

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

DOCKET NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

DANIEL OWEN CONAHAN, JR.,

Petitioner,

vs.

STATE OF FLORIDA.

Respondent.

**On Petition For A Writ of Certiorari To
The Supreme Court of Florida**

**DEATH WARRANT SIGNED
EXECUTION SET SEPTEMBER 10, 2026 at 6:00 P.M.**

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September 7, 2026

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CAPITAL CASE QUESTIONS PRESENTED

Mr. Conahan has maintained his innocence; the case against him rests on circumstantial evidence. For more than a year and a half, Mr. Conahan has sought DNA testing of evidence collected at the scene and from the victim's body to conclusively establish that he is not responsible for the death of Mr. Montgomery. While the State continues to actively test evidence in this case including hair and a cigarette butt, the Florida courts have precluded Mr. Conahan from testing similar items claiming that the nature of the items would not be probative of identity here.

Florida state courts imposed an impossible, heightened burden concerning the materiality of the evidence to deny his access to DNA testing. Florida statutory procedures for obtaining DNA testing run afoul of the Due Process Clause of the Fourteenth Amendment as set forth in this Court's precedents. This Court has explicitly recognized that capital prisoners have a liberty interest in obtaining DNA testing (*see Gutierrez v. Saenz*, 606 U.S. 305 (2025); *Skinner v. Switzer*, 562 U.S. 521 (2011); *Dist. Atty's Office for 3rd Jud. Dist. v. Osborne*, 557 U.S. 52, 69 (2009)) and a property interest in not being arbitrarily denied access to state-created investigatory procedures. *See Logan v. Zimmerman Brush*, 455 U.S. 422 (1982).

The question presented is:

Whether Florida's imposition of a heightened burden of proof at the pleading stage violated Petitioner's right under Florida law to DNA testing that would demonstrate his innocence thereby depriving Petitioner of due process and rendering illusory his state-created right to prove his innocence through newly discovered evidence.

PARTIES TO THE PROCEEDINGS

Petitioner Daniel Owen Conahan, Jr., a death-sentenced inmate facing imminent execution, was the Appellant and Petitioner in the Florida Supreme Court.

Respondent State of Florida, was the Appellee and Respondent in the Florida Supreme Court.

RELATED PROCEEDINGS

Per Supreme Court Rule 14.1(b)(iii), the following proceedings relate to the case at issue in this Petition:

Underlying Trial:

Circuit Court in and for Charlotte County, Florida,
State v. Conahan., No. 97-166-CF
Judgment Entered: August 17, 1999

Direct Appeal:

Florida Supreme Court
Conahan v. State, 844 So. 2d 629 (Fla. 2003)
Opinion Issued: January 16, 2003

Supreme Court of the United States
Conahan v. Florida, 540 U.S. 895 (2003)
Certiorari Denied: October 6, 2003

First Postconviction Proceedings:

Circuit Court in and for Charlotte County, Florida,
State v. Conahan., No. 97-CF-166
Order Denying Relief: January 31, 2011

Florida Supreme Court (Appeal and State Habeas Proceedings)
Conahan v. State, 118 So. 3d 718 (Fla. 2013)
Opinion Issued: March 21, 2013

Federal Habeas Proceedings:

United States District Court (M.D. Fla.)
Opinion Denying Relief: *Conahan v. Sec’y, Dep’t of Corr.*, 2:13-cv-428-JES-KCD, 2023 WL 2648168 (Mar. 27, 2023)
Order denying Mtn to Alter and Amend: Feb. 13, 2024

United States Court of Appeals (11th Cir.):
Conahan v. Sec’y, Dep’t of Corr., No. 24-10844, 2024 WL 2950845 (May 31, 2024) (reconsideration denied, Aug. 20, 2024)

Supreme Court of the United States
Conahan v. Dixon, Sec’y, Dep’t of Corr., 145 S.Ct. 1195 (2025)
Certiorari Denied: Feb. 24, 2025

Second Postconviction Proceedings:

Circuit Court in and for Charlotte County, Florida,
State v. Conahan, 97-166-CF
Order Denying Relief: May 5, 2016

Florida Supreme Court
Conahan v. State, No. SC16-1153, 2017 WL 656306 (Feb. 17, 2017) (rehearing denied, May 1, 2017)

Third Postconviction Proceedings:

Circuit Court in and for Charlotte County, Florida,
State v. Conahan, 97-166-CF
Order Denying Relief: December 11, 2017

Florida Supreme Court
Conahan v. State, 258 So. 3d 1237 (Fla. 2018)
Opinion Issued: October 19, 2018

Fourth Postconviction Proceedings:

Circuit Court in and for Charlotte County, Florida,
State v. Conahan, 97-166-CF
Order Denying Relief: July 14, 2026

Postconviction Motion for DNA Testing

Circuit Court in and for Charlotte County, Florida,
State v. Conahan, 97-166-CF
Order Denying Relief: August 12, 2026

Successive Postconviction Proceedings (Under Warrant):

Circuit Court in and for Charlotte County, Florida,
State v. Conahan, 97-166-CF
Order Denying Relief: August 20, 2026

Florida Supreme Court
Consolidated appeal of denial of Fourth Successive Motion, denial of DNA motion, and denial of circuit court warrant proceedings. Consolidated opinion includes appellate proceedings and state habeas proceedings under warrant
Conahan v. State, SC2026-1234, SC2026-1236, SC2026-1291, and SC2026-1282, 2026 WL 2603686 (Fla. Sept. 3, 2026)
Opinion Issued: September 3, 2026

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Daniel Owen Conahan, Jr. respectfully petitions for a writ of certiorari to review the opinion of the Florida Supreme Court.

OPINIONS BELOW

The Florida Supreme Court’s consolidated opinion affirming the denial of state postconviction relief, postconviction DNA testing, and denying Mr. Conahan’s petition for writ of habeas corpus is unreported. *Conahan v. State*, SC2026-1234, SC2026-1236, SC2026-1281, SC2026-1282, 2026 WL 2603686 (Fla. Sept. 3, 2026) (Pet. App. A, a1) The state circuit court’s (“postconviction court”) order denying Mr. Conahan’s motion for postconviction relief pursuant to Fla. R. Crim. P. 3.851 is unreported. (Pet. App. B, a8) The postconviction court’s order denying Mr. Conahan’s motion for postconviction DNA testing pursuant to Rule 3.853 is also unreported. (Pet. App. C, a32)

JURISDICTION

The Florida Supreme Court issued its consolidated order affirming the denial of postconviction relief and denying Mr. Conahan’s petition for writ of habeas corpus on September 3, 2026. The mandate issued immediately thereafter. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Florida Rule of Criminal Procedure 3.853 provides as follows:

(b) Contents of Motion. The motion for postconviction DNA testing must be under oath and must 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 previously tested 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;

(5) motion; and (6) a statement of any other facts relevant to the a certificate that a copy of the motion has been served on the prosecuting authority.

(c) Procedure.

(1) On receipt of the motion, the clerk of the court must notify the assigned judge.

(2) The court must review the motion and deny it if it is facially insufficient. If the motion is facially sufficient, the prosecuting authority must be ordered to respond to the motion within 30 days or such other time as may be ordered by the court.

(3) On receipt of the response of the prosecuting authority, the court must review the response and enter an order on the merits of the motion or set the motion for hearing.

(4) In the event that the motion must proceed to a hearing, the court may appoint counsel to assist the

movant if the court determines that assistance of counsel is necessary and on a determination of indigency under section 27.52, Florida Statutes.

(5) The court must make the following findings when ruling on the motion:

(A) Whether it has been shown that physical evidence that may contain DNA still exists.

(B) Whether the results of DNA testing of that physical evidence likely would be admissible at trial and whether there exists reliable proof to establish that the evidence containing the tested DNA is authentic and would be admissible at a future hearing.

(C) Whether there is a reasonable probability that the movant would have been acquitted or would have received a lesser sentence if the DNA evidence had been admitted at trial.

