

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

DOCKET NO. 26-5476

IN THE SUPREME COURT OF THE UNITED STATES

DANIEL OWEN CONAHAN, JR.,

Petitioner,

vs.

STATE OF FLORIDA.

Respondent.

REPLY IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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

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September 9, 2026

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REPLY TO BRIEF IN OPPOSITION

The State misapprehends Mr. Conahan's arguments, and in so doing, fails to respond to his single question presented, not, as the State articulates, two questions. Mr. Conahan raises due process challenges to Florida's interpretation of Rule 3.853, challenging Florida's creation of a procedure that "is fundamentally inadequate to vindicate the substantive rights provided." *Dist. Attorney's Off. for Third Jud. Dist. v. Osborne*, 557 U.S. 52, 69 (2009).

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

Mr. Conahan explicitly argued in his petition that due process requires states to provide adequate procedures to "vindicate" state-created substantive rights, including a prisoner's right to prove his innocence with new evidence. *Osborne*, 557 U.S. at 68-69. In opposition, the State has advanced an extreme and patently incorrect application of due process, arguing that the constitutional guarantee does not apply to State procedures. (BIO at 12-3) The State reasons that because the

federal constitution does not entitle capital defendants to postconviction proceedings, “the due process Conahan was entitled to under the United States Constitution ended when his direct appeal and his federal habeas proceedings concluded.” (BIO at 12). This is neither true nor logical. Despite the State’s insistence, due process applies to State procedures. The State cannot pick and choose when the constitution applies. To do so would be a fundamental miscarriage of justice—particularly with Florida’s sobering track record of wrongful convictions and death row exonerations that are indelible stain on the state’s history.¹

Florida has erred in applying a heightened burden for the purposes of denying Mr. Conahan access to his substantive right, particularly when the State continued to test similar natured pieces of evidence. And, the court summarily denied Mr. Conahan’s motion for testing without providing him an adequate opportunity to meaningfully meet that burden. As Mr. Conahan argued in his petition, the signing of the execution warrant coupled with Florida’s insistence on carrying out executions as quickly as possible, notwithstanding any meritorious challenges or constitutional errors in the process, deprived Mr. Conahan of due process to be meaningfully heard and have adequate access to Florida’s established process for postconviction DNA testing. The court had not even heard argument on the motion nor held a hearing to resolve the factual disputes asserted by the State. The signing of the warrant

¹ Florida continues to lead the nation in death row exonerations. *See Florida, DEATH PENALTY INFO. CTR.*, <https://deathpenaltyinfo.org/state-and-federal-info/state-by-state/florida> (last visited Mar. 17, 2026).

truncated his proceedings and denied Mr. Conahan any opportunity to be heard.

Mr. Conahan does not raise a speculative attack. He met the criteria of Florida's Rule 3.853 permitting postconviction DNA testing—the evidence exists, he asserted that DNA remains on the items to test, and he asserted that conclusive results from the items would lead to an acquittal. The factual discrepancy here is whether Mr. Conahan can meet the last prong, which he maintains he can. Although it is true that testing conducted in the 1990's, using some of the earliest and most limited technology, excluded Mr. Conahan as a contributor, the State wholly ignores that *it argued to the jury that Mr. Conahan could be a contributor on the hair evidence*. In listing its reasons as to why the evidence Mr. Conahan seeks testing of would not change the outcome of his case, it neglected to address the hair evidence. Certainly conclusive results identifying the unknown contributor on the hair would absolutely lead to a new suspect. The same applies to the additional items Mr. Conahan seeks testing of. The State's argument that the presence of a third party's DNA at the scene would not be probative defies logic. This is precisely the type of DNA results that law enforcement would investigate. While the absence of his DNA was known at trial, the presence of the true killer's DNA was not.

As Mr. Conahan has demonstrated throughout his proceedings, the evidence in this case is not what it appears. As Mr. Conahan has successfully challenged a questionable aspect of his case, the court relies on another questionable aspect of the case to deny relief. The Florida Supreme Court did just that in affirming the denial of relief under warrant. The court agreed that the State *did* overstate the reliability

of fiber evidence, yet it denied relief relying on the statements of the *Williams* Rule witness Stanley Burden. Ten years ago the same court determined Burden was a habitual liar. It ultimately denied relief at that time relying on the pathology. Again, Mr. Conahan has demonstrated that the pathology testimony was neither accurate nor scientifically reliable.

Notably, the State does not engage with the reality that additional testing could result in newly discovered evidence establishing Mr. Conahan's innocence. It is of no importance to the State of Florida that they will execute an innocent man, so long as the proceedings keep their conviction intact. To do so, the State continues to advance its own narrative in this case, particularly relying on a misstatement of facts suited to bolster the reliability and credibility of evidence Mr. Conahan has contested throughout the years.

For example, although the Florida Supreme Court agreed that the fiber evidence had been overstated at trial, the State continues to argue to the weight of the fiber evidence to this Court. (BIO at 7-8) The State likewise improperly characterizes the fiber evidence as "indistinguishable" from fibers found at Mr. Conahan's home. The FDLE analyst never described the fibers using such language. It cannot be understated that false or misleading forensic evidence has been found to be a contributing factor in 24% of all wrongful convictions.²

The same goes for the State's reliance on the single 3.5 by 1-millimeter paint

² *Forensic Science: Problems and Solutions*, The Innocence Project, <https://innocenceproject.org/forensic-science-problems-and-solutions/>

chip allegedly recovered from Mr. Montgomery's body. The State continues to suggest this establishes Mr. Conahan must have been in recent contact with Mr. Montgomery prior to the crime. (Resp. 8) This analysis is unfounded. First, nothing supports the State's continued argument that the paint chip was collected from Mr. Montgomery as it is neither documented in the autopsy report nor in the crime scene reports detailing evidence collected at the scene. The paint chip likewise does not support the State's theory that whoever harmed Montgomery, lured him to the woods willingly. Without any struggle inside of a car, how would a paint chip from a car appear on Mr. Montgomery's body in the woods? If the paint chip originated from Mr. Conahan's father's vehicle, reason suggests it came from the vacuumings collected during the search of the car.

As exhibited in Mr. Conahan's case, and in Mr. James Duckett's just six weeks ago, the Florida Supreme Court continues to construe Rule 3.853 in a manner that fails to comport with fundamental fairness and due process in violation of this Court's precedent. *Dist. Atty's Office for 3rd Jud. Dist. v. Osborne*, 557 U.S. 52, 69 (2009). Florida cannot erode any right that impedes it from a streamlined execution. It is "inexplicable" why the State of Florida "refuses to allow DNA testing" of evidence that is directly related to the underlying crimes "despite the very real substantial possibility that such testing could exculpate" Mr. Conahan "and identify the real killer." *Reed v. Goertz*, 146 S. Ct. 936, 939 (2026)(Sotomayor, J., dissenting).

CONCLUSION

For the reasons set forth above and in his Petition, this Court should grant certiorari to review the judgment of the Florida Supreme Court.

Respectfully submitted,

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