IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

SEDLEY ALLEY	)	
	)	No. _____
Petitioner-Appellant	)	Lower Court No. P-8040
	)	(Shelby County)
v.	)	CCA No. _____
	)	**Execution Date: June 3, 2004**
STATE OF TENNESSEE	)	
	)	S.Ct.No. M1991-00019-DPE-DD
Respondent-Appellee	)	**Filed May 18, 2004**

EMERGENCY MOTION FOR PRODUCTION OF BIOLOGICAL SAMPLES FOR DNA ANALYSIS

Petitioner-Appellant Sedley Alley, who stands convicted of first-degree murder and under sentence of death, respectfully moves this Court to immediately reverse the judgment of the Criminal Court of Shelby County denying his Petition For Post-Conviction DNA Analysis.[1] This Court should immediately order the production of eleven (11) biological samples for purposes of DNA analysis, which Alley is entitled to test before a current June 3, 2004 execution date. The evidence should be ordered produced immediately, because Sedley Alley has a personal right to test this evidence to demonstrate his innocence, and if the evidence is immediately produced, Sedley Alley can provide the courts and any other available forum the results of such testing before June 3, 2004. The trial court erred in denying the motion by failing to consider the significance of semen samples found on and in the victim and hairs found in and near the victim. The Criminal Court also ignored compelling evidence showing that Sedley Alley did not commit the offense, including, for example, proof that Alley was simply not the person who abducted the victim, as well as extensive evidence showing

[1] That motion was filed pursuant to Tenn. Code Ann. §40-30-301 et seq., the Eighth and Fourteenth Amendments, and the Tennessee Constitution, including Article I §16.

that he is not guilty. See e.g., pp. 11-14, *infra*. The Criminal Court should be immediately reversed.[2]

I.
THE BIOLOGICAL SPECIMENS REQUESTED BY SEDLEY ALLEY

Sedley Alley has requested the production of the following eleven (11) biological samples, which include fluid samples from the victim, semen samples found on the victim, and hairs found on the victim and the victim's clothing:

(1) Vaginal swabs from the victim;[3]

(2) Swab taken from the victim's right inner thigh;[4]

(3) Swab taken from the victim's left inner thigh;[5]

(4) Nasopharyngeal swabs from the victim;[6]

---

[2] The May 17, 2004, Order of the Criminal Court states: "Initially, this court finds, with regard to the criteria set forth in Tenn. Code Ann. §§ 40-30-204(2) and 40-30-305(2), that the requested samples are still in existence and have never been subjected to DNA testing." The court then inexplicably and inconsistently concludes, "However, having found the petitioner has failed to meet criteria (2) under both sections 304 and 305 of the Act, this court need not reach the issue of whether the petition was filed for the purpose of demonstrating actual innocence or merely to unreasonably delay the execution of petitioner's sentence." In fact, reading the opinion as a whole demonstrates that the court denied relief by misapplying the statute as explained in *Jack Jay Shuttle v. State*, E2003-001310CCA-R#-PC, 2004 Tenn. Crim. App. Lexis 80 (Tenn. Crim. App. December 16, 2003)(attached as Exhibit 7). (Page numbers for citation to the court's order are not available as the pages of the order are not numbered.)

[3] University of Tennessee Toxicology And Chemical Pathology Laboratory, July 19, 1985 Report #1, Lab No. 85-1778, Case No. 85-1681, Item 11 (Attached as Exhibit 1 to this motion).

[4] University of Tennessee Toxicology And Chemical Pathology Laboratory, July 19, 1985 Report #1, Lab No. 85-1778, Case No. 85-1681, Item 12 (Exhibit 1).

[5] University of Tennessee Toxicology And Chemical Pathology Laboratory, July 19, 1985 Report #1, Lab No. 85-1778, Case No. 85-1681, Item 13 (Exhibit 1).

[6] University of Tennessee Toxicology And Chemical Pathology Laboratory, July 19, 1985 Report #2, Lab No. 85-1775, Case No. 85-1681, Item 3 (Exhibit 2).

