

**A True and Correct Copy**

**of the**

**Trial Testimony of**

**ANTHONY MELENDEZ**

1 THURSDAY, OCTOBER 10, 1985

2 MORNING SESSION: 9:10 a.m.

3 - - - - -

4 (Whereupon the Defendant was  
5 (present.

6 THE COURT: Do you have a witness  
7 ready?

8 MR. FEAZELL: Yes, Your Honor.

9 (Whereupon the following proceedings  
10 (took place within the hearing of  
11 (of the jury.

12 THE COURT: All right, let us  
13 call the next witness, gentlemen.

14 MR. FEAZELL: Your Honor, the  
15 State calls Anthony Melendez.

16 ANTHONY MELENDEZ, called as a  
17 witness on behalf of the State, having been duly  
18 sworn, testified as follows:

19 DIRECT EXAMINATION

20 QUESTIONS BY MR. FEAZELL:

21 Q Will you state your name for the record, please,  
22 sir?

23 A My name is Anthony Melendez.

24 Q Anthony Melendez?

25 A Yes, sir.

Q Spell your last name, please.

1 A M-e-l-e-n-d-e-z.

2 Q All right, and Mr. Melendez, during your testimony,  
3 we will need for you to direct your answers to the  
4 jury seated right here.

5 This lady sitting over here is a part of the  
6 jury, too, and she will need to hear as will the  
7 lady in the far chair back here, every word that you  
8 say, all right?

9 A Yes, sir.

10 Q Mr. Melendez, on July 13, 1982, did you participate  
11 with a man named David Wayne Spence in the murder  
12 of three teenagers at Koehne Park?

13 A Yes, I did.

14 Q All right, Mr. Melendez, where are you from?

15 A From Waco.

16 Q And how long have you lived in Waco?

17 A I would say, off and on, four or five years.

18 Q All right, did you go through the public schools in  
19 Waco?

20 A Yes, sir.

21 Q Do you have a brother?

22 A Yes, I do.

23 Q What is his name?

24 A Gilbert Melendez.

25 Q Mr. Melendez, you need to speak up. The jury is

- 1 already having trouble hearing you. Lean toward the  
2 microphone, please -- Gilbert Melendez?
- 3 A Yes, sir.
- 4 Q When did you meet David Wayne Spence?
- 5 A I met David when I was going to North Junior.
- 6 Q By North Junior, you mean the North Junior High School?
- 7 A Yes, sir.
- 8 Q All right, and by the answer to your first question,  
9 we can take it that you knew David and had some  
10 association with David during the summer of 1982?
- 11 A Yes, sir.
- 12 Q During July of 1982, Mr. Melendez, were you working?
- 13 A Yes, sir.
- 14 Q Where were you working?
- 15 A In Bryan.
- 16 Q In Bryan, Texas?
- 17 A Yes, sir.
- 18 Q The city we are in right now?
- 19 A Yes, sir.
- 20 Q What kind of work were you doing?
- 21 A I was a painter.
- 22 Q What kind of painting jobs were you doing?
- 23 A I was working for a contractor painting houses.
- 24 Q Painting what?
- 25 A Apartments and houses.



- 1 Q Okay, did you go to work on July 13, 1982?
- 2 A Yes, sir, I did.
- 3 Q What time did you get off work that day?
- 4 A I got off work about 12:00 o'clock.
- 5 Q 12:00 noon?
- 6 A Yes, sir.
- 7 Q Why did you only work half a day?
- 8 A To -- my cousin and I wanted to come back to Waco.
- 9 Q Your cousin. Now, who is that?
- 10 A His name is Perry Surita.
- 11 Q And, was he also working with you?
- 12 A Yes, he was.
- 13 Q Now, speak up so that the jury can hear. Was he
- 14 working with you?
- 15 A Yes, he was.
- 16 Q Were you all able to set your own hours, or was it
- 17 that you just decided to take off at 12:00?
- 18 A Well, we kept our own time, and we put in as many
- 19 hours as we wanted during that week.
- 20 Q Okay, what was your reason for wanting to go back
- 21 to Waco?
- 22 A Well, I didn't know anybody in Bryan at that time,
- 23 and I told him I wanted to come back to Waco to
- 24 score some dope.
- 25 Q Score some dope. What does that mean?

- 1 A Well, I came back to score some methamphetamines.
- 2 Q To try to find somebody to buy it from?
- 3 A Yes, sir.
- 4 Q So tell the jury whether or not you and your cousin
- 5 then went to Waco?
- 6 A We did come to Waco. We left about 12:00 and got
- 7 back to Waco between 2:00 and 3:00.
- 8 Q What did you do when you got to Waco?
- 9 A Went to my cousin's house, and he stayed there, and
- 10 I left and went to the Armadillo.
- 11 Q The Armadillo?
- 12 A It is a bar right down the street, pool hall.
- 13 Q Right down the street from where?
- 14 A From McFerrin.
- 15 Q Is that the street your cousin lived on?
- 16 A Yes, he does.
- 17 Q Okay, how did you get from your cousin's house to
- 18 the Armadillo?
- 19 A I walked to the bar.
- 20 Q What did you do after you got to the Armadillo?
- 21 A Well, I looked for some people I knew to see if I
- 22 could score anything there and drank a few beers.
- 23 Q Okay, and were you able to find any drugs for sale
- 24 at the Armadillo?
- 25 A No, I didn't.

1 Q What did you do then?

2 A I left and went towards another friend's house.

3 I was walking.

4 Q Still walking?

5 A Yes, sir.

6 Q Okay, and what happened as you were walking towards  
7 that friend's house?

8 A Well, I was headed down 15th Street, and I was going  
9 to this friend's house, and I ran into David.

10 Q David --

11 A At his mother's house.

12 Q Okay, you were going down 15th Street?

13 A Yes, sir.

14 Q And then you say you ran into David. Tell the jury  
15 what you mean by that.

16 A Well, he was outside in front of his mother's house,  
17 and I was walking down the street, and he called me  
18 over, and we started talking.

19 Q Okay. All right, and after you and David were out  
20 in the yard at his mother's house talking, what  
21 happened then?

22 A He said that he was going to go check out my brother,  
23 Gilbert, and if I would like to go along with him,  
24 and I told him I would because I haven't seen my  
25 brother in awhile.

- 1 Q Okay, and that is your brother you mentioned earlier,  
2 Gilbert Melendez?
- 3 A Yes, it is.
- 4 Q All right, so what did you do?
- 5 A Well, we took off and headed down 15th Street and  
6 stopped at a store on the corner.
- 7 Q Were you all walking or in a car?
- 8 A No, we took off in David's car.
- 9 Q What kind of car did David have, if you remember?
- 10 A It was a Malibu.
- 11 Q Okay, four-door -- two-door?
- 12 A Two-door.
- 13 Q Okay, so you got in David's Malibu, and then what  
14 did you do?
- 15 A We took off down the street and stopped at a store  
16 and bought some beer.
- 17 Q Okay, then what?
- 18 A Then we took off, again. We were headed down the  
19 street, and we ran into my brother.
- 20 He was walking down the street, and we pulled  
21 over, and I jumped in the back seat, and he got  
22 in the front seat.
- 23 Q All right, so you saw your brother. Then how did  
24 David know where to go to find your brother?
- 25 A I guess, he knew where he lived.

1 Q Okay, but you all saw him walking on the street?

2 A Yes.

3 Q Okay. Now, speak up so that the jury can hear.

4 Do you know if Gilbert had been working that day?

5 A No, I don't.

6 Q All right, what happened after you got in the back  
7 seat and Gilbert got in the front seat?

8 A I asked my brother, Gilbert, if he knew anyplace  
9 where I could score some dope, and he said he didn't  
10 know anybody right offhand.

11 So I told him, David, I might know a couple of  
12 people where I could score if we could go check them  
13 out.

14 Q Okay, what kind of dope were you looking for?

15 A We call it crank, speed.

16 Q Speed?

17 A Yes, sir.

18 Q That is some type of amphetamine?

19 A Yes, it is.

20 Q All right, an upper?

21 A Yes.

22 Q Okay, then what happened?

23 A Well, we went and checked out a couple of people  
24 I knew. They weren't at home at the time. So we  
25 didn't stop.



1 I told him to go ahead and blow it off. I  
2 would just find somebody later on, and then David  
3 mentioned about going out to the lake.

4 Q All right, so David is the one that brought up  
5 going to the lake?

6 A Yes.

7 Q Okay, so then what?

8 A So we took off toward the lake. I thought we were  
9 going to Airport Park.

10 Q Slow down and speak up because I am even having  
11 trouble understanding you.

12 You were going to go to the lake and you said  
13 you thought --

14 A We were headed toward Airport Park, another part of  
15 the lake.

16 Q Another part of the lake?

17 A Yes.

18 Q Okay, why did you think you were going to Airport  
19 Park?

20 A Well, that is where I usually go, to go out there  
21 and hang around.

22 Q Had you been out there before with David?

23 A Not that I remember.

24 Q Okay. All right, so then what happened?

25 A We were headed down Valley Mills.

1 Q Valley Mills is one of the main streets in Waco?

2 A Yes, it is.

3 Q Okay.

4 A We were headed down Valley Mills toward Lake Shore  
5 Drive, and we stopped at a store called Hilltop  
6 and bought some more beer, and my brother and David  
7 went inside and came back out.

8 We pulled off, and I thought we were still  
9 headed out towards Airport Park.

10 Q Okay. Now, that was the second time you all had  
11 stopped and bought beer, wasn't it?

12 A Yes, it was.

13 Q Do you remember how much beer you were buying at a  
14 time?

15 A A couple of six packs at a time.

16 Q All right, so you all were drinking a good bit of  
17 beer then?

18 A Yes, we were.

19 Q Okay, what happened after you left the store?

20 A Well, we took off down Lake Shore Drive. We were  
21 coming up to a park called O6.

22 Q O6?

23 A Yes.

24 Q Does O6 have another name?

25 A They call it Koehne Park.

1 Q All right.

2 A And David pulled in, and we went toward the left  
3 down to this circled area.

4 Q Okay, if you will stop right there for just a minute,  
5 I want to show you something that has already been  
6 introduced into evidence, Mr. Melendez, as State's  
7 Exhibit No. 1.

8 If you would, just step over here with me for  
9 a minute. Orient yourself to the picture.

10 A couple of landmarks would be Lake Shore Drive,  
11 Twin Bridges, Valley Mills. Show the jury the route  
12 you took from Valley Mills to the store, Lake Shore  
13 Drive and then to the park.

14 A Well, we came off around here and went down Valley  
15 Mills and the store is right here.

16 Q All right, speak up because this lady has to get  
17 everything you are saying, and the jury has to hear  
18 you. Here, why don't you do this: Why don't you  
19 kind of point at it for the jury.

20 A Okay.

21 Q And then look at them and tell them.

22 A Well, right here is where we stoppe<sup>d</sup> at the store  
23 and got the beer and we took --

24 MR. VANCE: Judge, could we have  
25 Mr. Feazell move? We can't see.

1 MR. FEAZELL: I apologize,  
2 Judge.

3 A And as we left the store, we took off down this  
4 way (indicating) and made a left right here.

5 This is where O6 is called Koehne Park, and  
6 we took another left and went down this road down  
7 here to a circled area.

8 Q This little paved circle area here?

9 A Yes.

10 Q Okay.

11 A Went to this circled area, went around the circle,  
12 and we came back down and came out like this, and  
13 then we were headed down toward the beach area,  
14 down right here (indicating).

15 This is where I seen a truck, and I think, a  
16 Trans AM or Camero parked right here talking to  
17 each other.

18 Q Okay, stop right there. I am going to show you what  
19 has been introduced into evidence as Defendant's  
20 Exhibit No. 2.

21 Do you recognize this as being a drawing of  
22 Koehne Park, this being the entrance, this being  
23 the paved circle and that the road.

24 Do you make sense out of that?

25 A Yes, I do.

1 Q And the beach area. All right. Now, instead of  
2 pointing at the small part of the map, show the  
3 jury on here what -- I believe, you had just gotten  
4 back to here and were going to the beach area?

5 A Yes, we were right -- came in through here. This  
6 is where we were fixing to turn down towards the  
7 beach area, and another car was coming up from this  
8 way (indicating).

9 We pulled up, and David waved to them at the  
10 time, and they stopped and I seen a blond-headed  
11 girl and a boy sitting up front.

12 David stopped and leaned over and was talking  
13 to them.

14 Q To the boy?

15 A Well, the boy was leaning over talking to David.

16 Q Okay, you can take your seat, again.

17 Do you remember, Mr. Melendez, what color that  
18 car was that they were in?

19 A It was an orange car.

20 Q Okay, had you ever seen the people inside the car  
21 before?

22 A No, I haven't.

23 Q Okay, what happened next?

24 A Well, David was talking to the boy. He was leaning  
25 over looking at David.



1           Then they took off, and David said we were  
2           going back to the area we just came from where the  
3           circle was.

4           We were going to go down there and party with  
5           them.

6   Q       So back down to that paved circle?

7   A       Yes.

8   Q       What happened when you got down to the paved circle?

9   A       At that time, we pulled up. They were already parked.

10           David pulled in behind them, and we all got out  
11           of the car and started talking.

12           There was a blond-headed girl. She got out, and  
13           I was talking to her and asked her if she was from  
14           Waco, and she said, no, she was down here visiting.

15           Then I asked her if the boy was her old man.

16   Q       What does that mean, her old man?

17   A       Her boyfriend.

18   Q       Okay.

19   A       And she said no, that he was just a friend of hers.

20   Q       What happened then?

21   A       We were drinking some beer, and I rolled a couple  
22           of joints. We were smoking them.

23   Q       Okay, what do you mean by "rolled a couple of joints"?

24           Tell the jury in plain English what that means.

25   A       Well, I rolled some cigarettes out of marijuana.

- 1 Q All right.
- 2 A And we started smoking them. We was drinking some  
3 beer, and I heard David talking to the boy and asked  
4 him if he still had his bike.
- 5 Q He asked the boy if he still had his bike?
- 6 A Yes, sir.
- 7 Q All right.
- 8 A And he told him it was broken down. It was in the  
9 shop being fixed.
- 10 Q Okay, what happened then?
- 11 A Well, we sat there and talked some more, drank a  
12 few more beers.
- 13 Then the boy asked us if we wanted to smoke  
14 another joint. So he went to the car and rolled  
15 up one and came back out.
- 16 Q Okay, Kenneth Franks asked that?
- 17 A Yes, sir.
- 18 Q And he went to the orange car?
- 19 A Yes, sir.
- 20 Q So then did you assume that there was some marijuana  
21 in the orange car, also?
- 22 A Yes, sir.
- 23 Q How about the first marijuana? Was that yours?
- 24 A Yes, it was.
- 25 Q Okay.

1 A And he came back out, and we smoked a few more  
2 joints and drank a few more beers.

3 David mentioned about going to the store. We  
4 was running low on beer.

5 Q All right, do you remember it was David that brought  
6 up going to the store?

7 A Yes, he did.

8 Q Okay, what happened?

9 A And we all said yes, let us go get some more beer.  
10 So we all got into David's car and were leaving.

11 Q Now, you say "We all got in David's car." You mean,  
12 you, Gilbert and David, or do you mean all six of  
13 you?

14 A All of us, the girls and the boy and us.

15 Q Okay.

16 A And as we were --

17 Q Speak up.

18 A As we were leaving, we were taking off and David  
19 pulled around, and we were taking off.

20 The girl started telling David not to be messing  
21 with her.

22 Q Okay, wait a minute. Which girl was it that told  
23 David not to be messing with her?

24 A The girl with the black hair.

25 Q The brunette?

1 A Yes.

2 Q How did she say it?

3 A Well, she was mad at him. She was telling him to  
4 leave her alone and not to be grabbing on her.

5 Q Not to be grabbing on her?

6 A Yes.

7 Q Okay.

8 A Then as we was fixing to leave, we were making the  
9 last corner and David pulled over by the dumpster,  
10 kind of slowed down toward the trees.

11 Then he pulled off into the tree area, and  
12 they were still arguing. She was telling him to  
13 leave her alone.

14 Q Okay, stop right there and let us look at the map,  
15 again.

16 If you would, just step right over here with me.  
17 You said you left the circled area?

18 A Yes.

19 Q Where in here did he pull off?

20 A Right in here somewhere (indicating).

21 Q Okay, right -- so would this be the dumpster right  
22 here?

23 A Yes, it is.

24 Q And the little parking area?

25 A Yes, it is like a flat area right here. You can just

1 pull right into the trees.

2 Q How far in did he go?

3 A I would say, he went in about up to here -- not  
4 too far from the road.

5 Q Thank you, sir. Was the brunette screaming or  
6 fussing or talking loud? What did it seem to you?

7 A She was raising her voice. She was mad, at the  
8 time.

9 Q All right, what happened as the car pulled off into  
10 the wooded area?

11 A Well, he stopped, and like I said, they were still --  
12 the girl was still telling David to leave her alone,  
13 and I said, "Well, let us just go ahead and get out  
14 of the car."

15 Q Why did you say that?

16 A Well, we were just sitting there. It was kind of  
17 hot, and I just wanted to get out.

18 If they were going to be arguing, I would just  
19 rather be outside the car.

20 Q Okay.

21 A And we got out of the car, and the black-headed girl  
22 was standing next to me, and the blond-headed girl  
23 was standing next to my brother.

24 The boy was still sitting in the car. David  
25 told him to go ahead and get out of the car.



1           The boy didn't say nothing. He just sat there.  
2           Then David came around to the door.

3   Q    Now, you say, David told him to get out of the car.  
4           How -- do you remember how David told him to get  
5           out of the car?

6   A    He was shouting at him telling him to get out. The  
7           dude -- the boy didn't say nothing.

8           He just sat there. So David got mad at him  
9           and went around to the side and opened the door and  
10          told him to get out, again.

11          So the boy finally -- he just got out of the  
12          car.

13   Q    How was the boy acting?

14   A    He looked like he was scared.

15   Q    What did you think about what was going on, at that  
16          time?

17   A    I really didn't know what was happening. I thought  
18          he might have been mad because David was messing  
19          around with that other chick, the black-headed girl.

20   Q    By that time, had you, David and Gilbert had a lot  
21          to drink and a lot to smoke?

22   A    Yes, we did.

23   Q    Were you pretty drunk?

24   A    Yes, I was.

25   Q    Okay, so the boy was sitting in the back of the car

1           scared. What happened then?

2       A     Well, like I said, David went around to the side of  
3           the car and pulled the door open and told him to  
4           get out of the car.

5           He got out of the car, and David was -- stepped  
6           up to him and got in front of him and told him that  
7           he was going to get even with him for some dope that  
8           he burned him for.

9       Q     Okay, what does that mean, "for dope you burned me for"?

10      A     Well, it is either he took some money from him and  
11           never got the dope that he wanted, or he sold him  
12           some bad stuff.

13      Q     Okay, so what happened?

14      A     And David was up in his face yelling at him, at  
15           the time.

16      Q     What was the boy doing?

17      A     The boy -- he wasn't saying anything. He was just  
18           standing there.

19      Q     Still looking scared?

20      A     Yes, he was scared, and David pulled out a knife and  
21           put it up to the boy's chest and said that he was  
22           going to get even with him for burning him and he  
23           should know better than to burn "Chillie".

24      Q     You saw David pull out the knife?

25      A     I seen him when he had it in his hand.

1 Q Okay. Now, you were just asked by the Court  
2 Reporter -- you used the name Chillie -- "You should  
3 know better than to burn Chillie."

4 Do you know who Chillie was?

5 A It was David.

6 Q That is a nickname for David?

7 A Yes, he uses it at times.

8 Q Speak up for the jury. What did you say?

9 A He uses it at times.

10 Q Uses the name Chillie?

11 A Yes.

12 Q All right. Okay, then what happened?

13 A He was still telling that dude that he shouldn't  
14 have burned him for the dope, and that is when he  
15 grabbed a hold of him.

