No. 25-

IN THE

Supreme Court of the United States

TONY VON CARRUTHERS,

Applicant,

—— V.——

STATE OF TENNESSEE,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE TENNESSEE SUPREME COURT

APPENDIX TO APPLICATION FOR A STAY OF EXECUTION AND EXPEDITED CONSIDERATION OF CERTIORARI PETITION

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DEATH PENALTY CASE
Case No. W1997-00097-SC-DDT-DD
EXECUTION SCHEDULED FOR May 21, 2026, at 10:00 a.m.

IN THE TENNESSEE SUPREME COURT
AT NASHVILLE

TONY VON CARRUTHERS,
Movant,

v.

STATE OF TENNESSEE,
Respondent.

MOTION FOR STAY OF EXECUTION

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INTRODUCTION

Plaintiff Tony Carruthers, a prisoner under sentence of death at Riverbend Correctional Facility in Nashville, Tennessee, is scheduled to be executed on May 21, 2026, for crimes he maintains he did not commit. No physical evidence has ever linked Mr. Carruthers to these crimes. Mr. Carruthers, in an attempt to prove his innocence before his execution, has litigation pending in both state and federal court seeking further analysis of evidence connected to the crime scenes. To ensure the State of Tennessee does not execute an innocent man or, at the least, allows due process to Mr. Carruthers in fighting for his life, this Court should grant a stay of execution to allow Mr. Carruthers to litigate his pending claims before his execution. Mr. Carruthers' requests for forensic testing are not made for delay but, instead, for truth and justice.

BACKGROUND

Mr. Carruthers was indicted, convicted, and sentenced to death for crimes that occurred in 1994. His conviction and death sentence rest entirely on circumstantial evidence—including testimony from a secretly paid government informant, several convicted felons, and a medical examiner who has since disavowed his trial testimony. In fact, the State's case against Mr. Carruthers was originally dismissed in General Sessions Court for lack of evidence. And Mr. Carruthers' codefendant, who was later offered a plea from

the State based on limited DNA testing of forensic evidence, told federal investigators in 2010 or 2011 that Mr. Carruthers did not commit these crimes.

In 2021, Mr. Carruthers requested fingerprint analysis under Tennessee's Post-Conviction Fingerprint Analysis Act of 2021 (the "**Fingerprint Act**"). That request was not denied until January 16, 2026—after Mr. Carruthers' execution had been set. Mr. Carruthers appealed the denial to the Court of Criminal Appeals, which affirmed the denial on April 16, 2026. Twelve days later, Mr. Carruthers filed a Complaint in federal court challenging Tennessee's procedures for reviewing claims brought under the Fingerprint Act.

Meanwhile, Mr. Carruthers has also sought DNA testing. He originally filed a motion for DNA analysis under Tennessee's Post-Conviction DNA Analysis Act of 2001 (the "**DNA Act**") (§§ 40-30-304, 40-30-305, Tenn. Code Ann.) in this Court on April 9, 2026, pursuant to Rule 12.4(E) because the motion and related litigation may "potentially affect" the timing of his execution. However, on April 30, 2026, this Court denied Mr. Carruthers' motion, stating:

> Mr. Carruthers' motion is not well-taken. As the State asserts in its response in opposition to the motion, the December 2025 amendment to Rule 12(4)(E) neither created a new procedural avenue nor granted this Court original jurisdiction to adjudicate an eleventh-hour DNA claim that was not timely pursued via the existing DNA Act. *See* Tenn. S. Ct. R. 12(4)(E) (2025) (authorizing the appointment of a special master when deemed necessary by

> the Court to conduct fact-finding in pending state collateral litigation that "potentially affect[s] the method or timing" of an impending execution). Accordingly, the motion is DENIED.

Mr. Carruthers maintains that the filing of his request in this Court was appropriate under the plain language of Rule 12(4)(E) and that, in doing so, he followed the appropriate and available state court remedy to seek this testing. After this Court's Order, Mr. Carruthers amended his Complaint in federal court to include claims related to the DNA Act and Rule 12(4)(E). As of this Motion, none of the Defendants in the federal action have responded to the Amended Complaint.

Nevertheless, in light of this Court's Order, Mr. Carruthers promptly filed a *Motion for DNA Testing* (the "**DNA Motion**") in the Shelby County Criminal Court on Monday, May 4. A true and correct copy of that motion is attached as **Exhibit 1**.[1] The State responded the next day. On May 10, Mr. Carruthers filed a *Motion for Order Compelling Disclosure* (the "**Motion to Compel**"), requesting that the Court require the State to disclose biological standards of Ronnie Irving so that they can be compared to existing evidence. A true and correct copy of the Motion to Compel is attached as **Exhibit 2**. The state responded the next day.

[1] For brevity, the appendix to the DNA Motion is omitted.

Also on May 11, the Criminal Court entered an Order denying Mr. Carruthers' DNA Motion (the "**DNA Order**").[2] A true and correct copy of the DNA Order is attached as **Exhibit 3**. The court conceded that Mr. Carruthers established prongs two and three of both the discretionary and mandatory provisions of the DNA Act—crediting his expert affidavit regarding suitability for testing (prong 2) and his assertions that the testing had not been previously conducted or requested (prong 3). (DNA Order, at 11, 14.) However, the court denied the DNA Motion, finding that Mr. Carruthers did not establish prongs one and four of the mandatory or discretionary provisions of the DNA Act. (*See generally* DNA Order.) As to prong one, the court concluded Mr. Carruthers failed to establish that he would not have been prosecuted, convicted, or received a more favorable sentence if there were exculpatory DNA results. (DNA Order, at 10-11, 14.) Finally, the court concluded that Mr. Carruthers failed to show that the DNA Motion was not filed for purposes of delay. (DNA Order, at 12, 14.)

The next day, the Criminal Court entered an Order denying Mr. Carruthers' Motion to Compel, writing:

> The Court finds that the motion is not well-taken. First, the Court notes that Mr. Carruthers does not cite any authority supporting his request. Second, the Court denied Mr. Carruthers' [DNA Motion] on May 11, 2026. As such, the Court does not have

[2] Although the DNA Order is dated May 11, it was not received by Mr. Carruthers' counsel until May 12.

> pending before it a matter in which the biological standard would be relevant. Finally, as referenced in his motion, Mr. Carruthers can seek to obtain the standard through the issuance of a subpoena.

A true and correct copy of that Order is attached as **Exhibit 4.**

The morning after receiving the Criminal Court's Orders—on May 13, just eight days before his scheduled execution—Mr. Carruthers filed a Notice of Appeal to the Tennessee Court of Criminal Appeals. A true and correct copy of the Notice of Appeal is attached as **Exhibit 5**. Mr. Carruthers has requested expedited briefing.

LEGAL STANDARD

This Court has the sole authority in Tennessee state court to issue a stay of execution. *See* Tenn. Sup. Ct. R. 12(4); *Barger v. Brock*, 535 S.W.2d 337, 340 (Tenn. 1976) (citing Tenn. Const. art. VI, § 1); *Black v. Strada*, 721 S.W.3d 223, 228 (Tenn. 2025). To obtain a stay of execution pending resolution of collateral litigation, Mr. Carruthers must "prove a likelihood of success on the merits of that [collateral] litigation." *State v. Irick*, 556 S.W.3d 686, 689 (Tenn. 2018) (citing Tenn. Sup. Ct. R. 12(4)(E)).

ARGUMENT

The U.S. Supreme Court has long recognized that death is different." *Gregg v. Georgia*, 428 U.S. 153, 188 (1976). It is the only irreversible punishment in the American criminal justice system. *See Woodson v. North*

Carolina, 428 U.S. 280, 305 (1976). "Death, in its finality, differs more from life imprisonment than a 100-year prison term differs from one of only a year or two. Because of that qualitative difference, there is a corresponding difference in the need for reliability in the determination that death is the appropriate punishment . . . ." *Id.* Here, Mr. Carruthers seeks just that—forensic testing to which he has been unconstitutionally denied that will determine whether his death sentence and execution are reliable.

Without a stay of execution, Mr. Carruthers will be permanently deprived of the opportunity to test readily available forensic evidence that could establish his innocence. Absent a stay, Tennessee will execute Mr. Carruthers despite holding evidence that could hold critical answers to the legitimacy and legality of Mr. Carruthers' convictions and sentence. Because Mr. Carruthers has a strong likelihood of success on his appeal, this Court should stay his May 21 execution to allow full litigation of his claims to ensure the State of Tennessee does not execute an innocent person.

I. The Criminal Court erred by failing to hold an evidentiary hearing on Mr. Carruthers' DNA Motion.

This Court has held in the past that post-conviction courts should hold an evidentiary hearing on claims raised under the Act. *See Griffin v. State*, 182 S.W.3d 795, 800 (Tenn. 2006) ("[F]indings of fact upon which rights are granted or denied are best made following an evidentiary hearing."). Here, the Criminal

Court denied Mr. Carruthers' DNA Motion in a matter of days without a hearing. In fact, as discussed below, the DNA Order indicates that a hearing would have been helpful to the court's analysis and perhaps would have corrected some of the court's misunderstandings of the case. Therefore, the Criminal Court erred by denying Mr. Carruthers' DNA Motion without an evidentiary hearing. On this basis alone, this Court should stay Mr. Carruthers' execution and remand to the Criminal Court for an evidentiary hearing.

II. The Criminal Court erred in denying Mr. Carruthers' DNA Motion.

A. The Criminal Court's conclusion that Mr. Carruthers did not meet prong one under either provision of the DNA Act is not supported by substantial evidence.

Contrary to the trial court's conclusion, Mr. Carruthers has shown a reasonable probability that he would not have been prosecuted, convicted, or sentenced to death if he had exculpatory DNA results. In reviewing a motion under the DNA Act, Tennessee courts must presume that the requested testing would be favorable to the movant. *See Powers v. State*, 343 S.W.3d 36, 58 (Tenn. 2011) ("For purposes of determining whether testing is warranted under section 40–30–304 of the Act, however, we must presume that testing results would prove exculpatory to the petitioner."). Had the Criminal Court

correctly applied this presumption and considered the evidence available, the outcome would have been different.

As discussed in detail in the DNA Motion (Ex. 1), the evidence Mr. Carruthers seeks to test is *directly* related to the crimes and almost certainly would contain the true perpetrators' DNA—the bindings used on the victims and scrapings from the victims' fingernails. Therefore, the DNA testing requested could produce several results that would affect the outcome in Mr. Carruthers' case. For example, a match on the evidence could directly link an alternative third suspect, Ronnie Irving, to these crimes. This, along with Mr. Montgomery's later statement implicating Mr. Irving, would give police a basis to name Irving a suspect for these crimes—and certainly a strong basis to change the outcome in Mr. Carruthers' case. Alternatively, the testing could reveal the same unknown male profile that was found on a blanket buried with the victims (which Mr. Carruthers has already been excluded from) offering further support of an alternative suspect.

As this Court has said previously, "DNA [has] changed the nature of criminal investigations . . . by making it possible to exculpate or inculpate suspects." *Powers*, 343 S.W.3d at 58 (citation omitted). That is exactly what could happen here. Therefore, as in *Powers*, "a reasonable probability exists not only that a jury would not have convicted the petitioner, but also that the State would have chosen not to prosecute him." *Id.*

In fact, reaching this conclusion does not require guesswork. The Criminal Court wholly ignored evidence that *confirms* the impact that exculpatory DNA would have had on Mr. Carruthers jury. One of Mr. Carruthers' jurors expressly concluded that "[a] DNA match with a different person would make [her] doubt Mr. Carruthers' guilt." (DNA Mot., at 21.) One less vote for guilt or one less vote for death would, of course, change the entire outcome of Mr. Carruthers' trial—establishing the first prong of § 40-30-304 and § 40-30-305.

Further, in denying the DNA Motion, the Criminal Court relied on information that is undisputably false. As explained in the DNA Motion, the State's theory at trial that the victims were buried alive was false. (DNA Mot., at 10-11.) The medical examiner who testified at Mr. Carruthers trial, Dr. O.C. Smith, has disavowed his trial testimony that the victims were buried alive. (DNA Mot., at 10.) Despite this evidence, the trial court inexplicably repeated this erroneous narrative in its DNA Order and used it as support for the conclusion that Mr. Carruthers did not meet prong one of the test under the DNA Act, stating: "The Court also finds that the number of victims and the opinion that the victims were buried alive would weigh heavily in favor of death sentences." (DNA Order, at 13). This conclusion is not based on substantial evidence but, instead, is wholly unsupported.

The Criminal Court's reliance on this false premise to find that Mr. Carruthers did not meet prong one taints its entire analysis. As explained in the DNA Motion, a juror *from Mr. Carruthers' case* acknowledged the importance of the State's argument that the victims were buried alive, stating, "I recently learned that the victims were not buried alive . . . . Had I known the victims were not buried alive, I would not have voted for a death sentence." (DNA Mot., at 22.) Therefore, contrary to the Criminal Court's conclusion, the victims were *not* buried alive and there *is* a "reasonable probability" that Mr. Carruthers' case would have turned out differently had this DNA been tested.

Accordingly, the Criminal Court's conclusion in denying Mr. Carruthers' DNA Motion that Mr. Carruthers did not establish prong one of the test under the DNA Act was not based on substantial evidence.

B. The trial court's conclusion that Mr. Carruthers has not established that his Motion was not filed for purposes of delay is not supported by substantial evidence.

The Criminal Court's Order acknowledges that Mr. Carruthers filed his first DNA Motion on April 9, 2026, in this Court. (DNA Order, at 12, n.4.) However, the Court stated that Mr. Carruthers' filing the prior motion in this Court did not "impact" its analysis as to prong four. *Id.* It should.

Mr. Carruthers did not delay filing his DNA Motion in the Criminal Court (or in this Court). Within two business days of receiving this Court's

Order, Mr. Carruthers' counsel filed Mr. Carruthers' DNA Motion in the Criminal Court and requested expedited resolution.[3] The State responded within 24 hours. The trial court then took no action for another week. Rather than delay, Mr. Carruthers continued to diligently seek forensic testing to prove his innocence before he is executed.

Mr. Carruthers, through counsel, has been diligently seeking DNA testing for nearly five weeks now, being bounced around between the Tennessee courts in search of answers. With his execution now eight days away, Mr. Carruthers asks this Court to issue a stay of execution so that his meritorious DNA claims will not be mooted by his execution.

II. The Criminal Court's denial of Mr. Carruthers' Motion to Compel violates due process.

Mr. Carruthers has a liberty interest in utilizing state procedures to demonstrate his innocence and/or seek a reduction of his sentence. *See, e.g*, *Gutierrez v. Saenz*, 606 U.S. 305, 314 (2025); *Pichiorri v. Burghes*, 162 F.4th 745, 753 (6th Cir. 2025) (recognizing that state law can give rise to a liberty interest for a prisoner in obtaining DNA evidence).

With the DNA Act, the State of Tennessee created a statutory procedure through which convicted persons can obtain post-conviction DNA and

[3] Had the State agreed to the DNA testing, it would have been completed in approximately two weeks—even before this Court issued its denial on Mr. Carruthers' original motion.

fingerprint testing—and then utilize exculpatory results from that testing to secure relief from their convictions, including post-conviction relief, a new trial, or executive clemency. Tenn. Code Ann. § 40-30-404, § 40-30-405 (Fingerprint Act provisions); Tenn. Code Ann. § 40-30-117 (Reopen Post-Conviction Proceedings); Tenn. Code Ann. § 40-27-101(Governor's Clemency Authority). The Act also "allows a post-conviction court, 'in its discretion, [to] make such other orders as may be appropriate.'" *Powers v. State*, 343 S.W.3d 36, 48-49 (Tenn. 2011) (quoting Tenn. Code Ann. § 40–30–311).

Here, the Criminal Court denied the Motion to Compel after denying the DNA Motion—merely so that it could say "the Court does not have pending before it a matter in which the biological standard would be relevant." (Ex. 4.) Just twenty-four hours prior, the Court *did* have "a matter in which the biological standard would be relevant" pending before it. Prisoners trying to prove their innocence ahead of their execution should not be subjected to this type of procedural maneuvering by the very courts that hold the power to assist in their final days. Mr. Carruthers was not given adequate due process in the Criminal Court and, therefore, the Criminal Court's Orders are unconstitutional.

WHEREFORE, Plaintiff Tony Carruthers respectfully requests that this Court enter an order: (1) granting this Motion, (2) staying his execution currently scheduled for May 21, 2026, pending resolution of his appeal pending

in the Criminal Court of Appeals, and (3) granting all other relief the Court deems appropriate.

Respectfully submitted this the 13th day of May, 2026.

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CERTIFICATE OF SERVICE

I, Lucas Cameron-Vaughn, Esq., certify that I have forwarded a true and exact copy of this Motion for Stay of Execution by electronic mail to all parties and/or their attorneys in this case in accordance with Rule 20 of the Tennessee Rules of Appellate Procedure on May 13, 2026.

/s/ *Lucas Cameron-Vaughn*
Lucas Cameron-Vaughn, Esq.

Exhibit “1”

IN THE CRIMINAL COURT OF TENNESSEE
FOR THE THIRTIETH JUDICIAL DISTRICT AT MEMPHIS
DIVISION V

TONY CARRUTHERS,
Petitioner,

Nos. 94-02797-99, 95-11129
CAPITAL CASE
Execution Scheduled May 21, 2026

vs.

STATE OF TENNESSEE,
Respondent.

MOTION FOR DNA TESTING PURSUANT TO THE TENNESSEE POST-CONVICTION DNA ANALYSIS ACT OF 2001

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STATEMENT OF THE CASE

The State of Tennessee (Respondent) is on the verge of executing Petitioner Tony Carruthers without testing available, probative, and untested physical evidence that could confirm Mr. Carruthers' innocence, which he has maintained for three decades.[1] Through this Motion, Mr. Carruthers seeks access to forensic evidence collected in this case for DNA testing under the Tennessee Post-Conviction DNA Analysis Act of 2001 (the "**DNA Act**") (§§ 40-30-304, 40-30-305, Tenn. Code Ann.).

Mr. Carruthers originally filed a motion for DNA testing under the DNA Act in the Tennessee Supreme Court (the "**TSC**"), on April 9, 2026, pursuant to Rule 12.4(E) because the motion and related litigation may "potentially affect" the timing of his execution scheduled for May 21. However, on April 30, 2026, the TSC issued a three-sentence denial of Mr. Carruthers' motion, stating:

> Mr. Carruthers' motion is not well-taken. As the State asserts in its response in opposition to the motion, the December 2025 amendment to Rule 12(4)(E) neither created a new procedural avenue nor granted this Court original jurisdiction to adjudicate an eleventh-hour DNA claim that was not timely pursued via the existing DNA Act. *See* Tenn. S. Ct. R. 12(4)(E) (2025) (authorizing the appointment of a special master when deemed necessary by the Court to conduct fact-finding in pending state collateral litigation that "potentially affect[s] the method or timing" of an impending execution). Accordingly, the motion is DENIED.

A true and correct copy of the Order is attached as **Exhibit 2**.

Despite the TSC's Order, Mr. Carruthers maintains that filing his request in the TSC was appropriate under Rule 12(4)(E) and that, in doing so, he followed the appropriate and available state court remedy to seek this testing. Nevertheless, in light of the TSC's Order, Mr. Carruthers now files this request in this Court and asks for an expedited ruling. This Court can and should grant Mr. Carruthers' request without the need for an evidentiary hearing. However, should this Court determine

[1] A true and correct copy of the Order setting Mr. Carruthers' execution is attached as **Exhibit 1**.

that there are factual matters of dispute, Mr. Carruthers requests an evidentiary hearing to address any factual issues.

STATEMENT OF THE FACTS

I. Mr. Carruthers' conviction and death sentence are based on circumstantial evidence, including the testimony of convicted felons and paid informants.

On the night of February 24, 1994, Marcellos "Cello" Anderson, his mother Delois Anderson, and Frederick Tucker disappeared. *State v. Carruthers*, 35 S.W.3d 516, 524 (Tenn. 2000). After Ms. Anderson was reported missing, on March 3, 1994, the victims' bodies were found in a grave in a Memphis cemetery. *Id.* Their bodies were on top of one another, underneath a piece of plywood that was underneath a casket. Marcellos Anderson's hands were bound behind his back with cloth ties. Frederick Tucker was also bound with cloth ties at his hands and feet. Delois Anderson had two red socks knotted together wrapped around her neck, and one arm was tied behind her back with a pair of knotted pantyhose. (1996 Trial Tr., Vol. 13, pp. 1864-67, attached as **Exhibit 3**.)

The State believed Ms. Anderson's home was the scene of the kidnapping because Ms. Anderson did not take her purse with her, someone answered the phone when her niece telephoned the residence but failed to speak, and a half-eaten meal was found in Ms. Anderson's bedroom. Police collected multiple latent prints suitable for comparison from Ms. Anderson's house, including prints from the doorknobs and the phone receiver.

The State's case against Mr. Carruthers was originally dismissed in General Sessions Court for lack of evidence. (Docket and news article showing dismissal of charges, attached as **Exhibit 4**). The State was only able to secure an indictment and proceed with its case against Mr. Carruthers after it enlisted the services of a career snitch named Alfredo Shaw, who testified to Mr. Carruthers' purported confession. (Crimestoppers Report (April 3, 1994), attached as **Exhibit 5**.)

In the words of the investigating officer, without Shaw's "information and his testimony in Grand Jury Carruthers would have been released." *Id.* A true and correct copy of Shaw's grand jury testimony is attached as **Exhibit 6**.

Indeed, the State's original theory of prosecution was based on Mr. Shaw's grand jury testimony that two brothers, Jerry and Terry Durham, hired Mr. Carruthers to commit the murders for $100,000 and a kilogram of cocaine. (*See* Ex. 6.) But before trial, Mr. Shaw recanted his grand jury testimony in a TV news statement where he confessed that the police paid him to testify against Mr. Carruthers. *See* Resp. Mot. to Set Execution Date, *State v. Carruthers*, No. W1997-00097-SC-DDT-DD, (Dec. 30, 2019), attached as **Exhibit 7**, at Ex. 5 (Alfredo Shaw, Interview with Channel 13 News (Fox 13), in Memphis, TN. (Feb. 28, 1996) (transcript)) & Ex. 9 (video).

The State's ultimate theory at trial was that Mr. Carruthers, along with his co-defendants, James and Jonathan Montgomery kidnapped Marcellos Anderson to rob him. *Carruthers*, 35 S.W.3d at 524. Marcellos Anderson was "heavily involved in the drug trade" and known to carry large amounts of cash and valuables. *Id.* It was Jonathan Montgomery who led authorities to the bodies in the grave, which led police to the involvement of his brother James. Jonathan was found hanged in his cell prior to trial. *Id.* at 524 n.2. Jonthan gave inconsistent statements to police from the beginning, but after several unrecorded interrogation breaks and across multiple days, Jonthan ultimately told police that he, James, and Mr. Carruthers were present at the gravesite when the victims were killed, but that neither James nor Mr. Carruthers killed anyone. Instead, Jonathan told police it was a man named Bobby Wilson who was the actual killer.[2] (*See* Jonathan Montgomery Statements, attached as **Exhibit 8**.)

[2] At a motion to suppress Jonathan Montogmery's statements, Memphis Police Sgt. Roleson testified that Mr. Wilson was wanted for a different Memphis homicide, the January 19, 1994

No forensic evidence linked Mr. Carruthers to the crime. *See Carruthers*, 35 S.W.3d at 523-72. There were no eyewitnesses to the murder. *Id.* The fingerprints collected from Ms. Anderson's house, which included six unidentified prints, excluded Mr. Carruthers and Mr. Montgomery.[3]

At trial, the prosecution's case rested almost entirely on the testimony of convicted felons and paid informants. Jimmy Lee Maze Jr., "a convicted felon," testified that he had received two letters from Mr. Carruthers about a "master plan" to "make those streets pay me." *Carruthers*, 35 S.W.3d at 524. Mr. Maze then recounted a conversation he purportedly had with Mr. Carruthers discussing plans for the kidnapping. *Id.* Charles Ray Smith testified that Mr. Carruthers had commented to him, while working together on a prison work detail in a cemetery, that hiding a body under the grave of another would be a good way to dispose of a corpse. *Id.*

Finally, Mr. Shaw testified that Mr. Carruthers confessed to him. *Id.* at 528-29. Mr. Shaw's testimony was the only putative "confession" in this case. While Shaw is a career snitch, the jury did not hear that at trial (as discussed more below).

The State's remaining evidence against Mr. Carruthers was circumstantial at best. For example, Nakeita Shaw testified that she witnessed Mr. Carruthers and James Montgomery at her home on the night of the kidnappings. *Id.* at 526. Without more, however, this testimony did little

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shooting death of Marlin Webb and that he believed Wilson was on the run at the time of the murders. (Motion to Suppress Transcript (Dec. 15, 1994, attached as **Exhibit 9**, at 39.)

[3]In 2022, the Memphis Police Department ran the unidentified prints in AFIS. (*See* Latent Fingerprint Report (Jan. 24, 2022), attached as **Exhibit 10**.) One print on the northwest bedroom door matched Ms. Anderson's niece, but there still remain six unidentified prints.

In addition to requesting testing under the DNA Act, Mr. Carruthers also requested testing under Tennessee's Post-Conviction Fingerprint Analysis Act of 2021. After the state court denied that claim, Mr. Carruthers filed a lawsuit in federal court related to that denial. Those claims remain pending in *Carruthers v. Skrmetti, et al.*, No. 3:26-cv-00540 (M.D. Tenn.).

to inculpate Mr. Carruthers; it has never been asserted that Mr. Carruthers was unacquainted with the Montgomery brothers. Likewise, Chris Hines' testimony that Jonathan Montgomery beeped him and said "[m]an, a n——r got them folks," apparently meaning "Cello and them" (*id.* at 526), also does not inculpate Mr. Carruthers but only shows that Jonathan Montgomery had knowledge of the murders, which he clearly did since he led police to the bodies.

Mr. Carruthers was forced to represent himself at trial. The jury never heard any evidence about the fingerprints from Ms. Anderson's house—either that there were unidentified prints or that Mr. Carruthers and Mr. Montgomery were excluded from the prints.

Both James Montgomery and Mr. Carruthers were convicted and sentenced to death. On direct appeal, the Tennessee Supreme Court found that James Montgomery was so prejudiced by Mr. Carruthers' forced self-representation that Mr. Montgomery was entitled to a new trial. *State v. Carruthers*, 35 S.W.3d 516, 553-54 (Tenn. 2000) (reversing Montgomery's conviction and death sentence because "the record demonstrates that Montgomery was severely prejudiced by Carruthers' self-representation").

II. In the decades since Mr. Carruthers' conviction and death sentence, the circumstantial evidence against him at trial has been further undermined.

A. Testing conducted on significant physical evidence prior to James Montgomery's re-trial affirmatively excluded Mr. Carruthers.

As part of his re-trial proceedings, Mr. Montgomery sought forensic testing on multiple pieces of physical evidence collected from both crime scenes. Testing revealed critical information. (Aff. Alan Keel (April 6, 2026), attached as **Exhibit 11**, at Attachment 2 [hereinafter Keel Aff.].)

First, the testing did not reveal any DNA matches to Mr. Montgomery or Mr. Carruthers. A majority of the samples were either too small to produce a profile under 2003 technology, were inconclusive, or matched the victims. However, there was one robust male profile on a white

blanket that was buried with the victims. *Id*. Mr. Carruthers, Mr. Montgomery, and the male victims were excluded as a source of the DNA. The unknown male profile was suitable for upload into the Combined DNA Index System (CODIS) database. The last report Mr. Carruthers obtained, through a request under James Montgomery's case, was in 2019 and indicated that there were no hits in CODIS. (2019 CODIS Report, attached as **Exhibit 12**.)[4] No additional DNA testing has occurred since 2003, and to the best of Mr. Carruthers' knowledge, the unknown male profile has not been analyzed or compared since 2019.

B. For decades, the State concealed Alfredo Shaw's status as a paid government informant.

For thirty years, the State withheld information from Mr. Carruthers and his defense team about Alfredo Shaw's status as a paid government informant. It did so despite repeated requests from Mr. Carruthers and his team for exculpatory and impeachment materials. The State's concealment of Mr. Shaw's status began as soon as Mr. Carruthers' prosecution commenced and continued in the years following his trial, as evidenced by the State's repeated failures to disclose any information about Mr. Shaw's history as an informant. *See, e.g.*, Defense Suppl. Mot. Disc. & Inspection (June 8, 1994), attached as **Exhibit 14**; State's Resp. Mot. Discovery (Sept. 29, 1994), attached as **Exhibit 15**; Mot. Disc. Impeaching Info. (Jan. 31, 1996), attached as **Exhibit 16**; Resp. State Mot. Disc. Impeaching Info. (Sept. 29, 1994), attached as **Exhibit 17**.

And before Mr. Carruthers' trial, Mr. Shaw went to the media and admitted that his grand jury testimony was false and given only as a result of pressure and payment from the State Attorney

[4] In the wake of the release of the DNA results, the State offered and Mr. Montgomery accepted an *Alford* plea to a reduced charge of three counts of second-degree murder. *See North Carolina v. Alford*, 400 U.S. 25 (1970). Mr. Montgomery was sentenced to concurrent 27-year sentences on each count and was released in 2016 (James Montgomery Plea Form and Transcript, attached as **Exhibit 13**.)

and law enforcement. *See* Ex. 6, at Ex. 5 (Alfredo Shaw, Interview with Channel 13 News (Fox 13), in Memphis, TN. (Feb. 28, 1996) (transcript)) & Ex. 9 (video). Not only would Mr. Shaw's position as an informant have gone to his bias, but his recantation directly undermines the State's case against Mr. Carruthers.

At trial, Mr. Carruthers, forced to act as his own counsel, called Mr. Shaw to the stand to admit his recantation from the media interview. Before Mr. Shaw took the stand, the trial court called in Mr. Shaw's counsel and, in open court, cautioned that if Mr. Shaw repeated his recantation then the State "plan[ned] to seek indictments for aggravated perjury in both . . . instances." (1996 Trial Tr., Vol. 14, p. 2128, attached as **Exhibit 18**.) After meeting with his client, Mr. Shaw's lawyer reported that Mr. Shaw would "testify that what he has testified before was all true and correct." *Id*. at 2136. Indeed, on the stand, Mr. Shaw repeated for the jury the "confession" that Mr. Carruthers purportedly gave him—which he had previously recanted to the media. (1996 Trial Tr., Vol. 15, pp. 2174-78, attached as **Exhibit 19**.) Mr. Carruthers attempted to ask if Mr. Shaw was a paid informant, but the prosecutor successfully objected and kept the jury from learning the truth. *Id*. at 2254.

