

1 (WITNESS EXCUSED)

2 THE COURT: We are going to take an early recess  
3 with the usual admonition not to discuss the case with  
4 anyone, and it is particularly important at this point  
5 that you not read newspaper accounts, watch the TV  
6 accounts or listen to radio accounts or let anybody  
7 discuss the media coverage of the case with you or in  
8 your presence. It doesn't mean that you can't watch  
9 your favorite TV program and you can watch the news  
10 except when it relates to this case. And I think all  
11 of you understand the need and importance of that.  
12 You need to have your mind made up by the evidence  
13 that you hear in court and not from outside  
14 influences.

15 With that reminder, you're free to go until in  
16 the morning at 9:30.

17 CORNING, ARKANSAS, JANUARY 27, 1994, AT 9:30 A.M.

18 (THE FOLLOWING CONFERENCE WAS HELD IN CHAMBERS)

19 THE COURT: Let the record reflect that this is a  
20 hearing out of the presence of the jury.

21 MR. DAVIS: In regard to Michael Moore there's  
22 photographs -- the State intends to offer photographs  
23 59A, 62A, 60A, 61A, 64A, 63A, 71A, 70A, 69A, 68A, 67A,  
24 72A, 73A, 65A and 66A.

25 THE COURT: Let Doctor Peretti look at those

1 first.

2 THE WITNESS: (EXAMINING)

3 THE COURT: Do those photographs aid and assist  
4 you in describing the wounds that you detailed on the  
5 decedent Moore?

6 THE WITNESS: Yes, they do.

7 THE COURT: Are they descriptive of the injuries  
8 you observed?

9 THE WITNESS: Yes, they are.

10 THE COURT: Will they aid and assist you in your  
11 testimony?

12 THE WITNESS: Yes, they will.

13 THE COURT: All right, gentlemen. Take a look at  
14 them. If you have any specific objections, refer to  
15 the photograph by number.

16 MR. STIDHAM: Your Honor, my specific objection  
17 would be that one photograph depicting each injury  
18 would certainly seem to be sufficient. They are very,  
19 very graphic. And jurors are lay people and they are  
20 not used to seeing this kind of stuff, and quite  
21 frankly, I'm not used to seeing this kind of stuff.  
22 My concern is the prejudicial nature of the  
23 photographs.

24 I think one photograph depicting the head injury,  
25 one depicting the injuries to the other parts of the

1 body are sufficient.

2 Also, the photograph, State's Exhibit 69A,  
3 depicting the anal area of the victim Moore -- the  
4 Medical Examiner has told me on numerous occasions  
5 that there's no evidence of any sodomy. We would  
6 specifically object to that photograph because it's  
7 not relevant.

8 THE COURT: Well, I can look at the photograph  
9 from about six feet away from you and see swelling and  
10 redness to the rear. I don't know what the doctor's  
11 testimony would be, but I certainly can see some  
12 trauma to his buttocks.

13 Doctor, what is that picture descriptive of?

14 THE WITNESS: That picture is descriptive of  
15 showing the buttocks region and surrounding the  
16 buttocks region there is a focal area of abrasions or  
17 scrapes, some lividity and minimal bruising.

18 THE COURT: Is that lividity or is it trauma?

19 THE WITNESS: You have lividity and you have the  
20 abrasions overlying the lividity.

21 MR. CROW: So that is not bruising?

22 THE WITNESS: No. Not right -- the bruising is  
23 the, ah, abrasions, the scrapes.

24 THE COURT: Doctor, lividity is the gathering of  
25 the blood in the buttocks after death.

1 THE WITNESS: Right.

2 MR. STIDHAM: Referring to 68A, can you not tell  
3 the same things from that photograph as you can from  
4 69A?

5 THE WITNESS: This is showing the buttocks that  
6 is not spread open to take the photograph. And it  
7 shows the lividity, some of the abrasions here, or  
8 scrapes, and some scrapes around the buttocks region  
9 here.

10 THE COURT: Will one of those photographs suffice  
11 to describe the injury and, if so, which one would  
12 best describe the injuries that you observed?

13 MR. FOGLEMAN: Your Honor, if I may -- Doctor  
14 Peretti, on the photograph which is shown as State's  
15 69A, is it correct that you found anal dilation on  
16 this victim Michael Moore?

17 THE WITNESS: Yes, I did.

18 MR. FOGLEMAN: Does that photograph depict that?

19 THE WITNESS: It shows some of the dilatation.

20 MR. FOGLEMAN: Does the other photograph depict  
21 the dilatation?

22 THE WITNESS: No.

23 THE COURT: I'm going to allow both of them.

24 If your only objection is the fact that the  
25 photograph by its very nature might have some

1 prejudicial effect, that is basically what you are  
2 objecting to all of these?

3 MR. STIDHAM: Correct, your Honor, and also the  
4 cumulative nature of them as well. Here's another  
5 photograph, 67A, showing the abrasions on the buttock  
6 area of the victim.

7 THE COURT: It also shows his legs and hands tied  
8 by what appears to be a shoestring.

9 MR. CROW: Your Honor, isn't it possible for one  
10 picture to show two things? I mean this one picture  
11 could show the abrasions and the tying.

12 MR. STIDHAM: We could eliminate one of these it  
13 seems.

14 MR. DAVIS: Judge, one thing we would like to  
15 proffer is what has been marked State's Exhibits 300,  
16 301 and 302 and State's Exhibit 300 is another  
17 photograph showing the bindings which the State  
18 withheld or didn't ask --

19 MR. CROW: Is that from the local --

20 MR. DAVIS: No. These are Medical Examiner  
21 photographs. These are three pictures which are  
22 proffered for the purposes of showing that the State  
23 made an effort to introduce photographs that depict  
24 the injuries without showing those that are unduly  
25 gruesome.

1           THE COURT: Doctor, do the three photographs that  
2 we are speaking of -- 67A, 68A, 69A -- do each of  
3 those three photographs separately depict an area of  
4 your clinical evaluation and assessment of the  
5 injuries of Michael Moore?

6           THE WITNESS: Photograph 67A shows the bindings.  
7 That is what that picture represents. The photograph  
8 69A is the photograph of the anus showing no tears  
9 around the anal orifice, and it shows some of the  
10 scrapes on the buttocks region, and State's 68A is a  
11 similar photograph with the buttocks not spread open.  
12 This shows some of the injuries, but it doesn't show  
13 the anal orifice.

14          THE COURT: Is it significant to depict the anal  
15 orifice to describe your findings relative to that  
16 portion of the anatomy?

17          THE WITNESS: Well, this photograph shows the  
18 anal dilatation, and it shows that there is no trauma  
19 around the orifice.

20          THE COURT: Does that aid and assist you in  
21 describing your findings?

22          THE WITNESS: Yes, it would.

23          MR. CROW: Doctor, is there anything in 68A that  
24 can't be shown from 69A?

25          THE WITNESS: 69 shows everything that's in 68.

1 THE COURT: You're saying we can eliminate 68A?

2 THE WITNESS: Yes.

3 THE COURT: We're going to eliminate 68A and 301,  
4 302 and 300. They may be attached for demonstration  
5 purposes to illustrate what photographs have been  
6 excluded.

7 (STATE'S EXHIBITS 68A, 301, 302 AND 300 ARE  
8 RECEIVED FOR IDENTIFICATION)

9 MR. STIDHAM: State's Exhibit 59A depicts head  
10 wounds to the victim Moore as does 62A and we would  
11 ask that only one of those photographs be submitted.

12 THE COURT: Do you have another one showing the  
13 chest and right shoulder?

14 MR. STIDHAM: No, your Honor.

15 THE COURT: 59A shows from the trunk up. It  
16 doesn't show his lower extremities. It depicts an  
17 injury to right below the right clavicle and scrape  
18 marks above the right nipple. Is that what it  
19 depicts?

20 THE WITNESS: Yes, sir.

21 MR. FOGLEMAN: Your Honor, it also shows on the  
22 right, the swelling which the other photographs do  
23 not.

24 THE COURT: These two photographs show completely  
25 different injuries. In the Court's opinion they are

1 not that gruesome.

2 MR. STIDHAM: 61A and 60A. Doctor Peretti, is  
3 there any difference in those two photographs?

4 THE WITNESS: 61A shows two impact sites on the  
5 scalp, whereas 60A is a close-up of the forward, the  
6 most anterior wound. It's showing the type of injury  
7 close up.

8 MR. STIDHAM: Could you not do that with just one  
9 of the photographs?

10 THE WITNESS: You can see both of them here.  
11 This is just a close-up of it.

12 THE COURT: Take out the close-up then. 60A.  
13 Although I think it clearly is admissible and could be  
14 used, I'm going to remove 60A.

15 (STATE'S EXHIBIT 60A IS RECEIVED FOR  
16 IDENTIFICATION)

17 MR. STIDHAM: With regard to the remaining  
18 photographs, we just have a general objection to the  
19 prejudicial nature.

20 THE COURT: Overruled.

21 MR. DAVIS: Judge, these are the photographs in  
22 regard to Steve Branch. 70B, 71B, 72B, 73B, 63B, 62B,  
23 61B, 64B, 65B, 59B, 66B, 67B, 68B, 69B and 60B.

24 THE COURT: Doctor, in 71B and 73B is there any  
25 significant difference between those photographs?



1 THE WITNESS: 71 -- excuse me. 73B shows the  
2 neck hyperextended, and it's showing some additional  
3 injuries on the neck region and State's Exhibit 71B  
4 you don't see those injuries on the neck, but you can  
5 see the facial injuries. But 73B is a close-up --

6 THE COURT: -- of 72B. Can you describe those  
7 injuries from one of those photographs or two of them?

8 THE WITNESS: 72B shows some additional injuries  
9 that are not clearly visible in 73 and 71.

10 MR. STIDHAM: What you're saying you feel like  
11 you need all three of those to demonstrate those  
12 wounds to the jury?

13 THE WITNESS: I can use all three but if you  
14 would eliminate one, I would eliminate 71B.

15 MR. FOGLEMAN: Of course, it doesn't show the  
16 wounds to the front of the face.

17 MR. STIDHAM: But they're only on one side.

18 MR. FOGLEMAN: Well, you've got a pattern above  
19 his eye that you can't see on the other --

20 THE WITNESS: Yes. Right. There's this here --

21 MR. DAVIS: And also the injury to the top of the  
22 nose.

23 THE COURT: Okay. What about 62B and 63B?

24 THE WITNESS: These are -- 63 and 62 demonstrate  
25 the injuries on the ear, in front of the ear and back

1 of the ear.

2 THE COURT: Do you think both of those are  
3 necessary for you to accurately describe the injury  
4 and to depict what you're describing?

5 THE WITNESS: Yes, sir.

6 THE COURT: 64B and 65B shows the penis and  
7 scrotum of the victim Branch. Are they both necessary  
8 to describe the injuries?

9 THE WITNESS: Yes. These are.

10 THE COURT: What is the difference in the two?

11 THE WITNESS: Here what I'm trying to show -- you  
12 can see the front of the penis, the head of the penis  
13 with some scratching and bruising, and on State's  
14 Exhibit 64B I'm trying to point out the  
15 circumferential nature of the injury, how it  
16 completely encircles the penis. There's one part of  
17 the penis that is clearly involved -- the head of the  
18 penis. And the shaft is not involved.

19 MR. STIDHAM: We would strongly object to both of  
20 those. We would ask that the Court consider allowing  
21 only one of those into evidence due to the prejudicial  
22 nature of the photographs.

23 THE COURT: The mere fact that they depict the  
24 genital region and describe an injury to an  
25 eight-year-old child alone is not sufficiently

1 prejudicial to override its probative value of  
2 evidence.

3 MR. CROW: I understand, your Honor. But I  
4 believe the injury on the penis is basically the same  
5 in both places. He can testify to the fact that is  
6 around the whole shaft.

7 THE COURT: If they aid and assist him in his  
8 testimony, I'm going to allow them. The same would be  
9 true of all of these.

10 MR. FOGLEMAN: We would proffer to show that we  
11 picked less offensive -- number 303, 304, 305, 306 and  
12 307.

13 THE COURT: (EXAMINING) I will have to admit that  
14 the ones you just handed me are a whole lot worse than  
15 the ones you're tendering in evidence. These may be  
16 attached as an exhibit to show that an effort was made  
17 to remove gruesome photographs that were not necessary  
18 to establish the injuries observed by the Medical  
19 Examiner.

20 (STATE'S EXHIBITS 303, 304, 305, 306 AND 307 ARE  
21 RECEIVED FOR IDENTIFICATION)

22 THE COURT: I'm going to allow the others over  
23 the standard objection made.

24 MR. CROW: I would state that I don't feel it is  
25 necessary for every single injury to be shown. I

1 think at some point we get to the point of overkill.  
2 I just don't think --

3 THE COURT: I'm not trying to tell the  
4 prosecution what they need to put in and what they  
5 don't need to put in. If they choose to show all the  
6 injuries and have some desire or interest to do so as  
7 long as it is not overly gross or offensive, then I'm  
8 going to allow it to some extent.

9 I'm aware of the latest cases on it. For years  
10 and years it didn't matter how gruesome or horrible  
11 the photographs might be. If it had evidentiary value  
12 it was allowed. And just very recently in the last  
13 year our Court has tempered that ruling to some extent  
14 and basically it's, as I understand it, left with the  
15 discretion of the Court to make an effort to prevent  
16 the unnecessary display of gruesome, horrible  
17 photographs. I think we're doing that as best as  
18 possible. Just the facts of the case that the  
19 injuries occurred.

20 MR. CROW: I understand that, your Honor. Just  
21 note my objection, please.

22 MR. DAVIS: The next photographs are photographs  
23 of Chris Byers and the ones we anticipate introducing  
24 are 60C, 59C, 64C, 63C, 68C, 67C, 66C, 61C, 62C, 69C,  
25 70C, 71C, 65C and 72C.

1 THE COURT: Let me see the ones that you have  
2 excluded. Were all these taken in the Medical  
3 Examiner's office?

4 THE WITNESS: Yes, sir.

5 MR. FOGLEMAN: (HANDING) I haven't marked them  
6 yet. They will be State's Exhibits 308 and 309.

7 THE COURT: Doctor, between 59C and 60C it  
8 appears that one of them is a close-up of the facial  
9 injuries this victim sustained.

10 THE WITNESS: Yes, sir.

11 THE COURT: Is there any reason why you cannot  
12 use the close-up rather than showing the length of his  
13 torso?

14 THE WITNESS: 59C would be sufficient. 60C is  
15 more of an identification photograph.

16 THE COURT: 60C will be excluded by the Court as  
17 being duplicative of 59C.

18 (STATE'S EXHIBIT 60C, 308 AND 309 ARE RECEIVED  
19 FOR IDENTIFICATION)

20 THE COURT: 69C and 70C, can you explain the need  
21 for both of those photographs in your testimony?

22 THE WITNESS: 69C shows the genital mutilation,  
23 but it also shows the injuries situated on the right  
24 thigh. Whereas 70C is a close-up showing the genital  
25 mutilation and the injuries around the penile area and

1 the cutting wounds of the thighs.

2 MR. STIDHAM: Obviously that photograph is to  
3 show the mutilation, not the bruise on his thigh, and  
4 we would submit that one of those would be sufficient.  
5 He can testify that there's a bruise on his thigh.

6 MR. DAVIS: It also depicts where the bindings  
7 were on his legs.

8 THE COURT: I'm going to allow these photographs  
9 as well.

10 MR. STIDHAM: Your Honor, this would probably be  
11 an appropriate time to talk about -- I anticipate that  
12 Doctor Peretti might also be asked to testify with  
13 regard to a knife that was located in a lake behind  
14 where one of the co-defendants lived.

15 We would submit that that is not relevant in our  
16 case here today, and we filed a motion in limine  
17 asking to exclude the evidence that may tend to show  
18 that the co-defendants were involved in this matter  
19 but don't tend to have any relevance or show any  
20 involvement on the part of Mr. Misskelley.

21 MR. FOGLEMAN: Your Honor, at this point it is my  
22 understanding that at this point we are not intending  
23 on getting into that in this trial -- with that  
24 particular issue not related to Doctor Peretti.

25 THE COURT: I understood you were going to

1 compare or -- from talking to one of you or listening  
2 to y'all talk -- that you were going to compare one of  
3 the knives that you found --

4 MR. FOGLEMAN: Not in this trial.

5 MR. STIDHAM: It might be appropriate to talk  
6 about what I anticipate Miss Sakevicius might be  
7 testifying to in regard to fiber or hair comparisons  
8 with regard to the other co-defendants. We would  
9 submit that that is not relevant in this case and  
10 also, your Honor, I anticipate that she's going to say  
11 that a hair fragment found at the scene or on one of  
12 the bodies is microscopically similar to Jason  
13 Baldwin.

14 However, the Alabama Crime Lab fellow, Mr.  
15 Kilbourn, told me on the telephone last week that it's  
16 impossible to make that comparison because the hair is  
17 not long enough and doesn't possess significant  
18 characteristics in order to do a comparison.

19 We would ask, first of all, that that be held  
20 irrelevant and not be allowed in a case against Mr.  
21 Misskelley.

22 Second of all, if the Court determines that it is  
23 somehow relevant, we would ask that the State put Mr.  
24 Kilbourn on to show that there isn't so we get a true  
25 and accurate description of the hair. After all, they

1 are the ones that hired the Alabama Crime Lab.

2 MR. FOGLEMAN: Your Honor, number one, we say  
3 that it's relevant. Mr. Misskelley said these people  
4 were involved. I think that in order to show that  
5 what he said was true, I think we ought to be allowed  
6 to show other evidence that these other two people  
7 that he said were involved were involved.

8 On the thing about the hair related to Jason  
9 Baldwin, my information from the Crime Lab wasn't  
10 exactly what Dan said. That may be what he told him.  
11 I'm not saying he didn't tell Dan that. But what he  
12 told me was that in his opinion because of the color  
13 or lack of color in the hair, he himself was not able  
14 to give any kind of opinion.

15 Lisa says she feels like she can give an opinion.  
16 I'm willing to stipulate that the guy from Alabama  
17 would say -- if we can talk to him on the phone or  
18 something and get what he says -- I'm willing to  
19 stipulate to that. I hate to fly him down here to say  
20 that in his opinion it is inconclusive.

21 MR. CROW: We'd obviously much rather have him  
22 here.

23 MR. STIDHAM: A stipulation read into evidence is  
24 simply not as powerful as live testimony.

25 THE COURT: Subpoena him. Get him here.



1 MR. CROW: We have issued a subpoena. We weren't  
2 sure about the fact that he was in Alabama if he would  
3 have to honor it.

4 MR. FOGLEMAN: I think he told you he would be  
5 willing to come --

6 MR. CROW: -- he said someone has to pay for his  
7 airfare and motel. Obviously we don't have the -- we  
8 want to get the Court's --

9 THE COURT: -- If he's within a thousand miles  
10 he's subpoenaable. Get him here.

11 MR. STIDHAM: Will we be allowed to introduce his  
12 testimony at the same time the State offers that, or  
13 are we going to have to wait until our case?

14 THE COURT: You will have to wait until your case  
15 in chief and call him as your witness to give a  
16 contrary opinion, if he has one. That's normally the  
17 way it's done. I don't care. If he's here at the  
18 same time and he is available, it is fine with me. I  
19 don't have any objection to that.

20 MR. STIDHAM: I assume the Court is ruling that  
21 that is going to be relevant?

22 THE COURT: My notion of the case is from the  
23 very beginning Misskelley has been characterized as an  
24 accomplice, or stood by, aided and assisted or in some  
25 way assisted the other two in the perpetration of

1 these crimes and the fact that evidence is adduced as  
2 to the other two is simply a part of the case.

3 MR. STIDHAM: Part of our defense is that Mr.  
4 Misskelley made up this story and it is not out of the  
5 realm of possibility that Damien and Jason did do it,  
6 but that's not relevant against Mr. Misskelley --

7 THE COURT: I think the total circumstances of  
8 what allegedly happened there are admissible and a  
9 part of the res gestae and that whatever applied to  
10 them applied to Misskelley as an accomplice.

11 MR. STIDHAM: At this time it might be  
12 appropriate to talk about the other prong of our  
13 argument.

14 I anticipate that the State may attempt to  
15 introduce out-of-court statements made by Mr. Echols.  
16 With regard to the substance of that, will be  
17 basically, "I did it," or he told someone else that he  
18 did it and we would like to make an argument on that  
19 issue. We would strongly object to the State putting  
20 on any evidence from any witness saying that Mr.  
21 Echols said he did it outside of court. I think that  
22 specific rule was addressed in -- Mr. Crow knows more  
23 about that than I do. I could turn that over to him.

24 MR. CROW: I don't have the rule book in front of  
25 me.

1 MR. STIDHAM: I think it's 804(b)3.

2 Your Honor, basically it deals with when an  
3 out-of-court statement by a co-defendant is  
4 admissible, and we would submit that under the rule it  
5 is not admissible.

6 THE COURT: Do you intend to introduce that kind  
7 of evidence?

8 MR. FOGLEMAN: Yes, sir.

9 MR. CROW: It starts off by saying, "As a hearsay  
10 exception a statement against interest is an exception  
11 to the hearsay rule." Then an exception to the  
12 exception in the rule says, "If the statement  
13 implicates a co-defendant or other individual in a  
14 criminal case, it is not within that exception and  
15 therefore is back to hearsay."

16 If they are contending -- well, I was going to  
17 say that obviously any statement that Mr. Echols made  
18 would be used against Mr. Misskelley. Therefore, it  
19 is not an exception to the hearsay rule.

20 THE COURT: (EXAMINING) If it is offered to  
21 exculpate the accused.

22 MR. CROW: No, your Honor, right before that.  
23 Any statement made by a co-defendant.

24 MR. FOGLEMAN: Your Honor, I would agree with  
25 just about everything that Mr. Crow said there. The

1           only problem is, is that rule says that any statement  
2           made by a co-defendant --

3           MR. CROW: -- Or other person.

4           MR. FOGLEMAN: -- Or other person which would  
5           inculcate, which is incriminating of the defendant,  
6           would be excluded. It is not incriminating of the  
7           defendant. It doesn't mention the defendant. Damien  
8           says, "I did it."

