

STATEMENT REGARDING ORAL ARGUMENT

Patrick Swiney requests that oral argument be allowed in this appeal. He contends that oral argument would be helpful to this Court in making the decision in this case. Reasons that oral argument would be helpful to the court is because there are a number of mixed questions of law and of interpretation of fact involved in the issues in this appeal.

The major issue is a question of fact, to be decided *de novo* by this Court. The question of fact is whether the evidence presented in the Rule 32 petition of Patrick Swiney is "newly discovered evidence." Patrick Swiney contends that the evidence that he has presented in his appeal is in fact, newly discovered evidence. While there is a legal definition for newly discovered facts, that definition involves first of all answering questions of fact. Oral argument would be helpful in clarifying by offering examples and differentiating questions of fact involved in this determination.

There is also a series of technical questions involved, with these questions involving the operation of the scientific equipment used in the preliminary testing in

this case. Oral argument would be a helpful way to resolve questions relating to the capabilities, limitations, and development of this equipment, and of the methodology used to gather test samples for the equipment. Older technical methods could be compared and contrasted in oral argument, where the experience and background of individuals, including the learned Judges of this court, vary greatly.

Technical questions concerning the operation of firearms, blood spatter, and the relationship to the scene of the crime could be effectively discussed in relation to the legal issues to be decided.

Mixed questions of law and fact, as well as issues concerning technical information, and familiarization with a specific location, are all presented in the factual setting of this appeal. Oral argument would be especially helpful in comparing, contrasting, and differentiating questions of fact as they apply to principles of law in this case.

There is a question of law concerning admission of scientific evidence that may be unsettled in Alabama law. The standard in criminal cases (less DNA) is, by case law, the Frye, as opposed to the Daubert, standard. However, Alabama cases hold that testimony concerning the admission