

1 (Whereupon, all parties went into the
2 (courtroom, and out of the presence
3 (and hearing of the jury the following
4 (proceedings were had, to-wit:

5 THE COURT: All right, now, I want the record
6 to reflect we're outside the presence and hearing of the
7 jury.

8 And the State has certain evidence that's going
9 to be offered first in the presence of the Court outside
10 the presence and hearing of the jury, so that the Court
11 can rule upon the admissibility.

12 Call your first witness.

13 MR. FEAZELL: Dr. James Jolliff.

14 STATE'S EVIDENCE

15 THE COURT: Dr. Jolliff, if you will just come
16 right around here.

17 Raise your right hand.

18 (Whereupon, the witness was sworn.

19 THE COURT: Have a seat, sir.

20 DR. JAMES JOLLIFF

21 called as a witness on behalf of the State of Texas, and
22 having been first sworn, testified as follows, to-wit:

23 DIRECT EXAMINATION
24 (OUT OF THE PRESENCE OF THE JURY)

25 BY MR. FEAZELL:

Q For the record, you are Dr. James Jolliff?

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A That is correct.

Q You are a psychiatrist here in the City of Waco?

A Yes.

Q I believe you saw David Spence on or about April 7, 1983?

A Yes.

Q And conducted an interview with him?

A Yes.

Q And before conducting the interview, you gave Mr. Spence his rights?

A Yes.

Q And prior to that, he had also been read his rights by a Justice of the Peace, I believe, Judge John Cabaniss?

A I had been informed that that had been done, also.

Q Okay. And based upon your interview with Mr. Spence, you came to certain conclusions, is that not correct?

A Yes.

Q Okay.

(Whereupon, the instruments herein-
(after described were identified as
(State's Exhibits 95 and 96.

MR. FEAZELL: Your Honor, for the purposes of this hearing only, we offer State's Exhibits 95 and 96, which are the statutory warnings that were given to Mr. Spence prior to talking to Dr. Jolliff, dated April 7, 1983, and also warning him that any statements made to a

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2 psychiatrist representing the State of Texas, can and
3 will be used against him. "I have previously given this
4 subject a regular statutory warning," signed by Judge
5 John Cabaniss. And those statutory warnings are set out
6 on the sheets.

7 And another sheet, number 95, is also giving
8 him his rights, and it was signed by David Spence. He
9 was given his rights by Truman Simons, concerning the
10 same.

11 MR. HUNT: Your Honor, we have no objection,
12 during this hearing, to the admission of 95 and 96, Your
13 Honor.

14 THE COURT: All right.

15 Then, for the purpose of this hearing, then 95
16 and 96 are admitted.

17 (Whereupon, the instruments above
18 (referred to were received in evidence
19 (out of the presence of the jury as
20 (State's Exhibits 95 and 96, and
21 (copies of the same are included in
22 (this record at the pages shown in the
23 (Index hereof.

24 MR. FEAZELL: That's all, Your Honor.

25 MR. HUNT: We have several questions, Your
Honor.

THE COURT: All right, sir.

CROSS EXAMINATION
(OUT OF THE PRESENCE OF THE JURY)

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4 BY MR. HUNT:

5 Q Dr. Jolliff, when was the first time you were notified
6 that you were going to be a witness in this case?

7 A I'm hesitating, because I don't remember the exact date.
8 It would have been last week.

9 Q Okay. And, in fact, when you talked to Hayes Fuller and
10 myself, at one time, you told us that you were not
11 expecting to be a witness in this case, is that correct?

12 A I don't recall saying I wasn't expected to. I did not
13 expect to. I had not been told then. I really had no
14 contact with anyone from the investigating branch of this
15 procedure since April 7th.

16 Q Okay.

17 A Of '83.

18 Q Now, on State's 96, Dr. Jolliff, it indicates that you
19 were a psychiatrist representing the State, is that
20 correct?

21 A I guess that is the way it would be stated. I was
22 pleased that I was asked to give an opinion, without any
23 prejudice implied. I was not asked to find any one thing
24 in particular.

25 Q All right. Were you aware, during the time of that

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psychiatric examination, or after that psychiatric examination, that the Sheriff's Department was going to tape record, or listen to that conversation with David Wayne Spence?

A I was aware that it was intended.

O Okay. How were you made aware that it was intended?

A I was told by the investigators.

O Okay. And who was that?

A Mr. Simons, Mr. Weyenberg was there, and Dennis...

O Baier? Dennis Baier?

A Baier. Yes, sir.

