

1 witnesses? I understand you have one Friday morning,
2 tomorrow morning?

3 MR. PHILLIPSBORN: We have one, I think not really
4 an additional expert, but there's a lawyer who review-
5 ed the file just to establish what was in the, uh,
6 Baldwin file. There were questions about that.

7 THE COURT: Who is the witness?

8 MR. BURT: It's Jack.

9 THE COURT: Okay. Call your next witness.

10 MR. BURT: We next call Nancy Pemberton.

11 THEREUPON,

12 NANCY PEMBERTON

13 was called as a witness by and on behalf of the Petitioner/
14 Defendant and having been duly sworn was examined and testified
15 as follows, to-wit:

16 DIRECT-EXAMINATION

17 BY MR. BURT:

18 Q] Could you state your name, please?

19 A] Nancy Pemberton.

20 Q] And your business, or occupation?

21 A] I am a licensed investigator and a licensed attorney.

22 Q] And Ms. Pemberton, uh, some time ago did you start working
23 on the Misskelley case?

24 A] Yes, I did.

25 Q] How long have you been working on the case?

1 A] I think since 2004.

2 Q] Uh, at a certain point in time, did you have contact with
3 Dan Stidham in regard to this trial?

4 A] Yes, probably back in about 2004.

5 Q] And can you tell, did you in fact gain possession of the
6 file?

7 A] Yes. I was here in, I was in Paragould with you and we
8 went to his office and, uh, obtained his file, uh, got boxes,
9 put it into boxes, had it shipped, uh, Mail Box, etc cetera, uh,
10 to our office.

11 Q] And did Mr. Stidham represent to you that he was giving you
12 his entire trial file?

13 A] Yes, he did.

14 Q] Uh, did the files eventually arrive in California?

15 A] Yes, they did.

16 Q] And how large of a file are we talking about?

17 A] I'm thinking it's about, uh, seventeen boxes. We labeled
18 them A, B, C, uh, and I don't remember, I think their State
19 Exhibit #1 has the index that we created.

20 Q] Can you look at that exhibit, uh, State Exhibit #1?

21 A] I don't think this is it. It's an index of the file.

22 MR. HOLT: I don't think it's been...

23 MR. BURT: ...ten or fifteen...

24 MS. PEMBERTON: ...it's an index of the file.

25 THE COURT: You probably didn't bring it,

1 Rosemary.

2 THE REPORTER: I brought everything.

3 THE COURT: Okay.

4 MR. BURT: You marked that.

5 MR. HOLT: I think so. I know what it is.

6 MS. PEMBERTON: I know what it is.

7 THE REPORTER: Everything is back there.

8 MR. BURT: Judge, while she's doing that and just
9 to give the Court some context for this testimony, uh,
10 way back when we started this hearing there was some
11 testimony by Mr. Stidham that he had never seen the
12 bench notes of Kermit Channell which contained some
13 information that he said he hadn't seen these notes of
14 the serology expert.

15 And then, uh, you asked Stidham a question, it's
16 at page 20 of his testimony on September 30th.

17 THE COURT: Let me clarify something. It's been
18 represented to the Court that these exhibits came from
19 Mr. Stidham's file and I thought Mr. Crow testified
20 that they were in the file and you got them.

21 MR. BURT: Actually, Your Honor, this exhibit,
22 meaning the bench notes, came from Mr. Channell's file
23 and these documents did not come from Mr. Stidham's
24 file and we're actually going to present a witness who
25 reviewed the files and they will say that they were

1 not. So that's where we're going with this.

2 MS. PEMBERTON: I have it on my flash drive.

3 MR. BURT: It's got to be in there.

4 MR. HOLT: We'll stipulate...

5 MR. BURT: ...well, I just wanted her...

6 THE COURT: ...I remember the index, I remember
7 seeing it.

8 MR. BURT: Yeah, I know it's here, because I
9 remember reading the transcript.

10 THE REPORTER: I have it in a box.

11 THE COURT: Rosemary thinks it's in the back room.

12 (Pause.)

13 THE REPORTER: Here it is. It's not number 1,
14 it's number 6.

15 THE COURT: All right, go ahead.

16 MR. BURT: Okay.

17 DIRECT-EXAMINATION, continuing:

18 Q] Ms. Pemberton, I believe we have located State's Exhibit
19 #6?

20 A] That's correct.

21 Q] And can you identify that exhibit?

22 A] (Witness examining same.) Yes. It's an index that, uh, my
23 staff did under my supervision of the Dan Stidham trial boxes
24 when we first got back from Arkansas in 2004.

25 Q] And what kind, uh, how many boxes were there that the

1 office received?

