

IN THE SUPREME COURT OF FLORIDA

Case No. SC2023-0721
Lower Case No. 032001CF002956XXAXMX

PAUL GLEN EVERETT,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

ON APPEAL FROM THE CIRCUIT COURT
OF THE FOURTEENTH JUDICIAL CIRCUIT,
IN AND FOR BAY COUNTY, STATE OF FLORIDA

INITIAL BRIEF OF APPELLANT

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REQUEST FOR ORAL ARGUMENT

In this capital case, Paul Glen Everett appeals the circuit court's denial of his sworn Motion for Postconviction DNA Testing, filed pursuant to Fla. R. Crim. P. 3.853 and Section 925.11, Fla. Stat. Counsel for the Appellant respectfully requests the opportunity to present oral argument. This is a capital case, the resolution of the issues presented will determine whether Mr. Everett will live or die, and a complete understanding of the complex factual, legal, and procedural history of this case is critical to the proper disposition of this appeal.

CITATIONS TO THE RECORD

Citations to the record on appeal in this case are designated as "ROA. ." References to the transcript from Appellant's trial are designated as "T. ." References to the record on direct appeal are designated as "DA-R. ." References to the initial postconviction record on appeal are designated as "PC-R. ." All other references are self-explanatory or otherwise explained herewith.

STATEMENT OF THE CASE AND FACTS

A. Procedural History

On January 28, 2002, Mr. Everett was indicted for first-degree murder, burglary of a dwelling with a battery, and sexual battery involving serious physical force. (DA-R. 5-6). He proceeded to trial, where the State urged the jury to reject Appellant's theory that other people could have committed the crime by stating, "We don't have anybody else's DNA." (T. 282; R.885). The jury returned guilty verdicts as charged on all counts. (DA-R. 113-114). The verdict form was a general verdict as it related to the first-degree murder count, and the jury did not specify whether they found Appellant guilty of premeditated murder or felony murder.

At the penalty phase, the jury recommended a death sentence by a unanimous vote. (DA-R. 131). Appellant was adjudicated guilty and sentenced to death on the first-degree murder count and two consecutive life sentences on the remaining counts. (DA-R. 152-165).

On direct appeal, this Court affirmed Mr. Everett's convictions and sentences. *Everett v. State*, 893 So. 2d 1278 (Fla. 2004). 8 So. 2d 927. He then filed a petition for writ of certiorari in the United States

Supreme Court, which was denied. *Everett v. Florida*, 544 U.S. 987 (2005).

Mr. Everett filed his first motion for postconviction relief under Florida Rule of Criminal Procedure 3.851 in 2006 in the Fourteenth Judicial Circuit in and for Bay County, Florida. After an evidentiary hearing on the motion, the circuit court denied relief in 2008. (PC-R. 653-667). Appellant appealed the denial of relief and also filed a petition for writ of habeas corpus in this Court. The Court denied Mr. Everett relief on all grounds. *Everett v. State*, 54 So. 3d 464 (Fla. 2010).

In January 2017, Mr. Everett filed a successive postconviction motion to vacate his death sentence in light of the *Hurst* decisions issued by the United States Supreme Court and this Court. After the circuit court denied relief, this Court affirmed. *Everett v. State*, 258 So. 3d 1199 (Fla. 2018).

In October 2020, Mr. Everett filed a successive motion to vacate in light of newly discovered evidence that Jared Farmer was the person who actually killed the victim. (R. 535-684). The circuit court denied the motion without prejudice to amend. (R. 878-884). Because counsel who filed the successor was not death-qualified, the circuit

court appointed Capital Collateral Regional Counsel-North, and gave CCRC-N leave to amend the dismissed successor. (R. 885-888). After a comprehensive review of the record of Mr. Everett's proceedings, undersigned CCRC-N counsel advised the Court that she did not have a good faith belief that the newly discovered evidence alleged in the successor warranted relief. Counsel also advised the Court that after reviewing all the records in the case, it was apparent that Mr. Everett had never had the opportunity to have his case independently reviewed and investigated by a defense team that is specifically trained in postconviction litigation until CCRC-N was appointed. (R. 906-908).

