FILED 5-19-06
WILLIAM R. KEY, CLERK
BY _____ D.C.

IN THE CRIMINAL COURT
FOR THE THIRTEENTH DISTRICT AT MEMPHIS
DIVISION 2

SEDLEY ALLEY,
Petitioner,

v.

STATE OF TENNESSEE,
Respondent.

No. 85-05085-87

PETITION FOR POST-CONVICTION DNA ANLYSIS
PUSRANT TO TENN. CODE ANN. § 40-30-304 & 305

INTRODUCTION

DNA testing has the potential to objectively prove or disprove Sedley Alley's innocence claim, but it has not yet been conducted. As a result, after a five-hour hearing on May 15, 2006 - two days before Mr. Alley's scheduled execution - the Board of Probation and Parole recommended that Governor Bredesen issue a reprieve so that DNA testing could be performed, to prevent a potential irreversible miscarriage of justice - the execution of innocent man.

On May 16, 2006, Governor Bredesen issued a fifteen day reprieve so that Mr. Alley could return to this court to file a comprehensive request for DNA testing under the Post-Conviction DNA Analysis Act, Tenn. Code. Ann. §40-30-305 *et seq* ("the Act" or "the DNA statute"). Due to the inexperience of Sedley Alley's prior counsel with DNA issues, Mr. Alley's previous 2004 petition under

the DNA statute failed to request testing of the most critical, potentially exonerating items of evidence in this case.

Specifically, Mr. Alley's prior, 2004 request sought testing on: (1) Black head hairs found on the victim's socks; (2) a Caucasian body hair found on the victim's waistband; (3) a Caucasian pubic hair found on the victim's left shoe; (4) a hair on a stick found inside the victim; (5) nasopharyngeal swabs from the victim; (6) oral swabs from the victim; (7) rectal swabs from the victim; and (8) vaginal swabs from the victim. As both this court and the Court of Criminal Appeals noted, none of these hairs were used to link Mr. Alley to the crime scene. Furthermore, as the victim lived in public accommodations, it is conceivable that none of these hairs originated from the perpetrator. As for the swabs, the trial court and Court of Criminal Appeals agreed that any semen on the swabs could have been the result of a prior consensual sexual encounter. Thus, faced with a request for testing of far less compelling evidence, when this court considered Mr. Alley's previous request, it concluded that testing of certain hairs and body swabs could not establish a reasonable probability that Mr. Alley would not have been prosecuted or convicted. *See Alley v. State*, 2004 WL 1196095 (Tenn. Crim. App. May 26, 2004), *cert denied* 125 S.Ct 1695 (2004).

However, there exists additional crime scene evidence which could – and should - be tested, as testing of these items is capable of demonstrating Mr. Alley's innocence. While these items were recently presented to the Board of Pardon and Parole - which resulted in the Board's recommendation that a

reprieve be issued so that DNA testing could be done – it is important to note that **THESE ITEMS WERE NOT THE SUBJECT OF MR. ALLEY'S PREVIOUS PETITION UNDER THE ACT.**

Mr. Alley's current testing plan is capable of determining with unmatched precision whether he is innocent or guilty of the 1985 rape and murder for which he was convicted and sentenced to death.[1] Mr. Alley seeks testing on the following items not mentioned in his first petition: (1) skin cells/sweat from the underwear that were found next to the victim's body and believed to have been worn by the assailant; (2) blood or skin cells on a stick used to violate the victim; and (3) material from underneath the fingernails of the victim. All of these items, in addition to the swabs from the victim possibly containing semen, could be subjected to STR DNA testing to conclusively prove (or disprove) Mr. Alley's innocence. Moreover, Mr. Alley also requests DNA testing on blood and a hair found on and in his car that were directly linked to the victim at trial using primitive ABO testing and microscopic hair analysis. DNA testing of the blood and hair, not requested in Mr. Alley's first petition due to the inexperience of counsel, is capable of objectively showing whether or not the only physical evidence linking Mr. Alley to the victim is actually inculpatory or exculpatory.

---

1 The instant petition has been filed on an expedited basis, undersigned counsel intends to perform additional investigation next week, and reserves the right to amend.

First, there is the underwear - aside from the victim's underwear, also a pair of men's red bikini underwear (State's Exhibit 35) were recovered from the scene near the victim's body, which under the state's longstanding theory, belonged to the man who sexually assaulted and murdered Ms. Collins.[2] At trial, the prosecution made clear the significance of both pairs of underwear, including the perpetrator's.[3] DNA testing of these two pieces of evidence could reveal the identity of the person who left any skin cells, sweat, or semen on both items.

Second, there is the tree branch/murder weapon, which the assailant broke off, cleaned, and used as a tool to kill the victim. As the prosecution maintained, the person who killed Ms. Collins broke the branch off of its tree at the crime scene, cleaned it, and inserted more than once into the victim's vagina.[4] (This item was found protruding from the body near the right and left thighs, which yielded a positive finding for seminal substance.) There is blood on the stick, and semen may be found on it as well. In addition, due to the significant

---

2 Trial Tr. 458-461.

3 *See* Closing Arg. p. 39: "We know something she didn't do, and that is she didn't wear red men's bikini underwear. That becomes important as you all realized a little later on." *Id* at 54-55: "You saw something from the scene that did not belong to Suzanne Marie Collins. You saw her underwear. It's got her name in it. You saw it and we had it identified for you by her roommate. And you found something else out there at the scene."

4 *See e.g.*, Closing, pp. 57, 144.

physical contact that the assailant had with the stick there is every reason to believe it contains DNA (sweat/skin cells) from the assailant.[5]

Third, there is a fingernail from the victim that was apparently broken during the course of her struggle with the perpetrator and may contain residue from her assailant. The victim was severely beaten and died, in part, as a result of manual strangulation. There is evidence that she struggled, fought with her attacker, and, according to the autopsy report, had a "fractured left mid finger nail." DNA testing can reveal the assailant's DNA underneath her nails and exclude Alley from that DNA.

Finally, DNA tests can be performed on the blood and a hair said to be from the victim at trial, which was found on and in Sedley Alley's car and in his shorts and provided an apparently objective corroboration of his guilt. If DNA tests showed that this biology did not, in fact, come from the victim, there would be no forensic evidence linking Mr. Alley to the crime creating more than a reasonable probability that the jury would not have convicted or handed down a death sentence.

