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James Hitchcock v. State of Florida

NEXT CASE ON THE COURT'S DOCKET IS HITCHCOCK VERSUS STATE. ES

GOOD MORNING. YOU MAY PROCEED.

MAY IT PLEASE THE COURT, MY NAME IS JAMES DRISCOLL AND ALONG WITH ERIC PINKER SEATED AT COUNSEL TABLE TO MY LEFT, WE REPRESENT JAMES HITCHCOCK IN POST CONVICTION.

WHERE DOES THE POST CONVICTION MOTION STAND? I UNDERSTAND THAT THERE WAS A HEARING BACK IN APRIL ON THE 3.851 MOTION. HAS THE JUDGE RULED ON THAT?

NO, YOUR HONOR, WE JUST COMPLETED WRITTEN CLOSING ARGUMENTS, AS OUR DOCTOR WAS OUT OF TOWN. IT WAS BIFURCATED INTO MAY. WE ARE AWAITING A DECISION ON THAT. BUT WHAT'S INTERESTING IS, WE DID HAVE TILL 2003, OCTOBER 2003, WE WERE COURT ORDERED TO FILE THE DNA MOTION IF WE WERE GOING TO AFTER THE ORIGINAL 3851 MOTION WAS FILED. AND WE DID. WE COMPLIED WITH THE COURT ORDER. AND WITHIN THE SHORT PERIOD, SUBMITTED OUR DNA MOTION.

I'M CONCERNED ABOUT WHETHER WE HAVE A DEFECT IN THIS RULE THAT WE HAVE RECENTLY ADOPTED IN THAT IT -- HOW DOES IT MAKE A LOT OF SENSE TO, WHERE WE HAVE GOT AN ONGOING 3.851, TO SEPARATE THIS MOTION FROM THAT AND THEN HAVE THIS APPEAL AND -- WHY IS IT NOT -- WOULD IT NOT BE POSSIBLE TO HAVE WRAPPED IT ALL UP IN ONE?

IT WAS, I THINK IT -- JUST MY OPINION, IT SHOULD BE POSSIBLE. BUT WITH, WITH THE REQUIREMENT IN THE RULE AND THE STATUTE, THAT OF NOTICE OF APPEAL BE FILED WITHIN 30 DAYS, WE CERTAINLY WANTED TO COMPLY.

I APPRECIATE THAT.

TO MAKE SURE THAT MR. HITCHCOCK WAS HEARD ON THAT. AND WHAT WAS UNDER A SEPARATE CRIMINAL RULE WASN'T WAIVED.

HOW ABOUT SPEAKING DIRECTLY TO -- THE TRIAL JUDGE MADE A DETERMINATION THAT UNDER FACTS OF HITCHCOCK'S CASE, THAT THE DNA, HE MADE THE DETERMINATION THAT WITHIN REASONABLE CERTAINTY THAT THE RULE SAYS PROBABILITY. BUT TELL US WHY THERE -- WHAT SPECIFIC TESTING WOULD OVERCOME THAT BURDEN?

YOUR HONOR, IT IS OUR POSITION THAT MR. JAMES HITCHCOCK DIDN'T COMMIT THIS OFFENSE. HE MADE A FALSE CONFESSION BACK IN 1976 AND HE'S LIVED WITH THAT EVER SINCE. BUT AS WE BELIEVE TO BE AN INNOCENT MAN ON DEATH ROW, WE ARE ATTEMPTING TO SHOW THAT INNOCENCE. WE RAISED A NUMBER OF CLAIMS AND A NUMBER OF ISSUES WHERE WE FOUND THERE TO BE CONSTITUTIONAL ERROR IN THE VARIOUS PROCEEDINGS AND VARIOUS HEARINGS THAT HE'S HAD OVER TIME. BUT JAMES HITCHCOCK'S TESTIMONY IN THE 1977 TRIAL WAS, I DIDN'T KILL THE VICTIM IN THIS CASE. WHAT HE SAID WAS AFTER HIS BROTHER CAME UPON HIM IN POST SEXUAL SITUATION, WITH THE VICTIM, HE BECAME ENRAGED, TOOK THE VICTIM OUT AND RICHARD HITCHCOCK --.

I UNDERSTAND WHAT HIS CONTENTION WAS. BUT HE DID ADMIT TO HAVING SEXUAL ENTER

COURSE WITH THE VICTIM, CORRECT?

YES, YOUR HONOR.

SO THE DNA AS TO THE FLUIDS AND THE, HE EVEN STATED THAT, WAS HER BLOOD THAT WAS ON HIS CLOTHES. CORRECT?

YES, YOUR HONOR. THE SEAMAN CERTAINLY, WE KNOW THE SOURCE OF THAT BASED ON JAMES HITCHCOCK'S TESTIMONY THERE WAS OTHER FORENSIC EVIDENCE IN THIS CASE, WHICH THE STATE AND WE FOUND SOME DEFICIENCIES IN THE SCIENTIFIC TESTING THAT WAS USED. BUT THE STATE WAS ABLE TO CLOAK ITS CASE IN THIS FALSE SENSE OF SCIENTIFIC CERTAINTY WHICH WE BELIEVE LED TO THE CONVICTION OF JAMES HITCHCOCK AND WRONGFULLY SO. NOW MR. HITCHCOCK, JAMES HITCHCOCK IS CERTAINLY NOT A SER ROLL GIST OR HAIR EXPERT. HE HAS NO WAY WITHIN A CERTAIN SUSTAIN WHETHER THE BLOOD WAS FOUND TO BE COMPATIBLE OR THE SAME TYPE AS THE VICTIM THAT WAS ON SOME CLOTHES THAT WERE TAKEN. THERE WAS SOIL SAMPLES. THERE WERE FINGERNAIL SAMPLES TAKEN FROM THE VICTIM IN THIS CASE THAT DNA TESTING JUST DIDN'T EXIST AT THAT TIME.

LET ME ASK YOU THIS. YOU HAVE LISTED ABOUT 39, IN THE MOTION YOU LISTED ABOUT 39 ITEMS THAT YOU WANT TO HAVE TESTED FOR DNA. BUT MY PROBLEM WITH THIS IS, THERE ARE CERTAIN ITEMS ON HERE THAT THERE IS NO INDICATION OF WHERE THEY CAME FROM, WHO THEY BELONG TO, AND SO IT REALLY DOESN'T INDICATE HOW IT WOULD HELP YOUR CLIENT. FOR EXAMPLE, YOU HAVE LISTED A BROWN LEATHER BELT. WHOSE BROWN LEATHER BELT WAS IT? WHERE WAS IT IN RELATIONSHIP TO THE CRIME SCENE? HOW DO YOU KNOW -- HOW WOULD WE KNOW WHETHER OR NOT A TESTING OF THAT BROWN LEATHER BELT WOULD BE OF ANY USE TO MR. HITCHCOCK?