(6) If the court orders DNA testing of the physical evidence, the cost of the testing may be assessed against the movant, unless the movant is indigent. If the movant is indigent, the state must bear the cost of the DNA testing ordered by the court.

(7) The court-ordered DNA testing must be ordered to be conducted by the Department of Law Enforcement or its designee, as provided by statute. However, the court, on a showing of good cause, may order testing by another laboratory or agency certified by the American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB) or Forensic Quality Services, Inc. (FQS) if requested by a movant who can bear the cost of such testing.

(8) The results of the DNA testing ordered by the court must be provided in writing to the court, the movant, and the prosecuting authority.

(d) Time Limitations. The motion for postconviction DNA testing may be filed or considered at any time following the date that the judgment and sentence in the case becomes final.

(e) Rehearing. The movant may file a motion for rehearing of any order denying relief within 15 days after service of the order denying relief. The time for filing an appeal must be tolled until an order on the motion for rehearing has been entered.

(f) Appeal. An appeal may be taken to the appropriate appellate court only from the final order disposing of the motion. All final orders denying relief must include a statement that the defendant has the right to appeal within 30 days of the rendition of the order. All nonfinal, nonappealable orders entered under this rule should include a statement that the defendant has no right to appeal the order until entry of the final order.

The Eighth Amendment to the United States Constitution provides:

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

The Due Process Clause of the Fourteenth Amendment to the United States Constitution provides:

[N]or shall any State deprive any person of life, liberty, or property, without due process of law.

CITATIONS TO THE RECORD

The relevant citations to the record will be as follows:

(R. Vol. #, Page #) and (T. Page #) – record on direct appeal to the Florida Supreme Court, Case No. SC2000-170;

“(PCR. Vol. #, Page #)” – postconviction record on appeal, Case No SC2011-615;

“(2PCR. Page #)” – successive postconviction record on appeal, Case No: SC2016-1153;

“(3PCR. Page #)” – successive postconviction record on appeal, Case No: SC2026-1234;

“(WR. Page #)” – successive conviction proceedings under warrant, Case No. SC2026-1281.

STATEMENT OF THE CASE

A. Relevant Facts of the Crime

Daniel Owen Conahan, Jr. was convicted of one count of first-degree murder and one count of kidnapping for the death of Richard Montgomery. (T. 2016) On April 17, 1996, Mr. Montgomery was found in a wooded area in Charlotte County, Florida, which was described as a dumping area that contained a lot of trash. Mr. Montgomery was found naked underneath a piece of carpet padding, his genitalia were removed, and there were several ligature marks on his neck, wrists, abdomen, and legs. (T. 752, 792) Mr. Montgomery was last seen less than 24 hours before his body was discovered.

Among the items collected from the location include: cigarette butts on the ground, and fibers, hairs, and a single 3.5 by 1-millimeter paint chip all alleged to come from the debris on Montgomery's body and a sheet used to transport his body. (T. 873, 876, 1653; 1883; 3PCR. 388) Early-stage polymerase chain reaction (PCR) testing was performed on the hair and cigarette butts. (3PCR. 388, 392; T. 1884) Mr. Conahan and Mr. Montgomery were excluded as the source of the DNA profiles on the cigarette butts. (3PCR. 388) One hair found in the sheet used to transport Mr. Montgomery's body was identified as his own and contained the DNA of another unknown contributor. (3PCR. 392; T. 1884-86)

Medical examiner, Dr. R.H. Imami, performed Mr. Montgomery's autopsy and collected swabs and fingernails clippings for testing. (T. 907, 911) The collected DNA was determined to belong to Montgomery. (3PCR. 396) Dr. Imami opined that Mr.

Montgomery died from strangulation and further noted that the ligature markings on his body were sustained after he died. (T.939-40)

There were no eye witnesses and no forensic clues pointing to a suspect. In the days and weeks following his death, police spoke to family, friends, roommates, and an ex-girlfriend, developing many leads, many of which were never thoroughly investigated. Police spoke to Mr. Montgomery's mother, Mary Montgomery-West who provided several names of Mr. Montgomery's friends and associates as well as the names of multiple people who had harmed Mr. Montgomery in the past. Mr. Montgomery had been molested by an uncle and his mother's fiancé. Ms. Montgomery-West also provided the names of homeless people that spent time at Mr. Montgomery's home and offered details about a prior associate that she was concerned about. One of Mr. Montgomery's uncles, James Bauman had been involved in the assault and murder of a gay man in 1988 in which the victim's genitals had been mutilated. Bauman received an immunity deal for that case.

In June of 1996, the Charlotte County Sheriff's Office (CCSO) was informed of a Fort Myers Police Department (FMPD) report from two years earlier in which a man named Stanley Burden claimed Mr. Conahan assaulted him in the woods. (T. 1121; 1159-66) Burden told police he went to the woods to pose for nude bondage theme photos in exchange for payment. Burden claimed that while he was tied to a tree for the photos, Mr. Conahan suddenly tried to sexually assault him and strangle him. (T. 1159-66) He claimed Mr. Conahan attempted to strangle him for thirty minutes, gave up, and offered to pay Burden before walking away. (T. 1166-69)

According to Burden, Mr. Conahan allegedly made this offer as Burden used pliers Conahan left on the ground to free himself of the rope. (T. 1169) Notably, at last one investigating officer did not believe Burden because he felt Burden was not conveying the full story. (T. 1126)

Despite the lack of any credible forensic evidence linking Mr. Conahan to the crime, Mr. Conahan's maintenance of his innocence, and the absence of any credible connection between the circumstances of Montgomery's assault and Burden's assault, the State charged Mr. Conahan with the murder, kidnapping, and sexual battery of Montgomery. (R. Vol. 1, 1-2)

B. Trial Proceedings

The State built a circumstantial case against Conahan. Indeed, there was no direct evidence linking him to the gruesome crime. The State's case centered on four areas: (1) Burden's *Williams*¹ rule testimony (similar bad acts testimony); (2) expert testimony asserting Montgomery's injuries were antemortem and consistent with being tied to a tree; (3) expert testimony asserting fibers and a paint chip linked Mr. Conahan's father's vehicle to the scene; and (4) Mr. Montgomery's mother Mary

¹ *Williams v. State*, 110 So. 2d 654, 662 (Fla. 1959) (“[E]vidence revealing other crimes is admissible if it casts light upon the character of the act under investigation by showing motive, intent, absence of mistake, common scheme, identity or a system or general pattern of criminality so that the evidence of the prior offenses would have a relevant or a material bearing on some essential aspect of the offense being tried.”)

Montgomery-West's surprise testimony connecting Burden's and Montgomery's assaults.²

Because Mr. Montgomery's body contained ligature marks, the State's theory was that Mr. Conahan, who is gay, had lured Mr. Montgomery, another gay man, to the wooded area under a pretense of photographing Mr. Montgomery in nude bondage themes, and strangled him. This was based on Burden's claims. (T. 1156-69) Over defense objection, the State used this testimony to suggest a modus operandi existed between both cases, thereby implicating Mr. Conahan as Mr. Montgomery's assailant. (T. 1254-57) Notably, the State did not pursue Burden's case and noelle prosecuted the charges against Mr. Conahan prior the Montgomery trial. This meant that the State never had to meet the beyond a reasonable doubt standard concerning Burden's allegations.

Mr. Conahan testified at trial. Despite the heinous allegations against him, he took the stand and spoke about his encounter with Burden. Mr. Conahan acknowledged that he had previously solicited Burden and that the two engaged in a single consensual sexual act. (T. 1910) Mr. Conahan then drove Burden back to the location where the two initially met. Mr. Conahan acknowledged that he was interested in taking photos of Burden, but that Burden declined his offer and the encounter ended. (T. 1914)

² The State also presented the testimony of John Cecil Neuman, who claimed that Mr. Conahan had stated to him that "Montgomery was a mistake." (R. Vol. 6. 1074). Neuman was a known jailhouse informant who served a fraction of his 12-18 year sentence for participating in a racketeering and robbery ring in which he and his co-defendants posed as police and burglarized homes.

