

1 of people over here. Does that sound reasonable?

2 They all left at dusk or dark.

3 The testimony from Tony and Gilbert, right there
4 (indicating) dusk, raping and murdering, yelling --
5 people yelling at the top of their lungs.

6 Again, remember, Mr. Spence is
7 on trial here today for the death of Kenneth Franks --
8 not Jill Montgomery, not Raylene Rice. Thank you.

9 (Brief recess.)

10 THE COURT: All right, let us
11 proceed, Mr. Reaves.

12 DEFENDANT'S FINAL ARGUMENT

13 MR. REAVES: May it please the
14 Court, Mr. Butler, ladies and gentlemen, it seems
15 like an awful long time ago but really it was just
16 last week when we first began this case.

17 We had an opportunity at that
18 time to make opening arguments to you, and at that
19 time, if you recall in my opening argument, I told
20 you that you were probably going to hear two
21 co-defendants testify and that you were going to
22 hear at the trial that they had told stories before
23 about what happened and that they had lied.

24 Now, when the evidence came in,
25 they came into testify, you found out that Tony

1 Melendez had given a story before, and you found
2 out and he admitted to you that he lied about some
3 things in it.

4 You heard from Gilbert Melendez.
5 He told you that he had given some stories before,
6 several stories before, and he admitted to you that
7 he lied about some of those things in it.

8 I am going to talk about that
9 more, but first, let us talk about a little bit more
10 about what Mr. Vance went over with you, and that is,
11 the law of accomplice witnesses.

12 The Charge on accomplice witnesses
13 says that you need to have something tending to
14 connect the defendant to the commission of the crime,
15 if you believe their testimony.

16 If you believe their testimony,
17 then you look to see if there is anything to
18 corroborate with -- to corroborate it. Let us
19 talk about that.

20 Let us assume that you believe
21 their testimony. Let us take Gilbert Melendez.
22 Let us take Tony Melendez. Let us take their
23 testimony and sit it over here completely out of
24 the case.

25 Completely ignore it altogether,

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and look at what you have left to corroborate them.

First of all, you have forensic odontology. You have bite marks.

I think, Mr. Vance went over that with you and showed you what that evidence is, showed you two different interpretations of what that evidence is.

It is going to be up to you to go back there and look at that, and determine, is that enough? Is that enough corroboration, ladies and gentlemen, those bite marks?

Look at what -- look at Dr. Vale's slides. He compared those slides, and he compared the way those teeth fit in. Look at them.

What other corroboration did the State of Texas bring you in this case to connect Mr. Spence with the death of Kenneth Franks?

Again, I am going to point out to you, as Mr. Vance did, that he is being charged here today -- he is being tried, the indictment against him is for causing the death of Kenneth Franks.

What is there that connects him

1 to the death of Kenneth Franks?

2 They brought in a lady named --
3 or a girl named Regina Rosenbaum, and she testified
4 to a statement Mr. Spence made to her one day after
5 they ran into her or her boyfriend or whatever ran
6 into him at the store.

7 She didn't know him. She had
8 seen him, but she didn't know him. She hadn't sat
9 down and talked to him before.

10 Look at that statement that
11 he made. Does that say anything or does that tie
12 him in any way into the death of Kenneth Franks?

13 Does that statement really tell
14 you anything, if indeed he made it.

15 It certainly doesn't tell you
16 anything specific. You don't know anything about
17 the circumstances of that statement.

18 You don't know anything about
19 how it was made. She didn't even know him.

20 That was the first time they
21 had ever sat down and talked.

22 If you believe that statement
23 that they took some girls out to the park, that is
24 how she interpreted it, what does that do to Tony
25 Melendez and Gilbert Melendez who said they met

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them out at the park?

That is one statement that they --
or that is some of the corroborating evidence that
they used.

Again, look at the evidence.
Take away Tony and Gilbert Melendez and look at what
you have left in this case.

They also brought you a gentleman
named David Puryear who had been in jail with
Mr. Spence at one time, and he also testified to
some statements Mr. Spence made.

He testified that on one
occasion he stated to him that he was being
questioned about the deaths and he didn't know why.

For some reason, Mr. Puryear
has ignored that statement, I suppose, and he is
going with another statement that he made.