ONE OF THE REASONS FOR THE BROADNESS OF THE, OF WHAT WE ASKED FOR IS BECAUSE AFTER SUCH A LONG TIME, SCIENTISTS MAY NOT BE ABLE TO GET A SAMPLE. WHAT IT WAS IMPORTANT WE FELT TO GET TO THE BOTTOM OF THIS, IS TO INDIVIDUALLY TEST EACH ITEM AND COME UP WITH A PROFILE.

DON'T YOU THINK YOU SHOULD HAVE TO CONNECT EACH ITEM WITH AT LEAST THE CRIME SCENE OR ONE OF THE PERSONS THAT IS LIKELY DID THIS CRIME? I MEAN, WHO OWNED THE BROWN LEATHER BELT AND WHERE WAS IT FOUND? I'M JUST HAVING A HARD TIME TRYING TO FIGURE OUT WHY JUST THIS BRAWN LEATHER BELT THAT'S MENTIONED AS A PART OF THE EVIDENCE HERE, WOULD DO ANYTHING.

WELL YOUR HONOR --.

WHO DID IT BELONG TO?

I BELIEVE THAT WOULD HAVE BEEN SEIZED BY LAW ENFORCEMENT ON THE STATED LAW ENFORCEMENT BEGAN TO INVESTIGATE. I DON'T KNOW EXACTLY BUT IT WOULD HAVE BEEN AN ITEM.

BUT ISN'T THERE AN OBLIGATION THAT, TO SORT OF DRAW A ROAD MAP, THAT IS, TO SAY FOR INSTANCE, TO THE TRIAL COURT JUDGE, ONE OF THE ITEMS OF EVIDENCE CEASED -- SEIZED WAS A PINK SLIPPER. AND THAT SLIPPER IS STILL IN THE POSSESSION OF THE STATE. AND IF THAT PINK SLIPPER WAS EXAMINED, THERE IS A REPORT THAT THERE ARE BLOOD STAINS AND HAIR FIBER ON IT, WHATEVER. AND THAT THOSE HAIR FIBERS ARE EXAMINED AND THE BLOOD STAINS ARE EXAMINED, POTENTIALLY THAT COULD BE IDENTIFIED AS COMING FROM ANOTHER PERSON AS OPPOSED TO THE DEFENDANT. AND IF IT WAS IDENTIFIED AS COMING FROM THE OTHER PERSON, IT WOULD PRODUCE A SUBSTANTIAL PROBABILITY OF A DIFFERENT OUTCOME IN THE GUILT PHASE OR THE PENALTY PHASE OF THIS TRIAL. IN OTHER WORDS, THAT WITH EACH ITEM POTENTIALLY THAT COULD BE EXAMINED, ISN'T THERE AN OBLIGATION TO SHOW THE

RELEVANCY OF THAT ITEM, THE STAINS OR MATERIAL ON THAT THAT WOULD BE TESTED FOR DNA, AND THE POSSIBLE OUTCOME THAT WOULD BENEFIT THE DEFENDANT? I THINK THAT'S WHAT JUSTICE QUINCE IS SAYING, IS THAT NOW WE HAVE THIS LIST OF THINGS, AND HOW SHE'S PICKED OUT THE ONE THING, LIKE THE BROWN LEATHER BELT, WELL, WHAT ARE WE TALK -- ARE WE TALKING ABOUT A BROWN LEATHER BELT THAT ALLEGEDLY BELONGED TO THE ASSAILANT? ARE WE TALKING ABOUT A BROWN LEATHER BELT THAT IS A TINY BELT THAT BELONGED TO THE CHILD VICTIM? ARE WE TALKING ABOUT JUST A BROWN LEATHER BELT THAT JUST HAPPENED TO BE FOUND? SO, ISN'T THERE AN OBLIGATION IN MAKING THIS CLAIM BECAUSE OUR RULE SETS OUT INDEED A REQUIREMENT THAT THERE BE A PROBABILITY OF A DIFFERENT OUTCOME ABOUT AN IMPORTANT ISSUE. SO, IS THERE SOMEWHERE THAT WE CAN LOOK IN YOUR MOTION OR ARGUMENT AT THE TRIAL COURT LEVEL THAT WILL SET OUT THIS ROAD MAP WITH REFERENCE TO EACH OF THESE ITEMS?

I THINK WITHIN -- TO BE FRANK, I THINK IT'S A VERY GOOD POINT WITH THE BELT. PERHAPS IT COULD HAVE BEEN CLEAR WHERE THE BELT, THAT IT WAS IN FACT THE DEFENDANT'S BELT.

HE'S GIVING AN EXAMPLE. LET'S GET -- YOU SAID THAT YOUR CLIENT FALSELY CONFESSED TO THE MURDER. IS THERE AN ALLEGATION THAT HE FALSELY CONFESSED TO HAVING SEXUAL INTERCOURSE WITH THE VICTIM?

NO, YOUR HONOR.

SO WE HAVE GOT -- SO IN MANY CASES, WHERE THERE IS AN ISSUE THE DEFENDANT IS SAYING IT WASN'T HIM, ALL, ANY RETESTING OF ANY OF THE BODILY FLUIDS, WHATEVER, THAT IS NOT GOING TO YIELD A DIFFERENT RESULT. YOU'RE NOT CLAIMING THAT?

YOUR HONOR, AS FAR AS THE SEMEN WOULD GO, WE WEREN'T EXPECTED ANOTHER RESULT. AS FAR AS BLOOD, AND I THINK I WAS SPECIFIC ABOUT IN ANOTHER SENSE ABOUT THE HAIR.

LET'S TALK ABOUT, THAT'S WHAT I WANT TO ASK YOU ABOUT THE BLOOD. THERE WAS BLOOD OF THE VICTIM FOUND ON THE DEFENDANT'S PANTS, CORRECT?

YES, YOUR HONOR.

WHAT IS THE -- SO WHAT OTHER BLOOD -- AND THERE WAS BLOOD ON THE VICTIM FROM HER OWN, THAT WAS HER OWN. WHAT IS IT, WHAT OTHER BLOOD EVIDENCE IS THERE THAT YOU'RE CONTENDING HAS NOT BEEN TESTED THAT WOULD TEND TO EXONERATE MR. HITCHCOCK AND PUT THE RESPONSIBILITY ON ANOTHER INDIVIDUAL?

WELL IT IS OUR POSITION THAT, I MEAN THERE WAS SER LOGICAL TESTING THAT TOOK PLACE, WHICH WAS ESSENTIALLY A BLOOD TYPE. IN THIS CASE, RICHARD HITCHCOCK NEVER GAVE, THE CRIME LAB NEVER HAD A BLOOD SAMPLE OF RICHARD HITCH COME. ALL THE BLOOD SAY, THIS PERSON ESCAPES ME WHICH TYPE THE VICTIM HAD. BUT THE VICTIM HAS TYPE O. AND JAMES HITCHCOCK HAS TYPE A.

