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IN THE CIRCUIT COURT OF CRAIGHEAD COUNTY, ARKANSAS  
WESTERN DISTRICT

DAMIEN ECHOLS and CHARLES  
JASON BALDWIN,

PLAINTIFFS,

vs.

CR-93-450A & 450 B

THE STATE OF ARKANSAS,

RESPONDENT.

**ORDER FOR DNA TESTING**

THESE MATTERS are before this Court because Echols and Baldwin have separately filed Petitions and Motions for post-conviction evidence testing under Arkansas Code Section 16-112-201, *et seq.*

**FINDINGS**

The Court is informed and finds that counsel for Echols and Baldwin, and the State of Arkansas, represented by the Office of the Prosecuting Attorney for the Second Judicial Circuit, have agreed that DNA analysis of the below-described items of evidence will be conducted, and that the described parties have reached an agreement on protocols to accomplish this testing. The Court is further informed, and finds, that the parties have agreed that biological material found on the below-described evidence has the scientific

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potential to produce new cumulative evidence which may be materially relevant to the defendants'/Petitioners' assertions of actual innocence for the purposes of this Court's finding of good cause for the agreed upon testing to proceed. The Court further is informed, and finds, that the State of Arkansas has reserved the right, based on reasonable notice to the Petitioners, to object to the relevance of test results obtained from testing of items enumerated and described in "List B" below as not being items which have the scientific potential to produce new noncumulative evidence materially relevant to the defendants'/Petitioners' assertions of actual innocence.

The Court is further informed, and finds, that Echols and Baldwin have agreed to pay for the testing to be conducted on the items of evidence enumerated and described below. Their agreement to make payment shall not be deemed a waiver of any rights that they may have to seek reimbursement from the State for any or all of these testing related expenses pursuant to the provisions of Arkansas Code Sections 16-112-201, *et seq.* The Court is further informed, and finds, that the parties have agreed that Echols and Baldwin may initiate action either in this Court as a part of these actions, or by bringing separate legal actions either in this Court or in any other court of the State of Arkansas, pursuant to Arkansas Code Sections 16-112-201, *et seq.*, seeking reimbursement or payment of any costs of testing, or other costs for which the State of Arkansas is deemed and/or found to be liable, or responsible.

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**IT IS HEREBY ORDERED:**

1. Based on the agreement of the parties, the Court orders that the following items of evidence are to be tested using technology and techniques applicable to DNA testing, and finds that any results pertinent to the items enumerated and described in "List A" below may produce relevant information within the meaning of Arkansas Code Sections 16-112-201, *et seq.*:

**LIST A ITEMS**

**Evidence Item #    Related #s    Lab Case #    Description**

**Michael Moore**

FP2		93-05716	Left hand nail scrapings from victim
FP3		93-05716	Right hand nail scrapings from victim
FP5		93-05716	Two (2) Caucasian hairs removed from Moore.
FP6		93-05716	One (1) package containing ligatures from wrists to legs, right and left, of victim Moore.
FP6	QH	93-05716	Hair from Moore ligature
FP6		93-05716	Skin/tissue/hairs from Moore ligatures
FP7	Q1-4	93-05716	Swabs taken from Moore
FP7		93-05716	Dyed hair from FP7 (Moore)

**Steven Branch**

FP3		93-05717	Nail scrapings from victim Branch
FP4		93-05717	Right hand nail scrapings, Branch
FP5		93-05717	Two (2) dark Caucasian hairs removed from Branch.
FP6		93-05717	Ligatures from victim Branch

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FP6		93-05717	Skin, tissue or hair removed from Branch ligatures
FP6	K1-Q1-4	93-0717	Branch blood sample; swabs

**Christopher Byers**

FP3		93-05718	Hair found on Byers' body
FP4		93-05718	Left hand nail scrapings from Byers
FP5		93-05718	Right hand nail scrapings, Byers
FP6	QH	93-05718	Hair on lower body, Byers
FP8		93-05718	Ligatures from right and left extremities, Byers
FP8	QH	93-05718	Hair from Byers' ligature
FP8		93-05718	Tissue, skin or hair, Byers' ligature
FP9		93-05718	Hair, perineum, Byers

<u>Evidence Item #</u>	<u>Related #s</u>	<u>Lab Case #</u>	<u>Description</u>
FP10	QH	93-05718	Negroid hair removed from white sheet <sup>1</sup>
FP10	Q1-3	93-05718	Swabs from Byers

**Other Evidence**

E3		93-05716	Hair from E3
E5		93-05716	Hair from Scout cap
E126	QH	93-05716	Hair from knife
E127	LS1-QH	93-05716	Hair from tree stump
E147	QH	93-05716	Hair from knife

**Clothing Cuttings**

E3		93-05716	Cuttings from blue pants
E7		93-05716	Cuttings from jeans

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<sup>1</sup> The Court is informed, and finds, that the State has reserved the right to dispute the relevance of this item.

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**Knife**

E178                                      93-05716      Kershaw folding knife

2. Based on the agreement of the parties, the Court reserves the parties the right to object to the relevance of results of testing on Item E-178, listed immediately above, a Kershaw folding knife. The objections reserved to all parties include the objection that there was a failure to maintain a chain of custody sufficient to establish that the knife was neither tampered with, nor altered in any material aspect.

