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your right hand.

(Whereupon, the witness was sworn.

THE COURT: Have a seat.

CINDY PACK

called as a witness on behalf of the State of Texas, and  
having been first sworn, testified as follows, to-wit:

DIRECT EXAMINATION  
(OUT OF THE PRESENCE OF THE JURY)

BY MR. FEAZELL:

Q What is your name, please?

A Cindy Pack.

Q That is P-a-c-k?

A Yes, sir.

Q Cindy, are you the mother of Darvin Pack?

A Yes.

Q Cindy, have you ever met David Spence? Do you know who  
he is?

A I know who he is.

Q Okay. Have you had occasion to talk with people about  
Mr. Spence?

A Yes.

Q Who are some of the people you have talked to?

A A girl named "Sunshine".

Q "Sunshine"?

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2 A A girl named K. C.

3 Q K. C.?

4 A My son.

5 Q Your son, Darwin.

6 A Kenneth Harper.

7 Q Kenneth Harper.

8 A A guy named David.

9 Q David. Like David Reyna?

10 A I think. I don't know.

11 O Okay. Jimmy Guttilla?

12 A Jimmy Guttilla.

13 Q And from talking to these people, did you find out that  
14 these are people who have associated with David Spence in  
15 the past?

16 A Yes.

17 Q People that he has -- that are part of his community?

18 A Most of them. Some of them.

19 Q And from talking with these people, Cindy, did you find  
20 out anything about David's reputation? Did you get  
21 familiar with his reputation in the community in which  
22 he resides for being a peaceful and law-abiding citizen?

23 A Yes.

24 Q And is that reputation good or bad?

25 A Real bad.

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Q Real bad.

MR. FEAZELL: I believe that's it, Judge.

CROSS EXAMINATION  
(OUT OF THE PRESENCE OF THE JURY)

BY MR. HUNT:

Q Mrs. Pack, I have -- I'm Russell Hunt, and I just have a few questions to ask you. You went over some names. You said "Sunshine". I guess that is Cindy Click. Is that right?

A I don't know. I just know her by "Sunshine".

Q Okay. And K. C. Do you know what K. C.'s name is?

A (Shaking head.)

Q David Reyna. And you weren't sure if it was David Reyna, but it's David somebody?

A (Nodding head.)

Q And Jimmy Guttilla, and your son Darvin. And who else did you talk to?

A Kenneth Harper.

Q Kenneth Harper. Okay. Did you specifically talk to them about things that David Spence had done? Or did you talk to them about David Spence's reputation in the community?

A It's one and the same to me.

Q Okay. Did you ever say to them, tell me some of the

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things that David had done?

A I didn't have to ask, when they knew --

Q They volunteered?

A When they knew. Yes.

Q Did you ever say to them, tell me about David Spence's reputation?

A I didn't have to. I mean, if they knew that I had been associated with him, they volunteered, hey, I know him, and they started telling me.

Q Well, did they tell you -- now, this is specific legalities, okay, I'm not trying to trap you. What I need to know is, I need to know whether they talked about specific bad things that he did?

A Yes.

Q Or whether they talked about his reputation as a human being?

A His reputation as a human being was bad.

Q Okay. Can you tell me what they said about his reputation? Anyone? Let's take Kenneth Harper first.

A About his reputation?

Q Yes, ma'am.

A That he terrorized people, he put -- you know -- he scared people and -- I don't know.

Q Okay. Did they give you instances? I mean, where they

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said, David Spence terrorized somebody?

A A couple. Yes.

Q Okay. Did Kenneth Harper ever say, oh, I know him, and I know his reputation, and his reputation is bad?

A Oh, no. Not actually those words.

Q Okay. How about Darwin? I know Darwin told you about the cutting, okay. Did Darwin ever say, oh, I know David, and David's reputation is really bad, he's got a bad reputation? Or did he tell you about the bad act that he had done?

A Sir?

Q Did he tell you -- I know he told you about the bad act. But what I'm asking you about is, did he ever tell you, Mom, I know David's reputation?

A He said, "Mom, I know he has a bad one."

Q He said he knows he had a bad reputation?

A Yes.

Q Did he say when he found that out?

A After the incident that happened with him.

Q After the offense, is that correct?

A (Nodding head.)

Q Okay. How about Jimmy Guttilla? Did he tell you anything about he knew David's reputation? Or did he tell you specific bad things that David had done?

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A More or less, he just had a bad reputation.

Q Okay. Can you remember how he said it, Mrs. Pack?

A No. I really can't.

