

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</u>
Plaintiff,	:	<u>IN OPPOSITION TO THE STATE’S</u>
	:	<u>MOTION TO STRIKE</u>
- vs. -	:	
	:	
WILLIAM THOMAS ZEIGLER, JR.,	:	
	:	
Defendant.	:	
-----	X	

The State’s new motion to strike turns logic on its head. The only party that improperly submitted unsolicited information to the Court to correct its defective closing argument is the **State**. The Defendant had a due process right to respond to the State’s submission, particularly because that submission – as with much of the State’s presentation during the evidentiary hearing – was clearly aimed at distorting the factual record to mislead the Court. There is absolutely no basis to strike the Defendant’s response. If anything, the State’s submission should be stricken as unsolicited and improper.

As the defense noted at the March 31, 2016 evidentiary hearing this Court held on Defendant’s DNA testing motion, the State did not once claim in its opposition brief that the Defendant had been wearing a raincoat or gloves when he allegedly committed the murders. In fact, the State did not submit or reference a single piece of evidentiary support in its opposition papers, relying instead on a legal brief devoid of any evidentiary citations or support. In

particular, the State failed to put before the Court a single piece of evidence supporting its new theory that the Defendant changed clothes or wore a raincoat and gloves during the murders. The Defendant, by contrast, supported each and every one of his factual assertions with documentary proof, which he attached to his motion.

In its closing argument, the Defense pointed out that the State had offered no proof supporting its new raincoat theory. Apparently recognizing this failure, the State sent an unsolicited email to the Court **after** the conclusion of the evidentiary hearing providing, for the first time, a factual citation that purportedly supported its new theory. Defendant was entitled to respond, and did so to point out that the portion of the record cited for the first time by the State does not support any inference that Mr. Zeigler wore a raincoat while committing the murders, and therefore provides no basis to deny Mr. Zeigler the DNA testing he seeks. *See generally Bleiweiss v. State*, 24 So. 3d 1215, 1216 (Fla. 4th DCA 2009) (a defendant's right to be heard is "the most fundamental of all due process rights").

For the foregoing reasons, the State's motion to strike should be denied. If anything should be stricken, it is the State's improper attempt to bolster the record on this motion after the fact with an unsolicited email submission to the Court.

April 8, 2016

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th 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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