

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

STATE OF FLORIDA,

Plaintiff,

vs.

WILLIAM THOMAS ZEIGLER, JR.,

Defendant.

CASE NOS.: 1988-CF-5355
1988-CF-5356

**ORDER DENYING "MOTION TO VACATE CONVICTIONS BASED UPON
NEWLY AVAILABLE EVIDENCE" AFTER EVIDENTIARY HEARING**

THIS MATTER came before this Court on December 20-21, 2004, for an evidentiary hearing on Defendant William Thomas Zeigler's "Motion to Vacate Convictions Based Upon Newly Available Evidence" filed on January 15, 2003, pursuant to Florida Rules of Criminal Procedure 3.850, 3.851, and 3.853.

FACTUAL BACKGROUND

Defendant was charged by Indictment with four (4) counts of first degree murder. Following a jury trial on July 2, 1976, he was convicted of two counts of first degree murder and two counts of second degree murder. The facts as stated in Zeigler v. State, 402 So. 2d 365 (Fla. 1981) are as follows:

On Christmas Eve, December 24, 1975, Eunice Zeigler, wife of defendant (hereinafter referred to as wife), and Perry and Virginia Edwards, parents-in-law of Defendant (hereinafter referred to as Perry and Virginia), were shot to death in the W. T. Zeigler Furniture Store in Winter Garden, Florida. In addition, Charles Mays, Jr., (hereinafter referred to as Mays), was beaten and shot to death at the same location.

Times of death were all estimated by the medical examiner as within one hour of 8:00 P.M. The defendant was also shot through the abdomen.

The state's theory of the case may be summarized as follows:

Edward Williams had known defendant and his family for a number of years. Williams testified that in June 1975 defendant inquired of him about obtaining a "hot gun." Williams then went to Frank Smith's home and arranged for Smith to purchase two RG revolvers. The revolvers were delivered to defendant. Also, during the latter part of 1975 defendant purchased a large amount of insurance on the life of his wife. Thus was shown the means and the motive.

Mays and his wife came to defendant's furniture store during the morning of December 24 and Mays agreed to meet defendant around 7:30 P.M. The store was closed around 6:25 P.M.

Mays left his home around 6:30 P.M. He went to an Oakland beer joint and saw a friend, Felton Thomas, who accompanied Mays to the Zeigler Furniture Store.

The theory of the state's case is that defendant had two appointments on Christmas Eve, one with Mays and one with Edward Williams. Prior to these appointments he took his wife to the store and in some manner arranged for his parents-in-law to go there. He killed his wife, Eunice, quickly, and for her, unexpectedly, since she was found with her hand in a coat pocket, shot from behind.

Because of the location of her body, Virginia was probably trying to hide among the furniture. Perry probably surprised defendant with his strength and stamina as they struggled for some time. After defendant subdued Perry and rendered him harmless, defendant shot him. Considering the fact that a bullet penetrated Virginia's hand, the state said it was likely she was huddled in a protective position when she was executed.

Defendant then left the store, returning to meet with Mays who had arrived there at about 7:30. He was probably surprised to see the presence of another man, Felton Thomas, with Mays. He took Thomas and Mays to an orange grove to try the guns. The states says that the purpose of the trip was to get the two to handle and fire the weapons in the bag. From the grove he returned to the store, but was unsuccessful in getting Mays or Thomas to provide evidence of a break-in. He did, however, get Thomas to cut off the lights in the store. The three returned to defendant's home. Defendant got out, went to the garage, came back and tossed a box of some kind to Mays

and told him to reload the gun. They returned to the store. Defendant could not persuade Thomas to enter the store, so Thomas lived. When Thomas disappeared, the defendant returned to his home and picked up Edward Williams. Defendant had killed Mays.

Defendant was successful in getting Williams partially inside the back hallway. Defendant put a gun to Williams' chest and pulled the trigger three times, but the gun did not fire. Williams said, "For God's sake, Tommy, don't kill me," and ran outside, refusing to return to the store. The state says that the empty gun was as much a surprise to defendant as it was to Williams. The state says in all probability defendant thought he was holding the gun that Mays had shot in the orange grove and which defendant told Mays to reload.

When he was unable to get Williams into the store, the defendant became desperate and conceived the idea that he would appear uninvolved if he happened to be one of the victims. Accordingly, he shot himself and then called Judge Vandeventer's residence where he knew the police officers would be.

