

## **Testimony of Kermit Channell in Misskelley trial Feb 1994**

DIRECT EXAMINATION

BY FOGLEMAN:

Q: Would you state your name and occupation for the jury?

A: Yes. My name is Kermit Channell, and I'm a forensic serologist with the Arkansas State Crime Lab.

Q: Alright. And would you state your education, training, background and experience to qualify you as a serologist for the Crime Laboratory?

A: I received my bachelor's degree in biology and a minor in chemistry from Elon College in North Carolina and I've also received forensic serology training from the FBI academy at Quantico, Virginia.

FOGLEMAN: Your Honor, we would submit Mr. Channell as an expert in the field of serology.

STIDHAM: No objection, your Honor.

THE COURT: Alright, you may proceed.

BY FOGLEMAN:

Q: Mr. Channell, in the course of your duties with the State Crime Laboratory did you examine some items submitted from the West Memphis Police Department in the case of victims, Michael Moore, Stevie Branch and Chris Byers?

A: Yes, I did.

Q: And, as a part of that, did you receive from Lisa Sakevicius some possible tissue recovered from ligatures?

A: Yes, I did.

Q: Did she just submit the tissue or the ligature to you?

A: I received the tissue from her.

Q: Alright. And what did you do with that tissue?

A: I received the tissue on May the 14th and I submitted it to Genetic Designs in Greensboro, North Carolina.

Q: What is Genetic Designs?

A: Genetic Designs is a forensic DNA lab.

Q: And did you have some identifying number on that when you submitted it to Genetic Design?

A: Yes, I did. The items submitted was listed as my Q4, possible tissue recovered from the ligature of Christopher Byers, and also Q39, from James Michael Moore.

Q: Okay. Now, did you also examine a number of items of the, uh -- found purported to be of the victims?

A: Yes, I did.

FOGLEMEN: (in background) Your Honor, I'm having trouble finding one of my exhibits.

(inaudible mumbling)

BY FOGLEMEN:

Q: Alright, did you examine State's Exhibits 45 and 48, or do you recognize those?

A: (EXAMINING) Yes, I do. It has my serology case number and my questioned item numbers and my initials on each of the bags.

Q: And um, before we get to those, did you also examine the other items of clothing of the victims?

A: Yes, I did.

Q: Did you find anything of value, of evidentiary value, on those other items?

A: No, I did not.

Q: Alright. Specifically referring to Exhibits 45 and 48, what type of tests did you run on those items?

A: I examined these items for the presence of blood and semen. I did not find any blood on each

of the items. They were my Q6 which were some blue jeans, and also Q10, another pair of pants, were very dirty and muddy. I employed a laser technique, which is an alternate light source, to help determine if there were any stains that I could not see with the unaided eye. I did find some questioned stains. I further analyzed these stains in a microscope to see if I could identify any sperm cells present. And I could not. I went also and tried to determine whether there were any enzymes present, specifically P30, which is a prostatic antigen.

Q: What do you mean by that?

A: Prostatic antigen is a protein that's specific to the male prostate that is found in semen samples. I ran a test on these items for that, and I got a positive reaction. However, in the course of my work I also ran control samples which also gave me a similar reaction. Based on that, I concluded that there could possibly be something in the material or in the mud that was interfering with my testing. Therefore, I submitted those items also to Genetic Design where they could employ DNA testing which is a more sensitive technique.

Q: Alright. Now, on these two items, Exhibit 45 and 48, which are the two pair of pants. Is that right?

A: That's correct.

Q: Alright. You ran basically two tests. Well, wait a minute. Let me back up. You ran a test for blood?

A: I employed a screening test for the presence of blood.

Q: Alright. And did that screening test indicate the presence of any blood on either of the pair of pants?

A: No, it did not.

Q: Alright. And then you ran two screening tests for the presence of semen? Is that right?

A: That's correct.

Q: And what were the results on those tests?

A: Actually, the first test was a laser technique. Based on the condition of the garments, they were too dirty to be able to visualize any type of stains with the unaided eye. What the laser does -- it picks up -- it's an alternate light source. It picks up on any material that might glow. For

instance, there are certain items that will, will glow, and semen is one of them. It is, however, just a basic screening test which allows me to try to first identify the stain and secondly to try to continue on with my analysis. The second part of the analysis is an acid phosphatase test, which is again just a screening test to see if the item that I am testing possibly can contain semen, and that test was also positive. The third step is to try to visualize to find -- to see if you can see any spermatozoa in the stain that I identified.

Q: And you could not do that?

A: That's correct.

Q: Alright. And how did you label those two items that you submitted to Genetic Design -- are these the whole pants?

A: They are cuttings from the pants.

