

**SUPREME COURT OF LOUISIANA**

**No. 00-KA-0434**

**STATE OF LOUISIANA**

**VERSUS**

**CURTIS DEAL**

**Appeal from the First Judicial District Court,  
Parish of Caddo,  
Honorable Ramona I. Emanuel, Judge**

**CALOGERO, Chief Justice,\* Dissenting**

In a criminal case, the law does not permit an expert witness to testify as to his opinion on the ultimate question the jury must decide.<sup>1</sup> Therefore, the trial court's admission of expert testimony as to whether defendant had the specific intent to kill his child was clearly erroneous.

With respect to the sentencing phase, it would have taken only one of twelve jurors to disagree with his colleagues and effect a sentence of life imprisonment rather than a death sentence. For this reason, I find it impossible to conclude that an error of this magnitude is harmless. I cannot conclude that the punishment chosen is completely unattributable to the trial court's error. Therefore, I dissent from the majority opinion in this case only with regard to affirming the death sentence. The defendant's conviction is properly affirmed, and he should face a sentence of life

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<sup>1</sup> La. Code Evid. art. 704 provides as follows:

Testimony in the form of an opinion or inference otherwise admissible is not to be excluded solely because it embraces an ultimate issue to be decided by the trier of fact. However, in a criminal case, an expert witness shall not express an opinion as to the guilt or innocence of the accused.

imprisonment.