

ORIGINAL

IN THE CIRCUIT COURT OF CRAIGHEAD COUNTY, ARKANSAS
WESTERN DISTRICT

CHARLES JASON BALDWIN,

DEFENDANT/PETITIONER

vs.

NO. CR-93-450B

STATE OF ARKANSAS

PLAINTIFF/RESPONDER

FILED
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CIRCUIT COURT CLERK
CRAIGHEAD COUNTY ARK

**[PETITIONER BALDWIN'S PROPOSED] ORDER AND PRECEDENT ON
BALDWIN'S STATUTORY HABEAS CORPUS PETITION AND MOTION FOR
NEW TRIAL, ARKANSAS CODE SECTIONS 16-112-201 ET SEQ.**

Pursuant to this Court's scheduling orders, Baldwin filed a "Petition for Writ of Habeas Corpus under Arkansas Code §16-112-201 *et seq.* and a Motion for New Trial Under Arkansas Code §16-112-208(e)(1)." The State responded. Baldwin filed a reply by incorporating into his record a document entitled "Petitioner Damien Echols' Reply in Support of Motion for a New Trial". The State requested, and received, permission to file further briefing in the event that the Court ordered an evidentiary hearing.

In support of his Petition and Motion for New Trial, Baldwin submitted 79 exhibits consisting of a variety of materials, including: laboratory reports; affidavits; interview transcripts; maps, and the like. The State's response also included some supporting exhibits in the form of letters; postmortem examination reports, and other case-related materials.

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The pertinent procedural history of this case is as follows: Baldwin was committed to the Arkansas Department of Correction on March 19, 1994, having been convicted of three counts of capital murder in violation of Arkansas Code §5-10-101;

Baldwin's convictions were affirmed on direct appeal in *Echols and Baldwin v. State*, 326 Ark. 917; 936 S.W.2d 509 (1996), *cert denied* 520 U.S. 1244 (1997).

The Legislature of the State of Arkansas enacted Acts 2001, No. 1780 (referred to by this Court as Act 1780) which contains the provisions now embodied in A.C.A. §16-112-201 *et seq.* Act 1780 has been amended since its initial enactment. As it now reads, A.C.A. §16-112-201 allows a person convicted of a crime to commence a proceeding to secure relief by the filing of a petition on the basis that scientific evidence not available at trial establishes the petitioner's actual innocence, or that the scientific predicate for the claim could not have been previously discovered through the exercise of due diligence and the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable fact-finder would find the petitioner guilty of the underlying offense. A.C.A. §16-112-201(a)(1)(2).

A.C.A. §16-112-202(10) established a timeliness requirement, and §16-112-202 generally sets forth a series of procedural requirements. These procedural requirements must be fulfilled for a petitioner/moving party to obtain access to case evidence for

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testing. Baldwin obtained such access principally through a series of agreements with the State.

In order to assess whether Baldwin has been timely in pursuing relief, the Court now reviews the pertinent procedural history. On November 20, 2002, within less than 16 months from the time of the enactment of Act 1780, Baldwin filed a "Petition for Writ of Habeas Corpus and Supplement to Motion to Preserve Evidence and for Access to Evidence for Testing Filed by Petitioner". This petition/motion specifically referenced a March 9, 2001 Motion to Preserve Evidence and for Access to Evidence for Testing that Baldwin filed in *pro se*. The November 20, 2002 filing was specifically brought under A.C.A. §16-112-201. In the 2002 Petition, Baldwin alleged that he satisfied all of the filing eligibility requirements set forth in A.C.A. §16-112-202. The State never formally denied this allegation. As evidenced by this Court's DNA testing orders, the Court deemed Baldwin eligible to avail himself of the provisions of Act 1780 in obtaining access to evidence from his case, and in making arrangements to have the evidence tested, or retested.

