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Q You don't know whether he said it or not? You have related to this jury everything that you can remember hearing him say?

A Just like I said, what I remember is what I told you.

MR. BUTLER: Judge, I don't have anything else.

MR. HUNT: We don't have any other questions either, Your Honor.

THE COURT: All right.

You may step down.

Just have a seat.

JESSE HAYDEN IVY

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

DIRECT EXAMINATION

BY MR. BUTLER:

Q State your name, please.

A My name is Jesse Hayden Ivy.

Q Mr. Ivy, have you been previously sworn in this matter?

A Yes, I have.

Q Where do you live, Mr. Ivy?

A I live on the Eastham Unit in Lovelady, Texas.

Q How old are you?

A Thirty-seven.

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Q How long have you been living on the Eastham Unit?

A About the last three years.

Q What kind of sentence are you serving down there, Mr. Ivy?

A I'm on a 35-year sentence for Aggravated Robbery.

Q Was this the first time you have been to the Texas Department of Corrections?

A No, sir, it's not.

Q How many times have you been there?

A I have been there five times.

Q Since you were 17 years old, how many years have you spent out in the free world?

A Maybe four or five.

Q The rest of the time you have been in the penitentiary?

A Yes, sir.

Q All of it at Eastham?

A No, sir.

Q Where else?

A The sentences on two were done at Ramsey One and three on Eastham. I'm doing the sentence now on Eastham.

Q And you have been down there for the last three years?

A Yes, sir.

Q What was your first sentence for?

A Forgery.

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Q Your second sentence?

A Burglary.

Q Your third sentence?

A Forgery.

Q Fourth sentence?

A Forgery.

Q And what sentence or term of years did you get on each of those, if you recall?

A I got two three years and one four-year sentence and one ten-year sentence, and one 35-year sentence.

Q All right. Drawing your attention back to the summer of 1982, and more specifically, July of 1982, did you have occasion to read, or hear, or see anything about a triple murder that occurred in Waco?

A No, sir.

Q Have you ever been to Waco before?

A No, sir.

Q When is the first time you ever came to Waco?

A About three weeks ago. Something like that.

Q Let me draw your attention back to the months of August, September, October and November of 1983, just this last year. Did you have occasion -- first, let me ask you, were you at Eastham, at that time?

A Yes, sir, I was.

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Q All right. Where on Eastham did you live?

A Kayline, which is a cell block.

Q Did you have occasion to meet David Wayne Spence there?

A Yes, sir, I did.

Q Is he present in the courtroom today?

A Yes, he is.

Q Would you identify him, please?

A There he is right there.

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

THE COURT: Yes, sir.

BY MR. BUTLER:

Q Did you have occasion to talk with David Wayne Spence --

A Yes, I did.

Q -- while you were there on Kayline? And what did you talk to him about?

A About his case.

Q Was he asking for legal advice?

A Yes, he was.

Q When is the first time you ever heard of the lake murder cases?

A When he told me about it.

Q All right. What exactly did he tell you about it, the first time you had a conversation, with regard to the

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lake murders?

A The first time I ever talked to David Wayne Spence, he told me that he heard a tape that the Waco Police had let him listen to that Gilbert Melendez had made against him, as a witness against him, or snitch on him, or whatever on him. And he told me that Gilbert said his conscience got to bothering him, that he told the whole thing, and that they might as well go ahead and cop out and that he might as well go ahead and tell them that he was in it, too.

O All right. Now, what, if anything -- he told you that the Waco Police had let him listen to the tape?

A Yes.

O That Gilbert Melendez had made?

A Yes.

O All right. Did he say anything about whether or not the tape was true?

A No, sir. He said it wasn't true.

O All right. And what did you tell him?

A I told him he was going to have to shoot straight with me and tell me everything, if he wanted me to do anything, or get somebody to do anything for him.

O All right. Where did that conversation take place?

A At Kayline cell block.

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O Specifically, where?

A The dayroom.

O All right. Was anybody else there?

A Yes, sir.

O Who?

A There was a David Robert Snelson and Frank Amorella.

O What was the reason Snelson was there?

A Snelson is known as a lawyer. He is what is called a "penitentiary lawyer."

O All right. And were you going -- what was your part in this thing? Why were you talking to Spence, if Snelson is the lawyer?

