

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT
IN AND FOR ORANGE COUNTY, FLORIDA

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STATE OF FLORIDA,	:	
	:	Case Nos. CR 76-1076, CR 76-1082
Plaintiff,	:	CR 88-5355, and CR 88-5356
	:	
- vs. -	:	MOTION FOR DNA
	:	TESTING PURSUANT TO
	:	FLA. STAT. § 925.11(1)(a)
WILLIAM THOMAS ZEIGLER, JR.,	:	
	:	
Defendant.	:	
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William Thomas Zeigler, Jr. ("Zeigler"), defendant in the above-captioned action, respectfully submits this Motion for DNA Testing pursuant to Section 925.11, Florida Statutes (2006) and Florida Rule of Criminal Procedure 3.853 ("Rule 3.853"). For the reasons set forth herein and in the accompanying memorandum of law, Zeigler respectfully prays that this Court enter an order authorizing the release of the physical evidence described herein. The following facts set forth the basis for the relief Zeigler seeks herein.

1. Zeigler is an inmate sentenced to death and currently incarcerated at Union Correctional Institute, Raiford, Florida. He has spent the past thirty-nine years of his life in prison. Zeigler has consistently maintained that he is innocent of the crimes of which he has been convicted.

2. Pursuant to the Post-Sentencing DNA Statute, section 925.11, Florida Statutes (2006) and Florida Rule of Criminal Procedure 3.853, Zeigler hereby requests a post-hearing order authorizing the release of certain physical evidence, listed in paragraph 4, for DNA testing.

3. The facts supporting this motion are as follows and as further set forth in the memorandum of law filed together herewith:

A: Background

a. Prior to his wrongful arrest, conviction, and incarceration, Zeigler was happily married to his wife, Eunice, and living in Winter Garden, Florida. He owned and ran a successful family business, the W.T. Zeigler Furniture Store, and was known as a prominent member of his community. He was never in trouble, had no criminal record, and was active in his church.

b. On Christmas Eve, 1975, Zeigler visited his store to pick up three gifts he planned to deliver that night. When he entered, he found the store dark and the lights inoperable. Moments later, as he fumbled in the darkness, he was violently attacked and his glasses fell from his face. Zeigler fought for his life against at least one large black man but could not make out his features in the dark and without his glasses. When Zeigler reached the area in the store where he kept a magnum revolver, he grabbed it and attempted to fire it at his assailants. He also may have attempted to shoot his attacker with a .22 caliber pistol he carried for protection. During the fight, someone shot Zeigler in the stomach. Zeigler heard voices speak the name "Mays" and then passed out. When he came to, he called his friend, police chief Don Ficke, and pleaded with him to come to the store immediately.

c. Zeigler was rushed to the hospital and into surgery for his gunshot wound. Afterwards, during recovery, he was told that when law enforcement came to the furniture store, they found Zeigler's wife, her parents, and Mays, all shot to death. Zeigler's father-in-law, Perry Edwards, had also been severely beaten. Mays had been struck on his head.

d. On December 29, 1975, while Zeigler was in his hospital room recovering from surgery, he was arrested for the four murders.

B: Zeigler's Trial and the Evidence Used to Convict Him

e. The primary point of dispute at Zeigler's trial was the identity of the individual(s) who committed the murders in the furniture store that night. Zeigler has maintained for 39 years that he did not commit any of the murders for which he has been convicted. His testimony at trial, which has never changed, was that he was attacked by at least three people. Zeigler believes one of these people was Charlie Mays because he heard others speak Mays' name shortly before he passed out. Because Zeigler was attacked in the dark and then shot, and because his eyeglasses flew off his face when the attack on him began, Zeigler does not know for sure who the killers were or why they attacked him and his family.

