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NEXT CASE ON THE COURT'S CALENDAR IS HENRY SIR HE CAN I VERSUS -- HENRY SIRECI VERSUS THE STATE OF FLORIDA. MR. AULISIO.

MAY IT PLEASE THE COURT. MY NAME IS JULIUS AULISIO, AND WITH ME HERE IS MY COUNSEL. WE ARE HERE ON THE SUMMARY DENIED, THE POST-CONVICTION RELIEF MOTION FILED ON BEHALF OF MR. SIRECI. I AM REPRESENTING MR. SIRECI HERE. THIS CASE, IN ITS POST-CONVICTION MOTION AND RELIEF HISTORY, IS THAT MR. SIRECI WAS CONVICTED OF MURDER YOU ARING MR. POTEET AT A USED CAR DEALERSHIP, AND THE KEY STATE WITNESS IS BARBARA PERKINS, IN THIS CASE, WHO CLAIMS THAT SHE TOOK MR. SIRECI TO A MOTEL, WHICH IS RIGHT NEXT TO THE -- RIGHT NEAR THE USED CAR DEALER SHICH. -- DEALERSHIP.

COUNSEL, WE ARE FAMILIAR WITH THE FACTS, AND YOU HAVE GOT 30-SOME POINTS HERE, AND I JUST WONDER, I THINK YOU OUGHT TO GO AHEAD AND GET INTO YOUR IMPORTANT, WHICHEVER POINTS YOU THINK ARE YOUR MOST IMPORTANT AND MOVE RIGHT TO THEM.

OKAY.

JUDGE, THE, PRIMARILY THE CLAIM I AM GOING TO FOCUS ON IS THE ACTUAL INNOCENCE CLAIM, THE NEWLY-DISCOVERED EVIDENCE. THIS IS, IN MY BELIEF AND THE BEST I CAN SEE FROM THE RECORD, THIS CASE IS NUMEROUS BOXES AND NUMEROUS RECORDS HERE, AND I WAS NOT THE ORIGINAL ATTORNEY. I HAVE BEEN WITH CCR SINCE APRIL 1. FROM WHAT I CAN TELL, FROM THE BRIEFS AND THE RECORDS, THIS NEWLY-DISCOVERED EVIDENCE, THERE WAS HAIR SAMPLES FOUND AT THIS MOTEL ROOM. THE REASON I MENTIONED THE MOTEL ROOM, IS BECAUSE BARBARA PERKINS, THE KEY STATE WITNESS, INDICATED THAT SHE WAS NEVER IN THIS MOTEL ROOM. THERE WERE HAIR SAMPLES FOUND IN THIS MOTEL ROOM THAT WERE IDENTIFIED AS BEING CONSISTENT WITH THE HAIRS COMING FROM BARBARA PERKINS. THE SIGNIFICANCE OF THIS IS THAT THE WHOLE BASIS OF THE STATE'S CASE, IT INITIATED FROM BARBARA PERKINS. WHAT WE HAVE IS THE, SUBSEQUENT TO THE MURDER, THE -- THERE WAS A JACKET FOUND IN THE MOTEL ROOM. THERE WAS BLOOD FOUND ON THE JACKET. THIS WAS BEFORE THE DAYS OF DNA TESTING, SO WE DON'T KNOW FOR SURE WHERE THAT BLOOD CAME FROM.

SO YOU ARE ALLEGING, THEN, THAT YOU CAN DO MORE SOPHISTICATED DNA TESTING, AND THEREBY GET SOMETHING MORE THAN JUST CONSISTENT WITH OR MAYBE SAY THIS IS NOT HIS PARTICULAR -- HIS HAIR. SO WHEN DID THIS NEW TESTING OR WHAT YOU CLAIM TO BE NEW TESTING, WHEN DID WE HAVE THIS PARTICULAR TESTING? I MEAN I CAN'T TELL, FROM YOUR BRIEF, WHEN YOU WOULD HAVE KNOWN ABOUT THIS TESTING.

