

1 as if the rest of the parts of the woods looked.

2 (WITNESS EXCUSED)

3 MR. FOGLEMAN: Your Honor, our next witness is
4 Bryn Ridge. There are several photographs that we
5 need to --

6 THE COURT: Do you need a short recess to go over
7 them?

8 MR. FOGLEMAN: Yes, sir.

9 THE COURT: All right. Ladies and gentlemen, you
10 may take a ten minute recess with the usual admonition
11 not to discuss the case among yourselves or with
12 anyone.

13 (THE FOLLOWING CONFERENCE WAS HELD IN CHAMBERS)

14 MR. STIDHAM: I would like to object strenuously
15 to what I think is improper behavior on the part of
16 the State in trying to cause problems with my expert
17 witness in the fact that they are attempting to have
18 him removed from the courtroom when I have him
19 subpoenaed here, and I think his testimony is
20 imperative, and I think that is improper conduct on
21 the State.

22 I don't think it is any concern of the
23 prosecuting attorney what, if any, hearings my expert
24 witness may have with his governing licensing board
25 and I think that's totally improper for him to pursue

1 such a course of conduct against a witness in this
2 case. I think it borders on intimidation.

3 THE COURT: Do you want to respond?

4 MR. DAVIS: Yes, sir. It's the State's position
5 if he puts himself out to be an expert and then
6 whatever disciplinary hearings or actions are pending
7 or scheduled against him, then the content of those
8 clearly becomes relevant as to his credibility and his
9 professional qualifications.

10 MR. STIDHAM: But it is not the prosecutor's job
11 to speed up any process that would not ordinarily take
12 place. It is not proper for the prosecuting attorney
13 to go out and ensure --

14 THE COURT: You're talking in riddles. What
15 specifically is the prosecutor doing that you're
16 objecting to?

17 MR. STIDHAM: I understand the prosecuting
18 attorney has contacted the Attorney General's Office
19 and the licensing board for psychologists or
20 psychiatrists, and he is trying to make sure that my
21 expert witness is not in the courtroom on Friday but
22 at this disciplinary hearing. I think that's entirely
23 improper. The Court ruled on this the other day that
24 he was not going to be allowed to go into that, and I
25 think this is absolutely improper.

1 THE COURT: Are you suggesting that the
2 prosecuting attorney had scheduled and accelerated and
3 in some way caused a hearing to be set on Friday?

4 MR. STIDHAM: I'm not saying he caused a hearing
5 to be set on Friday. He is doing everything he
6 possibly can to make sure my witness is there as
7 opposed to being here. It is common knowledge or
8 accepted practice that when someone is subpoenaed to
9 be in the courtroom, they could get a continuance on a
10 hearing. Why is it all of a sudden real important for
11 the prosecuting attorney to seek this special
12 treatment for my expert witness?

13 MR. FOGLEMAN: It has been scheduled for four
14 years.

15 MR. STIDHAM: It has been continued many times.

16 THE COURT: How long has the hearing been set?

17 MR. STIDHAM: I don't know.

18 THE COURT: Who set it?

19 MR. STIDHAM: Mr. Davis knows --

20 MR. DAVIS: Your Honor --

21 THE COURT: -- I understand Mr. Davis trying to
22 find any credible evidence he can to refute your
23 witness' testimony. That is what the prosecutor gets
24 paid to do.

25 What the Court is concerned about is a

1 representation was made this morning that he needed to
2 be in the courtroom to hear all of the testimony.
3 Frankly, that is a discretionary call by the Court. I
4 agreed to let the man stay in the courtroom. This was
5 before the Court had been informed that he possibly
6 had legal proceedings pending against him scheduled
7 for Friday. I don't want my court to be used as a
8 vehicle to avoid process on some other proceeding when
9 it is not necessary that he be in court.

10 MR. STIDHAM: I don't think that is the case.

11 THE COURT: All I'm ruling is that he is entitled
12 to be here. However, I don't think he needs to be
13 here for the whole trial based on what you told me.
14 I'm going to give him the opportunity to be here based
15 upon your assertion that it's necessary. If he's
16 scheduled for a hearing, then there's absolutely no
17 reason why he can't go. We have ample television
18 cameras in the courtroom. They can provide and will
19 provide a color videotape of any testimony that he
20 might miss. That tape can be taken with him, studied
21 and reviewed over the weekend.

