

1 to get a statement from Jessie Misskelley. The police
2 were suggestive and they led Jessie through the entire
3 statement. When you listen to the statement, when you
4 read about the statement, think again about the
5 narrative, and think about the way these officers led him
6 through the entire statement. The way they suggested
7 things to him through the entire statement.

8 Ladies and gentlemen of the jury, what I'm about to
9 tell you is the most important thing that you will hear
10 throughout the course of this trial. A very learned
11 judge in the State of Florida once said in one of our
12 opinions, he said, "The killing of one human being by
13 another is a most heinous act only excluded by the
14 killing of an innocent man by the state." Ladies and
15 gentlemen of the jury, my client, Little Jessie
16 Misskelley, is an innocent man. He's innocent and I will
17 ask you to go back to that jury room and bring back a
18 verdict that renders justice -- truth and justice -- and
19 I would ask you to bring back a verdict that you can live
20 with for the rest of your life. Thank you.

21 THE COURT: Do you want to take a stretch break?
22 About two minutes in place.

23 (RECESS.)

24 THE COURT: Alright, Court will be in session.
25 Alright, you may proceed.

1 MR. DAVIS: If it please the Court, Mr. Stidham,
2 ladies and gentlemen of the jury, I know at this point
3 we're all tired. We've spent weeks in preparing this
4 case while a lot of times while you all have been out in
5 the halls we've been in here at each other's throats and
6 we're all tired and we all have a great deal of
7 responsibility. Fortunately, my responsibility is going
8 to end when I sit down and yours is going to just begin.

9 What I want to do briefly and I'm not going to recap
10 everything. I think Mr. Fogleman did an excellent job of
11 detailing what the testimony was and showing you the
12 specific facts that you should concentrate on. But what
13 I want to do is try to boil it down to what really the
14 issue of this case is. I think it's something that Mr.
15 Stidham is nearly afraid to articulate. Because what
16 their whole premise to their case is is that their client
17 lied. He's a liar and the police are liars because they
18 won't tell you what happened when he was being
19 interrogated and as a result you should throw a
20 **confession** out the window and find the defendant not
21 **guilty**. And that's his case.

22 Now, he tries to couch in in different terms and to
23 put it in a different form or fashion but that's what it
24 boils down to. Personally I find it repugnant with this
25 evidence that Mr. Stidham would make such allegations.

1 It is the first time in my career that I've had to stand
2 up here and deal with a defense attorney claiming that
3 his client lies. It is so incredibly a reversal of roles
4 for the defense, but what else can they do? Their client
5 confesses to his involvement. He tells specific
6 instances of his involvement. He describes details that
7 only a person that is there could possibly know, and I
8 don't care what he says. He can say it was newspaper
9 articles or what else. But you can read in that
10 statement that he described the castration of that
11 particular boy. That is a fact that only someone who was
12 there would know. And when he described that the other
13 two individuals forced them to perform oral sex on them
14 and grabbed them by the ears, those are facts that only a
15 person there would know.

16 When he described the cutting on the side of one
17 boy's face, those are facts that only a person that was
18 there would know. Unless -- unless he successfully
19 convinces you that the police officers got up here and
20 they are the ones that are lying, and they are the ones
21 that are lying to you. And I hope that you have the
22 integrity and good sense not to buy that because it
23 doesn't mesh with the facts and evidence in this case and
24 that's what you make your decision on.

25 The other issue that is involved in this case I'll

1 address in a minute, but that is going to be whether the
2 defendant was involved enough to be convicted of capital
3 murder. But let me address some of the specifics that
4 Mr. Stidham brought up.

5 On the one he started off by saying that Mr. Ofshe
6 was on trial. For what Mr. Ofshe gets paid and for his
7 willingness to go out on a limb and make the statements
8 that he makes based on the flimsy information he
9 possesses -- well, that -- he -- he was on trial to some
10 extent. It reminds me -- in preparation of this case I
11 listened to a tape recording of Warren Holmes, their
12 other expert, and he said in that, he said, "The
13 difference between a Ten Thousand Dollar a year salesman
14 and a hundred thousand dollar a year salesman is one is a
15 better liar." And we've got a Forty Thousand Dollar a
16 year salesman who came and talked to you.

