

**IN THE SUPREME COURT OF FLORIDA
CASE NO. SC22-1221**

MICHAEL GORDON REYNOLDS

Appellant,

v.

STATE OF FLORIDA

Appellee.

**ON APPEAL FROM THE CIRCUIT COURT OF THE EIGHTEENTH
JUDICIAL CIRCUIT, IN AND FOR SEMINOLE COUNTY, STATE OF
FLORIDA**

INITIAL BRIEF OF APPELLANT

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RECEIVED, 11/14/2022 03:09:02 PM, Clerk, Supreme Court

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STATEMENT OF THE CASE

Mr. Reynolds was tried by a jury and found guilty of two counts of first-degree murder, the lesser included offense of second-degree murder, and burglary of a dwelling during which a battery was committed while armed. Before the sentencing phase, Mr. Reynolds, advised by counsel, waived his right to present mitigating evidence. On May 9, 2003, a jury returned unanimous recommendations of death for both counts of first-degree murder. Mr. Reynolds was ultimately sentenced to death on September 19, 2003.

Mr. Reynolds' direct appeal, petition for certiorari, and post-conviction motions were later denied. *See Reynolds v. State*, 934 So. 2d 1128, 1160 (Fla. 2006); *Reynolds v. Florida*, 127 S. Ct. 943 (2007); *Reynolds v. State*, 99 So. 3d 459 (Fla. 2012).

On July 22, 1998, the Seminole County Sheriff's Office began investigating the murders of Danny Ray Privett, Robin Razor, and their daughter, Christina Razor. The body of Danny Ray Privett was found outside on the property located at 1628 Clekk Circle, Geneva, Seminole County, Florida. The bodies of Robin Razor, and Christina Razor were found inside their residence, a prowler camping trailer located on the described property. Record at 74.

The trial court found that the cause of death for Danny Privett was primarily blunt force trauma to the head resulting from multiple blows. *Id.* at 75. Robin Razor suffered multiple stab wounds to the head and neck area and one to the torso, and also suffered a number of defensive wounds to the arms and hands. *Id.* at 81. The Court concluded that the existence of numerous defensive wounds demonstrates that the victim was resisting. *Id.* The court further found that the numerous stab and cutting wounds suffered by the victim, Robin Razor, were consistent with the use of a weapon such as a knife. *Id.* In addition, the victim was beaten about her head with a piece of concrete block. *Id.* at 92. Based on DNA analysis, the trial court concluded that the blood of Danny Ray Privett was mingled with that of the victim, Robin Razor, on the concrete block located within the camper. *Id.* In other words, both victims were struck with the same weapon.

As to the cause of death of Christina Razor, the medical examiner testified that Christina suffered two stab wounds to the neck and shoulder area, contusions to her face, and injuries to her mouth. She also suffered an abrasion on the back of one of her hands which was characterized as being consistent with a defensive wound. The wounds were consistent with the use of a knife as a weapon. *Id.* at 81.

On December 5, 2013, the Mr. Reynolds, through counsel, filed a Motion for DNA Testing seeking to have 22 items in evidence tested for DNA. *Id.* at 487. The sentencing court summarily denied the motion. *Id.* at 235, which was affirmed by the Florida Supreme Court. *Reynolds v. State*, 192 So. 3d 41 (Fla. 2015).

On May 10, 2022, Mr. Reynolds, through counsel, filed the instant "Motion for Post-Conviction DNA Testing." The trial court summarily denied this motion, which is the subject of this appeal.

STANDARD OF REVIEW

The standard of review is *de novo*. *Stephens v. State*, 748 So.2d 1028, 1032 (Fla. 2000). The lower court's legal rulings are reviewed *de novo* and deference is given to factual findings supported by competent and substantial evidence. *Sochor v. State*, 883 So.2d 766, 772 (Fla. 2004). In this matter, since the successive motion was summarily denied, Mr. Reynolds' factual assertions should be accepted as true.

