

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

STATE OF ARKANSAS

VS

JESSIE LLOYD MISSKELLEY, JR.

PLAINTIFF

NO. CR-93-47

DEFENDANT

84 JAN 11 AM 12

Bohne

MOTION IN LIMINE TO EXCLUDE PHOTOGRAPHS

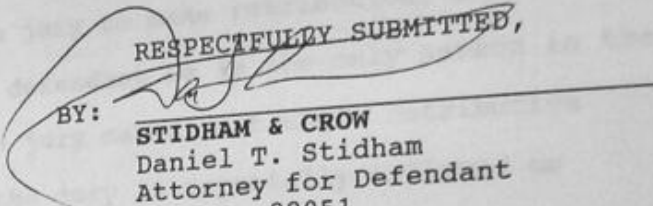
Comes now the defendant, Jessie Lloyd Misskelley, by and through his attorneys, Stidham and Crow, and for his Motion in Limine to Exclude Photographs, states and alleges the following:

1. The defendant is charged with three (3) counts of Capital Murder, and a jury trial is set on these charges on January 18, 1994.
2. The state should be precluded from introducing at trial any photographs depicting the victim's bodies at the crime scene or photographs taken during the autopsies of said victims.
3. The defendant affirmatively states that the prejudicial nature of said photographs vastly outweighs any possible probative value, and as such, said evidence is inadmissible.
4. That in the event the Court rules that one or more of said photographs are admissible, for any purpose, the Defendant moves the Court to limit the number of photographs

so as to not prejudice the Defendant by inflaming the jury.
WHEREFORE, the defendant prays that his motion in limine
be granted.

RESPECTFULLY SUBMITTED,

BY:


STIDHAM & CROW
Daniel T. Stidham
Attorney for Defendant
Bar No. 88051
203 N. Second Street
P.O. Box 856
Paragould, AR 72451
(501) 236-7600

BRIEF IN SUPPORT

In support of his Motion in Limine to Exclude
Photographs, the Defendant respectfully refers the Court to
Rules 401 and 403 of the Arkansas Rules of Evidence, and the
case of Berry v. State, 718 S.W. 2d 447 (1986). In Berry the
Arkansas Supreme Court stated that:

The first question upon the proper introduction of
photographs, as with all evidence, is whether they are
relevant. "'Relevant evidence' means evidence having any
tendency to make the existence of any fact that is of
consequence to the determination of the action more probable
or less probable than it would be without the evidence."
A.R.E. Rule 401. If the evidence is relevant, it still "may
be excluded if its probative value is substantially
outweighed by the danger of unfair prejudice, confusion of
the issues, or misleading the jury, or by considerations
of undue delay, waste of time, or needless presentation of
cumulative evidence." A.R.E. Rule 403.

The Defendant respectfully submits that any probative value

photographs of this nature have are vastly outweighed by the prejudice to the Defendant. Photographs which are especially gruesome, as in the case at Bar, serve no other purpose than to inflame and incite the jury to make retribution, and unfortunately for the defendant he is the only person in the Courtroom in which the jury can direct their retributive tendencies. Thus, if the jury is especially inflamed or passioned, this could distract them from an even more important goal, that of determining the guilt or innocence of the defendant. The cornerstone of our criminal justice system is that all defendants are innocent until proven guilty. And in the careful process of determining guilt or innocence a jury should not be burdened with undue passion or emotion. If their verdict is a reflection of undue passion, as opposed to a careful examination of the guilt or innocence of the accused, they have violated the presumption of innocence.

In Berry, the Court cited language appearing in other cases regarding this issue:

"Of course, if a photograph serves no valid purpose and can only result in inflaming the passions of the jury, it is inadmissible." Gruzen v. State, 267 Ark. 380, 591 S.W.2d 342 (1979).

"The fact that a photograph may have some probative force is not always completely determinative of its admissibility. There are cases where the logical relevance of such an exhibit will unquestionably be overwhelmed by its inherently prejudicial qualities which will impair the defendant's right to a fair and impartial trial. When

undoubtedly the minute peg of relevance will be entirely obscured by the quantity of dirty linen hung upon it, fair play directs the exclusion of the exhibits." State v. Bucanis, 26 N.J. 45, 138 A. 2d 739 (1958)

"The more gruesome the photographs, the more difficult it is to establish that their probative value and relevance outweigh their prejudicial effect. Commonwealth v. Scaramuzzino, 455 Pa. 378, 317 A.2d 225 (1974).

Some states, in recognition of the potential for prejudice caused by inflammatory photographs, have adopted a rule that the photographs are not admissible unless they are "of such essential evidentiary value that their need clearly outweighs the likelihood of inflaming the minds and passions of the jurors." Commonwealth v. Liddick, 370 A.2d 729 (Pa. 1977).

The Berry decision resulted in an establishment of the Court's rules regarding the admissibility of inflammatory photographs:

"The analysis should firmly emphasize the need for the trial court to carefully weigh the probative value of the photographs against their prejudicial nature, rather than promoting a general rule of admissibility which essentially allows automatic acceptance of all the photographs of the victim and crime scene the prosecution can offer."

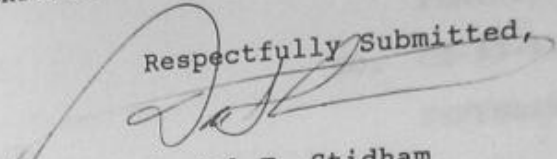
"A good definition of "unfair prejudice" is found in the advisory committee's commentary to Fed. R. Evid. 403, which describes it as an "undue tendency to suggest decision on an improper basis, commonly, though not necessarily, an emotional one."

Should the Court determine that one or more of said photographs are admissible for any purpose, the defendant requests that the Court limit their introduction pursuant to the Arkansas Supreme Court's ruling in Strobbe v. State, 752 S.W. 2d 29 (1988) where the Court held:

"[photographs] taken at the autopsy of the victim's head and parts of her body, are exceptionally grisly and sickening, which no ordinary person can view without

being repulsed. It was not necessary that all these photographs be introduced into evidence. One photograph alone would have demonstrated that the victim's head had been crushed."

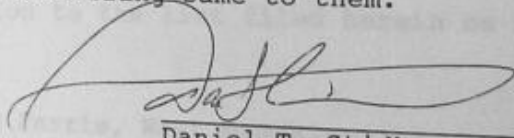
Respectfully Submitted,



Daniel T. Stidham
Stidham & Crow
Attorneys for Defendant

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 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 9th day of January, 1994 with sufficient postage attached to ensure delivery, or by personally delivering same to them.



Daniel T. Stidham
Attorney at Law

- a. Murray Parks,
- b. Christopher Hill
- c. Linda Fikes, Highland Trailer Park
- d. Jessie Wingo, Highland Trailer Park
- e. Donald Holden, Highland Trailer Park
- f. Helvin Holden, Highland Trailer Park
- g. Addie Burns