9           MR. CROW: If it is not incriminating of the  
10          defendant, it is not relevant.

11          MR. FOGLEMAN: It is relevant in the sense that  
12          it corroborates Mr. Misskelley's confession.

13          MR. CROW: If it is corroborating Mr.  
14          Misskelley's confession, it is incriminating Mr.  
15          Misskelley.

16          MR. FOGLEMAN: The statement itself by itself  
17          does not. The circumstances make it incriminating.

18          MR. CROW: Your Honor, that's the very purpose of  
19          the rule is to keep an out-of-court statement in a  
20          criminal case by a co-defendant that in any way  
21          inculpates the defendant from coming in.

22          MR. STIDHAM: If it is not relevant, why are you  
23          trying to introduce it?

24          MR. FOGLEMAN: I didn't say it wasn't relevant.

25          MR. CROW: If it is offered to try to implicate

1 Mr. Misskelley, then it is not an exception.

2 MR. FOGLEMAN: That is not what the rule says.

3 MR. STIDHAM: Your Honor, there's also a right of  
4 confrontation issue there. We can't put Mr. Echols on  
5 the stand and ask him whether he said it or not  
6 because he'll invoke the Fifth Amendment.

7 MR. FOGLEMAN: Any statement against interest you  
8 cannot do that.

9 MR. CROW: That's another reason why in a  
10 criminal case these kinds of situations are not  
11 admissible.

12 MR. STIDHAM: That's the very purpose of the  
13 rule, your Honor.

14 MR. FOGLEMAN: No, the purpose of the rule is if  
15 Echols had said, "Me and Jessie did it." Well, it is  
16 a statement against Echols' interest, but it also  
17 specifically incriminates the defendant and in that  
18 case it would be inadmissible. But in this case he  
19 didn't say that. It is simply to corroborate the  
20 defendant's confession --

21 MR. CROW: -- if it's being offered --

22 MR. FOGLEMAN: -- I'm talking.

23 MR. CROW: I'm sorry.

24 MR. FOGLEMAN: It's merely to corroborate the  
25 defendant's confession when he says that Echols was

1 involved, and it does corroborate that.

2 MR. CROW: So the "statement or confession  
3 offered against an accused" -- unquestionably it would  
4 be offered against the accused -- "made by a  
5 co-defendant or another person implicating himself and  
6 the accused is not within this exception."

7 Are you trying to say this statement does not in  
8 any way implicate Mr. Misskelley?

9 MR. FOGLEMAN: Not from the statement itself.

10 MR. STIDHAM: How can you draw a line between the  
11 two? You're offering it against him.

12 MR. FOGLEMAN: That's right. You know, I didn't  
13 -- Damien's the one who said it. I didn't.

14 MR. CROW: Neither did Mr. Misskelley.

15 MR. FOGLEMAN: That's right. And it was a  
16 statement against Mr. Echols' interest. As far as Mr.  
17 Echols was concerned, he didn't say anything about  
18 Jessie.

19 MR. STIDHAM: Then it shouldn't be relevant.

20 MR. FOGLEMAN: It is relevant because it  
21 corroborates his confession.

22 MR. CROW: If it is relevant, it's implicating  
23 Mr. Misskelley. If it implicates Mr. Misskelley, it  
24 is not admissible.

25 MR. DAVIS: But for the statement of Jessie

1 Misskelley, but for his confession, this statement --  
2 it would have no purpose in this trial but all it does  
3 is corroborate --

4 THE COURT: Are you planning to put it on in your  
5 case in chief or rebuttal?

6 MR. FOGLEMAN: Case in chief. As evidence to  
7 corroborate -- they're saying Mr. Misskelley made all  
8 this stuff up. Now they're saying maybe he guessed  
9 that Damien was involved.

10 They can't have it both ways, Judge. They want  
11 to argue false confession but when we try to prove  
12 that what he says is accurate, then they want to say,  
13 "No, you can't do that."

14 THE COURT: I'm going to rule on it later.  
15 Before you bring that testimony up, call it to the  
16 Court's attention, and we will continue this hearing.

17 MR. FOGLEMAN: One other thing, your Honor. I'm  
18 planning on getting into the statement today. I was  
19 kind of left in question about where we stood on the  
20 polygraph issue. I understood that you had ruled no  
21 results.

22 THE COURT: (NODS HEAD)

23 MR. FOGLEMAN: Of course, if the defense doesn't  
24 want any mention of polygraph at all in view of the  
25 Court's ruling, we don't want to mention it. But if

1 it is going to be an issue just the circumstances of  
2 it, we would like to know that.

3 MR. STIDHAM: Would the Court consider allowing  
4 us to talk about the polygraph and the results and  
5 offer the jury an instruction they are not to consider  
6 the results of the test as evidence of innocence or  
7 guilt of the accused?

8 MR. CROW: I don't intend -- if I understand what  
9 the Court's ruling to be that we can tell the jury;  
10 one, he took a polygraph; two, they told him he  
11 flunked it and we're not going to be able to put on  
12 our expert, I don't --

13 THE COURT: I didn't say you couldn't put your  
14 expert on.

15 MR. CROW: Expert about polygraph, your Honor.

16 THE COURT: No, I didn't say that. You can  
17 mention it just like you propose to do. You can put  
18 your expert on if you want to, but I'm not going to  
19 allow two experts --

20 MR. CROW: -- I understand.

21 THE COURT: -- to get into a controversy over  
22 whether one was correct and the other one --

23 MR. CROW: -- I understood he could testify --

24 THE COURT: -- was not.

25 MR. CROW: -- that they could coerce him, but



1           you're not going to allow the expert to testify as to  
2           whether or not he passed the test.

3           THE COURT: That's exactly right. The results of  
4           the test from either examiner will not be admissible.  
5           Y'all need to decide right now which way you want to  
6           go. If you don't want the polygraph mentioned, that's  
7           fine. If you want to go into it as being coercive to  
8           Jessie Misskelley to the extent that it would have  
9           overridden his free will, then you're going to have a  
10          free opportunity to do that, but the results are not  
11          admissible. I'm not going to get into a swearing  
12          match between two so-called experts on a device that  
13          hasn't even been declared scientifically accurate in  
14          any court that I know of unless it was by stipulation  
15          and agreement.

16          There's a specific statute in Arkansas that  
17          prohibits the use of polygraph or the results in  
18          court, and I am relying on that, and I am also relying  
19          on the other cases that have said basically what I did  
20          that if you want to go into it you can, but I'll have  
21          to give an instruction to the jury that they are not  
22          to even consider the results of a polygraph and  
23          whatever the other language is in the cautionary  
24          instruction. But I'm not going to get into a swearing  
25          match between two people on a device that is not even

1 considered to be scientifically accurate.

2 MR. STIDHAM: Judge, it would be illogical and  
3 probably ineffective assistance of counsel for us to  
4 be willing to say that he took it and flunked it and  
5 not be able to say that he passed it. Therefore, we  
6 would ask that we be allowed to make an offer of proof  
7 with regard to what our expert would say with regard  
8 to the polygraph and the coercive nature --

9 THE COURT: You have already done that. We took  
10 testimony on that.

11 MR. STIDHAM: And also we would like to have the  
12 Court rule that there be no mention of polygraph. If  
13 we're not going to be able to put all of it out there,  
14 we don't want to put any of it out there due to the  
15 prejudicial nature.

16 THE COURT: Well, you're not going to put the  
17 Court in the position of barring your testimony. You  
18 will just have to make an election --

19 MR. STIDHAM: -- We understand --

20 THE COURT: -- based on my ruling. And my ruling  
21 is very simple and narrow --

22 MR. STIDHAM: -- yes, your Honor. We understand.

23 THE COURT: -- and that ruling is that the  
24 results from either expert are not admissible.  
25 Basically, everything else goes.

1 MR. STIDHAM: But it would be extreme prejudice  
2 to the defendant for us to say that he took it and  
3 flunked it because that's going to make the jury --

4 THE COURT: I'm not going to allow the  
5 prosecution to say that he flunked it.

6 MR. CROW: The only way it would come in at all  
7 would be that he took it and he was informed he  
8 flunked it. The jury is going to surmise that the  
9 officer is not lying to them.

10 MR. STIDHAM: If we can't tell them the whole  
11 story, Judge, we don't want to tell them anything  
12 about it. We'll just make an offer of proof.

13 THE COURT: So what do you want to do?

14 MR. STIDHAM: We don't want to mention anything  
15 about it.

16 THE COURT: Y'all are told that you cannot  
17 mention the polygraph at all.

18 MR. CROW: One last thing, your Honor, I guess  
19 Lisa is going to testify tomorrow?

20 MR. FOGLEMAN: Right.

21 MR. CROW: On the tee shirt, I assume it is not  
22 going to be mentioned at all?

23 MR. FOGLEMAN: No.

24 MR. STIDHAM: Will Lisa be informed, or was it  
25 Kermit?

1 MR. FOGLEMAN: No, it's DeGuglielmo.

2 MR. CROW: But if we ask Lisa what she found,  
3 she's not going to talk about the tee shirt?

4 MR. FOGLEMAN: I'll try to remember -- well,  
5 Kermit's the one --

6 MR. CROW: I'm talking about the wrong person.

7 MR. FOGLEMAN: I'll make myself a note to mention  
8 it to Kermit.

9 MR. DAVIS: One thing on Doctor Peretti's  
10 testimony is we anticipate he'll identify the  
11 photographs, introduce the photographs of all three  
12 boys first and then ask him to go before the jury and  
13 take the first case, Michael Moore, present the  
14 photographs, explain it to the jury, then exhibit  
15 those photographs to the jury and let them view those  
16 photographs while he gets his reports ready for the  
17 next one. Then after they view those photographs,  
18 take up Steve Branch and do the same thing and then  
19 Chris Byers.

20 THE COURT: All right.

21 (RETURN TO OPEN COURT)

22 DOCTOR FRANK PERETTI

23 having been first duly sworn to speak the truth, the whole truth  
24 and nothing but the truth, then testified as follows:

25 DIRECT EXAMINATION

1 BY MR. DAVIS:

2 Q Will you please state your name and occupation?

3 A Doctor Frank Peretti. P-E-R-E-T-T-I. Associate Medical  
4 Examiner for the State of Arkansas.

5 Q Could you briefly explain what the Associate Medical  
6 Examiner for the State of Arkansas does?

7 A I'm a forensic pathologist. I perform medical legal  
8 autopsies for the State of Arkansas to determine cause and  
9 manner of death.

10 Q Could you briefly tell us about your education, training,  
11 background and experience that qualifies you to be the Associate  
12 Medical Examiner for the State of Arkansas?

13 A I graduated from medical school in 1984. I began my  
14 training in anatomical pathology at Brown University in  
15 Providence, Rhode Island, from 1985 to 1988.

16 After completion of my training in anatomical pathology, I  
17 went to the office of the Medical Examiner in Baltimore,  
18 Maryland, where I did a subspecialty or a fellowship training in  
19 forensic pathology. I completed that in 1989.

20 Upon completion of my fellowship training, I was on the  
21 staff of the office of the Chief Medical Examiner performing  
22 medical legal autopsies for the State of Maryland, and I left  
23 Maryland in August of 1992 to come to Arkansas.

24 Q Is one of the primary functions of the Medical Examiner to  
25 perform autopsies on individuals?

1 A Yes, it is.

2 Q We would submit Doctor Peretti as an expert in the field of  
3 forensic pathology.

4 THE COURT: Do you want to take him any further  
5 on voir dire?

6 MR. STIDHAM: No, your Honor.

7 THE COURT: All right. You may proceed.

8 BY MR. DAVIS:

9 Q Doctor, before I go into the specifics of this case, could  
10 you tell the ladies and gentlemen of the jury what your job  
11 requires in the terms of findings you make when you perform an  
12 autopsy -- what you're required to do and what you look for when  
13 you perform an autopsy.

14 A What we do is on any body that is brought into the Crime  
15 Lab -- we take as is photographs of the person as they come in  
16 and take their height and weight.

17 After we document the body, we clean the body up, remove  
18 the clothing, any evidence on the body and document it. We then  
19 subsequently take clean photographs of the body cleaned up.

20 After that is completed and before we begin the external  
21 examination. Depending on the type of case we have; for  
22 example, if it's a gunshot case, we do a gunshot residue kit.  
23 If it's a rape, we do a rape kit. We focus in on the type of  
24 case it is to get evidence off the body.

25 Then what we do is we do an external examination where we

1 note the general features of the body, the height and weight,  
2 color of the hair, color of the eyes, any injuries or unusual  
3 features situated on the external aspect of the body.

4 After that has been completed and documented, we proceed  
5 with the internal examination where we examine the structures of  
6 the neck, the chest, the abdomen and the head. During that  
7 time, we look for any natural disease or injury. We also at  
8 that time take specimens for toxicology to determine the  
9 presence of drugs or alcohol in body fluids. We take blood. We  
10 take urine if it's available. We take the vitreous humor. That  
11 is the fluid behind the eyeball.

12 After that's completed, I issue a death certificate stating  
13 the cause and manner of death, and I generate an autopsy report  
14 for criminal and civil use.

15 Q Doctor, when you say you issue a death certificate that  
16 tells the cause and manner of death, when you say, "cause of  
17 death," what do you mean?

18 A There are many different causes of death. For instance,  
19 people die of a heart attack or cancer or multiple gunshot  
20 wounds, multiple stab wounds or multiple injuries.

21 Q And when you say, "manner of death," what do you mean by  
22 that?

23 A Manner of death means the way the person sustained those  
24 injuries. Is it natural, is it an accident, is it homicide,  
25 suicide or is it undetermined.

1 Q Doctor, I'd like to turn your attention back to May 7th of  
2 1993. On that date did you have an occasion to perform  
3 autopsies on the bodies of Michael Moore, Steve Branch and Chris  
4 Byers?

5 A Yes, I did.

6 Q Did you follow the procedure in that case that you have  
7 outlined to the jury as customary?

8 A Yes, I did.

9 Q Are there photographs taken when you perform an autopsy?

10 A Yes, sir.

11 Q What is the reason for taking those photographs?

12 A To document the injuries.

13 Q Doctor, what I would like to do is show you a number of  
14 exhibits that have been previously marked. (HANDING) I show you  
15 photographs numbered 59A, 62A, 61A, 63A, 64A, 71A, 70A, 67A,  
16 69A, 72A, 73A, 65A and 66A and ask if you could look at these  
17 photographs and identify those for us, please, sir?

18 A (EXAMINING) Yes. Photographs 59A through 73A are the  
19 photographs labeled 329 of Michael Moore.

20 Q Are those photographs taken at the Crime Lab or in your  
21 office during the course of the autopsy?

22 A Yes, they are.

23 Q Would those photographs assist you in explaining what the  
24 physical findings were when you performed the autopsy?

25 A Yes, they will.



1 Q Do they accurately depict the body of Michael Moore at the  
2 time you performed the autopsy?

3 A Yes, they do.

4 MR. DAVIS: Your Honor, we would move for the  
5 introduction of those State's exhibits which have  
6 previously been read out which are the photographs of  
7 Michael Moore.

8 THE COURT: They may be received subject to the  
9 rulings of the Court previously.

10 (STATE'S EXHIBITS 59A, 61A, 62A, 63A, 64A, 65A,  
11 66A, 67A, 69A, 70A, 71A, 72A, AND 73A ARE RECEIVED IN EVIDENCE)

12 BY MR. DAVIS:

13 Q (HANDING) I'd also like to show you what have been marked  
14 photographs 71B, 72B, 73B, 70B, 61B, 62B, 63B, 64B, 65B, 59B,  
15 66B, 67B, 68B, 69B and 60B which are a packet of photographs and  
16 would ask if you could identify those for us?

17 A (EXAMINING) Yes, I can. These are the photographs of Steve  
18 Branch.

19 Q Do those photographs accurately depict the condition of the  
20 body of Steve Branch on the day you performed the autopsy?

21 A Yes, they do.

22 Q Would those photographs be beneficial to you and assist you  
23 in explaining your findings based on the conducting of the  
24 autopsy?

25 A Yes, they would.

1 MR. DAVIS: Your Honor, at this time we would  
2 move for the introduction of those photographs which  
3 have previously been identified.

4 THE COURT: They'll be received subject to the  
5 previous rulings of the Court.

6 (STATE'S EXHIBITS 59B, 60B, 61B, 62B, 63B, 64B,  
7 65B, 66B, 67B, 68B, 69B, 70B, 71B, 72B, AND 73B ARE RECEIVED IN  
8 EVIDENCE)

9 BY MR. DAVIS:

10 Q (HANDING) Last, Doctor. I have photographs which have been  
11 marked as 59C, 64C, 63C, 68C, 67C, 66C, 62C, 71C, 70C, 69C, 61C,  
12 65C and 72C and ask if you can look at those photographs and if  
13 you can identify those for us?

14 A (EXAMINING) Yes. These are the photographs of Chris  
15 Byers.

16 Q Were those photographs taken at the Crime Lab at the time  
17 of this autopsy?

18 A Yes.

19 Q Do those photographs accurately depict the condition of the  
20 body at the time the autopsy was performed?

21 A Yes, they do.

22 Q Would they be beneficial to you in explaining to the jury  
23 your findings as a result of that autopsy?

24 A Yes, they would.

25 MR. DAVIS: Your Honor, at this time we would

1 move for the introduction of those previously listed  
2 photographs into evidence.

3 THE COURT: They may be received subject to the  
4 previous rulings of the Court.

5 (STATE'S EXHIBITS 59C, 61C, 62C, 63C, 64C, 65C,  
6 66C, 67C, 68C, 69C, 70C, 71C, AND 72C ARE RECEIVED IN EVIDENCE)

7 BY MR. DAVIS:

8 Q Doctor, if I could, let me ask you -- do you have a  
9 numbering system that you use in order to ensure that you know  
10 the person that you are performing the autopsy on and also to  
11 identify your reports and photographs?

12 A Yes, sir, I do.

13 Q Was there a number assigned to the case of Michael Moore?

14 A Yes.

15 Q What number was that?

16 A 329-93.

17 Q Do you have a copy of your autopsy report from that  
18 particular autopsy?

19 A Yes, I do.

20 MR. DAVIS: Your Honor, may Doctor Peretti refer  
21 to that report during the course of his testimony?

22 THE COURT: Yes.

23 MR. DAVIS: Your Honor, at this time I would ask  
24 that Doctor Peretti be allowed to step out of the  
25 witness box so that he can in the course of his

1 explanation to the jury of his findings that he be  
2 allowed to show the photographs and use the  
3 photographs in that explanation.

4 THE COURT: All right. That will be permitted.

5 BY MR. DAVIS:

6 Q Doctor, your autopsy report regarding Michael Moore -- does  
7 it reflect the size, height and weight of Michael Moore at the  
8 time you performed this autopsy?

9 A Yes, it does.

10 Q What does it reflect?

11 A Body weight was fifty-five pounds and forty-nine and  
12 one-half inches in height.

13 Q Was the body bound in a particular fashion at the time of  
14 the autopsy?

15 A Yes.

16 Q Could you describe that for us, please?

17 A The body was bound in a hog-tied fashion with shoelaces.  
18 The wrists were bound to the ankles bilaterally with black  
19 shoelaces on both sides.

20 Q Okay, and when you say, "bilaterally," was the right wrist  
21 bound to the right ankle and the left wrist bound to the left  
22 ankle?

23 A Yes. That's correct.

24 Q If you would, start -- based on your autopsy report -- is  
25 the first thing listed a notation of the general description of

1 the injuries?

2 A Yes.

3 Q Could you describe for the jury what injuries you found  
4 upon your visual examination of Michael Moore?

5 A Well, there were multiple injuries. We have head injuries.  
6 We have neck, chest and abdominal injuries. We have lower  
7 extremity injuries and back injuries, upper extremity injuries,  
8 and injuries to the inside of the body plus evidence of  
9 submersion. And I have them in order -- and I will describe --  
10 I will start with the head first.

11 Q Doctor, if you would, when using those photographs identify  
12 them by exhibit number and also you may need to move up and down  
13 in front of the jury box so they can see the photographs. If  
14 you would, describe those head injuries and using the  
15 photographs depict those to the jury.

16 A State's Exhibit 59A, 62A, 61A, and 63A will demonstrate the  
17 head injuries and some of the chest injuries. State's Exhibit  
18 59A shows a laceration over the left forehead region and also we  
19 can see an abrasion. When I say, "abrasion," I'm going to use  
20 the term abrasion, which is a scrape or scratch and contusion  
21 means a bruise. In layman's term, black and blue.

22 On the left side we can see a laceration and also we can  
23 see an abrasion on the right side of the forehead.

24 State's Exhibit 62A is a view of the head showing the left  
25 side and the hair. We can see --

1 Q Doctor, excuse me. Was the hair shaved back so that that  
2 could be photographed?

3 A Yes, I shaved the hair. Here we can see three impact  
4 points on the scalp. There are three separate scalp lacerations  
5 surrounded by abrasions and contusions surrounding the wound.

6 Above the eyebrow we have an abrasion immediately adjacent  
7 to the eyebrow, or a scrape. And also on this photograph we can  
8 see the bruise or contusion noted below the left eye -- this  
9 dark discoloration here.

10 On State's Exhibit 61A we have two abrasions or scrapes on  
11 the top of the head that are ovoid. We have two separate impact  
12 sites here.

13 Q Doctor, I noticed that the injuries depicted in Exhibit 61A  
14 are different than those that appear in the previous Exhibit  
15 62A. Can you explain to the ladies and gentlemen of the jury  
16 based on your experience and expertise why we have different  
17 type injuries?

18 A Well, we have two different instruments -- ah, weapons  
19 being used to inflict these type of injuries.

20 Q What type of instrument would you expect to be used or a  
21 general description of the type instrument that would inflict  
22 the injury in 61A?

23 A On 61A we are looking for an object with a broad surface --  
24 wide surface area.

25 Q Would that be consistent with, say, a log approximately two

1 to three or three to four inches in diameter?

