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REGINA ROSENBAUM, called as a witness on behalf of the State, having been duly sworn, testified as follows:

DIRECT EXAMINATION

QUESTIONS BY MR. FEAZELL:

Q Will you state your name for the record, please, ma'am?

A Regina Ann Rosenbaum.

Q Will you spell your last name?

A R-o-s-e-n-b-a-u-m.

Q Okay, Regina, tell the jury what town you live in.

A Waco, Texas.

Q And were you living in Waco during the summer of 1982?

A Yes, I was.

Q All right, did you have an occasion, ma'am, during the summer of 1982 to meet a man by the name of David Wayne Spence?

A Yes, sir.

Q About when was that, that you met David Spence?

A It was about the end of July -- last part of July.

Q End of July of '82?

A Yes.

Q How is it that you remember that it was the end of July?

- 1 A My son was born at the first part of the summer,  
2 and my brother's birthday and my cousin's birthday  
3 are there in June, the last part of June, and it  
4 was three to four weeks after that -- after their  
5 birthdays.
- 6 Q Okay, tell the jury how it is that you came to meet  
7 David Spence during the last part of July of '82.
- 8 A I had been out at the lake.
- 9 Q Lake Waco?
- 10 A Yes.
- 11 Q Okay.
- 12 A Me and my boyfriend at the time had been out there  
13 with some other friends, and we were on our way  
14 back in from the lake, and we stopped at the Payless  
15 Gas.
- 16 Q You were in an automobile?
- 17 A Yes.
- 18 Q Coming back in to Waco?
- 19 A Yes.
- 20 Q Okay.
- 21 A We stopped at Payless Gas, and Johnny had known  
22 David's brother -- had gone to school with David's  
23 brother, and they started talking.
- 24 Q David's brother or David?
- 25 A No, David.

- 1 Q Okay.
- 2 A Johnny knew David through David's brother.
- 3 Q And so then was it at the Payless Gas station,  
4 the store that you saw David?
- 5 A Yes.
- 6 Q Okay, what happened after he and Johnny -- I believe,  
7 you said his name was Cardwell, your boyfriend,  
8 at the time?
- 9 A Yes.
- 10 Q What happened after the two of them started talking?
- 11 A Either Johnny invited himself over to David's  
12 apartment or David invited us to his apartment.  
13 I am not sure which is which. They talked outside  
14 the car at the store.
- 15 We wound up going to the Northcrest Apartments.  
16 I think, that is the name of them.
- 17 Q Okay, is that in Waco?
- 18 A Yes.
- 19 Q Is that where David's apartment was at the time?
- 20 A Yes.
- 21 Q Okay.
- 22 A More or less.
- 23 Q What do you mean by more or less?
- 24 A Well, he was -- he had been moving out or was in  
25 the process of moving out. The only thing that was

1 left in the apartment was furniture, and there was  
2 nothing else that made the apartment look lived in.

3 There was nothing around like that.

4 Q No pictures or knickknacks or anything?

5 A No.

6 Q Did he tell you he was moving out?

7 A He had said that he was moving out.

8 Q All right, who all -- okay, so you and Johnny went  
9 over to David Spence's apartment?

10 A Yes.

11 Q Who else was there?

12 A There was two other guys, Billy Wright and another  
13 guy named Billy that had been out at the lake with  
14 me and Johnny and some other friends had been out  
15 to the lake, too, but they weren't with us at the  
16 time.

17 Q So how many all together were there?

18 A There was five.

19 Q Okay. Now, while the five of you were there at  
20 the apartment, Regina, what did you all do?

21 A Talked and just drank beer.

22 Q Okay, what kind of things -- tell the jury what  
23 kind of things, just in general, that you all were  
24 talking about, if you remember.

25 A The guys were talking about girls. Billy had talked

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about his fiancée.

Q Now, by talking about girls, you mean, boisterous type talk or just talking in general about their girlfriends, or how do you mean?

A Started out talking in general about the girlfriends.

Q Okay, did anything unusual happen during that conversation?

A David started talking about him and some friends of his going out to the lake with some girls.

MR. REAVES: Your Honor, I am going to object to any statements that David Spence may have made which she may have heard or said to her are clearly hearsay and not admissible.

MR. FEAZELL: Your Honor, statements made by the Defendant against his own interests.

MR. REAVES: They haven't proved up it is against his interests or that it is tied into this crime, Your Honor.

THE COURT: Objection sustained as to the form of the question at this time.

Q Okay, you all were sitting around talking in general about girlfriends, correct?

