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SC SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Honorable Doyet A. Early, III, Circuit Court Judge

CA No. 05-CP-18-1368
Appellate Case No. 2014-000387

KENNETH SIMMONS, SK5066. . . . . *Petitioner,*

v.

STATE OF SOUTH CAROLINA . . . . . *Respondent.*

PETITIONER'S REPLY

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As set forth in detail in Petitioner's opening brief: (1) the State presented false, misleading, and unreliable DNA evidence to secure Kenneth Simmons' conviction at trial; (2) the State failed to disclose material and favorable evidence regarding its DNA testing; and, (3) "there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction . . . in the interest of justice." S.C. Code Ann. § 17-27-20(A)(4); *Napue v. Illinois*, 360 U.S. 264 (1959); *Brady v. Maryland*, 373 U.S. 83 (1963); *Giglio v. United States*, 405 U.S. 150 (1972); *United States v. Bagley*, 473 U.S. 667 (1985). As will be discussed in more detail below, the arguments advanced in Respondent's January 22, 2016 submission lack support in the record and are grounded in numerous misstatements of fact and law.

I. THE STATE COMMITTED MULTIPLE VIOLATIONS OF *BRADY V. MARYLAND*, 373 U.S. 83 (1963), *NAPUE V. ILLINOIS*, 360 U.S. 264 (1959), AND THEIR PROGENY.

At trial, Lauren Crane, Michael Baird and Solicitor Bailey all told the jury that Simmons' DNA was consistent with the crime scene at ***nine out of nine*** tested genetic locations. App. 1470-71, 1474-75, 1481-82, 2005-06, 1041 ("nine out of nine locations on DNA molecules that they compared with the semen in that vaginal swab matched the DNA from Kenneth Simmons' blood"). While Respondent asserts that Crane's trial testimony, which formed the basis for Baird's and Bailey's assertions, "would have been exactly the same" even if there were no errors reported on the State's exhibit at trial, Brief of Respondent 19, 23, 24, there is no serious dispute that this assertion was false. As Crane explained in her PCR deposition, three of the nine tested genetic locations (the CTT test results) do not "match," "include" or incriminate Simmons in any way. App. 4830-32. Drs. Stephen Lambert, Charlotte Word and Robin Cotton likewise testified that the CTT results do not match Simmons' DNA. App. 4106, 4122, 4951, 5008. But, as we now know, Crane did not disclose to Simmons' defense counsel or explain to the jury that the CTT results did

not match Simmons' DNA. App. 4832-33. Respondent's assertion that this materially false testimony amounted to nothing more than a minor error on a demonstrative aid has not even a shred of record support.

Defense counsel had no way of knowing that Crane's trial testimony was false because Lifecodes never issued a report about their CTT test results, except for the results they obtained from Kenneth Simmons *known* blood sample. App. 4470-74 (February 2, 1998 report of CTT results on Kenneth Simmons' known sample only). Lifecodes never reported to defense counsel what results it had obtained with CTT testing on the victim's known blood sample or on the crime scene samples. App. 4094-95, 4956-57. When Crane discussed the State's exhibit 24 at trial (reproduced at page 6 of Petitioner's Brief), that was the first and only time that Lifecodes reported any CTT results from the crime scene evidence[1]—and the results that Crane claimed before the jury were completely wrong. If the lab had properly reported their test results, defense counsel would have been aware that the CTT results do not match Kenneth Simmons at all. They only match the victim's known blood sample, and they do not indicate a mixture of more than one person's DNA. Instead, they only show ***a single DNA profile*** consistent with the victim's known sample. App. 4943-44, 4951, 5014.

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[1] Crane acknowledged this fact as well. When asked why there were no other CTT reports other than the February 2, 1998 report for Simmons' known sample, she responded:

> [F]irst of all, that report is generated just based on Mr. Simmons' values. And there was no, in my opinion, conclusive result that I could generate that I felt was conclusive with the CTT result. Therefore, there was no official report that was generated. And the subsequent report was prepared, you know, at the time of trial.

App. 4829-30.

Accordingly, the CTT test results were wholly inconsistent with the lab's purported finding of a mixture of more than one DNA profile with the DQ Alpha Polymarker ("DQA/PM") test conducted on the same samples. After the CTT testing failed to show a mixture of DNA, Lifecodes conducted a gender-typing test on all of the remaining evidence available and ***no male DNA was identified*** in the evidentiary samples. App. 4953-54, 5010. The State did not disclose the gender-typing test results, nor did it disclose a variety of other information, such as Lifecodes' failure to use important quality control procedures and other errors showing the lab's sloppy work.[2] App. 4956, *see also*, Petitioner's Brief 15, n.13.

