

IN THE SUPREME COURT OF FLORIDA

ETHERIA JACKSON

Appellant,

v.

CASE NO. SC 12-773

STATE OF FLORIDA,

Appellee.

\_\_\_\_\_ /

ON APPEAL FROM THE CIRCUIT COURT  
OF THE FOURTH JUDICIAL CIRCUIT  
IN AND FOR DUVAL COUNTY, STATE OF FLORIDA

ANSWER BRIEF OF THE APPELLEE

PAMELA JO BONDI  
ATTORNEY GENERAL

MEREDITH CHARBULA  
Assistant Attorney General  
Florida Bar No. 0708399

DEPARTMENT OF LEGAL AFFAIRS  
THE CAPITOL  
Tallahassee, Florida  
(850) 414-3300, Ext. 3583  
(850) 487-0997 (Fax)

COUNSEL FOR APPELLEE

TABLE OF CONTENTS

TABLE OF CONTENTS.....i

TABLE OF AUTHORITIES.....ii

PRELIMINARY STATEMENT.....1

STATEMENT OF THE CASE AND FACTS.....2

SUMMARY OF THE ARGUMENT.....13

ARGUMENT.....15

**WHETHER THE COLLATERAL COURT ERRED IN SUMMARILY  
DENYING JACKSON'S MOTION FOR DNA TESTING**

CONCLUSION.....33

CERTIFICATE OF SERVICE.....34

CERTIFICATE OF FONT COMPLIANCE.....34

**TABLE OF AUTHORITIES**

<b><u>CASES</u></b>	<b>PAGE#</b>
<u>Cole v. State</u> , 83 So.3d 706 (Fla. 2012).....	32
<u>Cole v. State</u> , 895 So.2d 398 (Fla.2004).....	16,32
<u>Consalvo v. State</u> , 3 So.3d 1014 (Fla.,2009).....	30
<u>Galloway v. State</u> , 802 So.2d 1173 (Fla. 1st DCA 2001).....	16
<u>Gore v. State</u> , 32 So.3d 614 (Fla. 2010).....	30
<u>Hitchcock v. State</u> , 991 So.2d 337 (Fla. 2008).....	29, 30
<u>Jackson v. Florida</u> , 128 S. Ct. 89 (2007).....	9
<u>Jackson v. Florida</u> , 488 U.S. 1050 (1989).....	7
<u>Jackson v. Singletary</u> , 613 So.2d 5 (Fla. 1993).....	8
<u>Jackson v. State</u> , 2007 Fla. LEXIS 392 (Fla., Feb. 15, 2007)....	9
<u>Jackson v. State</u> , 50 So.3d 1137 (Fla. 2011).....	9, 10
<u>Jackson v. State</u> , 530 So.2d 269 (Fla. 1988).....	passim
<u>Jackson v. State</u> , 633 So.2d 1051 (Fla. 1993).....	7, 8
<u>Jackson v. State</u> , 952 So. 2d 1190 (Fla. 2006).....	8
<u>King v. State</u> , 808 So.2d 1237 (Fla.2002).....	16
<u>Lott v. State</u> , 931 So.2d 807, 820 (Fla.2006) .....	16,29
<u>Overton v. State</u> , 976 So.2d 536 (Fla.2007) .....	16
<u>Ring v. Arizona</u> , 536 U.S. 584 (2002).....	8
<u>Robinson v. State</u> , 865 So.2d 1259 (Fla.2004).....	15
<u>Scott v. State</u> , 46 So.3d 529 (Fla. 2009).....	16, 31, 32
<u>Sireci v. State</u> , 908 So.2d 321 (Fla.2005).....	31
<u>Van Poyck v. State</u> , 908 So.2d 326 (Fla.2005).....	16
<u>Willacy v. State</u> , 967 So.2d 131 (Fla. 2007).....	30

**STATUTES**

28 U.S.C. § 1983..... 10  
42 U.S.C. § 1983..... 9  
Section 27.702, Florida Statutes..... 9,10  
Section 945.10, Florida Statutes..... 9

**RULES**

Rule 3.853, Florida Rules of Criminal Procedure..... passim

**PRELIMINARY STATEMENT**

Appellant, Etheria Jackson, appeals the summary denial of his motion for DNA testing. References to appellant will be to Jackson or Appellant, and references to appellee will be to the State or Appellee. The record on appeal in the instant case consists of two volumes and will be referenced as "DNA-R" followed by the appropriate volume and page number. There is also one supplemental volume. The supplemental volume will be referred to as SDNA-R followed by the appropriate page number. The record from Jackson's capital trial will be referenced as "TR" followed by the appropriate volume and page number. References to Jackson's initial brief in the instant case will be referred to as (IB) followed by the appropriate page number.

## STATEMENT OF THE CASE AND FACTS

Jackson appeals the collateral court's summary denial of his motion for DNA testing. The relevant facts concerning the 1985 murder of Linton Moody are recited in this court's case on direct appeal:

... Wendell and Linton Moody operated a retail furniture business in Jacksonville, Florida. To facilitate the collection of monthly installment payments, Linton obtained cash from the bank every month and then cashed customers' government checks, deducting their installment bills from the respective checks. On November 29, 1985, Linton cashed a check at the bank for \$ 4,000. On December 2, Linton worked in the furniture store from 10:30 a.m. until early afternoon. The following day Linton failed to report for work and his brother filed a missing person report. On December 5, Officer Raymond Godbee discovered Linton's body rolled up in a carpet in the back of Linton's 1983 Chevrolet station wagon. Several pieces of evidence were discovered with the body, including the victim's brown briefcase and a calling card box.

