

IN THE CIRCUIT COURT CRITTENDEN COUNTY

PAM HICKS and JOHN MARK
BYERS

APPELLANTS

v.

CV-2012-290-6

THE WEST MEMPHIS, ARKANSAS,
POLICE DEPARTMENT; THE CITY
OF WEST MEMPHIS, ARKANSAS;
DONALD OAKES, in his Individual
and Official Capacities as Chief of Police
of The West Memphis, Arkansas,
Police Department; WILLIAM
H. JOHNSON, in his Individual and
Official Capacities as Mayor of
WEST MEMPHIS, ARKANSAS;
and SCOTT ELLINGTON, in his
Individual and Official Capacities
as Prosecuting Attorney for the
Second Judicial District of Arkansas

APPELLEES

**THIRD AMENDED PETITION FOR
DECLARATORY JUDGMENT, COMPLAINT FOR VIOLATION OF
THE ARKANSAS FREEDOM OF INFORMATION ACT OF 1967, AND
APPEAL FROM ADMINISTRATIVE DECISION OF THE APPELLEES**

Come now the Appellants, and for their Third Amended Petition for Declaratory Judgment,
Complaint for Violation of the Arkansas Freedom of Information Act of 1967, and Appeal from
Administrative Decision of the Appellants, state:

I. INTRODUCTION

1. Pam Hicks and John Mark Byers (hereinafter, "Appellants") hereby incorporate to this
Third Amended Petition, Complaint, and Appeal, all statements, allegations, and exhibits of the original
and First and Second Amended Petitions, and Complaint, and Appeal, as if restated herein word-for-

FILED
2012 SEP -4 AM 11:21
TERRY HARRIS
CLERK
CIRCUIT COURT CRITTENDEN COUNTY AR

word. Ark. R. Civ. P. 10(c).

2. On, or about, July 12, 2012, the below-signed attorney, on behalf of the Appellants, transmitted by facsimile, electronic mail, and postal mail certified delivery, a request to Scott Ellington, as Prosecutor for the Second Judicial District of Arkansas. See, Appellants' Exhibit 11, Letter from below-signed attorney to Scott Ellington, attached.

3. Said request was made pursuant to the Arkansas Freedom of Information Act of 1967.

4. Said Letter was received by Mr. Ellington by facsimile and email on July 12, 2012, and by certified mail on July 26, 2012. See Appellants' Exhibits 12-14, Facsimile Confirmation Page, Electronic Mail Confirmation Page, and PS Form 3811, 7011 1570 0001 5355 0656, attached.

5. Defendant, Ellington, acknowledged to below-signed attorney, both over the telephone and by electronic communication, receipt of said letter.

6. Defendant, Ellington, has not provided the information requested.

7. As is shown in the previous Petitions, incorporated herein, the non-response of the Defendant, Ellington, was in violation of Arkansas Law. Ark. R. Civ. P. 10(c).

8. Appellants respectfully request a hearing withing seven days of this Petition. Ark. Code Ann. §25-19-107(b).

WHEREFORE, Appellants pray for an order from this Court granting their Petition, Complaint, and Appeal against the Appellants, for an order to the Appellees requiring them to allow Appellants to view and examine all evidence gathered in the investigation of the murders that occurred in West Memphis on May 5, 1993, for an order from this Court directing the Defendants to provide an evidence log or list identifying the physical evidence, for an order from this Court directing the

Defendants to provide all logs or other records indicating who has been permitted access to any of the physical evidence, for an order requiring the Defendant, Ellington, to provide the information requested in the Appellants' Exhibit 11, attached, and for all other proper relief.

Respectfully Submitted,



Ken Swindle

Ark. Bar #97234

619 West Walnut Street

Rogers AR 72756

Telephone (479) 621-0120

Fax (479) 621-0838

CERTIFICATE OF SERVICE

I, Ken Swindle, hereby state that the above-referenced document was transmitted to David Peebles, via U.S. First Class Mail, postage pre-paid, this 31st day of August, 2012.



Ken Swindle

SWINDLE LAW FIRM

KEN SWINDLE, Esq.
619 W. Persimmon Street
Rogers AR 72756

Phone: (479) 621-0120 Fax: (479) 621-0838

July 12, 2012

Mr. Scott Ellington, Prosecuting Attorney
2nd Judicial District of Arkansas
P.O. Box 1736
Jonesboro AR 72403

Via Electronic Mail: ellington@yourprosecutor.org,
and Facsimile: (870) 336-4011; and,
Certified Mail: 7011 1570 0001 5355 0656

Re: Request for Assistance under the Rights of Victims of Crime Act and Request for
Information under the Freedom of Information Act

Dear Mr. Ellington:

As you know, I represent Pam Hicks, mother of Steve Branch ("Steve"), and John Mark Byers, father of Christopher Byers ("Chris"). Steve and Chris were murdered on May 5, 1993, in the Robin Hood Hills woods, West Memphis, Arkansas. Ms. Hicks and Mr. Byers believe, as was stated in the June 9, 2012, editorial in the *Jonesboro Sun*, that the person who murdered Steve and Chris "has walked among us for nearly two decades" and desire to see the investigation of these murders opened and continued until the murderer is brought to justice.

It appears that some in the law enforcement community may have engaged in either willful blindness or reckless disregard of the truth with respect to the murders of Steve and Christopher. For example, the most statistically likely suspect for the murder of Steve was his stepfather, Terry Hobbs. Yet Terry Hobbs was not investigated or cleared of the murders in 1993. The only time he provided a statement to the West Memphis Police Department, to my knowledge, was in 2007 after DNA evidence linked him to the body of Michael Moore and the area where the boys' bodies were discovered. The 2007 Terry Hobbs interview left much to be investigated, but, to date, it appears there has been little, or no, follow-through.

I trust that you will reverse these perceptions and correct any deficiencies in the investigations of these murders revealed in compiling your responses to the requests made in this letter. I look forward to your timely initial responses to these requests. I also advise that I will be requesting supplemental responses on August 15, 2012, to ascertain if the blinders that apparently impeded the investigation of these murders before you became the prosecuting attorney have been removed.

Ms. Hicks and Mr. Byers request the documents, records and opportunity to identify the evidence listed in paragraphs 1-25 below under their natural and common law rights as the parents of the murdered children, the Arkansas Freedom of Information Act of 1967, the Arkansas Rights of Victims of Crime Act, and in the interest of justice for themselves and their murdered children.

As you know, the Freedom of Information Act provides that any person who negligently violates its provisions shall be guilty of a misdemeanor and punished by a fine or jail time,



or both, or a sentence of public service or education, or both. If the evidence requested is in active use or storage and therefore not available at this time for examination, then the custodian of that evidence shall certify this fact in writing to the applicant and set a date and hour **WITHIN THREE WORKING DAYS**, at which time the records will be available. Any citizen denied the rights granted to him by the Arkansas FOIA may appeal immediately from the denial to the Pulaski County Circuit Court or to some other appropriate Circuit Court for relief. The petition shall be heard within seven days of the application of the petitioner and those who refuse to comply with the orders of the court shall be found guilty of contempt of court. In any action to enforce the rights granted by the Arkansas FOIA, or in any appeal therefrom, the Court shall assess against the defendant reasonable attorneys fees and other litigation expenses reasonably incurred by a plaintiff who has substantially prevailed, unless the court finds that the position of the defendant was substantially justified, or that other circumstances make an award of those expenses unjust.

Would you kindly let me know what arrangements are necessary for my clients, Pam Hicks and John Mark Byers, accompanied by my agent, Danny Owens, to gain access to the documents, information and other records requested, and when the opportunities requested with respect to all physical evidence listed below, which are public records, will be provided?

The documents, information, other records and opportunities requested are:

1. Any record of a statement reflecting Michael Hobbs, Jr., stated to Terry Hobbs (sometimes referred to herein as "Mr. Hobbs") was in any way involved in the murders of Steve Branch, Michael Moore, and/or Christopher Byers.
2. Any record of a statement reflecting a person heard a conversation between Terry Hobbs and his brother Michael Hobbs, Sr., including, but not limited to, a statement reflecting a conversation where Mr. Hobbs stated: "I am sorry; I regret it." and Michael Hobbs, Sr. responded "You are in the clear; no one thinks you are a suspect; those guys are already in prison."
3. Any record concerning a person providing a statement described in items 1 or 2 above, including, but not limited to, any interview of such a person and any background check of such a person.
4. Any record concerning Michael Hobbs, Jr., including, but not limited to, any interview of Michael Hobbs, Jr., concerning any statement described in items 1 and 2 above and any background check of Michael Hobbs, Jr.
5. Any record concerning Michael Hobbs, Sr., including, but not limited to, any interview of Michael Hobbs, Sr. concerning any statement described in items 1 and 2 above and any background check of Michael Hobbs, Sr.
6. Any record concerning Terry Hobbs, including, but not limited to, any interview of Terry Hobbs concerning any statement described in items 1 and 2 above and any background check of Terry Hobbs.
7. Any interview of any person concerning any statement described in items 1 and 2 above.

8. Each test conducted on any knife in Terry Hobbs' collection of knives, including, but not limited to, any test conducted on Steve Branch's pocket knife.

EXPLANATION:

According to Pam Hicks, her son Steve Branch always carried the pocket knife his grandfather gave him. Her suspicions that Terry Hobbs might have been involved in Steve's death were exacerbated when she learned Terry Hobbs had Steve's pocket knife. She had always thought the killer took it. The West Memphis Police Department (WMPD) did not check the contents of the boys' pant pockets, but left that to the Crime Lab. http://callahan.8k.com/wm3/gitcheil_letter_5_26_93.html. The WMPD asked the Crime Lab to look for the badge Michael Moore was known to wear and a pocket knife. The Crime Lab found the badge. http://callahan.8k.com/images2/ascl/lab_note.jpg. The pocket knife was not found. <http://callahan.8k.com/images/ascl/lisasakkermittechan.jpg>. After Steve Branch's pocket knife was found in Terry Hobbs' collection of knives, the collection of knives was turned over to the WMPD. This inquiry is to determine what, if anything, was done with Steve's pocket knife.

9. The opportunity for Ms. Hicks and Mr. Byers to view the clothing and personal items associated with the children (Steve, Chris, and Michael Moore) so they may properly identify the items and advise of any discrepancies in what was found, who it belonged to, and what should have been found.

EXPLANATION:

The parents of Steve Branch and Christopher Byers were never asked to identify the clothing and personal items found at the ditch and associate them with their children. Pam Hicks and John Mark Byers request that they be permitted to view the items of clothing and personal items found at the ditch associated with any of the children to determine if the clothing is what they last saw the child wearing on May 5, 1993, if the clothing and personal items belonged to one of the children and have been properly attributed to the correct child, and to determine what should have been, but was not, found. Pam Hicks, for example, saw all three boys after school on May 5, 1993. Michael Moore had on a wrist watch or a wrist compass. Was this found? Christopher Byers was wearing a long sleeve white shirt when he left the Hobbs' home at 4 p.m. on May 5, 1993, and when John Mark Byers left Christopher at his carport on May 5, 1993, at 5:30 p.m. The shirt associated with Christopher found at the ditch is different and has never been identified as a shirt belonging to Christopher. Christopher was also wearing a medical identification bracelet? Was this found?

10. Any interview of any person who saw the boys after 4 p.m. on May 5, 1993, and before 8 p.m. on May 5, 1993 reflecting what any of the boys was wearing at that time.

EXPLANATION:

Pam Hicks recalls Steve Branch changed into blue jeans and a primarily white t-shirt when he came home from school on May 5, and this was what he was wearing when she last saw him as he left her home around 3:15 to ride bikes with Michael Moore. This is what she reported Steve Branch was wearing to the WMPD in the missing person report. <http://callahan.8k.com/wm3/mprsb.html>. But at 5:45 p.m. on May 5, Steve Branch reportedly was wearing something different. Allen Bailey reported Steve was wearing white/red shorts. http://callahan.8k.com/wm3/allen_bailey_door.html;

http://callahan.8k.com/wm3/o_bailey_statement.html. I have located no report of how Steve Branch was dressed after 5 p.m. by anyone other than Allen Bailey.

Did Steve return to the Hobbs' unlocked home about 4:50 p.m., shortly after his stepfather left to take his Mother to work, to eat and perhaps change from jeans to shorts? Did Terry Hobbs return home at about 5:00 p.m. to find Steve there and give Steve permission to stay out with his friends until 6:30? It seems clear the answer to both these questions is yes. Mr. Hobbs claims that he was searching for Steve from the time he let Pam off at work, and that he did not see Steve or his friends the entire day. But Mr. Hobbs' conduct (going to David Jacoby's shortly after 5:00 p.m. to play guitars) and words (telling David Jacoby that Steve is riding his bike and then telling Mr. Jacoby shortly before 6:30 p.m. that he needs to go home to check on Steve) say otherwise.
http://callahan.8k.com/wm3/d_jacoby_declaration.html.

