No._____

In the

Supreme Court of the United States

Sedley Alley,
Petitioner

v.

State of Tennessee,
Respondent.

BRIEF OF *AMICUS CURIAE*, DOUGLAS WARNEY, CLARENCE ELKINS, CHRISTOPHER OCHOA, DENNIS FRTIZ AND KEVIN GREEN, WRONGFULLY CONVICTED PERSONS, IN SUPPORT OF PETITIONER'S PETITION FOR WRIT OF CERTIORARI

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INTEREST OF *AMICI CURIAE*[1]

Amici are persons once wrongfully convicted and now completely exonerated by post-conviction DNA testing. They are living proof, notwithstanding the Tennessee courts' assertions to the contrary, that neither confessions, nor "overwhelming" evidence of guilt, nor late-breaking requests for DNA analysis, nor seemingly far-fetched proposals to compare crime scene DNA to other potential suspects, are inconsistent with actual innocence. Indeed, the experiences of the *amici* – who were each exonerated despite strong, seemingly inculpatory evidence and via comparison of crime scene DNA to the DNA of other suspects or to a DNA database – incontrovertibly prove otherwise.

Amici's interest in this case stems from their personal, first-hand knowledge that the post-conviction DNA testing scheme at issue is being construed in a manner that will unfairly curtail the efforts of innocent people to pursue both their own vindication and true justice for the greater community. *Amici* know that had their cases been reviewed under a standard akin to the Tennessee Post-Conviction DNA Analysis Act as it has been interpreted in this case, every single one would still be incarcerated – if not executed – and the true perpetrator of the crimes of which they were convicted would likely still be at large. To the extent this interpretation was based upon the lower courts' misapprehension of the real life mechanics of DNA exoneration, *amici* respectfully submit that their experiences will be of material and unique assistance to the Court in evaluating the petitioner's claim.

INTRODUCTION AND SUMMARY OF ARGUMENT

Amici, all innocent men, once stood precisely in the shoes of Sedley Alley – convicted on the basis of seemingly unassailable evidence, often including their own confessions. Each was

[1] Counsel for both the petitioner and the respondent have consented to the filing of this *amicus* brief, pursuant to Sup. Ct. R. 37.2(a). Copies of the letters of consent have been filed herewith. No counsel for either party authored the brief in whole or in part. No one other than the *amici* contributed monetarily to its preparation or submission.

convicted of – or pleaded guilty to – a heinous crime; each was sentenced to a lengthy term of imprisonment or to death; each was ultimately exonerated. And every single one would still be incarcerated – or dead at the hands of the state – if he had been denied the DNA testing that Sedley Alley now seeks.

The lower courts in this case have determined that the relief available under Tennessee's Post-Conviction DNA Analysis Act is highly limited. They have effectively ruled that DNA testing is available only in the rare "silver-bullet" case – such as a single-perpetrator rape of a single victim – where analysis of a single piece of biological evidence from a given crime scene has the potentially to definitively exonerate. They have therefore prohibited DNA testing in cases where redundant results on multiple items of evidence or secondary comparisons of the evidence DNA to other DNA profiles could well demonstrate a defendant's innocence.

While such limitation may seem, at first blush, a reasonable restriction, it is, in fact, neither logical nor fair and accordingly renders Tennessee's innocence protection scheme insufficient to truly identify and address wrongful convictions. Indeed, as *amici's* cases show, the lower courts' interpretation of the Tennessee act threatens to transform legislation clearly designed to aid the innocent, *see Ensley v. State*, 2003 WL 1868647, at *2 (Tenn. Crim. App. April 11, 2003) (Act intended to "provide[]... relief to those who assert that they have been wrongfully convicted of a crime"), into a mechanism for denying relief even in truly meritorious cases.[2] In so doing, the lower