SO WHICH -- YOU'RE SAYING THAT THE TESTING WASN'T PROPER. WHAT BLOOD EVIDENCE WOULD YOU, ARE YOU SAYING YOU WANT SOMETHING RETESTED? AND WHAT BLOOD EVIDENCE IS THAT?

WELL WE WANTED TESTED BY DNA.

HOW MUCH BLOOD EXISTS AND WHERE WAS IT FOUND? WHAT ARE WE TALKING ABOUT HERE?

THE BLOOD WAS ON SOME OF THE CLOTHING THAT WAS CEASED, WAS TAKEN FROM THE VICTIM. THERE WAS VARIOUS TYPES OF SWABS. I JUST DON'T KNOW, WITHOUT HAVING ACTUALLY TESTED EVERYTHING, I DON'T KNOW WHAT'S --.

BUT THE BLOOD OF THE DEFENDANT WASN'T FOUND ON THE VICTIM?

I DON'T BELIEVE SO.

SO IT WAS THE VICTIM'S BLOOD. ARE YOU SUGGESTING THAT NOW THAT THIS RULE, THIS SHOULD HAVE A RETESTING OF THAT BLOOD TO SHOW IT WASN'T THE VICTIM'S BLOOD?

I DON'T THINK OF STATE OF SCIENCE AT 76, 77 WHEN THIS OCCURRED COULD SAY IT WAS THE VICTIM'S BLOOD. IT COULD SAY THAT IT WAS THE SAME TYPE AS THE VICTIM, AND INCONSISTENT WITH JAMES HITCHCOCK. BUT IT COULD NOT AFFIRMATIVELY SAY WHICH DNA SCIENCE, THE PROGRESS THAT'S BEEN MADE IN THAT, IT COULD SAY THIS IS THE VICTIM'S BLOOD.

WELL WHAT DID THE DEFENDANT, WHAT DID JAMES HITCHCOCK SAY ABOUT THE BLOOD?

WELL JAMES HITCHCOCK, WHAT HAPPENED AFTER RICHARD HITCHCOCK COMMITTED THIS MURDER, JAMES HITCHCOCK MOVED THE BODY AND THAT'S HOW THE BLOOD GOT ON HIM.

OKAY. SO, JAMES HITCHCOCK HAS SAID THIS IS THE VICTIM'S BLOOD? ESSENTIALLY. CORRECT?

HE BELIEVED IT TO BE. HE HAD NO.

RIGHT. AND SO HOW IS THE TESTING OF THAT BLOOD GOING TO -- WITHIN A REASONABLE DEGREE OF PROBABILITY, AFFECT THE OUTCOME OF THIS TRIAL? SINCE IT'S PRETTY MUCH AGREED THAT IT WAS THE VICTIM'S BLOOD THAT GOT ON JAMES HITCHCOCK.

WELL, IF WHAT WE SAY IS CORRECT, AND THERE WAS A STRUGGLE, AND IT WAS A VIOLENT STRUGGLE AND RICHARD HITCHCOCK WAS INVOLVED IN THAT, RICHARD HITCHCOCK'S BLOOD COULD HAVE MIXED IN WITH THE BLOOD ON THE VICTIM. IF RICHARD HITCHCOCK'S BLOOD IS ON THAT CRIME SCENE, THEN WHAT THE STATE GOT UP AN ARGUED TO THE JURY THAT CONVICTED JAMES HITCHCOCK WAS PATENTLY FALSE.

RIGHT NOW THAT'S PURE SPECULATION THOUGH, IS THAT CORRECT? AS TO WHETHER OR NOT THE ASSAILANT BLED AND THAT THERE WAS ASSAILANT BLOOD ON THESE MATERIALS? IN OTHER WORDS, HAVE YOU SET OUT ANY KIND OF A SORT OF A PRELIMINARY SHOWING THAT IN ADDITION TO THE VICTIM APARTMENTS BLOOD, THAT THERE WAS OTHER BLOOD AND AT THIS POINT, WE DON'T KNOW WHERE THAT BLOOD CAME FROM?

YOUR HONOR, WITHOUT, WITHOUT ACTUALLY CONDUCTING THE DNA TESTING, THERE IS NO WAY FOR US TO TELL WHETHER THERE IS OTHER BLOOD.

WOULDN'T BE THERE EVIDENCE AT THE CRIME SCENE OUTSIDE -- IF THERE WAS SUCH A VIOLENT STRUGGLE, EVIDENCE AT THE CRIME SCENE OR WEREN'T THE PARTIES, THE BROTHERS SEEN BY LAW ENFORCEMENT IMMEDIATELY AFTER THIS EVENT?

LIKE THEY DIDN'T COME INTO CONTACT WITH JAMES HITCHCOCK TILL MUCH LATER IN THE DAY. I BELIEVE LAW ENFORCEMENT DID APPEAR AT THE CRIME SCENE ONCE THE VICTIM APPEARED TO BE MISSING.

WHAT IS THE CLAIM WITH REFERENCE TO FINGERNAIL SCRAPINGS? IS THIS FINGERNAIL SCRAPINGS FROM THE VICTIM?

YES, AS PART, IT MAY TURN OUT TO BE VERY FORTUNATE FOR MR. HITCHCOCK. BUT AS PART OF THE AUTOPSY OR WHATEVER THE PROCEDURE WAS, FINGERNAILS WERE TAKEN FROM THE VICTIM, THE CLIPPINGS. I BELIEVE IN MY MOTION I LIFTED IT AS TWO LEFT. WOULD BE THE LEFT AND RIGHT HAND FROM THE VICTIM. IF THAT VICTIM WHEN SHE STRUGGLED WITH RIRBD ORDER -

- RICHARD HITCH COME, REACHED UP AND SCRATCHED HIM, EACH IF IT IS JUST A SMALL SCRATCH ON THE BACK OR SOMETHING THAT WOULDN'T BE NOTICEABLE TO LAW ENFORCEMENT AND THAT WITH TODAY'S TECHNOLOGY, WE CAN TESTIFY THAT, AND FIND WHETHER RICHARD HITCHCOCK'S DNA IS UNDER THE FINGERNAILS.

WHEN DID LAW ENFORCEMENT COME IN CONTACT WITH RICHARD AFTER THIS INCIDENT?

I BELIEVE WHEN THE POLICE WERE CALLED.

HOW LONG?

WOULD HAVE BEEN THE MORNING, EARLY MORNING HOURS WHEN THEY DISCOVERED.

AND WAS THERE ANY EVIDENCE OF ANY SCRATCH MARKS ON RICHARD'S FACE?

THERE IS NOT IN THE POLICE REPORT.

IS THERE ANYTHING FROM THE PATHOLOGY REPORT WHEN THEY TOOK THE CLIPPINGS IN THE AUTOPSY THAT INDICATED THERE WAS ANY FLESH OR ANY BLOOD OR ANYTHING UNDER THESE FINGERNAILS?

