

ORIGINAL

FILED

IN THE CIRCUIT COURT OF CRAIGHEAD COUNTY, ARKANSAS  
WESTERN DISTRICT

AMID: 09  
Case No. \_\_\_\_\_  
CIRCUIT COURT CLERK (CR 03-450B)

CHARLES JASON BALDWIN,

PETITIONER,

vs.

STATE OF ARKANSAS

RESPONDENT

**PETITIONER BALDWIN'S SUBMISSION OF SUPPLEMENTAL SEALED EXHIBITS 75-77 AND MOTION FOR ORDER ADDRESSING STATUS OF 'AFFIANT'S' SEALED AFFIDAVIT FILED ON MAY 30, 2008 WITHOUT COPIES TO THE PARTIES**

**I. INTRODUCTION**

Petitioner Jason Baldwin hereby supplies the Court with the original of an affidavit previously filed under seal and moves this Court for an order addressing the status of an affidavit filed under seal in this action by a third party on Friday, May 30, 2008.

**II. BACKGROUND AND ARGUMENT**

The relevant facts are these:

On May 30, 2008, a sealed envelope containing the caption for this action and the title "SUPPLEMENTAL EXHIBITS IN SUPPORT OF CHARLES JASON BALDWIN'S STATUTORY HABEAS CORPUS PETITION; MOTION FOR NEW TRIAL; RULE 37 PETITION; PETITION FOR WRIT OF ERROR" was filed with the Clerk of this Court. That envelope contained two documents.

The first of these documents was a copy of an affidavit from Lyndall Stout. Ms.

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Stout is a journalist who interviewed Juror Number Four, the foreman of the Echols and Baldwin jury, in the spring of 2005. Ms. Stout states that the jury foreman admitted to her that he and other members of the jury discussed during their deliberations information which had not been admitted at trial - i.e., the statement taken from Jessie Misskelley on the date of his arrest in June of 1993 - even though the foreman knew that it was improper to discuss matters that had not been introduced into evidence. The Stout affidavit was submitted in support of the claim of juror misconduct in receiving and considering matters excluded from evidence raised in the motions filed by Mr. Baldwin last week. The Stout affidavit was filed under seal because it contains the name of Juror Number Four. The original of that affidavit is now being filed under seal with the Court Clerk and being served on counsel for the state and Baldwin's co-defendants.

As to the second document contained in that envelope, undersigned counsel state the following on information and belief. Earlier this year, Dennis Riordan, counsel for Damien Echols, received information that Juror Number Four had discussed his service on the Echols-Baldwin jury with another person during the trial and thereafter. The information received by Mr. Riordan included the broad outline of what had been discussed by Juror Number Four during those conversations. That information generally supported the claim that the Echols-Baldwin jurors had improperly discussed and relied on the Misskelley statement, as well as the claims that Juror Number Four had erroneously discussed the trial with a non-juror before its completion and had prejudged the defendants' guilt or innocence prior to the commencement of deliberations.

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Mr. Riordan then contacted the person to whom Juror Four had purportedly spoken, hereafter referred to as "the affiant," and inquired about the information he had received. The affiant stated to Mr. Riordan that he was concerned about whether the information he possessed was subject to a claim of privilege by Juror Number Four. Mr. Riordan suggested to the affiant that he consult with an attorney for advice on whether he was free to discuss that information.

Mr. Riordan subsequently spoke with the lawyer retained to advise the affiant on the privilege question. Affiant's counsel informed Mr. Riordan that he had concluded, based on his review of the relevant law, that the information possessed by the affiant was not privileged, and on that basis the affiant had decided he was free to inform this Court of the information in his possession. The affiant further concluded that he should take that course of action. In order to ensure that privileged information was not disclosed improperly, however, affiant's counsel decided that his client's affidavit should be filed with the Court without being disclosed to undersigned counsel for Petitioner, counsel for Echols, counsel for Misskelley, or counsel for the State, thereby permitting the Court to decide any claim of privilege raised by Juror Number Four before the contents of the affidavit are disclosed to other parties. Mr. Riordan arranged with affiant's counsel that he would file his client's affidavit in the same sealed envelope as the Stout affidavit. The Baldwin defense have not seen the affidavit nor read its contents, nor has Mr. Riordan, nor has any of the other counsel for Baldwin, Echols, or Misskelley. The affidavit has also not been served on counsel for the State.