Mr. Conahan was a gay man living with his parents in South Florida in the 1990's, a time that was incredibly difficult for gay men to find their own community and to have open, public relationships. This is part of the reason he opted to waive a jury for the guilt presentation. The community in Southwest Florida was quite homophobic at the time and he worried he would not get a fair trial, particularly in light of the fact that he had solicited men for sex.

At the guilt phase portion of Mr. Conahan's trial, the court heard from Dr. Imami, who indicated Mr. Montgomery's post-mortem (after death) wounds included those on his wrists and other areas. (T. 938) His autopsy report indicated that the only ante-mortem (pre-death) injuries on Mr. Montgomery were the ligatures on his neck and thorax. (R. Vol. 11, 2133) Imami did agree with the State that the scratches on Mr. Montgomery's back *could be* consistent with being tied to a tree. (T. 925)

At penalty, the State swapped experts and presented Dr. Carol Huser, who testified to the jury that the wounds on Mr. Montgomery's neck, wrists, and ankles must be ante-mortem wounds because "it makes no sense to tie up a dead man." (T. 2441). This, Dr. Huser testified, was based solely on a common-sense analysis, and not on medical and scientific guidance with respect to assessing the timing of wounds during an autopsy. (T. 2412, 2441; 3PCR. 222)

There was no evidence presented that Mr. Montgomery was tied to a tree. Luminol testing of trees in the area was negative for blood. There were no ligatures found at the Montgomery crime scene nor was there any evidence presented that Mr. Montgomery was sexually assaulted. Moreover, the scrapes and scratches on Mr.

Montgomery's back and buttocks were determined by the medical examiner, Dr. Imami, to have been inflicted *after death*.

The State argued fiber and paint chip evidence connected Mr. Conahan to the location where Mr. Montgomery was found. FDLE analyst Paula Sauer analyzed hundreds of fibers from the scene and fibers collected from Mr. Conahan's home and vehicles; however, this analysis was limited to a microscopic comparison. (T. 1727-28) Sauer could not definitively determine the source of the fibers, but that did not stop the State from insisting in closing that there were "hundreds and hundreds" of fibers linking Mr. Conahan to the scene. (T. 1727-28, 1977) FDLE Analyst Janice Taylor examined a 3.5 by 1-millimeter paint chip allegedly collected from the debris on Mr. Montgomery's body. Notably, neither the autopsy report nor evidence collection reports indicate the existence of the paint chip. Taylor testified the paint chip contained four layers of paint that she opined to be "typical of an [sic] automotive refinish" and similar to the finish on Mr. Conahan's father's car. (T. 1782-83, 1801) In closing, the State asserted the paint chip came from Mr. Conahan's vehicle, despite Taylor's testimony that she could not definitively conclude the paint chip originated from the vehicle. (T. 1782-83)

And while the DNA found on Mr. Montgomery's hair found on the sheet used to transport him did not match Mr. Conahan, (T. 1884-85) the State improperly argued Mr. Conahan *could be* a contributor because some of his alleles matched those of the contributor. (T. 1886) Developments in science demonstrate that this is untrue.

The State also presented Ms. Montgomery-West. At first, her testimony was not critical to the State's case. She offered no probative information about the crime nor details about the identity of the assailant. She largely testified to the information she provided to police concerning Montgomery's life. On cross-examination, however, for the first time, Ms. Montgomery-West claimed that her son had spoken of Mr. Conahan by name and described as him as a new friend. On redirect, the State goaded Ms. Montgomery-West and elicited that her son *also* told her Mr. Conahan was a nurse, had been in the Navy, and lived in Punta Gorda, facts which were widely publicized prior to her testimony and never-before mentioned by Ms. Montgomery-West until trial. She also testified, again for the first time, that Mr. Montgomery told her someone offered him money to pose nude, a fact which the State used to connect the case to Burden's account. Ms. Montgomery-West claimed she had disclosed all of this information to the State prior to trial. When asked to point to the portion of her statement where she did so, she pointed to the entries labeled as "inaudible" on the transcript. (T. 1091-1113)

The jury returned an advisory verdict of 12-0 for death and made no factual findings. The trial court found three aggravating circumstances: (1) the crime was committed while the defendant was engaged in the commission of a kidnapping; (2) the crime was committed in a cold, calculated, and premeditated manner without any pretense of moral or legal justification; and (3) the crime was especially heinous, atrocious, and cruel. *Conahan v. State*, 844 So. 2d 629 (Fla. 2003).

C. State Postconviction Proceedings

In his initial postconviction proceedings, and throughout his successive proceedings as newly discovered evidence became available, Mr. Conahan has contested the reliability of the four pillars of the State's case and the circumstantial nature of the evidence lodged against him.

a. Mary Montgomery-West's False Testimony

During Mr. Conahan's initial postconviction proceedings, collateral counsel conducted a forensic evaluation of Ms. Montgomery-West's audio taped statement in which she, as she alleged at trial, apparently gave Mr. Conahan's name to police in her sworn statement. Contrary to her testimony, the evaluation revealed Ms. Montgomery-West directly told police she did *not* know of any men her son was in a relationship with aside from an individual named Bobby. Mr. Conahan then amended his motion adding a *Giglio*³ claim asserting Ms. Montgomery-West's testimony was materially false, this fact was known and exacerbated by the State, and the State failed to correct her testimony. The State acknowledged that the inaudibles in Ms. Montgomery-West's transcripts did not at all reference the curiously missing information she claimed it did. However, the State then argued that she must have told other police during the investigation. Discovery materials establish that isn't so.

The state postconviction court denied Mr. Conahan's claim and the Florida Supreme Court affirmed. (PCR. 1678); *Conahan v. State*, 118 So. 3d 718 (2013). The court determined that even if Ms. Montgomery-West's testimony was false, it wasn't

³ *Giglio v. United States*, 405 U.S. 150 (1972).

material. The court pointed to the testimony of the snitch witness, Neuman, and to the testimony of Robert Whittaker, the man that owned the trailer Mr. Montgomery lived in. However, the record clearly established that Whittaker had changed his testimony several times and Mr. Montgomery's sister even testified that Mr. Montgomery felt uncomfortable living with Whittaker.

b. Stanley Burden's False Testimony

At trial, Burden swore he had not been offered any promises or inducements for his testimony. In 2015, however, Mr. Conahan learned that Burden lied under oath. Collateral counsel received unsolicited letters from Burden detailing an offer of assistance he received from prosecutor Lee prior to his testimony in the Montgomery trial. At the time of trial, Burden was serving a 15-25-year sentence in Ohio for the rape of a minor. Burden signed a declaration and affidavit explaining he only testified because Lee promised to write a letter to the Ohio Parole Board on his behalf. He further swore that Lee instructed him to lie on the stand in the event he was asked about the deal. (2PCR. 55-60) Mr. Conahan timely filed a *Giglio* claim asserting Burden's testimony that he received no promises of assistance was false, the State knew of its falsehood, and the testimony was material because it was used as similar act evidence to link Mr. Conahan to Mr. Montgomery. Mr. Conahan also asserted a *Brady*⁴ violation because the State concealed its promise of assistance and knowledge that Burden lied on the stand—going so far as to tell Burden to lie about the offer if asked to preclude proper impeachment—and Burden's testimony was the crux of the

⁴ *Brady v. Maryland*, 373 U.S. 83 (1963).

State's case. The court summarily denied Mr. Conahan's claim. *Conahan v. State*, No. SC16-1153, 2017 WL 656306, at *1 (Fla. Feb. 17, 2017).