17 He says that the reasonable doubt that exists -- and
18 this is his first point. I'm going along -- we couldn't
19 see the chart, but I assume this is what he did. The
20 first reasonable doubt is Jessie's story. "My client's a
21 liar. Therefore, you should have a reasonable doubt."
22 That's his first premise.

23 Then he goes and he says, "Well, the victims --
24 there's no evidence that the victims were sodomized."
25 Well, if you'll recall the Doctor's testimony was that in

1 all three instances there was anal dilation. That there
2 were abrasions and bruises about the buttocks and the
3 anal rectal area and then as Mr. Fogleman described and I
4 know it was hard to follow, but the DNA guy said that
5 there was DNA consistent as coming from a source of male
6 sperm on the pants of one of the boys. And Mr. Stidham
7 says, "No evidence." Well, ladies and gentlemen, you
8 make your decision on the evidence in the case.

9 He talked about the time and, granted, there are
10 inconsistencies in the time. You've heard the expert say
11 number one, this defendant has a disorder in terms of
12 memory, and number two, all of a sudden we're sitting
13 here talking about, "Well, gee, a defendant who committed
14 three murders tells us something that's not true, we must
15 believe that all those other facts that he could only
16 have acquired if he was there, must not be true either."
17 And that doesn't make good sense, ladies and gentlemen.

18 All defendants -- all criminal defendants do not
19 immediately tell you the truth. In fact, Mr. Stidham
20 forgets that his very own expert, Mr. Holmes, told you
21 that ninety-nine percent of the time there will be
22 details that wouldn't be consistent, that would be left
23 out, there will be threads that don't connect, and that
24 in ninety-nine percent of those cases the defendant is
25 guilty.

1 Mr. Holmes also told you that in situations -- I
2 asked him, I said, "Mr. Holmes, does it worry you if a
3 defendant recants and says after he confesses all of a
4 sudden he said, 'No, not me. I didn't do it. I lied to
5 the police.'" And he says, "That doesn't worry me at
6 all. In ninety-nine percent of the cases when that
7 occurs the defendant is guilty. "If there are admissions
8 in that first statement that go to show his guilt that no
9 one else could know" -- and I put to you those are what
10 we have in this case -- and that is why this defendant is
11 guilty.

12 Now, he also talks about Jessie's alibi and I nearly
13 laughed at this -- seriously. He said -- you know -- he
14 said the State -- for him to commit this murder -- must
15 think that he could be in two places at one time. Well,
16 as you listen to his alibi testimony, he was. Because
17 there were people that testified and I -- you go back and
18 look at your testimony -- that he's sitting on the front
19 porch for an hour and a half with somebody, and at the
20 **same time**, he's with his girlfriend, and they're two
21 **different** people, and then all of a sudden at the time
22 **that the Sheriff's Deputy** got there, he's with Dennis
23 Carter, and you remember Dennis Carter got up here and
24 testified when he talked to the police the first time he
25 gave them a statement and said he hadn't seen Jessie all

1 day. In fact he said he hadn't been with Jessie all day.
2 The second time he talked to him he had been with Jessie
3 all day and this is right. A week -- ten to thirteen
4 days after Jessie's arrest. This is his friend. This is
5 the guy that's in jail and he's concerned about him, and
6 where is the yellow ribbon? That close in proximity he
7 never says a word about being with Jessie that day.
8 Never says a thing about it. One of them was a
9 handwritten statement now, and only to say Mr. OfShe
10 would say they coerced that out of him. He wrote it out
11 himself. And yet he never mentions the same until he
12 gets up here, and the reason -- go back and look and see
13 why these people -- and some of them -- some of them I'm
14 putting to you are just flat liars. Some of them I think
15 after a month had elapsed and the Misskelleys came and
16 approached them and they came in with these police
17 reports and said this happened on this day, and they came
18 in with these things that they wanted to help their
19 friend and neighbor, and they wanted to do what they
20 could. And so when they were told, "Don't you remember
21 this? Don't you remember that?", they bought into it.
22 But when you listen to it, if they were telling the
23 truth, there would be consistencies. And if they knew
24 where Jessie was on the fifth, they would have told it
25 when they talked to the police the first time, not nine

