to society?

18 A Yes.

19 Q And what was that opinion, Doctor?

20 A My opinion is, that he is dangerous, very dangerous, and  
21 that there would be great danger to anyone around him,  
22 at any time in his life.

23 Q Including even if he were incarcerated and put in prison?

24 A Anywhere, any time.

25 MR. FEAZELL: Pass the witness.

FURTHER RECROSS EXAMINATION

BY MR. HUNT:

Q Dr, Jolliff, I have a few questions to ask you. First of all, about the interview itself, where was the interview conducted?

A In the basement of the -- at the basement or first floor of the Courthouse Annex.

Q Prior to the interview, did you have contact with any police officers?

A Yes.

Q Who was that?

A Truman Simons, Dennis Baier and Dan Weyenberg.

Q Okay. And prior to the interview, was there any kind of provision made, in order for the law enforcement officers to listen to the interview?

A Yes. There was.

Q You said that David Spence requested your interview as a psychiatrist, is that correct?

A That is correct.

Q Did you explain to David Spence that anyone else was going to be listening to that interview?

A No.

Q So, David Spence didn't know that the interview was going to be listened to, or somebody was going to attempt to

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listen to the interview?

A Not as far as I know.

Q Is that standard practice, when you have a psychiatric interview with a paying client, that you have somebody else listen to the interview?

A No.

Q Kind of unusual practice?

A It was unusual, but it was for my protection. Because the police officers were convinced that I was in danger, being in a room alone with him.

Q There was no way they could watch, for instance, and see that he didn't attack you?

A No.

Q There wasn't any --

A I don't think they could have watched, anyway.

Q There wasn't any provision for a room, in which they could put you where they could simply watch?

A No.

Q You're saying there is no place in the jail where they could put you to watch?

A I don't know that.

Q So, you just don't know?

A That is correct.

Q So, instead, you let someone else listen to, I assume,

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what would normally be, in a paying situation, a confidential interview, is that correct?

A That is correct.

Q Okay. Now, during this interview, is it correct to say that he did the lake murders?

A That is correct.

Q Did he tell you that somebody else thought that he had some kind of a split personality?

A I'm hesitating on that, because it came up in a couple of contexts, and I'm not sure. I think you mean first, the initial?

Q Yes, sir.

A And I am not certain. He was wondering if he did, and told me a good deal about these things that I described a bit ago about superstitions, compulsions, phobias and so forth. And I really felt David was saying to me, am I crazy? Is something wrong? What he described was loss of control when he was under the influence of alcohol and drugs.

Q Okay.

A But he did talk to me about having discussed, with Mr. Simons in particular, the possibility of having a split personality. Who might have mentioned it first, I do not know.

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Q Okay. And he also, I believe, during the interview, mentioned to you that he was being told that he did the lake murders, is that correct?

A Yes.

Q But that if he did it, he couldn't remember having done it, and he was asking you whether that was possible, is that correct?

A That's right. He was saying, could I have been so drunk I did it without remembering it?

Q Okay. When was this interview conducted?

A April 7, 1983.

Q Do you know how long David Spence had been incarcerated, at that point, in McLennan County Jail?

A I did not know at the time. I have since been told that he had been there since September.

Q And are you aware, that during that time, he was being interrogated at length by police officers and accused of the lake murders and being told that he was going to die for the lake murders.

A All but the last.

MR. FEAZELL: I object to that, Judge. There is absolutely no evidence of anything like that.

MR. HUNT: Your Honor, I believe that there is evidence to that, coming from some of the people who have

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been incarcerated and were told that by David Spence.

THE COURT: All right. I overrule the objection.

MR. HUNT: Thank you, Your Honor.

BY MR. HUNT:

A The last clause, if you could rephrase the whole question. The last one, I needed to say no to. The former, I am aware that Mr. Simons had talked to him at length.

Q About the lake murders?

A I don't know for how many months, or how many hours in those months. But, yes, I am aware of that.

Q And that he was told by Truman Simons, that Truman Simons believed he did the lake murders?

A Before my interview with him?

Q Yes, sir.

A No. I would have to say I didn't know that.