In post-conviction, through counsel, Mr. Carruthers continued his quest to prove that Mr. Shaw was a paid informant for the State. Attached as **Composite Exhibit 20** are three letters from Mr. Carruthers' post-conviction counsel, Charles R. Ray, to John W. Campbell, Assistant District Attorney in August 2002 requesting such information. On September 12, 2002, Mr. Carruthers, through post-conviction counsel, filed a *Motion to Compel the State to Reveal All Agreements, Renumeration, Or Other Consideration Given To The State's Witnesses* (attached as **Exhibit 21**). In its response (attached as **Exhibit 22**), the State denied giving Mr. Shaw a deal but parsed carefully its denial of payment to Mr. Shaw:

> [T]he State again submits that Shaw was not given any deal in exchange for his testimony. Furthermore, the State submits that Shaw was not a 'paid government agent' planted in the jail to obtain evidence against petitioner.

(Ex. 22, at 1.)

Concerned regarding the State's equivocations, on November 25, 2002, post-conviction counsel filed a second Motion to Compel specifically as it related to Mr. Shaw (attached as **Exhibit 23**). The post-conviction court ordered that the State file a written response "divulging whether Alfredo Shaw was or was not a paid government agent for either the county, state, or federal government during the time period he had conversations with petitioner in the Shelby County Jail." (Order (Dec. 3, 2002), attached as **Exhibit 24**, at 1.) The State's response filed December 10, 2002 (attached as **Exhibit 25**), asserted that Mr. Shaw "was not a 'paid government agent' planted in the jail to get a statement from the petitioner. . . . The State does not understand why another Response is necessary." (Ex. 25.) The State doubled down on this answer in a January 7, 2003, letter from Mr. Campbell to Mr. Ray (attached as **Exhibit 26**):

> I thought this matter was resolved by my earlier response. But just in case [sic], **I have talked to the prosecutors who tried your client and neither is aware of any situation where Alfredo Shaw acted as a paid informant for anybody. . . I do not know how much clearer I can be on this topic.**

(Ex. 26 (emphasis added).)

Over the ensuing decades, Mr. Carruthers' counsel continued to request documents related to Mr. Shaw's work as a confidential informant through Tennessee Public Records requests, Freedom of Information Act requests directed to federal law enforcement agencies, and through discovery in federal habeas proceedings. Copies of these requests are attached as **Composite Exhibit 27**.

Finally, on May 9, 2024—almost three decades after Mr. Carruthers' trial—the Shelby County Criminal Court, Division V, ordered the Memphis Police Department to provide

information regarding Mr. Shaw's employment as a confidential informant to the Shelby County District Attorney's Justice Review Unit. (Agreed Order Directing Memphis Police Dep't Release Data Regarding Alfredo Shaw Shelby Cnty. Just. Rev. Unit (May 9, 2024), attached as **Exhibit 28**.) On August 6, 2024, Assistant District Attorney Kevin Rardin provided Mr. Carruthers' counsel with more than 20 pages of information regarding Mr. Shaw's employment as a confidential informant (attached as **Exhibit 29**). The documents included signed confidential agreements between Mr. Shaw and law enforcement dating back to mid-1980s and ledgers of payments to Mr. Shaw continuing until at least 2003. (*See generally* Ex. 29.)

C. The medical examiner's trial testimony that the victims were buried alive has been proven false.

At Mr. Carruthers' trial, medical examiner Dr. O.C. Smith testified that the victims were buried alive. *Carruthers*, 35 S.W.3d at 527. The State then used this narrative in its penalty phase arguments to emphasize the purported "wicked" and "atrocious" nature of the crime. A true and correct copy of an excerpt of the prosecutor's penalty phase argument is attached as **Exhibit 30**.

However, there was no scientific basis for the conclusion that the victims were buried alive. (Testimony of Dr. Cleland Blake & Dr. George Nichols, attached as **Exhibit 31** (post-conviction expert testimony that there was no scientific basis for Dr. Smith's trial testimony).) Even Dr. Smith himself has subsequently disavowed his own testimony from Mr. Carruthers' trial. (Aff. Dr. O.C. Smith (April 3, 2007), attached as **Exhibit 32** ("I will no longer sustain an opinion, as I did in my original testimony, that to a reasonable degree of medical certainty, the victims were in fact alive at the time they were buried beneath the coffin.").) Yet, the State perpetuates this false narrative—to this day. *See* State's Br., *Carruthers v. State*, No. W2026-00226-CCA-R3-PD (Tenn. Crim.

App. Mar. 23, 2026), at 9 ("[T]rial testimony established that they had all died of injuries associated with being buried alive.").[5]

D. In 2010, James Montgomery gave a statement exonerating Mr. Carruthers and inculpating Ronnie Irving.

In 2010, James Montgomery, while serving his reduced sentence (*see supra* note 4), gave a statement to an investigator with the Capital Habeas Unit that he kidnapped two of the victims and dispatched Ronnie "Eyeball" Irving to kidnap Ms. Anderson. He confirmed to the investigator that Mr. Carruthers was not involved in the kidnapping or the murders. Mr. Irving was murdered in 2002, and his fingerprints and a DNA sample are on file at the medical examiner's office. To date, the unidentified physical evidence—the latent fingerprints or unknown male DNA profile—has not been compared to Mr. Irving. *See supra* note 3.

Mr. Carruthers has tried to obtain DNA testing throughout the three decades since his trial. In state post-conviction, Mr. Carruthers argued that his counsel was ineffective during pre-trial litigation for failing to retain a DNA expert, who would have testified: (1) DNA was available on blood found on "blanket-like cloth"; and (2) the DNA did not belong to the victim or any of the three co-defendants. *See generally Carruthers v. State*, No. W2006-00376-CCA-R3PD, 2007 WL 4355481 (Tenn. Crim. App. Dec. 12, 2007). At an evidentiary hearing, Mr. Carruthers presented expert testimony:

> Todd Bille, accepted as an expert in forensic DNA analysis, testified that, in November 2002, he was hired by codefendant James Montgomery to serve as

[5] To this day, public perception of this case is shaped by the mistaken belief that Mr. Carruthers buried the victims alive. *See, e.g.*, Evan Mealins, *Tennessee Supreme Court sets 2026 execution dates for Christa Pika, three others*, The Tennessean (Oct. 1, 2025), https://perma.cc/VG3H-KZ72 (claiming Carruthers was convicted of "burying alive three people"); WREG Staff, *Memphis man convicted of triple murder goes from death row to freedom*, WREG (Sept. 26, 2016), https://wreg.com/news/memphis-man-convicted-of-triple-murder-goes-from-death-row-to-freedom/ (recounting co-defendant Montgomery's release from prison and conviction for burying the victims alive).

> an expert in his case. Bille was asked to examine evidence to determine if there could be potential biological fluids and whether DNA analysis could be performed. Bille examined a total of nineteen items, including Marcellos Anderson's socks, pants, shirt, underwear and belt; Tucker's socks, jeans, belt, shirt, and boots; Delois Anderson's dress and underwear; an unidentified red sock; ties or bindings from Tucker; and a section of a white cloth blanket. From the testing done on these items, Bille prepared a summary report in June 2003 and a final report on March 17, 2005.
>
> Bille reported that samples from the white blanket did not match the DNA of any of the victims, the petitioner, or the codefendants. Bille commented that the tests performed on the white blanket could not have been performed at the time of the trial, but similar tests could have been performed with the same results.

Id. at *33.

The post-conviction court Mr. Carruthers' claim, concluding that this testimony and the DNA results "are only very minimally helpful to the petition. In no ways does this evidence negate all other proof in the case and it is rank speculation to assume that this indicates that a third party might have committed this crime." *Id.* at *38.

Mr. Carruthers next moved *pro se* in 2011 to reopen state post-conviction proceedings under the DNA Act, seeking testing of the vaginal swab and blanket from trial, using a pre-printed form. Mr. Carruthers sought testing under only the mandatory provisions of the DNA Act. § 40-30-304. Tenn. Code Ann. The State opposed the testing, arguing that while the DNA sample from the blanket did not match any of the codefendants, it had been uploaded to CODIS as of April 2012 and there were no hits.

The post-conviction court dismissed Mr. Carruthers' motion, relying on the 2007 ruling in his post-conviction case that the DNA testing "has already occurred, and the results are only minimally helpful to Petitioner." *Carruthers v. State*, No. W2012–01473–CCA–R3–PD, 2013 WL 3968787, at *3 (Tenn. Crim. App. Aug. 1, 2013) (quoting *Carruthers*, 2007 WL 4355481, at *38). The Court ruled that Mr. Carruthers did not meet the statute's requirement for mandatory testing because a "new CODIS match might identify the depositor of the biological material on the blanket

but could not prove that it was deposited at a time contemporaneous with the crime for which Petitioner was convicted." *Id*. at *4.

III. Pursuant to the DNA Act, Mr. Carruthers seeks testing of several pieces of evidence.

A. Items that Have Never Been Tested

First, Mr. Carruthers seeks the DNA testing of items, which are still in existence and which have never been subjected to DNA testing: (1) fingernail scrapings from Marcellos Anderson, Frederick Tucker, and Delois Anderson;[6] (2) the bindings of Marcellos Anderson;[7] and (3) the bindings of Delois Anderson, which include knotted pantyhose around her hand and the red socks knotted around her neck.[8] Criminalist and DNA expert Alan Keel concludes that it is likely each of these items "bear transfer biology from whomever bound the victims." (Keel Aff., at 6.) New advances in DNA testing and analysis create a likelihood that testing will provide investigative leads to answers far beyond the unanswered question of whose blood was on the blanket. *Id.* at 2.

Mr. Keel has conducted DNA testing in hundreds of cases in over 36 states and has reviewed the records related to the prior testing in this case conducted by the Tennessee Bureau of Investigation and Bode Technology Group. *Id.* at 1-2. Because of revolutionary advances in forensic DNA testing, analysis today can lead to highly discriminating DNA profiles from

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[6] These are in the custody of the Shelby County Medical Examiner.

[7] These are packaged, sealed, and in the custody of the Shelby County Criminal Court Clerk under evidence number E-C94-586;15305 ("Marcellos Anderson, cloth ties, knotted").

[8] These are separately packaged, sealed, and in the custody of the Shelby County Criminal Court Clerk under evidence number C-C94-588;15305 and 15305a ("Delores (sic) Anderson knotted pantyhose", "dirty red sock", and "bloody red sock"). The red sock listed as "bloody" (15305a) was tested in 2003 and revealed a weak unknown profile from a bloodstain, but it appears that the mate—listed as "dirty" (15305)—was never tested. Both socks appeared to be knotted together around her neck.

common sources across different items of evidence, including sources not previously considered suitable for testing. *Id*. at 2. Mr. Keel concludes that the bindings should be sampled for transfer or touch biology from the assailant in light of current technology, explaining:

> This approach could also produce a DNA profile or profiles common to more than one item and common to more than one victim, and/or be redundant to the blood stain profile from the #16 blanket. Such a finding would produce additional investigative leads (e.g. CODIS/GG), or minimally, support the relevance of the foreign blood previously discovered on the #16 blanket as originating from an assailant.

Id. at 6. In other words, the analysis could provide a lead to the true perpetrator's profile. Additionally, if the male DNA profile on the bindings matched the unidentified profile from the blood on the blanket, it would support the inference that the blood was deposited at the time of the murders.

Mr. Keel also explains the importance of testing the fingernail scrapings:

> Fingernails have long been recognized as likely bearing assailant biology in cases with violent/intimate contact, and with today's technology are now routinely tested. It is likely that one or more of the victims struggled with the perpetrator(s) during the assault. I have personally examined fingernail evidence in over 50 cases. My experience attests and the scientific literature documents that most people sampled at random do not have foreign biology under their fingernails, and that foreign biology intentionally introduced to the fingernails of living subjects in controlled studies is short lived. Hence, foreign biology associated with the fingernails of homicide victims is usually relevant to the crime. Biology transferred from a person to another person's fingernails is rarely self-evident and often is not from blood. Any available fingernail evidence specimens from any or all of the victims should be tested in a contemporary investigation.

Id. at 7.

Assuming a profile is obtained from any or all of these items, Mr. Carruthers seeks to compare that profile to the victims for exclusionary purposes, to himself, to co-defendant James Montgomery, to Ronnie Irving, and to upload any unmatched profile to CODIS.

B. Further Testing of Previously Tested Items

Mr. Carruthers also seeks to compare the unknown male profile that was found on a white blanket in the grave with the victims.[9] As noted above, this profile was already compared to Mr. Carruthers, co-defendant James Montgomery, and the victims and uploaded to CODIS. (Ex. 8.) Mr. Carruthers' counsel was provided an update in 2019 that there have been no hits. Counsel has not received a more recent update in the seven years since.

In other words, the testing of this evidence is incomplete. Mr. Carruthers seeks to have that unknown male profile re-run in CODIS and compared to Mr. Irving.

SUMMARY OF THE ARGUMENT

Mr. Carruthers' case shares many of the hallmarks of other wrongful conviction cases—a conviction resting primarily on the testimony of snitches and informants and otherwise on circumstantial evidence. *See, e.g.*, *DPI Analysis: Causes of Wrongful Convictions*, Death Penalty Info. Ctr. (May 31, 2017), https://deathpenaltyinfo.org/stories/dpic-analysis-causes-of-wrongful-convictions (reporting official misconduct as the leading cause for wrongful capital convictions); *Wrongful Convictions*, Equal Just. Initiative, https://eji.org/issues/wrongful-convictions/ (last visited May 3, 2026) ("More than half of wrongful convictions can be traced to witnesses who lied in court or made false accusations. In 2018, a record number of exonerations involved misconduct by government officials. Other leading causes of wrongful convictions include mistaken eyewitness identifications, false or misleading forensic science, and jailhouse informants." (footnotes omitted)). But Mr. Carruthers was even more disadvantaged due to his forced self-representation.

[9] This profile from the blanket is in the custody of the Tennessee Bureau of Investigation under Lab Case #063001146, marked as Exhibit 02-a.

Mr. Carruthers requests DNA testing on specific pieces of probative physical evidence, most of which has never been tested. In reviewing this Motion, it is important to consider the totality of the circumstances, including the information known at Mr. Carruthers' trial, along with the significant new evidence and information discovered since his trial. Before the State executes Mr. Carruthers, which can't be undone, this Court should require the State to submit critical evidence for DNA testing pursuant to the DNA Act.

ARGUMENT

I. This Court should grant Mr. Carruthers DNA testing under the DNA Act before the State carries out his irreversible execution.

The DNA Act was created to serve two purposes—"first, to aid in the exoneration of those who are wrongfully convicted and second, to aid in identifying the true perpetrators of the crimes." *Powers v. State*, 343 S.W. 3d 36, 51 (Tenn. 2001). The *Powers* Court specifically concluded that the DNA Act granted more than just exclusionary testing. *See id.* "DNA analysis that only compares a petitioner's profile with a profile developed from biological material found at a crime scene cannot effectuate this second purpose." *Id*. "When, however, uploading the latter into a DNA database can potentially identify the person responsible for the crime, the Act also serves a 'law-enforcement,' or justice-finding, purpose: the apprehension of criminals who may still be at large." *Id*.

Similarly, the U.S. Supreme Court has recognized and echoed this purpose:

> DNA testing has an unparalleled ability both to exonerate the wrongly convicted and to identify the guilty. It has the potential to significantly improve both the criminal justice system and police investigative practices. The Federal Government and the States have recognized this, and have developed special approaches to ensure that this evidentiary tool can be effectively incorporated into established criminal procedure—usually but not always through legislation.

Dist. Attorney's Off. For Third Jud. Dist. v. Osborne, 557 U.S. 52, 55, (2009). Indeed, DNA testing helps prevent wrongful incarceration around the country. *See* Br. The Innocence Network as Amicus Curiae Supporting Appellee, *State v. Jones*, No. 2025-0913, 2026 WL 221492, at *3 (Ohio Jan. 27, 2026) (noting that postconviction DNA testing is a powerful tool to prevent wrongful incarceration and that all 51 legislatures have enacted postconviction DNA testing statutes).

There are no statutory time limits for requesting testing under the DNA Act, meaning a petitioner can request DNA testing at any time. § 40-30-303, Tenn. Code Ann. ("[A] person convicted of and sentenced for the commission of first degree murder, . . . may ***at any time***, file a petition requesting the forensic DNA analysis of any evidence that is in the possession or control of the prosecution, law enforcement, laboratory, or court, and that is related to the investigation or prosecution that resulted in the judgment of conviction and that may contain biological evidence." (emphasis added)); *see also Griffin v. State*, 182 S.W.3d 795, 799 (Tenn. 2006). Further, a petitioner cannot waive the right to DNA analysis under the DNA Act by implication. *See id.* In fact, the third prong of both standards provides for testing if the evidence was not subjected "to the analysis that is now requested." §§ 40-30-304, 40-30-305, Tenn. Code. Ann.[10] Therefore, Mr. Carruthers' motion is properly filed now—before his looming execution.

A. Mr. Carruthers' case is exactly the kind of case for which Tennessee's Post-Conviction DNA Statute was created.

In reviewing Mr. Carruthers' motion, this Court must "presume that the DNA analysis at issue is exculpatory or favorable to the defense." *McBee v. State*, No. E2025-00053-CCA-R3-

[10] As noted above, Mr. Carruthers filed a *pro se* request for mandatory DNA testing in 2011 asking for DNA testing on the vaginal swab collected from Delois Anderson and the white blanket containing male DNA. The instant Motion is not seeking the same analysis. Instead, he is seeking testing of several pieces of evidence that have either never been subject to DNA testing or that he is now seeking to compare to a known alternate suspect.

PC, 2026 WL 230074, at *7 (Tenn. Crim. App. January 28, 2026) (citing *Powers*, 343 S.W. 3d at 55). The Court must also "consider all the available evidence, including the evidence presented at trial and any stipulations of fact made by either party." *Alley v. State*,No. W2004–01204–CCA–R3–PD, 2004 WL 1196095, at *3 (Tenn. Crim. App. May 26, 2004); *see also id.* at *9. The Court "must focus on the strength of the DNA evidence as compared to the evidence presented at trial." *McBee v. State*, No. E2025-00053-CCA-R3-PC, 2026 WL 230074, at *7 (Tenn. Crim. App. Jan. 28, 2026).

Further, Tennessee courts have never limited DNA testing "to . . . cases in which there was tenuous evidence supporting the jury's finding of guilt." *Powers*, 343 S.W.3d at 57 (granting DNA testing in a sexual assault case where the defendant was identified through a photo line-up). To the contrary, the Tennessee Supreme Court has recognized that "past cases demonstrate" that "many DNA exonerations have occurred *despite* the fact that there was substantial evidence supporting the conviction." *Id*. at 56 (emphasis added).

In cases where Tennessee courts have denied requests for DNA testing, the proposed DNA testing could not conclusively identify an alternate suspect, the testing was based on pure speculation of another perpetrator, or there was overwhelming evidence of guilt. *See Alley*, 2004 WL 1196095, at *9 (holding that the purpose of the DNA Act was "not to create conjecture or speculation that the act may have possibly been perpetrated by a phantom defendant" and denying DNA testing where Petitioner's had confessed, his allegation of innocence was recent, and he had set forth an insanity defense at trial); *see also McBee* , 2026 WL 230074, at *8 (denying mandatory DNA testing on a gun and laser sight where the defense at trial was that the victim shot herself during a struggle over the gun and exculpatory testing could only possibly result in some impeachment evidence). None of these are true here.

Mr. Carruthers' case is not supported by overwhelming evidence of guilt. Mr. Carruthers has maintained his innocence of the crimes for which he was sentenced to death for 30 years. No physical evidence connected him to the crime. The State's case against Mr. Carruthers at trial was circumstantial at best. Since then, the State's case has fallen apart—as explained above. The DNA testing completed in 2003 in Montgomery's case excluded Mr. Carruthers and revealed the presence of an unidentified male profile. But it was incomplete.

Further, Mr. Carruthers does not seek to pin these murders on a "phantom" defendant. Rather, before his life is taken by the State of Tennessee, Mr. Carruthers requests an opportunity to prove what he has been saying for 30 years: that he is not guilty of the kidnapping and murder underlying his death sentence and that someone else committed these crimes with James Montgomery.

Ultimately, granting Mr. Carruthers' request for DNA testing would advance both of the stated purposes of the DNA Act—to exonerate Mr. Carruthers and to help with identifying the true perpetrator(s) of the crimes underlying Mr. Carruthers' conviction and sentence.

B. Mr. Carruthers is entitled to testing under both provisions of the DNA Act.

The DNA Act allows a petition to secure DNA testing on two separate grounds, which have separate standards—one mandatory and one discretionary. As discussed below, Mr. Carruthers satisfies all four prongs under both standards.

1. Mr. Carruthers meets the criteria for DNA analysis under § 40-30-304.

First, the Court ***shall*** grant testing if the following four prongs are met:

> (1) A reasonable probability exists that the petitioner would not have been prosecuted or convicted if exculpatory results had been obtained through DNA analysis;
>
> (2) The evidence is still in existence and in such a condition that DNA analysis may be conducted;

> (3) The evidence was never previously subjected to DNA analysis or was not subjected to the analysis that is now requested which could resolve an issue not resolved by previous analysis; and
>
> (4) The application for analysis is made for the purpose of demonstrating innocence and not to unreasonably delay the execution of sentence or administration of justice.

§ 40-30-304, Tenn. Code. Ann.

On the first prong, "[a] 'reasonable probability' of a different result exists when the evidence at issue, in this case potentially favorable DNA results, undermines confidence in the outcome of the prosecution." *Alley*, 2004 WL 1196095, at *9 (citing *State v. Workman*, 111 S.W.3d 10, 18 (Tenn. Crim. App. 2002)). "Previous appeals should not . . .be used to determine 'the merits of any claim,' that is, whether the reasonable probability threshold [for testing] has been established." *Powers*, 343 S.W.3d at 56.[11] Therefore, in reviewing this Motion, this Court cannot substitute the prior ineffectiveness finding in Mr. Carruthers' case as a merits ruling against this request for testing. Moreover, the new evidence of a third-party suspect and new evidence of prosecutorial misconduct cast the case in a different light. Mr. Montgomery's 2010 statement admitting that he committed the crime and confessing that he dispatched Mr. Irving to kidnap Delois Anderson provided new evidence supporting Mr. Carruthers' innocence that was not available when the prior ruling was made. The testing Mr. Carruthers' now seeks has the potential to show that the State of Tennessee has convicted and sentenced the wrong man to death, consistent with Mr. Montgomery's 2010 statement.

Further, considering "the 'potentially favorable' DNA results along with the existing evidence" (*Alley*, 2004 WL 1196095, at *9) in this case means that, when weighing the potentially

[11] Also, Mr. Carruthers seeks testing under newly available DNA testing, new facts that have come to light since his prior post-conviction proceedings, and a different provision, Tennessee Code § 40-30-305 (2024), the permissive DNA testing statute.

favorable DNA results, this Court must consider three key pieces of new evidence that Mr. Carruthers' jury never heard: (1) the 2010 statement from James Montgomery exonerating Mr. Carruthers and implicating Mr. Irving; (2) the State's recent admission (after decades of denying it) that Mr. Shaw was indeed a career paid informant; and (3) the evidence discrediting the medical examiner's testimony that the victims were buried alive. *See supra* pp. 6-13.

Especially when considered in the context of this information, there is a reasonable probability that Mr. Carruthers would not have been prosecuted or convicted if he had exculpatory DNA results. The evidence Mr. Carruthers seeks to test is *directly* related to the crimes and almost certainly would contain the true perpetrators' DNA—the bindings used on the victims and scrapings from the victims' fingernails. Therefore, the DNA testing requested could produce several results that would affect the outcome in Mr. Carruthers' case. For example, a match on the evidence could directly link an alternative third suspect, Ronnie Irving, to these crimes. This, along with Montgomery's statement implicating Irving, would give police a basis to name Irving a suspect for these crimes—and certainly a strong basis to change the outcome in Mr. Carruthers' case.[12]

In fact, Mr. Carruthers' jurors have confirmed the outcome of his trial would have been different had exculpatory DNA been presented. While Mr. Carruthers' DNA motion was pending at the TSC, federal investigators interviewed jurors who served on the jury at Mr. Carruthers' trial. One of the jurors concluded that "[a] DNA match with a different person would make [her] doubt Mr. Carruthers' guilt." (Decl. Zillah Ferrari (April 2, 2026), ¶ 11, attached as **Exhibit 33**.)

[12] Indeed, the DNA analysis done in 2003 for Mr. Montgomery's re-trial cast such a doubt on the State's theory of prosecution against Mr. Montgomery that the State itself accepted a negotiated *Alford* plea for Mr. Montgomery, who has been free for the last decade. *See supra* note 4.

One less vote for guilt on first-degree murder, of course, would change the entire outcome of Mr. Carruthers' trial—establishing the first prong of § 40-30-304.

Jurors also confirmed that the other information that has come to light would affect their analysis. That same juror also stated that if she had "known that Shaw was a paid informant, [she] would not have voted for a death sentence." (*Id.* ¶¶ 8, 11.) In addition, that juror *and* a separate juror acknowledged the importance of the State's argument that the victims were buried alive, stating: "Had I known the victims were not buried alive, I would have not voted for a death sentence." *Id.* ¶ 3; Decl. David Adams (April 21, 2026), ¶ 3, attached as **Exhibit 34** (same). These juror declarations show that exculpatory DNA evidence, especially when considered with the other information that has come to light since trial, would have changed their analysis of Mr. Carruthers' case. Therefore, the first prong of § 40-30-304 is satisfied.

Even if this Court reviews this request in the context of *only* the evidence presented at Mr. Carruthers' trial three decades ago, the first prong is still satisfied because, again, the jury heard *no direct evidence* connecting Mr. Carruthers to the crime. The presentation of exculpatory DNA evidence surely would have changed the jury's calculus of considering the case.

As to the second prong, the evidence Mr. Carruthers seeks to test is available and suitable for DNA testing. The fingernail specimens are in the custody of the Shelby County Medical Examiner; the bindings of Marcellos Anderson and the knotted pantyhose and red socks from Delois Anderson are in the custody of the Shelby County Criminal Court Clerk, and the unknown male profile obtained from the white blanket is in the possession of the Tennessee Bureau of Criminal Investigation. To the extent the State disputes the accuracy of these assertions, an evidentiary hearing is proper for the Court to hear from the Clerk of the Court, the Medical Examiner, and the Tennessee Bureau of Investigation.

As to the third prong, the fingernail specimens and the bindings on Marcellos Anderson and Delois Anderson have never been subjected to DNA testing.[13] The white blanket was subject to DNA testing, and an unknown male profile was developed. Mr. Carruthers is not requesting further sampling of the white blanket; rather, he seeks to compare the unknown profile to Mr. Irving and to further ensure the sample has been recently run in CODIS to see if there are any matches. In other words, Mr. Carruthers requests testing that has not been conducted. Therefore, this prong is also satisfied.

Finally, Mr. Carruthers does not submit this Motion for any other reason other to prove the innocence that he has maintained for 30 years. While his execution has been set, this testing should take only 14 days after the evidence is delivered to the DNA lab. (Keel Aff., ¶ 17.) As such, the results will be available prior to Mr. Carruthers' execution. While the results themselves may generate further motions or litigation, the inquiry for this Court in reviewing *this Motion* is whether the *request for testing* is done for purposes of delay.[14] It is not. The purpose is to establish his innocence before he is killed for a crime he did not commit.

2. Mr. Carruthers meets the criteria for DNA analysis under § 40-30-305.

Second, the Court ***may*** grant testing if the following four prongs are met:

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[13] There were two red socks recovered from Delois Anderson, one marked as "bloody" and one marked as "dirty." The "bloody" red sock was subjected to DNA testing on the blood only in 2003. It does not appear the "dirty" sock was tested at all. Neither sock was tested for touch DNA, which is what Mr. Carruthers now requests.

[14] Moreover, undersigned counsel became only recently involved in Mr. Carruthers' case, in late March of 2026. Also, Mr. Carruthers filed a similar motion 27 days ago in the TSC. The State responded on April 12, 2026. The TSC did not deny that motion until three weeks later, stating the motion was not properly filed at the TSC under Rule 12. (Ex. 2.) Any additional delay related to the proceedings at the TSC should not be attributed to Mr. Carruthers. Indeed, if the State had agreed to the request at the outset, the testing would probably be complete by now. (*See* Keel Aff., ¶ 17.)

> (1) A reasonable probability exists that analysis of the evidence will produce DNA results that would have rendered the petitioner's verdict or sentence more favorable if the results had been available at the proceeding leading to the judgment of conviction;
>
> (2) The evidence is still in existence and in such a condition that DNA analysis may be conducted;
>
> (3) The evidence was never previously subjected to DNA analysis, or was not subjected to the analysis that is now requested which could resolve an issue not resolved by previous analysis; and
>
> (4) The application for analysis is made for the purpose of demonstrating innocence and not to unreasonably delay the execution of sentence or administration of justice.

§ 40-30-305, Tenn. Code. Ann. The Tennessee Court of Criminal Appeals recently explained this separate standard:

> If a petition does not meet the criteria for mandatory testing, a post-conviction court has discretion to order testing if a "reasonable probability exists that analysis of the evidence will produce DNA results that would have rendered the petitioner's verdict or sentence more favorable if the results had been available at the proceeding leading to the judgment of conviction" and the criteria in (2), (3), and (4) are met. T.C.A. § 40-30-305. A "reasonable probability" means "a probability sufficient to undermine confidence in the outcome." *Powers v. State*, 343 S.W.3d 36, 54 (Tenn. 2011) (quoting *Grindstaff v. State*, 297 S.W.3d 208, 216 (Tenn. 2009) (citations and quotation marks omitted). Although the post-conviction court must presume that the DNA analysis at issue is exculpatory or favorable to the defense, the court "must focus on the strength of the DNA evidence as compared to the evidence presented at trial." *Id*. at 55.

McBee, 2026 WL 230074, at *7. If this Court does not find in Mr. Carruthers' favor under the mandatory standard, it should *at least* find that Mr. Carruthers is entitled to testing under this discretionary standard.

Exculpatory DNA results would have been extremely relevant and meaningful to Mr. Carruthers' jury, which heard only circumstantial evidence of Mr. Carruthers' guilt at trial. for the reasons discussed above (*supra* Part I.B.1), exculpatory DNA results provide a reasonable probability Mr. Carruthers would have been convicted of a lesser charge and/or would not have been sentenced to death.

