

IN THE CIRCUIT COURT OF CRAIGHEAD COUNTY, ARKANSAS
WESTERN DISTRICT

STATE OF ARKANSAS
VS. NO.
DAMIEN ECHOLS and
JASON BALDWIN
PLAINTIFF
DEFENDANTS

IN THE CIRCUIT COURT OF CLAY COUNTY, ARKANSAS
WESTERN DISTRICT

STATE OF ARKANSAS
VS. NO.
JESSIE MISSKELLEY
PLAINTIFF
DEFENDANT

* * * * *

TRANSCRIPT OF HEARING

August 19, 2011

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Came on for hearing before the Honorable David N.

Laser, Circuit Judge, in Jonesboro, Arkansas.

* * * * *

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1 (COURT REPORTER'S NOTE: Court convened on
2 August 19, 2011, in Jonesboro, Arkansas at 9:30
3 a.m.)

4 THE COURT: Good morning, ladies and
5 gentlemen.

6 (Attendees respond.)

7 THE COURT: All right, we are on the record
8 and out of public purview in CR-93-458, State of
9 Arkansas versus Damien Wayne Echols. We're here
10 in CR-93-450, State versus Charles Jason
11 Baldwin. And we're here in Clay Western, 1993-
12 47, State versus Jessie Lloyd Misskelley, Jr.

13 All the parties are present and represented
14 by counsel. We have here on behalf of the
15 State, Ms. Melanie Alsworth -- or Mr. Scott
16 Ellington, the prosecuting attorney for the
17 Second Judicial District. Melanie Alsworth, the
18 deputy prosecutor from Crittenden County, Mike
19 Walden, deputy from Craighead County, and Alan
20 Copelin --

21 MR. COPELIN: Right here, Your Honor.
22 Mike's --

23 THE COURT: -- also from Craighead County.
24 We have for Mr. Echols, Dennis Riordan and
25 Donald Horgan from San Francisco, Stephen Braga

1 from Washington, D.C., and Ms. Laura Nirider
2 from Chicago, also on behalf of Echols.

3 Well, Mr. Patrick Binka, are you here,
4 Patrick?

5 MR. BINKA: I am, Your Honor.

6 THE COURT: Okay, Patrick's here on behalf
7 of Mr. Echols, the local counsel as well.

8 On behalf of Mr. Baldwin, we have Mr. Blake
9 Hendrix and we have Ms. Erin Cassinelli. On
10 behalf of Jessie Misskelley, we have Mr. Jeff
11 Rosensweig. Did that cover everybody?

12 MR. BRAGA: Yes, Your Honor. Yes.

13 THE COURT: Okay, good. And, as everyone
14 has known for a couple of days or more, this is
15 a hearing held out of the presence of the
16 public, which we anticipate following by a
17 public hearing at about 11 o'clock, at which
18 time we will proceed to do much of what we're
19 going to talk about here in this private session
20 -- this session out of the -- out of the purview
21 of the public. It's on the record with all
22 defendants present.

23 There won't be any rulings made at this
24 hearing. This will be -- will be a preliminary
25 hearing with such questions and answers as are

1 necessary in order that everyone understands
2 what is proposed here, what we're about, what
3 the practical ramifications of the proposed
4 Alford plea involve and that sort of thing.

5 I want to make sure this record will be
6 made public in the event -- in the event there's
7 any sort of challenge directly or indirectly of
8 these proceedings down the line, whether it be
9 by virtue of any -- anything that might be
10 brought against an attorney or brought by either
11 party to set aside any portion of what we are
12 doing.

13 And, otherwise, it'll simply be for -- for
14 private benefit in order that we -- I want to be
15 very clear on -- what we're doing here is a bit
16 unusual. This case is certainly has attracted a
17 lot of attention, and the rights and obligations
18 of the parties are very, very significant in
19 this case. The victims' family are involved and
20 a divergence of positions in the matter, and
21 defendant families are also involved in these
22 proceedings.

23 So I want to be as transparent as possible
24 about all this and I want it to -- I want to be
25 certain that this is -- this is -- this is a

1 procedure that's done because the parties
2 mutually agree that this is the right thing to
3 do under the circumstances, and that it's not
4 subject to any -- any -- any outside influences
5 or any coercion or threats or anything of that
6 nature, and that everybody is doing what's
7 proposed to be doing here because they believe
8 it's in their best interest to do it.

9 And, with that, I've introduced the parties
10 and so forth. What the Court understands is
11 that -- I'll give you a general outline of the
12 proceedings the Court understands is going to be
13 followed here in our open hearing in this case.

14 The Court will be asked, after some
15 preliminary statements are made, to enter a
16 conditional order for a new trial, which will in
17 effect conditionally vacate the sentences that
18 were imposed at the earlier -- earlier trials in
19 the case.

20 And -- and, will, subject to additional
21 work to be done, grant a new trial in the case,
22 which will revest this Court with jurisdiction
23 to make further proceedings regarding
24 disposition and sentencing, either by virtue of
25 -- of how we handle that.

1 Specifically, in this case it's
2 contemplated that after the conditional order
3 for a new trial, which I assume counsel have
4 been over with their particular clients.

5 MR. BRAGA: Yes, Your Honor.

6 THE COURT: Mr. Echols, I assume you've
7 been over it with your counsel?

8 MR. ECHOLS: Yes, sir.

9 THE COURT: And understand the contents of
10 it?

11 MR. ECHOLS: Yes, sir.

12 THE COURT: And Mr. Baldwin?

13 MR. BALDWIN: Yes, Your Honor.

14 THE COURT: And Mr. Misskelley?

15 MR. MISSKELLEY: Yes, sir.

16 THE COURT: All right, once that is done,
17 we will proceed. It's my understanding that the
18 proposal will be at that point, once that is
19 done, and the Court will determine itself, and I
20 can let you know at this point in time under the
21 circumstances, the Court -- the Court believes
22 that it is in the best interest of -- of all
23 involved, and it's consistent with the -- with
24 the facts to enter a conditional order for a new
25 trial in this case.

1 I make that decision in conjunction with,
2 but yet independent of, in a sense, of anything
3 that's been done here.

4 So the -- I commend everyone for working
5 this case the way it's been worked. The
6 information's come in timely and all, and we've
7 gathered -- we've moved a lot of -- of -- we've
8 covered a lot of ground since we had a first
9 hearing in this case and I'm pleased.

10 Once the order for a new trial is entered,
11 without any further ado, it's my understanding
12 that the -- that a plea proposal has been made
13 in this case would be based on the conditional
14 order for a new trial, that the defendants each
15 wish to accept and the State will -- will make a
16 -- a statement as to certain facts that can be
17 proved by the State in connection with this case
18 upon which a jury, on a new trial, could make a
19 finding of guilt beyond a reasonable doubt.

20 And the defendants will not acknowledge or
21 confess guilt to those, however, the defendants
22 will acknowledge that they are aware that that
23 evidence is there, that it will come in, and
24 that under the circumstances they see a -- a
25 real heavy risk involved in proceeding with the

1 trial as opposed to the alternative of entering
2 an agreed disposition as to lesser and
3 alternative sanctions.

4 So far, is everybody on board and
5 understand? Is that what we're about?

6 MR. BRAGA: Yes, Your Honor.

7 THE COURT: Mr. Echols?

8 MR. ECHOLS: Yes, sir.

9 THE COURT: Mr. Baldwin?

10 MR. BALDWIN: Yes, sir.

11 THE COURT: Mr. Misskelley?

12 MR. MISSKELLEY: Yes, sir.

13 THE COURT: All right, the -- the bottom
14 line of this is going -- and that's what's
15 called an Alford plea. It was approved by the
16 United States Supreme Court in -- in North
17 Carolina v. Alford back a few years ago.

18 It's -- it's effect is a little bit
19 different from -- obviously different from the
20 standard guilty plea where a person actually
21 confesses to the -- and allocutes as to the
22 actual facts charged. And it's a little bit
23 different from a *nolo contendere* plea, in a
24 sense.

25 The Alford plea, I want to make sure

1 everybody's on board. There will be a finding
2 by the Court. Once I find the pleas accepted
3 and everybody's aware of the terms and
4 conditions and it's -- and it's intelligently
5 entered into, there will be a finding by the
6 Court of guilt on the part of all three
7 defendants to the offense of first-degree
8 murder.

9 MR. ROSENZWEIG: Mr. Misskelley will ask --

10 THE COURT: Mr. Misskelley will be --

11 MR. ROSENZWEIG: -- first and two seconds.

12 THE COURT: -- first and two seconds.

13 MR. ROSENZWEIG: That's right.

14 THE COURT: Because that's what his
15 previous trial resolution was.

16 And -- and that will -- and it will play as
17 a conviction for -- for subsequent purposes.

18 In other words, if there is going to be --
19 there will be like a period of suspended
20 imposition of sentence. I'm sure all that's
21 been explained. There are certain conditions,
22 there are certain conditions that apply, for
23 instance, to Mr. -- Mr. Misskelley that may not
24 apply to Mr. Echols, Mr. Baldwin. Y'all have
25 been over those individually, I assume, Mr.