AS FAR AS WITH THE TESTING ON THE BLOOD, I GUESS THAT, PROBABLY, WAS AVAILABLE, I THINK, EARLY '90s, BUT AS FAR AS --

WHAT?

EARLY '90s. 1990, '92, I THINK, IN THAT VICINITY. BUT THE HAIR SAMPLES THAT WERE FOUND IN THE MOTEL ROOM, TO MY KNOWLEDGE, THERE HAS BEEN RELATIVELY NEW, WITHIN THE LAST YEAR OR TWO YEARS, THAT THEY CAN NOW DO MITOCHONDRIAL TESTING, SO THEY CAN, NOW, TAKE THOSE HAIR SAMPLES AND DO TESTING. MY UNDERSTANDING, ALSO, IS THAT IT IS NOT -- IT IS NOT QUITE TO THE ACCURACY OF THE STANDARD DNA THAT IS BEING USED, BUT IT CAN BE VERY ACTIVE.

IS THAT WHAT WAS ALLEGED IN THE MOTION? IS THAT SPECIFICALLY ALLEGED? THE PROBLEM

THIS COURT HAS OR ANY COURT HAS, IN TRYING TO SEPARATE THE WHEAT FROM THE CHAF IS WHEN 99% OF THE CLAIMS ARE CLAIMS THAT WERE ALREADY RAISED, IF YOU HAVE ANY CLAIM THAT HAS ANY MERIT, IT GETS LOST.

THE FACT THAT THE HEIRS WERE FOUND, THAT -- THE FACT THAT THE HEIRS WERE FOUND, THIS -- THE HAIRS WERE FOUND, THIS WAS PROVIDED IN THE 119 REQUEST THAT CCR DID IN '93 OR '94, WHEN THEY GOT THOSE HAIRS.

WHEN WHAT, NOW?

THAT THEY GOT THE HAIRS THAT WERE FOUND IN THE MOTEL ROOM. THEY WERE NOT AWARE OF THOSE HAIR SAMPLES THAT WERE FOUND IN THE MOTEL ROOM, PRIOR TO THIS TIME WHEN THESE 119 RECORD REQUESTS CAME IN.

I THOUGHT YOU SAID THAT THERE WAS SOMETHING ABOUT IT BEING CONSISTENT WITH YOUR CLIENT'S HAIR.

THERE WAS IN THOSE REPORTS. THOSE WERE REPORTS OBTAINED FROM THE ORANGE COUNTY SHERIFF'S OFFICE, DURING THE 119 RECORDS REQUEST. TO MY KNOWLEDGE, AND I HAVE FOR THROUGH THE BOXES, THE BEST I CAN FIND, THAT THAT INFORMATION WAS NOT AVAILABLE OR WAS NOT PROVIDED THROUGH THE ORIGINAL TRIAL ATTORNEY.

AND WHERE DOES THAT LEAD US? CAN YOU GO JUST A LITTLE BIT FURTHER. NO TESTING HAS BEEN DONE ON ANY OF THIS MATERIAL. IS THAT CORRECT?

THAT'S CORRECT. WE BASICALLY WE ARE IN A POSITION WHERE, DUE TO FINANCES, WE CAN'T GO OUT AND TEST EVERY PIECE OF DNA THAT WE FIND, AND, ALSO, WE HAVE THE PROBLEM OF GETTING THE HAIR SAMPLES RELEASED. WE RUN INTO THAT PROBLEM ALL THE TYPE, WHERE THEY DON'T WANT TO RELEASE THEM.

BUT THAT IS NOT -- IS THAT PART OF THIS PROBLEM, THIS HEARING BELOW, IS THAT YOU WANTED TO GET THEM, AND THEY WOULDN'T LET YOU HAVE THEM, AND SOME FIGHT OVER THIS? I AM TRYING TO UNDERSTAND, AND IT IS A VERY LENGTHY MOTION WE ARE DEALING WITH. WAS THAT PRESENTED TO THE TRIAL COURT, THAT WE TRIED TO GET THEM AND THEY WILL NOT GIVE IT TO NEWS IS.

