

**A True and Correct Copy**

**of the**

**Trial Testimony of**

**GILBERT MELENDEZ**

1 don't know about this Court, I want to tell you  
2 that I won't in any way hold it against you. You  
3 be sure and do whatever you deem necessary if you  
4 want to retire the jury or what have you.

5 I know you are here to represent  
6 your client's best interests and that you will do so.

7 Now, before we proceed, you  
8 have had plenty of time to talk with your attorney  
9 and you are satisfied with his representation?

10 MR. MELENDEZ: Yes, sir.

11 THE COURT: All right, with  
12 the jury still retired, gentlemen, let us proceed  
13 to the point in question. Do you want me to ask  
14 him, or do you all want to ask him, or what --

15 MR. FEAZELL: I can get it  
16 started, Judge, and if the Defense has any questions,  
17 they can ask him.

18 THE COURT: All right.

19 STATE'S DIRECT EVIDENCE (RESUMED)

20 G I L B E R T M E L E N D E Z, called as a  
21 witness on behalf of the State, having been duly  
22 sworn, testified as follows:

23 DIRECT EXAMINATION

24 QUESTIONS BY MR. FEAZELL:

25 Q For the record, you are Gilbert Melendez?

- 1 A Yes, sir.
- 2 Q Mr. Melendez, I believe, you were scheduled at one
- 3 time for a hypnosis session on this case?
- 4 A Yes, sir, I was.
- 5 Q And do you recall when that was? If you do, that
- 6 is fine, if not --
- 7 A No, sir, I don't.
- 8 Q All right, was it -- it was prior to -- prior to
- 9 this year, was it not?
- 10 A Yes, sir.
- 11 Q Okay, did you attend the hypnosis session?
- 12 A Yes, I did.
- 13 Q Did the individual performing the hypnosis session
- 14 begin the session?
- 15 A Yes, he started it.
- 16 Q How many -- let me ask you this: Were you asked
- 17 any questions about this case, about the facts of
- 18 this case or anything concerning this case?
- 19 A No, sir, I don't think so.
- 20 Q And why is that?
- 21 A We -- the session started, and he was more or less
- 22 just trying to go through whatever they go through
- 23 to begin to get you ready for the actual hypnosis.
- 24 Q So all he was doing was explaining it to you?
- 25 A Yes, he explained it, and he went a little farther

1           than that. He went through the beginning phases  
2           of it.

3       Q     You mean, like beginning the relaxation exercises?

4       A     Yes, sir.

5       Q     Is that as far as he got?

6       A     Yes, that is as far as he got.

7       Q     How come?

8       A     While he was doing that, it went on for a few minutes,  
9           and I just told him that I couldn't do it. You  
10          know, the questions he was asking me as he was going  
11          along, wasn't happening to me. So I just told him  
12          that, you know, I didn't think that I could.

13      Q     Can you recall any questions he was asking you?

14      A     No, sir. It was mostly about relaxing and things  
15          like that.

16      Q     Okay, so never were you asked any questions concerning  
17          this case?

18      A     No, sir, I don't think so.

19      Q     When you told him you couldn't do it, did he then  
20          stop?

21      A     Yes, he did.

22      Q     Who else was present? Do you recall?

23      A     I was taken over there by Captain Weyenberg and Truman  
24          Simons.

25      Q     All right, were they present?

1 A Yes, sir.

2 Q Was there anyone else present?

3 A No, sir, I don't think so.

4 Q Just the two of them and the man that was trying  
5 to do the hypnosis?

6 A Yes, sir.

7 MR. FEAZELL: All right, that  
8 is all, Your Honor.

9 CROSS EXAMINATION

10 QUESTIONS BY MR. REAVES:

11 Q Mr. Melendez, the purpose of this hypnosis session  
12 was to ask you questions regarding the Lake Waco  
13 murders. Is that correct?

14 A Yes, sir.

15 Q Okay, was the person that was going to do the  
16 hypnosis a Texas Ranger?

17 A I believe, he was.

18 Q Was his name Bob Prince?

19 A That might have been his name.

20 Q Okay, to your knowledge, you do not know whether  
21 you were under hypnosis or not, or are you saying  
22 you don't think you were?

23 A I know that I was not.

24 Q Do you know if during the time that you were in  
25 there undergoing this procedure whether or not a

1 tape recorder was going?

2 A Yes, sir, a tape recorder was going. I believe, a  
3 tape recorder was going.

4 Q And it was taping everything that went on?

5 A Yes, sir.

6 Q All right, taping the questions that he asked you  
7 and your responses?

8 A I think so. I am not sure about it, but I think,  
9 there was a tape recorder.

10 Q Who all was present in the room other than Mr. Prince,  
11 if indeed that was who it was?

12 A I am not sure if anyone else -- I think, it was  
13 either Captain Dan Weyenberg or Truman Simons or  
14 maybe both, but I am not sure. It may have just  
15 been me and whoever was doing it.

16 MR. REAVES: Your Honor, we  
17 don't have any further questions.

18 REDIRECT EXAMINATION

19 QUESTIONS BY MR. FEAZELL:

20 Q Mr. Melendez, you say you definitely were not  
21 hypnotized?

22 A No, I wasn't.

23 Q All right, and that you definitely were not asked  
24 any questions concerning this case?

25 A No, sir.

1 Q Your answer is that you were not asked any  
2 questions?

3 A Yes, sir, I don't think that I was.

4 Q All right, and when you told him that you didn't  
5 want to do it, you couldn't do it, then that is  
6 when he stopped?

7 A Yes, sir.

8 Q All right, and that was prior to being asked any  
9 factual questions about this case?

10 A Yes, sir -- no, I don't remember being asked any  
11 questions about the case.

12 MR. FEAZELL: All right, that  
13 is all, Judge.

14 RECROSS EXAMINATION

15 QUESTIONS BY MR. REAVES:

16 Q Mr. Melendez, how long did this procedure last?  
17 How long were you there?

18 A It could be around an hour or so.

19 MR. REAVES: Okay, we don't  
20 have any further questions, Your Honor.

21 REDIRECT EXAMINATION

22 QUESTIONS BY MR. FEAZELL:

23 Q During that hour that you were there, was Mr. Prince  
24 talking the whole time trying to put you under, or  
25 was it just a lot of time standing around and waiting

1 for us?

2 A Standing around waiting and setting up. The actual  
3 talking time was maybe five or 10 minutes. I am not  
4 sure. Around there. It wasn't very long.

5 MR. FEAZELL: All right.

6 EXAMINATION

7 QUESTIONS BY THE COURT:

8 Q Mr. Melendez, let me make something very clear.  
9 On this date in question, you never did answer  
10 any questions about this case whatsoever. Is that  
11 correct?

12 A Yes, sir.

13 Q Yes, sir, you are saying that you did not answer  
14 any questions that day?

15 A No, sir, I don't think that I was asked any questions  
16 about this case.

17 Q And any testimony that you have given to law  
18 enforcement officials about this case was on a  
19 whole another day, another time, another place.  
20 Is that correct?

21 A Yes, sir.

22 Q And at that time, there was never any discussion  
23 or suggestion of hypnosis on the other occasions.  
24 Is that right?

25 A Yes, sir.

1 Q This was the only time, this date that we are  
2 talking about now, that anybody ever talked about  
3 hypnosis to you?

4 A Well, it was mentioned to me prior to going there,  
5 and I agreed upon going with them to try that, but  
6 at the time, it was mentioned to me, they weren't  
7 questioning me. They just asked if I would agree  
8 to do that, and I agreed to try it.

9 Q But this was the only time that you ever even tried  
10 any hypnotic technique whatsoever?

11 A Yes, sir.

12 Q Throughout the history of this case as far as you  
13 have been concerned?

14 A Yes, sir.

15 THE COURT: All right.

16 MR. REAVES: One more question.

17 RECROSS EXAMINATION

18 QUESTIONS BY MR. REAVES:

19 Q Mr. Melendez, after this hypnosis session, did you  
20 make any statements to law enforcement officers?

21 A I don't really remember when it was that we went  
22 down there. I am not sure what time of year it was  
23 or even what year it was.

24 Q Let me just ask you this: Subsequent to the time  
25 you went down there and went to this session, okay --

1 A Okay.

2 Q -- after that date, did you give any information  
3 regarding these cases to any law enforcement  
4 officers whether it be a written statement or an  
5 oral statement or any information to them at all?

6 A After that date?

7 Q Yes, sir.

8 A Well, I am sure I did after that date.

9 Q Okay, do you know whether you gave a written statement  
10 after that date?

11 A Well, sir, I am not even sure when that date was.

12 Q Okay, but you believe that you have given some  
13 information to law enforcement officers after the  
14 date that you went to that hypnosis session?

15 A Yes, sir.

16 MR. REAVES: No further questions,  
17 Your Honor.

18 THE COURT: Anything else?

19 REDIRECT EXAMINATION

20 QUESTIONS BY MR. FEAZELL:

21 Q After the date of the alleged hypnosis session, you  
22 have already testified that you did not get  
23 hypnotized and you were asked no questions about  
24 the case. I believe that January the 18th of '85  
25 would have been a good deal of time after that date,

1 would it not?

2 A Yes, sir.

3 MR. FEAZELL: For the record,  
4 if your record reflects, Counsel, when -- what date  
5 are we talking about?

6 MR. REAVES: March 27, 1983.

7 Q March 27th of '83, Mr. Melendez.

8 MR. VANCE: Is that stipulated  
9 in the record? That is when the hypnosis or the  
10 alleged hypnosis session occurred? Will the State  
11 stipulate to that date?

12 THE COURT: It says March. It  
13 doesn't give a date, does it?

14 MR. REAVES: It says March 27,  
15 1983.

16 THE COURT: That is the Ranger  
17 Prince's testimony.

18 MR. REAVES: At this time, we  
19 would ask the Court to take judicial notice of the  
20 testimony at a pretrial hearing held May 7, 1984 in  
21 the 54th District Court of McLennan County, Texas,  
22 the transcript of that which is on file in this  
23 cause and in this county, specifically, Pages 23  
24 through 29 which are the testimony of Texas Ranger  
25 Prince.

1 THE COURT: I wasn't the Judge  
2 in that prior proceeding, but if the State will  
3 stipulate to it I will approve the stipulation.

4 MR. FEAZELL: We will stipulate  
5 if that is what the record says, Your Honor. I  
6 didn't know anything about any prior --

7 THE COURT: All right, I will  
8 approve the stipulation, if that is what it says,  
9 but I cannot personally say one way or another. I  
10 didn't conduct the pretrial, and I wasn't present  
11 at the time of the alleged hypnotic session.

12 MR. FEAZELL: That is all we  
13 have got, Judge.

14 THE COURT: All right, ready to  
15 bring the jury in?

16 MR. REAVES: Okay, Judge, we  
17 would also ask for the tapes of that session be  
18 turned over and marked for the Court to review.

19 MR. FEAZELL: We would make a  
20 diligent effort to find the tape, if a tape exists,  
21 Your Honor.

22 THE COURT: All right, put it  
23 in the record and as part of the in-camera proceeding.

24 MR. VANCE: Could we have that  
25 made as an exhibit to this particular hearing, is

1           what we really need it for.

2                   THE COURT: All right, if they  
3           can -- it hasn't been ascertained whether they had  
4           a tape recorder, and if so, whether it was even  
5           going.

6                   MR. VANCE: He testified there  
7           was a tape recorder.

8                   THE COURT: He said he thinks  
9           so, but do you know? Did they tape it?

10                  THE WITNESS: No, I am not sure.

11                  THE COURT: Did you see one  
12           there and see it running?

13                  THE WITNESS: There was a tape  
14           recorder there. Whether it was running or not, it  
15           is so far back, I am not sure if it was or not.

16                  THE COURT: All right.

17                  MR. REAVES: The pretrial testimony  
18           of Mr. Prince indicates there was a tape made.

19                  MR. FEAZELL: Does he indicate  
20           whether or not he kept it since he was not put under  
21           hypnosis?

22                  MR. REAVES: It indicates that  
23           they were delivered to the Court Reporter for -- in  
24           McLennan County.

25                  MR. FEAZELL: Then in that case,

1 we ought to be able to find it.

2 THE COURT: It ought to be a  
3 part of the record, anyway, of the other case.

4 MR. VANCE: If they will  
5 bring us a copy just to tender as an exhibit just  
6 for this motion, that is all we really need.

7 THE COURT: All right, ready  
8 for the jury? Bring them in.

9 (Whereupon the jury returned into  
10 the courtroom and the following  
11 proceedings took place:

12 THE COURT: All right, let us  
13 proceed, gentlemen.

14 DIRECT EXAMINATION

15 QUESTIONS BY MR. FEAZELL:

16 Q Will you state your name for the record, please,  
17 sir?

18 A Gilbert Melendez.

19 Q And spell your last name, please.

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

21 Q All right, Mr. Melendez, you may need to pull the  
22 microphone down a little, and ask you to speak up  
23 so that everybody and the jury can hear you including  
24 this lady seated over here. She is a part of the  
25 jury, and this lady back here in the corner. Everyone  
will need to hear.

1 A Yes, sir.

2 Q Okay, how old are you, Mr. Melendez?

3 A I am 30 years old.

4 Q All right, where were you born?

5 A I was born in Waco, Texas.

6 Q Where did you grow up?

7 A I grew up in Waco for the first part of my younger  
8 years, and my father was in the service, and we  
9 went to Germany for about three years when I was  
10 about in the fifth grade.

11 Q And after you returned from Germany, where did you  
12 go?

13 A We returned to Waco.

14 MR. FEAZELL: Your Honor, if we  
15 may have the microphone turned up just a little.

16 THE COURT: It is turned up  
17 to the max right now. If you will get a little  
18 closer to it, please, sir, it may help.

19 MR. FEAZELL: Thank you, sir.

20 Q While you were living in Waco, Mr. Melendez, did  
21 you have an occasion to meet a man by the name of  
22 David Wayne Spence?

23 A Yes, sir.

24 Q And when did you meet David Spence?

25 A I met David Spence back around '82 -- '81, somewhere

1           around there. I am not sure.

2       Q     All right, where did -- how did you meet him?

3       A     I was a -- a guy I worked with, we caught a ride  
4           home with a guy I worked with. Where this guy I  
5           worked with lived, David Spence knew him. My  
6           brother had come to pick me up from where they  
7           drop us off at, and David Spence was there. My  
8           brother knew him, and they were talking, and my  
9           brother introduced me to him.

10      Q     By "your brother," are you talking about Tony  
11           Melendez?

12      A     Yes, sir.

13      Q     And is Tony Melendez your younger brother?

14      A     Yes, he is.

15      Q     Do you know how long Tony had known David Spence?

16      A     I don't know how long. I think, they went to  
17           school together sometime.

18      Q     Also, sometime during the year 1982, did you have  
19           an occasion to meet a man by the name of Muneer  
20           Mohammed Deeb?

21      A     Yes, sir.

22      Q     Do you know Mr. Deeb by a nickname?

23      A     Yes, sir.

24      Q     What was his nickname?

25      A     Lucky.

- 1 Q Lucky?
- 2 A Yes, sir.
- 3 Q Mr. Melendez, I am going to ask you to direct your  
4 attention in particular to the day of July 13, 1982.  
5 On that day, tell the jury whether or not you  
6 were working.
- 7 A Yes, sir, I was.
- 8 Q Where were you working and what kind of work were  
9 you doing?
- 10 A I was working over by the Hillcrest Hospital. We  
11 were building some condominiums in that area.
- 12 Q Is that in Waco?
- 13 A Yes, sir, it is.
- 14 Q So it was basically construction work that you were  
15 doing?
- 16 A Yes, sir, I was a painter. We were painting.
- 17 Q I believe, your brother also had a job as a painter,  
18 didn't he?
- 19 A Yes, sir, he did.
- 20 Q And he was working in Bryan?
- 21 A I believe so.
- 22 Q Had you seen your brother recently, at that time?
- 23 A No, sir, I hadn't.
- 24 Q What happened -- well, about -- tell the jury about  
25 what time you got off work that day.

1 A I got off work about -- around 4:30.

2 Q And what happened when you got off work?

3 A I got off work, and I was walking home towards my  
4 grandmother's house. It wasn't that far away.

5 It was a pretty good ways, and as I was walking  
6 home when I was getting pretty close to where she  
7 lived, I ran into Spence and my brother, Tony, about  
8 10, maybe 15 blocks from where she lived.

9 Q You say you ran into David Spence and Tony. What  
10 were they doing?

11 A They were riding in Spence's car. They happened to  
12 see me. We kind of ran into each other, and they  
13 stopped and asked me what I was doing.

14 Q Will you describe that car for the jury?

15 A It was -- I am not sure what kind of car it was.  
16 It was a Pontiac-looking car.

17 Q What color?

18 A It -- I am not sure about that either. It may have  
19 been like -- it seems like it was a gold -- goldish,  
20 tannish color or something like that.

21 Q Two door or four door?

22 A It was a two door.

23 Q Now, when you ran into David Spence and Tony, what  
24 happened then?

25 A They saw me walking. So they stopped and picked me

- 1 up and asked me if I wanted to go riding around,  
2 what I was doing, and I told them I was walking  
3 home from work and if I wanted to go riding around  
4 and drink some beer, smoke some pot.
- 5 Q And what did you say?
- 6 A I told them, yeah, I would go riding around with  
7 them. I wasn't doing anything. I was just going  
8 home from work.
- 9 Q Had it been very long since you had seen David  
10 Spence prior to that day?
- 11 A It had been a little while. I had seen him before.  
12 I am not sure how long.
- 13 Q Well, a couple of weeks, a month?
- 14 A It had been a couple of weeks, I believe.
- 15 Q All right, so after they asked you if you wanted  
16 to go drinking beer and smoking some pot, you got  
17 in the car. Then what did you do?
- 18 A We stopped over at a store right there. They picked  
19 me up at an intersection there, and there was a  
20 store there, and we stopped and got some beer.
- 21 Q Do you remember how much beer you bought?
- 22 A I believe, we bought about a 12-pack of beer.
- 23 Q And what did you do then, Mr. Melendez?
- 24 A Then we went riding around a little bit, drinking  
25 some beer and smoked a couple of joints.

1 Q Do you recall where you went?

2 A We more or less were just riding around. We  
3 started off riding up towards North 18th, around  
4 that area.

5 Q Now, when Tony and David picked you up, what  
6 condition were they in?

7 A I -- I don't know how long they had been together.  
8 They had been drinking beer. They already had some  
9 beer.

10 They seemed like they were pretty high.

11 Q Already on their way?

12 A Yes, sir.

13 Q Okay. Well, then where did you go?

14 A Well, we rode up -- we just kind of rode around.  
15 We rode up North 18th, and we were drinking a beer,  
16 riding around.

17 We may have stopped at a store and got some  
18 more when we finished that, and then we rode out  
19 towards Valley Mills and just kind of made a round.

20 Q Valley Mills, that being the main drag there in  
21 Waco on the southwest side?

22 A Yes, sir, Valley Mills Drive.

23 Q What happened then?

24 A Well, we rode out Valley Mills Drive and went through  
25 some parking lots there where people drive through.

1           Then we rode down Lake Shore Drive out towards  
2           the lake.

3       Q     All right.

4       A     We were riding around drinking. I think, David may  
5           have said, "Let's ride out by the lake." Off of  
6           Lake Shore there, there is a little park that is  
7           not too far off of Valley Mills there.

8           So we said, "Okay." That is where a lot of  
9           people hang out and drive through there. So we  
10          went down that way and down towards the park.

11       Q     And did you do that?

12       A     Yes, sir, we did.

13       Q     All right, then what did you do?

14       A     We drove down to the park. It is called Koehne  
15           Park or O6 park, they call it, and people hang out  
16           there and drink beer and listen to music.

17           So we drove through there. It is like a  
18           circle park where everybody, you know, stands  
19           around and drinks.

20           We kind of drove through that area, and they  
21           kind of drive through there.

22       Q     Then what?

23       A     Well, we went to the park. We drove and made a  
24           round -- turned around through there where they  
25           drive through.

1           We drove back up to the road, and we had been  
2           drinking some beer, and we were running low on beer.

3           So we went back up to Valley Mills to get some  
4           more beer.

5       Q     So by this time, were you getting pretty stoned  
6           and pretty drunk yourself?

7       A     Yes, sir.

8       Q     And I imagine David and Tony were even more stoned  
9           and more drunk?

10      A     Yes, sir.

11      Q     All right, so you went to buy some more beer. Then  
12           what?

13      A     We got some more beer and decided to go back through  
14           the park.

15           So we drove back down through the park again.

16      Q     And by the park, you mean Koehne Park?

17      A     Yes, sir.

18      Q     What happened when you got to Koehne Park?

19      A     We drove through, again, the same way we had before.  
20           We drove through the area where everybody hangs out.

21           It is like a paved road, and it turns into  
22           a graveled road where it goes down there.

23      Q     Did you notice any cars in particular?

24      A     Well, when we first drove through there, you have  
25           to -- a lot of cars park up on top of the hill sort of.

1 Q That is before you go down to the circle area?

2 A Yes, sir.

3 Q You are talking about up by the entrance?

4 A Yes, sir.

5 Q All right.

6 A And there was some cars parked there, and I noticed  
7 a pickup truck parked there because they were  
8 playing loud music, kind of hanging around it.

9 There was some -- a few more cars there, and  
10 we just kind of passed through there and went on  
11 down the hill to drive through.

12 Q Did you notice anybody in particular before you  
13 drove down or as you were driving down?

14 A Well, you know, I didn't recognize anybody I knew.

15 As we were driving down, I noticed there was  
16 a Monte Carlo there, and I remember that because  
17 something was said about it as we were driving  
18 through there.

19 Q What was said about it, and who said it?

20 A There was a black guy standing there, and we were  
21 driving through, Spence said, you know, "What is  
22 a fucking Nigger --

23 MR. REAVES: Your Honor, I  
24 object to anything David Spence may have said to  
25 him as hearsay.

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MR. FEAZELL: Your Honor, it is  
part of the res gestae.

THE COURT: Objection overruled.  
Go ahead.

Q What did he say?

A He said, "What is a fucking Nigger doing out here?"

Q Talking about the black person by the Monte Carlo?

A Yes, sir.

Q From your experiences with David in the past, did  
he have a disliking for black people?

A Yes, sir.

MR. REAVES: Your Honor, I am  
going to object. That is not relevant to anything  
in this case.

THE COURT: Sustained.

MR. REAVES: Would you instruct  
the jury to disregard that?

THE COURT: Disregard, ladies  
and gentlemen, for any purpose whatsoever, the last  
answer by the witness.

MR. REAVES: In light of that  
comment, Your Honor, we move for a mistrial.

THE COURT: Denied.

Q All right, after you saw the black man there and  
you remember a statement being made, what do you

1           remember happening right after that?

2       A     We -- well, we just drove through there. We just  
3           kind of drove around and drove back out through  
4           there.

5       Q     All right, and what did you see next?

6       A     We -- well, I didn't notice anybody in particular.  
7           We were just riding around. I wasn't really paying  
8           attention.

9                 We drove down through there, and we just drove  
10           back up and back out of there.

11      Q     Okay, and then what happened?

12      A     As we drove out, we drove across the road and drove  
13           to the park on the other side.

14                 It is all one park, but there is two parts to  
15           it, and we drove across the road to the other area  
16           of the park.

17      Q     So right now, you are talking about going down  
18           toward the circle area?

19      A     Yes, sir.

20      Q     Okay, then what happened?

21      A     We drove down the road that goes to the circle  
22           area until we got to the circle area.

23                 As we were driving up to the circle area,  
24           there was -- it is really not that big, and there  
25           was a -- I noticed two cars parked there.

1           There was a larger car and a smaller car parked  
2           in that circle area as we came into it.

3           There was some people standing there. There  
4           was some picnic tables around in that area. They  
5           were sort of in the center.

6           As we were driving in, we could see them, and  
7           David said, "I know those people. Those are the  
8           people I told you about that ripped that dude off."

9       Q     Okay, so had David talked to you about looking for  
10           some people?

11      A     No, sir, then he didn't.

12      Q     Had he before?

13      A     Yes, sir, he had at one time.

14      Q     All right, what happened after he let on like he  
15           recognized the people?

16      A     He said that, you know, "Let's stop. I want to check  
17           them out." I told him, "No," that I didn't want  
18           to stop.

19           I told him, you know, not to stop, that I  
20           didn't want to stop, and he said, "Yeah, I just want  
21           to stop and talk to them."

22      Q     Okay, why didn't you want to stop?"

23      A     Well, I figured if they were the people that he  
24           knew that ripped that dude off that there might be  
25           some trouble or something.

1 Q Okay. Well, so what happened?

2 A Well, we ended up stopping. He stopped, and right  
3 where they were at as he stopped, he hollered out  
4 to them -- it's not that far off the road, and he  
5 hollered out a name to one of the people. That was  
6 the girl's name.

7 As I was getting out of the car, she responded  
8 to it, but she responded to it like she said her  
9 name back, and it wasn't the same name. It was  
10 similar to what he said, but it wasn't the same.

11 Q She responded but with a different name than what  
12 he had called her by?

13 A Yes, sir.

14 Q Okay, how many people are we talking about here,  
15 Mr. Melendez?

16 A There were three people.

17 Q What sex -- what gender?

18 A There were two girls and a boy.

19 Q What happened then?

20 A Well, we stopped the car, and he called out to her,  
21 and when she responded to him, she sort of walked  
22 up and started walking up toward the car.

