COURT WILL NOW MOVE TO THE
SECOND CASE ON TODAY'S DOCKET.
JACKSON V. THE STATE OF FLORIDA.
>> GOOD MORNING.
MAY IF I RESERVE FIVE MINUTES,
PLEASE?
>> CERTAINLY.
>> MAY IT PLEASE THE COURT, I'M
KARIN MOORE, AND THOMAS AND I
REPRESENT KIM JACKSON.
WE'RE HERE TODAY TO DISCUSS THE
GUILT PHASE ISSUES RAISED IN THE
APPEAL AFTER THE CIRCUIT COURT'S
DENIAL OF OUR MOTION FOR
POST-CONVICTION RELIEF.
THE CIRCUIT COURT OR FOUND
DEFICIENT CONDUCT BY TRIAL
COUNSEL ON THE HANDLING OF THE
DNA EVIDENCE IN THIS MURDER
TRIAL.
HOWEVER, THE COURT DID NOT FIND
THAT THE PREJUDICE ROSE TO THE
REQUIREMENT BY STRICKLAND.
THE--
[INAUDIBLE]
APPREHENDED OUR ARGUMENT ON
THIS, AND I'D LIKE TO TALK ABOUT
THE DNA EVIDENCE AND OTHER
ISSUES IN THE CASE.
THE CASE CONSISTED OF A HAIR
FOUND ON THE VICTIM'S LEG THAT
WAS DETERMINED TO BE A FULL
MARKER DNA MATCH WITH
MR. JACKSON, A FINGERPRINT IN
BLOOD ON THE LIP OF THE SINK AND
HIS DENIAL OF EVER HAVING BEEN
IN THE HOUSE OR KNOWN THE VICTIM
AS PIERCE.
THE HAIR ON THE VICTIM'S LEG,
THE DEFENSE TRIED TO ARGUE THAT
IT WAS INNOCENTLY TRANSFERRED,
AND IN JOA THEY ARGUED THAT IT
COULD HAVE BEEN COMING THROUGH
AN OPEN DOOR, PEOPLE A PASSING
BY, IT COULD HAVE HAPPENED IN
INNOCENT WAYS.
THE CIRCUIT COURT SAID GIVE ME A
REASONABLE REASON.
IF COUNSEL HAD RETAINED A DNA
EXPERT IN A TIMELY MANNER
INSTEAD OF ABOUT FIVE WEEKS OUT
FROM TRIAL AND HAD COUNSEL MET
WITH THE DNA EXPERT, HAD HER

EXAMINE ALL THE EVIDENCE IN THE CASE, THE DNA EXPERT COULD HAVE EXPLAINED THAT HAIR HAS SUCH A LOW PRIORITY LEVEL IN TESTING IN THE DNA LABS BECAUSE IT IS SO EASILY TRANSFERRED.
AND THE DNA EXPERT COULD HAVE EXPLAINED TO THE COURT AND MOST IMPORTANTLY THE JURY THAT THE HAIR COULD HAVE BEEN THERE QUITE INNOCENTLY.
>> COUNSEL, COUNSEL, CAN I-- I'M GOING TO ASK A QUESTION ABOUT THAT.
>> SURE.
>> IT'S MY UNDERSTANDING KIND OF LOOKING BACK AT THE TRANSCRIPT OF THAT HEARING THAT YOUR EXPERTS IN THE POST-CONVICTION PHASE DID NOT REFUTE ANY SORT OF CLAIM FROM THE ORIGINAL TRIAL REGARDING THE 34 NANOGRAMS THAT WAS ON THAT HAIR.
IS THERE ANYTHING THAT I MISSED, ANYTHING IN THE TRANSCRIPT IN WHICH YOUR EXPERT SAID NATURALLY-SHED HAIR CAN RESULT IN THIS MANY NANOGRAMS OF DNA BEING IN A HAIR VERSUS SOMETHING THAT'S NOT NATURALLY SHED?
>> MY EXPERT SAID THAT SHE HAD OBTAINED A FULL MARKER PROFILE FROM A NATURALLY-SHED HAIR.
AND THE DNA ANALYST SAID SHE HAD, I BELIEVE, BETWEEN 30 AND 35 NANOGRAMS IN THE SAMPLE FROM THIS HAIR.
MY EXPERT ALSO SAID THAT AT THE TIME OF THE TESTING-- THE STUDY WAS DONE IN 2001 WHICH COUNSEL WASN'T AWARE OF.
BUT IN 2006 WHEN THIS TESTING WAS DONE, A FULL MARKER PROFILE COULD BE OBTAINED FROM A SINGLE NANOGRAM.
AND A NANOGRAM'S A BILLIONTH OF A GRAM, SO WE'RE TALKING ABOUT INCREDIBLY MINUTE, NOT VISIBLE TO THE NAKED EYE EVEN.
SO SHE'S TALKING, MS. CLARK IS TALKING ABOUT 30-35, AND MY EXPERT IS TALKING ABOUT 1-10 NANOGRAMS.
SO IN THE SCHEME OF THINGS,

WE'RE TALKING ABOUT A DIFFERENCE
OF 20 BILLIONTHS OF A GRAM, AND
IT'S NOT MUCH.
THE WHOLE POINT OF THIS IS--
AND WE DIDN'T ARGUE THAT THIS
WASN'T KIM JACKSON'S HAIR.
MR. JACKSON HAD TESTIFIED THAT
HE'D BEEN IN THE HOUSE.
HE'D MOVED A COUCH, AND HE'D
BEEN UP UNDER THE SINK REPAIRING
THE GARBAGE DISPOSAL.
SO WHAT THE ARGUMENT WAS THIS
HAIR COULD HAVE BEEN THERE AND
EASILY TRANSFERRED.
BUT THE CIRCUIT COURT DID NOT
ACCEPT THAT ARGUMENT AND WAS
RATHER DISMISSIVE OF THE
ARGUMENT BY COUNSEL AT JOA.
SO WE DIDN'T ARGUE IT WASN'T HIS
HAIR, WE WERE SAYING THAT IT
COULD HAVE BEEN NATURALLY SHED
BASED ON OUR EXPERT'S OWN
EXPERIENCE AND BASED ON THE FACT
THAT YOU COULD GET A FULL MARKER
PROFILE FROM A SINGLE NANOGRAM,
A SINGLE, YOU KNOW, BILLIONTH OF
A GRAM.
>> DID YOUR EXPERT SAY THAT THAT
HAIR WITH THE 34 NANOGRAMS COULD
HAVE BEEN NATURALLY SHED?
>> YES, SHE DID.
SHE DID.
BUT THE HAIR ISN'T THE WORST
PART OF THIS.
THE WORST PART OF THIS IS, WELL,
THERE'S ANOTHER HAIR THAT'S BAD,
BUT THE WORST PART IS, IS THAT
THE STATE PUT ON DETECTIVE
WALDRUP IN REBUTTAL TO STATE
THAT THE VICTIM'S VAN WAS FOUND
ON THE SAME ROAD WHERE THE
DEFENDANT LIVED ABOUT A MILE,
MILE AND A HALF DOWN.
AND IN CLOSING, THE STATE
ARGUED, WELL, YOU KNOW, THERE'S
THE VAN, THE VICTIM'S VAN,
THERE'S HER BLOOD, THERE'S A
MIXTURE THERE.
THE DNA ANALYST SAYS THAT THE
DEFENDANT MATCHES AT A COUPLE OF
THOSE MARKERS.
AND THE POINT WAS TO PUT THE VAN
CLOSE TO THE DEFENDANT'S HOME.
CHESTER NARVELLE, THE FRIEND OF