B. Motion for Postconviction DNA testing.

A comprehensive review of the record of all proceedings in this case did reveal substantial evidence that Jared Farmer was likely involved in the murder of K.B. It also revealed that law enforcement was requesting that numerous items of evidentiary value that they had seized be submitted to FDLE for expedited laboratory analysis. (R. 924). With all but the exception of the saliva sample for Jared Farmer, none of those items were analyzed by the FDLE laboratory for possible DNA. Some of the items submitted for testing included

possible skin and hair removed from the victim's hands, actual hairs removed from both the victim's hands and arm, and scrapings and clippings from the victim's fingernails. (R. 924). Also submitted to FDLE on the same day was a DNA sample from Jared Farmer. (R. 924). Farmer's saliva sample was actually analyzed by FDLE and a full profile obtained. (PC-R. 1935).

In light of the foregoing, Mr. Everett filed a sworn motion to have DNA testing performed on the items law enforcement previously had submitted to FDLE for expedited analysis, yet were never analyzed. (R. 909-1108). One of the items submitted to FDLE was a fish billy found near the crime scene. (R. 924). The fish billy was the first investigatory lead that identified Jared Farmer and Paul Everett as possible suspects in the burglary and murder of K.B. Farmer and Everett were seen on surveillance cameras purchasing the fish billy days before the murder. (R. 926).

When law enforcement interviewed Jared Farmer about the fish billy, he lied to them and told them he was not present when the billy was purchased. Once law enforcement confronted him with indisputable evidence of his presence on the surveillance video, he admitted he was lying to them. (R. 926). Despite knowing that Farmer

had made statements to people that revealed he knew facts about the crime that only the offender would know, they never questioned or confronted him with how he came to know those details.

Prior to even their first interview with Farmer on November 13th, law enforcement knew that Farmer was telling people that the victim had been strangled during a botched robbery. John Blackburn was interviewed on November 7th and told police that Farmer was saying a lady had been murdered behind La Fiesta Motel. He told law enforcement he thought she might have been strangled when the guy tried to rob her. (R. 928). Blackburn was interviewed because of a tip from a juvenile on November 5th that Blackburn told her he heard it was a guy named Paul that killed the woman. (R. 930).

News articles about the death had officers reporting that the cause of death was a blow to the body. Law enforcement would not specify where the blow was struck, only reporting it officially as blunt trauma. (R. 932-933). Despite law enforcement knowing that the victim's neck had been broken, they did not confront Farmer in that initial interview as to how he knew the victim had injuries to her neck.

After Farmer gave law enforcement the name of Mike Frederick in his initial interview, Officer Haire went and interviewed Frederick on November 14th. Frederick told Haire that Farmer came to his work the day after the victim was found. Farmer told him that Paul had seen a white female in her back yard and told Farmer he was going to come back and burglarize the home. Farmer told Frederick that Paul went into the house through the back door. There was a woman home sleeping who was startled and awoke.¹ She and Paul met up in the living room area and he strangled her. (PC-R. 2136). Despite law enforcement knowing there was a pool of blood in the living room (R. 935), the police did not ask Farmer how he knew details of the crime only the offender would know.

While being interviewed on the 15th, Farmer told the officer that his mother told him the victim walked out of her bedroom and caught Paul and he strangled her. (PC-R. 3311). The interrogating officer did not bother to ask Farmer or his mother -- who was present in the interview -- how they learned of such a detailed account of the crime.

¹ Friday was the day that the victim switched back her days and nights to go to work on the night shift. She would sleep in the day Friday and wake up to get ready for work at 7:00 p.m. (R. 1065-1067) The bed was unmade and the victim's underwear was lying next to the bed. (R. 1069).

At the time of their interviews with Farmer, law enforcement's theory of the time of death was somewhere between 11:00 a.m. and 5:00 p.m. on Friday, November 2nd. The medical examiner, Dr. Hansen, had responded to the scene and given them that estimate.² (R. 937). Dr. Hansen arrived at the crime scene on Friday, the 2nd, at 10:55 p.m. and departed at 12:15 a.m. on the 3rd. She reappeared on scene shortly thereafter at 2:21 a.m. and left at 3:34. (R. 939-940). It appeared that Ms. Bailey had been deceased for some time due to the appearance of lividity. (R. 942). The victim's stepfather, John Greathouse, testified that the victim was ice cold when he found her sometime after 8:15 p.m., Friday evening, after she failed to show for work. (T 34; 36; R. 944-946).