2 A An object of that nature is consistent with inflicting  
3 these type injuries.

4 Q The injuries you see depicted in 62A you said would be  
5 inflicted by a different type weapon. What could have caused  
6 that or what type instrument would you expect --

7 A Well, this one has different characteristics than the  
8 previously shown wound. Here we have lacerations or in layman's  
9 term, "cuts" on the scalp. Some are irregular, some are  
10 straight and some have a stellate appearance.

11 In these type of injuries here would indicate an object of  
12 smaller diameter, such as a piece of wood, a two-by-four, a  
13 stick or broom handle are capable of inflicting these type of  
14 injuries here.

15 Q Something about the size of a broom handle?

16 A Yes.

17 Q Doctor, if you would, continue with the next photograph.

18 A State's Exhibit 64A is showing abrasions, contusions, or  
19 bruising behind the ear and some scattered abrasions that were  
20 under the scalp on the left side. This dark discoloration here  
21 is a bruising behind the ear. You can see this little area here  
22 -- this discoloration. This is an abrasion or scrape behind the  
23 ear. And also we can see in the hairline an abrasion or scrape.

24 State's Exhibit 71A is showing a similar abrasion on the  
25 back of the neck.

1 State's Exhibit 70A is a photograph of the back of the  
2 shoulder showing an abrasion and contusion or bruising.

3 State's Exhibit 67A is a photograph of the bindings and the  
4 anal region.

5 Q Did -- Doctor, did you make any findings regarding the  
6 examination of the anal area regarding dilation?

7 A Yes. There was anal dilatation.

8 Q That means a loosening or slackening of the muscles  
9 surrounding the anal area?

10 A That's correct.

11 Q Was there also a purple or -- are there some abrasions on  
12 the buttocks?

13 A You can see some abrasions, scrapes and the postmortem  
14 lividity. This red discoloration is the postmortem lividity or  
15 the settling out of the blood vessels after death.

16 69A is a photograph of the anal orifice. Here we can see  
17 abrasions and the focal areas of contusion and lividity.

18 State's Exhibits 72A and 73A show the front and back of the  
19 hands showing there's a few abrasions, but what I'm trying to  
20 point out here is the "washerwoman" wrinkling of the hands  
21 showing that the bodies have been in the water. That's the  
22 wrinkling.

23 Q Doctor, you may need to refer to your report. I'm not sure  
24 it is clearly shown in the photographs. Did you also find on  
25 the hands some what are referred to in your report as defense



1 type wounds?

2 A Page five. Yes. On the right -- this part of the anatomy  
3 here I found some cuts, a one-inch cut. There are also some  
4 very small lacerations which are about one-eighth of an inch  
5 each. On the back of the left hand there was a three-quarter  
6 inch scratch. A one-sixteenth inch abrasion was present on the  
7 left thumb.

8 Q When you characterize these as defense type wounds, what do  
9 you mean by that?

10 A The type of injuries that we normally see when people are  
11 trying to defend themselves.

12 Q Do you normally see those injuries to the hands as you've  
13 described here?

14 A You can see them to the hands, the forearms, also the legs,  
15 the feet, depending on the situation.

16 Q The "washerwoman" wrinkling that you refer to, what does  
17 that indicate?

18 A That indicates that the bodies were in water and there's  
19 evidence of submersion.

20 Q Doctor, if you could refer to the next photograph?

21 A The next photograph, State's Exhibit 65A and 66A, show the  
22 mucosal surface or the inner aspect of the lips -- the upper lip  
23 and lower lip respectively. And also the nose. Here on the  
24 nose we can see some abrasions or scrapes. Here on the upper  
25 lip we can see some cuts, contusions, and edema or swelling.

1 That is 65A.

2 Q Doctor, does that also reflect what you refer to as  
3 punctate scratches of the nose?

4 A Yes, sir.

5 Q What are those?

6 A Innumerable, very small scratches or abrasions situated on  
7 the entire nose.

8 State's Exhibit 66A is also showing the nose where you can  
9 see the abrasions and scrapes and the lower lip where you can  
10 see the bruising. The dark discoloration is the bruise.

11 Q Doctor, in your experience as a Medical Examiner, when you  
12 see injuries to the ears and injuries to the inside surface of  
13 the mouth, what does that indicate to you in a person that is  
14 eight years old and has died this type of death?

15 A There's a number of possibilities, but commonly when we see  
16 the ears are contused on both sides or bruised with overlying  
17 fine linear scratches --

18 MR. CROW: Your Honor, I'm going to object. Can  
19 we approach the bench?

20 (THE FOLLOWING CONFERENCE WAS HELD AT THE BENCH  
21 OUT OF THE HEARING OF THE JURY)

22 MR. DAVIS: I may need to reformulate my question  
23 as to background --

24 MR. CROW: He states -- in the first place  
25 there's a background problem. In the second place he

1 states there's a number of possibilities.

2 MR. STIDHAM: The witness shouldn't be allowed to  
3 speculate, your Honor.

4 THE COURT: Rephrase your question. I think that  
5 probably is overbroad.

6 (RETURN TO OPEN COURT)

7 BY MR. DAVIS:

8 Q Let me ask you, have you seen in your past experience as a  
9 Medical Examiner, have you seen similar injuries to the ears of  
10 children?

11 A Yes, I have.

12 Q In those cases were they frequently also accompanied by  
13 injuries to the inside of the child's mouth?

14 A Yes, they were.

15 Q Based on your past experience, expertise and training, do  
16 those type injuries indicate to you based on your expertise and  
17 training a particular type trauma that has occurred to cause  
18 those injuries?

19 A In my practice these type of injuries I have seen in  
20 children that are held by the ears who are forced to perform  
21 oral sex. They can also be due to putting the hand over the  
22 mouth causing the injuries to the mucosal surface of the lips or  
23 they can be by someone grabbing someone by the ear and is  
24 pulling them.

25 Q There were injuries consistent with that found in the

1 autopsy of Michael Moore. Is that correct?

2 A That's correct.

3 Q Your report at the end has a list of what is called  
4 "Pathologic Diagnoses." Is that kind of a general rundown in  
5 what you found in your autopsy?

6 A Yes. It is a summary of the anatomical findings.

7 Q Could you go over that for us and explain a rundown of all  
8 the injuries and items you found based on your examination of  
9 Michael Moore?

10 A The head injuries consisted of multiple facial abrasions,  
11 or scrapes, and contusions, or bruises. He had multiple  
12 abrasions and contusions of the lips. He had multiple scalp  
13 lacerations and contusions or bruising of the scalp. Multifocal  
14 subgaleal contusions and edema of the subgalea. When we do an  
15 autopsy, we make an incision and reflect the scalp back -- that  
16 is the underlying surface of the scalp -- and we can see from  
17 the inside out. There we had edema and swelling and multiple  
18 contusions and bruises.

19 We also had multiple fractures of the calvarium and the  
20 base of the skull -- the calvarium is the top of the skull --  
21 and the base of the skull, or the bottom of the skull. There  
22 were multiple fractures there. Associated with these fractures  
23 we had subarachnoid hemorrhage involving the brain. We had  
24 contusions or bruises involving the brain. Those were the head  
25 injuries.

1           Then the other injuries we had, we had the bindings of the  
2 wrists and ankles in a hog-tied fashion. We had multiple  
3 contusions, abrasions, and lacerations of the torso and  
4 extremities. We had defense type injuries to the hands.

5           We had anal dilatation and hyperemia of the anal/rectal  
6 mucosa. We had evidence of drowning. This was the  
7 "washerwoman" wrinkling of the hands and feet. We had petechial  
8 hemorrhages -- small punctate hemorrhages -- on the heart, lungs  
9 and thymus. We had pulmonary edema and congestion when your  
10 lungs get full of water and we had water in the sphenoid sinus.  
11 There was no evidence of disease present and we found signs of  
12 terminal aspiration of gastric contents.

13 Q       The items you mentioned, the evidence of drowning, what was  
14 the cause of death of Michael Moore?

15 A       Cause of death of Michael Moore was multiple injuries with  
16 drowning.

17 Q       The head injuries that you describe -- the skull fractures,  
18 injuries to the brain -- would they have caused his death  
19 independently of the drowning?

20 A       Yes, they would have.

21 Q       In this particular case the drowning contributed to those  
22 particular factors?

23 A       Yes.

24 Q       Let me just ask you, in the instance of each child did you  
25 remove the bindings that they were tied with when you did your

1 autopsy?

2 A Yes.

3 Q Did you forward those items on to the other area of the  
4 Crime Lab?

5 A Yes.

6 Q I'd like to show you what has been marked for  
7 identification purposes as State's Exhibit 80 and ask you if  
8 that has your name at the bottom indicating those are in fact  
9 the ligatures you removed? (HANDING)

10 A (EXAMINING) Yes. That's my signature and initials.

11 Q Does it indicate which individual --

12 A Michael Moore.

13 MR. DAVIS: We move for the introduction of  
14 State's Exhibit 80.

15 MR. STIDHAM: No objection.

16 THE COURT: It may be received without objection.  
17 (STATE'S EXHIBIT 80 IS RECEIVED IN EVIDENCE)

18 BY MR. DAVIS:

19 Q I show you State's Exhibit 81 and ask if you can identify  
20 that for us. (HANDING)

21 A (EXAMINING) State's Exhibit 81 is labeled, circled in blue  
22 pen, "ligature from left and right wrist and legs," initialed by  
23 me.

24 Q Which of the victims?

25 A Steve Branch.

1 MR. DAVIS: Move for the introduction of State's  
2 Exhibit 81.

3 MR. CROW: No objection.

4 THE COURT: It may be received without objection.

5 (STATE'S EXHIBIT 81 IS RECEIVED IN EVIDENCE)

6 BY MR. DAVIS:

7 Q And what is marked State's Exhibit 82. I'd ask if you  
8 could identify that for us, please? (HANDING)

9 A (EXAMINING) State's Exhibit 82 is a package labeled  
10 "ligature from left and right wrist and right and left legs,"  
11 initialed by me.

12 Q And this is in regard to Chris Byers?

13 A Yes, sir.

14 Q All these ligatures were sent to another area of the Crime  
15 Lab for purposes of further analysis?

16 A Yes, sir.

17 MR. DAVIS: Your Honor, if we didn't I would move  
18 for the introduction of State's Exhibit 82.

19 MR. CROW: No objection.

20 THE COURT: It may be be received without  
21 objection.

22 (STATE'S EXHIBIT 82 IS RECEIVED IN EVIDENCE)

23 BY MR. DAVIS:

24 Q What case number did you assign to your autopsy examination  
25 of Steve Branch?

1 A 330-83.

2 Q Doctor, if you could, generally describe for the ladies and  
3 gentlemen of the jury what injuries you found regarding Mr.  
4 Branch?

5 A Mr. Branch we found to have had head injuries, chest  
6 injuries, genital injuries, lower extremity injuries, upper  
7 extremity injuries, and evidence of terminal submersion.

8 Q If you could, utilizing those photographs could you  
9 describe for us the head injuries that you found regarding Steve  
10 Branch?

11 A On Steve Branch what I found was multiple confluent  
12 contusions and abrasions. We have multiple scattered abrasions  
13 over the right eye. We have contusion in the right periorbital  
14 region, the area generally right in here (INDICATING) or a black  
15 eye. We have multiple scratches that were present on the right  
16 mandible. Also we have on the right mandible a patterned  
17 injury. An injury that has a pattern to it. It was bell-shaped  
18 with an abrasion. We had a central area of pallor, an area of  
19 clearing and scraping. The lips were abraded with multiple  
20 lacerations and cuts. The inner aspects of the lips showed  
21 multiple contusions, lacerations and hemorrhage. The gums were  
22 extensively hemorrhagic.

23 Also, above and below the left eyebrow we have another  
24 bell-shaped patterned abrasion with a small one-quarter inch  
25 laceration in the immediate vicinity. Also, the left parietal



1 scalp showed multiple superficial cuts and abrasions. The  
2 entire left ear was contused or bruised with overlying linear  
3 scratches.

4 Q Doctor, if the photographs would help you describe those,  
5 please feel free to use the photographs in your description.

6 A Before I show the photographs, I'd just like to explain so

7 --

8 Q Oh, okay.

9 A -- then I can point them out on the photographs because it  
10 would be a lot easier.

11 The entire left side of the face in an area five and a half  
12 by five inches showed multiple abrasions and scrapes, with  
13 multiple gouging type irregular cutting wounds. These wounds  
14 went from one-eighth of an inch to one and three-quarters of an  
15 inch and terminated in the oral cavity.

16 State's Exhibit 71B is a photograph of the face showing the  
17 abrasions and the gouging type wounds, cutting wounds. Also,  
18 you can note on the top here you have the patterned abrasion.  
19 It looks like a bell. It almost has the appearance of a belt  
20 buckle.

21 State's Exhibit 72B is a photograph of the face showing the  
22 abrasions, the gouging, cutting wounds and contusion and  
23 bruising and the previously described superficial lacerations  
24 and abrasions.

25 Q When you say those "multiple gouge wounds," are those

1 caused by an instrument different than the blunt object you  
2 described and then the broom handle size object you described?

3 A Yes.

4 Q We are now talking about injuries caused by yet a third  
5 weapon?

6 A Yes, sir. In here you can see the large openings in the  
7 skin. Those are the gouging wounds. If you'll notice how  
8 irregular they are. The skin has been pulled away, torn out.  
9 The underlying soft tissue has been pulled away from the cheek.

10 State's Exhibit 73B is a close-up of those injuries and  
11 here we can also see the depth of some of these gouging type  
12 injuries, the injuries to the lips, and we can see the patterns  
13 that I previously described on the neck.

14 State's Exhibit 70B shows the side of the face with the  
15 black eye as I previously described, some abrasions and injuries  
16 to the lips.

17 State's Exhibit 61B is a photograph of the back of the  
18 skull showing a similar type injury that I showed you on Michael  
19 Moore. The back of the head, a large abrasion.

20 Q That is the injury that you indicated in regard to Michael  
21 Moore would be consistent with a three to four inch diameter  
22 club or log?

23 A Yes. State's Exhibit 62B is showing some of the gouging  
24 wounds on the face, showing the left ear, the contusions, the  
25 scratches on the back of the left ear and some of the

1 superficial lacerations on the scalp.

2 State's Exhibit 63B is a photograph of the front of the ear  
3 showing the contusions, the scrapes and the injuries involving  
4 the ear.

5 Q Doctor, were the injuries to the ears of Steve Branch --  
6 were they of the same nature and type as the kind you described  
7 in regard to Michael Moore?

8 A Yes, they were.

9 Q Were there also injuries to the mouth and lips regarding  
10 Steve Branch?

11 A Yes.

12 Q Would these be consistent -- as you indicated earlier based  
13 on your experience -- would that be consistent in past cases  
14 that you observed?

15 MR. CROW: Object again, your Honor.

16 THE COURT: I'll sustain your objection.

17 Rephrase your question. I think that's a little bit  
18 broad.

19 BY MR. DAVIS:

20 Q Can you draw any findings from the injuries or can you give  
21 us an opinion as to the cause of injuries when you have injuries  
22 to the ears and injuries to the mouth and lips?

23 MR. CROW: Your Honor, we would object if he is  
24 going to speak in the alternative of what it is going  
25 to be.

1235

1 THE COURT: Doctor, do you have an opinion as to  
2 the cause of those injuries and if so, is that opinion  
3 based upon a reasonable degree of medical certainty in  
4 your experience and training in your field?

5 THE WITNESS: Yes, I have an opinion.

6 THE COURT: Is that opinion based upon your  
7 training and education?

8 THE WITNESS: Yes.

9 MR. CROW: I understood what he said before was  
10 alternate sources, alternate possibilities.

11 THE COURT: Well, I'm going to allow him to  
12 testify as to what his opinion is.

13 BY THE WITNESS:

14 A Injuries noted to the ears can be caused by holding the  
15 ears, pulling the ears. The injuries involving the lips could  
16 be from having an object, any object inserted inside the mouth  
17 or a hand placed over the mouth or a firm object placed over the  
18 mouth. It could also be from a punch also or hit with a rock.  
19 That is how you sustain those type of injuries.

20 Q Describe what additional injuries you found.

21 A There are injuries to the penis and the anus. The anus  
22 showed dilatation and hyperemia of the anal mucosa.

23 Q When you say "hyperemia," Doctor, what do you mean by that?

24 A Redness of the mucosa. It is red. It is not the normal  
25 coloration it should be.

1376

1 Q Dilation would be enlargement?

2 A Of the orifice, yes.

3 Q In regard -- if you could refer to the exhibit numbers and  
4 explain the additional injuries.

5 A Exhibits 64B and 65B are photographs of the penis. 65B  
6 shows the mid-shaft of the penis and the head of the penis with  
7 contusions, bruising and overlying scratches. This injury is --  
8 you can see there is an area of demarcation of the involved area  
9 and the uninvolved area. All this discoloration here is  
10 bruising. There are fine scratches overlying the head of the  
11 penis along with other focal areas of bruising.

12 Also, State's Exhibit 64B is the back of the penis showing  
13 similar injuries and lines of demarcation between the involved  
14 and noninvolved area.

15 Q Do you have an opinion as to what type of instrument or  
16 what could have caused the bruising, lacerations and injuries  
17 you have indicated to the penis?

18 A Well, these injuries could be from oral sex. They could be  
19 from also a squeeze, a very tight squeeze. But also with the  
20 clear band of demarcation between the involved and uninvolved  
21 areas, an object could have been placed around the penis and  
22 tightened very fast.

23 State's Exhibit 59B is an injury that was on the thigh, a  
24 linear band. You have two linear bands here with an area of  
25 pallor and abrasion.

1 State's Exhibit 66B is a photograph of the arm showing some  
2 bruising inside the arm and some scratches.

3 Q In these autopsies are you able to tell the difference in a  
4 wound that was inflicted before death and a wound that was  
5 inflicted after the death?

6 A Some of the injuries we can tell.

7 Q Could you tell in regard to any of these three children  
8 whether there were some wounds that were inflicted even after  
9 death?

10 A Some of the wounds would be perimortem, around the time of  
11 death, and postmortem, after death.

12 Q Using the remaining photographs, if you could explain your  
13 findings.

14 A State's Exhibit 67B and 68B show -- on 67 it shows the  
15 wrinkling of the hands. We can also see the abrasions from the  
16 ligatures on the wrist.

17 State's Exhibit 68B shows a hand with an abrasion, with the  
18 ligature abrasion and also Steve Branch had a cloth bracelet on  
19 his wrist. It was left on the body so he could be buried with  
20 it.

21 State's Exhibit 69B shows the multiple abrasions and  
22 contusions and ligature injuries, the binding injuries on the  
23 wrist.

24 And 60B shows an abrasion or scrape on the back of the  
25 neck.

1270

1 Q You indicate in your report -- you have your pathological  
2 diagnosis. You kind of generally go over what your primary  
3 findings were regarding the injuries. Could you go over that  
4 for us?

5 A Yes. We had multiple facial abrasions, contusions and  
6 lacerations. We had subgaleal contusions and bruising  
7 underneath the scalp. We also had multiple fractures to the  
8 base of the skull. We also had hemorrhaging involving the brain  
9 in association with the head injuries.

10 We have the bindings of the hands and feet. We have the  
11 contusion of the penis with superficial overlying scratches and  
12 dilatation of the anus, multiple contusions, abrasions and  
13 lacerations of the torso and extremities.

14 And we had evidence of drowning consistent with the  
15 wrinkling of the hands and feet, aspiration of water into the  
16 sinuses, pulmonary edema and congestion. There was no evidence  
17 of any natural disease which could have contributed to the  
18 death, and there was evidence of terminal aspiration of gastric  
19 contents.

20 Q Doctor, what is your opinion based on your experience and  
21 expertise regarding the cause of death in this particular  
22 situation?

23 A Mr. Branch died of multiple injuries with drowning.

24 (RECESS)

25

CONTINUED DIRECT EXAMINATION

1370

1 BY MR. DAVIS:

2 Q If you could, in reference to Steve Branch could you tell  
3 us how tall he was and how much he weighed?

4 A He weighed 65 pounds and was 50 inches in height.

5 Q Four foot two and how much did he weigh?

6 A 65 pounds.

7 Q If you would, would you find your autopsy report on Chris  
8 Byers?

9 A Yes, sir.

10 Q What number did you assign to that particular case?

11 A 331-93.

12 Q Could you step down from the witness box and with those  
13 photographs that have previously been introduced -- could you  
14 explain your findings regarding the autopsy?

15 A Here we have head injuries, neck injuries, genital and anal  
16 injuries, injuries to the right leg, injuries to the left leg,  
17 back injuries, injuries to the right arm and injuries to the  
18 left arm.

19 His body was received nude, covered with dry mud and  
20 leaves. There was wrinkling of the hands and feet also. The  
21 hands were bound to the ankles behind the back in a hog-tied  
22 fashion. Strands of hair-like material were found on the left  
23 posterior thigh, on the back of the left thigh, and under the  
24 bindings of the left ankle. The right wrist was bound to the  
25 right ankle with a black shoelace. And the left wrist was bound



1 to the left ankle with a white shoelace.

2 The injuries, we have similar injuries. The right ear was  
3 contused and abraded also. On the bridge of the nose there were  
4 multiple abrasions. Situated between the upper lip and bridge  
5 of the nose, a semi-lunar patterned abrasion. Abrasions were  
6 present on the lips, and the mucosal surfaces of the lower lip  
7 showed a five-sixteenths inch laceration. The frenulum -- that  
8 is the little piece of soft tissue that when you lift up your  
9 lips, it is right in the midline. That was bruised and  
10 surrounded by a bruise measuring one-half inch. There were  
11 multiple bite marks present on the mucosal surfaces of both left  
12 and right sides of the cheek, in other words, inside the mouth.

