

No. 23-5611

OCTOBER TERM, 2023
In the
Supreme Court of the United States

DAVID STEPHEN MIDDLETON,

Petitioner,

v.

WILLIAM GITTERE, WARDEN,
AARON FORD, ATTORNEY GENERAL, STATE OF NEVADA

Respondents.

*On Petition for Writ of Certiorari
to the Supreme Court of the State of Nevada*

**REPLY TO BRIEF IN OPPOSITION TO PETITION FOR WRIT OF
CERTIORARI**

CAPITAL CASE

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REPLY TO BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Middleton files this reply to respond to the State's mischaracterization of the record. The State misstates the record surrounding the issue of DNA testing in three ways. First, according to the State, "[i]t was only after the Washoe County Forensic Science Division's report reflected that Middleton's DNA had not been found that Middleton accused the State of some sort of nefarious motive with respect to the scope of the testing." BIO at 11–12. Middleton's argument has never been about whether his DNA would be found on the clothing items: instead, his position is the results of DNA testing will be exculpatory as it would show the presence of his ex-girlfriend's (Evonne Haley) DNA on the clothing items—not Thelma Davila's.

Second, the State asserts "the additional testing conducted by the State did not yield conclusive results." BIO at 12. Not true. The testing the State conducted conclusively showed that Haley's DNA was found on the items of women's clothing. That is precisely why it is so important to conduct DNA testing of the clothing items the State alleged at trial belonged to Davila. The State conducted DNA testing on all items of clothing found in a garbage bag in Middleton's storage unit and the results showed they belonged to Haley—not Davila. However, the State failed to test the three items of clothing they linked to Davila at trial that also came out of the same garbage bag. The results of the items the State tested strongly suggests these three items will also come back to Haley (not Davila) if DNA testing is conducted. That is why the results will be exculpatory.

Finally, the State argues throughout its brief that Middleton opposed DNA testing. BIO at i, 13. However, the State overstates Middleton's position on this point. Middleton has included a copy of his opposition to the State's motion to withdraw exhibits with this reply. App. E.¹ Middleton did not argue against DNA testing as a general matter. Rather, he argued that the State's crime lab should not conduct the testing due to documented problems concerning the reliability of its testing and the State's prosecutorial misconduct in the case. In the alternative, Middleton proposed the DNA testing be conducted by a third-party lab. App. E. at 46-49.

If the trial court had granted Middleton's request, or at least entertained his later request to have his own expert present for the testing, he would have already had the results of the DNA testing. Instead, the State apparently failed to test the relevant items even after being given the opportunity to do so by the trial court because it realized the results would likely be exculpatory to Middleton.

CONCLUSION

For the foregoing reasons and those stated in his petition, Middleton requests that this Court grant his petition for writ of certiorari and vacate the judgment of the Nevada Supreme Court. In the alternative, Middleton requests that this Court grant, vacate, and remand his case back to the Nevada Supreme Court for further

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¹ Middleton's pleading is found in Volumes 11–12 of his appendix before the Nevada Supreme Court at pages 2735–2761.

consideration in light of *Reed v. Goertz*, 598 U.S. 230 (2023).

Dated this 25th day of October, 2023.

Respectfully submitted,

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