

1 A In Lieutenant Hester's office at the police department on
2 6-3-93.

3 Q Do those fairly and accurately portray the defendant as he
4 appeared on the date of his arrest?

5 A Yes, they do.

6 MR. FOGLEMAN: Your Honor, we would offer State's
7 Exhibits 78 and 79.

8 MR. STIDHAM: We object. These don't fairly and
9 accurately depict the way he appeared May 5th.

10 THE COURT: If the witness testified that is the
11 way he appeared on the day of his arrest, it will be
12 received for that purpose. You may exhibit to the
13 jury.

14 (STATE'S EXHIBITS 78 AND 79 ARE RECEIVED IN
15 EVIDENCE)

16 (WITNESS EXCUSED)

17 GARY GITCHELL

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

20 DIRECT EXAMINATION

21 BY MR. FOGLEMAN:

22 Q Will you please state your name and occupation?

23 A Gary Gitchell. I'm the inspector for the West Memphis
24 Police Department Criminal Investigation Division.

25 Q How long have you been with the West Memphis Police

1 Department?

2 A Nineteen and a half years.

3 Q Inspector Gitchell, I want to direct your attention to June
4 third, 1993. On that date did you have occasion to have a
5 conversation with the defendant Jessie Misskelley, Junior?

6 A Yes, sir, I did.

7 Q Was that -- who was present when you had this conversation?

8 A Myself and Detective Ridge.

9 Q Approximately what time did you begin talking to him?

10 A That was approximately 12:40 P.M.

11 Q During the course of your conversation with this defendant,
12 initially were you doing anything to preserve the conversation
13 yourself?

14 A No, sir.

15 Q Was Detective Ridge?

16 A No, sir. Not that I know of. He may have been taking some
17 notes.

18 Q Why were you not taking notes at that time?

19 A When I talk with someone, I usually do not like to for the
20 purpose I like to key on and be able to listen and have my
21 complete attention as to the conversation.

22 Q During the course of this conversation, was there -- let me
23 ask you, was there a photograph shown to the defendant?

24 A Yes, sir.

25 Q Was there a small portion of a tape played for the

1 defendant?

2 A Yes, sir, there was.

3 Q Was there something about a circle?

4 A Yes, sir.

5 Q Was that done before or after you started tape recording?

6 A That was before we started tape recording.

7 Q Do you recall the sequence of what took place when?

8 A During Detective Ridge and I's conversation with Mr.
9 Misskelley, there was a, I believe, I hope this is right. There
10 was the diagram which I did and then the picture and then the
11 tape.

12 Q Were they one behind the other or were there things in
13 between?

14 A There was some in between from -- the diagram was the first
15 thing. Then some time passed and then there was the picture.
16 Just a few minutes passed from that point to the tape.

17 Q On the diagram describe for the jury what this was, this
18 diagram.

19 A I'm assuming a lot of people may be familiar with a term,
20 "straddling the fence." And that was sort of along the lines
21 that I was thinking. When talking to someone that you do not
22 feel is telling you the complete truth, "Quit straddling the
23 fence. Be on one side of it or the other."

24 I did something a little different insomuch as I drew a
25 circle, and I had several dots within that circle and several

1 dots outside, and I asked which side is he going to be on. On
2 the outside or inside.

3 Q Who is inside the circle?

4 A No one in particular, no one named. But I indicated that
5 law enforcement was on the outside of the circle.

6 Q In general what was on the inside?

7 A In general, just who was responsible for these crimes.

8 Q When you did this diagram, did you say these dots inside
9 represent a particular named individual or individuals?

10 A No, sir.

11 Q What did you do with the circle and the dots?

12 A You mean afterwards? Just pretty much like I did then.
13 Just did it on a piece of paper and that was it. And of course
14 showed that to Jessie because he was right there.

15 Q When you showed it to him, what did you do?

16 A He immediately said he wanted to be on the outside of the
17 circle with the law enforcement.

18 Q Then I take it you had some more conversation?

19 A Yes, sir.

20 Q Then what took place?

21 A A short time later is when I stepped out of the room.

22 Q Is that when you got the picture?

23 A Yes. I stepped out of the office that we were talking to
24 Jessie in and got this picture and also I remembered a recording
25 of a phrase, just only a phrase, probably a four to five second

1 phrase within that recorded statement, that I wanted to play for
2 Jessie.