13 Also, internally -- also, the left ear was contused with  
14 multiple scratches. On the left parietal scalp region there was  
15 a one and one-quarter inch laceration. When we did the autopsy,  
16 we reflected the scalp. There was edema, swelling, and multiple  
17 bruising. The calvarium, or the top of the skull, was not  
18 fractured. However, the base of the skull was extensively  
19 fractured like an eggshell. And also on the left posterior  
20 medial cranial fossae -- the base of the brain is divided up  
21 into regions. We have the interior region, the middle region,  
22 and the posterior in the back. And on the back of the base of  
23 the skull on the left side we had a one-quarter inch ovoid, or  
24 round, fracture that was punched out into the brain, going into  
25 the brain. The brain also showed multiple hemorrhage, and there

1 were associated fracture contusions. State's Exhibit --

2 Q Doctor, before you get started, how tall and how much did  
3 Chris Byers weigh?

4 A Chris weighed 52 pounds and was 48 inches in height.

5 Q If you could using those photographs, explain your findings  
6 to the jury?

7 A 59C is a close up of the face, showing contusions, black  
8 eyes and abrasions on the nose. There is a pattern type injury  
9 here.

10 State's Exhibit 64C shows the ear with the bruising and the  
11 overlying scratches.

12 Q Would those scratches over the bruising -- would that be  
13 consistent with fingernail scratches?

14 A Fingernails will cause these type of scratches, yes.

15 Here we can see the side of the face with scratches,  
16 bruising of the ears, bruising of the eye. Here we have on the  
17 back of the scalp with the lacerations, similar appearance of  
18 the other two boys. Linear.

19 Q Doctor, that laceration would be more consistent with the  
20 broom handle type weapon you referred to rather than the large  
21 four inch club of some sort?

22 A Or a piece of two-by-four, piece of wood.

23 On State's Exhibit 67C and 66C these are the mucosal  
24 surfaces of the lips and here is the frenulum which is bruised.  
25 You can see the laceration of the lower lip.

1342

1 State's Exhibit 62C here we can see on the face we have  
2 these other patterns. They are round and circular and indented  
3 the skin.

4 Q Comparatively speaking, can you rate the severity of the  
5 head injuries of Chris Byers? How did they compare with the  
6 severity of the injuries to the other two boys?

7 A I think they were all equal in degree. Some may have a  
8 little more injury, but basically the same types of injuries.

9 State's Exhibit 71C is the buttock region in here. There  
10 was evidence of genital mutilation. This is the back, the anal  
11 orifice, the multiple cutting wounds here on the anal orifice  
12 and the perineum area, which is the area below the anal orifice.

13 Q Doctor, did you also make a finding that the anal and  
14 rectal mucosa were hyperemic and injected?

15 A Yes.

16 Q Can you explain what that means?

17 A It was red, injected, some capillary dilatation there.

18 Q And there were signs of physical trauma as far as abrasions  
19 and lacerations to the buttocks area and the area immediately  
20 surrounding the anus, correct?

21 A There's cutting wounds and abrasions, yes.

22 State's Exhibit 70C is a close-up of the genital  
23 mutilation. Here we have multiple gouging type injuries where  
24 the skin has been pulled out. The skin overlying the shaft of  
25 the penis was carved off. What you see here -- this red part

1 that is in the photograph -- that is the shaft of the penis  
2 after the skin has been removed and you can see above -- the  
3 scrotal sac and testes are missing. The whole genital area is  
4 missing, especially the internal aspect of the shaft and penis.  
5 Around these areas you can see the multiple gouging type wounds,  
6 stab wounds and cutting wounds.

7 Q The gouge wounds and cutting wounds you referred to around  
8 the genital area -- how did those -- in your opinion how would  
9 those wounds have been inflicted -- what type of manner would  
10 those have been inflicted?

11 A Well, it could be -- you see these type of irregular  
12 gouging wounds. Not knowing the instrument, you can get these  
13 type of wounds from a knife, piece of glass. Usually the knife  
14 or the object is being twisted and the victim is moving to get  
15 those irregular edges.

16 State's Exhibit 69C is a photograph showing the legs, the  
17 area of the genital mutilation. You can see the binding  
18 injuries of the left wrist but also here we can note on the top  
19 of the thighs and inner aspect of the thighs we have multiple  
20 contusion and bruising inside the thighs, and you can see that  
21 here.

22 Q Doctor, what would cause that type of bruising?

23 A These type of injuries we normally see in female rape  
24 victims when they are trying to spread the legs for penetration,  
25 or they may be hit with an object also. It is a possibility.

1 State's Exhibit 65C is a close-up of the bruises inside the  
2 thigh.

3 State's Exhibit 72C is a photograph -- I'm showing the back  
4 of the anal region, the thighs, and the bruising situated on the  
5 thighs and also on the back of the lower legs. Here you can see  
6 all the bruising. There is some sort of pattern, two linear  
7 bands of contusion in between here. And there is what is called  
8 pallor which is uninvolved. That indicates an object such as a  
9 piece of wood, a large object, was inflicted there -- struck  
10 there to cause this type of injury. Also on -- you can see on  
11 the back of the legs what we would classify as defense wounds,  
12 too. Bruising on the back of the legs.

13 State's Exhibit 61C shows a small abrasion at the back of  
14 the neck.

15 Q In regard to Chris Byers' autopsy did you find in him  
16 injuries to the mouth and to the ears similar to what you found  
17 with the other two?

18 A Yes, I did.

19 Q Would your opinion as to a cause of those injuries be the  
20 same regarding this particular case?

21 A Yes.

22 MR. CROW: Your Honor, I make the same objection.

23 THE COURT: As to the general broad nature?

24 MR. CROW: Yes, sir.

25 THE COURT: Rephrase your question.

1215

1 BY MR. DAVIS:

2 Q Doctor, based on your experience, background and training  
3 do you have an opinion as to the cause of the injuries where you  
4 have ear injuries as you have described and injuries to the  
5 mouth as you have described?

6 A Yes, I do.

7 Q What is that opinion?

8 A Those injuries you normally see on areas of children who  
9 are forced to perform oral sex. You can get those types of  
10 injuries from an object placed over the mouth, a firm object,  
11 the hand or mouth. Some injuries -- the contusion to the lips,  
12 the bruising, may be due to a punch.

13 Q The injuries that were around the genital area -- those  
14 were inflicted by some sharp object such as a knife?

15 A A sharp object, yes.

16 Q The injuries to the head of Chris Byers -- were those  
17 injuries inflicted by different type weapons?

18 A Yes, sir.

19 Q Which injury by what type of weapon?

20 A The injuries to the head were probably inflicted by an  
21 object such as a piece of wood. Could be a large stone. The  
22 injuries to the genital area were inflicted by an object such as  
23 a knife or piece of glass.

24 Q The laceration to his head or the elongated injury -- was  
25 that different than the injury to the back of his skull?

1 A Yes, that was different.

2 Q So would it be fair to say that at least three different  
3 weapons -- one causing injury to the top of the head, one to the  
4 back and one to the genital area?

5 A Yes.

6 Q Regarding Chris Byers what was your opinion based on your  
7 examination, your experience and training as to the cause of  
8 death of Chris Byers?

9 A That he died of multiple injuries.

10 Q And those multiple injuries being what?

11 A They consisted of the multiple facial contusions, abrasions  
12 lacerations, the contusions and abrasions of the ears, the left  
13 parietal scalp lacerations, the fracturing of the base of the  
14 skull, the subarachnoid hemorrhage and contusions of the brain,  
15 the abrasions that were situated in the front of the neck.

16 We have the genital mutilation with absence of the scrotal  
17 sac, testes, skin and head of the penis with multiple  
18 surrounding gouging and cutting wounds.

19 We also have the dilated anus, the bindings of the ankles  
20 behind the back in hog-tied fashion, the multiple contusions,  
21 abrasions, and lacerations of the torso and extremities,  
22 terminal aspiration of gastric contents. There was no evidence  
23 of disease which would have contributed to his death.

24 Q Any evidence regarding Chris Byers as to drowning?

25 A There was no evidence of drowning in Chris Byers.

1 Q Let me ask you some questions regarding who receives this  
2 information that you put in your report after an autopsy is  
3 performed. Where does your autopsy report go and who did you  
4 send it to after May 7, 1993, when you performed that autopsy?

5 A What happens after we perform any autopsy, we send to the  
6 investigating agencies and the coroner a cause of death form so  
7 they know exactly what we found at the time of autopsy because a  
8 lot of times the investigating agency may not have the time to  
9 call us so we communicate with them in written response.

10 We do that with all cases. What I normally do if it is a  
11 gunshot wound case, an automobile accident or suicide, I would  
12 outline in generalities the type of injuries. If it was a  
13 gunshot wound, I would say where the bullet was found.

14 But on this case here because of the intense media coverage  
15 and phone calls, I issued a press statement and what I did was I  
16 elected to send out the cause of death form just putting the  
17 causes of death. I did not list any of the injuries on the  
18 initial forms that I sent to the investigating agencies.

19 I sent the cause of death forms to Mr. Kent Hale, the  
20 coroner, and Brent Davis, the prosecuting attorney. It goes to  
21 the prosecuting attorney regardless if it is a natural -- they  
22 will get a cause of death form so he knows what's going on in  
23 his jurisdiction -- and the West Memphis Police Department.

24 Q And the initial sheet that you sent out is a one page sheet  
25 just listing the cause of death?



1 A Yes.

2 Q And so in an effort to not reveal the specifics of the  
3 injuries you made sure you didn't put those specifics in that  
4 information, correct?

5 A I felt in the nature of the case and the publicity it was  
6 receiving it was best not to divulge those injuries to the media  
7 or even the prosecuting attorney.

8 Q And the reason -- with an on-going investigation, why would  
9 that be important?

10 A Well, it would be important so it wouldn't be common  
11 knowledge so people won't have something to talk about. People  
12 in my experience tend to spread rumors about certain types of  
13 cases so that on these particular cases here, that would  
14 eliminate that. I thought it would be beneficial to keep the  
15 communication with -- subsequently with the West Memphis Police  
16 Department and Brent Davis and the prosecuting attorney's office  
17 -- not give any information out to anyone else, at that time.  
18 Subsequently as the investigation took place, I had meetings  
19 with the police, the prosecuting attorney and defense counsel.

20 Q Doctor, would that also be for the purpose that only those  
21 people who were there when the bodies were retrieved and those  
22 who performed the autopsy in the Crime Lab and those who  
23 received the autopsy report would know the specific nature --

24 MR. CROW: Object to leading, your Honor.

25 THE COURT: Avoid leading.

1 MR. DAVIS: I'll pass the witness, your Honor.

2 CROSS EXAMINATION

3 BY MR. STIDHAM:

4 Q Doctor Peretti, you don't have to be a pathologist or a  
5 Medical Examiner to look at the bodies when they were recovered  
6 to determine there were head injuries, injuries to their faces,  
7 injuries to other parts of their body including the genital  
8 mutilation. You don't have to be a pathologist to see those  
9 things, do you?

10 A No, sir.

11 Q Those are obvious? That sounds like a silly question, but  
12 it would be obvious to those who had been there and seen it?

13 A That's correct.

14 Q The injuries that you were describing to the victims' ears  
15 -- you laid out some possibility about how that could have been  
16 caused. Is there any evidence that it was definitely caused by  
17 oral sex?

18 A I found no evidence of semen in the oral cavities.

19 Q Doctor Peretti, you talked about the victims' anal orifices  
20 being dilated. Isn't it true that that could be caused by the  
21 fact that the bodies were in water?

22 A That's correct.

23 Q Was there any evidence whatsoever to indicate that these  
24 victims were sodomized or raped anally?

25 A No semen was detected in the anal orifice and canals.

1 Q Was there any evidence of trauma or lacerations or anything  
2 of that nature?

3 A There were no injuries noted to the anal orifice or the  
4 anal mucosa. The only thing I saw was the hyperemia or  
5 reddening of the mucosa.

6 Q Isn't it true, Doctor, if someone were sodomized or raped  
7 that you would expect to find these types of injuries?

8 A My experience dealing with the many children of rape I have  
9 found anal trauma.

10 Q So you would expect to find that if the victim had been  
11 sodomized?

12 A Yes.

13 Q Was there any indication that any of the victims were  
14 choked?

15 A There were no -- although there was some abrasions or  
16 scrapes on the neck region, there was no evidence of any type of  
17 strangulation.

18 Q Doctor Peretti, if you were told that one of the victims  
19 was choked -- specifically, victim Byers was choked with a big  
20 old stick -- would you expect to find some evidence --  
21 abrasions, bruising, a line of demarcation -- something  
22 indicating a choking?

23 A I would expect to find a pattern of injuries on the neck  
24 and underlying neck muscles.

25 Q Did you find any such patterns?

1 A No.

2 Q Did you find any such patterns on the victim Byers  
3 specifically?

4 A No.

5 Q Was there any abrasions or injury to the strap muscles of  
6 the neck?

7 A No.

8 Q Were there any fractures of the larynx or the -- how do you  
9 say that --

10 A Hyoid bone. No.

11 Q Would you expect to find those had a victim been choked?

12 A You may not find fractures of the hyoid bone because in  
13 young children it is difficult to fracture it, but I would  
14 expect to find hemorrhage.

15 Q So does there appear to be any evidence of sodomy or  
16 choking on any of these victims?

17 A No.

18 Q The most likely source of the dilation of the anus is  
19 probably the water?

20 A You get dilatation from being in the water, postmortem  
21 relaxation, or a small object such as a finger may have been  
22 inserted into the anus, but more so decomposition.

23 REDIRECT EXAMINATION

24 BY MR. DAVIS:

25 Q When you indicate that there was no sign of semen in the

1 anal or oral cavities, all that indicates to you is there was no  
2 ejaculation if there was a sexual assault, correct?

3 A That's correct.

4 Q There can be a sexual assault and that evidence does not  
5 counter indicate --

6 MR. CROW: Object to leading, your Honor.

7 MR. DAVIS: I'll rephrase.

8 THE COURT: Rephrase your question.

9 BY MR. DAVIS:

10 Q The absence of semen does not rule out sexual assault?

11 A It indicates there was no ejaculation.

12 Q In this case -- if you would, refer to your autopsy report  
13 on Chris Byers on page four of that report at the very top of  
14 the page. Did you indicate in that report that "the anal  
15 orifice was markedly dilated"?

16 A Yes. On Chris Byers it was markedly dilated.

17 Q When you say, "markedly," how is that different from the  
18 other ones where you said it was dilated?

19 A It is dilated more than the others.

20 Q You also indicate that the "examination of the rectal and  
21 anal mucosa showed them to be diffusely hyperemic"?

22 A Yes.

23 Q "And injected"?

24 A That's correct.

25 Q What does diffusely mean?

1 A I mean all over, involving the entire mucosa surface.

2 Q About five -- or four paragraphs down right before you get  
3 to the injuries of the right leg, did you indicate there was  
4 "scattered lineal abrasions present about the anal orifice"?

5 A Yes.

6 Q That would be abrasions around the area of the anal  
7 opening?

8 A Yes.

9 Q You indicated I believe on cross examination that you found  
10 no tears or anything in the anal orifice itself?

11 A That's correct.

12 Q And would whether or not there was trauma of that nature --  
13 would that depend on, number one, if there was penetration?

14 A That would depend if there was penetration.

15 Q If there was an attempt to sodomize an individual but no  
16 penetration, would you expect to find tears or lacerations?

17 A Well, if the penis enters into the canal, because the canal  
18 is tight I would expect to find tearing and bruising and  
19 abrasions of the opening.

20 Q But with no penetration would you expect to find the  
21 injuries to be to the outer portion of the buttocks?

22 A Well, without penetration -- if there was forceful  
23 penetration, you would have some injuries around the external  
24 aspect of the orifice.

25 Q Here we had some injuries?

1 A We had some abrasions.

2 Q Also the size of the object penetrating would determine if  
3 there was any laceration or tears, correct?

4 A That's correct.

5 RE CROSS EXAMINATION

6 BY MR. STIDHAM:

7 Q If there was a witness to these homicides and that witness  
8 purported to say that these victims were sodomized, would you  
9 expect to find tears or trauma to their anal orifices, Doctor  
10 Peretti?

11 A If there was forceful penetration into the orifice and into  
12 the rectum, I would expect to find injuries.

13 Q In the absence of those injuries you would expect that  
14 sodomy didn't occur?

15 A I would expect there was no penetration into the canal with  
16 ejaculation of semen.

17 REDIRECT EXAMINATION

18 BY MR. DAVIS:

19 Q Doctor Peretti, are you familiar with medical literature  
20 that indicates there can be sodomy to young children without  
21 evidence of tears or lacerations?

22 A There is published medical literature on those facts, yes.

23 RE CROSS EXAMINATION

24 BY MR. STIDHAM:

25 Q Doctor Peretti, more times than not there would be trauma

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

STATE OF ARKANSAS

PLAINTIFF

VS.

NO. CR-93-47

JESSIE LLOYD MISSKELLEY, JR.

DEFENDANT

PRETRIAL AND TRIAL PROCEEDINGS

CORNING, ARKANSAS

VOLUME 5

APPEARANCES

FOR THE STATE:

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BEFORE THE HONORABLE:

DAVID BURNETT, CIRCUIT JUDGE

BARBARA J. FISHER  
OFFICIAL COURT REPORTER  
P. O. BOX 521  
PARAGOULD, AR 72451-0521  
(501)236-8034



1 if that occurred?

2 A My experience in the cases that I have dealt with, I've  
3 always seen trauma.

4 Q Always seen trauma?

5 A The cases that I previously autopsied.

6 (WITNESS EXCUSED)

7 MIKE ALLEN

8 having been previously duly sworn to speak the truth, the whole  
9 truth and nothing but the truth, then testified further as  
10 follows:

11 REDIRECT EXAMINATION

12 BY MR. FOGLEMAN:

13 Q Are you the same Mike Allen who testified earlier?

14 A Yes, sir.

15 Q Detective Allen, I want to direct your attention to June  
16 third, 1993. On that date -- well, the first thing that  
17 detectives do in the morning -- what do y'all do?

18 A We have a morning meeting.

19 Q What time does that start?

20 A Eight o'clock.

21 Q And in general what takes place in those meetings?

22 A In the general morning meetings -- you're referring to  
23 during the time we were investigating this homicide?

24 Q Yes.

25 A Every morning when we went into the morning meeting

1 Inspector Gitchell would have -- we would go over what was done  
2 the day before up to that point. Then at that point we would  
3 talk about who was going to do what that day and people that we  
4 were going to talk to that day and whatever was going to be done  
5 that day was discussed and assigned out that morning.

6 Q On June third did you have an assignment to locate a  
7 particular person?

8 A Yes.

9 Q What was your assignment to do?

10 A My assignment was to contact Jessie Misskelley, Junior..

11 Q At that time was the defendant a suspect?

12 A No, sir.

13 Q If he was not a suspect, why were you assigned to contact  
14 him?

15 A It was explained in the morning meeting that he was a  
16 friend with Damien Echols and Jason Baldwin.

17 Q Did you locate the defendant?

18 A Yes, sir, I did.

19 Q What did you do to locate him?

20 A That morning I left the police department, went to the area  
21 of Highland Trailer Park where I understood that Jessie  
22 Misskelley, Senior and Junior lived. First went to the  
23 residence of Jessie Misskelley, Senior. I knocked on the door.  
24 A lady came to the door -- Lee Rush. Talked with her and told  
25 her I was needing to talk to Jessie Misskelley, Junior. She

1 told me he wasn't there, that I could go down to Jim's Diesel  
2 Shop which is located there in Highland Trailer Park and talk to  
3 Jessie Misskelley, Senior and he would know where Jessie  
4 Misskelley, Junior was. So I went to Jim's Diesel Shop and  
5 contacted Jessie Misskelley, Senior and inquired to the  
6 whereabouts of Jessie Misskelley, Junior.

7 Q What time did you leave the police department?

8 A According to the radio log that morning, it was 9:13.

9 Q You left the police department and you went where?

10 A Highland Trailer Park.

11 Q Where is that in relationship to West Memphis?

12 A This is in between Marion and West Memphis just off of  
13 Interstate 55, north of West Memphis.

14 Q I want to direct your attention to State's Exhibit Two and  
15 ask if Highland Trailer Park is located on that map?

16 A This is West Memphis here. This is the interstate. This  
17 is Interstate 40, Interstate 55 north here from West Memphis.  
18 This -- it is north of this railroad here so this is Highland  
19 Park Subdivision, Highland Trailer Park, what we call, here.

20 Q Would you highlight where it says Highland Park?

21 A (MARKING)

22 Q You went to where you understood that the defendant lived  
23 and you talked to who now?

24 A A female identified later as Lee Rush.

25 Q After speaking to her, you went to Jim's Diesel?

1 A Yes, sir.

2 Q And then at Jim's Diesel, who did you talk to?

3 A Jessie Misskelley, Senior.

4 Q After talking to Mr. Misskelley Senior, what happened?

5 A He in turn went to get Jessie Misskelley, Junior. He left  
6 in a vehicle, a pickup truck.

7 Q Then what happened after he left?

8 A He came back with Jessie Misskelley, Junior.

9 Q And when he returned, what did you say to the defendant?

10 A I asked him if he could come to the West Memphis Police  
11 Department to talk to me about two individuals that lived out in  
12 Lakeshore.

13 Q The best you can remember, if you can, be as specific as  
14 you can and as precise about exactly what you said to him.

15 A I asked him if he could, I said, "Would you mind coming up  
16 to the police department to talk to me about some friends of  
17 yours out at Lakeshore?"

18 Q Then what happened?

19 A He said, "Sure," and then I said -- Jessie Misskelley,  
20 Senior was there -- and I said, "Do you want to drive him down  
21 there or he can ride with me and I can bring him back."

22 Q What happened?

23 A I assumed his father was working and told him to ride with  
24 me.

25 Q You told him or who told him?

1 A It was -- I told him I would give him a ride and he  
2 indicated that he would ride with me.

3 Q When he rode with you, where did he ride in the car?

4 A I have a -- my car is an unmarked Ford LTD. Doesn't have a  
5 cage or anything in it, and he rode in the front seat with me.