16 He jerked him down to the ground. He was on  
17 his knees.

18 Q How did he grab a hold of him?

19 A He had him by the shirt.

20 Q Okay.

21 A And he pulled him down to his knees, and he still had  
22 the knife on him.

23 That is when he kind of just pushed him back  
24 and made him lay on his back.

25 Q Pushed him with his hand or --

1 A Well, he had a hold of his shirt with his hand. He  
2 pushed him back.

3 Q But there wasn't any stabbing, at that time?

4 A No, there wasn't.

5 Q Okay, what did the boy do?

6 A Well, the boy, he didn't say anything. He just  
7 laid there and didn't try to get up or anything.

8 Q Did he say anything when David told him, "You  
9 shouldn't have burned me for the dope"?

10 A He said that he hadn't -- he hadn't burned him for  
11 anything. He hadn't done anything to him.

12 Q How did he say it?

13 A He said it like he was scared.

14 Q All right, did Kenneth Franks appear to be a drug  
15 dealer to you?

16 A No, he looked too young to be really dealing  
17 heavily in big quantities of dope.

18 Q Did you know him, or had you ever heard of him  
19 dealing in anything?

20 A No, it was the first time I met him.

21 Q Okay, during the time that you saw him down at  
22 the circle before you got in the car with him,  
23 did he try to sell you anything?

24 A No, he didn't mention anything about buying  
25 anything from him.

1 Q Okay. All right, what happened next?

2 A When the boy was lying on the ground, David came  
3 toward me to where I had -- I was standing next  
4 to the black-headed girl.

5 He had a hold of her arm, and David told her  
6 that he was going to get even with her, and that  
7 is when he grabbed a hold of her and started walking  
8 off into the wooded area.

9 Q Okay, when David was grabbing Kenneth Franks and  
10 talking about ripping him off for the drugs, do you  
11 recall whether or not the brunette girl said anything?

12 A Well, when David grabbed a hold of him, she was  
13 trying to walk toward David and the boy.

14 I grabbed a hold of her arm and told her to be  
15 cool and nothing was going to happen.

16 Q You grabbed the brunette girl's arm?

17 A Yes, sir.

18 Q Okay, why did you do that?

19 A Well, David was mad at this dude, and he had the  
20 knife out on him.

21 I didn't want her to walk over there and get  
22 into it and get hurt or anything.

23 Q I am sorry. You didn't what?

24 A I didn't want her to walk toward David and get  
25 into it -- get hurt.



1 Q You mean, you are telling the jury you were  
2 concerned that she might get hurt?

3 A Well, at the time, I thought David was just going  
4 to beat up on this dude or something, you know.  
5 I really -- not really do anything to him.

6 So I didn't want her to get in the way.

7 Q Were you at all concerned for your own safety,  
8 at that time?

9 A At that time, I was.

10 Q How is that?

11 A Well, the last time me and David were together,  
12 me and him got into a little hassle.

13 Q Well, had you done anything at this time to protect  
14 yourself?

15 A Well, when I was getting out of the car, there was  
16 a screwdriver laying on the floorboard.

17 I picked it up and stuck it in my back pocket.

18 Q How come?

19 A Well, like I said, me and David had been in a  
20 hassle before.

21 We were all pretty loaded at the time, pretty  
22 drunk, and to me, I didn't know what David might  
23 do.

24 He might get mad at me or you know, try  
25 something with my brother or anything.

1 Q Okay. All right, after you stopped the girl from  
2 walking over and Kenneth was already on the ground,  
3 then what happened?

4 A David came over toward me where I was with the girl  
5 with the black hair, and he told her that he was  
6 going to get even with her.

7 Q Get even with her?

8 A Yes.

9 Q Okay.

10 A He told her that she should have known better than  
11 to burn him for some dope.

12 That is when he grabbed a hold of her arm, and  
13 we both started walking off toward the wooded area.

14 Q Okay, so who all now is walking toward the wooded  
15 area?

16 A Myself, David and the girl with the black hair.

17 Q Okay, and that, now, you know is Jill Montgomery?

18 A Yes.

19 Q Okay, how far off did you walk?

20 A It was a pretty good ways from the car and from the  
21 road. That was out by the trees.

22 Q Give the jury an idea how far, a few feet, a few  
23 yards, a mile?

24 A No, I would say it was a few yards.

25 Q Okay. All right, what happened then?

1 A That is when David was still telling her that he was  
2 going to get even with her for burning him for some  
3 dope.

4 She should have known better than to mess with  
5 him. He had the knife out, and he pulled her down  
6 on the ground, and he was sitting -- when he pulled  
7 her down on the ground, he was sitting on top of her --  
8 on top of her legs.

9 She was saying that she hadn't done anything  
10 to him, and that is when I -- she was talking kind  
11 of loud, screaming at him, and that is when I turned  
12 around and looked off toward the road to see if  
13 anybody might have heard anything or seen what was  
14 going on.

15 Q You were concerned somebody on the road might hear?

16 A Yes.

17 Q Okay, so it was -- was he pretty loud, at that time?

18 A Yes, both of them were talking pretty loud, at the  
19 time.

20 Q Him and the girl?

21 A Yes.

22 Q All right.

23 A And I walked off a little ways to look off toward  
24 the road to see if anybody was coming.

25 Then when I walked back toward where they were,

1 David was still on top of the girl, and she had  
2 her top off.

3 Q Had her blouse off?

4 A Yes.

5 Q You saw her breasts?

6 A Yes, I did.

7 Q Okay.

8 A And he was still telling her that he was going to  
9 get even with her and that she shouldn't have burned  
10 him for any dope.

11 He had his knife out, and he was rubbing it  
12 across her breasts.

13 Q What do you mean, "rubbing it across her breasts"?

14 A He was -- like he was playing with her -- with the  
15 knife.

16 Q What was she doing?

17 A She wasn't moving, at the time. She was just laying  
18 there.

19 Q At the time, did it appear that she had been stabbed  
20 or cut yet?

21 A No, she wasn't.

22 Q Okay, you said awhile ago that she was pretty loud,  
23 too. What was she -- what kind of things was she  
24 saying?

25 A Well, she said that she hadn't burnt him for anything

1 and that she didn't burn him for any dope.

2 Q What happened then after you saw him rubbing the  
3 knife on her breasts?

4 A That is when he handed me the knife and told me to  
5 go get the boy.

6 So I went off and got the boy. He said that he  
7 wanted him to watch this. So I went and got him and  
8 brought him over.

9 Q Okay. Now, David handed you the knife?

10 A Yes.

11 Q Why didn't you just take that knife and throw it away?

12 A I don't know. I really don't know.

13 So I walked over to where the boy was and  
14 brought him back.

15 Q So you did what David told you to?

16 A Yes, I did.

17 Q How was the boy acting when you brought him back?

18 A Well, he wasn't saying anything. When I went and  
19 got him, he just went along with me.

20 He didn't try to get away or anything.

21 Q Was he tied up or anything?

22 A I don't remember.

23 Q Okay.

24 A And I brought him over to where David and the girl  
25 was, the black-headed girl was, and he looked up at

1 him.

2 Q Who looked up at him?

3 A David did. He looked up at him, and he told him that  
4 he would get even with him.

5 At that time, David was getting it on with  
6 this chick.

7 Q You mean, having sex with her?

8 A Yes.

9 Q Raping her?

10 A Yes.

11 Q All right, and what was she doing?

12 A She wasn't -- she wasn't trying to get away or fight.  
13 She just -- she was just laying there.

14 So I was standing there with the boy while  
15 David was doing this, and then when he got finished,  
16 he got up, and I handed him back the knife, and  
17 he told me to go ahead.

18 Q To go ahead what?

19 A To make it with this chick.

20 Q What did he say to you?

21 A He said, "Go head on -- to go ahead."

22 Q Well, how did you know what he wanted you to do?

23 A Well, it was pretty obvious, you know, to me it  
24 was because she was laying there, and he just  
25 got finished.

- 1                   He told me to go head on.
- 2   Q   All right, then what?
- 3   A   So I got down and started to get it on with this
- 4       chick, and the blond -- I mean, the black-headed
- 5       girl --
- 6   Q   So you mean you were having sex with her or you were
- 7       raping her also?
- 8   A   Yes, I was.
- 9   Q   What was David doing, at that time?
- 10  A   Well, he was standing next to the boy.
- 11  Q   What was Kenneth doing?
- 12  A   He was looking down at me. Looking at me and the
- 13       black-headed girl.
- 14               When I was making it with this chick, he -- the
- 15       black-headed girl, he was telling him something. I
- 16       couldn't hear what he was saying.
- 17  Q   David was saying something to you or to Kenneth?
- 18  A   To Kenneth.
- 19  Q   All right.
- 20  A   Then he started to walk off toward the car with the
- 21       boy.
- 22  Q   What happened then?
- 23  A   Well, I was still with that girl. I didn't really
- 24       stay that long with her, you know.
- 25  Q   Why not?

1 A Well, to me, it just -- it is just, you know, not  
2 the way to be with a girl -- just forcing her to  
3 do it.

4 So I just really stayed with her for a little  
5 bit.

6 Q You just quit?

7 A After David walked off.

8 Q Did you ever ejaculate?

9 A No, I didn't.

10 Q What did you do when you quit?

11 A I got up, and I told the black-headed girl to stay  
12 there and not to move, and I walked back over towards  
13 the car.

14 Q And who was at the car?

15 A My brother, Gilbert, and David was standing in front  
16 of the car.

17 Q Then what?

18 A Then David told me that the blond-headed girl was  
19 in the back seat.

20 Q Okay.

21 A So I went around to the back seat and got in the  
22 back with the girl with the blond hair, and I got  
23 into the car with her. She didn't have any clothes  
24 on.

25 Q She was already naked?



1 A Yes, she was.

2 Q Okay.

3 A And she told me not to hurt her.

4 Q Where were David and Gilbert, at that time?

5 A Well, when I was getting into the car, they were  
6 walking off toward where the black-headed girl  
7 was laying.

8 Q Okay, do you know where Kenneth Franks was, at  
9 that time?

10 A No, I don't remember.

11 Q All right, so you were in the back seat with Raylene  
12 Rice, and she doesn't have any clothes on?

13 A Yes.

14 Q What happened?

15 A Well, I got into the back seat with the girl, and  
16 she told me not to hurt her.

17 I told her that I wouldn't hurt her -- that  
18 after all this was over, she wouldn't see me any  
19 more.

20 Q You told her what?

21 A That she wouldn't see me any more.

22 Q At that time, did you think anybody was going to be  
23 killed?

24 A No, not at that time.

25 Q What did she say?

- 1 A Well, she told me not to hurt her.
- 2 Q Was she crying?
- 3 A She looked like before I got to the car with her that
- 4 she was crying, and so I started to get it on with
- 5 that chick.
- 6 Q You mean, you started having sex with her?
- 7 A Yes, I did.
- 8 Q All right, then what?
- 9 A I didn't spend that much time with her. When I got
- 10 out of the car --
- 11 Q Did you ejaculate?
- 12 A No, sir.
- 13 Q Why not?
- 14 A It is just -- I didn't really -- like I said before,
- 15 I didn't really want to get into it that much.
- 16 Q Then why did you do it in the first place?
- 17 A I really don't know.
- 18 Q Okay, how light was it, at this time? Was it still
- 19 daylight?
- 20 A It was getting pretty dark. Where we were at in
- 21 the trees, it was getting dark.
- 22 Q In that wooded area, is it pretty brushy? I mean,
- 23 a lot of overhang and a lot of tree covers?
- 24 A Yes, it is.
- 25 Q Okay.

1 A So when I finished with the blond-headed girl, I  
2 got back out of the car.

3 David and Gilbert were standing in front of the  
4 car. David told Gilbert to stay with the blond-headed  
5 girl.

6 I went with David back over to where the black-  
7 headed girl was laying down there.

8 Q Do you know where Kenneth Franks was, at that time?

9 A No, I didn't. I couldn't -- like I say, it was  
10 getting dark. I couldn't really see where he was at.

11 Then me and David went back over to where the  
12 black-headed girl was laying, and that is when he  
13 told her that he was going to get even with her.  
14 She should have known better than to burn him.

15 Q Speak up so that the jury can hear you. That was  
16 why he told her -- what?

17 A That he was going to get even with her and that she  
18 should have known better than to burn him.

19 He got down on top of her, again, and he was --  
20 had his knife out and he was --

21 Q Now, you say he got down on top of her again. What  
22 do you mean by that?

23 A He was sitting on top of her legs.

24 Q And what was she doing?

25 A She was telling him that she hadn't done nothing

1 to him and that she hadn't burned him for any dope.

2 Q Was she crying?

3 A I think, she was because she was -- you know, she

4 was still screaming at him that she hadn't done

5 anything. She was scared.

6 Q She was scared and screaming?

7 A (Nodded)

8 Q Okay.

9 A That is when David had his knife, and he was cutting

10 her. He had his knife on her breasts, and he was

11 cutting her -- cut her a few times.

12 Q Okay, and by cutting her, do you mean he stabbed her,

13 or do you mean he just put some slices on her?

14 A No, he didn't stab her. He was just cutting her --

15 slicing her.

16 Q And what was she doing?

17 A She was moving around trying to get away.

18 Q She was what?

19 A Moving around trying to get away.

20 Q Okay. Now, the jury is having trouble understanding

21 you.

22 A Then he told her, again, that he was going to get

23 even with her for burning him for the dope.

24 I was kneeling down next to him, and that is

25 when he stabbed her. She tried to scream, but

1           didn't really.

2       Q     She tried to scream?

3       A     Yes -- yes, she did. It didn't really come out to  
4           a scream. She kind of moaned.

5           Then he pulled the knife out and stabbed her  
6           again and told her she should have known better than  
7           to try to burn him.

8           Then he looked over at me, and he said, "We  
9           are all in this thing together and we don't need  
10          anybody talking."

11       Q     Okay. Now, when he looked at you and told you "We  
12           are all in this together and we don't need anybody  
13           talking," was he saying it calm like that, or how  
14           was he saying it?

15       A     Yes, he was saying it calm. He was -- to me, it was  
16           like, it wasn't no big deal that he was sitting  
17           there cutting this chick up, stabbing her.

18           It just didn't seem to affect him, really. Just  
19           an ordinary thing to him.

20       Q     So what happened?

21       A     That is when he handed me the knife.

22       Q     He gave you back the knife?

23       A     Told me that we were all in that together and that  
24           we didn't need anybody talking, and I was holding  
25           the knife, and he was telling me, "Go ahead, do it."

- 1 Q When he was saying, "Go ahead, do it," what was  
2 that like?
- 3 A Well, he was yelling at me.
- 4 Q So he started yelling then?
- 5 A Yes, yes, he did.
- 6 Q What were you doing?
- 7 A I was holding the knife looking at the girl.
- 8 Q Were you on your knees or where?
- 9 A Yes, I was kneeling next to her.
- 10 Q All right.
- 11 A He said, "Go ahead, and do it."
- 12 Q Where was David in relation to you?
- 13 A He was still on top of the girl.
- 14 Q All right, but where was he in relation to you?
- 15 How close was he to you?
- 16 A We were right next to each other.
- 17 Q All right, and he was yelling?
- 18 A Yes, he was.
- 19 Q And what was he yelling?
- 20 A To, "Go ahead and do it."
- 21 Q How many times?
- 22 A It was several times. He kept saying it over and  
23 over, and that is when the girl seemed to move.  
24 She tried to jerk away.
- 25 Q She was still alive?

1 A Yes, she was moving. She went to jerk away, and  
2 that is when I stabbed her.

3 Q You stabbed her?

4 A Yes.

5 Q All right, and what happened when you stabbed her?

6 A When I stabbed her, the knife seemed to -- it just  
7 went in kind of easy -- just went in all the way,  
8 and I looked down at her.

9 She was still moving like she was in pain.  
10 Then I pulled the knife out, and he said, "Go ahead,  
11 do it."

12 He was yelling at me to do it again, and I  
13 stabbed her again.

14 When I stabbed her, the knife didn't seem to go  
15 in all the way. It kind of stopped like it hit the  
16 bone.

17 So I pulled back on the knife, and David says,  
18 "You didn't do it right."

19 Q He told you, you didn't do it right?

20 A He said, "You didn't do it right." So I gave him  
21 back the knife.

22 He says, "I will show you how to do it." Then  
23 he bent down. There was a lot of blood.

24 Q There was a lot of blood on her, at this time?

25 A Yes, sir.

1 MR. REAVES: Judge, I will object  
2 to Mr. Feazell repeating everything he says. He is  
3 trying to testify.

4 THE COURT: All right, let the  
5 witness answer the question, Mr. Feazell, unless  
6 there needs to be a clarification, please, sir.

7 All right, let us proceed.

8 A He said he was going to show me how to do it, and  
9 there was a lot of blood.

10 It was on her breasts and things, and David  
11 bent down and like he was going to kiss her on the  
12 breasts, and when he bent down, I seen that when  
13 he put his mouth to her that she jerked.

14 While I was looking at him, he bit her on the  
15 breast, and that is when she moved.

16 Q What happened then?

17 A After that, he looked back up, looked toward me,  
18 and I was looking at him. He turned around and  
19 stabbed the girl -- stabbed her again.

20 Q What kind of stab was that?

21 A He just pulled his hand back and just stabbed her.

22 Q Did he act like he was through -- that he was  
23 trying to finish it off, or was he still playing  
24 with her or what?

25 A No, he wasn't trying to kill her.



1           He was -- like he was getting off to what --  
2           watching her go through all this pain.

3           He stabbed her, again. She was still moving  
4           around.. That is when I got up and walked off.

5       Q     How many times did you see him stab her, if you can  
6           remember?

7       A     I don't remember.

8       Q     All right. Well, what happened when you walked off?

9       A     Well, she was laying there when I walked off because  
10          she made a little -- quite a bit of noise, and when  
11          David was screaming at me to do it, to stab her, I  
12          walked off up towards the hill to see if anybody  
13          might have heard anything or drove up while all  
14          this was going on.

15      Q     Now, that was after you had stabbed her?

16      A     Yes.

17      Q     Okay.

18      A     When I was walking up toward the clearing, I  
19          noticed that the boy was sitting down next to the  
20          tree, and I walked right past him.

21               I kneeled down to look at him. He had a -- his  
22          head was down, and he had a big stained spot on his  
23          shirt -- on his chest.

24               He wasn't moving or anything. So I just looked  
25          at him, walked up toward the clearing, looked down

1           toward the circle area.

2       Q     How was Kenneth Franks situated? Was he --

3       A     He was sitting up against the tree and had his head  
4           down.

5       Q     Okay.

6       A     So I walked up to the top and looked around to see  
7           if anybody might have heard anything or pulled up.

8           Then I came back down. David and Gilbert were  
9           by the car. I walked over toward where David was.  
10          My brother was walking off -- Gilbert was walking off  
11          toward where the black-headed chick was -- the black-  
12          headed girl was.

13          David went around and got the blond-headed girl  
14          out.

15       Q     What happened when he got the blond-headed girl out?

16       A     He told her that she was -- now she was going to get  
17          hers -- what was coming to her.

18          She was telling him that she hadn't done anything.  
19          She gave him what he wanted -- not to hurt her.

20       Q     Was she crying?

21       A     Yes, she was crying. She was real scared.

22          David pulled her down to the ground, and he  
23          stabbed her.

24          I was standing next to him, and then he went  
25          to stab her, again, and I walked -- turned around

1 and walked off.

2 Q Do you remember if David was saying anything while  
3 he stabbed her?

4 A I don't remember.

5 Q All right, what happened when you walked off?

6 A My brother was coming towards me. I walked up to  
7 him, and I told him that I haven't done anything.

8 So I said, "Let's go. Let's split -- get out  
9 of here."

10 Q Why did you tell him that?

11 A Because everything -- a lot of stuff went down, and  
12 I was ready to leave -- just get away from it. Get  
13 away and get out of town.

14 Q Were you scared, at that time?

15 A At that time, I was.

16 Q Were you starting to sober up a little bit?

17 A Yes, I knew what was going on.

18 Q What was the lighting like at the time the blond girl,  
19 Raylene Rice, was killed? Was it dark or light?

20 A No, it was dark.

21 Q Were you having trouble seeing by then?

22 A I could see, you know, when they got close enough.  
23 When I was close, I could see images where they  
24 were. I couldn't really see them that good, but I  
25 could tell where they were at.

1 Q Okay, what happened next?

2 A Well, I told my brother, "Let's go ahead and split."  
3 He said, "No, everything will be all right. Just be  
4 cool."

5 I walked back over to the car, and David walked  
6 over toward Gilbert.

7 Then Gilbert came toward the car, and David was  
8 walking towards us and told us that we were going  
9 to leave.

10 Q Okay, I couldn't hear you. I'm sorry.

11 A He told me that we were going to leave.

12 Q Who told you that?

13 A My brother.

14 Q Okay.

15 A That we were going to leave and David was going to  
16 stay there.

17 Q So what happened?

18 A I told him, "Well, let's split." When we was getting  
19 in David's car to leave --

20 Q Who drove?

21 A My brother was driving. We was getting in David's  
22 car to leave and David came up to my brother and  
23 told him he wanted to get something out of the car.