3 Q The voice on this tape, without naming names, how old a
4 person was this?

5 A Eight years old.

6 Q Are you aware of whether or not the defendant knew the
7 person whose voice it was?

8 A Information that we had was that he is familiar with the
9 eight-year-old boy.

10 Q When you came back in the room -- I want to show you
11 State's Exhibit 76 and ask if you recognize that?

12 A (EXAMINING) Yes, sir. This is the photograph that I showed
13 Jessie. It has the number three on the front of the photograph
14 and on the back it is number 107.

15 Q What was the response to the photograph?

16 A When I showed Jessie this photograph, he took it into his
17 hand, and he just went back in his chair like this, and he just
18 locked in on it, fixed in on the photograph, just kept staring
19 at it. I could tell that he was -- I didn't know how long he
20 was going to do that so I took it from his hand and set it on
21 the table that we were working on.

22 Q Then what happened?

23 A Briefly just few minutes after that -- of course, I had the
24 tape which I do have that tape with me at this time, and I
25 played the small portion of the tape.

1 MR. FOGLEMAN: We would ask permission to play
2 the portion of the tape.

3 THE COURT: You may be permitted to do so.

4 (TAPE BEING PLAYED)

5 BY THE WITNESS:

6 A Should I do that again?

7 Q I think so.

8 (TAPE BEING PLAYED)

9 BY MR. FOGLEMAN:

10 Q What did he say for the jurors who didn't catch it?

11 A He said, "Nobody knows what happened but me."

12 Q And when you played this tape, what was the defendant's
13 response?

14 A He immediately stated that he wanted to tell us about it at
15 that point.

16 Q At some point thereafter, did Detective Ridge leave the
17 room?

18 A Yes, sir, he did.

19 Q While Detective Ridge was out of the room, what took place?

20 A At that point Jessie indicated to me that he was present
21 during the time that the boys were murdered.

22 Q Had there been some statement -- or what statements, if
23 any, did the defendant make in your presence about having been
24 at the scene?

25 A He had stated earlier that he had been at the scene, that

1 -- also that he had gone back to the scene.

2 Q "Gone back." Were those his words?

3 A Yes.

4 Q Did he say that before or after he admitted being there
5 when it took place?

6 A That may have been before. It does get a little confusing
7 even for me.

8 Q What did he say about when he went back to the scene?

9 A That he went out into the woods where this occurred, the
10 murders, and he sat down and cried.

11 Q After he admitted to you that he had been there -- I may be
12 jumping ahead of myself. Tell me again what he said to you
13 while Detective Ridge was out of the room.

14 A That he was present when the boys were murdered.

15 Q After he admitted to you that he was present, what was the
16 defendant's response?

17 A Basically I stopped him at that point and then I wanted to
18 make sure -- it was obvious at this time we had more than just a
19 person that we were trying to get information from as to other
20 parties. It was obvious to us that we had a person here that
21 was involved.

22 Q Was there any kind of emotional response?

23 A From Jessie?

24 Q Yes.

25 A Yes. He was emotionally upset. You could tell that. It

1 was an emotional time for myself also.

2 Q When you said he was emotional, what told you that?

3 A He had tears coming down his eyes.

4 Q Had y'all yelled at him or been mean to him or threatened
5 him or promised him, did any of those things?

6 A None of those things happened whatsoever.

7 Q After he admitted to being there, what did you do in order
8 to preserve the conversation?

9 A I instructed Detective Ridge -- I went out of the room and
10 said, "We need to get a tape recorder," which this is
11 (INDICATING) the identical tape recorder that was used.

12 The tape recorder was brought into the room. Myself and
13 Detective Ridge -- at that point we advised him of his rights
14 for the third time that day.

15 Q I want to hand you what I've marked for identification as
16 State's Exhibit 75A and ask if you can identify that?

17 A (EXAMINING) Yes, sir. This is a typed transcript of that
18 taped interview.

19 Q Does that transcript fairly portray what is said on the
20 tape?

21 A Yes, sir.

22 MR. FOGLEMAN: Your Honor, we would offer 75A and
23 we would --

24 BY MR. FOGLEMAN:

25 Q Do you have the tape, too, by the way?

1 A Yes, sir. I believe it's on your table.

2 Q Let me show you what is marked State's Exhibit 75 and ask
3 if you can identify that?

4 A (EXAMINING) This package is one in which I did fill the
5 information out on this package. It has the date on it, the
6 case file number, Jessie Misskelley, Junior, stating that this
7 is the original tape, and it has Ridge and Gitchell as the
8 interviewers of that and this tape is also marked on the
9 outside.

