

1 All right, sir.

2 LYNNAN KENDRICK

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

5 DIRECT EXAMINATION

6 BY MR. HUNT:

7 O Lynnan, state your name for the record.

8 A Lynnan Kendrick.

9 Q How are you currently employed?

10 A I'm an attorney in private practice.

11 Q Okay. Lynnan, I'm going to ask you how you were
12 employed back in the latter half of 1981 and first half
13 of 1982.

14 A I was employed by the McLennan County District
15 Attorney's Office as a prosecutor.

16 Q Okay. That carried on through when? Approximately the
17 summer of 1983?

18 A May of 1983. Mid-May, I believe.

19 Q Lynnan, did you in your duties as a prosecutor with
20 McLennan County have any contact with a file involving
21 the Defendant in this action, David Wayne Spence?

22 A I did.

23 Q Can you describe to the Court what your involvement was
24 with David Wayne Spence back in, let's say, starting
25 about September of 1982.

1 A Judge, I received the case, which was Aggravated Sexual
2 Abuse, after John Segrest left the District Attorney's
3 Office. I am not exactly sure on what date I received
4 it.

5 I have requested to look at my file or look at the
6 file, I should say. I asked Ned Butler and Pat Murphy
7 last week if I could look at the file, and they told me
8 that I could not. So I don't know exactly when it was.
9 But probably in November.

10 Q Okay. Just to clear up who everybody is, all the
11 parties -- where did you go to request a copy of your
12 file?

13 A The District Attorney's Office.

14 Q You are no longer employed in the District Attorney's
15 Office?

16 A That's correct.

17 Q And you talked to whom?

18 A Mr. Ned Butler.

19 Q And Ned Butler is present in the courtroom. Who is
20 Mr. Ned Butler?

21 A He's an Assistant District Attorney employed by McLennan
22 County.

23 Q One of the two main prosecutors in the case now against
24 David Wayne Spence in the lake murders; is that correct?

25 A That's correct.

1 Q And who is Pat Murphy?

2 A He's the First Assistant for the McLennan County
3 District Attorney's Office.

4 Q Okay. And when did you go in and talk to them?

5 A I believe it was last Thursday or last Friday. Thursday,
6 I believe.

7 Q In the course of doing your file back when you were
8 handling the case against David Wayne Spence -- first
9 of all, what case was it?

10 A Aggravated Sexual Abuse.

11 Q That's the one involving Darvin Pack; is that correct?

12 A That's correct.

13 Q In the course of handling that file, did you keep
14 detailed records in your file?

15 A I would assume that I did, yes.

16 Q Okay. Explain for the Court what detail records you
17 kept.

18 A I would've kept records concerning any plea bargaining
19 that was going on between myself and the attorney
20 representing David Wayne Spence; on any witness inter-
21 views I would've taken notes, and those notes would be
22 in the file. That's what I was talking about.

23 Q Are those the notes you asked for?

24 A Yes, it is.

25 Q Those are the notes they would not give you?

1 A That's correct.

2 Q I'm going to hand you some of the documents from the
3 Court's file on that case. That way perhaps that might
4 refresh your recollection relative to dates.

5 Can you tell me, first of all, when you first
6 received the file approximately, Lynnman?

7 A It would have been sometime in November. According to
8 the -- last Thursday or Friday I came up and looked
9 through the transcript from the pre-trial motions that
10 were heard by this Court. And I made some comment --
11 we were at a hearing on Monday, and I said that I had
12 received the file the prior Friday. So if you went
13 back and looked in those records, that could tell you
14 exactly when I had received the file. I don't remember
15 offhand when it was.

16 Q All right. Lynnman, who handled the file before you had
17 it?

18 A John Segrest, who was at that time employed as an
19 Assistant Criminal District Attorney.

20 Q When you first received the file, Lynnman, was there an
21 open offer, plea bargain offer, in the file?

22 A I truly do not remember.

23 Q Okay. Were you made aware sometime after you had gotten
24 the file about a plea bargain that was on the table?

25 A May I explain to the Court?

1 O Sure.

2 A I remember that John Segrest had made an offer of seven
3 years to the attorney representing Gilbert Melendez,
4 and I did honor that plea negotiation.