24 He wanted to get his love stick out of the car.

25 Q His what?

1 A His love stick.

2 Q Okay, did he get it out of the car?

3 A Yes, he got it out of the car.

4 Q Tell the jury what it looked like.

5 A It is a stick about that big (indicating). It has  
6 got tape wrapped around one end of it.

7 Q And you definitely remember him calling it a love  
8 stick?

9 A Yes, I do.

10 Q Had you ever seen him with it before?

11 A When I used to -- when I was living with him, he  
12 always had a stick. He carried it around with him.  
13 He called it his love stick.

14 Q Okay, what happened then?

15 A Well, we were fixing to leave. I was getting on the  
16 passenger side of the car, and David went up to the  
17 blond-headed girl.

18 Q And how close was she laying to the car?

19 A She was right next to the door.

20 Q All right.

21 A And as I was getting in the car, I seen David kneel  
22 down. He had that stick.

23 He had the stick in between her legs. That is  
24 when I got in the car, and we backed out and took off.

25 When we were leaving, I told my brother, "Let's

1 just go ahead and split. Leave David out there."

2 He said, "No, we need to go back."

3 I kept telling him, "No, just forget it. Just  
4 go ahead and leave." We kind of argued about it,  
5 and he said that we were going back.

6 So I said, "Fine. Forget it."

7 He told me we were going to go pick up his  
8 truck.

9 Q He said you were going to do what?

10 A Go pick up his truck.

11 Q Gilbert's truck?

12 A Yes.

13 Q Where did you go to pick it up?

14 A Out towards Bosqueville.

15 Q Where is Bosqueville?

16 A It is on the north side of town outside of -- going  
17 out towards the lake.

18 Q It is still near the lake?

19 A Yes, it is near the lake.

20 Q Okay, so what did you do?

21 A We went out there and got his truck.

22 He told me that he was going to follow me, to  
23 drive the car back to David's house.

24 So he followed me back to David's mother's  
25 house, and I got out and parked the car and got out.

1                   We got in the truck and went back out to the  
2                   lake.

3       Q       So you left the car there? Is that what you did?

4       A       Yes, we left the car there.

5       Q       At David's mother's?

6       A       Yes.

7       Q       Okay, who was driving the truck when you left David's  
8                   mother's house?

9       A       Gilbert was driving.

10      Q       All right.

11      A       We took off back towards 06.

12      Q       Back to Koehne Park?

13      A       Koehne Park.

14      Q       Okay, go ahead.

15      A       We got to Koehne Park. We pulled up to where the  
16                   girl's car was parked and got out. David was coming  
17                   towards us.

18      Q       Okay, let us stop just for a minute.

19                   If you will, step down here for just a second.

20                   I believe, you have already testified that you  
21                   all were in this area right here (indicating).

22      A       Yes, we were.

23      Q       Brown car parked in here?

24      A       Yes.

25      Q       Show the jury where you came back to with the truck.

1 A We came back in and pulled up around towards the  
2 circled area.

3 We parked right over here. The other car was  
4 right over here, and David came up here (indicating).

5 Q All right, so you all saw David in -- near the picnic  
6 table? Is that where it was?

7 A Somewhere around there.

8 Q All right, take your seat. What happened then?

9 A Well, David came out. I was sitting in front of the  
10 truck and looked around.

11 David come up to my brother and said that he  
12 had found some money and he had a watch and a ring.

13 Q Okay, money and what else?

14 A A watch and a ring. Him and -- David and my brother  
15 walked off toward the trees.

16 I was still looking around to see if anybody  
17 was going to pull up while they were coming out.

18 They brought one of the girls out. I was  
19 standing on the side of the truck when they came past  
20 me. It looked like she had been bleeding a lot.

21 Q Okay, I am having trouble understanding you. It  
22 looked like what?

23 A That she had been bleeding a lot.

24 Q Okay, do you remember which girl it was?

25 A No, I don't.



1 Q Did she look any different to you than when you had  
2 seen her the last time?

3 A Well, she looked like that she had been cut up more --  
4 been stabbed more in her -- when they brought her  
5 past me, her arms weren't hanging down by her side.

6 Q Were or weren't?

7 A They weren't.

8 Q All right.

9 A So they came around and put her in the back of the  
10 truck, and they took off again, David and my brother.

11 Q Took off walking?

12 A Went into the woods.

13 Q Okay.

14 A Then I was standing there. I walked over to that  
15 girl's car and opened the door and sat on the seat,  
16 and there was a bag of dope sitting there.

17 Q Where was it sitting?

18 A It was in between the seats.

19 Q Okay, and what kind of dope was it?

20 A It was marijuana.

21 Q How much marijuana was it?

22 A It wasn't very much, just a small amount.

23 Q Were you -- during that period of time, were you  
24 accustomed to buying marijuana?

25 A Yes, I was.

1       where we were leaving, we took a right and were  
2       headed up toward Valley Mills and took another right  
3       before we got up to Valley Mills to a neighborhood.

4               We went around and came out to a road called  
5       Fish Pond Road which leads you to Highway 6.

6               We got to Highway 6 and was headed to Speegleville  
7       Park.

8       Q       So did you go over the Twin Bridges?

9       A       Yes, we headed -- had to go over the bridges to get  
10      to the other side of the lake.

11      Q       All right, and what happened?

12      A       While we were cruising along going across the bridges,  
13      and we were a pretty good ways -- almost to the middle  
14      of the lake where the bridges cross, and I leaned  
15      over and pulled a screwdriver out of my back pocket,  
16      and the glasses -- I grabbed a hold of them and threw  
17      them out the window and threw them into the lake.

18              Then we got to the other side of the bridge.  
19      My brother got off on the first exit which goes to  
20      Speegleville Park, and we got off -- David told him  
21      which way to go.

22      Q       David was giving the directions?

23      A       Yes.

24      Q       All right, do you know which way he went?

25      A       I know we got off on the exit and went down the road.

1                   We drove into the park.

2   Q     Was it pretty dark?

3   A     Yes, it was dark.

4   Q     Did you go in through the main gate or through a  
5           different way?

6   A     No, we didn't go in through the main gate. We passed  
7           that first entrance up.

8           We got into the park, and we pulled off down  
9           the dirt road that leads into this wooded area.

10          We drove down the road, and we pulled up, and  
11          we got out of the truck.

12          I got out, and I was looking around to see if  
13          anybody was cruising around or if anybody was there.

14   Q     Is it pretty dark out there where you were?

15   A     Yes, there is no light out there or nothing. So I  
16          told him, "Let's go ahead and get it over with" for  
17          what we were going to do.

18          I jumped in the back of the truck and lifted  
19          up one of the bodies, the boy, and David and Gilbert  
20          grabbed a hold of him and carried him off.

21          They were gone, headed off into the trees. They  
22          were gone for a little while. Then they came back.

23          I could hear them. They were coming back and  
24          they were talking.

25   Q     You could hear David and Gilbert talking?

1 A Yes, I did.

2 Q All right, could you hear what was said?

3 A Well, when they got closer to the truck, David was  
4 laughing. He was telling my brother that they were  
5 going to freak out when they find this boy because  
6 he will be sitting up.

7 Q Say that again. I want to make sure the jury heard  
8 it.

9 A He told my brother that they were going to freak out  
10 when they found the boy because he would be sitting  
11 up.

12 Then I handed him another body, and they took  
13 it off and went off in the same direction.

14 I was sitting there, and they came back and  
15 got the other one and took off with her.

16 They came back pretty quick. I told them to  
17 split. I told my brother, "Let's go."

18 We jumped in the truck, and we was headed back.  
19 David mentioned something about the money, again.

20 I said I didn't want any of the money. Go ahead  
21 and keep it, and we was headed back into town.

22 I told my brother that I was going to split.  
23 I was going to leave town. I was going to go back  
24 to work.

25 Q So what did you do?

- 1 A I told him where to drop me off at.
- 2 Q Where did they drop you off?
- 3 A They dropped me off at Alexander and 18th by the
- 4 store called Melvin's.
- 5 Q Called what?
- 6 A Melvin's.
- 7 Q Then what did you do?
- 8 A After that, when we left, I told my brother, I said,
- 9 "You won't be seeing me for awhile." He said not
- 10 to worry about it, and he took off. I went back to
- 11 my cousin's house.
- 12 Q How did you get there?
- 13 A I was walking. Melvin's is just a few blocks down
- 14 from his house.
- 15 When I got to my cousin's house, everybody was
- 16 asleep, and I had all my clothes in my cousin's van.
- 17 So I got inside the van.
- 18 Q You did what?
- 19 A I got in the van and got ready to go to work and
- 20 put on my painting clothes.
- 21 Q Your what clothes?
- 22 A Painting clothes.
- 23 Q Okay.
- 24 A And I went to sleep.
- 25 Q Where did you go to sleep?

1 A In the van.

2 Q All right.

3 A And I got up the next day. I was sitting on the  
4 porch. My uncle come out and asked me if I was  
5 ready, and I said, "Yes, I am ready," and he said,  
6 "Well, Perry will be out here in a little bit, and  
7 you can leave."

8 Perry came out, and then he came out, and we  
9 left for Bryan.

10 Q You came back here to Bryan?

11 A Yes.

12 (Brief recess.)

13 THE COURT: All right, proceed.

14 MR. FEAZELL: Thank you,  
15 Your Honor.

16 Q Mr. Melendez, during the past hour and a-half, you  
17 have been testifying about things that went on out  
18 at the lake with a man named David Wayne Spence.

19 I ask you, sir, whether or not you see  
20 Mr. Spence in the courtroom?

21 A Yes, I do.

22 Q Would you point him out to the jury, please, sir?

23 A Right over here (indicating).

24 MR. FEAZELL: Your Honor, if  
25 the record could reflect that the witness has

1 identified the Defendant, David Spence.

2 THE COURT: All right.

3 Q Mr. Melendez, tell the jury whether or not you  
4 have been offered any kind of promises or deals to  
5 testify today?

6 MR. REAVES: Your Honor, I am  
7 going to object to this line of questioning. He  
8 is trying to bolster the witness's testimony before  
9 he has even been impeached.

10 THE COURT: All right, rephrase  
11 the question, Mr. Feazell.

12 Q Mr. Melendez, have you pled guilty?

13 A Yes, I have.

14 Q On all three?

15 A Two counts.

16 Q On two counts? What sentence did you receive?

17 A I received two life sentences to run CC.

18 Q All right, why have you not pled on the third count?

19 A My lawyers when I pled to the first two, they told  
20 me that the last case would be pending so I would  
21 not come back and take the blame for the whole --  
22 everything that happened out there."

23 Q Okay, is it your understanding that there is already  
24 a plea that has been agreed to on the third case  
25 for you?

1 A Yes.

2 Q What is that?

3 A That my last case will be given a life sentence,  
4 and it will be -- run concurrently with my other  
5 two.

6 Q Was there any kind of requirement that you testify?

7 A No, there wasn't.

8 Q Mr. Melendez, tell this jury why it is that you are  
9 testifying today?

10 A I am testifying today because I want everybody to  
11 know the truth of what happened out there, and I  
12 have been holding this -- I have had this inside  
13 me for two or three years now.

14 By me telling this, I just want it to all be  
15 over. To me, get down there and serve my time out  
16 and just have it done with.

17 Q Okay, did you give a confession?

18 A Yes, I did.

19 Q All right, when did you give the -- when was the  
20 first time you confessed, approximately?

21 A It was in July -- sometime in July.

22 Q Of '84?

23 A Yes, it was '84.

24 Q Okay, and then did you later give a longer and  
25 more detailed confession?



1 A Yes, I did.

2 MR. FEAZELL: All right, I  
3 believe, at this time, we will just pass the witness.

4 MR. REAVES: Your Honor, at  
5 this time, this is the first time we have heard  
6 Mr. Melendez' testimony and had any idea of what he  
7 has said.

8 We have not had an opportunity  
9 to review either of the statements he has given,  
10 and we will need a substantial amount of time to  
11 review those and prepare our cross examination.

12 We would ask for a continuance  
13 until after lunch to do that.

14 THE COURT: Where are the  
15 statements?

16 MR. FEAZELL: I have got them  
17 right here.

18 THE COURT: Have you received  
19 copies?

20 MR. VANCE: No, sir.

21 MR. REAVES: We have not gotten  
22 anything until now.

23 THE COURT: Let me see how lengthy  
24 they are.

25 MR. VANCE: Judge, we also have

1 another matter we will have to take up outside the  
2 presence of the jury when we do get to cross  
3 examination.

4 THE COURT: I thought they had  
5 copies of these. Where have their copies been?

6 MR. FEAZELL: Your Honor, it was  
7 ruled that we did not have to, if I recall, not have  
8 to serve copies.

9 THE COURT: All right, there is  
10 about seven pages there. I will give you 15 minutes.  
11 We are not going to recess until after lunch.

12 You have heard his testimony. We  
13 have got to move this trial along.

14 MR. VANCE: Well, we would  
15 object to the Court's ruling of only giving us 15  
16 minutes to prepare.

17 THE COURT: All right, that is  
18 fine. Go ahead and use 15 minutes, and then you can  
19 come back and tell me why you haven't been able to  
20 read seven pages in 15 minutes, and I will take it  
21 under consideration at that time.

22 MR. VANCE: Your Honor, we also  
23 have another matter that we need to take up.

24 THE COURT: Let us take it one  
25 at a time. Read those statements first. You have

1 got 15 minutes.

2 I want everybody to have plenty  
3 of time, but we have had too many delays.

4 Every time we turn around,  
5 somebody needs more time to do something.

6 MR. VANCE: Judge, that is not  
7 our fault. We have never been provided --

8 THE COURT: You are not  
9 entitled to it until after he has passed the witness.

10 MR. VANCE: Are you overruling  
11 our objection?

12 THE COURT: I am giving you 15  
13 minutes to read. The more you spend, it is taking  
14 off your time.

15 Every time we do something in  
16 here, somebody wants a half a day to prepare for  
17 the next.

18 (Brief recess.)

19 (Whereupon the jury retired from  
20 the courtroom and the following  
21 proceedings took place out of  
their presence and hearing:

22 THE COURT: Mr. Vance, you have  
23 had 25 minutes. Now, tell me where you stand.

24 MR. VANCE: Judge, we still need  
25 some more time.

1 THE COURT: What is the nature  
2 of the reason for more time?

3 MR. REAVES: Judge, we are  
4 trying to go through and not only go through  
5 Mr. Melendez' statements but compare them to the  
6 testimony of his brother when he testified previously  
7 which is some 250 pages long.

8 MR. FEAZELL: They can't impeach  
9 him with his brother's testimony in a prior trial.

10 MR. REAVES: We certainly can  
11 pin him down, though.

12 THE COURT: You all have had  
13 ample time to read his brother's testimony, right?

14 MR. VANCE: But we haven't had  
15 a chance to compare it with what we have heard  
16 today. We have not seen anything regarding this  
17 witness until they passed him at approximately 10:30  
18 this morning.

19 THE COURT: The only statement he  
20 has made is seven pages of caps, double spaced.

21 MR. VANCE: He has two different  
22 statements that are inconsistent with each other, also.

23 THE COURT: Well, I haven't  
24 read the statement, but I know there was no  
25 voluminous reading involved, but now, let us get back --

1           you have had the other statement how long, his  
2           brother's?

3                       MR. VANCE: We have had that  
4           since before the trial, but we haven't had anything  
5           to compare it to because we weren't furnished  
6           anything regarding this witness until today, and it  
7           was only after he testified --

8                       THE COURT: As I understand the  
9           law, you are entitled to any statement that is used  
10          before the jury or the Gaskin rule or the witness  
11          after he has testified for the State, and that is  
12          just what has transpired.

13                      As far as this going and taking  
14          a previous testimony from his brother in another trial  
15          and all that, I don't think the Gaskin and used  
16          before the jury speaks to that.

17                      I want to be sure you have had  
18          plenty of time to review his statement.

19                      MR. VANCE: We are saying we  
20          have not.

21                      THE COURT: I'm not talking  
22          about comparing it with his brother's 205 page  
23          testimony in another trial. I am talking about,  
24          have you had -- in 25 minutes, you have had seven  
25          typewritten caps, double spaced to read.

1 MR. VANCE: Our contention is  
2 we have not had enough time to properly cross examine  
3 this witness.

4 THE COURT: Cross examine -- we  
5 haven't even started that.

6 MR. VANCE: We are getting ready  
7 to.

8 THE COURT: All right, to read  
9 those seven pages, now, how long do you need? How  
10 much more in addition to 25 minutes?

11 MR. VANCE: We could probably  
12 use a couple of hours.

13 THE COURT: To read seven pages?

14 MR. VANCE: To properly prepare  
15 cross examination based on his statements and other  
16 knowledge of the facts of this case.

17 THE COURT: Well --

18 MR. VANCE: To determine any  
19 inconsistencies in his testimony and not only --

20 THE COURT: Anytime somebody  
21 passes a witness, I don't think it is incumbent upon  
22 the Court to call a recess to give the lawyers an  
23 opportunity to prepare.

24 We are going to start back. It  
25 is now seven minutes after 11:00. I imagine that you

1 can use up the better part of the time until 12:00  
2 o'clock, and then we will have a lunch and recess  
3 for an hour and a-half, and you can take that time,  
4 and we will go from there.

5 MR. VANCE: I didn't understand  
6 that.

7 THE COURT: I say, we are going  
8 to go ahead, and you are going to start cross  
9 examination and asking him what you have already had  
10 25 minutes to review the statement, and probably, we  
11 will recess at noon when you still have him on  
12 cross examination, and you will have the lunch hour.

13 I may give you an extra half  
14 hour, or in other words, instead of an hour and  
15 a-half, two hours for lunch.

16 That will give you -- you can eat  
17 and read at the same time, and that way, we won't  
18 keep the jury waiting around while -- every time we  
19 pass witnesses.

20 MR. VANCE: The other problem we  
21 have, Judge, is we may need this witness to review  
22 this videotape that we hope to offer into evidence.

23 So we will have to do that  
24 outside the presence of the jury, also. So I am  
25 just notifying the Court for that.

1 THE COURT: All right, you know,  
2 it seems like to me we have pretrialed this thing  
3 hours on end, and I thought all these things had been  
4 taken care of, and here we are get in the middle of  
5 the trial and about every two hours of trial, we have  
6 to have two to four hours of recess for one side or  
7 the other.

8 We are going to have to do something  
9 about it.

10 MR. VANCE: None of this was given  
11 to us prior. If Gilbert had testified, we don't have  
12 any problems because we are ready for him.

13 THE COURT: Well, everybody  
14 announced ready back on the 8th of October, and that  
15 was a qualified ready.

16 All right, bring the jury in,  
17 and let us see how far we can go before the lunch  
18 recess.

19 MR. VANCE: You are denying our  
20 request, at this time?

21 THE COURT: No, I gave you 25  
22 minutes, now it is up to about 50 minutes, and then  
23 we will have another two hour recess, and you can go  
24 back and review the statement some more.

25 You can do it in increments.



1           That is the way this trial is going, in increments  
2           or installments. So we will do it that way.

3                       MR. VANCE: At this time, you  
4           are denying our immediate request?

5                       THE COURT: I gave you 25 minutes,  
6           and I am denying your request for additional successive  
7           times, but I will give you two hours more time which  
8           will be convenient with the jury's schedule, also.

9                       MR. VANCE: All right, I just  
10          need a ruling, Judge.

11                      THE COURT: You will get two  
12          more hours. It will just not be successive. You  
13          will end up with two hours and 25 minutes.

