

PEOPLE OF THE
STATE OF MICHIGAN,

Plaintiff,

v.

Circuit Court No. C01-0491FC

SCOTT ALAN BALDWIN,

Defendant.

**MOTION FOR POST-CONVICTION RELIEF PURSUANT TO MCR 6.502(G)(2) AND
MCR 6.508(D)(3)**

Scott Baldwin, through the undersigned attorneys and law students of the Wisconsin Innocence Project at the University of Wisconsin Law School and the Brickley Law Office, respectfully moves the Court to: (1) reverse Baldwin’s conviction based on newly discovered evidence strongly supporting Baldwin’s longstanding claim of innocence and implicating another man, Allen Nutter, as the real perpetrator, or (2) at the very least, order post-conviction DNA testing and fingerprint analysis that could establish whether Baldwin or Nutter committed the crime. In support of this motion, Baldwin states the following:

Summary of Claims

1. Since the time of Scott Baldwin’s conviction for murdering Kalamazoo bicycle shop owner Earl O’Byrne—a crime for which Baldwin has always maintained his innocence— Baldwin has discovered new evidence that another individual, Allen Nutter, actually committed the crime. Specifically, Nutter has admitted to his daughter, Brooke Staley, that he robbed and murdered O’Byrne, and that his girlfriend, Rene Padula, was the getaway driver. Padula has admitted to two other

- individuals that she drove the getaway car after Nutter robbed and killed O’Byrne. Nutter’s description and attire from the time of the crime match a suspect seen by a police officer at the scene of the crime. Further, his current sentence and prior record closely match the circumstances of the O’Byrne robbery and murder. Nutter is currently serving a lengthy prison sentence for home invasion and felony firearm possession. His prior record includes breaking and entering a building, kidnapping, larceny, resisting/obstructing an officer, and unlawfully driving away an automobile.¹
2. Apart from the new evidence implicating Nutter, other new evidence undermines the case against Baldwin. Two of the People’s key witnesses, Stacey Sheets and Amy Kennedy, have made new statements directly contradicting important trial testimony.
 3. In light of this important new evidence of innocence, Baldwin is entitled to a new trial, or, at the very least, post-conviction DNA testing and fingerprint analysis that could conclusively prove whether Baldwin or Nutter committed the crime.

Background

4. In the early morning hours of June 3, 1988, Earl O’Byrne was murdered at his bicycle shop and residence in Kalamazoo, Michigan. (Transcript of “Jury Trial,” 7/25/2001, pg. 325, hereinafter “TT”). Mr. O’Byrne was last seen alive at 12:45 a.m. by an off-duty police detective, Harold West, who passed the shop on his way home and saw O’Byrne standing in the shop’s doorway. (TT: 539-540). In addition, West saw a young white male with blond hair walking alongside the shop, who was wearing light-colored pants tucked into his boots. (TT: 541, 544-545). West realized the

¹ Website of Michigan Department of Corrections, available at: <http://www.state.mi.us/mdoc/asp/otis2profile.asp?mdocNumber=165088>.

- importance of what he had seen and documented his observations the following day after learning of O'Byrne's murder. (West Office Memorandum, 6/3/1988 - Ex. Y).
5. O'Byrne was not seen again until shop employees arrived at 8:45 a.m. and discovered O'Byrne, dead, and covered in blood. (TT: 328, 340). The death was ruled a homicide because the autopsy revealed the cause of death to be blunt force trauma to the head. (TT: 328).
 6. Crime scene analysts were unable to locate a murder weapon (TT: 676), but they determined that the murder occurred in the hallway of the shop. They also found blood stains throughout the shop, including a trail of blood leading from the front door to the area where O'Byrne was found, and blood spots just outside the door to the shop. (TT: 557-59). Police determined that a robbery precipitated the homicide because two money bags and some boxes of coins were missing. (TT: 672-73).
 7. Police found no eyewitnesses and had few clues. (TT: 673). They began to rely on a tip hotline, the Silent Observer, to further investigate. (TT: 673). They received hundreds of tips, implicating dozens of suspects. More than a year after the murder, they received a single tip implicating Scott Baldwin. (Silent Observer Tip #2942 - Ex. A).
 8. The tip implicating Baldwin came from Charles Adair, who relayed that Baldwin had confessed his involvement in the murder to Adair's sister-in-law and Baldwin's former girlfriend, Stacey Sheets. (TT: 1076). One week later, Detective Sharon Whaley interviewed Sheets. (TT: 839). Sheets told Whaley that her former boyfriend, Baldwin, had crawled into their basement apartment in the early morning hours of June 3, 1988, with blood on his boots and clothing. (TT: 854). She also told

- Whaley that that morning she had seen Baldwin burn a bloody wooden stick in a burn barrel, and that Baldwin had painted his Jeep that day. (TT: 854, 872-873). Sheets stated that she confronted him about his involvement that day, but he made no admissions to her. However, Sheets said that he confessed to her about a month after the homicide. (TT: 853).
9. Whaley administered a polygraph to Sheets, and she failed. (Whaley Continuation Report P89-059, 7/7/1989 - Ex. B; Whaley Office Memorandum, 11/6/2000 - Ex. C). Sheets said she exaggerated her story, yet despite changing details, she never passed a polygraph. (Ex. B). Whaley attached a note to her report: “story doesn’t gel...” (Stacey Spencer Statement, Case # 88-27309, 6/30/1989 - Ex. D). Consequently, police discounted Baldwin as a suspect. (TT: 691). Police also found fingerprints at the scene of the crime and excluded Baldwin as the source of the prints. (Police Report, 7/12/1989 - Ex. E).
 10. The case then remained open and unsolved for 12 years until the Kalamazoo Police Department established a cold case unit and began reinvestigating the case. (TT: 673, 814). Detectives from the cold case unit re-contacted Sheets on November 28, 2000. (TT: 1077, 795). Sheets eventually provided a forty-two page statement implicating Baldwin in the murder. (TT: 815). He was charged on March 14, 2001, based largely on Sheets’ statement. During the 12-year period between the murder and the charges, Baldwin had no criminal record, held a steady job, and was in a stable marriage. (TT: 1443-44, 1467, 1472-73).
 11. Before trial, Baldwin’s attorney sought disclosure of the Silent Observer tips related to the O’Byrne homicide. (Transcript of “Motion for Leave to File Delayed

Discovery Motion,” 7/2/2001, pg. 17, hereinafter “MFL”). The court granted access to some tips, but denied access to more than 100 anonymous tips. (MFL: 17). The court reasoned that it should honor the police department’s promise of anonymity to callers. (MFL: 17). The trial began shortly after, on July 25, 2001.

