

**IN THE SUPREME COURT OF FLORIDA**

**CASE NO. SC2026-0528**

**EXECUTION STAYED**

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**JAMES AREN DUCKETT,**  
**Appellant,**

**v.**

**STATE OF FLORIDA,**  
**Appellee.**

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**ON APPEAL FROM THE CIRCUIT COURT  
OF THE FIFTH JUDICIAL CIRCUIT,  
LAKE COUNTY, FLORIDA**

**LOWER CASE NO. 1987-CF-1347**

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**INITIAL BRIEF OF APPELLANT**

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## **REQUEST FOR ORAL ARGUMENT**

Mr. Duckett respectfully requests oral argument by counsel pursuant to Florida Rule of Appellate Procedure 9.320. The resolution of the issues involved in this action will determine whether Mr. Duckett lives or dies. Mr. Duckett has raised meritorious issues that warrant an opportunity to be heard before this Court. A full opportunity to argue the issues at oral argument is appropriate in this case because of the seriousness of the claims at issue and the penalty that the State seeks to impose on Mr. Duckett.

## **CITATIONS TO THE RECORD**

References to the record will note the relevant proceeding on appeal and page number: Direct Appeal (R. \_\_\_); Postconviction Record on Appeal and proceedings after remand, SC01-2149 (PC-R1. \_\_\_) and Transcripts (PC-R1-T. \_\_\_); Successive Postconviction Record on Appeal, SC13-719 (PC-R2. \_\_\_); Successive Postconviction Record on Appeal, SC16-793 (PC-R3. \_\_\_); Warrant Record on Appeal, SC2026-0449 (WR. \_\_\_); and Warrant Record on Appeal—3.853 proceedings, SC2026-0528 (WR2. \_\_\_), supplemental (WR2-S. \_\_\_), and sealed (WR2-S2. \_\_\_). All other references and citations are self-explanatory or explained herein.

## **STATEMENT OF THE CASE AND FACTS**

On February 27, 2026, the Governor signed an execution warrant for Mr. Duckett, setting his execution for March 31. The State of Florida seeks to execute Mr. Duckett for the murder and sexual battery of Teresa McAbee, for which he has steadfastly maintained his innocence for nearly 40 years.

This Court has stayed the execution pending litigation of DNA testing of a critical piece of biological evidence extracted from Ms. McAbee's underpants. The material was extracted pre-trial and mounted onto a slide identified as Exhibit 14, Q6(3), sub. 001 ("Q slide") (WR. 433-543; 629-740). No attempt was made to test Q slide for DNA at the time of trial because DNA testing was not sophisticated enough to test such a minute amount. In 2003, on appeal from the denial of his postconviction motion, this Court remanded Mr. Duckett's case for DNA testing (WR. 632). The circuit court determined that the Q Slide and certain other items of evidence should be tested. FDLE analyst Emily Booth tested several of the items, except the Q slide, but could not obtain a profile. At a hearing, Ms. Booth testified that "due to the compromised nature of the slide, she was concerned that any attempt by her to unmount the slide would destroy the material on the slide and no DNA profile would be obtained" (WR. 632). No further DNA analysis was attempted, and the slide was preserved at Lake County Sheriff's Office

for the possibility of testing in the future when technology progressed.<sup>1</sup>

Under warrant, Mr. Duckett filed a Motion for DNA testing pursuant to Rule 3.853. Mr. Duckett obtained an affidavit from former FDLE analyst Booth indicating that based upon her review of the case file and her recognition of the degradation of the biological materials, the method of testing most likely to obtain a valid profile on the slide was Single Nucleotide Polymorphism (“SNP”) testing as opposed to Short Tandem Repeat (“STR”) (WR. 658-60).

Mr. Duckett was referred to Othram, Inc., a leading laboratory in forensic testing, both because it conducts SNP using Forensic-Grade Genome Sequencing (“FGGS”), a specialized optimized application of Whole Genome Sequencing (“WGS”), and because Othram conducts the exact testing for FDLE, which does not offer SNP at all. Mr. Duckett retained David Mittelman, Ph.D., cofounder of Othram to obtain an affidavit explaining that SNP testing “would provide the most reliable method of extraction of testable DNA from the Q slide” (WR. 728-40). He noted that “the technology used at Othram is relatively new and thus is not available for use in most laboratories,” and that Othram was capable of conducting the testing “within one to two weeks from receipt of the slide” (WR. 536).

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<sup>1</sup> Mr. Duckett sought the opinion of an numerous experts in the field who all expressed the same concerns (WR. 1498-99).

Mr. Duckett filed his motion on March 5 and the lower court held an impromptu hearing the next day. Because Mr. Duckett’s team had no notice and only learned of the hearing as it was beginning, they had no opportunity to prepare the expert, who they had just met a few days previously, before putting him on as an expert witness.<sup>2</sup> During a short 15-minute recess, counsel was able to reach Dr. Mittelman and he agreed to appear via Zoom to answer the court’s questions. This was the only time Mr. Duckett was able to present expert testimony.<sup>3</sup> The State agreed that it did not object to DNA testing, just to the type of testing and the lab that would conduct it.<sup>4</sup> The hearing focused on how long testing would take and who would conduct the testing. Dr. Mittelman explained that Othram conducts testing for FDLE regularly and was available at any time to begin the testing, which would take from days to a few weeks (WR. 815, 818).

The court granted testing finding that the results of the DNA testing would likely be admissible at trial or a future hearing, “that identity was an issue at trial, and that if DNA testing of the sperm indicated that it did not belong to [Mr. Duckett], there would have been a reasonable probability of

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<sup>2</sup> Counsel learned of the hearing when they received emails asking if they were going to join the Zoom hearing in progress.

