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S I D N E Y S M I T H, called as a witness
on behalf of the State, having been duly sworn,
testified as follows:

DIRECT EXAMINATION

QUESTIONS BY MR. BUTLER:

Q For the record, would you state your name and spell
it, please?
A Sidney Wayne Smith, S-i-d-n-e-y W-a-y-n-e S-m-i-t-h.
Q Where do you live, Mr. Smith?
A I live at Gemini Village, 13C Wooded Acres in Waco.
Q How are you employed?
A I work for Cen-Tex Service in Waco.
Q What kind of work do you do?
A Appliance repair.
Q How long have you lived in Waco, Mr. Smith?
A Around 14 years.
Q Were you living in Waco during July of 1982?
A Yes, sir.
Q Directing your attention specifically to July 13th
and July 14th and more specifically on the 14th,
did you have occasion to go to Lake Waco?
A Yes, sir.
Q And on the 14th, do you recall what day of the week
that was?
A No, sir.

1 Q Would it -- was it a weekend or weekday?

2 A A weekday, I think.

3 Q Were you working, at that time?

4 A No, sir.

5 Q What was the reason that you went to Lake Waco?

6 A My brother-in-law and I were going fishing.

7 Q Did you go in the morning or the afternoon?

8 A It was in the afternoon.

9 Q All right, and is there any particular part of Lake

10 Waco where you went?

11 A We went to Midway Park first.

12 Q Were you -- did you have a boat with you?

13 A No, sir.

14 Q How were you fishing?

15 A From the bank.

16 Q Would you point out for the jury there on State's

17 Exhibit No. 1, that aerial photograph, would you

18 point out for them where that portion of the lake

19 is that you first started there at Midway Park?

20 A Back down in here (indicating).

21 Q Okay, thank you. You stated that you went there

22 with your brother-in-law in the afternoon on the

23 14th.

24 A Yes, sir.

25 Q How long did you stay there?

1 A Quite awhile. I am not sure exactly what time or
2 how long.
3 Q Were the fish biting?
4 A No, sir.
5 Q All right, what -- did you have occasion to look for
6 another place to fish?
7 A Yes, sir.
8 Q And where did you go?
9 A We went across the Twin Bridges to Speegleville Park.
10 Q Had you ever been fishing over there before?
11 A No, sir.
12 Q Had your brother-in-law ever been fishing over there
13 before?
14 A I don't know.
15 Q What was your reason for going to Speegleville?
16 A Just to find another place to fish.
17 Q Do you know what time it was when you went over to
18 Speegleville Park?
19 A Not for sure.
20 Q Where did you go after you crossed the Twin Bridges?
21 A Well, we went into Speegleville Park through the
22 gate and intersection. There is a "T" intersection,
23 and we took a right like going towards the marina,
24 but we cut off on a little field on a dirt road.
25 Q Where did you go after that?

1 A We followed the dirt road on around just looking until
2 we came upon Kenneth Franks.
3 Q How long was it from the time you went in the gate
4 at Speegleville Park until you found what you now
5 know to be Kenneth Franks' body?
6 A Five minutes.
7 Q So you did not stop to fish anywhere in Speegleville
8 Park?
9 A No, sir.
10 Q Now, who first noticed Kenneth's body?
11 A My brother-in-law.
12 Q What, if anything, did he do or say when he noticed
13 it?
14 A It scared him or startled him, and he jumped and
15 pointed.
16 Q Okay. Now, who was driving?
17 A I was.
18 Q And what kind of vehicle were you in?
19 A It is a Ford truck.
20 Q Two-wheel drive or four-wheel drive?
21 A Two-wheel drive.
22 Q What kind of condition were the roads at that time?
23 Do you recall?
24 A Dry.
25 Q You didn't get stuck anywhere?

1 A No, sir.

2 Q And he jumped and pointed when he saw Kenneth's body?

3 A Yes, sir.

4 Q Would you describe for the jury the kind of area
5 that you were in when you first came upon Kenneth's
6 body there in Speegleville Park?