1 months later. And if they knew where he was and those
2 that didn't talk to the police, they would have reported
3 it.

4 What happened though is Fred Revelle was the one
5 person who reported it. And he came up with this theory,
6 "Well, I know where he was 'cause that's when he got --
7 that's when we paid the money." And he did report it.
8 He told the police, then they checked it out, and said,
9 "No, I'm sorry, Fred, you're wrong. It was April twenty-
10 seventh." And once that word got out I didn't see a soul
11 bother to report their alibi information because they
12 didn't want it to get under scrutiny of the eye of the
13 police department.

14 Now, I put to you the reason for that is -- the
15 reason why it doesn't jive -- the alibis don't jive --
16 the reason why he's in two places at the same time is
17 because those alibis are not accurate, and those alibis
18 are not true.

19 Mr. Stidham says, "Gosh, when this incident happened
20 that late, sure everybody was out there." Well, from my
21 recollection of the testimony was that there were four or
22 five people out there at times. Some of his witnesses
23 put Jessie up there talking to the Sheriff's Deputy.
24 Now, I guess conceivably you could say, "Well, with four
25 or five people out there, Officer Dollahite may not have

1 seen him." But their witnesses say that he was within
2 five yards of the car. There's only three or four people
3 there and two or three of their witnesses said he was
4 talking to the officer. Now, maybe you could say, "Well,
5 you know, gee, these officers run into a lot of people
6 over the course of the day, runs into a stranger out
7 there, maybe he wouldn't recognize him." Well, these
8 officers all knew Jessie Misskelley, Junior. They were
9 all familiar with him -- acquainted with him -- before
10 they went out there, and those officers -- all three of
11 them -- who say, "Jessie Misskelley, Junior wasn't
12 there."

13 Ladies and gentlemen, when you look at that and
14 compare that with these other alibis that put him in the
15 same place -- or two different places at the same time,
16 it just doesn't jive and it just doesn't work.

17 He also refers to Jim McNease. Now, Jim McNease is
18 the one that puts him with Allen Carter. Jim McNease is
19 the one who refused to even talk with the police when
20 they wanted to talk to him back in June. He refused to
21 communicate with them and he gets on the stand and says
22 that night he saw him with Allen Carter. Well, that's
23 fine because he's got him walking down the street with
24 Allen Carter and Mr. Hoggard has him walking down the
25 street by himself. Mr. Hoggard has him up there talking

1 to the Sheriff's Deputy. Mr. Hoggard has the Sheriff's
2 Deputy's car in Stephanie Dollar's driveway, which the
3 officer testified he never was in her driveway.

4 But when you look at that, if that's really -- if
5 they are accurately recalling based on that event, you
6 would not have those blaring inconsistencies, because to
7 my knowledge there was no evidence that any of those
8 people have memory deficits or anything of that nature,
9 and you would expect that information to at least give
10 more significantly than what it does with the facts you
11 hear from the witness stand.

12 He also refers and he says -- and I don't know if
13 they just missed part of the last testimony or not -- but
14 he said part of the reason why the alibi is good is
15 because Jessie, Senior comes home from D. W. I. School
16 and meets the officer driving out of the park, which is
17 rather unusual since he got out of D. W. I. School at a
18 quarter 'til eight and the officers left the scene about
19 ten 'til seven, which would again he's accusing us of
20 putting Jessie two places at once. It seems like Jessie,
21 Senior also has that ability to be in D. W. I. School at
22 a quarter 'til eight and he's driving home at ten 'til
23 seven.

