

TRIAL XIII

1 (At 9:00 a.m., July 2, 1984, the
2 (following proceedings were had out of the
3 (presence and hearing of the jury:

4 THE COURT: All right. I think all the parties
5 are present. We're outside the presence and the hearing of
6 the jury. And you have some additional objections that you
7 wissh to state.

8 MR. FULLER: Yes, sir. At this time the defense
9 would re-offer the testimony of the witnesses Katheryn
10 Breiton, Sharon Hittle, and Lt. Horton. We would offer and
11 urge the Court to -- we would offer this testimony, the
12 testimony of these witnesses into evidence at this time and
13 move to re-offer the testimony, Your Honor.

14 THE COURT: Of Katheryn Breiton and Sharon
15 Hittle, and who else?

16 MR. FULLER: And Lt. Marvin Horton.

17 THE COURT: All right.

18 MR. FULLER: Is that denied, Your Honor?

19 THE COURT: I was going to ask -- go ahead and
20 state your -- Does the state have any additional
21 objections?

22 MR. FEAZELL: No, Your Honor. We have same the
23 same objections we had Friday.

24 THE COURT: I sustain those objections.

25 MR. FULLER: In this case, Your Honor, pursuant

1 to Article 40.09 Texas Code of Criminal Procedure we would
2 ask that the testimony of the witnesses Katheryn Breiton,
3 Sharon Hittle, and Marvin Horton, each question posed to
4 those witnesses and each of their responses be included in
5 this record as a Bill of Exception. Is that granted, Your
6 Honor?

7 THE COURT: Yes, sir.

8 MR. FULLER: With reference to the Court's ruling
9 rendering the testimony of those witnesses inadmissible,
10 Your Honor, we would object to the Court's ruling on the
11 basis that it denies the defendant due process of law
12 pursuant to the 5th and 14th Amendments of the United
13 States Constitution and Article I, Section 19 of the Texas
14 Constitution.

15 THE COURT: Overruled.

16 MR. FULLER: Further, Your Honor, we would object
17 to the Court's ruling on the basis that it denies the
18 defendant effective assistance of counsel pursuant to the
19 6th Amendment of the United States Constitution and Article
20 I, Section 10 of the Texas Constitution.

21 THE COURT: Overruled.

22 MR. FULLER: Further, Your Honor, we would object
23 to the Court's ruling on the basis that it denies the
24 defendant a fair trial in that he's being denied his right
25 to present a defense of other suspect responsible to this

1 crime pursuant to the 6th Amendment of the United States
2 Constitution, and Article I, Section 10 of the State
3 Constitution and Article I, Section 15 of the Texas
4 Constitution.

5 THE COURT: Overruled.

6 MR. FULLER: That's all we have at this time,
7 Your Honor.

8 MR. FEAZELL: Your Honor, the State would point
9 out that we have no objection to anything that Marvin
10 Horton may be able to testify to concerning David Spence
11 with any relevance to this trial. I don't remember
12 everything that he testified to in chambers.
13 We specifically object to any testimony from Lt. Horton or
14 any or witnesses concerning any other possible suspect
15 because no relevancy, no nexus was established.

16 THE COURT: All right, sir. Defense have
17 anything else?

18 MR. FULLER: No, sir. At this time we're ready
19 for the jury, Your Honor.

20 THE COURT: If you will bring the jury in.

21 (Whereupon the jury was brought into the
22 Courtroom, seated in the jury box, and the
23 trial continued as follows, to-wit:

24 THE COURT: All right. Defense call your next
25 witness.

MR. FULLER: Your Honor, before calling our next

1 witness, the defense would like to offer into evidence what
2 has been pre-marked marked as Defense Exhibit Number 25 and
3 Defense Exhibit Number 26.

4 Defense Exhibit Number 26 consists of three pages. It is a
5 certified copy of the official record of the National
6 Weather Service on file with the Weather Service office in
7 Waco, Texas. It is certified by Doyle Casey, the official
8 in charge.

9 And we would also offer into evidence Defendant's Exhibit
10 25, which is titled Local Climatological Data Monthly
11 Summary for July 1982, Waco, Texas which has been certified
12 by Danial B. Mitchell as an official record of the National
13 Climatic Center.

14 We would offer that under those exceptions to the hearsay
15 rule, Your Honor, as they are official government records,
16 D-25 and D-26.

17 MR. FEAZELL: Approach the bench, Your Honor?

18 THE COURT: All right.

19 (Whereupon counsel for the State and the Defense
20 (went into chambers for a brief time; and after
21 (returning to their respective places in the
(Courtroom, the trial continued as follows:

22
23 THE COURT: All right. Now, it's my
24 understanding there is an additional stipulation in
25 reference to the offer of Defendant's Exhibit 25 and 26.

MR. FULLER: Yes, sir. With regard specifically