I DON'T RECALL THAT, THAT THEY WERE, THAT THEY WERE TESTED FOR ANYTHING. THE TECHNOLOGY WOULDN'T HAVE EXISTED BACK THEN.

THE MARSHAL HAS TURNED ON THE LIGHT REMINDING YOU YOU'RE IN YOUR REBUTTAL TIME IF YOU WANT TO PAUSE FOR JUST A MOMENT. STATE?

THANK YOU YOUR HONOR, MAY IT PLEASE THE COURT, KEN NUNNELLEY. LET ME START WITH THE FINGERNAIL CUTTINGS. WE ARE NOT TALKING ABOUT FINGERNAIL SCRAPINGS, TALKING ABOUT THEY TRIMMED THE VICTIM'S FINGERNAIL. WE DIDN'T START HEARING ABOUT SCRAPINGS UNTIL WE GOT ON APPEAL. THE FINGERNAIL CUTTINGS WERE EXAMINED BY THE CRIME LAB, I'M STUCK ON CALLING THEM FDLE BUT I DON'T THINK IT WAS AT THAT TIME. THEY TESTIFIED IN THE RECORD AT PAGE 593 OF THE ORBLG TRIAL, THAT I BELIEVE THERE WERE NEGATIVE RESULTS ON THAT EXAMINATION.

THAT THERE WERE NO FOREIGN MATERIALS?

I BELIEVE THAT'S CORRECT, YOUR HONOR.

COUNSEL'S ARGUING THAT THERE WAS NOT THE TECHNOLOGY AVAILABLE AT THAT TIME TO EVEN DETERMINE WHETHER THERE WAS ANY KIND OF INFORMATION THAT MAY BE, MAY HAVE BEEN LEFT THERE. WHAT'S YOUR RESPONSE TO THAT?

WELL YOUR HONOR, I DON'T WANT TO START TRYING TO QUALIFY MYSELF AS A FORENSIC EXPERT. BUT I BELIEVE THE TECHNOLOGY HAS BEEN AROUND FOR QUITE SOME PERIOD OF TIME TO RECOGNIZE IF THERE IS IN FACT FOREIGN MATERIALS FOUND ON A FINGERNAIL. NOW WE COULDN'T DO DNA BACK IN 1976 BECAUSE NOBODY HAD EVEN COME UP WITH IT. BUT WE COULD LOOK TO SEE IF THERE WAS SOMETHING THERE.

THE RECORD -- DID THE RECORD ESTABLISH HERE THAT THESE FINGERNAIL CLIPPINGS EXIST PRESENTLY?

PRESENTLY, YOUR HONOR, NO THE RECORD DOES NOT ESTABLISH THAT. THE RECORD CONFESSED WITH RESPECT TO THE ITEMS THAT MR. HITCHCOCK WANT TO TEST, 39 SEPARATELY ITEMS, INCLUDING BLOOD, PANTS, NOTICEABLY ABSENT ARE ANY BODY FLUID LEAVINGS TAKEN FROM

THE VICTIM'S BODY. HE WANTS TO TEST SOIL SAMPLES. HE WANTS TO TEST WEEDS. HE WANTS TO TEST PANTS AND TOWELS THAT ADMITTEDLY HAVE THE VICTIM'S BLOOD ON THEM. HE WANTS TO TEST THE SHIRT MR. HITCHCOCK HAD ON WHEN HE RAPED AND MURDERED HIS VICTIM. ALL OF WHICH AGAIN ADMITTEDLY ARE GOING TO HAVE HITCH -- RATHER THE VICTIM'S BLOOD ON THEM. WHAT WE ARE SEEING IS NOT A 3851 APPEAL. THAT MATTER IS PENDING IN THE CIRCUIT COURT OF ORANGE COUNTY AND WILL ARRIVE AT THIS COURT IN DUE COURSE ONCE IT IS DISPOSED OF. WE ARE NOT TALKING ABOUT ANYTHING OTHER THAN THE PROPRIETY OR CORRECTNESS, IF YOU WILL, OF THE CIRCUIT COURT'S DENIAL OF MR. HITCHCOCK'S INSUFFICIENTLY PLED MOTION FOR POST CONVICTION DNA TESTING. AND I WOULD POINT OUT--

WHAT SPECIFICALLY ARE YOU CONTENDING IS MISSING IN THIS MOTION?

THE WHY, YOUR HONOR, IS WHAT'S MISSING FROM THIS. MR. HITCHCOCK HAS SPENT MORE TIME IN HIS MOTION DISCUSSING WHAT HE WANTS TESTED AND HOW HE WANTS THAT TESTING DONE THAN HE HAS SPENT WITH EXPLAINING WHY THE TESTING IS GOING TO EITHER EXONERATE HIM, WHICH IT CAN'T. OR MITIGATE HIS SENTENCE. I DON'T KNOW WHAT HE SAYS THE WHY IS, BECAUSE HE HAS NEVER TOLD US. THE RULE AS PROMULGATED BY THIS COURT REQUIRES THE DEFENDANT TO SHOW WHY THE DNA IS GOING TO EITHER EXONERATE HIM OF THE CRIME FOR WHICH HE WAS CONVICTED, OR MITIGATE HIS SENTENCE.

WOULD YOU ADDRESS THE BLOOD EVIDENCE. DID THE VICTIM BLEED A LOT? IS THERE A LOT OF BLOOD EVIDENCE IN THIS CASE? WHERE IS THE BLOOD -- WHERE WAS THE BLOOD EVIDENCE? COULD YOU GIVE US BENEFIT OF THAT PERSPECTIVE?

YOUR HONOR, MY UNDERSTANDING OF THE, OF WHAT THE BLOOD EVIDENCE WAS AND I'M PRESUMING THAT THE DEFENDANT HAS CORRECTLY IDENTIFIED WHERE THAT EVIDENCE IS NOW LOCATED. WAS APPARENTLY BLOOD ON THE DEFENDANT'S PANTS THAT WAS ABO MATCHED WITH THAT OF THE VICTIM. I BELIEVE THERE WAS A TOWEL OR TWO THAT HAD BLOOD ON THEM AND ADMITTEDLY MR. HITCHCOCK BY HIS OWN STATEMENT HAD BLOOD ON HIS FACE AND HE USED ONE OF THESE TOWELS TO WIPE HIS FACE OFF. THERE WAS ARGUABLY POTENTIALLY BLOOD ON THE DEFENDANT'S PULL-OVER SHIRT. I SUPPOSE A POLO TYPE SHIRT. BUT MR. HITCHCOCK AFTER HE TOOK A SHOWER, AFTER HE KILLED THE VICTIM AND DISPOSED OF HER BODY, WASHED OUT THE SHIRT. SO WE HAVE THE VICTIM'S BLOOD ON HIS PANTS AND ON THESE TOWELS. THAT IS MY UNDERSTANDING OF WHAT THE BLOOD EVIDENCE OR THE POSTURE OF THE BLOOD EVIDENCE IS.