Notably, the state postconviction court acknowledged that Burden is a habitual liar, (2PCR-389), yet subsequently accepted his ever-changing story about Conahan as true. In doing so, the court ignored Burden's prior statements, including details establishing that Conahan did not attack Burden. The Florida Supreme Court, again dismissing the materiality of the evidence presented in postconviction, relied on other "physical evidence corroborating Burden's testimony, including scars around Burden's neck and indentations around the tree from the rope that Conahan used to restrain and attempt to strangle Burden." *Conahan*, 2017 WL 656306, at *1.

c. Pathology, Fiber and Paint Chip Evidence

Mr. Conahan has consistently maintained that he did not assault Burden. He does not dispute that Burden may have been assaulted, but he is not responsible. Notwithstanding, what Burden experienced is not what happened to Montgomery. The two sustained different injuries and there is no credible evidence to suggest their cases are connected. In 2023, Mr. Conahan raised a claim contesting the reliability of the pathology, fiber, and paint chip evidence presented at trial based on recent developments in forensic standards and expert reports.

Dr. Jonathan Arden, a forensic pathologist, issued a report indicating the ligature marks on Montgomery, other than those on his neck, were post-mortem and the marks on his neck are inconsistent with having been tied to a tree. This evidence directly contradicts Huser's testimony to the jury at the penalty phase that most of

Mr. Montgomery's injuries were ante-mortem and that he was strangled against a tree, thereby weakening the State's theory that Mr. Conahan strangled Mr. Montgomery in a fashion similar to Burden. In support of the HAC aggravator, the trial court expressly stated that "the pre-mortem wounds to his body reflect a struggle for his life" and "his back bore crisscross scratching produced by his struggle while being tied to a tree or other rough surface." (R-Vol-18, 3288) The report established that the finding was not supported by the evidence.

Dr. Madeline Audesmore, a forensic statistician, issued a report revealing only five fibers could seemingly connect Mr. Conahan to Mr. Montgomery. Audesmore also noted that under modern forensic standards and based on the limited analysis in Mr. Conahan's case, it was improper for Sauer to categorically conclude several fibers came from Mr. Conahan's home. Similarly, it was improper for the prosecutor to state the paint chip conclusively came from Mr. Conahan's vehicle. In July 2026, the court summarily denied his motion. Mr. Conahan timely appealed the court's denial, and three days later the Governor signed his execution warrant. The Florida Supreme Court affirmed under warrant. a1.

D. Pre-Warrant Proceedings Concerning DNA Testing

More than a year and a half before his warrant was signed, and while his successive postconviction motion challenging the pathology and fiber evidence presented at trial was pending, Mr. Conahan moved for postconviction DNA testing pursuant to Fla. R. Crim. P. 3.853, of five pieces of evidence collected from the scene where Mr. Montgomery was discovered and from his body. (3PCR. 371) The items

included cigarette butts, fingernail clippings, and a hair. *After* the Rule 3.853 motion was filed and over a span of six months, the State produced five Florida Department of Law Enforcement (FDLE) reports indicating ongoing forensic testing of evidence collected from the location where Mr. Montgomery was found had been conducted since 2022. (3PCR. 405, 406, 499, 583) The State admitted that the reports were turned over because they could be viewed as *Brady* material. (3PCR-1657) Notably, the State has been testing a cigarette butt and hairs.

Prior to these reports, Mr. Conahan was unaware that any testing and investigation were ongoing. He promptly sought public records under Fla. R. Crim. P. 3.852, particularly the supporting case file of the FDLE forensic testing. The FDLE reports themselves include very little information and the case files are necessary to assess the probative value of the testing results. Additionally, the disclosed reports indicated additional FDLE reports that were not disclosed. This, of course, would inform Mr. Conahan's pending motion for DNA testing and could be the basis for new claims.

The state postconviction court held a hearing in August of 2025 to address the public records demands and to hear argument on Mr. Conahan's claims challenging the fiber and pathology evidence. Mr. Conahan presented expert testimony identifying specific records, including items within the case file and documents held by the laboratory, that are necessary when reviewing forensic testing. (3PCR. 1107-1134) During the hearing, the court acknowledged Mr. Conahan's argument linking the relevance of the requested records to Mr. Conahan's case "makes sense" and

contained “a lot of linkage that [wasn’t] contained in these demands” for records. (3PCR-1159, 1161) Mr. Conahan subsequently amended his demands and the court held a hearing in April of 2026 hearing on the matter. During the hearing, the court requested a copy of a chart counsel had made demonstrating the connection between the FDLE reports the State disclosed and the additional reports referenced that were not disclosed.

The court did not, however, address the outstanding DNA motion. Mr. Conahan argued that the records concerning the ongoing testing could inform his motion and possibly negate testing if the State had already tested additional items, or lead to the testing of additional items.

E. Current Proceedings

On August 11, 2026, Governor DeSantis signed Mr. Conahan’s death warrant, and his execution was set for September 10, 2026. Within an hour, the Florida Supreme Court issued a scheduling order mandating that all circuit court proceedings be completed by August 21, 2026. Consequently, Mr. Conahan was given just eight business days to investigate and present any claims arising under warrant and address his outstanding motions.

The State filed a proposed scheduling order which offered Mr. Conahan until August 13 at noon to file public records demands and until August 18 to file his postconviction claims. The postconviction court held its first status under warrant approximately 24 hours after it was signed and addressed scheduling. Just three hours before the hearing, the court entered a surprising 13-page order denying Mr.

Conahan's pending public records demands. At the hearing, the court rejected the State's proposed schedule and provided Mr. Conahan considerably less time to file his demands and investigate and present his claims. Over Mr. Conahan's objection, he was given less than 6 hours to move for any records and just 75 hours to file claims.

At that initial hearing, Mr. Conahan reminded the court that his Rule 3.853 motion remained pending. The court noted it would address the motion but not "[n]ot in this hearing." (3PCR-1630) Within an hour of the hearing, the court issued an order summarily denying DNA testing. The court never heard argument on the motion.

Mr. Conahan timely filed his public records demands that evening. Because he was so limited on time, he did not address each agency directly with respect to the ongoing investigation and forensic testing in his case and instead filed a motion for rehearing of the lower court's denial of his demands. The court heard argument on Mr. Conahan's records demands the following morning, and subsequently, denied the demands filed under warrant and his Motion for Rehearing of the prior demands.

That Saturday evening, Mr. Conahan timely filed his successive postconviction motion, in which he raised two claims: Mr. Conahan again challenged the pathology used in his case and argued that the short warrant period deprived him of due process and a full and fair postconviction proceeding. With respect to the former claim, days before Conahan's warrant was signed, he learned of the Consensus Study Report titled, "Strengthening the U.S. Medicolegal Death Investigation [MLDI] System: Lessons from Deaths in Custody," published in October 2025 by the National Academies of Sciences, Engineering, and Medicine. The report documents evidence-

based concerns with death investigations and highlights specific issues that were relevant to the presentation of pathology evidence at trial.

With respect to claim two, relevant for the instant petition, Mr. Conahan alleged Florida's truncated warrant process stripped Mr. Conahan of his right to meaningful, reliable postconviction proceedings. Mr. Conahan has been afforded 30 days to litigate claims which will determine whether he lives or dies. Even worse, the resolution of his claims has been streamlined in such a fashion that any purported opportunity afforded to him to be heard has been eroded. In deference to the Florida Supreme Court's directive to expedite Mr. Conahan's warrant proceedings, the postconviction court issued a scheduling order requiring Mr. Conahan to file public records demands within six hours of its verbal order and his successive postconviction motion within 75 hours of its verbal order. Prior to the warrant, the postconviction court appeared inclined to grant Mr. Conahan access to public records demands concerning the State's ongoing DNA testing in his case, and had not yet even addressed his own request to do the same. Mr. Conahan argued that despite the court's clear engagement with Mr. Conahan's arguments over the course of over a year, he received a rushed disposition of his Rule 3.853 motion and Rule 3.852 demands for no other reason than the fact that he is now under warrant.

The following Monday, the court held a case management conference on Mr. Conahan's postconviction motion at 1:00 p.m. That morning, at approximately 9:25 a.m., Mr. Conahan's legal team spoke with Alfred Rhiner, a defendant incarcerated at Avon Park Correctional Institution. Rhiner was housed in the same cell as Mr.