Again, look at the circumstances
around that statement. He comes back upset,
presumably after being -- or he said he had been
questioned about the murders. Who knows what went
on? Who knows what they told him? Who knows what
happened when he was away?

Mr. Puryear doesn't know. Who
knows what caused him to make that statement. That

1 is the main substance, at least, as we see it, of
2 their corroboration of Anthony and Gilbert Melendez.

3 Do you think that is enough?
4 Do you think that is enough to convict him of the
5 death of Kenneth Franks?

6 Again, remember, the death of
7 Kenneth Franks. Does it go to that?

8 Mr. Vance pointed out to you
9 about the physical evidence. Where is it?

10 You have got two statements.
11 You have got some bite marks that there is a
12 difference of opinion on, and that is what they
13 are using as corroboration.

14 In order to get to the
15 corroboration issue, as Mr. Vance said, you first
16 must believe the testimony of Gilbert and Tony
17 Melendez.

18 If you believe it, then you
19 look to that corroboration and see whether their
20 testimony was corroborated.

21 Now, let us look at the testimony
22 of both of those two, and let us look at it several
23 different ways.

24 First of all, let us look at
25 it from the point of view, does Gilbert Melendez'

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story and do Tony Melendez' story fit together?
You would expect that if they were both there, if
they both saw the same thing, if they were both
involved in it that their stories would fit
together, but do they?

Mr. Melendez, as Mr. Vance
said, says they ran into the people in the Pinto
up here (indicating). He put that mark up there.

Mr. Melendez denies that. When
asked about it, he says, that is not true. We
didn't run into them up there.

MR. FEAZELL: Objection,
Your Honor, he is misstating the evidence. He
clearly said he did not remember.

THE COURT: All right, ladies
and gentlemen of the jury, remember the evidence
as you best heard it. Go ahead.

MR. REAVES: Ladies and
gentlemen, as Judge McDonald told you, what we are
up here to do is argue as best we see it.

We are thinking about many
different things, everybody is, and sometimes, we
may not see it as you see the evidence.

You are the ones that decide
what the facts are. You are the ones that decide

1 what the evidence is.

2 If our view of the evidence
3 doesn't fit in with what you think it is, you use
4 your version of the evidence because that is what
5 you have got to go by.

6 Tony Melendez says they see
7 them up there in the gravel area. At least as I
8 remember it, Gilbert Melendez says that is not so.
9 They didn't see them until they went down into the
10 circle area and saw them.

11 That is a big difference. That
12 is not something that is just a little bit mistaken
13 about.

14 Another thing that is not a
15 small mistake but it is a big difference, Tony
16 Melendez, again, in his testimony, has them sitting
17 here in the circle area talking and drinking beer,
18 smoking dope for a couple of hours, an hour or more.

19 At least, for some period of
20 time, he has got them in there in that circle area
21 hanging around sitting on the hood of the cars.

22 Mr. Melendez, again, didn't
23 remember it that way. He says they drive down
24 there and the kids aren't sitting on their car.
25 They don't follow them into the circle area, as

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Mr. Melendez said, but they are sitting on picnic tables.

They don't even stay long enough for Gilbert Melendez to get out of the car. According to him, they meet, and they drive off. They are not there for an hour or two.

Again, what Tony Melendez says, as Mr. Vance says, doesn't square up with the other evidence you heard. The other people that were there at the park didn't see any such thing.

Another inconsistency in their stories, and it is interesting, is about the screwdriver.

If you will remember, Anthony Melendez talked about pulling out a screwdriver out of the car and throwing it away later. Gilbert Melendez doesn't remember anything about that. He said he didn't have a screwdriver.

MR. FEAZELL: Objection -- I will argue it, Judge. Never mind.

MR. REAVES: Mr. Melendez didn't remember a screwdriver, as I remember his testimony.

In fact, he goes and gives him his knife at one point in time. Why would he do

1 that if he already had something else?

2 Who stabbed Raylene Rice?

3 Who knows? It all depends on who you listen to.

4 Gilbert says Tony did. Tony
5 says he doesn't.

6 If you listen to the testimony
7 of Tony Melendez, as you did, and in the testimony
8 of Gilbert Melendez which came after him, later on,
9 you almost get the impression that they are at
10 two different places talking about two different
11 things.