f. The prosecution contended that Zeigler was the killer and that he had planned a convoluted and bizarre scheme to commit at least two of the murders in advance. According to the State, Zeigler lured his wife to their store Christmas Eve and killed her in order to collect her life insurance policies, even though the amount of her insurance was modest and the Zeiglers were a wealthy couple with no pressing need for additional funds. The State never offered any explanation for why Zeigler would also murder his wife's parents, but nonetheless contended that he shot his mother-in-law and brutally beat his father-in-law before shooting him, too. According to the State, after Zeigler committed those three murders (and was presumably covered in blood from doing so), he met with Charlie Mays, whom he knew, and Felton Thomas, a stranger to Zeigler, and took them to test fire guns at an orange grove so that their fingerprints would be on those guns – an assertion that is inconsistent with the State's claim that Zeigler later wiped those same guns clean of fingerprints. Zeigler then reportedly took Mays and Thomas

back to the store to get them to stage a break in, then back to his home to get keys to the store he had just murdered three people in, and then back to the store again, wherein he allegedly murdered Mays but allowed Thomas to escape. Zeigler did all this, according to the State, to frame Mays for killing his family. After all that, the State claims that Zeigler went back to his home, picked up Edward Williams, who had been waiting there for over an hour, and then took him to the store to try to murder him as well. The State claims that Zeigler then turned the gun on himself and shot himself at close range in his belly to make it seem like he was a robbery victim.

g. The State built its case against Zeigler on three things; inferences from physical evidence, which the DNA testing Zeigler seeks in this motion will flatly refute; circumstantial testimony from a key trial witness, Felton Thomas, who has recently recanted substantial portions of that testimony; and circumstantial evidence from another witness, Edward Williams, who was heavily impeached at trial for, among other things, having one of the murder weapons in his possession.

h. The first and most important form of evidence against Zeigler was blood spatter evidence elaborated upon by the State's expert, and specifically, blood stains on the underarm of the inner and outer shirts Zeigler was wearing that night. According to the State, the person who beat Perry Edwards to death caused a significant amount of Mr. Edwards' blood to spatter through the air. The State contended that the stains on Zeigler's shirt were created by being in close proximity to that spatter and therefore proved that Zeigler beat his father-in-law to death by holding him in a headlock under his left arm. The State supported that inference by arguing that the stains on Zeigler's shirt must have come from Perry Edwards because Edwards' blood and the stains were both consistent with type A blood.

i. While Perry Edwards had type A blood, so did Charlie Mays and scores of other people who could have been the attacker Zeigler struggled with before being shot. Zeigler was unable to prove at trial that the blood on his shirt did not come from Perry Edwards, however, because the State made a unilateral decision during the investigation not to test blood samples taken from the victims for subtypes. Zeigler seeks DNA testing in this motion to prove definitively that he did not, in fact, have any of Perry Edwards' blood or other DNA on his clothing, which in turn proves that he could not have committed the murders.

j. The other two key pieces of evidence against Zeigler were testimony from two witnesses, Felton Thomas and Edward Williams. Thomas testified that Zeigler took him to an orange grove to test fire guns, presumably so his fingerprints would be on the guns, and that Zeigler then took him to the store to stage a break in. The State placed great reliance on Thomas' testimony, and the Florida Supreme Court has repeatedly cited it as key evidence supporting Zeigler's convictions.

k. Felton Thomas has recently changed his story altogether, however. As set forth more fully in the memorandum of law filed with this motion, Mr. Thomas now insists that he never fired any guns. Thomas also says that he was never shown any lineup of suspects and that his statement at trial that Zeigler was the person who took him to the orange grove the night of the murders was based on the police telling him Zeigler was the man responsible for the murders. Thomas also states that the person he saw the night of the murders drive him in a four-door car. Zeigler's car at the time was a dark brown Oldsmobile with two doors. Thomas's recent statements are thus fundamentally inconsistent with his trial testimony and substantially undermine both Thomas's credibility and the inculcating nature of his testimony.

