

1 MR. HUNT: We call Ned Butler to the stand.

2 THE COURT: Ned Butler.

3 NED BUTLER

4 called as a witness on behalf of the Defendant, and having  
5 been previously duly sworn, testified as follows, to-wit:

6 DIRECT EXAMINATION

7 BY MR. HUNT:

8 Q Ned, state your name for the record, please.

9 A Ned Butler.

10 Q How are you employed, Ned?

11 A Assistant District Attorney of McLennan County.

12 Q How long have you been employed in that capacity?

13 A Almost a year.

14 Q Have you had prior attorney experience in a District  
15 Attorney's Office, Ned?

16 A Yes, I have.

17 Q Would you state that for the Court and record, please.

18 A I've previously been an Assistant District Attorney of  
19 Potter County, Texas. Before that I was an Assistant  
20 and the District Attorney in Upshur County, Texas.  
21 Prior to that I was an Assistant District Attorney in  
22 Harris County, Texas.

23 Q Would you give me the dates of those, please.

24 A I don't recall exactly.

25 Q Can you give me approximate dates, will you, Ned?

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1 A Probably in Harris County from '75 to '77. Late '76,  
2 maybe. I was in Upshur County two and a half years,  
3 and I was in Potter County for about two and a half  
4 years.

5 Q Okay. During that time have you had a chance to prose-  
6 cute a number of different cases?

7 A I prosecuted several cases. Yes.

8 Q Approximately how many cases have you prosecuted?

9 A I have no idea.

10 O Ned, you're aware of the subpoena that was issued today,  
11 the subpoena duces tecum; is that correct?

12 A Issued to who?

13 Q All the witnesses that were called under subpoena in  
14 this case.

15 A No, I'm not.

16 O Did you receive a subpoena?

17 A No, I did not.

18 Q There was no subpoena with your name?

19 A I was not served with a subpoena.

20 Q Did anyone make you aware there was a subpoena with  
21 your name on it anywhere?

22 A I heard reference to the fact that several people in  
23 the office had been subpoenaed. I did see a list of  
24 people that you had subpoenaed, and my name was on  
25 that list. I was not served with a subpoena.

1 O Okay. Did you understand in reading that subpoena that  
2 the witnesses that were subpoenaed were supposed to  
3 bring records relative to David Wayne Spence?

4 A I saw that several of the subpoenas did say that. Yes.  
5 Let me rephrase that. I saw one, and it did say that.

6 Q And I believe you testified earlier that you instructed  
7 at least one witness that they were not to bring records  
8 in this courtroom pursuant to that subpoena duces tecum;  
9 is that correct?

10 A That's correct.

11 Q And I believe you also testified that you in fact have  
12 care, custody and control of those records that we have  
13 subpoenaed; is that correct?

14 A That is correct.

15 MR. HUNT: Your Honor, at this time I would ask  
16 the Court to direct Mr. Butler to go get those records  
17 and bring them in the courtroom pursuant to the subpoena  
18 duces tecum.

19 THE COURT: For what purpose?

20 MR. HUNT: Your Honor, because he needs those  
21 records to refresh his recollection, unless we want to  
22 go farther and find out if he has got the exact dates.  
23 And we would like the records sealed and made a part of  
24 the Court's file so that this Court and future appellate  
25 courts, if the need comes up, will have a chance to

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review those records.

THE COURT: Well, I assume you've got a motion for discovery where you are going to try to get some of those records.

MR. HUNT: Your Honor, we're not trying to get those records for us. We are trying to get those records for the benefit of the witness himself and the Court.

THE COURT: If the witness says he needs them, he can go get them.

MR. HUNT: Thank you, Your Honor.

BY MR. HUNT:

Q Okay. Mr. Butler, do you need the records in order to come up with dates, because I'm going to ask you very specific questions about dates of all your contacts with David Wayne Spence?

A I have no idea what questions you are going to ask me. Until you ask me, I can't answer.

Q Ned, give me the dates of every one of your contacts with David Wayne Spence from the time he's been arrested until now.

A I have no idea what dates they were.

Q Would that be reflected in your file?

A No, sir. They would not.

Q Would any of those dates be reflected in your file?