24 Also, the witness that we put on in rebuttal, Mr. --
25 I think it's Mercier and Mercer -- look at this, please.

1 When everybody that got up here testified that at times
2 whenever they were there -- they signed this. It hasn't
3 got a date one. If you'll look and see whose the last
4 name on there and he told you he wasn't friends with
5 anybody, didn't appear to have any bias, Mr. Stidham
6 didn't attack him in any way in that nature. He just
7 said, "I was only there once and I signed that document
8 then and that was before the boys were murdered."

9 Now, he says there's no physical evidence linking
10 Jessie Misskelley, and Friday -- I think it was last
11 Friday -- I'm not even sure what today is -- but last
12 Friday after all of the testimony we put on the guy from
13 the crime lab, Lisa S. and all these people that
14 testified about various physical evidence, and the next
15 morning I read the paper and it said nothing -- it said
16 nothing happened, nothing really significant occurred
17 yesterday, but what we were doing -- you have to
18 understand and I'm sure unless you have been in a
19 criminal trial before -- if we don't put on evidence that
20 a fingerprint expert looked at everything at a crime
21 scene and says, "I looked at everything there was. There
22 were no fingerprints." Then the defense jumps up and
23 screams, "They didn't even try to get fingerprints." So
24 we put on a fingerprint expert to say they submitted all
25 sorts of things -- these sticks -- everything in the

1 world. We looked at them. We examined them. We
2 couldn't find latent prints. We also put on the DNA
3 people. He testified he had a number of things submitted
4 to him. They examined all sorts of things. It wasn't
5 that they found evidence that somebody else was connected
6 or evidence that couldn't be explained because we didn't
7 know who it belonged to -- which would be permissible.
8 You know if there's fingerprints out there that we can't
9 match up then somebody else might have been there and
10 it's not this defendant. But that's not the case.
11 That's not the case.

12 The evidence that we presented was that all of these
13 efforts were made to procure physical evidence and what
14 physical evidence was obtained and was identifiable goes
15 back to Damien and Jason. We didn't find anything with
16 Jessie. But the fact that the evidence does connect
17 those two is certainly consistent with what his statement
18 was that he told the police. And it in no way gets him
19 out of responsibility by saying, "Well, gee, there was no
20 evidence connecting him, he couldn't have been there."
21 This whole crime scene out in the woods you've heard how
22 clean it was, how devoid of physical evidence -- out of
23 the entire investigation -- and it was massive and it was
24 meticulous. There was just a handful of fibers and I
25 think ten hairs that were even suitable for comparison.

1 And for them to say that because you don't have something
2 that directly links Jessie then he wasn't there is
3 absolutely preposterous. We put that evidence on to show
4 you what we did, what we had, and who it connected to,
5 and it's consistent with what he told you in his
6 statement.

7 They talk about Bojangles. Do you think if the
8 blood sample that was obtained at Bojangles had indicated
9 in its examination that it belonged to somebody or some
10 thing or would have any evidentiary value, don't you
11 think that you would have heard some evidence about it
12 from the defense? Don't you think they would have put
13 something on? The reason that -- and that's one of those
14 things -- one that we call a red herring -- and I think
15 the reason they call it a red herring is because it's
16 something if you throw it in the jury box and leave it
17 there long enough it's going to create a big stink. And
18 that red herring is thrown in there to try to throw you
19 off, but like Mr. Fogleman said, the person that was in
20 Bojangles -- I don't know if they investigated him --
21 whatever happened to him -- whatever caused him to be
22 bleeding -- that person was not the same person who
23 meticulously cleaned this area, who jammed the clothes
24 down in the water, who submerged these three little
25 victims and left no trail of blood anywhere in those

1 woods. That person is not the same person that was in
2 Bojangles. And you all agreed with me during voir dire
3 you'd apply your common sense. And common sense tells
4 you that that is -- is -- I guess -- blowing smoke on the
5 part of the defense because it's just not something that
6 makes any common sense whatsoever.

