

IN THE CIRCUIT COURT OF CRAIGHEAD COUNTY, ARKANSAS

WESTERN DISTRICT

CHARLES JASON BALDWIN,

DEFENDANT/PETITIONER

vs.

NO. CR-93-450

STATE OF ARKANSAS

PLAINTIFF/RESPONDENT

**JOINDER IN ECHOLS' BRIEF ON THE ADMISSIBILITY
OF EVIDENCE OF JUROR MISCONDUCT AND
BALDWIN'S SUPPLEMENTAL BRIEF**

On November 4, 2010, the Arkansas Supreme Court issued its decision holding that this circuit court, per the Honorable David Burnett, had erroneously interpreted the Arkansas DNA testing statutes in refusing to hold an evidentiary hearing on Petitioner Baldwin's Petition/Motion for New Trial brought pursuant to A.C.A. § 16-112-201 *et seq.* *Baldwin v. Arkansas* 2010 Ark. 412. In setting forth its ruling, the Court referenced the companion decision in *Echols v. Arkansas* 2010 Ark. 417. The Court ruled that Baldwin may be permitted to present evidence that there was jury misconduct during the proceedings of his trial not as a means to collaterally attack the judgement, but rather to demonstrate under § 16-112-208 (e)(3) that a new trial would result in acquittal. *Baldwin, supra*, slip opinion at p. 2.

Baldwin had tendered ample evidence of misconduct by his original jury as part of his Petition/Motion for New Trial, including the record of the jury selection, affidavits, juror notes, and other evidence demonstrating that the original verdict was tainted by misconduct.

While his analysis of the issues in the Petition/Motion for New Trial currently pending in this Court is somewhat different from that of his Co-Petitioner, and former co-defendant Echols, Baldwin joins in Echols's current Brief on the Admissibility of Evidence of Juror Misconduct, which was served on undesignated counsel on April 29, 2011. Baldwin joins, as well, in Echols's request for oral argument on this issue, and for a hearing on the matter—though on this latter point, Baldwin offers only a partial joinder.

Echols is requesting that the Court hear 'testimonial evidence' on jury misconduct matters—and indeed, such evidence may be pertinent, advisable, and in certain areas, necessary. However, the procedural law framing the current litigation envisions that this Court may receive evidence during any hearing held on these matters by "affidavit, deposition or oral testimony...". A.C.A. § 16-112-205 (c) (5). Thus, given the limited time available for a hearing on a number of compelling issues supporting his plea for a new trial, Baldwin is of the view that there is uncontradicted evidence available on a number of aspects of the jury

misconduct claim that need not be supplemented by oral testimony.

Otherwise, Baldwin believes that Echols's Brief contains a useful review of the facts that demonstrate that the issue of jury misconduct at the 1994 Echols/Baldwin trial should be addressed by the evidence presented to this Court so as to properly calibrate the evidentiary 'value' and the significance of the original guilty verdicts against Baldwin and Echols that were rendered by a jury that engaged in significant misconduct, outlined by Echols.

Baldwin also points out that in his Petition/Motion for New Trial, he reviewed the compelling evidence of juror misconduct, some of which was uncovered only as the parties began their review of the scientific evidence in the case. Poster sized juror notes had been saved for some unidentified reason, and were placed in the States group of pieces of case evidence. Defense counsel opened the posters during a review of the physical evidence by all the parties, and these poster sized notes lead to further inquiry about the matters that had apparently been of enough concern to someone that they had been blacked out—Baldwin's Exhibit 62 in support of his Petition/Motion for New Trial is a photocopy of the original posters found during the evidence review.

Exhibit 63, a copy of juror notes, filed under seal, was referenced in Baldwin's Petition/Motion for New Trial. (Petition/Motion at pp. 113-114, para.

297). Exhibit 63, which is a copy of notes that a juror kept in her possession from the time of trial, replicates what was on the now-redacted posters used during the jury deliberations—and the excluded Misskelley statement, which was not to have played any part in the evidence against Baldwin and Echols is referenced there.

The extent to which jurors violated the instructions and admonishments of the trial court is amply demonstrated by these materials—and others referenced both by Echols in his Brief (and his Petition) and by Baldwin in his Petition and in the supporting exhibits.

CONCLUSION

Counsel for Damien Echols have helpfully synthesized the evidence of jury misconduct, and of the tainted jury processes, that led to the Baldwin/Echols convictions in 1994. Baldwin joins Echols in his arguments and proffers. Separately, Baldwin notes that the procedure at hand does not require oral evidence on all points addressed in the hearing, and points out that there is un-rebutted evidence of misconduct available that should cause this Court to consider that the original guilty verdicts from the 1994 Baldwin/Echols trial is not the appropriate litmus, or a reliable point of departure, for the analysis of the evidence during the upcoming hearings

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Dated: April 29, 2011

Respectfully submitted by

J. BLAKE HENDRIX; J.T. PHILIPSBORN
Attorneys for Charles Jason Baldwin

CERTIFICATE OF SERVICE

I hereby certify that I have mailed, and/or sent electronic, copies of Baldwin's and Misskelley's Brief of Issues on Remand 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, 323 Center St., Little Rock, AR 72201; Michael Walden, Circuit Prosecutor, Jonesboro; and counsel of record for the co-defendants: Deborah Sallings, 35715 Sample Road, Roland, AR 72135 for Echols; and Jeff Rosenzweig, 300 Spring Street, Little Rock, AR 72201 for Misskelley this 29th day of April, 2011.

JOHN T. PHILIPSBORN