1 Echols?

2 MR. ECHOLS: Yes, sir.

3 THE COURT: And Mr. Baldwin?

4 MR. BALDWIN: Yes, Your Honor.

5 THE COURT: And Mr. Misskelley?

6 MR. MISSKELLEY: Yes, sir.

7 THE COURT: These conditions have to be
8 complied with. The do nots and the do's, and if
9 they're not complied with, then the State can
10 revoke those -- those suspended impositions, you
11 know, and invoke additional time based on a 40-
12 year maximum, less the amount that's been used
13 up by the sentencing in this case, as far as
14 future offense is concerned.

15 If you should draw a new felony charge,
16 this plea, this Alford plea, will likely be
17 useable against you for enhancement or
18 otherwise.

19 Do each of you understand that, Mr. Echols?

20 MR. ECHOLS: Yes, sir.

21 THE COURT: Mr. Baldwin?

22 MR. BALDWIN: Yes, Your Honor.

23 THE COURT: Mr. Misskelley?

24 MR. MISSKELLEY: Yes, sir.

25 THE COURT: The -- and the Court will

1 sentence -- based upon that Alford plea, the
2 Court will sentence each of the defendants to a
3 sentence of -- the bottom line is time served.
4 There are people from the Department of
5 Corrections here who will have the processing
6 paperwork done here on site, so it will not be
7 necessary you be returned to the ADC to be
8 processed out.

9 That will be done, and you'll be given
10 copies -- you've signed off, I assume, you've
11 probably signed off on your conditions, have
12 you, Mr. Echols?

13 MR. ECHOLS: Yes, sir.

14 THE COURT: Mr. Baldwin?

15 MR. BALDWIN: Yes, Your Honor.

16 THE COURT: Mr. Misskelley?

17 MR. MISSKELLEY: Yes, sir.

18 THE COURT: And that will be entered --
19 those will be entered -- judgment of commitment
20 orders will be entered, the conditions will be
21 entered. This is a pre '94 case; I don't think
22 it'll be necessary to do a prosecutor's report
23 or a departure report.

24 So that will be it. And -- and we know
25 from media and otherwise -- and I'm not telling

1 you defendants anything that you don't know --
2 there is a large divergent view out there in the
3 public domain about this case, some more vocal
4 than others, which I suppose is as it should be.
5 It's going to happen anytime you have a matter
6 of this seriousness and with questions and so
7 forth.

8 There's also, I think, a big disconnect
9 between the public purview of a case and the
10 legal system's view of the case, you know. And
11 so that going to be stuff that's going to have
12 to be dealt with, you know, by various people
13 over time and this and that. And actually I may
14 be in a position --

15 (Two attorneys enter the courtroom.)

16 THE COURT: This is closed hearing,
17 counsel. Y'all are welcome to come if you can
18 fit into the open hearing, but --

19 MALE VOICE: Okay.

20 (Attorneys leave the courtroom.)

21 THE COURT: One of those was Mr. Paul Ford,
22 who formerly represented Mr. Baldwin.

23 And the paperwork should all be done to the
24 point that -- that everything can be wrapped up
25 here today.

1 It'll be up to you three, based on your
2 advice of counsel, what you want to do as to
3 what access you will have.

4 I'll lift a gag order after this proceeding
5 goes through in public hearing, so you'll be
6 free to talk to the extent -- and I would simply
7 caution you to listen closely to your counsel
8 insofar as under what circumstances you talk and
9 how you talk. Your counsel has demonstrated an
10 excellent ability to look out for your interest
11 in this case, and I think they bear listening to
12 in that regard.

13 We'll also have an opportunity that
14 counsel, if counsel wishes to speak with the
15 media, they'll be able to. And that counsel
16 will be for the State and for the -- and for the
17 defense.

18 The -- the -- Mr. Echols, the way it --
19 this is a for instance, the recommendation to
20 your case, Mr. Echols, is 216 months and 78
21 days, 18 years and 78 days, imprisonment in the
22 Department of Correction with credit for 216
23 months and 78 days, with a period of suspended
24 imposition of sentence additionally for a period
25 of 120 months, with the same as to B and C, the

1 other two.

2 MR. ECHOLS: Right.

3 THE COURT: So that will be three
4 concurrent dispositions in that regard. And --
5 and I assume it's the same as to the other
6 actions, as to Mr. Baldwin and Misskelley.

7 In your case, Mr. Echols, if -- if your
8 suspension is revoked for violation, we may
9 impose upon you a sentence of up to 252 months
10 and 287 days, 21 years and 287 days in the
11 Department of Corrections. Do you understand
12 that?

13 MR. ECHOLS: Yes, sir.

14 THE COURT: And what are the numbers on Mr.
15 Baldwin?

16 MR. WALDEN: Judge, I -- I -- you may be
17 working from old first drafts.

18 THE COURT: I'm working from what?

19 MR. WALDEN: I've got the -- I've got the
20 final drafts here, and then there's one on each
21 defendant, and you can go from those. I would
22 point out, on Echols and Baldwin, we just added
23 the 120 SIS on -- on one count, so we wouldn't
24 have this concurrent, consecutive --

25 THE COURT: All right.

1 MR. WALDEN: -- so it's -- that makes it
2 clear that it's 122 --

3 THE COURT: Mr. Baldwin 216 months, 78
4 days, with credit for 216 months and 78 days as
5 to the three counts, but the suspended
6 imposition on one count of 120 months.

7 MR. ECHOLS: Yes, Your Honor.

8 THE COURT: And -- and in -- in your case,
9 you would be liable for 252 months and 287 days
10 in the event of a revocation of your suspended
11 imposition. Do you understand that?

12 MR. BALDWIN: Yes, Your Honor.

13 THE COURT: And I believe that would be the
14 same with Mr. Echols.

15 MR. BALDWIN: Yes, sir.

16 THE COURT: And I don't have -- or Mr.
17 Misskelley's, let me see his materials. I've
18 tried to stay up to speed on this, but Mr.
19 Misskelley, yours would be --

20 MR. WALDEN: Same --

21 THE COURT: -- 216 months and 78 days, with
22 credit for -- full credit for that, and 120
23 months suspended imposition on one count.

24 The -- and in -- in the event -- and you
25 would be liable for an additional 252 months and

1 287 days, or 21 years and 287 days in the ADC
2 for a violation or revocation. Do you
3 understand that?

4 MR. MISSKELLEY: Yes, sir.

5 THE COURT: Okay. Those are the numbers I
6 wanted to make sure everybody's clear about.

7 So the understanding is here, you have --
8 you have all executed a -- Mr. Echols, you've
9 executed a guilty plea statement pursuant to
10 Alford in this case?

11 MR. ECHOLS: Yes, sir.

12 THE COURT: Is that correct?

13 MR. ECHOLS: Yes, sir.

14 THE COURT: That's been over by you with
15 your attorneys and fully explain to you and you
16 had your questions answered and signed off on
17 it?

18 MR. ECHOLS: Yes, sir.

19 THE COURT: And the same with you, Mr.
20 Baldwin?

21 MR. BALDWIN: Yes, Your Honor.

22 THE COURT: You've been over yours and
23 signed off on it?

24 MR. BALDWIN: Yes, Your Honor.

25 THE COURT: And Mr. Misskelley?

1 MR. MISSKELLEY: Yes, sir.

2 THE COURT: Okay. Now, at this point in
3 time, does counsel for either the State or the
4 defendants have additional questions you wish to
5 bring up at this hearing in order to make sure
6 there are no unanswered questions? Mr.
7 Rosenzweig.

8 MR. ROSENZWEIG: A venue issue, and we
9 would formally waive venue because Mr.
10 Misskelley is a --

11 THE COURT: As to the --

12 MR. ROSENZWEIG: -- Clay County --

13 THE COURT: -- Clay County venue.

14 MR. ROSENZWEIG: Yes, sir. And so we --

15 THE COURT: All right. Thank you.

16 MR. ROSENZWEIG: -- would waive for --
17 waive venue.

18 THE COURT: All right. Thank you. It's so
19 ordered.

20 MS. ALSWORTH: May I ask for some direction
21 from the Court, please, if that's okay?

22 THE COURT REPORTER: Excuse me.

23 MS. ALSWORTH: I'm -- I'm looking at
24 some --

25 THE COURT REPORTER: Excuse me.

1 THE COURT: Melanie.

2 MS. ALSWORTH: Sir?

3 THE COURT: She's not hearing you. Do we
4 not have a -- we don't have a podium? Don't
5 have room for a podium.

6 MR. ROSENSWEIG: Right there. Right there.
7 Right there in front of you.

8 THE COURT: Here's one right here.

9 MS. ALSWORTH: Yes, sir. Regarding the
10 statement of facts that will be presented this
11 morning, I believe that we've agreed on a rather
12 diluted statement, and I understand the reason
13 for doing that, the sensitive nature of the
14 case.

15 I would just ask for an opportunity this
16 morning while we're in this in-chambers meeting
17 to provide additional facts that the Court could
18 incorporate to find that there is a factual
19 basis for the pleas.

20 THE COURT: All right. All right.

21 MR. HENDRIX: Your Honor, we have an agreed
22 -- and I hope you've had an opportunity to see
23 the agreed factual basis for the pleas.

