

IN THE SUPREME COURT OF TENNESSEE
AT JACKSON

ROBERT GLEN COE)
)
Petitioner-Applicant)
)
v.)
)
STATE OF TENNESSEE)
)
Respondent)

CCA No. W2000-0005-CCA-28M-PD
Shelby Co. No. P-3577, 6594, 14345

FILED

February 25, 2000

**Cecil Crowson, Jr.
Appellate Court Clerk**

MEMORANDUM IN SUPPORT OF MOTION FOR STAY OF EXECUTION

The State of Tennessee convicted Robert Coe of murder and got the jury to sentence him to death by losing or destroying critical evidence which would have exonerated him – evidence which proved that Donald Gant committed the offense for which Robert Coe now stands convicted. As held by this Court in State v. Ferguson, 2 S.W.3d 912 (Tenn. 1999), the State’s destruction of critical evidence constitutes a fundamental violation of the Tennessee Constitution.

This Court has a responsibility to the citizens of this State to ensure that no person is executed if he has been denied a fundamentally fair trial or if there is any question about his innocence. Because Robert Coe was in fact denied a fundamentally fair trial under Ferguson -- which directly implicates his innocence and the justness of the death sentence -- this Court should grant this motion for stay of execution, grant his application for permission to appeal, order further briefing, and then reverse both his first-degree murder conviction and sentence of death.

I.
THE INNOCENT ARE CONDEMNED TO DEATH

Are the innocent condemned to death? There is no doubt that they are. Anthony Porter,

from Illinois, is but one example in a long line of cases in which a man has been convicted unjustly but then exonerated on the eve of execution. It is for this reason that the Governor of Illinois has stopped all executions in Illinois. It is for this reason that the American Bar Association has called for a moratorium on executions throughout the Nation. And indeed, no execution should ever go forward if a defendant has raised a claim implicating his innocence, when his claim has not been fully considered by the courts. This is the precise situation here.

II.

ROBERT COE'S *FERGUSON* CLAIM IMPLICATES HIS INNOCENCE, AND HIS CLAIM IS MERITORIOUS

In the trial court below, Robert Coe has demonstrated the following *undisputed* facts:

(1) Donald Gant – *not* Robert Coe – was identified by the three eyewitnesses to the abduction as the person who committed this offense: Maggie Stout, Michael Stout, and Herbert Clements. See Application For Permission To Appeal, p. 7 & Exhibit 2, Attachment C;

(2) Donald Gant had a history of making inappropriate sexual advances to young girls. Id. Application For Permission To Appeal, p. 7 & Exhibit 2 Attachments A & C;

(3) Immediately after the abduction of the victim in this case, *Donald Gant had fresh bloody scratches on his neck.* Application For Permission To Appeal, pp. 7-8 & Exhibit 2, Attachment C, E.H.Tr. 73.

(4) Gant had no alibi, but admitted that he was in Greenfield -- the site of the abduction – the night it occurred. Application For Permission To Appeal, p. 8 & Exhibit 2 Attachment C (2 E.H.Tr. 83: T.B.I. Agent Robert Yoakum);

Attachment A (Pet'r E.H.Ex. 56 at 333, 416, 417, 421);

(5) Critical physical evidence from Gant – his bloody clothing and bedding – were taken by authorities for testing. Application For Permission To Appeal, p. 8 & Exhibit 2, Attachment A (Pet'r E.H.Ex. 56 at 333), Attachment C (2 E.H.Tr. 72, 83, 144, 147)

(6) The State apparently destroyed all of that physical evidence from Gant – including trace evidence from Gant's clothing and bedding, and blood --

which would have been traceable to the victim and would have shown that Gant was guilty. (7) Other physical evidence – including a hair found on the

victim's body shows that Robert Coe is innocent: *the hair on the body was from someone who is not Robert Coe* (Application For Permission To Appeal, p. 9; Tr. 1646); Tire tracks at the muddy crime scene are not from Robert Coe's car but are consistent with the tires on *Gant's* car (Application For Permission To Appeal, p. 9 & Exhibit 2, Attachment C, 1 E.H.Tr. 196-201, 207-220, 2 E.H.Tr. 3-8).

All of this establishes a meritorious claim under Ferguson. Gant was the person identified by all the eyewitnesses, he had a history of inappropriate sexual advances toward young girls, he had no alibi, but admitted being in Greenfield the night of the abduction *and* he had fresh scratches on his neck *and* his bloody clothing and bedding were taken by authorities. If Robert Coe is guilty, then *why* did the Tennessee Bureau of Investigation secure critical evidence and either lose or destroy it? If the person identified by the eyewitnesses -- Gant -- didn't commit the offense, *why* does the State mysteriously have no record of the critical evidence which they took in the case? *Why* is it that evidence which would prove Donald Gant's guilt is taken and then

destroyed?

It cannot be said that Robert Glen Coe was convicted and sentenced to death in a proceeding in which his fundamental right to a fair trial was preserved. Instead, critical evidence was destroyed. Is there a question whether Robert Coe is innocent or guilty? Absolutely. Did the destruction of the critical evidence from Gant deny Robert Coe a fair trial. Ferguson says again: Absolutely. Yet Robert Coe's claim of constitutional error has been given short shrift by the lower courts, with the trial court even erroneously claiming that it had given Robert Coe an "evidentiary hearing" on the matter, when he has never had his case heard on the merits by any court in this State.

III. THE MOTION FOR STAY SHOULD BE GRANTED

In this Court's opinion in Ferguson, this Court has set forth a standard which ensures that no one in this State is unjustly convicted or sentenced to death. *Robert Coe has been denied his rights under Ferguson, yet he has not even received a hearing on his claim.* This Court should grant his motion for stay and grant his application for permission to appeal, to ensure that Ferguson does its duty – ensuring that the innocent are not unjustly convicted and executed. Robert Coe is entitled to relief under Ferguson, and this Court should so hold.

Unless this Court fully enforces the rights enunciated in Ferguson, Tennessee risks falling into the intolerable situation plaguing other states -- the innocent face execution. No one in Tennessee wants to leave this as our legacy.

WHEREFORE, premises considered, Mr. Coe begs this Court to grant the Motion for Stay of Execution.

Respectfully submitted,

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Certificate of Service

I hereby certify that a copy of the foregoing Opening Brief was mailed, first-class postage prepaid, to the Office of the Attorney General, Criminal Division, 425 Fifth Avenue North, Cordell Hull Building, Nashville, TN 37243-0493, this the _____ day of February, 2000.

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