It is beyond dispute that DNA testing on the above-mentioned items has the potential to both identify the real perpetrator and challenge the state's only forensic evidence linking Mr. Alley to the crime scene. For example, DNA test

---

5 Also, there "was blood evidence or red material evidence on the external aspect of this tree branch, or stick, that was protruding from between the legs" (Trial Tr. 914), which could match other male DNA on the weapon. Given the severity of injuries and beating the victim sustained, it is certainly possible that the assailant bled during the attack.

results could show that male DNA from the perpetrator's underwear and the stick come from the same man, someone other than Mr. Alley. Moreover, the DNA profile obtained from the underwear and stick could also be matched to DNA material under the victim's nails, further demonstrating that someone other than Mr. Alley committed the crime. *See*, Appendix 1, chart graphically illustrating the various ways that DNA testing can prove innocence in this case.

The importance of comprehensive DNA testing in Mr. Alley's case is underscored by the exoneration earlier this week of Douglas Warney, who was released on March 16th after a decade of wrongful imprisonment. Mr. Warney was originally charged with capital murder for the 1996 stabbing murder of a Rochester, New York man. Basic serology done prior to trial showed that some of the blood evidence at the crime scene did not belong to Warney. However, the State found the serology exclusion unpersuasive, reasoning that the blood could have been unrelated to the crime and/or Warney could have had an accomplice. Similar to Mr. Alley, Warney was convicted of the murder based in large part on a confession he gave to police when questioned about the crime.

Recent DNA tests in Warney's case showed that the blood from the crime scene matched DNA from underneath the victim's fingernails, which was insufficient for serology testing at the time of trial. As is done as a matter of course, the State then entered the DNA profile of the crime scene evidence into the convicted offender database. A database hit matched the crime scene evidence to the actual culprit, Eldred L. Johnson, who was already in jail for

another stabbing murder and who has a history of slicing three other people's throats. Moreover, a fingerprint at the crime scene (on a video tape in the murder victim's bedroom) previously believed unrelated to the crime, also was matched to Johnson. Johnson confessed last week to committing the crime alone. *See Inmate To Be Freed As DNA Tests Upend Murder Confession*, New York Times, May 16, 2006. *See also* Decision & Order of Judge Thomas M. Vanstrydonck dated 5/16/06, attached as Appendix 2.

The power of a database hit to overcome seemingly powerful evidence of guilt cannot be overstated. Just like Sedley Alley, Mr. Warney confessed to committing a crime he did not commit. Just like Sedley Alley, Dr. Richard Leo, one of the nation's top experts on false confessions, concluded that Mr. Warney's confession was coerced.[6] Just like Sedley Alley, the prosecution resisted DNA testing, arguing that testing could not exonerate Warney. Like Alley, his

---

6 Significantly, Dr. Leo's determination of a probable false confession has been proven right through subsequent DNA testing time and again. In addition to Mr. Alley's and Mr. Warney's cases, Dr. Leo also examined the confession of Earl Washington and determined it a probable false confession long before the DNA testing was done, which ultimately demonstrated Washington's innocence. Police obtained a confession from Washington to a Virginia murder, which contained details of the rape murder that only the perpetrator (and police) knew. He was sentenced to death and, at one point, came within nine days of execution. DNA ultimately proved his innocence and identified the actual assailant. Dr. Leo also examined the confession of Bruce Godschalk who was convicted of two rapes in Pennsylvania based largely on a detailed confession that he gave to police after a brief custodial interrogation. Godschalk's confession contained over a dozen details of the crime not released to the public. Dr. Leo's finding that Godschalk's confession was a probable false confession came years before the DNA testing which ultimately showed that, while the same person had in fact committed both rapes, Godschalk was innocent.

confession included details from the crime scene that prosecutors said only the perpetrator could know. However, also like Alley, Warney's confession included many inaccurate details regarding the murder that prosecutors glossed over. In the end, it was the power of DNA to identify the real perpetrator that essentially solved the crime and proved Mr. Warney's innocence. Because DNA testing has the potential to do the same thing in Mr. Alley's case – it should be ordered.

ARGUMENT

The Post-Conviction DNA Analysis Act of 2001 enables persons convicted of "first degree murder, . . . rape . . ." to "at any time, file a petition requesting the forensic DNA analysis of any evidence that is in the possession or control of the prosecution, law enforcement, laboratory, or court, and that is related to the investigation or prosecution that resulted in the judgment of conviction and that may contain biological evidence." TENN. CODE ANN. § 40-30-303 (2003).

Under the Post-Conviction DNA Analysis Act, the trial court must order testing if it finds that the following criteria are met:

> (1) A reasonable probability exists that the petitioner would not have been prosecuted or convicted if exculpatory results had been obtained through DNA analysis;
>
> (2) The evidence is still in existence and in such a condition that DNA analysis may be conducted;
>
> (3) The evidence was never previously subjected to DNA analysis or was not subjected to the analysis that is now requested which could resolve an issue not resolved by previous analysis; and

(4) The application for analysis is made for the purpose of demonstrating innocence and not to unreasonably delay the execution of sentence or administration of justice.

TENN. CODE ANN. § 40-30-304. Moreover, the trial court additionally may order DNA testing if it finds there is a reasonable probability that testing "will produce DNA results which would have rendered the petitioner's verdict or sentence more favorable if the results had been available at the proceeding leading to the judgment of conviction. . . ." TENN. CODE ANN. § 40-30-305.

As detailed below, the testing Mr. Alley seeks in this petition satisfies the requirements of the Act and therefore DNA testing is required.

1. A REASONABLE PROBABILITY EXISTS THAT MR. ALLEY WOULD NOT HAVE BEEN PROSECUTED OR CONVICTED IF EXCULPATORY RESULTS HAD BEEN OBTAINED THROUGH DNA ANALYSIS

The "reasonable probability" determination necessarily operates on the assumption of test results most favorable to the defendant; otherwise the very point of the inquiry would be defeated. **For the purposes of evaluating Mr. Alley's request for DNA testing under the Act, the court "must assume that DNA testing will reveal exculpatory evidence."** *Shuttle v. State*, No. E2003-00131-CCA-R3-PC, 2004 Tenn. Crim. App. LEXIS 80, at *14; *See also State v. Peterson*, 364 N.J. Super. 387 (App. Div. 2003) (reasoning under New Jersey's post-conviction DNA testing statute, which is similar to § 40-30-304, that in evaluating a request for testing "the trial court should postulate whatever

realistically possible test results would be most favorable to the defendant."). DNA testing in Mr. Alley's case is capable of producing a range of possible exculpatory DNA test results. Some of these results would at a minimum satisfy the "reasonable probability" requirements of TENN. CODE ANN. § 40-30-304 and other results would conclusively exonerate Mr. Alley.

