

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MR. VANCE: No objection.

THE COURT: All right, you are  
finally excused, Ms. Rosenbaum.

(Witness excused.)

MR. BUTLER: We call David  
Puryear.

D A V I D P U R Y E A R, called as a witness  
on behalf of the State, having been duly sworn,  
testified as follows:

DIRECT EXAMINATION

QUESTIONS BY MR. BUTLER:

Q State your name, please, for the record, and spell  
your last name for the Court Reporter.

A David Elon Puryear, P-u-r-y-e-a-r.

Q Mr. Puryear, where do you live?

A 3701 North 26th, Waco, Texas.

Q How long have you lived there?

A About three months.

Q How are you employed?

A I am a mechanic for Carl Garillo.

Q Mr. Puryear, are you acquainted with David Wayne  
Spence?

A Yes, sir.

Q How do you know David Wayne Spence?

A I met him while I was incarcerated in McLennan

2. 2  
1 County jail.

2 Q Do you recall when that was?

3 A Sometime in June of 1982 or July -- June or July.

4 I am not exactly sure.

5 Q Okay, are you sure it was 1982?

6 A Well, that is when I was arrested. I would have to  
7 think about it. Let me think. It might have been  
8 later than June of '82.

9 Q Mr. Puryear, do you recall the first time that you  
10 came in contact with David Spence?

11 A Yes, sir.

12 MR. BUTLER: May I have just a  
13 moment, Your Honor?

14 THE COURT: Yes, sir.

15 (Brief pause.)

16 Q Where was it that you first came in contact with  
17 him?

18 MR. VANCE: Your Honor, I will  
19 have to object until we get a time established  
20 because the alleged offense did not occur until  
21 July of '82, and here he is talking about seeing  
22 the Defendant in jail in June of '82, and I object  
23 to the relevancy, at this time.

24 THE COURT: All right, sustained.

25 Q All right, Mr. Puryear, if you would, take a minute

- 1 to reflect when it was that you first went to jail.
- 2 A June of '82.
- 3 Q You went to jail in June of 1982?
- 4 A Yes, sir, June the 3rd.
- 5 Q All right, how long were you in jail, if you can
- 6 recall, before you came in contact with David
- 7 Spence?
- 8 A Maybe two months -- maybe three.
- 9 Q So if you went in June, it would have been sometime
- 10 in late August or September when you came in contact
- 11 with David Wayne Spence. Is that correct?
- 12 A I am pretty sure. I don't remember exactly when I
- 13 was arraigned for my trial, and I met him when I was
- 14 being arraigned.
- 15 Q But you feel like it was some two maybe three months
- 16 after you were arrested in June of 1982?
- 17 A Yes, sir.
- 18 Q Now, without going into the content of the conversation,
- 19 where was it that you first saw him?
- 20 A In the hold-over tank before I was being arraigned.
- 21 Q And who were the other people in that hold-over tank?
- 22 A David Spence was there, Gilbert Melendez, and a
- 23 young black guy, but I don't remember what his name
- 24 was.
- 25 Q At that time, did you know any of those three people?

2. 1 A Well, I had seen Gilbert Melendez because I lived  
2 next door to his aunt and uncle.  
3 Q Did you have conversation with Gilbert Melendez?  
4 A While in the hold-over tank?  
5 Q Yes.  
6 A Well, we were just shooting the bull back and forth.  
7 Q And did you have any conversation with David Spence?  
8 A Other than just listening and just shooting the bull,  
9 nothing else was said to me.  
10 Q When did you next see David Spence?  
11 A Let's see. It was after I had gotten my time for  
12 jail. I was transferred back to the new jail to  
13 await transfer to Texas Department of Corrections.  
14 Q All right, do you recall when that was?  
15 A Let's see. I think that I was sentenced in April  
16 of '83 or March of '83, and then I left in April  
17 of '83.  
18 Q So it would have been sometime in that time frame  
19 between March and April of 1983?  
20 A Yes, sir.  
21 Q All right. Now, what was your occasion for coming  
22 in contact with him during that time period, March  
23 to April of 1983?  
24 A He was already in the -- what they call the new  
25 jail, and I was in the old jail, and they transferred

1 me from the old jail to the new jail, and he was  
2 there, and then they transferred me to that same  
3 area.