The Trial

Stacey Sheets's Testimony

12. The People’s case rested largely on Sheets’ testimony. She testified about Baldwin’s alleged suspicious behavior the night of the murder and about incriminating statements he allegedly made after the crime. (TT: 722-25).
13. Sheets testified that around June 2, 1988, she and Baldwin got into an argument because he had written a bad check that she had to cover. (TT: 722). Sheets claimed she confronted Baldwin and told him to go find some money to repay her. (TT: 722).
14. Sheets stated she was woken the next morning by Baldwin’s tapping on the basement window, asking to be let in. (TT: 724). She testified that he came in holding a bloody wooden object, and that he had blood on his hands, clothes, and boots. (TT: 725).
15. Sheets testified that later that day, Baldwin painted his jeep and threw his clothes and the bloody stick into a burn barrel in his yard. (TT: 728). Sheets’ friend Missy Jarsma testified that she also saw the burn barrel with unspecified materials burning, and that Sheets had shown her a stick that appeared to have blood on it. (TT: 893, 896).
16. Sheets also testified about incriminating statements Baldwin supposedly made to her one year after the crime. (TT: 735). She stated that Baldwin told her in June 1989 that he had killed O’Byrne. (TT: 736-37).

17. Sheets said she confided in her brother-in-law, Charles Adair, just after this alleged confession. (TT: 757-58). Adair verified that Sheets told him Baldwin had confessed to her, and that he did in fact call the Silent Observer. (TT: 935). Sheets testified that she met with Detective Whaley and gave her a statement. (TT: 839). Sheets said that after this meeting, she had nothing to do with the case until 2000. (TT: 814).

18. Defense counsel, in an attempt to impeach Sheets' testimony, raised several discrepancies in her statement to Whaley in 1989, her statement to detectives in 2000, and her trial testimony. (TT: 755-56). The defense raised the following issues to cast doubt on Sheets' credibility:

- Sheets was confused about when Baldwin allegedly confessed to her. In 1989, she claimed it was a month after the crime. (TT: 757). In her 2000 statement and at trial, she claimed it happened a year after the crime. (TT: 778-79).
- Sheets' claim about when Baldwin confessed to her appeared to be chronologically impossible. The defense established that, at the time Sheets claimed the confession occurred, Baldwin was in jail serving a three to four month sentence for an unrelated matter. (TT: 740); (TT: 1399-1401); (Felony Register of Actions, Case # 89-428-FY - Ex. F).
- At trial, Sheets testified that Baldwin had blood on his hands, clothes, and boots. (TT: 724-25). But in her 1989 statement, Sheets said she was unsure whether Baldwin had any blood on him at all. (TT: 779-80).
- Sheets' 2000 statement, which came after she spoke with cold case detectives, was forty-two pages, which is strikingly longer and more detailed than the

three page statement she provided in 1989. (TT: 800-02, Stacey Sheets Statement, 12/28/2000 - Ex. G).

- In her 2000 statement and at trial, Sheets claimed that Baldwin threw his clothes into the burn barrel in his yard. (TT: 728-29). However, in 1989, Sheets stated that Baldwin had probably washed his clothes. (TT: 810).

19. Along with Sheets, the People called two other witnesses, who testified about statements Baldwin allegedly made to them. (TT: 1202-03). Amy Kennedy, an acquaintance of Baldwin at that time, said that she and Baldwin were driving by the bicycle shop one day when Baldwin said that he robbed the place once. (TT: 1202-03). The defense argued that the comment, if it occurred at all, was insignificant and unrelated to the murder. (TT: 1205). The defense established that Baldwin often bragged about minor things he stole, and Kennedy agreed that it was not unusual for Baldwin to casually remark that he had stolen something—the emphasis was on petty theft; there was no mention of murder. (TT: 1203, 1205). Laura Walkley, another acquaintance of Baldwin at that time, testified that Baldwin told her that when he and his friends saw police tape at O’Byrne’s shop, Baldwin told his friends that he had killed O’Byrne. (TT: 1217). Walkley claimed she told her father about Baldwin’s statement and that her father relayed the story to a Kalamazoo police detective. (TT: 1218). Baldwin testified that he had never made any admissions to Walkley. The defense pointed out that there was no evidence that any detective ever spoke to Walkley or her father, or that a report about it had even been written. (TT: 1218-20).

Scott Baldwin's Testimony

20. The defense's primary witness was Baldwin, who testified that he did not kill O'Byrne. (TT: 1348). Baldwin testified that he never came through the basement window, that he never came home bloody, and that he never had a bloody stick. (TT: 1377, 1380).
21. Baldwin stated that the only connection he had with the bike shop was that he, like most neighborhood kids, worked there when he was 14. (TT: 1351-52). Baldwin also admitted that when he worked there as a kid, he stole a bike from the shop. (TT: 1354-55).
22. With respect to the jeep, Baldwin testified that soon after he bought the jeep, he wanted to trade it in. (TT: 1363-65). Because the car was rusty and in disrepair, he decided to paint it before selling it to get a higher price. (TT: 1366). Baldwin testified that he had spray painted almost every car he had owned. (TT: 1357-1362). According to Baldwin, it took him about a week to complete the process. (TT: 1366-69).
23. Baldwin also testified about his and Sheets' relationship. He testified that when they were together, he did not approve of her stripping, or her use of cocaine. He also testified that around June 2, 1989, soon after he had broken up with Sheets and around the time of Sheets' tip, she came over to his mother's house very upset about the breakup. (TT: 1395-97, 1399). According to Baldwin, Sheets ran through the house screaming at him, hitting him, and refused to leave until the police came over. (TT: 1366-69).
24. On cross-examination, the People attempted to challenge Baldwin's credibility. Baldwin admitted that he had not been honest in the past, and he took responsibility

for his prior petty thefts. (TT: 1443-44, 1467, 1472-73). He also claimed, however, that he had changed, as evidenced by his steady employment, his marriage, and the fact that he had not gotten in trouble with the law from 1989 to 2001, when he was arrested for the murder. (TT: 1443-44, 1467, 1472-73).

