

In *Shute v. State*, 744 S.W.2d 96, 97 (Tex.Crim.App.1988), the Court of Criminal Appeals held that an oral notice of appeal, which was acknowledged in the clerk's records, did not invoke jurisdiction. In spite of this, the Court of Criminal Appeals

refused petition in *Jiles*, indicating, if not approval, at least an acceptance of the result of the case. Both *Shute* and *Jiles* cannot be correct: The facts of the two cases are almost exactly alike; only their holdings are different.

	Shute	Jiles
Notice of appeal:	oral	oral
	unsigned	unsigned
	noted by clerk	noted by clerk
Jurisdiction:	no	yes

In *Shute*, the Court of Criminal Appeals affirmed the unpublished opinion by the Fourteenth Court of Appeals. The opinions in *Shute* and *Jiles*, thus, represent the conflicting views on the requirements for the notice of appeal between the Fourteenth and First Courts of Appeals. These two courts review cases from the same 14 county district. Presently, with this conflict unresolved, the Court of Criminal Appeals has left the courts, the prosecutors, and the defendants in this district without guidance on the jurisdictional requirements for the notice of appeal.

The confusion continues unabated. In *Mullins v. State*, 767 S.W.2d 166, 167-68 (Tex.App.—Houston [1st Dist.] 1988, no pet.), this Court again held that an oral notice of appeal, acknowledged in the judgment, invoked jurisdiction. In *Jones v. State*, 752 S.W.2d 150, 151 (Tex.App.—Dallas 1988, pet.ref'd), the Dallas Court of Appeals held a written but unsigned notice of appeal, invoked jurisdiction. I agree with the dissenters in *Jones*, that *Shute* cannot be distinguished from *Jones*. As stated by Justice McClung in his dissent in *Jones*, to be effective as a notice of appeal, the notice must be, (1) timely filed, (2) in writing, and (3) signed. 752 S.W.2d at 154.

For the State to appeal an order suppressing evidence under article 44.01(a)(5) & (d), there are four requirements for an effective notice of appeal. The State's notice must be:

(1) timely filed;

(2) in writing;

(3) and signed by the prosecuting attorney (not the assistant prosecuting attorney),

(4) who shall certify to the trial court that:

(a) the appeal was not taken for the purpose of delay; and

(b) the evidence was of substantial importance in the case (emphasis added).

Because the State's notice of appeal was not signed by the prosecuting attorney, and because the prosecuting attorney did not make the article 44.01(a)(5) certification to the trial court until nine months after the judgment, I would hold, under the guidance of *Shute*, the State did not perfect its appeal of the motion to suppress.



James Edward PERRYMAN, Appellant,

v.

The STATE of Texas, Appellee.

No. 05-89-00882-CR.

Court of Appeals of Texas,
Dallas.

Aug. 31, 1990.

Rehearing Denied Oct. 31, 1990.

Defendant was convicted of aggravated sexual assault following jury trial in

the 219th District Court, Collin County, Curt B. Henderson, J. Defendant appealed. The Court of Appeals, Ovard, J., held that: (1) trial court erred in admitting harmful expert testimony by police detective that assailant was "power reassurance rapist"; (2) evidence was sufficient to support finding that defendant was guilty of aggravated sexual assault; (3) statute defining aggravated criminal sexual assault did not deny defendant's right to due process and equal protection; and (4) defendant was not entitled to jury instruction on lesser-included offense of sexual assault.

Reversed and remanded.

1. Criminal Law ⇨480

State has the burden to establish all requisites for admissibility of expert testimony when defendant makes general objection based on competency of witness.

2. Criminal Law ⇨1028

Generally, when an error has not been preserved for review, appellant may not complain on appeal; however, the court of appeals may examine the record in the interest of justice.

3. Criminal Law ⇨369.1

An accused has the right to be tried for the particular offense alleged and should not be tried for being a criminal generally.

4. Criminal Law ⇨472

Expert opinion evidence is admissible when jurors are not competent to infer, absent testimony from one having superior knowledge, probable existence of facts to be ascertained, or likelihood of their occurring from other facts actually proved. Rules of Crim.Evid., Rule 702.

5. Criminal Law ⇨478(1)

Special knowledge which qualifies a witness to give an expert opinion may be derived entirely from study of technical works, specialized education, or practical experience, or combinations thereof.