SUMMARY OF ARGUMENT

Mr. Reynolds has maintained his innocence throughout this investigation. Mr. Reynolds has consistently argued that the DNA evidence presented against him was tainted, unreliable, and inconclusive. Additionally, state witnesses have admitted mistakes were made in the collection and storage

of evidence including evidence linking Mr. Reynolds to the scene. Regardless of whether the evidence was tainted, unreliable, and/or inconclusive, the testing of the requested DNA may identify another perpetrator, who was more culpable than Mr. Reynolds mitigating Mr. Reynolds' culpability. The relative culpability of another suspect may be established through the requested testing because those items include the supposed murder weapon and hairs in the victim's hands indicating closer contact between the other suspect and victims than that of the victims and Mr. Reynolds.

ARGUMENT

I. THE CIRCUIT COURT ERRED IN DENYING REYNOLDS' MOTION FOR POST-CONVICTION DNA TESTING.

Mr. Reynolds has always asserted his innocence. During the defense opening and closing arguments, Mr. Reynolds' counsel put forward the theory that Justin Pratt-an acquaintance of Danny Privett and the owner of the camper where the family resided-together with Alan Combs, and Justin Pratt's girlfriend, Nicole Edwards, committed the crime. TR. Vol. XV, at 2831. Notably, Justin Pratt was the first person identified by the victim's older daughter, Danielle Privett, as a person of interest. According to Danielle, Justin Pratt, instigated by his girlfriend Nicole, threatened Danny Privett some days before the crime with a note affixed to the family's camper's door.

Something along the lines of, "I guess it's war, conventional weapons." The threat was because of a debt. Specifically, Danny Privett owed rent to Justin Pratt. Evidence in the record shows that Justin wanted to get the family out of the trailer so he could sell it. In fact, at the time of the crime, Justin had already posted an advertisement seeking to sell the camper. More telling, however, is the fact that after Mr. Pratt was interrogated by detectives, a Computerized Voice Stress Analysis (CVSA) was performed and showed Mr. Pratt was lying about everything he was telling the detectives, including his statements that he was not involved in the crimes. R at 126. Mr. Pratt left Florida, and the defense was never able to have him testify at trial.

The defense further theorized that more than one person was involved in the crime. TR. Vol. XV, at 2831. The theory is supported by testimony in the records that the night before the crimes, Alan Combs, Justin Pratt, and Nicole Edwards drove by the trailer with guns threatening to kill the family, TR. Vol XV. 2872, and by the use of various murder weapons in the commission of the crime. Specifically, the defense argued that it would have been impossible for one person to crush Robin Razor's spine from behind while at the same time stabbing her. See TR. Vol XV. 2876.

Mr. Reynolds' DNA Motion is filed pursuant to Section 925.11 of the Florida Statutes and Rule 3.853 of the Florida Rules of Criminal Procedure.

Under the Florida Statutes, a defendant “may petition [the] court to order the examination of physical evidence collected at the time of the investigation of the crime for which he . . . has been sentenced which may contain DNA (deoxyribonucleic acid) and which would exonerate that person or mitigate the sentence that person received.” Fla. Stat. § 925.11(a). A petition for DNA testing under Section 925.11(a) “may be filed or considered at any time following the date that the judgment and sentence in the case becomes final.” Fla. Stat. § 925.11(b).

The Florida courts have determined that 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)).

In her “Order Denying Defendant’s Motion for Post-Conviction DNA Testing,” the trial court wrote:

“Moreover, the trial court reviewed the Defendant’s assertions about how these items would have established the Defendant’s innocence and ruled that the evidence would not have changed the result at trial. The Defendant makes similar factual assertions in the instant motion. As the State notes, the amount and locations where the Defendant’s DNA was located inside the

trailer would mean that, at best, further testing would reveal a codefendant rather than exonerating the Defendant. Even if Justin Pratt's DNA were located and matched, it would not exonerate the Defendant. The Defendant has not shown an entitlement to further testing. *King v. State*, 808 So. 2d 1237, 1247-49 (Fla. 2002).”

The trial court’s order is flawed because Rule 3.853 does not require the defendant show he “is innocent and how the DNA testing requested by the motion will exonerate the movant,” as alluded to by the trial court. In addition to the prior claim of innocence, Rule 3.853(b)(3) allows for an alternative lower threshold of “*or* a statement how the DNA testing will mitigate the sentence received by the movant for that crime[.]” (emphasis added).

