

This excerpt from the state's response to Mr. Zeigler's latest motion was signed by former Assistant Attorney General and now Assistant State Attorney Kenneth Nunnally as well as an Assistant Attorney General, indicating that Att.General Bondi is supporting the denial of the motion. In 2007, Nunnally presented the oral argument before the Florida Supreme Court claiming erroneously that "marital discord" was a motive for Zeigler to kill his wife. In so doing, he may have been reminding Justice Charles Wells, who was a private lawyer in Orange County at the time of the murders, of newspaper coverage of the crime which speculated about homosexuality as a possible motive. Wells was a friend and advisor to Sheriff Mel Colman in 1975, and should have recused himself from hearing the appeal,

#### EXCERPT

JUDICIAL CIRCUIT, IN AND FOR ORANGE COUNTY, FLORIDA

CASE NO.: 1976-CR-1076 1976-CR-1082 1988-CR-5355 1988-CR-5356

STATE'S RESPONSE TO MOTION FOR POST CONVICTION DNA TESTING

COMES NOW, the State of Florida and files its response to the Defendant's Motion for DNA Testing Pursuant to Fla. Stat. § 925.11(1)(a). For the reasons set out below, that motion should be denied.

Zeigler argues that "touch DNA" testing of Perry Edwards' fingernails and clothing may also shed significant light on the murders. Motion for DNA Testing Pursuant to Fla. Stat. §925.11(1)(a) at 12, with emphasis added. In Hitchcock, where the defendant argued what DNA testing may show, the Florida Supreme Court stated that "such a speculative claim cannot support the granting of postconviction DNA testing." Hitchcock, 866 So. 2d at 26. Similarly, Zeigler is arguing pure speculation in regards to the value of any DNA testing on Edwards' fingernails and clothing. He states in the Motion (without factual support) that "[a] person involved in a beating such as that which Mr. Edwards suffered typically fights back, causing the DNA of their attacker to become lodged in their fingernails." Motion for DNA Testing Pursuant to Fla. Stat. §925.11(1)(a) at 12, with emphasis added. He further argues that "[i]f Zeigler murdered Mr. Edwards, touch DNA testing should reveal Zeigler's DNA on Edwards' shirt and jacket sleeves." Id., with emphasis added. Zeigler has provided no proof that Perry Edwards fought back, as he argues, or that there was any evidence found under his fingernails. The Defendant's motion illustrates that he is simply on a fishing expedition. See, Hitchcock, supra; Consalvo v. State, 3 So. 3d 1014, 1016 (Fla. 2009).

In addition, Zeigler has now added two guns – the RG guns - to the latest list of items to be tested for DNA. While Zeigler argues that "touch DNA" testing of the guns is critical to his case, there is no reasonable explanation given as to why he has not previously requested that these guns be tested, particularly if the testing of the guns is critical as he now argues. Furthermore, Zeigler has not demonstrated in his motion how testing the guns would lead to a reasonable probability of acquittal or a lesser sentence. While he argues that the "touch DNA" testing will prove that Zeigler did not clean and maintain those guns and that the testing will likely also prove that Edwards Williams cleaned, maintained and owned the guns, Id. at 11, Zeigler's arguments do not explain how the cleaning, maintenance, or ownership of the guns is relevant to whether he committed the murders. Zeigler has not shown how the testing of the guns would exonerate him or lessen his sentence.

Under Rule 3.853, Zeigler "must lay out with specificity how the DNA testing of each item requested to be tested would give rise to a reasonable probability of acquittal or a lesser

sentence.” Hitchcock, 866 So. 2d at 27. “In order for the trial court to make the required findings, the movant must demonstrate the nexus between the potential results of DNA testing on each piece of evidence and the issues in the case.” Id. Zeigler has not demonstrated such a nexus. When stripped of its pretensions, the latest DNA motion is the same motion for DNA testing that Zeigler has filed four times before. Zeigler seeks the same relief on the same grounds that have been decided adversely to him on several occasions. In the 2013 decision affirming the denial of Zeigler’s prior DNA motion, the Florida Supreme Court said:

In his present motion, Zeigler is seeking additional DNA testing based on variations of the same arguments he made in his previous motion for DNA testing in 2001, and we already affirmed the circuit court’s decision of these issues against him in *Zeigler*, 967 So. 2d at 125.

*Zeigler v. State*, 116 So. 3d at 258 (Fla. 2013). Nothing has changed with the filing of the latest motion, which is also collaterally estopped. This Court should deny the motion on that basis. Zeigler’s argument that testing will prove beyond any doubt that he could not have committed the murders has no basis in fact. Zeigler was convicted with competent, substantial evidence and he has failed to establish a reasonable probability as to how the DNA testing he requests would prove or negate a material fact. The motion should be denied.