

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

No. 26-5156

IN THE SUPREME COURT OF THE UNITED STATES

JAMES AREN DUCKETT,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

REPLY TO BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI
TO THE FLORIDA SUPREME COURT

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

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ARGUMENT IN REPLY

The State's Brief in Opposition fails to engage with the meat of the Petitioner's argument, responding instead to arguments Mr. Duckett does not assert. Mr. Duckett does not assert a federal right to due process (BIO at 12), does not contend that due process provides him a second bite at the apple (BIO at 11), nor does he argue that he has a federal substantive right to DNA testing (BIO at 12). The State's response misapprehends Mr. Duckett's arguments and in so doing, fails to respond to the actual question presented. Mr. Duckett raises due process challenges to Florida's interpretation of Rule 3.853, challenging Florida's creation of a procedure that "is fundamentally inadequate to vindicate the substantive rights provided." *Dist. Attorney's Off. for Third Jud. Dist. v. Osborne*, 557 U.S. 52, 69 (2009). Mr. Duckett raises only a single question and offers three reasons for granting the petition, each of which are likely to succeed on the merits.

Contrary to the State's position, Mr. Duckett's arguments fall squarely in this Court's jurisdiction, and clearly violate this Court's established precedent. A state court may not "under the color of local practice," *Rogers v. Alabama*, 192 U.S. 226, 230 (1904) (Holmes, J.), use a cloudy and manipulable state-law standard to evade review of a federal constitutional right it disfavors. When a state court engages in such behavior, the federal courts will ignore the purported state ground and reach the constitutional merits. *See, e.g., Lee v. Kemna*, 534 U.S. 362 (2002); *Harris v. Reed*, 489 U.S. 255 (1989). It is immaterial that the state court decision rests on a matter of state law when the state law violates the constitution. Mr. Duckett explicitly argued in his petition that due

process requires states to provide adequate procedures to “vindicate” state-created substantive rights, including a prisoner’s right to prove his innocence with new evidence. *Osborne*, 557 U.S. at 68-69.

The state court erred in applying a procedural bar for the purposes of denying Mr. Duckett access to his substantive right, particularly when it had not applied a bar in similar circumstances. Indeed, *Reynolds* cites to no other cases in which the court denied a litigant access to DNA testing where the courts had previously agreed the litigant met the threshold of Rule 3.853 and granted testing. The entire *Reynolds* opinion addresses procedural bars where capital litigants either re-raise claims the courts have repeatedly denied on the merits, or where the courts have denied a claim based on undue delay. The record here supports neither of these conclusions.

Moreover, these cases relied upon by the State concern a litigant’s ability to litigate claims for relief pursuant to Rule 3.851, which includes explicit temporal limitation as well as specific rules for successive motions. Rule 3.853 includes neither. As Petitioner noted in his petition for writ of certiorari, when Rule 3.853 was initially passed, Florida litigants were provided only two years to move for testing. In 2004, that limitations period was extended to four years, and in 2005, it was eliminated entirely. The elimination of any filing deadline reflects the rule’s purpose: to prioritize the truth-seeking function of DNA testing over procedural time bars where justice may depend on scientific evidence.

It is “inexplicable” why the State of Florida “refuses to allow DNA testing” of evidence that is directly related to the underlying crimes “despite the very real

substantial possibility that such testing could exculpate” Mr. Duckett “and identify the real killer.” *Reed v. Goertz*, 146 S. Ct. 936, 939 (2026)(Sotomayor, J., dissenting), and especially in a case where the State has agreed identity is at issue.

Mr. Duckett also contests the State’s analysis of the facts. Notably, in its cursory review of the history of this case, the State chooses to ignore, as it does in every proceeding, the wealth of evidence presented in post-conviction that undermines the State’s case, such as the recantations by the State’s star witness, Gwen Gurley, or the rebuttal of FBI hair analyst Malone through independent reviews by the DOJ and FBI.

The State mischaracterizes the significance of FDLE Clark’s testimony with respect to the need for WGS testing. While it may be accurate to say that the majority of humans share DNA, WGS is the gold standard for identifying the largest number of loci that have testable materials to compare. This is critical in circumstances like here where we have severely degraded samples. It is necessary to have the capability to identify as many loci as possible. This highlights the very issue with using a genealogy test, Kintelligence, rather than a test “likely [to] produce a definitive result.” *See* Rule 3.853(b)(2). Genealogy tests, such as Kintelligence, are designed to use large amounts of pure, high quality double stranded DNA. Commercial microarrays fail when DNA stands are broken into short pieces beyond standard size thresholds. Thus it is no surprise that Kintelligence was unable to identify more than 27 testable loci as it was not designed to identify broken DNA fragments such as those found on the Q6 slide.

Curiously, the State also argues facts from its expert report that were never admitted as evidence. Indeed, the State objected to an evidentiary hearing on the

reports. But as outlined in Othram's analysis, there are significant concerns regarding the validity of Parabon's findings, and insufficient information was provided with the report to determine the scientific validity of the evaluation (WR1-S2. 2342). One critical area of concern is that Parabon reported that due to the low and uneven coverage in the sample, they were only able to identify 27 loci—out of a potential *10,230 SNP markers* that this particular kit identifies and out of millions of SNP markers that each individual has - that provided significant data to allow them to be analyzed. Parabon's report stated that of the 27 loci, 25 were consistent with Mr. Duckett and 2 were "not observed in the suspect profile." (WR1-S2 2333). The report then states that the 2 loci may "*reflect contributions from an unknown individual*" or be stochastic effects of artifact (*Id.*)(emphasis added). The State has never asserted nor is there any evidence that there could be two separate contributors to the sample so if in fact the loci reflect contributions from an unknown individual, *this excludes Mr. Duckett.*

Respondents further encourage this Court to deny certiorari based on a limited reading of this Court's authority to review lower court decisions, (BIO at 14-16) and in so doing, once again misstate Petitioner's argument. Supreme Court Rule 10(c) clearly authorizes this Court to exercise its discretion to review "important question[s] of federal law that [have] not been, but should be, settled by this Court." Mr. Duckett's assertion that the due process guarantee prohibits state courts from imposing arbitrary procedural barriers, contrary to their own state rules, to preclude defendants from accessing DNA testing that would demonstrate their innocence falls squarely within that scope.

As to question 2, the State has created a question that does not exist which misconstrues Petitioner's challenge. Petitioner does not argue that the denial of public records was a constitutional deprivation, or assert a challenge to the state court's denial of public records pursuant to Rule 3.852. Mr. Duckett notes that he requested records pursuant to Rule 3.852 to explain the failures of Rule 3.853. Petitioner's argument is that the rule, as applied, provides no vehicle to access any information about the DNA process.

Notwithstanding, the State's argument proves Mr. Duckett's point—there is no mechanism to access records about the DNA testing process for which the State has granted a substantive right. The plain reading of Rule 3.852 and the body of corresponding jurisprudence concerns access to records related to colorable claims, raised pursuant to Rule 3.851 motions for postconviction relief. Rule 3.852 is silent as to record production concerning Rule 3.853 proceedings. Mr. Duckett challenges Rule 3.853, which is also silent as to access to records within Rule 3.853 proceedings.

For the reasons set forth above, this Petition for Writ of Certiorari to review the judgment of the Florida Supreme Court should be granted.

Respectfully submitted,

/s/ Mary E. Wells

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