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MR. REAVES: We have nothing further, Your Honor.

THE COURT: May Mr. Guthrie be excused, gentlemen?

MR. REAVES: No objection.

THE COURT: All right, Mr. Guthrie, you are finally excused. You can go back to Waco or whatever you need to.

(Witness excused.)

(Brief recess.)

MR. REAVES: We call as our next witness Calvin Nesbit.

C A L V I N N E S B I T, called as a witness on behalf of the Defendant, having been duly sworn, testified as follows:

DIRECT EXAMINATION

QUESTIONS BY MR. REAVES:

Q Mr. Nesbit, if you would, please, state your name for the record.

A Calvin Nesbit.

Q And how do you spell your last name?

A N-e-s-b-i-t.

Q Okay, where do you live, Mr. Nesbit?

A In Waco.

Q Okay, and what do you do for a living?

22-1

1 A Mechanic work, and I do roofing.

2 Q Okay, both roofing and mechanic work. Okay,

3 Mr. Nesbit, do you know a gentleman named Gilbert

4 Melendez?

5 A I know of him -- pretty well, not too well.

6 Q Okay, did you know Mr. Melendez back in 1982 -- the

7 summer of 1982?

8 A Yes.

9 Q Okay, how did you come to meet him?

10 A He brought his truck out to my house, and I met him

11 through Dave Cook.

12 Q Dave Cook -- is that a friend of yours?

13 A (Nodded.)

14 Q What kind of truck did Mr. Melendez have?

15 A It was a Ford truck.

16 Q Okay, do you know what year?

17 A No, I don't.

18 Q Older or new?

19 A It was an old one.

20 Q Okay, what was the reason Mr. Melendez brought his

21 truck out to you?

22 A So I could work on it.

23 Q Okay, in your mechanic work?

24 A (Nodded.)

25 Q Okay, how did Mr. Melendez bring his truck to you?

- 1 Did he drive it, or was it towed out there?
- 2 A No, him and Dave Cook pulled it out there.
- 3 Q Okay, was it capable of being driven, at that time?
- 4 A No.
- 5 Q Okay, what was the matter with it?
- 6 A The starter was out on it and carburetor was messed
7 up on it and points was bad in it and fuel pump was
8 out.
- 9 Q Okay, was it in a running condition? Could you get
10 it going?
- 11 A Not very easy.
- 12 Q Okay, do you recall when it was that he brought the
13 truck to you?
- 14 A It was -- I can't remember the date, but it stayed
15 at my house for about three months.
- 16 Q Okay, do you recall what time period it stayed at
17 your house? Do you have referenced any time that
18 you can tie it to?
- 19 A Well, about two months before July and all through
20 July, just about.
- 21 Q Okay, how can you -- how can you tie it to that
22 time period?
- 23 A Well, I usually have a family barbecue every 4th
24 of July.
- 25 Q Okay, and did you have one the 4th of July, 1982?

- 1 A Yes, sir.
- 2 Q Okay, was Mr. Melendez' truck there on that day?
- 3 A Yes, it was there.
- 4 Q Okay, did it stay there -- how long did it stay
- 5 there after that date?
- 6 A Until along towards the last of July.
- 7 Q Okay, what kind of condition was the truck in on the
- 8 4th of July?
- 9 A It wasn't running.
- 10 Q Okay.
- 11 A It had three flats on it.
- 12 Q Three flats? Still in the same condition as it was
- 13 when it was brought to you?
- 14 A (Nodded.)
- 15 Q You had not been able to do any work on it?
- 16 A No, he hadn't brought me no money to get the parts
- 17 and stuff.
- 18 Q Okay, did Mr. Melendez ever come, to your knowledge,
- 19 and pick the truck up?
- 20 A No.
- 21 Q Did he come pick it up and bring it back at some
- 22 later time?
- 23 A No.
- 24 Q When was the last time you saw the truck?
- 25 A It was about, oh, third or fourth week of July,