23 He asked him what was going on. I thought that  
24 he knew him and the other two people with him walked  
25 up toward the car with her.

1 Q Okay, then what happened, Mr. Melendez?

2 A As they were walking up, we had stopped. Tony got  
3 out, my brother, and went around the car to where  
4 David was standing.

5 He had already gotten out. People were  
6 walking up. I just stayed in the car.

7 Q Okay, were you able to see and hear what was going  
8 on?

9 A Yes, sir.

10 Q Then tell the jury what happened next.

11 A Well, they walked up to the car, and he had asked  
12 them -- David asked them what was going on, what  
13 were they up to, and they said, "Just drinking  
14 some beer." The brunette girl did most of the  
15 talking. He was, like, talking to her.

16 Well, they were just talking. I am not sure  
17 of everything they said, but they said they were  
18 drinking some beer, and he said, "Well, we could  
19 go get some more beer, if you all wanted to," and  
20 she said, "Yes, that sounded all right." She  
21 seemed to agree with it.

22 Q You are talking about the brunette?

23 A Yes, sir.

24 Q All right.

25 A And so he said, "Well, we can ride up to the store

1 and get some, and do you all want to go," and she  
2 kind of asked her friends if they wanted to go.

3 They said that it didn't matter. They would  
4 go or they could wait. It didn't make any difference.

5 I am not sure who said it. Something was said  
6 about some pot -- that we had some marijuana and  
7 we could smoke some on the way up, and everybody --  
8 the three of them decided to go to the store.

9 Q Whose idea was it to get in the car and go get the  
10 beer?

11 A David suggested it.

12 Q Did everybody, in fact, get in the car?

13 A Yes, sir, everyone got in the car.

14 Q Do you recall -- or if you recall, tell the jury  
15 how the people were seated in the car.

16 A The -- David got in the driver's side. The people  
17 got in the back first. The blond-haired got in  
18 the back and the boy.

19 I was sitting in the back. David was on the  
20 driver's side. The brunette girl got in, and Tony  
21 got on the passenger's side.

22 Q So the brunette was in the front seat sitting next  
23 to David?

24 A Yes, sir.

25 Q All right, what happened after everybody got in the

1 car?

2 A Everybody got in the car and we started the car up  
3 to drive off, and there is a turn there.

4 So we went towards the turn to turn around,  
5 but you can't turn around all the way. So we had  
6 to back up a little bit.

7 As we went into the turn to back up, one of  
8 the girls said something about, "I hope nobody  
9 messes with my car. Nobody -- look out, don't hit  
10 my car," as we were backing up.

11 Then that is when I noticed a smaller car,  
12 and I thought the smaller car was probably theirs.

13 Q Do you recall anything about the car?

14 A Well, when I looked over at the car, I remembered  
15 it had some stickers on the back of it, on the  
16 back windshield.

17 Q Do you remember what color it was or anything?

18 A No, sir.

19 Q Okay. Now, as you were backing up and turning  
20 around, then what happened?

21 A Well, as we were backing up, she said something  
22 about the car, and they were -- you know, there was  
23 talk, and she was doing most of the talking.

24 Q The brunette?

25 A Yes, sir, and one of them said something about a

1 radio station or something. We had the radio on.

2 My brother, Tony, looked back and asked the  
3 blond-haired girl if that was her old man, talking  
4 about the boy, and she said, no, that they were just  
5 friends.

6 Q Okay, then what?

7 A Well, we finished backing up and made the turn to  
8 go in the opposite direction, and we started to --

9 Q Was anything mentioned about where either the girls  
10 lived?

11 A Well, yes, sir. Tony asked them if they were from  
12 Waco as we were -- before we got finished making  
13 the complete turn.

14 I think, the boy said he was from Waco but  
15 that the girls or one of the girls was from out  
16 of town.

17 Q All right. Now, by this time, was the car out of  
18 the circle area?

19 A Well, it had -- we had just turned around and were  
20 fixing to drive out of the circle area.

21 Q Fixing to drive up the road toward the entrance of  
22 the park?

23 A Yes, sir.

24 Q What happened then, Mr. Melendez?

25 A Well, as we started to drive up, we weren't going

1           that fast. We had just turned around, and the  
2           road curves there pretty good.

3           It is not a real big road. We started driving  
4           out, and Spence looked over at me in the back and  
5           said, "She sure does have some big tits."

6       Q     Okay, let's stop right there for a minute. If you  
7           would for the jury, describe how you remember the  
8           brunette to have looked.

9       A     The brunette was -- she had brown hair. She was  
10          about 5'4". She was kind of big-boned built type.

11          She wasn't fat or anything. She was just kind  
12          of big.

13          She was dark complected. Her hair was about  
14          shoulder length. It had a little wave to it.

15          I believe, she had some -- a little bit of  
16          make-up on.

17       Q     Do you remember how she was dressed?

18       A     No, sir, I am not sure about how she was dressed.

19       Q     How about the blond? What do you remember about  
20          the blond?

21       A     Well, the blond girl was smaller than the brunette.  
22          She was real light complected.

23          She had more make-up on. She had a lot of  
24          make-up on, especially, around her eyes.

25          She was about five foot, I guess. She was kind

1 of small and thin compared to the other one.

2 Q Do you remember anything about how she was dressed?

3 A I think, she had on some kind of top like where her  
4 shoulders showed. I don't know what you call it, like,  
5 a tube top or something.

6 I am not sure what kind of -- if she was wearing  
7 pants or anything. I don't remember exactly.

8 She had some shoes on. They weren't like sandals,  
9 but you could see her feet in them.

10 Q Tell the jury what you remember about Kenneth Franks.

11 A He was kind of tall and thin. He wasn't skinny. He  
12 was just tall.

13 He had about shoulder-length hair. I believe,  
14 he had on blue jeans, and I think, a colored shirt.  
15 He looked about like one of the average people you  
16 see out at the park that hang out there.

17 Q At that time, Mr. Melendez, what -- how did you look?

18 A I had hair down to my shoulders. My hair was pretty  
19 long, about down to my shoulders, and mustache and  
20 a little bit of a goatee.

21 Q Okay, how did David Spence look?

22 A Spence's hair wasn't that long. It was fairly  
23 long, longer than average.

24 He had a mustache and a beard.

25 Q And how about your brother, Tony? How did he look?

1 A Tony's hair was fairly long, and I believe, he had  
2 a mustache.

3 I am not sure if he had a beard or not. He  
4 may have had a mustache and beard.

5 (Whereupon instruments were marked  
6 (for identification as State's  
(Exhibits Nos. 40 through 42.

7 Q Mr. Melendez, I will show you what has been marked  
8 as State's Exhibit 40 and ask you if you recognize  
9 the person depicted in that photograph?

10 A Yes, sir.

11 Q Who is it, please?

12 A That is my brother, Tony Melendez.

13 Q And is that a fair and accurate representation of  
14 how he appeared during the summer of 1982?

15 A Yes, sir.

16 Q And I will show you what has been marked as State's  
17 Exhibit 41 and ask you if you recognize the  
18 individual in that photograph?

19 A Yes, sir, that is David Spence.

20 Q And is that a fair and accurate representation of  
21 how he appeared during the summer of 1982?

22 A Yes, sir.

23 Q And I will show you what has been marked as  
24 State's Exhibit 42 and ask you if you recognize  
25 the individual in that photograph?

1 A Yes, sir, that is me.

2 Q And is that a fair and accurate representation of  
3 how you appeared during the summer of 1982?

4 A Yes, sir, it is.

5 MR. FEAZELL: Your Honor, at  
6 this time, we would offer into evidence State's  
7 Exhibits 40, 41 and 42.

8 MR. REAVES: Defense has no  
9 objections, Your Honor.

10 THE COURT: All right, exhibits  
11 will be admitted, 40, 41 and 42.

12 (State's Exhibits Nos. 40 through  
13 (42 were then admitted into  
evidence.)

14 MR. FEAZELL: Thank you, Your Honor.

15 THE COURT: Yes, sir.

16 Q Now, you were just about to tell the jury what took  
17 place and what was starting to take place as you  
18 started up the road away from the circle and into  
19 the entrance of the park. What happened, sir?

20 A Well, David Spence had looked back at me and said,  
21 "She sure does have some big tits."

22 Q Was he talking about the brunette?

23 A Yes, sir.

24 Q Jill Montgomery?

25 A Yes, sir.

1 Q All right.

2 A As he said that, the -- she told him, you know, not

3 to say that. She said, "Don't say that," and the

4 boy said something -- I am not sure what it was, but

5 he kind of laughed about it, you know, when he said

6 that. He said something about -- I am not sure what

7 it was.

8 Q Tried to laugh it off?

9 A Yes, sir.

10 Q Okay, then what?

11 A Well, we drove on. We were driving along just

12 starting off as that happened, and she told him,

13 you know, not to say that and not to talk like that,

14 and he said to her, "Well, you do," and she said

15 something else to him, you know, to -- not to be

16 kidding around like that or whatever.

17 So as we were driving along, he reached over

18 and tried to grab at her, again, and she told him

19 to stop, and they argued back and forth like that

20 for a few minutes.

21 Q What do you mean grabbed at her?

22 A He, you know, reached over like towards her breasts

23 to touch her.

24 Q Okay, and that --

25 A That went on for a few minutes as we were riding

1 along, and she was telling him to stop and trying to  
2 push his hand away from her.

3 He said, "I will grab one, if I want to," and  
4 they started arguing back and forth like she was  
5 trying to push him away, for him to stop, telling  
6 him to stop.

7 Q Was this happening all pretty fast?

8 A Yes, sir.

9 Q All within that short little drive up that road?

10 A Yes, sir.

11 Q Okay, what happened?

12 A And well, he -- you know, he was trying to grab  
13 her and stuff, and he said, "I will grab one if  
14 I want to."

15 He started to pull over to the side of the  
16 road. She was telling him not to, and they were  
17 arguing back and forth like that, trying to push  
18 his hands away.

19 So he stopped the car. We had gone down the  
20 road a little ways, and he pulled off to the side  
21 a little bit and stopped and said, "I will grab  
22 one if I want to."

23 She was telling him to quit, "What is the  
24 matter with you? Are you crazy?"

25 As they were -- as they were arguing, he stopped

1 the car, and she was telling him not to, pushing  
2 him back and everything, and then he slapped her.

3 Q He slapped her?

4 A Yes, sir.

5 Q Right there in the car?

6 A Yes, sir.

7 Q What happened then?

8 A Well, when he slapped her, he slapped her pretty  
9 hard. He kind of backhanded her.

10 So you know, she stopped arguing. I guess,  
11 she was scared or something, and she just kind of  
12 stopped. She didn't say anything any more.

13 Q Did he say anything to her then?

14 A Well, as he slapped her, he said "No bitch is going  
15 to tell me what to do."

16 She had told him, you know, to stop, and they  
17 had been arguing back and forth.

18 Q What happened then?

19 A Well, she got quiet, and she kind of put her hand  
20 up to her face, and the boy said what was going  
21 on, "What's going on?"

22 Q How is everybody in the car acting, at this time?

23 A Well, when it started happening, everybody was  
24 just more or less watching or something.

25 I think, the girl may have said something,

1 or they said, you know, "What's the matter with  
2 him? What's wrong?"

3 You know, nobody had really said anything loud  
4 until the boy said, you know, "What's going on?"

5 He had slapped her and everybody got quiet,  
6 and the boy said, "What's going on?" And I told  
7 him to shut up.

8 As Spence did that, well then, he pulled the  
9 car up a little bit from where we had stopped on  
10 top of the hill and kind of drove off into a wooded  
11 area there.

12 It is not a road, but it is kind of a place  
13 where you can drive off into the woods.

14 Q Drive off into the trees there?

15 A Yes, sir.

16 Q Now, were you back to the entrance of the road to  
17 the park yet, or had you gone --

18 A No, sir, we had just come out of the turn and gone  
19 up a hill.

20 As all this was happening, we had made the  
21 distance up to the top of the hill where he pulled  
22 over, and it was a -- just a few feet from where  
23 we had stopped past that to where we went to the  
24 wooded area.

25 Q Is there any kind of identifying marker or anything

1           that can identify that part of the road where you  
2           drove off into the trees?

3       A     Well, right before we drove off into the trees,  
4           there is a -- sort of like a parking area there  
5           where a dumpster stays, and it is just kind of  
6           marked off where you can pull up and park.

7       Q     Okay, sir, I am going to show you what has been  
8           marked and already introduced into evidence as  
9           State's Exhibit No. 10.

10                Do you see the circle area in the road that  
11           goes up to the entrance of the park?

12       A     Yes, sir.

13       Q     If you would, point out to the jury where it is  
14           that the dumpster is and where you pulled off into  
15           the trees.

16       A     Okay, the circle area is here (indicating). This  
17           is where we went up to the road. This is where  
18           the dumpster area is, the parking area, and that  
19           is where we kind of pulled off to the side of  
20           the road.

21                Where the trees begin, a little past there,  
22           is where we went off into.

23       Q     So in this area right here?

24       A     Yes, sir.

25       Q     This is a different view of it, Mr. Melendez.

1 This is marked Defendant's Exhibit No. 3.

2 This is from the water looking in. Here is  
3 the circle and the road that comes out.

4 If you would, show the jury on here, approximately,  
5 where we are talking about.

6 A Okay, this is the circle area here. This is the  
7 top of the hill. It would be right in this area  
8 here.

9 Q Right in the trees. So this would be the parking  
10 area you are talking about, right here?

11 A Yes, sir, that is the parking area.

12 MR. VANCE: Can we see where  
13 he is putting his finger?

14 MR. FEAZELL: Right there.

15 Q Now, Mr. Melendez, what happened as Mr. Spence  
16 pulled the car off into the trees?

17 A Well, we pulled off into the trees. We went in  
18 there a little ways. You can't go too far. There  
19 is a bunch of trees, but it is off far enough to  
20 where it is off the road.

21 We pulled in there and stopped. Spence stopped  
22 the car and opened the door and told everyone to  
23 get out.

24 Q What was his mannerisms as he told everybody to get  
25 out? How was he acting?

1 A Well, we pulled in there, and he went in there  
2 and you know and stopped, and said, "Everybody  
3 get out of the car."

4 Q Okay, was it just a polite request, or was he  
5 ordering and screaming?

6 A Well, no, sir, he was saying it real loud and  
7 ordering everyone to get out.

8 Q What happened then?

9 A Well, as he stopped, he was -- you know, got out  
10 and opened the door and told everybody to get  
11 out of the car, and Tony said, "Man, you are crazy."

12 Q He said that to Spence?

13 A Yes, sir, and so he said, "Come on, let's get out  
14 of the car," and the brunette started sliding over  
15 to get out on his side, on the driver's side.

16 Tony started to get out of the car, and he  
17 said, "Come around the car so none of them will  
18 take off or try to take off," and the boy and the  
19 blond and I got out of the back seat on the  
20 passenger's side.

21 Q All right, what happened then?

22 A We all got out of the car, and as they got out,  
23 he was standing back.

24 They sort of went towards the front of the car.  
25 The three kids went towards the front, and then

1 Spence was standing on that end.

2 As I got out, I was more or less standing on  
3 the back end of where we were at.

4 Q Okay, so you are all kind of standing around the  
5 car?

6 A Yes, sir.

7 Q Approximately, how far off the road was the car,  
8 sir?

9 A It was -- it was somewhere around 25 feet -- 20 to  
10 25 feet around there.

11 Q Now, in July of 1982, was that a very wooded area?

12 A Yes, sir, it was.

13 Q So some underbrush?

14 A Yes, sir, it was wooded enough to where if you  
15 looked in off the road, you couldn't really see  
16 in there, but you could more or less see out and  
17 see the road if you were in the woods.

18 Q Okay, what time of the day was it? What was the  
19 lighting like?

20 A I am not sure what time it was, but it was like --  
21 it was -- whatever time when it was fixing to get  
22 dark.

23 Q Okay, dusk time?

24 A Around dusk.

25 Q Now, you just told the jury that all three of the

1 kids, Kenneth, Raylene and Jill, were up by the  
2 front of the car. The three of you were out of  
3 the car. What happened then?

4 A We -- well, we were standing there out of the car,  
5 and those three were -- I don't remember the exact  
6 conversation as they were standing there. David  
7 Spence was saying something to them about some  
8 dope or ripping that dude off or something.

9 They were saying that they didn't know what  
10 he was talking about or something like that.

11 Q Ripping that dude off?

12 A Yes, sir.

13 Q Did you know what dude he was talking about?

14 A Well, I figured he was talking about the dude that  
15 owned the store.

16 Q Lucky?

17 A Yes, sir.

18 Q Muneer Deeb?

19 A Yes, sir.

20 Q And what were the kids saying to him about that?

21 A Well, they were saying that they didn't know what  
22 he was talking about. They hadn't ripped anybody  
23 off.

24 Q Do you recall who said that to him?

25 A I believe, the brunette girl said, "I don't know

1           what you're talking about. We don't know what  
2           you're talking about."

3           Then the boy said, "We ain't ripped nobody off."

4       Q     What happened then?

5       A     Well, as they said that, Spence told the girls,  
6           he told them to take their clothes off.

7           He told them to get undressed. He said --  
8           ordered, you know, yelled at them to take their  
9           clothes off.

10          They said something about it, and he just, you  
11          know, told them to take their clothes off.

12          When they kind of said, you know, they didn't  
13          want to or whatever they said -- I am not sure what  
14          they said, but like, they didn't want to or something.  
15          That is when I first remembered seeing a knife.

16       Q     Who had the knife?

17       A     Spence had the knife. He flashed the knife around  
18           and told them if they didn't take their clothes off --  
19           to take their clothes off, and if they didn't take  
20           them off, he was going to kill them.

21       Q     What happened then?

22       A     They had -- I guess, he scared them, you know. They  
23           had said something about their clothes. One of the  
24           girls had said something about some money or something.

25       Q     Do you remember what she said about the money?

1 A No, sir, I don't remember. It was something about  
2 that he could have the money or they had some  
3 money, and he said -- he had the knife, and he told  
4 them -- well, he started cussing and calling them  
5 names. He said --

6 Q Spence was cussing at them at this time and calling  
7 them names?

8 A Yes, sir.

9 Q How was he acting?

10 A Well, he was acting real mean, and he was talking  
11 real mean to them trying to scare them.

12 Q How were the three kids acting?

13 A They were -- well, they were acting like they were  
14 scared.

15 Q What did David say to the girls?

16 A Well, she said something about the money or something,  
17 and he had the knife, and he was flashing it around.

18 He said -- he started calling them names,  
19 cussing at them, and he said, "You bitches, you know,  
20 take your clothes off. You fucking cunts do what  
21 I told you to do."

22 He had the knife there. They were -- everybody  
23 was pretty close together.

24 So the girls, you know, acted like they were  
25 fixing to start taking their clothes off.

1 Q What happened then?

2 A As that happened, he said -- I was over by the  
3 car door, and he said -- he kind of glanced at  
4 me and said, "Get something to tie the boy up with,"  
5 and I said, "What?" And he said, "Get something.  
6 It is under the front seat or out from under the  
7 front seat or on the floor board."

8 Q When he told you to get something to tie the boy  
9 up with, what did you do?

10 A Well, I walked over to the car, and I looked around,  
11 you know, on the floor board on the driver's side  
12 and reached under the front seat and kind of looked  
13 around there for a few minutes.

14 I reached under the seat, and I found something  
15 under there, and I pulled it out, and it was like --  
16 it was a rag or a towel or something like that, and  
17 I brought it out to him.

18 Q What happened then?

19 A Well, I got out, and I went over and handed the  
20 towel to him.

21 Q To David?

22 A Yes, sir, and by that time, it took me a few minutes  
23 to find it while I was looking for it, and the  
24 girls -- when I came out, the girls were undressed.

25 Q What were they doing?

1 A Well, they were standing there. They had taken  
2 all their clothes off, and it was like they were  
3 trying to cover themselves up, you know, as best  
4 they could.

5 Q By then, they were naked?

6 A Yes, sir, it was like they were trying to cover  
7 themselves up a little bit with their hands or  
8 something.

9 Q What happened then?

10 A They -- well, as I handed him the towel, I noticed  
11 then that -- you know, I said to the blond-haired  
12 girl which was lighter complected than the brunette --

13 Q The brunette was darker?

14 A Yes, sir, and they didn't have any clothes on.  
15 So the brunette girl -- she was -- it was like she  
16 had a tan or something because there were areas  
17 like maybe where she wore a bathing suit or something  
18 like that where she was lighter complected in those  
19 areas than the rest of her.

20 As we were standing there, David grabbed the  
21 brunette girl by her arm and said, "I am going to  
22 take her over here." He said, "Gilbert, you can  
23 go with her" meaning the blond.

24 He said somebody -- "Tony, watch the boy."

25 Q Do you recall seeing him tie the boy up, at that

1 time?

2 A No, sir, I don't.

3 Q Okay, so what happened then?

4 A He got the brunette girl by the arm and started  
5 walking away from the car with her toward -- into  
6 the woods a little bit. It is kind of a little  
7 open area there.

8 He walked a little ways with her and said,  
9 "You can go with the blond" and I told the blond-  
10 haired girl to come with me over to the car, to  
11 the other side of the car.

12 Tony was going to watch the boy, and Tony  
13 walked over with the boy a little ways from the  
14 car.

15 The blond girl and I went over to the  
16 passenger's side of the car. As we were walking  
17 over there, Spence had walked a little ways with  
18 the brunette and told Tony to --

19 Q Okay, let's stop right there for a minute. So at  
20 this time, it is the first time that the three kids  
21 were separated from each other after you all got  
22 out into the woods?

23 A Yes, sir.

24 Q All right, how were they acting, at that time?

25 A They were acting -- they were scared. They didn't --

1           you know, I don't know. I guess, they didn't know  
2           what was going on or something.

3           They were acting scared, and they just did what  
4           they were told to do, and they had seen the knife  
5           and everything. So they just went along with what  
6           they were told to do.

7       Q     What did you think was going on?

8       A     Well, when we first pulled up in there, I thought  
9           that since he had said those were the three kids  
10          that had gotten ripped off, I figured that maybe --

11      Q     That had gotten ripped off?

12      A     They had ripped the dude off -- excuse me. I  
13          thought maybe that, you know, he was just going to  
14          scare them or something when he slapped the girl  
15          and pulled off into the woods and said, "Get out  
16          of the car," I thought maybe he was just going to  
17          shake them up and those were the people that ripped  
18          the dude off and he was just going to try to scare  
19          them.

20      Q     Okay, how about when you got to the point to where  
21          he was making them take their clothes off?

22                       MR. VANCE: Your Honor, I am  
23          going to object to that to preserve the record that  
24          this deals with extraneous offenses and not related  
25          to the death of Kenneth Franks -- anything dealing

1970

1 with Jill Montgomery or Raylene Rice.

2 THE COURT: All right, objection  
3 overruled. Go ahead, Mr. Feazell.

4 Q What about when he told them to take their clothes  
5 off? Did you still think that was what was going on?

6 A I still thought that is what was going on.

7 Q How about when he told you to go to the car with  
8 the blond?

9 A I thought that we were just -- they were just going  
10 to -- those were the people that had ripped the  
11 dude off that he had been talking about, and well,  
12 you know, we were just going to scare them or shake  
13 them up a little bit.

14 Q Well, why did you go on into the car with the blond?

15 A Once he pulled off in there -- everything happened  
16 a lot faster than me sitting here saying it, and I  
17 guess, I really can't explain it.

18 I guess, just the type of people that I hung  
19 around with at that time, and the circle of people  
20 that we knew, it is -- things like that happen a lot.

21 It is like maybe they are never reported or  
22 not someone getting killed or anything, but it is  
23 in those circles of people, it is like --

24 Q What you are saying is that you just went ahead  
25 and did it?

1 A Yes, sir.

2 Q Okay, didn't really give it any thought?

3 A No, sir, I didn't.

4 Q All right, you were about to say when you got in

5 the car with Raylene Rice, then you heard something.

6 What did you hear?

7 A Well, as we were fixing to get in the car, David

8 was still -- had gone over to the area where he

9 was with the brunette girl.

10 He, you know, told Tony, he said, "Bring that

11 boy over here. I want him to watch me fuck this

12 cunt."

13 Q Okay, talking about bringing Kenneth Franks over

14 there to where Jill Montgomery was?

15 A Yes, sir.

16 Q Mr. Melendez, I want to show you what has been

17 marked as State's Exhibit No. 39 and ask you if

18 you recognize what is depicted in that photograph?

19 A Yes, sir, I do.

20 Q Is it a fair and accurate representation of what

21 it is intended to depict?

22 A Yes, sir.

23 Q And what is it?

24 A It's a picture of where we were at in the woods

25 where the car was parked and where the people were

1           laying.

2       Q     And notice on the ground, there are some chalk lines.

3       A     Yes, sir.

4       Q     Who directed where the chalk lines should go?

5       A     I did.

6       Q     And what do the chalk lines represent?

7       A     The chalk lines represent a car and three areas  
8           where people -- where bodies were laying.

9                           MR. FEAZELL:   Okay, Your Honor,  
10           we would offer into evidence State's Exhibit 39.