1 A No, sir. They would not.

2 Q None of the dates?

3 A No, sir.

4 Q You don't keep records of when you talk to a defendant,  
5 Mr. Butler?

6 A No, sir. I do not.

7 Q No written records?

8 A No, sir. I do not.

9 Q Tell me how many contacts you have had with David  
10 Wayne Spence since he's been arrested.

11 A Probably six or seven. Maybe eight.

12 Q When did you first enter the McLennan County District  
13 Attorney's Office?

14 A I believe April 4th, 1983. Possibly April the 1st.  
15 I'm not sure.

16 Q I assume it's fair that you didn't have any contact  
17 with David Wayne Spence prior to entering the McLennan  
18 County District Attorney's Office; is that correct?

19 A That is correct.

20 Q So since approximately April 1st, 1983, you have had  
21 all your contacts with David Wayne spence; is that  
22 correct?

23 A That's correct.

24 Q Okay. How many times have you talked to David Wayne  
25 Spence by yourself without another officer there, or

1 another person from your office there?

2 A To my knowledge, none.

3 Q Okay. When is the first time you had contact with  
4 David Wayne Spence?

5 MR. DEACONSON: We are going to object to the  
6 materiality unless he is referring to after the  
7 arrest of Mr. Spence in this cause.

8 THE COURT: Sustained.

9 MR. HUNT: Your Honor, am I to understand by  
10 that last ruling that the Court is not going to let me  
11 go into questions relative to contacts with David Wayne  
12 Spence from the time that he, Ned Butler, entered that  
13 office until after David Wayne Spence was arrested  
14 pursuant to the indictment in this case?

15 THE COURT: Well, doesn't the Speedy Trial Act  
16 say till the complaint is filed or the indictment is  
17 returned?

18 MR. HUNT: Your Honor, I believe that the  
19 Speedy Trial Act says that it initiates when a defendant  
20 is either arrested or indicted, whichever happens first.  
21 And obviously our position is that David Wayne Spence  
22 was in fact arrested prior to the indictment.

23 THE COURT: It just wasn't filed on?

24 MR. HUNT: Yes, sir. That is correct.

25 THE COURT: What is the question you want to

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ask?

MR. HUNT: My questions has to do with contacts with David Wayne Spence prior to -- well, beginning from the time Mr. Butler came into the District Attorney's Office.

THE COURT: I sustain the State's objection.

MR. HUNT: Your Honor, I'm going to object to that on the basis that that is deprivation of the Defendant's right to confront witnesses, and it's a deprivation of our right under Article 40.09 to go into further questioning that is necessary.

THE COURT: Overruled.

MR. HUNT: Your Honor, am I going to be permitted to ask further questions in order to establish the bill?

THE COURT: Go ahead and ask the questions.

MR. HUNT: Thank you, Your Honor.

BY MR. HUNT:

O Ned, when is the first time you had contact with David Wayne Spence from the time you entered that office?

MR. DEACONSON: Renew our objection. Same objection, materiality.

THE COURT: All right. I'm going to allow him to answer.

A When was the first -- repeat it, please.

1 Q When was the first time you had contact with David Wayne  
2 Spence?

3 A The first time I saw him or the first time I talked to  
4 him?

5 Q The first time you talked to him.

6 A I would say it was probably late July or early August  
7 1983.

8 Q Okay. Who was present during that conversation?

9 A Truman Simons.

10 Q Where did the conversation take place?

11 A In the jail.

12 Q How long did the conversation take place?

13 A Probably 30 minutes. Maybe 45.

14 Q Did David Wayne Spence have an attorney present at the  
15 time?

16 A No, sir. He did not.

17 Q Was he warned beforehand that he had a right to an  
18 attorney there with him?

19 A I don't recall whether he was or not.

20 Q Okay. When is the next time you had contact with David  
21 Wayne Spence?

22 A Probably a week or ten days after that.

23 Q Who was present during that contact?

24 A Deputy Simons, as I recall.

25 Q Anyone else?



1 A Not on that occasion.

2 Q Where did the conversation take place?

3 A In the jail.

4 Q Can you tell the Court whether or not David received

5 any warnings prior to that conversation?

6 A I don't recall whether he did or not.

7 Q You didn't warn him; is that correct?

8 A No, I didn't.

9 Q Okay. And you just don't remember whether Truman did?

10 A It's possible that he did. I just don't recall.

11 Q Did you personally advise him that he had a right to

12 have an attorney with him at that time?

