

February 3, 1994

THE COURT: All right, you may proceed.

BY DAVIS:

May it please the Court, Mr. Stidham, ladies and gentlemen of the jury. I know at this point, we're all tired. We spent weeks in preparing this case. While a lot of times while y'all have been out in the hall, we've been in here at each other's throat, and we're all tired and we all have a great deal of responsibility. Fortunately, my responsibility is gonna end when I sit down. And yours is going to just begin.

What I want to do briefly -- and I'm not gonna recap everything, I think Mr. Fogleman did an excellent job of detailing what the testimony was and showing you the specific facts that you can concentrate on -- but what I wanna do is try to boil it down to what really the issue in this case is. And I think it's something that Mr. Stidham is nearly afraid to articulate. Because what their whole premise for their case is, is that their client lied, and he's a liar, and the police are liars because they won't tell you what happened when he was being interrogated. And as a result, you should throw a confession out the window and find the defendant not guilty. And that's his case. Now he tries to couch it in different terms, and put it in a different form or fashion, but that's what it boils down to.

Personally, I find it repugnant with this evidence that Mr. Stidham would make such allegations. It is the first time in my career that I've had to stand up here and deal with a defense attorney claiming that his client lied. It is so incredibly a reversal of roles for the defense, but what else can they do? Their client confesses to his involvement, he tells specific instances of his involvement, he describes details that only a person that is there could possibly know. And I don't care what he says -- he can say there's newspaper articles or what else, but you can read in that statement that when he describes the castration of that particular boy, that is a fact that only someone who was there could know. And when he describes that the other two individuals forced them to perform oral sex on them, and grabbed them by the ears, those are facts that only a person there would know. When he describes the cutting on the side of one boy's face, those are facts that only a person that was there would know.

Unless, unless, he successfully convinces you that the police officers got up here and they're the ones that are lying, and they're the ones that are lying to you. And I hope that you have the integrity and the good sense not to buy that. Because it doesn't mesh with the facts in evidence in this case, and that's what you make your decision on.

The other issue that is involved in this case, I'll address in a minute, but that is going to be whether the defendant was involved enough to be convicted of capital murder. But let me address some of the specifics that Mr. Stidham brought up.

Number one, he started off by saying that Mr. Ofshe was on trial. Well, for what Mr. Ofshe gets paid and for his willingness to go out on a limb and make the statements that he makes based on the flimsy information he possesses, now that -- he, he was on trial to some extent. It reminds me, in preparation of this case, I listened to a tape recording of Warren Holmes, their other expert. And he said in that, he said the difference between a ten thousand dollar a year salesman and a hundred thousand dollar a year salesman is one's a better liar. And we got a forty thousand dollar a year salesman that came and sat on the bench and talked to you.

He says that the reasonable doubt that exists -- and he, this is his first point, I'm going along, we couldn't see his chart but I'm assuming this is what he was going -- the first reasonable doubt is Jessie's story. My client's a liar, therefore you should have a reasonable doubt. That's his first premise.

Then he goes and he says well the victims, there's no evidence that the victims were sodomized. Well, you, if you recall the doctor's testimony, was that in all three instances there was anal dilation, that there were abrasions and bruises about the buttocks and the anal rectal area. And, then, as Mr. Fogleman described -- and I know it was hard to follow -- but the DNA guy said that there was DNA consistent as coming from a source of male sperm on the pants of one of the boys. But Mr. Stidham says, no evidence. Ladies and gentlemen, you make your decision on the evidence in the case.

He talks about the time. And, granted, there are inconsistencies in the time. You've heard the experts say number one, this defendant has a disorder in terms of memory. And number two, all of a sudden we're sitting here talking about, well gee, a defendant who's committed three murders tells us something that's not true, we must believe that all those other facts -- that he could only have acquired if he was there -- must not be true either. And that doesn't make good sense, ladies and gentlemen.

All defendants, all criminal defendants, do not immediately tell you the truth. In fact, Mr. Stidham forgets that his very own expert, Mr. Holmes, told you that 99% of the time, there will be details that will be inconsistent, will be left out, will be threads that don't connect, and that in 99% of those cases, the defendant's guilty. Mr. Holmes also told you that in situations -- I asked him, I said, 'Mr. Holmes, does it worry you if a defendant recants and says after he confesses all of a sudden says nuh, not me, I didn't do it, must've, I lied to the police?' He says, 'That doesn't worry me at all. In 99% of the cases, when that occurs, the defendant is guilty.' If there are admissions in that first statement, that go to show his guilt, that no one else could know -- and I put to you that those are what we have in this case -- and that is why this defendant's guilty.

