

***** CAPITAL CASE *****

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

JAMES AREN DUCKETT,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE FLORIDA SUPREME COURT

APPENDIX TO PETITION FOR WRIT OF CERTIORARI – Vol. II

**DEATH WARRANT SIGNED
EXECUTION SET JULY 28, 2026, AT 12:00 P.M. EDT**

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**IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT,
IN AND FOR LAKE COUNTY, FLORIDA**

**STATE OF FLORIDA,
Plaintiff,**

**CASE NO. 1987-CF-1347
JUDGE BRIAN WELKE**

v.

**JAMES AREN DUCKETT
Defendant.**

**DEFENDANT’S SUCCESSIVE MOTION TO VACATE JUDGMENTS OF
CONVICTION AND SENTENCE WITH REQUEST FOR LEAVE TO AMEND AND
FOR EVIDENTIARY HEARING**

COMES NOW the Defendant, **JAMES AREN DUCKETT**, by and through undersigned counsel, and pursuant to Fla. R. Crim. P. 3.851(e)(2), requests that this Court enter an order vacating his convictions and death sentence and ordering a new trial and sentencing.

PROCEDURAL HISTORY

James Duckett was convicted of one count of first-degree murder and one count of sexual battery in the Lake County Circuit Court on May 10, 1988 (R. 2010).¹ Within a few hours of the conclusion of the first phase of the trial on May 10, 1988, the penalty phase proceeding began (*See* R. 2434-2441). Later that same day, the jury returned a recommendation of death by a vote of eight to four (R. 2442). Mr. Duckett was sentenced to death with a consecutive 25-year minimum mandatory sentence (R. 2552).

Mr. Duckett’s direct appeal, filed on February 1, 1989, and supplemented on April 27,

¹ Citations to the record are as follows: Direct Appeal (R. ____); Postconviction Record on Appeal and proceedings after remand, SC01-2149 (PC-R1. ____) and Transcripts (PC-R1-T. ____) and (PC-R1-SV. ____); Successive Postconviction Record on Appeal, SC13-719 (PC-R2. ____); Successive Postconviction Record on Appeal, SC16-793 (PC-R3. ____); Warrant Record on Appeal, SC2026-0449 (WR1. ____) and supplemental sealed (WR1-S. ____); and Warrant Record on Appeal—3.853 proceedings, SC2026-0528 (WR2. ____), supplemental (WR2-S. ____), and sealed (WR2-S2. ____).

1989, raised four issues: 1) the circuit court erred in denying defendant's motion for a judgment of acquittal as the evidence was not sufficient to support the verdict; 2) the circuit court incorrectly interpreted the *Williams* rule in permitting the testimony of three witnesses; 3) the circuit court erred when it qualified FBI agent Michael Malone as an expert as Agent Malone committed perjury when he lied about his qualifications; and, 4) the circuit court erred in imposing the death penalty when it failed to remove the arbitrariness from the proceedings and when the trial judge failed to consider that the jury may have been influenced by improper considerations and when the judge placed undue emphasis on improper factors.

The Florida Supreme Court affirmed Mr. Duckett's convictions and sentences. *Duckett v. State*, 568 So. 2d 891 (Fla. 1990). With respect to issue one, the Court found that the State proved the evidence was inconsistent with a reasonable hypothesis of innocence, supporting that finding with, among other things, the "fact" that the victim was last seen in James Duckett's car. With respect to the second issue, the Court found that the testimony of one of the three *Williams* rule witnesses should properly have been excluded but found this error harmless in light of other evidence presented at trial. With respect to the third issue, the credibility of Agent Malone, the Court found that issue of Malone's credibility had been resolved by the jury. Finally, with respect to issue four, the court simply found that Mr. Duckett's status as a police officer was not used as a non-statutory aggravator. In the conclusion to the brief, appellate counsel raised the issue of the failure of the circuit court to properly weigh all aggravators and mitigators. This claim was not addressed by the Florida Supreme Court.

Mr. Duckett filed his initial *Motion to Vacate Convictions and Sentences Pursuant to Rule 3.850* on May 1, 1992 (PC-R. 1859-1870). A consolidated amendment to the petition was filed on

November 14, 1994 (PC-R. 337-470).²

On May 23, 1995, the court ordered evidentiary hearings on claims I, II - A, C (§ 22-23), D, E and F, III, V and IX (PC-R. 778). Evidentiary hearings were conducted on January 7-8, 1997, October 28-30, 1997, December 17, 1997, October 26-27, 1998, and February 19, 1999.

On August 13, 2001, the Court entered an order denying Mr. Duckett relief on all claims (PC-R. 1782-1819). With respect to the claims concerning Ms. Gurley's testimony, the Court

² Mr. Duckett's claims in his initial motion to vacate included his arguments that: I) records pertaining to him in the possession of the Florida Parole Commission, the Board of Executive Clemency and the State Attorney's Office were withheld in violation of Fla. Stat. § 119.01 *et. seq.*; II) Mr. Duckett was denied an adversarial testing when critical exculpatory evidence was not presented to the jury, specifically A) Gwen Gurley lied and the jury never heard critical impeachment evidence, B) the jury considered improperly admitted *Williams* rule testimony, C) newly discovered evidence concerning the jury deliberations raises substantial doubts about Mr. Duckett's convictions and sentences, D) the jury did not hear critical evidence which raised a reasonable doubt of guilt, including, but not limited to, evidence of other, more viable, suspects, E) the jury did not receive significant evidence contradicting the State's forensic evidence, including the hair evidence, the tire tracks evidence and the fingerprint evidence, and F) the jury never heard critical evidence corroborating Mr. Duckett's version of events including evidence that the victim was found wearing different clothes than she had been wearing when Mr. Duckett questioned her earlier in the night, and forensic evidence that the victim did not die from drowning as alleged by the State; III) Mr. Duckett was denied the effective assistance of counsel at penalty and sentencing phases when counsel failed to adequately investigate and refute aggravating factors and failed to establish mitigating factors; IV) the prosecutor's inflammatory and improper comments, arguments and conduct rendered Mr. Duckett's trial fundamentally unfair and unreliable; V) Mr. Duckett was denied his rights under *Ake v. Oklahoma* when counsel failed to obtain an adequate mental health evaluation and failed to provide necessary background information to a mental health consultant; VI) the sentencing jury did not receive instructions guiding and channeling its sentencing discretion by explaining the limiting constructions of the aggravating circumstances, and the aggravating circumstances were improperly argued and applied; VII) the sentencing instructions unconstitutionally diluted the jury's sense of responsibility for the sentence; VIII) the jury instructions unconstitutionally shifted the burden to Mr. Duckett to prove that death was inappropriate; IX) the trial was fraught with procedural and substantive errors; X) the evidence was insufficient to support the verdict; XI) Mr. Duckett was absent from critical stages of the proceedings; XII) Mr. Duckett's sentence of death was exacted pursuant to a pattern and practice of prosecuting authorities, courts and juries to discriminate on the basis of race; XIII) Florida's rule prohibiting the interview of capital jurors is unconstitutional; and XIV) the death penalty is cruel and unusual punishment in that it is applied in an arbitrary and capricious fashion in Florida.

found on the one hand that Ms. Gurley's recantations were inadmissible hearsay, and then found on the other hand that the recantation was incredible and unreliable. The Court did not address the wealth of evidence presented that Ms. Gurley had testified falsely at trial and that the State had knowingly obtained and presented this false testimony. With respect to the incredible hair evidence presented by Malone, the Court simply found that the attack upon Malone was unfounded and without merit. The Court did not further address the problems with the hair evidence.

On May 31, 2002, Mr. Duckett filed an appeal to the Florida Supreme Court from the denial of his Rule 3.850 motion and on June 4, 2002, he filed a *Petition for Writ of Habeas Corpus* with the Florida Supreme Court. The Court consolidated the two cases for oral argument, which was heard on March 6, 2003. Following oral argument, the Court remanded the case to this Court to determine whether clothing existed which could be tested for DNA, and to conduct such testing (Fla. S. Ct. SC01-2149, Order March 21, 2003). The Court proceedings on the DNA remand were concluded with the Final Order and Report to Supreme Court on DNA Testing submitted by this Court to the Florida Supreme Court on February 5, 2004.

Mr. Duckett appealed those proceedings on February 25, 2004, and supplemental briefs were filed.

On August 10, 2004, Mr. Duckett filed a *Motion to Relinquish Jurisdiction* in the Florida Supreme Court based upon newly discovered evidence that Gwen Gurley had indeed lied at her trial at the behest of State agents. The Florida Supreme Court relinquished the case to this Court and this Court conducted a hearing on the grounds alleged in the Motion. This Court did not enter an order on the Motion but sent the records from the relinquishment proceedings to the Florida Supreme Court to be included with the pending appeal. The Florida Supreme Court denied Mr. Duckett's appeal on October 5, 2005. *Duckett v. State*, 918 So. 2d 224 (Fla. 2005).

Mr. Duckett filed a *Writ of Certiorari* to the United States Supreme Court on May 31, 2006, which was denied on October 2, 2006. *Duckett v. Florida*, 549 U.S. 846 (2006).

On January 5, 2007, Mr. Duckett filed a *Petition for Writ of Habeas Corpus* in federal court, which was denied on March 25, 2010. Mr. Duckett's Application for Certificate of Appealability was denied by the district court and by the court of appeals.

Mr. Duckett filed a *Petition for Writ of Certiorari* in the United States Supreme Court on June 6, 2011, which was denied on October 3, 2011. *Duckett v. Tucker*, 565 U.S. 860 (2011).

Mr. Duckett filed a successive postconviction motion pursuant to Rule 3.851 on November 29, 2010 raising four issues,³ which was denied on March 13, 2013. Mr. Duckett filed an appeal to the Florida Supreme Court. The Court affirmed the circuit court's decision on June 26, 2014. *Duckett v. State*, 148 So. 3d 1163 (Fla. 2014).

Mr. Duckett filed a successive postconviction motion on August 25, 2015, raising newly discovered evidence claims of *Brady* and *Giglio* violations based on the 2014 DOJ review of FBI analyst Malone. The circuit court denied the claims on April 16, 2016. The Florida Supreme Court affirmed the circuit court's order on October 12, 2017. *Duckett v. State*, 231 So. 3d 393 (Fla. 2017). Mr. Duckett filed a petition for writ of certiorari with the United States Supreme Court on March 18, 2018, which was denied on June 11, 2018. *Duckett v. Florida*, 584 U.S. 1035 (2018).

On June 2, 2016, Mr. Duckett filed a third successive postconviction motion raising five claims based on *Hurst v. State*, 202 So. 3d 40 (Fla. 2016), which was summarily denied. Mr. Duckett's appeal to the Florida Supreme Court was affirmed on December 28, 2018. *Duckett v.*

³ The claims were (1) improper analysis of IAC claim pursuant to *Porter v. McCollum*, (2) newly discovered evidence of a violation of *Giglio v. United States* regarding Gwen Gurley's false testimony, (3) violation of due process based on application of new perjury statute to prohibit Gwen Gurley from testifying truthfully, and (4) newly discovered evidence based on the 2011 FBI review of FBI analyst Mike Malone's hair analysis and testimony.

State, 260 So. 3d 230 (Fla. 2018). His petition for certiorari to the United States Supreme Court was denied on June 10, 2019. *Duckett v. Florida*, 587 U.S. 1053 (2019).

On February 27, 2026, the Governor signed a warrant scheduling Mr. Duckett's execution for March 31, 2026. After his death warrant was signed, Mr. Duckett filed a *Successive Motion to Vacate Convictions and Sentences* pursuant to Rule 3.851 on March 8, 2026 (WR1. 884-926). The Court denied Mr. Duckett's Motion to Vacate on March 17, 2026 (WR1. 1261-2064), and Mr. Duckett filed a timely appeal to the Florida Supreme Court (WR1. 2077-80).

Mr. Duckett filed a *Motion for Postconviction DNA Testing* pursuant to Rule 3.853 on March 5, 2026 (WR1. 433-445), and a *Motion Requesting Evidentiary Hearing* on June 11, 2026 (WR1-S. 2197-2206). The Court granted Mr. Duckett's Rule 3.853 Motion granting DNA testing of slide Q6(3), which was a smear of biological material extracted from the victim's underwear. The Court entered an Order concluding the DNA testing on June 19, 2026 (WR1-S. 2262), and denied Mr. Duckett's *Motion for Rehearing* on June 24, 2026. Mr. Duckett appealed the *Order Denying Motion Requesting Evidentiary Hearing* to the Florida Supreme Court on June 24, 2026. The Court dismissed Mr. Duckett's appeal for lack of jurisdiction on July 1, 2026.

On July 8, 2026, the Florida Supreme Court denied Mr. Duckett's appeal of his Motion to Vacate and his Writ of Habeas Corpus and lifted the stay of execution.

GROUND FOR POST-CONVICTION RELIEF

By his motion for Fla. R. Crim. P. 3.851 relief, Mr. Duckett asserts that his convictions and sentences, including his sentence of death, were obtained in violation of the Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the U.S. Constitution and the corresponding provisions of the Florida Constitution for the reasons set forth below.

CLAIM I

THE STATE’S DESTRUCTION OF THE CRITICAL SLIDE CONTAINING VIABLE DNA EVIDENCE VIOLATED MR. DUCKETT’S RIGHTS TO DUE PROCESS AS DEFINED BY *CALIFORNIA V. TROMBETTA* AND *ARIZONA V. YOUNGBLOOD* AND ITS PROGENY, AND HIS RIGHTS UNDER THE FIFTH, SIXTH, EIGHTH, AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND CORRESPONDING PROVISIONS OF THE FLORIDA CONSTITUTION.

A. Relevant Facts

On March 5, Mr. Duckett moved for postconviction DNA testing of slide Q6(3) (“Q Slide”) containing biological evidence of sperm extracted from the victim’s underpants. In his *Motion for Postconviction DNA Testing*, Mr. Duckett sought SNP testing using Massively Parallel Sequencing (MPS) as opposed to STR testing, which is less sensitive and advanced (WR1. 629). Specifically, Mr. Duckett sought Whole Genome Sequencing (WGS), which is the application of the MPS used by Othram, Inc., asserting that this testing provided a “reasonable probability that [it] would yield a conclusive result,” (WR1. 633-35), and that it “would provide the most reliable method of extraction of testable DNA from the Q slide” (WR1. 728-40).

This Court granted the motion, finding “identity was an issue at trial, and that if DNA testing of the sperm indicated that it did not belong to Defendant, there would have been reasonable probability of an acquittal” (WR1. 748).

Because Mr. Duckett intended to use the results in support of his motion alleging his actual innocence, Mr. Duckett requested this Court stay the warrant proceedings until the DNA testing concluded. This Court denied Mr. Duckett’s multiple requests and required him to plead and argue his Rule 3.851 motion (WR1. 741, 828, 829).

Mr. Duckett asserted in his Rule 3.851 motion that newly discovered evidence, in the form of DNA results, would conclusively establish his innocence (WR1. 885). Without the DNA results,

however, this Court was left without any newly discovered evidence supporting Mr. Duckett's claim and summarily denied his motion for postconviction relief (WR1. 1261).

Following the grant of DNA testing, this Court held a series of hearings wherein the parties discussed the where, when and, how of the DNA testing (WR1. 984, 1105, 1150, 1197). However, because these hearings were conducted with minimal notice and *never* noticed as evidentiary hearings, Mr. Duckett was unable to present thorough and complete testimony from an expert on SNP and WGS testing. The court only heard from Dr. David Mittelman once wherein he confirmed that in his professional opinion, as asserted in the Motion for DNA Testing and his attached affidavit, the type of testing most likely to yield a conclusive result was WGS.

The State did not object to DNA testing but did object to the type of testing and the lab that would conduct it. This Court, in turn, determined that FDLE would conduct the initial portion of the testing, quantification, and based on those results, determine if SNP or STR testing would be appropriate.

As the Florida Supreme Court found in its March 26, 2026 Order staying Mr. Duckett's execution, this Court "permitted the State to exercise complete control over the location, timing, and method of testing," (WR2. 27), a finding the Florida Supreme Court reiterated in its April 30, 2026 Opinion. *Duckett v. State*, 431 So. 3d 990, 992 (Fla. 2026). Although the Rule provides for an outside lab to conduct testing if good cause is shown, the State was adamant the rule required FDLE to conduct the testing. Ultimately, FDLE was given control of the Q slide.

After completing quantification of the slide, FDLE agreed with Mr. Duckett at a March 12 hearing that the "best course of action" was to process the DNA using SNP testing and that an outside lab would be required to conduct the testing as it was beyond the capabilities of FDLE (WR1. 1116). Mr. Duckett thus reasserted his argument that because the amount of DNA recovered

appeared to be very limited and degraded, careful coordination was required to determine the best testing strategy and that WGS provided the most reasonable likelihood of a result.

FDLE Deputy Director Leigh Clark provided a list of four accredited labs that could do the SNP testing, including Othram, DNA Labs International (DLI), Bode, and Signature Science.⁴ Per this Court’s instructions, FDLE inquired of each lab “their technical capabilities, capacity to perform the testing, the location of the lab that will perform the testing, and their anticipated timeline to complete such testing” (WR1. 1092). Ms. Clark emailed the results of her inquiries to the parties that evening, and the court set an impromptu hearing the next morning at 9:00 a.m. (WR1. 1101).

