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2 (Whereupon, the jury was recessed,
3 (and out of the presence and hearing
4 (of the jury the following proceedings
5 (were had, to-wit:

6 THE COURT: All right, I want the record to
7 reflect we are outside the presence and hearing of the
8 jury.

9 MR. BUTLER: We will call Gene Deal.

10 REGINALD E. DEAL

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

13 DIRECT EXAMINATION
14 (OUT OF THE PRESENCE OF THE JURY)

15 BY MR. BUTLER:

16 Q State your name, please.

17 A Reginald E. Deal.

18 Q And Mr. Deal, how are you employed?

19 A As an Adult Probation Officer with the 52nd Judicial
20 District Court.

21 Q How long have you been so employed?

22 A Approximately 19 months.

23 Q And where were you employed during the summer months of
24 1982?

25 A I was employed with the Region VIII Office, District
Office, State Patrol.

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Q And during the course and scope of your employment, did you have occasion to meet one David Wayne Spence?

A Yes, sir. I did.

Q All right. In what capacity did you meet him?

A I was his parole officer.

Q And how long were you his parole officer, if you recall?

A Approximately nine months, sir.

Q And during that time, did you have occasion to talk to people about David Wayne Spence?

A Yes, sir. I did.

Q Did you have occasion to talk to employers?

A Yes, sir. I did.

Q Neighbors?

A Yes, sir. I did.

Q Friends?

A Yes, sir. I did.

Q And his family?

A Yes, sir. I did.

Q And during that time, did you become knowledgeable regarding his reputation in the community in which he resided and among the people with whom he associated?

A Yes, sir. I did.

Q And did you know his reputation for being a peaceful and law-abiding citizen?

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A Yes, sir.

Q Was that reputation good or bad?

A Bad, sir.

MR. BUTLER: Pass the witness.

CROSS EXAMINATION
(OUT OF THE PRESENCE OF THE JURY)

BY MR. HUNT:

Q Gene, you and I have talked on the phone. I'm Russ Hunt.

A Yes, sir.

Q My understanding is, that you have actually talked to people about David's reputation, as opposed to, have you talked to people about specific acts that David did. Is that what you're saying?

A Yes, sir. That is correct.

Q Okay. So, you actually said, what kind of a reputation does David have, or words to that effect?

A I can't say the word "reputation" was used, sir.

Q Okay. Can you tell me, the best you can recall, what word was used?

A Well, the best example I could think of, would be when I talked to his employer at Brenwood Farms. And this was after he had told me that he had quit work. And they told me that he had been fired for misconduct.

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Q Okay. So, you're saying, if I understand you -- again, I want to make sure the record is correct -- you're saying that the employer told you that David had been fired for misconduct?

A Yes, sir. That is one example.

Q Okay. Did his employer say anything to you about David's reputation?

A I can't remember the specific details of the conversation, sir. But it had to do with just the way David acted on the job.

Q Okay. The reason I'm asking you the questions, Gene, is, I need to know how much conversation you've actually had with people relative to David's reputation, as opposed to specific bad acts and acts of misconduct that David had engaged in. And it is a funny difference, okay. Can you tell me anybody that you have talked to regarding David's reputation in the community for being a peaceful and law-abiding citizen?

A Again, I can't remember a specific name, sir, but I did talk to neighbors. This was following reports of drunkenness in and around his home.

Q Okay.

A Incidents --

Q Let me interrupt you for just a minute.

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A Yes, sir.

Q That, again, would be acts of specific acts of misconduct that was related to you by his neighbor, or drunkenness?

A Yes, sir.

Q Is that correct?

A Yes, sir.

Q When you talked to the neighbors, did you ever say to the neighbors, do you know David's reputation in the community for being a peaceful and law-abiding citizen?

A Again, sir, I did not use that word. No.

Q Go ahead and give me another instance, if you can, Gene.

