

Defense Motion for Mistrial

THE COURT: All right. Let's go on
21 the record. Today is Friday, January 10th.
22 All right. Let the record reflect
23 that these proceedings are being -- well, where is Mr.
24 Hagler -- well, there he is.
25 Everybody please have a seat.
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1 All right. Let the record reflect
2 that these proceedings are being held outside the
3 presence of the jury and all parties of the trial are
4 present.
5 Mr. Hagler.
6 MR. JOHN HAGLER: Yes, your Honor. At
7 this time, your Honor, we would move for a mistrial based
8 on a violation of the Rule -- violation of Rule 613 in
9 the Texas Rules of Criminal Evidence.
10 Your Honor, at the beginning of this
11 trial, the Rule was invoked, and this Court admonished
12 those witnesses who were sworn that they were to comply
13 with the requirements of the Rule.
14 Now, during the first day of testimony
15 some damaging testimony was elicited, brought out by the
16 defense in this case, regarding the bruising and the age
17 of the bruises on the defendant's arm.
18 After that, testimony was brought out
19 in front of the jury, through cross-examination of a
20 number of witnesses, we were able to -- and I might say
21 the Court noted, I would suspect, the reluctance of the
22 witnesses. I'm referring to the Baylor nurses and
23 employees. Their reluctance to mention that there was a
24 clandestine meeting that occurred at the Holiday Inn.
25 Now, your Honor, I might note again
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1 that although these witnesses, again the Baylor
2 personnel, were not sworn in at the time of the
3 commencement of this trial, your Honor, still the spirit
4 of the rule, the purpose of the rule is to avoid either
5 party from shading, influencing or manipulating the
6 testimony of witnesses that will come out during the
7 course of the trial. These Baylor employees, I might add
8 were here. They were obviously going to be witnesses for
9 the State. And we would submit that they likewise fell
10 under the scope of the Rule and Rule 613.
11 Now, your Honor, again, we -- with

12 great reluctance did the witnesses disclose the nature of
13 this meeting, and as those witnesses testified it became
14 readily apparent that there was this clandestine meeting,
15 in which the nature and scope and age of the bruising was
16 discussed.

17 And if the Court will recall these
18 matters were never brought out earlier until damaging
19 testimony was offered on the first day of the trial.

20 Now, your Honor, it seems, and of
21 course the Court heard the testimony, but it's
22 extraordinary that all of the testimony of the Baylor
23 employees has now been conformed as to the age of the
24 bruising. And we would submit, your Honor, that it's
25 readily apparent from the testimony of those witnesses
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1 that they were influenced, that their testimony was
2 molded, and for lack of other words, was cooked up by the
3 State in order to confront the damaging testimony that
4 was offered the first day in this trial.

5 For that reason, your Honor, at this
6 point in time we have no way of knowing what their
7 original testimony would have been regarding the age of
8 the wounds.

9 The harm has been done on an important
10 issue in this case and we would ask that this Court grant
11 a mistrial due to the damaging nature of such testimony.

12 MR. DOUGLAS D. MULDER: Your Honor,
13 just one thing I might add, both sides were admonished.
14 Once the Rule was invoked, the Court admonished us to
15 make sure that our witnesses -- make sure that we
16 conformed our conduct to the Rule of Evidence, and they
17 were likewise admonished.

18 So the Rule was in effect, it was in
19 effect for all witnesses, not those just sworn in here.

20 I mean, it's reprehensible.

21 THE COURT: All right. Motion denied.

22 Thank you.