

1 families. And they've been here and you've had a chance
2 to look at that and I don't think it's inappropriate to
3 say when you determine punishment, think about what the
4 effect has been, not only in the taking those three
5 lives, but what impact it's had on the mothers, the
6 fathers, and the other family members of those three
7 boys. When you think about those things and you look at
8 the evidence, I think it will be a clear and easy
9 decision that the maximum punishment -- although it's
10 something that's a heavy responsibility to deal out
11 particularly to somebody who's eighteen years old -- I
12 think it's clearly appropriate and it's something that
13 you can feel that you've done something right in regard
14 to having the courage to give out that type of punishment
15 for this type of crime, but if people can see what the
16 punishment is in this case and say that that fits what
17 this defendant did. Thank you very much.

18 THE COURT: Are you all going to split or are you
19 going to do it all?

20 MR. CROW: Do it all, your Honor.

21 THE COURT: Alright.

22 MR. CROW: Ladies and gentlemen of the jury, your
23 Honor, Mr. Fogleman, Mr. Davis. I want to thank you
24 all, too, for your patience, and your willingness to
25 serve on the jury. It's been a hard three weeks for all

1 of us. I thank you all very much for your willingness to
2 serve, to pay attention, and to be here without y'all,
3 this trial would not have been possible. Obviously from
4 your findings you have found that Jessie was at the
5 scene.

6 When you go back to that jury room I'll ask you to
7 consider a few things. First, please consider what
8 Jessie said in his statement. Please consider what he
9 said he did and what he said he didn't do. Please
10 consider all of the circumstances.

11 I'll also ask you to consider the age of Jessie.
12 The prosecutor talks about him being eighteen. He's
13 eighteen. He was seventeen when the crimes were
14 committed and now he's eighteen. I'll also ask you to
15 consider not only his physical age, but his mental
16 ability. You've heard testimony that Jessie reasons on
17 the level of a six to eight year old. He certainly can
18 function in society to some extent but he does have
19 certainly some type of mental deficiency. Now, his
20 **chronological** age doesn't always tell the whole story. I
21 think each of you know that.

22 I'll also ask you to consider his family background.
23 He had mental problems -- you've heard bits and pieces of
24 his background. You heard some testimony about his
25 mother and father. He was raised by his father and

1 stepmother and the other family history. I ask you to
2 please consider those things.

3 Most importantly though, ladies and gentlemen, I
4 want you to consider what Little Jessie said. I take it
5 you believe his statement. I would ask you to
6 (INAUDIBLE) consider what he himself contends. That he
7 himself contends (INAUDIBLE).

8 As Mr. Davis pointed out, there is a range of
9 punishment. The State of Arkansas has decided that when
10 a person has committed the crime that you have found that
11 Jessie committed he must be punished for murder in the
12 first degree -- the range of punishment is ten to forty
13 or life. I'll please ask you to consider all of them.
14 I'm not going to stand here and say it should be one or
15 it should be another. I would ask you to please consider
16 all of them.

17 Murder in the second degree, ladies and gentlemen,
18 the range of punishment is five to twenty. I would ask
19 you to consider the full range of punishment. When you
20 are considering those things again, think back to the
21 **statement**. Think about what Jessie did and what he
22 **didn't do**. To go in and not pay attention to those
23 details, (INAUDIBLE). It's a difficult situation for us
24 all and a hard duty. Please review the tape and consider
25 what did and didn't happen. Consider what Jessie did and

1 what he didn't do. I will trust you to come back with
2 the proper verdict. Thank you.

3 MR. FOGLEMAN: Was there a circumstantial evidence
4 instruction?

5 THE COURT: No. There should have been but I don't
6 remember giving it.

7 MR. FOGLEMAN: Ladies and gentlemen---

8 THE COURT: Approach the bench.

9 (THE FOLLOWING DISCUSSION WAS HELD AT THE BENCH OUT
10 OF THE HEARING OF THE JURY.)

11 THE COURT: I didn't give it, but I don't know
12 whether it would be inappropriate at this time. Is it
13 circumstantial evidence? I probably should have given
14 it but nobody requested it.

15 MR. DAVIS: We would request it if it was not given.

16 THE COURT: Did I give it? Do you remember?

17 MR. DAVIS: No, you did not, your Honor. I know.

18 THE COURT: Well, in this case it sure should have
19 been given.

20 MR. DAVIS: We had it prepared.

21 MR. CROW: They didn't offer it.

22 THE COURT: I didn't read it. Alright, I think it's
23 probably appropriate at this time for me to read it.

24 MR. CROW: I would object since it wasn't in the
25 original, your Honor---