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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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A Yes, sir.

Q Do you remember what he said?

A No, sir.

Q Okay. You said you talked to Gilbert Melendez?

A Yes, sir.

Q About David's reputation?

A Uh-huh.

Q Okay. When was that?

A It was the night -- that night.

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

A I talked to him. Yeah.

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

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

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

A No.

Q How do you know that you talked to him about his reputation?

A I just know I talked to him.

Q You know you talked to him. Do you know that you even 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