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those bases?

THE COURT: All right.

I overrule the objection, but I will allow you a running bill.

MR. HUNT: Thank you, Your Honor.

MR. FEAZELL: Your Honor, for the record, we would point out that evidence concerning the bad act has been in the record for months, at their request.

THE COURT: All right. The record will so reflect.

DARVIN PACK

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

REDIRECT EXAMINATION

BY MR. FEAZELL:

Q Now, Darwin, you have already been sworn.

MR. FEAZELL: May we proceed, Your Honor?

THE COURT: Yes, sir.

BY MR. FEAZELL:

Q You have already been sworn in, correct?

A Yes, sir.

Q Now, Darwin, we will need you to speak up, so that everybody on this jury can hear what you're saying. I'm going to put this microphone over kind of close to you.

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Okay. And will you speak up, so that everybody can hear you. You are the son of Donald and Cindy Pack, Cindy, who just testified in here a minute ago?

A Yes, sir.

Q Darwin, were you living in Waco back in the summer months of 1982, and more specifically, Spetember of 1982?

A Yes, sir.

Q And during those summer months of 1982, Darwin, did you have an occasion to meet a man by the name of David Wayne Spence?

A Yes, sir.

Q Do you remember what day that was?

A September the 5th.

Q How is it, Darwin, that you specifically remember that it was September the 5th?

A It was two days after my birthday.

Q And how old were you on that birthday?

A Just turned 18.

Q So, September the 5th would have been two days after your 18th birthday?

A Yes, sir.

Q And that's the date you met David Spence?

A Yes, sir.

Q It wasn't in July?

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A No, sir.

Q It was September the 5th?

A Yes, sir.

Q How did you meet David Wayne Spence on September the 5th?

A Well, the people that was with me, Jim Guttilla and --

Q Okay. Now, you need to speak up. The jury is already having some problems understanding you, Darwin.

A Me and Kenneth and Jim Guttilla were riding around in my car. And --

Q What time of the night was it the three of you were riding around?

A It was about 11:00 something.

Q About 11:00 at night?

A (Nodding head.)

Q Okay. And you, Kenneth and Jimmy were riding around in your car. What happened?

A Well, Jimmy said he knew these people in this car.

Q Okay. Speak up.

A Jim told me he knew these people in this car.

Q In another car?

A In another car.

Q And you saw the other car pass by?

A Yes, sir.

Q And did Jim tell you who those people were? Or did you

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later find out who those people were?

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3 A Yes.

3

4 Q And who were they?

4

5 A David Spence and Gilbert Melendez.

5

6 Q David Spence and Gilbert Melendez. Did you have occasion  
7 to talk with those two people that night?

6

7

8 A Yes, sir.

8

9 Q And where was that?

9

10 A The first time?

10

11 Q The first time.

11

12 A The first time was at their house.

12

13 Q Okay. You went over to their house?

13

14 A Yes, sir.

14

15 Q Where David was living?

15

16 A Yes, sir.

16

17 Q Did anything strange or unusual happen there?

17

18 A No, sir.

18

19 Q Then where did you go?

19

20 A We left and went just our separate ways. And we run out  
21 of gas in my car, and then they come by and they flagged  
22 them down and they give us a ride to my Grandma's house.

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23 Q So, you ran out of gas. And you say that Gilbert and  
24 Spence came by?

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25 A Yes, sir.

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Q And you flagged them down?

A (Nodding head.)

Q And they gave you a ride to your grandmother's house?

A Yes, sir.

Q Is that here in Waco?

A Yes, sir.

Q Was your grandmother at home?

A No, sir.

Q She was down in Bastrop with your mother and dad, right?

A Yes, sir.

Q Were you staying with your grandmother that summer?

A Yes, sir.

Q What happened when ya'll got to your grandmother's house?

Now, I believe it would have been you and Kenneth, Jim, David Spence and Gilbert, right?

A Uh-huh.

Q Maybe a couple of more people.

A And Robert Coleman and this girl that was with Jim.

Q Robert Coleman and a girl that was with Jim. All right.

What happened, Darwin, when all of ya'll got to your grandmother's house?

