

*** CAPITAL CASE ***

DOCKET NO. 26A119

IN THE SUPREME COURT OF THE UNITED STATES

JAMES AREN DUCKETT,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

REPLY TO RESPONSE TO APPLICATION FOR A STAY OF EXECUTION

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

**To the Honorable Clarence Thomas, Associate Justice of the Supreme Court
of the United States and Circuit Justice for the Eleventh Circuit:**

Respondent's response in opposition to Mr. Duckett's Application for Stay of Execution is premised upon a misapprehension of the question presented.

Mr. Duckett submits that he has shown a stay of execution is appropriate. *See Nken v. Holder*, 556 U.S. 418, 434 (2009).

A. Mr. Duckett has shown a reasonable likelihood of success on the merits of his claims.

The State misapprehends Mr. Duckett's arguments, and in so doing, fails to respond to Mr. Duckett's question presented. Mr. Duckett raises due process challenges to Florida's interpretation of Rule 3.853, challenging Florida's creation of a procedure that "is fundamentally inadequate to vindicate the substantive rights provided." *Dist. Attorney's Off. for Third Jud. Dist. v. Osborne*, 557 U.S. 52, 69 (2009).

Mr. Duckett raises only a single question and offers three reasons for granting the petition, each of which are likely to succeed on the merits.

Contrary to the State's position, Mr. Duckett's arguments fall squarely in this Court's jurisdiction, and clearly violate this Court's established precedent. A state court may not "under the color of local practice," *Rogers v. Alabama*, 192 U.S. 226, 230 (1904) (Holmes, J.), use a cloudy and manipulable state-law standard to evade review of a federal constitutional right it disfavors. When a state court engages in such behavior, the federal courts will ignore the purported state ground and reach the constitutional merits. *See, e.g., Lee v. Kemna*, 534 U.S. 362 (2002); *Harris v. Reed*, 489 U.S. 255 (1989). It is immaterial that the state court decision rests on a matter of state law when the state law violates the constitution. Mr. Duckett explicitly argued in his petition that due process requires states to provide adequate procedures to "vindicate" state-created substantive rights, including a prisoner's right to prove his innocence with new evidence. *Osborne*, 557 U.S. at 68-69.

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

Moreover, these cases concern a litigant's inability to litigate claims for relief pursuant to Rule 3.851, which includes an explicit temporal limitation as well as specific rules for successive motions. Rule 3.853 includes neither.

Notably, the State does not engage with the reality that additional testing could result in newly discovered evidence establishing Mr. Duckett's innocence. It is of no import to the State of Florida that they will execute an innocent man, so long as the proceedings keep their conviction intact.

Instead, the State makes a bold and unsubstantiated claim that the failed testing somehow "ultimately incriminates" Mr. Duckett. (Resp. Mtn to Stay. at 5). This claim is patently false. Upon the failed testing data, the State sent the data to its own third-party lab, Parabon Nanolabs. Parabon, albeit with caution, reported a *likelihood ratio* that supports Mr. Duckett having contributed to the evidentiary sample (WR1-S2. 2330). This is not the conclusion the State asserts.

But as outlined in Othram's analysis, there are significant concerns regarding the validity of these findings, and insufficient information was provided with the report to determine the scientific validity of the evaluation (WR1-S2. 2342). One area of concern is that Parabon reported that due to the low and uneven coverage in the sample, they were only able to identify 27 loci—out of a potential *10,230 SNP markers* that this particular kit identifies and out of millions of SNP markers that each individual has - that provided significant data to allow them to be analyzed. Parabon's report stated that of the 27 loci, 25 were consistent with Mr. Duckett and 2 were "not observed in the suspect profile." (WR1-S2 2333). The report then states that the 2 loci

may “*reflect contributions from an unknown individual*”, or be stochastic effects of artifact (*Id.*)(emphasis added). The State has never asserted nor is there any evidence that there could be two separate contributors to the sample so if in fact the loci reflect contributions from an unknown individual, this excludes Mr. Duckett.