THE VICTIM WHO FOUND HER BODY
BUT HAD NOTICED HER CAR GONE A
COUPLE OF DAYS BEFORE, THAT WAS
IMPORTANT BECAUSE THE STATE
ARGUED THAT THE VAN WENT MISSING
AT THE TIME OF THE MURDER AND
THEY CONNECTED MR. JACKSON TO
THE VAN WITH THIS EVIDENCE OF HE
CANNOT BE EXCLUDED.
HOWEVER, THE REPORT THAT WAS
VETTED BY FDLE BY ANOTHER
EXAMINER AND A TECHNICAL
EXAMINER AND AS CLARK THAT
TESTIFIED THAT EVERY WORD SHE
WROTE, EVERY TEST SHE DID WAS
REVIEWED, THE PROBLEM IS THAT
SHE SAID I COULD NOT DETERMINE
THE PROFILE OF THE MINOR DONOR.
HAD COUNSEL HAD A DNA EXPERT
THERE, THE DNA EXPERT COULD HAVE
EXPLAIN TO COUNSEL, LOOK, SHE'S
JUST TESTIFIED BEYOND HER
REPORT.
AND NOT ONLY THAT-- AND THE TWO
EXPERTS WE CALL WERE BOTH FORMER
FDLE EXAMINERS, AND THEY HAVE
GUIDELINES.
AND THEY CANNOT INCLUDE AN
ALLELE OR A PEAK THAT'S BELOW A
THRESHOLD.
THEY CAN EXCLUDE FOR THAT
BECAUSE THE POWER IS EXCLUSION,
BUT THEY CANNOT INCLUDE.
AND WHEN SHE SAID I CANNOT
EXCLUDE MR. JACKSON AT THE Y
MARKER OR AT TWO OTHERS WHICH
CAME UP ON CROSS AND THEN ON
REDIRECT, SHE WAS SAYING I CAN
INCLUDE HIM.
AND THAT WAS VERY CRITICAL
EVIDENCE FOR THE STATE BECAUSE
THE STATE WANTED TO PUT
MR. JACKSON IN THAT VAN.
THE STATE HAD A PROBLEM.
THERE WAS A THIRD HAIR THAT WAS
FOUND IN THE VICTIM'S HAND.
THEY BAGGED HER HANDS AT SCENE
TO PRESERVE EVIDENCE.
THERE WAS A THIRD HAIR THAT HAD
AN EXTRA ALLELE.
MAJOR DONOR, AGAIN, WAS
MS. PIERCE.
BUT THERE WAS A MINOR DONOR, AN
ALLELE, THAT DID NOT MATCH

MR. JACKSON.
ADD THAT TO THE FACT THAT THE DNA ON THE TIP OF THE KNIFE THAT MS. PIERCE WIELDED HAD DNA FROM AT LEAST ONE MALE, MAYBE TWO, THAT MR. JACKSON WAS EXCLUDED FROM, AND THEN YOU'VE GOT A REAL REASONABLE DOUBT ARGUMENT.
AND THE PROBLEM IS, IS COUNSEL DID NOT EVEN TALK TO THE DNA EXPERT THEY RETAINED UNTIL THE DAY BEFORE TRIAL WHEN SHE HAD NOT EVEN COMPLETED HER EXAMINATION.
THEY HAD NO INTENTION OF CALLING HER AT TRIAL, THEY WERE JUST CHECKING A BOX.
THE DNA EXPERT, SHE COULDN'T HELP.
SO IT WAS DEFICIENT CONDUCT, THE COURT FOUND THAT, BUT IT WAS ALSO VERY, VERY HARMFUL BECAUSE THE DEFENSE COULD HAVE REBUTTED THE DNA EXPERT'S TESTIMONY THAT THIS WAS, YOU KNOW, JACKSON'S DNA IN THE VAN THAT WAS STOLEN THE NIGHT SHE WAS MURDERED AND FOUND NEAR HIS HOME AND ALSO EXCLUDED HIM BECAUSE OUR EXPERT SAID, LOOK, YOU CAN GO BELOW THE THRESHOLD TO EXCLUDE IF YOU BELIEVE THAT IT'S THE PEAK.
IF IT'S A PEAK.
AND MS. ZOLEGER EXCLUDED MR. JACKSON AT THE MARKER AND, I THINK, ONE OTHER.
SO THIS WAS IMPORTANT.
AND IT COULD HAVE PASSED OUT ON HER OTHER TESTIMONY, FRANKLY.
AND IT'S CONCERNING, AGAIN, I MEAN, SHE DIDN'T DO OTHER THINGS.
SHE DIDN'T RUN THE SECOND REQUIRED TEST OF THE COFILER.
SHE SAID SHE'D FOLLOWED ALL THE RULES, BUT SHE DIDN'T.
SO, YOU KNOW, IT COULD HAVE CAST DOUBT ON, DOUBT ON THE FACT THAT THIS WAS A FORCEFULLY SHE WOULD HAIR HAD DNA EXPERT BEEN AVAILABLE, HAD THEY UTILIZED THIS EXPERT.
AND WHEN I ASKED MR. PATE AT THE EVIDENTIARY HEARING, YOU KNOW,

