

**February 3, 1994**

**BY STIDHAM:**

...long trial. There have been a lot of objections and there have been a lot of approaches to the bench, and, and I also thank you for that.

Um, during the prosecution's closing argument, I got a little confused. And for a minute there, I actually thought Dr. Richard Ofshe was on trial instead of Jessie Misskelley. I think there's a reason for that, ladies and gentlemen of the jury, and I think the reason is clear. The prosecutor spent most of his time talking about our defense, Mr. Holmes, and Dr. Ofshe. The reason for that is because they don't have a case against Jessie Lloyd Misskelley, Jr. In order for you to find Jessie Lloyd Misskelley, Jr. is guilty of three counts of capital murder, you must find him guilty beyond a reasonable doubt. We talked about that in voir dire and I wanna talk about it again.

(PAPER RUSTLING) If we make it through this with this thing without falling, it'll be a miracle.

As we talked about in voir dire, ladies and gentlemen, there are three legally recognized burdens of proof in the law. The first one is by a preponderance of the evidence, that's the lowest standard. The middle standard is clear and convincing evidence. That means you have to have evidence which is clear and convincing. And then there's the top standard, beyond a reasonable doubt -- the highest standard recognized in the law. For you to find Jessie Lloyd Misskelley, Jr. guilty, you must find that the State proved its case beyond a reasonable doubt.

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Ladies and gentlemen of the jury, we would submit to you that there is a reasonable doubt about the defendant's guilt. In fact, we would submit to you that there's many, many reasonable doubts -- and that's what I'd like to go over with you in closing, is these reasonable doubts and I wanna talk to you about each and every one of them.

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The first area of reasonable doubt is Jessie's story, that he gave the police. What evidence has the State introduced against Jessie in this trial? His statements. That's all they got. There's nothing else. This wild story that he told the police on June the third, 1993. In this story, Jessie says that Jason called him at 9:00PM on May the fourth. He also says that Jason Baldwin called him at 9:00AM on May the fifth. That can't be true. Jessie wasn't home, he spent the night with Josh Darby on May the fourth. He went roofing at 9:00AM the next morning. That was testified by two witnesses. Josh Darby doesn't have a telephone. How could he have gotten these phone calls?

The next reasonable doubt, ladies and gentlemen of the jury, is that the victims were sodomized. Jessie told the police that these little boys were raped. There's no evidence of that. The medical examiner sat right there in that chair and told you that there was no evidence of physical trauma to those little boys suggestive of the fact that they'd been sodomized.

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The next reasonable doubt, Jessie in this story tells the police 'Well, I was up there by the service road when this was happening.' Do you remember where the service road is on the diagram of the crime scene? About 450 feet through dense vegetation. It was impossible -- a witness testified that it's almost impossible to see through there now in January. Imagine what it would be like in May, when you have all that foliage. It's im -- it's not possible.

Probably the biggest reasonable doubt that we've heard during the course of this trial is that Jessie says the murders took place at noon. Everyone agrees that that's not true. It can't be true. The victims were in school all day, Jason Baldwin was in school that day, and Jessie was roofing 'til past noon. So we know that this could not have happened.

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The next reasonable doubt, Jessie says that he went to West Memphis with Damien and Jason at 9:00AM on May the fifth. Again, we know that's not the case. Jason was in school all day. And Jessie was roofing with Ricky Deese and Josh Darby. We know that that's not true. It can't be true.

(mumbles: I'm gonna try it this way)

Another one of the major, major reasonable doubts is the brown rope. The victims were not tied up with a brown rope. Jessie tells Gitchell they were tied up with a brown rope. It just didn't happen. Everyone knows that the victims were tied with shoestrings.

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Another reasonable doubt, ladies and gentlemen of the jury, Jessie says that Damien choked Chris Byers with a big ole stick. The medical examiner says that didn't happen -- no evidence on the body to suggest that Chris Byers was choked or that any of the victims were choked. It just didn't happen.

The prosecution wants you to forget about these major, major impossibilities. They want you to believe only the things that Jessie may have gotten right. They want you to forget about all these big, big reasonable doubts. That's why we're here today, ladies and gentlemen of the jury, to talk about reasonable doubts.

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The next area of reasonable doubt deals with Jessie's alibi. The prosecution would have you believe that Jessie somehow has a mystical, magical time machine which enables him to be in two places at one time. He can't do that. We can't do that. Nobody can do that. You can't be in two places at one time.

May the fifth, 1993 -- the prosecution would have you believe that that's just like any other day, no special reason to remember what you were doing that day. Well, that may be true for people who didn't live in West Memphis -- or excuse me, for people who didn't live in West Memphis -- but for people who did, people who lived in Highland Trailer Park and other parts of the city, May fifth was an important day. And there are several reasons why it was an important day.

