

1 THE COURT: All right,
2 Mr. Vance and Mr. Reaves.

3 DEFENDANT'S CLOSING ARGUMENT

4 MR. VANCE: On behalf of our
5 client, David Spence, and Mr. Reaves and myself,
6 we want to thank you very much for your patience
7 during the past six weeks and the attention and
8 the cooperation that you have given us in this
9 case.

10 As you can probably see, it
11 has been a very long ordeal for everybody concerned
12 here, and we appreciate everything that you have
13 done.

14 The thing that the Defense
15 feels is most important in this case is that
16 Mr. Spence is being tried for the death of Kenneth
17 Franks.

18 He is not being tried here
19 today by this jury for the death of Jill Montgomery
20 or Raylene Rice, and you have seen a tremendous
21 amount of evidence, gory, gruesome photos, dealing
22 with the deaths of Jill Montgomery and Raylene Rice.

23 He is not on trial here today
24 for their deaths.

25 We would ask you to focus your

1 attention to those matters regarding the death
2 of Kenneth Franks.

3 When you get a copy of the
4 Charge, Paragraph VIII is very important in this
5 particular case. It deals with the accomplices.

6 As it is set out in the Charge,
7 Anthony Melendez and Gilbert Melendez are accomplices
8 as a matter of law, and furthermore, if any offense
9 was committed as alleged in the indictment, the
10 indictment talks about the death of Kenneth Franks,
11 you cannot convict the Defendant upon their testimony
12 unless you first believe that the testimony is true.

13 That is the first hurdle you
14 have to get by. Is their testimony true? You have
15 seen their testimony, and you have seen how they
16 responded to Cross Examination in this case.

17 I am going to save the specifics
18 of those particular comments for Mr. Reaves because
19 he did the bulk of the Cross Examination of those
20 two particular witnesses.

21 That is the first thing. If
22 you don't believe them, there is no need to go any
23 further. Because if you don't believe their
24 testimony establishes the commission of this offense
25 as alleged in the indictment, there is nothing else.

1 All of this myriad and table full of evidence, it
2 doesn't matter.

3 So I think you have really
4 got a pretty good idea, now --

5 MR. BUTLER: May it please the
6 Court, that is not a true statement of the facts
7 in this case. There is other evidence in this case.
8 That is not the sole evidence, the testimony of the
9 co-defendant.

10 MR. VANCE: I will get to
11 corroboration in a minute, Your Honor.

12 MR. BUTLER: I am not talking
13 about corroboration. He told them if they
14 disbelieve one or the other of the two co-defendants,
15 then that is the end of it.

16 THE COURT: Clarify it.

17 MR. VANCE: If you do not
18 believe the testimony of Gilbert and Tony Melendez,
19 look to see what other evidence you have connecting
20 this Defendant to this crime.

21 Secondly, if you believe their
22 testimony is true in that particular issue, you
23 all also must determine whether that evidence
24 connects the Defendant with the alleged offense,
25 that is, the death of Kenneth Franks -- not Jill

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Montgomery, not Raylene Rice.

Then the Charge further instructs you that if you do believe their testimony, if you made the decision that you do believe their testimony beyond a reasonable doubt applying it to the elements, you still cannot convict the Defendant unless there is corroboration pending to connect the Defendant to the commission of the death of Kenneth Franks -- not Jill Montgomery, not Raylene Rice.

MR. BUTLER: May it please the Court, that again is a misstatement of the law.

MR. VANCE: No, it isn't.

MR. BUTLER: It says before you can convict on their testimony alone or on the basis of the testimony, and he is excluding that. He is excluding all the other evidence when he is explaining that.

MR. VANCE: Judge, they have to -- the corroboration has to tend to connect him with the offense charge, and the offense charged in this case is the death of Kenneth Franks.

THE COURT: Ladies and gentlemen, this is argument, and you will have a copy of the Charge, and you can read and study it yourself. Now,

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let us proceed with argument.

MR. VANCE: All right. Now, corroboration as you may or may not have picked up is, again, one of those words in which we don't have a definition of.

It is in the same league as, what is beyond a reasonable doubt. So it is a word that you are going to have to think about and deliberate over to determine if there is enough evidence to corroborate Gilbert and Tony, if you believe them.

I am not going to go into too many details of that because you all have also heard the facts on that.

The last thing regarding the Charge is that you are further instructed that one or more accomplices cannot corroborate each other.

So in essence, what we are saying is you have got -- their testimony is interrelated there, and you have got to corroborate it, if you believe it.

All right. Now, let us look at some of this corroboration. Bite marks -- July 15, 1982, an autopsy was performed on three individuals in this case.

1 The pathologist didn't see
2 anything unusual. She didn't determine that there
3 were bite marks existing on the bodies of Raylene
4 Rice or Jill Montgomery.

5 It was only 18 months later
6 when Mr. Butler called her and discussed this
7 matter that the issue of bite marks came up in this
8 case.