24 THE COURT: Well, the only one that I've
25 seen is the -- is the long form.

1 THE COURT REPORTER: Could I have a name,
2 please?

3 MR. HENDRIX: Blake.

4 THE COURT: Blake Hendrix.

5 MR. HENDRIX: Your Honor --

6 THE COURT: You represent --

7 MS. ALSWORTH: That's my copy, Your Honor,
8 so --

9 THE COURT: -- Baldwin. Is this the --

10 MR. HENDRIX: That -- that's it, Your
11 Honor. That's the agreed factual basis for
12 the --

13 THE COURT: All right.

14 MR. HENDRIX: -- plea to be read in open
15 court, and we hope Your Honor will read through
16 it and concur that it's sufficient in order to
17 make this legally binding.

18 THE COURT: Well, I -- I said I want to
19 make sure that it is and -- but I don't have any
20 objection if Ms. Alsworth wishes to -- at this
21 hearing, if she wishes to introduce an expanded
22 version of the factual scenario that'll be
23 accepted. You can either do it in written form
24 or you can read it, however you want to do it.

25 MS. ALSWORTH: I would just like to provide

1 some additional facts and I can do it verbally.
2 I don't have anything --

3 THE COURT: Okay.

4 MS. ALSWORTH: -- written that I could
5 submit to the Court.

6 MR. HENDRIX: And, Your Honor, just with
7 that caveat that very likely there may be things
8 said that -- that we dispute. We do not want to
9 get in the way of -- of this proceeding going
10 forward.

11 THE COURT: Well, this proceeding doesn't
12 really -- doesn't really -- the defendants don't
13 -- don't stipulate to the truth of any of the
14 matters, as I understand it. Simply that they
15 are matters that would be in evidence, if the
16 case went forward. Is that correct?

17 MR. HENDRIX: That's correct, Your Honor.
18 The long and short of it is, the document that
19 you have in front of us that was to be read in
20 open court is what we specifically agreed
21 establishes the --

22 THE COURT: You're saying the rest of it
23 has some contested facts in it?

24 MR. HENDRIX: Very likely.

25 THE COURT: Okay.

1 MR. BRAGA: Yes, Your Honor, Stephen Braga
2 for Mr. Echols. Just getting onto that, it's a
3 little unusual case because there's already been
4 a trial and a conviction affirmed by the
5 Arkansas Supreme Court, so the factual basis
6 isn't sort of we don't know anything about what
7 it is, what does the government have, what are
8 they going to show.

9 The brief statement before, Your Honor, we
10 think, in -- in conjunction with the Arkansas
11 Supreme Court's decision on the direct appeals
12 makes it abundantly clear that there's
13 sufficient evidence on which the defendants
14 could be convicted; they were convicted.

15 So I think the basis for an Alford plea is
16 there. I -- I would just worry about going too
17 much into controverted facts for the reasons
18 stated by Mr. Hendrix.

19 THE COURT: Well, I'm doing it in the open
20 session, but I'm talking about doing it in this
21 session and I'll tell you that my position --
22 and I'm thinking out loud -- we're -- we're
23 taking a further step that's been taken. We're
24 -- we're doing a conditional new trial in this
25 case, which puts us back at square one.

1 MR. BRAGA: Right.

2 THE COURT: And we don't assume anything at
3 that point in time. And the factual basis has
4 to be laid in order to justify the plea that's
5 being proposed, even an Alford plea. So -- so
6 I'm going to permit in. I will -- I will permit
7 you to add, amplify the additional factors in
8 the Chambers discussion.

9 Ms. Alsworth, you want to do that now?

10 MS. ALSWORTH: Thank you, Your Honor,
11 whenever --

12 THE COURT: All right.

13 MS. ALSWORTH: -- the Court's ready.

14 THE COURT: All right, and -- and counsel
15 of the three -- and Mr. -- Mr. Echols, Mr.
16 Baldwin, Mr. Misskelley, all saying this
17 abbreviated version?

18 MR. BRAGA: Yes, Your Honor.

19 THE COURT: And I assume they've all been
20 over the expanded version as well?

21 MR. BRAGA: We -- we are aware of what the
22 --

23 THE COURT: You're aware --

24 MR. BRAGA: -- expanded --

25 THE COURT: -- of it and --

1 MR. BRAGA: Yes.

2 THE COURT: -- have talked about it?

3 MS. ALSWORTH: And I don't plan to read the
4 entire thing. I think that there is a paragraph
5 in there that says that there is substantial
6 direct and circumstantial evidence in the record
7 that supports the guilty pleas, and I would just
8 like to briefly go over some of --

9 THE COURT: Okay.

10 MS. ALSWORTH: -- the facts and --

11 THE COURT: Go ahead.

12 MS. ALSWORTH: -- the Court can make
13 findings.

14 Your Honor, as far as the circumstantial
15 evidence is concerned, the autopsy reports on
16 the victims showed that there were many injuries
17 that were consistent with multiple weapons being
18 used. One was a sharp object, such as a knife.
19 One weapon was consistent with the size of a
20 broom handle. One weapon was large and blunt.

21 Additional observations were the knots that
22 were used to bind the victims. The knots were
23 of three different types, indicating that more
24 than one person was involved.

25 Your Honor, I believe that there was

1 evidence collected in the form of fibers from
2 some of the victims' clothing at the scene that
3 was subsequently compared to fibers taken from
4 two of the defendants' homes that were
5 microscopically similar to the fibers collected
6 from the victims' clothing.

7 Also, Your Honor, there was a knife that
8 was found in the lake behind Mr. Baldwin's
9 residence. This knife was a survival-type
10 knife. Believe that the testimony could
11 possibly establish that the pattern of the knife
12 was consistent with some of the injuries on the
13 victims. Testimony from the State would
14 establish that Mr. Echols was known to carry a
15 knife very similar to this, with the only
16 exception on the end of his knife was a compass
17 that was not present on the knife that was
18 recovered from the lake.

19 Your Honor, as far as the direct evidence
20 is concerned, would point the Court to the
21 statements that the State would introduce that
22 were allegedly made by Mr. Echols, admitting his
23 involvement in this case, which was overheard by
24 girls at a softball game.

25 Regarding Mr. Baldwin, he allegedly made a

1 statement while he was in juvenile detention to
2 another detainee in Craighead County.

3 And with Mr. Misskelley, he made statements
4 to law enforcement officers after he was
5 Mirandized, implicating himself in these crimes.
6 The facts from Mr. Misskelley's statement and
7 what we allege Mr. Baldwin's statement to be are
8 consistent with the actual evidence in the case
9 and we'd ask you to consider those as well.

10 THE COURT: All right. And counsel and
11 defendants in the case, you understand that that
12 evidence is out there, that the State purports
13 to introduce it and make the argument based upon
14 it connecting you with this offence. You
15 understand that?

16 MR. ECHOLS: Yes, Your Honor.

17 MR. BALDWIN: Yes, Your Honor.

18 THE COURT: Even though you don't agree
19 with it?

20 MR. ECHOLS: Yes, Your Honor.

21 MR. HENDRIX: And, Your Honor, in response,
22 again, we agree that there is a sufficient
23 factual basis for this Alford plea and not to
24 atomize too much what has just been said, but to
25 show that I know Your Honor is granting our DNA

1 petitions and, in the conditional order, finding
2 that there has been presented to you clear and
3 convincing evidence that a reasonable fact
4 finder could acquit these gentlemen. And --

5 THE COURT: I think they use the term
6 compelling, perhaps.

7 MR. HENDRIX: That's correct, Your Honor.

8 MR. BRAGA: That's correct, Your Honor.

9 THE COURT: I think they used the term
10 compelling --

11 MR. HENDRIX: Yes, sir.

12 THE COURT: -- and -- and the Court's job
13 is to determine whether -- whether a new jury
14 hearing the same situation that was heard before
15 plus everything that's come in since then, would
16 likely reach a different result --

17 MR. HENDRIX: Yes, sir, that would --

18 THE COURT: -- than was reached before.

19 MR. HENDRIX: And largely, Your Honor, that
20 was based on now scientific evidence that has
21 shown that the knife in question was very likely
22 not, in fact, a murder weapon, but that the
23 wounds that have been referenced were actually
24 caused by animal predation.

25 THE COURT: Well, I'm -- I'm aware of

1 those, yeah, of those arguments.

2 MR. HENDRIX: Okay.

3 THE COURT: The -- while we're on that
4 point, the Court has not yet ruled -- did not
5 rule. Three things come to mind and I'm sure
6 counsels' been over these with the -- the
7 defendants.

8 One was the -- the jury misconduct issue --
9 the juror misconduct issue that related to the
10 jury foreperson in the Craighead County trial
11 with Mr. Echols had not been ruled on at this
12 point.

13 And the -- another one was the -- was to
14 what extent the -- the DNA that -- obviously the
15 DNA that was already in in front of the Supreme
16 Court, you know, stays in and is, I think, is
17 probably the most compelling DNA that's been
18 received to this point, you know, following the
19 subsequent, you know.