THERE IS A COUPLE OTHER THINGS THAT HE LISTS IN HERE, LIKE ITEMS 20, SAYS MEDICAL CRIMINAL DASH BLOOD. AND I THINK 21 SAYS BASICALLY THE SAME THING. BUT I'M NOT SURE. IT DOESN'T SEEM LIKE IT IS CONNECTED WITH ANY PARTICULAR ITEM. IS THERE VIALS OF BLOOD?

I BELIEVE, YOUR HONOR, IF I CAN TURN JUST A MOMENT TO THE, TO THE EVIDENCE LOGS AND I WOULD POINT OUT THAT WHAT THE DEFENDANT DID IN THE 39 ITEMS LISTED THAT HE WANTS TESTED IS MERELY, HE JUST LISTS ALL THE MATERIAL FOUND ON THE EVIDENCE LOGS THEMSELVES. THERE -- I BELIEVE THERE WAS -- YES, MA'AM, THERE WAS A VIAL OF BLOOD AS INDICATED ON PAGE 40 OF THE RECORD.

AND WHOSE BLOOD IS THIS?

IT DOES NOT INDICATE, YOUR HONOR. THE RECORD, THE PROPERTY RECEIPT AND THE DEFENDANT'S MOTION DO NOT INDICATE WHO THAT BLOOD WAS, OR WHO THAT BLOOD CAME FROM. I WOULD ASSUME IN CONTEXT IT WAS THE VICTIM'S BLOOD BUT I DON'T KNOW THAT. IT'S LISTED AMONG OTHER ITEMS THAT WERE COLLECTED IF THE VICTIM.

DO YOU KNOW ANYTHING ABOUT THE BROWN BELT?

NOT A THINK, YOUR HONOR. I DON'T KNOW ANYTHING -- OTHER THAN A BROWN BELT APPEARS LISTED ON THE PROPERTY RECEIPT ON PAGE 38 OF THE RECORD. SAYS ONE BROWN LEATHER BELT. ARTICLE NO. EIGHT AND I HAVE NO IDEA WHERE IT CAME FROM. I DON'T RECALL ANY TESTIMONY IN THE GUILT PHASE OF MR. HITCHCOCK'S CAPITAL MURDER TRIAL CONCERNING A BROWN BELT. I SIMPLY DON'T KNOW BECAUSE IT DOESN'T SHOW UP IN THE RECORD AND THE DEFENDANT HASN'T HE LIST DATED FOR THE COURT WHAT VALUE BENEFIT OR OTHER UTILITY DOING DNA TYPING ON THAT BROWN BELT MAY HAVE.

THE LIST THERE, IT IS SEPARATED BETWEEN EVIDENCE POSSESSION OF THE ORANGE COUNTY CLERK OF COURT, THAT'S ITEMS 19-37.

YES, MA'AM.

PRESUMABLY THEN THOSE ARE ITEMS THAT WERE INTRODUCED INTO EVIDENCE IN THE CASE, CORRECT?

THAT IS MY UNDERSTANDING, YOUR HONOR.

SO WAS THE BROWN BELT IN THAT GROUP?

LET ME LOOK REAL QUICKLY YOUR HONOR. I DON'T BELIEVE THE BROWN BELT WAS INTRODUCED AT TRIAL. NO. IT'S LISTED ON, IN THE MOTION, WHICH IS 30 OF THE RECORD, AS EVIDENCE AND POSSESSION OF THE ORANGE COUNTY SHERIFF. SO I AM ASSUMING IT WAS NOT INTRODUCED.

THAT THE ITEMS THAT ARE IN THE CLERK'S OFFICE WERE THE ITEMS THAT WERE INTRODUCED?

YES, MA'AM. AND YOU KNOW, JUST TO PERHAPS WRAP THE WHOLE THING, TO WRAP THE ISSUE UP, THIS COURT IN THIS CASE I BELIEVE IS CONFRONTED WITH SOME POLICY DETERMINATIONS THAT ARE GOING TO HAVE TO BE MADE WITH RESPECT TO THE USE OF RULE 3.853. THIS CASE IS NOT LIKE THE JAMES DUCT CASE. WHERE WE HAVE A SEXUAL BATTERY FOLLOWED BY A MURDER IN A DEFENDANT CLAIMING THAT HE WASN'T THERE, DIDN'T DO IT, AND DOESN'T KNOW WHO DID. THIS IS A CASE -- IN DUCKET, THE DNA TYPING THAT IS BEING DONE AT THIS POINT FOLLOWING THIS COURT'S DIRECTIVE, SEEMS TO ME IN MY HUMBLE OPINION TO BE WHAT RULE 3.853 CONTEMPLATED. THIS CASE UNLIKE THE DUCKETTE CASE IS FAR MORE SIMILAR TO THE WILLIAM THOMAS ZIG LETTER CASE, WHERE THE DEFENDANT CAME TO THIS COURT, ADMITTEDLY PRE-RULED, BUT NONETHELESS, BEFORE THIS COURT SEEKING REVERSAL OF THE ORANGE COUNTY CIRCUIT COURT'S DETERMINATION THAT HE WAS NOT ENTITLED TO POST CONVICTION DNA TYPING. AND THIS COURT AFFIRMED THAT RULING AND AS I RECALL, THIS COURT'S REASONING FOR THAT WAS BECAUSE MR. ZEIGLER, AND I'M PARAPHRASING, HAD NOT EXPLAINED WHY IT WOULD HELP HIM. AND THAT IS WHAT WE HAVE HERE. WE HAVE A DEFENDANT WHO SAYS I WANT TO TEST 39 SEPARATE ITEMS OF EVIDENCE THAT WERE COLLECTED FROM THE CRIME SCENE, BUT HE DOESN'T TELL US HOW IT'S GOING TO HELP OR WHY IT'S GOING TO HELP. HE SPENDS A LOT OF TIME TELLING US HOW HE'S GOING TO TEST IT BUT HE DOESN'T TELL US WHY HE WANTS TO DO IT. AND I WOULD SUGGEST THAT THE REASON FOR THAT IS BECAUSE THIS DEFENDANT, JUST LIKE WILLIAM THOMAS SEEING ZEIGLER, WANTS TO TEST IT AND SEE WHAT IT SHOWS AND THEN CONSTRUCT A THEORY AROUND THE RESULTS OF THE TESTING. AND THAT IS NOT WHAT RULE 3.853 CONTEMPLATES. THIS COURT SHOULD NOT, I WOULD SUGGEST, PLACE THE TRIAL COURT IN ERROR IN THIS CASE FOR FOLLOWING THIS COURT'S RULES AND REQUIRING A SPECIFIC PLEADING FROM A DEFENDANT WHO WANTS TO ENGAGE IN POST CONVICTION DNA TYPING. THE CIRCUIT COURT IS ENTITLED TO KNOW, UNDER THE TERMS OF THIS COURT'S RULE, WHAT THE DEFENDANT'S THEORY IS. AND I WOULD SUGGEST SO IS THE STATE.

