

Appendix 4  
Appellant's Letter Re: Supplemental Authority  
Alley v. State, No. W 2006-01179-CCA-R3-PD

OFFICE OF THE  
FEDERAL PUBLIC DEFENDER  
MIDDLE DISTRICT OF TENNESSEE

MARIAH A. WOOTEN  
FIRST ASSISTANT FEDERAL PUBLIC DEFENDER

SUMTER L. CAMP  
SUPERVISORY ASS'T FEDERAL PUBLIC DEFENDER

C. DOUGLAS THORESEN  
SENIOR LITIGATION COUNSEL

JUDE T. LENAHAN  
CARYLL S. ALPERT  
PAUL R. BOTTEI  
KELLEY J. HENRY  
CHRISTOPHER M. MINTON

HENRY A. MARTIN  
FEDERAL PUBLIC DEFENDER

810 BROADWAY, SUITE 200  
NASHVILLE, TENNESSEE 37203-3805  
TELEPHONE: 615-736-5047  
FAX: 615-736-5265

RONALD C. SMALL  
R. DAVID BAKER  
HUGH M. MUNDY  
WILLIAM J. STEED  
GRETCHEEN L. SWIFT  
ASSISTANT FEDERAL PUBLIC DEFENDERS

ISAIAH S. GANT, ADMITTED IN ILLINOIS  
CAPITAL RESOURCE COUNSEL

JENNIFER N. COFFIN  
MICHAEL C. HOLLEY  
DEAN ROSS  
RESEARCH ATTORNEYS

June 20, 2006

Honorable David G. Hayes  
Honorable John Everett Williams  
Honorable Alan Glenn  
Court of Criminal Appeals - Western Division  
Supreme Court Building  
6 Hwy 45 Bypass  
Jackson, TN 38302

RE: Alley v. State, W2006-01179-CCA-R3-PD  
Supplemental Authority Pursuant to Tenn. R.App.P. 27 (d)

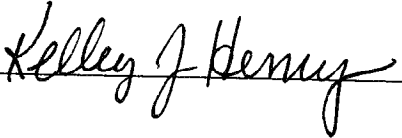
Dear Sirs,

We write to advise the Court of supplemental authority which came to our attention on the eve of oral argument in this matter. We respectfully request this Court to consider the case of State v. Moffitt, 2002 Tenn. Crim.App. LEXIS 362 (Tenn.Crim.App. at Jackson, April 19, 2002). In the Moffitt case this Court observed that a criminal defendant is entitled to an adverse inference instruction when the State fails to preserve evidence. Moffitt is applicable here in the context of the reasonable probability analysis under the Post-Conviction DNA Analysis Act. As we argued to the Court, if the State were to refuse to put the male DNA profile generated from the biological evidence left at the crime scene ( from, for example, the assailant's underwear, the stick , the victim's T-Shirt and bra) in the CODIS databank, under Moffitt, the trier of fact must assume that the results of such a databank search would "hit" on a serial offender. Under any reasonable interpretation of the evidence, a databank "hit" on a serial offender would be a conclusive exoneration of Mr. Alley. As such, there is a reasonable probability, i.e. a probability sufficient to undermine confidence in the verdict, that Mr. Alley would not have been prosecuted or convicted, let alone sentenced to death, if the evidence were tested.

Respectfully submitted,

Barry Scheck  
Vanessa Potkin  
Colin Starger  
THE INNOCENCE PROJECT  
100 5<sup>th</sup> Avenue, 3<sup>rd</sup> Floor  
New York, NY 10011

Paul R. Bottei #17036  
Kelley J. Henry, #21113  
Office of the Federal Public Defender  
Middle District of Tennessee  
810 Broadway, Suite 200  
Nashville, Tennessee 37203

BY: 

cc: Jennifer Smith  
Asst. Attorney General  
Office of the Attorney General  
425 Fifth Avenue North  
Nashville, TN 37243