Q Okay. How about the David? Now, how did you know David?

A Well, when the incident happened with my son, my husband was talking to people on the streets, about David, trying to find him, trying to find out who he was.

Q Okay. About David Spence?

A About David Spence.

Q Okay. And did he --

A And we talked to this -- when David and he was talking to us about an incident that occurred to him, and that David was bad news.

Q Okay. So, he said he thought David was bad news. Okay. Did he say anything about knowing David Spence's reputation on the street?

A That's what he was talking about.

Q Okay. And the same thing with K.C. How did you come in contact with K.C.?

A I came in contact with K. C. when this friend of mine knew what happened to my son, and he says, "I know a girl that he messed around pretty bad." And she was telling me.

Q And, so, then, you went to this girl named K. C.?

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A No. She came to me.

Q Okay. K. C. came to you, and K. C. said to you -- did she tell you something about bad things that David Spence had done? Or did she say, I know David Spence's reputation and his reputation is bad?

A She said that, also. But she did tell me some of the stuff that he had done. And she said the same thing, "He's bad news."

Q Okay.

MR. HUNT: I believe we'll pass the witness, Your Honor.

MR. FEAZELL: That's all, Judge.

THE COURT: Do you have any objections to this witness' testimony?

MR. FULLER: Okay.

Your Honor, we would object to this witness' testimony, on the basis that the source of her information, it's hearsay, her testimony is based on hearsay. The evidence, as such, would be a violation -- the admissibility of such evidence would be a violation of the prohibition against cruel and unusual punishment guaranteed the Defendant by the Eighth Amendment, and the due process clause of the Fourteenth Amendment of the Constitution of the United States.

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2 Further, such evidence violates the rights of  
3 the Defendant under the Sixth Amendment and the Due  
4 Process Clause, and the Fourteenth Amendment of the  
5 Constitution of the United States, to confront witnesses  
6 against him.

7 Further, Your Honor, the general reputation to  
8 which this witness is testifying, apparently, the knowl-  
9 edge of that was learned after the offense in question,  
10 and as such, would be irrelevant and immaterial.

11 THE COURT: Overrule the objection.

12 MR. FULLER: Object to the Court's ruling.

13 THE COURT: All right.

14 MR. FEAZELL: Judge, would you like to go  
15 ahead and take Darvin Pack?

16 THE COURT: Let's go ahead and do that before  
17 we bring the jury in.

18 MR. FEAZELL: All right.

19 THE COURT: Ma'am, if you will just step down  
20 and retire back to the hallway.

21 If you will, just come right around here, sir.

22 If you would, raise your right hand.

23 (Whereupon, the witness was sworn.

24 THE COURT: Have a seat, sir.  
25

DARVIN PACK

called as a witness on behalf of the State of Texas, and  
having been first sworn, testified as follows, to-wit:

DIRECT EXAMINATION  
(OUT OF THE PRESENCE OF THE JURY)

BY MR. FEAZELL:

Q For the record, your name is Darvin Pack?

A Yes, sir.

Q Darvin, I believe you lived in Waco during the summer  
months of 1982, is that correct?

A Yes, sir.

Q And you had an occasion to meet David Spence on or about  
September the 5th of 1982?

A Yes, sir.

Q Something happened to you after you met Spence, didn't it?

A Yes, sir.

Q Did David Spence use a knife on you?

A Yes, sir.

Q Did he cut you on the legs?

A Yes, sir.

Q Did he hold the knife on your throat?

A Yes, sir.

Q Did he force you to engage in a sex act with another man  
by the name of Gilbert Melendez?

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A Yes, sir.

Q And that was done by threat and at knifepoint?

A Yes, sir.

Q Okay. And is that David Spence right there?

A Yes, sir.

MR. FEAZELL: If the record could reflect,  
Your Honor, that he has pointed out the Defendant?

THE COURT: All right. And the record will so  
reflect.

BY MR. FEAZELL:

Q And Darwin, I believe you testified before as a complain-  
ant, have you not, against Mr. Spence?

A Yes, sir.

Q And Mr. Spence was convicted in that case?

A Yes, sir.

Q And assessed a sentence of 90 years by the jury?

A Yes, sir.

MR. FEAZELL: Pass the witness.

MR. HUNT: Is he also going to be a reputation  
witness?

MR. FEAZELL: Huh?

MR. HUNT: Is he also going to be a reputation  
witness?

MR. FEAZELL: I wasn't planning on it, I was

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planning on him just testifying as to specific acts.