6. Criminal Law ⇨469.2, 1153(1)

Trial court has discretion to determine whether party offering expert testimony

has satisfied its burden of establishing admissibility of expert's opinion; trial court's decision to admit or exclude expert opinion testimony will not be disturbed absent clear abuse of discretion.

7. Criminal Law ⇨478(1)

In prosecution for aggravated sexual assault, trial court did not abuse its discretion in determining that police officer was competent to testify as an expert on characteristics of sexual assault assailants where State established that officer had practical experience in dealing with sexual assaults, special training in psychological profiling, and previous experience using profiling techniques.

8. Criminal Law ⇨469.1, 736(1)

Expert testimony must assist trier of fact to understand evidence or to determine a fact in issue to be admissible; question of whether subject in issue is one upon which expert opinion would assist jury is question for trial court to decide and not a matter of "weight" to be decided by jury. Rules of Crim.Evid., Rule 702.

9. Assault and Battery ⇨83

In prosecution for aggravated sexual assault, trial court abused its discretion by admitting opinion testimony by police officer as to type of assailant that matched profile of "power reassurance rapist," even though officer was competent to testify as expert, where disputed testimony did not go to resolution of any issue before the jury, and thus, did not aid jury in understanding any other evidence presented. Rules of Crim.Evid., Rule 702.

10. Criminal Law ⇨469

Expert testimony is admissible in a criminal proceeding only when testimony's probative value outweighs its prejudicial effect. Rules of Crim.Evid., Rule 403.

11. Criminal Law ⇨474.4(5)

In prosecution for aggravated sexual assault, probative value of opinion testimony of police officer, characterizing assailant as a "power reassurance rapist," was outweighed by testimony's prejudicial effect, and thus testimony was inadmissible, because characterizing assailant in this

manner at the guilt phase of trial did not assist jury in either identifying assailant nor crime committed, but such testimony implied that defendant was an experienced, habitual rapist. Rules of Crim.Evid., Rule 403.

12. Criminal Law ⇨1169.9

Where court of appeals finds error, court shall reverse judgment of conviction unless it determines, beyond a reasonable doubt, that erroneous admission of expert's opinion made no contribution to conviction or to punishment of defendant. Rules App. Proc., Rule 81(b)(2).

13. Criminal Law ⇨1169.9

In prosecution for aggravated sexual assault, error in admitting expert testimony characterizing assailant as "power reassurance rapist" was harmful and required reversal of conviction where testimony improperly suggested that assailant was repeat offender notwithstanding that nothing in record showed defendant had any prior conviction, and given jury sentence of 99 years, error may have contributed to defendant's conviction or punishment. Rules App.Proc., Rule 81(b)(2).

14. Assault and Battery ⇨59

In determining whether sexual assault was aggravated, fact finder must consider an objective test of assailant's conduct and reasonableness of victim's subjective fears. V.T.C.A., Penal Code § 22.021(a)(2)(A)(ii).

15. Assault and Battery ⇨95

Reasonable trier of fact could find defendant guilty of aggravated sexual assault based on defendant's actions of forcing his way into victim's apartment, locking door, repeatedly pushing victim to floor and placing dishtowel over her face so as to impair her breathing to point of nearly fainting.

16. Assault and Battery ⇨59

Constitutional Law ⇨250.1(2), 258(5)

Aggravated sexual assault statute does not deny defendant due process and equal protection, even though level of offense is increased from sexual assault to aggravated sexual assault based on subjective state of mind of victim, where fact

finder also considers defendant's objective conduct. U.S.C.A. Const.Amend. 14; V.T.C.A., Penal Code § 22.021.

17. Assault and Battery ⇨96(5)

In prosecution for aggravated sexual assault, defendant was not entitled to jury instruction on lesser-included offense of sexual assault where there was sufficient evidence for jury to have found element of aggravation and there was no evidence that raised only the lesser offense. V.T.C.A., Penal Code § 22.021.

Randy Schaffer, P.C., Houston, for appellant.

J. Bryan Clayton, McKinney, for appellee.

Before WHITHAM, OVARD and WHITTINGTON, JJ.

OPINION

OVARD, Justice.

James Edward Perryman was convicted by a jury of aggravated sexual assault and sentenced to ninety-nine years' confinement and a \$10,000 fine. In five points of error, Perryman challenges the sufficiency of the evidence; the constitutionality of section 22.021 of the Texas Penal Code; and the trial court's rulings on his request to include a jury instruction on the lesser included offense of sexual assault, his objection to the testimony of a detective regarding psychological profiles of rapists, and his objection to the admission into evidence of the results of DNA testing. Because we agree with Perryman's contention that the trial court erred in admitting the detective's testimony, we reverse the trial court's judgment and remand the cause for a new trial.