10 Q Is that the tape of your conversation from the time that
11 Jessie first admitted that he was present up until there was a
12 break?

13 A Yes, sir.

14 MR. FOGLEMAN: Your Honor, we would offer State's
15 Exhibit 75.

16 THE COURT: It may be received.

17 (STATE'S EXHIBIT 75 IS RECEIVED IN EVIDENCE)

18 MR. FOGLEMAN: Did I offer 75A?

19 MR. STIDHAM: That's just the front page of the
20 transcript.

21 MR. FOGLEMAN: That's the entire transcript.

22 MR. STIDHAM: You're going to introduce the
23 entire transcript?

24 MR. FOGLEMAN: To aid and assist the jury as they
25 listen along. I've got copies for them all.

1 MR. STIDHAM: Your Honor, may we approach the
2 bench?

3 (THE FOLLOWING CONFERENCE WAS HELD AT THE BENCH
4 OUT OF THE HEARING OF THE JURY)

5 MR. STIDHAM: Your Honor, first of all, we want
6 to object to the statement being introduced into
7 evidence because we think it is involuntary.

8 THE COURT: You have already made that objection.

9 MR. STIDHAM: We want to make sure we don't waive
10 it.

11 THE COURT: You're not waiving it. I'm going to
12 allow you to do it in the manner which you -- you're
13 going to have to collect the copies, and one copy will
14 be received in evidence.

15 (STATE'S EXHIBIT 75A IS RECEIVED IN EVIDENCE)

16 (RETURN TO OPEN COURT)

17 (TAPE BEING PLAYED)

18 BY MR. FOGLEMAN:

19 Q Inspector Gitchell, in the tape there is a place where
20 there's some reference to some pictures from a newspaper?

21 A Yes, sir.

22 Q What was going on then?

23 A He was naming or attempting to name the boys as far as the
24 injuries and at that point we had a picture that was, I believe,
25 either on the wall or on the table. It was a copy of a

1 newspaper article. I don't recall which paper, but I believe I
2 retrieved that and possibly the court reporter has that picture.

3 Q Anyway, what did you do with it?

4 A He was pointing out which boys and which one had done what
5 damage to the boys.

6 Q I noticed on the tape that Detective Ridge said something
7 -- asked something about which boy did he hit and he picked the
8 third picture and he said, "Michael" --

9 A Yes. He was pointing to the one. He'd say, "The third one
10 or this one." He was pointing to them. That is why Detective
11 Ridge went ahead and after he pointed out those names, he read
12 the caption underneath the picture at that time.

13 Q What I'm referring to is after he's -- this may be before
14 he read the caption. Detective Ridge referred to the newspaper
15 article and asked, "Which one of the three boys is it you say
16 Damien hit?"

17 He says, "The third picture," which would be Michael. And
18 you say, "This boy right here?" He says, "Yes." You say, "That
19 is Byers."

20 What was happening there?

21 A He named one boy but I believe he named the incorrect boy
22 as far as their names. He picked out the right boy who was
23 castrated. He picked out the right boy, but he called him by
24 the wrong name.

25 Q Let me hand you -- do you recognize that?

1 A (EXAMINING) Yes, sir. This is the photostatic copy that I
2 mentioned.

3 Q I want to refer you to page four of the transcript of
4 Exhibit 75A. This is before we get to the part about the
5 castration. If you would, read that over to yourself.

6 A (EXAMINING) Okay.

7 Q I note that apparently Steve was in the middle. Is that
8 correct?

9 A That's correct.

10 Q What was going on with -- in that particular sequence right
11 there?

12 A What he mentioned was, he said, "the third boy." You count
13 one, two, three. He mentioned a third boy and pointed to
14 (INDICATING) this boy. That was in response to the question,
15 "Of the three boys you said Damien hit," and he points to the
16 Byers boy. At that point that is when I wrote "first" and then
17 "Damien" above that picture and then he went on through.