11                          MR. REAVES:   May we ask the  
12           witness a question, Your Honor?

13                          THE COURT:    Yes, sir.

14                                   VOIR DIRE EXAMINATION

15           QUESTIONS BY MR. REAVES:

16       Q     Mr. Melendez, do you know when these pictures were  
17           taken?

18       A     I am not sure what month they were taken.

19       Q     Do you know what year?

20       A     Yes, sir, they were taken in '84.

21       Q     Do you know what time of year?   Was it fall, summer,  
22           winter, spring?

23       A     I am not sure.

24       Q     Okay, was it summer?

25       A     It may have been the end of summer.

1 Q Okay, are you saying that this accurately depicts  
2 this area as it was on July 13, 1982, or is there  
3 some differences?

4 A The time of season may be different, but I don't  
5 think it is that much different. I think, it is  
6 around summertime or maybe the end of summer. I  
7 am not sure. I don't remember what month it was.

8 MR. FEAZELL: Your Honor, that  
9 would go to the weight and not the admissibility.

10 MR. VANCE: We haven't even  
11 objected to it yet.

12 Q (By Mr. Reaves) And the chalk lines were placed  
13 by whom?

14 A The chalk lines were placed by Truman Simons, but  
15 I showed him where to put the chalk lines.

16 MR. REAVES: Your Honor, we  
17 don't have any objections to State's Exhibit 39.

18 MR. FEAZELL: We would offer  
19 it into evidence, Your Honor.

20 THE COURT: All right, Exhibit 39  
21 of the State will be admitted.

22 (State's Exhibit No. 39 was then  
23 admitted into evidence.

24 DIRECT EXAMINATION (RESUMED)

25 QUESTIONS BY MR. FEAZELL:

1 Q Mr. Melendez, on the night of July 13, 1982, tell  
2 the jury whether this is what the scene looked  
3 like, or were there -- tell the jury whether that  
4 is what it looked like on that night, or was the  
5 lighting different, or could there have been more  
6 underbrush at the time?

7 A There could have been more underbrush, and it was  
8 late in the evening around dusk. So the lighting  
9 was different. It is -- more or less looks the  
10 same.

11 I don't think it is that far off from the  
12 month of July. It may be a month after that, but  
13 I am just not sure.

14 Q If you would, please, sir, you can just step right  
15 over here and use this ruler as a pointer, and  
16 you can probably do it from right there.

17 If you would, show the jury in what direction  
18 would the road be?

19 A The road would be back this way -- this direction  
20 (indicating).

21 Q Which direction is the lake?

22 A The lake is here. This direction you can see a  
23 little bit of it there past the trees.

24 Q Which side would be the front of the car?

25 A The front of the car would be right here.

- 1 Q Okay, so this being the front, this being the back  
2 of the car?
- 3 A Yes, sir.
- 4 Q There is an X up here in front of the car by this  
5 tree. What does the X represent?
- 6 A The X would be at some point in time there where  
7 the boy was sitting around in that area.
- 8 Q Around in this area is where you kept Kenneth Franks?
- 9 A Yes, sir.
- 10 Q And there is a rectangle-looking thing in chalk  
11 over here. What does that represent?
- 12 A That would represent where the brunette girl was  
13 at.
- 14 Q Where David walked her off to?
- 15 A Yes, sir, around in that area.
- 16 Q This rectangle beside the car, what does that  
17 represent?
- 18 A That represents where the blond-haired girl was  
19 laying.
- 20 Q Okay, these two lines out from the car, that  
21 represents the car doors?
- 22 A Yes, sir.
- 23 Q Okay, thank you, sir. You can be seated.
- 24 Okay, when we broke for the picture, you just  
25 told us about the brunette being taken over away

1 from the car to the area represented by the, I  
2 believe, it is a square or a rectangle off in the  
3 trees?

4 A Yes, sir.

5 Q What happened then?

6 A Well, as David said that, he went over with the  
7 brunette girl, and he told Tony to bring the boy  
8 over there.

9 I and the blond-haired girl got in the front  
10 seat of the car.

11 Q Okay, what happened when you got in the front seat  
12 with the blond, Raylene Rice?

13 A Well, as we got in the front seat, she was kind of,  
14 you know, starting to cry and everything, and she  
15 had -- she said that -- not to hurt her. She was  
16 saying not to hurt her that she would do what I  
17 wanted.

18 I told her that I wouldn't hurt her and that  
19 we -- she laid down in the front seat, and I got  
20 in the front seat, and I had sex with her.

21 Q Did you ejaculate?

22 A No, sir, I didn't.

23 Q So you got off of her before you had completed the  
24 sex act?

25 A Yes, sir.

1977

- 1 Q What happened then?
- 2 A Well, when I decided to stop with the girl, I got
- 3 out of the car, and I brought her out of the car
- 4 with me, and we walked towards the front of the
- 5 car.
- 6 Q Okay.
- 7 A As I walked up -- we walked up to the front of the
- 8 car, Tony was still watching the boy. Spence was
- 9 still where the brunette was.
- 10 Q Okay, so was the boy over there by the brunette
- 11 then, or had he come back up to where the X is?
- 12 A Well, they were more over a little bit -- more
- 13 around in that area.
- 14 Q Around the area of the X or around the area of
- 15 where Jill was laying?
- 16 A Well, they were back away from them -- between the
- 17 area of Jill and the X, around that area somewhere.
- 18 The boy was sitting and Tony.
- 19 Q What was the lighting like by that time?
- 20 A It was dark.
- 21 Q Could you see David and Jill Montgomery?
- 22 A I could see where they were at. I could see images
- 23 of them from where I was at.
- 24 Q Just images?
- 25 A Yes, sir, I could make out who was who and where

1           they were at.

2       Q     Did you have on your glasses that night?

3       A     Yes, sir, I think, I did have my glasses on.

4       Q     Okay, did you have them on the whole night?

5       A     I am not sure if I had them on the whole night or  
6           not. My eyes are pretty bad. So I usually wear  
7           them all the time.

8                   At night, it is harder for me to see at night  
9           than it is in the day. I have to wear them to  
10          drive. So I have been wearing glasses for quite  
11          a few years.

12      Q     So your eyes then aren't as good as, say, an average  
13           person's eyes?

14      A     No, sir.

15      Q     How well can you see me from where you are?

16      A     I can see you fairly well, but if I didn't -- if I  
17           hadn't seen you before, I probably couldn't describe  
18           you real well, or if you had something to read in  
19           your hand, I probably couldn't read it.

20      Q     Okay, so you could see the image of David and Jill  
21           off to the side?

22      A     Yes, sir.

23      Q     You had walked up to Tony. What happened then?

24      A     Well, as we came up, I had said to Tony, I said  
25           that I would watch the boy -- that he could go with

1 the girl, if he wanted to, and Tony and I exchanged  
2 places.

3 As Tony walked over to the blond girl, I  
4 walked over to where the boy was.

5 When I had said that, the boy had been sitting  
6 down. I guess, Tony had been sitting on the rail  
7 or something. I am not sure, but as I said that,  
8 they both got up -- or the boy got up, and I told  
9 him to sit back down as I walked over there.

10 He sat down, and Tony went with the blond girl  
11 in the car.

12 Q Did Tony have a pocketknife, at that time?

13 A Yes, sir, he did. When I first went with the blond  
14 girl, Tony went with the boy.

15 I had a pocketknife, and I pulled it out of  
16 my pocket and opened it and handed it to Tony, and  
17 I said, "Here, here, take this knife while you  
18 watch him." So maybe it would scare him from trying  
19 to get away or something.

20 Q What kind of knife was it?

21 A It was a small pocketknife. It was a knife I used  
22 for work. It was something like the small Buck  
23 knives you see about that big when it is open, but  
24 it wasn't a Buck knife. It was just an off brand  
25 knife. I used it for work.

1 Q Okay, what happened then?

2 A Well, as we exchanged places --

3 Q Did you take the knife back from Tony?

4 A Yes, sir, I did. I got the knife from him, and  
5 Tony went with the blond girl in the car.

6 I told the boy to stay sitting down, and I  
7 walked over and kind of kneeled beside him where  
8 he was sitting kind of in a kneeling position, just  
9 kind of kneeled down on one leg, and Tony went in  
10 the car with the blond.

11 Q Did you do or say anything to Kenneth Franks?

12 A I didn't, no, sir.

13 Q At that time?

14 A I don't remember saying anything. I just told him  
15 to sit down, and he just sat down.

16 Q Okay, what did you next see or observe?

17 A Well, as Tony and the blond went in the car and  
18 Spence and the brunette were over to the side there  
19 a little ways, and I could hear the girl making  
20 some sounds or some, you know, and some noises  
21 like she was crying, and like she was making some  
22 moaning sounds or crying sounds like she didn't like  
23 what was going on.

24 As I looked over there, I could see that Spence  
25 was kind of on top of her or he was on top of her,

1 and he had the knife, and he had the knife like  
2 up in front of her face. He was back away from  
3 her a little bit.

4 Q Okay, so you could see the knife flashing every  
5 once in awhile?

6 A Yes, sir, on the lake there, it is -- it was dark,  
7 but there is a little reflection. I guess, there  
8 is some lights around there or something, but it  
9 wasn't just pitch dark. You could see a little.

10 Q Okay, so what happened? Did you hear David say  
11 anything to her?

12 A Well, I looked over --

13 MR. VANCE: Your Honor, I will  
14 have to renew my objection again. Again, this is  
15 an extraneous offense not dealing with the death of  
16 Kenneth Franks.

17 This deals with a totally  
18 unrelated matter in this trial. We are not here  
19 on trial for anything but whether the Defendant  
20 killed Kenneth Franks.

21 MR. FEAZELL: Still part of the  
22 res gestae.

23 THE COURT: Objection overruled,  
24 go ahead.

25 Q Go ahead.

1       A     Well, as I was sitting there, I looked over toward  
2             the car, and the whole time we were there, you could  
3             hear cars. You know, it sounded like they were  
4             coming up the road there because of the water and  
5             everything and the woods there.

6             So I was looking around. I looked over towards  
7             them, and Spence had the knife like up to her face,  
8             and he was kind of on top of her.

9             As I looked around and looked back again and  
10            another time it was like he had his face down to  
11            her breast like he had his face down to them, and  
12            then at one time, you know, she was making some  
13            noise like she was crying, or she didn't like what  
14            was going on.

15            At one time, I heard him say when you know,  
16            he was still on top of her, he said something like  
17            "You like that. You like that, don't you? Move  
18            faster."

19       Q     What was Kenneth Franks doing?

20       A     He was -- well, he was sitting there. He said  
21             some -- may have said something once or twice like,  
22             "What is going on" or -- and you know, I told him  
23             to just sit there and shut up and be quiet.

24             When I told him that, he would. He would  
25             look over there sometimes, and he was more or less

1 looking around like I was, and sometimes -- I  
2 looked at him a couple of times, and he may have  
3 had his eyes closed at times thinking about what  
4 was happening. I don't know.

5 Q What do you recall about his hands?

6 A I don't really remember seeing his hands while he  
7 was sitting there at different times.

8 I am not sure. I didn't see him tied up,  
9 but he may have been tied up at that time. It  
10 seems like he was, but I don't remember.

11 Q Okay, so at that time, you had the impression that  
12 he was tied up?

13 A Yes, sir.

14 Q What happened then?

15 A As -- well, as that was happening, Tony -- there  
16 was a little time there, and he was still with the  
17 brunette. Tony was in the car. It didn't seem  
18 like it was that long. It was for a little while.

19 Tony and the brunette -- the blond -- excuse  
20 me -- got out of the car. Spence was still with  
21 the brunette.

22 Well, as they got out of the car and went  
23 towards the front, there was a few minutes there,  
24 and Spence stood up, and the brunette girl was  
25 laying on the ground.

1           As he stood up, he, you know, started walking  
2           over a little bit toward the center there. It wasn't  
3           that far apart.

4           The area was pretty close.

5       Q     So from the part on there chalked out like a square  
6           started over toward the X?

7       A     Yes, sir.

8       Q     But I believe, you have already testified that you  
9           all were a little closer to the square at this time  
10          than what the X indicates?

11      A     Yes, sir.

12      Q     Okay.

13      A     So he got up and sort of walked a few steps out  
14          from the brunette girl and said, "One of you all  
15          watch her. I want to go with her," meaning the  
16          blond girl.

17            I said, "I will watch her." So as he and I  
18          walked towards each other, the blond and the boy  
19          were closer than the brunette and the boy and the  
20          blond would be.

21            So as we crossed that way, Tony went over to  
22          watch the boy, and David went with the blond, and  
23          I walked over towards where the brunette was by  
24          her.

25      Q     Okay, what happened then?

1 A Spence and the blond -- took the blond in the car.  
2 Tony went over by where the boy was and stayed by  
3 him, and I walked over to where the brunette was.

4 Q Did David say anything to you before he got in  
5 the car with Raylene?

6 A Well, when he got up from --

7 MR. VANCE: Before he answers,  
8 I have to renew my objection to the extraneous  
9 offense against Raylene Rice -- that it doesn't  
10 have any materiality to the death of Kenneth Franks,  
11 and it is an extraneous offense.

12 THE COURT: All right,  
13 objection overruled, go ahead.

14 Q Did he say anything to you before he got into the  
15 car with Raylene?

16 A Yes, sir, as we were passing each other as he walked  
17 away from the brunette girl, he said, "You ought  
18 to get you some of that." He said, "I sure did  
19 hate to cut her tits."

20 Q Okay, what did you do?

21 A Well, he walked over to where the blond was, and  
22 I walked over to where the brunette girl was.

23 She was kind of laying. She was laying  
24 down kind of on her side, and he went in the car  
25 with the blond girl.

1           When I went over by the brunette girl, I kind  
2           of kneeled down beside her like I was, you know,  
3           by the boy, and I looked over at her. She was  
4           laying there and I -- you know, I just said "Hey"  
5           to her.

6           She was -- she didn't look up. She didn't  
7           respond to it. She didn't say anything. She was  
8           like, you could hear her crying or sobbing -- not  
9           real loud screaming or nothing, but you know, she  
10          was told to be quiet and not to scream and holler.

11          So I looked over at her, and she was kind of  
12          laying on her side, and it looked -- you know, she  
13          sounded like she was hurting because she was crying,  
14          and it looked like she was bleeding.

15          I looked over, and it looked like she was  
16          bleeding in her chest area or around her shoulders.  
17          I thought she was bleeding because when Spence  
18          walked by and said, "I sure hated to cut her tits,"  
19          I figured that she was hurting -- that she was  
20          bleeding.

21          She didn't respond to me. So I stood up and  
22          walked about two or three feet away from her. I  
23          didn't think that she was, you know, going to get  
24          up. She was just laying there.

25          Q       So when you saw that she was bleeding, you moved

1 back?

2 A Yes, sir, I stood up and moved a few feet away.

3 Q What happened then?

4 A I -- as I stood up, I was looking around because we  
5 could hear the cars and stuff, and you could  
6 probably see the lights from the road.

7 I looked over towards the car where Spence  
8 and the blond were, and the blond-haired girl was  
9 sitting up in the car, and I could see Spence in  
10 the car like --

11 Q So she was sitting up?

12 A Yes, sir.

13 Q You could see her?

14 A Yes, sir.

15 Q Okay.

16 A And it -- he was like laying over the car, like,  
17 leaning inside the car, leaning over like the  
18 seat looking -- I thought he was looking around  
19 for something.

20 It looked like he was looking around for  
21 something or reaching under the seat or the  
22 floor board. I thought may be he was looking for  
23 a beer or something.

24 Q All right, what happened then?

25 A Well, I stood there. He was over there, and a

1           few minutes later, I noticed that they both laid  
2           down in the car. I couldn't see the girl standing  
3           there any more -- sitting up in the seat any more.

4                 So I could hear. It was kind of quiet, and  
5           I could -- the sound carries there, and I could  
6           hear like the girl maybe -- she was like crying  
7           and stuff, or maybe saying something like, "Don't  
8           hurt me" or something.

9                 I am not sure what she said, but I could hear  
10          here like moaning or crying like she didn't like what  
11          was going on.

12   Q        You could hear Raylene you are talking about?

13   A        Yes, sir, the blond-haired girl.

14   Q        How much time did David Spence spend in the car with  
15          Raylene?

16   A        I am not sure how much time it was. It was a little  
17          while. It wasn't a real long time.

18   Q        From the moment you drove into the woods or that  
19          David drove the car off into the woods until the  
20          point you are talking about right now, you are  
21          talking about a lot of time, or did it all happen  
22          just real fast?

23   A        No, sir, it all happened real fast. It is not  
24          like sitting here asking me a question and me  
25          answering about it, or me talking about it. It

1 takes a whole lot longer.

2 It just happened fast. One thing happened  
3 after another. It takes a lot longer to explain  
4 it than it actually happened.

5 Q Okay.

6 A It happened real fast.

7 Q So what happened next?

8 A Well, I could, you know, hear them moving around in  
9 the car and her crying and making some moaning  
10 sounds or something like she didn't like what  
11 was going on.

12 That went on for a few minutes, and he wasn't  
13 in there a real long time, and then they got out of  
14 the car.

15 David got out of the car and left the blond  
16 girl in the car, but she -- you could see her. She  
17 had sat up. She was sitting up, and she was like  
18 crying, I guess, because she was scared and everything  
19 that was happening, and she kind of like had her  
20 hands covering up her face.

21 Q She had her hands over her face?

22 A Yes, sir. So he shut the door and come out of the  
23 car, and as he did that, I told him, you know, I  
24 said, "Come and watch her. I'm going to go check  
25 things out" because I could hear the cars driving

1 around.

2 It sounded like they were coming right down  
3 the road where we were at there. So I wanted to  
4 go up towards the road a little bit and look around  
5 and check things out.

6 He walked over to where the brunette was, and  
7 I walked over by the car to walk behind the door,  
8 and Tony -- I think, something was said to Tony  
9 or Tony just got up and walked over with the boy  
10 by the car because the girl was in the car so he  
11 could kind of more or less watch both of them.

12 Q Okay, so which way did you go?

13 A I went -- well, I walked away from the brunette  
14 past the car. I went behind the car, like, in  
15 between the car and the road, more or less.

16 Q Up toward the road?

17 A Yes, sir.

18 Q Okay, and you saw Tony and Kenneth Franks get up  
19 and come back toward the car?

20 A Toward the front of the car, yes, sir.

21 Q Before you walked over to the road, did you have  
22 occasion to have a conversation with David or  
23 have David show you some money?

24 A Well, yes, sir, when -- as we passed, I said, you  
25 know, "Come and watch her. I'm going to go check

1 things out and see if anybody is coming or if  
2 anybody has heard anything."

3 As we passed, I walked away from her a little  
4 bit, and she wasn't really moving around too much.  
5 So I didn't figure she was going to get up.

6 As we passed each other, David handed me some  
7 money and said, "Here, stick this in your pocket."

8 I just noticed that it was some money, and I  
9 just grabbed it and put it in my pocket, and then  
10 I walked off behind the car, and he went right back  
11 to where the brunette was at.

12 Q Were you later able to make an estimate as to how  
13 much money it was?

14 A Yes, sir, later on I did.

15 Q How much?

16 A I flipped through it. I am not sure exactly how  
17 much it was. It was around four or \$500.

18 Q What happened next?

19 A Well, I walked back towards the car a little ways  
20 between the car and trees towards the road.

21 It is -- you know, there is not really that  
22 much distance between the car and the road, but  
23 it is far enough in the woods to where you couldn't  
24 see at night.

25 Tony and the boy had come up to the front,

1 and Spence went back over to where the brunette was.

2 It was kind of quiet. He went over there with  
3 her. I was looking around checking things out.

4 I heard some noises. It sounded like they  
5 were -- like she was -- she was struggling with him  
6 or something over there where Spence and the brunette  
7 were.

8 I looked over there, and they were struggling --  
9 making some sounds like they were struggling.

10 Q What do you mean "struggling" wrestling around?

11 A Like maybe she was -- like she was fighting him or  
12 something or, you know, like he was hitting her.

13 It looked like he was hitting her and maybe  
14 she was fighting him back and like, she tried to  
15 make some -- maybe holler or make some noise or  
16 something, but it was kind of an muffled noise like  
17 maybe he had his hand over her mouth.

18 She wasn't screaming, but they were making  
19 noises like they were fighting, and it looked like  
20 he was hitting her.

21 That went on for a few minutes, but you know,  
22 the noise that she was making, he was kind of --  
23 they were kind of muffled like he had his hand over  
24 her mouth or something. They weren't real loud  
25 yelling.

1                   That went on for a few minutes, and then it  
2                   stopped, the noise. The fighting and everything  
3                   stopped, and everything got still.

4       Q       What did the boy, Kenneth Franks, do?

5       A       He was -- well, when that happened when it -- you  
6                   know, you could hear it like it was fighting going  
7                   on and everything, and she was trying to scream or  
8                   holler, and he had said, "What's going on?" You  
9                   know, "What's going on over there?"

10      Q       Kenneth did?

11      A       Yes, sir, and Tony told him to shut up. He told him  
12                   to sit there and shut up.

13      Q       Okay, what happened next?

14      A       Well, when the fighting stopped and the noise  
15                   stopped, Spence was over there for a few minutes.  
16                   He was like kneeling over her on his knees over  
17                   her.

18                   She quit moving, and the noise stopped, and  
19                   he was there over her for a few minutes, and then  
20                   he got up and walked away from her towards the car.

21      Q       Okay, and then what happened?

22      A       He walked up towards the car where the boy was.

23                   Tony had told the boy to shut up and sit down,  
24                   and the boy was, like, sitting down in front of the  
25                   car off to the side of the fender there on the front

1 of the car.

2 Spence walked over to him where the boy was at,  
3 and you know, he was sitting down.

4 He kind of told him to get up, and he kind of  
5 helped him up -- kind of yanked him up.

6 Q Then what happened?

7 A He yanked -- he grabbed the boy by the shirt and  
8 yanked him up, stood him up, and you know, he told  
9 him, "Yeah, you all ripped that dude off."

10 The boy said, "Man, I don't know what you  
11 are talking about. We didn't do anything."

12 As he yanked him up, he backed away from the  
13 car a little bit towards Spence, and he said that  
14 he didn't have anything to do with it. He didn't  
15 know what he was talking about, and he said, "Yeah,  
16 you were fucking around with his old lady."

17 As he said that -- he said, "You were fucking  
18 around with his old lady." He kind of, you know,  
19 moved his head back, like, the brunette girl then  
20 was behind him.

21 Q So you got the indication he was talking about the  
22 brunette?

23 A Yes, sir.

24 Q Okay.

25 A And the boy said that, "No, we were just friends."

1 He said, "No, mother fucker, he walked in and caught  
2 you all fucking around on the couch or on the floor"  
3 or something like that. It was the couch or the  
4 floor, something like that, you know, that he said.

5 The boy was telling him, no, that they were  
6 just friends, and that he wasn't, and Spence told  
7 him that he was and said he walked in and caught  
8 them fucking around.

9 As he was doing that, he was saying it real  
10 loud, you know, and he had a hold of the boy, and  
11 he was like getting mad at him or something.

12 He said -- he started calling the boy's name --  
13 the boy names, and he called him something, and  
14 then he said, you know, he had a hold of him, and  
15 he said, "You fucking punk."

16 He hit him upside the head, and as he did that,  
17 then he had a knife, and he had the knife in front  
18 of him, and he kind of grabbed the boy by the  
19 throat and had the knife in front of him and was,  
20 you know, kind of yelling pretty loud at him when  
21 he said that.

22 When he hit him, he was telling him all of that,  
23 and he grabbed the boy by the throat and started,  
24 like, sticking him with the knife because the boy  
25 was starting to move back a little bit.

1           He was trying to say something or like, he  
2           couldn't make any sound, because -- he was trying  
3           to make a sound, but it wasn't very loud because  
4           Spence had him by the throat.

5       Q     Where was David poking him with the knife?

6       A     In the chest area. He -- you know, he had him up  
7           and had him by the throat, and he was just kind of  
8           jabbing him.

9       Q     What do you mean by "he was poking or jabbing him"?  
10           Are you talking about stabbing him?

11      A     No, sir, he wasn't like stabbing him real hard or  
12           anything. He was just kind of sticking him with  
13           the knife.

14           As he was doing it, he was backing him up  
15           towards --

16      Q     So Kenneth was still standing up?

17      A     Yes, sir.

18      Q     And he was just -- little short jabs like that?

19      A     Yes, sir.

20      Q     Then what happened?

21      A     Well, as he was jabbing him with the knife, Franks  
22           went -- you know, he was moving back trying to get  
23           away from him, but he had -- I guess, he had a  
24           pretty good hold on him.

25           As he was sticking him with the knife, he backed

1997

1 him all the way up to the car. They had come a  
2 little bit a ways from it, and as he backed him up  
3 to the car kind of -- I don't know exactly what  
4 he said. He was, you know, mumbling something to  
5 him.

6 He backed him up to the car, and he just  
7 started stabbing him several times real hard with  
8 the knife.

9 Q You are talking about deep stabs, now?

10 A Yes, sir.

11 Q What happened then?

12 A Well, when he did that, he stabbed him several  
13 times. I don't know how many, and he kind of  
14 pushed him back towards the car.

15 Whenever he finished, he kind of pushed him  
16 away from him. He finished stabbing him and pushed  
17 him away from him a little bit, and he kind of  
18 went back to the car and fell back towards Spence.