22 However, if his testimony is needed and if he's
23 required to be here to testify on Friday, that is a
24 different issue, but I don't see any reason why he can
25 use this case as a basis for not meeting his --

1 MR. STIDHAM: Can I have his witnesses arrested
2 if they have outstanding warrants?

3 THE COURT: Do you have something specific --

4 MR. STIDHAM: I know of a witness that has three
5 outstanding warrants, and I would like for --

6 THE COURT: Go ahead. I don't care. Go ahead.

7 MR. STIDHAM: I think it is improper for the
8 prosecutor to be so concerned about making sure my
9 expert witness goes to his meeting.

10 THE COURT: That's what prosecutors do. I'm not
11 surprised nor perturbed by it. Now, what else?

12 MR. STIDHAM: The photographs we have been
13 provided by the State that they intend to introduce
14 through Officer Allen -- I'm sorry, Officer Ridge. We
15 don't have any -- would you read those off?

16 MR. CROW: We have no objection to 14, 15, 16,
17 18, 19, 25, 27, 28, 29, 30, 32, 34, 37, 37A, 37B, 38,
18 40, 41, 42, 56, 57, 58.

19 MR. STIDHAM: I understand the Court's ruling
20 with regard --

21 MR. CROW: -- We make the general objection that
22 we raised in limine on the photographs. I understand
23 -- we make the general objection to the photographs we
24 discussed this morning. We raise our objection again
25 to any photographs of the victims.

1 MR. STIDHAM: Our concern is that one of the
2 photographs of each of the victims depicting the
3 condition of their bodies would seem to be sufficient.
4 Duplicate photographs, which basically some of these
5 are the same as these, and one of these is the same as
6 have already been introduced by Officer Allen.

7 THE COURT: Refer to them by number. It looked
8 to the Court as you were going through them that you
9 are objecting to any view of the deceased bodies of
10 any one of the three victims.

11 MR. CROW: As a general objection on the front
12 end, your Honor, we would raise that objection.

13 MR. STIDHAM: I assume you have already ruled --

14 THE COURT: All I have ruled is that you would
15 have to object specifically when it was raised. I
16 wouldn't as a matter of a motion in limine preclude
17 it. I'm assuming that the State can give a neutral
18 reason for each photograph as a necessity in its case.
19 If they cannot and you object, that's a different
20 matter. So take them one at a time and we'll go
21 through them.

22 MR. CROW: Start with 17.

23 MR. STIDHAM: Your Honor, State's Exhibit 17
24 depicts the victim Branch as he is removed from the
25 water and is being placed on the bank of the creek.

1 If that is the only photograph that they intend to
2 introduce of the victim Branch -- our objection is we
3 don't think it is proper for the State to introduce
4 any of the pictures because their prejudicial value
5 highly exceeds any probative value because the Medical
6 Examiner and the officers who recovered the bodies can
7 testify as to what the wounds in the body are. I
8 think in a case involving children this area of
9 prejudice is extremely magnified in it could tend to
10 inflame the jurors and the courts have ruled that
11 repeated photographs -- our alternative argument --
12 that repeated or repetitious photographs are not
13 proper.

14 Our first objection would be that it should not
15 be allowed at all because of the prejudice, and our
16 alternative objection in light of the fact that we
17 anticipate your Honor would rule that it's admissible
18 is that only one photograph of each victim be allowed.

19 THE COURT: Do you want to respond? Number 17
20 right now.

21 MR. FOGLEMAN: Your Honor, as to Number 17,
22 number one, that is a photograph of Branch. It
23 depicts not only the condition of the body and the
24 manner in which it's tied but also the condition of
25 the water at the spot where he was removed.

1 MR. CROW: What is the relevance of the condition
2 of the water?

3 MR. FOGLEMAN: I think it is going to go to the
4 clean-up attempt that was made.

5 MR. STIDHAM: They have already introduced the
6 photographs that show the water conditions.

7 THE COURT: I'm going to allow photograph 17. It
8 shows clearly injuries to his face, the condition of
9 his body as it was found, basically completely nude.
10 Looks like there's some restraints on his body around
11 one leg and what appears to be binding on one hand and
12 where it appears that the other hand was bound and
13 from this photograph it looks like it was shoestrings
14 so I think there's relevant evidence there and based
15 upon my recollection of Misskelley's statement, some
16 of those matters are corroborative of his statement
17 and some are not.

18 MR. FOGLEMAN: As to Exhibit 17 of the victim
19 Branch and any other photograph of the victim Branch
20 -- and this goes to probative value being outweighed
21 by prejudicial effect -- we want to proffer 114, 119,
22 121, 131, 132, 133, 135, 136, 138 and 139 as examples
23 of other photographs that we could have offered but
24 which we chose not to.

