

# Teacher chosen as 2nd juror in Spence capital murder trial

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A 21-year-old substitute teacher was chosen Thursday as the second juror during the third day of jury selection in the capital murder trial of David Wayne Spence.

The Waco woman joins a 63-year-old Baylor University psychology professor, who was selected Wednesday in 54th State District Court. Jury selection, which is expected to take three weeks, will continue until 12 jurors and two alternates are chosen.

The juror chosen Thursday was the 10th person questioned by court-appointed defense attorneys Russ Hunt

and Hayes Fuller and prosecutors Vic Feazell and Ned Butler.

Four people questioned Wednesday and four interviewed Thursday were rejected as jurors.

Three people questioned Thursday were excused because they said they could not sentence Spence to death if he is convicted in the stabbing death of Jill Montgomery. The bodies of Miss Montgomery, Raylene Rice and Kenneth Franks were discovered at Lake Waco's Speegleville Park on July 14, 1982.

Spence, 25, is one of four defendants charged with three counts of capital murder in the triple homicide. If con-

victed, he faces death by injection or life imprisonment.

Butler and Feazell have used two of their 15 peremptory strikes to dismiss jurors. A peremptory challenge allows attorneys to reject a prospective juror without citing a specific reason to Judge George Allen.

On Thursday, prosecutors dismissed a 55-year-old U.S. Postal Service supervisor because she said she was acquainted with Spence and his family when he was growing up.

Defense attorneys have not used a peremptory strike.

Attorneys also are given an unlimited number of "strikes for cause," in

which attorneys must give a legal reason for the person to be rejected as a juror. Allen then rules on whether the person should be dismissed.

In other developments Thursday involving Spence, Waco's 10th Court of Appeals upheld Spence's March 1983 aggravated sexual abuse conviction for which he was sentenced to 90 years in prison and fined \$10,000 by a 54th State District Court jury.

The appeal now will be forwarded to the Court of Criminal Appeals in Austin.

Spence was convicted of sexually abusing an 18-year-old Waco man by threatening him if he did not perform

sexual acts with Gilbert Melendez, who also is a defendant in the Lake Waco triple slaying.

Melendez pleaded guilty to aggravated sexual abuse in 1982 and was sentenced to seven years in prison.

Spence's attorneys appealed the conviction on five legal grounds, and the appellate court rejected four of the claims and reformed one of them.

In issuing the opinion, Associate Justice Bob L. Thomas ruled that the trial court erred by ruling that Spence used a deadly weapon during the commission of the crime, although evidence was presented that he cut the victim

with a knife.

"If an indictment does not allege that a deadly weapon was used and the jury finds guilt as alleged or charge in the indictment, the defendant is entitled to have the judgment reformed to delete the court's finding that a deadly weapon was used," Thomas wrote.

"Therefore, we sustain the fifth ground (of appeal) and reform the judgment to delete the following finding: 'A deadly weapon was used or exhibited in commission of the offense during immediate flight therefrom.'"

Spence also was convicted in 1982 for robbery in Tarrant County.