1 I guess.

2 Q Okay, and what happened to the truck on the fourth
3 week of July?

4 A Well, we fixed it.

5 Q Who fixed it?

6 A I did. I fixed it first, and then his stepdaddy
7 came out there and fixed the tires and everything
8 on it.

9 Q Okay, who drove the truck off?

10 A I don't know. I didn't see them drive it off.

11 Q Was that the last -- did -- was Mr. Melendez out
12 there at the time?

13 A (Nodded.)

14 Q Is that the last time you saw the truck?

15 A Yes.

16 Q Okay, it was not brought back to you at some
17 later date to be worked on?

18 A No.

19 MR. REAVES: Okay, Your Honor,
20 I don't think we have any further questions.

21 THE COURT: All right.

22 CROSS EXAMINATION

23 QUESTIONS BY MR. FEAZELL:

24 Q Mr. Nesbit, you live in Bosqueville, don't you?

25 A Yes, sir.

2 5

1 Q That is where you were living back in July of 1982?

2 A (Nodded.)

3 Q In July of 1982, that has been over -- a little

4 over three years, hasn't it?

5 A Yes.

6 Q A long time ago.

7 A Quite a while.

8 Q I don't believe that you have given any kind of

9 written statement or anything back around the time

10 that this happened, did you?

11 A No, sir.

12 Q All right, hadn't really had a whole lot of reason

13 or a lot of occasion to have to think about it,

14 have you?

15 A No.

16 Q Okay. Now, you just testified that Gilbert's stepdad

17 came out and fixed the truck and took it away toward

18 the end of July. Now, I am sure that you wouldn't

19 want to mislead the jury when you tell them in July

20 because that is the best you remember, isn't it?

21 A Yes.

22 Q But now, as a matter of fact, at the time it was

23 taken away from your place out in Bosqueville, that

24 was after Gilbert had already been put in jail,

25 wasn't it?

1 A No.

2 Q Now, Gilbert wasn't out there with him when the
3 truck was taken away.

4 A No, but his stepdaddy is the one that got it, I
5 think.

6 Q Yes, sir, and that was after Gilbert Melendez was
7 in the county jail.

8 A Maybe so. I don't know.

9 Q Okay, but you didn't see Gilbert out there with his
10 stepdaddy taking it away. That's the point.

11 A No, I wasn't there when he had taken it.

12 Q Okay. Now, if it has already been testified to
13 by Gilbert Melendez that the truck was taken away
14 sometime in September or that he went to jail in
15 September and it was after he was in jail, you
16 wouldn't have any reason to dispute that, would
17 you?

18 A It was in July when he had taken it -- last part of
19 July.

20 Q How is it that you are so positive that it was the
21 last part of July and not sometime in September?

22 A Because I moved to Fort Worth in the last part of
23 July.

24 Q Okay, I thought you said you were still living at
25 Bosqueville.

- 1 A I still live there.
- 2 Q All right, when did you come back from Fort Worth?
- 3 A About six months later.
- 4 Q Okay. Now, sir, think real hard because it is
- 5 important, but isn't it true, Mr. Nesbit, that
- 6 Mr. Melendez' truck was brought out to your place
- 7 twice -- on two different occasions?
- 8 A No, just once.
- 9 Q How was it brought out there?
- 10 A It was towed out there with another pickup.
- 11 Q Pulled out there by another pickup? It wasn't up
- 12 on a trailer or anything like that?
- 13 A No.
- 14 Q Now, you are trying to tell the jury that it was
- 15 pulled out there on three flat tires?
- 16 A No, the tires went flat after it was sitting there
- 17 for awhile.
- 18 Q Sometime after it was sitting there. Now, do you
- 19 recall when Gilbert came out to try to fix the
- 20 ignition on it and he bought the wrong ignition and
- 21 got the wires crossed on it?
- 22 A (Nodded.)
- 23 Q Now, it was running up until that time, wasn't it?
- 24 A No.
- 25 Q Did you ever try to start it?