4 Q When they transferred you, did they put you in the  
5 same cell block or --

6 A What they do is they have got it divided between  
7 north and south, and I was put on the same side as  
8 David was.

9 Q And did you have occasion to come in contact with  
10 him and have conversations with him because of  
11 where they transferred you?

12 A Yes, sir, I did.

13 (Whereupon an instrument was  
14 marked for identification as  
State's Exhibit No. 43.

15 Q Mr. Puryear, let me show you what has been marked  
16 for identification purposes as State's Exhibit 43  
17 and ask if you can identify that.

18 A Yes, sir, it is a bandanna that I drew while I was  
19 in jail.

20 Q You drew that yourself?

21 A Yes, sir.

22 Q And what did you do with it?

23 A I presented it to David Spence as a gift.

24 Q Okay, this is the same one that you drew and gave  
25 to David Wayne Spence?

1 A Yes, it is.

2 Q At that time period between March and April of 1983?

3 A Yes, sir.

4 MR. BUTLER: Your Honor, at  
5 this time, we would offer what has been marked for  
6 identification purposes as State's Exhibit 43 into  
7 evidence.

8 MR. REAVES: Your Honor, we are  
9 going to object to it at this time. It hasn't been  
10 shown how it is relevant to anything in this trial.

11 MR. BUTLER: Judge, I can show  
12 the relevancy.

13 THE COURT: All right, if you  
14 can tie it up, it will be admitted.

15 Q Mr. Puryear, would you explain for the jury just  
16 what this is?

17 A Okay, I was just sitting around in the cell drawing,  
18 and I drew the little border around the outside of  
19 it and had a picture of a 44 Magnum, and everybody  
20 in the other cell block was calling David the Texas  
21 Outlaw. So I drew these on there and showed him the  
22 picture.

23 Q All right, first, where did this come from,  
24 Mr. Puryear?

25 A It was a pillowcase, and I had an extra pillowcase

2 1 in my cell. So I just tore it up and made that out  
2 of it.

3 Q All right, so you drew the 44 Magnum from a picture  
4 that you had in a magazine?

5 A Yes, sir, I did.

6 Q And you put the Texas Outlaw on there because that  
7 is what they call David Spence?

8 A Yes, sir.

9 Q All right, what else do you see on there?

10 A Well, the two girls -- this one and this one,  
11 David said that he wanted on there, one with a  
12 dark-haired girl and a blond-haired girl.

13 MR. REAVES: Your Honor, I will  
14 object again. It is hearsay.

15 THE COURT: Overruled.

16 Q All right, at the time you presented it to him,  
17 did it have those two girls on there?

18 A No, sir.

19 Q So you put them on there at his request?

20 A Yes, sir.

21 Q All right, did he ask you to do anything specific  
22 regarding those two girls? Did he tell you how to  
23 draw them or anything about how to make them?

24 A Well, other than just the hair, I drew the pictures  
25 of the girls out of a People Magazine, and then he

1           said he wanted one dark haired and one light haired.

2       Q     Okay, did he tell you why?

3       A     No, sir.

4       Q     All right, I notice there is also a box or what  
5           appears to be a box sitting on the ground in front  
6           of each of them, and on one of them it says Budweiser  
7           Light. Any particular reason those boxes are there?

8       A     Well, I can't -- I am not real good at drawing hands  
9           and feet. So I messed up on this one. So I just  
10          drew a box around it and decided I wasn't going to  
11          try that one, and I drew the Budweiser Light on  
12          there for something to put on there.

13      Q     And what did you do with it after you drew the two  
14           girls on it?

15      A     I went and gave it to David.

16      Q     Did he say anything about why he wanted a dark-haired  
17           girl and a light-haired girl on the handkerchief?

18      A     No, sir.

19      Q     At any time while you were there in the cell block  
20           or on the same side with David Spence, did you have  
21           occasion to discuss with him or did he discuss or  
22           did you overhear him discussing the lake murder case?

23      A     Well, I heard different conversations and had  
24           different conversations with him.

25                           MR. REAVES: Your Honor, again,

2 9  
1 we are going to object to any conversation he may have  
2 had with him. It is hearsay.