Although Ms. Clark had agreed at the March 12 hearing “that it would be best for the private lab that would be conducting SNP testing to have the capabilities for a whole genome sequencing” because “you would want a professional who performs whole genome sequencing to make that decision [on whether WGS was necessary] based on the quantitation [sic] data,” (WR1. 1135, 1130-31), on March 13, Ms. Clark did an about-face and asserted “in my opinion the whole genome sequencing is not necessary, and I do not believe that type of testing would be perform by Othram or DNA labs in this example” (WR1. 1158).⁵ This change of opinion occurred after the State asserted that DLI and Signature Science offered the ForenSeq Kintelligence Kit, which would purportedly take only 15 days. Ms. Clark, a self-professed non-expert in SNP testing, further opined that whole genome sequencing was “overkill” (WR1. 1159).

⁴ Ms. Clark further noted that only Othram and a fifth lab, Parabon Nanolabs, Inc., were capable of reviewing the Y-SNP data. Resp. to State’s Mot. to Vacate Stay, SC2026-0449 & SC2026-0450, Apr. 6, 2026, Attachment 1.

⁵ This statement was patently wrong and contrary to the only testimony Mr. Duckett was permitted to present, as Dr. Mittelman categorically stated that the testing Othram would conduct was WGS.

Because there were no evidentiary hearings held regarding the procedures for the DNA testing or any of these related decisions, nor did anyone from any of the labs who could perform the testing testify aside from Dr. Mittelman at the initial hearing, Mr. Duckett was never provided the opportunity to question whether the labs actually had the capability to do what was required given the state of the evidence to be tested. Instead, the sole guiding factors became, per the State's demand, who could do the testing quickest and that the testing be done within Florida.⁶ Due to the lack of evidentiary hearings, it was never determined whether Kintelligence is validated for mixed samples containing male DNA. What was established is that Kintelligence is meant for other types of DNA analysis and is not used for forensic scientific questions like the one in Mr. Duckett's case, (WR1. 1161), a fact that became tragically clear after DLI conducted its testing. With no evidentiary development, the Florida Supreme Court directed the evidence to be conducted by DLI at its Florida laboratory (WR1. 1144).

In the interim, Mr. Duckett moved the Florida Supreme Court for an emergency stay of his Rule 3.851 appeal and his habeas proceedings, detailing the litigation in this Court concerning his Rule 3.853 motion for DNA testing and his claims of actual innocence included in his motion for postconviction relief. Central to Mr. Duckett's argument was that this Court granted DNA testing but then precluded him from using the results. Mr. Duckett moved the Florida Supreme Court to stay all proceedings "so that a full and fair evidentiary hearing may be conducted on Mr. Duckett's claims after he receives the outstanding DNA results." Mot. to Stay, SC2026-0449 & SC2026-

⁶ DLI, who ultimately conducted the testing, had initially stated in response to Ms. Clark's inquiry regarding what testing was needed that it would conduct the testing at its Utah laboratory and that it would take closer to a month (WR1. 1233-35). It is only when the State insisted that the evidence not leave the State of Florida and that the Kintelligence Kit be used because it was purportedly quicker that DLI changed this position.

0450, Mar. 26, 2026.

Because the Florida Supreme Court had not yet ruled on Mr. Duckett's stay motion, he timely filed his Initial Brief in his 3.851 appeal on Friday, March 20, 2026, and his Reply Brief to the State's Answer Brief on Monday, March 23.

The Florida Supreme Court thereafter granted Mr. Duckett's motion to stay his appellate and habeas proceedings "pending further order of this Court." *Duckett v. State*, 428 So. 3d 40 (Fla. 2026) (Mem). The Supreme Court further instructed the State to file a status report "addressing the status of the DNA testing no later than Friday, March 27, 2026, at 5:00 p.m." *Id.*

The following day, on March 27, the State filed notice of the DNA results from DLI (WR2. 43). The results were reported as inconclusive and DLI was unable to obtain a profile. Notably, the testing *did* yield data. The issue, however, became that DLI does not have the capability to conduct the requisite analysis to determine if a profile can be obtained—a problem FDLE was aware of when submitting the sample to DLI. The kit used in Mr. Duckett's case, called ForenSeq Kintelligence, is meant for other types of DNA analysis and is not used for scientific questions like the one at issue here. That meant that DLI did not have the capability to conduct the analysis of the data required in this case. *See* (WR2. 156) ("DLI does not perform statistical analysis of Y-SNP results and therefore cannot provide a probability determination of data obtained in testing.").

In her email to the parties regarding DLI's results, Ms. Clark expressly stated that the analysis was not yet over. Ms. Clark further stated that FDLE was unable to provide an opinion on the results of the tests and suggested that "[a] qualified bioinformaticist may be able [sic] provide an opinion and calculation based on the Y SNP results." (WR2-S2. 308). Ms. Clark suggested that either Othram or Parabon Nanolabs, Inc., would be capable of further reviewing the Y-SNP data. These are the same two labs Ms. Clark initially noted as the only ones capable of conducting the

necessary analysis on the backend of the testing when this Court was gathering information about which lab should conduct the testing in this case. *Id.*; *see also* (WR1. 1165-66, 1169).

Despite FDLE's clear recommendation to have the data read by a bioinformaticist, the State surprisingly moved the Florida Supreme Court to lift the stay of Mr. Duckett's Rule 3.851 appeal and habeas proceedings and urged this Court to conclude Mr. Duckett's Rule 3.853 proceedings. The State's motion tersely asserted that "[t]he SNP DNA results were inconclusive" and that the stay should be lifted "[b]ecause the SNP DNA testing is complete and the results do not exonerate [Mr.] Duckett." Mot. to Lift Stay, SC2026-0449 & SC2026-0450, Mar. 27, 2026. Not once in its motions did the State mention—or even acknowledge—the fact that Ms. Clark advised further statistical analysis could be conducted with the SNP testing data. Rather, the State's motions focused on the merits of Mr. Duckett's pending claims and urged the Court to issue rulings in both the 3.851 appeal and habeas proceeding.

Mr. Duckett responded, requesting time to litigate outstanding issues in his Rule 3.853 proceeding given that the testing was inconclusive and FDLE's indication that further analysis could still yield a profile that could exonerate him. Resp. to State's Mot. to Lift Stay, SC2026-0449 & SC2026-0450, Mar. 27, 2026. Mr. Duckett specifically noted that Rule 3.853 contemplates testing to a definitive result. *See* Fla. R. Crim. P. 3.853(b)(2) (The contents of a motion for postconviction DNA testing require a statement that "subsequent scientific developments in DNA testing techniques likely would produce a definitive result establishing that the movant is not the person who committed the crime.")). Mr. Duckett asserted that both Rule 3.853 and due process demand that he have the opportunity to have his expert review the testing data from DLI and assess the reliability of the results and litigate any related issues.

The Florida Supreme Court rejected the State's arguments and entered an Order denying

the State’s motion to lift the stay of Mr. Duckett’s appeal of his Rule 3.851 denial and corresponding habeas petition. *Duckett v. State*, 429 So. 3d 1006 (Fla. 2026) (Mem). The Order clarified that this Court retained “concurrent jurisdiction to rule on motions related to DNA testing and successive claims filed by the petitioner” *Id.* The Supreme Court directed this Court to file a Status Report on all pending issues by Thursday, April 2, 2026, at 5:00 p.m. *Id.*

The proceedings that followed failed to meet the intention of the Florida Supreme Court’s Order, which Mr. Duckett read to imply that this Court was granted time to review the matter and permit further analysis of the inconclusive results at the recommendation of FDLE. Instead, this Court set two quick hearings during which it heard argument and subsequently denied Mr. Duckett’s Rule 3.853 proceedings without providing meaningful due process. In so doing, the court summarily denied the proceedings and made findings of fact unsupported by the record.

Mr. Duckett appealed this Court’s denial of his outstanding Rule 3.853 issues, arguing *inter alia* that this Court failed to provide due process when the court denied him full access to the DNA evidence in violation of the Fifth, Eighth, and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the Florida Constitution. Mr. Duckett further argued that the court failed to hold adequate hearings “related to the procedures for DNA testing” as required by *Cardona v. State*, 109 So. 3d 241, 242 (Fla. 4th DCA 2013). Initial Br., SC2026-0449 & SC2026-0450, at 28.

On April 30, 2026, the Florida Supreme Court reversed this Court’s denial of Mr. Duckett’s request for the underlying DNA testing data and remanded “for the underlying testing data to be provided for a statistical analysis, as directed by the Florida Department of Law Enforcement (FDLE).” *Duckett v. State*, 431 So. 3d 990, 992 (Fla. 2026).

This analysis concluded and the reports from both the State’s expert, Parabon NanoLabs,

and the defense expert, Dr. Mittelman of Othram, were filed with this Court. *See* State’s Notice of Filing, June 2, 2026; Def. Notice of Filing, June 18, 2026. The experts who analyzed the same testing results and underlying data disagreed on the ability to determine an outcome. Parabon, albeit with caution, reported a likelihood ratio that supports Mr. Duckett having contributed to the evidentiary sample. Dr. Mittelman’s Analysis raised significant concerns regarding the validity of these findings, and insufficient information provided with the report to determine the scientific validity of the evaluation. Dr. Mittelman also addressed issues with the Kintelligence Kit for analyzing the biological material in this case, noting that it was not developed as a probabalistic genotyping platform for highly degraded, low-template DNA mixtures. Def. Notice of Filing, June 18, 2026, at 3.

DLI could not do what was needed to obtain a result and the State knew that likelihood existed yet allowed the evidence to be sent there for testing using a test that was not appropriate for the particular needs in this case—a fact that was made clear in the initial hearing on the request for DNA testing. The lab that could have conducted the appropriate test, WGS, completed it in the same or less time as it took DLI to use the Kintelligence Kit, and provided the court with the full analysis of the result, Othram, was left standing in the wings because the State adamantly professed there was a conflict of interest, repeatedly argued that Othram was not accredited despite clear evidence to the contrary, and ignored testimony that Othram could do the testing in less time than the chosen lab. It is hard to imagine how this result comports with due process.

Mr. Duckett filed a *Motion Requesting Evidentiary Hearing* in this Court on June 11, 2026, which was argued at a June 16 status hearing. Mr. Duckett requested an evidentiary hearing to take sworn testimony from the scientists to provide a full record of the testing that was conducted, the analyses that were done, and the support for the resulting conclusions. The Court indicated it would

consider the motion and issue a ruling and also requested the parties to provide their availability in the coming weeks should a hearing be scheduled. Before the Court issued any ruling, however, the State again moved to lift the stay of Mr. Duckett's 3.851 appeal and habeas proceedings in the Florida Supreme Court. Mr. Duckett responded, indicating that the litigation in this Court had not yet concluded.

This Court thereafter issued an order on June 19 denying Mr. Duckett's motion for an evidentiary hearing. Mr. Duckett sought rehearing on June 23, which was denied June 24. Mr. Duckett filed his notice of appeal the same day. As previously noted, the Florida Supreme Court denied Mr. Duckett's appeal for lack of jurisdiction.

B. Legal Argument

More than a century ago, the Supreme Court declared that the Due Process Clause of the U.S. Constitution required fundamental fairness of the State. *See Hurtado v. California*, 110 U.S. 516, 535 (1884) (due process protects “those fundamental principles of liberty and justice which lie at the base of all our civil and political institutions”); U.S. Const. amend. XIV, §1; *see also Strickland v. Washington*, 466 U.S. 668, 685 (1984) (“The Constitution guarantees a fair trial through the Due Process Clause[.]”). Part and parcel of this right is the assurance that a suspect be given the opportunity to defend him or herself against charges levied by the State. *California v. Trombetta*, 467 U.S. 479, 485 (1984) (holding that the Due Process Clause “require[s] that criminal defendants be afforded a meaningful opportunity to present a complete defense” to “comport with prevailing notions of fundamental fairness”).

Trombetta established that defendants have a constitutional guarantee of access to evidence under the due process clause of the Fourteenth Amendment. In *Trombetta*, the Supreme Court recognized that the State has a duty “to preserve evidence . . . that might be expected to play a

significant role in the suspect's defense." 467 U.S. at 488. The *Trombetta* Court explained that the State violates an appellant's due process rights when the State destroys evidence 1) whose exculpatory significance is apparent prior to its destruction and 2) that is sufficiently unique that the defendant could not obtain "comparable evidence by other reasonably available means." *Id.* at 480. In reviewing the exculpatory value of the evidence, courts look to whether the evidence in question would have contributed significantly to the defense's case. *See U.S. v. Brown*, 9 F.3d 907 (11th Cir. 1993).

Four years later, the court in *Arizona v. Youngblood* reaffirmed that the State has a "constitutional duty" to preserve evidence that has apparent exculpatory value to the police. 488 U.S. 51, 56, n.* (1988). The *Youngblood* Court held that the State's destruction of "potentially useful" evidence violates a suspect's right to due process when the State destroys the evidence in bad faith. *Id.* at 58.

A distinction is made between (1) evidence that is deemed "material," *Trombetta*, 467 U.S. at 489; and (2) evidence which is found to be "potentially useful" to the defense. *Youngblood*, 488 U.S. at 58. When material exculpatory evidence exists, destruction is a denial of due process regardless of good or bad faith. *See Illinois v. Fisher*, 540 U.S. 544, 547 (2004). In *Fisher*, the Court clarified that the bad-faith requirement does not apply where a defendant can show the destroyed evidence was plainly exculpatory at the time it was destroyed: "applicability of the bad-faith requirement in *Youngblood* depended not on the centrality of the contested evidence to the prosecution's case or the defendant's defense, but on the distinction between 'material exculpatory' evidence and 'potentially useful' evidence." *Fisher*, 540 U.S. at 547-49; *see also*

United States v. Londono, No. 18-12888, 2025 WL 2408499, at *6 (11th Cir. Aug. 20, 2025)⁷; *United States v. Cesiro*, No. 23-6649, 2024 WL 4647667, at *1 (2d Cir. Nov. 1, 2024); *Moldowan v. City of Warren*, 578 F.3d 351, 384-85 n. 11 (6th Cir. 2009). Bad faith is required only where the destroyed evidence is no more than potentially useful, not when it has apparent exculpatory value.

The inquiry is whether *Trombetta* or *Youngblood* governs the analysis of defendant's due process challenge; and turns upon the nature of the destroyed evidence. Where the State destroys evidence that has an apparent exculpatory value *Trombetta* applies but where all that is shown is that the State destroyed potentially useful evidence then *Youngblood* is triggered.

In *Trombetta*, the United States Supreme Court held that the State's constitutional duty to preserve evidence is limited to evidence that "both possess[es] an exculpatory value that was apparent before the evidence was destroyed, and [is] of such a nature that the defendant would be unable to obtain comparable evidence by other reasonably available means." 467 U.S. at 489. In *Youngblood*, however, the Supreme Court held that the Due Process Clause requires a different result when the State fails to preserve evidence that does not possess an apparent exculpatory value, but which is merely "potentially useful" to the defense. 488 U.S. at 57. "Potentially useful" evidence is evidence "of which no more can be said than that it could have been subjected to tests, the results of which might have exonerated the defendant." *Id.* When the State fails to preserve potentially useful evidence, due process is violated only if the defendant can show bad faith on the part of the police or prosecution. *Id.* at 58; *Dufour v. State*, 905 So. 2d 42, 68 (Fla. 2005). "Under *Youngblood*, bad faith exists only when police intentionally destroy evidence they believe would exonerate a defendant." *Dufour*, 905 So. 2d at 68 (quoting *Guzman v. State*, 868 So. 2d 498, 509 (Fla. 2003)).

Anderson v. State, 220 So. 3d 1133, 1148-49 (Fla. 2017).

Evidence is constitutionally material when its *exculpatory value is apparent before it was*

⁷ "The relevant legal test depends on how we categorize the destroyed evidence. If the exculpatory value of the evidence was constitutionally material, [the defendant] need not show that the Government destroyed the evidence in bad faith. *See Trombetta*, 467 U.S. at 488-89. To be constitutionally material, [the defendant] must show that the evidence possessed an exculpatory value that was "apparent" before it was destroyed and that he could not have obtained equivalent evidence elsewhere. *Id.* But if the evidence was only "potentially" exculpatory, [the defendant] must show that the Government destroyed the evidence in bad faith in order to establish a due-process violation. *See Youngblood*, 488 U.S. at 57-58; *Revolorio-Ramo*, 468 F.3d at 774-75." *Londono*, 2025 WL 2408499, at *5.

lost or destroyed and is of such a nature that a defendant would be unable to obtain other comparable evidence by other reasonably available means. The exculpatory value of the evidence in question was readily apparent before it was destroyed. Here, the State was aware of the exculpatory value of the slide as evidenced by the examination and efforts to determine how to test in on several occasions over the course of Mr. Duckett's case. *See Guzman v. State*, 868 So. 2d 498, 509 (Fla. 1993) (holding that "[e]vidence that has not been examined or tested by government agents does not have 'apparent exculpatory value.'"). Analysis with a forensic testing method that was formulated to obtain results with old, degraded, biological material, such as that in Mr. Duckett's case, would have allowed him to obtain valid DNA results providing the necessary evidence to exclude him. This egregious destruction of evidence has torpedoed Mr. Duckett's ability to present his innocence claims to the court. The "[a]pparent" exculpatory value of evidence "must be judged based on the facts, circumstances and knowledge available to [state actors] before the evidence [was] destroyed." *See Elliott*, 83 F. Supp. 2d at 642. There is no question that the evidence that was destroyed here meets that standard.

