

NO. 14544

THE STATE OF TEXAS

IN THE DISTRICT COURT

V.

242ND JUDICIAL DISTRICT

MUNEER MOHAMMED DEEB

JOHNSON COUNTY, TEXAS

DIRECT EXAMINATION OF GILBERT MELENDEZ

APPEARANCES:

HON. VIC FEAZELL

HON. NED BUTLER

HON. PAT MURPHY

Courthouse

Waco, Texas, for the State of Texas

HON. DICK McCALL

HON. JACK HOLCOMB

HON. DAVID ANDERSON

Attorneys at Law, for the Defendant

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BE IT REMEMBERED THAT on the 5th day of March, the
above and foregoing entitled and numbered cause came on for
Hearing before said Honorable Judge, John MacLean, whereupon
the following proceedings were had, to-wit:

1 THE FOLLOWING PROCEEDINGS TOOK PLACE ON THE 5th DAY OF MARCH, 1985

2
3 GILBERT MELENDEZ,

4 who after having been duly sworn to tell the truth, the
5 whole truth, and nothing but the truth, testified on his
6 oath as follows, to-wit:

7 DIRECT EXAMINATION

8 BY MR. FEAZELL:

9 Q. Would you state your name for the record, please, sir?

10 A. Gilbert Melendez.

11 Q. Mr. Melendez, these two ladies sitting right back here
12 are on our jury. They will need to hear every word you
13 have to say, so please speak up as you talk. You may
14 occasionally need to move into the microphone. Also,
15 the lady sitting over there is going to be writing down
16 everything that you and I say, so that means you will
17 need to answer in yes or no, or answer out loud for
18 she can't get down head shakes. All right?

19 A. Okay.

20 Q. Also, if at any time you need to break for a drink of
21 water, please indicate that to the Judge or to the
22 bailiff and they will get you a drink of water. All
23 right?

24 A. Okay.

25 Q. Would you spell your last name, please, Mr. Melendez?

1 A. M-E-L-E-N-D-E-Z.

2 Q. The people on the jury can barely hear you.

3 THE COURT: If need be, take
4 the microphone and push it up closer. Closer.

5 QUESTIONING CONTINUED BY MR. FEAZELL:

6 Q. Now, please spell your name for the record.

7 A. M-E-L-E-N-D-E-Z.

8 Q. All right. Mr. Melendez, on July 13th, 1982, tell the
9 jury whether or not you participated with a man named
10 David Wayne Spence in murdering three teenagers at
11 Koehne Park.

12 A. Yes, sir, I did.

13 Q. All right. Where are you from, Mr. Melendez?

14 A. From Waco.

15 Q. Were you born in Waco?

16 A. Yes, sir.

17 Q. Did you grow up all your life in Waco?

18 A. No. I was in Waco until about the fifth grade. My
19 father was in the service and went to Germany for
20 about three years and then returned back to Waco.

21 Q. Now, Gilbert, you will need to speak up a little
22 louder because even with the microphone right there,
23 I'm having a little trouble hearing you. All right?

24 A. Okay.

25 Q. So you lived in Germany for three years with your

1 father?

2 A. Yes, sir.

3 Q. When did you move back?

4 A. I was in about the seventh or eighth grade.

5 Q. Gilbert, how did you meet David Spence?

6 A. I met David Spence with a friend of mine that worked
7 with me, the same place I worked, taking me home one
8 day. He happened to be there and he knew that person,
9 and I met David Spence one day when my brother picked
10 me up from work. He knew David and introduced us.

11 Q. Okay. So you met him in effect through your brother?

12 A. Yes, sir.

13 Q. And, Gilbert, what is your brother's name?

14 A. Anthony Melendez.

15 Q. And what do people usually call him?

16 A. Tony.

17 Q. Tony?

18 A. Yes, sir.

19 Q. Are you older or younger than David?

20 A. I'm older.

21 Q. How about Tony?

22 A. I'm older than Tony.

23 Q. So Tony is your little brother?

24 A. Yes, sir.

25 Q. Gilbert, I am going to show you what has been introduced

1 into evidence as State's Exhibit No. 17. Do you
2 recognize the person in that photograph?

3 A. Yes, sir.

4 Q. Tell the jury who it is, please.

5 A. David Spence.

6 Q. Is that about the way David appeared in July of 1982?

7 A. Yes, sir.

8 MR. FEAZELL: Can everybody hear
9 all right?

10 QUESTIONING CONTINUED BY MR. FEAZELL:

11 Q. Gilbert, where were you living in 19 -- in the early
12 summer of 1982?

13 A. I was working different places. I was living with
14 friends at just different places at that time;
15 nowhere particular.

16 Q. In the summer of '82, did you have any contact with
17 David Spence?

18 A. Yes, sir.

19 Q. Do you recall a conversation you had with David in
20 late June or early July?

21 A. Yes, sir.

22 Q. Tell the jury about that conversation, please.

23 A. Well, we were riding around one day --

24 Q. We who?

25 A. David Spence and I.

1 Q. All right.

2 A. We got together, and the conversation that -- we were
3 talking about dope, and he said something --

4 Q. Wait a minute. You were talking about what?

5 A. Some drugs.

6 Q. Okay.

7 A. And David had said he had a friend of his that had
8 gotten ripped off --

9 Q. Okay.

10 MR. McCALL: I'm going to object
11 to the injection of any hearsay, Your Honor.

12 MR. FEAZELL: Judge, if I may
13 respond --

14 THE COURT: Sustained. I
15 sustain the objection as it was -- sustain the
16 objection.

17 QUESTIONING CONTINUED BY MR. FEAZELL:

18 Q. When was the first time -- did you have a conversation
19 involving drugs that included this defendant, Muneer
20 Deeb?

21 MR. McCALL: I am going to
22 object. That is leading, Your Honor.

23 THE COURT: Overruled.

24 MR. McCALL: It also calls for
25 an answer based on hearsay.

1 THE COURT: Overruled.

2 MR. McCALL: Furthermore, we
3 object there is no independent showing of the existence
4 of any conspiracy and this will be hearsay.

5 THE COURT: Overruled.

6 MR. McCALL: Could we have a
7 running objection on that?

8 THE COURT: Yes, sir, you may.

9 QUESTIONING CONTINUED BY MR. FEAZELL:

10 Q. That means you can answer my question, Gilbert.

11 A. Would you repeat it, please?

12 Q. Okay. I was wondering if during the early part of
13 July -- late part of June and early part of July if
14 you and David had a conversation in which Mr. Deeb
15 was alluded to.

16 A. Yes, sir.

17 Q. All right. Tell us about that conversation.

18 A. Spence had told me that he had a friend that had
19 gotten ripped off for some drugs and that he wanted
20 either his money back or his drugs back.

21 Q. That who wanted to get the money back?

22 A. The friend of his who had gotten ripped off.

23 Q. Okay. What else did Spence tell you about that?

24 A. He said that his friend gave a bunch of speed and
25 crank to some people and they never paid him back, and

*Spence
Gilbert
Conversation*

1 he wanted to get the drugs or the money back, and he
2 was willing to pay good to get it back.

3 Q. Okay. This person was willing to pay good?

4 A. Yes, sir.

5 Q. Okay. Did Spence tell you anything else at this time?

6 MR. McCALL: I'm going to
7 object again. That's hearsay, Your Honor.

8 THE COURT: Overruled.

9 QUESTIONING CONTINUED BY MR. FEAZELL:

10 A. He said that -- I told him that I didn't think it was
11 worth getting mixed up in that kind of shit, and he
12 said he was thinking about doing it because the guy
13 was willing to pay him to get it back.

14 A. All right. Did Mr. Spence mention to you who it might
15 have been that ripped this dude off for the drugs?

16 A. He -- I asked who the people were and he said something
17 about the dude and a chick. I know he said something
18 about a chick.

19 Q. All right. What was your attitude about it at that
20 time, Gilbert?

21 A. Well, I just told him that I didn't think it was worth
22 getting mixed up in something like that.

23 Q. How come?

24 A. Because I just told him it wasn't worthwhile and he
25 said he thought it was worthwhile because the guy was

1 willing to pay for it, and he was thinking about doing
2 it.

3 Q. All right. That Spence was thinking about doing it?

4 A. Yes, sir.

5 Q. Now, some time after that, did you have an opportunity
6 to meet Mr. Deeb?

7 A. Yes, sir.

8 Q. About how long after that conversation was it that you
9 met Deeb?

10 A. It was a few days after that.

11 Q. How did you meet Deeb?

12 A. We were -- I had been with Spence again. I had run
13 into him and we went riding around and drinking some
14 beer, and we had run out, so we were going to stop and
15 buy some more-

16 Q. Buy some more beer?

17 A. Yes, sir.

18 Q. Okay.

19 A. And we went to -- we stopped at this store -- he said,
20 "Let's go to this store and get some beer here."

21 Q. Which store did you stop at?

22 A. At the -- it was the Rainbow Drive-in.

23 Q. All right. And what did Spence tell you?

24 A. He said he knew the guy that owned the store and let's
25 stop and go in there and get some beer.

1 Q. What happened, Gilbert, when you went inside the
2 store?

3 A. We went inside the store, and as we walked in, Spence
4 had seen the guy that owned the store, which I know
5 now is Deeb, and as we walked in he said, "Hey, what's
6 going on," and stuff like that.

7 Q. Who said that?

8 A. Spence did.

9 Q. Who did he say it to?

10 A. He said it to Deeb.

11 Q. All right. Then what happened?

12 A. We walked in toward the end of the store there, and
13 they were just talking about what was happening, and
14 he said that we had come in to get some beer, and he
15 said, "This is Gilbert, a friend of mine, the guy I
16 told you about."

17 Q. Okay. Now, this was Spence talking to Deeb?

18 A. Yes, sir.

19 Q. All right.

20 A. And we were kind of standing there together toward
21 the end of the counter, and he said, "This is Gilbert,
22 a friend of mine, the guy I told you about," and
23 Deeb kind of nodded, and he said, "I told him about
24 you getting ripped off for your drugs," and he kind of
25 nodded, too, and he said --

1 Q. Deeb nodded or Spence nodded?

2 A. Deeb nodded.

3 Q. Okay.

4 A. Well, he was in the middle of a sentence there, and
5 he said, "the one trying to get your shit back."

6 Q. Okay. What happened then?

7 A. Deeb seemed kind of like he -- he changed the subject.
8 He kind of looked at me and it seemed like he was
9 getting kind of nervous or uptight and he kind of
10 started to change the subject, but as Spence finished
11 that sentence, I guess he noticed that he was getting
12 nervous because, you know, he didn't know me. I had
13 just come up, and he was saying I was a friend of his,
14 and he said, "Gilbert is all right. He's my bro, a
15 friend of mine."

16 Q. Okay. Bro?

17 A. Yes.

18 Q. Is that street slang for something?

19 A. Yes, sir. It's like he's my brother.

20 Q. Let me get this straight. It was Spence telling Deeb
21 about this?

22 A. Yes, sir.

23 Q. All right. Now, you said Deeb was acting kind of
24 nervous. How do you know he was acting nervous?

25 MR. McCALL: I object to his

1 repeating the witness' testimony. It amounts to the
2 prosecutor attempting to testify. The testimony should
3 come from the witness stand.

4 MR. FEAZELL: I'm asking a
5 question, Your Honor.

6 THE COURT: Overruled.

7 QUESTIONING CONTINUED BY MR. FEAZELL:

8 Q. How do you know he was acting nervous?

9 A. Well, he just kind of exchanged glances between me and
10 Spence when he said that, and then he -- while he was
11 changing the subject he kind of looked at Spence and
12 kind of went like that, and said, "What have y'all been
13 up to," or "What are y'all fixing to do," "What's
14 going on?" and just kind of changed the subject.

15 Q. Okay. So what happened next?

16 A. They started talking to each other about what we were
17 doing and everything, and so I felt he was pretty
18 nervous, so I just walked off and left them alone and
19 went and got some beer.

20 Q. Okay. Went off and left Deeb and Spence alone?

21 A. Yes, sir.

22 Q. Was anybody else around Deeb and Spence at that time
23 that you noticed?

24 A. No, sir.

25 Q. Was there anybody else in the store besides Deeb at

1 that time?

2 A. I think somebody was behind the counter.

3 Q. Okay.

4 A. By the door by the register.

5 Q. Can you describe that person for the jury?

6 A. He was a foreigner type dude, kind of dark complected
7 guy.

8 Q. All right. What did you do after that, Gilbert?

9 A. I got beer out of the cooler box and walked back up to
10 where David Spence -- David and Deeb were, and they
11 were still kind of talking, and he said, "Are you
12 ready?" and I said, "Yeah. I'll pay for this," and
13 somebody walked up to the counter and they stayed there
14 a few minutes, and I paid for the beer and the guy
15 sacked the other one, and David said, "Are you ready
16 to go?" and I said, "Yeah," and we stayed there a
17 second and we left.

18 Q. Just you and David?

19 A. Yes, sir.

20 Q. Did you and David have a conversation in the car
21 immediately after leaving that store?

22 A. Yes, sir.

23 Q. What was that?

24 MR. McCALL: I object. It is
25 hearsay, Your Honor.

1 THE COURT: Overruled.

2 QUESTIONING CONTINUED BY MR. FEAZELL:

3 A. He said that -- he was telling me how much money the
4 guy had because he owned the store and stuff, like
5 that, that the guy had a lot of money because he owned
6 the store.

7 Q. Did he say anything else besides the fact Deeb had a
8 lot of money?

9 A. He -- I don't remember.

10 MR. McCALL: I'm going to have
11 a running objection on this as hearsay.

12 THE COURT: Yes, sir.

13 QUESTIONING BY MR. FEAZELL:

14 Q. Was there any more discussion at that time about the
15 people who had ripped Mr. Deeb off?

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

17 Q. Okay. Gilbert, do you see that man in the court room
18 today, the one that you were talking to with Spence in
19 the store?

20 A. Yes, sir.

21 Q. Where is he, please?

22 A. He's sitting right there on the end of the table, with
23 the glasses.

24 MR. FEAZELL: Your Honor, may
25 the record reflect Mr. Melendez has identified the

1 defendant?

2 THE COURT: The record will so
3 reflect.

4 MR. FEAZELL: Thank you.

5 QUESTIONING CONTINUED BY MR. FEAZELL:

6 Q. Was there any more conversation between you and David
7 concerning helping him with Mr. Deeb's situation?

8 A. No, sir.

9 Q. All right. Now, let's talk about July 13th, 1982.

10 Were you working at that time?

11 A. Yes, sir.

12 Q. Where were you working?

13 A. I was a painter -- painted some condominiums they had
14 built close to Hillcrest Hospital.

15 Q. All right. Were you working on that day?

16 A. Yes, sir.

17 Q. Did you have an occasion to see David Spence on that
18 day?

19 A. Yes, sir. I had gotten off work about 4:30. That is
20 the usual time we got off, and I happened to be
21 walking home that day. Those last few days I had
22 walked to work. It wasn't too far from where I was
23 staying, and as I was about on 15th and Colcord, I was
24 going to home, I happened to see David Spence and my
25 brother Tony at an intersection near and they hollered

1 at me and pulled over and picked me up.

2 Q. Okay. Spence -- was anybody with Spence and Tony?

3 A. No, sir.

4 Q. Do you recall what car they were in?

5 A. They were in his car.

6 Q. Whose car?

7 A. Spence's car.

8 Q. What did it look like?

9 A. It was -- it's like a Pontiac or something like that.
10 I'm not sure.

11 Q. Do you remember the color?

12 A. I think it is -- I don't remember exactly what color
13 it was.

14 Q. Okay. When Tony and Spence pulled over, what happened?

15 A. They stopped and pulled over and told me to get in and
16 asked me what I was doing, and I told them I had just
17 gotten off from work, going home, and they asked me if
18 I wanted to go riding around and drink some beer with
19 them, and I said sure. We went to the store -- there
20 was a store right there on the corner, and got some
21 more beer.

22 Q. What did you do then, Gilbert?

23 A. Then we went riding around a little bit.

24 Q. Riding around in Waco?

25 A. Yes, sir.

1 Q. Did you go anywhere in particular?

2 A. No. We just drove up and down the main streets. I
3 think we went up 18th a little ways and drank some
4 beer and smoked some pot, and stopped at a store on
5 North 18th and went in and picked up some more beer.

6 Q. All right. You say you were drinking beer and smoking
7 pot?

8 A. Yes, sir.

9 Q. Is pot another name for marijuana?

10 A. Yes, it is.

11 Q. How much marijuana were you smoking?

12 A. We smoked several joints.

13 Q. How much did Spence smoke?

14 A. We all smoked the same amount.

15 Q. Okay. Plus drinking the beer?

16 A. Yes, sir.

17 Q. Did you have an occasion then to go to Koehne Park?

18 A. Yes, sir, we did.

19 Q. Once or more than once?

20 A. Twice.

21 Q. Okay. Twice initially?

22 A. Yes, sir.

23 Q. All right. What happened the first time when you got
24 to Koehne Park?

25 A. We just drove through the park, down to the gravel

1 area. There's a lot of people -- that's w
2 body parks and hangs around, and we drove
3 just drove down and drove back out. We didn't see
4 anybody we knew, so we just kind of made the round
5 where everybody drives through, and then drove out
6 and went up Valley Mills.

7 Q. You say you didn't see anybody. Were you looking for
8 anybody in particular?

9 A. No, sir, I wasn't.

10 Q. Well, you said I wasn't. Do you know if anybody was?

11 A. I didn't think anybody was. We were just riding around
12 and drinking.

13 Q. Were there any notable conversations at that time
14 between you and Spence and Tony?

15 MR. McCALL: I object to any
16 hearsay, Your Honor.

17 THE COURT: Overruled.

18 QUESTIONING CONTINUED BY MR. FEAZELL:

19 A. No, sir, we just drove through there and made the
20 round.

21 Q. What did you do after you left Koehne Park?

22 A. We went back on Valley Mills and drove up a little
23 ways through the drag there, kind of, and I believe
24 we stopped and got some more beer at a store.

25 Q. By then do you recall how much beer you had had to

1 drink?

2 A. We had drank several beers. We usually got about a
3 12 pack each time we stopped.

4 Q. And there were only three of you in the car?,

5 A. Yes, sir.

6 Q. How many 12 packs do you recall picking up?

7 A. Three or four.

8 Q. Plus the marijuana?

9 A. Yes, sir.

10 Q. What did you do after you bought the additional
11 beer?

12 A. Drove around a little bit more and went through some
13 parking lots there on Valley Mills. I remember going
14 through Click's Parking Lot. There was a lot of people
15 there that drive through there.