Mr. Reynolds submits that the DNA test results of the requested evidence will exclude him from these critical items of crime scene evidence and point to another perpetrator. At the very least, his exclusion would cast grave doubt on whether he was the individual who stabbed and hit the victims and thus provide grounds to mitigate his sentence by reducing his relative culpability.

The evidence Mr. Reynolds seeks DNA testing on includes: concrete block with possible bloodstains (supposed murder weapon); swabbing from the body of Christina Razor; stains taken from a black t-shirt; stains pair of black shorts; swabbing from a ring with hair; a dark brown Caucasian hair found in the right-hand of Robin Razor; a dark brown Caucasian hair found

in the left bicep of Robin Razor; a dark brown Caucasian hair found in debris from nightgown; and a pair of white female underwear.

These items, if tested, should identify the actual killer based on the proximity of the evidence to the victims. Justice Canady wrote, “We have previously held that “once a codefendant's culpability has been determined by a jury verdict or a judge's finding of guilt we should abide by that decision, and only when the codefendant has been found guilty of the same degree of murder should the relative culpability aspect of proportionality come into play.” *Shere v. Moore*, 830 So.2d 56, 62 (Fla.2002).

If the requested items were tested and repeatedly revealed a new contributor of DNA, that source would likely be the actual killer. If another contributor is identified, it would call into question Mr. Reynold's level of participation and may have resulted in a not guilty verdict or life sentence. Additionally, if another, more culpable defendant, was identified, prosecuted, and sentenced to life, this would make Mr. Reynold's sentence disproportionate. “In order to have that same degree of blame or fault the codefendants must, at a minimum, be convicted of the same degree of the crime.” *Id.*

Lastly, the record shows several mistakes were made in the collection and storage of DNA evidence. It was established during the trial and at the

2010 evidentiary hearing held on Mr. Reynolds' first post-conviction motion, that mistakes were made in the way the evidence—including the evidence linked to Mr. Reynolds's DNA—was collected, labeled, stored, swept, and analyzed. Mr. Reynolds has consistently argued that the DNA evidence presented against him was tainted, unreliable, and inconclusive. These mistakes include the mistaken packaging of the pillow and blue towel; the mislabeling of the white female underwear; the lack of SRT testing on several items of evidence; the inappropriate storage of blood evidence in plastic opposed to paper¹. The errors committed during the investigation and analysis of the evidence raise a "credible concern that an injustice may have occurred, and DNA testing may resolve the issue." *Zollman*, 820 So. 2d at 1062 (citations and quotations omitted).

Mr. Reynolds submits that SRT testing became more sensitive in the latest years. While STR testing was able to identify up to thirteen markers on a person's DNA at the time the evidence in this case was analyzed, now it can identify up to 20.² Such increased capability produces more exact

¹ See Mr. Reynolds' original "Motion For Post-Conviction DNA Testing" pgs. 8-16 for a full and complete description of issues with the evidence.

² *Selection and implementation of expanded CODIS core loci in the United States*, D.R. Hares, *Forensic Sci. Int. Genetics* 17:33-34 (2015). See also Combined DNA Index System (CODIS), at <https://www.fbi.gov/services/laboratory/biometric-analysis/codis>.

matches. The used of this more sensitive type of STR testing was developed around 2010 and was ordered to be fully implemented by the FBI by 2017.³ Further, the technology has advanced in recent years. Now, the sensitivity of DNA testing allows to develop DNA profiles from just a few cells and extract DNA from sources that used to be too difficult or too contaminated to use, including skin cells. Thus, with the more sensitive technologies, it is easy to determine if foreign DNA from skin cells can be detected as a result, for example, of Robin Razon's struggle with her attacker.

In addition to regular STR testing, Mr. Reynolds submits that Y-STR could be used to secure exculpatory evidence. Y-STR testing is a type of DNA testing that allows analysts to essentially ignore female components of a DNA profile when they are not of interest and focus on foreign male DNA. If Christina and Robin's attacker was male, we should be able to ignore the female components and focus only on what male components might be present on, for example, the swabs from the victims' bodies. Y-STR testing is also more sensitive to find differences between male DNA.