<sup>3</sup> The State presented an FDLE analyst but did not elicit any questions as to the requisite type of testing or the length of time required to conduct testing.

<sup>4</sup> The State did not dispute that the results of testing would be admissible.

an acquittal” (WR. 748). Although the Rule provides for an outside lab to conduct testing if good cause is shown, the State was adamant the rule required FDLE to conduct the testing. As this Court found in its Order staying the execution, the circuit court “permitted the State to exercise complete control over the location, timing, and method of testing” (WR2. 27). Ultimately, the court ruled that FDLE would conduct the quantification analysis, and if it was deemed SNP was appropriate, FDLE would send the sample to another lab as its designee (WR. 806, 819-20).

The FDLE Crime Laboratory in Orlando completed the quantification completed on March 11. The results were significant and instructive. Until FDLE successfully retrieved the biological evidence from the Q slide, the existence of usable DNA evidence was uncertain and largely speculative. Mr. Duckett argued below that because the amount of DNA recovered appeared to be very limited, careful coordination was required to determine the best testing strategy. He emphasized that testing decisions must be made carefully to avoid consuming the sample in a way that prevents the most informative analysis.

At a hearing held March 12, FDLE announced that it agreed with the defense that the “best course of action” was to process the DNA using SNP (WR. 1116). Leigh Clark, Deputy Director of Forensic Services, confirmed

that FDLE was unable to do the testing and listed four accredited labs that do: Othram, DNA Labs International (“DLI”), Bode Laboratories (“Bode”), and Signature Science. Although FDLE expressly stated, “We presently have our SNP testing needs met by Othram in Texas,” for the first time, FDLE informed the court that it was not in a position to contract with any lab as its designee in this case (WR. 1115). FDLE explained that the parties would be the client.<sup>5</sup>

When asked to give her recommendation, Ms. Clark provided an analogy to make the point again that she was not an expert in SNP testing (WR. 1128). Notwithstanding this answer, the court maintained that its order stood and FDLE was to perform the testing or figure out a lab (WR. 1115).<sup>6</sup> After revisiting Rule 3.853, the court determined good cause existed for a private lab to conduct the testing—a fact that Mr. Duckett had argued a week earlier. The court directed FDLE to inquire of each lab “their technical

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<sup>5</sup> This proved to be false. When the lower court later ordered the sample be sent to DLI, FDLE completed the contract and listed itself as the initiating agency. FDLE was also the main point of contact. Despite the lower court ordering CCRC-South pay for the testing, DLI would not even update counsel as to the testing progress (See WR2-S2. 342) . Indeed, the lab told undersigned counsel that all communications and information regarding the testing were required to go through FDLE per the AG.

<sup>6</sup> Despite previously agreeing FDLE could designate another lab to perform SNP testing as it’s designee, the State suddenly objected to any other lab conducting the testing and to the evidence leaving the state (WR. 1121).

capabilities, capacity to perform the testing, the location of the lab that will perform the testing, and their anticipated timeline to complete such testing.” (WR. 1092). Before FDLE returned the results of its inquiry, the court entered an order directing FDLE to select a lab.

FDLE contacted each lab, except Othram, and sent the information to all parties the same evening but did not, however, select a lab. At 9:06 p.m. The court set a hearing for 9:00 a.m. the following morning. FDLE’s research indicated that Othram was the best choice—the lab offered the fastest turnaround time, the most sensitive technology, and greater capability for analysis of the results on the back end of the testing. Indeed, Othram was the only lab that could do both the testing and conduct the requisite analysis.

On March 13, Ms. Clark again appeared and reported only *some* of the information gathered from the labs. Because the court only scheduled this hearing the night before, Dr. Mittelman was unable to appear due to a previously scheduled appointment. Mr. Duckett was unable to offer testimony from a scientist experienced in the testing at hand and rebut any misinformation. Instead, the court relied on Ms. Clark’s representations regarding SNP despite her testimony that she is not trained on nor does she conduct SNP testing.

Mr. Duckett requested SNP testing be conducted using WGS, which

is specifically designed for degraded samples. At the March 12 hearing, Ms. Clark agreed “that it would be best for the private lab that would be conducting SNP testing to have the capabilities for a whole genome sequencing. . . .” because “**you would want a professional who performs whole genome sequencing to make that decision** [on whether WGS was necessary] **based on the quantitation [sic] data**” (WR. 1135, 1130-31) (emphasis added). Ms. Clark told the court that FDLE was “not in a position to be able to make a recommendation as to whole genome sequencing or not.” (WR. 1131). Ms. Clark clarified that the *only* recommendation FDLE could make was that SNP technology should be used (WR. 1131).

Although Dr. Mittelman testified at the March 6 hearing that WGS would take only 1-2 weeks, and that he could start immediately, Ms. Clark testified that WGS would take 6-8 weeks (WR. 733, 1158). Upon learning that DLI and Signature Science offered a different kit, ForenSeq Kintelligence, which would only take 15 days, Ms. Clark changed her testimony: “in my opinion the whole genome sequencing is not necessary, and I do not believe that type of testing would be performed by Othram or DNA labs in this example” (WR. 1158).<sup>7</sup> The statement was patently wrong

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<sup>7</sup> Ms. Clark testified the day prior that the question about length of time “would be better posed to the entity that’s actually going to perform the testing,” (WR. 1133-34), yet the only accredited lab certified to do SNP

as Dr. Mittelman indicated Othram would conduct WGS. Having no experience herself, Ms. Clark opined that whole genome sequencing is “overkill” (WR. 1159). Instead of following the dictates of the science, the determination of who was to do the testing and the method of testing performed was primarily driven by the perceived time limits which were not supported by the record and by the State’s demands.

It was never determined whether DLI found this to be the best option based on their analysis or if they simply did the testing they were told to by FDLE.<sup>8</sup> Indeed, it was never determined whether Kintelligence is approved for mixed samples containing male DNA. What was established, however, is that Kintelligence is meant for other types of DNA analysis and is not used for scientific questions like the one in Mr. Duckett’s case (WR. 1161). That means that DLI does not have the capability to conduct the analysis of the data required in this case— a point Ms. Clark mentioned in her email to the parties but conveniently left out of her summary to the court (See WR2. 156) (“DLI does not perform statistical analysis of Y-SNP results and therefore cannot provide a probability determination of data obtained in testing.”).

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testing who provided an estimate on WGS testing was Othram, and that time limit was significantly lower than that asserted by Ms. Clark.

<sup>8</sup> DLI’s initial response envisioned a test that would take closer to a month and would be conducted in their Utah facility (WR. 1233-35).

The lower court issued an order, relying on the unsupported assertions FDLE made to the court, and directed the evidence to be tested by DLI (WR. 1144).

Meanwhile, on March 10, the lower court moved this Court for a 7-day extension of time, noting that testing would be completed no later than March 18. Acknowledging that the DNA results “would have a reasonable probability of producing an acquittal at trial if favorable to Defendant,” the court specifically requested the time “to receive the results of the DNA testing under [] 3.853(c)(8) so as to fully adjudicate the matter.” (WR. 972). This Court granted the extension, in part, ordering the lower court to file a status report “no later than 5:00 p.m., Wednesday, March 18, 2026, or within 12 hours of receiving DNA results, whichever occurs first” (WR. 1074).

On March 13, the parties learned that the testing would likely be completed on or before March 27. This Court granted the lower court an extension to address the DNA results and the lower court had the authority to issue a stay. Yet, at the behest of the State, on March 17, the lower court ruled on Mr. Duckett’s warrant proceedings and denied all claims, including his claim of actual innocence which was reliant on the outstanding results of the DNA testing. Mr. Duckett appealed to this Court and promptly moved for a stay, which this Court granted (WR2. 27).

On March 27, 2026, Ms. Clark sent an email to the parties with the results of the DNA testing conducted by DLI. The results were reported as inconclusive and DLI was unable to obtain a profile. Notably, the testing *did* yield data. The issue, however, is that DLI does not have the capability to conduct the requisite analysis to determine if a profile can be obtained—a problem FDLE was aware of when submitting the sample to DLI (WR2-S2. 308). Ms. Clark expressly stated that the analysis is not yet over. While FDLE is unable to provide an opinion on the results of the tests, Ms. Clark suggested that “[a] qualified bioinformaticist may be able [sic] provide an opinion and calculation based on the Y SNP results.” (WR2-S2. 308). Ms. Clark suggested that either Othram or Parabon Nanolabs, Inc., would be capable of further reviewing the Y SNP data—the same two labs Ms. Clark suggested initially when the lower court was gathering information about which lab should conduct the testing in this case. *Id.*; (WR. 1165-66, 1169).

In anticipation of the DNA testing results, on March 25, Mr. Duckett filed below a *Motion Requesting Testing Protocol, Data, and Results of DNA Testing* (WR2. 1-13). He explained that these items are necessary to assess the testing conducted and ascertain additional information. The State responded, arguing that Mr. Duckett is entitled to only the results and no other underlying data or protocols (WR2. 14-26). Mr. Duckett’s motion and

the State's response were pending at the time the results issued and this Court entered its Orders staying the execution.

The State surprisingly moved to lift the stay and conclude Mr. Duckett's Rule 3.853 proceedings immediately after filing the results with this Court, tersely asserting that "[t]he SNP DNA results were inconclusive" and that the stay should be lifted "[b]ecause the SNP DNA testing is complete and the results do not exonerate [Mr.] Duckett." Mot. to Lift Stay, Mar. 27, 2026. The State further moved in this Court and in the circuit court to dismiss Mr. Duckett's discovery requests and to preclude any further filings, arguing that any such filings violated *Jimenez v. Bondi*, 259 So. 3d 722 (Fla. 2018), because they were not contemplated by the scheduling order. The State argued that Mr. Duckett was not entitled to any further litigation because the inconclusive DNA results did not exonerate him.

Mr. Duckett responded, requesting time to litigate outstanding issues in his Rule 3.853 proceeding given that the testing was inconclusive and FDLE's indication that further analysis could still yield a profile that could exonerate him. Resp. to State's Mot. to Lift Stay, Mar. 27, 2026. Mr. Duckett specifically noted that Rule 3.853(b)(2) contemplates testing to a definitive result. Mr. Duckett asserted that both Rule 3.853 and due process demand that he have the opportunity to have his expert review the testing data from

DLI and assess the reliability of the results and litigate any related issues. Mr. Duckett also filed a motion to relinquish.

This Court rejected the State's arguments and entered an Order denying the State's motion to lift the stay. The Order clarified that the lower court retained "concurrent jurisdiction to rule on motions related to DNA testing and successive claims filed by the petitioner . . . ." (WR2. 51). The Court directed the lower court to file a Status Report on all pending issues by Thursday, April 2, 2026, at 5:00 p.m. *Id.*

Once the Court ruled that Mr. Duckett was permitted to litigate his outstanding Rule 3.853 issues, Mr. Duckett filed public records demands to the State Attorney's Office ("SAO-5"), FDLE, and the Attorney General's Office ("AG") requesting communication between each agency and DLI. As Mr. Duckett explained above, DLI would not communicate with CCRC-South, but did communicate with the State. From FDLE, Mr. Duckett also requested the DLI case file and additional materials required for an expert to conduct a thorough assessment and analysis of the testing completed in order to render any further opinion (*See WR2-S2. 345*).