6 Q Was he handcuffed?

7 A No, sir.

8 Q What time did you get back to the police department?

9 A It was around ten o'clock that morning.

10 Q And after getting back to the police department, what did  
11 you do?

12 A Went to the detective division which is located upstairs of  
13 the police department and started talking to Mr. Misskelley.

14 Q Before you started talking to him, what did you do?

15 A I filled out a subject description form, but I was talking  
16 to him during the time period.

17 Q What kind of information do you get on the subject  
18 description form?

19 A Basic information. Your name, sex, race, date of birth,  
20 education, mother and father's name, relative's name, home  
21 telephone number. We have a standard form at the police  
22 department that we fill out.

23 Q I want to show you what I've marked for identification as  
24 State's Exhibit 104 and ask if you can identify that?

25 A (EXAMINING) This is a subject description form that was

1 filled out by me at the West Memphis Police Department on June  
2 third, 1993.

3 Q What time did you fill that out?

4 A This was 10:00 A.M.

5 Q And did you also make some --

6 A There's also some information that I filled out on the  
7 back.

8 Q Is the entire form in your handwriting?

9 A No, sir, the scars, marks and tattoos was filled out by  
10 Detective Bryn Ridge.

11 MR. FOGLEMAN: We would offer for identification  
12 purposes State's Exhibit 104.

13 THE COURT: It may be received for identification  
14 purposes.

15 (STATE'S EXHIBIT 104 IS RECEIVED FOR  
16 IDENTIFICATION)

17 BY MR. FOGLEMAN:

18 Q After completing the subject description form, did you talk  
19 to the defendant?

20 A Yes, sir, I did.

21 Q Who else was present?

22 A Detective Ridge.

23 Q And after talking to the defendant for a while, did you  
24 decide that you needed to advise him of his rights?

25 A Yes, sir.

1 Q And why was that?

2 A I felt that everything that he was telling me wasn't the  
3 truth.

4 Q I want to show you what I have marked for identification as  
5 State's Exhibit 74 and ask if you can identify that?

6 A This is a standard rights sheet of the West Memphis Police  
7 Department that I typed up on that date that was advised to  
8 Jessie Misskelley, Junior and witnessed by myself and Detective  
9 Ridge and signed by Jessie Misskelley, Junior.

10 Q Did you use any force, promises, threats or coercion to get  
11 him to sign the form?

12 A No, sir.

13 Q How did you go about advising him of his rights?

14 A Verbally. I advised him of each one of these rights, read  
15 this form to him. When we got down to the part where I advised  
16 him, "You have the right to remain silent and do you understand  
17 that right?" He said he did.

18 Q Did he seem to have any problem understanding that?

19 A No, sir.

20 Q When he said that he understood it, did he signify his  
21 understanding?

22 A Yes.

23 Q How did he do that?

24 A Either shaking his head yes or saying yes.

25 Q Did he signify it on the form?

1 A Yes. By his initials on each one of these rights.

2 Q Did you use any force, promises, threats or coercion to get  
3 him to place his initials on the form?

4 A No, sir.

5 Q Did you follow the same procedure in advising him of each  
6 of his rights?

7 A Yes, sir.

8 Q Did you ask him to sign the form?

9 A Yes, sir.

10 Q Did you see him sign the form?

11 A Yes, sir.

12 Q Did you use any force, promises, threats or coercion to get  
13 him to sign the form?

14 A No, sir.

15 MR. FOGLEMAN: Your Honor, we would offer State's  
16 Exhibit 74.

17 MR. STIDHAM: No objection.

18 THE COURT: It may be received without objection.  
19 You may exhibit to the jury.

20 (STATE'S EXHIBIT 74 IS RECEIVED IN EVIDENCE)

21 BY MR. FOGLEMAN:

22 Q Does the form show what time you advised him of his rights?

23 A Yes, sir.

24 Q After you advised him of his rights, did you and the  
25 defendant then go somewhere else?



1 A Yes, sir, we did.

2 Q Where did you go?

3 A We went to get a permission form signed by his father.

4 MR. STIDHAM: Your Honor, may counsel approach  
5 the bench?

6 THE COURT: Yes.

7 (THE FOLLOWING CONFERENCE WAS HELD AT THE BENCH  
8 OUT OF THE HEARING OF THE JURY)

9 MR. STIDHAM: I thought we were not going to go  
10 into that.

11 THE COURT: He's not, I hope.

12 MR. FOGLEMAN: He said, "permission form."

13 MR. STIDHAM: It makes the jury think they got  
14 permission from his father to waive his Miranda  
15 rights.

16 THE COURT: Where are you going with it?

17 MR. FOGLEMAN: There had to be some kind of  
18 explanation of why he went to see the father.

19 THE COURT: I'm going to allow it to that extent  
20 and then go on.

21 MR. FOGLEMAN: I am.

22 (RETURN TO OPEN COURT)

23 BY MR. FOGLEMAN:

24 Q About what time did you go to find the defendant's father?

25 A It was approximately eleven o'clock or right there

1 afterwards.

2 Q What happened?

3 A We went and got into my unit and --

4 Q Where was he sitting this time?

5 A In front of the police department.

6 Q Where was he sitting in the car?

7 A He was sitting in the passenger side.

8 Q Was he handcuffed?

9 A No, sir.

10 Q Then what did you do?

11 A We went up Missouri Street which is in the direction toward  
12 Highland Trailer Park.

13 Q Show with this marker the general area of the police  
14 department and where Missouri Street is.

15 A (MARKING) You can see this U-shaped driveway. This is the  
16 West Memphis Police Department. I parked my vehicle in front  
17 here. We got in the vehicle, went down Broadway to Missouri  
18 Street. We got to -- we got around the McDonald's on Missouri  
19 Street where at that time we saw Jessie Misskelley, Senior in a  
20 -- I can't remember if it was a wrecker or some kind of work  
21 truck coming south on Missouri Street, and Jessie said, "There's  
22 my dad," and we flagged him like --

23 Q You said, "We flagged him." What did Jessie Junior say?

24 A I think he said, "There's my dad," and anyways he pointed  
25 like he was going to pull over.

1 Q Who pointed?

2 A Jessie Misskelley, Senior.

3 Q Okay.

4 A And we turned around, I believe at the Exxon service  
5 station, and turned around and followed him back down Missouri  
6 Street to Chief Auto Parts located on Missouri Street.

7 Q When you got to the auto parts place, did you have a brief  
8 conversation with the defendant's father?

9 A Yes, sir.

10 Q Did the defendant stay in the car or get out of the car?

11 A He got out of the car where me and his father were talking.

12 Q After this conversation, what did y'all do?

13 A Then we got back in my car and went back to the police  
14 department -- myself and Jessie Misskelley, Junior.

15 Q After returning to the police department, did -- ah, what  
16 further involvement did you have with the defendant after you  
17 returned to the police department?

18 A None at that point.

19 RE CROSS EXAMINATION

20 BY MR. STIDHAM:

21 Q You said on the morning of June third, 1993, you had a  
22 detective's meeting about eight o'clock?

23 A Yes, sir.

24 Q Who all was present?

25 A I'm not sure how many detectives. Myself, Inspector

1 Gitchell, Bryn Ridge, Bill Durham was there. There was --  
2 probably Detective Hester. I'm not sure that morning whether  
3 the 13 or 14 -- I don't know how many of those 13 or 14 of those  
4 detectives that we had working on this case were in the morning  
5 meeting.

6 Q Detective Ridge and Detective Gitchell were there?

7 A Yes, sir.

8 Q You told the prosecutor that your assignment was to contact  
9 Jessie Misskelley, Junior?

10 A Yes, sir.

11 Q Can you tell the jury why you were asked to go make contact  
12 with him?

13 A His name had came up as being a person that was friends or  
14 knew -- or friends with Damien Echols.

15 Q You're telling the Court and jury that he wasn't a suspect  
16 on the morning of June the third?

17 A That's correct.

18 Q You stated that you took Mr. Misskelley, Junior down to the  
19 station house and filled out the basic questionnaire -- on the  
20 subject description --

21 A Yes.

22 Q What was the name of the form?

23 A Subject description form.

24 Q And then I assume you asked him certain things?

25 A Yes, sir.

1 Q Do you remember what you asked him?

2 A Are you talking about during the subject description form  
3 being filled out?

4 Q No, after that.

5 A We talked about Damien Echols at that time and what he knew  
6 about Damien Echols as far as his friendship with him.

7 Q Did he tell you that he was friends with Damien, or did he  
8 tell you that he knew Damien?

9 A He said he knew Damien.

10 Q What else did he tell you about Damien?

11 A He told me that he knew that he had been around Damien and  
12 Jason at one point. He said that Jason had got into a fight and  
13 Damien had taken his finger and wiped blood off of his nose and  
14 then licked the blood, things of that nature. I have  
15 highlighted some notes some of the things we talked about.

16 Q Officer Allen, did you ask Mr. Misskelley whether or not he  
17 knew anything about the murders?

18 A I asked him if he had heard anything about the murders. I  
19 asked him questions -- my questioning of him was based on what  
20 he knew about Damien Echols and what he -- if he saw Damien  
21 Echols the day of the murder, things of that nature, if he knew  
22 anything about Damien Echols.

23 Q What was his response?

24 A He told me some things about Damien Echols. He didn't know  
25 anything about the murders is what he told me at that time.

1 Q Did you also ask him where he was on May 5th, the day of  
2 the murders?

3 A We were talking about -- you have got to understand this is  
4 a month later, almost a month later after the murders, and I  
5 asked him in reference to if he remembered that -- the  
6 Wednesday, I believe it was, that the little boys come up  
7 missing because he had talked about something that he had told  
8 someone about seeing one of the boys on a bike, and we were  
9 trying to get to that date. And during the time period he said,  
10 "I worked with Ricky Deese" -- I think he said -- "Tuesday  
11 Wednesday and Thursday," or something. He said three days that  
12 week until five o'clock each evening.

13 Q So he told you that he was working on May 5th?

14 A Yes, sir.

15 Q You stated earlier in your testimony that for some reason  
16 you didn't believe him when he was telling you these things?

17 A From the information that I had at that time from other  
18 officers, some of the things that he was saying did not agree  
19 with what they had said, and I didn't know at that point who was  
20 telling the truth.

21 Q Did you make any attempt on June third, 1993, to call Mr.  
22 Deese and see if in fact he was working that day?

23 A No, sir.

24 Q Are you aware of the fact that Mr. Misskelley has a mental  
25 handicap?

1 A No, sir.

2 Q Do you have a specialized training in dealing with people  
3 who are mentally handicapped?

4 A I have dealt with mentally handicapped people before, but I  
5 did not know that he was mentally handicapped at the time or if  
6 he is mentally handicapped. I have no knowledge of that.

7 Q This information that you are suggesting you didn't believe  
8 -- it was something about that cult stuff, right?

9 A Repeat that?

10 Q You said you had reason to believe Mr. Misskelley was not  
11 being truthful to you. Is that the information about the cult  
12 that you were aware of?

13 A That was some information, yes, sir.

14 Q The police department had received some information that  
15 Mr. Misskelley had been to a cult meeting or something to that  
16 effect?

17 A Yes, sir.

18 Q So did the West Memphis Police Department believe at this  
19 time that this was a cult related killing?

20 A At this point we were investigating this murder and we had  
21 no knowledge at that point of exactly what we had. That had  
22 been one aspect of the investigation.

23 Q Tell the jury what information you had that made you want  
24 to go pick up Jessie Misskelley that morning.

25 A Inspector Gitchell assigned me to go pick him up because of

1 some information that he was associated or friends with Damien  
2 Echols. Everyone else had assignments to go pick up different  
3 people, and he was the person I was assigned to go pick up.

4 Q At a previous hearing you testified that Damien Echols was  
5 a suspect from the beginning in this case. Is that correct?

6 A To the best of my knowledge. I don't know exactly from the  
7 very beginning what point or what day afterwards, but I know he  
8 was one of the suspects during this time period.

9 Q On June third did you ever talk to Jessie Junior or Jessie  
10 Senior about the thirty thousand dollar reward?

11 A Before when we had this conversation, I do not remember --  
12 if it was asked of me how much the reward was, I would have  
13 probably said something -- but it does not ring a bell with me  
14 as far as whether or not that conversation was brought up about  
15 a reward with Jessie Misskelley, Senior.

16 Q Could have happened but you just don't recall?

17 A If someone during that time period would have asked me, I  
18 would have told them whatever the reward was. I would have told  
19 them, "Yeah, there's a reward available."

20 Q You also testified you couldn't remember exactly all the  
21 questions you had asked Mr. Misskelley that morning?

22 A That's true.

23 Q So your notes don't reflect everything that was asked?

24 A Generally, the questions, the highlights or whatever of the  
25 conversation. My notes reflect the basic things that I wrote



1 down while I was talking to him.

2 Q How many people would you estimate, Officer Allen, that the  
3 West Memphis Police Department rounded up and asked about their  
4 association or contact with Damien Echols?

5 MR. FOGLEMAN: Before or after the arrest?

6 BY MR. STIDHAM:

7 Q I'm talking about before.

8 A I have no knowledge on numbers. During the course of this  
9 investigation, we talked to probably hundreds of people.

10 REDIRECT EXAMINATION

11 BY MR. FOGLEMAN:

12 Q Mr. Stidham asked in regard to any alleged reward and, of  
13 course, you responded the way you did. Did you ever bring up  
14 anything about a reward?

15 A No, sir.

16 Q Mr. Stidham also asked about how many people were rounded  
17 up -- friends, supposed friends of Damien Echols -- and you  
18 responded that you -- not you -- y'all had talked to literally  
19 hundreds?

20 A Not necessarily. I don't know how many people in regards  
21 to Damien Echols. I know that we talked to hundreds of people  
22 in regard to numerous suspects that we had.

23 Q Was Damien Echols -- I think you just answered my question  
24 -- but was Damien Echols the only suspect you had?

25 A No, sir.

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RECROSS EXAMINATION

BY MR. STIDHAM:

Q Was Damien Echols your prime suspect on June third?

A I don't know if you could -- there were several suspects. Things seemed to turn -- a lot of things seemed to turn back toward him, but there were other suspects. I'm not sure at that given time but during the course of this investigation, there were numerous suspects.

Q Was he in the top three?

A I would say yes.

Q Officer Allen, Mr. Misskelley was 17 years of age on June third. Is that correct?

A Yes, sir.

Q Did you at any time get his father's permission to waive his Miranda warnings?

A No, sir.

(WITNESS EXCUSED)

BILL DURHAM

having been first duly sworn to speak the truth, the whole truth and nothing but the truth, then testified as follows:

DIRECT EXAMINATION

BY MR. FOGLEMAN:

Q Will you please state your name and occupation?

A Bill Durham, detective and polygraph examiner for the West Memphis, Arkansas Police Department.

1 Q And I want to direct your attention to June third, 1993.  
2 Did you have occasion on that date to come into contact with the  
3 defendant Jessie Misskelley, Junior?

4 A Yes, sir.

5 Q And did you advise him of his rights also?

6 A Yes, sir, I did.

7 Q I want to show you what is marked for identification as  
8 State's Exhibit 84 and ask if you can identify that?

9 A (EXAMINING) Yes, sir. This is a West Memphis Police  
10 Department rights form that I filled out which was signed,  
11 "Jessie Lloyd Misskelley, Junior" dated June third, 1993, and  
12 the time he signed it was 11:30 A.M.

13 Q How did you go over that form with him?

14 A Jessie Misskelley, Junior was sitting beside my desk. I  
15 turned the form so that he could read it and as he was looking  
16 at it, I read the form to him so that he could read along with  
17 me. I explained each of his rights individually, which he  
18 initialed beside each of his rights. I then covered the waiver,  
19 and he signed at the bottom.

20 Q You said that he initialed each right. Did he indicate  
21 whether or not he understood those rights?

22 A I asked him individually, and he did indicate that he  
23 understood each one.

24 Q Did he appear to be having any trouble understanding those  
25 rights?

1 A No, sir, he did not.

2 Q Did you use any force, promises, threats or coercion to get  
3 him to place his initials by each right or to sign the form?

4 A No, sir.

5 Q Did you witness the form?

6 A Yes, sir.

7 Q Place your signature on it?

8 A Yes, sir.

9 Q Did you see him sign the form?

10 A Yes, sir, I did.

11 MR. FOGLEMAN: We offer State's Exhibit 84.

12 THE COURT: It may be received. You may exhibit  
13 to the jury.

14 (STATE'S EXHIBIT 84 IS RECEIVED IN EVIDENCE)

15 BY MR. FOGLEMAN:

16 Q After advising the defendant of his rights, did you have a  
17 conversation with him?

18 A Yes, sir.

19 Q About how long were you with him?

20 A Approximately one hour.

21 Q During the course of this period of time that you were with  
22 him, did he provide you any information of substance?

23 A No, sir, he did not.

24 Q Did you provide him any details of anything that happened  
25 in the murders?

1 A No, sir, I did not.

2 Q The manner in which you advised this defendant of his  
3 rights -- did you do that any differently than you would for  
4 anybody else?

5 A No, sir.

6 CROSS EXAMINATION

7 BY MR. STIDHAM:

8 Q Do you have any special training in dealing with people who  
9 are mentally handicapped?

10 A No, sir.

11 Q During this hour that Mr. Misskelley spent with you on June  
12 the third, did he deny any involvement in these murders the  
13 entire hour? Did he deny that throughout the whole time?

14 A Yes, sir, he did.

15 REDIRECT EXAMINATION

16 BY MR. FOGLEMAN:

17 Q Did you spend the entire hour asking him whether or not he  
18 was involved?

19 A No, sir, I did not.

20 Q Was the entire hour made up of asking questions?

21 A Yes, sir.

22 Q The entire hour?

23 A No, sir, not the entire hour. There was other paperwork  
24 that I completed which took a degree of time and no, sir, the  
25 entire hour was not spent asking him questions.

1 Q During the time when you were talking to him -- well,  
2 approximately how much time would you say was involved in  
3 actually asking him questions related to the incident?

4 A Probably maybe half that time, probably 30 minutes.

5 RE CROSS EXAMINATION

6 BY MR. STIDHAM:

7 Q So for 30 minutes he denied any involvement in these  
8 homicides?

9 A Yes, sir, that's correct.

10 (THE FOLLOWING CONFERENCE WAS HELD AT THE BENCH  
11 OUT OF THE HEARING OF THE JURY)

12 MR. FOGLEMAN: I feel that Mr. Stidham is putting  
13 us in a bad position. On the one hand we cannot  
14 mention --

15 MR. STIDHAM: Your Honor, if we're going to talk  
16 about this, can we retire to chambers?

17 (RETURN TO OPEN COURT)

18 THE COURT: Ladies and gentlemen, you can have a  
19 ten minute recess with the usual admonition not to  
20 discuss the case.

21 (THE FOLLOWING CONFERENCE WAS HELD IN CHAMBERS)

22 THE COURT: Let the record reflect that this is a  
23 hearing out of the presence of the jury and the  
24 defendant is present.

25 MR. FOGLEMAN: Judge, the problem that is

1 developing -- Mr. Stidham in his last question asked  
2 Detective Durham, "Did he continue to deny it for that  
3 30 minutes," and of course the officer says, "Yes."

4 It is creating a misrepresentation to the jury of  
5 what goes on. Obviously it is not a situation -- "Did  
6 you do it?" "No." "Did you do it?" "No." -- for 30  
7 minutes -- I mean, that's absurd. But the jury is  
8 being left with the impression that the officer  
9 accused him and he's denying it for the entire 30  
10 minutes when that is not what happened at all.

11 MR. CROW: Why don't you have him -- ask him --  
12 were several subjects discussed and every time -- and  
13 if Dan wants to ask, "Every time you discussed the  
14 subject of the murders he denied it."

15 MR. STIDHAM: But he did deny it for 30 minutes

16 --

17 (MR. STIDHAM AND MR. FOGLEMAN SPEAKING AT THE  
18 SAME TIME - UNINTELLIGIBLE)

19 MR. FOGLEMAN: -- They didn't ask him for 30  
20 minutes, "Did you do it?"

21 THE COURT: Well, during that 30 minutes he  
22 denied it. That's what it amounts to.

23 MR. FOGLEMAN: It is not as if during the entire  
24 30 minutes -- well, you could say for a month he  
25 denied it up until the time he confessed.

1           THE COURT: I don't see any big deal or any  
2 impression that is made by it. Just a reasonable  
3 argument would be --

4           MR. FOGLEMAN: -- Well, we're prevented from  
5 explaining the circumstances, and Mr. Stidham is  
6 asking these questions when we are in an area where we  
7 cannot explain what happened. He's asking these  
8 questions that suggest to the jury that during this  
9 entire time he's asking him and he's denying it.

10          THE COURT: I don't see any need to explain it.  
11 The response is that he was interviewed by this  
12 officer for a period of 30 minutes and during the 30  
13 minutes he denied involvement. Later --

14          MR. FOGLEMAN: -- That's not what happened.

15          THE COURT: Later when he was confronted with the  
16 little bite from that recording and a couple of other  
17 things, the chalk circle or whatever it was, that he  
18 changed his tune. You are just explaining that he  
19 went before two officers and then subsequently a third  
20 and fourth where he changed his tune. I don't see any  
21 big deal about it.

22                 Again, I want to emphasize that y'all are  
23 electing to waive your argument that the polygraph was  
24 a forceful inducement to cause him to change his  
25 testimony.



1 MR. CROW: We are waiving that, your Honor  
2 because --

3 THE COURT: You are waiving it because I want the  
4 record to be very clear that I am not prohibiting that  
5 argument or that evidence.

6 MR. CROW: We understand that. We are certainly  
7 not backing up and waiving that as a consideration in  
8 the suppression hearing. We are not going to make the  
9 argument to the jury.

10 THE COURT: I want the record to be very explicit  
11 that I am not excluding that tender or that testimony  
12 if you choose to follow that defense. The only thing  
13 I'm limiting are the results of the polygraph from  
14 either side.

15 MR. CROW: I want the record to reflect why we  
16 are doing that.

17 MR. STIDHAM: Your Honor, it's not logical from a  
18 defense standpoint to allow the State to say he  
19 flunked it and not allow us to say he passed it. We  
20 can't have it both ways. It's got to be one way or  
21 the other.

