

FILED

07 OCT 31 PH 4:40

IN THE CIRCUIT COURT OF CRAIGHEAD COUNTY, ARKANSAS
WESTERN DISTRICT
ANN WILSON
CIRCUIT AND CHANCERY
COURT CLERK

DAMIEN ECHOLS and CHARLES
JASON BALDWIN,

PLAINTIFFS,

vs.

CR-93-450A & 450

THE STATE OF ARKANSAS,

RESPONDENT.

JESSIE LLOYD MISSKELLEY, JR.

PLAINTIFF,

vs.

CR-93-450A

THE STATE OF ARKANSAS,

RESPONDENT.

**JOINT STATUS MEMORANDUM SUBMITTED BY NON-CAPITAL CASE
PETITIONERS BALDWIN AND MISSKELLEY**

DEPT: JUDGE BURNETT

I. INTRODUCTION

The purpose of this Status Memorandum from non-capital case Petitioners Baldwin and Misskelley is to report to the Court on recent developments in the above-entitled matter and to outline the proposals of non-capital Petitioners Baldwin and

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Misskelley for further proceedings.

One of the concerns in addressing this Memorandum to the Court at this juncture is that capital case Petitioner Damien Echols has notified the parties, through counsel, that he intends to amend his Federal *habeas* petition currently pending in the Federal District Court in Little Rock. The amendment is likely to take place during the week of October 29, 2007, and may be accompanied by some press coverage. Non-capital Petitioners Baldwin and Misskelley are not privy to the specifics of the amendment, and submit this Memorandum to assure the Court that they are proceeding with their cases on the course generally outlined for the Court during a brief meeting between the Court and counsel earlier this year. Also, the Baldwin and Misskelley defenses are informed by counsel for Damien Echols that the Echols defense does not anticipate that the amendment of the Federal petition will have any specific bearing on matters pending in the Echols case before this Court.

2. **STATUS OF POST-CONVICTION TESTING OF THE EVIDENCE,
SCIENTIFIC EVIDENCE REVIEW, AND PRODUCTION OF REPORTS.**

A. **DNA Testing**

The parties in this matter continue to cooperate in seeking to timely complete testing of physical evidence and review of scientific evidence issues. The Baldwin and Misskelley defenses thank the Prosecuting Attorney, Brent Davis, and personnel at the Arkansas Crime Laboratory, for their continuing assistance.

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Since counsel met with the Court earlier this year, DNA testing has proceeded. At the time of the meeting of counsel with the Court, testing using STR techniques had been completed, and the parties had received reports from the agreed-upon laboratory, the Bode Technology Group of Lorton, Virginia. Up to that point, by agreement of the parties, the testing processes were arranged by counsel for Petitioner Baldwin. During this first phase of DNA testing, some mitochondrial testing was initiated of selected hairs recovered from the scene, and transmitted to the Bode Technology Group pursuant to Orders signed by this Court.

As a result of the STR testing, at least two partial foreign DNA profiles (not those of Petitioners, or of the victims) were found on evidence from the crime scene, and on a swab taken from one of the victims. In part as a result of that development, as well as because a variety of hairs (both human and animal) were recovered from the scene by the Arkansas Crime Laboratory personnel and West Memphis police officers, the parties agreed to further DNA testing of hairs, and to review of evidence from the current scene transmitted to the Bode Technology Group to assess whether additional DNA testing could be applied to evidence to yield further results.

This 'new' component of testing has largely been managed (by agreement of the parties) by counsel for Petitioner Echols. This phase of testing yielded further evidence regarding hairs, including some mitochondrial DNA profiles which the parties have been

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further investigating. At least one profile, as has been publically reported, was largely consistent with one person known by the parties (other than a victim or one of the convicted Petitioners) to have resided in the area, and to have had links specific to one of the victims.

Review of hair testing results continues, and DNA scientists working on the case have been asked to report whether additional techniques can be applied to provide additional information regarding material in the hands of the parties. It may be that the Echols defense can further update the Court on specifics of DNA testing issues not reported on here.