[1] In his fourth point of error, Perryman complains of Detective Keith Grisham's testimony regarding the psychological profile of the victim's assailant, which the State offered as expert testimony. The detective described his training and education in the development and use of psychological profiles of suspects. He then

explained that, through use of information provided by the victim regarding the offense, he was able to develop a psychological profile of the victim's assailant. The detective concluded that the assailant was an experienced offender who he categorized as a "power reassurance rapist." This type of rapist, according to the detective's testimony, carefully selects his victims, waits for the right opportunity, and uses just enough force to overcome his victim. Perryman objected to this testimony on the ground that the detective was not competent to render expert psychological testimony. On appeal, Perryman again argues that Detective Grisham was not competent to testify as an expert and additionally argues that the testimony should not have been allowed due to its irrelevance. While an objection to expert testimony based on the competency of the witness is a general objection, we find it adequate to shift the burden to the State to establish all requisites for admissibility. See *Holloway v. State*, 613 S.W.2d 497, 502 (Tex.Crim.App.1981). Therefore, the point of error having been preserved, we will consider both the detective's competency to testify as well as the relevance of the testimony.

[2,3] Alternatively, even if the objection has not properly been preserved, we determine that the point of error should be reviewed in the interest of justice. The general rule is that, when an error has not been preserved for review, then appellant may not complain on appeal. *Boggs v. State*, 643 S.W.2d 180, 182 (Tex.App.—Tyler 1982, no pet.) (citing *Carrillo v. State*, 566 S.W.2d 902, 912 (Tex.Crim.App. [Panel Op.] 1978)). However, in the interest of justice, this Court may examine the record. *Boggs*, 643 S.W.2d at 182. Arguably, in the case at bar, appellant's point of error on appeal concerns the relevancy of the expert testimony while appellant's objection at trial addressed the competency of the expert. The testimony conveyed to the jury the opinion that Perryman was a "power reassurance rapist," thus implying the conclusion that he was a recidivist offender who had committed repetitive offenses against women. An accused has the right to be tried for the particular

offense alleged and should not be tried for being a criminal generally. *Crank v. State*, 761 S.W.2d 328, 341 (Tex.Crim.App. 1988), cert. denied, — U.S. —, 110 S.Ct. 209, 107 L.Ed.2d 162 (1989).

[4-6] Ordinarily, opinion evidence is inadmissible because it is not based upon personal knowledge of the existence of facts capable of being proved by direct evidence. *Holloway*, 613 S.W.2d at 500. But when the jurors are not competent to infer, absent testimony from one having superior knowledge, the probable existence of the facts to be ascertained, or the likelihood of their occurring from other facts actually proved, expert opinion evidence is admissible. *Id.* at 500-01; TEX.R.CRIM. EVID. 702. The burden of establishing the admissibility of an expert's opinion rests on the party offering such evidence. *Holloway*, 613 S.W.2d at 501. The special knowledge which qualifies a witness to give an expert opinion may be derived entirely from a study of technical works, or specialized education, or practical experience, or varying combinations thereof. *Id.* The trial court has discretion to determine whether a witness offered as an expert is qualified. *Acosta v. State*, 752 S.W.2d 706, 710 (Tex.App.—Corpus Christi 1988, pet. ref'd). The trial court's decision to admit or exclude the testimony will not be disturbed absent a clear abuse of discretion. *Steve v. State*, 614 S.W.2d 137, 139 (Tex.Crim.App. [Panel Op.] 1981); *Acosta*, 752 S.W.2d at 710.

[7,8] In the instant case, the State laid the predicate for determining the officer's expertise by establishing that the officer had practical experience in dealing with sexual assaults, specific training in psychological profiling, and previous experience using the profiling technique. Based on the facts of this case, we determine that the trial court did not abuse its discretion in determining that the officer was competent to testify as an expert. However, the trial court is also compelled to follow Texas Rule of Criminal Evidence 702 and may not allow expert testimony that does not meet that rule's requirements. Rule 702 re-

quires that expert testimony be such that it will assist the trier of fact to understand the evidence or to determine a fact in issue. TEX.R.CRIM.EVID. 702; see also *Hopkins v. State*, 480 S.W.2d 212, 218 (Tex.Crim.App. 1972). The question of whether the subject in issue is one upon which expert opinion would assist the jury is a question for the trial court to decide and not a matter of "weight" to be determined by the jury. *Holloway*, 613 S.W.2d at 501.