A One was an allegation that he had been entering a bar just south of where his residence was, and that he had been drinking, that he had been getting drunk, that he had been coming back home and raising hell around the area.

Q Okay. Again, those are specific acts, number one, in violation of the terms and conditions of his parole?

A Yes, sir.

Q And, number two, specific acts of misconduct on David's part, is that correct?

A Not specific acts, no, sir. There were several allegations made, general allegations, about that type of conduct continuing.

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Q All right. Did you talk to any of those people about David's reputation for being a peaceful and law-abiding citizen? Or did you talk to them about specific acts that David had done?

A Again, sir, the term was not used, but their general perception was of his actions, based on this period of time.

Q Can you think of anyone else that you talked to other than those people?

A Yes, sir. I talked to Christy Juhl.

Q Okay. Again, did Christy Juhl relate to you specific bad acts that David had done?

A Yes, sir. She did.

Q Did you and Christy ever talk about David's reputation in the community?

A No, sir.

Q Did you talk to anybody else?

A Well, several police officers. I talked to his mother.

Q All right. When you talked to his mother, did you talk to his mother about specific bad things that David had done, or did you talk to her about his reputation?

A I guess you would have to say specific bad things.

Q Okay. So, you talked to police officers. Did you talk to police officers about specific bad things? For

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instance, did they talk to you about the allegations that had been made by the young lady that testified here previous, relative to her claim that David raped her?

A Did the police talk to me about that?

Q Yes.

A No, sir. David did.

Q Okay. Did you ever follow that up with a conversation with the police?

A Yes, sir. I did.

Q Okay. Did you ever talk to any police officers, specifically, about David's reputation in the community, as opposed to the bad acts that David was supposed to have done?

A No, sir. I can't say that I did.

Q Okay. Did you talk to anybody else, Gene?

A Not that I can recall, at the present time.

Q Okay.

MR. HUNT: Your Honor, we will pass the witness. And at the same time, we will object to the witness' testimony, based on the fact that he has testified to numerous conversations regarding bad acts. As the Court well knows, bad acts and reputation for being a peaceful and law-abiding citizen are two completely different things. And he has testified that he has only talked to

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2 people about bad acts and not about David's reputation.
3 He formed an impression of David's reputation, but he
4 did not talk to people about that reputation. We object
5 to any of his testimony.

6 THE COURT: All right, sir.

7 MR. BUTLER: Judge, I guess we heard it two
8 different ways. I heard him specifically state that he
9 talked to people about general allegations as to bad
10 acts, non-specific bad acts. I think that even if it
11 were only specific bad acts, bad reputation is made up
12 of bad acts. You don't get a bad reputation for good
13 acts.

14 THE COURT: I overrule the objections.

15 MR. HUNT: Your Honor, in that case, we would
16 object to any testimony that he has relative to general
17 reputation, and ask that his testimony be excluded, based
18 on the fact that the reputation is based on hearsay, that
19 hearsay evidence is a violation of the prohibition of
20 cruel and unusual punishment guaranteed to the Defendant
21 by the Eighth Amendment and the Due Process Clause of the
22 Fourteenth Amendment of the Constitution of the United
23 States, and that such evidence violates the rights of the
24 Defendant under the Sixth Amendment and Due Process
25 Clause of the Fourteenth Amendment of the Constitution, to

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confront witnesses against him.

THE COURT: I overrule it.

MR. FEAZELL: Judge, do you want to go ahead?

THE COURT: Do you have another witness?

MR. FEAZELL: Do we need to do an outside the presence hearing with the psychiatrist, who will be answering hypothetical questions?

THE COURT: I don't see any need to.

MR. FEAZELL: I'm wondering if we need to approach the Bench, Mr. Hunt, for a psychiatrist's testimony, when he's only going to be asked hypothetical questions?

MR. HUNT: If he is going to be asked a question based on a hypothetical.