14                               (Whereupon the jury returned into  
15                               (the courtroom and the following  
                              proceedings took place:

16                      THE COURT: All right, proceed.

17                               CROSS EXAMINATION

18                      QUESTIONS BY MR. REAVES:

19          Q       Mr. Melendez, your name is Anthony Melendez. Is  
20                   that correct?

21          A       That is correct.

22          Q       Okay, have you ever gone under any other name?

23          A       Yes, I have.

24          Q       What other name was that?

25          A       Tony Fajardo.

- 1 Q How do you spell that?
- 2 A F-a-j-a-r-d-o.
- 3 Q Back in July of 1982, which name were you going
- 4 under?
- 5 A Tony Fajardo.
- 6 Q Where does Tony Fajardo come from? Where does that
- 7 name come from?
- 8 A It was my mother's maiden name before she got married.
- 9 Q And you used those two names interchangeably?
- 10 A Yes, I do.
- 11 Q When you were working here in Bryan, were you working
- 12 under the name Anthony Fajardo or Anthony Melendez?
- 13 A Fajardo.
- 14 Q Okay, who were you working for here in Bryan?
- 15 A John Hazel.
- 16 Q Okay, what does Mr. Hazel do?
- 17 A He contracts out painting.
- 18 Q Contracts out painting? Okay, did you work for him,
- 19 or did you work for whoever he was doing the painting
- 20 for?
- 21 A I worked for him.
- 22 Q Okay, who wrote your paycheck?
- 23 A He did.
- 24 Q Was that paycheck made out to you, or was that
- 25 paycheck made out to someone else?

1 A It was made out to someone else.

2 Q Okay, who was it made out to?

3 A My cousin.

4 Q Okay, and your cousin's name is?

5 A Perry Surita.

6 Q Why was it that paycheck was not made out to you?

7 A It was -- at that time, I didn't -- I wasn't using

8 Anthony Melendez.

9 Q Okay, you didn't have any identification for Anthony

10 Fajardo?

11 A No, I didn't.

12 Q Okay, so your paycheck -- if your records from

13 Mr. Hazel would reflect -- would not reflect a

14 check made out to you. Is that correct?

15 A That is correct.

16 Q Okay, your check would have been included with any

17 checks that were to Perry Surita?

18 A That is correct.

19 Q So Mr. Surita's check not only had his payments in

20 there but also yours?

21 A Yes.

22 Q Okay, how long had you been working for Mr. Hazel?

23 A From the beginning of summer.

24 Q Would that have been June or earlier?

25 A Earlier.

1 Q Okay, before June of 1982?

2 A Somewhere around there.

3 Q Okay, somewhere around June of 1982, maybe a little  
4 bit earlier?

5 A I don't remember exactly what month I started for  
6 him.

7 Q Okay, other than Perry Surita, were any other -- did  
8 you have any other relatives also working for  
9 Mr. Hazel?

10 A Yes, I did.

11 Q Okay, what were their names?

12 A Rudolph Surita and Roy Surita.

13 Q Roy, R-o-y?

14 A (Nodded)

15 Q Okay, anyone else?

16 A No, that was it.

17 Q When you all were working for Mr. Hazel, where were  
18 you living at?

19 A We lived -- stayed on the job site.

20 Q Okay, did you have a place to stay there, or would  
21 you sleep in a car or in a tent, or where would you  
22 sleep?

23 A Well, sometimes we would sleep in -- I would sleep  
24 in my cousin's van or apartment that was already  
25 finished that we had painted -- sleep in there.

- 1 Q And that was the Pecan Grove Apartments?
- 2 A Yes, we stayed there occasionally. Where we were
- 3 working, there is where we stayed.
- 4 Q How did you get back and forth to Bryan and Waco?
- 5 A With my cousin.
- 6 Q Okay, and that is --
- 7 A Perry.
- 8 Q Perry, and he had a van?
- 9 A Yes, he did.
- 10 Q Okay, did any other of your relatives have transportation?
- 11 A My uncle and my other cousin did.
- 12 Q Okay, did they also have cars or trucks?
- 13 A My uncle had a van, and my cousin had a truck.
- 14 Q Did they drive those vehicles up here to Bryan?
- 15 A Yes, they did.
- 16 Q Okay. Now, do you remember what day July the 13th
- 17 was, what day of the week?
- 18 A I don't remember.
- 19 Q Okay, but you had been working that day, July 13,
- 20 1982?
- 21 A Yes, I was.
- 22 Q Do you remember how many hours you worked that week?
- 23 A No, I don't remember.
- 24 Q Okay, do you know whether you worked -- how many
- 25 hours would you normally work in a week?

- 1 A At least, 44 hours a week.
- 2 Q At least, how many?
- 3 A Forty-four.
- 4 Q Forty-four?
- 5 A I worked 10 hours a day.
- 6 Q Okay, but on July the 13th, you didn't work your  
7 full 10 hours?
- 8 A No, I didn't.
- 9 Q Okay. Now, what time did you leave Bryan? Did you  
10 leave Bryan at noon or later on July 13, 1982?
- 11 A It was close to noon.
- 12 Q Close to noon -- before or after?
- 13 A Before.
- 14 Q Okay, did you leave right after you got off from  
15 work?
- 16 A Yes.
- 17 Q Okay, who came with you?
- 18 A Perry did.
- 19 Q Okay, what about Rudolph and Roy? Did they come  
20 with you?
- 21 A They stayed in Bryan.
- 22 Q Okay, did they get off at 12:00, also?
- 23 A They were off at lunch when we left.
- 24 Q Okay, you don't know -- of course, since you weren't  
25 there, you don't know if they went back to work or not?

- 1 A No, I don't.
- 2 Q Did they have cars up here, at the time?
- 3 A I don't remember if my cousin had his truck up here.
- 4 I know my cousin had his van.
- 5 Q Is that Rudolph or Roy?
- 6 A Rudolph drives a truck.
- 7 Q So you and Perry took off about noon on July 13, 1982?
- 8 A Yes, we did.
- 9 Q So not only -- you are paid not only -- are both --
- 10 since you were already getting paid with Perry, both
- 11 of you-all's paychecks would reflect that you didn't
- 12 work a full shift that day?
- 13 A Yes, it should.
- 14 Q It should reflect that you worked approximately --
- 15 what time did you go to work that morning? Do you
- 16 remember?
- 17 A We usually started at 7:00.
- 18 Q Okay, so it should reflect that you worked
- 19 approximately five hours, more or less?
- 20 A It should have.
- 21 Q 7:00 to 12:00. Where did you first go when you got
- 22 back to Waco?
- 23 A We went to my cousin's house.
- 24 Q Perry Surita?
- 25 A Yes.

- 1 Q Do you recall what time you got there?
- 2 A I think, it was somewhere around 2:00 or 3:00.
- 3 Q 2:00 or 3:00 in the afternoon?
- 4 A Yes.
- 5 Q Did you all stop along the way anywhere?
- 6 A We stopped before we left Bryan, and I don't remember
- 7 if we stopped on the way back.
- 8 Q Now, you came back here for the purpose, you said,
- 9 of buying some drugs?
- 10 A Yes.
- 11 Q Okay, and you told the jury that you weren't able
- 12 to find anybody that had any or weren't able to find
- 13 anybody that sold some to you?
- 14 A No, I wasn't.
- 15 Q Okay.
- 16 A That is correct.
- 17 Q You came back here to buy some drugs but you didn't
- 18 end up buying any?
- 19 A No, I didn't.
- 20 Q Do you recall giving a statement back on June 12,
- 21 1984?
- 22 A Yes.
- 23 Q Okay, do you recall taking an oath at that time,
- 24 being sworn to tell the truth?
- 25 A Yes.



1 Q Being read your rights?

2 A Yes.

3 Q Okay, you had been read your rights by Judge Joe  
4 Johnson, Justice of the Peace.

5 A Right.

6 Q At that time, did you say that you had bought some  
7 drugs?

8 A I don't remember.

9 Q You don't remember that?

10 A No.

11 Q But if you said that you bought some drugs, that  
12 would be a lie because you didn't?

13 A I don't remember what I said on that tape.

14 MR. REAVES: May I approach  
15 the witness, Your Honor?

16 THE COURT: Yes.

17 Q Mr. Melendez, let me show you a document that has  
18 been marked -- or that has not been marked, but it  
19 is a -- what -- has at the top of it a statement  
20 form warning by magistrate and ask if you recognize  
21 the signature on that?

22 A Yes, I do.

23 Q And whose signature is that?

24 A It is my signature.

25 Q Anthony Melendez?

1536

Yes.

Okay, and there are three pages that has your signature on each page?

Yes.

Okay, what is that document?

It is my statement.

Okay, is that a written statement signed by you?

Yes, it is.

Okay, let me refer you to the second paragraph of that statement and ask if in that statement you made the statement under oath that you bought some drugs here in Waco -- or in Waco?

MR. FEAZELL: Your Honor, I am going to object, at this time. May we approach the bench?

(Conference at the bench.)

MR. FEAZELL: For the record, I would state that we object as to there being any implication that this statement was given under oath, as it was not. It is not notarized.

THE COURT: All right, the statement was previously characterized as having been a sworn statement, ladies and gentlemen. The reference to the Justice of the Peace Johnson is there was a magistrate's warning given before the

1 statement was made which -- would you like to  
2 elaborate or read exactly what the magistrate's  
3 warning consists of, Mr. Reaves? This is printed  
4 at the top. Clarify what the statement is exactly.

5 Q Okay, Mr. Melendez, I am sorry. Previously, I just  
6 had a chance to glance at your statement before I  
7 began cross examining you, and I said that it was  
8 under oath, but in fact, it was not. Okay, you did  
9 not raise your hand and swear to tell the truth,  
10 the whole truth and nothing but the truth.

11 You took a magistrate's warning. Is that correct?

12 A That is right.

13 Q Judge Johnson gave you the warning to the effect that --  
14 that you have the right to retain counsel. You have  
15 the right to remain silent and not say anything.

16 You have a right to have an attorney present  
17 during any interview with peace officers or attorneys  
18 representing the State.

19 You have a right to terminate the interview at  
20 any time. You have the right to request the  
21 appointment of counsel.

22 If indigent and cannot afford counsel, it was  
23 scratched out that you have the right to have an  
24 examining trial and that you have the right to make  
25 any statement and that any statement made by you may

1 be used against you.

2 It further says that I understand my rights  
3 as set out in this warning and knowing that I --  
4 what they are, I freely and voluntarily without  
5 being forced or compelled by promises, threats or  
6 persuasion, waive these rights and make the following  
7 statement in writing to Deputy Sheriff Truman Simons.

8 Is that the substance of what was told to you  
9 at the time you made that statement?

10 A Yes, it was.

11 Q Now, let me go back and again refer you to the  
12 second paragraph in that statement.

13 Did you make -- did you say that you, in fact,  
14 did buy some drugs?

15 A Yes, I did.

16 Q And that statement is not true?

17 A No, it isn't.

18 Q Okay, further in the statement, it says that you got  
19 off work about noon and messed around until 2:00 or  
20 3:00. Was that messed around here in Bryan?

21 A No.

22 Q Okay, what does that refer to?

23 A The drive back.

24 Q So again, you would have gotten here in Waco at  
25 approximately 2:00 or 3:00 o'clock?

- 1 A Yes.
- 2 Q How long did you stay at the Armadillo Lounge?
- 3 A I was there for a few hours.
- 4 Q A few hours?
- 5 A Yes.
- 6 Q One or two or more than that?
- 7 A It was more than two hours.
- 8 Q Okay, what did you do there?
- 9 A I drank some beer and shot some pool.
- 10 Q Okay, do you recall how many beers you had to drink
- 11 while you were there?
- 12 A No, I don't remember.
- 13 Q Okay, was anybody else there that you knew?
- 14 A Not at that time.
- 15 Q So you were there for more than a couple of hours,
- 16 and after that, you left. Is that correct?
- 17 A Yes, that is correct.
- 18 Q You didn't have a car so you had to walk?
- 19 A That is correct.
- 20 Q Where did you go after you left the Armadillo Lounge?
- 21 A I was headed to a friend's house that lived on
- 22 Concord and 12th Street.
- 23 Q Okay, who was that?
- 24 A Tom Walker.
- 25 Q Tom -- I am sorry, what?

1 A Tom Walker.

2 Q W-a-l-k-e-r?

3 A Yes.

4 Q After you left the Armadillo Lounge, did you have an  
5 occasion to go over to Gilbert's house?

6 A No, I didn't.

7 MR. REAVES: May I approach the  
8 witness, Your Honor?

9 THE COURT: Yes.

10 Q And again, let me show you the statement that I  
11 previously showed you dated June 12, 1984 and refer  
12 you, again, to the second paragraph.

13 You say that you stayed there a short while,  
14 referring to the Armadillo Lounge, and then went  
15 to Gilbert's house.

16 A Yes, I did.

17 Q You did not do that?

18 A No, I didn't.

19 Q That is not the truth?

20 A No.

21 Q Where was Gilbert living at the time? Do you know?

22 A No, I don't.

23 Q Okay, do you know whether he was moving into a  
24 small apartment close to Piggly Wiggly on Lyle?

25 A No.

- 1 Q So if you said that in your statement, that again is  
2 not true?
- 3 A Yes.
- 4 Q Where did you see David Spence on the afternoon of  
5 July 13, 1982?
- 6 A At his mother's house.
- 7 Q Okay, and where is that?
- 8 A It is 15th and Cumberland.
- 9 Q 18th and Cumberland?
- 10 A 15th and Cumberland.
- 11 Q Okay, what was David doing there when you saw him?
- 12 A He was out on the porch.
- 13 Q Okay, sitting out on the porch, or what was he doing?
- 14 A He was sitting out on the porch.
- 15 Q Okay, just sitting there watching everybody go by?
- 16 A I wouldn't know.
- 17 Q Okay, you were still on foot?
- 18 A Yes.
- 19 Q Did you know that was where David was living?
- 20 A Yes.
- 21 Q Okay, was that where he was living the last time  
22 that you ran into him or saw him?
- 23 A Yes, it was.
- 24 Q Okay, at his mother's house?
- 25 A Yes.

1 Q Do you know whether or not he was living there at  
2 that time or whether he was just over there?

3 A No, I don't.

4 Q You don't know whether he was living there, at  
5 that time?

6 A No, I don't know if he was living there.

7 Q What time would you have ran -- or what time did you  
8 see David?

9 A I wouldn't know.

10 Q Okay. Well, if you went to the Armadillo Lounge  
11 about 2:00 or 3:00 and you stayed there a couple of  
12 hours or more than a couple of hours, would it have  
13 been about 4:00 or 5:00?

14 A I wouldn't remember what time I left the Armadillo.

15 Q Okay, was it still daylight?

16 A Yes, it was.

17 Q How long -- how far was it from the Armadillo Lounge  
18 to David Spence's mother's house?

19 A I guess, a pretty good ways.

20 Q Pretty good ways? About how long did it take you  
21 to walk it?

22 A I would say, about 30 minutes, maybe more.

23 Q Okay, after you came by -- after you found or saw  
24 David, you all got in David's car and went driving  
25 around?



1 A Well, we went down to -- down to the corner and  
2 bought some beer.

3 Q Okay, down to the corner of what?

4 A 15th and Concord.

5 Q Okay, did you have any beer with you when you came  
6 by David's house?

7 A I don't remember.

8 Q Okay, had you stopped by and bought some beer after  
9 you came out of the Armadillo?

10 A After I ran into David.

11 Q But before you ran into David, had you stopped by  
12 and bought some beer?

13 A I don't remember.

14 Q You don't remember?

15 A No.

16 Q Okay. Now, when you saw David there at the house,  
17 at his mother's house, was anyone with him?

18 A No.

19 Q Okay, Gilbert wasn't with him?

20 A No.

21 Q Okay, and he was sitting on the porch and not in his  
22 car?

23 A Yes, he was sitting on the porch.

24 MR. REAVES: Okay, may I approach  
25 the witness, Your Honor?

THE COURT: Yes, sir.

1  
2 Q Again, Mr. Melendez, let me show you your statement  
3 dated June 12, 1984 and again refer you to the first  
4 paragraph where you are -- state, first of all, that --  
5 well, after you walked -- after you state that you  
6 walked to the Seven Eleven store at 18th and Lyle  
7 and bought a six pack of beer, you say you don't  
8 remember whether you did that or not?

9 A No, I don't.

10 Q Okay, then you walked over to the apartment -- what  
11 apartment -- well, the next statement is, is that  
12 Gilbert and David drove up in Spence's car. That is  
13 while you were walking?

14 A This isn't true.

15 Q That is not true?

16 A No.

17 Q Now, Mr. Melendez, after you -- according to your  
18 testimony, after you ran into David, you all went  
19 over to where Gilbert was -- or towards where Gilbert  
20 was working. Is that correct?

21 A I don't understand your question.

22 Q Okay, what did you all do after you -- after David --  
23 you ran into David and got in his car and you went  
24 and bought some beer, then where did you go?

25 A We were headed down Concord again.

- 1 Q Okay, and that is where you ran into --
- 2 A My brother, Gilbert.
- 3 Q Your brother, Gilbert, and that is Gilbert Melendez?
- 4 A Yes, it is.
- 5 Q Where on Concord did you run into him?
- 6 A I wouldn't remember.
- 7 Q Did you drive very far before you ran into him?
- 8 A I don't remember.
- 9 Q You don't remember?
- 10 A No.
- 11 Q Okay, do you remember what time of day it was?
- 12 A No, I don't.
- 13 Q Was it dark?
- 14 A No, it wasn't dark.
- 15 Q Okay, was it getting dark? Was it dusk?
- 16 A No.
- 17 Q Still fairly light?
- 18 A Yes.
- 19 Q Okay, and then you went to buy some more beer after
- 20 you picked up Gilbert?
- 21 A Yes, we did.
- 22 Q Okay, was Gilbert on foot when you met him?
- 23 A We picked him up, he was --
- 24 Q He was walking?
- 25 A Yes, he was.

1 Q Where did you all stop and get beer after you picked  
2 up Gilbert?

3 A On Valley Mills.

4 Q Okay, do you know the name of the store?

5 A At that time, it was called Hilltop.

6 Q Mr. Melendez, if I can get you to come up here to  
7 what has previously been marked as State's Exhibit  
8 No. 1, and I will give you this pointer.

9 Can you locate where on this drawing where the  
10 Hilltop Grocery is where you stopped to buy beer?

11 A It is somewhere right in here (indicating).

12 Q Okay, this location in here being Valley Mills Drive?

13 A Yes, it is.

14 Q Where on this map would you have ran into your brother,  
15 Gilbert? Can you locate that area?

16 A No, I can't.

17 Q Okay, you can't locate Concord on that map?

18 A No.

19 Q Okay, you can go ahead and have a seat.

20 After you went to -- after you went to the Hilltop  
21 Grocery and stopped and got some beer, then where did  
22 you -- you went out to Koehne Park?

23 A Yes.

24 Q Okay, which you also referred to as O6 Park?

25 A Yes.

1 Q Okay, did you drive through there on the night after --  
2 the afternoon of July 13th, 1982? Did you drive  
3 through Koehne Park on one occasion or more than  
4 one occasion?

5 A Which part are you referring to -- the beach area  
6 or --

7 Q Koehne Park in general.

8 A In general? When we first got there, we went off  
9 towards where the circle was at, and then we came  
10 out.

11 We were headed down toward the beach area and  
12 never made it down there. We turned around and went  
13 back to the circle.

14 Q Okay, so you stayed in Koehne Park that time? You  
15 just went from one part to the other?

16 A Yes.

17 Q Okay, but you never did go into Koehne Park and leave,  
18 get out back on Lake Shore Drive and drive around  
19 awhile and come back?

20 A No, we didn't.

21 Q Okay, Mr. Melendez, let me get you to come back up  
22 to the board and what has been marked as Defendant's  
23 Exhibit No. 2. If you would, please, point out to  
24 the jury the circle area that you are referring to.

25 A It is right here.

- 1 Q Okay. Now, where is the entrance to Koehne Park?
- 2 A Right up here.
- 3 Q Okay, when you came into Koehne Park, this is the
- 4 entrance. Is that correct?
- 5 A Yes.
- 6 Q That day -- where did you go first of all?
- 7 A We came in here and left down to the circle.
- 8 Q You went all the way down to the circle. What did
- 9 you do when you got to the circle?
- 10 A We drove around and came back.
- 11 Q Okay, you didn't spend any time -- didn't stop and --
- 12 A No.
- 13 Q Okay, when you came back out the circle, where did
- 14 you go?
- 15 A Across the street. We came across the entrance here
- 16 and went on the other side toward the beach area.
- 17 Q What kind of area is this back over here?
- 18 A This right here is paved. You can park up on top
- 19 like somewhere around there, and it goes down toward
- 20 the beach. The water is out that way (indicating).
- 21 Q How far did you get down here before you saw --
- 22 A It was somewhere around here. The other car was
- 23 coming up this way. We was fixing to head down the
- 24 hill.
- 25 Q Okay, Mr. Melendez, if I can get you to come back

1 here, if you would, as best you can, draw a little  
2 diagram of Koehne Park.