And before we talk about this, I will ask each and every one of you to think about how is it that you remember things. How do you remember events and dates? You go back and you look at calendars, you look at birthdays, you look at events. Then you go back and try to tie those time references together. That's common sense.

The Dollar incident happened on May the fifth. Everyone in Highland Trailer Park was outside looking at the incident. Cody Romero was pulled off the bicycle by the head of his hair, everyone was out there and seen that. The police were out there, the police testified that they were there. The police logs show that they were there. Everyone was outside.

Kevin Johnson, on the Search and Rescue Squad, he was at a meeting that night. He remembers that night, he testified that he remembers that night. He told you that he was supposed to go wrestling with his brother, he invited his brother Keith Johnson to go that night. But he went to a Search and Rescue meeting, and at that Search and Rescue meeting he heard about the boys missing, he didn't know whether they were gonna have to go out and look that night, he didn't go wrestling. Keith Johnson only went wrestling that one night, and that's the night that his brother was at the Search and Rescue meeting.

Also, ladies and gentlemen of the jury, Jessie Sr. was at DWI school that night. You've seen the receipt, evidencing the fact that he was there. You've seen the uh, roll sheet, where he was present at the meeting.

Also, the boys were missing that night. Everyone in town knew that, especially folks who were on the Search and Rescue Squad. The next day, the bodies were discovered. And that was on not only the local news, but the national news covered that. Everybody in West Memphis can remember that day. Everybody. Not just people in Highland Trailer Park, not just people who wear yellow ribbons -- everyone can remember that.

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May the fifth, 1993. I prepared a time line to demonstrate to you the aspects of Jessie's alibi -- all day.

9:00AM, Jessie is roofing with Josh Darby and Ricky Deese. At 1:00PM, Ricky Deese drops Jessie off at home, he's in the trailer park at one o'clock. Not in Robin Hood Hills, witnessing three boys getting killed at noon. 2:30PM, Jessie begins babysitting for Stephanie Dollar. 3:30PM, Susie Brewer comes home, goes to the trailer park, she joins Jessie at Stephanie's, and helps him babysit the children. 4:00 to 6:00PM, many of the people that testified during the course of the trial told you that they seen Jessie between the hours of 4:00 and 6:00PM in Highland Trailer Park.

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6:15PM, Jim McNease has to close down Jim's Repair Shop because Jessie Sr. is at DWI school. He testified that six o'clock, or about that time, he closed the shop. He went home and at 6:15PM, Jim McNease sees little Jessie and Dennis Carter out in the street. He talks to 'em, and they talk about wrestling. 6:30 to 7:00PM, again is the Dollar incident. There's lots of people outside watching and trying to figure out what was happening -- the police were there, everybody's outside wondering what's going on. Louis Hoggard, the trucker, you've seen his truck log, he told you when he was in town -- May the fifth. He sees Jessie. Charles Ashley, he sees Jessie. Susie Brewer, Stephanie Dollar, Christy Jones, Dennis Carter. These people are with Jessie at Highland Trailer Park.

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7:15PM, Jessie Sr. comes home from DWI school. The police are leaving the trailer park, he's afraid because he's driving on a suspended license. That's how he can remember. He quickly goes home so he doesn't get caught by the police for driving on a suspended license. He sees Jessie Jr. at the trailer.

At about 7:30PM, little Jessie Misskelley leaves for Dyess with these individuals -- Freddy Revelle, who testified. Bill Cox, who didn't testify. Roger Jones, Dennis Carter, and Johnny Hamilton, who we were able to find right before the trial. (mumbled word) the defense started presenting its case. All these people, ladies and gentlemen of the jury, testified to you under oath that Jessie Misskelley was with them in another county about 40 miles away from West Memphis on May the fifth at the time that these little boys are being murdered.

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8:00PM, Jessie and the other wrestlers meet Keith Johnson at the Exxon station at the junction of Highway 63 and Interstate 55. They pick up Keith, they go on to Dyess. And at about 11:30, Jessie and the others arrive back at Highland Trailer Park. From 11:30 to midnight, little Jessie

spends time with Roger Jones and Jennifer Roberts at their trailer. That accounts for him the entire day. The entire day.

(PAPER RUSTLING)

I'm gonna have to ask for a time out and switch pads.

(PAUSE, MORE PAPER RUSTLING)

The next area of reasonable doubt, ladies and gentlemen of the jury, is a very, very important one. No physical evidence linking Mr. Misskelley to the crime scene or to these homicides. None. Not just a -- not even a little bit. None.

There's no footprints, on the blue Adidas shoes or any other shoes they looked at. No fingerprints, no hairs, Lisa Sakevicius [he somewhat mangles her name] -- that's the best I can do and I'm sorry -- testified that she'd examined hundreds of hairs, none of which matched little Jessie Misskelley. No fibers, no fibers matched Mr. Misskelley. None. No physical evidence.