3. Based on the agreement of the parties, the Court orders testing of the items enumerated and described in "List B" below using technologies and techniques pertinent to DNA testing. The Court is informed, and finds, that the State has reserved the right to dispute whether the items in "List B" below have the potential to produce new noncumulative evidence which may be materially relevant to the defendants'/Petitioners' assertions of actual innocence:

**LIST B ITEMS**

<u>Evidence Item #</u>	<u>Related #s</u>	<u>Lab Case #</u>	<u>Description</u>
E1A		93-05716	Bag of clothing, area of homicide
E27		93-05716	Hair from knife
E28		93-05716	Hair from E28 butterfly knife
E134	QH	93-05716	Hair from knife
E17		93-05716	One (1) wooden stick, scene
FP10	QH	93-05716	Negroid hair removed from white sheet

4. Within thirty (30) days of the filing of this Order, the Prosecuting Attorney, Second Judicial Circuit, and/or his designees from the Arkansas State Crime Laboratory, specifically Laboratory Criminalist Kermit Channell, shall package and deliver to the agreed upon and below described independent laboratory all of the evidence, exhibits,

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and biological material enumerated and described above. The evidence shall be delivered in packaged form using currently accepted laboratory packaging standards for the transmission by mail, or express delivery, of evidence acquired in a criminal case.

5. Within five (5) days of having transmitted the evidence, the Prosecuting Attorney and/or his designee Kermit Channell shall be responsible for ensuring that the evidence, accompanied by a copy of this Order, and a transmittal letter identifying for chain of custody purposes all of the evidence described and enumerated above, is transmitted to the laboratories of the Bode Technology Group in Springfield, Virginia ("Bode"). The Prosecuting Attorney, or his designee at the Arkansas Crime Laboratory, Kermit Channell, shall file with the Court, and shall serve upon below described counsel, an affidavit describing: all evidence packaged and transmitted; the manner of packaging and transmission, including the specification of any Airbill or shipment number; and a confirmation of the receipt of the specific evidence by the agreed upon laboratory.

6. The cost of shipping the evidence shall be paid for by Petitioners Echols and Baldwin. Petitioners shall transmit to the Prosecuting Attorney and/or his designee a Federal Express account number to which the cost of the overnight delivery service shall be billed. Petitioners shall also provide the address for Bode, to which the evidence is to be shipped. On the date of shipment, the Prosecuting Attorney and/or his designee,

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Kermit Channell shall promptly transmit either by telefax, or by mail, a legible copy of the Federal Express air bill to counsel for all parties, using the fax numbers below.

7. Upon receipt of the evidence, Bode shall inventory the evidence, using this Order as the basis for the inventory. Prior to beginning any testing, Bode shall examine the evidence to determine whether it is feasible to split the evidence so as to permit replicate testing by the State or by Petitioners. Bode shall promptly inform counsel for Petitioners of its conclusion with respect to this inquiry.

8. If Bode represents that there is insufficient evidence to split, counsel for Petitioner shall immediately notify Prosecuting Attorney Brent Davis of that conclusion, either verbally or in writing. If notice is oral, it shall be promptly confirmed in writing. If the parties cannot agree on how to proceed with the testing of items as to which too little biological material exists for splitting, the parties shall then notify the Court, in writing, either in a joint or in separate pleadings, that the matter must come before the Court for decision. Bode shall then proceed with the DNA analysis of the biological evidence.

9. The parties have agreed that if Bode determines that any of the hair evidence is not suitable for nuclear DNA testing, it shall forward such evidence to Mitotyping Technologies, L.L.C., in State College, PA, for mitochondrial DNA analysis.

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10. Upon completion of their testing and analysis, each designated laboratory shall reduce its findings in a written report, which shall be provided to the Office of the Prosecuting Attorney, and to counsel for Petitioner. Copies of these reports shall be filed with the Court.

**Reservations of Rights**

11. The parties have agreed, and the Court finds, that each of the parties in this case has reserved certain rights as set forth below. The Court recognizes these reservations without purporting to adjudicate or enforce those rights at this juncture in the proceedings.

12. The State of Arkansas, through the Office of the Prosecuting Attorney for the Second Judicial Circuit, reserves the right to object to the relevance of any results of testing on any items listed herein insofar as those results may pertain to the defendants'/Petitioners' claims for relief resulting from said tests. In addition, the State has further reserved objections to the results of any test conducted on the items enumerated and described in List B, above for the reasons specified in paragraph 3 above, and to the results of any test conducted on List A, Item E-178 for the reasons specified in paragraph 2, above.

13. Petitioners Echols and Baldwin reserve the right to litigate the legal and scientific validity of any of the State's objections. Petitioner have also specifically

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reserved the right to demonstrate the relevance of any biological material, or test results, pertinent to items on List B and of any biological material, and test results, pertinent to List A, Item E-178. Echols and Baldwin also reserve the right to contest the validity of the State of Arkansas' objections to the testing of evidence items that are not the subject of this Order, but which the parties stipulate, and the Court finds, are the subject of Echols' and Baldwin's written requests, and the State's written objections. The parties have agreed, and the Court finds, that the parties have exchanged letters that evidence both the requests and objections just noted. Finally, Echols and Baldwin also reserve the right to seek reimbursement for the costs of testing pursuant to Arkansas Code Section 16-112-201, *et seq.* insofar as this Court, or any other court of the State of Arkansas, finds that testing was conducted on items, evidence, or biological material as provided for, covered by, or defined in, Arkansas Code Sections 16-112-201, *et seq.*

14. Upon written application by any of the parties to this action, this Court will adjudicate any claim of right specifically reserved under the agreement which has led to the issuance of this Order.

IT IS SO ORDERED.

David Burnett  
CIRCUIT JUDGE DAVID BURNETT

DATE OF ENTRY: 5/26/04

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**APPROVED BY COUNSEL:**

**FOR PETITIONER DAMIEN ECHOLS:**



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Dated: May 9, 2004

**FOR PETITIONER CHARLES JASON BALDWIN:**

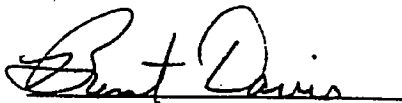
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Dated: May 6, 2004

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Dated: 5/20/04

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