Haddox v. State, 2004 WL 2544668 (Tenn. Crim. App, Nov. 10, 2004), which was decided **after** Mr. Alley's 2004 request under the Act is instructive. Haddox, the defendant, was convicted in 1981 of a second degree murder based largely on multiple eyewitnesses who identified him as the shooter. Haddox sought testing of a red baseball cap, which – identical to the underwear in Sedley Alley's case – was left by the perpetrator at the scene and found near the murder victim's body. In granting testing of the cap, the Court of Criminal Appeals rejected the State's arguments that Haddox should be denied testing because the absence of his DNA on the cap would not exclude him as the perpetrator since "he could have worn the cap without leaving traces of his DNA" and the presence of someone else's DNA on the baseball cap would merely indicate that some other person, "at some time, had come in contact with the cap."

The Court of Criminal Appeals found:

> . . . While DNA results may not definitively exculpate the Petitioner, both sides agree that the red baseball cap was worn by the perpetrator of the murder and found at the crime scene. While the lack of the Petitioner's DNA on the cap would not conclusively exclude him from being present and committing the crime, and the presence of another person's DNA would not necessarily mean that another

person wore the cap during the commission of the crime, the statute specifically requires that DNA analysis be conducted if a *reasonable probability* exists that the petitioner would not have been prosecuted *or* convicted if exculpatory results had been obtained through DNA analysis. *See* Tenn.Code Ann. § 40-30-304(1). While exculpatory results from DNA analysis of the red cap may not have resulted in a reasonable probability that the Petitioner would not have been *prosecuted*, we conclude that such results would have resulted in a reasonable probability that the Petitioner would not have been *convicted*. The proper analysis for the trial court under the DNA Analysis Act necessarily includes a consideration of the effect on the jury of evidence showing that Petitioner's DNA was not present on the baseball cap that was worn by the perpetrator and recovered at the crime scene. In this regard, there is at least a reasonable probability that the Petitioner would not have been convicted if the jury was presented evidence that a DNA analysis if the red baseball cap worn by the perpetrator indicated that no DNA from Petitioner is present in or on the red baseball cap.

. . . the term "exculpatory results" does not imply that the results of the contemplated DNA analysis must indicate with certainty that the petitioner is innocent of the crime in question. If Petitioner's DNA is not found in or on the baseball cap worn by the perpetrator of the murder, such is an "exculpatory result" for the jury to consider, along with all the other evidence in the case. A proper analysis by the trial court must include consideration of the effect of this "exculpatory result" on the jury. We conclude that there is a reasonable probability that the Petitioner would not have been convicted if exculpatory results had been obtained through DNA analysis of the red baseball cap, and those results had been presented to the jury. Under the unique facts of this case, there is a reasonable probability that exculpatory results from a DNA analysis of the red baseball cap would have created a reasonable doubt in the mind of one or more jurors. By law, a reasonable doubt in the mind of one or more jurors would have precluded a conviction.

Haddox v. State, 2004 WL 2544668 5-6 (Tenn. Crim. App Nov. 10, 2004). Certainly, the same is true of the underwear in Mr. Alley's case.

a. A Reasonable Probability Exists that Mr. Alley Would Not Have Been Convicted If DNA Tests Showed that the Male DNA on the Underwear That the Perpetrator Left at the Crime Scene Belonged to Another Man, Not Sedley Alley

It is clear from the trial record that the man who murdered Ms. Collins left his red underwear at the scene, and police recovered the underwear on the ground next to the victim's body. Now, DNA testing can be performed on underwear. Indeed, because DNA can be obtained from skin cells or sweat, clothing in recent years has become a common item of evidence for DNA testing. DNA analysts sample and perform testing on various areas of an item of evidence for habitual wearer DNA.[7] *What Every Law Enforcement Officer Should Know About DNA Evidence;* Nat'l Instit. Just., Off. Just. Programs, U.S. Dept. Just. (Oct. 1999) (NIJ report published to provide law enforcement officers with "fundamental knowledge about identifying, preserving, and collecting DNA to help solve cases," listing clothing as a common item of evidence for DNA testing); *Using DNA to Solve Cold Cases*, Nat'l Instit. Just., Off. Just. Programs, U.S.

---

7 As the name implies, habitual wear DNA refers to a profile obtained from various portions of an item of clothing to which establishes the DNA profile of the wearer of the item. For examples, on a pair of jeans, habitual wearer DNA would be obtained through testing the crotch, fly, and waist areas and on a shirt, the inside cuff, collar and armpit areas.

Dept. Just., at 21 (same).[8] In the instant case, as in the Haddox case where key evidence was left by the perpetrator at the crime scene, DNA test results showing that none of the DNA on the perpetrator's underwear belongs to Mr. Alley certainly would meet the reasonable probability requirement.

---

8 DNA testing of skin cells on clothing has led to the identification of numerous perpetrators and also led to the exoneration of the innocent. *See generally* Jonathan Saltzman and Mac Daniel, *Man Freed in 1997 Shooting of Officer Judge Gives Ruling After Fingerprint Revelation*, BOSTON GLOBE, January 24, 2004 (man convicted of shooting a police officer in 1997, based on officers' identification and partial print match, exonerated after DNA testing excluded him as the source of DNA on evidence the assailant left at or near the crime scene, including "sweat from the brim of a baseball cap," a sweatshirt, and "saliva from the rim of a glass mug... used by the assailant"; a new trial was granted based on the DNA test results, but the charges were dismissed after State reviewed prints and found a non-match) ; Rachel Graves, *DNA Links Prison Inmate to '86 Killing of Newlywed*, Houston Chronicle, July 31, 2003 (seventeen years after the brutal rape and murder of Debra Oliver, Charles Ray Bailey's DNA was recovered from a sock used to gag the victim); Thomas Krause, *Three Men Sentenced to Life in Revenge Killing*, MACON TELEGRAPH, November 19, 2002, (three men convicted of felony murder in Georgia for shooting into a woman's home and killing her in 2001; a red hat found near the house was subjected to DNA testing and "linked skin cells in the hat's brim to" one of the defendants); Rex Bowman, *Jury Selection Starts in Wise Murder Case*, RICHMOND TIMES DISPATCH, September 25, 2002 (man charged with shooting death during a robbery at supermarket in Virginia in 2000 after his DNA profile was matched to DNA on a ski mask that investigators recovered near where the victim was shot).

b. A Reasonable Probability Exists that Mr. Alley Would Not Have Been Convicted If Redundant DNA Results Were Obtained Through DNA Testing, i.e. Results Showing There is DNA from the Same Male (Someone Other Than Sedley Alley) on a Number of Crime Scene Items Including, the Underwear Left By the Perpetrator at the Scene and the Stick which the Perpetrator Sharpened Into a Weapon and Used to Murder the Victim (and/or Also DNA on the victim's fingernails or body swabs or other evidence).