COULD A DNA EXPERT HELP EXPLAIN
TO YOU THE EASE OF TRANSFER OF
HAIR OR THE LOW VALUE OF TESTING
HAIR AT A CRIME SCENE, HE SAID,
WELL, I DON'T KNOW IF SHE KNEW
ABOUT IT.
HE OBVIOUSLY DIDN'T KNOW ABOUT
IT.
SO, YOU KNOW, THE COURT AND THE
STATE ARGUE, WELL, YOU KNOW,
IT'S NOT-- WE'LL EXCUSE THIS
BECAUSE, YOU KNOW, MAYBE HE
DIDN'T WANT TO BRING UP
SOMETHING ON CROSS WHEN THEY
WERE GETTING SOME GOOD
INFORMATION FROM HER.
BUT THEY DIDN'T EVEN KNOW ABOUT
IT.
SO THAT CAN'T BE A VALID
STRATEGY.
THEY DIDN'T KNOW ABOUT THAT.
SO THE DNA WAS HUGE, AND THE DNA
EVIDENCE IS VERY DAUNTING.
YOU HAVE TO STUDY IT.
IN THIS CASE THE FIRST DEFENSE
TEAM REQUESTED THE LAB NOTES,
YOU KNOW, SOMETHING BEYOND THE
MERE REPORT, THE ELECTRONIC DATA
IN JANUARY OF 2010, AND IT WAS
ORDERED DISCLOSED IN JANUARY OF
2010.
WHEN MR. PATE HIRED THIS EXPERT,
HE SENT HER THE LATENT PRINT
REPORTS TWO DIFFERENT TIMES, AND
IT WASN'T UNTIL APRIL 4TH-- AND
WE'RE 11 DAYS OUT FROM THE
TRIAL-- WHEN HE FINALLY GETS
THE RECORDS THAT HIS EXPERT HAD
REQUESTED.
AND HIS EXPERT SAID, YOU KNOW,
AGAIN, IT WAS WRONG FOR
MS. CLARK TO TESTIFY THE
THRESHOLD TO INCLUDE MR. JACKSON
IN THE BLOOD ON THE STEERING
COVER.
LET ME TALK ABOUT THE ALIBI,
BECAUSE THE JURY CAME BACK WITH
A QUESTION ABOUT THE ALIBI--
>> I'M SORRY.
I WAS GOING TO ASK YOU ABOUT THE
OTHER FINGERPRINT, THE
FINGERPRINT--
>> SURE.
>> YOU CAN DO ALIBI FIRST OR

SINCE WE'RE ON THE SUBJECT OF
FINGERPRINTS, WOULD YOU LIKE TO
DO THAT?
>> I CAN TALK ABOUT THE
FINGERPRINT.
>> OKAY.
LET ME, LET ME HEAR WHAT YOU
HAVE TO SAY ABOUT ISSUE 2,
PLEASE.
>> THE FINGERPRINT.
A COUPLE OF THINGS.
THE DEFENSE COUNSEL OPENS IN ITS
OPENING STATEMENT AND SAYS,
LOOK, YOU'RE GOING TO HEAR THAT
THIS FINGERPRINT IS NOT OF VALUE
FOR COMPARISON PURPOSES.
AND IN THE LITERAL NEXT BREATH
SAYS, BUT IT'S HER FINGERPRINT.
THEN HE CALLS THE WITNESS IN HIS
CASE.
AND, AGAIN, HE HAS HER TESTIFY
THAT THE PRINT IS NOT OF VALUE
FOR COMPARISON PURPOSES.
ON CROSS-EXAMINATION THAT
WITNESS BECOMES ANOTHER STATE
WITNESS BECAUSE THE STATE ASKS
THE WITNESS TO LOOK AT THE
SIDE-BY-SIDE PHOTOS THAT HAVE
BEEN ENHANCED SINCE SHE LAST
VIEWED THEM, AND NOW SHE CANNOT
EXCLUDE MR. JACKSON FROM THAT.
THE STATE PUT IT BEST IN
CLOSING, THAT IT WAS THE MOST
WILDLY CONFUSING THING.
WAS IT NOT OF VALUE OR WAS IT
HIS PRINT?
AND OTHER BAD EVIDENCE CAME FROM
THAT.
THE STATE THEN DID THE REVERSE
VOUCHING, SAID I KNOW THIS
EXAMINER, AND SHE'S A GREAT
WOMAN, BUT SHE'S JUST DEAD WRONG
ON THIS AND INTIMATED THAT HE
HAD, YOU KNOW, INFORMATION
OUTSIDE THE RECORD ABOUT HER AND
WHY SHE SHOULDN'T BE BELIEVED.
AND THIS COURT HAD A PROBLEM
WITH THAT ON THE DIRECT APPEAL.
AND THE FACT THAT THE PRINT IS
THERE, MR. JACKSON ADMITTED
BEING IN THE HOME.
HIS PRINT WAS THERE.
I'M NOT CONTESTING THAT IT
WASN'T HIS PRINT, BUT IT DOESN'T

MEAN THAT HE KILLED THIS WOMAN.
YOU KNOW, THERE'S MORE PROOF
THAT THE DNA FROM THE UNKNOWN
PEOPLE ON THE BUSINESS END OF
THE VICTIM'S KNIFE KILLED HER
THAN ANYTHING ELSE.
SO--
>> BUT, COUNSEL, IT WASN'T JUST
A FINGERPRINT.
IT WAS--
>> IT WAS A FINGERPRINT IN
BLOOD.
>> AND WASN'T THERE, I MEAN,
THERE WAS TESTIMONY THAT THAT IS
NOT JUST-- BLOOD DOESN'T JUST
APPEAR ON FINGERPRINTS.
IT'S USUALLY MADE WITH THE BLOOD
BY FINGERPRINT, BLOOD ON THE
FINGER--
>> I'M SORRY, I DIDN'T MEAN--
>> NO, THAT'S OKAY.
>> THE FBI AGENT SAID SHE'D
NEVER SEEN IT, BUT IT WAS
POSSIBLE.
BUT IT COULD BE THAT MR. JACKSON
WAS AT THE SCENE AT SOME OTHER
TIME, EVEN AFTER, AND TOUCHED
THAT.
BUT IT DOESN'T MEAN THAT HE
KILLED HER.
IT DOES NOT MEAN THAT.
AND THERE'S MORE EVIDENCE THE
THIRD ALLELE OF, YOU KNOW, THE
STATE DESCRIBED THE VIOLENT
STRUGGLE WITH PULLING.
THERE'S A HAIR IN HER HAND THAT
HAS AN ALLELE.
IT'S NOT HERS AND IT'S NOT
MR. JACKSON'S.
SAME THING WITH THE KNIFE THAT
SHE WIELDED.
SO IT WAS IMPORTANT.
AND THE DEFENSE, THE DEFENSE WAS
SO DISJOINTED, IT ARGUED
CONTRADICTORY THEORIES, AND IT
WAS CONFUSING.
AND IT WAS WILDLY CONFUSING.
LET ME GO TO THE ALIBI.
THE JURY CAME BACK--
[INAUDIBLE]
AND COUNSEL HAD ADVISED THEIR
WITNESSES NOT TO TELL THE JURY
THAT THE REASON THEY BELIEVED
THAT THIS WAS MR. JACKSON'S, YOU