As to Mr. Carruthers' death sentence, it is especially significant that Tennessee allows the jury to consider residual doubt as a mitigation factor. *State v. Hartman*, 42 S.W.3d 44, 56 (Tenn. 2001) (citing *State v. Teague*, 897 S.W.2d 248, 256 (1995)). Had the jury heard exculpatory DNA at trial, at least one juror would have certainly considered it in mitigation and voted against a death sentence—thus precluding the court from sentencing Mr. Carruthers to death. (*See* Ex. 33, ¶ 12 (stating that he does not support Mr. Carruthers' death sentence after learning new information); Ex. 34, ¶ 4 (same).)

This conclusion is further underscored by the State's own treatment of the previous DNA results in Mr. Montgomery's case. Mr. Carruthers and Mr. Montgomery being excluded from the evidence previously tested, coupled with the discovery of an unknown male profile on a blanket buried with the victims, led the State to enter into an *Alford* plead with Mr. Montgomery for a more favorable judgment and sentence—leading to his ultimate release. *See supra* notes 4 & 12. Montgomery was originally charged, convicted and sentenced to death in the same trial and under the same state theory as Mr. Carruthers. He was sentenced to a term of years and was released from custody in 2016 due to the strength of these favorable DNA results. *See supra* note 4. And yet, Mr. Carruthers now sits six weeks away from his scheduled execution. (*See* Ex. 1.)

As to the other prongs of § 40-30-305, they are established here for the same reasons as they are established under § 40-30-304. *See supra* Part I.B.1.

CONCLUSION

As U.S. Supreme Court Justice Sotomayor recently concluded in her dissent from denial of certiorari for a Texas Petitioner seeking DNA testing, it is inexplicable why the State "refuses to allow DNA testing . . . despite the very substantial possibility that such testing could exculpate [the Petitioner] and identify the real killer . . . ." *Reed v. Goertz*, 146 S. Ct. 936, 939 (2026)

(Sotomayor, J., dissenting from denial of certiorari). Without such testing, the State will proceed with executing Mr. Carruthers "without the world ever knowing" whether his DNA is on the evidence from the crimes scenes and victims' bodies, "even though a simple DNA test could reveal that information." *Id.*

The State of Tennessee should not follow the State of Texas' lead here. Granting the requested DNA testing could definitively prove what Mr. Carruthers has been saying for 30 years—that he is not guilty of these kidnapping murders. If the State had known of these exculpatory results or if his jury had been told about this exculpatory evidence, he would not have been prosecuted, convicted as charged, and/or sentenced to death. This Court should refuse to let his execution take place without first allowing Mr. Carruthers to conduct the requested DNA testing.[15] Accordingly, this Court should grant the Motion.

PRAYER FOR RELIEF

WHEREFORE, Petitioner Tony Carruthers respectfully requests that this Court enter an Order (1) granting this Motion, (2) setting an evidentiary hearing if the Court deems it necessary, (3) expediting briefing on this Motion, (4) granting the requested DNA testing, and (5) granting any other relief the Court deems just.

Respectfully submitted this the 4th day of May, 2026.

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[15] Even in Florida, the national leader on executions as of late, James Duckett was recently granted not one but two rounds of DNA testing before the State could proceed with his execution. *See generally Duckett v. State*, No. SC2026-0528, 2026 WL 1173073 (April 30, 2026).

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ATTORNEYS FOR MOVANT TONY VON CARRUTHERS

**pro hac vice* forthcoming

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that on May 4, 2026, a true and correct copy of the foregoing has been served on counsel for the Respondent via electronic mail:

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Exhibit “2”

IN THE CRIMINAL COURT OF TENNESSEE
FOR THE THIRTIETH JUDICIAL DISTRICT AT MEMPHIS
DIVISION V

TONY CARRUTHERS,
Petitioner,

Nos. 94-02797-99, 95-11129
CAPITAL CASE
Execution Scheduled May 21, 2026

vs.

STATE OF TENNESSEE,
Respondent.
_____/

MOTION FOR ORDER COMPELLING DISCLOSURE

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ATTORNEYS FOR MOVANT
TONY VON CARRUTHERS

**pro hac vice* pending or forthcoming

Petitioner, Tony Von Carruthers, by and through undersigned counsel, hereby requests this Court issue an Order directing the Shelby County Medical Examiner to release the biological standards of Ronnie Irving to a lab designated by defense counsel for comparison. As grounds in support, Mr. Carruthers states:

1. Mr. Carruthers is set for execution on May 21, 2026.

2. On April 9, 2026, undersigned counsel filed a Motion for Post-Conviction DNA testing in the Tennessee Supreme Court pursuant to Tennessee Supreme Court Rule 12(4)(e).

3. On April 30, 2026, the Tennessee Supreme Court issued an Order concluding:

> Mr. Carruthers' motion is not well-taken. As the State asserts in its response in opposition to the motion, the December 2025 amendment to Rule 12(4)(E) neither created a new procedural avenue nor granted this Court original jurisdiction to adjudicate an eleventh-hour DNA claim that was not timely pursued via the existing DNA Act. *See* Tenn. S. Ct. R. 12(4)(E) (2025) (authorizing the appointment of a special master when deemed necessary by the Court to conduct fact-finding in pending state collateral litigation that "potentially affect[s] the method or timing" of an impending execution). Accordingly, the motion is DENIED.

4. On May 4, 2026, Mr. Carruthers filed a *Motion for DNA Testing Pursuant to the Tennessee Post-Conviction DNA Analysis Act of 2001* (the "**DNA Motion**") in this Court.

5. The State filed a response in opposition to Mr. Carruthers' DNA Motion on May 5, 2026, asserting in part, "The Motion also states, without any support, that Mr. Irving's DNA sample is on file with the medical examiner's office." (State's Resp., at 13.)

6. Since Mr. Carruthers filed his DNA Motion in this Court, federal defense investigator Ben Leonard contacted the Shelby County Medical Examiner to try to obtain the biological standards for Mr. Irving—collected when his autopsy was performed. (Decl. Ben Leonard (May 8, 2026), ¶ 3 (attached as **Exhibit A**) [hereinafter Leonard Decl.].) The Medical

Examiner told Mr. Leonard that he needed a court order or subpoena to obtain the biological standards. (Leonard Decl. ¶ 6.)

7. The State should not be permitted to claim that Mr. Carruthers has failed to prove that the samples exist, while simultaneously allowing a state government agency to refuse to discuss the existence of and refuse to disclose those samples absent a court order. *Cf. Trotter v. Florida*, 146 S. Ct. 755, 756 (2026) (Sotomayor, J., respecting from denial of application for stay of execution and denial of certiorari) ("[T]he Florida Supreme Court appears to be placing prisoners in a Catch-22: It has affirmed the denial of requests for records on these issues, at least in part, because the prisoners do not yet have enough information to raise a 'colorable' Eighth Amendment claim. *Ibid*. The very reason the prisoners are seeking the records, however, is to gather enough information to raise a colorable Eighth Amendment claim.").

8. Nor should Mr. Carruthers be stopped from obtaining this information, which could provide valuable information related to his alleged innocence.

9. Accordingly, in addition to the relief requested in his DNA Motion,[1] Mr. Carruthers requests that this Court issue an Order compelling the Shelby County Medical Examiner to release the biological standards of Ronnie Irving to a lab designated by counsel for Mr. Carruthers so they can be compared to existing data.

WHEREFORE, Petitioner Tony Carruthers respectfully requests that this Court expeditiously enter an Order (1) granting this Motion, (2) directing the Shelby County Medical Examiner to release the biological standards of Mr. Irving to a qualified lab designated by counsel

[1] Significantly, the disclosure requested herein would *not* moot the request in Mr. Carruthers' DNA Motion but would at least allow Mr. Carruthers to proceed with comparing Mr. Irving's profile to existing information while his DNA Motion is litigated.

for Mr. Carruthers following appropriate chain of custody protocols, and (3) granting all other relief the Court deems appropriate.

Dated: May 10, 2026

Respectfully submitted,

/s/ Lucas Cameron-Vaughn

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ATTORNEYS FOR MOVANT TONY VON CARRUTHERS

**pro hac vice* pending or forthcoming

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was filed with the court and served by mail with a courtesy copy sent by email on May 10, 2026, upon:

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Courtney N. Orr
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I further certify that, pursuant to the Court's order, courtesy copies of the foregoing were served by email to:

Judge Carlyn Addison
Criminal Court Judge
Carlyn.Addison@shelbycountytn.gov

Paul Bruno
Capital Case Attorney
Paul.Bruno@tncourts.gov

/s/ Lucas Cameron-Vaughn
Lucas Cameron-Vaughn, Esq.

EXHIBIT A

IN THE CRIMINAL COURT OF TENNESSEE
FOR THE THIRTIETH JUDICIAL DISTRICT AT MEMPHIS
DIVISION V

TONY CARRUTHERS,
Petitioner,

Nos. 94-02797-99, 95-11129
CAPITAL CASE
Execution Scheduled May 21, 2026

vs.

STATE OF TENNESSEE,
Respondent.

DECLARATION OF BEN LEONARD

I, Ben Leonard, being of lawful age and legal resident of Nashville, Davidson County, Tennessee, declare the following, based on my personal knowledge:

1. I am employed as an investigator in the Capital Habeas Unit of the Federal Public Defender's Office.

2. I have been so employed for 18 years.

3. As part of my duties, on May 4, 2026 I contacted the Shelby County Medical Examiner trying to obtain that office's file for Ronnie Irving who died in 2002.

4. I provided the Medical Examiner with a signed release from Yvonne O'Neal next of kin of Ronnie Irving.

5. I requested the autopsy report as well as the biological standards taken from Mr. Irving, including fingerprints and a DNA swab.

6. The Medical Examiner agreed to provide me with the autopsy report based on the release but said they need a court order or subpoena for biological standards.

I declare under penalty of perjury and the laws of the United States and State of Tennessee that the foregoing is true and correct to the best of my knowledge.

Dated this 8th day of May 2026 in Memphis, Shelby County, Tennessee.

Ben Leonard

Exhibit “3”

Filed 5.11.26
Heidi Kuhn, Clerk
BY SC D.C.

IN THE CRIMINAL COURT OF TENNESSEE
FOR THE THIRTIETH JUDICIAL DISTRICT AT MEMPHIS
DIVISION V

TONY VON CARRUTHERS,	)	
	)	
Petitioner,	)	
	)	**Case Nos. 94-02797, 94-02798, 94-02799,**
v.	)	**95-11128, 95-11129, P-25948**
	)	**Death Penalty Case**
STATE OF TENNESSEE,	)	**(DNA Analysis Claim)**
	)	**Execution Date: May 21, 2026**
Respondent.	)	

ORDER DENYING PETITIONER'S MOTION FOR DNA TESTING PURSUANT TO THE TENNESSEE POST-CONVICTION DNA ANALYSIS ACT OF 2001

Pending before the Court is Mr. Carruthers' *Motion for DNA Testing Pursuant to the Tennessee Post-Conviction DNA Analysis Act of 2001*. The motion was filed on May 4, 2026. In his motion, Mr. Carruthers moves the Court for an order allowing him to conduct DNA testing on (1) the fingernail scrapings from Marcellos Anderson, Frederick Tucker, and Delois Anderson (2) the bindings of Marcellos Anderson, and (3) the bindings of Delois Anderson (which include knotted pantyhose around her hand and the red socks knotted around her neck) and then to compare those test results (assuming a DNA profile is obtained from any or all of the items) to the DNA profiles of the victims for exclusionary purposes, to himself, to co-defendant James Montgomery, to Ronnie Irving, and with known profiles in the CODIS DNA database.

Further, Mr. Carruthers moves the Court for an order directing the comparison of the unknown male profile that was found on a white blanket in the grave with the victims (which contained a male profile that excluded Mr. Carruthers, co-defendant James Montgomery, and the victims) with known DNA profiles in the CODIS database and with Ronnie Irving. The profile from the white blanket was last compared to the profiles in the CODIS DNA database in 2019.

Mr. Carruthers seeks to have that unknown male profile re-run in the CODIS DNA database and compared to Mr. Irving. Mr. Carruthers is seeking an expedited ruling without an evidentiary hearing.

On May 5, 2026, the State filed its response in opposition asking the Court to deny the petition, arguing that Mr. Carruthers has not shown (1) a reasonable probability that further testing would have prevented his prosecution, first-degree murder convictions, or death sentences; (2) that the relevant evidence still exists in a suitable state for reliable testing; or (3) that his request was made for any reason other than delay.

The Relevant Statutes

Under T.C.A. § 40-30-304, the court shall order DNA analysis if it finds that:

(1) A reasonable probability exists that the petitioner would not have been prosecuted or convicted if exculpatory results had been obtained through DNA analysis;

(2) The evidence is still in existence and in such a condition that DNA analysis may be conducted;

(3) The evidence was never previously subjected to DNA analysis or was not subjected to the analysis that is now requested which could resolve an issue not resolved by previous analysis; and

(4) The application for analysis is made for the purpose of demonstrating innocence and not to unreasonably delay the execution of sentence or administration of justice.

Under T.C.A. § 40-30-305, the court may order DNA analysis if it finds that:

(1) A reasonable probability exists that analysis of the evidence will produce DNA results that would have rendered the petitioner's verdict or sentence more favorable if the results had been available at the proceeding leading to the judgment of conviction;

(2) The evidence is still in existence and in such a condition that DNA analysis may be conducted;

(3) The evidence was never previously subjected to DNA analysis, or was not subjected to the analysis that is now requested which could resolve an issue not resolved by previous analysis; and

(4) The application for analysis is made for the purpose of demonstrating innocence and not to unreasonably delay the execution of sentence or administration of justice.

In analyzing the motion, the Court references the Tennessee Supreme Court's ruling in *Powers v. State*, 343 S.W.3d 36, (Tenn. 2011). The Court held, "that the Post–Conviction DNA Analysis Act permits access to a DNA database if a positive match between the crime scene DNA and a profile contained within the database would create a reasonable probability that a petitioner would not have been prosecuted or convicted if exculpatory results had been obtained or would have rendered a more favorable verdict or sentence if the results had been previously available." *Id.* at 39. "The definition of 'reasonable probability' has been well-established in other contexts, and is traditionally articulated as ' 'a probability sufficient to undermine confidence in the outcome.' ' *Grindstaff v. State*, 297 S.W.3d 208, 216 (Tenn.2009) (quoting *Strickland v. Washington*, 466 U.S. 668, 694, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984))." *Id.* at 54. "The 'reasonable probability' inquiry under section 40–30–304(1) of the Act requires courts to look at the effect the exculpatory DNA evidence would have had on the evidence at the time of trial or at the time the decision to prosecute was made, not on the evidence as construed by an appellate court in the light most favorable to the State." *Id.* at 57.

"Under section 40–30–304(1) of the Act, however, we begin with the proposition that DNA analysis will prove to be exculpatory. 28 *Payne v. State,* W2007–01096–CCA–R3–PD, 2007 WL 4258178, at *10 (Tenn.Crim.App. Dec. 5, 2007); *Shuttle v. State,* No. E2003–00131–CCA–R3–PC, 2004 WL 199826, at *5 (Tenn.Crim.App. Feb. 3, 2004)." *Id.* at 55. "As one jurisdiction has ruled, 'the trial court should postulate whatever realistically possible test results would be most

favorable to [the] defendant in determining whether he has established' the reasonable probability requirement under that jurisdiction's DNA testing statute." *State v. Peterson*, 364 N.J.Super. 387, 836 A.2d 821, 827 (N.J.Super.Ct.App.Div.2003). *Id.* "While courts must also consider the evidence that was presented against the petitioner at trial, the evidence must be viewed in light of the effect that exculpatory DNA evidence would have had on the fact-finder or the State." *Id.* "We agree that it may be appropriate to look at previous appeals in this setting in order to discern the 'essential facts of the crime at issue.'" *Id.* at 56.

Trial Proof[1]

On the night of February 24, 1994, Marcellos "Cello" Anderson, his mother Delois Anderson, and Frederick Tucker disappeared. On March 3, 1994, the victims' bodies were found buried together in a pit that had been dug beneath a casket in a grave in a Memphis cemetery.

In the summer of 1993, Jimmy Lee Maze, Jr., a convicted felon, received two letters from Carruthers, who was then in prison on an unrelated conviction. In the letters, Carruthers referred to "a master plan" that was "a winner." Carruthers wrote of his intention to "make those streets pay me" and announced, "everything I do from now on will be well organized and extremely violent."

Later, in the fall of 1993, while incarcerated at the Mark Luttrell Reception Center in Memphis awaiting his release, Carruthers was assigned to a work detail at a local cemetery, the West Tennessee Veterans' Cemetery. At one point, as he helped bury a body, Carruthers remarked to fellow inmate Charles Ray Smith "that would be a good way, you know, to bury somebody, if you're going to kill them.... [I]f you ain't got no body, you don't have a case."

[1] *State v. Carruthers*, 35 S.W.3d 516 (Tenn. 2000).

Smith also testified that he overheard Carruthers and Montgomery, who also was incarcerated at the Reception Center, talking about Marcellos Anderson after Anderson had driven Carruthers back to the Reception Center from a furlough. According to Smith, when Montgomery asked Carruthers about Anderson, Carruthers told him that both Anderson and "Baby Brother" Johnson dealt drugs and had a lot of money. Carruthers said he and Montgomery could "rob" and "get" Anderson and Johnson once they were released from prison.

On January 11, 1994, James Montgomery was released from prison.

On February 23, 1994, Marcellos Anderson borrowed a white Jeep Cherokee from his cousin, Michael Harris. Around 4:30 on the afternoon of February 24, 1994, witnesses saw Marcellos Anderson and Frederick Tucker riding in the Jeep Cherokee along with James and Jonathan Montgomery. About 5 p.m. that day, James and Jonathan Montgomery and Anderson and Tucker arrived in the Jeep Cherokee at the house of Nakeita Shaw, the Montgomery brothers' cousin.

The four men entered the house and went downstairs to the basement. A short time later, James Montgomery came back upstairs and asked Nakeita Shaw if she could leave for a while so he could "take care of some business." When Nakeita Shaw returned home, she saw only Carruthers and James Montgomery. She saw James Montgomery, Carruthers, and the two victims, Anderson and Tucker, leave in the Jeep Cherokee. Prior to trial, Nakeita Shaw told the police that Anderson's and Tucker's hands were tied behind their backs when they left her house. While she admitted making this statement, she testified at trial that the statement was false and that she had not seen Anderson's and Tucker's hands tied when they left her home.

In the meantime, around 8 p.m. on February 24, Laventhia Briggs telephoned her aunt, victim Delois Anderson. When someone picked up the telephone but said nothing, Briggs hung

up. Briggs was living with Delois Anderson at the time and arrived at her aunt's home around 9:00 p.m. Although Delois Anderson was not home, her purse, car, and keys were there. Food left in Anderson's bedroom indicated that she had been interrupted while eating.

Chris Hines, who had known the defendants since junior high school, testified that around 8:45 p.m. on February 24, 1994, Jonathan Montgomery "beeped" him. Jonathan said, "Man, a n——r got them folks." When Hines asked, "What folks?" Jonathan replied, "Cello and them" and said something about stealing $200,000. Jonathan arrived at Hines' home at about 9:00 p.m. and told him, "Man, we got them folks out at the cemetery on Elvis Presley, and we got $200,000. Man, a n——r had to kill them folks."

The Jeep Cherokee that Anderson had borrowed was found in Mississippi on February 25 around 2:40 a.m. It had been destroyed by fire.

On March 3, 1994, about one week after a missing person report was filed on Delois and Marcellos Anderson, Jonathan Montgomery directed Detective Jack Ruby of the Memphis Police Department to the grave of Dorothy Daniels at the Rose Hill Cemetery on Elvis Presley Boulevard. Daniels' grave was located six plots away from the grave site of the Montgomery brothers' cousin. Daniels had been buried on February 25, 1994. Pursuant to a court order, Daniels' casket was disinterred, and the authorities discovered the bodies of the three victims buried beneath the casket under several inches of dirt and a single piece of plywood.

Dr. Hugh Edward Berryman, one of the forensic anthropologists who assisted in the removal of the bodies from the crime scene, noted there was no evidence to suggest that Daniels' casket had been disturbed after she was buried. Thus, it can be inferred that the bodies of the three victims were placed in the grave and covered with dirt and a piece of plywood prior to the casket being placed in the grave.

Dr. O.C. Smith, who helped remove the bodies from the grave and who performed autopsies on the victims, testified that, when found, the body of Delois Anderson was lying at the bottom of the grave and the bodies of the two male victims were lying on top of her. The hands of all three victims were bound behind their backs. Frederick Tucker's feet were also bound and his neck showed signs of bruising caused by a ligature.[2] A red sock[3] was found around Delois Anderson's neck. Dr. Smith opined that each victim was alive when buried.

Carruthers called Alfredo Shaw as a witness. After seeing a television news report about these killings in March of 1994, Alfredo Shaw had telephoned CrimeStoppers and given a statement to the police implicating Carruthers. Alfredo Shaw later testified before the grand jury which eventually returned the indictments against Carruthers and Montgomery. Prior to trial, however, several press reports indicated that Alfredo Shaw had recanted his grand jury testimony, professed that the statement had been fabricated, and intended to formally recant his grand jury testimony when called as a witness for the defense. Therefore, when Carruthers called Alfredo Shaw to testify, the prosecution announced that if he took the stand and recanted his prior sworn testimony, he would be charged with and prosecuted for two counts of aggravated perjury. In light of the prosecution's announcement, the trial court summoned Alfredo Shaw's attorney and allowed Alfredo Shaw to confer privately with him. Following that private conference, Alfredo Shaw's attorney advised the trial court, defense counsel, including Carruthers, and the prosecution, that Alfredo Shaw intended to testify consistently with his prior statements and grand jury testimony and that any inconsistent statements Alfredo Shaw had made to the press were motivated by his fear of Carruthers and by threats he had received from him.

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[2] Each body had ligatures or bondage to the hands. Mr. Tucker also had ligatures on his feet. (1996 Trial Tr., Vol. 13, pp. 1865.)

[3] Petitioner alleges there are two red socks.

Despite this information, Carruthers called Alfredo Shaw as a witness and as his attorney advised, Shaw provided testimony consistent with his initial statement to the police and his grand jury testimony. Specifically, Alfredo Shaw testified that he had been on a three-way call with Carruthers and either Terry or Jerry Durham, and during this call, Carruthers had asked him to participate in these murders, saying he had a "sweet plan" and that they would each earn $100,000 and a kilogram of cocaine. Following his arrest for these murders, Carruthers was incarcerated in the Shelby County Jail along with Alfredo Shaw, who was incarcerated on unrelated charges. Carruthers and Alfredo Shaw were in the law library when Carruthers told Alfredo Shaw that he and some other unidentified individuals went to Delois Anderson's house looking for Marcellos Anderson and his money. Marcellos was not there when they arrived, but Carruthers told Delois Anderson to call her son and tell him to come home, "it's something important." When Anderson arrived, the defendants forced Anderson, Tucker, who was with Anderson, and Delois Anderson into the jeep at gunpoint and drove them to Mississippi, where the defendants shot Marcellos Anderson and Tucker and burned the jeep. According to Alfredo Shaw, the defendants then drove all three victims back to Memphis in a stolen vehicle. Alfredo Shaw testified that, after they put Marcellos Anderson and Tucker into the grave, Delois Anderson started screaming and one of the defendants told her to "shut up" or she would die like her son and pushed her into the grave. Carruthers also told Alfredo Shaw that the bodies would never have been discovered if "the boy wouldn't have went and told them folks." Carruthers told Alfredo Shaw that he was not going to hire an attorney or post bond because the prosecution would then learn that the murders had been a "hit." Carruthers told Alfredo Shaw that Johnson also was supposed to have been "hit" and that Terry and Jerry Durham were the "main

people behind having these individuals killed." Carruthers said that the Durhams wanted revenge because Anderson and Johnson had previously stolen from them.

In response to questioning by Carruthers, Alfredo Shaw acknowledged that he had told the press that his statement to police and his grand jury testimony had been fabricated, but said he had done so because Carruthers had threatened him and his family. According to Alfredo Shaw, one of Carruthers' investigators had arranged for a news reporter to speak with him about recanting his grand jury testimony.

As impeachment of his own witness, Carruthers called both Jerry and Terry Durham, twin brothers, as witnesses. The Durhams denied knowing Alfredo Shaw and said they had never been party to a three-way telephone call involving Alfredo Shaw and Carruthers.

Analysis

The Court will first analyze this motion under T.C.A. § 40-30-304 and will then analyze this motion under T.C.A. § 40-30-305.

Under the *mandatory testing* statute, T.C.A. §40-30-304, prong (1) requires the Court to find: (1) A reasonable probability exists that the petitioner would not have been prosecuted or convicted if exculpatory results had been obtained through DNA analysis. In conducting its analysis of prong (1), the Court must assume, pursuant section 40–30–304(1) of the Act, that DNA analysis will prove to be exculpatory. In addition, "the trial court should postulate whatever realistically possible test results would be most favorable to [the] defendant in determining whether he has established" the reasonable probability requirement under Tennessee's DNA testing statute. *Powers* at 55. Therefore, the Court completes its analysis of prong (1) with the assumption that DNA will be obtained from the items and that the DNA will be linked to a known third party, meaning someone other than the victims, Mr. Carruthers, James Montgomery, and Jonathan

Montgomery. The DNA "hit" may be related to another individual who participated in the crime or an individual who touched one or more of the items at another time (i.e. someone living with one of the victims or perpetrators, a retailer, or the actual owner of the items).

Even with that assumption, the Court does not find a reasonable probability exists that the petitioner would not have been prosecuted or convicted if exculpatory results had been obtained through DNA analysis. It is unlikely that Mr. Carruthers would not have been prosecuted, even if a third party's DNA had been found at the crime scene. With (1) letters referring to "a master plan" that was "a winner," an indication of Mr. Carruthers' intention to "make those streets pay me," and an announcement from Mr. Carruthers that "everything I do from now on will be well organized and extremely violent," (2) the statement of Mr. Carruthers that "that would be a good way, you know, to bury somebody, if you're going to kill them.... [I]f you ain't got no body, you don't have a case," (3) Mr. Carruthers' statement that he and Montgomery could "rob" and "get" Anderson and Johnson once they were released from prison, (4) Nakeita Shaw's eyewitness account that she saw James Montgomery, Mr. Carruthers, and the two victims, Anderson and Tucker, leave her home in the Jeep Cherokee on the night the victims went missing, (5) the victims' bodies were found buried together in a pit that had been dug beneath a casket in a grave in a Memphis cemetery (Mr. Carruthers had previously been assigned to a work detail at a local cemetery where he helped bury a body), (6) Mr. Carruthers' confession to Alfredo Shaw, and (7) the likelihood that more than one participant was involved in the homicides given the number of victims and the movement of the victims, the Court does not find that a reasonable probability exists that the petitioner would not have been prosecuted or convicted if exculpatory results had been obtained through DNA analysis. There is simply not "a probability sufficient to undermine confidence in the outcome." The Court finds that prong (1) of T.C.A. §40-30-304 has not been

met.

Prong (2) requires the Court to find the evidence is still in existence and in such a condition that DNA analysis may be conducted. Although the State disputes this prong can be met, it does appear that the Petitioner meets this prong based upon Exhibit 11 to the motion (the Affidavit of Alan Keel). Criminalist and DNA expert Alan Keel concludes that it is likely each of these items "bear transfer biology from whomever bound the victims." The Court finds that prong (2) has been met.

Prong (3) requires the Court to find the evidence was never previously subjected to DNA analysis or was not subjected to the analysis that is now requested which could resolve an issue not resolved by previous analysis. It is appears to the Court that three of the four items ((1) the fingernail scrapings from Marcellos Anderson, Frederick Tucker, and Delois Anderson (2) the bindings of Marcellos Anderson, and (3) the bindings of Delois Anderson (which include knotted pantyhose around her hand and the red socks knotted around her neck)) have not been previously tested pursuant to current DNA testing technology. Although the fourth item, the white blanket, was tested and compared to the data in the CODIS DNA database, it has not been compared since 2019. It appears prong (3) has been met.

Prong (4) requires the Court to find the application for analysis is made for the purpose of demonstrating innocence and not to unreasonably delay the execution of the sentence or administration of justice. Prong (4) requires the Court to find (a) the application for analysis is made for the purpose of demonstrating innocence **and** (b) not to unreasonably delay the execution of the sentence or administration of justice. On one hand, the motion is clearly an attempt to demonstrate that Mr. Carruthers is innocent of the offenses for which he has been convicted. In fact, Mr. Carruthers for over thirty years has claimed his innocence, and Mr. Carruthers believes

that further DNA testing may prove his innocence.

On the other hand, and perhaps more apparent, it clearly appears that filing this motion on May 4, 2026 (only seventeen days before Mr. Carruthers' scheduled execution) could very well be an attempt to unreasonably delay the execution of Mr. Carruthers' sentence.[4] This motion could have been filed years ago. This procedural avenue became available in 2001. James Montgomery allegedly identified Ronnie Irving as an additional suspect in 2010 or 2011. This motion could have been filed when Mr. Carruthers filed his *pro se* motion for fingerprint analysis (September 21, 2021). This motion could have been filed shortly after September 30, 2025, when the execution date was set. This motion could have been filed when counsel for Mr. Carruthers filed his *Reply to State's December 23, 2025, Response to Pro Se Petition and/or Amended Petition* regarding the fingerprint motion (December 31, 2025). There is no explanation provided or that the Court can surmise as to why Mr. Carruthers waited until April, 2026, to bring this to this Court's attention if not for the purpose of unreasonably delaying the execution of the sentence or administration of justice. This Court finds the filing of this motion is an attempt to unreasonably delay the execution of Mr. Carruthers' sentence. Prong (4) has not been met.

The Court will now analyze this motion under T.C.A. § 40-30-305. Under the *discretionary testing* statute, T.C.A. §40-30-305, prong (1) requires the Court to find a reasonable probability exists that analysis of the evidence will produce DNA results that would have rendered the petitioner's verdict or sentence more favorable if the results had been available at the proceeding leading to the judgment of conviction. As noted above, the Court must assume, pursuant section 40–30–304(1) of the Act, that DNA analysis will prove to be exculpatory. In addition, "the trial

[4] It should be noted that Mr. Carruthers originally filed a similar motion in the Tennessee Supreme Court on April 9, 2026. However, the Tennessee Supreme Court denied the motion on procedural grounds. The filing of a similar motion in the Tennessee Supreme Court approximately one month before filing the motion pending in this Court does not impact this Court's analysis.

court should postulate whatever realistically possible test results would be most favorable to [the] defendant in determining whether he has established" the reasonable probability requirement under Tennessee's DNA testing statute. *Powers* at 55. Therefore, the Court completes its analysis of prong (1) with the assumption that DNA will be obtained from the items and that the DNA will be linked to a known third party, meaning someone other than the victims, Mr. Carruthers, James Montgomery, and Jonathan Montgomery. The DNA "hit" may be related to another individual who participated in the crime or an individual who touched one or more of the items at another time (i.e. someone living with one of the victims or perpetrators, a retailer, or the actual owner of the items).

