

IN THE CRIMINAL COURT
FOR TENNESSEE'S THIRTIETH JUDICIAL DISTRICT
DIVISION _____

DONNIE E. JOHNSON)
)
Petitioner,)
)
v)
)
STATE OF TENNESSEE)
)
Respondent.)

PETITION FOR POST-CONVICTION DNA ANALYSIS
PURSUANT TO T.C.A. § 40-30-301 et seq.

I. INTRODUCTION

1. Petitioner Donnie E. Johnson was convicted of the first-degree murder of his wife, Connie Johnson, and sentenced to death. Connie Johnson died from suffocation resulting from a plastic trash bag being forced into her mouth. Mr. Johnson's trial was a finger pointing contest between Mr. Johnson and the State's key witness, Ronnie McCoy. Each claimed the other killed Ms. Johnson in the back room of a sales office while the other performed an errand. As the Tennessee Supreme Court recognized on direct appeal, "there is no question but that (Mr. Johnson) or one Ronnie McCoy murdered her." State v. Johnson, 743 S.W.2d 154, 155 (Tenn. 1987). The jury found Mr. Johnson forced the bag into Ms. Johnson's mouth, and it therefore convicted him of first-degree murder and sentenced him to death.

2. Throughout his trial, throughout State post-conviction proceedings, and throughout federal habeas corpus proceedings, Mr. Johnson has steadfastly maintained his innocence and that Ronnie McCoy is Ms. Johnson's killer. Forensic DNA analysis of the trash bag forced into Ms. Johnson's mouth can prove Mr. Johnson's innocence and McCoy's guilt.

II. PRELIMINARY MATTERS

3. Mr. Johnson brings this action pursuant to T.C.A. § 40-30-301 et seq.

4. Venue is proper in Tennessee's Thirtieth Judicial District because the trash bag Mr. Johnson seeks to subject to forensic DNA analysis is in the possession of the Clerk of Court for Tennessee's Thirtieth Judicial District.

5. Mr. Johnson's full name is Donnie Edward Johnson. His address is Number 109031, Unit 2, Riverbend Maximum Security Institution, 7475 Cockrill Bend Industrial Road, Nashville, Tennessee, 37209.

III. FACTS

6. On December 9, 1984, Connie Johnson's body was found in a van parked at the Mall of Memphis.

7. At Mr. Johnson's trial, Ronnie McCoy testified that on December 8, 1984, he was working at Force Camping, a retail seller of recreation vehicles. McCoy testified that at the conclusion of the work day, Mr. Johnson, Ms. Johnson, and he visited in the Force Camping sales office. McCoy testified that he left to tend to dogs that guarded the Force Camping grounds, and when he returned Ms. Johnson was dead and Mr. Johnson admitted killing her.

8. At Mr. Johnson's trial, Mr. Johnson testified that at the conclusion of the work day, Ms. Johnson and he visited in the Force Camping sales office. Mr. Johnson testified that he left the office to check the Force Camping grounds, and when he returned McCoy was in the sales office and Ms. Johnson was dead. Mr. Johnson testified that McCoy threatened to harm Mr. Johnson's children if Mr. Johnson told anyone about the killing.

9. At Mr. Johnson's trial, O'Brien Clary Smith testified that Ms. Johnson died as a result

of suffocation resulting from a plastic trash bag being forced into her mouth.

10. At Mr. Johnson's trial, the trash bag forced into Ms. Johnson's mouth was entered as Exhibit 56. That bag is currently in the custody of the Court Clerk for Tennessee's 30th Judicial District and is in such a condition that DNA analysis on it may be conducted.

11. Forensic DNA analysis of biological material on Exhibit 56 can establish with precision who forced the trash bag into Ms. Johnson's mouth. Specifically, skin cells, sweat, saliva, and other biological material transferred from the perpetrator onto the trash bag can answer the critical question in this case: Did Mr. Johnson kill the victim or did Ronnie McCoy?

12. A reasonable probability exists that Mr. Johnson would not have been prosecuted or convicted if DNA analysis establishes that Mr. McCoy forced the trash bag into the victim's mouth.

13. A reasonable probability exists that analysis of the evidence will produce DNA results which would have rendered the verdict against Mr. Johnson or his sentence more favorable if the results had been available at his trial.

14. The trash bag has never been subjected to DNA analysis.

15. Mr. Johnson files this petition for the purpose of demonstrating innocence and not to unreasonably delay the execution or administration of justice.

16. For the above reasons, Mr. Johnson respectfully requests that the Court

(1) Order that Trial Exhibit 56, the trash bag taken from the mouth of the victim, be preserved and protected;

(2) Order that Trial Exhibit 56 be produced for forensic DNA testing;

(3) Order that Trial Exhibit 56 be sent for analysis to a qualified DNA expert

of Mr. Johnson's choosing. Mr. Johnson does not object to being able to test no more than half of the samples found on the trash bag and returning the remainder of all such samples to the Court or the custodian of such evidence;

(4) Appoint undersigned counsel to represent Mr. Johnson, as required under Tenn. Code Ann. §40-30-202 et seq., including Tenn. Code Ann. §40-30-206(a)-(e), because Mr. Johnson is indigent and has been indigent throughout all proceedings in this Court (See also Tenn. Code Ann. §40-30-307);

(5) Order the payment of all expenses related to this testing because Mr. Johnson is indigent and such payment is authorized and warranted under Tenn. Code Ann. §40-30-306 & 40-30-313;

(6) Enter any and all other appropriate orders to ensure that Mr. Johnson receives necessary access to Exhibit 56 without delay so that he can conduct an independent and accurate DNA analysis of that exhibit, and afterwards present any and all exculpatory results from such DNA testing. See e.g., Tenn. Code Ann. §40-30-311; and

(7) Order a hearing following the completion of testing so that Mr. Johnson may present any and all exculpatory evidence resulting from such testing which demonstrates that Mr. Johnson was unjustly or inaccurately convicted and/or sentenced to death.

Respectfully submitted,

Donnie E. Johnson
Unit II
Riverbend Maximum Security Institution
7475 Cockrill Bend Industrial Road
Nashville, Tennessee 37209

Donald E. Dawson
Post-Conviction Defender
530 Church Street
Suite 600
Nashville, Tennessee 37243
(615) 741-9331

VERIFICATION

I affirm under the penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Date: _____

Donnie E. Johnson
Unit II
Riverbend Maximum Security Institution
7475 Cockrill Bend Industrial Road
Nashville, Tennessee 37209

Sworn to and subscribed before me this the 30th day of May, 2006.

Notary Public

My Commission Expires: _____

AFFIDAVIT OF INDIGENCY

I, Donnie E. Johnson, do solemnly affirm that because of my poverty, I am not able to bear the expenses of the action which I am about to commence. I further affirm that, to the best of my knowledge, I am justly entitled to the relief sought.

Signature of Petitioner

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: _____

EXHIBIT 1