On March 31, the lower court scheduled a status hearing for the same day at noon and a subsequent hearing for the next morning, April 1, at 9:00 a.m. At the March 31 hearing, the lower court announced it intended to

address Mr. Duckett's motion for the protocols and testing data. Present were Ms. Clark from FDLE and Rachel Oefelein, Ph.D., from DLI, both of whom confirmed that further statistical analysis of the Y SNP data from DLI is possible.<sup>9</sup> Dr. Oefelein advised that the lab conducting the analysis recommended by the FDLE would be conducting a quantitative analysis, not further testing of the biological evidence itself, and that the review should not require a lengthy amount of time. Ms. Clark verified the information relayed by Dr. Oefelein, and that this was the suggested course of action in her March 27 email to try and ascertain more definitive results. The court inquired of both as to whether the sample had been consumed, which both confirmed was true (WR2. 195-96).

Mr. Duckett requested the court hold an evidentiary hearing and hear from the scientists and subsequently permit another lab to analyze the testing data and determine whether conclusive results could be obtained (WR2. 189).<sup>10</sup> Mr. Duckett again requested that the court send the data to

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<sup>9</sup> This hearing, like every previous hearing, was not noticed as an evidentiary hearing and did not provide the defense with sufficient time or notice to secure expert attendance. Also, as with every previous hearing, the defense did not learn until the hearing if the State was bringing a witness or who that witness would be. Additionally, although both Ms. Clark and Dr. Oefelein were questioned by the court, neither were sworn as witnesses.

<sup>10</sup> When defense counsel requested that a representative from DLI appear at an earlier hearing to answer questions, they did not attend and the

Othram, the only lab suggested that is accredited to do the testing and is capable of reading the data. The State argued that the inconclusive result ended the inquiry (WR2. 188). In response to the question about which lab should read the data, the State made an unfounded and absurd claim that the Defense deliberately created a conflict with Othram labs (WR2. 193).<sup>11</sup>

The lower court permitted the parties to file responses to arguments made at the hearing. Mr. Duckett was given until 3:00 p.m. and the State was given until 4:00 p.m. It was unclear until the court entered its order at 7:52 p.m. whether there would be a hearing the following morning (WR2. 155) (“And if necessary, we’ll have the hearing in the morning”). In his pleading, Mr. Duckett asserted that this Court could have agreed with the State’s argument that the results were inconclusive and no further analysis was warranted and could have lifted the Stay precluding any further review of the DNA results. This Court did not do that. Mr. Duckett further urged the lower court to hold an evidentiary hearing, as required by *Cardona v. State*,

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defense were informed by the court that even if they had attended, counsel would be precluded from asking them questions (WR. 1202).

<sup>11</sup> As Mr. Duckett has explained at every turn in this warrant, there is no conflict. Indeed, after it was known that Mr. Duckett retained Othram, the lower court ruled that FDLE was permitted to choose “Othram as its designee” (WR. 749). Despite the absurdity of this argument, at the March 31 hearing the court agreed with the State’s argument and removed Othram as a potential lab to do the requested analysis of DLI’s data, despite the fact that they are the most qualified agency for the job (WR2. 207-08).

109 So. 3d 241, 247-48 (Fla. 4th DCA 2013), to hear from the scientists on the anticipated scope and procedure of any further analysis.<sup>12</sup> Mr. Duckett explained that he wants nothing more than to have the evidence properly examined using the testing methods and analysis most likely to produce a testable profile (See WR2. 127).

The State's pleading, arguing that an inconclusive result was the end of the necessary inquiry, highlighted the very need for an evidentiary hearing as it focused on scientific information not in evidence and in dispute.

In the 7:52 p.m. order, the court stated it would determine whether Mr. Duckett is "entitled to the data from the DNA testing for its own independent analysis" at the hearing (WR2. 156-57). The court also further noted that it would address Mr. Duckett's "remaining discovery requests" (WR2. 157).

At the April 1 hearing, Mr. Duckett's counsel urged the court to hold an evidentiary hearing wherein the experts would provide testimony as to the outstanding factual issues. Mr. Duckett highlighted the various facts at issue in this case and the necessity of a hearing to address them. He further requested, as he had in each of his pleadings and at prior hearings, that he seeks from the State records and data to provide the Court with valid facts

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<sup>12</sup> This did not happen in the hearings determining who should do the testing and what testing should be done.

and evidence upon which it can rely.

In response, the State asserted boldly, for the first time, and without a scintilla of evidence, that no further analysis was required because “we already know these are inculpatory not exonerating” (WR2-S. 239); *id.* at 238-39 (“[T]hese numbers don’t exclude Duckett.”); *id.* at 239 (“[E]ither one of those numbers incorporate it. They are both evidence of guilt.”); “He does not have any new evidence of his innocence. The only thing on the table is evidence including him.” (WR2. 271). It is unclear what number the State is referencing because there is no report, and thus no number reported. Counsel was baffled, noting that she felt a “little bit like we’ve entered - - we’re Alice in – in Wonderland . . .” (WR2. 271). One can only describe the world in which the State can make such absurd and unfounded statements in litigation which will determine whether he lives or dies as a Wonderland.

Despite FDLE’s clear statements that DLI was unable to read the data here and assess whether additional probative information can be gained, the State further claimed Mr. Duckett is not entitled to any underlying data because the numbers do “not matter” in postconviction (WR2. 271). The lower court did not hold a hearing and no experts provided any sworn testimony concerning SNP data calculations. The only information provided to the court was that the data needs to be read by a bioinformaticist.

The lower court entered a written order denying Mr. Duckett's request to have the inconclusive data read by a qualified expert and his records demands. Mr. Duckett addresses each of the court's grounds in turn.