On the same day, Linda Riley, appellant's live-in girlfriend and the mother of one of appellant's children, reported Linton's murder to the police department. According to Linda Riley's trial testimony, she purchased a washing machine from Linton Moody on the installment plan. On December 3, 1985, Linton came to her home to collect the monthly payment. On this particular occasion, Riley's two children and the appellant were also present. Riley stated that after Linton cashed the check, he gave her a receipt. At this point, the appellant, Jackson, grabbed Moody and put a knife to his neck. Riley testified that appellant then forced Moody to the floor and directed her to remove his wallet and keys. As the sixty-four-year-old Moody begged for mercy, he was bound, gagged, and then choked with a belt until he was unconscious. After Moody regained consciousness, Jackson beat him in the face with a cast on his forearm and then straddled his body and

repeatedly stabbed him in the chest. Jackson and Linda Riley then disposed of the body by rolling it up in a carpet and stuffing it in the back of the victim's car. The car was driven by Jackson to another location and abandoned, where it was later discovered by police. Riley also testified that after Jackson left with the body, he returned forty-five minutes later with two men, summoned Riley into the kitchen, and asked her to inject cocaine into his arm.

One of the two men who returned with Jackson also testified at the trial and stated he was driving with a friend when they were flagged down by a man with a cast on his forearm, later identified as Jackson. He stated Jackson asked if they knew where to find cocaine, and offered to purchase a tank of gas for the witness's car, stating, "I'll fill your tank, I have money all over, I just hit a sweet lick." According to the witness, Jackson later pulled stacks of folded twenty- and fifty-dollar bills from his pockets. After they purchased drugs, the witness said they returned to Jackson's house where his girlfriend injected him with cocaine.

An autopsy established that the victim had numerous bruises on the head, face, and neck, a shallow slash wound on the neck, a rug-burn on the left elbow, and bruised kneecaps. The victim also sustained seven stab wounds in the upper left chest area, causing massive internal bleeding and death. There was no blood on the lower extremities, indicating the victim was prone when the injuries were inflicted. The bruises on the neck were consistent with strangulation by either a forearm or cast, or possibly a broad belt.

In an interview with detectives on December 9, Jackson said Riley committed the murder and claimed he was not present when it occurred. He further stated on this occasion that an affair between Riley and the victim while he was in prison had prompted the killing. Jackson's mother testified that Jackson visited with her on December 8 and related three different versions of the murder, at least two of which placed Jackson at the scene of the crime.

The investigating detectives obtained a search warrant for Jackson's cast. In accordance with the warrant, they took Jackson into custody and brought him to Jacksonville's University Hospital to examine his cast for blood traces. One of the detectives testified that during this time Jackson made statements to the detective, admitting that the detective had him "like a hawk" and stating, "I had the opportunity." The detective testified that when he replied that Jackson still had the opportunity to tell the truth, Jackson, responded, according to the detective, "Not really, I have to go with what I told you, I can't change my story now." The examination of the cast failed to produce any blood trace evidence. The state did present, however, expert testimony matching appellant's fingerprints with prints found on the victim's calling card box. The jury found Jackson guilty of first-degree murder.

In the penalty phase, the state presented witnesses who established that Jackson was previously convicted of armed robbery and escape. Multiple witnesses were presented on Jackson's behalf. A former attorney who represented appellant Jackson on the armed robbery charge testified that appellant had pled guilty and agreed to be a state witness against his codefendant for that offense. Evidence from the family reflected that Jackson was talented, intelligent, and a good student; that he was respectful and helpful to members of the family; that he helped care for his older sister, who had polio, and his father, who suffered from arthritis and a heart condition. Favorable testimony was also given by Vanessa Jackson, the mother of two of appellant's children. Appellant's mother testified that appellant had substantially changed in the month before Moody's murder and that she assumed he was under the influence of drugs. Jackson testified in his own behalf, advising the jury that he wanted to live, that he loved his parents and children, and, if given a chance to live, he would try to be a positive influence on his children's lives, as he always had been.

Jackson v. State, 530 So.2d 269 (Fla. 1988).



The jury recommended a sentence of death by a vote of seven to five (7-5). The trial judge found five aggravating factors: (1) the murder was committed while the defendant was under sentence of imprisonment because he was on parole at the time of the killing; (2) the defendant was previously convicted of a felony involving the use or threat of violence to some person (armed robbery); (3) the murder was committed for financial gain; (4) the murder was especially heinous, atrocious, or cruel; and (5) the murder was committed in a cold, calculated, and premeditated manner.

The trial judge concluded that no statutory or nonstatutory mitigating circumstances exist. Jackson v. State, 530 So.2d 269 (Fla. 1988). The trial judge followed the jury's recommendation and sentenced Jackson to death.

Jackson appealed his convictions and sentences, raising three issues as to the guilt phase. Jackson claimed the trial court erred in (1) limiting his cross-examination of Linda Riley concerning her present dating relationships; (2) allowing the state to introduce evidence that Jackson had been in prison prior to this offense; and (3) admitting the statements Jackson made to a detective during the examination of his arm cast.