25. The jury found Baldwin guilty and the court sentenced him to life in prison.

Original post-conviction proceedings

26. Baldwin moved for a new trial on two bases: (1) newly discovered evidence that another man, Allen Nutter, had admitted to killing O’Byrne; (2) denial of a fair trial because the trial court refused to grant access to the anonymous Silent Observer tips.

27. Baldwin’s newly discovered evidence claim was based on affidavits of Tommy Melson and Donald Charles Russell. At a post-conviction hearing, Melson and Russell testified that Allen Nutter had confessed to the O’Byrne homicide in 1995 while all three were in prison together.² Nutter had been investigated by police in 1988, but was released after passing a polygraph. (Jancasz Continuation Report, 6/23/1988 - Ex. H).

- Russell testified that Nutter told him he had “killed a guy.” (Motion for New Trial, 8/22/2002, pg. 8, hereinafter, “MNT”). Nutter told Russell he had entered the shop through a window and then encountered O’Byrne. After realizing O’Byrne would recognize him, Nutter “picked up a table leg and started beating [O’Byrne] with it.” (MNT: 9).

² Neither of these two witnesses had ever met Baldwin. (MNT: 9)

- Melson testified that Nutter had told him he had “broke[n] in there,” that when O’Byrne saw him Nutter feared he would be recognized, and that Nutter then threw something and “hit him in the head.” (MNT: 48).

28. Defense counsel also sought to present evidence from Rick Sehy, an acquaintance of Nutter’s girlfriend Renee Padula. According to Sehy, Padula confessed to driving the getaway car for Nutter after Nutter robbed and killed O’Byrne. (Mattison Department of Public Safety #88-28309, 7/31/2002 - Ex. D). Sehy provided a statement to detectives, informing them that his sister, Dawn Makos, was also present during the conversation. Sehy was serving a federal sentence in West Virginia, so Baldwin’s appellate counsel attached the police reports to a brief rather than calling Sehy to testify. However, Padula testified. She said that Nutter had never confessed to her (MNT: 101), that he was with her on the night of the murder at a motel (MNT: 99), and that she had never told Sehy anything to the contrary. (MNT: 103).

Results of Baldwin’s Original Motion for a New Trial

29. As to the newly discovered evidence claim implicating Nutter, the trial court denied the claim because, according to the court, all of the issues raised “could have been brought up at trial.” (MNT (cont): 21-22). The court did not consider Sehy’s statements in the police reports, because appellate counsel failed to call Sehy as a witness. (MNT (cont): 13-14).
30. In response to Baldwin’s contention that he should have received all of the Silent Observer tips, including the anonymous ones, the trial court stood by its earlier ruling that Baldwin could not gain access to the anonymous tips.

31. Baldwin appealed. The court of appeals found that the trial court erred in determining that the testimony of Melson and Russell was not newly discovered, but the court affirmed the denial of a new trial because it found that “the evidence would not have made a different result probable on retrial.” (9/23/2003 Unpub’d Opinion pg. 3). Regarding the anonymous tips, the court of appeals held that the trial court did not abuse its discretion in denying access. (Unpub’d Opinion pg. 6).

Post-Appeal FOIA Request: Baldwin Gains Access to Anonymous Silent Observer Tips

32. After exhausting his appeal, Baldwin and undersigned counsel tried on several occasions in 2005 to obtain the anonymous Silent Observer tips via Freedom of Information Act requests. These initial requests were denied. Then, after changes to Kalamazoo County’s FOIA procedures, undersigned counsel filed a new FOIA request and, in May of 2008, received the remaining tips to which Baldwin had previously been denied access. (Kalamazoo, MI: Office of the City Attorney Letter, May 28, 2008 - Ex. J).

33. Many of the Silent Observer Tips implicated Allen Nutter. (Silent Observer Forms Implicating Allen Nutter - Ex. K). As a result, Baldwin’s undersigned counsel pursued investigation to ascertain whether Nutter murdered O’Byrne.

Newly discovered evidence points to Scott Baldwin’s innocence and implicates Allen Nutter as the true perpetrator

34. Compelling new evidence of Baldwin’s innocence has emerged since the time of his trial. This evidence strongly suggests that Allen Nutter, not Scott Baldwin, murdered Earl O’Byrne, and includes:

- A tape recorded statement by Brooke Staley, biological daughter of Allen Nutter, who states that her father admitted to her in 2005 that he killed Earl O’Byrne, with then girlfriend Renee Padula serving as the getaway driver (Riley & Powers Affidavit, 10/23/2009 - Ex. AC);
- Evidence that Allen Nutter’s description and attire from the time period of the murder match the individual witnessed at the scene of the murder by police officer Harold West (Jancasz Continuation Report, 6/6/1988 - Ex. O);
- Affidavits signed by Dawn Makos and Rick Sehy attesting to incriminating statements by Rene Padula. According to Makos, Padula confessed on three separate occasions to being Nutter’s getaway driver in the O’Byrne murder. (Makos Affidavit, 10/6/2006 - Ex. M). Sehy was present when Padula confessed approximately two years after the murder (Sehy Affidavit, 5/24/2005 - Ex. N);
- An affidavit from Brian Berger, a long-time acquaintance of Allen Nutter, declaring that Nutter confessed on multiple occasions to the murder of Earl O’Byrne. (Berger Affidavit, 10/19/2009 - Ex. AD);
- A tape recorded statement by Amy Kennedy recanting her trial testimony in which she testified that as she and Baldwin were driving by the Kalamazoo Cycle Shop, she heard him say “ I robbed that place once.” (TT: 1202-03). Kennedy now states that it was actually Baldwin’s girlfriend (Stacey Sheets) who told her that Baldwin had robbed the old man that owned the bike shop. (Amy Kennedy Audio Recording, Time = 5:25-5:40, 9/23/2009 - Ex. AE). Kennedy admits that everything she heard came directly from Sheets and was

hearsay. (Ex. AE, Time = 6:51). At no point did she and Baldwin discuss previous robberies of the bike shop or the O'Byrne murder;

- A tape recorded statement by Stacey Sheets admitting that: (1) she received reward money from the Silent Observer Fund (despite testifying to the contrary), and (2) she was given transcripts or manuscripts by Detective Sergeant Richard Mattison and Sergeant Michael Werkema prior to testifying at trial. Furthermore, Detective Sergeant Mattison and Sergeant Werkema told Sheets that she was not supposed to have the transcripts they gave her (Stacey Sheets Alabama Audio Recording, Time = 8:35-8:50, 9/12/2009, - Ex. AG);
- An affidavit from Baldwin's ex-wife, Tracy, describing the jealous and highly emotional behavior of the People's key witness, Stacey Sheets, around the time she accused Baldwin, suggesting that Sheets falsely accused Baldwin in order to get back at him for breaking up with her. (Tracy Baldwin Affidavit, 2/17/2009 - Ex. Z).

Allen Nutter's Confession to his Daughter, Brooke Staley, and to long-time acquaintance, Brian Berger

35. Baldwin's investigator contacted Brooke Staley in the summer of 2008, requesting information about the O'Byrne³ murder. Upon learning that Baldwin had been convicted of the murder and sentenced to prison, Staley volunteered information implicating her father as the actual perpetrator. (Ex. AC)

36. According to Staley, throughout her childhood she has been approached by many of her father's acquaintances and her relatives who have talked to her about her father

³ Staley refers to O'Byrne as "Bicycle Pete."

- murdering O'Byrne. (Ex. AC). Staley indicated that her father's involvement in the murder is such common knowledge in her circle of friends and family that even her nine-year old son knows that "Papa killed someone." (Ex. AC). Indeed, Staley overheard a conversation between her son and Nutter in which Nutter admitted that while he was not proud of killing someone, he had done so. (Ex. AC).
37. Because of the many things she had heard, Staley directly confronted her father the last time he was out of prison in the summer of 2005, asking him whether he had killed O'Byrne. (Ex. AC). During the conversation, Nutter started crying, became very emotional, and admitted that he had killed O'Byrne, confirming the rumors Staley had long heard.
38. Nutter told Staley that he was responsible for the robbery and assault, and that Renee Padula, his girlfriend at the time, was with him at the scene of the crime. (Ex. AC). Nutter told Staley that the robbery had been planned as a "lick" to make some quick money. (Ex. AC). He said it was common knowledge that O'Byrne kept a significant amount of money in the shop, and that he intended to steal from O'Byrne. (Ex. AC).
39. Nutter told Staley that he did not intend to kill O'Byrne, but he admitted to using a "leg to a table" to assault him. (Ex. AC). Nutter told Staley that after the assault, O'Byrne was still alive, so in trying to decide what to do, they placed him in the vehicle and Padula drove the car "around the block to figure out what they were going to do with him." (Ex. AC). Nutter relayed that O'Byrne "was bleeding, he was hunched over, [he and O'Byrne] were in the back seat, there was a guy in the front seat and that Renee was driving." (Ex. AC). Eventually, they decided to return

to the shop and left O'Byrne there. Nutter told Staley that afterwards, he had to change his bloody shirt as a result of O'Byrne's extensive bleeding. (Brooke Staley Audio Recording, Time = 26:41-26:47, 10/17/2008, - Ex. X).

40. Staley believes that her father's admission was genuine, and she has no doubt that her father was involved in O'Byrne's murder. (Ex. AC). Staley believed her father's admission because she is familiar with his character, knowing he has stolen countless times and is a very aggressive person. (Ex. AC). She also believed him because he seemed sincere, having no reason to lie, and because he was seeking forgiveness, both from her and from God. (Ex. X, Time = 16:33-16:44). In fact, since he has been back in prison, he has written Staley letters from prison asking for forgiveness and a second chance. (Ex. AC). Finally, she believed her father's confession because what Nutter told her fit with what she had long heard about his involvement in the O'Byrne murder. (Ex. AC).

41. Apart from his confession to his daughter, Nutter also confessed to a long-time acquaintance from Kalamazoo, Brian Berger. As set forth in Berger's affidavit, he and Nutter were incarcerated together, and Nutter admitted on several occasions that he had robbed and killed O'Byrne. (Ex. AD).

Nutter's Description and Attire from the Time of the Crime Match the Individual Witnessed by Officer Harold West at the Scene of the Murder

42. On the night of the murder, Officer Harold West drove past the bicycle shop and observed O'Byrne standing in the doorway of his shop. West saw a light or cream-colored vehicle with square headlights parked immediately next to the building. He also saw a white male in his early 20s walking alongside the building. West described this person as having light-colored hair and as wearing light-colored pants

that were tucked into his boots. (Ex. O; Nutter Booking Picture, 2/26/1988 - Ex. P).

In a May 14, 2008 interview with Baldwin's investigator, West still remembered the boots. West explained that the person he had seen that night outside the bike shop was wearing "high black boots." (Dickerson Affidavit, 8/21/2009 - Ex. L).

43. Evidence obtained in 2008 shows that descriptions of Allen Nutter from around the time of the murder match the description of the individual observed by West at the scene of the crime. A police arrest report dated February 25, 1988, just four months before the crime, reveals the clothing Nutter wore in the course of committing a different crime around that same time: stone-washed gray jeans and high black boots, precisely the attire seen on the individual West witnessed. (Bean Continuation Report, pg. 3 of 4, 2/25/1988 - Ex. Q). Additionally, Nutter's hair was blond, which also matches West's description. (Ex. P).

Rene Padulla's admissions to Dawn Makos and Rick Sehy

44. As set forth above, Baldwin's appellate attorney was aware of admissions Rene Padula made to two acquaintances, Dawn Makos and Rick Sehy. However, appellate counsel did not present either witness at the post-conviction hearing, nor did either witness testify at trial. In light of the other new evidence pointing to Nutter and Padula, the statements of Makos and Sehy take on new significance, and this court should hear their testimony.
45. According to Makos, a few days after the O'Byrne homicide, Padula told Makos that she waited in the car while Nutter robbed the shop, and that "Nutter told her [Padula] that he had gone into the bike shop, hit the man inside over the head, and taken the money." (Ex. M).

46. A couple of years after the murder, when Makos was at her house with Padula and her brother, Rick Sehy, “Padula again brought up the O’Byrne murder. She told [Makos] that Nutter had robbed and killed the man in the bike shop.”
47. Rick Sehy has also signed an affidavit corroborating what Makos stated. Sehy remembers a conversation at his sister’s house, approximately a year after the murder, in which Padula told them “that Nutter had broken in to the bike shop, struggled with the man inside, hit the man over the head and killed him, and taken the money.” Padula said that she had driven Nutter home after the robbery. She said that Nutter had told her about what happened inside the bike shop.” (Ex. N).

Amy Kennedy’s Recantation of her Trial Testimony

48. At trial, Amy Kennedy gave critical incriminating testimony—emphasized by the prosecutor in closing (TT: 1563)—that Baldwin admitted to her that he had robbed O’Byrne’s shop. She testified that she had talked to Baldwin directly, and that he had admitted to robbing the shop. However, in a recent recorded interview, Kennedy has recanted that testimony. She now admits that Baldwin never directly spoke with her regarding any crime involving O’Byrne’s shop. Rather, all of her knowledge and testimony concerning Baldwin and O’Byrne’s shop came from Stacey Sheets, not directly from Baldwin. This recantation undermines critical incriminating testimony linking Baldwin to the murder.

Stacey Sheets Received Reward Money from Silent Observer and Was Improperly Provided Transcripts or Manuscripts by the Kalamazoo Cold Case Homicide Unit

49. Baldwin’s investigators traveled to Boaz, Alabama and met with Stacey Sheets at her residence in September 2009. During the interview, Sheets revealed that she did, in fact, receive reward money and that it came from Silent Observer. (Stacey Sheets

Telephone Audio Recording, Time = 7:14, 9/21/2009, - Ex. AF). This revelation contradicts an extensive portion of Sheets' testimony from 2001. During her trial testimony, Sheets specifically said, "I don't want any money" and that she was not expecting any money or consideration. (TT: 749-50). She went on to say that it is not about the money; "it's about what's right and what's not right" (TT: 750).

50. In its closing argument, the People relied heavily on Sheets' testimony that she did not receive financial incentives. (TT: 1537). The People's theory regarding Sheets was that, because she had nothing to gain from testifying, she must have been telling the truth about Baldwin, and therefore her testimony alone was powerful evidence of Baldwin's guilt. (TT: 1542-49). The People specifically said, "This isn't the type of case where we put a witness on that we gave a deal to who testified in exchange for something." (TT: 1542). However, that is exactly what happened; Sheets presented testimony and received a monetary reward from Silent Observer. Had the jury known that Sheets received reward money from Silent observer, the weight of the People's argument would have been greatly reduced.

51. Furthermore, during the same interview with Sheets, Baldwin's investigators learned that Sheets was given manuscripts or transcripts by Detective Sergeant Richard Mattison and Sergeant Michael Werkema prior to testifying at trial. (Ex. AG, Time = 8:35-8:50). Sheets explained that Detective Sergeant Mattison and Sergeant Werkema told her that she was not supposed to have the documents that they provided to her. (Ex. AG, Time = 8:35-8:50). Sheets felt like they wanted to seal the case and the fact that they provided these documents to her bothered her. (Ex. AG, Time = 9:37).

I. BALDWIN IS ENTITLED TO A NEW TRIAL BASED ON THE STANDARD GOVERNING NEWLY DISCOVERED EVIDENCE.

52. As set forth in the following sections, the above-described new information satisfies the standard for a new trial based on newly discovered evidence.

A. Baldwin is entitled to bring his newly discovered evidence claim under MCR 6.502(G)(2) and MCR 6.508(D)(3).

53. Baldwin brings this motion pursuant to MCR 6.502(G)(2), under which a defendant is entitled to file a “second or subsequent [post-conviction] motion based on . . . a claim of new evidence that was not discovered before the first motion.” Because the evidence he presents was not discovered until after his initial appeal, his motion for a new trial is not procedurally barred under MCR 6.502(G).

54. If the court does not believe that Baldwin falls under this exception, Baldwin is entitled to bring his newly discovered evidence claim under MCR 6.508(D)(3) if he can: (a) demonstrate good cause for not raising these claims previously, and (b) show actual prejudice. Under MCR 6.508(D)(3), “actual prejudice” means that the defendant would have had a reasonably likely chance of acquittal but for the alleged error.

55. Baldwin did not raise these claims previously because the evidence is newly discovered and was not available at the time of conviction or earlier post-conviction proceedings. As a result, he has “good cause” for failing to raise these claims previously.⁴ Second, there is “actual prejudice” here, as Baldwin would have a reasonably likely chance of acquittal if a jury heard his new evidence. Because this standard is similar to the newly discovered evidence requirement that the new

⁴ If the court does not accept Baldwin’s analysis of “good cause,” the court can waive the “good cause” requirement “if it concludes that there is a significant possibility that the defendant is innocent of the crime.” MCR 6.508(D)(iv).

evidence would probably cause a different result on retrial, the “actual prejudice” standard is discussed in further detail in Section C below. In short, the significant evidence that another individual, Allen Nutter, murdered O’Byrne creates a reasonably likely chance of acquittal.

B. The new evidence satisfies the first three prongs of the newly discovered evidence test.

56. To obtain a new trial based on newly discovered evidence, a defendant must show that: (1) the evidence itself, and not merely its materiality, is newly discovered; (2) the evidence is not merely cumulative; (3) the moving party could not, using reasonable diligence, have discovered and produced the evidence at trial; and (4) the new evidence would probably cause a different result on retrial. *People v. Cress*, 468 Mich. 678, 692; 664 N.W.2d 174 (2003). These four requirements are met, as described below.

i. The evidence is newly discovered.

57. Allen Nutter’s admission to his daughter did not exist at the time of Baldwin’s trial because the admission did not occur until 2005. Rene Padula’s statements to Rick Sehy and Dawn Makos did not occur until after trial. Similarly, Nutter’s confession to a long-time acquaintance, Brian Berger, did not occur until after trial. Amy Kennedy’s recantation, as well as Stacey Sheets admission that she received reward money and unauthorized transcripts or manuscripts prior to trial, was not discovered until 2009. Finally, until his recent FOIA request in 2008, Baldwin had not discovered evidence that Nutter’s description and attire matched the suspect witnessed at the crime scene. (Ex. Q).

ii. The evidence is not merely cumulative.

58. At trial, Baldwin did not present evidence implicating Nutter as the true perpetrator.

Thus, the new evidence is not cumulative to information presented at trial.

59. And while Baldwin did present testimony at the post-conviction hearing from two jail inmates (Melson and Russell) who said Nutter had confessed to them, the new evidence described in this motion far surpasses that testimony. Staley not only offers details of the crime that are consistent with the crime scene evidence, but she is also more credible, given that she is Nutter's daughter and therefore would be naturally hesitant to implicate him in a murder. Nutter's confession to Staley is of a completely different character than the previous evidence; consequently, the evidence from Staley is not cumulative.

