

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

gave the warnings.

THE COURT: All right, send him in then.

MR. BUTLER: I didn't know who you wanted first, Judge.

THE COURT: Well, do you all want to take a few minutes and discuss that?

MR. VANCE: Let us go ahead and get this witness, and then we will take a few minutes.

THE COURT: Bring in the next one, Judge Cabaniss, you say, J. P. Cabaniss?

MR. REAVES: He is one of our Justice of the Peace in Waco.

THE COURT: Good morning, sir, how are you?

J O H N C A B A N I S S, 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, please.

A John Cabaniss.

Q Would you spell that, please, for the Court Reporter?

A John, and then Cabaniss is C-a-b-a-n-i-s-s.

1 Q Where do you live, sir?
2 A Waco, Texas.
3 Q And how are you employed?
4 A Justice of the Peace, Precinct 1, Place 1, McLennan
5 County, Texas.
6 Q How long have you been so employed?
7 A Twenty-six years.
8 Q Are you also an attorney?
9 A Yes, I am.
10 Q Were you so employed on or about the 7th day of
11 April, 1983?
12 A Yes, sir, I was.
13 Q On that day, did you have occasion to come in contact
14 with a person present in the courtroom today, David
15 Wayne Spence?
16 A Yes, sir, I did.
17 Q What was your reason for coming in contact with
18 him on that day, if you recall?
19 A Called by the District Attorney's Office to give a
20 statutory warning.
21 Q And did you, in fact, give that statutory warning
22 to David Wayne Spence?
23 A Yes, sir, I did.

(Whereupon an instrument was
(marked for identification as
(State's Exhibit No. 53.

- 1 Q All right, let me show you what has been marked
2 for identification purposes as State's Exhibit 53,
3 and ask if you can identify that, please?
- 4 A Yes, I can.
- 5 Q What is it?
- 6 A It is a statutory warning that I gave to David
7 Wayne Spence on the 7th day of April 1983 at the
8 new county jail, and I stated to him that he is
9 warned that any statements made to a psychiatrist
10 representing the State of Texas can and will be
11 used against him.
- 12 Q All right. Now, is that the normal and usual
13 statutory warning that you give?
- 14 A Yes, it is.
- 15 Q All right, and all his rights are enumerated on
16 there, and you read all those rights to him?
- 17 A Yes, I did.
- 18 Q And further, I believe, you wrote on this -- that
19 portion you just read about what you stated regarding
20 the psychiatrist --
- 21 A Yes, that is my writing.
- 22 Q All right, that is not the normal warning.
- 23 A That is an addition to the normal warning.
- 24 Q All right.
- 25 A I had -- I made a note to myself. I have previously

1 given this subject the regular statutory warning.

2 Q So you had previously given him the standard
3 warnings. Then this one was specifically for
4 a psychiatrist examination?

5 A Yes, that is right. This was specifically for a
6 psychiatrist.

7 Q Did he indicate to you that he understood those
8 warnings?

9 A Yes, he did.

10 Q And did he, in fact, acknowledge that by signing
11 it?

12 A Yes, he did.

13 Q Did he sign it in your presence?

14 A Yes.

15 Q And was all that done on the date reflected?

16 A Yes, it was, the 7th day of April, 1983.

17 MR. BUTLER: All right,
18 Your Honor, at this time, we would offer what has
19 been marked for identification purposes as State's
20 Exhibit 53. For the record, Your Honor, this is a
21 copy of the original. The original is in evidence
22 in the other case in Waco.

23 MR. REAVES: Your Honor, we have
24 no objections to State's Exhibit 53 for the purpose
25 of this hearing.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE COURT: It will be admitted.

(State's Exhibit No. 53 was then
admitted into evidence.

MR. BUTLER: We will pass the
witness.

VOIR DIRE EXAMINATION

QUESTIONS BY MR. REAVES:

Q Good morning, Judge Cabaniss. At the time you gave
Mr. Spence that warning, he was not under indictment
for any felony offense, was he?

A I would have to examine the record to know, sir.

Q Okay, do you know -- I think, it reflects in there
that there was not at that time a formal complaint
signed against him. Do you recall that?

A I do not recall that.

Q Do you recall what the charge against him was for?
Was it for capital murder?

A Yes, it was.

Q Okay, at that time, you had -- nobody had presented
a written complaint to you for the offense of
capital murder?

A I take so many, sir, I would have to examine the
records to know.

MR. REAVES: Okay, we have no
further questions of this witness, at this time.

1 THE COURT: All right, any others
2 that need to be individually voir dired before we
3 bring the jury in?

4 MR. VANCE: We have to have the
5 doctor.

6 THE COURT: All right, Judge,
7 what we are doing is, we are doing the individual
8 voir dire at the request of the Defense before we
9 bring the jury in. We are going to go through
10 other witnesses that they deem necessary, and then
11 we will come back and have you back again in front
12 of the jury.

13 THE WITNESS: That would be
14 fine.

15 THE COURT: All right, so who
16 is the doctor, gentlemen?

17 MR. FEAZELL: Jolliff.

18 THE COURT: All right, we will
19 get back to you, Judge Cabaniss.

20 MR. VANCE: There is one thing
21 after that, Dr. Jolliff. Then can we have a few
22 minutes to discuss that Charge because I think we
23 are going to have some objections to it and requests
24 and instructions. So we will do that, and Janet
25 can be typing --