19 Q Kenneth did?

20 A Yes, sir.

21 Q He fell towards Spence?

22 A Yes, sir, he fell forward, and as he fell down to  
23 the ground, he fell kind of into Spence.

24 He kind of put his leg up to him like to keep  
25 him from rolling over or you know, moving away from

1 him.

2 The ground was kind of damp, you know, a little  
3 bit around in front of the car there.

4 Q So you are saying David, like, put his knee up or  
5 what?

6 A Yes, sir, as he fell down, he come down, and he  
7 kind of put his knee up toward him when he fell on  
8 the ground to, like, keep him from rolling over on  
9 his stomach or rolling toward him, you know.

10 He just kind of held him like that on his  
11 side the way he fell down.

12 Q What happened then?

13 A Well, when he was -- when he let go of him as he --  
14 all this happened real fast. It was happening real  
15 fast, and as he let go of him, you could then --  
16 all the time, he was trying to make some noise or  
17 scream or something, but you couldn't really hear  
18 it because he had his hand on his throat.

19 As he let go of him, you could hear Franks  
20 start making some noise, and as he was falling  
21 down, it was like he was trying to catch his breath,  
22 or he was having a hard time breathing, or like,  
23 he was gasping for air or something.

24 You know, it just took a second for him to  
25 fall down, and then he was laying there, and you

1           could hear like he was trying to breathe, gasping  
2           for air.

3           Spence kneeled down over him, and he -- you  
4           know, like they were down on the ground then by  
5           the front of the car.

6           I could see, like, his legs over -- his legs  
7           kind of curled up like maybe he had bent his knees,  
8           like, laying on his side, like, maybe he was curled  
9           up in a ball or something or trying to get away  
10          from him.

11          David was kneeling over him, and he was still  
12          making that noise for a few seconds, and then he  
13          just -- he stopped.

14        Q     Did you ever hear any more noise out of Kenneth  
15              Franks?

16        A     No, I didn't hear any more noise.

17        Q     Did you ever see Kenneth move again by himself?

18        A     No, sir, I didn't.

19        Q     Where was Tony when this was going on?

20        A     I am not sure where Tony was.

21        Q     Was Tony around anywhere in your sight, in your  
22              view?

23        A     No, I don't remember him being in my view.

24        Q     Tell the jury what happened next.

25        A     Well, as that happened, well, it got quiet and like,

1           Spence was down with the boy for a few minutes.

2           Well, I was -- that made a lot of noise. It  
3           seemed like it was a real loud noise, and I was  
4           looking around to see if anybody had heard that  
5           was coming down that way because we could hear  
6           the cars from the other side.

7           It sounded like they were right there, and as  
8           Tony walked up, at that time, I am not sure where  
9           he was at, but as he walked up towards the car, and  
10          as David stood up, there was a few minutes there  
11          after Kenneth fell down to the ground, and it got  
12          quiet.

13          Tony walked up, and David had stood up around  
14          that time, and he either said, you know, "Get the  
15          girl out of the car" or "Let's get the girl out of  
16          the car."

17          Tony was by the passenger's side door, at that  
18          time. So he opened the door and told the blond  
19          girl to get out of the car, and they got her out  
20          of the car.

21          They got her out of the car and walked around,  
22          like, to the right front fender of the car. It  
23          was just a couple of steps, just a few feet from  
24          the door.

25          She was kind of, like, with her back -- standing

1 up with her back. They got her out of the car,  
2 and she was crying and saying not to hurt her and  
3 don't hurt her.

4 She was, like, crying, and they got her out  
5 and stood her up by the -- she was standing right  
6 next to the right fender.

7 She was saying, "Don't hurt me," you know, and  
8 Spence said that, "She's seen too much."

9 He said, "She knows what's going on. She's  
10 seen too much." Tony was standing there, and he  
11 was -- you know, it was like he was saying it, you  
12 know, pretty loud and pretty fast. He was talking  
13 real fast. Everything was still happening real  
14 fast.

15 Q David was talking pretty loud and pretty fast?

16 A Yes, sir.

17 Q Okay.

18 A And you know, whenever he got up, it was just like  
19 it wasn't anytime there that everything stopped.

20 He was saying that, you know, we couldn't let  
21 her go, "We can't let her go. She's seen too much  
22 and we can't let her go. She knows what's going  
23 on."

24 She was -- while he was saying that, she was  
25 saying, you know, "Don't hurt me. I didn't see

1 anything. I won't do anything. I won't say  
2 anything. I haven't see nothing, and I won't say  
3 anything."

4 He was saying, "No, she's seen too much. We  
5 can't let her go. If we don't do something to her,  
6 we're going to get caught, and you know what that  
7 means."

8 All of that was happening real fast. He was  
9 saying that real fast and real loud and right --  
10 Tony was right next to him like he was, you know,  
11 right next to him saying it to him and loud and  
12 fast.

13 He had the knife in his hand from when he got  
14 up with Franks, and as he was saying that, everything  
15 was happening so fast. She was also at the same  
16 time saying not to hurt me or anything. She was  
17 against the car.

18 They were right next to her, and as all of  
19 that was happening, she was crying. I guess, she  
20 knew -- I don't know, but she made a sudden move.

21 As that was happening, Spence had the knife  
22 like he was trying to push it to Tony. From where  
23 I could see them at, Spence had the knife like he  
24 was pushing it to Tony saying, "We can't let them  
25 go. I killed them two. I have already killed them.

1 We can't let her go. If we don't, she's going to  
2 tell."

3 As all that was happening, and he was screaming  
4 real loud, she made a sudden move. It seemed like  
5 Spence handed Tony the knife.

6 As she made the sudden move, they both reached  
7 to her. She started to make a noise like she was  
8 hollering or something.

9 One of them covered her mouth up because it  
10 was muffled, and Tony was hitting her and stabbing  
11 her with the knife.

12 Q So from where you were standing, it looked to you  
13 like Tony had stabbed Raylene Rice?

14 A Yes, sir, they were -- it happened real fast. They  
15 were both together, and they both were on her and  
16 pushed her back, as it happened.

17 She went back against the car, and as it was  
18 happening, it looked to me like Tony was hitting her  
19 and stabbing her with the knife.

20 Q What happened then?

21 A Tony backed off.

22 MR. VANCE: Your Honor, I am  
23 going to enter an objection and make a motion to  
24 strike all of the testimony concerning the death  
25 of Raylene Rice, as it is now obvious from this

1 particular witness that David Wayne Spence is not  
2 involved in the death of Raylene Rice.

3 We renew our objection that it is an extraneous  
4 offense, the matters dealing with Raylene Rice,  
5 as they have no connection here.

6 He is only on trial here for the death of  
7 Kenneth Franks.

8 THE COURT: Objection overruled.

9 MR. FEAZELL: Thank you,  
10 Your Honor.

11 Q Mr. Melendez, you are telling us things as best you  
12 remember it and the way that you remember seeing it.  
13 Is that correct?

14 A Yes, sir.

15 Q What happened next?

16 A Well, the knife fell to the ground. They backed  
17 away from her.

18 As they backed away from her, she kind of  
19 pushed up against the car. When all that happened,  
20 she kind of fell toward David.

21 Tony backed away farther, and she fell towards  
22 David, and she kind of fell into him and fell down  
23 to the ground.

24 You know, he kind of leaned into her like he  
25 did with Franks with his leg. I don't know, but he

1           leaned into her.

2           Tony looked around like to where I was at,  
3           and he looked real scared, and he looked around,  
4           and he just walked away and kind of walked up the  
5           little hill there where it was at.

6           David bent down and picked up the knife and  
7           was leaning -- was leaning over the blond girl. I  
8           guess, he was making sure she was dead or something.

9       Q     So he had the knife. You could see him with the  
10           knife and leaning over Raylene?

11      A     Yes, sir.

12      Q     What happened after that?

13      A     Well, you know, I was still where I was at looking  
14           for the road. That made a lot of noise, too.

15           So I was checking it out, and because it  
16           sounded like cars were coming down the road. Tony  
17           walked up.

18           He stayed over her for a few minutes like  
19           kneeling over her, and everything looked okay. It  
20           didn't look like anybody had heard anything.

21           So I started walking back towards the car,  
22           and I told David, I said, "Man, let's get the fuck  
23           out of here."

24           He leaned over her, and he was starting to  
25           get up as I was walking over there, and he said --

1           you know, he said, "Okay," and I said, "Well, we  
2           need to go. Let's get the fuck out of here right  
3           now."

4           He said, "Well, we can't leave them here" and  
5           he said --

6       Q     David said that?

7       A     Yes, sir, and I said, "Let's just leave them here,  
8           and let's just go."

9           He said, "No, we can't leave them here.  
10          Somebody may have seen us drive through or seen  
11          us in the car" or something like that or seen us  
12          talking to them.

13          He said, "We've got to move them somewhere.  
14          I know somewhere we can move them."

15          I said, "Man, fuck that shit. I don't want  
16          to mess with it. Let's go."

17          He kept telling me that we couldn't leave them  
18          there and that we had to move them.

19          He said, "We need a truck." I had a pickup  
20          truck. He said, "We need a truck," and I told  
21          him that no, I wasn't going to do that, and we  
22          talked back and forth about that for a few minutes.

23          He said, "Well, we need to move them." Somebody  
24          might have seen us driving in my car.

25       Q     So you and David were arguing about whether to

1 leave or take the bodies somewhere?

2 A Yes, sir.

3 Q How was David acting, at that time?

4 A Well, you know, he was -- everything was going --  
5 it was like we were all nervous. He was talking  
6 real fast, and like, we had to move them.

7 He kept talking that we had to move them, and  
8 we discussed it for a few minutes, and then I decided  
9 that, you know, we would go get the truck and move  
10 them in case somebody seen us come in, you know.

11 Q So what did you do?

12 A I decided to go get the truck. I said, "Yeah, I  
13 will go get the truck." He said, "Okay."

14 Tony had walked back around because he heard  
15 us talking, and we decided to go get the truck.

16 As we were discussing this or arguing about  
17 that, as I was coming up to the car, it -- you know,  
18 he had moved around a little bit, and I walked  
19 away from the car for a minute when we were discussing  
20 that, and I said, "No, I don't want to go get the  
21 truck. Let's just leave."

22 During that time, he had walked around towards  
23 the back of the truck.

24 Q The back of the car?

25 A The back of the car and opened the trunk, and he

1 put something in there. I don't remember exactly  
2 what he put in there. I just remember him opening  
3 and closing the trunk.

4 Q Put something in the trunk of his own car?

5 A Yes, sir.

6 Q All right, did you tell Tony then what you were  
7 going to do?

8 A Yes, sir, he came down, and we decided and I told  
9 him that we were going to go get the truck.

10 So Tony and I were going to go drive into  
11 town and get the truck and David said he was going  
12 to stay out there.

13 Q Is that what you did?

14 A Yes, sir.

15 Q Who drove David's car?

16 A I drove his car to where my truck was at.

17 Q Was Tony with you?

18 A Yes, sir.

19 Q What did Tony think about going back and getting  
20 David? Did he tell you?

21 A Yes, sir, we left -- as we left, we didn't say  
22 a whole lot. It was just kind of quiet.

23 Then we started discussing getting my truck  
24 and going back and picking David up, and we discussed  
25 the fact of not going back and picking David up.

1           Then I told Tony that no, we had to go back.  
2           We couldn't leave him.

3           We argued about that for a few minutes, and  
4           then I told him that we were going to go back and  
5           pick him up.

6       Q     Where did you go to get your truck?

7       A     My truck was parked out at Bosqueville. I left it  
8           over at a person I knew out there that I had parked  
9           it out there for a few days.

10      Q     And is that where you went?

11      A     Yes, sir.

12      Q     And when you got there, was your truck there?

13      A     Yes, sir, it was.

14      Q     And what did you do when you got to the truck?

15      A     I parked the car on the road there. It is kind of  
16           like out in the country a little bit off of  
17           Bosqueville Road.

18           It has got a little driveway entrance there  
19           that is fairly long, and my truck was parked about  
20           halfway between there and the house.

21           So I went over and got my truck, started it up  
22           and just drove out. Tony drove David's car, and we  
23           took the car over to his mother's house, and Tony  
24           got in the truck, and we drove back.

25      Q     You took the car where?

1 A To David's mother's house and parked it on the side  
2 of the house there.

3 Q All right.

4 A And we drove back out to the park.

5 Q With you driving the truck?

6 A Yes, sir.

7 Q What happened when you and Tony got back out to  
8 Koehne Park in your truck?

9 A We drove back out to the park, and I drove around.  
10 I was -- I didn't turn off into the wooded area  
11 where the car had been. I drove around back to  
12 the circle area.

13 Before we had left, Spence said that he would  
14 be waiting for us when we got back, and when we  
15 drove up to the circle area, we saw him. He was  
16 like over by one of the picnic tables there where  
17 I backed up across the street from where we had  
18 seen --

19 Q Okay, then what?

20 A Well, he come up to the -- we got out of the truck.  
21 He came up to the truck, and I said, "Let's hurry  
22 up. Let's get them and go," and I told Tony to  
23 stay there and watch for anybody coming.

24 Spence and I went into the woods and picked  
25 them up. We went --

1 Q So you brought them out. You went in and brought  
2 them out from the opposite end of where you had  
3 driven in David's car?

4 A Yes, sir.

5 Q Okay, so actually, were you taking the bodies back  
6 out to the circle area?

7 A Yes, sir.

8 Q Okay, what did you do?

9 A Well, we went in, and we got -- we picked up one  
10 of the girls first, and we went and picked the  
11 boy up and another girl.

12 When we went in, they were still about where --  
13 you know, where we had left them, and when Tony  
14 and I left.

15 Spence and I picked up the brunette girl. I  
16 got her by her feet, and he got her by the shoulders,  
17 and we picked her up and walked out to the truck.

18 At that point, I noticed that her legs were  
19 tied up, and I don't remember, you know, her arms  
20 dangling or anything as we were carrying her out.

21 So I thought maybe her hands were tied, and  
22 it looked like something may have been around her  
23 mouth.

24 As we got to the truck, it was light in that  
25 area. When we got the truck and laid her down in

1 the truck, I could see that she was -- her hands  
2 were tied, and her legs were tied, and she had  
3 something around her mouth.

4 Q Okay, what happened after that?

5 A We went back and got the boy and the girl. They  
6 were -- when we took them back, they were generally  
7 in the same -- tied up in the same manner that the  
8 first girl was.

9 Q After you got -- you and David got all three of the  
10 bodies?

11 A Yes, sir.

12 Q Kenneth, Jill and Raylene into the truck?

13 A Yes, sir.

14 Q Then what happened?

15 A We laid them on the back of the truck there, and  
16 I am a painter. So I had some paint and some paint  
17 equipment and stuff back there.

18 I had an old drop cloth that was back there,  
19 and we had to leave the park, and I mentioned  
20 something about nobody seeing three bodies in the  
21 back of the truck.

22 So we got this old piece of drop cloth I had  
23 that was big enough to cover them up, and Spence  
24 and I put the drop cloth over them and kind of  
25 put it on the sides of them there where it wouldn't

1 blow off to cover them up.

2 We got in the truck, and I was driving, and  
3 my brother was in the middle, and Spence got on the  
4 passenger side and drove out of the park.

5 Q Drove out of Koehne Park?

6 A Yes, sir.

7 Q Okay, what did you do as you got back to the entrance  
8 of Koehne Park?

9 A We went to the -- drove up to -- well, we come in  
10 at the entrance at Koehne Park, and we took a  
11 right and went up Lake Shore and cut back across  
12 on some roads over there by Highway 6.

13 Spence said he knew a place to dump them off  
14 at Speegleville.

15 Q Spence said he knew a place?

16 A Yes, sir.

17 Q All right, so --

18 A So I knew that Highway 6 went over to the Twin Bridges  
19 to Speegleville. So I cut across town in a  
20 neighborhood area there off Lake Shore and got on  
21 Highway 6, and we started to drive over the Twin  
22 Bridges.

23 THE COURT: All right, let's  
24 have a five minute recess for the Court Reporter.

25 (Brief recess.)

1 Q Now, as we broke, Mr. Melendez, you had just  
2 testified about coming out of Koehne Park taking  
3 the route over to Highway 6.

4 A Yes, sir.

5 Q If you would, with the pointer, again, here is  
6 Koehne Park right here and the circle and the  
7 entrance.

8 Show the jury the route that you took over  
9 to Highway 6.

10 A Okay, we came up Lake Shore Drive here.

11 Q Speak up loud. You may need to --

12 A Okay, the entrance is here. We come out on Lake  
13 Shore Drive. We drove up Lake Shore Drive a little  
14 ways. There is a store there. We took a right,  
15 right in that area somewhere. It is some  
16 neighborhoods. I am not sure --

17 Q You were talking about -- are you talking about the  
18 Hilltop Store?

19 A Yes, sir.

20 Q In this area in here?

21 A Yes, sir, up in this neighborhood area, and we cut  
22 across to Fish Pond Road and went down. I think,  
23 it was in the neighborhood here.

24 Q Okay, this is Fish Pond Road.

25 A We cut through the neighborhoods to Fish Pond Road,

1 and went down this road over to the bridge.

2 When I got here, I had -- there is a -- the  
3 only way you can get on is if you take a left.

4 THE COURT: Do you want to move  
5 the easel and him out here more and he won't have  
6 to -- they can hear him better and everybody else  
7 can see better that needs to. Come on around here,  
8 and that way they will be able to hear and see  
9 better.

10 Q Okay, Mr. Melendez, if you would, step to the side.  
11 Show the jury where you were. You were talking  
12 about this area right here on Fish Pond Road?

13 A Yes, sir, if you go straight on it, you go under  
14 this underpass here. I went straight a little bit.  
15 So I backed up and took a left here.

16 Then there is an access road. I went on the  
17 access road and got on the on-ramp.

18 This is Highway 6. I got on Highway 6 and  
19 went across the Twin Bridges here.

20 Q All right, what did you do, Mr. Melendez, after you  
21 crossed Lake Waco on the Twin Bridges?

22 A We got across the Twin Bridges and went down this  
23 highway a little ways to the first exit to the  
24 right. I think, that is right in here somewhere.

25 Q Okay, and for the jury's information, this white

1 line here is just the end of this picture. It is  
2 not a road or anything.

3 So then what you did was take this exit  
4 right here?

5 A Yes, sir.

6 Q All right.

7 A We went down that exit. It curves here, as you  
8 can see, and we went down there. It curves a  
9 little bit.

10 We went across it, and then there is a road  
11 that passes -- like, there is a park entrance  
12 there.

13 Q You are talking about the gate entrance to  
14 Speegleville Park right in here?

15 A Yes, sir.

16 Q Where the gate is and where they have the trailer?

17 A Yes, sir.

18 Q All right, and did you go through that gate, or  
19 did you go past the gate?

20 A No, sir, we went past the gate down this road  
21 here that curves off away from the highway.

22 Q All right, this one here and went on past the gate  
23 and up this road here? Take your time.

24 A No, sir, I think, when you come off the access  
25 road, the exit -- the exit curves here. We cut

1 across that exit, I believe. This is it right  
2 here.

3 Q All right.

4 A Whichever road passes the entrance, it is hard for  
5 me to tell.

6 Q This is the entrance right here.

7 A Okay, we went past that entrance and down this road.

8 Q Okay, I believe, this is the entrance into the park  
9 right here.

10 A No, sir, we passed that entrance, and we went by --  
11 bypassed the entrance and went down this road here.  
12 It is kind of confusing which one of these roads  
13 is which here.

14 Q All right, then after going up this road here,  
15 show the jury how far you went up that road past  
16 the gate.

17 A We went past the gate. We went quite a ways past  
18 the gate to the road. There was another road that  
19 intersects with it, a gravel road.

20 Q You are talking about up here?

21 A Okay, it's up here. We went down this road and  
22 turned -- here is where we turned., Here is where  
23 the gate is, and we went down this road up to  
24 where -- this is the gravel road. It runs into  
25 it, and right along in here, we got off this gravel

1 road and took a right and went down, what I thought,  
2 was a road. It was an opening there.

3 Q An opening in the fence?

4 A Yes, sir. When we come through this area, once we  
5 cross these bridges, Spence gave me directions on  
6 which way to go.

7 Q So he was directing your every turn?

8 A Yes, sir, I knew how to cut across here, but once  
9 we got on the bridges, he had to direct me around  
10 Speegleville Park and which way to go from there.

11 Q Do you notice this marked in area right here?

12 A Yes, sir.

13 Q Which I believe is the fire lane?

14 A Yes, sir.

15 Q Could that have been the way that you went?

16 A Yes, sir, when we turned off the road here, we  
17 made a direct turn on that entrance to the right  
18 and that -- this dark area here, that is the road  
19 we took, or the fire lane, as you called it.

20 We come around the curve here and went down  
21 this road until there was an area where we could  
22 cut back on the paved road, and we just kind of  
23 cut off.

24 Q So you cut back up onto this paved road here inside  
25 the park?

1 A Yes, sir.

2 Q What did you do after you got on the paved road,  
3 if you remember?

4 A We got on the paved road, and we got down it. We  
5 went down it a pretty good ways.

6 We went down the paved road, and then we got  
7 off on a dirt road. I think, we come down the  
8 paved road here. It is hard for me to read this map.  
9 It kind of loses me.

10 Q Well, was Mr. Spence telling you where to turn?

11 A Yes, sir, we had got on the paved road, and then  
12 we turned off. I think, it was here.

13 We turned off here and went to a wooded area.  
14 I am not sure where the turn is.

15 We went on a paved road, come down a paved  
16 road and then we turned off on another paved road  
17 and went like off the road into another dirt road  
18 that led us into a wooded area.

19 Q All right.

20 A I believe, it was this road here. We come down this  
21 road. After we got on it, it is a long ways because  
22 there is a fence line. We got on this road and  
23 stayed on the paved road.

24 We turned here. It was a dirt road somewhere  
25 in here. I believe, this is it.

1           We come down, and we ended up in a wooded  
2           area right by the lake here. We went down the  
3           road. It was like a field, and we went down the  
4           road, and the road went into a wooded area.

5           We went and stopped right in these woods here.

6   Q       And did Mr. Spence also tell you how to get out  
7           of the park?

8   A       Yes.

9   Q       Did you get out pretty much the same way you got in?

10   A       Yes, sir, we just -- well, we come in on the dirt  
11           road. We just followed that road out. It branched  
12           off two ways.

13           We took a right and got -- somehow or other  
14           got back on this paved road and ended up -- he gave  
15           me directions and we ended up back on a paved road  
16           and ended up the other way.

17   Q       Out through the fire lane and back out the way you  
18           came?

19   A       Yes, sir, we could see the highway. I knew where  
20           we was when we came back and got on this road. You  
21           could see this highway, cars, and we got back on  
22           another road.

23           We ended up back on the highway.

24   Q       At any time, did you ever go through the gate, or  
25           did you all go past the gate?

1 A No, sir, we passed the gate because I knew where  
2 I was at here, in this area. There was a park  
3 entrance there.

4 As we come off here, the entrance is right  
5 closer after you drive off. It is not that far.  
6 I said, "You are not talking about right there --  
7 turning right there," and he said, "No, go up  
8 farther and follow the road out."

9 Then he gave me directions on which way to go,  
10 and when we got to where the road intersects here,  
11 he told me to slow down because it was a gravel  
12 road.

13 This also turned into gravel. This was paved,  
14 kind of an older bumpy road, and then when we got  
15 in that area, he told me to slow down because there  
16 was a turn.

17 When we turned, we turned off into another dirt  
18 road that went around here like this.

19 Then later on, there was a way to get back up  
20 on the paved road.

21 I thought it was just an old dirt road.

22 Q All right, take your seat, please, sir.

23 Now, after the three of you with the three  
24 bodies in back of the truck got to the wooded  
25 area which has already been identified with the red

1 pen sticking in it, what happened then?

2 A We drove into the wooded area. As you go into it,  
3 you can see the water there, and then it just --  
4 woods are there. It is pretty thick.

5 We drove about halfway in there, and they --  
6 he said to stop. So we stopped. He said, "Stop  
7 right here." So we stopped.

8 Q Then what happened?

9 A Well, he said we were going to dump them off here,  
10 to let him out.

11 So I stopped the truck and said, "Okay, well,  
12 let's hurry up and get them out."

13 We got out of the truck. I got out. Spence  
14 got out, and Tony got out.

15 I told him to watch to see if he could -- it  
16 was dark out there.

17 Q Tony to watch?

18 A Yes, sir, to see if he could see -- you could see  
19 any headlights or something if they come off into  
20 that field area that we drove in on, that dirt road.

21 He kind of walked away from the truck some,  
22 and Spence and I let the tailgate down and pulled  
23 the cover off of them and started to unload them.

24 We got the brunette girl, pulled her out. I  
25 grabbed her by her feet like I did when we put them

1 in the truck.

2 He grabbed her by her shoulders, and he was  
3 kind of saying, "Come over here this way" because  
4 it was real dark, and it was real thick woods and  
5 bushes.

6 We went over to the left of the truck there.  
7 We walked in a bunch of bushes in a high grassy  
8 area where the trees were a pretty good ways and  
9 laid the brunette girl down there.

10 Q All right, then what happened?

11 A Well, as we went over there and laid her down and  
12 got done, I told him, "Let's hurry up. Let's hurry  
13 up and get this shit over with."

14 He said, "Okay, I'll be with you in a minute."  
15 He kind of stayed there for a minute as we laid the  
16 brunette down.