12 They just don't fit together.
13 Why is that? Their stories also don't fit together
14 with the physical evidence that has been introduced
15 at this trial.

16 They don't fit together one
17 against the other. They don't fit together with
18 the physical evidence.

19 To believe their story, both
20 Tony and Melendez -- Tony Melendez and Gilbert
21 Melendez, you must believe that they drove out to
22 Speegleville Park. At least, what they told you is
23 they drove out to Speegleville Park, and you have
24 got exhibits that they drove out there.

25 They got on a -- they went into

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Speegleville Park and got on a dirt road in this area right here (indicating), Defendant's Exhibit No. 16.

It had to be through a cut in the fence. Mr. Feazell asked some questions about going through the gate. Could people go through the gate? I am sure people could go through the gate, but that is not what Tony Melendez and Gilbert Melendez told you they did.

They told you they went through there and got on that dirt road, and Gilbert Melendez thinks it was through a cut in the fence.

What do you know about that? You had a gentleman come in here named Martin Gustafson, an independent witness not associated with any party, a government employee who as a part of his job looked after Speegleville Park in July of 1982.

He told you that he went and checked the perimeter of Speegleville Park on the night -- or the afternoon of July 14th after the murders.

He told you he drove around there and looked at it, and what did he see? He didn't see a cut fence.

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He said it wasn't there. Now, he said that it was possible he missed it, but he said it wasn't probable and it was almost impossible that he missed it.

If it was there, he would have seen it. That was his job, to check that area.

He was out there doing his job on July 14, 1982, and he did it, and he didn't see any cut in the fence.

Now, he saw one later, but that was after the murders. It doesn't fit with the physical evidence, Gilbert and Tony's statements.

How did they get in there? Both Gilbert and Tony say they used Gilbert's truck.

Mr. Butler has already talked about Mr. Nesbit -- Calvin Nesbit. Again, somebody that is not associated with any party.

He came in here and told you that Gilbert's truck was out there during that time period, July 13, 1982.

There is no question about it because Gilbert Melendez admitted that it was out there. It was out there.

The question is, what kind of shape was it in? Mr. Shulak, who sold the truck,

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doesn't know what kind of shape it was in on July 13th.

He doesn't know what kind of care Gilbert Melendez took of that truck after he gave it to him.

Remember something else Mr. Nesbit said when he testified. Once that truck was brought out to him, it never moved. Gilbert Melendez, he said, never came and picked that thing up and brought it back.

He remembered that clearly, but if you listen to Gilbert's story, he went out and picked it up that night and brought it back sometime later.

Now, again, remember the testimony as you heard it. I remember him saying -- not remembering when he said it but saying it was a couple of days to a week later when he was up here this first time.

It is interesting that the second time he came up, he said it was in the first part of August, which would have been more than a week later. In fact, it would have been a couple of weeks later.

Also, remember what Mr. Nesbit

1 said. He left at the end of July. They went to
2 Fort Worth, and yet Gilbert Melendez wants to tell
3 you that he took that truck back there in August
4 when Mr. Nesbit said he wasn't even there and talked
5 to him and took him the truck back.

6 The pathologist who testified --
7 she testified about the stab wounds on Kenneth
8 Franks.

9 She said that those stab
10 wounds, as I remember the testimony, was consistent
11 with Kenneth Franks lying down, lying down in the
12 ground because of the number of stab wounds and
13 because they were all in the same direction, and
14 they were all similar in direction and angle.

15 Because of that, she felt like
16 they were made while they were lying down, but
17 what does Gilbert Melendez say? Standing up. Just
18 doesn't fit.

19 The odontologist -- both
20 odontologists testified, as Mr. Vance said, that
21 the direction of the bites came from the side or
22 from an angle.

23 Tony Melendez said -- if I
24 can remember his drawing -- Tony Melendez said
25 David Spence was standing over her or kneeling over

1 her.

2 Gilbert Melendez said he was
3 standing over her and kneeling over her -- not off
4 to the side and not what the odontologist said,
5 not coming from the side on any of the bites. Just
6 doesn't add up, ladies and gentlemen.

