Filing # 245575575 E-Filed 04/08/2026 04:48:37 PM

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC2026-0528

EXECUTION STAYED

JAMES AREN DUCKETT,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

ON APPEAL FROM THE CIRCUIT COURT
OF THE FIFTH JUDICIAL CIRCUIT,
LAKE COUNTY, FLORIDA
LOWER CASE NO. 1987-CF-1347

REPLY BRIEF OF APPELLANT

MARY ELIZABETH WELLS
Special Assistant CCRC-South
Fla. Bar No.: 0866067
mewells27@comcast.net

COURTNEY M. HAMMER
Staff Attorney
Fla. Bar No. 1011328
hammerc@ccsr.state.fl.us

BRITTNEY LACY
Assistant CCRC-South
Fla. Bar No. 116001
lacyb@ccsr.state.fl.us

Capital Collateral Regional
Counsel – South Office
110 S.E. 6th Street, Suite 701
Fort Lauderdale, FL 33301

COUNSEL FOR MR. DUCKETT

April 8, 2026

<u>**TABLE OF CONTENTS**</u>

TABLE OF AUTHORITIES .... **Error! Bookmark not defined.**

ARGUMENT IN REPLY 1

CONCLUSION AND RELIEF SOUGHT 10

CERTIFICATE OF COMPLIANCE AND FONT 11

ARGUMENT IN REPLY – ARGUMENT 1

The briefing schedule in Mr. Duckett's Rule 3.853 appellate proceedings highlights his prior criticism of the 'fire drill approach" to reviewing his claims. Despite the fact that there is no impending execution and the warrant week has concluded, he is required to file his reply brief 5 hours after receiving the State's response. There is no question that this impacts his ability to adequately reply to the State's substantive arguments. Mr. Duckett is entitled to proceedings that meet constitutional scrutiny. *See United States v. Cronic*, 466 U.S. 644, 656 (1984).

The State focuses much of its argument on the purported failure to show good cause. This argument both ignores the record and misconstrues the status of the case. We are beyond most of the State's arguments—testing was granted. What greater cause could be shown than the State's own lab (FDLE) recommending that the data be read by a qualified expert? The recommendation came after FDLE told the court and the parties that DLI, the lab performing the testing, does not have the capability to assess the data for the question at hand, *i.e.,* the analysis is not complete. The State's reliance on *Osborne* to assert Mr. Duckett is not entitled to the analysis of the DNA data here is misplaced (AB. at 8). Unlike *Osborne* and the other cases cited by the State, the court here *granted* DNA testing and

determined that the results could lead to a possible acquittal. It was the court that then truncated the process and precluded full analysis of the sample. The court's actions here are the very definition of a due process denial.

The State's recitation of the facts are misleading. The State suggests Mr. Duckett was outright granted the "specialized type of testing" he requested and that it did not object (AB. at 8-9). Mr. Duckett requested SNP testing because it was his understanding that this was only available testing that could potentially get a result. He was granted the testing only after FDLE performed quantification analysis and opined that SNP was the "best course of action" (WR. 1116). The State did not then agree to SNP testing, it tried to move Heaven and earth to preclude it (WR. 1115). Even after FDLE testified they did not do SNP testing and that it would have to go to another lab, the State vehemently objected to any other lab conducting the testing (WR. 1121, 1122).[1]

The State's reliance on *Ziegler* and *Everett* for the premise that Mr. Duckett has failed to show he is entitled to testing are likewise misplaced (AB. at 11). In both cases, the court denied DNA testing outright, determining that the movant's failed to establish that the results would lead to an acquittal.

---

[1] "The position of the state is that we absolutely object to any testing that is not done by [FDLE] and we absolutely object to this sample leaving the state [sic] of Florida under any circumstances whatsoever" (WR. 1121).