A Well, you see, I get a little money out of it, too. That's the way I make my money down there, is to hustle business for Snelson. He cuts me in on some of the money.

O I see. And you were going to charge Mr. Spence some money to work on his lawsuit?

A Well, that was the idea; yes, sir.

O All right. Did you, in fact, charge him any money?

A No. We never got around to that.

O Did you work on his lawsuit?

A Yes, sir.

O Did you believe what he was telling you?

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A No, sir.

Q What did you tell him?

A I told him he was going to have to shoot straight with me, level with me, tell me what happened.

Q What did he reply to that?

A He said he was guilty, "but dead people couldn't talk."

Q Did he tell you anything else?

A Yes, he did.

Q What did he tell you?

A He told me what happened.

Q All right.

A He didn't tell me everything, but he told me enough.

Q All right. Mr. Ivy, I want you to use the words that he used, as best you can remember them, and tell this jury what David Wayne Spence said to you?

A Well, he told me what I told you. And he told me that him and Gilbert Melendez was in a car and they went to a park in Waco, where they seen two girls and a boy. Spence says to Melendez -- said to Gilbert Melendez, "There's the mother fucker that beat that Iranian on a drug deal, let's go get them and fuck them up."

Q All right. Do you know what he meant by that?

A Well, not really; no.

Q Did he tell you whether or not it was just him and

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Gilbert?

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A There was one other boy's name mentioned, it was Tony.

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No last name given, or anything, just Tony.

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O Do you know who that was?

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A Not for a fact, I don't know.

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O All right. Did he say whether or not they went ahead and

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picked those kids up?

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A Yes. They went down and picked them up. They had been

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drinking. Gilbert and Spence had been drinking. And

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they went down and picked them up and got them in the

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car, and they either went to another park, or to another

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part of the park. That's where they took the black

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headed girl out of the car.

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O All right. Did he tell you anything about that black

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headed girl?

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A Yes, sir.

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O What did he tell you about her?

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A He said, "She had some nice tits, looked like she would

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make a good fuck."

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O All right. Did he say whether or not anything happened

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then?

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A Yes, sir. They took her out of the car.

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O And what happened?

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A And took her down there and one of them raped her while



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the other one held her, and then the other one raped her while the other one held her.

Q Did he say where the other kids were while this was going on?

A Back at the car, or back that way.

Q Did he tell you anywhere, specifically, that this happened?

A Waco park. It was by a dock, or boat dock, or ramp, or something like that.

Q Did he say anything in specific that he did to her while he was raping her?

A Yes, sir, he did. He said he bit her titty nipple off.

Q What else did he tell you about it?

A Slit her throat, cut her throat, tied her up and gagged her.

Q Did he say anything to you about what happened to the other kids?

A He just went back to the car and they raped this girl back at the car. They both took turns raping her, too. Then he tied her up and killed her.

Q Did he say anything about the boy, where he was, while all of this was happening?

A He was tied up watching it.

Q Did you ever have occasion to talk to him about evidence?

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A Yes, I did.

O All right.

A Well, let me say, he talked to me about some evidence.

O All right. What kind of evidence did he talk to you about?

A Well, he asked me if his teeth could get him a conviction. In other words, could his teeth get him a conviction. And I told him, "Well, hell, yeah, man. Your teeth are like your fingerprints, nobody's are the same. Nobody has got the tooth the same."

O And what did he say to that?

A He didn't say nothing, he just shook his head.

O Mr. Ivy, would you describe for the jury how he appeared, or what he looked like when he was telling you all of this?

A He looked excited, like he was getting off to it, or something, his eyes all dancing, and what have you.

O Mr. Ivy, has anybody offered you anything --

A No, sir.

O -- or promised you anything, or threatened you in any way, to testify in this case?

A No. No, sir.

O Why are you testifying?

A Because I want to testify, because I feel like I need

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to testify.

MR. BUTLER: Judge, we pass the witness.

THE COURT: All right.

CROSS EXAMINATION

BY MR. HUNT:

Q Mr. Ivy, I need to ask you a few questions. You said that David told you about a tape, is that right? A tape that he had been allowed to listen to, or heard, while he was in McLennan County Jail, is that correct?

A Yes, sir.

