

Witness for the Prosecution

January 28, 1994

MR. FOGLEMAN: We call Vickie Hutcheson.

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

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

MR. CROW: I may be anticipating what they are going to try to elicit from this witness but I anticipate she's going to testify that she saw him at some alleged cult meeting after the murders. If she wants to testify that she saw him with Damien, that's fine, but all this cult stuff - - I don't think there's been a proper foundation laid for it. It is prejudicial and we would strongly object.

THE COURT: After - - is that what you're going to do - -

MR. FOGLEMAN: Between the murders and the arrests.

THE COURT: But after the event.

MR. FOGLEMAN: That's correct.

MR. STIDHAM: Just because he was somewhere drinking and carrying on with somebody doesn't mean he's satanic - -

THE COURT: I'm reminded of the Strobbe objection, the first trial - - it wasn't Strobbe - - it was the biscuit man - - where y'all persuaded me to let in some evidence that happened after the time of the charge that indicated either criminal activity or wrongdoing and the Court said you couldn't do that - - the Ridling trial. Is there any difference in what you're trying to do here?

MR. FOGLEMAN: In this particular case the defendant in his confession talked about this cult activity. We contend that the proof is going to show that within maybe a couple weeks after the murders she got Jessie to introduce her to Damien, and Damien invited her to an Esbat, some kind of witch or satan worship deal. Damien and Jessie took her there. And while there she observed the kids. Some of them have their faces painted black, they begin to have sex. She asked to leave and Damien took her home and Jessie stayed.

MR. STIDHAM: We have already brought out in cross examination why the police were looking - - why they picked up Jessie that morning, and this is highly prejudicial in that it occurred after the murders if it occurred at all, and I think any probative value is surely outweighed by the prejudicial effect of this.

MR. DAVIS: Judge, one thing that you need to remember - - in their entire cross examination of the officers yesterday they kept asking, "Do you have any evidence that Jessie was involved in cult activity? What evidence do you have?"

MR. CROW: It has already been discussed.

MR. DAVIS: We can put on witnesses to show what evidence they have.

MR. FOGLEMAN: And they were the ones in their examination of the officers who asked about, "Where did you get this information about Jessie being involved in with this cult stuff with Damien?"

THE COURT: I'm going to take a recess and think about it.

(RETURN TO OPEN COURT)

THE COURT: Ladies and gentlemen, you may take a ten minute recess at this time with the usual admonition not to discuss the case.

(RECESS)

(THE FOLLOWING CONFERENCE TOOK PLACE IN CHAMBERS)

THE COURT: Let the record reflect that is a hearing out of the presence of the jury. All right, gentlemen, the Court is considering the testimony of Vickie Hutcheson. State for the Court what your theory and notion of relevance is to this testimony.

MR. FOGLEMAN: Your Honor, we expect that the witness would testify that approximately two weeks after the murders - - two to three weeks after the murders - - she was introduced to the co-defendant Damien Echols by the defendant and after being introduced she kind of played detective and got Damien or led Damien to believe that she was interested in occult activity and Damien invited her to an Esbat, which I understand is some kind of witch or satanic meeting. That Damien and the defendant took her to this meeting and that at this meeting a group of young people were there. They had their faces painted black and began to take off all their clothes and have sex with each other. Let me back up. I don't think she's - - I think she's going to say she left before that actually took place. They began to touch each other is what I think she said. Then she asked to leave and Damien took her home and the defendant stayed. The theory of relevance is that the defendant in his confession stated that he had been engaged in cult activities with Damien Echols, and there were orgies that took place and the defense has taken the position that we would not be able to prove any of these cult activities or any connection with any cult, and this is offered to corroborate what the defendant said as far as his involvement in these activities which the defendant in his statement relates to the murders by his statement that there was a photograph of the little boys that was passed around at one of these meetings.