7 A It was a fairly wooded area, a little brush.

8 Q And in relation to the way your pickup was driving,
9 was his body on the right side or the left side?

10 A It was on the right side.

11 Q Which was on the passenger's side of the vehicle?

12 A Yes, sir.

13 Q And when your brother-in-law noticed and pointed to
14 the body, what, if anything, did you do?

15 A My first impression was that it was a dummy, and I
16 told him not to worry about it.

17 Q Then what happened?

18 A Well, we got closer, and we pulled up and parked.
19 We stopped and got out and walked over to where it was
20 and realized that it wasn't a dummy.

21 (Whereupon an instrument was
22 (marked for identification as
(State's Exhibit No. 4.

23 Q Now, if you would, Mr. Smith, tell the jury what
24 position Kenneth's body was in when you first
25 observed it?

1 A He was laying on his back with his hands behind his
2 back.

3 Q All right, let me show you what has been marked for
4 identification purposes as State's Exhibit No. 4
5 and ask if you can identify that?

6 A Yes, sir.

7 Q What is that, please?

8 A It is Kenneth Franks.

9 Q All right, does that accurately depict the way his
10 body appeared when you first saw it on the 14th day
11 of July 1982?

12 A Yes, sir.

13 Q That is the position it was in?

14 A Yes, sir.

15 MR. BUTLER: Your Honor, at this
16 time, we would offer what has been marked for
17 identification purposes as State's Exhibit No. 4
18 into evidence.

19 MR. VANCE: We have no objection.

20 THE COURT: All right, it will
21 be admitted, Exhibit 4.

22 (State's Exhibit No. 4 was then
23 admitted into evidence.)

24 Q All right. Now, Mr. Smith, at the time you first
25 discovered Kenneth's body, was it daylight, or was

1 it dark?

2 A It was daylight.

3 Q All right, so this picture appears to have been taken
4 after dark. This picture was made sometime after
5 you discovered the body.

6 A Yes, sir.

7 Q But the body is in the same position as when you
8 first noticed it?

9 A Yes, sir.

10 Q What, if anything, did you do after you found out
11 that it was not a dummy -- that it was, in fact,
12 the body of a person?

13 A It would be -- got back in the truck, and we went
14 to the marina to get the constable.

15 Q Mr. Smith, how far was the body lying from the road?

16 A Well, the road makes a Y, and the Y goes to the
17 right which goes back out to the main road, and he
18 was laying right at the edge of that road.

19 Q All right, and how far were his feet from the actual
20 roadway?

21 A Not that far. I don't know how far for sure, but
22 they were close to the edge of the roadway.

23 Q Right close to the edge of the roadway?

24 A Yes, sir.

25 Q His feet were closer to the roadway than his head was.

1 Is that correct?

2 A Yes, sir.

3 Q His feet were pointed towards the road?

4 A Yes, sir.

5 Q You said you went to get the constable?

6 A Yes, sir.

7 Q Where did you have to go to get a constable?

8 A He lives right by the marina or at the marina.

9 Q And how far was the marina from where you found

10 Kenneth's body?

11 A Maybe two, two to three miles -- two miles.

12 Q How long did it take you to get there?

13 A About four or five minutes.

14 Q And what did you do when you arrived at the

15 constable's trailer?

16 A We got out and went up to the door and knocked on

17 the door.

18 Q What happened then?

19 A He came to the door, and we told him what we had

20 found.

21 Q What, if anything, did he do?

22 A He told us to wait a second, and then he came out,

23 and he followed us back down there.

24 Q You were in your pickup?

25 A Yes, sir.

1 Q And he was in a car?

2 A Yes, sir.

3 Q How long was it from the time that you left Kenneth's

4 body, went and got the constable and got back to

5 Kenneth's body? How much time elapsed?

6 A About 10 minutes. Maybe a little less.

7 Q A little less than 10 minutes?

8 A Maybe a little less than 10 minutes.

9 Q When you arrived at Kenneth's body, was it still in

10 the same condition as you left it?

11 A Yes, sir.

12 Q No one else was there?

13 A No, sir, not that I know of.

14 Q What happened when you got back to Kenneth's body

15 with the constable?

16 A He walked over and looked at the body and then

17 came back and radioed -- called somebody on the

18 radio.

19 Q Do you know who he called?

20 A No, sir.

21 Q After he did that, did he ask you to do anything?

22 A Yes, he asked our names and our addresses and what

23 we were doing out at the lake or in that area.