Conahan, John Neuman, and a third cellmate Christopher Ortiz during Mr. Conahan's pretrial detention. Due to the expedited nature of the warrant, Mr. Conahan was unable to contact Rhiner before he filed his postconviction motion. Rhiner provided newly discovered evidence about the circumstances of the purported statements Neuman alleged Mr. Conahan made to him. Rhiner remembers very clearly that Mr. Conahan adamantly maintained his innocence. Following the call with, Mr. Conahan promptly sought leave to amend his Rule 3.851 motion. Because the court was to hear his motion in just three hours, Mr. Conahan filed a quick motion with some of the details he just learned; however, Mr. Conahan identified in the motion that he had not yet had an opportunity to fully plead his claim.

The postconviction court denied Mr. Conahan's motion to amend his claims and denied all claims for relief, based largely on Burden's testimony. a39. The court determined that any DNA evidence located on the items requested for testing would not exonerate Mr. Conahan nor mitigate his sentence because Mr. Conahan was convicted "despite there being no DNA evidence linking him to Montgomery" and "the absence of evidence is not evidence of absence." a36. The court continued that the presence of any DNA would be unsurprising because Montgomery's body was located in an open area.

Florida Supreme Court Opinion

On appeal, Mr. Conahan argued: (1) the postconviction court abused its discretion in denying him access to postconviction DNA testing; (2) the postconviction court improperly precluded his opportunity to amend his motion for relief in light of

the newly discovered evidence from Rhiner; and (3) Florida's warrant process has deprived Mr. Conahan of his constitutional right to substantive and procedural due process. Mr. Conahan simultaneously filed a State habeas petition in which he addressed the amalgamation of constitutional errors in his case requiring the Florida Supreme Court's intervention and correction.

In rejecting Mr. Conahan's claim that Florida's warrant process violates his due process rights, the court held that a successive Rule 3.851 motion is not the proper vehicle for such a claim because "procedural defects in carrying out a sentence give no reason to vacate the sentence (or the underlying judgment)." a4. The court denied the claim as meritless citing its own history of repeatedly upholding the constitutionality of Florida's expedited warrant proceedings, and finding Mr. Conahan "has not identified any matter on which he was denied notice and an opportunity to be heard." a4. The court further reasoned that Mr. Conahan has had twenty-three years to raise any additional claims. a4.

The Florida Supreme Court affirmed the denial of postconviction DNA testing under Rule 3.853 for two reasons. First, concerning the items containing an unknown suspect's DNA—the hair and two cigarette butts—the court found denial was proper because "[t]here is no reasonable probability that knowing the identity of the third-party contributor would have changed any aspect of the outcome." a5. The only explanation the court offers for that lack of a reasonable probability is the conclusion that random DNA would be unsurprising given the fact that the evidence was collected from an open area which also seemed to be used as a trash dump.

Second, concerning Mr. Montgomery's fingernail clippings, the court determined Mr. Conahan did not show a reasonable probability that DNA testing would exonerate him or lessen his sentence because the argument that Montgomery clawed at his attacker during the murder was speculative. a5. The court did not discuss the probability that Mr. Montgomery came into accidental or willing physical contact with his killer prior to his death.

F. Additional Context

Before Mr. Montgomery's body was discovered, five law enforcement agencies: CCSO, FMPD, North Port Police Department, FDLE, and the State Attorney, created a task force to investigate several other bodies that were discovered within a ten-mile radius in the Punta Gorda area. Over the years, the number grew to approximately ten. In 2000, the task force located eight bodies approximately 50 miles away in Fort Myers. Early articles published about the discovery indicated that law enforcement did not recover any personal items at the scene and could not provide any information as to how long the individuals had been there.

The State saw two strange crimes—the Burden allegations and Montgomery's death—and treated them as the same despite the evidence establishing that they were two distinctly different sets of circumstances. Once law enforcement set their eyes on Mr. Conahan, the investigation into additional suspects for Mr. Montgomery's death, and for the death of the unsolved murders, halted. Mr. Conahan has never been charged with any crimes related to the cold cases, yet, the State continues blame Conahan for the deaths of all of the men the State discovered over more than six years

and across multiple counties. Thirty years later, the police have not identified a shred of evidence to even suggest so. To the contrary, the evidence presented undermines the incredible argument that these killings are even linked. The victims range in age, size, and background.⁵ And, the locations span more than 50 miles from North Port to Fort Myers.

For example, law enforcement continue to blame Mr. Conahan for the murder of a man that went missing in 1991, three years before Burden's report, and discovered in 1994. He was initially labeled the first John Doe, and has since been identified. Newspaper articles indicate that the man's genitals had been removed. Mr. Conahan cannot be responsible. Testimony established Mr. Conahan moved to Florida in 1993. (T-1902) Police wholly failed to investigate James Bauman whose victim was found within the ten-mile radius of the discovery of both Montgomery and this unsolved case.

The State continues to make this case something that it isn't, and in so doing, has tried to link Mr. Conahan to murders for which he is not responsible. Rather than present a straightforward case, the State continues to adjust its theories to conform with any conclusion in which Mr. Conahan is deemed a killer.

This Petition now follows:

REASONS FOR GRANTING THE PETITION

The State of Florida will execute Daniel O. Conahan, Jr. in three days, after

⁵ In support of admitting Burden's testimony, the State argued that Conahan targeted a specific type of appearance.

having arbitrarily denied him statutory DNA testing in a largely circumstantial case. This Court’s “duty to search for constitutional error with painstaking care is never more exacting than it is in a capital case.” *Kyles v. Whitley*, 514 U.S. 419, 422 (1995) (quoting *Burger v. Kemp*, 483 U.S. 776, 785 (1987)). This principle extends to all lower courts—both state and federal—given the fact that “death is different.” *See also Lockett v. Ohio*, 438 U.S. 586, 605 (1978) (“Given that the imposition of death by public authority is so profoundly different from all other penalties, we cannot avoid the conclusion that an individualized decision is essential in capital cases”); *Asay v. State*, 210 So. 3d 1, 18 (Fla. 2016) (“Both this Court and the Supreme Court have recognized that ‘death is different.’”) (citations omitted).

The Florida Supreme Court upheld the postconviction court’s denial of Mr. Conahan’s motion for DNA testing, made pursuant to a state statute specifically providing for such postconviction requests, by interpreting the Rule to require a heightened burden to show the materiality of probative testing results, thereby creating a process “fundamentally inadequate to vindicate the substantive rights provided.” *Dist. Atty’s Office for 3rd Jud. Dist. v. Osborne*, 557 U.S. 52, 69 (2009).

Historically, the Florida Supreme Court prided itself on the fact that “in death cases, [it] has taken care to ensure all necessary protections are in place before one forfeits his or her life . . .” *Asay v. State*, 210 So. 3d 1, 18 (Fla. 2016). The court has since abdicated its responsibility to conduct meaningful appellate review in capital postconviction cases, particularly those in a successor posture, and instead, “in its regular practice . . . has become a rubber stamp for lower court death-penalty

determinations.” *Barclay v. Florida*, 463 U.S. 939, 973 (1983) (Stevens, J., concurring in the judgment). This Court’s intervention is warranted at this time “even though [its] labors may not provide posterity with a newly minted rule of law,” and its review of Mr. Conahan’s case is “especially important” given the “current popularity of capital punishment” in Florida. *Kyles v. Whitley*, 514 U.S. 419, 455-56 (1995) (Stevens, J., concurring).

Mr. Conahan sought DNA testing of evidence recovered from the scene where the victim was found and evidence recovered from the victim, more than a year and a half ago. In the time between his motion for DNA testing and the Governor’s signing of his execution warrant, he continued to litigate access to testing, access to public records, and challenged the reliability of his convictions and sentence, which he asserted were obtained using improper and unscientific pathology opinions unsupported supported by the evidence in this case. Once the execution warrant was signed, the state postconviction court denied his access to testing without the opportunity to even address his DNA testing motion that had been pending.