20 The further and further removed we get from
21 the locus in the case, you know, the negative
22 findings mean perhaps less. But in any event,
23 also I haven't ruled on that, although my -- my
24 view is to let whatever DNA is out there come
25 in, certainly at the evidentiary hearing before

1 me.

2 The Supreme Court also authorized me to do
3 whatever the Court felt was appropriate insofar
4 as how to handle Mr. Misskelly's statement that
5 was used against him at his own trial, as to how
6 it might be used against the other two
7 defendants in the case. And the Court has not
8 made a ruling on that. The Supreme Court even
9 indicated I could do it by affidavit or I could
10 do it by -- by the statements themselves or
11 otherwise.

12 And I haven't -- I'm not exactly sure,
13 following it all the way through, whether or not
14 how I handle it at the evidentiary hearing would
15 be necessarily binding on how we handle it at
16 the -- at a new trial when a new trial was
17 granted, you know.

18 But I'll simply say along those lines that
19 it's -- and I don't think I'm telling counsel
20 for either side anything that y'all don't
21 already know, that I believe that in matters of
22 that -- that importance, the right to cross
23 examine is very important. And the Court's
24 inclination is to preserve the right to cross
25 examine without regard to the latitude given to

1 me in the Supreme Court decision.

2 I just believe that, well, that's a basic
3 fundamental -- fundamental right.

4 So those issues, and I don't think -- I
5 can't recall any other issues that were not
6 really touched on by the Court, can counsel?

7 MR. BRAGA: No, Your Honor.

8 THE COURT: Okay. Now, and so far -- so
9 far, Mr. Echols, are you up to speed on what
10 we've talked --

11 MR. ECHOLS: Yes, sir.

12 THE COURT: -- about here? And you, Mr.
13 Baldwin?

14 MR. BALDWIN: Yes, Your Honor.

15 THE COURT: And Mr. Misskelley?

16 MR. MISSKELLEY: Yes, sir.

17 THE COURT: Okay, are there any other --
18 does counsel have any other questions about the
19 proceedings?

20 MR. BRAGA: None for Mr. Echols, Your
21 Honor.

22 MR. COPELIN: One -- one thing, Judge, is
23 the Court commonly, when you take a plea,
24 advised that the defendants have accepted the
25 plea offer, but in this case, actually the

1 defendants proposed the Alford plea offer and
2 the State accepted it.

3 If that's -- that's the facts and that's
4 the -- the position that we take, so I don't
5 know if that --

6 THE COURT: I'll simply state the plea
7 agreement has been reached.

8 MR. COPELIN: That's fine. Thank you.

9 THE COURT: I don't really care which way
10 it started or which way it's emanated from or
11 to, but that a plea agreement has been reached.

12 MR. ELLINGTON: Thank you.

13 THE COURT: Mr. Echols, do you have any
14 questions you wish to ask your counsel or the
15 Court at this point about these proceedings?

16 MR. ECHOLS: None that I can think of right
17 now, sir.

18 THE COURT: All right, Mr. Baldwin?

19 MR. BALDWIN: No, sir, Your Honor.

20 THE COURT: Mr. Misskelley?

21 MR. MISSKELLEY: No, sir.

22 MR. COPELIN: And one other thing, are you
23 going to ask -- are we going to hear how each of
24 the defendants plan to respond to you here in
25 Chambers as far as how they plea, so that --

1 that we can -- so that you can know how, you
2 know, the wording that the --

3 THE COURT: Let me hear from counsel first.

4 MR. BRAGA: Yes, Your Honor.

5 THE COURT: Mr. Braga.

6 MR. BRAGA: Consistent with our discussion
7 yesterday, Mr. Echols will say at the
8 appropriate point, Your Honor, I am innocent of
9 these charges, but I am entering a guilty plea
10 pursuant to Alford based on my counsels' advice
11 in light of the fact that I've determined it's
12 in my best interest based on the entire record.

13 THE COURT: You're prepared to do that, Mr.
14 Echols?

15 MR. ECHOLS: Yes, sir.

16 THE COURT: And Mr. Baldwin?

17 MR. BALDWIN: Yes, Your Honor.

18 THE COURT: Same for you?

19 MR. BALDWIN: Yes, Your Honor.

20 THE COURT: And Mr. Misskelley?

21 MR. MISSKELLEY: Yes, sir.

22 THE COURT: Okay, does counsel wish to make
23 a statement and let the -- and let them agree
24 with it from the standpoint of wording?

25 MR. BRAGA: That would probably be easier,

1 Your Honor. I did want to make a brief
2 statement about sort of why I think an Alford
3 plea is appropriate for the record, but --

4 THE COURT: State it.

5 MR. BRAGA: -- it would be very brief.

6 THE COURT: Go ahead and state it, if you
7 want to now.

8 MR. BRAGA: Yes, Your Honor. This -- this
9 obviously, as you said, there's a large
10 divergence of opinion on this case. It's been a
11 war for 18 years.

12 The Alford plea is a unique kind of plea,
13 rarely used, but there specifically for the best
14 interest of the defendant, the interest of
15 justice and judicial efficiency when you have
16 this kind of war. How do we stop this war?
17 They're forced to fight for 18 more years.
18 Alford plea says no. The defendants get to
19 maintain their innocence, the prosecution gets a
20 guilty plea, finality is reached.

21 The -- the requirement of Alford, adopted
22 by the Supreme Court in North Carolina v. Alford
23 that Your Honor cited, is it's got to be in the
24 best interest of the defendant. So what's the
25 trigger for that? That he could be convicted,

1 that there is some evidence out there that could
2 convict him.

3 In Mr. Echols case, the -- the softball
4 girls referenced by Ms. Alsworth, if their
5 testimony alone were accepted by a jury and the
6 jury didn't pay attention to anything else, that
7 would be sufficient to convict him; he
8 understands that.

9 He's on death row. This deal allows him to
10 get off of death row. That's Alford. And
11 Alford is not --

12 THE COURT: The stakes are very high --

13 MR. WHATEVER: -- pled --

14 THE COURT: -- in other words.

15 MR. WHATEVER: -- to avoid the death
16 penalty. So the Alford plea is particularly
17 appropriate in this case for Mr. Echols, we
18 would say, Your Honor.

19 THE COURT: All right, Mr. Hendrix.

20 MR. HENDRIX: Your Honor, what I would
21 simply propose is, is if I said Mr. Baldwin was
22 pleading guilty pursuant to North Carolina v.
23 Alford and Arkansas Rules of Criminal Procedure,
24 Rule 24.

25 THE COURT: And he will agree with that?

1 MR. BALDWIN: Yes, Your Honor.

2 THE COURT: All right, and --

3 MR. ROSENZWEIG: And --

4 THE COURT: Mr. Rosenzweig.

5 MR. ROSENZWEIG: -- and I'll probably
6 say -- I'll do something similar, Your Honor,
7 and Mr. Misskelley will -- will agree.

8 THE COURT: Okay.

9 MR. COPELIN: So you're -- the defendants
10 are actually not going to say I'm pleading
11 guilty pursuant to Alford.

12 THE COURT: They're pleading guilty
13 pursuant to Alford in North Carolina versus
14 Alford.

15 MR. COPELIN: But it's not coming out of
16 their mouth, it's coming out of --

17 THE COURT: It's going to --

18 MR. COPELIN: -- counsels' mouth.

19 THE COURT: -- come out of counsels' mouth
20 and then they're going to agree that that is
21 their plea.

22 MR. COPELIN: I thought that when we talked
23 earlier you were going to -- that --

24 THE COURT: I mean they will state that is
25 their plea. I think the wording is -- is

1 important, though.

2 MR. COPELIN: And --

3 THE COURT: And I'm not wanting it unless
4 we have to have each of the defendants try to
5 wing it separately.

6 MR. COPELIN: But the Court actually asked
7 counsel in a brief -- just a conference
8 yesterday if they were going to pen something
9 for their -- so that their clients could read it
10 aloud during -- you asked if they were going to
11 compose something for them to -- to --

12 THE COURT: And I don't think they said
13 they -- they were. They said they could work it
14 out, something of that nature and that's what
15 we're doing here sort of.

16 MR. COPELIN: Well, and that's what I'm
17 asking you if -- I mean, I -- I would -- the
18 State would prefer to hear it come from the
19 defendants' mouth if -- if they have to write it
20 on a post-it card and let them read it, that --
21 that it comes out of their mouth that I am
22 pleading guilty pursuant to North Carolina v.
23 Alford. That -- that's what I've told the
24 victims' families because that was my
25 understanding originally that was going to be

1 said.

2 And so that's why I'm -- I'm just -- if I
3 hadn't told the victims' families that, and I'm
4 not trying to be --

5 THE COURT: Well, what I'm going to do is
6 ask counsel to say -- that I'm going to ask the
7 defendants themselves if they are in fact
8 pleading guilty under North Carolina v. Alford
9 because they believe it's in their best interest
10 to do so, all things considered in this case.
11 And they will answer me yes.

12 MR. COPELIN: Understand. I -- I --

13 THE COURT: Doesn't that accomplish what
14 you're talking about?

15 MR. COPELIN: I wanted the words -- I
16 wanted to hear the words coming out of their
17 mouth: I plead guilty pursuant to -- or
18 pursuant to U.S. -- North Carolina v. Alford, I
19 plead guilty.

