Filing # 219387296 E-Filed 03/21/2025 05:20:40 PM

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

| | |
|---|---|
| STATE OF FLORIDA,<br><br>v.<br><br>WILLIAM THOMAS ZEIGLER, JR., | **Case Nos.** **1988-CF-5355**<br>**1988-CF-5356** |

**DEFENDANT'S MEMORANDUM OF LAW IN SUPPORT OF MOTION TO SET ASIDE CONVICTIONS BASED ON NEWLY DISCOVERED EVIDENCE**

March 21, 2025

Ralph V. Hadley III
Florida Bar No.: 108033
Benjamin C. Iseman
Florida Bar No.: 194506
**MAYNARD NEXSEN PC**
200 East New England Avenue
Suite 300
Winter Park, Florida 32789
Tel.: (407) 647-2777
rhadley@maynardnexsen.com
biseman@maynardnexsen.com

Dennis H. Tracey, III (admitted *pro hac vice*)
David R. Michaeli (admitted *pro hac vice*)
Elizabeth B. Cochrane (*pro hac vice* application pending)
William C. Winter (*pro hac vice* application pending)
Patience M. Tyne (*pro hac vice* application pending)
**HOGAN LOVELLS US LLP**
390 Madison Avenue
New York, New York 10017
Tel.: (212) 983-3000
dennis.tracey@hoganlovells.com
david.michaeli@hoganlovells.com

John Houston Pope, Esq.
**EPSTEIN, BECKER & GREEN, P.C.**
200 Central Avenue
Suite 2200
St. Petersburg, FL 33701
Tel.: (727) 346-3775
Fax: (212) 878-8600

*Attorneys for Defendant,*
*William Thomas Zeigler, Jr.*

## TABLE OF CONTENTS

**Page**

## TABLE OF AUTHORITIES

**Page(s)**

**Cases**

**Statutes**

**Other Authorities**

## PRELIMINARY STATEMENT

William Thomas Zeigler, Jr. ("Zeigler") has been wrongfully imprisoned on death row for almost half a century. For decades, he has fought for the right to use comprehensive DNA testing to prove his innocence. In 2022, following a joint motion filed by the Defendant and the State for testing of evidence, the Court ordered the release of evidence for comprehensive testing. The results of the testing show that Zeigler is not guilty of the crimes for which he was convicted. Accordingly, Zeigler moves this Court to set aside his wrongful convictions on the basis of newly discovered evidence pursuant to Florida Rule of Criminal Procedure 3.851 ("Rule 3.851").

Zeigler was convicted in July 1976 of four murders – three members of his family and a fourth person – on Christmas Eve, 1975. At trial, the State argued that blood on Zeigler's clothing was powerful evidence of guilt. During the closing, the State Attorney argued to the jury that "[t]he blood on his clothes was the victims' blood." Trial Transcript (*see* **Exhibit C**) at 2565. And throughout the trial, the State argued that bloodstains on Zeigler's shirt proved that Zeigler held his father-in-law, Perry Edwards, in a headlock and beat him to death. *Id*. at 2425:19-22, 2552:22-25.

But the DNA testing shows that these statements are *false.* The testing has shown that there was *no blood of any of his family members* on his clothing (other than a trace of blood on one shoe). And the blood stains on his shirt were *not* the blood of Perry Edwards at all. This shows without question that Zeigler *could not have committed the crimes.* If, as the State argued, he shot each of his family members at close range, he would have been covered in backspatter and gunshot residue from the shootings. But there was none. No backspatter. No gunshot residue.

These findings are even more compelling in light of the many other deficiencies and contradictory evidence in the State's case. At trial, the State argued that Zeigler shot and killed his wife, mother-in-law, and father-in-law in a large furniture store he owned; lured three men to

the store to frame them for the murders; shot and killed one of them; and then shot himself to make it look like he was a victim. But the case made little sense from the start. Zeigler had no history of crime or violence of any kind, and no rational motive. And the physical evidence was inconsistent with Zeigler being the killer. The four victims were killed using eight different guns and 28 bullets, strongly indicating that multiple perpetrators committed the murders rather than a lone gunman. The sole eye witness saw exactly that: a shootout outside the store. He reported what he saw in a recorded conversation, but the State buried the recording and concealed it from the defense so the jury never heard it. Zeigler was himself shot in the right side of his abdomen with a .357 Magnum – a gunshot that would have been both highly illogical and nearly impossible for a right-handed person like Zeigler to self-inflict.

In addition to the lack of evidence of guilt, the case was rife with prosecutorial and judicial misconduct, including a presiding judge who had a documented personal animosity to the Defendant, the suppression of key evidence, improper witness coaching, and the drugging of a holdout juror with Valium, following which that juror changed her vote from not guilty to guilty. The jury had so much doubt about Zeigler's guilt that it rejected the death penalty and recommended life sentences after mere minutes of deliberation, with one juror stating *on the record* that she believed Zeigler was innocent. Zeigler is only on death row because the trial judge overrode the jury's sentencing decision and sentenced Zeigler to death.

The State's arguments that the blood stain evidence supported a finding of guilt were only possible because of the limited scientific analysis available in 1976. Since DNA testing had not yet been invented, there was no way to disprove the State's assertions. That is no longer the case. DNA testing has made it possible to finally unlock this nearly 50 year-old case and prove that Tommy Zeigler is innocent. In May 2021, after an exhaustive study of the evidence by the State

Attorney's Office, Zeigler and the State Attorney's Office jointly moved for an order releasing hundreds of items of evidence for comprehensive DNA testing. The motion reflected a joint effort by the State and the Defendant to seek the truth about Zeigler's case using state-of-the-art technology that was not available at the time of trial. This Court approved the joint motion and denied an effort by the Attorney General to block the testing.[1]

As will be discussed in detail below, the DNA testing, all of which was done under the joint supervision of and in cooperation with the State, shows conclusively that Zeigler could not have committed the murders. This new evidence amply satisfies the legal standard – evidence sufficient to show reasonable doubt – for setting aside his convictions.

The evidence shows that whoever murdered Zeigler's family would have been covered in their blood. All three of Zeigler's relatives – his wife Eunice Zeigler ("Eunice"), his father-in-law Perry Edwards ("Perry"), and his mother-in-law Virginia Edwards ("Virginia") were shot in the head at close range with large-caliber bullets that entered but did not exit the victims' skulls – conditions that produced substantial volumes of back-spattered blood and tissue back toward the perpetrator(s). Eunice was shot at close range in the left occipital area of the head, a region replete with cerebral arteries. Her murder produced back-spattered blood all over a doorframe several feet away from her body. Virginia was shot *two* times: through her index finger and into her right temple – where the temporal arteries run – and through her right arm, her chest and abdomen. Perry was shot *four* times: twice in his temples and once each in his right ear and left shoulder.

[1] The Court found that under the Florida Constitution, the State Attorneys' Office, not the Attorney General's Office, represents the State in this case. The Attorney General's office initially appealed that ruling to the Florida Supreme Court, but after their motion for a stay was denied unanimously, they dismissed their appeal.

Perry was also savagely beaten in addition to being shot – injuries that caused him to shed massive quantities of blood throughout the store in which the murders occurred.

Contrary to what the prosecution told the jury, modern DNA testing confirms that Zeigler had *none* of his family members' blood on his outer shirt, inner shirt, pants, socks or glasses. It is inconceivable that Zeigler shot *three* people at close range *eight* times and savagely beat one of them, with each victim spattering a large volume of blood onto their killer, without Zeigler having his victims' blood all over his clothes.[2] As the State's own expert has testified, given the nature of the murders "it's not going to be one drop. . . there would be quite a bit of transferred blood" back to the perpetrator. March 31, 2016 Hearing Tr. (*see* **Exhibit R)** at 101:10-101:13; 116:25-117:9. If Zeigler had been the killer, "you would expect there to be transferred blood back to him." *Id.* at 117:17-118:4. The blood of Zeigler's family members was not on Zeigler's clothing because he did not kill them.

The victims' blood did not disappear with time; modern testing identified it easily on their own clothing, and in other locations. Perry's blood *was* present in large quantities all over two other people: on his daughter, Eunice, who was found in an entirely different room; and on the fourth victim, Charlie Mays ("Mays"). Eunice had numerous bloodstains containing Perry's blood on her coat, pants, and one of her socks. The locations of these bloodstains is significant; all were locations that would have been covered when Eunice was killed and only became exposed while Eunice's body was being repositioned after her murder. The presence of Perry's blood in these locations proves that Perry bled so profusely onto his attacker that the attacker transferred large

[2] Two small specks of Perry's blood were found on one of Zeigler's shoes, which he most-likely picked up from being at the store given that Perry's blood was found throughout the store. Those two specks are not consistent with Zeigler shooting Perry four times and beating him to death.

quantities of Perry's blood onto Eunice while moving her body. This shows that Zeigler could not have been the attacker. If Zeigler had been sufficiently covered in Perry's blood that he dripped it all over Eunice's body, Perry's blood would also be on Zeigler's clothes. It isn't.

Perry's blood wasn't the only DNA found on Eunice's clothing. "Touch" DNA testing (which identifies skin cells transferred to an object through physical contact) also revealed DNA that appears to belong to Mays on the very locations on Eunice's clothing that her killer would have needed to grab to rearrange her clothing after her death. Every other individual at the store has been excluded as a potential source of this DNA. The DNA did not come from Zeigler, Perry, or Virginia. There is no reason for Mays' DNA to be *anywhere* on Eunice's clothing, let alone on the very locations her killer grabbed. Nor is there any reason for anyone else's DNA to be present in those locations.

DNA testing also revealed that, in addition to leaving his own DNA on Eunice in the store's kitchen, Mays had large quantities of Perry's blood on multiple locations on both his left and right pant legs. The fact that Mays is covered in Perry's blood further inculpates Mays and would have been material to the jury as it evaluated the considerable evidence already in the record suggesting that Mays was a perpetrator rather than a victim.

These results amply satisfy the legal standard for relief, which is that the new evidence "'weaken[] the case against [the defendant] so as to give rise to a reasonable doubt as to his culpability.'" *Swafford v. State*, 125 So. 3d 760, 763 (Fla. 2013) (quoting *Jones v. State*, 709 So. 2d 512, 526 (Fla. 1998)). The newly discovered evidence, both independently and viewed cumulatively with the other evidence, requires that Zeigler's convictions be vacated.