The defendant denies that he had any contact with Smith or purchased any guns from him. He says that the increase in the amount of the insurance policy was pursuant to advice on an estate plan. Defendant says that his wife, Perry, and Virginia were killed during the course of a robbery; that Mays was involved in the robbery but was killed by his confederates; that he was shot by the burglars and left to die. The jury obviously did not believe the testimony of the defendant. To have believed his story, the jury would necessarily have had to disbelieve the testimony of Smith, Thomas, and Williams and would have had to have found no significance in the other substantial evidence.

....

The defendant was arrested in his hospital room on December 29, 1975, a preliminary hearing was held January 16, 1976, and the grand jury returned indictments on March 26, 1976. One indictment charged defendant with three counts of first degree murder for the shooting deaths of Eunice Zeigler, Perry Edwards and Virginia Edwards. Another indictment charged defendant with one count of first degree murder for the beating death of Charles Mays, Jr.

....

Defendant testified that he was attacked by unknown assailants. He related how he fought with his attackers, how he was in and out of

consciousness and how he suffered a gunshot wound and heard the unknown voice directing that Charles Mays or someone be killed. The jury rejected this defense and the evidence, as previously discussed, was ample to sustain the verdict of the jury.

By its verdict, the jury found proof beyond a reasonable doubt that defendant had committed four murders within the course of two hours. He killed Eunice quickly and for her, unexpectedly. She was shot from behind. With Eunice dead, defendant then shot his in-laws. Perry struggled with the defendant. Defendant subdued Perry, rendered him harmless, and shot him once while he lay on the floor. Defendant then went in search of Virginia, found her and shot her in the head. The evidence shows that these people were killed prior to 7:30 P. M.

By 9:00 P.M. he had murdered Mays in furtherance of a crafty design to focus attention on others as the murderers. Defendant could not persuade Thomas to enter the store so Thomas survived. He got Williams partially inside the back hallway, turned on him and tried to shoot him in the chest. The gun failed to fire, so Williams survived.

By this time, defendant was very desperate. He had four bodies in the store, and little, if anything, to support the appearance of a surprise robbery and massive shootout. He would not appear to be involved if he happened to be one of the victims. Accordingly, he shot himself and called the police for help.

Id. at 367-368, 374-375.

Following a sentencing hearing on July 16, 1976, the jury recommended life imprisonment for the two counts of first degree murder. The trial court overrode the jury's recommendation and sentenced Defendant to death for the first degree murders and to consecutive life terms for the second degree murders. The convictions and sentences were affirmed on appeal. See Zeigler v. State, 402 So. 2d 365 (Fla. 1981). Defendant's first motion for postconviction relief was denied. On appeal, however, the Florida Supreme Court remanded for an evidentiary hearing on one ground. See Zeigler v. State, 452 So. 2d 537 (Fla. 1984).

Following the hearing, Defendant's claim was denied and affirmed on appeal. See Zeigler v. State, 473 So. 2d 203 (Fla. 1985). When Defendant filed his second motion for postconviction relief, the circuit court ordered an evidentiary hearing on one of the issues, but the State appealed and the Florida Supreme Court reversed. State v. Zeigler, 494 So. 2d 957 (Fla. 1986). In April, 1988, Defendant's death sentences were vacated and the case remanded for resentencing. See Zeigler v. Dugger, 524 So. 2d 419 (Fla. 1988).¹ Defendant was again sentenced to death for the first degree murders and the sentences were affirmed on appeal. See Zeigler v. State, 580 So. 2d 127 (Fla. 1991). The denial of Defendant's third motion for postconviction relief² was affirmed on appeal. See Zeigler v. State, 632 So. 2d 48 (Fla. 1993), and the denial of his motion to vacate his sentences was also affirmed on appeal. See Zeigler v. State, 654 So. 2d 1162 (Fla. 1995). On January 30, 2001, Defendant filed his Motion for Release of Certain Evidence for DNA Testing, which was granted after hearings conducted during the course of the year 2001.

On January 15, 2003, Defendant filed a Motion to Authorize (nunc pro tunc) DNA Testing and a "Motion to Vacate Convictions Based Upon Newly Available Evidence" which is now before this Court. Defendant alleges that the DNA testing of several pieces of key evidence in the instant case produced exculpatory results. Specifically, Defendant claims that: (1) Perry Edwards ("Perry") cannot be the source of type A blood stains on Defendant's shirt and pants because the testing profile affirmatively excluded Perry; and (2) the likely source of several type

¹ The cases were originally numbered 1976-CF-1076 and 1976-CF-1082. Prior to resentencing, however, they were renumbered 1988-CF-5355 (formerly 1976-CF-1076) and 1988-CF-5356 (formerly 1976-CF-1082).