[2] Notably, the Tennessee statute contemplates broader post-conviction relief than many analogous provisions in other jurisdictions. It is not, for example, limited to cases where identity was contested at trial. *C.f., e.g.*, 725 Ill. Comp. Stat. Ann. 5/116-3(b)(1) ("[t]he defendant must present a prima facie case that...identity was the issue in the trial"); Tex. Code Crim. Pro. art. 64.03(a)(1)(B) ("[a] convicting court may order forensic DNA testing under this chapter only if the court finds that...identity was or is an issue in the case"). Moreover, as the Tennessee appellate court noted, it is uncontested that the Tennessee "Post-Conviction DNA Analysis Act was created because of the possibility that an innocent person has been wrongfully convicted or sentenced." *Alley v. State*, No. W2006-01179-CCA-R3-PD, slip op. (Tenn. Crim. App. at Jackson, June 22, 2006) [hereinafter June 22, 2006 Court of Appeals Decision] at 18, *citing Shuttle v. State*, 2004 WL 199826, at *4 (Tenn. Crim. App. at Knoxville Feb. 3, 2004), *perm. to appeal denied*, (Tenn. Oct. 4,

courts have been constrained to disregard the irrefutable evidentiary potential of forensic DNA and the real world scenarios that have lead to the discovery of many wrongful convictions in the past. For these reasons, *amici* respectfully urge this Court to grant Mr. Alley's petition for a writ of certiorari.

ARGUMENT

I. Post-Conviction DNA Testing Limited Only To Comparison Of Evidentiary DNA Against The Defendant's DNA Profile Is Not Sufficient To Identify Wrongful Convictions.

DNA cases are as varied as crime itself; there is no universal template. Some DNA cases present relatively straight-forward scenarios where the DNA in question clearly belongs to the true perpetrator and to no one else. Examples of these cases include single-assailant rape cases where the DNA has been recovered from the victim and where it is uncontested that the victim had no intimate contact with anyone other than the assailant.[3] These cases, however – where a simple "evidence

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2004). It must therefore be presumed to require that meaningful relief be provided to all who make a colorable case for such a "possibility," not merely those who, by dint of fate, were convicted in cases where innocence can be determined from a single, silver-bullet DNA test. *See National Gas Distrib., Inc. v. State,* 804 S.W.2d 66, 67 (Tenn. 1991) (meaning of a statute must be determined in light of the general purpose of the legislation and in a manner consistent with that intent); *Loftin v. Langsdon,* 813 S.W.2d 475, 478-79 (Tenn. Ct. App. 1991) (same).

[3] Another example is provided by cases where a single DNA profile appears on numerous pieces of evidence in a manner that precludes coincidental deposit and where it is uncontested that no innocent party could have contributed that DNA – cases often referred to as "redundant hit" or "redundancy" cases. Significantly, the Tennessee Court of Appeals misapprehended entirely the redundancy argument advanced by Mr. Alley in this case – namely that the discovery of the same (non-Alley) DNA profile on numerous pieces of evidence, even without secondary comparisons identifying the true source of that DNA, would prove that Mr. Alley could not have been the perpetrator as no one but the perpetrator could possibly have left his or her DNA on multiple items of evidence given the facts of this case. The Court of Appeals, however, believed that Mr. Alley's redundancy claim amounted to an assertion that the *absence of Mr. Alley's DNA* on multiple items of evidence – as opposed to the repeated *presence of an unknown DNA*

DNA v. defendant DNA" comparison is capable of producing a definitive exonerative result – are few and far between.

Vastly more common are cases wherein exclusion of a particular defendant as the source of a particular piece of evidentiary DNA, standing alone, is not necessarily conclusive proof of innocence. In such cases, additional steps are required to ascertain the full truth. Here, only a secondary comparison – revealing that the evidence DNA matches a known alternative suspect or a DNA profile in a known offender database – has the capacity to provide solid proof that the defendant did not commit the crime. Far from "creat[ing] conjecture or speculation," *Alley v. State*, No. 85-05085-87, Order Denying Post-Conviction DNA Analysis (Tenn. Crim. Ct. May 31, 2006) at 9 [hereinafter Higgs Order], *quoting Alley v. State*, W2004-01204-CCA-R3-PD at 9-10 (Tenn. Crim. App. at Jackson May 26, 2004), in such cases, this secondary comparison provides the only means of conclusively determining guilt or innocence. *See House v. Bell*, 547 U.S. ---, --- S. Ct. ---, 2006 WL 1584475, at *20 (June 12, 2006) (noting that post-conviction investigation limited only to comparison of biological evidence to defendant's DNA profile can be insufficient to prove innocence and that full evaluation of innocence claims may require, *inter alia*, secondary investigation of alternative suspects). It is just such a case that the Court confronts in the instant matter.[4]