Mr. Duckett asserts that even if this Court applies the *Youngblood* analysis, the facts in his case warrant relief. The determination of whether *Youngblood* or *Trombetta* governs the analysis is by necessity a fact-intensive analysis that depends on the individual case. The court must make a "case-by-case assessment" that examines the discarded evidence's "significance when viewed in light of its nature, its bearing upon critical issues in the case and the strength of the government's untainted proof." *United States v. Grammatikos*, 633 F.2d 1013, 1020 (2d Cir. 1980); *see also Youngblood*, 488 U.S. at 60 (Stevens, J., concurring) (cautioning the exculpatory value of evidence may be higher in cases "involving a closer question as to guilt or innocence").

If the analysis is being done pursuant to *Youngblood*, the Court must assess the potentially

useful nature of the evidence, which is easily established here. The parties agreed that the Q slide, which contained sperm heads taken from the victim's clothing, would support a claim of newly discovered evidence if they did not match Mr. Duckett. There can be no question, given the unique nature of the evidence to be tested and the facts of this case, that this evidence was, at a minimum, potentially useful. Once the potentially useful nature of the evidence is established, the next step in the analysis requires an assessment of whether the destruction of that evidence was undertaken in bad faith. *Youngblood*, 488 U.S. at 58. In circumstances where evidence is "potentially useful" a requirement of bad faith is shown to establish a due process violation. *Id.* The inquiry into bad faith "must necessarily turn on the [government's] knowledge of the exculpatory value of the evidence at the time it was lost or destroyed." *United States v. Bohl*, 25 F. 3d 904, 911 (10th Cir. 1994) (quoting *Youngblood*, 488 U.S. at 57 n.*) (alteration in original).

In this case, the State required that the evidence be tested by a method that could not garner the necessary results and would, in the process, destroy the evidence, thereby resulting in a violation of Mr. Duckett's due process rights. The State was provided with a testing method, WGS, that is designed for this very type of evidence, yields more sensitive results, and could be done in the same time or less than the Kintelligence testing, yet refused to allow that to happen. Instead the State falsely asserted repeatedly that the lab that could do the testing, Othram, was not certified even after hearing testimony from both Dr. Mittelman and Ms. Clark that this was not correct and argued with no support that Othram had a conflict that would preclude it from doing the work. Even if the State was acting without "a specific intent to harm the defendant," bad faith can be established. *United States v. Elliott*, 83 F.Supp.2d 637, 651 (E.D. Va. 1999) (reckless disregard of rules and procedures to protect evidence can constitute a showing of objective bad faith to establish the bad faith requirement). Additionally, the requirement of bad faith can be proven by actions by

others that prevent a defendant in a criminal case from presenting proof on the issue. *See, e.g., State v. McGrone*, 798 So. 2d 519, 523 (Miss. 2001) (“Where the State’s actions absolutely prevent a defendant in a criminal case from presenting proof on this issue, we will consider the requirement of bad faith to have been proven.”).

Florida law is well established that newly discovered evidence may be grounds for relief where the facts on which the claim is predicated were unknown to the trial court, the moving party, or counsel at the time and could not have been ascertained by the party or her counsel in the exercise of due diligence. *Jones v. State*, 709 So. 2d 512, 521 (Fla. 1998) (*Jones II*); *Jones v. State*, 591 So. 2d 911, 915 (Fla. 1991) (*Jones I*); *see also Gonzalez v. State*, 990 So. 2d 1017 (Fla. 2008). There is no question that the facts supporting the claim pled in this motion did not exist at the time of trial and could not have been discovered previously, as the circumstances arise out of the current ongoing warrant litigation.

For a defendant to obtain relief based on newly discovered evidence, the evidence must be of such a nature that would probably produce an acquittal on retrial, a less severe sentence, or result in a life sentence rather than a death sentence. *Schwab v. State*, 969 So. 2d 318 (Fla. 2007); *Williamson v. State*, 961 So. 2d 229 (Fla. 2007); *Van Poyck v. State*, 961 So. 2d 220 (Fla. 2007). The State agreed that the Q slide should be tested and only contested who should conduct the testing. This Court found that “identity was an issue at trial, and that if DNA testing of the sperm indicated that it did not belong to Defendant, there would have been a reasonable probability of an acquittal.” (WR1. 748). Fairness begins and ends with due process and, given the circumstances in this case, regardless of how one chooses to characterize the State’s behavior—though there are certainly ample indications of bad faith—the loss of evidence in this case is so critical to the defense as to render the proceedings fundamentally unfair. It is the only available and appropriate

reaction if the mandate of due process and fundamental fairness is to be honored. The State willfully or with egregious negligence caused the destruction of the most critical piece of evidence in Mr. Duckett's case.

Given the insistence by the State that the evidence had to be tested using a test that its *own witness* had said was not made for such, and the evidence that appropriate testing could be completed in less or equal time, the question of good faith seems genuinely out of place and inappropriate. Mr. Duckett has been irreparably crippled. Under such circumstances it seems that a discussion of good faith is really beside the point. The damage is done. It cannot be undone. One questions whether it makes any difference in this case whether we are addressing a colossal thoughtless blunder or if in fact there is reason to genuinely suspect motivation and deed.

Mr. Duckett prevails under *Trombetta* or *Youngblood*. Even if the Court finds that the exculpatory value of the evidence was not readily apparent before the testing, a finding that would fly in the face of the record, Mr. Duckett still prevails. Mr. Duckett asserts that the exculpatory value of the evidence was clear to everyone, but at a minimum, there can be no argument that the slide was not potentially useful material.

The State acted in bad faith in willfully ignoring the testimony regarding what testing was needed to get a result, and insisting that the only concerns were that the testing occur in Florida and that it be done within the warrant period. The State knew of the exculpatory value of the evidence at the time it was destroyed. 488 U.S. at 577. Such a flagrant disregard for the type of testing that was done on the evidence, after the State's own expert testified it was not appropriate method for this type of evidence, in a capital case, should be seen as a de facto example of bad faith. The State violated Mr. Duckett's right to due process by the destruction of material, exculpatory evidence in his case which was central to establishing his innocence. Prejudice has

ensued to Mr. Duckett due to the use of testing could not and did not produce valid results and that also completely consumed the evidence, thereby precluding any other agency from conducting the proper testing.

Furthermore, “[f]airness dictates that when a person’s liberty is at stake, the sole fact of whether the police or another state official acted in good or bad faith in failing to preserve evidence cannot be determinative of whether the criminal defendant has received due process of law.” *Fisher*, 540 U.S. at 549 n.* (Stevens, J., concurring) (alteration in original) (quoting *State v. Morales*, 657 A.2d 585, 593 (Conn. 1995)).

Unlike in *Trombetta*, where the defendant had a reasonable available comparable means to challenge the validity of the evidence, no such vehicle exists here unless the court permits DNA testing of the other evidence and other biological evidence exists. *See Trombetta*, 467 U.S. at 489-9.

Prejudice has ensued to Mr. Duckett’s due to his inability to obtain valid results from the key piece of evidence that could have exonerated him. Rule 3.851 relief is proper and warranted.

Respectfully submitted,

/s/ Mary E. Wells

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COUNSEL FOR MR. DUCKETT

CERTIFICATE OF COUNSEL

I HEREBY CERTIFY that I am the attorney for **JAMES AREN DUCKETT**, that I have discussed the contents of the foregoing Defendant's Successive Motion to Vacate Judgments of Conviction and Sentence with Special Request for Leave to Amend and For Evidentiary Hearing fully with the Defendant. Counsel certifies that she has done what she can to comply with Rule 4-1.4 of the Rules of Professional Conduct, and that the foregoing motion is filed in good faith.

/s/ Mary E. Wells
MARY ELIZABETH WELLS
Law Office of M.E. Wells
Florida Bar No. 0866067
mewells27@comcast.net

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by electronic service using the State of Florida E-Filing Portal, to the following this 9th day of July, 2026.

/s/ Courtney M. Hammer
COURTNEY M. HAMMER
Staff Attorney

Copies furnished to:

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Chief Judge, Fifth Judicial Circuit
jweeks@circuit5.org

Hon. Brian Welke
Circuit Court Judge, Fifth Judicial Circuit
sturner@circuit5.org

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ATTACHMENT A

☐ PROBATION VIOLATOR
(Check if Applicable)

IN THE CIRCUIT COURT, FIFTH
JUDICIAL CIRCUIT, IN AND FOR

LAKE COUNTY, FLORIDA

DIVISION FELONY

STATE OF FLORIDA

CASE NUMBER 87-1347-CFA

—vs—

JAMES AREN DUCKETT

Defendant

JUDGMENT

The Defendant, JAMES AREN DUCKETT, being personally before this

Court represented by Jack Edmund, Esquire, his attorney of record, and having:

(Check Applicable Provision) ☒ Been tried and found guilty of the following crime(s)
☐ Entered a plea of guilty to the following crime(s)
☐ Entered a plea of nolo contendere to the following crime(s)

COUNT	CRIME	OFFENSE STATUTE NUMBER(S)	DEGREE OF CRIME	CASE NUMBER
One	MURDER IN THE FIRST DEGREE	782.04(1)(a)1	Capitol	87-1347-CFA

and no cause having been shown why the Defendant should not be adjudicated guilty, IT IS ORDERED THAT the Defendant is hereby ADJUDICATED GUILTY of the above crime(s)

.....

The Defendant is hereby ordered to pay the sum of twenty dollars (\$20.00) pursuant to F.S. 960.20 (Crimes Compensation Trust Fund). The Defendant is further ordered to pay the sum of three dollars (3.00) as a court cost pursuant to F.S. 943.25(4).

(Check if Applicable) ☒ The Defendant is ordered to pay an additional sum of two dollars (\$2.00) pursuant to F.S. 943.25(7).
(This provision is optional; not applicable unless checked).

☐ The Defendant is further ordered to pay a fine in the sum of \$ _____ pursuant to F.S. 775.0835.
(This provision refers to the optional fine for the Crimes Compensation Trust Fund, and is not applicable unless checked and completed. Fines imposed as part of a sentence pursuant to F.S. 775.083 are to be recorded on the Sentence page(s)).

☐ The Court hereby imposes additional court costs in the sum of \$ _____.

☐ The Defendant is further ordered to pay an additional \$200.00 pursuant to F.S. 27.3455

Imposition of Sentence
Stayed and Withheld
(Check If Applicable)

☐ The Court hereby stays and withholds the imposition of sentence as to count(s) _____ and places the Defendant on probation for a period of _____ under the supervision of the Department of Corrections (conditions of probation set forth in separate order)

Sentence Deferred
Until Later Date
(Check If Applicable)

☒ The Court hereby defers imposition of sentence until June 30, 1988
(date)

☒ The Defendant in Open Court was advised of his right to appeal from this Judgment by filing notice of appeal with the Clerk of Court within thirty days following the date sentence is imposed or probation is ordered pursuant to this adjudication. The Defendant was also advised of his right to the assistance of counsel in taking said appeal at the expense of the State upon showing of indigency.

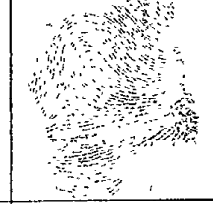
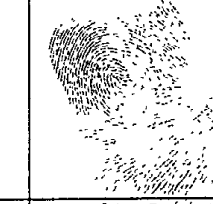
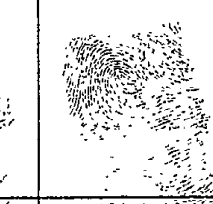
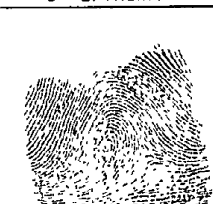
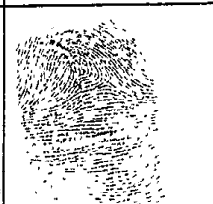
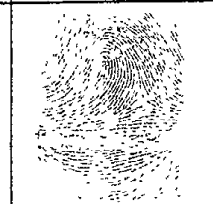
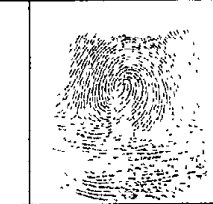
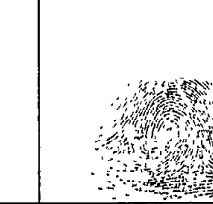
☐ The Defendant in Open Court was advised that without expressly reserving his right to appeal he gave up his right to appeal any and all matters relating to the Judgment, including the issue of guilt or innocence, but that his plea did not impair his right to review by appropriate collateral attack.

(CHECK APPLICABLE PARAGRAPH)

Jerry T. Lockett
JERRY T. LOCKETT

JUDGE

FINGERPRINTS OF DEFENDANT

1. R Thumb	2. R Index	3. R Middle	4. R Ring	5. R Little
				
6. L Thumb	7. L Index	8. L Middle	9. L Ring	10. L Little
				

Fingerprints taken by:

Arthur W. Newcome / Bailiff
Name and Title

DONE AND ORDERED in Open Court at Jacksonville, Lake County, Florida, this 10th day of May A.D. 19 88. I HEREBY CERTIFY that the above and foregoing fingerprints are the fingerprints of the Defendant, James Allen Duckett and that they were placed thereon by said Defendant in my presence in Open Court this date.

Jerry T. Lockett
JERRY T. LOCKETT

JUDGE

FILED IN OPEN COURT

5-10-88
CLERK CIRCUIT COURT
LAKE COUNTY, FLORIDA

BY: Susan K. Spooner

Page _____ of _____

244168

☐ PROBATION VIOLATOR

(Check if Applicable)

IN THE CIRCUIT COURT, FIFTH
JUDICIAL CIRCUIT, IN AND FORLAKE COUNTY, FLORIDADIVISION FELONY

STATE OF FLORIDA

CASE NUMBER 88-262-CFA

—vs—

JAMES AREN DUCKETT

Defendant

JUDGMENTThe Defendant, JAMES AREN DUCKETT, being personally before thisCourt represented by Jack Edmund, Esquire, his attorney of record, and having:

- (Check Applicable Provision)
- ☒ Been tried and found guilty of the following crime(s)
- ☐ Entered a plea of guilty to the following crime(s)
- ☐ Entered a plea of nolo contendere to the following crime(s)

COUNT	CRIME	OFFENSE STATUTE NUMBER(S)	DEGREE OF CRIME	CASE NUMBER
<u>One</u>	<u>CAPITOL SEXUAL BATTERY</u>	<u>794.011(2)</u>	<u>PBL</u>	<u>88-262-CFA</u>

and no cause having been shown why the Defendant should not be adjudicated guilty, IT IS ORDERED THAT the Defendant is hereby ADJUDICATED GUILTY of the above crime(s)

.....

The Defendant is hereby ordered to pay the sum of twenty dollars (\$20.00) pursuant to FS. 960.20 (Crimes Compensation Trust Fund). The Defendant is further ordered to pay the sum of three dollars (3.00) as a court cost pursuant to F.S. 943.25(4).

- (Check if Applicable)
- ☒ The Defendant is ordered to pay an additional sum of two dollars (\$2.00) pursuant to F.S. 943.25(7).
(This provision is optional; not applicable unless checked).
- ☐ The Defendant is further ordered to pay a fine in the sum of \$ _____ pursuant to F.S. 775.0835.
(This provision refers to the optional fine for the Crimes Compensation Trust Fund, and is not applicable unless checked and completed. Fines imposed as part of a sentence pursuant to F.S. 775.083 are to be recorded on the Sentence page(s)).
- ☐ The Court hereby imposes additional court costs in the sum of \$ _____.
- ☐ The Defendant is further ordered to pay an additional \$200.00 pursuant to F.S. 27.3455

Imposition of Sentence
Stayed and Withheld
(Check if Applicable)



The Court hereby stays and withholds the imposition of sentence as to count(s) _____
and places the Defendant on probation for a period of _____
under the supervision of the Department of Corrections (conditions of probation set forth in
separate order.)

