No. 15-

CAPITAL CASE

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 2015

HENRY PERRY SIRECI,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent

On Petition for a Writ of Certiorari to the Florida Supreme Court

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PETITION FOR WRIT OF CERTIORARI

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CAPITAL CASE

QUESTION PRESENTED

Does a State Court violate Petitioner's federal due process rights when it denies a new trial and DNA testing in an actual innocence case where newly discovered evidence demonstrates that the only physical evidence linking the Petitioner to the crime scene was based upon inaccurate forensic science and false expert testimony?

LIST OF PARTIES

All parties appear on the caption to the case on the cover page. Mr. Sireci was the Appellant below. The State of Florida was the Appellee below.

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PETITION FOR WRIT OF CERTIORARI

Petitioner, Henry P. Sireci, respectfully requests that this Court issue a writ of certiorari to review the judgment the judgment of the Florida Supreme Court and address the important questions of federal constitutional law presented.

CITATION TO OPINIONS BELOW

The Florida Supreme Court issued its initial opinion supporting the judgment presented for review on December 16, 2015. (Appendix A). Mr. Sireci timely filed a Motion for Rehearing. (Appendix B). That motion was denied on February 15, 2016. (Appendix C). The state circuit court's Order denying relief is attached as Appendix D. The Motion for Rehearing filed in the state circuit court is attached as Appendix E, and the state circuit court's Order denying Rehearing is attached as Appendix F.

JURISDICTION

The opinion of the Florida Supreme Court was entered on December 16, 2015. (Appendix A). A timely Motion for Rehearing was filed. (Appendix B). That motion was denied February 15, 2016. (Appendix C). Mr. Sireci moved to extend the time for filing his Petition for Writ of Certiorari, which was granted and he was allowed up to and including July 14, 2016 in which to file. This Court has jurisdiction pursuant to 28 U.S.C. § 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. CONST. AMEND. V

The Fifth Amendment to the Constitution of the United States

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. CONST. AMEND. VI.

The Sixth Amendment to the Constitution of the United States

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

U.S. CONST. AMEND. VIII.

The Eighth Amendment to the Constitution of the United States

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

U.S. CONST. AMEND. XIV.

The Fourteenth Amendment to the Constitution of the United States

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shll make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

I. Procedural History

For over 40 years, Mr. Sireci has maintained his innocence for the robbery and murder of used a car salesman in Orlando, Florida. He challenges his conviction for First Degree Murder rendered by the Circuit Court of the Ninth Judicial Circuit, Orange County, Florida on October 22, 1976. Mr. Sireci also challenges the sentence of death rendered after a resentencing on May 4, 1990.

Mr. Sireci was convicted of first degree murder. He was sentenced to death by a non-unanimous jury. On direct appeal, the Florida Supreme Court affirmed his conviction for first-degree murder, *Sireci v. State*, 399 So.2d 964 (Fla. 1981)(*Sireci* I) cert. denied, *Sireci v. Florida*, 456 U.S. 984 (1982). Mr. Sireci subsequently filed post-conviction Motion challenging his conviction and sentence of death. Mr. Sireci was granted a resentencing by the state circuit court because the mental health examination he received was so grossly incompetent it failed to detect Mr. Sireci's organic brain damage and borderline intellectual functioning, thus violating his Due Process rights. The State appealed. The Florida Supreme Court sustained the granting of relief. *State v. Sireci*, 536 So. 2d 231 (Fla. 1988)(*Sire*ci II).

At resentencing, Mr. Sireci was again sentenced to death by a non-unanimous jury. 1990TR XXVI: 3271. His 1990 death sentence was affirmed on direct appeal. *Sireci v. State*, 587 So. 2d 450 (Fla. 1991)(*Sireci* III), cert. denied *Sireci v. Florida*, 503 US 946 (1992).

He filed a post-conviction challenge to his 1990 death sentence which was denied and the denial was upheld by the Florida Supreme Court. *Sireci v. State*, 773 So. 2d 34 (Fla. 2000)(*Sireci* IV).

Mr. Sireci subsequently filed a 3.853 Motion for DNA testing in which he swore that he was actually innocent and sought to test the evidence against him. The trial court denied Mr. Sireci the opportunity to test the evidence against him and the Florida Supreme Court upheld the denial. *Sireci v. State*, 908 So. 2d 321 (Fla. 2005)(*Sireci* V).

