

*****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**

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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

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2026 WL 2603686

Only the Westlaw citation is currently available.

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Supreme Court of Florida.

DANIEL O. CONAHAN, JR., Appellant,

v.

STATE OF FLORIDA, Appellee.

DANIEL O. CONAHAN, JR., Petitioner,

v.

SECRETARY, DEPARTMENT
OF CORRECTIONS, Respondent.

Nos. SC2026-1234, SC2026-1236,
SC2026-1281, No. SC2026-1282

|

September 3, 2026

An Appeal from the Circuit Court in and for Charlotte County,
[Lisa S. Porter](#), Judge Case No. 081997CF0001660001XX

And an Original Proceeding – Habeas Corpus

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Opinion

[TANENBAUM](#), J.

*1 Daniel Conahan received a death sentence for murdering
Richard Montgomery. Governor DeSantis signed a warrant
on August 11, 2026, and Conahan's execution was set for
September 10, 2026. Conahan appeals from court orders
summarily denying his third and fourth successive motions

for post-conviction relief filed under [Florida Rule of Criminal
Procedure 3.851](#) and from an order summarily denying his
motion for post-conviction DNA testing filed under [Florida
Rule of Criminal Procedure 3.853](#). He also requests a stay of
execution and has petitioned for a writ of habeas corpus. We
have jurisdiction. *See Art. V, § 3(b)(1), (9), Fla. Const.*; *see
also State v. Fourth Dist. Ct. of Appeal*, 697 So. 2d 70, 71 (Fla.
1997) (holding “that in addition to our appellate jurisdiction
over sentences of death, we have exclusive jurisdiction to
review all types of collateral proceedings in death penalty
cases”). For the reasons set out below, we affirm the summary
denials of post-conviction relief, deny Conahan's request for
a stay of execution, and deny him any relief on his habeas
petition.

I

The underlying facts of this case are as follows. Sometime in
the evening of April 16, 1996, Montgomery informed some
friends that he was going out to make a few hundred dollars
but would return soon. He did not tell the friends, but he did
tell his mother, that someone had offered him \$200 to pose for
nude pictures. He also mentioned, though without identifying
Conahan as the offeror, that he had recently met a Daniel
Conahan who lived in Punta Gorda Isles and was a nurse at a
medical center, all of which accurately described Appellant/
Petitioner, Conahan.

The next day, April 17, Montgomery was found dead in a
remote, heavily wooded area. He was nude, his genitalia had
been removed, and he had visible signs of trauma to the
neck, waist, wrists, and back. His body was covered in carpet
padding, and deputies found a rope on top of a nearby trash
pile. They also found human remains from other, unidentified
decedents around the scene. Of note, a K-9 showed unusual
interest in a portion of a tree that looked somewhat flattened
and worn down.

An autopsy showed that Montgomery had died from
strangulation. The marks along his neck, chest, and wrists
were of similar width and were consistent with marks that
would be left on an individual who had been tied to a tree.
Those marks did not extend to his back, but Dr. Imami, who
prepared the autopsy report, agreed that the distinct marks on
his back were also consistent with his having been tied to a
tree.

In 1994, Conahan carried out an eerily similar assault on another victim, Stanley Burden,¹ who physically resembled Montgomery and, like Montgomery, was a high school dropout who had difficulty maintaining steady income. Conahan approached Burden and offered to pay him between \$100 and \$150 to pose for nude photographs. After Burden agreed, Conahan drove him to the woods, where Conahan laid out a tarp and took multiple pictures on a Polaroid camera. Conahan then took out a package of clothesline so that he could take “bondage” pictures. Conahan asked Burden to get close to a nearby tree, draped the clothesline over Burden, then suddenly snapped the rope tightly around Burden and tied him to the tree, at which point Conahan proceeded to perform oral sex on Burden before attempting to sodomize him. After failing to sodomize Burden, Conahan hit him in the head and attempted to strangle him with the rope for thirty minutes. Frustrated, Conahan asked Burden why he would not die and eventually left the scene with Burden still tied to the tree.

*2 Based on the similarities in Burden's and Montgomery's cases, law enforcement launched an undercover investigation of Conahan, during which Conahan twice offered money to an undercover officer in exchange for sexual favors. This included an offer of \$150 if the undercover officer posed for nude pictures. Law enforcement also obtained paint samples from Conahan's father's car, which Conahan sometimes used. Analysts found that the paint samples from the car were indistinguishable from a paint chip that was found on Montgomery's body. Law enforcement also found that, on the evening of April 16, 1996, Conahan's credit card was used to purchase clothesline, Polaroid film, pliers, and a utility knife from a Punta Gorda Walmart. Security photos showed that just minutes later, Conahan withdrew cash from a nearby ATM. No items recovered from the crime scene contained Conahan's DNA. All of this evidence was presented at Conahan's bench trial.² The trial court found and adjudicated Conahan guilty of first-degree premeditated murder and kidnapping.

At the penalty phase of Conahan's trial, Dr. Huser, a medical examiner, testified that killing a person by ligature strangulation would require one to apply pressure for an extended length of time. She also stated that to be killed by strangulation would be terrifying. She also opined that Montgomery's ligature injuries had all been sustained before he died, which differed from Dr. Imami's opinion that some of the injuries were post-mortem, noting that it defied common sense for Conahan to have restrained Montgomery *after* he died.

The jury recommended a death sentence on the murder conviction by a twelve-to-zero vote. The trial court agreed and sentenced Conahan to death.

On direct appeal, we affirmed Conahan's convictions and sentences, including the death sentence. *Conahan v. State*, 844 So. 2d 629, 643 (Fla. 2003). For post-conviction timeliness purposes under *Florida Rule of Criminal Procedure 3.851*, finality occurred when the United States Supreme Court denied certiorari review on October 6, 2003. See *Conahan v. Florida*, 540 U.S. 895 (2003).

Since then, Conahan has asserted multiple unsuccessful collateral challenges to both the judgment and death sentence, in both state and federal courts. See *Conahan v. State*, 118 So. 3d 718 (Fla. 2013) (affirming denial of Conahan's initial motion for post-conviction relief and denying habeas relief); *Conahan v. State*, 2017 WL 656306 (Fla. Feb. 17, 2017) (affirming denial of Conahan's first successive motion for post-conviction relief); *Conahan v. State*, 258 So. 3d 1237 (Fla. 2018) (affirming summary denial of Conahan's second successive motion for post-conviction relief); *Conahan v. Sec'y, Dep't of Corr.*, No. 2:13-cv-428-JES-KCD, 2023 WL 2648168 (M.D. Fla. Mar. 27, 2023) (denying habeas relief); *Conahan v. Sec'y, Dep't of Corr.*, 2024 WL 2950845 (11th Cir. May 31, 2024) (denying Conahan's motion for a certificate of appealability); *Conahan v. Dixon*, 145 S. Ct. 1195 (2025) (denying Conahan's petition for writ of certiorari); see also *Lightbourne v. McCollum*, 969 So. 2d 326 (Fla. 2007) (denying class petition, which Conahan had joined, challenging the constitutionality of Florida's lethal injection procedures); *Abdool v. Bondi*, 141 So. 3d 529 (Fla. 2014) (denying class petition, which Conahan had joined, challenging the constitutionality of the Timely Justice Act of 2013).

On February 3, 2023, Conahan filed a third successive *rule 3.851* motion for post-conviction relief, which the trial court summarily denied on July 14, 2026. Meanwhile, on January 17, 2025, Conahan filed his *rule 3.853* motion for post-conviction DNA testing, which remained pending until after the death warrant was signed on August 11, 2026. He appealed the summary denial of his third successive *rule 3.851* motion on August 7, 2026. Governor DeSantis set Conahan's execution for September 10, 2026, and the trial court denied Conahan's *rule 3.853* motion the day after the warrant was signed, on August 12, 2026. Conahan appealed that denial order on the same day.

*3 Meanwhile, Conahan moved this court to extend the time set by our post-warrant schedule governing post-conviction proceedings, in the light of his two contemporaneous appeals. After we denied that motion, Conahan filed a fourth successive motion for post-conviction relief and a motion to stay execution in the trial court. Conahan then moved to amend his fourth successive motion, which request the trial court denied. The trial court then summarily denied the [rule 3.851](#) motion and the motion to stay in a single order, and Conahan appealed that order and moved, now in this court, to stay his execution. Conahan also filed a petition for a writ of habeas corpus in this court. His three appeals have been consolidated, and we now address those appeals, his motion to stay, and his writ petition.

II

Starting with the appeals from the denials of Conahan's third and fourth successive [rule 3.851](#) motions, the trial court has the authority to summarily deny a motion for post-conviction relief if either the motion fails to sufficiently "allege factual elements sufficient to constitute a basis for the collateral relief sought" or "the record conclusively shows no entitlement to relief." *State v. Weeks*, 166 So. 2d 892, 897 (Fla. 1964) (internal quotations omitted); *Fla. R. Crim. P. 3.851(f)(5)(B)*; see also *State v. Reynolds*, 238 So. 2d 598, 600 (Fla. 1970) (holding that the trial court "may make a summary disposition" when it determines that the motion either "is defective in form or substance and insufficient to state a prima facie case entitling the prisoner to relief" or "appears to be sufficient, but the files and records in the case conclusively refute the allegations or otherwise conclusively preclude relief"); *Muhammad v. State*, 426 So. 2d 533, 535 (Fla. 1982) ("If the motion and the record and files of the case conclusively show that the movant is not entitled to relief, the motion may be denied without an evidentiary hearing.").

In reviewing the trial court's summary denials, we must treat the defendant's "allegations as true except to the extent that they are conclusively rebutted by the record." *Harich v. State*, 484 So. 2d 1239, 1241 (Fla. 1986); see also *Tompkins v. State*, 994 So. 2d 1072, 1081 (Fla. 2008). "The defendant bears the burden of establishing a prima facie case based upon a legally valid claim. Mere conclusory allegations are not sufficient to meet this burden." *Freeman v. State*, 761 So. 2d 1055, 1061 (Fla. 2000). "We must examine each claim to determine if it is legally sufficient, and, if so, determine whether or

not the claim is refuted by the record." *Id.* Applying these principles here, we conclude that the trial court's summary denials of Conahan's successive [rule 3.851](#) motions were not error meriting any appellate relief.

Both successive [rule 3.851](#) motions hinge on claims of newly discovered evidence. The "newly discovered evidence" supporting the third successive motion consists of reports prepared by would-be forensic experts who reviewed the autopsy report, the paint evidence, and the fiber evidence from trial on Conahan's request. The "newly discovered evidence" supporting the fourth successive motion consists of a consensus study report documenting "concerns" with the "Medicolegal Death Investigation System," though Conahan's actual argument simply amounts to his belief that the State's experts' testimony contained "elements of bias." The problem with both successive motions is thus clear: although the reports cited are new, the evidence is not.

To overcome the one-year time limit on [rule 3.851](#) motions by reason of newly discovered evidence, the motion must allege that "the facts on which the claim is predicated were unknown ... and could not have been ascertained by the exercise of due diligence." See *Fla. R. Crim. P. 3.851(d)(2)(A)*. Furthermore, any successive motion for post-conviction relief "must be dismissed" if "there was no good cause for failing to assert those grounds in a prior motion." See *Fla. R. Crim. P. 3.851(e)(2)*. There is no reason why Conahan or counsel could not have, through the exercise of due diligence, dug into and challenged back in 2003 the autopsy report, the fiber evidence, or the paint evidence that they ultimately challenged in Conahan's third successive [rule 3.851](#) motion, almost twenty years after his death sentence became final.

*4 Likewise, there is no reason why Conahan could not have argued in a timely post-conviction motion that the State's experts' testimony included "elements of bias." Everything Conahan has cited to from the consensus study report to support his argument is a basic, commonsense principle that any lawyer exercising due diligence could have applied to an analysis of the State's experts' testimony, such as the principle that an expert's testimony should not be "overly influenced by nonscientific information." In sum, nothing in the report was necessary to the argument Conahan raised in his fourth successive [rule 3.851](#) motion. See *Schwab v. State*, 969 So. 2d 318, 325 (Fla. 2007) (noting that this court "has not recognized [] 'new research studies' as newly discovered evidence"); *Sliney v. State*, 362 So. 3d 186, 189 (Fla. 2023) (finding that an updated scientific consensus did

not constitute newly discovered evidence where the operative facts had “long been available”). Moreover, the report is from a study on deaths of individuals while incarcerated or in police custody—it is hardly related to the expert testimony in this case, which centered on the murder of a civilian that took place in the woods.

That said, Conahan's main argument on appeal, which he also raised in his fourth successive [rule 3.851](#) motion, is that the thirty-day period between the signing of the death warrant and the execution date is not long enough for him to fully investigate and litigate both his pre-warrant and post-warrant claims, which, he asserts, is a violation of his due process rights. Beyond that, Conahan contends that the trial court unnecessarily shortened the time period for him to present his claims in that court, mostly by making his fourth successive [rule 3.851](#) motion due three days earlier than it would have been due under the State's proposed post-warrant schedule. To bolster that argument and as a separate basis for relief, Conahan also alleges that the trial court erred in denying his request to amend his fourth successive [rule 3.851](#) motion as untimely.

Turning first to the amendment request, allowing Conahan to amend his motion would not have helped him because the argument he sought to add would have been procedurally barred for the same reason the arguments he actually made were barred: Conahan failed to establish that the “newly discovered evidence” underlying his amendment request could not have been found by the exercise of due diligence or that there was some other good cause for him not to have raised the argument sooner. See [Fla. R. Crim. P. 3.851\(d\)\(2\) \(A\), \(e\)\(2\)](#). And he makes no attempt to do so on appeal. Thus, the trial court did not err in denying the motion to amend.