Sentence Deferred
Until Later Date
(Check if Applicable)



The Court hereby defers imposition of sentence until June 30, 1988

(date)

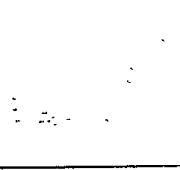
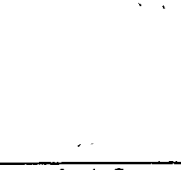
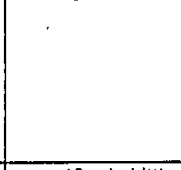
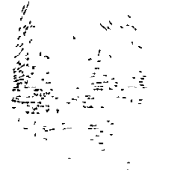
☒ The Defendant in Open Court was advised of his right to appeal from this Judgment by filing notice of appeal with the Clerk of Court within thirty days following the date sentence is imposed or probation is ordered pursuant to this adjudication. The Defendant was also advised of his right to the assistance of counsel in taking said appeal at the expense of the State upon showing of indigency

☐ The Defendant in Open Court was advised that without expressly reserving his right to appeal he gave up his right to appeal any and all matters relating to the Judgment, including the issue of guilt or innocence, but that his plea did not impair his right to review by appropriate collateral attack

(CHECK APPLICABLE PARAGRAPH)

Jerry T. Lockett
JUDGE
Jerry T. Lockett

FINGERPRINTS OF DEFENDANT

1. R. Thumb	2. R. Index	3. R. Middle	4. R. Ring	5. R. Little
				
6. L. Thumb	7. L. Index	8. L. Middle	9. L. Ring	10. L. Little
				

Fingerprints taken by:

Alvin K. Kneave / Bailiff
Name and Title

DONE AND ORDERED in Open Court at Tavares, Lake County, Florida, this 10th day of May, A.D., 19 88. HEREBY CERTIFY that the above and foregoing fingerprints are the fingerprints of the Defendant, James Allen Duckett and that they were placed thereon by said Defendant in my presence in Open Court this date

Jerry T. Lockett
JUDGE
Jerry T. Lockett

FILED IN OPEN COURT
5-10-88
CLERK CIRCUIT COURT
LAKE COUNTY, FLORIDA

BY Swann K. Spooner
Deputy Clerk

Page _____ of _____

2446170

Defendant JAMES AREN DUCKETTCase Number 87-1347-CFA**SENTENCE**(As to Count One)The Defendant being personally before this Court, accompanied by his attorney, JACK EDMUND, Esquire

_____ and having been adjudicated guilty herein, and the Court having given the Defendant an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why he should not be sentenced as provided by law, and no cause being shown,

☒ and the Court having on 05-10-88 deferred imposition of sentence until this date
(date)

(Check either provision
if applicable)

☐ and the Court having placed the Defendant on probation and having subsequently revoked the Defendant's probation by separate order entered herein.

IT IS THE SENTENCE OF THE LAW that:

☐ The Defendant pay a fine of \$ _____, plus \$ _____ as the 5% surcharge required by F.S. 960.25

☒ The Defendant is hereby committed to the custody of the Department of Corrections

☐ The Defendant is hereby committed to the Custody of the Sheriff of _____ County, Florida

To be imprisoned (check one, unmarked sections are inapplicable)

☐ For a term of Natural Life

☒ For a term of Death Penalty

☐ For an indeterminate period of 6 months to _____ years

If "split" sentence
complete either of
these two paragraphs

☐ Followed by a period of _____ on probation under the supervision of the Department of Corrections according to the terms and conditions of probation set forth in a separate order entered herein

☐ However, after serving a period of _____ imprisonment in _____ the balance of such sentence shall be suspended and the Defendant shall be placed on probation for a period of _____ under supervision of the Department of Corrections according to the terms and conditions of probation set forth in a separate order entered herein.

SPECIAL PROVISIONS

By appropriate notation, the following provisions apply to the sentence imposed in this section:

**Firearm - 3 year
mandatory minimum**

☐ It is further ordered that the 3 year minimum provisions of F.S. 775.087(2) are hereby imposed for the sentence specified in this count, as the Defendant possessed a firearm

**Drug Trafficking -
mandatory minimum**

☐ It is further ordered that the _____ year minimum provisions of F.S. 893.135(1) () () are hereby imposed for the sentence specified in this count

**Retention of
Jurisdiction**

☐ The Court pursuant to F.S. 947.16(3) retains jurisdiction over the defendant for review of any Parole Commission release order for the period of _____. The requisite findings by the Court are set forth in a separate order or stated on the record in open court

Habitual Offender

☐ The Defendant is adjudged a habitual offender and has been sentenced to an extended term in this sentence in accordance with the provisions of F.S. 775.084(4)(a). The requisite findings by the court are set forth in a separate order or stated on the record in open court.

Jail Credit

☒ It is further ordered that the Defendant shall be allowed a total of 247 Days credit for such time as he has been incarcerated prior to imposition of this sentence. Such credit reflects the following periods of incarceration (optional).

Consecutive/Concurrent

It is further ordered that the sentence for this count shall run ☐ consecutive to ☐ concurrent with (check one) the sentence set forth in count _____ above.

Defendant JAMES AREN DUCKETTCase Number 87-1347-CFA**Consecutive/Concurrent**
(As to other convictions)It is further ordered that the composite term of all sentences imposed for the counts specified in this order shall run ☐ consecutive to ☒ concurrent with (check one) the following.☒ Any active sentence being served.☐ Specific sentences _____

In the event the above sentence is to the Department of Corrections, the Sheriff of LAKE County, Florida is hereby ordered and directed to deliver the Defendant to the Department of Corrections together with a copy of this Judgment and Sentence.

The Defendant in Open Court was advised of his right to appeal from this sentence by filing notice of appeal within thirty days from this date with the Clerk of this Court, and the Defendant's right to the assistance of counsel in taking said appeal at the expense of the State upon showing of indigency.

In imposing the above sentence, the Court further recommends _____

DONE AND ORDERED in Open Court at Tavares, Lake County, Florida, this 30th day of June A.D., 19 88.

Jerry T. Lockett
JUDGE
Jerry T. Lockett

FILED IN OPEN COURT

6-30-88JAMES C. WATKINS
CLERK OF COUNTY COURT

By:

Susan K. Speer
Deputy Clerk

**IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT,
IN AND FOR LAKE COUNTY, FLORIDA**

**STATE OF FLORIDA,
Plaintiff,**

v.

**CASE NO. 1987-CF-1347
Judge Brian Welke**

**JAMES AREN DUCKETT
Defendant.**

_____ /

DEFENDANT'S MOTION FOR POSTCONVICTION DNA TESTING

COMES NOW, **JAMES AREN DUCKETT**, by and through undersigned counsel, and hereby respectfully moves this Court pursuant to Florida Rule of Criminal Procedure 3.853 and the Florida and United States Constitutions for Single Nucleotide Polymorphism ("SNP") testing using Massively Parallel Sequencing on physical evidence collected as part of the criminal investigation that led to his trial and conviction. Specifically, Mr. Duckett seeks testing of the following items:

- a) Exhibit 14 – Q6, Underwear
- b) Exhibit 4 – Q6(1), Underwear Cutting Extract
- c) Exhibit 4 – Q6(2), Underwear Cutting Extract
- d) Exhibit Q6-Q6#3, Cutting of Underwear
- e) Exhibit Q5, Jeans
- f) Slides of Q5, Q6(1), and Q6(2), All smears (Identified as LCSO 56)
- g) Packaging from Exhibit 4 – Q43, Vaginal Swabs
- h) Packaging Exhibit 4 – Q43a, Vaginal Swabs
- i) Exhibit 14 – Q43, Vaginal Smear
- j) Packaging from Q30/Q31, Fingernail scrapings
- k) Extracts from 2003 testing of underwear, jeans, and vaginal swabs, including Q202,

DNA extract from underwear and #4, LCSO Item 131, DNA extracts from underwear.

- l) Tubes marked F13241 and F13422, also known as Q201, DNA Extracts from Underwear

This state-of-the-art method of DNA testing was not available when FDLE previously tested the evidence in this case, is capable of proving that Mr. Duckett is actually innocent of first-degree murder and/or will serve to mitigate his sentence, and may also lead to the apprehension of the true perpetrator through comparative analysis. In support of this motion, Mr. Duckett would state:

STANDARD FOR GRANTING RELIEF

The purpose of the DNA testing statute is “to provide defendants with a means by which to challenge convictions where there is a ‘credible concern that an injustice may have occurred and DNA testing may resolve the issue.’” *Zollman v. State*, 820 So. 2d 1059, 1062 (Fla. 2d DCA 2002) (quoting *In re Amendment to Fla. Rules of Criminal Procedure Creating Rule 3.853 (DNA Testing)*, 807 So. 2d 633, 636 (Fla. 2001) [hereinafter “*In re Amendment Rule 3.853*”]).

Florida Statutes, § 925.11, provides as follows:

(1) Petition for examination.—

(a) 1. A person who has been tried and found guilty of committing a crime and has been sentenced by a court established by the laws of this state may petition that court to order the examination of physical evidence collected at the time of the investigation of the crime for which he or she has been sentenced which may contain DNA (deoxyribonucleic acid) and which would exonerate that person or mitigate the sentence that person received.

(b) A petition for post-sentencing DNA testing under paragraph (a) may be filed or considered at any time following the date that the judgment and sentence in the case becomes final.

Rule 3.853 of the Florida Rules of Criminal Procedure requires that the contents of a motion

for postconviction DNA testing include the following:

- (1) a statement of the facts relied on in support of the motion, including a description of the physical evidence containing DNA to be tested and, if known, the present location or last known location of the evidence and how it originally was obtained;
- (2) a statement that the evidence was not tested previously for DNA, or a statement that the results of previous DNA testing were inconclusive and that subsequent scientific developments in DNA testing techniques likely would produce a definitive result establishing that the movant is not the person who committed the crime;
- (3) a statement that the movant is innocent and how the DNA testing requested by the motion will exonerate the movant of the crime for which the movant was sentenced, or a statement how the DNA testing will mitigate the sentence received by the movant for that crime;
- (4) a statement that identification of the movant is a genuinely disputed issue in the case and why it is an issue or an explanation of how the DNA evidence would either exonerate the defendant or mitigate the sentence that the movant received; [and]
- (5) a statement of any other facts relevant to the motion

The threshold sufficiency requirement has intentionally been established to offer broad access to the review process. Accordingly, “a claim is facially sufficient with regard to the exoneration issue **if the alleged facts demonstrate that there is a reasonable probability that the defendant would have been acquitted if the DNA evidence had been admitted at trial.**” *Knighten v. State*, 829 So. 2d 249, 252 (Fla. 2d DCA 2002) (emphasis added); *King v. State*, 808 So. 2d 1237, 1247 (Fla. 2002).

Mr. Duckett’s request for DNA testing is therefore “facially sufficient” and satisfies each of the requirements of Rule 3.853. There can be no rational dispute that, if exculpatory DNA results collected from the victim’s underpants, vaginal swabs, jeans, or fingernails had been presented to the jury, there is a reasonable likelihood the verdict and/or the sentence would have been different.

Indeed, this Court has already “agree[d] that identity was an issue at trial, and that if DNA testing of the sperm [on the slide of material extracted from the victim’s underpants] indicated that it did not belong to Defendant, there would have been a reasonable probability of an acquittal” (WR1. 748). Mr. Duckett asserts that the reasoning applies to the underpants themselves, vaginal swabs, the victim’s jeans, and her fingernail scrapings. The potential significance of exclusionary DNA test results is so great that such results would more likely have led a jury to harbor at least a reasonable doubt about guilt and acquit Mr. Duckett.

ARGUMENT

1. Relevant Facts, Description of Evidence To Be Tested, and Last Known Location of the Evidence (Fla. R. Crim. P. 3.853(b)(1))

a. Statement of Facts and Relevant Procedural History:

Mr. Duckett was convicted of first-degree murder and one count of sexual battery for the murder of eleven-year-old Teresa McAbee. On the night of the murder, Mr. Duckett, a police officer, was running radar and saw Ms. McAbee and a young man behind the dumpster at the Circle K store across the street. After determining that Ms. McAbee was underage, he went to speak with the two about the curfew in Mascotte. The boy went with his uncle who was doing laundry next to the Circle K, and Mr. Duckett spoke with Ms. McAbee in his car. Ms. McAbee then exited the car and was last seen going around the building in the direction of her home which was less than 400 feet behind the Circle K.

The next morning, Ms. McAbee’s body was found fully clothed face down in the lake past her home. The medical examiner determined that she had been sexually assaulted, strangled, and drowned.

i. *Evidence Collection and Preliminary Examination*

As part of his examination, the medical examiner collected the victim’s underpants and

jeans and provided them to FDLE for analysis. The examiner also collected vaginal swabs from Ms. McAbee and created a smear of those vaginal swabs. The medical examiner likewise collected fingernail scrapings from both of Ms. McAbee's hands.

FDLE serologist Margaret Tabor examined the evidence in this case upon its collection in 1987. The vaginal swabs, Q43, were examined for the presence of semen and none could be found. Chemical tests indicated blood. It does not appear any testing was done on the blood.

Tabor identified male reproductive cells, sperm, on the jeans identified as Q5 (R. 1266-67). However, further grouping tests were not done due to the condition of the jeans. The jeans were further examined for the presence of blood, and Tabor reported none could be found. It is unclear what tests Tabor performed to determine whether blood was present. The jeans were sent to Lifecodes Corporation. Lifecodes analyzed a stain, and using technology in 1987, was unable to yield any detectable DNA.

As for the underpants, Q6, Tabor identified male reproductive cells, and chemical tests indicated the presence of blood. However, further grouping tests were not done due to the condition of the item. The underwear were sent to Lifecodes Corporation and processed, wherein "insufficient high molecular weight human DNA was isolated."

Tabor also extracted biological evidence from cuttings from the underpants and mounted them onto slides pre-trial in 1987. One slide is identified as Exhibit 14, Q6(3), sub. 001. No attempt was made to test for DNA at the time of trial because DNA testing was not sophisticated enough to test that minute amount.

Tabor also made slides of Q5, Q6(1), and Q6(2), each of these items are smears of the extract of the items. These were not tested.

The fingernail clippings were not processed in 1987.

ii. Attempted DNA Analysis in Initial Postconviction Proceedings

On March 21, 2003, the Florida Supreme Court remanded Mr. Duckett's postconviction proceedings to the circuit court for DNA testing indicating the trial court was to "determine whether clothing exists that can be tested for DNA" *See* (WR1. 450).¹ Following submissions from the parties, this Court determined that certain items of evidence should be tested. FDLE examiner Emily Booth conducted some analysis on the submitted evidence, except slide Q6(3), and concluded that no DNA profile could be obtained from any of the evidence.

Notably, Examiner Booth relied heavily on the previous analysis of the items done by Tabor in 1987. This is concerning given that DNA testing in 1987 was not yet conceivable as a method for determining identity.

As for slide Q6(3), examiner Booth testified that "due to the compromised nature of the slide, she was concerned that any attempt by her to unmount the slide would destroy the material on the slide and no DNA profile would be obtained." *Id.* Pursuant to Examiner Booth's conclusions and the testimony of her supervisor regarding other possible methods of testing the slide, Mr. Duckett investigated the potential for obtaining a DNA profile on slide Q6(3) from an outside agency. Each agency expressed the same concerns stated by Examiner Booth and confirmed that the questioned slide would be consumed entirely in the testing (WR1. 450-52).

As for the remaining slides, Q5, Q6(1), and Q6(2), Booth testified that they slides were broken so she was unable to test the smears for biological material (PC-R1-SV. 2305-07).

¹ Citations to the record are as follows: Direct Appeal (R. ____); Postconviction Record on Appeal and proceedings after remand, SC01-2149 (PC-R1. ____ and Transcripts (PC-R1-T. ____ and (PC-R1-SV. ____); Successive Postconviction Record on Appeal, SC13-719 (PC-R2. ____); Successive Postconviction Record on Appeal, SC16-793 (PC-R3. ____); Warrant Record on Appeal, SC2026-0449 (WR1. ____ and confidential supplemental (WR1-S. ____); and Warrant Record on Appeal—3.853 proceedings, SC2026-0528 (WR2. ____), supplemental (WR2-S. ____), and sealed (WR2-S2. ____).

Examiner Booth made cuttings of the underwear Q6, and extracts were taken. These became items Q6(1)-Q6(3). According to Booth, microscopic examinations of Q6(1) and Q6(2) showed no sperm. No other testing were done of the extracts. As for the underwear themselves, Q6, Examiner Booth indicated there were no chemical indications of semen, but it is unclear what, if any, analysis was conducted or if Booth relied solely on Tabor's assessment in 1987.

In between the initial collection in 1987 and the 2003 reevaluation of the evidence, the cutting of the jeans that indicated sperm curiously went missing (PC-R1-SV. 2298). Booth viewed liquid extracts from the jeans made by Tabor and saw no biological material on the slide (R. 2294). Booth did not conduct her own extracts. Booth also indicated the jeans themselves, Q5, failed to indicate any sperm or blood, but again, it is unclear what analysis was performed. Booth did take another cutting from near where the original cutting was taken and indicated that testing for fluids was negative.

According to Booth, the vaginal swabs, Q43 and Q43a, had no cotton remaining on the wooden sticks. She indicated that she reviewed the items under a microscope and did not see sperm; however, no chemical tests or further assessment was completed (PC-R1-SV. 2306-08). Booth indicated she assessed Tabor's extract and saw no biological material on a slide. A smear was made of the vaginal swab, which is also identified as Q43. This item indicated the presence of cellular debris, possibly epithelial cells; however, no further analysis was conducted (PC-R1-SV. 2307).