1. Edward Williams testified at trial that Zeigler attempted to frame him for the murders, too, and that Zeigler tried to kill Williams once he had transported him to the store. Williams' testimony was heavily impeached at trial, however.

m. Based on the foregoing, neither Thomas's revised statement nor Williams' testimony supports Zeigler's verdict of guilt beyond a reasonable doubt, particularly if DNA testing proves that contrary to the State's argument, Zeigler did not have any of Perry Edwards' blood on him.

n. Even with the original physical evidence and Thomas' original testimony, the jury at Zeigler's trial initially deadlocked, with six jurors voting to acquit. After ongoing deliberations, the jury remained deadlocked, with one juror refusing to vote for conviction. That juror, Mrs. Brickel, reported being subjected to great pressure from the other jurors, and twice requested permission to speak with the judge in private. Instead, the judge called her doctor, without advising Zeigler's lawyers, and convinced him to prescribe Valium for Mrs. Brickel without even examining or speaking with her. Shortly after taking the Valium procured for her by the judge, Mrs. Brickel changed her vote to guilty, allowing the jury to return guilty verdicts on July 3, 1976: two for first-degree murder (for the deaths of Zeigler's wife, Eunice, and Charlie Mays) and two for second-degree murder (for the deaths of Perry and Virginia Edwards). Two weeks later, a short sentencing hearing was held. The jury was out only twenty-five minutes before returning with an advisory sentence of life imprisonment on all counts. The trial judge, however, overrode the jury's recommendation and sentenced Zeigler to death.

C: DNA Testing History

o. In late 2001, after a number of efforts at post-conviction relief had failed, Zeigler was finally permitted to conduct DNA testing on certain pieces of physical evidence, including

the shirts that he wore the night his family was killed and clothing worn that night by Charlie Mays. That testing, which utilized techniques that are outdated today, focused on the areas of Zeigler's clothing the State pointed to at trial as evidence of his guilt, such as the stains on the underarm of Zeigler's shirts that the State claimed proved he held Perry Edwards in a headlock and beat him. The results of that testing severely undermined the prosecution's entire theory of the murders – and directly exculpated Zeigler from the murder of Perry Edwards. Tests on the areas of his shirts the State contended at trial were soaked in Perry Edwards' blood in fact revealed no sign of Perry Edward's blood – a finding that is flatly inconsistent with the State's claim that Zeigler held his father-in-law in a headlock and beat him to death with a blunt instrument. Instead, the testing showed that Charlie Mays' clothes were deeply stained with Perry Edwards' blood. This evidence suggested that Mr. Edwards had been beaten by Mays and not by Zeigler. Such evidence was entirely consistent with, and indeed substantiated, the account that Zeigler maintained all these years.

p. Armed with this evidence and other newly discovered exculpatory evidence, Zeigler moved the court to vacate his convictions. However, the State successfully moved to limit the presentation of evidence in the motion to vacate to the new DNA evidence only.

q. An evidentiary hearing for the motion was held. The State could not deny that the DNA testing did not reveal any evidence that Perry's blood was on Zeigler's shirt. Instead, the State argued that the testing results were inconclusive because DNA material could have degraded over time and because there were other, untested spots on Zeigler's red outer shirt and white t-shirt that could have been Perry Edwards' blood. The Court accepted the State's contention that this untested evidence somehow confirmed Zeigler's guilt. The Court also expressed concern, despite the fact that the shirt at issue yielded high quality, unambiguous

results, that the exculpatory DNA evidence taken from the underarm of Zeigler's shirt could have been too small or degraded a sample to constitute reliable evidence.

r. Zeigler filed a motion for rehearing, along with a separate supporting motion in furtherance of the motion for rehearing in which he requested authorization to test the very evidence relied upon by the State and the court to contest Zeigler's motion to vacate – the spotting on his shirts, and additional points on the shirts' underarms. The court did not authorize further testing. Instead, it summarily denied the motion for rehearing. Zeigler's subsequent appeal to the Florida Supreme Court was also denied, with that Court agreeing that the testing results Zeigler had obtained were insufficient to show his innocence because other, untested spots on his shirts might contain Perry Edwards' blood.

s. In August 2009, Zeigler filed a subsequent request to do additional DNA testing of a number of pieces of evidence. This Court held an evidentiary hearing on that motion in December 2011 at which a blood spatter expert, Paul E. Kish, testified. Dr. Kish explained that the volume of spatter that must have been produced when Perry Edwards was beaten made it all but impossible for the person responsible for the beating not to have had the blood spattered onto his or her clothing. Kish also testified that he believed the testing Zeigler sought would reveal whether or not Perry Edwards' blood had been spattered on Zeigler's shirt.