A Yes.

Q David Spence was there.

14  
1 A Yes.

2 Q What did David Spence look like?

3 MR. REAVES: Your Honor, I will  
4 object to that question. That is not relevant to  
5 anything in this case, what he looked like at the  
6 time.

7 THE COURT: What is the purpose  
8 of that question?

9 MR. FEAZELL: Just to establish  
10 that she did know him at the time, Your Honor, and  
11 that it was him in the apartment making the  
12 statement. Therefore, it was a statement of the  
13 Defendant and --

14 THE COURT: If you are talking  
15 about for that purpose, objection overruled. Go  
16 ahead.

17 Q So what did he look like at the time?

18 A He was kind of heavy. He had a beard and a mustache,  
19 and he wore a cap that looked like a -- I don't know  
20 what you would call it. It is a round cap, and it  
21 has a flat brim, but the top of the cap came down  
22 that was made of cloth.

23 Q Okay.

24 A Every time I saw him, he wore that hat.

25 Q By heavy, do you mean fat, or do you mean muscular?

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A No, more muscular than fat.

Q Do you see David Spence in the courtroom today?

A Yes, I do.

Q Will you point to him for the jury, please?

A That gentleman right there.

Q The one on the end?

A Yes.

MR. FEAZELL: Your Honor, if the record could reflect that Ms. Rosenbaum has identified the Defendant.

THE COURT: All right.

Q Now, at the time this conversation is going on from what Mr. Spence said, do you feel that the conversation was abruptly changed?

A Yes.

Q Okay, and tell the jury what it was that Mr. Spence said.

MR. REAVES: Again, we are going to object to whatever Mr. Spence said to her. It is hearsay, Your Honor.

MR. FEAZELL: Your Honor, statements by the Defendant are not hearsay. Any kind of statement like that in the presence of somebody else is not hearsay. Clearly admissible in a criminal case.

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THE COURT: You all go in the  
anteroom a minute, ladies and gentlemen.

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

MR. REAVES: Your Honor, we would  
disagree with Mr. Feazell. Anything that she heard  
or that was said to her is hearsay, and there may be  
an exception to the hearsay rule, but that hasn't  
been proved up yet.

THE COURT: I wanted the jury  
out before we go into that.

MR. FEAZELL: Then if I may voir  
dire the witness, Your Honor.

THE COURT: All right.

VOIR DIRE EXAMINATION

QUESTIONS BY MR. FEAZELL:

Q Tell the Judge what Mr. Spence said that day.

A He started talking about him and some friends had  
been out at the lake, and there was a couple of  
girls out there, and they had been fondling them,  
grabbing them on their breasts and their butts.

Q Well, use his words. What did he tell you he had  
done to them?

A Him and his friends had gone out to the lake, and

14  
1 there was some chicks out there, and they grabbed  
2 their asses and was grabbing their tits, and the  
3 girls were getting real pissed off.

4 So they tied them up and raped them. That was  
5 the -- the conversation had been tried to -- everybody  
6 was trying to change the subject after it got to that  
7 point, and it just -- nobody wanted to talk about  
8 anything like that.

9 MR. FEAZELL: This would have  
10 been within two weeks, Your Honor, after the  
11 commission of the lake murders, July 13, 1982.  
12 Therefore, clearly admissible as a declaration  
13 against his own penal interests.

14 MR. REAVES: May we ask the  
15 witness some questions, Your Honor?

16 THE COURT: Yes, sir.

17 VOIR DIRE EXAMINATION

18 QUESTIONS BY MR. REAVES:

19 Q Ms. Rosenbaum, what date did you say this statement  
20 occurred?

21 A I am not sure of the specific date. It was about  
22 the end of July.

23 Q Okay, and you tie that into the birthday of your  
24 son?

25 A The birthday of my son and then my brother's birthday

14  
1 and his -- and my cousin's birthday and then my  
2 birthday is the 1st of August, and it was before  
3 my birthday, and so it had to have been the last  
4 part of July.

5 Q When the statement was made, was there any indication  
6 as to when this had occurred?

7 A No, he had not said a date or a time or anything like  
8 that.

9 Q Was there any indication as to whether or not the  
10 girls had been killed?

11 A Like I said, there was -- everyone tried to change  
12 the subject. He didn't indicate anything like that.

13 Q Was there any indication as to the names of the  
14 people that were with him?

15 A No.

16 MR. REAVES: Your Honor, that  
17 is all the questions we would have, but we would  
18 object to the statement. Although it may be a  
19 declaration against interests, we don't feel like  
20 any declaration against penal interests is admissible  
21 in any criminal case unless it is tied to the  
22 particular charge that is being brought against that --  
23 in that particular case.