- 1 A Yes, I tried to start it, but it wouldn't start.
- 2 Q Okay, but that was after Gilbert had tried to put
- 3 the ignition switch on it, right?
- 4 A That was before.
- 5 Q Do you know where that truck is now?
- 6 A No, I sure don't.
- 7 Q Mr. Nesbit, do you remember how many times Gilbert
- 8 came out and worked on the truck?
- 9 A One time.
- 10 Q How many times was it, Mr. Nesbit, that you might
- 11 have been off working on your other job, working
- 12 on the roofs or maybe off somewhere else and you
- 13 didn't know that Gilbert had been out there working
- 14 on it?
- 15 A Well, it never was moved from there because it was
- 16 still sitting in the same place.
- 17 Q Right, but that is not what I am asking you. I am
- 18 asking you, sir, Gilbert could have come out there
- 19 without you knowing it. Isn't that true?
- 20 A He could have but --
- 21 Q You didn't have it locked up in a garage or anything
- 22 like that, did you?
- 23 A No.
- 24 Q Just had it sitting out under a tree in a field by
- 25 your house?

1 A Yes.

2 Q Okay, you know David Spence, don't you?

3 A No, sir.

4 Q You never had a conversation with David Spence,
5 the man sitting here?

6 A No.

7 Q You don't remember Gilbert bringing him out to your
8 place with him one time?

9 A He might have with Dave Cook and them. I don't
10 know.

11 MR. FEAZELL: Okay, we will
12 pass the witness.

13 REDIRECT EXAMINATION

14 QUESTIONS BY MR. REAVES:

15 Q Mr. Nesbit, you told Mr. Feazell you had never
16 given a written statement regarding this. Is that
17 correct?

18 A That is correct.

19 Q When was the first time anybody came and talked to
20 you about it?

21 A Two weeks ago, I think, it was.

22 Q Okay. Now, once Mr. Melendez brought his truck
23 there to you, it never -- he never took it away
24 and brought it back a couple of days later?

25 A No.

1 Q And it wasn't running because of the problems that
2 you described?

3 A That is right.

4 Q What was the main problem with it that kept it
5 from running?

6 A The fuel pump, really, and the carburetor.

7 MR. REAVES: Okay, no further
8 questions, Your Honor.

9 RECROSS EXAMINATION

10 QUESTIONS BY MR. FEAZELL:

11 Q Gilbert never brought you the money to fix it,
12 did he?

13 A No.

14 Q And you being a man who works as a mechanic for
15 a living, you wouldn't work on somebody's automobile
16 unless they paid you for it unless they were a
17 pretty close friend. Isn't that right?

18 A Well, I was doing it for -- to be a friend, you know.

19 Q I understand, but I am saying, he didn't bring you
20 the money. Isn't that right?

21 A That is right.

22 Q And since he didn't bring you the money, you didn't
23 actually do the work on it, did you?

24 A That is right.

25 MR. FEAZELL: That is all.

1 MR. REAVES: We don't have any
2 further questions, Your Honor.

3 THE COURT: May he be excused?

4 MR. FEAZELL: Yes, sir.

5 MR. REAVES: Defense has no
6 objection.

7 THE COURT: Thank you, sir.
8 You can go back to Waco or Fort Worth or wherever.

9 (Witness excused.)

10 MR. REAVES: Judge, we have a
11 matter we need to take up outside the presence of
12 the jury.

13 THE COURT: How long do you
14 need?

15 MR. REAVES: About 10 minutes.

16 THE COURT: All right.

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

21 MR. REAVES: Your Honor, at
22 this time, we have called all the witnesses we
23 intend on calling, both Mr. Vance and myself.

24 Mr. Spence has a motion he
25 would like to make on his own behalf.

THE COURT: All right, proceed.

1 THE DEFENDANT: Your Honor, at
2 this time, I would like to make a motion for a
3 mistrial on the third ground of my motion to dismiss
4 counsel that I took up before the trial started.
5 Would you like me to repeat that?