Sireci, through the assistance of his post-conviction counsel and the Innocence Project, was able to persuade the State to allow DNA testing of a limited number of items of evidence through a Consent Agreement. SR1:32-34. The DNA testing of the limited evidence was inconclusive. In order to obtain the Consent Agreement, the State required Sireci to waive the right to seek additional DNA testing through the courts. Despite Mr. Sireci's request, the State also refused to allow certain evidence to be tested, including hair collected from Mr. Poteet's sock – the hair that allegedly tied Mr. Sireci to the scene of the crime. The hair on the victim's sock, the microscopic comparison of which is the subject of the instant challenge, has never been subjected to DNA testing.

On April 21, 2014, Mr. Sireci filed a Successive Rule 3.851 Motion to Vacate the Judgment of Conviction and Sentence. (APPENDIX G). Mr. Sireci asked for an evidentiary hearing and also for leave to amend based on requests for public records. (APPENDIX H). Mr. Sireci filed an amended successive motion on July 28, 2014. (APPENDIX I). The State stood on its previous response. SR1:191-192. The Court issued an order summarily denying Mr. Sireci's Amended Successive 3.851 Motion to Vacate Judgment of Conviction and Sentence on November 24, 2014. (APPENDIX D). Mr. Sireci filed a motion for rehearing on December 9, 2014. (APPENDIX E). That motion was denied on January 15, 2015. (APPENDIX F).

Mr. Sireci timely appealed the circuit court's denial to the Florida Supreme Court. His

appeal was denied and his case became final in the Florida Supreme Court on February 15, 2016. *Sireci v. State*, 2015 WL 9257768 (unpublished)(*Sireci* VI). He petitioned this Court for an extension of time in which to file his Petition for Writ of Certiorari, which was granted on May 11, 2016. This timely Petition follows.

II. Facts of the crime:

Mr. Sireci was charged and convicted of the murder of Howard Poteet, the owner of a used car sales lot. The State argued at trial that Sireci entered the used car lot for the purpose of robbing Mr. Poteet. *Sireci v. State*, 399 So. 2d 964, 966-967 (Fla. 1981)(*Sireci* I), cert denied, 456 U.S. 984, 102 S.Ct. 2257, 72 L.Ed.2d 863(1982). The State further argued that Sireci was armed with a wrench and a knife and that the evidence showed that Poteet was stabbed multiple times. *Id.*

The State also presented testimony from crime laboratory analyst William Munroe who claimed to have performed valid scientific testing on hair evidence which placed Mr. Sireci at the murder scene. 1976 TR2:368. Mr. Munroe, a crime scene analyst from the Sanford Crime Lab, who was trained by the Federal Bureau of Investigation (FBI), opined that, based on his scientific analyses, the hair found on the victim's sock at the crime scene was "consistent with" Mr. Sireci's hair. Monroe further testified "consistent with means that of all the characteristics of the hairs I examined, I found no significant differences, *that in all probability*, this hair came from that individual." 1976 TR3:406-407 (emphasis added). The hair on the victim's sock was the only physical evidence linking Mr. Sireci to the crime scene.

The State Attorney argued in closing that "one of those clothing items became very important later on and that was Mr. Poteet's socks. ... The socks became relevant because on the socks was a hair. ... Bill Munroe . . . the expert chemist . . . who did comparison tests on the

evidence submitted to him and came to the finding on the socks, that on the socks of Howard Poteet, **there was a hair that matched the hair of [Henry Sireci]**." 1976 TR4:679-684. (emphasis added). The State also introduced statements purportedly made by Mr. Sireci implicating himself in the murder.

Mr. Sireci's attorney, who was later found to be ineffective at the penalty phase, argued that the crime amounted to only third-degree murder. 1976 TR4:702-12. The 1976 trial court prohibited Mr. Sireci from testifying to his innocence during the penalty phase of the proceedings. See *Sireci v. State*, 399 So. 2d at 972. During the guilt phase of the proceedings, Mr. Sireci's attorney spoke to two men who had been transported to the Orange County Jail and who had written a letter which had been sent to various people including the attorneys and the trial judge. The letter implicated a man named James Capotorto aka "Big Jim" in the murder. 1976 TR1:193 and 1976 TR4:648. Following the guilty verdict and the rendering of the jury's non-unanimous advisory sentence recommending death, Mr. Sireci wrote a letter to the trial court wherein he told the court he had wanted to discharge his lawyer prior to the verdict because the two men who wrote the letter about "Big Jim" had not been called to testify. Sireci also asked the court to declare a mistrial. 1976 TR2:292-93 and 1976 Vol. Transcript of Sentencing R. 4. The Court denied the motion for mistrial. *Id.* Nevertheless, Mr. Sireci has continued to maintain his innocence.

