**DEATH PENALTY CASE**
**Case No. _____**
**EXECUTION SCHEDULED FOR May 21, 2026, at 10:00 a.m.**

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**IN THE TENNESSEE SUPREME COURT**
**AT NASHVILLE**

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**TONY VON CARRUTHERS,**
**Appellant,**

**v.**

**STATE OF TENNESSEE,**
**Appellee.**

_____

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# MOTION FOR THIS COURT TO ASSUME JURISDICTION PURSUANT TO TEN. CODE. ANN. § 16-3-201(d)


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**Pro Hac Vice* Pending in CCA

*Counsel for Plaintiff Tony Carruthers*

Pursuant to Tenn. Code Ann. § 16-3-201(d), Appellant, Tony Carruthers, respectfully requests that this Court assume jurisdiction over his appeal currently pending in the Court of Criminal Appeals (the "**CCA**") and states:

## INTRODUCTION

Mr. Carruthers is scheduled for execution on May 21 for crimes he maintains he does not commit. His claims in the underlying appeal relate to his requests for DNA testing that could prove his innocence. Due to the time-sensitive nature and great importance of the issues presented, Mr. Carruthers requests that this Court assume jurisdiction of his appeal.

## BACKGROUND

1. Mr. Carruthers originally sought DNA testing under the Tennessee Post-Conviction DNA Analysis Act (the "**DNA Act**") in this Court on April 9 pursuant to Rule 12.4(E). On April 30, this Court denied that motion, saying that it was improvidently filed in this Court.

2. On May 4, Mr. Carruthers filed a motion under the DNA Act in the Shelby County Criminal Court (the "**DNA Motion**"). On May 10, while the DNA Motion was pending, Mr. Carruthers filed a *Motion for Court Order Compelling Disclosure* (the "**Motion to Compel**"), requesting that the Criminal Court issue an order compelling the Shelby County Medical Examiner to release biological information for testing that could assist in proving Mr. Carruthers' innocence.

3. On May 11, the Criminal Court entered an Order denying the DNA Motion (the "**DNA Order**"). A true and correct copy of the DNA Order is attached as **Exhibit 1**. The DNA Order specifically noted that the Motion to Compel was pending. (Ex. 1, at 1.)

4. Then, on May 12, the Criminal Court entered an Order denying the Motion to Compel (the "**Compel Order**"), holding in part that the court did "not have pending before it a matter in which the biological standard would be relevant." A true and correct copy of the Compel Order is attached as **Exhibit 2**.

5. On May 13, Mr. Carruthers filed a Notice of Appeal of the Criminal Court's Orders to the CCA. *See Carruthers v. State*, No. W2026-00706-CCA-R3-PD (Tenn. Crim. App.).

6. On May 15, Mr. Carruthers filed his Initial Brief, raising three issues: (I) the Criminal Court erred by not holding a hearing on Mr. Carruthers' DNA Motion; (II) the Criminal Court erred in denying Mr. Carruthers' DNA Motion; and (III) the Criminal Court's denial of the Motion to Compel violated Mr. Carruthers' right to due process.

7. Pursuant to the CCA's Order on May 14 expediting the appeal, the State's Answer Brief is due on Monday, May 18.

## DISCUSSION

This Court can "assume jurisdiction over an undecided case in which a notice of appeal or an application for interlocutory or extraordinary appeal is filed before any intermediate state appellate court." Tenn. Code Ann. § 16-3-201(d)(1). This provision applies "to cases of unusual public importance in which there is a special need for expedited decision and that involve . . . [i]ssues of constitutional law." *Id.* § 16-3-201(d)(2). This case meets both prongs and warrants this Court assuming jurisdiction.[1]

### I. This case is one of unusual public importance because it could prevent the State of Tennessee from executing an innocent person.

The importance of this case cannot be overstated. The U.S. Supreme Court and this Court have recognized the critical importance of DNA testing in exonerating the wrongly convicted and identifying the guilty. *Dist. Attorney's Off. For Third Jud. Dist. v. Osborne*, 557 U.S. 52, 55, (2009); *Powers v. State*, 343 S.W.3d 36, 51 (Tenn. 2001). Indeed, that is precisely the purpose of the DNA Act. *Powers*, 343 S.W.3d at 51. And that is precisely why Mr. Carruthers seeks DNA testing ahead of his execution, which is now just days away.

