

1 MR. DAVIS: Your Honor, at this point I'll object
2 to leading. This is his witness. He's asked four
3 leading questions in a row. He can ask open ended
4 questions and let her testify.

5 THE COURT: Avoid leading.

6 MR. CROW: Yes, Your Honor.

7 BY MR. CROW:

8 Q There was something I was a little bit confused about when
9 we started. What was Jessie's hair style on May 5th, 1993?

10 A He had lines that was drawn in on the side and it was short
11 on top.

12 Q The lines were in his hair at that time?

13 A Yes. But the little thing on top was not on his head.

14 (WITNESS EXCUSED)

15 JOSH DARBY

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

18 DIRECT EXAMINATION

19 BY MR. CROW:

20 Q Will you please state your name?

21 A Josh Darby.

22 Q How old are you?

23 A Eighteen.

24 Q Do you go to school?

25 A Nope.

- 1 Q How long have you known Jessie Misskelley?
- 2 A Ever since we was about nine.
- 3 Q On May 5th -- where do you live now?
- 4 A Highland Trailer Park.
- 5 Q Did you live in Highland Trailer Park on May 5th?
- 6 A Yes.
- 7 Q You live in the same location as you did then?
- 8 A Yes, sir.
- 9 Q If you will turn around behind you, this is State's Exhibit
- 10 Two. This is Highland Trailer Park. Can you indicate where you
- 11 live in Highland Trailer Park?
- 12 A That is where Stephanie lives.
- 13 Q Okay.
- 14 A On the back row.
- 15 Q Do you remember Tuesday, May 4th, 1993?
- 16 A Yes. Jessie come over to my house -- at my mom's house --
- 17 at Little's. I was staying at Highland and he spent the night
- 18 with me over there Tuesday.
- 19 Q Did you go roofing that day?
- 20 A Yes, sir.
- 21 Q Who did you roof with?
- 22 A Ricky Deese.
- 23 Q Jessie spend the night with you that night, May 4th?
- 24 A Yes, sir.
- 25 Q Do you know what time you got with him that day?

- 1 A Tuesday?
- 2 Q That afternoon.
- 3 A (NO RESPONSE)
- 4 Q If you don't know, you don't know.
- 5 A I don't know.
- 6 Q Were you with Jessie around the nine o'clock hour?
- 7 A In the morning?
- 8 Q No. On Tuesday night.
- 9 A I don't think so.
- 10 Q But Jessie spent the night with you that night?
- 11 A Um-hum.
- 12 Q The next morning on May 5th, what happened that morning?
- 13 A Ricky picked us up at my house -- my mom's trailer -- at
- 14 Little's -- about nine o'clock in the morning. We went from
- 15 there to go roof a job.
- 16 Q Ricky picked you up at nine?
- 17 A Yes, sir.
- 18 Q Did Jessie receive a phone call that morning?
- 19 A Not that I know of.
- 20 Q Did you have a phone in that trailer?
- 21 A No, sir.
- 22 Q Do you remember where you went roofing?
- 23 A I don't know what street it was, but I can show them where
- 24 it was but --
- 25 Q Do you recall how long y'all worked that day?

1 A Until about 12:30 or 1:00.

2 Q What happened at that point?

3 A We went back to Highland. Ricky dropped us off at Jessie's
4 house. Jessie said he was going to go get him something to eat.
5 After that I went home and Jessie said he was going back down to
6 Stephanie's house.

7 MR. DAVIS: Your Honor, at this time if I may
8 interject an objection. He's testifying as to what
9 Jessie said. That is hearsay.

10 THE COURT: Sustained.

11 BY MR. CROW:

12 Q Where were you dropped off?

13 A Right there beside Jessie's, behind his trailer.

14 Q Who dropped you off?

15 A Ricky Deese.

16 Q You and who else?

17 A Me and Jessie.

18 Q What did you see him do?

19 A He went in the house and he said he was --

20 Q Where did you go?

21 A I went home.

22 Q You went home. Did you run into Jessie again shortly
23 thereafter?

24 A Well, after he met his girlfriend at Stephanie's.

25 Q You saw him and his girlfriend at Stephanie's?

- 1 A Um-hum.
- 2 Q Do you know what time that was?
- 3 A It was around four.
- 4 Q Stephanie's is the house that kind of crosses the "T" up
5 there?
- 6 A (NODS HEAD)
- 7 Q How long have you lived in Highland Trailer Park?
- 8 A Off and on for about fifteen years.
- 9 Q Are you familiar with any cult activity?
- 10 A No, sir.
- 11 Q You are sure?
- 12 A Yes, sir.
- 13 Q Have you ever known Jessie to be involved in any kind of
14 cult activity?
- 15 A No, sir.
- 16 Q To your knowledge did Jessie hang around with Jason or
17 Damien?
- 18 A No, sir.
- 19 Q After you saw Jessie and his girlfriend, did you see him
20 anymore that day?
- 21 A Jessie come down to my house after he got to talk to his
22 girlfriend. He stayed at my house for about 15 or 20 minutes
23 and he said he was going to his house. That was the last time I
24 seen him.

