IN THE CIRCUIT COURT OF CRITTENDEN COUNTY, ARKANSAS
CRIMINAL DIVISION

PLAINTIFF

STATE OF ARKANSAS

NO. CR-93-516, 517, 518

VS.

OCT 20 1993

JESSE LLOYD MISSKELLEY, JR., CHARLES JASON BALDWIN and DAMIEN ECHOLS, a/k/a MICHAEL WAYNE ECHOLS

DEFENDANTS

BRIEF IN RESPONSE TO MOTION TO TAKE DEPOSITIONS OF INTERROGATING OFFICERS

The defendant Misskelley acknowledges and admits that there is currently no statutory or judicial authority in Arkansas for the taking of a deposition in a criminal case, as requested by the defendant. The defendant Misskelley relies on the case of Wardius v. Oregon, 412 U.S. 470 (1973). The Arkansas Supreme Court has considered this very issue on appeal on numerous occasions and, on each occasion, has upheld the trial Court in its refusal to order that a defendant be allowed to take the depositions of witnesses. See Sanders v. State, 276 Ark. 342, 635 SW 2d 222 (1982); Hoggard v. State, 277 Ark. 117, 640 SW 2d 102 (1982); and Spencer v. State, 285 Ark. 339, 686 SW 2d 436 (1985). In Hoggard, the Court, in holding that the Court did not err in refusing to order a discovery deposition, stated:

> The Wardius Court made it clear it was not suggesting the due process clause of its own force required Oregon to adopt discovery procedures in criminal cases, citing U.S. v. Augenblick, 393 U.S. 348, 89 S.Ct. 528, 21 L.Ed. 2d 537 (1969) and Cicenia v. Lagay, 357 U.S. 504, 78 S.Ct. 1297, 2 L.Ed. 2d 1523 (1958), rather it was holding that where a state imposes discovery against a defendant, equivalent discovery rights must be given to a defendant.

Id. @ ____, 640 SW 2d @ 105. In Sanders, the Court, in upholding the trial Court in refusing to order that appellant be allowed to take depositions, stated:

> Appellant argues that the trial Court erred in refusing to order that appellant be allowed to take the depositions of two out-of-state persons who were called as witnesses at the trial by the prosecution. Appellant alleged that the witnesses refused to speak with defense counsel; therefore, he could not adequately prepare for trial. However, appellant has failed to show how he was prejudiced by his not being allowed to take their depositions before trial. Hill v. State, ___ Ark. ___, 628 SW 2d 284 (1982). Both witnesses testified at trial and defense counsel had an opportunity to cross examine them. There is nothing to indicate that appellant was not furnished with the witness's statements after direct examination as required by Ark. Stat. Ann. Section 43-2011.3 (Repl. 1977). Appellant cites ARCRP Rule 17.4 (Repl. 1977) and Ark. Stat. Ann. Section 43-2011 and Section 43-2011.1 (Supp. 1981) to support his argument that neither the statutes nor the rules provide for the taking of a deposition under the circumstances present in this case.

It is respectfully submitted that the defendant Misskelley has made no showing of a basis for the taking of a deposition in this criminal case and has cited no authority authorizing the taking of a deposition in a criminal case. The Motion to Take Depositions of Interrogating Officers should be denied.

Respectfully submitted,

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By 

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Brief was served upon the defendants herein by mailing such copy to their attorneys of record, addressed as follows:

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