

1 A Black.

2 Q Was there anything about her pants? What was the condition  
3 of the pants?

4 A It had holes above the knees.

5 Q What about the condition of the clothes of both of them?

6 A They -- they was kind of muddy.

7 Q And where did you see them?

8 A Beside Blue Beacon. They was right before you get there --  
9 they was walking.

10 Q They was where now?

11 A They was right beside Blue Beacon.

12 (WITNESS EXCUSED)

13 THE COURT: All right, ladies and gentlemen, with  
14 the usual admonition not to discuss the case, you may  
15 stand in recess until 9:30 in the morning.

16 (ADJOURNMENT)

17 CORNING, ARKANSAS, JANUARY 28, 1994, AT 9:30 A.M.

18 THE COURT: Let me make an announcement to the  
19 media. I've been informed that one of the papers  
20 carried a photograph of a witness who had requested  
21 not to be photographed or depicted on live coverage  
22 that also included the jury. I'm considering a rather  
23 substantial fine. I'm asking you not to do that  
24 again. The jury is not to be photographed under any  
25 circumstances, and I sure don't like it placed in the

1 newspaper. If it was, and that is what was reported to  
2 me. I want you to avoid that or I will consider a  
3 fine.

4 All right, you may proceed.

5 GITCHELL CROSS EXAMINATION

6 B:

7 Q

8 A

9 Q

10 Inspector Gitchell, we heard the tape yesterday of Jessie's  
11 statement. Did you and Detective Ridge rehearse Jessie's story  
12 before you turned the tape recorder on?

13 A No, we did not.

14 Q So basically this was a contemporaneous thing after you  
15 showed the photograph and diagram and played the tape?

16 A Yes, sir.

17 Q How did Ridge know what to say and what to ask?

18 A I don't understand what you mean.

19 Q A lot of the questions, a lot of what Jessie was saying was  
20 merely repeating what Ridge said to him.

21 A I believe there was a lot of repetition on Mr. Ridge's part  
22 of what Jessie said.

23 Q Let's talk about the things that Jessie told you that are  
24 absolutely incorrect beginning with Jessie's statement that  
25 Jason Baldwin called him at 9:00 in the morning. Isn't it true  
that Jason Baldwin --

1 MR. FOGLEMAN: What page are you on?

2 MR. STIDHAM: I believe it is in the very  
3 beginning.

4 BY THE WITNESS:

5 A I'm sorry. You're going to have to repeat that for me.

6 Q Mr. Misskelley said he had received a phone call from  
7 Jason Baldwin at 9:00 A.M.?

8 A I don't -- is that in there? Could you show that to me?

9 Q I stand corrected. That was something that Jessie told  
10 Detective Ridge prior to the tape recorder being turned on.

11 Do you recall being there and being present when he said  
12 that?

13 A Who said it? I've lost track now.

14 Q Jessie said he received a phone call from Jason Baldwin at  
15 nine in the morning.

16 A I believe that's nine at night.

17 Q I'm going to skip over that and we'll come back to that.  
18 I'll find my notes, and we will clarify that.

19 Another thing that Jessie told you, I believe this is on  
20 the tape, is that Jessie was standing on the service road when  
21 he saw Damien hit Christopher Byers. How far is the service  
22 road from --

23 A No, sir. There's never anything mentioned of the service  
24 road.

25 Q There's not?

1 A I don't recall anything.

2 MR. DAVIS: Your Honor, it is improper cross  
3 examination for him to ask general questions. If he  
4 wants to refer to the tape recorded statement or to  
5 previous statements and say in fact this is what was  
6 said, is that what took place, and why was that said,  
7 that's one thing. But he's generalizing -- and it's  
8 the State's position he's incorrectly generalizing  
9 what is contained in the statement.

10 THE COURT: Approach the bench.

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

13 THE COURT: I'm having a problem with the way  
14 that you are proceeding on cross examining him on a  
15 statement made by Misskelley.

16 MR. STIDHAM: He was present in the room when the  
17 questioning --

18 THE COURT: I'm going to let you do it if you  
19 take the statement and refer to it page by page and  
20 line by line and ask, "Was this statement made?"

21 MR. STIDHAM: Judge, I've been over that  
22 statement so many times. I know what's in there. I  
23 don't have the page numbers --

24 MR. FOGLEMAN: Your Honor, I think I know what's  
25 in there, too, and I don't remember anything referring

1 to a service road and watching him hit --

2 MR. STIDHAM: Your Honor, I'm going to have to  
3 have ten minutes or so to go through it and put the  
4 page numbers down.

