

21
1 Department of Corrections?

2 A Yes, sir, that is right.

3 Q Had you given any information to anyone that was
4 transmitted to law enforcement officers before you
5 were transferred to TDC?

6 A No, sir.

7 MR. REAVES: That is all the
8 questions we have, at this time, for this hearing,
9 Judge.

10 VOIR DIRE EXAMINATION

11 QUESTIONS BY MR. BUTLER:

12 Q Were you contacted, Mr. Puryear, through any
13 conscious action on your part or any request on
14 your part? Were you contacted by a law enforcement
15 agency pertaining to your knowledge in this case,
16 and by that, I mean, the first contact?

17 A The very first contact I had was when yourself and
18 Dennis Bayer came to the Texas Department of
19 Corrections.

20 Q Was that at your request?

21 A No, sir.

22 Q Was that through any conscious effort on your part?
23 Did you ask anybody to contact law enforcement and
24 tell them to come see you?

25 A No, sir, I didn't.

1 Q Did you have any idea you were going to be contacted?
2 A No, sir.
3 MR. BUTLER: We pass the
4 witness, Your Honor.
5 MR. REAVES: We don't have
6 anything further, at this time.
7 THE COURT: All right. Are
8 you ready to bring the jury in?
9 MR. BUTLER: Judge, this is not
10 going to be our first witness.
11 THE COURT: Anything you all
12 need to put in the record outside the presence of
13 the jury?
14 MR. REAVES: Not at this time,
15 Your Honor.
16 THE COURT: About this witness?
17 MR. REAVES: Not at this time.
18 THE COURT: What would be -- I
19 mean, why not do it now if you're going to do it --
20 you know, what he will testify to.
21 MR. REAVES: Well, at the
22 proper time, Judge, we will make an objection based
23 on hearsay grounds -- whatever he testifies.
24 THE COURT: That would be in
25 the presence of the jury. I am talking about anything

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outside the presence of the jury that needs to be done now or relating to this witness that we can get done so we don't have to stop again.

MR. REAVES: We don't have anything, at this time, Judge. The purpose of this hearing was to determine whether he was acting as an agent of the State or not when the statements were made to Mr. Spence, and I think, he has testified that he wasn't contacted until afterwards.

THE COURT: Well, I just wanted to be sure because I hate to run the jury in and out any more than is necessary.

MR. REAVES: We are not waiving our hearsay objection or whatever we may have.

THE COURT: No, I am not talking about that. I am talking about outside the presence of the jury hearing.

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

THE COURT: All right, let us go ahead. Call your next witness, Mr. Feazell or Mr. Butler.

MR. FEAZELL: Your Honor, the State calls Regina Rosenbaum.

R E G I N A R O S E N B A U M, called as a

2 1 witness on behalf of the State, having been duly
2 sworn, testified as follows:

3 DIRECT EXAMINATION

4 QUESTIONS BY MR. FEAZELL:

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

7 A Regina Ann Rosenbaum.

8 Q All right, and spell your last name for the
9 Court Reporter.

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

11 Q Now, Regina, I will need for you to speak up so
12 that everybody can hear you including the lady
13 seated over here. She is part of the jury, and
14 this lady back over here, all right?

15 A Yes, sir.

16 Q What town do you live in, Regina?

17 A Waco, Texas.

18 Q And let me get this straight before we go on. You
19 are the same Regina Rosenbaum who testified in this
20 trial last week?

21 A Yes, sir.

22 Q All right, how long have you lived in Waco?

23 A About the past four years.

24 Q Were you living in Waco during the summer of 1982?

25 A Yes, sir.

1 Q I am asking you to think back, specifically, to the
2 latter part of July 1982.

3 Did you have occasion to meet a man by the
4 name of David Wayne Spence?

5 A Yes, sir.

6 Q Tell the jury how it was that you came to meet David
7 Spence.

8 A We had been out at the lake, and we were on our way
9 home, and we stopped at the store and --

10 Q We who?

11 A Myself, Johnny Cardwell, Billy Wright and another
12 guy named Billy. I don't know what his last name
13 is.

14 Q All right, and you stopped at the store?

15 A Yes.

16 Q Then what happened?

17 A Johnny had met David there at the store. Johnny
18 knew his brother or something like that through
19 going to school with him, and they talked.

20 We went to David's apartment after we left
21 the store.

22 Q Okay, everybody that you just mentioned went to
23 David's apartment?

24 A Yes, sir.

25 Q Do you remember where that was?

1 A It was Northwoods, I think. It is right across
2 from MCC. I can't remember the name of it.
3 Q Right across from the Community College there?
4 A Yes, sir.
5 Q That is down on 19th Street -- North 19th off of
6 19th?
7 A Yes, it is off of 19th.
8 Q Out towards Bosqueville?
9 A Yes, sir.
10 Q All right, how did you get to his apartment?
11 A In the car.
12 Q Did you all follow him?
13 A Yes.
14 Q Now, what happened when you got to David's
15 apartment?
16 A We went in and started talking and visiting, stuff
17 like that.
18 Q Did David's apartment look lived in?
19 A No, sir.
20 Q Why is that?
21 A Everything was out of it. There was furniture
22 there, but there was no sheets or nothing, you know,
23 that showed that it looked lived in. It looked as
24 though they were moving out or moving in.
25 Q Let me ask you this: You testified earlier when you

1 were here last week that this was sometime toward
2 the end of July.