Q: And how did you label those cuttings?

A: They're labeled as Q6 and Q10.

Q: Alright, Q6 and Q10. In the course of your duties were you requested to come to West Memphis on or about June third, 1993, to participate in a search?

A: Yes, I was.

Q: And did you participate in the search of the home of Damien Echols?

A: Yes, I did.

Q: I want to show you what I have marked for identification purposes as State's Exhibit 83 and ask if you can identify that?

A: (EXAMINING) Yes, I can. It is marked as E84, which is a book that came from one of the bedrooms.

FOGLEMEN: Your Honor, we would offer State's Exhibit 83.

STIDHAM: Your Honor, may we approach the bench?

BENCH CONFERENCE

THE COURT: What is it?

FOGLEMAN: Specifically, it's a satanic book. Your Honor, if you'd like to open that --

STIDHAM: Your Honor, I'd ask that you --

THE COURT: Need me to open it or something (CRINKLING LIKE OPENING)

STIDHAM: Can we go to chambers, your Honor? Can we go to chambers before you open that?

THE COURT: Yeah.

RETURN TO OPEN COURT

THE COURT: Alright, it's time for another short recess, ladies and gentlemen. With the usual admonition not to discuss the case, you may have a five minute recess.

[audio stops]

(THE FOLLOWING CONFERENCE TOOK PLACE IN CHAMBERS OUT OF THE PRESENCE AND HEARING OF THE JURY)

THE COURT: Let the record reflect that is a hearing out of the presence of the jury.

STIDHAM: Your Honor, our objection is going to be similar to the objection your Honor sustained earlier with regard to the stuff found in Jason's trailer. That may be relevant entirely against Mr. Echols at his trial, but it certainly isn't relevant against Mr. Misskelley in this trial. They have been severed, and I don't see the relevancy. Even if it is relevant, which we submit that it is not, the prejudicial value is so high because of the cult or satanic type stuff. That came from the library, but they are going to introduce it as being some kind of satanic cult thingamabob. Basically, they may have been proving a lot of things against Jason and Damien, but they still have not yet proven anything against Mr. Misskelley. And that doesn't corroborate anything that he might have had something to do with these homicides.

FOGLEMAN: But, your Honor, it corroborates his confession. He tells the officers about Damien's involvement and stuff and his own involvement in it, and this corroborates Damien's involvement which corroborates his own statement. He says Damien's involved in it. This corroborates it.

CROW: For one thing, your Honor, this book is not about any kind of satanic stuff.

FOGLEMEN: It's got stuff about pacts with the devil in there.

CROW: Obviously in the three minutes I have been looking at this book, I haven't read the whole book. It talks about -- it appears to be about witchcraft which is --

STIDHAM: Judge, they had this big march in Jonesboro to tell people the difference between being a witch and being a satanist so -- Judge, there's so much prejudice attached to that it wouldn't be fair to allow the jury to see that because they might unfairly demise [sic] that Mr. Misskelley might be --

CROW: It is not a book found at Mr. Misskelley's house, your Honor.

DAVIS: Judge, the allegation is that Mr. Misskelley acted in concert and was an accomplice to and acted with Damien Echols, and it's certainly a part of the State's case that the motivation for this act came about as a result of their cult related activities which he in fact mentioned in his statement, and if there are books in Damien Echols' house that go to indicate rather strongly in this instance that he was involved in cult related activity, it would be analogous to a situation if we had charged somebody with a bombing. If there are books in the house that indicate how to build a bomb and how to put a bomb to use, then that certainly would be relevant and admissible if a person is charged with a bombing. In this case the State's position is that they are charged with murder, and the State's position is that it is a cult related murder, and one of the three co-defendants is found with books in his house that relate to cult activity and satanic rituals. And we don't see how much more relevant --

STIDHAM: Judge, if he's going to use that analogy, where is the chapter on killing eight-year-olds? This is a homicide case not a cult case. And let's assume that he did eat a dog one time. What does that have to do with --

FOGLEMEN: Jessie is the one that brought up --

STIDHAM: -- there's nothing in that statement that says anything whatsoever that the killings had any motivation toward satanism.

THE COURT: I remember some remark in the statement that Jessie made to the effect that he knew what they were going to do and that either Branch [sic] or Echols when he had talked to him about meeting him that day said something to the effect that, "We are going to go out and beat up some boys."

STIDHAM: That's not a homicide, your Honor.

FOGLEMEN: Your Honor, he also said at one of these meeting that a photograph -- at one of these cult meetings -- that a photograph of the boys was passed around, and then the boys end up dead. I think that shows a relationship --

THE COURT: Your theory is that it's admissible going to motivation, scheme, intent and design on the part of the three defendants collectively --

FOGLEMEN: Yes, sir.