6 THE COURT: Yes, sir.

7 THE DEFENDANT: That Mr. Vance
8 and Mr. Reaves refused to offer evidence that I want
9 offered to the Court, to-wit: That Ronnie Lee
10 Breiton reportedly came home the morning of July
11 the 14th with his clothes covered with blood. Also,
12 that he told his stepmother that he had been out
13 to Speegleville Park.

14 This is testimony from his
15 stepmother. I also --

16 MR. FEAZELL: Objection,
17 Your Honor. That is not testimony from his
18 stepmother. The Defendant is misquoting any prior
19 evidence.

20 THE DEFENDANT: Your Honor, I
21 think --

22 THE COURT: Well, it is in the
23 form of a motion. It is not testimony in any
24 event, but go ahead and recite your motion.

25 THE DEFENDANT: Also, that his

2. 3
1 wife cashed paychecks for the girl victim, Jill
2 Montgomery, on the evening of July 13th, the
3 alleged date of the offense. His wife being Joyce
4 Breiton, and that she also reportedly has told
5 someone that she seen him and the bloody clothes.

6 She refuses to come forward
7 with any information until her husband is securely
8 behind bars. Also, that they associated --

9 MR. FEAZELL: Your Honor, we
10 would object to him going on further with this on
11 the record. The motion is in writing, and the
12 things he is saying -- I don't know if that motion
13 is under oath or not, but it is not within his
14 personal knowledge, and there is absolutely nothing
15 to substantiate it.

16 THE DEFENDANT: Your Honor, this
17 is offered -- the first motion has done been put
18 into the record.

19 THE COURT: Have you already
20 filed it, Mr. Spence? Is this the one you filed
21 back at the pretrial?

22 MR. FEAZELL: It is the same
23 one, Your Honor.

24 THE COURT: All right, I am
25 familiar with it then. I thought you had something

1 new or an amendment.

2 THE DEFENDANT: No, I told you,
3 Your Honor, that it was the third charge that I
4 put on there and asked if you wanted me to reread
5 it.

6 THE COURT: All right, no, I
7 have read that motion. Now, what -- did you want
8 to renew another one? All right, that motion right
9 there is denied, but what was the other one about
10 your counsel -- a new one you said you had?

11 THE DEFENDANT: No, I said that
12 I wanted to make this a motion for mistrial with
13 the third ground for my motion to dismiss counsel.

14 THE COURT: All right.

15 THE DEFENDANT: I would also
16 like to attach this letter to this motion and reurge
17 my motion to dismiss counsel because they refused
18 to offer this or cross examine Gilbert Melendez.
19 According to this letter that was sent to me through
20 a trustee to where he was trying to tell me what to
21 tell them and that they would show me where the
22 bodies were found and everything like that. I wanted
23 my lawyers to cross examine him on it, and they
24 refused to do so.

25 THE COURT: All right, motion

1 for mistrial is denied, and Mr. Spence, you didn't
2 hire these attorneys. I appointed them, and I am
3 not going to discharge them. That motion is denied.

4 MR. REAVES: Your Honor, in
5 light of the disagreements we have had over the
6 handling of the case, I would personally ask to
7 withdraw.

8 MR. VANCE: I would also join
9 in that.

10 THE COURT: That motion is denied
11 as to each of you.

12 MR. BUTLER: Judge, pursuant to
13 this motion and the motion when Mr. Spence first
14 urged it, there was testimony under oath in chambers
15 in the first trial regarding this evidence that he
16 wishes to offer on the grounds he stated a few
17 minutes ago regarding testimony of Catherine Breiton.

18 I would request that for purposes
19 of his motion that all those in-camera proceedings
20 be entered as part of the record in this case. There
21 has been -- it has been reduced to writing. The
22 Court Reporter has transcribed it.

