

Appendix 3  
Appellant's Supplemental Brief  
Alley v. State, No. W 2006-01179-CCA-R3-PD

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
WESTERN DIVISION  
AT JACKSON

|                       |   |                           |
|-----------------------|---|---------------------------|
| SEDLEY ALLEY,         | ) |                           |
|                       | ) |                           |
| Petitioner-Appellant, | ) | No. W2006-01179-CCA-R3-PD |
|                       | ) | Capital Case              |
| v.                    | ) |                           |
|                       | ) |                           |
| STATE OF TENNESSEE,   | ) |                           |
|                       | ) |                           |
| Respondent-Appellee   | ) |                           |

SUPPLEMENTAL BRIEF OF APPELLANT  
SEDLEY ALLEY

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Appellant Sedley Alley respectfully files this supplemental brief discussing the impact of the United States Supreme Court's recent decision in House v. Bell, 547 U.S. \_\_\_\_, 2006 U.S.Lexis 4675 (2006).<sup>1</sup> The reasoning and analysis in *House* make clear that, under the "reasonable probability" standard applicable to Sedley Alley's DNA petition, Sedley Alley is entitled to release of the requested evidence because: (1) his showing of actual innocence through DNA and other evidence is even stronger than House's; and (2) House was found to satisfy an evidentiary standard much higher than the "reasonable probability" standard which governs this appeal. *A fortiori*, where House wins, Sedley Alley must win as well – especially where *Alley*, unlike *House*, has uncontroverted evidence establishing alibi, and like House, has identified the person who DNA would show to be the likely killer. While House's case "is not a case of conclusive exoneration" (*Id.*, 547 U.S. at \_\_\_\_, 2006 U.S.Lexis 4675, p.\*62-63), Sedley Alley's would be such a case for "conclusive exoneration" given exculpatory DNA results.

I. *House v. Bell*, 547 U.S. \_\_\_\_ (2006) Confirms Sedley Alley's Entitlement To The DNA Evidence

*House* is significant to this appeal for multiple reasons. First, *House* confirms Tennessee law that the determination whether a petitioner meets the standards of the DNA Act requires a consideration of all available evidence, including that uncovered post-conviction. Second, comparing the facts that led to granting of relief in *House* with the facts before this Court confirms that Sedley Alley is entitled to release of the evidence applying the "reasonable probability" standard. Evaluating all the evidence, Alley's case for innocence based on the presumed exculpatory DNA evidence is *markedly stronger than House's*.

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<sup>1</sup> This Court had ordered Appellant's opening brief to be filed in Jackson no later than 4:00 p.m. on June 12, 2006, and *House* was decided on June 12. Appellant thus could not meaningfully address the significant factual and legal issues now addressed herein, especially where Appellant's brief was essentially finished the morning of June 12.

A. This Court Must Consider All Relevant Evidence When Applying The Reasonable Probability Standard

As noted by Sedley Alley in his opening brief, when applying the “reasonable probability” standards of Tenn. Code Ann. §§40-30-304(1) & 305(1), a reviewing court “must consider all the available evidence . . . .” Jones v. State, 2004 Tenn.Crim.App.Lexis 1069, p.\*15. See Appellant’s Brief, p. 49. *House* confirms the reasoning and wisdom behind this rule. Simply put, when the inquiry is one concerning the possibility of innocence, a reviewing court must not artificially limit its inquiry by failing to consider relevant evidence of innocence. As the Supreme Court explained in *House*, to make a determination whether a federal habeas corpus petitioner has made a sufficient showing of actual innocence, a reviewing court “must consider all the evidence, old and new . . . .” House, 547 U.S. at \_\_\_, 2006 U.S.Lexis 4765, p.\*35. This is because any assessment of innocence requires “a holistic judgment about all the evidence . . . and its likely effect on reasonable jurors applying the reasonable-doubt standard.” Id., p.\*39. Clearly, this holistic concern for innocence is mirrored in Tennessee law, which requires a determination whether there is a “reasonable probability that exculpatory results from a DNA analysis . . . would have created a reasonable doubt in the mind of one or more jurors.” Haddox v. State, 2004 Tenn.Crim.App.Lexis 991, p. \*17.