(5) Oral swabs from the victim;[7]

(6) Rectal swabs from the victim;[8]

(7) Head hairs from an African-American individual found on the victim's socks, which do not match Sedley Alley, who is caucasian (Q7);[9]

(8) A caucasian body hair found on the victim's waistband (Q6);[10]

(9) A caucasian pubic hair found on the victim's left shoe (Q1);[11]

(10) A hair found on a stick found in the victim;[12]

(11) Blood and hair samples of the victim.[13]

All of these samples contain biological evidence which will establish the identity of the person or

---

[7] University of Tennessee Toxicology And Chemical Pathology Laboratory, July 19, 1985 Report #2, Lab No. 85-1775, Case No. 85-1681, Item 4 (Exhibit 2).

[8] University of Tennessee Toxicology And Chemical Pathology Laboratory, July 19, 1985 Report #2, Lab No. 85-1775, Case No. 85-1681, Item 5 (Exhibit 2).

[9] Trial Transcript 883 (Craig Lahren: Item Q7 consists of 2 strands of hair from a black individual found on victim's sock)(Contained in attached Exhibit 3).

[10] Trial Transcript 882 (Craig Lahren: Item Q6 collected from waistband of victim and identified as medium-brown caucasian body hair)(Exhibit 3).

[11] Trial Transcript 879 (Craig Lahren: Item Q1 hair collected inside shoe of victim)(contained in attached Exhibit 3). See also Excerpt of Shelby County Sheriff's Report Concerning Evidence, AG File pp. 269, 271 (Attached as Exhibit 4).

[12] See Search Warrant Affidavit, July 17, 1985 ("hair was found on an instrument" used in sexual assault)(Attached as Exhibit 5).

[13] See e.g., University of Tennessee Toxicology And Chemical Pathology Laboratory, July 19, 1985 Report #1, Lab No. 85-1778, Case No. 85-1681, Items 1 & 2; Trial Transcript 872 (Exhibit 3).

persons who committed the sexual assault and murder of the victim in this case.[14]

There is also clear evidence that the requested swabs contain semen which can identify the killer. Indeed, in her reports, Paulette Sutton *specifically identified semen in at least four different swabs and samples*:

> – Concerning vaginal swabs, Sutton reported the presence of semen: : "Seminal Type ** Detected * *" See Exhibit 1, Item 11;
>
> – Concerning a swab from the victim's right inner thigh, Sutton again reported finding semen: "Seminal Type ** Substance Detected** *** Right inner thigh***." See Exhibit 1, Item 12;
>
> – Concerning a swab from the victim's left inner thigh, Sutton again reported finding semen: "Seminal Type ** Substance Detected** *** Left inner thigh***." See Exhibit 1, Item 13;
>
> – Finally, concerning nasopharyngeal swabs, Sutton again reported the presence of semen: "3-Seminal Type * * 'H' substance Detected" See Exhibit 2, Item 3.

In denying access to this critical evidence, the Criminal Court claimed that the evidence in the swabs could come from the victim, but that simply cannot be true. The semen detected by Paulette Sutton obviously came from a male. Moreover, DNA analysis can identify small amounts of male DNA found in female fluids – which is why DNA analysis can identify killers and rapists in cases involving rape and murder. That is why DNA analysis is required – to identify the donor of the semen and the fluids on the body.

II.
SEDLEY ALLEY'S REQUEST IS APPROPRIATE, AND IMMEDIATE PRODUCTION OF THE EVIDENCE WILL ENABLE TESTING BEFORE THE JUNE 3 EXECUTION DATE

Sedley Alley is entitled under Tennessee law to ask for the DNA evidence "at any time."

---

[14] The trial court properly concluded that the evidence exists, and indeed the state never argued to the contrary. See Tenn. Code Ann. §40-30-304(2); 40-30-305(2).

Tenn. Code Ann. §40-30-303. He could not have asked for it in earlier state proceedings, because the Post-Conviction DNA Act was only passed in 2001 – after he had completed state post-conviction review. The cellular DNA analysis (STR analysis) to be performed on the fluid samples also did not exist until 2002. See Exhibit 6 (Declaration and Resume of Gary Harmor).

