

Testimony of Josh Darby in Misskelley trial Feb 1994

DIRECT EXAMINATION

BY CROW:

Q: State your name, sir.

A: Joshua (something?) Darby.

Q: Mr. Darby, how old are you?

A: Eighteen.

Q: Okay. Do you go to school?

A: Nope.

Q: How long have you known Jessie Misskelley?

A: Ever since we was about nine.

Q: Okay. On May the 5th -- where do you live now?

A: Highland Trailer Park.

Q: Okay. Did you live in Highland Trailer Park on May the 5th?

A: Yes.

Q: Do you live in the same location in Highland Trailer Park now as you did then?

A: Yes, sir.

Q: Okay. If you will turn around behind you, sir -- may I approach, your Honor? -- this is State's Exhibit Two. This is Highland Trailer Park. Can you kinda -- can you indicate to the jury where you live in Highland Trailer Park? See, that's where Stephanie lives.

A: On the back row.

Q: Okay. Would you mind marking in green roughly where you live?

A: (MARKING)

Q: Okay. Do you remember Tuesday, May 4th, 1993?

A: Yes. Jessie come over to my house at Little's Trailer Park -- at my mom's house really. See, I was staying at Highland and he spent the night with me over there Tuesday.

Q: Okay. Did y'all, did y'all go roofing that day?

A: Yes, sir.

Q: Okay. Who did you roof with?

A: Ricky Deese.

Q: Okay. That's May -- that's Tuesday, May 4th.

A: Yes, sir.

Q: Okay. And uh. Jessie spent the night with you that night?

A: Yes, sir.

Q: Okay. Do you know what time you got with him that day?

A: Tuesday?

Q: That afternoon.

A: (NO RESPONSE)

Q: If you don't know, you don't know.

A: I don't know.

Q: Okay. Do you, were you with Jessie around the nine o'clock hour?

A: In the morning?

Q: No, the night. On Tuesday night.

A: No, sir.

Q: Okay. But Jessie spent the night with you that night, though?

A: Um-hum.

Q: Okay. Turning -- the next morning on May 5th, what happened that morning?

A: Ricky picked us up at my house, my mom's trailer at Little's, uh, about nine o'clock in the morning --

Q: Okay.

A: -- and we went from there to go roof a job.

Q: Okay. So Ricky picked you up about nine that morning?

A: Yes, sir.

Q: Okay. Did Jessie receive a phone call that morning?

A: Not that I know of.

Q: Okay. Did you have a phone in that trailer?

A: No, sir.

Q: Okay. You did not have a phone?

A: No, sir.

Q: Okay. Now, do you remember where you went roofing on Wednesday, May 5th?

A: I don't know what street it was, but I can show them where it was but --

Q: Okay. Do you recall how long y'all worked that day?

A: 'til about 12:30 or 1:00.

Q: Okay. What happened at that point?

A: We went back to Highland. Ricky dropped us off at Jessie's house. Jessie went in, he said he was going to go get him something to eat. And then, after that I went home and Jessie said he was going back down to Stephanie's house.

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

THE COURT: Sustained.

CROW: Yes, your Honor.

BY CROW:

Q: Do you know what time you got back to -- okay, where were you dropped off?

A: At, right there in front of -- right there beside Jessie's, behind his trailer.

Q: Okay. Who dropped you off there?

A: Ricky Deese.

Q: He dropped you and who else?

A: Me and Jessie.

Q: Okay. And what did you see Jessie do? Don't tell me what he said, what'd you see him do at that point?

A: He went in the house --

Q: Okay.

A: -- and he said --

Q: Okay. Where did you go? Don't tell me what he said.

A: I went home.

Q: You went home. Okay. Did you run into Jessie again shortly thereafter?

A: Ye -- well, after he met his girlfriend down at Stephanie's.

Q: Okay. You saw him and his girlfriend down at Stephanie's?

A: Um-hum.

Q: Do you know what time that was?

A: It was about, it was around four.

Q: Okay. And Stephanie, uh, is the house that kind of crosses the "T" up there?

A: (NODS HEAD)

Q: Okay, alright. How long have you lived in Highland Trailer Park?

A: Off and on for about fifteen years.

Q: Okay. Are you familiar with any cult activity?

A: No, sir.

Q: You sure?

A: Yes, sir.

Q: Have you ever known Jessie to be involved in any kind of cult activity?

A: No, sir.

Q: Okay. Did you know -- to your knowledge -- did Jessie hang around with Jason or Damien?

A: No, sir.

Q: Okay. After you saw Jessie and Stephanie -- excuse me, Jessie and his girlfriend at Stephanie's, did you see him anymore that day?

A: Jessie come down to my house after he got to talk to his girlfriend. He stayed at my house for about 15 or 20 minutes and he said he was going to his house. So --

Q: That was the last you saw him?

A: -- that was the last time I seen him.