BY MR. FEAZELL:

Q But I will ask you, Darwin, are you familiar with David Spence's reputation in the community in which he resides and among the people that he associates with, for being a peaceful and law-abiding citizen?

A Yes, sir.

Q Okay. And who do you know about his reputation from? Have you talked to Kenneth Harper?

A Yes, sir.

Q Jimmy Guttilla?

A Yes, sir.

Q Who else have you talked to about David Spence?

A That's about it.

Q Gilbert?

A Gilbert.

Q Gilbert Melendez tell you he was a pretty bad dude?

A Yeah.

Q Okay. And what is his reputation in the community in which he resides and among the people with which he associates, for being a peaceful and law-abiding citizen?

A Bad.

Q It's bad. And you know that from your own personal experience, too, don't you, Darwin?

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A Yes, sir.

MR. FEAZELL: That's it.

CROSS EXAMINATION  
(OUT OF THE PRESENCE OF THE JURY)

BY MR. HUNT:

Q Mr. Pack, I have a few questions that I need to ask you. First of all, I need to know whether you talked with Kenneth Harper about David Spence's reputation, or whether you talked to him about different bad things David Spence is supposed to have done?

A No. Just reputation.

Q You talked to him about his reputation?

A Uh-huh.

Q Do you remember what you were told by Kenneth Harper about his reputation?

A No, sir.

Q You don't remember?

A No, sir.

Q Okay. You said you talked to Jimmy Guttilla about David Spence's reputation, is that right?

A Yes, sir.

Q Again, did you talk to him about his reputation, or did you talk to him about some bad things he was supposed to have done?

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A His reputation.

Q Okay. Do you remember what was said by Jimmy Guttilla and what was said by you?

A No, sir.

Q How long prior to the night that you got cut did Kenneth Harper know David Spence? Do you know?

A No, sir.

Q When did you talk to Kenneth Harper about David Spence's reputation?

A I don't know what day it was.

Q Well, give me an approximate date, in relationship to the event when you got cut.

A What's that?

Q Was it before you got cut or after you got cut?

A It was after.

Q How long after?

A The next day.

Q The next day. You talked to him then about David Spence's reputation?

A Uh-huh.

Q Can you explain to me and the Court exactly what was said?

A I can't remember exactly what was said.

Q You just remember you talked to him about his reputation?

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2 A Yes, sir.

3 Q Do you remember what he said?

4 A No, sir.

5 Q Okay. You said you talked to Gilbert Melendez?

6 A Yes, sir.

7 Q About David's reputation?

8 A Uh-huh.

9 Q Okay. When was that?

10 A It was the night -- that night.

11 Q The night that you got cut, you talked to Gilbert about  
12 David Spence's reputation?

13 A I talked to him. Yeah.

14 Q And what did you say to Gilbert about David Spence's  
15 reputation, and what did he say to you?

16 A I was just talking to him. I don't know what we said.

17 Q Well, it's important that we know. You said you talked  
18 to people about his reputation. But you don't remember  
19 any of the conversations at all?

20 A No.

21 Q How do you know that you talked to him about his reputa-  
22 tion?

23 A I just know I talked to him.

24 Q You know you talked to him. Do you know that you even  
25 talked to him about his reputation?

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A Yeah.

Q Well, then, tell me, as best you can recall, what you said and what he said?

A I can't remember.

MR. FEAZELL: Judge, the witness has already testified he doesn't remember. He just knows, from talking with these boys, and what David did to him, that his reputation is pretty bad.

MR. HUNT: Your Honor, if the witness can't remember what was said, how can he know whether or not he talked to him about reputation?

MR. FEAZELL: Judge, he don't have to remember what was specifically said, to know that somebody is pretty bad.

THE COURT: Well, I understand.

Go ahead and answer whatever question was asked.

MR. HUNT: Okay.

BY MR. HUNT:

Q Mr. Pack, you said that you also were present when you got cut, is that correct?

A Yes, sir.

Q When was that?

A September the 5th.

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Q September 5th. How much after that was David arrested?

A About three or four days later.

Q He was arrested for that offense, is that correct?

A Yes, sir.

Q Okay.

MR. HUNT: Your Honor, we'll pass the witness. That's all of the questions we have, at this time.

MR. FEAZELL: No more, Judge.

THE COURT: So I can understand, do you know his general reputation in the community in which he resides for being a peaceful and law-abiding citizen?

THE WITNESS: Yes, sir.

THE COURT: Or have you heard it discussed? I should say that.

THE WITNESS: Yes, sir.

THE COURT: Is that reputation good or bad?