Aside from the underwear, it is also possible to test skin cells (as well as the hair) from the stick that the perpetrator sharpened into a weapon and used to murder Ms. Collins. Weapons, such as the murder weapon stick in Mr. Alley's case, are also now recognized as common items of evidence for DNA testing precisely because they can contain sweat or skin cells from perpetrators. *See Using DNA to Solve Cold Cases* (listing weapons as common items of evidence for testing); *What Every Law Enforcement Officer Should Know About DNA Evidence* (same); *State v. Hale*, 335 Ore. 612, 616 (DNA testing of the grip of a revolver found in the perpetrator's house revealed multiple DNA patterns, most damningly including the profile of the rape-murder victim); *See also* Andrew Osborn, *Swedes Release Lindh Suspect*, The Guardian, September 25, 2003 (authorities released suspected assassin of the Swedish foreign minister after analysis of skin cells on the murder weapon, a knife, excluded the suspect); Bill Bryan, *DNA Makes Mark on Crime-Solving*, St. Louis Post-Dispatch, June 17, 2005 (investigators matched Gus Grady's DNA to skin cells on a rope used to tie up victim of abduction and assault); Shaoni Bhattacharya, *Killer Convicted Thanks to Relative's DNA*, New Scientist, April 20, 2004 (British police identified perpetrator

of homicide using DNA recovered from weapon, a brick thrown from atop a bridge that landed on the victim).

As recognized by modern crime scene investigators, in the context of DNA investigations, redundant results (DNA test results that establish the same genetic profile on a number of probative items of evidence, such as from a victim's body, evidence used in the attack, and/or left at a crime scene) are often key to establishing the identity of the perpetrator of a crime. Certainly, a reasonable probability exists that DNA test results which exclude Mr. Alley and show that male DNA from the underwear that the perpetrator left at the scene matches male DNA from the stick-weapon would, in the words of the Court of Criminal Appeals, "have created a reasonable doubt in the mind of one or more jurors."

In fact, redundant results have served as the basis for several post-conviction DNA exonerations. Nicholas Yarris, for example, was recently exonerated after twenty-one years on death row in Pennsylvania prisons for a 1981 abduction, rape and murder that DNA testing showed he did not commit. Specifically, the DNA test results established that Yarris was not the donor of semen found on the victim's underwear, the DNA profile of which was consistent with DNA from skin cells found under her fingernails and in gloves believed to have been worn by the killer (thus, demonstrating that the semen did not simply come from a consensual sex partner and did in fact belong to the killer). Michael

A. Fuoco, *DNA Test Said to Clear Death Row Inmate Jailed 21 Years in Rape, Murder Case*, POST-GAZETTE, July 29, 2003.

In a similar fashion, Larry Peterson's murder conviction in New Jersey recently was vacated based on redundant post-conviction DNA test results. Peterson was tried for capital murder in 1989. Similar to Alley's case, the victim in Peterson's case had been sexually assaulted and murdered; her partially clothed body was found in a wooded area and a stick had been inserted into her vagina. *See State v. Peterson*, 364 N.J. Super. 387, 397 (App. Div. 2003). Peterson was convicted and sentenced to life imprisonment based primarily on the testimony of four individuals who claimed that he confessed to the crime as well as testimony from a state's forensic expert that seven hairs from the victim's body and a stick, which was used as a weapon and found at the scene, were microscopic "matches" to Peterson. *Id.* When the victim's body swabs were examined and tested by the State's forensic expert in 1989, no semen or spermatozoa were detected. While the results of testing on each piece of evidence alone may not have been sufficient to undermine his conviction and show innocence, the Appellate Division of New Jersey granted testing, holding that "DNA testing could show that all of this evidence . . . had a common identifiable source other than defendant who could have had access to the victim around the time of the murder" and that "DNA test results that not only tended to exculpate defendant but to implicate someone else would be evidence' of the sort that would probably change the jury's verdict if a new trial were granted.'"

State v. Peterson, 364 N.J. Super. at 398. DNA testing was ordered and, in the post-conviction re-examination, critical semen evidence was identified which had been completely overlooked in the original examination - there was sperm on every body orifice swab from the victim. The post-conviction DNA results showed that the hairs that had been microscopically matched to Peterson actually belonged to the victim. The DNA also showed that sperm from the victim's mouth and vagina came from an unknown man and this same man's DNA was found underneath the victim's fingernails. Based on these results, Peterson's conviction was vacated. *See* Laura Mansnerus, *Citing DNA, Court Annuls Murder Conviction from 1989*, N.Y. Times, July 30, 2005; *See* Maurice Possley, *Convict Seeks New Trial on Basis of Flawed Hair Analysis*, CHI. TRIB., Jul. 29, 2005.

Aside from DNA test results linking the male DNA from the perpetrator's underwear and the stick-weapon to each other and excluding Mr. Alley, the DNA profile obtained from the underwear and stick also could be matched to DNA material under the victim's nails. It is not unusual, as happened in the recent Douglas Warney exoneration and Larry Peterson case, to find probative DNA from underneath a victim's fingernails when a struggle is known to have occurred. *See also* profile of Calvin Willis at http//www.innocenceproject.org (after twenty-two years in prison for rape in Louisiana, Calvin Willis was exonerated after DNA testing showed that there was male DNA underneath the

victim's nails which matched DNA on a pair of men's underwear that the assailant left at the crime scene).

It is important to also note that, while this court previously considered a request for DNA testing of the victim's body swabs, it considered this request in isolation, noting no sperm were observed on the swabs[9] and also that a DNA exclusion would not be conclusive since the semen could have originated from a prior consensual sex partner. Of course, as in the Yarris case discussed previously, it was the redundant results - the DNA test results that showed that the skin cells found under her fingernails and in gloves worn by the killer

---

9 While sperm were not observed microscopically on the victim's body swabs, the University of Tennessee Toxicology Laboratory report clearly documents that the thigh, vagina and mouth swabs tested weakly positive for acid phosphatase [hereinafter "AP"], the screening test for detecting the presence of semen. AP is an enzyme found primarily in prostate gland (though it can be found in other body fluids) and the AP test is a presumptive chemical test for the presence of semen. The results obtained here suggest the presence of semen on the victim's body swabs. It is possible that the victim's body swabs may contain seminal fluid, but no sperm (this could be for various reasons such as the donor was aspermic) and Y-Chromosome DNA tests (which target male DNA) could be used to identify and develop the genetic profile of male DNA on the victim's body swabs. It is also entirely possible the victim's swabs contain sperm which simply was overlooked when the evidence was microscopically examined. Slides are made from swabs to identify sperm (since the test for sperm is visual and entails microscopic examination). Thus, slides represent only a small fraction of biological material that is on the swab and, in many cases, critical biological evidence such as sperm has been overlooked during original investigations, but later identified when the evidence was re-examined post-conviction. *See DNA Clears Rape Convict After 12 Years*, N.Y. TIMES, May 20, 2003 (at Michael Mercer's 1992 trial, a police lab technician testified that swabs taken from the victim tested negative for sperm, yet in 2000, Cellmark found previously overlooked spermatozoa and **DNA results excluded Mercer as the sperm source and identified the actual assailant after the profile was entered in the New York DNA convicted offender databank.**)

matched semen from the victim's body - which demonstrated that the semen did not simply come from a consensual sex partner and did in fact belong to the killer. The same could happen here.