Jackson also raised five issues regarding the penalty phase of his trial. Jackson claimed the trial court erred by: (1)

permitting the state to introduce evidence of Jackson's conviction for escape, because the evidence was unnecessary to prove the aggravating circumstance that appellant was in prison at the time of the offense; (2) allowing the state to cross-examine Jackson regarding prior convictions; (3) refusing to give the jury specific instructions as to the nonstatutory mitigating circumstances it could consider; (4) improperly doubling up the aggravating circumstances of heinous, atrocious, and cruel, and cold, calculated, and premeditated; and (5) failing to allow evidence, that the parole commission does not consider for parole inmates serving life sentences without eligibility for parole for twenty-five years, as a mitigating circumstance.

This Court found no merit to any of Jackson's guilt phase claims and rejected all but one of Jackson's penalty phase claims. This Court ruled the trial court improperly found the cold, calculated, and premeditated aggravating factor, but concluded that elimination of this aggravating factor would not have resulted in a life sentence. This Court affirmed Jackson's conviction and sentence to death. Jackson v. State, 530 So.2d 269 (Fla. 1988).

Jackson filed a petition for writ of certiorari in the United States Supreme Court. The United States Supreme Court

denied review on January 23, 1989. Jackson v. Florida, 488 U.S. 1050 (1989).

On April 16, 1990, Jackson filed a petition for habeas corpus in this Court. In his petition, Jackson claimed (1) this Court improperly placed exclusive sentencing authority with the jury and the trial judge by not reweighing the aggravating and mitigating factors or applying a harmless error analysis; (2) this Court erred in finding that the trial court correctly found that there were sufficient aggravating circumstances to support the death sentence; (3) the trial court denied Jackson the right to an individualized and reliable sentencing proceeding; (4) the judge and jury improperly considered victim impact evidence; (5) the trial court's instruction improperly diluted the jury's sense of responsibility for sentencing and that counsel was ineffective for not litigating this issue; and (6) the prosecutor improperly commented on the evidence, thus rendering Jackson's conviction and sentence fundamentally unfair. Jackson v. State, 633 So.2d 1051 (Fla. 1993).

Subsequently, on September 5, 1990, Jackson filed an initial motion for post-conviction relief in the trial court raising numerous claims. The trial court summarily denied all of his claims without an evidentiary hearing. Jackson appealed and this Court consolidated that appeal with its consideration

of Jackson's April 1990 petition for writ of habeas corpus.

While these cases were still pending, Jackson filed a petition for writ of habeas corpus through a fellow inmate as his "Next Friend". On January 4, 1993, this Court denied that petition. Jackson v. Singletary, 613 So.2d 5 (Fla. 1993).

On September 19, 1993, this Court concluded that Jackson's motion for post-conviction relief under rule 3.850 was properly denied. This Court also denied Jackson's April 16, 1990 petition for writ of habeas corpus. Jackson v. State, 633 So.2d 1051, 1055 (Fla. 1993). Jackson's motion for rehearing was denied. Mandate issued on March 15, 1994. Id.

On June 28, 1994, Jackson filed a motion to recall the mandate. On January 26, 1995, this Court denied his motion.

On June 24, 2003, Jackson filed his first successive motion for post-conviction relief. In his motion, Jackson alleged his conviction and sentence to death were unconstitutional in light of the United States Supreme Court's decision in Ring v. Arizona, 536 U.S. 584 (2002). The State filed a response. On June 23, 2005, the collateral court summarily denied Jackson's motion.

Jackson appealed. This Court affirmed the collateral court's order denying Jackson's Ring claim. Jackson v. State, 952 So.2d 1190 (Fla. 2006).

Jackson filed a motion for rehearing on November 29, 2006. On February 17, 2007, this Court denied Jackson's motion for rehearing. Jackson v. State, 2007 Fla. LEXIS 392 (Fla., Feb. 15, 2007). On May 11, 2007, Jackson filed a petition for a writ of certiorari in the United States Supreme Court. The Court denied review. Jackson v. Florida, 128 S. Ct. 89 (2007).

On April 27, 2007, Jackson filed a second successive motion for post-conviction relief raising three claims. Jackson v. State, 50 So.3d 1137 (Fla. 2011). In Claims I and III, Jackson alleged that newly discovered evidence established that Florida's lethal injection protocols violate his Eighth Amendment right to be free from cruel and unusual punishment. In Claim II, Jackson challenged, on due process and equal protection grounds, the constitutionality of Section 27.702, Florida Statutes, which prohibits capital collateral regional counsel from filing an action pursuant to 42 U.S.C. § 1983. The State filed a response.

On January 14, 2008, Mr. Jackson served a motion to amend his second successive motion. Jackson averred he wished to amend his first claim with additional facts and arguments and to add a fourth claim attacking the constitutionality of section 945.10, Florida Statutes.

Ultimately, the collateral court denied Jackson's second successive motion for post-conviction relief. Jackson appealed, raising the same four claims he raised before the collateral court.

On appeal, this Court affirmed in part, and reversed in part. Jackson v. State, 50 So.3d 1137 (Fla. 2011). This Court affirmed the denial of Jackson's substantive claims but reversed the denial of Jackson's challenge to section 27.702, Florida Statutes. In doing so, this Court ruled that Capital Collateral Regional Counsel (CCRC) attorneys are authorized to represent a death-sentenced individual in a 28 U.S.C. § 1983 injunctive claim if that claim challenges the State's intended method of execution. Id. This Court's ruling did not grant any substantive relief to Jackson. Instead, it allowed his appointed counsel to file a 28 U.S.C. § 1983 action in federal court on Jackson's behalf (which she has done). Jackson v. State, 50 So.3d 1137 (Fla. 2011).