KNOW, WEEKEND UP ABOUT HIS
BIRTHDAY WAS BECAUSE THAT WAS
THE LAST BIRTHDAY THEY SAW HIM
AS A FREE MAN.
SO AT THAT POINT IN TIME, THE
MURDER OCCURRED IN 2004 AND THE
TRIAL'S IN APRIL.
SO THIS ALIBI IS ALREADY NINE
YEARS OLD, AND IT'S VERY STALE.
AND THESE WITNESSES, FRIENDS,
FAMILY WERE PREDICTABLY
IMPEACHED WITH THEIR AFFECTION
FOR MR. JACKSON AND THEIR
UNCERTAINTY ABOUT THE TIME.
BUT IF COUNSEL HAD SPENT ANY
TIME WITH PENNY WILLIAMS, THEY
WOULD HAVE LEARNED THAT
MS. WILLIAMS, MR. JACKSON'S
SISTER, HAD VERY UNIQUE,
PERSONAL REASONS TO REMEMBER
THIS DATE.
SHORTLY AFTER HER BROTHER LEFT
FROM HIS BIRTHDAY CELEBRATION IN
ADEL, GEORGIA, SHE LOST HER JOB.
SHE HAD THREE KIDS.
AND IT WAS THE FIRST CHRISTMAS
SHE HAD NOT BEEN ABLE TO PROVIDE
GIVES FOR THEM.
SHE WAS EMBARRASSED THAT SHE HAD
TO ASK HER FATHER FOR HELP FOR
GIFTS.
SHE ALSO MET HER FUTURE HUSBAND
A COUPLE OF MONTHS LATER, IN
FEBRUARY OF 2005, AND SHE
MARRIED HIM IN APRIL OF 2005.
AND THOSE ARE DATES THAT SHE
KNOWS.
THEY'RE VERY UNIQUE TO HER AND
VERY PERSONAL TO HER AND TO HER
HUSBAND.
AND THAT WAS NEVER DEVELOPED.
SO YOU HAVE THIS VERY VAGUE
RECOLLECTION OF SOMETHING THAT
HAPPENED NINE YEARS EARLIER
AROUND HIS BIRTHDAY.
THE OTHER PROBLEM WITH THE ALIBI
TESTIMONY PROVIDED WAS THAT THE
DEBORAH JACKSON, KIM JACKSON'S
WIFE, TESTIFIED.
AND FIRST QUESTION ON
CROSS-EXAMINATION HAVE YOU EVER
BEEN CONVICTED OF A CRIME
INVOLVING DISHONESTY, AND SHE
SAID, YES.

AT THE EVIDENTIARY HEARING, I ASKED MR. PERKINS WHO CONDUCTED THE DIRECT ON HER, I SAID WHY DIDN'T YOU GET UP THERE AND EXPLAIN THE CIRCUMSTANCES BEHIND THIS WORTHLESS CHECK?
AND HE SAID, WELL, I COULD HAVE. THERE WAS NO REASON NOT TO DO THAT.
SO THERE'S NO VALID STRATEGY CALL THERE.
BUT HE COULD HAVE CONDUCTED A REDIRECT EXAMINATION AND ASKED HER WHAT HAPPENED WITH THIS CHECK.
IT WAS A SINGLE CHECK FOR ABOUT $50.
IT WAS 20 YEARS BEFORE HER TESTIMONY, AND SHE--
>> COUNSEL, I JUST WANT YOU TO BE AWARE YOU ARE CONSUMING YOUR REBUTTAL TIME HERE.
>> ANYWAY, SHE WAS A COMPELLING WITNESS.
SHE COULD HAVE EXPLAINED THAT SHE HAD JUST MISSED THIS.
SHE'D HAD A CHILD.
AND THE JURY HAD VERY MUCH INTEREST IN THAT ALIBI DEFENSE.
THEY WERE CONSIDERING IT.
THEY WANTED TO KNOW ABOUT IT, AND THEY WANTED THAT TESTIMONY READ AGAIN.
I'LL RESERVE THE REMAINDER OF MY REBUTTAL TIME.
THANK YOU.
>> MAY IT PLEASE THE COURT, MY NAME IS JASON RODRIGUEZ, ASSISTANT DISTRICT ATTORNEY GENERAL FOR THE STATE OF FLORIDA.
IN MY TIME BEFORE THE COURT, I'LL EXPLAIN WHY THE POST-CONVICTION COURT CORRECTLY DENIED JACKSON'S 3851 INITIAL MOTION.
BEFORE REACHING THE SUBSTANCE OF ANYTHING, I DID WANT TO ADDRESS JUSTICE GROSSHANS' QUESTION REGARDING THE 34 NANOGRAMS OF DNA, AND AT NO POINT DID ANY TESTIMONY COME OUT THAT A NATURALLY-SHED HAIR COULD CONTROL 34 NANOGRAMS OF DNA.

THE TESTIMONY WAS THAT 1-10 NANOGRAMS COULD COME FROM A NATURALLY-SHED HAIR.
THAT WAS FROM THEIR EXPERT, AND MS. CLARK AGREED.
IF THIS COURT IS MORE INTERESTED IN THAT ISSUE, THE RECORD CITES FOR THAT ARE PAGES 2,391-98, I BELIEVE THAT'S THEIR EXPERT TESTIFYING.
THEN REGARDING THE 34 BEING BEYOND WHAT A NATURALLY-SHED HAIR WOULD HAVE CONTAINED, RECORD AT PAGE 2,446, 2,489 AND 2,519-21.
THERE WAS NO DISPUTE THAT A NATURALLY-SHED HAIR COULD NOT CONTAIN THAT AMOUNT OF DNA.
IF IT WAS NATURALLY SHED, IT HAD 1-10 NANOGRAMS, AND AS CLARK SAYS THAT'S ON THE HIGH END.
34 NANOGRAMS IS NOT IN THAT RANGE.
REGARDING THE REMAINDER OF THE ARGUMENTS THAT WERE PRESENTED HERE, I DID WANT TO FOCUS THE COURT ON TWO LEGAL PRINCIPLES AT THE OUTSET.
THE FIRST ONE I THINK IS PROBABLY BEST PUT BY THE CASE OF PUTNAM CITED IN THE BRIEF, AND THAT'S IF THE RECORD IS UNCLEAR OR INCOMPLETE ABOUT WHY COUNSEL TOOK THE ACTIONS HE TOOK, THAT'S WHEN THE PRESUMPTION OF INCOMPETENCE ATTACHES.
THE 11TH CIRCUIT WENT ON TO SAY THE PRESUMPTION IS NOT WHEN A PARTICULAR DEFENSE COUNSEL IN REALITY FOCUSED ON AND DELIBERATELY DECIDED TO DO OR DO.
RATHER, THE PRESUMPTION IS THAT WHAT THE PARTICULAR DEFENSE LAWYER DID AT TRIAL-- FOR EXAMPLE, WHAT WITNESSES HE PRESENTED OR DID NOT PRESENT-- WERE ACTS THAT SOME REASONABLE LAWYER MIGHT DO.
THAT'S WHY WHEN IT IS UNCLEAR WHY COUNSEL TOOK THE ACTION HE DID BELOW, COUNSEL SAYS A COUPLE TIMES I DON'T REMEMBER WHY I DIDN'T REDIRECT DEBORAH JACKSON,