7 Now, he says another thing that's reasonable doubt
8 is the cult. That there is no -- no evidence that these
9 other people were in the cult. Well, the only evidence
10 is that a witness testified that this defendant along
11 with Damien Echols went with -- or took her to a cult
12 related activity. You heard in his statement where he
13 talked about how they would kill animals and eat meat off
14 their hind legs. He talked about being involved with
15 cult related activity. You seen the book that they
16 confiscated from Damien's house and when this Hutchison
17 lady wanted to get hooked up with Damien who was it she
18 was able to go through to make that connection? It was
19 Jessie Misskelley.

20 Now, they say there's no connection between him and
21 a cult and I guess technically there's no scientific
22 evidence that says this was a cult killing. But there is
23 certainly evidence and I think it's clearly showed that
24 more than one person was involved because we have three
25 separate weapons. We have three separate type knots in

1 the ligature. We have three different type bruises to
2 these children. Now you can -- just from your own common
3 sense three eight year olds -- to corral and do what they
4 did to these children, it's going to take more than one.
5 And then to perform the sadistic acts they did on them I
6 don't know what the definition of the cult is. I don't
7 know if it has to mean that they go once a week and
8 worship the devil or what, but when three -- more than
9 one -- and I put to you the evidence is that all three of
10 them are involved in this type of activity -- that's a
11 cult in my book and I think that Mr. Stidham finds that
12 there's a different definition then at least for
13 standards of northeast Arkansas, maybe he ought to move
14 to Berkeley, California, with Mr. Ofshe.

15 He says that there is no narrative in the -- in the
16 tape recording. You listen to that and be the judge.
17 Also, remember that all of the tests indicated that
18 Jessie has some verbal problems and granted, he does not
19 -- there are not long orations on Jessie's part, but when
20 you go through there you will see areas -- in fact one
21 area is where he's mentioning where somebody lives, and
22 he describing to the officers where somebody lives and
23 it's about five or six lines long. And it's a
24 description -- "You go down this street, you turn left,
25 you go down about four blocks and then it's the third

1 house on the right. There's a truck across -- there's a
2 goal post next to it." It's a very detailed statement
3 that flies in the face of this poor little innocent
4 fellow that's had his head tucked down all during the
5 course of this trial that wouldn't look you in the eye.
6 It's not consistent with what you've seen here.

7 And Mr. Fogleman touched on it. They're claiming
8 police officers were deceptive and they're claiming that
9 the police officers have lied to you and have been
10 involved in deceit and have created this entire statement
11 so that you'll convict Jessie Misskelley, Junior. And
12 that they're staking their professional integrity on
13 doing something like this in order to solve this crime.

14 Well, when you look at these photographs of this guy
15 right here and then you look at what you've been staring
16 at for the last two or three weeks sitting over there
17 with his head bowed down, different attire, different
18 hair cut, please tell me who it is that's the deceptive
19 party in this whole situation.

20 What Mr. Stidham pointed out about their expert,
21 what they told you was that there are these certain items
22 that you can look at that can indicate a person can be as
23 easily suggestible or can be influenced. Well, to
24 determine whether a person actually was you need to know
25 what happened there and you need to look at how the

1 questions were asked. Mr. Fogleman has gone over with
2 you all those questions where if they were suggestive,
3 coercive, and influencing him improperly he would have
4 said what they wanted him to. If these officers were so
5 diabolical and manipulative and to hear Mr. Ofshe say
6 there's some sort of book where they have these
7 interrogation tactics that they could get you or I to go
8 in their office and after a short period of time we would
9 confess to multiple homicides. But if they're so
10 diabolical and they're so good in such a science that
11 they can prey on somebody in this -- and this poor
12 defendant is just so easily suggestible, why didn't they
13 get a better statement? Why didn't they make it perfect?
14 Why would they ask him -- why would Ridge say, "What
15 about nine o'clock in the morning?" Why would they ask
16 him when he says, "It's the Byers child who's been
17 castrated?" Why would they say, "Are you sure?" Heck,
18 they got what they wanted, let's move on and pin him down
19 to the next thing we're going to try coerce him on.