24 Q And did he -- and of course, you gave them to him?

25 A Yes, sir.

1 Q And then did he ask you -- did he ask you to do
2 anything?
3 A Yes, sir, he asked us to go back up to the T
4 intersection and escort officers in or officials.
5 Q Did you do that?
6 A Yes, sir.
7 Q How long was it before the first officers arrived?
8 A About 15 -- about 15 minutes.
9 Q And during that period of time, you and your
10 brother-in-law were waiting to show them where to
11 come, and the constable stayed with Kenneth's body.
12 Is that right?
13 A Yes, sir.
14 Q When the first officers arrived, did you and your
15 brother-in-law both take them back to the location
16 of the body?
17 A Yes, sir.
18 Q Then what did you do?
19 A Then we turned around and went back.
20 Q Went back where?
21 A Back to the intersection.
22 Q What was the reason for going back, again?
23 A To wait on other people. They said that there would
24 be other people come.
25 Q To show other people how to get to the scene?

1 A Yes, sir.

2 Q How many times did you escort officers back and
3 forth or to that scene?

4 A Twice, I think.

5 Q And then how did they find the location without you
6 to show them?

7 A I am not sure.

8 Q What then happened, if anything, Mr. Smith?

9 A They -- another officer again asked our -- us our
10 names and our addresses.

11 Q You gave them that?

12 A Yes, sir.

13 Q What else did he ask you?

14 A Just what we were doing in that area. That is all
15 I can remember.

16 Q All right, then what happened?

17 A Then they started looking around going off in
18 different directions and to one officer yelled,
19 "Here they are," talking about the two girls.

20 Q So the bodies of the two girls were found while
21 you were there?

22 A Yes, sir.

23 Q Was it still daylight, at that time?

24 A Yes, sir.

25 Q Did you see the bodies of the two girls?

12

1 A No, sir.

2 Q Why not?

3 A They wouldn't let us down there.

4 Q Where were you at the time the bodies of the two

5 girls were found?

6 A Right at the -- close to Kenneth Franks.

7 Q What did you do after they found the bodies of the

8 two girls?

9 A We just stood by the truck.

10 Q How much longer did you stay in Speegleville Park?

11 A Not very long. They told us that we could leave.

12 Q Where did you go?

13 A Home.

14 Q Mr. Smith, were you acquainted with Kenneth Franks?

15 A No, sir.

16 Q Were you acquainted with Jill Montgomery?

17 A No, sir.

18 Q Were you acquainted with Raylene Rice?

19 A No, sir.

20 Q Have you been back to that particular area of

21 Speegleville Park since then?

22 A No, sir.

23 Q Why not?

24 A I tried --

25

MR. VANCE: Your Honor, I will

1 object to the relevancy of that.

2 THE COURT: Sustained.

3 MR. BUTLER: We would pass the
4 witness, Your Honor.

5 MR. VANCE: Could we approach
6 the bench, Your Honor?

7 THE COURT: Yes, sir.

8 (Conference at the bench
9 (out of the hearing of the
10 (jury.

11 MR. VANCE: I had requested
12 that we be furnished a copy of his, Mr. Smith's,
13 written statements because in the record on
14 Page 216 of the prior Statement of Facts seems to
15 indicate there is one that isn't there.

16 MR. BUTLER: He never gave one.

17 MR. FEAZELL: I have never seen
18 it. Let me see the record.

19 MR. VANCE: May we have a minute
20 to check?

21 MR. BUTLER: There was no statement.

22 (Whereupon the following
23 (proceedings took place
24 (within hearing of the jury.

25 CROSS EXAMINATION

QUESTIONS BY MR. VANCE:

Q Mr. Smith, you never gave any type of written

1 statement to the police?

2 A Not that I know of.

3 Q Do you know who you first talked to there that
4 afternoon or evening at Speegleville Park?

5 A No, sir.

6 Q Was it a Waco police officer or a constable or
7 other than the constable?

8 A I can't remember for sure.

9 Q Okay, do you remember who -- which officials arrived
10 on the scene after you took the constable to the
11 area where Mr. Franks' body was?