25 THE COURT: These are extremely gross and

1 gruesome photographs. I'm going to have these
2 introduced or tagged as for identification purposes to
3 show additional photographs of the victim Branch's
4 condition immediately after being found and I would
5 not allow those. So the Court is excluding these and
6 they may be made a part of the record to establish to
7 any appellate reviewer the fact that the Court has
8 considered the nature of the photographs and finds
9 that State's Exhibit 17 is certainly a reasonable
10 photograph considering these others that are not being
11 allowed.

12 (STATE'S EXHIBITS 114, 119, 121, 131, 132, 133,
13 135, 136, 138 AND 139 ARE RECEIVED FOR IDENTIFICATION)

14 MR. STIDHAM: You mentioned that your
15 recollection of Mr. Misskelley's statement -- if we
16 assume for purposes of our argument with regard to
17 these photographs that his statement is correct, we
18 certainly don't submit that it is -- but for purposes
19 of argument let's assume for a moment that it is --
20 Mr. Misskelley never touched any of these victims or
21 struck them, hit them, killed them, raped them --

22 THE COURT: Seems like -- I don't remember where
23 I read it -- but I recall him saying something to the
24 effect that one of the other defendants struck one of
25 the boys real bad. He also made some contradictory

1 statements about how they were tied. And what was
2 done with their bodies and where it occurred and some
3 of those things are corroborative and some of them are
4 not. It depicts the crime scene, the location of the
5 body and certainly that is relevant to any issue the
6 State has to prove. It is also relevant to some
7 extent to show the degree of injury sustained by these
8 victims.

9 MR. STIDHAM: The point I'm trying to make -- our
10 argument is, Judge, that Mr. Misskelley did not
11 inflict those wounds --

12 THE COURT: I understood what you said.

13 MR. STIDHAM: The jury might be inflamed by the
14 injuries which were inflicted by the others and that
15 might prejudice Mr. Misskelley.

16 MR. FOGLEMAN: I think the jury can fairly
17 conclude -- they can draw their own conclusions of
18 whether or not Mr. Misskelley inflicted any wounds.

19 MR. STIDHAM: I will move on.

20 State's Exhibit 20 depicts, I believe, the victim
21 Moore.

22 MR. FOGLEMAN: That is Branch.

23 MR. STIDHAM: That's Branch. It depicts the
24 victim Branch being removed from the water and again
25 our objection would be the same as to Exhibit 17 and

1 we would submit that the photograph is repetitious due
2 to the fact that Officer Allen testified how the
3 bodies were removed. There's a photograph already in
4 evidence depicting the body being in the water.

5 THE COURT: This is a totally and completely
6 different view and if the State maintains some
7 relevancy, I'm going to allow it. I have seen a lot
8 worse than that.

9 MR. STIDHAM: Exhibit 22 depicts the victim
10 Moore. We would make the same objection to it.

11 THE COURT: Overruled. It is not -- while it
12 does depict an eight-year-old boy nude with facial
13 injuries, it is not that gross or prejudicial. It
14 does show the deceased remains as it was located.

15 MR. STIDHAM: State's Exhibit 23 depicts the same
16 thing as in 22 and we object as to repetition and also
17 the same arguments we had with 17.

18 MR. FOGLEMAN: This particular picture is mainly
19 showing the condition of the bank.

20 MR. CROW: There are other pictures of the bodies
21 that show the bank.

22 MR. FOGLEMAN: They don't show the bank like
23 these do. They are closer.

24 MR. STIDHAM: We disagree with the prosecutor.

25 THE COURT: It is a different view and it does

1 show the left leg restraints connected to the right
2 wrist. I'm going to allow it.

3 MR. STIDHAM: What does this show?

4 MR. FOGLEMAN: I'm not sure -- I don't --

5 MR. STIDHAM: Number 27 -- we object to anything
6 that they don't know what it is.

7 MR. FOGLEMAN: I said I didn't. That doesn't
8 mean the witnesses don't.

9 THE COURT: I'm going to allow 23.

10 MR. STIDHAM: Exhibit 24 shows the victim Byers
11 and his sexual mutilation and our specific objection
12 to that would be that that is a very shocking and
13 gruesome photograph and while it does show the
14 injuries to the victim, it is particularly gruesome
15 and that is something the Medical Examiner could
16 testify to.

17 THE COURT: How many pictures of this nature do
18 you have?

19 MR. FOGLEMAN: We would proffer on the victim
20 Byers 130 and 200 to show that we have chosen a much
21 less offensive picture.

