

FILED

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IN THE CIRCUIT COURT OF CRAIGHEAD COUNTY, ARKANSAS
WESTERN DISTRICT

AMR. HUDSON
CIRCUIT COURT CLERK

CHARLES JASON BALDWIN,

DEFENDANT/PETITIONER

vs.

NO. CR-93-450B

STATE OF ARKANSAS

PLAINTIFF/RESPONDENT

MOTION FOR ORDER ON SCOPE AND SCHEDULING OF HEARING ISSUES

1. Introduction

Petitioner Charles Jason Baldwin files this motion so as to allow discussion and rulings on the scope and scheduling of this hearing, in view of issues discussed below.

2. Release of sealed attorney affidavit; determination of privilege issues; scheduling of attorney testimony

Baldwin made allegations in his Rule 37 Petition that he was deprived of Sixth Amendment rights due to a variety of matters, including repeated juror misconduct. Baldwin filed with the Court a sealed affidavit provided to him by counsel for Echols, which was briefly discussed by the Court and counsel at the last calling of the case. The affidavit is understood to have been prepared by a lawyer who spoke with the foreman of the Baldwin/Echols jury, and obtained evidence relevant to a determination of whether jury misconduct occurred. Echols' lawyer Dennis Riordan was contacted by a lawyer representing the lawyer-affiant who provided a general description of the content of the affidavit without further identifying the affiant.

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Baldwin's undersigned counsel have now identified the affiant, and his lawyer. The affidavit at issue, which was to be released to the parties, has yet to be released. Baldwin is seeking the release of the affidavit, and also intends to call the affiant as a witness, unless the Court determines that, as a matter of law, the affiant will not be permitted to testify. Nonetheless, Baldwin intends to have the affiant under subpoena so that Baldwin has made every effort to get testimony at issue before the Court.

Baldwin recognizes that the State has argued that claims of juror misconduct, or deprivation of the right to a fair jury trial, are not cognizable under Rule 37. In part because this Court could make rulings that would affect the need for the lawyer-affiant to be present during these proceedings, as well as because the parties have previously agreed to the release of the lawyer's affidavit pursuant to a protective order, Baldwin respectfully requests that this matter be addressed prior to the commencement of testimony on September 24, 2008.

3. Scope and Scheduling of Hearing Issues

Baldwin is aware that the State has argued that Baldwin's Rule 37 Petition raises issues that are not cognizable under Rule 37. Thus, the State contends that a number of his claims can be ruled on as a matter of law without the need for any further factual determinations by the Court.

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Baldwin respectfully requests that rulings on these arguments by the State be made prior to the commencement of the taking of testimony.

In addition, because of the schedule set forth by the Court, and the breadth of ineffectiveness of counsel claims that he has brought, Baldwin respectfully requests that the Court review scope of hearing and scheduling issues prior to the commencement of the taking of testimony on the ineffectiveness claims that the State reluctantly conceded were cognizable in these proceedings. Of particular concern to the Baldwin defense is the question of the scheduling of any expert witnesses whose testimony may be permitted by the Court - and whose testimony would also be relevant to the Misskelley claims.

Misskelley's lawyers, like Baldwin's, are concerned to understand if the Court intends to allow expert testimony, and further to know whether the Court intends to proceed in a joint session where experts are common to both cases.

The Baldwin defense has previously addressed this issue in other correspondence, and respectfully notes that at the last calling of the case the question of the scope of these Rule 37 hearings was left for further determination. Initially, the Baldwin defense understood that the Court expected these hearings would focus mainly on evidence pertinent to the actions (or omissions) of trial counsel, and review of any strategic and tactical decision-making. The defense is maintaining contact with specific expert witnesses, all of whom are from outside the State of Arkansas. The defense has discussed

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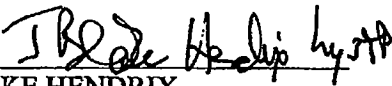
with the State (through Circuit prosecutor Brent Davis) that these are not witnesses who are easily available without notice, and given the initial indication by the Court that there would only be 5 to 6 days allocated to both Baldwin and Misskelley for the Rule 37 hearings, and discussions between the Court and the parties that some of the evidence on forensic science issues might be heard in consolidated hearings to minimize the need for repetition, the Baldwin defense asks that this matter be addressed at the earliest possible time to permit it to attend to the scheduling of necessary witnesses, depending on the Court's rulings on this issue.

WHEREFORE, Baldwin respectfully moves for the above issues to be addressed at the beginning of his hearing, or as soon thereafter as is convenient to the Court.

Dated: September 19, 2008

Respectfully Submitted by

PETITIONER CHARLES JASON BALDWIN



J. BLAKE HENDRIX
Attorney for Charles Jason Baldwin



JOHN T. PHILPSBORN
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:

MOTION FOR ORDER ON SCOPE AND SCHEDULING OF HEARING ISSUES

- (x) By placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the U.S. Mail 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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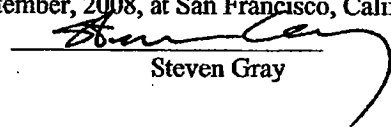
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 19th day of September, 2008, at San Francisco, California.

Signed: 
Steven Gray

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