3 THE COURT: Objection overruled.

4 Q Do you recall what the first conversation was there  
5 in the March -- April time frame, the first  
6 conversation you had with him regarding the lake  
7 murder cases?

8 A Well, the first time I was around when he said  
9 something about it, he said that he didn't commit  
10 the crimes, and he didn't know why he was being  
11 questioned about them.

12 Q Do you remember who it was he was talking to?

13 A There was a bunch of us sitting around a table  
14 playing poker.

15 Q And did that conversation go any further? Do you  
16 remember anything more about it, or was that what  
17 you recall?

18 A I don't think it went any further than that.

19 Q When was the next time you recall him saying anything  
20 about it?

21 A It was a little bit later -- maybe several days  
22 later. Somebody else had brought the conversation  
23 up again, and David had said something about, he  
24 did it, but he didn't know why he did it.

25 Q Was anything more said, at that time?

1 A No, sir.

2 Q Do you recall any other occasion when he discussed  
3 it either with you or in your presence?

4 A Only one other, and it was after he came back from  
5 seeing somebody. I am not sure who he saw, but he  
6 came back and was real upset.

7 Q Would you explain to the jury what it was that he  
8 did to make you think -- or just explain his actions.

9 A Well, we were sitting at the first table as you  
10 came into our cell block, and we were playing poker,  
11 and David came back, and he was mad so he --

12 Q When you say "came back --"

13 A From wherever it was he had went.

14 Q All right, wherever it was, it was out of your  
15 presence and off the cell block?

16 A Yes, and he came back from wherever that he was,  
17 and he was real mad, and he went straight to his  
18 cell.

19 He didn't say anything to any of us, and then  
20 he --

21 Q When you say, "he went to his cell," Mr. Puryear,  
22 would you explain to the jury the way the jail is  
23 arranged?

24 A Okay.

25 Q That particular area where you were.

2 1

1 A Okay, the -- as you first come in the door, it  
2 has got a sliding glass door, and you come in and  
3 you walk maybe at a 45 degree angle, and you come to  
4 another door, and that led into the section where our  
5 cells were.

6 You went through both doors, and then went into  
7 his cell.

8 Q All right, did each person have an individual cell?  
9 A Yes, sir.

10 Q All right, was there an opening or a day room or  
11 area where you could watch TV and visit and play  
12 cards, or did you have to do that in somebody's  
13 cell?

14 A No, sir, it was -- as you first come into the cell  
15 block area, there is an area there for televisions,  
16 and it has got several tables that you could eat at  
17 or play cards on.

18 As you go through the other door, one for each  
19 side of the cell, there is two other tables sitting  
20 there that you can sit outside your cell and play  
21 cards or whatever you want to do there.

22 Q So you have the common area where you can mingle,  
23 and then you have your own --

24 A Little cells.

25 Q Separate individual cells that are adjacent to that?

2

1 A Yes, sir.

2 Q Okay, when he came in, where did he go?

3 A Straight to his cell.

4 Q What happened then?

5 A Well, we heard him crying, and he was real mad and

6 upset.

7 Q How long did this go on?

8 A Well, until the next house call.

9 Q What does that mean?

10 A All right, a house call is when -- if you need to go

11 to your cell for something, every hour they open the

12 doors and let you go to your cell and maybe go to

13 the bathroom, get a book or whatever.

14 It lasts for about 10 minutes, and after the

15 house call -- when they called house call, David came

16 back out of his cell.

17 Q At the time he returned from wherever he had been,

18 did he return during the house call and that is how

19 he got into his cell, or did they just --

20 A No, sir, they opened his door for him.

21 Q So this was something other than the normal house call

22 to let him in?

23 A Yes, sir.

24 Q And he stayed there until the next house call?

25 A Yes, sir, it was about an hour.

- 1 Q What happened then?
- 2 A David came out of the cell, and he was real mad,  
3 and said that they had showed him the pictures of  
4 the lake murders.
- 5 Q Did he say who "they" was?
- 6 A No, sir, he didn't specify exactly who showed him  
7 the pictures. He just said they showed him the  
8 pictures, and he was real mad, and he said that he  
9 had done the crime and he was glad that he did it  
10 and he liked it.
- 11 Q Did he say anything else, at that time?
- 12 A Well, if he did, I didn't hear it because I went  
13 straight to my cell.
- 14 Q Would you describe for the jury his appearance and  
15 the manner in which he said it?
- 16 A Well, he looked real -- well, it is hard to say.  
17 He looked like he could reach out and if he reached  
18 out and touched you then he could absorb your  
19 personality and your presence -- kind of like he  
20 was the devil himself standing there. He had a  
21 real evil look on his face, and it scared me so bad  
22 I went to my cell.
- 23 Q Did you ever have any other conversations with  
24 David Spence about the lake murders?
- 25 A No, sir, I was transferred to TDC.