[1] Mr. Carruthers also filed a *Motion for Stay of Execution* in this Court on May 13, 2026 (Case No. W1997-00097-SC-DDT-DD), which remains pending.

Mr. Carruthers has maintained his innocence in the three decades since his conviction but has been denied an opportunity to prove it at every turn. No direct evidence has ever connected Mr. Carruthers to the crime, and his codefendant has specifically told investigators he was not involved. Mr. Carruthers was forced to represent himself in his trial, was found guilty based solely on circumstantial evidence, and subsequently sentenced to death.

The evidence Mr. Carruthers seeks to test is available and has never been tested—as the Criminal Court found in the DNA Order. This testing could exculpate Mr. Carruthers and inculpate another actor for these crimes. It is unfathomable that the State of Tennessee would proceed to execute Mr. Carruthers and "refuse[] to allow DNA testing . . . despite the very substantial possibility that such testing could exculpate [the Petitioner] and identify the real killer . . . ." *Reed v. Goertz*, 146 S. Ct. 936, 939 (2026) (Sotomayor, J., dissenting from denial of certiorari).

## II. This case involves issues of constitutional law.

This case contains issues of constitutional law involving the denial of Mr. Carruthers' right to due process guaranteed by the Fourteenth Amendment to the U.S. Constitution and the "Law of the Land" Clause of Article I, Section 8 of the Tennessee Constitution.

The Tennessee courts have denied Mr. Carruthers his due process rights by refusing his requests to utilize the available state procedures created by the

Legislature in the DNA Act to demonstrate his innocence and/or to seek a reduction of his sentence. *See Pichiorri v. Burghes,*162 F.4th 745, 753 (6th Circ. 2025). Rather than provide Mr. Carruthers with a fair opportunity to do so, the Criminal Court gave Mr. Carruthers the procedural runaround and frustrated this purpose—undermining the fundamental ideals of fairness and due process.

As keepers of the rule of law in Tennessee, this Court has a responsibility to ensure full and meaningful due process is provided to all who seek relief through the court system and to ensure that the laws enacted by the Tennessee Legislature are implemented consistently with citizens' constitutional rights.

**WHEREFORE**, pursuant to Tenn. Code Ann. § 16-3-201(d), Appellant, Tony Carruthers, respectfully requests that this Court assume jurisdiction over his appeal currently pending in the Court of Criminal Appeals.

Dated: May 15, 2026

Respectfully submitted,

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*Counsel for Plaintiff Tony Carruthers*

**CERTIFICATE OF SERVICE**

I, Lucas Cameron-Vaughn, Esq., certify that I have forwarded a true and exact copy of this Motion by electronic mail to all parties and/or their attorneys in this case in accordance with Rule 20 of the Tennessee Rules of Appellate Procedure on May 15, 2026.

/s/ *Lucas Cameron-Vaughn*
Lucas Cameron-Vaughn, Esq.

# Exhibit “1”

**IN THE CRIMINAL COURT OF TENNESSEE**
**FOR THE THIRTIETH JUDICIAL DISTRICT AT MEMPHIS**
**DIVISION V**

| | | |
|---|---|---|
| **TONY VON CARRUTHERS,** | ) | |
| | ) | |
| Petitioner, | ) | |
| | ) | **Case Nos. 94-02797, 94-02798, 94-02799,** |
| **v.** | ) | **95-11128, 95-11129, P-25948** |
| | ) | **Death Penalty Case** |
| **STATE OF TENNESSEE,** | ) | **(DNA Analysis Claim)** |
| | ) | **Execution Date: May 21, 2026** |
| Respondent. | ) | |

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**ORDER DENYING PETITIONER'S MOTION FOR DNA TESTING PURSUANT TO THE TENNESSEE POST-CONVICTION DNA ANALYSIS ACT OF 2001**

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Pending before the Court is Mr. Carruthers' *Motion for DNA Testing Pursuant to the Tennessee Post-Conviction DNA Analysis Act of 2001*. The motion was filed on May 4, 2026. In his motion, Mr. Carruthers moves the Court for an order allowing him to conduct DNA testing on (1) the fingernail scrapings from Marcellos Anderson, Frederick Tucker, and Delois Anderson (2) the bindings of Marcellos Anderson, and (3) the bindings of Delois Anderson (which include knotted pantyhose around her hand and the red socks knotted around her neck) and then to compare those test results (assuming a DNA profile is obtained from any or all of the items) to the DNA profiles of the victims for exclusionary purposes, to himself, to co-defendant James Montgomery, to Ronnie Irving, and with known profiles in the CODIS DNA database.