9 The pathologist, I believe,
10 testified that she thought it was some type of
11 insect activity, and you begin to wonder about the
12 pathologist.

13 Here you have a young lady's
14 nipple removed, and she talks about insect activity.

15 Furthermore, were there any
16 bite marks on Kenneth Franks? Again, that is for
17 whom the Defendant is being tried for here today,
18 the death of Kenneth Franks.

19 Now, Dr. Vale came here, and
20 he gave his honest opinion based on the information
21 that he had received and researched and developed
22 that he could really not make the same prediction
23 or direct contradiction to Dr. Campbell's testimony,
24 but when you boil his testimony down to a nutshell --
25 and it was his testimony that there really wasn't

1 sufficient evidence from the photographs to make
2 any kind of reasonable or medical certainty in this
3 particular case.

4 He probably came closest in
5 his opinion to possibly exclude the Defendant when
6 he talked about his guidelines.

7 Guidelines are introduced in
8 evidence. You will have an opportunity to read
9 those during deliberation, but in his scoring
10 procedures, he scored the bite marks on Jill
11 Montgomery's breast as a 15.

12 It was his opinion, the
13 minimum necessary score for proper identification
14 in bite marks was a 40.

15 We didn't have any guidelines
16 for Dr. Campbell, who is a member of that
17 organization and voted on those same guidelines
18 and voiced no objections to them.

19 In fact, he was a Secretary
20 at the same time that Dr. Vale was the President
21 of the Forensic Odontology Association, or they
22 had some other long name for it.

23 Mr. Butler talked about the
24 comparisons of the teeth impressions to a photograph.
25 Well, as you can well see that that stone cast is

1 not three dimensional, you cannot look directly
2 above and see the exact placement of the teeth in
3 the stone cast as opposed to the photograph.

4 Probably the closest we have
5 come is, in fact, the slides and the transparencies
6 of Dr. Vale, and I think, he made a very good
7 analysis of it that there was insufficient evidence
8 to reach a conclusion that David Wayne Spence was,
9 in fact, the biter in this case.

10 That brings up another point.
11 The State never excluded Gilbert Melendez. They
12 never excluded Tony Melendez.

13 MR. BUTLER: Your Honor, I am
14 going to object to arguments along these lines.
15 That evidence was offered, and by his own motion,
16 that was kept out of this courtroom, and I am
17 certainly going to object.

18 MR. VANCE: I will object to
19 him arguing to something outside of the record.

20 MR. BUTLER: Your Honor, he
21 is --

22 MR. VANCE: That was taken up
23 outside the jury's presence, and I cross examined
24 the witness --

25 THE COURT: Objection overruled.

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Go ahead with the argument.

MR. VANCE: Again, you remember my Cross Examination of Dr. Campbell. The other two co-defendants were not excluded.

Furthermore, looking at the testimony of Tony Melendez and remember Dr. Campbell testifying that the bite on the left breast of Jill Montgomery came from a person that was to her side.

Tony Melendez stated -- and again, the evidence is as best as you recall it, and this is the best as I recall it, that in this comment, that he said the Defendant was straddling her.

He at no point in time ever said that the Defendant was over to that side of her, and the bite mark came from an angle off to the side of Jill Montgomery.

Both doctors agree on that. They both said the biting took place from someone positioned off to Jill Montgomery's left side as she lay on her back.

The photographs, one-to-one, as close as humanly possible. A natural reaction to that is, if it is as close as humanly possible,

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there also can be human error in this case.

Would you convict a man where there is that particular possibility of human error?

I disagree with Mr. Butler in his comment regarding Dr. Vale's comparison of the transparencies to the photos.

He originally said that there was insufficient evidence to make a reasonable medical and dental certainty in this case, and he used the transparencies in order to show the alignments of the teeth, the alignments of the Defendant's versus the alignment on those particular photographs.

In particular, he begged to differ with Dr. Campbell regarding the alleged bite marks on Raylene Rice because from the evidence, the photos -- and he even used the State's exhibits in his analysis that he couldn't even tell for sure what the alignment really was in the five teeth on the lower arch.

Then he gave the prosecution the benefit of the doubt and lined it up with his protractor, and you can see where there was a distinct difference.

Again, that was portrayed in

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his slide show.

In all of the exhibits of Dr. Campbell, he didn't use transparencies. He just put -- he just came before the jury and put that mold on top of the picture and said, yes, they are the same. No three dimensional objectivity and actually placing some semblance of the Defendant's bite on the photographs.

Further alleged corroboration -- I believe, it was yesterday that we heard testimony regarding some jewelry owned by Jill Montgomery.

Did you ever hear Gilbert or Tony talk about any jewelry out there? In fact, the witnesses couldn't even identify it as being the same -- similar to.

The necklace that was introduced, it was found on her body, but what corroboration does that have to do with anything other than it was with her body, and it was part of the remains returned to her mother.

