

1 you did, Greg. I've never been asked to approve --  
2 and I'm sure not going to pay somebody from California  
3 three hundred dollars an hour.

4 MR. STIDHAM: We explained that to these people  
5 ahead of time.

6 THE COURT: Y'all indicated to me you didn't want  
7 the state hospital to do it --

8 MR. CROW: -- That was in reference to Doctor  
9 Wilkins.

10 THE COURT: Well, he's a volunteer, as I  
11 understand it.

12 MR. CROW: I haven't had a fee discussion with  
13 any of them.

14 MR. STIDHAM: I told them that I couldn't  
15 guarantee that they would be paid anything. I told  
16 them I couldn't guarantee that I would be paid  
17 anything.

18 THE COURT: Val, for you all's cases, if you're  
19 going to want outside experts, get prior approval of  
20 the Court, or I'm not going to pay them a dime.

21 (RECESS)

22 (CHAMBERS CONFERENCE CONTINUED)

23 MR. DAVIS: At this time the State would rest,  
24 save for rebuttal.

25 MR. STIDHAM: Since the State has rested, we

1 would like to move for a directed verdict. We would  
2 submit to the Court the State has not met its burden  
3 of proof with regard to the defendant having committed  
4 the offense of capital murder, three counts. More  
5 specifically, we would submit that there's been no  
6 evidence that Mr. Misskelley himself with the  
7 premeditated and deliberated purpose of causing the  
8 death of another person, caused the death of any of  
9 the victims.

10 Also, your Honor, we would point out the only  
11 evidence they have offered against the defendant is  
12 his statements to the police and if you assume that  
13 they are true -- of course, we're submitting that  
14 they're not -- but if you think for a moment and  
15 assume they are true and correct, all he says is that  
16 he was present and he did not hurt or kill anyone.

17 There was a statement about he had went down and  
18 grabbed one of the little boys but that was before any  
19 of the homicidal acts occurred and for the State to  
20 submit that he knew it was going to happen would be  
21 speculation and conjecture.

22 Second of all, your Honor, there's no proof that  
23 Mr. Misskelley acted as an accomplice to capital  
24 murder. In order for the State to prove that Mr.  
25 Misskelley was an accomplice, they must show that;

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1 first, Mr. Misskelley aided and assisted or abetted in  
2 committing the offense of capital murder and;  
3 secondly, that Mr. Misskelley had the required intent  
4 to commit capital murder.

5 We would direct your attention, your Honor, to  
6 the 1993 decision by the Arkansas Supreme Court in  
7 *Eight versus State*, 314 Ark. 438, which provides that  
8 the Court's interpretation of the accomplice liability  
9 statute effectuates the policy that an accomplice's  
10 liability ought not to extend beyond the criminal  
11 purposes that he or she shared.

12 Further, the Court says that because accomplice  
13 liability holds an individual criminally liable for  
14 actions done another, it is important that the  
15 prosecution fall squarely within this statute.

16 There's nothing introduced by the State to  
17 suggest that Mr. Misskelley had the intent to commit  
18 any homicidal act or aid in any homicidal act. There  
19 is nothing in the State's case without adding  
20 speculation or conjecture that Jessie Misskelley  
21 intended to kill anyone or agreed to aid or assist  
22 anyone in killing these three victims.

23 Therefore, with regard to the charge of capital  
24 murder, we'd ask for a directed verdict on that basis.

25 MR. CROW: Your Honor, in several cases the

1 Arkansas Supreme Court has discussed what is an  
2 accomplice. I would cite the Court to -- it's  
3 P-U-R-I-F-O-Y versus State, 307 Arkansas 482, 282  
4 Southwest 2d 374. In that case the Arkansas Supreme  
5 Court said, "Arkansas Code Annotated five two four  
6 three eight two provides that a person acts as an  
7 accomplice with another person in the commission of an  
8 offense if with requisite intent he aids, agrees to  
9 aid or attempts to aid another person in the  
10 commission of an offense."

11 Similarly in other cases the Court has made it  
12 clear that the liability of an accomplice is -- it  
13 goes to his intent, what he intended. Mr. Stidham and  
14 I decide to rob a store and we agree that no one is  
15 going to be shot, no one is going to be killed, as a  
16 matter of fact, no one's going to carry a weapon. We  
17 go in and Mr. Stidham shoots somebody. I can be  
18 charged with murder under a felony murder position,  
19 but that's not what Mr. Misskelley has been charged  
20 with.

21 Under the straight strictures of the murder  
22 statute, unless my accomplice liability was to commit  
23 a homicidal act, if I didn't intend to hurt anybody, I  
24 can't be. That is why we have felony murder. Mr.  
25 Misskelley has not been charged with felony murder.