By contrast to law enforcement's theory on the time of death, Farmer's account of events had he and Everett arguing on Friday, the 2nd, and him leaving the motel at around 6:00 p.m. He conveniently had Everett in a fit of rage just hours before the victim was found and

² Dr. Hansen later testified in deposition that when she got out to the crime scene and examined the victim a little later, she was in full rigor. That would suggest backing up the time of death to around 12 to 18 hours before examining her, with a standard deviation of two to three hours either way. (R. 1071-1072). Dr. Hansen's deposition testimony would place the time of death in a broad range of anywhere from as early as 2:00 a.m. to as late as 2:00 p.m. on Friday.

Everett was picked up by Alabama bondsmen. Farmer says he left the motel for many hours and when he returned, Everett was no longer there. He called his mother in Alabama the next day, Saturday the 3rd, and asked her to return to Florida right away. (R. 948-955). Law enforcement never confronted Farmer with the inconsistency between his story and the time of the death of the victim.

In giving his account, Farmer's mother tried to correct him and say that it was Friday that he called her, but Farmer insisted on saying he hung out with Everett all day Friday until their fight and then called his mother the following day. (R. 951-952). Again, law enforcement never sought to clarify or confront Farmer with the inconsistencies between his story and the actual evidence.

When Farmer's mother was interviewed by herself immediately after Farmer's second interview, she said Jared called her around lunchtime on Friday, the 2nd. It took about an hour to an hour and a half for them to finally talk. Once they did talk around 2:00 - 2:30 p.m., she packed her stuff up and returned to Florida. (R. 957). Law enforcement secured her time sheet from work and verified that she was at work at the Holiday Terrace Motel in Panama City on Saturday, November 3rd, at 8: 30 a.m. (R. 959).

What the foregoing makes clear is that Farmer called his mother right around the timeframe when the victim was killed. Upon receiving his phone call, his mother immediately left and drove the six to seven hours back to Florida, despite the fact that she had just made the six-to-seven-hour trip up to Alabama on the Wednesday night preceding the night the body was found. (R. 955; 957). The lead detective in the case said Farmer's mother was very overprotective of her son. (R. 961). Despite the clear inconsistencies in their stories, law enforcement never confronted Farmer with the fact that his mother's story was not lining up with his.

Upon being arrested for perjury over his fish billy lie, Farmer's family hired a high-priced attorney to represent him. His lawyer immediately sent law enforcement a demand that they not speak to his client anymore. He further confirmed that he attempted to speak with Farmer on November 15th, but law enforcement refused him access to Farmer. (R. 963-964).

Even after Farmer's arrest for perjury, more people told law enforcement that Farmer knew the victim was strangled or choked and some provided the additional detail that the victim was awakened during a burglary. (R. 966-967; 969-970; 972-973; 975-

976; 978-979). It is apparent from the record that once Jared Farmer was arrested for perjury and retained counsel, any investigation into his involvement ceased.

Through the course of their investigation, law enforcement sent FDLE at least eight submissions of evidence, with each submission containing multiple items of evidentiary value. On November 15, 2001, law enforcement asked the State to request that the lab analysis of fifteen items be expedited. (R. 924). Those items included: i) hairs removed from the victim's hands and arm, ii) possible skin and hair removed from the victim's hand, iii) nail scrapings and clippings from the victim's hands, iv) the victim's shirt, v) the fish billy found near the crime scene, vi) hairs removed from bathroom sink, vii) a bed post top, and viii) a blue fleece jacket found near the crime scene. Also included in the request for expedition were a saliva sample and inked fingerprints of Farmer and the shoes he was wearing at the time of his arrest (and that he told law enforcement he wore every day since he had been in Florida).³ (R. 924; 981).

³ Farmer also told law enforcement that Everett had threw his shoes away days before the death of the victim. Farmer said after Everett lost his shoes, he would either go barefoot or borrow Farmer's sandals. (R. 981).

In a telephone call with the FDLE lab analyst on November 15, 2001, the State only asked the analyst to rush the fish billy. Despite the inculpatory nature of everything law enforcement knew about Farmer, the State told the analyst that the subject was Paul Everett. (R. 983-984). While the fish billy was tested in the serology department and transferred to the DNA section for testing, no report was ever issued to show that the fish bat was tested for DNA or a comparison with the known standard of Jared Farmer.

