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THE COURT: All right, get the next witness. We will do that.

All right, Judge, if you will go back out, please, sir, and Doctor, come on in.

D R. J A M E S J O L L I F F, called as a witness on behalf of the State, having been duly sworn, testified as follows:

VOIR DIRE EXAMINATION

QUESTIONS BY MR. BUTLER:

Q State your name for the record, please, sir.

A James W. Jolliff.

Q Would you spell your last name for the Court Reporter?

A J-o-l-l-i-f-f, two F's.

Q Dr. Jolliff, where do you live?

A 3821 Chatteau, Waco, Texas.

Q How are you employed, sir?

A I am self-employed. I am a psychiatrist in private practice in Waco.

Q How long have you been so employed?

A Almost 20 years in Waco.

Q Were you so employed back during the month of April of 1983?

A Yes, sir.

Q Directing your attention to that month, did you

1 have occasion to come in contact with David Wayne
2 Spence?

3 A Yes.

4 Q Do you recall specifically when that was?

5 A On the evening of April 7th, 1983.

6 Q What was your purpose for seeing David Wayne
7 Spence?

8 A There had been some question raised as to whether
9 he might have what is called a quotes split
10 personality end quotes, and I was asked to see
11 him to give my professional opinion about the
12 presence or absence of such a condition.

13 Q Prior to talking to him, Dr. Jolliff, do you know
14 whether or not he received any legal warnings?

15 A Yes, I saw an official warning of his rights
16 administered by Judge Cabaniss. I think, it had
17 been administered that afternoon.

18 Q All right, let me show you what has been entered
19 into evidence as State's Exhibit 53 and ask if you
20 can identify that?

21 A 4:00 o'clock in the afternoon, yes, that is the
22 warning that I saw prior to my seeing him that
23 evening.

24 Q All right, and did you have occasion to notice
25 particularly the handwriting on there that specifically

1 refers to psychiatric examination?

2 A Yes, sir.

3 Q Do you know whether or not he received any additional
4 warnings?

5 A I gave him a verbal warning as the very first or
6 second sentence out of my mouth when I met him.
7 I said, "Hello" and then said, "I want you to know
8 that anything you say may be used against you in
9 a court of law."

10 Q And do you recall what his response was, if any?

11 A He certainly understood that and agreed.

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

14 MR. REAVES: Can we have just
15 a second, Your Honor?

16 THE COURT: Yes, sir.

17 VOIR DIRE EXAMINATION

18 QUESTIONS BY MR. REAVES:

19 Q Dr. Jolliff, I believe, you've stated that the
20 purpose of seeing Mr. Spence was to determine if
21 he had what, I guess, we call -- a layman calls
22 a split personality?

23 A Yes.

24 Q I am sure there is a more scientific word for it,
25 but -- and you saw him specifically for that purpose?

1 A Yes.

2 Q Okay. Now, what was the nature of the warning that
3 you gave to him? Did you warn him that he didn't
4 have to talk to you?

5 A No, I did not say those words. I had seen the
6 written warning that he had received, and I said,
7 "Hello," shook his hand, and then said, "Do you
8 realize or I want you to know that anything you say
9 may be used against you in a court of law." He
10 understood that, acknowledged it either with a
11 head shake or "I understand" or "Yes."

12 He certainly seemed to understand fully.

13 Q Okay, at the time that you saw him, were you aware
14 of whether or not he was -- had been formally
15 charged by complaint or indictment with any offense?

16 A It was my understanding that he had not been.

17 Q Okay, were you aware of the nature of the charges?
18 Were you aware of the capital murder case?

19 A I was aware that he was a suspect in what has been
20 called the lake murders, yes.

21 Q So at the time you saw him, it was your understanding
22 that he was a suspect in those cases?

23 A Yes.

24 Q A suspect but a suspect who had not been formally
25 charged by -- whether by complaint or indictment?

1 A Yes.

2 Q Was the purpose of your visit to determine whether
3 or not -- or to come in -- was the purpose of your
4 visit to determine whether or not there was a
5 probability that he would commit criminal acts of
6 violence in the future?