A Well, me and Kenneth and Jim and that girl went in the house. And that girl was sick. You know she got sick.

Q Sick from drinking?

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A Sick from drinking.

Q Okay.

A And, then, David and Gilbert and Robert, they all followed us in.

Q David, Gilbert and Robert just followed you on into the house?

A Yes, sir.

Q And what happened once they got inside your grandmother's house?

A We were just all sitting around talking and we were all drinking beer.

Q Okay. So, how long did all of you sit around and talk and drink beer?

A A couple of hours.

Q Okay. And after two hours of sitting around and talking and drinking beer, what happened?

A Gilbert and Robert got into an argument. I mean, not Gilbert, but Robert and Jim got into an argument over motorcycles.

Q Okay. Robert and Jim got into an argument over motorcycles. Then what happened?

A Robert went outside, and I went outside with Robert. And I asked them to get -- to tell David and them to go on home, because it was getting late.

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Q Okay. You might need to lean a little closer to the microphone. You say you told Robert what?

A I asked Robert if he would tell Gilbert and David, if they would -- you know -- if they would leave, because it was getting late.

Q You were ready for Gilbert and David to leave?

A Yes, sir.

Q Okay. So, what happened?

A Jim come out and he started arguing again with Robert.

Q With Robert. Okay. What then?

A I told Jim, I said, "Well, you just go get your girl friend and ya'll just go with them." And he just wanted to fight me, and started trying to fight me.

Q Okay. So, you tried to get Jim to get his girl friend and all of them just leave?

A Yes, sir.

Q Okay. You may need to lean into the microphone, or whatever, but Darwin, I need you to speak up, so everybody can hear you, all right. Because this is important. So, what happened when you tried to get Jim and his girl friend and David and Gilbert to leave?

A Jim was -- he started trying to fight me.

Q Jim started trying to fight you. Now, Jim is a little fellow, isn't he?

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2 A Yes, sir.

3 Q He was what, only about 15 back then?

4 A Yes.

5 Q Okay. What happened?

6 A I told him I didn't want to fight him. And he kept on  
7 and kept on. And, then --

8 Q Was Jim drunk?

9 A Yeah. Probably. He wasn't all that drunk.

10 Q Okay. But he was wanting to start some trouble?

11 A Yes, sir.

12 Q Did you want to fight him?

13 A No.

14 Q Are you much of a fighter?

15 A No.

16 Q Okay. So what happened then, Darwin?

17 A Well, Gilbert started pushing around, and David, you  
18 know, kept on agging it on and stuff --

19 Q Okay. Now, wait a minute. Speak so that the jury can  
20 hear you. Gilbert did what?

21 A Gilbert started slapping me around, and then David  
22 started slapping me around, and just agging me on to  
23 fight him.

24 Q Were ya'll in the yard or in the house, at that time?

25 A In the front yard.



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Q Okay. And Gilbert slapped you. Where did he slap you?

A In the face.

Q In the face. And what did you do?

A I just stepped back.

Q Okay. And what happened?

A He just kept on slapping me, until I decided, you know, that I had to fight Jim.

Q You say David was doing what?

A He was slapping me around, too.

Q David was hitting you too?

A Uh-huh.

Q Okay. So what happened, Darwin?

A Well, I walked over and I grabbed Jim. You know, I just grabbed him and told him I didn't want to fight him.

Q Okay. But, now, let me get this straight. David and Gilbert was slapping on you, trying to get you to fight Jim?

A Yes, sir.

Q All right. What kind of things was David saying to you?

A I don't remember.

Q Okay. Well, what happens next, Darwin?

A (Shaking head.)

Q You grabbed Jim?

A I grabbed Jim and I told him I didn't want to fight him.

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And he pulled a knife out.

Q Jim pulled out a knife?

A Jim pulled a knife out.

Q Okay. And what happened?

A And, then, David got him to give it to him.

Q Okay. Look at the jury, lean into the microphone.

Please, Darwin, speak up, so they can hear you.

A (Nodding head.)

Q What happened?

A Well, David got the knife away from Jim. And, then, Jim was still wanting to fight me, so I kicked him. And then we went in the house.