COULD YOU HELP US OUT? WHAT ITEMS OF, THAT WERE COLLECTED AT THE CRIME SCENE ARE NOT ON THE LIST?

GO BACK TO MY BOOK, JUDGE. LET'S SEE.

I GUESS WHAT I'M TRYING TO DO IS FIND OUT, IS THIS SIMPLY A FISHING EXPEDITION AS YOU'RE ASSERTING AND THERE HAS NOT BEEN A PROPER NARROWING?

JUDGE, I DON'T BELIEVE HE ASKS TO TEST THE VICK -- ITEMS LISTED ON PAGE 38. AND AGAIN, I'M HAVING TO COMPARE, KIND OF QUICKLY HERE IN MY HEAD BUT I DON'T BELIEVE HE ASKS TO TEST THE VICTIM'S SHORTS OR UNDERWEAR. HE CERTAINLY DOESN'T ASK TO TEST --.

THERE IS SOME SHORTS LISTED AS ITEM 24 THAT HE WANTS.

I MISSPOKE, YOUR HONOR. HE CERTAINLY DOES NOT ASK TO TEST THE MAJORITY OF THE ITEMS LISTED ON PAGE 40 OF THE RECORD, WHICH ARE VAGINAL SMEARS, ORAL SWABS, RECTAL SMEARS, HE DOESN'T ASK TO TEST THOSE ITEMS.

WHAT MY CONCERN IS, IS WE RECENTLY HAD AN EXPERIENCE IN KING, DURING A WARRANT PERIOD IN WHICH, AFTER THE APPEALS WERE OVER, THE EXECUTIVE BRANCH DECIDED THAT THEY WERE GOING TO ORDER A DNA TESTING. AND WHAT IS THE BURDEN HERE OF GOING AHEAD AND THEN DOING THIS AT THE 3.851 STAGE? WHAT'S THE TIME THAT IT WOULD TAKE?

JUSTICE WELLS, I THINK -- I'M SURE YOU'LL CORRECT ME IF I'M WRONG BUT I THINK THAT GOES BACK TO YOUR OPENING COMMENTS ABOUT THE WAY THE RULE WORKS. AND WHETHER OR NOT RULE 3.853 SHOULD BE SPLIT FROM RULE 3851 AND WHETHER THOSE SHOULD BE TWO SEPARATELY TRACKED PROCEEDINGS, IS A MATTER THAT THIS COURT MAY WELL NEED TO LOOK AT. WHETHER OR NOT YOU, THE TWO PROCESSES SHOULD BE SPLIT UP, BUT I WOULD SUGGEST THAT UNDER THIS PARTICULAR CIRCUMSTANCE, AND I'M PUTTING KING TO THE SIDE FOR THE MOMENT, SINCE THAT APPEARS, THAT DOES NOT COME UNDER THE RULE. THE DEFENDANT HAS TO MAKE A SHOWING ON HIS, THE FACE OF HIS PLEADING OR THE VERY LEAST IN HIS ARGUMENT BEFORE THE COURT, THAT THERE IS A REASONABLE PROBABILITY THAT DNA TYPING IS GOING TO EITHER EXONERATE HIM OR MITIGATE HIS SENTENCE. AND IF HE CAN'T MAKE THE SHOWING OF A REASONABLE PROBABILITY, THEN HE FAILS IN HIS BURDEN OF PROOF -- EXCUSE ME, HIS BURDEN OF PERSUASION, NOT A BURDEN OF PROOF. HE'S GOT TO MAKE THAT SHOWING. IF HE DOESN'T MAKE THAT SHOWING, THEN HE'S NOT ENTITLED TO DNA TYPING. NOW, WHAT, THE RATIONALE BEHIND THE PROCESS IN KING IS SOMETHING I AM NOT PRIVY TOO, YOUR HONOR. I DO NOT KNOW THE RATIONALE BEHIND IT. AND I WILL HASTEN TO SAY I WAS NOT COUNSEL OF RECORD IN KING, NOR HAVE I READ THIS COURT'S OPINION.

LET ME ASK A PRACTICAL QUESTION. IF WE WERE TO ACCEPT THE DEFENDANT'S ARGUMENT AND REQUIRE THE STATE TO TEST ALL OF THESE ITEMS, FROM YOUR EXPERIENCE, HOW LONG ARE WE TALKING ABOUT? TO OBTAIN THE RESULTS?

LET ME THINK FOR A SECOND YOUR HONOR, AND I AM -- WHAT I'M TRYING TO DO IS TIE IT TO DUCKETTE, QUITE OBVIOUSLY I WILL ADD MATE I AM TRYING TO REMEMBER. THE TIMING ON DUCKET. IT APPEARS TO ME, OR IT SEEMS LIKE, BASED ON MY BEST MEMORY IS THAT WITHIN ABOUT 30 DAYS OF THIS COURT'S DIRECTIVE TO CONDUCT DNA TESTING IN THE DUCK IT CASE, AT THE 30 OR 45 DAY MARK, THAT MATERIAL, THE MATERIAL AT ISSUE HAD BEEN SENT TO THE FLORIDA DEPARTMENT OF LAW ENFORCEMENT AT THE ORLANDO REGIONAL LAB. THE TESTING IS STILL ONGOING. WE DO NOT YET HAVE A REPORT IN DUCKET.

HOW MANY ITEMS WERE WE TALKING ABOUT IN THAT PARTICULAR CASE? ARE WE TALKING ABOUT THE SAME KIND OF THINGS?

NO, MA'AM. WE ARE TALKING ABOUT SUBSTANTIALLY LESS ITEMS. IN DUCKIT ET. I BELIEVE WE WERE TALKING ABOUT CERTAINLY LESS THAN A DOZEN ITEMS. MY BEST RECOLLECTION.

THE ISSUE OF HOW LONG FDLE TAGS IN A GIVEN CASE, THE ACTUAL TESTING OF DNA OR DNA, THAT'S SOMETHING, I KNOW IN KING, THAT'S LIKE VERY QUICKLY.

SOMETIMES IT CAN AND SOMETIMES IT CAN'T BE YOUR HONOR, IS MY UNDERSTANDING OF IT.

ISN'T IT JUST A WORKLOAD ISSUE AS OPPOSED TO HOW LONG THE ACTUAL TEST TAKES?

NOT NECESSARILY, YOUR HONOR. MY UNDERSTANDING OF IT IS THAT WHILE FREQUENTLY IT IS A WORKLOAD ISSUE, I WILL ADMIT THAT. IT IS NOT ALWAYS A WORKLOAD ISSUE. IT SOMETIMES -- IT DEPENDS ON WHAT THE LABORATORY HAS TO DO TO GET THE GENETIC MATERIAL READY FOR TESTING. AND SOMETIMES THE EXTRACTION OF THE GENETIC MATERIAL FROM HOWEVER IT ARRIVED IN THEIR POSSESSION IS WHAT SLOWS THEM DOWN.