While the clearest way to exonerate Mr. Alley would be through DNA testing of the aforementioned items, there are many other items of physical evidence that were collected and should, in the interest of a thorough post-conviction investigation, be subjected to examination as they could contain additional evidence and create additional redundant results.[10] This evidence includes:

a) Sleeveless Jersey Type Shirt (State's Trial Exhibit 2)

b) One White Tube Sock (State's Trial Exhibit 33)

c) One pair of jogging shorts (State's Trial Exhibit 3)

d) Bra (State's Trial Exhibit 34)

e) White cotton panties (State's Trial Exhibit 7)

---

10 Another important law enforcement tool is fingerprint analysis. In this case, latent prints were lifted from a beer bottle found at the crime scene. The latent lifts were compared to Alley and determined not to be his. Those fingerprints can be run through the AFIS database. This can be done quickly, conveniently, and cheaply. If the fingerprints come back as belonging to a serial offender or to Mr. Borup, who has been arrested, then that would constitute powerful evidence of Mr. Alley's innocence. In addition, if the fingerprints match the same person as the DNA left at the crime scene, as happened just this week in the Douglas Warney exoneration case, this too would be powerful evidence of Mr. Alley's innocence. While recognizing the PC DNA Analysis Act does not expressly provide for fingerprint examination, we request that this Court order the State to immediately run the latent lifts through the AFIS databank.

f) Red cotton panties (State's Trial Exhibit 35)

g) Blue Waistband (State's Trial Exhibit 4)

h) One jogging shoe (left foot) (State's Trial Exhibit 5)

i) One jogging shoe (right foot) (State's Trial Exhibit 6)

j) Styrofoam drinking cups (Items 10, 11, 12)

k) Tree limbs (State's Trial Exhibits 36, 68)

l) Blood stained grass (Items 14, 18, 19, 20, 21, 22)

m) Grass samples (Items 23, 24)

n) Beer bottles (Items 36, 37, 38)

Moreover, at trial, forensic serologist Paulette Sutton testified that blood found on the driver's side door of Mr. Alley's car revealed an ABO blood type, the same type as the victim and the defendant.[11] Also, hair analyst Craig Lahren testified that a bloody Caucasian head hair was found on the front driver's side of the petitioner's car, and that microscopic hair analysis revealed that the hair was consistent with the hair belonging to the victim.[12] This was admittedly

---

11 Paulette Sutton also found human blood foreign to both Mr. Alley and the victim.

12 Microscopic hair comparison analysis is subjective; it is simply far less precise and reliable than DNA testing. A recent study of microscopic hair comparisons found that, out of eighty "microscopic associations," made independently by two top FBI examiners, nine were demonstrated to be exclusions when later subjected to DNA testing, approximately 11 percent of the cases. Houck & Budowle, *Correlation of Microscopic and Mitochondrial DNA Hair Comparisons*, 47 J. Forensic Sci. 964, 966 (2002). In numerous of the post-conviction DNA exoneration cases, DNA testing has contradicted microscopic hair comparison analysis. For example, Ron Williamson and Dennis Fritz were convicted of a 1982 rape and murder of a woman in her Oklahoma home. Mr.

powerful testimony. But DNA testing could now show, as it has often done in the past, that the ABO blood typing and microscopic hair comparison testimony incorrectly linked the victim to Mr. Alley's car.

c. DNA Testing Could Also Exclude Mr. Alley And Match the Crime Scene Evidence to a Convicted Offender in the DNA Databases

In granting DNA testing under New Jersey's similar post-conviction DNA testing statute, in the Peterson case, discussed previously, the Appellate Division held: "DNA testing could show that all of this evidence . . . had a common identifiable source other than defendant who could have had access to the victim around the time of the murder" and that "DNA test results that not only tended to exculpate defendant but to implicate someone else would be evidence 'of the sort that would probably change the jury's verdict if a new trial were granted.'" *State v. Peterson*, 364 N.J. Super. at 398.

Williamson received a death sentence and Mr. Fritz a sentence of life in prison. A key element of the State's case was forensic expert testimony that seventeen hairs from the crime scene microscopically "matched" either Fritz or Williamson, and that serological analysis of semen recovered from the victim during her autopsy included both men as possible contributors. The State's case appeared to be so compelling that Mr. Williamson's appeals were quickly exhausted and he came within five days of execution. However, in 1999, Mr. Williamson received a last minute stay of execution and obtained post-conviction DNA testing. The results conclusively excluded both him and Fritz as the source of the semen from the victim's body. DNA testing also proved that none of the seventeen hairs that were deemed "matches" with Fritz and Williamson at the time of trial belonged to them. Both were exonerated and released from prison. Charles T. Jones, *DNA Tests Clear Two Men in Prison*, DAILY OKLAHOMAN, April 16, 1999.

In this case, DNA from the crime scene could very well match the victim's Millington, Tennessee boyfriend, John Borup. Mr. Borup recently admitted to being with the victim the night she was abducted, a fact that is inconsistent with the trial testimony that Ms. Collins was on duty until she went out for a jog. Mr. Borup more closely matches the description of the abductor than does Mr. Alley. Eyewitnesses to the abduction described the assailant as 5'8", short dark hair, no facial hair and driving a dark station wagon with wood paneling on the side. Mr. Borup is 5'8", had short dark hair, no facial hair, and drove a dark woodpaneled Dodge Aspen stationwagon. Mr. Alley was significantly taller, 6'4", had long reddish-brown hair, and a full beard. Additionally, Mr. Borup had a motive. Mr. Borup believed that he and Ms. Collins were involved in an exclusive relationship and was looking forward to meeting her parents the next day. In fact, Ms. Collins was engaged to another man and was leaving the next day to be with him.