Your Honor, we would object to any basis, any psychiatric testimony on that basis, in that it is violative of his rights under the Fourteenth Amendment of the Constitution of the United States, in that he has never talked to the Defendant, and David Wayne Spence has not, at this point, had an opportunity to employ a psychiatrist on his own, to give possible counter testimony. We would object on those bases.

THE COURT: Overruled.

Bring the jury back in.

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2 (Whereupon, the jury was returned to
3 (the courtroom, and at which time,
4 (Counsel for the State, Counsel for
5 (the Defense, the Court and the Court
6 (Reporter went into the Court's
7 (Chambers, and out of the presence
8 (and hearing of the jury, the follow-
9 (ing proceedings were had, to-wit:

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11 THE COURT: All right, go ahead and state your
12 additional objections.

13 MR. HUNT: Your Honor, we have an additional
14 objection to the testimony of this witness. And that is,
15 that this witness was David's parole officer at the time
16 that the witness is going to testify to, and that is the
17 time period surrounding the lake murders time. We would
18 object, because the fact that he was David's parole
19 officer, is going to bring out the fact that David Spence
20 has a prior conviction for robbery, or a prior felony
21 conviction, as will be obvious from the fact that the
22 witness is a parole officer and David was reporting to
23 him. We would object on the basis that, by mentioning
24 anything about his capacity and his relationship with
25 David as David's parole officer, brings in an extraneous
offense, that it again raises the same grounds that we
have raised before relative to the pen pack. And that
is, it is a surprise to us, that it is bringing up an
extraneous offense for which we have not been prepared.

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2 And for that reason, it is violative of the Defendant's
3 due process rights under the Fourteenth Amendment.

4 THE COURT: Overruled.

5 MR. HUNT: Further, Your Honor, the Judgment
6 and Sentence upon which that is based, is invalid, for
7 the reason that the indictment, information and complaint
8 upon which it is based, fails to allege a proper offense.
9 And that the Judgment was not signed, as provided by
10 Texas statutes.

11 THE COURT: All right.

12 Overruled.

13 (Whereupon, all parties returned to
14 (the courtroom, and the trial con-
15 (tinued in the presence and hearing
16 (of the jury as follows, to-wit:

17 MR. HUNT: Your Honor, if I may, prior to the
18 testimony of this witness, I would again like to renew
19 my objections to any testimony of this witness relative
20 to the Defendant's reputation, and object specifically on
21 the grounds that any such testimony is violative of his
22 rights, because any testimony would be based on hearsay,
23 and that hearsay is a violation of the prohibition
24 against cruel and unusual punishment guaranteed by the
25 Eighth and Fourteenth Amendments of the Constitution of
the United States, in that it permits punishment to be
based on hearsay evidence, and that such evidence violates

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the rights of the Defendant under the Sixth and Fourteenth Amendments of the Constitution, to confront the witnesses against him.

I would also object on the basis that has just been made before the Court in Chambers.

And I would ask the Court to permit me a running bill on those bases, so that I don't have to continually repeat this objection to every question and every answer that is made by the witness.

THE COURT: I overrule your objection. I will allow you to have a running bill.

MR. HUNT: Thank you, Your Honor.

MR. BUTLER: May we proceed, Your Honor?

THE COURT: Yes, sir.

REDIRECT EXAMINATION

BY MR. BUTLER:

Q State your name, please.

A Reginald Eugene Deal.

Q Mr. Deal, do you know a man named David Wayne Spence?

A Yes, sir. I do.

Q Is he present in the courtroom today?

A Yes, sir. He is.

Q Would you identify him, please?

A Right here, sir.

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MR. BUTLER: Your Honor, may the record reflect that the witness has indicated and pointed to the Defendant?

THE COURT: Yes, sir.

BY MR. BUTLER:

Q Mr. Deal, were you acquainted with David Wayne Spence during the early and middle part of 1982?

A Yes, sir. I was.

Q During that period of time, did you become familiar with his reputation?

A Yes, sir. I did.