## RULE 3.851 STATUTORY REQUIREMENTS

Pursuant to Rule 3.851(e)(1)(A), Zeigler was convicted of two counts of first-degree murder and two counts of second-degree murder in July 1976 in the Circuit Court of the Ninth

Judicial Circuit in and for Orange County, Florida. The trial judge overrode the jury's sentencing decision and imposed two death sentences and two life sentences, which were affirmed on appeal. *See Zeigler v. State*, 402 So. 2d 365 (Fla. 1981). The Florida Supreme Court subsequently vacated Zeigler's sentences due to the trial judge's failure to consider non-statutory mitigating circumstances, *Zeigler v. Dugger*, 524 So. 2d 419, 420 (Fla. 1988), however the identical sentences were reimposed at resentencing and affirmed on appeal. *Zeigler v. State*, 580 So. 2d 127, 128 (Fla. 1991). Pursuant to Rule 3.851(e)(1)(C), the nature of the relief Zeigler seeks is the vacating of his four convictions. Pursuant to Rule 3.851(e)(2)(B), the disposition of all previous claims raised in post-conviction proceedings and the claims raised therein are listed in Appendix A attached hereto. The claims raised here could not be raised in prior post-conviction proceedings because these claims are based on newly discovered evidence.

Pursuant to Rule 3.851(e)(2)(C), the name, address, and telephone number of the witness supporting this claim are: Kristen Harty-Connell, 3777 Depot Road, Suite 403, Hayward, California 94545, (510) 266-8140; Kenton Wong, 3777 Depot Road, Suite 403, Hayward, California 94545, (510) 266-8100. Zeigler reserves the right to identify expert witnesses at the case management conference pursuant to Rule 3.851(f)(5). These witnesses could not testify previously because the newly discovered evidence was not known at the time and therefore neither the witnesses nor counsel were aware that they had information that was relevant to this matter. The Affidavit of Kristen Harty-Connell, dated January 15, 2025, is attached as **Exhibit A**. Ms. Harty-Connell and Mr. Wong will be available to testify under oath, should an evidentiary hearing be scheduled. Likewise, the Affidavit of Kristen Harty-Connell, attached as Exhibit A, and the three DNA Laboratory Report findings prepared by Forensic Analytical Crime Lab ("FACL") (all of which are appended to Exhibit A) were not previously available. All other documents attached

to this motion were previously available, and are attached solely to support facts asserted in the "Factual Background" section *infra*. Pursuant to Rule 3.851(d), this motion to vacate Zeigler's judgment and conviction is filed within one year following discovery of new evidence upon which this motion relies.

## FACTUAL BACKGROUND

### A. Summary of the Case.

Zeigler, his wife Eunice, her parents Perry and Virginia, and Mays were all shot on Christmas Eve, 1975 in the furniture store Zeigler and his wife owned in Winter Garden, Florida (the "Store"). There were no witnesses to the shootings other than the Jellison family staying at the motel next to the Store. As discussed below, they provided an account to the State that was inconsistent with the State's theory of the case, but their account was not disclosed to the defense, which did not learn of it until years after Zeigler's trial.

At trial, the State argued that Zeigler committed all four murders and then shot himself to cover up his crimes. The State maintained that Zeigler murdered Eunice at approximately 7:15 p.m. and murdered Eunice's parents after they arrived at the Store shortly thereafter. Ex. C. at 20:9-21:11. *Zeigler's* alleged motive was to collect on two $250,000 life insurance policies in Eunice's name, despite evidence that Zeigler was already wealthy and had no apparent need for the additional money. *Id.* at 17:20-18:14, 32:3-16. The State did not offer a motive for Zeigler to also murder his in-laws, with whom he was close and who were visiting him for the holidays.

The State also asserted that over the course of the next hour, Zeigler separately coaxed three additional people to the Store — Mays and two other individuals named Felton Thomas and Edward Williams — so that Zeigler could kill them, too, and then frame them for the murders he had already committed. *Id.* at 21:12-24:25. Thus, according to the State's account, Zeigler planned

to murder *six people* that Christmas Eve — all to collect on life insurance money from one victim that the evidence showed Zeigler did not need.

Zeigler has consistently maintained that he was a victim of these heinous crimes, not a perpetrator. He believes that the attack was a botched armed robbery committed by Mays and at least two of his associates, an armed robbery that went horribly wrong when Zeigler and his family got in their way. *Id.* at 37:9-24.

Zeigler testified at trial that he and his wife had plans on Christmas Eve to attend a neighborhood Christmas party along with Eunice's parents and several of Zeigler and Eunice's friends, including the Winter Garden Chief of Police, Don Ficke. *Id.* at 37:25-38:3, 2394:19-2395:9. Before going to the party, Zeigler drove to the Store to pick up three large Christmas gifts.

When Zeigler arrived at the Store, he found the lights off and inoperable. *Id.* at 2403:1-5. The police subsequently confirmed that the Store's lights were, in fact, inoperable, and that the Store's master electrical switch had been switched off. *Id.* at 393:18-19. One of the witnesses against Zeigler, Felton Thomas, admitted that he turned the power to the Store off. *Id*. at 1157:21-24.

Zeigler testified that he was attacked shortly after entering the darkened building. He was hit over the head from behind with such force that his glasses flew off his face. *Id.* at 240416-2405:4. Zeigler's hospital records confirm that he suffered a "contused area in the right occipital," which is in the back of the head, "with a moderate degree of swelling and tenderness," all of which is consistent with Zeigler's account. Dec. 24, 1975 Hospital Report (*see* **Exhibit Z**) at 7.

Reeling from the blow, and unable to see clearly with the lights out and without his glasses, Zeigler picked himself up and fought for his life, striking and attempting to shoot his attackers with a .22 caliber pistol that jammed. Ex. C at 2406:9-21. Zeigler testified that he heard unfamiliar

voices and saw two figures coming towards him, at least one of which was a tall individual. *Id.* at 2407:7-17. Zeigler was thrown into a desk in which he stored a .357 Magnum for protection, and he was able to take out the gun and try to shoot at his attackers. *Id.* at 2408:2-2409:11. During the melee, Zeigler was shot in the stomach and fell to the ground. *Id.* at 2410:15-2411:9. When he came to, Zeigler crawled over what he believed to be a body, got up, and tried to find the back wall where there was a phone. *Id.* at 2413:4-25. Unable to find the phone on the back wall, he found his glasses in the front office and called the police from the Store service counter. *Id.* at 2414:5-2415:5.

**B. Review of the Physical Evidence Presented at Trial.**

At trial, the State relied heavily on inferences from physical evidence – inferences which, as discussed in detail below, have now been proven false by DNA testing. Inferences were needed because it was not possible in 1976 to determine with certainty which bloodstains came from which victims. While blood sub-typing was possible in 1976, the State elected not to conduct that type of testing.

The state nonetheless emphasized bloodstains on Zeigler's clothing at trial, arguing to the jury that "[t]he blood on his clothes was the victims' blood." *Id*. at 2565:3-4. The State also argued that bloodstains on Zeigler's shirt proved that Zeigler held Perry in a headlock and beat him to death. *Id.* at 2425:19-22, 2552:22-25. During Zeigler's cross examination, the State asked "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? [Tommy Zeigler] A. No, sir, because I did not do it." *Id.* at 2425:19-22. Again in its closing statement, the State argued that the presence of Type A blood on Zeigler's shirt proved that Zeigler must have killed Perry after engaging in a prolonged struggle, and thus he also must have killed the other victims. *Id.* at 1455-58, 1460-61, 2425:11-22, 2552:4-2553:7; *see also id.* at 2552:22-2553:7 (State's closing argument stating: "[y]ou will

have the opportunity to examine Mr. Zeigler's clothing. You will see a big blood stain right in the area where Edward Williams said he saw dark stain. You will see a soaked area of blood under the left armpit of those shirts. That could have gotten there only by his having someone in his arm who was Type A blood. He didn't get that crawling around on the floor. Who was bleeding Type A blood?").

In fact, as DNA testing has confirmed, the blood on Zeigler's clothing did not come from Perry at all. It is a mix of Zeigler's own blood and blood from Mays – presumably from their physical altercation as Zeigler tried to defend himself from Mays' attacks. *Id.* at 2407:7-2411:9.

Other physical evidence raised substantial questions as to how Zeigler could have committed the murders. For instance, both Zeigler and the murder victims were tested for gunshot residue. As the State's gunshot residue expert testified, gunshot residue forms a cloud the moment a gun is fired. If a person has only handled a clean gun that has not been fired, you would not expect to find gunshot residue on their hands. "If it was a clean hand and a dirty weapon and they just handled it, you would expect only to find it on the palm of their hand. But if it's a discharging, you will find it on the back of the hand as well as the palm of the hand, if it is a dirty weapon, but you will find much greater concentrations on the back of the hand." *Id*. at 2171:4-11.

Every one of the victims had gunshot residue present on their hands – evidence that they either fired a weapon or were in close proximity to a weapon that was fired, which is consistent with the close ranges at which they were shot. Eunice had gunshot residue on her hands despite being shot just once. Perry and Virginia also had gunshot residue on their hands. *Id.* at 2178:9-23. Mays had gunshot residue "on both the palms and the backs of the hands, and it's in fairly high quantity." *Id.* at 2177:9-2178:8. Zeigler, by contrast, had ***no*** gunshot residue on him. *Id.* at 1635:6-1636:17. Thus, to be guilty, Zeigler would have needed to have somehow fired a total of

28 bullets out of eight guns without getting any gunshot residue on himself – and without getting his victims' DNA on him, as discussed in further detail below.

In addition, the evidence adduced at trial demonstrated that Zeigler was shot on the right side of his abdomen midway between his navel and his side. Ex. Z at 7. The bullet exited directly behind the exit wound, indicating that the gun used to shoot Zeigler was pointed directly at him, rather than on an angle. As a right-handed person, it would have been exceedingly difficult for Zeigler to aim a gun at himself in a straight line rather than on an angle and to shoot himself in the right side of his abdomen. That is especially true because the weapon used to shoot Zeigler was a .357 Magnum – a gun Zeigler would have been highly unlikely to aim at himself when smaller .22 caliber pistols were present, and which Zeigler could not have discharged without getting gunshot residue on himself.

**C. Prior DNA Testing and Differences in Results.**

In 2001, Zeigler won the right to conduct DNA testing using then-current technology. November 19, 2001 Order of Hon. Donald E. Grinewicz (*see* **Exhibit S**). This limited DNA testing focused on disproving the State's argument at trial that bloodstains on specific locations of Zeigler's shirt came from Zeigler holding Perry in a headlock and beating him. Petition for DNA Testing (*see* **Exhibit H**) at ¶ 3(i). The testing results did not reveal any of Perry's blood, so Zeigler moved to set aside his convictions. June 20, 2002 LapCorp Report (*see* **Exhibit B**); Zeigler's January 15, 2003 Motion to Vacate Based Upon Newly Available Evidence (*see* **Exhibit T**).

The Florida Supreme Court deemed these early results insufficient to set aside Zeigler's convictions and denied additional testing, for three reasons. *First*, "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 v. State,* 116 So. 3d 255, 259 (Fla. 2013). *Second*, "it was possible to miss blood on the shirt, due to deterioration and improper storage." *Id.* (citation

omitted). *Third*, "[i]t was also possible to have a mixed stain, from multiple contributors, in the same area." *Id.* (citation omitted).