In addition, a male STR profile recovered from the underwear, stick, fingernail, or even semen swabs also could be entered into CODIS or a state DNA database and score a "hit" to a convicted offender, thus not only exonerating Mr. Alley, but also identifying the actual assailant.[13] The possibility

---

13 CODIS, the national DNA databank system, is a digital state and federal registry of STR-DNA profiles (from convicted felons, unsolved crimes, and missing persons) based on the 13 genetic markers common to all STR testing systems. The databank allows law enforcement officials to compare hundreds of thousands of profiles instantaneously. This rapidly expanding databank has enabled law enforcement agencies to solve thousands of "cold cases," some of

of a DNA hit has happened with startling frequency including here in Shelby County. *See* Maurice Possley and Steve Mills, *Crimes Go Unsolved as DNA Tool Ignored*, Chicago Tribune, Oct. 26, 2003 at 1 (An analysis of 115 DNA exonerations recently revealed that, of the 71 profiles entered into DNA databanks, 41 cold hits identified a new suspect in the crime); *See* Tom Bailey, Jr., *DNA May Further Vindicate McMillan*, COMMERCIAL APPEAL, July 16, 2002 (Clark McMillan was convicted in 1980 of rape in Shelby County and over twenty two years later became the first person in Tennessee to be exonerated by post-conviction DNA testing; After DNA testing excluded Mr. McMillan as the perpetrator in 2002, authorities ran the DNA profile of the crime scene evidence through the federal DNA database and it matched a serial rapist who was then serving a life sentence in Texas as a result of a subsequent rape). The DNA

---

them decades old and with no previous leads before a databank hit identified the perpetrator. As of December 2005, there were 2,952,820 offender profiles in CODIS's National DNA Index System. *See* NDIS Statistics, *available at* http://www.fbi.gov/hq/lab/codis/clickmap.htm. The databases have played a pivotal role in determining whether wrongful convictions have occurred in this State and around the country. For example, during the investigation of a North Carolina murder, where the victim was stabbed in her home, police recovered a washcloth that the perpetrator used to clean up with after the crime. Despite the fact that the defendant plead guilty to the crime, the prosecutor agreed to post-conviction testing over a decade later stating, "**he felt ethically obligated to consent [to testing] because such technology is now available and there was another 'viable suspect' at the time of the investigation**". That post-conviction DNA testing recently excluded the defendant as the source of the blood on the washcloth. Andrea Weigl, *DNA Match Could Free Convict: Inmate Says He Took Plea Bargain in Killing He Did Not Commit*, The News and Observer. The STR DNA profile of the evidence is being searched in the national DNA database of convicted offenders.

testing we are proposing could not only exclude Mr. Alley, but also identify the true perpetrator through a match in the convicted offender DNA databases. *See* Henry Weinstein, *Arizona Convict Freed on DNA tests is Said to be the 100th Known Condemned U.S. prisoner to be Exonerated Since Executions Resumed*, L.A. TIMES, April 10, 2002 (Ray Krone was initially convicted in 1992 and sentenced to death for the murder of a cocktail waitress in Phoenix, Arizona; Krone was exonerated after DNA test results showed he was not the source of small specks of blood and saliva on the victim's clothes and the results were entered in the DNA databanks and matched to Kenneth Phillips, a convicted offender; Krone was exonerated and Phillips indicted for the murder).

Petitioner must have the right to do DNA testing of the crime scene evidence to prove third party guilt, whether that comes about by linking DNA from the crime scene evidence to a convicted offender in the CODIS database or directly to Mr. Borup. [14]

d. Mr. Alley's Confession/Insanity Defense Does Not Undermine the Capacity of DNA Testing to Prove Innocence

The very purpose of the Post-Conviction DNA Analysis Act is to use advanced scientific technology to test the State's proof – proof a jury has already determined to be beyond a reasonable doubt – to determine if a wrongful

14 The AFIS database could be used to link the latent prints from the crime scene either to a convicted offender or Mr. Borup, whose DNA also may be found on the crime scene items. Such a print match would provide additional proof of third party guilt.

conviction has occurred. DNA testing cuts to the truth; it is a method of establishing the identity of a perpetrator of a crime that is far more reliable and precise than nearly any other type of identification proof, including eyewitness identifications, confessions, and rudimentary forensic science such as conventional serology or microscopic hair comparison analysis. *See Shuttle v. State*, No. E2003-00131-CCA-R3-PC, 2004 Tenn. Crim. App. LEXIS 80, at *14, A. 265, 270 (quoting Judge Tipton, concurring, *Brown v. State*, No. M2002-02427-CCA-R3-PC, 2003 Tenn. Crim. App. LEXIS 528, at *7, A. 272-275 (Tenn. Crim. App. June 13, 2003)) (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.")

In *Shuttle v. State*, 2004 Tenn. Crim. App. LEXIS 80, A. 265-271, for example, the defendant, who was convicted of murder, filed a petition under the Act, requesting DNA testing of blood from underneath the victim's fingernails and blood that was found on his jeans. The post-conviction court denied Shuttle's petition for testing because he had testified at trial that he killed the victim. The court reasoned that, because of his trial testimony, the results of DNA testing would not be dispositive and thus the defendant failed to establish that a reasonable probability existed that he would not have been prosecuted or convicted had exculpatory DNA evidence been obtained. *Id.*, at *9; A. 268. However, the Court of Criminal Appeals reversed, "conclud[ing] Judge Tipton's analysis applies to the case at bar, which involves a petitioner who essentially

contends he was wrongly convicted at trial where he gave false incriminating testimony." *Id.* at *14; A. 270. Noting that for purposes of the Act, the court "must assume that DNA testing will reveal exculpatory evidence," *Id.* at *14, A. 270, the Court of Criminal Appeals ruled that TENN. CODE ANN. § 40-30-304(1) (2003) was met in the case. The court explained that if DNA testing showed that the source of the blood samples was neither the victim nor the Petitioner, then:

> the test results would be inconsistent with the state's theory at trial, inconsistent with the petitioner's trial testimony [where he admitted to killing the victim], consistent with the petitioner's first statement to his trial counsel [where he asserted his innocence], and consistent with the petitioner's latest testimony [at the evidentiary hearing for the post-conviction motion under the Act]. Thus, we conclude the petitioner has established a reasonable probability that he would not have been prosecuted or convicted if exculpatory DNA evidence had been obtained.

See Shuttle, 2004 Tenn. Crim. App. LEXIS 80, at *15; A. 270 (Citations Omitted).