17 I walked away and was walking towards the truck  
18 telling him to come on.

19 Q You mean, David stayed with the body?

20 A Yes, sir.

21 Q All right.

22 A And when I looked back at him to tell him, you know,  
23 "Come on, let's hurry up," he was kind of like  
24 kneeling over her looking at her, I guess, or kind  
25 of moving her around with his foot or something.

1 I don't know what he was doing, but I thought  
2 maybe he was just checking them out to make sure  
3 they were dead or they weren't going to move or  
4 something.

5 I got back to the truck and told him to come  
6 on, and in a few minutes, he came along, and we got  
7 the blond girl.

8 We got her. We took her in the same area but  
9 not quite as far as we had taken the brunette girl,  
10 and laid her down.

11 I told him, "Let's hurry." I was telling him  
12 to hurry, and he said, "Okay."

13 I walked away from him again back towards the  
14 truck, and he stayed there like he did with the  
15 brunette girl.

16 Q Stayed with her awhile, too?

17 A Yes, sir, and then he kind of -- I was telling him  
18 to hurry up and come on, and when he did come back  
19 to where the truck was, I said, "Come on, let's  
20 hurry up and take him out." He said, "Wait, let's  
21 move the truck up a little bit. Let's let him off  
22 somewhere else up a little farther."

23 There were a bunch of bushes, and it was  
24 summertime, and there was a bunch of bugs and stuff  
25 out there. So I told him, I said, "Okay."

1 He said, "I'll get the truck and show you  
2 where to go." So I told Tony to get in the truck,  
3 and I started the truck up, and he walked in front  
4 of me. It wasn't that far.

5 We walked up -- as he walked up the road a  
6 little ways, I drove, and he just kind of walking  
7 and motioned me this way, and right there, the  
8 road turned into a Y, more or less.

9 He went to the right of that and said, "Stop  
10 right there."

11 So I turned to the right of it and stopped the  
12 truck right there.

13 Q Okay, then what happened?

14 A Well, I got out of the truck, and he was walking,  
15 like, already past towards the back to the back of  
16 the truck. It was right there. There was a lot  
17 of bushes, too, and they were almost touching the  
18 car.

19 If you drove through there, they would scrape.  
20 So as I got out, I told him, "Just a minute. I'm  
21 going to go up there towards the front" because  
22 there was a little bit of woods, and then there  
23 was an open area where you could see the road.

24 The road is out there, and I said, "I'm going  
25 to walk up here and check it out." I don't remember

6  
1 if Tony got out of the truck or not.

2 I think, he opened the door. I don't remember  
3 if he got out or not, and I said, "I'll help you in  
4 a minute" and he said, "I'll get him."

5 We were right there -- it was -- the road there  
6 wasn't that big. So it wasn't that far to take  
7 somebody out. He went towards the back, and I walked  
8 up in front of the truck.

9 Q What did you do up at the front?

10 A Well, I walked down the road a little ways, and we  
11 had just carried the other two bodies, the two girls,  
12 and I went walking around -- it curves a little bit,  
13 and I was feeling sick to my stomach.

14 So I went around the curve there, and I  
15 vomited a couple of times.

16 I looked around, and I didn't see any cars or  
17 any lights or anything. So that took a few minutes.

18 So when I got myself together, I come back and  
19 walked down the road. There was a little curve  
20 from where we stopped up the road a little ways a  
21 few feet.

22 I walked back, and David was already, like,  
23 at the back of the truck, and as I walked over  
24 there, I said, "I'll help you." He said, "No, I  
25 already got him," and he was, like, off more to the

1 bushes than on the road there.

2 When I went over behind him, I couldn't really  
3 see because his back was to me and the bushes and  
4 the truck and it was real cramped there.

5 It was like he -- I thought he was pulling him  
6 farther into the bushes off the road because he  
7 was still, you know, struggling a little bit, or  
8 whatever he was doing, and he was more or less half  
9 in the bushes and half still by the truck, but he  
10 was, like, you know, moving the boy. I thought he  
11 was moving him back farther.

12 Q Okay, did David say anything to you right then?

13 A No, he didn't. I told him, "Well, hurry up. Let's  
14 go." Because he had already had him out of the truck,  
15 and I thought he was moving him back farther, and  
16 he said, "Okay, just a minute."

17 I said -- I just told him, "Come on, man, let's  
18 hurry up and go."

19 Tony said, "Hurry up. Let's go," and he said,  
20 "Okay, just a minute." Then in a minute, he walked  
21 off away from the bushes and shut the tailgate and  
22 went around to get in the truck, and I got in the  
23 truck and started it up and started to drive out.

24 Q All right, then what happened?

25 A Well, we were starting to drive out, and I told him

1 to tell me which way to go.

2 We drove out, and we come on another road, and  
3 he said, "Just go on until you get on the paved road  
4 and take a right."

5 So as we started driving out, we had gotten --  
6 all got in the car, and I was trying to see where I  
7 was going because I was driving, and Tony and David  
8 were saying something.

9 They were talking. I really wasn't paying  
10 that much attention at first, and then as we started  
11 going out, I remember him saying -- him and Tony  
12 talking. He was saying something like, you know,  
13 "They will sure freak out when they find him."

14 Q Meaning Kenneth Franks?

15 A Yes, sir.

16 Q What happened after that?

17 A Well, he, you know, showed me which way to go to  
18 get out of there, and after we come back where we  
19 come in that little entranceway on that dirt road,  
20 we got back on the gravel road, and on that paved  
21 road, I could tell where I was at because I could  
22 see the highway.

23 We cut across in that direction and got on the  
24 highway and went back across the Twin Bridges back  
25 into town.

1 Q Okay, then what happened?

2 A We drove into town. As we were driving, we had,  
3 you know, said we weren't going to say anything  
4 about it, and we were all in this together, and  
5 we weren't going to tell anything to anybody about  
6 it.

7 David said nobody would know about it, just  
8 we knew about it, and you know, we were in trouble.  
9 I was telling him we was in big trouble, that you  
10 know, everything that happened was bad.

11 Q Okay, slow down just a little bit. Everything  
12 that happened was bad?

13 A Yes, sir.

14 Q All right, then what?

15 A Well, we drove -- I drove across town and cut  
16 through some side roads -- not so busy roads there,  
17 and I dropped Tony off first.

18 Tony was staying with some friends or some  
19 relatives or something. Anyway, I dropped him off  
20 up around North 18th, around -- there is a store  
21 there down the street from where he was staying  
22 by this Armadillo club.

23 He was staying in that area. So since it  
24 was late and I didn't want -- we didn't want anybody  
25 seeing me drop him off that night, I dropped him

1 off a little ways down the street up by the store.

2 Q All right, then what happened?

3 A We -- well, I stopped by the store, and it is kind  
4 of a busy area there. So I was in a hurry to go  
5 ahead and let him off, and that is when I looked  
6 through the money that David had given me.

7 It was kind of like there -- because the store  
8 was across the street, and I just kind of quickly  
9 thumbed through the money and looked at it and split  
10 it up in about three-thirds. I looked at it and  
11 split it up about even, and Tony had gotten out of  
12 the truck, and I handed it to David and said, "You  
13 all split that up."

14 I gave them two splits. It was split up in  
15 half of what I gave him, and I -- he was leaning  
16 out of the truck talking to Tony and we said we  
17 would see him later, and I thought that, you know,  
18 he had given Tony the money.

19 Q Did you ever see Tony get the money?

20 A I never saw him get the money.

21 Q All right, what happened then?

22 A Then I took David over to where his car was parked  
23 at his mother's house.

24 Q All right, then what happened?

25 A I -- well, I went over there and stopped.

1 Q Sit up by the microphone, please.

2 A I went over there and stopped, you know, to drop  
3 him off, and I told him that, you know, I was --  
4 as we got there, I told him that I was thinking  
5 of getting all my things together and leaving town  
6 the next day.

7 He said, "Well, hold on a minute. You know,  
8 I am supposed to get -- I am supposed to get some  
9 money." He said something like around \$5,000,  
10 something like that, and he said, "Why don't you  
11 stick around for a little bit, hang around for a  
12 few days, and I will get the money, and we'll both  
13 leave together."

14 Q Okay, did you know where David was going to get  
15 the money?

16 A I figured that -- I just thought that he was going  
17 to get the money from the dude he had told me about,  
18 about at the store, about the drug deal for the people  
19 ripping him off for the drugs or --

20 Q Had you ever known David to have that kind of money  
21 before?

22 A No, sir.

23 Q Okay, so what happened after that?

24 A I told him, "Okay, I'll give you a holler. Maybe  
25 I'll stick around for a couple of days."

1           So I dropped him off, and then I left and  
2           drove down -- my grandmother lived down the road  
3           a ways where they picked me up. That store -- that  
4           intersection was like between his mother's house and  
5           where my grandmother stayed.

6           So I drove down to my grandmother's house and  
7           parked the truck and changed clothes and got the  
8           clothes that I had on and the drop cloth and stuff  
9           and stuck them in a paint bucket I had, and I just  
10          sat up on the porch all night thinking about all this  
11          until the next morning.

12          Then I got up and -- well, I never went to sleep.  
13          I sat there. I got the truck and went -- started  
14          towards work, and I was at a Seven Eleven store  
15          across the street, and I, you know, stopped there  
16          and threw the drop cloth and the pants and the shirt  
17          that I had had on in the dumpster there at the  
18          Seven Eleven store.

19       Q       Okay, when was the next time you heard from David?

20       A       I hadn't -- I didn't see David for awhile. I called  
21               over at his house a couple of times, and then I  
22               got in touch with him. He wasn't there. So I called  
23               again.

24               I got in touch with him about around two weeks  
25               later, around there.

1 Q So you stayed in town for two weeks?

2 A Yes, sir.

3 Q Why did you do that if you had told him you were  
4 going to split like the next day?

5 A Well, I don't know. I just -- well, when I went  
6 back to work, everything seemed okay, and you know,  
7 I had been working, and I had a little money but  
8 not a whole bunch of money, and he had said  
9 something about, you know, he was supposed to come  
10 into some money, the \$5,000, to hang around and  
11 wait and we would both leave together.

12 So I thought maybe if we did leave, we could  
13 use some money. So I decided to wait and see if  
14 he could get the money.

15 Q Okay, so you heard -- you got in touch with him  
16 finally about two weeks later?

17 A Yes, sir.

18 Q Was that over the phone?

19 A Yes, sir, I called him.

20 Q All right, what happened?

21 A Well, I had gotten off of work. I had taken my  
22 truck and left it somewhere to get it worked on,  
23 and from where my grandmother lived, it wasn't that  
24 far.

25 So I had walked back and forth to work, and I

1 had gotten off of work and walked up to the store,  
2 and I just thought I would call him and see if he  
3 was at home.

4 I talked to him and told him where I was at,  
5 and he said he would come and get me.

6 So he drove up there, and I met him there,  
7 and he came to pick me up where I was at.

8 Q Did he pick you up in the same car that he had the  
9 night of the murder?

10 A No, sir, when I seen him that time, he had another  
11 car.

12 Q And what kind of car did he have then?

13 A He had a station wagon.

14 Q All right, did you ask him about it?

15 A Well, when he picked me up, we got some beer, you  
16 know, and were riding around drinking some beer,  
17 and I asked him about the car.

18 I said, "Oh, you got another car," and he said,  
19 "Yeah." He got another one, and I asked him, "Well,  
20 did you get some money?" I thought --

21 MR. REAVES: I will object to  
22 anything that Mr. Spence may have told him two  
23 weeks after the murder. That is hearsay.

24 MR. FEAZELL: Your Honor, it  
25 has to do with the money that he was promised by

1 Mr. Spence.

2 THE COURT: Overruled.

3 Q Did you ask him about the money?

4 A Yes, sir, I asked him if he had gotten any money  
5 because I thought he may have gotten some to buy  
6 this other car that he had.

7 He told me, no, he hadn't gotten any money --  
8 that he had been by there a couple of times and  
9 the guy had said he was going to get it.

10 Q Okay, did you and David go anywhere that day?

11 A Well, yes, sir, we went riding around drinking some  
12 beer, and I had asked him about the car, and he  
13 said he had traded the other one that he had that  
14 we were in that night and had gotten this other car.

15 So we were running low on beer, and he said,  
16 "Well, we'll go over to this store over here and  
17 get some more beer," and that was the store that  
18 the guy had, and he said, "We'll go in that store  
19 and" --

20 Q The guy, you mean Deeb?

21 A Yes, sir.

22 Q All right, and --

23 A And so he said, "We'll stop in here, and I'm going to  
24 ask him about the money." So I said --

25 Q Is that what took place?

- 1 A Yes, sir.
- 2 Q Did you get any money from him that day?
- 3 A No, sir, we didn't.
- 4 Q Without going into the contents of the conversation,  
5 was money discussed?
- 6 A Yes, sir.
- 7 Q Between you and David and Muneer Deeb?
- 8 A Yes, sir.
- 9 Q After you left the store, did you and David have  
10 another conversation?
- 11 A Yes, sir.
- 12 Q Did it concern the stuff that had belonged to the  
13 kids?
- 14 A Yes, sir.
- 15 Q Did you find out what had happened to it?
- 16 A Yes, sir.
- 17 Q And is that what was put in the trunk?
- 18 A I believe, it was.
- 19 Q Okay, what did you find out had happened to the  
20 stuff that belonged to the kids?
- 21 A He told me that he had burned it.
- 22 Q Did you and David reach any kind of agreement as  
23 to whether or not to discuss this matter?
- 24 A Yes, sir, we said we weren't going to discuss it.  
25 We didn't know anything about it, and we weren't

1 going to discuss it.

2 Q Okay, Mr. Melendez, have you since that time given  
3 a statement about the situation about the murders?

4 A Yes, sir, I have.

5 Q And have you pled guilty?

6 A Yes, sir.

7 Q To two of the murders?

8 A Yes, sir.

9 Q Did you receive two life sentences?

10 A Yes, sir.

11 Q And is it your understanding that you are yet to  
12 plead guilty to a third case?

13 A Yes, sir.

14 Q Did you give any written statements concerning the  
15 murders out at the lake?

16 A Yes, sir.

17 Q I believe, you gave three statements back during  
18 the latter part of March, first part of April of  
19 1980 -- what, three? Is that correct?

20 A Yes, sir, I did.

21 Q And each one is a little more detailed account of  
22 the other. Is that right?

23 A Yes, sir.

24 Q And then, I believe, you gave another statement  
25 around January the 18th of 1985. Is that correct?

- 1 A Yes, sir, I did.
- 2 Q The more detailed, more comprehensive statement?
- 3 A Yes, sir.
- 4 Q Are there some differences between your statement
- 5 of January '85 and your statements of March 26th?
- 6 A Yes, sir, there are.
- 7 Q What is the primary difference?
- 8 A That I put my brother, Tony, into it.
- 9 Q Okay, are you saying that in the first statements,
- 10 Tony wasn't mentioned?
- 11 A Yes, sir.
- 12 Q At that time, had Tony been arrested?
- 13 A No, sir.
- 14 Q At that time, I believe, you and Mr. Spence were the
- 15 only two?
- 16 A Yes, sir.
- 17 Q Why were you leaving your brother out of the first
- 18 three statements?
- 19 A Well, he wasn't arrested, and I didn't think that
- 20 anybody -- that any police officers or any
- 21 investigators knew anything about him. So I just
- 22 didn't put him in there. I didn't want to tell on
- 23 him.
- 24 Q Then after you gave the more complete statement in
- 25 January of 1985, had your brother been arrested, at

- 1           that time?
- 2       A     Yes, sir.
- 3       Q     Already?
- 4       A     Yes, sir.
- 5       Q     And I believe, he had already pled guilty to two
- 6           of the offenses as well?
- 7       A     Yes, sir.
- 8       Q     The first three statements, March the 26th, 27th
- 9           and the May 3rd, are they substantially the same
- 10          statements?
- 11      A     Yes, sir, they are.
- 12      Q     Why were there three given so close together?
- 13      A     Well, the first statement I gave to the officers
- 14          was a more or less an oral statement. It was a
- 15          taped statement.
- 16      Q     Okay, so that was the one that was just typed up
- 17          from the tape?
- 18      A     Yes, sir.
- 19      Q     All right, how about the next day?
- 20      A     The next day is the -- if I recall --
- 21      Q     As a matter of fact, I believe, they were both
- 22          March the 26th, weren't they?
- 23      A     Yes, sir, I think, it was just the time of day it
- 24          was or something.
- 25      Q     All right.

1       A     The second statement is actually the first statement.  
2             I -- it is a handwritten statement by me. The  
3             first statement that was on the recorder, whoever  
4             put it on paper made a few mistakes and left some  
5             sentences, I believe, or some words out of it.

6             I -- when I gave the first statement, I just --  
7             they just -- I did it on tape, and they just told  
8             me to go ahead and tell what happened.

9       Q     All right, and were there some things upon reading  
10            it that you also remembered that you had not put in?

11      A     Yes, sir.

12      Q     Okay.

13      A     So the second statement when I wrote it out again,  
14            what I did was look at the statement that had been  
15            typed on paper and the things I remembered and the  
16            things that weren't put in there that were on the  
17            tape or left out by accident, probably, whoever put  
18            it on paper, I just filled it in, is what I did.

19            So the second statement was more or less the  
20            first statement. I just wrote it out and put things  
21            in that I left out.

22      Q     What was the reason you gave the third statement,  
23            the one a week later around April 7th?

24      A     The third statement was more or less a question and  
25            answer statement.

1           When I gave the first statement, I just put it  
2           on tape, and they just said, you know, go ahead and  
3           say what happened.

4           There was a -- it wasn't question and answer.  
5           No one questioned me.

6           The third statement was more or less a question  
7           and answer statement. There were some questions asked  
8           to me that, you said something here, a question, and  
9           I answered it. So that is what the third statement  
10          was.

11       Q   All right, so then substantially, are the first three  
12           statements pretty much the same?

13       A   Yes, sir.

14       Q   Except that you remembered a little more and put in  
15           a little more detail?

16       A   Yes, sir.

17       Q   And then the fourth statement, the one of January 1985,  
18           that is the more detailed one where you went ahead  
19           and told about your brother?

20       A   Yes, sir.

21       Q   Okay, Mr. Melendez, have you been able to see your  
22           brother and talk to him about your testimony?

23       A   No, sir, I haven't.

24       Q   Have you been able to see him and talk to him about  
25           any of your prior statements?

1 A No, sir, I haven't.

2 Q Do you recall when was the last time you talked  
3 with your brother, Tony?

4 A I believe, the last time I talked to Tony was shortly  
5 after we were indicted, and we were -- all four of us  
6 were in pretrial hearings, or he and I were -- during  
7 pretrial hearings, and I didn't really get to talk  
8 to him, but we were both in the courtroom at the  
9 same time.

10 Q Did you talk to him about your statements or about  
11 the evidence or anything like that?

12 A No, sir.

13 Q Okay, you have been telling this jury a lot of things  
14 that happened on the night of July 13, 1982 with  
15 you and your brother Tony and a man named David  
16 Wayne Spence.

17 Do you see David Wayne Spence in the courtroom  
18 today?

19 A Yes, sir, I do.

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

21 A That is David Spence.

22 Q Thank you, Mr. Melendez.

23 Your Honor, if the record could reflect that  
24 Mr. Melendez has identified the Defendant as the  
25 man who participated with him on July 13th.

1 THE COURT: All right.

2 Q Mr. Melendez, do you have a prior criminal record?

3 A Yes, sir, I do.

4 MR. FEAZELL: Your Honor, we  
5 would pass the witness, at this time.

6 MR. REAVES: Your Honor, at this  
7 time, we would ask to see Mr. Melendez' prior  
8 statements and would ask for an opportunity to review  
9 those and look those over.

10 MR. FEAZELL: Could we approach  
11 the bench, Your Honor?

12 (Conference at the bench.)

13 THE COURT: All right, let's  
14 proceed, gentlemen.

15 CROSS EXAMINATION

16 QUESTIONS BY MR. REAVES:

17 Q Mr. Melendez, I believe, when you were testifying  
18 earlier, you told Mr. Feazell that this was not the  
19 first time you had told about what happened out  
20 there at the lake on the night of July 13, 1982.

21 Is that correct?

22 A Yes, sir.

23 Q All right, and I believe, you have given several  
24 other statements. Is that correct?

25 A Yes, I have.

1 MR. REAVES: Okay, may I  
2 approach the witness, Your Honor?

3 THE COURT: Yes, sir.

4 Q Okay, first of all, let me show you a statement  
5 that is dated March 26, 1983. Is that a statement  
6 that you gave?

7 A Yes, it is.

8 Q Okay, and prior to giving that statement, it indicates  
9 that certain rights were read to you.

10 A Yes, sir.

11 Q Were those read to you?

12 A Yes, they were.

13 Q That you had the right to have counsel, that you had  
14 a right to remain silent and not to say anything.

15 A Yes, sir.

16 Q Okay, certain other rights. Is that right?

17 A Yes, that is right.

18 Q All right, and all those were gone over with you,  
19 at that time.

20 A Yes, they were.

21 Q Now, this statement is also under oath, is it not?

22 A Yes, it is.

23 Q Okay, you were -- that statement was taken before  
24 a notary public, and you swore to tell the truth.  
25 Is that correct?

1 A Yes.

2 Q Okay, you also gave another statement, which I  
3 believe, is also dated March 26, 1983. Do you  
4 recognize that?

5 A Yes, sir.

6 Q Is that also a statement you made?

7 A Yes, it is.

8 Q A statement signed by you?

9 A Yes.

10 Q Okay, again, were your rights read to you when you  
11 made that statement?

12 A Yes, they were.

13 Q Okay, again, was that statement made before a notary  
14 public, and you swore to tell the truth?

15 A Yes.

16 Q Okay. Now, I have another statement that is dated  
17 April 7, 1983. Again, is this a statement made  
18 by you?

19 A Yes, it is.

20 Q Okay, and again, that statement recites that various  
21 rights were read to you. Were those rights read to  
22 you that time?

23 A Yes, they were.

24 Q Okay, and again, this statement was also made before  
25 a notary public. Is that correct?

1 A Yes.

2 Q That again, when you made that statement, the last  
3 statement, you swore to tell the truth?

4 A Yes, sir, I did.

5 Q Okay, just like you swore to tell the truth here  
6 today. Is that correct?

7 A Yes, sir.

8 Q Okay. Now, today in your testimony you have indicated  
9 that David Wayne Spence and Tony Melendez picked you  
10 up while you were walking home from work about 4:30  
11 on July 13, 1982.

12 A Yes, sir.

13 Q Is that what you said in any of these three statements  
14 that I have talked to you -- that I have shown you,  
15 and would you like to look at them?

16 A Yes, I would like to look at them.

17 Q Okay. First of all, let's look at statement number  
18 one.

19 First of all, it has several questions and  
20 answers between you and the detective taking your  
21 statement.

22 A Yes.

23 Q Okay.

24 A I don't really remember if I have or not.

25 Q Well, let's look at them and see, okay?

1 A That's fine.

2 Q Okay, it says -- in your first statement, it says,  
3 "July 13th between 9:00 and 10:00 o'clock p.m. or  
4 9:00 and 10:00 o'clock."

5 A Yes, it does.

6 Q Okay, is that 9:00 o'clock a.m. or p.m.?

7 A It is probably p.m.

8 Q Okay, is that correct? Was it that late?

9 A That is what it says here on this particular  
10 statement.

11 Q I know, but I'm asking you if that's the truth.

12 A No, it's not the truth.

13 Q That's not the truth, okay. Let's look at your  
14 second statement.

15 I will refer you to a little bit down there.

16 Again, it says, "July 13, 1982 between 9:00 and  
17 10:00 p.m."

18 A Yes, sir.

19 Q Okay.

20 A That's about the same statement as the first one.

21 Q This one says, "David came by my house and picked  
22 me up where I lived." Is that the truth?

23 A No, it isn't.

24 Q That's not the truth? Okay, your third statement.  
25 Again, all these were made within the span of a

1 week or less or more?

2 A Yes, sir.

3 Q Okay, and in your third statement, again, another  
4 statement taking an oath after you had been read  
5 your rights, "July 13th, David came by my house  
6 between 9:00 and 10:00 p.m."

7 A Yes, that is what it says.

8 Q Again, that is not the truth?

9 A No, it isn't.

10 Q Okay, let me ask you some other questions.

11 You have already told Mr. Feazell that none  
12 of those statements refer to Tony Melendez?

13 A No, they didn't.

14 Q Okay, feel free to look through those, if you  
15 want to. Okay, you intentionally left them out of  
16 there?

17 A Yes.

18 Q Okay, so that was a lie when you didn't include him  
19 in there and say he was with you?

20 A I didn't include him intentionally.

21 Q Intentionally.

22 A Yes.

23 Q And you have already told Mr. Feazell that that was  
24 to try to protect him?

25 A To leave him out of it, yes.

- 1 Q Okay, so you have already admitted to the jury,  
2 in effect, that you lied to protect your brother.
- 3 A I tried to keep him out of it, yes.
- 4 Q Okay, now, in your testimony today, you have also  
5 said that Mr. Spence was driving what you think is  
6 a Pontiac, or was a Pontiac.
- 7 A A Pontiac-looking car.
- 8 Q A Pontiac-looking car?
- 9 A Yes, sir, I'm not sure what brand it was.
- 10 Q What do you mean by a mid-sized car? What do you  
11 mean Pontiac-looking car?
- 12 A Just a Pontiac-looking car.
- 13 Q Okay, in either of these three other statements  
14 that you gave on March 26th, then April 7th, did  
15 you mention an automobile?
- 16 A Yes, I did.
- 17 Q Okay, what kind of automobile did you mention?
- 18 A I believe, I mentioned a station wagon.
- 19 Q Okay, again, that was not the truth?
- 20 A No, it wasn't.
- 21 Q Okay. Now, I believe, in your second statement  
22 here, you referred to a station wagon. That is  
23 not the truth? Today you are saying it is a  
24 Pontiac-type automobile?
- 25 A Yes, sir.

