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

REPLY BRIEF OF APPELLANT

ALICE B. COPEK
Assistant CCRC-North
Florida Bar No. 25475
Alice.Copek@ccrc-north.org
(850) 487-0922

OFFICE OF THE CAPITAL
COLLATERAL REGIONAL
COUNSEL – NORTH
1004 DeSoto Park Drive
Tallahassee, Florida 32301

COUNSEL FOR APPELLANT

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ARGUMENT IN REPLY

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

As it did below, the State relies heavily on *Overton v. State*, 976 So. 2d 536 (Fla. 2007), in asking this Court to deny Mr. Everett's motion. And as it did below, the State fails to take in to account the nature of the evidence to be tested and its nexus to the crime. In *Overton*, this Court affirmed the denial of testing of hairs on the tape used to bind the murder victim. *Id.* at 567. In affirming, the Court noted that it was impossible to establish when and how the hairs attached to the tape or where they originated from. *Id.* at 567-68. By contrast, this Court spoke favorably of the circuit court's granting of DNA testing of the fingernail scrapings of the victim "because the presence of skin cells that are neither [Appellant's] nor the victim could indicate the existence of another perpetrator and mitigate [Appellant's] sentence. **Scrapings are more likely to implicate the perpetrator** than hair on tape bindings which could come from any source at any time." *Id.* at n22. (Emphasis supplied).

The State's criticism of Mr. Everett's reliance on a footnote of this Court recognizing the inherently probative value of fingernail scrapings versus hair evidence that could have been deposited at any time, entirely ignores the nature of the evidence that Mr. Everett is requesting be tested in this case. (A.B. at 41-42). The footnote highlighted the factual distinctions that are intrinsic in the nature of the DNA to be tested and its nexus to the circumstances of the crime. Here, as in *Overton*, we are requesting testing of evidence that is likely to implicate the perpetrator of the crime. If Farmer's DNA is found under the victim's nails and in hairs and possible tissue that were clutched in her hands, there can be only one explanation for when and how it got there; he struggled with the victim and killed her.

The Fourth District Court of Appeals distinguished its case from *Overton* in *Cardona v. State*, 109 So. 3d 241 (Fla. 4th DCA 2103). In *Cardona*, the victim specifically testified that she pulled her perpetrator's hair out during the assault. *Id.* at 247. That testimony provided the necessary nexus to explain when and how the hair came to be on the crime scene. If the hair was not Cardona's, there was a reasonable probability a jury could acquit him. Thus, it was error to deny Cardona's motion for DNA testing. *Id.* Mr. Everett's case is more

akin to *Cardona* than *Overton*. If DNA testing reveals Jared Farmer's DNA is under the victim's nails and in hairs and possible tissue that were clutched in her hands, there can be only one explanation for when and how it got there; he struggled with the victim and killed her.

The State also relies heavily on *Galloway v. State*, 802 S. 2d 1173 (Fla. 1st DCA 2001). What was critical to the Court in *Galloway* was the fact that the State had already proven that Galloway was with two co-defendants when the robbery and sexual battery was committed. *Id*. Thus, even if Galloway himself had not been the main perpetrator of the crimes, he was appropriately convicted and sentenced as a principal.

As the State notes in its Answer Brief, Mr. Everett relied on several cases that distinguished its cases from the *Overton* and *Galloway* cases. (A.B. at 43-46); *See*, *Cardona v. State*, 109 So. 3d 241 (Fla. 4th DCA 2103); *Mitchell v. State*, 179 So. 3d 407 (Fla. 4th DCA 2015); *Hampton v. State*, 924 So. 2d 34 (Fla. 3d DCA 2006). In urging this Court to find all three cases to be factually inapposite, the State relies on the fact that all three involved living victims who provided testimony that made the DNA testing probative and

relevant. (A.B. at 44-45). The State then says the cases are factually inapposite because the victim was killed and, thus, was never able to tell her story. (A.B. at 44). This argument disregards the very crux of Mr. Everett's DNA motion: it was Jared Farmer who killed the victim and eliminated her as a witness and his DNA in her clutches will prove that.