23 I would request that that hearing --
24 I believe, there were six or seven witnesses in
25 camera, Joyce Breiton -- no, Catherine Breiton,

1 Mr. and Mrs. Hiddle and several Waco police officers
2 who testified in chambers. We would request that
3 that be made part of the record for this purpose.

4 THE COURT: All right.

5 MR. FEAZELL: And further, the
6 Judge's ruling in that cause, Your Honor, as to the
7 inadmissibility of that evidence and the fact that
8 it was groundless.

9 THE COURT: All right. Now,
10 that was conducted as part of the first trial by
11 Judge Allen?

12 MR. FEAZELL: Yes, sir.

13 THE COURT: All right, that will
14 be made part of this Statement of Facts. Now, is
15 there anything else?

16 Mr. Spence, do you have anything
17 else?

18 THE DEFENDANT: No, sir, Your Honor,
19 other than to just reurge my dismissal of counsel.

20 THE COURT: I do the hiring,
21 and I will do the firing. Right now, they are full
22 time on the job.

23 THE DEFENDANT: Your Honor, don't --
24 I mean, don't I have to be satisfied with my counsel?
25 I mean, this is the representation of my life here.

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THE COURT: You are entitled to good lawyers and to a fair trial. You are not entitled to the best lawyers in the world, nor a perfect trial, and I assure you that you have good lawyers, and as far as I can tell, you have had a very fair trial, and that is the way we are going to proceed from here.

Every time you don't like something, you don't get a new lawyer. That would be like somebody getting a scratch on a brand new car so they get a new one every time. We can't run our society this way.

THE DEFENDANT: I understand, Your Honor, but they refused to offer testimony that I wanted offered. They refused to cross examine Gilbert Melendez on the letter that he sent me when I asked them to do so. I mean, he has got statements in here to where he --

MR. FEAZELL: Judge, we would object to any extraneous statements. If he wants to make that letter a part of his motion on this --

THE DEFENDANT: Your Honor, I am just trying to give you an understanding as to why I am so disagreeable with my defense. I mean, he states in here that they would show me where the

1 bodies were. He -- as a matter of fact, he states
2 that they showed him.

3 THE COURT: All right, I will
4 take it under advisement. I have already considered
5 it back about three weeks ago, and that is why you
6 have your lawyers to advise you as to what is the
7 best thing according to the law. They have been
8 trained in this area, and they are doing a good job.

9 THE DEFENDANT: They didn't
10 advise me on nothing. They just told me they weren't
11 going to offer the evidence period.

12 I wanted the evidence introduced,
13 and they said they just wasn't going to do it.

14 THE COURT: I am sure that there
15 are some very good reasons, and it is in your best
16 interest that they have decided not to do that.

17 THE DEFENDANT: Your Honor,
18 shouldn't I be the judge of what is in my best
19 interest? I mean, I am on trial here for my life --
20 not Mr. Vance or Mr. Reaves.

21 THE COURT: You are the Defendant,
22 and they are your counsel, and they are doing their
23 best to represent your best interests.

24 THE DEFENDANT: They get appointed
25 to me by the Court, and I have to accept them whether

2
1 I like them or not. If they refuse to offer testimony
2 that I think is important to help me save my life
3 and they refuse to, I just have to be happy with
4 that and go along with it?

5 THE COURT: I am not going to
6 belabor the point. I have been over this with you
7 on several previous occasions, and you have said
8 that you understand and have acknowledged that you
9 understand the role of your court-appointed counsel,
10 and we are going to leave it at that. We are going
11 to proceed with the trial.

12 Now, who are the next witnesses?

13 MR. VANCE: We are going to
14 rest, Your Honor.

15 THE COURT: All right, bring
16 the jury back in.

17 MR. BUTLER: Judge, before you
18 bring them back -- Judge, we are going to have to
19 have until in the morning to bring rebuttal witnesses
20 because we did not know how long their testimony
21 would be, but we can work on the Charge this
22 afternoon.

23 THE COURT: We will get the
24 jury in and let them go, and we can do that this
25 afternoon on our own time. Bring the jury back.