2 4

1 Q So the last time you heard him say anything was  
2 when he said, "I did it and I'm glad I did it and  
3 I enjoyed it"?  
4 A Yes, sir.  
5 Q Now, Mr. Puryear, you told the jury that you went  
6 to TDC from there. What were you charged with?  
7 A Two burglaries of a motor vehicle and criminal  
8 mischief.  
9 Q And what kind of a sentence did you receive?  
10 A Three years.  
11 Q Was that the first time you had been to the Texas  
12 Department of Corrections?  
13 A No, sir.  
14 Q When was the first time?  
15 A In 1979.  
16 Q And what was that for?  
17 A Burglary of a motor vehicle and a building.  
18 Q And what kind of a sentence did you receive that  
19 time?  
20 A I had a four-year probation which was later shortened  
21 to a two-year prison term.  
22 Q Your probation was revoked?  
23 A Yes, sir.  
24 Q And you received two years in the penitentiary?  
25 A Yes, I did.

2 5  
1 Q And are those the only two times you have been to  
2 the penitentiary?

3 A Yes, sir.

4 Q And do you recall when it was that you finished  
5 that sentence that you received that you have  
6 already told the jury about?

7 A Which sentence the --

8 Q The second one.

9 A I discharged my second sentence in September of this  
10 year, September the 16th.

11 Q When did you get out on parole?

12 A November 3rd of 1983.

13 Q That was '83?

14 A Maybe '84.

15 MR. BUTLER: Your Honor, we would  
16 pass the witness.

17 CROSS EXAMINATION

18 QUESTIONS BY MR. REAVES:

19 Q Mr. Puryear, regarding the bandanna that has been  
20 introduced into evidence, okay, you drew that for  
21 Mr. Spence?

22 A Yes, sir, I did.

23 Q Did he ask you to draw that for him?

24 A Well, when I started drawing it, he didn't ask for  
25 anything. I did it on my own.

- 1 Q Why would you -- how long had you known him, at  
2 that time?
- 3 A I don't know. Maybe a month or something like that --  
4 not very long.
- 5 Q Okay, is that one of your hobbies, art?
- 6 A I like to draw.
- 7 Q Had you done anything like that before?
- 8 A Well, I used to draw on anything I could get my  
9 hands on.
- 10 Q While you were in jail in 1983, had you drawn anything  
11 like that before?
- 12 A Well, a lot of pictures, horses, cattle, things like  
13 that.
- 14 Q Anything like the bandanna that has been introduced?
- 15 A Well, I used to draw a lot and make little bandannas  
16 for myself and wear them when we played basketball  
17 in jail.
- 18 Q So you had drawn some bandannas for yourself to wear?
- 19 A Yes, sir, I did.
- 20 Q Why did you decide to draw one for Mr. Spence?
- 21 A When I started drawing it, I drew it just to have  
22 something to do, and then we were sitting around  
23 and people called David the Texas Outlaw. So I  
24 decided I would draw something for him.
- 25 Q How many other people were in that jail cell with

201

1           you or in that tank?

2       A     Oh, one for each cell. It was 16 -- 16 cells on each

3           side.

4       Q     So there are quite a few other people?

5       A     About 32 people.

6       Q     Quite a few other people in that particular area

7           with you?

8       A     Yes, there were.

9       Q     Okay. Now, the first thing that you heard

10           Mr. Spence say regarding the lake murders was -- is

11           that he didn't do it and he didn't know why he was

12           being questioned about it.

13       A     Yes, sir.

14       Q     Okay, did you know at that time that he was being

15           questioned about the lake murders? Had you heard

16           that?

17       A     No, sir.

18       Q     That was the first time you had heard anything about

19           it?