The court’s actions in this case are of particular of concern because after Mr. Conahan sought DNA testing, he learned the State had been conducting its own DNA testing for the previous three years. The court ultimately denied access for Mr. Conahan to test items while the State was permitted to do so. And, the court determined that the items Mr. Conahan sought testing of were not of a nature that could exonerate him, yet the State was testing similar items, some of which were the same type.

Permitting the state court's decision denying potentially exculpatory DNA testing to stand, and Mr. Conahan's execution to go forward, would compound previous injustices in this case and contravene the Florida DNA statute's dual purposes of ensuring that the innocent are not wrongfully convicted and that the criminal legal process reveals the truth of what happened. "DNA testing has an unparalleled ability to both exonerate the wrongly convicted and to identify the guilty," *Osborne*, 557 U.S. at 55, and the public has an interest in the assurance that the State is not executing an innocent man. 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. *Id.* at 68-69.

The Florida Supreme Court's construction of Rule 3.853 violates due process and threatens to send an innocent man to his death. This case and the question it presents are exceptionally important and warrant plenary review. DNA testing has the power to conclusively show that Florida has gotten it wrong and will execute an innocent man. Due process requires that this Court remand these proceedings to the postconviction 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.

I. State Courts Cannot Impose Unduly Burdensome or Unreasonably Heightened Standards to Arbitrarily Deny Prisoners their State-created Right to Prove their Innocence through DNA Testing.

The State of Florida has created a statutory procedure through which persons

convicted of a felony or who have entered a plea of guilty or nolo contender can obtain postconviction DNA testing and then use exculpatory results from that testing to secure postconviction relief. Fla. Stat. § 925.11. Fla. R. Crim. P. 3.853 offers a process specific to capital defendants in postconviction proceedings, wherein defendants can obtain postconviction DNA testing and then use exculpatory results from that testing to secure postconviction relief in the form of a new trial or a new penalty phase proceeding. These processes, established by the State, for obtaining access to DNA testing must comport with fundamental fairness and due process. *Osborne*, 557 U.S. at 69; *see also Skinner v. Switzer*, 562 U.S. 521, 530 (2011) (permitting a due process claim under 42 U.S.C. § 1983 where a state official refuses to release biological evidence for testing, thereby depriving a prisoner of “his liberty interests in utilizing state procedures to obtain reversal of his conviction and/or to obtain a pardon or reduction of his sentence”); *see also Gutierrez v. Saenz*, 606 U.S. 305, 314 (2025). Rule 3.853, as construed by the Florida Supreme Court, fails to fulfill that command.

Rule 3.853 requires the moving party to provide a statement establishing “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” and “a statement that identification of the movant is a genuinely disputed issue” or “an explanation of how the DNA evidence would either exonerate the defendant or mitigate the sentence that the movant received.” Fla. R. Crim. P. 3.853(b)(3)&(4).

At trial, the State presented circumstantial “scientific forensic” evidence

purporting to identify a similarity in a single paint chip from a car and five fibers linking Conahan to the crime. In postconviction, Mr. Conahan has challenged the admission of the “evidence” as both unreliable and improper; and under warrant, the Florida Supreme Court acknowledged “the State greatly exaggerated the weight of the Fiber evidence” at trial.⁶ a6. Without the fiber evidence, the State was left with little to connect Mr. Conahan to the wooded area and a largely circumstantial case.⁷ The State’s case has fallen apart from all angles. Despite this, Florida continues to deny relief. Each time the court addresses a questionable aspect of the State’s case, even if it is determined that the evidence is no longer reliable, the court dismisses the challenge as harmless, relying on another problematic aspect of the case, that has likewise been challenged.

Mr. Conahan sought testing of two cigarette butts located at the scene, which had been previously tested and results indicated the evidence contained DNA. Prior testing determined that the contributor was neither Montgomery nor Mr. Conahan. Mr. Conahan sought additional analysis of the DNA to determine if that third party could be the true killer. Mr. Conahan likewise sought testing of a hair found on Mr.

⁶ The court determined that the absence of the fibers did not establish Mr. Conahan’s innocence. a6.

⁷ Mr. Conahan maintains that the purported paint chip is likewise unreliable and should not have been admitted. The State improperly overstated its weight at trial. The paint chip, 3.5 by 1-millimeter in size, was allegedly recovered on Mr. Montgomery’s body, yet it is neither noted in the autopsy report nor any reports about the collection of evidence. Likewise, it is not logical that a paint chip from Mr. Conahan’s car would be on Mr. Montgomery’s body under the State’s theory that Montgomery went willingly to the woods. It *is* logical however, that the paint chip came from the vacuumings collected from the cars.

Montgomery's body. The hair was determined to be Mr. Montgomery's and it also contained DNA that was neither his nor Mr. Conahan's. At trial, the State argued that the DNA could be Mr. Conahan's due to the presence of two alleles. Yet, in postconviction, the State argued that the hair was immaterial to the question of innocence. Certainly a hair found on Mr. Montgomery's body containing a third party's DNA, that the State argued at trial could be the defendant's, would be probative in the State's investigation of the case. Lastly, Mr. Conahan sought testing of fingernail clippings collected from Mr. Montgomery. While the State's case rested on the premise that Mr. Montgomery went to the wooded area willingly, he was murdered by strangulation. Certainly some sort of struggle ensued. Indeed, the State argued that the scratches on his back were the result of a struggle while Mr. Montgomery was allegedly tied to a tree. Even so, Mr. Montgomery could have just as easily accidentally or willingly touched his assailant prior to his death.

Precluding testing, the Florida Supreme Court determined that "there is no reasonable probability that knowing the identity of the third-party contributor would have changed any aspect of the outcome" a5. The Florida Supreme Court has long held that the question of whether the DNA will exonerate a movant "requires consideration of the facts of the crime itself and the other available evidence." *Zollman v. State*, 820 So. 2d 1059 (Fla. 2002). The court has affirmed the denial of DNA testing in situations wherein the results could not exonerate the defendant. For example, where defendant admitted to being present at the scene, or in a sexual assault case wherein a rape kit tested negative for any seminal fluids. *Id.* at 1063.

Prior Florida opinions, however, do contemplate testing wherein there is some evidence suggesting the defendant was involved such as a victim's identification of the defendant. *Id.* Mr. Conahan's case is of the latter type wherein the presence of a third party's DNA on items collected from the scene would shed light on his innocence.

Contrary to the court's ruling, the presence of a third-party contributor would be probative, particularly DNA on Mr. Montgomery's hair and in his fingernail clippings. Indeed, results from testing of DNA located on a victim's body is precisely the type of evidence law enforcement uses to investigate potential suspects. The state court's construction of the rule, and denial of testing, imposes an arbitrary and impossible burden on the moving party seeking DNA testing, in violation of the Fifth, Eighth and Fourteenth Amendments. This is not the type of case wherein Mr. Conahan has ever suggested he was involved or that a second suspect was present. Thus, the identification of another party's DNA could exonerate Mr. Conahan.

To preclude Mr. Conahan from such testing in this largely circumstantial case begs the question whether the court will ever determine DNA testing is probative, outside of the existence of sperm in a sexual assault case. This case is circumstantial and the presence of a third party's DNA on Mr. Montgomery would provide law enforcement with the identity of the true killer. However, rather than permit testing, Florida's courts continue to cut Mr. Conahan off from a viable, state-created avenue to litigate his innocence claim in violation of his federal right to due process.

Florida's imposition of this heightened burden is completely arbitrary. *The State continues to test evidence it believes is probative as to identity, including the*

exact type of evidence Mr. Conahan seeks to test: cigarette butts and hairs. Mr. Conahan seeks an opportunity to test evidence akin to that which the State has tested behind closed doors for the past four years. It is not speculation to assert that the presence of another suspect's DNA on an item found at Montgomery's crime scene, and subsequent investigation of said suspect, would result in a less severe sentence for Mr. Conahan.