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

THE COURT: All right, gentlemen,
lèt's proceed.

MR. REAVES: Your Honor, at this
time, the Defense rests.

MR. FEAZELL: Your Honor, the
State has rebuttal witnesses to call, and they will
not be here until in the morning.

THE COURT: All right, ladies
and gentlemen of the jury, there is some work to be
done by the Court and the attorneys which we can
spend this afternoon in that matter, and that will
save time on the other end so we will -- what time
will your witness be here in the morning, Mr. Feazell,
or witnesses?

MR. FEAZELL: As soon as you want
him. He is supposed to touch down tonight sometime
here in Bryan.

THE COURT: All right, let us
start at 8:00 o'clock then and hopefully, we will
conclude the testimony tomorrow.

We are going to do a lot of work
on the Charge this afternoon, and it may be that we
will be prepared to proceed with the reading of the

1 Charge and final arguments tomorrow afternoon.

2 Now, I don't want to commit
3 myself to that for sure because we haven't really
4 gotten started on the Charge yet, and until we get
5 into it, we cannot accurately, predict for sure how
6 long that will take, but perhaps, if you come in
7 the morning at 8:00, we can conclude all testimony,
8 and then if we are not sure about our time frame
9 on the Charge, I will give you that number that you
10 can call, and that way, you can go on about your
11 lives and call in.

12 We can keep putting a message
13 on the machine and save you another trip back up
14 to the courthouse here, but the end is definitely
15 in sight so far as all the evidence and the Charge.

16 So hopefully, we will be moving
17 along to a conclusion on or before the end of this
18 week, and remember the instructions of the Court,
19 and I will see you at 8:00 o'clock in the morning,
20 and we will proceed from there. Have a good evening.

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

24 THE COURT: All right, do you
25 all have a border plate charge to give us a starting

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point that we can meet back here at 1:30 and get started with that, and get a copy, and we will make some -- take this copy of his motion that is file stamped and that attachment to go with the other part of it.

MR. REAVES: The motion has already been filed.

THE COURT: I know it, but he wants to add that other to it is what my understanding was.

THE DEFENDANT: Yes, sir, the letter here.

THE COURT: Yes, file mark it, and it will be included as part of the motion.

All right, say, 1:30. Let us come and start work on the Charge, men. We will meet here in the courtroom.

MR. FEAZELL: Fine.

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WEDNESDAY, OCTOBER 16, 1985
MORNING SESSION: 8:00 a.m.

- - - - -

(Whereupon the Defendant was present.)

THE COURT: All right, let's proceed.

MR. VANCE: Judge, we have some matters that we need to take up before.

THE COURT: What are these about here?

MR. VANCE: Well Judge, it is our understanding that the State is going to call Dr. Homer Campbell on rebuttal, and what has appeared to have happened is over the weekend, they have taken teeth impressions of Gilbert and Anthony Melendez.

We have filed this motion to exclude his rebuttal testimony and for the reasons set therein.

We would ask that this particular testimony not be allowed, and furthermore, if the Court allows it, we would ask for a motion for continuance in order that we can travel to California or bring Dr. Vale back so he can, at least, look at

1 it so I can effectively confront and cross examine
2 this witness.

3 I am not an expert in forensic
4 odontology. I have no idea what this is all about,
5 and I am going to need an expert to analyze the
6 new material and discuss it with him and determine
7 my effectiveness in representing Mr. Spence in this
8 matter.

9 The other thing is that they
10 have had almost six months to get these teeth
11 impressions, and the testimony was in this particular
12 case, Gilbert just had his teeth impressions made,
13 I thought he said, last Saturday.

14 These men have already pled
15 guilty, approximately, eight months ago, and why
16 does the State at the last minute have to do this
17 particular action?