12 A The sheriff, I think, but I am not for sure.

13 Q The sheriff or deputy?

14 A A sheriff. I am not for sure.

15 Q And who was the second person or persons that you
16 took to the scene?

17 A I don't know.

18 Q Do you remember how many people were there at the
19 scene when you left?

20 A Approximately, 15 people.

21 Q Were they all police officers?

22 A Not everybody. There was a TV crew there.

23 Q Did they get there before some of the police officers?

24 A I think so.

25 Q Would you do me a favor? Would you go to that

1 blackboard behind you and draw this area that you
2 are talking about where you entered into Speegleville
3 Park and the roads that you took?
4 A (Witness complied.)
5 Q Would you put a G where the gate is entering into
6 Speegleville Park?
7 A (Witness complied.)
8 Q Okay, was that gate open that afternoon?
9 A Yes, sir.
10 Q Okay, and about how far did you drive on the paved
11 road before you got off of it?
12 A All the way down here. This is all dirt road.
13 Q Okay, would you kind of put a wiggly line over
14 the unpaved road?
15 A (Witness complied.)
16 Q About how far is that from the gate to that area
17 that you turned off?
18 A About a mile and a-half.
19 Q Okay, and are there any fences along there, or were
20 there, at that time?
21 A Not that I can remember.
22 Q Okay, and what was the -- from the pavement to the
23 portion that you found the body, what was the
24 distance regarding that?
25 A A quarter mile.

1 Q Okay, and what kind of land did you pass over on
2 this dirt road?
3 A Okay, out in here? It is just a big open field and
4 starts getting brushy or trees about right along
5 in here (indicating).
6 Q Okay, the boundary on the road is where it is brushy?
7 A Well, there is just trees all along in here. Out
8 here, it is open.
9 Q And this open area, was it cultivated, at that time?
10 A No, sir.
11 Q Were there any roads across it?
12 A No, sir, not that I know of.
13 Q Does this dirt road -- did this appear to be a
14 road that was maintained by the park system?
15 A It was an easily passable road.
16 Q It didn't have any gravel on it or anything like
17 that?
18 A No, no gravel.
19 Q And it was through the middle of a field?
20 A Around the edge of a field.
21 Q And did you notice if it was muddy in any way?
22 A No.
23 Q Had it rained prior to that day?
24 A No.
25 Q Okay, and would you put a big circle where you found

1 Kenneth Franks' body?

2 A (Witness complied.)

3 Q And it was to the -- our left of that circle that

4 you found the body?

5 A It was right there (indicating).

6 Q Okay, is that on the road?

7 A Well, it is to the left of the road.

8 Q All right.

9 A To the left of this road.

10 Q And where is the water in relation to that road?

11 How far is it to the water?

12 A Maybe 50 yards.

13 Q Okay, and what is the terrain like between the area

14 that you found Kenneth Franks' body in and to the

15 water?

16 A Wooded.

17 Q Okay, when we talk about "wooded," are we talking

18 about large trees, small trees, brush?

19 A Large and small trees, a little brush, easily

20 passable.

21 Q Easily passable? Any type of artificial lighting

22 out there?

23 A No, sir.

24 Q Would you mind marking on that drawing where the

25 water was?

12.1

1 A The lake runs back out in here (indicating).

2 Q Thank you. You can -- you had never been to this

3 area before?

4 A No, sir.

5 Q No particular reason to go there?

6 A No, sir.

7 Q And you don't remember any fences along the paved

8 road?

9 A No, sir.

10 Q Okay, would you describe the gate that you go through?

11 First of all, would you go to -- do you recognize

12 this aerial photo of Lake Waco?

13 A Yes, sir.

14 Q Would you go and show the jury how you enter into

15 Speegleville Park -- where the entrance is?

16 A You exit right here, and you go into Speegleville

17 Park right through here (indicating).

18 Q Okay, you cross over the bridges and probably about

19 six inches up the drawing then there is a road that

20 turns into the right. Okay, what kind of gate is

21 there at that park?

22 A It is a big iron gate -- iron pole gate.

23 Q Okay, you can have a seat now. When you first got

24 out and looked at Mr. Franks' body, did you notice

25 any unusual -- anything unusual around the body?

1 A No, sir.

2 Q Were there any skid marks or grass that had been
3 bent over or anything like that to indicate the
4 body had been moved?

5 A I didn't notice.

6 Q Okay. Well, you weren't looking for that?

7 A No, sir.

8 Q How about any type of tire marks or tread marks?

9 A I don't know.

10 Q You didn't notice any?

11 A No, sir.

12 Q About how many police officers were on the scene
13 before they started marking off this area for
14 investigative purposes?