7 A No, that was not the purpose of my visit.

8 Q Okay, at the time you warned him, did you warn him
9 that anything he said might be used and you might
10 come back in if he was eventually indicted and
11 your testimony might be brought in, in a punishment
12 phase of a capital murder trial?

13 A No. I said, "Used against you in a court of law."
14 So it was much more general.

15 Q Did you specifically warn him that what he said
16 to you may form the basis of an opinion on your
17 part as to whether or not he would pose a threat
18 to society and commit criminal acts of violence
19 in the future?

20 A No, neither of us were aware of that at that time.

21 Q So there were no specific warnings given to that
22 effect?

23 A That is correct.

24 Q Did you at any time warn him that what he said may
25 later be presented by you in a court of law, your

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opinion?
A I said only the exact sentence that anything he said might be used against him in a court of law.

Q Again, just to tie down the warnings, did you specifically ask him or inform him at the time that whatever he said against him may later be used against him and presented to a jury for their determination in whether or not he would receive life or death in a capital murder case?

A No.

MR. REAVES: Okay, we don't have any further questions of this witness, at this time.

VOIR DIRE EXAMINATION

QUESTIONS BY MR. BUTLER:

Q Dr. Jolliff, at the time you saw David Wayne Spence, was it also your understanding that it was at his request?

A Yes.

Q That he had requested to see a psychiatrist?

A Yes, I had been told that he wanted to see someone because both he and Mr. Simons, who had been talking to him, were concerned about the possibility of whether or not he had a split personality.

Q So your understanding was that your visit was in compliance with the request by David Wayne Spence

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himself?

A Yes.

MR. BUTLER: Pass the witness.

VOIR DIRE EXAMINATION

QUESTIONS BY MR. REAVES:

Q Dr. Jolliff, your understanding of the request was to determine whether or not Mr. Spence had a split personality?

A Yes.

Q Who conveyed that request to you?

A Mr. Truman Simons.

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

THE COURT: All right, Doctor, if you will step down and be on standby, sir, we will need you back again perhaps in a few minutes.

All right, next witness.

MR. REAVES: Well, Your Honor, first of all, we would object to Dr. Jolliff testifying for the reason that at the time he saw Mr. Spence, he did not specifically warn him that whatever was told to him may later form the basis for his conclusion or opinion as to whether or not there would be a probability that he would commit criminal acts of violence and that that could be

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used in the punishment phase of a capital murder trial. We would argue that that violates the Defendant's right --

MR. BUTLER: Before he does any arguing, we have got more evidence on this. We have got other witnesses that there was an additional warning given, specifically, given to psychiatric testimony.

MR. REAVES: I would like to go ahead and make my objection.

THE COURT: Go ahead.

MR. BUTLER: This warning will deal specifically with the testimony of Dr. Jolliff. I think, it is pertinent before he makes any argument to exclude it.

MR. REAVES: I am objecting to that witness.

THE COURT: I think, what he is objecting to is that this doctor didn't say that in specific words at this point in time -- not whether or not there was another person that may have given a specific warning.

So go ahead with your objection, and I will carry it along until you all can --

MR. REAVES: My objection is,

1 is that because he did not specifically warn him
2 that his -- that the information may be used against
3 him in the punishment portion of a capital murder
4 case, specifically, the issues the jury decides as
5 to whether or not ultimately the Defendant will get
6 life or death, violates Mr. Spence's rights in self-
7 incrimination guaranteed by the Fifth Amendment to
8 the United States Constitution, and also, the rights
9 guaranteed him by the Sixth and Fourteenth Amendments
10 and Article 1 Section 10 of the Texas Constitution.

11 THE COURT: All right, I will
12 carry that objection until we see where we go
13 from here.

14 MR. BUTLER: Judge, we don't
15 have anything further. We just -- unless -- we
16 do have one other thing. Let me get him.

17 Judge, if I may have just one
18 second.

19 (Brief pause.)

20 MR. BUTLER: For the purposes
21 of this hearing, we call Truman Simons.

22 T R U M A N S I M O N S, called as a witness
23 on behalf of the State, having been duly sworn,
24 testified as follows:

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