Now, he also talked about Jessie's alibis. I nearly laughed at this. Seriously. He said, you know, he said the State, for him to commit this murder, must think he could be in two places at one time. Well if you listen to his alibi testimony, he was. Because there were people that testified -- and I, you go back and look at your testimony -- but he's sitting on the front porch for

an hour and a half with somebody and at the same time he's, he's with his girlfriend and they're two different people. And then all of a sudden, at the time that the sheriff's deputy's out there, he's with Dennis Carter. And, you remember Dennis Carter got up here and testified, when he talked to police, first time he gave 'em a statement, said he hadn't seen Jessie all day. Fact, he said he hadn't been with Jessie all day. Second time he talks to 'em, he hadn't been with Jessie all day, and this is like a week, ten, thirteen days after Jessie's arrest. This is his friend, this is the guy that's in jail, that he's concerned about, he wears the yellow ribbon. That close in proximity, he never says a word about being with Jessie that day. Never says a thing about it. One of them was a handwritten statement, now. And, I don't even think Mr. Ofshe would say they coerced that out of him, he wrote it out himself. And yet, he never mentions a thing 'til he gets up here.

And the reason, go back and look and see why these people -- and some of them, some of them I'm puttin' to you are just flat liars. Some of them I think, after months had elapsed, and the Misskelleys came and approached them, and they came in with these police reports, said this happened on this day, they came in with these things, that they wanted to help their friend and neighbor. And they wanted to do what they could. And so when they were told don't you remember this, don't you remember that, they bought into it. But, when you listen to it, if they were telling the truth, there would be consistencies, and if they knew where Jessie was on the fifth, they would have told it when they talked to police the first time, not nine months later. And if they knew where he was, and those that didn't talk to police, they would have reported it.

What happened though is, Fred Revelle was the one person who reported it. And he came up with this theory, well I know where he was, because that's when we got -- that's when we paid the money. And he did report it. He told police, and then they checked it out, said no sorry Fred, you're wrong, that's April 27th. And once that word got out, not another soul bothered to report their alibi information, because they didn't want it to get under the scrutiny of the eye of the police department.

And I put to you the reason for that is, and the reason why it doesn't jibe, their alibis don't jibe, the reason why he's in two places at the same time, is because those alibis are not accurate. And those alibis are not true.

Mr. Stidham said gosh, when this incident happened out at Lakeshore, everybody was out there. Well, my recollection of the testimony was that there were four or five people out there at times, some of his witnesses put Jessie up there talking to the sheriff's deputy. Now, I guess conceivably you could say well, with four or five people out there, Officer Dollahite may not have seen him. But their witnesses said he's within five yards of the car. There's only three or four people there, and two or three of their witnesses said he's talking to the officer. Now, maybe you could say well, you know gee, these officers run into a lot of people over the course of a day, runs into a stranger out there, maybe he wouldn't recognize him, but these officers all knew Jessie Misskelley, Jr. They were all familiar with him, acquainted with him before they went out there and those officers -- all three of them -- who say Jessie Misskelley, Jr. wasn't there. Ladies

and gentlemen, when you look at that and compare that with these other alibis that put him in the same place, or two different places at the same time, it just doesn't jibe, and it just doesn't work.

He also refers to Jim McNease. Now Jim McNease is the one who puts him with Alan Carter. Jim McNease is the one who refused to even talk to police when they wanted to talk to him back in June. He refused to communicate with 'em, then he gets on the stand and says that night he saw him with Alan Carter. Well, that's fine because he's got him walking down the street with Alan Carter, Mr. Hoggard has him walking down the street by himself. Mr. Hoggard has him up there talking to the sheriff's deputy. Mr. Hoggard has the sheriff's deputy car in Stephanie Dollar's driveway, which the officer testified he never was in her driveway. And when you look at that -- if that's really -- if they are accurately recalling based on that event -- you would not have those glaring inconsistencies. Because to my knowledge, there was no evidence that any of those people had memory deficits or anything of that nature. And you would expect that information to at least jibe more significantly than what it does with the facts you hear from witness stand.