It makes no scientific sense that the initial DQA/PM test results showed a DNA mixture, but the subsequent, more sophisticated CTT tests showed only a single DNA profile that does not contain any male DNA.[3] The only reasonable explanation for this discrepancy is error, likely

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[2] Respondent is therefore equally wrong in its claim that "Simmons challenges only the accuracy of the demonstrative aid," and although "[t]he chart is wrong, . . . there is no evidence the testing was wrong." Brief of Respondent 17, 24. Simmons' three post-conviction experts explicitly grounded their testimony exposing the material flaws in the trial DNA evidence on Lifecodes' case file, including Lauren Crane's lab notebook and copies of her testing results. App. 4075-76, 4931, 4951-52, 4995-96. Moreover, Dr. Lambert requested that Orchid Cellmark provide high quality digital color scans of the CTT test results (which it did) because the copies that were provided to defense counsel prior to trial were so poor that the test results were not decipherable, App. 4093, 4130-31, and Dr. Word traveled to the Orchid Cellmark facility to review the entire file in person. App. 4931-32. From this thorough review of the underlying data, the experts testified that: (1) Lifecodes' CTT test results do not show a mixture of DNA; (2) the CTT results do not match Simmons' DNA; (3) the gender-typing tests did not reveal any male DNA in the evidence; (4) Lifecodes failed to use a reagent blank control process to alert them to the occurrence of cross-contamination during the DQA/PM testing process; and, (5) Lifecodes failed to properly report any of this evidence to defense counsel. *See, e.g.*, App. 4954-60, 4974-75, 5008-5012.

[3] The DQA/PM test has limited capabilities by today's standards. It was designed to function as a test solely for exclusionary purposes—not as a tool for specific inclusion. It tests for only six genetic locations and can only identify several locations by a process of elimination rather than conclusive identification. By contrast, today's tests can specifically identify an average of 13 to 16 genetic locations in a much more precise manner. App. 4935-36, 4941-42. As Dr. Lambert explained, the CTT test was a more sophisticated test because it was "more similar to the test that

cross-contamination, during the DQA/PM testing process.[4] Respondent speculates that perhaps the gender-typing test results did not show any male DNA because the sample was too small, but that fails to explain how the sample was large enough to produce results for the DQA/PM test, which requires more biological material, but inexplicably small enough just days later to register only an "X" chromosome but not a "Y" (i.e., male) chromosome during CTT testing. Moreover, the jury was deprived of the opportunity to consider that argument and weigh it against other evidence pointing to the more plausible possibility that there was never any testable sperm in the samples to begin with, including evidence that: (1) the samples were degraded, App. 1432-33; (2) the samples contained far more DNA from the victim herself than from any other outside source, which is not typical of a sexual assault case, App. 4094; (3) Crane oddly reported only that "[d]ata suggest that sperm was visualized," App. 4312; and, (4) the Lifecodes file does not contain any information, as one would typically expect, verifying that sperm was identified in the samples by anyone at Lifecodes.[5] App. 4956, 5060.

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we currently run at the State Law Enforcement Division. It was a precursor to the tests that we currently run." App. 4089.

[4] Dr. Cotton explained that contamination could have occurred from the lab technician's own DNA or from another sample being tested at the same time, as Crane's lab notebook indicates that she completed the DQA/PM testing for this case simultaneously with multiple samples from other cases and, further, failed to use a reagent blank control process as a quality assurance mechanism to ensure that no human DNA was inadvertently introduced during the testing process. App. 5009-5012.