20 **But** when you get to areas like that then Doctor
21 **Ofshe**, who is a little slippery, he comes up and he wants
22 **to talk about something else.** But please look at that
23 because -- and think about it -- because what he accused
24 the police of doing was having a brainwashing mind
25 control ability over this defendant, and that they were

1 able just to get him to say what they wanted and if
2 that's true, then why isn't the statement perfect? Why
3 are there -- why are there still some inconsistencies in
4 it? Why would they do that? It doesn't make sense if
5 you believe the defense theory.

6 The other thing is, too, they want it both ways.
7 They want you to believe that this defendant is so -- and
8 they call him handicapped -- but he's got such a low I.
9 Q. that he is practically just like putty in the hands of
10 these police officers. His -- you know -- to think of
11 it, no matter what situation he were in to confess to the
12 horrendous -- to running down a boy -- an eight year old
13 boy and dragging him back to his death -- just think what
14 pressure would be required to cause you to do that.
15 Think of it. And what they're telling you is that this
16 person -- because he has such a low I. Q. was persuaded
17 and coerced into doing it yet the way he was able to give
18 a statement that -- on the tape that you heard that had
19 such good facts is because although he's so slow he's
20 easily suggestible, he's also so smart he can pick up all
21 this stuff while they're questioning him and then spit it
22 back out to you in a statement.

23 So it's really -- he's slow for one purpose, but
24 he's very intelligent for another purpose. And they
25 can't have it both ways because it doesn't make sense,

1 and if it doesn't make sense then it shows that this
2 defendant is guilty.

3 The second issue is -- and I think it's one that's
4 crossed your minds from the time you heard the confession
5 -- is that the law requires the State to prove that this
6 defendant acted with premeditation and deliberation with
7 the purpose of causing the death -- him or an accomplice
8 -- even under the tape, how do we find that this
9 defendant committed capital murder? Because what he says
10 in his tapes that his involvement is relative;y slight.
11 Well, examine what his statement says. He ran the Moore
12 boy down and brought him back. At the time he did that
13 Damien had already -- was already beating up one of the
14 boys and he brings him back. Now, he'll say somewhere in
15 that statement -- he'll say, "Well, that's when I saw
16 what was happening, I left." But that's not true. It
17 can't be because in his statement he then proceeds to
18 detail how the boy was cut in the face. He detailed how
19 the boy was castrated and he doesn't just say castrated.
20 When they say, "Are you sure?" He said, "Yes." And they
21 say, "Well, how did they do it?" And he said, "They got
22 him down on his back. They were both on top of him. One
23 of them was sitting on him and then I saw the blood."

24 Now, if his involvement was that he ran and chased
25 the boy down and brought him back and then he took off,

1 how was it he saw all of those things? How was it that
2 three weapons were used to inflict these wounds with if
3 there's only two people that are left there? And in
4 talking about his involvement -- an accomplice -- he's
5 guilty as an accomplice if he aids or agrees to aid in
6 the participation of the offense or aids or agrees to aid
7 another in the commission of the offense. It's with the
8 purpose -- and when you get back there and read the
9 instructions -- purpose is defined as consciously
10 engaging in conduct of a certain nature. If he
11 consciously engaged in conduct that involved him in this
12 act, then he's guilty of capital murder if that's the
13 result.