2 A] There were fourteen boxes.

3 Q] And were the boxes, when we got them, arranged in some sort
4 of order?

5 A] They were roughly in an order that, uh, there was apparent-
6 ly Dan Stidham's trial order, uh, for the trial boxes and then
7 there were boxes of appellate material, I think a box from the
8 Echols, uh, material. There was a post-conviction box, uh, a
9 couple of post-conviction boxes. And so the idea was is to keep
10 them in the same order that we had received them.

11 Q] And is that what the inventory is based on; in other words,
12 you retained his original organization?

13 A] Right. And that's why there are actually, like, it says
14 "box A," and I think it's actually multiple box A's because he
15 had kept documents in sections, so he had sections one through
16 seven; he had sections eight through eleven; sections twelve
17 through twenty-three. So because those were all trial files, we
18 named them Box A, Section 1; Box A, Section eight through
19 thirteen; whatever it is.

20 Q] And you've done habeas investigations before this case?

21 A] Yes, I have.

22 Q] Uh, have you learned that it's important to keep the
23 original integrity of the trial files?

24 A] Yes, I have.

25 Q] Uh, now at a certain point in time in the, uh, in the

1 investigation of this case, were you informed by me that the
2 Defense, uh, the habeas defense lawyers, that is, Mr. Phillips-
3 born and I had been to the police department and had obtained
4 some laboratory bench notes from Kermit Channell?

5 A] Yes, I did.

6 Q] Uh, and did I ask you to go through Mr. Stidham's file and
7 see if these bench notes were anywhere in all of the boxes that
8 you have?

9 A] Yes. I, uh, I think it must have been in the summer of
10 last year as we were preparing to come here in last September
11 that, uh, you asked me to do that and I personally went through
12 all of the boxes, looking.

13 Q] Now did he, did Mr. Stidham actually have files that were
14 marked "Crime Lab Material"?

15 A] Yes. There were, I think, two files; one, uh, in what we
16 had identified as box D, as in David, uh, File #6 was Crime Lab
17 material; and then there was a, in box F, which was his appeals
18 file there was another file that said "Crime Lab."

19 Q] And did I ask you to provide a copy of the bench notes that
20 I had obtained from Kermit Channell?

21 A] You showed them to me.

22 Q] And did you, uh, physically go through not only the files
23 that were marked "Crime Lab," but the entire file, every box,
24 every page to see if Mr. Stidham had these lab bench notes?

25 A] I did.

1 Q] And what, what were the results of that search?

2 A] I did not find those lab notes.

3 MR. BURT: That's all I have.

4 THE COURT: Any questions?

5 MR. HOLT: Do you have that box where we could
6 make it a part of the record?

7 MR. BURT: Maybe we should talk about that. We
8 have the other box, we have all of the boxes out in
9 Jeff's car.

10 Logistically, I'm not sure how we - - we're
11 talking fourteen boxes, so Mr. Holt is indicating he
12 would like to make it a part of the record.

13 We have no problem with that, but where would
14 that be stored at?

15 MR. HOLT: You probably don't want it.

16 THE COURT: Well, I sure don't and I know Rosemary
17 doesn't.

18 MR. BURT: Okay.

19 MR. HOLT: Can we make these two, which she
20 testified to?

21 MR. BURT: Sure. Okay, we can retrieve those;
22 right?

23 MS. PEMBERTON: I can go down to Jeff's car and
24 find them.

25 MR. HOLT: Okay.

1 THE COURT: Okay, so you're going to introduce the
2 two files that she's testified to, by agreement?

3 MR. BURT: Yes, sir.

4 THE COURT: All right, they'll be received.

5 MR. BURT: And anything else that they want; I
6 mean, if they want more, we can figure that out.

7 THE COURT: Is this a joint submission?

8 MR. BURT: I think that will be appropriate.

9 THE COURT: Okay.

10 (WHEREUPON, Joint Exhibit # was admitted and received into
11 evidence and is appended on page.)

12 THE COURT: Call your next witness.

13 MR. BURT: That will be Mr. Phillipsborn.

14 THE COURT: Well, are y'all going to object to
15 this?

16 MR. HOLT: No.

17 THE COURT: All right, go ahead, then.

18 MR. RAUPP: He wasn't on the list.

19 MR. HOLT: He wasn't on the list.

20 THE COURT: Well, I think we've got a rule that in
21 Arkansas, the lawyer involved in the case cannot
22 testify.

23 MR. BURT: Well, I wasn't aware of that.

24 THE COURT: Am I not right on that?

25 MR. RAUPP: Is he testifying in the Misskelley