On June 2, 2004, the Court issued an "Order for DNA Testing". The Order made reference to agreements between the State, Baldwin, and Baldwin's former co-defendants Misskelley and Echols. The Order provided that a series of identified items were to be transmitted an agreed-upon laboratory, the Bode Technology Group. On February 23,

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2005, the Court issued a "First Amended Order for DNA Testing" which modified the June 2, 2004 Order. Thereafter, the parties periodically informed the Court about the progress of testing procedures. The Court was informed that the DNA testing laboratory agreed upon by the parties, Bode Technology, Inc, of Lorton, Virginia, had completed agreed upon testing by April 15, 2008, when the Court met with the parties on the record to set forth a litigation schedule.

Pursuant to this Court's scheduling Order, in May, 2008, Baldwin filed his "Petition for Writ of Habeas Corpus Under Arkansas Code Annotated §16-112-201 *et seq.* and Motion for New Trial Under §16-112-208(e)(1)" in which he made use of the DNA test results communicated to the parties by Bode Technology.

In ruling on whether Baldwin's May, 2008, Petition/motion for new trial, is properly before the Court, and subject to a ruling on its merits, the Court notes that Act 1780 sets forth various procedures for the consideration of DNA and other forensic test results obtained after conviction. Act 1780 specifies the contents of a motion or petition filed under the pertinent sub-chapter (A.C.A. §16-112-203); the other pleadings that may be filed (A.C.A. §16-112-201-205); the procedures and procedural rights pertinent to a hearing (A.C.A. §16-112-205); the time period for appeal (A.C.A. §16-112-206); the provision for the appointment of counsel and for the provision of various services of the State crime laboratory (A.C.A. §16-112-207); and the testing procedures, and standards,

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applicable to a consideration of the substantive issues involved where new scientific evidence, and specifically DNA testing, was ordered (A.C.A. §16-112-208).

Act 1780 has been interpreted in some of its aspects, most specifically in connection with whether a petitioner satisfied the statutory requirements to obtain access to evidence for testing. See, for example, *Johnson v. State*, 356 Ark. 534; 157 S.W.3d 151 (2004). The Court is not aware of interpretations of the Act in connection with the assessment of whether a petitioner carried his burden such as to permit the granting of a new trial under A.C.A. §16-112-208(e)(3). The Court finds that courts in other states have interpreted similar statutes, including *People v. Dodds*, 344 Ill. App. 3d 513, 801 N.E. 2d 63 (2003) which interpreted Illinois's statute allowing post conviction consideration of new scientific evidence.

A. The first question that the Court must address is whether Baldwin is eligible for the Court to consider whether to grant him a new trial, or some other post conviction relief, under Act 1780. The Court finds that Baldwin timely sought access to the evidence in his case for testing and retesting, and that his May, 2008, petition/motion for new trial is timely. The State does not contest Baldwin's timeliness allegations in a specific way, and even if it did, there is at least the appearance that the State's participation in the agreed upon testing and reporting process would waive any objection of untimeliness. The record is clear that Baldwin initiated his pursuit of

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retesting within 36 months of the enactment of Act 1780, which is the presumptive timeliness standard set forth in the Act as it would apply to a case like Baldwin's which arose prior to the existence of the Act.

B. The second question for consideration is whether there is evidence before this Court that satisfies the standard for consideration of new trial relief specified in Act 1780. The Court now concludes, as a matter of law, that there is such evidence, based on the finding that the statutory language is clear, and must be given its plain meaning. *Smith v. Fox*, 358 Ark. 388, 392; 193 S.W. 3d 238 (Ark. 2004). The Court also concludes that the appropriate standard for consideration of Baldwin's Petition is found in A.C.A. §16-112-208(e).

The Court finds the pertinent facts to be as follows: Baldwin, and the State have filed extensive pleadings in this case. Baldwin has filed more than 79 exhibits including numerous affidavits in support of his petition, at least some of which have not yet been opened for viewing by the parties, or the public, because they are alleged to have been lodged with the Court by a lawyer seeking a ruling to clarify the breadth of the attorney-client privilege. The State filed several responsive exhibits supporting its Opposition to the petition. On August 20, 2008, the Court made clear to the parties that it intends to allow materials submitted by Baldwin to be considered by the Court. In this respect, the

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Court specifically notes that §16-112-205(c)(5) allows it to receive evidence “in the form of affidavit, deposition, or oral testimony.”