22 THE COURT: I'm not going to allow them to say  
23 that he flunked.

24 MR. STIDHAM: Well, the fact that he took it and  
25 they kept interrogating him for four more hours -- it

1 is kind of a red flag.

2 THE COURT: You can argue that is a tool of  
3 confessions, that they do it all the time and that  
4 they tell these people that they failed it whether  
5 they did or not. Sometimes they don't even give them  
6 a test. You can do all kinds of stuff.

7 MR. STIDHAM: If the jury is not properly  
8 schooled on the polygraph and the results that can be  
9 interpreted from them, they are going to assume that  
10 he flunked it and, therefore, he must be guilty.

11 THE COURT: Well, the point is I'm not excluding  
12 that tender of testimony or that argument. I'm only  
13 excluding the results which I think is consistent with  
14 Arkansas law.

15 MR. STIDHAM: Judge, you're not suggesting that  
16 we have waived our proffer?

17 THE COURT: No. Are you talking about on the  
18 Denno hearing? No. That is a matter of record. I'm  
19 saying you have elected to waive during the trial that  
20 defense. I'm not prohibiting --

21 MR. CROW: Only because of the Court's ruling.  
22 If the Court would allow us to put our expert on, we  
23 would have gone into it here.

24 MR. FOGLEMAN: The judge has ruled you can put  
25 your expert on.

1 MR. CROW: Not about the results of the  
2 polygraph. I understand the Court's ruling. I'm not  
3 arguing about the Court's ruling.

4 THE COURT: I'm saying you can make your argument  
5 whether or not the results were ever admitted.

6 MR. CROW: We understand that, but we don't think  
7 we can make it effectively without the other part.

8 (RETURN TO OPEN COURT)

9 REDIRECT EXAMINATION

10 BY MR. FOGLEMAN:

11 Q Detective Durham, during this 30 minutes -- Mr. Stidham has  
12 characterized him as having been denying it the whole time --  
13 were you questioning him on his involvement the entire 30  
14 minutes?

15 A No, sir.

16 Q What was the main focus of your questioning of the  
17 defendant?

18 A Whether or not he was an associate of another person that  
19 we were looking at as a possible suspect, whether or not he was  
20 involved in any of these alleged cults that we had heard about

21 --

22 Q Involved in what now?

23 A Cults.

24 Q Okay.

25 A And whether or not he knew who may have possibly been

1 responsible for this crime.

2 Q Were you satisfied with the responses you got?

3 A No, sir, I was not.

4 (WITNESS EXCUSED)

5 BRYN RIDGE

6 having been previously duly sworn to speak the truth, the whole  
7 truth and nothing but the truth, then further testified as  
8 follows:

9 REDIRECT EXAMINATION

10 BY MR. FOGLEMAN:

11 Q You are the same Detective Ridge who has previously  
12 testified?

13 A Yes, sir.

14 Q Detective Ridge, I want to direct your attention to June  
15 third, 1993. Did you participate in some questioning of the  
16 defendant Jessie Misskelley, Junior?

17 A Yes, sir, I did.

18 Q Were you present when Detective Allen advised him of his  
19 rights?

20 A Yes, sir, I was present.

21 Q I want to introduce State's Exhibit 74 and ask if you  
22 recognize that?

23 A (EXAMINING) Yes, sir, I do.

24 Q Did you sign that as a witness?

25 A Yes, sir, I did.

1 Q Was there any force, promises, threats or coercion used to  
2 get the defendant to sign the form, to initial the rights or  
3 make any statements?

4 A No, sir.

5 Q I also want to show you what has been introduced as State's  
6 104 and ask if you recognize that?

7 A Yes. That's a subject description form.

8 THE REPORTER: That has been received for  
9 identification only.

10 BY MR. FOGLEMAN:

11 Q All right, for identification. Is part of that form in  
12 your handwriting?

13 A Yes, sir.

14 Q What part is that?

15 A The scars, marks and tattoos.

16 Q Where did you get that information?

17 A From the defendant, Mr. Misskelley.

18 MR. FOGLEMAN: We offer State's Exhibit 104.

19 MR. STIDHAM: No objection.

20 THE COURT: It may be received for  
21 identification. You may exhibit to the jury.

22 (STATE'S EXHIBIT 104 IS RECEIVED IN EVIDENCE)

23 BY MR. FOGLEMAN:

24 Q Before I continue on the questioning, I want to back up a  
25 minute. At the crime scene what efforts, if any, were made to

1 keep any bystanders from seeing the victims and the injuries  
2 they suffered?

3 A Before the bodies were actually removed from the water,  
4 everybody that was not concerned with the case -- the detectives  
5 assigned to the case -- were moved away from the crime scene and  
6 tape was put up to keep them away.

7 Q After Michael and Steve and Chris were removed from the  
8 water, was anything done to keep people that were not police  
9 from seeing?

10 A Yes, sir. The bodies were covered with black plastic.

11 Q Back to June third, after Detective Durham talked to the  
12 defendant, did you have some conversations with the defendant?

13 A Yes, sir, I did.

14 Q Did -- was somebody else with you?

15 A Yes, sir.

16 Q Who was that?

17 A Inspector Gary Gitchell.

18 Q During this conversation that you and Detective Gitchell  
19 had with the defendant, was any force, promises, threats or  
20 coercion used to get him to make any statements to you?

21 A No, sir.

22 Q Did the defendant during this time -- well, first, what  
23 time did this start?

24 A Approximately 12:40 after I had come back from lunch.

25 Q During the time that you and Detective Gitchell were having

1 this conversation with the defendant, did you do anything to  
2 preserve your conversation?

3 A At a point tape recorder was --

4 Q I'm talking about before the tape recorder.

5 A I took some notes.

6 Q Was there any reason why you weren't tape recording  
7 immediately?

8 A It wasn't determined that he was a suspect at this point.

9 Q What did you think he was?

10 A A potential witness.

11 Q As far as -- what type of witness?

12 A A reluctant witness to the homicide or to activities of  
13 Damien Echols.

14 Q What, if anything, did he tell you during this conversation  
15 before the tape recording in regard to anything he might know  
16 about the homicides?

17 A He had told us that he had attended some satanic cult type  
18 meetings. He was a member of a satanic cult type group.

19 Q What did he tell you about that?

20 A They had met in various parts of the state, generally on a  
21 Wednesday, generally late in the evenings, even into the night.  
22 That boys along with girls would attend. There would be  
23 sessions of sex, orgies as he called them, that dogs and animals  
24 had been killed, and in fact those animals -- portions of them  
25 had been eaten by the members. He talked about some phone calls

1 he had received.

2 Q From who?

3 A Jason Baldwin. He says he heard the voice of Damien Echols  
4 in the background.

5 Q What did he tell you about those phone calls?

6 A There were three phone calls. One was on the day before  
7 the murders, he explained. One was the morning of the murders,  
8 he explained. One was the night after the murders, he  
9 explained.

10 Q Did he say -- what did he say that you recall about the  
11 phone call the day before the murders?

12 A Something to the effect that they were going to go  
13 somewhere and get some girls the next day or something to that  
14 effect.

15 Q Do you have your notes there?

16 A I can probably find them. (EXAMINING) Yes, sir, I have  
17 them.

18 Q Do you have notes related to the phone call the day or  
19 night before the murders?

20 A (EXAMINING)

21 Q I'm looking at the first page.

22 A I'm on page four.

23 Q I'm looking at page one.

24 A Okay. "Stated that he had received a call from Jason  
25 Baldwin the night before the murders."



1 Q What did he tell you?

2 A At that time, "They were going to go out and get some boys  
3 and hurt them."

4 Q Then what did he tell you about Damien in the background?

5 A "Stated he received a call from Jason. Damien in the  
6 background. Wanted him to go with them. Said they planned  
7 something. Heard Damien say that Jason ought to tell that they  
8 were going to get some girls or something."

9 Q Then what did Jessie tell you?

10 A Jessie said he knew what they were going to do.

11 Q Did he say anything in this conversation about a briefcase?

12 A Yes, sir, he did.

13 Q What did he say about the briefcase?

14 A He said that the briefcase was something that showed up at  
15 these meetings they would have. The briefcase contained a  
16 couple of guns, some marijuana, I believe some cocaine, and that  
17 there was a picture in the briefcase and that he saw pictures of  
18 the boys that were killed.

19 Q Did he say anything about what Damien or any of the people  
20 had done in regard to these boys?

21 A He said that Damien had been stalking these boys or  
22 watching them.

23 Q How about the -- do you recall what, if anything, he said  
24 about the phone call that came the morning of the murders?

25 A I'm not sure if it is in my notes. He referred to that he

1 received a phone call that morning and that they wanted him to  
2 go with them.

3 Q How about after dark after the murders?

4 A He said that he heard Damien in the background and that he  
5 heard him say, "We did it. We did it. What are we going to do  
6 now? What are we going to do if somebody saw us?"

7 Q During the course of these conversations or this  
8 conversation with the defendant, was anything shown to the  
9 defendant?

10 A Yes, sir.

11 Q What was shown to him?

12 A There was a picture that Inspector Gitchell showed him.

13 Q What was that a picture of?

14 A One of the victims.

15 Q I want to show you State's Exhibit 76 and ask if you can  
16 identify that?

17 A (EXAMINING) That is the body of Chris Byers.

18 Q But the picture itself?

19 A It's a Polaroid photograph.

20 Q Is that the photograph that Inspector Gitchell, or one like  
21 it, that he showed him?

22 A Yes, sir.

23 MR. FOGLEMAN: We offer State's Exhibit 76.

24 MR. STIDHAM: No objection.

25 THE COURT: It may be received.

1

(STATE'S EXHIBIT 76 IS RECEIVED IN EVIDENCE)

2

MR. CROW: Your Honor, may we approach the bench?

3

4

THE COURT: Yes.

5

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(THE FOLLOWING CONFERENCE WAS HELD AT THE BENCH  
OUT OF THE HEARING OF THE JURY)

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MR. CROW: I don't think it is necessary because of the Court's earlier rulings, but we want to make a record that we are objecting to all testimony about what Jessie said. I think the Court has already ruled on that.

THE COURT: Yes. You have already made your record on that.

MR. CROW: We raise every issue we raised before.

THE COURT: You don't have to reraise it.

(RETURN TO OPEN COURT)

BY MR. FOGLEMAN:

Q What were the circumstances in which this photograph was shown to the defendant?

A The defendant had been talking. He had gotten to where he had almost not been talking. He slowed down in giving any information, at which time Inspector Gitchell left the office and came back with this picture.

Q What did he do?

A He showed the picture to Jessie.

Q What was the defendant's response?

1 A He grabbed the picture. He sat back in his seat. He  
2 became fixated on this picture. You could tell he was tense.  
3 He just intently looked at this picture.

4 Q Then what happened?

5 A He wasn't answering any more questions. He was so fixated  
6 on the picture that he wasn't talking, wasn't saying anything,  
7 just looking at the picture. We had to physically take the  
8 picture away from him, in other words just pulled it out of his  
9 hands and laid it down on the desk, and he just continued to  
L0 look at the picture.

L1 Q Then what happened?

L2 A Inspector Gitchell moved the picture out of his sight, and  
L3 we continued to talk to him.

L4 Q At some point did you leave the room?

L5 A Yes, sir.

L6 Q Before you left the room, what else occurred?

L7 A A tape recorder with a short session was played where the  
L8 defendant could hear it.

L9 Q You said "a short session." What --

20 A I mean just a few words were said by a young person on this  
21 tape.

22 Q Do you know whether or not the person's voice was somebody  
23 that the defendant was acquainted with?

24 A Yes, sir, I think he is, yes.

25 Q In fact, did the defendant say something about where he had

1 been like the night before?

2 A I was made aware of where he had been the night before.

3 Q You don't remember the defendant saying anything about  
4 that?

5 A No, sir.

6 Q Okay. What was your purpose in leaving the room?

7 A We had just played this tape and Jessie says something to  
8 the effect that, "I want out of this. I want to tell you  
9 everything," at which time we started asking him some more  
10 questions. We asked about this third telephone call, and that  
11 is when that third telephone call came in and he tells us about  
12 what Damien had said in the background. I felt this was  
13 extremely good information and that we were at the verge of  
14 getting a good witness, and I wanted -- I just decided it was  
15 time to take a break, and I wanted to inform Sergeant Allen of  
16 this information.

17 Q Up to this point, did you have any reason to suspect that  
18 the defendant was involved?

19 A No, sir.

20 Q Had y'all -- what was the demeanor or the atmosphere when  
21 y'all were questioning him?

22 A It was -- mostly we were just as nice as we could be. We  
23 were not hollering. We were not loud. It was just as though  
24 I'm talking to you right now.

25 Q You said, "mostly?"

1 A That's all. I mean there wasn't anything except the  
2 incident with the picture that you could see there was stress.  
3 The incident with the tape recorder, when he reacted, "I want  
4 out of this. I want to tell you everything."

5 Q Was there something about a circle?

6 A Yes, sir.

7 Q Was that before you left the room or after you returned?

8 A That was before I left the room.

9 Q Tell us about the circle.

10 A That was -- it is an interrogation technique that Inspector  
11 Gitchell used. It is basically a circle that would be drawn on  
12 a piece of paper. There were dots all over the paper, "Where  
13 are you in the circle?" That is the question that was asked of  
14 the defendant.

15 "Are you a witness? Are you a defendant? What are you?"

16 Q After you went out of the room, what happened next?

17 A I was talking with Sergeant Allen about what he had told us  
18 about the telephone call and what he had heard Damien say in the  
19 background, and Inspector Gitchell came out and informed me that  
20 he had just told him he was there when the boys were killed.

21 Q From that point on, how did you preserve the conversation?

22 A Everything that was said from that point on during the  
23 interviews was taped.

24 Q During the portion where the conversation was tape  
25 recorded, did the defendant provide some information about some

1 tennis shoes?

2 A Yes, sir, he did.

3 Q Were these his shoes?

4 A He said they were his shoes.

5 Q Do you remember what kind of shoes he said they were?

6 A He said they were blue and white Adidas tennis shoes.

7 Q Did he say what he had done with the shoes?

8 A Yes, sir, he did.

9 Q What did he say he had done with them?

10 A Those were the shoes he had worn the night of the murders.

11 Q What did he say he had done with them?

12 A He said that he gave those shoes to Buddy Lucas.

13 Q I want to show you what I've marked for identification as  
14 State's Exhibit 95 and ask if you can identify that?

15 A (EXAMINING) Yes, sir, I can identify them.

16 Q What are those?

17 A These are the shoes recovered from Buddy Lucas.

18 Q What kind of shoes are they?

19 A Blue and white Adidas tennis shoes.

20 MR. FOGLEMAN: Your Honor, we offer State's  
21 Exhibit 95.

22 MR. STIDHAM: No objection.

23 THE COURT: It may be received without objection.

24 (STATE'S EXHIBIT 95 IS RECEIVED IN EVIDENCE)

25 CROSS EXAMINATION

1 BY MR. STIDHAM:

2 Q These tennis shoes -- were they sent to the Crime Lab for  
3 analysis?

4 A Yes, sir.

5 Q Did they come back with anything linking Mr. Misskelley to  
6 the scene of the crime?

7 A No, sir.

8 Q Let's talk about the interrogation on June third. At some  
9 point Officer Allen picked up Mr. Misskelley?

10 A Yes, sir.

11 Q Brought him to the department about what time?

12 A I think he picked him up at about 9:30.

13 Q When did you begin to take part in the interrogation?

14 A It was about 10:30 I guess. I can look at the subject  
15 description form. The time is at the bottom of it when I walked  
16 into the room.

17 Q When you walked into the room, you began to ask Mr.  
18 Misskelley questions about participation in a cult?

19 A Yes, sir.

20 Q Did you also begin to ask him about his whereabouts on May  
21 5th?

22 A Yes, sir.

23 Q Is it safe to assume that at this point in time Mr.  
24 Misskelley is a suspect?

25 A No, sir.



1 Q You mean to tell me you got him down to the police  
2 department, you are asking him where he was on May 5th, and he's  
3 not a suspect?

4 A That's correct. He was not a suspect at that point.

5 Q You were just bringing in everybody off the street and  
6 asking them these same questions?

7 A Brought in very many people off the street and asked them  
8 questions about their whereabouts and see if they could remember  
9 where they were on that date.

10 Q What happened if somebody said they couldn't remember? Did  
11 that mean they become a suspect?

12 A Not necessarily. No, sir.

13 Q Tell the jury what the basis of this cult stuff is. You  
14 received some information, I assume?

15 A Yes, sir. We received some information that a cult-like  
16 group existed.

17 Q Did you also receive information that Jessie had been to  
18 one of these meetings?

19 A Yes, sir.

20 Q Where was this meeting held?

21 A Somewhere in the area of Turrell, from what I understand.

22 Q Were you ever able to locate this spot?

23 A I was taken to a spot where it was supposed to have taken  
24 place, yes, sir.

25 Q Did you find any upside down crosses or any -- anything

1 that would suggest that this was a cult place or anything? Did  
2 you find anything there?

3 A No, sir.

4 Q Did that surprise you that you didn't find anything?

5 A No, sir.

6 Q Later on, Jessie in this story -- he tells you -- he tells  
7 you several people are in this cult with him?

8 A Yes, sir.

9 Q Were you able to confirm any of these people as being  
10 members of this cult?

11 A No, sir.

12 Q Did you ask these people?

13 A Yes, sir.

14 Q Did you find out some of these people were possibly enemies  
15 of his, people that he had conflicts with in the past?

16 A I wasn't aware that he had conflicts with them. No, sir.

17 Q Was there anything found at the crime scene to indicate  
18 there was any upside down crosses, carvings on a tree with six,  
19 six, six -- anything that would make this look like a cult  
20 killing?

21 A Sir, I'm not an expert on the cult type killings.

22 Q Didn't the police department receive some anonymous tips  
23 through "America's Most Wanted" or other tips anonymously that  
24 this was a cult killing?

25 A Yes, sir. We had received information to that effect.

1 Q So y'all were looking into that angle?

2 A Yes, sir.

3 Q So someone had told you that Damien was involved in this  
4 kind of stuff. Is that a correct statement?

5 A Yes, sir, it is.

6 Q So is it safe to assume that Damien was your prime suspect  
7 at this point, on June the third?

8 A He was one of several suspects, yes, sir.

9 Q Did you ever find any people who had ate dogs or skinned  
10 dogs with Jessie or cooked dogs -- like he said in his story  
11 that he told you?

12 MR. FOGLEMAN: Your Honor, I think that would  
13 call for the officer to draw a conclusion about  
14 whether or not somebody ate a dog or not. I don't  
15 think it's a proper question.

16 THE COURT: Rephrase your question. You might  
17 ask him did he ever find anything that he could  
18 confirm or -- you're asking him to speculate on what  
19 he did find. So rephrase your question.

20 BY MR. STIDHAM:

21 Q Did you find any confirmation whatsoever that there was a  
22 cult or Jessie was involved in a cult?

23 A Yes, sir.

24 Q What is that?

25 A A young man by the name of Ricky Climer in another state

1 that is separated from the group --

2 Q I don't want you to tell me what this person may have said  
3 because there may be an objection later on. But anybody else  
4 besides Mr. Climer?

5 A Yes, sir, there were other people talked to.

6 Q This information about this cult meeting in Turrell -- you  
7 didn't find anything there?

8 A No, sir, I didn't.

9 Q Did this person who told you about the meeting tell you  
10 about a certain individual who was there?

11 A Yes, sir.

12 Q What was that individual's name?

13 A A Michael Shawn Webb.

14 Q Have you ever been able to determine where this person is?

15 A No, sir, not yet.

16 Q Have you ever been able to determine whether or not he  
17 even exists?

18 A Yes, sir, he does exist.

19 Q But you don't know where he's at?

20 A I know that he's somewhere in Memphis.

21 Q You testified earlier in a different hearing that there was  
22 rumors in West Memphis that were running rampant that Damien was  
23 involved in these murders. Is that correct?

24 A There were murders that Damien was involved. Yes, sir.

25 Q Those were pretty common throughout West Memphis and

1 Marion?

2 A Yes, sir.

3 Q You stated that there was a time when you decided that it  
4 was important to turn on the tape recorder and record the  
5 information that Mr. Misskelley was giving you. Why didn't you  
6 record anything up that to point?

7 A It wasn't discovered he was a suspect until he said he was  
8 there at the time of the murders.

9 Q That is when you decided it was important to record all of  
10 it?

11 A Yes, sir.

12 Q Did you write down everything and every question you asked  
13 him prior to turning on the tape recorder?

14 A No, sir.

15 Q In other words, does your notes reflect everything?

16 A Everything? No, sir, it does not.

17 Q Can you remember everything that was asked and answered?

18 A Can't remember everything. No, sir.

19 Q Initially Mr. Misskelley denied any involvement whatsoever?

20 A Yes, sir, he did.

21 Q Did he also tell you he was roofing that day?

22 A Yes, sir, he did.

23 Q On June third did you make any attempt whatsoever to verify  
24 this?

25 A No, sir.

1 Q Prior to making any other arrests in this case, did you  
2 verify that?

3 A Before making other arrests? No, sir.

4 Q The photograph that was just introduced of one of the boy's  
5 bodies. That was shown to Jessie?

6 A Yes, sir.

7 Q This was immediately prior to him admitting and telling you  
8 the story about being present when the boys were killed?

9 A Shortly before. Yes, sir.

10 Q And also this business about the circle with the dots in  
11 the middle and the dots on the outside -- that happened right  
12 before he gave you the story about being present when the boys  
13 were killed?

14 A Yes, sir.

15 Q Also this little tape recorded message with the little  
16 boy's voice on there -- that was immediately before admitting he  
17 was present at the scene. Is that correct?

18 A Few minutes before.

19 Q Why did you do the circle? Why did you do the tape? Why  
20 did you show him the photograph --

21 MR. FOGLEMAN: Excuse me. Your Honor, Detective  
22 Ridge has testified that Inspector Gitchell did that.  
23 I think the appropriate person to ask why they did  
24 something would be Inspector Gitchell.