He also refers and he says -- and I don't know if they just missed part of the last testimony or not -- but he said part of the reason why the alibi's good is because Jessie Sr. comes home from DWI school and meets the officers driving out of the, the park. Which is rather unusual, since he got out of DWI school at a quarter 'til eight, and the officers left the scene about ten 'til seven. Which would again -- he's accusing us of putting Jessie two places at once -- it seems like Jessie Sr. also has that ability because he's in DWI school at a quarter 'til eight and he's driving home at ten 'til seven.

Also, the witness that we put on in rebuttal, Mr. -- and I, I think it's Merseer or Mersher -- look at this, please. When everybody got up here and testified that at times, whenever they were there, they signed this. And it hadn't got a date on it, but you look and see who's the last name on there. And he told you, and he doesn't -- he wasn't friends to anybody, he didn't appear to have any bias, Mr. Stidham didn't attack him in any way in that nature. He just said I was only there once, and I signed that document then. And that was before the boys were murdered.

Now, he says there's no physical evidence linking Jessie Misskelley. And Friday -- I think it was last Friday, not even sure what today is to be perfectly honest, think it's Wednesday or Thursday -- um, but last Friday, after all the testimony, we put on the guy from the crime lab, Lisa S., and all these people that testified about various physical evidence. And, the next morning, I read the paper and it said nothing, gee it said nothing happened. Nothing really significant occurred yesterday. But what we were doing, you have to understand, I'm sure, unless you've been in a criminal trial before, if we don't put on evidence that a fingerprint expert looked at everything at a crime scene, and says, "I looked at everything in the world and there were no fingerprints," then the defense jumps up and screams "They didn't even try to get fingerprints!" So, we put on a fingerprint expert to say they submitted all sorts of things, these sticks, everything in the world, we looked at 'em, we examined 'em, we couldn't find latent prints.

We also put on the DNA people. He testified he had a number of things submitted to him. They examined all sorts of things. It wasn't that they found evidence that somebody else was connected, or evidence that couldn't be explained because we didn't know who it belonged to -- which would be significant, you know, if there's fingerprints out there that we can't match up, then somebody else might've been there and it's not this defendant. But that's not the case. That's not the case.

The evidence that we presented was that all these efforts were made to secure physical evidence, and what physical evidence was obtained, and was identifiable, goes back to Damien and Jason. We didn't find anything with Jessie. But the fact that the evidence does connect those two, is certainly consistent with what his statement was that he told police. And it in no way, gets him out of responsibility by saying well gee, there was no evidence connecting him, he couldn't be there. This whole crime scene out in the woods, you've heard how clean it was, how devoid of physical evidence. Out of an entire investigation, and it was massive and it was meticulous, there were just a handful of fibers and I think ten hairs, that were even suitable for comparison. And for them to say that because you don't have something that directly links Jessie that he wasn't there, is absolutely preposterous. We put that evidence on to show you what we did, what we had, and who it connects it to and it's consistent with what he told you in his statement.

They talk about Bojangles. Do you think, if the blood sample that was obtained at Bojangles had indicated in its examination that it belonged to somebody, or some thing or would have any evidentiary value, don't you think that you would have heard some evidence about it from the defense? Don't you think they would've put something on? The reason that, and that's one of those things we call red herrings, and I think the reason they call it a red herring is because it's something if you throw it in the jury box and leave it there long enough, it's going to create a big stink. And that red herring is thrown in there to try to throw you off. But like Mr. Fogleman said, the person that was in Bojangles, I don't know, they investigated him, whatever happened to him, whatever caused him to be bleeding, that person was not the same person who meticulously cleaned this area, who jammed the clothes down in the water, who submersed these three little victims, and left no trail of blood anywhere in those woods. That person is not the same person that was in Bojangles. And you all agreed with me during voir dire you'd apply your common sense and common sense tells you that that is, is I guess blowing smoke on the part of the defense, because it's just not something that makes any common sense whatsoever.

Now, he says another thing that's reasonable doubt is the cult. That there is no, no evidence that these other people were in the cult. Well, the only evidence is that a witness testified that this defendant, along with Damien Echols, went with or took her to a cult related activity. You heard in his statement where he talked about how they would kill animals and eat meat off their hind leg. He talked about being involved in cult related activity, you've seen the book that they confiscated from Damien's house and when this Hutcheson lady wanted to get hooked up with Damien, who was it she was able to go through to make that connection? It was Jessie Misskelley.