It is entirely possible for DNA testing, in the instant case, to overcome Mr. Alley's confession and insanity defense. In addition to the Warney case ripped from this week's headlines, in over thirty cases, DNA has exonerated individuals who were wrongfully convicted based on false confessions to the crime (with many "confessions" containing details of the crime that were not released to the public).[15] DNA testing also has proven the innocence of numerous individuals

---

15 *See Godschalk v. Montgomery County District Attorney's Office*, 177 F.Supp.2d 366 (E.D.Pa. 2001)(despite compelling "confession" of Godschalk, which included numerous details of the crime not released to the public, he was granted access to evidence for DNA testing, and was later exonerated)

The case of Eddie Joe Lloyd is also illustrative. Lloyd was convicted of the 1984 rape and murder of a sixteen year-old girl, whose body was found in an

who not only confessed, but then went on to plead guilty to rapes/rape-murders that they simply did not commit.[16] DNA testing has also exonerated people such

---

abandoned garage. Police questioned Lloyd after he wrote letters to them, asking questions and purporting to provide information about the crime. After being interrogated by the authorities, Lloyd, who had a history of mental illness and was hospitalized at the time, gave a chillingly accurate and detailed taped confession to the crime, which contained unreleased details (including the fact that a bottle had been inserted in the victim's rectum). Prior to trial, Lloyd recanted, claiming that police tricked him into believing that, by confessing to the crime, he would help police "smoke out" the true perpetrator. After seventeen years of wrongful imprisonment, in 2002, DNA testing of sperm from the victim's body, the bottle, and long johns that had been used to strangle her excluded Lloyd and demonstrated his innocence. Jodi Wilgoren, *Confession Had His Signature; DNA Did Not*, The New York Times, August 26, 2002 at 1; David Zeman and Ben Schmitt, *How Justice Failed Eddie Joe Lloyd*, Detroit Free Press, October 24, 2002.

Finally, the case of Jerry Frank Townsend is another false confession case. After Townsend was convicted based on a confession, a Fort Lauderdale police officer began reinvestigating one of the crimes attributed to Townsend, the rape and murder of thirteen-year-old girl, at the request of her mother. When DNA testing was done on a semen sample from the victim's shorts, it cleared Townsend of the murder and implicated another man, Eddie Lee Mosley, who was already found responsible for a series of rapes and murders around the Fort Lauderdale area. Paula McMahon and Ardy Friedberg, *Legal Twist Holds Up Charges in Murders; Suspect Mentally Unfit to Face Trial in Rape, Killing Cases*, Sun-Sentinel, May 6, 2002 at 1B.

16 For example, in 1988, Chris Ochoa was an employee of the Pizza Hut restaurant chain in Austin, Texas. After a young woman was found raped and murdered in another Pizza Hut restaurant, he was brought to the police station for questioning, under the theory that a "master key" had been used to gain access to the premises. After several hours of interrogation, Ochoa gave a detailed confession, which contained key details of the crime not available to the public. Ochoa described in graphic detail how he and a friend and fellow employee, Richard Danziger, raped the victim before Ochoa shot her in the head. Unlike many defendants who confess to crimes while in police custody, Ochoa did not recant his statements after he was released; instead, he pled guilty to the crime, and went on to testify in detail about the events of that night at Danziger's trial. Danziger was convicted on the basis of that testimony, in addition to the expert testimony that a pubic hair found near the victim's body was

as Frank Lee Smith who, despite his actual innocence, was defended at trial on the basis of insanity.[17] Especially where there is already other proof of actual innocence, Sedley Alley's case falls well within the mainstream of cases where DNA testing has led to exoneration.

2. THE EVIDENCE IS STILL IN EXISTENCE AND IN SUCH A CONDITION THAT DNA ANALYSIS MAY BE CONDUCTED.

On May 17, 2006, the Shelby County District Attorney's Office confirmed in a telephone call with undersigned counsel that the Clerk of Court is currently in possession of all of the exhibits introduced at trial as well as the "residue." It

---

microscopically similar to Danziger's own. In 1998, however, a man named Achim Marino wrote to then-Governor (and now-President) George W. Bush, confessing to the murder and stating that he could not longer bear responsibility for the fact that two innocent men were in prison for his crimes. Post-conviction DNA testing subsequently confirmed Marino's claim and exonerated both Ochoa and Danziger, excluding both men as the source of the semen found in the victim's body, with the single male DNA profile obtained a perfect match to Marino's own. See Mark Donald, Lethal Rejection, Dallas Observer, Dec. 12, 2002; Mark Wrolstad, *Hair-Matching Flawed as a Forensic Science; DNA Testing Reveals Dozens of Wrongful Verdicts Nationwide*, The Dallas Morning News, March 31, 2002. *See also* case profiles of John Dixon (New Jersey), Frank Townsend (Florida), David Vasquez (Virginia) at *http//www.innocenceproject.org*.

17 Like Jerry Townsend (n. 10 supra), Frank Lee Smith was convicted and sentenced to death for the rape and murder of an eight year-old, a crime actually committed by Eddie Lee Mosley. Smith died of cancer on death row before he could be released. *See* Ardy Friedberg and Paula McMahon, *21-Year Inmate to Go Free; Miami-Dade Drops Charges in 2 Murders, Rape Case for Mentally Disabled Man*, Sun-Sentinel, June 15, 2001.

is clear that the red underwear (State's Trial Exhibit 35) and sticks (State's Trial Exhibits 36, 68) still exist and are in the Clerk's custody.

At the time of this filing, undersigned counsel is in the process of locating the remaining evidence, including the fingernails (University of Tennessee Toxicology and Pathology Laboratory Reports, Item 14), body swabs, hair and blood evidence. While the District Attorney General's Office has represented to undersigned counsel that it believes some of the requested items may have been destroyed, there are no contemporaneous records, evidence logs or other documents indicating that the evidence was in fact destroyed. The Innocence Project has handled numerous cases where evidence believed to be lost or destroyed was located after a diligent search. As such, in order to identify the location of evidence relevant to the instant petition for DNA testing, discovery is necessary, including but not limited to the following: deposition of the custodian of evidence and records thereof for the Tennessee Bureau of Investigation Laboratory, Regional Forensic Center, University of Tennessee, and Baptist Hospital. Petitioner requests the court set a schedule for expedited discovery.

Certainly, all of the above requested items would be "in such a condition that DNA analysis may be conducted." The evidence has been in the State's custody since the time it was collected during the investigation of the crime. The Short Tandem Repeat ("STR") testing system, which is the national standard,[18]

---

18 All fifty states and the federal government use STR DNA testing in casework and also to operate the state and federal DNA databanks.

can generate DNA results from old, degraded and/or low-quantity samples.[19] *See generally Authorities Say DNA Solves Case From '71*, REGISTER-GUARD, November 5, 2003 (in 2003, California authorities arrested a convicted rapist for the 1971 murder of a young woman and the case went unsolved for 32 years until a Cold Case Squad detective pulled some clothing from an evidence bag and sent it for DNA analysis; the STR DNA profile from the clothing evidence was run through the state DNA Database and matched an inmate serving an 18-year-to-life sentence for a series of subsequent kidnappings and rapes in the early 1980s). At the May 15, 2006 hearing before the Board of Pardon and Parole, the prosecution advanced the argument that the items of evidence could have been contaminated. The fact that people may have handled the evidence does not undermine the capacity of DNA testing to identify the genetic profile of the assailant of this crime. Just as if Sedley Alley's DNA was found on the evidence, it would be taken as an indication of his guilt, similarly if the DNA of another individual was found on several of the different items of evidence or if DNA from the evidence matches Mr. Borup or a convicted offender in the DNA database, this too would be indicative of guilt. In other words, the possibility of contamination only adds another layer of interpretation to potential DNA

---

19 DNA can also survive harsh conditions. For example, "following the 9/11/01 attacks, investigators were able to find traces of DNA in the rubble of the World Trade Center that identified victims and brought some measure of closure and relief to their devastated families." *Science and Technology in the Name of Justice, Part 1, DNA Database Helps Deliver Promise of Powerful Crime-Fighting Tool*, FBI headline archive, February 2, 2004.

results, it does not undermine the capacity to identify the real perpetrator's DNA through testing.

