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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