I DON'T REMEMBER WHY I DIDN'T BRING THIS UP FROM PENNY WILLIAMS, THIS COURT IS REQUIRED TO UNDER THE 6TH AMENDMENT AND UNDER STRICKLAND TO INDULGE IN INCOMPETENCE.
IF THEY COULD, THAT'S THE END OF THE INQUIRY.
>> WHAT ABOUT THE EVIDENCE THAT THERE WAS DNA FROM TWO OTHER PEOPLE ON THE TIP OF THE KNIFE?
>> WELL, YOUR HONOR, THAT WAS ACTUALLY BROUGHT OUT BY COUNSEL ON THE-- AS FAR AS THE POCKET KNIFE THAT WAS FOUND BENEATH JACKSON-- SORRY, MY APOLOGIES, THE VICTIM, THAT POCKET KNIFE WAS FOUND BENEATH HER, AND THAT WAS THE EVIDENCE THAT JACKSON'S TRIAL COUNSEL ARGUED AND SAID THAT WAS THE BEST EVIDENCE I COULD HOPE FOR.
THE STATE'S EXPERT IS TELLING ME THAT THERE IS DNA THAT MATCHES NEITHER JACKSON NOR THE VICTIM FOUND ON A POCKET KNIFE BENEATH HER.
>> WAS THAT USED EXTENSIVELY IN CLOSING?
>> YES, YOUR HONOR.
JACKSON'S COUNSEL ARGUED THAT THIS WAS THE PERSON THAT DID IT AND SAID MAYBE IT WAS THE PEOPLE THAT CAME IN AFTERWARDS THAT WERE LOOTING THE HOUSE.
BUT, YES, THAT WAS ARGUED IN CLOSING.
THAT WAS JACKSON'S THEORY OF THE CASE.
>> SO WHAT WOULD YOU CONSIDER TO BE THE BEST EVIDENCE THERE IS TO SUPPORT THE STATE'S POSITION THAT THIS DEFENDANT DID IT?
>> THE BLOODY FINGERPRINT.
BECAUSE PARTICULARLY, AND THIS IS NOTED ON DIRECT APPEAL AS IT RECITED THE FACTS THAT ALTHOUGH THE FBI EXPERT SAID SHE'D NEVER SEEN IT BUT IT WAS POSSIBLE, I BELIEVE IT WAS WILLIAM-- [INAUDIBLE]
CONCLUDED THE SAME FINGERPRINT MATCHED THE RING FINGER OF JACKSON, AND THE FINGERPRINT WAS

LEFT ON THE SINK WHILE JACKSON'S
FINGER WAS COATED IN A WET
SUBSTANCE SUCH AS BLOOD.
THIS WAS NOT THE SITUATION WHERE
HE WAS THERE A COUPLE MONTHS
BEFORE AND LATER LEFT A
FINGERPRINT COATED IN BLOOD, HE
TOUCHED THAT SINK WHILE HIS
FINGER WAS COATED IN BLOOD.
HIS DENIAL THAT HE'D EVER BEEN
IN HER HOUSE WHICH WAS THE FIRST
THING HE TOLD INVESTIGATORS WHEN
THEY WENT TO SPEAK WITH HIM.
THE SECOND PRINCIPLE THAT I DO
WANT TO DIRECT THIS COURT TO IS
A 3851 MOTION DESCRIBES WHAT WE
DISCUSSED AT THE TRIAL, AND
PENNY WILLIAMS IS NOT MENTIONED
IN THE 3851 MOTION.
HER TESTIMONY IS NOT MENTIONED
IN THE 3851 MOTION.
AND SO THERE CAN BE NO CLAIM
THAT IS PROPERLY PRESENTED TO
THIS COURT REGARDING WHAT SHE
SAID OR DID NOT SAY.
THIS COURT IS BOUND AND HAS
RECOGNIZED ON MULTIPLE OCCASIONS
IF IT'S NOT IN THE 3851 MOTION,
WE DON'T CONSIDER IT.
SO WITH THOSE CLAIMS IN MIND, I
DID WANT TO PROCEED MORE
DIRECTLY OR THOSE PRINCIPLES IN
MIND TO TALK ABOUT THE SPECIFIC
ISSUES IN THIS CASE, FIRST BEING
THE BLOOD ON THE STEERING WHEEL
AND THIS MISPERCEPTION OR
MISTAKEN STATEMENT THAT BY
SAYING THAT THERE'S POTENTIAL
MALE DNA THERE, THAT SHE
TESTIFIED SHE COULD INCLUDE HIM.
THE TESTIMONY WAS VERY CLEAR
THAT THE RESULTS OF HER TESTING
REGARDING THE MINOR DONOR OF THE
DNA ON THE STEERING WHEEL WAS
INCONCLUSIVE, AND THE TRIAL
COURT RECOGNIZED THAT.
IN CLOSING THE STATE SAID CLARK
CAN'T EVEN SAY IF IT'S MALE OR
NOT.
THERE WAS NO REMOTE INDICATION
IN CLARK'S TESTIMONY THAT SHE
COULD INCLUDE JACKSON BY HER
STATEMENTS.
SHE WAS FIRM ALL THROUGHOUT.

THAT IS AN INCONCLUSIVE PIECE OF DNA.
I CANNOT UTILIZE IT, INCLUDE OR EXCLUDE IT.
AND CLARK ALSO MENTIONED THAT THE MODERN WAY THAT FDLE IS SHIFTING THE TESTING THAT WE DON'T USE WHAT'S NOTED AS-- [INAUDIBLE]
WHERE IT'S EXCLUDED FOR A LOWER THRESHOLD THAN WE WOULD INCLUDE.
THE SAME ANALYSIS ON BOTH FRONTS.
REGARDING THE ALLELE THAT THEIR EXPERT USED TO EXCLUDE HIM, CLARK TESTIFIED IT WAS IN THE STUTTER POSITION, I WOULDN'T HAVE USED IT.
SO WE HAD A SITUATION WHERE WHAT COUNSEL WOULD HAVE FOUND WOULD HAVE BEEN DISPUTED EVIDENCE WHETHER HE COULD BE EXCLUDED OR WHETHER THE RESULTS OF THE BLOOD ON THE STEERING WHEEL WERE INCONCLUSIVE.
AND THAT'S IMPORTANT BECAUSE COUNSEL HAD A SPECIFICALLY ARTICULATED STRATEGY IN THE RECORD ON PAGES 2,312-15, AND THAT STRATEGY WAS I'M NOT GOING TO ATTACK WHAT CLARK DOES AS FAR AS HER TESTING BECAUSE SHE HAS GIVEN ME THE BEST PIECE OF INFORMATION I COULD HAVE, SOMEONE ELSE'S DNA ON THAT POCKET KNIFE.
SO TO THE EXTENT POST-CONVICTION JACKSON IS CLAIMING COUNSEL SHOULD HAVE DONE ALL OF THESE OTHER STEPS THAT WOULD HAVE DIRECTLY GONE AGAINST THE STRATEGY AND THE REASONABLE STRATEGY THAT HE HAD, HIS INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM FAILS.
REGARDING THE EASE OF HAIR TRANSFERENCE, THIS BEARS REALLY NO GREATER MENTION.
THE OTHER DNA PIECE OF EVIDENCE WAS WHAT WAS TERMED INCORRECT TESTIMONY FROM CLARK REGARDING THE HAIR THAT HATCHED NEITHER JACKSON OR THE VICTIM ACCORDING TO POST-CONVICTION COUNSEL.