On April 27, 2010, Jackson filed a motion for DNA testing. Jackson asked for testing on six items collected by law enforcement in conjunction with the investigation of Mr. Moody's murder (an arm cast, two butcher knives, a brown belt, the victim's pants, and the victim's eyeglasses). (DNA-R 1-16). Only one of them, the arm cast, had been entered into evidence

at trial. On October 15, 2011, the collateral court denied the motion. (DNA-R Vol. I 20).

On December 28, 2011, Jackson filed a motion for rehearing on the grounds the collateral court failed to follow the procedures or make the requisite findings set forth in Rule 3.853, Florida Rules of Criminal Procedure. (DNA-R Vol. I 22-23). The State filed no opposition to the motion.

On January 6, 2011, the collateral court granted Jackson's motion for rehearing and, pursuant to Rule 3.853, Florida Rules of Criminal Procedure, ordered the State to respond to the motion. (DNA-R Vol. I 26).

On February 7, 2012, the State filed its response. As part of its response, the State averred that only the arm cast was still within the State's possession. The State provided two affidavits from the current and present property and evidence custodians attesting to a good faith effort to locate the remaining items of evidence which apparently were lost as a result of water damage to the building in which it was housed. (DNA-R Vol. I 55-57).

On February 24, 2012, the collateral court summarily denied Jackson's motion for DNA testing. (DNA-R Vol. II 313-320). The collateral court found that only the arm cast was still in existence. The court found the other five items were no longer

in the State's possession. The Court further found that Jackson's claims were purely speculative and failed to demonstrate a reasonable probability Jackson would be acquitted or would have received a lesser sentence if the DNA evidence he claims to exist had been admitted at trial. (DNA-R Vol. II 319). Jackson appealed.

On August 14, 2012, Jackson filed his initial brief. This is the State's answer brief.



### SUMMARY OF THE ARGUMENT

In his motion for DNA testing, Jackson requested six items to be tested. The collateral court correctly concluded that Jackson is not entitled to DNA testing because Jackson failed to establish DNA testing would probably result in an acquittal or a life sentence.

One of the items, the arm cast worn by Jackson at the time of the murder, is still in the possession of the state. The other items are not. The only item remaining was also the only item, among those requested to be tested, that was introduced into evidence at trial. The jury heard that Jackson's arm cast did not contain even a trace of Mr. Moody's blood. Jackson used the lack of blood on the cast to argue that Riley was the real killer. Accordingly, DNA testing would not likely lead to an acquittal or life sentence.

Even if the other items, requested to be tested, were still in the state's possession, Jackson merely speculates that the items would have Moody or Riley's DNA evidence on them. He also speculates the presence of this DNA, and perhaps the absence of his own, would have probably resulted in an acquittal or a lesser sentence. This Court has consistently ruled that Rule 3.853 is not intended to be a fishing expedition with speculation used as bait.

Moreover, even though most of the items requested to be tested are no longer in the State's possession, the trial court committed no error in failing to conduct an evidentiary hearing. This Court has held the trial judge commits no error in failing to conduct an evidentiary hearing to inquire into the other factual findings required by Rule 3.5853 (c)(5) if the trial judge finds the defendant fails to demonstrate that DNA testing would probably produce an acquittal or lesser sentence.

Finally, Jackson cannot show the denial of DNA testing violates his constitutional right to equal protection or due process. On at least two occasions, this Court has rejected the same claim.

## ARGUMENT

### ISSUE

#### WHETHER THE COLLATERAL COURT ERRED IN SUMMARILY DENYING JACKSON'S MOTION FOR DNA TESTING

The defendant spreads one claim into three in his brief on appeal from the denial of his motion for DNA testing. In reality, however, Jackson brings only one claim: did the trial judge properly deny Jackson's motion for DNA testing without an evidentiary hearing. The State submits the answer is yes!

I. **Jackson did not bear his burden set forth in Rule 3.853?**

This Court has ruled that in order to be entitled to DNA testing, pursuant to Rule 3.853, Florida Rules of Criminal Procedure, the movant is required to lay out with specificity how the DNA testing of each item requested to be tested would give rise to a reasonable probability of acquittal or a lesser sentence. The defendant has the burden to demonstrate the need for testing. This Court has explained this burden this way: "[i]t is the defendant's burden to explain, with reference to specific facts about the crime and the items requested to be tested, how the DNA testing will exonerate the defendant of the crime or will mitigate the defendant's sentence." Lott v. State, 931 So.2d 807, 820 (Fla.2006) (emphasis added) (quoting Robinson v. State, 865 So.2d 1259, 1265 (Fla.2004)). When the defendant cannot show that DNA will prove or negate a material fact, the

request for testing should be denied. Scott v. State, 46 So.3d 529 (Fla. 2009). See also Overton v. State, 976 So.2d 536, 569 (Fla.2007) (affirming denial of post-conviction DNA testing because it would not prove or disprove any material fact); King v. State, 808 So.2d 1237, 1247-49 (Fla.2002) (affirming denial of DNA testing when defendant could not show that the result would raise a reasonable probability of acquittal); Galloway v. State, 802 So.2d 1173, 1175 (Fla. 1st DCA 2001) (affirming denial of DNA testing, concluding that a mere allegation that the DNA would not match was insufficient to establish that the defendant was not present and a co-participant in the crime).