NO. I THINK, DUE TO OUR BUDGET CONSTRAINTS, THE IDEA WAS THAT, IF WE GOT THE EVIDENTIARY HEARING, THEN WE WERE GOING TO ASK TO HAVE THOSE HAIR SAMPLES RELEASED TO DO THE DNA TESTING ON THEM.

IS ON RIGHT NOW IT IS JUST IN A POSTURE OF SOME HAIR WAS THERE AND THERE MIGHT BE SOME TESTING THAT MIGHT SHOW SOMETHING. THAT IS KIND OF WHERE WE ARE TODAY?

A LITTLE BIT MORE THAN THAT, IN THAT THIS RECORDS FROM THE ORANGE COUNTY SHERIFF'S DEPARTMENT SAID THAT THESE HAIRS THAT WERE FOUND ON A TOWEL, AND THE TOWEL HAD BLOOD ON IT, THESE HAIRS ARE CONSISTENT WITH BARBARA PERKINS, SO IT IS NOT LIKE WE ARE GOING ON A WILD GOOSE CHASE. WE HAVE SOME INDICATION THAT THIS COULD COME OUT TO BE HER HAIR.

WHERE DOES THIS TAKE US? THIS IS IN THE NATURE OF IMPEACHMENT? TO IMPEACH HER TEST MONEY THAT -- TESTIMONY THAT SHE REALLY WAS NEVER PRESENT AT A MOTEL, BUT, THEN, WHERE DOES THAT TAKE US, IN THE STANDARD, IF IT IS BRADY MATERIAL, HOW IS THAT GOING TO CHANGE WHAT WE HAVE, WITH APPROXIMATELY SEVEN CONFESSIONS INVOLVED IN THE CASE. WHERE DOES IT GO? WHAT DOES IT DO FOR US?

WELL, BASICALLY, AS I WAS SAYING, I THINK THE WHOLE FOUNDATION OF THIS CASE IS ON BARBARA PERKINS' TESTIMONY. IT PUTS HER AT THE SCENE, VERY MUCH INVOLVED IN THIS CRIME AND POTENTIALLY HER INVOLVEMENT COULD BE HER OR BONNY ARNOLD, WHO WAS ONE OF HER COMPATRIOTS THAT ACTUALLY LEFT THE STATE WITH BARBARA PERKINS AND MR. SIRS IS I -- AND MR. SIRECI.

DOES THAT AT ALL SHOW THAT YOUR CLIENT WAS NOT INVOLVED?

IF, IN FACT, IT WAS BARBARA PERKINS AND BONNIE ARNOLD, YES. THE ONLY PHYSICAL EVIDENCE TYING MR. SIRECI TO THE SCENE WAS THERE WAS A HAIR FOUND ON THE SOCK OF THE VICTIM, AND IT WAS GENERAL TYPE TESTING THAT IT WAS CONSISTENT WITH MR. SIRECI'S HAIR. NOW, WITH THIS NEW MOTOCHONDRIA LDN A -- MITOCHONDRIAL DNA, THAT WAS WHAT I JUST FOUND OUT B.

THIS TESTIMONY ARGUED -- THIS TESTING ARGUED TO THE TRIAL COURT, THAT THIS LATER, MORE SOPHISTICATED FORM OF TESTING, WOULD BE MORE EFFECTIVE IN YIELDING RESULTS, AND YET THIS IS A PIECE OF THE PUZZLE THAT IS VERY IMPORTANT. WAS ALL OF THIS ALLEGED IN THE MOTION AND THEN ARGUED TO THE TRIAL COURT JUDGE, THAT IS THAT, JUDGE, WE RECOGNIZE THAT GENERALLY DNA TESTING HAS BEEN AVAILABLE FOR A LONG TIME, AND THEREFORE YOU KNOW, ACTING REASONABLY BEFORE WE COULD HAVE HAD THAT DONE A LONG TIME AGO, BUT NOW THERE IS THIS OTHER MORE EFFECTIVE -- IT IS ONLY BECOME AVAILABLE RECENTLY, AND IT IS CRITICAL, YOU KNOW, TO THE CASE. WAS THIS ALLEGED? NO, JUDGE. NOT IN THOSE SPECIFIC TERMS.