Further, Mr. Carruthers moves the Court for an order directing the comparison of the unknown male profile that was found on a white blanket in the grave with the victims (which contained a male profile that excluded Mr. Carruthers, co-defendant James Montgomery, and the victims) with known DNA profiles in the CODIS database and with Ronnie Irving. The profile from the white blanket was last compared to the profiles in the CODIS DNA database in 2019.

Mr. Carruthers seeks to have that unknown male profile re-run in the CODIS DNA database and compared to Mr. Irving. Mr. Carruthers is seeking an expedited ruling without an evidentiary hearing.

On May 5, 2026, the State filed its response in opposition asking the Court to deny the petition, arguing that Mr. Carruthers has not shown (1) a reasonable probability that further testing would have prevented his prosecution, first-degree murder convictions, or death sentences; (2) that the relevant evidence still exists in a suitable state for reliable testing; or (3) that his request was made for any reason other than delay.

**The Relevant Statutes**

Under T.C.A. § 40-30-304, the court shall order DNA analysis if it finds that:

(1) A reasonable probability exists that the petitioner would not have been prosecuted or convicted if exculpatory results had been obtained through DNA analysis;

(2) The evidence is still in existence and in such a condition that DNA analysis may be conducted;

(3) The evidence was never previously subjected to DNA analysis or was not subjected to the analysis that is now requested which could resolve an issue not resolved by previous analysis; and

(4) The application for analysis is made for the purpose of demonstrating innocence and not to unreasonably delay the execution of sentence or administration of justice.

Under T.C.A. § 40-30-305, the court may order DNA analysis if it finds that:

(1) A reasonable probability exists that analysis of the evidence will produce DNA results that would have rendered the petitioner's verdict or sentence more favorable if the results had been available at the proceeding leading to the judgment of conviction;

(2) The evidence is still in existence and in such a condition that DNA analysis may be conducted;

(3) The evidence was never previously subjected to DNA analysis, or was not subjected to the analysis that is now requested which could resolve an issue not resolved by previous analysis; and

(4) The application for analysis is made for the purpose of demonstrating innocence and not to unreasonably delay the execution of sentence or administration of justice.

In analyzing the motion, the Court references the Tennessee Supreme Court's ruling in *Powers v. State*, 343 S.W.3d 36, (Tenn. 2011). The Court held, "that the Post–Conviction DNA Analysis Act permits access to a DNA database if a positive match between the crime scene DNA and a profile contained within the database would create a reasonable probability that a petitioner would not have been prosecuted or convicted if exculpatory results had been obtained or would have rendered a more favorable verdict or sentence if the results had been previously available." *Id.* at 39. "The definition of 'reasonable probability' has been well-established in other contexts, and is traditionally articulated as ' 'a probability sufficient to undermine confidence in the outcome.' ' *Grindstaff v. State*, 297 S.W.3d 208, 216 (Tenn.2009) (quoting *Strickland v. Washington*, 466 U.S. 668, 694, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984))." *Id.* at 54. "The 'reasonable probability' inquiry under section 40–30–304(1) of the Act requires courts to look at the effect the exculpatory DNA evidence would have had on the evidence at the time of trial or at the time the decision to prosecute was made, not on the evidence as construed by an appellate court in the light most favorable to the State." *Id.* at 57.

"Under section 40–30–304(1) of the Act, however, we begin with the proposition that DNA analysis will prove to be exculpatory. 28 *Payne v. State,* W2007–01096–CCA–R3–PD, 2007 WL 4258178, at *10 (Tenn.Crim.App. Dec. 5, 2007); *Shuttle v. State,* No. E2003–00131–CCA–R3–PC, 2004 WL 199826, at *5 (Tenn.Crim.App. Feb. 3, 2004)." *Id.* at 55. "As one jurisdiction has ruled, 'the trial court should postulate whatever realistically possible test results would be most

favorable to [the] defendant in determining whether he has established' the reasonable probability requirement under that jurisdiction's DNA testing statute." *State v. Peterson*, 364 N.J.Super. 387, 836 A.2d 821, 827 (N.J.Super.Ct.App.Div.2003). *Id.* "While courts must also consider the evidence that was presented against the petitioner at trial, the evidence must be viewed in light of the effect that exculpatory DNA evidence would have had on the fact-finder or the State." *Id.* "We agree that it may be appropriate to look at previous appeals in this setting in order to discern the 'essential facts of the crime at issue.'" *Id.* at 56.