In its Answer Brief, the State makes no attempt to address Mr. Everett's contention that the very argument the State made to the jury in urging it to reject the defense theory that someone else may have killed the victim highlights how different their case would have been had someone else's DNA been present at the scene. As the State told the jury, "We don't have anybody else's DNA." (T. 282). This argument alone stresses the impact Jared Farmer's DNA at the crime scene would have altered the State's presentation of its case against Mr. Everett and argument to the jury.

What is significant and highly probative of guilt in this case is the fact that it is not merely "someone else's" DNA that is present, but the DNA of a man: (1) who was with Mr. Everett when the fish billy found near the crime scene was purchased; (2) whose DNA sample was obtained by law enforcement as a possible suspect in this

crime; (3) who knowingly lied to law enforcement; (4) who knew details of the crime unknown to the public and of which only the offender would know.

In urging this Court to affirm the denial of postconviction DNA testing, the State asks this Court to turn a blind eye to all the additional incriminating evidence against Jared Farmer, arguing that only the potential results of a DNA test are relevant to this Court's analysis of whether there is a reasonable probability that a new jury would acquit Mr. Everett or vote to spare his life. (A.B. at 38-50). That argument is illogical. In analyzing whether Jared Farmer's DNA in the clutches of the victim would lead a reasonable jury to acquit or vote for life, this Court must be cognizant that the impact of this new evidence must be measured by how probative it would be and that its probative value depends on all the other incriminating evidence that shows that it was Jared Farmer who killed the victim.

In arguing that overwhelming evidence of guilt defeats any notion that a reasonable jury would probably acquit or mitigate Mr. Everett's sentence, the State completely ignores how that evidence would not be so overwhelming when the jury learns Jared Farmer's DNA is in the victim's clutches. While Mr. Everett's semen in the

victim establishes sexual contact, the DNA evidence under the victim's nails and in her hands is indicative that she struggled with her killer and his DNA was deposited in that struggle. Mr. Farmer's DNA on the victim would undermine Mr. Everett's confession in which he said Farmer was not present. As was outlined in the motion for DNA testing, the abrasion in her vaginal vault was likely caused by a blunt object being placed inside her days before the killing during a medical procedure. Farmer was present when the fish billy found near the scene was purchased and later lied to police about it. Jared Farmer knew details of the crime that were unknown to the public and could only have been learned by the offender. Contrary to the claim that Mr. Everett threw his shoes away after killing the victim, Jared Farmer told law enforcement that Mr. Everett had thrown his shoes away days before the murder and would either go barefoot or borrow Farmer's sandals. (R. 981).

The State seeks to downplay the significance of DNA evidence placing Jared Farmer at the scene by advising this Court that Mr. Everett is merely speculating that if Farmer's DNA was found to be at the scene, the State would have charged him with murder. (A.B. at 51). That it cannot be reasonably assumed that the State of Florida

would not allow a man whose DNA was virtually in the clutches of a deceased woman to walk free is staggering to Mr. Everett and should be rejected by this Court. This admission by the State shows that there is no length the State will not go to have its finality interests prevail over a defendant's due process right to correct a manifest injustice.

Because this is a capital case, finality will result in the execution of K.B.'s killer. That execution will be done in the name of the State of Florida and, thus, it is morally imperative – and should be legally imperative – that the right man be executed. The truth of who killed K.B. may be found through postconviction DNA testing. This Court should permit that testing be done to ensure justice not only for Mr. Everett, but for all the citizens of the State of Florida.

CONCLUSION

For the reasons set forth in this Reply Brief and Appellant's 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,

/s/ Alice B. Copek
ALICE B. COPEK
Assistant CCRC-North
Florida Bar No. 25475
Alice.Copek@ccrc-north.org

OFFICE OF THE CAPITAL
COLLATERAL REGIONAL
COUNSEL – NORTH
1004 DeSoto Park Drive
Tallahassee, Florida 32301
(850) 487-0922

COUNSEL FOR APPELLANT

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 7th day of August, 2023.

CERTIFICATION OF TYPE SIZE AND STYLE

This is to certify that the Initial Brief of Appellant has been reproduced in a 14-point Bookman Old Style type, a font that is not proportionately spaced.

/s/ Alice B. Copek
ALICE B. COPEK