IF I UNDERSTAND IT CORRECTLY, THE ALLEGATIONS ARE REALLY JUST THAT WE WANT TO DO ADDITIONAL DNA TESTING.

RIGHT. WELL, THAT --

HOW DO YOU OVERCOME A JUDGE CONCLUDING THAT, WELL, ON THE FACE OF THE RECORD, SINCE DNA TESTING HAS BEEN AVAILABLE FOR A LONG, LONG TIME, THAT SOMEBODY ACTING REASONABLY IN THIS SITUATION, BECAUSE THEY THOUGHT THAT WAS IMPORTANT, WOULD HAVE ASKED FOR IT A LONG, LONG TIME AGO?

WELL, IT WAS ONLY SUBSEQUENT TO OUR 119 REQUEST IN '93 OR '94, THAT WE HAVE LEARNED ABOUT IT.

WELL, '93, '94. WHEN WAS THIS MOTION FILED?

THE ONE ALLEGING THE HEIRS WAS -- THE HAIRS WAS FILED IN '95, I BELIEVE. AND THERE WAS -- MY GUESS IS THAT IT WAS BUDGET CONSTRAINTS. YOU KNOW, THROUGH THOSE MID-NINTH YEARS, CCR DID NOT -- MIDNINETY YEARS, CCR DID NOT HAVE MONEY TO GO OUT AND DO THOSE THINGS. THEY WERE OPERATING BY HANGING ON BY THEIR TEETH.

ANECDOTALLY WE HAVE TO SYMPATHIZE WITH THAT SITUATION, BUT DON'T YOU HAVE TO MAKE A DEMONSTRATION TO A TRIAL COURT JUDGE RATHER TIGHTLY, WITH REFERENCE TO SOMETHING LIKE THIS, AND THAT IS MY CONCERN HERE. FOR INSTANCE, GETTING THE AFFIDAVIT OF THE SCIENTIST OR SPB THAT SAYS -- OR SOMEBODY THAT SAYS, WELL, WE DO HAVE THIS NEW, MORE SOPHISTICATED FORM OF TESTING, AND WE COULD REALLY DO SOMETHING WITH THESE HAIR SAMPLES, WHATEVER, IF THEY WERE AVAILABLE, AND THIS STATE-OF-THE-ART TESTING WAS, REALLY, DIDN'T COME INTO VOGUE UNTIL 1998 OR SOMETHING LIKE THAT. HAS THERE BEEN ANY ATTEMPT TO DO ANYTHING LIKE THAT IN THIS CASE?

FRANKLY, YOUR HONOR, IT HASN'T, BECAUSE I HAVE JUST RECENTLY, WITHIN THE LAST SEVERAL MONTHS, HAVE LEARNED ABOUT THIS NEW -- AS A MATTER OF FACT, I THINK IT WAS EARLY,

WHEN I STARTED WITH CCR, I CONTACTED A LAB THAT TESTS DNA, AND AT THAT TIME THEY TOLD ME THAT THEY HAD TO HAVE THE HAIR FOLLICLE, IN ORDER TO BE ABLE TO DO THE DNA TESTING.

WHAT ATTEMPT DURING THE PENDENCY OF THESE PROCEEDINGS, WAS THERE TO ACTUALLY GET THE HAIR SAMPLE RELEASED TO A TESTING FACILITY? WAS THERE ANY ATTEMPT TO DO THAT DURING THE COURSE OF THESE PROCEEDINGS?