In part because the record of this case clearly establishes that the parties agreed to a specific DNA laboratory which was alleged in various joint applications to the Court to be accredited and otherwise compliant with the dictates of Act 1780, the Court finds that no reasonable purpose would be served by holding a further evidentiary hearing at which oral testimony would be given about DNA testing results, because of the agreements reached by the parties in designating Bode Technology as the DNA laboratory for the purposes of this case. The State does not dispute the admissibility of Bode’s reports, though it does dispute the relevance of the DNA test results to Baldwin’s claims for relief, or at least disputes their sufficiency.

C. The third question to be addressed by this Court is whether there are any new test results from a qualified forensic testing laboratory that are admissible in Baldwin’s case under Act 1780. The Court now finds that the facts establish that there are DNA test results obtained as a result of testing conducted under Act 1780 that the Court concludes, as a matter of law, are relevant and admissible under Act 1780, and are thus subject to consideration based on the allegations, and evidence supporting, Baldwin’s May, 2008, Petition.

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The Court further concludes that the merits of the issues presented to it must be assessed according to the plain meaning of the statutory scheme at issue here. In this regard, the Court notes that Act 1780 requires a court to consider any new scientific evidence, or discussions of the scientific predicate for a claim in light of all of the evidence in the case both when it commences a proceeding, having granted an applicant the right to test evidence under §16-112-201(a), and when considering the motion for new trial after evidence of testing has been submitted to it under §16-112-208. §16-112-208(e)(3) which permits the Court to grant a motion for new trial or re-sentencing if the DNA results "... when considered with all other evidence in the case regardless of whether the evidence was introduced at trial, established by compelling evidence that a new trial would result in an acquittal." The Court concludes, as a matter of law, that this is not a review limited to the assessment of new DNA evidence viewed against the evidence of guilt produced at trial, or even viewed against all of the evidence produced by either party at the underlying trial, rather it is a review the DNA evidence considered with "all other evidence in the case", which are the plain words in the statute. *Phillips v. Arkansas Department of Human Services*, 85 Ark. App. 450, 456; 158 S.W. 3d 691, 695-696 (2004). The State has argued for a more restrictive standard, which is not warranted given the plain meaning of Act 1780.

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D. The next question addressed by the Court is whether there are DNA test results obtained from tests ordered by this Court which either exclude Baldwin, or, when considered with all other evidence in the case regardless of whether the evidence was introduced at trial, establish by compelling evidence that a new trial would result in an acquittal. The Court finds, based on the facts presented to it in the various DNA testing results that have been reported by Bode Technology, and in the various reports interpreting these results, that there is DNA evidence that excludes Baldwin, as well as other DNA evidence that when considered with all other evidence in Baldwin's case establishes by compelling evidence that a new trial would result in an acquittal.

The Court's findings of fact on this question are as follows:

1. The parties agree that the Bode Technology Group's various forensic DNA case reports bearing on STR and mitochondrial DNA testing in this case provide the factual basis upon which this Court can determine the results of DNA testing; comparisons of Petitioner's samples, those of his former co-defendants Echols and Misskelley, with those of the victims, and all of these (meaning the defendants and the three victims) with the various items of evidence sent to the laboratory of the Bode Technology Group for testing. The Court has reviewed, without objection, Baldwin's exhibits: 7 (Bode report of 12/30/05); Exhibit 8 (forensic DNA case report of 12/30/05);