CLARK TALKED ABOUT THIS HAIR.
THERE WERE TEN HAIRS APPARENTLY FOUND IN THE VICTIM'S HAND, ALL OF THEM MATCHED THE VICTIM EXCEPT FOR ONE, AND THAT'S UNDISPUTED.
THERE IS ONE THAT IS A DISPUTED HAIR THAT CONTAINS A SINGULAR ALLELE THAT THEIR EXPERT SAID MATCHES NEITHER JACKSON NOR THE VICTIM, SO THE POSTULATION IS THAT BELONGED TO SOME OTHER PARTY.
THE ISSUE WAS, AGAIN, THIS WOULD HAVE BEEN DISPUTED AT TRIAL.
CLARK IN HER TESTIMONY SAID THIS ALLELE IS A MUTATION THE, IT'S NOT AN UNCOMMON OCCURRENCE, AND ALL OF THE OTHER HAIRS THAT LOOKED ALIKE, THERE WAS NO WAY TO DISTINGUISH SO IN REVIEWING EVERYTHING, I LABELED THIS INCONCLUSIVE BECAUSE I KNOW ABOUT THIS PHENOMENON.
THAT'S WHAT I WOULD HAVE TOLD TO THE JURY.
SO WE AGAIN HAVE A SITUATION WHERE COUNSEL COULD HAVE GONE AGAINST HIS STRATEGY, CREATED A BATTLE OF THE EXPERTS ON THIS HAIR, OR HE COULD HAVE DONE THE MORE REASONABLE THINGS WHICH IS FOCUS ON THE POCKET KNIFE BENEATH VICTIM THAT HAD DNA THAT NO ONE DISPUTED BELONGED TO SOMEONE OTHER THAN JACKSON OR THE VICTIM.
VERY BRIEFLY ON THIS ISSUE, THE TRIAL COURT MADE A VERY GENERALIZED FINDING OF DEFICIENT PERFORMANCE THAT SEEMED TO BE BASED ON A FRUSTRATION WITH THE DEFENSE COUNSEL THAT THEY DID NOT CONTACT A DNA EXPERT SOONER.
THIS COURT OWES THE TRIAL COURT NO DEFERENCE WHEN IT COMES TO A DETERMINATION OF DEFICIENT PERFORMANCE.
THAT IS REVIEWED DE NOVO.
THE UNDERLYING FACTS ARE FOR COMPETENT, STABLE EVIDENCE.
AND THERE IS NO 6TH AMENDMENT TIME FRAME THAT REQUIRES ANY DEFENSE COUNSEL TO CONTACT A

WITNESS WITHIN A GIVEN POINT OF TIME, AND THAT APPEARS TO BE WHAT THE TRIAL COURT'S FRUSTRATION WAS.
COUNSEL DID, INDEED, CONTACT DEFENSE WITNESS ON THE EVE OF TRIAL, GAVE HER THE EVIDENCE THAT WAS-- INCORRECTLY GAVE HER THE EVIDENCE ON ONE OCCASION.
BUT HER ENDING RESULT WAS I FOUND ONE PIECE OF IMPORTANT EVIDENCE.
DNA ON THE POCKET KNIFE COUNSEL ALREADY KNEW ABOUT.
COUNSEL DIDN'T DEFICIENTLY PERFORM BY, IN FACT, CONSULTING A DNA EXPERT WHO WAS OF NO HELP TO HIM REGARDING HIS STRATEGY AND TOLD HIM WHAT HE ALREADY KNEW.
THERE IS NO 6TH AMENDMENT CLOCK THAT SUDDENLY STOPS AND REQUIRES COUNSEL TO PERFORM THINGS IN A CERTAIN WAY WHEN THERE IS NOTHING BEYOND THAT.
REGARDING THE FINGERPRINTS, THERE IS A CLAIM RAISED THAT THERE WERE CONTRADICTORY CLAIMS ABOUT PRINT THEY PRESENTED ROYAL AS THE FINGERPRINT EXAMINER WHO SAID THE PRINT IS OF NO VALUE BUT ALSO CONCEDED BOTH IN OPENING AND CLOSING THAT THIS PRINT BELONGED TO JACKSON.
THE TRIAL COURT EXPLICITLY FOUND A VARIATION OF THIS CLAIM WAS WAIVED BELOW.
IT WAS RAISED FOR THE FIRST TIME IN CLOSING ARGUMENT.
AND I SAY A VARIANT, BECAUSE THE ARGUMENT THAT WAS RAISED THERE WAS COUNSEL WAS INEFFECTIVE FOR PRESENTING ROYAL AND THEN CONCEDING IN CLOSING ARGUMENT THAT IT WAS, IN FACT, JACKSON'S FINGERPRINT.
IT HAS MORPHED NOW ON APPEAL TO COUNSEL WAS INEFFECTIVE BECAUSE NOW IN OPENING AND CLOSING IT WAS CONCEDED THAT IT WAS HIS PRINT.
COURT DOES NOT PERMIT CLAIMS TO BE PRESENTED FOR THE FIRST TIME IN CLOSING ARGUMENTS.