16 Q. What is Click's

17 A. It's like a pool hall that sells beer and drinks.
18 It's in a shopping center.

19 Q. Tell the jury where you went after you left the
20 Click's parking lot.

21 A. We drove back to Koehne Park.

22 Q. All right. Gilbert, I am going to ask you to step
23 down here with me and look at the map. Do you
24 recognize that as an aerial photo of the Lake Waco
25 area?

1 A. Yes, sir.

2 Q. Just to help you get your bearings, here are the twin
3 bridges. This is Valley Mills Drive and Lake Shore
4 Drive. Put your finger on Valley Mills Drive and trace
5 around and find Koehne Park.

6 A. This is Valley Mills.

7 COURT REPORTER: I can't hear
8 him.

9 A. This is Valley Mills Drive and this is the entrance to
10 Koehne Park.

11 Q. Okay. Tell the jury where you went the second time.

12 A. The second time took a left here at the entrance and
13 turned right and went down to the gravel area, and
14 come back out, turned right on the road and crossed
15 the road to the other side.

16 Q. All right. Where did you go on the other side?

17 A. We went all the way down to the end. It curves and
18 comes around to a place that is called the circle.

19 Q. And that's the circle there where you had your finger?

20 A. Yes.

21 Q. Okay. Take the stand. Mr. Melendez, I am going to
22 show you what is already in evidence as State's
23 Exhibits 39 and 38. Do you recognize those photos
24 or what it depicts?

25 A. Yes, sir.

1 Q. All right. Tell the jury what it is.

2 A. This is Koehne Park.

3 Q. I am going to ask you in particular, Gilbert, to look
4 at that area between the circle and the boat ramp,
5 this wooded area right here. Have you ever been down
6 in that area before?

7 A. Yes, sir.

8 Q. Describe what that area looks like, will you, please?

9 A. It's just a wooded area there. It has just got a lot
10 of trees pretty far apart.

11 Q. All right. Can you see into there real easy from the
12 road, or is it pretty thick?

13 A. It is pretty thick. You can't really see in there.

14 Q. Gilbert, tell the jury what you saw when you got down
15 into Koehne Park that second time. What do you
16 remember seeing?

17 A. We drove back through the drive-through the area
18 where we drove through the first time. As we
19 took a right in the drive-through area I remember
20 seeing a truck and a car and some people standing around
21 drinking. They were just kind of parked on the top of
22 the hill there where the road goes downhill a little
23 ways. We continued on down the road and there were
24 people standing around drinking. I remember seeing a
25 Monte Carlo and Gran Prix a little further down the

1 road there.

2 Q. Anything in particular -- that you remember about any
3 of the people you saw?

4 A. There was -- yeah, I remember there was a black guy
5 talking to some people.

6 Q. How do you remember the black guy talking to the
7 people?

8 A. Well, I remember that because Spence had made a comment
9 like what's that fucking nigger doing out here.

10 Q. Okay. Mr. Spence didn't like black folks very much?

11 A. No, sir.

12 Q. What happened right after that?

13 A We drove along -- that was about half way between where
14 we turned around and drove on down and made a turn
15 and drove back up to the entrance there and crossed
16 the road and went over to the other side of the park.

17 Q. Over to the circle?

18 A. Yes, sir.

19 Q. What did you see, Gilbert, when you got over to the
20 circle?

21 A. Well, we drove over to the circle and I noticed a
22 larger car and a small car as we come into the circle.

23 Q. Okay. Did you see anything else?

24 A. As we were driving in, we seen some people --

25 Q. Please speak up.

1 A. As we were driving in, we seen some people there --
2 Spence noticed them, and he said, "I know those people
3 there. Let's stop and talk to them. Those are the
4 three people that I told you about that ripped that
5 dude off."

6 Q. All right. Did you know what dude he was talking about
7 when he said the three people that ripped that dude
8 off?

9 A. Yes, sir. I figured he was talking about the dude
10 that owned the store he was talking about.

11 MR. McCALL: I object to any
12 speculation, Your Honor, if he is speculating on it.

13 THE COURT: Overruled.

14 QUESTIONING CONTINUED BY MR. FEAZELL:

15 Q. Who was he talking about?

16 A. The dude at the store that he had told me about earlier
17 because he said those were the people that ripped him
18 off.

19 Q. The same --

20 A. That he was telling me about.

21 Q. The same dude that he had introduced you to?

22 A. Yes, sir.

23 Q. Okay. You mentioned seeing a couple of cars. Is
24 there anything in particular that you noticed about
25 this small car, Mr. Melendez?

1 A. Yes, sir. A little later when we were going out, I
2 noticed the small car had some stickers on the back of
3 it, on the back windshield.

4 Q. I'm going to show you what has been marked as
5 State's Exhibit No. 1. Does that appear to be the car
6 you're --

7 A. Yes, sir, that's the car.

8 Q. Do you see the stickers on the back?

9 A. Yes, sir.

10 Q. Now, about the three kids, where were they situated
11 there in Koehne Park?

12 A. They were kind of standing over around -- there were
13 some picnic tables there, too, and they were sort of
14 in the middle, in that area there as you come through
15 the circle, there's a curve there.

16 Q. Did you notice whether or not they were doing anything
17 in particular?

18 A. No, sir, I didn't notice anything until David talked
19 to them. They were drinking some beer and had a beer
20 can or a beer bottle in their hands.

21 Q. Okay. Let me show you, Gilbert, what has been marked
22 as State's Exhibit No. 2. Does that appear to be one
23 of the teenagers that you saw?

24 A. Yes, sir, that's the boy.

25 Q. Let me show you what has been marked as State's -- no,

1 this is Defense No. 6. Does that appear --

2 A. Yes, sir, that was the two girls.

3 Q. Do you see the car in the background?

4 A. Yes, sir.

5 Q. Recognize the car?

6 A. Yes, sir. That is the same small car.

7 Q. Speak up.

8 A. Yes, sir, that looks like the same car as the small
9 car that was out there.

10 Q. All right. After you saw the three kids out there,
11 what happened?

12 A. David had said he wanted to stop, that he knew those
13 were the ones that ripped that dude off, and I told
14 him, "Man, fuck that shit," and I didn't want to stop,
15 and he said, "No, I just want to stop and talk to
16 them. I know them."

17 Q. Why didn't you want to stop, Gilbert?

18 A. Well, he said it was the three people that ripped that
19 dude off, so I figured he may -- you know, there may be
20 some trouble or he may start something --

21
22 MR. McCALL: I object to any
23 hearsay or speculation on the part of the witness,
24 Your Honor.

25 THE COURT: Overruled.

QUESTIONING CONTINUED BY MR. FEAZELL:

1 Q. Okay. You didn't want to stop. Did David go ahead
2 and stop?

3 A. Yes, sir. He said, "I just want to talk to them," and
4 we stopped.

5 Q. Now, had you ever seen druggie types before, Gilbert?

6 A. Yes, sir.

7 Q. The types that are involved in big money stuff?

8 A. Yes, sir.

9 MR. McCALL: I object to that.
10 It is irrelevant and immaterial, and is calling for
11 speculation.

12 MR. FEAZELL: Judge, they are
13 the ones that have been bringing this up since the
14 trial started.

15 MR. McCALL: I object to the
16 sidebar remark, too. I mean, if he's got something
17 that responds --

18 THE COURT: Sustain the
19 second objection; overrule the first one.

20 MR. FEAZELL: Thank you, Judge.

21 QUESTIONING CONTINUED BY MR. FEAZELL:

22 Q. So you had seen these druggers before. What did these
23 three look like?

24 A. They just looked like regular teenage people.

25 MR. McCALL: I'm going to object.

1 He is speculating, Your Honor.

2 THE COURT: Overruled.

3 QUESTIONING CONTINUED BY MR. FEAZELL:

4 Q. Tell the jury, please, Gilbert, what the three looked
5 to you.

6 A. They just looked like average, regular teenage people.

7 Q. All right. Okay. So what happened?

8 A. David stopped the car and he opened the door and got
9 out. He called out a name to someone, one of the

10 girls that was there.

11 Q. Called out one of the girl's names?

12 A. Yes, sir.

13 Q. What happened then?

14 A. Well, one of the girls responded to it, you know, said
15 something to him, but it is like he called her by the
16 wrong name or something. She came back with a name
17 that was similar to what he said, but it wasn't like
18 what he said. It was like what he said -- he had
19 called her by the wrong name.

20 Q. Can you remember what the names were?

21 A. No, sir, I can't remember what the names were, but I
22 know now the girl who responded was the brunette girl
23 and I know her name is Jill now, but it sounded
24 something like that, but I didn't know it then.

25 Q. All right. David called her by the wrong name?

1 A. It seemed like it when she answered --

2 MR. McCALL: I object to it.

3 He is speculating, Your Honor.

4 THE COURT: Overruled.

5 QUESTIONING CONTINUED BY MR. FEAZELL:

6 A. It wasn't the name, but it sounded like what she had
7 said.

8 Q. All right. Did David respond to her correcting him, or
9 what did he do?

10 A. He just started -- he said, "What's going on?" Just
11 started talking to them and she started talking back
12 to him, and I thought that they knew each other. He
13 knew them.

14 Q. Okay. And it was the brunette

15 A. Yes, sir.

16 Q. Was David pretty stoned by then?

17 MR. McCALL: Objection. Leading.

18 THE COURT: Sustained.

19 QUESTIONING CONTINUED BY MR. FEAZELL:

20 Q. Mr. Melendez, tell this jury whether or not, in your
21 opinion, from having observed David Spence, was he
22 intoxicated, or was he on drugs?

23 A. Yes, sir, we all were. We had drank quite a bit
24 and been smoking.

25 Q. Okay. What happened then?

1 A. He started talking to them, asking them what was going
2 on and stuff like that, and they said, "Nothing. We're
3 just drinking a few beers.. I stayed in the car. My
4 brother Tony got out at that time when they started
5 talking and walked around, over to the driver's side of
6 the car, and the other two people came up toward the
7 car they were driving.

8 Q. All right. What happened after they got up to the car?

9 A. They were -- you know, they talked about what was
10 happening. David had said -- asked them if they wanted
11 to go get some more beer, and party some more, and
12 the brunette girl seemed like she was willing to go,
13 and she asked the other two, "Do you want to ride up
14 to the store and we'll get some more." She seemed like
15 she was willing to go, and she asked the other two if
16 they wanted to go, or if they wanted to wait, or
17 whatever, and they said it didn't matter; they would
18 go or wait. David said, you know, we can all fit in
19 the car, there is plenty of room, and I don't know if
20 it was David or Tony, but something was said about
21 some pot, some marijuana, that we could smoke some on
22 the way up there, so everyone agreed to go.

23 Q. Okay. Are you talking about the marijuana that y'all
24 had?

25 A. Yes, sir.

1 Q. Okay. So after they agreed to get in the car with you
2 down at the circle, what happened?

3 A. Everyone got in the car.

4 Q. Tell the jury how they were situated in the car.

5 A. Okay. I was in the back seat on the passenger's side.
6 The blonde girl got in beside me in the middle and the
7 boy got in behind the driver's seat. David was
8 driving. Tony was on the passenger's side, and the
9 brunette got in the middle.

10 Q. The brunette was in the middle in the front?

11 A. Yes, sir.

12 Q. Okay. After everybody was in the car, tell the jury
13 what happened.

14 A. Well, everyone got in the car and we started to pull
15 off. We had to turn around because it is a circle
16 deal, and we were pulling around to turn around.
17 Something was said about hope nobody messes with my
18 car by one of the girls -- don't hit my car, and as
19 we were backing up, that is when I noticed that the
20 smaller car was hers.

21 Q. Was that when you noticed the stickers on the back?

22 A. Yes, sir.

23 Q. Which girl was this talking about the car?

24 A. The brunette girl.

25 Q. The brunette girl?

1 A. Yes, sir.

2 Q. Now, what happened after they got in the car and
3 started backing around?

4 A. Well, they said something about the car and then
5 Tony, my brother, kind of looked back and asked -- just
6 kind of asked everybody if they were from Waco. The
7 boy said he was from Waco and the girls -- one of the
8 girls said she was from out of town. It was the
9 blonde girl --

10 Q. Okay.

11 A. -- that said she was from out of town.

12 Q. Okay.

13 A. And the radio was on, so something was said about a
14 radio station. I don't remember exactly what it was,
15 but the blonde headed girl, I think, said something
16 about the radio station.

17 Q. What happened then?

18 A. After we turned around and everything, this conversation
19 was going on. Tony had asked the blonde girl -- looked
20 back toward her -- if that guy was her old man, meaning
21 the boy, and she said no they were just friends.

22 Q. Tony asked that of the blonde girl?

23 A. Yes, sir.

24 Q. Okay. At that point is that when you started to pull
25 back up the road?

1 A. Yes, sir.

2 Q. Okay. Before we get into that, Gilbert, if you would,
3 please, for the jury, describe how the blonde girl
4 looked and what you can remember her wearing that day,
5 if you remember what she was wearing.

6 A. The blonde girl, she was about five foot tall. She was
7 kind of small and thin. She wore a lot of make-up,
8 eye make-up. She had blonde hair about shoulder length.
9 It was -- it had a wave, kind of a wave to it. It
10 wasn't straight. It looked like it wasn't natural
11 blonde. It looked like close to the roots of her scalp,
12 it looked like it was dark, not a natural blonde, and
13 she had on -- you could see her shoulders with
14 whatever she had on, like a T-top or something like
15 that. I noticed that her -- she had on -- you could
16 see her feet in her shoes. She was wearing not sandals,
17 but something like that.

18 Q. Not sandals, but something like sandals?

19 A. Yes, sir.

20 Q. Do you remember anything else about the blonde?

21 A. No, sir.

22 Q. Describe the brunette for the jury, please.

23 A. The brunette was a little taller than the blonde, 5'3"
24 or four. She was heavier than her -- not fat, but
25 heavier compared to the blonde. She had about shoulder

1 hair. It was wavy, dark brown. She had make-up on
2 around her eyes, not as heavy as the blonde girl did.
3 She had -- I don't remember too much about what she was
4 wearing. She was more talkative than the blonde, and
5 she had a big smile. She showed a lot of teeth when
6 she smiled.

7 Q. She had what?

8 A. She had like a big smile. When she smiled, she showed
9 a lot of teeth when she smiled real big and when she
10 talked.

11 Q. And at that time you say she was pretty talkative?

12 A. Yes, sir.

13 Q. Okay. Can you think of anything else about the
14 brunetté?

15 A. No, sir.

16 Q. Describe the boy.

17 A. The boy was kind of tall and he was kind of tall and
18 slim; not skinny. He had dark hair, about medium length,
19 and he looked like one of the average looking people
20 you would see out at Koehne Park. He kind of fit in
21 with the crowd of people out there, the way he looked,
22 and he had on some blue jeans and a colored pull over
23 shirt.

24 Q. Anything else you remember about him?

25 A. No.

1 Q. Tell the jury whether or not you remember him having on
2 sunglasses.

3 A. I don't remember if he did or not.

4 Q. Okay. So at that time you are in the circle area and
5 start to pull out on the road.

6 A. Yes, sir.

7 Q. What happened then? Show the jury on the picture.

8 A. We completed the turn and started to pull up the road
9 here, and as we were going, David said something
10 about the brunette girl. He kind of looked in the back
11 toward me and said, "She sure has got some big tits,"
12 and kind of looked at me when he said that.

13 Q. Okay. Where were you on the road?

14 A. About right here.

15 Q. Just barely pulled off?

16 A. Yes, sir.

17 Q. Okay. Gilbert, was that a two door or a four door car?

18 A. That was a two door.

19 Q. All right. She was in the middle in the front?

20 A. Yes, sir.

21 Q. What happened after David made that comment?

22 A. When he made the comment he kind of looked toward me and
23 the boy said something or kind of laughed about it,
24 and she said -- she told him, "Don't say stuff like
25 that. Stop it. Don't talk --"

1 Q. She told who that?

2 A. She told David that.

3 Q. Okay. Did you notice at that point how the boy was
4 acting?

5 A. He just kind of -- he said something about -- laughed
6 about it, I think. You know, like David was stupid.

7 Q. Okay. Did anything seem serious yet at that time?

8 A. No.

9 Q. Okay. What happened right after that?

10 A. We went off the road a little bit, and she told, you
11 know, David to stop it, and he said, "Well, you do.
12 You do have big tits," or something like that, and she
13 said, "Don't be talking like that," and as we were
14 driving, he reached over and grabbed one of her
15 breasts.

16 Q. David did?

17 A. Yes, sir.

18 Q. And what happened then?

19 A. She pushed his hand away, and said, "What's the matter
20 with you? What are you doing?" And he just said,
21 "Well, I want to grab one." She started pushing his
22 hand away, telling him not to do that, and he said
23 that he would do it if he wanted to, and they kind of
24 argued back and forth like that, and --

25 Q. What was happening in the car at that time with every-

1 body else?

2 A. We were just kind of riding along. Everybody was
3 watching what was going on with David. As he was
4 doing that, he pulled over and --

5 Q. He was pulling over?

6 A. Yes. He pulled over to stop it at the side of the road.

7 Q. Did that take a long time to happen, or was it
8 happening pretty fast?

9 A. It happened pretty fast. It don't take too long to
10 drive to the side of the road.

11 Q. What happened next?

12 A. As he stopped, he was still doing that, and she was
13 telling him not to and pushing him away, kind of.

14 MR. McCALL: I'm going to
15 object to any hearsay, Your Honor.

16 MR. FEAZELL: It is the
17 res gestae of the crime.

18 THE COURT: Overruled.

19 MR. McCALL: May I have a
20 running objection, then, on this conversation he is
21 testifying about?

22 MR. McCALL: Sure.

23 QUESTIONING CONTINUED BY MR. FEAZELL:

24 Q. Okay. So what happened, Gilbert?

25 A. Then as he was pushing his hand and everything, well,

1 he slapped her. They were like struggling with each
2 other, and he slapped her and told her to shut up,
3 "No bitch is going to tell me what to do."

4 Q. Show the jury how he slapped her.

5 A. Kind of backhanded her; reached over and slapped her
6 pretty hard.

7 Q. What did he say?

8 A. He told her to shut up, that no bitch was going to tell
9 him what to do.

10 Q. All right.

11 A. It scared her. I guess she got scared and she just
12 stopped. She didn't say anything and put her hand
13 up to her face.

14 Q. Where was the car then?

15 A. We had pulled over -- it kind of goes up an incline
16 there and we were toward the top of the hill and
17 around the curve.

