

1 on behalf of the State, having been duly sworn,  
2 testified as follows:

3 DIRECT EXAMINATION

4 QUESTIONS BY MR. BUTLER:

5 Q Would you state your name and spell it for the  
6 record, please.

7 A I am Dan Weyenberg, W-e-y-e-n-b-e-r-g.

8 Q Are you the same Dan Weyenberg who has previously  
9 been sworn to testify in this cause?

10 A Yes, sir, I am.

11 Q And I believe, you testified, did you not, that you  
12 are the chief deputy for McLennan County?

13 A Yes, sir.

14 Q How long have you been so employed in that capacity?

15 A Since 1981.

16 Q Directing your attention back to the month of May  
17 1983 and more specifically to the 5th day of May,  
18 was David Wayne Spence, at that time, in the McLennan  
19 County jail?

20 A He was.

21 Q And as such, was he under your care, custody and  
22 control?

23 A Yes, sir.

24 Q Did you have occasion on that day to see Mr. Spence?

25 A I did.

1 Q And for the record, is that same David Wayne Spence  
2 present in the courtroom today?

3 A It is.

4 Q Would you identify him, please?

5 A Yes, sir, sitting to the right of Mr. Reaves.

6 MR. BUTLER: Your Honor, may  
7 the record reflect the witness has identified the  
8 Defendant.

9 THE COURT: All right.

10 Q All right, would you state for the jury, what was  
11 the reason that you came in contact with Mr. Spence  
12 on the 5th day of May, 1983?

13 A I had a motion to compel for the taking of teeth  
14 imprints.

15 MR. VANCE: Excuse me, I am going  
16 to have to lodge an objection, for the record, that  
17 the taking of the teeth impressions pursuant to  
18 this order is a violation of the Fourth and Fifth  
19 Amendments to the U.S. Constitution, Article 1  
20 Section 9 of the Texas Constitution, Articles 18.01,  
21 18.02 and 18.23 of the Code of Criminal Procedure  
22 and also violates the Sixth Amendment to the U.S.  
23 Constitution.

24 THE COURT: All right.

25 MR. VANCE: We would object to

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him testifying as to the actions that he performed  
on May 5, 1983.

THE COURT: Objection overruled.

You may proceed.

MR. BUTLER: Thank you, Your Honor.

Q You may continue your answer.

A I received an order from our 54th District Court Judge,  
George Allen, on a motion to compel for the taking of  
teeth impressions on the Defendant, David Wayne Spence.

Q Do you recall what time of day or night it was,  
approximately, that you came in contact with  
Mr. Spence for that purpose?

A It was a little bit before 8:35 p.m. when the motion  
to compel was executed on.

Q And would you explain to the jury, please, how it  
was that you went about executing that motion to  
compel?

A Once I received the order from the Judge, I  
proceeded to the jail with Mr. J. L. Crawford, who  
was an investigator with the District Attorney's  
office and also a Dr. Brinkman who was a dentist.  
I believe, his office is in McGregor outside of Waco.

We went to the jail area, and there went ahead  
and executed on taking the teeth impressions from  
David Spence.

- 1 Q All right, did you explain to Mr. Spence what it was  
2 that you intended to do?
- 3 A Yes, sir, I did.
- 4 Q And without telling this jury what he said, what,  
5 if anything, did Mr. Spence do, at that time?
- 6 A He brushed his teeth.
- 7 Q Did you notice anything unusual about him, at that  
8 time?
- 9 A He had some difficulty putting the toothpaste on  
10 the toothbrush.
- 11 Q And would you -- did you observe any reason for that  
12 difficulty?
- 13 A Nervousness.
- 14 Q All right, and would you describe or show the jury  
15 what you mean by, "Had difficulty" and the nervousness  
16 that you observed? Would you describe that for them?
- 17 A Well, when you are holding the toothpaste in one  
18 hand and toothbrush in the other, you have to meet  
19 and put it on top between the -- when there is movement,  
20 it is difficult to put the paste on the toothbrush.
- 21 Q All right, and what kind of movement did you observe?
- 22 A Just light hand movement.
- 23 Q All right, was it just a very simple one-time movement,  
24 or was it something that was very obvious to you?
- 25 A Well, it was rather obvious to me, yes, sir.

1 Q All right, and would you state whether or not you had  
2 an opinion as to the cause of the reactions that  
3 you observed?

4 MR. VANCE: Your Honor, I will  
5 object to that as being speculative. He has already  
6 testified to the actions.

7 THE COURT: Sustained.

8 Q Did he appear to be acting in that manner before you  
9 told him what you were going to do?

10 A No, sir.

11 Q All right, at any time, did you observe a particular  
12 point that he became, what you described as,  
13 nervous and shaking?

14 A After I explained to him what we were going to do,  
15 yes, sir.

16 Q After he brushed his teeth, what then happened?

17 A Then Dr. Brinkman set up the, oh, I don't know what  
18 you call it, the casting that you put in the mouth  
19 to take the complete mouth impressions of your --  
20 roof of your mouth, the teeth, all the way around.

21 Q How long did the entire procedure take, and by  
22 entire procedure, I mean, the taking of the imprints  
23 of his teeth?

24 A Five, 10 minutes for the uppers. Five or 10 minutes  
25 for the lowers.

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Once the cast was made, I believe, the doctor went through the routine as a dentist would, checking you for cavities or missing teeth or what have you to mark down on charts.

Q What happened after that?

A Once all this was completed, we left the jail.

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

THE COURT: Yes, sir.

(Brief pause.)

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

CROSS EXAMINATION

QUESTIONS BY MR. VANCE:

Q Captain Weyenberg, which hand did Mr. Spence have his toothbrush in?

A Mr. Vance, that is difficult to remember that long back. I think, it was his right hand. I am not sure.

Q And he was squeezing the toothpaste on with his left hand?

A That would be right, yes, sir.

Q Okay, do you know if he is right-handed or left-handed?

A No, sir, I do not.

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Q Is this the only time you ever observed him?

A No, sir, I had contact with David Spence on numerous occasions during his stay, but I never paid any particular attention to whether -- I don't recall whether he is right-handed or left-handed.

MR. VANCE: I have no further questions.

MR. BUTLER: We have nothing further from this witness, Your Honor.

THE COURT: All right, Captain.

MR. FEAZELL: May this witness be excused?

THE COURT: Yes, sir, unless there is some objection from Defense counsel.

MR. FEAZELL: Subject to recall.

MR. REAVES: That is fine.

THE COURT: All right, fine.

(Witness excused.)

MR. FEAZELL: Your Honor, the State would call Dr. W. A. Brinkman.

D R. W. A. B R I N K M A N, called as a witness on behalf of the State, having been duly sworn, testified as follows:

DIRECT EXAMINATION

QUESTIONS BY MR. FEAZELL: