CAPITAL CASE

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 2024

JAMES RANDALL ROGERS,

Petitioner,

v.

STATE OF GEORGIA,

Respondent.

MOTION FOR EXTENSION OF TIME TO FILE PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

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Counsel of Record for Petitioner

May 12, 2025

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Petitioner,

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STATE OF GEORGIA,

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MOTION FOR EXTENSION OF TIME
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TO THE SUPREME COURT OF GEORGIA

TO THE HONORABLE CLARENCE THOMAS, Associate Justice of the Supreme Court of the United States, and Circuit Justice for the Eleventh Circuit:

Petitioner James Rogers, by and through undersigned counsel and pursuant to Supreme Court Rule 13, respectfully requests an extension of time of thirty (30) days to file his Petition for Writ of Certiorari in this Court, up to and including Thursday, August 28, 2025. In his Petition, Mr. Rogers will seek review of the order of the Supreme Court of Georgia denying his application for discretionary review and affirming the denial of his extraordinary motion for new trial on April 3, 2025.

See Attachment A. The Supreme Court of Georgia denied Mr. Rogers's motion for reconsideration on April 30, 2025. *See* Attachment B.

Mr. Rogers invokes the jurisdiction of this Court pursuant to 28 U.S.C. § 1257(a). His time to file a Petition for Writ of Certiorari in this Court elapses on July 29, 2025. *See* S. Ct. R. 13.3 ("[I]f a petition for rehearing is timely filed in the lower court by any party . . . the time to file the petition for a writ of certiorari for all parties . . . runs from the date of the denial of rehearing."). He therefore makes this request more than ten (10) days before the date his petition would be due without an extension of time. In support of this request, Mr. Rogers shows the following as good cause:

Mr. Rogers filed an extraordinary motion for new trial on November 20, 2020, in Floyd County, Georgia, arguing, *inter alia*, that the now recanted bitemark evidence used to convict Mr. Rogers and sentence him to death warranted a new trial. The court held an evidentiary hearing in 2022, and it denied the motion on February 5, 2025. *See* Attachment C. The Supreme Court of Georgia denied Mr. Rogers's application for discretionary review on April 3, 2025, and then denied his motion for reconsideration on April 30, 2025.

Undersigned counsel requests this extension of time because of professional obligations in this and other cases. Among other hearings and filing deadlines, counsel has hearings in a pretrial death penalty case already scheduled for May, June, and July of 2025. In addition, a Petition for Writ of Certiorari is essential in this capital case because the issues Mr. Rogers will raise in his petition implicate

important issues of federal constitutional law and the right of the State of Georgia to execute him in light of new evidence. With an extension of thirty (30) days, undersigned counsel will be able to present the relevant issues to this Court.

WHEREFORE, Mr. Rogers respectfully requests that this Court grant him a thirty (30) day extension of time within which to file his Petition for Writ of Certiorari, up to and including August 28, 2025.

Respectfully submitted, this 12th day of May, 2025.

/s/ *Mark Loudon-Brown*
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Counsel of Record for Petitioner

PROOF OF SERVICE

I hereby certify that, in accordance with Supreme Court Rule 29, on May 12, 2025, I served a copy of the foregoing via first-class mail, postage prepaid, upon counsel for the Respondent:

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/s/ *Mark Loudon-Brown*
Mark Loudon-Brown

ATTACHMENT A

SUPREME COURT OF GEORGIA
Case No. S25D0797

April 03, 2025

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

JAMES RANDALL ROGERS v. THE STATE.

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby denied.

Peterson, CJ, Warren, PJ, and Bethel, Ellington, McMillian, LaGrua, and Colvin, JJ, concur. Pinson, J., disqualified.

Trial Court Case No. 83CR212953

SUPREME COURT OF THE STATE OF GEORGIA
Clerk's Office, Atlanta

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

, Clerk

ATTACHMENT B

SUPREME COURT OF GEORGIA
Case No. S25D0797

April 30, 2025

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

JAMES RANDALL ROGERS v. THE STATE.

Upon consideration of the Motion for Reconsideration filed in this case, it is ordered that it be hereby denied.

Peterson, CJ, Warren, PJ, and Bethel, Ellington, McMillian, LaGrua, and Colvin, JJ, concur. Pinson, J., disqualified.

SUPREME COURT OF THE STATE OF GEORGIA
Clerk's Office, Atlanta

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

, Clerk

ATTACHMENT C

IN THE SUPERIOR COURT OF FLOYD COUNTY
STATE OF GEORGIA

STATE OF GEORGIA,	)	
	)	
	)	CRIMINAL ACTION FILE
v.	)	NO. 83CR21295-3
	)	
JAMES RANDALL ROGERS,	)	
	)	
Defendant.	)	

ORDER ON DEFENDANT'S EXTRAORDINARY MOTION FOR NEW TRIAL

On June 22, 1985[1], a Floyd County jury found James Randall Rogers guilty of murdering Grace Perry and the aggravated assault with intent to rape she suffered immediately prior to death. Following additional evidence and argument later that day, the same jury sentenced Rogers to death.[2] He appealed his conviction and sentence and the Supreme Court of Georgia affirmed the same. See Rogers v. State, 256 Ga. 139 (1986).

He now brings an extraordinary motion for new trial asserting that newly discovered evidence would probably lead to a different verdict. Specifically, he argues that the bite mark evidence, hair microscopy evidence, and fingerprint evidence introduced by the State is scientifically flawed and cannot support the testimony presented to the jury. He further argues that the methodology used by

[1] Rogers was initially indicted, convicted of these crimes, and sentenced to death, but his initial indictment and convictions were reversed based on an improper grand jury pool composition. See Devier v. State, Rogers v. State, 250 Ga. 652 (1983). The case was remanded and the trial at issue here occurred. Rogers also had a later trial and appeals based on his alleged mental retardation. See Rogers v. State, 276 Ga. 67 (2003); Rogers v. State, 282 Ga. 659 (2007)(affirming sentence and finding that Rogers was not mentally retarded).

[2] For the aggravated assault count, the trial court sentenced Rogers to 20 years to serve consecutive

such forensic experts was so tainted by cognitive confirmation bias, so as render it impermissible.

This court agrees with Rogers's assertions regarding the bite mark evidence. Given the newly discovered evidence of the lack of scientific foundation for bite mark comparison, such evidence should not have been presented to the jury. However, given the balance of remaining evidence, this court cannot say that, under the *Timberlake* standard, the exclusion of bite mark evidence would probably lead to a different verdict. As such, Rogers's motion is DENIED.

Factual Summary

Viewing the evidence in a light most favorable to the verdict, the following is a summary of the relevant facts:

On May 21, 1980, the Defendant, James Randall Rodgers, mowed the lawns of his neighbors, Faye Bolt, Letha Schnall, and the murder victim Grace Perry. (T. 345, 862, 1589). The Defendant used his own lawnmower and never used a rake to rake up the grass on the lawns. (T. 345-46, 568, 862). Ms. Perry kept a rake in her home by the door in the dining room. (T. 568). After he had mowed the three lawns Defendant went to his sister's house to drink "a couple of quarts of beer," before coming home where he smoked a joint that had angel dust in it with an acquaintance. (T. 1591). The acquaintance then asked if he knew any places around to break into before things "went blank" and the Defendant woke up in custody. (T. 1591-1594).

Between approximately 9:15 and 9:30 p.m., Ms. Bolt observed a "shadow of a man" attempting to break into her home. (T. 346-47). Ms. Bolt called the police, who came out and said that someone had tried to pry the screens of her bathroom and bedroom windows. (T. 346-47, 367-68). Ms. Bolt subsequently left and spent the night with her sister, before being called early the next morning on May 22, 1980, and was told that her home had been burglarized while she was gone. (T. 347-48, 378). The intruder "ransacked" Ms. Bolt's house, stealing four checkbooks from Ms. Bolt as well as her daughter's coin bank and tracking grass clippings into the residence. (T. 349-51, 378, 542).

Shortly before midnight, at approximately 11:55, Steve Hall, the younger brother of the Defendant's then-girlfriend, left his home to go see the Defendant. (T. 407-08). Mr. Hall found Defendant between Ms. Bolt and Ms. Schnall's homes at a window touching the screen. (T. 409). The Defendant "staggered" over to Mr. Hall and held out two checkbooks to him and asked if he wanted them. (T. 410-13). Mr. Hall saw that the checkbooks had Ms. Bolt's name on them. (T. 412). Mr. Hall refused to accept the checkbooks but did accept some pennies that the Defendant offered him. (T. 413-14). Mr. Hall then returned to his home and placed the coins on his couch before getting his sister, with the two returning to the Defendant to find him arrested. (T. 414-16).

Between approximately 11:45 p.m. and 12:00 am, Edith Polston, the assault victim and roommate of Grace Perry, returned home from work to find a bloody rake on the porch blocking one of the doors. (T. 550-555). Ms. Polston entered the

home and discovered Ms. Perry lying dead on a bedroom floor before being seized from behind by an unknown person. (T. 556-561). Ms. Polston's assailant made her lie next to Ms. Perry's body before forcefully removing her clothes and taking her outside. (T. 561-564). Ms. Polston's assailant then began to strike her in the face before she managed to escape and take shelter with a neighbor, Ms. Letha Schnall, who called the police. (T. 565-566).

The first investigating officers quickly arrived on the scene at approximately eleven minutes after midnight on the morning of May 22, 1980. (T. 875, 925). The officers found the Defendant attempting to climb a fence at the rear of the victim's property. (T. 876-77). Officers found the Defendant shirtless and shoeless, wearing only blue jeans, underwear, and socks covered in blood stains and grass clippings. (T. 877, 947). Scratches covered the Defendant, and he had what officers believed could have been a bite mark on his forearm. (T. 1566). Officers found long blonde hairs on the Defendant's back. (T. 1036). Officers also described the Defendant as nervous, with glassy dilated eyes. (T. 697, 699, 887, 1040). The officers handcuffed the Defendant to the railing on the front porch before beginning a search of the house. (T. 960). At the scene of the crime, Ms. Polston identified the Defendant as her assailant. (T. 964).

In searching the home, officers found grass clippings, a blue knit shirt, one of Ms. Bolt's stolen checkbooks, and loose change near Ms. Perry's body. (T. 945-46, 1032-33, 1364).

While in custody, the Defendant made several statements. Ms. Polston overheard the Defendant tell his mother "I'm gone this time mamma; I'm gone." (T. 571-72). While in route to the police station, Defendant repeatedly told an officer, "I killed her. There's nothing you can do about it, I'm crazy and I've got papers to prove it." (T. 885). While being brought into the station, the Defendant yelled "Kill me! Kill me! I'm a murderer! I'm a murderer!" (T. 613, 1022 1076). While in custody at the city jail, the Defendant admitted to his then-girlfriend Jane Hall that he burglarized Ms. Bolt's home. (T. 1530, 1541, 1543-1545).

An autopsy of Ms. Perry's corpse revealed a large amount of dried blood on her legs and the infliction of wounds on her lower body. (T. 581). The internal examination showed that an approximately three-centimeter perforation through the vaginal wall extended through the liver, the diaphragm, and into the right lung. This perforation caused a sudden and massive hemorrhaging into the right chest cavity which resulted in Ms. Perry's death. (T. 581-84). The use of a blunt pole instrument which was at least two feet long and no more than two inches in diameter with considerable, purposeful force was consistent with this trauma. (T. 583-84). What appeared to be blood and other fluid covered two to four feet of the rake's handle. (T. 1084).

The Georgia State Crime Lab found that a fingerprint taken from the metal sleeve of the rake head matched the Defendant's right ring finger. (T. 1517). Analysis found that the blood on the rake and one of the two blood stains on the Defendant's jeans were the same type as Ms. Perry's. (T. 1446, 1448-1451). Further

analysis found that the long blonde hairs found on the Defendant were consistent with Ms. Perry's hair and could have originated from her, and inconsistent with the Defendant's. (T. 1494). The crime lab further found the presence of blood on fingernail clippings taken from both the Defendant and Ms. Perry, but the amount was an insufficient to determine blood type. (T. 1465).

Law enforcement and a dentist made photographs of the Defendant's teeth and took bite mark impressions. They also created dental molds of the Defendant's teeth, as well as the victims, Ms. Perry and Ms. Polston's teeth. (T. 1161-68, 1197-1224). These photographs, molds and impressions were turned over to Dr. Richard Souviron who compared the potential bite marks of the three. (T. 1253-1254). Dr. Souviron found that while neither the Defendant nor Ms. Polston's teeth could have created the bite mark on the Defendant's arm, Ms. Perry's dentures could have. (T. 1254).

In total, the State presented testimony from 27 witnesses in its case in chief. Their testimony totaled over 830 pages in the transcript. Of this, only two dentists testified about bite mark analysis and the collection of evidence necessary to perform it. Their testimony totaled 86 pages. As measured by pages, 89.7% of the State's testimony did not involve bite mark analysis.

The state's closing argument totaled over 40 pages in the transcript and indicated that the state presented over 30 witnesses and tendered "some hundred and fifteen pieces of evidence." (T. 1896-99, 1935-74). Of the closing argument, which numbered approximately 1000 lines in the transcript, only 75 lines across

seven pages concerned the bite mark evidence presented by either the state or the defense. (T. 1935, 1946, 1969-73).

Summary of Hearing on
Extraordinary Motion for New Trial

Hearings for the Extraordinary Motion for New Trial were held on May 10, May 11, and August 8, 2022, the following people testified as follows:

Dr. Adam J. Freeman, a dentist and forensic odontologist who previously served as a diplomate of and in various senior leadership roles at, the American Board of Forensic Odontology (the "ABFO"), as well as holding senior leadership, and editor positions with other related groups and publications, testified on the unreliability of bite mark analysis. *May 10 – May 11, 2022, Extraordinary Motion for New Trial Transcript* ("*T2.*") at 19-23. Dr. Freeman stated that in 2009, the same year he became a board-certified diplomate with the ABFO, the National Academy of Sciences ("NAS") published a report called, *Strengthening Forensic Sciences in the United States: A Path Forward* which found that regarding bite mark evidence there was no scientific basis to bite mark evidence, that it was "fraught with bias", that skin was "not a good replicator of an injury," and that bite mark analysis could not reliably match an injury to a suspect. *T2.* at 30.

Following this report, as chair of the Bite Mark Committee at the ABFO, Dr. Freeman in an attempt to systemize bite mark analysis compiled a hundred cases with two specific photographs: 1) an orientation photograph to determine where on the body the mark was made, and 2) a close-up photo with a proper scale in place, so that the viewer can orient the size and shape of the mark. *T2.* at 32-35. These cases

were then sent out to board-certified forensic dentists who were asked first whether the photographs provided enough information to determine whether the injury was a bitemark and second, if there was enough information, was it a human bite mark, suggestive of a bite mark, or not a bite mark. *T2.* at 35-36. Dr. Freeman found a large disparity in the answers of the board-certified forensic dentists as to whether there was enough information, and as to the source of the injury. *T2.* at 37-38. In one case, Dr. Freeman included photos of an injury that Dr. Mincer sustained while opening a box that looked like a bite mark, in which there was a high level of agreement among the board-certified forensic dentists that the injury was a bite mark. *T2.* at 39. Based on these findings, Dr. Freeman conducted a second test with the" ten or so" "best and the brightest in the field" identified by the leadership within the ABFO, which resulted in an even higher level of disparity. *T2.* at 40-41.

Dr. Freeman presented these findings to the Texas Forensic Science Commission which instituted a moratorium on the use of bite mark evidence in criminal cases in Texas as a response until the ABFO could show that it could: 1) reliably diagnose human bite marks, 2) establish whether a bite mark was made by an adult or child, and 3) present error rates associated with the field and individual practitioners. *T2.* at 44-46.

Dr. Freeman conducted an analysis of the evidence in this case, first by reviewing the photograph of the bite mark evidence in isolation and then reviewing the trial transcripts of Dr. Souviron and Dr. Mincer. *T2.* at 49-51. Dr. Freeman found that the injury was incredibly poor quality as far as it relates to being able to

determine whether it was a bite mark as it lacked semicircle arches which could be identified as teeth marks. *T2.* at 49-51. Further, Dr. Freeman stated that Dr. Souviron was biased based on the information provided to him, as he was told the injury was a bite mark, and that it was caused by one of three people. *T2.* at 53. Lastly, while at trial Dr. Mincer testified that injury in this case was not an ideal bite mark and that Dr. Souviron was wrong, Dr. Freeman stated that since bite marks cannot be reliably diagnosed, Dr. Mincer's guess was no better than Dr. Souviron's, and that the science of bite mark evidence was not in question at the time of the trial. *T2.* at 66.