As for the due process argument itself, a “motion to vacate judgment of conviction and sentence,” which is what Conahan titled his fourth successive [rule 3.851](#) motion, is not the proper vehicle for bringing such a claim. That is because procedural defects in carrying out a sentence give no reason to vacate the sentence (or the underlying judgment). At best, Conahan's due process argument could be construed as further elaboration on his motion to stay. That said, the argument lacks merit. We have repeatedly stated that expedited warrant proceedings do not constitute a violation of due process. See, e.g., [Jennings v. State](#), 422 So. 3d 107, 118–19 (Fla.), *cert. denied*, 146 S. Ct. 402 (2025); [Jones v. State](#), 419 So. 3d 619, 625 (Fla.) (citing multiple cases that concluded the same), *cert. denied*, 146 S. Ct. 79 (2025). And this is so even when

claims were pending at the time the warrant was signed. See [Hutchinson v. State](#), 416 So. 3d 273, 279–80 (Fla.), *cert. denied*, 145 S. Ct. 1980 (2025). All due process requires is notice and an opportunity to be heard. See [Asay v. State](#), 210 So. 3d 1, 27 (Fla. 2016) (citing [Huff v. State](#), 622 So. 2d 982, 983 (Fla. 1993)); [Flint River Steamboat Co. v. Roberts](#), 2 Fla. 102 (1848). As we found decisive in [Jones](#), Conahan “has not identified any matter on which he was denied notice and an opportunity to be heard.” 419 So. 3d at 625.

Conahan contends that having more time post-warrant would have enabled him to raise additional claims, noting that he had only six hours to file public records requests under [section 27.7081, Florida Statutes](#), and [Florida Rule of Criminal Procedure 3.852](#). Conahan does not identify what those additional claims might have been, and, more crucially, ignores the fact that he had almost twenty-three years before the warrant was signed to file any [rule 3.852](#) requests and raise any claims. See [Glock v. Moore](#), 776 So. 2d 243, 254 (Fla. 2001) (recognizing that defendants ought to show good cause for waiting until after the death warrant is signed to make public records requests); [Sims v. State](#), 753 So. 2d 66, 70 (Fla. 2000) (explaining that [rule 3.852](#) is “not intended to be a procedure authorizing a fishing expedition for records”). Conahan cannot wait over two decades and then complain that he has not had enough time to investigate possible additional bases to challenge his conviction and sentence. Indeed, he *has* challenged them multiple times. Accordingly, we find that the trial court did not err in denying him relief on his due process claim.

III

*5 Apart from the due process challenge to the denials of the successive [rule 3.851](#) motions, Conahan focuses his appeal on the trial court's denial of his [rule 3.853](#) motion. In that motion, Conahan asked to test five different items for DNA. The items were all tested before trial, none were found to contain Conahan's DNA, some were found to contain DNA from a contributor other than Conahan or Montgomery, and these facts were presented at trial. Now, Conahan argues that advances in DNA science would enable the third-party contributor to be identified. For purposes of a [rule 3.853](#) motion, the difference between “someone other than Conahan” and “a specific named individual other than Conahan” is narrow, to put it mildly.

To grant a [rule 3.853](#) motion, the trial court must find “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.” See [Fla. R. Crim. P. 3.853\(c\)\(5\)\(C\)](#); § 925.11(2)(f)3., Fla. Stat. There is no reasonable probability that knowing the identity of the third-party contributor would have changed any aspect of the outcome. And as the trial court noted in its order denying the [rule 3.853](#) motion, Montgomery's body was found in an open area commonly used as a trash dump, so it “should not, therefore, be surprising that the victim's hair might carry random DNA.” The same goes for the two cigarette butts found at the scene, which contained neither Conahan's nor Montgomery's DNA but did contain a third party's DNA.

That leaves the two sets of Montgomery's fingernail clippings, which contained only Montgomery's DNA. Conahan argues that advances in DNA testing may show traces of another contributor's DNA. As the trial court pointed out, this argument rests entirely on the purely speculative notion that Montgomery clawed at his attacker during the murder. The burden was on Conahan to show a reasonable probability that his requested DNA testing would exonerate him or lessen his sentence. See [Scott v. State](#), 46 So. 3d 529, 533 (Fla. 2009). Conahan offered nothing except that *maybe* someone else's DNA would be found on Montgomery's fingernails. This was not enough to carry his burden. We thus find that Conahan's [rule 3.853](#) motion was properly denied.

IV

Lastly, we turn to Conahan's petition for a writ of habeas corpus. The petition is essentially an attempt by Conahan to relitigate the entire case, repeating factual claims from his previously denied [rule 3.851](#) motions and insisting that this court must ignore procedural barriers and its own prior decisions because failing to ignore them would result in a “manifest injustice.” Conahan asserts that he has been denied meaningful appellate review, which the procedural history of this case flatly refutes. See [Conahan](#), 844 So. 2d 629; [Conahan](#), 540 U.S. 895; [Conahan](#), 118 So. 3d 718; [Conahan](#), 2017 WL 656306; [Conahan](#), 258 So. 3d 1237; [Conahan](#), 2023 WL 2648168; [Conahan](#), 2024 WL 2950845; [Conahan](#), 145 S. Ct. 1195. Conahan insists that he is nevertheless entitled to what would essentially be another direct appeal so that his various post-conviction claims can be considered in the aggregate, ignoring the axiomatic fact that a litigant “is not

entitled to two appeals.” See [Lake v. Lake](#), 103 So. 2d 639, 642 (Fla. 1958).

We have been clear: “[h]abeas corpus is not a second appeal and cannot be used to litigate or relitigate issues which could have been, should have been, or were raised on direct appeal.” [Breedlove v. Singletary](#), 595 So. 2d 8, 10 (Fla. 1992) (citing [Porter v. Dugger](#), 559 So. 2d 201 (Fla. 1990); [Clark v. Dugger](#), 559 So. 2d 192 (Fla. 1990)). Conahan asserts that there is a “manifest injustice” exception to this principle. He cites cases where we recognized such an exception to res judicata, collateral estoppel, and “law of the case” doctrines, but they are distinguishable as arising in nonhabeas contexts.

*6 Still, it is true we have acknowledged a “manifest injustice” exception to a habeas petition's being otherwise procedurally barred. Cf. [Walls v. State](#), 423 So. 3d 865, 876 (Fla.) (considering and rejecting argument that enforcing procedural bar to habeas petition would result in “manifest injustice” (citing prior decisions)), *cert. denied*, 146 S. Ct. 1436 (2025). Conahan claims the “manifest injustice” that would result from our not lifting the procedural bar here is the execution of a defendant professing his innocence. But he fails to recognize that such an exception could justify ignoring all procedural bars and allowing never-ending litigation in virtually every capital case. Rather than point to some recent, exceptional development that might excuse the procedural bar, Conahan simply disagrees with the trial court's and this court's decisions on his various post-conviction motions and appeals. This cannot be the sort of “manifest injustice” over which we will consider a habeas petition as a second appeal, lest the exception swallow the rule.

The fact is that Conahan has filed five [rule 3.851](#) motions, one [rule 3.853](#) motion, seven appeals in this court (including the three that have been consolidated here), a habeas petition, and four filings in federal court in the over twenty-six years since he was sentenced. We cannot conclude that it is a manifest injustice to deny him *another* chance to rehash everything he has already litigated in the past two and a half decades. Conahan's habeas petition is thus procedurally barred. See *id.* at 876–77 (rejecting “manifest injustice” claim because a review of the record and precedent left the court “confident in the propriety of the sentence imposed”).

Moreover, even if the petition were not procedurally barred, it lacks merit. In addition to the various issues we already found meritless in Conahan's earlier appeals, Conahan focuses heavily on the evidence referenced in his third successive

rule 3.851 motion: the fiber evidence, the paint evidence, and Dr. Huser's testimony. As to the fiber evidence, the State argued at trial that hundreds of fibers found at the murder scene linked Conahan to the crime, while Conahan argues that only five fibers could have linked him to the crime. To the extent that we grant Conahan's assertion that the State greatly exaggerated the weight of the fiber evidence, the relative absence of fibers linking Conahan to the crime would not establish his innocence. It also would not undermine the case for his guilt so as to create a reasonable possibility of a different outcome. The paint evidence is even less availing, with Conahan acknowledging that the paint chip found at the scene matched all four layers of paint on his father's car but emphasizing that the chip could have matched any car that happened to have the same four layers of paint. Lastly, Conahan dwells on the fact that Dr. Huser stated that her testimony was partly based on "common sense," ignoring the fact that the jury heard this very admission and still unanimously recommended the sentence of death. Conahan may feel that the jury gave too much weight to Dr. Huser's testimony, but it is not as if the jury did not do so with eyes open; it is not this court's role to substitute its judgment on the weight of the evidence for that of the factfinder. See *Holstun v. Embry*, 169 So. 400, 405–06 (Fla. 1936).

Montgomery was bound and strangled to death in the woods shortly after telling his friends that he was going out to make a few hundred dollars. Burden's testimony, which the factfinder found to be credible despite knowing about the challenges posed by Conahan, established that Conahan had offered him a little over a hundred dollars in exchange for nude photographs, taken him to the woods, bound him, and attempted to strangle him. Burden's testimony was corroborated by the testimony of an undercover officer whom Conahan had approached in the same manner. It was corroborated by Burden's open court presentation of his scars from the assault. And it was corroborated by visible marks on a tree that corresponded with Burden's injuries.

*7 Other evidence, which Conahan does not attack, established that he purchased clothesline and Polaroid film—the same materials he used during the attack on Burden—and withdrew cash from an ATM mere hours before Montgomery's murder. Finally, Dr. Huser concluded, based

on Dr. Imami's autopsy report, that Montgomery died by strangulation. She opined, based on her medical expertise, that a person would have to strangle another for a significant length of time to kill him. Moreover, the conclusion that Montgomery struggled was based not only on Dr. Huser's testimony but Dr. Imami's, as he agreed with the State that the markings on Montgomery's back were consistent with his having struggled against a tree. Conahan has offered no alternative explanation for how those markings got there, and a K-9's unusual interest in a worn-down portion of a nearby tree further supported the State's theory of what occurred. Moreover, in the light of all of that, the paint chip exactly matching all four layers of paint on Conahan's father's car, which Conahan used, is noteworthy. In sum, even when accounting for Conahan's arguments, there is no reasonable possibility that he could have been found innocent or that the aggravators would not have applied. But this is beside the point, as Conahan's repetitious and untimely claims are procedurally barred. He has shown no entitlement to habeas relief.

V

On all the reasoning just set out, we affirm the trial court's summary denials of Conahan's third and fourth successive motions for post-conviction relief and of his motion for post-conviction DNA testing, deny him a stay of his execution, and deny him any relief under habeas.

No oral argument is necessary, and no motion for rehearing will be considered. The mandate shall issue immediately.

It is so ordered.

COURIEL, C.J., and MUÑIZ, GROSSHANS, FRANCIS, and BARRIOS, JJ., concur.

LABARGA, J., concurs in result.

All Citations

--- So.3d ----, 2026 WL 2603686

Footnotes

- 1 The details of this assault were presented at trial under the *Williams* rule. See [Williams v. State](#), 110 So. 2d 654 (Fla. 1959); § 90.404(2), Fla. Evid. Code.
- 2 Conahan waived his right to a jury for the guilt phase of his trial.

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**IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR CHARLOTTE COUNTY, FLORIDA**

STATE OF FLORIDA,
Plaintiff,

Case No. 97-000166-F

vs.

ACTIVE DEATH WARRANT
Execution scheduled for
September 10, 2026, at 6:00 p.m.

DANIEL O. CONAHAN, JR.,
Defendant.

**ORDER DENYING DEFENDANT'S SUCCESSIVE
MOTION TO VACATE JUDGMENT OF CONVICTION
AND SENTENCE OF DEATH PURSUANT TO
FLORIDA RULE OF CRIMINAL PROCEDURE 3.851
AFTER A SIGNED DEATH WARRANT and ORDER DENYING
DEFENDANT'S MOTION FOR STAY OF EXECUTION**

THIS CAUSE comes before the Court on Defendant's Successive Motion to Vacate Judgment of Conviction and Sentence of Death Pursuant to Florida Rule of Criminal Procedure 3.851 after a Signed Death Warrant, filed on August 15, 2026, and the State's response filed on August 17, 2026, as well as Defendant's Motion for Stay of Execution filed on August 15, 2026. A *Huff*¹ hearing was held on August 17, 2026, after which this Court entered an order determining that all of Defendant's claims for relief could be resolved by a review of the record and prevailing case law. The Court has considered Defendant's motion and the State's response, reviewed the record, and is duly advised in the premises. For the reasons stated below,

¹ *Huff v. State*, 622 So. 2d 982 (Fla. 1993).

the Court finds that Defendant is not entitled to any relief.

FACTS OF THE CASE

In its opinion affirming Defendant's convictions and death sentence, the Florida Supreme Court described the facts of the case as follows:

On April 16, 1996, Richard Montgomery, who lived with his sister, was with Bobby Whitaker, Gary Mason, and other friends when he mentioned that he was going out to make a few hundred dollars and would be back shortly. When asked whether it was legal, he smiled. Montgomery also told his mother that someone had offered to pay him \$200 to pose for nude pictures, but he did not tell her who made the offer. In the same conversation, Montgomery mentioned that he had recently met the defendant Daniel O. Conahan, Jr., who lived in Punta Gorda Isles and was a nurse at a medical center. The last time friends saw Montgomery alive was on April 16 between 4 p.m. and 7 p.m.

The next day, April 17, Thomas Reese and Michael Tish, who were storm utility engineers for Charlotte County, discovered a human skull in a remote, heavily wooded area off of Highway 41 and immediately notified the police department. While searching the scene, deputies found the nude body of a young, white male that was later identified as Richard Montgomery. He had visible signs of trauma to the neck, waist, and wrists, and the genitalia had been removed. The forensic lab personnel arrived and collected various items from the scene, including a rope found on the top of a nearby trash pile, carpet padding that covered the victim's body, a skull and a torso (neither of which belonged to the victim), a gray coat, and various combings from the victim's arms, hands, chest, pubic area, and thighs. On the following day, Deputy Todd Terrell arrived on the scene with a K-9 dog which showed significant interest in a sabal palm tree, specifically the side of the tree which was somewhat flattened and damaged.

An autopsy revealed that Montgomery died as a result of strangulation. He had two ligature marks on the front of his neck, two horizontal marks on the right side of his chest, and abraded grooves around his wrists. All of the grooves were of similar width, did not extend to Montgomery's back, and were consistent with marks that would be left on an individual who had been tied to a tree.