13 A I don't recall that I personally did that. No, sir.

14 Q Okay. When is the next time you had contact with David

15 Wayne Spence?

16 A Probably another week or so -- two weeks after that.

17 Q I'm sorry. I'm going to go back to the second incident

18 when you had contact with David Spence. How long did

19 that conversation take place?

20 A Probably about the same length of time. Somewhere

21 between 30 minutes and an hour.

22 Q Okay. Now, I'm going to ask you about the third time

23 you had contact with David Wayne Spence. When was that?

24 A As I said, probably, again, a week or ten days. Maybe

25 two weeks later.

- 1 Q How long did that last?
- 2 A I didn't talk with him very long on that occasion.
- 3 Q How long were you present in the room with him?
- 4 A On that occasion, maybe probably five minutes. Maybe
- 5 ten.
- 6 Q Okay. Who else was present?
- 7 A Truman Simons.
- 8 Q Anybody else?
- 9 A As I recall that third occasion was when there was a
- 10 psychologist or psychiatrist there. I believe that was
- 11 the third time that I saw Mr. Spence. I'm not sure of
- 12 that.
- 13 Q What was the name of the psychologist or psychiatrist
- 14 that was there with you?
- 15 A His first name was Robert.
- 16 Q Robert Sullivan?
- 17 A Robert Sullivan.
- 18 Q What are Robert Sullivan's professional qualifications?
- 19 A I have no idea.
- 20 Q Is he a psychiatrist or psychologist?
- 21 A I have no idea.
- 22 Q Do you know him fact if he is either?
- 23 A Of my own personal knowledge, I do not.
- 24 Q What was the purpose of having Robert Sullivan there?
- 25 A Mr. Spence asked to see him.

1 Q Was Mr. Spence warned prior to that conversation with  
2 Mr. Sullivan?

3 A Yes, He was.

4 Q By whom?

5 A I don't know.

6 Q By you?

7 A Possibly, but I rather suspect it was Deputy Simons. I  
8 don't recall exactly who warned him. I do recall he  
9 was warned.

10 Q Were you present during the interview with Dr. Sullivan?

11 A No, I was not.

12 Q Did you in any way listen to the interview with Dr.  
13 Sullivan?

14 A No, I did not.

15 Q How long did the conference last with Dr. Sullivan?

16 A I don't recall.

17 Q I'm sorry. I didn't understand you.

18 A Probably 30 minutes. I don't really recall.

19 Q Did anyone listen to that conversation?

20 A Other than Spence?

21 Q Other than Spence and Sullivan.

22 A Not to my knowledge.

23 Q Okay. When is the next contact you had with David Wayne  
24 Spence?

25 A I probably saw him at least once a week there for about

1 a six-week period.

2 Q Okay. Let's take the first one. How long did it  
3 last?

4 A I think none of them lasted less than 15 minutes, or  
5 more than an hour to an hour and 15 minutes.

6 Q Each of those lasted approximately that time; is that  
7 what you are saying?

8 A Somewhere between 15 minutes and an hour to an hour and  
9 15 minutes at the extreme.

10 O Who was present during those interviews?

11 A As I recall, Deputy Simons was with me each and every  
12 occasion. It seems like Robert Sullivan might have  
13 talked to Mr. Spence on two different occasions. I'm  
14 not sure about that. I know one, and I am thinking  
15 possibly a second time. I'm not sure about that.

16 Q During one of those conversations, did Robert Sullivan  
17 attempt at least to hypnotize David Wayne Spence?

18 A I don't know.

19 Q You don't know?

20 A No, I don't know.

21 Q Who would know?

22 A Seems like there was some -- possibly he did. Seems  
23 like on a second occasion -- there was a second occasion,  
24 and he did attempt to do that as I recall.