O Were you told that before or after the interview?

A Before.

O So, that you knew during the interview, that the interview was going to be tape recorded or listened to in another room?

A Listened to, as I understood.

O Okay. Listened to by people who were peace officers of the State, is that correct?

A Yes.

O Okay. In fact, was that done?

A It was attempted. There was a mechanical failure and they were not able to listen.

O Okay. And you were aware of that before it started?

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A No. I had the thought I was being listened to during the interview.

O I'm sorry.

A I was not aware until after the interview that there was a mechanical failure.

O Okay. So, during the interview, you thought that you were being listened to by them?

A Yes.

O Did David Spence know that?

A Not as far as I know.

O Okay. So, no one informed David Spence that he was going to be listened to by agents of the State listening in another room?

A Not that I'm aware of.

O Okay. During the time that you talked to David Spence, did he tell you about prior actions, actions in the past?

A Yes.

O Okay. And is that what you based your opinion on, when you rendered your opinion in this case?

A Partly his description of what had occurred in the past, and partly what is called the "Mental Status Examination," my evaluation of the kind of person he seemed to be, as he related his history.

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Q All right. You were not informed, prior to that interview, that David Spence has talked for long hours with Truman Simons about the possibility of David Spence having a split personality, is that correct?

A No. That's not correct. I did know from Mr. Simons that he had talked -- I didn't know about ours -- but I knew that that had been discussed. When I was asked to see him, it was to evaluate whether or not Mr. Spence had a split personality, and if not that, what else? Was he, indeed, responsible for his actions, or was he psychotic, crazy, in lay terms, that sort of thing? But I was aware of what was being considered as a possibility was a split personality.

Q Okay. How were you made aware of that?

A Mr. Simons told me about it in a lengthy conversation with him prior to my interview with Mr. Spence.

Q Tell me what Truman Simons told you about the split personality. Did he tell you that David thought he had a split personality? Did he tell you that they were considering that? How did the subject come up?

A The way that he presented it -- and, again, I was pleased with the way it was presented to me -- was, that they really wanted my opinion. And I was not given any prejudice ahead of time by Mr. Baier or Mr. Simons about what

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2 they thought or what David thought. It was, "Doctor, I
3 would like for you to see him, for your opinion." I
4 thought that that had been handled quite professionally.
5 Q Your opinion relative to David having a split personality?

6 A Or any other psychiatric disorder.

7 Q Okay. Tell me what they said relative to their talking
8 with David Spence about having a split personality.

9 A As I understood it, they had talked with him about this
10 a good deal. I don't know whether he had complained to
11 them about it. Again, I take it, you do not want me to
12 say what he said to me. But part of my answer to that
13 question would be based on my interview with David. I
14 really thought, from what he said, that he had talked to
15 them about, "Do I have a split personality?" Because a
16 number of his questions to me were, "Do I have a mental
17 illness? Is something wrong? Am I crazy? Am I alcoholic?"
18 There were many questions along those lines. So, I had
19 assumed that he had asked them the same sort of questions.
20 All right. Was there ever any indication given, either
21 by Truman Simons or David Spence, regarding who first
22 brought up the subject of a split personality?

23 A I do not know that.

24 Q Okay. It is true, isn't it, that during this interview,
25 David Spence never told you that he did the lake murders,

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is that correct?

A That is correct.

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

MR. FEAZELL: That's all, Judge.

EXAMINATION
(OUT OF THE PRESENCE OF THE JURY)

BY THE COURT:

O I've got two or three questions I want to ask you. You said that he asked you that you -- that he talked to you for the -- and was warned by you, is that correct?

A Yes.

O And what did you warn him?

A My statement was, how do you do, David? Or hello, David. And told him my name, shook his hand. And then said, "I need to tell you first thing, that anything you say may be used against you in a court of law," quotes, end quotes.

O And did he appear to understand what you had told him?

A Yes.

O And did you tell him that he was entitled to an attorney to be present at that time?

A I was unaware of that. I did not tell him.

O You did not say anything?

A No.

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O Your warning consisted of the fact that you told him, anything that he said might be used, or would be used in evidence against him?

A "Could be used against him in a court of law," was my exact phrase. I do remember that.

O All right, sir. And he appeared to understand it?

A Yes.

THE COURT: All right. Thank you.

REDIRECT EXAMINATION
(OUT OF THE PRESENCE OF THE JURY)

BY MR. FEAZELL:

O Doctor, you testified earlier that you were aware that David had previously been warned by a Justice of the Peace?