A procedural rule should not be construed or applied in a manner that effectively nullifies a substantive statutory right absent a clear expression of legislative intent. Construing Rule 3.853 to impose a heightened showing of materiality would frustrate the remedial purpose of Florida's postconviction DNA testing framework and produce a result contrary to the intent of its authors, whose objective was to ensure access to potentially exculpatory DNA evidence rather than to erect procedural obstacles that prevent its consideration.

II. The State Courts Cannot Evade Due Process and Preclude Full and Fair Postconviction Proceedings Simply to Comport with the Demand for Expedient Warrant Proceedings.

Florida's commitment to its rushed warrant proceedings have caused an improper expedited review of Mr. Conahan's postconviction DNA testing litigation depriving him of due process. The warrant procedures in Florida and its constituent proceedings are so truncated that they preclude a meaningful hearing on claims raised under warrant, and in Mr. Conahan's case, the unnecessarily truncated process precluded meaningful review of his claims filed more than a year before Florida scheduled his execution. Mr. Conahan highlighted the glaring due process violation this system created in his own case—he was given far less time than any

other capital defendant under execution warrant in Florida to litigate his warrant proceedings, and precluded full and fair review of his pre-warrant proceedings in order to meet the demands of the court's briefing schedule.

At the hearing on the Mr. Conahan's public record demands filed pre-warrant, the state postconviction court seemed to agree with Mr. Conahan's arguments in support of accessing the public records, noting "It makes sense to me. . ." yet nearly a year later and within 24 hours of the signing of the warrant, the court suddenly issued an order denying all records demands. Hours later, the court issued an order denying his motion for postconviction DNA testing. The court had never even heard argument on the motion. The court's actions demonstrate that the signing of the warrant improperly curtailed Mr. Conahan's ongoing litigation.

The Due Process Clause of the Fourteenth Amendment guarantees that "no State shall . . . deprive any person of life, liberty, or property without due process of law." Amend. XIV, U.S. Const. "Whether acting through its judiciary or through its legislature, a state may not deprive a person of all existing remedies for the enforcement of a right, which the state has no power to destroy, unless there is, or was, afforded to him *some real opportunity to protect it.*" *Brinkerhoff-Faris Trust & Savings Co. v. Hill*, 281 U.S. 673, 682 (1930) (emphasis added). "At a minimum," due process "require[s] that deprivation[s] of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case." *Armstrong v. Manzo*, 380 U.S. 545, 550 (1965) (quoting *Mullane*, 339 U.S. at 313).

As this Court held in *Mathews v. Eldridge*, "the fundamental requirement of

due process is the opportunity to be heard ‘at a meaningful time and *in a meaningful manner.*’ 424 U.S. 319, 333 (1976) (quoting *Armstrong*, 380 U.S. at 553) (emphasis added). Nowhere can these principles be more important than in a capital case, where this Court has repeatedly emphasized that the Eighth Amendment requires a heightened degree of reliability in the process. *See, e.g., Herrera v. Collins*, 506 U.S. 390 (1993); *McKoy v. North Carolina*, 494 U.S. 433 (1990); *Loudermill*, 470 U.S. at 542 (quoting *Mullane*, 339 U.S. at 313) (reiterating that the due process requirements of notice and opportunity must be “appropriate to the nature of the case”); *Eddings v. Oklahoma*, 455 U.S. 104 (1982); *Lockett v. Ohio*, 438 U.S. 586, 604 (1978) (plurality); *Woodson v. North Carolina*, 428 U.S. 280, 305 (1976). “If the Constitution renders the fact *or timing* of his execution contingent upon establishment of a further fact . . . then that fact must be determined with the high regard for truth that befits a decision affecting the life or death of a human being.” *Herrera*, 506 U.S. at 405-406 (quoting *Ford v. Wainwright*, 477 U.S. 399, 411 (1986)).

The Florida legislature explicitly granted prisoners the right to DNA testing for the purpose of enabling them to pursue potentially meritorious claims of innocence. Should Mr. Conahan establish that he is wrongfully convicted, his death sentence would violate the Eighth Amendment. A legally sufficient motion for DNA testing pursuant to Rule 3.853(b) requires a litigant plead six specific criteria. Subsection (c) of the rule instructs a court to deny the motion if it is facially insufficient; however, if the motion is facially sufficient, the State *must* be ordered to respond. Fla. R. Crim. P. 3.853(c)(2). The court then is permitted to rule on the merits

of the motion or set it for a hearing. In Mr. Conahan's case, by ordering the State to respond, the court determined the motion was facially sufficient. However, in denying Mr. Conahan's motion, the postconviction court determined he failed to "make a facially or legally sufficient" motion. a36.

Notwithstanding, the State in response asserted facts that remain in dispute. Florida law provides that an evidentiary hearing is required in postconviction proceedings when there are disputes of facts at issue, this includes questions presented in postconviction motions for DNA testing. *See Merritt v. State*, 388 So. 3d 1 (Fla. 4th DCA 2024) (finding the State's representation that evidence no longer existed for DNA testing a disputed fact warranting an evidentiary hearing); *Caymitte v. State*, 868 So. 2d 681 (Fla. 4th DCA 2004) (reversing and remanding for an evidentiary hearing to determine if DNA existed to be tested where court summarily denied movant's motion); *Cardona v. State*, 109 So. 3d 241, 247-48 (Fla. 4th DCA 2013) (an evidentiary hearing is necessary to determine the proper scope and procedure for DNA testing).

Because Mr. Conahan's allegations at the pleading stage must be taken as true, unless concretely refuted by the record, the court was required to hold an evidentiary hearing and make findings as to the disputed facts. That did not occur here. Mr. Conahan was not even given an opportunity to be heard on the motion. Florida's summary denial of Mr. Conahan's Rule 3.853 motion curtails this due process requirement.

It is of no relevance that Mr. Conahan's case was final on direct appeal in 2003.

Mr. Conahan diligently filed a DNA motion with no active execution date and with plenty of time to complete the DNA testing. *Cf. Logan*, 455 U.S. at 429-30 (“[T]he Fourteenth Amendment’s Due Process Clause has been interpreted as preventing the States from denying potential litigants use of established adjudicatory procedures, when such an action would be ‘the equivalent of denying them an opportunity to be heard upon their claimed right[s].’” (quoting *Boddie v. Connecticut*, 401 U.S. 371, 380 (1971))). Rather than allow Mr. Conahan access to this right, as statutorily guaranteed by Florida, the State signed a warrant and then cried delay.

Florida’s construction of Rule 3.853 improperly permits courts to summarily deny motions for DNA testing despite the necessity of an evidentiary hearing, in violation of the Fifth and Fourteenth Amendments to the United States Constitution. This abject refusal to follow the dictates of the law under warrant is not isolated to Mr. Conahan, indeed, the Florida courts have continued to treat the result of warrant proceedings as a foregone conclusion.

Mr. Conahan is not the first capital litigant to show that his convictions and sentences were illegally obtained and fail to meet constitutional scrutiny. And he is not the first that the Florida courts have wholly ignored in order to carry out executions at a rapid pace, irrespective of the constitutional errors and absence of reliability in the process.

James Duckett was treated similarly. Governor DeSantis signed Mr. Duckett’s warrant on February 27, 2026. Mr. Duckett promptly requested DNA testing of a piece of evidence the State and court agreed would be probative to the question of

identity in his case. *See Duckett v. State of Florida*, No. 26-5156, 2026 WL 2164207 (July 28, 2026). Because the DNA testing could not be completed within the warrant period, the Florida Supreme Court granted a stay of execution. Notably, Mr. Duckett was the first capital litigant to receive a stay of execution from the Florida Supreme Court in nearly eight years and the first under the current administration which has carried out forty-two executions since May 2019.⁸

However, Mr. Duckett's stay proved to be futile when the state postconviction court, at the behest of the State and over Mr. Duckett's objection, chose to expedite the DNA testing process and ordered the sample be processed using the quickest technology, not the most appropriate. The court refused to hold an evidentiary hearing, as required by Florida law, to determine the necessary testing process. *See* Fla. R. Crim. P. 3.853(b)(2) (requiring movant establish that "DNA testing techniques likely would produce a definitive result"); *Cardona*, 109 So. 3d at 247-48 (Establishing that a hearing is necessary to determine the proper scope and procedure for DNA testing). As a result, the testing was unable to yield a conclusive result as mandated by Rule 3.853.

