

1 something to do with castration type injuries?

2 A Yes, sir. subsequent to the murders of the three little

3 Q Anything else you would have told him? Hatcheson regarding

4 A No, sir. my being placed to her?

5 Q Didn't mention to him about injuries to the ears or
6 anything like that? A Yes, Your Honor, I object to this

7 A No, sir. He's asking -- I assume he's getting toward

8 Q Didn't mention to him anything about signs or injuries or
9 indication of sexual abuse? Your Honor, may he approach the

10 A No, sir, I can't recall.

11 THE WITNESS (WITNESS EXCUSED) WAS HELD AT THE STAKE
12 OUT OF THE REAR END OF THE RHONDA DEDMAN

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

15 what is a DIRECT EXAMINATION subject.

16 BY MR. STIDHAM: Q Now, our response to that -- she was asked

17 Q Will you please state your name? He asked and she denied

18 A Rhonda Dedman. statement. This is proper impeachment. You

19 Q Where do you live? -- if they made the statement. If they

20 A Highland Park in Marion. -- allowed to approach them with the

21 Q Are you familiar with the defendant Jessie Misskelley?

22 A Yes, sir. and to do it. well, well, well, well, well

23 Q How long have you known him? testified she wasn't sure

24 A Around fourteen years. but statement of not, that

25 Q Are you familiar with Vickie Hatcheson? and by her answer.

1 A Yes, sir.
 2 Q At anytime subsequent to the murders of the three little
 3 boys, did you have a conversation with Miss Hutcheson regarding
 4 the reward money being given to her?

5 A Yes, sir.
 6 MR. DAVIS: Your Honor, I object to this
 7 question. He's asking -- I assume he's getting toward
 8 a hearsay response which is totally inappropriate.
 9 MR. STIDHAM: Your Honor, may we approach the
 10 bench?

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

13 MR. DAVIS: I assume the only thing possible she
 14 is here for is to get a hearsay response. If that is
 15 where he's heading, we want to object.

16 MR. CROW: Our response to that -- she was asked
 17 on cross examination about the reward and she denied
 18 making a statement. This is proper impeachment. You
 19 ask the witness if they made the statement. If they
 20 deny it, then you're allowed to impeach them with the
 21 inconsistency. That is exactly the way you are
 22 supposed to do it.

23 MR. STIDHAM: She testified she wasn't sure
 24 whether she made that statement or not.

25 THE COURT: I think you are bound by her answer.

1 I don't think you can collaterally attack it. Can you
2 show me a case where you can collaterally attack --

3 MR. CROW: That's exactly the way you're supposed
4 to do it with an inconsistent statement.

5 MR. STIDHAM: If the witness denies it or says
6 she can't remember if something occurred -- it's
7 important as this reward -- this witness can testify
8 that she talked to her on two occasions, and Miss
9 Hutcheson said she was going to get the reward money.
10 This is the same lady that played detective and led to
11 the incrimination of Jessie Misskelley. It is
12 important to show that Miss Hutcheson had ulterior
13 motives for playing detective. if she never told

14 MR. DAVIS: If she clearly denies that she made
15 that statement, then he can't get it in. Her
16 testimony, as Mr. Stidham indicated, was she didn't
17 recall.

18 MR. STIDHAM: She said she did not remember
19 saying that. to impeach her with and give her an

20 MR. DAVIS: Yeah. And he can't put on extrinsic
21 evidence to say otherwise. The only thing this
22 evidence would go toward would be to impeach her
23 credibility. I'm going to sustain the objection.

24 MR. STIDHAM: That's what we're trying to do,
25 your Honor. TO OPEN COURT

1 MR. DAVIS: You can't put on extrinsic evidence
2 of a prior inconsistent statement for the purpose of
3 impeaching credibility unless the person denies making
4 the statement.

5 MR. CROW: She says she didn't remember. This is a

6 MR. STIDHAM: Miss Hutcheson's veracity is
7 certainly in issue. I understand it, you propose to

8 THE COURT: Can you agree as to what her
9 testimony was because as I recall it, she says she
10 didn't remember making a statement like that. Then
11 you asked her -- did you ask her specifically if she
12 made it to this woman?