[9] At the guilty/not guilty phase, the State offered opinion testimony as to the psychological profile of the assailant. At this phase of the trial, the issues were: (1) what crime was committed; and (2) who committed the crime. The expert's opinion as to the type of assailant that matched the profile could not assist the trier of fact in determining either of the issues. First, the opinion that the assailant in this case was a "power reassurance rapist" did not assist the jury in identifying Perryman because no evidence established that Perryman was this type of rapist. Second, the profile testimony did not enhance the determination of whether the assault was aggravated because the aggravation issue is a function of the assailant's objective acts or words combined with the victim's subjective state of mind; this testimony went to the assailant's subjective intent. *Foreman v. State*, 743 S.W.2d 731, 732 (Tex.App.—El Paso 1987, no pet.). As a result of the admission of this testimony, the assailant was classified as an experienced rapist (i.e., one who has perpetrated other similar criminal acts). The evidence clearly showed that Perryman was the assailant. As a result, the effect of this opinion testimony was to portray Perryman as a specific type of recidivist rapist rather than to assist the jury's determination of a fact issue.

This Court has recently addressed the issue of whether expert testimony is of assistance to the jury. In *Key v. State*, 765 S.W.2d 848 (Tex.App.—Dallas 1989, pet. ref'd), this Court held that expert testimony on the issue of consent in an alleged "date rape" case was admissible because it would assist the jury. *Id.* at 850. This Court relied on the Court of Criminal Ap-

peals decision in *Fielder v. State*, 756 S.W.2d 309 (Tex.Crim.App.1988), which held that expert testimony is admissible where the testimony would be of "appreciable aid" to the trier of fact. *Key*, 765 S.W.2d at 850 (citing *Fielder v. State*, 756 S.W.2d at 321). This court also noted that the expert testimony in *Key* assisted the jury in resolving a contested issue. *Key*, 765 S.W.2d at 850. The case at bar is distinguishable from *Key* because the admitted testimony did not go to the resolution of any issue; neither the determination of the crime committed nor the identity of the assailant was ascertainable from the testimony. Thus, Detective Grisham's testimony did not aid the jury in understanding any other evidence presented. We hold, based on the facts of this case, that the trial court abused its discretion by admitting opinion testimony that could not "assist" the jury as required by rule 702.

[10, 11] Further, expert testimony in a criminal proceeding is admissible only when the testimony's probative value outweighs its prejudicial effect. *Holloway*, 613 S.W.2d at 502; *Key*, 765 S.W.2d at 849; TEX.R.CRIM.EVID. 403. In *Key*, this Court held that the probative value of expert testimony outweighed its prejudicial effect. *Key*, 765 S.W.2d at 851. Similar to the case at bar, the expert witness in *Key* testified as to the particular classifications and behavior patterns of rapists. However, in *Key*, the testimony did not directly concern the victim, defendant, or the specific sexual assault at issue; the testimony concerned general behavioral characteristics of rapists. *Id.* Conversely, the testimony in the case at bar concerned the particular sexual assault at issue and the specific victim. Though the testimony characterized rapists in general, it related to this particular defendant. Evidence should be excluded when its prejudicial and inflammatory effect outweighs its probative value. *Id.* The probative value of characterizing the assailant in this case as a "power reassurance rapist" at the guilty/not guilty phase was minimal because it proved neither the identity of the defendant nor the crime committed. The testimony was prejudicial because it im-

plied that Perryman was an experienced, habitual rapist. We conclude that the prejudicial and inflammatory effect of the opinion testimony clearly outweighed its probative value and that it was error for the trial court to admit it.