20 And -- and that's what I wanted to hear,
21 but the Court --

22 THE COURT: All right, if you want to write
23 something down for them to say, that's fine.

24 MR. RIORDAN: Whatever way Your Honor wants
25 to --

1 THE COURT: Go ahead --

2 MR. RIORDAN: -- do it. We --

3 THE COURT: -- and do that --

4 MR. RIORDAN: -- have written it down --

5 THE COURT: -- Mr. Braga --

6 MR. RIORDAN: -- for Mr. Echols.

7 THE COURT: -- to satisfy the State.

8 MR. COPELIN: Thank you.

9 THE COURT: And -- and counsel, just, you
10 know, if it wants to come out that way, fine.
11 We -- we'll short circuit the process that way.

12 MR. HENDRIX: And -- and, Your Honor, as
13 agreed upon wording that I'm going to write for
14 my client, I'm going to write that I, Jason
15 Baldwin, plead guilty pursuant to North Carolina
16 v. Alford and Rule 24 of the Arkansas Rules of
17 Criminal Procedure, and I believe I am innocent.

18 MR. COPELIN: That's fine.

19 THE COURT: That's fine.

20 MR. COPELIN: That -- that's -- I just
21 wanted to hear it because that's what I told the
22 victims' families.

23 MR. HENDRIX: Although I believe myself to
24 be innocent of the charges.

25 THE COURT: Okay, fine. And each of you do

1 that sort of thing, I don't think we'll have a
2 problem at all.

3 MR. HENDRIX: Very good, Your Honor.

4 THE COURT: Okay. All right, anything
5 else, counsel?

6 MR. BRAGA: Nothing from Mr. Echols, Your
7 Honor.

8 THE COURT: All right, we've got about 20
9 minutes before we open the matter up.

10 MS. ALSWORTH: You have my statement.

11 THE COURT: I do?

12 MS. ALSWORTH: Yes, sir.

13 THE COURT: This one?

14 MS. ALSWORTH: Yes, sir.

15 THE COURT: Okay.

16 MS. ALSWORTH: Thank you.

17 MR. COPELIN: And to make it clear,
18 Melanie's not going to read the -- this added
19 facts when the public gets here.

20 THE COURT: This is correct. She'll read
21 the short form that's --

22 MR. COPELIN: Right.

23 THE COURT: -- that's been agreed on
24 between counsel.

25 MR. HENDRIX: All right, Thank you.

1 THE COURT: All right, we'll reconvene here
2 at 11:00.

3 Yes, Sheriff?

4 THE SHERIFF: Your Honor, Mr. Byers has
5 been out in front of the courthouse, ex-
6 tremely --

7 THE COURT: Byers?

8 THE SHERIFF: Yes, sir. -- extremely vocal
9 and extremely hostile and has made some threats.

10 THE COURT: Well --

11 THE SHERIFF: So I don't know what his
12 actions are going to be in hearing.

13 THE COURT: Well, if he's -- if he appears
14 to be a security risk at any point in time, or a
15 disruptive risk at any point in time, I have no
16 problem with him being kept out of the hearing.

17 MR. COPELIN: Mr. Branch as well.

18 THE COURT: Huh?

19 MR. COPELIN: And Mr. Branch as well. He's
20 the one that went over --

21 THE COURT: Branch is the one that was on
22 the -- I understand that. But, no, I do not
23 want any -- I want to err on the side of
24 security. All these, Mr. Echols, Mr. Baldwin,
25 and Mr. Misskelley are in our protective custody

1 at this point, and I want everybody protected
2 and even if it means -- I mean, I -- I don't
3 want to be in the business of excluding victim
4 family from the public proceedings, but by the
5 same token if the risks -- the security impact
6 outweigh the benefits of them being here, then
7 they are to be kept out.

8 I'm going to leave that in your discretion.

9 THE SHERIFF: Thank you, Your Honor.

10 THE COURT: Then they can watch it on --
11 they can watch it on the feed that we're going
12 to have.

13 Okay, we're adjourned. We'll be back in
14 session at 11:00.

15 (Court stood adjourned briefly at 10:48
16 a.m.)

17 THE COURT: Good morning, ladies and
18 gentlemen. Be seated please, those of you who
19 can.

20 All right, I'm David Laser, Circuit Judge,
21 Division Nine, the Second Judicial District of
22 the state of Arkansas, which includes both
23 Craighead and the Western District of Clay
24 County, Arkansas, as well as seven other
25 courthouses in single or split districts in this

1 district.

2 We're on the record in the cases of State
3 of Arkansas versus Damien Echols, Charles Jason
4 Baldwin, Craighead CR-93-450 and 458. And we're
5 also here on Clay Western, CR-93-147, Jessie
6 Lloyd Misskelley, Jr.

7 The Court notes that -- that all three
8 defendants are present and were also present at
9 a preliminary closed-session hearing that was
10 just conducted with no affirmative action being
11 taken. It was simply in order to make sure that
12 everybody was completely informed and onboard as
13 to what has been proposed to the Court by the
14 parties in this case.

15 Counsel have been previously identified and
16 we have on behalf of Mr. Echols, Mr. Dennis
17 Riordan, Mr. Donald Horgan, Mr. Stephen Braga,
18 Ms. Laura H. Nirider and Mr. Patrick Benca.

19 We have counsel on behalf of Mr. Baldwin
20 Mr. Blake Hendrix and Ms. Erin Cassinelli.

21 And we have counsel on behalf of Mr.
22 Misskelley Mr. Jeff Rosenzweig.

23 The State is represented in this case by
24 Mr. Scott Ellington, prosecutor for the Second
25 Judicial District, and deputy prosecutors

1 Melanie Alsworth, Michael Walden, and Alan
2 Copelin.

3 As indicated, subject to the Court's
4 approval, certain dispositive agreements have
5 been reached by and between the State and the
6 defendants in this case to bring a resolution to
7 the issues in this case. I have been presented
8 for review a conditional order for a new trial
9 in this case, which if approved by the Court
10 would, in order to reinvest this Court in the
11 jurisdiction of this matter in order that this
12 Court might be in full power to do whatever is
13 necessary to be done to implement the -- the
14 plea agreement and to enter final judgments and
15 commitments in this case, would have to be
16 approved subject to additional steps to be
17 taken, upon which that is a condition.

18 The conditional order for a new trial is --
19 is one that's presented by agreement of the
20 parties.

21 Mr. Walden, tell me the State's position as
22 relates to the proposed continued conditional
23 order.

24 MR. WALDEN: Your Honor, as the Court
25 indicated, you should have two orders in front

1 of you that were agreed to by the parties -- all
2 the parties for the defendants and the State.
3 One is in the Clay County case involving Mr.
4 Misskelley. The other's in the Craighead
5 County case --

6 THE COURT: Speak up a little bit or either
7 move forward toward the reporter, please.

8 MR. WALDEN: The other is in the Craighead
9 County case involving Mr. Echols and Mr.
10 Baldwin. Each of these are titled order of
11 conditional order granting new -- conditional
12 order of new trial.

13 It's an effort by the parties, really, in
14 response to recent overtures by the defense to
15 bring this matter to a resolution.

16 And if the conditions as set forth in those
17 orders are met, then the State is agreeable to
18 the dispositions that -- that are contemplated
19 by those orders.

20 I think that if the Court wants me to
21 summarize them, essentially we're asking the
22 Court to -- to grant these -- grant the -- in
23 accordance with the jurisdiction that you've
24 assumed, go ahead and grant the new trials,
25 making the findings necessary to grant those new

1 trials or recognizing that this granting of a
2 new trial is on the condition that -- or is on
3 the condition that certain other conditions are
4 met after that, and those would be the entry of
5 the pleas that are contemplated by the parties.

6 I believe it contemplates entries by Mr.
7 Echols and Mr. Baldwin to three guilty pleas
8 pursuant to Alford versus North Carolina, and
9 everyone, I think, is aware that that's the
10 method by which someone can enter a plea of
11 guilty and still maintain innocence.

12 Mr. Baldwin and Mr. Echols would enter the
13 pleas to the three counts of murder. Mr.
14 Misskelley, in accordance with -- more in line
15 with his jury verdict from Clay County, would
16 enter a plea to one first-degree murder count,
17 two second-degree murder counts on the first-
18 degree murder count. He would get the same
19 sentence as the others.

20 Each of them involves a sentence to
21 essentially -- the Court has the numbers in
22 front of him. They are -- they are timed-served
23 sentences that would be followed by an
24 additional period of suspended imposition of
25 sentence that would last for 10 years from this

1 date.

2 That has certain conditions, obviously the
3 most significant of which to, you know, be of
4 law-abiding character and not violate the laws
5 of the State of Arkansas or any other state.