1           Similarly, your Honor, the intent that is  
2 required in capital murder is premeditated and  
3 deliberated purpose. If you go through Mr.  
4 Misskelley's statement, it isn't there. If you take  
5 his statement on its face value, which obviously for  
6 this motion it has to be, at the time he allegedly ran  
7 down a boy and brought him back, he said Damien had  
8 hit one of the boys. I think he said he had hit him  
9 bad, but there was no evidence of any intention that  
10 anybody be killed at that point. Not without going to  
11 conjecture or speculation can you get to that, your  
12 Honor.

13           There's nothing in the record to indicate Mr.  
14 Misskelley knew at the time he aided or abetted -- if  
15 you're taking his statement on face value -- that he  
16 knew anyone was going to be killed or intended for  
17 anyone to be killed. Possibly murder two, which says  
18 if you intentionally inflict bodily injury and someone  
19 does die, you are guilty of murder two.

20           That is the difference between capital, first and  
21 second degree. That is why we have the different  
22 levels. And Mr. Misskelley's intent -- and the courts  
23 have made it clear that your -- intent of an  
24 accomplice is an important intent, your Honor.

25           THE COURT: Do you want to respond?

1 MR. DAVIS: Your Honor, it is the State's  
2 position that the intent is not something that is  
3 proved by concrete direct evidence but is proved by  
4 circumstantial evidence and the fact that there was  
5 testimony by Officer Ridge that Mr. Misskelley in his  
6 statement said that he knew the night before that they  
7 were going to the woods to hurt the boys, that he then  
8 went and accompanied them. There is evidence that at  
9 least three weapons were used, three different  
10 weapons, and the State alleges -- and as part of his  
11 statement there were three individuals there -- that  
12 the State -- and according to Mr. Misskelley he ran  
13 down Michael Moore and but for his act in running down  
14 Michael Moore and bringing him back, Michael Moore  
15 would still be alive and would not be dead and,  
16 therefore, his actions directly aided and assisted the  
17 commission of a capital murder.

18 In addition to that all the injuries that were  
19 involved, the multiple injuries, the multiple weapons,  
20 the multiple knots on the ligatures, the fact that  
21 three eight-year-old boys were corraled and held and  
22 treated in this fashion -- all is circumstantial  
23 evidence from which the jury could find that there was  
24 the involvement, active involvement of three people.

25 Even at a minimum his chasing a child down and

1 going there knowing that was the purpose and the child  
2 ultimately dying is enough to get capital murder. But  
3 with all the other circumstantial evidence involved,  
4 we have had met our burden and the jury could  
5 certainly infer from the evidence that the defendant  
6 was involved in all three acts of capital murder.

7 MR. FOGLEMAN: And the photograph --

8 THE COURT: And in addition to that the  
9 defendant, if his statement is to be believed, places  
10 himself at the scene and at the time and in the  
11 company of two other persons, and it is possible that  
12 the jury could believe that he did more than he said  
13 and as far as I'm concerned a circumstantial case has  
14 been made, and I am going to deny the motion for a  
15 directed verdict.

16 MR. CROW: For the record, I think I went through  
17 the different levels a while ago -- there's different  
18 levels. In the first place I would make a contention  
19 that they haven't met their burden of proof on any  
20 level from capital to negligent homicide.

21 THE COURT: I think you've done that, and I'm  
22 going to deny that.

23 MR. CROW: We would move for a directed verdict  
24 on each level -- capital murder, first degree, second  
25 degree, manslaughter and negligent homicide.

1 THE COURT: His statement, again, if the jury  
2 gives it credence that he knew the night before that  
3 they were going to hurt the boys -- I believe that is  
4 the way I heard it -- supplies that element of intent  
5 at least to first degree and second degree murder.

6 MR. FOGLEMAN: He also stated a photograph of the  
7 boys was passed around at one of these cult meetings.

8 THE COURT: I'm going to deny the motion for a  
9 directed verdict. I'll probably instruct all the way  
10 down to possibly even manslaughter but I will have to  
11 hear the rest of the case.

12 MR. DAVIS: I prepared instructions and they are  
13 being typed up today. My instructions only go down  
14 through second degree.

15 MR. CROW: The ones I prepared went through  
16 manslaughter.

17 THE COURT: I'm not making a decision at this  
18 point anyway. I'm just saying that's a possibility.

19 MR. STIDHAM: Your Honor, we have several  
20 exhibits that we intend to introduce during the course  
21 of our case. This is a letter that Mr. Misskelley  
22 wrote to his parents from the Cross County Jail the  
23 day after he was arrested. Obviously Mr. Misskelley  
24 would have to testify before we could lay a foundation  
25 for that, and we have not made up our minds for



1 certain whether he will testify, but that is one of  
2 the exhibits.