Fingernail scrapings from both of Ms. McAbee's hands were also collected in 1987. These were processed for the first time in 2003. The fingernail scrapings are identified as Q30 and Q31. Booth testified that she opened the envelope holding the scrapings and poured the pieces into a chemical solution without looking at them under a microscope first (PC-R1-SV. 2310-12). She

yielded no probative results.

iii. Warrant Proceedings

Under warrant, Mr. Duckett moved for postconviction DNA testing of slide Q6(3) pursuant to Rule 3.853. Mr. Duckett focused on the Q slide because of the nature of the evidence; certainly, DNA of the true perpetrator from a slide with biological material obtained from the victim's underwear would conclusively exonerate him. This Court agreed and granted testing finding that the results of the DNA testing would likely be admissible at trial or a future hearing, "that identity was an issue at trial, and that if DNA testing of the sperm indicated that it did not belong to [Mr. Duckett], there would have been a reasonable probability of an acquittal" (WR1. 748).²

The State did not object to testing but did object to who would do the testing and the type of testing to be conducted. Over the course of the following weeks and months, these two issues became the subject of significant litigation. Ultimately, as the Florida Supreme Court pointed out, this Court "permitted the State to exercise complete control over the location, timing, and method of testing" (WR2. 27); *see also Duckett v. State*, 431 So. 3d 990, 992 (Fla. 2026). As a result, Mr. Duckett's concerns about the testing necessary for the evidence in this case were ignored, and decisions were made solely based on how quickly the analysis could be completed. Consequently, slide Q6(3) was tested using the ForenSeq Kintelligence Kit, a purportedly faster but less sensitive technology not meant for the type of analysis required here, and the testing was conducted by a lab that did not have the capability to even conduct the requisite analysis of the data (WR1. 1161; WR2. 156).

As expected, DLI was unable to read the results of its own testing, which it reported as

² The State did *not* dispute that the results of testing would be admissible (WR1. 747).

inconclusive (WR2-S2. 308). Based on the testing data, FDLE suggested that “[a] qualified bioinformaticist may be able [sic] provide an opinion and calculation based on the Y SNP results.” (WR2-S2. 308). At the direction of the Florida Supreme Court, this Court held a hearing on April 1, 2026, at which the State presented a representative from both FDLE and DLI. Because the hearing was not noticed as an evidentiary hearing, Mr. Duckett was not on notice to present his own expert. Nonetheless, both representatives confirmed further analysis was necessary and that the sample of the Q slide had been completely consumed (WR2. 193). This Court denied further review of the slide, and Mr. Duckett appealed.

The Florida Supreme Court granted Mr. Duckett’s appeal and remanded to this Court “for the underlying testing data to be provided for a statistical analysis, as directed by the Florida Department of Law Enforcement (FDLE).” *Duckett v. State*, 431 So. 990, 992 (Fla. 2026). Mr. Duckett had Othram review the data. The State also had the data analyzed by Parabon NanoLabs. The labs disagreed on the ability to determine an outcome. Parabon, albeit with caution, reported a likelihood ratio that supports Mr. Duckett having contributed to the evidentiary sample. But as outlined in Othram’s analysis, there are significant concerns regarding the validity of these findings, and insufficient information provided with the report to determine the scientific validity of the evaluation.

At the outset, it was clear DLI could not do what was needed to obtain a result. As expected, the testing was unable to yield probative results, and slide Q6(3) was consumed. Mr. Duckett now seeks testing of additional items. Identity remains at issue in this case, yet the State continues to argue that the State of Florida should execute Mr. Duckett.

b. Evidence to be Tested:

In addition to slide Q6(3), Mr. Duckett seeks testing of the underwear, jeans, slides made

from the items, the packaging that carried the fingernail clippings, the packaging that carried the vaginal swabs, and vaginal smears. Duckett seeks testing of these items to conclusively establish that he did not kill Ms. McAbee.

Mr. Duckett seeks to test the following items:

- a) Exhibit 14 – Q6, Underwear
- b) Exhibit 4 – Q6(1), Underwear Cutting Extract
- c) Exhibit 4 – Q6(2), Underwear Cutting Extract
- d) Exhibit Q6-Q6#3, Cutting of Underwear
- e) Exhibit Q5, Jeans
- f) Slides of Q5, Q6(1), and Q6(2), All smears (Identified as LCSO 56)
- g) Packaging from Exhibit 4 – Q43, Vaginal Swabs
- h) Packaging Exhibit 4 – Q43a, Vaginal Swabs
- i) Exhibit 14 – Q43, Vaginal Smear
- j) Packaging from Q30/Q31, Fingernail scrapings
- k) Extracts from 2003 testing of underwear, jeans, and vaginal swabs, including Q202, DNA extract from underwear and #4, LCSO Item 131, DNA extracts from underwear.
- l) Tubes marked F13241 and F13422, also known as Q201, DNA Extracts from Underwear.

c. Last Known Location of Evidence:

On February 5, 2004, this Court entered an order requiring that any biological evidence in the case, including but not limited to slides and extracts made from evidence gathered in the case, be stored in a manner to ensure the quality of the evidence is maintained.

Undersigned counsel visited the Lake County Sheriff's Office (LCSO) on March 4, 2026, and visually confirmed, with Assistant State Attorney Kenneth Nunnelly present, that LCSO is in possession of the slides identified as Q5, Q6, and Q43.

Undersigned counsel also visited LCSO in June 2016 and visually confirmed the existence of the following items: the packaging of the fingernail clippings, items Q30/Q31; the tubes marked Tubes marked F13241 and F13422, also known as Q201, DNA Extracts from Underwear; packaging of Q43 and Q43a and the original wooden sticks, vaginal swabs; Q202, LCSO item 119 and No. 4, LCSO Item 131, extracts from underwear (which was also confirmed under these warrant proceedings to be in the custody of LCSO).

Undersigned counsel visited the Clerk's Office in 2016 and visually confirmed the existence of the following items: Q6, underwear (also labeled as State's Exhibit 3); and Q5, jeans (also labeled as State's Exhibit 4).

Mr. Duckett has a good faith reason to believe the items have not been moved or destroyed.

2. The Evidence Mr. Duckett Seeks To Have Tested Was Not Previously Tested for DNA or Prior Testing Was Inconclusive and Further Testing Would Likely Yield a More Conclusive Result (Fla. R. Crim. P. 3.853(b)(2))

The evidence was collected and initially processed more than 35 years ago. Following the Florida Supreme Court's remand in 2003, the items were reprocessed. However, despite the fact that in the more than 15 years that had passed, DNA testing became accessible and technology had improved, Booth relied heavily on the work Tabor did in 1987. In other words, instead of starting the requisite analysis over and conducting many of her own screening measures, Booth picked up where Tabor left off. This is notable given that the examiners would be looking for different indications and clues as to the existence of biological material.

Moreover, the technology was incredibly limited. Indeed, this was a main concern of FDLE analyst Emily Booth who examined the evidence pursuant to an order from this Court in 2003.

Many of the items listed were processed visually under a microscope. As to the items that were processed, the technology at the time, ProFiler and CoFiler, were incredibly less sensitive than the technology used today. In order to even test an item, more than double the amount of biological material was necessary than what is required to do a traditional STR test today, and the system itself read a fraction of the loci that new technology can detect. The CoFiler and ProFiler kits each required 10 microliters of material and could detect up to 13 loci. And because the technology was a dual kit, that amount of liquid was necessary for both CoFiler and ProFiler, so 20 microliters was required. The next generation of the amplification kits required half that amount. Today, laboratories use the GlobalFiler kit for STR testing, which is a single amplification kit and requires a fraction of the biological material while detecting 24 loci. Whole Genome Sequencing, however, requires even less biological material than STR, and if the proper technology is used, can detect more than 10,000 loci.

In other words, the amount of material needed in 2003 for analysis of these items was far higher than what is needed today. The relevance of this goes far beyond the testing itself. The consequence of less sensitive technology meant analysts processed less evidence because they were limited to testing only evidence that had enough biological material to meet the higher thresholds of the technology. That means smaller traces of DNA were often overlooked or ignored. Indeed, this impacted the collection and screening of the items in this case.

Until recently, it was highly unlikely any testing would yield probative results. With advances in SNP testing using the Whole Genome Sequencing technique (WGS), which is the application of the Massively Parallel Sequencing, there now exists a reasonable probability that testing would yield a conclusive result.

3. James Aren Duckett is Innocent and the DNA Testing Requested Herein Will Exonerate Him (Fla. R. Crim. P. 3.853(b)(3))

From the very outset of the case, Mr. Duckett has maintained that he is innocent of all charges. Every bit of evidence relied upon by the State to gain a conviction against Mr. Duckett has been rebutted in postconviction. The DNA evidence would provide objective evidence that someone other than Mr. Duckett killed the victim.

The State's case at trial relied on five main points: testimony from Gwen Gurley that Mr. Duckett drove around the block and picked up Ms. McAbee after she left to walk home; a pubic hair found in Ms. McAbee's underpants that was that allegedly a match with Mr. Duckett; Ms. McAbee's fingerprints on the front of the police car; tire tracks found near the scene of the crime that were allegedly from Mr. Duckett's police car; and three *Williams*' rule witnesses. Biological evidence containing sperm heads was found on Ms. McAbee's underpants and mounted on a slide by an FDLE technician, but it was not tested because no agency could extract DNA from it at that time.

Mr. Duckett has presented significant evidence in postconviction countering each piece of the State's case. Not one aspect of the State's case is untouched. Ms. Gurley has recanted her trial testimony on six separate occasions, including in a sworn deposition and in a sworn affidavit. A multitude of witnesses have confirmed under oath that Ms. Gurley lied, and these witnesses and evidence presented in postconviction confirm that she did so because she had a secret deal with the State to be released from her jail sentence early to have her baby which, in fact, did occur.

The veracity of the evidence regarding the pubic hair, and of the testimony of FBI Agent Michael Malone, has been discounted throughout the postconviction proceedings. In April of 1997, the Department of Justice ("DOJ") concluded that Malone had falsely testified concerning his testing in another court case. Following that report, the DOJ hired independent examiners to

reexamine Malone's reports and testimony in cases where he testified. The DOJ examiner who evaluated Malone's testimony in Mr. Duckett's case found that Malone's testimony was not consistent with his bench notes, was not consistent with his lab results, and was not within the bounds of the examiner's expertise. This evidence was unrebutted by the State.

Additionally, Mr. Duckett has presented expert and lay testimony that rebuts the State's evidence regarding the fingerprints found on the hood of the car and the tire tracks found at the scene of the crime that purportedly linked Mr. Duckett to the crime scene. The Florida Supreme Court threw out the testimony of one of the *Williams*' rule witnesses on direct appeal and the truth of the testimony of the remaining two witnesses has been rebutted by evidence presented in the postconviction proceedings. Mr. Duckett has presented a wealth of unrebutted evidence in addition to the evidence discussed above, supporting the fact that he did not commit this crime and that other, more likely, suspects were never pursued.

The person who sexually assaulted and killed the victim left sperm in her underpants and on her jeans. This was not Mr. Duckett. Evidence that the sperm found on the victim the night she died did not belong to Mr. Duckett would conclusively show that he was not the person who sexually assaulted and murdered her, as would epithelial cells indicating the true perpetrator. Mr. Duckett continues to maintain that he is actually and legally innocent of the crime and the death penalty. DNA testing has the potential to conclusively prove Mr. Duckett's actual innocence and identify the true killer. Alternatively, DNA testing will serve to mitigate Duckett's sentence. The jury rendered an advisory 8-4 verdict in favor of death. Had the jury heard that DNA evidence pointed to an alternative suspect, there is a reasonable probability that at least two jurors would have voted for a life sentence.

The DNA results would provide objective evidence that someone other than Mr. Duckett

sexually assaulted and killed the victim.

4. Mr. Duckett's Identification is a Disputed Issue in the Case and Why it is an Issue. (Fla. R. Crim. P. 3.853(b)(4))

It is well established that even where evidence against a defendant is far more overwhelming than that offered against Mr. Duckett, identity is still a disputed issue under Rule 3.853(b)(4) provided that—as here—the defense at trial denied that Mr. Duckett committed the offense. *See Huffman v. State*, 837 So. 2d 1147, 1149 (Fla. 2nd DCA 2003) (identity a disputed issue despite “substantial” evidence of defendant’s guilt at trial, including defendant’s fingerprint at the scene and phone calls from his home to victim’s after the attack); *see also Zollman*, 820 So. 2d at 1062; *Knighten*, 829 So. 2d at 251. Further, victim identification—which was attempted through the admitted *Williams’* rule evidence—is not enough to negate a genuine dispute as to identity. *See Knighten*, 829 So. 2d at 251.

This case is not a case where the defendant may have been present but was not responsible for the killing. This case was a true “who done it.” Mr. Duckett’s case is precisely the type contemplated by Rule 3.853, as there exists a “credible concern that an injustice may have occurred and DNA testing may resolve the issue.” *Zollman*, 820 So. 2d at 1062. Here, Rule 3.853 testing “offers a chance to ensure the validity of the jury’s verdict.” *Dubose v. State*, 113 So. 3d 863, 866 (Fla. 2d DCA 2012). In *Dubose*, the district court of appeals determined that testing was warranted because “based on the nature of the crime, inconsistencies between testimony, and the questionable credibility of the witnesses, identification is indeed a genuinely disputed fact, and there is a reasonable probability that DNA evidence would have acquitted him.” *Id.*

The State built a purely circumstantial case against Mr. Duckett, who has consistently asserted that he did not commit this murder. Indeed, the State agreed at trial that identity was the central issue in this case, so much so that the State relied on questionable tire-track marks and

fabricated hair testimony and unreliable witness testimony to implicate Mr. Duckett.

This Court has already agreed that the identity of the perpetrator was the critical question in the investigation of the murder of Teresa McAbee (WR1. 748). To preclude Mr. Duckett from testing the items that can conclusively prove his innocence would be a travesty of justice.

Accordingly, Rule 3.853(b)(4) is satisfied.

5. Constitutional Claims

In addition to Mr. Duckett's entitlement to testing under Rule 3.853, a denial of his request to submit this DNA evidence for testing would also violate his rights under the due process and/or equal protection clauses of Fourteenth Amendment to the United States Constitution and corresponding provisions of the Florida Constitution. *See Gutierrez v. Saenz*, 606 U.S. 305, 314 (2025) (emphasizing that "[i]ndividuals convicted of crimes in state court 'have a liberty interest in demonstrating [their] innocence with new evidence under state law'" (quoting *Dist. Att'y Off. for Third Jud. Cir. v. Osborne*, 557 U.S. 52, 68 (2009) (second alteration in original))). Those provisions, like Rule 3.853, have long recognized a defendant's constitutional right to prove his innocence by introducing evidence that a third party committed the crime, rooted in the fundamental right to "present a defense." U.S. Const. amend. VI, XIV; Art. I, §§ 9, 16, Fla. Const.

This fundamental right was reaffirmed in a highly analogous context in *Holmes v. South Carolina*, 547 U.S. 319 (2006). In *Holmes*, a unanimous Supreme Court held unconstitutional a state rule that barred a defendant from introducing evidence of possible third-party guilt, merely because the State's evidence of guilt appeared to be strong and included inculpatory forensic evidence. *Id.* at 328-31.

Holmes provides support for defendants like Mr. Duckett who seek postconviction DNA testing for precisely this purpose: to obtain (and, ultimately, present to a fact-finder) DNA evidence

that a third party may have committed a crime. Indeed, that reasoning was recognized in *State v. DeMarco*, 904 A.2d 797 (N.J. Super. Ct. App. Div. 2006). In *DeMarco*, the Court held, under New Jersey’s postconviction DNA testing statute, that the defendant was entitled to postconviction DNA re-testing on evidence from a murder case for which he had been convicted. *Id.* The court expressly recognized that *Holmes* gave the defendant’s statutory request for DNA testing substantial additional weight because of *Holmes*’s reaffirmation of the fundamental constitutional right to present evidence of third party guilt—a right that had also long been recognized as a matter of state and federal law. *DeMarco*, 904 A.2d at 805-06; *Holmes*, 547 U.S. at 328-31; *Chambers v. Mississippi*, 410 U.S. 284, 294 (1973). As in *DeMarco*, Florida courts have long recognized, under state law, a defendant’s fundamental right to present potentially exculpatory evidence. *See Rivera v. State*, 561 So. 2d 536, 539 (Fla. 1990) (recognizing fundamental right to present “evidence [that] tends in any way, even indirectly, to establish a reasonable doubt of defendant’s guilt”); *see also Story v. State*, 589 So. 2d 939, 942-43 (Fla. 2d DCA 1991); *Campos v. State*, 366 So. 2d 782, 783 (Fla. 3d DCA 1978).

That fundamental right is equally at issue in the instant motion. The State built a circumstantial case with no supporting inculpatory DNA evidence against Mr. Duckett. SNP testing and Whole Genome Sequencing analysis on the evidence described herein has a reasonable probability of implicating the true killer. Accordingly, Mr. Duckett has a fundamental right to present evidence such exculpatory evidence.

PROCEDURE

Rule 3.853(c)(7) requires that all testing be conducted by FDLE; however, on showing of good cause, this Court is permitted to order that testing be completed by another lab, as long as the laboratory is properly certified. As FDLE explained at a hearing in Mr. Duckett’s case, the

accreditation bodies listed in Rule 3.853 no longer exist (*see* WR1. 1124, 1130). The American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB) and Forensic Quality Services, Inc. (FQS) have been subsumed by ANSO National Accreditation Board (ANAB) (WR1. 1093, 1130). FDLE does not yet have the capabilities to conduct the testing identified by Mr. Duckett. Mr. Duckett requests this Court enter an order for the evidence to be transported to and analyzed by BODE Laboratories at the cost of Mr. Duckett.

Should there be a question as to the type of testing and laboratory to conduct the testing, this Court must hold an evidentiary hearing as required by *Cardona v. State*, 109 So. 3d 241, 242 (Fla. 4th DCA 2013).