15 A I don't know.

16 Q Did you ever --

17 A I think that we left before they started marking it
18 off. I am not sure.

19 Q Okay, and what time did you find the body?

20 A It was in the afternoon.

21 Q 3:30 -- 4:00 o'clock?

22 A I couldn't say for sure. I don't know. It was
23 daylight.

24 Q How long do you think you were out there until you
25 left?

12.

1 A When -- from the time we got there or --
2 Q Yes, sir, from the time you found the body until you
3 left to go home, about how long do you think you
4 were there?
5 A Maybe an hour and a-half or --
6 Q And in this hour, you had gone and got the constable,
7 went back to the body and then went back -- and where
8 is this T that you talked about that you went back
9 to bring officers in? Would you show us that on
10 the drawing there?
11 A (Witness complied.)
12 Q Would you mind putting an X there?
13 A (Witness complied.)
14 Q Okay, in essence, you made three trips to where the
15 body was located in a period of about one hour before
16 you left?
17 A It could have been longer. I don't know for sure.
18 Q Was it dark when you left?
19 A No, sir.
20 Q Okay, and there was about how many people there?
21 A There was, approximately, 15 people when we left.
22 Q What were most of them doing?
23 A Walking, looking.
24 Q Had the scene been marked off, in any way?
25 A Not that I can recall.

12

1 Q Okay, had Kenneth Franks' body been moved?

2 A I don't think so.

3 Q Did you ever see anybody touch or move Kenneth

4 Franks' body while you were there?

5 A No, sir.

6 Q Did you ever see anything put on his body?

7 A I don't remember.

8 Q Do you recall if the constable may have put a blanket

9 or something like that over his body?

10 A I don't remember.

11 Q And you described the area from where you found

12 Mr. Franks' body to the water as being passable?

13 A The best I can remember, it is passable.

14 Q Okay, was there any road that actually went to the

15 water?

16 A Not that I know of. I don't know.

17 Q The little dip that you have off this U-shaped dirt

18 road, do you know if that went to the water?

19 A I didn't never --

20 Q Never went that far?

21 A Never went that far.

22 Q Okay, was the news media also just walking around

23 the area while you were there?

24 A They were -- they asked us questions.

25 Q But were they just wandering around the area?

1 A They were around there.

2 Q How many persons would you estimate were there

3 from the news media?

4 A I only seen two.

5 Q Two? Okay, well, I have one last question. Can you

6 come back to the aerial photo and show us where the

7 marina is that you referred to?

8 A (Indicating)

9 Q Okay, that is a pretty good distance there, isn't it?

10 Is that all paved road?

11 A It is all paved road.

12 Q And there wasn't a park ranger there at the main

13 gate or anything?

14 A There was a guy that lives at the trailer, but we

15 didn't go up there.

16 Q How did you know this constable lived there at the

17 marina?

18 A My brother-in-law knew that he lived there.

19 Q All right. Okay, you had never been to Speegleville

20 Park before?

21 A I have been before.

22 Q Oh, you had been before, but just not to this area?

23 A Not in this area, no.

24 Q Okay, how often did you go there?

25 A Not that often. I have been down to the marina a

1 few times before.

2 Q But you knew there was a guy that lived there at
3 the gate?

4 A Oh, yes.

5 Q Was that back in July of '82?

6 A Yes, sir.

7 Q To your knowledge, does this person stay there at
8 night?

9 A I assume that he does. I couldn't say for sure.

10 Q Okay, if you would, right under your -- what would
11 probably be better is if you would take a minute
12 and transfer that drawing on to that piece of paper.
13 That way, we would be able to save this.

14 Do you mind doing that?

15 A No.

16 Q Okay, go ahead and fill in the wooded and field
17 area, too, please, sir.

18 A (Witness complied.)

19 Q Okay, and in your drawing, you have lines that run --
20 A Open.

21 Q -- horizontal. That is the open field and the areas
22 where you have the dashes is the wooded area?

23 A Right.

24 Q Would you also do me more favor? On that exhibit,
25 would you draw kind of a diagram of the gate and the

1 trailer where the officer or the guy lives there
2 at the entrance to Speegleville Park? Just a rough
3 schematic drawing.

4 A Of the gate?

5 Q Just show us where the gate is in relation to the
6 trailer, and you can do it up to the top of the
7 drawing separately, if you don't mind, please, sir.