20       A     Yes, sir, it was.

21       Q     And did he indicate to you who was doing the

22           questioning?

23       A     No, sir.

24       Q     Okay, so he denied being involved in it?

25       A     Yes, sir.

- 1 Q Okay, and the last time -- the last statement he  
2 made, he came back up and said it angry?
- 3 A Yes, sir, he did.
- 4 Q And crying?
- 5 A Yes, sir.
- 6 Q It is clear to you that something had upset him?
- 7 A Very much so, by his actions.
- 8 Q You don't know where he went that day or who was  
9 talking to him or what he had been doing?
- 10 A No, sir.
- 11 Q Okay, because you obviously can't follow anybody  
12 out of the jail cell and go with them.
- 13 A No, sir.
- 14 Q When you drew those pictures on the bandanna, the  
15 girls, did you know what Mr. Spence's wife looked  
16 like?
- 17 A No, sir, I have never seen her.
- 18 Q Did you know what his girlfriend looked like?
- 19 A I have never seen her either.
- 20 Q Did you know what his ex-wife looked like?
- 21 A No, sir.
- 22 Q So you don't know what color of hair -- what hair  
23 color those people were?
- 24 A No, sir.
- 25 Q Okay. Now, regarding -- first of all, these were

2  
1 the three things that you heard him say -- what you  
2 testified to today?

3 A Yes, sir.

4 Q Okay. Now, regarding your -- you were in there at  
5 the time for burglary of a motor vehicle?

6 A Yes, sir.

7 Q Okay, two cases?

8 A Two counts of burglary of a motor vehicle.

9 Q Okay, that is breaking into somebody's car without  
10 their permission?

11 A Yes, sir.

12 Q All right, and two different incidents?

13 A Yes, sir.

14 Q Okay, and that is also what you had been to the  
15 penitentiary for before?

16 A Yes, sir.

17 Q Okay, in addition to -- there was something else,  
18 breaking into somebody's building without their  
19 permission?

20 A Yes, sir.

21 MR. REAVES: Your Honor, we don't  
22 have any further questions at this time.

23 REDIRECT EXAMINATION

24 QUESTIONS BY MR. BUTLER:

25 Q Now, Mr. Puryear, when did you make the District

200  
1 Attorney or District Attorney's Office or any member  
2 of law enforcement aware that you had knowledge  
3 regarding this case?

4 A It was after I was visited at the Texas Department  
5 of Corrections by yourself and Dennis Bayer.

6 Q When we came to visit you at the Texas Department  
7 of Corrections, was that as a result of any effort  
8 on your part? Had you made any effort or asked  
9 anybody to contact us, or had you tried to contact  
10 us yourself?

11 A No, sir.

12 Q Did you know we were coming?

13 A No, sir.

14 Q And what was it, Mr. Puryear, that you told us when  
15 we came the first time and asked you if you had any  
16 knowledge or if you would be willing to testify?

17 A I didn't want to get involved.

18 Q And what was the next contact that you had with  
19 anybody regarding this case?

20 A Well, after discussing it with a friend of mine, he  
21 told me that if I knew anything that I should go  
22 ahead and say what I knew. So I wrote a letter to  
23 you telling you that I wanted to clear my conscience  
24 of the knowledge that I had.

25 Q And what happened then?

1     A     I was bench warranted back from TDC to McLennan  
2           County.  
3     Q     And at that time, you made us aware of the knowledge  
4           that you had and that you were willing to testify.  
5           Is that correct?  
6     A     Yes, sir.  
7     Q     Did you at any time receive any benefit for testifying?  
8     A     No, sir.  
9     Q     Or any deals made to you or any promises given to  
10           you in regard to your testimony?  
11    A     No, sir, there weren't.  
12                                 MR. BUTLER: We would pass the  
13           witness, Your Honor.  
14                                 RECROSS EXAMINATION  
15    QUESTIONS BY MR. REAVES:  
16    Q     Mr. Puryear, how long was it after you talked with  
17           Mr. Butler and told him what you had told us here  
18           today that you were discharged from prison?  
19    A     Repeat the question, please.  
20    Q     Okay, Mr. Butler initially talked to you and said  
21           you didn't want to talk to him.  
22    A     Yes, sir.  
23    Q     Then you contacted him and eventually told him  
24           what you told us here today.  
25    A     Okay.

