

1 back door -- once I start reading the jury instructions,
2 I don't want anybody going in and out. I probably ought
3 to announce out there if anybody wants to come in they'd
4 better do it now. I didn't think to tell you that.

5 Alright, Court will be in session.

6 Alright, ladies and gentlemen, I'm about to read to
7 you the instructions of law that you are to apply to the
8 facts that you've heard in this case. They've been
9 reduced to written form and you'll be able to take a copy
10 of the instructions to the jury room with you and they
11 should answer your questions on point of law. I'll
12 attempt to read them where you can understand them.
13 Obviously, I might read them too fast, or stumble over
14 something. I hope I don't, but if I do, you do have a
15 copy in the jury room to refer to.

16 Was there anything else you gentlemen need to do
17 before I proceeded reading the instructions?

18 MR. DAVIS: No, sir.

19 MR. STIDHAM: No, sir.

20 THE COURT: Alright.

21 The faithful performance of your duties as jurors is
22 essential to the administration of justice. It is my
23 duty as judge to inform you of the law applicable to this
24 case by instruction and it is your duty to accept and
25 follow them as a whole, not singling out one instruction

1 to the exclusion of others. You should not consider any
2 rule of law with which you may be familiar unless it is
3 included in my instructions.

4 It is your duty to determine the facts from the
5 evidence produced in this trial. You are to apply the
6 law as contained in these instructions to the facts and
7 render your verdict upon the evidence and law. You
8 should not permit sympathy, prejudice, or like, or
9 dislike of any party to this action or of any attorney to
10 influence your findings in this case.

11 In deciding the issues you should consider the
12 testimony of the witnesses and the exhibits received in
13 evidence. The introduction of evidence in Court is
14 governed by law. You should accept without question my
15 rulings as to the admissibility or rejection of evidence,
16 drawing no inferences that by those rulings I have in any
17 manner indicated my views on the merits of the case.

18 Opening statements, remarks during the trial, and
19 closing arguments of the attorneys are not evidence, but
20 are made only to help you in understanding the evidence
21 and applicable law. Any argument, statements, or remarks
22 of the attorneys having no basis in the evidence should
23 be disregarded by you.

24 I have not intended by anything I have said or done
25 or by any questions that I may have asked to intimate or

1 suggest what you should find to be the facts, or that I
2 believe or disbelieve any witness who testified. If
3 anything that I have done or said has seemed to so
4 indicate you will disregard it.

5 In considering the evidence in this case you are not
6 required to set aside your common knowledge, but you have
7 a right to consider all of the evidence in the light of
8 your own observations and experiences in the affairs of
9 life.

10 You are the sole judges of the weight of the
11 evidence and the credibility of the witnesses. In
12 determining the credibility of any witness and the weight
13 to be given his testimony, you may take into
14 consideration his demeanor while on the witness stand,
15 any prejudice for or against a party, his means of
16 acquiring knowledge concerning any matter to which he
17 testified, any interest he may have in the outcome of the
18 case, the consistency or inconsistency of his testimony,
19 its reasonableness or unreasonableness, and any other
20 fact or circumstance tending to shed light upon the truth
21 or falsity of his testimony.

22 An expert witness is a person who has special
23 knowledge, skills, experience, training, or education on
24 the subject to which his testimony relates. An expert
25 witness may give his opinion on questions and

1 controversies. You may consider his opinion in the light
2 of his qualifications and credibility, the reasons given
3 for his opinion, and the facts and other matters upon
4 which his opinion is based. You are not bound to accept
5 an expert opinion as conclusive, but you should give it
6 whatever weight you think it should have. You may
7 disregard any opinion testimony if you find it to be
8 unreasonable.

9 The State must prove beyond a reasonable doubt each
10 element of the offense charged. On the other hand, the
11 defendant is not required to prove his innocence. There
12 is a presumption of the defendant's innocence in a
13 criminal prosecution. In this case Jessie Lloyd
14 Misskelly, Junior is presumed to be innocent. That
15 presumption of innocence attends and protects him
16 throughout the trial and should continue and prevail in
17 your minds until you are convinced of his guilt beyond a
18 reasonable doubt.