8 A Okay.

9 Q Okay, the bar across the road symbolizes the gate.
10 Would you put a G there, please?

11 A (Witness complied.)

12 Q And the little square is the trailer. Okay, there
13 are fences on either side of that gate.

14 A They have got posts with cables running through them.

15 Q So you can't get around that gate very easy, can you?

16 A Not -- no.

17 MR. VANCE: May I approach the
18 witness, Your Honor?

19 THE COURT: Yes, sir.

20 (Whereupon an instrument was
21 marked for identification as
(Defendant's Exhibit No. 4.

22 Q Okay, Sidney, I am going to show you what has been
23 marked and identified as Defendant's Exhibit No. 4.

24 Is this a true and accurate drawing of the
25 testimony that you have related here today concerning

1 Speegleville Park and the entrance thereto and the
2 area in which you found Mr. Franks' body?

3 A Yes, sir.

4 Q Okay, is there anything you want to change about
5 this drawing?

6 A There is this (indicating).

7 Q To the best that you recall it?

8 A Yes.

9 MR. VANCE: Okay, at this time,
10 we will offer into evidence what has been marked
11 Defendant's Exhibit 4.

12 MR. BUTLER: No objection,
13 Your Honor.

14 THE COURT: Exhibit 4 will be
15 admitted.

16 (Defendant's Exhibit No. 4
17 (was then admitted into
18 (evidence.

19 MR. VANCE: I pass the witness.

20 REDIRECT EXAMINATION

21 QUESTIONS BY MR. BUTLER:

22 Q All right, Mr. Smith, if you would, approach this
23 map, State's Exhibit No. 1. Now, you testified
24 that you came across the Twin Bridges here. That
25 is Highway 6, isn't it?

A Yes, sir.

1 Q You came across the exit and come through the gate
2 right here in this area into Speegleville Park. Is
3 that correct?
4 A Yes, sir.
5 Q All right. Now, you follow this road up, and is
6 this the T intersection that you talked about?
7 A Yes, sir.
8 Q All right, and that would correlate to the location
9 where the X is on your drawing?
10 A Yes, sir.
11 Q All right, which way did you go when you got to this
12 T intersection, to the left or to the right?
13 A To the right.
14 Q Which would be down that way? (Indicating)
15 A Yes, sir.
16 Q And, all right, and came around how far? Did you
17 come all the way around to another T intersection,
18 or did you come off before you got to that other
19 T intersection?
20 A I don't remember the second T.
21 Q All right, when you left the paved road, do you recall
22 coming across an open field? When you left the
23 pavement, did you then come across an open field
24 before you got to the treed area again?
25 A Came around an open field.

12

1 Q Well, were you on the edge of it with trees along
2 one edge and you were driving along the edge --
3 trees on one side of the road and open field on the
4 other?
5 A Yes, sir.
6 Q All right, and you notice on the map, the road that
7 comes down this way comes off this paved road and
8 comes down this way with the trees on this side and
9 an open field over here.
10 Can you see that on this map?
11 A Yes, sir.
12 Q All right, do you see where this red pin is located
13 in the map?
14 A Yes, sir.
15 Q Would that be, approximately, where Kenneth's body was
16 located?
17 A In that area.
18 Q Understand that this is taken from a long way up,
19 and it is hard to see the details, but would this be
20 the approximate area?
21 A Yes, sir.
22 Q In relation to Speegleville Park as you recall the
23 body being found?
24 A Yes, sir.
25 Q Okay, you may resume your seat, please.

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So the drawing that you did and what was introduced as Defendant's Exhibit 4 is not necessarily to scale, is it?

A No, sir.

Q And it doesn't represent every road and all the tree lines?

A No, sir.

Q Okay, do you know whether or not that particular location in Speegleville Park is in McLennan County?

A I think it is. I am not sure.

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

MR. VANCE: We have no further questions.

THE COURT: All right, may Mr. Smith be excused, gentlemen?

MR. VANCE: Yes, sir.

MR. BUTLER: We certainly have no objection, Your Honor.

THE COURT: Mr. Smith, you are finally excused, thank you.

(Witness excused.)

MR. BUTLER: Gene Thorp.

G E N E T H O R P, called as a witness on behalf of the State, having been duly sworn,