Similarly to the analysis of prong (1) under T.C.A. § 40-30-304, the Court does not find that a reasonable probability exists that analysis of the evidence will produce DNA results that would have rendered the petitioner's verdict more favorable if the results had been available at the proceeding leading to the judgment of conviction. Given the facts of this case as noted above, it is unlikely that the verdict in Mr. Carruthers' case would have been more favorable, even if a third party's DNA had been found at the crime scene. Again, there is simply not "a probability sufficient to undermine confidence in the outcome." The Court believes the convictions would remain intact. The Court finds that prong (1) of T.C.A. §40-30-305 has not been met.

When analyzing whether the sentence may have been more favorable, the analysis is somewhat more complicated. In the analysis, the trial facts remain the same. The Court finds this crime was planned over a period of time and was not a spur-of-the-moment idea. The Court also finds the number of victims and the opinion that the victims were buried alive would weigh heavily in favor of death sentences. Finally, the Court finds that Deloris Anderson was a truly innocent

victim in this case. There is clearly sufficient proof and a solid basis for the jury returning death sentences in this case.

On the other hand, it is plausible that a DNA profile of a third party at the crime scene (especially on the ligatures) could cause residual doubt in the minds of the jurors due another participant possibly being involved and not prosecuted and could produce questions about Mr. Carruthers' specific role in the offenses. Each of these possibilities may have given at least one juror a reason to not vote for death in this case. The question for this part of the analysis is whether the DNA profile of a third party at the crime scene would result in "a probability sufficient to undermine confidence in the" death sentences.

The Court finds that evidence of a third party's DNA profile at the crime scene would not result in "a probability sufficient to undermine confidence in the" death sentences, given all of the facts of the case at trial. The Court finds that a reasonable probability does not exist that analysis of the evidence will produce DNA results that would have rendered the petitioner's sentences more favorable if the results had been available at the proceeding leading to the judgment of conviction. As such, prong (1) of T.C.A. § 40-30-305 has not been met.

Prongs (2) through (4) of T.C.A. § 40-30-305 are same as prongs (2) through (4) of T.C.A. § 40-30-304. The Court has found herein that prongs (2) and (3) of T.C.A. § 40-30-304 have been met and that prong (4) of T.C.A. § 40-30-304 has not been met. The Court makes the same findings as to T.C.A. § 40-30-305. Using the same analysis as explained above, prongs (2) and (3) of T.C.A. § 40-30-305 have been met and prong (4) of T.C.A. § 40-30-305 has not been met.

Conclusion

WHEREFORE, based on the above-stated reasons, the Court finds prongs (2) and (3) of T.C.A. § 40-30-304 have been met and prongs (1) and (4) of T.C.A. § 40-30-304 have not been

met. The Court further finds that prongs (2) and (3) of T.C.A. § 40-30-305 have been met and prongs (1) and (4) of T.C.A. § 40-30-304 have not been met. Mr. Carruthers' *Motion for DNA Testing Pursuant to the Tennessee Post-Conviction DNA Analysis Act of 2001* is hereby denied.

IT IS SO ORDERED this 11 day of May, 2026.

Carlyn Addison, Judge
Criminal Court, Division V
30th Judicial District, at Memphis

Exhibit “4”

IN THE CRIMINAL COURT OF TENNESSEE
FOR THE THIRTIETH JUDICIAL DISTRICT AT MEMPHIS
DIVISION V

TONY VON CARRUTHERS, Petitioner,	)	**Case Nos. 94-02797, 94-02798, 94-02799, 95-11128, 95-11129, P-25948**
v.	)	**Death Penalty Case**
	)	**(Motion to Compel Disclosure)**
STATE OF TENNESSEE, Respondent.	)	**Execution Date: May 21, 2026**

ORDER DENYING PETITIONER'S MOTION FOR ORDER COMPELLING DISCLOSURE

Pending before the Court is Mr. Carruthers' *Motion for Order Compelling Disclosure*, filed on May 10, 2026. Through his motion, Mr. Carruthers requests this Court to issue an Order directing the Shelby County Medical Examiner to release the biological standards of Ronnie Irving to a lab designated by defense counsel for comparison. The State has responded in opposition.

As grounds for the motion, Mr. Carruthers asserts that the medical examiner's office has biological standards of Ronnie Irving. He alleges the standards "could provide valuable information related to his alleged innocence." (Motion at page 3). Mr. Carruthers has been told by the medical examiner's office that he needs either a court order or a subpoena to obtain the biological standards.

The Court finds that the motion is not well-taken. First, the Court notes that Mr. Carruthers does not cite any authority supporting his request. Second, the Court denied Mr. Carruthers' *Motion for DNA Testing Pursuant to the Tennessee Post-Conviction DNA Analysis Act of 2001* on May 11, 2026. As such, the Court does not have pending before it a matter in which the biological standard would be relevant. Finally, as referenced in his motion, Mr. Carruthers can seek to obtain the standard through the issuance of a subpoena.

Filed 5.12.26
Heidi Kuhn, Clerk
BY SC D.C.

For these reasons, Mr. Carruthers' *Motion for Order Compelling Disclosure* is hereby denied.

IT IS SO ORDERED this 12th day of May, 2026.

Carlyn Addison, Judge
Criminal Court, Division V
30th Judicial District, at Memphis

Exhibit “5”

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON

TONY CARRUTHERS,	**Case No.:**
Petitioner/Appellant,	**CAPITAL CASE**
v.	**EXECUTION SCHEDULED MAY 21, 2026**
STATE OF TENNESSEE,	**Shelby County Criminal Court Case No. 94-02797; 94-02798; 94-0299; 95-11128; 95-11129; P-25948**
Respondent/Appellee. _____/	

NOTICE OF APPEAL

NOTICE is given that Petitioner Tony Carruthers appeals two orders from the Criminal Court of Tennessee for the Thirtieth Judicial District at Memphis—(1) *Order Denying Petitioner's Motion for DNA Testing Pursuant to the Tennessee Post-Conviction DNA Analysis Act of 2001* dated May 11, 2026, and (2) *Order Denying Petitioner's Motion for Order Compelling Disclosure* dated May 12, 2026—to the Court of Criminal Appeals of Tennessee at Jackson.

Dated: May 13, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Lucas Cameron-Vaughn, Esq., certify that I have forwarded a true and exact copy of this Notice of Appeal by electronic mail to all parties and/or their attorneys in this case in accordance with Rule 20 of the Tennessee Rules of Appellate Procedure on May 13, 2026.

/s/ *Lucas Cameron-Vaughn*
Lucas Cameron-Vaughn, Esq.

Electronically RECEIVED on May 15, 2026
Appellate Court Clerk

Electronically FILED on May 15, 2026
Appellate Court Clerk

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

STATE OF TENNESSEE,	)	
	)	**No. W1997-00097-SC-DDT-DD**
Respondent,	)	
	)	
v.	)	**CAPITAL CASE**
	)	
TONY CARRUTHERS,	)	
	)	**Execution: May 21, 2026**
Movant.	)	

STATE OF TENNESSEE'S RESPONSE IN OPPOSITION TO MOTION FOR STAY OF EXECUTION

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INTRODUCTION

This Court should deny Tony Carruthers's last-ditch motion for a stay of execution. *First*, Carruthers cannot complain that the trial court denied his petition for DNA testing without a hearing when he asked the court to do just that. *Second*, the trial court correctly denied Carruthers's meritless DNA petition. Even assuming the requested DNA matched Carruthers's supposed alternative suspect—Ronnie Irving—that would not have affected Carruthers's prosecution, conviction, or sentence. *Third*, Carruthers's motion to compel the release of Mr. Irving's biological sample was not supported by any authority, the trial court's denial of that motion does not offend due process, and Carruthers has no right of appeal from that denial. *Fourth*, Carruthers's eleventh-hour stay motion is nothing more than an attempt at delay. This Court should deny a stay.

BACKGROUND

A. Factual Background

In late February 1994, Tony Carruthers and two other men murdered Marcellos "Cello" Anderson, his mother Delois Anderson, and Freddrick Tucker.[1] *State v. Carruthers*, 35 S.W.3d 516, 524 (Tenn. 2000), *cert. denied*, 533 U.S. 953 (2001). The men shot Mr. Anderson and Mr. Tucker, beat and strangled Ms. Anderson, and buried all three victims with their hands bound behind their backs in an empty grave at a Memphis cemetery. *Id.* at 527. The State's expert at trial opined that

[1] Throughout litigation of these crimes, court records have misspelled Mr. Tucker's first name "Frederick." Mr. Tucker's family recently provided the State with the correct spelling. Out of respect for the victims, the State uses the spelling provided by Mr. Tucker's family.

each victim died of injuries associated with being buried alive. *Id.* at 527-28. Their bodies were discovered in early March 1994. *Id.* at 527-28.

While incarcerated during the summer of 1993, Carruthers began broadcasting his plans to kidnap, rob, and murder Mr. Anderson. *Id.* at 524. He wrote a letter to Jimmy Lee Maze describing a "master plan" that was a "winner." *Id.* He intended to "make those streets pay" him and told Maze that "everything I do from now on will be well organized and extremely violent." *Id.* That fall, while on a work detail assisting with a cemetery burial, Carruthers told fellow inmate Charles Ray Smith that this "would be a good way, you know, to bury somebody, if you're going to kill them." *Id.* He explained, "[I]f you ain't got no body, you don't have a case." *Id.* Smith also heard Carruthers and his co-defendant, James Montgomery[2], discussing their plans to rob Mr. Anderson because he had a lot of money through dealing drugs. *Id.*

A month after Carruthers's release from jail in November 1993, he told co-defendant Jonathan Montgomery that when James was released from prison, "it would be the best time to kidnap Marcellos." *Id.* at 525. James left prison in January 1994, and Carruthers executed his plan in February. *Id.*

Multiple witnesses saw Carruthers and James with Mr. Anderson and Mr. Tucker on the evening of February 23. *Id.* at 526. Nakeita Shaw told police that she saw Carruthers and James lead Mr. Anderson and Mr. Tucker to a Jeep with their hands tied behind their backs. *Id.* Mr.

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[2] Because co-defendants James and Jonathan Montgomery share a surname, the State uses their first names.

Anderson had recently borrowed a Jeep, which was later found destroyed by fire on February 25. *Id.*

On the evening of February 24, Jonathan told Chris Hines that they had stolen $200,000 and had killed "Cello and them" "out at the cemetery on Elvis Presley." *Id.* Jonathan repeatedly told Hines that "they had to kill some people." *Id.* at 527.

On March 3, 1994, Jonathan led police to a grave in the Rose Hill Cemetery on Elvis Presley Boulevard in Memphis where they found the three victims' bodies buried under a casket. *Id.* at 527 n.5. Though Mr. Anderson was known to wear "expensive jewelry . . . [and] carr[y] large sums of money on his person," no money or jewelry was found with his body. *Id.* at 524.

The next day, Jonathan gave another statement to police where he said that he, James, Carruthers, and a person named Bobby Wilson were all present for the murders. *See State v. Carruthers*, No. W1997-00097-SC-DDT-DD, (Tenn. Apr. 13, 2026) (State's Response to Motion for Special Master Att. 1, March 4, 1994 Statement at 2).

After seeing a news report about the killings, Alfredo Shaw called a police tip line and later testified before the grand jury that "he had been on a three-way call with Carruthers" and another man and that "during this call, Carruthers had asked [Mr. Shaw] to participate in these murders, saying he had a 'sweet plan' and that they would each earn $100,000 and a kilogram of cocaine." *Id.* at 528-29.

Before trial, Mr. Shaw told media that he had lied to the grand jury about Carruthers's involvement in the murders. *Id.* at 528. But when

Carruthers called Mr. Shaw as a trial witness, Mr. Shaw testified that he lied to the media because Carruthers had threatened him and his family. *Id.* at 528-29. Mr. Shaw further testified that Carruthers confessed to the murders while they were jailed together before Carruthers's trial. *Id.* at 529. Carruthers told Mr. Shaw that he used Ms. Anderson to lure Mr. Anderson and Mr. Tucker. *Id.* Carruthers said he then shot two of the victims, burned the Jeep, stole a car to return to Memphis, and buried the victims alive. *Id.* According to Carruthers, Ms. Anderson began screaming as Mr. Anderson and Mr. Tucker were forced into the grave, and so Carruthers or a co-defendant pushed her into the grave too. *Id.* Carruthers lamented to Mr. Shaw that the bodies would never have been found if "'the boy wouldn't have went and told them folks.'" *Id.*

B. Procedural Background

The jury convicted Carruthers of three counts of first-degree murder, three counts of aggravated kidnapping, and one count of especially aggravated robbery, and it sentenced him to death for each count of first-degree murder. *Id.* at 530-31.[3] This Court affirmed his convictions and sentences on direct appeal. *Id.* at 572.

After his convictions, Carruthers repeatedly attempted to assert his innocence through collateral proceedings. In his original post-conviction

[3] Jonathan and James Montgomery were also charged in this case. *Id.* at 524. Several months before trial, Jonathan was found hanged in his jail cell. *Id.* at 524 n.2. James was tried with Carruthers, but his conviction and sentences were reversed, and his case was remanded for a new trial. *Id.*

proceedings, the trial court rejected Carruthers's claim that counsel was ineffective for failing to hire a DNA expert to testify about blood found on a blanket-like cloth at the grave site that did not match any of the victims, Carruthers, or the Montgomery brothers. *Carruthers v. State*, No. W2006-00376-CCA-R3-PD, 2007 WL 4355481, at *38 (Tenn. Crim. App. Dec. 12, 2007). As the trial court noted, those DNA results were "only very minimally helpful to [Carruthers]." *Id.* They did nothing to refute the other evidence identifying Carruthers as one of the murderers, and it was "rank speculation to assume that [the DNA results] indicate[] that a third party might have committed this crime." *Id.* The Court of Criminal Appeals agreed that the DNA results were "inconclusive and would not have changed the outcome of trial." *Id.* at 40.

Then, in 2011, Carruthers sought to have DNA analysis performed on a vaginal swab from Delois Anderson and the blanket collected from the crime scene pursuant to the Post-Conviction DNA Analysis Act of 2001. *Carruthers v. State*, No. W2012-01473-CCA-R3-PD, 2013 WL 3968787, at *1 (Tenn. Crim. App. Aug. 1, 2013). The Court of Criminal Appeals affirmed dismissal of that petition, noting that there was no indication that the biological material on the blanket was left contemporaneously with the murders. *Id.* at *4. Further, it concluded that, even if DNA analysis were exculpatory, such results would "not in any way" provide a reasonable probability that Carruthers would not have been convicted. *Id.* at *5.

In 2021, Carruthers filed a pro se petition seeking fingerprint testing under the Post-Conviction Fingerprint Analysis Act of 2021.

Carruthers v. State, No. W2026-00226-CCA-R3-PD, 2026 WL 1031140, at *6 (Tenn. Crim. App. Apr. 16, 2026) (perm. app. deadline not expired). He later filed, through counsel, an amended petition, alleging that, in 2010, his co-defendant James Montgomery said Carruthers was not involved in the offense and identified Ronnie "Eyeball" Irving as his accomplice in the murders.[4] *Id.* The Shelby County Criminal Court dismissed that petition, finding that—even if fingerprints found at Ms. Anderson's house belonged to Mr. Irving—they would not have affected the State's decision to prosecute Carruthers or the outcome of his trial. *Id.* The Court of Criminal Appeals affirmed. *Id.* at *10.

Carruthers next sought DNA analysis through a standalone Tenn. Sup. Ct. R. 12(4)(E) motion in this Court, to advance his claim of innocence and point the finger at Mr. Irving as the "real perpetrator." Rule 12(4)(E) Motion at 23, 33-34, *State v. Carruthers*, No. W1997-00097-SC-R11-DD (Tenn. Apr. 9, 2026). This Court denied the motion as not well-taken because Rule 12(4)(E) "neither created a new procedural avenue nor granted this Court original jurisdiction to adjudicate an

[4] Throughout this end-stage litigation, Carruthers has alleged that, in 2010, his co-defendant James Montgomery "gave a statement" exonerating Carruthers and identifying Mr. Irving as one of the co-perpetrators. (Mot. at 9.) Notably, Carruthers does not cite to, nor does he attach, any such statement from James. It appears that Carruthers's assertion rests on notes that an investigator from his defense team drafted in 2011 documenting a conversation with James Montgomery. (*See* State's Att. 1.) But even those notes do not identify Mr. Irving as the alleged alternative suspect. And, importantly, James Montgomery refused to sign a declaration or affidavit formalizing the statement he gave to the investigator. (State's Att. 2.)

eleventh-hour DNA claim that was not timely pursue via the existing DNA Act." Order, *State v. Carruthers*, No. W1997-00097-SC-R11-DD (Tenn. Apr. 30, 2026).

Carruthers then returned to the trial court, and on May 4, 2026, he filed a motion for DNA Analysis pursuant to the Tennessee Post-Conviction DNA Analysis Act of 2001. (Mot. Ex. 1.) He later filed a separate motion for an order compelling the Shelby County medical examiner to turn over Ronnie Irving's biological standard to a defense-selected lab for testing. (Mot. Ex. 2.) Notably, Carruthers did not file a contemporaneous motion for stay or appointment of special master in this Court to facilitate timely adjudication of those motions. Instead, he waited until the trial court had denied both motions, (*see* Mot. Ex. 3-4), to file another "eleventh-hour" motion for stay in this Court.

LEGAL STANDARD

After an execution date is set, "any state court collateral litigation that would potentially affect the method or timing of execution must commence with the filing of a motion" in the Tennessee Supreme Court. Tenn. Sup. Ct. R. 12(4)(E). "[T]he Court will not grant a stay or delay of an execution date pending resolution of collateral litigation in state court unless the prisoner can prove a likelihood of success on the merits in that litigation." *Id.* This standard requires "more than a mere possibility of success." *State v. Irick*, 556 S.W.3d 686, 689 (Tenn. 2018). It requires "a significant possibility of success on the merits." *Hill v. McDonough*,547 U.S. 573, 584 (2006).

REASONS TO DENY A STAY

I. Carruthers Has No Likelihood of Success on the Merits of His Post-Conviction DNA Appeal.

Carruthers seeks a stay to allow him to litigate and appeal from the denial of his petition for DNA testing and dismissal of his motion to compel release of Mr. Irving's biological standard. (Mot. at 2.) He continues to assert that DNA testing of items found at the crime scene would have identified another potential suspect and, therefore, would "prove [Carruthers's] innocence." (Mot. at 2, 8-9.) That is simply not true. Despite his multiple attempts to advance this claim, Carruthers still has not satisfied the statutory criteria for DNA testing. The trial court properly denied that motion, and Carruthers's appeal to the Court of Criminal Appeals has no merit. This Court should deny his motion for a stay of execution.

A. The Post-Conviction DNA Analysis Act sets forth strict prerequisites, and the scope of review is narrow.

Under the Post-Conviction DNA Analysis Act of 2001, a defendant convicted of first-degree murder may, at any time, "file a petition requesting the forensic DNA analysis of any evidence that is in the possession or control of the prosecution, law enforcement, laboratory, or court, and that is related to the investigation or prosecution that resulted in the judgment of conviction and that may contain biological evidence." Tenn. Code Ann. § 40-30-303.

The court *shall* order DNA analysis if it finds that:

> (1) A reasonable probability exists that the petitioner would not have been prosecuted or convicted if exculpatory results had been obtained through fingerprint analysis;

> (2) The evidence is still in existence and in such a condition that DNA analysis may be conducted;
>
> (3) The evidence was never previously subjected to DNA analysis or was not subjected to the analysis that is now requested which could resolve an issue not resolved by previous analysis; and
>
> (4) The application for analysis is made for the purpose of demonstrating innocence and not to unreasonably delay the execution of sentence or administration of justice.

Id. § -304.

Conversely, the court *may* order fingerprint analysis if it finds the same latter three criteria above and:

> (1) A reasonable probability exists that analysis of the evidence will produce DNA results that would have rendered the petitioner's verdict or sentence more favorable if the results had been available at the proceeding leading to the judgment of conviction[.]

Id. § -305(1). "A reasonable probability is a probability sufficient to undermine the confidence in the conviction or prosecution." *Powers v. State*, 343 S.W.3d 36, 55 (Tenn. 2011).

Courts dealing with post-conviction DNA analysis petitions need not hold an evidentiary hearing to determine whether to grant testing. *Elsea v. State*, No. E2017-01676-CCA-R3-PC, 2018 WL 2363589, at *3 (Tenn. Crim. App. May 24, 2018) (no perm. app. filed). Testing under either the mandatory or discretionary provisions will be granted only if the petitioner satisfies all four elements of the tests. *Powers*, 343 S.W.3d at 48. Courts should presume the testing would be exculpatory. *Id.* at 55 & n.28.

All that said, the scope of review in these cases is narrow. The Court of Criminal Appeals held long ago that the Post-Conviction DNA Analysis Act

> does not permit the court to consider new evidence, aside f[rom] DNA test results, supporting a different theory than the one relied upon by the petitioner. The Post-Conviction DNA Analysis Act is not the proper vehicle to seek review of evidence other than results available from DNA testing of biological specimens recovered during the course of the investigation or prosecution of the petitioner. *See generally* T.C.A. § 40-30-302. Other avenues exist for consideration of newly discovered evidence in both the state and federal courts.

Alley v. State, No. W2006-01179-CCA-R3-PD, 2006 WL 1703820, at *7 (Tenn. Crim. App. June 22, 2006), *perm. app. denied* (Tenn. June 27, 2006). To be sure, this Court later overruled *Alley*'s narrower holding that the Post-Conviction DNA Analysis Act "'does not authorize the trial court to order the victim to submit new DNA samples years after the offense, nor does the statute open the door to any other comparisons the petitioner may envision.'" *Powers*, 343 S.W.3d at 49 (quoting *Alley*, 2006 WL 1703820, at *9). But *Powers* did not alter *Alley*'s holding that the scope of review under the Post-Conviction DNA Analysis Act is limited to "results available from DNA testing" and that "the Act [does not] permit the court to consider new evidence, aside f[rom] DNA test results." *Alley*, 2006 WL 1703820, at *7; *see also* W. Mark Ward, Tennessee Criminal Trial Practice § 32:26, Westlaw (database updated November 2025) ("[T]he Act does not permit the post-conviction court to re-evaluate the credibility or validity of the evidence submitted at trial nor does it permit the court to consider new evidence, aside from the DNA test results.").

B. Carruthers waived a hearing on his request for DNA analysis.

Carruthers first complains that the Shelby County Criminal Court did not hold a hearing on his motion for DNA analysis. (Mot. at 7-8.) But he explicitly waived a hearing, stating the court "can and should grant [his] request without the need for an evidentiary hearing." (Mot. Ex. 1 at 2.) He only requested a hearing if "there are factual matters of dispute." (Mot. Ex. 1 at 2-3.) And he identified no such factual disputes.

The trial court's order was not based on any factual dispute. Instead, the court found that exculpatory DNA analysis would not have changed Carruthers's prosecution, conviction, or sentence and that the motion was filed for purpose of delay. (Mot. Ex. 3 at 10-14.) Both of those findings are legal determinations. *Bondurant v. State*, 208 S.W.3d 424, 429 (Tenn. 2006). And, as explained in Section I(D), the "factual disputes" Carruthers attempts to advance now were irrelevant to the court's decision.

Simply put, Carruthers explicitly waived a hearing on his petition in the trial court. He cannot now turn about-face and complain about the results of his own waiver.

C. Carruthers did not meet the statutory requirements for DNA testing.

The trial court properly concluded that exculpatory DNA analysis would not have affected Carruthers's prosecution, conviction, or sentence. Even assuming Mr. Irving's DNA was identified on the victims' fingernails scraping, their bindings, and the blanket found near the gravesite, that would do nothing to undermine the mountain of evidence

presented against Carruthers; at most, it would merely introduce a fourth suspect into the mix. And the record showed Carruthers filed his motion for DNA analysis simply to delay his execution. Carruthers has no likelihood of success in his appeal from the denial of that motion, and his pending appeal cannot support a stay.

First, even assuming that additional DNA testing would identify Mr. Irving's DNA, such evidence would not undermine the evidence pointing specifically at Carruthers as the mastermind and principal culprit behind the scheme to kidnap the victims and bury them alive in an empty grave. *Carruthers*, 35 S.W.3d at 524, 527-29. Mr. Irving's DNA would not undermine Carruthers's remarks to Charles Ray Smith that burying someone in an empty grave would be a good way to hide a body. *Id.* at 525. Mr. Irving's DNA would not undermine the evidence that Carruthers told others about this scheme beforehand and bragged about it afterward. *Id.* at 524, 527-29. Mr. Irving's DNA would not undermine that Nakeita Shaw saw Carruthers and James Montgomery leading Mr. Anderson and Mr. Montgomery, whose hands were tied behind their backs, out of her house the night of the murders. *Id.* at 525. And Mr. Irving's DNA would not undermine Carruthers's lament to Alfredo Shaw that police would not have found the victims if "the boy wouldn't have went and told them folks." *Id.* at 529. Finally, though relevant only to the decision to prosecute because such statement was not admitted at trial, Mr. Irving's DNA would not undermine that Jonathan Montgomery told police that Carruthers was present at the cemetery when the victims were killed. *State v. Carruthers*, No. W1997-00097-SC-R11-DD, (Tenn.

Apr. 13, 2026) (State's Response to Motion for Special Master Att. 1, March 4, 1994 Statement at 2). Carruthers would still have been prosecuted, convicted, and sentenced to death.

The trial court was not breaking new grounds when it concluded as much. Tennessee courts have repeatedly reached the same conclusion on Carruthers's similar prior requests. The Court of Criminal Appeals concluded in Carruthers's post-conviction proceedings that he was not prejudiced by pretrial counsel's failure to retain a DNA expert because the DNA evidence was "only very minimally helpful" to him. *Carruthers*, 2007 WL 4355481, at *33. And just last month, the Court of Criminal Appeals affirmed the denial of Carruthers's petition for fingerprint analysis, stating "any alleged exculpatory information would have led to a possible fourth participant in these crimes. Even if the analysis revealed exactly what [Carruthers] asserts, it would not have undermined the significant evidence against him unrelated to those fingerprints." *Carruthers*, 2026 WL 1031140, at *9. Though Carruthers seeks different testing now, the same reasoning still applies.

Even assuming that Mr. Irving's DNA was on the victims' fingernail scrapings or bindings or the blanket, that simply means that there might have been an additional accomplice involved in the murders. It doesn't erase Carruthers's involvement and thus creates no reasonable probability that Carruthers would not have been prosecuted, convicted of murder, or sentenced to death. Exculpatory DNA evidence would pale in comparison to the strength of the State's case against Carruthers at trial. *Powers*, 343 S.W.3d at 55 (noting that "the analysis must focus on the strength of the DNA evidence as compared to the evidence presented at

trial"). He cannot meet the first prong under either the mandatory or discretionary statutes, and that failure alone supports the trial court's denial of his motion for DNA analysis.

Second, Carruthers's motion for DNA analysis also failed the fourth statutory prong because this motion was surely filed to "unreasonably delay the execution of sentence or administration of justice." Tenn. Code Ann. §§ 40-30-304(4), -305(4). He argues that the delay should not be held against him because he diligently pursued his claim in various courts for the past month. (Mot. at 11-12.) But the DNA Analysis Act is not concerned with the minimal delays necessary for courts to consider motions after they are filed. Instead, the relevant delay was the decades Carruthers waited before filing this claim. No amount of diligence in the past few weeks can excuse the years he sat on this claim.

Carruthers has pursued nearly every conceivable method for collaterally attacking his judgment since his conviction, yet he waited until the eve of his execution to bring this one. He could have sought this testing any time in the past twenty-five years. The procedural avenue was available in 2001. Tenn. Code Ann. § 40-30-301. According to Carruthers, the DNA evidence has been sitting in storage rooms and various medical examiners' offices since at least 2002. (Mot. Ex. 1 at 13, 22.) And James Montgomery supposedly identified Mr. Irving as an additional suspect in 2010 or 2011. (Mot. Ex. 1 at 11-12.) What's more, Carruthers's execution date was set in September 2025. Order, *State v. Carruthers*, No. W1997-00097-SC-R11-DD (Tenn. Sept. 30, 2025). He had an active petition for fingerprint testing pending at that time, and

yet he made no effort to amend that petition or otherwise bring this DNA analysis request.

Carruthers has been actively requesting additional scientific analysis for years, and yet he never sought the testing now requested. *See Carruthers*, 2026 WL 1031140, at *6; *Carruthers*, 2013 WL 3968787, at *1; *Carruthers*, 2007 WL 4355481, at *38. He sat on this request for decades and brought this claim at the eleventh hour. Any assertion that the motion is filed for any purpose other than delay is simply not credible.

Carruthers failed to satisfy all four criteria under the mandatory or discretionary testing provisions of the Post-Conviction DNA Analysis Act. The trial court properly exercised its discretion when it denied Carruthers's motion for DNA analysis. Carruthers's appeal from that denial has no likelihood of success, and therefore, provides no basis for a stay. *See Irick*, 556 S.W.3d at 689.

D. Carruthers relies on inadmissible, irrelevant, or incorrect evidence.

Carruthers alternatively nitpicks the wording of the trial court's order and complains that the court did not consider certain pieces of evidence when reaching its decision on his DNA analysis request. None of these complaints are worth this Court's consideration.

Carruthers falsely asserts that the trial court failed to presume exculpatory DNA results in its analysis. (Mot. at 8-9.) Nothing could be further from the truth. The court acknowledged the legal standard requiring the presumption, and it explicitly stated that it conducted its analysis "with the assumption that DNA will be obtained from the items and that the DNA will be linked to a known third party, meaning

someone other than the victims, Mr. Carruthers, James Montgomery, and Jonathan Montgomery." (Mot. Ex. 3 at 9-10.) It further acknowledged that any such DNA "hit" could identify "another individual who participated in the crime[.]" (Mot. Ex. 3 at. 10.) But even applying that presumption did not help Carruthers because, as detailed above, identifying a fourth suspect in the offense would not overcome the mountains evidence against him.