In sum, the only showing that is required is that the evidence is in a condition making DNA testing possible, not that results will be obtained. Mr. Alley meets this burden.

3. THE EVIDENCE WAS NEVER PREVIOUSLY SUBJECTED TO DNA ANALYSIS OR WAS NOT SUBJECTED TO THE ANALYSIS THAT IS NOW REQUESTED WHICH COULD RESOLVE AN ISSUE NOT RESOLVED BY PREVIOUS ANALYSIS

It is beyond dispute that DNA technology was not available at the time of Sedley Alley's trial and the biological evidence from this case has never before been subjected to DNA testing.

4. THE APPLICATION FOR ANALYSIS IS MADE FOR THE PURPOSE OF DEMONSTRATING INNOCENCE AND NOT TO UNREASONABLY DELAY THE EXECUTION OF SENTENCE OR ADMINISTRATION OF JUSTICE

While Mr. Alley did not present a claim of innocence at trial and initially on appeal, this was a strategic move of his counsel, the error of which became apparent when previously undisclosed *Brady* material revealed that the time of death made Mr. Alley's innocence likely. At that point, in 2004 Mr. Alley sought DNA testing, and he has been seeking it ever since to scientifically demonstrate his innocence.

The Board of Pardon and Parole recognized that Mr. Alley's request for DNA testing needs to be taken seriously and is not just a tactic to delay. As a result of their recommendation, the Governor issued a reprieve so that Mr. Alley could return to this court to obtain DNA testing that is capable of proving his innocence. In doing so, the Governor joined with a host of other Governors,[20] who similar to Supreme Court of North Carolina (which took a similar action in the Jerry Wayne Conner case earlier this month)[21] have issued reprieves to allow for DNA testing. DNA testing can only serve the interests of objective scientific truth, and provide true finality - either by preventing a wrongful execution or by definitively proving guilt and resolving serious residual doubt. *Compare, e.g.*, Henry Weinstein, "Arson Experts Challenge Conviction of Executed Man," Los Angeles Times, May 2, 2006 *available at*

20 For example, in June 2000, just minutes before Ricky McGinn's scheduled execution, President (then Governor) George W. Bush granted a thirty-day reprieve so that DNA testing could be performed to determine whether McGinn in fact had committed the rape-murder of his twelve-year-old stepdaughter. In issuing the stay, **Bush remarked: "Any time DNA can be used in its context and can be relevant as to the guilt or innocence of a person on death row, we need to use it."** The DNA testing further incriminated McGinn and he was executed in September 2000. More recently, President Bush endorsed a dramatic expansion of "the use of DNA evidence to prevent wrongful conviction," stating, "In America, we must make doubly sure no person is held to account for a crime he or she did not commit." Also, Earl Washington was wrongly convicted of the murder of a Virginia woman and sentenced to death largely based *on his detailed confession to the crime*. In the mid-1990s, Governor Douglas Wilder ordered DNA testing and, based on the results, granted Washington clemency, commuting his death sentence to life. Governor James Gilmore subsequently ordered more sophisticated testing, and based on DNA results obtained in 2000, pardoned Washington based on his actual innocence.

21 *See*http://www.aoc.state.nc.us/www/public/sc/orders/2000/2903.PDF.

http://www.latimes.com/news/nationworld/nation/la-050206execute_lat,0,7994631.story?coll=la-story-footer (Four leading arson experts presented a report to Texas officials demonstrating that the state executed an innocent man, Cameron Willingham, based on an erroneous interpretation of fire evidence.) Moreover, the DNA testing Alley seeks can be performed expeditiously.

5. DESIGNATION OF TESTING FACILITIES

Pursuant to § 40-30-310, Petitioner requests that the biological evidence be submitted to a mutually agreeable private laboratory for the requested testing. Petitioner proposes the following laboratories which meet the requirements for appropriate laboratories under § 40-30-310: ReliaGene Technologies, Serological Research Institute, or Cellmark.

WHEREFORE, Petitioner Requests:

(1) That, as is required by § 40-30-309, the Court issue an order that all evidence in the possession of law enforcement, laboratories or the court that could be subjected to DNA analysis be preserved;

(2) That, in order to identify the location of evidence relevant to the instant petition for DNA testing, the Court grant immediate discovery, including but not limited to the following: deposition of the custodian of evidence and

records thereof for the Tennessee Bureau of Investigation Laboratory, Regional Forensic Center, University of Tennessee, and Baptist Hospital;

(3) That the Court grant the requested testing and direct the parties to identify a mutually agreeable testing laboratory and protocol for proceeding with the testing, or in the alternative, schedule an immediate hearing so that Petitioner can present additional evidence to make out his entitlement to testing under the Act; and

(4) That the Court order the State to immediately run the latent lift evidence through the AFIS databank.

Respectfully Submitted,

Barry Scheck
Vanessa Potkin
Colin Starger
The Innocence Project
100 5th Avenue, 3rd Floor
New York, NY 10011
(212) 364-5359
FAX 364-5341

Paul R. Bottei (#17036)
Kelley J. Henry (# 021113)
Office of the Federal Public Defender
Middle District of Tennessee
810 Broadway, Suite 200
Nashville, Tennessee 37203
(615) 736-5047
FAX (615)736-5265

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been served by first-class mail and facsimile upon counsel for the State, District Attorney General William Gibbons, District Attorney General's Office, Criminal Justice Center, 201 Poplar Avenue Memphis, TN 38103 on this 23rd day of May, 2006.

VERIFICATION

I affirm under the penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Date: May 19, 2006

Sedley Alley
Unit II
Riverbend Maximum Security Institution
7475 Cockrill Bend Industrial Road
Nashville, Tennessee 37209

Sworn to and subscribed before me this the 19th day of May, 2006

Notary Public

My Commission Expires:

January 4, 2009

AFFIDAVIT OF INDIGENCY

I, Sedley Alley, do solemnly affirm that because of my poverty, I am not able to bear the expenses of the action which I am about to commence. I further affirm that, to the best of my knowledge, I am justly entitled to the relief sought.

Signature of Petitioner