25 MR. STIDHAM: Judge --

1                   THE COURT:  If he knows why, I'm going to let him  
2                   testify, if you really want him to answer that  
3                   question.  I'm going to let him do that if he knows  
4                   why.

5  BY MR. STIDHAM:

6  Q     There had to be a reason for him to do that.

7  A     There are times when Jessie would not be talking.  He's  
8  getting slower with information.  He's telling us things that  
9  are just -- it is over and over the same thing.  Those  
10 techniques are used to evoke a response.

11 Q     So you did these things -- Inspector Gitchell did these  
12 things to invoke a response?

13 A     Yes, sir.

14 Q     Invoke a confession?

15 A     Evoke a response.  To keep him talking.

16 Q     Did it ever occur to you that Mr. Misskelley has a mental  
17 handicap?

18 A     No, sir, it didn't to me on that day.

19 Q     Do you have any special training in dealing with people  
20 with mental handicaps?

21 A     No, sir.

22 Q     Did it ever occur to you that this was going to scare him,  
23 showing him a picture of a body?

24 A     That it would scare him?  I don't know.  I guess you are  
25 scared into making a statement.  Yes, sir.

1 Q Did you think it was going to scare him when you drew this  
2 -- or when Inspector Gitchell drew this circle and made this  
3 diagram? Did you think that was going to scare him?

4 A Not to scare him, no, sir.

5 Q Did you think this little tape recorded statement with the  
6 little boy's eerie voice saying what it said -- did you think  
7 that would scare him?

8 A Yes, I thought that probably would scare him if he was  
9 involved.

10 Q You did that to invoke a response?

11 A Inspector Gitchell did that. Yes, sir.

12 Q Tell the jury about the circle.

13 A The circle?

14 Q Would you describe it, please?

15 A Just a circle drawn on a piece of paper. There are dots  
16 drawn on the piece of paper. It was shown to Mr. Misskelley.  
17 Then it was asked where on this circle he was. Was he inside  
18 with the people that everybody was looking for, was he outside?  
19 We asked him where was he.

20 Q And he replied, "I want out"?

21 A Yes, sir.

22 Q Officer Ridge, when you testified earlier that when he  
23 looked at the picture of the boy's body, he was fixated?

24 A Yes, sir.

25 Q Kind of frozen, just sat there and looked at it?



1 A Yes, sir.

2 Q Is that indicative of fear?

3 A I would think so. Yes, sir.

4 Q How long was Mr. Misskelley at the station house that day?

5 A That day from whenever he was picked up at 9:30, I guess,  
6 until he was arrested that day.

7 Q What time was he placed under arrest?

8 A As far as I'm concerned, he was under arrest when he  
9 confessed to these crimes.

10 Q When he said he was present and watched Damien and Jason do  
11 it?

12 A Yes, sir.

13 Q That is the point you considered him under arrest?

14 A Yes, sir.

15 Q Let's talk a little bit about what he told you. I guess  
16 you were real shocked because you testified at the earlier  
17 hearing that you were shocked when he told you that the little  
18 boys were killed at noon.

19 A Yes, sir.

20 Q Why did that shock you?

21 A I didn't feel that the murders took place at that time.

22 Q What evidence did you have before you to suggest that?

23 A There was a window of opportunity when the murders could  
24 have occurred, which we found between 6:30 on the fifth of May  
25 until approximately 1:30 the next morning when the bodies were

1 found on the sixth.

2 Q So you knew the boys were in school that day?

3 A Yes, sir.

4 Q And you also knew that there were eyewitnesses that placed  
5 them near their homes at 6:00 or 6:30?

6 A Near their homes. Yes, sir.

7 Q So you knew that the murders couldn't have happened at  
8 noon?

9 A Yes, sir.

10 Q Why didn't you ask Jessie about that on the tape?

11 A He was asked about that on the tape.

12 Q When -- I mean, later on?

13 A The tape of Inspector Gitchell.

14 Q The second tape?

15 A Yes, sir.

16 Q You were the one doing the interrogating on the first tape.

17 A Yes, sir.

18 Q Didn't you think it was important enough to go into that  
19 while you had the tape recorder on the first time?

20 A Yes, sir, it is all important. It was important that we  
21 keep him talking. When you start contradicting somebody, then  
22 they stop talking.

23 Q I guess you were also shocked when you learned that Jessie  
24 said the boys were tied up with a brown rope?

25 A Yes, sir.

1 Q You knew that wasn't true.

2 A I don't know that at some point they weren't tied up with a  
3 rope.

4 Q That is not the way the bodies were found, is it?

5 A No, sir.

6 Q After Jessie told you that he was present and watched  
7 Damien and Jason kill these three little boys, did you ever make  
8 an attempt to verify where he was at and what he had told you  
9 earlier?

10 A (NO RESPONSE)

11 Q About roofing that day or being home that afternoon?

12 A On that day we took the statement and everything he had  
13 told us, then we acted on it.

14 Q I guess you were pretty happy that he had given this  
15 statement?

16 A That's a fair judgment.

17 Q There was a lot of pressure on the police department to  
18 make an arrest, wasn't there?

19 A I'm not saying to make an arrest -- to solve the crime.

20 REDIRECT EXAMINATION

21 BY MR. FOGLEMAN:

22 Q This business about him -- about checking out his story --  
23 when you've got a person that is confessing a crime to you, do  
24 you just interrupt them in the middle of their confession and  
25 say, "Let me go out and check and see where you were that day,

1 see if you're telling us the truth." Is that correct -- do you  
2 do that?

3 A No, sir. You cannot do that.

4 Q Now later, well, first of all, what did he tell you about  
5 where he was that day?

6 A He said he had been roofing earlier that day and he had  
7 gotten off work.

8 Q At what time?

9 A He said five o'clock.

10 Q Did you check with the person he was doing the roofing for?

11 A Yes, sir, I did.

12 Q You talked to him?

13 A Yes, sir.

14 Q Did you find out Jessie wasn't telling you the truth about  
15 how long he had been working that day?

16 A Yes, sir.

17 Q What time did you find out he got off work?

18 A 12:30 that afternoon.

19 Q This business about the defendant being scared. Was it  
20 your perception that he was scared of you or scared of the  
21 situation he was finding himself in?

22 MR. STIDHAM: I object. That calls for  
23 speculation.

24 MR. FOGLEMAN: Your Honor, he's asked him about  
25 being scared. I think we ought to be allowed to

1           inquire into that.

2           MR. STIDHAM: Judge, I think it is obvious what  
3 he was scared of.

4           MR. CROW: It would call for speculation.

5           MR. FOGLEMAN: Your Honor, if that question calls  
6 for speculation, the question to Detective Ridge --

7           THE COURT: Gentlemen, you can argue -- each of  
8 you can argue your perception of the observation of  
9 the witness that he was scared, and I think that is a  
10 question of argument, and I'm going to let it go at  
11 that.

12 BY MR. FOGLEMAN:

13 Q       In regard to the circle when this circle was drawn, were  
14 there any particular number of dots inside or outside the  
15 circle?

16 A       There were dots all over the paper.

17 Q       Do you remember how many dots were inside the circle?

18 A       Not in particular. No, sir, I don't.

19 Q       Can you say whether it was -- you don't have any idea?

20 A       No, sir, I really don't know.

21 Q       Did you do that?

22 A       No, sir. Inspector Gitchell did that.

23 Q       In regard to Mr. Stidham's question in regard to confirming  
24 any of this satanic activity and eating dogs and that kind of  
25 stuff, were y'all ever directed to sites in the Lakeshore and

1 Highland Park area where animal carcasses were found?

2 A Yes, sir.

3 Q What type of graffiti was found in the same area?

4 A There were pentagrams, upside down crosses, writings,  
5 AC/DC.

6 Q Heavy metal type stuff?

7 A Yes, sir. All kind of symbols.

8 RE CROSS EXAMINATION

9 BY MR. STIDHAM:

10 Q You're talking about Stonehenge, right?

11 A I'm talking about several different areas close to  
12 Lakeshore.

13 Q How do you know this isn't a bunch of kids getting  
14 together, playing loud music and drinking beer?

15 A I don't know that.

16 REDIRECT EXAMINATION

17 BY MR. FOGLEMAN:

18 Q Were you expecting to find a bunch of animal carcasses  
19 around if it's just a bunch of kids drinking beer and playing  
20 loud music?

21 A I wouldn't think so. No, sir.

22 Q On these people that Jessie identified as possibly being  
23 involved, would you expect for any of them to admit that they  
24 had been involved in eating dogs?

25 A No, sir.

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## REXCROSS EXAMINATION

BY MR. STIDHAM:

Q Did you find out anything from talking to these people that would indicate they were being deceptive with you when you asked them about cult activities?

A That they were being deceptive?

Q Yes.

A Just that they denied being a member.

Q Did you have reason to disbelieve them?

A No, sir.

Q So you can't prove that any of those people that he said were in the cult were in the cult, can you?

A No, sir. I can't prove that.

## REDIRECT EXAMINATION

BY MR. FOGLEMAN:

Q I neglected to ask you something. In regard to State's Exhibit 95, when did you recover those shoes from Buddy Lucas?

A On 6-10-93.

Q June the 10th?

A Right.

Q I want to show you what I have marked for identification as State's Exhibit 78 and 79 and ask if you recognize those photographs?

A (EXAMINING) Yes, I do.

Q When were those photographs taken?

1 A In Lieutenant Hester's office at the police department on  
2 6-3-93.

3 Q Do those fairly and accurately portray the defendant as he  
4 appeared on the date of his arrest?

5 A Yes, they do.

6 MR. FOGLEMAN: Your Honor, we would offer State's  
7 Exhibits 78 and 79.

8 MR. STIDHAM: We object. These don't fairly and  
9 accurately depict the way he appeared May 5th.

10 THE COURT: If the witness testified that is the  
11 way he appeared on the day of his arrest, it will be  
12 received for that purpose. You may exhibit to the  
13 jury.

14 (STATE'S EXHIBITS 78 AND 79 ARE RECEIVED IN  
15 EVIDENCE)

16 (WITNESS EXCUSED)

17 GARY GITCHELL

18 having been first duly sworn to speak the truth, the whole truth  
19 and nothing but the truth, then testified as follows:

20 DIRECT EXAMINATION

21 BY MR. FOGLEMAN:

22 Q Will you please state your name and occupation?

23 A Gary Gitchell. I'm the inspector for the West Memphis  
24 Police Department Criminal Investigation Division.

25 Q How long have you been with the West Memphis Police



1 Department?

2 A Nineteen and a half years.

3 Q Inspector Gitchell, I want to direct your attention to June  
4 third, 1993. On that date did you have occasion to have a  
5 conversation with the defendant Jessie Misskelley, Junior?

6 A Yes, sir, I did.

7 Q Was that -- who was present when you had this conversation?

8 A Myself and Detective Ridge.

9 Q Approximately what time did you begin talking to him?

10 A That was approximately 12:40 P.M.

11 Q During the course of your conversation with this defendant,  
12 initially were you doing anything to preserve the conversation  
13 yourself?

14 A No, sir.

15 Q Was Detective Ridge?

16 A No, sir. Not that I know of. He may have been taking some  
17 notes.

18 Q Why were you not taking notes at that time?

19 A When I talk with someone, I usually do not like to for the  
20 purpose I like to key on and be able to listen and have my  
21 complete attention as to the conversation.

22 Q During the course of this conversation, was there -- let me  
23 ask you, was there a photograph shown to the defendant?

24 A Yes, sir.

25 Q Was there a small portion of a tape played for the

1 defendant?

2 A Yes, sir, there was.

3 Q Was there something about a circle?

4 A Yes, sir.

5 Q Was that done before or after you started tape recording?

6 A That was before we started tape recording.

7 Q Do you recall the sequence of what took place when?

8 A During Detective Ridge and I's conversation with Mr.  
9 Misskelley, there was a, I believe, I hope this is right. There  
10 was the diagram which I did and then the picture and then the  
11 tape.

12 Q Were they one behind the other or were there things in  
13 between?

14 A There was some in between from -- the diagram was the first  
15 thing. Then some time passed and then there was the picture.  
16 Just a few minutes passed from that point to the tape.

17 Q On the diagram describe for the jury what this was, this  
18 diagram.

19 A I'm assuming a lot of people may be familiar with a term,  
20 "straddling the fence." And that was sort of along the lines  
21 that I was thinking. When talking to someone that you do not  
22 feel is telling you the complete truth, "Quit straddling the  
23 fence. Be on one side of it or the other."

24 I did something a little different insomuch as I drew a  
25 circle, and I had several dots within that circle and several

1 dots outside, and I asked which side is he going to be on. On  
2 the outside or inside.

3 Q Who is inside the circle?

4 A No one in particular, no one named. But I indicated that  
5 law enforcement was on the outside of the circle.

6 Q In general what was on the inside?

7 A In general, just who was responsible for these crimes.

8 Q When you did this diagram, did you say these dots inside  
9 represent a particular named individual or individuals?

10 A No, sir.

11 Q What did you do with the circle and the dots?

12 A You mean afterwards? Just pretty much like I did then.  
13 Just did it on a piece of paper and that was it. And of course  
14 showed that to Jessie because he was right there.

15 Q When you showed it to him, what did you do?

16 A He immediately said he wanted to be on the outside of the  
17 circle with the law enforcement.

18 Q Then I take it you had some more conversation?

19 A Yes, sir.

20 Q Then what took place?

21 A A short time later is when I stepped out of the room.

22 Q Is that when you got the picture?

23 A Yes. I stepped out of the office that we were talking to  
24 Jessie in and got this picture and also I remembered a recording  
25 of a phrase, just only a phrase, probably a four to five second

1 phrase within that recorded statement, that I wanted to play for  
2 Jessie.

3 Q The voice on this tape, without naming names, how old a  
4 person was this?

5 A Eight years old.

6 Q Are you aware of whether or not the defendant knew the  
7 person whose voice it was?

8 A Information that we had was that he is familiar with the  
9 eight-year-old boy.

10 Q When you came back in the room -- I want to show you  
11 State's Exhibit 76 and ask if you recognize that?

12 A (EXAMINING) Yes, sir. This is the photograph that I showed  
13 Jessie. It has the number three on the front of the photograph  
14 and on the back it is number 107.

15 Q What was the response to the photograph?

16 A When I showed Jessie this photograph, he took it into his  
17 hand, and he just went back in his chair like this, and he just  
18 locked in on it, fixed in on the photograph, just kept staring  
19 at it. I could tell that he was -- I didn't know how long he  
20 was going to do that so I took it from his hand and set it on  
21 the table that we were working on.

22 Q Then what happened?

23 A Briefly just few minutes after that -- of course, I had the  
24 tape which I do have that tape with me at this time, and I  
25 played the small portion of the tape.

1 MR. FOGLEMAN: We would ask permission to play  
2 the portion of the tape.

3 THE COURT: You may be permitted to do so.

4 (TAPE BEING PLAYED)

5 BY THE WITNESS:

6 A Should I do that again?

7 Q I think so.

8 (TAPE BEING PLAYED)

9 BY MR. FOGLEMAN:

10 Q What did he say for the jurors who didn't catch it?

11 A He said, "Nobody knows what happened but me."

12 Q And when you played this tape, what was the defendant's  
13 response?

14 A He immediately stated that he wanted to tell us about it at  
15 that point.

16 Q At some point thereafter, did Detective Ridge leave the  
17 room?

18 A Yes, sir, he did.

19 Q While Detective Ridge was out of the room, what took place?

20 A At that point Jessie indicated to me that he was present  
21 during the time that the boys were murdered.

22 Q Had there been some statement -- or what statements, if  
23 any, did the defendant make in your presence about having been  
24 at the scene?

25 A He had stated earlier that he had been at the scene, that

1 -- also that he had gone back to the scene.

2 Q "Gone back." Were those his words?

3 A Yes.

4 Q Did he say that before or after he admitted being there  
5 when it took place?

6 A That may have been before. It does get a little confusing  
7 even for me.

8 Q What did he say about when he went back to the scene?

9 A That he went out into the woods where this occurred, the  
10 murders, and he sat down and cried.

11 Q After he admitted to you that he had been there -- I may be  
12 jumping ahead of myself. Tell me again what he said to you  
13 while Detective Ridge was out of the room.

14 A That he was present when the boys were murdered.

15 Q After he admitted to you that he was present, what was the  
16 defendant's response?

17 A Basically I stopped him at that point and then I wanted to  
18 make sure -- it was obvious at this time we had more than just a  
19 person that we were trying to get information from as to other  
20 parties. It was obvious to us that we had a person here that  
21 was involved.

22 Q Was there any kind of emotional response?

23 A From Jessie?

24 Q Yes.

25 A Yes. He was emotionally upset. You could tell that. It

1 was an emotional time for myself also.

2 Q When you said he was emotional, what told you that?

3 A He had tears coming down his eyes.

4 Q Had y'all yelled at him or been mean to him or threatened  
5 him or promised him, did any of those things?

6 A None of those things happened whatsoever.

7 Q After he admitted to being there, what did you do in order  
8 to preserve the conversation?

9 A I instructed Detective Ridge -- I went out of the room and  
10 said, "We need to get a tape recorder," which this is  
11 (INDICATING) the identical tape recorder that was used.

12 The tape recorder was brought into the room. Myself and  
13 Detective Ridge -- at that point we advised him of his rights  
14 for the third time that day.

15 Q I want to hand you what I've marked for identification as  
16 State's Exhibit 75A and ask if you can identify that?

17 A (EXAMINING) Yes, sir. This is a typed transcript of that  
18 taped interview.

19 Q Does that transcript fairly portray what is said on the  
20 tape?

21 A Yes, sir.

22 MR. FOGLEMAN: Your Honor, we would offer 75A and  
23 we would --

24 BY MR. FOGLEMAN:

25 Q Do you have the tape, too, by the way?

1 A Yes, sir. I believe it's on your table.

2 Q Let me show you what is marked State's Exhibit 75 and ask  
3 if you can identify that?

4 A (EXAMINING) This package is one in which I did fill the  
5 information out on this package. It has the date on it, the  
6 case file number, Jessie Misskelley, Junior, stating that this  
7 is the original tape, and it has Ridge and Gitchell as the  
8 interviewers of that and this tape is also marked on the  
9 outside.

10 Q Is that the tape of your conversation from the time that  
11 Jessie first admitted that he was present up until there was a  
12 break?

13 A Yes, sir.

14 MR. FOGLEMAN: Your Honor, we would offer State's  
15 Exhibit 75.

16 THE COURT: It may be received.

17 (STATE'S EXHIBIT 75 IS RECEIVED IN EVIDENCE)

18 MR. FOGLEMAN: Did I offer 75A?

19 MR. STIDHAM: That's just the front page of the  
20 transcript.

21 MR. FOGLEMAN: That's the entire transcript.

22 MR. STIDHAM: You're going to introduce the  
23 entire transcript?

24 MR. FOGLEMAN: To aid and assist the jury as they  
25 listen along. I've got copies for them all.



1 MR. STIDHAM: Your Honor, may we approach the  
2 bench?

3 (THE FOLLOWING CONFERENCE WAS HELD AT THE BENCH  
4 OUT OF THE HEARING OF THE JURY)

5 MR. STIDHAM: Your Honor, first of all, we want  
6 to object to the statement being introduced into  
7 evidence because we think it is involuntary.

8 THE COURT: You have already made that objection.

9 MR. STIDHAM: We want to make sure we don't waive  
10 it.

11 THE COURT: You're not waiving it. I'm going to  
12 allow you to do it in the manner which you -- you're  
13 going to have to collect the copies, and one copy will  
14 be received in evidence.

15 (STATE'S EXHIBIT 75A IS RECEIVED IN EVIDENCE)

16 (RETURN TO OPEN COURT)

17 (TAPE BEING PLAYED)

18 BY MR. FOGLEMAN:

19 Q Inspector Gitchell, in the tape there is a place where  
20 there's some reference to some pictures from a newspaper?

21 A Yes, sir.

22 Q What was going on then?

23 A He was naming or attempting to name the boys as far as the  
24 injuries and at that point we had a picture that was, I believe,  
25 either on the wall or on the table. It was a copy of a

1 newspaper article. I don't recall which paper, but I believe I  
2 retrieved that and possibly the court reporter has that picture.

3 Q Anyway, what did you do with it?

4 A He was pointing out which boys and which one had done what  
5 damage to the boys.

6 Q I noticed on the tape that Detective Ridge said something  
7 -- asked something about which boy did he hit and he picked the  
8 third picture and he said, "Michael" --

9 A Yes. He was pointing to the one. He'd say, "The third one  
10 or this one." He was pointing to them. That is why Detective  
11 Ridge went ahead and after he pointed out those names, he read  
12 the caption underneath the picture at that time.

13 Q What I'm referring to is after he's -- this may be before  
14 he read the caption. Detective Ridge referred to the newspaper  
15 article and asked, "Which one of the three boys is it you say  
16 Damien hit?"

17 He says, "The third picture," which would be Michael. And  
18 you say, "This boy right here?" He says, "Yes." You say, "That  
19 is Byers."

20 What was happening there?

21 A He named one boy but I believe he named the incorrect boy  
22 as far as their names. He picked out the right boy who was  
23 castrated. He picked out the right boy, but he called him by  
24 the wrong name.

25 Q Let me hand you -- do you recognize that?

1 A (EXAMINING) Yes, sir. This is the photostatic copy that I  
2 mentioned.

3 Q I want to refer you to page four of the transcript of  
4 Exhibit 75A. This is before we get to the part about the  
5 castration. If you would, read that over to yourself.

6 A (EXAMINING) Okay.

7 Q I note that apparently Steve was in the middle. Is that  
8 correct?

9 A That's correct.

10 Q What was going on with -- in that particular sequence right  
11 there?

12 A What he mentioned was, he said, "the third boy." You count  
13 one, two, three. He mentioned a third boy and pointed to  
14 (INDICATING) this boy. That was in response to the question,  
15 "Of the three boys you said Damien hit," and he points to the  
16 Byers boy. At that point that is when I wrote "first" and then  
17 "Damien" above that picture and then he went on through.