6 The State's position is that we're
7 agreeable to a new trial being granted for that
8 sole purpose.

9 THE COURT: The State acknowledges for the
10 basis proposed to the Court as a conditional new
11 trial, that there is a basis for the Court to
12 grant a new trial --

13 MR. WALDEN: We --

14 THE COURT: -- in this case.

15 MR. WALDEN: -- we acknowledge that the
16 Court, based on the record before it, could make
17 that finding.

18 And -- and based on that we are entering
19 into this agreement, but again, for the sole
20 purpose of allowing the pleas to take place with
21 the understanding that if the pleas don't take
22 place, the Court would rescind its order of a
23 new trial, and that would be revoked and we will
24 be back on the track that we've been for the
25 last several years, heading toward a new

1 trial --

2 THE COURT: We'd proceed to gather evidence
3 and have an evidentiary hearing on December 5th
4 as scheduled, towards the end of the Court
5 making a ruling as to whether or not it
6 recommends a new trial in the case.

7 MR. WALDEN: Is that sufficient --

8 THE COURT: I think so.

9 MR. WALDEN: -- for the State?

10 THE COURT: I want to hear from the
11 defense. Someone on behalf of -- Mr. Braga?

12 MR. BRAGA: Yes, Your Honor, on behalf of
13 Mr. Echols. Mr. Walden has accurately
14 summarized the understanding between the
15 parties. Mr. Echols has been advised about it.
16 We're agreeable to the conditional order for a
17 new trial to implement the other two steps of
18 the recommendation, the Alford plea and the
19 sentence, which I understand we'll discuss a
20 little more in detail later.

21 THE COURT: All right, Mr. Hendrix.

22 MR. HENDRIX: And, Your Honor, I echo the
23 words of Mr. Braga and Mr. Walden. This is a
24 fair summary of the agreement that's been
25 reached between the parties in the ultimate

1 resolution of the case. Thank you.

2 MR. ROSENZWEIG: And Mr. Misskelley is in
3 concurrence with everyone else.

4 THE COURT: Okay, and, Mr. Echols, you
5 heard what your counsel has said. You're in
6 agreement with that?

7 MR. ECHOLS: Yes, sir.

8 THE COURT: And Mr. Baldwin?

9 MR. BALDWIN: Yes, Your Honor.

10 THE COURT: And Mr. Misskelley?

11 MR. MISSKELLEY: Yes, Your Honor.

12 THE COURT: Thank you. The Court having
13 received evidence since we had our initial
14 scheduling in this case and hearing the proposal
15 of the parties, believes that there is a basis
16 in this case for its ordering a new trial,
17 conditional on the fulfillment of certain other
18 requirements of this proposed Alford plea. And
19 the Court will enter a conditional order for a
20 new trial at this time on behalf of both Mr.
21 Echols, Mr. Baldwin, and Mr. Misskelley.

22 MR. BRAGA: Thank you, Your Honor.

23 THE COURT: It's my understanding now as
24 relates to the -- and an order will be entered
25 to that effect.

1 Now that we're at the state where the Court
2 has entered an order of a new trial in the case,
3 before we proceed on with the -- with the plea
4 in the case, counsel -- does the State wish to
5 make -- does the State have a recommendation or
6 wish to modify the charges in this case before
7 we proceed to sentencing and guilty plea?

8 MR. COPELIN: Your Honor, yes. You have
9 the paperwork there in your hands. The State
10 will so move to amend the charges we previously
11 filed to those reflecting first-degree murders,
12 three counts, for Mr. Echols; first-degree
13 murder for three counts for Mr. Baldwin; one
14 first-degree murder and two second-degree
15 murders for Mr. Misskelley, commensurate with
16 the negotiated plea that you have with you.

17 THE COURT: All right. All right, the
18 Court will so note and the charges will be
19 modified accordingly.

20 The -- at this point in time I want to
21 proceed with the -- with the Alford plea.

22 If you would, please, Mr. -- Mr. Echols,
23 Mr. Baldwin, Mr. Misskelley, if you would stand,
24 please, and face the Court and speak up loudly
25 enough that you can be heard.

1 You are Damien Echols?

2 MR. ECHOLS: That's correct.

3 THE COURT: Mr. Echols, how old are you?

4 MR. ECHOLS: I am 36 years old.

5 THE COURT: How much education and
6 schooling do you have?

7 MR. ECHOLS: Ninth grade high school,
8 completed a GED after that.

9 THE COURT: All right, are you under the
10 influence of any drugs, alcohol, medication, or
11 substance?

12 MR. ECHOLS: None at all.

13 THE COURT: And, Mr. Baldwin, how old are
14 you?

15 MR. BALDWIN: I'm 33, Your Honor.

16 THE COURT: How much education or schooling
17 do you have?

18 MR. BALDWIN: Completed seventh grade, I've
19 earned my diploma through GED, and I have 30
20 plus hours of college.

21 THE COURT: Are you under the influence of
22 any drugs, alcohol, medication, or substance?

23 MR. BALDWIN: No, Your Honor.

24 THE COURT: Mr. Misskelley, how old are
25 you, sir?

1 MR. MISSKELLEY: Thirty-six.

2 THE COURT: How much education or schooling
3 do you have?

4 MR. MISSKELLEY: The ninth grade, sir.

5 THE COURT: Ninth grade?

6 MR. MISSKELLEY: Yes, sir.

7 THE COURT: Do -- do you read and write and
8 understand English?

9 MR. MISSKELLEY: Yes, sir.

10 THE COURT: Have you been over all the
11 paperwork with your counsel, had your questions
12 answered, and had things read to you that you
13 could not read for yourself and fully understand
14 what's going on here?

15 MR. MISSKELLEY: Yes, sir, I do.

16 THE COURT: All right, are you under the
17 influence of any drugs, alcohol, medication, or
18 substance?

19 MR. MISSKELLEY: No, sir.

20 THE COURT: Okay, for the three of you here
21 on charges -- Mr. Echols, Mr. Baldwin, you're
22 here on charges of three counts of first-degree
23 murder as opposed to capital murder.

24 And Mr. Misskelley, you're here on the
25 charge of first-degree murder and two counts of

1 second-degree murder. Do you understand that?

2 MR. MISSKELLEY: Yes, sir.

3 THE COURT: Do each of you understand that
4 -- that you do not have to plead guilty in any
5 form or fashion to any of these charges, but
6 have a right to go further and go fully to have
7 the Court proceed to rule as to whether or not
8 you're entitled to a new trial?

9 And if you be determined to be entitled to
10 a new trial, to fully challenge the proceedings
11 through trial, a new trial, through verdict and,
12 if adverse to you, on appeal.

13 Do you understand that, Mr. Echols?

14 MR. ECHOLS: Yes, sir.

15 THE COURT: Do you understand that, Mr.
16 Baldwin?

17 MR. BALDWIN: Yes, Your Honor.

18 THE COURT: And you understand that, Mr.
19 Misskelley?

20 MR. MISSKELLEY: Yes, Your Honor.

21 THE COURT: And do you understand that
22 during those proceedings you would all have, as
23 you have in the past, you all have full -- you'd
24 have a right to be fully and completely
25 represented by counsel at all stages of the

1 proceeding, whether it be for a determination of
2 motions, whether it be determination of trial,
3 whether it be subpoenaing witnesses, whether it
4 be cross-examining State's witnesses as to
5 whether or not to -- to testify, and as to all
6 your rights and obligations in the proceedings.

7 Do you understand that, Mr. Echols?

8 MR. ECHOLS: Yes, Your Honor.

9 THE COURT: Do you understand that, Mr.
10 Baldwin?

11 MR. BALDWIN: Yes, Your Honor.

12 THE COURT: And Mr. Misskelley?

13 MR. MISSKELLEY: Yes, Your Honor.

14 THE COURT: Do you further understand that
15 if you proceed forward with this plea, this
16 Alford guilty plea, and it is accepted by the
17 Court, each of you will have waived and given up
18 your right for the Court to -- to go to jury
19 trial in this case? And you will have waived
20 any right to appeal from any sentence that's
21 imposed here today.

22 Do you understand that Mr. Echols?

23 MR. ECHOLS: I do understand that.

24 THE COURT: Mr. Baldwin?

25 MR. BALDWIN: I do, Your Honor.

1 THE COURT: And Mr. Misskelley?

2 MR. MISSKELLEY: I do understand, Your
3 Honor.

4 THE COURT: Knowing all this at this point
5 in time -- and does counsel -- does counsel
6 agree so far that the proceedings in this case
7 are in the best interest of the -- of the
8 defendants, Mr. Braga?

9 MR. BRAGA: Yes, we do, Your Honor.

10 THE COURT: And Mr. Hendrix?

11 MR. HENDRIX: I do, Your Honor.

12 THE COURT: And Mr. Rosenzweig?

13 MR. ROSENZWEIG: I do also, Your Honor.

14 THE COURT: At this point in time I would
15 like to ask the -- the State to -- to read a
16 statement of agreed information that is going to
17 be offered -- that would be offered as evidence
18 in this case if this matter went to trial, which
19 in addition to a more amplified statement made
20 in chambers would provide the basis for the --
21 for the plea.