5 THE COURT: All right. Can you ask other  
6 questions now that gets rid of the rest of your cross  
7 examination?

8 MR. STIDHAM: That is what my cross examination  
9 mostly consists of, your Honor.

10 (RETURN TO OPEN COURT)

11 THE COURT: We're going to take a ten minute  
12 recess at this time with the usual admonition not to  
13 discuss the case.

14 (RECESS)

15 CROSS EXAMINATION

16 BY MR. STIDHAM:

17 Q We are going to try this again. If I confuse you about  
18 page numbers, just say so and we'll compare.

19 A Okay.

20 Q As you know, there's two different transcripts. The  
21 transcript I've been looking at is a little bit different than  
22 the one that was shown to the jury yesterday. If there's any  
23 confusion on your part, please let me know, and we'll clarify  
24 it.

25 On page three of his statement Jessie tells you that him

1 and Jason and Damien went down to the woods, that they left to  
2 go down there about nine o'clock. Did you find that part yet?

3 A I see where -- nine o'clock in the morning. Is that what  
4 you're in reference to?

5 Q Yes.

6 A Okay, I see that.

7 Q You confirmed that Jason Baldwin went to school that day,  
8 did you not?

9 A Yes, sir.

10 Q What time does school normally begin in West Memphis?

11 A Jason I think goes to Marion. I'm not sure what time it  
12 starts.

13 Q Inspector Gitchell, how far is it from the place where the  
14 bodies were found to the interstate and service road?

15 A I couldn't give you an exact. It would be just a  
16 guesstimate on my part -- 60, 70 yards -- something like that.  
17 I'm assuming. I don't know.

18 Q On page nine of his statement, Inspector Gitchell, Jessie  
19 says the murders took place around noon and when he told you  
20 that, you knew at that time that that wasn't correct, did you  
21 not?

22 A That's right.

23 Q How did you know that was incorrect?

24 A Because the boys -- the young boys were still in school.

25 Q Later on, on that same page he makes reference to the

1 little boys had skipped school that day.

2 A Yes, sir, he did. But I believe Jessie is getting confused  
3 there. Jason Baldwin was supposed to skip school that day, and  
4 they were all going to --

5 Q The little boys didn't skip school that day, did they,  
6 Inspector Gitchell?

7 A The little boys did not skip school, but Jason was to skip  
8 school that day.

9 Q That's not what I asked you. My question was, did the  
10 little boys skip school that day?

11 A No, the little boys did not.

12 Q You knew that was incorrect when Jessie told you that?

13 A That's correct.

14 Q Thank you. How were the boys tied when the bodies were  
15 discovered?

16 A They were tied by shoestrings from wrist, like right wrist  
17 to the right ankle.

18 Q In Jessie's second statement that was played to the jury  
19 yesterday did he tell you they were tied with a brown rope?

20 A That's correct.

21 Q These seem to be pretty important issues with regard to his  
22 statement. At any time when he was telling you these things  
23 that you knew were incorrect, did it ever occur to you that what  
24 he was telling you was false and his entire story was false?

25 A There's always a time in a defendant's statement -- that in

1 Jessie's case I feel like he did tell us a good bit of truth,  
2 but then they also lessen their activity in a statement. That's  
3 just common, at least in my twenty years career.

4 Q It is common to ignore things like time of death and the  
5 fact that the boys were not tied up --

6 A Well --

7 Q Let me finish my question, Inspector.

8 A I was going to answer the first part.

9 Q Is it common for the police to simply ignore those big  
10 obvious problems and assume that everything else he's telling  
11 you has gotta be correct?

12 A It is easy to ignore the part about the boys skipping  
13 school because you simply know that's not true. Jessie simply  
14 got confused. That's all.

15 Q Confused. Now, the prosecuting attorney was obviously  
16 concerned about some of the things Jessie was getting wrong,  
17 wasn't he?

18 A Yes, sir.

19 Q That was the purpose for the second statement?

20 A Yes, sir, right.

21 Q Why didn't you go into these issues with him when you had  
22 him on the tape recorder the first time?

23 A I have a tendency if someone is in a portion of an  
24 interview that they are talking that -- if you will notice  
25 through the transcript, I said very little. And that is my



1 technique, is to let someone go ahead and talk.

2 So I simply allowed him to keep talking and I injected very  
3 little into the interview.

4 Q But the prosecutor later told you he had some serious  
5 questions about this and asked you to go back in and talk to  
6 Jessie again?