Finally, Mr. Reynolds submits that in certain pieces of evidence like the concrete block, the use of the M-VAC, a wet vacuum system that works like a carpet shampooer for DNA, would be valuable. The M-VAC deposits liquid

³*Id.*

solution onto the surface of an object and then sucks that liquid back up into the instrument, concentrating it on a filter. This is ideal for objects like rocks and cinderblocks because it allows for collection on the rough surface and gets into cracks and crevices, which would be impossible with a swab. This technology has been developed in the time since the case was processed, and the samples from the rocks in this case would benefit from being processed with this tool.⁴

Finally, Mr. Reynolds submits that the results of the testing of the evidence in this case may change now that the DNA database managed by the CODIS software has significantly expanded. Prior to 2006, only convicted felons were required to have their DNA profiles entered into the database. But a January 2006 law, which was signed by President Bush and funded in 2008, has expanded the collection of DNA samples beyond convicts to include federal arrestees, as well as suspected illegal immigrants or captives in the war on terrorism. Justice officials estimate the new collecting requirements will add DNA from an additional 1.2 million people to the database each year. If unknown DNA is found based on the testing of the evidence, the DNA

⁴ For more information about the use of M-Vac and its effectivity when compare only to the use of swabs in items such as bricks, as it was done in this case, *see* M-Vac Systems, Inc., *Brick-Touch DNA*, at <https://www.m-vac.com/why-mvac/casework/brick>.

profile could be searched against the State's database of crime scene DNA profiles called the Forensic Index to create a match to the real perpetrator(s) of the crime.

Forensic DNA technology has advanced to the point that it is not the same it was back in 1998 when Mr. Reynolds' case was first investigated, or when the first DNA motion was filed. Therefore, the Court's concern is unfounded at this moment in time. Mr. Reynolds should be allowed an opportunity to prove his innocence by taking advantage of the new DNA technologies.

At the time of his initial arrest, prosecution, and trial, Mr. Reynolds maintained his innocence and claimed that Jason Pratt together with other individuals killed the Razor family. He continues to maintain that he is actually and legally innocent of the crime and that he is not deserving of the death penalty.

The DNA results of the above listed evidence may provide irrefutable proof that another person was in direct contact with the victims and in fact hold one of the weapons used in the crime. Notably, the requests in this motion focus on items of evidence that are intimately connected with the struggle leading to the murders. These items of evidence can be divided specifically in three groups.

- i. Concrete blocks

Mr. Reynolds seeks to test the concrete blocks found inside the trailer and outside the trailer. As described above, both victims Danny Privett and Christina Razor suffered blunt trauma to the head, and at least one concrete block has mixed blood from both victims. This piece of evidence is without doubt the closest thing to a murder weapon found at the crime scene. It is expected that the use of the M-VAC will permit to extract DNA and create a DNA profile of the person that use the brick to kill the victims. Such DNA could lead to establishing Mr. Reynolds' innocence and in the worst-case scenario, the testing of the concrete blocks will demonstrate that Mr. Reynolds was not the main perpetrator of the crimes. Such finding is relevant under the Florida Case law, which still permits the courts to conduct relative culpability analysis among codefendants to determine the appropriate punishment in a case. *See Jennings v. State*, 718 So.2d 144, 153 (Fla. 1998) ("disparate treatment of codefendants is permissible in situations where a particular defendant is more culpable.").

ii. Robin Razor's rings, hairs found in Robin Razor's hands, stains from the clothing wear by Robin Razor, and swabs from the female victims' bodies.

The crime scene shows hand-to-hand combat. Despite the presence of alleged defense wounds in Mr. Reynolds' hands, curiously the evidence logs

do not reflect the existence of fingernail debris or clippings collected from the female victims. The closest evidence to fingernail debris that could show evidence of a struggle between the victims and the perpetrator of the crime are the hairs found on Robin Razors' hands, her rings, and the swabs from the female victims' bodies. The swabs are especially important when the State suggested the motive of the crime was the attempted sexual battery of Christina Razor.