THE FAILURE TO OBJECT TO THE
STATE'S COMMENTS ABOUT ROYAL IN
CLOSING, COUNSEL HAD AN ANSWER
FOR THAT, AND THE COURT FOUND
THAT WAS A REASONABLE STRATEGIC
DECISION BECAUSE COUNSEL WAS
OKAY WITH THE STATE PARTIALLY
VOUCHING FOR A DEFENSE WITNESS.
THAT'S THE BOTTOM LINE.
COUNSEL HAD A VERY UNUSUAL
SITUATION WITH THIS FINGERPRINT
EXPERT.
THIS APPEARS TO HAVE BEEN THE
ONLY FINGERPRINT EXPERT THAT
CAME TO THE CONCLUSION THAT THE
PRINT WAS OF NO VALUE.
COUNSEL HAD CONSULTED WITH A
FINGERPRINT EXPERT, AND THAT
INDIVIDUAL WAS OF NO HELP TO
HIM.
SO COUNSEL HAD THIS PIECE OF
EVIDENCE THAT WAS CONTRADICTED
BY A LOT OF OTHER EVIDENCE.
IT MAKES SENSE FOR COUNSEL TO
NOT PUT HIS CREDIBILITY BEHIND
THE SINGULAR WITNESS THAT WOULD
HAVE CONTRADICTED THE FBI, THE
STATE'S OTHER EXAMINER.
BUT AT THE SAME TIME, HAVING A
DESIRE TO JUST PLACE THAT BEFORE
THE JURY AND SEE WHAT HAPPENS.
SEE IF MAYBE ONE JUROR THINKS
THAT THAT'S REASONABLE DOUBT
WITHOUT PUTTING HIS CREDIBILITY
AT ISSUE BEFORE THE ENTIRETY OF
THE PANEL.
THAT APPEARS TO BE WHAT COUNSEL
DID IN THIS CASE.
I CAN'T GIVE YOU COUNSEL'S EXACT
REASONING SINCE IT WASN'T
PRESENTED IN 3851, IT WASN'T
DELVED INTO AT THE
EVIDENTIARY HEARING.
SO THIS REALLY ENDS UP LOOKING
MORE LIKE AN INEFFECTIVE
ASSISTANCE OF COUNSEL CLAIM ON
THE FACE OF THE RECORD MORE THAN
ANYTHING ELSE.
LET'S SEE.
REGARDING THE INVESTIGATIVE
ALIBI SITUATION, AGAIN, THE
TRIAL COURT SEEMED TO HAVE A
GENERAL FRUSTRATION THAT COUNSEL
DID NOT GO AND CONSULT THESE

ALIBI WITNESSES AT A BETTER TIME FRAME.
THAT'S SIMPLY NOT THE STANDARD FOR INEFFECTIVE ASSISTANCE OF COUNSEL.
THE WILLIAMS CLAIM WE'VE PARTIALLY DISCUSSED IS NOT REFERENCED AT ALL IN THE 3851 MOTION.
IT IS IMPROPER TO GO AND DISCUSS IT BEYOND THAT.
IT'S A WAIVED CLAIM IF IT'S NOT RAISED.
AT MINIMUM, AS THIS COURT NOTED RECENTLY IN BROWN, WHEN YOU HAVE A FAILURE TO CALL A WITNESS CLAIM, YOU HAVE TO NAME THE WITNESS AND WHAT THEY WOULD HAVE SAID.
AND THAT'S CITED IN BOOKER WHICH IS A MUCH OLDER CASE.
>> COULD I ASK YOU TO GO BACK TO THE ALIBI WHICH YOU WENT QUICKLY THROUGH?
DOES THE STATE HAVE A POSITION ON WHETHER THERE COULD HAVE BEEN ANY STRATEGIC BASIS FOR NOT CONDUCTING THE ALIBI INVESTIGATION IN A MORE TIMELY FASHION?
>> SO COUNSEL GAVE A REASON FOR THAT BELOW.
HE SAID I KNEW THE ALIBI WAS STALE BY NOW, THAT IT WAS AN OLD DEFENSE, AND SO IT WAS A LOW PRIORITY.
IT WAS, IN A NUTSHELL, WHAT I TOOK HIS REASON TO BE.
BUT HE DID SEND INVESTIGATORS OUT.
HE DID, IN FACT, PRESENT A FAIRLY COMPREHENSIVE ALIBI DEFENSE.
IF HIS ALIBI WITNESSES WERE BELIEVED, THEY PLACED JACKSON IN GEORGIA FROM OCTOBER 15TH TO OCTOBER 22ND.
THE MURDER OCCURRED ON OCTOBER 17TH, SO IT WOULD HAVE BEEN MIDWAY IN BETWEEN THOSE TWO DATES.
SO IT'S DIFFICULT TO DETERMINE HOW COUNSEL COULD HAVE PRESENTED OR INVESTIGATED AN INEFFECTIVE

ALIBI DEFENSE WHEN HE ACTUALLY
PRESENTED A DECENT ALIBI DEFENSE
BUT SIMPLY COULDN'T OVERCOME THE
FACT THAT JACKSON HAD TOUCHED
THE SINK ABOVE THE BODY OF THE
VICTIM WITH HIS FINGER WHILE IT
WAS COATED IN BLOOD AND LEFT A
MARK ON IT.
SO THAT APPEARS TO BE THE
STRATEGIC REASON.
I HAVE OTHER THINGS TO DO, I
DON'T HAVE THE TIME TO DEAL WITH
THIS OLD ALIBI DEFENSE, BUT I
WILL DO IT AND HE DID, IN FACT,
INVESTIGATE IT AND PUT ON A
SUBSTANTIAL THE ALIBI.
REGARDING THE FAILURE TO PREPARE
THE WIFE TO TESTIFY, IT'S
UNCLEAR WHAT COUNSEL COULD HAVE
DONE AS FAR AS DELVING INTO MORE
OF THE DETAILS OF THIS.
HE COULD HAVE BROUGHT OUT THE
FACTS OF POST-CONVICTION COUNSEL
SUGGESTS, BUT THE TRIAL COURT
POINTED OUT IT'S STRATEGIC NOT
TO POINT THE JURY MORE CLOSELY
TO THE FACT THAT THIS INDIVIDUAL
HAS A MISDEMEANOR CONVICTION.
AND I DO WANT TO HONE IN THAT IF
COUNSEL WOULD HAVE PRESENTED
EXACTLY WHAT THE WITNESS SAID
BELOW, DEBORAH JACKSON SAID
BELOW, IT WAS A 20-YEAR-OLD
CONVICTION, AND I JUST MISSED
IT.
WELL, SHE DIDN'T JUST MISS IT.
YOU DON'T CONVICT PEOPLE FOR
JUST MISSING CHECKS.
THE STATUTE THAT HAS BEEN IN
PLAY REQUIRES A MEASURE OF
INTENTIONALITY.
SO IF SHE VERBATIM SAID WHAT SHE
SAID IN POST-CONVICTION, THE
STATE'S NEXT STEP WOULD BE TO
ADMIT A CERTIFIED COPY OF THE
CONVICTION AND DISCUSS WHAT IT
WOULD HAVE BEEN REQUIRED TO
PROVE TO GET THAT CONVICTION
INCLUDING THAT SHE INTENTIONALLY
LIED.
AND IF SHE WAS WILLING TO LIE
ABOUT THAT, WOULDN'T SHE BE
WILLING TO LIE TO SAVE HER
HUSBAND'S LIFE, GET HIM OFF A