On November 30, 2001, the FDLE lab analyst spoke with the State again and this time was asked to rush the sexual assault examination kit, fingernail scrapings, and possible tissue from the victim's hands. The analyst was again told that the suspect was Paul Everett. (R. 983-984). While the fingernail scrapings were tested in the serology department, no report was ever issued to show that they were tested for DNA or a comparison with the known standard of Jared Farmer. No report was ever issued to show that the possible tissue from the victim's hands was ever tested.

Yet again in November, the FDLE lab analyst spoke with the State and the lead prosecutor's secretary told her they were only mainly concerned with Paul Everett. (R. 983-984).

On December 12, 2001, the lab analyst called the crime scene investigator who collected the sexual assault examination kit and advised her that the kit needed to be resubmitted because the medical examiner's office did not handle their standards properly.⁴ (R. 983-984; 986).

No report was issued to show that any of the hairs recovered, the victim's shirt, the bed post, or the blue fleece jacket were ever tested for DNA, despite law enforcements request that they be expedited. Since no DNA testing was performed, none of the items were compared with the known standard of Jared Farmer.

Throughout the course of his representation of Mr. Everett, postconviction counsel never requested appointment of an investigator or mitigation specialist. The record is devoid of any evidence that Jared Farmer was ever independently investigated by postconviction counsel.⁵ At the time counsel was preparing Everett's

⁴ A year before performing the autopsy in this case, Dr. Hansen and her boss were forced to resign from the Sixth Circuit M.E.'s office due to a botched autopsy by Hansen. The successor M.E. conducted a new review and concluded the autopsy report was contrary to the evidence. Dr. Hansen was sued for the faulty autopsy. (R. 1074-1083).

⁵ Upon being appointed registry counsel, Charles Lykes, Everett wrote to the Court and averred that Lykes was not qualified and he should be appointed different counsel. Everett alleged that Lykes had previously filed postconviction motions containing a mere few pages and was failing to preserve his clients' federal rights. (R. 1085-1089). In fact, Lykes's representation of one death row

3.851, Farmer was under indictment in Georgia for armed robbery, burglary, two counts of aggravated assault, and kidnapping. The charges included allegations that Farmer broke into the victim's house, dragged her around looking for valuables, demanded that she remove her clothes, and assaulted she and her kids with a knife and a baseball bat. It was only after her young son was able to escape the home to get help that Farmer fled the scene. (R. 988; 1135-1148). As they did in the instant case, his family hired a private lawyer shortly before trial and Farmer was acquitted of the charges.

Over the course of years since Everett's conviction in this case, Farmer has made statements to people that he has killed before and someone else is doing time for his crime. (R. 994-1000). Since resolution of Everett's initial 3.851 motion, Farmer has been arrested for numerous offenses by victims willing to report his criminal activity. These arrests include burglary of a conveyance, where the allegation was that Farmer followed the victim's daughter home the night before. (R. 1002-1007). These arrests include burglary of dwelling, where the allegation was that Farmer attempted to enter

inmate led the American Bar Association to describe incompetent work and characterize his motions as "non-motions." (R. 1091-1096).

the home through the bathroom window while the occupants were sleeping. (R. 1009-1012). And these arrests include interference with child custody, where the allegation was that Farmer sexually battered a minor. (R. 1014-1017). Farmer also had numerous arrests for drug charges.

After ordering the State to respond to Appellant's motion for postconviction DNA testing and receiving Appellant's reply, the court denied the motion without a hearing. (R. 1149-1165). The court reasoned that even if DNA testing of the items produced DNA that matched that of Jared Farmer, such evidence would not demonstrate that Mr. Everett was not present at the scene. (R. 1156). The court further found that DNA evidence that would establish Jared Farmer was present at the scene would not exonerate Mr. Everett or establish that Farmer was the main perpetrator of the offenses. (R. 1162).

Appellant filed a motion for rehearing of the court's order denying DNA testing, which the court denied on April 19, 2023. (R. 1643-1647). Appellant timely filed a notice of appeal and this appeal follows.