MR. CROW: Your Honor, first, the prejudicial effect of this type of testimony in front of your average American juror is obvious. Very few members of American society are anything but Judeo-Christian ethic. This activity allegedly occurred two weeks after the murders. There's no alleged connection between this event and the murders. There's nothing been put forth so far in the prosecution's case or anything I'm aware they're going to put on saying the actual murders were cult related other than the fact that these guys may have been in a cult together. Jessie doesn't say in his statement it was a cult killing. There's no physical evidence to my knowledge, on the scene making it cult related. And the effect this thing is going to have on the jury is very substantial and the probative value for something that happened two weeks after the murder is so limited.

THE COURT: I'm not going to let you do it.

MR. FOGLEMAN: You're preventing us from being able to corroborate the things he says in his statement and - - I am not arguing with the Court.

THE COURT: The last time I did it I restricted the defense and the Court reversed saying that I - - but the issue there was entrapment and it was conduct of the police that they wanted to demonstrate afterwards.

MR. FOGLEMAN: That's correct.

THE COURT: This is a little different situation, frankly. The conduct is conduct of the defendant.

MR. STIDHAM: But it's after the murders.

THE COURT: The issue is whether or not that portrayal of him involved in cult activities with the co-defendant would so prejudice the jury against him that it would outweigh any probative value, that is, the corroboration of his statement.

MR. STIDHAM: Your Honor, would you consider this? We are not here to determine whether or not Jessie was in a cult meeting in Turrell. We're here to determine whether or not he was involved in a homicide.

THE COURT: It's relevant inasmuch as you're questioning and have since the outset of the trial the statement itself made by Misskelley. You are alleging that it was contrived, that it's false and it is simply not true. So - - and basically that is the only evidence that ties Misskelley directly to the commission of a crime is his own statement. So it is extremely important and relevant that the jury be provided all evidence necessary to decide whether or not that statement was voluntarily given and whether it was truthful at the outset. So I certainly understand the State's position. I'm trying to balance the thing.

MR. FOGLEMAN: Your Honor if - - if you want to - -

THE COURT: I'm more concerned about all of the fact and details that occurred at the - -

MR. FOGLEMAN: Do you want us to ask her not to say about what they were doing?

THE COURT: What took place. I think I'm inclined to let her testify that she attended, whatever you called it, occult activity with Jessie Misskelley and Damien Echols.

MR. STIDHAM: That's the prejudicial part that we are objecting to.

THE COURT: You're not objecting to black painted faces and sex?

MR. CROW: We're objecting to that, too.

THE COURT: I think it is relevant, and they're entitled to show that it's true that there were cult activities, based upon at least this witness' representation. But I'm more concerned about all the details and circumstances that the witness would be prepared to testify to. Those to me are more prejudicial than the fact that he went to a cult activity.

MR. STIDHAM: Your Honor, the State is required to corroborate the homicides, not corroborate that maybe he was at a meeting - -

MR. CROW: - - two weeks after the murder.

MR. STIDHAM: - - with teenagers drinking and having an orgy - -

MR. CROW: - - two weeks after the murder.

MR. STIDHAM: He's here on a homicide. That is why we are here before the Court is to determine if he was involved in a homicide.

MR. CROW: If they want to prove that he was at some cult activity prior to the homicides as he says he said in his statement, that's one thing. But proving he was at cult activity after the homicide - - something he didn't discuss in his statement - - is totally out of bounds.

MR. FOGLEMAN: If we were talking about three months after, I could see the point about - - but we are only talking about a few weeks. And, really if y'all were not arguing false confession, we wouldn't be in a position like we are because all we would have to do is corroborate that the crime occurred. But with you arguing false confession, we feel compelled to try to corroborate as many details as we can. In fact I think your expert says that some of the things that are important is whether or not you are able to corroborate details unrelated that he says in his statement.

MR. CROW: Corroborating with stuff - - his activity prior to the crime, which is things he talked about, is one thing. Maybe he said he was a St. Louis Cardinals baseball fan and saying he went to a St. Louis Cardinals game after the crime - - I just don't see the - - obviously that is not prejudicial.