This Court has also made clear that "the burden is on the movant to 'demonstrate the nexus between the potential results of DNA testing on each piece of evidence and the issues in the case.'" Van Poyck v. State, 908 So.2d 326, 329 (Fla.2005) (quoting Hitchcock, 866 So.2d at 27). This Court has consistently rejected claims in which the defendant was merely speculating and has repeatedly cautioned that "[r]ule 3.853 is not intended to be a fishing expedition." Lott v. State, 931 So.2d at 820-21 (quoting Cole v. State, 895 So.2d 398, 403 (Fla.2004)).

In this case, the trial court properly denied Jackson's motion for DNA testing because Jackson failed to make a

threshold showing that DNA testing would exonerate him of the crime or mitigate his sentence. Indeed, Jackson's motion demonstrates he wishes to go on a fishing expedition and wants this Court to provide the boat.

Jackson's defense at trial was that Linda Riley killed Mr. Moody and he helped her cover it up. (TR Vol. XIV 478). Riley was Jackson's live in girlfriend. Linda Riley testified she was instead, an eyewitness to the actual murder perpetrated by Etheria Jackson.

Riley admitting to taking part in other aspects of the crime, albeit it, according to her, unwillingly for the most part, such as taking money from the victim's pockets, tying his hands, putting a gag in his mouth, taking her check book Mr. Moody had cashed for her [and cashing it again] rolling the victim up in the rug, getting him out of the house and into the victim's own car, going through the victim's car for valuables and stealing his gun from the glove compartment. She also admitted that after Jackson disposed of the victim's body, she and Jackson spent the money Jackson took from Mr. Moody to pay bills, to replace the rug they used to wrap his body in, and to go shopping. (TR Vol. XIV 601).

Riley testified at trial about the events leading up to, and after, the murder. In addition to being Jackson's live-in

girlfriend, Ms. Riley was a customer of Mr. Moody. Riley had purchased a washing machine from Moody and was paying it off in installments.

Moody had somewhat unusual (but apparently effective) method of collecting payments. To facilitate timely payment, Moody would get cash from the bank around the first of the month, travel to his customers (rather than them to him), cash their government checks, deduct the monthly payment, and return the remaining monies to his customer. (TR Vol. XIV 494-495).

Four days prior to his death and pursuant to his unusual collection method, Mr. Moody cashed a check at the bank for \$4,000. (TR Vol. XIV 502). According to Mr. Moody's brother, it was not uncommon for his brother to carry large bills when he went out on his collection calls. (TR Vol. XIV 502).

The day before his death, Mr. Moody went to Riley's home to collect the monthly installment payment. (TR Vol. XIV 570). She was not home and Moody left his business card in her door. (TR Vol. XIV 570). Jackson found Moody's card in Riley's door. (TR Vol. XIV 570).

The next day, Mr. Moody returned to collect Ms. Riley's payment. Riley testified that on December 3, 1985, Mr. Moody came to her home to collect her monthly payment at about 8:30 or 9:00 in the morning. (TR Vol. XIV 571). She, Jackson and her

two children were at home. When Mr. Moody arrived at her door, Ms. Riley told him that she had not yet received her check but that it probably was in the mailbox. (TR Vol. XIV 572). Mr. Moody suggested she put on something warm as it was cool outside. Ms. Riley went upstairs to get a sweater. Jackson was upstairs. He asked who was at the door. Ms. Riley told him it was Mr. Moody. (TR Vol. XIV 572).

Ms. Riley went out to the mailbox to get her check. When she returned to the house, Jackson was downstairs talking to Moody. (TR Vol. XIV 573). Ms. Riley told the jury that Jackson had a cast on his right arm. (TR Vol. XIV 573).

Ms. Riley gave her check to Mr. Moody. He gave her \$200 cash and wrote out a receipt for the installment payment. (TR Vol. XIV 573). At first, he gave her larger bills (all \$50s). She requested small bills and Mr. Moody obliged. (TR Vol. XIV 573). Mr. Moody had a large wad of money in his possession. (TR Vol. XIV 574).

When Mr. Moody had finished the transaction and given Ms. Riley a receipt, Jackson grabbed Moody from behind and pointed a knife at his neck. Riley asked Jackson what he was doing. Jackson told her to shut up. (TR Vol. XIV 574).

Jackson forced Moody to the floor and told Mr. Moody to get on his stomach. Jackson "helped" him to comply when Moody

resisted. (TR Vol. XIV 575). Moody told Jackson he was having problems with his breathing and asked to sit up. Jackson told him to lay on his stomach anyway. (TR Vol. XIV 575). Jackson turned Moody onto his side and told Riley to check his pockets. (TR Vol. XIV 575). Moody told her to do what he said. (TR Vol. XIV 576). Moody did not resist. Jackson also went through Mr. Moody's pocket. He took Mr. Moody's money. (TR Vol. XIV 576). Jackson even took Riley's money. When Riley protested, Jackson told her to get her check from Moody. She did. (TR Vol. XIV 576).

Jackson also instructed Riley to tie Mr. Moody's hands. She did so but was not able to tie him tightly enough. According to Riley, Jackson told her he would kill her if Moody got loose. (TR Vol. XIV 577).

Although Mr. Moody asked for mercy and offered Jackson anything he wanted, Riley told the jury she saw Jackson choking Moody out with a belt. Riley told Jackson to stop but he didn't. Mr. Moody urinated on himself and blood trickled from his nose. (TR Vol. XIV 578). Riley believed that Moody was rendered unconscious by Jackson's actions in choking him with the belt. Jackson stopped choking Mr. Moody and Mr. Moody began to come around. He was moaning and Jackson told him to shut up. At some point, Ms. Riley put a rag doll in Mr. Moody's mouth.