18 Q. What were the other folks in the car doing when he
19 slapped her?

20 A. Everyone was sitting there. The boy said, "What's
21 going on?" and I told him -- he was in the back.
22 Somebody said something and then the boy said, "What's
23 going on?" and I told him to shut up.

24 Q. Why did you do that, Gilbert?

25 A. Well, I just -- I don't know why I did that. I just --

1 things were happening and I guess because I had been
2 drinking and everything, and I figured David just --
3 it was because of the dope deal or something and
4 maybe David was going to shake them up or something.
5 I just kind of went along with it.

6 Q. At that point in time, did you have any idea that
7 somebody was going to get killed?

8 A. No, sir, I didn't.

9 Q. At that point in time, tell the jury whether or not you thought
10 it was part of the shake-up thing for the dude at the
11 store.

12 A. Yes, sir, I did.

13 Q. Where on this picture were you at the time that that
14 happened?

15 A. We were -- there's a little driveway area right here,
16 parking area or something, and we were right about --

17 Q. Are you talking about this right here?

18 A. Yes, sir. This clear area here and we were right
19 about here toward the end of it, and we just kind of
20 pulled off the road.

21 Q. Where did you pull off the road to?

22 A. We pulled off the road just about -- we weren't in
23 the main road there.

24 Q. Okay. Did you leave your car there the rest of the
25 time?

- 1 A. No, sir. As that happened and I told the boy to shut
2 up, David pulled off into some woods there, a little
3 drive in area right there, and he just kind of drove
4 off into the woods there.
- 5 Q. Into these woods right here?
- 6 A. Yes, sir.
- 7 Q. How far down in those woods did you go in the car?
- 8 A. We went a little ways. There's a -- you can go a
9 pretty good ways. It wasn't real far off the road.
10 I'm not sure how far it was, but it was far enough
11 off the road where you can't see in there, but you
12 could still hear sounds from the road.
- 13 Q. You could hear the sounds, but you couldn't see in?
- 14 A. Yes, but you could see from the woods and kind of see
15 the road.
- 16 Q. What happened after you got the car down into the
17 woods?
- 18 A. We pulled off -- David pulled off in the woods and
19 stopped. You can only go so far because there is a lot
20 of trees there. As he stopped he told everyone to
21 get out of the car.
- 22 Q. He told everybody?
- 23 A. yes, sir. He opened the door and he said, "Everybody
24 get out of the car."
- 25 Q. So what happened?

1 A. I looked over at him and as he said that he was getting
2 out, opening the door, and the brunet was getting
3 out. Tony looked at him and said, "Man, you're crazy."

4 Q. Your brother said that?

5 A. Yes, sir.

6 Q. To who?

7 A. To David.

8 Q. All right.

9 A. And he said, "Tony, come around to this side," and we
10 in the back seat, we all went out the driver's side.
11 Tony got out and shut the door. The boy, the blonde,
12 and I.

13 Q. What happened then?

14 A. Everybody got out of the car and kind of walked toward
15 the front of the car. David said walk around toward
16 the front of the car, and he started saying some
17 stuff -- something about -- it was something about --
18 I don't remember the exact conversation, but it was
19 something about money and the dope, ripping that dude
20 off, or something like that.

21 Q. Even though you can't remember the exact words, did you
22 know what he was talking about?

23 A. Yes, sir. He said something about ripping that dude
24 off for the money and drugs, or something like that.
25 It was money and drugs. I thought, you know, that the

1 people knew what he was talking about.

2 Q. Well, did they say anything in response to that?

3 A. They said -- the brunet girl said, "I don't know what
4 you are talking about. We don't know what you are
5 talking about," and the boy said they hadn't ripped
6 anybody off.

7 Q. Okay. How were the three kids acting at that time?

8 A. They were scared. The three of us had gotten out and
9 then the three of them had gotten out, and David told
10 them to get out and they were standing around and
11 they were kind of together there by the front of the
12 car.

13 Q. You could tell they were scared?

14 A. Yes, sir.

15 Q. So what happened next?

16 A. David had -- David told the girls to take their clothes
17 off. He told them to take their clothes off and one of
18 the girls said something -- they said something -- I
19 don't remember what it was, but it was like something
20 about not wanting to take their clothes off.

21 Q. So what happened?

22 A. He told them to take their clothes off like he told
23 them and that is when I first seen him having a knife.
24 He had a knife and pulled it out and kind of flashed
25 it and said if they didn't take their clothes off he

1 was going to kill them.

2 Q. Was it David's knife?

3 A. Yes, sir.

4 Q. What happened then?

5 A. They said something, you know, about taking your clothes
6 off, and he told them to do what he told them to do,
7 and he was calling them names.

8 Q. What kind of names?

9 A. Bitches --

10 Q. Was he talking calmly?

11 A. No, he was talking pretty mean, you know, telling them--
12 letting them know that he wanted them to do what he was
13 telling them to do. One of the girls said -- talking
14 about having some money or something, and he said
15 something like, you know, "You bitches do what I tell
16 you. You take your clothes off," or something like that.
17 He was kind of hollering at them to do that, and he
18 said something -- he said somebody get something to
19 tie the boy up with.

20 Q. Okay. So what happened?

21 A. I said, "What?" I was closer to the car on the
22 driver's side and the door was open, and I said, "What?"
23 He said, "There is something in the car, on the floor-
24 board or seat or something," so I went over to the
25 car and I kind of looked around in the floorboard and

1 under the seat. I was there for a few minutes and I
2 found a rag or a towel or something. I didn't really
3 look at it. I just grabbed it out from under the
4 front seat and went over and handed it to David.

5 Q. What happened next, Gilbert?

6 A. I went over and handed the towel to David. I noticed
7 that the girls had already undressed. They were
8 standing there naked without any clothes on. They
9 were trying to cover themselves up the best they could.

10 Q. How were they doing that?

11 A. They were just kind of --

12 Q. With their arms?

13 A. With their arms and hands in front of them.

14 Q. Did they have anything else?

15 A. No, sir. I had said something about the brunet -- I
16 may not have said it a minute ago, but she was darker
17 than the blonde haired girl. The blonde haired girl
18 was more light complected or whiter than the brunet
19 She was kind of darker. At that time I noticed where
20 she didn't have any clothes on, she was real light
21 complected or white like where a bathing suit had been.

22 Q. You remembered that?

23 A. Yes, sir, like she had a good tan, darker than the
24 blonde girl.

25 Q. Okay. You had come back to the car and by then, after

1 finding the towel. the girls were naked. Then what?

2 A. David got the brunet girl by the arm and he said, "I'm
3 going over here with her," and he said, "One of y'all
4 watch the boy. Gilbert, you can go with the blonde
5 haired girl." When I handed him the towel, he didn't
6 tie anybody up with it then, I didn't notice.

7 Q. He didn't tie anybody then?

8 A. No, sir. I didn't notice him tie anybody up.

9 Q. Okay. Now, tell me which one did he take with him?

10 A. The brunet girl.

11 Q. When did the boy get tied up, Gilbert?

12 MR. McCALL: Objection; leading.

13 THE COURT: Overruled.

14 QUESTIONING CONTINUED BY MR. FEAZELL:

15 A. I'm not sure when he got tied up. Later when I was
16 standing next to him, it seems like he may have been
17 tied up then. I'm not sure. I never saw him get
18 tied up.

19 Q. I'm going to show you what has been marked as State's
20 Exhibit No. 28. Tell the jury whether or not that
21 appears to be the towel you got out from under the
22 seat.

23 A. That looks like the towel I got from under the front
24 seat.

25 Q. Okay. Spence had taken the brunet off away from the

1 car. What happened next?

2 MR. McCALL: Objection.
3 Leading, and it is repeating testimony.

4 THE COURT: Sustained.

5 QUESTIONING CONTINUED BY MR. FEAZELL:

6 Q. Gilbert, wherever we stopped, tell me what happened
7 next.

8 A. Okay. Spence had grabbed the brunet by the arm and
9 said, "I'm going over here with her. One of y'all
10 watch the boy," and he said, "Gilbert, you go with
11 the blonde." He --

12 Q. And did you go with the blonde?

13 A. Yes, sir.

14 Q. Where did you take her?

15 A. I took the blonde to the car in the front seat.

16 Q. Then what happened?

17 A. I went with the blonde in the front seat and Tony
18 went with the boy. David grabbed the brunet by the
19 arm and walked over a little ways with her and he
20 hollered at Tony, he said, "Bring him over here so he
21 can watch me fuck this cunt."

22 Q. David said that to who?

23 A. To Tony, to bring the boy over toward him so he could
24 watch him. All right. When I went with the blonde,
25 I had -- I had a pocket knife. I handed Tony my knife.

1 He went with the boy over towards where David and the
2 brunet were, and the blonde and I went to the car.

3 Q. Okay. What is the next thing you remember?

4 A. I remember -- I went in the car with the blonde.

5 David walked over with the girl and Tony was with the
6 boy. We didn't stay in the car that long. We went
7 in the car and I told her that -- to come with me to the
8 car. I told her I wouldn't hurt her, and she said
9 not to hurt me, I'll do what you want me to do, and
10 I told her I wouldn't.

11 Q. Gilbert, how was she acting?

12 A. She was scared and --

13 Q. Tell the jury whether or not she was crying.

14 A. Like she was crying. She had tears in her eyes like
15 she was crying -- wanted to cry.

16 Q. So what happened?

17 A. Her and I went in the car and we laid down in the
18 front seat and I had sex with her.

19 Q. Okay. What did you do? Did you take all your clothes
20 off, or what?

21 A. No, sir. She didn't have any clothes on and she laid
22 down and I just took my pants down and laid down on
23 top of her.

24 Q. How long did you have sex with her, Gilbert?

25 A. It wasn't very long. She was -- it was like she was

1 crying and she was afraid, she was scared, and so once
2 the act started, she was afraid, and it wasn't the
3 same thing like if you had a willing partner, so I
4 never did go through the entire thing. I mean, she was
5 scared. It just wasn't the same thing. It didn't
6 feel right, so I just stopped, and we got out of the
7 car.

8 Q. How long did that take?

9 A. A few minutes. I'm not sure how long it was. It
10 wasn't very long. It wasn't a very long time that we
11 were in the car.

12 Q. What happened when you got out of the car?

13 A. I got out of the car and told her to get out, and we
14 walked toward the front of the car.

15 Q. Now, wait a minute. You told her to get out of the
16 car?

17 A. Yes.

18 Q. And both of you walked toward the front?

19 A. Yes, sir.

20 Q. Okay. Then what?

21 A. We walked toward the front of the car and Tony and the
22 boy stood up, and I don't remember exactly what was
23 said, but I told Tony, "I'll watch him. You go with
24 her," and Tony and I exchanged places. I went to
25 where the boy was. He had stood up and I told him to

1 sit down, and Tony and the blonde haired girl went to
2 the car.

3 Q. Okay. What was the boy doing and how was he acting?

4 A. He was scared. He tried to say something a couple of
5 times, but somebody told him to shut up and be quiet,
6 so he just was -- he was being quiet sitting there.

7 Q. He was sitting down?

8 A. Yes, sir.

9 Q. Did he have his eyes open or shut?

10 A. He had his eyes open at times, and then he had his
11 eyes -- would close his eyes some times. I guess he
12 was thinking.

13 Q. All right.

14 MR. McCALL: I object to any
15 speculation, Your Honor; just what he observed.

16 THE COURT: Sustained.

17 QUESTIONING CONTINUED BY MR. FEAZELL:

18 Q. Instead of telling what you thought he was thinking,
19 tell us how he was acting.

20 A. He was scared He would kind of look at what was going
21 on, and then at times he would just look off in
22 another direction.

23 Q. Okay. What did you observe while you were guarding
24 the boy?

25 A. I went over and sort of -- I told him -- he was sitting

1 down and I kind of kneeled down beside him. Tony and
2 the blonde girl went to the car and I could see -- it
3 was getting kind of dark and it was kind of dark in there,
4 but I could see the images of David and the brunet
5 girl over to the side where they were -- she was --
6 David was kind of like on top of her and she was
7 making some noises or moaning sounds like she didn't
8 like what was going on, and --

9 Q. Okay. She was doing what?

10 A. Making some noises or like some moaning sounds, or like
11 she didn't like what was happening, or --

12 Q. Like she didn't --

13 A. Yes, sir, like she thought he was being rough with her
14 or something like that.

15 Q. Do you recall hearing David say anything?

16 A. At one time David -- I couldn't hear everything, but
17 I heard David saying one time -- he said, "You like
18 that, don't you? Move faster." He was saying that
19 to her.

20 Q. What could you see? Tell us what you could see.

21 A. I could see that -- while that was going on, David was
22 kind of on top of her, and I could see at one time that
23 he had that knife up to her face because he was back
24 from her a little bit.

25 Q. Was she laying down or standing up, or --

1 A. She was laying down, and at one time it was like David
2 had his face down toward her breasts, and then I
3 looked over there again and it looked like he was kind
4 of kneeling over her. She never made any noises.

5 It sounded like -- she made some noises, but it was
6 kind of like a muffled sound or not real loud or not
7 a scream or anything, but she did kind of make like --
8 they weren't loud. Maybe they were muffled like he
9 had his hand over her mouth or something like that.

10 Q. All right. Maybe she had something in her mouth?

11 MR. McCALL: Objection; leading.

12 THE COURT: Sustained.

13 QUESTIONING CONTINUED BY MR. FEAZELL:

14 Q. Do you know whether or not she had anything in her
15 mouth at the time?

16 A. At that time I don't know whether she had anything in
17 her mouth or not.

18 Q. Do you know whether or not she had anything in her
19 mouth at a later time?

20 A. At a later time I noticed that she had something tied
21 around her mouth.

22 Q. Does that appear to be the way it looked, Gilbert?

23 A. Yes, sir.

24 THE COURT: What's that
25 number, Counsel?

1 MR. FEAZELL: Your Honor, that
2 is No. 19, State's Exhibit.

3 QUESTIONING CONTINUED BY MR. FEAZELL:

4 Q. Okay. Then what happened?

5 A. Tony and the blonde haired girl had gotten out of the
6 car and kind of walked toward the front of the car.

7 I was still with the boy and David -- at that time
8 David -- the last time he was leaning over. He had
9 stood up a few minutes later. Tony got out of the car
10 and started walking away from the brunet girl. He --

11 Q. What did the brunet girl do?

12 A. She just stayed laying there. She was crying or, you
13 know, kind of sobbing and crying. You could hear her,
14 but it wasn't real loud. She didn't scream or anything.
15 She was just -- she just stayed there. And David had got
16 up and said, "Somebody watch her," and I said, "I'll
17 watch her, and we kind of started to trade places.
18 We walked together toward the center there where
19 everyone was at, and David said, "Get you some of
20 that. It's pretty good. You ought to get you some
21 of that."

22 Q. He said that to you?

23 A. Yes, sir. He said, "I sure hated to cut her tits,
24 though," just like she had some nice tits or something,
25 but I know he said, "I hated to cut her tits." As

1 he walked by and I was walking toward her, he walked
2 between the boy and the blonde girl and Tony.

3 Q. What did you do?

4 A. I was -- well, Tony and David changed positions.
5 David said he wanted to be with the blonde, so Tony
6 went over with the boy as I was walking over there,
7 and David went with the blonde. I walked over toward
8 the brunette girl and when I got there, she was kind
9 of laying on her side and she was like sobbing or
10 crying or something like that, and I kind of knelt down
11 beside her like I had been by the boy and --

12 Q. What was the lighting condition like at the time?

13 A. It was pretty dark.

14 Q. Starting to get dark?

15 A. Yes, sir.

16 Q. Okay.

17 A. It was dark; night had come. So I kind of knelt down
18 beside her and you know, I said, "Hey," and she didn't
19 respond or say anything. She just stayed like she was,
20 kind of crying and everything, so as I looked at her
21 to say something, she didn't -- I kind of noticed
22 it looked like she may have -- I could tell that she
23 was hurt because she was crying and everything, and
24 David saying he had cut her tits, you know, I noticed
25 it looked like maybe she was bleeding from her

1 shoulders or chest area, around there. I didn't get
2 down and examine, but it looked like that, and since
3 he had said that, I figured he had cut her. She
4 didn't respond to what I said, so -- she was just
5 laying there, so I just stood up and walked about three
6 or four feet away because she didn't look like she
7 was going to try to go anywhere. Tony was by the boy
8 and David was with the blonde.

9 Q. How does it make you feel to talk about this, Gilbert?

10 A. It is hard to talk about it. It bothers me to talk
11 about it.

12 Q. How come? Tell the jury why it bothers you.

13 A. Well, it is not a good thing to talk about. When I
14 talk about it, I remember what happened and -- now I
15 think about it, and it is really hard to think about
16 it. It bothers me to --

17 Q. Does it bother you to remember?

18 A. Yes, it does.

19 Q. All right. After you walked back from the brunet
20 tell us what happened.

21 A. I walked three or four feet away from her, just kind
22 of looking around, and I noticed that David and the
23 blonde girl had gone to the car and Tony was with the
24 boy. The blonde girl was kind of sitting up in the
25 car, and it looked like like -- I couldn't see all of

1 David. He wasn't sitting up, and it looked like he
2 was looking for something. I thought he was looking
3 for a beer or something. because it was kind of like,
4 you know, he seemed like that, and at the time he was
5 looking around and I thought maybe he was looking for
6 a beer, and I could hear some cars. They sounded
7 close. I guess it was from the other side because the
8 water is there and everything, but you could hear real
9 clear in that area, and I was looking around. I looked
10 over there again and I didn't see David or the blonde,
11 so they were both laying in the front seat, but they
12 were still in the car. I could hear some noises and
13 it sounded like the girl was making some noise like --

14 Q. You mean the noise was coming from the car?

15 A. Yes, sir. The blonde haired girl was making noise like
16 maybe a moaning sound; if not a moaning sound, she was
17 enjoying the thing. It was like a moaning sound -- not
18 something she didn't like. David didn't seem -- he
19 didn't stay in there that long. He was in there a
20 little while and I could hear like a car moving.

21 Q. Now, you said David seemed like he was looking for
22 something. At any time that night did you see David
23 with a stick?

24 MR. McCALL: Objection; leading.

25 QUESTIONING CONTINUED BY MR. FEAZELL:

1 Q. Tell the jury whether or not you ever saw David with a
2 stick that night.

3 A. I never said anything about a stick because I wasn't
4 absolutely sure that I had seen David with a stick.
5 It seems like I remember --

6 MR. McCALL: I object to his
7 speculation, Your Honor. He is speculating.

8 THE COURT: Overruled.

9 QUESTIONING CONTINUED BY MR. FEAZELL:

10 Q. Go ahead and tell what you recall.

11 A. It seems like I remember him having a stick during
12 that time when he was walking back and forth through
13 there, but I just wasn't positive about it, so I
14 didn't say.

