

MISSK.MOT/DTS:vgk
93-284/01-05-94

IN THE CIRCUIT COURT OF CLAY COUNTY, ARKANSAS
WESTERN DISTRICT
CRIMINAL DIVISION

04 JUN 7 AM 1994

STATE OF ARKANSAS

PLAINTIFF

VS

NO. CR-93-47 *AP*

JESSIE LLOYD MISSKELLEY, JR.

DEFENDANT

MOTION CHALLENGING CONSTITUTIONALITY OF ARKANSAS
CODE ANNOTATED SECTION 16-89-111(d)

Comes now the Defendant, Jessie Lloyd Misskelley, Jr., and for his Motion states:

1. That the Defendant is charged with three (3) counts of capital murder and is scheduled for trial January 18, 1994.
2. That the defendant is entitled to a fair and impartial trial under the terms of both the Arkansas and United States Constitutions.
3. That the current provisions of Arkansas Law regarding corroboration of a confession in a criminal case are unconstitutional in that they are violative of the fair trial and due process clauses of the United States Constitution in that they only require proof that the offense charged was actually committed by someone in order to corroborate a confession, and further does not account for the possibility of a false confession by a criminal defendant.
4. That not requiring the State to corroborate a

confession by producing some evidence, independent of the confession, that the Defendant, himself, actually committed the crime violates the due process rights of the Defendant.

5. That the current provisions of Arkansas Law regarding corroboration of a confession in a criminal case are violative of A.C.A. 5-1-111 (a) (1) which provides that the State is required to prove each element of the charge against the Defendant beyond a reasonable doubt. That not requiring the State to corroborate a confession by producing some evidence, independent of the confession, that the Defendant, himself, actually committed the crime, unfairly shifts the burden of proof to the Defendant, who is not legally required to prove his innocence.

6. That the Arkansas legislature, in creating the provisions contained in A.C.A. 16-89-111(d), has promulgated and pronounced an arbitrary and unreasonable classification of defendants.

7. That it is a denial of the equal protection rights of the Defendant, which are guaranteed under the 14th Amendment to the U.S. Constitution, for the State of Arkansas to hold one class of defendants to a different level of corroboration of evidence from

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another kind, or classification.

6. That even the slightest notions of due process, equal protection and the defendant's right to a fair trial would seem to afford a criminal defendant facing the Death Penalty the same degree of corroboration enjoyed by a Defendant who cannot be convicted solely upon the testimony of an accomplice unless there is some independent evidence linking him to the crime.

WHEREFORE, the Defendant prays that the Court grant his Motion Challenging the Constitutionality of the Arkansas statute regarding the proof necessary to corroborate a confession, and enter appropriate Order(s) with regard thereto.

RESPECTFULLY SUBMITTED,

BY: 

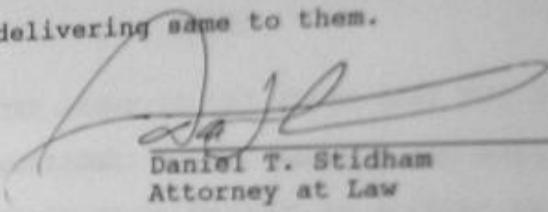
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CERTIFICATE OF SERVICE

I, Daniel T. Stidham, Attorney for the Defendant herein, do hereby certify that I have served a copy of the foregoing pleading upon John Fogleman, Deputy

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Prosecuting Attorney, P.O. Box 1663, West Memphis, AR
72303, and all other attorneys of record, by placing
same in the U.S. Mail this 6th day of January, 1994
with sufficient postage attached to ensure delivery, or
by personally delivering same to them.



Daniel T. Stidham
Attorney at Law