NO, YOUR HONOR. AND THAT PROBABLY SHOULD HAVE BEEN DONE, SO IT WAS MY FAULT. I AM HANDLING TEN CASES. I HAVE EVIDENTIARY HEARINGS. THE CASE LOAD IS STILL OVERWHELMING. I THINK IT IS STILL AT LEAST TWO TO THREE TIMES WHAT IT SHOULD BE, AND --

FOLLOW-UP, A LITTLE BIT, YOU STATED THIS TO BE PART OF A CLAIM OF ACTUAL INNOCENCE. WHAT, ON THE RECORD, AT LEAST, WHAT WAS THE OTHER EVIDENCE AGAINST YOUR CLIENT, WITH REFERENCE TO HIS GUILT OF THIS OFFENSE?

IN OTHER WORDS WE HAVE TO EXAMINE WHAT THE OTHER EVIDENCE IS THAT IS SUPPORTED HIS CONVICTION OF THIS. WHAT IS THE OTHER PROOF?

THE INITIAL EVIDENCE COMING FROM BARBARA PERKINS, AND WE HAVE TO REALIZE THAT BARBARA PERKINS WAS FOUND IN POSSESSION OF THE CREDIT CARDS OF THE VICTIM, SO SHE HAS A REASON TO POINT THE FINGER AT MR. SIRECI. THE OTHER EVIDENCE, BASICALLY, HIS CONFESSIONS BY MR. SIRECI. NOW, WHEN YOU CONSIDER THESE CONFESSIONS, YOU HAVE TO CONSIDER MR. SIRECI CAME FROM AN ABUSED CHILDHOOD. HE HAS A LOW IQ. THE TESTIMONY CAME OUT THAT HE IS BRAIN DAMAGED. I HAVE SPOKEN TO MR. SIRECI, AND HE WILL SAY THINGS. HE IS VERY EASILY LED. AS A MATTER OF FACT, WHEN THEY LEFT FLORIDA, IT WAS HIM AND BARBARA PERKINS AND BONNY ARNOLD. THEY LEFT FLORIDA AND DROPPED MR. PERKINS OFF IN GEORGIA AND WENT TO TENNESSEE, AND MS. PERKINS SAID WHEN THEY GOT TO TENNESSEE, SHE WANTED TO TAKE THE CAR, AND SHE GOT MR. MR. SIRECI TO GO INTO A K SMART TO STEAL A JACKET FOR HER, KNOWING THAT HE WOULD GET CAUGHT AND GET ARRESTED AND BE PUT IN JAIL. THAT IS WHAT HAPPENED. INTERESTINGLY ENOUGH THAT TESTIMONY THAT BARBARA PERKINS TESTIFIED TO AT THE SECOND, AT THE PENALTY PHASE HEARING IN 1990, SHE DIDN'T TESTIFY TO THAT AT THE TRIAL, IN 1976, SO MR. SIRECI IS A PERSON THAT IS EASILY LED. HE SAYS THINGS. HE WILL DO THINGS. WHATEVER SOMEBODY ELSE IT HIM -- WHATEVER SOMEBODY TELLS HIM TO DO.

THIS CONFESSION, IT IS UNUSUAL AND THERE ARE A NUMBER OF THEM AND THEY ARE RATHER DETAILED, ARE THEY NOT?

THEY ARE DETAILED, BUT THEY ARE, ALSO, INCONSISTENT. HE TOLD MR. WOODALL THAT HE WAS WEARING A GREEN SWEATSHIRT. HE TOLD HIM THAT THERE WAS, LIKE, 115 -- I BELIEVE IT WAS \$115 RECOVERED, BUT HE TOLD SOMEONE ELSE THAT IT WAS \$11 RECOVERED. YOU KNOW, I THINK THE THING IS WE HAVE TO CONSIDER HOW MR. SIRECI'S BRAIN FUNCTIONS. IT DOESN'T FUNCTION LIKE THE NORMAL PERSON.

AS FAR AS MILE ROLE OR WHAT HE DID, ARE THERE INCONSISTENCY? IN OTHER WORDS HIS ADMISSION IN THOSE STATEMENTS. ARE THERE INCONSISTENCIES ABOUT THAT?