We are past that. In Mr. Duckett's case, the court permitted testing and made findings that the results of this sample would indeed meet the requirements of 3.853 and could exonerate Mr. Duckett. And the State agreed. The court's refusal to conduct a complete analysis of the testing is an abuse of discretion and fails to comport with the dictates of due process and Mr. Duckett's Fifth, Eighth, and Fourteenth Amendment rights.

In an attempt to minimize FDLE's determination that further analysis is necessary here, the State suggests that data is only relevant at trial and that statistical calculations are only necessary when making a "match" determination so as to prove identity beyond a reasonable doubt. Not only is this wrong, there is no record evidence that the statistical calculations will make a match, only the State's arguments. In its insistence that no one look further into the DNA here, the State forgets that statistical calculations are also used to *exclude* contributors. These arguments again highlight the need for a full evidentiary hearing. A scientist must explain the significance and meaning of the testing and the data.

FDLE indicated that further analysis is required here because DLI cannot read the data any further. Indeed, at a prior hearing, FDLE confirmed that the kit used, Kintelligence, is not used for this type of question, therefore

DLI does not have the ability to do the back-end analysis.[2] Mr. Duckett is not requesting retesting, as the State suggests in citing *King* (AB. at 15); he is asking that the testing already done be adequately analyzed to completion. by a qualified expert.

Mr. Duckett cannot meet his burden under Rule 3.851 and establish his newly discovered evidence claim that the DNA in this case shows that he did not murder Ms. McAbee. That is true. But at this point, Mr. Duckett's inability to meet that burden is because the lower court failed to permit the full analysis of the DNA evidence in this case. The State's assertion that the discovery sought is not relevant to any viable claim is disingenuous at best. The State is aware that its own lab opined further analysis is required of the testing data and that results could be obtained. These results, as the lower court determined, could lead to his exoneration.

The State's insistence in arguing that any further analysis would only establish Mr. Duckett's guilt is reckless and unfounded. Neither FDLE nor DLI who the State now claims is a "State witness"[3] testified to that effect. The

---

[2] The State's attempt to bolster the abilities of the Kintelligence test by asserting that it has been found to be more sensitive than another unknown test is irrelevant (AB. at 21).

[3] The irony of this is that the State has lodged repeated accusations of conflict throughout the proceedings at Mr. Duckett for retaining Othram to assist him in providing the necessary information he needed to meet his burden when filing a Rule 3.853 motion—a conflict that the State argued

State's conclusion that "[i]f a person cannot be excluded, they are included" (AB. at 24) is based on absolutely no record evidence.

It is shocking that the State has fought so hard against the use of Othram Labs as they are, per FDLE's testimony, the only agency accredited to do SNP testing AND qualified to do the further analysis by an informaticist of DLI's test results recommended by FDLE. In fact, just today, the State of Florida recognized Othram's success in this field in its announcement of its partnership with Othram to investigate cold cases.[4] ("The evidence was there, what was missing was the ability to interpret it. This project changes that.")

The State's entire argument challenging the requirement that the lower court hold an evidentiary hearing is incorrect and reliant on cases addressing Rule 3.851 proceedings, not Rule 3.853. Mr. Duckett's claims on

---

precluded him from doing anything in the case—yet, the State, who took complete control over the location, timing, and method of the testing, is permitted to make the agency paid for by the defense its witness and control what information that agency shares. It appears the State is also permitted to instruct that agency not to speak with Othram as well, as DLI analyst Oefelein indicated in her unsworn questioning at the March 31 hearing that she failed to contact Othram to see if they could do the analysis, despite the fact Othram was one of the two agencies recommended by FDLE.