The statements purportedly made by the borderline intellectually disabled and brain-damaged Mr. Sireci were inconsistent with each other and inconsistent with the forensic evidence. By way of example, Harvey Woodall, a convicted felon who had been sentenced to prison six times, testified that Mr. Sireci told him he picked up the wrench on the premises. 1976 TR3:437. Bonnie Arnold, who had sex with Mr. Sireci's alleged girlfriend Barbara Perkins, said Mr. Sireci

told him that he brought the wrench with him and hit him on the head in the office and that he fought the victim when he got out of the car, (1976 TR3:455-56); and, that Mr. Sireci never took anything from Mr. Poteet. 1976 TR4: 473. Detective Arbisi testified that Mr. Sireci told him that he got $11 from Mr. Poteet, (1976 TR3:598); that Mr. Poteet didn't offer much resistance, (1976 TR4:605); and, that Barbara Perkins had "prior knowledge of the homicide" and was present and took part in the homicide. 1976 TR4:608.

Barbara Perkins, who received a three-year plea deal for charges related to this case and a promise not to be prosecuted for other crimes, (1990 TR8:1043), denied being present during the murder. She testified that Mr. Sireci told her he took the wrench with him on the way to the used car lot (1976 TR1:179) and that he couldn't find any money so he took Mr. Poteet's wallet which contained credit cards. 1976 TR1:195. Perkins, who was described incorrectly by the Florida State Courts as Sireci's girlfriend, had actually been found in Sireci's car in Las Vegas with the victim's credit cards. Perkins had used the credit cards to buy gas for the car on her way to Las Vegas from Tennessee. Sireci, who was in Illinois at the time of Perkins' arrest, had reported his car stolen in Tennessee. Ms. Perkins' credibility could also reasonably be doubted because she had been convicted of four or five crimes of dishonesty or false statement. 1990 TR8:1046.

Bonnie Arnold, another witness to a purported confession by Mr. Sireci, was not charged in the case but could have been charged as an accessory after the fact based on his testimony. Arnold was not cross-examined on this issue. 1976 TR3:442-476. Mr. Arnold also had an interest in protecting Ms. Perkins in that he engaged in sex with Ms. Perkins the morning after the murder, prior to taking Ms. Perkins and Mr. Sireci back to his residence. 1976 TR3:467-469. At trial in

1976, defense counsel failed to ask a single question in cross examination of at least two witnesses: Detective Gary Arbisi (1976 TR4:609) and Peter Sireci (1976 TR3:426).

At the 1990 penalty phase, the defense mental health experts testified Mr. Sireci's statements were inconsistent and suggest confabulation, a characteristic consistent with Mr. Sireci's brain damage. Even though the judge rejected that assertion, he found "credible" the defense expert testimony which "convincingly establishes [that Mr. Sireci] suffers from organic brain damage ... and he may be described as functionally retarded." 1990 TR26:2676-7.

III. Newly discovered evidence:

Nearly four decades after Henry Sireci's conviction, the Federal Bureau of Investigation ("FBI") conceded that the type of hair comparison evidence that formed the basis of the State's case at Mr. Sireci's trial is scientifically invalid. Indeed, in 2013, the FBI admitted that testimony provided by its agents, identical in all relevant ways to the testimony offered by crime laboratory analyst William Munroe in this case against Mr. Sireci, has been discredited and is scientifically unsupportable. Put simply, were the State to offer today the same testimony used to convict Mr. Sireci, it would be inadmissible as a matter of law.