### **SUMMARY OF ARGUMENTS**

1. The lower court erred when it denied Mr. Duckett access to the DNA testing data and precluded him from having the testing fully analyzed by a bioinformaticist as was recommended by the FDLE. Further, the court's failure to grant him the requisite evidentiary hearings regarding the scientific analysis of the DNA was error. The court's order was factually and legally erroneous, precluded meaningful appellate review, and denied Mr. Duckett his rights under the Fifth, Sixth, and Eighth and Fourteenth Amendments and presents a risk that an innocent man will be executed without being given the opportunity to fully analyze the DNA results.

2. The lower court abused its discretion in denying Mr. Duckett access to public records wherein he met the requirements of Rule 3.852(i) and directly refuted the sole objection to the records. Further, the lower court erred when it made findings of fact contradicted by the record. The records—communications with a private laboratory concerning DNA testing and the underlying testing case file and accompanying laboratory documents—are directly related to Mr. Duckett's litigation of his Rule 3.853

motion which is the basis for his newly discovered evidence claim that he is innocent, a recognized colorable claim.

### **STANDARD OF REVIEW**

Factual determinations are reviewed for competent substantial evidence. *Goodwin v. State*, 91 So. 3d 182 (Fla. 4th DCA 2012). Questions of law are reviewed de novo. *Reynolds v. State*, 192 So. 3d 41 (Fla. 2015). The lower court's findings as to testing procedures are submit to de novo review "to determine whether they employ a method generally accepted by the scientific community." *Cardona*, 109 So. 3d 241.

### **ARGUMENT 1**

#### **The Lower Court's Denial Of Full Analysis Of The DNA Evidence, As Recommended By The FDLE, Denied Mr. Duckett Due Process And A Full And Fair Hearing Contrary To The Fifth, Eighth And Fourteenth Amendments To The U.S. Constitution and the Corresponding Provisions Of The Florida Constitution.**

Mr. Duckett has consistently professed his innocence of the charges supporting his death sentence. Rule 3.853 was promulgated to avoid the precise injustice that Mr. Duckett faces, to make sure that the wrongly convicted, like Mr. Duckett, do not become the wrongly executed. See *Zollman v. State*, 820 So. 2nd 1059, 1062 (Fla. 2nd DCA 2002), (quoting *In re Amend. to Fla. R. Crim. P. Creating Rule 3.853*, 807 So. 2d 633, 636 (Fla. 2001) (Anstead, J., concurring)). Both the State and the lower court agreed

that Mr. Duckett had met his burden under Rule. 3.853, satisfying each prong required to obtain testing:

[T]he Court agrees that identity was an issue at trial, and that if DNA testing of the sperm indicated that it did not belong to Defendant, there would have been a reasonable probability of an acquittal.

(WR. 748). Yet when rubber met the road, the court inexplicably applied the brakes, in an order that appears to be more concerned with complying with the strict timeline resulting from litigating under warrant rather than ensuring that an innocent man is not put to death. The court's decision precluding Mr. Duckett from completing the analysis on the DNA results, potentially excluding him as the perpetrator of the crime, denied both the spirit and the letter of the law. The lower court's 2 ½ page order is replete with errors and contains no citations to the record and only cites three cases, none of which support the proposition that a defendant who has met his burden under Rule 3.853 to obtain DNA testing should be forced to stop the inquiry before fully analyzing the testing to determine the result. Instead, the court relies on findings that are factually incorrect, contrary to the record, and not consistent with controlling law.

**A. The court's finding that no testimony or reasoning was presented as to how the information sought by Defendant could lead to Defendant's exoneration is erroneous (WR2. 163).**

It is unclear whether the court based this statement on a finding that

the requested analysis cannot exclude Mr. Duckett as the perpetrator, or a finding that defendant failing to adequately support his request for the further analysis with argument and testimony, but either way the court is wrong. Because the court fails to expand on the statement or to provide citations to the record, Mr. Duckett is left guessing what was meant by it.

After DLI submitted the inconclusive result, the State began asserting the argument, with no evidence in support, that these results were actually inculpatory. See *infra*, p. 13. Nowhere in the results reported by DLI is there an assertion that the results are inculpatory or inclusive; nowhere in the email from Ms. Clark is there such an indication; nowhere in the statements made by either Ms. Clark or Dr. Oefelein do they state that the results are inculpatory or inclusive. To the extent the circuit court is reading a finding that an inconclusive result is only consistent with an inclusion, and is inconsistent with an exclusion, that interpretation is not supported by any evidence in the record, nor by science, and would be contrary ISO/IEC 17025 accreditation requirements which DLI is bound by.<sup>13</sup>

To the extent the court faults Mr. Duckett for failing to present testimony in support of his arguments, the fault lies with the process and not

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<sup>13</sup> ANAB accreditation requires labs to produce accurate, objective, and unambiguous results which prohibits reporting definitive conclusions (inclusion or exclusion) when data is inconclusive.

Mr. Duckett. The court consistently held hearings with either little or no notice, precluding Mr. Duckett from presenting his expert to dispute the erroneous testimony of the FDLE or from questioning the representative from DLI about the anticipated testing. The only time Mr. Duckett was able to present expert testimony was in the initial hearing on the Rule 3.853 hearing, a hearing which he learned about as it was happening. The court did not confirm that the April 1 hearing regarding whether the defense would be entitled to the data to conduct the necessary analysis until 7:52 p.m. the night before, and at no time did the court indicate that this was an evidentiary hearing nor that counsel should present expert testimony.