Q Did he give you any description of what that tape said? Did he tell you what the tape said?

A Yes, sir.

Q Did he tell you the tape was by Gilbert?

A Yes, sir.

Q He also told you the tape wasn't true, didn't he?

A That's what he said.

Q Did he tell you what part of the tape wasn't true?

A Let me think about it. Yeah. He said it wasn't true, that he wasn't the one that stabbed her in the neck.

Q Is that the only part of the tape that he said wasn't true?

A Yes, sir.

Q Was all of the rest of it supposed to be true?

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A Yes, sir.

Q That the only part of that tape was, that he wasn't the one that stabbed her in the neck?

A That's right.

Q Do you remember which girl he was talking about?

A No, I don't.

Q It could have been either of the girls?

A Yes, sir.

Q Didn't identify her by hair color, or anything like that?

A (Shaking head.)

Q Okay. Now, the best I understand your testimony, Snelson is the writ writer, you are kind of the runner, you coordinate folks to get to Snelson, so that Snelson can get some money for writing writs, is that correct?

A That's true.

Q Okay. Can you tell me how you go -- how does Snelson go about setting fees?

A I have no earthly idea.

Q Can you give me an idea of whether he charges a certain amount per writ?

A No, sir.

Q How does he get paid?

A I have no idea. They don't have a whole lot of money in TDC.

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Q Okay. So, if you're going to run somebody to Snelson for a writ, how do you expect to get paid? What are you going to get out of it?

A Well, you go by a blue bag percentage there, you know. It is \$2.25 a blue bag. That's all they deal in there. There's no cash, or anything, just commissary.

Q Okay. So, commissary privileges, is that what you kind of trade off?

A Yeah.

Q Okay. Let's say I'm down there and I want a writ, and it's not a terribly major case, okay. And I go to Snelson and I want -- or I go to you and I say, hey, I need some help, because I don't have a good legal background, can you connect me with somebody that will do it?

A You would really have to talk to Snelson about that, because I really couldn't answer that.

Q You just coordinated people that said they needed help with Snelson?

A Right.

Q Okay. What would you normally get out of it? Is there such a thing as an average?

A There is no set salary on anything like that.

Q Okay. But he would get the salary, you would get a

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portion?

A Yeah.

O Okay. Anybody that said different, was going to be a liar, is that correct?

A Yeah.

O Okay. Now, you said that you talked to Spence. At that time, you said that you knew what he was down there for, is that correct?

A Yes, sir.

O Okay. You knew he was down there and had had something to do with the lake murders, is that fair?

A No. That's not so.

O You didn't know about the lake murders?

A (Shaking head.)

O Okay.

A Not until he talked to me about it.

O Okay. So, is this the conversation that happened some place up near the bars?

A No. That was the second conversation.

O Okay. The first conversation had to do with the tape?

A (Nodding head.)

O And he told you that the tape was wrong, that he didn't cut the girl's throat?

A That's right.

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O Okay. Did he say who cut the girl's throat?

A No, he didn't.

O Did he tell you whether it was Gilbert or Anthony?

A No, sir.

O Okay. At the second conversation -- you only had two conversations, is that correct?

A That's correct.

O Okay. The second conversation, how did he approach you? What did he say to you?

A How did he approach me?

O Yes. Did he say, I want you to help me?

A No. The way he approached me, is just like I got through telling you awhile ago. That was all part of the second conversation. In other words, after he got through telling me what the tape said that he listened to --

O Yeah.

A -- then I told him, "You're going to have to level with me, man, you're going to have to shoot straight."

O Okay. Maybe I'm getting confused.

A Yeah. I'm sure you are.

O It wouldn't be the first time.

A Right. And it probably won't be the last time.

O Okay. That's true. Okay. Did all of this happen at one time?

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A Yes, it did.

Q About the tape?

A Yes, it did.

Q Okay. There weren't two separate conversations?

A No, sir.

Q Okay. See, that's where I was confused.

A Uh-huh.

Q You said to him, you've got to level with me?

A That's right.

Q Now, you're the one that said that you normally coordinated this through Snelson, is that correct?

A Yes, sir.

Q So, I guess you had to get Snelson handy, so that Snelson could listen, because otherwise, Snelson couldn't help?

A Well, that's absolutely correct.

