

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

STATE OF FLORIDA,

Plaintiff,

- vs. -

WILLIAM THOMAS ZEIGLER, JR.,

Defendant.

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

**PETITION FOR DNA
TESTING PURSUANT TO
FLA. STAT. § 925.11(1)(a)**

I, William Thomas Zeigler, Jr., being duly sworn, depose and say:

1. I am an inmate sentenced to death and currently incarcerated at Union Correctional Institute, Raiford, Florida. I have spent the past thirty-three years of my life in prison. I am innocent of the crimes of which I have been convicted. .

2. Pursuant to Post-Sentencing DNA Statute, section 925.11, Florida Statutes (2006), I hereby request the court for a post-hearing order authorizing the release of certain physical evidence, listed in paragraph 4, for DNA testing.

3. The facts supporting this Petition are as follows:

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

b. On Christmas Eve, 1975, I met Eunice and her parents, Perry and Virginia Edwards, at the store. Eunice and I planned to attend a party later that night. Instead, we were

brutally attacked by assailants in the store that night. At least three men broke into the store – apparently planning a robbery. I recognized one as Charlie Mays, a man I knew from the town. I fought with the assailants, but during the attack was shot in the stomach. I was then in and out of consciousness. At one point, I came to and managed to reach a phone. I called my friend, police chief Don Ficke, and pleaded with him to come to the store immediately.

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

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

e. The primary point of dispute at my trial was the identity of the individual(s) who committed the murders in the furniture store that night. My testimony was, and is, that my family and I were attacked by at least three people, one of whom was Charlie Mays.

f. The prosecution contended that I was the killer – that, over the course of two hours, I killed my wife, my in-laws and Charlie Mays. They said that I did it to receive Eunice's life insurance benefits. According to the State, I lured her and my in-laws to the store and then shot Eunice and Virginia. They said I beat Perry, holding him in a headlock and violently striking him on the head, and shot him too. The State then alleged that, an hour and a half later, I coaxed three men, Charlie Mays, Felton Thomas, and Edward Williams, to the store in order to stage a robbery and then pin the murders on them. According to the State, I shot and killed Mays; the other two men successfully escaped. The State then alleged that I turned the gun on myself, and shot myself at close range in my belly to make it seem like I was a robbery victim.

g. Despite the fact that Eunice, Charlie and Perry shared the same blood type, Type A, and Virginia and I were both Type O, during the investigation, the prosecution made the unilateral decision not to test blood samples taken from the victims for subtypes. Nevertheless, the centerpiece of the prosecution's case at trial was blood evidence elaborated upon by its blood spatter expert. A chief contention on which the jury could convict, and for which I could not provide a sturdy scientific rebuttal, involved a bloodstain on the underarm of my inner and outer shirts. The prosecution went to great lengths to persuade the jury that the bloodstains came from my alleged beating of my father-in-law, Perry Edwards. This inference was permissible from the evidence – the shirt bloodstains and Perry's blood were both Type A.

h. The jury returned guilty verdicts on July 3, 1976: two for first-degree murder (for the deaths of 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 me to death.

i. In late 2001, after a number of efforts at post-conviction relief had failed, I was finally permitted to conduct DNA testing on certain pieces of physical evidence. Those results severely undermined the prosecution's entire theory of the murders – and directly exculpated me from the murder of Perry Edwards. The testing conducted on areas of my shirts that I wore that Christmas Eve revealed no sign of Perry Edward's blood. Instead, the testing showed that stains found on Charlie Mays' clothing were consistent with Perry Edwards' DNA profile. This evidence demonstrated that Mr. Edwards had been beaten by Mays and not by me. Such

evidence was entirely consistent with, and indeed substantiated, the account that I maintained all these years.

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

k. 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 my shirt. Instead, the State argued that the sample was too small or deteriorated to be relied upon.

l. The State then used inferences about evidence that had not been tested – limited spotting on my red outer shirt and white t-shirt – to form a new hypothesis as to my guilt. The State said that the spotting on my shirt came from Mays while I supposedly beat him. This theory was not presented during the original trial. I had no reason to expect this new “interpretation” of the evidence and I was unable to effectively combat the new theory during the evidentiary hearing – having had no reason to test these stains, my lawyers had no hard, scientific evidence to use to combat the State's new theory.

m. Though there was no evidence that the spotting was in fact May's blood (or that it was even blood at all) the Court accepted the State's contention that this untested evidence actually confirmed my 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 my shirt could have been too small or degraded a sample to constitute reliable evidence. My motion to vacate was denied.

n. I filed a motion for rehearing, along with a separate supporting motion in furtherance of the motion for rehearing in which I requested authorization to test the very

evidence relied upon by the State and the court to contest the motion to vacate – the spotting on my shirts, and additional points on the shirts’ underarms. The court did not authorize further testing. Instead, it summarily denied the motion for rehearing. My subsequent appeal to the Florida Supreme Court was also denied.

o. In its opinion, the Supreme Court stated that I “abandoned the DNA testing motion” when I filed a notice of appeal. I never abandoned the DNA testing motion. The testing motion was in support of, and contingent upon, the motion for rehearing, which the court denied. When the court denied the rehearing motion, I was unable to pursue the supporting testing motion in the circuit court. In my appeal of the rehearing denial, I did request an order to the circuit court to conduct further DNA testing. The Florida Supreme Court denied the request.