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profile – would amount to exoneration. June 22, 2006 Court of Appeals Decision at 11. This was manifestly incorrect. *See, e.g.*, Petitioner's Reply to State's Response to Petition for DNA Testing at 1, 2, 5, 11; [Appellate] Brief of Sedley Alley at 9, 10, 13, 22, 30-38; Supplemental [Appellate] Brief of Sedley Alley at 2, 9.

[4] *Amici* note that in many cases – including the case at bar – these secondary comparisons involve analysis of DNA profiles already in the possession of the state or the defense and accordingly do not require collection of DNA from additional parties. Thus, without taking a position on the correctness of the lower courts' rulings that the Tennessee Post-Conviction DNA Analysis Act cannot be used to compel the *collection* of DNA from third parties, *see* Higgs Order at 8, *citing Crawford v. State*, 2003 WL 21782328 (Tenn. Crim. App. August 4, 2003); June 22, 2006 Court of Appeals Decision at 11, *amici* submit that even if this Court were to endorse such a reading of the Act, the testing sought by Mr. Alley would likely not run afoul of that limitation.

II. No One Knows The Insufficiencies of Limited Post-Conviction DNA Testing Better Than The *Amici* – Who Would Never Have Been Exonerated Without Precisely The Kind Of Testing That Has Been Denied In This Case.

Each one of the *amici's* cases demonstrates, conclusively, that post-conviction DNA testing limited only to comparisons of evidence samples against the defendant's DNA profile is by no means sufficient to provide true justice for the wrongfully convicted, for the victims of crime or for the community at large. Simply put, none of the *amici* – all of whom have been exonerated in their respective jurisdictions – would have been able to prove their innocence without post-conviction DNA analysis that went beyond simply comparing DNA from the crime to DNA from the defendant.[5]

In addition, any one of these innocent men could likewise have been confronted with – and derailed by – accusations that the secondary comparisons conducted in their cases were no more than dubious efforts to search for a "phantom" perpetrator, *see* Higgs Order at 9, 24, *citing Alley v. State*, 2004 WL 21782328 (Tenn. Crim. App. May 26, 2004); June 22, 2006 Court of Appeals Decision at 11; their cases were virtually indistinguishable from Mr. Alley's at the time. Indeed, each case involved precisely the type of "overwhelming" evidence of guilt – confessions,

[5] *Amici* are, moreover, hardly alone. At least twenty-three additional documented exonerations have followed precisely the scenario deemed so preposterous by the lower courts in this case and exemplified so dramatically by *amici's* own experiences – i.e. scenarios wherein exoneration occurred only upon secondary comparison of crime scene DNA with either a specific third party's DNA profile or profiles contained in a known offender database. *See* Edward Connors et al., S. Dep't of Justice, National Institute of Justice, *Convicted by Juries, Exonerated by Science: Case Studies in the Use of DNA Evidence to Establish Innocence at Trial* (June, 1996), *available at* http://www.ncjrs.gov/pdffiles/ dnaevid.pdf; website of The Innocence Project *available at* http://www.innocenceproject.org/ (containing case profiles of Kenneth Adams, Kirk Bloodsworth, Marcellius Bradford, Charles Clyde, Rolando Cruz, Richard Danziger, Anthony Gray, Alejandro Hernandez, Verneal Jimerson, David Allen Jones, Ray Krone, Antron McCray, Robert Miller, Calvin Ollins, Willie Rainge, Kevin Richardson, Yusef Salaam, Raymond Santana, Jerry Frank Townsend, David Vasquez, Dennis Williams, Ron Williamson and Khary Wise).