Due to the unique nature of the homicide (being tied to a tree naked and then strangled), police reviewed a similar assault reported on August 15, 1994. The victim, Stanley Burden, was a high school drop-out who, like Montgomery, had difficulty keeping a steady job and had physical features similar to those of Montgomery. The report indicated that Burden met Conahan, who offered to pay him \$100 to \$150 to pose for nude photographs. Burden agreed and Conahan drove him to a rocky dirt road in a secluded area where Conahan pulled out a duffle bag with a tarp and a Polaroid camera. The two men headed into the woods where Conahan laid the tarp out and asked Burden to take off his shirt and show a little hip. After taking numerous pictures of Burden, Conahan then took out a new package of clothesline so he could get some bondage pictures. He asked Burden to step close to a nearby tree and then clipped the clothesline in several pieces, draping them over Burden to make it look like bondage. Conahan moved behind Burden, snapped the rope tightly around him, pulled his hands behind the tree, placed ropes around his legs and chest, and wrapped the rope twice around Burden's neck. Conahan then performed oral sex on Burden and attempted to sodomize him. Burden fought to position himself in the middle of the tree while Conahan tried to pull him to the side to have anal sex. After many unsuccessful attempts, Conahan snapped the rope around Burden's neck, placed his foot against the tree, and pulled on the rope in an attempt to strangle Burden, who tried to slide around the tree to keep his windpipe open. Conahan hit Burden in the head and unsuccessfully attempted to strangle

him for thirty minutes. Conahan asked Burden why he would not die and finally gave up, gathered his possessions, and left. Burden freed himself, went to a local hospital, and received treatment for his injuries. The police located the crime scene and found that one of the melaleuca trees had ligature indentions that corresponded with Burden's injuries.

Based on this information, the police began an undercover investigation of Conahan. On May 24, 1996, Deputy Scott Clemens was approached by Conahan at Kiwanis Park, and Conahan offered Clemens \$7 to show his penis or \$20 if Clemens would allow Conahan to perform fellatio. Clemens refused the offer and the next day returned to the park where he again encountered Conahan, who offered him \$150 to pose for nude photos.

On May 31, 1996, pursuant to a warrant, the police searched Conahan's residence and vehicles and obtained paint samples from his father's Mercury Capri, which Conahan occasionally used. The police then compared paint samples from the Capri with a paint chip from the victim's body and found that they were indistinguishable.

On February 25, 1997, Conahan was indicted for first-degree premeditated murder, first-degree felony murder, kidnapping, and sexual battery of Richard Montgomery. In the guilt phase of his trial, Conahan waived his right to trial by jury. The State presented evidence of the manner in which the victim's body was found and evidence obtained from the autopsy and the searches of Conahan's residence and vehicles. The State also presented evidence that on the day of Montgomery's disappearance, April 16, 1996, at 6:07 p.m., Conahan's credit card was used to purchase clothesline, Polaroid film, pliers, and a utility knife from a Wal-Mart store in Punta Gorda. Still photos showed that minutes later, at 6:12 p.m., Conahan withdrew funds from an ATM which was located close to the Wal-Mart.

The trial court permitted the State to introduce Williams rule evidence of Burden's attempted murder and sexual battery,

ruling that the evidence was sufficiently similar to the evidence leading up to Montgomery's death so as to constitute a unique modus operandi sufficient to establish the identity of Montgomery's murderer. After the guilt phase of the trial was completed, the trial court found and adjudicated Conahan guilty of first-degree premeditated murder and kidnapping.

On November 1, 1999, the penalty phase of Conahan's trial was conducted before a jury at which time photos taken at the crime scene of the victim's body were published, and Deputy Gandy testified relative to the crime scene and how the body was found. Gandy further testified that during an interview Conahan told him that he had a fantasy involving bondage and sex.

The medical examiner, Dr. Carol Huser, testified regarding the autopsy report prepared by Dr. Imami. After examining Dr. Imami's report and viewing the autopsy photographs, Dr. Huser concluded that Montgomery died by ligature strangulation. The autopsy photographs were published to the jury. Dr. Huser also testified that being killed in such a manner required applying pressure for a length of time notwithstanding the fact that the victim loses consciousness after only a few seconds. She further opined that to be killed by strangulation would be terrifying.

Conahan's aunt, Betty Wilson, testified on behalf of the defense that Conahan was a jovial, personable individual who participated in family activities and cared for his ailing mother before she died. Robert Lindy and his daughter Nancy Thomson, the father and sister of Hal Lindy, who was Conahan's roommate and lover when he lived in Chicago, testified that Conahan was like another son and brother to them. Conahan was instrumental in helping Hal and Nancy overcome alcoholism, was considered one of the family, and was included in many family functions. Thereafter, the defense rested its case.

Before the jury deliberated, the trial court gave instructions relative to the following aggravators: (1) the murder was heinous, atrocious, or cruel (HAC); (2) the murder was cold,

calculated, and premeditated (CCP); and (3) the murder was committed during the course of a kidnapping. By a vote of twelve to zero, the jury recommended the death penalty. A *Spencer* hearing was held on November 5, 1999, and on December 10, 1999, Conahan was sentenced to death for the first-degree murder of Richard Montgomery and to fifteen years' imprisonment for kidnapping.

Conahan v. State, 844 So. 2d 629, 632-634 (Fla. 2003) (footnotes omitted).

PROCEDURAL HISTORY

In 1999, Defendant waived a jury trial and was found guilty by the trial judge of first-degree murder and kidnapping. The penalty phase was conducted before a jury. Before deliberations, the trial judge gave instructions relative to the following aggravators: (1) the murder was heinous, atrocious, or cruel (HAC); (2) the murder was cold, calculated, and premeditated (CCP); and (3) the murder was committed during the course of a kidnapping. The jury recommended the death penalty by a unanimous vote of twelve (12) to zero. On December 10, 1999, Defendant was sentenced to death for the first-degree murder of Richard Montgomery and to fifteen (15) years' imprisonment for kidnapping. The trial judge found that all three (3) of the aggravators had been proven beyond a reasonable doubt and further found that the aggravating circumstances substantially outweighed the mitigating circumstances.

Defendant appealed and the Florida Supreme Court affirmed Defendant's convictions and sentences, including the sentence of death. *Conahan v. State*, 844 So. 2d 629 (Fla. 2003). The United

States Supreme Court denied Defendant's Petition for Writ of Certiorari on October 6, 2003. *Conahan v. Florida*, 540 U.S. 240 (2003).

On October 1, 2004, Defendant filed his first motion for postconviction relief. The motion was amended several times, the last of which was filed on October 21, 2009, raising twenty (20) grounds. In the order directing an evidentiary hearing, the trial court summarily denied all grounds, except for Grounds IV, V, VI, VII, VIII, IX, the portion of Ground X alleging ineffective assistance of counsel, the portion of Ground XII alleging ineffective assistance of counsel, and Ground XX. An evidentiary hearing was held June 21, 2010, through June 24, 2010, at which time Defendant called fourteen (14) witnesses to testify. The parties filed written closing arguments, and the final order denying Defendant's first motion for postconviction relief was rendered January 31, 2011. Defendant appealed the denial and filed a petition for writ of habeas corpus in the Florida Supreme Court. The Florida Supreme Court affirmed the trial court's denial of Defendant's postconviction motion and denied relief on the habeas petition. *Conahan v. State*, 118 So. 3d 718 (Fla. 2013).

On February 2, 2016, Defendant filed his first successive motion for postconviction relief claiming that newly discovered evidence would show that witness Stanley Burden testified in return for assistance from the prosecutor, contrary to his testimony, and that his conviction and sentence were unconstitutional under *Hurst v. State*, 136 S.Ct. 616 (2016). By order rendered May 5, 2016, the newly discovered evidence ground was summarily denied because

Defendant failed to meet his burden of demonstrating that the information is material. The *Hurst* ground was denied as premature, without prejudice for Defendant to file another motion after the Florida Supreme Court issues its opinion resolving the issue of whether *Hurst* is to be applied retroactively. Defendant appealed the denial of his motion. The Florida Supreme Court affirmed the trial court's denial of Defendant's newly discovered evidence claim and, based upon the agreement of the parties, did not address Defendant's *Hurst* claim, without prejudice, allowing Defendant to raise the issue in a future pleading. *Conahan v. State*, No. SC16-1153, 2017 WL 656306 (Fla. Feb. 17, 2017).

On October 13, 2017, Defendant filed his second successive motion for postconviction relief based on the Florida Supreme Court opinion issued in *Hurst v. State*, 202 So. 3d 40 (Fla. 2016) and the 2017 legislative changes made in response to the U.S. Supreme Court's *Hurst* opinion. Defendant claimed that his sentence was unconstitutional because a jury did not make all the findings necessary to impose a death sentence, and that the Laws of Florida, Chapter 2017-1 (codified as Fla. Stat. §921.141), requiring a unanimous jury verdict and findings, should be applied retroactively. The trial court denied both claims by order rendered December 11, 2017, citing binding Florida Supreme Court precedent. On appeal, the Florida Supreme Court affirmed the trial court's denial of postconviction relief. *Conahan v. State*, 258 So. 3d 1237 (Fla. 2018).

Defendant's federal petition for writ of habeas corpus was denied by opinion and order issued by the United States District

Court, Middle District of Florida, on March 27, 2023. *Conahan v. Sec’y, Dep’t of Corr.*, No. 2:13-cv-428, 2023 WL 2648168 (M.D. Fla. Mar. 27, 2023). The United States Court of Appeals, Eleventh Circuit, denied Defendant’s motion for certificate of appealability. *Conahan v. Sec’y, Dep’t of Corr.*, No. 24-10844, 2024 WL 2950845 (11th Cir. May 31, 2024). Defendant’s subsequent petition for writ of certiorari was denied by the United States Supreme Court by opinion issued February 24, 2025. *Conahan v. Dixon*, 145 S.Ct. 1195 (2025).

On February 3, 2023, Defendant filed his third successive motion for postconviction relief asserting newly discovered evidence.² Defendant’s first ground alleged that Defendant had retained a new expert witness who would testify that certain injuries sustained by the victim were inflicted after his death and, therefore, were improperly considered as part of the especially heinous, atrocious, and cruel (HAC) aggravator by the penalty phase jury. Defendant’s second ground alleged that Defendant had retained a new expert witness who would challenge the significance of fiber and paint chip comparison analysis used, in part, to establish guilt. By trial court order rendered July 14, 2026, both claims were summarily denied. Defendant filed a notice of appeal on August 7, 2026, and the appeal is currently pending before the Florida Supreme Court (SC2026-

² The existence of Defendant’s third successive motion for postconviction relief was not brought to the attention of the undersigned trial judge by either the Clerk or the parties. The undersigned trial judge only learned of its existence upon reviewing the court file in relation to Defendant’s rule 3.853 motion for postconviction DNA testing which was subsequently filed on January 17, 2025.

1234).

On January 17, 2025, Defendant filed a motion seeking postconviction DNA testing pursuant to Fla. R. Crim. P. 3.853. Specifically, Defendant sought additional DNA testing of hair, cigarette butts, and fingernail clippings of the victim. By order rendered August 12, 2026, Defendant's motion was denied based on the trial court's finding that there is no reasonable probability that Defendant would have been acquitted or received a lesser sentence if the DNA results were proven to be from some other unknown individual and had been admitted at trial, especially in light of the other overwhelming evidence adduced at trial. Defendant filed a notice of appeal on August 12, 2026, and the appeal is currently pending before the Florida Supreme Court (SC2026-1236).

On August 11, 2026, the Governor of the State of Florida issued a Death Warrant to carry out the sentence of death imposed on Defendant. The execution is scheduled for Thursday, September 10, 2026, at 6:00 p.m.

APPLICABLE PROCEDURAL LAW

A defendant sentenced to death is permitted to file a successive motion for collateral relief outside of the standard one-year time limitation only if:

(A) the facts on which the claim is predicated were unknown to the movant or the movant's attorney and could not have been ascertained by the exercise of due diligence, or

(B) the fundamental constitutional right asserted was not established within the period provided for in subdivision (d)(1)

and has been held to apply retroactively, or

(C) postconviction counsel, through neglect, failed to file the motion.

Fla. R. Crim. P. 3.851(d)(2).

Even if an exception exists, successive postconviction claims may still be denied as untimely if there is a delay in raising those claims. *See Rodgers v. State*, 288 So. 3d 1038, 1039 (Fla. 2019) (to be considered timely filed as newly discovered evidence, the motion must be filed within one year of the date upon which the claim became discoverable through due diligence). Claims which either were or could have been raised on appeal or in prior postconviction proceedings are not properly raised in a successive motion. *See King v. State*, 597 So. 2d 780, 782 (Fla. 1992) (holding that claims were barred because they could have been, should have been, or were raised in a prior proceeding). Summary denial is appropriate where successive postconviction claims are refuted by the record. *See Fla. R. Crim. P. 3.851(f)(5)(B)*. Likewise, summary denial of purely legal claims is appropriate where such claims are without merit under controlling precedent. *See Mann v. State*, 112 So. 3d 1158, 1162–1163 (Fla. 2013) (because Mann raised purely legal claims that have been previously rejected, the circuit court properly summarily denied relief).

In this case, the Court finds that Defendant's current claims are untimely, procedurally barred, legally insufficient, and/or without merit, and, therefore, an evidentiary hearing is not necessary.

CLAIMS FOR RELIEF

Defendant raises two (2) claims for relief.

CLAIM ONE:

Newly Discovered Evidence Undermines Confidence in Defendant's Capital Trial by Establishing that the Pathology Opinion Presented at Trial is Premised on Unreliable Methods.

The newly discovered evidence is identified by Defendant as a 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. Defendant identifies two areas of concern raised in the report as being "cognitive bias" and "undue influence," suggesting that the testimonies of both Dr. Imami and Dr. Huser "have elements that the MLDI report warns injects unnecessary bias into the proceedings."

Notably, Defendant only claims to have a newly discovered published report, not a newly discovered expert witness who would testify as to Mr. Montgomery's cause or manner of death or the timing of Mr. Montgomery's injuries.³

To obtain a new trial based on newly discovered evidence, a defendant must meet two requirements: (1) the evidence must not have been known by the trial court, the party, or counsel at the time

³ A newly discovered expert to challenge Dr. Huser's trial testimony was raised by Defendant in his third successive postconviction motion, which was denied by trial court order rendered July 14, 2026.

of trial, and it must appear that the defendant or defense counsel could not have known of it by the use of diligence, and (2) the newly discovered evidence must be of such nature that it would probably produce an acquittal on retrial; if the defendant is seeking to vacate a death sentence, the second prong requires that the newly discovered evidence would probably yield a less severe sentence. *Schwab v. State*, 969 So. 2d 318, 325 (Fla. 2007).