18 THE COURT: Don't ask me. Ask
19 Mr. Butler or Mr. Feazell.

20 MR. BUTLER: May I respond,
21 Your Honor?

22 THE COURT: Yes, sir.

23 MR. BUTLER: Because there was
24 no reason to do it until he brought it out on his
25 cross examination on Friday the fact that Dr. Campbell

1 had not examined the teeth of the two co-defendants,
2 Anthony Melendez and Gilbert Melendez.

3 When he did that, then it
4 became an issue in this trial, and then we were
5 entitled to -- or obligated as far as representing
6 our client to have Dr. Campbell examine both Gilbert
7 Melendez and Anthony Melendez and compare their bite
8 marks to the bite marks of the Defendant in this
9 case, bite marks of the bodies of Jill Montgomery
10 and Raylene Rice.

11 Now, as far as them having an
12 opportunity, they certainly had an opportunity
13 when Dr. Vale was here. As they are well aware,
14 it does not require a search warrant. All it
15 requires is a motion to compel. They can certainly
16 have made that motion. They could have had Dr. Vale
17 examine both Anthony Melendez and Gilbert Melendez
18 at the time he was here.

19 We would certainly object for
20 a motion for continuance.

21 MR. VANCE: Judge, Tony Melendez
22 had already testified and gone on his way by the
23 time Dr. Vale got here.

24 Judge, I cannot effectively
25 cross examine this forensic odontologist unless I,

1 at least, have an opportunity to talk to an expert.

2 THE COURT: Have you tried to
3 contact Dr. Vale?

4 MR. VANCE: Yes, sir, he is
5 still in trial in San Francisco. Plus, we have to
6 get the materials to him to see it.

7 I will fly to California, if
8 that is what is necessary. Of course, it will be
9 at McLennan County's expense, but we will go and
10 hope we can get him.

11 THE COURT: Have you talked to
12 him about that possibility?

13 MR. VANCE: I couldn't get ahold
14 of him. He is in trial.

15 THE COURT: He won't be in trial
16 now. It is three hours behind in California. He
17 will probably be in bed.

18 MR. FEAZELL: Judge, the thing
19 is, it never came up in any of the other trials.
20 We didn't take any more samples from any suspects
21 because once you find a positive match, there ain't
22 any reason to keep looking.

23 MR. VANCE: Your Honor, that is
24 not true. Dr. Campbell specifically testified that
25 he looked at two other sets of impressions from people

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in this case.

MR. BUTLER: As a result of
actions by the Defense attorneys.

MR. FEAZELL: That is correct,
at the first trial, Your Honor.

MR. VANCE: Not these Defense
attorneys.

MR. BUTLER: Well, we didn't say
that.

MR. FEAZELL: We didn't say that,
and there wasn't any reason to look at Gilbert and
Tony's teeth when you have got a positive match
until it was brought into issue by Defense Counsel
in this case last week -- last Friday.

MR. REAVES: And it was brought
out on Cross Examination of their witness, Judge.
It wasn't brought out in our defense -- our case.
They are trying to rebut something we brought out
on Cross Examination.

MR. VANCE: They could have
recalled Dr. Campbell in Direct before they rested
their case to alleviate this particular matter.
They have already had their teeth impressions prior
to them resting their case.

MR. REAVES: The purpose of

1 rebuttal is to rebut what we put on in our defensive
2 case....

3 MR. VANCE: And we didn't
4 attack that.

5 THE COURT: All right, let us
6 go ahead and get started and at the recess, you all
7 keep trying to talk to your man and Dr. Vale, and
8 let me know because we are getting ready to go to
9 the jury on this.

10 MR. VANCE: Judge, that is their
11 first witness, I believe.

12 MR. BUTLER: No, he is not, but
13 he will be coming up very shortly, Judge.

14 THE COURT: Well, go ahead and
15 during -- or two of you -- one can go out and call
16 Dr. Vale and see the status report.

17 MR. BUTLER: There is one other
18 matter we need to take up outside the presence of
19 the jury, I assume.

20 We have a photograph here that
21 we intend to offer into evidence, and they are going
22 to have some objection to it. So I thought we might
23 as well take it up at this point and possibly save
24 a little time.