B. Review of Causes of Injury and Forensic Pathology Issues

At the same time as the above-mentioned DNA testing activities, through a cooperative effort which has resulted in exchanges of expert information between the parties, all three Petitioners provided Prosecuting Attorney Brent Davis information concerning scientific review of the original forensic pathology findings. With Prosecuting Attorney Brent Davis' cooperation, and with the assistance of Medical Examiner Dr. Frank Peretti, and Arkansas Crime Laboratory supervisors (and criminalists) Kermit and Lisa Channell, several consulting forensic pathologists and odontologists who have reviewed the findings and evidence in this case, met in May, 2007 at the Arkansas Crime Laboratory with the State's scientific evidence experts to

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review a number of issues, including the mechanisms of injury to the victims.

Because of the parties' concerns that there be a full, fair, and accurate review, requests for further data were made of the Arkansas Crime Laboratory and Medical Examiner's office, and pertinent scientific evidence issues continue to be reviewed by experts in the fields of forensic pathology, odontology, and crime scene investigation.

3. **AGREEMENTS TO DISAGREE**

As previously reported to the Court, there are some areas of scientific evidence endeavor that the parties have agreed to disagree about, which will likely require resolution by the Court. These areas include, but are not limited to: the opportunity for the defense to review fiber evidence; fingerprint evidence review; additional DNA testing and review. As to this last matter, the Baldwin and Misskelley defenses defer to the Echols defense in view of its now primary role in managing the DNA testing processes.

4. **STATUS OF BALDWIN AND MISSKELLEY CASES**

Arkansas Rules of Criminal Procedure, Rule 37 petitions were timely filed and are pending before the Court in the Baldwin and Misskelley cases. The State and the Baldwin and Misskelley defenses have agreed that after the conclusion of scientific evidence review, and any further litigation necessary to the completion of scientific evidence testing/review, Baldwin and Misskelley will submit amended petitions

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integrating relevant scientific evidence findings, along with other factual allegations as provided by ongoing post-conviction investigation. The State has agreed not to contest the timeliness of these amendments so long as they are made in an orderly way, without the filing of a series of amended petitions.

5. **THE BALDWIN AND MISSKELLEY DEFENSES ANTICIPATE THAT THIS CASE WILL BE READY TO PROCEED IN THE MANNER OUTLINED FOR THE COURT**

As noted in the introduction to this Status Report, the Baldwin and Misskelley defenses anticipate that there will be no delays on necessary State post-conviction litigation as the result of any amendments to the *habeas corpus* petition filed by Damien Echols. Petitioner Echols is involved in some, but not all, of the litigation concerning Baldwin and Misskelley. According to discussions among counsel, it does not appear that any developments in the Echols case will affect scheduling issues.

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CONCLUSION

Should the Court wish to meet with the parties, hold a telephonic status conference, or obtain further written information about the case, the Baldwin and Misskelley defenses will make themselves available as directed by the Court. This Joint Status Memorandum is

Respectfully Submitted by the
Following Parties:

PETITIONER CHARLES JASON BALDWIN
J. Blake Hendrix, Esq.
John T. Philipsborn, Esq.

Dated: October 26, 2007

By: 

JOHN T. PHILIPSBORN
Attorneys for Jason Baldwin

PETITIONER JESSIE MISSKELLEY
Michael N. Burt, Esq.
Jeffery M. Rosenzweig Esq.

Dated: October 26, 2007

By: 

MICHAEL N. BURT, Esq.
Attorney for Jessie Misskelley, Jr.

with permission

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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:

JOINT STATUS MEMORANDUM SUBMITTED BY NON-CAPITAL CASE PETITIONERS BALDWIN AND MISSKELLEY

- (x) By placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States 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

Michael Burt
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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 26th day of October, 2007, at San Francisco, California.

Signed: _____


Steven Gray

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