Q Do you know his reputation in the community in which he resides and among the people with whom he associates, for being a peaceful and law-abiding citizen?

A Yes, sir. I do.

Q Is that reputation good, or is it bad?

A Bad, sir.

MR. BUTLER: Pass the witness.

RE-CROSS EXAMINATION

BY MR. HUNT:

Q Gene, shortly after the lake murders, did you have occasion to talk to David Spence about the lake murders?

A Yes, sir. I did.

Q And at that time, did David Spence tell you he knew some-

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thing about the lake murders?

A Yes, sir. He did.

Q Did he indicate to you that he thought he knew somebody that might have done the lake murders?

A No, sir. That's not what he indicated.

Q Okay. If you could explain to the jury, what was it he indicated to you?

A Well, on the day that I talked to David, he was very agitated and upset. I had known David for approximately eight or nine months, at that time, had gotten to the point where I could read him pretty well. And I could see that he was emotionally upset about something.

Q Okay. Let me again ask you this, Gene, did you ask David what was troubling him?

A Yes, sir. I did.

Q Did he indicate to you that it had something to do with the lake murders?

A Yes, sir.

Q Did you ask him if he would explain to you what it was, and did he refuse to do that?

A I asked him if he would explain why he was so agitated and upset, and he did explain it. Yes, sir.

Q Okay. And did you ask him if he would go to the police with his information?

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A No, sir. I did not.

Q Did you tell him or ask him if it would be all right for you to go to the police with that information?

A First of all, sir, I recommended to him that, if what he had told me was correct, that he should go to the police with any information that he had.

Q Did he indicate to you that he was not going to do that?

A Yes, sir.

Q Okay.

A That's a fair statement.

Q Okay. And, then, did you ask him if it would be all right for you to go to the police with that information, or to tell them that he had information?

A Yes, sir. That is correct.

Q And did he say that would be all right?

A He -- not initially. No, sir. He reluctantly agreed to let me do that.

Q Okay. And did you attempt to contact the Waco police with that information?

A I called the Waco Police Department approximately an hour or an hour and a half after I had talked to David in the field.

Q Okay. And was that sometime in approximately August of 1982?

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A Yes, sir. Probably the second week of August, I would think.

Q Okay.

MR. HUNT: I'm going to pass the witness, Your Honor.

FURTHER REDIRECT EXAMINATION

BY MR. BUTLER:

Q As a matter of fact, you talked with him about that on more than one occasion, did you not, Mr. Deal?

A Yes, sir.

Q And did you have an opinion as to whether or not he had any knowledge of it?

A Initially, no, sir.

Q All right. And after all of your conversations with David Wayne Spence, you later formed an opinion, did you not?

A It finally took a conversation with his mother, before I ever -- before it ever really hit me that he either had information, or might possibly have been involved in it.

Q All right. And what was that opinion?

A I'm afraid that I reached the conclusion that he was actually involved in it.

MR. BUTLER: Pass the witness.

MR. HUNT: We don't have any additional ques-

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tions, Your Honor.

THE COURT: You may step down.

You may be excused, Mr. Deal.

THE WITNESS: Thank you, Your Honor.

MR. HUNT: Your Honor, again, we would renew our objections and move the Court for a mistrial, based upon the testimony that has just been given.

THE COURT: Overruled.

MR. FEAZELL: Your Honor, the State calls Dr. Clay Griffith.

THE COURT: Dr. Griffith.

MR. HUNT: Your Honor, as the witness is approaching the stand, the Defense would renew our objections, on the grounds that have been previously based. We would ask that the Court restrict his testimony and exclude him as a witness on the grounds we have already stated, which center around the Equal Protection Clause of the Fourteenth Amendment of the Constitution of the United States.

I would ask in addition, that the Court grant me a running bill on that basis, so that I don't have to object to every question, Your Honor.

THE COURT: I overrule the objection, but I will grant you a running bill on that basis.