On April 21, 2013, the American Society of Crime Laboratory Directors (ASCLD/LAB) issued the following Notification to its member Crime Labs that,

> [T]he Federal Bureau of Investigation and the United States Department of Justice are jointly in the process of reviewing pre-1999 microscopic hair comparison cases in which evidence was examined by the FBI Laboratory and the reports issued and/or the testimony provided indicated a positive association(s) between known samples and crime scene evidence. This case review was initiated as a result of several convictions being overturned in 2012 following DNA testing of evidence. Subsequently, concerns were raised as to how the results of microscopic hair comparisons were explained to juries in these cases.
>
> The case review discussed above is not intended to be an assessment of the validity

of the science of microscopic hair comparisons but may determine if reports and associated testimony exceeded the limits of science. . . .

The purpose of this Notification is not intended to highlight the events taking place in the FBI Laboratory but to raise awareness within the Forensic Science Community and the Criminal Justice System that there may be broader need for review of reports and testimony provided in microscopic hair comparisons made prior to the routine implementation of DNA technology in hair comparisons.

[Based on ASCLD/LAB Guiding Principles of Professional Responsibility for Crime Laboratories and Forensic Scientists] [w]e have an ethical obligation to take appropriate action if there is potential for, or there has been a miscarriage of justice due to circumstances that have come to light, incompetent practice or malpractice." It is not ASCLD/LAB's intent to direct that such reviews be conducted by any laboratory or judicial system but it is our recommendation that each laboratory, in consultation with the appropriate legal authorities, consider whether there may be past cases, specifically involving convictions, in which it would be appropriate to evaluate the potential impact of the reported conclusions and/or related testimony on the conviction.

(APPENDIX I, Attachment A).

ASCLD/LAB was founded in 1973 when a group of 47 crime laboratory directors from around the United States were invited to meet with then FBI Director Clarence Kelly and other FBI personnel in Quantico, Virginia. The meeting led to an agreement between the FBI and crime labs around the country to form an association of crime lab directors. In 1974, ASCLD was officially formed. At the same time, national headlines were being made establishing serious concerns about the quality of work performed in some of the nation's crime laboratories. ASCLD recognized the problem and worked to establish standards for crime laboratories in an attempt to restore the public confidence in the work performed by the nation's crime laboratories. SR1:61; http://www.ascld-lab.org/history/ (last visited June 28, 2016).

As ASCLD continued to grow, it accredited more and more crime laboratories around the country so that by 1984, ASCLD had accredited 38 crime laboratories. By 1993, 36 more

laboratories were accredited and a crime laboratory in Australia was the first international laboratory to be accredited. Currently, ASCLD has accredited more than a hundred crime labs worldwide and continues to inspect and accredit crime labs. *Id.*

The Florida Department of Law Enforcement Orlando Regional Crime Laboratory located at 500 West Robinson Street in Orlando, Florida is an ASCLD/LAB accredited crime laboratory.[1] The crime lab's certificate is ALI-151-T. At the time the Notification was issued, the Lab was accredited. It continues to be accredited today. The Lab's most recent accreditation date is September 3, 2015. Its accreditation expires September 2, 2019.

At the time of Sireci's trial in 1976, the hair analysis was performed by William Munroe, a Crime Laboratory Analyst with the State of Florida, Department of Criminal Law Enforcement, Sanford Regional Crime Laboratory. This Laboratory is now part of the FDLE Orlando laboratory. SR1:65-71.

Sireci's case fits within those cases identified in ASCLD/LAB's April 21, 2013 Notification. Sireci's case is a conviction, and sentence of death, that meets the criteria for cases in which it is ethically recommended to evaluate the impact and related testimony regarding the microscopic hair analysis. Mr. Munroe's testimony about the positive identification of the hair comparison from the Sireci sample and hair found at the crime scene, coupled with the prosecutor's closing argument to Sireci's jury, exceeded the limitations of science.

Based on the disclosure of public records after the filing of his Successive 3.851 Motion, Mr. Sireci learned that FDLE did in fact receive the ASCLD/LAB Notification. (APPENDIX H, APPENDIX I, Attachment E). As a result of the Notification, FDLE conducted a sharply limited

[1] As are the other FDLE Labs throughout the State of Florida.

review. FDLE only reviewed cases where an FBI analyst had performed the examination, instead of the broader based review that was contemplated in the Notification. Because Mr. Munroe was not an FBI analyst, FDLE did not review Mr. Sireci's case. According to the records provided by FDLE, they reviewed only four cases in the entire State of Florida based on the ASCLD/LAB Notification. *Id.*