[4] *'AG James Uthmeier joins Law Enforcement in Miami to Announce Statewide Cold Case Initiative'*: https://www.youtube.com/live/1Ng0P7WuKI8 ("Othram is leading the nation, a company that has proven success when it comes to advanced forensic DNA analysis.")

appeal in this proceeding concern his Rule 3.853 matter. *Cardona* controls. The lower court was required to hold a hearing to address the disputes concerning the DNA testing. Contrary to the State's assertion, Mr. Duckett cannot be faulted for not presenting an expert at the two post-result hearings as the State suggests. The lower court set the first hearing, March 31, as a status and scheduled the status for noon—just 3 hours after his order issued. The second hearing was scheduled for the following morning at 9:00 a.m. During the noon hearing, the court indicated the hearing the following morning may not be held. In the court's 7:52 p.m. order indicating the hearing would move forward, the court announced it intended to address whether additional analysis of the data was required. The court never instructed the parties that it would be an evidentiary hearing and to call witnesses. Mr. Duckett had requested the opportunity to present experts at the status and in the pleading that followed. The court never announced that the April 1 hearing was his moment to do so. The court permitted Mr. Duckett to argue that the law required an evidentiary hearing and then subsequently entered a finding that Mr. Duckett did not present expert testimony to show how the information "could lead to Defendant's exoneration." The court never told Mr. Duckett that was the question it sought to have answered. To then fault him for failing to present testimony, when he repeatedly requested to do so, turns

the system on its ear.

The State's argument that Mr. Duckett could have requested DNA earlier is unsupported by the record and is a red herring. As Mr. Duckett argued in his initial brief, Rule 3.853 contains no time requirement, and, in any event, the State waived any argument to timeliness when it agreed that Mr. Duckett had met his burden under Rule 3.853. And, even if it were relevant, the State cites to the date the Kintelligence kit became available—regardless of whether the kit was used or the lab had become accredited for the testing at that point—when FDLE admitted that Kintelligence was not formulated for this type of inquiry. The record is devoid of any evidence as to when the sample in this case could have or should have been tested. And, arguably, with the inconclusive result, without further analysis, we still do not know if the science is advanced enough to produce a definitive result. Certainly, DLI was unable to obtain a result using Kintelligence.

The State's arguments both at the hearings and in its Response are just that, argument, and not evidence. The State does exactly as it cautioned the court not to do—dismiss the need for expert testimony and allow attorneys to tell the court about the science. The State is not an expert on the development of DNA testing technology and its arguments as to when Mr. Duckett could have requested testing are wholly unsupported by the

record and by the science. Mr. Duckett requested representatives from DLI at the court's status held on Monday, March 16, 2026, to which the State objected via email to the Defense asking any questions of the experts. At the hearing, the lower court announced that Mr. Duckett would not be permitted to ask any questions of the DLI representative should they appear (WR. 1202). At the hearing held March 13, the court had instructed that he wanted a representative be present for the Monday hearing. Over email, FDLE notified the parties that a representative would not be present. DLI indicated they would not be present unless specifically requested. FDLE indicated it would arrange a representative to be present. No one from DLI showed.

The breakneck speed of hearings, and the knee-jerk determination of who best to examine this critical slide that holds the secret of who actually killed Ms. McAbee, does not comport with due process. In the first hearing, which Mr. Duckett learned about as it was occurring, he did the best he could at presenting evidence to the court through a scientist who actually does SNP testing, Dr. Mittelman. Due to the lack of notice, counsel had no opportunity to speak with Dr. Mittelman about what testing he could offer, to prep him for the hearing at hand, or to discuss the additional questions that might be relevant to the proceedings. Counsel has never worked with Dr. Mittelman before this case and had only met him a few days before the

hearing.[5]

ARGUMENT II

Most of the State's arguments were not asserted below, and therefore, must be deemed waived. Only the State Attorney objected below, claiming that communications with DLI are exempt from disclosure as work product. The court did not sustain this objection. The lower court denied the records finding only that the records were not "'relevant to a matter of a proceeding under rule 3.851' nor 'reasonably calculated to lead to the discovery of admissible evidence'" (WR. 163). DLI communicated with the State concerning the DNA testing in this case, yet refused to communicate with the Defense[6] at the direction of the State. DNA testing is nuanced. Each lab offers different technology, has varying thresholds for the amount of biological material necessary to conduct testing, and different capabilities in reading the data that is output from testing. All of this informs how the sample

---

[5] Dr. Mittelman stated that he and counsel had just met, but due to the rush job required of the court reporter, it did not make it into the transcript.