It didn't have anything to corroborate to, and then the bracelet. Isn't that ironic that two years almost to the date, some investigator from the D.A.'s office were out scratching in the area and came upon State's

1 Exhibit No. 46?

2 I want you to take this bracelet
3 back there in that jury room, and you look at it,
4 and does it appear to you a bracelet that sat out
5 in the elements for two years, the rain, snow,
6 ice, sleet, sun, leaves falling on it, rotting
7 around it and molding around it, does that look
8 like it sat out there for two years and then
9 conveniently was found near the alleged scene of
10 this offense? Take a look at it.

11 We have also presented to you
12 in this case a video which gives you a reasonably
13 fair and accurate trail of the area in which the
14 alleged murders occurred.

15 If you choose to watch that
16 video, there is a curved tree in that photograph
17 that you can use -- or in the video that you can
18 use it to reference in this particular case because
19 that particular tree is also found in State's
20 Exhibit No. 39, and I will show it to you. It is
21 the only one of its kind there which is a good
22 basis for where the bodies allegedly were or
23 where they allegedly were murdered, if you believe
24 the testimony of Gilbert and Tony.

25 We still get back to that

1 question. You have got to believe them in order
2 to convict this Defendant.

3 The pathologist --

4 MR. FEAZELL: Your Honor, we
5 will renew our objection. He is misstating the
6 law again about having to believe them in order to
7 convict the Defendant.

8 If there is other evidence in
9 the case separate and apart --

10 THE COURT: Objection sustained.
11 Stay within the Charge and the evidence.

12 MR. VANCE: I will read it
13 back to them then, Judge. It says, unless you
14 first believe that the testimony is true and shows
15 the guilt of the Defendant as charged in the
16 indictment.

17 MR. BUTLER: Judge --

18 MR. FEAZELL: Your Honor, he is
19 misquoting the law again. That doesn't say you
20 can't convict him. It says he can't be convicted
21 on their testimony alone.

22 THE COURT: All right, ladies
23 and gentlemen, you all have copies of the Charge,
24 and you can read it, and your understanding is
25 what will govern.

1 MR. VANCE: Furthermore, the
2 pathologist indicated that other samples were
3 taken, hair, fiber, other samples. Where are the
4 results?

5 They also described the
6 conditions in which the area in which the bodies
7 were found, dirt roads -- any tire marks taken?
8 Any other type of physical evidence that they
9 brought to you to corroborate Gilbert and Tony?

10 I just have a few more comments
11 about some of the witnesses that are a little bit
12 more specific than the general things that I have
13 talked about.

14 Mr. Richard Franks came in here
15 and testified before you about his son. There was
16 one interesting feature that I felt needed to be
17 commented on.

18 He told the jury that he and
19 Kenneth had this arrangement worked out regarding
20 his keys and if he was ever in any trouble, he
21 needed to hide his keys so no one could get a hold
22 of them.

23 Did you hear any testimony from
24 Gilbert or Tony when they were sitting around the
25 circle shooting the breeze and were going to go get

1 high and going to go drink some beer that he was
2 in any type of trouble?

3 That leads me to three more
4 witnesses, Martha Turner, Kenneth Young and Rick
5 Guthrie.

6 As I recall the evidence, and
7 it depends on which co-defendant you believe because
8 their stories are considerably different, Tony
9 Melendez basically said that they came into the
10 park, drove down in the beach area, and as they
11 were driving down, they saw the individuals in the
12 orange Pinto.

13 They stopped there, and they
14 had a conversation, but who was sitting there right
15 there in that particular area? Kenneth Young. What
16 was Kenneth Young's testimony? Number one, he knew
17 who Kenneth Franks was and that orange Pinto and
18 Kenneth Franks did not pass him in this particular
19 area.

20 In fact, Kenneth Young's testimony
21 was he saw the orange Pinto come in and go toward
22 this particular area (indicating).

23 Martha Turner -- she testified
24 she was in the circle and was with some of her
25 friends from about 7:00 p.m. until dusk.

1 She also described there was a
2 lot of other folks there, and she remembers seeing
3 the kids drive up, get out of the orange Pinto and
4 walk down to this X down by the lake.

5 There wasn't any gold car pulling
6 up behind them as described by Gilbert Melendez.

7 They didn't sit around here in
8 the cars drinking beer for a couple of hours as
9 Tony leaned up on the windshield, because that didn't
10 happen.

11 Rick Guthrie -- he was also in
12 the circle that night. You know what was interesting
13 about him? That circle was so full of cars that he
14 actually had to wait a little while until a car
15 backed out in order for him to get a place to park.

16 He was there until dusk, but
17 Gilbert and Tony said there wasn't anybody in that
18 circle -- maybe one car.

19 Furthermore, Guthrie said that
20 he saw people walking into those woods around dusk,
21 and at the same time, Tony and Gilbert are saying
22 that David Wayne Spence and them are over here
23 murdering and raping two girls and a boy.

24 There was screaming going on
25 and hollering right here where we have a circle full

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