Q Sounds reasonable to me. So, when you asked Snelson to come on over there, said, Snelson, come on over here, I want you to hear this boy's story?

A I didn't have to say that. He came over there anyway.

Q Why did he come over there?

A He's the lawyer.

Q Well, how did he know you were talking to him about helping him with his case?



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A What else would I be talking to him about?

Q I don't have the foggiest idea. You didn't talk to anybody unless --

A Neither do I. I don't talk to very many people, sir.

Q The only time you talk to people, is if you want to help them with their case?

A Well, not necessarily. But I don't talk to that many people. I am sort of a loner.

Q I'm sorry, I didn't hear that.

A I said, "I am sort of a loner."

Q You're a loner?

A Yes, sir.

Q Okay. Except that you are kind of in a business relationship with Mr. Snelson?

A Right.

Q So, you're talking to him, Snelson sees you talking to Spence, and he figures, this must be a business deal.

Is that what it is?

A Well, I believe he came over, because I'm sure that he felt that I was talking to this man about what we were talking about awhile ago.

Q He felt that you were talking to him about it?

A Uh-huh.

Q Okay. So, he came over there because he felt like you

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needed his help, is that correct?

A Who, Snelson?

Q Uh-huh.

A Yes, sir. We had been talking about it, so he came over there.

Q Okay. Could he hear that before then? Could he hear ya'll talking about it?

A Could he hear us talking? Yes, sir. He was sitting on the bench right there by the water fountain. It's not no further than from here to, say, right there.

Q So, he could hear ya'll talking about the tape with Gilbert before that, you mean?

A Well, I don't know what all Mr. Snelson heard, sir.

Q Okay.

A I can't testify to that.

Q Okay. Then he came over there. And did you ask him to listen, so you could see if you wanted to help this boy?

A No. I didn't ask him to listen, he listened on his own.

Q You didn't ask him to?

A I didn't ask nobody to listen to nothing.

Q Okay. Did you get the impression he was listening?

A I'm sure he was.

Q Why do you think that?

A He is a pretty perceptive person.

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2 Q Well, what gave you an indication he was listening?

3 A What gave me an indication he was listening? Because he  
4 was talking, too, man.

5 Q Snelson was talking. What was Snelson saying?

6 A He was talking to me.

7 Q All right.

8 A He asked me what I thought, man.

9 Q During the conversation, did he say, what do you think,  
10 man?

11 A Yeah.

12 Q And that was your impression, that Snelson heard what  
13 this boy said?

14 A I believe he did.

15 Q Well, was he just listening off and on, or did he hear  
16 the whole conversation?

17 A Off and on.

18 Q What was he doing the rest of the time?

19 A I have no idea. You will have to ask Mr. Snelson that  
20 question.

21 Q Wasn't it important for Snelson to listen and see what  
22 the facts were, to see if he could help?

23 A To be perfectly honest, I'm not an attorney.

24 Q Snelson is?

25 A That's right.

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2 O So, you would think that he ought to listen, if he was  
3 going to help the boy, is that right?

4 A I would imagine.

5 Q Okay. So, you would expect him to be listening, does  
6 that sound fair?

7 A Yes.

8 Q Okay. Then you said that Spence recalled a conversation.  
9 You said that he and Gilbert were in the car. Did he  
10 say whose car?

11 A No, sir.

12 Q Okay. Did he tell you before, about what the tape said,  
13 other than in general terms?

14 A No, sir.

15 Q So, you don't know the difference between what he's  
16 telling you and what was on the tape, is that right?--

17 A I've never heard the tape, if that's what you're asking.

18 Q No. I'm really asking you if he told you what was on  
19 the tape?

20 A Yes, sir.

21 Q In general terms. Did he tell you specifically what  
22 was on the tape?

23 A I'm just taking his word for it. I don't know what was  
24 on the tape. I can only tell you what he told me.

25 Q I understand that, Mr. Ivy.

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2 A Yes, sir.

3 Q My question to you is, did he describe to you in detail  
4 what was on the tape, or did he tell you in general terms  
5 what was on the tape?