15 Q. Okay. What happened after you first noticed the
16 moaning coming from the car?

17 A. David was in there for a few minutes. It didn't
18 seem like he was in there that long. David come out
19 of the car, shut the door, and I guess you could -- I
20 don't know what he said, but the blond girl stayed in the
21 car sitting up in the car. She kind of had her head
22 down like she was crying and her hands to her face.
23 David walked away from the car toward the front of the
24 car, and I told him to come here where I was at because
25 I wanted to check it out, look around for some cars

1 that sounded like they were close and he come down
2 where we were at.

3 Q. How were you feeling about that time?

4 A. I didn't -- I don't know. I was just -- I didn't know
5 what to think, really, I guess, and we were all
6 pretty loaded and it looked like -- I don't know. I
7 can't describe how I was feeling. Everything was
8 messed up.

9 Q. So what happened?

10 A. So I walked -- David walked over to the girl. As he
11 was walking toward her --

12 Q. Which girl?

13 A. The brunet girl. She was laying on the ground. I
14 walked past the car toward the back of it -- there
15 wasn't much distance between the road and the car. I
16 could hear cars. I guess they were coming from the
17 other side, but it sounded like they were right near
18 or headed that way, so I wanted to check it out and
19 see if there was anyone coming close to us. David
20 walked over to the brunet girl. I stopped half way
21 between the car and the road, and David was back down
22 with the brunet girl and it was like -- I heard some
23 noises and it was like maybe he was fighting with her
24 or having a scuffle with her and she was fighting back
25 with him, but she was not screaming, but making noises like

1 a muffled sound. Maybe he had his hand over her mouth
2 because it wasn't like she had let out a scream and
3 it was like he was hitting her, and that went on for
4 a few minutes -- I don't know how long it went on. It
5 all happened so fast. It went on for a little time
6 there and he -- she finally stopped making any noises
7 or moving around. The noise or commotion they were
8 making stopped.

9 Q. Okay. And then what?

10 A. When David -- I forgot this. When David had walked
11 over to the brunet Tony and the boy got up and
12 walked toward the car as I walked by. The boy was at
13 the front of the car because the blonde haired girl
14 was in there. I kind of walked toward the back. David
15 got up and Tony had the boy and he was sitting toward
16 the front end of the car, to one side maybe, on the
17 ground. David had gotten up and walked toward where
18 they were at, where the boy and Tony were in front of
19 the car.

20 Q. Gilbert, I want to show you what has been marked as
21 State's Exhibit No. 51, and ask if you recognize what
22 is depicted in that photograph.

23 A. Yes, sir, I do.

24 Q. There are some lines. Do you recognize those lines?

25 A. Yes, sir.

1 Q. Do you know who put those lines there?

2 A. Yes, I do. Truman Simons.

3 Q. Do you know who told him where to put them?

4 A. Yes. I told him where to put them.

5 Q. Is this photograph an accurate representation of what
6 it is intended to depict?

7 A. Yes, sir.

8 Q. And that being the location of where the murders took
9 place?

10 A. Yes, sir.

11 MR. FEAZELL: Your Honor, we
12 offer into evidence State's Exhibit 51.

13 MR. McCALL: We don't have any
14 objections.

15 THE COURT: Admitted.

16 QUESTIONING CONTINUED BY Mr. FEAZELL:

17 Q. Gilbert, will you show the jury where the car was
18 parked?

19 A. Yes, sir. This area here is where the car was
20 parked.

21 Q. The big white square represents the car?

22 A. Yes, sir.

23 Q. Show the jury where you were talking about where David
24 had the brunet girl, Jill Montgomery.

25 A. The brunet girl was right here in this white area.

1 Q. The white area back here?

2 A. Yes.

3 Q. All right. Indicate where the front of the car would
4 have been.

5 A. The front of the car would have been right here.

6 Q. Okay. Mr. Melendez, I believe you just testified --
7 tell us what was the last thing you recall testifying
8 to, where the people were located. I believe the
9 girl -- the brunet girl -- was back over here.

10 A. Yes, sir. The brunet girl was -- that's where David
11 was walking away from her up toward the front of the
12 car.

13 Q. Up here?

14 A. Yes, sir, where Tony and the boy were.

15 Q. All right. Then what happened?

16 A. David walked up to where Tony and the boy were. The
17 boy was sitting on the ground and David grabbed him
18 by the shirt and kind of --

19 Q. Where was the boy sitting on the ground, please?

20 A. Toward the front end of this side of the car, right
21 about here.

22 Q. Right where the X is on this?

23 A. Yes, sir.

24 Q. Is that where you instructed them to put the X?
25 Where the boy had been sitting?

1 A. Yes.

2 Q. All right. What happened then when David walked up to
3 the boy, the boy meaning Kenneth Franks; right?

4 A. Yes, sir. He and Tony were sitting --

5 Q. You will need to speak up.

6 A. Tony was standing by the front of the car and the boy
7 was kind of sitting on the ground. He was sitting
8 down. David walked away from the brunet and walked
9 up toward him and grabbed him by the shirt and told
10 him to get up, and helped pick him up.

11 Q. What do you mean, helped pick him up?

12 A. He kind of yanked him up.

13 Q. All right. Yanked him up?

14 A. Yes, sir.

15 Q. What happened after Spence yanked him up?

16 A. The boy said, "What's going on? I didn't do anything,"
17 and Spence said, "You ripped that dude off." He called
18 a name, but I didn't really snap on it.

19 Q. Okay. At the time he called a name, but you didn't
20 snap on it.

21 A. Yes, sir.

22 Q. Did you know who he was talking about?

23 A. I knew he was talking about the dude at the store
24 because he said, "You ripped that dude off."

25 Q. Did you later recall what name he used?

1 A. Later I recalled the name being --

2 MR. McCALL: I will object to
3 hearsay, Your Honor.

4 THE COURT: Overruled.

5 QUESTIONING CONTINUED BY MR. FEAZELL:

6 Q. Say that again, please.

7 A. I later recalled the name being Lucky.

8 Q. All right.

9 MR. McCALL: Can we have a
10 running objection on --

11 THE COURT: Yes, sir.

12 MR. McCALL: -- hearsay?

13 QUESTIONING CONTINUED BY MR. FEAZELL:

14 Q. Okay. After Spence made that first statement, what
15 then?

16 A. He said -- well, he had the boy by the shirt, and he
17 said --

18 Q. Okay. He had the boy by the shirt. Where was he
19 standing? Show the jury about where he was standing
20 in relation to the car.

21 A. The front of the car is here. The boy was standing
22 about right here toward the left front fender, and
23 Spence was standing in front of him.

24 Q. And how did he have him by the shirt.

25 A. He had him by the shirt like that.

1 Q. All right. Pretty tight?

2 A. Yes, sir.

3 Q. What happened?

4 A. As he had him by the shirt, he said, "Yeah, you've been
5 fucking around with that dude's old lady," and kind of
6 glanced like that over where the brunet was over here.

7 Q. Okay. Who glanced over toward the brunet?

8 A. Spence did.

9 Q. All right. At what point during that time did he
10 glance over toward the brunet?

11 A. As he was saying that you've been fucking around with
12 his old lady, like that, toward where the brunett was.

13 Q. Okay. Whose old lady?

14 A. He said his name again, that dude's, but --

15 Q. Lucky's?

16 A. Yes.

17 Q. All right. What else did Spence say?

18 A. As he had him by the shirt there, the guy was like,
19 you know, shaking his head no. He said, "No, we're
20 just friends." Spence said, "No, mother fucker, he
21 walked in and caught y'all fucking around --

22 MR. McCALL: I'm going to
23 object to any hearsay, Your Honor.

24 A. -- on the couch.

25 THE COURT: Overruled.

1 MR. McCALL: Could I have a
2 running objection on that?

3 THE COURT: Yes, sir.

4 QUESTIONING CONTINUED BY MR. FEAZELL:

5 Q. So that you can get it all out, tell the jury what he
6 said.

7 A. He said, "No, mother fucker, he walked in on y'all and
8 caught you fucking around sitting on the couch," or
9 something like that. I thought he said on the couch,
10 or something.

11 Q. Then what happened?

12 A. Spence had him by the shirt and, well, Spence was
13 hollering at him, by then pretty loud, and he said --
14 started calling him names. He said, "You fucking
15 punk," and hit him up beside the head.

16 Q. How hard?

17 A. He hit him pretty hard up beside the head, and then
18 grabbed the boy by the throat and he pulled his knife
19 out -- or he had his knife out -- I don't remember if he
20 pulled it out. I seen a knife in his hand, and he had
21 the boy by the throat. They were a little ways from
22 the car and he yanked him up and pulled him up, and
23 he was like sticking the boy with his knife because
24 he was trying to make him -- like he was trying to
25 make a noise or something, but he had him by the throat.

1 Q. Who was trying to make a noise?

2 A. The boy.

3 Q. Kenneth?

4 A. Yes, sir.

5 Q. Why couldn't he make a noise?

6 A. Because Spence had him by the throat and you could tell
7 from the way it sounded he just couldn't get the noise
8 out, like he was being hurt, and Spence was backing him
9 up toward the car, sticking him --

10 Q. Sticking him how?

11 A. It wasn't like he was stabbing him real hard or anything,
12 but just like he was kind of sticking him with his
13 knife, backing him up toward the car.

14 Q. Did it look like the boy was going to fall down or
15 not?

16 A. He -- Spence had a pretty good hold and he was just
17 kind of backing up like he was trying to back away,
18 but he couldn't get away since Spence had a hold of him
19 and as he was sticking him with the knife, he backed
20 into the front of the car.

21 Q. And you saw that?

22 A. Yes, sir, I was by the back of the car, between the
23 car and the road, and I could see from the angle I was
24 at. Back on this side, I could see right down this
25 side of the car. The car was parked at an angle, so

1 that the front end was at an angle.

2 Q. What did you do when you saw it?

3 A. I was just looking over there -- I was just looking
4 around because he was talking kind of loud, and wondering
5 if anybody was hearing. That is, it happened so fast,
6 it didn't take as long as it does for me to sit here
7 and say it. It just happened real fast. When he backed
8 him up to the car, he had a hold of him and back him
9 up to the car and just started stabbing him several
10 times, and the boy fell down.

11 Q. Did Spence -- tell the jury whether or not Spence was
12 saying anything to Kenneth while he was sticking him
13 with those little sticks.

14 A. He was saying something, but I couldn't really under-
15 stand what he was saying. He was telling him -- backing
16 him up and saying he was fucking around and all that
17 stuff. He was talking pretty loud, but he was saying
18 something, but I couldn't make out what he was
19 saying. He wasn't saying that as loud as he was before
20 when he was grabbing ahold of him and before he
21 started sticking him with the knife.

22 Q. Between the time he was talking about Lucky and his
23 old lady and catching them on the couch, and the time
24 that the stabbing started, how much time was in between?

25 A. It really wasn't all that much time. It just seemed like

1 it just happened fast. There wasn't much time in
2 between.

3 Q. Are we talking minutes, are we talking hours, are we
4 talking seconds?

5 A. We are talking seconds.

6 Q. What happened after the boy got backed all the way up
7 to the car?

8 A. Spence backed him up toward the car, and then he just
9 started hitting him, stabbing him real hard, several
10 times, and he let the boy go and he kind of -- he had
11 him up against the car and he fell back forward --
12 forward toward Spence, and he fell to the ground.

13 Spence kind of had his leg up against him to keep him
14 from rolling over, I guess. I don't know why. He was
15 up against him.

16 Q. But you did see Spence push his leg up there?

17 A. Up against him to stop him from pushing back. He knelt
18 down beside him. The boy was making some noise because
19 he had let go of him -- like he was having a hard
20 time breathing. He was kind of like gasping for air,

21 I guess. It sounded like that. He knelt over him
22 for a few minutes there, and I guess to make sure he
23 was dead. He was quiet.

24 Q. How close did he get to him when he knelt over him?

25 A. Right over him.

1 Q. Which was was Kenneth's face facing at the time Spence
2 knelt over him?

3 A. He wa s facing Spence. They were facing each other.

4 Q. So he was having a look at him?

5 A. Yes, he was looking at him.

6 Q. What did you see next, Gilbert?

7 A. When he was making a noise like he was trying to
8 breathe, Spence knelt over him and then the boy was
9 kind of like maybe he was trying to curl up in a ball,
10 where Spence couldn't do anything to him, and then
11 he just just stopped moving.

12
13 Q. What did you think?

14 A. I thought that he must have killed him.

15 Q. How did you feel?

16 A. I knew he was hurt bad enough to where he wasn't moving
17 any more. I do know one thing; it was a bad feeling,
18 but like it was just a bad feeling.

19 Q. How was Kenneth laying when he quit moving?

20 A. He was laying kind of on -- not all the way on his
21 back, but on his side kind of.

22 Q. Because he had tried to curl up in a ball?

23 A. He was twisted a little bit.

24 Q. Okay. All right. Then what happened?

25 A. David stood up and Tony had -- he had told Tony to

1 open the door. Tony had been by the side of the car
2 and he told Tony to get the girl out.

3 Q. Out of the car?

4 A. Yes, sir.

5 Q. Which door did she come out of?

6 A. She came out of this door here. That would be the door
7 open.

8 Q. What is represented by this rectangle in front of the
9 car?

10 A. That represents where the boy was laying.

11 Q. Where Kenneth was laying?

12 A. Yes, sir.

13 Q. Okay. What happened when Raylene got out of this
14 side of the car?

15 A. She got out of the car and closed the door, and David
16 walked over that way. They went back to the front of
17 the car where Kenneth and David were, where the
18 fender is on the passenger side, right here, and
19 she was like towards -- her back to the car and David
20 and Tony were in front of her, in front of her while
21 she had her back to the car.

22 Q. Where were you?

23 A. I was like back here.

24 Q. And David and Tony up by Raylene.

25 A. Yes, the blonde girl.

1 Q. What was Raylene doing?

2 A. She looked up when David said get her out of the car,
3 and when they took her out of the car and walked over
4 there, she was crying and they walked her -- it wasn't
5 but just a couple of steps. David said that we can't
6 let her go; she knows what's going on.

7 Q. Was she saying anything?

8 A. She was crying and she was saying not to hurt her,
9 not to hurt her. As they walked over there he said
10 we couldn't let her go. She knows too much. She knows
11 what is going on, and she was saying, "I know what's
12 going on. I won't say anything."

13 Q. Was she saying it like that, Gilbert?

14 A. No. She was crying and she was like saying, "I know
15 what's going on." She was more like pleading.

16 Q. Pleading?

17 A. Yes, and she was crying not to hurt her and she was
18 scared, and she didn't see nothing and wouldn't say
19 anything; not to do anything to her. She was crying
20 and telling them that, and then David said that we
21 can't let her go; she's seen too much, and she --

22 Q. How was David acting? Tell the jury how Mr. David
23 Spence was acting?

24 A. He was talking kind of loud again like he was when he
25 was with the boy, when he was hollering at the boy. He

1 was saying it like that. He was kind of shouting it
2 to Tony. He was saying, "We can't let her go. She
3 has seen too much," and at the same time she was saying,
4 "I didn't see anything. I won't say anything," and to
5 let her go. She was crying, so he got a little louder
6 than her, and he was talking real fast and he kind of
7 yelled it, saying we couldn't let her go; that if we
8 don't do something to her that we are going to be caught
9 and that means --

10 MR. MCCALL: I object to the
11 witness going into a narrative, Your Honor.

12 THE COURT: Sustained.

13 QUESTIONING CONTINUED BY MR. FEAZELL:

14 Q. Is what you were trying to tell the jury was that she
15 was pleading?

16 A. Yes, sir.

17 Q. Now, what did David do?

18 A. Well, David said those things, and he told Tony that
19 we're all in this together, and as he was saying that,
20 he handed Tony the knife --

21 Q. Okay. Wait a minute. What did he tell Tony?

22 A. He said that we couldn't let her go. If we got
23 caught, you know what that means, and he said, "We're
24 all in this together."

25 Q. All right.

1 A. And he handed Tony the knife. David had had the knife
2 in his hands as he was saying that.

3 Q. When did he hand Tony the knife? Was it as he was
4 saying we're all in this together?

5 A. Yes, sir. He said, "We're all in this together," and
6 he said, "I killed them two. I killed them. We're
7 all in this together," and he handed the knife to
8 Tony. The blond girl was up against the car, the
9 front bumper, and she was scared and crying and
10 everything, and she made a sudden move like she was
11 fixing to take off or try to get away, and --

12 Q. Now, all of the talking that David was doing, how close
13 was he to Tony?

14 A. He was right next to Tony. He was just hollering at
15 Tony.

16 Q. How loud was he hollering at this time?

17 A. He was all riled up. He was hollering pretty loud.

18 Q. What did his eyes look like to you?

19 A. He had a crazy look in his eyes, and his eyes were
20 wide open, and he was just talking real fast and
21 hollering that we couldn't let her go.

22 Q. How far was David's mouth from Tony's ear?

23 A. He was right next to him. He was right next to
24 Tony, hollering and shouting as he was saying all this,
25 and as he handed Tony the knife it looked like she was

1 trying to get away. He was right next to them.

2 Q. Okay. What happened when Raylene made this move like
3 she was trying to get away?

4 A. They both kind of tried to push her back and tried to
5 stop her, and one of them had their hand on her mouth,
6 they both seemed like they had their hands moving at the
7 same time. Tony stabbed her with the knife several
8 times. I don't know how many times, and she went
9 back -- they pushed her back toward the car and she
10 was trying to make a noise and the sound was muffled.
11 It happened real fast and she wasn't hollering loud
12 because she couldn't, and they backed away from her and
13 Tony dropped the knife down on the ground and she kind
14 of fell forward, and Spence was standing in front of
15 her -- they were both standing there and Tony kind of
16 walked away and she kind of fell against Spence and
17 fell down. He knelt down over her and picked up the
18 knife and he stayed with her there a few minutes,
19 and Tony walked back toward the back of the car,
20 behind it.

21 Q. Who did?

22 A. Tony did.

23 Q. What was Tony doing?

24 A. He just kind of had a scared look on his face and he
25 just dropped the knife and walked away. Everything

1 happened so fast. He knew what was happening. David
2 just got him all wound up.