5 I don't remember if the same plea had been offered
6 to David Spence's lawyer or not. There is no way for
7 me to know unless I look in the file.

8 I know at some point, though, I did have discussions
9 with Skip Reaves, who was representing Spence.

10 Q In the Aggravated Sexual Abuse --

11 A In the Aggravated Sexual Abuse case concerning a seven-
12 year plea.

13 Q At that time were your conversations regarding whether
14 or not you would offer or honor a seven-year plea?

15 A Right.

16 Q Would you have honored a seven-year plea at that time?

17 A Right.

18 Q Now, when we talk about a seven-year plea, I understand
19 that there was some conversation whether it would be
20 for Aggravated Sexual Abuse or Aggravated Assault. Do
21 you recall anything about that?

22 A That's correct. Skip Reaves, Spence's attorney, asked
23 if I would let or agree to a plea of seven years to
24 Aggravated Assault instead of Sexual Abuse.

25 Again, I would really need to look at my file. I

1 feel like -- I remember that there was some discussion
2 about it. But without looking at the file, I could not
3 swear that I had agreed to it.

4 Q Okay. Can you tell me, if you know, why was there any
5 discussion whether it was going to be Aggravated Sexual
6 Abuse or -- a plea for Aggravated Sexual Abuse or just
7 a plea for Aggravated Assault?

8 A Okay. Spence had -- it was my understanding, had not
9 actually engaged in any sexual contact with the victim.

10 Q Okay.

11 A But that he had cut the victim with a knife.

12 Q All right. So it was his position that he did not
13 actually do anything sexual in the assault? Is that
14 correct?

15 A Right.

16 Q Now, Gilbert Melendez pled to Aggravated Sexual Abuse,
17 though; is that correct?

18 A Right. That's what my memory is.

19 Q And he got seven years?

20 A Right. And he had at least one prior felony conviction;
21 is that correct?

22 A Russ, I don't remember.

23 Q Okay. Were you going to try the case against David Wayne
24 Spence?

25 A Yes, I was.

- 1 O Did you make any effort at all to make sure that you
2 were the one that tried that case?
- 3 A Yes.
- 4 O What did you do?
- 5 A Well, the case against Spence and the case against
6 Robert Cruz Garcia were scheduled to go to trial on the
7 same day. Originally they were set to go to trial on
8 the same day. In both cases -- well, both cases were
9 continued. And I asked Judge Allen if he would schedule
10 the cases on different days when they were reset,
11 because I did want to try both cases.
- 12 O Was anybody going to assist you in the trial of those
13 cases?
- 14 A Yes.
- 15 Q Who was that?
- 16 A The District Attorney, Vic Feazell.
- 17 O Okay. Were both of the cases set on different dates
18 so you could try both of them?
- 19 A No.
- 20 Q Why?
- 21 A I don't know.
- 22 Q Okay. When did you first learn of the trial settings?
- 23 A Without my file, it would have been prior to whenever
24 they were actually tried.
- 25 Q Can you tell me approximately, without going into the

1 dates -- tell me approximately how much before that you
2 found out that they were both set for trial at the same
3 time?

4 A I don't remember. Maybe several weeks. I really don't
5 remember.

6 Q Okay.

7 A That would be a pure guess.

8 Q Can you tell anything by looking at the subpoena list
9 and dates on that, Lynnann?

10 A This was my application for subpoenas to be issued in
11 the Aggravated Sexual Abuse case. It was filed on
12 February 9th to be tried on February 14th.

13 Q Okay. Did you prepare for the trial so that you would
14 actually be one of the attorneys trying David Wayne
15 Spence?

16 A Yes.

17 Q When did you find out you were not going to try David
18 Wayne Spence, approximately?

19 A Roughly -- I don't know. I just don't know without
20 looking at my files.

21 Q Can you tell me approximately how long it was before the
22 trial was set to take place that you found out you weren't
23 going to trial?