3 A Yes.

4 Q How is it that you specifically remember that this
5 meeting with David Spence in his apartment took
6 place at the end of July 1982?

7 A My son was born the first of summer, and my brother's
8 birthday and my cousin's birthday are both in June,
9 and so it was about two to three weeks after that.
10 So it had to have been the last part of July.

11 Q Okay, do you recall whether or not it was after
12 the lake murders in Waco?

13 A Yes, sir, the lake murders had already been on the
14 news.

15 Q All right, and you remember that?

16 A Yes, sir.

17 Q You say you all were sitting around talking. What
18 did the conversation come around to? What were
19 they talking about?

20 A Girls. You know, I was the only girl there, and
21 Billy Wright started talking about his fiancée. He
22 was going to get married, at the time, and so they
23 started talking about girls.

24 Q Was it loud, boastful talking or just in general
25 talking?

1 A Billy Wright was talking about the things that his
2 fiancée did and just in general, about her personality
3 and stuff like that.

4 Q Anything offensive about what he was saying?

5 A No, sir.

6 Q During that conversation with all of you participating,
7 was David Spence there?

8 A Yes.

9 Q At that time, did anything unusual happen concerning
10 David Spence?

11 A He started talking into the conversation. I guess,
12 you would say he kind of changed the conversation --

13 Q How was that?

14 A -- a little bit. He wasn't -- he was talking about
15 some girls that they had taken out to the lake, him
16 and some friends.

17 MR. REAVES: Judge, we will
18 object to anything that Mr. Spence may have said
19 to her as it is hearsay and not admissible.

20 THE COURT: All right,
21 objection overruled.

22 Q Okay, what is it that he said?

23 A He had mentioned that him and some friends had
24 taken some girls out to the lake.

25 Q All right.

1 A A couple of chicks, as he said it.
2 Q Okay, so you got the impression it was two?
3 A Yes.
4 Q All right, and I believe, last week you testified
5 David and a --

6 MR. VANCE: Your Honor, I will
7 object to him leading this witness as to what she
8 testified to.

9 THE COURT: Rephrase the
10 question not to say -- don't suggest an answer.

11 Q Okay, did he give you any indication of how many
12 people were with him?

13 A No, not really.

14 Q Okay, did he give you some idea?

15 A He said, some friends.

16 Q Okay, go ahead.

17 A And they had taken them out to the lake, and they
18 were fondling them.

19 Q Use David's words as best you remember. What was
20 he saying?

21 A "We grabbed their tits and asses and --"

22 MR. REAVES: Your Honor, we are
23 going to again object to this. It is hearsay, for
24 one. It is an extraneous offense, and it doesn't
25 have anything to do with the death of Kenneth Franks,

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and it is not relevant or probative because it hasn't been tied to anything that has been going on in this trial and this offense.

THE COURT: All right, objection overruled.

Q All right, go ahead. You said he had been -- what?

A They had been pinching their tits and their asses and the girls got pissed off.

Q All right.

A So they decided just to -- how to get pissed off.

Q And was he saying they decided or he decided?

A They decided, I think. I don't know.

Q All right, go ahead.

A And so he said that they had tied them up and raped them.

Q All right, did he say where this happened?

A He just said out at the lake. That is all I know.

Q All right, what happened when David Spence made the statement to the folks you were with and to you?

A Everyone tried to change the subject. They started talking about going home or being out at the lake earlier or just trying to change the subject in general.

Q How was he acting as he told you this story?

A Calm, just like a normal everyday conversation.

1 Q What did the rest of you do?
2 A Got nervous. I mean, just wasn't the usual
3 conversation.
4 Q How much longer did you stay?
5 A I am not really sure. I don't think we stayed
6 much longer. I think, we finished up the beer
7 that had been bought, and then I think we left right
8 after that.
9 Q All right.
10 A I can't remember.
11 Q Did you have another occasion to see David Spence
12 after that?
13 A Yes, I did.
14 Q And where was that?
15 A That was at my house on North 19th.
16 Q How did that come about?
17 A We had been sitting at home, and David and Gilbert
18 came up to our house.
19 Q Gilbert -- you mean, Gilbert Melendez?
20 A Yes, sir.
21 Q All right.
22 A And they came up to our house to visit or drink
23 beer or something.
24 Q Had they been invited?
25 A No, not that I know of.

1 Q All right, did you know David Spence at that time
2 by a nickname?

3 A As Chillie. They had -- I had heard him called
4 Chillie.

5 Q Without telling the jury what he said, did he
6 tell you how he got the nickname?

7 MR. REAVES: Your Honor, I will
8 object to that. That is not relevant to anything
9 in this case.

10 THE COURT: Sustained.

11 MR. FEAZELL: We will pass the
12 witness, Your Honor.

13 CROSS EXAMINATION

14 QUESTIONS BY MR. REAVES:

15 Q Ms. Rosenbaum, had you -- prior to the time that you
16 went over to Mr. Spence's apartment, had you ever
17 met him before?