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Petitioner therefore requests an order that the sealed affidavit of 'affiant' be provided to Juror Number Four in order that he may consider whether he wishes to attempt to raise a claim of privilege regarding its contents. In addition, Petitioner asks that copies of the affiant's affidavit be provided to counsel for the State and Baldwin, Misskelley, and Echols, subject to a protective order precluding any disclosure of the information contained therein, in order to permit sealed briefing on the privilege issue.

Finally, Petitioner is also now filing certain court documents under seal which serve as important corroboration of the information contained in the affiant's affidavit. While these documents are presently a matter of public record, they could lead indirectly to the identification of Juror Number Four, and are being filed under seal in the exercise of caution.

In sum, Petitioner's Exhibit List, and Exhibits supporting his Amended Rule 37 and statutory habeas corpus Petition (A.C.A. 16-112-201 *et seq.*), are now amended to include:

- Exhibit 75 Affidavit of Lyndall Stout
- Exhibit 76 Affidavit of 'Affiant'
- Exhibit 77 Court records corroborating 'Affiant's' affidavit

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Exhibits 75, 76, and 77 are filed under seal to preserve juror confidentiality.

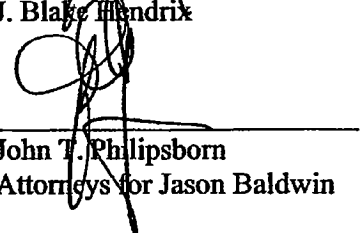
Respectfully Submitted,

J. Blake Hendrix, Esq.  
John T. Philipsborn, Esq.

Dated: June 5, 2008

  
\_\_\_\_\_  
J. Blake Hendrix

Dated: June 5, 2008

  
\_\_\_\_\_  
John T. Philipsborn  
Attorneys for Jason Baldwin

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ADD01007

**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 SUBMISSION OF SUPPLEMENTAL SEALED EXHIBITS 75-77 AND MOTION FOR ORDER ADDRESSING STATUS OF 'AFFIANT'S' SEALED AFFIDAVIT FILED ON MAY 30, 2008 WITHOUT COPIES TO THE PARTIES**

- (x) By Federal Express at San Francisco, California, addressed as set forth below;
- ( ) By electronically transmitting a true copy thereof;

The Honorable David Burnett  
 Circuit Judge  
 Courthouse Annex  
 511 South Union Street, Suite 424  
 Jonesboro, Arkansas 72403

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 Kent Holt  
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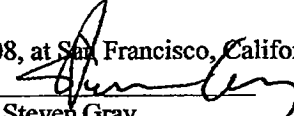
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 Cauley Bowman Carney & Williams  
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 Roland, AR 72135

Blake Hendrix  
 Law Offices  
 308 South Louisiana Street  
 Little Rock, AR 72201

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

Executed this 5<sup>th</sup> day of June, 2008, at San Francisco, California.

Signed:   
 Steven Gray

**001009**

ORIGINAL

IN THE CIRCUIT COURT OF CRAIGHEAD COUNTY, ARKANSAS

WESTERN DISTRICT

CRIMINAL DIVISION

CHARLES JASON BALDWIN,  
Petitioner,

CR-93-450B

vs.

STATE OF ARKANSAS,  
Respondent.

FILED  
08 JUN -6 AM 10:10  
ANN HOBSON  
CIRCUIT COURT CLERK

**SECOND SUPPLEMENTAL EXHIBITS (#75, #76, #77) IN SUPPORT OF PETITIONER  
CHARLES JASON BALDWIN'S:**

STATUTORY HABEAS CORPUS PETITION

MOTION FOR NEW TRIAL, RULE 37 PETITION

PETITION FOR WRIT OF ERROR

**FILED UNDER SEAL**

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