The Defendant also presented an affidavit of Dr. Richard Souviron, the expert witness who actually testified at trial. Souviron recanted his entire trial testimony stating a) that he no longer believes that Grace Perry's teeth, to the exclusion of all others, inflicted injury on Roger's arm; b) that he could not state with any degree of scientific reliability or certainty that Perry left any teeth marks in this case; and c) under current ABFO Standards and Guidelines, no forensic odontologist could offer testimony that Perry was "the biter". Sourviron, Affidavit ¶ 19, (September 15, 2020)(attached to Rogers "Extraordinary Motion for New Trial").

Dr. Eyal Aharoni, an associate professor of psychology at Georgia State University who teaches cognitive science, testified as an expert in cognitive bias as applied in forensic science at the May 10 hearing. *T2.* at 71, 78. Dr. Aharoni discussed how bias could affect the conclusions of forensic analysts, specifically pointing to studies that showed that, when exposed to opinions as to whether a

print is really a match, fingerprint examiners tended to agree with the prior judgment irrespective of the ground truth. *T2.* at 86-89. Dr. Aharoni identified that the NAS concluded that fingerprints, bite marks, and hair comparisons are all subjective disciplines and are the most at risk for error due to cognitive bias and that mitigating techniques for avoiding bias were not around or applied in the 1980s. *T2.* at 102-105. Regarding the evidence in this case, Dr. Aharoni stated that asking Dr. Souviron to make an impression of what they believed was a bite mark created a risk of bias in Dr. Souviron. *T2.* at 106.

Dr. Alicia Carriquiry, a professor and president's chair in statistics at Iowa State University, as well as director of the Center for Statistics and Applications in Forensic Evidence, testified at the May 11, 2022, hearing. *T2.* at 135-36. Dr. Carriquiry discussed how there is no objective measuring process in hair microscopy comparison, but that examiners look at some attributes of the samples and subjectively decide as to whether they are close enough to conclude a match, and that a 2002 study revealed a 12% error rate. *T2.* at 149, 152-54. Dr. Carriquiry further stated that without relevant population frequency data for the hair characteristics identified which match the suspect, the examiner cannot quantify the likelihood that a suspect was the source of a particular hair. *T2.* at 156-57. Regarding the testimony at trial, Dr. Carriquiry stated that Mr. Peterson should not have omitted the number of people that could have been the source of the hair found on the Defendant which was consistent with the victim's hair. *T2.* at 190-91.

Lastly, John Black, a forensic consultant and instructor, and expert in latent fingerprint examination with over twenty years of experience testified on August 8, 2022. *August 8, 2022, Extraordinary Motion for New Trial Transcript* ("*T3.*") at 6-8. Mr. Black stated that, despite an earlier belief to the contrary, there is an error rate in latent fingerprint examination, that two studies on the topic have produced error rates of .17% and about 3%, and that absolute certainty of identification is not possible with latent fingerprint. *T3.* at 17-19. In examining the fingerprint recovered on the rake, Mr. Black determined that the print was "on the cusp of the lowest quality that's still examinable," but identified seven minutiae on the latent print which corresponded to four minutiae on the Defendant's right ring finger print. *T2.* at 36-38. Due to the lower quality and relative shortage of details, Mr. Black found limited support for the latent print being from the same source as the Defendant's exemplar print, but the "weight of the evidence" prevented him from finding a more certain identification. *T2* at 39-40.

Standard of Review

Generally motions for new trial must be made within 30 days of the entry of judgment. OCGA § 5-5-40(a). However, in extraordinary circumstances, such motions may be made following the expiration of that period. *Id.* When a motion for new trial is made after 30 days, "some good reason must be shown why the motion was not made during such period" and it is within the trial court's discretion to judge such reason. See OCGA § 5-5-41(a).

"A new trial may be granted in any case where any material evidence, not merely cumulative or impeaching in its character but relating to new and material facts, is discovered by the applicant after the rendition of a verdict against him and is brought to the notice of the court within the time allowed by law for entertaining a motion for a new trial." Smith v. State, 315 Ga. 287, 292 (2022)(citing OCGA § 5-5-23; Mitchum v. State, 306 Ga. 878, 880-882 (2019)).

