

IN THE CRIMINAL COURT
FOR THE THIRTIETH JUDICIAL DISTRICT
AT MEMPHIS
DIVISION 2

SEDLEY ALLEY)
)
 Petitioner) No. P-8040
)
 v.)
)
 STATE OF TENNESSEE)
)
 Respondent)

PETITIONER’S REPLY TO RESPONDENT’S RESPONSE

Contrary to Respondent’s contentions, as a matter of due process of law under the Tennessee Constitution and the Fourteenth Amendment, and under Tenn. Code §40-30-301 et. seq., Sedley Alley is entitled to the production of the requested forensic samples in order to prove that: (1) he is innocent; and/or (2) that the death penalty was inappropriately imposed upon him. To deny Sedley Alley his request would be to condone a possible miscarriage of justice – the very type of miscarriage of justice which §40-30-301 et seq. were designed to prevent.

I.

SEDLEY ALLEY NEED ONLY ESTABLISH THAT THE EVIDENCE, IF TESTED,
COULD ESTABLISH THAT SEDLEY ALLEY WAS UNJUSTLY CONVICTED
OR SENTENCED TO DEATH: HE NEED NOT PROVE HIS INNOCENCE
TO GET EVIDENCE PROVING HIS INNOCENCE

To avoid miscarriages of justice, the Legislature passed §40-30-301 et seq. The Legislature never intended that the petitioner would have to prove his innocence before being provided evidence necessary to prove his innocence. Indeed, such a proposition is wholly illogical. Rather, as the Court of Criminal Appeals made clear in the case of Shuttle v. State, 2004 Tenn.Crim.App.Lexis 80 (Feb. 3, 2004)(Exhibit 1), 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 wrongfully convicted based upon mistaken identity or false testimony.

Shuttle, slip op. at * 13. Thus, in Shuttle, where the petitioner “contend[ed] that he was wrongfully 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. *15.¹

Here, we must assume that testing of the fluid samples and hairs will demonstrate that all the fluid samples and hairs were left by someone other than Sedley Alley. That being said, the evidence would demonstrate that Sedley Alley did not rape and kill the victim, but that someone else did. Given these circumstances, Sedley Alley is entitled to production of the evidence. Indeed, a reasonable jury who hears that Sedley Alley did not rape and kill the victim would acquit him and certainly not impose the death sentence. Thus, Sedley Alley is therefore entitled to the evidence under §40-30-304, because he would not have been convicted, and he is also entitled to the evidence under §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, in this

¹ The state argues that the Saine case is applicable. It is not. In Saine, as the Court of Criminal Appeals explained in Shuttle, the petitioner did not contest that he had assaulted the victim, and the evidence sought to be tested would not have identified the perpetrator. 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.

state, residual doubt is a mitigating factor which jurors must consider when imposing sentence. See State v. Hartman, 42 S.W.3d 44 (Tenn. 2001).

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. 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.

II.
EVEN WERE SEDLEY ALLEY REQUIRED TO MAKE SOME SHOWING
THAT SOMEONE ELSE COMMITTED THE KILLING,
HE CAN DO SO

Sedley Alley is entitled to the evidence under Shuttle, *supra*. Even were he required to make some sort of showing of innocence (which he is not), Sedley Alley can show definitive evidence demonstrating that he did not kill the victim. That evidence includes, but is not limited to, the following:

(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 2 (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 3 (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 4 (Statement of Scott Lancaster). This clearly does not describe Sedley Alley. Sedley Alley was 6'4", 200 pounds, with medium to long light brown-reddish hair, a mustache and beard, medium complexion, and wearing blue jean shorts. See e.g., Exhibit 5 (Alley's booking photograph); Exhibit 6 (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 7, ¶5 (Affidavit of April Higuera);

(4) The car involved in the abduction was initially described as a "brown over brown station wagon." See Exhibit 8 (July 12, 1985 Statement of Richard Wayne Rogers). Borup drove a brown Dodge Aspen, which fits that description. See Exhibit 7, ¶6 (Affidavit of April Higuera); Exhibit 9 (Picture of Dodge Aspen);

(5) The tire tracks at the abduction scene *do not* match Sedley Alley's car. See Exhibit 10 (picture of tire tracks at abduction scene); Exhibit 11 (photographs of Sedley Alley's car); Exhibit 12 (Report of Peter McDonald: Sedley Alley's car did not make tire tracks found at abduction scene);

(6) Black 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 13);

(7) Fingerprints on a beer bottle recovered near the body “are definitely not identical to Sedley Alley’s fingerprints.” See Exhibit 14 (Excerpt of Report of Sgt. G.B. Dunlap);

(8) 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 15: Report concerning shoe prints; Exhibit 16 (picture of Sedley Alley’s shoes);

(9) Alley’s statement to the police is not true and was coerced and the product of manipulation. 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 didn’t 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 didn’t 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, the authorities turned it off, during which time they provided information to Alley. In fact, the tape is significantly shorter in length than the claimed time of the interrogation. See Exhibit 17 (Affidavit of Janet Santana concerning length of tape being under one hour); Exhibit 18 (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. Indeed, he doesn't 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.

III.

SEDLEY ALLEY'S REQUEST FOR DNA TESTING IS TIMELY AND APPROPRIATE

Finally, Sedley Alley's request for DNA testing is timely and appropriate. Sedley Alley is entitled under Tennessee law to ask for the DNA evidence "at any time." Tenn. Code Ann. §40-30-303. He couldn't have asked for it in earlier state proceedings, because the Act was only passed in 2001 – after he had completed state post-conviction review. The analysis which will be conducted on the evidence also didn't even exist until 2002. See Exhibit 20 (Declaration and Resume of Gary Harmor).²

² Moreover, as an individual convicted of a capital offense, Sedley Alley has the right to
(continued...)

Notably, Sedley Alley filed his petition on May 4, 2004, over four weeks from a proposed execution date. Should this Court rightly produce the evidence promptly, Petitioner's unquestionably qualified expert, Gary C. Harmor, can complete his analysis before the end of May. See Exhibit 20 (Declaration and Resume of Gary Harmor). There is no prospect of any "delay" of any execution date so long as the evidence is promptly produced. The analysis of the evidence will be completed before any execution date.³

All told, Sedley Alley is entitled to the evidence 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. His request for the evidence is timely and appropriate and should therefore be granted. 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). Herrera v. Collins, 506 U.S. 390 (1993).

²(...continued)

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.

³ Further, 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 and previously unknown information about the 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. Further, Alley has been pursuing remedies in the federal courts, with his most recent certiorari petition just being denied on March 29, 2004. See Alley v. Bell, U.S. No. 03-8641.

Respectfully Submitted,

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DECLARATION & VERIFICATION

I affirm that statements contained in this document concerning the circumstances of my interrogation are true and correct to the best of my knowledge. It is my express intention that the evidence in this case be tested.

Sedley Alley

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.

Date: _____