19 Reasonable doubt is not a mere possible or imaginary
20 doubt. It is a doubt that arises from your consideration
21 of the evidence and one that would cause a careful person
22 to pause and hesitate in the graver transactions of life.

23 A juror is satisfied beyond a reasonable doubt if
24 after an impartial consideration of all of the evidence
25 he has an abiding conviction of the truth of the charge.

1 Evidence that a witness previously made a statement
2 which is inconsistent with his testimony at the trial may
3 be considered by you for the purpose of judging the
4 credibility of the witness, but may not be considered by
5 you as evidence of the truth of the matter set forth in
6 that statement.

7 In this case the State does not contend that Jessie
8 Lloyd Misskelly, Junior acted alone in the commission of
9 the offenses of three counts of capital murder. A person
10 is criminally responsible for the conduct of another
11 person when he is an accomplice in the commission of an
12 offense.

13 An accomplice is one who directly participates in
14 the commission of an offense or who with the purpose of
15 promoting or facilitating the commission of an offense
16 agrees to aid, aids, or attempts to aid the other person
17 or persons in the planning or committing the offense.

18 Purpose is defined: A person acts with purpose with
19 respect to his conduct or a result thereof when it is his
20 conscious object to engage in conduct of that nature or
21 to cause such a result.

22 Jessie Lloyd Misskelly, Junior is charged with three
23 counts of capital murder. This charge in each count
24 includes the lesser offenses of first degree murder and
25 second degree murder for each count. You may find the

1 defendant guilty of one of these offenses or you may
2 acquit him outright. If you have a reasonable doubt as
3 to which offense the defendant may be guilty of on each
4 count, you may find him guilty only of the lesser
5 offense. If you have a reasonable doubt as to the
6 defendant's guilt of all offenses, you must find him not
7 guilty.

8 Jessie Lloyd Misskelly, Junior is charged with the
9 offense of capital murder, three counts. To sustain this
10 charge on each count the State must prove the following
11 things beyond a reasonable doubt:

12 First, that with the premeditated and deliberated
13 purpose of causing the death of any person, Jessie Lloyd
14 Misskelly, Junior or an accomplice caused the death of
15 Michael Moore in Count One or Stevie Branch, Count Two,
16 or Chris Byers, Count Three.

17 Purpose is defined again: A person acts with
18 purpose with respect to his conduct or a result thereof
19 when it is his conscious object to engage in conduct of
20 that nature or to cause such a result.

21 If you have a reasonable doubt of the defendant's
22 guilt on the charge of capital murder, you will then
23 consider the charge of first degree murder.

24 To sustain the charge of first degree murder the
25 State must prove beyond a reasonable doubt that Jessie

1 Lloyd Misskelly, Junior with the purpose of causing the
2 death of another person caused the death of Michael Moore
3 in Count One, Steven Branch in Count Two, and Christopher
4 Byers in Count Three.

5 If you have a reasonable doubt of the defendant's
6 guilt on the charge of first degree murder, you will then
7 consider the charge of second degree murder.

8 To sustain the charge of second degree murder the
9 State must prove beyond a reasonable doubt that Jessie
10 Lloyd Misskelly, Junior knowingly caused the death of
11 Michael Moore in Count One, Steven Branch, Count Two, and
12 Christopher Byers in Count Three under circumstances
13 manifesting extreme indifference to the value of human
14 life or that Jessie Lloyd Misskelly, Junior with the
15 purpose of causing serious physical injury to Michael
16 Moore, Count One, Steven Branch, Count Two, and
17 Christopher Byers, Count Three did cause the death of
18 Michael Moore, Steven Branch and Christopher Byers.

19 Knowingly is defined: A person acts knowingly or
20 with knowledge with respect to his conduct or the
21 circumstances that exist at the time of his act when he
22 is aware that his conduct is of that nature or that such
23 circumstances exists. A person acts knowingly with
24 respect to a result of his conduct when he is aware that
25 it is practically certain that his conduct will cause

1 such a result.

2 Serious physical injury means physical injury that
3 creates a substantial risk of death or that causes
4 protracted disfigurement, protracted impairment of
5 health, or loss or protracted impairment of a function of
6 any bodily member or organ.