[12,13] Because we have found error, this Court shall reverse the judgment below unless we determine, beyond a reasonable doubt, that the admission of the expert's opinion made no contribution to the conviction or to the punishment of the defendant. TEX.R.APP.P. 81(b)(2). In applying this rule, the Texas Court of Criminal Appeals has instructed:

[a]n appellate court should be concerned with the integrity of the process leading to the conviction.... [T]he court should examine the source of the error, the nature of the error, whether or to what extent it was emphasized by the State, and its probable collateral implications.... [T]he court should consider how much weight a juror would probably place upon the error.... [T]he court must also determine *whether declaring the error harmless would encourage the State to repeat it with impunity*.... [T]he reviewing court should focus not on the weight of the other evidence of guilt, but rather on whether the error at issue might possibly have prejudiced the jurors' decision-making; it should ask not whether the jury reached the correct result, but rather whether the jurors were able properly to apply law to facts in order to reach a verdict.... [T]he reviewing court must focus upon the process and not on the result.... [A] reviewing court must always examine whether the trial was an essentially fair one. If the error was of a magnitude that it disrupted the juror's orderly evaluation of the evidence, no matter how overwhelming it might have been, then the conviction is tainted ... [I]t is the effect of the error and not the other evidence that must dictate the reviewing court's judgment.

Harris v. State, 790 S.W.2d 568, 587-88 (Tex.Crim.App.1989) (emphasis added). The admitted testimony labeled the assail-

ant as a "power reassurance rapist." This characterization of the defendant, when identified as the assailant, becomes harmful. The witness testified that a "power reassurance rapist" was experienced, suggesting that the assailant was a repeat offender. Applying the above mentioned standard and considering the testimony, the fact that there is nothing in the record to show Perryman had any prior convictions, and given the jury sentence of ninety-nine years, it cannot be said that, beyond a reasonable doubt, the error in admitting the testimony did not contribute to the conviction or punishment.

Upon examining the record, we determine that the error in admitting the expert testimony was harmful and requires reversal of the conviction notwithstanding the fact that Perryman voiced a general competency objection at trial and now urges that objection coupled with a relevancy objection. Our review of this point is consistent with *Holloway* and in the interest of justice. Point of error number four is sustained.

Due to our ruling on point four, we need not engage in lengthy discussion of Perryman's other points of error. However, because a new trial is ordered, additional comments are necessary.

[14,15] In his first point of error, Perryman contends that, while the evidence is sufficient to prove a sexual assault, it is insufficient to prove an aggravated sexual assault. Perryman would have this Court focus on his objective conduct in determining whether the alleged aggravating element has been proved. He argues that we should not focus on the victim's subjective state of mind.

The applicable statute states:

(a) A person commits an offense:

(2) if:

(A) the person:

(ii) by *acts or words places the victim in fear* that death, serious bodily injury, or kidnapping will be imminently inflicted on any person;

TEX.PENAL CODE ANN. § 22.021(a)(2)(A)(ii) (Vernon 1989) (emphasis added). The fact

finder is statutorily directed to determine whether a victim was placed in fear and whether that fear was due to conduct or words of the alleged attacker. Normally, the victim's state of fear is established through his or her testimony. The defendant's conduct is then examined to determine whether it was the producing cause of such fear and whether the subjective state of fear was reasonable in light of such conduct. *Foreman*, 743 S.W.2d at 732. We reject Perryman's suggestion to consider only his objective conduct as well as his allegation that the statute requires us to consider only the victim's subjective state of mind. It is not only an objective test of the assailant's conduct which is controlling, but additionally, the reasonableness of the victim's subjective fears must be considered. *Id.* at 733. We conclude that a reasonable trier of fact could have found Perryman guilty of aggravated sexual assault based on his actions in forcing his way into the victim's apartment, locking the door, repeatedly pushing the victim to the floor and placing a dishtowel over her face so as to impair her breathing to the point of nearly fainting. Point of error one is overruled.

[16] In his second point of error, Perryman contends that section 22.021 of the Texas Penal Code is unconstitutional as applied to him. He claims to have been denied due process and equal protection. He argues that it is fundamentally unfair to increase the level of the offense from sexual assault to aggravated sexual assault where the only determining factor is the state of mind of the victim. His argument would have merit if the trier of fact focused only on the subjective feelings of the victim, and the identical conduct could be punished differently depending on how it affected various victims. However, as we have previously explained in our discussion under point of error number one, Perryman has incorrectly identified the test for determining whether the element of aggravation exists. Applying the correct test, as set out above, to the facts of this case does not infringe on Perryman's due process or equal protection rights. Section 22.021 of the Texas Penal Code is not un-

constitutional as applied to Perryman. *See Foreman*, 743 S.W.2d at 732-33; TEX. PENAL CODE ANN. § 22.021 (Vernon 1989). Point of error number two is overruled.