(TR Vol. XIV 618). She also tied a scarf around Mr. Moody's mouth. (TR Vol. XV 634).

Riley testified that when Mr. Moody did not shut up, Jackson took his cast and started beating Moody in the face. According to Riley, there might have been a few blood specks that got on Jackson's cast. (TR Vol. XIV 579). Jackson later washed his cast. (TR Vol. XIV 579).

Riley testified that she saw Jackson straddling Mr. Moody and saw his arm going up and down. Jackson was stabbing Mr. Moody. Riley told the jury the knife broke on the outside of Mr. Moody's chest. (TR Vol. XIV 579). Jackson got another knife and started stabbing him again. Mr. Moody was down on the floor on his back while Jackson was stabbing him. (TR Vol. XIV 580). The knife was in Jackson's left hand. (TR Vol. XIV 581).

When Jackson was done, Jackson got up and walked away. Jackson thought about what to do next. Jackson decided to roll Mr. Moody's body in Riley's carpet. Both Jackson and Riley rolled Mr. Moody's body up in the carpet. (TR Vol. XIV 587). At Jackson's behest, Riley got Mr. Moody's car and drove it around the back of her house. She went through the glove box for money. She found a gun instead and concealed it on her person. Later, Riley turned the gun over to the police. (TR Vol. XIV 587).

Jackson flagged down a passerby and asked for assistance putting a "rug" into the back of their car. The passerby obliged and then men loaded Mr. Moody's body in the trunk of his own car. (TR Vol. XIV 588). Jackson drove away.

About 45 minutes later, Jackson returned with two men she had never met before. (TR Vol. XIV 596). All three men went into her kitchen. Jackson had some cocaine and asked her to inject it into his arm. (TR Vol. XIV 595-596).

One of those two men, Edward Doldron testified that he and a friend were driving North on David Street in Jacksonville, Florida when Jackson flagged them down. Mr. Doldron's friend, David, knew Jackson and told Doldron to stop the car. Jackson came up to the car and asked them whether they knew where he could get some cocaine. (TR Vol. XV 709). Mr. Doldron told Jackson he did not have much gas in his car. Jackson told Doldron, "No problem, I'll fill your tank, I have money all over, I just hit a sweet lick." (TR Vol. XV 712). Jackson did not explain what he meant. (TR Vol. XV 712). Jackson did not say he had killed anyone. (TR Vol. XV 721).

Mr. Doldron saw the money Jackson had. Jackson had stacks of \$20 bills in a fold. There were about four or five stacks. (TR Vol. XV 713). Jackson had the money in his front pocket. (TR Vol. XV 713). Mr. Doldron later saw that Jackson also had

stacks of \$50 bills in his pocket. There were about three or four stacks of \$50 bills. The bills were carefully folded up. (TR Vol. XV 714). Jackson told Mr. Doldron that he did not know how much money he had. (TR Vol. XV 714).

Mr. Doldron and his friend took Jackson to buy some cocaine. After that, they went to Jackson's house. Mr. Doldron had never been there before. (TR Vol. XV 715). They used cocaine together. (TR Vol. XV 716). Jackson had Riley inject him. He was too nervous to do it. (TR Vol. XV 716).

Mr. Moody's body was found in his car still wrapped up in the carpet. (TR Vol. XIV 509). Jackson's fingerprints were found on the victim's calling card box, which was found with his body. (TR Vol. XIV 509).

When Jackson was interviewed by the police, Jackson claimed that Riley killed the victim and he was not even present at the scene. (TR Vol. XVI 825). Jackson told Detective Warren that he had spent the night before at a friend's house named Freddie (Johnson).<sup>1</sup> When he arrived at Riley's home, Mr. Moody was already dead and rolled up in a carpet. (TR Vol. XVI 825). Jackson told Detective Warren that Linda had a large amount of

---

<sup>1</sup> Jackson lied to Warren when he told him that story. (TR Vol. XVI 840). Mr. Johnson testified Mr. Jackson did not spend the night with him before the murder. Indeed, Mr. Johnson testified that Jackson told him to lie to the police in order to give him an alibi. Jackson also told his mother several versions of the murder.

money in her pocket and confessed to killing Mr. Moody. (TR Vol. XVI 826). Jackson said he never saw the body. (TR Vol. XV 828). Jackson told the officer that he and Riley took the carpet out to Mr. Moody's car.

The carpet was too heavy to get it into the car so Jackson solicited the help of a young boy and the three of them put the carpet in the back of Mr. Moody's station wagon. Jackson told Detective Warren, at first that Linda had driven off alone and disposed of the body. Jackson later told Warren that he and Linda drove off together and disposed of Mr. Moody's body. (TR Vol. XVI 829).

Jackson told Detective Warren that he and Linda went shopping together with Mr. Moody's money. (TR Vol. XVI 831). Jackson told Detective Warren that one of their purchases was a replacement carpet. Jackson used the name of Anthony Freeman to buy the rug. (TR Vol. XVI 831).

Later on the same afternoon, Detective Warren spoke with Jackson again. Detective Warren wanted to check Jackson's cast for evidence. He got a search warrant for the cast.

During the time, he was with Jackson, Jackson told Detective Warren, "Boy you have me like a hawk." (TR Vol. XVI 835). Jackson also told Detective Warren "I had the opportunity." (TR Vol. XVI 835). Warren told Jackson that he

still did and could tell him the truth. Jackson told him, "Not really, I have to go with what I told you, I can't change my story now." (TR Vol. XVI 835). Jackson also told Warren that "I can beat you, you can't prove this on me." (TR Vol. XVI 835). Warren told Jackson they were taking the cast to look for blood. (TR Vol. XVI 846). Jackson admitted that he had washed his cast because it had been dirty. (TR Vol. XVI 836, 846).