REQUEST FOR RELIEF

WHEREFORE, James A. Duckett respectfully requests:

- 1) that the physical evidence described herein be released to BODE Laboratories for testing;
- 2) that the Court grant Mr. Duckett an evidentiary hearing to allow testimony from experts regarding the available testing procedures, if needed; and,
- 3) that the Court grant a stay of execution to ensure that Mr. Duckett is not executed before the testing of the evidence is concluded.

Should the motion be granted, Mr. Duckett will provide the State and the Court with a proposed Order designating the laboratory and a protocol for shipment and testing of the evidence.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by electronic service using the State of Florida E-Filing Portal, to the following this 9th day of July, 2026.

/s/ Courtney M. Hammer
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VERIFICATION

STATE OF FLORIDA)

COUNTY OF BRADFORD)

BEFORE ME, the undersigned authority, this day personally appeared, **JAMES DUCKETT**, who, being first duly sworn, says that he is the Defendant in the above styled cause, and that he has personal knowledge of the facts and matters set forth and alleged in the foregoing **Motion for Postconviction DNA Testing**; and that each and all of these facts and matters are true and correct.

FURTHER AFFIANT SAYETH NAUGHT.

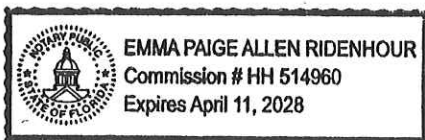


JAMES A. DUCKETT

SWORN TO AND SUBSCRIBED TO before me this 30^m day of June, 2026,
by JAMES DUCKETT, who is personally known to me and/or produced
_____ identification.



NOTARY PUBLIC, STATE OF FLORIDA
My Commission Expires:



IN THE SUPREME COURT OF FLORIDA

**CASE NO. SC2026-1083
Consolidated with SC2026-1084**

EXECUTION SET FOR JULY 28, 2026, AT 12:00 P.M.

**JAMES AREN DUCKETT,
Appellant,**

v.

**STATE OF FLORIDA,
Appellee.**

**ON APPEAL FROM THE CIRCUIT COURT
OF THE FIFTH JUDICIAL CIRCUIT,
LAKE COUNTY, FLORIDA**

LOWER CASE NO. 1987-CF-1347

INITIAL BRIEF OF APPELLANT

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July 20, 2026

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PRELIMINARY STATEMENT

Mr. Duckett, an indigent inmate facing imminent execution, appeals the circuit court's denial of his Motion for Postconviction DNA Testing filed pursuant to Florida Rule of Criminal Procedure 3.853 and his Motion to Vacate Convictions and Sentences pursuant to Rule. 3.851. Mr. Duckett has steadfastly maintained his innocence for nearly 40 years and should be allowed to test material items of evidence that were collected as part of the criminal investigation that led to his wrongful conviction and sentence of death. The lower court's denial of Mr. Duckett's motions was clear error and violates Mr. Duckett's Fifth, Sixth, Eighth, and Fourteenth Amendment rights. This Court has jurisdiction to review the lower court's final order under article V, section 3(b)(1) of the Florida Constitution; section § 925.11(3)(a), Florida Statutes (2025); and Rule 3.853(f). *See also, e.g., Everett v. State*, 377 So. 3d 1123, 1125 (Fla. 2024); *Reynolds v. State*, 373 So. 3d 1124, 1125 (Fla. 2023).

REQUEST FOR ORAL ARGUMENT

Mr. Duckett respectfully requests oral argument by counsel pursuant to Florida Rule of Appellate Procedure 9.320. The resolution of the issues involved in this action will determine whether Mr. Duckett lives or dies. Mr. Duckett has raised meritorious issues that warrant an opportunity to be heard

before this Court. A full opportunity to argue the issues at oral argument is appropriate in this case because of the seriousness of the claims at issue and the penalty that the State seeks to impose on Mr. Duckett.

CITATIONS TO THE RECORD

References to the record will note the relevant proceeding on appeal and page number: Direct Appeal (R. ____); Postconviction Record on Appeal and proceedings after remand, SC01-2149 (PC-R1. ____) and Transcripts (PC-R1-T. ____); Successive Postconviction Record on Appeal, SC13-719 (PC-R2. ____); Successive Postconviction Record on Appeal, SC16-793 (PC-R3. ____); Warrant Record on Appeal, SC2026-0449 (WR1. ____), sealed supplement (WR1-S. ____), and second sealed supplement (WR1-S2. ____); Warrant Record on Appeal – 3.853 Proceedings, SC2026-0528 (WR2. ____), supplement (WR2-S. ____), and sealed supplement (WR2-S2. ____); and Warrant Record on Appeal – Successive 3.853 Proceedings, SC2026-1083 (WR3. ____). All other references and citations are self-explanatory or explained herein.

STATEMENT OF THE CASE AND FACTS

On February 27, 2026, Governor DeSantis signed a death warrant for James Aren Duckett, setting his execution for the first-degree murder and sexual battery of 11-year-old Teresa McAbee. Mr. Duckett has steadfastly maintained his innocence since arrest and absent immediate intervention from this Court, a wrongful conviction will occur on July 28.

At the outset of his proceedings, the lower court found that identity was an issue at Mr. Duckett's trial and that DNA testing would exonerate Mr. Duckett, granting his request for DNA testing of a slide containing sperm extracted from the victim's underwear (WR1. 748). The State, however, "was permitted to exercise complete control over the location, timing, and method of [that] testing," *Duckett v. State*, 431 So. 3d 990, 992 (Fla. 2026), which deliberately resulted in the use of a technology inappropriate for the analysis required in this case and an inconclusive result.

After losing what was the best evidence capable of exonerating him, Mr. Duckett sought DNA testing of similar items that would provide a comparable means of identifying the true perpetrator (WR3. 36). He also filed a 3.851 motion alleging that the State's actions during the prior DNA testing resulted in the destruction of key exculpatory evidence central to establishing his innocence and violated his right to due process (WR3. 1).

In response to his motions, the Governor reset Mr. Duckett's execution for two weeks later on July 28. It was not until then that the lower court acknowledged Mr. Duckett's filings and, after hearing brief argument, denied any additional testing and postconviction relief (WR3. 212).

"DNA testing has an unparalleled ability to both exonerate the wrongly convicted and to identify the guilty," *Dist. Atty's Office for 3rd Jud. Dist. v. Osborne*, 557 U.S. 52, 55 (2009), and the public has an interest in the assurance that the State is not executing an innocent man. Due process requires that this Court remand these proceedings to the circuit court for additional DNA testing before "the most irremediable and unfathomable of penalties" is imposed. *Ford v. Wainwright*, 477 U.S. 399, 411 (1986). Any other result is a fundamental miscarriage of justice that will leave an indelible stain on this state's history.

Relevant Facts and Procedural History

The case against Mr. Duckett was entirely circumstantial. On the night of the murder, Mr. Duckett, a police officer, was running radar and saw Ms. McAbee and a young man behind a dumpster at the Circle K store across the street. After determining Ms. McAbee was underage, he went to speak with the two about the curfew in Mascotte. The boy went with his uncle who was doing laundry next to the Circle K, and Mr. Duckett spoke with Ms.

McAbee in his car. Ms. McAbee then exited the car and was last seen going around the building in the direction of her home which was less than 400 feet behind the Circle K. Mr. Duckett drove off in the opposite direction. The next morning, Ms. McAbee's body was found fully clothed, face down in the lake past her home.

The medical examiner determined that Ms. McAbee had been sexually assaulted, strangled, and drowned and collected vaginal swabs, fingernail scrapings, and evidence from her underwear and jeans, and provided them to FDLE for analysis. FDLE serologist Margaret Tabor identified male reproductive cells on the victim's jeans, Q5, and underwear, Q6, and extracted biological evidence from underwear cuttings and mounted it onto slides, one of which was identified as Exh. 14, Q6(3), sub. 001. The jeans and underwear were sent to Lifecodes for DNA analysis but the jeans did not yield any detectable DNA and "insufficient high molecular weight human DNA was isolated" from the underwear. No attempt was made to test the slide for DNA because testing was not sophisticated enough to test that minute amount. Tabor also made slides of the smears from the extracts, labeled Q5, Q6(1), and Q6(2). These slides and the fingernails scrapings were not tested or processed in 1987 before Mr. Duckett's trial where he was ultimately convicted and sentenced to death

following the jury's 8-to-4 recommendation.

Following a remand from this Court in 2003 for DNA testing, FDLE examiner Emily Booth further conducted analysis on the evidence, except slide Q6(3), and concluded that no DNA profile could be obtained from any of the evidence. Notably, Booth relied heavily on the previous analysis of the items done by Tabor in 1987. This is concerning given that DNA testing in 1987 was not yet conceivable as a method for determining identity. Booth did not test Q6(3) due to concerns that the compromised nature of the slide would result in destruction of the material with no DNA profile being obtained (WR1. 451), a concern echoed by other agencies who were asked to test the slide (WR1. 450-52). She did not attempt to examine slides Q5, Q6(1), and Q6(2) because they were broken (PC-R1-SV. 2305-07). Booth took her own samples from the underwear extracts, items Q6(1)-Q6(3) but microscopic examinations showed no sperm. Booth also indicated the jeans, Q5, failed to indicate sperm or blood, but it is unclear what analysis she performed. The cutting of the jeans with sperm curiously had gone missing between trial and 2003 (PC-R1-SV. 2293-94, 2298).

Booth indicated the vaginal swabs, Q43 and Q43a, had no cotton remaining on the wooden sticks and that she reviewed the items under a microscope and did not see sperm. However, no chemical tests or further

assessment was completed (PC-R1-SV. 2306-08). A smear was made of the vaginal swab, also Q43, which indicated the presence of cellular debris, possibly epithelial cells, but no further analysis was conducted (PC-R1-SV. 2307). Booth testified she poured the fingernail scrapings, Q30 and Q31, into a chemical solution without looking at them under a microscope first and they yielded no probative results (PC-R1-SV. 2310-12).

Following the death warrant, Mr. Duckett moved for and was granted postconviction DNA testing of slide Q6(3) pursuant to Rule 3.853 (WR1. 433-543, 629-740). Mr. Duckett focused on the Q6(3) slide because DNA evidence of this nature from the victim's underwear left by the true perpetrator would conclusively exonerate him. The lower court found that the results of the DNA testing would likely be admissible at trial or a future hearing, "that identity was an issue at trial, and that if DNA testing of the sperm indicated that it did not belong to [Mr. Duckett], there would have been a reasonable probability of an acquittal." (WR1. 748). The State did *not* dispute the admissibility of the results (WR1. 747).

Although the State did not object to the DNA testing, it did object to who would do the testing and the type of testing to be conducted. These two issues became the subject of extensive litigation in the weeks and months that followed, but aside from an initial impromptu hearing that counsel

learned of as it was being held, the court did not permit any evidentiary hearings on the matter. Due to the degraded nature of the slide, Mr. Duckett maintained that Single Nucleotide Polymorphism (SNP) testing using Massively Parallel Sequencing was necessary to provide the best chance of yielding a probative result.

FDLE Deputy Director Leigh Clark agreed with Mr. Duckett “that it would be best for the private lab that would be conducting SNP testing to have the capabilities for a whole genome sequencing” because “you would want a professional who performs whole genome sequencing to make that decision [on whether WGS was necessary] based on the quantitation [sic] data,” (WR. 1135, 1130-31), yet the very next day Clark did an about-face and asserted “in my opinion the whole genome sequencing is not necessary, and I do not believe that type of testing would be performed by Othram or DNA labs in this example” (WR. 1158). This statement was patently wrong and contrary to the only testimony Mr. Duckett was permitted to present, as Dr. David Mittelman categorically stated that the testing Othram would conduct was WGS. This change of opinion occurred after the State asserted that DNA Labs International (DLI) and Signature Science offered the ForenSeq Kintelligence Kit, which would purportedly take only 15 days. Clark, a self-professed non-expert in SNP testing, further opined

that whole genome sequencing was “overkill” (WR. 1159).

Because the court refused to hold an evidentiary hearing on the DNA testing procedures or any of these related decisions, nor were any of the “professional[s] who perform[] whole genome sequencing” called as witnesses, aside from Dr. Mittelman at the initial impromptu hearing, Mr. Duckett was never provided the opportunity to question whether the labs actually had the capability to do what was required given the state of the evidence to be tested. Instead, the sole guiding factors became, per the State’s demand, who could do the testing quickest and that the testing be done within Florida. Resultantly, it was never determined whether Kintelligence is validated for mixed samples containing male DNA. What *was* established is that the kit is meant for other types of DNA analysis and is not used for forensic scientific questions like the one here, (WR. 1161), a fact that became tragically clear after DLI conducted its testing.

As this Court noted, the lower court “permitted the State to exercise complete control over the location, timing, and method of testing,” (WR2. 27); *Duckett*, 431 So. 3d at 992, and Mr. Duckett’s repeated concerns about the testing necessary for the evidence in this case were ignored. Decisions were made solely based on how quickly the analysis could be completed, and the Q6(3) slide was consequently tested by DLI using the Forenseq

Kintelligence Kit. This purportedly faster technology was unsuitable for the type of analysis the slide required, and DLI did not have the capability to conduct the requisite analysis of the resulting data (WR1. 1161; WR2. 156).

On March 27, the State filed notice of the DNA “results” but reported that DLI was not capable of providing an analysis of their results (WR2. 43). The lower court denied Mr. Duckett’s request to have the underlying testing provided to another agency for the statistical analysis. On appeal, this Court reversed and remanded “for the underlying testing data to be provided for statistical analysis, as directed by the [FDLE].” *Duckett*, 431 So. 3d at 992.

Mr. Duckett had Othram review the data. The State also had the data analyzed by Parabon Nanolabs. The labs disagreed on the ability to determine an outcome. Parabon, albeit with caution, reported a likelihood ratio that supports Mr. Duckett having contributed to the evidentiary sample (WR1-S2. 2330). But as outlined in Othram’s analysis, there are significant concerns regarding the validity of these findings, and insufficient information was provided with the report to determine the scientific validity of the evaluation (WR1-S2. 2342). Othram also addressed issues with the Kintelligence Kit for analyzing the biological material in this case, noting that it was not developed as a probabilistic genotyping platform for highly degraded, low-template DNA mixtures (WR1-S2. 2347). Mr. Duckett moved

for an evidentiary hearing on the DNA results, which was denied (WR1-S1. 2197, 2262). This Court dismissed Mr. Duckett's 3.853 appeal for lack of jurisdiction, finding that Mr. Duckett's "request for an evidentiary hearing [was] not authorized, and the . . . order denying that request [was] not appealable." *Duckett v. State*, SC2026-0959, 2026 WL 1895689, at *1 (Fla. July 1, 2026).

Mr. Duckett immediately moved to relinquish jurisdiction to file additional claims and for supplemental briefing to address the impact of the 3.853 litigation on his proceedings that had been stayed since March 26 by this Court. Notwithstanding these motions, this Court disposed of Mr. Duckett's pending 3.851 appeal and habeas petition and vacated the stay of execution. *Duckett v. State*, SC2026-0449 & SC2026-0450, 2026 WL 1970442, at *1 (Fla. July 8, 2026). In doing so, the Court specifically found Mr. Duckett's actual innocence claim meritless because he did "not have a viable newly discovered evidence claim based on the DNA testing results" from the Q slide, which were inconclusive. *Id.* at *4. This Court further denied Mr. Duckett's motions to supplement briefing and relinquish.

With no execution date, Mr. Duckett filed a successive 3.851 motion for postconviction relief the next day asserting that the State's destruction of the Q6(3) slide violated his rights to due process as defined by *California*

v. Trombetta, 467 U.S. 479 (1984), and *Arizona v. Youngblood*, 488 U.S. 51 (1988), and its progeny (WR3.1). Because identity remains at issue, Mr. Duckett also filed a second motion for DNA testing pursuant to Rule 3.853, requesting the court grant SNP testing of additional intimate evidence collected as part of the criminal investigation (WR3. 36).

On July 14, the Governor reset Mr. Duckett's execution for July 28, 2026, at 12:00 p.m. The State filed responses to Mr. Duckett's 3.851 and 3.853 motions July 15 (WR3. 89, 112). The lower court entered a written order summarily denying both motions on July 17.

The court deemed the 3.853 motion procedurally barred because the items he sought to have tested could have been included when he initially sought DNA testing after his warrant was signed and further found that Mr. Duckett's motion did not comport with the requirements of Rule 3.853(b) because "he . . . failed to include a description of physical evidence containing DNA or that the previous results were inconclusive." (WR3. 220). This consolidated appeal follows.

SUMMARY OF ARGUMENTS AND STANDARD OF REVIEW

1. The lower court erred in summarily denying Mr. Duckett's claim establishing a due process violation under *California v. Trombetta* and *Arizona v. Youngblood*. In so doing, the court misapplied governing law and

record facts and precluded Mr. Duckett from exploring facts that bear directly on the requisite inquiry here where the State knowingly selected a destructive testing methodology that was less capable of producing meaningful forensic information when a superior and equally available alternative existed, thereby permanently eliminating any opportunity for independent testing of the best evidence to exonerate Mr. Duckett.