Importantly, Sedley Alley's unquestionably qualified expert can complete the DNA analysis of the fluid samples within 2 weeks of production of the evidence. See Exhibit 6 (Declaration of Gary Harmor). Mr. Harmor can complete the mitochondrial DNA analysis of the hair samples within 3 weeks. See Id. Therefore, this Court should immediately order the production of the evidence, so that the testing can be conducted and completed as quickly as possible, before June 3, 2004.[15]

III.
SEDLEY ALLEY IS ENTITLED TO PRODUCTION OF THE EVIDENCE UNDER TENNESSEE LAW, THE UNITED STATES CONSTITUTION, AND THE TENNESSEE CONSTITUTION

A.
SEDLEY ALLEY IS ENTITLED TO PRODUCTION OF THE EVIDENCE UNDER *SHUTTLE v. STATE*, TENNESSEE LAW, THE TENNESSEE CONSTITUTION, AND THE UNITED STATES CONSTITUTION BECAUSE THE EVIDENCE IS RELEVANT TO HIS INNOCENCE AND THE FAIRNESS OF THE DEATH SENTENCE

To avoid miscarriages of justice, the Legislature passed §40-30-301 et seq. to prevent innocent people from either remaining incarcerated or being executed. As the Court of Criminal Appeals made clear in the case of Shuttle v. State, 2004 Tenn.Crim.App.Lexis 80 (Feb. 3,

[15] Sedley Alley's request for DNA analysis was made because, after conducting further investigation into the case in the spring of 2004, Alley's defense team uncovered previously unknown exculpatory evidence which demonstrates innocence, including Dr. Bell's notes (Exhibit 8) and previously unknown information about a boyfriend – all of which indicates that Sedley Alley did not commit the crime. That investigation prompted further investigation, including analysis of the tire tracks at the abduction scene, and shed further light on the identity of the perpetrator, confirming the need and for the very type of DNA analysis permitted by the Legislature.

2004)(Exhibit 7), when reviewing an application for DNA testing:

> The Act requires the trial court to assume that the DNA analysis will reveal exculpatory results in the court's determination as to whether to order DNA testing . . . The Act was created because of the possibility that a person has been wrongfully convicted or sentenced. A person may be wrongly convicted based upon mistaken identity or false testimony.

Shuttle, slip op. at * 13. Thus, in Shuttle, where the petitioner "contend[ed] that he was wrongly convicted at trial where he gave false incriminating testimony," (Id., slip op. at p. * 14), the Court held that he was entitled to production of the evidence because: "In summary, for purposes of the Act, we must assume that DNA testing will reveal exculpatory evidence." Id., slip op. p. *15.[16]

The Criminal Court misapplied the ruling in *Shuttle*. The lower court assumed that Petitioner's statement is accurate and that he is the perpetrator. If the evidence is viewed from this perspective, one must assume as did the Criminal Court that DNA testing of the evidence requested would be futile. This ignores the reasoning of *Shuttle* and eviscerates Tenn. Code. Ann. 40-30-301 *et seq.*

Here, we must assume that testing of the fluid samples and hairs will demonstrate that all the fluid samples and hairs left on and in the victim and on her clothing were left by someone other than Sedley Alley. The hair found on the stick found inside the body, we must assume, came from someone other than Alley. Who other than the killer would leave a hair on a stick found only at the scene? Indeed, how would a hair get on a tree limb at the crime scene in the first place and then suddenly find itself inside the victim – except that the killer got hair on the limb before attacking the

[16] As the Court explained in granting the evidence to Shuttle, Shuttle denied having committed the offense, maintained that the evidence would show his statements to authorities were false, and analysis of the evidence would have shown the identity of the perpetrator. Saine, therefore, "is distinguishable from the case at bar." Shuttle, slip op. p. *16 & 17. Shuttle controls here, and entitles Sedley Alley the evidence he has requested.

victim? The Criminal Court makes the erroneous assumption that a tree limb could somehow contain the hair of anyone. That is not true and makes little sense. Trees do not normally contain hairs. Under the circumstances here, it would likely contain the hair of the killer – no one else.