22 Ms. Alsworth?

23 MS. ALSWORTH: Yes, Your Honor. The State
24 would offer evidence in its case-in-chief that
25 would substantially prove the guilt of all three

1 defendants as follows:

2 That on the evening of May 5, 1993, three
3 children were reported missing, Steven Branch,
4 Chris Bowers, and Michael Moore. The next day
5 they -- their bodies were found in an area known
6 as Robin Hood Hills. The State would provide
7 evidence as to the cause of death for each of
8 these children, the manner of death for each
9 child, being that of the homicide. That in the
10 course of the investigation by the West Memphis
11 Police Department that the defendant, Jessie
12 Misskelley, was interviewed and confessed to his
13 participation. That the State would also
14 provide testimony that defendant Baldwin made
15 incriminating statements while he was in
16 juvenile detention. And that defendant Echols
17 also made incriminating statements to a group of
18 individuals.

19 Additional direct and circumstantial
20 evidence would be offered by the State to prove
21 the guilt of the defendants and would
22 corroborate the statements made by each.

23 THE COURT: All right, having heard those
24 statements, Mr. Echols, what -- how do you wish
25 to plea in this case?

1 MR. ECHOLS: Your Honor, I am innocent of
2 these charges, but I'm entering an Alford guilty
3 plea today based on the advice of my counsel and
4 my understanding that it's in my best interest
5 to do so, given the entire record.

6 THE COURT: Have you been threatened or
7 coerced or intimidated in any way to give rise
8 to this plea?

9 MR. ECHOLS: No, sir, I have not.

10 THE COURT: And you are entering this plea
11 because you believe that it is in your best
12 interest to do so, and want to go this route as
13 opposed to taking the risk of -- of higher
14 penalties and more -- and more penalties at
15 trial?

16 MR. ECHOLS: That's correct.

17 THE COURT: Mr. Baldwin, having heard the
18 statement made by the State as to a portion of
19 the proof that's expected in this case, how do
20 you choose to plea in this case?

21 MR. BALDWIN: Your Honor, first of all I am
22 innocent of murdering Chris Bowers, Michael
23 Moore and Stephen Branch; however, I've been
24 serving 18 years in the penitentiary for such.
25 I agree that it is in the State's best interest,

1 as well as my own, that based upon North
2 Carolina versus Alford, that I plead guilty to
3 first-degree murder for those crimes.

4 THE COURT: All right, and the same as it
5 relates to you, Mr. Misskelley. How do you wish
6 to plea in response to the provable charges in
7 this case?

8 MR. MISSKELLEY: I am pleading guilty under
9 North Carolina versus Alford and the Arkansas
10 Rules although I am innocent. This is -- and --
11 and this plea is in my best interest.

12 THE COURT: All right, thank you. Do each
13 of you, Mr. Echols, are you fully and completely
14 satisfied with the service, advice, council of
15 all your attorneys that have been representing
16 you in this case --

17 MR. ECHOLS: Yes, sir.

18 THE COURT: -- in connection with these
19 post-conviction proceedings?

20 MR. ECHOLS: Very much so, yes.

21 THE COURT: All right, any complaints
22 whatsoever?

23 MR. ECHOLS: None.

24 THE COURT: And, Mr. Baldwin, I'll ask you
25 the same question. Are you fully and completely

1 satisfied with the service, advice, council of
2 your representatives -- attorney representatives
3 in this case that have handled these post-
4 conviction proceedings on your behalf?

5 MR. BALDWIN: Your Honor, I am.

6 THE COURT: Any complaints whatsoever?

7 MR. BALDWIN: No, sir.

8 THE COURT: And, Mr. Misskelley, I'll ask
9 you the same question. Are you fully and
10 completely satisfied with the service of your
11 attorney in handling these post-conviction
12 proceedings and advising you and getting us to
13 this point?

14 MR. MISSKELLEY: Yes, sir, I am.

15 THE COURT: Have any complaints whatsoever
16 --

17 MR. MISSKELLEY: No, sir --

18 THE COURT: -- toward --

19 MR. MISSKELLEY: -- I have none.

20 THE COURT: -- your counsel?

21 MR. MISSKELLEY: No, sir.

22 THE COURT: The Court finds that this is a
23 complying plea within -- that's a basis pursuant
24 to North Carolina versus Alford, that there is a
25 factual basis for the plea, and that the pleas

1 are voluntary and will be accepted and received
2 by the Court.

3 Having said that, the -- the plea agreement
4 in this case indicates that, as relates to -- to
5 you, Mr. Echols, the proposed plea and sentence
6 recommendation would be that, as to one count of
7 first-degree murder, you would be -- as to three
8 counts of first-degree murder, you'd be
9 sentenced to concurrent sentences of 216 months
10 and 78 days, 18 years and 78 days, in the
11 Department of Correction, with credit for that
12 full sentence, 216 months and 78 days jail time,
13 followed on one count only by a 120-month period
14 of suspended imposition of sentence, subject to
15 your compliance with certain terms and
16 conditions, all of which are set forth on
17 paperwork that you've been over with your
18 counsel and signed off on. Is that correct?

19 MR. ECHOLS: That's correct, sir.

20 THE COURT: And is that a correct statement
21 of the proposal in your particular case?

22 MR. ECHOLS: Yes, sir.

23 THE COURT: And, Mr. Baldwin, as relates to
24 the proposed plea and sentence recommendation in
25 your case, the -- the same recommendation would

1 be made as relates to Mr. Echols; do you
2 understand that?

3 MR. BALDWIN: I do, Your Honor.

4 THE COURT: And you understand that it
5 would be time served, and on one count it would
6 be subject to a 120-month period of suspended
7 imposition of sentence?

8 MR. BALDWIN: Yes, Your Honor.

9 THE COURT: And, Mr. Misskelley, you
10 understand in your case that there'd be one
11 count of murder in the first degree with the
12 same basic sentence that's recommended in Mr.
13 Echols, Mr. Baldwin, and a 120-month period of
14 suspended imposition on that single count --

15 MR. MISSKELLEY: Yes, Your Honor.

16 THE COURT: -- with two-- with two counts
17 of second-degree, as was the result of your
18 first trial?

19 MR. MISSKELLEY: Yes, Your Honor.

20 THE COURT: And is that the correct plea
21 and sentence recommendation in your case?

22 MR. MISSKELLEY: Yes, sir.

23 THE COURT: And in your case, Mr. -- Mr.
24 Misskelley, you understand that if you should,
25 during the course of the 120-month period of

1 suspended imposition and sentence, fail to
2 comply in any way with those terms and
3 conditions, draw another charge or otherwise
4 violate that law or the conditions of your
5 suspended imposition, you could be -- that --
6 that suspended sentence could be revoked and
7 you'd be required to serve an additional 252
8 months and 287 days, 21 years and 287 days, in
9 the Arkansas Department of Corrections? Do you
10 understand that?

11 MR. MISSKELLEY: Yes, sir, I understand.

12 THE COURT: And that has been fully
13 explained to you by counsel?

14 MR. MISSKELLEY: Yes, sir.

15 THE COURT: And you've signed off on
16 documentation to that effect?

17 MR. MISSKELLEY: Yes, sir, I have.

18 THE COURT: And, Mr. Echols, by the same
19 token, a violation or a failure to comply with
20 terms and conditions of your suspended
21 imposition of sentence during that time frame
22 would result in your being liable for up 252
23 months and 287 days, 21 years and 287 days,
24 additional in the Arkansas Department of
25 Corrections?

1 MR. ECHOLS: Yes, Your Honor.

2 THE COURT: You've each been over -- and,
3 Mr. Baldwin, the same for you; is that correct?

4 MR. BALDWIN: Yes, Your Honor.

5 THE COURT: You've each been over the --
6 you've each been over your conditions of
7 suspended imposition, which are not necessarily
8 the same for each of you. There are differences
9 in, but you've been over them item by item with
10 your counsel and signed off on them in agreement
11 of those; is that correct, Mr. Echols?

12 MR. ECHOLS: Yes, sir, I have.

13 THE COURT: And, Mr. Baldwin?

14 MR. BALDWIN: Yes, Your Honor.

15 THE COURT: And, Mr. Misskelley?

16 MR. MISSKELLEY: Yes, Your Honor.

17 MALE VOICE: Your Honor, if you go do this,
18 you're going to open a Pandora's box.

19 FEMALE VOICE: That's right.

20 MR. BRANCH: You're going to give -- you're
21 going to give the key --

22 FEMALE VOICE: They're murderers.

23 MALE VOICE: -- to everybody --

24 THE COURT: Sir --

25 FEMALE VOICE: -- on death row --

1 THE COURT: -- sir, would you have --

2 MALE VOICE: -- you'll be opening the cell
3 door.

4 THE COURT: -- a seat, please?

5 MALE VOICE: That's what you're going to
6 do.

7 FEMALE VOICE: They're murderers.

8 THE COURT: Have a seat, please.

9 MALE VOICE: That's what this precedent's
10 going to do.

11 FEMALE VOICE: (unintelligible.)

12 MALE VOICE: You're wrong, Your Honor. You
13 can stop it right now if you will.

14 (Two male gentlemen escorted from the
15 courtroom.)

16 THE COURT: All right, the -- does anyone
17 have anything -- anything for the State to be
18 said before sentence is pronounced in this case?