A Yes.

MR. FEAZELL: Your Honor, may we show to the Court, State's Exhibits, I believe it is 95 and 96?

FURTHER EXAMINATION
(OUT OF THE PRESENCE OF THE JURY)

BY THE COURT:

O And, Doctor, after you told Mr. Spence that any statement that he made could and probably would be used against him in any criminal trial, then did he voluntarily go ahead and talk to you?

A Immediately, quite pleasantly and cooperative.

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THE COURT: Any other questions?

MR. HUNT: Just a couple, Your Honor.

RE CROSS EXAMINATION
(OUT OF THE PRESENCE OF THE JURY)

BY MR. HUNT:

Q Dr. Jolliff, did David understand that this was a session for evaluation or assistance? What was his understanding of the session?

A I assumed he understood it was for evaluation. I do think that he wanted help. He was approaching it as if he thought he was sick and needed help.

Q Okay. And at no time did you explain or anybody else explain, that the conversation was going to be listened in on by the police officers that you just described, is that right?

A That's correct.

MR. HUNT: That's all the questions we have, Your Honor.

FURTHER REDIRECT EXAMINATION
(OUT OF THE PRESENCE OF THE JURY)

BY MR. FEAZELL:

Q It wasn't listened in on, though, was it, Doctor?

A No.

MR. FEAZELL: Okay. That's all.

One more question.

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2 BY MR. FEAZELL:

3 Q Did you conduct your interview, Doctor, any differently
4 than you would have conducted it, if you had known for a
5 fact no one was listening?

6 A No. The fact that someone might have been listening, did
7 not affect anything.

8 MR. FEAZELL: All right.

9 That's all.

10 THE COURT: Let me ask you this, I'd like to
11 know what you intend to offer in front of the jury from
12 the witness, also?

13 MR. FEAZELL: Substantially, Your Honor, the
14 information contained in the letter. And the Defense has
15 been provided a copy of the letter. They do have it in
16 their possession and in their file.

17 THE COURT: Let me see ya'll a minute.

18 (Whereupon, Counsel for the State,
19 (Counsel for the Defense, the Court
20 (and the Defendant went into the
21 (Court's Chambers and returned a
22 (short time later, and the trial
23 (continued as follows, to-wit:

24 MR. FEAZELL: Your Honor, may this witness be
25 excused right now?

THE COURT: Yes. You can be excused right now.

MR. BUTLER: Would you mark that.

1 (Whereupon, the instrument herein-
2 (after described was identified as
3 (State's Exhibit No, 97.

4 THE COURT: All right.

5 It's my understanding that the next evidence
6 which the State seeks to offer is going to be the pen
7 pack, is that correct?

8 MR. FEAZELL: Yes, sir.

9 MR. BUTLER: Then we have two reputation
10 witnesses, Judge, that we could do outside the presence.
11 They will be very short, if you want to go ahead and do
12 them outside of the presence first. It might save some
13 time.

14 THE COURT: All right.

15 I assume -- just so the record will reflect it
16 -- that the next witness that you're going to -- or would
17 anticipate to get your pen pack in, is to call Dennis
18 Kidwell, who would identify the fingerprints --

19 MR. FEAZELL: Yes, sir,

20 THE COURT: -- with a known print. And then
21 seek to offer it?

22 MR. BUTLER: That's correct.

23 THE COURT: Is there any -- and I can't see any
24 use in calling Dennis Kidwell outside the presence of the
25 jury.

MR. HUNT: No, Your Honor. I don't guess

1 there's any... We know what he's going to testify to.
2 We purely would object, on the basis that we don't believe
3 the pen pack itself is admissible.

4 THE COURT: All right, And I have examined the
5 pen pack itself, And as far as any showing on its face
6 that it is inadmissible, I don't see it. I overrule that
7 objection.

8 MR. FULLER: Your Honor, we would also restate
9 the objections which we previously stated to the Court,
10 regarding the Motion to Exclude this record of prior
11 convictions, and reurge an objection to the Court's
12 ruling, at this time, to each and every one of those objec-
13 tions.

14 THE COURT: All right.

15 And I overrule them.

16 Now, you say you have got two or three reputa-
17 tion?

18 MR. BUTLER: Two.

19 MR. FEAZELL: Two more short ones that we could
20 go ahead and take up.

21 THE COURT: All right.

22 Well, let's go ahead and do those.

23 I want the record still to reflect that we're
24 outside the presence of the jury.

25 Ma'am, if you will come right up here and raise