This may explain why the boys were stripped by their killer. Pam Hicks told Officer Moore in Mr. Hobbs' presence that Steve was last seen wearing jeans, and this is what is reflected in Steve's Missing Person Report. At the first opportunity after hearing this (about 10:30 p.m.), Mr. Hobbs abandoned Pam Hicks and their daughter and was gone for about an hour without explanation.
http://callahan.8k.com/wm3/p_hobbs_declaration1.html (paragraph 52). This provided ample time for Mr. Hobbs to strip the boys and replace the shorts with Steve's jeans. If Steve was in fact wearing shorts after 5 p.m., Mr. Hobbs was the only person with both the motive and opportunity to replace the shorts with jeans. Moreover, it appears Mr. Hobbs may have washed Steve's clothes on May 5, including the clothes Steve wore to school that day. When officers came to collect clothing with Steve's scent about 10 a.m. on May 6, 1993, the only item of clothing Ms. Hicks could locate that had not been washed was Steve's Cub Scout kerchief. No one acknowledges washing the clothes Steve Branch wore to school on May 5, 1993, but they had been washed. This may also explain why the jeans associated with Steve Branch found at the ditch are clean compared to the pants associated with Michael Moore. Compare the jeans associated with Steve,
http://callahan.8k.com/images2/clothing/clothing_241.JPG, with Michael's pants,
http://callahan.8k.com/images2/mm_clothing/mm_clothing_225.JPG.

11. Any reports estimating the length of time before Steve died that he ate the green vegetable material found in his stomach during his autopsy.

EXPLANATION:

The autopsy report for Steve Branch shows his stomach contained remnants of green vegetable-like material. <http://callahan.8k.com/wm3/autsb.html> (p. 4; Alimentary Tract). Steve ate lunch at school on May 5, 1993. The menu for that day was hamburger, and the pickles on the hamburger were the only green vegetable shown on the menu.
http://callahan.8k.com/images/eveningtimes/school_lunch_menus.jpg.
Pam Hicks does not recall that Steve ate anything after school before leaving to ride bikes with Michael Moore, and certainly not any green vegetables. Pam Hicks prepared green beans and Salisbury steak for supper, but Steve did not come home to eat before she left for work. His plate was left out for him. The only logical explanation for the green vegetable-like material in Steve's stomach is that Steve returned home and ate some green beans. Given the boys reported activities on May 5, 1993, this could have occurred only between 4:50 and 5:15 p.m., or between 6:15 p.m. and 6:20 p.m. The time it takes for an active, normal 8-year old boy to digest a serving of green beans should be ascertainable to a reasonable degree of scientific certainty.

12. All reports and/or interviews of any person attempting to resolve any of the inconsistencies between Terry Hobbs' statements and those of other witnesses, or to confirm Mr. Hobbs' alibi, including, but not limited to, any interview conducted of David Jacoby, Bobbie Jacoby, Pam Hicks, John Mark Byers, Deborah Moyer, Jamie Clark Ballard, or Erin Clark Williams.

EXPLANATION:

Generally, proof that a person has attempted to fabricate evidence of his innocence or engaged in other conduct to obstruct justice is admissible to show the person committed the crime. See *Williams v. State*, 338 Ark. 97, 991 S.W.2d 565, 574 (1999); *Kellensworth v. State*, 276 Ark. 127, 131, 633 S.W.2d 21 (1982); *Flowers v. State*, 30 Ark.App. 204, 207, 785 S.W.2d 242, 243 (1990). Mr. Hobbs' statements about what he did after taking Pam Hicks to work on May 5, 1993, are inconsistent with other witnesses' statements and appear to many as an attempt to fabricate an alibi and conceal his participation in the murders of Steve, Michael and Chris. Here are some examples:

a. "I did not see Steve, Michael or Chris on May 5, 1993."