[5] The fact that sample fractions are referred to as the "male" and "female" fractions does not prove the presence of sperm, as Respondent asserts. Brief of Respondent 23. As Dr. Word explained, these labels stem from the assumption that where semen is suspected in a sample, the differential lysis process (using first a weaker chemical wash, followed by a stronger chemical procedure) will extract a majority of the female cells first, leaving the more resilient male cells in the second fraction. App. 4939-40. This process does not work perfectly, typically leaving a mixture remaining in both fractions, but one is assumed to contain more female cells and the other is assumed to contain more male cells if any are present. App. 4940-41. In any event, Dr. Word explained that the labeling of the separate fractions is based on an assumption from the differential

Respondent argues that the solicitor and/or the State's witnesses may not have known of their errors at the time of trial. Brief of Respondent 24. That is not likely, but even if true it is irrelevant. The State's use of false evidence at trial violates the Fourteenth Amendment, even if it is not deliberate. *Napue*, 360 U.S. at 269; *Giglio*, 405 U.S. at 153. A new trial is warranted when there is a reasonable likelihood that the false evidence could have affected the verdict. *See Napue*, 360 U.S. at 272. Moreover, prejudice is established for a *Brady* violation "if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." *Kyles v. Whitley*, 514 U.S. 419, 433-34 (1995) (internal quotation marks omitted); *Bagley*, 473 U.S. at 682. The evidence offered in post-conviction establishes both due process violations.

Respondent also argues that the *Brady* violations in this case were not prejudicial because Simmons confessed to the crime. In an attempt to blunt the likelihood that Simmons' confessions were false, Respondent asserts that there are transcripts of some (but not all), of Simmons' statements available in the Appendix. But, these transcripts are not recordings of the entire interrogations. As Simmons' expert Dr. Richard Leo explained, they are merely recordings of the "recap" after some previous hours of unrecorded interrogation. App. 4231. Thus, there is no way to determine whether Simmons' interrogators fed Simmons – an intellectually disabled person vulnerable to police interrogation techniques – details of the facts of the crime, although there are known cases of false confession in which police interrogators did exactly that, *see* Brief of the Arc of South Carolina, *et. al.* 4-5, and Simmons' description of the interrogation supports that conclusion. App. 4232 (Simmons described police asking questions such as "are you sure you did

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lysis procedure, but in this particular case, there is no evidence in the Lifecodes file that sperm were actually identified in any of the crime scene samples. App. 4955-56.

not strangle her?" or "did you rob her?" or "did you hit her with a stick?"). Furthermore, despite Respondent's assertions to the contrary, Dr. Leo did not "speculate" that the details of the crime were widely known in Simmons' neighborhood, but instead specifically attached a series of newspaper articles dated over a year before Simmons' arrest in which the details of the crime were reported in the community. App. 4239-45.

As Respondent acknowledges, defense counsel heavily attacked Simmons' statements at trial and, therefore, the jury very likely viewed his statements with some skepticism. This significantly increases the likelihood that, had the State properly disclosed material, exculpatory and impeachment DNA evidence, there is a reasonable probability that the outcome of the trial would have been different.

II. DR. BAIRD'S INCORRECT STATISTICAL CALCULATIONS ARE THE LEAST OF THE STATE'S PROBLEMS.

Simmons' PCR experts did not, as Respondent claims, agree that his DNA profile is included in the crime scene samples to the exclusion of 99% of the population. Rather, they testified that ***if and only if*** Lifecodes' DQA/PM test results are completely accurate (which they are clearly not because of the errors discussed above), Simmons' DNA would be included at three of the six genetic locations tested by DQA/PM (and countless other people in the world are also "included" by these locations).[6] Moreover, Simmons' experts testified that Dr. Baird's statistical

[6] In order for Simmons' DNA to be included, one must also make the assumption that the 1.2 allele is present in the crime scene samples. Simmons' genotype at the DQA location is 1.1, 1.2. The victim's genotype at this location is 2, 4. But, the DQA/PM test is not able to specifically identify the presence of a 1.2 allele. The test works by the process of elimination. There is a section on the DQA/PM test strip where a "dot" appears if either a 1.2, 1.3 or a 4 allele is present in the tested sample. Lifecodes' test results indicate that a "dot" does appear in this section of the test strip, but because the sample is purported to be a mixture that also includes the victim's DNA, this section may be showing a "dot" simply because the victim has a 4 allele. *See* App. 4461 for an illustration created by Dr. Lambert to demonstrate this problem; *see also* App. 4082-85 (Dr. Lambert's testimony about this issue); App. 4969-70 (Dr. Word's testimony about this issue). Thus, in order

calculation was grossly inaccurate, seriously misrepresented the strength of the potential evidence, and "[n]o credible forensic scientist would report the results from DNA testing in this manner." App. 5048, *see also* App. 4972-73, 5015-16.