6 A He told me what was on the tape.

7 Q Okay. Did he say Iranian?

8 A Iranian?

9 Q Yes, sir. I think that's the word you used.

10 A Yeah.

11 Q I might be wrong.

12 A That's true.

13 Q Might he have said something else? Might he have said  
14 "Jordanian"?

15 A No, sir. It was "Iranian."

16 Q It was "Iranian." You said he mentioned something about  
17 Tony. What did he mention about Tony?

18 A He was just in the car, in the beginning of this whole  
19 incident.

20 Q Tony was in the car?

21 A Yes, sir.

22 Q And you're going to assume that that probably was Tony  
23 Melendez, is that correct?

24 A I'm not assuming anything.

25 Q Well, what was your impression?

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A I have no idea. All I know is, a man named Tony was in the car.

O Tony was in the car?

A I wouldn't even know a Tony Melendez, or whatever you said.

O Okay. Do you know a Gilbert Melendez?

A No, sir. I have never met no Gilbert Melendez.

O Okay. Tony and Gilbert and David were in the car together. David sees the car and says something to Gilbert -- sees the kids and says something to Gilbert, is that correct?

A Yes, sir. That's true.

O You said that Gilbert and David had been drinking. Did he say where they had been drinking, or anything like that?

A No, sir.

O Okay. You said you couldn't remember what park it was where they were, is that correct?

A That's true. All I know is, it was a Waco park.

O Did he say how they got the kids in the car?

A They were all drinking. I guess they just got them in the car, and "Let's go drink."

O So, the kids probably got in to go drink?

A Uh-huh.

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Q Okay. Where was Tony? Did he say, at that time? Or did he --

A Like I said, his name was only mentioned once.

Q Okay.

A That's the only time I ever heard it.

Q Did he say where they went before he raped the girl?

A Not to me, he didn't.

Q Did he say when they tied the kids up?

A Tied them up after he cut the girls' throat.

Q Does that make sense to you, Mr. Ivy?

A I don't know. Nothing that happened makes sense to me, period.

Q If you were going to cut somebody's throat, would you tie them up after or before?

A Are you asking me that question?

Q Yes, sir, I am.

A If I was going to cut your throat, I wouldn't want you tied up.

Q Mr. Ivy, why would you tie me up after you cut my throat?

A I don't know. I'll let you answer that, sir.

Q I'm asking you the question, Mr. Ivy.

A Ask it to me again, sir.

Q Why would you tie somebody up after you had cut their throat?

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A I have no earthly idea, sir.

Q Doesn't make a bit of sense, does it?

A Well, sick things don't make any sense at all.

Q What did he say Tony was doing while Spence and Gilbert are supposed to be out raping the girl?

A I already answered that question, sir.

Q You don't remember?

A I have told you that I only heard Tony's name mentioned one time.

Q Okay. So, you don't have any idea?

A No, sir, I don't.

Q Okay. Did he give you any description, as far as the boat ramp is concerned?

A He didn't go into details with me about a whole lot of things.

Q Just kind of glossed over it?

A Yeah. He told me what happened, in his words.

Q Okay. Did he say how he tied the boy up?

A Just tied him up, man.

Q Did he say what he tied him up with?

A He didn't tell me. He told me he tied him up, his hands, his feet, gagged him.

Q Tied up his hands and his feet?

A That's right.



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Q Are you sure he tied up his feet?

A I'm not sure of anything, really, but death.

Q That's kind of what I'm concerned about, Mr. Ivy.

A Yeah.

Q You are concerned about everything.

A I realize that. Ask me that question again, sir.

Q Yeah. Did he tie up his hands and his feet?

A He told me he did.

Q Did he tie up the girls' hands and their feet?

A He told me he did.

Q Okay. Did he gag them?

A That's what he said.

Q All of them, or just some of them?

A That's what he said. He said he gagged them.

Q All of them?

A I don't know. He told me he gagged the people and killed them.

Q Okay. "The people"?

A Right.

Q Okay. Did he tell you whether he tortured them first?

A Like I said, sir, he did not go into details about nothing like that.

Q He went into details in some things, but not other things?

A That's right.

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Q Did he tell you what he tied them with?

A No, sir, he didn't.

Q Did he tell you whether he took anything off of the bodies of the kids?

A He said something about a ring, man, I don't know. Something about a ring, or something like that.

Q What did he say about the ring?

A I really don't even -- that really didn't even matter to me, really and truly.

