

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

Case Nos. CR 76-1076, CR 76-1082,
CR 88-5355, and CR 88-5356

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STATE OF FLORIDA,	:	
	:	
	:	<u>DEFENDANT’S RESPONSE TO</u>
Plaintiff,	:	<u>STATE SUBMISSION REGARDING</u>
	:	<u>THE STATE’S NEW</u>
- vs. -	:	<u>RAINCOAT ARGUMENT</u>
	:	
WILLIAM THOMAS ZEIGLER, JR.,	:	
	:	
Defendant.	:	
-----	X	

On March 31, 2016, this Court held an evidentiary hearing on Mr. Zeigler’s Motion for DNA Testing, during which counsel for the State repeatedly claimed that Mr. Zeigler’s motion should be denied because there was evidence that Mr. Zeigler had been wearing a raincoat and gloves when he committed three of the four murders for which he was convicted. Following the hearing, counsel for the State sent the Court’s Judicial Assistant an email (attached as Exhibit A) claiming that “[t]he portion of the trial transcript referring to the gloves and raincoat referenced by the State is found at pages 149-151 of the 1976 trial.” The Defendant wishes to briefly respond to the State’s unsolicited email to note that there is, in fact, literally **no** evidence that Mr. Zeigler was wearing a raincoat or gloves on the night the murders were committed. The State is grasping at straws.

The sole evidence identified by the State is testimony by witness Curtis Dunaway that he kept a raincoat at the store that he had not seen since the night of the crime, and that gloves were kept at the store:

Q: All right. On December the 24th did you have a raincoat?

A: Yes, sir.

Q: Where did you keep it?

A: Well, it was in the enclosed office, Mrs. Zeigler's office and Tommy's office.

Q: Did you ever see it again after that evening?

A: I haven't seen or heard of it since then.

* * *

Q: Did you occasionally use rubber gloves in and around the furniture store?

A: No, sir, we never did.

Q: Were there any in there, to your knowledge?

A: Yes, sir, there was some there.

Trial Transcript ("TT") 149-151 (the full text of which is attached as Exhibit B). Nothing in that testimony remotely supports an inference that **Mr. Zeigler** (as opposed to anyone else) ever wore the missing raincoat or was responsible for its disappearance, let alone that Mr. Zeigler wore the raincoat while committing some, but not all, of the murders. Similarly, nothing in the identified testimony supports an inference that Mr. Zeigler (as opposed to anyone else) ever wore the gloves found in the store. Those conclusions are pure speculation on the part of the State which are unsupported by any evidence. It is well-settled that relief cannot be denied, nor a conviction bolstered, based on pure speculation. *See generally Gains v. State*, 417 So. 2d 719, 722-23 (Fla. 1st DCA 1982) (conviction could not rest upon mere suspicion that defendant was "wheelman" in a robbery), *pet. for review denied*, 426 So. 2d 26 (Fla. 1983); *c.f. Vecta Contract, Inc. v. Lynch*, 444 So.2d 1093, 1095 (Fla. 4th DCA 1984) (directed verdict should have been entered where evidence amounted to "rank speculation").

Further, the State's claim that Mr. Zeigler wore gloves is, in addition to being utterly speculative and unsubstantiated by evidence, also irrelevant. Wearing gloves would not have

had any effect on the unavoidable transfer of biological material from the victims to their attacker's clothing (not hands) that both the State's and the Defense's experts testified at the hearing must have occurred during the close-range shooting of the victims and the beating of Mr. Edwards.

Finally, the State's new claim that Mr. Zeigler changed clothing in the middle of committing four murders is the opposite of what the State argued at trial and on prior motions, and is also fundamentally illogical. The State's argument to the jury at trial was that Mr. Zeigler had blood stains on his shirt from holding Mr. Edwards in a headlock while beating him. The following questions and answers are from the prosecution's cross examination of Mr. Zeigler:

- Q: I want you to tell me, if you can, sir, how you got all the blood under the armpit of your clothing, Type A blood?
- A: The only thing that I can tell you is that during the fight I was grabbing everything I could grab ahold of and swinging with everything that I had. That's the only thing that I can tell you.
- Q: You can't tell me how you held Perry Edwards around the neck and clubbed him with your right hand as you held him with your left?
- A: No, sir, because I did not do it.

TT 2425. *See also* testimony of the State's forensic expert, Herbert MacDonnell, at TT 1029-1031 (presenting a detailed explanation of why the blood stains on the defendant's shirts were consistent with him committing the murders). In their closing argument, the prosecutors made clear that "[t]he blood on [Mr. Zeigler's] clothes was the victims' blood" – not just that of Mr. Mayes. TT 2565. Thus the State affirmatively argued at trial that Mr. Zeigler had the blood of Mr. Edwards on his shirt, and thus had not worn a raincoat that would have shielded the transfer of Mr. Edwards' blood.

