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THE COURT: All right, fine.

Bring Mr. Gene Deal in, please.

MR. BUTLER: Judge, it is their motion.

G E N E D E A L, called as a witness on behalf of the State, having been duly sworn, testified as follows:

VOIR DIRE EXAMINATION

QUESTIONS BY MR. REAVES:

Q Mr. Deal, as I understand it, you are here to testify in this case regarding Mister -- basically, regarding Mr. Spence's reputation for being a peaceful and law-abiding citizen. Is that correct?

A Yes, sir, that is what I understand.

Q On how many occasions have you discussed with anyone else Mr. Spence's reputation?

A Numerous occasions. Probably in excess of 50.

Q Okay, specifically, discussing his reputation or specifically discussing specific instances of conduct?

A Specific incidents?

Q The question I am asking you is when you have had these discussions with other people, have you talked with them about specific instances of conduct?

A Yes, sir.

- 1 Q Okay, as opposed to discussing with them Mr. Spence's
2 reputation?
- 3 A No, sir, we have also discussed reputation.
- 4 Q Have you discussed Mr. Spence's reputation with
5 anyone since the time you last testified sometime
6 back in 1984?
- 7 A No, sir.
- 8 Q At that time, I believe, you testified that you had
9 discussed on numerous occasions with people,
10 specific acts and specific things that Mr. Spence
11 had done but you had never discussed with them his
12 reputation.
- 13 A I don't recall my testimony at that time, sir.
- 14 Q I know it is kind of hard to separate out what is
15 a discussion about a specific instance of conduct
16 and what is a discussion about reputation. Do you
17 understand what I am asking basically?
- 18 A Well, that is why I asked you the question. Yes,
19 sir, I believe, I do now.
- 20 Q All right, discussion about reputation would be
21 about what kind of person he is.
- 22 A General conduct, yes, sir.
- 23 Q With someone else.
- 24 A Yes, sir.
- 25 Q Okay, as opposed to talking with them about something

1 specific or talking with anyone in general about
2 what a specific person has done?
3 A Yes, sir.
4 Q Okay, and you now say that you have discussed his
5 reputation --
6 A Yes, sir.
7 Q -- with other people?
8 A Yes, sir.
9 Q Mr. Deal, do you remember testifying in the last
10 trial about several specific things you had talked
11 with other people about?
12 A I can recall some of the instances, yes, sir.
13 Q Okay, and did you also testify regarding some
14 discussions you had with police officers?
15 A Yes, sir.
16 Q Okay, and at that other trial, do you recall
17 testifying -- well, did you ever discuss his
18 reputation with those police officers?
19 A No, sir.
20 Q And with the people that you testified about with
21 in the last trial that you discussed specific acts
22 with, did you discuss his reputation with them?
23 A Yes, sir.
24 Q You are now saying that you did?
25 A As far as general conduct, yes, sir.

1 Q Okay, I guess, we are still getting back -- you are
2 saying as far as general conduct?
3 A Well, I am trying to identify exactly what you mean
4 as far as --
5 Q Okay, your discussions with other people, were they
6 to the effect about things that -- or were they to
7 the effect about things that Mr. Spence had done --
8 A Yes, sir.
9 Q -- that they knew about?
10 A Yes, sir.
11 Q Okay, and that was the substance of all of your
12 discussions with people about things that Mr. Spence
13 had done that they were aware of?
14 A No, sir, they were not limited to just that specific
15 act itself.
16 Q Okay, the things that they were aware of that he
17 knew -- specific things that they knew he had done,
18 is that what you talked with them about?
19 A Yes, sir, as far as their general knowledge of him,
20 I guess, you would say.
21 MR. REAVES: Okay, that is all
22 the questions we have, Your Honor.
23 THE COURT: All right.
24 MR. REAVES: Your Honor, we
25 would object to Mr. Deal as a reputation witness on

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the grounds that his discussions with other individuals have been about specific conduct that they are aware of that Mr. Spence did or that may have been involved in and the proper reputation witness is about someone who has testified -- or has talked with somebody about the general reputation in the community.

MR. BUTLER: Do I need to answer that, Judge?

THE COURT: I'll give you --

MR. BUTLER: I believe, his testimony is very clear that he has talked to people both about specific acts of misconduct and his general character or his general conduct in the community, that he has talked about things which are clearly within the scope of the nature of reputation testimony, and that is, the conduct of David Wayne Spence generally.

Now, there is no requirement that somebody say the conversation be in the nature of, well, let me tell you, David Wayne Spence's reputation is bad.

They don't have to even use the word "reputation" when they are having a conversation with somebody. What it is purely and

4
1 simply is his general conduct in the community.
2 We are not offering it for any of the specific
3 bad acts. Although, if they want to know about
4 those, they are certainly entitled to ask about
5 them, but we are offering it for the reputation
6 in the community which he discovered by talking
7 to people.

8 It is clearly hearsay, and
9 this is the one time that hearsay is admissible --
10 not only is it admissible, but it is a requirement,
11 and that is exactly what he has testified to.

12 THE COURT: All right,
13 objection overruled. Now, before we bring the
14 jury in --

15 MR. VANCE: What about
16 Dr. Jolliff?

17 THE COURT: That was my next
18 question. Do you want to go ahead and do both of
19 them and not have any more delays and won't have to
20 send them out again?

21 MR. REAVES: Might as well go
22 ahead.

23 THE COURT: Okay, let's bring
24 him in now. Also, have you all had a chance to
25 review that draft of the Charge so she can go ahead

1 and put it in the machine?

2 MR. BUTLER: Judge, I read it,
3 and you know, anything that -- in the back part of
4 it that applies to temporary insanity, I think,
5 needs to be --

6 THE COURT: Yes, as I explained,
7 it was just a hurry-up copy from another case, but
8 absent that, I think, it is adequate, but you all
9 take a second or two there and glance over it.

10 Just delete that part out, and
11 she can go ahead and start working on it and save
12 some time.

13 MR. VANCE: We hadn't made a
14 decision on whether we wanted voluntary intoxication,
15 and we need to discuss that with Mr. Spence.

16 THE COURT: All right.

17 MR. BUTLER: Judge, wait a
18 minute. Before we bring Dr. Jolliff in, we probably
19 need to bring in a couple of other witnesses.

20 THE COURT: All right, I just
21 took it that he would be the next one for the voir
22 dire purpose. Is there going to be some others
23 that need to be voir dired?

24 MR. BUTLER: We need to
25 establish the warnings. Judge Cabaniss is here who