t. This Court nonetheless denied Zeigler's request, finding that he was seeking either to re-test evidence that had previously been tested or to test evidence that he could have sought to test in 2002. On appeal, the Florida Supreme Court reversed this court's holding that Rule 3.853 barred successive testing motions, finding "[w]e agree with Zeigler that his motion for postconviction DNA testing was not barred because it was successive." The Court affirmed the decision to deny Zeigler's testing motion, however, finding "there was no way to know for

sure that all of the contributors to the blood on Zeigler's clothing would be identified unless every single bloodstain was tested." Zeigler respectfully submit this motion in light of those holdings.

D: Zeigler's Request for Additional DNA Testing

4. In and by this motion, Zeigler requests authorization from the Court to conduct tests on the following physical evidence:

a. "every single bloodstain" on Zeigler's red outer shirt (State's Exhibit 16-4), including all spots that could be blood but have never been identified as such;

b. "every single bloodstain" on the white t-shirt that Zeigler wore underneath his red outer shirt (State's Exhibit 16-1), including all spots that could be blood but have never been identified as such;

c. The two guns the State contended that Zeigler bought from Frank Smith and used to commit the murders (State's Exhibits A-Z and ZZZZ)

d. Perry Edward's shirt (A0066 #5);

e. Perry Edward's jacket (A0066 #11);

f. Perry Edward's finger nails (Q-104,105);

g. Eunice Zeigler's coat (Defense Exhibit 5)

h. Eunice Zeigler's socks and shoes (Defense Exhibit 6, Exhibit ZZZ for identification)

i. Eunice Zeigler's slacks (Defense Exhibit 8)

This testing would also require the release of blood samples from Zeigler (State's Exhibit 48), Perry Edwards (State's Exhibit 49), Mays (State's Exhibit 50), Felton Thomas (Defense Exhibit DD), and Edwards Williams (Defense Exhibit EE) for purposes of determining the

source of DNA profiles identified through testing on the above exhibits. If, for instance, testing reveals Felton Thomas's DNA on evidence from the crime scene, such as the RG guns or Perry Edwards' clothing or person, that would be powerful evidence of Zeigler's innocence and Thomas's participation in the murders.

5. Zeigler's attorneys have contacted the Clerk of the Court in Orange County and confirmed that the evidence listed above is in the possession of the Clerk.

6. The testing Zeigler seeks to have done on his shirts will be for touch DNA that would have been transferred had Zeigler held Perry Edwards in a headlock under his arm and beat him. This type of testing is newly possible, and has never before been conducted in Zeigler's case. Touch DNA testing involves a new type of testing procedure that was not available in 2001, when Zeigler last obtained leave to conduct DNA testing. It is currently used by both prosecutors and defendants, including by Florida prosecutors, and carries the ability to detect DNA transferred by merely touching an object. It would not have been possible for Zeigler to beat Perry Edwards while holding him in a headlock without transferring significant quantities of Perry Edwards' touch DNA onto his shirts. The testing Zeigler seeks will confirm that no such touch DNA exists on his shirts.

7. Zeigler also seeks to test every single bloodstain on his shirts, including all spots that could be blood but have never been identified as such, based on the Florida Supreme Court's ruling that "there was no way to know for sure that all of the contributors to the blood on Zeigler's clothing would be identified unless every single bloodstain was tested." While Zeigler's shirts have previously been tested for blood DNA, that testing was limited to the specific areas the state pointed to at trial as evidence of his guilt. The testing Zeigler requests in this motion includes additional areas that have not been previously tested for DNA.

8. In addition, to address the State's concern that DNA could have degraded, Zeigler further requests that all testing of his shirts be done using mini STR technology, such as a MiniFiler test kit. This type of DNA testing, which was not available when Zeigler secured limited DNA testing back in 2001, is significantly more sensitive than the testing previously conducted in this case. The absence of any of Perry Edwards' blood on Zeigler's clothing using this method will form powerful evidence of his innocence. That is particularly true if the testing shows, as Zeigler expects it will, that blood from Mays and Zeigler remains easily identifiable. There is no reason in the world to believe that Perry Edwards' blood would have degraded to the point of being undetectable to highly sensitive mini STR equipment when Mays' and Zeigler's blood remain easily detectable.