To the extent that the court is asserting that Mr. Duckett failed to argue how this testimony would provide support for his innocence claim, that finding is belied by the record where Mr. Duckett, both in motions and in the hearings, has repeatedly argued that he believed the DNA evidence, if capable of producing a result, would exclude him. (See, e.g., WR2-S. 241, 247, 260, WR2. 127, 189, 190).

It is possible, though unclear from the lower court's order due to the complete lack of explanation, that the court misunderstood the import of the inconclusive result and failed to appreciate the critical distinction between the result obtained by DLI and the analysis that a forensic bioinformaticist

could conduct on the test results. Because the court held no evidentiary hearings, there was no testimony regarding what an inconclusive result meant.

DLI could not do what was needed to obtain a result and FDLE knew that likelihood existed yet allowed the evidence to be sent to them for testing. The agency that could have conducted the more sensitive WGS testing, completed it in the same or less time as Kintelligence, and provided the court with the full analysis of the result, Othram, was left standing in the wings because the State adamantly professed they were conflicted, and ignored testimony that they could do the testing in less time than the chosen agency. It is hard to imagine how this result comports with due process.

When an analyst declares a result inconclusive, that declaration is not a finding of fact. It is an acknowledgment that the standard methodology has reached its limit. It means the data, as processed through the tools that DLI used, cannot support a statistically reliable conclusion under the laboratory's established protocols. That is precisely the testimony, albeit unsworn, that DLI representative Dr. Oefelein provided to the court (WR2. 203).

But inconclusive does not mean *uninformative*. It means *unresolved by conventional means*. That does not mean the inquiry should end, especially when there are ways to resolve the issue and get a conclusive

result, as Ms. Clark recommended in her email to the court (WR2-S2. 308). A forensic bioinformaticist brings a fundamentally different toolkit to the same raw data. Their discipline sits at the intersection of computer science, statistics, and molecular biology, and it enables them to interrogate DNA evidence at a depth that DLI could not reach. This is the analysis that could provide the court with an exclusion or inclusion. There is no question that this analysis falls squarely within both the spirit and the letter of Rule. 3.853.

It is precisely because FDLE's analysis of the Q slide resulted in low-template samples, that FDLE recommended SNP testing rather than STR testing. Additionally, the sample was a mixed DNA sample, containing genetic material from two or more contributors.<sup>14</sup> Low-template and mixed DNA samples—precisely the kind most likely to be declared inconclusive—contain signal that is obscured by noise, dropout, drop-in, and stochastic effects. A forensic informaticist can apply deconvolution algorithms to separate the overlapping genetic signals of multiple contributors, reconstruct partial profiles with quantified uncertainty, and assess whether a known individual can be statistically included or excluded from a mixture.

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<sup>14</sup> It is unclear without analysis of the full results, a full report, or testimony from the analyst, whether this mixed sample is a result of DLI mixing the sperm fraction and the epithelial fractions together prior to conducting the testing, or for some other reason.

A forensic bioinformaticist can also serve a critical validation function. They can review the raw electropherogram data—the foundational output of the DNA typing process—and assess whether the original analyst's interpretation was the only reasonable one, or whether alternative interpretations of the same data are statistically supportable. In cases where the original analysis has declared a result inconclusive, a bioinformaticist may be able to demonstrate that the data, properly modeled, actually supports an *exclusion* of the defendant. That is not a minor distinction. That is potentially the difference between conviction and acquittal. Leaving out this critical step, when the state agent has recommended it, is inconsistent with the purpose of Rule 3.853.

**B. The court erroneously found that reanalyzing the test results could not generate new evidence on which his actual innocence claim could rest (WR2. 163).**

As with the previous finding, the court provides no analysis nor record citations, so once again Mr. Duckett is left trying to guess the support for this statement. The lower court found, when granting the DNA testing, that if the DNA testing excluded Mr. Duckett, there is a reasonable probability of an acquittal at trial; and Mr. Duckett continued to argue throughout the proceedings that the additional testing would provide him evidence of exclusion, which was needed to permit him to supplement his Rule 3.851

motion as the State had agreed he could do (WR2-S. 260). As with the previous finding discussed above, this finding is not supported by the record and thus deserves no deference.

**C. The lower court's finding that it is uncontroverted that Defendant's DNA testing could have been previously performed is clearly erroneous, contrary to the record, and irrelevant to the question before the court (WR2. 163).**

In perhaps the most inexplicable holding in the circuit court's order, the court found that it is "uncontroverted that Defendant's DNA testing could have previously been performed, long before [] the death warrant was signed" (WR2-S. 234). Not only is this contrary to the record, it is contrary to the law as the statute contains no timing requirement. The State conceded as much at the April 1 hearing (WR2-S. 261).

Uncontroverted refers to information that is accepted as true and is not disputed by any party involved in the legal case. That could not be further from the truth in this case. As this Court previously found, the State did not object to the timeliness when they agreed to the DNA testing (WR2. 27). Yet it continued to present argument regarding timeliness, unsupported by facts or evidence. Mr. Duckett has repeatedly pointed out that no evidence has been presenting regarding when any testing method became available, and at no point agreed that the science was available to obtain a result earlier (see, e.g., WR2-S. 240-43). Because the circuit court's factual findings are

clearly erroneous and lack evidentiary support, this Court should reverse. In addition to its factual errors, the circuit court misapplied the governing law. Questions of law are reviewed de novo, and no deference is owed to the circuit court's legal conclusions.

Rule 3.853 contemplates this approach of testing to a definitive result. See Fla. R. Crim. P. 3.853(b)(2) (The contents of a motion for postconviction DNA testing require a statement that "subsequent scientific developments in DNA testing techniques likely would produce a definitive result establishing that the movant is not the person who committed the crime."). Both Rule 3.853 and due process demand that he have the opportunity to have a bioinformaticist review the testing data from DLI and assess the reliability of the results and litigate any related issues.