THE WITNESS: Bad.

THE COURT: Any other questions?

MR. HUNT: No, Your Honor.

But at this time, we would move the Court to exclude his testimony relative to general character and reputation. He says he talked to three specific people and he can't remember anything they said. We would ask the Court to restrict his testimony purely to the act.

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THE COURT: You said that you didn't remember specifically what was said. Do you remember whether or not you discussed the reputation, and whether or not that was good or bad?

THE WITNESS: Well, all that I remember is just David Spence was the name. I don't, you know --

THE COURT: Do you not remember whether it was good or bad?

THE WITNESS: No

MR. FEAZELL: Your Honor, we will limit our questions of Mr. Pack to the specific act.

THE COURT: I assume ya'll are not intending to offer what the punishment was in the other case. Ya'll are not asking to offer that, are you?

MR. FEAZELL: Are we?

You mean of the specific punishment? You mean 90 years?

THE COURT: Right.

MR. FEAZELL: No. We're not intending to do that, Your Honor. But we were intending to offer evidence that he did testify in the trial.

THE COURT: All right.

MR. HUNT: Your Honor, we would also object to his testimony relative to specific bad acts, in that we

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2 believe that any questions in that vein have not been  
3 alleged in the indictment, and we have not been given  
4 notice of that, and that the same violates the Defendant's  
5 rights under the Sixth Amendment and Due Process Clause  
6 of the Fourteenth Amendment of the Constitution of the  
7 United States. It violates the Defendant's right to the  
8 presumption of innocence, in violation of the Due Process  
9 Clause of the 14th. It violates the right of the Defend-  
10 ant to an impartial jury, guaranteed him under the Sixth  
11 Amendment and the Due Process Clause of the Fourteenth  
12 of the Constitution of the United States, in that the  
13 Defendant has not had an opportunity to interrogate these  
14 jurors as to their prejudices or biases pertaining to  
15 the alleged bad act to which he will testify and which  
16 the said evidence is going to be presented. We would  
17 object on those bases, Your Honor.

18 THE COURT: I overrule the objection. I'm  
19 going to allow him to testify as to the bad act.

20 Anything else before we bring the jury in?

21 MR. HUNT: No, Your Honor.

22 MR. FEAZELL: Except that we want to call Cindy  
23 Pack, first.

24 THE COURT: Oh, okay.

25 If you will, just step down and retire back to

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the hallway.

Ma'am, if you will just have a seat.

(Whereupon, the jury was returned to  
(the courtroom, and the trial con-  
(tinued in the presence and hearing  
(of the jury as follows, to-wit:

THE COURT: All right, Ms. Pack, you have  
already been sworn.

Go ahead, sir.

MR. HUNT: Your Honor, prior to the questioning  
beginning by Mr. Feazell, the Defense would object to  
any questions and answers being presented to this witness,  
because we have been informed what her testimony is going  
to be. We would ask that the Court exclude her testimony.  
And we would object, specifically, on the basis that her  
responses and the questions will elicit responses that  
would be hearsay, and that this evidence is in violation  
of the prohibition against cruel and unusual punishment  
guaranteed the Defendant by the Eighth Amendment and the  
Due Process Clause of the Fourteenth Amendment of the  
Constitution of the United States, and that such evidence  
violates the right of the Defendant under the Sixth  
Amendment and the Due Process Clause of the Fourteenth  
Amendment of the Constitution of the United States to  
confront the witness against him.

I would ask the Court, at this time, rather

1 than having to make the same objection every time the  
2 question is asked and responses given, I would ask that  
3 the Court give me a running bill on those bases?

4 THE COURT: I overrule the objection. I will  
5 allow you a running bill on that basis.

6 MR. HUNT: Thank you, Your Honor.

7 MR. FEAZELL: May I proceed, Your Honor?

8 THE COURT: Yes.

9 CINDY PACK

10 recalled as a witness on behalf of the State of Texas, and  
11 having been previously sworn, testified further, as follows,  
12 to-wit:

13 REDIRECT EXAMINATION

14 BY MR. FEAZELL:

15 Q Would you state your name for the record, please?

16 A Cindy Pack.

17 Q Mrs. Pack, I believe you live down at Bastrop right now?

18 A Yes.

19 Q And are you the mother of a young man named Darvin Pack?

20 A Yes.

21 Q Mrs. Pack, I'm going to ask you this question. Have you  
22 seen David Spence before?

23 A Yes.

24 Q Do you know his reputation in the community in which  
25 he resides and among the people with which he associates