² The motion was actually entitled "Second Amended Motion to Vacate Judgment and Sentence" and incorporated both the original motion for postconviction relief and the amended motion, filed in September 1988, and October 1989, respectively.

A blood stains on Charlie Mays' ("Mays") pants is Perry because, although the testing profile affirmatively excluded both Mays' and Eunice Zeigler's blood,³ it did not exclude Perry's blood.

Two requirements must be met in order to set aside a conviction based on newly discovered evidence:

First, in order to be considered newly discovered, the 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.'

Secondly, the newly discovered evidence must be of such nature that it would probably produce an acquittal on retrial. To reach this conclusion the trial court is required to 'consider all newly discovered evidence which would be admissible' at trial and then evaluate the 'weight of both the newly discovered evidence and the evidence which was introduced at the trial.'

Jones v State, 709 So. 2d 512, 521 (Fla. 1998) (citations omitted). See also Roberts v. State, 840 So. 2d 962, 972 (Fla. 2002) (in determining whether newly discovered evidence warrants setting aside conviction, trial court must consider all newly discovered evidence which would be admissible at trial and then evaluate weight of *both* newly discovered evidence and evidence introduced at trial to determine whether evidence would probably produce a different result on retrial); Lightbourne v. State, 742 So. 2d 238, 247 (Fla. 1999) (court cannot consider each piece of evidence in a vacuum, but must look at total picture of all evidence when making decision).

Furthermore, it is a defendant's burden to explain, with reference to specific facts about the crime, how DNA testing results will exonerate him or mitigate his sentence. See Robinson v. State, 865 So. 2d 1259, 1264-65 (Fla. 2004). See also Fla. R. Crim. P. 3.853 (court must determine if there is reasonable probability that movant would have been acquitted or would

³ Mays and Eunice Zeigler were the only other type A blood sources at the crime scene.

have received lesser sentence if DNA evidence had been admitted at trial);

Based on DNA testing results of clothing worn at the crime scene, Defendant raises the following claims:

The large blood stain on the left arm of his t-shirt, which the State argues resulted from holding Perry in a headlock and beating him to death, came from Mays, not Perry.

The type A blood on Defendant's shirt, which did not originate from Perry, is consistent with the defense theory that Mays' blood was deposited on Defendant's shirt as he crawled across Mays' body or through a pool of Mays' blood.

Mays's pants are stained with Perry's blood in the rear pocket and the left shin areas; this evidence directly corroborates Defendant's testimony that Mays was a perpetrator, rather than an innocent party killed in a cover-up.

Implicating Mays as a perpetrator also implicates Felton Thomas as a perpetrator, thus completely undermining the credibility of his testimony against Defendant at trial.

A reasonable jury, presented with physical evidence disputing one central tenant of the State's case, and corroborating one central tenet of the defense case, would probably have reached a different verdict.

During trial, Professor Herbert MacDonnell ("Professor MacDonnell"), testified that the blood stains visible in a photograph of Mays' body indicated "swipe" patterns, i.e., patterns made by smeared blood, on Mays' sweatshirt. (R. 985-987.) Superimposed on top of the swipe stains were "medium velocity impact spiders," or stains from force consistent with a beating. (R. 986, 987.) Professor MacDonnell opined that the underlying swipe stains had dried for fifteen to thirty minutes before the "spiders" spattered on them; otherwise the "spiders" would have dissolved. (R. 986, 992, 993.) The arm of the sweatshirt had several very long streaked stains that seemed to radiate out from the head wound, which were consistent with the victim's arm

being outstretched at the time of the beating. (R. 1034, 1035.) The smaller stains on the sweatshirt were also consistent with a beating. (R. 1035.) Professor MacDonnell found no evidence in the blood at the crime scene matching Mays' shoe pattern. (R. 1046.) Examination of Mays' trousers, underwear, and yellow t-shirt revealed stains that appeared to be blood. (R. 1047.) Professor MacDonnell opined that the fine spatters on the lower front part of Mays' t-shirt could be from medium velocity impact on the inside of the right pocket. (R. 1047.) There were also specks of high or medium velocity impact spots on the inside area of Mays' underwear, which were generated from inside, rather than outside, of the trousers. (R. 1048, 1049.)