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Exhibit 9 (STR forensic DNA case report dated 1/02/07); Exhibit 10 (Bode Technology Group supplemental forensic case report dated 1/25/07); Exhibit 12 (Bode Technology Group STR DNA case report dated 9/27/07); Exhibit 13 (supplemental forensic case report from Bode dated 9/27/07 bearing on mitochondrial DNA testing). Exhibit 70 (Bode supplemental report dated 5/23/08 dealing with head hair sample comparison of head hair from Terry Hobbs with unknown hair from crime scene). The Bode Technology Group evidence appears to the Court, based on the briefing tendered, to be subject to no objection from any party, and thus is the evidence relied on by the Court in its findings of fact, and conclusions of law, concerning the state of DNA evidence based on the application of DNA testing techniques not available at the time of the trial of this case. As to the matters tested by agreement of the parties, including swabs of the victims' bodies; hairs recovered from the scene in various locations; a variety of items including clothing; known samples taken from all three victims; known samples taken from Baldwin and his co-defendants Misskelley and Echols, no DNA evidence consistent with Baldwin's DNA profile, or consistent with that of his two co-defendants Misskelley and Echols, was found on the tested materials. This is an exclusion of Baldwin as a source of DNA on the items from the crime scene tested by mutual agreement.

2. This lack of any DNA identification of Petitioner and his co-defendants is significant for several reasons. First, Baldwin and his co-defendant Echols were tried in

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part on the basis that the injuries to the victims were consistent in specific respects with sexual assault. A reading of the State Supreme Court's opinion on direct appeal confirms this as the Court makes mention of its view of the testimony of Dr. Frank Peretti, the State's Assistant Medical Examiner at the time. *State v. Echols, et al., supra*, at 934-938. The lack of DNA evidence from Baldwin or his codefendants undermines the theory presented to the jury by the State, and undermines any inferences from the facts available that Baldwin came in contact with the victims or with the crime scene in part because the DNA testing revealed at least some foreign DNA—meaning DNA not attributable either to the victims or to the convicted defendants, including Baldwin.

3. Petitioner has produced evidence, and the State does not disagree, that two foreign hairs recovered from the scene, one from the ligature used to bind Michael Moore (one of the victims), and a second from a tree stump, yielded identifiable DNA profiles, which were neither Baldwin's nor his former co-defendants', nor the victims'. There are two different areas of significance to these test results. First, it has been established by uncontradicted evidence that DNA testing yielded some DNA profiles. Second, there is uncontradicted evidence that hair evidence recovered from the scene, had it been Baldwin's or that of his two former co-defendants, could have been identified as theirs through the DNA testing conducted in this case. Third, hair evidence with specific profiles other than Baldwin's was recovered in areas such as the Moore victim's ligature,

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which would logically raise questions about whether the person whose profile is identified had some contact with the ligature at prior to its collection by law enforcement authorities beginning on May 6, 1993 after the victims' bodies were discovered by West Memphis Police Officers. The State has offered no innocent explanation for the evidence, which was not discussed at Baldwin's trial. Jurors were unaware that hair evidence had been found by the State located in one of the ligatures removed from a victim, and DNA technology at the time of trial would not have permitted the development of a profile of the type made known to the Court. This evidence, whether the 'foreign' profile (which Baldwin alleges is that of the step father of the victim Steve Branch) of the hair from the Moore ligature is considered reliably identified by Baldwin or not, supports Baldwin's allegation that he was wrongly identified as a perpetrator.

4. In addition, Baldwin and his co-defendants have presented evidence that DNA testing identified a foreign allele on the penile swab of victim Steve Branch. This foreign allele means that DNA not originating with the victim Branch was detected on the penile swab obtained and maintained by the State. According to the uncontradicted evidence presented to the Court, the foreign allele is unrelated to Baldwin or his former co-defendants. It is insufficient to identify another person, but it is sufficient to establish that foreign DNA was detected on a penile swab. It is also evidence that may have been left on the Branch remains by some innocent chance, or by a perpetrator. These arguments

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are of the type that support the theory that Baldwin was wrongly identified as a perpetrator.

5. Reviewing the DNA test results as a whole, the Court finds that both victim DNA and foreign DNA were identified through the testing process, and that the DNA testing process yielded useful and illuminating results, relevant to this Court's determination of Baldwin's petition/motion for new trial.

6. The Court finds that the DNA test results, alone, exclude Baldwin (and his co-defendants) as the donor of the DNA on or in evidence subjected to post-conviction testing.