Carruthers complains that the trial court disregarded juror affidavits detailing how facts not introduced at trial may have affected their deliberations. (Mot. at 10.) But juror testimony is only admissible to establish the fact of extraneous information or improper influence on the jury. Tenn. R. Evid. 606(b); *Walsh v. State*, 166 S.W.3d 641, 649 (Tenn. 2005). Jurors may not testify—through sworn testimony or through declarations and affidavits—about the effect any fact may have had on their deliberations or verdict. Tenn. R. Evid. 606(b). And Carruthers points to those jurors' declarations exactly for that improper purpose. The jurors' declarations regarding how facts may have affected their deliberations were inadmissible, and the trial court properly disregarded them. *See id.*

Carruthers also claims the trial court asserted as fact that the victims were buried alive, despite disputes about that testimony in later litigation. (Mot. at 10.) Respectfully, the court made no such factual assertion. Instead, the court found the trial testimony that the victims were buried alive would have weighed heavily in favor of the death sentences. (Mot. Ex. 1 at 13); *Carruthers*, 35 S.W.3d at 527. The suggestion that the expert later qualified his testimony does not change

what was presented to the jury, and the trial court properly found that an additional person's DNA at the grave site would not have overcome the proof presented at trial. To the extent Carruthers challenges that trial testimony, that challenge is outside the scope of the DNA motion's narrow scope of review. (Mot. at 10-11); *Alley*, 2006 WL 1703820, at *7 (courts may not reevaluate the validity or credibility of trial testimony in a post-conviction DNA Act proceeding).

II. Carruthers's Appeal from the Denial of His Motion to Compel Cannot Support a Stay.

Carruthers has no right to appeal the denial of his motion to compel release of Mr. Irving's biological standard, and his unauthorized appeal cannot support a stay. In any event, denial of that motion in no way implicated Carruthers's due process rights.

A. Carruthers's unauthorized appeal cannot support a stay.

Carruthers asks this Court to stay his execution pending the resolution of an appeal he has no right to bring. Indeed, his notice of appeal does not cite any authority permitting such an appeal. (Mot. Ex. 5.) Absent a rule or statute providing Carruthers a right to appeal, the Court of Criminal Appeals lacks jurisdiction consider his claim, and therefore, his appeal cannot support a stay.

Tennessee grants criminal defendants broad but not unlimited rights of appeal. Those authorizations can come from statute or rule, but the right must be enumerated for the defendant to seek an appeal as of right. *State v. Rowland*, 520 S.W.3d 542, 545 (Tenn. 2017). Appellate

courts lack jurisdiction to consider appeals not authorized by rule or statute. *Id.* at 546.

Simply put, neither rule nor statute authorize Carruthers's appeal from the denial of his motion to compel disclosure of a third party's biological standard. Tennessee Rule of Appellate Procedure 3(b) does not enumerate any such appeal. Carruthers has not identified—in his notice of appeal or in his motion to stay—any statute that would grant him the right to appeal. And undersigned counsel has found no such statute, which is unsurprising when the underlying motion was likewise unsupported by authority. Absent any authority granting Carruthers the right to appeal denial of his motion, the Court of Criminal Appeals lacks jurisdiction to consider his claims. *Rowland*, 520 S.W.3d 546. Therefore, Carruthers cannot show "a significant possibility of success on the merits," *see Hill*, 547 U.S. at 584, and his appeal cannot support a stay of execution.

B. Carruthers's due process challenge fails.

Carruthers's tenuous due process challenge is meritless. His argument about the timing of the trial court's orders ignores the fact that his motion to compel was filed unsupported by legal authority. He is not entitled to litigate his motion to compel, and the denial of that motion did not offend due process.

Due process does not require the State to create avenues for collateral litigation. *Pike v. State*, 164 S.W.3d 257, 262 (Tenn. 2005). All due process requires is, once those collateral procedures are established, the defendant have "the *opportunity* to be heard in a meaningful time

and in a meaningful manner." *Stokes v. State*, 146 S.W.3d 56, 61 (Tenn. 2004) (cleaned up).

Carruthers's complaint about the timing of the trial court's order is a red herring. His due process claim fails because his motion to compel was unauthorized. Tennessee Rule of Criminal Procedure 47(c)(1) requires that any "motion shall state: (1) with particularity the grounds on which it is made." That means a "motion must be sufficiently definite, specific, detailed, and non-conjectural, to enable the court to conclude a substantial claim . . . [is] presented." *State v. Burton*, 751 S.W.2d 440, 445 (Tenn. Crim. App. 1988). And that requirement includes the need for citation to legal authority. *State v. Winbush*, No. E2018-02136-CCA-R3-CD, 2020 WL 1466307, at *23 (Tenn. Crim. App. Mar. 24, 2020) ("The motion cited no legal authority. As Defendant did not satisfy the requirements of Tennessee Rule of Criminal Procedure 47(c), he cannot show that he would have been entitled to a hearing, thus he cannot show how he was harmed. Defendant is not entitled to relief."), *perm app. denied* (Tenn. Aug. 6, 2020). Because Carruthers cited no legal authority supporting his motion, the trial court properly denied it. He suffered no deprivation of due process.

III. Equity Does Not Tolerate Further Delay.

It is well known that "capital petitioners might deliberately engage in dilatory tactics to prolong their incarceration and avoid execution of a sentence of death." *Rhines v. Weber*, 544 U.S. 269, 277-78 (2005). "[I]t is the same strategy adopted by many death-row inmates with an impending execution: bring last-minute claims that will delay the

execution, no matter how groundless." *Price v. Dunn*, 587 U.S. 999, 1008 (2019) (Thomas, J., concurring in denial of certiorari).

But given the significant interests at stake, "[l]ast-minute stays should be the extreme exception, not the norm." *Bucklew v. Precythe*, 587 U.S. 119, 150 (2019) (cleaned up). "[A] stay of execution is an equitable remedy. It is not available as a matter of right, and equity must be sensitive to the State's strong interest in enforcing its criminal judgments." *Hill v. McDonough*, 54 7 U.S. 573, 584 (2006). The State and victims have a "powerful and legitimate interest in punishing the guilty." *Calderon v. Thompson*, 523 U.S. 538, 556 (1998) (cleaned up). They also "have an important interest in the timely enforcement of a [death] sentence." *Bucklew*, 587 U.S. at 149 (cleaned up). Victims also have the constitutional right to "a prompt and final conclusion of the case after the conviction or sentence." Tenn. Const. art I, § 35. Once post-conviction proceedings "have run their course . . . finality acquires an added moral dimension." *Calderon*, 523 U.S. at 556. "Only with an assurance of real finality can the State execute its moral judgment in a case" and "the victims of crime move forward knowing the moral judgment will be carried out." *Id.* "To unsettle these expectations is to inflict a profound injury." *Id.*

To avoid such injury, "the last-minute nature of an application that could have been brought earlier, or an applicant's attempt at manipulation, may be grounds for denial of a stay." *Bucklew*, 587 U.S. at 150 (cleaned up). Indeed, federal courts apply "a strong equitable presumption against the grant of a stay where a claim could have been

brought at such a time as to allow consideration of the merits without requiring entry of a stay." *Nelson v. Campbell*, 541 U.S. 637, 650 (2004).

Unfortunately, tactical delay is common in Tennessee end-stage litigation. In Tennessee's last nine executions, five inmates moved this Court to stay their final execution dates. *Nichols v. State*, No. E1998-00562-SC-R11-PD (Tenn. Dec. 10, 2025) (motion filed); *Black v. State*, No. M2000-00641-SC-DPE-CD (Tenn. Aug. 1, 2025) (motion filed); *State v. Sutton*, No. E2000-00712-SC-DDT-DD (Tenn. Feb. 7, 2020) (motion filed); *State v. Hall*, No. E1997-00344-SC-DDT-DD (Tenn. Nov. 28, 2019) (motion filed); *State v. Irick*, No. M1987-00131-SC-DPE-DD (Tenn. Jul. 30, 2018) (motion filed). Those inmates waited one (Nichols), four (Black), thirteen (Sutton), seven (Hall), and ten (Irick) days before their executions to seek relief.

Carruthers follows this trend by seeking a stay eight days before his execution when he could have sought the DNA analysis he now requests much earlier. At the very least, Carruthers should have immediately sought this testing and moved for stay in September 2025, when this Court set his execution date, or contemporaneous with filing his motion for DNA analysis in the trial court. *State v. Carruthers*, No. W1997-00097-SC-DDT-DD (Tenn. Sept. 25, 2025) (order); *see* Tenn. Sup. Ct. R. 12(4)(E).

Carruthers sat on his request for DNA analysis until the last moment, and even though he has been actively litigating his claims "for nearly five weeks," (Mot. at 12), he still waited until days before his

execution to bring this stay request to this Court.[5] "The proper response to this maneuvering is to deny [Carruthers's] meritless request[] expeditiously." *Price*, 587 U.S. at 1008. The Court should reset appropriate norms for timely end-stage litigation by calling out Carruthers's gross delay as an additional ground for denying his stay motion.

[5] While Carruthers previously filed a Motion for Appointment of Special Master pursuant to Tenn. Sup. Ct. R. 12(4)(E), he explicitly did not ask for a stay in that motion. *State v. Carruthers*, No. W1997-00097-SC-DDT-DD (Tenn. April 9, 2026) (Motion at 2.)

CONCLUSION

Carruthers's motion to stay his execution should be denied.

Respectfully submitted,

JONATHAN SKRMETTI
Attorney General and Reporter

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DOCUMENTS ATTACHED

Attachment 1: 2011 Declaration of Investigator Ben Leonard re: James Montgomery Interview

Attachment 2: Carruthers's Motion to Declare James Montgomery Unavailable

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

TONY VON **CARRUTHERS**,	)	
	)	
Petitioner,	)	
	)	No. 08-2425-BBD-dvk
vs.	)	
	)	
DAVID **OSBORNE**, Warden,	)	
	)	
Respondent.	)	

DECLARATION OF BEN LEONARD

Declarant, Ben Leonard, states:

1. I am employed as an investigator for the Office of the Federal Public Defender for the Middle District of Tennessee. In that capacity, I have been working on the above case.

2. I make this declaration based on personal knowledge, except where indicated otherwise.

3. I, along with counsel, have interviewed Mr. James Montgomery, Mr. Carruthers's co-defendant.

4. In the interview Mr. Montgomery provided me with a statement directly implicating himself in the murders at issue, and exculpating Mr. Carruthers. Attached to this declaration as Exhibit 1 are the notes of my interview.

FURTHER DECLARANT SAITH NOT.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: September 30, 2011

Ben Leonard

BEN LEONARD

Exhibit 1

OFFICE OF THE
FEDERAL PUBLIC DEFENDER
MIDDLE DISTRICT OF TENNESSEE

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To: File
From: B. Leonard
Date: 6/6/11
Case: Carruthers, T.
Re: Interview with James Montgomery

James Montgomery was interviewed on 5/13/2011 at the NECX prison in Mountain City, TN. James is the co-defendant in the Tony Carruthers case.

James stated to us that Marcellos Anderson threaten to kill him and his family. Marcellos was telling people on the street that he was going to shoot up the Montgomery house. James told Marcellos not to threaten him or his family, but Marcellos didn't listen. James went to Marcellos a second time and told to stop the threats. The third time Marcellos made these threats, James said he had to do something about it. James wasn't going to let Marcellos kill him or his family members, so he went after Marcellos before Marcellos could kill him or any of James's family members.

James saw Marcellos riding around and stopped him. He ask Marcellos if he would give him a ride to the dry cleaners. Marcellos stopped by James's house first. James stated this is when he got a hand gun. Johnathen Montgomery also went along for the ride. Fred Tucker was also in the car with Marcellos at that time. James said they stopped by Nakeita Shaw's house. Nakeita left the house shortly after James, Marcellos and Fred arrived. James, Johnathen, Marcellos and Fred went down to the basement. James pulled out his gun and tied Marcellos and Fred up. It is not clear when Johnathen leaves Nakeita's house alone, but he was not there when Nakeita's returns.

After tying them up James left and went to get Marcellos's mother at her home. He grabbed Ms. Deloris Anderson and tied her hands. He also place a pillow case over her head. James then took Ms. Anderson to the grave yard off of Elvis Presley Blvd. He took her out of the car and place her by the grave site. James hit Ms. Anderson in the head with a piece of wood. As she was lying on the ground bleeding, he place the wooden casket over her body to hide her.

James left the grave yard and returned to Nakeita's house to get Marcellos and Fred. While at Nakeita's house Tony Carruthers shows up. James stated that he talk to Tony for a few minutes and then Tony leaves

to go over his girlfriends place. James said Tony didn't see Marcellos and Fred tied up in the basement. James goes back to the basement and places Marcellos's and Fred's coats over their backs so nobody could see their hands tied behind the backs. He then walks them out of Nakeita's house to the car. Nakeita's sees James, Marcellos and Fred leave, but she didn't see Marcellos or Fred's hands tied because their hands were hidden by their coats. James took Marcellos and Fred to grave yard where they were killed along with Ms. Anderson. The bodies were then place in the grave and covered.

James stated that Tony Carruthers didn't have anything to do with the murders and was not involved. James said he would sign a declaration or give a deposition about what is stated above, but before he will agree to do so he wanted to talk to attorney Mr. Scholl or Mr. McAfee. James is afraid of being prosecuted again for the murders if he shared this information about the crime. Mr. Passino told James that he would make contact with either Mr. Scholl or Mr. McAfee so that they could advise James on his legal concerns regarding signing a declaration or being deposed.

We told James that we also gave Mr. Scholl the release he sign for us to get his files, but Mr. Scholl has not given them to us. James said Mr. Scholl should have given you those files and he will discuss this issues with Mr. Scholl.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

TONY VON **CARRUTHERS**,	)	
	)	
Petitioner,	)	
	)	No. 08-2425-BBD-dkv
vs.	)	
	)	
DAVID **OSBORNE**, Warden,	)	
Morgan County Regional Prison,	)	
	)	
Respondent.	)	

PETITIONER'S FED.R.EVID. 804(a)(1) MOTION TO DECLARE JAMES MONTGOMERY UNAVAILABLE

Pursuant to Fed.R.Evid. 804(a), Petitioner respectfully moves for an order that co-defendant James Montgomery be declared unavailable as a witness in this proceeding because his counsel have informed that Mr. James Montgomery invokes his Fifth Amendment right against self-incrimination with respect to the circumstances surrounding the deaths of Marcellos Anderson, Delois Anderson, and Fred Tucker. In a statement directly implicating himself, Mr. Montgomery informed Petitioner's investigator that Petitioner was not involved in these murders.

In support of this motion, Petitioner shows:

1. Substantial portions of the State's evidence at trial was false or misleading, which the prosecution well knew. (See D.E. 21 (Amended Petition at 87-91, ¶¶329-41 (Claim 13 - *Brady*); 91-94, ¶¶342-64 (Claim 14 - False Testimony). This conclusion is underscored by recent statements and documents of witnesses whose testimony was presented at trial, including Charles Smith and Alfredo Shaw. (See Exhibits to Petitioner's Rule 6 Motion To Depose Alfredo Shaw & Reply (presently not assigned a docket number)).

2. The unreliability of the evidence presented at trial also supports Petitioner's

procedural defense of actual innocence, as well as his related claim. (See House v. Bell, 547 U.S. 518, 536-37 (2006); D.E. 21 (Amended Petitioner at 116-17, ¶¶492-94 (Claim 33 - Actual Innocence).

4. Mr. Montgomery's statements against interest to Petitioner's investigator, implicating himself and exculpating Petitioner (see Exhibit 1 (Leonard Declaration)), lend compelling support to the conclusion that the evidence presented against Petitioner at trial was completely unreliable, if not that Petitioner is actually innocent of the charges against him. Because Mr. Montgomery, though counsel, invokes his Fifth Amendment privilege against self-incrimination (see Exhibit 2 (6/6/2011 Letter to Mr. Montgomery's counsel)), he is unavailable within the meaning of Fed.R.Evid. 804(a), and this Court should so declare.

* * * *

Rule 804(a)(1) of the Federal Rules of Evidence provides that a witness is unavailable when "exempted by ruling of the court on the ground of privilege from testifying concerning the subject matter of the declarant's statement . . .." The determination of when a declarant is unavailable under Rule 804(a) may be determined by motion, e.g., United States v. Sanders, 591 F.2d 1293 (9th Cir. 1979); Beckett v. Ford, 613 F.Supp.2d 970, 973-74 (N.D. Ohio 2009), including whether the declarant is unavailable because he has invoked the Fifth Amendment privilege not to incriminate himself. See United States v. Williams, 927 F.2d 95, 98-99 (2d Cir. 1991); United States v. Brainard, 690 F.2d 117, 1123-24 (4th Cir. 1982); cf. United States v. Thomas, 571 F.2d 285, 288 (5th Cir. 1978) (mere formalism to insist on formal invocation of rights when co-defendant's right

to assert privilege and resulting unavailability patent). Where, as here, a declarant's attorney has stated that the witness will invoke the Fifth Amendment privilege, no more is required for establishing the witness' unavailability. See United States v. Brainard, 690 F.2d at 1123 (citing cases).

Should this Court prefer to make the determination that co-defendant Montgomery will formally invoke his Fifth Amendment privilege as his counsel have stated, Petitioner requests that the Court issue a writ of habeas corpus ad testificandum directing Mr. Montgomery to appear for deposition.

WHEREFORE, Petitioner moves that this Court declare Mr. Montgomery unavailable within the meaning of Fed.R.Evid. 804(a)(1) or, alternatively, that it authorize the issuance of a writ of habeas corpus ad testificandum directing Mr. Montgomery to appear for deposition.

Respectfully Submitted,

Paul R. Bottei # 017036
Michael J. Passino #005725
Office of the Federal Public Defender
Middle District of Tennessee
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Nashville, Tennessee 37203
(615) 736-5047

/s/ Michael J. Passino

CERTIFICATE OF DISCUSSION

I certify that I have discussed this motion with Assistant Attorney General James Gaylord who was authorized to speak for Andrew Smith while he was unavailable by Associate Deputy Attorney General Jennifer Smith. General Gaylord reasonably believed that Assistant Attorney General Andrew Smith would oppose this motion Further, while Mr. Smith will not return to the office until June 7, 2011, he and I have discussed similar issues and he has generally expressed his respectful objection to any motion by Petitioner that could possibly authorize further discovery. As such, the Respondent opposes this motion.

/s/ Michael J. Passino

CERTIFICATE OF SERVICE

This motion will be served electronically on opposing counsel by the CM/ECF sytem when it is filed. It has also been served by email and U.S. mail on:

Marty McAfee, Esq.
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Dated: June 6, 2011

/s/ *Michael J. Passino*

EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

TONY VON CARRUTHERS, Petitioner, vs. DAVID MILLS, Warden, Morgan County Regional Prison, Respondent.	)	No. 08-2425-BBD-dkv

DECLARATION OF BEN LEONARD

Declarant, Ben Leonard, states:

1. I am employed as an investigator for the Office of the Federal Public Defender for the Middle District of Tennessee. In that capacity, I have been working on the above-captioned case.

2. I make this declaration based on personal knowledge, except where indicated otherwise.

3. I, along with counsel, have interviewed Mr. James Montgomery, a co-defendant in the state court prosecution in which Mr. Montgomery and Mr. Carruthers were convicted of first degree murder and sentenced to death.

4. Mr. Montgomery provided me releases to review his former attorneys' files and to talk with them about the case. Those releases were provided to Messrs. McAfee and Scholl.

5. Mr. Montgomery also provided me with a statement directly implicating himself in the murders at issue, and exculpating Mr. Carruthers.

6. When I asked Mr. Montgomery whether he would sign a statement, he said not

without discussing the matters with Messrs Scholl and McAfee.

FURTHER DECLARANT SAITH NOT.

BEN LEONARD

Dated: 6-6-2011

CERTIFICATE OF SERVICE

This motion will be served electronically on opposing counsel by the CM/ECF sytem when it is filed. It has also been served by email and U.S. mail on:

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Dated: June 6, 2011

/s/ Michael J. Passino

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Re: Tony Carruthers v. David Mills, Warden
No. 08-2425-BBD (W.D. Tenn.) (Donald, J.)

Dear Messrs. McAfee and Scholl:

This is to confirm your statement to me on May 27, 2011, and my follow-up telephone conversation with Mr. McAfee on June 6, 2011. As you know, my investigator and I have talked to Mr. James Montgomery, who signed releases authorizing us to talk to you and to review your files. When we asked him if he would sign a statement relating to his knowledge of the facts in the above-referenced case, he informed us that we would not do so until consulting with you.

On May 27, 2011, you informed me that after "conferring with us as his attorneys, James Montgomery does not wish to make any declaration, affidavit, or statement regarding this matter. He asserts his 5th Amendment privilege and refuses to do so." This invocation extends to any process issued to him by the Court in the above-captioned matter to testify at a hearing or provide a deposition. You have informed me that you will continue to represent Mr. Montgomery.

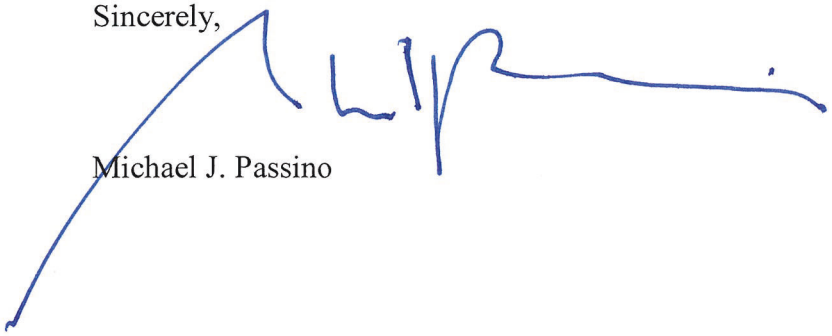
I appreciate your consideration and sincerely apologize for any inconvenience or burden this has caused you. In future, I will send you any pleadings or documents relating to Mr. Montgomery that we file on behalf of Mr. Carruthers.

If I have misstated anything, or you have any questions, please do not hesitate to call.

Sincerely,

Michael J. Passino

Sincerely,



Michael J. Passino

DEATH PENALTY CASE
Case No. W2026-00706-SC-RDM-PD
EXECUTION SCHEDULED May 21, 2026, at 10:00 a.m.

IN THE SUPREME COURT OF TENNESSEE
AT JACKSON

TONY VON CARRUTHERS,
Petitioner/Appellant,

v.

STATE OF TENNESSEE,
Respondent/Appellee.

APPELLANT'S INITIAL BRIEF
(ORAL ARGUMENT REQUESTED)

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STATEMENT OF ISSUES

1. Whether the post-conviction court erred in denying Mr. Carruthers' request for DNA testing under Tennessee's Post-Conviction DNA Analysis Act of 2001 without a hearing.

2. Whether the post-conviction court erred in denying Mr. Carruthers' request for DNA testing under Tennessee's Post-Conviction DNA Analysis Act of 2001 based on conclusions that are not supported by law or substantial evidence.

3. Whether the post-conviction court denied Mr. Carruthers' right to due process in denying his request to compel the State to disclose existing information that could be used to confirm Mr. Carruthers' innocence.

STATEMENT OF THE CASE

"DNA testing has an unparallelled ability to both exonerate the wrongly convicted and to identify the guilty." *Dist. Attorney's Office for Third Judicial Dist. v. Osborne*, 557 U.S. 52, 55 (2009). Appellant Tony Carruthers—a prisoner under sentence of death at Riverbend Correctional Facility in Nashville, Tennessee and scheduled for execution on May 21, 2026, for crimes he maintains he did not commit—seeks to utilize the power of DNA testing to prove his innocence before his execution.

Mr. Carruthers was convicted and sentenced to death based entirely on circumstantial evidence. No physical evidence has ever linked Mr. Carruthers to the crimes underlying his sentence.

Mr. Carruthers requested DNA testing under Tennessee's Post-Conviction DNA Analysis Act of 2001 (§§ 40-30-304, 40-30-305, Tenn. Code Ann.) (the "**DNA Act**") of evidence directly connected to the crimes in the Shelby County Criminal Court. He also asked the Criminal Court to compel Appellee State of Tennessee to disclose existing information that could be used to confirm Mr. Carruthers' innocence—a power the DNA Act gives the Criminal Court. Without a hearing, the Criminal Court denied Mr. Carruthers' requests. Mr. Carruthers appealed to the Criminal Court of Appeals (the "**CCA**"), and this Court assumed jurisdiction under Tenn. Code Ann. § 16-3-201(d).

The Criminal Court's Orders were premature, unsupported, and violated Mr. Carruthers' right to due process. Accordingly, this Court should reverse the Criminal Court's rulings and remand for further litigation.[1]

STATEMENT OF FACTS

Mr. Carruthers was indicted, convicted, and sentenced to death for crimes that occurred in early 1994. *See State v. Carruthers*, 35 S.W.3d 516, 524 (Tenn. 2000). His conviction and death sentence rest entirely on circumstantial evidence—including testimony from a secretly paid government informant, several convicted felons, and a medical examiner who has since disavowed his trial testimony.

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[1] On May 14, the Criminal Court of Appeals entered an order expediting this appeal. Due to the expedited nature of this appeal, Mr. Carruthers' counsel has not had access to the paginated record prior to finalizing and filing this Initial Brief. Therefore, citations to documents in the record are to the documents themselves rather than the paginated record. Mr. Carruthers' *Motion for DNA Testing Pursuant to the Tennessee Post-Conviction DNA Analysis Act of 2001* filed in the Criminal Court on May 4, 2026, is referenced as the "**DNA Motion**" and cited as "DNA Mot." The Appendix to the DNA Motion is cited as "DNA App'x." The *State's Response in Opposition to Petitioner's Motion for DNA Analysis Pursuant to the Tennessee Post-Conviction DNA Analysis Act of 2001* filed in the Criminal Court on May 5, 2026, is referenced as the "**DNA Response**" and cited as "DNA Resp." Mr. Carruthers' *Motion for Order Compelling Disclosure* filed May 10, 2026, is referenced as the "Motion to Compel" and cited as "Compel Mot."

Mr. Carruthers has also sought a stay of execution from this Court (Case No. W1997-00097-SC-DDT-DD).

Mr. Carruthers has maintained his innocence of the crimes underlying his conviction and sentence. Yet, his execution is set for May 21, 2026. (*See* DNA App'x, Ex. 1.)

I. Mr. Carruthers' conviction and death sentence are based entirely on circumstantial evidence.

The three victims—Marcellos "Cello" Anderson, his mother Delois Anderson, and Fredrick Tucker—disappeared on February 24, 1994. *Id.* After Ms. Anderson was reported missing, Mr. Carruthers' codefendant, Jonathan Montgomery, led authorities to the victims' bodies. *Id.* On March 3, 1994, the victims' bodies were found in a grave in a Memphis cemetery. *Id.* Mr. Anderson's hands were bound behind his back with cloth ties. (DNA App'x, Ex. 3.) Mr. Tucker was also bound with cloth ties at his hands and feet. *Id.* Ms. Anderson had two red socks knotted together wrapped around her neck, and one arm was tied behind her back with a pair of knotted pantyhose. *Id.* There were no eyewitnesses to the murder. *Carruthers*, 35 S.W.3d at 523-72.

Jonathan also led police to the involvement of his brother James Montgomery. While Jonathan gave inconsistent statements to police, he ultimately—after several unrecorded interrogation breaks and across multiple days—told police that he, James, and Mr. Carruthers were present at the gravesite when the victims were killed, but that neither James nor Mr. Carruthers killed anyone. (DNA App'x, Ex. 8.) Instead, Jonathan told police

that Bobby Wilson was the actual killer. *Id.* Jonathan was found hanged in his cell prior to trial. *Carruthers*, 35 S.W.3d at 524 n.2.

The State believed that Ms. Anderson's home was the scene of a kidnapping because Ms. Anderson did not take her purse with her, someone answered the phone when her niece telephoned the residence but failed to speak, and a half-eaten meal was found in Ms. Anderson's bedroom. Police collected multiple latent prints suitable for comparison from Ms. Anderson's house, including prints from the doorknobs and the phone receiver. The fingerprints collected from Ms. Anderson's house, which included six unidentified prints, excluded Mr. Carruthers and Mr. Montgomery.[2]

Consistent with Jonathan Montgomery's statement that Mr. Carruthers did not commit these crimes, no forensic evidence linked Mr. Carruthers to the crime. *See id.* at 523-72. In fact, the State's case against Mr. Carruthers was originally dismissed in General Sessions Court for lack of evidence. (DNA App'x, Ex. 4.)

The State was only able to obtain an indictment against Mr. Carruthers after enlisting the services of a career snitch named Alfredo Shaw, who testified to Mr. Carruthers' purported confession. (DNA App'x, Ex. 5; *see also*

[2] In 2022, the Memphis Police Department ran the unidentified prints in AFIS. (DNA App'x, Ex. 10.) One print on the northwest bedroom door matched Ms. Anderson's niece, but there still remain six unidentified prints. *See id.*

DNA App'x, Ex. 6 (Shaw's grand jury testimony).) That testimony formed the basis for the State's original theory against Mr. Carruthers—that two brothers, Jerry and Terry Durham, hired Mr. Carruthers to commit the murders for $100,000 and a kilogram of cocaine. (DNA App'x, Ex. 6.) But before trial, Mr. Shaw recanted his grand jury testimony in a TV news statement where he confessed that the police paid him to testify against Mr. Carruthers. (DNA App'x, Ex. 7.) So the State changed its theory.

The State's new theory was that Mr. Carruthers, along with his co-defendants, James and Jonathan Montgomery, kidnapped Mr. Anderson to rob him and buried the victims alive. *Carruthers*, 35 S.W.3d at 524. Mr. Anderson was "heavily involved in the drug trade" and known to carry large amounts of cash and valuables. *Id.*

At trial, the prosecution's case rested almost entirely on the testimony of convicted felons and paid informants. Jimmy Lee Maze Jr., "a convicted felon," testified that he had received two letters from Mr. Carruthers about a "master plan" to "make those streets pay me." *Id.* Mr. Maze then recounted a conversation he purportedly had with Mr. Carruthers discussing plans for the kidnapping. *Id.* Charles Ray Smith testified that Mr. Carruthers commented to him, while working together on a prison work detail in a cemetery, that hiding a body under the grave of another would be a good way to dispose of a corpse. *Id.*

Finally, Mr. Shaw testified that Mr. Carruthers confessed to him. *Id.* at 528-29. Mr. Shaw's testimony was the only putative "confession" in this case. But the jury *never heard* that Mr. Shaw is a career snitch (as discussed more below).