This highlights the very issue with using a genealogy test, such as Kintelligence, rather than a test “likely [to] produce a definitive result.” *See* Rule 3.853(b)(2). Genealogy tests, such as Kintelligence, are designed to use large amount of pure, high quality double stranded DNA. Commercial microarrays fail when DNA stands are broken into short pieces beyond standard size thresholds. Thus it is no surprise that Kintelligence was unable to identify more than 27 testable loci as it was not designed to identify broken DNA fragments such as those found on the Q6 slide.

What’s more, the expert’s report is not in evidence. Indeed, the State objected to an evidentiary hearing, thus the court never heard testimony from the experts, nor were their reports admitted as substantive evidence.

As to the State’s crafted Question 2—Mr. Duckett does not assert a challenge to the state court’s denial of public records pursuant to Rule 3.852. Mr. Duckett notes that he requested records pursuant to Rule 3.852 to explain the failures of Rule 3.853. The rule, as applied, provides no vehicle to access any information about the DNA process.

Notwithstanding, the State’s argument proves Mr. Duckett’s point—there is no mechanism to access records about the DNA testing process for which the State has granted a substantive right. The plain reading of Rule 3.852 and the body of

corresponding jurisprudence concerns access to records related to colorable claims, raised pursuant to Rule 3.851 motions for postconviction relief. Rule 3.852 is silent as to record production concerning Rule 3.853 proceedings. Mr. Duckett challenges Rule 3.853, which is also silent as to access to records within Rule 3.853 proceedings. The State cannot, as it has done here, create a mechanism to access a substantive right and then erect procedural hurdles to preclude access to that right. Failing to allow Petitioner any information about the testing process while permitting the State “to exercise complete control over the location, timing, and method of [that] testing,” *Duckett v. State*, 431 So. 3d 990, 992 (Fla. 2026), does not 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).

It is “inexplicable” why the State of Florida “refuses to allow DNA testing” of evidence that is directly related to the underlying crimes “despite the very real substantial possibility that such testing could exculpate” Mr. Duckett “and identify the real killer.” *Reed v. Goertz*, 146 S. Ct. 936, 939 (2026)(Sotomayor, J., dissenting), and especially in a case where the State has agreed identity is at issue.

The denials of due process to Mr. Duckett ahead of his scheduled execution are blatant and apparent. Under these circumstances, there is a reasonable likelihood that four members of this Court would vote to grant certiorari.

B. There can be no dispute that Mr. Duckett will suffer irreparable harm absent a stay.

Despite the State’s position that “more should be required to establish irreparable harm than the execution itself,” (Res. Mtn. to Stay. at 5), this Court has

recognized for years, “the penalty of death is different in kind from any other punishment imposed under our system of criminal justice.” *Gregg v. Georgia*, 428 U.S. 153, 187 (1976). The irreparable injury is through the procedural impediments used to deny Mr. Duckett access to the mechanisms that would allow him to present a claim of newly discovered evidence to prove his innocence. Though this error, an innocent man will be executed.

C. The public interest lies in ensuring that the State does not end a life without adequate due process.

In opposition to Mr. Duckett’s application for stay, the State emphasizes that criminal law is “deprived much of its deterrent effect” without finality. (Resp. to Mtn to Stay. at 6). There can be no “deterrent effect” in executing an innocent man.

The State cannot ignore that the public has a strong interest in ensuring that the State does not end a life without adequate due process—as it seeks to do here by denying Mr. Duckett adequate access to statutory procedures that could ultimately demonstrate his innocence.

CONCLUSION

Accordingly, Mr. Duckett respectfully requests that the Court grant this Application, stay his execution, expedite consideration of his Petition, and grant any other relief that the Court may find just.

Respectfully submitted this the 28th day of July 2026.

Respectfully submitted,

/s/ Mary E. Wells

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