*House* thus confirms the foundational principles underlying this appeal: Assessing a claim of innocence requires a holistic assessment as seen through the eyes of a reasonable juror. Such a holistic approach would mandate consideration of redundant DNA results on multiple items of evidence. That same holistic approach would further require acknowledgment of the possibility of proving third-party guilt through a database match.

Sedley Alley is therefore entitled to the requested DNA evidence because there is a

reasonable probability that at least one reasonable juror would have voted to acquit had he or she learned that all of the DNA found at the crime scene (including on the assailant's red underwear, the victim's shirt, the stick, the fluid stained grass from beneath the vaginal area, the victim's bra, and other evidence) excludes Sedley Alley, but was deposited by John Borup or some other discrete individual. Clearly, one reasonable juror would have acquitted Alley had he or she known that the DNA all over the crime scene excludes Alley (as this Court must presume), but identifies someone else as the killer. See e.g., Appellant's Brief, pp. 30-46.

B. *House* Confirms Sedley Alley's Entitlement To The DNA Evidence Because Alley's Case For Innocence Based On Favorable DNA Results Is Exponentially Greater Than House's Case For Innocence

*House* is also significant here, because while *House* satisfied an even more stringent standard than the "reasonable probability" standard governing this proceeding, Alley's evidence of innocence is significantly stronger than House's, assuming (as this Court must) exculpatory DNA results. Indeed, the Supreme Court made clear that House's case "is not a case of conclusive exoneration." House, 2006 U.S.Lexis 4765, p. \*62-63. Here, however, with favorable DNA results, Sedley Alley's case is both "a case of conclusive exoneration" (Id.) and, *a fortiori*, a case involving a reasonable probability of an acquittal under Tenn. Code Ann. §40-30-304(1) & 305(1).

1. House Applied A Higher Standard For Innocence Than The Lesser "Reasonable Probability" Standard Demanded By Tennessee's Post-Conviction DNA Analysis Act

In *House*, the Supreme Court applied an extremely stringent test for establishing innocence, the test of Schlup v. Delo, 513 U.S. 298 (1995). Under *House*, to show innocence, a petitioner must show that it is "more likely than not, in light of the new evidence, no reasonable juror would find him guilty beyond a reasonable doubt – or, to remove the double negative, that more likely than not

any reasonable juror would have reasonable doubt.” House, 2006 U.S.Lexis 4675, p.\*37. In other words, under this standard, proof of innocence must be so strong that every reasonable juror would have a reasonable doubt about a party’s guilt.

Without question, the standard applied in *House* is much more demanding than the reasonable probability test of Tenn. Code Ann. §40-30-304(1) & 305(1), which requires only that “potentially favorable DNA results *undermine confidence in the outcome of the prosecution.*” Haddox v. State, 2004 Tenn.Crim.App.Lexis 991, p.\*12 (emphasis supplied). Indeed, the “reasonable probability” standard here is identical to the “reasonable probability” standard governing claims of ineffective assistance of counsel under Strickland v. Washington, 466 U.S. 668 (1984), which provides that a “reasonable probability is a probability sufficient to undermine confidence in the outcome.” Id. at 695. This is not an “outcome-determinative” standard. Id. at 693.

