

## 1 RE CROSS EXAMINATION

2 BY MR. STIDHAM:

3 Q Was Damien Echols your prime suspect on June third?

4 A I don't know if you could -- there were several suspects.  
5 Things seemed to turn -- a lot of things seemed to turn back  
6 toward him, but there were other suspects. I'm not sure at that  
7 given time but during the course of this investigation, there  
8 were numerous suspects.

9 Q Was he in the top three?

10 A I would say yes.

11 Q Officer Allen, Mr. Misskelley was 17 years of age on June  
12 third. Is that correct?

13 A Yes, sir.

14 Q Did you at any time get his father's permission to waive  
15 his Miranda warnings?

16 A No, sir.

17 (WITNESS EXCUSED)

18 BILL DURHAM

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

21 DIRECT EXAMINATION

22 BY MR. FOGLEMAN:

23 Q Will you please state your name and occupation?

24 A Bill Durham, detective and polygraph examiner for the West  
25 Memphis, Arkansas Police Department.

1 Q And I want to direct your attention to June third, 1993.  
2 Did you have occasion on that date to come into contact with the  
3 defendant Jessie Misskelley, Junior?

4 A Yes, sir.

5 Q And did you advise him of his rights also?

6 A Yes, sir, I did.

7 Q I want to show you what is marked for identification as  
8 State's Exhibit 84 and ask if you can identify that?

9 A (EXAMINING) Yes, sir. This is a West Memphis Police  
10 Department rights form that I filled out which was signed,  
11 "Jessie Lloyd Misskelley, Junior" dated June third, 1993, and  
12 the time he signed it was 11:30 A.M.

13 Q How did you go over that form with him?

14 A Jessie Misskelley, Junior was sitting beside my desk. I  
15 turned the form so that he could read it and as he was looking  
16 at it, I read the form to him so that he could read along with  
17 me. I explained each of his rights individually, which he  
18 initialed beside each of his rights. I then covered the waiver,  
19 and he signed at the bottom.

20 Q You said that he initialed each right. Did he indicate  
21 whether or not he understood those rights?

22 A I asked him individually, and he did indicate that he  
23 understood each one.

24 Q Did he appear to be having any trouble understanding those  
25 rights?

1 A No, sir, he did not.

2 Q Did you use any force, promises, threats or coercion to get  
3 him to place his initials by each right or to sign the form?

4 A No, sir.

5 Q Did you witness the form?

6 A Yes, sir.

7 Q Place your signature on it?

8 A Yes, sir.

9 Q Did you see him sign the form?

10 A Yes, sir, I did.

11 MR. FOGLEMAN: We offer State's Exhibit 84.

12 THE COURT: It may be received. You may exhibit  
13 to the jury.

14 (STATE'S EXHIBIT 84 IS RECEIVED IN EVIDENCE)

15 BY MR. FOGLEMAN:

16 Q After advising the defendant of his rights, did you have a  
17 conversation with him?

18 A Yes, sir.

19 Q About how long were you with him?

20 A Approximately one hour.

21 Q During the course of this period of time that you were with  
22 him, did he provide you any information of substance?

23 A No, sir, he did not.

24 Q Did you provide him any details of anything that happened  
25 in the murders?

1 A No, sir, I did not.

2 Q The manner in which you advised this defendant of his  
3 rights -- did you do that any differently than you would for  
4 anybody else?

5 A No, sir.

6 CROSS EXAMINATION

7 BY MR. STIDHAM:

8 Q Do you have any special training in dealing with people who  
9 are mentally handicapped?

10 A No, sir.

11 Q During this hour that Mr. Misskelley spent with you on June  
12 the third, did he deny any involvement in these murders the  
13 entire hour? Did he deny that throughout the whole time?