CROW: Okay. That's all I have, your Honor.

CROSS EXAMINATION

BY DAVIS:

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

A: Yes.

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

A: Yes, sir, I believe I did.

Q: Okay. Was it in a handwritten statement that you gave to them?

A: I don't --

Q: Your Honor, may I approach the witness? I'd like to show you a copy of a handwritten statement you gave to police on the 18th of June which would have been approximately 15 days after Jessie's arrest. And point out to me where in that statement you indicated to police he spent the night with you.

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

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

A: Yes, sir.

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

A: Yes, sir.

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

A: No, sir.

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

A: Yes, sir.

Q: Do you know anything about that?

A: No he, I never did know anything about nothing like that.

Q: Were you and Jessie pretty tight?

A: We was close.

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

A: Real close.

Q: Have been for about nine years?

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

Q: Okay. Did you -- were you familiar with his frequent huffing of gasoline, where he'd huff gasoline to get high?

A: Uh. No.

Q: You had never been around him when he did that in these past nine years, is that correct?

A: (SHAKES HEAD)

Q: Okay. What about his frequent marijuana use? Were you around him when he did that?

CROW: Your Honor, I object. Your Honor, may we approach the bench?

(BENCH CONFERENCE)

CROW: Your Honor, prior bad acts of Mr. Misskelley are only admissible if he takes the stand.

DAVIS: Your Honor, these aren't prior bad acts. It's to go to the credibility of this witness because he selectively says he doesn't know anything about his cult activity, but we can prove through their witnesses later on that he's got all these other friends (?). So his lack of knowledge regarding that would show that he has selective recollection about what he knows.

FOGLEMEN: Your Honor, it is also related to his knowledge and acquaintanceship of this defendant. He claims to really know him. They even said -- their own expert, Doctor Wilkins in his report -- says all this about the huffing gas and smoking dope.

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

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

STIDHAM: Thank you, Your Honor.

(RETURN TO OPEN COURT)

BY DAVIS:

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

A: Later on --

Q: Okay.

A: -- after that, you know, I seen him because he helped us move.

Q: That night?

A: No. Later on during the weekend, you know, like on a Friday and Saturday.

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

A: Yes, sir.

Q: And you didn't see him again until sometimes later that week?

A: (NODS HEAD)

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

A: (NO AUDIBLE RESPONSE)

DAVIS: No further questions.

COURT REPORTER: Is that a no? Is that a no?

THE COURT: You're gonna have to answer out loud.

DARBY: No, sir.

THE COURT: Alright. I got an emergency telephone call. We're gonna take a five minute recess.

(RECESS)

(BACK TO OPEN COURT)

DAVIS: I'd indicated I was going to pass the witness. I do have one last question.

THE COURT: Alright.

BY DAVIS:

Q: Mr. Darby, referring your attention back there to May 5th when you and the defendant were doing this roofing job, what kind of haircut did he have at that time?

A: Regular haircut that I noticed of.

Q: Okay. And when you say, "regular," you mean something kind of like the one you have now?

A: Oh, no. His, he always kind of kept his short, you know --

Q: Okay.

A: -- on top.

Q: Anything other than that distinctive about it?

A: (SHAKES HEAD)

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

A: Yeah.

DAVIS: Okay. No further questions.

UNKNOWN: Your Honor, we're having a hard time hearing over here.

THE COURT: You need to speak up.

REDIRECT EXAMINATION

BY CROW:

Q: Mr. Darby, when the police were asking questions about Mr. Misskelley's presence on May 5th, were they inquiring about where he was the night before or were they inquiring about where he was that afternoon?

A: Where he was --

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

THE COURT: Rephrase your question.

CROW: I'll let it pass, your Honor.

DAVIS: No further questions.

THE COURT: Alright. You may stand down, you're excused, free to go. Call your next witness.

(WITNESS EXCUSED)

REDIRECT EXAMINATION BY CROW

Q: Mr. Darby, you testified early this morning?

A: Yes.

Q: Remember you're still under oath, ok?

A: (no audible answer)

The Court: You'll have to answer out loud now, and sit up and talk into the microphone.

A: All right.

Q: Mr. Darby, one thing I realized later wasn't very clear, did Jessie Misskelly spend the night with you the night of May 4th?

A: Yes, sir

Q: Ok, where, earlier you informed the jury where you resided. Is that where you spent the night with Jessie?

A: Uh, no, I spent the night with him at Little's

Q: Ok, that's what I was confused about. It wasn't at your house it was at a different trailer park?

A: Yea.

Q: Ok, who lives out there?

A: My mom

Q: Ok, it was at your mom's trailer. Ok, is that the place you talked about didn't have the phone?

A: Yes, sir.

Q: Is that where the pay phone's at a store somewhere nearby?

A: Yes, sir.

Q: Ok, thank you.

The Court: All right, you may stand down.