2. House Satisfied The *Schlup* Standard With Proof Of Innocence Less Compelling Than Proof Of Sedley Alley’s Innocence Arising From Exculpatory DNA Results: *A Fortiori*, Sedley Alley Is Entitled To Release Of The Evidence Under The Less Demanding “Reasonable Probability” Standard

The distinction between the *House* standard and the “reasonable probability” standard applicable here is critical in light of the outcome in *House*. House satisfied the stringent *Schlup* standard despite DNA evidence that is less compelling than that available in Sedley Alley’s case, because House had demonstrated potential guilt of a third party and had provided an explanation for the victim’s blood being on his clothing. The Supreme Court found House innocent under the *Schlup* standard notwithstanding the fact that there was evidence *clearly placing House at the crime scene* (unlike here), circumstantial evidence that House lured the victim from her house, *and* clear proof that House lied about his whereabouts the night of the murder. Comparing House’s



facts to Alley's, it becomes apparent that not only does Alley have more compelling DNA proof than House, Alley's proof of someone else's guilt and overall proof of Alley's innocence is markedly stronger than House's. Where House satisfied *Schlup* such that all reasonable jurors would have acquitted him, Sedley Alley clearly satisfies the lesser "reasonable probability" standard.

a. All Reasonable Jurors Would Acquit House

House was found to satisfy the *Schlup* standard given three main types of new exculpatory evidence: (1) Proof that semen found on the victim did not come from a sexual assault by House, but came from the victim's husband; (2) The victim's husband had opportunity to kill the victim; and (3) There was a reasonable explanation for alleged inculpatory proof of the victim's blood on House's clothing. The Supreme Court identified the following evidence as showing that House was innocent:

– **DNA Evidence:** DNA evidence from semen found on the victim (Carolyn Muncey) did not come from House, as the prosecution claimed at trial, but actually came – without question – from the victim's husband, Hubert Muncey. This exculpatory DNA proof was "of central importance." *Id.*, p.\*40. Not only did conclusive proof of the absence of a sexual assault by House eliminate any alleged motive for House to kill the victim (*Id.*, p.\*40-42), the DNA evidence eliminated "the only forensic evidence at the scene that would link House to the murder." *House*, 2006 U.S.Lexis 4675, p.\*41.

– **Another Suspect:** House also established "troubling evidence that Hubert Muncey could have been the murderer." *Id.*, p.\*53-54. Proof of Hubert Muncey's guilt included evidence that he "had the opportunity to commit the crime" given his whereabouts at the time of the killing (*Id.*, p.\*58) and evidence that he had confessed to the crime to others

(Id., p. \*56), though he later denied it (Id., p.\*60).

– **Explanation For Blood Evidence Inculcating House:** House was further able to explain away the undisputed existence of the victim’s blood on House’s jeans clothing – it had been spilled on his clothing during forensic examination and/or transport. Id., p.\*43-53. This new revelation about the blood stains on House’s clothing “would prevent reasonable jurors from placing significant reliance on the blood evidence.” Id., p.\*52.<sup>2</sup>

Given this evidence, the Supreme Court concluded that no reasonable juror would have convicted House beyond a reasonable doubt, because the “evidence pointing to Mr. Muncey,” while “by no means conclusive,” would, in “combination . . . with the challenges to the blood evidence and the lack of motive with respect to House . . . reinforce other doubts about House’s guilt.” Id., p.\*61.

As the Court explained:

[Where the] central forensic proof connecting House to the crime – the blood and the semen – has been called into question, and House has put forward substantial evidence pointing to a different suspect, we conclude that . . . – had the jury heard all the conflicting testimony – it is more likely than not that no reasonable juror viewing the record as a whole would lack reasonable doubt.

Id., p.\*63.

Critically, the Supreme Court concluded that House had established reasonable doubt to all reasonable jurors even though there was significant evidence indicating that House is actually guilty:

- (1) House went for a “bizarre evening walk” (Id., p.\*63) the night the victim disappeared, and returned “hot and panting, missing his shirt and his shoes” (Id., p.\*17);
- (2) A person with a “deep voice,” like House, was at the victim’s house before

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<sup>2</sup> The Supreme Court also noted that there was additional evidence showing that House was innocent, including proof that House did not suffer any injuries consistent with having killed the victim. Id., p.\*61-62.

the killing and lured the victim from her home (Id., p.\*11, describing testimony of Laura Muncey);

(3) House was seen walking up the embankment where the body was found, “wiping his hands on a black rag” before the body was found (Id., p.\*13);

(4) The body was found near where “House’s car had been parked, dumped in the woods a short way down the bank leading toward a creek” (Id., p.\*15);

(5) House unquestionably had the victim’s blood on his jeans (Id., p.\*20);

(6) House lied about his whereabouts the night of the killing, falsely telling authorities that he spent the entire evening with his girlfriend Donna Turner (Id., p.\*16);

(7) House lied about the clothing he wore that night, lying that the night of the murder, he had not worn the blue jeans that later were found to have Carolyn Muncey’s blood on them (Id., p.\*16, 20).