Q Did the story matter to you?

A Well, to be honest, yes, it did. It really did.

Q Because it was making you sick, or something?

A Yeah. It was making me sick. Real sick.

Q Because you're not used to violence like that, or something.

A I didn't say I wasn't used to violence. I'm not used to that kind of violence, sir.

Q I see. You mean involving kids?

A Yes, sir. I have a daughter of my own.

Q I see. Now, you said he asked you if his teeth could get him a conviction?

A That's what he said, sir.

Q And I guess he figured you were a dentist, or something?

A No, sir. No, sir. He didn't figure I was a dentist.

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Q Okay.

A But he figured I had been around enough and knew enough about law, or whatever, that I could tell him the answer to it.

Q Okay. Meanwhile, I thought that Snelson was the one that was the attorney?

A He is the attorney, but, hey, I know a little bit about law myself.

Q Okay. And during this time, Snelson is standing there listening to it?

A Yes, sir. To the best of my knowledge he was; yes, sir.

Q Because Snelson is the one that is going to get the fee out of it, if anybody is going to, and you're going to split it, is that right?

A I would imagine so.

Q Okay. So, did Snelson hear the whole story, or did he leave in the middle?

A I can't testify to what Snelson heard, I have no idea.

Q Well, you can testify as to where Snelson was?

A Oh, yes, sir. I can testify, I already did. He was from about here to right there.

Q Through the whole story? Or did he leave halfway through?

A I really wasn't paying that much attention to him.

Q You don't know?

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A I was paying more attention to Mr. Spence.

O Okay. You don't know where Snelson was during the story, is that what you're telling us?

A He was there part of the time. I don't know what he heard.

O Was he there part of the time, or all of the time?

MR. BUTLER: Judge, this question has been asked and answered four times. It's repetitious.

THE COURT: Sustained.

MR. BUTLER: I ask that you instruct him to move on.

BY MR. HUNT:

Q Do you remember where he was?

MR. BUTLER: Judge, that's the same question again. He has answered that question four times.

THE COURT: I sustained the objection.

BY MR. HUNT:

Q Did Mr. Snelson come back toward the end? Did he leave in the middle? All I want to know is where Snelson was?

A He left after the conversation was over. Like I told you, he was on the bench sitting there.

O He was on the bench sitting there, he wasn't standing next to the bars?

A He was on the bench sitting there. Amorella was stand-

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ing next to the bar by the water fountain. He was sitting down on a metal rail right there by the water fountain.

Q Okay. And when ya'll finished the conversation, where did ya'll go?

A I went on. I left and went back to the issue room.

Q Okay. Where did Snelson go?

A I have no idea.

Q Where did Spence go?

A I have no idea.

Q Everybody just split up and went on their way?

A Yeah.

Q Wasn't any talk about a fee?

A No.

Q When would you normally set the fee? Or when would Snelson normally set the fee?

A I have no idea, sir. You would have to talk to Snelson about that.

Q You just brought people to Snelson?

A That's absolutely correct.

Q Like everything else you said?

A That's absolutely correct.

Q All right.

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

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THE COURT: All right.

MR. BUTLER: We don't have anything further,  
Your Honor.

MR. HUNT: We don't have anything either, Your  
Honor. This witness can be released.

THE COURT: You may step down, sir.

(Whereupon, Counsel for the State and  
(Counsel for the Defense approached  
(the Bench and an off the record  
(discussion was had out of the hear-  
(ing of the Reporter, following  
(which the trial continued as follows,  
(to-wit:

THE COURT: All right, Ladies and Gentlemen of  
the Jury, I'm going to recess you. As you know already,  
it takes some time to line witnesses up and dispose of  
other matters. I'm going to recess you until in the  
morning at 9:00 o'clock.

Now, I again caution you to keep in mind  
the instructions that I have given you. I have given  
them to you any number of times, and I'm sure you all  
specifically remember those instructions. It is  
extremely important that you keep in mind those instruc-  
tions.

I will excuse you until in the morning at  
9:00.

If everyone in the audience will let the jury

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clear the courtroom first.

(Whereupon, Court was recessed until  
(June 27, 1984, at which time the  
(proceedings were reported by Deputy  
(Official Court Reporter Janice Vick.

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