18 A No, I hadn't.

19 Q You never had sat in on a conversation with him
20 or never been over to his apartment, or he never
21 had been over to your house?

22 A No.

23 Q Okay, and the only reason that you came into it
24 and met him that day was because of someone that
25 was with you?

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1 A Yes.

2 Q Okay. Now, who was that that was with you?

3 A Johnny Cardwell.

4 Q And Mr. Cardwell did not know David Spence but

5 knew his brother?

6 A Well, he knew David, but he had gone to school

7 with his brother.

8 Q Gone to school with David's brother?

9 A Yes, or cousin or -- I think, it was his brother.

10 I don't really remember.

11 Q Now, at the time you say the statement was made

12 to you, did Mr. Spence indicate when this had

13 happened?

14 A No.

15 Q Okay, and he did not indicate to you where it

16 had happened?

17 A No, just out at the lake.

18 Q Okay, did not indicate to you who he was with?

19 A No, sir.

20 Q Okay. Now, you said that -- according to you, you

21 said that he had taken them to the lake, he and

22 his friends had taken them to the lake. Did that

23 indicate to you that they had gone out to the lake

24 with them or they had met them out at the lake?

25 A He had said they had gone to the lake with some

1 chicks so --

2 Q So that indicated to you that they had --

3 A He had taken them out there, yes.

4 Q Okay, not just met them out there?

5 A I guess, that sounds about right.

6 Q The way you took it, okay. When did you first come

7 and tell this story?

8 A What do you mean by that question -- when?

9 Q Who did you first tell this story to -- what you have

10 testified here today?

11 A I talked to the D.A.'s office down in Waco. I

12 think, it was the first part of '83 was when I

13 first went in and talked to them -- no, wait a

14 minute. It had to have been the last part of '82,

15 I think.

16 Q Had they contacted you?

17 A Yes.

18 Q And asked you to come down and talk to them?

19 A Yes.

20 Q That was the McLennan County District Attorney's

21 Office?

22 A Yes.

23 Q How old were you at the time all this happened?

24 A I was 18.

25 Q How old are you now?

1 A Twenty-one.

2 Q The second time you saw Mr. Spence when he came by

3 your house, do you recall when that was?

4 A It was either the last part of August or the first

5 of September. I am not real sure about that. It

6 was after my birthday, but I am not clear about what

7 day it was or anything.

8 Q When is your birthday?

9 A August 8th.

10 Q Now, you recall this conversation with Mr. Spence

11 and tied it into the birthday of your -- or your

12 son's birthday?

13 A I knew that it was after my son's birthday. I had

14 already had my son.

15 Q And what day was his birthday?

16 A May 2nd.

17 Q Is that the day he was born that year?

18 A Yes.

19 Q Who is Johnny Cardwell?

20 A He was my boyfriend, at the time.

21 Q Okay, is he the father of your son?

22 A Of one of my sons, yes.

23 Q Not the son we are talking about here?

24 A No.

25 MR. REAVES: Your Honor, we will

2
1 pass the witness, at this time.

2 REDIRECT EXAMINATION

3 QUESTIONS BY MR. FEAZELL:

4 Q Regina, I am going to show you what has already
5 been introduced into evidence. It is State's
6 Exhibit No. 41, being a picture of David Wayne
7 Spence. Is that the way Mr. Spence appeared
8 during the summer of 1982?

9 A Yes, and he wore a hat all the time, every time
10 that I saw him.

11 Q All right, and is that the way Mr. Spence appeared
12 at the time you saw him there in his apartment?

13 A Yes.

14 Q At the time of this conversation?

15 A Yes.

16 Q Regina, do you see Mr. Spence in the courtroom here
17 today?

18 A Yes, sir.

19 Q Would you point him out for the jury, please?

20 A Right there at the end.

21 MR. FEAZELL: If the record
22 could reflect, Your Honor, that the witness has
23 identified the Defendant.

24 THE COURT: All right.

25 MR. FEAZELL: We pass the witness.

REXCROSS EXAMINATION

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QUESTIONS BY MR. REAVES:

Q Let me straighten out one thing. You said every time you saw him, is that the two times that you saw him?

A I had seen him a couple of times driving around the lake and driving down the streets and going into the Armadillo.

Q Okay, but the two times that you met him, was this the time that you have talked with -- told us about when you went over to his apartment and then sometime later when he came over to your apartment?

A He had -- yes, and he had also been out at the lake talking with some other people.

Q But I am talking about, particularly, the two times that you had met him and sat in on a conversation with him or talked with him?

A Yes.

MR. REAVES: No further questions, Your Honor.

MR. FEAZELL: That is all, Your Honor.

THE COURT: All right, may she be excused, gentlemen?

MR. FEAZELL: Yes, Your Honor.