

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

PETITIONER'S EXHIBIT #35  
Transcript of Dr. Peretti's phone call

RE: STATE OF ARKANSAS VS. CHARLES JASON BALDWIN

TRANSCRIPT OF A TELEPHONE CALL BETWEEN DR. PERETTI, MEDICAL EXAMINER PAUL FORD ON \_\_\_\_\_

GRW: I was talking with Pau ...

DR: The speaker is loud.

GRW: Yeah I'm on the speaker phone. I'm taking some notes and I thought I could just talk to you better if that's okay.

Paul Ford and I, you remember Paul from the other day,

DR: Right

GRW: We were visiting well yesterday afternoon and again today, Paul told me that he had talked with John Fogelman, the Deputy Prosecuting Attorney in Crittenden County.

DR: That's right he called me yesterday.

GRW: Okay. John, Paul was, we were discussing some things in the case and of course I wasn't there Doctor so I can't tell you exactly was said, but my understanding is that Fogelman told Paul Ford that your testimony at trial would be that these boys were sodomized.

DR: I .. no. I did not say that. I did not say that. I told him that he asked me about anuses. I told him that anuses on two of the kids were dilated and it could happen one of three ways; probably due to the bodies being in the water, it could be done by certain foreign objects into the rectum or a small penis. He asked me if there were any injuries. I said there were no injuries surrounding the anus. That's what I told him.

GRW: It was my understanding from us talking the other day



that ...

DR: That's what I told you the other day, didn't I?

GRW: Yeah. What I was going to say - the other day I thought you told us that there was no evidence of sodomy.

DR: Well, there is no evidence of - the anus is dilated. How could that happen. I said there was three ways. I told him and I told you there is no evidence of any lacerations or tears, no spermatozoa was found.

GRW: And I thought you told us that you would expect to find trauma to the anus if there had been sodomy.

DR: If someone, especially in a young child, I think if they're penetrated, okay, with a penis I would expect to find injuries.

GRW: Okay.

DR: That what I told him.

GRW: Okay because it is my understanding Doctor that John Fogelman told another attorney on his word of honor that these boys were sodomized.

DR: I don't know how he can say they were sodomized. I mean I told him that. I told him there are no tears and lacerations as I told you and I told him the explanation why the anuses may be dilated.

GRW: Doctor, do you think the Prosecutor in this case can stand in front of a jury and in good faith tell the jury that they expected to - that the proof would be that these boys were sodomized.

DR: I would say not in good faith. That's his decision not



mine.

GRW: Absolutely, yes sir.

DR: I mean I told him what I told you I don't want to be in the middle of this.

GRW: I'm not - no sir, and I'm not putting you there either.

I got concerned because I thought that we took some fairly copious notes the other day and I thought we had fully understood what you had told us and I wanted to make sure that I had not recorded something on paper incorrectly concerning this issue of the boys being sodomized.

DR: No. There is no evidence of anal rectal trauma. Okay. I mean could they have put a finger there? Yes. Could they have put a dildo there and not leave an injury? Yes. Could they have been penetrated after death and not have any injuries? That's a possibility. But, I would expect to see some tearing. See what I'm saying?

GRW: Yes sir. Okay.

DR: But I never said that they were sodomized. I never said that. You know, you read my report - it is clearly - read the opinions in there.

GRW: And the issues in there concerning dilation and that - you're not in any way attempting to make an inference that there was sodomy.

DR: No. It is a possibility? Sure. Anything is possible. But there is no evidence of trauma.

GRW: Correct.

DR: See what I'm saying.

GRW: You would be, as a medical doctor, you would be surprised or it is more probable that there was no sodomy based on the evidence.

DR: There are no injuries there and I told him that yesterday. I spelled that out to him.

GRW: Based upon that it would be more probable that there was not sodomy. Would it?

DR: I mean the whole thing stands from when the police went and told him that they were sodomized - the Prosecutor - you see what I'm saying? This is before, when I first did the autopsy. You see what I'm saying. I haven't talked in detail with the Prosecutors. They have been down here once but we haven't really talked in detail.

GRW: You could not say or testify or give an opinion based upon a reasonable degree of medical certainty that these boys were sodomized. Could you?

DR: I can't exclude it but there is no injuries to substantiate that. You see what I'm saying. I can't say to you there was no evidence whatsoever of sodomy.

GRW: And there are no facts to substantiate that opinion are there?

DR: That's right. I'm telling you. That's a possibility. You know I gave you three possibilities.

GRW: Yeah. Listen I know and I'm not fussing with you and I appreciate you talking to me the other day and like I say the only reason I'm calling you is that I had heard that



the Prosecutor was maintaining that this was something that was a fact and it was something that you had told him and like I said before you were - and as we told you the other day we were very pleased that you were so open and happy to talk with us.

DR: I'm telling you, I mean, I keep my word.

GRW: I believe that and that's just why I wanted to touch base with you real quickly just to clear that up in my mind.

DR: I have to ask you a question. They told me, maybe we're misinformed, but the Prosecutor told us that you did not have a Court Order to come and talk to us? Is that correct?

GRW: I - that we don't have a Court Order?

DR: Apparently, what I understood - it makes no difference to me, but what I understood was that you were coming down and people were coming down and you had a written Court Order.

GRW: My understanding Doctor is that the State all along has given us no objection to us talking with ya'll and also my recollection is that at the very first hearing in this case when the Defendant's were arraigned that the Court allowed us to come talk to ya'll.

DR: Okay - I have no problem with this.

GRW: Sure, I don't have to have a Court Order to come down there and talk to you about this.

DR: I know, I know. But you know they asked me why we talked and I said well I normally talk to attorneys. I have an

open door policy and second of all there was a Court  
Order.

**PEMBERTON**  
**& Associates**

---

August 19, 2009

Rosemary Jones  
420 West Hale Avenue  
Osceola, AR 72370-2532

RE: *State of Arkansas v. Jessie Misskelley*

Dear Rosemary:

Enclosed is a copy of Exhibit 35, which was missing at the end of the evidentiary hearing last Friday. I would appreciate your marking it and making it part of the official record.

Thank you.

Regards,



Nancy S. Pemberton

cc: Kent Holt (via email)

600 Townsend, Suite 329 E • San Francisco, California 94103

Phone (415) 522-0840 • Fax (415) 522-1506 • [nspemberton@earthlink.net](mailto:nspemberton@earthlink.net)

**003647**