7 A Right.

8 Q Inspector Gitchell, was it a big secret about what had  
9 happened to these little boys and what injuries they sustained?

10 A Yes, sir.

11 Q I guess you were shocked when some of the people you were  
12 bringing in off the street and questioning -- they told you what  
13 had happened to the little boys?

14 A You have lost me on that. You'd have to get me some names  
15 that I can refer to so I can get some files and see.

16 Q (HANDING) Do you remember the police interviewing a fellow  
17 by the name of Richard Cummings on 5-12-93?

18 A This is Lieutenant Sudbury's notes. Are you mentioning  
19 this, "pointed to the penis and said it was cut off"?

20 Q And that the little boys were beat up.

21 A Yes, sir.

22 Q It is obvious that Mr. Cummings knew what had happened?

23 A I believe that -- it was ran in the news media that all had  
24 been sexually mutilated. If my recollection is correct, which  
25 in fact was not true.

1 Q We're going to talk about that in a minute.

2 MR. STIDHAM: Do you have any problem with this?

3 MR. FOGLEMAN: Your Honor, we don't have any  
4 objection to introducing the exhibit, but it's just a  
5 series of what are answers to questions that were put  
6 to people. and I think the questionnaire ought to be  
7 attached, too.

8 MR. STIDHAM: Judge, the obvious question is what  
9 happened to these little boys and this is what he told  
10 them.

11 THE COURT: Well --

12 MR. STIDHAM: I don't have any problem with  
13 attaching the questionnaire as a part of the exhibit.

14 THE COURT: Let me see what you're doing.

15 MR. STIDHAM: Your Honor, the purpose of the  
16 exhibit is to demonstrate to the jury that this  
17 information about what had happened to the little boys  
18 wasn't a top secret situation. Everybody in West  
19 Memphis knew about it and heard rumors about it.

20 THE COURT: Are you objecting?

21 MR. STIDHAM: No, they said they had no  
22 objection, your Honor.

23 THE COURT: Well, I didn't follow. There was  
24 some objection --

25 MR. FOGLEMAN: Your Honor, the only thing we said

1 is if that is going to be admitted, it is hearsay  
2 because Detective Gitchell did not do it but if it's  
3 going to be admitted, we think the questionnaire ought  
4 to be attached as well.

5 THE COURT: Approach the bench.

6 (THE FOLLOWING CONFERENCE WAS HELD AT THE BENCH  
7 OUT OF THE HEARING OF THE JURY)

8 THE COURT: Are you objecting to the admission of  
9 this? It is hearsay and police reports are not  
10 admissible.

11 MR. STIDHAM: They have already said they have no  
12 objection.

13 THE COURT: It was kind of equivocal. "If it is  
14 going to be admitted." I don't know if that's  
15 objecting to it or not. That's what I'm asking.

16 MR. STIDHAM: I understood they had no objection.

17 THE COURT: If they don't, go ahead.

18 MR. DAVIS: We don't have an objection if the  
19 questionnaire is attached to it. But if we end up with  
20 --

21 THE COURT: Are we going to go through a whole  
22 series of interviews of people?

23 MR. STIDHAM: We have two.

24 THE COURT: Okay. Go ahead.

25 (RETURN TO OPEN COURT)

1 THE COURT: Without objection you may proceed.  
2 (DEFENDANT'S EXHIBIT ONE IS RECEIVED IN EVIDENCE)  
3 MR. STIDHAM: I would like to exhibit this to the  
4 jury.

5 THE COURT: All right.

6 BY MR. STIDHAM:

7 Q Inspector Gitchell, do you recognize that document?

8 A (EXAMINING) Yes, sir.

9 Q That appears to be in your handwriting?

10 A Yes, sir.

11 Q Your initials are at the bottom?

12 A Right.

13 Q This individual who was picked up for questioning, Dalton  
14 Shane Kellon, also related to you that he had heard rumors of  
15 castration and mutilation and the boys were beaten to death?

16 A That's correct.

17 MR. STIDHAM: Judge, we offer this as Defendant's  
18 Exhibit Two.

19 THE COURT: It may be received without objection.  
20 You may exhibit to the jury.

21 (DEFENDANT'S EXHIBIT TWO IS RECEIVED IN EVIDENCE)

22 BY MR. STIDHAM:

23 Q You mentioned a moment ago that the press had somehow  
24 intercepted a computer message from the West Memphis Police  
25 Department that was sent to other law enforcement agencies?