Professor MacDonnell testified that the stained areas in the ribbed patterns of the armpit area of Defendant's white t-shirt indicated that the shirt was in contact with something that had blood on it, rather than blood that had soaked through Defendant's outer shirt. (R. 1027.) The stains along the outside arm and right front came from a source other than Defendant. (R. 1027, 1028.) Professor MacDonnell stated that the large area of staining under the armpit and a little to the back was a typical swiped or wiped pattern from another object, most likely something porous. (R. 1028, 1029.) A larger area of staining⁴ on the left sleeve and the stains on the back of the shirt were externally produced and consistent with the t-shirt having been worn underneath the red shirt. (R. 1030, 1031, 1053.)

Professor MacDonnell characterized the small, well distributed splatters on Defendant's red shirt as consistent with "medium velocity impact spiders" or blood from impact, and stated that to produce those particular blood droplets, some physical force, such as slapping, had to take

⁴ Professor MacDonnell admitted that although the stains appeared to be blood, he had not conducted chemical tests to determine their origin.

place. (R. 1029, 1030.) Professor MacDonnell testified that the stains on the back of the red shirt did not appear to be blood that had been transferred from the floor by Defendant lying in blood; instead, they were more consistent with blood striking the shirt. (R. 1053-1055.) While he admitted he could not explain the origin of the stains, Professor MacDonnell stated that they were consistent with a person administering a beating with a small, heavy object to another person who was lying prone on the floor; the one administering the beating could get cast off drops on the back of his shirt from the instrument used in the beating, where the blood generated initially flew upward, then fell back down. (R. 1054, 1084.) While the blood was not consistent with someone standing over Defendant and dripping blood on him, it could be consistent with bloody hands touching the shirt. (R. 1056.) Professor MacDonnell testified that he had examined the area of the store where Mays' and Perry's bodies was found, and the blood spatters radiating from their heads were consistent with both men having been beaten while they lay on the floor. (R. 1076, 1077, 1081.)

Defendant testified that when he walked into the furniture store, he was hit over the head, fell to the floor, and lost his glasses. (R. 2404.) As he was getting up, he saw two blurs coming at him. (R. 2406, 2407.) Defendant drew his .22 caliber Escort pistol, but could not tell if he fired it or not, because it jammed. (R. 2406.) After he threw the gun, he heard glass breaking and things falling, and "started flying through the air and bouncing off the walls and refrigerators and the shelves that are back in that area." (R. 2406, 2407.) He was thrown back into the hall, where he hit a desk. (R. 2408.) He snatched the desk drawer open and got out a .357 magnum. (R. 2408). Although he could not tell if he actually fired the gun, he stated he could have fired it several times. (R. 2409.) He then started swinging the gun "with everything I had." (R. 2409.)

He stated that he “connected” with the gun and was swinging it at the top and bottom of his assailants, “just as hard as I could.” (R. 2409.) When asked how he got all the type A blood under the armpit of his clothing, Defendant testified, “The only thing that I can tell you is that during the fight I was grabbing everything I could grab ahold [sic] to and swinging with everything that I had. That’s the only thing that I can tell you.” (R. 2425.) Defendant denied that he held Perry around the neck with his left arm and clubbed him with his right hand. (R. 2425.)

During the December 20-21, 2004, evidentiary hearing, Shawn Weiss (“Weiss”)⁵ testified that DNA testing was conducted on a cutting taken from the back of Mays’ pants near the cuff area, and cuttings taken from the front of the pants near the zipper, belt, and left knee areas. (T. 31-33.) The cuttings from the cuff and the knee area of the pants produced findings that were consistent with Perry’s DNA profile. (T. 32-36.) The cuttings from the other areas revealed genetic markers consistent with Mays. (T. 45.)

Testing of a cutting from the left pocket area of Defendant’s red shirt excluded Perry, but did not exclude Mays as the source of the biological material found there. (T. 36-38.) A cutting from the left armpit of Defendant’s t-shirt revealed only one genetic marker;⁶ that marker was consistent with Mays and excluded Perry. (T. 38-40.) Testing of Defendant’s socks could not exclude Mays as the blood source or Perry as a possible “mixed” blood source. (T. 54, 55.)

⁵ Weiss is the associate technical director of the forensic identity department for Laboratory Corporation American Holdings (LABCORP). (T. 16.) He stated that he interpreted the DNA testing results and generated a report containing his conclusions of the testing. (T. 23-25.)