14 A Yes, sir, he did.

15 REDIRECT EXAMINATION

16 BY MR. FOGLEMAN:

17 Q Did you spend the entire hour asking him whether or not he  
18 was involved?

19 A No, sir, I did not.

20 Q Was the entire hour made up of asking questions?

21 A Yes, sir.

22 Q The entire hour?

23 A No, sir, not the entire hour. There was other paperwork  
24 that I completed which took a degree of time and no, sir, the  
25 entire hour was not spent asking him questions.

1 Q During the time when you were talking to him -- well,  
2 approximately how much time would you say was involved in  
3 actually asking him questions related to the incident?

4 A Probably maybe half that time, probably 30 minutes.

5 RECROSS EXAMINATION

6 BY MR. STIDHAM:

7 Q So for 30 minutes he denied any involvement in these  
8 homicides?

9 A Yes, sir, that's correct.

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

12 MR. FOGLEMAN: I feel that Mr. Stidham is putting  
13 us in a bad position. On the one hand we cannot  
14 mention --

15 MR. STIDHAM: Your Honor, if we're going to talk  
16 about this, can we retire to chambers?

17 (RETURN TO OPEN COURT)

18 THE COURT: Ladies and gentlemen, you can have a  
19 ten minute recess with the usual admonition not to  
20 discuss the case.

21 (THE FOLLOWING CONFERENCE WAS HELD IN CHAMBERS)

22 THE COURT: Let the record reflect that this is a  
23 hearing out of the presence of the jury and the  
24 defendant is present.

25 MR. FOGLEMAN: Judge, the problem that is

1 developing -- Mr. Stidham in his last question asked  
2 Detective Durham, "Did he continue to deny it for that  
3 30 minutes," and of course the officer says, "Yes."

4 It is creating a misrepresentation to the jury of  
5 what goes on. Obviously it is not a situation -- "Did  
6 you do it?" "No." "Did you do it?" "No." -- for 30  
7 minutes -- I mean, that's absurd. But the jury is  
8 being left with the impression that the officer  
9 accused him and he's denying it for the entire 30  
10 minutes when that is not what happened at all.

11 MR. CROW: Why don't you have him -- ask him --  
12 were several subjects discussed and every time -- and  
13 if Dan wants to ask, "Every time you discussed the  
14 subject of the murders he denied it."

15 MR. STIDHAM: But he did deny it for 30 minutes

16 --

17 (MR. STIDHAM AND MR. FOGLEMAN SPEAKING AT THE  
18 SAME TIME - UNINTELLIGIBLE)

19 MR. FOGLEMAN: -- They didn't ask him for 30  
20 minutes, "Did you do it?"

21 THE COURT: Well, during that 30 minutes he  
22 denied it. That's what it amounts to.

23 MR. FOGLEMAN: It is not as if during the entire  
24 30 minutes -- well, you could say for a month he  
25 denied it up until the time he confessed.

1           THE COURT: I don't see any big deal or any  
2 impression that is made by it. Just a reasonable  
3 argument would be --

4           MR. FOGLEMAN: -- Well, we're prevented from  
5 explaining the circumstances, and Mr. Stidham is  
6 asking these questions when we are in an area where we  
7 cannot explain what happened. He's asking these  
8 questions that suggest to the jury that during this  
9 entire time he's asking him and he's denying it.

10          THE COURT: I don't see any need to explain it.  
11 The response is that he was interviewed by this  
12 officer for a period of 30 minutes and during the 30  
13 minutes he denied involvement. Later --

14          MR. FOGLEMAN: -- That's not what happened.

15          THE COURT: Later when he was confronted with the  
16 little bite from that recording and a couple of other  
17 things, the chalk circle or whatever it was, that he  
18 changed his tune. You are just explaining that he  
19 went before two officers and then subsequently a third  
20 and fourth where he changed his tune. I don't see any  
21 big deal about it.

22                 Again, I want to emphasize that y'all are  
23 electing to waive your argument that the polygraph was  
24 a forceful inducement to cause him to change his  
25 testimony.

1 MR. CROW: We are waiving that, your Honor  
2 because --

3 THE COURT: You are waiving it because I want the  
4 record to be very clear that I am not prohibiting that  
5 argument or that evidence.