FIRST-DEGREE MURDER CHARGE?
THAT WOULD HAVE BEEN THE PICTURE
THE STATE COULD HAVE DEPICTED IF
SHE TESTIFIED EXACTLY THE WAY
SHE DID IN POST-CONVICTION, AND
THAT'S SIMPLY A REASONABLE
STRATEGY FOR COUNSEL TO AVOID
DELVING INTO THINGS OF THAT
NATURE.
I DID MISS ON THE ISSUE 4 THE
INVESTIGATE THE ALIBI DEFENSE.
THE LAST BIRTHDAY BEFORE PRISON.
IN MY REVIEW THAT'S ALSO
UNPRESERVED, BUT IT ALSO MAKES
PERFECTLY REASONABLE SENSE WHY
COUNSEL WOULD NOT HAVE WANTED
THE JURY TO KNOW THAT JACKSON
WAS GOING TO PRISON RIGHT AFTER
THIS TIME PERIOD WHERE THE
STATE'S ACCUSING HIM OF
FIRST-DEGREE MURDER.
THAT'S VERY DIFFERENT THAN
LEARNING THAT HE'S A CONVICTED
FELON AT SOME UNSPECIFIED POINT
IN THE PAST.
LEARNING THAT YOU ARE AT THIS
POINT IN TIME, ADMITTEDLY,
COMMITTING CRIMES THAT ARE
PUTTING YOU AWAY FOR A LONG
PERIOD OF TIME WHILE THE STATE'S
ACCUSING YOU OF FIRST-DEGREE
MURDER IS VASTLY DIFFERENT.
AT A MINIMUM, A REASONABLE
COUNSEL COULD HAVE PERCEIVED IT
THAT WAY AND THIS COUNSEL-- TWO
COUNSEL, IN FACT-- DID PERCEIVE
IT THAT WAY.
YOUR HONORS, AS JUSTICE CURIEL
REMINDED ME LAST TIME, I NEED TO
INVITE THE COURT IF THEY HAVE
ANY MORE QUESTIONS BEFORE
SITTING DOWN, AND SO IF THE
COURT HAS ANY MORE QUESTIONS,
I'M MORE THAN HAPPY TO ADDRESS
THOSE AT THIS POINT.
SEEING NONE, THE STATE
RESPECTFULLY ASKS THAT THIS
COURT AFFIRM THE CONVICTION THAT
HAS BEEN ENTERED IN THIS CASE.
THANK YOU, YOUR HONORS.
>> THANK YOU, COUNSEL.
REBUTTAL.
>> HAD COUNSEL PRESENTED A FULL
ALIBI DEFENSE, THE WITNESS'

TESTIMONY WOULD HAVE BEEN
BOOSTED, THEIR CREDIBILITY WOULD
HAVE BEEN BOOSTED, AND THIS
LIKELY WOULD HAVE BEEN A
DIFFERENT RESULT.
THE OFFER OF STRATEGY FOR NOT
TALKING TO DEBORAH JACKSON OR
NOT DOING THE REDIRECT CAN'T BE
PROVIDED AT THE EVIDENTIARY
HEARING OR IN THE COURTS OR
DENYING BY THE COURT OR BY THE
STATE WHEN COUNSEL DIDN'T EVEN
CONSIDER IT AT THE MATERIAL
TIME.
AND THAT WAS AT TRIAL.
STRICKLAND SAYS THAT WE CAN'T
LOOK AT THESE CASES THROUGH THE
DISTORTING LENS OF HINDSIGHT.
WELL, NEITHER SHOULD THE STATE
BE ABLE TO PROVIDE STRATEGY
REASONS FOR COUNSEL WHO DID NOT
EVEN CONSIDER THIS EVIDENCE AT
THE TIME OF TRIAL.
AND I'M TALKING ABOUT CLARK NOW.
THE STATE SUGGESTED THAT, HEY,
MAYBE YOU DIDN'T CROSS-EXAMINE
MS. CLARK BECAUSE SHE GAVE YOU
HELPFUL INFORMATION.
WELL, THAT'S NOT WHY HE DIDN'T
CROSS-EXAMINE ON THE MIXTURE ON
THE STEERING WHEEL COVER.
HE DIDN'T KNOW THAT SHE WAS
TESTIFYING BEYOND HER REPORT,
AND HE DIDN'T KNOW TO CONTEST
THAT.
AND THE STATE CAN'T NOW PROVIDE
A VALID STRATEGY REASON FOR
THAT.
AND JUST ONE MORE THING ON THE
HAIR.
THE LAB REPORT-- AND IT'S IN
EVIDENCE, I THINK IT'S ON PAGE
1,212 OF THE RECORD-- IT SAYS
TECHNICALLY--
[INAUDIBLE]
AND, AGAIN, WE'RE TALKING ABOUT
BILLIONTHS OF A GRAM.
THE WHOLE POINT ABOUT THE HAIR
WAS THAT IT WAS EASILY
TRANSFERRED, AND COUNSEL MISSED
AN OPPORTUNITY TO HAVE AN EXPERT
COME IN AND SAY, LOOK, WE DON'T
USUALLY TEST THIS STUFF BECAUSE
IT'S SO LOW IN RELEVANCE BECAUSE

IT IS SO EASILY TRANSFERRED.
SO THE STATE AND THE CIRCUIT COURT SHOULDN'T PROVIDE STRATEGY CALLS THAT DIDN'T EXIST IN THE MIND OF LAWYERS BASED ON THOROUGH PREPARATION AT THE TIME.
THIS WAS NOT THE GUIDING HAND OF COUNSEL CONTEMPLATED IN POWELL V. ALABAMA THROUGH STRICKLAND THROUGH OUR CURRENT JURISPRUDENCE.
WE DO NOT HAVE TO PROVE THAT NOT ONE REASONABLE LAWYER WOULD HAVE DONE WHAT THESE LAWYERS DID, WE HAVE TO PROVE THAT THERE WAS DEFICIENT CONDUCT, AND WE HAVE TO PROVE THAT THE DEFICIENT CONDUCT UNDERMINES YOUR CONFIDENCE IN THIS VERDICT.
AND WE'VE DONE THAT--
>> COUNSEL, YOU HAVE EXCEEDED YOUR TIME BUT GO AHEAD AND SUM UP IN ABOUT 30 SECONDS, IF YOU WOULD.
>> SURE.
I WOULD JUST ASK YOU TO REVERSE THE CIRCUIT COURT'S OPINION AND REMAND THIS FOR A NEW GUILT PHASE.
THANK YOU.
>> WE THANK YOU BOTH FOR YOUR ARGUMENTS.
THE COURT WILL BE HEARING THE THIRD CASE ON TODAY'S DOCKET VIRTUALLY AT 11:30.
COURT WILL NOW STAND IN RECESS UNTIL THEN.