YOU ARE TALKING, NOW, ABOUT, IN A SENSE, COLLATERAL DETAIL.

INCONSISTENCIES ABOUT THE EXACT DETAILS OF THE CRIMES, THEMSELVES? THEY ARE, BUT THEY ARE MINOR. THEY ARE NOT MAJOR INCONSISTENCIES, BUT AS FAR AS HITTING THE PERSON, THE NUMBER OF STAB WOUNDS. THERE ARE MINOR INCONSISTENCIES IN THOSE DETAILS.

HOW DO WE FACTOR IN, YOU HAVE MENTIONED A COUPLE OF TIMES YOUR TIME CONSTRAINT.

THAT YOU COULDN'T DO CERTAIN THINGS, BECAUSE YOU HAVE A LOT OF CASES. YOU HAVE SO MANY CASES AND THIS TYPE OF THING. HOW DO WE FACTOR THAT IN, WHEN WE LOOK AT THIS CASE, THE CASE THAT IS BEFORE US, AND WE SEE 30-SOME POINTS, HALF OF WHICH ARE OBVIOUSLY TIME BARRED, PROCEDURALLY BARRED. YOU KNOW, YOU CAN LOOK AT THEM AND YOU WOULD HAVE TO CONCEDE, SO WHY -- AREN'T YOU USING UP A LOT OF THIS VALUABLE TIME THAT YOU ARE TALKING ABOUT, PUTTING IN POINTS LIKE THIS, THAT --

JUDGE --

WE CAN JUST TAKE ONE LOOK AT IT AND SAY THAT IS TIME BARRED. THAT IS TIME BARRED. AS I ROLLED THROUGH THIS, I KEPT ROLLING INTO TIME BARRED.

JUDGE, YOU KNOW, IN ALL HONESTY, WHEN I CAME INTO CCR, I AM STILL LEARNING THE JOB. THOSE ARE POINTS THAT WERE PUT IN, AND I THINK THEY ARE PUT THERE NO PRESERVATION PURPOSES, BECAUSE IF THE SUPREME COURT OR SOMEBODY COMES BACK AND CHANGES THAT LAW, AND THEY WILL SAY, WELL, YOU DIDN'T RAISE IT AT THE LOWER LEVEL, AND YOU CAN'T GET RELIEF, SO THEY ARE THERE FOR PRESERVATION PURPOSES.

BUT THAT TAKES UP A LOAD OF TIME, TO PUT ALL OF THESE POINTS IN HERE.

SURE, BUT IT COULD SAVE MR. SIRECI'S LIFE, IF THERE IS A CHANGE IN LAW, AND SOME OF THESE, ALSO, THEY COULD BE ADDRESSED, IF IT IS TO CORRECT AN INJUSTICE, AND YOU KNOW, WHEN WE ARE TALKING ABOUT THE DEATH PENALTY, WE HAVE TO HAVE AN ABUNDANCE OF CAUTION, RAISE ALL OF THESE THINGS.

COULD YOU ADDRESS ONE THAT I HAD A CONCERN WITH, AND ENLIGHTEN ME, AND I WOULD, ALSO, LIKE THE STATE TO ENLIGHTEN ME AS WELL, ABOUT THE RECORDS THAT YOU TRIED TO GET FROM DOC, WITH REGARD TO, APPARENTLY, THE SENTENCING RECORDS. YOU APPARENTLY GOT AN AFFIDAVIT, INDICATE HAD GONE THAT THE RECORDS WERE NOT AT THE FLORIDA STATE PRISON, AND YOU RAISED THAT AS PART OF -- I THINK PART OF THE EXPERT'S FAILURE TO PROVIDE PROPER MITIGATION. I THINK IT WAS CLAIM 25. IS THAT SO IN SUBSTANTIAL THAT WE SHOULD NOT EVEN BE CONCERNED WITH IT?