1 Q Is that correct?

2 A Yes, sir.

3 Q That is -- okay, how long was it after that that  
4 you were discharged from prison?

5 A Well, I was discharged -- my papers were signed  
6 for my release from prison in September.

7 Q When were --

8 A But I didn't get out of McLennan County jail until  
9 November.

10 Q When were you actually released?

11 A November the 3rd.

12 Q When did you talk with Mr. Butler and told him what  
13 you have told us here today?

14 A It was while I was bench warranted back from Texas  
15 Department of Corrections.

16 Q Okay, so sometime between September and November of  
17 '84?

18 A Yes, sir.

19 MR. REAVES: No further questions.

20 REDIRECT EXAMINATION

21 QUESTIONS BY MR. BUTLER:

22 Q Mr. Puryear, had you remained at TDC and not come  
23 back to McLennan County on the bench warrant, had  
24 you not been willing to testify, when would you have  
25 been released from TDC?

1 A September the 16th.

2 Q And in fact, you weren't released until November.  
3 Why?

4 A I was being held there because my paper work was  
5 jumping all over the place trying to find me, and  
6 I was at the McLennan County jail with this case.

7 Q So you actually spent two or more months behind  
8 bars because you were willing to testify in this  
9 case?

10 A Yes, sir.

11 Q And had you stayed where you were you would have  
12 been released in September?

13 A Yes, sir, I would have.

14 Q Had you not been willing to testify, you would have  
15 been released some two to two and a-half months  
16 earlier.

17 A Yes, sir.

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

20 RECROSS EXAMINATION

21 QUESTIONS BY MR. REAVES:

22 Q Mr. Puryear, you didn't stay in the McLennan County  
23 jail solely so you could testify. That wasn't the  
24 reason that you stayed there, was it?

25 A Well, I was bench warranted back to the McLennan

1 County jail, and somehow in the process of my  
2 release, my papers were transferred to Huntsville  
3 and then back to Gatesville and then all around back  
4 and forth. So they had to leave me somewhere until  
5 my release came.

6 Q I understand that. The papers didn't catch up with  
7 you.

8 A Right.

9 Q And that is why you weren't released earlier.

10 A Yes, sir.

11 Q Okay, it wasn't you were staying in jail solely  
12 so you could testify.

13 A No, sir.

14 Q The minute your papers got there, you were released.

15 A Yes, sir.

16 Q And how were you released -- on parole?

17 A Well, mandatory supervision.

18 MR. REAVES: No further questions,  
19 Your Honor.

20 MR. BUTLER: We have nothing  
21 further, Your Honor.

22 THE COURT: May he be finally  
23 excused?

24 MR. REAVES: Defense has no  
25 objections.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

THE COURT: All right, Mr. Puryear,  
you are finally excused.

(Witness excused.)

MR. BUTLER: May we have just a  
moment, Your Honor?

THE COURT: Yes, sir.

(Brief pause.)

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

THE COURT: All right.

MR. VANCE: Your Honor, we  
need to take some matters up outside the presence  
of the jury before we start on our case.

THE COURT: All right, ladies  
and gentlemen, if you will, go back in the jury  
room, please.

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

THE COURT: All right.

MR. REAVES: May we proceed,  
Your Honor?

THE COURT: Yes, sir.

MR. REAVES: At this time,  
subsequent to the time the State has rested and

1 closed their case and prior to the time that the  
2 Defense has put on any evidence, we would make  
3 several motions to the Court.

4 " First of all, we would point out  
5 to the Court that Tony Melendez, one of the  
6 co-defendants in this case, testified that he --  
7 testified regarding the deaths of Raylene Rice and  
8 Jill Montgomery and that he did not know anything  
9 about the death of Kenneth Franks and that all he  
10 did was observe them there.

11 He did not see anything as to  
12 how the death happened or anything else and so based  
13 on that ask the Court that the testimony of Tony  
14 Melendez be struck and the jury be asked to  
15 disregard it.