2. The lower court erred in denying Mr. Duckett's motion for postconviction DNA testing as procedurally barred, relying on this Court's opinions in which defendants continuously attempt to relitigate claims courts have repeatedly rejected or have caused undue delay in their own cases. The Courts in this case have previously determined additional DNA testing *should* occur; however, the technology simply was not capable of obtaining a result. Under warrant, in light of developments in technology, Mr. Duckett sought testing of the best evidence to exonerate him. Once the State took control of that testing and insisted on an improper technology, which resulted in a failed test, Mr. Duckett immediately sought testing of additional items. His case is the very reason the postconviction DNA statute exists—to test or retest items that previous technology could not obtain a conclusive result from to prevent the execution of the innocent.

Factual determinations are reviewed for competent substantial

evidence. *Sochor v. State*, 883 So. 2d 766 (Fla. 2004). Questions of law are reviewed de novo. *Reynolds v. State*, 192 So. 3d 41 (Fla. 2015).

ARGUMENTS

ARGUMENT I: The Lower Court Erred in Summarily Denying Mr. Duckett's Rule 3.851 Motion and Determining the State's Destruction of the Critical Slide did Not Violate His Right to Due Process as Defined by *California v. Trombetta* and *Arizona v. Youngblood* and Its Progeny and Under the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States and Florida Constitutions.

The lower court denied Mr. Duckett's claim on an incomplete record of its own making. The court refused to permit an evidentiary hearing concerning the biological testing, the scientific capabilities and limitations of the testing laboratory, the laboratory's knowledge regarding the inadequacy of the selected testing methodology, and the reliability of the reported results. Having foreclosed the development of that evidence, the court nevertheless concluded that Mr. Duckett failed to establish a due process violation under *California v. Trombetta* and *Arizona v. Youngblood*. That ruling misapplied the governing law and deprived Mr. Duckett of a meaningful opportunity to prove his constitutional claim.

The record established that both parties understood before testing that the biological sample would likely be consumed. The record further established that a superior testing methodology was available during the same time period and could have been employed without delaying the

prosecution. Beyond the initial impromptu hearing where Mr. Duckett's counsel and expert witness learned of the hearing as it was occurring, the lower court precluded any evidentiary development prior to or after the testing occurred. Thus, Mr. Duckett had no opportunity to explore whether the State and its laboratory knew the selected testing method was incapable of producing the forensic information necessary to answer the relevant evidentiary question, whether DLI would be able to analyze their results, and whether the reported results were scientifically reliable. Those facts bear directly on the *Youngblood* inquiry into bad faith and on the *Trombetta* inquiry concerning the evidentiary value of the destroyed material.

The lower court refused to permit that inquiry. Having denied Mr. Duckett access to the very evidence necessary to establish the State's knowledge and intent, the court improperly relied on the absence of that evidence to reject the constitutional claim. Due process does not permit a court to prevent factual development and then deny relief because the claimant failed to produce evidence the court prohibited him from obtaining.

The lower court compounded this error by making affirmative factual findings unsupported by competent, substantial evidence. The lower court cites the testimony of FDLE Deputy Director Clark that "whole genome sequencing is not necessary," (WR3. 216), yet ignores Clark's earlier

statements that she was not an expert in SNP and that the professionals who perform WGS should be the ones to make that decision (WR1. 1130-31, 1135, 1159). It is not just an “opinion that Defense’s experts disagree with,” (WR3. 216), but is an opinion that is contradicted by the previous statements of the State’s expert. The order, contrary to the record, assumes the selected testing methodology was appropriate. Based upon this erroneous factual finding, the order then assumes the laboratory acted in good faith and assumes the reported results were scientifically reliable. Yet those issues were never subjected to adversarial testing because the court denied Mr. Duckett the opportunity to present expert testimony, examine laboratory personnel, or otherwise develop the factual record. Findings based upon assumptions rather than evidence cannot constitute competent, substantial evidence and are entitled to no deference on appeal.

To uphold the lower court's summary denial of claims, the claims must be either facially invalid or the record must conclusively refute them. *Gordon v. State*, 863 So. 2d 1215, 1218 (Fla. 2003); *Lecroy v. Dugger*, 727 So. 2d 236 (Fla. 1998); *Occhicone v. State*, 768 So. 2d 1037, 1041 (Fla. 2000) (citing Fla. R. Crim. P. 3.850(d)). Neither of those are true in this case. There are, at best, disputed factual issues. Without permitting Mr. Duckett the opportunity to develop the facts and address these disputed issues, the

court could not properly conclude that no constitutional violation occurred. Its legal conclusions rest upon an incomplete record and factual findings unsupported by competent, substantial evidence.

DLI could not do what was needed to obtain a result and the State knew that likelihood existed, yet insisted the evidence be sent there for testing using a test that was not appropriate for the particular needs in this case—a fact that was made clear in the initial hearing on the request for DNA testing. The lab that could have conducted the appropriate test, WGS, in the same or less time as it took DLI to use the Kintelligence Kit, and provided the court with the full analysis of the result, Othram, was left standing in the wings because the State adamantly professed there was a conflict of interest, repeatedly argued that Othram was not accredited despite clear evidence to the contrary, and ignored testimony that Othram could do the testing in less time than the chosen lab—all of which is untrue. It is hard to imagine how this result comports with due process.

The constitutional issue is not merely that biological evidence was destroyed, or not, as the lower court asserts, that the State acted in bad faith by using a testing method that “could not garner the necessary results” (WR3. 215). At issue is whether the State knowingly selected a destructive testing methodology that was less capable of producing meaningful forensic

information when a superior and equally available alternative existed, thereby permanently eliminating any opportunity for independent testing. The answers to those questions depend upon evidence concerning the laboratory's knowledge, scientific capabilities, and decision-making process. By foreclosing that inquiry, the lower court rendered meaningful review under *Trombetta* and *Youngblood* impossible.

The Supreme Court in *Trombetta* recognized that the State has a duty “to preserve evidence . . . that might be expected to play a significant role in the suspect’s defense,” thereby establishing a constitutional guarantee of access to evidence under the due process clause of the Fourteenth Amendment.⁴⁶⁷ U.S. at 488. The *Trombetta* Court explained that the State violates an appellant’s due process rights when the State destroys evidence 1) whose exculpatory significance is apparent prior to its destruction and 2) that is sufficiently unique that the defendant could not obtain “comparable evidence by other reasonably available means.” *Id.* at 480. In reviewing the exculpatory value of the evidence, courts look to whether the evidence in question would have contributed significantly to the defense’s case. See *United States v. Brown*, 9 F.3d 907 (11th Cir. 1993).

A distinction is made between (1) evidence that is deemed “material,” *Trombetta*, 467 U.S. at 489, and (2) evidence which is found to be

“potentially useful” to the defense. *Youngblood*, 488 U.S. at 58. If material, destruction is a denial of due process regardless of good or bad faith. See *Illinois v. Fisher*, 540 U.S. 544, 547 (2004). *Fisher* clarified that the bad-faith requirement does not apply where a defendant can show the destroyed evidence was plainly exculpatory at the time it was destroyed: “applicability of the bad-faith requirement in *Youngblood* depended not on the centrality of the contested evidence to the prosecution’s case or the defendant’s defense, but on the distinction between ‘material exculpatory’ evidence and ‘potentially useful’ evidence.” *Id.* at 547-49. Bad faith is required only where the destroyed evidence is no more than potentially useful, not when it has apparent exculpatory value.

The lower court relies upon *United States v. Stevens*, *People v. Wartena*, and *McDonald v. State* for the proposition that “material consumed in testing is not materially exculpatory” and thus “the burden is on the defendant to show bad faith by the State.” (WR3. 214-15). The court’s application of those cases ignores critical factual distinctions in Mr. Duckett’s case which make these findings inapplicable here. In *McDonald*, the appellant challenged counsel’s effectiveness for failing to move to suppress bloodstain evidence that had been lost or destroyed after testing before trial. 952 So. 2d 484, 494 (Fla. 2006). Unlike here, there is no evidence in

McDonald that the State chose a testing method that they knew could not garner the necessary results. And, unlike here, the DNA materials were still available to provide a comparison if the defendant so desired. *Id.* at 495. Similarly, the testing in *Stevens* was pretrial examination of evidence that was tested using a method most likely to garner results that consumed the entire sample. 935 F. 2d 1380, 1387 (3d Cir. 1991). Perhaps more importantly, the *Stevens* court found that “nothing in the record suggests that the government suspected that the evidence could form a basis for exonerating the defendant.” *Id.* at 1388. This finding is directly inapposite here where the State agreed that slide could exonerate Mr. Duckett. The holding cited by the lower court in *Wartena* is dicta in a concurrence in judgment only where the majority found that the defendant could be present during DNA testing, a fact scenario that has no similarity to the case at bar and dicta that has no precedential value. See 156 P. 3d 469, 475 (Colo. 2007); (WR3. 215).

Mr. Duckett does not dispute that the consumption of evidence by the State when it is, in good faith, investigating its case does not give rise to a due process violation, but that is simply not what happened here. After Clark retrieved the evidence from the Q6 slide, the parties in Mr. Duckett’s case were on notice that biological evidence capable of testing existed. Both

parties, and the lower court, agreed that the Q slide, which contained sperm heads taken from the victim's clothing, would support a claim of newly discovered evidence if they did not match Mr. Duckett. And the limited testimony permitted in the lower court hearings established that WGS was the best method for retrieving a DNA profile. Given these facts as established in the record below, Mr. Duckett has met his burden.

The court must make a “case-by-case assessment” that examines the discarded evidence's “significance when viewed in light of its nature, its bearing upon critical issues in the case and the strength of the government's untainted proof.” *United States v. Grammatikos*, 633 F.2d 1013, 1020 (2d Cir. 1980); *see also Youngblood*, 488 U.S. at 60 (Stevens, J., concurring) (cautioning the exculpatory value of evidence may be higher in cases “involving a closer question as to guilt or innocence”). The exculpatory value of the evidence in question was readily apparent before it was destroyed.

Here, the State was aware of the exculpatory value of the slide as evidenced by the examination and efforts to determine how to test it on several occasions over the course of Mr. Duckett's case. *See Guzman v. State*, 868 So. 2d 498, 509 (Fla. 1993) (holding that “[e]vidence that has not been examined or tested by government agents does not have ‘apparent exculpatory value’”). Despite being aware that the evidence was materially

exculpatory, the State demanded DLI do the testing simply because of purported expediency and the desire to keep the testing in-state. The “[a]pparent” exculpatory value of evidence “must be judged based on the facts, circumstances and knowledge available to [state actors] before the evidence [was] destroyed.” See *United States v. Elliott*, 83 F. Supp. 2d 637, 642 (E.D. Va. 1999). There is no question that the evidence that was destroyed here meets that standard. This egregious destruction of evidence has torpedoed Mr. Duckett’s ability to present his innocence claims to the court.

The State required that the evidence be tested by a method that could not garner the necessary results and would, in the process, destroy the evidence, thereby resulting in a violation of Mr. Duckett’s due process rights. The State refused to allow WGS, a testing method designed for this very type of evidence, yields more sensitive results, and could be done in the same time or less than the Kintelligence testing (WR1. 733). Instead, the State falsely asserted that Kintelligence was a sufficient test without any authority. Indeed, the State did not permit a lab that conducts SNP to evaluate the sample and determine the appropriate testing. Instead, the State repeatedly made unsupported arguments that the lab Mr. Duckett suggested that could do the testing the quickest was unaccredited and

conflicted. Even if the State was acting without “a specific intent to harm the defendant,” bad faith can be established. *Elliott*, 83 F.Supp.2d at 651 (reckless disregard of rules and procedures to protect evidence can constitute a showing of objective bad faith to establish the bad faith requirement). Additionally, the requirement of bad faith can be proven by actions by others that prevent a defendant in a criminal case from presenting proof on the issue. See, e.g., *State v. McGrone*, 798 So. 2d 519, 523 (Miss. 2001) (“Where the State’s actions absolutely prevent a defendant in a criminal case from presenting proof on this issue, we will consider the requirement of bad faith to have been proven.”).

Fairness begins and ends with due process and, given the circumstances here, regardless of how one chooses to characterize the State’s behavior—though there are certainly ample indications of bad faith—the loss of evidence is so critical to the defense as to render the proceedings fundamentally unfair. It is the only available and appropriate reaction if the mandate of due process and fundamental fairness is to be honored. The State willfully or with egregious negligence caused the destruction of the most critical piece of evidence in Mr. Duckett’s case.

Given the insistence by the State that the evidence had to be tested using a test that its *own witness* said it was not made for, and the evidence

that appropriate testing could be completed in less or equal time, the question of good faith seems genuinely out of place and inappropriate. Mr. Duckett has been irreparably crippled. Under such circumstances it seems that a discussion of good faith is really beside the point. The damage is done. It cannot be undone. One questions whether it makes any difference in this case whether we are addressing a colossal thoughtless blunder or if in fact there is reason to genuinely suspect motivation and deed.

Furthermore, “[f]airness dictates that when a person’s liberty is at stake, the sole fact of whether the police or another state official acted in good or bad faith in failing to preserve evidence cannot be determinative of whether the criminal defendant has received due process of law.” *Fisher*, 540 U.S. at 549 n.* (Stevens, J., concurring) (alteration in original) (quoting *State v. Morales*, 657 A.2d 585, 593 (Conn. 1995)).

ARGUMENT II: The Lower Court Erred in Summarily Denying Mr. Duckett’s Rule 3.853 Postconviction Motion After Previously Determining Identity is an Issue and Probative DNA Results Would be Exonerative in Violation of the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution.

After losing what was the best evidence capable of exonerating him, Mr. Duckett sought DNA testing of similar items that would provide a comparable means of identifying the true perpetrator in this case (WR3. 36). The lower court denied Mr. Duckett’s motion as procedurally barred

because the items he sought to have tested could have been included when he initially sought DNA testing after his warrant was signed. The court further found that Mr. Duckett's motion did not comport with the requirements of Rule 3.853(b) because "he . . . failed to include a description of physical evidence containing DNA or that the previous results were inconclusive." (WR3. 219-20). The court misapprehended the law and made factual determinations belied by the record in this case, which has resultantly deprived Mr. Duckett of his constitutional right to due process and prove his innocence using the procedure created for this exact purpose under Florida law. See *Gutierrez v. Saenz*, 606 U.S. 305, 314 (2025) (emphasizing that "[i]ndividuals convicted of crimes in state court 'have a liberty interest in demonstrating [their] innocence with new evidence under state law'" (quoting *Osborne*, 557 U.S. at 68 (second alteration in original)); U.S. Const. amend. VI, XIV; Art. I, §§ 9, 16, Fla. Const..

A. Mr. Duckett's Motion is Not Procedurally Barred.

The lower court relies on this Court's decision in *Reynolds v. State*, 373 So. 3d 1124, 1126-27 (Fla. 2023), for the proposition that "Defendant's may not bring postconviction claims that could or should have been brought in prior proceedings," which "includes DNA testing of items that were previously known of but not raised." (WR3. 219). The court's rote application

of *Reynolds* as dispositive precedent ignores the procedural and factual distinctions in Mr. Duckett's case. Indeed, *Reynolds* is inapposite.

As a threshold matter, no court in *Reynolds* ever determined that he was entitled to DNA testing; rather, the courts have twice determined such testing would not lead to an acquittal or lesser sentence due to the other existing evidence of guilt. *Reynolds*, 373 So. 3d at 1127. Conversely, this Court in 2003 remanded Mr. Duckett's case to determine whether DNA testing of the victim's clothing was possible, and the circuit court permitted testing of additional intimate items pursuant to the parties' agreement. See Order, SC01-2149 (Fla. Mar. 21, 2003); (PC-R1-SV. 2245-49). Moreover, under warrant, the lower court—and *the State*—agreed that identity was at issue at Mr. Duckett's trial and that DNA testing was capable of producing exonerative results in this otherwise circumstantial case (WR1. 748).

In this vein, the court erred in applying any procedural bar based on *Reynolds*. Unlike Reynolds who *unsuccessfully* sought postconviction DNA testing of the same items using the same technology in separate 3.853 motions years apart, Mr. Duckett is not relitigating any previously denied testing requests concerning these items; in fact, there are none. Procedural bars exist to prevent litigants from substantially delaying their claims and relitigating, over and over, claims the courts have determined have no merit.

That is clearly not the case here, and the court's finding otherwise misapprehends the record where testing of the items at issue was permitted in 2003, and everyone agreed that the technology in use at the time failed to yield probative results, hence FDLE's agreement to abstain from testing the Q6(3) slide and the court's order requiring that "*any* biological evidence . . . be stored in a manner to insure the quality of the evidence is maintained . . . until this case is closed, either by acquittal of [Mr. Duckett] . . . or by execution" (PC-R1-SV. 2206) (emphasis added).

What is more, the court's focus on the fact that these items were not listed at the outset ignores that the subsequent request is a direct byproduct of the State's destruction of the best evidence in this case. Mr. Duckett could not have foreseen that the State would be "permitted to exercise complete control over the location, timing, and method of the testing" of slide Q6(3), *Duckett*, 431 So. 3d at 992, and that it would deliberately choose an unsuitable technology not meant for the type of analysis the evidence required. The lower court's reliance on *Reynolds* to bar Mr. Duckett's request to test additional items when identity remains at issue runs afoul of any notion of due process when "the gravest sentence our society may impose" is at stake. *Hall v. Florida*, 572 U.S. 701, 724 (Fla. 2014).

Cases like Mr. Duckett's where prior testing proved inconclusive are

the quintessential reason postconviction DNA testing exists, and the lower court's finding that his motion is procedurally barred cannot stand.