**Trial Proof**[1]

On the night of February 24, 1994, Marcellos "Cello" Anderson, his mother Delois Anderson, and Frederick Tucker disappeared. On March 3, 1994, the victims' bodies were found buried together in a pit that had been dug beneath a casket in a grave in a Memphis cemetery.

In the summer of 1993, Jimmy Lee Maze, Jr., a convicted felon, received two letters from Carruthers, who was then in prison on an unrelated conviction. In the letters, Carruthers referred to "a master plan" that was "a winner." Carruthers wrote of his intention to "make those streets pay me" and announced, "everything I do from now on will be well organized and extremely violent."

Later, in the fall of 1993, while incarcerated at the Mark Luttrell Reception Center in Memphis awaiting his release, Carruthers was assigned to a work detail at a local cemetery, the West Tennessee Veterans' Cemetery. At one point, as he helped bury a body, Carruthers remarked to fellow inmate Charles Ray Smith "that would be a good way, you know, to bury somebody, if you're going to kill them.... [I]f you ain't got no body, you don't have a case."

[1] *State v. Carruthers*, 35 S.W.3d 516 (Tenn. 2000).

Smith also testified that he overheard Carruthers and Montgomery, who also was incarcerated at the Reception Center, talking about Marcellos Anderson after Anderson had driven Carruthers back to the Reception Center from a furlough. According to Smith, when Montgomery asked Carruthers about Anderson, Carruthers told him that both Anderson and "Baby Brother" Johnson dealt drugs and had a lot of money. Carruthers said he and Montgomery could "rob" and "get" Anderson and Johnson once they were released from prison.

On January 11, 1994, James Montgomery was released from prison.

On February 23, 1994, Marcellos Anderson borrowed a white Jeep Cherokee from his cousin, Michael Harris. Around 4:30 on the afternoon of February 24, 1994, witnesses saw Marcellos Anderson and Frederick Tucker riding in the Jeep Cherokee along with James and Jonathan Montgomery. About 5 p.m. that day, James and Jonathan Montgomery and Anderson and Tucker arrived in the Jeep Cherokee at the house of Nakeita Shaw, the Montgomery brothers' cousin.

The four men entered the house and went downstairs to the basement. A short time later, James Montgomery came back upstairs and asked Nakeita Shaw if she could leave for a while so he could "take care of some business." When Nakeita Shaw returned home, she saw only Carruthers and James Montgomery. She saw James Montgomery, Carruthers, and the two victims, Anderson and Tucker, leave in the Jeep Cherokee. Prior to trial, Nakeita Shaw told the police that Anderson's and Tucker's hands were tied behind their backs when they left her house. While she admitted making this statement, she testified at trial that the statement was false and that she had not seen Anderson's and Tucker's hands tied when they left her home.

In the meantime, around 8 p.m. on February 24, Laventhia Briggs telephoned her aunt, victim Delois Anderson. When someone picked up the telephone but said nothing, Briggs hung

up. Briggs was living with Delois Anderson at the time and arrived at her aunt's home around 9:00 p.m. Although Delois Anderson was not home, her purse, car, and keys were there. Food left in Anderson's bedroom indicated that she had been interrupted while eating.

Chris Hines, who had known the defendants since junior high school, testified that around 8:45 p.m. on February 24, 1994, Jonathan Montgomery "beeped" him. Jonathan said, "Man, a n––r got them folks." When Hines asked, "What folks?" Jonathan replied, "Cello and them" and said something about stealing $200,000. Jonathan arrived at Hines' home at about 9:00 p.m. and told him, "Man, we got them folks out at the cemetery on Elvis Presley, and we got $200,000. Man, a n––r had to kill them folks."

The Jeep Cherokee that Anderson had borrowed was found in Mississippi on February 25 around 2:40 a.m. It had been destroyed by fire.

