

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

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

SUPPLEMENT IN SUPPORT OF PETITION FOR DNA ANALYSIS

_____ At this Court’s May 12, 2004 hearing, there were questions about the significance of the fluid samples found on and in the victim, and hairs found on and around the victim. Petitioner respectfully informs the Court: (1) that semen *was* found on the body and on swabs; and (2) the hairs identified by the prosecution’s expert *were not* positively identified as coming from the victim. Thus, Sedley Alley is entitled to the production of the requested evidence.

1. In her reports, Paulette Sutton *specifically identified semen in at least four different swabs and samples:*

a. Concerning vaginal swabs, Sutton reported the presence of semen: “Seminal Type ** Detected * **” See Petition For DNA Analysis, Exhibit 3, Item 11 (Attached to this supplement as Exhibit A)

b. Concerning a swab from the victim’s right inner thigh, Sutton again reported finding semen: “Seminal Type ** Substance Detected** *** Right inner thigh***.” See Petition For DNA Analysis, Exhibit 3, Item 12 (Exhibit A)

c. Concerning a swab from the victim’s left inner thigh, Sutton again reported

finding semen: “Seminal Type ** Substance Detected*** ** Left inner thigh***.” See Petition For DNA Analysis, Exhibit 3, Item 13 (Exhibit A).

d. Finally, concerning nasopharyngeal swabs, Sutton again reported the presence of semen: “3-Seminal Type * * ‘H’ substance Detected” See Petition For DNA Analysis, Exhibit 2, Item 3 (Attached to this Supplement as Exhibit B)

2. Obviously, the semen found on or in the victim did not come from the victim. As Petitioner has argued, if that semen came from someone other than Sedley Alley, then it is apparent that a reasonable juror could find that Sedley Alley did not rape and kill the victim. Sedley Alley is therefore entitled to production of all the requested fluid samples to identify the donor of the semen specifically reported by Paulette Sutton.

3. Courts 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).

4. As in these other cases, the fluids found on or in the body in this case – should they not be Sedley Alley’s – point to the identity of the killer, and for that reason, the testing must be ordered under Tenn. Code Ann. §40-30-304 & 40-30-305.

5. Craig Lahren’s microscopic hair analysis does not alter that conclusion. Even Lahren made clear in his report that, using the type of microscopic analysis he employed, questioned hairs could not be positively identified as coming from the victim, because “[H]air does not possess enough individual microscopic characteristics to serve as a basis for positive personal identification.” See Attached Exhibit C, Excerpt of written report of Craig Lahren. Contrary to the state’s claims, there is no positive proof of Sedley Alley’s guilt.

6. It is also disingenuous for the state to argue that such testing could have been performed earlier during the state court process. The DNA statute wasn’t passed until 2001, after Sedley Alley had completed post-conviction proceedings. Also, the tests to be run on the fluids didn’t even exist until 2002.

7. Further, Sedley Alley has only recently uncovered previously undisclosed and unknown evidence showing innocence, and that new evidence has resulted in the need for DNA analysis. That new evidence includes previously unknown evidence concerning the time of death (Petitioner’s Reply, Exhibits 2 & 3), the victim’s boyfriend (Id., Exhibits 4-7), the boyfriend’s car (Id., Exhibits 7-9), and the tire tracks at the abduction scene (Id., Exhibits 10-12).

8. Under these circumstances, there is no just reason not to order production of the DNA evidence – especially where the requested evidence can be tested before June 3, 2004.

9. In sum, therefore, testing of the evidence can establish that the person who deposited semen (and/or hair) on the victim was not Sedley Alley. If that person is not Sedley Alley, then there

is a reasonable probability that Sedley Alley would not have been convicted (Tenn. Code Ann. §40-30-304) and/or would have received a more favorable sentence, i.e., a life sentence. See Tenn. Code Ann. §40-30-305. Sedley Alley is therefore entitled to the requested evidence as a matter of Tennessee law, and under the Tennessee and United States Constitutions. There is no just reason for denying Sedley Alley the requested evidence so that he may immediately test the evidence to answer unanswered questions concerning innocence.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing motion has been served this day by fax upon the Office of the District Attorney General, Thirtieth Judicial District, in Memphis.

Date: _____

EXHIBIT A

EXHIBIT B

EXHIBIT C