7. The DNA test results, given the facts of the case presented to the Court, are insufficient to conclusively identify another specific person as either the perpetrator, or one of the perpetrators, of this crime.

8. Following the dictates of A.C.A. §16-112-208(e), the Court has reviewed the DNA test results "with all other evidence in the case regardless of whether the evidence was introduced at trial," including all of the evidence argued to be relevant and significant by the State, and by Baldwin.

A. Baldwin offered further evidence from laboratory scientists interpreting DNA data, including Exhibit 72, the affidavit of Dr. Jason Gilder; Exhibit 73, the affidavit of Dr. Dan Krane. In these

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two affidavits, Drs. Gilder and Krane state that all victims and defendants are excluded as the source of the foreign alleles on the penile swab associated with victim Steve Branch. The Court finds this evidence to be uncontradicted by the evidence offered by the State

- B. The Court also reviewed the affidavit of Dr. Donald Riley (Baldwin's Exhibit 74) offered to explain Baldwin's allegations to the effect that the State's evidence on the interpretation of findings from cuttings taken from the pants of one of the victims, and identified at the time of trial, as having preliminarily been identified as likely seminal fluid, and containing a sperm fraction is described by Dr. Riley as incorrect and misleading. The State has offered responsive comments in a letter from Arkansas State Crime Laboratory Criminalist Kermit Channell. As to this matter, the Court finds another factual dispute. However, the Court also notes Baldwin's Exhibit 78 from Professor Patricia Zajac further discussing technical problems with certain testimony presented to this Court by the State through its DNA expert at the time of trial, Michael Diguglielmo. Based on its review of all of the materials

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just mentioned, including the recent letter from the State Laboratory's Criminalistic Kermit Channell, the Court finds that there was insufficient reliable evidence of the presence of seminal fluid, sperm, or sperm fractions on any cutting testified to about Mr. Diguglielmo to corroborate the theory advanced by the State at trial that evidence associated with the killings of the three victims supported the theory that these were killings that occurred either during, or after, a sexual assault. The Court finds that Baldwin's expert evidence in this regard is sufficient to establish, by clear and convincing evidence, especially when viewed together with Mr. Channell's letter, that there was no reliable evidence of sexual assault found on any of the clothing processed by the State Laboratory, or by its contractor Diguglielmo.

- C. In addition, the Court has reviewed evidence proffered by the parties bearing on the cause(s) of death of the three victims; the likely mechanisms of injury; the reliability of opinion testimony offered by Dr. Frank Peretti about the causes of death and mechanisms of injury. In its consideration of this specific issue, the Court has reviewed the letter of Dr. Frank Peretti, and of the current Medical

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Examiner of the State of Arkansas (who, like the defense experts, was not present at the time of the postmortem examinations in this case); as well as Baldwin's various affidavits, CV's, and materials from several forensic pathologists, and odontologists. In this regard, the Court has considered Baldwin's Exhibit 7, the affidavit of Dr. Janice Ophoven together with her CV (Exhibit 18); Exhibits 19-21, the CV and two letter reports of Dr. Werner Spitz; Exhibits 22 and 23, the CV and reports of Dr. Terri Hadix; Exhibits 24 and 25, the letter report, affidavit and CV of Dr. Michael Tabor; Exhibits 26 and 27, the report and CV of Dr. Richard Souviron; and the CV of Dr. Robert Wood (Exhibit 29).

- D. The Court finds (and Baldwin acknowledges) that in prior proceedings, the Court received testimony from experts in forensic pathology, and odontology, in the context of Rule 37 proceedings associated with Baldwin's former co-defendant Damien Echols. Baldwin correctly points out in his Petition that in the Echols Rule 37 proceedings held in October, 1998, there was testimony offered by both Echols and the State in which at least one expert, Dr. Joseph Cohen, who at the time was employed by the Chief Medical

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Examiner in New York City, stated his views that injuries on the left side of the face of victim Steve Branch are nondescript possible "post-mortem marine activity" (October 28, 1998 hearing at RT 1126) and the same witness testified in response to questions by the Court that he saw "... areas that are suspicious for animal activity." RT at 1133. This testimony was given in passing as Echols was focused, at the time, on a theory that there was evidence, among other things, of at least one or more human bite mark on the remains of the victims.