25

CROSS EXAMINATION

1 BY MR. DAVIS:

2 Q Mr. Darby, you gave a statement to the police in regard to
3 what you knew about Jessie Misskelley's whereabouts on or about
4 the fifth of May. Is that correct?

5 A Yes.

6 Q You never told the police anything about him spending the
7 night at your house the night before, did you?

8 A Yes, sir. I believe I did.

9 Q Was it in a handwritten statement that you gave to them?

10 A I don't --

11 Q I'd like to show you a copy of a handwritten statement you
12 gave to the police on the 18th day of June which would have been
13 15 days after Jessie's arrest. Point out to me where you
14 indicated to the police that he spent the night with you.

15 A (EXAMINING) I don't think I put it on there.

16 Q Left that part off, didn't you.

17 A Yes, sir.

18 Q If I understand your testimony correctly, you saw Jessie
19 about 4:15 or 4:30 that afternoon on the 5th?

20 A Yes, sir.

21 Q You didn't see him any later after that?

22 A No, sir.

23 Q Mr. Crow asked you were you familiar -- did you know
24 anything about Jessie being involved in cult activities,
25 correct?

1 A Yes, sir.

2 Q Do you know anything about that?

3 A I never did know nothing about nothing like that.

4 Q Were you and Jessie pretty tight?

5 A We was close.

6 Q Okay. Y'all were real close friends?

7 A Real close.

8 Q Have been for about nine years?

9 A We've been close for a long time, yeah. You could say
10 that.

11 Q Were you familiar with his frequent huffing of gas where he
12 would huff gas to get high?

13 A No.

14 Q You had never been around him when he did that in these
15 past nine years?

16 A (SHAKES HEAD)

17 Q What about his frequent marijuana use? Were you around him
18 when he did that?

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

20 (THE FOLLOWING CONFERENCE WAS HELD AT THE BENCH
21 OUT OF THE HEARING OF THE JURY)

22 MR. CROW: Your Honor, prior bad acts of Mr.

23 Misskelley are only admissible if he takes the stand.

24 MR. DAVIS: These aren't prior bad acts. It's to
25 go to the credibility of this witness because he

1 selectively says he doesn't know anything about his
2 cult activity, but we can prove through their
3 witnesses later on that he's met all these other
4 folks. So his lack of knowledge regarding that would
5 show that he has selective recollection about what he
6 knows.

7 MR. FOGLEMAN: Your Honor, it is also related to
8 his knowledge and acquaintance of this defendant. He
9 claims to really know him. They have even said --
10 their own expert -- Doctor Wilkins in his report --
11 says about the huffing gas and smoking dope.

12 MR. CROW: Until Mr. Misskelley takes the stand,
13 his prior bad acts are not admissible.

14 THE COURT: I think until he takes the stand you
15 cannot go into his bad acts. If this witness were
16 called for his character and his reputation in the
17 community, maybe so, but that's not what they put the
18 witness up there for.

19 (RETURN TO OPEN COURT)

20 BY MR. DAVIS:

21 Q Based on your knowledge you don't have any idea what Jessie
22 Misskelley after you last saw him about 4:15 on May fifth,
23 correct, based on what you know.

24 A Later on after that, you know, I have seen him because he
25 helped us move.

1 Q That night?

2 A No. Later on during the weekend, like on Friday and
3 Saturday.

4 Q On the night of May 5th you saw Jessie about 4:15 that
5 afternoon, correct?

6 A Correct.

7 Q You didn't see him again until sometime later that week?

8 A (NODS HEAD)

9 Q As far as what he did from 4:15 until midnight that night,
10 you have no earthly idea?

11 A No, sir.

12 Q Referring your attention back to May 5th when you and the
13 defendant were doing this roofing job, what kind of haircut did
14 he have at that time?

15 A Regular haircut that I noticed of.

16 Q When you say, "regular," you mean something kind of like
17 the one you have now?

18 A Oh, no. He always kind of kept his short on top.

19 Q Anything other than that distinctive about it?

20 A (SHAKES HEAD)

21 Q Does it look kind of like his hair now?

22 A Yeah.

23 REDIRECT EXAMINATION

24 BY MR. CROW:

25 Q When the police were asking questions about Mr.

1 Misskelley's presence on May 5th. were they inquiring about
2 where he was the night before or were they inquiring about where
3 he was that afternoon?

4 A Where he was --

5 MR. DAVIS: Your Honor, we object to hearsay.
6 He's asking what the police said to him and that
7 requires a hearsay response.

8 THE COURT: Rephrase your question.

9 MR. CROW: I will let it pass.

10 (WITNESS EXCUSED)

11 RICKY DEESE

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

14 DIRECT EXAMINATION

15 BY MR. CROW:

16 Q Will you please state your name?

17 A Ricky Deese.

18 Q What is your occupation?

19 A I was a roofer when Jessie worked with me. I work at West
20 Memphis Fence now.

21 Q On May 5th what was your occupation?

22 A Roofing.

23 Q Were you self-employed?

24 A Yes, sir.

25 Q How old are you?