However, not all new evidence is the equivalent of newly discovered evidence for the purposes of establishing a postconviction claim. *Henry v. State*, 125 So. 3d 745, 750 (Fla. 2013), *citing Gore v. State*, 91 So. 3d 769, 775 (Fla. 2012), *cert. denied*, *Gore v. Florida*, 132 S.Ct. 1904 (2012).

In *Schwab*, 969 So. 2d at 325-326, the Florida Supreme Court wrote, “[a]s for Schwab’s argument that he is entitled to a new trial due to two recent scientific articles regarding brain anatomy and sexual offense, this Court has not recognized ‘new opinions’ or ‘new research studies’ as newly discovered evidence.” *See also Howell v. State*, 145 So. 3d 774 (Fla. 2013); *Henry v. State*, 125 So. 3d 745 (Fla. 2013). Accordingly, though the Consensus Study Report was published in October 2025, it is not necessarily newly discovered evidence for the purpose of establishing a postconviction claim.

The Consensus Study Report relied upon by Defendant states that:

“The committee’s findings and recommendations build on those offered in Chapter 9 of the 2009 National Research Council report *Strengthening Forensic Science in the United States: A Path Forward* (NRC 2009). That chapter focused on the role of

the medical examiner and coroner in the context of the broader forensic science system. It found, as has this committee, that across the country, medical examiners and coroners are often functioning under great duress. These individuals may lack facilities and equipment (routinely relying, e.g., on personal phones and fax machines to fulfill reporting requirements), may need to delegate postmortem examinations to others (due, in many cases, to the lack of an adequate supply of forensic pathologists), or operate with insufficient staff support or in unaccredited facilities with physicians who may lack board certifications in forensic pathology or medicolegal death investigators who do not have appropriate certification (as resources for staffing and to support accreditation and certification are often unavailable). As was documented in the 2009 report, ‘most systems are under budgeted and understaffed’ (NRC, 2009, p. 264).”

Strengthening the U.S. Medicolegal Death Investigation [MLDI] System: Lessons from Deaths in Custody, p. 5, National Academies of Sciences, Engineering, and Medicine (2025). As such, the Consensus Study Report admittedly builds on an already existing publication and findings dating back to at least 2009 and cannot be considered as newly discovered evidence. *Henry*, 125 So. 3d at 750-751.

Even if it were to be considered as newly discovered evidence, the Consensus Study Report specifically involves the review of deaths of persons while incarcerated or in police custody, with recommendations to improve the system of investigating deaths of those who die while incarcerated or in police custody. This study has no relation to the situation or case at bar or the medical examiners’ opinions in this case as to Mr. Montgomery’s cause or manner of death or the timing of injuries based on examinations that took place close in time to Mr. Montgomery’s death.

As recited by the Florida Supreme Court in setting out the facts of Defendant's case:

An autopsy revealed that Montgomery died as a result of strangulation. He had two ligature marks on the front of his neck, two horizontal marks on the right side of his chest, and abraded grooves around his wrists. All of the grooves were of similar width, did not extend to Montgomery's back, and were consistent with marks that would be left on an individual who had been tied to a tree.

Conahan, 844 So. 2d at 632-633. In addition,

The medical examiner, Dr. Carol Huser, testified regarding the autopsy report prepared by Dr. Imami. After examining Dr. Imami's report and viewing the autopsy photographs, Dr. Huser concluded that Montgomery died by ligature strangulation. The autopsy photographs were published to the jury. Dr. Huser also testified that being killed in such a manner required applying pressure for a length of time notwithstanding the fact that the victim loses consciousness after only a few seconds. She further opined that to be killed by strangulation would be terrifying.

Conahan, 844 So. 2d at 634.

This is not a case in which the cause or manner of death, nor timing of the injuries, was genuinely in dispute. Accordingly, Defendant fails to demonstrate that the October 2025 Consensus Study Report is of such nature that it would probably produce an acquittal on retrial or would probably yield a less severe sentence. For Defendant to now suggest, twenty-six (26) years after trial, that Dr. Imami's and Dr. Huser's opinions as to Mr. Montgomery's cause or manner of death, or the timing of when the injuries were inflicted, were a result of "cognitive bias" or "undue influence" is pure

speculation.

Likewise, Defendant's use of this claim that the 2025 Consensus Study Report constitutes newly discovered evidence as a bridge to now suggest that the Williams Rule evidence would not have been admitted is pure speculation.

Defendant's attempt to now rely on the 2025 publication of the Consensus Study Report as newly discovered evidence

"ignores the important distinction between the facts on which his claims are predicated and the evidence used to prove those facts. *See generally Flanagan v. Johnson*, 154 F.3d 196, 199 (5th Cir. 1998) (explaining the difference)."

Sliney v. State, 362 So. 3d 186, 189 (Fla. 2023). If Defendant truly believed that he had a cognizable claim that Dr. Huser's opinions were the result of "cognitive bias" or "undue influence," these are claims that could have been raised at trial, on direct appeal, and/or in a timely postconviction motion; the 2025 Consensus Study Report does not, for the first time, provide a basis for any such alleged postconviction claims.

And, finally, though in a different context, a similar claim was raised in Defendant's Third Successive Motion to Vacate Judgments of Conviction and Sentence, in which Defendant identified a new expert witness who would testify, contrary to Dr. Huser, that certain injuries sustained by Mr. Montgomery were inflicted after his death. This claim was denied by trial court order rendered July 14, 2026, finding that this claim of a new expert opinion based on existing trial court records does not constitute newly discovered evidence within the meaning of rule 3.851.

Accordingly, for the reasons set forth herein, Claim One is procedurally barred as both untimely and successive, and, alternatively, even if admissible, the 2025 Consensus Study Report would have had no impact on Defendant's conviction or sentence.

CLAIM TWO:

The Unreasonably Truncated and Surprise Nature of the Warrant Process on [sic] Florida has Denied Defendant his Right to a Full, Fair, and Meaningful Postconviction Process in Violation of the Fifth, Eighth, and Fourteenth Amendments.

Defendant argues that the timeframe for completing all proceedings before the trial court "is unnecessarily truncated and illustrates how Florida is an outlier in its procedure for setting and carrying out executions." (footnote omitted). Defendant presents argument as to the hardships imposed on all parties, particularly on Defendant and Defendant's postconviction counsel, as well as on all involved agencies, courts and court staff, due to the short timeframe and expedited proceedings once a death warrant issues.

Though the Court appreciates Defendant's position, the fact is that Defendant has been afforded due process, including notice and the opportunity to be heard, throughout the life of this case which began upon Defendant's arrest on February 27, 1997, and through these current death warrant proceedings. Defendant was afforded a trial and a direct appeal. His conviction and death sentence were upheld by the Florida Supreme Court and became final when the United States Supreme Court denied certiorari review on October 6, 2003. Defendant had the benefit of his original postconviction

motion, for which an evidentiary hearing was granted, and Defendant appealed the trial court's denial of his original postconviction motion. Defendant has sought relief through the filing of both state and federal petitions seeking a writ of habeas corpus. Defendant has filed a first and a second successive postconviction motion and appealed the trial court's denial of both successive motions. And, most recently, Defendant filed a third successive postconviction motion and a motion for postconviction DNA testing, both of which have been denied by the trial court and are currently on direct appeal. Defendant even took the opportunity to move to amend the current postconviction motion, seeking to add a claim. This additional claim was given thoughtful consideration by the trial court and was denied, not simply because it wasn't included in Defendant's postconviction motion filed two (2) days prior, but because, even if it had been, it would have been untimely, procedurally barred, and without merit.

During oral argument at the *Huff* hearing, counsel for Defendant admitted that the Florida Supreme Court continues to uphold trial court orders denying relief on claims regarding the short warrant period, characterizing the Florida Supreme Court as "rubber-stamping" trial court denials. However, case law reflects that the Florida Supreme Court has considered the merits of such claims over and over again.

In *Barwick v. State*, 361 So. 3d 785 (Fla. 2023), the Florida Supreme Court acknowledged that the post-warrant litigation in that case had been particularly arduous for Barwick's counsel "due to certain circumstances that happened to coincide with the beginning

of the warrant period, such as the occurrence of Holy Week, Passover, and Ramadan; co-counsel being ill; and the presence of another inmate on Death Watch.” *Id.* at 789 (footnote omitted). While further acknowledging that “post-warrant litigation is arduous, even without such circumstances,” the Florida Supreme Court found that “none of the obstacles identified by Barwick resulted in a denial of due process.” *Id.* at 789-790. “Because Barwick has failed to state when he was denied notice or an opportunity to be heard, his due process claim fails.” *Id.* at 790.⁴

The defendant in *Hutchinson v. State*, 416 So. 3d 273 (Fla. 2025), raised a claim of violation of due process based on the shortness of the warrant period, and, similar to Defendant in the case at bar, defendant based his claim, in part, on the fact that there were postconviction claims pending at the time the warrant was signed, plus a “myriad of additional issues” frustrating counsel’s ability to research and present post-warrant claims. *Id.* at 279. In rejecting Hutchinson’s claim, the Florida Supreme Court found that “although the warrant period in this case was admittedly short and the record lengthy, Hutchinson has been able to raise numerous postconviction claims and advance arguments to support them.” *Id.* at 279-280.

The defendant in *Jones v. State*, 419 So. 3d 619 (Fla. 2025),

⁴ In *Barwick*, the Florida Supreme Court also rejected a related claim that the thirty-day warrant period and the difficult attendant circumstances identified by Barwick made it impossible for postconviction counsel to provide effective assistance. *Id.* at 790-791. Though Defendant in the case at bar alleged many ways in which postconviction counsel has been negatively impacted by the short timeframe, Defendant never actually asserts a claim of ineffective assistance of postconviction counsel.

using the same words that Defendant uses in the postconviction motion at issue, argued that “the circuit court erred in summarily denying his claim that the unreasonably ***truncated and surprise nature of the death warrant process*** in Florida violates ‘the Due Process Clause of the Fifth, Fourteenth, and Eighth Amendments.’” *Id.* at 625. (emphasis added). In finding that this claim has been repeatedly rejected, the Florida Supreme Court cites to seven (7) prior cases, including *Barwick, supra.*, then finds as follows:

“The thirty-day warrant period does not, in and of itself, deprive a capital defendant of [due process]. In post-warrant litigation, due process requires a defendant be given notice and an opportunity to be heard’ *Bates*, 416 So. 3d at 321. Jones has not identified any matter on which he was denied notice and an opportunity to be heard.”

Id. In addition, the Florida Supreme Court found that “the record refutes Jones’s claim that the issuance of his warrant was a ‘surprise,’” pointing out that Jones’ death sentence had been imposed thirty-two (32) years prior and had been final for thirty (30) years. In addition, the Florida Supreme Court had certified to the Governor in 2013 that Jones had completed his direct appeal and initial postconviction proceeding and appeal therefrom in federal court, and, therefore had been on notice for nearly twelve (12) years that he was “warrant-eligible,” meaning that the Governor could sign a warrant for his execution. *Id.* at 625-626.

Other cases in which the Florida Supreme Court explicitly found that the expedited warrant litigation schedule does not violate a Defendant’s due process rights include *Lukehart v. State*, No.

SC2026-0736, 2026 WL 1480328 (Fla. May 27, 2026); *Knight v. State*, 432 So. 3d 509 (Fla. 2026); *Randolph v. State*, 422 So. 3d 166 (Fla. 2025); *Windom v. State*, 416 So. 3d 1140 (Fla. 2025); *Bates v. State*, 416 So. 3d 312 (Fla. 2025); *Zakrzewski v. State*, 415 So. 3d 203 (Fla. 2025); *Bell v. State*, 415 So. 3d 85 (Fla. 2025); *Tanzi v. State*, 407 So. 3d 385 (Fla. 2025).

“Due process requires that a defendant be given notice and an opportunity to be heard on a matter before it is decided.” *Asay v. State*, 210 So. 3d 1, 27 (Fla. 2016), citing *Huff v. State*, 622 So. 2d 982, 983 (Fla. 1993). In the case currently before this Court, Defendant has not identified any specific matter on which he was denied notice or an opportunity to be heard. Defendant has raised several grounds in his current postconviction motion, including an additional claim raised in a motion to amend, and has advanced arguments to support them. Defendant’s death sentence was imposed on December 10, 1999, nearly twenty-seven (27) years ago, and has been final since the United States Supreme Court denied certiorari review in October 2003, nearly twenty-three (23) years ago.

Though Defendant may have not expected a death warrant to issue while prior postconviction claims were pending, the Florida Supreme Court record in *Conahan v. State*, Case No. SC00-170, reflects that, on March 10, 2026, the State filed “Attorney General’s Notification to Clerk of the Florida Supreme Court” advising that Defendant “has completed his direct appeal, initial postconviction proceeding in state court, habeas corpus proceeding and appeal therefrom in federal court,” and “The United States Supreme Court

denied certiorari review of the Eleventh Circuit Court of Appeals' opinion affirming the district court's denial of defendant's §2254 petition on February 24, 2025." Copies were served on Defendant's postconviction counsel. Accordingly, the issuance of the death warrant cannot truly be treated as a "surprise."

Accordingly, for the reasons set forth herein, Claim Two is found to be legally insufficient and without merit.

MOTION FOR STAY OF EXECUTION

Defendant filed a motion for stay of execution on August 15, 2026. Section 922.06(1), Fla. Stat. (2025), provides that "[t]he execution of a death sentence may be stayed only by the Governor or incident to an appeal." Otherwise, "[a] stay of execution pending the disposition of a successive motion for postconviction relief is warranted only when there are 'substantial grounds upon which relief might be granted.'" *Chavez v. State*, 132 So.2d 826, 832 (Fla. 2014) (citing *Buenoano v. State*, 708 So.2d 941, 951 (Fla. 1998)).

As set forth in detail hereinabove, this Court has found that Defendant's claims are untimely, procedurally barred, legally insufficient, and/or without merit. Accordingly, Defendant has failed to establish any "substantial grounds upon which relief might be granted," *Dillbeck v. State*, 357 So.3d 94, 103 (Fla. 2023), and his Motion for Stay of Execution shall, therefore, be denied.