MR. STIDHAM: That's why they are wanting to hang this boy and that is why the newspapers have been splashing this cult stuff and that's why everybody's got their mind made up about his guilt or innocence because they are so petrified and horrified by this cult stuff. Mr. Crow made a good point that people - -

THE COURT: Everything they've just said are certainly subject matters of cross examination if he takes the stand. There's no question about that. I'm going to let them develop from the witness that she went with Jessie and Damien to a cult activity and that - - to that extent, basically. Don't go into all the circumstances of what was seen and what was done and that sort of thing. I think the fact that you are challenging both the police activity - - overreaching of the defendant in taking a confession - - the fact that the confession is false, that is a fabrication on the part of Jessie Misskelley, that the State should be given some latitude to prove that this is not false. These are the underlying facts that support the truthfulness of the statement. I think just basic fairness allows him to do that. On the other hand, I'm trying to balance the harmful effect by - - I agree to some extent if they went in there and started telling about black painted faces and children having sex in the woods with devil signs around and all of those sorts of things, that would be prejudicial to some extent. But whether or not that prejudice would outweigh its probative value, I'm not certain. I frankly think that maybe fairness would allow it to all go in to show the circumstances immediately after the crime. But I'm going to limit it to the fact that she did attend with them some kind of cult activity without allowing her to go into all the details.

MR. CROW: Note our objection.

(RETURN TO OPEN COURT)

VICTORIA HUTCHESON

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

DIRECT EXAMINATION

BY MR. FOGLEMAN:

Q: Will you please state your name and the address where you lived in May of 1993?

A: My name is Victoria Hutcheson, and at that time I lived in Highland Park in a trailer there.

Q: Where did you live before you moved to Highland Park?

A: I lived at 1502 East Barton in West Memphis.

Q: Do you have children?

A: Yes, I do. I have two boys.

Q: How old are they?

A: I have one that just turned eleven and one that's eight.

Q: Your eight-year-old - - was he acquainted with Mike or Steve or Chris?

A: Yes, he was really good friends with Chris and Mike and Steve, and they ran together, but Steve more or less ran with my older boy.

Q: Did they go to the same school?

A: Steve and Aaron and Chris were all in the same class together.

Q: And Aaron is your eight-year-old?

A: My eight-year-old, yes.

Q: When did you move to Highland Park in relation to the murders, approximately?

A: Approximately April. Like the second week of April.

Q: After you moved to the Highland Park area, did you become acquainted with the defendant?

A: Yes, I did.

Q: And how did you become acquainted with him?

A: Jessie and I became really close friends.

Q: After the murders, were you also friends with the families of any of the victims?

A: Todd Moore, who is the Cub Scout - - leader over the Cub Scouts - - both of my boys were in the Cub Scouts troop.

Q: You were acquainted with - -

A: With Todd.

Q: At some point after the murders, did you decide that you wanted to play detective?

A: I thought I would play detective.

Q: And in the course of that, and without saying what you had heard, had you heard some things about Damien Echols?

A: I heard a lot of things about Damien Echols.

Q: What did you do to try to learn more about this person?

A: I had Jessie Misskelley, Junior introduce us.

Q: Are you referring to the defendant?

A: Yes, sir.

Q: After he introduced you to Damien, did you do any particular things to try to gain Damien's confidence?

A: I had went to the library. Don Bray, the police at Marion, had given me his card to check out some satanic books because they can't be checked out just by normal - -

Q: All right. You said Don Bray of the Marion Police Department?

A: Marion Police Department.

Q: At this time was the West Memphis Police Department aware of what you were doing?

A: West Memphis knew nothing.

Q: After these books were obtained, what did you do with them?

A: I just like spread them out on my coffee table like it was everyday reading.

Q: For what purpose?

A: If he was into witchcraft - -

Q: Who?

A: Damien.

Q: Okay.

A: If Damien were into witchcraft, naturally he's going to be curious why I have all this stuff, I thought.

Q: At some point did Damien invite you to go to some meeting?