As stated above, the evidence does far more than suggest Mr. Hobbs saw the boys around 5 p.m. when he returned home from taking Pam to work. Additionally, the statements of Mr. Hobbs' neighbors directly conflict with this assertion: Mr. Hobbs saw the boys at 6:30 p.m. http://callahan.8k.com/pdf/affidavit_jamie_clark_ballard.pdf
http://callahan.8k.com/pdf/affidavit_deborah_moyer.pdf
http://callahan.8k.com/pdf/affidavit_brandy_clark_williams.pdf

b. "I searched for Steve from the time I left Pam off at work until the next morning."

Mr. Hobbs was not searching for the boys from shortly after 5 p.m. until shortly before 6:30 p.m. on May 5, 1993. He was at Mr. Jacoby's and then at home where he saw the boys. Mr. Hobbs never suggested Steve was missing until he returned to Mr. Jacoby's at about 6:45. http://callahan.8k.com/wm3/d_jacoby_declaration.html

c. "I met up with John Mark Byers and Dana Moore at 6 p.m. on May 5 and searched with them until I picked Pam up from work."

Mr. Hobbs tried mightily to get John Mark Byers to provide him an alibi for the time period from 6:00 p.m. until 9:15 p.m. on May 5, 1993. Mr. Byers insists he did not meet Mr. Hobbs and was not with Mr. Hobbs until after Mr. Byers completed a missing person report for Chris, sometime between 8:15 and 8:30 p.m. Mr. Byers also states that when the search began of Robin Hood Hills around 8:30 p.m., all the searchers but Mr. Hobbs headed to the Devil's Den area. Mr. Hobbs went in the opposite direction towards the pipe-bridge, and where the boys' bodies were ultimately found. http://callahan.8k.com/wm3/jmb_declaration.html

d. "I went to the West Memphis Police Department the evening of May 5 and raised hell because we had no help finding Steve and his friends. They have me on videotape."

The WMPD has no record or video of Mr. Hobbs coming to the police station on May 5, 1993. http://callahan.8k.com/hobbs_pasdar/i_mitchell_depo.pdf (p. 10).

e. "After I dropped Pam off at work, I was with somebody all night. Either Amanda,

Pam, Pam's Dad, David Jacoby, John Mark Byers, or a combination of them."

The fact is Mr. Hobbs has no alibi for these periods during May 5-6, 1993: 7:00-7:45 p.m.; 8:40-9:10 p.m.; 10:30-11:30 p.m.; and 3:00 a.m.-5:30 a.m. Mr. Hobbs has never explained why he abandoned Steve's Mother and Sister at 10:30 p.m. for about an hour. http://callahan.8k.com/wm3/p_hobbs_declaration1.html (paragraph 52). Mr. Jacoby left the search around 3:00 a.m. http://callahan.8k.com/wm3/d_jacoby_declaration.html (paragraph 15).

f. "At about dawn on May 6, 1993, Pam and I saw a black bum at the 7th Street Bridge over 10 Mile Bayou."

When the DNA evidence implicating Mr. Hobbs became known in 2007, Mr. Hobbs introduced a "black bum" as an alternative suspect. While maintaining the State got it right and the WM3 were the murderers, Mr. Hobbs casually introduced this alternative suspect into the mix. He claims his former wife, Pam Hicks, was with him when he saw this "black bum" on the 7th Street Bridge around dawn on May 6. Pam Hobbs says this is not true. John Mark Byers likewise says there was no "black bum" mentioned before 2007. http://callahan.8k.com/wm3/jmb_declaration.html (paragraphs 22-23); http://callahan.8k.com/wm3/p_hobbs_declaration1.html (paragraph 63).

This is not an exhaustive list of Mr. Hobbs' inconsistent statements. The inconsistencies need to be resolved, as does Mr. Hobbs' opportunity to commit the crimes.

13. Please provide all tests conducted of the ligatures used to tie the boys. If the tests do not include a measurement of the each ligature, including the lace left in Christopher Byers' shoe, please arrange for the ligatures to be measured at the same time you arrange for Ms. Hicks and Mr. Byers to view the clothing and other personal items of the children.

EXPLANATION:

Michael Moore was apparently bound by an adult shoe string that was 60 inches in length and cut in half. This lace would not have come from any of the boys' shoes; it was too long. There was a lace left in one of Chris' shoes. This means the murderer used a lace to bind the boys that did not come from one of the boys' shoes, and the murderer also disposed of a lace that did come from one of the boys' shoes.