Now they say there's no connection between him and a cult, and I guess technically there's no scientific evidence that says this was a cult killing. But there is certainly evidence, and I think it clearly shows that more than one person was involved because we have three separate weapons. We have three separate type knots in the ligatures. We have three different type injuries to these children. And you can just from your own common sense, three eight-year-olds, to corral and do what they did to these children, is going to take more than one. And then to perform the sadistic acts they did on them, I don't know what the definition of a cult is. I don't know if it has to mean that they go once a week and worship the devil or what. But when three, more than one, and I put to you the evidence is that all three of them are involved in this type of activity, that's a cult in my book. And I think, if Mr. Stidham finds that there's a different definition, then at least for standards in Northeast Arkansas, maybe he ought to move to Berkeley, California, with Mr. Ofshe.

He says that there is no narrative in the, in the tape recording. You listen to that and be the judge. Also remember that all the tests indicated that Jessie has some verbal problems. And granted, he does not, there are not long orations on Jessie's part, but when you go through there, you will see areas -- fact, one area is when he's mentioning where somebody lives. And he's describing to the officers where somebody lives, and it's about five or six line long and it's a description, you go down to this street, you turn left, you go down about four blocks, then it's the third house on the right, there's a truck across, there's a goal post next to it. It's a very detailed statement that flies in the face of this poor little innocent fellow that's had his head tucked down all during the course of this trial that wouldn't look you in the eye. It's not consistent with what you've seen here.

And Mr. Fogleman touched on it -- they're claiming police officers were deceptive. And they're claiming that police officers've lied to you and have been involved in deceit, and created this entire statement so that you'll convict Jessie Misskelley, Jr. And that they're staking their professional integrity on doing something like this in order to solve this crime. Well, when you look at these photographs, of this guy right here [HOLDS UP MISSKELLEY'S MUG SHOTS] and then you look at what you've been staring at for the last two or three weeks, sitting over there, with his head bowed down, different attire, different haircut, please tell me who it is that's the deceptive party in this whole situation.

What Mr. Stidham pointed out about their experts, what they told you was that there are these certain [?] that can indicate a person can be, is easily suggestible or can be influenced. Well, to determine whether a person actually was, you need to know what happened there, and you need to look at how the questions were asked. Mr. Fogleman's gone over with you all those questions, where if they were suggesting, coercing, influencing him improperly, he would've said what they wanted him to. If these officers were so diabolical and manipulative, and to hear Mr. Ofshe there's some sort of book where they have these interrogation tactics they could get you or I to go in their office and after a certain period of time, we would confess to multiple homicides.

But if they're so diabolical, and they're so good, and it's such a science that they can prey on somebody and this poor defendant is just so easily suggestible, why didn't they get a better statement? Why didn't they make it perfect? Why would they ask him, why would Ridge say "What about nine o'clock in the morning?" Why would they ask him when he says it's the, it's the Byers child that's been castrated, why would they say "Are you sure?" Heck, they got what they wanted, let's move on and pin him down to the next thing we're gonna try to coerce him on. But when you get to areas like that, then Dr. Ofshe, who's a little slippery, he comes up and wants to talk about something else. But please look at that because -- and think about it -- because what he accused the police of doing was having a brainwashing, mind control ability over this defendant. And that they were able just to get him to say what they wanted. And if that's true, then why isn't this statement perfect? Why -- why are there -- why are there still some inconsistencies in it? Why would they do that? It doesn't make sense, if you believe the defense theory.

The other thing is too, they want it both ways. They want you to believe that this defendant is so -- and they call him handicapped -- but he's got such a low IQ that he is practically just like putty in the hands of these police officers. Just - no, 'cause think of it, no matter what situation you were in to confess to the horrendous -- to running down a boy, an eight-year-old boy, and dragging him back to his death, just think what pressure would be required to cause you to do that. Just think of that. And what they're telling you is that this person, because he has such a low IQ, was persuaded and coerced into doing it, yet, the way he was able to give a statement that on the tape that you heard that had such good facts, is because although he's so slow he's easily suggestible, he's also so smart he can pick up all this stuff while they're questioning and then spit it back out to ya in a statement. So it's really, he's slow for one purpose but he's very intelligent for another purpose. And they can't have it both ways, because it doesn't make sense. And if it doesn't make sense, then it shows that this defendant is guilty.