However, there is no discernible difference between Mr. Munroe's improper testimony in Mr. Sireci's case and those cases where FBI analysts conducted the examination and offered testimony. In July of 2013, the FBI, the Innocence Project, and the National Association of Criminal Defense Attorneys entered into an Agreement that identified the specific types of hair comparison testimony that exceeds the limits of science:

> Microscopic hair analysis is limited, however, in that the size of the pool of people who could be included as a possible source of a specific hair is unknown. An examiner report or testimony that applied probabilities to a particular inclusion of someone as a source of a hair of unknown origin cannot be scientifically supported. This includes testimony that offers...opinions regarding frequency, likelihood, or rareness implicitly suggesting probability. Such testimony exceeds the limits of science and is therefore inappropriate.

(APPENDIX I, Attachment F, H). The Agreement was made public in July of 2013.[2]

The Agreement notes three types of errors: 1) "The examiner stated or implied that the evidentiary hair could be associated with a specific individual to the exclusion of all others. This type of testimony exceeds the limits of the science." 2) "The examiner assigned to the positive association a statistical weight or probability or provided a likelihood that the questioned hair

[2] While the attached agreement reflects a date of November 9, 2012, the Agreement was not made public until July of 2013 and therefore not accessible to Mr. Sireci or his counsel until that time.

originated from a particular source, or an opinion as to the likelihood or rareness of the positive association that could lead the jury to believe that valid statistical weight can be assigned to a microscopic hair association. This type of testimony exceeds the limits of science." 3) "The examiner cites the number of cases or hair analyses worked in the lab and the number of samples from different individuals that could not be distinguished from one another as a predictive value to bolster the conclusion that a hair belongs to a specific individual. This type of testimony exceeds the limits of science." *Id.*

The Agreement explained that the only appropriate testimony in this area is testimony that "hair comparison could not be used to make a positive identification, but that it could indicate, at the broad class level, that a contributor of a known sample could be included in a pool of people of unknown size, as a possible source of the hair evidence (without in any way giving probabilities, an opinion as to the likelihood or rareness of the positive association, or the size of the class) or that the contributor of a known sample could be excluded as a possible source of the hair evidence based on the known sample provided." *Id.*

REASONS FOR GRANTING THE WRIT

TO ENSURE THAT INNOCENT PRISONERS ARE NOT UNCONSTITUTIONALLY EXECUTED, THIS COURT SHOULD REVERSE A STATE COURT'S DENIAL OF A NEW TRIAL WHERE THE STATE PRESENTED FALSE EXPERT TESTIMONY REGARDING PHYSICAL EVIDENCE AT TRIAL AND REFUSED TO CONDUCT DNA TESTING OF THAT SAME PHYSICAL EVIDENCE IN POST CONVICTION.

Mr. Sireci has been on death row in Florida for 40 years for a crime he has always maintained he did not commit. He availed himself of the available state court procedures in order to challenge his conviction and sentence, yet he still faces execution despite the fact that the primary piece of physical evidence against him has never been subjected to DNA testing.

Moreover, it is undisputed that the testimony about that physical evidence was based on false scientific testimony.

Scientific evidence has a uniquely persuasive impact on juries[3], which are predisposed to credit the testimony of scientific experts and to believe that conclusions reached through the application of scientific methods are trustworthy.[4] "The major danger of scientific evidence is its potential to mislead the jury; an aura of scientific infallibility may shroud the evidence and thus lead the jury to accept it without critical scrutiny." Paul C. Giannelli, *The Admissibility of Novel Scientific Evidence: Frye v. United States, A Half-Century Later*, 80 Colum. L. Rev. 1197, 1237 (1980). *See also United States v. Addison*, 498 F.2d 741, 744 (D.C. Cir. 1974) (Noting that "scientific proof may in some instances assume a posture of mystic infallibility in the eyes of a jury of laymen…).

This Court has long held that a conviction based on the use of false evidence by the State violates the Due Process Clause of the Fourteenth Amendment and, if the false evidence is likely to have affected the outcome of the trial, compels a new trial. *See United States v. Agurs*, 427 U.S. 97, 103 (1976); *Giglio v. United States*, 405 U.S. 150,153 (1972); *Miller v. Pate*, 386 U.S. 1,7 (1967); *Alcorta v. Texas*, 355 U.S. 28, 31-32 (1957); *White v. Ragen*, 324 U.S. 760, 64 (1945);

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[3] "[J]urors place substantial weight on forensic evidence. A 1978 survey of jurors conducted immediately after their discharge from serving on criminal cases revealed forensic science experts are the most persuasive of all witnesses testifying at trial." Tara Marie La Morte, Comments, *Sleeping and Gatekeepers:* United States v. Llera Plaza *and the Unreliability of Forensic Fingerprinting under* Daubert, 14 Alb. L.J. Sci. & Tech. 171,208 (2003)(citing reference omitted).