25 Q Were you there?

- 1 A No.
- 2 Q Okay. You just knew he was going to; is that correct?
- 3 A I think the discussion we had was after he had attempted,  
4 not before.
- 5 Q Okay. Who else was present during those last six talks  
6 with David Wayne Spence besides yourself, Truman Simons  
7 and possibly Robert Sullivan?
- 8 A As I recall on one occasion, Skip Reaves came in and  
9 talked for a few minutes.
- 10 Q Skip Reaves being his attorney in the other case; is  
11 that correct?
- 12 A That's correct.
- 13 Q Okay. Was Dr. Jolliff present during one of those at  
14 times?
- 15 A No.
- 16 Q Okay. At what point did Dr. Jolliff interview David?
- 17 A I don't know exactly. I know it was long before I ever  
18 met Mr. Spence.
- 19 Q It was long before what?
- 20 A Before I ever met Mr. Spence.
- 21 Q I'm sorry. I have a hard time hearing. Before you --
- 22 A Before I met him.
- 23 Q Before you met David Spence?
- 24 A That's correct.
- 25 Q Okay. Ned, are you sitting there today saying that you

1 would have no way of reconstructing those dates from  
2 your records, the dates of those prior occasions,  
3 especially the dates that you met with Robert Sullivan?  
4 You're saying that no place in your records are those  
5 dates reflected?

6 A Not in my records, no.

7 Q Records to which you have access in the District  
8 Attorney's Office?

9 A It's possible that the dates that Robert Sullivan  
10 talked with him would be reflected.

11 MR. HUNT: Okay. Your Honor, I'm going to  
12 ask that you direct Mr. Butler to go over and get his  
13 records so he can find out if those dates are reflected,  
14 because he thinks it's possible that they are there.

15 MR. DEACONSON: Your Honor, we object upon the  
16 grounds of this materiality. This is not discoverable  
17 material under the motions we are here today. There-  
18 fore, they are not entitled to these records.

19 THE COURT: Sustained.

20 MR. HUNT: Your Honor, if I could address that  
21 for one minute. I'm not asking that he give that to me.  
22 I'm asking that it be available for him because he is  
23 the one testifying. If it's there, the records will  
24 show him the dates.

25 THE COURT: I sustained the objection.

1 MR. HUNT: Okay. Your Honor, I'm going to  
2 object on the basis of the Court refusing to let us go  
3 into material that we believe is very relevant to the  
4 Speedy Trial Act.

5 THE COURT: All right, sir.

6 MR. HUNT: Are you overruling my objection?

7 THE COURT: Yes, sir.

8 MR. HUNT: Your Honor, I'll ask if you will  
9 let me continue in this vein in order to perfect a bill.

10 THE COURT: All right, sir.

11 MR. HUNT: Thank you.

12 BY MR. HUNT:

13 O Okay. Ned, you said that there were about -- occasions  
14 on about six weeks when you talked to him practically  
15 weekly. When was the next contact you had with David?

16 A One week after the last one I told you about, approxi-  
17 mately.

18 O Okay. Does that mean that there weren't six weeks  
19 running; there were seven weeks running?

20 A You're the one sitting there making notes. I told you  
21 I probably saw him somewhere between six and eight  
22 different times. They were approximately one week to  
23 ten days apart. It's possible that some of them were  
24 more closely -- possibly two times in one week, and then  
25 not again for two weeks. I cannot tell you exactly.

1 O Okay. What are your duties -- what were your duties  
2 from the time that you came into the District Attorney's  
3 Office until the present?

4 A The duties of any Assistant District Attorney, I assume:  
5 Represent the State of Texas.

6 Q Were you assigned specifically to the case involving  
7 the lake murders?

8 A Yes, sir. I was.

9 O That is practically your full time job, is that correct?

10 A It's one of my jobs.

11 Q Approximately how much time have you spent on the lake  
12 murders since you first went into that office?

13 A Probably half my time.

14 O Okay. During the time that you were talking to David  
15 Wayne Spence -- first of all, where did the conversations  
16 take place? Both in your office and at the jail?

17 A I don't recall ever talking to David Wayne Spence in my  
18 office.

19 Q Does that mean that all the conversations took place  
20 over at the jail?

21 A It seems like on one occasion Dr. Sullivan talked with  
22 David Spence over in the basement of the Sheriff's  
23 Office, and I talked with him a very short period of  
24 time then.

25 Q At any time that Dr. Sullivan interviewed David Wayne



1 Spence was the conversation bugged so that somebody  
2 else could hear it from another room?

3 A Not that I recall.

4 Q Is it possible that it happened and you just don't  
5 recall?

6 A If it did happen I do not recall it.

7 Q Okay. Did all your conversations with David Wayne  
8 Spence have to do with the lake murders or him being a  
9 suspect in the lake murders?