The Supreme Court fully acknowledged that many aspects of the prosecution’s evidence showed that House was actually guilty: “Lora Muncey’s memory of a deep voice, House’s bizarre evening walk, his lie to law enforcement, his appearance near the body, and the blood on his pants . . . still support an inference of guilt.” Id., p.\*63. Nevertheless, the Court concluded that given the new DNA evidence, clear evidence indicating that Hubert Muncey was the real killer, and an explanation for the victim’s blood on House’s jeans, House had met the extremely high standard of showing that every reasonable juror would have had a reasonable doubt about his guilt.

**In other words, given critical DNA evidence and clear indications that someone other than House killed Carolyn Muncey, the Supreme Court concluded that all reasonable jurors would have a reasonable doubt *even though* inculpatory proof showed that House was at the**

**crime scene, his car was near the crime scene, there was proof that he had been at the victim's home, he returned that night in disarray and unclothed, he made up an alibi, he had the victim's blood on his jeans, and he lied about having worn those jeans that night.** Where House has won on his facts, Sedley Alley necessarily wins the right to DNA testing under the circumstances of his case, because DNA can conclusively exonerate Sedley Alley.

- b. Sedley Alley Presents A Stronger Case Than House: Alley's Case Is A Case Of Conclusive Exoneration With Exculpatory DNA Tests, Especially Compared To *House*, And It Is Unquestionable After *House* That Sedley Alley Meets The Reasonable Probability Test

Compared to House's case, which is decidedly not "a case of conclusive exoneration" (*Id.*, p.\*62-63), Sedley Alley has a case of conclusive exoneration (and necessarily a reasonable probability of a different outcome) with DNA testing – especially where, like House, Alley has identified the victim's boyfriend (John Borup) who (like Hubert Muncey) had motive and opportunity to kill the victim. In contrast to House's case, Alley has a stronger case of innocence than House, given Alley's clear and undisputed alibi, and proof that Alley was not the person identified as the abductor, Borup matches that description, Alley was not seen at the crime scene, and Alley's inculpatory statement to the police is false.

Comparing House's facts to Alley's it clearly appears that, as to the three categories of evidence found dispositive in House's favor by the Supreme Court (DNA, another suspect, explanation for inculpatory blood evidence), Alley's case for innocence is stronger than House's. Further, the types of evidence which inculpated House are not present in Alley's case. In other words, compared to House, Alley has much more exculpatory evidence showing innocence, and much less inculpatory evidence showing guilt.

Succinctly stated, Alley's case for innocence based on exculpatory DNA results is far stronger than House's for the following reasons:

(1) **DNA Evidence:** House's DNA evidence merely eliminated House's alleged motive, while eliminating the only forensic proof connecting House to the crime scene. Under *Shuttle*, every potential DNA result from evidence at the crime scene is presumed exculpatory: By definition, as in *House*, such exculpatory results both eliminate any alleged sexual motivation for the murder, while confirming that Sedley Alley was not at the scene of the murder. Alley's DNA evidence, however, is significantly stronger, because *House* only involved one semen sample from the victim, which could be explained by the victim having had intercourse with her husband.