[17] In his third point of error, Perryman contends the trial court erred in refusing to include in the jury charge an instruction on the lesser included offense of sexual assault. The Texas Court of Criminal Appeals has held that:

[I]n determining whether a charge on a lesser included offense is required, a two step analysis is to be used. First, the lesser included offense must be included within the proof necessary to establish the offense charged. Secondly, there must be some evidence in the record that if the defendant is guilty, he is guilty of only the lesser offense.

Royster v. State, 622 S.W.2d 442, 446 (Tex. Crim.App. [Panel Op.] 1981) (op. on reh'g). By definition, sexual assault is a lesser included offense of aggravated sexual assault. Therefore, the first prong of the test is satisfied. Again, we reject Perryman's contention that the only distinction between sexual assault and aggravated sexual assault is the subjective mental state of the victim. As stated above, there was sufficient evidence for the jury to have found the element of aggravation. Perryman presented no evidence concerning the elements of the offense as charged, nor was there any evidence that raised only the lesser offense. Therefore, the second prong of the test was not satisfied and he was not entitled to a charge on the lesser included offense of sexual assault. Point of error number three is overruled.

In his final point of error, Perryman contends the trial court erred in admitting evidence of DNA test results. The objection at trial was that DNA testing has not yet gained general acceptance in the scientific community. This Court has recently held that such DNA testing is reliable and has gained general acceptance in the scientific community. *Glover v. State*, 787 S.W.2d 544, 548 (Tex.App.—Dallas 1990, no pet.). Point of error number five is overruled.

For the reasons set forth above, the judgment is reversed and the cause remanded to the trial court for a new trial.

Ann.Texas Civ.St. arts. 4495b, § 3.06(d)(1), 4548, 4551a(3).



Jim CRYAN, Appellant,

v.

The STATE of Texas, Appellee.

No. 09-90-014 CR.

Court of Appeals of Texas,
Beaumont.

Sept. 12, 1990.

Rehearing Denied Oct. 4, 1990.

Defendant was convicted of unauthorized practice of dentistry. Judgment was entered in the County Court at Law, Angelina County, Joe Martin, J. Defendant appealed. The Court of Appeals, Burgess, J., held that: (1) instruction that physicians exempt from dentistry licensure could not delegate authority to make dentures was harmless error, insofar as it constituted a misstatement of law; (2) instruction was harmful insofar as it constituted a comment upon the weight of evidence; and (3) admission of past criminal and civil cases involving unauthorized practice of dentistry was harmless error.

Reversed and remanded.

Brookshire, J., dissented and filed opinion.

1. Physicians and Surgeons ⇌6(11)

Trial court misstated law by instructing jury, in practicing dentistry without license case, that while physicians and surgeons were exempt from law regulating practice of dentistry they may not delegate to others right to make dentures; physicians could delegate right to licensed dentists or to other explicitly exempted from dental licensure requirements. Vernon's

2. Criminal Law ⇌1172.6

Trial court's error in instructing jury that physician exempt from dental licensure requirements did not delegate right to make dentures to others, was harmless in unauthorized practice of dentistry case, insofar as it misstated the law; while physician could in fact delegate denture making to licensed dentists or to others exempt from dental licensure requirement, defendant had not alleged that he was within either of those classes. Vernon's Ann.Texas Civ.St. arts. 4495b, § 3.06(d)(1), 4548, 4551a(3).

3. Physicians and Surgeons ⇌6(11)

Instruction that physician exempt from dental licensure requirements could not delegate the making of dentures improperly commented upon weight of evidence in unauthorized practice of dentistry case; instruction emphasized defendant's attempt and failure to obtain a jury instruction on his sole defense theory, that he had been authorized by a physician to supply dentures. Vernon's Ann.Texas C.C.P. arts. 36.14, 36.19; Vernon's Ann.Texas Civ.St. arts. 4495b, § 3.06(d)(1), 4548, 4551a(3).

4. Physicians and Surgeons ⇌6(10)

Evidence of previous criminal and civil proceedings involving the unauthorized practice of dentistry through making of dentures was inadmissible in later criminal case; offenses were useless to refute defendant's theory of case because they did not involve defendant's making of dentures pursuant to physician authorization, and period of time during which earlier crimes could be used for impeachment had expired. Rules of Crim.Evid., Rule 609(a), (c)(2).

Charles Meyers, Lufkin, for appellant.

Ed C. Jones, County Atty., Lufkin, for state.