**(a) The cast**

The first item that Jackson asks to be tested is Jackson's arm cast. Jackson points to the medical examiner's testimony that Mr. Moody had lacerations and bruises on his mouth consistent with being struck by a cast. (IB 14). Jackson posits that if this testimony is accurate, Mr. Moody's blood, saliva, and/or skin cells would be present on the cast. (IB 14).

Jackson cannot show that DNA testing on the cast would exonerate him of the crime. This is so for two reasons. First, if Mr. Moody's DNA is on the cast, such evidence would support Linda Riley's story and point to Jackson's guilt not innocence. If, on the other hand, Mr. Moody's DNA is not present on the cast, it still will do Jackson no good. This is so because the jury heard, as this Court noted, that an examination of the cast, after Jackson's arrest, failed to produce any blood trace evidence. Jackson v. State, 530 So.2d 269 (Fla. 1988)(noting

that the examination of the cast failed to produce any blood trace evidence). (TR Vol. XVI 971-973). Jackson used this absence of any trace of Mr. Moody's blood on the cast to argue that Riley was not credible and that Riley was the actual killer. (TR Vol. XVII 1125). The jury convicted Jackson anyway.

Because, at trial, Jackson pointed to the lack of blood evidence on the cast to argue Linda Riley committed the murder and the jury rejected his claim, Jackson cannot show DNA testing will exonerate him of the crime or mitigate his sentence.

**(b) *Two butcher knives***

These items are no longer in the State's possession.<sup>2</sup> However, even if they were, Jackson cannot show DNA testing will exonerate him of the crime or mitigate his sentence. Jackson cannot show these butcher knives, albeit apparently taken into the State's possession during the investigation into Mr. Moody's murder, have any actual relevance to the crime. The knives were never introduced into evidence.

---

<sup>2</sup> Apparently, Jackson believed at the time of trial that the murder weapon and the belt used in the murder were thrown away. (TR Vol. XVII 1117). Jackson used the absence of this evidence to argue he was innocent of the murder. Jackson posited to the jury that Riley threw away the murder weapons. Jackson used Linda's testimony that she threw away the knife and the belt (that was used to choke him apparently) as evidence she was not credible. Jackson argued at trial to discredit Linda: "How about corroboration by means of physical evidence, like the belt, the knives, the wallet, the papers, and the wallet, and the watch. Well, that might have provided some corroboration, but who threw them away? Linda threw them away." (TR Vol. XVII 1126).

Nonetheless, Jackson claims that one of the knives is most likely the murder weapon. Jackson claims that because the attack on Mr. Moody was likely a protracted struggle, it is likely the actual killer got cut. Jackson speculates that if Mr. Moody's DNA is recovered from one of the knives and if Ms. Riley's blood is present on that same knife, such evidence will conclusively prove that Ms. Riley was the actual murderer. (IB 17).

This is wrong for several reasons. First, there was not the slightest suggestion that Ms. Riley was bleeding or injured in any way after the attack. Moreover, the knives were found in Ms. Riley's home and Jackson points to nothing that demonstrates that biological material was detected on the two knives. Lott v. State, 931 So.2d 807, 820 (Fla. 2006)(affirming the denial of DNA testing when Lott could not point to any evidence in the record which demonstrated the items he requested to be tested contain any genetic material that could be submitted for testing and as such was merely speculating about these items).

Even if all the "ifs" that Jackson offers were true, the presence of Ms. Riley's DNA on the knives, found in her own home, would not exonerate Jackson or even mitigate his sentence. See generally Hitchcock v. State, 991 So.2d 337,348 (Fla. 2008)(fact that victim and supposed killer shared living space

would provide innocent explanation of the supposed's killer's DNA on victim's body).

(c) ***The belt***

This item is no longer in the state's possession. As he does with the knives, Jackson once again supposes that "if" the belt recovered by the police was the one used to strangle Mr. Moody, then his DNA should be on the belt. Jackson points to nothing in the record, or otherwise, that indicates the brown belt recovered from Ms. Riley's home was indeed the murder weapon or ever contained any biological material suitable for DNA testing. Lott v. State, 931 So.2d 807, 820 (Fla. 2006)(affirming the denial of DNA testing when Lott could not point to any evidence in the record which demonstrated the items he requested to be tested contain any genetic material that could be submitted for testing and as such was merely speculating about these items).

Nonetheless, Jackson avers the absence of his DNA on the belt and/or the presence of Riley's DNA on the belt would exonerate him or at least mitigate his sentence. Not so.

If Mr. Moody's DNA is on the belt, then such evidence will not exonerate Jackson. If Riley's DNA was found on the belt, such evidence would not exonerate Jackson and point to Riley as the killer. Like the knives, the belt was found in Ms. Riley's



home where she and both Jackson lived. Accordingly, even "if" the belt was the murder weapon and even "if" the belt contained Mr. Moody's DNA, the absence of Jackson's DNA on the belt or the presence of Riley's DNA on the belt would not exonerate Jackson or even mitigate his sentence. See generally Hitchcock v. State, 991 So.2d 337,348 (Fla. 2008)(fact that victim and supposed killer shared living space would provide innocent explanation of supposed's killer's DNA on victim's body).