4. In and by this Petition, I request authorization from the Court to conduct tests on the following physical evidence:

- a. My red outer shirt (State’s Exhibit 16-4);
- b. My white t-shirt that I wore underneath the red outer shirt (State’s Exhibit 16-1);
- c. Charlie Mays’ white T-shirt (A0067 # 8);
- d. Charlie Mays’ yellow outer shirt (A0067 #11);
- e. Charlie Mays’ shoes (State Ex. 78);
- f. Perry Edward’s shirt (A0066 #5);
- g. Perry Edward’s jacket (A0066 #11);
- h. Perry Edward’s pants (A0066 #8);
- i. Perry Edward’s tie (A0066 #12);
- j. Perry Edward’s tie clip (A0066 #15);
- k. Perry Edward’s finger nails (Q-104,105); and

1. Eunice Zeigler's clothing (Def. Exs. 5, 6 and 8).

This testing would also require the release of blood samples of Perry Edwards (State's Exhibit 49); Virginia Edwards (State's Exhibit 51); Eunice Zeigler (State's Exhibit 52); Charlie Mays (State's Exhibit 56); Tommy Zeigler (State's Exhibit 48); and Felton Thomas (Defense Exhibit 41).

5. It is my understanding that the evidence listed above is located in the custody of the Clerk of the Court, in Orange County. My attorneys called the Orange County Clerk to confirm this.

6. The testing of my shirts will be on those areas referenced by the State during the evidentiary hearing – spotting on my outer red shirt, and additional points on the underarms of both shirts. While my shirts have previously been tested for DNA, these specific areas have not. The other evidence listed above has not been previously tested for DNA.

7. My father-in-law was brutally beaten by either his murderer or the murderer's accomplice. Further testing on my shirts will demonstrably show that there is no blood of Perry Edwards on my clothing – as there would be had I had actually beaten and killed Perry. Testing on Perry's clothing and fingernails and on Mays' clothing will also demonstrate that I was not Perry's assailant. Furthermore, by showing that I did not kill Perry, the testing results will destroy the State's entire theory of the case, making any conclusion that I killed my wife and her mother utterly untenable.

8. The testing will also show that Perry's blood is on Mays' clothing, which substantiates Mays' role as a perpetrator of the murders that night. By revealing Mays' hand in the murders, the testimony of Felton Thomas, a close friend of Mays and an important

prosecution witness in my case, is rendered completely unreliable. The prosecution's case collapses.

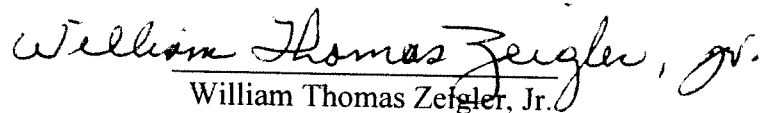
9. In addition, testing conducted of the spotting on my outer shirt will show whether the blood spatter really is, as contended by the State during the 2004 evidentiary hearing, attributable to the alleged beating of Charlie Mays.

10. I am innocent of the felonies of which I have been accused and for which I have been punished for over three decades. The testing will finally exonerate me.

11. As a matter of due process, fundamental fairness, and in the interest of knowing the truth, I plead that the Court grant my Petition 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 my innocence, as I contend they will, the evidence can be used to finally set me free.

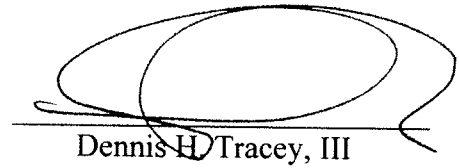
Under penalty of perjury, I declare that I have read the foregoing petition and that the facts stated in it are true.

Dated: August 19, 2009


William Thomas Zeigler, Jr.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 27, 2009, a copy of the foregoing Petition and Proposed Order granting the same was served upon the State Attorney's Office by Federal Express, addressed to Chris Lerner and Jeff Ashton, Assistant State Attorneys, 415 North Orange Avenue, Orlando, FL 32801.



Dennis H. Tracey, III

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STATE OF FLORIDA,

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WILLIAM THOMAS ZEIGLER, JR.,

Defendant.
----- X

Case Nos. CR 76-1076, CR 76-1082
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**[PROPOSED] ORDER
GRANTING PETITION FOR
DNA TESTING PURSUANT TO
FLA. STAT. § 925.11(1)(a)**

Now, upon reading the Petition of WILLIAM THOMAS ZEIGLER, JR., sworn to the 19th day of August, it is hereby ORDERED that Mr. Zeigler's Petition for DNA Testing of certain evidence in the custody of the Evidence Clerk of the Court of Orange County, pursuant to Section 925.11, Florida Statutes (2006) is granted in all respects.