7 In order to find that Jessie Lloyd Misskelly, Junior
8 acted with premeditated and deliberated purpose you must
9 find that he had the conscious object to cause death and
10 that he formed that intention before acting as a result
11 of weighing in the mind the consequences of a course of
12 conduct as distinguished from acting upon sudden impulse
13 without exercise of reasoning powers.

14 It is not necessary that this state of mind existed
15 for any particular length of time, but it is necessary
16 that it was formed before the homicide was committed.

17 If you find Jessie Lloyd Misskelly, Junior guilty of
18 capital murder, first degree murder, or second degree
19 murder of one or more counts you will so indicate on a
20 verdict form to be given to you.

21 If you find Jessie Lloyd Misskelly, Junior not
22 guilty of one or more counts you will so indicate on the
23 appropriate forms.

24 In your deliberations the subject of punishment is
25 not to be discussed or considered by you. If you return

a verdict of guilty on any charge, the matter of
punishment will be submitted to you separately.

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INSTRUCTION NO. 1

An accomplice is criminally responsible for the acts of others only to the extent he has a shared criminal purpose with the others. If you ultimately find that Jessie Lloyd Misskelley, Jr. was an accomplice, you may find him guilty only of a crime you determine that he had a conscious object to engage in, or a conscious object to cause such a result.

Fight v. State, 314 Ark. 438, ___ S.W.2d ___ (1993).

Refused 1) covered by 401 -
 2) not an approved modification
 3) "with the purpose of promoting or facilitating the commission of an offense"
 4) Distinguished from Fight v. State
 314 Ark 438 (1993)

INSTRUCTION NO. 7

AFFIRMATIVE DEFENSE - CAPITAL MURDER

Jessie Lloyd Misskelley, Jr. asserts an affirmative defense to the charge of capital murder. To establish this affirmative defense, Jessie Lloyd Misskelley, Jr. must prove each of the following things:

- First: That he was not the only party to the offense;
- Second: That he did not commit the homicide act; and
- Third: That he did not in any way solicit, command, induce, produce, counsel, or aid its commission.

Jessie Lloyd Misskelley, Jr., has the burden of proving this defense by a preponderance of the evidence, unless the defense is so proved by other evidence in the case. "Preponderance of the evidence" means the greater weight of evidence. The greater weight of evidence is not necessarily established by the greater number of witnesses testifying to any fact or state of facts. It is the evidence which, when weighed with that opposed to it, has more convincing force and is more probably true and accurate. If the evidence with regard to this defense appears to be equally balanced, or if you cannot say upon which side it weighs heavier, then the defense has not been established. If you find that this defense has been established then you shall find Jessie Lloyd Misskelley, Jr. not guilty of the offense of capital murder. Whatever may be your finding as to this defense, you are reminded that the State still has the burden of establishing the guilt of Jessie Lloyd Misskelley, Jr. upon the whole case beyond a reasonable doubt.

AMCI 1501 D

Refused

1 Was there anything else, gentlemen?

2 MR. DAVIS: No, sir.

3 MR. STIDHAM: No, sir.

4 THE COURT: Alright, you may argue your case.

5 MR. FOGLEMAN: Your Honor, could I---

6 THE COURT: Do you want the verdict forms? I've got
7 them here.

8 MR. FOGLEMAN: Your Honor, if I could have just a
9 second to get---

10 THE COURT: Yes, try to keep them in the right order
11 for me.

12 MR. FOGLEMAN: May it please the Court, Mr. Stidham,
13 Mr. Crow, and ladies and gentlemen of the jury. Before I
14 actually get into -- we call it argument -- I'm not going
15 to argue with you. I'm going to try to reason through
16 the facts and law and talk to you -- but before we get to
17 that, I want to take this opportunity and I'm sure Mr.
18 Stidham and Mr. Crow would join me in this -- in
19 sincerely thanking you for your willingness to serve as
20 jurors in this case. This isn't your all's case. This
21 is a Crittenden County case and we appreciate -- we all
22 appreciate your willingness to serve as jurors in this
23 case and take time away from your families and your jobs
24 to be with us and help us to see that justice is
25 done.