1 A Um-hum.

2 Q Do you recognize this document?

3 A (EXAMINING) No, sir, I do not.

4 Q Can you identify the initials, "DIS" stamped in the  
5 righthand corner?

6 A No, sir, I do not know what that is.

7 MR. DAVIS: Is this the same thing he's looking  
8 at?

9 MR. STIDHAM: Yes.

10 MR. FOGLEMAN: Your Honor, this is apparently  
11 something I furnished to the defense. If "DIS" is on  
12 there, it means that I furnished it to the defense.

13 THE COURT: Gentlemen, I don't know what you're  
14 talking about.

15 MR. FOGLEMAN: It is apparently an article out of  
16 the newspaper.

17 MR. STIDHAM: Your Honor, this is an Associated  
18 Press article that outlines the computer message that  
19 the West Memphis police sent to other law enforcement  
20 agencies --

21 MR. FOGLEMAN: The judge can read. I don't think  
22 --

23 THE COURT: I appreciate that show of confidence.

24 MR. FOGLEMAN: Your Honor, we don't have any  
25 objection if he wants to introduce that.

1 THE COURT: If you don't have any objection, it  
2 may be received.

3 (DEFENDANT'S EXHIBIT THREE IS RECEIVED IN  
4 EVIDENCE)

5 BY MR. STIDHAM:

6 Q Inspector, the article said that the Associated Press says  
7 that the victims' hands were tied, and their genitals had been  
8 removed with a sharp instrument?

9 A Yes, sir. It says, "victims." That means more than one.

10 Q Inspector Gitchell, do you ever holler at people or get in  
11 people's face when you interrogate them?

12 A Yes, sir, I have in the past.

13 REDIRECT EXAMINATION

14 BY MR. FOGLEMAN:

15 Q Did you do that with the defendant?

16 A No, sir, not at all.

17 Q There's one person you did that with in this case, isn't  
18 there, at least one?

19 A May have been two.

20 Q But not the defendant?

21 A No, sir, not the defendant.

22 Q Was there any need to do that?

23 A No, sir.

24 Q On Defendant's Exhibit Two on this Dalton Shane Kellon  
25 interview of June 2nd, does he mention who specifically had the

1 cuts to the face or who was castrated?

2 A No, sir.

3 Q And is the information that he relays basically the same  
4 information that was in the newspaper?

5 A Yes, sir.

6 Q Is it unusual, Detective Gitchell, when you take a  
7 confession from a defendant to have some details that are wrong?

8 A That's quite common.

9 Q Do you know whether or not -- are you aware of any evidence  
10 that would indicate that there had been some sort of binding  
11 other than the shoestrings?

12 A Some markings of their legs.

13 MR. STIDHAM: I'm going to object to that. He's  
14 not the Medical Examiner.

15 MR. FOGLEMAN: He can state what he observed.

16 THE COURT: Are you testifying from reports,  
17 records or from your own personal observation?

18 THE WITNESS: From my own observation.

19 THE COURT: Overruled.

20 BY MR. FOGLEMAN:

21 Q I want to show you State's Exhibit 59B, the mark across the  
22 leg here. Did you observe that?

23 A Yes, sir.

24 Q What did you observe?

25 A Well, the --

1 MR. STIDHAM: May I interpose another objection?  
2 Your Honor, I think that calls for pure unadulterated  
3 speculation on the part of this witness who is not  
4 qualified to render such an opinion.

5 MR. FOGLEMAN: Your Honor, I asked him what he  
6 observed.

7 THE COURT: I'm going to allow him to testify to  
8 what he observed on the victims' bodies. I'm not  
9 going to let him speculate as to the cause of the  
10 observation. Your objection will be sustained in that  
11 regard. He may testify to what he personally  
12 observed.

13 BY MR. FOGLEMAN:

14 Q What did you observe?

15 A I observed this bruising, I believe it was on the left leg  
16 stretching approximately three and a half inches of the leg.

17 Q Did you observe a pattern?

18 A Yes, sir, it appears to be of a --

19 MR. STIDHAM: Your Honor, again, that calls for  
20 pure speculation. Why didn't he ask the Medical  
21 Examiner yesterday when he was here? He may be  
22 qualified to answer that question.

23 MR. FOGLEMAN: Your Honor, I think --

24 THE COURT: I cannot respond to why they didn't  
25 ask somebody something, but I'm going to let this



1 witness testify to what he personally observed, but he  
2 cannot draw conclusions on what he observed.