3 I will start you off with the circle right  
4 there, and draw as best you can how the circle fits  
5 into Koehne Park and put the graveled in area so we  
6 can have you mark where you ran into the orange Pinto.

7 A (Witness complied.)

8 Q Okay, first of all, let us -- so we can get our  
9 bearings straight, label the entrance there. Just  
10 put "entrance."

11 A (Witness complied.)

12 Q Okay, and label the circled area as "circle." Let  
13 me give you a green pen, if you would, since we  
14 don't have a blue one, and draw in the location of  
15 the water -- Lake Waco.

16 A Down here somewhere.

17 Q Okay, go ahead and with that same green pen, mark  
18 where you ran into the orange Pinto.

19 A When we were right here, the Pinto was coming up  
20 this way, and we met them right here.

21 Q Okay, you can go ahead and have a seat. Excuse me,  
22 Mr. Melendez, if I could get you to go back up there  
23 and mark which one is your car. Just put TM will be  
24 fine.

25 That is the car you were in, and then Pinto on

1 the other one, okay.

2 Now, when you ran into the Pinto, you all were  
3 on your way down to the water or to the graveled area?

4 A Yes.

5 Q Okay, had you already gone around there and turned  
6 back, or were you going in?

7 A We were on our way in.

8 Q Okay, did you notice any other cars in that area?

9 A Yes, when we pulled in, I noticed there was a truck  
10 and a Trans AM.

11 Q If you would, go ahead and go back up to that drawing,  
12 and with either one of those pens, mark where the  
13 truck was and where the Trans AM was.

14 A (Witness complied.)

15 Q Okay, would you also draw in the picnic table that  
16 you said was up there?

17 A (Witness complied.)

18 Q Okay, and just go put PN for picnic table.

19 A (Witness complied.)

20 Q Okay, you have drawn the truck and the Trans AM and  
21 the picnic table in green. Is that correct?

22 A That is correct.

23 Q Were there any people around that -- around the  
24 truck and the Trans AM?

25 A No, they were sitting inside.



- 1 Q Okay, but you did see some people there? Could you  
2 describe what they looked like?
- 3 A I just saw a dude sitting in the truck. I didn't  
4 really get to see who was in the Trans AM.
- 5 Q There was a guy in the truck?
- 6 A Yes.
- 7 Q Okay, again, do you recall -- you don't recall what  
8 time this was?
- 9 A No, I don't.
- 10 Q Okay, was it getting dark?
- 11 A Not yet.
- 12 Q Okay, still light?
- 13 A Yes, it was.
- 14 Q Okay, did you see any other cars parked on down the  
15 road there that day?
- 16 A Down at the beach area?
- 17 Q Yes, sir.
- 18 A There was a few cars down there.
- 19 Q Okay, you did not stop anywhere in there and drink  
20 a few beers or sit on the hood of your car. Is  
21 that correct?
- 22 A That is correct.
- 23 Q Okay, you saw the girls coming in -- or you saw  
24 them coming out of that area and talked to them  
25 as you were going in?

1 A That is correct.

2 MR. REAVES: May I approach the  
3 witness, Your Honor?

4 THE COURT: Yes, sir.

5 Q Let me, again, show you your statement dated June 12,  
6 1984.

7 I will refer you down to the last paragraph  
8 where it says, "We drove on down to the bottom of  
9 the hill. There were a few cars parked halfway  
10 down the hill and a few more were parked at the  
11 very bottom. We parked about halfway between where  
12 the two sets of cars were and got out.

13 "We were about 100 yards from the bottom. I  
14 sat on the hood of the car and leaned back against  
15 the windshield. David and Gilbert stood there  
16 beside the car for awhile and we talked about what  
17 kind of work I was doing in Bryan."

18 Then it goes on to where you see the girls  
19 coming up and the guy in the car. Is that what  
20 happened?

21 A No.

22 Q That is not what happened?

23 A No, that is not.

24 Q That is not the truth?

25 A No, it isn't.

1 Q Mr. Melendez, when did you plead guilty?

2 A I am not for sure. I think, it was July the 13th  
3 or the 14th.

4 Q Of 1980 -- what, '4?

5 A '84.

6 Q Okay, was it before or after you made this statement  
7 dated June 12, 1984?

8 A Before I made that statement?

9 Q Was it before or after?

10 A I don't remember if I pleaded the same day I made  
11 that statement or not. I am not for sure what day  
12 I made my plea.

13 Q Do you recall whether or not it was close in time  
14 to the time you made your statement when you entered  
15 your plea?

16 A Yes, it was.

17 Q It was close in time? Okay, was this statement  
18 dated June 12, 1984, the only one you made up until  
19 last week?

20 A Yes, it was.

21 MR. REAVES: May I approach the  
22 witness, again, Your Honor?

23 THE COURT: Yes, sir.

24 Q Okay, again, Mr. Melendez, let me show you the  
25 statement dated June 12, 1984.

1           Going back to the part that we were talking  
2           about before where you were parked -- where you  
3           stated that you were parked at the bottom of the  
4           hill.

5   A    Yes, sir.

6   Q    Okay, and then you say that some -- that is when  
7           you saw the three people drive up in the Pinto?

8   A    Yes.

9   Q    Okay, and in the next paragraph, you say that "David  
10          stood on the passenger side and talked to them for  
11          awhile. They got out of the car and smoked a joint.  
12          I was sitting on the hood of David's car, and the  
13          blond walked over and started talking to me."

14                Again, this is down at the bottom of the hill  
15                in the graveled area. That is again not true. Is  
16                that correct?

17   A    That is correct.

18   Q    That is not what happened?

19   A    No, it isn't.

20   Q    So unlike what you said in your statement, you didn't  
21          spend any time down there on the graveled area but  
22          went straight to the circle once you saw the Pinto  
23          and started talking to them?

24   A    Yes.

25   Q    Did you hear any names used when -- well, first of

1 all, who talked to the people in the Pinto? Was it  
2 David Spence?

3 A Yes.

4 Q Okay, who was he talking to?

5 A When we ran into them, when he pulled up next to  
6 them, I was looking over at him and noticed the  
7 blond was driving.

8 I looked on the other side, and that is when  
9 I seen the boy leaning over looking out the window  
10 talking to David.

11 Q Leaning over looking out the window. Was he leaning  
12 over the blond in the front seat?

13 A He was leaning toward her way so we could see through  
14 the window.

15 Q Was he the one doing the talking?

16 A When I looked over at him, he was talking.

17 Q Okay, where were you sitting in David's car?

18 A In the back seat.

19 Q Okay, were you on the driver or the pasenger's  
20 side?

21 A I don't remember.

22 Q Okay, do you remember whether you were sitting  
23 behind David or sitting behind your brother?

24 A I was sitting behind my brother when we first  
25 pulled up, and then I noticed that there was this

1 blond-headed girl driving. That is when I slid  
2 over to take a look at her.

3 Q Okay. Now, your brother -- David was driving. Is  
4 that correct?

5 A That is correct.

6 Q So your brother would have been sitting on the  
7 passenger side?

8 A Correct.

9 Q How long did you all talk to them there when you  
10 first met them?

11 A It wasn't too long. A couple of minutes.

12 Q Okay, did you all drive down to the bottom and  
13 turn around, or did you turn around there in the  
14 entrance?

15 A We turned -- David turned around right there when  
16 we took off.

17 Q So right where you have labeled those two cars there,  
18 the truck and the -- or David's car and the Pinto,  
19 then David's car is the one that you have labeled  
20 as TM, which is the car you were in.

21 Right after he saw them, he turned around  
22 basically in that area?

23 A Yes.

24 Q Were any of the -- when you first came up to the  
25 Pinto and talking to -- and David was talking to

1           them, were the girls in the Pinto doing any talking?

2       A       When we first ran into them?

3       Q       Yes, sir.

4       A       I don't remember.

5       Q       You then went and drove down to the circle after  
6           you turned around?

7       A       Yes.

8       Q       Okay, and followed the Pinto there, or did the  
9           Pinto follow you?

10      A       We followed the Pinto.

11      Q       Okay, let me get you to go back up to the diagram  
12           which has been marked Defendant's Exhibit No. 2.

13               First of all, on this diagram, Defendant's  
14           Exhibit No. 2, there are some tables that are marked  
15           on there.

16               Do you recall those tables being out there at  
17           the circled area of Koehne Park on July 13, 1982?

18      A       Yes, I do.

19      Q       Okay, when you first -- or when you came into the  
20           circled area and followed the Pinto area, first of  
21           all, show the jury where the Pinto parked.

22      A       Okay, the Pinto parked -- there was a dumpster right  
23           here. There was a dumpster right here, and it pulled  
24           up in front of it (indicating).

25      Q       Okay, is the circled area paved?

1 A Yes, it is.

2 Q Okay, where did you and David and Gilbert pull up?

3 A We pulled in behind them, right next to them  
4 around here.

5 Q Okay, did you all then get out and go to any of  
6 the tables?

7 A No, we didn't.

8 Q Okay, you can go ahead and have a seat.

9 Okay, Mr. Melendez, let me go ahead, and if  
10 you would, go back up to your drawing there to try  
11 to keep this other one from being marked on, but  
12 go ahead and take the green Magic Marker. First  
13 of all, again, put a diagram for the Pinto as to  
14 where it parked in the circle.

15 A Okay.

16 Q Okay, if you can, just kind of draw a line up there  
17 and label which one is the Pinto and which one is  
18 David's car.

19 A David's car was right here. This is where David's  
20 car was parked. This is where the Pinto was parked.

21 Q Okay, so you have labeled TM for David's car and  
22 Pinto for the Pinto?

23 A Yes.

24 Q Okay, was anyone else in the circled area when you  
25 all drove in?



- 1 A No.
- 2 Q Okay, did you see any other cars parked there?
- 3 A No.
- 4 Q Okay, and you did not see any other people there?
- 5 A No.
- 6 Q Okay, did anyone else come up while you were there?
- 7 A Not that I remember.
- 8 Q Again, do you recall what time this was?
- 9 A No, I don't.
- 10 Q Okay, was it still daylight?
- 11 A Well, the sun was starting to set then.
- 12 Q The sun was starting to set while you were in the
- 13 circled area. You all did not go to any of the
- 14 picnic tables? Did you just stand around the cars?
- 15 A Yes.
- 16 Q Okay, what did you do while you were there around
- 17 the cars?
- 18 A We talked.
- 19 Q Okay, did you drink some beer?
- 20 A Smoked a couple of joints.
- 21 Q Okay, how long would you estimate that you were there?
- 22 A A little over an hour, close to two hours.
- 23 Q Okay. Now, you were -- you had originally stopped
- 24 with David to get some beer after he first picked
- 25 you up. How much beer did you buy then?

- 1 A A couple of six packs.
- 2 Q Okay, then you went and picked up your brother,
- 3 Gilbert?
- 4 A (Nodded)
- 5 Q Mr. Melendez, you still need to speak up so she
- 6 can hear you.
- 7 Then when you picked up your brother, Gilbert,
- 8 you stopped and got some more beer at the Hilltop?
- 9 A Yes, we did.
- 10 Q How much beer did you get then?
- 11 A I think, we got -- pretty sure we got a case of
- 12 beer then.
- 13 Q About four six packs?
- 14 A Yes.
- 15 Q So you still had about a case of beer when you went
- 16 into -- or you had at least a case of beer when you
- 17 went into Koehne Park?
- 18 A Yes.
- 19 Q Is that fair to say?
- 20 A Yes.
- 21 Q So you all sat around for about an hour or two there
- 22 at Koehne Park drinking that beer that you had?
- 23 A Yes.
- 24 Q Okay, sat around there for an hour or two -- not sure
- 25 how long?

1 A No, I'm not sure.

2 Q Okay, anybody have the radio on or music on?

3 A I don't remember.

4 Q During the time that you were -- the two hours  
5 that you were there, nobody drove through or nobody  
6 drove by?

7 A Not that I remember.

8 Q Okay, nobody came and sat by the picnic tables  
9 that you recall?

10 A No.

11 Q Okay, were you actually sitting in the cars, or  
12 were you standing outside the cars?

13 A Standing outside of them.

14 Q Okay, everyone?

15 A Yes.

16 Q While you were there, did you run out of beer?

17 A We were close to running out of beer. We still  
18 had a few left.

19 Q Okay, that is when you all decided to go get some  
20 more, or did you decide to go get some more?

21 A That is when David said, "Let's go get some more  
22 beer."

23 Q Let me get the sequence going into Koehne Park  
24 straight, again.

25 You followed -- you and David and Gilbert

1 followed the Pinto into Koehne Park and pulled up  
2 beside -- behind them. Is that correct?

3 A We followed them to the circled area.

4 Q Did you while you were sitting or while you were in  
5 Koehne Park during that time, did you go up and sit  
6 on a picnic table and go to sleep?

7 A No, I didn't.

8 Q You personally did not?

9 A No, I didn't.

10 MR. REAVES: May I approach the  
11 witness, again, Your Honor?

12 THE COURT: Yes, sir.

13 Q Again, let me show you your statement dated June 12,  
14 1984.

15 I point you to the second paragraph from the  
16 bottom. In that statement, you said, "I laid back  
17 on the table and was nodding out."

18 Then you later say, "I went to sleep and woke  
19 up."

20 Is that true or not true?

21 A It is not true.

22 Q Okay, so you were not telling the truth at the  
23 time you gave that statement?

24 A No, I wasn't.

25 Q Okay, let me point you to the paragraph right up

1           there, and you said -- where you say that "We got  
2           in David's car and drove to the circle. We were  
3           in front of the tree. They followed."  
4           That is not the way it happened either?  
5    A       No, it wasn't.  
6    Q       Okay, you followed them?  
7    A       That is correct.  
8    Q       So your statement is not true?  
9    A       No, it isn't.  
10   Q       When you all got ready to leave, you got in David's  
11       car. Everyone got in David's car?  
12   A       Yes, sir.  
13   Q       Okay, how was everybody sitting? Who was in the  
14       front seat?  
15   A       David was driving. The chick with the black hair  
16       was next to David, and then the boy was on the  
17       other side.  
18   Q       Okay, so in the front seat, you had David Spence.  
19       In the middle was the burnette-haired girl or the  
20       black-haired girl, as you are describing her?  
21   A       Yes.  
22   Q       And on the passenger's side of the front seat was  
23       the boy?  
24   A       Yes.  
25   Q       Okay. Now, how was everyone seated in the back seat?

1 A I don't remember.

2 Q Okay, you obviously were in the back seat, and your  
3 brother was in the back seat?

4 A Yes.

5 Q Is that correct?

6 A Yes.

7 Q You remember that much. Do you remember whether  
8 the boy or whether the blond-haired girl was  
9 in between you or whether she was on one end?

10 A No, she was in the middle.

11 Q So you do remember she was in the middle?

12 A Yes.

13 Q Mr. Melendez, if I could get you to come up to  
14 this diagram, again.

15 Show the jury which way you drove out of  
16 Koehne Park with everyone in the car.

17 A When we left, we went around this way around the  
18 circle (indicating).

19 Q Okay, you turned around and started going out?

20 A Yes, we headed around the corner down toward the  
21 entrance and pulled up in here, and then we stopped.

22 Q Okay, if I could get you to go to your diagram and  
23 place a mark approximately where you got off the  
24 road. I take it, you did get off the road. Is  
25 that correct?

- 1 A Yes.
- 2 Q Okay, what -- you have marked something there, and
- 3 I can't quite read it. This is where there was a
- 4 dumpster -- right here (indicating).
- 5 Q Okay, go ahead and mark "dumpster" there.
- 6 A (Witness complied.)
- 7 Q Okay, and then what is the other area that you have
- 8 marked?
- 9 A Right here is where we pulled into the woods.
- 10 Q Okay. Now, if you could, what kind of area is that
- 11 back from where you pulled in? Is that wooded or
- 12 clear?
- 13 A No, it is all -- right here is kind of a clear area
- 14 and all back in here is --
- 15 Q Okay, draw some kind of squiggly lines that would
- 16 indicate where the trees are.
- 17 A (Witness complied.)
- 18 Q Okay, you can go ahead and sit down.
- 19 Did you pull in or back in?
- 20 A Pulled in.
- 21 Q Okay, how far off the road did you go?
- 22 A We were completely off the road by the trees.
- 23 Q How far into the trees did you go?
- 24 A We were a pretty good ways in the trees.
- 25 Q Okay, do you have any idea about how far?

- 1 A Not really.
- 2 Q Were you as far from yourself to the jury, farther  
3 than that or closer than that from the edge of  
4 the road?
- 5 A About that far, maybe a little further. Not much  
6 further.
- 7 Q Okay, about 15 or 20 yards. Would that be fair  
8 to say?
- 9 A Somewhere around there.
- 10 Q Okay, did you have any trouble driving down in there?
- 11 A No.
- 12 Q Okay, is that a -- is that a road, or is that just  
13 a clearing in the woods?
- 14 A Well, it is not like a road, but people have pulled  
15 off in the area before. There is a lot of trails  
16 out back off in the ----
- 17 Q Had you ever gone back in there before?
- 18 A Not that I remember.
- 19 Q Okay, had you ever been out to Koehne Park before?
- 20 A A few times.
- 21 Q So you were familiar with how it was laid out, more  
22 or less?
- 23 A Yes.
- 24 Q Okay, have you been out there since all this happened?
- 25 A Yes, I have.



1 Q When was that?

2 A I went out there once before I left TDC, when I  
3 made my first statement, and then I was back out  
4 there when I was -- I was back out there when I was  
5 bench warranted back from TDC.

6 Q Okay, first of all, you say you went out there about  
7 the time you made your first statement?

8 A Yes.

9 Q Okay, that is the statement that we have been  
10 talking about dated June 12, 1984. Is that correct?

11 A Yes, that is correct.

12 Q Do you recall whether you went out there before or  
13 after that statement was made?

14 A It was before.

15 Q Before?

16 A Before, yes.

17 THE COURT: Gentlemen, it is  
18 obvious we are not going to finish this witness  
19 before a reasonable time for lunch.

20 So let's -- first off, let us  
21 get a reading on what you attorneys anticipate  
22 time-wise for anything that would not necessitate  
23 the presence of the jury so we won't have to keep  
24 them in and out and waiting.

25 Would you all step in the anteroom,

1           please, ladies and gentlemen?

2                               (Whereupon the jury retired from  
3                               (the courtroom and the following  
4                               proceedings took place out of  
5                               (their presence and hearing:

6                               THE COURT: All right. Now then,  
7                               let us see what you all need to do outside the  
8                               presence of the jury. Do you want some more time to  
9                               study this, Mr. Melendez' -- Tony Melendez' statement?

10                              MR. REAVES: Yes, sir, and we  
11                              have a videotape which we intend to introduce through  
12                              him, and our reading of the law is that we need to  
13                              take that up outside the presence of the jury and  
14                              let him review that.

15                              THE COURT: How long is the  
16                              videotape going to take?

17                              MR. REAVES: It is about five  
18                              minutes.

19                              THE COURT: What does it consist?

20                              MR. REAVES: It consists of shots  
21                              of Koehne Park and of the route taken to Speegleville  
22                              Park.

23                              THE COURT: All right, about how  
24                              much more time do you need to review these seven  
25                              page statements that he has -- seven total pages --  
                             seven and a-half, I think, it is.

1 MR. VANCE: I think, we would  
2 be able to determine that once we get back from  
3 lunch. There may be adequate time, and there may  
4 not be.

5 THE COURT: All right, I will  
6 give you a two-hour lunch hour, and we will have  
7 food brought to you, with your Defendant, and you  
8 all can just stay right in there for two solid  
9 hours with seven pages -- hamburgers and pages,  
10 and that is all I want you to discuss and consider  
11 for two hours.

12 MR. VANCE: I want mine with  
13 mustard and pickles.

14 THE COURT: Then we are going  
15 to have the videotape. We will give you 15 minutes  
16 for that, and also, his Counsel is present, and he  
17 will be entitled to be present when you all view  
18 the videotape, if you would like.

19 MR. VANCE: Do you want to do  
20 it now, or do you want to do it in a few minutes?

21 THE COURT: You have got two  
22 hours and 15 minutes. You can use it any way you  
23 want to.

24 Mr. Dittfurth will order, and  
25 what do you all need? Have you got your camera

1 ready?

2 MR. VANCE: All we need to do  
3 is roll the D.A.'s equipment in here and go.

4 THE COURT: All right, you can  
5 use the conference room and the hold-over cell  
6 combination. That is your suite for the noon hour.