1. The Evidence Clerk is directed to release the physical evidence listed in paragraphs 2 and 3 herein to a representative of the Orange County Sheriff's Department ("OCSD") for the purpose of transporting said evidence to Labcorp, Inc. 4009 Barrett Dr., Raleigh, North Carolina, 27609 for testing of the evidence. The date and time of release shall be scheduled with the Evidence Clerk by those involved in order to permit timely delivery of the evidence to Labcorp. Mr. Zeigler shall be entitled to have his own representative present at the turnover of the evidence to the OCSD representative and to accompany the OCSD representative in the process of transporting the evidence. The Evidence Clerk shall not turn the evidence over to the OCSD representative unless Mr. Zeigler's representative also is present or his counsel has provided a written statement waiving the presence of a representative for Mr. Ziegler.

2. Upon Mr. Zeigler's petition, the evidence to be released by the Clerk and tested pursuant to this Order is as follows:

- a. Mr. Zeigler's red outer shirt (State's Exhibit 16-4);
- b. Mr. Zeigler's white t-shirt that he wore underneath the red outer shirt (State's Exhibit 16-1);
- c. Charlie Mays' white T-shirt (A0067 # 8);
- d. Charlie Mays' yellow outer shirt (A0067 #11);
- e. Charlie Mays' shoes (State Ex. 78);
- f. Perry Edward's shirt (A0066 #5);
- g. Perry Edward's jacket (A0066 #11);
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- i. Perry Edward's tie (A0066 #12);
- j. Perry Edward's tie clip (A0066 #15);
- k. Perry Edward's finger nails (Q-104,105); and
- l. Eunice Zeigler's clothing (Def. Exs. 5, 6 and 8).

3. It is further ordered that the following blood samples be released: Perry Edwards (State's Exhibit 49); Virginia Edwards (State's Exhibit 51); Eunice Zeigler (State's Exhibit 52); Charlie Mays (State's Exhibit 56); Tommy Zeigler (State's Exhibit 48); and Felton Thomas (Defense Exhibit 41).

4. Mr. Zeigler shall have sole authority to direct the scope and nature of the testing of the evidence listed and described above. Mr. Zeigler and the State's Attorney shall be entitled to have a representative present to observe any testing procedures. Said representatives must

obey any rules or regulations of the testing facility and must not interfere with the testing procedures.

5. All expenses incurred in connection with the release and testing of the evidence described above shall be borne by Mr. Zeigler, except that the State shall bear the costs involved in the transporting of the evidence by the OCSD representative.

6. The following procedures shall be used to maintain the chain of custody concerning the evidence:

(a) The Evidence Clerk shall photograph all evidence prior to its release. Any evidence residing in sealed containers shall be photographed intact.

(b) The representative of the OCSD shall deliver the evidence to a member of the staff of Labcorp forensics laboratory between the hours of 8:00 a.m. and 5:00 p.m. on a date agreed upon by both parties, no later than September 24, 2009. Counsel for Mr. Zeigler shall be responsible for calling the forensics laboratory of Labcorp on or before the date that the evidence delivery is due to be delivered to Labcorp, to confirm that laboratory personnel will be present between the hours of 8:00 a.m. and 5:00 p.m. on the date of delivery in order to receive the same.

(c) At the time of delivery of the evidence to the forensics laboratory, OCSD representative shall sign the release form (a "Form 206") releasing the evidence to Labcorp. A forensics laboratory staff member shall simultaneously sign the Form 206 as acknowledgement of receipt of the delivered evidence.

(d) The Labcorp forensic laboratory staff will, during the time it holds and tests the evidence, store the evidence in an isolated and locked space; such storage will be indicated by an internal chain of custody form, which form shall bear the time, date and signature of each and every person who removes the evidence from the locked storage, as well as a

description of the purposes for which the evidence was removed from storage and the time of the return of the evidence to storage.

(e) Upon completion of the testing of the evidence, a member of the forensics laboratory staff shall notify the counsel for Mr. Zeigler by telephone that the evidence may be retrieved. Counsel for Mr. Zeigler shall then make the arrangements with the OCSD to retrieve the evidence and return it to the custody of the Evidence Clerk. At the time of release of the evidence, a member of the forensics laboratory staff shall sign the Form 206 releasing the evidence, and the representative of the OCSD shall sign the Form 206 accepting the evidence. The form used by the forensics laboratory indicating chain of custody of the evidence while in possession of that laboratory shall be given to the representative of the OCSD at the time of retrieval.

(f) Transportation and testing of the demised evidence shall be done in such a fashion as to assure against spoliation, and consistently with the practices and standards employed by the Florida statewide criminal analysis laboratory system.

(g) Copies of this Order shall be provided to Labcorp prior to the transport of the evidence, and the acceptance of the evidence by Labcorp shall be deemed to be acceptance by it of the procedures set forth in this Order.

7. Any reports or results of testing shall be provided to counsel for Mr. Zeigler and the Office of the State Attorney, and copies will be filed with the Clerk of the Court.

SO ORDERED, in Orlando, Orange County, Florida, this ____ day of September, 2009.

Copies:

Dennis H. Tracey, III, Attorney for William Thomas Zeigler, Jr.
Jeffrey Ashton, Assistant State's Attorney
Clerk of the Court.