SUMMARY OF ARGUMENT

“[T]he purpose of section 925.11 and rule 3.853 is to provide defendants with a means by which to challenge convictions when there is a ‘credible concern that an injustice may have occurred and DNA testing may resolve the issue.’ *Zollman v. State*, 820 So. 2d 1059, 1062 (Fla. 2002)(quoting *In re Amendment to Fla. Rules of Criminal Procedure Creating Rule 3.953 (DNA Testing)*, 807 So. 2d 633, 636 (Fla. 2001)(Anstead, J., concurring)). See, also *Cardona v. State*, 109 So. 3d 241, 246 (Fla. 4th DCA 2013).

Mr. Everett is under sentence of death for a crime he maintains he did not commit. Mr. Everett and Jared Farmer were both suspects in the crime and were seen together purchasing a fish billy that was found near the crime scene. When asked about purchasing the fish billy, Farmer lied to law enforcement and said he was not present. Law enforcement was aware that Farmer had told numerous individuals details of the crime that only the offender would know, yet they did not ask how he come to possess that information. Law enforcement was aware that Farmer’s story of what happened in the days surrounding the murder did not align with the actual evidence and was inconsistent with his mother’s story of what happened. Yet,

they did nothing to confront him on his inconsistencies or pin down a true account of events.

Law enforcement had numerous items of evidentiary value that could possibly contain DNA. They sent the State a list of fifteen items of evidence that they wanted FDLE to expedite laboratory analysis on. Included in that list were possible skin and hairs from victim's hand, actual hairs removed from the victim's hands and arm, and scrapings and clippings from the victim's fingernails. (R. 924).

Despite the fact that these items of evidence were literally in the clutches of the victim's hands when she passed, they were never tested for DNA. It is apparent that once a DNA hit came back to Paul Everett from the victim's vaginal swab, DNA that could have been deposited before the murder and through consensual sex, any and all DNA testing was ceased.

While the State's claim at trial that no one else's DNA was at the crime scene was true, what Mr. Everett's motion for DNA testing makes clear is that it was only true because crucial pieces of physical evidence – found in the clutches of the victim – were never tested for DNA. In the truth-seeking function of the court system, it is imperative that these critical pieces of evidence be analyzed and

compared to the known standard of Jared Farmer, so that the injustice of Mr. Everett's conviction for murder and sentence of death be corrected.

Because the circuit court erroneously denied Mr. Everett postconviction DNA testing, this Court should reverse and order DNA testing or, at the very least, that there be an evidentiary hearing to determine the extent to which such evidence can be produced and its likely effect in a new trial or penalty phase proceeding.

STANDARD OF REVIEW

Rule 3.853 “provides procedures for obtaining DNA (deoxyribonucleic acid) testing under Sections 925.11 and 925.12, Fla. Statutes.” Fla. R. Crim. P. 3.853(a). A circuit court’s denial of a motion for DNA testing “involves a pure question of law and thus is subject to de novo review.” *Consalvo v. State*, 3 So. 3d 1014, 1016 (Fla. 2009)(citing *State v. Glatzmayer*, 789 So. 2d 297, 301 n. 7 (Fla. 2001)).

ARGUMENT

THE CIRCUIT COURT REVERSIBLY ERRED IN DENYING MR. EVERETT'S MOTION FOR POSTCONVICTION DNA TESTING.

When this Court issued Rule 3.853, it established the court procedure to be employed when exercising that substantive right. *Amendment to Fla. Rules of Criminal Procedure Creating Rule 3.853*, 807 So. 2d 633 (Fla. 2001). The rule sets forth the pleading requirements to be used by a convicted defendant to obtain DNA testing of biological evidence. “[T]he purpose of section 925.11 and rule 3.853 is to provide defendants with a means by which to challenge convictions when there is a ‘credible concern that an injustice may have occurred and DNA testing may resolve the issue.’” *Zollman*, 820 So. 2d at 1062.

In denying Mr. Everett’s motion for DNA testing, the trial court did not contest that the evidence requested to be tested still exists or that it would be admissible at a new trial. Rule 3.853 provides that a motion for DNA testing requires only that there be “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(5)(C). A defendant is entitled to

postconviction DNA testing if his motion fully complies with the requirements of Rule 3.853 and demonstrates a reasonable probability that he would have been acquitted or received a lesser sentence if the DNA evidence had been admitted at trial. *See, Bates v. State*, 3 So. 3d 1091, 1098 (Fla. 2009). In making this determination, the allegations contained in the sworn motion must be taken as true. *See, Montez v. State*, 86 So. 3d 1243, 1245 n. 1 (Fla. 2d DCA 2012).