3 Q. Were you able to see David when he knelt over Raylene?

4 A. I could see down the side of the car that he knelt
5 down. They were over beside the car by the fender and
6 the door, and he looked over a little bit, and he
7 knelt over her and I couldn't see exactly what he was
8 doing. It looked like he maybe was making sure she
9 was dead, or she wasn't going to move or get up, or
10 make any noise.

11 Q. What happened to the knife?

12 A. David picked the knife up when he knelt over her.

13 Q. Could you tell whether or not he was stabbing her some
14 more?

15 A. He was moving -- I couldn't tell actually what he was
16 doing. He was moving around, probably just making
17 sure he wouldn't make any noise and that she was dead.

18 Q. How did you feel then, Gilbert?

19 A. I felt like -- kind of scared, and I didn't feel too
20 good about it. I didn't know what to do. Everything
21 happened so fast and got out of hand. I didn't think
22 all that was going to happen when we first drove into
23 the woods.

24 Q. How long did it take for the whole thing to happen?

A. It takes -- it took a whole lot longer saying it than

1 it happened. I don't know. Everything just happened so
2 fast, it just seems to me that it happened -- one thing
3 after another, it just went a lot faster than me sitting
4 heresaying it. It happened real fast. I'm not sure.
5

6 THE COURT: Excuse me, Counsel.

7 Ladies and gentlemen, we are going to recess for 20
8 minutes. Bailiff, take the jury out, and please keep
9 everybody in the court room for me while the jury
10 is leaving the jury room going on break. Twenty
11 minutes.
12

13 (Whereupon a 20 minute recess
14 was held, after which the
15 following proceedings were
16 had, to-wit:)

17 QUESTIONING CONTINUED BY MR. FEAZELL:

18 Q. Gilbert, at the time we broke, I believe you testified
19 that Raylene had just been killed.

20 A. Yes, sir.

21 Q. And David was bending over her. What happened after
22 that?

23 A. David had -- David stood up, and he had gotten up and
24 I had walked back toward where he was at. Tony walked
25 behind the car, so I walked over to where he was at,
and I told him, "Man, let's get the fuck out of here,"
and he said, "Okay, but we can't leave them here
because someone may have seen us drive through here."

1 Through the park in the woods.

2 Q. Okay. Now, please speak up so everybody can hear you.

3 He said what?

4 A. He said we couldn't leave them there because someone
5 may have seen us come through the park or seen us
6 talking to them.

7 Q. The bodies of Jill, Raylene, and Kenneth?

8 A. Yes, sir. He said -- I said, "Man, I don't want to
9 fuck with it. Let's go," and he said, "No, we need to
10 move them. We need to take them somewhere. We need
11 us a truck," and I told him that I didn't want to
12 fuck with it, I just wanted to leave, and he said
13 we couldn't leave them there; someone may have seen us
14 and may have seen us out there talking to them, or
15 something, so I agreed with him that we would get the
16 truck, my truck.

17 Q. What kind of truck did you have?

18 A. I had a '63 Ford pickup truck.

19 Q. What color?

20 A. ~~Gray~~ White

21 Q. Where was it?

22 A. It was parked at a friend of mine's, out at Bosqueville.

23 Q. How far is Bosqueville from Koehne Park?

24 A. I'm not sure how far. It runs out past the end of
25 Lake Shore Drive, where Lake Shore Drive ends into

1 Steinbeck Bend --

2 Q. Is Bosqueville, then, sort of a part of Waco?

3 A. Yes, sir. It is just right outside the city limits
4 of Waco.

5 Q. What happened after he said, "We've got to get your
6 truck"?

7 A. I told him that okay we would do that, and he said,
8 "Well, I know a place we can take them out at
9 Speegleville, and again I told him fuck it, I didn't
10 want to mess with it.

11 Q. Okay. He said he knew a place out at Speegleville?

12 A. Yes, sir.

13 Q. Had you ever been to Speegleville before with David?

14 A. No, sir.

15 Q. Okay. Go ahead.

16 A. And so we argued a minute about that and taking them
17 out to Speegleville --

18 Q. Now, why were you arguing about whether to take them
19 to Speegleville?

20 A. Because Speegleville is on the other side of the lake
21 and you have to kind of go around to get to it, and
22 cross some bridges, and I just didn't want to go that
23 far and do all that, but he again said that someone
24 may have seen us and all that, and we couldn't take
25 them in the car, that we would have to use the truck,

1 so I finally agreed with them then to go get the truck,
2 to go get my truck.

3 Q. All right. Gilbert, when you and David and Tony first
4 saw Jill, Raylene, and Kenneth sitting on that -- or
5 standing around that table by the circle, do you
6 remember about what time that was?

7 A. It was just before getting dark. It wasn't quite dark
8 yet, just before it was getting dark. It was still
9 light.

10 Q. Okay. Whenever you got ready to go get your truck,
11 do you have any idea what time it was then?

12 A. I don't know what time it was. It might have been 10:30
13 or 11:00.

14 Q. All right. So what happened?

15 A. We decided to go get the truck and so Tony and I got
16 in David's car and David stayed there. Tony drove the
17 car and we back out and went to get the truck.
18 We told him we'd be back and he said he would stay.

19 Q. All right. You and Tony?

20 A. Yes, sir.

21 Q. Who was driving?

22 A. Tony drove the car to where my truck was.

23 Q. Okay.

24 A. No, sir. I'm sorry. I drove the car to where the
25 truck was, and Tony drove the car and I drove the truck

1 and we went --

2 Q. Okay. Let's wait just a minute before we get into
3 all that. So you backed the car out of the woods?

4 A. Yes, sir.

5 Q. All right. What was David doing? Did you notice what
6 David was doing when you backed the car out of the
7 woods?

8 A. He was just kind of running around where the people was.
9 It looked like he was going toward where the brunet
10 was. He watched us back out and then he kind of was
11 checking the people or something.

12 Q. All right. Now, you backed out of the woods. Show
13 the jury which way you went.

14 A. We backed out of the woods and went --

15 Q. Speak up real loud.

16 Q. We backed out of the woods here and went in this
17 direction, out toward -- this is Lake Shore Drive and
18 we went down Lake Shore Drive -- I'm not sure where
19 it runs.

20 Q. That's all right. Take your seat.

21 What were you and Tony doing as you were driving to
22 Bosqueville?

23 A. I told Tony everything had happened so fast before
24 we knew what was happening, and we were involved in it,
25 and that we had to go back and get David. We couldn't

1 just leave him out there. We thought about just not
2 going back, but we couldn't do that because we had his
3 car and he was out there, and everything that had
4 happened, we couldn't really -- I didn't feel like we
5 could leave him there.

6 Q. All right. So even though you talked about leaving
7 him, y'all decided to go back?

8 A. Yes, sir.

9 Q. Did you discuss anything else?

10 A. We just said we were going to forget what had happened
11 and not talk about it or say anything about it to
12 anyone.

13 Q. What did you do?

14 A. We drove to where my truck is at Bosqueville, just
15 right up the road, and I pulled off on the side of the
16 road, and there was a pretty long driveway that leads
17 into it off the road a good ways, and I walked to the
18 truck and Tony got in the car and I started the truck
19 and drove out, and he drove into town and let the car
20 off at David's mother's house and we went back in the
21 truck.

22 Q. Okay. Where is David's mother's house?

23 A. I'm not sure exactly what street it is on, but it is
24 close to 15th and Colcord where they first picked
25 me up that afternoon.

1 Q. Kind of on the way back from Bosqueville, or did you
2 have to go out of your way?

3 A. No, we went down 18th.

4 Q. Do you have any idea whatever happened to the stuff
5 that belonged to the kids?

6 A. Well --

7 Q. Shoes and purses and stuff like that?

8 A. Before we -- when we decided to get the truck, we were
9 talking about it, David had -- I remember David
10 opening and closing the trunk, and he was putting --

11 Q. Opening and closing what?

12 A. Opening and closing the trunk of his car while we were
13 discussing getting the truck, and he had put something
14 in there. I wasn't sure exactly what it was, but it
15 may have been those things.

16 Q. What happened after you left David's car off at his
17 mama's house?

18 A. Tony got in the truck and I drove back to Koehne Park.

19 Q. Okay. What happened when you got to Koehne Park?

20 A. I drove in and went around to where the wooded area is,
21 and I went all the way around to the circle. Before
22 we had left, David said, "I'll see you up here by
23 where we first stopped or down there by the tables on
24 the circle."

25 Q. Okay. So you didn't back into the woods where you had

1 been with the car?

2 A. No, sir.

3 Q. Is this the circle you are talking about you drove the
4 truck to?

5 A. Yes, sir.

6 Q. What did you do after you got to the circle?

7 A. I drove around the circle and backed the truck up to
8 right here at this spot. You can walk in the woods
9 and it is as far back as you can go.

10 Q. You backed it into the edge of the woods?

11 A. Yes, sir, edge of the woods.

12 Q. All right. Then what did you do?

13 A. Well, we had seen David when we pulled in and he
14 walked up to the truck --

15 Q. Now, where did you see David when you pulled in there?

16 A. He was by the tables, there where we had picked the
17 three kids up at. He was standing around there. When
18 we drove up, we seen him. He walked up to us. I
19 guess he knew it was us.

20 Q. Okay. What happened then?

21 A. I backed up the truck there and I got out and Tony got
22 out, and I told Tony to stay there and watch and see
23 if anyone else was coming, and I told David let's
24 hurry up and get this over with. So David and I went
25 off into the woods, walked in a ways, and

1 brought the bodies back to the truck.

2 Q. Which body did you bring back first?

3 A. We got the blond haired girl first and brought her back.

4 When we picked her up, David got her by the shoulders
5 and I got her -- carried her by the legs. I didn't
6 really look at them, but I noticed that --

7 Q. Why didn't you look at them?

8 A. I didn't want to look at them, and it was bad enough
9 carrying them, and I --

10 Q. What do you mean it was bad enough carrying them?

11 A. It just didn't feel like they were hurt. It just felt
12 like they --

13 Q. They were hurt?

14 A. They had been hurt and everything happened to them.
15 I just didn't feel right carrying them. It was a bad
16 feeling carrying them to the truck. I noticed --

17 Q. Go ahead.

18 A. I noticed that since I had her by the legs, her legs
19 were tied and I didn't notice her hands dangling down,
20 so I thought they had been tied, and when we got her to
21 the truck, I noticed her hands were tied as we laid
22 her in the truck, and she had something tied around
23 her mouth.

24 Q. Okay. Do you know what was tied around her mouth?

25 A. I thought that it -- I don't know. I thought it was a

1 piece of the rag or towel that I had handed David
2 earlier.

3 Q. Then what did you do?

4 A. We laid her in the truck and we walked back and got the
5 boy and carried him back the say way. I got his
6 legs and David got him by the shoulders and took him
7 to the truck, and then we came back and got the
8 brunet girl.

9 Q. All right.

10 A. When we put them in the truck, I noticed they were all
11 gagged and had their hands behind their back. I didn't
12 notice their hands hanging down as we were carrying
13 them to the truck.

14 Q. Did you notice what Raylene's legs were tied with?

15 A. I didn't notice. I thought it was the same thing.

16 Q. Okay. But you weren't really looking?

17 A. No, sir. I tried not to look at all as we carried
18 them to the truck.

19 Q. Gilbert, have you ever looked at the pictures?

20 A. No, sir, I haven't.

21 Q. What happened after you got the three bodies in the
22 truck?

23 A. We set them in the back of the truck and I'm a painter,
24 so I had some old drop cloth back there, and David got
25 in and pulled it over them and covered the three bodies

1 up the best we could, pulled the tailgate up and --

2 Q. Covered them up with your dropcloth?

3 A. Yes, sir.

4 Q. What do painters use dropcloths for?

5 A. To put on floors or carpets or whatever so you won't
6 spill any paint on them.

7 Q. To catch just whatever may happen to fall?

8 A. Yes, sir.

9 Q. Then what?

10 A. We got in the truck and I drove, and we pulled out and
11 Spence was going to show us where to go in Speegleville.
12 I asked him if he knew where we were going, and he said
13 to go out of the park and went off Valley Mills.

14 Q. Okay. Now you were driving?

15 A. Yes.

16 Q. Where was Tony sitting?

17 A. Tony was sitting in the center and Spence was on the
18 passenger side.

19 Q. Which way did Spence tell you to go?

20 A. Well, we went out Valley Mills and we were going to
21 cut across to get to Highway 6, cross back through
22 there. As we were going out Valley Mills, Tony said,
23 "Let's turn here. There's a street that you can turn
24 in the neighborhood area," but I told him I didn't want
25 to turn there --

1 Q. Is this about where you were in through here?

2 A. Yes, sir. We were going south on Valley Mills.

3 Q. Where did you turn off of Valley Mills?

4 A. I don't know. There's a store up on top of the hill.
5 You go up a hill and there is a store there, and we circled
6 by it there.

7 Q. And went into the residential area?

8 A. Yes, sir. We cut across through there to Fish Pond
9 Road.

10 Q. Okay. Where did you go from Fish Pond Road?

11 A. We cut back to the right and headed toward Highway 6.

12 Q. Is there anything that you can remember in particular
13 that would point out Highway 6 on this map?

14 A. There's some bridges there.

15 Q. Twin bridges?

16 A. Yes, sir.

17 Q. So you took Fish Pond, then Highway 6?

18 A. Yes, sir.

19 Q. Then what did you do?

20 A. We went across the bridges and there is a -- he said --
21 there's an exit there, and David said take the
22 Speegleville exit.

23 Q. Did you take the Speegleville exit?

24 A. Yes, sir. We went down through there, and I told
25 David, "That's not what you're talking about, going

1 right here, are you?"

2 Q. Here?

3 A. Right off the exit.

4 Q. Why not? Why did you say you're not talking about here?

5 A. Right off the exit. It's like a park or something
6 there. There's a trailer there and it's got a gate
7 and stuff like that. You had to pass through there to
8 make entrance to the park.

9 Q. Were you concerned about passing through the entrance?

10 A. Yes, sir.

11 Q. The trailer and everything?

12 A. Yes, sir, someone might see us.

13 Q. Okay. How did David respond to that, Gilbert?

14 A. He said, "No, I'm not --" I said, "We're not going
15 there are we? You're not talking about that spot
16 there?" and he said, "No, go on up a ways. We are
17 going farther."

18 Q. Okay. Will you get up and show the jury about where you
19 went? You exited off at the Speegleville exit. It has
20 to be right up here. This is the entrance right in
21 through here. Are you telling the jury you went
22 through the entrance?

23 A. No. We by-passed the entrance and the road splits
24 there. One part runs with the highway and the other
25 part runs off to the side.

1 Q. Okay. Let me show you an aerial photograph that might
2 help you. You can sit down. You didn't go through the
3 entrance?

4 A. No, sir.

5 Q. You went on past it and turned?

6 A. Yes.

7 Q. Where did you go after you went on past the turn; what
8 did you do then?

9 A. We went out that road that veered off and went up
10 another road that is parallel with the exit road, and
11 we went off the other road and went down a ways.
12 It's a small road and we came to kind of like an
13 intersection. It was dark there. He was telling me
14 where to go. I said, "You tell me -- I hope you know
15 where you're at."

16 Q. Spence was telling you where to turn?

17 A. Yes, sir. So that road was pretty straight and we
18 went down there a little ways, and he said it is up
19 here somewhere, and when we got to that area, he showed
20 me where to turn and we turned off the road.

21 Q. All right. What did you turn off the road onto?

22 A. To me it looked like one of the roads like out at the
23 park, gravel road, or just dirt roads, gravel roads
24 through there.

25 Q. It wasn't a paved road?

1 A. No, sir. It was off the paved road.

2 Q. All right. What did you do after you got off the
3 paved road?

4 A. Right after the paved road, it turns into dirt and
5 then went to the right. He said, "Slow down." It's
6 right up here." He showed me where to turn. I turned
7 and went off like onto a dirt road, and it swung around
8 and I followed it down a ways, and then he said we
9 could turn off here and get back on the pavement, and
10 we swung off to the right and got back on the paved
11 road.

12 Q. Did you at a later date, Gilbert, ever have an
13 opportunity to take some law enforcement officers out
14 to Speegleville Park and show them the way you went?

15 A. Yes, sir.

16 Q. And were you later in the daylight able to figure out
17 how you got into Speegleville Park?

18 A. Yes, sir. We had went out there and I showed them
19 about where it was at, because it was dark and it
20 looked different at night and daytime. We went out
21 there at night and we couldn't see a whole lot, and
22 we went back in the day and I showed them.

23 Q. How was it that y'all did get into Speegleville Park?

24 A. We had gone -- I didn't know we were in Speegleville
25 Park because we had by-passed the exit. We had gone

1 up the side road here and David showed me a turn off.

2 Q. Let me show you a picture here and maybe this will
3 help you explain it.

4 A. Okay.

5 Q. Do you recognize that photograph of the general area?

6 A. Yes, sir.

7 Q. All right. You're on this road here. Show the jury
8 what you did?

9 A. Okay. This is the road we went out that angled off.
10 This is an intersection, a type of intersection, and
11 another road meets here. We passed this road and went
12 up a little ways and turned off to the right and we
13 went on what I thought was a dirt road. We went down
14 this road here.

15 Q. What is that right here?

16 A. That is -- I know how that that is some kind of a fire
17 lane or something.

18 Q. Plows into the field?

19 A. Yes, sir,

20 Q. How did you get off of this road over to the fire lane?

21 A. When we come to this intersection, David had said it
22 was up a little ways. "I'll show you. Slow down."
23 So I drove up a little ways and he said right here, and
24 I turned -- it is grass here, but it looked like you
25 could drive here. There wasn't a ditch or anything, so

1 I drove through there. There was an opening there and I
2 drove through that opening.

3 Q. You followed this fire lane up to where?

4 A. Up to this point here where the road begins, and he
5 said we could come on up here and it is just open and
6 we drove back onto the paved road.

7 Q. Gilbert, it appears from this photograph the fire lane
8 runs parallel to this road here. Why didn't you just
9 turn at that intersection?

10 A. Well, right here there are some -- you can't see very
11 good -- there are some posts here that stops and
12 blocks that road.

13 Q. That is not a passable road, then?

14 A. No, sir.

15 Q. Okay. After you got past -- what about down here?
16 Where did you come back onto it?

17 A. We came back on past this curve here in the road.
18 It is not passable. It is the end of this road. It is
19 blocked off, and we come up on this road. We just
20 drove off this road here onto the paved road.

21 Q. Then what did you do?

22 A. We drove down. I asked him which way and he said
23 straight down this way, straight down the paved road,
24 a little ways, and there is some roads that veer off,
25 and he said go on a little farther and I will show you

1 and I asked him if he knew where we were going and he
2 said he did.