On March 3, 1994, about one week after a missing person report was filed on Delois and Marcellos Anderson, Jonathan Montgomery directed Detective Jack Ruby of the Memphis Police Department to the grave of Dorothy Daniels at the Rose Hill Cemetery on Elvis Presley Boulevard. Daniels' grave was located six plots away from the grave site of the Montgomery brothers' cousin. Daniels had been buried on February 25, 1994. Pursuant to a court order, Daniels' casket was disinterred, and the authorities discovered the bodies of the three victims buried beneath the casket under several inches of dirt and a single piece of plywood.

Dr. Hugh Edward Berryman, one of the forensic anthropologists who assisted in the removal of the bodies from the crime scene, noted there was no evidence to suggest that Daniels' casket had been disturbed after she was buried. Thus, it can be inferred that the bodies of the three victims were placed in the grave and covered with dirt and a piece of plywood prior to the casket being placed in the grave.

Dr. O.C. Smith, who helped remove the bodies from the grave and who performed autopsies on the victims, testified that, when found, the body of Delois Anderson was lying at the bottom of the grave and the bodies of the two male victims were lying on top of her. The hands of all three victims were bound behind their backs. Frederick Tucker's feet were also bound and his neck showed signs of bruising caused by a ligature.[2] A red sock[3] was found around Delois Anderson's neck. Dr. Smith opined that each victim was alive when buried.

Carruthers called Alfredo Shaw as a witness. After seeing a television news report about these killings in March of 1994, Alfredo Shaw had telephoned CrimeStoppers and given a statement to the police implicating Carruthers. Alfredo Shaw later testified before the grand jury which eventually returned the indictments against Carruthers and Montgomery. Prior to trial, however, several press reports indicated that Alfredo Shaw had recanted his grand jury testimony, professed that the statement had been fabricated, and intended to formally recant his grand jury testimony when called as a witness for the defense. Therefore, when Carruthers called Alfredo Shaw to testify, the prosecution announced that if he took the stand and recanted his prior sworn testimony, he would be charged with and prosecuted for two counts of aggravated perjury. In light of the prosecution's announcement, the trial court summoned Alfredo Shaw's attorney and allowed Alfredo Shaw to confer privately with him. Following that private conference, Alfredo Shaw's attorney advised the trial court, defense counsel, including Carruthers, and the prosecution, that Alfredo Shaw intended to testify consistently with his prior statements and grand jury testimony and that any inconsistent statements Alfredo Shaw had made to the press were motivated by his fear of Carruthers and by threats he had received from him.

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[2] Each body had ligatures or bondage to the hands. Mr. Tucker also had ligatures on his feet. (1996 Trial Tr., Vol. 13, pp. 1865.)

[3] Petitioner alleges there are two red socks.

Despite this information, Carruthers called Alfredo Shaw as a witness and as his attorney advised, Shaw provided testimony consistent with his initial statement to the police and his grand jury testimony. Specifically, Alfredo Shaw testified that he had been on a three-way call with Carruthers and either Terry or Jerry Durham, and during this call, Carruthers had asked him to participate in these murders, saying he had a "sweet plan" and that they would each earn $100,000 and a kilogram of cocaine. Following his arrest for these murders, Carruthers was incarcerated in the Shelby County Jail along with Alfredo Shaw, who was incarcerated on unrelated charges. Carruthers and Alfredo Shaw were in the law library when Carruthers told Alfredo Shaw that he and some other unidentified individuals went to Delois Anderson's house looking for Marcellos Anderson and his money. Marcellos was not there when they arrived, but Carruthers told Delois Anderson to call her son and tell him to come home, "it's something important." When Anderson arrived, the defendants forced Anderson, Tucker, who was with Anderson, and Delois Anderson into the jeep at gunpoint and drove them to Mississippi, where the defendants shot Marcellos Anderson and Tucker and burned the jeep. According to Alfredo Shaw, the defendants then drove all three victims back to Memphis in a stolen vehicle. Alfredo Shaw testified that, after they put Marcellos Anderson and Tucker into the grave, Delois Anderson started screaming and one of the defendants told her to "shut up" or she would die like her son and pushed her into the grave. Carruthers also told Alfredo Shaw that the bodies would never have been discovered if "the boy wouldn't have went and told them folks." Carruthers told Alfredo Shaw that he was not going to hire an attorney or post bond because the prosecution would then learn that the murders had been a "hit." Carruthers told Alfredo Shaw that Johnson also was supposed to have been "hit" and that Terry and Jerry Durham were the "main

people behind having these individuals killed." Carruthers said that the Durhams wanted revenge because Anderson and Johnson had previously stolen from them.