7 Does the story make sense?
8 Look at it from that point of view, Gilbert Melendez
9 and Tony Melendez.

10 According to them, as Mr. Vance
11 told you, all this happened in Koehne Park around
12 dusk, a public park which admittedly, there were
13 several people around. They were out there.

14 There were screams. There were
15 loud talking, and nobody heard anything. Nobody
16 saw anything.

17 When you take the videotape back,
18 if you take it back to look at it, look at the
19 second half of that videotape and look at the route
20 they took from Koehne Park.

21 They piled three bodies in the
22 back of a pickup truck and transported them along
23 the route you will see there, through a neighborhood
24 some distance away.

25 Does it add up, or does it make

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sense? Look at the kind of people that they are asking you to believe in, Anthony and Tony Melendez (sic).

Tony Melendez is a convicted burglar. Gilbert Melendez is also a convicted felon. He has been convicted of assault with intent to murder and aggravated sexual abuse.

Those are the kind of people they are putting up on the stand and asking you to believe.

You have got evidence about Gilbert Melendez' arrest for the aggravated sexual abuse. It is in evidence. You can look at the arrest. The State introduced it.

Gilbert Melendez, I guess, I should say or Gilbert Fajardo -- Anthony Melendez and/or Anthony Fajardo, they both told you they have used those names before. What reason could they use those names for?

They didn't want anybody to know who they were. They were trying to deceive people. They didn't want them to let them know they were Anthony Melendez or Gilbert Melendez.

They used a false name and wouldn't even tell people who they really were.

1 I am sure that you noticed
2 it when they testified and I just ask you to
3 remember the way they testified, the way they
4 looked, and remember Anthony Melendez, the way he
5 sat up there and talked to you.

6 Remember Gilbert Melendez,
7 the way he sat up there and talked to you. What
8 you have in Anthony Melendez and Gilbert Melendez
9 is two people who have admitted they lied before
10 about what happened out there.

11 Tony Melendez, who admitted he
12 lied in his earlier statement which we talked to
13 him about, but did he ever explain why? No. He
14 never explained why.

15 It is probably because there
16 isn't an explanation for it. Probably the reason
17 his story is different from the previous one is
18 because he is lying about what happened, and he just
19 can't keep his stories straight and just can't
20 remember what he said from one time to the next.

21 If he was out there and knew
22 what happened, don't you think his story would be,
23 at least, substantially the same -- not as different
24 as it admittedly was?

25 Look at when he made the

1 statement, too, ladies and gentlemen. He didn't
2 explain it to you why he made that statement, why
3 he lied about those things. Did he really have a
4 reason to? He had already decided to plead guilty.
5 Why would he lie to you?

6 Now, Gilbert Melendez got up
7 on the stand also and talked about his prior
8 statements.

9 He explained his, and I am sure
10 you all got sick of listening to what his explanation
11 was. Because every time he told about what he said,
12 he certainly did kick in that explanation about why
13 he didn't tell the truth.

14 What he really told you was, is
15 that he knows how to lie, and he doesn't mind doing
16 it if it is going to help him out or he doesn't
17 mind doing it if it is going to help his brother out.

18 What he told you is, he is
19 going to lie if he needs to. He also showed you he
20 can lie pretty good.

21 Because when he went over those
22 statements, you saw the detail in some of those,
23 and you saw the detail that just wasn't there. That
24 wasn't the truth, and he told you it wasn't the
25 truth.

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Do they have a motive to lie?

Mr. Butler says they don't have any and not getting anything out of it.

They have already pled guilty and got the death penalty -- or got life sentences. What they got was life sentences.

What they didn't get was the death penalty. Maybe they didn't have to testify, if you believe their testimony, but you also remember that they got those two capital murder -- or at least, one of them -- at least, one of them each has a capital murder case hanging over them.

What kind of story are they going to give with each one having that capital murder case hanging over his head?

Tony Melendez told you all he wanted to do was get it over with and do his time. Do you remember how he testified and he told you what his deal was and what it meant to him?

Think back, ladies and gentlemen, and imagine March 26, 1983. Imagine April 7, 1983. Gilbert Melendez at that time was in telling law enforcement officers all about what happened out at Koehne Park.