3 THE COURT: What is the relevancy?

4 MR. CROW: That would be a contemporaneous  
5 statement saying that he was not guilty  
6 contemporaneous with his confession, shortly  
7 thereafter. I believe under the rules once he's  
8 testified, that a contemporaneous statement saying  
9 that his statement to the police was not correct -- it  
10 is admissible evidence. It has relevancy showing he  
11 was immediately after the statement saying he wasn't  
12 guilty.

13 MR. DAVIS: We would object in that it is  
14 self-serving. It is hearsay for him to put in  
15 evidence as to what he previously said.

16 MR. CROW: Once you have had --

17 MR. STIDHAM: It's not hearsay --

18 MR. CROW: Obviously he will have to testify.

19 MR. FOGLEMAN: It is still hearsay. It's an  
20 out-of-court statement.

21 THE COURT: This is supposedly Jessie's letter?

22 MR. CROW: Yes, your Honor.

23 THE COURT: You will have to put him on the  
24 stand.

25 MR. CROW: Yes, your Honor. That's what we

1 talked about. Obviously this would not come in unless  
2 he gets on the stand.

3 MR. FOGLEMAN: Even if they put him on the stand,  
4 it is still hearsay.

5 THE COURT: I'm going to reserve my ruling on  
6 that.

7 MR. STIDHAM: This is Mr. Misskelley Senior's  
8 receipt that he received at DWI school on May 5th.  
9 The purpose of that is to show that that is how he  
10 remembers May 5th because he was at DWI school that  
11 month.

12 THE COURT: His dad?

13 MR. STIDHAM: His dad. His dad is part of his  
14 alibi.

15 MR. CROW: It's important to show that is the day  
16 his dad went to DWI school. It's the day his dad  
17 remembers coming home at a certain time. The time is  
18 on there, but his dad remembers coming home. That is  
19 why he was home at this hour not another hour.

20 MR. DAVIS: I don't have a problem with that one.

21 MR. STIDHAM: This is Officer Dollahite's report  
22 that night on May 5th showing that he was present at  
23 6:30 P.M. to investigate a disturbance. We would like  
24 to introduce that to show a time reference with regard  
25 to when the officers were there at this scene and

1 that's how people can remember what night the  
2 disturbance occurred, it being the same night as the  
3 homicides.

4 MR. DAVIS: We object to that because a police  
5 report is not admissible in evidence. It's hearsay.  
6 He can ask the officer when he was there, what he did.

7 MR. CROW: The officer will be on the stand. The  
8 report is important, not for the incident he was  
9 investigating. This is not the trial on that  
10 incident. This is a trial on a different incident.  
11 That is very relevant and important evidence as to --

12 THE COURT: Rule eight oh three eight excludes  
13 police reports from admissibility.

14 MR. STIDHAM: Your Honor, we're --

15 THE COURT: He could use his report to refer to  
16 to get the date and time off of, but he can testify to  
17 that.

18 MR. STIDHAM: We feel it would be important for  
19 the jury to see the report so that they would know  
20 that the officer was present at that particular time  
21 on that particular date, and also it is a point of  
22 reference for all the alibi witnesses to remember that  
23 incident, and that is how they can remember the night.  
24 We think it is crucial to our defense.

25 MR. DAVIS: It still doesn't make it any less

1 inadmissible.

2 THE COURT: I doubt that I'd let that in. I'll  
3 have to wait and see how it comes up.

4 MR. STIDHAM: Your Honor, these are Louis  
5 Hoggard's daily logs from May 4, May 5, May 6. The  
6 purpose of these exhibits is for Mr. Hoggard to show  
7 when he was in town and out of town, May 5th being the  
8 crucial day, and it shows when he was off duty, when  
9 he was sleeping, when he was driving, and what cities  
10 he was in and out of. It will assist him in  
11 testifying and demonstrating to the jury when he was  
12 there.

13 THE COURT: Do you have any objection to that?  
14 Is that out of his log book?

15 MR. STIDHAM: Yes, your Honor.

16 MR. DAVIS: Are those his entries?

17 MR. CROW: Yes, sir.

18 MR. DAVIS: I don't see any particular objection.

19 (RETURN TO OPEN COURT)

20 STEPHANIE DOLLAR

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

23 DIRECT EXAMINATION

24 BY MR. CROW:

25 Q Will you please state your name and address?