A: He did. On a Wednesday night, an Esbat.

Q: Is that E-S-B-A-T?

A: Uh-huh.

Q: Did you learn what that - -

A: I had to look it up but it was in one of the witch books and it's an occult satanic meeting.

Q: Okay. And did you go with him to this?

A: Yes.

Q: Who went with you?

A: Jessie.

Q: What did y'all go in, what vehicle?

A: A red Escort.

Q: Who was driving?

A: Damien.

Q: And about how many people were there?

A: Approximately at a distance I would say ten, twelve, even fifteen.

Q: After a period of time as things developed, did you ask to leave?

A: I did.

Q: And when you asked to leave, did somebody take you home?

A: Yes.

Q: Who was that?

A: Mr. Echols.

Q: What did the defendant do?

A: Um, stayed.

Q: Are you familiar with - - or aware of this tape that's been played in court with the voice?

A: Yes, sir, I am.

Q: Do you know who that voice is?

A: That's my child.

Q: Was the defendant acquainted with your child?

A: Yes, he was.

Q: Had the defendant spent time where you were living?

A: Jessie and I - - I thought were very close and good friends, and so he did spend quite a bit of time with us.

Q: At the time that you asked the defendant to introduce you to Damien, did you have any reason to believe that he was involved in the murders?

A: Never.

CROSS EXAMINATION

BY MR. STIDHAM:

Q: Miss Hutcheson, you say that you asked Jessie to introduce you to Damien?

A: Yes, sir.

Q: Did he tell you that he knew him?

A: He had told me on several occasions that he knew him.

Q: Knew who he was from school?

A: He was a friend of his.

Q: Why did Don Bray, the officer from the Marion Police Department, give you his library card?

A: Don --

Q: Let me ask you this way: How did you come in contact with Mr. Bray?

A: Through a Delta situation, which I'm not going to elaborate on, but ah - -

Q: I want you to elaborate on it.

A: Would you like for me to elaborate on it?

Q: Yes, ma'am.

A: There was a credit card mess up, and I was working during the time that this happened and another boy. And it was a two hundred dollar transaction that had been done without - - I don't really know the particulars of the credit card, but there was an investigation. All charges were dropped.

Q: Why did you go see Don Bray that day?

A: For that.

Q: Did you go for a specific reason, to take a test or anything?

A: I did take a lie detector test.

Q: A lie detector test was conducted?

A: Yes, sir.

Q: And all charges were dropped, you say?

A: I have the file.

Q: Have you ever been convicted of writing bad checks in this state?

A: Yes. In Arkansas I have.

Q: Mr. Fogleman asked you if you at some point wanted to play detective?

A: Mr. Fogleman?

Q: Um-hum.

A: I had never met Mr. Fogleman until like a month or - - about two months ago.

Q: You testified that you were going to play detective in this case?

A: I decided that on my own. Those boys I loved, and I wanted their killers caught.

Q: Did that thirty thousand dollar reward have anything to do with your decision?

A: No. It had nothing to do with it.

Q: Did you ever tell anybody that you were going to get that reward?

A: Not to my knowledge, no.

Q: Mr. Fogleman asked you if you had anything to do with this at the time you went to this so-called meeting?

A: No one mentioned Jessie Misskelley's name to me whatsoever until he was arrested and on TV.

Q: Fact is he spent the night with you the night before he was arrested?

A: Exactly. To protect me.

Q: To protect you from a prowler?

A: From a prowler.

REDIRECT EXAMINATION

BY MR. FOGLEMAN:

Q: This Delta situation - - were you ever charged?

A: No, I was not.

Q: In fact the day that you were in Mr. Bray's office - - is that the day - - which day was that in relation to when the boys - -

A: The boys were still missing at the time I was sitting in his office, and he asked me - - I was obviously upset, and he asked my why I was upset.

Q: It was the day the boys were found?

A: Yes, they were found Thursday.

Q: It was that same day?

A: Yes.

(WITNESS EXCUSED)