16 THE COURT: All right, go ahead  
17 with your whole motion. I will take up the whole  
18 thing.

19 MR. REAVES: There are three  
20 separate motions, Judge.

21 THE COURT: All right, first  
22 part is denied.

23 MR. REAVES: The second motion  
24 is, is that in the State's case in chief, they  
25 admitted as State's Exhibit No. 22 which was admitted

2 7  
1 subject to being tied up as corroboration of a  
2 co-defendant's testimony. That picture was to  
3 corroborate that there was a sexual assault with  
4 a blunt instrument. The testimony, first of all,  
5 from Gilbert Melendez, a co-defendant, did not  
6 involve anything regarding a blunt instrument.

7 From the testimony of Tony Melendez, there  
8 was evidence that there may have been a stick,  
9 but he did not testify that it was used on any of  
10 the girls, and so there's nothing to corroborate,  
11 and we would ask that that exhibit be struck.

12 MR. FEAZELL: Your Honor, in  
13 response to that, Mr. Melendez testified that as  
14 they were fixing to back out, he and his brother,  
15 Gilbert, that David came up to the car and said,  
16 wait a minute. He needs to get his love stick and  
17 dug around in the car and pulled out the broomstick  
18 looking object with the tape around it, and the last  
19 thing Tony saw as they backed out was David Spence  
20 getting down in between the legs of Raylene Rice  
21 with the stick.

22 MR. REAVES: He didn't see him  
23 use it, Judge, and that was admitted to corroborate  
24 his testimony.

25 MR. FEAZELL: Certainly

1 circumstantial, Judge.

2 THE COURT: You are saying  
3 you can't use circumstantial to corroborate,  
4 Mr. Reaves?

5 MR. REAVES: It is our position  
6 that they were going to introduce it that he had  
7 actually assault the girl with that stick, and  
8 the exhibit was introduced to tie that up, and  
9 there wasn't any testimony about that.

10 MR. FEAZELL: Same as the  
11 smoking gun, Your Honor.

12 THE COURT: Objection overruled.

13 MR. REAVES: The last motion  
14 is, is that the testimony in this case has been  
15 based on the statements or the testimony of  
16 co-defendants, Anthony Melendez and Gilbert Melendez.  
17 Those statements by law must be corroborated as to  
18 the death of Kenneth Franks.

19 It is our position that proof  
20 of an extraneous matter is not sufficient  
21 corroboration for a co-defendant's testimony.

22 Co-defendants can't corroborate  
23 each other. The only thing that has been -- there  
24 hasn't been anything introduced in this trial which  
25 corroborates the testimony of both those co-defendants

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

as to the death of Kenneth Franks.

We would ask for an instructed verdict.

THE COURT: All right, denied.  
Anything else before we bring  
the jury in?

MR. FEAZELL: Yes, Your Honor.  
At this time, I believe that Mr. Russell is in the  
courtroom. The State would ask that Mr. Russell be  
sworn in and placed under the rule to be called as  
a possible State's witness in the event that the  
Defense should call his wife, Mrs. Russell, as a  
Defense witness.

MR. REAVES: Your Honor, if  
they want to do that, they can subpoena him, and  
they have not done that.

MR. FEAZELL: He is right in  
the courtroom. We don't have to.

MR. VANCE: He has been sitting  
here, and he is under no subpoena, and we would  
object to this procedure. If they want to subpoena  
him, they can.

MR. BUTLER: Judge, if he is  
called, it would be as a rebuttal witness. We are  
not required to subpoena if he is here in the  
courtroom, and there is no way that we can put

1 anybody on notice as to what our rebuttal witnesses  
2 are until we know what their testimony is.

3 We are placing the Court on  
4 notice that we might use him as a rebuttal witness.

5 THE COURT: All right, stand  
6 and raise your right hand, please, sir, Mr. Russell.

7 (Whereupon Mr. Russell was sworn.)

8 THE COURT: All right, you will  
9 be placed under the witness rule which means you need  
10 to remain outside the hearing and presence of all  
11 other witnesses testifying.

12 You are not to discuss your  
13 testimony with other witnesses, Mr. Russell. I think,  
14 you understand. You don't -- I don't need to  
15 explain it in any more detail.

16 All right.

17 (Whereupon Mr. Russell left the  
18 courtroom.)

19 MR. REAVES: We do have one  
20 exhibit we need to get out of there.

21 MR. VANCE: I've got it.

22 (Whereupon instruments were marked  
23 (for identification as Defendant's  
24 Exhibits Nos. 17 and 18.

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