In response to questioning by Carruthers, Alfredo Shaw acknowledged that he had told the press that his statement to police and his grand jury testimony had been fabricated, but said he had done so because Carruthers had threatened him and his family. According to Alfredo Shaw, one of Carruthers' investigators had arranged for a news reporter to speak with him about recanting his grand jury testimony.

As impeachment of his own witness, Carruthers called both Jerry and Terry Durham, twin brothers, as witnesses. The Durhams denied knowing Alfredo Shaw and said they had never been party to a three-way telephone call involving Alfredo Shaw and Carruthers.

**Analysis**

The Court will first analyze this motion under T.C.A. § 40-30-304 and will then analyze this motion under T.C.A. § 40-30-305.

Under the *mandatory testing* statute, T.C.A. §40-30-304, prong (1) requires the Court to find: (1) A reasonable probability exists that the petitioner would not have been prosecuted or convicted if exculpatory results had been obtained through DNA analysis. In conducting its analysis of prong (1), the Court must assume, pursuant section 40–30–304(1) of the Act, that DNA analysis will prove to be exculpatory. In addition, "the trial court should postulate whatever realistically possible test results would be most favorable to [the] defendant in determining whether he has established" the reasonable probability requirement under Tennessee's DNA testing statute. *Powers* at 55. Therefore, the Court completes its analysis of prong (1) with the assumption that DNA will be obtained from the items and that the DNA will be linked to a known third party, meaning someone other than the victims, Mr. Carruthers, James Montgomery, and Jonathan

Montgomery. The DNA "hit" may be related to another individual who participated in the crime or an individual who touched one or more of the items at another time (i.e. someone living with one of the victims or perpetrators, a retailer, or the actual owner of the items).

Even with that assumption, the Court does not find a reasonable probability exists that the petitioner would not have been prosecuted or convicted if exculpatory results had been obtained through DNA analysis. It is unlikely that Mr. Carruthers would not have been prosecuted, even if a third party's DNA had been found at the crime scene. With (1) letters referring to "a master plan" that was "a winner," an indication of Mr. Carruthers' intention to "make those streets pay me," and an announcement from Mr. Carruthers that "everything I do from now on will be well organized and extremely violent," (2) the statement of Mr. Carruthers that "that would be a good way, you know, to bury somebody, if you're going to kill them.... [I]f you ain't got no body, you don't have a case," (3) Mr. Carruthers' statement that he and Montgomery could "rob" and "get" Anderson and Johnson once they were released from prison, (4) Nakeita Shaw's eyewitness account that she saw James Montgomery, Mr. Carruthers, and the two victims, Anderson and Tucker, leave her home in the Jeep Cherokee on the night the victims went missing, (5) the victims' bodies were found buried together in a pit that had been dug beneath a casket in a grave in a Memphis cemetery (Mr. Carruthers had previously been assigned to a work detail at a local cemetery where he helped bury a body), (6) Mr. Carruthers' confession to Alfredo Shaw, and (7) the likelihood that more than one participant was involved in the homicides given the number of victims and the movement of the victims, the Court does not find that a reasonable probability exists that the petitioner would not have been prosecuted or convicted if exculpatory results had been obtained through DNA analysis. There is simply not "a probability sufficient to undermine confidence in the outcome." The Court finds that prong (1) of T.C.A. §40-30-304 has not been

met.

Prong (2) requires the Court to find the evidence is still in existence and in such a condition that DNA analysis may be conducted. Although the State disputes this prong can be met, it does appear that the Petitioner meets this prong based upon Exhibit 11 to the motion (the Affidavit of Alan Keel). Criminalist and DNA expert Alan Keel concludes that it is likely each of these items "bear transfer biology from whomever bound the victims." The Court finds that prong (2) has been met.

Prong (3) requires the Court to find the evidence was never previously subjected to DNA analysis or was not subjected to the analysis that is now requested which could resolve an issue not resolved by previous analysis. It is appears to the Court that three of the four items ((1) the fingernail scrapings from Marcellos Anderson, Frederick Tucker, and Delois Anderson (2) the bindings of Marcellos Anderson, and (3) the bindings of Delois Anderson (which include knotted pantyhose around her hand and the red socks knotted around her neck)) have not been previously tested pursuant to current DNA testing technology. Although the fourth item, the white blanket, was tested and compared to the data in the CODIS DNA database, it has not been compared since 2019. It appears prong (3) has been met.