3 BY MR. FOGLEMAN:

4 Q Did you observe a pattern?

5 A Yes, sir.

6 Q On this piece of paper, could you draw the pattern that you  
7 observed?

8 A (DRAWING)

9 Q I'm going to mark this Exhibit 105A. Is that what you  
10 observed on his leg?

11 A Yes, sir.

12 MR. STIDHAM: Your Honor, may we approach the  
13 bench?

14 (THE FOLLOWING CONFERENCE WAS HELD AT THE BENCH  
15 OUT OF THE HEARING OF THE JURY)

16 MR. STIDHAM: Your Honor, this witness is not  
17 qualified to render an opinion based on --

18 THE COURT: I'm not going to allow him to render  
19 an opinion as to causation, but I'm going to allow him  
20 to testify to what he saw.

21 MR. CROW: Can I view the photograph?

22 MR. FOGLEMAN: (HANDING)

23 MR. CROW: I think the photograph is more  
24 adequate to show what he observed, your Honor.

25 MR. STIDHAM: They are trying to pass him off as

1 an expert in pathology. That's not proper.

2 MR. FOGLEMAN: Your Honor, I asked him what he  
3 observed and I asked him to draw it.

4 THE COURT: I'm going to allow him --

5 MR. STIDHAM: Your Honor, that could have been  
6 caused by a stick. That could have been caused by  
7 anything.

8 MR. CROW: Your Honor, the photograph shows it.

9 THE COURT: You are again arguing what caused  
10 those markings that he saw, which is something you can  
11 argue at the end of the case. Each of you can draw  
12 conclusions, and you can argue what you believe to be  
13 the cause of that. The officer is going to be  
14 permitted to testify to what he saw.

15 MR. STIDHAM: Will this exhibit be allowed to be  
16 introduced?

17 THE COURT: Yes.

18 MR. CROW: I think the picture shows it better.

19 THE COURT: I'm going to allow it.

20 MR. CROW: Note our objection.

21 (RETURN TO OPEN COURT)

22 (STATE'S EXHIBIT 105A IS RECEIVED IN EVIDENCE)

23 BY MR. FOGLEMAN:

24 Q Again in all of these people -- first of all, approximately  
25 how many people did y'all talk to?

1 A At least a hundred.

2 Q Out of all of these people that you talked to, how many  
3 people besides the defendant told you about -- that this -- that  
4 -- which particular person had the genitals removed, that one of  
5 them had cuts to the side of the face and that there were  
6 bruising to the ears?

7 MR. CROW: Object to hearsay.

8 THE COURT: Rephrase your question. I was  
9 looking up something else y'all handed me.

10 BY MR. FOGLEMAN:

11 Q Out of the hundred or more people y'all talked to, are you  
12 aware of anybody other than the defendant who told you that  
13 there was one of the victims that had their genitals removed and  
14 one of them had cuts to the side of the face and there had been  
15 some grabbing of the ears?

16 THE COURT: The objection to that is hearsay?

17 MR. CROW: He's rephrased somewhat since my  
18 objection.

19 THE COURT: I'm going to overrule the hearsay  
20 objection and I will allow him to respond yes or no  
21 without going into detail of who that person was or  
22 the circumstances.

23 BY THE WITNESS:

24 A There was no one else that mentioned those particular  
25 injuries and you yourself, Mr. Fogleman, you are pointing to the

1 wrong side of the cheek.

2 Q But nobody else?

3 A No one else.

4 (WITNESS EXCUSED)

5 MR. FOGLEMAN: We call Vickie Hutcheson.

6 MR. CROW: Your Honor, may we approach the bench?

7 (THE FOLLOWING CONFERENCE WAS HELD AT THE BENCH  
8 OUT OF THE HEARING OF THE JURY)

9 MR. CROW: I may be anticipating what they are  
10 going to try to elicit from this witness but I  
11 anticipate she's going to testify that she saw him at  
12 some alleged cult meeting after the murders. If she  
13 wants to testify that she saw him with Damien, that's  
14 fine, but all this cult stuff -- I don't think there's  
15 been a proper foundation laid for it. It is  
16 prejudicial and we would strongly object.

17 THE COURT: After -- is that what you're going to  
18 do --

19 MR. FOGLEMAN: Between the murders and the  
20 arrests.

21 THE COURT: But after the event.

22 MR. FOGLEMAN: That's correct.

23 MR. STIDHAM: Just because he was somewhere  
24 drinking and carrying on with somebody doesn't mean  
25 he's satanic --