⁶ Weiss stated that only one result was obtained because of deterioration of the blood and how the clothing was stored. (T. 39.)

Weiss admitted that he was not asked to test other parts of the shirt, and it was possible that the other stains on it came from Perry. (T. 49, 50.) He also admitted that it was possible to miss blood, due to deterioration and improper storage, and to have a mixed stain, from multiple contributors, in the same area. (T. 44, 45, 52, 53.)

After examining Defendant's red shirt, Stuart James ("James"), a forensic scientist, stated that the shirt contained a lot of "contact" stains⁷ in the arm pit and left shirt pocket area,⁸ and several "saturated" stains⁹ on the sleeves. (T. 75-78.) Stains on one side of the shirt were inconsistent with the stains on the other side, indicating that two "independent activities" were involved.¹⁰ (T. 129.) The staining, particularly on the collar, indicated that Defendant was facing the source of spatter with his neck, and possibly his arms, moving, "rocking his body" and having his hands "move toward the source of the blood." (T. 136-139.) James opined if the spatters on the shirt were the result of Mays' beating, Defendant would "be in the place of someone inflicting the blows if that spatter can be, you know, eliminated as to any other possible source." (T. 144, 145.) Another possible explanation for the spatter would be an incident involving two people trading blows or punching each other in the face. (T. 145, 146.) James

⁷ "Contact stains" were defined as those produced by a wet blood source making contact with a previously non-bloody surface. (T. 77.)

⁸ Having reviewed the DNA testing report, James knew that the results obtained from the pocket area stains were consistent with Mays and excluded Perry. (T. 80-82.) He declined to opine that these stains were consistent with holding someone's bloody head in a headlock. (T. 85.)

⁹ "Saturated stains" were defined as those that had soaked all the way through the material, rather than just accumulating on the material's surface. (T. 77.)

¹⁰ James described these as "reddish-brown stains" and indicated that even if these were blood stains, he didn't know whose blood it was. (T. 130, 164, 165.)

stated that because Mays' teeth were loosened by the facial blows, the expiratory blood, i.e. blood blowing out of Mays' mouth, could account for the spatter on the arms and collar, but it would not account for all of the spatter on the shirt. (T. 169, 170, 173, 181, 182, 186, 187.)

When asked if the spatter on the shirt, other than in the arm and collar areas, could have been deposited while Defendant was not moving, i.e. while he was lying on the floor, James stated that although it was theoretically possible, he didn't see any place on the floor where Defendant would have been to get hit by the spatter. (T. 189.) James further opined that the bloodstain on the upper left arm area of the red shirt could have been transferred from Mays' bloody long-sleeved sweatshirt. (T. 93, 94.) However, merely crawling over the sweatshirt would only produce a light transfer of blood; in order for blood from the sweatshirt to seep into the shirt, Defendant would have to lie across Mays' torso. (T. 150-152, 154.) James stated that while the castoff blood on the ceiling caused by Mays' beating would not cause all the spatter on Defendant's clothes, close proximity to Mays while he was beaten on the head would account for all of it. (T. 182, 183, 189, 190.) James opined that there were at least three possible scenarios which would explain all the spatter on Defendant's clothing: blunt force trauma to Mays' head while he was on the floor; expiratory blood; and blood from another confrontation spattered at a previous time. (T. 183.) James admitted that all of the spatter evidence would be explained if Defendant was the killer. (T. 149, 150.)

James opined that the stains on the upper left chest and sleeve areas of Defendant's t-shirt were the result of blood soaking through from the red shirt and stated that it was his understanding that the DNA evidence excluded Perry, but not Mays, as the source. (T. 86-91.) He also stated that there was no way to know exactly whose DNA was on every area on the shirt.

(T. 85.)

James testified that the large stained areas on Mays' trousers resulted from either contact with blood or from blood flowing down from a garment worn higher up on the body. (T. 95.) He opined that staining on the right leg, particularly around the cuff area, which saturated both sides of the material, occurred because there was ample opportunity for Mays to have contact with a significant amount of blood that was consistent with Perry's blood. (T. 95, 96, 98, 99.) James testified that the stains on Mays' pants were not inconsistent with Mays coming onto the scene after Perry was beaten. (T. 120, 122.)

After examining a photograph depicting Perry's body, James stated that Mays' footprints were not in the pool of blood around Perry's head. (T. 98-100.) Although Mays could have been standing next to Perry shortly after Perry was killed, based on a finding of Type A blood on Mays's shoes, James testified that it is was impossible to determine where Mays was standing because blood pooling could obliterate footprints. (T. 98-100.)