18 MR. FOGLEMAN: Your Honor, I suppose we ought to  
19 make that an exhibit.

20 THE COURT: All right. It may be received.

21 MR. FOGLEMAN: For the record it will be State's  
22 Exhibit 105 on the gray sticker.

23 (STATE'S EXHIBIT 105 IS RECEIVED IN EVIDENCE)

24 BY MR. FOGLEMAN:

25 Q When the defendant is telling you about these injuries, is

1 he gesturing in any way or demonstrating anything?

2 A Yes, sir. In particular about the Chris Byers when we  
3 asked where he was cut, and that point he was pointing like here  
4 (INDICATING) pointing to himself, and that is where it is hard  
5 to see someone pointing on cassette tape. So that's why we  
6 mentioned, "Are you speaking of the groin area?"

7 Q Is that after he said, "at the bottom"?

8 A Yes, sir.

9 Q What time did this tape recorded session end?

10 A It was completed at 3:18 P.M.

11 Q After the tape recorded session ended at 3:18 P.M., did a  
12 period of time elapse and then you went back and talked to the  
13 defendant some more?

14 A Yes, sir, it did.

15 Q Let me ask you this: Between the time -- was the follow-  
16 up conversation recorded also?

17 A Yes, sir, the follow-up was.

18 Q Between the time when you ended at 3:18 and you started the  
19 follow-up, did you have any conversation with the defendant that  
20 was not tape recorded?

21 A No, sir, I did not.

22 Q In the tape also there was some reference to him going out  
23 with a cam corder and showing things. Why was that not done?

24 A During that time there was a very large media coverage of  
25 the area, of the police department. Many times my investigators

1 would go out, and they were pretty much followed. So for  
2 security of the case, we felt it would be better not to take  
3 Jessie to that location because we knew he would be seen, and  
4 that could hinder any chances on making arrests of other  
5 suspects.

6 Q Also the defendant mentions Jason Baldwin and the clothes  
7 he was wearing. I want to show you State's Exhibit 99 and ask  
8 if you can identify that?

9 A (EXAMINING) Yes, sir. This is a picture of Jason Baldwin.

10 Q Does it fairly and accurately portray the defendant at the  
11 time of his arrest?

12 A Yes, sir, I took that picture.

13 MR. FOGLEMAN: Judge, we would offer State's  
14 Exhibit 99.

15 MR. STIDHAM: Judge, I don't think it is  
16 relevant.

17 THE COURT: Overruled.

18 MR. STIDHAM: What did it fairly and accurately  
19 depict?

20 MR. FOGLEMAN: The defendant Jason Baldwin's  
21 appearance at the time of his arrest.

22 MR. STIDHAM: Your Honor, what does that have to  
23 do with this case?

24 MR. FOGLEMAN: The defendant has said, your  
25 Honor, that Jason Baldwin was one of the people

1 involved and I think the jury ought to be able to see  
2 his appearance.

3 THE COURT: I allowed it in evidence.

4 (STATE'S EXHIBIT 99 IS RECEIVED IN EVIDENCE)

5 THE COURT: Don't question me again.

6 MR. STIDHAM: Your Honor, I never got a chance to  
7 respond.

8 THE COURT: If you want to state an objection,  
9 I'll allow that, but don't ask me to respond to a  
10 ruling. All right?

11 MR. STIDHAM: Yes, your Honor.

12 THE COURT: Do you want to make an objection?

13 MR. STIDHAM: I'd like to make an objection for  
14 the record.

15 THE COURT: All right.

16 MR. STIDHAM: Your Honor, he asked -- the  
17 statement that Mr. Misskelley gave -- the question was  
18 what was he wearing on May 5th. What he is wearing on  
19 June 5th, the date of his arrest, has no relevancy  
20 whatsoever -- and I wasn't trying to be improper to  
21 the Court. I never got a chance to respond before  
22 your Honor admitted it.

23 THE COURT: Approach the bench.

24 (THE FOLLOWING CONFERENCE WAS HELD AT THE BENCH  
25 OUT OF THE HEARING OF THE JURY)

1 THE COURT: The relevancy of the picture is not  
2 -- I didn't understand him to say what he was wearing  
3 on June the 5th. Is that what you said?

4 MR. FOGLEMAN: No. In the tape he says what was  
5 he wearing --

6 THE COURT: -- and then you asked him to identify  
7 that picture, and he said that is what he was wearing  
8 on the date of his arrest. Is that the way it went?

9 MR. STIDHAM: That's what I was trying to do,  
10 your Honor.

11 THE COURT: The relevancy should be quite obvious  
12 that if it corroborates what Jessie said in his  
13 statement, then it is some relevant evidence as to  
14 what the boy was wearing, clothing of a similar nature  
15 and type. Also, it could be relevant as to -- I think  
16 I know what you're getting at. It's something that --

17 MR. STIDHAM: Your Honor, may we retire to  
18 chambers?

19 (RETURN TO OPEN COURT)

20 THE COURT: Ladies and gentlemen, you may stand  
21 in recess for five to ten minutes.

22 (THE FOLLOWING CONFERENCE WAS HELD IN CHAMBERS)

23 THE COURT: Let the record reflect that this is a  
24 hearing out of the presence of the jury with the  
25 defendant present.

1 THE COURT: Dan, I --

2 MR. STIDHAM: Your Honor, before you speak, may I  
3 make a motion?

4 THE COURT: Sure, but I want to say one thing.  
5 You were questioning the Court and demanding that I  
6 make some explanation as to a ruling that the Court  
7 had attempted to make which would have required the  
8 Court, had I chosen to respond to your challenge, to  
9 comment on the evidence. That is the reason that I  
10 mentioned to you don't question me on it because by  
11 doing that, one, you are challenging the Court's  
12 ruling and, two, you are forcing the Court, if I felt  
13 the need to respond, to comment on the evidence and I  
14 can't do that, obviously.

15 I understand what you're trying to do and I'm  
16 going to let you -- anytime you want to make an  
17 objection, I'm going to let you make that objection  
18 and I'm going to let you amplify it and clarify it.  
19 I've never failed to do that so if you want to make an  
20 objection, let's do it.

21 MR. STIDHAM: Your Honor, I know it's been a long  
22 day, but I'd like to make a motion for a mistrial  
23 because of the way I was admonished in front of the  
24 jury. I think it was a clear comment that I had done  
25 something improper, which I submit that I had not.



1 Your Honor made a ruling before I ever had a chance to  
2 make an objection. If your Honor felt I was acting  
3 improper, it would have been best to bring me back to  
4 chambers and --

5 THE COURT: I agree that it would have been best  
6 if I had brought you back to chambers, but I'm going  
7 to deny your motion for a mistrial.

8 MR. STIDHAM: It makes it look like I can't stand  
9 up and object and protect my client's interest --

10 THE COURT: No, no --

11 MR. STIDHAM: -- if I can't stand up and speak.

12 THE COURT: I disagree with that. In fact I have  
13 never done that. We're back in chambers now. You can  
14 make your objection.

15 MR. STIDHAM: Your Honor wants me to make my  
16 motion again with regard to the photograph?

17 THE COURT: Yes. Sure.

18 MR. STIDHAM: The Court has denied my motion for  
19 a mistrial?

20 THE COURT: Yes.

21 MR. STIDHAM: Your Honor, with regard to the  
22 photograph, my objection was that Mr. Fogleman asked  
23 the witness -- or the taped statement suggested that  
24 Mr. Misskelley was describing to the interrogator what  
25 Mr. Baldwin was wearing on the date, May 5th. Mr.

1 Fogleman asked the witness if this was a fair and  
2 accurate depiction of what Mr. Baldwin looked like on  
3 the date of the arrest, which is June the third. My  
4 objection is what is the relevance of that photograph  
5 when --

6 THE COURT: You made the objection, "What is the  
7 relevancy to that photograph," and I overruled your  
8 objection and allowed it. Then you started  
9 questioning the Court's ruling.

10 MR. STIDHAM: Your Honor, I never had an  
11 opportunity to say anything before you allowed it to  
12 come into evidence.

13 THE COURT: You had made your objection. I had  
14 ruled, and then you started questioning it.

15 MR. STIDHAM: That was not my intent.

16 THE COURT: I understand it, and I'm not upset  
17 about it. I agree I hardly ever say anything to any  
18 lawyer unless it is in the back room. The way you  
19 were doing it, Dan, I couldn't do anything other than  
20 say, "Don't question my ruling."

21 MR. STIDHAM: Your Honor, I meant no contempt.

22 THE COURT: I understand that, and I'm not taking  
23 offense. Let's move on to the real issue if you are  
24 raising the question of relevancy of the photograph.

25 MR. STIDHAM: Yes, your Honor. I don't think it

1 is relevant, especially with the foundation that was  
2 laid for its admission.

3 THE COURT: Well, you can cross examine him on  
4 when the photograph was taken. I thought it was clear  
5 that it was tendered as a photograph of Baldwin at the  
6 time of his arrest, June --

7 MR. FOGLEMAN: Third or fourth.

8 THE COURT: -- whatever it was. I thought that  
9 was the way the question was proffered to the witness.  
10 And the relevancy of it -- there are a multitude of  
11 reasons why it is relevant. We just listened to a  
12 long description of what all three of them were  
13 wearing on the day that it happened. It was similar  
14 type clothing. There was some reference about, "Do  
15 you wear black," or something. It is also relevant to  
16 that, and I also suspect that the picture is being  
17 offered for other reasons.

18 MR. STIDHAM: Your Honor, he didn't say what his  
19 reasons were. All he did was -- he attempted to  
20 mislead the jury --

21 (MR. STIDHAM, MR. FOGLEMAN AND THE COURT SPEAKING  
22 AT THE SAME TIME - UNINTELLIGIBLE)

23 MR. STIDHAM: -- I'm not accusing you of  
24 intentionally misleading the jury. What I'm saying is  
25 the way that the offer was made for the introduction.

1 was it made it sound like that was the clothes he was  
2 wearing on the night of May 5th.

3 THE COURT: I didn't take it that way.

4 MR. STIDHAM: That is exactly the way I took it,  
5 and his Honor ruled on it so quickly I never had a  
6 chance -- perhaps I should have asked to come to the  
7 bench. My concern is now, your Honor, in the eyes of  
8 the jury I'm a rogue --

9 THE COURT: I don't think so.

10 MR. STIDHAM: -- And that I'm rude and crude to  
11 the Court, and I'm afraid it's prejudiced my client's  
12 chance for a fair trial.

13 THE COURT: I don't think that it has and that  
14 motion is denied. You want me to go back and tell  
15 them I think you are a nice guy?

16 MR. CROW: No, your Honor.

17 THE COURT: I'll be glad to do it. You want me  
18 to go back and say --

19 MR. STIDHAM: Your Honor, I'm not sure any  
20 instruction to the jury can cure that problem.

21 THE COURT: I think so.

22 MR. CROW: I don't want an instruction, your  
23 Honor.

24 THE COURT: A mistrial is a drastic remedy, and I  
25 am not prepared to grant a mistrial at this time but

1 don't challenge the Court's rulings. If I'm wrong,  
2 then appeal it.

3 MR. STIDHAM: Your Honor, that's not -- that  
4 wasn't my intention.

5 THE COURT: It sure was. You repeated it two or  
6 three times.

7 MR. STIDHAM: In fact Mr. Fogleman and I were in  
8 a rapport, and I thought your Honor was going to make  
9 a ruling after we were discussing the relevancy.

10 THE COURT: Maybe I didn't see it the way it  
11 happened, but my observation was he offered it. You  
12 made an objection as to relevancy, and I overruled it  
13 and allowed it, and then you kept challenging me while  
14 seated, I might add, as to what is the relevancy,  
15 three or four times, and that is what happened.  
16 That's why we are here.

17 I understand that the appearance of all three of  
18 these boys could very well be relevant to anybody that  
19 might have seen them, and I think that it is relevant.  
20 The way they looked at the time of their arrest is  
21 relevant.

22 Anything else?

23 MR. CROW: No, your Honor.

24 THE COURT: Are you not going to have another  
25 witness that purports to have seen them -- you raised

1 that, Paul, on some motion you raised about Damien  
2 being seen with his girlfriend?

3 MR. FORD: That's correct.

4 THE COURT: Also in this statement -- I might be  
5 confusing it with this statement and something else  
6 y'all brought up in this case -- but something about  
7 somebody with sandy hair --

8 MR. FORD: The description was Damien and his  
9 girlfriend, Domini Teer, and Domini Teer has red hair.  
10 I've never seen her, but I understand it's kind of  
11 fire engine red.

12 THE COURT: I don't know but I'm assuming that  
13 the appearance of this young man could be similar in  
14 stature and hair color as the girlfriend. If that is  
15 the case, it is extremely relevant based upon your  
16 objection. That was what was in my mind at the time I  
17 allowed it to be received.

18 MR. FORD: I realize that that was something that  
19 took place at a previous hearing. I agree. There's  
20 been some argument to the Court about whether or not  
21 the witness is mistaken in her identity of Domini  
22 versus Jason.

23 THE COURT: So it's relevant for that purpose. I  
24 might be anticipating what will be introduced, but I  
25 have already heard it from you so I have got to

1 anticipate to some extent, and it's relevant certainly  
2 for that purpose of confused identity or mistaken  
3 identity.

4 MR. FOGLEMAN: That's correct.

5 THE COURT: And, Dan, if I owe you an apology,  
6 I'll certainly apologize to you, but it certainly  
7 appeared to the Court that you were challenging the  
8 Court's ruling.

9 MR. STIDHAM: I was just trying to set the record  
10 for appeal, Judge. The courts have ruled if you don't  
11 state specific objections --

12 THE COURT: I don't ever have a problem with you  
13 making an objection. Just stand up and say, "I  
14 object." And I thought that you had stated your  
15 objection as to relevancy and I overruled it. Then  
16 you kept on saying, "What is the relevancy," demanding  
17 that I reply to you which would require the Court to  
18 comment on the evidence and which is totally and  
19 completely inappropriate.

20 MR. STIDHAM: I was referring to Mr. Fogleman --

21 THE COURT: You were looking at me and saying,  
22 "What is the relevancy," and you said it more than  
23 once. I'll be happy to go out and tell the jury if I  
24 admonished a lawyer in their presence, that I was  
25 wrong. To my knowledge, I've never done that. But

1 the way you did it just caused that response to come  
2 from me, and I don't like to do that. I like you. I  
3 think you are doing a good job in this case.

4 (RETURN TO OPEN COURT)

5 REDIRECT EXAMINATION

6 BY MR. FOGLEMAN:

7 Q After you ended the tape at 3:18, at some point later was I  
8 summoned to the police department?

9 A Yes, sir.

10 Q After I got there, at my request did you have some further  
11 conversation with the defendant?

12 A Yes, sir, I did.

13 Q Was this conversation tape recorded as well?

14 A Yes, sir, it was.

15 Q I want to show you what is marked for identification as  
16 State's Exhibit 77 and ask if you can identify that?

17 A (EXAMINING) Yes, sir. This is the envelope which I marked  
18 "Jessie Misskelley," showing that this is a follow-up tape taken  
19 after the first confession.

20 Q I want to show you what I've marked for identification as  
21 State's Exhibit 77A and ask if you can identify that?

22 A (EXAMINING) Yes, sir. This is a transcript of that tape.

23 MR. FOGLEMAN: Your Honor, we would offer State's  
24 Exhibits 77 and 77A and ask permission to play the  
25 tape and distribute copies of the transcript to the



1 jury.

2 THE COURT: It may be received, and you will be  
3 permitted to play the tape and distribute copies of  
4 the transcript to the jury.

5 (STATE'S EXHIBITS 77 AND 77A ARE RECEIVED IN  
6 EVIDENCE)

7 (TAPE BEING PLAYED)

8 BY MR. FOGLEMAN:

9 Q Inspector Gitchell, when Jessie said -- after you had asked  
10 him about how they would force them to do this -- and he said,  
11 "He was holding him like this by his head like this and stuff,"  
12 was Jessie doing anything to demonstrate?

13 A Yes, sir. He was demonstrating to me they were holding the  
14 boys by their ears and forcing oral sex.

15 Q That is the way he was showing you?

16 A Yes, sir. By the ears and pulling down.

17 Q In the tape there's obviously places where you stopped the  
18 tape recorder. What happens then?

19 A I stopped the tape to walk out of the room to confer with  
20 you.

21 Q From the time you first started taping any of the  
22 conversations with Jessie at 2:44 P.M. until you completed the  
23 follow-up conversations with him, were there any conversations  
24 that you and anybody else had with the defendant that were not  
25 tape recorded?

1 A No, sir. We did not talk with him whatsoever.

2 Q Between the time that the original tape ended at 3:18 --  
3 first of all, approximately what time did the follow-up  
4 conversations begin?

5 A It was probably around five, maybe a little bit before.

6 Q Between 3:18 and 5:00 what were you and your men doing?

7 A I had ordered food for everyone, and I believe Jessie was  
8 also eating himself.

9 Q Were you doing anything else?

10 A We were in preparation for getting papers together, copies  
11 for getting affidavits and warrants.

12 MR. FOGLEMAN: That's all I have, your Honor.

13 THE COURT: You asked to reserve your cross  
14 examination until tomorrow morning?

15 MR. STIDHAM: That's correct.

16 THE COURT: I'll permit that.

17 (WITNESS EXCUSED)

18 MR. FOGLEMAN: Are we going to call that other  
19 witness now?

20 MR. STIDHAM: I'll leave that up to the Court.

21 THE COURT: If y'all didn't have any objection, I  
22 was going to do that as long as you can assure me it  
23 can be done in ten or fifteen minutes.

24 MR. FOGLEMAN: I think it can. Do you expect  
25 your cross examination to be long?

1 MR. STIDHAM: No.

2 THE COURT: You know who the witness is?

3 MR. STIDHAM: I believe so, your Honor. I would  
4 note for the record our previous objections to this  
5 witness.

6 THE COURT: I don't remember them. You'll have  
7 to come and tell me.

8 (THE FOLLOWING CONFERENCE WAS HELD AT THE BENCH  
9 OUT OF THE HEARING OF THE JURY)

10 MR. FOGLEMAN: It's to relevance since it  
11 involves Damien. It's the thing about corroboration  
12 and the objection they had to relevance.

13 THE COURT: Well, you've got to place, if you  
14 can, Damien and Jason at the scene or near the scene  
15 of the crime, and that corroborates the confession.

16 MR. CROW: That's our understanding of the  
17 Court's ruling. We object to it.

18 THE COURT: All right. And, please, if you want  
19 to object, just be sure you announce, "I object," and  
20 then I'm going to let you have an opportunity -- they  
21 tell me I might have cut you off early, Dan. If I  
22 did, I'm willing to tell the jury that I cut you off  
23 too quick if you want me to.

24 MR. CROW: I think it might do more harm than  
25 good.

1 THE COURT: Well, it might.

2 MR. STIDHAM: Thank you, your Honor.

3 (RETURN TO OPEN COURT)

4 TABITHA HOLLINGSWORTH

5 having been first duly sworn to speak the truth, the whole truth  
6 and nothing but the truth, then testified as follows:

7 DIRECT EXAMINATION

8 BY MR. FOGLEMAN:

9 Q Tabitha, would you state your name and where you live for  
10 the ladies and gentlemen of the jury?

11 A My name is Tabitha Hollingsworth, and I live in Marion.

12 Q What part of Marion do you live in?

13 A Lakeshore.

14 Q Okay, the best you can you need to speak up. Are you  
15 scared?

16 A (NO RESPONSE)

17 Q Don't be scared. How old are you, Tabitha?

18 A Seventeen.

19 Q I want you to go back to May the 5th. Do you remember  
20 going with your mom and some other family members that night?

21 A Yes.

22 Q Where did you all go?

23 A We was going to pick my grandmother up from work and take  
24 her home.

25 Q All right. And where does she work?

- 1 A She works at a laundromat in West Memphis.
- 2 Q How do you go to get where your grandmother is?
- 3 A We go down by Love's and the Blue Beacon.
- 4 Q Do you go on the interstate or the service road?
- 5 A Interstate.
- 6 Q All right. And who all was in the car with you?
- 7 A It was me, my dad, my brother, my sister. We was all in  
8 the car.
- 9 Q Do you remember about what time this was?
- 10 A About 9:30.
- 11 Q And on the way to get your grandmother, did you see  
12 somebody that you knew?
- 13 A Yes.
- 14 Q Who did you see?
- 15 A I seen Damien and Domini walking.
- 16 Q All right. Who is Domini?
- 17 A Domini Teer lives out there where I do.
- 18 Q What does she look like?
- 19 A She's got red hair. It's long.
- 20 Q Okay. And that night what was Damien wearing?
- 21 A He was wearing black pants and a black shirt.
- 22 Q What color clothes was Domini wearing?
- 23 A She was wearing some black pants that kind of had flowers  
24 on them.
- 25 Q Okay, and what about a shirt?

1 A Black.

2 Q Was there anything about her pants? What was the condition  
3 of the pants?

4 A It had holes above the knees.

5 Q What about the condition of the clothes of both of them?

6 A They -- they was kind of muddy.

7 Q And where did you see them?

8 A Beside Blue Beacon. They was right before you get there --  
9 they was walking.

10 Q They was where now?

11 A They was right beside Blue Beacon.

12 (WITNESS EXCUSED)

13 THE COURT: All right, ladies and gentlemen, with  
14 the usual admonition not to discuss the case, you may  
15 stand in recess until 9:30 in the morning.

16 (ADJOURNMENT)

17 CORNING, ARKANSAS, JANUARY 28, 1994, AT 9:30 A.M.

18 THE COURT: Let me make an announcement to the  
19 media. I've been informed that one of the papers  
20 carried a photograph of a witness who had requested  
21 not to be photographed or depicted on live coverage  
22 that also included the jury. I'm considering a rather  
23 substantial fine. I'm asking you not to do that  
24 again. The jury is not to be photographed under any  
25 circumstances, and I sure don't like it placed in the