The new testing that Zeigler obtained was specifically designed to address the court's concerns. First, the testing was extraordinarily comprehensive, covering dozens of locations – far more than is normally tested in a criminal case. Second, the lab used new technology designed to detect old, degraded profiles. This time, the lab identified all of the victims' blood in numerous locations – eliminating concerns about degradation making their blood undetectable. Third, the lab successfully identified profiles from mixed samples. And, finally, as discussed below, the new evidence of Felton Thomas's recantation challenges the witness accounts offered at trial by Felton Thomas, Edward Williams and Frank Smith.

As discussed below, these new test results dramatically enhanced the evidence and show what transpired the night of the murders.

**D. The DNA Testing Results are Wholly Inconsistent with Guilt.**

New comprehensive DNA testing results have established both reasonable doubt and proof of innocence. Eunice, Perry, and Virginia were killed by close-range gunshots to the head. Shooting victims in the head at close range with high caliber guns resulted in a large quantity of backspatter on the perpetrator(s)' clothing because the victims were shot in regions of their skulls that are replete with arteries that supply blood flow to the brain. *See* Oliver Jones, *Major Arteries of the Head and Neck*, TEACHME ANATOMY (Nov. 2, 2024), https://teachmeanatomy.info/neck/vessels/arterial-supply/#section-6788c3c0e25a8. Further, when bullets pierce cerebral arteries, those arteries produce arterial "spurting," typically "in a spray-type fashion not unlike a hole in a garden water hose," when ruptured. *See Stuart H. James, Paul E. Kish, T. & Paulette Sutton*, "Principles of Bloodstain Pattern Analysis: Theory and Practice" 149 (2005). This produces additional backspatter that would land on a shooter if that

shooter, as was the case here, was merely inches away from the gunshot entry. *See also* B. Karger et al., *Backspatter from Experimental Close-Range Shots to the Head*, 109 Int'l J. Legal Med. 66, 66 (1996); P.M. Comiskey et al*., High-speed video analysis of forward and backward spattered blood droplets*, 276 Forensic Sci. Int'l 134, 138 (2017). Whoever killed Eunice, Perry and Virginia from close range would have significant amounts of the victims' blood on them from the substantial quantities of backspatter that would have been produced.

The DNA results show that Zeigler was not the perpetrator.

**1. DNA Results on Zeigler's Clothing.**

The Forensic Analytical Crime Lab ("FACL") conducted extensive testing on Zeigler's clothing. FACL sampled and tested thirty-seven individual locations: eighteen from Zeigler's outer shirt, twelve from his pants, four from his socks, and three from his shoes. Ex. A (*See* March 25, 2024 Report at 2; May 8, 2024 Report at 2-4). Modern testing identified clear DNA profiles from this evidence, including from mixed samples containing more than one profile. DNA from Zeiger and Mays – both of which were also identified on Zeigler's clothing during the last round of testing two decades ago – were present in dozens of the samples. No trace of DNA from Eunice or Virginia was present, and Perry's DNA was found nowhere on Zeigler's shirts, pants, or socks. Ex. A (*See* March 25, 2024 Report at 2; May 8, 2024 Report at 2-4).

Of the eighteen cuttings from Zeigler's outer shirt, twelve from his pants, and four from his socks, none contained even a trace of DNA from Eunice, Perry, or Virginia. Instead, the blood on Zeigler's shirt, pants, and socks all came from Zeigler himself or Mays – findings that are consistent with Zeigler's testimony that he was attacked by, fought with, and tried to shoot in self-defense someone he believed to be Mays.

### 2. The DNA Results Show Zeigler is Not Guilty of Eunice' Murder.

#### a. Physical Evidence From Eunice's Murder.

Eunice was killed by a single .38-caliber gunshot to the left occipital area of the head, a region replete with cerebral arteries. Like the other members of Zeigler's family, she was shot at close range, and her shooting produced significant quantities of back-spattered blood. *See supra* at 12-13. As detailed in a February 2, 1976 police report, Eunice was killed inside the Store kitchen. Feb. 2, 1976 Police Report (*see* **Exhibit D**) at 10. The "kitchen door was in a partially open position when Mrs. Zeigler was shot" and "[h]igh velocity blood splatters were found on the inside edge of the said door." *Id.* at 13. Similarly, the State's forensic expert, Dr. MacDonnell, testified that Eunice's shooting caused a "spray of blood on the door and on the casing of high velocity impact." May 12, 1976 MacDonnell Tr. (*see* **Exhibit E**) at 32:7-10. Blood spatter was also visible on the floor. The amount of back-spattered blood would have far exceeded what is visible in the photographs of the crime scene because blood spatter produced in shootings includes a fine "mist" of tiny particles traveling at high speed that, while often not visible to the naked eye, are easily detectible using DNA testing technology. Ex. CC at 48:4-48:6.

All of the blood spatters around Eunice were backspatters because the bullet that entered Eunice's head did not exit, leaving only an entry would. As Dr. MacDonnell explained, "[t]his is an entrance only, not through and through. So you have backspatter that has to go back towards the [muzzle] [sic] from the origin of the [projectile] [sic]." Ex. E at 51:24-52:2. Dr. MacDonnell described the backspatter that resulted from Eunice's killing as an "eruption right out northeast from that door jamb . . . ." *Id.* at 52:16-52:17. Eunice's killer, who had to have been standing no more than two feet from her based on the shooting distance, would have been instantly covered in her blood.

Additionally, Dr. MacDonnell concluded from an examination of bloodstains on Eunice's body that her clothing must have been repositioned by someone after she was killed. Eunice was found lying on the floor of the Store with her coat buttoned, her shoes on, and her hand in her pocket. Ex. D at 10. However, as Dr. MacDonnell testified, there were bloodstains on her coat that could not have gotten there if her coat were buttoned in the way it was found. Dr. MacDonnell testified that: (1) Eunice's coat "would have to have been open" at the time the blood was dropped and smeared onto it, meaning her coat must have been buttoned after she was killed but before the police found her; (2) the blood would not have come from Eunice, who sustained a single gunshot to the head; (3) the blood dropped and smeared on her coat "was in a manner that is possible that someone may have had their thumb on the outside and their hand on the inside holding the lapel"; (4) the blood found on Eunice's clothing was consistent with "someone with blood on their hands [leaving] those spots from the fingertips"; and (5) that he believed "another person dripped blood on this area." Ex. C at 1059-1070. Indeed, it was the State's theory at trial that Eunice's murderer repositioned her body after killing her. *Id.* at 1060:13-1062:24.

There were also bloodspots inside Eunice's shoes that Dr. MacDonnell testified did not come from Eunice's gunshot to the head, but rather "had to have come from some other source." *Id.* at 1066:22-24. Dr. MacDonnell also found a "very heavy deposit" of blood on the inside of Eunice's pants, even though she was found fully clothed, which he testified "definitely" came from a source other than Eunice. *Id.* at 1068:10-1069:4. Dr. MacDonnell explained that the blood on Eunice's pants "could not have come from a woman being shot in the head, either standing or lying down in that position." *Id.* at 1069:10-1070:9.

**b. DNA Results From Eunice's Clothing.**

DNA testing confirmed that Eunice's clothing contains numerous bloodstains belonging to Perry, as well as touch DNA from Mays – powerful evidence that Perry bled sufficiently onto his

attacker(s) that they transferred his blood to her, and evidence that Mays was involved in moving Eunice's body after she was killed. Eunice does not have any blood from Zeigler, nor does Zeigler have any of Eunice's blood on him.

FACL took five cuttings from Eunice's pants, ten cuttings and nine swabs from her coat, two swabs from her left shoe, and one cutting from her sock. Ex. A (*see* March 25, 2024 Report at 2-5). Eunice's pants had one cutting with a single DNA contributor, Perry Edwards. *Id.* at 2. Four of the cuttings showed mixed sources, three with Perry as the major contributor and one with Eunice herself as the major contributor. *Id.* at 2. The swabs from Eunice's shoe and sock show Perry as the single or major contributor. *Id.* at 5. The cuttings from Eunice's coat also show either Eunice or Perry as the major contributors of the DNA. *Id.* at 2-4. The swabs from the right and left cuff, and right pocket, of Eunice's coat show Eunice as the major contributor, and show limited genetic evidence that Mays is also a contributor. *Id.* at 4.

In addition, swabs from both the left and right sleeve cuffs and the right pocket of Eunice's coat showed limited genetic evidence of DNA from Mays. This comports with the defense's theory that Mays was involved in the murders. Under the State's theory, Eunice would have been dead in the Store's kitchen before Mays entered the Store showroom. Mays would never have touched Eunice, meaning there should be none of his DNA on her clothing. The presence of Mays' DNA on Eunice's clothes points to his involvement in her murder.

Zeigler could not have shot Eunice at close range in the head without having significant blood spatter come back towards him and land on his clothing. But despite comprehensive DNA testing done on Zeigler's clothing, there is no blood from Eunice. *Id.* (*see* March 25, 2024 Report at 2; May 8, 2024 Report at 2-4).

The discovery of DNA from Perry and Mays on Eunice's clothing is extremely significant. The presence of Perry's blood on Eunice's clothing was likely caused by the perpetrator having Perry's blood on his hands from beating and shooting Perry and dripping that blood onto Eunice's clothing. As discussed above, the State's own trial expert testified that the murderer likely dripped Perry's blood onto Eunice. Zeigler could not have done that because he did not have Perry's blood on his clothes. Zeigler could hardly have been sufficiently covered in Perry's dripping blood that he deposited it all over Eunice's body without getting a drop on his own clothes.

### 3. The DNA Results Show Zeigler is Not Guilty of Virginia's Murder.

#### a. Physical Evidence From Virginia's Murder.

Virginia was shot twice using two different guns: through her right index finger and into in her right temple – where the temporal artery runs – and through her right arm, chest and abdomen. Virginia Edwards Autopsy Report (*see* **Exhibit Y**) at 6-7; Ex. C at 264:20-265:10. The bullet that entered Virginia's head was a .38 caliber round that entered but did not exit. Virginia also suffered a second .38-caliber gunshot to the torso which, according to the police report, "passed through the right arm, entered her right side, passed through some internal organs and lodged just underneath the skin of her left side." Ex. D at 12. This description was confirmed by the medical examiner at trial. Ex. C at 273:4-19.