Q Okay. It kind of died down?

A Yeah.

Q Now, you say David got the knife away from Jim. How did he get the knife away from Jim?

A He just told Jim to give it to him.

Q Told Jim to give it to him. Okay. Then you went back in the house?

A Yes, sir.

Q What happened then?

A Jim was in there rubbing his face in the back bedroom. And I told him, you know, there ain't no blood on your face. You know, ya'll just go ahead and leave now,

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before anything starts.

Q So, you were still trying to get them to leave your grandmother's house?

A Yes, sir.

Q Where were Gilbert and David?

A They was in the front yard still.

Q What happened then?

A Well, they come in. And I told them, you know, ya'll just go ahead and go.

Q Okay. Lean into the microphone and look at the jury. They came in and what?

A They came in, and I told them, well, ya'll just go ahead and go before -- you know -- before anything happens here.

Q Okay. You asked them to leave. Then what happened?

A Gilbert hit me in the stomach four or five times and threw me up on the bed.

Q What happened?

A Gilbert hit me four or five times in the stomach and threw me up on the bed.

Q Threw you up on the bed?

A Yes, sir.

Q Okay. Then what happened?

A He jumped up on top of me and started slapping me in the

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face and choking me.

Q Jumped up on you and started slapping you in the face and doing what?

A Choking me.

Q Choking you. Okay. I've got -- I've got to ask you again, Darwin, this jury has got to hear every word you're going to say.

A (Nodding head.)

Q Slapping you in the face and choking you?

A Yes, sir.

Q What was David doing?

A He was standing there watching him.

Q Okay. And what happened then?

A David told Jim, "Let me see your knife."

Q So, Jim had the knife back by then?

A Yes, sir.

Q And David said, "Jim let me see your knife." What happened?

A He got the knife from Jim, and then he laid up there on the bed beside me and put it up to my throat and said, "I'm going to cut your Adam's Apple out and eat it."

Q Okay. Who got up on the bed beside you?

A David.

Q And he did what with the knife?

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A Put it next to my neck.

Q Where? Show the jury.

A Right here.

Q And what did he say to you?

A Said, "I'm going to cut your Adam's Apple out and eat it."

Q Okay. Were you scared?

A Yes, sir.

Q You had already been slapped around a pretty good bit, hadn't you?

A Yes, sir.

Q What was Jim doing?

A He was just standing there.

Q What was Kenneth doing?

A Just standing there.

Q What was Robert Coleman doing?

A I don't think he was in the room.

Q Okay. He wasn't in the room?

A Huh-uh.

Q Had he left?

A Yeah.

Q What happened after David put the knife to your throat and said he was going to cut your Adam's Apple out and eat it?

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A Gilbert told me that -- well, he got up, and Gilbert told me to take off my pants.

Q Gilbert Melendez told you to take off your pants?

A Yes, sir.

Q And what did you do?

A I took them off.

Q How come?

A I was scared.

Q You were scared? Did they hit you some more?

A No.

Q Okay. Later, did they hit you some more?

A Yes, sir.

Q Okay. What happened when you took your pants off?

A They told me to take off my underwear.

Q And what happened after that?

A They just slapped me around a little more.

Q Did what?

A Slapped me around a little more.

Q Who did it?

A David and Gilbert.

Q Both of them?

A Uh-huh.

Q Then what happened, Darwin?

A Gilbert stood up and he took his penis out of his pants

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and said, "Suck it."

Q Gilbert stood up and took his penis out of his pants?

A Yes, sir.

Q And he was standing by the bed?

A Yes, sir.

Q And what did he say?

A He told me to "Suck it."

Q He said that to you?

A Yes, sir.

Q Okay. What happened?

A I told him, "No." And, then, David told me, said, "If you don't do it, I'm going to cut you."

Q "If you don't do it, I'm going to cut you."

MR. HUNT: Your Honor, at this time, I would renew all previous objections. And without waiving those, would also ask the Court to declare a mistrial, based on the previous objections. And ask, if the Court would not grant that motion for mistrial, I would ask that that be included in the bill.