14. Please provide the interviews conducted of the friends of Steve Branch, Michael Moore or Christopher Byers, including, but not limited to, George Taylor and Aaron Hutcheson, or any other person who knew or might have known what the three boys had planned for the afternoon of May 5, 1993, whether Terry Hobbs helped build a tree house for the boys in the Robin Hood Hills woods, or where any of the boys may have had a secret hideout in the Robin Hood Hills woods. This request includes any interview with Bobby Posey who reported in the door-to-door interviews conducted by the WMPD in May, 1993, that he saw Christopher Byers the afternoon of May 5, 1993, and that Christopher was planning on running away.

15. Please provide any records indicating Steve Branch, Michael Moore and Christopher Branch were not murdered in or adjacent to the ditch where their bodies were discovered.

16. Please provide all records concerning any search or investigation of the manholes and drainage system in, or adjacent to, Robin Hood Hills woods as the possible location for the murders of Steve Branch, Michael Moore and Christopher Byers or as the possible location of the boys' items of clothing and property not found in the ditch. This request includes, but is not limited to, any interview of Ryan Clark to determine whether he told Mr. Hobbs that the boys played in a manhole and, if so, where that manhole was located and whether anyone searched that manhole on May 5 or 6, 1993.

EXPLANATION:

The theory of the crime presented by the State in the cases of Jessie Misskelley, Damien Echols and Jason Baldwin (the "WM3") - that the WM3 "mutilated, molested and murdered three Cub Scouts, tied their wrists and ankles together and shoved their bodies under the water and watched them twitch and fight until they died" - appears inconsistent with the physical evidence.

- If the boys had died in 2 to 3 feet of ditch water, there would have been appreciable water and mud in their lungs and stomachs. None of the boys had any appreciable water or mud in his lungs or stomach.
- If the boys had been staked to the mud in the bottom of the ditch immediately after death in the position in which they were found, lividity would have settled primarily on their faces and torsos. This was not the case, as lividity settled primarily on the boys' backs and buttocks.
- If the boys had been tied before they died, there would be appreciable contusions from the ligatures and a lack of animal hair under the ligatures. The minimal contusions coupled with the animal hair under the ligatures led Dr. Michael Baden, a renowned board-certified forensic pathologist, to conclude the boys were tied after death.
- There is no credible evidence the boys were sexually molested.
- There is no credible evidence the boys were mutilated with a knife.
- In his 2007 statement to the WMPD, Mr. Hobbs states the Byers' boy "who was still alive" told him about a covered hole where the boys played.
<http://www.youtube.com/watch?v=qhEVugsKCKY&feature=relmfu> (3:29 mark). Mr. Hobbs clarified in a deposition that it was Ryan Clark, Chris' half-brother, who told him this, and Mr. Hobbs also confirmed the "covered hole" was a manhole. Mr. Hobbs did not know if anyone searched the manholes, but states he did not search them or suggest anyone else search them.

17. Any and all written inventories of evidence as contemplated in paragraph 7 of the Order for Preservation of Evidence (the "Order") signed by Judge Burnett.
<http://www.callahan.8k.com/wm3/img/preserveorder1.html>. It is my understanding this Order is no longer in effect as the cases against the WM3 are closed. If that is not correct, or if you believe the Court needs to be involved in the handling of any of the evidence impounded by this Order and implicated by any of these requests, please let me know so that I may prepare an appropriate motion and request a hearing.

18. Any and all records evidencing the service of the Order on any agency, person or

party as referenced in paragraph 5 of the Order.

19. Any and all notices from any law enforcement agency that evidence preservation was not possible as referenced in paragraph 6 of the Order.

20. Any and all records showing who accessed any of the impounded evidence and when after the Order was entered.

21. Any and all documents showing results or data from any test performed on any of the impounded evidence.

22. Any and all documents concerning any testing of any of the impounded evidence.

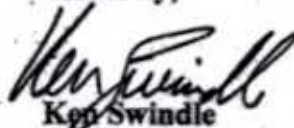
23. The records reflecting the toe and footprints of any of the murdered children - Steve Branch, Michael Moore and Christopher Byers.

24. The records reflecting any comparison of any of the murdered children's toe and footprints to any skin friction print obtained from the area where the boys' bodies were found.

