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sentence in the Texas Department of Corrections.

Thank you.

THE COURT: Mr. Reaves?

DEFENDANT'S FINAL ARGUMENT

MR. REAVES: Ladies and gentlemen, the decision you are about to make is a difficult one. I dare say it is probably the most difficult decision that any one of you have ever had to make in your life.

The decision you will have to make is one that normal human beings don't have to make. Very few people have to make the decision that you are going to be called upon here to make today.

It is difficult, and I know it is difficult, and I know none of you want to do it, and none of you have any choice about doing it, and it is going to be hard for you to do it.

In capital murder cases, a jury no longer has the discretion to decide whether or not a person gets life or death. We went over with you during the voir dire process what we call special issues and what those issues were in a capital murder case.

We also discussed with you what

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the answers to those two special issues meant, and I think, each of you knows what the answer to those two special issues meant.

Look at the Charge. Each of you knows what two yes answers to those special issues mean.

All of you at some time during the voir dire process have indicated a belief in capital punishment in certain situations, under certain circumstances.

I know each one of you thought about it and have thought about it during the course of this trial as to what kind of case you were going to feel it appropriate in, how you were going to answer those issues when it comes time to do so.

During voir dire, I discussed with you and each of you what the purposes of punishment are in any case.

I think, we discussed those and talked with you about each of them, and we talked about deterrence, and many of you think that is a purpose of punishment.

It is a purpose of punishment, and no doubt about it that the death penalty is a deterrent to that individual, but do you really

1 think it is a deterrent to others?

2 Do you really think that most
3 murders are planned, that most people think about
4 them, that most people think them through and weigh
5 the consequences of their conduct before they enter
6 into something and do it?

7 The death penalty has not always
8 been available. In fact, in the last several years,
9 it has become used again. For awhile, it was not.

10 Has it really had that much
11 of an effect? Has it really affected crime? Has
12 it really affected murders?

13 It is a deterrent, yes, to an
14 individual. That person will not commit any more
15 crimes, but isn't there another way, ladies and
16 gentlemen?

17 Remember your alternatives or
18 the result of your verdict is life imprisonment or
19 death.

20 Life imprisonment is punishment,
21 too. Life imprisonment can be a deterrent.

22 The questions you are going to
23 be asked and that you are going to have to answer
24 ask you to determine probabilities, probability of
25 continuing acts of violence. What are you going to

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use in answering those issues?

We talked with you about that, and I think each of you have had a chance to think about that. Certainly, you are going to look at past conduct, and that can be an indication.

You have had evidence of past conduct in this case. You have had evidence of past conduct. You have had evidence of an incident happening back in 1982.

You have had evidence from Mr. Deal about somebody's reputation that he has not talked with about in detail in the last year.

You have got evidence of past conduct, but do you have anything recent?

I think, many of you on voir dire when asked the question, can a person change, said yes.

It is hard to know what to look for in determining whether or not an individual has changed.

Look at what you have seen. Have you seen anything recently that they have brought to you regarding past conduct? Anything recently other than an incident in September of 1982 and a psychiatrist who examined a person over

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a year ago?

I think, all of you will agree, psychology isn't an exact science. They do the best they can, and even Dr. Jolliff who came in here and testified was not willing to rule out a possibility.

Even he in his testimony was not able to rule out the possibility that David Wayne Spence may change.

If he is not, are you?

I am not going to talk a lot about what Dr. Jolliff said, but I think you should look at a little bit of what he said.

He placed a great stock in determining how he felt about other people, how he got along with other people, his relationships with other people, and yet to his knowledge, he couldn't even remember talking with Mr. Spence about his family, whether or not he had any children, whether or not he was ever married.

If he was really interested in those relationships and how they fit in, in reaching his conclusion, don't you think he would have at least asked about them?

Also, remember one other thing

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he said that was interesting. That book he wrote --
not everything is black and white. There are
different shades of everything.

We all talked with you about
reasonable doubt. What is reasonable doubt? What
is not reasonable doubt? What is reasonable doubt
is up to you, and that is still the law.

What is reasonable doubt is up
to you. It is whatever you deem it to be. You may
deem reasonable doubt different in this portion of
the trial than you do in the other portion.

Again, that is up to you, ladies
and gentlemen, and that is what you have to view
the evidence in light of.

If you feel like it is a higher
standard in this case to you, that is what you use.

I will admit we are up here in
this portion of the trial asking you for mercy, asking
you for sympathy, asking you to look at David Spence,
asking you to look at his family.

Justice may be blind, but it is
not heartless, and we are asking you to show mercy
in your verdict and in the way you answer those
questions.

I am sure that you will hear

1 about the deaths again. I am sure that you will
2 hear Mr. Feazell ask where was the mercy for Kenneth
3 Franks. Where was the sympathy for Kenneth Franks?
4 Where was the sympathy for his family back on July
5 13, 1982, and I can't dispute any of that.

6 I wish we could go back to
7 July 13, 1982 and undo everything that has been done.

8 I wish we could bring Kenneth
9 Franks back. I wish you didn't have to be placed
10 in this situation of having to make the decision
11 that you are about to make, but we can't do it,
12 ladies and gentlemen. I can't do it.

13 In answering those issues in
14 such a way that you sentence David Wayne Spence
15 to death, can't do it. It doesn't bring Kenneth
16 Franks back to life.

17 There are many different kinds
18 of murder, ladies and gentlemen. You will see the
19 details of this again. You will be talked with
20 about this again.

21 They talked with you about, on
22 voir dire, the ways that murder can be committed.
23 Think of this way of committing a murder.

24 Think of a killer who tells his
25 victim he is going to kill him, takes him and locks

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1 him away in a room, tells him he is going to kill
2 him but doesn't tell him when he is going to do it,
3 keeps him locked away in that room and doesn't let
4 him know much of anything and then finally one day
5 tells him, well, this is the day. I am going to kill
6 you today and brings him out and gets him ready and
7 then decides not to.

8 He puts him back in the room
9 to wait again and makes his family wait.

10 MR. BUTLER: Judge, may we
11 approach the bench?

12 (Conference at the bench.)

13 MR. REAVES: Remember what the --
14 remember that you answer the special issues, ladies
15 and gentlemen. You answer them based on the
16 evidence as you feel it is in your heart. We are
17 asking you to look at what the effects of your
18 verdict are.

19 Kenneth Franks has a family,
20 and we can't do anything for that.

21 David Wayne Spence has a family,
22 too. There has been a lot of grief and a lot of
23 sorrow in this case.

24 We are asking you, ladies and
25 gentlemen, to look down deep when you answer those

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issues. Look at the evidence you have.

Look at it and see if it is really there to prove to you beyond a reasonable doubt each one of those issues.

Don't feel like you are letting anybody off the hook if you answer one of them no, if that is the way you feel that your answer should be.

Whatever you think the answer should be in your heart based on the evidence, based upon what you deem reasonable doubt is the correct answer.

We ask you to look closely at the evidence, ladies and gentlemen, and I know you are going to think strongly about what you do.

Again, I do not have another opportunity to argue with you. This will be the last time we have to talk with you.

We thank you for the way you have served, and on that, I will sit down.

MR. FEAZELL: Your Honor, if you will let me know when I have about five minutes left.

STATE'S FINAL ARGUMENT

MR. FEAZELL: Ladies and gentlemen, what you are called upon to do now is