eyewitness testimony, forensic hair "matches," even a guilty plea – cited with understandable concern by the lower courts in this case. *See* Higgs Order at 21, 23, 33, 40, 45; June 22, 2006 Court of Appeals Decision at 19 -20 (recounting all seemingly incriminating evidence), 21 (referring to evidence of guilt as "overwhelming"); *see also* Appellant's Exhibit PP to May 30, 2006 hearing (Apx. 233-270) (noting other exonerations in cases once deemed to represent "overwhelming" evidence of guilt).[6]

Finally, *amici's* cases also demonstrate that a post-conviction DNA testing scheme that encompasses comparison of crime scene DNA to the DNA of a known alternate suspect or to DNA profiles collected in a forensic DNA database is neither cumbersome nor a fantastical search for a chimerical true perpetrator. On the contrary, their cases – and the thirty thousand other cases where DNA database searches have resulted in linking offenders to crime scene DNA[7] – plainly establish the near-miraculous ability of such searches to, virtually effortlessly, produce dramatic crime-solving results.[8] Indeed, law enforcement

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[6] With respect to the post-conviction court's position that Mr. Alley's original insanity defense ought to foreclose according any sincerity to his current claim of innocence, *amici* note that in at least seven recent exonerations, the exonerated defendant had pleaded guilty to the crime in question. *See* Alex Leary, *Exonerations Stir Bids to Expand DNA Testing*, St. Petersburg Times, January 30, 2006, *available at* 2006 WLNR 1656288.

[7] The FBI, which operates the national Combined DNA Index System (CODIS), reports that as of April 2006, CODIS has produced over 32,500 DNA database "hits," assisting in more than 34,100 investigations. *See* FBI Website, *available at* http://www.fbi.gov/hq/ lab /codis/success.htm. Notably, this number does not include many of the matches made, and crimes solved, via state database searches.

[8] The case of Tennessee's first post-conviction DNA exoneree, Clark McMillan, provides another vivid example of the power and benefits of a DNA database search. Mr. McMillan was exonerated in 2002 after DNA testing excluded him as the source of semen collected from the victim of a 1980 rape. Given the facts of the case – a single-perpetrator assault upon a victim who had not had any prior sexual activity – this exclusion was sufficient to prove absolute innocence. Authorities nonetheless subsequently submitted the recovered DNA profile to a DNA databank and discovered the true perpetrator to be a serial rapist, who, having escaped prosecution in the case in which Mr. McMillan was prosecuted, had gone on to commit another violent sexual assault. *See* H.R. 2859, 2004 Sess. (Tenn. 2004) *available at* http://www.state.tn.us /sos/acts/103/pub/pc0880.pdf.

entities the world over extol the tremendous benefits of DNA database technology. *See, e.g.,* Nicholas Wade, *Wider Use of DNA Lists is Urged in Fighting Crime*, The New York Times, May 12, 2006, *available at* 2006 WLNR 8163713.

Thus, against this backdrop – and particularly in the wake of this Court's recent re-affirmation of a defendant's right to full and fair consideration of substantiated evidence of third party guilt, *Holmes v. South Carolina*, 547 U.S. ---,126 S. Ct. 1727 (2006) – *amici's* experiences belie the notion that post-conviction comparison of crime scene DNA to the DNA of other specific suspects or to the already-collected DNA of known offenders can be summarily deemed – even in the face of "overwhelming" evidence – a mere ploy or a fruitless exercise. *See* June 22, 2006 Court of Appeals Decision at 11 ("This court rejects...the need to 'run' DNA testing results through a DNA database for 'hits.'...The results of DNA testing must stand alone and do not encompass a speculative nationwide search for the possibility of a third party perpetrator"), 21 (referring to Mr. Alley's request as "a new investigation for a speculative phantom defendant").

These men and their stories prove otherwise.[9]

A. Douglas Warney

Mr. Warney was convicted in 1996 of the murder of William Beason, based almost entirely on Mr. Warney's own extremely in-depth confession. Like Mr. Alley's inculpatory statements, Mr. Warney's confession appeared highly reliable at the time of his trial as it contained numerous details of the crime not known to the general public. The confession was also seemingly corroborated by the fact that Mr. Warney had been acquainted with the victim. *See People v. Warney*, 299 A.D.2d 956 (N.Y.A.D. 2002).