Virginia's murder would have generated substantial backspatter of blood that would have been deposited on her killer(s). The 38-caliber bullet fired at her head entered but did not exit. In such cases, the entry wound becomes the sole point from which spatter can escape because there is no "exit" wound. Virginia was also shot with a large caliber bullet that had sufficient force to fracture her skull. As the police report notes, both of Virginia's eyelids "were of a blue color which is consistent with a person receiving skull fracture," and "[t]his fact was later determined in the autopsy performed on Mrs. Edwards." Ex. D at 12. Her killer had to have been extremely

close to her, as Dr. MacDonnell determined that Virginia was shot at a range of six–to–twelve inches. MacDonnell Report (*see* **Exhibit G**). Whoever killer Virginia would accordingly have been covered in her blood from shooting her.

**b. DNA Results from Virginia.**

Like the other victims, Virginia was killed by a close-range shot to the head. Zeigler had none of Virginia's blood on him. There is no trace of Virginia's DNA on Zeigler's clothing, either.

**4. The DNA Results Show Zeigler is Not Guilty of Perry's Murder.**

**a. Physical Evidence From Perry's Murder.**

Perry was shot *four* times: twice in his temples – where the temporal arteries run – with .38-caliber bullets, and once each in his right ear and left shoulder. Perry was also beaten with an instrument that produced such significant medium-velocity and cast-off spatter that blood was visible on the ceiling of the Store. Ex. D at 11-12; Ex. E at 74:8-74:19.

It is undisputed that Perry shed massive quantities of blood throughout the Store as a result of his injuries, and that his killer(s) would therefore have transferred substantial quantities of Perry's blood onto their clothing. Before being shot in the head, Perry was also shot at least two other times, in his right ear and his right shoulder. Ex. D at 11. As Dr. MacDonnell testified, "[t]he ear bleeds very profusely." Ex. E at 43:11; 47:16-19. Perry bled heavily from his multiple wounds as he fought with his killer in a struggle that the Florida Supreme Court noted lasted "for some time." *Zeigler*, 402 So. 2d at 367. Dr. MacDonnell stated in his report that the "bloodstains clearly demonstrate a path from where [Perry] was shot" the first two times. Ex. G at 1-2. Perry left a trail of blood "proceeding north along the east wall, west of the kitchen, to the north wall" and then moving "west along the north wall and turn[ing] south proceeding along the west wall turning south-east in front of the south linoleum rack to the point where he was found." *Id*.

That entire time, and while bleeding heavily, Perry was engaged in a physical fight for his life against his killer. Dr. MacDonnell noted that it was "clear" that Perry struggled with someone "most of the time he was making the bloodstain trail," as evidenced "not only from the on-scene examination" but also from photographs, and that "[s]wipe and drip patterns demonstrate this very clearly." *Id.* That struggle, like the initial shootings of Perry in the ear and shoulder, would have resulted in a substantial transfer of Perry's blood onto his attacker(s).

Perry was then beaten heavily with an instrument while laying on the floor, which would have transferred even more blood onto Perry's attacker(s). In his deposition, Dr. MacDonnell stated that it was "evident there is beating to the victim's head" and that "it is quite clear that there is a spatter pattern . . . which are of the medium velocity impact spatter consistent with a beating." Ex. E at 69:6-13. Dr. MacDonnell testified that whoever beat Perry at close range with a metal object would have transferred a large quantity of Perry's blood onto his clothing. He testified that this would be especially true if the perpetrator was holding Perry in a headlock while beating him, which is what the State argued had occurred. *See, e.g.*, Ex. C at 2425; *Id.* at 2671:17-23. The State's DNA expert, Dave Baer, agreed. *See* Mar. 24, 2016 Baer Tr. (*see* **Exhibit F**) at 82:14-17, 85:18-21 (discussing Perry's murder and explaining "you're not talking about, like, you know, one drop being shed from that incident; there would have been a lot," and that "if Mr. Zeigler was beating Mr. Edwards and there was a lot of blood shed and the splash, then there probably wouldn't be any difficulty in finding that blood on Mr. Zeigler").

In addition, Dr. MacDonnell also concluded based on blood spatter patterns that "without much question [Perry's killer] had to be kneeling right over him, probably straddling him" at the time the killer beat Perry. Ex. E at 93:21-93:23. That is enormously significant because Perry was surrounded in blood spatters from the beating his killer(s) administered. Whoever beat Perry

would have had substantial bloodstains from Perry on their pants from kneeling in Perry's blood. As discussed in further detail below, Mays has Perry's blood soaked into ***both*** of his pant legs. Zeigler does not have a single drop of Perry's blood on his pants.

Finally, Perry was shot at close range in the temples, producing further backspatter towards his attacker(s). In his report, Dr. MacDonnell estimated that the first gunshot to Perry's head was fired from a distance of just three–to–six inches, and the second was fired at a range of six–to–eighteen inches. Ex. G at 2. Neither bullet exited Perry's skull, leaving only entry wounds from which spatter could escape. *See supra* at 12-13.

**b. DNA Results from Perry.**

DNA testing confirmed that, unlike Zeigler, Mays had Perry's blood on his clothes. Testing on Mays' clothing continues, but has already confirmed that Perry's blood is present on ***both*** of Mays' pant legs. These stains are located in the cuffs and knee areas of Mays pants – the very locations that would have come into contact with Perry's blood if Mays had been kneeling while beating Perry, as the State's trial expert, Dr. MacDonnell, testified that Perry's attacker must have done. As stated above, DNA testing also confirmed bloodstains from Perry on Eunice's clothing, indicating that Perry bled onto his attacker(s) who transferred his blood to Eunice, and that Mays was involved in moving Eunice's body.

**E. Review of Other Evidence Presented at Trial.**

At trial, in addition to the physical evidence (which has now been disproven by the DNA testing, as discussed in detail in section D *supra*), the State relied on the testimony of three witnesses: Felton Thomas, Edward Williams, and Frank Smith. All three witness accounts are riddled with inconsistencies and one – Felton Thomas, the State's star witness – has long since *recanted* key portions of his trial testimony.

### 1. Evidence Regarding Charlie Mays.

At trial, the State argued that Zeigler lured Mays to the Store by telling Mays to come to pick up a television set. Ex. C at 21:12-14, 22:14-17. The evidence suggests otherwise. Mays drove his van to the Store the night of the murders, but did not park in the Store's parking lot, or even behind the back of the Store near its loading dock. Instead, Mays parked his van in the far corner of the parking lot of the motel located next to the Store – a lot that was separated from the Store by a six-foot-tall chain link fence. *Id.* at 398:13-399:7; 416:22-417:9; 607:8-23; 1149:5-9. To get to the Store (and back to his van with a television) from that location, Mays would have needed to walk around almost the entire block. *Id.* at 2596:11-16. If, as the State contended, Mays had come to the Store to pick up a television set – an item that in 1975 would have been both bulky and heavy – then Mays would have needed to carry the television that same distance to get it from the Store back to the rear side of the motel where he had parked. The State offered no explanation for why Mays parked in a dark and concealed location next to a neighboring motel rather than in the Store's parking lot.

### 2. The State's Star Witness, Felton Thomas.

#### a. Thomas's Trial Testimony.

The State's "star" witness was a man named Felton Thomas, a migrant fruit picker and an acquaintance of Mays. Ex. C at 1146:6-1147:10. Thomas testified that he had been at a "beer joint" on Christmas Eve when Mays pulled up in a van and asked if he wanted to ride with him. *Id.* at 1146:18-1147:4. Thomas had "nothing else better to do" so he agreed and got in the van. *Id.* at 1146:16-20. Thomas then recounted how Mays had driven to the Store where a "white man" came to the van and told Thomas and Mays that "the guy [who was] supposed to own the furniture store hadn't got there." *Id.* at 1151:3-9. Thomas had never met this man before and did not know his name. At trial, Thomas nonetheless identified him as Zeigler (*see id.* at 1151:7-20), based on

significant coaching and pressure from police. *See infra* at 23-24. Neither Thomas nor any other State witness explained why Zeigler, who Mays knew owned the Store, would tell Mays that he was waiting for a different man who was the Store's owner.

Thomas testified that he and Mays got into the "white man['s]" car, which had two doors and "looked like a Cadillac." *Id.* at 1151-52, 1185:2. Thomas could not have been describing the car Zeigler was driving that night – a four-door 1972 Oldsmobile 98 – because he was insistent that the "[c]ar didn't have no back door to it" and that Mays had climbed into the car through the front door. *Id.* at 1234:6-1235:12, 1185:2-7. The State never explained this discrepancy.

According to Thomas, he sat in the front of the two-door car next to "the white guy [that] was driving," who drove Mays and Thomas to an orange grove and had them remove several guns from a bag in the car and fire them out of the window of the car. *Id.* at 1152:17-25. Thomas continued that both he and Mays fired guns out of the car's window into the orange grove. *Id.* at 1154-55. "The state says that the purpose of the trip was to get the two to handle and fire the weapons in the bag," *Zeigler*, 402 So. 2d at 368, presumably so their fingerprints would be left on the guns even though that theory directly contradicts the State's claim that Zeigler later wiped those same guns clean of fingerprints. Ex. C at 2555:4-8.

Thomas further testified at trial that after shooting the guns in the orange grove, the "white man" drove Mays and him back to the Store and asked Thomas to pull a switch on a box on the wall of the Store, which Thomas did. *Id.* at 1155:20-1156:5. Thomas stated that the "white man" from the car then climbed over a fence to try to gain access to the Store, telling Thomas this was necessary because "the man hadn't come to open the Store yet, said he was in Apopka," and that the "white man" also attempted to break into the Store using a long rod before giving up and claiming that he might have an extra key at home. *Id.* at 1159:1-1161:2. Following these break-

in attempts, Thomas testified that the three men drove in the same car to a house where the "white man" rummaged around in a garage and came back to the car with a box with either ammunition or a gun in it, which he threw to Mays and asked him to load. *Id.* at 1162:19-1163:12. According to Thomas, they then drove back to the Store whereupon the "white man" unlocked the Store and asked Thomas to come in with Mays. *Id.* at 1163:13-1164:13. Thomas decided to leave instead but did not testify to hearing any gunshots or otherwise observing any signs of disturbance inside of the Store. *Id.* at 1164:14-21

Thomas stated that after leaving the Store, he went to a bar in Tylerville and continued drinking, until around midnight when someone came into the bar and announced that someone had been killed at the Store. *Id.* at 1166:15-24. After hearing this information, Thomas said he got a ride to Oakland to see if the information was true and then hitched a ride back to the Store. *Id.* at 1166:25-1167:19. There, Thomas saw a large crowd of people and police. *Id.* at 1167:18-19, 1206:4-12. Yet, despite the large police presence at the Store, Thomas did not report his visit to the Store earlier that night. Instead, Thomas stated that he got a ride to Orlando, where he went to a restaurant, ordered coffee, and upon seeing an officer at the restaurant, reported his information to that officer. *Id.* at 1167:20-1169:19.