Once the State had destroyed the best evidence, Mr. Duckett then sought testing of additional items remaining. Petition for Certiorari, *Duckett*, 2026 WL 2164207 (filed July 25, 2026) (No. 26-5156). At this point, Mr. Duckett's warrant proceedings had been ongoing for more than four months and his execution had been

⁸ Thirty-three of these executions have been carried out in the 19 months between February 13, 2025 and September 1, 2026.

stayed for more than three months, despite the state postconviction court's best efforts to hurry his case through and preclude meaningful due process at every step. *Id.* Because the court had already acknowledged that DNA testing in this case could lead to an acquittal, the court was forced to implore additional avenues to deny the motion. Imposing a temporal limitation that does not exist in Rule 3.853, the court denied the request as procedurally barred. *Id.* The court also found that Mr. Duckett had not met Rule 3.853(c)(5)(A) and shown that the evidence "may contain DNA." *Id.* The court in *Duckett* did not, however, as the law requires, hold an evidentiary hearing to determine whether the evidence contained DNA to test. Instead, the Florida executed a man after the State and the Florida courts agreed that probative DNA results could exonerate him of a crime for which he maintained his innocence of for nearly 40 years. There is no undoing Florida's wrongful execution of Mr. Duckett.

The deprivation of due process has plagued the entire warrant process in Florida, extending beyond the treatment of postconviction DNA motions. Under warrant in the case of *Billy Kearse v. State of Florida*, a juror made a social media post about her service during Mr. Kearse's trial. In her post, the juror admitted that the presence of law enforcement officers during the trial influenced her role as a juror. *See* Petition for Writ of Certiorari, *Kearse v. Florida*, 146 S.Ct. 1786 (No. 25-6926) (filed Feb. 28, 2026). Mr. Kearse promptly raised a claim in light of the newly discovered evidence:

Mr. Kearse asserted that Juror Matthews's social media comments establish not just the presence of uniformed law enforcement officers "filling" the courtroom and showing their unwavering support for the victim during the

resentencing, but also that their presence created an atmosphere that prejudiced Mr. Kearse in contravention of his “Sixth Amendment right to be tried ‘by a panel of impartial, “indifferent” jurors [whose] verdict must be based solely upon the evidence developed at trial.’” *Woods v. Dugger*, 923 F.2d 1454, 1456-57 (11th Cir. 1991) (quoting *Irvin v. Dowd*, 366 U.S. 717, 722 (1961) (alteration in original); *Holbrook v. Flynn*, 475 U.S. 560, 570 (1986) (emphasizing “the threat that a roomful of uniformed and armed policeman might pose to a defendant’s chance of receiving a fair trial”).

Id. at 13.

Searching for any conceivable way to bypass the actual constitutional issues the social media post raised, the Florida Supreme Court ignored the merits of Mr. Kearse’s claim and affirmed the summary denial by construing the newly discovered evidence standard in Florida to contain a heightened and impossible burden in showing diligence. *Id.* As it did in Mr. Conahan’s case, the court failed to engage with the probative facts that undermined the State’s case. Mr. Kearse presented credible allegations undermining the reliability of his penalty phase proceedings. The outcome of which could have resulted in a lesser sentence, particularly in light of the evidence of his intellectual disability that the jury never heard and the postconviction court refused to hear. As a result, Florida executed a man in violation of the Eight Amendment.

The court is not excused of its denial of due process because an execution warrant is signed. Yet, Florida continues to deny due process challenges to its improperly truncated warrant process relying on its history of upholding the

expedited warrant schedule in other cases. Florida's treatment of warrant cases and abject denial of due process warrants yet another intervention by this Court. ⁹

⁹ Florida has a history of ignoring Supreme Court precedent concerning the administration of the death penalty, warranting repeated intervention. Between 1959-1962, this court was required to intervene three times when Florida refused to provide litigants an evidentiary hearing where they stated a well-pled claim of the violation of a federal constitutional right. *See Cash v. Culver*, 358 U.S. 633 (1959); *McNeal v. Culver*, 365 U.S. 109 (1961); *Carnley v. Cochran*, 369 U.S. 506 (1962). This failure to heed this Court's rulings has continued over the years requiring this Court to continue to intervene as Florida routinely abandons the principles set out in *Cash*, *McNeal*, and *Carnley*, and fails to provide litigants the process necessary to assert federal constitutional claims, particularly in the capital context. In *Ford*, this Court intervened when Florida failed to provide meaningful process for capital litigants to challenge their sanity to be executed. Finding the process "necessarily inadequate," this Court determined Florida's method to determine sanity to be executed violated the "fundamental requisite of due process of law." *Ford v. Wainwright*, 477 U.S. 399, 414 (1986).

In 1989, the court intervened in *Hitchcock v. Dugger*, 481 U.S. 393 (1987), because Florida refused to allow jury instructions on nonstatutory mitigation years *after* this Court's decisions in *Skipper v. South Carolina*, 476 U.S. 1 (1986), *Eddings v. Oklahoma*, 455 U.S. 104 (1982), and *Lockett v. Ohio*, 438 U.S. 586 (1978) (plurality opinion). Just four years later, in *Parker v. Dugger*, 498 U.S. 308, 322 (1991), the Florida Supreme Court outright failed to conduct an independent appellate review, "[i]n fact, there is a sense in which the court did not review Parker's sentence at all." Despite this Court's prior decisions in *Williams v. Taylor*, 529 U.S. 362 (2000) and *Rompilla v. Beard*, 545 U.S. 374 (2005) clarifying the importance of mitigation and how the reweighing analysis should be conducted, the Florida Supreme Court continued to "discount to irrelevance" critical details of capital defendants lives, causing this Court's intervention in *Porter v. McCullom*, 558 U.S. 30, 43 (2009).

After 14 years of Florida courts failing to require juries to make findings of fact in capital sentencing proceedings and permitting the judge, not the jury, to make the requisite findings necessary to impose death, this Court struck down Florida's death penalty sentencing statute in its entirety as violative of the Sixth Amendment as enumerated in *Apprendi v. New Jersey*, 530 U.S. 466 (2000), and *Ring v. Arizona*, 536 U.S. 584 (2002). *Hurst v. Florida*, 577 U.S. 92 (2016). In the 12 years following *Atkins*, Florida failed to provide capital litigants a full and complete assessment of intellectual disability claims, instead denying claims based on an interpretation of the diagnostic criteria that "conflict[ed] with the logic of *Atkins* and the Eighth Amendment." *Hall v. Florida*, 572 U.S. 701, 720 (2014).

The court's circular reasoning as to the short warrant process is much like the circular treatment of Mr. Conahan's case in total, denying each challenge relying on other aspects of the State's case that have been undermined. When the court is faced with a challenge to the evidence it previously relied on, it moves the ball and denies relief relying on another aspect of the case. At some point, Florida must relent in its pursuit of Mr. Conahan and recognize that the State's case is not as it appeared at trial.

Mr. Conahan has a due process right to obtain the DNA testing that may result in his walking out of prison as a free man, or at least reducing his sentence of death, *Gutierrez*, 606 U.S. at 314-15 (quoting *Skinner*, 562 U.S. at 530) that is of considerably greater weight than the respondents' asserted interest in executing him first. *See Reed v. Goertz*, 146 S. Ct. 936 (2026) (Sotomayor, J., dissenting from the denial of certiorari). "It is inexplicable why [the Florida state courts refused to allow the additional testing], despite the very substantial possibility that such testing would exculpate [Mr. Conahan] and identify the real killer." *Id.* at 939 (2026) (Sotomayor, J., dissenting).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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