The State has taken the same position since trial. For instance, the State did not once mention its new theory that Mr. Zeigler wore a raincoat that shielded his clothing from blood in its briefs to this Court and the Florida Supreme Court opposing Mr. Zeigler's motion to set aside

his convictions based on the prior DNA test results, or in the State's briefs opposing Mr. Zeigler's 2009 motion for additional DNA testing. The State cannot now retroactively change its position and invent facts to try to avoid the significance – acknowledged by its own expert – of the DNA testing Mr. Zeigler seeks in his motion. Indeed, the fact that Zeigler's request for DNA testing would require the State to radically change its trial and post-conviction position and invent new theories of the case only confirms that the testing Mr. Zeigler requests is material and would probably have changed the outcome of the trial (for why else would the State need to develop an entirely new theory of the case, supported by nothing but speculation?).

In light of the foregoing, the State's raincoat theory offers no basis to find that Mr. Zeigler's requested DNA testing would fail to establish reasonable doubt of his guilt. Rather, as established in the hearing and in the defendant's moving papers, testing would clearly be probative of innocence and should be granted.

April 6, 2016

Respectfully submitted,

/s/ Javier Peral II

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6th day of April, 2016, a true and correct copy of the foregoing was electronically filed via the Florida Courts eFiling Portal, which will serve the Notice on all counsel of record via the Court's e-service system.

By: /s/ Javier Peral II
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EXHIBIT A

Michaeli, David R.

From: Nunnelley, Kenneth <KNunnelley@sao9.org>
Sent: Thursday, March 31, 2016 5:07 PM
To: Jerry, Patricia (CTADMIN)
Cc: Palmer Darkes, Anna (CTADMIN); Michaeli, David R.
Subject: Defendant: ZEIGLER, WILLIAM T., Court Case No: 48-1988-CR-005355

The portion of the trial transcript referring to the gloves and raincoat referenced by the State is found at pages 149-151 of the 1976 trial.

Ken Nunnelley
Assistant State Attorney – 9th Circuit
407-836-2406

EXHIBIT B

1 A To my knowledge, no.

2 Q Are you one of these people, Mr. Dunaway,
3 that leaves his car unlocked?

4 A No, sir. If I get out of my car for
5 five minutes I lock it and when I get back in it,
6 of course, I unlock it and when I get back out
7 I lock it again.

8 Q Did you have a call that evening from
9 Mrs. VanDeventer?

10 A Yes, sir.

11 Q Can you tell the Jury approximately what
12 time that occurred?

13 A It was between 7:15 and 7:30.

14 Q Were you invited to their home?

15 A I was invited to the Christmas -- she
16 asked me if I would come over and I told her no
17 because I was having a party at my house.

18 Q Can you tell the Jury whether or not
19 in the course of your employment there at the
20 furniture store you or anyone else, to your
21 knowledge, had occasion to employ rubber gloves?

22 A Would you repeat that, please, sir?

23 Q Did you occasionally use rubber gloves
24 in and around the furniture store?

25 A No, sir, we never did.

1 Q Were there any in there, to your
2 knowledge?

3 A Yes, sir, there was some there.

4 Q Can you tell the Jury, please -- describe
5 them as best you can and where they were kept or
6 where you last saw them.

7 A Well, if you don't mind, I'll have to
8 go back to when we were downtown at the old store.

9 Q Yes, sir.

10 A That's when I first found them. They
11 were in back of the storeroom in back of the
12 office area and when we moved, of course, to the
13 new store we moved them with us and they were in
14 the kitchen at one time and they wound up -- I
15 believe there was a glass wall cabinet which we
16 use for sheets and towels at the old store which
17 we carried to the new store and they wound up in
18 there.

19 Q All right. On December the 24th did
20 you have a raincoat?

21 A Yes, sir.

22 Q Where did you keep it?

23 A Well, it was in the enclosed office,
24 Mrs. Zeigler's office and Tommy's office.

25 Q Did you ever see it again after that

1 evening?

2 A I haven't seen or heard of it since then.

3 Q Did you frequently visit the Tommy
4 Zeigler residence?

5 A No, sir.

6 Q Can you tell the Jury how the garage
7 doors operated?

8 A With an automatic push-button thing
9 from your car.

10 Q Do you know where those automatic push-
11 button things were kept?

12 A Yes.

13 Q First, how many were there?

14 A There were two in Tommy's truck. One
15 operated -- I know one operated his door to his
16 garage and I believe the other one was for his
17 mother's.

18 Q Was there one in his automobile?

19 A There was not -- Mr. Eagan, that I am
20 not sure now. There would have to be one because
21 Eunice used the car most of the time and to get
22 in and out she would have to have one in her car.

23 Q Was there one in your Oldsmobile?

24 A There was not one in my Oldsmobile,
25 no, sir.