It is like he came in here and

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told you what happened. He was in there telling them all about what happened.

I asked him if he was telling the truth, and he said yes.

Placed him under oath, and he said he was telling the truth. Did he?

Did that oath really mean anything to him at that time? No, it didn't.

Now, he is before you again telling you a story about what happened out there on the night of July 13th.

Just like he was out there on -- just like he was with those law enforcement officers, he is telling you just like he told them that he is telling you the truth.

He is taking an oath, again. How do you know this is any different from those two occasions?

How do you know he is telling you the truth, now? Can you really be sure that somebody who admits he has lied before, who admits that he lies for a reason, is now up here telling you the truth?

I am sure that when Mr. Feazell has his opportunity, he is going to talk with you

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about those statements also, and like Gilbert said, is going to say there is quite a bit of truth in them.

There may be some things which aren't true, but that there is quite a bit of truth in them.

What I am asking you to look at, ladies and gentlemen, is can you really be so sure about that? Can you really separate what is the truth from what is not the truth?

Can you really be sure that that oath means anything to him, to tell the truth? Are you so sure about it that you don't have any doubt that he is telling you the truth?

There was quite a bit of evidence presented, and Mr. Vance went over it with you and talked with you about the type of murders these are, showed you the pictures, and we all talked with you back on voir dire that there were going to be some gruesome and bloody and some gory pictures involved, but that doesn't tell you who did it, and you all agreed to that.

It is not a reason to find one way or the other. What you have to do is look at the evidence, and I am sure you will. Look at the

1 evidence going to who did it.

2 Just because it is a brutal
3 crime doesn't mean the burden of proof is lowered.

4 The State still has that burden,
5 and they still have to show you who did it.

6 Look at what they brought to
7 you to show you that. Look at what they brought
8 to you other than Gilbert Melendez and Tony Melendez.

9 In voir dire, you all -- it was
10 discussed with each and every one of you all what
11 reasonable doubt was. Now, you remember that it is
12 up to each of you to define what you are going to
13 deem a reasonable doubt in your mind.

14 In voir dire, both Mr. Butler
15 and Feazell used the used car example, and part of
16 that was -- is what if you don't trust the salesman?

17 Ladies and gentlemen, in this
18 case, Gilbert Melendez and Tony Melendez are
19 salesmen. They are trying to sell you on their story,
20 trying to sell you that what they say is true.

21 Do you believe them? Do you
22 think that that is enough to convict a man of
23 capital murder?

24 Please, look at their statements
25 against each other. Look at their statements as

1 they add up against the evidence. Look at what
2 kind of people they are.

3 Look at what they have told
4 you about themselves. It is a hard job that you
5 have to decide -- to do to decide the credibility
6 of the witnesses and decide who is telling you the
7 truth.

8 Look at the evidence that you
9 got outside of their testimony. The evidence just
10 isn't there, ladies and gentlemen.

11 Do you really not have a doubt
12 about the stories of Gilbert Melendez and Tony
13 Melendez? Can you really be sure that they are
14 telling you the truth here today just like they
15 were telling the truth before?

16 The evidence isn't there,
17 ladies and gentlemen.

18 We would ask you on the jury
19 verdict when you go back to the jury room to answer
20 the first one because there hasn't been -- it hasn't
21 been proved to you beyond a reasonable doubt because
22 the evidence just isn't there to return a verdict
23 of not guilty (sic).

24 I want to thank you all for the
25 attentive way you all have sat through this case.

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Nobody had any choice of whether or not they were going to come and do this, but each one of you have been attentive and have done your job as a juror.

It makes all of our job a little bit easier. We want to thank you for that.

In the order of trial, the State has the burden of proof. They must prove each and every element of the offense beyond a reasonable doubt.

Because they have the burden of proof, we will not have a chance to come back up here and talk with you again after Mr. Feazell talks with you.

We would ask you to keep what we have said in mind. Remember that throughout the arguments. Remember it when you go back into the jury room. Thank you.

STATE'S FINAL ARGUMENT

MR. FEAZELL: Ladies and gentlemen, it has been a long two weeks for all of us. I know it has been for you:

I know it has taken you away from your family, from your job. I know from what you have had to hear and from what you have had to