1 Q Okay. Now, your testimony today at the park is  
2 that Mr. Spence was sitting in the front seat with  
3 the brunette and Tony Melendez?

4 A Yes, sir.

5 Q Okay, and in the back seat, you were sitting with  
6 the blond and with Kenneth Franks?

7 A Yes, sir.

8 Q Okay, how did you have them seated in these  
9 statements? Do you recall?

10 A No, I don't.

11 Q Okay, let us look at the first statement. If you  
12 look right there, what does -- you have got one  
13 girl in the front seat, the brunette. Where are  
14 you in that statement? Where did you say you were  
15 seated?

16 A It says one girl in the front seat, the brunette  
17 between me and David Spence, and the other boy and  
18 girl in the back seat.

19 Q Okay, so in that statement, you said that you were  
20 seated in the front seat.

21 A Yes, sir.

22 Q Okay, it is not the truth?

23 A No, it isn't.

24 Q You lied about that. Okay, the second statement,  
25 do you know if these other two statements are the

1 same?

2 A I don't know if they are the same or not.

3 Q Okay, let's look at the second statement.

4 If you look down to right there, same thing  
5 as the first statement, girl in the front seat with  
6 you?

7 A Yes.

8 Q Okay, boy and girl in the back seat?

9 A Yes.

10 Q Okay, let us look at your last statement. Again,  
11 you look right there, girl in the front seat with  
12 you?

13 A Same statement.

14 Q And the boy and the girl in the back seat, okay.  
15 Again, none of those are the truth?

16 A No, sir, they are not because I left my brother  
17 out of it. So I couldn't arrange them the way  
18 they were sitting in the car.

19 Q Okay, and you also intentionally gave a wrong car --  
20 described the wrong car?

21 A I intentionally gave a lot of wrong things in these  
22 statements, sir. The reason I gave this first  
23 statement is because I thought David Spence was going  
24 to give a statement about the murders and try to  
25 push it off on me.

1 Q Okay, so you -- well, we will get to that in a  
2 minute, but you are going to admit that there is a  
3 lot of wrong things in there, I take it?

4 A Yes, sir, I admit that.

5 Q And you did it in order to get some benefit for  
6 you to try to help yourself out, protect your  
7 interests?

8 A I was -- I did it because I thought David Spence  
9 was going to go downstairs and give a statement  
10 against me.

11 Q Okay. Now, also, in your testimony today, you  
12 have got David in the car with your brother and  
13 the three kids going off into the woods.

14 A Yes, sir.

15 Q Okay, is that in any of your three previous  
16 statements?

17 A No, sir, I don't think it is.

18 Q No. Did you say where you went in any of the  
19 three previous statements?

20 A I may have named a place in the statements.

21 Q Okay, can you look at those and tell me where you  
22 named?

23 A I don't have to look at them. I named another  
24 place besides the place that it really happened.

25 Q Okay, and where was that?

- 1 A The woods.
- 2 Q Okay -- no, I mean, where did you name in those  
3 three statements?
- 4 A On the other side where all the people hang out.  
5 I said it was down at the end of that circle.
- 6 Q Let's go up here, Mr. Melendez, if you would,  
7 and walk up here to Defendant's Exhibit No. 2. Let  
8 me ask you first, can you identify that?
- 9 A I think so.
- 10 Q Okay, does that appear to be a diagram of Koehne  
11 Park?
- 12 A Yes, sir, it does.
- 13 Q Okay, so that would -- does that appear to be a  
14 diagram of the circle area here?
- 15 A Yes.
- 16 Q Okay, and the entrance to Koehne Park being here?
- 17 A Yes.
- 18 Q Okay. Now, what you are telling me is in the  
19 previous statements, you did not say that you went  
20 into the woods but that it was somewhere back in  
21 here?
- 22 A Yes, sir.
- 23 Q Back in the gravel area?
- 24 A Yes.
- 25 Q Or is that what you call the gravel area?

1 A Yes.

2 Q And that is the water back there.

3 A Yes, sir.

4 Q Okay. Now, also, in your testimony today, you said  
5 that Mr. Spence asked you to hand him something  
6 to tie up Mr. Franks with.

7 A Yes, sir.

8 Q Okay, and it is your testimony that you handed him  
9 a rag or a towel?

10 A Yes, sir.

11 Q Okay, do you remember what you said in your  
12 previous statements?

13 A No, sir, I don't.

14 Q Okay, first of all, did you look in statement  
15 number one, and if you look there, did you say  
16 anything there about what you gave him?

17 A No, I didn't.

18 Q Okay, you told him to get something himself?

19 A Yes, sir.

20 Q Okay, that is not the truth because you did get  
21 something for him, you are saying today?

22 A Yes, sir.

23 Q Okay, what about statement -- the second statement?

24 Again, the same statement on March the 26th, what  
25 did you -- if you will look to there, what did you

- 1 say in that statement that you grabbed?
- 2 A I don't see where that is at.
- 3 Q Okay, if you will look back in there and read it,
- 4 I don't want to put any words in your mouth.
- 5 A Well, it is right here. You will have to show
- 6 me where it is at.
- 7 Q Okay, starting right there.
- 8 A Oh, it is right here.
- 9 Q Okay, what did you say?
- 10 A It said that I grabbed a bra from the front seat
- 11 and I handed it to him.
- 12 Q Okay, a bra?
- 13 A Right.
- 14 Q Okay, and that is not what you are saying today?
- 15 A No, sir, it isn't.
- 16 Q Okay, let us go to the third statement. If you
- 17 will, look to right there. What did you say here?
- 18 A The same thing I just said in the last statement.
- 19 Q I grabbed a bra. You also said something else,
- 20 didn't you?
- 21 A Yes, sir.
- 22 Q It didn't work. She already had her top off. I
- 23 handed him a blouse or something.
- 24 A Yes, sir.
- 25 Q Again, that is not the truth?

- 1 A No, sir, it isn't.
- 2 Q You said today that you went to the front seat  
3 with the blond, Raylene Rice, and had sex with  
4 her?
- 5 A Yes, sir.
- 6 Q Is that correct?
- 7 A Yes, it is correct.
- 8 Q Did you put that in any of -- either of those three  
9 statements?
- 10 A No, sir, I didn't.
- 11 Q Okay, you did not admit to that in either of those  
12 three statements?
- 13 A No, sir, I did not.
- 14 Q Okay, you have also said today that David Spence  
15 went with the brunette, went over to the side of  
16 the car. Okay, and I think, you -- there is an  
17 exhibit there where there is a rectangular area  
18 and where you say he went over to the side of the  
19 car with her. Is that correct?
- 20 A Yes, sir, that is correct.
- 21 Q Okay, let us look at the statement, and do you  
22 remember where you said that he took the brunette  
23 in these statements?
- 24 A No, sir, I don't remember.
- 25 Q Okay.

1 A When I gave these statements, I was -- I wasn't  
2 telling them the whole story.

3 I was leaving my brother out of it. So I  
4 had to change quite a few things.

5 Q I understand that, Mr. Melendez.

6 A I also did this just to stop him from giving a  
7 statement on me. I wasn't sure whether I was  
8 going to stick with this or change my mind on it.

9 So I said a lot of things different because  
10 if I had changed my mind and I had to go to court  
11 and fight the case, then I would have some points  
12 to argue. Because if I knew it wasn't all the  
13 truth and they went by something like this and  
14 claimed it happened this way, then I could argue  
15 the point in court because I know how it happened,  
16 and I would know that a lot of those things I said  
17 in those statements were incorrect.

18 Q Sure. So in other words, you took an oath and lied  
19 about certain things.

20 A Yes, sir, I did.

21 Q And you did it and you are admitting to the jury  
22 that you lied to try to get yourself and -- to  
23 benefit yourself?

24 A No, sir.

25 Q Well, why would you do it then? You say you lied

1 and you intentionally lied so that you could try  
2 to worm out of it later on, if you wanted to. That  
3 is trying to benefit yourself, isn't it?

4 A Well, yes, sir, in a way, I did that, but the main  
5 reason I gave the statement to begin with is because  
6 I thought David was fixing to come down and give a  
7 statement.

8 When I gave this statement, I didn't think they  
9 knew anything about my brother. So I left my brother  
10 out of it.

11 Q Okay, I understand, but that is not the only thing  
12 that is lies about those statements, is it?

13 A There are several things that are inconsistent and  
14 not true in those statements because I didn't tell  
15 them the whole true story.

16 There are a lot of things in those statements  
17 that are true.

18 Q Okay, don't worry, Mr. Melendez. I am going to go  
19 through all these statements, and we will have a  
20 chance to go over all of them, okay? Now --

21 A I had David Spence in each one of those statements.

22 Q I understand that. Okay, now, you have said today,  
23 also, David Spence went to the front seat with the  
24 blond.

25 A Yes, sir.

- 1 Q Okay, and you don't know whether he had sex with her  
2 or not. You couldn't see good enough.
- 3 A No, sir, I didn't see him.
- 4 Q Okay, what did you say about that in those other  
5 three statements?
- 6 A I don't recall.
- 7 Q Okay, do you recall whether you said that -- well,  
8 let me just show you your statement.
- 9 Let's make sure we get to the blond.
- 10 A Okay.
- 11 Q Okay, is this where you are talking about the blond  
12 girl?
- 13 A I believe so.
- 14 Q Okay, you said in that statement that he had sex  
15 with her.
- 16 A Yes, sir, I did.
- 17 Q Okay, and you saw him.
- 18 A Yes, sir.
- 19 Q In this statement.
- 20 A In this statement, yes.
- 21 Q Okay, this statement in this part, I believe, you  
22 are talking about the blond.
- 23 A Yes, sir, I think so.
- 24 Q Okay, same thing.
- 25 A Yes, sir.

- 1 Q And you saw him in this statement, according to  
2 that statement?
- 3 A Yes, sir, according to that statement.
- 4 Q Okay, and this is part of the statement, I believe,  
5 talking about the blond?
- 6 A Yes, sir, I think so.
- 7 Q Okay, again, same thing, you say you saw him?
- 8 A I think, I do.
- 9 Q When was the first time you said anything about  
10 going to get your truck?
- 11 A I didn't say anything about going and getting my  
12 truck.
- 13 Q Okay, in those statements, in those three statements  
14 that you gave previously, what car did you transport  
15 the bodies in?
- 16 A I said it was the Pontiac-looking car.
- 17 Q David Spence's car?
- 18 A Yes, sir.
- 19 Q Well, now, did you mention a Pontiac-looking car  
20 in those three statements?
- 21 A No, sir, but that is the one I am referring to,  
22 David Spence's car.
- 23 Q I am asking you about those three statements in  
24 which you said --
- 25 A I said it was David Spence's car.

- 1 Q And in one of those statements, you referred to  
2 a station wagon?
- 3 A Yes, sir.
- 4 Q Okay, again, that was not the truth because you  
5 say now that it was a Pontiac-looking car?
- 6 A That is the car I said it was in, yes.
- 7 Q Okay, that is the car you are saying he was in now,  
8 the Pontiac?
- 9 A Yes, sir.
- 10 Q Okay, that is not the car you said he was in back  
11 at the time you made those three statements.
- 12 A I am not sure.
- 13 Q Well, didn't we just go over that you said he was  
14 in a station wagon?
- 15 A Yes, I did say it at one time. It may be in all  
16 these statements, or one of them. I am not sure.
- 17 Q Okay, and also, in those statements, you had him  
18 transporting -- or both of you all transporting the  
19 bodies in his car, whatever that may be.
- 20 A Yes, sir.
- 21 Q Okay, and that is not the truth?
- 22 A No, sir, it isn't.
- 23 Q You have also testified today that you drove your  
24 truck to Speegleville Park.
- 25 A Yes, sir.

- 1 Q Okay, how about in those statements? Who drives  
2 out to Speegleville Park?
- 3 A I think, David was driving out to Speegleville Park.
- 4 Q In all three statements?
- 5 A I believe so. I am not sure.
- 6 Q Would you like to look at them, or would you like  
7 for me to come show you where it is at?
- 8 A If I said that in there, then that is what I said,  
9 if that is what it says.
- 10 Q Let us make sure it is in there.
- 11 A I believe, it does say that.
- 12 Q Okay, you remember saying that?
- 13 A Yes, sir, I think so.
- 14 Q That David was the one that drove out to Speegleville  
15 Park?
- 16 A Yes, sir.
- 17 Q Okay, do you remember saying in those statements  
18 where you went after you came back from Speegleville  
19 Park?
- 20 A I am not sure.
- 21 Q Okay.
- 22 A I think, I said he dropped us off at a friend's --  
23 dropped me off at a friend's house or something  
24 like that.
- 25 Q Okay, let us look at statement -- okay, first

1 statement you gave -- or the second statement you  
2 gave, I believe.

3 Okay, do you recall where he dropped you --  
4 you say he dropped you off, at that statement, if  
5 you will look right there.

6 A Okay.

7 Q "He took me to where I lived."

8 A Yes, sir.

9 Q Okay, again, that is not the truth?

10 A No, it isn't.

11 Q Okay, the last statement you gave, again, if you  
12 will look right there, drove over where I lived,  
13 and we finished a beer and talked.

14 A Yes, sir.

15 Q Again, that is not the truth?

16 A No, it isn't.

17 Q What you are saying now is not that David took you  
18 to where you were living but that you took him to  
19 his mother's house?

20 A Yes, sir.

21 Q Okay, what kind of truck did you have back on  
22 July 13th?

23 A '63 Ford.

24 Q '63 what?

25 A Ford.

- 1 Q Okay, how long had you had it?
- 2 A I am not sure how long. I hadn't had it very long.
- 3 Q Okay, had you been driving it or --
- 4 A Yes, sir.
- 5 Q Okay, did you drive it back and forth to work?
- 6 A Yes, sir, sometimes, I did.
- 7 Q Okay, who were you working for at the time?
- 8 A I am not sure who I was working for. I was working
- 9 for a company that built apartments and condominiums,
- 10 and I was on a painting crew for that company.
- 11 Q Do you know who your supervisor or your boss was?
- 12 A I'm not sure.
- 13 Q Okay, do you know who wrote your checks?
- 14 A I don't remember.
- 15 Q Okay. Now, the truck that you had, you said that
- 16 you took it to be worked on or took it over to a
- 17 mechanic's house sometime before July 13, 1982.
- 18 A Yes, sir.
- 19 Q Okay, and do you recall when you took the truck
- 20 over?
- 21 A I am not sure exactly what day it was. It could
- 22 have been a couple of days -- two or three days
- 23 before July the 13th.
- 24 Q Okay, do you think it could have been any longer
- 25 than that?

1 A It is possible.

2 Q Okay, what did you take it over for? What was the  
3 matter with it?

4 A There was nothing the matter with it. When I  
5 would drive the truck, when I would get up to the  
6 speed limit, it seemed like it would miss out a  
7 little bit or cut out a little bit.

8 This guy that lived at this house, I met him  
9 through a friend of mine, worked on his truck and  
10 his car for him. So I left it out there and asked  
11 him to check it out and see if it was the points  
12 and plugs or something that I had a little miss in.

13 Q Okay, what was the name of the guy you took the  
14 truck to?

15 A I am not sure what his name was. I think, it was  
16 Calvin or Kelvin. I met him through another friend.

17 He was a friend of a friend of mine's, and I  
18 left my truck out there for a few days for him to  
19 check whenever he got the time to check it.

20 Q Okay, who is he a friend of?

21 A He was just a friend of another friend of mine.

22 Q Okay, I know that is what -- who was your other  
23 friend that he was a friend of?

24 A A friend named David that knew him.

25 Q A friend named David. Do you know what his last

1 name was?

2 A I am not sure what his last name was.

3 Q Okay, what did Calvin look like?

4 A He was a -- I don't remember exactly what he looked  
5 like. He was kind of short. He was about in his  
6 middle or late forties, somewhere around there.

7 Q Okay, kind of short?

8 A Yes.

9 Q Heavy, thin?

10 A About average. David has seen him.

11 Q Is that what he does for a living, is mechanic work?

12 A No, sir, it isn't. I don't know what he does for  
13 a living.

14 Q Who had the keys to the truck?

15 A I had two keys to the truck. I left him one, and  
16 I had one in case I needed to come and pick the  
17 truck up.

18 Q Did you carry those keys with you all the time?

19 A Yes, sir.

20 Q Okay, after July 13, 1982, you said that you dropped  
21 the truck off at -- you dropped the truck off, again,  
22 at the mechanic's. Is that correct?

23 A I took the truck back out to a friend of mine's  
24 house, Calvin, Kelvin, whatever his name was. It  
25 was something like that, and left it out there for

1 him to check it out for me.

2 Q Okay, you took it back out to the same place?

3 A Yes, sir.

4 Q Okay, and how long did it stay there that time?

5 A I -- it stayed there for awhile that time because  
6 he never had the time to get to look at it.

7 We looked at it a few times, and I started  
8 taking pieces off and parts off and checking it  
9 out trying to find out what was making it miss.

10 Q Okay, did you finally get it fixed, or did he fix  
11 it for you?

12 A No, he didn't. We got it running several times,  
13 but I bought new parts for it, points and plugs  
14 and things like that.

15 I was trying to fix it, and my ignition switch  
16 was giving me a problem, the wires or something,  
17 and when I took it off, I brought the -- I bought  
18 the wrong ignition switch, and I got the wires  
19 crossed up on it.

20 So it just sat there for awhile, while I was  
21 trying to get someone to rehook the wires up right  
22 for me.

23 Q Okay, who finally fixed the truck?

24 A I don't know. I never went back and drove the  
25 truck off.

- 1 Q Okay, so as far as you know, nobody ever went and  
2 got the truck?
- 3 A I don't know if anyone ever went back and fixed  
4 the truck.
- 5 Q Okay, you did not drive the truck off?
- 6 A No, I didn't.
- 7 Q How long was it after July 13th that you took the  
8 truck back there?
- 9 A I'm not sure.
- 10 Q Was it a week or more or less?
- 11 A Probably more.
- 12 Q More than a week?
- 13 A I am not sure. It was over a week, probably.
- 14 Q Okay, the next day, July 14, 1982, the day after  
15 the murders, did you go to work that day?
- 16 A I went out to work. I don't remember if I stayed  
17 at work, or when I arrived there, if I went out  
18 and actually worked or decided to leave. I don't  
19 remember.
- 20 Q Okay, do you recall how you got there? Did you  
21 drive your truck or walk?
- 22 A I started out in my truck.
- 23 Q When you say, "started out in your truck" --
- 24 A I believe so.
- 25 Q Okay, does that mean you got there in your truck?

- 1 A I -- yes, sir.
- 2 Q Okay.
- 3 A I think so. I am not sure.
- 4 Q Okay, do you know what the brunette girl was
- 5 wearing?
- 6 A No, sir, I don't.
- 7 Q Okay, how about the blond?
- 8 A She was wearing some kind of blouse where her
- 9 shoulders showed in it, and I just remember she had
- 10 some kind of shoes on where you could see her feet.
- 11 Q Okay, do you remember what color top or --
- 12 A No, sir, I don't.
- 13 Q Okay, for either one?
- 14 A No, sir.
- 15 Q Okay. Now, what you said today is that when you
- 16 first pulled into the wooded area, David Spence
- 17 ordered everybody out of the car.
- 18 A Yes, sir.
- 19 Q Okay, real loud?
- 20 A Yes, sir.
- 21 Q Talking to them loud?
- 22 A Yes, sir.
- 23 Q How loud was he talking? Was he talking as loud
- 24 as I am right now?
- 25 A He was probably talking a little louder and a

- 1           little meaner than you are right now.
- 2       Q     Well, I am not going to talk mean to you, but was
- 3           he talking as loud as I am right now?
- 4       A     Around there somewhere.
- 5       Q     Okay, louder, softer?
- 6       A     Probably a little louder.
- 7       Q     Okay, how about when he was talking to the kids
- 8           after he ordered them out, still about the same
- 9           volume?
- 10      A     Somewhere around there.
- 11      Q     Still talking pretty loud to them?
- 12      A     Yes, sir.
- 13      Q     Okay, Mr. Melendez, if I can get you to come to
- 14           this what has been marked as Defendant's Exhibit
- 15           No. 2 and point to the wooded area where you say
- 16           the car was pulled in -- where you pulled in.
- 17      A     Would this be the top of the hill here where there
- 18           is a parking area?
- 19      Q     That would be right around the curve.
- 20      A     Is that what that represents?
- 21      Q     That represents a dumpster.
- 22      A     And there is a little parking area that would be
- 23           right in there.
- 24      Q     Okay, right in through there?
- 25      A     Yes.

- 1 Q Okay, how far is it to this road right here?  
2 Would you guess?
- 3 A From where?
- 4 Q From the wooded area where you were at in here to  
5 this road right here?
- 6 A I am not sure. It was far enough off the road  
7 where you really couldn't see the car. I don't  
8 know how far it was.
- 9 Q Okay, how far would you estimate it is from the  
10 area where you were at back to the circle area  
11 where the picnic tables are?
- 12 A To that area to where I was at. What are you  
13 talking about?
- 14 Q Well, the wooded area is what you are telling us --  
15 this is where you all pulled in the car?
- 16 A Yes, sir.
- 17 Q Okay, did I follow you that far?
- 18 A Yes, sir.
- 19 Q Okay, how far was that area where you pulled in  
20 the car, in your estimate, back to this circle  
21 area back in here where the picnic tables are?
- 22 A That is a little ways from this area. The car  
23 would be -- you know, using the size of this  
24 picture here, if the car was right here in this  
25 area where we were, say, here, it wasn't -- it was

1           about three times as far as the distance from  
2           where the car was to the road, maybe four. It was  
3           a little ways.

4       Q     Okay, but you are saying it was four times as far  
5           from here to the circle area as it was from the  
6           road to here?

7       A     Somewhere around there. It was a little bit more  
8           distance. It was a little ways to the circle area  
9           from where we were.

10      Q     Okay, Mr. Melendez, if I could, let me go ahead  
11           and get you to -- take this green marker, if you would,  
12           and mark where you pulled in -- the car in the  
13           wooded area on Defendant's Exhibit No. 2.

14      A     Okay, this is where the dumpster is. Where we  
15           pulled the car in, there is a little area here.  
16           It would be around this area here (indicating).

17      Q     Okay, so just go ahead and draw in a little  
18           rectangular -- a little rectangle for a car where  
19           you -- where your guess is the car was.

20      A     (Witness complied.)

21      Q     Okay. Now, when you pulled into the circle area --  
22           you can go ahead and have a seat. We are backing  
23           up, and your guess is, I think, you testified  
24           previously, that you think you were about 25 feet  
25           off the road into the trees?

- 1 A Around there somewhere.
- 2 Q Okay, so going from that, you would be about --
- 3 there would be about 100 feet from where that car
- 4 is which you have labeled in green there and the
- 5 circle area where the tables are?
- 6 A Somewhere around there.
- 7 Q Is that fair to say?
- 8 A Around there.
- 9 Q When you pulled into the circle area, was there
- 10 anybody else around?
- 11 A At what time are you talking about?
- 12 Q The second time you pulled into the circle area?
- 13 A When I returned with the truck?
- 14 Q Okay, let us go back, and let me get you to come
- 15 up here.
- 16 The first time when you pulled into the
- 17 circle area and you saw the three kids that later
- 18 came with you --
- 19 A Okay.
- 20 Q -- if you would go ahead and pick up that green
- 21 marker, again, and first of all, where were the
- 22 three kids sitting? Were they sitting at one
- 23 of the picnic tables?
- 24 A They were like around the center picnic table there.
- 25 Q Okay, go ahead and mark that on that exhibit for us.

1 A Three picnic tables and they were sitting around  
2 in this area here.

3 Q Okay, and you have marked that in green. You just  
4 made a little green line.

5 A Yes, sir.

6 Q Okay, and was there anybody else there that you  
7 saw?

8 A I didn't see anyone else.

9 Q Okay, did you see any other cars there?

10 A I saw a larger car and a smaller car when we  
11 pulled in there.

12 Q Okay, where was the smaller car? Go ahead and mark  
13 that for us.

14 A The smaller car would be -- it is kind of hard for  
15 me to mark on this picture.

16 I would say the smaller car was around -- this  
17 would be the water back here, and the smaller car  
18 was -- what is this?

19 Q That is just a concrete culvert. It is supposed to  
20 depict a concrete culvert.

21 A Okay, the smaller car --

22 Q The diagram is drawn so that the circle area -- the  
23 paved circle area is in there.

24 A It is hard for me to really -- to get close to this  
25 smaller car was around there. That would be -- this

1 picture would make the car facing towards the water.