The semen and fluids found on the body also must be assumed to have come from someone other than Sedley Alley. The fact that someone deposited semen or bodily fluids on the victim of a sexual assault also clearly confirms that the person who left the semen is the killer. Courts throughout the country have made clear that in a murder case, semen found on, in, or near a body is proof of the identity of the killer:

> Evidence placing [a person] at the scene of the murder tends to prove that he participated in it. Semen is no different from fingerprints, hair follicles, or blood in its utility for this purpose. Such evidence connects him with the place, which in turn connects him to the crime that occurred there.

Commonwealth v. Sicari, 752 N.E.2d 684, 751 (Mass. 2001)(upholding murder conviction where defendant's semen found at crime scene); See Banks v. State, 43 P.3d 390 (Okla.Cr.App. 2002) (where defendant's DNA contained in sperm found on victim's corpse and clothing, evidence established defendant's guilt); See also "Two Months After Innocent Men Cleared in 1986 Chicago Murder, Two New Suspects Charged," Associated Press, February 8, 2002 (victim was raped and murdered, but DNA from semen and hair samples did not match those convicted; defendants were later pardoned by the Governor).

The Criminal Court also assumes away the significance of the semen evidence, asserting that the victim may have had some sort of consensual sexual encounter before her death. *However, there is no proof of any such assertion,* and analysis of the DNA evidence would be able to prove that claim false. In fact, the victim was on duty the entire day at the base, so she could not have engaged

in the type of sexual behavior now alleged for the first time by the Criminal Court. That being said, the DNA in that semen is certainly from the killer. That is precisely why the evidence must be tested. The state cannot claim that the semen came from someone other than the killer without proof of that fact. Again, that is why DNA testing is mandated – to identify who deposited semen and fluids on and in the victim at the time of her death. Similarly, hairs found the victim's clothing would likewise identify the killer.[17]

Ultimately, the Criminal Court has denied access to the critical evidence because it assumes that if the DNA in the fluid samples and the hair was from someone else, it would not make any difference to a jury. That fails to accept the reality of the situation. A jury would not convict and certainly would not impose the death penalty upon Sedley Alley if it heard:

(1) Someone else's semen was found in the victim;

(2) That someone else's semen was found on the victim's thighs;

(3) That same person's hair was found inside the victim; and

(4) That same person's hair was found on the victim's clothing.

The Criminal Court thinks otherwise, but that makes little sense. And that ruling makes the Post-Conviction DNA Analysis Act essentially meaningless.

A reasonable jury which hears that hairs and fluids found on, in, or near the victim did not come from Sedley Alley would reasonably conclude that Sedley Alley did not rape and kill the victim. A jury would acquit him under the reasonable doubt standard, and certainly would never impose the death sentence. Thus, Sedley Alley is therefore entitled to the evidence under Tenn. Code

[17] The Criminal Court has also stated that the evidence is not significant because the prosecution argued that the victim was raped by the stick. But test results from the semen could rove otherwise, identifying the killer as someone who actually raped the victim in other ways as well.

Ann. §40-30-304, because he would not have been convicted beyond a reasonable doubt had this evidence been presented at trial.

He is also entitled to the evidence under Tenn. Code Ann. §40-30-305, because there is a reasonable probability that the jury would have rendered a "sentence more favorable," i.e., a life sentence, had they known that Sedley Alley did not abduct, rape and kill the victim. See Tenn. Code Ann. §40-30-305(1). This is especially true because residual doubt is a mitigating factor which jurors must consider when deciding whether to impose the death sentence. See State v. Hartman, 42 S.W.3d 44 (Tenn. 2001).[18]

The Criminal Court concludes that DNA evidence would make no difference because Sedley Alley gave a statement to the police. But this erroneously assumes the truth of the statements. Sedley Alley is contending that the DNA evidence will conclusively show that such statements are not true. The Criminal Court's conclusion is circular – it is patently wrong to assume that the statement is true, when DNA evidence can scientifically prove it to be false. *Even the Medical Examiner testified at trial that Sedley Alley's statement concerning the victim's death was simply not true.* See e.g. State v. Alley, 776 S.W.2d 506, 509 n.1 (Tenn. 1989)(victim not struck by car or stabbed in head with screwdriver as asserted in custodial statement).