There are -- is one item of physical evidence which the prosecution would have you just bypass and ask you to not consider it because it's not very important and it's not logical, well I would submit to you, ladies and gentlemen of the jury, that when three little boys are murdered at approximately the same time that a gentleman stumbles into a fast food restaurant minutes from the crime scene covered with blood and covered with mud, and the police aren't even interested enough to come in the store and check it out until the next day. And take blood samples? Were the blood samples ever submitted to the crime lab? Were the sunglasses ever submitted to the crime lab? Who knows. I call that a reasonable doubt. On Christopher Byers, the boy who was mutilated, the negroid hair was found on the sheet covering his body. Is that a coincidence, as the prosecution would have you believe? I don't think so. I call it a reasonable doubt.

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The next area of reasonable doubt, ladies and gentlemen of the jury, is this cult business. Officer Ridge testified that he couldn't confirm any of the people on Jessie's list of cult members. None. Detective Ridge also testified that there were no cult artifacts at the crime scene -- that there were no cult artifacts at Turrell Twist where this alleged cult meeting was supposed to have, supposedly taken place. There's no evidence that this is a cult homicide. No evidence.

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The next area of reasonable doubt, ladies and gentlemen of the jury, is the fact that little Jessie Misskelley has a mental handicap. He has a low IQ, he has low self-esteem, he's very suggestible, he's codependent. He feels the need to conform to authority figures. And that's why some of the most compelling testimony that came out of this witness chair was from two expert

witnesses -- Mr. Holmes and Dr. Ofshe. The most compelling testimony came from those two witnesses. About these very ideas, and more specifically, about the profile of one who falsely confesses to something they didn't do.

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Mr. Holmes, who doesn't have thirteen years of experience -- thirty-nine years of experience with the Miami Police Department, lecturing to the FBI, the CIA, this gentleman worked on John F. Kennedy's assassination, Martin Luther King's assassination, Watergate, the Boston Strangler case, the Hampton case in Louisiana -- thirty-nine years of experience.

And what did he tell you? The profile of a false confessor is someone with a low IQ and a weak personality. He also told you that there were several problems with Jessie's statement.

A) There's no corroboration. Jessie Misskelley didn't tell the police anything that they didn't already know. Nothing. There's no narrative in this statement. The prosecutor has asked you to go back to the jury room and listen to the tape. I want you to do that, too. And when you're listening to the tape, ask yourself this question: "Does this sound like a kid who's telling you about something that he's seen or is it telling you something about that he made up, or that was suggested to him?" There's no narrative in the statement. Everytime the police officers asked him to elaborate about a detail, he says, 'Well they were doing this, and stuff. And they were doing this, and stuff. Then we did this. And stuff.' Does that sound like someone who witnessed three homicides? Telling about it? There's no narrative.

Mr. Holmes also testified that Mr. Misskelley was wrong on too many points, and we talked about those earlier. Mr. Holmes concentrated on two of the big ones -- time and ligatures. Two very, very important things about the crime that Jessie Misskelley got wrong. Mr. Holmes also testified that the officers were very leading and very suggestive. They led him through this entire taped statement, and ladies and gentlemen of the jury, we don't know what happened before they turned the tape recorder on. They didn't videotape it, the officers didn't take notes on all the questions, they testified to that. They even testified they couldn't remember some of the things they asked him. How do we know what really happened? And that's where we get to Dr. Ofshe.

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Dr. Ofshe is a doctor. He's not a medical doctor, but he is a doctor. And I would submit to you, ladies and gentlemen, that his testimony was riveting. His testimony was very, very helpful in trying to establish what happened in this interrogation. Dr. Ofshe also testified that the profile of a false confessor is someone with a low IQ and someone who has low self-esteem. His expert opinion, ladies and gentlemen of the jury, this is what he told you, that the West Memphis Police Department used coercive psychological tactics to get a statement from Jessie Misskelley. The police were suggestive, and they led Jessie through the entire statement. When you listen to the statement, when you read about the statement, think again about the narrative and think about the

way these officers led him through the entire statement. The way they suggested things to him through the entire statement.

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Ladies and gentlemen of the jury, what I'm about to tell you is the most important thing you will hear throughout the course of this trial. A very learned judge in the state of Florida once said in one of her opinions, she said that "the killing of one human being by another is a most heinous act, only exceeded by the killing of an innocent man by the State." Ladies and gentlemen of the jury, my client, little Jessie Misskelley, is an innocent man. He's innocent. And I would ask you to go back to that jury room and bring back a verdict that rings of justice. Truth and justice. And I would ask you to bring back a verdict that you can live with for the rest of your life.

Thank you.