JUDGE, I DON'T THINK THAT IS A MAJOR ISSUE AT THIS POINT. I THINK THAT MOST OF THE RECORDS HAVE BEEN OBTAINED. AS FAR AS THE EXPERTS, THE ONLY THING THAT I WOULD LIKE TO SAY ON THAT, ON THE MITIGATION, IS THAT THE EXPERTS THAT WERE HIRED BY DEFENSE AT THE NEW PENALTY PHASE, THEY HAD A PSYCHIATRIST AND A NEUROLOGIST THE. THEY -- THEY SHOULD HAVE HIRED A PSYCHOLOGIST, BECAUSE THE STATE HIRED A PSYCHOLOGIST, AND THEY DIDN'T HAVE ANYBODY TO REBUT THE PSYCHOLOGIST, TO BE ABLE TO EXPLAIN TO THE JURY THE IMPACT OF MR. SIRECI'S BRAIN DAMAGE AND HIS CHILDHOOD, SO THAT IS SOMETHING THAT SHOULD HAVE BEEN DONE. THERE SHOULD HAVE BEEN A PSYCHOLOGIST THERE, SO HE COULD HAVE BEEN ABLE TO CROSS-EXAMINE AND PRESENT THAT EVIDENCE.

PSYCHIATRIST. THEY DID HAVE A PSYCHIATRIST, BUT THE PSYCHIATRIST WOULD NOT BE QUALIFIED TO TESTIFY TO THAT KIND OF INFORMATION?

THE PSYCHIATRIST BASICALLY, THEY WERE I WANT ARE RESTED, THEY WERE DOING -- THEY WERE INTERESTED, DOING ACADEMIC WORK AND DOING STUDIES, AND DR. LEWIS EVEN INDICATED THAT HER PRIMARY INTEREST WASN'T MR. SIRECI, AND SHE HADN'T REALLY DELVED INTO HIS PSYCHOLOGICAL RECORDS FOR SIX YEARS, EVEN PRIOR TO HER TESTIFYING, SO SHE WASN'T READY TO DEAL WITH THE PSYCH HOLINGIST. I SEE MY -- WITH THE PSYCHOLOGIST. I SEE MY TIME IS UP.

THANK YOU.

SCOTT BROWN FOR THE STATE OF FLORIDA. YOUR HONORS, TAKING THE LAST POINT FIRST, WITH REGARD TO THE PENALTY PHASE, THERE WERE FIVE STATUTORY AGGRAVATORS AND NO MENTAL MITIGATORS. IN FACT THERE WERE NO STATUTORY MITIGATORS. THE PROBLEM WITH APPELLANT'S MOTION IS HE DID NOT PRESENT ANY CREDIBLE INFORMATION THAT WAS NOT PRESENTED BY HIS OWN PENALTY PHASE EXPERTS. IN OTHER WORDS THE TRIAL COURT IN THIS CASE HAD NO REASON TO BELIEVE THAT THE MENTAL HEALTH EXPERTS THAT THE APPELLANT DID, IN FACT, HAVE, WERE IN ANY INADEQUATE, SO BASED ON THIS RECORD, THAT CLAIM WAS PROPERLY SUBJECT TO SUMMARY DENIAL. MOVING ALONG TO THE NEWLY-DISCOVERED EVIDENCE CLAIM, YOUR HONORS, AS YOU LOOK THROUGH THIS RECORD, ONE THING IS CONSPICUOUS. YOU DO NOT FIND A MOTION IN THIS RECORD THAT IS RELEASE FOR EVIDENCE FOR DNA TESTING. IN FACT YOU DON'T FIND A REQUEST TO CONDUCT DNA TESTING IN THE 1997 OR FINAL VERSION OF THE MOTION, SO THIS IS PRIMARILY A NEW CLAIM BEFORE THIS COURT, THAT, WELL, THIS DNA TESTING SHOULD HAVE BEEN DONE.

