IN THE CRIMINAL COURT OF TENNESSEE
FOR THE THIRTIETH JUDICIAL DISTRICT
AT MEMPHIS, TENNESSEE
DIVISION II

SEDLEY ALLEY,
Petitioner

-vs-

NO. P-8040

STATE OF TENNESSEE,
Respondent

RESPONSE OF THE STATE TO PETITIONER'S MOTION FOR DEPOSITIONS

Comes now the State of Tennessee and in Response to petitioner's Motion for Depositions, would submit the following.

On May 25, 2006, the petitioner filed a Motion for Depositions to identify the current location of evidence which may be subject to DNA analysis. This request comes four days after he filed his Petition for Post-Conviction DNA seeking testing on specific items. Now the petitioner is asking for a discovery deposition to determine if the items requested exist. He is specifically asking that individuals from the University of Tennessee be deposed and questioned about evidence that was in their custody. The University of Tennessee was the custodian of the biological samples obtained from the autopsy, clothing, and from the petitioner's vehicle. The petitioner has not explained why he has waited until May 25th, just a few days before the Court ordered a hearing on his petition to seek a deposition to see if the evidence he wants tested even exists. The petitioner apparently has not attempted to actually see what evidence is in existence

before he filed his petition before the Court. Furthermore, the petitioner did not make an inquiry as to what evidence existed when he filed his original petition in 2004 asking for biological evidence that was in the custody of the University of Tennessee. In April of 2004 the petitioner filed a lawsuit in Federal District Court seeking DNA testing on certain evidence and did not ask for testing on the evidence that was in the custody of the University of Tennessee. Counsel for the petitioner, Assistant Federal Public Defender Paul Bottei, specifically stated to the District Judge that their investigation revealed that the UT evidence did not exist anymore and that the only evidence left for testing was in the custody of the Criminal Court Clerk, William Key. (See Exhibit 1 attached). That is why he did not also file suit against the University of Tennessee to have the court require them to produce evidence in their custody. The State would note that when the petitioner went before the Parole Board last week and asked for a reprieve to seek DNA testing, some of the evidence that was identified and argued should be tested, was the very evidence that the petitioner told the District Judge that their investigation revealed did not exist.

The State submits, that based on the above, the Court should not allow a deposition of the requested individuals in advance of the hearing ordered for May 30, 2006 at 1:30 p.m. If the petitioner wants to get testimony from these individuals he can issue a subpoena for the hearing already scheduled.

Respectfully submitted,

JOHN W. CAMPBELL #10750
Assistant District Attorney General

J. Robert Carter Jr.

J. ROBERT CARTER, Jr. #07037
Assistant District Attorney General

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was caused to be delivered to Kelley Henry, attorney for petitioner, on this the 26th day of May, 2006.

J. W. Campbell

APPENDIX 1

THE COURT: All right. I have to say it my way so I understand it, it's not that you're not clear.

MS. SMITH: But I --

THE COURT: If I say it and you agree with me, then I know I must be right.

MS. SMITH: Or we're both wrong, I don't know.

THE COURT: Or we're both wrong. But at least we are wrong together.

MS. SMITH: That's right. But, I mean our position about that, about the conclusive effect in terms of whether it's -- we don't think it matters that they ask for these three identical items. In fact, it is a little bit puzzling, I think, that the petitioner wouldn't be asking for the biological evidence that he knows actually exists at the lab and still hasn't been tested. But be that as it may, they are intertwined and the state court took into consideration that connection and considered the source of the biological evidence when it concluded that it would not have led to a reasonable probability that he would not have been convicted. That it wouldn't have made any difference, given the strength of the other evidence at trial, which is set out in the opinion and the court is well aware of.

THE COURT: All right.

MR. BOTTEI: I'd like to be heard on that, Your Honor.

THE COURT: Well --

BOTTEI: The state is trying to argue that it simply doesn't exist. To be sure there was evidence taken off of various of these samples, but those were specific pieces of evidence. There was never any indication, or any attempts made in the state court, to find either from the actual pieces of evidence we have described in complaint Paragraph No. 10, either saliva, or semen, or blood, or urine, or mucous, or any other type of bodily fluid that could yield D.N.A. evidence. All that was asked for by Mr. Alley were specific items of evidence which had been identified. Various hairs, a blood sample, and various swabs that had been taken from the victim.

It is also, I think, important to note that in the court opinion that there was a quote by the Court of Criminal Appeals indicating that they believe that there was no evidence that there was any semen involved and that there was any semen that could be obtained from the swabs.

As we filed in our document yesterday, a Supplemental Memorandum, there were two reports from Paulette Sutton, Exhibit 1 and Exhibit 2 to our Supplemental Memorandum. And at least as to vaginal swabs, which were Item No. 11 identified in Exhibit 1, seminal type -- they detected said a substance. Item 12, seminal type substance detected right in her thigh. Item 13, seminal type substance detected. Exhibit 2, there were also additional swabs, seminal type, a