A new trial should be awarded when a defendant presents newly discovered evidence and demonstrates "(1) that the evidence has come to his knowledge since the trial; (2) that it was not owing to the want of due diligence that he did not acquire it sooner; (3) that it is so material that it would probably produce a different verdict; (4) that it is not cumulative only; (5) that the affidavit of the witness himself should be procured or its absence accounted for; and (6) that a new trial will not be granted if the only effect of the evidence will be to impeach the credit of a witness." Timberlake v. State, 246 Ga. 488, 491 (1980). Further, "implicit in these six requirements is that the newly discovered evidence must be admissible as evidence." *Id.* Failure to satisfy a single *Timberlake* requirement is sufficient to deny a motion for new trial. State v. Gates, 308 Ga. 238, 250 (2020).

Expert opinion evidence may from the basis of "newly discovered evidence" provided it relates to new and material facts and satisfies the *Timberlake* standard. See Smith v. State, 315 Ga. 287, 296-297 (2022).

Application of Law and Findings of Fact

The court finds that all the new evidence presented by Rogers in support of his extraordinary motion for new trial has come to his knowledge since the trial, as it all relies on developments in the respective forensic science fields that occurred well after his trial. The court further finds that it was not owning to the want of due diligence that Rogers did not acquire all this evidence sooner. Indeed, Rogers presented this evidence as soon as a scientific consensus regarding new forensic standards in the relative fields was reached and subsequently were applied to his specific case. The court further finds that the new evidence is not cumulative only.

However, Rogers motion must still fail because the new evidence related to the hair comparison, finger print analysis, and the role of cognitive bias only have the effect of impeaching the credit of the various experts that testified at trial. With regards to the bite mark evidence, the effect is not merely to impeach the witness. Instead, the court finds that the new evidence demonstrates that the trial testimony is so scientifically flawed as to be unjust, improper, and inadmissible under any standard of admissibility. However, in examining the case and the evidence presented as a whole, the court cannot say that, in its absence, a different verdict would probably have been produced.

Roger attacks the hair comparison by presenting expert evidence demonstrating a 12% false positive rate in matching two hairs. He further presents evidence that, in the absence of population frequency databases, assigning a probability or probative statement that two hairs were from the same source is

flawed and that examiners should not report a match that assigns any weight or probative value.

However, no such testimony was presented in this case. Rather, the examiner merely testified that the blond hairs found on Rogers back *could* have originated from Perry and that Rogers was excluded as a possible source for the hair. No probative value or weight was given. The examiner even further conceded that on occasions, albeit very rarely, he had *personally* observed hair from two different sources sharing the same microscopic characteristics, i.e. a false positive. On cross examination, he concedes that it is impossible to assign any percentages to hair examinations citing the same unknowns identified by Rogers's current experts. Further, Rogers presented no evidence that the process or standards for microscopic hair examination have changed. The "new" evidence Rogers presents with regards to hair examination does not indicate that the trial testimony was so flawed as to be excludable today but merely serves to under cut its weight and credibility. Thus, it only has the effect of impeachment. Under *Timberlake*, this cannot form the basis of a new trial.

In attacking the fingerprint identification, Rogers provides a new testimony from a latent print examiner. He again points to two new studies showing a relatively small false positive rate (.17% and 3% respectively). He further takes issue with use of the term match, in that new guidelines require more accurate and graded terminology for results. And again, Rogers leans on recent developments in the cognitive sciences for confirmation and other biases. However, once again,

Rogers is not attacking the entire field of fingerprint analysis as unfounded of "junk" science. Indeed, he even provides his own experts re-analysis of the same latent print image and known sample analyzed in the original trial – a re-analysis that found "limited support for same source" of the two prints. That characterization, rather than the term "match" for the same results, is from a conclusion scale which the report states is "used by [the analyzing expert] in accordance with proposed 2019 OSAC standards for reporting conclusions." What Rogers is essentially doing here is challenging the *strength* of the findings of the State's trial expert based on the quality of the prints for analysis and the wording of their conclusions. This is the very essence of impeachment. As such, it cannot form the basis for the grant of a new trial under *Timberlake*.

The same conclusion holds for the recent developments in the field of cognitive sciences surrounding confirmation bias and other relevant biases – that evidence speaks to the credibility and application of analysis, not the science underpinning the field.