After reviewing the Motion, files, and record of the cases, and having heard argument from both sides, the Court concludes that even if the alleged newly discovered evidence resulting from the DNA testing had been admitted at trial, there is no reasonable probability that Defendant would have been acquitted. See Jones v. State, 709 So. 2d at 521.

Defendant admitted that he was at the crime scene, and there is no dispute that his blood, as well as the blood of the four victims, was present at the scene. Although the DNA testing identified, in some cases, *whose* blood was on the clothing of both Defendant and Mays, it did not conclusively eliminate Defendant as the perpetrator of the crimes.

The bodies of both Mays and Perry were found at the back of the furniture store within a

few feet of each other. While the blood found on Mays' shoes and the stains on his pants leg and cuff areas revealed a genetic profile consistent with Perry, these findings are consistent with Mays standing next to Perry, or being in close proximity to his body, after Perry was killed. These findings do not show, as Defendant asserts, that Mays was the perpetrator, rather than a victim of the crimes. Instead, if Mays were involved in a struggle with Defendant while in close proximity with Perry's bloodied body, it would not be surprising that Perry's blood ended up on Mays' shoes and pants during the altercation.

Testimony given at both the trial and evidentiary hearing indicated that the stains on the back of Defendant's red shirt were not transferred from the floor, as Defendant claims, but instead were consistent with a beating wherein the instrument used in the beating caused the blood to initially spray upward, then fall back onto the shirt. Even though all the stains on the shirt were not tested, testimony was adduced that if the spatters on Defendant's shirt came from Mays, Defendant was the one who beat Mays to death. No findings were introduced which contradicted this testimony.

Patterns made by smeared blood were present on Mays' sweatshirt and on top of those patterns were stains from force consistent with a beating. The blood patterns had dried for fifteen to thirty minutes before the spatter landed on top of them. Testimony at the evidentiary hearing indicated that while the bloodstains could have been transferred from Mays' sweatshirt to Defendant's shirt, merely crawling over the shirt, as Defendant claims he did, would not be sufficient; instead, Defendant would have to lie across Mays' torso in order to achieve those particular stains.

Finally, the fact that only Mays' blood was found on the left arm of Defendant's t-shirt

does not exonerate Defendant or even tend to exonerate Defendant. As Weiss stated at the evidentiary hearing, it was possible to miss blood on the shirt, due to deterioration and improper storage. It was also possible to have a mixed stain, from multiple contributors, in the same area. Thus, the presence of Mays' blood, and the absence of Perry's, on Defendant's t-shirt does not conclusively show that Defendant did not hold Perry in a headlock and beat him.

Based on the foregoing, the Court finds that Defendant has not shown that the DNA testing results would exonerate him or mitigate his sentence. See Robinson, 865 So. 2d at 1265-65. Accordingly, it is hereby **ORDERED AND ADJUDGED** that:

1. Defendant William Thomas Zeigler, Jr.'s "Motion to Vacate Convictions Based Upon Newly Available Evidence" is **DENIED**.
2. Attached to this Order and incorporated by reference are applicable portions of the trial transcript and the evidentiary hearing transcript.
3. Defendant has **thirty (30) days** from the date of this Order in which to file an appeal.
4. The Clerk of the Court shall promptly serve a copy of this Order upon Defendant including an appropriate certificate of service.

DONE AND ORDERED in Chambers, at Orlando, Orange County, Florida, this 18th day of April 2005.

REGINALD WHITEHEAD
Circuit Court Judge

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing Order has been furnished by U. S. Mail or hand delivery to **John Houston Pope, Esquire, Counsel for Defendant**, 250 Park Avenue, New York, New York 10177-1211; **Dennis Tracey III, Esquire, Counsel for Defendant**, 875 Third Avenue, New York, New York 10022; **Kenneth Nunnelley, Esquire, Assistant Attorney General, Office of the Attorney General**, 444 Seabreeze Blvd., Fifth Floor, Daytona Beach, Florida 32118-3951; **Jeff Ashton, Esquire, Assistant State Attorney, Office of the State Attorney**, 415 N. Orange Avenue, Orlando, Florida 32801, and **Chris Lerner, Esquire, Assistant State Attorney, Office of the State Attorney**, 415 N. Orange Avenue, Orlando, Florida 32801, on this 18th day of April 2005.

Judicial Assistant