THE COURT: Ask that that be? All right.

MR. HUNT: Included in the bill.

THE COURT: I overrule the objection. I will allow that it be included in the bill.

MR. HUNT: Thank you, Your Honor.

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THE COURT: Go ahead.

BY MR. FEAZELL:

Q He said, do it, or I'm going to cut you. Well, what happened?

A I started getting up, and then --

Q You started getting up out of bed?

A I started to get up off of the bed, and I felt him cut me on the leg.

Q You felt him cut you on the leg?

A Yes, sir.

Q Then what?

A I just freaked and put my lips to it.

Q You freaked?

A Uh-huh.

Q How many times, Darwin, did David cut you?

A Three, four.

Q Three or four -- four times?

A Uh-huh.

Q Tell the jury where David cut you.

A He cut me once on my left leg. I mean, my right leg, on my calf. Twice on my left leg, and once on my arm.

Q Did you bleed?

A Yes, sir.

Q Did you bleed a lot?



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2 A Yes, sir.

3 Q What happened after he cut you all of those times?

4 A I just -- he told me to get down on the bed and spread  
5 my butt open with my hands.

6 Q Then what?

7 A And, then, Gilbert said, "That don't even make my dick  
8 hard."

9 Q Were you still bleeding, Darwin?

10 A Yes, sir.

11 Q Why did you put your mouth on Gilbert's genitals?

12 A I was scared.

13 Q You were scared. What were you scared of?

14 A My life.

15 Q Scared for your life?

16 A Yeah.

17 Q What did David tell you that made you do that?

18 A He was going to cut me.

19 Q He said he was going to cut you. Did he threaten to kill  
20 you?

21 A Yeah.

22 Q Tell the jury what he said, as best you can remember.

23 A He told me he was going to cut me right there.

24 Q Right there?

25 A Yeah.

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2 Q Did he tell you he was going to kill you, if you didn't  
3 do it?

4 A No.

5 Q Okay. Did he tell you at other times he was going to  
6 kill you?

7 A Yes, sir.

8 Q Okay. Did he hit you some more?

9 A Yes, sir.

10 Q Where did he hit you?

11 A In the head and the stomach.

12 Q Did he describe how he was going to hit you? Did he  
13 say anything about the kind of hit he was going to give  
14 you?

15 A Yeah. He stood me up and grabbed me by my hair and said,  
16 "I'm going to show you how a real man hits."

17 Q Said, "I'm going to show you how" what?

18 A "A real man hits."

19 Q "How a real man hits." What did they do to you after  
20 cutting you and making you put your mouth on Gilbert's  
21 genitals, and then making you spread your rear end open?  
22 What did they do to you then, Darwin?

23 A They took me in the bathroom and stuck my head in the  
24 commode.

25 Q What? They stuck your head all of the way in the commode?

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A Yes, sir.

Q In the water. What then?

A Then they throwed me on the floor and David jumped on me and started slapping me. I mean, Gilbert jumped on me and started slapping me. Then he kicked me in the head.

Q Kicked you in the head. What else?

A And then he stood me back up and throwed me back on the bed.

Q Then what?

A Gilbert jumped on me and started slapping me and choking me. And then -- I can't remember now. Jim jumped on the bed and kicked me in the head.

Q Then Jim jumped in there? How about Kenneth? Did Kenneth ever participate?

A No, sir.

Q Kenneth was pretty scared for his own life, wasn't he?

A Yes, sir.

Q Did you ever hear David threaten Kenneth?

A Yes, sir.

Q What did David say to him?

A David walked over with the knife and said, "I think I'm going to kill you."

Q "I think I'm going to kill you."?

A Uh-huh.

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Q Did he tell Kenneth to do anything?

A No.

Q Did he tell him to keep his mouth shut?

A (Nodding head.)

Q Tell him not to leave?

A Yes.

Q What else happened, Darwin?

A They just slapped me around a little more. And then they told me, they said, "If you call the cops, I'm going to --"

Q Now, this part here, speak up, lean into the microphone and tell the jury what he told you,

A He told me -- David told me that, if I "called the cops, that one of them would plead guilty and the other one would come back and kill me."