Given the significant evidence of Jared Farmer's involvement in the murder of K.B., as outlined *supra*, and the presence of crucial physical evidence on her person that was never analyzed, Mr. Everett filed his motion for postconviction DNA testing. Pursuant to Rule 3.853, he attached as an exhibit a description of the items he requested to be tested and that they remained in the possession of law enforcement who had originally seized them. Appellant stated that the items had never been tested for DNA. Appellant maintained his innocence in the murder of K.B. He advised the Court of the State's theory for disputing Appellant's defense that someone else committed the murder: "We don't have anybody else's DNA." And, finally, Mr. Everett gave a detailed explanation, with reference to

specific facts about the crime, the investigation into it, and the items requested to be tested, of how Jared Farmer's DNA at the crime scene would lead to a reasonable probability of acquittal or conviction for a lesser offense, or mitigate his sentence from death to life. (R. 909-923).

Mr. Everett and Jared Farmer were both suspects in the crime and were seen together purchasing a fish billy that was found near the crime scene. When asked about purchasing the fish billy, Farmer lied to law enforcement and said he was not present. Law enforcement was aware that Farmer had told numerous individuals details of the crime that only the offender would know, yet they did not ask how he come to possess that information. Law enforcement was aware that Farmer's story of what happened in the days surrounding the murder did not align with the actual evidence and was inconsistent with his mother story of what happened. Yet, they did nothing to confront him on his inconsistencies or pin down a true account of events.

Law enforcement had numerous items of evidentiary value that could possibly contain DNA. They sent the State a list of fifteen items of evidence that they wanted FDLE to expedite laboratory analysis

on. Included in that list were possible skin and hairs from victim's hand, actual hairs removed from the victim's hands and arm, and scrapings and clippings from the victim's fingernails. (R. 924).

Despite the fact that these items of evidence were literally in the clutches of the victim's hands when she passed, they were never tested for DNA. It is apparent that once a DNA hit came back to Paul Everett from the victim's vaginal swab, DNA that could have been deposited before the murder and through consensual sex, any and all DNA testing was ceased.

While the State's claim at trial that no one else's DNA was at the crime scene was true, what Mr. Everett's motion for DNA testing made clear is that it was only true because crucial pieces of physical evidence – found in the clutches of the victim – were never tested for DNA. Mr. Everett's jury was never told that numerous items of evidentiary value were submitted to FDLE but never subjected to DNA testing.

In denying Mr. Everett's motion for DNA testing, the circuit court concluded the motion should be denied because testing showing Farmer's DNA at the crime scene and on the person of the victim would not demonstrate that Mr. Everett was not present at the

scene. (R. 1156). The Court's rationale ignores several due process protections afforded defendants who are charged with crimes committed with other persons to ensure that a defendant is not convicted for crimes based on mere presence at the crime scene, but possessing no criminal intent of the charged crime.

Had pretrial DNA testing been performed and Jared Farmer's DNA detected, Farmer would undoubtedly have been charged with the murder of K.B. In a trial with his co-defendant's culpability at issue, Mr. Everett would have been entitled to a principals jury instruction. With that instruction, the jury would have been told it could only assign responsibility for Farmer's conduct to Mr. Everett if it found that Mr. Everett had a conscious intent that the murder be done and that he did some act or word to encourage or assist Farmer in murdering K.B. *See, Fla. Std. Jury Instr. (Crim.) 3.5(a)*.

In a trial with Farmer's culpability at issue, Mr. Everett would also have been entitled to an independent act instruction. With that instruction, the jury would have been told that even if it believed Mr. Everett entered the victim's home with the intent to steal, it should acquit Mr. Everett of the murder if it found that Mr. Everett did not intend for a murder to occur, did not participate in the murder, and

murder was not a reasonably foreseeable consequence of the burglary. *See, Fla. Std. Jury Instr. (Crim.) 3.6(l)*. As the circuit court noted in its order denying the motion for DNA testing, Mr. Everett had told law enforcement he entered the victim's home because lights were on in nearby homes but not the victim's, so he assumed no one was home. (R. 1160).