24 This statement may be an  
25 extraneous offense. It may not be tied in this case

1 at all, and on those grounds, it may be an admission  
2 to another crime, and if that was the case, it  
3 clearly wouldn't be admissible.

4 MR. FEAZELL: Judge, he is not  
5 charged with raping two other women at Lake Waco  
6 back around that time.

7 Besides that, it is a declaration  
8 against penal interests, and even if it weren't, it  
9 would be -- still be admissible because it is a  
10 declaration of the Defendant in a criminal case.

11 MR. REAVES: Well, it has got  
12 to be relevant to the case being tried. It can't be  
13 a declaration against penal interests for something  
14 that happened 10 years ago. That doesn't make it  
15 admissible in this case.

16 THE COURT: Objection sustained  
17 as to this last line of questioning.

18 Now, if she is here for some  
19 other testimony, let us develop that.

20 MR. FEAZELL: May we approach  
21 the bench, Your Honor?

22 (Conference at the bench outside  
23 the hearing of the witness.

24 MR. FEAZELL: We would like the  
25 opportunity to do some research, if we could,

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Your Honor.

The Court's ruling has completely ruled out any further testimony from -- not only this witness but our next witness as well.

THE COURT: No, the only thing I have ruled is the last part, but just because it is something said by the Defendant doesn't -- that is that old courthouse law. There is no case law at all that says just because the defendant says it, it is not hearsay.

A lot of people think that, and I have got a whole bunch of documentation that is plain old courthouse law that somebody said at one time and everybody believes it, but no appellate court has ever written on that.

MR. BUTLER: Judge, there is no other offense where two girls were tied up and raped at Lake Waco.

There is no other offense like that. There has been no other offense like that, and this statement was made within two weeks of the time the crime happened.

MR. REAVES: That is not in the record, Judge. The Court can't rule on something that is not in the record.

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MR. FEAZELL: And it is clearly an admission against penal interests, and it goes to show his state of mind at the time shortly after these lake murders which is what we intend to establish through the next witness as well who knew David Spence very well, had known him for quite some time.

THE COURT: Let us take each witness at a time, but just right now, what she just said, I don't believe that is admissible.

MR. BUTLER: Well then, this witness can just go home.

THE COURT: Well, that is why I asked you if there was anything else she can testify to.

MR. FEAZELL: That is all we have got because the next one, I can put her on but --

THE COURT: I don't know what else you might want to ask her. That is why I asked if there was something else.

MR. BUTLER: That is it.

THE COURT: Well, let us let her go and bring the next one.

All right, bring the jury back in -- or what do you all want to do with her?

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MR. FEAZELL: We would like to  
excuse her until a later time, Your Honor.

THE COURT: All right,  
Ms. Rosenbaum --

MR. FEAZELL: Subject to recall.

THE COURT: You will be excused  
subject to recall, and the D.A.'s office will be  
in touch with you. I don't know if they want you to  
stay around right now or what, but check with their  
investigator.

MR. REAVES: Before we excuse her,  
can we have it read back as to what her response was  
before we make our objection? Because if you have  
sustained our objection, we would like the ruling to  
disregard that answer.

THE COURT: All right, read back,  
Vicki.

(Whereupon the Court Reporter  
read back Ms. Rosenbaum's  
response.)

(Witness excused.)

MR. VANCE: Can we take the next  
witness outside the presence if it is the same type --

THE COURT: Yes, bring her in for  
voir dire.

MR. FEAZELL: Dorothy Miles.

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MR. BUTLER: If we do that, it gives them another opportunity to preview her entire testimony. They have got a transcript of her testimony in a previous trial. They know what it is going to be, and they can certainly make timely objections in front of the jury.

MR. VANCE: That is the purpose of why we want it done outside the presence of the jury because we are going to come to the same situation which we will have to object, the jury will be excused, and it is possible that they could hold that action against the Defendant.

THE COURT: All right, go ahead. Bring her in while they are out.

D O R O T H Y M I L E S, called as a witness on behalf of the State, having been duly sworn, testified as follows:

VOIR DIRE EXAMINATION

QUESTIONS BY MR. FEAZELL:

Q Ms. Miles, we are out of the presence of the jury because there has been an objection lodged to your testimony.

I intend to ask you questions about whether or not you know David and how long you knew him, that sort of thing, where you met him.