[4] "There is virtual unanimity among courts and commentators that evidence perceived by jurors to be 'scientific' in nature will have particularly persuasive effect." John William Strong, *Language and Logic in Expert Testimony: Limiting Expert Testimony By Restrictions of Function, Reliability, and Form*, 71 Or. L. Rev. 349, 367 n.81 (1992)(citing references omitted).

Pyle v. Kansas, 317 U.S. 213,216 (1942); *Mooney v. Holihan*, 294 U.S. 103,112 (1935). *See also United States v. Young*, 17 F.3d 1201, 1203-04 (9th Cir. 1994)("A conviction based in part on false evidence, even false evidence presented in good faith, hardly comports with fundamental fairness.").

Nationwide DNA exonerations prove that flawed forensic science and misleading testimony based on faulty forensic techniques are devastating to the truth-seeking function of the criminal justice system and that what often appears to be conclusive evidence of guilt is not always reliable. The number and publicity of DNA exonerations have helped highlight the dangers of flawed forensic evidence, leading courts to widely acknowledge both the fallibility of faulty forensic evidence and the perilous effects of grossly misleading testimony relating to such evidence.[5] Accordingly, Congress tasked the National Academy of Sciences ("NAS") with evaluating the scientific validity and reliability of various forensic techniques (including hair microscopy) and examining ways to improve the quality of those forensic techniques in criminal investigations and trials. In 2009, the work by the NAS culminated in the publication of a report that revealed fundamental flaws in many common forensic disciplines and acknowledged: "New doubts about the accuracy of some forensic science practices have intensified with the growing numbers of exonerations resulting from DNA analysis (and the concomitant realization that guilty parties sometimes walk free)."[6] With respect to hair comparison evidence, the NAS was

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5 *See Hinton v. Alabama*, 131 S. Ct. 1081, 1090 (2014) ("We have recognized the threat to fair criminal trials posed by the potential for incompetent or fraudulent prosecution forensics experts ...") (internal citations omitted).

6 Comm. on Identifying the Needs of the Forensic Sci. Cmty., Nat'l Research Council of the Nat'l Acads., *Strengthening Forensic Science in the United States: A Path Forward* (2009) (hereinafter, the "NAS Report"), at 7.

particularly critical: "No scientifically accepted statistics exist about the frequency with which particular characteristics of hair are distributed in the population." *Id.* at 160. Moreover, "[t]here appear to be no uniform standards on the number of features on which hairs must agree before an examiner may declare a 'match.'" *Id.*

Then, as noted above, in 2013, both the FBI and ASCLD/LAB conceded that the kind of testimony about mircoscopic hair comparison the State presented in Sireci is based on inaccurate forensic science. Indeed, faulty forensic methodology was used to convict Mr. Sireci and presented to his jury as scientific proof that Mr. Sireci was at the crime scene and had to be the perpetrator. The forensic techniques used in this case were unreliable and this newly discovered evidence clearly demonstrates, in a specific way, that the testing methods or opinions in Mr. Sireci's case were deficient. The hair evidence in Mr. Sireci's case was presented to his jury as a definitive match, when the reality is that such a finding was beyond the bounds of the science. This new evidence in Sireci's case, coupled with the State's continued refusal to conduct DNA testing on the sock, the only piece of physical evidence linking Sireci to the crime scene, require this Court to intervene.

Sireci was never found with any items belonging to the victim. Perkins was found with the victim's credit cards but was given a deal to testify against Sireci. The primary physical evidence against Sireci, the "matching" of the hair found at the crime scene to Sireci's hair, was based on testimony and argument that is now known to have exceeded the limits of science. Further, the blood evidence that was presented at trial and has now undergone DNA testing leading to inconclusive results, a fact which lends further weight to Sireci's argument.