THAT'S WHERE THERE IS A VERY MINUTE QUANTITY OF WHATEVER WANTS TO BE TESTED. THEY HAD TO DO SOMETHING FURTHER. BUT ANYWAY, I GUESS -- MAY BE BESIDES THE POINT HERE HOW LONG SOMETHING TAKES. I THINK THESE QUESTIONS JUST, RAISE THIS ISSUE AS TO WELL, YOU KNOW, IT'S A FISHING EXPEDITION, MAYBE, WHAT'S THE HARM MAYBE? YOU KNOW WITH THE STATE IN CERTAIN CASES THINKS THAT IT'S EASIER TO GO AHEAD AND DO IT AND PREVENT THAT FROM EVER BEING RAISED AS AN ISSUE AGAIN, THOSE ARE I GUESS THOSE ARE DIFFERENT POLICY ISSUES THAT MAYBE AREN'T EMBODIED IN THE RULE BUT ARE PRACTICAL QUESTIONS.

THOSE ARE PRACTICAL ISSUES THAT COME UP WITH THIS YOUR HONOR.

WHAT ABOUT THE PRACTICAL ISSUE HERE OF, EVEN IF WE SAY HE HAS, SHOULD HAVE THE OPPORTUNITY TO TEST THESE ITEMS, WHAT DO WE DO ABOUT HIS REQUEST THAT THEY BE TESTED BY THIS LABORATORY IN MARYLAND? I BELIEVE IT'S IN MARYLAND? HOW DO WE HANDLE THAT PARTICULAR REQUEST BY THE DEFENDANT?

THAT WAS GOING TO BE MY NEXT COMMENT. YOU'RE A STEP AHEAD OF ME JUSTICE QUINCE. THE PROBLEM WITH THAT IS, ONCE THE EVIDENCE LEAVES THE POSSESSION OF THE STATE, I HAVE A NUMBER OF OF ISSUES THAT COME TO MIND AND A NUMBER OF CONCERNS. I MAY HAVE A COMPROMISED CHAIN OF CUSTODY OF EVIDENCE. I MAY HAVE AN ANALYST CONDUCTING THIS TESTING WHO DECIDES THAT THEY REALLY DON'T CARE TO COME TO FLORIDA AND TESTIFY. I MAY HAVE -- I CERTAINLY HAVE AN ANALYST WHO IS FOUR OR FIVE HUNDRED MILES AWAY FROM ME AND I WILL HAVE SIGNIFICANT ISSUES IN MAKING THAT PERSON COME TO TESTIFY IF IN FACT THE DNA TESTING THEY CONDUCT AND THE RESULTS ARE NOT FAVORABLE TO THE DEFENDANT, I HAVE THAT ISSUE GOING ON IN ANOTHER CASE RIGHT NOW WITH ANOTHER LAB IN THE SAME AREA THAT SELLMARK IS LOCATED IN. AGAIN, I HAVE PRACTICAL CONCERNS ABOUT THE EVIDENCE LEAVING THE STATE AND GOING TO A PRIVATE LABORATORY.

COUNSEL, WHAT'S THE STANDARD OF OUR REVIEW?

AS TO THE ISSUE BEFORE THIS COURT, WHICH IS WHETHER OR NOT THE TRIAL COURT PROPERLY DENIED THE MOTION FOR TESTING, I WOULD SUBMIT THAT IT IS ABUSIVE DISCRETION. AND I WOULD SUBMIT THE CIRCUIT COURT DID NOT ABUSE HIS DISCRETION IN DENYING THIS INSUFFICIENTLY PLED MOTION. IN CONCLUSION, I WOULD POINT OUT, THERE IS NO INDICATION THAT RICHARD HITCHCOCK WAS BLEEDING AT ALL. RICHARD HITCHCOCK WAS IN THE PRESENCE OF LAW ENFORCEMENT ON MORE THAN ONE OCCASION ON THE DAY OF THE VICTIM'S MURDER. THE VICTIM WAS NOTICED MISSING AT APPROXIMATELY 8:00 A.M.. AND WAS FOUND AT APPROXIMATELY 3:00 OR 3:30 P.M. THE SAME DAY. SHE WAS FOUND BY RICHARD HITCHCOCK, HER STEPFATHER, AND ANOTHER INDIVIDUAL WHOSE NAME I HAVE FORGOTTEN. THE FACT THAT THE VICTIM WAS MISSING WAS NOTED EARLY IN THE MORNING BY HER MOTHER AND LAW ENFORCEMENT RESPONDED PROMPTLY. THE MISSING PERSON REPORT WAS COMPLETED, A BOLO WAS PUT OUT AND THERE IS NO INDICATION ANYWHERE IN THIS RECORD THAT RICHARD HITCHCOCK WAS BLEEDING. IN CONCLUSION, I WOULD ASK THE COURT TO AFFIRM THE TRIAL

COURT'S DENIAL OF MR. HITCHCOCK'S MOTION FOR POST CONVICTION.

MAY I ASK A QUESTION? WAS THERE ANY EVIDENCE OF A STRUGGLE OUTSIDE -- I ASSUME IT WAS OUTSIDE THE HOME HERE WHERE THE DEFENDANT'S ARGUMENT NOW THERE WAS SOME VIOLENT STRUGGLE BETWEEN HE AND RICHARD. WAS THERE ANY EVIDENCE FOUND AT THE CRIME SCENE OF ANY VIOLENT STRUGGLE?

I DO NOT RECALL SPECIFICALLY ANY DIRECT TESTIMONY INDICATING AN EXTREMELY VIOLENT STRUGGLE HAVING TAKEN PLACE. WE HAVE -- I KNOW I'M ON YA'LL'S TIME NOW. WE HAVE BASICALLY A TWO PART CRIME SCENE IN THE HOUSE, AND THEN OUT BACK OF THE HOUSE, WHERE THE VICTIM APARTMENTS BODY WAS DISCOVERED. I DON'T RECALL THERE WAS TESTIMONY WHERE HER BODY WAS FOUND.

THANK YOU VERY MUCH. MR. HAR SHAL, HOW MUCH TIME LEFT ON REBUTTAL?

WOULD YOU SHOW US THE NEXUS? THIS WHOLE ARGUMENT IS ABOUT, YOU FAILED TO DRAW A NEXUS. WOULD YOU IN THE TIME, SOME TIME THAT YOU HAVE, ADDRESS WHAT THAT NEXUS IS? THAT WE ARE MISSING?

THE NEXUS IS THAT --.

YOU WILL HAVE TO TALK WITH EACH ITEM RATHER THAN GENERALITIES.