18 MR. FOGLEMAN: Your Honor, I suppose we ought to
19 make that an exhibit.

20 THE COURT: All right. It may be received.

21 MR. FOGLEMAN: For the record it will be State's
22 Exhibit 105 on the gray sticker.

23 (STATE'S EXHIBIT 105 IS RECEIVED IN EVIDENCE)

24 BY MR. FOGLEMAN:

25 Q When the defendant is telling you about these injuries, is

1 he gesturing in any way or demonstrating anything?

2 A Yes, sir. In particular about the Chris Byers when we
3 asked where he was cut, and that point he was pointing like here
4 (INDICATING) pointing to himself, and that is where it is hard
5 to see someone pointing on cassette tape. So that's why we
6 mentioned, "Are you speaking of the groin area?"

7 Q Is that after he said, "at the bottom"?

8 A Yes, sir.

9 Q What time did this tape recorded session end?

10 A It was completed at 3:18 P.M.

11 Q After the tape recorded session ended at 3:18 P.M., did a
12 period of time elapse and then you went back and talked to the
13 defendant some more?

14 A Yes, sir, it did.

15 Q Let me ask you this: Between the time -- was the follow-
16 up conversation recorded also?

17 A Yes, sir, the follow-up was.

18 Q Between the time when you ended at 3:18 and you started the
19 follow-up, did you have any conversation with the defendant that
20 was not tape recorded?

21 A No, sir, I did not.

22 Q In the tape also there was some reference to him going out
23 with a cam corder and showing things. Why was that not done?

24 A During that time there was a very large media coverage of
25 the area, of the police department. Many times my investigators

1 would go out, and they were pretty much followed. So for
2 security of the case, we felt it would be better not to take
3 Jessie to that location because we knew he would be seen, and
4 that could hinder any chances on making arrests of other
5 suspects.

6 Q Also the defendant mentions Jason Baldwin and the clothes
7 he was wearing. I want to show you State's Exhibit 99 and ask
8 if you can identify that?

9 A (EXAMINING) Yes, sir. This is a picture of Jason Baldwin.

10 Q Does it fairly and accurately portray the defendant at the
11 time of his arrest?

12 A Yes, sir, I took that picture.

13 MR. FOGLEMAN: Judge, we would offer State's
14 Exhibit 99.

15 MR. STIDHAM: Judge, I don't think it is
16 relevant.

17 THE COURT: Overruled.

18 MR. STIDHAM: What did it fairly and accurately
19 depict?

20 MR. FOGLEMAN: The defendant Jason Baldwin's
21 appearance at the time of his arrest.

22 MR. STIDHAM: Your Honor, what does that have to
23 do with this case?

24 MR. FOGLEMAN: The defendant has said, your
25 Honor, that Jason Baldwin was one of the people

1 involved and I think the jury ought to be able to see
2 his appearance.

3 THE COURT: I allowed it in evidence.

4 (STATE'S EXHIBIT 99 IS RECEIVED IN EVIDENCE)

5 THE COURT: Don't question me again.

6 MR. STIDHAM: Your Honor, I never got a chance to
7 respond.

8 THE COURT: If you want to state an objection,
9 I'll allow that, but don't ask me to respond to a
10 ruling. All right?

11 MR. STIDHAM: Yes, your Honor.

12 THE COURT: Do you want to make an objection?

13 MR. STIDHAM: I'd like to make an objection for
14 the record.

15 THE COURT: All right.

16 MR. STIDHAM: Your Honor, he asked -- the
17 statement that Mr. Misskelley gave -- the question was
18 what was he wearing on May 5th. What he is wearing on
19 June 5th, the date of his arrest, has no relevancy
20 whatsoever -- and I wasn't trying to be improper to
21 the Court. I never got a chance to respond before
22 your Honor admitted it.

23 THE COURT: Approach the bench.

24 (THE FOLLOWING CONFERENCE WAS HELD AT THE BENCH
25 OUT OF THE HEARING OF THE JURY)

1 THE COURT: The relevancy of the picture is not
2 -- I didn't understand him to say what he was wearing
3 on June the 5th. Is that what you said?

4 MR. FOGLEMAN: No. In the tape he says what was
5 he wearing --

6 THE COURT: -- and then you asked him to identify
7 that picture, and he said that is what he was wearing
8 on the date of his arrest. Is that the way it went?