Although some hairs were evaluated using nuclear DNA analysis, some others were unable to be tested because they lacked the required material necessary to perform nuclear DNA testing. The hairs subject to this request, however, were preserved. Mr. Reynolds requests those hairs to be analyzed at this time using mitochondrial DNA analysis. As with the concrete blocks, the hairs could lead to evidence of the real perpetrator or perpetrators of the crimes. In fact, a swabbing from Q-30, a group of hairs, produced results of an unknown DNA match, and Q-24 B & C and Q-6 were identified as a hair that did not belong to the victims, but were never tested for DNA. Exhibit J, at 3; TR. VIII. at 1522-23. Mitochondrial testing of the hair found on the victims' hand would eliminate all physical evidence of Mr. Reynolds' being in a struggle with the victim. Considering that some of the hairs have already been microscopically identified as not coming from the victims, the

elimination of Mr. Reynolds as the donor increases, albeit circumstantially, the likelihood of another perpetrator of this crime. Furthermore, should the hair be determined to belong to another male the theory of Mr. Reynolds that Justin Pratt committed the crimes would be greatly supported. At the very least, the DNA testing will mitigate Mr. Reynolds's sentence. Had the jury heard that physical evidence corroborated his version of the murder and directly contradicted the State's theory that Mr. Reynolds alone committed the crimes, and that the crime was in fact motivated by the sexual abuse of a child, there is a reasonable probability that the jurors would have voted for a life sentence.

Like the hairs, DNA testing of the rings and swabbing from the rings and bodies has the potential to conclusively prove Mr. Reynold's actual innocence and identify the true killer as Jason Pratt.

iii. Evidence to be retested

As discussed above, TC-64D and TC-27 were key pieces of evidence during the trial that concluded in the sentencing of Mr. Reynolds. As also discussed above, private testing was unable to reproduce the results of the DNA testing calling into question the reliability of such results. Considering that TC-64D, and TC-27 were devastating evidence to his case because they linked Mr. Reynolds to the crime scene, Mr. Reynolds submits that new

testing is necessary. If as expected by Mr. Reynolds, the results come back as inconclusive, there cannot be doubt that had the jury hear such results, the outcome of the case would have been different.

In addition to Mr. Reynolds' entitlement to testing under Rule 3.853, a denial of his request to submit this DNA evidence for testing at his expense would also violate his rights under the due process and/or equal protection clauses of the Florida and United States constitutions. 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; Florida Const. Art. 1 §§ 9, 16.

This fundamental right was reaffirmed in a highly analogous context in *Holmes v. South Carolina*, 547 U.S. 319, 126 S. Ct. 1727 (2006). In *Holmes*, a unanimous Supreme Court (Alito, J.) held unconstitutional a state rule that had 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 1734-35.

Holmes has clear implications for defendants like Mr. Reynolds who seek post-conviction DNA testing for precisely this purpose: to obtain (and, ultimately, present to a fact-finder) DNA evidence that a third party may have

committed the crime. Indeed, that reasoning was recognized by an appellate court in *New Jersey in State v. DeMarco*, 904 A.2d, 797, 387 N.J. Super 506 (N.J. Super. Ct. App. Div. 2006). In *DeMarco*, the Court held that the defendant was entitled to post-conviction DNA re-testing on evidence from the murder case for which he had been convicted under New Jersey's post-conviction DNA testing statute. 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 law. See *id.* at 805-06. 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. DNA testing could demonstrate beyond any doubt that several items of critical biological evidence collected from the victims' bodies and the crime scene

came from someone other than Mr. Reynolds. Considering that Mr. Reynolds's request for DNA testing is "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 crime scene had been presented to the jury, there is at least a reasonable likelihood the verdict and/or the sentence would have been different.

CONCLUSION AND RELIEF SOUGHT

Based on the forgoing, the lower court improperly denied Mr. Reynolds' Motion for Post-Conviction DNA Testing. This Court should grant the order for testing the items listed in the original motion; or in the alternative remand the case to the lower tribunal to be heard.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been electronically filed with the Clerk of the Florida Supreme Court, and electronically delivered to Assistant Attorney General Patrick Bobek, Patrick.Bobek@myfloridalegal.com and capapp@myfloridalegal.com, on this 14th day of November, 2022.

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CERTIFICATE OF COMPLIANCE

I hereby certify that a true copy of the foregoing Initial Brief of Appellant was generated in Arial 14-point font, pursuant to Fla. R. App. P. 9.100 and 9.210.

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