2 Q Then go ahead and where you have marked a green  
3 little arrow type mark, go ahead and put SC for  
4 smaller car.

5 A (Witness complied.)

6 Q Now, if you would, draw in approximately where  
7 the larger car was.

8 A The larger car was right in here somewhere.

9 Q Is that the way it was facing?

10 A Yes, sir.

11 Q Okay, if you would, go ahead and put an LC for  
12 larger car.

13 A (Witness complied.)

14 Q What time was it when you pulled into the circle  
15 area there and saw the people at the picnic table?

16 A I am not sure exactly what time it was. It was  
17 about dusk, whatever time it gets dark.

18 Q Okay, was it still light?

19 A Yes, it was just getting dark.

20 Q It was light and getting dark?

21 A Yes, sir.

22 Q Okay, was that the first time you had seen those  
23 people that day?

24 A That is the first time I had ever seen those  
25 people.

1 Q Had you gone through that -- had you come through  
2 Koehne Park and gone through that circle area  
3 earlier in the day?

4 A No, sir.

5 Q Okay, so you went into Koehne Park one time that  
6 evening -- or prior to that, you had not gone into  
7 Koehne Park. That was your first time into Koehne  
8 Park to go down into that circle area that day,  
9 July 13, 1982?

10 A Yes, sir.

11 Q Okay, if you look back up to that diagram, there is  
12 a -- when you come into the entrance off of Lake  
13 Shore Drive, you take a left to get to the circle  
14 area. Is that correct?

15 A Yes, sir.

16 Q Okay, and I believe, your testimony is that when  
17 you first came into Koehne Park, you took a right  
18 and went down in this area?

19 A Yes, sir.

20 Q Okay. Now, as you were going in, did you see the  
21 same people that you saw over here in the circle  
22 area?

23 A I don't -- I didn't notice them.

24 Q Okay, did you stop in this area and talk to anybody?

25 A I don't remember if we stopped or not.

1 Q Okay, you don't remember if you stopped right here  
2 on the way in and talked with anybody in a car?

3 A No, I don't.

4 Q Okay, did you ever see your brother, Tony, with a  
5 screwdriver in his hand?

6 A No, sir, I don't think so.

7 Q Okay, you handed him your knife at one point during  
8 everything?

9 A Yes, sir.

10 Q Okay, and you didn't notice whether, at that time,  
11 he had anything else in his hand?

12 A No, sir, I didn't.

13 Q Okay, how about on the way out of Koehne Park and  
14 across the Twin Bridges across Lake Waco, okay,  
15 on your way out over to Speegleville Park, did  
16 you see your brother throw anything into the lake?

17 A I remember someone throwing something out. I am  
18 not sure when or if it was over the Twin Bridges or  
19 whether it was Tony or David.

20 Q Again, you were driving, and where was your brother,  
21 Tony, sitting?

22 A He was sitting in the middle.

23 Q Okay.

24 A In the center, between David and I.

25 MR. REAVES: May I approach the

1 witness again, Your Honor?

2 THE COURT: Yes, sir.

3 Q Mr. Melendez, let me come -- okay, now, you said  
4 previously that at one time you looked over at  
5 David Spence was over Jill Montgomery, the brunette-  
6 haired girl?

7 A Yes, sir.

8 Q Okay, and this was off to the side of the car?

9 A Yes.

10 Q Okay, and you saw him bend down over her?

11 A Yes, sir.

12 Q Okay, if you would, go up to that paper there and  
13 draw in as best you can a figure of a person.

14 A I can't draw at all.

15 Q Okay, how about if I draw it for you?

16 A That is fine.

17 Q Because I can't draw either but -- you can see,  
18 I really can't.

19 Let's us assume that that is Jill Montgomery  
20 lying as she was lying down on her back. Is that  
21 what you are saying?

22 A Yes, sir.

23 Q Okay, where was David Spence?

24 A He was, like, on top of her.

25 Q Okay, where was his -- was his head facing that way?

- 1 A Yes, sir, he was like -- his head was about where  
2 her chest was -- or he was almost laying on her,  
3 but he was, like, on top of her, if not, like,  
4 on her.
- 5 Q Was he straddling her?
- 6 A I am not sure. I just -- when I looked over there,  
7 he was above her or on top of her at times. I  
8 don't know exactly how he was.
- 9 Q Okay. Now, when you say he bent down and looked  
10 like he was bent down towards her breast area, was  
11 he still in this position?
- 12 A Yes, sir, he was, like, on his knees over -- almost  
13 like laying on her.
- 14 Q Okay, so if I put David Spence here, that is going  
15 to be the general direction that he was facing,  
16 and he was facing forward?
- 17 A Yes, sir.
- 18 Q Okay, facing towards her head area?
- 19 A Yes, sir.
- 20 Q Now, you came and knelt by her at sometime?
- 21 A Yes, sir.
- 22 Q Okay, where did you come in and kneel by her?
- 23 A Well, she was, like, laying on her side, and I  
24 was, like, towards the back of her, like, where  
25 her legs are.

1 Q Okay, so would that have been her right or left  
2 side that you were?

3 A It would be at her left side if she was laying on  
4 her right side. I would be to the left of her.

5 (Whereupon an instrument was  
6 (marked for identification as  
(Defendant's Exhibit No. 15.

7 Q I almost hate to preserve this, but let me show you  
8 what has been marked as Defendant's Exhibit No. 15,  
9 and does that accurately depict your testimony  
10 regarding the position of Jill Montgomery and David  
11 Spence?

12 A Well, if it shows that David Spence is on top of  
13 her -- almost laying on top of her, then it would  
14 be right, but I am not sure what you mean there,  
15 but if it shows that, then that is about right.

16 Q Okay, does this depict that David Spence is facing  
17 toward her front -- toward her head?

18 A Yes, sir.

19 Q Okay, and that is what your testimony is?

20 A Yes, sir.

21 MR. REAVES: Okay, Your Honor,  
22 at this time, we would offer into evidence  
23 Defendant's Exhibit No. 15.

24 MR. FEAZELL: As long as they  
25 don't try to come back later and say that is the

1 gate, we don't have any objection.

2 THE COURT: It will be admitted.

3 (Defendant's Exhibit No. 15 was  
4 (then admitted into evidence.

5 Q Mr. Melendez, I think, you have said today that you  
6 believe that your brother stabbed Raylene Rice or  
7 the blond-headed girl?

8 A Yes, sir, I did.

9 Q Where was she at the time when you think he stabbed  
10 her -- off to the right-hand side of the car? Is  
11 that correct?

12 A Yes, sir.

13 Q Okay, was she standing up or laying down?

14 A At that time, she was standing up.

15 Q And then she fell forward?

16 A Yes, sir.

17 Q Okay, did he stab her after that?

18 A I don't know. It was -- the way it looked to me at  
19 the time it happened was that Tony had stabbed her.  
20 When she fell down after the knife had fell to the  
21 ground, David Spence picked the knife up and was  
22 kneeling over her when she was on the ground. Tony  
23 had already walked away.

24 Q Now, going in -- when you first got in the car and  
25 you started driving up towards the hill, okay, that

1 is when you said Mr. Spence and according to your  
2 statement, Mr. Spence and Mister -- Miss Montgomery  
3 started getting in a little argument or whatever.  
4 That is when he slapped her. Is that right?

5 A Yes, sir.

6 Q Okay, and he was seated over in the driver's side  
7 driving?

8 A Yes, sir.

9 Q Okay, and she was seated in the middle?

10 A Yes, sir.

11 Q Okay, show the jury how he reached out and slapped  
12 her.

13 A He just more or less backhanded her. He just hit  
14 her like that in the face.

15 Q Just like you did it right there with his right  
16 hand?

17 A Yes, sir.

18 Q Okay, left hand still on the wheel?

19 A Yes, sir.

20 Q Okay.

21 A He wasn't going that fast. We were just barely  
22 going up the road.

23 Q Were you out of beer when you drove into the park?

24 A I don't think we were.

25 Q Okay, you still had some?

1 A I think, we did have some beer.

2 Q Okay, had you just stopped at the store?

3 A We had stopped at the store not too long before  
4 that.

5 Q Okay, and how much beer did you buy the last time  
6 you stopped?

7 A I think, every time we stopped at the store, we  
8 bought around a 12-pack of beer.

9 Q Okay, so you would have stopped not too long before  
10 you came into Koehne Park and purchased a 12-pack  
11 of beer?

12 A Yes, sir.

13 MR. REAVES: Your Honor, can we  
14 approach the bench?

15 THE COURT: Yes, sir.

16 (Conference at the bench.)

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

20 MR. VANCE: Let the record reflect  
21 we are outside the presence of the jury and Gilbert  
22 Melendez can view the videotape which has previously  
23 been marked and admitted as Defendant's Exhibit No. 8.

24 THE COURT: All right, go ahead.

25 Q (By Mr. Reaves) Mr. Melendez, are you ready?

1 A Yes, sir.

2 (Whereupon the videotape was played.)

3 Q Mr. Melendez, you have just seen the second half  
4 of Defendant's Exhibit No. 8. Can you recognize  
5 what that is?

6 A Yes, sir.

7 Q Okay, is that the route from Koehne Park to  
8 Speegleville Park that you took the night of  
9 July the 13th, 1982?

10 A Yes, sir.

11 Q Does that truly and accurately portray the route  
12 from Koehne Park to Speegleville Park up to the  
13 time that you went through the fence?

14 A Yes, sir.

15 MR. REAVES: Your Honor, at  
16 this time, we would offer the second half of  
17 Defendant's Exhibit No. 8 into evidence.

18 MR. FEAZELL: Is that all of it?  
19 Because the other day, it seemed like we turned  
20 around and went back down to the gate.

21 MR. REAVES: That has nothing  
22 to do with the way they went that night.

23 MR. FEAZELL: As long as it is  
24 cut off right here.

25 THE COURT: You will stop right

1 here?

2 MR. REAVES: Yes, sir.

3 THE COURT: Now, the other day,  
4 they went down and turned around and came back out.

5 MR. REAVES: There is more of  
6 this film, but this is where we intend to cut if  
7 off, and that is all we are offering into evidence  
8 is this portion of the tape right here.

9 MR. FEAZELL: Well, let's look  
10 at the rest of it because then we will offer the  
11 rest of it.

12 (Whereupon the end of the videotape  
13 was played.)

14 MR. FEAZELL: We don't want to  
15 offer the second half, Judge, because they didn't  
16 go far enough down to where they came back into  
17 the road, but as far as up to the point where  
18 Mr. Melendez said he recognized it, we have no  
19 objections.

20 THE COURT: Is that 15?

21 MR. REAVES: The second half  
22 of Defendant's 8.

23 MR. FEAZELL: Not the whole  
24 second half, now.

25 MR. REAVES: Well, the second

1 half up to the point to where it ends at the  
2 barbed wire fence.

3 THE COURT: All right, it will  
4 be admitted.

5 (Whereupon the second half of  
6 Defendant's Exhibit No. 8 was  
7 then admitted into evidence.

8 (Brief recess.)

9 (Whereupon the jury returned  
10 into the courtroom and the  
11 following proceedings took place:

12 Q (By Mr. Reaves) Mr. Melendez, I am going to let  
13 you or ask you to watch what has been marked as  
14 Defendant's Exhibit 8.

15 (Whereupon the videotape was  
16 played.

17 Q Can you see that, Mr. Melendez?

18 A Yes, sir.

19 Q Okay, can you identify what that area is right there?

20 A Yes, sir, that is where the turn is in the paved  
21 road.

22 Q Okay, is that the circle area that you have been  
23 talking about?

24 A Yes, sir.

25 Q And is this the way out of that circle area?

A Yes, sir.

Q Okay, is that the road going into Koehne Park?

- 1 A Yes, sir.
- 2 Q Okay, and it is coming up to Lake Shore Drive?
- 3 A Yes, sir.
- 4 Q Okay, this is the way you went on the night of
- 5 July 13, 1982? You took a right out of Koehne
- 6 Park --
- 7 A Yes, sir.
- 8 Q -- on to Lake Shore Drive?
- 9 A Yes, sir.
- 10 Q Okay, did you turn to the right there?
- 11 A Yes, sir.
- 12 Q Okay, coming up to a street, did you take a right
- 13 at this street?
- 14 A Yes, sir.
- 15 Q Is this coming up on Fish Pond Road?
- 16 A Yes, sir.
- 17 Q Okay, which way did you go to Fish Pond Road? Did
- 18 you take a right?
- 19 A Yes, sir.
- 20 Q This is where the film is going. Is that right?
- 21 A Yes, sir.
- 22 Q What is the highway coming up in front of you?
- 23 A That would be Highway 6.
- 24 Q Is this what is called the Twin Bridges?
- 25 A Yes, sir.

1 Q Is that the turn off coming up to Speegleville  
2 Park --

3 A Yes, sir.

4 Q -- to the right?

5 A Yes, sir.

6 Q Right straight ahead, is that the gate, the main  
7 entrance to Speegleville Park?

8 A Yes, sir, it is.

9 Q Okay, and you turned left on the road there?

10 A Yes, sir.

11 Q Can you identify this area, Mr. Melendez?

12 A That is the general area of where the fence was  
13 cut. I don't know if that is the exact spot or  
14 not, but that is the general area.

15 Q Okay, that is the approximate area of where you  
16 entered Speegleville Park and went down to what  
17 you call the dirt road?

18 A Yes, sir, but at the time that we entered that  
19 area, it wasn't grown up. It has changed.

20 It has grown up now on this film and everything.  
21 It looked like a road, at that time. All the grass  
22 was grown up, and it was short to the ground.

23 I think, they had just got through cutting out  
24 there or something.

25 Q And it was dark, of course, at the time?

1 A Yes, sir.

2 (Whereupon an instrument was  
3 (marked for identification as  
(Defendant's Exhibit No. 16.

4 Q Mr. Melendez, let me show you what has been marked  
5 as Defendant's Exhibit No. 16 and ask if you can  
6 identify that?

7 A Yes, sir, that is the general area.

8 Q Okay, does that appear to be the boundary or the  
9 outer boundary of Speegleville Park?

10 A Yes, sir.

11 Q Okay, and does that appear to be, approximately,  
12 the area where you entered Speegleville Park on  
13 the night of July 13, 1982?

14 A Yes, sir, it is in that area.

15 Q Okay, does that truly and accurately portray that  
16 area of Speegleville Park?

17 A Yes, sir, it looked a little different. I think,  
18 that the grass was shorter or something.

19 Q Okay, with that explanation, that is a true and  
20 accurate representation of Speegleville Park?

21 A Yes, sir.

22 MR. REAVES: Okay, at this time,  
23 Your Honor, we would offer Defendant's Exhibit  
24 No. 16.

25 MR. FEAZELL: No objection.

1 THE COURT: 16 is admitted.

2 (Defendant's Exhibit No. 16  
3 (was then admitted into  
4 (evidence.

5 Q Mr. Melendez, do you know how you entered Speegleville  
6 Park that night and got on the dirt road?

7 A I don't understand the question.

8 Q Okay, was there a gate there where you entered and  
9 got on the dirt road?

10 A No, sir. When -- he told me there was a spot to  
11 turn off. It just looked like an open area there.

12 Q Okay, you didn't notice a gate or --

13 A No, sir.

14 Q -- any kind of barricade like that?

15 A No, sir.

16 Q Okay, and that was a dirt road that you went down  
17 for awhile? Once you got off the paved road, you  
18 took a right on to the dirt road, is that correct,  
19 once you got into Speegleville Park?

20 A Are you talking about the area where the fence is?

21 Q Where the fence is, yes.

22 A Yes, sir, when we turned off and went through that  
23 fence area, there was, like, a dirt road that went  
24 along the fence line.

25 We took a right and went around it, and there  
was a fence line running there, and then the fence

1 line ran out, and there was an area where we just  
2 kind of took a right and went up on the road.

3 Q Okay, got on the paved portion of the -- got on  
4 the paved road there in Speegleville Park?

5 A Yes, sir.

6 Q So the place where you say that you entered  
7 Speegleville Park is the area that is depicted in  
8 that photograph which is the area that is fenced in?

9 A Yes, sir.

10 Q You went through that fenced in area?

11 A Yes, sir.

12 Q Okay, Mr. Melendez, when -- you say Mr. Spence had  
13 a hold of Mr. Franks by the throat.

14 A Yes, sir.

15 Q Do you recall how he had a hold of him? Did he have  
16 a hold of him with his right hand or his left hand?

17 A I am not sure. I think, it was his left hand.

18 Q Okay, he had a hold of him with his left hand and  
19 the knife in the right. Is that the way you --

20 A I think so.

21 Q Okay, as he backed him up to the car and as he --  
22 you say you saw him stab him, how was the stabbing  
23 motion? Show the jury. Was it overhand like  
24 that, or was it underhanded?

25 A Well, the jabbing when he was backing him up to the

1 car was like -- something like this (indicating).

2 Q Straight ahead?

3 A It looked like it was like that, yes, sir, and when  
4 he got back to the car and the hard stabbing part  
5 was, like, overhanded, just a jabbing.

6 Q Okay.

7 A It seemed to be like that.

8 Q That is the way you observed it?

9 A Yes, sir.

10 Q Okay, still having a hold of him by the throat?

11 A Yes, sir.

12 Q Okay, when Mr. Franks fell forward, how did he fall --  
13 face first?

14 A Well, he fell forward, like he fell into him, and  
15 he just kind of fell down on his side. It would be  
16 face first, but he fell into him.

17 Q Okay, Mr. Melendez, let me have you come back here  
18 to Defendant's Exhibit No. 2. Do you have your  
19 yardstick there?

20 A Yes, sir.

21 Q When you came back to Koehne Park the second time  
22 after you had gone to get your truck, where did you  
23 pull in, in the circle area?

24 A I pulled in the circle area here, and there is a  
25 little hill here.

1           There is a table. I am not sure how this runs,  
2           but I backed up right here close to or right by  
3           this little cement thing that you have drawn  
4           on here, a little drainage deal or something.

5       Q     Okay, did you back up, or did you pull your car  
6           in parallel?

7       A     When I pulled the truck in, I turned around and  
8           backed the truck up to that area.

9       Q     Okay, would you get one of those markers and  
10          indicate on the diagram where you pulled the truck  
11          in?

12      A     There are some -- I believe, there is some --  
13          there is a guardrail or something right around  
14          here. So it was in this -- there is a hill right  
15          here. So it was in this general area here.

16      Q     Okay, go ahead and put an arrow for the direction  
17          the truck was facing.

18      A     (Witness complied.)

19      Q     Okay, then label that GT for Gilbert's truck and  
20          identify it.

21      A     (Witness complied.)

22      Q     Okay, you have labeled these on Defendant's Exhibit  
23          No. 2, diagram of Koehne Park.

24      A     Yes, sir.

25      Q     Okay, Mr. Melendez, you can make up a pretty good

1 story, can't you?

2 A No, sir.

3 Q No, you can't?

4 A How do you mean that question?

5 Q Well, you can make up a lot of things that maybe  
6 aren't really true, can't you?

7 A Well, sir, it depends on what I was doing at the  
8 time.

9 On the previous statements that I gave, I had  
10 a reason to make up some things and leave things  
11 out.

12 Q I understand that. Let us look at -- well, first  
13 of all, let us look at your first statement. Okay,  
14 I believe, that is your first one there.

15 You are talking about when David and everybody  
16 are in the front of the car driving out, and what  
17 is going on between him and the brunette girl,  
18 okay. You say she pushed him back and tried to hit  
19 him in the face and was cussing at him to leave her  
20 alone, and they started fighting in the front seat,  
21 struggling. Is that true?

22 A That on the last statement, that is somewhat true.

23 Q Somewhat true. Was she cussing at him?

24 A They were arguing. I don't remember the exact  
25 words. She was trying to get him to stop and telling

1 him to stop.

2 She may have said a cuss word or two to him.

3 I am not sure.

4 Q Is that something you remember then, but you just

5 don't remember now?

6 A No, sir, that is generally what happened. Those

7 statements are generally what happened.

8 If you look at them closely and look at the

9 last statement, they are generally what happened.

10 Q I understand that. If you will let me ask you the

11 questions.

12 MR. FEAZELL: I am going to

13 object, Your Honor. He is not letting him answer

14 the questions.

15 THE COURT: Let him complete

16 his answer, and then you can ask the next question.

17 MR. FEAZELL: Thank you.

18 Q We will get to the rest of them, Mr. Melendez.

19 Did you ever say anything in your testimony

20 today about the brunette girl trying to scratch

21 him -- trying to scratch David?

22 A No, sir, I didn't.

23 Q In your testimony today?

24 A No, sir.

25 Q Did you say it in any of these statements?

- 1 A I may have.
- 2 Q Is that true?
- 3 A It is possible.
- 4 Q It is possible?
- 5 A Yes, sir.
- 6 Q Okay, you also said in this statement -- at least,  
7 in this first statement that you were in the front  
8 seat and they were pushing against you so you  
9 opened the door and got out?
- 10 A Yes, sir.
- 11 Q That is not true, is it?
- 12 A No, sir.
- 13 Q Do you know if you said that in your other two  
14 statements?
- 15 A I am not sure.
- 16 Q Again, something you made up?
- 17 A Yes, sir, because my brother was in the front seat.  
18 So I wanted to leave him out of it.
- 19 Q Do you remember saying in those statements that  
20 you told the boy and the girl to move over to the  
21 passenger's side and shut up?
- 22 A I am not sure.
- 23 Q Okay, look at your first statement. You told the  
24 two people in the back, the boy and the girl, to  
25 move over towards the door on the passenger's side

- 1           and to be quiet and shut up.
- 2     A     Yes, sir.
- 3     Q     Okay, is that what you said? Is that true?
- 4     A     That is what I said in that statement.
- 5     Q     Okay, is that true?
- 6     A     No, sir, it isn't.
- 7     Q     Okay, that is not what you said at trial today?
- 8     A     No, sir.
- 9     Q     Okay, you also say in these -- in at least, your
- 10           first statement that -- okay, you say that David
- 11           was hollering at the brunette telling her to take
- 12           her clothes off, and she was giving him a hard time
- 13           in the front seat.
- 14    A     Yes, sir.
- 15    Q     Okay, is that what happened?
- 16    A     He did tell her -- I changed it around. When I
- 17           gave those statements, I changed things around in
- 18           case I decided to back up on those statements.
- 19    Q     I understand that. Is that true or not?
- 20    A     Part of it is true.
- 21    Q     Okay, which part of it is true?
- 22    A     That he told her to take her clothes off, and he
- 23           was hollering at her.
- 24    Q     While she was in the front seat?
- 25    A     No, sir.

1 Q Okay, you also said in your first statement -- in  
2 your other two statements, look here. David Spence  
3 is in the front trying to take her blouse off -- her  
4 top off. She was giving him a hard time struggling,  
5 and she scratched his face up. Did she do that?

6 A It says he tried to take her blouse off -- her top  
7 off and she was giving him a hard time. He slapped  
8 her and hit her a couple of times. You skipped a  
9 couple of lines there.

10 Q Okay, and then go down here and it says she was  
11 trying to slap him and scratch his face up.

12 A Yes, sir.

13 Q Okay, is that what happened?

14 A Well, she was fighting him back, but she didn't  
15 get a chance to because he was holding her hands  
16 off, and he was trying to put her hands off and  
17 everything, and she didn't get a chance to, but  
18 she was attempting to do something like that.

19 Q So is that true or not?

20 A That is somewhat true. When I gave these statements,  
21 I had to say enough where it would be some truth  
22 to it so it would be believable to the statement.  
23 I could possibly have the statement accepted.

24 Q Okay. Now, also in here -- okay, you say that  
25 "David was still having to try to struggle with the

1 girl. A knife appeared somewhere. I don't know."  
2 I am not sure who had it. He did or she did. I  
3 don't know. Do you know who had the knife?  
4 A Yes, sir, I do.  
5 Q Okay, who was it?  
6 A David had the knife.  
7 Q Okay, so you did know who had the knife?  
8 A Yes, sir, I did.  
9 Q Okay, he put the knife to her and told her to cut  
10 it out, to quit fighting him, and she didn't want  
11 to and still kept trying to hit back at him. Is  
12 that true?  
13 A No, sir.  
14 Q Okay, but it is in this statement.  
15 A Yes, sir, I put it in that statement.  
16 Q Okay, after being sworn to tell the truth?  
17 A Yes, sir.  
18 Q Okay, it also says in here that "Girl is in the  
19 back seat." Is that the -- are you referring to  
20 the brunette -- I mean, to the blond?  
21 A I probably was, in that statement.  
22 Q I told them, meaning you, to step outside the car  
23 and stand by where I was at. He stepped outside.  
24 He said, okay, and stepped outside, and I told the  
25 girl to be quiet, to shut up and just sit there.

1 A Yes, sir.

2 Q Is that what happened?

3 A No, sir, that is not what happened, but I had to  
4 leave another person out of it. So I had to make  
5 up for the parts that that person was doing.

6 Q I understand. Let us go back up here a little bit  
7 to this first statement talking about the brunette  
8 in the front seat.

9 You say he got mad and started acting like he  
10 was going to cut her with the knife and he started  
11 cutting her with the knife, and she started to  
12 holler.

13 A Yes, sir.

14 Q Okay, and the boy is still in the back, and he  
15 tried to keep her from hollering, and the girl and  
16 the boy in the back seat, and the girl hollered that  
17 he had a knife, and I told her to shut up, again,  
18 and him and they did.