Alley's case, on the other hand, involves numerous samples, including skin cells and usual-wearer cells in the assailant's red underwear, saliva on the victim's shirt, semen and blood on the stick and its wrapper, and skin cells on the stick where the assailant would have handled it. Exculpatory proof from the assailant's red underwear *alone* would exonerate Alley: Identifying the wearer of the assailant's underwear identifies the killer. Moreover, redundant DNA results (DNA from the same male donor) on the red underwear, the victim's shirt, the stick, the victim's bra and the fluid-stained grass create a web of guilt for the person who deposited all such DNA. The only explanation for a certain male's semen and skin being on the red underwear and the stick and his saliva being on the shirt and bra is that such person is the killer. Indeed, the odds of someone randomly leaving DNA on all these different samples is millions to 1, increasing exponentially with the same DNA being found on each different sample. Thus, given the sheer number of exculpatory results here, Alley's

DNA case is stronger than House's: Alley's is a "case of conclusive exoneration," given exculpatory DNA results.<sup>3</sup>

(2) **Proof That Someone Else Was The Killer:** In *House* there was "substantial evidence pointing to another suspect." *Id.*, p. \*63. The proof was that Hubert Muncey had "opportunity" to kill the victim and had allegedly confessed. Here, Alley likewise has substantial evidence not only of John Borup's "opportunity" to kill Suzanne Collins (he admits being with her in his car on the base the night she died), but even more than House, Alley has proof of Borup's motive to kill: jealousy. And even stronger than House's case against Muncey, Alley has clear proof that *Borup matches the description of the abductor* (while Alley does not) and drove the same type of car driven by the abductor (brown-over-brown station wagon). Where Borup had motive and opportunity to kill, matched the description of the abductor, and drove the type of car driven by the abductor, Alley's proof of Borup's guilt is equally strong, if not stronger, than House's case against Hubert Muncey.

(3) **Inculpatory Blood Evidence:** House has not disputed that the victim's blood was on his jeans, but presented a disputed explanation for how the blood got there. Sedley Alley has always claimed that the purported "blood" on his shorts was not even blood at all. See Trial Tr. 852-853 (screening testing performed by state expert creates false-positive results). But more so, in this proceeding, this Court must presume that the alleged blood on

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<sup>3</sup> In his opening brief, Alley has specifically identified cases involving exonerations where more than one piece of crime scene evidence contained the DNA of someone other than the individual convicted. Such circumstances have led to conclusive exonerations. See e.g., Appellant's Brief, p. 35-36 (discussing case of Nicholas Yarris from Pennsylvania, Calvin Willis from Louisiana, and Larry Peterson from New Jersey, all of whom were exonerated after identical DNA results from differing pieces of evidence pointed to someone else).

Alley's shorts is not blood at all and does not match the victim: Rather, it is presumed to exculpate Alley, and it can be tested to show (unlike in *House*) that *it is not blood at all and/or does not belong to Suzanne Collins*. Thus, Alley's case on this point, once again, is much stronger than House's case.

This leads us to a comparison of the additional inculpatory evidence in *House* which, the Supreme Court held, was insufficient to prevent a jury from acquitting House. Once again, Alley's case for innocence is significantly stronger than House's. House's case for innocence was burdened by inculpatory evidence of House's being at the crime scene, having no alibi and lying about his whereabouts, which led to a conviction based on House's creation of false *exculpatory* evidence. Alley, on the other hand, has a seemingly ironclad alibi, substantial proof that it was someone else (not him) who was at the murder scene, and proof that Alley was the victim of false *inculpatory* evidence created by authorities. Indeed, as we continue to compare *House* and *Alley*, we see the following:

(4) **Alibi:** As Chief Justice Roberts has stated, "when identity is in question, alibi is key." *House*, 2006 U.S.Lexis 4675, p.\*92. Whereas House was found to establish innocence despite having fabricated a false alibi, Sedley Alley has the very type of ironclad alibi mentioned by the Chief Justice. It is undisputed and uncontroverted that the murder occurred at 3:30 a.m., when Alley was at home. In fact, authorities had documented Alley's whereabouts from 12:10 a.m. onward. Alley's case of innocence is substantially bolstered by this critical fact. On this point, there is no comparison. Unlike House, Alley has a case for exoneration given his clear proof of alibi. It is also worth repeating: The reason why Alley did not present alibi evidence sooner is that the prosecution unconstitutionally withheld the

exculpatory time-of-death evidence; Alley finally got all the alibi evidence in April 2005 – nearly 20 years after the offense.