The State's remaining evidence against Mr. Carruthers was circumstantial at best. For example, Nakeita Shaw testified that she witnessed Mr. Carruthers and James Montgomery at her home on the night of the kidnappings. *Id.* at 526. Without more, however, this testimony did little to inculpate Mr. Carruthers; it has never been asserted that Mr. Carruthers was unacquainted with the Montgomery brothers. Likewise, Chris Hines' testimony that Jonathan Montgomery beeped him and said "[m]an, a n——r got them folks," apparently meaning "Cello and them" (*id.*), also does not inculpate Mr. Carruthers but only shows that Jonathan Montgomery had knowledge of the murders, which is clear since he led police to the bodies.

Mr. Carruthers was forced to represent himself at trial. *See id.* at 533-34. The jury never heard any evidence about the fingerprints from Ms. Anderson's house—either that there were unidentified prints or that Mr. Carruthers and Mr. Montgomery were excluded from the prints.

At the penalty phase, the State emphasized its theory that the victims were buried alive in asking the jury to sentence Mr. Carruthers to death. (*See* DNA Mot., at 10-11; DNA App'x, Ex. 30.) Both James Montgomery and Mr.

Carruthers were convicted and sentenced to death. *See Carruthers*, 35 S.W.3d at 524.

II. Since trial, additional information and evidence have further undermined Mr. Carruthers' conviction and death sentence.

Since Mr. Carruthers' trial, additional information and evidence (which is undisputed) has further undermined Mr. Carruthers' conviction and death sentence. His codefendant, James Montgomery, was granted a new trial and ultimately released from prison. Prior to his release, Mr. Montgomery disavowed Mr. Carruthers' involvement in the crimes. The medical examiner who testified at Mr. Carruthers' trial disavowed his testimony that the victims were buried alive. And, after decades of evading its disclosure obligations, the State finally confirmed that Mr. Shaw was a paid informant.

A. After receiving a new trial, Mr. Carruthers' codefendant received an *Alford* plea due to forensic evidence and told federal investigators Mr. Carruthers did not commit these crimes and identified an alternative suspect. He has since been released from prison.

On direct appeal, this Court granted James Montgomery a new trial due to the prejudice caused by Mr. Carruthers' forced self-representation. *Id.* at 553-54. As part of his re-trial proceedings, Mr. Montgomery sought forensic

testing on multiple pieces of physical evidence collected from both crime scenes. The testing revealed critical information. (*See* Keel Aff., at Attachment 2.)[3]

First, the testing did not reveal any DNA matches to Mr. Montgomery or Mr. Carruthers. A majority of the samples were either too small to produce a profile under 2003 technology, were inconclusive, or matched the victims. However, there was one robust male profile on a white blanket that was buried with the victims. *Id*. Mr. Carruthers, Mr. Montgomery, and the male victims were excluded as a source of the DNA. The unknown male profile was suitable for upload into the Combined DNA Index System (CODIS) database. The last report Mr. Carruthers obtained, through a request under James Montgomery's case, was in 2019 and indicated that there were no hits in CODIS. (DNA App'x, Ex. 12.)[4] No additional DNA testing has occurred since 2003, and to the best of Mr. Carruthers' knowledge, the unknown male profile has not been analyzed or compared since 2019.

In the wake of the release of the DNA results, the State offered and Mr. Montgomery accepted an *Alford*[4] plea to a reduced charge of three counts of

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[3] The Affidavit of Alan Keel is in the Appendix to the DNA Motion at Exhibit 11 and cited as "Keel Aff." Mr. Keel has conducted DNA testing in hundreds of cases in over 36 states and has reviewed the records related to the prior testing in this case conducted by the Tennessee Bureau of Investigation and Bode Technology Group. (Keel Aff., at 1-2.)

[4] *See North Carolina v. Alford*, 400 U.S. 25 (1970).

second-degree murder. (DNA App'x, Ex. 13.) Mr. Montgomery was sentenced to concurrent 27-year sentences on each count. *Id.*

In 2010 and 2011, while serving his reduced sentence, Mr. Montgomery gave a statement to an investigator with the Capital Habeas Unit that he kidnapped two of the victims and dispatched Ronnie "Eyeball" Irving to kidnap Ms. Anderson. He confirmed to the investigator that Mr. Carruthers was not involved in the kidnapping or the murders.

Mr. Irving was murdered in 2002, and his fingerprints and a DNA sample are on file at the medical examiner's office. To date, the unidentified physical evidence—the latent fingerprints or unknown male DNA profile—has not been compared to Mr. Irving.

Mr. Montgomery was released from prison in 2015. (DNA App'x, Ex. 13.)

B. The medical examiner disavowed his trial testimony that the victims were buried alive.

At Mr. Carruthers' trial, medical examiner Dr. O.C. Smith testified that the victims were buried alive. *Carruthers*, 35 S.W.3d at 527. As stated above, the State emphasized this narrative in its penalty phase arguments to emphasize the purported "wicked" and "atrocious" nature of the crime. (DNA App'x, Ex. 30.)

However, there was no scientific basis for the conclusion that the victims were buried alive. (*See* DNA App'x, Ex. 31 (post-conviction expert testimony

that there was no scientific basis for Dr. Smith's trial testimony).) Even Dr. Smith himself has subsequently disavowed his own testimony from Mr. Carruthers' trial. (DNA App'x, Ex. 32 (Aff. Dr. O.C. Smith (April 3, 2007) ("I will no longer sustain an opinion, as I did in my original testimony, that to a reasonable degree of medical certainty, the victims were in fact alive at the time they were buried beneath the coffin.")).)

Yet, to this day, the State perpetuates this false narrative—including in its DNA Response. (*See* DNA Resp., at 10.)[5] More significantly, as discussed below, the Criminal Court relied on this false narrative in denying the DNA Motion.

C. Decades after trial, the State confirmed Mr. Carruthers' suspicion that the State's primary witness was a paid informant.

For thirty years, the State withheld information from Mr. Carruthers and his defense team about Alfredo Shaw's status as a paid government informant. It did so despite repeated requests from Mr. Carruthers and his team for exculpatory and impeachment materials. The State's concealment of Mr. Shaw's status began as soon as Mr. Carruthers' prosecution commenced.

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[5] The State also relied on this false narrative in recent briefing to the CCA in another case. *See* State's Br., *Carruthers v. State*, No. W2026-00226-CCA-R3-PD (Tenn. Crim. App. Mar. 23, 2026), at 9 ("[T]rial testimony established that they had all died of injuries associated with being buried alive.").

As stated above, before Mr. Carruthers' trial, Mr. Shaw went to the media and admitted that his grand jury testimony was false and given only as a result of pressure and payment from the State Attorney and law enforcement. (DNA App'x, Ex. 6.)

At trial, Mr. Carruthers, forced to act as his own counsel, called Mr. Shaw to the stand to admit his recantation from the media interview. Before Mr. Shaw took the stand, the trial court called in Mr. Shaw's counsel and, in open court, cautioned that if Mr. Shaw repeated his recantation then the State "plan[ned] to seek indictments for aggravated perjury in both . . . instances." (DNA App'x, Ex. 18, at 2128.) After meeting with his client, Mr. Shaw's lawyer reported that Mr. Shaw would "testify that what he has testified before was all true and correct." *Id*. at 2136. Indeed, on the stand, Mr. Shaw repeated for the jury the "confession" that Mr. Carruthers purportedly gave him—which he had previously recanted to the media. (DNA App'x, Ex. 19, at 2174-78.) Mr. Carruthers attempted to ask if Mr. Shaw was a paid informant, but the prosecutor successfully objected and kept the jury from learning the truth. *Id*. at 2254. Not only would Mr. Shaw's position as an informant have gone to his bias, but his recantation directly undermines the State's case against Mr. Carruthers.

In the decades after Mr. Carruthers' trial, the State's evasion continued—as evidenced by the State's repeated failures to disclose any

information about Mr. Shaw's history as an informant. (*See* DNA Mot., at 8-9; DNA App'x, Exs. 14-17.) In post-conviction, through counsel, Mr. Carruthers continued his quest to prove that Mr. Shaw was a paid informant for the State. (*See* DNA App'x, Ex. 20 (three letters from Mr. Carruthers' post-conviction counsel, Charles R. Ray, to John W. Campbell, Assistant District Attorney in August 2002 requesting such information); DNA App'x, Ex. 21 (Mr. Carruthers' *Motion to Compel the State to Reveal All Agreements, Renumeration, Or Other Consideration Given To The State's Witnesses* filed September 12, 2002); DNA App'x, Ex. 22 (State's response denying giving Mr. Shaw a deal); DNA App'x, Ex. 23 (Mr. Carruthers' second motion to compel filed November 25, 2002).) Even after court-ordered to file a written response "divulging whether Alfredo Shaw was or was not a paid government agent for either the county, state, or federal government during the time period he had conversations with petitioner in the Shelby County Jail" (DNA App'x, Ex. 24, at 1), the State denied that Mr. Shaw was a "paid government agent." (DNA App'x, Ex. 25; *see also* DNA App'x, Ex. 26 (January 7, 2003, letter from Mr. Campbell to Mr. Ray again denying that Mr. Shaw was a paid informant).)

Alas, Mr. Carruthers' quest continued. (*See* DNA App'x, Ex. 27 (Mr. Carruthers' requests for information).) Finally, on May 9, 2024—almost three decades after Mr. Carruthers' trial—the Shelby County Criminal Court, Division V, ordered the Memphis Police Department to provide information

regarding Mr. Shaw's employment as a confidential informant to the Shelby County District Attorney's Justice Review Unit. (DNA App'x, Ex. 28.) On August 6, 2024, Assistant District Attorney Kevin Rardin provided Mr. Carruthers' counsel with more than 20 pages of information regarding Mr. Shaw's employment as a confidential informant. (DNA App'x, Ex. 29.) The documents included signed confidential agreements between Mr. Shaw and law enforcement dating back to mid-1980s and ledgers of payments to Mr. Shaw continuing until at least 2003. *See generally id.*

III. In the decades since his trial, Mr. Carruthers has continuously tried to obtain DNA testing to prove his innocence.

Throughout the three decades since his trial, Mr. Carruthers has tried to obtain DNA testing. In state post-conviction, Mr. Carruthers argued that his counsel was ineffective during pre-trial litigation for failing to retain a DNA expert, who would have testified: (1) DNA was available on blood found on "blanket-like cloth"; and (2) the DNA did not belong to the victim or any of the three co-defendants. *See generally Carruthers v. State*, No. W2006-00376-CCA-R3PD, 2007 WL 4355481 (Tenn. Crim. App. Dec. 12, 2007). At an evidentiary hearing, Mr. Carruthers presented the expert testimony of Todd Bille, who testified that he was hired by Mr. Montgomery in November 2002 and "was asked to examine evidence to determine if there could be potential biological fluids and whether DNA analysis could be performed." *Id.* at *33. "Bille

examined a total of nineteen items, including Marcellos Anderson's socks, pants, shirt, underwear and belt; Tucker's socks, jeans, belt, shirt, and boots; Delois Anderson's dress and underwear; an unidentified red sock; ties or bindings from Tucker; and a section of a white cloth blanket." *Id.* In his report from that testing, "Bille reported that samples from the white blanket did not match the DNA of any of the victims, the petitioner, or the codefendants." *Id.* He further "commented that the tests performed on the white blanket could not have been performed at the time of the trial, but similar tests could have been performed with the same results." *Id.*

The post-conviction court denied Mr. Carruthers' claim, concluding that Bille's testimony and the DNA results were "only very minimally helpful to the petition," the evidence did not "negate all other proof in the case," and "it is rank speculation to assume that this indicates that a third party might have committed this crime." *Id.* at *38. On appeal, the CCA affirmed the denial. *See generally id.*

Mr. Carruthers next moved *pro se* in 2011 to reopen state post-conviction proceedings under the DNA Act, seeking testing of the vaginal swab and blanket from trial, using a pre-printed form. *Carruthers v. State*, No. W2012–01473–CCA–R3–PD, 2013 WL 3968787, at *3 (Tenn. Crim. App. Aug. 1, 2013). Mr. Carruthers sought testing under only the mandatory provisions of the DNA Act. § 40-30-304. Tenn. Code Ann. The State opposed the testing, arguing

that "DNA testing had already been performed on the items, and the results did not give rise to a reasonable probability that Petitioner would not have been convicted of the crimes." *Carruthers*, 2013 WL 3968787, at *3.

The post-conviction court dismissed Mr. Carruthers' motion. *Id.* On appeal, the CCA affirmed. *Id.* at *5. The Court reasoned that "[a]ny results that identified a female individual would not in any way provide a reasonable probability that the female individual, rather than Petitioner, would have been convicted of murdering the victims." *Id.*

IV. In a continued effort to confirm his innocence ahead of his imminent execution, Mr. Carruthers sought testing under the DNA Act.

The DNA Act offers litigants two paths to testing—one discretionary and the other mandatory. Tenn. Code. Ann. § 40-30-304; Tenn. Code. Ann. § 40-30-305.

First, pursuant to Tenn. Code. Ann. § 40-30-304, the Court *shall* grant testing if the following four prongs are met:

> (1) A reasonable probability exists that the petitioner would not have been prosecuted or convicted if exculpatory results had been obtained through DNA analysis;
> (2) The evidence is still in existence and in such a condition that DNA analysis may be conducted;
> (3) The evidence was never previously subjected to DNA analysis or was not subjected to the analysis that is now requested which could resolve an issue not resolved by previous analysis; and

(4) The application for analysis is made for the purpose of demonstrating innocence and not to unreasonably delay the execution of sentence or administration of justice.

Tenn. Code. Ann. § 40-30-304.

Second, pursuant to Tenn. Code. Ann. § 40-30-305, the Court *may* grant testing if the following four prongs are met:

(1) A reasonable probability exists that analysis of the evidence will produce DNA results that would have rendered the petitioner's verdict or sentence more favorable if the results had been available at the proceeding leading to the judgment of conviction;
(2) The evidence is still in existence and in such a condition that DNA analysis may be conducted;
(3) The evidence was never previously subjected to DNA analysis, or was not subjected to the analysis that is now requested which could resolve an issue not resolved by previous analysis; and
(4) The application for analysis is made for the purpose of demonstrating innocence and not to unreasonably delay the execution of sentence or administration of justice.

Tenn. Code. Ann. § 40-30-305.

A. The requested DNA testing could confirm Mr. Carruthers' innocence and/or inculpate an alternative suspect.

In the DNA Motion, Mr. Carruthers sought (1) testing of items that have never been tested, and (2) further testing of items that were previously tested.[6]

[6] As stated in the DNA Motion, each of the items is in the custody of Shelby County government officials. (DNA Mot., at 13, 15.)

Criminalist and DNA expert Alan Keel advised that the testing should take only 14 days after the evidence is delivered to the DNA lab. (Keel Aff., ¶ 14.)

1. *Testing Items That Have Never Been Tested*

First, Mr. Carruthers sought testing of items that are directly related to the crimes and have never been subjected to DNA testing: (1) fingernail scrapings from all three victims; (2) the bindings used on Mr. Anderson; and (3) the bindings used on Ms. Anderson, which include knotted pantyhose around her hand and the red socks knotted around her neck. Mr. Keel concluded that it is likely each of these items "bear transfer biology from whomever bound the victims." (Keel Aff., at 6.) Assuming a profile is obtained from any or all of these items, Mr. Carruthers sought to compare that profile to the victims for exclusionary purposes, to himself, to co-defendant James Montgomery, to Ronnie Irving, and to upload any unmatched profile to CODIS. (DNA Mot., at 14.)

As to the bindings used on the victims, Mr. Keel concludes that the bindings should be sampled for transfer or touch biology from the assailant in light of current technology, explaining that such testing "could . . . produce a DNA profile or profiles common to more than one item and common to more than one victim, and/or be redundant to the blood stain profile from the #16 blanket." (Keel Aff., at 7.) If such a finding were obtained, it "would produce additional investigative leads (e.g. CODIS/GG), or minimally, support the

relevance of the foreign blood previously discovered on the #16 blanket as originating from an assailant." *Id.* at 6. In other words, the analysis could provide a lead to the true perpetrator's profile. Additionally, if the male DNA profile on the bindings matched the unidentified profile from the blood on the blanket, it would support the inference that the blood was deposited at the time of the murders.

As to the victims' fingernail scrapings, Mr. Keel explained "[f]ingernails have long been recognized as likely bearing assailant biology in cases with violent/intimate contact, and with today's technology are now routinely tested." *Id.* at 7. Mr. Keel has "personally examined fingernail evidence in over 50 cases" and that, based on his experience and "the scientific literature," "most people sampled at random do not have foreign biology under their fingernails, and that foreign biology intentionally introduced to the fingernails of living subjects in controlled studies is short lived." *Id.* Therefore, "foreign biology associated with the fingernails of homicide victims is usually relevant to the crime." *Id.* And in this case, "[i]t is likely that one or more of the victims struggled with the perpetrator(s) during the assault." *Id.* Therefore, Mr. Keel concluded that "[a]ny available fingernail evidence specimens from any or all of the victims should be tested in a contemporary investigation." *Id.*

Mr. Keel explained that new advances in DNA testing and analysis create a likelihood that testing will provide investigative leads to answers far

beyond the unanswered question of whose blood was on the blanket. *Id.* at 2. Today's DNA analysis can lead to highly discriminating DNA profiles from common sources across different items of evidence, including sources not previously considered suitable for testing. *Id*.

2. Further Testing of Previously Tested Items

Mr. Carruthers also sought to compare the unknown male profile that was found on a white blanket in the grave with the victims. As noted above, this profile was already compared to Mr. Carruthers, co-defendant James Montgomery, and the victims and uploaded to CODIS. (DNA App'x, Ex. 8.) As stated above, Mr. Carruthers' counsel was provided an update in 2019 that there have been no hits. (DNA App'x, Ex. 12.) Counsel has not received an update in the seven years since. (DNA Mot., at 7.)

In other words, the testing of this evidence is incomplete. As such, Mr. Carruthers sought to have that unknown male profile re-run in CODIS and compared to Mr. Irving. (DNA Mot., at 15.)

B. Mr. Carruthers originally filed a request under the DNA Act in this Court.

Pursuant to Rule 12.4(E), because the motion and related litigation may "potentially affect" the timing of his execution, Mr. Carruthers originally filed a motion for DNA analysis under the DNA Act in this Court on April 9, 2026 (over a month before his scheduled execution and within days of the

undersigned being retained to represent Mr. Carruthers). (*See* DNA Mot., at 23, n.14.) However, on April 30, this Court denied Mr. Carruthers' motion, stating:

> Mr. Carruthers' motion is not well-taken. As the State asserts in its response in opposition to the motion, the December 2025 amendment to Rule 12(4)(E) neither created a new procedural avenue nor granted this Court original jurisdiction to adjudicate an eleventh-hour DNA claim that was not timely pursued via the existing DNA Act. *See* Tenn. S. Ct. R. 12(4)(E) (2025) (authorizing the appointment of a special master when deemed necessary by the Court to conduct fact-finding in pending state collateral litigation that "potentially affect[s] the method or timing" of an impending execution). Accordingly, the motion is DENIED.

(DNA App'x, Ex. 2.)[7]

C. After this Court's denial, Mr. Carruthers filed the DNA Motion in the Criminal Court.

After this Court's April 30 Order, Mr. Carruthers promptly filed the DNA Motion in the Criminal Court. (*See generally* DNA Mot.) The State responded the next day. (*See generally* DNA Resp.) Almost a week later, on May 11, without a hearing, the Criminal Court entered an *Order Denying Petitioner's Motion for DNA Testing Pursuant to the Tennessee Postconviction DNA Analysis Act of 2001* (the "**DNA Order**").[8]

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[7] Mr. Carruthers maintains that the filing of his request in this Court was appropriate under the plain language of Rule 12.4(E) and that, in doing so, he followed the appropriate and available state court remedy to seek this testing.

[8] Although the DNA Order is dated May 11, it was not received by Mr. Carruthers' counsel until May 12.

In the DNA Order, the Criminal Court conceded that Mr. Carruthers established prongs two and three of both the discretionary and mandatory provisions of the DNA Act—crediting his expert affidavit regarding suitability for testing (prong 2) and his assertions that the testing had not been previously conducted or requested (prong 3). (DNA Order, at 11.) However, the v denied the DNA Motion, finding that Mr. Carruthers did not establish prongs one and four of either the mandatory or discretionary provisions of the DNA Act. *See id.* at 10-12. As to prong one, the court concluded Mr. Carruthers failed to establish that he would not have been prosecuted, convicted, or received a more favorable sentence if there were exculpatory DNA results. *Id.* at 10-11. Finally, the court concluded that Mr. Carruthers failed to show that the DNA Motion was not filed for purposes of delay. *Id.* at 12.

D. In addition to the DNA Motion, the Criminal Court denied Mr. Carruthers' request to compel the State to disclose certain biological information for testing.

On May 10, while the DNA Motion was pending in the Criminal Court, Mr. Carruthers filed a *Motion for Order Compelling Disclosure* (the "**Motion to Compel**") requesting that the Criminal Court require the State to disclose biological standards of Ronnie Irving so that they can be compared to existing evidence. The state responded the next day.

On May 12, the *day after* it issued the DNA Order, the Criminal Court entered an *Order Denying Petitioner's Motion for Order Compelling Disclosure* (the "**Compel Order**"), writing:

> The Court finds that the motion is not well-taken. First, the Court notes that Mr. Carruthers does not cite any authority supporting his request. Second, the Court denied Mr. Carruthers' [DNA Motion] on May 11, 2026. As such, the Court does not have pending before it a matter in which the biological standard would be relevant. Finally, as referenced in his motion, Mr. Carruthers can seek to obtain the standard through the issuance of a subpoena.

(Compel Order, at 1.)[9]

The morning after receiving the Orders—on May 13, just eight days before his scheduled execution—Mr. Carruthers filed a Notice of Appeal to the CCA. Mr. Carruthers also requested expedited briefing, which the CCA granted on May 14.

On May 15, Mr. Carruthers filed a motion asking this Court to assume jurisdiction pursuant to Tenn. Code Ann. § 16-3-201(d), which this Court granted. This Court ordered that "both parties . . . file their briefs no later than Monday, May 18, 2026, at 4:30 p.m."

[9] The Criminal Court's DNA Order and the Compel Order are referenced collectively as the "**Orders**."

ARGUMENT

I. The Criminal Court erred by not holding a hearing on Mr. Carruthers' DNA Motion.[10]

This Court has held that post-conviction courts should hold an evidentiary hearing on claims raised under the DNA Act. *See Griffin v. State*, 182 S.W.3d 795, 800 (Tenn. 2006) ("[F]indings of fact upon which rights are granted or denied are best made following an evidentiary hearing."). Summary dismissal is only appropriate where the trial court *conclusively* finds, based on the entire contents of the petition, that petitioner is not entitled to relief. *Cole v. State*, No. M2012-01206-CCA-R3-PC, 2013 WL 4735471, at *5 (Tenn. Crim. App. Sept. 3, 2013).

Here, the Criminal Court denied Mr. Carruthers' DNA Motion in a matter of days without a hearing. In fact, as discussed below, the DNA Order indicates that a hearing would have been helpful to the Criminal Court's analysis and perhaps would have corrected some of the court's misunderstandings of the case. The Criminal Court even tacitly admits that a hearing would have been beneficial to ascertain additional information regarding the facts and circumstances surrounding the timeline of Mr. Carruthers' motion practice, writing: "There is no explanation provided or that

[10] Contrary to the Criminal Court's statement that Mr. Carruthers asked for a ruling without a hearing (DNA Order, at 2), Mr. Carruthers' DNA Motion *specifically* requested an evidentiary hearing. (DNA Mot., at 26.)

the Court can surmise as to why Mr. Carruthers waited." (*See* DNA Order, at 12.) This is precisely the type of information that could have been explored at an evidentiary hearing.

First, the Criminal Court denied Mr. Carruthers' Motion, in part, because it concluded that he had not met prong one under either provision of the DNA Act. (DNA Order, at 10, 13.) The Criminal Court reasoned that, when looking at the breadth of circumstantial evidence linking Mr. Carruthers to the crime, it did "not find a reasonable probability" that Mr. Carruthers "would not have been prosecuted or convicted if exculpatory results had been obtained through DNA analysis." *Id.* at 10. However, as discussed further below, this analysis entirely disregards Mr. Carruthers' evidence that the cited sources have either been outright discredited or doubts have been cast on their motives. (*See infra* Part II.A.)

Had Mr. Carruthers been afforded an evidentiary hearing, he would have been able to emphasize to the Criminal Court that exculpatory DNA evidence, when weighed against the entirely unreliable nature of the circumstantial evidence presented at trial, he has met prong one. Mr. Carruthers could have additionally presented the Criminal Court with evidence that Mr. Carruthers' jurors themselves have admitted that, if they had known that Mr. Shaw was a paid informant or that the DNA evidence shows Mr. Irving (and not Mr. Carruthers) were involved in the crimes, it

would have changed their analysis of Mr. Carruthers' case, therefore meeting the first prong of (at least) the discretionary testing statute. (*See* DNA Motion, at 21–22.)

Second, the Criminal Court found that "the number of victims and the opinion that the victims were buried alive would weigh heavily in favor of death sentences" and that Mr. Carruthers has therefore not met prong one of the discretionary testing statute. (DNA Order, at 13.) As outlined above, this is undisputedly false. At an evidentiary hearing, Mr. Carruthers could have addressed the Court's serious misconception of the victims' cause of death and introduced evidence that this theory has been proven false. (*See* DNA Motion, at 10–11 (citing the medical examiner's testimony in 2007 disavowing his finding that the victims were buried alive)); *see also infra* Part II.A.1.) The Court's grave misconceptions emphasize why the Tennessee Supreme Court has urged that such findings "are best made following an evidentiary hearing." *See Griffin*, 182 S.W.3d at 800.

Summary dismissal is only appropriate where the trial court *conclusively* finds, based on the entire contents of the petition, that petitioner is not entitled to relief. *Cole*, 2013 WL 4735471, at *5. As the DNA Order makes clear, the Criminal Court did not base its conclusion on the *entire* contents of the petition but, instead, ignored information disavowing the State's theory at trial and evidence that undermines confidence in Mr. Carruthers' conviction and

sentence. Therefore, summary dismissal was not appropriate. *Cf. Cole*, 2013 WL 4735471, at *5 (reversing the post-conviction court's summary dismissal of the petition filed under the DNA Act "[b]ecause there was an insufficient factual basis to support" the judgment).

On this basis alone, this Court should reverse the DNA Order and remand to the Criminal Court for an evidentiary hearing. *Cf. Griffin*, 182 S.W.3d at 800.

II. The Criminal Court erred in denying Mr. Carruthers' DNA Motion.

The DNA Act was created to serve two purposes—"first, to aid in the exoneration of those who are wrongfully convicted and second, to aid in identifying the true perpetrators of the crimes." *Powers v. State*, 343 S.W.3d 36, 51 (Tenn. 2010). This Court specifically concluded that the DNA Act granted more than just exclusionary testing. *See id.* "DNA analysis that only compares a petitioner's profile with a profile developed from biological material found at a crime scene cannot effectuate this second purpose." *Id.* "When, however, uploading the latter into a DNA database can potentially identify the person responsible for the crime, the Act also serves a 'law-enforcement,' or justice-finding, purpose: the apprehension of criminals who may still be at large." *Id.*

A postconviction court's order under the DNA Act is subject to reversal if "it is not supported by substantial evidence." *Allen v. State*, No. E2022-00373-CCA-R3-PC, 2022 WL 16780005, at *3 (Tenn. Ct. App. Nov. 8, 2022). Here, this Court should reverse the DNA Order because the Criminal Court's conclusion that Mr. Carruthers did not meet two prongs of the four-prong test "is not supported by substantial evidence." *Id.*[11]

A. The Criminal Court erred in concluding that Mr. Carruthers did not meet prong one under either provision of the DNA Act.

The Criminal Court's conclusion that Mr. Carruthers did not meet prong one under either provision of the DNA Act is inconsistent with Tennessee law, not supported by substantial evidence, and *directly* contradicted by the Criminal Court's *own finding* that "it is plausible that a DNA profile of a third party at the crime scene . . . *could cause residual doubt in the minds of the jurors* . . . ." (DNA Order, at 14 (emphasis added).) In reaching this errant conclusion, the Criminal Court relied on undisputedly false information, failed to apply the required presumption, and ignored critical evidence.

[11] Because the Criminal Court found that Mr. Carruthers established prongs two and three of the DNA Act standard, those prongs are not at issue.

1. The Criminal Court's DNA Order relied on undisputedly false information.

The DNA Order relies on information that is undisputedly false—namely, the State's disavowed theory that the victims were buried alive. (*See* DNA Mot., at 10-11 (explaining that this theory has been disproven); *see also* DNA Order, at 13 (relying on this false narrative).) Dr. O.C. Smith, the medical examiner who testified at Mr. Carruthers' trial *for the State*, has disavowed his trial testimony that the victims were buried alive. (DNA Mot., at 10; DNA App'x, Ex. 32.) Two additional expert pathologists, Dr. Cleland Blake and Dr. George Nichols, have likewise concluded there was no scientific basis for Dr. Smith's trial testimony. (DNA Mot., at 10; DNA App'x, Ex. 31.) Dr. Nichols testified that he found "no evidence, in [his] opinion, that any person was alive in the site in which their bodies were discovered" and that there was "no proof of the best evidence of conscious activity of any victim while alive in the grave site." (DNA App'x, Ex. 31.) This evidence is undisputed.

Despite this evidence, the Criminal Court inexplicably repeated this erroneous narrative in its DNA Order and used it as support for its conclusion that Mr. Carruthers did not meet prong one of the test under the DNA Act, stating: "The Court also finds that the number of victims and the opinion that the victims were buried alive would weigh heavily in favor of death sentences."

(DNA Order, at 13). This conclusion is not based on substantial evidence but, instead, is wholly unsupported.

The Criminal Court's reliance on this false premise to find that Mr. Carruthers did not meet prong one taints its entire analysis. As explained in the DNA Motion, a juror *from Mr. Carruthers' case* acknowledged the importance of the State's argument that the victims were buried alive, stating, "I recently learned that the victims were not buried alive . . . . Had I known the victims were not buried alive, I would not have voted for a death sentence." (DNA Mot., at 22.) Therefore, contrary to the Criminal Court's conclusion, the victims were *not* buried alive and there *is* a "reasonable probability" that Mr. Carruthers' case would have turned out differently had this DNA been tested.

Even if this Court were to conclude that it cannot consider evidence outside the trial record, the medical examiner's recantation must still be considered because it is undisputed. Dr. Smith's disavowal of his own testimony is not a contested factual matter, it is a stipulated and unchallenged fact. Under *Alley v. State*, No. W2004–01204–CCA–R3–PD, 2004 WL 1196095, at *3 (Tenn. Crim. App. May 26, 2004), this Court must consider "any stipulations of fact made by either party." The State has never contested Dr. Smith's recantation, nor has it offered any expert to support the now-abandoned opinion that the victims were buried alive. Accordingly, regardless

of how narrowly this Court defines the evidentiary record, the Criminal Court's reliance on the false "buried alive" narrative to deny prong one is indefensible.