**b. Thomas's Subsequent Recantation.**

Two critical aspects of Thomas's testimony were that (1) Thomas could positively identify the driver he rode with the night of the murders to be Zeigler; and (2) the driver had Thomas and Mays handle and fire the guns as part of his plot to frame them – which the State contended was the whole purpose for the trip. *Zeigler v. State*, 402 So. 2d at 368. But Thomas now states that neither of those two critical aspects of his trial testimony is true. Thomas, who has reported still being afraid to speak about this case for fear of his safety and wellbeing despite knowing that

Zeigler is in jail and on death row, insisted that he would only discuss the case in the front lobby of the Ft. Pierce, Florida police station, which is under video surveillance. Ex. O at 1.

In an interview with investigator Lynn-Marie Carty, Thomas was asked whether the "white man" he saw in the car the night of the murders was Zeigler. Ex. O at 31.[3] Thomas responded "I still don't know who it was." *Id.* Thomas explained that the police never showed him a photo lineup or even asked Thomas who he had seen that night. *Id.* at 3:8-12; 53. Instead, in a clear effort to manipulate Thomas's testimony, the police *told* Thomas that the man he reported seeing was Zeigler and improperly provided Thomas with additional information about their case against Zeigler to enable Thomas to falsely identify Zeigler. *Id.* at 49-50. Thomas recounted how, instead of asking him for the identity of the "white man" he had seen, "detectives" said on the night of the murders "Zeigler – that this man Zeigler said he called and say Charlie tried to rob him – Charlie tried to rob him. Said he had – he had done shot himself in the side right here. They could tell he had shot himself in the side because he had gun powder right here." *Id.* at 50:1-6. Thomas explained that he stated that the "white man" from the car was Zeigler because "Zeigler" was "the way they call him," referring to the police, and that the police told him Zeigler had committed the murders. *Id.* at 31:20-25.

Thomas also told Carty repeatedly that he never fired or even touched any guns on the night of the murders. Carty asked, "So you didn't fire guns?" to which Thomas responded, "No, no, no . . . I ain't fire." *Id.* at 23:20-23. Carty confronted Thomas with his trial testimony, in which Thomas testified clearly that he did fire a gun the night of the murders. Thomas now claims that his testimony was "wrong . . . I don't give a shit what they say [referring to the transcript of

[3] The "Audio Recorded Interview of Felton Thomas, Jr." is attached as Exhibit A to the June 24, 2015 Affidavit of Lynn-Marie Carty (*see* **Exhibit O**).

his trial testimony]. ***I know I didn't do that, I didn't do that . . . I never had my hand on one of those guns. Never***." *Id.* at 61-62 (emphasis added).

**3. The State's Other Key Witnesses, Edward Williams and Frank Smith.**

The State also relied heavily at trial on testimony from a second man, Edward Williams, without whom the lead prosecutor told the jury, "I don't think we could have really made a case." Ex. C at 2565:21-22. Unlike Thomas, who testified that he had never met or spoken to Zeigler before, Williams knew Zeigler and worked for him as a handyman. *Id.* at 1229:3-15. Williams testified that Zeigler asked Williams to come to his house at 7:30 p.m. on the night of the murders so that they could go to the Store together to pick up Christmas presents. *Id.* at 1230:17-1231:5. Williams said he arrived at Zeigler's house at about 7:30 p.m., parked behind Zeigler's truck, and waited. *Id.* at 1231:19-1232:7, 1233:21-1234:5. According to Williams, at about 8:00 p.m., Zeigler got into Williams' truck and the two drove to the Store. *Id.* at 1234:6-1239:2.

According to Williams, upon arriving at the Store, Zeigler led him down a hallway, pointed a pistol at Williams' chest, and pulled the trigger three times. *Id.* at 1244:4-1245:1. Williams testified that the gun did not fire and that he pleaded for Zeigler not to kill him and ran out of the building, where he encountered a locked gate. *Id.* at 1245:1, 1248:19-22. Williams alleged that Zeigler then followed him outside and tried to explain to Williams that it was all a mistake and Zeigler was not really trying to kill him. *Id.* at 1248:22-1249:12. Then, according to Williams, Zeigler handed him the pistol, which Williams put into his pants pocket, and tried to coax him back into the Store. *Id.* at 1249:21-1250:1, 1252:11. Williams testified that Zeigler bent down on his knee and begged Williams to come into the Store with him. *Id.* at 1250:24-25, 1251:3-1252:7. Williams refused, climbed over the fence, and ran away from the Store. *Id.* at 1252:10-13. Eventually, after making several inexplicable stops along the way, Williams went to the Winter

Garden police station and handed over the murder weapon he had in his possession. *Id.* at 1252: 12-23, 1255:25-1256:3, 1256:17-1257:9, 1258:2-3, 1258:12-24, 1259:7-1260:3.

Several months after he gave his initial report to the police, Williams changed his story. This time, he claimed that he had actually purchased the guns allegedly used by Zeigler. *Id.* at 2589:14-2590:20. As part of his new story, Williams claimed that Zeigler asked him in June of 1975 to help him buy a "hot" gun. *Id.* at 1262:1-1262:13. Williams testified that he contacted a taxi driver named Frank Smith and made arrangements for Smith to obtain two such guns. *Id.* at 1263:2-1264:25, 1363:8-23. Williams also testified that he handled everything from ordering the guns to picking them up himself. *Id.* at 1264:17-1268:4.

Smith testified at trial as well. He testified that Williams asked him to procure stolen guns and that he had supplied guns to Williams (which he claimed were not stolen) in response to that request. *Id.* at 1366:12-1367:20, 1374:20-24. He also claimed that at one point, Williams put Zeigler on the phone to discuss the sale. *Id.* at 1365:13-1367:15. Smith, however, had never met Zeigler before, and thus would not have been able to verify Zeigler's voice. *Id.* at 1374:4-11. Williams testified that Zeigler later asked him to collect a "sealed up" envelope from Zeigler and to drop it off at Smith's house. *Id.* at 1267:3-11. Upon dropping off the envelope, Williams claims he received an open paper sack from Smith, in which Williams could see the butts of two handguns. *Id.* at 1267:13-18. Williams claimed he folded open the top of the paper sack, took the bag to Zeigler's home, and left the sack of guns with Zeigler's wife (supposedly, the intended victim) to give to Zeigler. *Id.* at 1267:13-1268:4.

Williams' testimony was heavily impeached at trial. For example, Williams testified that he wore the same clothing on the night of the murders from the time he left his apartment at "twilight" until after turning himself in when a deputy sheriff escorted him to his apartment and

collected the clothes. *Id.* at 1277:9-1279:1. The clothes he handed over included a black sweater and dark green pants. *Id.* at 2570:25-2571:1. But Williams' landlady, Mary Wallace, testified that she saw Williams exiting the front entrance of his apartment complex at twilight wearing khaki-colored pants, a flannel shirt with "stripes" and "checks," and a khaki-colored jacket. *Id.* at 1843:20-1844:18. Further, the boots that Williams claimed he was wearing that evening and handed over to the police lacked any scuff marks and still had an unsoiled price tag on them, which was inconsistent with Williams' testimony that he wore those boots when he "ran all over" a parking lot as well as climbed and jumped a fence. *Id.* at 2584:1-2585:4, 1252:10-13. This testimony and evidence strongly indicate that Williams changed his clothes before he handed them over to the police.

In addition, Williams' alibi for the night of the murders was directly contradicted by an eyewitness. Williams testified that he waited in Zeigler's driveway with his blue truck parked behind Zeigler's truck until approximately 7:40 p.m., at which point Zeigler arrived. *Id.* at 1231:6-1234:7. According to Williams, Zeigler parked in his garage upon arriving, closed the garage door, and left with Williams in Williams' truck. *Id.* at 1236:4-1238:22. Zeigler's neighbor, Ed Reeves, directly refuted that account. Reeves testified that he had driven past Zeigler's house twice on the night of the murders at 8 p.m. when Reeves left home and again at 8:45 p.m. when he returned, and that he had made a point of looking at Zeigler's house on both occasions. *Id.* at 1874:6-1878:8. According to Reeves, Zeigler's garage was open, empty, and had the lights on at both 8:00 p.m. and between 8:40–8:45 p.m. that night—***not*** closed and not with a car in it as Williams claimed. *Id.* at 1874:6-1878:15.

Finally, Williams testified that, after Zeigler allegedly tried to shoot him, he ran out of the Store and tried to open a gate, which he found to be locked, preventing his escape. *Id.* at 1248:20-

22. But, in fact, when the police arrived, they found that the locking mechanism of the gate was ***inoperable*** and, even in its apparent "locked" position, it could be opened with a simple push—something Zeigler's regular employee and handyman would surely know. *Id.* at 103:17-104:22, 1332:1-21.

**4. Eye Witnesses Suppressed By The State.**

None of the State's witnesses claimed to have witnessed any shootings the night of the murders. But unbeknownst to the defense at the time of trial, other witnesses to the shootings ***had*** observed the shootings, and had come forward to describe what they observed. The State never disclosed these witnesses to the defense, which did not learn of them until more than a decade after Zeigler's trial.

On the night of the murders, the Jellison family was visiting Winter Garden from Michigan and stayed at the motel located directly adjacent to the Store. Shortly after 9:00 p.m. on the night of the murders, the Jellisons heard gunshots coming from the vicinity of the Store. April 20, 1976 Interview of Jon Jellison (*see* **Exhibit L**) at 1-6. When they looked from their hotel window, they saw a police car at the back of the Store and witnessed a police officer aiming his gun toward the Store over the top of his police car and firing shots. Other police cars arrived on the scene soon thereafter. *Id.* at 2-4.

The State Attorney personally interviewed the Jellisons. Soon afterwards, State investigator Jack Bachman called the Jellisons and reached Jon Jellison, who was one of the family members who had been staying in Winter Garden the night of the murders. Their April 20, 1976 conversation was recorded, but was not disclosed to the defense. Zeigler's attorneys first learned of the recording (along with other suppressed evidence, discussed more fully in Section F.1., *infra*), in April 1987. Mr. Jellison repeated his account on the call, and noted that his family members had provided a similar account to the State Attorney.

After hearing Mr. Jellison's account, the State's investigator expressed disappointment that Mr. Jellison's account was not consistent with their theory of the case, stating "[a]s long as you heard the gunshots after [] you saw the police car then that wouldn't help us a bit." *Id.* at 5 (emphasis added). He then described in detail the State's theory that Zeigler was the killer and had killed his family for life insurance money and then shot himself – a clear attempt to tamper with the witness' recollection of events. He concluded by stating that if "***you all get together and decide you heard those gunshots . . . before you saw the police car and in that case, we'd give you a free trip back to Florida***." *Id.* at 5-6 (emphasis added). Jellison declined to change his story.

**F. Additional Evidence That Prejudiced Zeigler's Defense.**

The new DNA evidence must be considered together with all other new evidence that has been adduced since the time of trial. In Zeigler's case, that additional evidence is substantial.