Accordingly, it is,

ORDERED AND ADJUDGED that

1. Defendant's Successive Motion to Vacate Judgment of Conviction and Sentence of Death Pursuant to Florida Rule of Criminal Procedure 3.851 After a Signed Death Warrant, filed August 17, 2026, is **DENIED**.

2. Defendant's motion for stay of execution filed August 15, 2026, is **DENIED**.

3. The Clerk of Charlotte County shall electronically transmit a copy of this order to the Clerk of the Florida Supreme Court immediately and shall electronically transmit the Record on Appeal to the Clerk of the Florida Supreme Court immediately, but no later than Friday, August 21, 2026, 4:30 p.m., as directed by the Florida Supreme Court in its scheduling order issued August 11, 2026.

Defendant may appeal this decision to the Florida Supreme Court by filing a notice of appeal by 1:30 p.m., Friday, August 21, 2026, as directed by the Florida Supreme Court in its scheduling order issued August 11, 2026.

DONE AND ORDERED in Chambers in Punta Gorda, Charlotte County, on the date affixed to the signature below.


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Lisa S. Porter, Circuit Court Judge PASHxW0k 97000166F
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**IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR
CHARLOTTE COUNTY, FLORIDA** **CRIMINAL ACTION**

STATE OF FLORIDA,

Plaintiff,

vs.

Case No. 97-166 F

DANIEL OWEN CONAHAN, JR.,

Defendant.

**ORDER DENYING DEFENDANT'S RULE 3.853 MOTION
FOR POSTCONVICTION DNA TESTING**

THIS CAUSE comes before the Court on Defendant's "Motion for Postconviction DNA Testing," pursuant to Fla. R. Crim. P. 3.853, filed by counsel on January 17, 2025. Having reviewed the instant motion, the State's response to the motion filed on April 15, 2025, the record, and the applicable law, the Court finds as follows:

The Defendant's motion claims that collateral DNA testing of five (5) items recovered from the crime scene in question in this case could be capable of proving his innocence or could serve to mitigate his sentence. The Court finds that an evidentiary hearing is not necessary on Defendant's claims for relief. The Defendant's motion can be resolved by a review of the record and the prevailing case law.

Procedural History and Facts

The facts of this case are outlined in the initial Florida Supreme Court opinion on direct appeal, Conahan v. State, 844 So.2d 629 (Fla. 2003).

On April 16, 1996, Richard Montgomery, who lived with his sister, was with Bobby Whitaker, Gary Mason, and other friends when he mentioned that he was going out to make a few hundred dollars and would be back shortly. When asked whether it was legal, he smiled. Montgomery also told his mother that someone had offered to pay him \$200 to pose for nude pictures, but he did not tell

her who made the offer. In the same conversation, Montgomery mentioned that he had recently met the defendant Daniel O. Conahan, Jr., who lived in Punta Gorda Isles and was a nurse at a medical center. The last time friends saw Montgomery alive was on April 16 between 4 p.m. and 7 p.m.

The next day, April 17, Thomas Reese and Michael Tish, who were storm utility engineers for Charlotte County, discovered a human skull in a remote, heavily wooded area off of Highway 41 and immediately notified the police department. While searching the scene, deputies found the nude body of a young, white male that was later identified as Richard Montgomery. He had visible signs of trauma to the neck, waist, and wrists, and the genitalia had been removed. The forensic lab personnel arrived and collected various items from the scene, including a rope found on the top of a nearby trash pile, carpet padding that covered the victim's body, a skull and a torso (neither of which belonged to the victim), a gray coat, and various combings from the victim's arms, hands, chest, pubic area, and thighs.

An autopsy revealed that Montgomery died as a result of strangulation. He had two ligature marks on the front of his neck, two horizontal marks on the right side of his chest, and abraded grooves around his wrists. All of the grooves were of similar width, did not extend to Montgomery's back, and were consistent with marks that would be left on an individual who had been tied to a tree.

Due to the unique nature of the homicide (being tied to a tree naked and then strangled), police reviewed a similar assault reported on August 15, 1994. The victim, Stanley Burden, was a high school drop-out who, like Montgomery, had difficulty keeping a steady job and had physical features similar to those of Montgomery. The report indicated that Burden met Conahan, who offered to pay him \$100 to \$150 to pose for nude photographs. Burden agreed and Conahan drove him to a rocky dirt road in a secluded area where Conahan pulled out a duffle bag with a tarp and a Polaroid camera. The two men headed into the woods where Conahan laid the tarp out and asked Burden to take off his shirt and show a little hip. After taking numerous pictures of Burden, Conahan then took out a new package of clothesline so he could get some bondage pictures. He asked Burden to step close to a nearby tree and then clipped the clothesline in several pieces, draping them over Burden to make it look like bondage. Conahan moved behind Burden, snapped the rope tightly around him, pulled his hands behind the tree, placed ropes around his legs and chest, and wrapped the rope twice around Burden's neck. Conahan then performed oral sex on Burden and attempted to sodomize him. Burden fought to position himself in the middle of the tree while Conahan tried to pull him to the side to have anal sex. After many unsuccessful attempts, Conahan snapped the rope around Burden's neck, placed his foot against the tree, and pulled on the rope in an attempt to strangle Burden, who tried to slide around the tree to keep his windpipe open. Conahan hit Burden on the head and unsuccessfully attempted to strangle him for thirty minutes. Conahan asked Burden why he would

not die and finally gave up, gathered his possessions, and left. Burden freed himself, went to a local hospital, and received treatment for his injuries. The police located the crime scene and found that one of the melaleuca trees had ligature indentations that corresponded with Burden's injuries.

Based on this information, the police began an undercover investigation of Conahan. On May 24, 1996, Deputy Scott Clemens was approached by Conahan at Kiwanis Park, and Conahan offered Clemens \$7 to show his penis or \$20 if Clemens would allow Conahan to perform fellatio. Clemens refused the offer and the next day returned to the park where he again encountered Conahan, who offered him \$150 to pose for nude photos.

On May 31, 1996, pursuant to a warrant, the police searched Conahan's residence and vehicles and obtained paint samples from his father's Mercury Capri, which Conahan occasionally used. The police then compared paint samples from the Capri with a paint chip from the victim's body and found that they were indistinguishable.

On February 25, 1997, Conahan was indicted for first-degree premeditated murder, first-degree felony murder, kidnapping, and sexual battery of Richard Montgomery. In the guilt phase of his trial, Conahan waived his right to trial by jury. The State presented evidence of the manner in which the victim's body was found and evidence obtained from the autopsy and the searches of Conahan's residence and vehicles. The State also presented evidence that on the day of Montgomery's disappearance, April 16, 1996, at 6:07 p.m., Conahan's credit card was used to purchase clothesline, Polaroid film, pliers, and a utility knife from a Wal-Mart store in Punta Gorda. Still photos showed that minutes later, at 6:12 p.m., Conahan withdrew funds from an ATM which was located close to the Wal-Mart.

The trial court permitted the State to introduce *Williams* rule evidence of Burden's attempted murder and sexual battery, ruling that the evidence was sufficiently similar to the evidence leading up to Montgomery's death so as to constitute a unique modus operandi sufficient to establish the identity of Montgomery's murderer. After the guilt phase of the trial was completed, the trial court found and adjudicated Conahan guilty of first-degree murder and kidnapping.

On November 1, 1999, the penalty phase of Conahan's trial was conducted before a jury at which time photos taken at the crime scene of the victim's body were published, and Deputy Gandy testified relative to the crime scene and how the body was found. Gandy further testified that during an interview Conahan told him that he had a fantasy involving bondage and sex.

The medical examiner, Dr. Carol Huser, testified regarding the autopsy report prepared by Dr. Imami. After examining Dr. Imami's report and viewing

the autopsy photographs, Dr. Huser concluded that Montgomery died by ligature strangulations. The autopsy photographs were published to the jury. Dr. Huser also testified that being killed in such a manner required applying pressure for a length of time notwithstanding the fact that the victim loses consciousness after only a few seconds. She further opined that to be killed by strangulation would be terrifying.

Before the jury deliberated, the trial court gave instructions relative to the following aggravators: (1) the murder was heinous, atrocious, or cruel (HAC); (2) the murder was cold, calculated, and premeditated (CCP); and (3) the murder was committed during the course of a kidnapping. By a vote of twelve to zero, the jury recommended the death penalty. A *Spencer* hearing was held on November 5, 1999, and on December 10, 1999, Conahan was sentenced to death for the first-degree murder of Richard Montgomery.

Conahan, 844 So.2d at 632-34 (footnotes omitted).

Motion for postconviction DNA Testing

The Defendant requests collateral DNA testing of five (5) items recovered from the crime scene in question in this case. Those items being: (1) a hair located in a sheet used by law enforcement to wrap the victim, Richard Montgomery's body; (2) a Winston cigarette butt found at the crime scene; (3) an additional cigarette butt; (4) fingernail clippings from Montgomery's right hand as well as (5) his left hand.

The instant motion indicates that the Defendant believes that additional DNA testing of the five items could potentially result in a match to some individual other than the victim or the Defendant. Thus, if admitted at trial, that evidence of absence linking the Defendant to the crime could have led a jury to a more likely finding of a reasonable doubt of guilt, or at least to mitigate the sentence received by the Defendant in this case.

Rule 3.853 requires that a motion for DNA testing must demonstrate (1) a statement of the facts relied upon 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; and (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.

With that stated, after a review of the instant motion and the State's response, the Court finds that the Defendant has failed to make facially or legally sufficient allegations to support the type of relief requested. First, the Defendant has adequately described the physical evidence containing DNA to be re-tested and its last known location. Second, the record shows that the five items in question have previously been tested for DNA (not resulting in a match to the Defendant), but the Defendant has raised an argument that subsequent scientific developments in DNA testing techniques could result in better or more conclusive results or findings. Third, while the Defendant asserts his innocence, he has failed to demonstrate how testing these items would exonerate him or mitigate his sentence. Fourth, while the motion does adequately state that identification was a disputed issue at trial, it again, has failed to demonstrate how testing these items would exonerate him or mitigate his sentence as Conahan was found guilty and sentenced despite there being no DNA evidence linking him to Montgomery. In other words, absence of evidence is not evidence of absence.

Analysis of Items to be Tested (or re-tested)

The Defendant's motion argues that the hair, the Winston cigarette butt, the additional cigarette butt, and Montgomery's fingernail clippings were subjected to DNA testing prior to trial; however further testing would likely yield a more conclusive result.

The Hair

DNA analysis introduced at trial established that the hair found in the sheet used to transport Montgomery's body from the crime scene was Montgomery's (Attachment A: V34/T. 1887). Testimony at trial revealed the presence of additional DNA on the hair that was not linked to Conahan. While Defendant argues that modern techniques of DNA analysis would establish conclusively that Conahan's DNA was not found on the hair, the Court agrees with the State's argument that this fails to establish a likelihood of a different outcome either in terms of sentencing or guilt. Where a defendant cannot show that DNA will prove or negate a material fact, a request for testing should be denied. Scott v. State, 46 So.3d 529 (Fla. 2009). Further, as the Florida Supreme Court's opinion in this case noted, Montgomery's body was found in an open area commonly used as a trash dump wrapped up in a discarded piece of carpet padding. It should not, therefore, be surprising that the victim's hair might carry random DNA.

The Cigarette Butts

The cigarette butts were located near Montgomery's body in the woods. When submitted for DNA testing in 1996 and 1999, the results excluded Conahan and Montgomery as the sources of the present DNA. The Court finds that same result with the cigarette butts found in the vicinity of Montgomery's body. The crime scene in this case was not a closed environment. Instead, here law enforcement found Montgomery and also parts of a second deceased person nearby. This, combined with the fact that the area in question was open and frequented by people seeking to

discard unwanted items, any number of people might have wandered through the area prior to the discovery of Montgomery's body. The Court finds that the two cigarette butts found at the scene could have come from any of these other sources. Thus, again, absence of evidence (the link to Conahan) is not evidence of absence (not being at the crime scene).

The Fingernail Clippings

The Defendant's motion argues that the fingernail clippings from Montgomery's right and left hand were tested for DNA in 1996, and only Montgomery's DNA was identified. It goes on to state that these items did not undergo any further testing to determine if additional DNA was deposited under Montgomery's fingernails. The motion claims that with the advances in DNA testing since this evidence was last tested, there exists a reasonable probability that the new testing could detect minute amounts of trace DNA that could be linked to the true killer. This claim all stands on the possibility that the victim clawed at the Defendant or clawed at the rope used to bound and strangle him. However, there is no evidence that any struggle or clawing actually did occur. Instead, at trial evidence was presented from Stanley Burden, who identified Conahan as his previous attacker, and offered evidence that he was paid by Conahan to perform some kind of bondage-style photo shoot in the woods and as such, he willingly went with Conahan and allowed himself to be tied to a tree, after which Conahan unexpectedly tightened the rope and was able to sexually assault him before attempting to strangle him with the rope.

Further, the State also presented testimony from an undercover deputy who reported that Conahan approached him in a park with a similar offer; that being money in exchange for sex and sexually explicit photographs. As such, this Court finds that new DNA analysis would not benefit Conahan. To add, and as noted by the Florida Supreme Court, there was clear and uncontested evidence that he (Conahan) was preying on young homeless men in the manner previously

described. Where a defendant cannot show that DNA will prove or negate a material fact, a request for testing should be denied. Scott v. State, 46 So.3d 529 (Fla. 2009). Even if collateral testing of the evidence found DNA and demonstrated that the DNA did not match Defendant, it would not prove that Defendant was not present at the crime scene or the perpetrator of the crime. This kind of speculation has been held as a basis for denying a Rule 3.853 motion. See Overton v. State, 976 So. 2d 536, 568-570 (Fla. 2007).

Conclusion

The Court finds that the Defendant has not established that the evidence requesting to be DNA tested (or re-tested) would exonerate him, or result in a lesser sentence. The Court finds there is no reasonable probability that Defendant would have been acquitted or received a lesser sentence if the DNA results were from some other unknown individual and had been admitted at trial, especially in light of the other overwhelming evidence adduced at trial, including the testimony of the *Willaims* witness, Stanley Burden. DNA testing will not be permitted if the requested DNA testing would shed no light on the defendant's guilt or innocence. Consalvo v. State, 3 So.3d 1014, 1016 (Fla. 2009).