Dr. Baird performed his statistical analysis by calculating the frequency of Simmons' known alleles at all nine of the DQA/PM and CTT genetic locations. First, it was error for Dr. Baird to include the CTT locations *at all* since, as explained above, the CTT results from the evidentiary sample do not match Simmons' DNA. Second, Dr. Baird's statistical calculations inappropriately fail to account for the fact that countless other people, apart from Simmons, would also be "included" as possible contributors to the crime scene samples.[7] In order for the jury to properly assess the weight of the DNA evidence in this case, they must know the likelihood that Simmons' "inclusion" could arise by chance or coincidence. Thus, the relevant statistical question is "what is the statistical probability of randomly selecting some other person, other than Simmons himself, whose DNA would likewise not be excluded as a potential contributor to the evidentiary sample?" Performing the calculation necessary to answer this question is sometimes called

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for Simmons to be included, one must simply assume that the 1.2 allele is present, but the DQA/PM test is not capable of actually determining whether the 1.2 allele is present or not. The most the test can tell us is that it "may" be present. This fact was properly disclosed to defense counsel prior to trial, and it was discussed briefly on cross-examination of the State's trial witnesses. App. 1471-73. This fact further reduces the strength of any potential inclusion, even if Lifecodes' test results were otherwise reliable.

[7] Of the six genetic locations tested by DQA/PM in this case, only three of those locations provide any information potentially relevant to Simmons. This is because two of the genetic locations (LDLR and GYPA) include everyone in the world—i.e., 100% of the population would "match" the crime scene sample at these locations. A third genetic location (HBGG) does not give us any information relevant to Simmons because he and the victim have identical DNA at this location. At the remaining three genetic locations, if there was no testing error by Lifecodes, Simmons' DNA is "included," but so are countless other people with different genetic profiles than Simmons. App. 4118-4123, 4460, 4964-71.

conducting "mixture statistics." That is not the calculation that Dr. Baird performed. Instead, Dr. Baird testified to what are known as "single source statistics." In other words, Dr. Baird calculated the statistical probability of randomly selecting some other person in the world, other than Simmons, whose DNA is identical to Simmons' (i.e., his genetic twin). This meaningless calculation bears no relation to and sheds no light on the ultimate issue in this case: was Kenneth Simmons the perpetrator.[8]

Throughout his PCR deposition, Dr. Baird admitted that there are other genetic profiles (other than Simmons') that would likewise be included by the DQA/PM test results, that mixture statistics would account for those other genetic profiles, and that the mixture calculation offered by Simmons' experts is a correct calculation. App. 4743-44, 4747. Moreover, Dr. Baird acknowledged that THE EVALUATION OF FORENSIC DNA, by the National Research Council (NRC), is an authoritative text on the subject of DNA testing, reporting and testimony. App. 4757-58. This book was published in 1996, three years before Dr. Baird testified at Simmons' trial. Dr. Baird was well aware of its contents. In fact, unscientific and irresponsible practices by Dr. Baird and the Lifecodes lab (under his direction) were actually the impetus for the NRC study that led to this publication. *See, e.g., Harvey v. State*, No. A-7963, 2004 WL 60771 at *10 (Alaska Ct. App. 2004) ("Baird and his company, LifeCodes, were connected to controversial DNA testimony that

[8] To use a simplified analogy, suppose a forensic test was able to identify that the perpetrator of a crime had red hair. If Simmons has red hair, then he would be "included" as a potential contributor. To properly assess the strength of that "inclusion," the jury would need to know how many other people, other than Simmons, also have red hair and therefore are likewise included. If 30% of the world's population has red hair, then the correct answer would be that roughly 30% of people, other than Simmons himself, are "included" as potential contributors. Instead of answering this question, Dr. Baird told the jury how many people in the world, other than Simmons himself, have the exact same genetic profile as Simmons—i.e., 0%. The fact that there is a 0% chance of finding Simmons' genetic twin is irrelevant, because it does not relate in any way to the crime scene evidence, and this figure is therefore grossly misleading.

prompted a National Research Council study of DNA evidence—a study that was critical of certain DNA testing, and that cautioned prosecutors and defense attorneys against 'over-sell[ing] DNA evidence' or arguing 'that DNA-typing is infallible.'"). Dr. Baird sent several chapters of THE EVALUATION OF FORENSIC DNA to Solicitor Bailey in preparation for Simmons' trial, and Dr. Baird admitted that this book specifically instructs experts *not* to report single source statistics in this kind of case:

> Q: Dr. Baird, I think I was referring you to page 129 in Evaluation of Forensic DNA, a publication by the National Research Council.
>
> A: Correct.
>
> Q: In that, on that page is where it details how to calculate the appropriate statistical frequencies for a mixed sample.
>
> A: Correct. And, again, this is copyrighted 1996.
>
> Q: And this testing was done in 1998?
>
> A: Correct.
>
> Q: And you'd agree with me that this is the book that every expert relies on in the appropriate calculation for DNA frequencies?
>
> A: Yes.
>
> Q: And in it, they say if it's a mixed sample, you have to use the mixed sample statistical techniques?
>
> A: Correct.
>
> Q: That's not what you did?
>
> A: Correct.
>
> Q: You used the single source frequency?
>
> A: That's right.

App. 4756-58.

Simmons' PCR experts testified that if the DQA/PM results are reliable, the DNA of approximately 1 in 145 whites would be included in the crime scene sample and 1 in 336 African-Americans would be included (not 1 in a billion and 1 in 8 million, as Dr. Baird claimed). App. 4971, 5093. Moreover, if the 1.2 allele is not present in the crime scene samples (and the DQA/PM test is not capable of determining whether it is or not), Simmons is absolutely excluded. App. 4970. This is not a matter on which reasonable experts could differ. As Drs. Word and Cotton explained:

> It is never appropriate to report results in the manner used by Dr. Baird. Presentation of the approximate frequency of the defendant's known sample completely misinforms the jury regarding the strength of the evidence. No credible forensic scientist would report the results from DNA testing in this manner.

App. 5048; *see also* App. 4972-73. The test results that Lifecodes obtained with the DQA/PM test are "not by any stretch an identification" of Kenneth Simmons. App. 5008. And, if Simmons is included, "it is a weak inclusion, as the stats demonstrate." *Id.*

In any event, Dr. Baird's egregiously incorrect statistical calculation would only matter if there were no reason to otherwise doubt the reliability of Lifecodes' DQA/PM test results. But, as explained above, the State's witnesses falsely claimed that Simmons' DNA was a "match" at all nine genetic locations, testified to fabricated data to support this false claim, failed to disclose a mountain of evidence that would have undermined its purported findings, and withheld additional evidence that would have raised serious questions about the lab's general quality, accuracy, and credibility. That Dr. Baird compounded these constitutional violations with yet another false piece of testimony simply reinforces the lab's propensity toward error, unreliability and fiction.

III. SIMMONS' CLAIMS ARE NOT PROCEDURALLY DEFAULTED.

Respondent's procedural default argument, raised for the first time in its brief on the merits, is a smokescreen intended to mask a wrongful conviction. Any contention that the PCR Court was somehow not aware of the issues now before this Court is disingenuous.

The DNA claim was included in Simmons' First Amended Application for Post-Conviction Relief, filed on December 21, 2009. App. 3731-34. Prior to the PCR hearing, Simmons filed a pre-trial brief addressing the DNA issues and explaining several open questions regarding what the State's witnesses had testified to at trial. App. 3784-3815. At the initial phase of the hearing, Dr. Stephen Lambert testified about flaws in the trial DNA evidence, but several questions remained because the parties had not yet taken testimony from Baird and Crane. App. 4073-4138. Undersigned counsel asked the PCR court to allow in-person deposition testimony from Baird and Crane. The court denied the request. Counsel then asked to take video depositions of these witnesses. The court initially denied that request as well, but ultimately granted permission for a video-recorded deposition of Dr. Baird.[9] App. 4536.

Baird's and Crane's depositions confirmed several of Dr. Lambert's beliefs about flaws in the State's DNA evidence, but also raised some additional questions. At the reconvened PCR hearing, the State recalled former Solicitor Bailey who revealed that although he created the State's DNA exhibit for trial, he did so only based on information provided to him by Crane and Baird.[10]

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[9] Crane was deposed via Skype, and her deposition was transcribed, but it was not video-recorded.