10 A I would say that they all had to do with the lake  
11 murders.

12 Q Okay. Was there ever a time during those time periods  
13 when you were interviewing David Wayne Spence that you  
14 personally did not consider him to be a suspect in the  
15 lake murders?

16 MR. DEACONSON: Objection, Your Honor. That's  
17 immaterial.

18 THE COURT: Sustained.

19 MR. HUNT: Your Honor, I'm going to object to  
20 that. That goes directly to the Speedy Trial Act. We  
21 are here today because of the Speedy Trial Act, David  
22 Spence's rights involving the Speedy Trial Act. And  
23 here we have an officer who is purposely interviewing  
24 him specifically for the lake murders. And I would  
25 object to the ruling and ask the Court to permit me to

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go further.

THE COURT: Overrule the objection.

MR. HUNT: Your Honor, may I go in further in order to perfect my bill?

THE COURT: No, sir.

MR. HUNT: Your Honor, then I would object on the basis of 40.09. In effect what the Court is doing is refusing to let me perfect my bill of exception.

THE COURT: All right, sir. I overrule your request.

MR. HUNT: Your Honor, I object to that on the basis of the Fifth, Sixth and Fourteenth Amendments.

THE COURT: All right, sir. And I overrule your objection.

BY MR. HUNT:

Q Is it fair to say that every one of your conversations with David Spence during that time period had to do at least at one point or another with the lake murders?

A I believe I've already stated that.

Q Is that correct?

A That's correct.

Q Okay. When is the first time that you learned that David Wayne Spence was supposed to be one of the members of the Church of Satan?

MR. DEACONSON: Objection, Your Honor. That's

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immaterial.

THE COURT: Sustained.

MR. HUNT: Your Honor, again I will object on the basis that this particularly goes into show harm, especially in this community. And I would ask that the Court permit me to go farther into this.

THE COURT: I sustained the objection. Deny the request.

MR. HUNT: Does that mean you're going to refuse to let me go any further into this?

THE COURT: Yes.

MR. HUNT: Your Honor, on that basis I would object under 40.09, that the Court is refusing to let me go and perfect my bill.

THE COURT: All right, sir. I overrule it.

BY MR. HUNT:

O On any occasion that you have had conversation with David Wayne Spence, have you told David Wayne Spence that you intend to kill him or see that he is killed as a result of the lake murders?

MR. DEACONSON: Objection, Your Honor. That as well is immaterial.

THE COURT: I'm going to let him answer it.

MR. HUNT: Again, Your Honor, that goes directly --

1 THE COURT: I said I'm going to let him answer  
2 it.

3 MR. HUNT: Thank you, Your Honor.

4 THE WITNESS: If not exactly those words, then  
5 certainly something to that effect. Yes, sir.

6 BY MR. HUNT:

7 Q Okay. On how many occasions did you say that to David?

8 A Several.

9 Q "Several" meaning three or more?

10 A Probably.

11 Q Could it have been more than three?

12 A Could have been. Could have been less.

13 Q I'm sorry?

14 A Could have been less. I don't recall exactly how many.

15 Q That you were going to kill him because of what he was --

16 A No. I didn't say I was going to kill him.

17 Q That the State was going to kill him?

18 A Or words to that effect, yes.

19 Q Can you remember when the first time you told that to  
20 David?

21 A No, sir. I don't remember specifically.

22 Q I assume that you would tell him that only one time  
23 during a particular interview with David; is that  
24 correct?

25 A I don't recall.

1 Q Did you tell him that on more than one interview with  
2 David?

3 A I'm sure I did.

4 Q Okay. Ned, is it your testimony that you are ready  
5 right now to try David Wayne Spence?

6 A Yeah.

7 Q Are you ready with the other three Defendants?

8 A Yes. We've already announced ready on all the cases.

9 Q Okay. Are you willing to try all four of the Defendants  
10 in any one of the district courts here in McLennan  
11 County?

12 A I think what I am willing to do doesn't have anything  
13 to do with -- we've announced ready for trial.

14 Q So wherever they put you for trial, you're ready to go  
15 and willing to go; is that correct?

16 A I don't have any choice.

17 Q Okay. Ned, is there any reason why David Wayne Spence  
18 has to be tried first?

19 MR. DEACONSON: I'm going to object to that,  
20 Your Honor. This is completely immaterial to the issues  
21 before the Court.