This distinction matters not as an academic exercise, but because the defendant's right to present a complete defense guaranteed by the Sixth and Fourteenth Amendments includes the right to confront the full evidentiary record with the best available scientific tools. Mr. Duckett has the burden but he cannot meet his burden if the court will not permit him to take the necessary step, as advocated for by the FDLE, and conduct the full examination of the data that is required. He is entitled to expert analysis that can interrogate that evidence at its deepest level and, where the data

supports it, offer a statistically grounded result.

The lower court's ruling produces an outcome that conflicts with established public policy embodied in Rule 3.853. Rule 3.853 reflects the justice system's priority of correcting wrongful convictions. Not allowing the defendant to complete the analysis on the testing fails to provide him the tools to correct his wrongful conviction.

"DNA testing has an unparalleled ability to both exonerate the wrongly convicted and to identify the guilty," *Dist. Atty's Office for 3rd Jud. Dist. v. Osborne*, 557 U.S. 52, 55 (2009), and the public has an interest in the assurance that the State is not executing an innocent man. "Executing the innocent is inconsistent with the Constitution," "contrary to the contemporary standards of decency," "shocking to the conscience," and "offensive to a principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental." *Herrera v. Collins*, 506 U.S. 390, 419 (1993) (internal quotations and citations omitted) (O'Connor, J., concurring). "The execution of a legally and factually innocent person would be a constitutionally intolerable event." *Id.* The additional scientific analysis by a qualified bioinformaticist as recommended by a state agent is warranted.

**D. The lower court's failure to conduct an evidentiary hearing to determine who, where, and how the DNA would be tested denied Mr. Duckett due process.**

The lower court erred by failing to conduct adequate hearings “relating to the procedures for DNA testing.” *Cardona*, 109 So. 3d at 242. Before determining what testing should be conducted, who would conduct it, the qualifications of the analysts to conduct said results and report them to the court, and the anticipated costs to the defendant, an evidentiary hearing should have been held. *Id.* That did not occur. *Cardona* squarely addresses the issue of when an evidentiary hearing is mandated pursuant to Rule 3.853. The issue presented in *Cardona* was whether the lower court erred in not holding an evidentiary hearing before ordering specific testing procedures. The appellate court found that because the issue was a scientific issue rather than a legal issue, an evidentiary hearing was warranted to hear from the scientists on the anticipated scope and procedure. *Id.* at 241, 247, 248. Mr. Duckett was denied the requisite hearing both before the initial testing and when the court was considering whether to permit the analysis by the bioinformaticist.

Had the initial hearings been held, it is unlikely that DLI would have been permitted to test the Q slide with Kintelligence, or to conduct any testing due to their inability to conduct the full analysis. It is possible that the failure to conduct evidentiary hearings before ordering the testing by DLI has irreparably harmed Mr. Duckett by destroying the entire sample with

testing that was not formulated for this type of inquiry. Unfortunately, that can no longer be resolved. But this Court can and should remand for an evidentiary hearing with respect to the analysis recommended by Ms. Clark, the qualifications of the potential bioinformaticists, and the costs to the defendant of said analysis. Mr. Duckett wants nothing more than to have the evidence properly examined using the testing methods and analysis most likely to produce a testable profile. This approach is consistent with Rule 3.853 and supported by case law. “The intent of the statute, and the companion rule, is to establish a methodology for a convicted defendant to have physical evidence examined for possible exoneration. . . .” *Id.* at 246.

By denying Mr. Duckett the right to have the DNA results fully analyzed, the lower court denied Mr. Duckett due process and essentially made Rule 3.853 unavailable to him. Where the State of Florida extends a right or a liberty interest, the right or liberty interest may only be extinguished in a manner that comports with due process. *See Evitts v. Lucey*, 469 U.S. 387 (1985) (State must operate whatever programs it does establish subject to the protections of the Due Process Clause). To grant a substantive right and then not allow the defense an opportunity to fully exercise the right is a due process violation contrary to the Eighth and Fourteenth Amendments. *Cf. Ohio Adult Parole Authority v. Woodard*, 523 U.S. 272 (1998) (due

process protection applies to the right to seek clemency).

### **E. Conclusion**

The lower court relies on facts not in evidence. The order makes blanket conclusions, yet no testimony supports the conclusion and it's impossible to determine, without further support, the bases of the conclusions. A trial court abuses its discretion when it bases its ruling on matters outside the record. Because the circuit court's order is flawed both factually and legally, it cannot stand.

## **ARGUMENT 2**

### **The Lower Court Abused Its Discretion In Denying Mr. Duckett Access To Public Records In Violation Of The Fifth, Eighth, And Fourteenth Amendments To The U.S. Constitution And The Corresponding Provisions Of The Florida Constitution.**

After this Court confirmed the lower court retained jurisdiction to rule on motions relating to the DNA testing results, Mr. Duckett filed demands for additional public records to FDLE, SAO-5, and AG pursuant to Rule 3.852(i). From FDLE, Mr. Duckett sought DLI's case file, including, *inter alia*, a copy of the electronic SNP testing data files and marker data generated for each sample tested, as well as DLI's procedures and protocols for SNP testing and use of the ForenSeq Kintelligence kit. Due to the lack of transparency in the testing process, Mr. Duckett's demands to each agency requested

communications and materials exchanged between the agencies and DLI from March 5, 2026, to present (WR2-SS. 345, 368, 390). None of the agencies filed written responses or objections, and FDLE did not appear at the April 1 hearing where Mr. Duckett's demands were addressed.<sup>15</sup> Rather, the lone argument concerning the demands came from ASA Nunnelley, who blanketly asserted that "the defense is not entitled to attorney work product" and urged the court to deny the demands "in all effects." (WR2-S. 287-88).