THE COURT: And, therefore, whatever evidence that relates to the scheme and purpose and intent on the premeditation would relate also to Misskelley. Is that what you're saying?

FOGLEMEN: Yes, sir.

STIDHAM: Your Honor, those two defendants aren't on trial. Mr. Misskelley is.

THE COURT: He was severed and only because he made a cross-implicating statement that implicated the other two defendants. His statement wouldn't have been admissible to the other two guys so that's why he's got a separate trial.

STIDHAM: Your Honor, let's assume for a minute -- and there has been testimony to this effect - - that there were rumors going around West Memphis that Damien Echols was involved or is a witch or is involved in a cult. That doesn't necessarily mean that Jessie is, and it doesn't necessarily mean that anything found in Damien's house or Jason's house regarding satanic stuff is --

THE COURT: The whole thing is, is the cult business relevant, and I believe it is relevant because it goes to motivation, it goes to corroborate the statement that he made that they were involved in some kind of cult or club or gang or whatever you want to characterize it, and that those activities involve doing some of the things he testified to, like eating dog leg and having orgies and things of that nature.

STIDHAM: Is there anything in this book, John or Brent, other than something about witchcraft that would tend to relate this to the homicide?

FOGLEMEN: I haven't read every page. There's some stuff in there about pacts with the devil and things like that.

CROW: If you're talking about forced confessions -- it's talking about courts, I think, in the Dark Ages -- what they did --

FOGLEMEN: If Mr. Stidham wants to argue from that book, your Honor --

THE COURT: How much more evidence like this are you going to introduce?

FOGLEMEN: Your Honor, probably -- that's the only other physical item. There will be a witness who will testify about Damien saying -- the one we talked about before about, "I did it."

THE COURT: You are raising an 804 objection to this and the other testimony.

CROW: Yes.

THE COURT: If you hadn't come on so hard in your defense about it being a false confession, I might have been persuaded to keep some of that out, but to me you've opened the door to this kind of testimony coming in to show that the confession was in fact based upon circumstances that existed.

CROW: We acknowledge that Damien's weird.

THE COURT: That is not the issue.

STIDHAM: If Jessie in his statement would have said this was a cult killing where we went out there and built a fire and killed these little kids as part of a ritualistic situation, that might be different. But there is a dichotomy between the two things.

THE COURT: The question is not what was said exactly but what reasonable inferences or relationship a jury could draw from what was said. They could conclude that this killing was based upon a cult ritual based upon his statement, and that would be motivation and intent, design, scheme, premeditation, all of those things. And from that kind of testimony a jury could conclude that that was what occurred. I'm going to let them put it in.

CROW: Note our objection.

RETURN TO OPEN COURT

[audio restarts]

CONTINUED DIRECT EXAMINATION

BY FOGLEMAN:

Q: Referring again, Mr. Channell, to State's Exhibit 83, where did you locate this item in Mr. Echols' residence?

A: It was in the first bedroom. There was a chest or trunk of some sort. And I believe, if I recall, it was on top of that.

FOGLEMAN: Alright. Your Honor, we would offer State's Exhibit 83.

THE COURT: Alright, it may be received.

(STATE'S EXHIBIT 83 IS RECEIVED IN EVIDENCE)

FOGLEMAN: May I exhibit to the jury, your Honor?

THE COURT: Yes.

BY FOGLEMAN:

Q: What effect, if any, would the victims being submersed in water have on the possibility of finding semen in the oral cavity?

A: Well, even in the best of circumstances and even regular sexual assault cases you rarely find semen in the oral cavity. I would expect that being submerged in the water the chances of semen surviving in any orifice would be greatly diminished.

Q: Alright. Did you say any orifice?

A: In any orifice. That's correct.

Q: Alright, and besides the mouth, what are you talking about?

A: The mouth or the rectum.

FOGLEMAN: Alright. I don't have any further questions.

CROSS EXAMINATION

BY STIDHAM:

Q: On State's Exhibit 45 and 48, you found no blood and no sperm. Is that correct?

A: That's correct.

STIDHAM: May I approach the jury box, your Honor? May I see that book that was introduced?  
Thank you.

BY STIDHAM:

Q: This is the book that you found at Damien's?

A: That's correct.

Q: And you know where it came from?

A: (EXAMINING) The inscription here is, "Crittenden County Library."

STIDHAM: That's all I have, your Honor.

FOGLEMEN: I don't have any further questions.

THE COURT: Need to keep him here further?

FOGLEMEN: No, sir.

THE COURT: You're free to go. Call your next witness.

(WITNESS EXCUSED)