24 A As soon as I found out that they were both set, I would
25 have probably notified Vic --

1 Q Vic Feazell, the District Attorney?

2 A Right. -- that they had both again been set on the
3 same day.

4 Q Okay. Without your notes can you tell what happened as
5 a result of that notification?

6 A I tried Garcia and Vic tried Spence.

7 Q Okay. Was any reason given to you why you couldn't be
8 involved in the trial of Spence?

9 A No.

10 Q Okay. In the proposed trial of Spence, were you going
11 to be lead chair or second chair?

12 A Vic was going to do voir dire.

13 Q Was he going to do anything else?

14 A I don't remember which one of us was going to question
15 Darvin Pack. We interviewed Jim Guitilla together.

16 Q Jim Guitilla was one of the witnesses?

17 A Right. I don't know without looking at it. I probably
18 had a list dividing up as to who would be doing what.
19 But that would be in the file that the District
20 Attorney's Office has.

21 Q Okay. Then sometime immediately -- well, prior to trial
22 you found out you were not going to try it, but instead
23 Vic was going to try it?

24 A Right.

25 Q Was there any problem with the indictment in that case

1 to start out with?

2 A Yes.

3 Q What was the problem with the indictment?

4 A It alleged that --

5 THE COURT: How does what happened in reference
6 to the indictment in that case have anything to do with
7 this?

8 MR. HUNT: Your Honor, again, we believe that
9 this goes into the nature of harm, the harm to the
10 Defendant, the reason for the harm to the Defendant,
11 and how the Defendant was harmed by the delay of
12 Speedy Trial.

13 THE COURT: I'm not going to allow that ques-
14 tion. I can't see that it's got any materiality to this
15 lawsuit.

16 MR. HUNT: Your Honor, I object to your refusal
17 to answer the question, and would ask if you would let
18 us to go into the answer in order to perfect our record.

19 THE COURT: All right.

20 MR. HUNT: I'm sorry. I didn't hear.

21 THE COURT: All right.

22 BY MR. HUNT:

23 Q Go ahead and finish answering the question.

24 A It alleged that -- I remember that Gilbert Melendez's
25 name appeared or Spence's name appeared where Gilbert

1 Melendez's should have been.

2 Q Okay. So it said that the sexual involvement had to do
3 with David Wayne Spence?

4 A Right. I believe that's correct.

5 Q When did you first learn that the indictment was faulty,
6 Lynnann?

7 A It was either -- it was around midnight between Saturday
8 and Sunday prior to the original setting.

9 Q Okay. Which would have been on a Monday?

10 A Right.

11 Q How did you learn that the indictment was faulty?

12 A Well, wait. Let me back up. Somebody got in touch with
13 me and said Vic was looking for me.

14 Q Okay.

15 A Sometime Sunday morning I talked to Vic, and that's when
16 he told me, I think.

17 Q He told you that the indictment was bad?

18 A Yes.

19 Q Okay. Did he say what he was going to do to correct the
20 indictment?

21 A Well, I don't know how it really came about. I knew
22 that --

23 MR. BUTLER: Judge, again I'm going to have to
24 object. None of this is relevant to the motion before
25 the Court.

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THE COURT: I sustain the objection.

MR. BUTLER: We request an instruction to go on to something relevant.

MR. HUNT: Your Honor, I object to the ruling of the Court and ask that the question would be asked and answered provided for the purpose of the record only.

THE COURT: I'm not going to do it. I can't see any materiality whatsoever.

MR. HUNT: Your Honor, what I intended to go into was the reason for continuance, which again shows harm to David Wayne Spence. Again I would ask purusant to Article 40.09 of the Code of Criminal Procedure that you let us perfect our record.

THE COURT: Ya'll are getting to perfect everything that I think is material. I'm not going to allow the question.

MR. HUNT: All right. I'll object to your ruling on that, Your Honor.

THE COURT: All right, sir.

MR. BUTLER: May I take the witness on voir dire, Your Honor?

THE COURT: Yes, sir.