9. Zeigler also seeks to have bloodstains on Eunice Zeigler's coat, trousers, socks and shoes – all of which are type A blood that could not have come from Zeigler – tested for both blood and touch DNA using mini STR and Y-STR testing technology. These methods will determine both the source of this blood, which the State's expert agreed was deposited on Eunice after she was killed, as well as the identity of the person who deposited it on her.

10. In addition, Zeigler seeks to have the RG guns, Perry Edwards' clothing, and Perry Edwards' fingernails tested for "touch DNA".

11. Touch DNA testing of the RG guns is critical in this case. Those guns were used as murder weapons and were key to the State's case that Zeigler planned to murder his family in advance. Touch DNA testing will prove that Zeigler did not clean and maintain those guns, and will likely also prove that Edwards Williams, who admitted only to buying and delivering them, did in fact clean, maintain, and own them.

12. Touch DNA testing of Perry Edwards' fingernails and clothing may also shed significant light on the murders. 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. The testing Zeigler seeks will reveal whether Zeigler's DNA is under Mr. Edwards' fingernails or not. Similarly, when a person struggles against an attacker, their clothing brushes against the attacker, causing touch DNA materials to be transferred from the attacker to the victim's clothing. If Zeigler murdered Mr. Edwards, touch DNA testing should reveal Zeigler's DNA on Edwards' shirt and jacket sleeves. If testing shows none of Zeigler's DNA in those locations, that result would be highly exculpatory.

13. In short, the testing Zeigler requests will prove beyond any doubt that he could not have committed the murders for which he has been convicted. The State has never disputed that anyone who held Perry Edwards in a headlock and beat him with a blunt instrument would have necessarily transferred large quantities of Edwards' blood onto their clothing. It is simply impossible for Zeigler to have killed Edwards in the manner in which Edwards died without transferring a single drop of Edwards' blood onto his clothing. Further, the testing Zeigler requests will show that there is none of Zeigler's DNA in the places it would necessarily have been deposited had he committed the murders, such as on the RG murder weapons, on Perry Edwards' shirt and coat sleeves, and under his fingernails.

14. Zeigler affirms that he is innocent of the felonies of which he has been accused and for which he has been punished for nearly four decades. The testing Zeigler seeks will finally exonerate him.

15. As a matter of due process, fundamental fairness, and in the interest of knowing the truth, Zeigler pleads that the Court grant his Motion and approve the requested DNA testing. If the test results confirm the State's theory, it will allay doubts that a man has been wrongly imprisoned for so long. If the results confirm Zeigler's innocence, as he contends they will, the evidence can be used to finally set him free.

Dated: July 1, 2015

Respectfully submitted,



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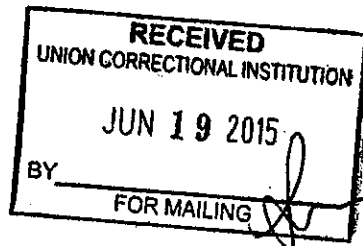
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VERIFICATION OF DOCUMENT

I, William Thomas Zeigler, Jr., hereby declare under penalty of perjury that I have read the foregoing motion for DNA testing and that the facts stated in it of which I have personal knowledge are true and correct. I further declare that I am innocent of the crimes for which I have been convicted and seek DNA testing solely for the purpose of proving my innocence.

William Thomas Zeigler, Jr.
William Thomas Zeigler, Jr.



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 1, 2015, a copy of the foregoing Motion was served upon State Attorney Jeffrey Ashton, State Attorney's Office, by Federal Express, addressed to 415 North Orange Avenue, Orlando, FL 32801, and by e-mail addressed to jashton@sac9.org, and upon Attorney General Pamela Bondi, Office of Attorney General, The Capitol PL-01, Tallahassee, FL 32399, and by e-mail at pam.bondi@myfloridalegal.com and

A handwritten signature in black ink that reads "Javier Peral". The signature is written in a cursive style with a large initial "J" and a long, sweeping underline.

Javier Peral II