The lower court, in turn, found Mr. Duckett's demands were "neither 'relevant to a subject matter of a proceeding under rule 3.851' nor 'reasonably calculated to lead to the discovery of admissible evidence' as required by Fla. R. Crim. Pro. 3.852." (WR2. 163). The lower court erred in denying him access to these materials in violation of due process and equal protection guaranteed by the Fifth and Fourteenth Amendments to the U.S. Constitution and the corresponding Florida Constitution provisions.

**A. "[A]ccess to public records is an essential ingredient in any meaningful postconviction review." *Sims v. State*, 753 So. 3d 66, 71 n.10 (Fla. 2000) (Anstead, J., concurring).**

This Court promulgated Rule 3.852 to govern the production of public

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<sup>15</sup> FDLE's lack of appearance is curious as the agency appeared at nearly every other hearing regarding the DNA testing and the agency was served on the court's order wherein the court noted the demands would be addressed at the hearing. Mr. Duckett submits that the agency waived any putative objections by failing to respond or appear at the hearing.

records for capital postconviction defendants. Rule 3.852, however, “was never intended to, and, indeed, [can]not, diminish a citizen’s constitutional right to access to public records.” *In re Amends. to Fla. R. Crim. P. Cap. Postconviction Recs. Prod.*, 683 So. 2d 475, 477 (Fla. 1996) (Anstead, J., specially concurring); *Sims*, 753 So. 3d at 71-72 (Anstead, J., concurring). Rather, it was designed “to promote the prompt and efficient processing of capital cases in a fair, just, and constitutionally sound manner.” *In re Amends. to Fla. R. Crim. P. 3.851, 3.852, et. seq.*, 797 So. 2d 1213, 1216 (Fla. 2001). “[A]ccess to public records [remains] an essential ingredient in any meaningful postconviction review,” *Sims*, 753 So. 3d at 71 n.10 (Anstead, J., concurring), and in safeguarding a death-sentenced individual’s due process rights under both the federal and state constitutions. See *Evitts*, 469 U.S. at 401. “[E]xecution is the most irremediable and unfathomable of penalties,” *Ford v. Wainwright*, 477 U.S. 399, 411 (1986), and the need for absolute transparency is at its apex when the State “tinker[s] with the machinery of death.” *Callins v. Collins*, 510 U.S. 1141, 1130 (1994) (Blackmun, J., dissenting).

**B. The Lower Court Erred in Determining That Mr. Duckett’s Demands Were Neither Relevant to the Subject Matter of a Rule 3.851 Proceeding Nor Reasonably Calculated to Lead to the Discovery of Admissible Evidence.**

The lower court’s findings are belied by the record in this proceeding.

Moreover, they stem from the erroneous narrative peddled by the State that the DNA testing process and Rule 3.853 proceedings are over by virtue of the inconclusive results DLI reported through FDLE on March 27. Mr. Duckett's demands satisfied Rule 3.852(i), and the lower court abused its discretion in finding that he was not entitled to the records at issue.

- 1. Mr. Duckett's demands were relevant to a claim of actual innocence based on newly discovered evidence which is cognizable in a Rule 3.851 proceeding.**

This Court has long held that newly discovered evidence is a basis for supporting a claim of actual innocence in a Rule 3.851 proceeding. The lower court recognized this fact and the State conceded as much when it agreed to DNA testing on the Q slide and maintained that Mr. Duckett would be able to amend his 3.851 motion or file a new claim upon receipt of favorable results. Both FDLE and DLI confirmed that further analysis by an appropriate lab could yield a probative result, and the records sought in Mr. Duckett's demands are directly relevant to his claim that he was wrongfully convicted and sentenced to death for a crime he did not commit.

- 2. Mr. Duckett's demands were reasonably calculated to lead to the discovery of admissible evidence.**

At bottom, the lower court unequivocally determined when it granted Mr. Duckett's 3.853 motion that any resulting evidence derived from the DNA testing would likely be admissible at a subsequent proceeding as

required by Rule 3.853(c)(5)(B) (WR. 747). As such, a requesting access to the underlying data from the SNP testing DLI conducted is reasonably calculated to lead to the discovery of admissible evidence and the categorical opposite of a “fishing expedition”—particularly when uncontroverted representations from FDLE and DLI confirm that further analysis by a qualified lab could reach a definitive result. The case file and corresponding protocols are critical for any reviewing examiner to adequately review assess the testing.

Moreover, this Court recognized that the lower court “permitted the State to exercise complete control over the location, timing, and method of testing.” (WR. 27). This level of unilateral authority, however, cloaked the process in a layer of secrecy that undermines the integrity of the 3.853 proceedings. Mr. Duckett’s request for communications and materials are public records subject to disclosure and their relevance cannot be considered in a vacuum. It is undisputed that these communications exist, and transparency is required where the ultimate penalty is at stake.

### **CONCLUSION AND RELIEF SOUGHT**

Mr. Duckett urges this Court to reverse the lower court, maintain the existing stay of execution, remand to the circuit court for a full and fair opportunity to be heard at an evidentiary hearing, direct that the additional

DNA analysis be conducted, and grant such other relief as the Court deems just and proper.

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE AND FONT**

Pursuant to Fla. R. App. P. 9.045, I hereby certify that the Initial Brief of the Appellant has been produced in Ariel, 14-point font. Counsel further certifies that this brief exceeds the 25-page limit imposed by this Court on April 2, 2026, and that a Motion to Exceed Page Limitations is being filed simultaneously with this brief.

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true copy of the foregoing pleading has been electronically filed through the Florida State Courts e-filing portal and served to the parties listed below on April 7, 2026.

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