13 MR. STIDHAM: I asked her if she never told
14 anyone that she said she was going to get the reward.

15 Her reply was she couldn't remember or -- now that is

16 MR. CROW: She didn't remember making the
17 statement. The rule is, is that a prior inconsistent

18 THE COURT: You didn't confront her with what
19 you're trying to impeach her with and give her an
20 opportunity to refute or deny it. statement, and the

21 MR. STIDHAM: I asked her specifically whether
22 she did it or not. hereon.

23 THE COURT: I'm going to sustain the objection.

24 MR. CROW: We'd like to make a proffer.

25 (RETURN TO OPEN COURT) recollection of the

1 THE COURT: Ladies and gentlemen, I'm going to
2 ask you to step into the jury room for just a few
3 minutes with the admonition not to discuss the case.

4 (JURY LEAVING THE COURTROOM AT THIS TIME)

5 THE COURT: Let the record reflect that this is a
6 hearing out of the presence of the jury. All agreed.

7 Gentlemen, as I understand it, you propose to
8 question this witness with regard to a conversation
9 that she had with a prior witness Hutcheson and you
10 want to elicit from her testimony to the effect that
11 Miss Hutcheson had said she was going to receive the
12 reward. for the purpose of laying that foundation.

13 MR. STIDHAM: That's correct. impeach her even

14 THE COURT: Under Rule 613 that would fall under
15 the heading of a prior statement of a witness that is
16 inconsistent with their testimony at the time of
17 trial. And the rule is, is that a prior inconsistent
18 statement can be inquired into for the purposes of
19 impeachment provided that the witness is afforded an
20 opportunity to explain or deny the statement, and the
21 opposing party is afforded an opportunity to
22 interrogate them thereon. not recall whether or not

23 Here, it is similar to HARRIS VERSUS POWERS, 262
24 Ark.96, that it may very well have been an
25 inconsistent statement. My recollection of the

1 witness' testimony was that she didn't remember making
2 that statement, and you characterized it in terms,
3 have you ever stated to anyone that you were seeking
4 the reward or going to get the reward and she replied
5 -- as best I recall -- and my recollection after all
6 these witnesses isn't perfect -- but you all agreed
7 she replied, not to her recollection.

8 So it would be my finding that you hadn't laid a
9 proper foundation to allow the witness to either admit
10 or deny the making of the inconsistency. you to do

11 that If you want to recall her and make her your
12 witness for the purpose of laying that foundation,
13 then I will allow you to attempt to impeach her even
14 though for that purpose she might be your witness.

15 First of all she's going to have to be given the
16 opportunity to admit or deny the statement; secondly,
17 to explain that statement, and the State will also
18 have an opportunity to cross examine her with regard
19 to the alleged inconsistency. 't recall having made

20 that MR. FOGLEMAN: Your Honor, we would also say for
21 the record and I don't remember -- but if the ' don't
22 testimony was that she did not recall whether or not
23 she made such a statement, then whatever this witness
24 testified to would not be inconsistent with what she
25 said because she has not denied or admitted --

1 THE COURT: That's basically what I'm ruling,
2 that a proper foundation hasn't been made. At this
3 point she hasn't been given an opportunity to admit or
4 deny and, secondly, to allow this witness to testify,
5 would be to allow a collateral issue to be brought
6 into the case that is not even impeaching her previous
7 testimony at this point. ~~her of times to impeach, but~~
8 ~~they~~ I'm saying you may call that witness, make her
9 your own witness for the purpose of laying the ~~'s~~ all
10 foundation and then proceed. ~~I'll allow you to do~~
11 that. ~~tted to do so.~~

12 MR. STIDHAM: We'd like to call her back. ~~As were~~

13 THE COURT: That will be fine. I will permit
14 that. ~~she said she couldn't remember, but I took that~~

15 MR. FOGLEMAN: Your Honor, if she's already said
16 that she does not recall -- ~~have to ask her~~

17 THE COURT: I don't have any idea what she might
18 say. Does anyone remember exactly what she said? My
19 recollection is that she didn't recall having made
20 that statement. ~~AN: What is the witness going to say?~~

21 MR. FOGLEMAN: If that's what she said, I don't
22 see how a proper foundation could be laid.

23 THE COURT: Well, he didn't preface -- he didn't
24 set her up right. If you had asked her, do you know
25 Dedman and did you make that statement to Rhonda

1 Dedman and if she denied it, then it is perfectly
2 permissible and I would allow it. But you've got to
3 give her an opportunity to admit or deny having made
4 the previous statement.