Nearly ten years later, Mr. Warney sought DNA testing of biological evidence collected at the crime scene, including blood and tissue recovered from under the victim's fingernails. Prosecutors successfully urged a post-conviction in this case, that even if DNA testing established that Mr. Warney was not the

[9] Unless otherwise denoted, facts contained in each narrative were provided by the *amici* themselves or by their post-conviction counsel.

source of these items, such results would still be theoretically compatible with Mr. Warney's guilt. This argument was based primarily on that fact that portions of Mr. Warney's confessions made reference to an accomplice and on the fact that blood typing evidence, introduced at trial, had already excluded Mr. Warney as the contributor of other biological material collected at the crime scene. *See* Ben Dobbin, *DNA Tests Free Man Held 10 Years in Slaying: Conviction in Death of Activist Disproved*, Buffalo News, May 17, 2006, *available at* 2006 WLNR 8618790.

Prosecutors in the Warney case also claimed, as has been argued here, that Mr. Warney's delay in requesting testing – his request came almost a decade after his confession and conviction – rendered his claim of innocence presumptively specious. *See* June 22, 2006 Court of Appeals Decision at 30-31 (discussing timing of Mr. Alley's requests for DNA testing). Finally, as here, the post-conviction court ultimately ruled that the prospect of a database or third party match was too speculative and highly improbable. *See* Higgs Order at 24 ("[post-conviction DNA] testing can not be used to identify some third party that petitioner now contends was involved in the crime or some 'phantom' defendant found in a database"); June 22, 2006 Court of Appeals Decision at 21 ("the Post-Conviction DNA Analysis Act...does not contemplate a new investigation for a speculative phantom defendant").

While the post-conviction court's denial of Mr. Warney's request for DNA testing was on appeal, prosecutors chose to conduct DNA testing on their own initiative in the wake of a pro-defendant post-conviction DNA ruling in a similar New York case. *See People v. Barnwell*, 828 N.E.2d 67 (N.Y. 2005). This testing excluded Mr. Warney as the source of the crime scene DNA and revealed the profile of an unknown male perpetrator – a result that, standing alone, would likely not have proven sufficient to exonerate, especially given the second perpetrator featured in Mr. Warney's confession. Post-conviction DNA analysis did not stop there, however; prosecutors in the case also ran the recovered profile through the state's DNA database. Notwithstanding the post-conviction court's skepticism regarding the benefit of such a search, this single additional investigatory step indeed identified the DNA from the crime scene as belonging to Eldred Johnson, a

violent career criminal with no innocent ties to the victim and no ties to Mr. Warney.

Mr. Warney was exonerated and released just a few weeks ago, having served ten years in prison. It is also now uncontested that the "unknown" facts contained in Mr. Warney's confession were provided to him, consciously or unconsciously, by investigating authorities. *See* Jim Dwyer, *Inmate to Be Freed as DNA Tests Upend Murder Confession,* New York Times, May 16, 2006 *available at* 2006 WLNR 8381092.

Tragically, during the time that Mr. Warney was wrongfully imprisoned, Eldred Johnson, the true perpetrator, committed two other brutal attacks, slashing the throats of two men in Rochester, New York and, according to prosecutors, leaving them to die. *False Conviction Gives Cause for Recording of Interrogations*, North County Gazette, June 5, 2006, *available at* http://www.northcountrygazette.org/articles/060506FalseConviction.html.

B. Clarence Elkins

Mr. Elkins was convicted in 1999 of raping and murdering his elderly mother-in-law as well as raping and strangling his six-year-old niece. Evidence at trial against Mr. Elkins consisted of chilling testimony by the niece identifying Mr. Elkins as the attacker, motive evidence that appeared to support the state's theory that Mr. Elkins attacked his mother-in-law in response to her interference with the relationship between Mr. Elkins and his wife and witness accounts of threats against the victim allegedly made by Mr. Elkins.