3 Q. All right.

4 A. There were some roads that went off and he said this
5 road -- take that road off to the right and went
6 behind them fields on a dirt road and it went
7 into a wooded area.

8 Q. Okay. What did you do when you got to the wooded area?

9 A. We drove off into the wooded area. It was pretty dark
10 there and he said, "Stop right here. Here's where
11 we're going to let them off," so I stopped and we
12 got out of the truck and Tony walked -- I said, "Check
13 it out and see if anybody is coming," and David and I
14 unloaded them.

15 Q. In getting down to the wooded area, did you ever make
16 any turns on your own, or was every turn directed by
17 David Spence?

18 A. I asked him to tell me where we were going because he
19 was the one who knew where he was going.

20 Q. Even when you turned off the paved road onto the fire
21 lane?

22 A. Yes, sir.

23 Q. Okay. Now, what happened, Gilbert, when y'all got into
24 the wooded area?

25 A. We pulled in the wooded area and we stopped. He said,

1 "Stop right here." It was a pretty thick wooded area
2 in there, so the road was real small. We walked back
3 to see if anyone had seen us or if anybody was coming
4 we could see their headlights, and so David and I -- I
5 told him let's hurry up and leave the people here, so
6 we unhooked the tailgate--

7 Q. Who unhooked the tailgate?

8 A. David unhooked one side and I unhooked the other side.
9 We got the brunet, the same way we loaded them up.
10 I got her by the legs and he got her by the shoulders
11 and we carried her off into a wooded area, a grassy
12 area there a little ways and sat her down on the ground.

13 Q. All right. Do you remember how you sat her down on
14 the ground?

15 A. We laid her down. I think we just laid her down on her
16 back.

17 Q. Sir?

18 A. I think we laid her down on her back. He had her by
19 the shoulders and I had her by her legs. I started
20 walking back to the truck and he stayed there with her
21 a few minutes. He was like pushing her with his foot,
22 and by the time I got back to the truck, he was just
23 coming back. I told him to come on.

24 Q. How are you feeling at this time, Gilbert?

25 A. I just wanted to get it over with as quick as possible

1 and get out of there. It didn't feel too good carrying
2 those people around.

3 Q. When you took them out of the truck at Speegleville,
4 Gilbert, did you get the chance to look at them?

5 I'm going to show you now.

6 A. I didn't really look at them. I was kind of looking
7 away and David was kind of leading the way where to
8 go, just kind of watching, but --

9 Q. Does that appear to be about the way that Jill
10 Montgomery was left laying out there on the grass?

11 A. Yes, sir.

12 Q. Do you see the gag in her mouth?

13 A. Yes, sir.

14 Q. Does that check out okay with your memory?

15 A. Yes, sir. I remember her mouth being tied up. I
16 didn't really look that close at her.

17 Q. How was David acting?

18 A. Well, we carried the first girl over there and he just
19 was kind of leading the way, I guess, and he didn't
20 seem to be worried about it. We just -- I hollered
21 at him to come on, let's hurry up, and --

22 Q. What did he say to you when you told him to hurry up?

23 A. He said, "Yeah, I'm coming," or "Yeah, be there in a
24 minute." I thought he was checking to see if they were
25 dead.

1 Q. All right. After he checked to see that they were dead,
2 did you say anything to him then?

3 A. Well, when I hollered at him to come on or at least
4 hurry up, he said, "Okay, I'm coming. I'll be there
5 in a minute," and as soon as he walked out we got the
6 blonde girl and took her off in the same area, not
7 quite as far as we took the brunet.

8 Q. Why didn't you take her as far as you took the brunet?

9 A. I don't know. We went a little ways in there and he
10 said, "This is far enough. Let's put her off here.
11 She's getting kind of heavy," so that was fine. I
12 was ready to set her down.

13 Q. You were ready?

14 A. Yes, sir. I didn't like carrying them, so I walked
15 back toward the truck again. He kind of stayed with her
16 a few minutes --

17 Q. Stayed with this one, too?

18 A. Yes, sir.

19 Q. All right. Then what?

20 A. When I got to the truck, it wasn't but about half as
21 far, and I said, "Come on, man, let's hurry up and
22 let's get out of here," and he said, "Yeah, I'm coming.
23 I'll be there in a minute." He kind of was kneeling
24 over her --

25 Q. He was kind of what?

1 A. Kneeling over her, and I thought he was checking to
2 make sure she was dead.

3 Q. When you told him to hurry up after checking the
4 blonde, did he say anything to you?

5 A. He said, "Yeah, I'm coming." He messed around -- as
6 he said that he messed around a little bit, and I
7 said, "Let's go," and he said, "Yeah, I'm coming," and
8 he got up and started to walk toward me.

9 MR. McCALL: I'm going to object
10 to the witness testifying in narrative, Your Honor.

11 THE COURT: Overruled.

12 QUESTIONING CONTINUED BY MR. FEAZELL:

13 Q. That means you can go ahead.

14 A. I told him to come on and he said, "Okay, I'm coming,"
15 and as he was walking out, I remember he said, you know,
16 kind of joking around, saying, "Do you want to get
17 some of that while it is still warm?" I said, "Man,
18 let's just hurry up and get the fuck out of here."

19 Q. Are you telling this jury that Spence was joking
20 around about it?

21 A. Yes, sir. It seemed like he was joking around and I
22 just told him let's go. He --

23 Q. Did you know what he meant when he said do you want to
24 get some of that while it is still warm?

25 A. He meant if I wanted to have sex with any of them

1 while it was still warm. That's what he meant, what
2 he said.

3 Q. How did that make you feel, Gilbert?

4 A. I just told him to come on, let's go. I figured he
5 just -- I didn't know --

6 Q. Were you thinking --

7 MR. MCCALL: I object to the
8 relevancy of that; what he was feeling or thinking.

9 THE COURT: Overruled.

10 QUESTIONING CONTINUED BY MR. FEAZELL:

11 Q. What were you thinking?

12 A. I was feeling pretty bad. I was ready to get out of
13 there, and somebody didn't need to be joking about it.

14 Q. Gilbert, this is State's Exhibit 16 -- State's Exhibit 6
15 and State's Exhibit 7. Those are pictures of Raylene.
16 Have you ever seen those before?

17 A. No, sir. I haven't seen the pictures.

18 Q. Does that appear like the way she was dumped in
19 Speegleville?

20 A. Yes, sir.

21 Q. Does the gag in her mouth square with your memory okay?

22 A. Yes, sir.

23 Q. What happened after you dumped off Raylene?

24 A. Okay. After he said that, I was over by the truck, and
25 he said, "Let's pull up a little ways --" We hadn't

1 set her down as far as we had the other one, but he
2 said, "Let's pull up a little ways. We'll set him off
3 up here."

4 Q. Okay.

5 A. And he said, "I'll walk in front of the truck and
6 show you up a few feet."

7 Q. Now, wait a minute. What was the lighting like?

8 A. It was pretty dark up there.

9 Q. What did he say to you?

10 A. He said, "Well, why don't you pull up the truck a little
11 bit and we'll set him off up a few feet. I'll show
12 you where to go." It was dark --

13 Q. So David knew where he was going?

14 MR. McCALL: I object. That's
15 leading, Your Honor.

16 MR. FEAZELL: I'm asking
17 whether or not you've got an opinion at the time from
18 David's actions and statements that he knew, or didn't
19 know, where he was going to dump Kenneth.

20 A. Yes, sir, I thought he knew where he was going. He
21 said he would walk up in front of the truck and show
22 me where to go. He walked up in front of the truck
23 and I told Tony to get in the truck. Tony had walked
24 back up, and we drove up a little ways, and he was in
25 front of me.

1 Q. Okay. Did you later stop the truck?

2 A. I pulled the truck up as he walked in front of me.

3 He went up a little ways --

4 Q. You kind of followed David?

5 A. Yes, sir. It was just a little ways up the road.

6 It bends to the "Y" and he said to stop right there.

7 Q. Okay. He stopped you where the road bends to the "Y"?

8 A. Yes, sir. He walked off to the right a little bit

9 and I followed him and he said stop a little bit past
10 the "Y".

11 Q. Okay. And then what happened?

12 A. So we stopped the truck -- I stopped the truck and he
13 was walking by the passenger's side to the back and I

14 said, "I'm going to see if anybody is coming. I'm
15 going to walk toward the front," because it looked

16 like the wooded area opened up again, and Tony opened
17 his door. I don't know if he got out or not, and

18 David said, "I'll get him," or "I can get him," or
19 something like that.

20 Q. I can get who?

21 A. The boy.

22 Q. Kenneth?

23 A. Yes, sir.

24 Q. All right. What did you do, Gilbert?

25 A. I was going to look to see if anybody was coming. I

1 walked in front of the car -- the truck. Up in front
2 of the truck the road curves a little bit, and I walked
3 up toward the front there. I guess I could hear cars
4 from the highway. You know, down the road you could
5 hear the noise -- to see if anyone was coming. I walked
6 up a ways and stopped. I vomited a couple of times
7 up the road a little ways. I come back around -- it
8 kind of curves there a little bit.

9 Q. You said you vomited a couple of times?

10 A. Yes, sir.

11 Q. You mean more than once?

12 A. Yes, sir, a couple of times and stopped, so --

13 Q. What did you do when you got through throwing up?

14 A. I walked back around the little curve there to the
15 front of the truck, and I walked past it, and David
16 was leaning over there -- the woods come real close to
17 the road there, so it was real close to the truck. I
18 had squeezed through there. Where David was towards
19 the back of the truck, the back was almost at the "Y".

20 Q. The back of the truck was almost at the "Y"?

21 A. Yes, sir.

22 Q. Was that where David was at with Kenneth?

23 A. Yes, sir.

24 Q. What happened?

25 A. He had already had him out and he was kind of in the

1 bushes there, in the trees or the woods there, and he
2 was kind of leaning over what I thought -- I said, you
3 know, "Let's go. Let's get out of here." Tony said
4 "Let's go," and I said, "Let's get the fuck out of
5 here," and he said, "Okay, I'm coming." When I walked
6 up past the driver's side and said that, walked up
7 towards it, he was kind of leaning over in the trees
8 there and then he backed up and okay. I said, "Hook
9 the tailgate," and he picked it up and hooked it.

10 Q. How much time do you think he spent there with Kenneth's
11 body?

12 A. It was a few minutes because I walked up around the
13 deal, from the truck around the curve there, and I
14 stayed there a couple of minutes and then I walked back
15 to the truck.

16 Q. What happened then?

17 A. I told him to shut the tailgate and he shut it, and
18 I said, "Let's go. Let's get out of here." I got in
19 the truck and Tony got back in the middle and David
20 got on the passenger side, and as we started to drive,
21 I said, "Can I go out this way --"

22 Q. Okay. Wait a minute. As you started what?

23 A. To drive out -- I started the truck up and started out
24 and said, you know, "Can I get out this way?" We
25 had come in another way. We were still going on

1 the same road we come in on, and he said, "Go out that
2 way," and he said something of the deal there He
3 said something like they are going to freak out or
4 something like that. As we were going along, he said
5 it again. He said, "They're going to freak out when
6 they find him."

7 Q. When they find him?

8 A. Yes, sir.

9 Q. Now when they find the bodies or find them?

10 A. No, sir. He said, "They are going to freak out when
11 they find him."

12 Q. Okay. At that time, Gilbert, did you have any concern
13 about Kenneth being placed so close to the road?

14 A. When I walked up to David and seen him kind of in the
15 trees a little ways, I thought he was still pulling
16 him back, making sure he was farther in, you know, he
17 had pulled him and made sure he was pretty far in the
18 trees there.

19 Q. Do you recall anybody saying anything, or David saying
20 anything, or whether or not you recall anything being
21 said about I hope they don't find them?

22 MR. McCALL: I object. That
23 is leading and calls for an answer based on hearsay.

24 MR. FEAZELL: Judge, I'm
25 asking whether or not he recalls any statement to that

1 regard at all. It calls for a yes or no.

2 MR. McCALL: It is still
3 leading.

4 THE COURT: Sustain the
5 objection. Rephrase your question.

6 QUESTIONING CONTINUED BY MR. FEAZELL:

7 Q. Gilbert, from everything you heard and everything you
8 observed, did you make a determination as to whether
9 or not David was concerned about the possibility of
10 the bodies being found?

11 A. No, sir.

12 Q. Okay. Was there anything done or said that gave the
13 feeling if the bodies were found?

14 MR. McCALL: Objection; leading.

15 THE COURT: Overruled.

16 QUESTIONING CONTINUED BY MR. FEAZELL:

17 A. Well, he had said that -- I didn't think about it right
18 at that moment, but he said something about they're
19 going to freak out when they find him, and once we
20 got down the road and I thought about it, it didn't
21 matter to him whether they got found or not. I
22 thought he had put him back farther.

23 Q. Okay. Gilbert, I'm showing you State's Exhibits 4 and
24 5. Have you seen those pictures before?

25 A. No, sir.

1 Q. Does that appear to be the way he left Kenneth?

2 A. I don't know. I didn't actually see how he left him.
3 When I came up to him he kind of had his back to me
4 in the trees. I didn't really see how it was.

5 Q. Gilbert, did you ever notice whether or not at any time
6 during this ordeal that Kenneth had his sunglasses on?

7 MR. McCALL: I object, Your
8 Honor. He just said he didn't notice what position or
9 anything about Kenneth Frank's body when he was laid
10 there.

11 THE COURT: Overruled.

12 QUESTIONING CONTINUED BY MR. FEAZELL:

13 Q. Did you notice at any time during the whole thing
14 whether or not Kenneth had his sunglasses on?

15 A. No, sir, I never did notice it.

16 Q. How much time did Mr. Spence spend with Kenneth before
17 he got in the truck?

18 A. It was a little while. It was the time when I walked
19 up the road a little ways, got sick, and then walked
20 back to the truck, and then telling him for us to go.
21 It was several minutes. Could have been about five
22 minutes more or less. I'm not sure.

23 Q. Well, what happened after y'all pulled out of the
24 wooded area?

25 A. We -- the dirt road went a little ways up. I asked

1 him which way because we had come up to the other
2 paved road, and he showed me which way to go, and he
3 gave me directions and we turned off onto another
4 paved road, and then we went down a ways and then we
5 turned off back onto the road we originally came on.
6 The other dirt road we went off on was in the same
7 area, back to the dirt road that he first told me to
8 turn off of.

9 Q. Actually, tell the jury whether or not you made it
10 back to Highway 6.

11 A. Yes, sir. We were out pretty much the same way we
12 came in.

13 Q. What happened after you got to Highway 6, Gilbert?

14 A. We got on Highway 6 and drove back into town and we
15 said we weren't going to discuss it and nothing would
16 happen, and we weren't going to say anything about it.
17 We all knew about it.

18 Q. Okay. Then what happened?

19 A. I dropped Tony off first; took him to a street a couple
20 of blocks down from Reuter. I'm not sure what it is,
21 but there is a store there that is down from the
22 Armadilla Club that's on Reuter Street, right there
23 at the Armadilla Club.

24 Q. Did anything happen when you dropped Tony off?

25 A. Yes, sir. At one point there -- I don't remember --

1 when David had went back to the brunet and I was going--
2 in the car with the blonde, I left her in the car, and
3 when he passed there I told him I was going to see if
4 anybody was coming because I had heard some cars, he had
5 handed me some money and told me to put it in my
6 pocket.

7 Q. Who had; David?

8 A. Yes, sir.

9 Q. All right.

10 A. So I just put it in my pocket. So when we stopped and
11 let Tony off, I went through my money and I just put
12 split it about three ways and I gave two parts of it
13 to David --

14 Q. Okay. Wait just a minute until the truck goes away.
15 Okay. You were dropping off Tony and what happened?

16 A. Tony got out of the truck and I pulled the money out of
17 my pocket and went through it and gave two parts of it
18 to David, like this, and told him to give one part of
19 it to Tony. He handed it to Tony out of the truck, and
20 he kept that part. I put the other part in my pocket.
21 We told Tony we would see him later, and we drove off,
22 and I took David to where his car was.

23 Q. All right. What happened when you got to where David's
24 car was?

25 A. I took David there and I stopped. He was fixing to

1 get out and I told him I was thinking -- I told him I
2 wanted to get my shit and leave town.

3 Q. Okay. You mean get your stuff?

4 A. Yes.

5 Q. Your belongings?

6 A. Yes, sir.

7 Q. All right.

8 A. And he said, "Well, wait a minute." He said, "Why
9 don't you hang on a couple of days. I'm supposed to
10 get some money from that dude and we will both go
11 together. We'll both --

12 MR. McCALL: I'm going to object
13 to any hearsay, Your Honor.

14 THE COURT: Overruled.

15 MR. McCALL: May I have a
16 running objection on that?

17 THE COURT: Yes, you may.

18 QUESTIONING CONTINUED BY MR. FEAZELL:

19 Q. Tell the jury what David said to you.

20 A. He said for me to hold on because he was supposed to
21 get some money from that dude and we could both leave
22 at the same time.

23 Q. Did he say how much money?

24 A. Yes. He said around \$5,000. He said all that in one
25 sentence.

1 Q. Which dude was he talking about?

2 A. I knew he was talking about the dude at the store
3 because he was the one he said was going to pay him
4 for the drug deal and everything, and said he owed him
5 money and everything, and I knew what he was talking about.

6 Q. Did he use the name again?

7 A. I think he did use the name, but I just never did snap
8 on it when he said it.

9 Q. Okay. Did he tell you how many days you would have to
10 wait to get your part of the \$5,000?

11 A. He said a few days, and he said within the next few
12 days, and then we would split the money and leave.

13 Q. How long did you and David sit there in the car?

14 A. We just sat there long enough to talk about that, and
15 I told him not to say anything, and he said he wouldn't
16 say anything, and I wouldn't either, and that I hadn't
17 seen him tonight, and he got out of the truck and
18 I drove off.

19 Q. Okay. What did you do then?

20 A. I drove down to where I had been staying sometimes.
21 I had left some clothes there at my grandmother's house
22 down the road, 15th and Colcord. She is real old, so
23 I didn't always go in the house. I just had some
24 clothes there in the garage and I went in there and
25 changed clothes, and I got the dropcloth and the clothes

1 I had and stuff and put them in a paint deal I had, a
2 paint bucket, and I didn't go in the house. I stayed
3 right there around her house and in the truck in the
4 driveway.