As will be explained in more detail *infra*, though Alley gave a statement to police, such statement was coerced and not true. It is his contention – as in Shuttle – that the DNA evidence will prove that the statement is, in fact, false. In fact, there are numerous reported cases in which DNA

[18] Moreover, as an individual convicted of a capital offense, Sedley Alley has the right to testing. He has specifically requested it. The fact that his trial attorney did not pursue such a course is irrelevant. Sedley Alley has the right to testing, and he is not bound by the decisions of trial counsel, which have influenced the ongoing litigation in this case.

has shown a defendant to be innocent – including of murder – though the police were able to extract a false confession from the defendant. See e.g., Godschalk v. Montgomery County District Attorney's Office, 177 F.Supp.2d 366 (E.D.Pa. 2001)(DNA evidence ordered produced, and defendant later exonerated; statement to police was false); Susan Saulny, "Why Confess To What You Didn't Do?" *New York Times*, Dec. 8, 2002 (defendants who confessed to Central Park rapes actually innocent, where DNA evidence showed that someone else committed offense); Drizin & Leo, The Problem Of False Confessions In The Post-DNA World, 82 N.C.L.Rev. 891, 926 (2002)(discussing case of Christopher Ochoa, from whom police extracted false confession to rape and murder of victim, but who was exonerated where another person later confessed and afterwards DNA tests showed that that person's semen was found at the crime scene).

It is precisely for this reason that the DNA testing must be ordered – to find the truth about what actually happened to the victim. Statements can be false. Witnesses can be wrong. DNA, however, does not lie. Under Shuttle, therefore, and as a matter of due process under the Tennessee Constitution and the Fourteenth Amendment, Sedley Alley must be provided the evidence he has requested. Under the Tennessee statutes, the due process provisions of the Tennessee Constitution, Article I §16 of the Tennessee Constitution, the Fourteenth Amendment's due process and equal protection clauses, and the Eighth Amendment (which prohibits cruel and unusual punishment and the execution of the innocent), the evidence must be produced. See State v. Thomas, 586 A.2d 250 (N.J. 1991)(due process requires DNA testing: no greater injustice than to prohibit testing of evidence to show innocence); Commonwealth v. Brison, 618 A.2d 420 (Pa. 1992); Dabbs v. Vegari, 570 N.Y.S.2d 765 (1990). See Herrera v. Collins, 506 U.S. 390 (1993).

As Judge Luttig (whose father was murdered) has properly recognized, where DNA can

identify the perpetrator of a murder, access to DNA evidence should "be unbegrudging," and there is both a substantive and procedural due process right under the Fourteenth Amendments to have such evidence produced and tested. Harvey v. Horan, 285 F.3d 298, 306, 312-321 (4th Cir. 2002) (Luttig, J., concurring in denial of rehearing). See also Kreimer & Rudovsky, Double Helix, Double Bind: Factual Innocence And PostConviction DNA Testing, 151 U.Pa.L.Rev. 547 (2002). Further, as a constitutional matter, evidence must be produced to avoid a miscarriage of justice. See e.g., Godschalk v. Montgomery County District Attorney's Office, 177 F.Supp.2d 366 (E.D.Pa. 2001)(granting access to evidence for DNA testing despite statement to police: petitioner later exonerated).

Because the Legislature passed the DNA Act to enable persons to establish their innocence through DNA testing, because the DNA evidence in this case will enable Sedley Alley to make such a showing under Tennessee law, and because it would be unconstitutional under Eighth Amendment principles and principles of procedural & substantive due process to deny him access to this vital evidence, Sedley Alley is entitled to production of the evidence. The Criminal Court should be reversed.