Indeed, even looking only at the evidence presented at trial and what is undisputed in the record, the Criminal Court's conclusion cannot stand. At trial, no physical evidence linked Mr. Carruthers to these crimes. No forensic evidence, no DNA, no fingerprints, no ballistics, connected him to the murders. (DNA Mot., at 5.) The case rested entirely on the testimony of convicted felons and a paid informant. The State never argued that Mr. Carruthers was the primary actor or more culpable than Mr. Montgomery. James Montgomery's later statements, which the Criminal Court wholly failed to address, confirm that Mr. Carruthers was not involved in the kidnapping or the murders and that Montgomery dispatched Ronnie Irving to kidnap Ms. Anderson. (DNA Mot., at 10-11.) When this evidence is considered alongside the presumption of exculpatory DNA results, there is plainly a reasonable probability that Mr. Carruthers would not have been prosecuted, convicted, or sentenced to death.

The intent of the DNA Act cannot possibly be to permit a court to rely on a demonstrably false fact to deny a petitioner's request for testing. The DNA Act was enacted to serve two purposes: "first, to aid in the exoneration of those who are wrongfully convicted and second, to aid in identifying the true perpetrators of the crimes." *Powers*, 343 S.W.3d at 51. Those purposes would be defeated if courts could deny testing based on conclusions that rest on

evidence that has been conclusively disproven. The Criminal Court's conclusion that "the number of victims and the opinion that the victims were buried alive would weigh heavily in favor of death sentences" does precisely that. (DNA Order, at 13.) It uses a fact that every qualified expert to examine the issue has rejected to deny Mr. Carruthers' request for DNA testing that could exonerate him. Such a result is antithetical to the purpose of the DNA Act and renders the Criminal Court's prong one analysis unsupported by substantial evidence.

2. The Criminal Court did not apply the required presumption that the requested DNA testing would be favorable to Mr. Carruthers.

In reviewing a motion under the DNA Act, Tennessee courts must presume that the requested testing would be favorable to the movant. *See Powers*, 343 S.W.3d at 58 ("For purposes of determining whether testing is warranted under section 40–30–304 of the Act, however, we must presume that testing results would prove exculpatory to the petitioner."). While the Criminal Court recognized this standard (DNA Order, at 12-13), the DNA Order indicates that the Criminal Court did not correctly apply it.

On its face, the DNA Order fails to properly apply this presumption—reasoning that a "DNA 'hit' may be related to another individual who participated in the crime *or an individual who touched one or more of the items at another time* (i.e. someone living with one of the victims or perpetrators, a

retailer, or the actual owner of the items)." (DNA Order, at 13.) Assuming that a third-party "hit" could be a completely unrelated person is wholly inconsistent with Tennessee law, which requires the court to "postulate whatever *realistically possible* test results would be *the most favorable to [the] defendant*." *Powers*, 343 S.W.3d at 55 (emphasis added). Under Tennessee law, the Criminal Court had to "presume that the DNA analysis at issue is exculpatory or favorable to the defense." *McBee v. State*, No. E2025-00053-CCA-R3-PC, 2026 WL 230074, at *7 (Tenn. Crim. App. Jan. 28, 2026). The Criminal Court's consideration of any potential uninterested third party is wholly inconsistent with Tennessee law—and the evidence.

As described above, the record establishes that the evidence Mr. Carruthers seeks to test——the bindings used on the victims and scrapings from the victims' fingernails—is *directly* related to the crimes and almost certainly would contain the true perpetrators' DNA. As DNA expert Mr. Keel testified, foreign DNA under a victim's fingernails is usually relevant to a crime and is evidence of an individual's violent/intimate contact with the victim's body. (DNA Mot., at 13–14.)

In reality, contrary to the Criminal Court's conclusion, the requested DNA testing could produce several favorable results that would affect the outcome in Mr. Carruthers' case. One realistically possible test result, which would be most favorable to Mr. Carruthers, would be that Mr. Irving's DNA is

present in the victims' fingernail scrapings and that Mr. Carruthers' is not. This finding would corroborate James Montgomery's 2010 and 2011 statements to investigators that he and Irving were the ones who kidnapped the victims and *that Mr. Carruthers was not involved in either the kidnapping or murders*. (*See* DNA Mot., at 11.) This, especially when coupled with Mr. Montgomery's later statement implicating Mr. Irving, would give police a basis to name Mr. Irving a suspect for these crimes—and certainly a strong basis to change the outcome in Mr. Carruthers' case. At the very least, such a finding would have rendered Mr. Carruthers' verdict or sentence more favorable if the DNA evidence corroborated testimony that Mr. Carruthers was not involved in the crime, thus meeting prong one of the discretionary provision of the DNA Act. *See* Tenn. Code Ann. § 40-30-305; *see also McBee*, 2026 WL 230074, at *7 (finding a court "must focus the strength of the DNA evidence as compared to the evidence presented at trial").

Another possibility is that the testing could reveal the same unknown male profile that was found on a blanket buried with the victims (from which Mr. Carruthers has already been excluded)—offering further support of an alternative suspect.

As this Court has said, "DNA [has] changed the nature of criminal investigations . . . by making it possible to exculpate or inculpate suspects." *Powers*, 343 S.W.3d at 58 (citation omitted). That is exactly what could happen

here and, in reviewing the DNA Motion, the Criminal Court had to presume these outcomes. *See id.*

Critically, the importance of a third-party DNA match in this case cannot be overstated because the State never argued at trial that Mr. Carruthers was more culpable than his codefendant or that he was the mastermind behind these crimes. The State's theory of prosecution was the same for both Mr. Carruthers and Mr. Montgomery. (DNA Mot., at 4.) It prosecuted them as equally liable participants. *Id.* Nothing in the evidence presented at trial established that Mr. Carruthers masterminded these crimes.

To the contrary, the only putative "confession" in this case, Mr. Shaw's testimony, placed Mr. Carruthers at the scene of the kidnapping at Ms. Anderson's home, which is precisely why the unidentified fingerprints recovered from that home are so significant. Six fingerprints from Ms. Anderson's house remain unidentified to this day, and Mr. Carruthers was excluded from all of them. *Id.* at 5. If DNA testing reveals the involvement of a third party such as Ronnie Irving, whom Mr. Montgomery identified as having been dispatched to kidnap Ms. Anderson, the State's entire theory of prosecution collapses.

3. The Criminal Court did not consider all of the available evidence.

In reviewing a request under the DNA Act, this Court has held that the court must "consider all the available evidence, including the evidence presented at trial and any stipulations of fact made by either party." *Alley*, 2004 WL 1196095, at *3; *see also McBee*, 2026 WL 230074, at *7 (holding that the court "must focus on the strength of the DNA evidence as compared to the evidence presented at trial"). In denying the DNA Motion, the Criminal Court either ignored critical evidence altogether or relied on facts that are undisputedly false.

The Criminal Court also wholly failed to account for James Montgomery's 2010 and 2011 statements exonerating Mr. Carruthers. In 2010 and 2011, Mr. Montgomery—Mr. Carruthers' codefendant who was convicted and sentenced to death at the same trial and under the same theory of prosecution—told investigators that he kidnapped two of the victims and dispatched Irving to kidnap Ms. Anderson. (DNA Mot., at 10-11.) Significantly, Mr. Montgomery confirmed to the investigator that Mr. Carruthers was not involved in the kidnapping or the murders. *Id.* at 11. Mr. Irving was murdered in 2002, and his fingerprints and a DNA sample are on file at the medical examiner's office. *Id.* Yet, to date, the unidentified physical evidence, including

the unknown male DNA profile found on the blanket buried with the victims, has never been compared to Mr. Irving.

Had the Criminal Court properly considered Mr. Montgomery's exculpatory statements alongside the presumption of favorable DNA results, the court would have no option but to conclude that Mr. Carruthers established prong one under both provisions of the DNA Act. A DNA match to Mr. Irving or an unknown profile on the victims' bindings or fingernail scrapings—especially combined with Mr. Montgomery's statements implicating Irving and exonerating Mr. Carruthers—would not merely undermine confidence in the outcome, it would fundamentally dismantle the State's theory of prosecution. In fact, the Criminal Court *acknowledged* this, writing:

> [I]t is plausible that a DNA profile of a third party at the crime scene (especially of the ligatures) *could cause residual doubt in the minds of the jurors* due to another participant possibly being involved and not prosecuted and *could produce questions about Mr. Carruthers' specific role in the offenses*.

(DNA Order, at 14 (emphasis added).) This finding by the Criminal Court simply cannot be reconciled with the conclusion that Mr. Carruthers did not establish prong one.

In fact, concluding that the outcome of Mr. Carruthers' case would be different with favorable DNA does not require guesswork. The State's own treatment of earlier DNA results in Mr. Montgomery's case illustrates the strength of Mr. Carruthers' case on prong one. Mr. Montgomery was originally

charged, convicted, and sentenced to death in the same trial and under the same theory of prosecution as Mr. Carruthers. The State never argued that Mr. Carruthers was more culpable than Mr. Montgomery. Yet, when limited DNA testing conducted in 2003 for Mr. Montgomery's retrial excluded both Mr. Carruthers and Mr. Montgomery from the evidence and revealed the presence of an unknown male profile on a blanket buried with the victims, the State itself determined that those results were significant enough to offer Mr. Montgomery an *Alford* plea to a reduced charge of three counts of second-degree murder. (DNA Mot., at 7, n.4.) Mr. Montgomery was sentenced to concurrent 27-year sentences and was released from custody in 2015. *Id.* In other words, the DNA results were so powerful that they led the State to reduce the charges against Mr. Carruthers' codefendant who was convicted and sentenced to death under the *same* theory and *same* evidence, and that codefendant has been free for nearly a decade.

If those limited DNA results were sufficient to cause the State to abandon its case against Mr. Montgomery, then surely the far more comprehensive testing Mr. Carruthers now seeks—including on evidence that has never been tested—establishes a reasonable probability that the outcome of Mr. Carruthers' case would have been different. (*Cf.* DNA Order, at 14.) The Criminal Court's failure to address this dispositive comparison renders its prong one analysis unsupported by substantial evidence.

Further, the Criminal Court wholly ignored evidence that *confirms* the impact that exculpatory DNA would have had on Mr. Carruthers' jury—as the court suspected. One of Mr. Carruthers' jurors expressly concluded that "[a] DNA match with a different person would make [her] doubt Mr. Carruthers' guilt." (DNA Mot., at 21.) Another juror stated that he does not support Mr. Carruthers' death sentence after learning new information about the case. *Id.* at 22. One less vote for guilt or one less vote for death would, of course, change the entire outcome of Mr. Carruthers' trial—establishing the first prong of § 40-30-304 and § 40-30-305. (*See* DNA Mot., at 14.)

Contrary to the trial court's conclusion, Mr. Carruthers has shown a reasonable probability that he would not have been prosecuted, convicted, or sentenced to death if he had exculpatory DNA results. *Cf. Powers*, 343 S.W.3d at 58 (finding that "a reasonable probability exists not only that a jury would not have convicted the petitioner, but also that the State would have chosen not to prosecute him"). In other words, the Criminal Court's conclusion that Mr. Carruthers did not establish prong one of the test under the DNA Act was not based on substantial evidence. Therefore, the DNA Order must be reversed. *Cf. id.*

B. The Criminal Court's conclusion that Mr. Carruthers has not established that his Motion was not filed for purposes of delay is not supported by substantial evidence.

Prong (4) of Tenn. Code Ann. § 40-30-304 and § 40-30-305 requires the Court to find that the application for DNA analysis is made for the purpose of demonstrating innocence and not to unreasonably delay the execution of the sentence or administration of justice. The Criminal Court's finding in the DNA Order that Mr. Carruthers did not meet this prong is unsupported by substantial evidence.

Significantly, this Court has established there is no statutory time limitation for filing a petition for DNA analysis under the DNA Act. *Griffin*, 182 S.W.3d at 799 (confirming that the DNA Act "gives petitioners the opportunity to request analysis at 'any time'"). And a petitioner cannot waive the right to DNA analysis under the Act by implication. *See id.*; *see also* Tenn. Code. Ann. § 40-30-305 (2024) (third prong expressly permits retesting when the evidence was not subjected "to the analysis that is now requested").

First, the Criminal Court's Order acknowledges that Mr. Carruthers filed his first request for testing under the DNA Act on April 9, 2026, in the Tennessee Supreme Court. (DNA Order, at 12, n.4.) However, the court stated that prior motion did not "impact" its analysis as to prong four. *Id.* It should.

The timeline is clear. Mr. Carruthers filed his initial DNA motion within days of the undersigned counsel being retained. (*See* DNA Mot., at 23, n.14.)

From there, the Tennessee Supreme Court took three weeks to deny the motion and send Mr. Carruthers to the Criminal Court. Within two business days, Mr. Carruthers filed the DNA Motion in the Criminal Court and requested expedited resolution. It took the Criminal Court a week to resolve the DNA Motion. The Criminal Court's finding that "[t]here is no explanation provided or that the Court can surmise as to why Mr. Carruthers waited until April, 2026, to bring this" issue "if not for the purpose of unreasonably delaying the execution of the sentence or administration of justice" is wholly unfounded. (DNA Order, at 12.)

The record is undisputed that the DNA testing Mr. Carruthers requests could be completed in approximately two weeks. (Keel Aff., ¶ 17.) Mr. Carruthers' April 2026 motion was filed with *plenty* of time for the DNA testing to be completed *before* his execution. *See id.* Had the State agreed to the testing at the outset, it would have been complete sometime in late April. *See id.* Indeed, in his April 9, 2026 request for DNA testing, Mr. Carruthers did not request a stay of execution because the testing could be completed in time without delaying his scheduled execution date.[12]

[12] Mr. Carruthers filed the April 9, 2026 request in this Court pursuant to the plain language of Rule 12.4(E) because the motion and related litigation may "potentially affect" the timing of his execution, understanding that subsequent litigation may become necessary based on the results of the testing.

Even after this Court waited until April 30 to deny his original motion and send him to the Criminal Court, Mr. Carruthers *still* did not ask for a stay. When he filed the DNA Motion in the Criminal Court on May 4, there was still time to complete the testing before the execution date. *See id.*

It was only after the Criminal Court denied the DNA Motion a week later and he filed his Notice of Appeal to the CCA on May 13 (eight days before his scheduled execution) that Mr. Carruthers filed a motion to stay his execution. *See* Mot. Stay Execution, *Carruthers v. State*, No. W1997-00097-SC-DDT-DD (Tenn. May 13, 2026).

The DNA Motion could not be filed for the purpose of delay where the requested relief could have been achieved prior to Mr. Carruthers' execution date and there was no request to stay or postpone that execution date. Therefore, the Criminal Court wrongly dismissed the fact that Mr. Carruthers' original motion was filed on April 9. (*See* DNA Order, at 12, n.4.)

Also, the Criminal Court acknowledged that the purpose of Mr. Carruthers' request is "an attempt to demonstrate that Mr. Carruthers is innocent of the offenses for which he has been convicted." (DNA Order, at 11.) And yet, somehow, the Criminal Court subsequently concludes that the DNA Motion is for the purpose of unreasonable delay. It is logically untenable for the Criminal Court to simultaneously hold these diametrically opposed conclusions. If Mr. Carruthers had waited until there was not enough time to

test the DNA without a stay—*i.e.*, less than two weeks prior to his execution date—before filing his first request for DNA testing, that could be interpreted as for the purpose of delay. But those are not the facts here.

Mr. Carruthers did not delay filing his DNA Motion in the Criminal Court (or in this Court). Instead, Mr. Carruthers continued to diligently seek forensic testing *that has never been done* to prove his innocence before he is executed.

Mr. Carruthers, through counsel, has been diligently seeking DNA testing for nearly five weeks now, being bounced around between the Tennessee courts in search of his statutory rights and answers. *Cf. Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 429-30 (1982) ("[T]he Fourteenth Amendment's Due Process Clause has been interpreted as preventing the States from denying potential litigants use of established adjudicatory procedures, when such an action would be 'the equivalent of denying them an opportunity to be heard upon their claimed right[s].'" (quoting *Boddie v. Connecticut*, 401 U.S. 371, 380 (1971))). Rather than Mr. Carruthers, it is the State and the Tennessee courts that have caused unreasonable delay in this litigation by punting Mr. Carruthers' requests. As Justice Sonya Sotomayor bluntly opined in a similar case involving a request for DNA testing in Texas:

> It is inexplicable why [the State] refuses to allow DNA testing . . . despite the very substantial possibility that such testing could exculpate [petitioner] and identify the real killer. It is also

> inexplicable why the courts below did not proceed with more caution and carefully consider each of [petitioner's] arguments . . . . Because the Court refuses to do so, the State will likely execute [petitioner] without the world ever knowing whether [petitioner's or the alleged alternative suspect's] DNA is on the murder weapon, even though a simple DNA test could reveal that information.

Reed v. Goertz, 146 S. Ct. 936 (2026) (Sotomayor, J., dissenting from the denial of certiorari).

The same is true here. The State and Tennessee courts are racing toward Mr. Carruthers' execution without ever testing evidence that is *in its possession* and has *never been tested*, as the Criminal Court found. (DNA Order, at 10-11.) The results of such testing which could very well corroborate what Mr. Carruthers' has maintained for thirty years and prevent the execution of an innocent man. Rather than spending two weeks testing the DNA, the State and Tennessee courts have spent more than double that time opposing and denying Mr. Carruthers' requests. *See Logan*, 455 U.S. at 429-30.

Despite his diligence, the Criminal Court makes the illogical and unsupported leap from acknowledging that the purpose of Mr. Carruthers' request is "an attempt to demonstrate that Mr. Carruthers is innocent of the offenses for which he has been convicted," to its premise that the DNA Motion "*could very well be* an attempt to unreasonably delay," to concluding that the DNA Motion "*is* an attempt to unreasonably delay." (DNA Order, at 12 (emphasis added).) The only support for this conclusion is that Mr. Carruthers

could have filed the DNA Motion on an earlier date.[13] This is exactly the type of threadbare analysis that *Griffin* cautions will result without an evidentiary hearing. *See* 182 S.W.3d at 800 (noting that the conclusion that the application failed to demonstrate it was not to unreasonably delay was puzzling in light of the fact that there was no evidentiary hearing and there was no evidence in the record to support this conclusion); *see also supra* Part I.

Ultimately, the Criminal Court's conclusion that Mr. Carruthers did not meet prong four is wholly unsupported. Accordingly, the DNA Order must be reversed.

III. The Criminal Court's denial of the Motion to Compel violated Mr. Carruthers' right to due process.

The Due Process Clause of the Fourteenth Amendment to the U.S. Constitution and the "Law of the Land" Clause of Article I, Section 8 of the Tennessee Constitution both guarantee every criminal defendant the right to due process. U.S. Const. amend. XIV, § 1; Tenn. Const. art. I, § 8; *see also Logan*, 455 U.S. at 429-30, 433-34; *State v. Rimmer*, 623 S.W.3d 235 (Tenn. 2021). As the U.S. Supreme Court has "emphasized time and again, the Due

[13] Admittedly, there is tension between the lack of a statute of limitations and Prong (4)'s requirement to show that a motion is not made for the purpose of unreasonable delay. However, when a court's sole reason for finding an unreasonable delay is that the motion could have been filed earlier, it is creating a de facto statute of limitations with no clearly defined boundaries.

Process Clause grants the aggrieved party the opportunity to present his case and have its merits fairly judged. Thus it has become a truism that '*some* form of hearing' is required before the owner is finally deprived of a protected property interest." *Logan*, 455 U.S. at 433.

"To facilitate this right, a defendant has a constitutionally protected privilege to request and obtain from the prosecution evidence that is either material to guilt or relevant to punishment." *Johnson v. State*, 38 S.W.3d 52, 55-56 (Tenn. 2001) (citing *Brady v. Maryland*, 373 U.S. 83, 87 (1963)). This fundamental right "imposes a duty on the State to produce all evidence that raises reasonable doubt as to the guilt of the defendant." *Rimmer*, 623 S.W.3d at 257 (citing *State v. Ferguson*, 2 S.W.3d 912, 915 (Tenn. 1999)). Moreover, state laws "may indeed create a liberty interest in accessing biological evidence for testing." *Estate of Alley v. State*, 648 S.W.3d 201, 227 (Tenn. Crim. App. 2021). Indeed, that is what the State of Tennessee did with the DNA Act.

With the DNA Act, Tennessee created a statutory procedure through which convicted persons can obtain post-conviction DNA and fingerprint testing—and then use exculpatory results from that testing to secure relief from their convictions, including post-conviction relief, a new trial, or executive clemency. Tenn. Code Ann. § 40-30-303; Tenn. Code Ann. § 40-30-304; Tenn. Code Ann. § 40-30-305; Tenn. Code Ann. § 40-30-117 (Reopen Post-Conviction Proceedings); Tenn. Code Ann. § 40-27-101 (Governor's Clemency Authority).

Critically, the Act also "allows a post-conviction court, 'in its discretion, [to] make such other orders as may be appropriate.'" *Powers*, 343 S.W.3d at 48-49 (quoting Tenn. Code Ann. § 40-30-311). This broad discretionary authority plainly encompasses orders compelling the disclosure of biological evidence necessary to effectuate the purposes of the DNA Act. And Mr. Carruthers' right to due process ensures him the right to reasonably access the DNA Act. *See Logan*, 455 U.S. at 429-30, 433-34.

The Criminal Court's denial of the Motion to Compel violated Mr. Carruthers' right to due process in accessing the biological evidence both procedurally and substantively.

A. This Court has jurisdiction and should review the Compel Order as an extraordinary appeal under Tennessee Rule of Appellate Procedure 10.

The CCA's May 14, 2026 Order expediting this appeal noted that "it is unclear at this point if the Petitioner has an appeal as of right from this order pursuant to Tennessee Rule of Appellate Procedure 3(b)" and invited the parties to "address this order in their pleadings." (Order, at 1, n.1.) To the extent this Court has similar doubt and/or determines that the Compel Order is not immediately appealable as of right under Rule 3, Mr. Carruthers respectfully submits that this Court should exercise its discretion to review the Compel Order as an extraordinary appeal pursuant to Rule 10. Specifically, Rule 10(a) provides:

> An extraordinary appeal may be sought on application and in the discretion of the appellate court alone of interlocutory orders of a lower court . . . (1) if the lower court has so far departed from the accepted and usual course of judicial proceedings as to require immediate review, or (2) if necessary for complete determination of the action on appeal.

Tenn. R. App. P. 10(a).

A Rule 10 extraordinary appeal "will lie whenever . . . either party has lost a right or interest that may never be recaptured." *State v. McKim*, 215 S.W.3d 781 (Tenn. 2007) (citing *State v. Willoughby*, 594 S.W.2d 388, 392 (Tenn. 1980)). "[T]his court may treat an improperly filed Rule 3 appeal as a Rule 10 extraordinary appeal." *State v. Norris*, 47 S.W.3d 457, 463 (Tenn. Crim. App. 2000).

The Criminal Court's Compel Order satisfies the criteria for extraordinary appeal under multiple independent grounds. First, the Criminal Court "so far departed from the accepted and usual course of judicial proceedings as to require immediate review." Tenn. R. App. P. 10(a). The Criminal Court denied the Motion to Compel without a hearing, without recognizing the broad statutory authority the DNA Act confers upon post-conviction courts to "make such other orders as may be appropriate," Tenn. Code Ann. § 40-30-311; *see Powers*, 343 S.W.3d at 48-49, and on the circular basis that it had already denied the DNA Motion—a denial that is itself the subject of this appeal. This procedural maneuvering—first denying the DNA

Motion and then using that denial as a basis to deny the Motion to Compel—constitutes a departure from the accepted and usual course of judicial proceedings that warrants immediate review.[14] *See Logan*, 455 U.S. at 433-34.

Second, Mr. Carruthers has "lost a right or interest that may never be recaptured." *Willoughby*, 594 S.W.2d at 392. Mr. Carruthers is scheduled for execution on May 21—just days from the filing of this Brief. If this Court does not review the Compel Order, Mr. Carruthers will be permanently deprived of all rights, including access to biological evidence that could confirm his innocence of the very crimes for which he is set to be executed. Unlike the defendant in *Willoughby*, who had "not lost a right or interest that may not be recaptured" because the requested discovery materials would "come to light" through other procedures (*id.*), Mr. Carruthers faces the ultimate and irreversible deprivation: execution. Once carried out, no future proceeding can restore his right to access evidence that may establish his innocence. The urgency and finality of Mr. Carruthers' circumstances make this precisely the type of case for which Rule 10 relief was designed.

Third, review of the Compel Order is "necessary for complete determination of the action on appeal." Tenn. R. App. P. 10(a). The Motion to Compel and the DNA Motion are inextricably linked. The biological standards

[14] Indeed, the DNA Order recognizes that the Motion to Compel was pending in front of the Criminal Court. (*See* DNA Order, at 1-2.)

of Ronnie Irving that Mr. Carruthers sought through the Motion to Compel are directly relevant to the DNA testing he seeks under the DNA Act. Should this Court reverse the DNA Order—as it should (*see supra* Parts I-II)—the DNA Motion will again be pending, and the Irving biological standards will be critical to effectuating the relief. Reviewing only the DNA Order without also reviewing the Compel Order would leave Mr. Carruthers unable to obtain some of the very evidence necessary to vindicate his rights under the DNA Act. *See Logan*, 455 U.S. at 429-30, 433-34.

Accordingly, this Court can and should review the Compel Order.

B. The Criminal Court's denial of the Motion to Compel unconstitutionally deprived Mr. Carruthers of his right to DNA testing.

Mr. Carruthers has a constitutionally protected liberty interest in using state-created procedures to demonstrate his innocence. *See Gutierrez v. Saenz*, 606 U.S. 305, 314 (2025); *Estate of Alley*, 648 S.W.3d at 201. Where, as here, the State has created a statutory liberty interest in post-conviction DNA testing, its actions restricting that interest must, at a minimum, satisfy this substantive due process threshold. *See Estate of Alley*, 648 S.W.3d at 210. A substantive due process violation is established where the government acts in a manner that is "(1) arbitrary, irrational or improperly motivated or (2) so egregious that it shocks the conscience." *State v. Broadrick*, 648 S.W.3d 158, 173 (Tenn. Crim. App. 2018) (citing *Cnty. of Sacramento v. Lewis*, 523 U.S. 833,

840 (1998)); *see also Abdur'Rahman v. Bredesen*, 181 S.W.3d 292, 309 (Tenn. 2005).

Even under the least stringent standard of review, the Criminal Court's categorical denial of Mr. Carruthers' Motion to Compel cannot withstand scrutiny. Mr. Carruthers unquestionably has a compelling interest in ensuring he is not executed for a crime he did not commit,[15] and the Criminal Court's refusal to facilitate access to biological evidence that could confirm Mr. Carruthers' innocence—while he faces imminent execution—was arbitrary, irrational, and fundamentally at odds with that interest. Indeed, the Criminal Court's reasoning in denying the Motion to Compel was flawed in every respect and, therefore, deprived Mr. Carruthers of a fair opportunity to obtain evidence material to defending his imminent execution.

First, the Criminal Court stated that "Mr. Carruthers does not cite any authority supporting his request." (Compel Order, at 1.) But, as set forth above, the DNA Act itself provides the authority under which the Court could have granted the Motion to Compel, granting post-conviction courts broad discretion to "make such other orders as may be appropriate." Tenn. Code Ann. § 40-30-311; *Powers*, 343 S.W.3d at 48-49. An order compelling the State (vis-à-vis the Medical Examiner) to release biological standards of an alternative suspect so

[15] Arguably, the State has a similar interest in ensuring it does not execute an innocent person.

that they can be compared to existing evidence is precisely the type of ancillary relief contemplated by the DNA Act. The Criminal Court's apparent failure to recognize this statutory authority does not defeat Mr. Carruthers' right to invoke it.

Second, the Criminal Court denied the Motion to Compel on the ground that the Court had already denied the DNA Motion and, therefore, "the Court does not have pending before it a matter in which the biological standard would be relevant." (Compel Order, at 1.) This reasoning is circular and fundamentally unfair. The Criminal Court denied the DNA Motion on May 11, 2026, just one day before denying the Motion to Compel. When Mr. Carruthers filed the Motion to Compel on May 10, the DNA Motion was pending before the Court, and the biological standards were unquestionably relevant and available.

Indeed, the Criminal Court's denial of the DNA Motion itself is the subject of this appeal. Should this Court reverse the DNA Order—as it should—the DNA Motion will again be pending, and the biological standards will be directly relevant. The Criminal Court's refusal to permit Mr. Carruthers to obtain the Irving biological standards while this litigation proceeds effectively ensures that Mr. Carruthers cannot develop the very evidence he needs to vindicate his rights under the DNA Act. Due process

cannot countenance such a result, particularly where a man's life hangs in the balance.

Finally, the equities overwhelmingly favor Mr. Carruthers. He is a prisoner under sentence of death, scheduled for execution in less than a week. He was convicted based entirely on circumstantial evidence. No physical evidence has ever linked him to the crimes. Mr. Montgomery told federal investigators that Mr. Carruthers did not commit these crimes. The State's own medical examiner has disavowed his trial testimony. And a juror from Mr. Carruthers' case has stated that exculpatory DNA evidence would cause her to doubt his guilt. Against this backdrop, the Criminal Court's refusal to order the Medical Examiner to release biological standards of an alternative suspect—standards that could confirm Mr. Carruthers' innocence or identify the true perpetrator—is fundamentally inconsistent with due process.

For these reasons, this Court should reverse the Criminal Court's Order denying Mr. Carruthers' Motion to Compel and remand with instructions to enter an order directing the Shelby County Medical Examiner to release the biological standards of Ronnie Irving to a qualified laboratory designated by Mr. Carruthers' counsel for comparison to existing evidence. In the alternative, this Court should remand with instructions to conduct a hearing on the Motion to Compel at which Mr. Carruthers may be heard regarding the necessity and relevance of the requested biological standards.

