

1 Ms. Schubat, for several months, kept quiet about
2 what had happened in this case and had indicated in
3 prior testimony in the reports that she was very
4 frightened of the defendant.

5 One thing I forgot to mention, actually,
6 the last time we litigated this, is there is a
7 videotaped statement of the defendant where you can
8 see the devil horns in the statement on him. So, I
9 mean, it would come in even if for no other reason
10 than this videotaped statement.

11 His appearance is different now than it
12 was back then also. It goes to identification.

13 But for those reasons, Judge, and for the
14 reasons the Court previously ruled, I would ask you
15 to deny that motion.

16 THE COURT: I will deny the motion.
17 Again, the State may not choose to stipulate to the
18 identification by the police officer and may want to
19 introduce the testimony to create more impact that
20 this police officer does remember the stop.

21 Secondly, I am not over-convinced about
22 Ms. Schubat being afraid of the defendant in view of
23 the remainder of the testimony, but that's one of
24 the theories that the State is seeking to introduce

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1 the tattoos for, whether they are horns or something
2 else. And I don't -- frankly, unless they are
3 prejudicial to the defendant and the probative value
4 would exceed the prejudicial effect -- would not
5 exceed the prejudicial effect, then I should keep it
6 out. I don't consider the prejudicial effect to be
7 that grave in view of the fact that, again, I viewed
8 the videotape. The defendant appeared that way and
9 appeared in public that way. Everybody knew him
10 that way, with those tattoos and those horns, and
11 there is no way I can bar the State from introducing
12 the defendant's statement, videotaped statement, to
13 which the defendant consented to.

14 There is no way I can obliterate, even if
15 I had found otherwise, the image from the videotape.
16 I do not see such a big prejudicial effect on the
17 defendant if the testimony about the tattoos comes
18 in. I think there is a lot to be proved by the
19 introduction, and the probative value definitely
20 exceeds the prejudicial effect.

21 MR. STRICKLAND: Judge, I have no
22 objection to No. 2, regarding any prior murder
23 allegedly attributed to the defendant. I have
24 instructed Ms. Schubat regarding that already.