22 THE COURT: Sustained.

23 BY MR. HUNT:

24 Q Ned, do you know of any reason at all that David Wayne  
25 Spence could not receive a fair trial in McLennan County

1 based on somebody having read Sunday's paper last week?

2 MR. DEACONSON: Objection, Your Honor. Same  
3 grounds. Completely immaterial.

4 THE COURT: Sustained.

5 BY MR. HUNT:

6 O Ned, how many of the other witnesses besides David have  
7 been hypnotized, witnesses or potential witnesses to  
8 the crime that were the lake murders?

9 MR. DEACONSON: Objection. Immateriality to  
10 the motion.

11 THE COURT: Sustained.

12 MR. HUNT: Your Honor, I believe that I can  
13 show the materiality if you will permit me a few more  
14 questions.

15 THE COURT: I sustain the objection.

16 MR. HUNT: Your Honor, I am going to object  
17 then on the basis that you are refusing to let me go  
18 into prove up the Speedy Trial Act, and request that  
19 you let me, under 40.09, go a little bit farther to  
20 perfect my bill.

21 THE COURT: I sustain the objection.

22 MR. HUNT: Your Honor, in that case I object  
23 on the basis of the deprivation of his constitutional  
24 rights under the Fifth, Sixth and Fourteenth Amendments.

25 THE COURT: Overrule your objection.

1 BY MR. HUNT:

2 Q Ned, were any of the witnesses hypnotized, or was  
3 hypnosis used with any of the witnesses or potential  
4 witnesses to the lake murders?

5 MR. DEACONSON: Objection. Immateriality.

6 THE COURT: Sustained.

7 BY MR. HUNT:

8 Q Ned, you've testified that you think that Robert  
9 Sullivan hypnotized David; is that correct?

10 A No. That's not what I said.

11 Q What did you say?

12 A I said there was some conversation after his interview,  
13 and hypnotism was discussed.

14 Q Okay. Are you familiar with the use of hypnosis in  
15 interviewing witnesses?

16 A No.

17 Q You've never come in contact with that before?

18 A There is a difference between coming in contact with it  
19 and being familiar with it.

20 Q Okay. Have you ever had contact with it?

21 A No.

22 Q Ever come up in one of your cases?

23 A No.

24 Q Did you personally ever do any research to find out  
25 what that does to a witness?

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A No.

MR. DEACONSON: Again, Your Honor, I'm going to object to this line of questioning. Immateriality.

THE COURT: Sustained.

MR. HUNT: Your Honor, again I'm going to object to the ruling and ask that the Court permit me to go farther in order to prove up the materiality of this line of questioning.

THE COURT: I sustained the objection.

MR. HUNT: Okay. Your Honor, are you then refusing to let me go farther in order to perfect my bill?

THE COURT: Well, he's read on it. I don't see any materiality. I sustain the State's objection.

MR. HUNT: So you're overruling my objection, Your Honor?

THE COURT: Yes, sir.

MR. HUNT: All right. I'll object on the basis of 40.09 and the Fifth, Sixth and Fourteenth.

THE COURT: All right, sir. Overruled.

BY MR. HUNT:

O Ned, are you aware of any promises made to any witnesses involved in this case?

MR. DEACONSON: Objection. Immateriality.

THE COURT: How does that have any materiality



1 to this motion? I'm not talking about some other  
2 motion, but we're dealing with a motion to dismiss.

3 MR. HUNT: Your Honor, it has to do with the  
4 harm that was done to David Wayne Spence in that he was  
5 locked up in the county jail here in McLennan County while  
6 they proceeded to build a case against David Wayne  
7 Spence, and they did it by using witnesses that had  
8 promises made to them.

9 THE COURT: I sustain the State's objection.

10 MR. HUNT: Your Honor, I'm going to ask that  
11 you let me go farther and prove up a bill of exception.

12 THE COURT: Overrule the request.

13 MR. HUNT: Your Honor, then I will object on  
14 the basis of 40.09, that the Court is refusing to let  
15 me perfect my bill.

16 THE COURT: Overrule your objection.

17 BY MR. HUNT:

18 O Ned, did you have anything to do with the bite sample  
19 being taken from David Wayne Spence?

20 MR. DEACONSON: Objection again. This issue is  
21 speedy trial. We're not under the discovery motion.  
22 We are objecting to immateriality.