25. All documents and records related to the Alford Pleas obtained from Jessie Misskelley, Damien Echols, and Jason Baldwin related to the murders of Steve Branch, Michael Moore and Christopher Byers, including, but not limited to, any settlement agreement, covenant not to sue, release, or indemnification agreement whereby any of these persons released, agreed not to sue, agreed to indemnify the State of Arkansas or any of its agents or officers, from or against liability for wrongful conviction, wrongful incarceration, or violation of any of their civil rights.

I appreciate your efforts to date. I look forward to working with you to resolve any issues you have with these requests. More importantly, I, and my clients, look forward to helping you bring this investigation and ordeal to a conclusion by the prosecution and conviction of the murderer.

Sincerely,



Ken Swindle

TRANSMISSION VERIFICATION REPORT

TIME : 07/12/2012 12:45
NAME : SWINDLE LAW FIRM
FAX : 4796210838
TEL : 4796210120
SER. # : BROD7J638728

DATE, TIME
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SWINDLE LAW FIRM

KEN SWINDLE, Esq.
619 W. Persimmon Street
Rogers AR 72756
Phone: (479) 621-0120 Fax: (479) 621-0838

July 12, 2012

Mr. Scott Ellington, Prosecuting Attorney
2nd Judicial District of Arkansas
P.O. Box 1736
Jonesboro AR 72403

Via Electronic Mail: ellington@yourprosecutor.org,
and Facsimile: (870) 336-4011; and,
Certified Mail: 7011 1570 0001 5355 0656

Re: Request for Assistance under the Rights of Victims of Crime Act and Request for
Information under the Freedom of Information Act

Dear Mr. Ellington:

As you know, I represent Pam Hicks, mother of Steve Branch ("Steve"), and John Mark Byers, father of Christopher Byers ("Chris"). Steve and Chris were murdered on May 5, 1993, in the Robin Hood Hills woods, West Memphis, Arkansas. Ms. Hicks and Mr. Byers believe, as was stated in the June 9, 2012, editorial in the *Jonesboro Sun*, that the person who murdered Steve and Chris "has walked among us for nearly two decades" and desire to see the investigation of these murders opened and continued until the murderer is brought to justice.

It appears that some in the law enforcement community may have engaged in either willful blindness or reckless disregard of the truth with respect to the murders of Steve and Christopher. For example, the most statistically likely suspect for the murder of Steve was his stepfather, Terry Hobbs. Yet Terry Hobbs was not investigated or cleared of the murders in 1993. The only time he provided a statement to the West Memphis Police Department, to my knowledge, was in 2007 after DNA evidence linked him to the body of

PLAINTIFF'S
EXHIBIT
12

Ken Swindle

From: Ken Swindle
Sent: Thursday, July 12, 2012 12:42 PM
To: 'Scott Ellington'
Subject: Pam Hicks and Mark Byers
Attachments: FOIA - Ellington.pdf; FOIA - Ellington.wpd; FOIA - Ellington.docx

Mr. Ellington, I am attaching my request to you on behalf of my clients. Please call me at your convenience. I look forward to working with you in this matter.

Sincerely,

Ken Swindle.

08/30/2012



7011 1570 0001 5355 0656

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PROSECUTING ATTORNEY'S OFFICE
 Street, Apt. No.,
 or PO Box No. **P.O. BOX 1736**
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JONESBORO AR 72403
 PS Form 3800, August 2005 **11065** See Reverse for Instructions

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. - Print your name and address on the reverse so that we can return the card to you. - Attach this card to the back of the mailpiece, or on the front if space permits.	A. Signature  ☐ Agent ☐ Addressee B. Received by (Printed Name) D. ALLEN HICKS C. Date of Delivery D. Is delivery address different from item 1? ☐ Yes If YES, enter delivery address below: ☐ No
1. Article Addressed to: PROSECUTING ATTORNEY'S OFFICE P.O. BOX 1736 JONESBORO AR 72403	3. Service Type ☒ Certified Mail ☐ Express Mail ☐ Registered ☐ Return Receipt for Merchandise ☐ Insured Mail ☐ C.O.D. 4. Restricted Delivery? (Extra Fee) ☐ Yes
2. Article Number (Transfer from service label)	7011 1570 0001 5355 0656

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

Shurberg No. 0119

PLAINTIFF'S
EXHIBIT

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