Prong (4) requires the Court to find the application for analysis is made for the purpose of demonstrating innocence and not to unreasonably delay the execution of the sentence or administration of justice. Prong (4) requires the Court to find (a) the application for analysis is made for the purpose of demonstrating innocence **and** (b) not to unreasonably delay the execution of the sentence or administration of justice. On one hand, the motion is clearly an attempt to demonstrate that Mr. Carruthers is innocent of the offenses for which he has been convicted. In fact, Mr. Carruthers for over thirty years has claimed his innocence, and Mr. Carruthers believes

that further DNA testing may prove his innocence.

On the other hand, and perhaps more apparent, it clearly appears that filing this motion on May 4, 2026 (only seventeen days before Mr. Carruthers' scheduled execution) could very well be an attempt to unreasonably delay the execution of Mr. Carruthers' sentence.[4] This motion could have been filed years ago. This procedural avenue became available in 2001. James Montgomery allegedly identified Ronnie Irving as an additional suspect in 2010 or 2011. This motion could have been filed when Mr. Carruthers filed his *pro se* motion for fingerprint analysis (September 21, 2021). This motion could have been filed shortly after September 30, 2025, when the execution date was set. This motion could have been filed when counsel for Mr. Carruthers filed his *Reply to State's December 23, 2025, Response to Pro Se Petition and/or Amended Petition* regarding the fingerprint motion (December 31, 2025). There is no explanation provided or that the Court can surmise as to why Mr. Carruthers waited until April, 2026, to bring this to this Court's attention if not for the purpose of unreasonably delaying the execution of the sentence or administration of justice. This Court finds the filing of this motion is an attempt to unreasonably delay the execution of Mr. Carruthers' sentence. Prong (4) has not been met.

The Court will now analyze this motion under T.C.A. § 40-30-305. Under the *discretionary testing* statute, T.C.A. §40-30-305, prong (1) requires the Court to find a reasonable probability exists that analysis of the evidence will produce DNA results that would have rendered the petitioner's verdict or sentence more favorable if the results had been available at the proceeding leading to the judgment of conviction. As noted above, the Court must assume, pursuant section 40–30–304(1) of the Act, that DNA analysis will prove to be exculpatory. In addition, "the trial

[4] It should be noted that Mr. Carruthers originally filed a similar motion in the Tennessee Supreme Court on April 9, 2026. However, the Tennessee Supreme Court denied the motion on procedural grounds. The filing of a similar motion in the Tennessee Supreme Court approximately one month before filing the motion pending in this Court does not impact this Court's analysis.

court should postulate whatever realistically possible test results would be most favorable to [the] defendant in determining whether he has established" the reasonable probability requirement under Tennessee's DNA testing statute. *Powers* at 55. Therefore, the Court completes its analysis of prong (1) with the assumption that DNA will be obtained from the items and that the DNA will be linked to a known third party, meaning someone other than the victims, Mr. Carruthers, James Montgomery, and Jonathan Montgomery. The DNA "hit" may be related to another individual who participated in the crime or an individual who touched one or more of the items at another time (i.e. someone living with one of the victims or perpetrators, a retailer, or the actual owner of the items).

Similarly to the analysis of prong (1) under T.C.A. § 40-30-304, the Court does not find that a reasonable probability exists that analysis of the evidence will produce DNA results that would have rendered the petitioner's verdict more favorable if the results had been available at the proceeding leading to the judgment of conviction. Given the facts of this case as noted above, it is unlikely that the verdict in Mr. Carruthers' case would have been more favorable, even if a third party's DNA had been found at the crime scene. Again, there is simply not "a probability sufficient to undermine confidence in the outcome." The Court believes the convictions would remain intact. The Court finds that prong (1) of T.C.A. §40-30-305 has not been met.

When analyzing whether the sentence may have been more favorable, the analysis is somewhat more complicated. In the analysis, the trial facts remain the same. The Court finds this crime was planned over a period of time and was not a spur-of-the-moment idea. The Court also finds the number of victims and the opinion that the victims were buried alive would weigh heavily in favor of death sentences. Finally, the Court finds that Deloris Anderson was a truly innocent

victim in this case. There is clearly sufficient proof and a solid basis for the jury returning death sentences in this case.