9 MR. STIDHAM: That's what I was trying to do,
10 your Honor.

11 THE COURT: The relevancy should be quite obvious
12 that if it corroborates what Jessie said in his
13 statement, then it is some relevant evidence as to
14 what the boy was wearing, clothing of a similar nature
15 and type. Also, it could be relevant as to -- I think
16 I know what you're getting at. It's something that --

17 MR. STIDHAM: Your Honor, may we retire to
18 chambers?

19 (RETURN TO OPEN COURT)

20 THE COURT: Ladies and gentlemen, you may stand
21 in recess for five to ten minutes.

22 (THE FOLLOWING CONFERENCE WAS HELD IN CHAMBERS)

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

1 THE COURT: Dan, I --

2 MR. STIDHAM: Your Honor, before you speak, may I
3 make a motion?

4 THE COURT: Sure, but I want to say one thing.
5 You were questioning the Court and demanding that I
6 make some explanation as to a ruling that the Court
7 had attempted to make which would have required the
8 Court, had I chosen to respond to your challenge, to
9 comment on the evidence. That is the reason that I
10 mentioned to you don't question me on it because by
11 doing that, one, you are challenging the Court's
12 ruling and, two, you are forcing the Court, if I felt
13 the need to respond, to comment on the evidence and I
14 can't do that, obviously.

15 I understand what you're trying to do and I'm
16 going to let you -- anytime you want to make an
17 objection, I'm going to let you make that objection
18 and I'm going to let you amplify it and clarify it.
19 I've never failed to do that so if you want to make an
20 objection, let's do it.

21 MR. STIDHAM: Your Honor, I know it's been a long
22 day, but I'd like to make a motion for a mistrial
23 because of the way I was admonished in front of the
24 jury. I think it was a clear comment that I had done
25 something improper, which I submit that I had not.

1 Your Honor made a ruling before I ever had a chance to
2 make an objection. If your Honor felt I was acting
3 improper, it would have been best to bring me back to
4 chambers and --

5 THE COURT: I agree that it would have been best
6 if I had brought you back to chambers, but I'm going
7 to deny your motion for a mistrial.

8 MR. STIDHAM: It makes it look like I can't stand
9 up and object and protect my client's interest --

10 THE COURT: No, no --

11 MR. STIDHAM: -- if I can't stand up and speak.

12 THE COURT: I disagree with that. In fact I have
13 never done that. We're back in chambers now. You can
14 make your objection.

15 MR. STIDHAM: Your Honor wants me to make my
16 motion again with regard to the photograph?

17 THE COURT: Yes. Sure.

18 MR. STIDHAM: The Court has denied my motion for
19 a mistrial?

20 THE COURT: Yes.

21 MR. STIDHAM: Your Honor, with regard to the
22 photograph, my objection was that Mr. Fogleman asked
23 the witness -- or the taped statement suggested that
24 Mr. Misskelley was describing to the interrogator what
25 Mr. Baldwin was wearing on the date, May 5th. Mr.

1 Fogleman asked the witness if this was a fair and
2 accurate depiction of what Mr. Baldwin looked like on
3 the date of the arrest, which is June the third. My
4 objection is what is the relevance of that photograph
5 when --

6 THE COURT: You made the objection, "What is the
7 relevancy to that photograph," and I overruled your
8 objection and allowed it. Then you started
9 questioning the Court's ruling.

10 MR. STIDHAM: Your Honor, I never had an
11 opportunity to say anything before you allowed it to
12 come into evidence.

13 THE COURT: You had made your objection. I had
14 ruled, and then you started questioning it.

15 MR. STIDHAM: That was not my intent.

16 THE COURT: I understand it, and I'm not upset
17 about it. I agree I hardly ever say anything to any
18 lawyer unless it is in the back room. The way you
19 were doing it, Dan, I couldn't do anything other than
20 say, "Don't question my ruling."

21 MR. STIDHAM: Your Honor, I meant no contempt.

22 THE COURT: I understand that, and I'm not taking
23 offense. Let's move on to the real issue if you are
24 raising the question of relevancy of the photograph.

25 MR. STIDHAM: Yes, your Honor. I don't think it

1 is relevant, especially with the foundation that was
2 laid for its admission.

3 THE COURT: Well, you can cross examine him on
4 when the photograph was taken. I thought it was clear
5 that it was tendered as a photograph of Baldwin at the
6 time of his arrest, June --

7 MR. FOGLEMAN: Third or fourth.

8 THE COURT: -- whatever it was. I thought that
9 was the way the question was proffered to the witness.
10 And the relevancy of it -- there are a multitude of
11 reasons why it is relevant. We just listened to a
12 long description of what all three of them were
13 wearing on the day that it happened. It was similar
14 type clothing. There was some reference about, "Do
15 you wear black," or something. It is also relevant to
16 that, and I also suspect that the picture is being
17 offered for other reasons.

