

# Supreme Court of Florida

THURSDAY, MAY 21, 2009

CASE NO.: SC09-839

Lower Tribunal No(s): CR83-5401

DAVID EUGENE JOHNSTON

vs. STATE OF FLORIDA

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Appellant(s)

Appellee(s)

The execution of David Eugene Johnston, scheduled for 6:00 p.m., Wednesday, May 27, 2009, is hereby stayed pending further order of this Court.

Johnston, a prisoner under a sentence of death and under the death warrant signed by Governor Charlie Crist on April 20, 2009, appeals inter alia the denial of his motion for DNA testing filed under Florida Rule of Criminal Procedure 3.853 seeking DNA testing on his tennis shoes, socks, and shorts, which are said to be in the custody of the Clerk of the Circuit Court or the Orlando Police Department, and on the fingernail clippings taken from the victim in this case, which are now said to be in the custody or control of the Orlando Police Department. Having reviewed the record in this case, including all prior proceedings and the briefs of the parties, and having heard oral argument of counsel, we hereby relinquish jurisdiction for a period of ninety days for the purpose of conducting DNA tests on the above-referenced items of evidence pursuant to the provisions of rule 3.853 and section 925.11, Florida Statutes (2008). Pursuant to the rule and statute, the results of the DNA testing shall be provided in writing to the trial court, counsel for Johnston, and the prosecuting attorney. The DNA testing and all proceedings in the trial court subsequent to the receipt of the DNA testing results shall be concluded and any order entered no later than ninety days from the date of this order. The trial court shall immediately provide a copy of any order entered subsequent to the DNA testing to the Clerk of this Court.

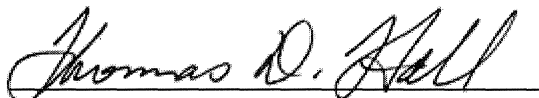
The court reporters shall have thirty days after completion of the above proceedings in which to file any transcripts with the trial court clerk and the trial court clerk shall have twenty days after receipt of the transcripts in which to file a record of the entire relinquishment proceeding with this Court. Per this Court's Administrative Order In Re: Mandatory Submission of Electronic Copies of Documents, AOSC04-84, dated September 13, 2004, the court reporters are directed to transmit a copy of any transcripts, in addition to paper copies, in an electronic format as required by the provisions of that order. The electronic version for this Court shall be submitted to the following e-mail address: [efile@flcourts.org](mailto:efile@flcourts.org). Counsel for the parties are hereby directed to file Status Reports with this Court every thirty days as to the progress of the relinquishment proceeding.

\* THE COVERSHEET SHALL REFLECT "SUPPLEMENTAL RECORD - VOLUME 5, ETC." AND PAGE NUMBERING SHOULD START WITH PAGE 298 AND RUN CONSECUTIVELY.

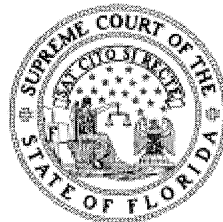
QUINCE, C.J., and PARIENTE, LEWIS, CANADY, POLSTON, LABARGA, and PERRY, JJ., concur.

A True Copy

Test:



Thomas D. Hall  
Clerk, Supreme Court



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Served:

JEFFREY L. ASHTON  
ROBERT R. WHEELER  
D. TODD DOSS  
HON. BOB WATTLES, JUDGE

HON. CHARLES J. CRIST, JR.  
OFFICIAL COURT REPORTERS  
KENNETH S. NUNNELLEY  
HON. LYDIA GARDNER, CLERK