

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

STATE OF FLORIDA,
Plaintiff,

CASE NO. 98-05739CF10A
JUDGE: HOROWITZ

v.

ERNESTO BEHRENS
Defendant.

**ORDER DENYING DEFENDANT'S MOTION FOR
REHEARING OF MOTION FOR DNA TESTING**

THIS CAUSE comes before this Court upon the Defendant's Motion for Rehearing of Motion for DNA Testing, brought pursuant to Fla. R. Crim. P. 3.853. Having considered the Defendant's Motion, the State's Response, the Court file, applicable law, and being otherwise duly advised in the premises, this Court finds as follows:

On or about August 9, 2004, Defendant filed the instant motion for rehearing in which he claims that this court overlooked his claim that "previous DNA testing results were inconclusive and subsequent scientific developments would likely produce a definite result." Defendant's claim is without merit. This Court found that the testing was not "inconclusive" as Defendant claims. As noted in the order denying relief, based on the DNA found on the sheet, the odds that someone else was the perpetrator were one in fourteen billion. The rule does not provide for additional testing based on contested testing methods. Newberry v. State, 870 So. 2d 926 (Fla. 4th DCA 2004). Accordingly, it is

ORDERED AND ADJUDGED that Defendant's Motion for Rehearing of Motion for Post Conviction DNA Testing is hereby **DENIED**.

DONE AND ORDERED on this 31 day of Aug, 2004, in Chambers, Fort Lauderdale, Broward County, Florida.

ALFRED J. HOROWITZ
CIRCUIT COURT JUDGE

Copies to:
Office of the State Attorney, Appeals Division
Defendant: Ernesto Behrens

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