5 Q. You slept in the truck that night?

6 A. I didn't sleep, but I stayed in the truck that night,
7 yes sir.

8 Q. What did you do all night?

9 A. I just sat up until morning and then I went to work.

10 Q. What did you do with the clothes and dropcloth?

11 A. There's a 7-11 store right across the street there. I
12 went over there and dumped the stuff out of the five
13 gallon bucket in the dumpster there at the 7-11 Store.

14 THE COURT: Counsellor, hold on
15 a minute. May I see the parties.

16 (Whereupon all counsel
17 approached the bench and a quiet
18 conversation was held out of the
19 hearing of the Jury and this
Reporter, after which the
following proceedings were had,
to-wit:)

20 THE COURT: Ladies and gentle-
21 men, I am going to send you home for your evening
22 recess.. I want you back in the morning a little bit
23 before 9:00. I'll see you in the morning a little bit
24 before 9:00. Please remember the instructions. Ever-
25 body please remain seated while the jury leaves the

1 Courthouse.

2 COURT RECESSED FOR DAY

3 (The following proceedings took place out of the
4 presence and hearing of the Jury.)

5 MR. McCALL: Now, your Honor, in
6 the interest of time, we would ask that we be able to examine
7 Gilbert Melendez's statements now, because it will take a
8 considerable amount of time. And, at lease we be able to
9 examine them up to the point that has already been covered
10 in the direct examination, if they are just going to take
11 another twenty minutes or so tomorrow. We are certainly
12 going to ask for an extended period of time to be able to
13 examine the statements he has given.

14
15 MR. BUTLER: Judge, as I understand
16 the rule, they are to provided at cross examination, after
17 direct examination is completed.

18 COURT: I am going to give them an
19 ample amount of time.

20 MR. BUTLER: Judge, we certainly
21 have no objection to them getting ample time.

22
23 MR. McCALL: I want to know if they
24 have the records, transcription of any recordings, and some
25 letter to Robert.

COURT: We will take that up at the

1 up at the time, and send the jury out, and hash that out
2 then. It will probably be about mid-morning.

3 MR. FEAZELL: Thank you, your Honor.

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1 THE FOLLOWING PROCEEDINGS TOOK PLACE ON THE 6TH DAY OF MARCH,
2 1985.

3 (At this time Court was
4 resumed, after which the
5 following proceedings were had
outside the hearing of the
Jury, to-wit:)

6 MR. BUTLER: In anticipation of
7 the defense being able to examine all of the statements
8 given by Mr. Melendez, I thought it might save us some time
9 if we turned over the tapes now so that one of them could
10 be listening to the tapes, in addition to having the written
11 material to read. They will need these to listen to. I
12 thought to save the Court some time, we would go ahead and
13 turn these over at the present time.

14 THE COURT: Tapes of the
15 present witness?

16 MR. BUTLER: Yes, Your Honor,
17 they are.

18 THE COURT: Are you talking
19 about in compliance with the Gaskin Rule?

20 MR. BUTLER: Yes, sir.

21 MR. McCALL: Does that --

22 THE COURT: Let the record
23 reflect the State is tendering the Defense tapes of witness
24 Melendez, presently testifying, in compliance with the Gaskin
25 Rule, in advance, to give them time to listen to the

1 tapes. I may need to send one lawyer out to be listening
2 to them.

3 MR. McCALL: Does this include
4 the tape where Gilbert Melendez was having a conversation
5 with David Spence?

6 MR. BUTLER: I don't know.

7 MR. McCALL: It doesn't
8 indicate that it does. Do you have that tape?

9
10
11 MR. BUTLER: That must be it,
12 unless that's the date the copies were made. No, that
13 should be it, that 3-13-83.

14 MR. McCALL: When they were in
15 a room?

16 MR. BUTLER: I don't know where
17 they were. I didn't even live in McLennan County at that
18 time.

19 THE COURT: All right, gentle-
20 men. Let the record so reflect. It is just the standard
21 tape recorder that you have, Counsel?

22 MR. McCALL: Yes, sir, I went
23 and got something to play that on.

24 THE COURT: Bring the jury in,
25 A.D.

1 (At this time the Jury entered
2 the Courtroom, after which the
3 following proceedings were had
4 within the presence of the
5 Jury, to-wit:)

6 THE COURT: Please be seated,
7 gentlemen. Are you ready to proceed, Mr. Feazell?

8 MR. FEAZELL: Yes, Your Honor.

9 THE COURT: Bring the witness
10 back.

11 GILBERT MELENDEZ,
12 having been already duly sworn, resumed testimony, to-wit:

13 BY MR. FEAZELL:

14 Q. Mr. Melendez, when we broke yesterday, I believe you
15 had just testified that you had dumped off the dropcloth
16 and your clothes in a dumpster near 7-11. Is that
17 correct?

18 A. Yes, sir.

19 Q. Okay. I have another question I want to ask you about
20 something, back during your testimony, and that is,
21 the money you testified about that was split between
22 Spence and you and Tony. Where did that money come
23 from?

24 A. That was money that David had given to me when he had
25 gotten out of the car, when we crossed each other. He
said, "Here. Stick this in your pocket," when we were

1 still out at Koehne Park.

2 Q. Okay. And which car are you talking about?

3 A. His car.

4 Q. All right.

5 A. When he had been with the blonde girl, he come out --
6 we just exchanged places and he handed me this as we
7 passed each other.

8 Q. Okay. Do you remember about how much money it was?

9 A. It was around \$500.

10 Q. What kind of denominations; what kind of bills?

11 A. I'm not sure. It was like tens and twenties, I think.

12 Q. How did you divide it?

13 A. I flipped through it when I stopped to let Tony off,
14 and I just kind of run through it real quick and put
15 it in three sections. I split it three ways. I believe
16 I gave him about \$150, or close to it, and I had a
17 little less than that when I looked through it.

18 Q. Now, after the murder, immediately after -- I'm
19 talking about before the next morning as you were
20 dropping off Spence and Tony, what were your immediate
21 plans at that time?

22 A. I was thinking of gathering all my belongings and
23 leaving town.

24 Q. Okay. Because of the murders?

25 A. Yes, sir.

1 Q. Why didn't you do that, Mr. Melendez?

2 A. Well, when I let David off, we had talked for a minute
3 and I told him I was going to to do that, and he said
4 something about for me to wait a couple of days, he
5 was supposed to get some money from that dude and we
6 would leave town together. He would get the money and
7 we would have some money to take with us.

8 Q. Okay. Did he say which dude?

9 A. He said that guy. He was talking about the guy at the
10 store.

11 Q. Okay. Did he say how much money?

12 A. Yes sir. He had said around \$5,000.

13 Q. All right. While y'all were riding around drinking
14 beer before you went to Koehne Park and saw these
15 three teenagers, did David have any money with him
16 then that you know of?

17 A. I don't think he had too much money with him because we
18 stopped every few stores and Tony had bought the beer,
19 and I -- Tony and I had paid for the beer that we
20 bought.

21 Q. Okay. Anything else that gives you an indication
22 Spence didn't have any money?

23 A. He may have said he didn't have much money, or tried
24 to pitch in one time, but didn't have enough, so Tony
25 and I took care of the -- we paid for it.

1 Q. After you dropped David off at his house after the
2 murders, did you have any more contact with him after
3 that, or when was the next contact?

4 A. After that, I went back to work and I had called his
5 house a couple of times during the week following that
6 night that I dropped him off, and -- but I never did
7 get in touch with him. He wasn't home, and a couple of
8 weeks after that, I called the following week also.
9 About two weeks after that he was there and I talked to
10 him.

11 Q. All right. What did you talk to him about?

12 A. I had just gotten off of work and caught him there and
13 asked him what he was doing, and he wasn't doing anything,
14 so I asked him to come and pick me up where I was
15 calling from.

16 Q. Again, please remember to speak up so that everybody
17 can hear.

18 Did he come pick you up?

19 A. Yes, sir, he did.

20 Q. Tell the jury about that.

21 A. I was at the sotre and he came and picked me up, and
22 when he drove up, he was in a different car than the
23 car he had owned before. I hadn't ever seen that
24 car. It was new to me, and I got in the car with him
25 and we were going to ride around and drink some beer,

1 and I asked him about the car, when did he get his car,
2 and he said he had just gotten it, and I asked him if
3 he had gotten any money from that guy to get his car,
4 and he said no, he hadn't gotten any money but he had
5 been by there a couple of times.

6 Q. Okay. Then what?

7 A. Well, we were -- I got a couple of beers at the store
8 and we drank those and we were riding around and we
9 were running out of beer, so he said, "Let's stop and
10 get some more beer." We were over in that area
11 where he lives -- and he said, "Let's go up to the
12 store up here on Herring."

13 Q. Which store is that?

14 A. The Rainbow Drive-Inn.

15 Q. Mr. Deeb's store?

16 A. Yes, sir.

17 Q. Did you go to that store?

18 A. Yes, sir. He said, "Let's stop here and get some
19 beer," and we pulled over and stopped. I said okay, and
20 he said, "Let's go in and I'll ask him about the money."

21 Q. All right. Did you know who he was talking about?

22 A. Yes, sir.

23 Q. Okay. Who was he talking about?

24 A. He was talking about Deeb.

25 Q. All right. What did you do?

1 A. We stopped and we went inside the store. Deeb was
2 there and there was somebody else there working at the
3 counter, listening to the radio, and we walked in and
4 Spence said something to Deeb. He kind of walked to
5 the end of the counter as we walked in, and Deeb said,
6 "What are y'all up to?" or something like that.

7 Q. Okay. Slow down and speak up for the Jury. What did
8 Deeb say?

9 A. Spence said something to him like what's going on, or
10 something like that, and Deeb said, "What are y'all
11 up to?"

12 Q. All right. Then what?

13 A. We walked toward the end of the counter there and
14 Spence said we were riding around drinking some beer,
15 or something, and he said, "You remember Gilbert, don't
16 you?" and Deeb nodded and said yeah. I spoke to him
17 and said, "What are you up to?" or something like that,
18 and Spence said, "Yeah, I just run into him. We have
19 been riding around drinking a couple of beers and he
20 asked me if I had gotten any money from you, and I
21 told him --"

22 Q. Okay, now wait a minute. Who is talking to who?

23 A. Spence is talking to Deeb.

24 Q. About you?

25 A. Yes, sir. He said he had just run into me.

1 MR. McCALL: I'm going to
2 object to hearsay, Your Honor?

3 THE COURT: Overruled.

4 MR. McCALL: Can I have a
5 running objection to that?

6 THE COURT: You may, sir.

7 QUESTIONING CONTINUED BY MR. FEAZELL:

8 Q. Okay. So Spence was talking to Deeb about you. What
9 did Spence tell Deeb about you?

10 A. He said -- well, we walked in, and he said we were
11 riding around drinking some beer. We walked up to
12 where Deeb was at and he said, "I run into Gilbert" --
13 he said, "You remember Gilbert, don't you?" and
14 Deeb spoke and said yeah, and he said, "He was asking
15 me --" Spence was saying I had asked him if he had gotten
16 any money from Deeb.

17 Q. Uh huh.

18 A. And he said, "I told him no I haven't, but I have been
19 by here at the store a couple of times.

20 Q. All right.

21 A. And Deeb said, he said, "I told him that you were good
22 for it, that you were going to get it."

23 Q. Now, wait a minute. Are you talking about Deeb
24 talking or Spence?

25 A. Spence was still talking. He said he had come by a

1 couple of times and I told Gilbert that you were
2 going to get it.

3 Q. Get what?

4 A. The money.

5 Q. The money. Okay. Then what?

6 A. Then Deeb said, "Yeah, I'll get it. You know I have
7 the money, but I have to wait until I take care of the
8 bills at the store first because it was the end of
9 the month.

10 Q. Okay. Who was that talking?

11 A. That was Deeb talking.

12 Q. The same man that is sitting at the end of the table
13 down there?

14 A. Yes, sir.

15 Q. Okay. What happened after he told you that he was good
16 for it and that he would get the money and all?

17 MR. McCALL: I object to his
18 repeating the testimony. He can just ask the
19 questions of the witness and have him testify. It is
20 argumentative and the prosecutor is testifying by
21 repeating the witness' testimony.

22 THE COURT: Overruled.

23 QUESTIONING CONTINUED BY FEAZELL:

24 Q. What happened next?

25 A. He said that he had to wait until the end of the month

1 and take care of the bills and Spence said, "He is
2 good for it."

3 Q. Okay.

4 A. I told him -- he was talking about me, and he said, "I
5 told him you was good for it."

6 Q. All right. What was your understanding of the
7 conversation, Mr. Melendez?

8 A. That --

9 MR. McCALL: I object to his
10 interpretation of it, or what conclusions he drew,
11 other than he testifies what he heard.

12 THE COURT: Sustained.

13 QUESTIONING CONTINUED BY MR. FEAZELL:

14 Q. Tell the Jury whether or not at that time you had any
15 prospects of getting money from Deeb?

16 A. Yes, sir.

17 Q. Okay. What happened next?

18 A. Spence said -- Spence told Deeb, he said -- after he
19 had said it was the end of the month and he was good
20 for it, he said, "Well, Gilbert just got out of jail
21 and we're kind of low on money, and you know how it is."

22 Q. Had you just gotten out of jail?

23 A. Yes, sir.

24 Q. What had you been in jail for?

25 A. I stayed in jail overnight. I think it was a misdemeanor

1 shoplifting charge. I think it was a package of
2 cigarettes, or something like that.

3 Q. Okay. After David told Deeb that, then what?

4 A. Well, we were standing toward the end of the counter
5 and he said, "Why don't we just ride around and drink
6 some beer. We're almost out," and he walked to the
7 beer deal and got some, and he said, "We'll go drink
8 this beer," and we started to walk toward the end of the
9 counter and he walked to the other side, and he said,
10 "I'll pay for this later when I get paid."

11 Q. Okay. Now, who said that?

12 A. Spence.

13 Q. Said it to who?

14 A. He said it to Deeb.

15 Q. All right.

16 A. And so we started walking toward the end of the counter
17 where the cash register is, and he said, "I'll pay for
18 this later when I get paid," and he nodded at him and
19 said okay and we said, "We'll see you later."

20 Q. Who nodded and said okay?

21 A. Deeb.

22 Q. All right. At that time when David made the remark
23 about getting paid, do you know whether or not David
24 was working anywhere?

25 A. I don't think he was working anywhere.

1 Q. What leads you to that conclusion?

2 A. He had teed me off. I had asked him, you know, if
3 that guy had given him any money because I didn't think
4 he could get much on trading his car, and I asked him
5 about that. I don't remember what he said. He didn't
6 get very much for it. He hadn't been working. He
7 just said --

8 Q. Okay, I can't hear you. What?

9 A. He said he hadn't been working.

10 Q. Okay. What happened next?

11 A. We left. We got in the car and started to leave and
12 I told Spence, I said, "That mother fucker aint going
13 to pay any money," and Spence said, "Yeah, he is.
14 He's got plenty of money. He' just --" I said,
15 "Well, if he's got money, why doesn't he go get it?"
16 and he said just to wait until the end of the month
17 until he paid some bills from the store.

18 Q. All right. Now, what was your understanding,
19 Mr. Melendez, of the reason that you were going to get
20 money from Deeb?

21 MR. McCALL: I object to the
22 speculation, Your Honor. It is calling for a conclusion
23 on the part of the witness.

24 THE COURT: Sustained.

25 QUESTIONING CONTINUED BY MR. FEAZELL:

1 Q. From everything that you had seen and observed and
2 heard during that conversation and other conversations
3 between you and David, and between you and David and
4 Mr. Deeb, what were you going to be getting the money
5 for?

6 MR. McCALL: I will make the
7 same objection, Your Honor. It calls for a conclusion,
8 speculation, and it is based on hearsay in part also.

9 THE COURT: Overruled.

10 QUESTIONING CONTINUED BY MR. FEAZELL:

11 A. I thought that he was talking about getting money from
12 him telling me about the dude getting ripped off for
13 the drugs, and he was paying the money to get his
14 drugs or money back to scare the people, and that's
15 what I thought the money was for.

16 Q. Okay. Which people are you talking about?

17 A. The three people that were killed by the lake.

18 Q. All right. What happened after you and David had that
19 conversation in the car?

20 A. He -- well, after I had told him why didn't he go get
21 it and he said something about the end of the month, he
22 said, "He's going to pay us. He's going to get the
23 money. He's not going to fuck us around. He knows
24 better."

25 Q. Okay.

1 A. Because we had gone in there and asked him about it
2 and everything, and everything that had happened.

3 Q. All right. Then what?

4 A. We were riding around and we drank some more, and I
5 asked him had he got rid of all of his stuff. I was
6 talking about the things he had picked up out there
7 that the three kids had on them when we left and he
8 put in the trunk, and he said, "Yeah, I burned it."

9 Q. Okay. What happened next?

10 A. We talked about a few more things. I said something
11 about a pocket knife that I had had, that I had handed
12 to Tony that I had out there, when we were out there,
13 and I said, "I don't know where my knife is, the one
14 I had at the lake. I think I lost it somewhere," and
15 he didn't say anything about it, and I said, "Well, I
16 think I may have lost it at the park," or something
17 like that.

18 Q. Did you and David talk about it any more during that
19 time, about the killings or anything?

20 A. No, sir. I said, "Well, I think I lost it," and then
21 I said, "Well, I don't know anything about what happened
22 out there any way," and he said, "Yeah, I don't either,"
23 and we didn't talk about it any more.

24 Q. Okay. Gilbert, at the time of the murders, during the
25 summer of '82, did you look like how you look now?

1 A. No, sir.

2 Q. How did you look back then?

3 A. I had fairly long hair, past my shoulders, and a
4 mustache, and sort of a goatee.

5 Q. Okay. Anything else different about you?

6 A. No, sir.

7 Q. Tell the Jury, Gilbert, whether you have got a criminal
8 record or not?

9 A. Yes, sir, I do.

10 Q. What kind of things have you been convicted for?

11 A. I was convicted on attempted murder charge in 1973.

12 Q. Where was that?

13 A. In Waco.

14 Q. All right. What else?

15 A. I was convicted on -- I pleaded to that first charge
16 and I pleaded guilty to Aggravated Sexual Abuse in
17 1982.