7 Now, then Mr. Dittfurth, if  
8 you will take the orders, and you all write out  
9 what you want to eat including Mr. Melendez.  
10 Everybody that will be involved, Counsel for  
11 Mr. Melendez, all five of you all. Does the D.A.'s  
12 office -- do you all want to be present during the  
13 video?

14 MR. FEAZELL: You bet, yes, sir.

15 MR. VANCE: What I suggest is  
16 we let the jury go. We run the video. Then we will  
17 eat lunch here. The video is not more than about five  
18 minutes.

19 THE COURT: If you all want to  
20 have food brought in, that is your business. I want  
21 you to utilize your time to the maximum.

22 If you want to spend the time  
23 going over the statement, that is going to save you  
24 from having to go out and eat and come back.

25 MR. VANCE: I am writing down my

1 order right now.

2 THE COURT: Good, all right,  
3 bring the jury in. I am going to bring the jury  
4 back in. It is 10 after 12:00 right now, and I am  
5 going to bring them back at 2:30, and then we are  
6 going to hit 2:30 and go straight through trial.

7 We are not going to have any  
8 more shutdowns unless one of you all fall out in  
9 the floor, and then we will prop you up and keep  
10 going.

11 All right, bring them in.

12 (Whereupon the jury returned into  
13 the courtroom and the following  
proceedings took place:

14 THE COURT: All right, ladies  
15 and gentlemen, there is some more matters that the  
16 attorneys will need to discuss. So we will have a  
17 little longer lunch hour.

18 I hope when we get started this  
19 afternoon, there will be no more delays so far as  
20 you are concerned.

21 I assure you that these are not  
22 delays in the sense that it is wasting time. There  
23 are certain things that I explained to you in the  
24 beginning that have to be determined outside of your  
25 presence.

1                               So we can try our best to  
2 follow the laws of the State of Texas and rules of  
3 evidence and so on, and even though we do all we can  
4 in advance to avoid this, there is still some things  
5 that come up during the course of a trial that no  
6 one can foresee, but I tried to minimize keeping you  
7 all in this little room or having you go in and out.

8                               So what we are going to do is  
9 have a recess until 2:30 by this clock over here  
10 for lunch.

11                              You can take some time and go  
12 by your -- whatever you would like to do -- your  
13 place of business and so on, but I would rather do  
14 that than have you come back and have two or three  
15 more shutdowns.

16                              The attorneys and I will discuss  
17 it, and hopefully, we will run straight through from  
18 2:30 until 5:00 o'clock or maybe a little later with  
19 testimony.

20                              We won't have you waiting around  
21 while we are doing our part of the trial.

22                              Please, bear with us. I know  
23 all of you understand. We are trying to do our best  
24 with what we have and we will move as rapidly as  
25 possible.

1 As I told you in the very  
2 beginning, administration of justice -- sometimes the  
3 only way we can do justice is to take time and try  
4 to be sure we are doing our best to follow the law,  
5 and that is what we are trying to do.

6 Have a good lunch. See you at  
7 2:30 by this clock.

8 (Whereupon the jury retired from  
9 (the courtroom and the following  
10 (proceedings took place out of  
11 (their presence and hearing:

12 (Whereupon attorney for Mr. Anthony  
13 (Melendez, Mr. Charles A. Youts  
14 (was present for all of Mr. Melendez'  
15 (testimony.

16 MR. YOUTS: May it please the  
17 Court, may I make a statement?

18 THE COURT: Yes, sir.

19 MR. YOUTS: I have previously  
20 introduced myself to the Court. My name is Charles  
21 Youts. I am an attorney from Waco, and I am the  
22 court appointed attorney for Anthony Melendez, the  
23 witness who has been testifying today, and I have  
24 been here since 9:00 o'clock this morning when the  
25 trial started and have sat through all his testimony  
and will sit with him through this lunch break to  
view the video and will also remain until his  
testimony is ended.

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THE COURT: All right, and  
Mr. Youts, as I told you as soon as I knew of your  
presence, if at any point in the trial you need to  
approach the bench or object or whatever you deem  
necessary to safeguard and protect the constitutional  
rights or any other rights of your client -- you can  
sit up here at the counsel table or whatever you  
would like to do. Don't be bashful.

I don't think you would anyway,  
but I want to point that out to you. Now that I  
know who you are and where -- I have been checking  
every once in awhile in case you stood up or  
something.

MR. YOUTS: You will hear me.

THE COURT: Mr. Melendez, you  
understand your lawyer has been here the whole time  
and you have talked to him before you came here  
today and so on. Is that right?

THE WITNESS: That is correct.

THE COURT: And you know he is  
here and is representing you and protecting your  
rights?

THE WITNESS: Yes, sir.

THE COURT: All right, and you  
have had plenty of time to discuss with him whatever



1           you need to so far as your testimony and your  
2           appearance here today?

3                       THE WITNESS:   Yes, I have.

4                       THE COURT:   All right, and  
5           everything is going -- you don't have any complaints  
6           or anything that you need to talk to your lawyer  
7           about?

8                       THE WITNESS:   No.

9                       THE COURT:   All right, let us  
10          bring in the videotape and do that.

11                      (Whereupon the video was played.)

12                      MR. FEAZELL:   When do you want  
13          us to lodge our objections?

14                      MR. REAVES:   Wait until it gets  
15          over.

16                      MR. VANCE:   Your Honor, for the  
17          record, we would object to Mr. Feazell leaning over  
18          next to the witness, making comments while this  
19          particular film is being showed.

20                      THE COURT:   All right, let us  
21          don't be talking to any of the witnesses.

22                      MR. FEAZELL:   I am sorry, Judge.  
23          I was talking to Mr. Butler, for the record, about  
24          our objections to this, Your Honor.

25                      MR. VANCE:   Those objections

1           could be listened to by the witness because they  
2           are in a close proximity.

3                       MR. FEAZELL: They are going  
4           to be heard by the witness.

5                       MR. VANCE: Maybe.

6                       THE COURT: Gentlemen, why  
7           don't we do this. The Court Reporter needs a break  
8           and needs to eat lunch. Why don't we come back at  
9           a quarter to 1:00 -- I mean, a quarter to 2:00 --  
10          excuse me -- and view the video, and that way you  
11          can go ahead and eat.

12                      MR. VANCE: The predicate won't  
13          be but just a few minutes.

14                      THE COURT: I mean, objections  
15          and everything. Do the predicate and then let us  
16          recess for lunch.

17   Q       (By Mr. Reaves) Mr. Melendez, regarding the first  
18          portion of that film, could you identify what that  
19          was?

20   A       Koehne Park.

21   Q       Is that a true and accurate representation of Koehne  
22          Park?

23   A       Yes, it is.

24   Q       Okay, is that a true and accurate representation  
25          of Koehne Park as you remember it?

- 1 A Are you talking about when the murders happened,  
2 or do I remember what it looks like right --
- 3 Q Is it a true and accurate representation as you  
4 remember it?
- 5 A No, sir.
- 6 Q What is different?
- 7 A There is a -- they got these wires and stuff up  
8 where you can't drive into certain parts of the  
9 park anymore and Speegleville Park --
- 10 Q Let us just talk about Koehne Park, the part that  
11 dealt --
- 12 A There is certain places where you can't pull in at.
- 13 Q But the cables are different than from what you  
14 remember it back in July of '82?
- 15 A Yes.
- 16 Q Okay, with those exceptions, though, it is a true  
17 and accurate representation of Koehne Park?
- 18 A Yes.
- 19 Q Okay. Now, regarding the second portion of the  
20 film, which is the trip, could you identify that?
- 21 A Leaving from Koehne Park?
- 22 Q Yes.
- 23 A Taking a right turn out of there and after that?
- 24 Q You cannot identify the second part? You don't  
25 recall that as being the way you went on the night

1 of July 13, 1982?

2 A No.

3 MR. YOUTS: Your Honor, if I  
4 may, on the record on behalf of Mr. Melendez, has  
5 this videotape been marked?

6 THE COURT: It has not been  
7 identified, Counsel. Let us go ahead and  
8 identify it for everybody here.

9 MR. YOUTS: Judge, if there  
10 is another videotape that should come up later on,  
11 I want it to be clear which one they are asking  
12 about.

13 THE COURT: All right, are  
14 you all going to sponsor this as a Defendant's  
15 exhibit?

16 MR. REAVES: Yes, sir.

17 THE COURT: Take the tape out  
18 and let her mark it.

19 (Whereupon an instrument was marked  
20 (for identification as Defendant's  
(Exhibit No. 8.

21 Q Now, Mr. Melendez, the questions I just asked you  
22 were with regard to Defendant's Exhibit 8, which  
23 was a videotape?

24 A Yes.

25 Q Okay, and regarding the first part, the view of

1 Koehne Park, that is a true and accurate representation  
2 of Koehne Park as you remember it with the exception  
3 of the cables and the areas you can't drive in?

4 A Yes.

5 Q Okay, and you cannot identify the second part,  
6 which is the moving part of the tape going out to  
7 Speegleville Park?

8 A No.

9 MR. REAVES: Okay, Your Honor,  
10 we would limit our offer on the videotape as to the  
11 first part of it which was the part dealing with  
12 Koehne Park and the views of Koehne Park.

13 MR. FEAZELL: If I could ask  
14 the witness a few questions, Your Honor.

15 THE COURT: All right.

16 VOIR DIRE EXAMINATION

17 QUESTIONS BY MR. FEAZELL:

18 Q You have already testified, Mr. Melendez, that the  
19 murders occurred in July of 1982.

20 You saw this videotape just now that was taken.  
21 Did you notice the part of the tape that was inside  
22 the wooded area there? Did that appear the same  
23 to you, or was it more wooded in July of '82 than  
24 when this was taken?

25 A It was more wooded.

1 Q Okay, how about the time of day? Does that appear  
2 to be the same, or does it appear to be different  
3 as far as the light?

4 A As far as the light, it seems about the same.

5 Q Okay. Now, I believe you testified earlier that  
6 while you were in there that it got dark -- started  
7 getting dark right after you were in there. Did  
8 that --

9 A Yes.

10 Q -- videotape appear to be taken at dusk, or did it  
11 appear to be taken during broad daylight?

12 A During broad daylight.

13 Q Okay, did you notice when the photographer would  
14 use his zoom lens and zoom in on something like  
15 there would be a picnic table way off in the  
16 distance, and then he would zoom in on it real close?

17 Did you notice some of that?

18 A Yes, I did.

19 Q Can your eyes do that, Mr. Melendez? I mean, make  
20 things come in a lot closer?

21 A No, they can't.

22 Q Okay, and also, some of it was pretty fast. I mean,  
23 he would turn the camera pretty fast. Did you  
24 notice that?

25 A Yes, I did.

1 Q Were you able to notice whether or not there were  
2 any additional mounds of dirt that may not have  
3 been there at the time you were there in July of '82  
4 as fast as the camera was moving or whether the  
5 terrain had been changed somewhat?

6 A There was one part when he started to show where  
7 the trees were inside the wooded area right there.  
8 It wasn't like that. That post wasn't there, and  
9 the mound of dirt wasn't there.

10 It was pretty much level. You can just drive  
11 on off in there.

12 Q And one way that you can notice that is you have  
13 been out there to the scene, have you not, since  
14 the mound of dirt was put there?

15 A Yes.

16 Q And since the posts were put up there?

17 A Yes.

18 MR. FEAZELL: Okay, Your Honor,  
19 based on that, we would object that it is not a  
20 fair and accurate representation of the scene as  
21 it appeared at the time of the hearing. The lighting --  
22 I mean, at the time of the killing. The lighting  
23 is different.

24 The time of the year is different  
25 which means the amount of foliage is different, and

1 the film is misleading because of the use of the  
2 zoom lens zooming in on something -- anybody that  
3 has used one of those knows you can read a license  
4 plate off at a distance with one of those that is  
5 certainly not visible with the naked eye.

6 So it would tend to mislead the  
7 jury about how close things out there are. So we  
8 would object to it that it is not a fair and accurate  
9 representation of the scene as it appeared at the  
10 time of the killing.

11 MR. REAVES: Your Honor, if I  
12 follow Mr. Feazell's reasoning, we can't get in a  
13 videotape unless we were out there at the time the  
14 murders were committed and shoot it at that time --  
15 that exact time of day and that exact time of the  
16 year.

17 THE COURT: It will be admitted,  
18 the first part, because it is the Court's position  
19 that it goes -- not to the admissibility but the  
20 weight, and Mr. Feazell and the broad cross  
21 examination in Texas can certainly bring out all of  
22 those imperfections or whatever you want to clarify  
23 them, and the jury will be able to be the fact-finders  
24 and go from that point forward.

25 I want to be sure that you all cut



1           it off right at the point that Koehne Park -- the  
2           part that he said that was all he could identify,  
3           and you can mark it or edit it.  
4                               MR. VANCE: There is a distinction  
5           there. There is a break.  
6                               MR. REAVES: There is a break.  
7                               THE COURT: I mean, be ready to  
8           cut it off or however you want to do it, but all right,  
9           we will see you all at 2:30.

10                              THURSDAY, OCTOBER 10, 1985  
11                              AFTERNOON SESSION: 2:30 p.m.

12                              - - - - -  
13                              (Whereupon the Defendant was  
14                              (present.

15                              THE COURT: All right. Now,  
16           gentlemen, is everything ready to go?

17                              MR. REAVES: Yes.

18                              THE COURT: All right, bring the  
19           jury in.

20                              (Whereupon the jury returned  
21                              (into the courtroom and the  
22                              (following proceedings took  
23                              (place:

23                              CROSS EXAMINATION

24                              QUESTIONS BY MR. REAVES:

25           Q       Mr. Melendez, we have had an opportunity to break for

1 lunch, and I assume, you have had an opportunity to  
2 discuss the testimony with your attorney.

3 With that in mind, do you have -- can you now  
4 recall whether or not you made the statement, the  
5 first statement we are talking about, either before  
6 or after you pled guilty?

7 A I made my statement before I pled.

8 Q Okay, what was the time frame between the time you  
9 made the statement and the time you pled guilty?

10 A I still don't recall.

11 Q Okay, was it the next day or longer than that or on  
12 the same day?

13 A I don't remember.

14 Q Okay, was it longer than a week?

15 A I don't remember.

16 Q Okay, the statement indicates that you were given  
17 the warnings that we talked about on June 12, 1984.

18 Is that the day the statement was made, or was  
19 it made sometime after that date?

20 A I don't remember.

21 Q Okay, and that is the statement that I have been  
22 questioning you on up to now.

23 You don't remember whether that was June 12,  
24 1984 or sometime after that?

25 A No, I don't.

1 Q Okay, when we left, we were discussing when you had  
2 first gone out to Koehne Park, and I assume, you  
3 went out there with somebody -- from someone  
4 associated with law enforcement. Is that correct?

5 A That is correct.

6 Q Okay, and we were -- I had asked you whether or not  
7 you had gone out to Koehne Park either before or  
8 after you had made this statement that we have been  
9 discussing.

10 A I went out before the statement.

11 Q Okay, do you know if it was -- again, was that the  
12 same day that you made the statement?

13 A I don't recall.

14 Q You can't recall if it was the same week?

15 A I can't recall.

16 Q Then this was -- okay, sometime before the statement  
17 that we have been talking about?

18 A Yes.

19 Q And to describe the statement, since we don't know  
20 the exact date you made this statement on, you have  
21 one statement that we have been discussing where  
22 you were given the warning on June 12, 1984.

23 You also had given another statement which is  
24 dated October 4, 1985.

25 A Yes.

1 Q So when I speak about the statement where you were  
2 given the warning on June 12, 1984, the one we have  
3 been discussing, I can refer to that as Statement 1,  
4 and you will understand that?

5 A Yes, sir.

6 Q Okay, who did you go out to Koehne Park with the first  
7 time?

8 A When I went to Koehne Park the first time, I went with  
9 Captain Weyenberg and Truman Simons.

10 I drove out there with them, and my lawyer  
11 followed us out there.

12 Q Did you have an occasion after that time to go out  
13 there again?

14 A No.

15 Q Okay. Now, I think, you said before we broke for  
16 lunch that you had gone out there twice. So that is  
17 not correct. You have only been out there once since  
18 you were arrested?

19 A No, the first time I went out there once when I came  
20 back with a bench warrant. I went to Koehne Park,  
21 again.

22 Q When you came back on a bench warrant? Bench warrant,  
23 when was that?

24 A In December.

25 Q Of which year?

- 1 A '84.
- 2 Q Okay, who did you go out there with, at that time?
- 3 A Truman Simons and someone else. I can't recall
- 4 his name.
- 5 Q And that was the second time you had gone out to
- 6 Koehne Park with some law enforcement officers?
- 7 A That is correct.
- 8 Q Let us go back to talking about when you all were
- 9 out at the circle, okay, and you were -- everyone
- 10 got in David's car.
- 11 A That is correct.
- 12 Q And I think, you said the seating arrangements
- 13 earlier was David was in -- driving. The brunette
- 14 was in the middle, and the boy was on the passenger
- 15 side in the front seat?
- 16 A I know David was driving, but I can't remember if we
- 17 were actually seated that way or not.
- 18 Q Okay, so what you told the jury earlier before lunch,
- 19 you can't remember now?
- 20 A It might seem that way. It happened that way, but
- 21 I am not for sure.
- 22 Q You just don't know?
- 23 A No, I don't remember.
- 24 Q Okay, but you remembered before lunch?
- 25 A I thought they might have been sitting that way, yes.

1 Q Now, Mr. Melendez, as you were driving out there  
2 with some kind of -- I believe, you said there was  
3 some kind of fight going on between Mr. Spence and  
4 the brunette?

5 A Yes.

6 Q Okay, if you can, you need to take your hands away  
7 from around your mouth so the Court Reporter can  
8 hear what you are saying, okay?

9 That was while they were driving in the car?

10 A Yes, it was.

11 Q Okay, and then you drove up a ways, and you have  
12 diagramed on there where you pulled off the road.

13 A Yes, I have.

14 Q And you were the one that said, "Everybody, let's  
15 get out of the car"?

16 A Yes.

17 Q Your brother didn't say that. David Spence didn't  
18 say that. You are the one that said that?

19 A Yes, I am the one.

20 Q Okay. Now, David -- you said that David was talking  
21 to the boy and yelling at him. Is that what you  
22 said?

23 A Yes.

24 Q Okay, was he shouting at him?

25 A Yes, he was.

1 Q How loud was he talking to him? Was he talking as  
2 loud as I am right now?

3 A A little bit louder.

4 Q He was talking louder like that?

5 A A little more.

6 Q Still louder?

7 A That is about right.

8 Q Okay, is that the way he was talking to the girl,  
9 too?

10 A No, it wasn't that loud.

11 Q It wasn't that loud.

12 May I approach the witness, Your Honor?

13 THE COURT: Yes, sir.

14 (Whereupon an instrument was  
15 (marked for identification as  
16 (Defendant's Exhibit No. 9.

16 Q Mr. Melendez, let me show you what has been marked  
17 as Defendant's Exhibit No. 9, which is a drawing  
18 that you made while you were testifying of the --  
19 Koehne Park, the circled area and the graveled  
20 area, okay?

21 A Yes.

22 Q Is that a true and accurate drawing of your  
23 testimony regarding Koehne Park and the location  
24 of the cars and what happened that day?

25 A Yes, it is.

1 MR. REAVES: Your Honor, at  
2 this time, we would offer into evidence Defendant's  
3 Exhibit No. 9.

4 MR. FEAZELL: State has no  
5 objections, Your Honor.

6 THE COURT: All right, it will  
7 be admitted.

8 (Defendant's Exhibit No. 9 was  
9 (then admitted into evidence.

10 Q Mr. Melendez, if I could get you to go back to the  
11 Board, if you would, let us talk about the incident  
12 involving the brunette, okay?

13 If you would, draw in a person there, and show  
14 me where David Spence was and where you were.

15 A From what time? We left the circle --

16 Q No, after you had pulled off into the woods. David  
17 went off to an area, you say, with the brunette,  
18 and you went along with him. Is that correct?