18 MR. STIDHAM: Your Honor, he didn't say what his
19 reasons were. All he did was -- he attempted to
20 mislead the jury --

21 (MR. STIDHAM, MR. FOGLEMAN AND THE COURT SPEAKING
22 AT THE SAME TIME - UNINTELLIGIBLE)

23 MR. STIDHAM: -- I'm not accusing you of
24 intentionally misleading the jury. What I'm saying is
25 the way that the offer was made for the introduction.

1 was it made it sound like that was the clothes he was
2 wearing on the night of May 5th.

3 THE COURT: I didn't take it that way.

4 MR. STIDHAM: That is exactly the way I took it,
5 and his Honor ruled on it so quickly I never had a
6 chance -- perhaps I should have asked to come to the
7 bench. My concern is now, your Honor, in the eyes of
8 the jury I'm a rogue --

9 THE COURT: I don't think so.

10 MR. STIDHAM: -- And that I'm rude and crude to
11 the Court, and I'm afraid it's prejudiced my client's
12 chance for a fair trial.

13 THE COURT: I don't think that it has and that
14 motion is denied. You want me to go back and tell
15 them I think you are a nice guy?

16 MR. CROW: No, your Honor.

17 THE COURT: I'll be glad to do it. You want me
18 to go back and say --

19 MR. STIDHAM: Your Honor, I'm not sure any
20 instruction to the jury can cure that problem.

21 THE COURT: I think so.

22 MR. CROW: I don't want an instruction, your
23 Honor.

24 THE COURT: A mistrial is a drastic remedy, and I
25 am not prepared to grant a mistrial at this time but

1 don't challenge the Court's rulings. If I'm wrong,
2 then appeal it.

3 MR. STIDHAM: Your Honor, that's not -- that
4 wasn't my intention.

5 THE COURT: It sure was. You repeated it two or
6 three times.

7 MR. STIDHAM: In fact Mr. Fogleman and I were in
8 a rapport, and I thought your Honor was going to make
9 a ruling after we were discussing the relevancy.

10 THE COURT: Maybe I didn't see it the way it
11 happened, but my observation was he offered it. You
12 made an objection as to relevancy, and I overruled it
13 and allowed it, and then you kept challenging me while
14 seated, I might add, as to what is the relevancy,
15 three or four times, and that is what happened.
16 That's why we are here.

17 I understand that the appearance of all three of
18 these boys could very well be relevant to anybody that
19 might have seen them, and I think that it is relevant.
20 The way they looked at the time of their arrest is
21 relevant.

22 Anything else?

23 MR. CROW: No, your Honor.

24 THE COURT: Are you not going to have another
25 witness that purports to have seen them -- you raised

1 that, Paul, on some motion you raised about Damien
2 being seen with his girlfriend?

3 MR. FORD: That's correct.

4 THE COURT: Also in this statement -- I might be
5 confusing it with this statement and something else
6 y'all brought up in this case -- but something about
7 somebody with sandy hair --

8 MR. FORD: The description was Damien and his
9 girlfriend, Domini Teer, and Domini Teer has red hair.
10 I've never seen her, but I understand it's kind of
11 fire engine red.

12 THE COURT: I don't know but I'm assuming that
13 the appearance of this young man could be similar in
14 stature and hair color as the girlfriend. If that is
15 the case, it is extremely relevant based upon your
16 objection. That was what was in my mind at the time I
17 allowed it to be received.

18 MR. FORD: I realize that that was something that
19 took place at a previous hearing. I agree. There's
20 been some argument to the Court about whether or not
21 the witness is mistaken in her identity of Domini
22 versus Jason.

23 THE COURT: So it's relevant for that purpose. I
24 might be anticipating what will be introduced, but I
25 have already heard it from you so I have got to

1 anticipate to some extent, and it's relevant certainly
2 for that purpose of confused identity or mistaken
3 identity.

4 MR. FOGLEMAN: That's correct.

5 THE COURT: And, Dan, if I owe you an apology,
6 I'll certainly apologize to you, but it certainly
7 appeared to the Court that you were challenging the
8 Court's ruling.