25 THE COURT: All right, what is it?

2 1 MR. BUTLER: It is a photograph
2 of Jill Montgomery. We are offering that to show
3 that she owned a bracelet that is depicted on her
4 wrist in that picture.

5 MR. REAVES: We will object to
6 that, again, for the same reasons we are objecting
7 to Dr. Campbell. None of the co-defendants testified
8 there was a bracelet.

9 I am assuming they are offering
10 it for corroboration of their testimony. What --
11 this is the State's rebuttal case. They are supposed
12 to be rebutting what we brought back on our defense.
13 We didn't question whether or not there was a bracelet
14 on her.

15 We didn't bring up anything of
16 that sort.

17 MR. BUTLER: We are entitled to
18 corroborate the statements of the co-defendants,
19 the accomplices, whatever you want to call them.
20 We will show by the evidence that shortly after
21 Gilbert Melendez and Anthony Melendez revealed to
22 law enforcement the exact location of the crime,
23 which was for the first time revealed to us, that
24 shortly after that, law enforcement officers went
25 to that exact location which has already been

2
1 testified to and identified as the place where the
2 attack upon Jill Montgomery took place and that when
3 they went to that same -- they went for the purpose
4 of looking for evidence, and that they dug down
5 through the leaves at that location and found that
6 bracelet.

7 THE COURT: Now, how is this
8 rebuttal?

9 MR. FEAZELL: They brought it
10 into issue, Judge, as far as the location of where
11 the -- well, the map is not up there -- but where
12 the offense took place by all their witnesses that
13 they put on, I didn't see anything at Koehne Park,
14 and they didn't hear anything at Koehne Park.

15 This is to prove it happened at
16 Koehne Park.

17 MR. BUTLER: And also, it goes
18 to the credibility of both Anthony Melendez and
19 Gilbert Melendez because they both testified that
20 that is exactly where it took place, and this is
21 circumstantial evidence to corroborate the statements
22 of both of them.

23 MR. REAVES: We didn't bring
24 anything in defense saying that their reputation
25 for truth and veracity was bad.

1 All we did was cross examine
2 them... This is evidence that may have been admissible
3 on their case in chief, but I don't think it is
4 proper rebuttal evidence.

5 MR. FEAZELL: We are talking
6 about the evidence that you put in in your case in
7 chief which brought into issue whether or not the
8 crime even happened in Koehne Park because of all
9 the people who didn't see Spence's car, who didn't
10 hear anything back in the woods, who didn't see
11 anything.

12 It is to show that it did
13 happen there where it is said to have happened in
14 rebuttal to your -- what you brought into issue in
15 front of that jury through your witnesses.

16 MR. BUTLER: And we have a lot
17 of cases, Judge, that say that circumstantial
18 evidence can be used to corroborate testimony of
19 the accomplice.

20 THE COURT: I am aware of that.
21 All right, the photograph will be admitted as
22 Exhibit -- whatever number it will be.

23 MR. REAVES: Our objection to
24 that -- that is overruled?

25 THE COURT: Yes, sir, objection

overruled. It will be admitted. All right, let us bring the jury in. Go ahead, and let her mark that before we bring the jury in.

(Whereupon the instrument referred
(to was marked for identification
(and admitted into evidence as
(State's Exhibit No. 44.

THE COURT: All right, is there anything else?

MR. BUTLER: There was writing on the back, Judge, and I attempted to mark it out.

THE COURT: What was it, anyway?

MR. BUTLER: It was just her mother's name and address and said "Return to Nancy Shaw" and address and phone number.

THE COURT: Paste a piece of paper or something on the back of it. Let us go ahead and get started, and you can fix it up.

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

MR. BUTLER: May we proceed,
Your Honor?

THE COURT: Yes, sir.

MR. BUTLER: We call Nancy Shaw.

STATE'S REBUTTAL EVIDENCE

N A N C Y S H A W, recalled as a witness on