6 MR. CROW: We understand that. We are certainly  
7 not backing up and waiving that as a consideration in  
8 the suppression hearing. We are not going to make the  
9 argument to the jury.

10 THE COURT: I want the record to be very explicit  
11 that I am not excluding that tender or that testimony  
12 if you choose to follow that defense. The only thing  
13 I'm limiting are the results of the polygraph from  
14 either side.

15 MR. CROW: I want the record to reflect why we  
16 are doing that.

17 MR. STIDHAM: Your Honor, it's not logical from a  
18 defense standpoint to allow the State to say he  
19 flunked it and not allow us to say he passed it. We  
20 can't have it both ways. It's got to be one way or  
21 the other.

22 THE COURT: I'm not going to allow them to say  
23 that he flunked.

24 MR. STIDHAM: Well, the fact that he took it and  
25 they kept interrogating him for four more hours -- it



1 is kind of a red flag.

2 THE COURT: You can argue that is a tool of  
3 confessions, that they do it all the time and that  
4 they tell these people that they failed it whether  
5 they did or not. Sometimes they don't even give them  
6 a test. You can do all kinds of stuff.

7 MR. STIDHAM: If the jury is not properly  
8 schooled on the polygraph and the results that can be  
9 interpreted from them, they are going to assume that  
10 he flunked it and, therefore, he must be guilty.

11 THE COURT: Well, the point is I'm not excluding  
12 that tender of testimony or that argument. I'm only  
13 excluding the results which I think is consistent with  
14 Arkansas law.

15 MR. STIDHAM: Judge, you're not suggesting that  
16 we have waived our proffer?

17 THE COURT: No. Are you talking about on the  
18 Denno hearing? No. That is a matter of record. I'm  
19 saying you have elected to waive during the trial that  
20 defense. I'm not prohibiting --

21 MR. CROW: Only because of the Court's ruling.  
22 If the Court would allow us to put our expert on, we  
23 would have gone into it here.

24 MR. FOGLEMAN: The judge has ruled you can put  
25 your expert on.

1 MR. CROW: Not about the results of the  
2 polygraph. I understand the Court's ruling. I'm not  
3 arguing about the Court's ruling.

4 THE COURT: I'm saying you can make your argument  
5 whether or not the results were ever admitted.

6 MR. CROW: We understand that, but we don't think  
7 we can make it effectively without the other part.

8 (RETURN TO OPEN COURT)

9 REDIRECT EXAMINATION

10 BY MR. FOGLEMAN:

11 Q Detective Durham, during this 30 minutes -- Mr. Stidham has  
12 characterized him as having been denying it the whole time --  
13 were you questioning him on his involvement the entire 30  
14 minutes?

15 A No, sir.

16 Q What was the main focus of your questioning of the  
17 defendant?

18 A Whether or not he was an associate of another person that  
19 we were looking at as a possible suspect, whether or not he was  
20 involved in any of these alleged cults that we had heard about

21 --

22 Q Involved in what now?

23 A Cults.

24 Q Okay.

25 A And whether or not he knew who may have possibly been

1 responsible for this crime.

2 Q Were you satisfied with the responses you got?

3 A No, sir, I was not.

4 (WITNESS EXCUSED)

5 BRYN RIDGE

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

9 REDIRECT EXAMINATION

10 BY MR. FOGLEMAN:

11 Q You are the same Detective Ridge who has previously  
12 testified?

13 A Yes, sir.

14 Q Detective Ridge, I want to direct your attention to June  
15 third, 1993. Did you participate in some questioning of the  
16 defendant Jessie Misskelley, Junior?

17 A Yes, sir, I did.

18 Q Were you present when Detective Allen advised him of his  
19 rights?

20 A Yes, sir, I was present.

21 Q I want to introduce State's Exhibit 74 and ask if you  
22 recognize that?

23 A (EXAMINING) Yes, sir, I do.

24 Q Did you sign that as a witness?

25 A Yes, sir, I did.