In its order denying Mr. Everett's motion, the circuit court relied on details that Mr. Everett told law enforcement that it said corroborated Mr. Everett's eventual "confession" to law enforcement. The court's reliance on corroborating details ignores the fact that Mr. Everett could have merely been present on the scene and witnessed Jared Farmer murder K.B. The court also ignores all the details of the murder that Farmer knew and told people before those details were ever known to the public.

Farmer knew the victim was attacked in the living room and died from injuries to her neck. (R. 928; PC-R. 2136; 3311). News articles about the death had officers reporting only that the cause of death was a blow to the body. (R. 932-933). Law enforcement would not specify where the blow was struck, only reporting it officially as blunt trauma, yet Farmer had told people she was killed with a neck

injury. (R. 928; 966-979; PC-R 2136; 3311). Farmer's knowledge that the victim was attacked in the living room was corroborated by evidence of a pool of blood in the living room. (R. 935).

In relying on Mr. Everett's confession to deny testing, the circuit court acknowledged that Mr. Everett asserted in his motion that he falsely confessed to murdering K.B. because of threats from Jared Farmer and his family. The court further acknowledged that DNA testing showing Jared Farmer's DNA at the crime scene would demonstrate that his confession was at least partially false, given that he told law enforcement that Farmer was not present. (R. 1162). The court, however, simply noted Mr. Everett's allegations and provided no rationale for rejecting them as a valid basis for questioning the reliability of Mr. Everett's confession and warranting DNA testing to correct the injustice of convicting Mr. Everett and sentencing him to die for a murder that Jared Farmer committed.

The reliance the circuit court placed on Mr. Everett's confession also ignores the fact that time and advancements in science have established that innocent suspects can and do confess to crimes they did not commit. *See, e.g.,* West & Meterko, *DNA Exonerations, 1989-2014: Review of Data and Findings from the First 24 Years*, 79 Alb. L.

Rev. 17, 759-63 (2016)(finding that 27% of the first 324 known DNA exoneration cases involved false confessions by an innocent defendant).

As Mr. Everett asserted in his motion, if the jury were to convict Mr. Everett despite Jared Farmer's DNA being in the clutches of the victim, that powerful physical evidence could still result in mitigation of his death sentence and the jury voting to spare his life. In arguing for the irrelevance of trial counsel's suggestion that other people could have committed the crime, the State told Mr. Everett's jury that it didn't matter if somebody else was present, it would not make the crime any less horrible. (T. 283; R. 1063).

Though the State's closing argument appears to suggest that any participation by Everett in the crime is sufficient for a death sentence, capital jurisprudence says different. In accordance with the United States Supreme Court's decision in *Enmund v. Florida*⁶ and *Tison v. Arizona*,⁷ and the Florida Supreme Court's application of *Enmund/Tison* in *Jackson v. State*,⁸ *Diaz v. State*,⁹ and *Perez v.*

⁶ 458 U.S. 782 (1982).

⁷ 481 U.S. 137 (1987).

⁸ 502 So. 2d 403 (Fla. 1986).

⁹ 513 So. 2d 1045 (Fla. 1987).

State,¹⁰ in order to vote for a sentence of death in an accomplice case, the jury must find that Everett was both a major participant in the underlying crime and that his state of mind amounted to a reckless indifference to human life.

Even throughout Everett's statements to law enforcement, he always maintained that he did not intend for the victim to be killed. If the jury were to reject Everett's claim that his confession was coerced and untrue, they could still conclude that the State did not prove the necessary *Enmund/Tison* findings to secure a death sentence. And even if the jury were to find that Mr. Everett was constitutionally eligible for the death penalty as a major participant who evinced a reckless indifference to human life, they very well may be loath to impose the death penalty upon him when he neither took the victim's life, nor intended that her life be taken.

¹⁰ 919 So. 2d 347 (Fla. 2005).

CONCLUSION

For the reasons set forth in this Initial Brief, Paul Glen Everett has demonstrated his entitlement to relief under Rule 3.853, Fla. R. Crim. P. in that he filed a facially sufficient motion and there is a reasonable probability that the results of such testing would lead to acquittal or a lesser sentence. Accordingly, this case should be remanded to the circuit court to allow such testing or, in the alternative, for an evidentiary hearing to determine the exonerating and mitigating nature of the evidence.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing pleading has been furnished by electronic service to all counsel of record on this 17th day of July, 2023.

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