B.
EVEN WERE SEDLEY ALLEY REQUIRED TO MAKE SOME SHOWING THAT SOMEONE ELSE COMMITTED THE KILLING, HE HAS DONE SO

Sedley Alley is entitled to the evidence under Shuttle, *supra*, the Tennessee Constitution and the United States Constitution. Even were he required to make some sort of showing of innocence to get the evidence (which he is not), Sedley Alley can show definitive evidence demonstrating that

he did not kill the victim. ***The Criminal Court, however, totally ignored all of this evidence in its decision to deny DNA testing*. That was manifest error**. Rather, in denying access to the critical evidence, the Criminal Court selectively relied solely on evidence inculpating Sedley Alley, while failing to acknowledge the significant evidence showing that Sedley Alley did not commit the offense.

As argued below, there is extensive evidence showing that Sedley Alley did not commit the offenses for which he has been convicted. That evidence includes, but is not limited to, the following, all of which establishes Sedley Alley's entitlement to production of the evidence:

(1) Recently discovered notes from Dr. James Bell, who examined the body at the scene and performed the autopsy, establish that the victim was killed as late as 1:30 a.m. to 3:30 a.m. on July 12, 1985. See Exhibit 8 (Bell Notes). We know, however, that Sedley Alley was arrested at 12:10 a.m. and under surveillance until 1:27 a.m. at his home, and that he remained at his house afterwards. See Exhibit 9 (Radio Log). Dr. Bell's newly discovered notes, in conjunction with clear evidence of Sedley Alley's whereabouts the morning of July 12, 1985, establishes alibi, and confirms that someone other than Sedley Alley committed the murder;

(2) The abductor was described by Scott Lancaster as caucasian, about 5'8," with short, dark brown hair, a dark complexion, and black shorts. See Exhibit 10 (Statement of Scott Lancaster). This clearly does not describe Sedley Alley. Sedley Alley was 6'4", 200 pounds, slender build, with medium to long light brown-reddish hair, a mustache and beard, medium complexion, and wearing blue jean shorts. See e.g., Exhibit 11 (Alley's booking photograph); Exhibit 12 (police description of Alley). Alley was not the person identified by

Lancaster:

	Abductor	**Sedley Alley**
Height & Build	5'8", Medium Build	6'4", Slender Build
Hair Color	Dark Brown	Light Reddish-Brown
Hair Length	Short	Medium to Long
Complexion	Dark Complexion	Medium Complexion
Facial Hair	None Noted	Mustache & Beard
Clothing	Black Shorts	Blue Jean Shorts

(3) Lancaster's description of the abductor closely matches the description of the victim's boyfriend, John Borup. See Exhibit 13, ¶5 (Affidavit of April Higuera);

(4) The car involved in the abduction was initially described as a "brown over brown station wagon." See Exhibit 14 (July 12, 1985 Statement of Richard Wayne Rogers). Borup drove a brown Dodge Aspen, which fits that description. See Exhibit 13, ¶6 (Affidavit of April Higuera); Exhibit 15 (Picture of Dodge Aspen);

(5) The tire tracks at the abduction scene *do not* match Sedley Alley's car. See Exhibit 16 (picture of tire tracks at abduction scene); Exhibit 17 (photographs of Sedley Alley's car); Exhibit 18 (Report of Peter McDonald: Sedley Alley's car did not make tire tracks found at abduction scene);

(6) Hairs on the victim's socks at the site where the body was found *do not match Sedley Alley*. See Trial Transcript p. Tr. 883 (Attached as Exhibit 3);

(7) Fingerprints on a beer bottle recovered near the body "are definitely not identical to Sedley Alley's fingerprints." See Exhibit 19 (Excerpt of Report of Sgt. G.B. Dunlap);

(8) Markings identified as shoe prints at the abduction scene have not been shown to match Sedley Alley's shoes, even though the authorities had his shoes from that night. See Exhibit 20: Report concerning shoe prints; Exhibit 21 (picture of Sedley Alley's shoes);