The second issue is, and I think it's one that's crossed your mind from the time you heard the confession, is that the law requires the State to prove that this defendant acted with premeditation and deliberation, with the purpose of causing the death -- him or an accomplice. Even under the tape, how do we find that this defendant committed capital murder. 'Cause what he says indicates that his involvement's relatively slack. Well, examine what his statement says. He ran the Moore boy down and brought him back. At the time he did that, Damien had already -- was already beating up one of the boys, and he brings him back. Now he'll say somewhere in that statement, he'll say well that's when I saw what was happening and I left. But that's not true. It can't be, because in his statement, he then proceeds to detail how the boy was cut in the face, he details how the boy was castrated -- and he doesn't just say he castrated him, when they say are you sure he said yes and they said well how'd they do it and he said they got him down on his back, they were both on top of him, one of them was sitting on him, and then I saw the blood. Now, if his involvement was that he ran and chased the boy down and brought him back and if he took off, how was it he saw all of those things? How was it that three weapons were used to inflict these injuries if there's only two people that are left there? And, in talking about his involvement, an

accomplice, he's guilty as an accomplice if he aids or agrees to aid in the participation of the offense or aids or agrees another in the commission of the offense. It's with the purpose -- and, and when you get back there and read the instructions -- purpose is defined as consciously engaging in conduct of a certain nature. If he consciously engaged in conduct that involved him in this act, then he's guilty of capital murder if that's the result.

See this picture? [HOLDS UP PHOTO OF MICHAEL MOORE] This is, this is the Moore boy. This defendant, who won't look up, he won't look at ya, but this defendant's action -- and you just think about it -- if this defendant does not chase down Michael Moore, if he does not run through the woods and chase him down and bring him back, Michael Moore lives. Michael Moore gets to go home at night, his parents get to be with him. But because of this defendant's actions, because of what Jessie Misskelley Jr. did, and what he told you about in that taped statement, Michael Moore Jr., or Michael Moore, doesn't go home anymore. And because, if he hadn't a chased him down, if Michael Moore gets away, it's only a few hundred yards to the truck stop. And certainly Michael Moore is gonna report what's happening, and if Michael Moore gets away, maybe the others decide that this isn't a good thing to engage in and they get out. Maybe it's just a kidnapping and a battery. Maybe they're just seriously hurt. Ladies and gentlemen, we'll never know. Because Jessie Misskelley Jr. didn't let Michael Moore get away. He chased him down like an animal, and brought him back, and as a result of his action, Michael Moore's dead, Stevie Branch is dead, Chris Byers is dead. And there's no getting around it.

And you can cut it anyway you want to, you can sit there and look over it, but when you read that tape -- or listen to that tape -- and look and go over this evidence, the actions of this defendant certainly meet the acts of an accomplice in aiding or agreeing -- agreeing to aid or assisting in the commission of a capital murder, and for goodness sakes in a case like this, I know there's a lotta, there's a lotta pressure, there's a lotta attention on it, and it's a great responsibility to go back there, because the person you've looked at for two weeks looks young and it's easy to empathize and sympathize with him. But please, for goodness sakes, go back there and follow the law.

And when I asked you in opening -- or in voir dire -- about using your common sense, what I meant was, in this case you will be presented, you are presented with a confession. A confession that gives details that only this defendant could know. And if -- under any other circumstances you would probably say it would be ludicrous not to say well gosh, you know, the reaction is well the person confesses and they know the details then they're guilty. But the defense, through bringing in so-called experts, such as Mr. Ofshe, have tried through smoke and mirrors to make it sound like a person that confesses to such a heinous crime, and admits their involvement, and gives you specific details of the involvement, that's indicative of someone who was forced or coerced to confess.

I think when you go back and you apply your common sense, and you do what's right, and you think about the evidence in this case, you're gonna know that what the evidence shows is

that this defendant ran down Michael Moore, that this defendant was there, he was involved, and he's guilty of three counts of capital murder.

You will have a verdict form that will be given to you, you'll take back all these instructions. And that verdict form will say: We, the jury, find the defendant Jessie Misskelley guilty of capital murder, count one, involving Michael Moore. Count two, Stevie Branch. And count three, Chris Byers. And the judge will tell you there's some lesser included offenses that he mentioned. You only, it's not like you take all these options and spread 'em out on the table and say well gee this looks like a good one. You start at the top. You start with capital murder. And if this defendant -- if from the evidence, you find beyond a reasonable doubt that the defendant's guilty of capital murder in each of those counts, you check those boxes and the lesser included offenses are not even to be considered. And I trust that when you go back there, you'll, you'll carry this heavy responsibility, but you'll do what the law and the facts require, and that's return a verdict of guilty.

Thank you very much.