In 2004, a previously unavailable form of DNA testing – Y-STR analysis – was performed on pubic hairs collected from the crime scene. The results of this testing proved, conclusively, that Mr. Elkins could not have been the source of those hairs. Around that same time, Mr. Elkins' niece also came forward to recant her testimony.

Still, Mr. Elkins was denied a new trial – prosecutors succeeded in convincing a post-conviction court that the DNA exclusion alone was not sufficient proof of innocence. Karen Farkas, *Man Denied New Trial in Beating, Rape, Killing,*

Cleveland Plain Dealer, July 15, 2005, *available at* WLNR 11149270. Indeed, both the prosecutor and post-conviction court were so firmly convinced of Mr. Elkins' guilt that they rebuffed even the recommendation of the Ohio Attorney General, who had supported Mr. Elkins' efforts to obtain a new trial. *See Attorney General Jim Petro Seeks Justice For Elkins: Asks Summit County Prosecutor's Office to Not Oppose Request for Temporary Release, December 9, 2005,* Press Release from the Office of the Ohio Attorney General *available at* http://www.ag.state.oh.us/press/05/12/pr20051209.asp.

Later, however, Mr. Elkins was able to secure the evidence and funds necessary to conduct a secondary DNA comparison that demonstrated that the hairs from the scene matched the DNA profile of convicted sex offender, Earl Mann, who lived near the victims at the time of the crime. In the wake of this discovery, the very prosecutor who had vigorously opposed Mr. Elkins request for DNA testing – and had scoffed at earlier requests to investigate the possibility of Mr. Mann's involvement in the crime – turned course and supported Mr. Elkins' release. Shane Hoover, *Elkins Walks from Prison,* Canton Rep, December 16, 2005, *available at* http://www.cantonrep.com/index.php?ID=258642&Category=11&fromSearch=yes. ("'I do not have a problem standing up and saying a mistake has been made in a case," Summit County Prosecutor Sherri Bevan Walsh said. "We never want to see a person sitting in prison that's innocent."').

Mr. Elkins was exonerated just over six months ago, after serving a total of seven years in prison. Ohio authorities are now pursuing charges against Earl Mann.

C. Christopher Ochoa

Mr. Ochoa pled guilty to the 1988 rape and murder of his co-worker, Nancy DePriest, in the wake of his own confession to the crime. At the trial of his co-defendant, Richard Danziger, pursuant to a cooperating witness agreement that spared Mr. Ochoa the death penalty, Mr. Ochoa in fact testified to committing both horrible crimes. Indeed, the details Mr. Ochoa provided during his testimony were so graphic and so gruesome that they caused Ms. DePriest's mother to flee the courtroom. Henry Weinstein, *Freed*

Man Gives Lesson on False Confessions: An Ex-Inmate Tells a State Panel How Texas Police Coerced Him Into Admitting to Murder, Los Angeles Times, June 21, 2006, *available at* 2006 WLNR 10675200.

In addition, a great deal of other, seemingly inculpatory evidence was also presented at that trial, including testimony that Mr. Ochoa and Mr. Danziger possessed master keys that would have allowed them easy after-hours access to the restaurant where the murder and assault occurred and testimony that a pubic hair found near the scene was microscopically consistent with Mr. Danziger's. Authorities also claimed that Mr. Danziger appeared aware of non-public information regarding the case and, although no DNA evidence was admitted at trial, a state forensic expert did testify that semen recovered from the victim was consistent with having come from Mr. Ochoa. *See Danziger v. State*, 786 S.W.2d 723 (Tex. Crim. App. 1990).

Nonetheless, some ten years later, DNA testing established that the semen evidence could not, in fact, have come from either Mr. Ochoa or Mr. Danziger. Had post-conviction testing been limited to that revelation, however, Mr. Ochoa and Mr. Danziger might very well still be serving out their life sentences; prosecutors could surely have argued that the recovered DNA came from either another, unknown, co-conspirator or from consensual relations on the part of the victim prior to the crime. Fortunately, Mr. Ochoa and Mr. Danziger were permitted to further compare the crime scene DNA in their case to the DNA profile of a known sex offender, Achim Marino, who, as it happened, had previously confessed to the crime. It was only after this secondary comparison revealed that Marino was, indeed, the source of the crime scene DNA, that Mr. Ochoa and Mr. Danziger were exonerated and released.