18 Q. All right. Who was you -- did you have-- tell the
19 Jury whether or not you had a co-defendant on that
20 charge.

21 A. Yes, sir, I did have a co-defendant.

22 Q. Who was your co-defendant?

23 A. David Spence.

24 Q. All right. Tell the Jury whether or not you pled
25 guilty to that case.

1 A. Yes, sir, I pled guilty to that case.

2 Q. Okay. What year was that?

3 A. 1982.

4 Q. '82.

5 A. Yes, sir.

6 Q. Do you remember who the D.A. was in Waco in 1982?

7 A. I believe it was Felipe Reyna.

8 Q. Okay. Anything else you have been convicted of?

9 A. Yes, sir. I pleaded guilty to two murders in 1985.

10 Q. All right. Are they for two of the kids at the lake?

11 A. Yes, sir.

12 Q. All right. What about is there another murder charge?

13 A. Yes, sir. I still have one capital murder charge
14 pending against me.

15 Q. Okay. Anything else?

16 A. No, sir.

17 Q. Why are you testifying here today and yesterday?

18 A. Well there is several reasons.

19 Q. What are they?

20 A. Well, I really -- in view of all the things that have
21 happened -- this has been going on for quite a while;
22 two years, I believe, and a lot of things have happened
23 since then, and I did think that I would have a really
24 good chance of being found guilty had I went to
25 trial. I have -- I'm pretty tired of all this. It has

1 been a long time and been pretty much of a strain, and
2 I would like to get it over with, and I was guilty, so
3 I went ahead and pleaded guilty to it and try to get it
4 over with as far as my part.

5 Q. That's why you pleaded guilty. Tell the Jury why you
6 testified.

7 A. There is several reasons for that, too.

8 Q. Tell them one at a time.

9 A. Okay. I am testifying because I -- well, I wanted to
10 get it over with, and I just think it was bad what
11 happened out there, and maybe this is one way that I
12 can kind of make up for it. I have thought a lot about
13 it and I've had plenty of time to think about it, and
14 it will make it a little easier for me living with it.
15 I don't like talking about it, but if I get it out
16 in the open and talk about it and get it off my shoulders,
17 maybe it will be a little easier to live with. Also, I
18 wanted to talk about it and let people know how I got
19 involved in it and what my part was. I feel I was more
20 or less brought into it -- I didn't really know what was
21 going on or what was going to happen. I didn't
22 intentionally go out there to do anything. I just
23 happened to be walking home from work that day when
24 I ran into David and Tony.

25 Q. Any other reasons?

1 A. I just thought -- also to avoid the death sentence.
2 It was because of the death penalty -- if I had gotten
3 convicted, I probably would have gotten it, but I
4 didn't think that I deserved to die for the way it
5 happened and the way I got involved in it, and the
6 way I was brought into it, I just figured that I
7 didn't really know what was happening, but I didn't
8 think that I deserved to die for the way I got involved
9 in it, my part of it.

10 Q. All right. Anything else?

11 A. There were several more reasons, Mr. Feazell, but I
12 just can't think of them all right at this minute.

13 Q. Okay. When were you arrested on this case, if you
14 remember?

15 A. I was indicted in November of '83.

16 Q. All right. Where were you at the time you were indicted?

17 A. I had -- I was back in the McLennan County Jail, I
18 believe.

19 Q. What were you in jail for?

20 A. I was in jail -- I was serving prison time for the
21 sexual abuse case.

22 Q. Okay. Have you talked to any law enforcement officers
23 after you were indicted?

24 A. Yes, sir. I think I talked to law enforcement officers
25 a few times.

1 Q. How about before you were indicted on this case? Did
2 you talk to them about this case?

3 A. Yes, I did at times.

4 Q. Do you remember approximately when was the first time
5 you talked to a law enforcement officer about this
6 case?

7 A. The first time, I may have been asked a couple of
8 questions about it. When I returned to Waco in March
9 of '82, I was bench warranted back to testify at
10 David Spence's sexual abuse trial.

11 Q. In March of what?

12 A. In March of '83.

13 Q. '83. Okay. Do you remember who talked to you about it
14 then?

15 A. Well, I didn't really talk about it. I was called out--
16 I talked to Truman Simons. I had never talked to him
17 before. I had just met him and he just kind of was
18 asking me if I knew anything about it. I didn't talk
19 to him but about a couple of minutes and he asked
20 me a couple of questions about it, if I knew anything,
21 and I told him that I didn't and it was just four or
22 five minutes.

23 Q. Okay. You said you had been bench warranted back to
24 testify in Spence's trial, the sex abuse trial.

25 A. Yes, sir.

1 Q. Did you testify?

2 A. No, I didn't.

3 Q. Who was it that benched you back; do you know? Was it
4 the prosecution or the defense?

5 A. It was David Spence's lawyer.

6 Q. When you were asked the first time about this case by
7 Truman Simons, did you tell him anything about it?

8 A. I told him I didn't know anything about it.

9 Q. Did you later -- tell the Jury whether or not you later
10 gave a statement.

11 A. Yes, sir, later I did give a statement.

12 Q. Okay. What kind of statement was it that you gave the
13 first time?

14 A. The first time I gave an oral statement. It was taped
15 statement.

16 Q. Okay. Tape recorded?

17 A. Yes, sir.

18 Q. Do you remember about when that was?

19 A. That was right at the time I came back. I may be
20 mistaken on the time I first talked to Truman Simons.
21 It was right in there. I may be wrong about that date,
22 but I'm sure that the day I gave the oral statement
23 on the tape I had talked to Truman Simons. It may be
24 the same day. I'm not sure. It was around that time.

25 Q. Do you know whether later that oral statement was

1 later transcribed and typed?

2 A. Yes, sir, it was.

3 Q. Did you sign it?

4 A. Yes, I did.

5 Q. Okay. During that first statement, the oral statement,
6 tell the Jury whether or not you made any reference to
7 the defendant in this case, Mr. Deeb.

8 A. Yes, sir, I did.

9 Q. Do you recall what you said about him?

10 A. I don't remember exactly what I said. I remember
11 something said about Spence had said that Deeb had
12 offered him \$5,000, or around \$5,000, to try to get
13 his money or his drugs back.

14 Q. Okay. After that tape was transcribed and you signed
15 it, were you then questioned about the contents of the
16 statement?

17 A. Yes, sir.

18 Q. Do you recall whether or not you were questioned about
19 Mr. Deeb?

20 A. Yes, I was.

21 Q. At the time that you were questioned subsequently, later
22 questioned about Mr. Deeb, did you tell the law
23 enforcement people anything about him then?

24 A. I was questioned about what I had said on the tape
25 and everything, and I was asked about the law enforce-

1 ment officer asking was I sure that I had told him
2 everything and that was I sure that what I had told
3 them about Deeb was correct, or was I just saying that.

4 Q. Uh huh.

5 A. At that time, when he asked me that question, of course,
6 I had already said that on the tape, I thought that he
7 may not know about Deeb or the law enforcement officers
8 may not know him, so I told him no I wasn't sure about
9 that, that I had just said that.

10 Q. Now, why did you do that?

11 A. Well, at the time I made the tape, I hadn't told the
12 whole story for several reasons, and when he asked me
13 about Deeb I thought that he may not know as much as
14 I thought they might know, and I didn't want to give
15 him any more than I had to; just give him enough to
16 where they would believe that I knew what I was
17 talking about, so I denied that and said that I had just
18 said that.

19 Q. You said you didn't want to tell the whole story for
20 several reasons. What were those reasons?

21 A. Well, Spence and I were there in jail. Deeb and my
22 brother were not in jail, and I didn't know if they
23 knew anything about them or not.

24 Q. The law enforcement people?

25 A. Yes, sir.

1 Q. Okay.

2 A. So I was trying to keep my brother out of it, and when
3 he asked me about Deeb, I took it for granted that he
4 may not know very much about it, so I didn't want to
5 say that either. At the time I gave the statement, I
6 had just returned from prison. Before I had left,
7 Spence had been saying a lot of things. I had heard a
8 lot of things that he was saying to people about the
9 lake murders, and that we were involved. When I came
10 back -- I thought he may have been talking to Truman
11 Simons. When I got back to prison I was asked a few
12 times about the triple murders. I never said anything
13 about it. It was publicized that several persons and
14 names given that had been suspects, so I figured it had
15 come from Spence. So when I came back, I thought that
16 Spence may come down and give a statement or confession
17 and try to push it all off on me, so I gave him --
18 that's one of the reasons I gave the statement,
19 because I thought I could hold him off and cut me
20 down and try to put everything on everybody else or me.

21 Q. Okay. So did the first statement say anything about
22 Tony?

23 A. No, sir.

24 Q. All right. When was the first time you realized that
25 you had said something about Deeb in the tape recorded

1 statement?

2 A. After the law enforcement officer questioned me.

3 Q. Okay. Did you give another statement after you gave
4 the tape recorded statement?

5 A. Yes, I did.

6 Q. What kind of statement was that?

7 A. That was a written statement. What I did was, there
8 was a copy of the oral statement on the tape was
9 transcribed -- I had been questioned about the
10 statement by law enforcement officer and I had told
11 him that I had just said that about Deeb and a few
12 other things. I told him the statement wasn't correct
13 and that I would like to change a few things in it to
14 correct it because I hadn't said everything in it,
15 so what I did was, I got the transcribed part and
16 told the officer it would be easier for me to
17 remember, so I just went page by page and wrote it
18 out in my own handwriting. That's what I did.

19 Q. Okay. So is that the second statement?

20 A. Yes, sir.

21 Q. Did it mention anything about either Tony or Deeb?

22 A. No, sir.

23 Q. Okay. For the same reasons you stated a while ago?

24 A. Yes, sir.

25 Q. Were there any more statements that you gave?

1 A. No, sir, I think -- I'm not sure. I think the last
2 statement I gave was this one that I just gave to you.

3 Q. Okay. When did you give that one?

4 A. In January of '85.

5 Q. All right. Why did you give that statement, Gilbert?

6 A. Well --

7 Q. Wait a minute. At that time, tell the Jury whether or
8 not you had come to your decision that you told us
9 about earlier to tell the truth.

10 A. Yes, sir. I had been thinking about it and well, one
11 of the last statements that I gave in '83, later I
12 retracted that statement.

13 Q. Okay. Why did you retract that statement?

14 A. I retracted that statement because I didn't -- they
15 had asked me a couple of times if Tony was involved
16 in it or not.

17 Q. Who had; the policeman?

18 A. Yes, sir.

19 Q. Okay.

20 A. And I was being questioned about the statement,
21 whether it was the whole truth and the whole story was
22 in it, and they started asking me questions about Tony
23 and some other things which I denied, but I sort of
24 felt that the way I had given the statement, I hadn't
25 given a whole lot that maybe could be used against me

1 and then they started asking me about Tony and a couple
2 of other things, so I just backed off the statement.

3 Q. What do you mean you don't think you hadn't given a lot
4 that could be used against you? What do you mean by
5 that?

6 A. Well, when I gave the statement, I gave it because I was
7 afraid Spence may come down and give a statement and
8 say a bunch of things about me and push it off on me,
9 or change things around, so as I was giving the
10 statement, I did that more or less to hold him off
11 and to try to keep my brother out of it and I was
12 trying to see how much maybe the law enforcement
13 officers knew about the case, so I tried to say
14 enough to where they would believe, but try to leave
15 enough open to where it wouldn't be too incriminating
16 because it could -- probably would have been used
17 against me.

18 Q. All right. Tell the Jury whether or not you made any
19 attempts to contact Spence to inform him of what your
20 plan was.

21 A. Yes, sir, I did.

22 Q. How many attempts to contact him?

23 A. One.

24 Q. Okay. What was the nature of that attempt?

25 A. I had given Simons the statement, so right after that,

1 in the same month, I believe, I wrote a letter to
2 Spence and through one of the Trustees, I got the
3 Trustee to go to the floor where he was out, passing
4 out laundry, and slipped the note to a friend of mine
5 to read it -- or give it to Spence.

6 Q. All right. So you slipped him a note?

7 A. Yes, sir, a letter.

8 Q. A letter. Okay. What were you trying to convey to
9 Spence in the letter?

10 A. I was trying to tell Spence what I had said to the law
11 enforcement officers. What I did was -- I told him
12 everything. I said -- and if he wanted to maybe work
13 something out with them, he and I could work out
14 something with them as far as pleading guilty to
15 something, it might leave my brother and whoever else
16 out of it, and Deeb out of it, and maybe we could just
17 take the whole rap for the thing and leave the other
18 two people involved out of it.

19 Q. All right. Did the letter say anything about Deeb?

20 A. Yes, sir it did.

21 Q. What was that?

22 A. Well, when I wrote the letter, I also wrote it in a way
23 to where it would cover me in case someone, a law
24 enforcement officer, got hold of it. I knew Spence
25 would know what I meant when I wrote the letter and

1 why I wrote it that way. I was trying to tell him
2 something, but if the letter got picked up by the
3 law enforcement officers and they came back to me with
4 it, I would have a way to explain it. So I said in
5 the letter I was telling him if he didn't want to do
6 what I was saying, or try to plead guilty to it, that
7 I was going to retract the statement also, and if he
8 did, that he may be able to work out a deal to plead
9 guilty, or he could have been -- I said that he could
10 use the Arab as part of the deal. I didn't want to
11 make a deal because I didn't think they knew anything
12 about him from what the officer said to me when I
13 changed the statement about what I had said about Deeb.

14 Q. Hmmm. Tell the Jury whether or not that plan of yours
15 had anything to do with leaving Deeb out of the second
16 statement.

17 A. Would you repeat that question.

18 Q. Tell the Jury whether or not that plan of yours about
19 if he couldn't plead guilty, using Deeb, whether that
20 was part of your plan when you left Deeb out of your
21 second statement, the one you gave after your tape
22 recorded one.

23 A. Yes, sir. I figured that it may come in handy later
24 if they didn't know about him.

25 Q. What was your main concern during this time, Gilbert?

1 A. My main concern was Spence coming down and saying
2 something -- nothing had been said really about my
3 brother until I had been questioned about it, so I
4 didn't think they knew anything about my brother, and
5 when I did that, and Spence did come down, I could
6 stop him from saying anything about me and my brother
7 When I did that if he had got mad he might try to come
8 back and put it on me, and just keep it between me and
9 him. I was trying to keep my brother out of it.

10 Q. In the last statement you gave, Mr. Melendez, the one
11 in January of 1985, have you put everything in there
12 that you can remember?

13 A. Yes, sir.

14 Q. Okay. Tell the Jury whether or not at times you are --
15 do you have occasions to sometimes still remember
16 things about it?

17 A. Yes, I do.

18 Q. This statement of January, 1985, is it the truth?

19 A. Yes, sir.

20 Q. Are you sure about that?

21 A. It is the truth the best I can remember it.

22 Q. Okay. During the times you were giving statements and
23 talking with policemen, tell the Jury whether or not
24 anybody ever tried to tell you what to say?

25 A. No, sir, no one ever tried to tell me what to say.

1 Q. Have any words been put in your mouth?

2 A. No, sir.

3 Q. Is it the truth that Tony killed Raylene?

4 A. Yes, sir, it is.

5 Q. Are you trying to cover for yourself in any way?

6 A. No, sir.

7 Q. Why did it take you so long to decide to tell the
8 truth?

9 A. Well, like I said, I was trying to keep Tony out of it,
10 and then several times when I talked to the law
11 enforcement officers I was trying to find out things
12 myself at the same time. It was impossible to know
13 how much they knew, or something like that. When we
14 got indicted, I had totally retracted the statement and
15 I wasn't going to go against Tony, and since he was --
16 at that time we were all waiting to go to trial, so
17 I wasn't going to say anything about it.

18 Q. Okay. Have you been in prison before? I'm not talking
19 about the county jail. I'm talking about the big
20 prison.

21 A. Yes, sir.

22 Q. What do folks in prison think about people who testify
23 against other folks?

24 A. They frown on that pretty seriously.

25 Q. What do you mean frown on it?

1 A. Well, it is --

2 MR. McCALL: I'm going to
3 object to the relevancy of that. He is trying to
4 bolster his witness.

5 THE COURT: Sustained.

6 MR. FEAZELL: We will pass the
7 witness, Judge.

8 MR. McCALL: May we have the
9 statements of this witness?

10 MR. FEAZELL: Yes, sir.

11 MR. McCALL: May we approach
12 the bench on that?

13 THE COURT: Yes, sir.

14 (Whereupon all counsel
15 approached the bench and a
16 quiet discussion was held out
of the hearing of the Jury,
after which the following
proceedings were had, to-wit:)

17 MR. McCALL: We would like to
18 look at the statements.

19 COURT: Let's get the
20 State's, and see what they look like.

21 MR. FEAZELL: Your Honor, all
22 I have got are the originals. We may have to make copies.
23 Let me see, some of these are duplicate copies.

24 MR. McCALL: I would like
25 to look at all of them.

1 MR. FEAZELL: There is one duplicate in there,
2 and we are trying to figure out which one it is.

3 COURT: And you are tendering these to the
4 defense for the purposes of cross examination?

5 MR. FEAZELL: Yes, sir.

6 MR. BUTLER: Judge, these are originals.

7 COURT: Well, you can keep somebody with the
8 statements.
9

10 (The following proceedings were had in the presence and
11 hearing of the jury.)

12 COURT: Ladies and Gentlemen of the Jury, let
13 me talk to the jury Gentlemen, just a minute. I am going to
14 recess you at this time until 11:00. Be back at eleven,
15 please, Ladies and Gentlemen. Take the Jury out, Mr. Becker.
16 Remember your instructions, folks.

17 (The following proceedings were had out of the presence
18 and hearing of the jury.)

19 MR. McCALL: Can we take the originals over
20 to the office, where we can have the privacy of working in
21 the office, where the tape recorder is and all of that, and
22 bring you back the original, if we promise not to make copies.

23 MR. FEAZELL: We just don't want extra copies.

24 MR. McCALL: We won't make extra copies.

25 COURT: That is just something you will have
to work out with the State. If you all reach an agreement,

1 that is fine.

2

COURT: The Court will be in recess.

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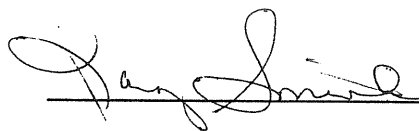
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1 THE STATE OF TEXAS

2 COUNTY OF McLENNAN

3 I, KAY SMITH, Official Reporter for the 54th Judicial
4 District Court of McLennan County, Texas, do hereby certify
5 that the within and foregoing is a full, true, complete
6 and correct transcript of the proceedings had in the above
7 entitled and numbered cause at the time and place as shown
8 herein, to the best of my knowledge, skill, and ability,
9 and was typed under my supervision and direction.

10 TO CERTIFY WHICH, witness my hand this the 5th day of
11 August, A.D., 1985.

12 

13 Kay Smith, Official Reporter

14 54th District Court, Courthouse

15 Waco, Texas, 757-5051, Certificate

16 #116, expiration date of 12-31-86
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