[6] It is beyond comprehension that CCRC-South was ordered to pay for the testing, but was completely cut out of the process. CCRC-South is a State agency and is accountable for its spending, yet the lower court ordered it pay for testing without any further parameters. CCRC-South was not permitted to participate in the selection of the lab, have any say in the type of testing, nor access to the testing data once it was complete. DLI was essentially given a blank check to conduct testing without any recourse or discussion with the agency that was ordered to pay.

is handled and the type of testing a lab performs. Mr. Duckett is entitled to communications between DLI and the identified state agencies about the testing in this case.

The lack of transparency through this process raises questions as to the State's intention of ensuring a conclusive result was yielded. From the outset, the State has refused to use the premier DNA lab in SNP testing which FDLE uses for all of its other SNP needs, has refused to ensure that the most sensitive technology be used and instead agreed to the use of a kit not appropriate for the testing in this case, and now refuses to permit the requisite analysis of the data.

The State's arguments illustrate a lack of understanding of DNA analysis. The protocols are required, as explained below, to understand how the testing was conducted, which may impact the reading of the data. For example, the protocols indicate the lab's thresholds. The thresholds inform the back-end assessment. As Mr. Duckett requested, a scientist can explain why the case file and additional laboratory documents are needed to get a full picture of the testing and the possibility for reading additional information.

CONCLUSION AND RELIEF SOUGHT

Mr. Duckett urges this Court to reverse the lower court, and remand to for a full and fair opportunity to be heard at an evidentiary hearing.

Respectfully submitted,

/s/ *Mary E. Wells*
MARY ELIZABETH WELLS
Law Office of M.E. Wells
Special Assistant CCRC-South
Florida Bar No. 0866067
mewells27@comcast.net

BRITTNEY LACY
Assistant CCRC-South
Florida Bar No. 116001
lacyb@ccsr.state.fl.us

COURTNEY M. HAMMER
Staff Attorney
Florida Bar No. 1011328
hammerc@ccsr.state.fl.us

Capital Collateral Regional Counsel-South
110 SE 6th Street, Suite 701
Fort Lauderdale, FL 33301
Tel. (954) 713-1284
COUNSEL FOR DUCKETT

CERTIFICATE OF COMPLIANCE AND FONT

Pursuant to Fla. R. App. P. 9.045, I hereby certify that the Reply Brief of the Appellant has been produced in Arial 14- point font. Pursuant to Fla. R. App. P. 9.210(a)(2)(D), this brief complied with the Court Ordered 10-page limit.

/s/ *Mary Elizabeth Wells*
MARY ELIZABETH WELLS
Florida Bar No. 0866067
Special Assistant CCRC-South

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 8, 2026.

/s/ Brittney N. Lacy
BRITTNEY N. LACY
Fla. Bar No.: 116001
Asst. CCRC-South

Copies furnished to:

OFFICE OF THE ATTORNEY GENERAL
Charmaine M. Millsaps, Special Counsel, AAG
charmaine.millsaps@myfloridalegal.com
capapp@myfloridalegal.com
paula.montlary@myfloridalegal.com
nanette.pelehach@myfloridalegal.com
elizabeth.bueter@myfloridalegal.com
jennifer.roberson@myfloridalegal.com

Naomi Nichols, Senior AAG
naomi.nichols@myfloridalegal.com
capapp@myfloridalegal.com

Nichole Rochelle Smith, Senior AAG
nicole.smith@myfloridalegal.com
capapp@myfloridalegal.com

Marilyn Muir, Associate Deputy Attorney General
Marilyn.muir@myfloridalegal.com

Scott A. Browne, Chief Assistant Attorney General
scott.browne@myfloridalegal.com

Stephen D. Ake, Attorney Manager II
stephen.ake@myfloridalegal.com

FLORIDA SUPREME COURT CLERK
warrant@flcourts.org
canovak@flcourts.gov