**1. The State's Conduct During its Investigation was Improper.**

The State's conduct during the investigation of the crime scene was highly improper, foreclosing Zeigler from pursuing available lines of defense.

From the night of December 24, 1975, until January 8, 1976, the police maintained complete control of the Store and, without any warrant or attempt to obtain one, ransacked the Store, including opening a closed cabinet. Ex. C at 97:14-19, 741:22-742:1. Many items of potential importance to the defense were taken and then lost through careless handling.

Further, at least one significant avenue of investigation – blood subtyping – was entirely foreclosed to the defense because the state inexplicably failed to perform this testing. *Id.* at 1505-07. The State asserted at trial that Type A bloodstains on Zeigler's shirt were proof that Zeigler must have beat Perry, who had Type A blood. *Id.* at 2425:11-22, 2552:22-2553:7, 2558:20-2560:23, 2565:3-22. But Mays also had Type A blood (*see id.* at 1424:9-12) and thus the Type A

bloodstains on Zeigler's shirt supported Zeigler's testimony that he had pulled himself across Mays' dead body to reach the phone he used to call for police assistance to save his life. Blood subtyping could have helped to distinguish between Mays' and Perry's blood. However, the prosecution unilaterally decided not to test blood samples taken from the victims for subtypes. Aug. 19, 2009 Zeigler Aff. (*see* **Exhibit H**) ¶ 3(g).[4]

Consequently, Zeigler was prevented from proffering a scientific rebuttal to the State's interpretation of the underarm bloodstain evidence. Even the State's Attorney criticized the techniques used to collect and test the bloodstain evidence, going so far as to send a letter to the Orange County Sheriff's Office stating he was "very concerned with the methods and procedures employed in the crime scene processing in the Zeigler case, particularly with the handling of the blood evidence." March 12, 1976 Ltr. from State Attorney Robert Eagan (*see* **Exhibit I**) at 2.

As another example, the police "lifted" a bloody shoeprint present at the crime scene which, according to the prosecution's theory, belonged to the murderer. At trial, the defense adduced testimony from an F.B.I. forensic expert that the shoeprint could not be identified as Zeigler's. Ex. C at 923:13-928:20. In addition, Dr. MacDonnell testified that he could neither confirm nor deny that the shoeprint belonged to Zeigler. *Id.* at 972:9-974:10. However, both experts testified on the basis of a photograph of the print, as apparently the actual imprint had been ***lost*** by the police. May 14, 1976 Frye Tr. (*see* **Exhibit J**) at 35-37. Thus, the best evidence was not available to either expert (or the court or jury, for that matter) due to shoddy investigative work by the police during their warrantless seizure of the Store. Had the defense had access to the Store, they could have made an imprint of that shoeprint and submitted it for proper forensic testing.

[4] Subtyping could not be performed at the time on blood stains that were more than two or three weeks old. *See* Ex. C at 1506:9-1507:7.

Additionally, the State had found various partial fingerprints on items from the crime scene, including on a gun, a door, and a cash register, which were not sufficiently complete to permit their positive identification as belonging to a particular person. Ex. C at 1136:3-14. However, that evidence could be used for "negative" identification; that is, to eliminate a particular person as the "owner" of the print. *Id.* at 2034:2-2035:1. But these partial prints were not analyzed for their negative value and were instead shredded and destroyed by the State. *Id.* at 1141:1-1144:17. A fingerprint specialist at Florida's Sanford Crime Laboratory testified that such destruction was not good practice. *Id.* at 2035:2-2036:1. The loss of the prints was a severe blow to the defense since those prints might have established the presence and involvement of other individuals and thus support the defense's theory that the murders were committed by intruders.

Further, the Sheriff's Office removed bullets from the Store without adequately marking them and, as a result, the defense was prevented from determining the location from which particular bullets had been removed. *Id.* at 522:3-527:18. Had the bullets been properly labeled, the defense could have determined which shots were fired by each gun. When compared with the location of the victims and the estimated times of deaths, such evidence might well have permitted the defense to show how one man could not have fired all of the bullets found in the Store.

Finally, a loose tooth shown in crime scene photographs was lost by the police. In the crime scene photographs, a tooth was shown lying on the hood or parka portion of Mays, and a forensic dental expert testified that the tooth in the photographs was ***not*** the same tooth that was turned over to the defense and which came from Mays. *Id.* at 1678:9-1679:8. Due to inadvertence or otherwise, the prosecution did not recover the photographed tooth from the crime scene, and it was never found. This photographed tooth, which unrebutted evidence established did not belong to any person known to be at the Store that night (*see id.* at 331:16-332:22, 518:9-520:2, 1099:14-

23, 1678:16-1679:8), likely would have enabled the defense to show that an additional, unidentified person was also present at the Store that night and had lost their tooth, thus supporting the defense's theory that one or more other persons committed the murders.

### 2. Evidence Revealed Since Zeigler's Conviction Further Confirms that Zeigler Did not Receive a Fair Trial.

Post-trial investigation revealed that the jury deliberation process was tainted with pre-judgment, intimidation, and harassment of jurors. Immediately after being elected foreman of the jury, the foreman stated that he had made up his mind two weeks earlier and did not need to discuss the case or deliberate but invited the other jurors to let him know when they were ready to vote. Aug. 9, 1976 Affidavit of Stephen J. Robertson (*see* **Exhibit Q**) ¶¶ 5(b), 6(a). In its first vote on the case, Zeigler's jury was split evenly, with six jurors voting to acquit and six jurors voting to convict. *See, e.g.*, *State v. Zeigler*, 494 So. 2d 957, 960 (Fla. 1986).

One of the jurors, Irma Brickel, expressed strong doubts during deliberations about Zeigler's guilt. When Brickel attempted to discuss the evidence in the case, she was subjected to strong intimidation, harassment, and verbal abuse. Ex. Q at ¶ 5(e). For example, at one point when Brickel attempted to discuss the evidence, another jury member clicked one of the guns in evidence behind her head. *Id.* ¶¶ 5(e), 6(e).

Given this prejudgment and harassment, Brickel asked to speak to the judge outside of the presence of the other jurors to discuss "other jurors and decisions made before they [were] permitted to make them." *Zeigler v. State*, 632 So. 2d 48, 51 (Fla. 1993). Judge Paul denied that request "and a subsequent similar request even though Ms. Brickel at one point fainted because of the pressure in the jury room" and abuse inflicted upon her by other jury members. *Id.* Instead, without consulting or even advising defense counsel, the trial judge "called Ms. Brickel's doctor and arranged a prescription for Valium for her." *Id.* Shortly after taking the Valium, "Ms. Brickel

abandoned her holdout position and voted with the other jurors to convict Zeigler" at 5:00 p.m. on July 2, 1976—the Friday afternoon on the weekend celebrating the Bicentennial. *Id.*

At a sentencing hearing held two weeks later on July 16, 1976, Brickel stated in open court that she did not believe Zeigler was guilty and that she had only voted to convict because the pressure on her was too great.

> JUROR BRICKLE: If I could call back the Friday, I would have changed my mind. In fact, I almost did. ***I still feel he's innocent***. My reasons don't seem to be important or they weren't.
>
> THE COURT: But you stated in open court that was your verdict.
>
> JUROR BRICKLE [sic]: I know I did, but I just couldn't take any more.
>
> THE COURT: ***Well, we are not concerned*.**

Ex. C at 2838:9-19 (emphasis added).

The prosecution did not present any witnesses at the sentencing hearing. The jury deliberated for only twenty-five minutes and returned an advisory sentence of life imprisonment on all counts.[5] Despite that recommendation, and despite having just heard Juror Brickel's residual doubt in open court, the trial judge overrode that recommendation and imposed two death sentences and two life imprisonment sentences. *Zeigler v. State*, 402 So. 2d at 375. The sentence was later affirmed on appeal. *Id.* Thereafter, the U.S. Supreme Court denied certiorari. *Zeigler v. State*, 455 U.S. 1035 (1982). In 1988, Zeigler's sentence of death was vacated but reimposed in August 1989 by a different judge, thereby overriding the original jury recommendation for a second time and imposing two death sentences. Those death sentences were affirmed on appeal. *Zeigler v. State*, 580 So. 2d 127 (Fla. 1991), *cert. denied*, 502 U.S. 946 (1991).

---

[5] It is difficult to interpret the jury's recommendation of life imprisonment as anything other than evidence of residual doubt among the jurors. Juror Brickel openly testified that she felt he was innocent. *Id.*

### a. State Suppression of Critical Evidence.

In the decades following his conviction, Zeigler has discovered that the State suppressed many pieces of critical evidence and relied on perjured testimony to obtain his conviction. An exhaustive listing and description of this suppressed evidence and perjured testimony is not possible in this factual summary. The more egregious examples of suppressed evidence and perjury are detailed below.

#### i. *The State Suppressed Crucial Witness Statements and Police Reports Made Early in the Police Investigation.*

Despite explicit requests by the defense, the State failed to disclose key witness statements and police reports from the period early in the investigation when the defense lacked access to witnesses and the crime scene, including important impeachment materials. The State concealed this evidence until April 1987, when it was compelled to grant access to Zeigler's file upon request by Zeigler's counsel under the Florida Public Records Act.

Among the suppressed documents was a fourteen-page report prepared by the first police officer to arrive at the crime scene, in which the officer observed that Zeigler had only dry blood on his wounds and clothing. December 24, 1975 Police Report of R.J. Thompson (*see* **Exhibit K**) at 4. This report ***refuted*** a crucial element of the State's case: that Zeigler shot himself immediately before the police arrived on the scene around 9:20 p.m. For the State's theory to be true, before shooting himself Zeigler needed time to: kill his wife and in-laws at approximately 7:10–7:25 p.m., drive Thomas and Mays to the orange grove, drive back to the Store, his home, and back to the Store again; then kill Mays, return home to meet Edward Williams, and finally return with Williams to the Store. Ex. C at 20:5-26:5, 2540:11-23, 2552:4-2553:7. Had Zeigler shot himself after taking all of those actions, the blood around his wound would have been wet, ***not*** dry, when the police arrived at 9:20. By contrast, the presence of dry

blood around Zeigler's wound corroborates Zeigler's own testimony at trial, that he was shot shortly after arriving at the Store at approximately 7:40 p.m.—more than an hour and a half ***before*** the police arrived.

When questioned at trial about the condition of the blood on Zeigler, the officer, Chief Thompson of the Oakland Police Department, testified that he observed "what appeared to be dried blood and damp blood," which the State inexplicably offered as proof that Zeigler shot himself shortly before calling the police (and after committing all four murders). *Id.* 383:2-5. The defense was unable to cross-examine Thompson with his prior inconsistent statement that the blood on Zeigler was dry (not damp) because the State had improperly suppressed the report.

ii. *The State Suppressed the Existence of, and Presented Perjured Testimony Regarding, a Key Witness to the Murders Who Was Also a Suspect in an Attempted Robbery Across the Street from the Murders, the Existence of Which Was Also Suppressed.*

The State suppressed both the existence of a key witness named Robert Foster who came to the police two days after the murders seeking protection based upon what he knew about them, and the fact that this same individual was suspected of committing an armed robbery across the street from Zeigler's furniture Store on the same night of the murders.