VOIR DIRE EXAMINATION

BY MR. BUTLER:

Q Mrs. Kendrick, did you ever in your duty as Assistant

1 District Attorney for this county have assigned to you
2 a case, the instant case of the lake murders with David
3 Wayne Spence or anyone else as the Defendant?

4 A No.

5 O Did you then or do you now have any knowledge of the
6 facts of the lake murder case tending to show the guilt
7 of David Wayne Spence or anyone else?

8 A Ned, I've talked to Ramon Salinas and Truman Simons --

9 Q As far as --

10 A -- when I was in the District Attorney's Office.

11 O Okay. Do you have knowledge of any facts that would
12 tend to show the guilt or innocence of David Wayne
13 Spence of your own knowledge? Something that's not
14 hearsay.

15 A No.

16 Q Were you employed as an Assistant District Attorney
17 when David Wayne Spence and Anthony Melendez and
18 Gilbert Melendez and Muneer Mohammad Deeb were indicted
19 for this offense?

20 A No.

21 Q At any time was this particular case ever assigned to
22 you --

23 A No.

24 O -- when you were employed.

25 At any time did you participate directly in the

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investigation of this case?

A I talked to the officers investigating the case. I had discussions with -- I remember sitting in Dennis Green's office, who was at the time the First Assistant, and during discussions with the officers who were investigating the case. But as far as me going out and investigating the case, no, I was not.

Q And it was never assigned to you as a case for you to work on specifically?

A Right.

MR. BUTLER: Your Honor, we would renew our motion.

MR. HUNT: Your Honor, I have three more questions, if you don't mind.

THE COURT: All right.

DIRECT EXAMINATION (CONTINUED)

BY MR. HUNT:

Q Lynnann, when were you first made aware that David Wayne Spence was a suspect in the lake murders, approximately, in relation to --

A Prior to trial.

Q Prior to the trial of the Aggravated Sexual Abuse?

A Right.

Q Okay. Were you made aware of that through your discussions with someone in the District Attorney's Office?

1 A That's where I would have had to have gotten it.

2 MR. BUTLER: Objection.

3 THE COURT: Sustained.

4 BY MR. HUNT:

5 Q Did you specifically talk about David Wayne Spence or
6 hear David Wayne Spence discussed as the suspect in the
7 lake murders, or one of the major suspects in the lake
8 murders, prior to the Ag Sex Abuse case?

9 MR. BUTLER: Same objection, Your Honor.

10 THE COURT: Sustained.

11 MR. FULLER: What is his legal basis of the
12 objection and the Court's ruling?

13 THE COURT: It's hearsay.

14 MR. HUNT: Your Honor, I'm going to object to
15 the Court providing the State with the objections that
16 he needs to be making, and I would ask that you would
17 require the State to make specific legal objections.

18 THE COURT: All right. I'm not going to allow
19 the question.

20 MR. HUNT: Lynnan, did you talk specifically
21 with Ramon Salinas about David Wayne Spence as being one
22 of the people that they suspected in the lake murders
23 prior to the Aggravated Sexual Abuse case?

24 MR. BUTLER: Your Honor, we object to that as
25 being work product. She was employed by the District

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Attorney's Office at that time.

THE COURT: Sustained.

MR. HUNT: Your Honor, I would object to the Court's ruling based on the fact that that goes to the intent of the District Attorney as relates specifically to the Speedy Trial Act, the question that we are here for; and I would ask that the Court permit me to go into the questioning in order to perfect the record.

THE COURT: Go ahead.

BY MR. HUNT:

Q Lynnan, you can answer the question.

A Russ, I knew that he was a suspect.

Q Okay.

A As to when exactly I found that out, I do not know.

I don't remember when specific conversations with Ramon, with Truman and Dennis, and other people up at the District Attorney's Office was.

I did know, though, that he was a suspect before the Aggravated Sexual Abuse case was tried. I may have had conversations after the case was tried. But my memory is that most of them -- most of my conversations would have been before the sexual abuse case was tried.

Q And would you file that the District Attorney's Office has refused to let you have -- would that refresh your recollection so that you would be able to testify as to