Accordingly, it is

ORDERED AND ADJUDGED that Defendant's "Motion for Postconviction DNA Testing," pursuant to Fla. R. Crim. P. 3.853, filed on January 17, 2025, is DENIED.

ORDERED at Charlotte County, Florida on August 12, 2026.



Honorable Lisa S. Porter
Circuit Court Judge

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**IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT,
IN AND FOR CHARLOTTE COUNTY, FLORIDA**

STATE OF FLORIDA
Plaintiff,

v.

CASE NO. 97-166-CF

DANIEL O. CONAHAN
Defendant.

DEFENDANT'S MOTION FOR POSTCONVICTION DNA TESTING

COMES NOW, DANIEL O. CONAHAN, by and through undersigned counsel, and hereby respectfully moves this Court pursuant to Rule 3.853, Florida Rules of Criminal Procedure, and the Florida and United States Constitutions, for Short Tandem Repeat ("STR") DNA testing of physical evidence collected as part of the criminal investigation that led to his trial and conviction. Specifically, Conahan seeks testing of five items: 1) a hair located in a sheet used by law enforcement to wrap Richard Montgomery's body; 2) the Winston cigarette butt found at the crime scene; 3) an additional cigarette butt; 4) fingernail clippings from Montgomery's right hand; and 5) fingernail clippings from Montgomery's left hand.¹

This state-of-the art method of DNA testing is capable of proving that Conahan 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, Conahan would state:

PROCEDURAL HISTORY

Conahan was tried, convicted, and sentenced to death for first-degree murder in Charlotte County, Florida. The jury returned an advisory verdict of 12-0 for death. The court entered

¹ The specific evidence tag numbers and locations for each item are listed below.

judgment and sentence on December 10, 1999. On direct appeal, the Florida Supreme Court affirmed Conahan's convictions and sentence of death. *Conahan v. State*, 844 So. 2d 629 (Fla. 2003). The United States Supreme Court denied certiorari on October 6, 2003. *Conahan v. Florida*, 540 U.S. 895 (2003).

Conahan timely filed his initial Rule 3.851 motion to vacate judgments of conviction and sentence on October 1, 2004. The initial postconviction court denied his motion and the Florida Supreme Court affirmed on appeal. *Conahan v. State*, 18 So. 3d 718 (Fla. 2013). Conahan filed a writ of habeas corpus in the United States District Court for the Middle District of Florida on June 10, 2013, which was denied on March 27, 2023. Conahan filed an application for a certificate of appealability at the Eleventh Circuit Court of Appeals on April 4, 2024. The Eleventh Circuit denied Conahan's application, after which, he sought and was denied reconsideration on August 20, 2024. Conahan timely filed a petition for writ of certiorari at the Supreme Court of the United States on December 18, 2024.

On February 3, 2023, Conahan filed a successive Rule 3.851 motion for postconviction relief in this Court raising challenges to the fiber and paint chip evidence presented in his case. That motion remains pending as of the filing of this motion.

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 '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;
- (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.”

Knighen v. State, 829 So. 2d 249, 252 (Fla. 2d DCA 2002) (emphasis supplied); *King v. State*, 808 So. 2d 1237, 1247 (Fla. 2002).

Conahan’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 at autopsy and at the crime scene had been presented to the jury, there is a reasonable likelihood the verdict and/or the sentence would have been different. 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 Conahan. Alternatively, DNA test results that exclude Conahan from these critical items of crime scene evidence and point to another perpetrator would cast grave doubt on whether he was the individual who actually killed the victim, and thus provide grounds to mitigate his sentence.

ARGUMENT

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

a. Statement of Facts

On April 17, 1996, two construction inspectors located a human skull in a heavily wooded area of Northwest Charlotte County, Florida. (T. 751, 797). The area was described at trial as a “remote, isolated area of the county,” that was “secluded...[and] basically undeveloped” with “a lot of garbage and dumping going on.” (T. 752, 759).² Still, the area was “relatively accessible by car [and] by foot traffic.” (T. 756). The inspectors immediately alerted nearby officers from the Charlotte County Sheriff’s Office who then secured the area and began

² Citations to Mr. Conahan’s trial will be designated as R. ____ for record cites and T. ____ for transcript cites. All other citations will be self-explanatory.

an investigation.³ (T. 753, 767-68). During the search, officers located the recently deceased body of Richard Montgomery. (T. 792).

Montgomery was found naked, on the ground, beneath a roll of carpet padding. (T. 792). Officers from the Sarasota County Sheriff's Office collected fibers from the debris on Montgomery's body, a sheet used to transport his body, a towel used to cover his face during transport, the foam carpet padding initially covering his body, and one paint chip. (T. 872-73, 876, 1502, 1653). Several hairs were found in the sheet and collected for testing. (T. 1883). Officers also collected cigarettes from the scene. *See* Attachment A (FDLE Report, Lab No. 96301909, August 28, 1996; FDLE Report, Lab No. 96301909, July 26, 1999). All of these items were submitted to the Sarasota Sheriff's Department and the Florida Department of Law Enforcement for testing. (T. 827, 831, 1625). Excluding polymerase chain reaction (PCR) testing done on the cigarette butts and hair, testing on the aforementioned evidence was limited to fiber and paint analysis. (T. 1625; 1762, 1884); *see also* Attachment A.

On April 18, 1996, the medical examiner, Dr. Riazul Imami, performed an autopsy on Montgomery and collected oral swabs, rectal swabs, and fingernail clippings from his left and right hands for testing. (T. 907, 911); *see also* Attachment B (CCSO Rickey Hobbs Report March 24, 1997). A serology examination of the oral and rectal swabs excluded the presence of semen, but additional PCR testing was not performed. (T. 945-46). As for the fingernail clippings, the collected DNA was determined to belong exclusively to Montgomery. *See* Attachment C (FDLE Report, Lab No. 96303186, September 10, 1996).

The State's theory at trial was that Conahan propositioned Montgomery to take nude

³ A task force was developed for this investigation which included officers from the Charlotte County Sheriff's Office, Florida Department of Law Enforcement, North Port Police Department, and the Sarasota County Sheriff's Office.

bondage photos in exchange for payment, tied Montgomery to a tree, and strangled him to death with a rope. (T. 725). The State built a circumstantial case against Conahan. With no direct evidence to support its case, the State introduced testimony on questionable fiber and paint chip analysis, as well as unreliable witness testimony.⁴ (T. 1683, 1782). The state presented *Williams* rule witness Stanley Burden and Montgomery's mother, Mrs. Montgomery-West. Burden claimed that two years earlier, Conahan had lured him into the woods under similar pretenses, tried to strangle him, and then simply gave up. (T. 1156, 1163, 1168). Notwithstanding the problems with Burden's ever growing and evolving testimony, the State, however, could not connect his tale to Montgomery's death until Mrs. Montgomery-West offered false testimony wherein she—for the first time in the entire case—alleged her son knew Conahan and that someone asked him to pose for nude photos in exchange for money. (T. 1106, 1110). Burden has since admitted that he lied about the promises and inducements made to him in exchange for his testimony. (PCR2-59-60). While Mrs. Montgomery-West has not admitted she fabricated testimony, in light of the record in this case, her statements are demonstrably false.

Further, the State presented the testimony of FDLE Analyst Paula Sauer, who testified on cross-examination that her fiber analysis was limited to microscopic comparison. (T. 1728). The State also presented the testimony of FDLE Analyst Janice Taylor who could not definitively conclude that the single paint chip located on Montgomery originated from the Mercury Capri as it could have originated from a vehicle with a similar paint composition. (T. 1782-83). Yet, at trial, the State overstated the weight and value of the results of testing both fiber evidence and paint chips used to connect Mr. Conahan to the crime scene of Mr. Montgomery's murder.

⁴ As noted above, Conahan filed a successive postconviction motion challenging the reliability of this forensic evidence. That motion remains pending.

Beyond the questionable and limited fiber and paint chip testimony presented, the State failed to present any direct forensic evidence linking Conahan to the crime. Further, defense counsel did not seek any independent PCR testing of the evidence collected at the scene. Conahan has consistently maintained his innocence. (T. 2127). Accordingly, additional testing would serve to exclude Conahan's DNA profile and/or identify a perpetrator's profile on the aforementioned evidence .

b. Evidence to be Tested:

1. Hair from sheet Montgomery was wrapped in (Ex. 6A-B, FDLE Lab. No. 96303186)
2. Winston cigarette butt from Montgomery crime scene (Ex. 4-3, FDLE Lab No. 96301909)
3. Cigarette butt (Ex. 18, FDLE Lab No. 96301909)
4. Fingernail clippings from Montgomery's right hand (Ex. 30, FDLE Lab No. 96303186)
5. Fingernail clippings from Montgomery's left hand (Ex. 31, FDLE Lab No. 96303186)

c. Last Known Location of Evidence.

Undersigned counsel viewed the above evidence at the Charlotte County Clerk's Office in June 2022. Conahan has a good faith reason to believe the evidence remains at the Charlotte County Clerk of Court's office and has not been moved or destroyed.

II. The Evidence Mr. Conahan 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. Pro. 3.853(b)(2))

The hair, the Winston cigarette butt, the additional cigarette butt, and Montgomery's fingernail clippings were subjected to DNA testing prior to trial; however further testing would likely yield a more conclusive result.

The hair was located in the debris from the sheet used to transport Montgomery's body at the scene. When submitted for PCR testing in 1997, a mixture of profiles were identified on the hair. (T. 1884-85). The major component of the mixture was consistent with Montgomery's DNA profile and the minor component was *inconsistent* with Conahan's DNA profile. (T. 1885). However, at trial the State suggested that Conahan could be a contributor to the minor profile because some of his alleles match the profile's alleles. (T. 1886). This item did not undergo any further testing to conclusively exclude Conahan as a contributor or identify whose DNA was on the hair. At the time the hair was tested forensic DNA science was in its infancy stages and early technology required a large sample to produce a result. Now, modern DNA technology is more sensitive, only requiring a single cell to test for a conclusive match to a DNA profile. Moreover, modern testing is more thorough. The kits used at the time of Mr. Montgomery's death analyzed less than half a dozen locations on a DNA sequence (referred to as loci); however modern testing analyzes over 24 loci. *See* Attachment D (Statement of Tiffany Roy, December 12, 2024). Modern PCR testing of the hair has a reasonable probability of establishing that Conahan did not contribute to the DNA profile or, at least, discovering evidence that inculcates an alternative suspect.

The cigarette butts were located near Montgomery's body in the woods. When submitted for DNA testing in 1996 and 1999, the results excluded Conahan and Montgomery as the sources of the present DNA. This item did not undergo any further testing to determine whose DNA was on the cigarette. In the event the killer used the cigarettes around the time of the murder, it is likely their saliva remained on the cigarette butts before discarding them. The cigarette butts were bagged individually before being sent to the FDLE for analysis and are currently being retained as frozen extractions in the FDLE Tampa laboratory (T. 1476-77); *see also* Attachment

A. Further, the evidence in this case was sealed in several layers of bags, both paper and plastic. Thus, it is likely that testable DNA is present on the evidence. Modern short tandem repeat (STR) DNA testing of this evidence has a reasonable probability of discovering evidence that inculcates an alternative suspect.

As for the fingernail clippings from Montgomery's right and left hands, a DNA test was performed in 1996 and only Montgomery's DNA was identified. *See* Attachment C. This item did not undergo any further testing to determine if additional DNA was deposited under Montgomery's fingernails. However, with the advances in DNA testing since this evidence was last tested, there exists a reasonable probability that new testing could detect minute amounts of trace DNA that could be linked to the true killer. Under the State's theory that Montgomery was bound to a tree and strangled to death with a rope, Montgomery would have been in close proximity to his murderer. Given the likelihood that he clawed at the killer and clawed at the rope used to bound and strangle him, the killer's DNA would be on Montgomery's fingernail clippings. DNA testing of this evidence has a reasonable probability of discovering evidence that exculpates Conahan and/or inculcates an alternative suspect. Further, "great weight is given to fingernail evidence and Florida courts routinely have granted requests for DNA testing where there was even less concrete evidence of a struggle." *Dubose v. State*, 113 So. 3d 863, 865 (Fla. 2d DCA 2012) (granted request for DNA testing where victim likely scratched the assailant while being placed in a chokehold). Here, though the details of a struggle are unclear, the scratches on Montgomery's back and his missing genitalia indicate a struggle likely took place, making the grant of DNA testing paramount.

III. Daniel Owen Conahan is Innocent and the DNA Testing Requested Herein Will Exonerate Him (Fla. R. Crim. Pro. 3.853(b)(3))

a. Statement of Innocence

At the time of his initial arrest, prosecution, and trial, Conahan maintained that he was innocent of the charged crimes. He continues to maintain that he is actually and legally innocent of the crime and the death penalty.

b. DNA Testing Will Exonerate Mr. Conahan

The DNA results would provide objective evidence that someone other than Conahan killed the victim. Each piece of evidence will be discussed in turn.

1. Hair from sheet wrapped around Montgomery

The hair was located in the debris from the sheet used to transport Montgomery's body at the scene. (T. 1883). The results from PCR testing revealed an unknown DNA profile on the minor component of the DNA mixture found on the hair. (T. 1884-85). It is foreseeable that the killer's DNA was left on multiple parts of Montgomery's body during the assault before the hair transferred onto the sheet. As such, there is a reasonable probability that testing the hair for DNA could lead to evidence that exculpates Conahan and/or inculcates an alternative suspect.

2. Winston cigarette butt from Montgomery crime scene (Ex. 4-3, FDLE Lab No. 96301909)

A Winston cigarette butt was retrieved from the Montgomery crime scene. *See* Attachment A. The results from PCR testing revealed an unknown DNA profile and excluded both Conahan and Montgomery as the sources of the DNA. The killer may have used the cigarette at the time of the murder and transferred their DNA onto it before discarding the cigarette butt at the scene. As such, there is a reasonable probability that testing it for DNA could lead to evidence that exculpates Conahan and/or inculcates an alternative suspect.