- E. The Court's understanding is not that Baldwin claims that evidence from forensic pathologists was not available at the time of his trial. Rather Baldwin contends, and the Court now finds, that the new DNA testing results when combined with the review of the evidence undertaken by several qualified forensic pathologists and odontologists undermines the evidence and the State's described theory that Baldwin committed the three murders of which he was convicted. . Specifically, there is a lack of DNA evidence to corroborate the theory used to convict Baldwin at trial, which was, in pertinent part, that there was evidence consistent with sexual

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assault of the victims . Baldwin contends that he is proffering the evidence from Board-certified forensic pathologists, and experienced odontologists, to demonstrate that he is entitled to a new trial. He offers the evidence at issue to demonstrate that Dr. Peretti, the State's main witness on forensic pathology, erred significantly in opining that there was evidence of sexually assaultive activity; that he erred as well in describing various wounds as consistent with having been made by a knife, including one with a serrated blade; that he erred in describing certain areas of injury, such as the victim Steve Branch's face, as having been injured by a knife; that he erred in describing the area around the victim Christopher Byers crotch as showing evidence of cutting or some form of knife wound. In addition, Baldwin's pathologists and odontologists all advance the view that injuries on the remains of the victims are consistent with some form of post-mortem animal predation.

- F. The Court notes that Dr. Frank Peretti does not offer a detailed response to the various exhibits and materials offered by Baldwin, but rather states in a letter written in 2008 that he stands by his

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previously expressed views, particularly insofar as he observed the remains during the autopsy process.

9. The Court concludes that the standard embodied in A.C.A. 16-112-208(e) requires consideration of all of the evidence which, as evidenced in this Order, includes testimony that this Court heard in the context of other hearings related to this case. Several reputable pathologists, and odontologists, have been offered to support Baldwin's claim that he would not have been convicted, and would not be convicted, if a jury had available all of the evidence now made available to this Court. Taking into consideration the evidence that has been produced over the years (during the Misskelley trial, during Baldwin's trial, in Echols' Rule 37 proceeding) in connection with cause of death and mechanism of injury issues, the Court concludes that there are legitimate, and serious, questions about the mechanisms of injury in this case which are important questions as they bear on whether there is evidence to corroborate the statement made to investigating officers by Baldwin's co-defendant Jessie Misskelley, whose confession is a matter of record, as well as the statement attributed to Baldwin himself, which is also a matter of record. Misskelley's statement contains the basis for the State's contention that there was a sexual assault that took place near the time of the killings of the three victims, and Baldwin's alleged admissions were directly related to the theory that the victim Christopher Byers was mutilated with a knife. Baldwin's post conviction

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evidence makes clear that reputable forensic scientists are of the view that there was a misinterpretation of the evidence during the post-mortem examination process conducted by Dr. Frank Peretti. The Court notes that the pathologists at issue are from various parts of the United States, that some have occupied positions of responsibility within Medical Examiners' Offices, that at least one (Dr. Spitz) is connected with the publication of a standard work in the field of medical legal investigation of death, and that a detailed critique of the State's evidence on pathology has been offered.

10. Baldwin's evidence on pathology and odontology demonstrates that there are reputable, credible, experts in the fields of forensic pathology and odontology who have carefully reviewed this case and questioned the reliability of the cause of death and mechanism of injury evidence produced to the jury.