19 MR. COPELIN: Nothing further.

20 THE COURT: Any defense counsel wish to
21 make any additional statement before sentence is
22 pronounced?

23 MR. BRAGA: Just briefly, Your Honor, I
24 would like to say that Mr. Echols has had ample
25 opportunity to discuss the arrangements to the

1 proposal, the sentencing recommendation from Mr.
2 Binka and I. He's gotten input from Mr. Riordan
3 and Mr. Horgan and Ms. Nirider through me. He's
4 a bright, intelligent young man. He's making a
5 voluntary decision.

6 THE COURT: All right, the Court finds each
7 of the defendants guilty of first-degree murder,
8 and the modified charges pursuant to the Alford
9 case, even though they profess their innocence
10 in connection with the matter. That's what this
11 sort of plea is calculated to -- to do, and to
12 give folks a reason, or a way, to -- to end a
13 matter of this nature in the best interest of
14 everybody concerned.

15 Having done that, the Court will now
16 pronounce sentence in this case.

17 Mr. Echols, you will be -- each of you will
18 be -- Mr. Echols, Mr. Baldwin, Mr. Misskelley,
19 you'll be each sentenced to serve 216 months and
20 78 days, 18 years and 78 days, in the Department
21 of Correction on the charge of first-degree
22 murder with full credit for that time already
23 served, 216 months and 78 days, followed on one
24 count of -- of first-degree murder in each of
25 these cases, Mr. Echols, Mr. Baldwin, Mr.

1 Misskelley, of 120-month period of suspended
2 imposition of sentence, subject to designated
3 terms and conditions, which gives rise to
4 additional liability if you fail to comply with
5 any of the terms of the -- of the conditions.

6 As the Court indicated to you earlier on,
7 this -- even though it's -- it's a guilty plea
8 with a profession of innocence, it's a guilty
9 plea under the law, and it will go down for
10 future reference as such. And, in the event
11 either of you should commit another offense of
12 any sort, it could be used as a means of
13 enhancing a sentence in that particular case
14 just as if you had gone to trial and been
15 convicted and sentenced.

16 Anything further to be offered by the
17 state?

18 MR. COPELIN: Have they acknowledged that
19 they read the rule -- the rules of suspended
20 sentence?

21 THE COURT: They've each -- I've had them
22 each acknowledged as we went along that they've
23 been over the -- of the terms and conditions of
24 the suspended imposition and signed off on them.
25 That is correct, Mr. Echols?

1 MR. ECHOLS: Yes, sir.

2 THE COURT: Mr. Baldwin? Mr. Baldwin and
3 Mr. Misskelley?

4 MR. BALDWIN: Yes, Your Honor.

5 MR. MISSKELLEY: Yes, sir.

6 THE COURT: All right, the Court, having
7 sentenced pursuant to the plea agreement, I'm
8 advised that the Department of Corrections
9 people are here to -- to put in place the
10 processing paperwork so it will not be necessary
11 for either of the defendants to be taken back to
12 the Department of Corrections and can be
13 processed out here. There's going to be
14 additional opportunities for some -- some media
15 contact with people, but not right now. We have
16 some processing things of that nature to do.

17 I want everyone to remain in the courtroom
18 at this point in time.

19 I'm going to allow the -- I'm going to
20 allow the defendants and counsel to take their
21 leave from the courtroom for the -- for the
22 State and the defense. I want everyone to
23 remain in the courtroom except counsel and the
24 parties that are subject to post-proceeding
25 interviews. State counsel may leave as well

1 and, as far as the plea agreement, the hearing
2 is concluded.

3 But I want -- I'm going to take about 10
4 minutes of your time, folks that are here in the
5 audience.

6 We're still in session. The Court's still
7 in session and I don't want any outbursts.

8 I commend you for -- for being orderly to
9 this point, and I want that to continue. I --
10 the Court's very much aware -- the Court's very
11 much aware of the nature of this proceeding and
12 -- and the extreme emotions that are there on
13 both sides of this particular matter.

14 And the Court takes no position as to -- as
15 to what occurred when this tragedy occurred and
16 these innocent lives were taken. That's not
17 part of what I do in connection with this.

18 But I am aware of the divergence of opinion
19 about that. I'm aware of the controversy that's
20 existed. I'm aware of the involvement of the
21 people in this case, and I commend people in the
22 case that have assisted the defense, that have
23 assisted anyone in connection with this case
24 towards the end of seeing that justice is served
25 to the best that we could do. It has been

1 helpful.

2 Counsel in this case have operated *pro*
3 *bono*, which means without pay. DNA sampling and
4 expensive testing has been done by virtue of --
5 of money raised by caring, supporting people in
6 support of the defendants in the case and I
7 commend them for that. Sometimes outside help
8 is in fact a big help in bringing -- in giving
9 us something that we may not have ordinarily
10 access to or resources to, so I -- so I
11 appreciate that.

12 And -- and for those of you who are -- who
13 have been a participant in that regard that are
14 here, I commend you personally and publicly for
15 -- for having done that.

16 This is -- it's hard to imagine a battle
17 that has raged this long in a particular
18 situation, and I realize that this result is
19 confusing.

20 It's -- in the time that I've been on the
21 bench, the better part of 14 years, I believe
22 it's the first time we've ever used an Alford
23 plea, but this was a proposal that came to me by
24 agreement between counsel and not something that
25 the Court suggested. But the Court does believe

1 that in this particular case, as I've stated,
2 that it is in the best interest of everyone at
3 this particular point.

4 The -- I think I pretty well set out
5 exactly what the effect of this is. The --
6 there's not a lot of case law about this
7 throughout the nation, except the United States
8 Supreme Court case. And in Arkansas there's not
9 really any precedent to amount to anything as to
10 the exact nuts and bolts of the implementation
11 of the Alford plea, although it's pretty well
12 understood that an Alford plea is an acceptable
13 way of disposition in Arkansas.

14 And we've had -- we've had -- we've had
15 excellent working between counsel in this case.

16 Quite frankly, I held the earlier non-
17 public hearing in this case in order that this
18 Court could be absolutely certain that there
19 were not any unanswered questions. There was no
20 -- it's one that ordinarily -- ordinarily
21 conferences like this occur when you have
22 counsel come in for the State and for the
23 defense and they meet with the judge and then
24 they come back out and then things happen in
25 public.

1 I believe that in this particular case,
2 because it's the right thing to do, that the
3 defendants should be actively involved in the
4 process. I wanted them to be actively involved
5 in the process. I did not want to hear
6 secondhand from anyone what was going on. I
7 wanted to make sure that they were doing what
8 they wanted to do and -- and also to make sure
9 that they had been absolutely informed as to all
10 the ramifications of this, that the State and
11 everyone knew full well what was going on.

12 And once I satisfied myself of that -- and
13 that was another reason that I was probably more
14 vague about the aspects of the hearing than
15 ordinary, because I wanted to make sure that
16 that understanding, that level of understanding
17 and informed agreement had occurred before we
18 finalize it. And -- and I am pleased that we've
19 done that.

20 So this won't answer all your questions. I
21 don't expect it to. It will give rise to
22 discussions for a long time to come. The -- I
23 don't think it'll make the pain go away to the
24 victim families. I don't think it'll make the
25 pain go away to the defendant families. I don't

1 think it will take away a minute of the 18 years
2 that these three young men served in the
3 Arkansas Department of Corrections. What I just
4 described is tragedy on all sides.

5 And ordinarily I don't talk this much about
6 a case, but since I've got a captive audience
7 here -- and I do believe that this is an unusual
8 situation. It's an unusual disposition and I
9 wanted to make sure that we are as transparent
10 as we can be in this process.

11 Let's hold on just a minute. I'm not ready
12 to release y'all quite yet. How long have we
13 been, about 10 minutes? Okay, I think -- I
14 think we're free to recess and I ask you to do
15 it in an orderly fashion.

16 Let's -- let's let the media -- let's let
17 the media proceed first; so bailiffs, if you'll
18 help me with this process, we'll let the media
19 proceed first.

20 All right, once our media gets out, then I
21 would like for -- I would like for our victim
22 family to be allowed to leave. Anyone connected
23 with the victims' family. Victims' family.

24 And let's give them just two or three
25 minutes, then -- then we'll escort the -- the

1 remaining persons from the courtroom.

2 Again, I appreciate your attendance and
3 hope for the best as things flesh out over the
4 next few weeks, months, and years.

5 (COURT REPORTER'S NOTE: Off the record.)

REPORTER'S CERTIFICATE

STATE OF ARKANSAS

COUNTY OF CRAIGHEAD

I, Dianne Gibson, certified court reporter for the Second Judicial District and notary public for the state of Arkansas, hereby certify that I reported the proceeding in the above-styled matter by voice writing, and the attached and foregoing transcript is true and accurate to the best of my ability.

I further certify that the above and foregoing pages numbered one through 73 as set forth in typewriting, is a true and accurate transcript of the proceeding to the best of my ability, along with all items admitted into evidence.

WITNESS MY HAND AND SEAL as such notary public and court reporter on September 7, 2011.

Dianne Gibson, CCR
Supreme Court's Court
Reporter Certificate #259

My Commission Expires:

07-29-12