(9) Alley's statement to the police was coerced and not true and the product of manipulation.[19] It contains patently false statements which are not born out by the physical evidence, including statements that the victim was hit by a car and stabbed in the head with a screwdriver. Even Dr. Bell made clear that such statements were not true. See e.g. State v. Alley, 776 S.W.2d 506, 509 n.1 (Tenn. 1989). Further, prior to the interrogation, Sedley Alley requested and was denied an attorney upon request, and he was threatened by authorities. Detective Sergeant Gordon Neighbours said the next time Alley went to the bathroom he could just shoot him in the back of the head, making the "case closed." They told Alley that his wife would be charged if he did not make the statement, and that she would get life at Leavenworth. Anthony Belovich lied by telling Alley that they had found the victim's identification card in the front seat of his car. Alley told them he did not know what they were talking about. These threats, lies, and manipulations led to a false confession by Alley. See Drizin & Leo, The Problem Of False Confessions In The Post-DNA World, 82 N.C.L.Rev. 891 (2004)(identifying 125 persons who gave false confessions to crimes they did not commit, including 9 who were sentenced to death based on confessions proven to be false). Moreover, even once the tape recorder was turned on to record the statement, the authorities turned off the recorder at times and provided information to Alley before

[19] In the lower court, Sedley Alley verified that the foregoing statements concerning the nature of the interrogation are true and correct.

continuing the statement. In fact, the tape is significantly shorter in length than the claimed time of the interrogation. See Exhibit 22 (Affidavit of Janet Santana concerning length of tape being under one hour); Exhibit 23 (reports stating that taped interrogation began at 13:47 and concluded at 15:42, indicating that statement was actually nearly two hours in length). This makes clear that the statement is simply not trustworthy.

Given all the circumstances, Sedley Alley has demonstrated substantial doubt about his guilt. He does not fit the description of the abductor and killer. Tire tracks from someone else's car were at the abduction scene. Someone else's hair and fingerprints were at the scene where the body was found. The murder would have occurred at a time where Sedley Alley's whereabouts were known. Under all the circumstances, Sedley Alley is entitled to production of the biological materials to finally prove his innocence – a result which the law requires.

The Criminal Court, however, denied access to the DNA evidence by explaining away the significance of the fluid and hair samples, while ignoring Sedley Alley's proffer which shows his innocence. Sedley Alley cannot prove his innocence without DNA, yet he is being denied the DNA evidence to prove his innocence. That is fundamentally unfair and unjust, and does not comport with Tennessee law or the Tennessee and United States Constitutions. A petitioner need not prove his innocence to get evidence to prove his innocence. This makes no sense. The Criminal Court must be reversed.

CONCLUSION

"The law must serve the cause of justice." Dretke v. Haley, 541 U.S. ___, ___ (2004)(Kennedy, J., dissenting). The Criminal Court's order does not serve the cause of justice. Sedley Alley needs the requested DNA evidence to establish his innocence. He cannot be denied

that evidence through arguments – adopted by the Criminal Court – that he must be guilty. The Legislature demands more than that. The Legislature demands – and requires – that convictions and sentences be subjected to scientific proof in the form of DNA analysis. Sedley Alley has been denied that right. Pursuant to Tenn. Code Ann. §40-30-301 et seq., the Tennessee Constitution (Article I §§ 8 & 16) and the Eighth and Fourteenth Amendments, this Court should enter an emergency order requiring immediate production of the requested biological samples from the University of Tennessee Toxicology and Chemical Pathology Laboratory in Memphis and Shelby County Medical Examiner's Office, so that all such samples may be sent to Petitioner's expert for immediate analysis. This Court should also conduct further proceedings as necessary on this appeal.

Respectfully Submitted,

_____

Donald E. Dawson
Post-Conviction Defender
530 Church Street
Suite 600
Nashville, Tennessee 37243
(615) 741-9331

AFFIDAVIT OF VERIFICATION

I affirm that all the information contained in this "Emergency Motion For Production Of Biological Samples For DNA Analysis" is true and correct to the best of my knowledge.

_____
Donald E. Dawson

Subscribed and sworn before me this ___ day of May, 2004

_____
Notary Public, State of Tennessee

My Commission Expires:

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing motion has been served this day upon the District Attorney General for the 30th Judicial District and the Office of the Attorney General, 425 Fifth Avenue North, Nashville, Tennessee 37243.

Date: _____

_____
Donald E. Dawson