

IN THE CIRCUIT COURT OF CRAIGHEAD COUNTY, ARKANSAS  
WESTERN DISTRICT

DAMIEN WAYNE ECHOLS

DEFENDANT/PETITIONER

vs.

No. CR-93-450A

STATE OF ARKANSAS

PLAINTIFF/RESPONDENT

**DAMIEN ECHOLS' TESTING STATUS REPORT**

By Order dated April 18, 2011, this Court authorized counsel for Damien Echols (“Echols”) to pursue additional DNA and other scientific testing of evidence potentially relating to the commission of the crimes underlying Echols’ convictions. The “other scientific testing” requested involved non-DNA examinations of (a) the shoe laces used as ligatures to bind the victims, including the fibers associated with those shoelaces (see Damien Echols’ Pre-Hearing Brief at 6); and (b) “the ‘2 ounces of partially digested fluid and remnants of green vegetable-like material’ found in Stevie Branch’s lumen during his autopsy to determine exactly what the green vegetable-like material is.” Id. at 7 n.8. Echols submits this ninety-day status report to update the Court and counsel on the status of these various testing initiatives.

DNA Testing: Bode Technology’s laboratory facility in Lorton, Virginia was selected to conduct the new DNA testing because that facility had been previously approved by the State for DNA testing in this case. With the cooperation of the West Memphis Police Department (“WMPD”), the Arkansas State Crime Laboratory (“ASCL”) and the Attorney General’s Office, all items of evidence requested by Echols except one were able to be sent to Bode for review. The one exception was the “papers that [the victims’] clothes were dried on” from the WMPD. Those papers were potentially probative for both contact and run-off DNA and were supposed to be maintained in Evidence Box 2b according to WMPD records. Unfortunately, in response to

Echols' request that these papers be sent to Bode for DNA testing, it was determined that the papers are not in Box 2b and cannot elsewhere be found by the WMPD.

The remaining items of evidence sent to Bode at Echols' request can be analytically divided into two general categories: nonhair evidence and hair evidence. With respect to the nonhair evidence, Bode has completed all of its analysis. That analysis found DNA in three places associated with victim Christopher Byers' sneakers: 1) around the shoelace hole on Evidence Item E-06 (black and purple tennis shoe with lace); 2) on the shoelace in Evidence Item E-06; and 3) on Evidence Item E-08 (the other black and purple tennis shoe). Bode's testing revealed that the DNA samples from Nos. 1 and 2 are from the same male source, while the DNA sample from No. 3 is from a different male source.<sup>1</sup> Bode's further comparative analysis then also conclusively excluded Echols, Baldwin or Misskelley as the source of any of these new DNA samples.

With respect to the new hair evidence, the process of mitochondrial DNA testing is ongoing and nearing conclusion.

Shoelace/Ligature Testing: The "shoelace/fiber analysis" is in progress.

Green Vegetable Material Testing: Unfortunately, the "green vegetable-like material analysis" requested by Echols proved impossible to conduct. Shortly after this Court's April 18 Order, the ASCL informed Echols' counsel that this material had not been preserved. Due to the nonpreservation of this evidence, we will not be able to determine scientifically whether Stevie Branch ate the green beans which Pam Hobbs had left for him as dinner – and, thus, whether Stevie returned to the family home late in the afternoon of May 5, 1993 - before he disappeared.

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<sup>1</sup> The samples from Nos. 1 and 3 also contain a mixture of DNA from a second source as well.