Q And did you call the cops?

A Not right off.

Q Not right off. You waited awhile?

A Yes, sir.

Q Okay. When did you finally decide to call the cops?

A About two days later.

Q When your grandma came home?

A Yes, sir.

Q And saw you had been all cut up?

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A Yes, sir.

Q Is that when she found the bloody sheets?

A Yes, sir.

Q And I believe she called your folks?

A Yes, sir.

Q Did you testify, Darwin, in the trial against David Spence, the way you testified here today?

A Yes, sir.

(Whereupon, the instrument herein-  
(after described was identified as  
(State's Exhibit No. 99.

BY MR. FEAZELL:

Q Darwin, I'm going to show you what has already been marked as State's Exhibit No. 86, and it has already been introduced into evidence, and I'm going to ask you if you recognize that picture?

A Yes, sir.

Q And is that David Wayne Spence, the way he appeared on the night that he sexually assaulted you?

A Yes, sir.

Q And I'm going to show you another picture that has been marked as State's 99, and ask you if you recognize that picture?

A Yes, sir.

Q Who is that a picture of?

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A Gilbert Melendez.

Q And is that the way Gilbert Melendez appeared on the night that he sexually assaulted you?

A Yes, sir.

MR. FEAZELL: Your Honor, we would offer State's 99 in evidence.

MR. HUNT: We have no objection to 99, Your Honor.

THE COURT: State's 99 is admitted.

(Whereupon, the instrument above referred to was received in evidence (as State's Exhibit No. 99, and a copy of the same appears in this record at the page shown in the Index hereof.

BY MR. FEAZELL:

Q Darwin, is this the same Gilbert Melendez, and is that the way -- excuse me, Darwin. Is that the way that Gilbert appeared the night that David forced you with a knife to put your mouth on Gilbert's genitals?

A Yes, sir.

MR. FEAZELL: We'll pass the witness, Your Honor.

MR. HUNT: We have no questions, Your Honor.

THE COURT: You may step down, sir.

MR. FEAZELL: May this witness be excused,

1  
2 Judge?

3 MR. HUNT: Your Honor, we just renew all of  
4 our prior objections, including the motion for mistrial.

5 THE COURT: And I overrule your objection, and  
6 I overrule your motion for mistrial.

7 You may be excused. Thank you, sir.

8 MR. FEAZELL: Your Honor, for the purposes of  
9 the record, I want to make sure that earlier, when I  
10 re-offered all of the evidence for consideration before  
11 the jury, I was referring to all of the prior testimony  
12 and all of the prior physical evidence.

13 THE COURT: Yes, sir. I understand that.

14 MR. FEAZELL: Thank you, Your Honor.

15 We need to approach the Bench, Judge.

16 (Whereupon, an off the record discus-  
17 sion was had out of the hearing of  
18 (the Reporter.

19 THE COURT: All right, Ladies and Gentlemen,  
20 I'm going to have to take up some matters outside the  
21 presence and hearing of the jury. And it will take me  
22 probably 15 or 20 minutes to do that.

23 I'm going to recess you, and you will stand  
24 in recess for that length of time. I will retire you  
25 back to the jury room. You're excused. Thank you.

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2 (Whereupon, the jury was recessed,  
3 (and out of the presence and hearing  
4 (of the jury the following proceedings  
5 (were had, to-wit:

6 THE COURT: All right, I want the record to  
7 reflect we are outside the presence and hearing of the  
8 jury.

9 MR. BUTLER: We will call Gene Deal.

10 REGINALD E. DEAL

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

13 DIRECT EXAMINATION  
14 (OUT OF THE PRESENCE OF THE JURY)

15 BY MR. BUTLER:

16 Q State your name, please.

17 A Reginald E. Deal.

18 Q And Mr. Deal, how are you employed?

19 A As an Adult Probation Officer with the 52nd Judicial  
20 District Court.

21 Q How long have you been so employed?

22 A Approximately 19 months.

23 Q And where were you employed during the summer months of  
24 1982?

25 A I was employed with the Region VIII Office, District  
Office, State Patrol.