Lead Detective Frye's initial arrest report recounts an interview with a "Robert Foster," mentioning the name five times. December 29, 1975 Arrest Report of Thomas Zeigler Jr. (*see* **Exhibit M**) at 2. However, in a subsequent February 6, 1976 report, the account initially attributed to Foster was changed to Felton Thomas. *See, e.g.*, Ex. D. At trial, Frye denied knowledge of anyone named Robert Foster, testifying that the original mention of "Robert Foster" was a "typographical error" and a "mistake," and that he was attempting to refer to "Felton Thomas" all along. Ex. C at 1769:11-22.

The defense subsequently learned from the Chief Deputy Sheriff at the time that a man named Robert Foster sought police protection because he believed that someone was trying to kill him for what he knew about the Zeigler Store murders, and that "Robert Foster had been admitted into the county jail in a special section that we set aside for the protection of material witnesses." April 1, 2012 Affidavit of Leigh McEachern (*see* **Exhibit N**) at 2. The defense also located eyewitnesses who stated that Foster was present in Orange County after his release from prison in 1975 and had attempted an armed robbery of a Gulf station across the street from the Store on the same night as the murders. Police Chief Thompson — who later investigated the Zeigler Store murders — responded to the attempted Gulf station robbery and took notes. Affidavit of Susan Ambler Graden (*see* **Exhibit P**) at 1-4.[6]

## POST-CONVICTION PROCEDURAL HISTORY

Zeigler has been imprisoned for nearly fifty years for murders that he did not commit. As required by Florida Rule of Criminal Procedure 3.850(c)(4), Zeigler informs this Court that he has filed approximately thirty-one motions seeking various forms post-conviction relief, inclusive of appeals thereof. The disposition and claims raised in each of Zeigler's post-conviction proceedings are listed in the **Appendix** attached hereto for ease of this Court's review.

### A. May 2021 Joint Motion.

On May 20, 2021, after extensive negotiations, Zeigler and the State Attorney's Office filed a "Joint Motion and Stipulation Regarding the Release of Evidence for DNA Testing." May 20, 2021 Joint Motion and Stipulation Regarding the Release of Evidence for DNA Testing (*see*

---

[6] Zeigler filed a timely Rule 3.851 motion to set aside his convictions based on these discoveries, which was denied on the ground that the suppression of Robert Foster's existence was not sufficient to "undermine [the Court's] confidence in the outcome" in light of other evidence of guilt such as "the testimony of Smith, Thomas, and Williams." *Zeigler v. State*, 130 So. 3d 694, at *1 (Fla. 2013), *cert. denied*, 134 S. Ct. 2292 (2014).

**Exhibit U**). At the Florida Attorney General's request, the Circuit Court stayed adjudication of the Joint Motion at a hearing on March 25, 2022 (*see* **Exhibit V**) pending the outcome of the Attorney General's appeal to the Florida Supreme Court in *Sireci,* which was unanimously affirmed on July 1, 2022. *State v. Sireci*, No. SC21-1467, 2022 WL 2387754 (Fla. July 1, 2022). The Circuit Court subsequently permitted the parties to make additional submissions on the impact of the *Sireci* ruling and, on October 27, 2022, ruled that *Sireci* applied and that the Attorney General did not have a legal basis to block the release of evidence agreed to by the State Attorney's Office. Oct. 27, 2022 Hearing Tr. (*see* **Exhibit W**) at 12:8-26; 13:1-9. The Attorney General filed an appeal and sought a stay from the Florida Supreme Court, which was unanimously denied. The Attorney General subsequently dismissed its appeal. *State v. Zeigler*, No. SC22-1774, 2023 WL 1792282, at *1 (Fla. Feb. 7, 2023).

The trial court requested that the parties submit a revised proposed order by November 30, 2022 to address issues of evidence handling in greater detail, and to set a hearing for December 19, 2022. *Id.* Zeigler and the State Attorneys' Office complied with these obligations and made the necessary arrangements for the transfer of evidence to begin once authorized by the Court. Following issuance of the Court's order on December 19, 2022, the parties supervised the release of evidence as required by the order. Dec. 19, 2022 Hearing Tr. (*see* **Exhibit X**) at 17:15-16.

**B. The 2023-2024 DNA Testing.**

Members of the State Attorney's Office and Zeigler's defense team traveled to Orange County, Florida in December 2022 to oversee the collection and shipment of nearly one-hundred pieces of evidence to FACL in Hayward, California. Since then, FACL has comprehensively tested the clothing of Zeigler, Eunice, Perry, Virginia, and Mays.

## LEGAL STANDARD

A motion to vacate, set aside, or correct a sentence is the appropriate procedure to raise newly discovered evidence claims. *See Roberts v. State*, 678 So. 2d 1232 (Fla. 1996); *see also Richardson v. State*, 546 So. 2d 1037 (Fla. 1989). A defendant's conviction may be set aside based on newly discovered evidence on two conditions. *First*, the new evidence "must have been unknown by the trial court, by the party, or by counsel at the time of trial, and it must appear that defendant or his counsel could not have known of it by the use of diligence." *Jones v. State*, 709 So. 2d 512, 521 (Fla. 1998) (internal citation omitted). *Second*, the new evidence must sufficiently "'weaken[] the case against [the defendant] so as to give rise to a reasonable doubt as to his culpability.'" *Swafford v. State*, 125 So. 3d 760, 763 (Fla. 2013) (quoting *Jones*, 709 So. 2d at 526). When determining the validity of a newly discovered evidence claim, the Florida Supreme Court has emphasized that a cumulative analysis is necessary: "[T]he postconviction court must consider the effect of the newly discovered evidence, ***in addition to all of the admissible evidence that could be introduced at a new trial***." *Hildwin v. State*, 141 So. 3d 1178, 1184 (Fla. 2014) (quoting *Swafford*, 125 So. 3d at 775–76) (emphasis added). Indeed, "the court must conduct a cumulative analysis of all the evidence so that there is a 'total picture' of the case and 'all the circumstances of the case.'" *Id.* (quoting *Swafford*, 125 So. 3d at 776). "This determination includes whether the evidence goes to the merits of the case or whether it constitutes impeachment evidence." *Id.* (internal citation omitted). An evidentiary hearing is required to evaluate a motion for a new trial based on newly discovered evidence "unless the record shows *conclusively* that the [defendant] is entitled to no relief." *Brantley v. State*, 912 So. 2d 342, 343 (Fla. 3d DCA 2005) (emphasis in the original).

## ARGUMENT

### CLAIM I: ZEIGLER IS ENTITLED TO A NEW TRIAL BECAUSE THE NEWLY DISCOVERED DNA EVIDENCE WOULD PROBABLY PRODUCE AN ACQUITTAL ON RETRIAL

Because the DNA evidence presented here is newly discovered evidence under the first *Jones* prong, "the only question is whether this evidence satisfies the second prong." *Aguirre-Jarquin v. State*, 202 So. 3d 785, 791 (Fla. 2016). Forensic DNA technology was not available at the time of Zeigler's trial in 1976 and therefore Zeigler's attorneys "could not have known of it by the use of diligence." *Jones v. State*, 709 So. 2d 512, 521 (Fla. 1998). Accordingly, under the second *Jones* prong, the Court need only assess whether the new DNA evidence – along with all the other admissible evidence, before and after Zeigler's conviction – creates reasonable doubt. *Swafford v. State*, 125 So. 3d 760, 763 (Fla. 2013) (quoting *Jones*, 709 So. 2d at 526). As noted by then-Florida Supreme Court Justice Barkett in her dissent in this very case, "[i]n light of an initial vote by the jury in this circumstantial evidence case of six jurors to acquit and six to convict, the allegation of newly discovered evidence warrants a careful review." *Zeigler*, 494 So. 2d at 960.

A careful review of the new DNA evidence here clearly satisfies this second prong and warrants setting aside Zeigler's conviction.

#### A. The New DNA Evidence Creates Reasonable Doubt About Zeigler's Guilt.

The fundamental question under *Jones*' second prong is whether the newly discovered evidence "'weakens the case against [the defendant] so as to give rise to a reasonable doubt as to his culpability.'" *Hildwin,* 141 So. 3d at 1192 (quoting *Jones*, 709 So. 2d at 526) (alteration in original). The Court must analyze all the evidence, *i.e.*, weigh the new findings "in combination with the evidence developed in postconviction proceedings" and with evidence presented at trial

"so that there is a 'total picture' of the case and 'all the circumstances of the case."' *Swafford*, 125 So. 3d at 776, 778 (quoting *Lightbourne v. State*, 742 So. 2d 238, 247 (Fla. 1999)).

When the cumulative evidence — all "the evidence that defense counsel could present at a new trial," including forensic expert testimony that Zeigler's jury never heard — are weighed against the State's circumstantial–evidence case, the "total picture" illustrates reasonable doubt as to Zeigler's guilt. *Swafford*, 125 So. 3d at 778.

### B. The New DNA Evidence Is Particularly Compelling Given that the State's Case Against Zeigler Was Purely Circumstantial.

The State's case against Zeigler was at best a "circumstantial evidence" case, heightening the significance of the scientific evidence of innocence that has come to light through the DNA testing. In a circumstantial case, the State will bear a particularly high burden of proof at any new trial. All of the facts "must be inconsistent with innocence" and must "lead to a reasonable and moral certainty that the accused and no one else committed the offense charged." *Dausch v. State*, 141 So. 3d 513, 517 (Fla. 2014) (internal citation and quotation marks omitted) (directing judgment of acquittal because the physical evidence only linked the defendant to the crime scene, not to the murder). Mere suspicion or even "probability of guilt" is not enough for a criminal conviction. *Id.*

*Swafford* is similar and instructive here. At Swafford's trial, the State put on a "circumstantial evidence case" premised on sexual battery as the motive for murder. 125 So. 3d at 766, 772. On post-conviction review, Swafford raised new, exculpatory forensic DNA evidence challenging the motive as well as on new testimonial evidence incriminating "another viable suspect" about whose potential culpability the "jury [had] never heard." *Id.* at 762, 778. The Florida Supreme Court granted Swafford a new trial, holding that the new evidence "completely change[d] the character" of evidence regarding the alleged motive, upon which the case's

circumstantial evidence relied, which "so significantly weakened" the state's murder case against the defendant "that it g[ave] rise to a reasonable doubt as to his culpability." *Id.* at 768, 778.