19 A That is correct.

20 Q That is your testimony. Okay, what have you drawn?

21 A This is all trees right here. This is where David's  
22 car is. We walked off this way (indicating).

23 Q Okay, and that little circle depicts where you all  
24 were standing?

25 A Yes, it does.



1 Q If you could, go up on higher and draw a body, or  
2 as best you can of a body up there so you can show  
3 me where David was standing in regards to the girl  
4 and where you were.  
5 A (Witness complied.)  
6 Q And label those DS, JM and TM.  
7 A (Witness complied.)  
8 Q Okay. Now, you have drawn a picture showing David  
9 straddling the girl, and you off to what would be  
10 his right side?  
11 A That is correct.  
12 Q Okay, is that the way it was? You were off to  
13 David's right side?  
14 A Yes, I was.  
15 Q Okay, were you -- which way were you facing? Were  
16 you looking back at him or looking forward?  
17 A Looking at him, forward.  
18 Q Okay, go ahead and sit down.  
19 At that time, you say that David had the knife --  
20 the knife in his hand?  
21 A Yes.  
22 Q Was it in the hand that was closest to you?  
23 A Yes, it was.  
24 Q Okay, that would be his right hand, and you would be  
25 over here to his right?

- 1 A Yes.
- 2 Q Okay. Now, when you took the knife and he gave  
3 the knife to you, were you still in that same  
4 position, off to his right?
- 5 A Yes, I was.
- 6 Q Okay, did you move up closer, or where did you go  
7 when he gave you the knife?
- 8 A I was kneeling next to him.
- 9 Q Okay, facing the girl?
- 10 A Yes.
- 11 Q Okay, still in the same position as depicted on  
12 your drawing there?
- 13 A Yes.
- 14 Q Okay, are you right-handed or left-handed?
- 15 A Right-handed.
- 16 Q Okay, which hand did you take the knife in?
- 17 A My right hand.
- 18 Q Okay, when you stabbed the girl, did you stab down?
- 19 A Yes, I did.
- 20 Q Okay, which part of the body do you think you  
21 stabbed her in?
- 22 A Above her breast.
- 23 Q Okay, Mr. Melendez, at that time, you were still  
24 facing towards the girl and towards David, is  
25 that correct, on his right side?

33

1 A I was facing more toward the girl.

2 MR. REAVES: Okay, can I approach

3 the witness, Your Honor?

4 THE COURT: Yes, sir.

5 Q So if you have a line, Mr. Melendez, on your drawing,

6 you are facing in this direction looking out that way.

7 Would that be correct?

8 A Yes.

9 Q Were you facing another direction?

10 A Before I kneeled down, I was facing that direction.

11 Q Okay, when you took the knife, were you facing that

12 direction?

13 A No, I wasn't.

14 Q Which way were you facing then?

15 A I was facing --

16 Q Go ahead.

17 A I was facing more this direction.

18 Q Okay, go ahead and put the knife right there.

19 A (Witness complied.)

20 Q Now, after you stabbed the girl and gave the knife

21 back to David, he got up later on, and you went and

22 started having sex with the brunette. Is that

23 correct?

24 A No, that is not correct.

25 Q No? Okay, what happened?

1 A After I stabbed the black-headed chick, I walked  
2 off.

3 Q You did not have sex with her there?

4 A Before?.

5 Q No, after -- after you stabbed her?

6 A No, I didn't.

7 Q Did you have sex with her before?

8 A Yes.

9 Q Okay, and that was after David had got up and told  
10 you to go over there, too?

11 A What are you talking about? Before she was stabbed  
12 or after she was stabbed?

13 Q You are saying that you went over there and had  
14 sex with her before she was stabbed.

15 A That is correct.

16 Q And then after you got -- and you knew that wasn't  
17 right, at that time. It just didn't feel right?

18 A No, it didn't.

19 Q So you didn't stay there very long.

20 A No.

21 Q You didn't stay with her very long?

22 A No.

23 Q Okay, and after she was stabbed, you got up and went  
24 back towards the car.

25 A That is correct.

1 Q Okay, and then the blond girl was sitting in the  
2 back of the car. Is that correct?

3 A She was in the back of the car.

4 Q Okay, and you went in and started having sex with  
5 her -- no?

6 A No.

7 Q When did you have sex with her?

8 A After I finished with the girl with the black hair.

9 Q That is what I say. After you got up and left --  
10 after the brunette girl had gotten stabbed, you got  
11 up and went back to the car -- towards the car?

12 A Yes, I went back towards the car.

13 Q Okay, and that is when the blond was still there in  
14 the car?

15 A She was in the car.

16 Q Okay, and you went back there and had sex with her?

17 A No.

18 Q No? Okay, when did you do that with the blond girl?

19 A After I was with the black-headed girl. After  
20 David finished and walked off with the boy, I got  
21 up and went toward the car.

22 David and Gilbert were standing in front of the  
23 car, and David said, "Go ahead," and that is when I  
24 got in the back seat with the girl, the blond-headed --

25 Q Go ahead. In reference to the blond-headed girl?

1 A Yes.

2 Q You probably didn't know that was right either.

3 You probably thought that wasn't right, too,

4 didn't you?

5 A It didn't feel right.

6 Q It didn't feel right, but you did it a second time

7 anyway?

8 A Yes, I did.

9 Q What time of day was it, at that time? Do you know?

10 A No, I don't.

11 Q Okay, was it dark?

12 A Yes, it was.

13 Q Okay, how well could you see, at that time -- at the

14 time you were with the blond-headed girl?

15 A I couldn't see off at a distance, but I could -- you

16 know, I was in front of her. I could see. It was

17 pretty dark.

18 Q How far could you see?

19 A I don't know -- a few yards.

20 Q Okay, when you first pulled off into the wooded

21 area, how light was it?

22 A It was starting to get dark.

23 Q Okay, dusk, would you say?

24 A Yes.

25 Q Okay, still were able to see fairly well outside of

the trees?

Yes.

Okay, and do you know what time that would be?

No, I don't.

How long do you think you were there in the wooded area?

I have no idea.

Thirty minutes -- more than that?

I don't remember.

More than an hour?

I can't remember.

Just don't have any idea?

No, I don't.

Okay, during that time, did you ever have an opportunity to go out of the wooded area up into the other portion of the circled area?

Yes, at one time, I did.

Where did you go to?

Up to where the park benches were.

Did you go and sit on a bench?

No.

Okay, if you could, let us go back to Defendant's Exhibit No. 2.

Point out to the jury what area -- where you went -- what portion of the park.

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girl,

1 did you?

2 A I don't remember.

3 Q You don't remember? Would you like to look at it?

4 (Brief pause.)

5 Q Is it in there? Have you looked at it?

6 A Yes, I have.

7 Q Was it in there?

8 A No, it wasn't.

9 Q Did you just forget about it?

10 A No, I didn't.

11 Q What?

12 A It is not in there.

13 Q Did you just forget about it?

14 A Forget about what?

15 Q About that when you gave that statement?

16 A I didn't put it in there.

17 Q So you knew about it and didn't say anything about it?

18 A Yes.

19 Q Okay, did you have an opportunity to look at the  
20 knife that you say Mr. Spence was holding?

21 A No.

22 Q Okay, you can't describe it?

23 A I don't know what it looked like.

24 Q Okay, that same knife you picked up and stabbed  
25 the brunette girl with. Is that correct?



1 A That is correct.

2 Q That is the same knife we are talking about?

3 A Yes.

4 Q Where was your screwdriver during all of this time?

5 A I had it in my back pocket.

6 Q Is that something you carry around usually?

7 A No.

8 Q Where did you pick it up from?

9 A The floorboard of David's car.

10 Q During this time, how loud were the girls talking?

11 A During which time?

12 Q During the time that you were out there in the wooded  
13 area.

14 A At times, they were screaming.

15 Q Screaming?

16 A Not real loud but screaming, and other times, they  
17 weren't saying nothing.

18 Q So at times, they would be screams, okay, but you  
19 didn't have any trouble hearing?

20 A No.

21 Q Let me ask you, Mr. Melendez, how far do you think  
22 it is from the area of the park here where you were  
23 to the road back in here or the picnic tables back  
24 in here?

25 First of all, how far would you say it is from

1           this area to the actual circled area?  
2       A     I don't have no idea.  
3       Q     Okay, 50 yards or more?  
4       A     I don't know.  
5       Q     Okay, how far would you think it was to the road  
6           out here or to this table right here?  
7       A     I don't know.  
8       Q     Again, don't know. Okay, Mr. Melendez, at this  
9           time, I would like for you to, if you can, come  
10          around.

11               Your Honor, could we approach the bench for  
12          a minute?

13                               THE COURT: Yes, sir.  
14                               (Conference at the bench out  
15                               (of the hearing of the jury.

16                               MR. REAVES: Your Honor, at  
17          this time, I do not believe in the earlier hearing  
18          that we offered Defendant's Exhibit No. 8 which is  
19          a tape of Koehne Park into evidence.

20                               THE COURT: That is right. It  
21          was only identified, but with that proviso -- any  
22          objections?

23                               MR. FEAZELL: Same as before --  
24          oh, you mean -- well, to the offering of it right  
25          now, no.

1 MR. BUTLER: For that particular  
2 portion.

3 MR. VANCE: We have a remote  
4 control.. You admitted it without us introducing it.  
5 So we need to clean the record up.

6 THE COURT: No, what we had done  
7 was, I had only admitted it for that other part, is  
8 what I took -- that I was doing. Anyway, it is  
9 clear for sure. It is admitted in accordance with  
10 the out-of-court hearing conducted just before we  
11 reconvened after lunch.

12 (Defendant's Exhibit No. 8 was  
13 (then admitted into evidence.

14 (Whereupon the following proceedings  
15 (took place within hearing of  
16 (the jury.

16 Q Mr. Melendez, can I get you to -- I don't think you  
17 can see this from there. Can you? Can you see that  
18 from where you are at?

19 A Yes, I can.

20 Q Mr. Melendez, I will show you a film, which I think,  
21 you have seen before.

22 A Yes, I have.

23 (Whereupon the video was played  
24 (for the jury.

25 Q Okay, Mr. Melendez, what area is this?

- 1 A That is Koehne Park.
- 2 Q Okay, is that the entrance to Koehne Park?
- 3 A Yes, it is.
- 4 Q Okay, and what is to the right there, to the right
- 5 of the sign that says "Koehne Park"?
- 6 A The lake.
- 7 Q Okay, is that the road that goes down to the
- 8 gravel road there to the right?
- 9 A Down to the beach area?
- 10 Q Yes, sir. Can you tell from that picture?
- 11 A No, I can't tell.
- 12 Q Okay, what is that area, Mr. Melendez?
- 13 A That is where the -- you go down toward the beach
- 14 area.
- 15 Q Okay, is that where you first saw the Pinto, in
- 16 that area?
- 17 A Yes, up on the top of that area.
- 18 Q Mr. Melendez, is this the route down to the circle
- 19 area?
- 20 A Yes, it is.
- 21 Q Is that the circle area?
- 22 A Yes, it is.
- 23 Q What is that a shot of, Mr. Melendez?
- 24 A To where you are driving into where the circle is at.
- 25 Q Now, Mr. Melendez, this was shot probably with the

- 1 zoom. This is not actually the way you see this  
2 area, is it?
- 3 A No, it isn't.
- 4 Q What are those? Are those picnic tables there at  
5 the circle?
- 6 A Yes, it is.
- 7 Q Were those cables there at the time on July 13, 1982  
8 that we saw just a little while ago, the post and  
9 cables?
- 10 A I don't remember.
- 11 Q What is that a view of, Mr. Melendez? Can you  
12 identify that?
- 13 A No, I can't.
- 14 Q Mr. Melendez, does this appear to be the route going  
15 out of Koehne Park?
- 16 A Yes, it does.
- 17 Q Out of the circle area?
- 18 A Yes, it does.
- 19 Q Okay, the wooded area that you have been talking  
20 about, is that the area back on the left -- to your  
21 left as you are going out?
- 22 A Yes, it is.
- 23 Q Okay, is this the area you were talking about, the  
24 wooded area?
- 25 A Yes, that is the area.

1 Q Okay, does that look like it did on July 13, 1982,  
2 or are there any changes?  
3 A Right there where that big mound of dirt was, it  
4 wasn't there.  
5 Q Okay, there was not quite as sharp a drop there?  
6 A No, there wasn't.  
7 Q Okay, is this still the wooded area?  
8 A Yes, this is the wooded area.  
9 Q Is that the mound of dirt that you say was not there?  
10 A Yes, it was.  
11 Q Okay, were those posts there? Do you know?  
12 A No, they weren't.  
13 Q Is that looking out to the entrance on Koehne Park?  
14 A Yes.  
15 MR. REAVES: We would like the  
16 record to reflect on Defendant's Exhibit 8, we ran  
17 it through 000 to 258.  
18 Q Mr. Melendez, if I could get you to come up here  
19 again. When it came time or when you left Koehne  
20 Park that night, which way did you come? You went  
21 in -- this is the entrance to Koehne Park. Is  
22 that correct?  
23 A That is correct.  
24 Q Which way did you turn when you came out?  
25 A We came out and made a right turn which would be

1           this way.

2       Q     Okay, first of all, let me clarify. You went and  
3           came back. Is that correct?

4       A     That is correct.

5       Q     Okay, so let us talk about the second time you came  
6           back, after you went back and got Gilbert's truck,  
7           okay, and you came and took a right. Is that correct?

8       A     That is correct.

9       Q     Let me let you look at State's Exhibit No. 1 and ask  
10          if you can find Koehne Park. Can you locate where  
11          that is on that exhibit?

12      A     Koehne Park is right there (indicating).

13      Q     Okay, show the jury on that exhibit which way you  
14          turned when you came out of Koehne Park, which  
15          way your right would be.

16      A     We came out Koehne Park and turned here this way.

17      Q     Okay, and which way did you go?

18      A     Up Valley Mills. We went up toward the hill and  
19          made a right turn up toward Valley Mills.

20      Q     Where did you turn at? Can you tell on that map?

21      A     We made another right turn, right about here.

22      Q     Do you know if that is the right turn, or was that  
23          the general area where you made a right turn?

24      A     I wasn't driving.

25      Q     Okay.

1 A I wasn't driving. I know it was in the neighborhood  
2 where a bunch of houses were somewhere along there.

3 Q So you drove through a neighborhood?

4 A That is correct.

5 Q What road did you drive to? Do you know?

6 A This road right here. It is Fish Pond Road.

7 Q You still need to speak up, Mr. Melendez, because  
8 your back is turned to the Court Reporter.

9 A Came out on this road right here, Fish Pond Road.

10 Q Okay, and then which way did you go?

11 A We took another right. Fish Pond Road comes out  
12 toward this way and comes out to Highway 6, right  
13 here.

14 Q You got on Highway 6, and which way did you go?

15 A On the highway was when we crossed Twin Bridges  
16 here towards Speegleville Park.

17 Q Can you locate where Speegleville Park is on that  
18 map?

19 A Speegleville Park is off this exit right here up  
20 towards this way. The park is over here.

21 Q Okay, now, Mr. Melendez, let us go back up to the  
22 diagram up here.

23 (Whereupon an instrument was marked  
24 (for identification as Defendant's  
(Exhibit No. 10.

25 Q First of all before we do that, let me show you



1           what has now been marked as Defendant's Exhibit  
2           No. 10 which is a drawing that you made during  
3           your testimony of the location of David Spence,  
4           Jill Montgomery and yourself in Koehne Park and  
5           also, a location of the car in relation to where  
6           you all were there.

7                     Is that a true and accurate representation of  
8           your testimony?

9   A       Yes, it is.

10                    MR. REAVES: Your Honor, we  
11           would offer Defendant's Exhibit No. 10.

12                    MR. FEAZELL: No objection.

13                    THE COURT: It will be admitted.

14                             (Defendant's Exhibit No. 10 was  
15                             (then admitted into evidence.

16   Q       Mr. Melendez, if you would, draw for us a diagram  
17           of which way you went once you got to Speegleville  
18           Park starting with -- is there a main gate to  
19           Speegleville Park?

20   A       Yes, there is.

21   Q       Okay, and what kind of gate is that? Is that a --  
22           describe it for the jury.

23   A       It is a long post gate where they close it and lock  
24           it after hours.

25                    There is a ranger or something like that.

1           When you pull in if you are going to stay after  
2           hours, you pay him.

3       Q     An iron gate at the entrance. Is that what kind of  
4           gate it is?

5       A     Yes.

6       Q     Okay, there is a trailer house near that entrance  
7           where the ranger lives?

8       A     Yes, it is.

9       Q     Okay, if you would, start off -- first of all, draw  
10          where that gate is.

11      A     Coming off the exit?

12      Q     Coming off the access road.

13      A     It will be somewhere right there.

14      Q     If you would, label that "gate." Now, and label  
15          the access road for us, or have you drawn in the  
16          access road?

17      A     It is right here, Highway 6.

18      Q     Okay, if you would, just label "Highway 6."

19                 Now, the night of July 13th, you did not go  
20          through that gate, did you?

21      A     No, we didn't.

22      Q     Okay, draw as best you can, which way you went.

23      A     It was like the access road off of Highway 6, we  
24          came off here and came around.

25      Q     You still need to speak up.

1 A We came off Highway 6 and came up toward the gate  
2 and went up the access road.

3 Q Okay, did you make a turn on the access road?

4 A Somewhere down the line, we did.

5 Q Okay, which way did you turn?

6 A We turned off to the right somewhere. Where, I  
7 wouldn't know. I wasn't driving.

8 Q Well, just draw a diagram as best you can of how  
9 you think you went. Okay, you think you took a  
10 right?

11 A Yes, there is a road that leads off, and we went  
12 off towards the right. That is all I know.

13 MR. FEAZELL: Your Honor, I am  
14 going to have to object. The witness has told him  
15 twice that he doesn't know, and he is now being  
16 asked to guess.

17 MR. REAVES: I am certainly  
18 entitled to ask him to draw what he remembers.

19 THE COURT: All right, go ahead,  
20 as best you can remember it, but explain your answer,  
21 if you need to. Go ahead.

22 Q Okay, do you recall what kind of road that was that  
23 you turned off on? Was it a paved road or a  
24 graveled road?

25 A I don't remember.

1 Q Okay, did you go straight down that road, or did  
2 you make any turns?

3 A We went straight down the road, and as we got down  
4 the road, we turned off to a dirt road.

5 Q Okay.

6 A Where at, I wouldn't know.

7 Q Well, we don't have any bearings in there. So just  
8 draw in there and put a right in there somewhere.

9 You turned off to the right on a dirt road?

10 A Yes.

11 MR. FEAZELL: Your Honor, I am  
12 going to object again. He is going all around it,  
13 but he is basically asking the man to take a guess.

14 THE COURT: Ask the question  
15 and let him answer it. Go ahead.

16 Q Okay, you know that you took a right on a dirt road.  
17 Is that correct, Mr. Melendez?

18 A That is correct.

19 Q Okay, that is all I am asking you to do is draw a  
20 right in your diagram which shows the way you go.

21 A How far down, I don't know.

22 Q Well, that is not to scale or anything else so --

23 A All right, so we made a right.

24 Q Okay, then did you just go straight to the area  
25 where you dumped off the bodies?

- 1 A No, I just -- it doesn't go straight into it. It  
2 is kind of a winding road.
- 3 Q Was it all dirt going in?
- 4 A I don't remember.
- 5 Q Do you recall whether you went through a gate or a  
6 fence or how you got on to the dirt road?
- 7 A No.
- 8 Q Was it dirt all the way in?
- 9 A I don't remember.
- 10 Q Once you made the right on the dirt road, do you  
11 remember how long you drove until you stopped?
- 12 A No.
- 13 Q Do you remember, did you come back out the same way  
14 you went in?
- 15 A Yes, we did.
- 16 Q Now, that was the second time you left Koehne Park,  
17 is that correct, that night? Earlier you had left  
18 in David's car. Is that right?
- 19 A That is correct.
- 20 Q And Gilbert drove out?
- 21 A When we picked up the truck?
- 22 Q Yes, sir, did Gilbert drive David's car out of  
23 Koehne Park?
- 24 A That is correct.
- 25 Q Okay, and where did you drive to?