ON THE JACKET, THERE IS SOME QUESTION ON THE JACKETING. GOING THROUGH THE RECORD AND LOOKING AT THE RECEIPTS AND HOW MANY ARE LISTED ON THE PROPERTY RECEIPTS, WOULD YOU CONFIRM THAT -- OUR REVIEW OF IT INDICATES THAT BOTH JACKETS WERE ACCOUNTED FOR, THAT THE ONE FROM LAS VEGAS WAS PRESENT AT TRIAL AND WAS ACCOUNTED FOR AND THE ONE WITH THE BLOOD ON IT WAS, ALSO, ACCOUNTED FOR, BECAUSE THERE IS SOME HINT OR SUGGESTION, MAYBE THERE IS A THIRD JACKET SOMEPLACE.

EXACTLY. THERE COULD HAVE BEEN A THIRD JACKET THAT IS SIMILAR TO MR. SIRECI'S THAT WAS, INDEED, RECOVERED, AFTER THE FACT, BUT I THINK THE TRIAL COURT LOOKED AT THIS EVIDENCE AND THEN LOOKED AT THE OVERWHELMING EVIDENCE OF GUILT AGAINST THE APPELLANT AND DETERMINED THAT, IF THIS IS ALL HE HAS IS SOME POSSIBLE IMPEACHMENT EVIDENCE, THERE IS ABSOLUTELY NO REASON TO HOLD AN EVIDENCE YEAR HEARING TO DEVELOP THE -- AN EVIDENTIARY HEARING TO DEVELOP THE CLAIM. THERE WERE, AS JUSTICE LEWIS POINTED OUT, APPROXIMATELY SEVEN SEPARATE CONFESSIONS IN THIS CASE, AND BASED UPON THIS RECORD, THE TRIAL JUDGE PROPERLY DENIED APPELLANT'S CLAIM TO THAT HEARING.

AS I UNDERSTAND HIS CLAIM ABOUT THIS DNA EVIDENCE IS THAT, NOT ONLY WAS THERE A HAIR FOUND ON THE VICTIM'S SOCK THAT WAS CONSISTENT WITH THE DEFENDANT'S HAIR, BUT WHAT HE IS CLAIMING, NOW, IS THAT THE POLICE, ALSO, FOUND A HAIR THAT WAS CONSISTENT WITH MS. JENKINS' HAIR.

BARBARA PERKINS.

BARBARA PERKINS' HAIR, AND THAT THAT WAS WHAT WAS NOT DISCLOSED, AND SOMEHOW, I AM NOT EXACTLY SURE, THAT WOULD LEAD TO OTHER EVIDENCE.

YOUR HONOR, THE HAIRS IN QUESTION WERE FOUND IN THE ABANDONED HOTEL ROOM. SO AT MOST, YOU HAVE HAIRS CONSISTENT WITH BARBARA PERKINS, PLACING HER INSIDE THE HOTEL ROOM, BUT SHE ADMITTED AT TRIAL THAT SHE PICKED THEM UP AT THE ABANDONED HOTEL ROOM, SO WHETHER OR NOT SHE WENT IN FOR A MINUTE DOES NOT, IN ANY WAY, CAST DOUBT UPON HER TESTIMONY. SHE WAS, IN FACT, FOUND WITH THE VICTIM'S CREDIT CARDS, BUT SHE GOT THEM FROM THE APPELLANT. THE PELL APARTMENT, IN THIS CASE, REPEAT -- THE APPELLANT, IN THIS CASE, REPEATEDLY CONFESSED HIS GUILT TO THE MURE OF HOWARD POTEET, AND IF YOU TAKE THE SUM OF THE NEWLY-DISCOVERED EVIDENCE, YOU DON'T HAVE ANY DOUBT THAT THE APPELLANT STILL, DID, IN FACT, COMMIT THIS CRIME, MUCH LESS A REASONABLE PROBABILITY OF A DIFFERENT RESULT. THE STATE HAS NOTHING FURTHER.

THANK YOU VERY MUCH. I BELIEVE YOU HAVE USED UP ALL OF YOUR TIME. THANK YOU VERY MUCH, COUNSEL.