**(5) Presence At The Murder Scene:** House was seen leaving the murder scene. Not only was Alley never seen at the murder scene, the forensic proof establishes that someone other than Alley was the murderer: Alley clearly does not match the description of the abductor; Tire tracks at the crime scene are from a car that is not Alley's; Fingerprints on items near the body are not Alley's; Shoe prints at the scene were not matched to Alley's shoes either. Again, Alley's case for innocence is significantly stronger than House's.

**(6) House's False Exculpatory Statements vs. Alley's False Inculpatory Statement:** House lied about his whereabouts the night of the murder and lied about the clothing he was wearing. This inculpates House. See House, 2006 U.S.Lexis 4675, p.\*92 (Roberts, C.J., concurring and dissenting). Whereas House provided false exculpatory evidence which inculpates him, it clearly appears that Alley was convicted on the basis of false inculpatory evidence, thus showing his innocence. The statement obtained from Alley by authorities occurred after hours of interrogation, and it has been acknowledged to be false in critical respects by Dr. Bell, the Tennessee Supreme Court, and Dr. Richard Leo. The statement introduced at trial was manipulated and much of the purported statement is simply missing. Yet again, Alley's case for innocence is much stronger than House's.<sup>4</sup>

Comparing *House* to *Alley*, it is clear that the facts support Mr. Alley's request for DNA testing because such testing could make a case for innocence far more compelling than that found

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<sup>4</sup> Alley presented an insanity defense at trial which relied on hypnosis testimony from Alley which the prosecution excluded as being unreliable, and which has been found to be unreliable by all reviewing courts.



to have merit by the Supreme Court. Though House's case does not involve a "case of conclusive exoneration," he has established that no reasonable juror would have convicted him, given limited exculpatory DNA evidence, proof of the guilt of another suspect, and explanation for inculpatory blood proof.

Alley's presumed exculpatory DNA proof is broader and exponentially stronger than House's; his proof of Borup's guilt is stronger as well, where it is supported by Borup having both motive *and* opportunity to kill, while Borup and his car fit the description of the abductor and his automobile; the alleged inculpatory blood evidence in Alley's case can be subjected to DNA testing, and at this stage, is presumed to exonerate Alley. When one adds to the mix Alley's clear-cut alibi, forensic evidence excluding Alley as being at the murder scene, and Alley's false "confession," Alley again presents a much stronger case for actual innocence than House ever could – especially where DNA testing of the red underwear alone will identify the killer.

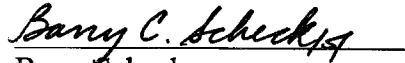
In *House* the "issue was close" (*Id.*, p.\*63) whether House was innocent under a "no reasonable juror would convict" standard – despite significant inculpatory evidence which included proof placing House at the murder scene. Alley has presented the very same types of evidence House presented, but Alley has an even stronger case of innocence than House. Alley's case presents a clear case for relief under the significantly more relaxed "reasonable probability" standard.

#### CONCLUSION

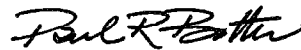
In light of *House*, therefore, Sedley Alley is entitled to release of the DNA evidence as he has requested, because there is a reasonable probability that he would not have been prosecuted, convicted, or sentenced to death had the jury – like the jury in *House* – heard that the numerous items of evidence from the crime scene are laden with someone else's male DNA, not Alley's. Sedley

Alley has a case for “conclusive exoneration.” House, p. \*62-63. Sedley Alley is therefore entitled to the DNA evidence to prove his actual innocence. The judgment of the trial court must be reversed, and the DNA testing ordered.

Respectfully Submitted,



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**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing has been served via hand delivery to the Office of the Attorney General, 425 Fifth Avenue North, Nashville, TN 37243 on this 14<sup>th</sup> day of June, 2006.

*Paul R. Botti*

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