14 See this picture? (INDICATING.) This is the Moore
15 boy and this defendant won't look up and won't look at
16 you. But this defendant's actions -- and you just think
17 about it -- if this defendant does not chase down Michael
18 Moore, if he does not run through the woods and chase him
19 down and bring him back, Michael Moore lives. Michael
20 Moore gets to go home at night and his parents get to be
21 with him. But because of this defendant's actions,
22 because of what Jessie Misskelley, Junior did and what he
23 told you about in that taped statement, Michael Moore,
24 Junior -- Michael Moore doesn't go home any more. And
25 because if he hadn't of chased him down, Michael Moore

1 gets away. It's only a few hundred yards to the truck
2 stop. And certainly Michael Moore is going to report
3 what's happening and if Michael Moore gets away, maybe
4 the others decide that this isn't a good thing to engage
5 in and they get out. Maybe it's just a kidnapping or
6 battery. Maybe they're just seriously hurt. Ladies and
7 gentlemen, we'll never know for Jessie Misskelley, Junior
8 didn't let Michael Moore get away. He chased him down
9 like an animal and brought him back and as a result of
10 his actions, Michael Moore's dead, Steven Branch is dead,
11 and Chris Byers is dead, and there's no getting around
12 it. And you can cut it any way you want to. You can sit
13 there and look over it, but when you read that tape and
14 listen to that tape, and you look and go over this
15 evidence, the actions of this defendant certainly meets
16 the acts of an accomplice in aiding or agreeing to aid or
17 assisting in the commission of capital murder and, for
18 goodness sakes, in a case like this -- I know there's a
19 lot of -- there's a lot of pressure, there's a lot of
20 attention on it, and it's a great responsibility to go
21 back to, because the person you've looked at for two
22 weeks looks young and it's easy to empathize and
23 sympathize with him. But, please, for goodness sakes go
24 back there, follow the law, and when I asked you in
25 opening -- or in voir dire about using your common sense,

1 what I meant was in this case you will be presented --
2 you are presented with a confession. A confession that
3 gives details that only this defendant could know. And
4 under any other circumstances you would probably say it
5 would be ludicrous not to say, "Well, gosh" -- I mean --
6 the reaction is if a person confesses and they know the
7 details, then they're guilty. But the defense through
8 bringing in so-called experts such as Mr. Ofshe have
9 tried to smoke and mirrors to make it sound like a person
10 that confesses to such heinous crimes and admits their
11 involvement and gives you specific details of the
12 involvement, that's indicative of someone who was forced
13 or coerced to confess.

14 I think when you go back and you apply your common
15 sense and you do what's right, and you think about the
16 evidence in this case, you're going to know that what the
17 evidence shows is that this defendant ran down Michael
18 Moore. That this defendant was there and was involved
19 and he's guilty of three counts of capital murder.

20 You will have a verdict form that will be given to
21 you and you'll take back all of these instructions. And
22 that verdict form will say, "We, the jury find the
23 defendant, Jessie Misskelley, guilty of capital murder,
24 Count One involving Michael Moore, Count Two, Steven
25 Branch, and Count Three, Chris Byers", and the Judge will

1 tell you there are some lesser included offenses that are
2 mentioned. You only -- it's not like you take all of
3 these options and spread them out on the table and say,
4 "Gee, this looks like a good one." You start at the top.
5 You start with capital murder and if this defendant, from
6 the evidence you find beyond a reasonable doubt that the
7 defendant is guilty of capital murder to each of those
8 counts, you check those boxes and the lesser included
9 offenses are not even to be considered.

10 And I trust that when you go back there -- you'll
11 carry a heavy responsibility -- but you'll do what the
12 law and the facts require and you'll return a verdict of
13 guilty. Thank you very much.

14 THE COURT: Alright, ladies and gentlemen, when you
15 reach the jury room you should elect one of your number
16 as foreperson and you will consider and complete one of
17 the following verdict forms and I'm going to read those
18 to you.

19 You will first take up and consider the charge --
20 charges of capital murder and that verdict form reads as
21 follows:

22 "We, the jury find Jessie Lloyd Misskelley, Junior
23 guilty of capital murder in the death of Michael Moore,
24 Stevie Branch, and Chris Byers", and there are three
25 separate blocks.