C. The Criminal Court's denial of the Motion to Compel was without adequate procedure.

A prisoner may "have a liberty interest in demonstrating his innocence with new evidence under state law" and "the state's procedures must afford adequate access to information to vindicate that state's right to post-conviction relief." *Estate of Alley*, 648 S.W.3d at 227 (citing *Osborne*, 557 U.S. at 68-69, 72). Thus, "a defendant may challenge a state's procedures for post-conviction access to evidence on due process grounds by showing the procedures are 'fundamentally inadequate to vindicate the substantive rights provided.'" *Id.* (quoting *Osborne*, 557 U.S. at 69); *see also Logan*, 455 U.S. at 433. The U.S. Supreme Court recently reaffirmed this principle in *Gutierrez*, holding that a capital defendant has standing to bring a due process challenge where the denial of a DNA testing request "deprived him of his liberty interests in utilizing state procedures to obtain an acquittal or sentence reduction." 606 U.S. at 306.

The Criminal Court's denial of Mr. Carruthers' Motion to Compel violated his due process rights by rendering the DNA Act's procedures fundamentally inadequate to vindicate his substantive rights. *See Osborne*, 557 U.S. at 69 (requiring that state procedures not be "fundamentally inadequate to vindicate the substantive rights provided"); *see also Griffin*, 182 S.W.3d at 800 ("[F]indings of fact upon which rights are granted or denied are

best made following an evidentiary hearing."); *Logan*, 455 U.S. at 433 ("[T]he Due Process Clause grants the aggrieved party the opportunity to present his case and have its merits fairly judged. . . . '[*S*]*ome* form of hearing' is required before the owner is finally deprived of a protected property interest." (citation omitted)). Before denying Mr. Carruthers access to evidence that could save his life, the Criminal Court should have, at minimum, afforded him a meaningful opportunity to be heard. *See Logan*, 455 U.S. at 433. But it did not.

The Court's tactic of first denying the DNA Motion and then using that denial as a basis to deny the Motion to Compel effectively placed Mr. Carruthers in an impossible "Catch-22." *Cf. Trotter v. Florida*, 146 S. Ct. 755, 756 (2026) (Sotomayor, J., respecting denial of application for stay of execution and denial of certiorari) (criticizing the Florida Supreme Court for "placing prisoners in a Catch-22" by denying requests for records because prisoners lack information to raise a colorable claim, "[t]he very reason the prisoners are seeking the records, however, is to gather enough information to raise a colorable . . . claim"). Prisoners trying to prove their innocence ahead of a scheduled execution should not be subjected to this type of procedural maneuvering, intentional or not, by the very courts that hold the power to assist in their final days. *See Logan*, 455 U.S. at 433. This is *especially* true when such power is *granted by statute*. *See id.*

Further, while the Criminal Court suggested that Mr. Carruthers "can seek to obtain the standard through the issuance of a subpoena" (Compel Order, at 1), this ignores the reality of Mr. Carruthers' situation. The Medical Examiner's office itself informed Mr. Carruthers' investigator that it requires either a court order or a subpoena to release the biological standards. (Compel Mot., Ex. A, ¶ 6.) Mr. Carruthers' best chance to obtain the necessary authorization was through the Criminal Court. The Criminal Court's suggestion that Mr. Carruthers pursue a subpoena—while simultaneously refusing to grant the Motion to Compel and accomplish the same result—is illusory and does not satisfy due process. Instead, it sent Mr. Carruthers on another expedition in search of biological evidence in the State's possession. A right of access that exists only in theory but cannot be exercised in practice is no right at all. *See Gutierrez*, 606 U.S. at 314 (recognizing standing to challenge procedures that effectively deny access to DNA evidence); *see also Logan*, 455 U.S. at 433-34.

Accordingly, this Court should reverse the Compel Order because it violates Mr. Carruthers' right to due process.

CONCLUSION

For these reasons, this Court should reverse the Criminal Court's Orders and remand for further litigation.

Dated: May 16, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Lucas Cameron-Vaughn, Esq., certify that I have forwarded a true and exact copy of this motion by electronic mail to all parties and/or their attorneys in this case in accordance with Rule 20 of the Tennessee Rules of Appellate Procedure on May 16, 2026.

/s/ *Lucas Cameron-Vaughn*
Lucas Cameron-Vaughn, Esq.

CERTIFICATE OF COMPLIANCE

I, Lucas Cameron-Vaughn, Esq., certify that this brief complies with the word limitation requirements of Rule 30 of the Tennessee Rules of Appellate Procedure. Excluding the parts of the document exempted by Rule 30(c), this brief contains 13,075 words

/s/ *Lucas Cameron-Vaughn*
Lucas Cameron-Vaughn, Esq.

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

STATE OF TENNESSEE v. TONY CARRUTHERS

Criminal Court for Shelby County
Nos. 94-02797, 94-02798, 94-02799, 95-11128, 95-11129

No. W1997-00097-SC-DDT-DD

ORDER

In 1996, a Shelby County jury convicted Tony Carruthers of the murders of Marcellos Anderson, his mother Delois Anderson, and Frederick Taylor, and sentenced him to death. *State v. Carruthers*, 35 S.W.3d 516, 524 (Tenn. 2000). Over the last three decades, Mr. Carruthers has unsuccessfully challenged his convictions and sentences in state and federal courts. His execution is scheduled for May 21, 2026.

On April 6, 2026, Mr. Carruthers filed an application for a stay during the pendency of his competency-to-be-executed proceedings. By order dated May 7, 2026, this Court denied Mr. Carruthers' application for a stay after affirming the trial court's finding that Mr. Carruthers is competent to be executed. Order, *Carruthers v. State*, No. W1997-00097-SC-DDT-DD, 2026 WL 1257769 (Tenn. May 7, 2026). On May 13, 2026, Mr. Carruthers filed the instant motion asking this Court to stay his execution while he pursues collateral litigation in state and federal courts.

Tennessee Supreme Court Rule 12(4)(E) provides in pertinent part that after an execution date is set, this Court will not grant a stay pending resolution of collateral litigation in federal court. Tenn. Sup. Ct. R. 12(4)(E). Likewise, this Court will not grant a stay of an execution pending resolution of collateral litigation in state court "unless the prisoner can prove a likelihood of success on the merits in that litigation." *Id.*

In his motion, Mr. Carruthers seeks a stay of his execution while he pursues an appeal of the state post-conviction court's judgment denying his last-minute

motion for DNA testing. *Carruthers v. State*, No. W2026-00706-CCA-R3-PD (Tenn. Crim. App. May 13, 2026). He asserts that he has shown a likelihood of success on the merits in that state collateral proceeding. On May 15, 2026, upon the motion of Mr. Carruthers, this Court assumed jurisdiction over the appeal. Order, *Carruthers v. State*, No. W2026-00706-SC-RDM-PD (Tenn. May 15, 2026). Earlier today, this Court filed its opinion affirming the post-conviction court's judgment. *Carruthers v. State*, No. W2026-00706-SC-RDM-PD (Tenn. May 19, 2026). Thus, Mr. Carruthers cannot establish a likelihood of success on the merits in his appeal. Accordingly, his motion for stay is DENIED.

This order is not subject to rehearing under Tennessee Rule of Appellate Procedure 39, and the Clerk is directed to certify this order as final and to immediately issue the mandate. As provided by this Court's order of September 30, 2025, the Warden of the Riverbend Maximum Security Institution, or his designee, shall carry out the execution of Tony Carruthers in accordance with Tennessee law on the 21st day of May, 2026, unless a stay is entered by this Court or by a federal court. Counsel for Tony Carruthers shall provide to the Office of the Appellate Court Clerk in Nashville a copy of any order of stay. The Clerk shall expeditiously furnish a copy of any stay order to the Warden of the Riverbend Maximum Security Institution.

It is so ORDERED.

PER CURIAM

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

TONY CARRUTHERS v. STATE OF TENNESSEE

Appeal from the Criminal Court for Shelby County
Nos. 94-02797, 94-02798, 94-02799, 95-11128, 95-11129, P-25948
Carlyn L. Addison, Judge

No. W2026-00706-SC-RDM-PD

Tony Von Carruthers, a death-row inmate scheduled for execution on May 21, 2026, filed a motion requesting last-minute DNA testing of fingernail scrapings and bindings from the murder victims.[1] Mr. Carruthers sought an expedited ruling on the motion without an evidentiary hearing. After analyzing the request under the mandatory and discretionary provisions of the Post-Conviction DNA Analysis Act of 2001 (DNA Act), the post-conviction court denied the motion. Mr. Carruthers appealed to the Court of Criminal Appeals. Upon motion of Mr. Carruthers, this Court assumed jurisdiction pursuant to Tennessee Code Annotated section 16-3-201(d). Because Mr. Carruthers has failed to establish the statutory criteria for ordering analysis under the DNA Act, we affirm the judgment of the post-conviction court.

Tenn. Code Ann. § 16-3-201(d); Judgment of the Shelby County Criminal Court Affirmed

Lucas Camerson-Vaughn, American Civil Liberties Union (ACLU) of Tennessee, Nashville, Tennessee; Maria DeLiberato, ACLU, Durham, North Carolina; and

[1] Mr. Carruthers also filed in the post-conviction court a "Motion for Order Compelling Disclosure," seeking a court order directing the Shelby County Medical Examiner to release the biological standards of a man whom codefendant James Montgomery allegedly identified as a participant in these crimes. The post-conviction court denied the motion, and the State asserts that Mr. Carruthers has no right to appeal the denial. We need not decide whether Mr. Carruthers has a right to appeal the trial court's denial of his motion because he has failed to establish statutory grounds for DNA testing. Accordingly, we conclude the issue is moot.

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Jonathan Skrmetti, Attorney General and Reporter; Courtney Orr, Deputy Attorney General; and Benjamin Barker, Assistant Attorney General, for the appellee, State of Tennessee.

OPINION

Factual Background Summary

In February 1994, Tony Carruthers, James Montgomery, and Jonathan Montgomery[2] killed Marcellos "Cello" Anderson, his mother Delois Anderson, and Freddrick Tucker and buried them beneath a casket in a Memphis cemetery. *State v. Carruthers*, 35 S.W.3d 516, 524 (Tenn. 2000), *cert. denied*, 533 U.S. 953 (2001). Mr. Carruthers and James were convicted of three counts of murder in a joint trial.[3] *Id.* The jury imposed a sentence of death for each murder. *Id.*

The proof at trial established that, while incarcerated in the summer of 1993, Mr. Carruthers shared his "master plan" to kidnap, rob, and murder Mr. Anderson. *Id.* In the fall, during a work detail at a local cemetery, Mr. Carruthers expressed to a fellow inmate that a grave would be a good way to hide a body if you killed someone, explaining, "[I]f you ain't got no body, you don't have a case." *Id.* The same inmate overheard Mr. Carruthers and James discussing their plans to rob Mr. Anderson because he made a lot of money dealing drugs. *Id.* When Mr. Carruthers was released from prison in late 1993, he told Jonathan Montgomery it would be best to wait until his brother James was released to carry out the plan. *Id.* at 524-25. James Montgomery was released from prison in January 1994, and the plan was carried out in February 1994. *Id.* at 525.

Multiple witnesses saw Mr. Carruthers and James with Mr. Anderson and Mr. Tucker on the evening of February 23. *Id*. at 525-26. Nakeita Shaw saw Mr.

[2] Because James and Jonathan Montgomery share a surname, we will refer to both by their first names for clarity. We intend no disrespect in doing so.

[3] Jonathan was also charged in this case. *Id.* at 524 n.2. Months before trial, Jonathan was found hanged in his jail cell. *Id*. James's conviction and sentences were later reversed, and his case was remanded for a new trial. *Id.* at 524.

Carruthers and James leading Mr. Anderson and Mr. Tucker to a Jeep.[4] *Id*. at 526. Earlier that night, Laventhia Briggs arrived at the home of her aunt, Delois Anderson, with whom she was residing. *Id.* Ms. Anderson was not at home, and it appeared to Ms. Briggs that Ms. Anderson had been interrupted while eating. *Id.* On the evening of February 24, Jonathan told Chris Hines they had stolen $200,000 and had killed "Cello and them" "out at the cemetery on Elvis Presley." *Id*.

On March 3, 1994, Jonathan led authorities to a grave in the Rose Hill Cemetery on Elvis Presley Boulevard in Memphis, where they found the three victims' bodies buried beneath a casket. *Id*. at 527 & n.5. Mr. Anderson and Mr. Tucker had been shot, and Ms. Anderson had been beaten and suffocated. *Id.* at 527-28. Although Mr. Anderson was known to wear "expensive jewelry" and carry large sums of cash, neither was found with his body. *Id.* at 524. After autopsies, the medical examiner opined that the victims had been buried alive. *Id.* at 527-28.

Alfredo Shaw saw the news report about the murders and called CrimeStoppers. *Id.* at 528. Mr. Shaw later testified to a grand jury that during a three-way call with Mr. Carruthers and another man, Mr. Carruthers asked Mr. Shaw to participate in the murders, saying each would earn $100,000 and a kilogram of cocaine. *Id.* at 528-29. Before trial, Mr. Shaw told the media he had lied to the grand jury about Mr. Carruthers's involvement in the murders. *Id*. at 528. Mr. Carruthers, who represented himself at trial, called Mr. Shaw as a defense witness. Mr. Shaw said he lied to the media because Mr. Carruthers had threatened him and his family. *Id.* at 529. Mr. Shaw testified that Mr. Carruthers confessed to the murders while they were jailed together before Mr. Carruthers's trial. *Id*. According to Mr. Shaw, Mr. Carruthers used Ms. Anderson to lure Mr. Anderson and Mr. Tucker to a meeting, and he then shot two of the victims, burned the Jeep in Mississippi, stole a car to return to Memphis, and buried the victims alive. *Id*. Mr. Carruthers also told him Ms. Anderson began screaming when Mr. Anderson and Mr. Tucker were forced into the grave, so Ms. Anderson was pushed into the grave too. *Id.* Mr. Shaw said Mr. Carruthers lamented that the bodies would never have been found if "'the boy wouldn't have went and told them folks.'" *Id*.

Procedural History

After this Court affirmed Mr. Carruthers's convictions and sentences on direct appeal, he unsuccessfully pursued relief in state post-conviction proceedings and in

[4] Mr. Anderson had recently borrowed a Jeep, which was found destroyed by fire on February 25. *Id.*

federal habeas corpus proceedings. *See State v. Carruthers*, No. W1997-00097-SC-DDT-DD, 2026 WL 1257769, at *6–7 (Tenn. May 7, 2026) (summarizing Mr. Carruthers's litigation history in his competency-to-be-executed proceedings).

Mr. Carruthers has made multiple innocence claims during collateral litigation. In fact, such claims began in his original post-conviction proceedings during which Mr. Carruthers alleged trial counsel was ineffective for failing to retain a DNA expert to testify about blood found on a blanket-like cloth at the grave site that did not match the DNA of any of the victims or any of the three defendants. *Carruthers v. State*, No. W2006-00376-CCA-R3-PD, 2007 WL 4355481, at *38 (Tenn. Crim. App. Dec. 12, 2007). The post-conviction court rejected the claim, noting that those DNA results were "only very minimally helpful to [Mr. Carruthers]" and did not "negate all other proof in the case." *Id.* The court remarked that "it is rank speculation to assume that [the DNA evidence] indicates that a third party might have committed this crime. There is no proof as to the age of the blood, or any explanation of how the blood got on the piece of cloth." *Id.* The Court of Criminal Appeals affirmed the trial court's ruling, explaining that any DNA results from the blood on the blanket would be "inconclusive and would not have changed the outcome of trial." *Id.* at *40.

In 2011, Mr. Carruthers filed a motion based on the DNA Act requesting testing of a vaginal swab from Delois Anderson and a blanket collected from the crime scene. *Carruthers v. State*, No. W2012-01473-CCA-R3-PD, 2013 WL 3968787, at *1 (Tenn. Crim. App. Aug. 1, 2013). Mr. Carruthers argued that such testing would exclude him as the source of the DNA and exonerate him of the crime. *Id.* at *3. The post-conviction court dismissed the motion stating, "[I]t appears from the record that DNA testing has already occurred and[,] the results are only minimally helpful to [Mr. Carruthers]." *Id.* The Court of Criminal Appeals affirmed, explaining that there was no indication the biological material on the blanket was left contemporaneously with the murders. *Id.* at *4. It further concluded that, even if DNA analysis excluded Mr. Carruthers, it would "not in any way" provide a reasonable probability that Mr. Carruthers would not have been convicted. *Id.* at *5.

In 2021, Mr. Carruthers filed a pro se petition followed by an amended petition through counsel seeking fingerprint testing under the Post-Conviction Fingerprint Analysis Act of 2021 ("Fingerprint Act"). He alleged that, in 2010, James told an investigator that Mr. Carruthers was not involved and identified another man, Ronnie "Eyeball" Irving, as his accomplice in the murders. *Carruthers v. State*, No. W2026-00226-CCA-R3-PD, 2026 WL 1031140, at *6 (Tenn. Crim.

App. Apr. 16, 2026).[5] The post-conviction court summarily dismissed the petition, concluding that, even if fingerprints found at Ms. Anderson's home belonged to Ronnie Irving, such results would not have affected either the State's decision to prosecute Mr. Carruthers or the outcome of the trial. *Id.* at *8–9. The Court of Criminal Appeals affirmed. *Id.* at *10.

This brings us to Mr. Carruthers's eleventh-hour request for DNA testing. On April 9, 2026, less than two months before his scheduled execution, Mr. Carruthers filed in this Court a "Motion for Post-Conviction DNA Testing and Request to Appoint a Special Master Pursuant to Tenn. S. Ct. R. 12.4(E)." In his motion, Mr. Carruthers sought DNA testing and comparison of: (1) fingernail scrapings from Marcellos Anderson, Frederick Tucker, and Delois Anderson; (2) the bindings of Marcellos Anderson; and (3) the bindings of Delois Anderson (which include knotted pantyhose around her hand and the red socks knotted around her neck). This Court denied the motion, noting that Mr. Carruthers had not availed himself of an available procedural vehicle in the post-conviction court — the DNA Act. Order, *State v. Carruthers*, No. W1997-00097-SC-R11-DD (Tenn. Apr. 30, 2026).

On May 4, 2026, Mr. Carruthers filed the instant motion pursuant to the DNA Act in the post-conviction court repeating the requests for DNA testing and comparison he raised in his previous motion to this Court. On May 11, 2026, the post-conviction court denied Mr. Carruthers's motion, concluding he had failed to establish the statutory criteria entitling him to either mandatory or discretionary testing under the DNA Act. Mr. Carruthers appealed to the Court of Criminal Appeals and filed a motion asking this Court to assume jurisdiction of his appeal. We granted his motion and established a briefing schedule. As explained herein, we affirm the decision of the post-conviction court.

Standard of Review

Appellate courts apply the abuse of discretion standard when reviewing a post-conviction court's decision on whether to grant relief under the DNA Act. *State v. Wilks*, No. W2014-02304-CCA-R3-PC, 2015 WL 5719926, at *3 (Tenn. Crim. App. Sept. 30, 2015); *cf. Alley v. State*, No. W2004-01204-CCA-R3-PD, 2004 WL 1196095, at *3 (Tenn. Crim. App. May 26, 2004). "A court abuses its discretion when it causes an injustice to the party challenging the decision by (1) applying an

[5] The sixty-day deadline to file an application for permission to appeal pursuant to Rule 11 of the Tennessee Rules of Appellate Procedure has not expired.

incorrect legal standard, (2) reaching an illogical or unreasonable decision, or (3) basing its decision on a clearly erroneous assessment of the evidence." *Black v. Strada*, 721 S.W.3d 223, 226 (Tenn. 2025).

Analysis

The Post-Conviction DNA Analysis Act of 2001

The DNA Act authorizes "a person convicted of and sentenced for the commission of first degree murder . . . [to] file a petition requesting the forensic DNA analysis of any evidence that is in the possession or control of the prosecution, law enforcement, laboratory, or court, and that is related to the investigation or prosecution that resulted in the judgment of conviction and that may contain biological evidence." Tenn. Code Ann. § 40-30-303. Under the DNA Act's "mandatory" provision, the court *shall* order DNA analysis if it finds that:

> (1) A reasonable probability exists that the petitioner would not have been prosecuted or convicted if exculpatory results had been obtained through DNA analysis;
>
> (2) The evidence is still in existence and in such a condition that DNA analysis may be conducted;
>
> (3) The evidence was never previously subjected to DNA analysis or was not subjected to the analysis that is now requested which could resolve an issue not resolved by previous analysis; and
>
> (4) The application for analysis is made for the purpose of demonstrating innocence and not to unreasonably delay the execution of sentence or administration of justice.

Tenn. Code Ann. § 40-30-304. Under the DNA Act's "discretionary" provision, the court *may* order DNA analysis if it finds that:

> (1) A reasonable probability exists that analysis of the evidence will produce DNA results that would have rendered the petitioner's verdict or sentence more favorable if the results had been available at the proceeding leading to the judgment of conviction;

(2) The evidence is still in existence and in such a condition that DNA analysis may be conducted;

(3) The evidence was never previously subjected to DNA analysis, or was not subjected to the analysis that is now requested which could resolve an issue not resolved by previous analysis; and

(4) The application for analysis is made for the purpose of demonstrating innocence and not to unreasonably delay the execution of sentence or administration of justice.

Tenn. Code Ann. § 40-30-305. "Under either the mandatory or discretionary provision, all four elements must be met before DNA analysis will be ordered by the court." *Powers v. State*, 343 S.W.3d 36, 48 (Tenn. 2011). Thus, a petitioner's failure to prove any one of the four criteria is fatal to the petitioner's claim, and the post-conviction court has the authority to dismiss the petition. *See Buford v. State*, No. M2002-02180-CCA-R3-PC, 2003 WL 1937110, at *6 (Tenn. Crim. App. Apr. 24, 2003).

In ruling on a request based on the DNA Act, the post-conviction court considers all "available evidence, including the evidence presented at trial and any stipulations of fact made by either party." *Alley*, 2004 WL 1196095, at *3. The post-conviction court may also consider appellate court opinions from the petitioner's direct appeal or his appeals of prior post-conviction or habeas corpus actions. *Id.* Finally, the post-conviction court presumes the requested DNA analysis would produce results favorable to the petitioner. *Powers*, 343 S.W.3d at 55 n. 28.

In this case, the post-conviction court concluded that Mr. Carruthers failed to establish the first statutory criteria under both the mandatory and discretionary provisions. In conducting its analysis of these criteria, the post-conviction court, consistent with governing precedent, began "with the assumption that DNA will be obtained from the items and that the DNA will be linked to a known third party, meaning someone other than the victims, Mr. Carruthers, James Montgomery, and Jonathan Montgomery." It further presumed that "the DNA 'hit' may be related to another individual who participated in the crime or an individual who touched one or more of the items at another time (i.e. someone living with one of the victims or perpetrators, a retailer, or the actual owner of the items)."

But, even with those assumptions, the post-conviction court concluded that

Mr. Carruthers failed to establish "a reasonable probability that [he] would not have been prosecuted or convicted" as the first criterion of the mandatory provision requires. The court explained:

> It is unlikely that Mr. Carruthers would not have been prosecuted, even if a third party's DNA had been found at the crime scene. With (1) letters referring to "a master plan" that was "a winner," an indication of Mr. Carruthers'[s] intention to "make those streets pay me," and an announcement from Mr. Carruthers that "everything I do from now on will be well organized and extremely violent," (2) the statement of Mr. Carruthers that "that would be a good way, you know, to bury somebody, if you're going to kill them…. [I]f you ain't got no body, you don't have a case," (3) Mr. Carruthers'[s] statement that he and Montgomery could "rob" and "get" Anderson and Johnson once they were released from prison, (4) Nakeita Shaw's eyewitness account that she saw James Montgomery, Mr. Carruthers, and the two victims, Anderson and Tucker, leave her home in the Jeep Cherokee on the night the victims went missing, (5) the victims' bodies were found buried together in a pit that had been dug beneath a casket in a grave in a Memphis cemetery (Mr. Carruthers had previously been assigned to a work detail at a local cemetery where he helped bury a body), (6) Mr. Carruthers' confession to Alfredo Shaw, and (7) the likelihood that more than one participant was involved in the homicides given the number of victims and the movement of the victims, the [c]ourt does not find that a reasonable probability exists that the petitioner would not have been prosecuted or convicted if exculpatory results had been obtained through DNA analysis. There is simply not "a probability sufficient to undermine confidence in the outcome." The Court finds that prong (1) of T.C.A. §40-30-304 has not been met.

Indulging these same presumptions, the post-conviction court also found that Mr. Carruthers failed to establish the first criterion under the discretionary provision of the statute. The post-conviction court explained its analysis as follows:

> Similarly to the analysis of [the first criterion of the mandatory provision], the Court does not find that a reasonable probability exists that analysis of the evidence will produce DNA results that would have rendered the petitioner's verdict more favorable if the results had been available at the proceeding leading to the judgment of conviction.

> Given the facts of this case as noted above, it is unlikely that the verdict in Mr. Carruthers'[s] case would have been more favorable, even if a third party's DNA had been found at the crime scene. Again, there is simply not "a probability sufficient to undermine confidence in the outcome." The Court believes the convictions would remain intact.
>
> . . . .
>
> When analyzing whether the sentence may have been more favorable, the analysis is somewhat more complicated. In the analysis, the trial facts remain the same. The Court finds this crime was planned over a period of time and was not a spur-of-the-moment idea. The Court also finds the number of victims and the opinion that the victims were buried alive would weigh heavily in favor of death sentences. Finally, the Court finds that Deloris Anderson was a truly innocent victim in this case. There is clearly sufficient proof and a solid basis for the jury returning death sentences in this case.
>
> On the other hand, it is plausible that a DNA profile of a third party at the crime scene (especially on the ligatures) could cause residual doubt in the minds of the jurors due to another participant possibly being involved and not prosecuted and could produce questions about Mr. Carruthers'[s] specific role in the offenses. Each of these possibilities may have given at least one juror a reason to not vote for death in this case. The question for this part of the analysis is whether the DNA profile of a third party at the crime scene would result in "a probability sufficient to undermine confidence" in the death sentences.
>
> The Court finds that evidence of a third party's DNA profile at the crime scene would not result in "a probability sufficient to undermine confidence in the" death sentences, given all of the facts of the case at trial. The Court finds that a reasonable probability does not exist that analysis of the evidence will produce DNA results that would have rendered the petitioner's sentences more favorable if the results had been available at the proceeding leading to the judgment of conviction.

We conclude that the post-conviction court did not abuse its discretion by concluding that Mr. Carruthers failed to meet the first criterion of both the mandatory and discretionary provisions of the DNA Act. As the post-conviction court

explained, even presuming the DNA analysis revealed exactly what Mr. Carruthers claims, these results would not amount to a reasonable probability that he would not have been prosecuted or convicted or a reasonable probability that his conviction or sentence would have been more favorable. Overwhelming evidence remains of Mr. Carruthers's involvement in planning and perpetrating the murders, and this evidence would not be undermined by favorable DNA results. This evidence clearly supports both Mr. Carruthers's convictions and the aggravating circumstances the jury found when it imposed sentences of death for each murder conviction. As summarized above, the State's evidence revealed that Mr. Carruthers devised a "master plan" to commit these crimes months in advance. After James was released from prison, Mr. Carruthers and the brothers carried out the plan. Jonathan later led the authorities to the exact location where the victims had been buried alive. Even if DNA results and comparison suggested another person was possibly involved in these crimes, such a suggestion does not undermine the significant remaining evidence against Mr. Carruthers. Because Mr. Carruthers failed to satisfy the first criterion of both the mandatory and discretionary provisions of the DNA Act, the post-conviction court did not abuse its discretion in denying the motion. This conclusion alone is a sufficient basis for this Court to affirm the post-conviction court's decision. *Powers*, 343 S.W.3d at 48; *Buford*, 2003 WL 1937110, at *6.

We also agree with the post-conviction court's conclusion that Mr. Carruthers failed to establish the fourth criterion of the mandatory and discretionary provisions of the DNA Act,[6] which requires the petitioner to show that the request for testing is made for the purpose of demonstrating innocence and not to unreasonably delay the execution of sentence or administration of justice. Tenn. Code Ann. §§ 40-30-304(4), -305(4). In determining Mr. Carruthers failed to make this showing, the post-conviction court reasoned:

> On one hand, the motion is clearly an attempt to demonstrate that Mr. Carruthers is innocent of the offenses for which he has been convicted. In fact, Mr. Carruthers for over thirty years has claimed his innocence, and Mr. Carruthers believes that further DNA testing may prove his innocence.
>
> On the other hand, and perhaps more apparent, it clearly appears that filing this motion on May 4, 2026 (only seventeen days before Mr. Carruthers'[s] scheduled execution) could very well be an attempt to

[6] The fourth criterion is identical under both the mandatory and discretionary provisions.

> unreasonably delay the execution of Mr. Carruthers'[s] sentence. This motion could have been filed years ago. This procedural avenue became available in 2001. James Montgomery allegedly identified Ronnie Irving as an additional suspect in 2010 or 2011. This motion could have been filed when Mr. Carruthers filed his *pro se* motion for fingerprint analysis (September 21, 2021). This motion could have been filed shortly after September 30, 2025, when the execution date was set. This motion could have been filed when counsel for Mr. Carruthers filed his *Reply to State's December 23, 2025, Response to Pro Se Petition and/or Amended Petition* regarding the fingerprint motion (December 31, 2025). There is no explanation provided or that the Court can surmise as to why Mr. Carruthers waited until April, 2026, to bring this to this Court's attention if not for the purpose of unreasonably delaying the execution of the sentence or administration of justice. This Court finds the filing of this motion is an attempt to unreasonably delay the execution of Mr. Carruthers'[s] sentence. Prong (4) has not been met.

We agree with the post-conviction court that Mr. Carruthers has had a procedural avenue to seek DNA testing since 2001, yet he waited to file this motion until just over one month before his scheduled execution and almost seven months after this Court set his execution date. The facts fully support the post-conviction court's determination that Mr. Carruthers brought his DNA motion for the purpose of delaying his execution and, in turn, failed to establish the fourth criterion of both the mandatory and discretionary provisions of the DNA Act. Again, we conclude that the post-conviction court did not abuse its discretion in denying the motion for DNA testing.[7]

Conclusion

For the reasons set forth above, we affirm the post-conviction court's judgment.

This opinion is not subject to rehearing under Rule 39 of the Tennessee Rules

[7] Mr. Carruthers's contention that the post-conviction court erred by failing to hold an evidentiary hearing on his motion is factually and legally without merit. Mr. Carruthers asked the post-conviction court to "grant his motion without the need for an evidentiary hearing." And this Court has held that post-conviction courts are not required to hold an evidentiary hearing to adjudicate requests for testing under the DNA Act. *Powers*, 343 S.W.3d at 56.

of Appellate Procedure, and the Clerk is directed to certify this opinion as final and to immediately issue the mandate.

This opinion is designated for publication pursuant to Rule 4 of the Rules of the Tennessee Supreme Court.

PER CURIAM