[10] Respondent claims it is unclear whether the chart Solicitor Bailey provided for Lauren Crane's review prior to trial is the same chart that was ultimately used at as the State's exhibit. Brief of Respondent 19, n.14. Respondent is mistaken. Solicitor Bailey specifically identified the chart as State's trial exhibit 24, which he said he had a copy of in his trial notebook. App. 4648. Bailey then explained that he personally created the chart with information that he got from Lifecodes. 4649-50. On cross-examination, Bailey testified that this was the only chart he prepared for trial. App. 4658. He then admitted that his correspondence established that he sent the chart to Lauren Crane for her review on December 21, 1998, and again acknowledged that he must have sent her

App. 4649-50. Following Solicitor Bailey's testimony, undersigned counsel moved to amend the PCR application to include a separate ground for the DNA claim under S.C. Code § 17-27-20(A)(4), providing for post-conviction relief when "there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction . . . in the interest of justice." App. 4701. Undersigned counsel explained that this amendment was needed to conform the PCR application to the evidence presented, since "it seems that the State is suggesting that although several mistakes were made at the trial, it's not anybody's fault." *Id.* The PCR court granted this motion. App. 4702.

Simmons then sought to introduce testimony from Dr. Word and Dr. Cotton, and filed their joint affidavit, App. 4537-4595, along with a second brief addressing the DNA issues and explaining how the facts in support of these claims had developed over the course of the post-conviction litigation. App. 4596-4625. Even though the PCR court declined to grant funding for Word's and Cotton's testimony, they ultimately agreed to testify for free because, "[t]here were so many errors and it was so inappropriately presented, I felt I had a huge scientific and moral obligation to make that information known." App. 4976. The PCR court also refused to sign a court order requiring Orchid Cellmark to produce the original Lifecodes' file for use in the PCR proceedings, so Dr. Word traveled to Texas to review the file in person. App. 4931.

Following the final PCR hearing, the lower court instructed the parties to submit post-hearing briefs solely on the intellectual disability issue. Given the importance of the DNA issue

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that chart because he did not prepare any other charts for use at trial. App. 4659. Lauren Crane likewise identified the chart as State's exhibit number 24, which she claimed that Dr. Baird prepared, and explained that the chart was used to illustrate her testimony at trial. App. 4799-80, 4803-06.

to the legitimacy of Simmons' convictions, Simmons also fully briefed the DNA claims in his post-hearing brief and reply. App. 5118-5174, 5233-5250.

The issues now before this Court were fully and fairly presented to the PCR court and the PCR court ruled (at Petitioner's insistence) on the merits of the issues. *See Cullen v. Pinholster*, 563 U.S. 170, 182 (2011) (holding that the state courts have the "primary responsibility" of adjudicating a state prisoner's federal claims). Respondent's hyper-technical argument, raised in its merits brief for the first time, that Simmons should have filed a fifth pleading asking the PCR court to address in more detail the DNA issues raised in his PCR Application would "'force resort to an arid ritual of meaningless form.'" *James v. Kentucky*, 466 U.S. 341, 349 (1984) (quoting *Staub v. City of Baxley*, 355 U.S. 313, 320 (1958)); *see also Lee v. Kemna*, 534 U.S. 362, 366 (2002) (holding the adjudication of federal constitutional rights "should not depend on a formal 'ritual . . . [that] would further no perceivable state interest.'") (quoting *Osborne v. Ohio*, 495 U.S. 103, 124 (1990)); *Davis v. Wechsler*, 263 U.S. 22, 24 (1923) ("Whatever springes the State may set for those who are endeavoring to assert rights that the State confers, the assertion of federal rights, when plainly and reasonably made, is not to be defeated under the name of local practice."). Simmons specifically and repeatedly asked the PCR court to rule on these issues and presented a fully developed record supporting his claims, and no more is required for preservation purposes.

CONCLUSION

For all of the reasons discussed above, and for the reasons set forth in the Petitioner's Brief and in the briefs of the Innocence Network and the collection of organizations working on behalf of people with intellectual disabilities as Amici Curiae, this Court should reverse Simmons' conviction. A new jury should have the opportunity to assess—based on accurate and scientifically

reliable evidence—whether Kenneth Simmons, a person who is intellectually disabled, committed the murder and sexual assault at issue in this case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of Petitioner's Reply Brief was served by first class United States mail, postage prepaid, this 11th day of February, 2016, upon the following:

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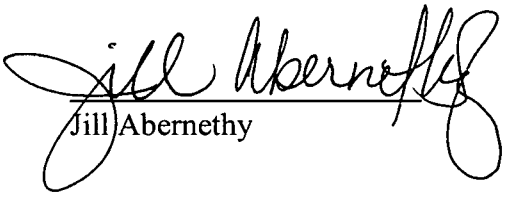

Jill Abernethy