60. Further, Staley's statement and the affidavits from Sehy and Makos illuminate not only Nutter's involvement in the murder, but also Padula's role as getaway driver.

(Ex. M; Ex. N). A court has never heard testimony from either of these individuals.

61. In addition, although Harold West testified at trial that he witnessed a blond individual at the crime scene, there was no evidence that the individual's description matched that of Nutter, who is now known to have worn precisely the attire worn by the individual West saw at the shop. While the conclusion that Nutter was the perpetrator was presented at Baldwin's original post-conviction hearing, the facts supporting this conclusion are completely new, and hence not cumulative.

62. Moreover, Amy Kennedy's recantation and Stacey Sheets' new statement about receiving reward money and unauthorized documents are, by definition, not cumulative because they directly contradict those witnesses' trial testimony, and there

was no other evidence presented at trial revealing the information contained in the new statements.

iii. Baldwin could not have discovered this evidence and presented it at trial with reasonable diligence.

63. As noted above, Nutter only recently confessed his involvement in the O’Byrne homicide to his daughter. Baldwin only learned of this confession in July, 2008 when Staley came forward after learning that Baldwin had been convicted of the crime her father committed. Since Nutter had not yet confessed to his daughter at the time of Baldwin’s trial, Baldwin was not negligent in failing to present this evidence.
64. The same is true of the new statements from Berger, Amy Kennedy, Stacey Sheets, Dawn Makos and Rick Sehy. None of those statements were available to Baldwin at the time of trial, and thus it would have been impossible to discover them before trial. Although police reports documenting Nutter’s physical description did exist at the time of trial, Baldwin was prohibited from discovering them by the trial court’s decision denying him access to the Silent Observer tips that would have alerted him to Nutter’s status as an alternate suspect. Thus he could not have discovered them with reasonable diligence.

C. The newly discovered evidence would probably cause a different result on retrial, satisfying the fourth prong of the newly discovered evidence test.

65. Weighing all the existing evidence—the evidence pointing toward Baldwin and the evidence pointing toward Nutter—there is at least as good a chance, if not better, that Nutter committed the crime. Under these circumstances, a jury would almost certainly conclude that the People cannot prove Baldwin’s guilt beyond a reasonable doubt.

66. To begin with, the evidence pointing toward Nutter is persuasive. His daughter has no reason to falsely implicate him. Indeed, she has been hesitant to reveal what she knows—coming forward only after learning the shocking information that an innocent man had been convicted for a crime her father committed. Her account of her father’s involvement fits the facts of the crime in many ways. To name only one example, police found blood outside the door of the bicycle shop (TT: 557-59), which is consistent with Nutter’s admission to Staley that he transferred O’Byrne back and forth from his car during the course of the crime. Furthermore, as stated above Nutter’s pattern of criminal behavior over the years closely resembles the facts of the O’Byrne murder.
67. Staley’s account also fits with the statements of Dawn Makos and Rick Sehy, to whom Nutter’s girlfriend, Rene Padula, admitted that she drove the getaway car for Nutter after he robbed and killed O’Byrne. The accounts of Staley, Makos, and Sehy are interlocking admissions which, taken together, convey a convincing picture of how Nutter and Padula worked together at the crime scene.
68. And, it should not be forgotten, this information fits previous testimony from the post-conviction hearing that Nutter confessed his role in the murder to two prison inmates, Tommy Melson and Donald Russell. Melson and Russell were not deemed sufficiently convincing at the time of the post-conviction hearing, but their testimony takes on wholly new significance given the mounting evidence against Nutter. The new evidence linking Nutter to the murder, combined with another Nutter confession to Brian Berger, provides even greater support that these statements would probably cause a different result on retrial.

69. All this evidence—the statements of Staley, Makos, Sehy, Melson, Russell, and Berger—fit with what Officer Harold West and other witnesses observed on the night of the murder. Officer West, the last person to see O’Byrne alive, saw a blond suspect with stonewashed jeans tucked into high black boots next to the car outside the shop. (Ex. J). Allen Nutter fits this description, as is clear from police reports of another crime he committed around the same time. (Ex. Q). Scott Baldwin has black hair and therefore does not fit the description. (Offense Report, #89-28935, 6/1/1989 - Ex. AA). Further, West and other witnesses saw a light colored or tan car adjacent to the bicycle shop the night of the murder. (Ex. O). Baldwin owned a vehicle that did not match this description—a forest green jeep (regardless of whether he painted it black, as the People claimed, in the weeks after the crime).
70. Finally, based on his prior crimes, Nutter is by no means an unlikely suspect. His pattern of criminal behavior fits this crime well. As stated above, Nutter has an extensive criminal record consisting of multiple violent crimes that are similar to the circumstances of the O’Byrne murder.
71. On the other side of the scale, the evidence against Baldwin was not overwhelming at trial, and has been further weakened by new evidence undermining the People’s witnesses. As a starting point, there was no physical evidence and no eyewitnesses linking Baldwin to the crime. And Baldwin had been living a crime-free life for the 12-year period between the O’Byrne murder and the trial.
72. Further, the testimony of the People’s key witness—Stacey Sheets—had substantial problems even at the time of trial. For one thing, law enforcement officers had originally dismissed her as not credible when she first implicated Baldwin (in part

because she failed a polygraph), and it was suspicious that her story became significantly more detailed after many years had passed and only after speaking with detectives on numerous occasions. In addition, her testimony had numerous inconsistencies dealing with important aspects of her story, such as when Baldwin confessed to her, what exactly he said and did, and how he could have confessed to her during a time period that he was in jail. Finally, Sheets had a motive to falsely accuse Baldwin. As confirmed by Baldwin's wife at the time (now his ex-wife), Sheets was a jilted lover who was very angry at Baldwin for breaking up with her—shortly after the breakup, Sheets showed up at Baldwin's house, angry and violent, breaking down two doors and pounding and screaming, causing Baldwin's family to call the police. (Ex. Z). This incident occurred around the time that Sheets accused Baldwin of the murder.

73. In addition to Sheets' problems at trial, Sheets' credibility is even further undermined by the new revelation that she received reward money from Silent Observer. Sheets repeatedly stated that she did not want or expect any payment for her testimony. (TT: 749). In closing, the People relied heavily on this fact to show that Sheets had no incentive to lie. (TT: 1542, 1547-48). It is now clear that she had an incentive to lie, due to her admission that she received reward money from Silent Observer, and this greatly weakens the legitimacy of her testimony. Apart from the new revelation concerning the reward money, it is also significant that Sheets has now admitted that police officers who were preparing her for her testimony provided her with court documents that they believed she was not supposed to have.