23 THE COURT: Sustained.

24 MR. HUNT: Your Honor, again I would respond to  
25 that. This goes directly to the harm that was done to

1 David Wayne Spence by keeping him locked up in custody  
2 of the McLennan County Jail during which time the State  
3 proceeded to build a case against him.

4 THE COURT: I overrule the objection and the  
5 request.

6 MR. HUNT: Your Honor, can I ask additional  
7 questions in order to prove up my bill?

8 THE COURT: No, sir.

9 MR. HUNT: Your Honor, then I would object on  
10 the basis of 40.09, that the Court is refusing to let  
11 me perfect my bill.

12 THE COURT: Overrule your objection.

13 BY MR. HUNT:

14 Q Ned, do you know when David Wayne Spence was supposed  
15 to be transferred to the Texas Department of Corrections  
16 after his first trial?

17 MR. DEACONSON: Objection. Immateriality.

18 THE COURT: I'll let him answer that question.

19 THE WITNESS: No.

20 BY MR. HUNT:

21 Q Do you know how long a defendant is supposed to be  
22 kept in the county jail prior to being transferred to  
23 TDC after they have been convicted?

24 A I don't know that there is any specific limit one way  
25 or the other.

1 Q Are you saying you're not familiar with the particular  
2 statute that has to do with that?

3 A That's what I said.

4 O Okay. Would you say that the fact that David Wayne  
5 Spence remained in the McLennan County Jail for a period  
6 of time from his conviction to the time that he was  
7 transferred helped or hindered the State's case against  
8 him?

9 MR. DEACONSON: Objection. His opinion on  
10 that is immaterial to the motion.

11 THE COURT: Sustained.

12 BY MR. HUNT:

13 O Ned, what was the name of the dentist who took the bite  
14 sample from David?

15 MR. DEACONSON: Objection. Immateriality.  
16 We're here to discuss speedy trial, not discovery motion,  
17 at this time.

18 THE COURT: Sustained.

19 BY MR. HUNT:

20 Q When was the last time you talked to David Wayne Spence  
21 about this case?

22 A Shortly after he was indicted.

23 Q Was that also shortly after Hayes Fuller and myself were  
24 appointed to this case?

25 A Yes, it was.

1 O And you and Truman Simons did that in the county jail?

2 A That's correct.

3 Let me make one thing clear. You said when was the  
4 last time I discussed this case with him.

5 O Yes.

6 A We did not discuss this case on that occasion.

7 O On that occasion that you just related, is your testimony  
8 to the Court that you and Truman Simons went into the  
9 jail, went into a room with David Wayne Spence, and  
10 talked with David Wayne Spence?

11 A No, sir.

12 Q Talked without being in a room with him?

13 A Yes, sir.

14 Q Your testimony is that the three of you did not go into  
15 a room together on that occasion?

16 A That is correct.

17 Q And your testimony to the Court is you didn't talk about  
18 this case, you talked about something else -- the weather  
19 or fishing or something?

20 A That is correct.

21 Q Was there any other contact between you or Truman Simons  
22 with David Wayne Spence from the time that he was  
23 indicted until now?

24 A Yes.

25 O When was that?

1 A Shortly after he came back from TDC but before any  
2 lawyers were appointed for him. We talked with him  
3 downstairs.  
4 Q Who talked to him?  
5 A Truman Simons and myself.  
6 O Where did this conversation take place?  
7 A In one of the interview rooms down in the jail.  
8 O Then there were attorneys appointed, your testimony is  
9 that you personally have only talked to David one time;  
10 is that correct?  
11 A As I recall, that is correct.  
12 Q Has Truman Simons talked to him any more than that?  
13 A If he has I'm not aware of it.  
14 MR. HUNT: We'll pass the witness, Your Honor.  
15 MR. DEACONSON: The State has no questions,  
16 Your Honor.  
17 THE COURT: You may step down.  
18 THE WITNESS: May I be excused, Your Honor?  
19 THE COURT: Yes, sir. You can go back and have  
20 a seat.  
21 MR. HUNT: Your Honor, would it be agreeable  
22 to take a five-minute break?  
23 THE COURT: Let's take a short five-minute  
24 recess.  
25 (Whereupon a short recess was had,  
(after which the hearing proceeded  
(as follows, to-wit: