

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.

1 In this case when you became a juror you recall
2 standing at the first and you took an oath. And you took
3 an oath to base your verdict solely and exclusively on
4 the law as Judge Burnett has given you and the evidence
5 as it comes from this witness stand, not speculation and
6 not conjecture, but on the evidence as it comes from this
7 witness stand. That's all that anybody can ask you to
8 do.

9 In the Judge's instructions also he mentioned
10 sympathy. Ladies and gentlemen, this is not a case about
11 sympathy for either side and it's natural for you to feel
12 sympathy, but in this case we don't want you to feel
13 sympathy for anybody in the case. We don't want you to
14 allow that to affect your decision in this case. We
15 submit to you after you look objectively at the evidence
16 in this case, at the testimony in this case, that you
17 will return an appropriate verdict of guilty to three
18 counts of capital murder.

19 Now, in this case, Judge Burnett has instructed you
20 that in order to sustain a conviction of capital murder,
21 in order for you to return a verdict of guilty of capital
22 murder the State has to prove two things beyond a
23 reasonable doubt on each count. That is that with the
24 premeditated and deliberated purpose of causing the death
25 of another person this defendant or an accomplice -- or

1 an accomplice caused the death of Michael Moore on Count
2 One, Stevie Branch on Count Two, and Chris Byers on Count
3 Three.

4 Now, in regards to the reference to an accomplice,
5 the Judge has given you an instruction on accomplice.
6 And in this instruction he tells you that a person is
7 criminally responsible for the conduct of another person
8 when he is an accomplice. He's just as guilty if he's an
9 accomplice. And an accomplice is one who either directly
10 participates in the commission of an offense, or who with
11 the purpose of promoting or facilitating a commission of
12 the offense, he aids, agrees to aid, or attempts to aid
13 the other person in planning or committing the offense.

14 Now, the definition of purpose is on here, too. And
15 these definitions are real important. And if you look at
16 it you'll see that a person acts with purpose with
17 respect to his conduct or a result thereof when it is his
18 conscious object to engage in the conduct of that nature
19 or to cause such a result.

20 Now, what I would like to do now is take the
21 **elements** of the offense and go through with you the
22 **elements** that we have to prove and what the evidence has
23 been in this case.

24 First, that with the premeditated and deliberated
25 purpose of causing the death of Michael Moore, Stevie

1 Branch, and Chris Byers, this defendant in his taped --
2 let me back up. This defendant in the statement before
3 he admitted being present, he tells Detective Ridge and
4 Detective Gitchell that he has a phone call the day
5 before the murders and that he's told that Damien and
6 Jason are going to West Memphis and they're going to get
7 these boys and hurt them.

8 He also testifies that at one of these cult meetings
9 he mentions that a photograph of not just some boys, but
10 these boys is passed around at this meeting. Now, Mrs.
11 Byers testified about her son coming in a month or so
12 before and saying about how some strange man all in black
13 had taken her picture -- had taken the son's picture --
14 Chris' picture.

15 He also stated that Damien had been watching these
16 boys. He had been stalking these boys -- premeditation.
17 In looking at premeditation the injuries themselves speak
18 loudest -- multiple skull fractures, Chris Byers bleeds
19 to death, and Stevie Branch and Michael Moore are
20 drowned. Was there a conscious object to cause death?
21 Unquestionably. I don't believe anybody could dispute
22 that.

23 The second element is that the defendant or an
24 accomplice caused the death of Michael Moore, Stevie
25 Branch, and Chris Byers. The defendant himself in this

1 taped interview describes this event. He describes his
2 participation -- or what he said -- is his participation
3 in this event. The defendant's own expert says that the
4 natural inclination of a defendant is to lessen his
5 involvement in the offense, and I'll come back to that a
6 little bit later. So he describes it for you himself.
7 In the way he describes it it reveals a premeditated and
8 deliberate murder although he tries to lessen his own
9 involvement.

10 Now, these alibis -- being in Highland Park and
11 wrestling. This was a parade of defendant's friends.
12 You saw the yellow ribbons. It's a -- the Judge tells
13 you in judging credibility you judge demeanor, the way
14 the witness testified, whether -- and I'm not getting
15 this word-for-word, so rely on what the instruction tells
16 you, not what I tell you it is -- whether there is any
17 reason him not to be telling the truth, any bias,
18 anything to be gained from the outcome of the case. And
19 when you look at the people with the yellow ribbons the
20 bias is obvious. They're here to try to help the
21 defendant.

22 Now, when you analyze their testimony -- and this
23 isn't a real impressive professional diagram I've got
24 here -- but, when you analyze their testimony in regard
25 to Highland Park -- and, of course, you can't see this,

1 but I'm just going to refer to it because it helps my
2 memory -- the testimony about where the defendant was up
3 until about five-thirty is really pretty consistent.
4 It's pretty consistent among the witness. But when you
5 get to the crucial time around five-thirty or six
6 o'clock, these witnesses have this defendant in three or
7 four different places at the same time. You look at it
8 at about -- see, Susie Brewer, she's got at six -- around
9 six o'clock -- between five-thirty and about seven, she's
10 got her and the defendant on the street together and at
11 Stephanie Dollar's house.

12 You move down to Jennifer Roberts. She's got at six
13 o'clock the defendant and Christy Jones on the
14 defendant's porch. Christy Jones says that from
15 beginning about five-thirty or six she and the defendant
16 are on her porch by themselves un -- for about an hour or
17 an hour and a half. So anywhere from five-thirty to
18 seven or six to seven-thirty she's saying that they're
19 sitting on the porch all by themselves.

20 You go down to Mr. Hoggard, he puts at six-thirty
21 ~~Jessie~~ by himself out in front of Stephanie Dollar's
22 house, not on the porch at the defendant's and not with
23 Susie Brewer down the street.

24 Mr. McNease says that about that time that he sees
25 the defendant at this police car which is down the street

1 from the defendant's house and finally, Jessie, Senior
2 says that he sees the police there when he gets home from
3 D. W. I. School -- well, D. W. I. School doesn't leave --
4 doesn't begin until almost eight o'clock and if you'll
5 look at this radio log you'll see that the officers
6 checked off the scene there right before seven o'clock --
7 or eight o'clock. Anyway, it was at a time when -- they
8 had already left by the time Mr. Misskelly, Senior got
9 home -- or even left where he was. So this is all
10 totally inconsistent.

11 And then when you go to the wrestling alibi, that
12 was a total total mess. You have Fred Revelle, the only
13 one -- the only person who comes to the police and says,
14 "Look, I think I may have made a mistake. He was with me
15 and here's why he was with me. We had gone wrestling.
16 It was me and Jessie and" -- one other person, I believe
17 he said and -- in his first statement to the police --
18 "and I know it was that day because that's the day we
19 paid the money." So the police naturally doing their
20 job, they go out and investigate to see if he's right.

21 Was -- you know -- was the defendant somewhere else?

22 And lo and behold, what do they find out? The money was
23 paid a week before that, and they get a receipt to prove
24 that.

25 Well, then when Mr. Revelle comes into court and

1 testifies, this story is completely different. He hadn't
2 told anybody about it with law enforcement.

3 Then you have Dennis Carter come in here and say,
4 "Yeah, I went with him May the fifth. I know it was May
5 the fifth as sure as I'm sitting here." But that's the
6 gist of his words. And then what did he tell the police?
7 Shortly after -- keep in mind, this is when it was still
8 fresh in memory -- shortly after the arrest of the
9 defendant what did he tell them? He said, "I didn't go
10 wrestling then. I didn't go wrestling until after the
11 murders that happened -- days after" -- just a mess.

12 And then finally after witness after witness gives
13 these confusing and conflicting stories about being
14 wrestling or not wrestling, you have this Johnny Hamilton
15 come in. And he testifies that, "Well, I'm sure it was
16 that day. Kevin Johnson was at search and rescue. Keith
17 Johnson went. That was the only time he went."

18 Keith Johnson says, "Yeah, I went wrestling one time
19 and some specific events happened, but I don't know when
20 it was." Keith Johnson, I think, told the truth. He
21 didn't have any idea when it was, but, yeah, he had been
22 wrestling with them one time. How do we know that's not
23 true? Not about Keith Johnson but about that it was May
24 the fifth.

25 When they went wrestling they signed this document.

1 Keith Mercier -- I hope I say that right -- he came in
2 today and testified, "I only went one time. I went one
3 time, signed the form, and it was before the murders."
4 He was the last person that signed. He had to have
5 signed after Keith Johnson, after Johnny Hamilton. Keith
6 Johnson only went one time. So Keith Johnson had to have
7 gone before the murders because Keith Mercier signed
8 after him.

9 Also, on Mr. Hamilton Keith said, "Well, I'm not
10 going to drive six hundred miles for nothing." He would
11 drive six hundred miles to testify but he won't go three
12 or four miles from Highland Park to the police department
13 to tell them, "Hey, I think you made a mistake." He
14 didn't tell anybody. He didn't even tell the defense.
15 He didn't tell anybody. Somebody goes and talks to him
16 last Sunday and he says, "Oh, yeah, I remember vividly --
17 May the fifth." Where were we May the fifth? I even got
18 this flu.

19 The defense then moved from alibi to Mr. Bojangles.
20 Remember Mr. Bojangles? Remember that? Is there any
21 evidence that suggests that Mr. Bojangles had anything to
22 do with this? You have a sheet with a single Negroid
23 hair fragment. A single one. So they pick out Mr.
24 Bojangles to present up here as this must be the person
25 who did it. Well, let's think about that a moment.

1 Well, there's blood and he came in and kind of
2 uncoherent. Is there something to that? Could it have
3 been Mr. Bojangles? Well, let's think about it. What
4 about the crime scene? Picture in your mind the crime
5 scene and then picture in your mind Bojangles. The crime
6 scene -- not a drop of blood. Not one -- couldn't find
7 one. The bodies were hidden. The kids' clothes were
8 hidden. They were crammed down in the mud. The blood
9 was washed off the bank and the scuff marks. Contrast
10 that with Bojangles. He goes in there and he leaves
11 blood all over the place -- down the hall, on the wall,
12 on the floor, on the commode -- all over the place. Do
13 you really believe that a guy is going to go to the
14 trouble of cleaning up the crime scene, hiding the kids'
15 bodies, hiding their clothes, hiding any evidence of this
16 crime that's taken place there, and then he's going to
17 walk down through a field to Bojangles Restaurant, a
18 public place, and leave blood all over the place. Give
19 me a break.

20 The defense in their opening claimed that there was
21 going to be proof that this is Damien tunnel vision. No
22 evidence to that. None. The testimony was that yes,
23 Damien was a suspect, but he was one of a number of
24 suspects. Just one of a number.

25 Let's talk about these experts that were called by

1 the defense. As the Judge has instructed you because
2 somebody is labeled an expert -- and that applies both to
3 the experts that testified on behalf of the State and
4 experts that testified on behalf of the defendant --
5 you're entitled to weigh their credibility and to judge
6 what you hear from them, decide whether you think it's of
7 any value or not.

8 Let's start with Mr. Holmes. What makes Mr. Holmes
9 an expert? He said why he had thirteen years of law
10 enforcement experience. He worked for the Miami Police
11 Department for thirteen years and since that time he's
12 been a lecturer and a witness. Detective Gitchell's had
13 nineteen years of experience.

14 Now, let's talk about it. Actually -- you think
15 about it -- now, Mr. Holmes is a good witness as far as
16 presentation. But when you sit back and really think
17 about it and analyze what he said. He said the police
18 didn't do anything wrong. He had some problems with the
19 content of some of the questions and some of the
20 responses. But as far as the police being coercive, he
21 said the police didn't do anything wrong. In fact if
22 you'll think back and use your own memory -- do you
23 remember Mr. Holmes saying, "I would have done the same
24 things myself." Do you remember that?

25 Mr. Holmes' complaint is time and ligature -- the

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1 knots -- and in his -- but in his testimony he says he
2 complains because they didn't clear these things up.
3 Well, as the testimony has been and Mr. Holmes himself
4 admitted, when you're interviewing somebody you don't
5 stop all of a sudden and start cross examining them about
6 something they said that may be wrong. The goal is to
7 keep the person talking. And then he says in his
8 testimony, "Well, they did go back later and clear up the
9 time, but not the ligature." And actually when he says
10 that, if you will look and listen to these tapes, there's
11 nothing said about how -- or what they're tied with until
12 the second statement anyway. They didn't clear it up
13 after the first one because it wasn't in there. It was
14 in the second one and that was not cleared up.

15 Now, I want to go through some of the things that
16 Mr. Holmes said that you looked at in determining whether
17 you've got a -- a coerced confession or true confession
18 -- I think that's the way he put it. He says on the
19 problems of time and the ligature, he gave a few possible
20 explanations. You know, he had to have been doped up or
21 he had to have been -- have a faulty memory, or maybe
22 just wasn't -- that he wasn't telling the truth.

23 Now, what we have in this case -- you know -- the
24 evidence doesn't show whether Mr. Holmes is familiar with
25 Doctor Wilkins' examination or not. So what do we have?

1 We've got a defendant who huffed gas, smoked pot, abused
2 alcohol, and he found significant memory gaps. The very
3 thing that the defense's own expert said could account
4 for these problems.

5 He also said the most important thing -- I wrote
6 this down -- that the person sounds and looks like
7 they're telling the truth. Yet Mr. Holmes admitted that
8 he had formulated his opinion before he even heard the
9 tape of the defendant. He had had a transcript, but how
10 do you judge how they sound if you don't hear the tape?
11 And he had already formulated his opinion.

12 He gave a number of factors. The indication of
13 relief was finally out. The -- some indication of
14 relief. Well, what was the testimony? The testimony was
15 that after the defendant -- or about the time the
16 defendant finally admitted that he was there when these
17 crimes occurred, that he cried. Is that not an
18 indication of relief? It's over.

19 He also says that one of the factors if you are
20 wrong in a supposition in questioning the person he will
21 correct you. Well, let's see if you find any of that.
22 The factors the defense's own expert says to look for.
23 If you're wrong in a supposition he will correct you. On
24 page three of the transcript Inspector Gitchell asked,
25 "Whose car were you all in?" Suggestful question, isn't

1 it? Leading question, isn't it? Well, does he buy into
2 the -- does the defendant buy into the suggestion? Does
3 he go along with these suppositions? No. He says, "We
4 walked." He corrects him, "No, we didn't go in a car.
5 We walked."

6 Then on page ten of the transcript. If you're wrong
7 in a supposition he will correct you. Detective Ridge
8 says, "Did they take like one picture of one boy?" The
9 supposition is there's one picture of one boy. Did he go
10 along and agree with this supposition -- this suggestful
11 leading question? Right? No, he says, "They were in a
12 group." He corrects him. "No, it was not one boy in one
13 picture. The boys were in a group."

14 Then on page eighteen. Detective Ridge, "Besides
15 just playing, the little boys, had they been in the
16 water? Did they get into the water with you all?" The
17 supposition was that the little boys had got into the
18 water. Is that an incorrect supposition and did he
19 correct him? He says, "No, they did not get into the
20 water with us." He corrects him. Just the very thing
21 that the defense's own expert says that you would do when
22 you're confessing and not a coerced confession.

23 He then says that in a confession uncoerced that you
24 have -- why in there they relate conversation with co-
25 defendants. Do you have that in this case? Well, the

1 proof was that before the tape -- before he admitted that
2 he was present and the tape was started -- that there was
3 a telephone call from Jason Baldwin to this defendant.
4 And in this phone call Damien is in the background saying
5 something to the effect of, "Tell him we're gonna get
6 some girls." And he says, "Hey, I know what I'm going --
7 what's going on." Do you think that the guy is going to
8 make up something? He's going to make up dialogue of
9 something like that, or would Mr. Ofshe stated they
10 manipulated him into saying that.

11 On page three -- again, remember one of the things
12 the defense's own expert says is, "You'll have
13 conversations between the co-defendants." The defendant
14 on page three says, "He called me, asked me could I go to
15 West Memphis with him and I told him no, I had to work
16 and stuff. And then he told me he had to go to West
17 Memphis. So him and Damien went." Conversations between
18 the co-defendants.

19 On page six -- conversations. He said, "They took
20 off running, went home, then they called me. They asked
21 me how come I didn't stay. I told them I just couldn't."
22 Again, the very thing that the defense's expert says that
23 you find in a uncoerced confession.

24 And then page twelve. You've got the telephone call
25 where he says, "We done it. We done it. What are we

1 going to do if somebody saw us?" All conversations with
2 co-defendants.

3 He then says another factor is that there's
4 something that corroborates the confession. Now, is
5 there anything in this tape that corroborates the
6 confession? Anything at all? Think about it. Number
7 one, Tabitha Hollingsworth. She testifies and her
8 testimony was not challenged one iota. She testifies
9 that her mother and the rest of her family are going to
10 pick up her grandmother, aunt -- whatever -- some
11 relation -- and on the way there between -- or about Blue
12 Beacon Truck Wash -- you know, the woods are just to the
13 side -- you all know all about the crime scene -- that
14 they see walking along the service road Damien and his
15 girlfriend, Domini. And do you remember how she
16 described the clothing? She said they were muddy. She
17 also said that they were wearing black and that Domini
18 had holes in her knees. Do you remember that? If you've
19 got any notes, refer back. Think back about that --
20 holes in the knees.

21 Now, what did the defendant say about what Jason was
22 wearing? All black. One of these shirts with the skull
23 on it. And it's in the tape about what he's wearing.
24 And how did he describe the pants that he's wearing? He
25 said he had holes in the knees.

1 At night along the service road Domini's got red
2 hair. Jason Baldwin -- slight -- slightly built, long
3 hair, and pants with holes in the knees. That's one
4 thing that corroborates the confession.

5 You've got Damien. You've got him at the scene by
6 Tabitha's testimony and you also have the testimony of
7 Lisa Sakevicius -- if that's the right pronunciation --
8 about the fiber. The fibers that were taken from one of
9 the victim's clothing that were consistent with having
10 come from this one shirt -- this one shirt out of
11 Damien's house. The testimony was that she checked
12 fibers from the victims' houses, checked fibers at
13 Jason's, Damien's -- the defendants. And out of all of
14 that one article of clothing that fibers matched. Sure
15 they can say, "Well, those fibers" -- as the witness
16 said, "Well, it could have come from a similar type
17 garment from the same batch of dye", but out of all of
18 those houses you get one garment that matches.

19 Then from Jason, again, you have a fiber. A fiber
20 that matches. The only match -- only match out of all of
21 the clothing in all of those houses -- the only match.

22 Is that a coincidence? Is it a coincidence that the
23 defendant described Jason as having pants with holes in
24 his knees and wearing all black and then Tabitha saying,
25 "Well, I seen Damien and Domini, his girlfriend, and it

1 just so happens she's got holes in her knees." Is that a
2 coincidence?

3 Then we get something that corroborates it which is
4 another thing Mr. Holmes says about some inconsequential
5 matter. I think the way he described it, somebody
6 walking by or some conversation or something. You
7 remember what the defendant said in his statement about
8 what he did with his tennis shoes and what kind of tennis
9 shoes they were? He said that he gave them to a guy
10 named Buddy Lucas, and he describes in his statement that
11 they were white and blue Adidas. Detective Ridge
12 testified that he went to Buddy Lucas' and lo and behold
13 what did he get from Buddy Lucas? The white and blue
14 Adidas'. Is that a coincidence? I think not.

15 Then you get to further corroboration -- the
16 injuries. When in discussing -- and listen -- you have a
17 right to listen to those tapes as many times as you all
18 want you. Listen to those tapes. Don't rely on what I
19 say they say or what Mr. Stidham or Mr. Crow says or what
20 Mr. Davis says, you go back there and listen to those
21 tapes. Listen for the inflection in the voice. Listen
22 for the yawns that shows the tremendous pressure he was
23 under in this interview. But when you listen to it, what
24 you're going to find is they ask him -- it said something
25 about a boy and where was the person cut? He said, "In

1 the face."

2 Now, in all of this stuff that Mr. Stidham put on
3 about this knowledge -- the stuff in the paper about they
4 were all sexually mutilated and that kind of thing,
5 nothing in there about a boy being cut in the face. They
6 were beat up real bad, but nothing -- nothing in there
7 about somebody being cut in the face. He says, "Yes, one
8 of them was cut in the face." And then they say, "Well,
9 was -- where was another boy cut?" "At the bottom." It
10 ends up he says, "In the area of the groin area."

11 Now, is all of that just coincidence that he says
12 that or is it as Mr. Ofshe said that somehow these
13 devious officers manipulated this defendant into saying
14 things that weren't true?

15 You've also got some other factors that they used.
16 The defendant tells about the kids being grabbed by their
17 ears. And you heard the medical examiner's testimony
18 whatever the purpose for grabbing the ears this defendant
19 in his statement says they were grabbed by their ears.
20 And if you'll look at that you'll see that's exactly what
21 he said. And Inspector Gitchell testified but before he
22 actually said it he was even demonstrating it. And what
23 do we have from the medical examiner? He's got damage to
24 his ears. Bruised ears. Consistent with being -- having
25 been grabbed.

1 You've got three guys supposed to be involved in
2 this -- the defendant, Damien and Jason. How many
3 weapons did the medical examiner say that he could put a
4 minimum number on? Three. At least two club type
5 weapons. And you don't have to be an expert to look at
6 these photographs and know that those injuries were not
7 caused by similar type things. It's obvious that these
8 were caused by a smaller object. (INDICATING.) These
9 by a larger object. (INDICATING.) And you have the
10 knives. Is it a coincidence again that we've got three
11 weapons?

12 He also said that -- and this is in a sense
13 corroboration of what he says in his statement -- Mr.
14 Holmes says it's natural for a person to try to lessen
15 their involvement. Out of all three of these kids for
16 the defendant to associate himself with as far as the one
17 that he dealt with, which one did he pick? He picked
18 Michael Moore, right? Which of the three boys didn't
19 have any torture type of mutilation to him? Michael
20 Moore. Is that a coincidence? Or did the police somehow
21 say, "Well, this would be a good scenario here. We'll
22 get him to admit to it but we'll only have him involved
23 with the one that wasn't hurt too bad." It's not
24 coincidence. It's not an accident. It's not a guess.
25 He's telling what he knew despite his faulty memory and

1 his gas -- gas huffing and alcohol abuse.

2 And while we're talking about that, do you recall
3 Doctor Rickert testifying about the effects of the faulty
4 memory and the things you'll remember and won't remember?
5 The things that you remember are the significant things.
6 This was over a month later or, excuse me, it wasn't over
7 -- it was about a month later. Which details is he right
8 on? The most traumatic and terrible event. Which one is
9 he wrong on? Two things -- time and rope. Are those the
10 significant things that a person with memory deficits are
11 going to remember and have branded in their mind? I
12 think not.

13 In regard to time and it was somewhat pointed out
14 this morning in Inspector Gitchell's testimony, there's
15 an interesting statement in here by the defendant. He's
16 saying this noon stuff and nine o'clock in the morning,
17 and all of that. On page twelve and listen to this --
18 when you get -- get back there -- again, make sure that
19 you ask to listen to the tape and get it to this spot and
20 you'll look and you'll see that nobody has said anything
21 about "Hey, it happened at night" or anything like that,
22 and you're going to hear Jessie say, "Well, after all of
23 this stuff happened that night that they done it, I went
24 home about noon." Absolutely makes no sense at all, but
25 you'll hear those words come out of his mouth. Is it

1 because you've got somebody that doesn't have any concept
2 of noon? It's not words put in his mouth. That's not
3 anything from a question that was asked to him. Those
4 are his words -- "Well, after all of this stuff happened
5 that night." Was that some kind of a slip? Why did he
6 say that? He's the one who first says about it happening
7 that night.

8 Then we get to Doctor Wilkins. He described the
9 defendant as a gas huffer, heavy alcohol user, pot smoker
10 and then you see the defendant throughout this trial and
11 you ask yourself and you listen to these experts and you
12 say, "Who's being objective?" Is it Inspector Gitchell
13 and Detective Ridge when they say, "Look, we just talked
14 to the guy. We let him talk. We took his information,
15 and when we found out and when we realized that he was
16 identifying injuries to particular people that only a
17 person that was there involved knew, we knew we had our
18 man."

19 Now, are they the ones being deceptive? Who's being
20 deceptive? This is the person that was there on May the
21 fifth. The bright eyes. The clear eyes. That is a
22 person that was there on May the fifth, not the person
23 that you've been observing -- allowed to observe
24 throughout this trial. Who's being deceptive in this
25 case?

1 Doctor Wilkins claims that this defendant is
2 suggestible. Do you remember when he was asked, "Well,
3 did you do some kind of test?" or "Was there any tests
4 that showed that?" There is no basis for his opinion
5 other than his general conclusion that he's suggestible.

6 And remember what Doctor Rickert said -- about being
7 suggestible? And how you would need to know whether the
8 person had a memory problem because that could affect
9 whether they're being suggested to or they just don't
10 remember. Do you remember that? Doctor Wilkins himself
11 testified that this defendant had significant memory
12 deficit.

13 Then we get to Mr. Ofshe -- or Doctor Ofshe --
14 whichever one you prefer. But Doctor Ofshe or Mr. Ofshe
15 -- he can't treat a broken arm. He can't treat your
16 mind. He's not a licensed psychologist. You can't be
17 licensed as a social psychologist. He's a professor and
18 a professional witness. And I will say this, my -- our
19 -- as Mr. Davis said, he has earned our respect. He is
20 an expert witness -- an expert at testifying. You
21 observed him. Do you believe that he would have even
22 agreed that Mr. Davis' shirt is white if you had asked
23 him? He probably would have wanted to explain his
24 answer.

25 Just because you hold yourself out as an expert in

1 something, it doesn't make you an expert. Just because
2 you come in with a lot of degrees and a Pulitzer Prize,
3 but if you heard Doctor Rickert it may as well have been
4 the Heisman Trophy. The Pulitzer Prize has no relevance
5 to scientific testimony. None. He's from Berkeley,
6 California, and he came and put on a show, and it was
7 from my table, pretty entertaining. It may not have been
8 too entertaining for Brent, but it was pretty
9 entertaining to watch this expert at testifying testify.
10 Last year he earned Forty Thousand Dollars just going
11 around testifying. And how many times could he recall
12 ever testifying on behalf of the prosecution? Not one.

13 And you might say, "Well, well, but" -- the
14 prosecution obviously wouldn't want him to come up here
15 and testify that its a coerced confession, but why, he
16 says forty percent of the time he looks at these things
17 and he finds they're not coerced. Well, don't you think
18 out of that forty percent or whatever thing he said that
19 one time the prosecution would have said, "Well, they're
20 challenging the voluntariness of the confession. Would
21 you come and testify for us?" No, he only testifies for
22 the defense. Of course, he claims -- you know -- he
23 doesn't make much money, but he made forty -- Forty
24 Thousand Dollars. He charges Three Hundred Dollars an
25 hour, but he's never gotten it. Isn't that what he said?

1 He said he charges Three Hundred Dollars an hour but he
2 hadn't ever been paid that much. I think he values
3 himself more than what he's really worth.

4 But let's talk about the substance, and I've talked
5 a lot about the qualifications and I think you all are --
6 acutely aware of what the proof is about that. But what
7 he boils down his opinion to was his problem was about
8 the same problem that Mr. Holmes had. He had a problem
9 with that time. Of course, Mr. Holmes said the time
10 thing was cleared up in the second interview. But Mr.
11 Ofshe spends all this time talking about the time
12 problem.

13 Now, I want you to think and you use your own
14 memory. Don't -- don't rely on what I say, use your own
15 memory. What scientific basis did he give for concluding
16 that any of that statement was coerced? What was the
17 scientific basis that he told you? What was it? He
18 didn't give you any. He didn't. It wasn't there. He
19 just said, "It's coerced because I reviewed this", just
20 like you could review the transcript and listen to the
21 tapes and say, "Um, there's a problem with time." You
22 need to pay a guy Three Hundred Dollars an hour to look
23 and see there's a problem with time? And I don't mean to
24 make light of it because it's a serious situation. It's
25 a serious problem. But the defendant is the first one

1 who mentions it happening at night. Then he reverts to
2 talking about it being in the morning, and why -- why he
3 did that, why he said that -- I don't know. He -- the
4 testimony has been he has significant memory problems,
5 he's huffing gas -- I don't know. But when you analyze
6 the way he talks in that tape and you analyze what he
7 said, you find he's not being coerced or manipulated.
8 He's telling what he thinks is the truth about the time.
9 And the most significant details of the crime he gets
10 right.

11 He says the problem is the suggestible questions.
12 Now, if you've got a person and whether he determined
13 that this defendant is a suggestible person or not, I
14 never was clear on it. I never heard him say anything
15 about that. Now, Dr. Wilkins did, but he didn't have any
16 basis for it. He couldn't give you any basis for it.
17 But he says the problem is the suggestible question --
18 which to me sounds like a leading question. Kind of like
19 when lawyers always jumps up and objects because it's a
20 leading question. It sounds about the same. Well, is a
21 leading question coercive? Well, if the leading or
22 suggestful question is coercive you just say, "Well,
23 that's not right." Like, "Whose car were you all in?"
24 "No, we weren't in a car. We walked." That's pretty --
25 pretty easy to do and the defendant did it. But if those

1 questions are suggestible and the officers are
2 manipulating this defendant, don't you think that he
3 would be agreeing with them when they asked him a
4 question that's leading or suggestful?

5 Now, let's go through this. Let's look at these
6 suggestful questions. Start at page four, Detective
7 Ridge, "What occurred while you're there?" Any
8 manipulation, suggestion, or leading in that question?
9 "What occurred while you were there?" And he answered,
10 he tells them, "I saw Damien hit the boy real bad."
11 Anything suggestful or leading about that? No.

12 Page six, "Have they got their clothes on when you
13 saw them tied?" That's a leading question, suggest that
14 they had their clothes on. He says, "No, they had them
15 off." From the photographs it's obvious that they
16 couldn't have been tied with their clothes on. They'd
17 had to have been tied after their clothes were off. They
18 couldn't have gotten their clothes off.

19 So there he doesn't buy into these suggestions -- if
20 you want to call it that -- or the leading. Page seven,
21 "Where was he cut at?" or "Where did he cut him at?" "He
22 was cutting him in the face." Anything that was
23 suggestive that he was being cut in the face? Now, they
24 said, "Well, he might have been pointing to his face."
25 Ladies and gentlemen, there's not one iota of evidence

1 that that took place -- not one, and you remember your
2 oath. You can't base it on speculation. You can't base
3 it on conjecture. It's got to be on evidence and there's
4 not any evidence that that took place. "Where was he cut
5 at" after he talked about cutting him in the face. "At
6 the bottom." Well, they might say, "Well, he was -- at
7 the -- there was a reference to the groin area." Well,
8 they say, "Well, they led him into saying the groin
9 area," but the officer testified that he was -- when he
10 said bottom he was pointing at the groin area. "See, you
11 want to say bottom." Look at the photograph of Chris
12 Byers and his bottom and see if it's not cut.

13 And he asked, "Which boy was that?" -- talking about
14 the boy castrated. "That boy right there", and he points
15 to the boy. There is no evidence that there was any
16 suggestion made to this defendant about which one of
17 these victims to select.

18 And you know to believe that they did this, there's
19 no evidence of it so you couldn't find that. But let's
20 just say that you said, "Well, they did." You would have
21 to conclude that these officers were so dishonest and
22 twisted that they would pin it on an innocent person -- a
23 person they knew to be innocent.

24 Then on page ten, "Has he ever had sex with them
25 before?" -- talking about Damien and the little boys.

1 Doesn't that suggest that the officers think that maybe
2 Damien had sex with them before? And under Ofshe's
3 theory the defendant should have said, "Yes" and then
4 tried to figure out what they wanted him to say next. He
5 says, "No. No. He's been watching them. No, he hasn't
6 been having sex with them, he's been watching them."

7 And page eleven, talking about the picture and this
8 next thing he threw out to him, "It has the same three
9 boys in it?" "Yes." And then Detective Ridge says,
10 "You're certain of that?" He asked him that on a number
11 of pages after they give a response that would be a
12 response that's consistent with the facts. "You're
13 certain of that?" Now what did Ofshe -- what did he say
14 when Mr. Davis asked him about that? "You're certain of
15 that?" What does that mean? Do you think they're trying
16 to lead him when they say that? Aren't they questioning
17 his answer when they say that? Well, he says "That's to
18 reinforce it." To reinforce it. These officers are
19 skillfully manipulating the defendant and this is the
20 reinforcement.

21 Well, when we get over here in the second interview
22 when we're clearing things up, he gets over here and you
23 know that the medical examiner testified about the
24 injuries to Stevie Branch's penis. What he called a suck
25 mark or whatever you want to call it. And there are some

1 little bruises across the penis that you could conclude
2 are teeth marks when you look at the bruises.

3 In -- the officer goes in there and he asks, "Did
4 anyone maybe suck theirs or something?" And Jessie says,
5 "Not that. I didn't see nothing. Neither one of them do
6 that." Again, the question is leading or suggestful or
7 whatever you want to call it, does he buy into it? No.

8 And then Inspector Gitchell says, "You didn't see
9 that?" And Jessie says, "Uh, uh." Gitchell again says,
10 "Okay. Did they pinch their penis in any way or rough
11 with it or anything like that?" Jessie, "I didn't see
12 nothing like that, not rough with them. I just seen" --
13 and Gitchell says, "You didn't see anyone go down on the
14 boys?" -- the third or fourth time. "Uh-uh."

15 Gitchell, "Are you sure?" Is Inspector Gitchell now
16 reinforcing an answer that's inconsistent with the facts?
17 It's obvious the defendant just didn't see this incident.
18 Now, when it works to the defense's advantage, Ofshe says
19 if he asks, "You're certain of that", why that means
20 you're reinforcing it -- skillfully reinforcing it. But
21 when it's the other way, what is it? What is it? You're
22 just asking questions. You're questioning, "Are you
23 sure?" When they ask, "Are you sure that Chris Byers is
24 the one that was castrated? Are you sure?" It's giving
25 him an opportunity to say something else. And he doesn't

1 take that opportunity then and he doesn't take it when
2 they're asking him about this injury to the penis.

3 In fact this shows directly to the contrary of what
4 Doctor Wilkins and Ofshe say about the suggestibility.
5 It shows that he is completely able to resist suggestion.

6 There are a number -- there are a number of other
7 times in there when similar type questions are asked and
8 I'm not going to go through every one of them. You can
9 find them for yourself where there are apparently leading
10 or suggestible questions that he doesn't buy into -- he
11 doesn't go along with.

12 Then there's this second tape in referring to time
13 when he talks about five or six, seven or eight,
14 Inspector Gitchell has a question about that time. And
15 finally he says, "It was starting to get dark." He
16 abandoned trying to refer it by time because he has no
17 concept of time. And he says, "It was starting to get
18 dark."

19 Page four, "Did you ever see the boys in the water?"
20 Suggestible, leading, that yes, they were in the water.
21 Jessie says, "Yes, down by the water." He doesn't buy
22 into it.

23 Page five, "Did you see the Moore boy? Was he
24 raped?" Certainly, suggest that he was, right -- leading
25 question? The answer, "No."

1 Finally, in talking about the boys being sexually
2 abused. Inspector Gitchell says, "So they both did it to
3 all three of the boys." Jessie, "Just them two as far as
4 I know."

5 The purpose of all of this that I've gone through
6 and I hope I haven't bored you all too much, but Mr.
7 Ofshe testified and went over and over things that he
8 claimed showed how suggestible this defendant was and how
9 the police were manipulating this defendant. These are
10 just a few examples throughout this transcript where what
11 you might call leading questions and by no means are all
12 of the questions leading, but some of the questions you
13 might consider leading, when the defendant -- as Mr.
14 Holmes said, "He'll straighten out." And that's what he
15 did. He didn't cave in and have his will overborne.
16 This expert when it's the way he wants it to be then it's
17 police manipulation. But if it's to the contrary, he
18 ignores it. And the best example of that is about him
19 saying that "Are you certain" reinforces it. When
20 Inspector Gitchell asked, "Are you certain" on a question
21 that he was test -- or stating it was inconsistent with
22 the facts. You can't have it both ways. It's either
23 reinforcement or it's not.

24 And then Ofshe -- and we went through this -- now,
25 why this very skillful expert testifier did this, I don't

1 know. But he testified that night was not mentioned
2 until page eighteen when Detective Ridge says, "The night
3 you were in these woods." And if you'll remember back on
4 page twelve and you'll have that with you back there --
5 the transcript and the tape -- it was the defendant
6 himself who first brought up night. Now, why Ofshe tried
7 to pass off to you all that the police had introduced
8 night, I don't know. Was he wrong? Just wrong?
9 Mistaken? Not -- doesn't have a grasp of the facts? Or
10 was he misrepresenting to you?

11 He then testified in regards to the follow-up tape
12 that no where in the record does the defendant say seven
13 or eight until Inspector Gitchell mentioned seven or
14 eight. Inspector Gitchell testified and explained where
15 he got seven or eight and it was from the defendant's
16 mouth.

17 And then on page three -- again why he did this, I
18 don't know -- Ofshe tells you that where the transcript
19 shows that Detective Ridge said nine o'clock in the
20 morning, why the transcript's wrong. That was Jessie
21 that said that according to Ofshe. Listen to that tape.
22 I don't believe you'll have any trouble distinguishing
23 between Detective Ridge's voice and the defendant's
24 voice, and it's clearly Detective Ridge saying, "Nine
25 o'clock in the morning."

1 Now, if these officers are going to skillfully
2 manipulate this defendant after he says it was in the
3 morning, why would he say nine o'clock in the morning?

4 Finally, in regards to Mr. Ofshe this is the same
5 man that despite all of these flowery explanations for
6 why this occurred, the same man who in the State of
7 Washington testified that a man had given a coerced
8 confession, a wrong untrue confession when his two -- not
9 minor daughters or mentally handicapped daughters or
10 anybody else -- his two adult daughters said that he had
11 molested them. His wife said that it happened and he
12 said that it happened and confessed to it, pled guilty,
13 and not until the expert testifier goes and talks to him
14 does he suddenly say -- this is after more than five
15 months of maintaining his guilt -- that "I'm not guilty."
16 All of these people -- were all of these people
17 skillfully manipulated and coerced into saying these
18 things? Well, the State of Washington and their courts
19 thought not and discounted his opinion.

20 **The bottom line in this case is these officers'**
21 **integrity -- Inspector Gitchell and Detective Ridge --**
22 **there is absolutely not one iota of evidence that they**
23 **have told anything other than the truth in this**
24 **courtroom, anything other than the truth about what**
25 **happened there -- there's no evidence of that. There's**

1 no evidence of coercion. There's no evidence of them
2 yelling at him. Inspector Gitchell said, "Sometimes you
3 have to do that. In this case it was not necessary."
4 There's no evidence of any form of coercion. What is --
5 what is -- what's the defense -- are they saying that the
6 defendant was brainwashed? Is that what they're saying?
7 This defendant knew facts that nobody else knew.

8 Now, when you look at these documents that the
9 defense introduced I believe it's going to be clear that
10 he was giving information that nobody else knew. The
11 newspapers, what they printed was that all of the boys
12 had been sexually mutilated. Well, if that's the
13 information he had, why didn't he say, "Well, all three
14 of them were cut" in that place instead of one and pick
15 out the right one.

16 Got a little report here from an interview with some
17 guy named Kelly -- rumors -- "castrated and mutilated,
18 beaten to death." Did it say one was castrated,
19 mutilated? Anything about cuts in the face? No. And
20 then another one, in response to the question nine which
21 is "How do you think they died?" Pointed to his penis
22 and said, "Heard it was cut off," or "It was cut off and
23 they were beat up." He didn't say it was cut off of one
24 or two or three. There's no evidence that -- who was cut
25 or how many was cut with common knowledge. You've got

1 injuries to the ears that nobody knew about. The
2 defendant described the way that it would have happened.
3 You've got injuries to the genital area where he
4 identified the specific person. Yes, there's information
5 that all of them had had that and that was not true.
6 That was wrong information. And he picked out the one
7 person who it was done to. Injuries to the face were not
8 common knowledge.

9 Finally, finally, we get to Bojangles defense which
10 we've already talked about briefly. And use your common
11 sense to judge these. You can take it back to the court
12 -- to the jury room with you. If somebody that's going
13 to go to all the trouble that these defendants went to to
14 clean up that scene, are they going to then -- is he then
15 going to go into a public place and leave blood all over
16 the place?

17 In this system we all have duties. Barbara's duty
18 is -- you notice she's not doing her little typing thing
19 -- she's still taking everything down by tape recorder.
20 In the courtroom that's her job is to take down
21 everything that's said. The Sheriff's office -- actually
22 the bailiff provides security and they've done their
23 duty. Inspector Gitchell and his men investigated this
24 crime to the very best of their ability. And keep in
25 mind what the medical people said -- let me digress a

1 minute.

2 This was a clean scene. Not like being in a house
3 where the evidence is contained. This is outside in the
4 woods. But yet not a drop of blood. They might say,
5 "Well, it must have happened somewhere else and they
6 carried them in here." There's no trail of blood leading
7 out there either and this guy going in Bojangles leaves
8 blood dripping all over the place. There's not any blood
9 out there because it had been wiped down. You got the
10 pictures and you can see in the pictures the condition of
11 that bank where it had been cleaned off. You've got the
12 most destructive thing to evidence that you can have --
13 water. You've got the bicycles in water. You've got the
14 kids in water. You've got their clothes in water, and
15 despite all of those problems the forensic people at the
16 crime laboratory were able to obtain fibers that matched
17 both Damien Echols and Jason Baldwin -- despite all of
18 those problems. And they also found -- and this is
19 somewhat confusing in the testimony -- at least it was
20 for me -- some of you all may be scientists or science
21 people -- but the testimony from doctor -- from Mr.
22 DuGuglielmo about DNA.

23 Now, if you'll recall Kermit Channell from the crime
24 lab said that on -- in his tests -- on the little boy's
25 pants that he ran screening tests ran one screening test

1 and it came back positive -- positive for semen. He ran
2 a second screening test -- positive for semen. He looked
3 under a microscope and the pants are all muddy and
4 everything and he couldn't see any sperm but he had these
5 two positive tests for semen. So he sent those cuttings
6 from the pants to Genetic Design in North Carolina and
7 that was the man from North Carolina. And what did he
8 tell you? We boil it all down -- if I can boil it down
9 -- he tells you that in his opinion the DNA that he found
10 from those cuttings was from sperm. Did he see any
11 sperm? No. Because he doesn't look at things under the
12 microscope. His are DNA tests. He says they ask ← Mr.
13 Stidham said, "Are you saying positively that there is
14 sperm there?" He said, "Well, no, you can never say
15 positively unless you look under a microscope and are
16 able to see it. But if I had done that it would have
17 used up part of the sample and we were trying to preserve
18 the sample." But with his opinion, with the test that he
19 ran, if you'll remember there's the epithelial -- what he
20 calls the fractions -- and the male or sperm fractions.
21 Remember the way he was describing how you split out the
22 two and you've got more than one suspect and you split it
23 out so you'll be able to divide them up? The epithelial
24 fraction is the non-male fraction. If it's something
25 other than sperm it's going to show up in that -- like

1 blood.

2 Well, when you got the DNA test back and the
3 epithelial back, nothing. No DNA. On the male fractions
4 -- the sperm fractions -- it was positive for DNA and he
5 stated that in his opinion that this indicated the
6 presence of sperm on those pants. So despite not enough
7 -- not enough to connect in his opinion but it wasn't
8 enough to connect to anybody. It's not as if you had
9 something that just didn't connect to this defendant. It
10 wasn't enough to connect to anybody because there's just
11 not enough of a sample. So despite this clean crime
12 scene the forensic people at the lab and through the work
13 of the police department they were able to come up with
14 that corroborating factor, the fibers that matched Damien
15 and Jason, and then you've got the Judge and back to the
16 duties.

17 Judge Burnett's job is to keep us all in line and
18 you've seen probably more objections and approaching the
19 bench than you ever want to see, but those things are --
20 as Mr. Davis pointed out to you -- voir dire is sometimes
21 necessary and we have to do those things. But his job is
22 to be the judge of the law and to give you the law that
23 you're to follow.

24 Mr. Stidham and Mr. Crow -- it's their job to
25 represent this defendant and they've done that. It's Mr.

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

STATE OF ARKANSAS

PLAINTIFF

VS.

NO. CR-93-47

JESSIE LLOYD MISSELLEY, JR.

DEFENDANT

PRETRIAL AND TRIAL PROCEEDINGS

CORNING, ARKANSAS

VOLUME 10

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BEFORE THE HONORABLE:

DAVID BURNETT, CIRCUIT JUDGE

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1 Davis' and my job to present to you the State's case and
2 we've done that. And now we're about to enter the phase
3 where really the job becomes yours -- the entire job
4 becomes yours.

5 To judge whether or not based solely and exclusively
6 on the evidence that you've got before you whether the
7 State has met its burden of proving this defendant guilty
8 of three counts of capital murder. I submit to you that
9 the State has met its burden of proof. I submit to you
10 that you should go back and deliberate, take your time --
11 this is not something to rush through and listen to those
12 tapes and return a verdict of guilty. Thank you.

13 THE COURT: I'm going to take a recess.

14 Alright, ladies and gentlemen, with -- Sheriff, I
15 want the whole hallway cleared out back there for the
16 jury to use both rest rooms -- have somebody on both
17 doors.

18 (RECESS.)

19 THE COURT: Alright, Court will be in session. You
20 may proceed.

21 MR. STIDHAM: Thank you, your Honor.

22 I'd like to take this opportunity to also thank you
23 for your patience and your ability to listen throughout
24 this long trial. There have been a lot of objections and
25 there have been a lot of approaches to the bench, and I