74. Similarly, other key witness testimony presented by the People has been substantially weakened. Apart from Stacey Sheets, the People also relied on Baldwin's alleged admission to another woman, Amy Kennedy. But Kennedy has now acknowledged that she never had a conversation with Baldwin regarding any robbery or murder at the Kalamazoo bike shop. She admits that her incriminating testimony at trial was actually derived from conversations with Sheets and was hearsay, not information she learned from Baldwin directly. Like Sheets' new statements, Kennedy's recantation substantially weakens the People's case.⁵

75. Because of all this, a jury at a new trial would likely believe that Nutter, not Baldwin, was the actual perpetrator. Thus, Baldwin satisfies the standard for a new trial based on newly discovered evidence.

II. ALTERNATIVELY, THIS COURT SHOULD ORDER POST-CONVICTION DNA TESTING AND FINGERPRINT ANALYSIS THAT COULD CONCLUSIVELY EXONERATE BALDWIN.

76. At the very least, the new evidence pointing toward Nutter warrants post-conviction DNA testing that could prove, once and for all, whether Baldwin or Nutter committed the crime. For that reason, Baldwin requests post-conviction DNA testing of biological evidence collected at the crime scene and previously subjected to inconclusive testing in 2001. New DNA testing technology has the potential to produce conclusive results where the 2001 technology could not (Ryan Affidavit, 7/13/2009 - Ex. R), and thus testing is warranted pursuant to Mich. Stat. § 770.16(1) and (4). Specifically, Baldwin seeks testing of the following samples collected during

⁵ It is true that the People presented one other purportedly incriminating statement made by Baldwin, specifically his alleged admission to Laura Walkley that he told other friends he had committed the crime. However, Walkley's testimony was brief and not used prominently by the People, and therefore does not overcome the significant new evidence Baldwin now presents.

the original investigation. (Nichols Continuation Report, 6/4/1988 - Ex. S; La Brie Continuation Report, 7/6/1988 - Ex. T):

i. Hair Root

- On a hallway door at the crime scene, in an area where it appeared the struggle occurred, police collected a hair that had blood on it. (Ex. T). The hair was determined to be visually inconsistent with the victim's hair. (Laboratory Report, Record #0100314, 1/25/2001 - Ex. U). Authorities attempted DNA testing on the root of the hair, but with inconclusive results. (Laboratory Report, Record #0100794, 2/20/2001 - Ex. V). As set forth in more detail below, according to an expert familiar with the most technologically-advanced testing methods, new technology could produce results and identify the perpetrator. (Ex. R).

ii. Swabbing of blood on hair

- Authorities swabbed the blood found on the hair, but again with inconclusive results. (Ex. V). New technology could produce conclusive results, revealing the identity of the true perpetrator. (Ex. R).

iii. Shaft of hair

- At the time of the original testing, analysts apparently did not attempt mitochondrial DNA testing on the shaft of the hair. Such testing could produce a mitochondrial profile that could be compared to Nutter and Baldwin.

- iv. Hallway floor blood sample
 - In the hallway where the struggle likely occurred, authorities collected and attempted to test a blood sample found on the floor. (Ex. T; Ex. V). Tests in 2001 were inconclusive, but new technology could produce results. (Ex. R).
- v. Doorway blood sample
 - Authorities collected a blood sample from the doorway where it appeared the perpetrator had entered and exited. (Ex. T). Testing in 2001 was inconclusive, but new technology could produce results. (Ex. V; Ex. R).

77. Like most other states, Michigan has responded to the wave of proven DNA exonerations by passing legislation granting access to post-conviction DNA testing under some circumstances. (MCLS § 770.16). Where biological evidence has already been subjected to inconclusive DNA testing, as it has here (Ex. U; Ex. V), the defendant must meet a variety of statutory conditions. First, the defendant must show that the results were inconclusive and that testing with current DNA technology is likely to result in conclusive results. Mich. Stat. § 770.16(1)(b&c).

78. Baldwin satisfies both of these initial conditions. As stated in laboratory reports, the results of the testing were inconclusive for the four samples. (Ex. V). Testing produced either no results, or detected activity which fell below reportable standards. Further, testing with current technology will likely produce conclusive results. When the evidence was tested in 2001, analysts used a traditional short tandem repeat (STR) method but were unable to obtain results because the samples were too degraded.

Today, DNA analysis is more sophisticated, enabling analysts to obtain results from samples that previously would not yield results. (Ex. R). Specifically, Baldwin proposes that the samples be subjected to MiniSTR analysis, a method that was unavailable in 2001 but that now allows analysts to obtain conclusive results from smaller or degraded samples. (Ex. R). Additionally, Baldwin proposes that the hair sample be subjected to mitochondrial analysis (a technique for obtaining DNA from samples, such as the shaft of a hair, that do not have the nucleus of the cell), another method likely to obtain results that was not utilized in 2001. (Ex. R).

79. Once a defendant has met these initial conditions, the defendant must establish that the biological material was collected and identified during the investigation of the defendant's case. Mich. Stat. § 770.16(3). Baldwin satisfies this condition, as biological material was collected and identified during the investigation of his case, in 1988. (Ex. S; Ex. T).
80. Next, the statute states that the Court shall order DNA testing if: 1) the defendant provides prima facie proof that the evidence presented for testing is material to the issue of the convicted person's identity as the perpetrator of the crime, § 770.16(4)(a), 2) the defendant establishes by clear and convincing evidence that (i) a sample of identified biological material is available for DNA testing; (ii) if previously tested, the evidence will be subject to DNA testing technology that was not available when the defendant was convicted; and (iii) the identity of the defendant as the perpetrator of the crime was at issue during his or her trial. § 770.16(4)(b). Baldwin meets these additional conditions.

