

MISSK.MOT/DTS:vgk  
93-284/10-14-93

IN THE CIRCUIT COURT OF CRITTENDEN COUNTY, ARKANSAS  
CRIMINAL DIVISION

FILED  
at \_\_\_\_\_ o'clock \_\_\_\_\_

STATE OF ARKANSAS

PLAINTIFF

OCT 25 1993

VS.

NO. CR-93-516, 517, 518

LAVADA NORRIS, CLERK

JESSIE LLOYD MISSKELLEY, JR.

DEFENDANT

BRIEF IN SUPPORT OF MOTION  
TO TAKE DEPOSITIONS OF INTERROGATING OFFICERS

The due process clause of the Fourteenth Amendment to the United States Constitution applicable to criminal trials in the State of Arkansas, requires that a criminal defendant obtain a fair trial under due process of law. The Defendant, Jessie Lloyd Misskelley, Jr., requests that a deposition be taken of the officers who interrogated him prior to his arrest that would allow him to discover what information said officers can be expected to testify to at pre-trial hearings and at trial.

This is needed so that Jessie Misskelley can be afforded the right of confrontation of witnesses and not be subject to surprise testimony of said officers.

In the case of Wardius v. Oregon, 412 U.S. 470 (1973), the United States Supreme Court held that a criminal defendant should be afforded the same procedural safeguards and rights that a State is entitled to use in the prosecution of criminal

defendants. The Court specifically held that:

"...in the absence of a strong showing of state interests to the contrary, discovery must be a two-way street. The State may not insist that trials be run as a "search for truth" so far as defense witnesses are concerned, while maintaining "poker game" secrecy for its own witnesses."  
[Wardius v. Oregon, 412 U.S. 470, 475 (1973)]

Pursuant to the Arkansas Rules of Criminal Procedure, the prosecuting attorney is authorized to subpoena individuals prior to trial and obtain testimony under oath. The same safeguard is requested by Jessie Lloyd Misskelley, Jr. through his attorneys to take the discovery deposition of said officers under oath prior to additional pre-trial hearings and the actual trial. Due to the severe potential punishment and seriousness of the charges against Jessie Lloyd Misskelley, Jr., he requests that such a deposition be scheduled so that all parties can be apprised of the expected testimony of said officers.

The Defendant admits that there is currently no statutory or judicial authority in Arkansas for the taking of a deposition in a criminal case as requested herein, but respectfully requests that this Court specifically rule that the defendant's Constitutional rights, as set forth herein, supersede the lack of specific authority on this issue.

Even the slightest notions of due process would afford a criminal defendant of such serious charges the same opportunity that a civil defendant would be entitled to receive under the Arkansas Rules of Civil Procedure. The Arkansas Rules of Criminal Procedure are designed to afford a criminal defendant the opportunity to discover what information and testimony will be presented against him. The clear intent of the Arkansas Rules of Criminal procedure is to afford both the State and the defendant an opportunity to discover what testimony will be presented. Under the notions of fair play and due process of law, the Motion should be granted.

The Defendant directs this Honorable Court to Indiana Court decisions which provide this important safeguard to criminal defendants. In Nuckles v. State, 236 N.E. 2d 816, a case which is remarkably similar factually to the case at bar, the Supreme Court of Indiana held that it was error to deny the defendant's request to take depositions of specified police officers who had interrogated the defendant, and that the deposition of said officers was a proper and essential part of an adequate preparation for trial. The Court further concluded that the right to conduct a

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deposition is a substantial right of the defendant.

The Indiana Court of Appeals, Fourth District, later echoed this ruling in the case of O'Conner v. State, 382 N.E. 2d 994 (1973) by stating that a criminal defendant has a general right to take the depositions of the prosecution's witnesses. Again, it seems that even the slightest notions of due process and the defendant's right to a fair trial would afford a criminal defendant facing the Death Penalty the same opportunity to conduct depositions that a civil defendant would be entitled to receive under the Arkansas Rules of Civil Procedure.

Respectfully submitted,

**STIDHAM & CROW**  
**Attorneys for Defendant**

BY: 

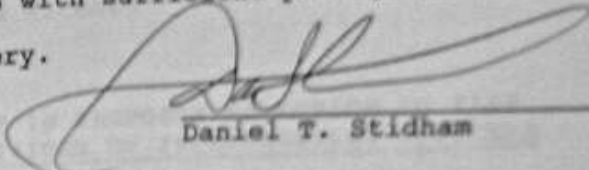
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CERTIFICATE OF SERVICE

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

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Prosecuting Attorney, P.O. Box 1666, West Memphis,  
Arkansas 72303, and all other attorneys of record, by  
placing same in the U.S. Mail this 19<sup>th</sup> day of  
October, 1993 with sufficient postage attached to  
ensure delivery.

  
Daniel T. Stidham