Bitemark evidence presents a different conclusion, however. In support of his motion, Rogers presents evidence of recantation by the original expert and attacks the very science of bite mark matching i.e. matching a particular injury as a bite made from a certain set of teeth. The evidence presented was not merely that the bite mark expert in this case mistakenly attributed Rogers's injury to Ms. Perry's teeth, but rather, that under current American Board of Forensic Odontology

guidelines, no certified odontologist anywhere can match any bite mark on flesh to any particular set of teeth.

Based on the evidence presented, the court finds that the original testimony regarding the bite mark would be inadmissible under the *Frye*, *Harper*, or *Daubert* standards. This new evidence and new conclusion does not serve to merely impeach.

The question then remains: is the new evidence or the result of the exclusion of the old evidence so material such that a different verdict would probably have been rendered? The court concludes that a different verdict, while possible, is not probable. Rogers points to the statements made in closing arguments regarding the bite mark evidence as an indicator of the importance of that evidence.[3] As noted above, however, approximately 89.7% of the trial testimony did NOT involve bite marks and out of approximately 1000 lines of closing arguments by either side in the transcript, only 75 lines across seven pages concerned the bite mark evidence.

Setting aside the bite mark evidence, other evidence supports the jury's verdict of guilty. Rogers was apprehended at the victim's home, trying to climb over the back fence, shirtless and shoeless, clad in blue jeans and socks covered in grass clippings and blood. Rogers mowed three lawns the day of the murder. In addition to on his bloody socks, grass clippings were also found in burglarized neighbor Faye Bolt's house, and at the crime scene around Ms. Perry's body.

[3] He also points out the strong language used by the prosecutor in characterizing the hair and fingerprint evidence as matches. However in every case, jurors are instructed that "what the lawyers say is not evidence and should not be considered evidence". In this case, that instruction was repeated multiple times. See T. 1896, 1935, and 1981. Further, the defense raised no objections based on these statements during closing arguments.

Ms. Bolt reported four of her checkbooks and her daughter's coin bank were stolen in the burglary. Checkbooks belonging to her and loose change were spotted in Rogers's possession and also around Ms. Perry's body. While in the city jail, Rogers admitted to his girlfriend that he had burglarized Ms. Bolt's home.

Hairs inconsistent with Rogers's hair, but consistent with Ms. Perry's hair were found on Rogers's back. While Rogers was found shirtless in Ms. Perry's backyard, a blue knit shirt was found next to her body inside the house.

While Rogers did not confess and at times professed innocence, he also made incriminating statements, such as "I'm gone this time mamma; I'm gone;" "I killed her. There's nothing you can do about it, I'm crazy and I've got papers to prove it;" and "Kill me! Kill me! I'm a murderer! I'm a murderer!"

Finally, there is also a latent print on the murder weapon, which the G.B.I. characterized as matching Rogers's ring finger. Further, Rogers's own recently hired expert found some support, albeit limited, that the latent print on the murder weapon came from Rogers. The two other patterns he analyzed were not exclusionary of Rogers; rather, one was not high enough quality to be analyzed and the other was inconclusive.

Viewing that remaining evidence in totality, the court cannot say with any probability that a different verdict would have been reached in the absence of the bite mark evidence. Thus, *Timberlake's* third requirement is not satisfied and a new trial is not warranted.

Conclusion

Because, despite the new evidence produced, Rogers has not met his burden under the *Timberlake* standard, his motion for new trial is DENIED.

SO ORDERED this 5th day of February, 2025.

Bryan Thomas Johnson,
Judge, Superior Court,
Rome Judicial Circuit

IN THE SUPERIOR COURT OF FLOYD COUNTY
STATE OF GEORGIA

STATE OF GEORGIA,	)	
	)	
VS.	)	
	)	CRIMINAL ACTION FILE
	)	NO. 82CR21295-3
	)	
JAMES RANDALL ROGERS,	)	
	)	
DEFENDANT.	)	

CERTIFICATE OF SERVICE

The undersigned hereby certifies that I have served the forgoing *ORDER ON DEFENDANT'S EXTRAORDINARY MOTION FOR NEW TRIAL* to the following party by Electronic Mail as follows:

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This 5th day of FEBRUARY, 2025.

Brenda Dempsey
Assistant to Judge Bryan Thomas Johnson
Superior Courts
Rome Judicial Circuit