A. The evidence presented for testing is material to the perpetrator's identity.

81. The samples from the bloody hair are probative of the perpetrator's identity because the hair was found in the hallway where the struggle occurred, making it likely that the perpetrator rubbed or slammed against the hallway door and left behind either the hair itself or the blood on the hair. Investigators have determined that the hair is not visually consistent with the victim's hair. (Ex. U). Because there is a significant chance that the hair or the blood on it came from the perpetrator, DNA testing of those samples is material to the perpetrator's identity. Testing has the potential to exclude Baldwin and match Nutter.
82. The same is true of the samples from the hallway floor, where the victim and the perpetrator struggled, and from the door where the perpetrator entered and exited. (Ex. S). Investigators collected and tested these items presumably because they likely came from the perpetrator. Testing has the potential to identify whether Baldwin or Nutter is the perpetrator.

B. The evidence is available to be tested.

83. The defendant has verified that the biological material still exists, and is available for testing. The Grand Rapids Laboratory Report states that the "DNA evidence will be maintained in the laboratory and is available upon request." (Ex. V). Additionally, in 2009, the Kalamazoo City Attorney's office provided a comprehensive list of all the evidence still in the custody of the Kalamazoo Department of Public Safety (KDPS). (Kalamazoo, MI: Office of the City Attorney Letter, 4/29/2009 - Ex. AB). Among the items listed are the biological samples Baldwin seeks to test. Accordingly, these samples are in KDPS custody and are available for testing.

C. The evidence will be tested with a technology not available at the previous

time of testing.

84. While the evidence was previously tested, the evidence will be subjected to DNA testing technology that was not available when the defendant was convicted. (Ex. R). As explained above, when the evidence was tested in 2001 with inconclusive results, the analysts used traditional STR testing. Baldwin now proposes that the samples be subjected to MiniSTR analysis, a technique that was unavailable in 2001 but that often obtains results from samples previously deemed too degraded for regular STR testing. (Ex. R). Additionally, Baldwin proposes that the hair shaft be subjected to mitochondrial DNA testing, another method that was not used at the time of the original testing.

D. The identity of the defendant as the perpetrator of the crime was the primary issue at trial.

85. Baldwin's case is a classic "whodunit." His defense at trial was that he is actually innocent and had nothing to do with the crime, and therefore that someone else must have been the perpetrator. The People had no physical evidence linking Baldwin to the crime, but instead relied mainly on testimony from Stacey Sheets, Baldwin's ex-girlfriend. Identity was the sole issue in the case.

86. For the above reasons, Baldwin is entitled to further DNA testing of i) the hair root, ii) the blood found on the hair, iii) the hair shaft, iv) the blood sample from the hallway, and v) the blood sample from the doorway. Baldwin requests that the testing be done at a private laboratory agreeable to the defense and the prosecutor's office, pursuant to § 770.16(6), at the expense of the defendant. Further, Baldwin requests that the court order the People to compare any genetic STR profiles obtained through testing with the DNA profiles of all offenders in the Michigan State Crime

Laboratory's DNA databank and the Combined DNA Index System (CODIS) databank. Baldwin requests that any mitochondrial profiles be compared to the mitochondrial profiles of Baldwin and Allen Nutter.

87. In addition to DNA testing, Baldwin requests that the court order fingerprint testing on latent fingerprints that were found at the scene of the crime. (Police Report, 7/12/1989 - Ex. E). The fingerprints have already been tested against Baldwin and exclude him as the source of the prints. (Police Report, 7/12/1989 - Ex. E). Although the prints were run through AFIS (the national fingerprint databank) in 1988, Baldwin requests that the prints be re-run through the current AFIS databank in an effort to determine the source of the prints and the identity of the perpetrator.

88. In light of the significant new evidence supporting Baldwin's claim of innocence, Baldwin is, at the very least, entitled to post-conviction DNA testing and fingerprint analysis that could conclusively prove whether Baldwin or Nutter committed the crime.

THEREFORE, for the above-stated reasons, Baldwin respectfully requests that this Court (1) reverse his conviction based on newly discovered evidence implicating Allen Nutter, or (2) at the very least, order post-conviction DNA testing and fingerprint analysis.

Respectfully submitted this ____ day of _____, 2009.

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TABLE OF EXHIBITS

Silent Observer Tip #2942	Exhibit A
Whaley Continuation Report P89-059, 7/7/1989.....	Exhibit B
Whaley Office Memorandum, 11/6/2000	Exhibit C
Stacey Spencer Statement, Case #88-27309, 6/30/1989.....	Exhibit D
Police Report, 7/12/2009	Exhibit E
Felony Register of Actions, Case #89-428-FY.....	Exhibit F
Stacey Sheets Statement, 12/28/2000	Exhibit G
Jancasz Continuation Report, 6/23/1988	Exhibit H
Mattison Department of Public Safety #88-28309, 7/31/2002	Exhibit I
Kalamazoo, MI: Office of the City Attorney Letter, 5/38/2008.....	Exhibit J
Silent Observer Forms Implicating Allen Nutter.....	Exhibit K
Dickerson Affidavit, 8/21/2009	Exhibit L
Makos Affidavit, 10/6/2006.....	Exhibit M
Sehy Affidavit, 5/24/2005.....	Exhibit N
Jancasz Continuation Report, 6/6/1988	Exhibit O
Nutter Booking Picture, 2/26/1988	Exhibit P
Bean Continuation Report, pg. 3 of 4, 2/25/1988.....	Exhibit Q
Ryan Affidavit, 7/13/2009	Exhibit R
Nichols Continuation Report, 6/4/1988	Exhibit S
La Brie Continuation Report, 7/6/1988	Exhibit T
Laboratory Report, Record #0100314, 1/25/2001	Exhibit U
Laboratory Report, Record #0100794, 2/20/2001	Exhibit V

Silent Observer Forms Reporting Seeing Nutter in a Tan Car (2)..... Exhibit W

*Brooke Staley Audio Recording, 10/17/2008..... Exhibit X

West Office Memorandum, 6/3/1988 Exhibit Y

Tracy Baldwin Affidavit, 2/17/2009..... Exhibit Z

Offense Report, #89-28935, 6/1/1989 Exhibit AA

Kalamazoo, MI: Office of the City Attorney Letter, 4/29/2009 Exhibit AB

Riley & Powers Affidavit, 10/23/2009 Exhibit AC

Berger Affidavit, 10/19/2009..... Exhibit AD

*Amy Kennedy Audio Recording, 9/23/2009 Exhibit AE

*Stacey Sheets Telephone Audio Recording, 9/21/2009..... Exhibit AF

*Stacey Sheets Alabama Audio Recording, 9/12/2009 Exhibit AG

* Item is included as a compact disc.