22 THE COURT: I'm going to allow State's Exhibit 24
23 and the State is proffering 130 and 200.

24 (STATE'S EXHIBITS 130 AND 200 ARE RECEIVED FOR
25 IDENTIFICATION)

1 MR. FOGLEMAN: By proffering those we are not
2 necessarily admitting that they are so gruesome that
3 the jury shouldn't see them. We are saying we have
4 chosen a much less offensive photograph.

5 THE COURT: These likewise will be received for
6 identification purposes for any possible appellate
7 review that might be necessary to determine the extent
8 and scope of the Court's review of the photographs and
9 I think they depict that the State has chosen Exhibit
10 24 which is much less gruesome.

11 MR. STIDHAM: Your Honor, State's Exhibit 26
12 depicts the victim --

13 MR. FOGLEMAN: It is Moore.

14 MR. STIDHAM: All it shows is feet and genitalia.
15 I assume the photograph is being submitted to show the
16 condition of the bank. We submit it would be much
17 more probative without the victim's body and
18 genitalia.

19 THE COURT: It also shows his right extremities
20 bound by what appears to be a shoestring and shows
21 that his right hand is clenched into a fist.

22 MR. STIDHAM: I don't know how that is relevant.

23 MR. FOGLEMAN: To show the manner in which he is
24 tied and the condition of the bank. Your Honor, I
25 don't know that we actually have a photograph that

1 shows the detail that this does on the bank. If you
2 will look at the photograph, you can see all the scuff
3 marks and grass with the mud on it where it has been
4 cleaned up.

5 THE COURT: I'm going to allow that.

6 MR. STIDHAM: Can we cut part of the body out of
7 the picture?

8 THE COURT: I don't see any need to. The jury is
9 almost going to have to view the body.

10 MR. STIDHAM: State's Exhibit 33, 35, 36, and 39.
11 We would submit that these pictures basically all show
12 the same thing and they are repetitious and the
13 prejudice outweighs the probative value.

14 THE COURT: I'm going to rule that 33, 35, 36 and
15 39 are not particularly ugly photographs and that the
16 prejudicial effect, if any, certainly doesn't outweigh
17 any probative value that they might have so your
18 motion will be denied.

19 MR. FOGLEMAN: As to the victim Moore, we have
20 also proffered 106, 113 and 201 -- we would proffer
21 those to show that we have chosen less gruesome
22 photographs.

23 THE COURT: They may be received for
24 identification purposes for review.

25 (STATE'S EXHIBITS 106, 113 AND 201 ARE RECEIVED

1 FOR IDENTIFICATION)

2 MR. STIDHAM: That leaves us with 78 and 79
3 showing Mr. Misskelley at the time of his arrest. We
4 object to the relevancy of his arrest photograph. His
5 appearance on June third is that but his appearance on
6 May 5th was nowhere near that. The fact that he chose
7 to go out and get a squirrely haircut like some
8 wrestler on TV -- I think it is very prejudicial and
9 does not accurately depict the way he looked on May
10 5th.

11 MR. FOGLEMAN: I guess they can have somebody
12 testify about that. This whole case comes down to
13 Jessie's credibility, whether he is deceiving somebody
14 or not, and the way he appears then -- now they've got
15 him sitting out there looking like a choir boy -- and
16 I think we've got the right to show the jury the way
17 he is now is not the true Jessie Misskelley.

18 MR. STIDHAM: That ain't the true Jessie
19 Misskelley there. I don't see any relevancy.

20 THE COURT: If this is the way he looked at the
21 time of his arrest or in any close proximity, then I'm
22 going to allow the photographs. That will be a matter
23 of you verifying by proof --

24 MR. FOGLEMAN: The proof will be that was at the
25 time of his arrest.

1915

1 THE COURT: Exhibits 78 and 79, if it is verified
2 that is the way he looked immediately prior to or
3 after the event, then I'm going to allow them.

4 MR. CROW: Note our objection.

5 (RETURN TO OPEN COURT)

6 BRYN RIDGE

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

9 DIRECT EXAMINATION

10 BY MR. FOGLEMAN:

11 Q Will you please state your name and occupation?

12 A Bryn Ridge, detective for the West Memphis Police
13 Department.

14 Q How long have you been in law enforcement?

15 A Over ten years.

16 Q Detective Ridge, I want to direct your attention to May 6,
17 1993. What part, if any, did you play in the investigation of
18 the disappearance of Michael Moore, Steve Branch and Chris
19 Byers?

20 A I participated in the search for the missing juveniles and
21 also in the discovery of the bodies.

22 Q Approximately what time did you begin your search efforts?

23 A About 7:30 A.M.

24 Q What area were you assigned to search?

25 A I went first to Robin Hood Hills, this park on North