Both Mr. Ochoa and Mr. Danziger spent over twelve years in prison for Achim Marino's crime. After their release, Mr. Ochoa went on to law school, graduating just a few weeks ago from the University of Wisconsin, with hopes of becoming a prosecutor. *See CBS Evening News for May 12, 2006*, FDCH CBS Newswire, May 12, 2006, *available at* 2006 WLNR 8216782. Mr. Danziger suffers still from a severe head injury sustained in a violent a prison assault.

D. Dennis Fritz

Mr. Fritz, along with his co-defendant Ron Williamson, was convicted in 1988 of the rape and murder of Debra Sue Carter. Evidence presented against the two men at their respective trials included two confessions by Mr. Williamson, at least one of which also implicated Mr. Fritz, testimony placing both men near the victim's workplace on the night of the murder, testimony that the victim had previously voiced concerns about the two men and microscopic hair analysis linking both Mr. Williamson and Mr. Fritz to evidence found at the scene. Mr. Fritz was also unable to account for his whereabouts on the night of the crime. *See Fritz v. Champion*, 1995 WL 539581, at *1 (10th Cir. Sep. 11, 1995); *Williamson v. State*, 812 P.2d 384 (Okla. Crim. App. 1991).

DNA testing on semen recovered from the body of the victim was nonetheless later discovered to match neither Mr. Williamson nor Mr. Fritz, who were also conclusively excluded via DNA as the source of the hairs admitted at trial. True exoneration, however, did not occur until it was discovered that the semen evidence in fact matched Glenn Gore, the state witness who had placed Mr. Williamson and Mr. Fritz at the crime scene at their trials.

Mr. Fritz and Mr. Williamson – who at one point came within five days of execution – were exonerated and released in 1999. They had been incarcerated for eleven years. During that time, Glenn Gore, who is currently being prosecuted for the murder of Ms. Carter, committed a host of other crimes, including a spree in which he kidnapped his ex-wife, held her and her daughter hostage for six hours and shot at responding police officers. *See Murder Suspect's Retrial is Under Way, Tulsa World*, June 16, 2006, *available at* http://www.tulsaworld.com/NewsStory .asp ?ID =060613 NeA10 Murde11866.

E. Kevin Green

Mr. Green was convicted in 1980 of brutally attacking and sexually assaulting his own wife – and thereby causing the death of

his own unborn child – after Mrs. Green, who suffered a brain injury in the attack, identified Mr. Green as her assailant. Though no physical evidence connected Mr. Green to the crime, his wife's powerful testimony, buttressed by a state expert who attested to her mental fitness, provided seemingly unassailable evidence of guilt. In addition, motive evidence relating to family discord was also introduced against Mr. Green who, upon conviction, was sentenced to life in prison.

Years later, DNA testing revealed that Mr. Green was not the source of semen that had been recovered at the scene and that the evidence, instead, matched Gerald Parker, a serial killer known as the "Bedroom Basher," who had a history of break-and-enter sexual assaults. Gerald Parker subsequently admitted to having committed the Green attack. *See Attorney General Lockyer Announces More Than 1,000 Hits Obtained Through CAL-DNA Data Bank:110 Hits in September Linking Known Felons to Old Crimes Sets New Record,* Press Release from the Office of California Attorney General, October 27, 2004, *available at* http://ag.ca.gov/newsalerts/ release.php?id=823. At the time Gerald Parker was linked to the Green crime via the database "hit," he had recently been released back into the community on parole.

Mr. Green was released, ten years ago this week, after having served sixteen years in prison. Gerald Parker ultimately confessed to a string of violent sex crimes.

CONCLUSION

For the foregoing reasons, *amici* urge this Court to grant Mr. Alley's petition for writ of certiorari.

Respectfully submitted,

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