9 MR. STIDHAM: I was just trying to set the record
10 for appeal, Judge. The courts have ruled if you don't
11 state specific objections --

12 THE COURT: I don't ever have a problem with you
13 making an objection. Just stand up and say, "I
14 object." And I thought that you had stated your
15 objection as to relevancy and I overruled it. Then
16 you kept on saying, "What is the relevancy," demanding
17 that I reply to you which would require the Court to
18 comment on the evidence and which is totally and
19 completely inappropriate.

20 MR. STIDHAM: I was referring to Mr. Fogleman --

21 THE COURT: You were looking at me and saying,
22 "What is the relevancy," and you said it more than
23 once. I'll be happy to go out and tell the jury if I
24 admonished a lawyer in their presence, that I was
25 wrong. To my knowledge, I've never done that. But

1 the way you did it just caused that response to come
2 from me, and I don't like to do that. I like you. I
3 think you are doing a good job in this case.

4 (RETURN TO OPEN COURT)

5 REDIRECT EXAMINATION

6 BY MR. FOGLEMAN:

7 Q After you ended the tape at 3:18, at some point later was I
8 summoned to the police department?

9 A Yes, sir.

10 Q After I got there, at my request did you have some further
11 conversation with the defendant?

12 A Yes, sir, I did.

13 Q Was this conversation tape recorded as well?

14 A Yes, sir, it was.

15 Q I want to show you what is marked for identification as
16 State's Exhibit 77 and ask if you can identify that?

17 A (EXAMINING) Yes, sir. This is the envelope which I marked
18 "Jessie Misskelley," showing that this is a follow-up tape taken
19 after the first confession.

20 Q I want to show you what I've marked for identification as
21 State's Exhibit 77A and ask if you can identify that?

22 A (EXAMINING) Yes, sir. This is a transcript of that tape.

23 MR. FOGLEMAN: Your Honor, we would offer State's
24 Exhibits 77 and 77A and ask permission to play the
25 tape and distribute copies of the transcript to the

1 jury.

2 THE COURT: It may be received, and you will be
3 permitted to play the tape and distribute copies of
4 the transcript to the jury.

5 (STATE'S EXHIBITS 77 AND 77A ARE RECEIVED IN
6 EVIDENCE)

7 (TAPE BEING PLAYED)

8 BY MR. FOGLEMAN:

9 Q Inspector Gitchell, when Jessie said -- after you had asked
10 him about how they would force them to do this -- and he said,
11 "He was holding him like this by his head like this and stuff,"
12 was Jessie doing anything to demonstrate?

13 A Yes, sir. He was demonstrating to me they were holding the
14 boys by their ears and forcing oral sex.

15 Q That is the way he was showing you?

16 A Yes, sir. By the ears and pulling down.

17 Q In the tape there's obviously places where you stopped the
18 tape recorder. What happens then?

19 A I stopped the tape to walk out of the room to confer with
20 you.

21 Q From the time you first started taping any of the
22 conversations with Jessie at 2:44 P.M. until you completed the
23 follow-up conversations with him, were there any conversations
24 that you and anybody else had with the defendant that were not
25 tape recorded?

1 A No, sir. We did not talk with him whatsoever.

2 Q Between the time that the original tape ended at 3:18 --
3 first of all, approximately what time did the follow-up
4 conversations begin?

5 A It was probably around five, maybe a little bit before.

6 Q Between 3:18 and 5:00 what were you and your men doing?

7 A I had ordered food for everyone, and I believe Jessie was
8 also eating himself.

9 Q Were you doing anything else?

10 A We were in preparation for getting papers together, copies
11 for getting affidavits and warrants.

12 MR. FOGLEMAN: That's all I have, your Honor.

13 THE COURT: You asked to reserve your cross
14 examination until tomorrow morning?

15 MR. STIDHAM: That's correct.

16 THE COURT: I'll permit that.

17 (WITNESS EXCUSED)

18 MR. FOGLEMAN: Are we going to call that other
19 witness now?

20 MR. STIDHAM: I'll leave that up to the Court.

21 THE COURT: If y'all didn't have any objection, I
22 was going to do that as long as you can assure me it
23 can be done in ten or fifteen minutes.

24 MR. FOGLEMAN: I think it can. Do you expect
25 your cross examination to be long?