## CONCLUSION

When the Arkansas Supreme Court decided that this case required an evidentiary hearing to determine whether newly discovered evidence – from both DNA testing and other sources – warranted that a new trial be given to Echols, Baldwin and Misskelley, that Court only had before it three pieces of DNA evidence.<sup>2</sup> Yet that Court repeatedly emphasized the importance of the point that “it is undisputed that the [DNA] results conclusively excluded Echols, Baldwin and Misskelley as the source of the DNA evidence tested.” Damien Echols’ Pre-Hearing Brief at 5. The Supreme Court undoubtedly emphasized this point because of the “long shadow” that such “non-match” DNA evidence logically casts over the integrity of convictions obtained without its consideration. See, e.g., Bedingfield v. Commonwealth, 260 S.W.3d 805, 815 (Ky. 2008). That shadow has just gotten a little longer in this case with the three new DNA samples discussed herein also testing out to exclude Echols, Baldwin and Misskelley as their sources.<sup>3</sup>

In addition to the new DNA results, though, the newly identified missing evidence should also be interpreted as a point in the defendants’ favor at this juncture. State authorities had complete control over both the “green vegetable-like material” and the “papers [the victims’] clothes were dried on.” Those authorities failed to preserve the former and apparently lost the latter. In such circumstances, the Court would certainly be justified in drawing an inference

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<sup>2</sup> As the Supreme Court put it, those items of DNA evidence were “a foreign allele from a penile swab of victim Steven Branch; a hair from the ligature used to bind victim Michael Moore; and a hair recovered from a tree stump, near where the bodies were recovered.” Damien Echols’ Pre-Hearing Brief at 4.

<sup>3</sup> There is, as previously noted, other “non-match” evidence in this case besides the DNA results. For example, “[i]n an interview with the West Memphis Police Department well after the trial, Tony Anderson – the fingerprint expert on the crime scene when the victims’ bodies were discovered, confirmed an important fact not appearing in the trial record: that one print taken at the crime scene was within five to ten feet of where the first body was located and that it was located at an angle which made it clear that it had been left there by someone who had been in the water. Anderson compared this print to Echols, Baldwin and Misskelley, as well as to the victims and every police officer at the scene, and found no match.” Damien Echols’ Pre-Hearing Brief at 6 n.4. A number of shoe prints were found at the crime scene as well which similarly resulted in “no match” to Echols, Baldwin or Misskelley.

against the State and in favor of the defense as a result of this now missing evidence.<sup>4</sup>

All things considered, in a case where “there’s just a scarcity of evidence,” as prosecutor Davis argued in his rebuttal closing to the jury at Echols’ trial, the slightest change to old evidence or the slightest addition of new evidence – even just a favorable or unfavorable inference – can make all the difference in the world. Those differences are in abundance in this case. Nothing is going to change the scientific testing results, or the missing evidence facts, addressed in this brief report, and nothing more should be required for the West Memphis Three to be found entitled to a new trial.<sup>5</sup>

Respectfully submitted,



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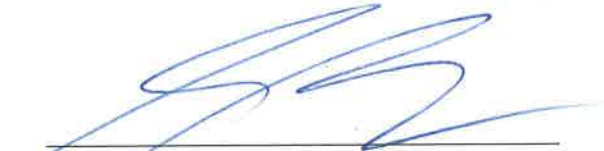
Counsel for Damien Wayne Echols

<sup>4</sup> As the Court is presumably aware, there is other significant missing evidence in this case as well. Thus, on the very night of the murders, a bleeding and disoriented African American male stumbled into a Bojangles restaurant within walking distance of the crime scene, went into the Ladies Room to clean himself up and then left the restaurant. The WMPD collected blood and other items of evidence from that restroom, but later lost them too.

<sup>5</sup> Although here, as this Court is already aware, there is indeed much more that counsels in favor of such a new trial as well, such as the apparently undisputed facts surrounding the jury foreman’s unconstitutional misconduct.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have mailed and/or sent electronic copies of the foregoing Damien Echols' Testing Status Report to the Hon. David N. Laser, c/o Craighead County Courthouse, Jonesboro, AR; Dustin McDaniel, Attorney General; David Raupp, Senior Assistant Attorney General; Kent Holt, Deputy Attorney General; Michael Walden, Circuit Prosecutor; Scott Ellington, Circuit Prosecutor; and counsel of record for all co-defendants, this 18<sup>th</sup> day of July, 2011.



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Stephen L. Braga