B. Mr. Duckett's 3.853 Motion is Facially Sufficient.

In one fell swoop, the lower court found that the record establishes the evidence Mr. Duckett seeks to test does not contain *any* biological material (WR3. 219-20). These findings are not only belied by the record but also bolster Mr. Duckett's argument that an evidentiary hearing on this scientific question was warranted. As outlined below, several of the items at issue *do* contain biological material. The slide of Q43 (also identified as FDLE 57), is reported to contain possible epithelial cells (PC-R1-SV. 2306); and Analyst Tabor noted the presence of blood and semen on several items when she examined them pre-trial in 1987. Analyst Booth's inability to obtain a profile on any items when this Court remanded Mr. Duckett's case for DNA testing in 2003 was the result of the state of technology at the time and did not mean that no testable biological material exists.

Mr. Duckett asserted below, which this Court is required to take as true, that FDLE's prior analyses were done using less sensitive technology, from screening to the actual testing itself. And, even if biological material was detected, it could not be processed at all unless it met specific threshold criteria for the kits in use at that time. These items were originally processed

in 1987 before DNA was commonly accessible and used to identify a contributor of human material found on a specific item.

In 2003, Booth reviewed Tabor's original analysis and conducted some of her own testing; however, she relied in large part on Tabor's findings after screening the items. The technological limitations for serological testing in 1987 are unimaginable today, and while significant strides were made by 2003, DNA testing was still unable to detect minute amounts of biological material on an item. For example, Booth testified that she did not identify any sperm on her extracts of Q(1) and Q(2) with microscopic examination or when she processed the sample using an early version DNA kit. Booth indicated that she did not find semen on the underwear but did not indicate whether the items had been screened for other biological material, such as blood or epithelial cells. Comparing Booth's report and testimony to Tabor's 1987 analysis, it appears Booth was indicating that there was not enough material at the time to conduct further analysis.

Tabor indicated she identified semen and blood on the underwear in 1987 but could not conduct further testing at the time due the item's condition. The same goes for the jeans, which Tabor noted contained semen. Booth did not analyze the smear made from the jeans because the

slide was broken. Rather, Booth analyzed a cutting of the jeans, which was made close to the initial cutting which had indicated the presence of semen.¹ As to the extract taken from the slide, Booth indicated that she looked at the drops and did not identify biological material. Again, technology has advanced, and Mr. Duckett asserts that the vials and items be processed using the incredibly sensitive kits that exist today to yield a result.

As to the items that were consumed, such as the cotton from the vaginal swabs indicating the presence of blood, Mr. Duckett seeks testing of the packaging the swabs (Q43 and Q43a) were stored in over the years. Because the items were previously wet and contained in a small envelope, there is a probability that biological material transferred to the packaging surface. This same analysis applies to packaging containing the fingernail scrapings as well as the vials that contained extracts from the testing of the items Mr. Duckett listed in his Rule 3.853 motion.

The court's findings fail to acknowledge that two slides were not analyzed in 2003 because, as Booth testified, they were broken and she was unable to process them. Tabor identified blood on the swabs in 1987, and Mr. Duckett asserts that testing techniques could now analyze the items

¹ This cutting from the jeans with semen curiously went missing before the evidence made it to Booth for analysis.

and yield a probative result.

The court further erred in relying on undersigned counsel's statements in 2004 as dispositive. Counsel's statements indicating that the Q6(3) slide was the last remaining piece of evidence to test was premised on the understanding of DNA evidence and testing technology available 22 years ago. Counsel's statement was not a concession that no further testing could ever be done on the other items as evidence by her motion requesting that the remaining items be stored in a specific manner to preserve the integrity of the evidence (PC-R1-SV. 2206).

CONCLUSION AND RELIEF SOUGHT

Mr. Duckett urges this Court to reverse the lower court, grant a stay of execution, remand with directions that Mr. Duckett be afforded a full evidentiary hearing at which he may examine the circumstances surrounding the selection of the testing methodology, the laboratory's knowledge of its limitations, the availability of superior contemporaneous testing methods, the scientific reliability of the reported results, and all other facts bearing upon the due process analysis required by *Trombetta* and *Youngblood*; and that DNA testing to be conducted pursuant to Rule 3.853; and grant such other relief as the Court deems just and proper.

Respectfully submitted,

/s/ Mary E. Wells

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CERTIFICATE OF COMPLIANCE AND FONT

Pursuant to Fla. R. App. P. 9.045, I hereby certify that the Initial Brief of the Appellant has been produced in Arial, 14-point font. Counsel further certifies that this brief contains 29 pages and that a Motion to Exceed the Page Limitations is being filed simultaneously with this brief.

/s/ Mary Elizabeth Wells
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing pleading has been electronically filed through the Florida State Courts e-filing portal and served to the parties listed below on July 20, 2026.

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IN THE SUPREME COURT OF FLORIDA

**CASE NO. SC2026-1083
CONSOLIDATED WITH SC2026-1084**

EXECUTION SET FOR JULY 28, 2026, AT 12:00 P.M.

**JAMES AREN DUCKETT,
Appellant,**

v.

**STATE OF FLORIDA,
Appellee.**

**ON APPEAL FROM THE CIRCUIT COURT
OF THE FIFTH JUDICIAL CIRCUIT,
LAKE COUNTY, FLORIDA**

LOWER CASE NO. 1987-CF-1347

REPLY BRIEF OF APPELLANT

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REPLY TO ARGUMENT I - The State fails to confront the Mr. Duckett's arguments and instead asserts a series of strawman arguments that do nothing to assist the Court in its analysis of Mr. Duckett's due process claim. Mr. Duckett's argument is not that *Youngblood* or *Trombetta* impose any specific procedural requirement for determining what type of testing is to be used (WR3. 218; AB at 6), but that when a state creates a substantive right to prove one's innocence through DNA testing, as Florida has done with Rule 3.853, the procedures the state provides for vindicating that right must comply with due process. The Fourteenth Amendment's Due Process Clause "imposes procedural limitations on a State's power to take away protected entitlements." *Dist. Atty's Office for 3rd Jud. Dist. v. Osborne*, 557 U.S. 52, 67 (2009). Even though there is no freestanding constitutional right to DNA testing, when a state grants defendants the right to prove their innocence with DNA evidence, the procedures for obtaining that testing must comply with due process. *See id.* at 68, 72. That did not happen here.

The State's due process analysis is directed at positions Mr. Duckett has never asserted. Specifically, Mr. Duckett has not argued: (1) a "due process right for the defendant to select the type of DNA testing that is conducted" (AB at 5); (2) that due process was violated by employing an in-state laboratory rather than Mr. Duckett's laboratory of choice (AB at 4); (3)

that the laboratory acted in bad faith by consuming the DNA sample when consumption was a necessary consequence of the testing process (AB at 8, 9); (4) that due process entitles a defendant to have testing conducted by a laboratory of his choosing (AB. at 5, 9) or, (5) that Mr. Duckett's *Youngblood* claim is based upon the argument that the State was required to use WGS (AB at 8). Instead, the State constructs different claims—ones Mr. Duckett has never asserted—and then argues against that manufactured position.

Misapprehending the arguments, the State suggests that the due process claim rests on the consumption of the evidence (AB at 5, 6). Mr. Duckett has never argued that the mere consumption of evidence, standing alone, establishes a due process violation. Both parties understood that the sample would likely be consumed (IB at 12). It is not just, as the State asserts, that there was an “unavoidable consumption” during testing (AB at 6), but that by subjecting the evidence to a test that could not produce a definitive result, *i.e.* the job which was required per §925.11, *and* consuming the sample in the process, Mr. Duckett was denied due process. The State fails to address this and the resulting deprivation of a meaningful opportunity to obtain and present potentially exculpatory evidence.

The issue is also not that there were two comparable testing methods that could be used to evaluate the evidence and the defendant objected to

which of those methods should be used (AB at 4, 6). The issue is that there was degraded evidence that required “a DNA testing technique likely [to] produce a definitive result.” That is precisely what Rule 3.853(b)(2) requires and what Mr. Duckett asserted throughout the proceedings should happen. Yet the State insisted that the evidence be tested using a testing kit, Kintelligence, that is designed for genetic genealogy and is not a “technique likely [to] produce a definitive result” per Rule 3.853. The State’s demand that the DNA evidence be analyzed with a test that could not produce the result, and that in the process destroyed the evidence, constituted a violation of due process per *Trombetta* and *Youngblood*. Mr. Duckett asserted that because the evidence was materially exculpatory per *Trombetta*, no requirement of a showing of bad faith is required.

Rather than address Mr. Duckett’s argument, which is amply supported by facts in the record, the State makes the blanket assertion that *Trombetta* does not apply because the exculpatory nature of the DNA on the slide was not apparent (AB at 7). But just saying it does not make it so. Only by failing to confront Mr. Duckett’s argument that *Trombetta* applies and not *Youngblood* can the State skip directly to its argument that Mr. Duckett has failed to meet his burden to show bad faith by the State.

Mr. Duckett does not contend that the prosecution acted in bad faith

merely by complying with a court order or by following Fla. Stat. § 925.11(2)(h) (SB at 8). No one disputes that compliance with a valid court order or governing statute, standing alone, cannot constitute bad faith. But that is not what occurred here, nor is it the issue before this Court. Section 925.11(2)(h) merely provides that testing "shall be carried out by [FDLE], or its designee." It says nothing about which laboratory must be selected, when testing must occur, or what methodology should be employed. Those decisions were all made by the State, who therefore retained control over the "who, what, and where" of the testing and elected to submit the evidence to a laboratory using a testing methodology that was not developed to produce definitive results from highly degraded DNA samples. Additionally, nowhere in the statute does it say the State gets to choose who does the testing, that the defendant cannot talk to anyone doing the testing, or that the defendant cannot discuss the results with the agency who did the testing. Yet that is what happened here. The State's reliance on section 925.11(2)(h) answers a claim Mr. Duckett has not made and does nothing to address whether the State's discretionary choices were made in bad faith.

It is difficult to discern whether the State's repeated misstatements stem from a misunderstanding of Mr. Duckett's arguments or an unwillingness to confront them. The State does not engage at all with Mr.

Duckett's argument regarding the lower court's refusal to permit him any opportunity to inquire of the scientists about the testing that was being proposed, what occurred during the testing, whether DLI would be able to analyze its results, and whether the reported results were scientifically reliable. It remains that the State willfully ignored the testimony regarding what testing was required to produce a definitive result and insisted that the only concerns were that the testing occur in Florida and that it be done within the warrant period. The testing forced upon Mr. Duckett by the State was incapable of producing the forensic information necessary to answer the relevant evidentiary question required by Rule 3.853. Even if this Court finds that the evidence was not materially exculpatory, Mr. Duckett has made the requisite showing of bad faith under *Youngblood*.

REPLY TO ARGUMENT II – The State has lost sight of Rule 3.853's very purpose: to determine whether DNA testing can resolve an injustice and prevent the execution of an innocent capital defendant. The State cannot, as it attempts to do here, ignore that Mr. Duckett's case is precisely the type contemplated by 3.853. Nor can it wipe away its role in the injustice here.

When Mr. Duckett's case was remanded for DNA testing by this Court in 2003, the science was so limited that FDLE was unable to yield DNA results on any of the items processed. This is highly relevant to the question

before the Court today because the lack of result in 2003 does not simply suggest that the perpetrator did not leave any DNA behind; rather, it is indicative of the limitations of the testing kits at the time. FDLE could not yield a single profile off of any item or from anyone—even the victim. It was believed at the time that none of the evidence had any forensic value, except possibly the lone slide Q6(3). Counsel could not predict the future strides in DNA testing; thus, her acknowledgment that the slide was the only remaining piece of evidence is not in and of itself fatal to Mr. Duckett's claim.

While the hope in 2003 was that DNA technology would advance and testing of the slide would one day yield probative results so Mr. Duckett could prove his innocence, whether and when that would occur was pure speculation. Submitting that last item for testing before advancements in science were sufficient enough was literally a gamble with his life. After the warrant was signed, Mr. Duckett had no choice but to place that bet and hope that technology could finally read the Q6(3) slide and save his life.

The State and court agreed probative results excluding Mr. Duckett could indeed lead to an acquittal. It is what happened *after* testing was granted that undermined confidence in the entire process. The State's Answer conveniently ignores its own role in why Mr. Duckett was forced to seek testing of additional evidence. When Mr. Duckett argued that the most

sensitive kit should be used to examine the initial slide, the State shouted from the rooftops that lawyers should not be in control of the testing—“we don’t have lawyers telling labs what testing to do.” (WR1. 1162). Harping on this point, the State asserted: “trying to direct what testing be done by a laboratory is no different than me standing over Dr. Wolf during an autopsy and telling her what to do because we don’t do that and we shouldn’t be doing it here either” (WR1. 1162). Yet, that is exactly what the State encouraged and the lower court did—it directed testing based on FDLE’s report of which testing was fastest despite FDLE’s admission that it has no experience in SNP, the requisite testing here, nor could it opine as to the specific kit that should be used in processing the slide. Not a single expert in SNP testing explained to the court how kits work and the purpose for each. Not a single SNP expert analyzed FDLE’s quantification results and rendered its own recommendation to the court as to the kit to be used. Nor did a single SNP expert assess the evidence itself and provide testimony as to the analysis required in this case.

Guided by *only* how long the process would take, the State pushed to have the sample tested using specific technology FDLE reported was quicker than the most sensitive kit on the market Mr. Duckett requested. Driven by this lone concern, the court agreed and followed the State’s lead.

Even after the testing was conducted—and failed—the court did not allow a single expert in SNP testing to testify about the testing that was ultimately conducted, whether it was appropriate, and the significance of the outcome.

Mr. Duckett only sought testing of the additional evidence after the State destroyed the best evidence in this case. Reliance on *Reynolds* ignores this history and misapprehends the very purpose of a procedural bar. Mr. Duckett is not Mr. Reynolds. This Court and the lower court have previously concluded that probative DNA results excluding Mr. Duckett *would be determinative*. Up and until the current appeal, Mr. Duckett's requests for DNA testing have only been limited by the advancements in technology, not the courts. *Reynolds* is simply not comparable; no court has agreed that DNA results would be probative, and there is no changing that fact in continuing to re-request DNA testing. Hence the procedural bar.

The State's insistence that Mr. Duckett knew about the evidence at the time of trial is likewise irrelevant. Indeed, the State agreed to testing those items in 2003; however, based on the technology at the time, it yielded no probative results. Now, with new technology suited to detect a fraction of the amount of biological material that was required for processing 23 years ago and designed to process degraded samples, Mr. Duckett believes further testing will yield exonerative results from these items. The instant

circumstances are specifically contemplated by Rule 3.853.

The State's arguments ignore the history of Rule 3.853 and concerns with placing statutes of limitations on postconviction DNA motions. Originally, litigants were provided only 2 years to move for testing. In 2004, the statute of limitations was increased to 4 years. In 2005, the Rule was again amended and eliminated the time for filing altogether. In support of the change, the Florida Bar Criminal Rules Committee took the formal position that DNA testing must be a, "meaningful component of Florida's criminal justice system—to help ensure that the real perpetrators of crimes are punished, that the freedom of innocent people is protected, and that the public's trust and confidence in the judicial process are not diminished."

Mr. Duckett sought testing of similar evidence—Ms. McAbee's underwear, slides of extracts from the underwear, packaging holding the vaginal swabs and extracts, and the jeans, which previously contained sperm on at least one area. The State's position that Mr. Duckett has not alleged how these items could exonerate him is disingenuous.

When Mr. Duckett contacted DNA experts about the possibility of testing the Q slide, he learned that reexamining the remaining evidence was also possible due to advancements in the detection of biological material on a source and the significantly lower thresholds require to process human

material. Mr. Duckett must not be faulted for having sought testing of a single piece of evidence, under incredibly rushed circumstances, to prevent delay and minimize the additional cost.

The State's assertion that Mr. Duckett has not properly pled that the items contain biological material is a misapprehension of the motion and record. The State's responses establish why a hearing is warranted given the disputed issues of fact. For instance, three slides Mr. Duckett seeks to test were not analyzed by Booth in 2003, because they are broken and she did not know how to do so. At least one of the slides indicates the presence of cellular debris, possibly epithelial cells (PC-R1-SV. 2307).

This is not the first time the State has acted to ensure evidence in this case is not undermined or reexamined. It withheld that the Department of Justice was investigating Michael Malone, the FBI agent who falsely testified in dozens of cases across the country concerning hair evidence. In many cases, it was determined he outright lied and told juries that hairs from crime scenes matched those of defendants when it was simply not true. Mr. Duckett eventually received a letter from the DOJ, nearly two years after the State was contacted, as established under warrant. The State told DOJ that there was no reason to investigate Malone's testimony in Duckett's case.

Mr. Duckett urges this Court to reverse and stay his execution.

Respectfully submitted,

/s/ Mary E. Wells

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing pleading has been electronically filed through the Florida State Courts e-filing portal and served to the parties listed below on July 22, 2026.

/s/ Brittney Lacy
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CERTIFICATE OF COMPLIANCE AND FONT

Pursuant to Fla. R. App. P. 9.045, I hereby certify that the Initial Brief of the Appellant has been produced in Ariel, 14-point font. Counsel further certifies that this brief consists of 10 pages in compliance with this Court's July 17, 2026 Order.

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