As this Court has said, death is "an unusually severe punishment, unusual in its pain, in its

finality, and in its enormity." *Furman v. Georgia,* 408 U.S. at 287 (Brennan, J., concurring). It differs from lesser sentences "not in degree but in kind. It is unique in its total irrevocability." *Id.* at 306 (Stewart, J., concurring). More recently, members of the United States Supreme Court have recognized the role which flawed forensics, specifically microscopic hair analysis, has played in numerous capital cases resulting in wrongful convictions. See *Glossip, et al. v. Gross, et al.*, 576 U.S. ___, 135 S.Ct. 2726, 2758(2015) (Breyer, J. dissenting)(specifically referencing flawed microscopic hair analysis as an example of the unreliability that exists in capital convictions).

In Mr. Sireci's case, the only physical evidence linking him to the scene was the hair on the victim's sock. There were no fingerprints connecting Mr. Sireci to the scene. No property belonging to the victim was discovered in Mr. Sireci's possession. In fact, it was Barbara Perkins, who was alone in Las Vegas (after stealing Mr. Sireci's car, which Mr. Sireci reported as stolen) when arrested, who possessed the victim's credit cards. While the State did present evidence of supposed confessions or admissions by Mr. Sireci, those statements are dubious at best.

Mr. Sireci suffers from organic brain damage and is functionally retarded. He is easily suggestible and prone to confabulation. Additionally, many of the witnesses who offered testimony about these alleged admissions had biases against Mr. Sireci or were otherwise unreliable. Barbara Perkins and Bonny Arnold were both implicated in the crime. Harvey Woodall was a six time convicted felon and jailhouse snitch. Both Peter Sireci and David Wilson had prior family conflicts with Mr. Sireci that were not adequately investigated or presented by trial counsel. The alleged admissions were not even consistent with each other.

Finally, it is important to note that more than one out of four exoneration cases involved false confessions. See http://www.innocenceproject.org/dna-exonerations-in-the-united-

states/ (last visited June 29, 2016). Mr. Sireci, if he had been allowed to do so, would have presented further evidence of the unreliability of these confessions at an evidentiary hearing.

Munroe's testimony regarding likelihood and probability that it was Mr. Sireci's hair to the exclusion of others is precisely the type of testimony that exceeds the limits of science as described in the FBI and ASCLD/LAB review. The prosecutor at trial obviously felt confident in the strength of Mr. Munroe's opinion as he told Mr. Sireci's jury, without objection, that the hair on the victim's sock "matched" Mr. Sireci's. When taken as a whole, both Mr. Munroe's testimony and the State's closing argument exemplify the errors described in the FBI's review and encompassed in ASCLD/LAB's advisement to agencies like FDLE of their "ethical obligation" to conduct a comprehensive review. Mr. Sireci was entitled to have his case properly reviewed by FDLE and/or have the hair in question subjected to DNA testing. At the very least, Mr. Sireci was entitled to an evidentiary hearing to explore the reasons for FDLE's failure to conduct this review. Anything less is a violation of Mr. Sireci's federal due process rights, and the time is ripe for this Court to intervene and ensure uniformity in evaluating innocence claims in capital cases, particularly where the conviction rested on now firmly discredited scientific testimony.

CONCLUSION

For the foregoing reasons, Mr. Sireci respectfully requests that this Court grant the petition for writ of certiorari to review the judgment of the Florida Supreme Court.

Respectfully submitted,

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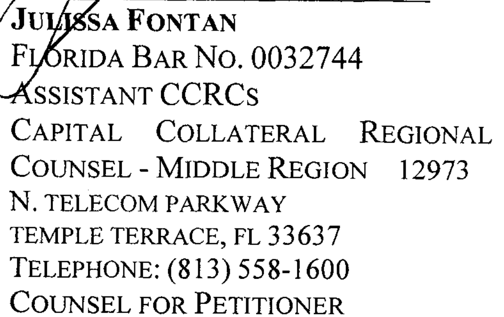

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JULY 13, 2016

PROOF OF SERVICE

I, Maria DeLiberato, do swear or declare that on this 13th day of July, 2016, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS and PETITION FOR A WRIT OF CERTIORARI on the party to the above proceeding, by depositing an envelope containing the above documents in the United States mail properly addressed to them and with first-class postage prepaid. The name and address of the party served is as follows:

Scott Browne, Assistant Attorney General
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This 13th day of July, 2016.

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