3. Cigarette butt (Ex. 18, FDLE Lab No. 96301909)

A cigarette butt was retrieved by law enforcement and submitted to FDLE for testing, presumably because of its association with the crime. *See Attachment A.* The results from PCR testing revealed an unknown DNA profile and excluded both Conahan and Montgomery as the sources of the DNA. The killer may have used the cigarette at or around the time of the murder and transferred their DNA on it before discarding the cigarette butt at the scene. As such, there is a reasonable probability that testing it for DNA could lead to evidence that exculpates Conahan and/or inculcates an alternative suspect.

4. Fingernail clippings from Montgomery's right hand (Ex. 30, FDLE Lab No. 96303186)

Fingernail clippings were removed from Montgomery's right hand and submitted for DNA testing. A PCR test was conducted and only Montgomery's DNA was identified under his fingernails. *See Attachment C.* However, several advancements have been made in DNA testing since this evidence was last tested, including the development of technology that is more sensitive to minute amounts of trace DNA. Based on the State's theory that Montgomery was bound to a tree and strangled with a rope, it is likely that Montgomery clawed at the killer and/or rope during the assault, resulting in minute amounts of the killer's trace DNA to be deposited under his fingernails. As such, there is a reasonable probability that testing it for DNA could lead to evidence that exculpates Conahan and/or inculcates an alternative suspect.

5. Fingernail clippings from Montgomery's left hand (Ex. 31, FDLE Lab No. 96303186)

Fingernail clippings were removed from Montgomery's left hand and submitted for DNA testing. A PCR test was conducted and only Montgomery's DNA was identified under his fingernails. *See Attachment C.* However, several advancements have been made in DNA testing since this evidence was last tested, including the development of technology that is more

sensitive to minute amounts of trace DNA. Based on the State's theory that Montgomery was bound to a tree and strangled with a rope, it is likely that Montgomery clawed at the killer and/or rope during the assault, resulting in minute amounts of the killer's trace DNA to be deposited under his fingernails. As such, there is a reasonable probability that testing it for DNA could lead to evidence that exculpates Conahan and/or inculpates an alternative suspect.

DNA testing has the potential to conclusively prove Conahan's actual innocence and identify the true killer. Alternatively, DNA testing will serve to mitigate Conahan's sentence. The jury rendered an advisory 12-0 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 six jurors would have voted for a life sentence.

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

It is well established that even where evidence against a defendant is far more overwhelming than that offered against Conahan, identity is still a disputed issue under Rule 3.853(b)(4) provided that—as here—the defense at trial denied that Conahan had 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).

Mr. Conahan'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. Conahan's case is the very unique situation in which Rule 3.853

testing “offers a chance to ensure the validity of the jury’s verdict.” *Dubose*, 113 So. 3d at 866. 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 Conahan, 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. (T. 1965). So much so that the State relied on questionable fiber and paint chip testimony and unreliable witness testimony to implicate Conahan.

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

V. Constitutional Claims

In addition to Conahan’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. 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 (Alito, J.) 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 Conahan 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* 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 Conahan. STR DNA testing on the requested evidence has a reasonable probability of implicating the true killer. Accordingly, Conahan has a fundamental right to present evidence such exculpatory evidence.

REQUEST FOR RELIEF

WHEREFORE, Daniel O. Conahan respectfully request that the physical evidence described herein be released to a DNA testing laboratory for DNA testing. Should the motion be granted, Mr. Conahan 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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COUNSEL FOR MR. CONAHAN

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Motion has been electronically filed through the Florida State Courts e-filing portal and thus served to Cynthia Ross, Assistant State Attorney and Timothy Freeland, Assistant Attorney General on January 17, 2025.

/s/ Brittney N. Lacy
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VERIFICATION

STATE OF FLORIDA)

COUNTY OF UNION)

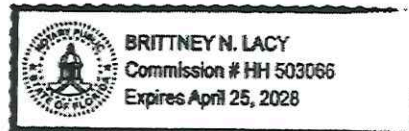
BEFORE ME, the undersigned authority, this day personally appeared, **DANIEL O. CONAHAN**, who, being first duly sworn, says that he is the Defendant in the above styled cause, and that he has read the foregoing **Motion for Postconviction DNA Testing** and has personal knowledge of the facts and matters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

FURTHER AFFIANT SAYETH NAUGHT.

Daniel O. Conahan
DANIEL O. CONAHAN

SWORN TO AND SUBSCRIBED TO before me this 8th day of January, 2025
by DANIEL O. CONAHAN, who is personally known to me and/or produced
_____ identification.

Brittney N. Lacy
NOTARY PUBLIC, STATE OF FLORIDA
My Commission Expires: _____



**IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL
CIRCUIT IN AND FOR CHARLOTTE COUNTY, FLORIDA**

STATE OF FLORIDA,

Plaintiff,

v.

Case No. 97-CF-166

DANIEL O. CONAHAN,

Defendant.

_____/

**STATE'S RESPONSE TO CONAHAN'S MOTION
FOR POSTCONVICTION DNA TESTING**

COMES NOW the State of Florida, by and through the undersigned attorney, and herein files its Response to Defendant's Motion for Postconviction DNA Testing filed January 17, 2025. The State respectfully moves this Honorable Court to deny the Defendant's Motion summarily as legally insufficient and because it is refuted by the record.

I. Facts and Procedural History

Daniel Conahan, Jr. was charged by indictment with premeditated murder of Richard Montgomery, felony-murder, kidnapping and sexual battery. He waived jury proceedings in the guilt phase and the Court found Conahan guilty of first-degree premeditated murder and kidnapping. Conahan was

sentenced to death on December 10, 1999.

The Florida Supreme Court affirmed Conahan's convictions and death sentence. Conahan v. State, 844 So. 2d 629 (Fla. 2003). It summarized the relevant facts in its opinion affirming Defendant's judgment and sentence of death:

On April 16, 1996, Richard Montgomery, who lived with his sister, was with Bobby Whitaker, Gary Mason, and other friends when he mentioned that he was going out to make a few hundred dollars and would be back shortly. When asked whether it was legal, he smiled. Montgomery also told his mother that someone had offered to pay him \$200 to pose for nude pictures, but he did not tell her who made the offer. In the same conversation, Montgomery mentioned that he had recently met the defendant Daniel O. Conahan, Jr., who lived in Punta Gorda Isles and was a nurse at a medical center. The last time friends saw Montgomery alive was on April 16 between 4 p.m. and 7 p.m.

The next day, April 17, Thomas Reese and Michael Tish, who were storm utility engineers for Charlotte County, discovered a human skull in a remote, heavily wooded area off of Highway 41 and immediately notified the police department. While searching the scene, deputies found the nude body of a young, white male that was later identified as Richard Montgomery. He had visible signs of trauma to the neck, waist, and wrists, and the genitalia had been removed. The forensic lab personnel arrived and collected various items from the scene, including a rope found on the top of a nearby trash pile, carpet padding that covered the victim's body, a skull and a torso (neither of which belonged to the victim), a gray

coat, and various combings from the victim's arms, hands, chest, pubic area, and thighs. On the following day, Deputy Todd Terrell arrived on the scene with a K-9 dog which showed significant interest in a sabal palm tree, specifically the side of the tree which was somewhat flattened and damaged.

An autopsy revealed that Montgomery died as a result of strangulation. He had two ligature marks on the front of his neck, two horizontal marks on the right side of his chest, and abraded grooves around his wrists. All of the grooves were of similar width, did not extend to Montgomery's back, and were consistent with marks that would be left on an individual who had been tied to a tree.

Due to the unique nature of the homicide (being tied to a tree naked and then strangled), police reviewed a similar assault reported on August 15, 1994. The victim, Stanley Burden, was a high school drop-out who, like Montgomery, had difficulty keeping a steady job and had physical features similar to those of Montgomery. The report indicated that Burden met Conahan, who offered to pay him \$100 to \$150 to pose for nude photographs. Burden agreed and Conahan drove him to a rocky dirt road in a secluded area where Conahan pulled out a duffle bag with a tarp and a Polaroid camera. The two men headed into the woods where Conahan laid the tarp out and asked Burden to take off his shirt and show a little hip. After taking numerous pictures of Burden, Conahan then took out a new package of clothesline so he could get some bondage pictures. He asked Burden to step close to a nearby tree and then clipped the clothesline in several pieces, draping them over Burden to make it look like bondage. Conahan moved behind Burden, snapped the rope tightly around him, pulled his hands behind the tree, placed ropes around his legs and chest, and wrapped

the rope twice around Burden's neck. Conahan then performed oral sex on Burden and attempted to sodomize him. Burden fought to position himself in the middle of the tree while Conahan tried to pull him to the side to have anal sex. After many unsuccessful attempts, Conahan snapped the rope around Burden's neck, placed his foot against the tree, and pulled on the rope in an attempt to strangle Burden, who tried to slide around the tree to keep his windpipe open. Conahan hit Burden in the head and unsuccessfully attempted to strangle him for thirty minutes. Conahan asked Burden why he would not die and finally gave up, gathered his possessions, and left. Burden freed himself, went to a local hospital, and received treatment for his injuries. The police located the crime scene and found that one of the melaleuca trees had ligature indentions that corresponded with Burden's injuries.

Based on this information, the police began an undercover investigation of Conahan. On May 24, 1996, Deputy Scott Clemens was approached by Conahan at Kiwanis Park, and Conahan offered Clemens \$7 to show his penis or \$20 if Clemens would allow Conahan to perform fellatio. Clemens refused the offer and the next day returned to the park where he again encountered Conahan, who offered him \$150 to pose for nude photos.

On May 31, 1996, pursuant to a warrant, the police searched Conahan's residence and vehicles and obtained paint samples from his father's Mercury Capri, which Conahan occasionally used. The police then compared paint samples from the Capri with a paint chip from the victim's body and found that they were indistinguishable.

On February 25, 1997, Conahan was indicted for first-degree premeditated murder, first-degree

felony murder, kidnapping, and sexual battery of Richard Montgomery. In the guilt phase of his trial, Conahan waived his right to trial by jury. The State presented evidence of the manner in which the victim's body was found and evidence obtained from the autopsy and the searches of Conahan's residence and vehicles. The State also presented evidence that on the day of Montgomery's disappearance, April 16, 1996, at 6:07 p.m., Conahan's credit card was used to purchase clothesline, Polaroid film, pliers, and a utility knife from a Wal-Mart store in Punta Gorda. Still photos showed that minutes later, at 6:12 p.m., Conahan withdrew funds from an ATM which was located close to the Wal-Mart.

The trial court permitted the State to introduce Williams rule evidence of Burden's attempted murder and sexual battery, ruling that the evidence was sufficiently similar to the evidence leading up to Montgomery's death so as to constitute a unique modus operandi sufficient to establish the identity of Montgomery's murderer. After the guilt phase of the trial was completed, the trial court found and adjudicated Conahan guilty of first-degree premeditated murder and kidnapping.

On November 1, 1999, the penalty phase of Conahan's trial was conducted before a jury at which time photos taken at the crime scene of the victim's body were published, and Deputy Gandy testified relative to the crime scene and how the body was found. Gandy further testified that during an interview Conahan told him that he had a fantasy involving bondage and sex.

The medical examiner, Dr. Carol Huser, testified regarding the autopsy report prepared by Dr. Imami. After examining Dr. Imami's report and viewing the autopsy photographs, Dr. Huser

concluded that Montgomery died by ligature strangulation. The autopsy photographs were published to the jury. Dr. Huser also testified that being killed in such a manner required applying pressure for a length of time notwithstanding the fact that the victim loses consciousness after only a few seconds. She further opined that to be killed by strangulation would be terrifying.

Conahan's aunt, Betty Wilson, testified on behalf of the defense that Conahan was a jovial, personable individual who participated in family activities and cared for his ailing mother before she died. Robert Lindy and his daughter Nancy Thomson, the father and sister of Hal Lindy, who was Conahan's roommate and lover when he lived in Chicago, testified that Conahan was like another son and brother to them. Conahan was instrumental in helping Hal and Nancy overcome alcoholism, was considered one of the family, and was included in many family functions. Thereafter, the defense rested its case.

Before the jury deliberated, the trial court gave instructions relative to the following aggravators: (1) the murder was heinous, atrocious, or cruel (HAC); (2) the murder was cold, calculated, and premeditated (CCP); and (3) the murder was committed during the course of a kidnapping. By a vote of twelve to zero, the jury recommended the death penalty. A Spencer hearing was held on November 5, 1999, and on December 10, 1999, Conahan was sentenced to death for the first-degree murder of Richard Montgomery and to fifteen years' imprisonment for kidnapping.

Conahan v. State, 844 So. 2d 629, 632-34 (Fla. 2003) (footnotes omitted).

II. Argument

In this case, Defendant seeks collateral DNA testing of (1) a hair located in a sheet used by law enforcement to wrap Montgomery's body; (2) a Winston cigarette butt found at the crime scene; (3) an additional cigarette butt; (4) fingernail clippings from Montgomery's right hand as well as (5) his left hand.

When reviewing a motion for postconviction DNA testing, the reviewing court must make findings relating to the following three items:

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.

Fla. R. Crim. P. 3.853(c)(5) (2012). The State will address each of these areas in turn.

A. Physical evidence does still exist.

The State has communicated with Detective Vogel and has determined that the evidence Defendant wishes to be tested does exist, either in physical form or as frozen PCR extracts.

B. DNA results would likely be admissible at trial and reliable proof is available to confirm the authenticity of the items.

The hair, cigarette butts and fingernail clippings were taken in evidence at the crime scene or during the subsequent autopsy, and an appropriate chain of custody can be had to authenticate them. FDLE's work product was extracted from those items. DNA testing results as to these items should therefore be admissible in any retrial, assuming that the proponent of such testing can show that it would be relevant to a material issue.

C. There is no reasonable probability that Defendant would be acquitted or receive a lesser sentence, should DNA results excluding him as contributor to DNA on any of the items in question be admitted at trial.

It is in this third category that Defendant's Motion fails, both as legally insufficient and partially refuted by the Record. Even if DNA testing were to obtain the results that Defendant

hopes for, the record positively refutes his claim that a reasonable probability would exist of acquittal or of a lesser sentence. The Court should deny Defendant's Motion for Postconviction DNA Testing. See e.g. Van Poyck v. State, 908 So. 2d 326, 330 (Fla. 2005).