THE NEXUS IS JAMES HITCHCOCK TESTIFIED THAT HE DIDN'T COMMIT THIS OFFENSE. THE STATE ARGUED IN ITS CLOSING THAT RICHARD HITCHCOCK, OR JAMES HITCHCOCK SAID COMMITTED THIS MURDER, THAT HE WAS AN EYEWITNESS TO WAS NOT AT THAT CRIME SCENE. IF THERE IS -- IF RICHARD HITCHCOCK'S BLOOD IS AT THAT CRIME SCENE, CONTRARY TO WHAT THE STATE ARGUED TO THE JURY THAT CONVICTED MR. HITCHCOCK, JAMES HITCHCOCK IN 1977, THEN WE BELIEVE THAT'S A NEXUS. AND WE BELIEVE THAT'S EXONERATEIF. UNFORTUNATELY WE DON'T KNOW UNTIL WE TEST WHAT THESE ITEMS WOULD YIELD.

LET'S DO TALK ABOUT SPECIFICS. I MEAN SHOULD WE BE HERE IN THIS COURTROOM TODAY, AT THIS POINT IN THESE PROCEEDINGS, TALKING ABOUT A BROWN BELT OR A VIAL OF BLOOD AND OF COURSE, MAYBE YOU'RE GOING TO HELP US HERE AND NOT KNOWING, HAVING NO KNOWLEDGE OF THEIR CONNECTION TO THIS CRIME OR THEIR POTENTIAL TO YIELD SOME RESULTS UNDER DNA TESTING THAT MAY BE OF ASSISTANCE TO YOUR CLIENT? WHAT CAN YOU TELL US ABOUT THE BROWN BELT AND THE VIAL OF BLOOD?

WHAT I CAN TELL YOU IS THAT THE EVIDENCE AND IN THE SHORT PERIOD I HAD TO DO THIS MOTION, I CONTACTED BOTH THE CLERK'S OFFICE AND THE ORANGE COUNTY SHERIFF'S OFFICE. IF IT WAS THE CLERK'S OFFICE, IT WAS AT THE TRIAL. IF IT WAS THE ORANGE COUNTY SHERIFF'S, LAW ENFORCEMENT BELIEVED THAT EVIDENCE HAD AT LEAST SOME RELATION TO THE CASE THAT IT WAS IN FACT EVIDENCE. THEY DIDN'T JUST COLLECT ITEMS RANDOMLY. NOW THAT BELT -- I COULD ASK MR. HITCHCOCK, IF HI MORE TIME I PROBABLY WOULD HAVE WENT THROUGH EVERY ITEM. BUT.

WHEN WAS THIS MOTION FILED?

THIS MOTION WAS FILED ON DECEMBER 19, 2001. AFTER THE MOTION --.

2001. ALL RIGHT. HERE WE ARE TODAY, OKAY, WE ARE JUST A FEW MONTHS AWAY FROM DECEMBER OF 2003, AND WE STILL DON'T KNOW ANYTHING ABOUT THE BROWN BELT OR THE VIAL OF BLOOD.

WELL I DIDN'T KNOW -- THE VIAL OF BLOOD, THERE WAS BLOOD COLLECTED FROM JAMES

HITCHCOCK. WE KNOW THAT. THERE WAS NEVER BLOOD COLLECTED FROM RICHARD HITCHCOCK. AND THAT IF RICHARD HITCHCOCK HITCHCOCK --.

SO WE HAVE A VIAL OF BLOOD OF JAMES HITCHCOCK, APPARENTLY THERE. AND YOU WANT THAT VIAL OF BLOOD TESTED?

THAT'S TO GET, PART OF THAT WOULD HAVE BEEN TO GET THE STANDARDS. THAT SOME THINGS THAT ARE KNOWN. AND THEN THERE WOULD BE A PROFILE ON ALL THE DIFFERENT ITEMS AND WE COULD SEE HOW THEY MATCH UP.

WOULD YOU AGREE THAT THERE SHOULD BE A BURDEN ON THE PETITIONER IN A INDICATES LIKE -- CASE LIKE THIS TO DO THE ROAD MAP THAT I DESCRIBED BEFORE?

AND I BELIEVE TO THE EXTENT POSSIBLE IN THIS CASE, WE COMPLIED WITH THAT BURDEN.

SO YOU THINK THAT THERE HAS BEEN A ROAD MAP FOR THIS BROWN BELT AND THIS VIAL OF BLOOD AND SOME OF THESE OTHER THINGS?

WHEN YOU LINK THAT WITH THE INFORMATION THAT WE PROVIDED IN THE OTHER PARTS OF THE MOTION, ABOUT WHAT OUR THEORY OF THE CASE IS, WHAT WE WERE ATTEMPTING TO SHOW AND ALSO WHAT --.

SO TELL ME HOW THE BROWN BELT NOW IS LINKED TO ALL THIS STUFF.

IF JAMES HITCHCOCK, WEIGH SAID WAS TRUE AND HE DID IN FACT CARRY THE VICTIM AND SHE HAD RICHARD HITCHCOCK'S BLOOD ON HER AND BLOOD GOT ON THAT BELT.

WHOSE BELT IS IT?

WE BELIEVE IT TO BE JAMES HITCHCOCK. IT WAS TAKEN -- I DON'T KNOW FOR SURE TO BE HONEST WITH THE COURT. BUT.

WHAT WOULD YOU EXPECT TO FIND -- IF IT WAS JAMES HITCHCOCK'S BELT AND HE ALREADY AGREED THAT HE CARRIED THE BODY, THAT HE HAD SEX -- WHAT WOULD YOU EXPECT TO FIND ON THAT BELT?

THERE VERY WELL COULD BE THE DNA OF RICHARD HITCHCOCK. AND THAT WAS -- THERE WAS A NUMBER OF ITEMS. I WOULD CONCEDE THAT THE BELT ISN'T OUR MOST IMPORTANT ITEM WE WERE SEEKING A TEST. BUT I DON'T BELIEVE WHEN I DID THE MOTION IN MY MENTAL PROCESS I PICKED AND CHOSE. I PICKED ITEMS WHICH COULD POSSIBLY HAVE DNA ON IT. IF IT IS TESTED AND FOUND, DEPENDING ON WHOSE DNA IT IS, THAT WOULD DETERMINE REALLY THE NEXUS AT THAT TIME. BUT I REALLY COULDN'T UNTIL -- UNTIL WE WERE DENIED THE OPPORTUNITY TO EVEN TEST IT, OKAY, THEN WE WOULD KNOW WHETHER THERE IS RICHARD HITCHCOCK'S DNA ON THE BELT OR JAMES HITCHCOCK OR SIMPLY THE VICTIM.

THANK YOU VERY MUCH. THE COURT'S GOING TO TAKE ITS REGULAR MORNING RECESS OF 15 MINUTES AT THIS TIME. WE WILL BE IN RECESS FOR 15 MINUTES UNTIL WE HEAR THE NEXT CASE.

PLEASE RISE.