5 I point out that normally this rule applies to
6 written statements. In fact the State has used
7 written statements a number of times to impeach, but
8 they have also given the witness an opportunity to
9 admit or deny the previous statement. And that's all
10 I'm saying. If you want to do that, you'll be
11 permitted to do so.

12 MR. STIDHAM: We would like to do that. We were
13 under the impression that she had denied that -- I
14 know she said she couldn't remember, but I took that
15 as a denial.

16 THE COURT: I think you have to ask her
17 specifically.

18 MR. STIDHAM: We'll ask the sheriff to try to
19 find her.

20 MR. FOGLEMAN: What is the witness going to say?

21 THE COURT: Do you want to proffer what she's
22 going to say?

23 MR. STIDHAM: Certainly, your Honor.

24 MR. CROW: Your Honor, one other issue. I
25 believe Vickie Hutcheson has been released from the

1 rule. I would like to place her under the rule at
2 this point and she -- the witnesses that are here not
3 have any conversations with her.

4 THE COURT: They have been told -- and she was
5 told -- police department, whoever had the reward

6 MR. CROW: She was released from the rule, your
7 Honor. I said that after the press conference came

8 THE COURT: I understand what you're saying. Go
9 ahead. I said that after the press conference came out.

10 PROFFER OF TESTIMONY herself who was going
11 BY MR. STIDHAM:

12 Q Do you remember having a conversation with Vickie Hutcheson
13 about the reward? MR. FOLEMAN: Your Honor, I --

14 A Yes, sir. THE COURT: If you want to call her back, I'll

15 Q Tell the Court what the nature of the conversation was.

16 A She told me they were going to split the reward money with
17 Aaron and another little boy. or cares to. Then if you do that.

18 Q Do you remember when it took place? to impeach her

19 A It was after the arrest is all. I don't remember the exact
20 date. MR. FOLEMAN: How is that going to be relevant.

21 Q Was there another occasion when it was discussed?

22 A Yes, sir. THE COURT: The only relevance that the Court

23 Q What was the nature of that discussion? of that witness

24 A The next discussion she told me they weren't going to split
25 the money, that they were going to give it all to Aaron. She

1 told me that right after the press conference came out. somebody

2 also getting a : EXAMINATION

3 BY MR. FOGLEMAN: From a logical standpoint we all know

4 Q Who is "they?" the child is going to get funds --

5 A I guess the police department, whoever had the reward
6 money. relevant because a proper foundation has not been laid

7 Q You said they said that after the press conference came
8 out? MR. STICKMAN: We'd like to have an opportunity to

9 A She said that after the press conference came out.

10 Q She never said anything about it was herself who was going
11 to get the reward? STICKMAN: Your Honor, we need to have an

12 A No, she said that Aaron was going to. the issue we

13 MR. FOGLEMAN: Your Honor, I --

14 THE COURT: If you want to call her back, I'll
15 let you. Give her an opportunity to admit or deny
16 having made that statement to Ms. Dedman and to
17 explain, if she can or cares to. Then if you do that,
18 I'll allow this lady to testify to impeach her in a
19 testimony. of the presence of the jury.

20 MR. FOGLEMAN: How is that going to be relevant
21 -- that somebody else would be getting a reward?

22 THE COURT: The only relevance that the Court
23 sees would be the possible impeachment of that witness
24 Hutcheson. Doctor Wilkie, on his credibility due to

25 MR. FOGLEMAN: But how is the question about a

1 reward even relevant if you're talking about somebody
2 else getting a reward?

3 MR. CROW: From a logical standpoint we all know
4 that if the child is going to get funds--

5 THE COURT: I'm ruling right now it's not
6 relevant because a proper foundation has not been laid
7 for impeachment.

8 MR. STIDHAM: We'd like to have an opportunity to
9 discuss that and make a decision.

10 THE COURT: Sure.

11 MR. STIDHAM: Your Honor, we need to have an
12 in-camera hearing with regard to the issue we
13 discussed earlier.

14 THE COURT: I'm going to let the jury go to lunch
15 until 1:00 o'clock.

16 (RECESS)

17 (THE FOLLOWING CONFERENCE WAS HELD IN CHAMBERS)

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

20 MR. STIDHAM: We talked about this, I think
21 during the voir dire or prior to the voir dire
22 examination, when we expressed our concern that the
23 prosecution was going to attempt to somehow impeach
24 our expert, Doctor Wilkins, on his credibility due to
25 some disciplinary proceeding that had been pending.