1. The hair

Defendant's first claim centers on hair found in the sheet used to wrap victim Montgomery for transport to the morgue. DNA analysis introduced at trial established that the hair was Montgomery's (Attachment A: V34/T. 1887). Testimony at trial revealed the presence of additional DNA on the hair that was not linked to Conahan. While Defendant argues that modern techniques of DNA analysis would establish conclusively that Conahan's DNA was not found on the hair, this fails to establish a likelihood of a different outcome either in terms of sentencing or guilt. As the Florida Supreme Court's opinion noted, Montgomery's body was found in an open area commonly used as a trash dump wrapped up in a discarded piece of carpet padding. It should not, therefore, be surprising that the victim's hair might carry random DNA; consequently, even if

subsequent testing established more conclusively that Conahan's DNA is not on the hair, such an outcome would not vindicate Conahan in the least. This was, after all, the state of the evidence at the time of Conahan's trial- that unidentified DNA not connected to Conahan was present on Montgomery's hair.

2. Cigarette butts

The same argument pertains to cigarette butts found in the vicinity of Montgomery's body. The crime scene was not a closed environment by any means; to the contrary, law enforcement found Montgomery and also parts of a second deceased person nearby. This, combined with the fact that the area in question was open and frequented by people seeking to discard unwanted items, any number of people might have wandered through the area prior to the discovery of Montgomery's body, and the two cigarette butts found at the scene could have come from any of these other sources. Evidence that Conahan's DNA is not found on two cigarette butts recovered from the scene would be meaningless.

3. Fingernail clippings

Finally, Conahan seeks new DNA analysis of the victim's fingernails because, he contends, the victim clawed at Conahan or the rope and further examination of his fingernail clippings is therefore warranted. There is no evidence, however, to support such a scenario. State's witness Stanley Burden testified that approximately eight months prior to Montgomery's death, Conahan offered to pay him to pose for explicit photographs. In exchange, Burden went willingly with Conahan and allowed himself to be tied to a tree, after which Conahan unexpectedly assaulted him sexually before attempting to strangle him with a rope. Burden's injuries bore remarkable similarities to those observed on Montgomery's body, including distinctive scarring to the throat, torso, legs, and wrists (Attachment B: V34/T. 1842). The State also presented testimony from an undercover officer who reported that Conahan approached him with a similar offer— money in exchange for sex and sexually explicit photographs.

The State's theory was that Montgomery fell victim to Conahan's predations, went willingly with him to the area where

his body was later found, and allowed himself to be tied to a tree because he believed Conahan would pay him to do that. There is no evidence that Montgomery struggled with Conahan before he was restrained. And DNA analysis of Montgomery's fingernail clippings introduced at trial revealed only one source—Montgomery.

New DNA analysis would not benefit Conahan in the slightest. As noted by the Florida Supreme Court, there was clear and uncontested evidence that he was preying on young homeless men in the manner previously described. Trace evidence found on Montgomery's body, including a paint chip with a distinctive pattern of four layers of paint that matched a vehicle owned by Conahan's father as well as fiber evidence matching items owned by Conahan, linked him to Montgomery. And while he told law enforcement that he did not know Montgomery, this was shown to be false. Montgomery's mother testified that her son mentioned a new friend named Daniel Conahan. And Montgomery's roommate testified that Conahan had been to the trailer he shared with Montgomery on at least one occasion looking for Montgomery. Finally, Conahan told his

cellmate that he had taken Montgomery out to buy beer every so often, but that Montgomery had been “a mistake.” Conahan’s claim that testing using newer “modern” methods is likely to reveal the presence of previously undiscovered DNA is mere speculation, and even if new DNA were found on the victim’s fingernail clippings, it would not necessarily exonerate Conahan or render a different sentence likely.

In a motion for postconviction DNA testing, Conahan’s burden is to show that a DNA result from the items he identifies would create a reasonable probability of a lesser sentence or of acquittal. See Van Poyck, 908 So. 2d at 329. Conahan’s argument in favor of new DNA testing rests on his claim that newer methods may reveal DNA missed by earlier testing and is pure speculation. As noted above, Conahan was found guilty despite there being no DNA evidence linking him to Montgomery. And given the nature of the crime scene, discovery of additional DNA on or around Montgomery’s body would not benefit Conahan.

In Galloway v. State, 802 So. 2d 1173, 1174 (Fla. 1st DCA 2001), the defendant moved for postconviction DNA testing. The

crime was committed by multiple perpetrators, and Galloway asserted that his innocence would be proven because none of his DNA was at the scene. See id. at 1174. But the district court observed that such evidence would not free him of blame for the crime, or demonstrate that he was not present and participating with the co-defendants in that crime. The appellate court upheld the denial of DNA testing because the defendant had failed to demonstrate how the negative test would provide a reasonable probability that he would be acquitted.

In Gore v. State, 32 So. 3d 614, 618 (Fla. 2010), a defendant sought collateral DNA testing on numerous items found at the crime scene including a Marlboro cigarette package and underwear located in the vicinity. Additionally, Gore sought testing of hair found in the victim's hand and a shoestring knotted around her wrist. But Gore did not show how DNA testing would exculpate him.

The Supreme Court in *Gore* held that summary denial of the motion was proper. The items were all located in an area known to be a dumping ground for household trash, which would serve to explain the source of DNA other than Gore's.

Running recovered profiles as Gore suggested would only lead to a fishing expedition, “for which rule 3.853 was not intended.”

Id.

In Van Poyck, 908 So. 2d at 329, the defendant wanted DNA testing on items he believed would establish that he was not the one who actually pulled the trigger in his case. But the State, in seeking death, had not relied on Van Poyck’s status as the man who pulled the trigger. See id. None of the aggravating circumstances supporting the death sentence relied on Van Poyck being the one who pulled the trigger. See id. at 329-30. Accordingly, Van Poyck had failed to demonstrate that DNA testing would provide him a mitigated sentence as he claimed, and summary denial of his motion was appropriate. See id. at 330.

As in Galloway, the DNA of someone other than himself on any of the items in question would not exonerate Defendant in light of the powerful trace evidence linking him to Montgomery, his claim that he had never met Montgomery, plus the similar fact evidence introduced through victim Stanley Burden that Conahan had a history of offering payment to lure young

homeless men to a remote area where he would restrain, sexually assault, and then strangle them. As in Van Poyck, Defendant has wholly failed to show that the result he seeks would lead to his acquittal or to a lesser sentence. Defendant's motion is both legally insufficient, is refuted by the record, and should be denied.

III. Conclusion

Collateral DNA testing is intended to ensure the validity of a jury's verdict in certain unique situations. Dubose v. State, 113 So. 3d 863 (Fla. 2d DCA 2012). This is not one of them. The presence of Defendant's DNA on items recovered from the crime scene would create a stronger case for the State, but discovery of DNA from someone other than Conahan would not weaken the State's case one iota. Defendant has not shown a reasonable probability that DNA testing of these items would lead to his acquittal or a reduced sentence. This Honorable Court should deny Defendant's motion.

Respectfully submitted,

JAMES UTHMEIER
FLORIDA ATTORNEY GENERAL

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CO-COUNSEL FOR STATE OF FLORIDA

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of April 2025, I electronically filed the foregoing with the Clerk of the Court by using the e-filing portal system which will send a notice of electronic filing to the following: the Honorable Lisa S. Porter, Circuit Judge, Charlotte County Justice Center, 350 E. Marion Avenue, Punta Gorda, Florida 33950, **lsharder@ca.cjis20.org**; Bianca Bentley, Assistant State Attorney, Twentieth Judicial Circuit State Attorney's Office, 2000 Main Street, Floor 6, Fort Myers, Florida 33901, **bbentley@sao20.org**, **evelotti@sao20.org**; Marie-Louise Samuels Parmer, Special

Assistant CCRC-S, Brittney N. Lacy, Assistant CCRC-S, and
Yiitsodirah Final, Staff Attorney, Office of the Capital Collateral
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lacyb@ccsr.state.fl.us, **finaly@ccsr.state.fl.us**.

/s/ Timothy A. Freeland
CO-COUNSEL FOR STATE OF
FLORIDA

**IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL
CIRCUIT IN AND FOR CHARLOTTE COUNTY, FLORIDA**

STATE OF FLORIDA,

Plaintiff,

v.

Case No. 97-CF-166

DANIEL O. CONAHAN,

Defendant.

_____/

ATTACHMENT A

LOWER CASE NUMBER: 97-166-CF

APPEAL CASE NUMBER: SC00-170

DANIEL O. CONAHAN, JR.
APPELLANT

VS

STATE OF FLORIDA
APPELLEE

RECORD ON APPEAL

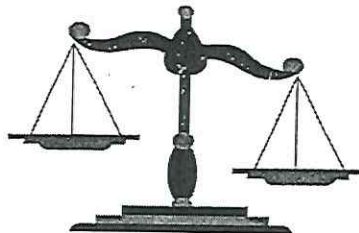
VOLUME XXXIV

APPEAL FROM THE CIRCUIT COURT CHARLOTTE COUNTY, FLORIDA

TRIAL JUDGE WILLIAM L. BLACKWELL

FOR APPELLANT:
OFFICE OF THE PUBLIC DEFENDER
APPELLATE DIVISION
P.O. BOX 9000 - DRAWER PD
BARTOW, FL 33830

FOR APPELLEE:
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LEGAL AFFAIRS
2002 NORTH LOIS AVENUE
WESTWOOD CENTER, SUITE 700
TAMPA, FL 33607



1 IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND
2 FOR CHARLOTTE COUNTY, FLORIDA CRIMINAL ACTION

3 STATE OF FLORIDA
4 PLAINTIFF,

5 vs

6 DANIEL O. CONAHAN,
7 DEFENDANT,

CASE NO: 97-166-CF
VOLUME XI
(pages 1788-1895)

8 TRANSCRIPT OF PROCEEDINGS
9 -----

10 Before the Honorable, WILLIAM L. BLACKWELL, Judge of said
11 Court, 20th Judicial Circuit of Florida, at a hearing
12 in the above-styled cause on August 16, 1999, held
13 at the Charlotte County Courthouse, Punta Gorda, Florida
14 commencing at approximately 1:30 p.m.
15
16

17 METZGER COURT REPORTING
18 201 WEST MARION AVENUE, SUITE 300
19 P.O. BOX 758
20 PUNTA GORDA, FLORIDA 33951
21 (941) 639-7797
22
23
24
25

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1 THE COURT: Yes, sir.

2 DIRECT EXAMINATION

3 BY MR. SULLIVAN:

4 Q What's your name, ma'am?

5 A My name is Robin Lynn Ragsdale.

6 Q And what do you do for a living?

7 A I'm a Florida Department of Law Enforcement Tampa Bay
8 Regional Operations Center as a serologist in the DNA serology
9 section.

10 Q And what sort of educational background do you have?

11 A I received my undergraduate degree from Jacksonville
12 University in 1985 in biology. I received my master's in 1988
13 from University of South Florida College of Medicine, and my
14 doctorate in 1990 from the University of South Florida College of
15 Medicine from the Department of Medical Microbiology and
16 Immunology.

17 MR. LEE: Your Honor, if I may, I am personally
18 familiar with Dr. Ragsdale and her work and her credentials,
19 and I would be happy to stipulate at this time to her as an
20 expert in the area of DNA.

21 THE COURT: All right.

22 MR. SULLIVAN: Thank you, Mr. Lee. Judge, be that as
23 it may, we can move right along.

24 THE COURT: All right. She will be so recognized.

25 BY MR. SULLIVAN:

1 A Yes, Mr. Conahan's excluded as being a possible
2 contributor to either the major or the minor component.

3 Q And why do you say that, how do you know that?

4 A By looking at the minor alleles and knowing which ones
5 would show up first based on size, if you look at the D7S8
6 marker, I'm sorry, the GC marker, Mr. Conahan is an A C, and
7 Mr. Montgomery is a C, C. If this was a stain that was
8 contributed to Mr. Conahan and Mr. Montgomery, then we would see
9 a C, C at the major component, with just an A in the minor
10 component.

11 However, that's not what we see. We see a major component
12 of the C, C, and then an A, B as a minor component. The presence
13 of that C excludes Mr. Conahan as being a contributor to this.

14 Q Now because this was a hair that was found in the sheet
15 used to transport Mr. Montgomery's body from the crime scene to
16 the morgue, and because the minor component of the DNA that you
17 found are consistent with Richard Montgomery, do you believe in
18 then that this hair was Richard Montgomery's hair?

19 A Because the major component of the hair was consistent
20 with Richard Montgomery, I think it's safe to assume that the
21 hair most probably originated from Richard Montgomery.

22 Q All right. And now, did you -- do you know what the
23 other DNA was? I know the DNA -- was it blood, semen, sweat,
24 tears?

25 A No, I do not know the origin of the other DNA. It

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ATTACHMENT B

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APPELLANT

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RECORD ON APPEAL

VOLUME XXXIV

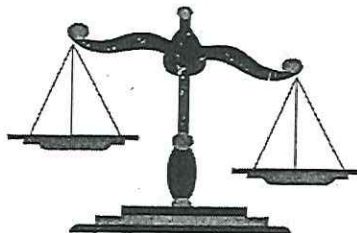
APPEAL FROM THE CIRCUIT COURT

CHARLOTTE COUNTY, FLORIDA

TRIAL JUDGE WILLIAM L. BLACKWELL

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1 and I will be back to give you a ruling on the William's
2 Rule issue. May I suggest, about ten minutes after the
3 hour.

4 We'll be in recess until then.

5 (Recess.)

6 THE COURT: Be seated, please.

7 All right. Let me announce my ruling on some of these
8 William's Rule issues. As to various collateral acts of the
9 Defendant, including the attempted strangulation of Stanley
10 Burden, the solicitation of Detectives Clements and Weir,
11 the Court will make the following findings:

12 The evidence, with respect to the injuries suffered by
13 Burden, are so similar in fact to the injuries sustained by
14 the decedent, Montgomery, in this case, that I will give
15 some limited discussion with the findings, the pictures,
16 that is to say, Exhibits 19 and 20, with respect to the
17 strangulation marks on Montgomery, and 56 and 57, with
18 respect to strangulation marks on Burden, are very similar.
19 They both show dual ligature marks on the neck and throat of
20 these victims, consistent with a double rap or, in nautical
21 terms, what might be called two half inches around the neck.
22 In each instance, found near the Adam's apple.

23 When I was asked to examine the throat of Mr. Burden
24 the other day while he was on the stand, I announced, for
25 the record, that I could see the two white horizontal marks