On the other hand, it is plausible that a DNA profile of a third party at the crime scene (especially on the ligatures) could cause residual doubt in the minds of the jurors due another participant possibly being involved and not prosecuted and could produce questions about Mr. Carruthers' specific role in the offenses. Each of these possibilities may have given at least one juror a reason to not vote for death in this case. The question for this part of the analysis is whether the DNA profile of a third party at the crime scene would result in "a probability sufficient to undermine confidence in the" death sentences.

The Court finds that evidence of a third party's DNA profile at the crime scene would not result in "a probability sufficient to undermine confidence in the" death sentences, given all of the facts of the case at trial. The Court finds that a reasonable probability does not exist that analysis of the evidence will produce DNA results that would have rendered the petitioner's sentences more favorable if the results had been available at the proceeding leading to the judgment of conviction. As such, prong (1) of T.C.A. § 40-30-305 has not been met.

Prongs (2) through (4) of T.C.A. § 40-30-305 are same as prongs (2) through (4) of T.C.A. § 40-30-304. The Court has found herein that prongs (2) and (3) of T.C.A. § 40-30-304 have been met and that prong (4) of T.C.A. § 40-30-304 has not been met. The Court makes the same findings as to T.C.A. § 40-30-305. Using the same analysis as explained above, prongs (2) and (3) of T.C.A. § 40-30-305 have been met and prong (4) of T.C.A. § 40-30-305 has not been met.

**Conclusion**

WHEREFORE, based on the above-stated reasons, the Court finds prongs (2) and (3) of T.C.A. § 40-30-304 have been met and prongs (1) and (4) of T.C.A. § 40-30-304 have not been

met. The Court further finds that prongs (2) and (3) of T.C.A. § 40-30-305 have been met and prongs (1) and (4) of T.C.A. § 40-30-304 have not been met. Mr. Carruthers' *Motion for DNA Testing Pursuant to the Tennessee Post-Conviction DNA Analysis Act of 2001* is hereby denied.

IT IS SO ORDERED this 11 day of May, 2026.

Carlyn Addison, Judge
Criminal Court, Division V
30th Judicial District, at Memphis

# Exhibit “2”

**IN THE CRIMINAL COURT OF TENNESSEE**
**FOR THE THIRTIETH JUDICIAL DISTRICT AT MEMPHIS**
**DIVISION V**

| | | |
|---|---|---|
| **TONY VON CARRUTHERS,** Petitioner, | ) | **Case Nos. 94-02797, 94-02798, 94-02799, 95-11128, 95-11129, P-25948** |
| **v.** | ) | **Death Penalty Case** |
| | ) | **(Motion to Compel Disclosure)** |
| **STATE OF TENNESSEE,** Respondent. | ) | **Execution Date: May 21, 2026** |

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**ORDER DENYING PETITIONER'S MOTION FOR ORDER COMPELLING DISCLOSURE**

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Pending before the Court is Mr. Carruthers' *Motion for Order Compelling Disclosure*, filed on May 10, 2026. Through his motion, Mr. Carruthers requests this Court to issue an Order directing the Shelby County Medical Examiner to release the biological standards of Ronnie Irving to a lab designated by defense counsel for comparison. The State has responded in opposition.

As grounds for the motion, Mr. Carruthers asserts that the medical examiner's office has biological standards of Ronnie Irving. He alleges the standards "could provide valuable information related to his alleged innocence." (Motion at page 3). Mr. Carruthers has been told by the medical examiner's office that he needs either a court order or a subpoena to obtain the biological standards.

The Court finds that the motion is not well-taken. First, the Court notes that Mr. Carruthers does not cite any authority supporting his request. Second, the Court denied Mr. Carruthers' *Motion for DNA Testing Pursuant to the Tennessee Post-Conviction DNA Analysis Act of 2001* on May 11, 2026. As such, the Court does not have pending before it a matter in which the biological standard would be relevant. Finally, as referenced in his motion, Mr. Carruthers can seek to obtain the standard through the issuance of a subpoena.

Filed 5.12.26
Heidi Kuhn, Clerk
BY SC D.C.

For these reasons, Mr. Carruthers' *Motion for Order Compelling Disclosure* is hereby denied.

IT IS SO ORDERED this 12th day of May, 2026.

Carlyn Addison, Judge
Criminal Court, Division V
30th Judicial District, at Memphis