**(d) The pants and eyeglasses**

These items are no longer in the State's possession. Jackson's claim regarding the victim's pants and eyeglasses is even more speculative. Ms. Riley testified that both she and Mr. Jackson went through Mr. Moody's pockets to look for money. Jackson suggests that his actions in going through the victim's pocket would leave his DNA in the pockets. Jackson then speculates the absence of his DNA in Mr. Moody's pants pockets will exonerate him or reduce his sentence. Jackson fails to demonstrate that biological material was deposited in Mr. Moody's pockets or that this is even a likely scenario. Once again, Jackson's motions rests on more than one "if." Lott v. State, 931 So.2d 807, 820 (Fla. 2006)(affirming the denial of DNA testing when Lott could not point to any evidence in the record which demonstrated the items he requested to be tested

contain any genetic material that could be submitted for testing and as such was merely speculating about these items).

The same is true for Mr. Moody's eyeglasses. Jackson speculates that Mr. Moody's eyeglasses should have his killer's DNA on them. Of course, Jackson points to nothing in the record to support his hypothesis. Lott v. State, 931 So.2d 807, 820 (Fla. 2006)(affirming the denial of DNA testing when Lott could not point to any evidence in the record which demonstrated the items he requested to be tested contain any genetic material that could be submitted for testing and as such was merely speculating about these items).

Moreover, Mr. Moody's eyeglasses were in contact with a carpet from Ms. Riley's home. <sup>3</sup> Even if Ms. Riley's DNA were on the eyeglasses and Jackson's not, such evidence would not exonerate Jackson or mitigate his sentence.

None of the evidence that Jackson requests to be tested was introduced into evidence to inculcate him in the murder. (See TR Vol. XIV 421). Indeed, with the exception of the cast, which Jackson used to argue Riley was not credible, none of the evidence Jackson requests to be tested was used to inculcate

---

<sup>3</sup> Although Jackson claims this particular finding was not supported by the record, Jackson told the police that Riley wrapped Mr. Moody's body in a carpet from Riley's home. Accordingly, the eyeglasses would come into contact with a carpet from Riley and Jackson's home.

him. Gore v. State, 32 So.3d 614, 619-620 (Fla. 2010)(noting that none of the evidence asked to be tested was used to inculcate Gore). Moreover, there is nearly overwhelming evidence that Jackson was the actual killer.

Jackson has not met the requirements of Rule 3.853. This Court should deny the claim. See Consalvo v. State, 3 So.3d 1014, 1016(Fla.,2009); Willacy v. State, 967 So.2d 131 (Fla. 2007)(DNA testing not required when post-conviction DNA testing would not eliminate significant and substantial evidence directly linking defendant to the murder); Sireci v. State, 908 So.2d 321, 325 (Fla.2005) (“[I]n light of the other evidence of guilt, there is no reasonable probability that Sireci would have been acquitted....”).

II. **Jackson is not entitled to an evidentiary hearing to explore the fact the items requested to be tested are no longer in the State’s possession.**

Ordinarily, when the state avers that evidence requested to be DNA tested is no longer in its possession, the trial court would hold an evidentiary hearing to determine whether that is the case. Such a procedure would allow the trial court to make findings, supported by competent substantial evidence, set forth in Rule 3.853(c)(5)(a), Florida Rules of Criminal Procedure.

However, in this case, such a procedure was unnecessary. This is so, because the trial court determined that, even if the

evidence requested to be tested did exist, Jackson had failed to make a threshold showing DNA testing would raise a reasonable probability of acquittal or a lesser sentence. Logic dictates that an inquiry into whether the evidence still exists or the circumstances of its loss is unnecessary when the defendant cannot show that DNA testing would have probably resulted in an acquittal or a life sentence. Scott v. State, 46 So.3d 529, 534 (Fla. 2009)(no evidentiary hearing required into the question of whether the evidence still exists when the trial court correctly concluded that Scott presented no argument supporting a reasonable probability that he would be acquitted or would have received a lesser sentence).

**III. Jackson's constitutional rights to due process and equal protection**

In the last part of his claim, Jackson avers the denial of his request for DNA testing violates his constitutional right to due process and equal protection. This Court has, on at least two occasions, rejected a similar claim when the defendant fails to demonstrate that DNA testing would probably result in an acquittal or a life sentence. Scott v. State, 46 So.3d 529, 534-535 (Fla. 2009)(denying Scott's claim that denial of DNA testing violated his constitutional rights); Cole v. State, 83 So.3d 706 (Fla. 2012). Jackson has offered no good reason to recede from this now well-established precedent.

**CONCLUSION**

Based upon the foregoing, the State requests respectfully that this Court affirm the denial of Jackson's motion for DNA testing.

Respectfully submitted,

PAMELA JO BONDI  
ATTORNEY GENERAL

---

MEREDITH CHARBULA  
Assistant Attorney General  
Florida Bar No. 0708399

Department of Legal Affairs  
PL-01, The Capitol  
(850) 414-3583 Phone  
(850) 487-0997 Fax

Counsel for Appellee

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by email Ms Marie Louise Samuels Parmer, CCRC-Middle, at parmer@ccmr.state.fl.us this 4<sup>th</sup> day of September 2012.

---

MEREDITH CHARBULA  
Assistant Attorney General  
meredith.charbula@myfloridalegal.com

**CERTIFICATE OF COMPLIANCE**

I HEREBY CERTIFY that the instant brief has been prepared with 12 point Courier New type, a font that is not spaced proportionately.

MEREDITH CHARBULA  
Assistant Attorney General