19 A Yes, sir.

20 Q Okay, is that the truth?

21 A No, sir, that is not the truth. When I said that on  
22 that statement, I didn't want them-- to tell them  
23 the truth. That way, if I decided to fight the  
24 case, they wouldn't have all the truth of what  
25 actually happened.

1 Q I understand.

2 A So I changed things.

3 Q But it is not the truth?

4 A No, sir, in that statement, it isn't.

5 Q Okay, let us go back over here. Okay, David looked  
6 at the girl in the back seat and said that -- he  
7 said that -- he said that I am going to fuck you,  
8 and she said, no, leave me alone. He told her to  
9 shut up, and the guy said something about leaving  
10 them alone, and I told him to just shut up, to just  
11 stand there, and he said, okay. Is that what  
12 happened?

13 A No.

14 Q Okay, something you made up?

15 A It was something like what happened, but that is  
16 not what was said.

17 Q It was still something you made up -- not the truth?

18 A Not the actual whole truth, no, sir.

19 Q Okay, then you talked about what happened in the  
20 back seat with the blond, okay?

21 A Yes, sir.

22 Q David got a hold of the girl in the back seat by  
23 the door, and she struggled with him. He had a  
24 knife in his hand and told her to settle down or  
25 she would get hurt, and she said to leave her alone.

1 She didn't do nothing.

2 She didn't want nothing to do with him. He  
3 was crazy, and he told her to shut up and hit her  
4 a couple of times. She struggled with him a little  
5 bit and put the knife on her and told her to settle  
6 down and to quit struggling.

7 He started to take her top off, and she was  
8 giving him a hard time, and he was trying to hold  
9 her hands down, and she was struggling a lot and  
10 trying to kick at him, but he had her pinned down,  
11 and she hollered.

12 Is that what happened in the back seat of that  
13 car?

14 A No, sir.

15 Q Okay, again, something you made up?

16 A I didn't want to say anything about my truck. So  
17 I used his car.

18 Q Didn't want to say anything about your truck? You  
19 didn't even go get your truck until after you  
20 transported the bodies, did you?

21 A But I didn't want to tell them the correct place  
22 it happened either. So I just said it all happened  
23 in the car there.

24 Q Okay, that is when you -- okay, we have already  
25 talked about what you handed him to tie her up with,

1           okay, and you start talking about him having sex  
2           with the blond.

3                   Again, you say today that you didn't see  
4           whether he did that or not?

5   A       I didn't actually see him do that. I seen him with  
6           her in the front seat, and it sounded like something  
7           was going on in there, and that is possible.

8   Q       Okay, and you said in this statement, "He still  
9           had all his clothing on and started to fuck her.  
10          He said, I am going to fuck you whether you want  
11          to or not." That is in your statement.

12   A       Yes, sir.

13   Q       Is that what you heard that night?

14   A       No, sir.

15   Q       Okay. Now, in this statement, you also say -- you  
16          also say that -- you say to David, what are you  
17          doing? Let's go. Let's get out of here, and he  
18          said, wait a minute. I'm going to get me some  
19          pussy. Is that what he said that night?

20   A       No, sir.

21   Q       Okay, again, something you made up?

22   A       Yes.

23   Q       Is that true? Okay, again, talking about the blond,  
24          she started giving him a hard time trying to push  
25          him away, and he got mad because he couldn't finish.

1                   She was giving him too much trouble. She  
2                   wouldn't cooperate with him. Okay, skipping down  
3                   here, she started to scream and yell at him, cussing  
4                   at him and trying to push him, and he hit her a few  
5                   times. Is that what happened?

6    A    No, sir.

7    Q    Okay, again, something you made up?

8    A    That is something I said in that statement, yes.

9    Q    Well, it is not true, is it?

10   A    What -- the wording there is not true. Something  
11           like that did happen.

12   Q    Okay, but that what it says in that statement is  
13           not true?

14   A    In that statement there, no.

15   Q    Again, after you had sworn to tell the truth?

16   A    Yes, sir.

17   Q    You also say in this statement that "I am not sure  
18           if he went in their pants pockets or not. First  
19           of all, before he rambled around in the car for  
20           half a minute or so, and I guess, he went in their  
21           purses."

22                   Did you see him ramble around in their car?

23   A    Yes, I did.

24   Q    Okay, you didn't say that today.

25   A    Yes, I did say that. When he was in the front seat

1 with the blond, it looked like he was looking  
2 around, leaning over in the car. She was sitting  
3 up, and he was looking around for something, and I  
4 thought he -- maybe looking for a beer or something.

5 Q So you did see him ramble around?

6 A Yes, I did.

7 Q Okay, and then it says he brought out some money  
8 after this.

9 A When he got out of the car with the blond, as I  
10 said today, when he passed me and I told him to  
11 come over here and watch her while I go check  
12 things out, he passed me some money, and I got it  
13 and stuck it in my pocket.

14 Q Okay, so that is kind of right?

15 A Yes, sir, there is a lot of things in there that  
16 are kind of right.

17 Q Some of them that aren't. Okay, now, you put some  
18 stuff in here about you walking away and said, I  
19 told David, I said, man, I am splitting, and I  
20 walked away from the car a little bit, and I said,  
21 I am splitting. I have got to go, and he said,  
22 hey, Bro, don't go. Where are you going?

23 He said, I will give you a ride. You can't  
24 go, and you said, I am going. He said, don't  
25 split. I said, I'm going to walk over here by the

1 water.

2 The water was not too far away -- the water's  
3 edge there. I still had a beer that I had sitting  
4 on the car. I picked it up and stood there for a  
5 minute. Is that what went on?

6 A No, that is not what went on.

7 Q Any of that true?

8 A None of that there in that statement is true. I  
9 just replaced going -- the conversation we had  
10 going to get the truck and talking about taking  
11 the bodies to Speegleville where he knew we could  
12 dump them off. I just sort of went off of it a  
13 little bit and said that. So it wouldn't be the  
14 actual truth.

15 Q I understand. Here we go again. I walked towards  
16 the water's edge and finished the beer I had and  
17 took a leak and lit up a cigarette and started to  
18 walk back and told David, hey, man, let's get out  
19 of here. Somebody is going to come by.

20 Is that what you said?

21 A No, because it wasn't even the correct spot where  
22 it happened at.

23 Q Okay, you hadn't even told him where it was?

24 A No, sir, I didn't.

25 Q You didn't put anything in this statement about

1           where it happened, did you?

2       A     Over there by the water's edge.

3       Q     Lots of water on Lake Waco.

4       A     Over there in the circle like I told you earlier  
5           where the gravel area is, where everybody drives  
6           around. There is always people there. It couldn't  
7           have happened there.

8       Q     This area you are talking about back over here  
9           (indicating)?

10      A     Yes, sir.

11      Q     Okay, and that is where you took the officers --

12      A     Yes, sir.

13      Q     -- when you went out and showed them where everything  
14           happened?

15      A     Yes, sir.

16      Q     Okay.

17      A     At that time, on this statement when I made this  
18           statement.

19      Q     Well, first of all, you made this statement and  
20           really didn't -- the first statement, you really  
21           didn't say where it happened, did you?

22      A     I am not sure if I did or not.

23      Q     You made one statement and took some officers out  
24           there, and then made another statement and put in  
25           where it was at.

1 A Those are -- that one statement is actually the  
2 same statement. It was tape recorded.

3 Then I rewrote it on some paper where they  
4 had left out some things and some things that I  
5 told them that I remembered.

6 Q Okay, both of them on the 26th?

7 A Yes, sir.

8 Q Both of them typewritten statements?

9 A Yes, sir.

10 Q Okay, on this first statement, again, as you are  
11 leaving the park -- said, "Okay, let's go. Do we  
12 got beer? I said, yeah, there's beer. We had beer  
13 all over the car, and there was beer on the floor  
14 board. I picked up a beer."

15 Is that true? Is that what happened?

16 A No, we had a bunch of beer. We had a lot of beer.  
17 There was probably some beers on the floor board  
18 rolling around in the car.

19 Q But is that what happened?

20 A No, that is sort of what happened. We had a lot of  
21 beer in the car. When we took the car and dropped  
22 it off there, there was probably some beer rolling  
23 around in the floor board.

24 Q But again, that is not true when you said that?

25 A That is somewhat true.

1 Q Okay, but it is not the truth?

2 A It is not the actual truth like I told on this  
3 last statement I made.

4 Q So you can take things and make up pretty good  
5 stories?

6 A Well, I was going on the general truth. If you  
7 look at those statements closely, there is a lot  
8 of truth there.

9 I just -- there was a lot of things I wanted  
10 to leave out in case I decided to retract the  
11 statement. Plus, I thought that if I gave a  
12 statement, that would keep David Spence from coming  
13 down and giving a statement and putting it on me.

14 I possibly would keep my brother out of it.

15 Q So you don't mind lying to get something out of it  
16 for you?

17 A I wasn't getting anything out of it.

18 Q Well, you thought you were going to try to keep  
19 David from coming down on you and trying to keep  
20 your brother out of it. You were trying to  
21 protect yourself, weren't you?

22 A I was trying to protect my brother, and they didn't  
23 know about my brother.

24 Q And yourself.

25 A Not myself. I was incriminating myself with that

1 statement.

2 Q But you wanted a way out of it.

3 A There wasn't a way out of it. There was a way deeper

4 into it.

5 Q But you wanted to leave it open. You intentionally

6 lied so that you could come --

7 A Leave it open in case I fought it in court, and

8 that statement would be used against me in court.

9 I don't think that would have helped me too

10 well, if it had been used against me. There is a

11 lot of truth there.

12 Q But there is also some lies there.

13 A Yes, sir, so I would have something to fight with

14 if I did retract that statement and go to court and

15 fight my case, which I did, at one time, retract

16 the statements. I retracted all three of those

17 statements.

18 Q So one time you told somebody or more than one

19 person that all these weren't the truth?

20 A I had to when I retracted the statements.

21 Q Okay, Mr. Melendez, which two murders did you

22 plead guilty to?

23 A I believe, I pled guilty to Jill Montgomery. I am

24 not sure.

25 Q You don't remember?

1 A I don't remember exactly which two. I think, it  
2 was the two girls.

3 Q Okay, and what sentence did you receive in return  
4 for your plea of guilty?

5 A I received a life sentence for each plea of guilty,  
6 which is two life sentences.

7 Q Okay, and those sentences are to run together,  
8 concurrently?

9 A Yes, sir.

10 Q Okay, and what about the other case against you?

11 A It is still pending.

12 Q Okay, still pending, waiting your testimony in  
13 this case?

14 A I will probably take care of it after all these  
15 trials are over.

16 Q After these are over, then you will go in, and it  
17 is your understanding, your plea bargain is you  
18 will get another life sentence?

19 A I am going to plead guilty to it.

20 Q For another life sentence?

21 A Yes, sir.

22 Q Another murder case?

23 A Yes, sir.

24 Q Okay, but it is still capital murder right now?

25 A Yes, sir, it is.

1 Q It is not the first thing you have -- first felony  
2 you have been convicted for, is it?

3 A No, sir, it isn't.

4 Q Okay, I believe, back in 1974, you were convicted  
5 of assault with intent to murder?

6 A Yes, sir.

7 Q Is that a felony?

8 A Yes, it is.

9 Q Okay, you received time in the Texas Department of  
10 Corrections?

11 A Three years.

12 Q And then in '82 -- in 1982, you were convicted  
13 of aggravated sexual abuse?

14 A Yes, sir.

15 Q Okay, and were you sentenced?

16 A Seven years.

17 Q To the Texas Department of Corrections in that  
18 case?

19 A Yes, sir.

20 Q So at the time you pled guilty on these cases,  
21 you were already serving a sentence in the Texas  
22 Department of Corrections for that case?

23 A Yes, sir.

24 Q Is that sentence to run concurrently with your  
25 two cases here?

- 1 A No, sir.
- 2 Q What is your understanding of that?
- 3 A I don't understand. What do you mean?
- 4 Q Your sentence for aggravated sexual assault.
- 5 A I have just completed that sentence.
- 6 Q Okay, while you were serving your life sentences?
- 7 A I didn't have a life sentence then.
- 8 Q Okay, but you were serving a sentence for that at
- 9 the time you pled guilty to the --
- 10 A I was just finishing up those sentences right about
- 11 the time I pled guilty -- around there somewhere.
- 12 Q Mr. Melendez, have you ever given or been forced to
- 13 give any samples of your teeth?
- 14 A Yes, sir, I did give some samples.
- 15 Q When was that?
- 16 A It was Saturday or Sunday of this past weekend.
- 17 Q Was this past weekend?
- 18 A Yes, sir.
- 19 Q That was the first time you had given anything like
- 20 that -- any samples of your teeth?
- 21 A I never was asked to.
- 22 Q Basically, it is your -- or you got the same deal
- 23 when you pled guilty as your brother got to these
- 24 cases?
- 25 A I don't know.

1 Q You don't know?

2 A No, sir, I don't.

3 Q Okay, mother and father ever come visit you?

4 A Yes, they do.

5 Q Okay, do you ever write to your brother?

6 A Do I write to my brother?

7 Q Yes, sir.

8 A No, sir, I don't.

9 Q You don't?

10 A I haven't talked to my brother since the time we  
11 come in here in a pretrial hearing, and the things  
12 we talked about was, how you were doing. We just  
13 seen each other for a few minutes in front of the  
14 attorneys, District Attorneys and the Judge.

15 Q Do you know where your brother is right now?

16 A I presume, he is in McLennan County jail.

17 MR. REAVES: Your Honor, we  
18 will pass the witness, at this time.

19 REDIRECT EXAMINATION

20 QUESTIONS BY MR. FEAZELL:

21 Q Now, Mr. Melendez, you have been asked a bunch of  
22 questions over the past couple of hours about the  
23 first three statements you gave during the first  
24 week period there, March 26th, March 26th and  
25 April 7th.

1 A Yes, sir.

2 Q Although you weren't asked many questions about  
3 the January 1985 statement.

4 A No, sir.

5 Q Is what you said in the January 1985 statement, is  
6 that the truth?

7 A Yes, sir.

8 Q And is that what you have testified to before this  
9 jury today?

10 A Yes, sir.

11 Q On those first three statements where you don't  
12 mention about David and Tony picking you up but you  
13 say David came by your house between 9:00 and 10:00 --

14 A Yes, sir.

15 Q -- why did you tell us that?

16 A Well, I just didn't want to give the correct time  
17 on when David -- I ran into David and where he  
18 picked me up. In case I did fight the case, I  
19 wanted to have some things that were incorrect on it.

20 Q Did it have anything to do with your brother being  
21 in the car when you were picked up?

22 A Yes, sir, I didn't want to say anything about my  
23 brother.

24 Q How about when you told about in the first three  
25 statements, the way you all were seated in the car

1 and you left Tony out?

2 A Yes, sir.

3 Q Same thing?

4 A Yes, sir, I had to fill in those gaps there.

5 Q Back in the beginning during March and early April  
6 of 1983, why didn't you tell us where the murders  
7 really happened?

8 A I was afraid maybe we left something out there or  
9 someone dropped something or there may be some  
10 evidence found there, and I didn't want any evidence  
11 found if I was -- I still hadn't decided whether I  
12 was going to fight the case or not or see what  
13 happened, if David was going to say something about  
14 my brother -- getting him involved in it.

15 Q Since that time though and since your plea of  
16 guilty and your brother's plea of guilty, have you  
17 taken policemen or sheriff's deputies out to the  
18 actual scene of the murder?

19 A Yes, sir, I have.

20 Q I believe, Mr. Reaves was asking you a question in  
21 your first statement -- something concerning when  
22 David asked you to get something to tie them up with.  
23 Do you recall that?

24 A Yes, sir.

25 Q And I believe, in one of your first statements, you

1           mentioned something about a bra and about a blouse  
2           that was used.

3       A     Yes, sir.

4       Q     I will show you what has been marked as State's  
5           Exhibit No. 9. It is already in evidence,  
6           Mr. Melendez. It is a gruesome picture. What does  
7           that look like in that girl's mouth? Could that be  
8           a blouse?

9       A     Yes, sir, it is -- it possibly could be.

10      Q     Now, when you did go to the car as you have testified  
11           before this jury here today and you picked something  
12           up for Mr. Spence to tie up Kenneth Franks with, what  
13           did you tell the jury you picked up?

14      A     I told them that when I picked it up, I thought it  
15           was a rag or a towel.

16      Q     All right, I will show you what is already in  
17           evidence as State's Exhibit 6 and State's Exhibit 15.

18                   What does that look like around that boy's hands?

19      A     It looks like a towel.

20      Q     What does that look like in that boy's mouth?

21      A     It looks like a towel or a rag.

22      Q     Does it look like it is part of the same towel or  
23           rag?

24      A     Yes, sir, it does.

25      Q     In answer to one of your questions -- Mr. Reaves'

1 questions, you told him a lot of things in those  
2 statements that are true.

3 A Yes, sir.

4 Q And I believe, he told you, well, we'll get to that  
5 in a minute.

6 A Yes, sir.

7 Q I don't believe he did.

8 A No, sir.

9 Q Is it true that Mr. Spence was out there that night?

10 A Yes, sir, that is true.

11 Q Is it true that he was there with you and your  
12 brother, Tony?

13 A Yes, sir.

14 Q Is it true that Mr. Spence stabbed and poked on  
15 Kenneth Franks the way you described it to this  
16 jury?

17 A Yes, sir.

18 Q The facts that you described that you witnessed out  
19 there in Koehne Park and that you participated in on  
20 July 13, 1982, are they true?

21 A Yes, sir, that -- it is the truth the best that I  
22 remember.

23 Q You were asked some questions, Mr. Melendez, about  
24 where you turned off to go into Speegleville Park.

25 A Yes, sir.

1 Q I believe, you have already showed us on the map  
2 that you turned off right about here where you  
3 came on down and later got on to this paved road?

4 A Yes, sir.

5 Q You turned off, and I believe, it was depicted on  
6 the videotape, the gravel road and then you turn  
7 the camera and you can see the weeds off the other  
8 side of the fence, correct?

9 A Yes, sir.

10 Q If you'll notice, Mr. Melendez, this aerial photograph  
11 was taken on December 13, 1982, some six months  
12 after the murders -- five months.

13 Even from the aerial photo, can you see the  
14 line right here?

15 A Yes, sir.

16 Q The line, apparently, as you have discussed the  
17 mowed area?

18 A Yes, sir, the part that looks like the road.

19 Q I believe, in your testimony, you mentioned an  
20 intersection that you passed.

21 A Yes, sir.

22 Q Do you recall this abandoned road right here?

23 A Yes, sir, I do.

24 Q And is that where you turned right, right after  
25 you passed that intersection?

1       A     Yes, sir, I passed the intersection and turned  
2             right.

3       Q     And in Defendant's Exhibit No. 16 that is already  
4             in evidence, if you will look toward the rear end  
5             of that automobile off in the corner here, off on  
6             the side, can you see that intersection?

7       A     Yes, sir.

8       Q     And was it right past that intersection through that  
9             fence where you turned?

10      A     Yes, sir, it was a little ways past that intersection,  
11             and it is in the general area somewhere. I am not  
12             exactly sure.

13      Q     And was it then that you went parallel to this  
14             abandoned road until you came back on to the paved  
15             road here?

16      A     Yes, sir.

17      Q     I am going to show you what is already in evidence  
18             as State's Exhibit No. 11, an aerial photograph of  
19             the area that we have been talking about with the  
20             abandoned road, the intersection and where you can  
21             even see the mowed fire lane right there.

22      A     Yes, sir.

23      Q     The part where the circle is drawn, the red circle,  
24             is that the intersection?

25      A     Yes, sir, it is.

1 Q Okay, and did you pass the intersection and then  
2 turn on to that fire lane?

3 A Yes, sir.

4 Q And if you will, show the jury about where you  
5 entered back on to the paved road back inside  
6 Speegleville Park.

7 A It was right back in this general area here.

8 Q All right, right back in this area (indicating)?

9 A Yes, sir.

10 Q You mentioned about taking your truck back to  
11 this fellow's yard out in Bosqueville.

12 A Yes, sir.

13 Q What did you say his name was?

14 A It was Calvin or Kelvin. I am not sure which one.

15 Q But I believe, you said David Spence knew him and  
16 had met him?

17 A Yes, sir.

18 Q Okay, did you ever get your truck back?

19 A No, sir, I didn't. A couple of months after I  
20 took my truck there, I was arrested, and I have  
21 been incarcerated since.

22 Q All right, I believe, you have been back, as you  
23 just testified, to the murder scene a couple of  
24 times since you have given your statement, correct?

25 A Yes, sir.

1 Q And when I say, "your statement," I am speaking  
2 about your 16 page statement of January 1985.

3 A Yes, sir.

4 Q This is the mark where you drew for the Defense  
5 lawyers where the car went into the wooded area.

6 A Yes, sir.

7 Q When you went back out to this wooded area, did  
8 you -- had there been any changes that you noticed  
9 between now -- between recently and the time that  
10 the murders were committed? I mean, physical  
11 changes to this area?

12 A Yes, there were.

13 Q And what are those changes, sir?

14 A There was -- in the area where I say we turned off,  
15 there was some -- past this area here, it was like  
16 they had put up some more fence posts, and where we  
17 actually turned off, it was like they had piled up  
18 a bunch of dirt there or something on the entranceway  
19 where we entered.

20 Q So a bunch of dirt piled up here and then some of  
21 those short posts with cables through there?

22 A Yes, sir.

23 Q Okay, in effect, blocking off the access or some  
24 of the easy access into the wooded area?

25 A Yes, sir.

1 MR. FEAZELL: Okay, we will pass  
2 the witness, Your Honor.

3 RECROSS EXAMINATION

4 QUESTIONS BY MR. REAVES:

5 Q Mr. Melendez, before July 13, 1982, had you ever  
6 been out to Speegleville Park before?

7 A Yes, sir, I have lived in Waco most of my life.  
8 I have been out there before.

9 Q How many times?

10 A I don't know how many times.

11 Q A lot, a few?

12 A Not really a lot. I have been out there before.

13 Q Is that why you are able to identify it so easily  
14 and everything out there?

15 A No, sir, I didn't even know exactly where I was at  
16 that night.

17 Q It is only because you have gone out there since  
18 that time with law enforcement officers that you  
19 know exactly where everything was and where you went?

20 A When I went out there with them, I remembered. I  
21 was driving. I remembered the roads I took to get  
22 out there. That is why I remember exactly where  
23 it was at.

24 Q But you didn't know where you were at that night?

25 A I didn't really know. He was showing me the way.

1 When we got off past that fence down them roads,

2 I didn't exactly know that I was in the park.

3 Q When you took your truck back to Calvin, was he  
4 there?

5 A Yes, he was there.

6 Q Okay, and this was after July 13, 1982?

7 A Yes, sir.

8 Q Was anybody else there when you took it back?

9 A I am not sure. I just -- I think, I seen him outside,  
10 and I just parked it there. I had someone take me  
11 out there and pick me up and follow me out there.

12 Q I noticed in your -- or in your testimony today,  
13 what you really admitted to is raping Raylene Rice.

14 A Yes, sir, I admitted to that.

15 Q You have not said that you stabbed any of the other  
16 kids.

17 A I didn't.

18 Q You did not?

19 A I did not.

20 Q When did you plead guilty?

21 A I believe, it was sometime in January of '85.

22 Q Was it before or after you made the statement that  
23 Mr. Feazell was referring to?

24 A I believe, it was a little before.

25 Q A little before?

1 A That I pleaded guilty? Would you repeat that  
2 question? I am sorry. I misunderstood you.

3 Q What happened first? Did you plead guilty, or did  
4 you give that statement?

5 A I gave the statement.

6 Q And then pled guilty?

7 A Yes, sir.

8 Q Mr. Feazell asked you if you were telling the truth  
9 when you gave that statement.

10 A Yes, sir.

11 Q Okay, did you tell the people, the law enforcement  
12 officers, on March 26th, twice on April 7th that  
13 you were telling the truth?

14 A Yes, sir, I did.

15 MR. REAVES: No further questions.

16 REDIRECT EXAMINATION

17 QUESTIONS BY MR. FEAZELL:

18 Q Mr. Melendez, when you went out to Speegleville  
19 Park with the law enforcement officers, just tell  
20 this jury, did you show them how you and David got  
21 into the park, or did they show you how you and  
22 David got into the park?

23 A I showed them the way we went out there.

24 MR. FEAZELL: That is all.

25 MR. REAVES: We don't have

1 anything further, Your Honor.

2 THE COURT: All right, you may  
3 step down.

4 (Witness excused.)

5 THE COURT: What time do you all  
6 want to start in the morning, 8:00, 8:30 or 9:00?

7 MR. FEAZELL: Your Honor, we  
8 have got witnesses coming in from out of town, if  
9 we could start at 9:00 --

10 THE COURT: They will be for  
11 sure by 9:00 ready to go, to go all day?

12 MR. FEAZELL: Well, I don't  
13 know about that, Your Honor. We are going to talk  
14 tonight about how many witnesses we have left.

15 MR. VANCE: May we approach  
16 the bench on that?

17 THE COURT: Let us start at  
18 9:00 o'clock. Let us let these people go ahead.  
19 All right, 9:00 o'clock, ladies and gentlemen, and  
20 have a good evening.

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

24 MR. VANCE: Judge, we will have  
25 our witnesses here tomorrow so we can keep on