In *Ballard*, the defendant appealed his murder convictions after the state had only provided circumstantial evidence — one fingerprint and one strand of hair at the crime scene. *Ballard v. State*, 923 So. 2d 475, 483 (Fla. 2006). The court held that "the State's evidence, while perhaps sufficient to create some suspicion, is simply not strong enough to support a conviction." *Id.* The court directed a judgment of acquittal, stating that in circumstantial evidence cases, "competent evidence" must prove culpability "to the exclusion of all other inferences." *Id.* at 486.

Zeigler's case is also circumstantial. Taking into consideration the new evidence reviewed herein, the State's case would leave the jury "nothing stronger than a suspicion" from which to infer Zeigler's guilt. *Id.* at 482. (internal citation omitted). Even before the DNA new evidence, the state's case was weak. No eyewitnesses or DNA evidence linked Zeigler to the murders. Far from confessing, Zeigler has always adamantly denied any wrongdoing. There is also no evidence Zeigler ever had "any hatred or ill feelings towards the victims." *Id.* at 485. Now, the post-conviction record powerfully corroborates Zeigler's account. Because the State's already-tenuous theory has been seriously undercut – and because there is no credible evidence that is inconsistent with Zeigler's defense – an acquittal is at least "probable" under the *Jones* standard. *Swafford*, 125 So. 3d at 766, 772; *see also Ballard*, 923 So. 2d at 486.

### C. The Cumulative Analysis of All Evidence in This Case Creates Reasonable Doubt About Zeigler's Guilt.

The new evidence here not only severely undercuts the State's entire theory of its circumstantial case but also creates "reasonable doubt as to [Zeigler's] culpability." *Swafford*, 125 So. 3d at 763. The new DNA results would be extremely compelling to a new jury, not only

because they are strong evidence that Zeigler cannot be guilty, but also because they implicate another viable suspect and rebut the State's limited forensic evidence at trial.

**a. The New DNA Evidence Is Compelling.**

First**,** favorable DNA results are compelling evidence. "DNA testing has an unparalleled ability both to exonerate the wrongly convicted and to identify the guilty." *Dist. Attorney's Off. for Third Jud. Dist. v. Osborne*, 557 U.S. 52, 55 (2009); *see also Hayes v. State,* 660 So. 2d 257, 262 (Fla. 1995) (setting aside defendant's conviction and death sentence when new DNA results inculpated another suspect because the probative power of DNA typing can be so great that it can outweigh all other evidence in a trial") (quoting The National Research Council). Many Florida courts have granted post-conviction relief based on new, favorable DNA test results. *See e*.g., *Hildwin,* 141 So. 3d at 1192; *Swafford*, 125 So. 3d at 778; *Ballard*, 923 So. 2d at 486.

Numerous courts outside of Florida have also set aside convictions based on new DNA evidence. *E.g.*, *Howard v. State*, 300 So. 3d 1011, 1016–17, 1020 (Miss. 2020) (setting aside defendant's murder conviction when new DNA results inculpated a new suspect and defendant's DNA was never linked to the crime); *State v. Gates*, 840 S.E.2d 437, 454, 456 (2020) (granting defendant's motion for a new trial when new DNA disproved the inculpatory evidence because "DNA evidence is likely to be especially resonant with a jury, even in light of some contradictory testimony establishing the defendant's guilt."); *Ex parte Chaney*, 563 S.W.3d 239, 275, 278 (Tex. Crim. App. 2018) (setting aside defendant's murder conviction when results of post-conviction DNA testing "undermined or invalidated" the state's evidence); *State v. Vollbrecht*, 820 N.W.2d 443, 452 (Wis. 2012) (affirming the postconviction court's order granting defendant a new trial for rape and murder when new DNA inculpated a new suspect).

Here, the new DNA evidence showing Zeigler's innocence is particularly powerful. The results also corroborate Zeigler's repeated claims of innocence by highlighting the implausibility of the State's theory that he committed the murders.

**b. The New Evidence Creates Reasonable Doubt By Implicating a New Suspect.**

Second, new DNA evidence that incriminates a new suspect is extremely compelling, and a new jury should hear Zeigler's case. *Hildwin,* 141 So. 3d at 1180; *Swafford*, 125 So. 3d at 778.

*Hildwin* held that "newly discovered evidence that identifies the donor of DNA left at the crime scene" — *i.e.*, someone other than the defendant and which supported the defendant's version of events — weakened the case against Hildwin to such an extent that it gave rise to a reasonable doubt as to his culpability and thus "compel[led] that a new trial be granted." 141 So. 3d at 1180. The court granted defendant a judgment of acquittal despite evidence as to defendant's motive, defendant's confession to the crime, and defendant's theft from the victim. *Id.* at 1181. Rather, the "significant" new DNA evidence was enough to allow a jury "to decide between two suspicious people." *Id.* at 1192.

In *Swafford*, new evidence implicating another suspect "completely change[d] the character" of the State's evidence. 125 So. 3d at 773. On post-conviction review, Swafford introduced new testimonial evidence pointing to another man the jury "never heard" about, which was sufficient for the court to require a new trial. *Id.* at 778. Postconviction DNA testing had refuted the state's strongest evidence against the defendant, while there was stronger circumstantial evidence against the unnamed "viable suspect." *Id.*

Here, the DNA evidence not only tends to exculpate Zeigler and create doubts about his guilt — which is all the law requires to grant the relief Zeigler requests here — but also has the tendency to implicate another viable suspect in the case. *See id.* The fact that Mays had Perry's

blood on his pants and that Mays' touch DNA was found on Eunice's coat is evidence of another viable suspect. Similarly, the subsequently developed evidence that convicted criminal Robert Foster was committing a robbery across the street from the Zeigler Store on the same night, and that his identity was concealed from the defense at the time of trial, also raises an inference of potential involvement in the murders. These facts are crucial because Zeigler's jury never heard Zeigler's theory about "another viable suspect." *Id.* at 778. Here, both new forensic and testimonial evidence tend to exculpate Zeigler and prove his innocence.

**c. The New DNA Evidence Rebuts the State's Limited Evidence at Trial.**

*Finally,* the State's limited forensic evidence — which was impossible to contest at trial given the State's suppression of key exculpatory evidence — has since been rebutted.

In *Aguirre-Jarquin,* the Florida Supreme Court granted Aguirre a new murder trial based on newly discovered DNA evidence from the crime scene. 202 So. 3d at 791. The court also based its ruling on the defendant's maintained innocence and "testimony from Aguirre's postconviction forensic experts explaining that the killer could not have been wearing Aguirre's shorts and [] the footwear impressions Aguirre left at the crime scene are consistent with his story of how he found the victims' bodies." *Id.* at 793.

In *Hildwin*, the defendant was convicted of murder despite claiming another man was responsible, and the State told the jury that defendant's theory was not possible. *Hildwin*, 141 So. 3d at 1181. Post-conviction DNA testing inculpated that other man as the perpetrator, not the defendant. *Id.* at 1183. In vacating defendant's conviction, the court held that "the State prosecuted the case based on a false theory of scientific evidence that was woven throughout its presentation of evidence and argument — scientific evidence that has now been totally discredited." *Id.* at 1181.

At Zeigler's trial, the State emphasized that Zeigler's family members' blood was all over his clothes. The new DNA evidence definitively proves that this, the crux of the State's circumstantial case, was false. This new evidence significantly "discredits the scientific evidence that the State relied upon at trial." *Id.* at 1180. Taken together with all admissible evidence here, it so weakens the case against Zeigler as to create substantial doubts of guilt. Accordingly, the Court must aside his conviction. *Id.* at 1193.

**CLAIM II: ZEIGLER'S CONVICTIONS SHOULD BE VACATED BECAUSE HE IS ACTUALLY INNOCENT**

The DNA results also support the requested relief because they show that Zeigler is innocent. In *Schlup v. Delo*, 513 U.S. 298 (1995), the United States Supreme Court held: "[C]oncern about the injustice that results from the conviction of an innocent person has long been the core of our criminal justice system. That concern is reflected, for example, in the 'fundamental value determination of our society that it is far worse to convict an innocent man than to let a guilty man go free.'" *Id.* at 325. Under *Schlup*, to demonstrate actual innocence a "petitioner must show that it is more likely than not that no reasonable juror would have found Petitioner guilty beyond a reasonable doubt." *Id.* at 327. In making this requisite showing, a Petitioner "is not bound by the rules of admissibility that would govern a trial" and may rely on evidence which "became available only after trial." *Id*. at 327-28.

As set forth above, the DNA evidence shows that Zeigler could not have committed the murders of which he was convicted. Zeigler's conviction should be vacated on the grounds that he is actually innocent. *Cf. People v. Wheeler-Whichard*, 884 N.Y.S.2d 304, 313-14 (Sup. Ct. 2009) (granting defendant's motion to vacate convictions for murder on the grounds that he was actually innocent of the crime "to ensure he does not continue to serve any more time in prison for these convictions") .

## CONCLUSION

For the reasons set forth above, Zeigler's convictions should be vacated.

Dated: March 21, 2025

***/s/ Ralph V. Hadley***

Ralph V. Hadley III
Florida Bar No.: 108033
Benjamin C. Iseman
Florida Bar No.: 194506
**MAYNARD NEXSEN PC**
200 East New England Avenue
Suite 300
Winter Park, Florida 32789
Tel.: (407) 647-2777
rhadley@maynardnexsen.com
biseman@maynardnexsen.com

Dennis H. Tracey, III (admitted *pro hac vice*)
David R. Michaeli (admitted *pro hac vice*)
Elizabeth B. Cochrane (*pro hac vice* application pending)
William C. Winter (*pro hac vice* application pending)
Patience M. Tyne (*pro hac vice* application pending)
**HOGAN LOVELLS US LLP**
390 Madison Avenue
New York, New York 10017
Tel.: (212) 983-3000
dennis.tracey@hoganlovells.com
david.michaeli@hoganlovells.com

John Houston Pope, Esq.
**EPSTEIN, BECKER & GREEN, P.C.**
200 Central Avenue
Suite 2200
St. Petersburg, FL 33701
Tel.: (727) 346-3775
Fax: (212) 878-8600

*Attorneys for Defendant,*
*William Thomas Zeigler, Jr.*

## ATTORNEY CERTIFICATION

Pursuant to Rule 3.851(e)(1)(F), I, Ralph V. Hadley III, have discussed the content of the motion fully with the defendant, have complied with Rule 4-1.4 of the Florida Rules of Professional Conduct, and this motion is filed in good faith.

***/s/ Ralph V. Hadley***
Ralph V. Hadley III

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 21, 2025, the foregoing document was electronically filed using the Florida Courts E-filing Portal which will send the foregoing document by e-mail to all counsel of record.

***/s/ Ralph V. Hadley***
Ralph V. Hadley III
Florida Bar No.: 108033
Benjamin C. Iseman
Florida Bar No.: 194506