11. Baldwin has also filed affidavits from lay witnesses, which are also significant in assessing what 'all of the evidence' in this case establishes. Baldwin has proffered evidence from witnesses who were either on the staff, or incarcerated in, the Juvenile Detention Center in Jonesboro (Baldwin's Exhibits 34-41). Baldwin's evidence tends to undermine the credibility of jailhouse witness Michael Carson, in that Baldwin obtained affidavits from staff members who were employed and on duty while Carson was incarcerated in the Detention Center at the same time as Baldwin; as well as from other detainees who were also incarcerated during that time period. At least one staff

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member who submitted an affidavit, and two detainees, claim to have been present at the time that Carson met Baldwin playing cards (as is documented in the Unit log). The affiants include the staff member who made pertinent entries in the Unit log, and two of the detainees who were reported to have been at the card table, along with Carson and Baldwin. Their account specifically undermines aspects of Carson's description of his interactions with Baldwin. More generally, the various affidavits of detainees and staff members undermine the credibility of Carson's testimony that within a short period of time of meeting Baldwin, Carson obtained a series of damaging admissions about Baldwin's involvement in the crimes.

12. In addition, based on the forensic DNA testing, and the other scientific evidence marshaled by Baldwin, and filed in support of his Petition undermines Carson's veracity given the mechanism of injury-related evidence summarized above that Baldwin has presented.

13. In addition, Baldwin has presented affidavits from a variety of persons who claim to have had contact with him during the course of the day of the victims' disappearance, as well as on the days following that disappearance, including the day of the recovery of the bodies. The Court refers specifically to the affidavits of Holly George, Heather Cliett, and Jennifer Bearden, who contend that they were on the phone with Baldwin and/or his co-defendant Echols most evenings in May, 1993, and who claim

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to have been on the phone with Baldwin on the evening of the victims' disappearance. The Court also has considered evidence from Baldwin's mother, and brother, on that issue, including evidence provided to the West Memphis Police Department.

14. Baldwin has also presented other evidence to demonstrate that it was not credible that he could have participated in the planning of the killings at issue, have been involved in them and have attended school both on the day the victims' disappeared (May 5, 1993), and on the next day when their remains were found. The evidence presented by Baldwin with his petition includes rough distances between the crime scene and Baldwin's family home, and anecdotal information in the form of affidavits about Baldwin's need to catch the school bus on school days, as well as evidence about his demeanor during the relevant period of time.

15. In the event that this Court reconsiders the Order granting Baldwin a new trial, it will address the question of whether the above findings of fact and conclusions of law warrant an evidentiary hearing. If the Order granting Baldwin a new trial is reconsidered, the Court will also address the merits of his motion for testing of fiber and hair evidence, as well as his proffer of evidence concerning juror misconduct, including the affidavit submitted by Baldwin, and sought to be unsealed by all parties, from a lawyer who has been unidentified to this point, but who, according to the proffers made to the Court, had direct contact with the foreman of the Baldwin/Echols jury.

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This Proposed Order, submitted by counsel for Petitioner Baldwin is:

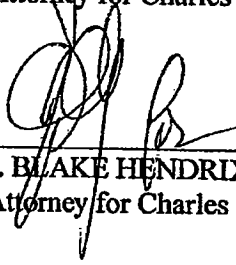
Dated: September 2, 2008

Respectfully Submitted by

PETITIONER CHARLES JASON BALDWIN



JOHN T. PHILIPSBORN
Attorney for Charles Jason Baldwin



J. BLAKE HENDRIX
Attorney for Charles Jason Baldwin

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PROOF OF SERVICE

I, Steven Gray, declare:

That I am over the age of 18, employed in the County of San Francisco, California, and not a party to the within action; my business address is 507 Polk Street, Suite 350, San Francisco, California 94102.

On today's date, I served the within document entitled:

[PETITIONER BALDWIN'S PROPOSED] ORDER AND PRECEDENT ON BALDWIN'S STATUTORY HABEAS CORPUS PETITION AND MOTION FOR NEW TRIAL, ARKANSAS CODE SECTIONS 16-112-201 ET SEQ.

- (x) By placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in a Federal Express Envelope at San Francisco, California, addressed as set forth below;
- (x) By electronically transmitting a true copy thereof;
- () By serving a true copy by facsimile to the person and/or office of the person at the address set forth below

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 2nd day of September, 2008, at San Francisco, California.

Signed: Steven Gray
Steven Gray

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