Q Okay. Would you say that, under circumstances like that, where somebody is incarcerated for a period of six to nine months, constantly interviewed, constantly accused of a heinous crime, being shown pictures of the victims, and being told that he is going to die for the crime, do you think that that is unusual that they might be concerned that somebody is going to kill them for a crime that they claim that they didn't do, or if they did, they

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didn't remember?

A I'm not sure what you mean. Do I think it is unusual that they would feel --

Q That they would be concerned about their own well being, and say, hey, they're trying to kill me?

A Of course.

Q That's not unusual, is it?

A It would not be unusual. There is a particular medical psychiatric syndrome called "the Ganser syndrome" -- it's quite rare -- where people under heavy interrogation will break down and become, it is kind of a pseudo psychotic thing. It looks crazy, but it is under a particular circumstance. And, again, my point would be, that there was no evidence of any kind of psychosis, including Ganser syndrome.

Q Okay.

A So, Mr. Spence may well have been frightened, but he had not become psychotic at the time of my interview from any interrogation.

Q He wasn't psychotic. But he was very concerned somebody was trying to kill him, is that correct?

A He was very concerned that he -- again, the way he told it, part of the interview was, that he might have committed a crime he doesn't remember. The tone of the interview

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changed when I reassured him that he was not crazy. It took a different turn, at that time.

Q And at that time, he told you, they're trying to kill me. And you said, aren't you concerned about the victims? And he said, Doctor, they're trying to kill me.

A No. That isn't quite the way it was. It wasn't concern about killing him. In literal terms, he didn't use that phrase. He was concerned about what would happen to him, that he was being accused, that they were --

Q If you were incarcerated for a period of eight or nine months and accused of a heinous crime and killing three individuals, and you believed that there was a substantial probability that someone was going to stick a needle in your arm, do you think you might be concerned about your well being?

A Yes. I would be concerned about my well being.

Q Would you say that you would be somewhat less caring for the victims than you would be concerned with your immediate future of you, in that you're going to die for something?

A I would have to tell you -- you have asked a very personal question -- and I think that I would be very likely to feel very bad about what happened to other people in my community, and concerned about myself. I think, even after months of interrogation. But I don't

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know, I haven't been through months of interrogation.

Q Okay.

MR. HUNT: I'll pass the witness, Your Honor.

FURTHER REDIRECT EXAMINATION

BY MR. FEAZELL:

Q Doctor, the question was brought up about the listening device in the room. And you informed the jury that you were aware that that was for your safety. Did you also become aware later that the listening device, for some reason, didn't work?

A I didn't know that until after the interview.

Q But you were informed that a chair had been pulled over by the door, in case there was some commotion, they could hear what was going on?

A Yes.

Q Okay. And it was also brought up that Mr. Spence had been in jail since September. You interviewed him in April. You were aware, though, Doctor, that he was in jail for a separate offense, not anything to do with the lake murders?

A Yes.

Q Okay. And here's my last question. And that is, has anything that Mr. Hunt asked you awhile ago, any of those questions put to you, caused you, in any way, to

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change your opinion concerning David Spence?

A No.

MR. FEAZELL: That's all, Judge.

THE COURT: Any other questions?

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

THE COURT: Dr. Jolliff, you may step down. You may be excused.

STATE RESTS.

THE COURT: Does the State have any other evidence?

MR. FEAZELL: Your Honor, at this time, the State rests.

DEFENDANT RESTS.

THE COURT: Is the Defense ready to proceed?

MR. FULLER: Your Honor, the Defense would rest.

THE COURT: Let me see ya'll.

(Whereupon, Counsel for the State, (Counsel for the Defense and the Court (went into the Court's Chambers and (returned a short time thereafter, (and the trial continued as follows, (to-wit:

THE COURT: All right, Ladies and Gentlemen of the Jury, I'm going to recess you. And I'm going to recess you, so that the Court can take up some matters in

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3 I, Morris W. Bower, Certified shorthand reporter in and  
4 for the State of Texas, do hereby certify that the above and  
5 preceding typewritten pages contain a full, true and correct  
6 transcription of the shorthand notes of the testimony of all  
7 witnesses in the above case and upon the occasion and date in  
8 the caption hereof, as reduced to typewriting by me or under my  
9 direction.

10 I further certify that this statement of facts truly and  
11 correctly reflects the exhibits offered by the respective  
12 parties, if any.

13 Witness my hand, this the 23rd day of August  
14 A.D., 1938.

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