- 1 A Out toward Bosqueville.
- 2 Q Okay, if you would, go back to State's Exhibit
- 3 No. 1 and show the jury where Bosqueville is. Is
- 4 it on this map?
- 5 A No.
- 6 Q Okay, did you take a right or a left when you got
- 7 out of Koehne Park?
- 8 A We took a left.
- 9 Q Approximately, how far was it from Koehne Park?
- 10 A It is on the other side of town, but it is close
- 11 to the lake -- the other side of the lake.
- 12 Q Did you have to cross Highway 6?
- 13 A No.
- 14 Q Okay, how long did it take you to get there?
- 15 A I don't know.
- 16 Q Longer than 30 minutes?
- 17 A Yes, it took longer than 30 minutes.
- 18 Q Okay, what kind of truck did Gilbert have?
- 19 A I don't know. It was the first time I had seen it.
- 20 Q Do you have any idea why -- well, first of all, what
- 21 kind of place was it at?
- 22 A It was out on somebody's property.
- 23 Q Okay, was it out in the country or in town?
- 24 A It is not really country. It is just right off --
- 25 outside of Waco. Still a part of Waco, but it is

1 not all the way into the country.

2 Q In somebody's garage or --

3 A No, just sitting in the field.

4 Q Sitting in the field, okay. Was it an old truck

5 or a new truck?

6 A Old truck.

7 Q Okay, do you have any idea why it was out there?

8 A No.

9 Q That was the first time you had seen it?

10 A Yes.

11 Q Okay, what did you do after you picked up Gilbert's

12 truck?

13 A He told me to drive David's car to his mother's

14 house. He would follow me.

15 Q Okay, and did you do that?

16 A Yes, I did.

17 Q Where was David's mother's house?

18 A On 15th and Cumberland.

19 Q About how long did it take you to get from Bosqueville

20 to there?

21 A Fifteen minutes.

22 Q Do you have any idea what time this was?

23 A No, I don't.

24 Q Where did you drop David's car off at?

25 A At his mother's house.

1 Q Okay, was there a driveway there, a garage, or  
2 did you leave it on the street?

3 A I parked it on the side of the house.

4 Q Okay, is there a little driveway going to the side  
5 of the house or --

6 A Not really a driveway. It is just part of the yard.

7 Q Okay, so it was actually parked in his mother's yard?

8 A Yes, that is correct.

9 Q Okay, and then from there, you got in the truck  
10 with your brother?

11 A That is correct.

12 Q And went back to Koehne Park?

13 A Yes, we did.

14 Q Okay, when you drove back into Koehne Park, where  
15 did you park the truck? If you would, show the  
16 jury on Defendant's Exhibit No. 2.

17 A When we came into Koehne Park, we came over here  
18 to the circle where the other car was parked. It  
19 was parked somewhere along here (indicating).

20 Q Did you pull in behind the other car or to the side  
21 of it?

22 A We pulled on the side of it. The Pinto was up here.  
23 We pulled in behind it and parked next to it.

24 Q Okay, you still need to speak up. Did you back  
25 the truck up?



- 1 A No, we just pulled in right next to it.
- 2 Q Okay, how long were you there in Speegleville or
- 3 Koehne Park?
- 4 A I don't know how long we were there.
- 5 Q Okay, is that the time that you went into the Pinto?
- 6 A Yes, it was.
- 7 Q Okay, what kind of glasses did you pick up?
- 8 A Just regular prescription glasses.
- 9 Q Okay, were they sunglasses or --
- 10 A No, they weren't sunglasses.
- 11 Q Okay, Mr. Melendez, if you could, just try to lean
- 12 in so you can get to the microphone.
- 13 Now, the reason you picked up the glasses was
- 14 because you were afraid your fingerprints might
- 15 be on them. Is that what you are saying?
- 16 A Yes, that is correct.
- 17 Q Okay, and how did you get into the car?
- 18 A Opened the door.
- 19 Q It wasn't already open?
- 20 A No, it wasn't.
- 21 Q Did you do anything to get rid of your fingerprints
- 22 on the door?
- 23 A I don't remember.
- 24 Q You weren't worried about that -- yes or no.
- 25 A I don't remember if I did wipe my handprints off

- 1 or not.
- 2 Q You don't remember if you were worried or not about  
3 that?
- 4 A No, I don't.
- 5 Q Okay, Mr. Melendez, when you made your first statement,  
6 did you say anything about taking Gilbert's truck  
7 out to Speegleville Park?
- 8 A I don't remember.
- 9 Q Would you like to look at your statement?
- 10 A Yes.
- 11 Q Is there anything in there about taking -- going out  
12 to Speegleville Park?
- 13 A No, there isn't.
- 14 Q Okay, you had an opportunity to look at it?
- 15 A Yes, I did.
- 16 Q Okay, did you say in that statement that "I got in  
17 David's car and drove back to Gilbert's apartment"?
- 18 A Yes, I did.
- 19 Q Okay, left his car parked there and walked to a  
20 friend's house?
- 21 A Yes, I did.
- 22 Q Is that what happened?
- 23 A No, it didn't.
- 24 Q Okay, that is not the truth?
- 25 A No, it isn't.

- 1 Q Do you have any idea what time you got back to  
2 your cousin's house the night of July 13th, the  
3 early morning of July 14th?
- 4 A No, I don't.
- 5 Q Okay, what time did you get up the next morning?  
6 Do you know?
- 7 A I would say, it was around 6:00 o'clock.
- 8 Q Did you go to work the next day?
- 9 A Yes, I did.
- 10 Q Okay, do you know what time you got to work?
- 11 A No, I don't.
- 12 Q You came back to Bryan?
- 13 A Yes.
- 14 Q Okay, who brought you back to Bryan?
- 15 A I rode back with my cousin.
- 16 Q Which is?
- 17 A Perry Surita.
- 18 Q Okay, did anybody else ride back to Bryan with you?
- 19 A No, it was just me and Perry.
- 20 Q Do you know how long you worked that day?
- 21 A I worked all day.
- 22 Q Did you come back to Waco that night, or did you  
23 stay in Bryan?
- 24 A I stayed in Bryan.
- 25 Q When was the next time that you came back to Waco?

- 1 A That weekend.
- 2 Q The weekend of July 13th?
- 3 A Yes.
- 4 Q Who did you come back to Waco with?
- 5 A One of my cousins.
- 6 Q Which cousin was that?
- 7 A I don't remember.
- 8 Q Okay, did you come back with Perry Surita?
- 9 A I don't remember.
- 10 Q How long did you work for John Hazel?
- 11 A I don't remember.
- 12 Q Mr. Melendez, when were you arrested for the charges
- 13 in this case?
- 14 A I was arrested August the 19th.
- 15 Q Okay, where were you arrested at?
- 16 A Fort Worth.
- 17 Q August the 19th of what year?
- 18 A '83.
- 19 Q '83, okay, and what were you doing in Fort Worth?
- 20 A I was working.
- 21 Q Who were you working for there?
- 22 A A man named David Cook.
- 23 Q How long had you been working for him?
- 24 A I don't remember.
- 25 Q So you were arrested on August 19, 1983, and

- 1 approximately a little bit less than a year later  
2 is when you gave your first written statement  
3 regarding what happened. Is that fair to say?
- 4 A Yes.
- 5 Q And you and I have gone over this statement which  
6 we have called Statement Number 1?
- 7 A Yes, we have.
- 8 Q There is just not a lot of truth in there, is there?
- 9 A There is some truth in there, and there is some that  
10 are lies.
- 11 Q Probably a lot more lies than truth, wouldn't you say?
- 12 A Might be.
- 13 Q And then it was another -- over a year when you came  
14 and made another statement, your last statement?
- 15 A That is true.
- 16 Q Okay, and I guess, your memory just got better?
- 17 A No, it didn't get better.
- 18 Q It didn't get better, okay. At the time you made  
19 this first statement, had you decided that you were  
20 going to plead guilty?
- 21 A Yes, I did.
- 22 Q You decided that you were going to take the blame  
23 for it, but you just weren't going to tell them what  
24 happened?
- 25 A When I made my first statement, I told them enough

- 1 to get my time, to go ahead and plead.
- 2 Q Okay, you just wanted to get it out of the way and  
3 get you a good deal or the best deal you could?
- 4 A I wanted to get it out of the way, but at the time  
5 I made that statement, like I said, I was just  
6 ready to go do my time.
- 7 Q You are kind of smiling about it. Is it funny?
- 8 A No, it is not funny.
- 9 Q Let me ask you, the second statement that you gave  
10 was dated October 4, 1985. Is that correct?
- 11 A That is correct.
- 12 Q Some six days ago?
- 13 A I don't know today's date.
- 14 Q Now, you did not give any statement between  
15 Statement Number 1 and October 4, 1985?
- 16 A No.
- 17 Q Where are you at right now?
- 18 A What do you mean?
- 19 Q Where are you serving your time right now? When  
20 you were brought down here to testify, where were  
21 you?
- 22 A What unit was I -- Coffield.
- 23 Q Is that where you were yesterday?
- 24 A No.
- 25 Q Where were you yesterday?

- 1 A In the county jail here.
- 2 Q County jail here? How about day before yesterday?
- 3 A McLennan County jail.
- 4 Q How long have you been in the McLennan County jail?
- 5 A Since December.
- 6 Q December of what year?
- 7 A '84.
- 8 Q Have you been in McLennan County jail continuously
- 9 since December 1984 and the time you were brought
- 10 up here?
- 11 A Yes.
- 12 Q Okay, and when you pled guilty in these cases, this
- 13 is not the first time you had been convicted of a
- 14 felony, was it?
- 15 A No, it wasn't.
- 16 Q Okay, you have been convicted of a burglary?
- 17 A Yes.
- 18 Q When was that?
- 19 A I don't know.
- 20 Q You don't remember?
- 21 A I know it was in Corpus Christi, but what year, I
- 22 don't remember.
- 23 Q Did you go to the Texas Department of Corrections
- 24 on that?
- 25 A No, I didn't.

1 Q You did not?

2 A No.

3 Q Now, your plea bargain -- or your plea agreement in  
4 these cases, which two cases did you plead to, which  
5 two deaths?

6 A I don't remember.

7 Q You don't remember that?

8 A No.

9 Q And as I understand your agreement was is that you  
10 got two life sentences and one of the cases is still  
11 pending?

12 A That is true.

13 Q Okay, and as you said, the case is still pending.  
14 So you can't take the blame for everything that  
15 happened?

16 A That is true.

17 Q So in other words, you know that if you get up here  
18 and testify and say that David Spence didn't have  
19 anything to do with this, then they have another  
20 capital murder case they can bring against you?

21 A That is true.

22 Q Is that correct? A capital murder case in which,  
23 in all likelihood, you probably just made a  
24 judicial confession to?

25 A That is true.



1 MR. REAVES: No further questions,  
2 Your Honor.

3 REDIRECT EXAMINATION

4 QUESTIONS BY MR. FEAZELL:

5 Q Mr. Melendez, was there any kind of requirement that  
6 you come in and testify at all in order to plead  
7 guilty to that third life sentence?

8 A No, there wasn't.

9 Q In other words, you could have just sat back and  
10 waited and at the proper time when everything else  
11 was over, pled guilty and taken a life sentence  
12 without ever coming into court?

13 A That is true.

14 MR. FEAZELL: Okay, may I  
15 approach the witness, Your Honor?

16 THE COURT: Yes, sir.

17 Q I believe, you already told the jury awhile ago  
18 why you decided to come in and testify, correct?

19 A That is correct.

20 Q I am going to show you this statement that  
21 Mr. Reaves has been showing you throughout his  
22 cross examination. Is that a copy of it?

23 A Yes, it is.

24 Q Now, that is the one that was given on June 12,  
25 1984?

- 1 A Yes, it is.
- 2 Q Mr. Melendez, do you admit to this jury that there  
3 are things in here that are not true?
- 4 A Yes, I do.
- 5 Q All right, the statement you gave -- the written  
6 statement you gave on the 4th day of October,  
7 1985, have you had an opportunity to read that?
- 8 A Yes, I have.
- 9 Q Is it true and correct to the best of your memory?
- 10 A Yes, it is.
- 11 Q Okay, and is it substantially what you testified  
12 to today?
- 13 A Yes, it is.
- 14 Q Now, Mr. Melendez, you were questioned awhile ago  
15 about Statement Number 1 as to whether or not there  
16 was anything in there about you going and getting  
17 Gilbert's truck. Remember that?
- 18 A Yes, I do.
- 19 Q Okay, well, look at it. Is there even anything in  
20 there at all about Speegleville Park?
- 21 A No, there isn't.
- 22 Q It doesn't even mention it?
- 23 A No.
- 24 Q But is there -- but you know that the bodies were  
25 found in Speegleville Park, correct?

1 A That's correct.

2 Q There is nothing -- is there anything in there about  
3 David or about Gilbert ever leaving Koehne Park?

4 A No.

5 Q Yet, we know they are not still out there, don't we?

6 A Yes.

7 Q There are quite a few discrepancies between this  
8 statement and the more detailed statement given  
9 recently. Why is that? Look at the jury and tell  
10 them why.

11 A Well, when I gave my first statement that time, I  
12 just wanted to get these charges off me -- to get  
13 my charges and go on down to TDC and do my time --  
14 just go down there and get it over with.

15 It started to get dragged out, taking more  
16 time than I anticipated, and then I knew there was  
17 no way that I could prove that I didn't do it.

18 So I went ahead and got in touch with my lawyers  
19 and told them I was ready to plead on my cases.

20 Q Okay, and you gave this short statement just enough,  
21 I believe, you said for your lawyers to get you  
22 pleaded guilty?

23 A That is correct.

24 Q Mr. Melendez, in your more detailed statement of  
25 this month, tell the jury, has anybody told you what

1 to say?

2 A No, they haven't.

3 Q Has anybody told you what to write down or what to

4 put in here?

5 A Well, I was told that if I was going to make this

6 statement, to tell the truth -- not to make anything

7 up.

8 Q Just to tell the truth and don't make anything up?

9 A That is correct.

10 Q During the time since you gave the first statement,

11 have you had any contact with your brother, Gilbert,

12 where you all talked about this case at all?

13 A No, I haven't.

14 Q Have you had any contact with your brother, Gilbert?

15 A No, I haven't.

16 Q All right, you testified earlier that when you went

17 out to Koehne Park with the law enforcement officers,

18 Captain Weyenberg and Deputy Truman Simons, I believe,

19 it was the three of you that went out there and your

20 lawyer followed?

21 A Jim Barlow.

22 Q Let me ask you, how did Mr. Simons and Captain Weyenberg

23 know where to go?

24 A I gave them directions where to go.

25 Q You told them where to go?

1 A Yes.

2 Q Did they suggest to you to go to Koehne Park?

3 A No, they didn't.

4 Q Did they suggest to you which part of Koehne Park  
5 to go to?

6 A No.

7 Q To your knowledge, before you showed them the scene  
8 of the murder, did they know where it had occurred?

9 MR. VANCE: Your Honor, I am  
10 going to object to that. That calls for speculation  
11 on his part, what the officers may or may not have  
12 known two years after the event.

13 THE COURT: Sustained. Rephrase  
14 the question.

15 Q Had anyone told you where the murders had happened?

16 A No one told me.

17 Q All right, had anybody ever told you that they even  
18 knew, at that time, where the murders had happened?

19 MR. VANCE: Your Honor, again,  
20 I am going to have to object as to anything that was  
21 told him, as being speculation on that particular  
22 person's part, and it is also hearsay.

23 MR. FEAZELL: I am not asking it  
24 for the truth of the matter asserted, just as to  
25 whether anybody told him -- not that that was the

1 right place or anything, but just that they knew  
2 where it happened.

3 THE COURT: All right, for that  
4 purpose, it will be admitted. Objection overruled.

5 Q Did anybody ever tell you, sir, that they knew where  
6 the murders happened?

7 A No, they didn't.

8 Q All right. Now, back to your job in Bryan, you told  
9 the jury that you would work 10 hour days, correct?

10 A That is correct.

11 Q Is that five days a week?

12 A Yes.

13 Q But I believe, your testimony was that you would  
14 work 44 hours a week.

15 A That is correct.

16 Q Okay, well, 10 hours a day, five days a week is about  
17 50 hours.

18 What would you do? Did you take off earlier at  
19 times, or what did you do?

20 A Most of the time, we took off early on Fridays --  
21 take off at noon or if I took off early one day,  
22 sometimes during the week, I would just make it up  
23 later on that week.

24 Q So then was it uncommon for you, Mr. Melendez, to  
25 once in awhile take off a day early?

1 A No, it wasn't.

2 Q You were asked about there being a lot of lies in  
3 that Statement Number 1. Is it true, Mr. Melendez,  
4 that you were out there?

5 A Yes, it is true.

6 Q Is it true, Mr. Melendez, that David was out there?

7 A Yes, this is true.

8 Q Is it true that the murder took place substantially  
9 as you described it?

10 A That is correct.

11 MR. FEAZELL: We will pass the  
12 witness, Your Honor.

13 RECROSS EXAMINATION

14 QUESTIONS BY MR. REAVES:

15 Q Mr. Melendez, Mr. Feazell earlier asked you if it  
16 was a requirement of your taking the guilty pleas  
17 that you come in and testify in any of the cases,  
18 and you said it was not?

19 A That is true.

20 Q You certainly believed, though, that if they asked  
21 you to come in and testify that you would be  
22 expected to do so, didn't you?

23 A No.

24 Q Okay, you felt like if they asked you to testify,  
25 you could say, forget it?

1 A That is true.

2 Q But you also knew that you couldn't say that you

3 were the one that was out there, to take all the

4 blame yourself, that is why they had that other

5 case pending against you?

6 A My lawyers explained it to me.

7 Q Is your other case set for trial?

8 A No.

9 Q No? Has it been set for trial recently?

10 A No.

11 Q Now, you stated at the time you made your first

12 statement, all you wanted to do was plead guilty,

13 get it over with and do your time?

14 A That is correct.

15 Q How much time do you expect to do?

16 A I don't have no idea.

17 Q You don't have any idea?

18 A No. When I first got down there, I was looking at

19 12 years.

20 MR. FEAZELL: Your Honor, we are

21 going to object to the insertion of any kind of

22 testimony about parole in that it is entirely

23 speculative.

24 THE COURT: Sustained.

25 MR. REAVES: Your Honor, he is



1 the one that said that he is -- just wants to do  
2 his time.

3 MR. BUTLER: May we approach  
4 the bench, Your Honor?

5 THE COURT: Objection sustained  
6 unless you want to qualify him as an expert on the  
7 parole laws of Texas so that everything he says will  
8 be 100 percent --

9 MR. BUTLER: May it please the  
10 Court, he is violating his own motion in limine. I  
11 would request an instruction for him not to do it.

12 THE COURT: All right, I had  
13 sustained the objection, and move on to another area.

14 Q Mr. Melendez, when you gave your second statement,  
15 Mr. Feazell asked you -- or you said all they told  
16 you was to tell the truth and put everything in there?

17 A That is correct.

18 Q Okay, did they tell you to tell the truth when you  
19 made your first statement?

20 A No, they didn't tell me anything when I made my  
21 first statement.

22 I got in touch with my lawyers and told them I  
23 wanted to make a statement.

24 Q All right, before you made it, they didn't tell you  
25 to tell the truth or anything like that?

- 1 A I just went into the D.A.'s office and had my lawyers  
2 there and gave my statement.
- 3 Q And just told them a story? When you took the  
4 officers out to Koehne Park, did you also take them  
5 out to Speegleville Park?
- 6 A The first time?
- 7 Q Either time -- either time.
- 8 A The first time I took them to Koehne Park. The  
9 second time I took them out to Speegleville.
- 10 Q Were you able to find your way out to Speegleville  
11 Park?
- 12 A Yes, I was.
- 13 Q Were you able to take them to where the bodies  
14 were recovered?
- 15 A Yes, I was.
- 16 Q But you can't remember where that is, now?
- 17 A Where the bodies were discovered?
- 18 Q How you got out there, you can't remember that, now?
- 19 A No, when I took them out there, I took them to  
20 where the bodies were.
- 21 Q Did you take them the route that you took that night?
- 22 A I wasn't driving. I don't know which route we took  
23 that night.

24 MR. REAVES: No further questions.

25

REDIRECT EXAMINATION

QUESTIONS BY MR. FEAZELL:

Q Mr. Melendez, tell this jury whether or not that as late as this last Sunday you were told that you could forget it if you wanted to and that you did not have to testify?

A That is correct.

MR. FEAZELL: That is all.

THE COURT: All right, any recross?

MR. REAVES: Defense has nothing further.

THE COURT: All right, you may step down.

(Witness excused.)

(Brief recess.)

THE COURT: Ladies and gentlemen, is there anybody that has a compelling reason that they couldn't go after 5:00 a little bit this afternoon?

We have got one more matter that we need to do out of your presence, and I don't want you to have to stay in that room. It could take about 15 minutes.

Then there will be three witnesses