

**IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT  
IN AND FOR DUVAL COUNTY, FLORIDA**

STATE OF FLORIDA,	)	
Plaintiff,	)	
	)	Case No. 1976-CF-000912
v.	)	
	)	
HUBERT NATHAN MYERS,	)	
Defendant-Movant	)	

**ORDER VACATING DEFENDANT’S JUDGMENT AND SENTENCES**

THIS CAUSE, having come to be heard upon the Defendant’s Motion for Postconviction Relief and to Vacate Judgment and Sentence Pursuant to Fla. R. Crim. P. 3.850, filed on March 28, 2019, and based on the State consenting to the entitlement to relief, the Court finds sufficient cause to grant the requested relief in this matter. The Court makes the following findings:

- (1) The Defendant, HUBERT NATHAN MYERS, was convicted of First-Degree Murder and Attempted First-Degree Murder on September 2, 1976, and was sentenced to concurrent sentences of life imprisonment and 30 years imprisonment on October 27, 1976;
- (2) In January 2018, the State Attorney’s Office for the Fourth Judicial Circuit created the Conviction Integrity Review Division (CIR) to investigate and review claims of actual innocence and make recommendations on appropriate relief;
- (3) The CIR performed a comprehensive and thorough review in the instant case, and performed additional investigation not previously available to this Court, the parties or the original jury;
- (4) On February 25, 2019, the CIR tendered its report to counsel for the Defendant, in which it found that:

- a. Available and new evidence contradicted the State's trial theory and its only material fact witness from trial;
  - b. Another man confessed to a number of people that he committed the shooting by himself, and independent investigative evidence available at the time of trial confirmed that he was present at the scene at the time of the shooting; and
  - c. Multiple alibi witnesses recalled being with both the Defendant and his co-Defendant at a nearby party at the same time they heard the shots fired during the crime, demonstrating the innocence of both defendants.
- (5) The CIR Report recommended that the Defendant's convictions and sentences be vacated, concluding that a "jury presented with the evidence known by the CIR could not conclude, beyond a reasonable doubt, that either defendant committed the shooting and murder," and that there "is no credible evidence of guilt, and likewise, there is credible evidence of innocence."
  - (6) On March 28, 2019, the Defendant filed a Motion for Postconviction Relief alleging that both the conclusions and recommendation on relief contained in the CIR Report, and certain new information produced by the CIR investigation, are newly discovered evidence upon which his convictions and sentences should be vacated.
  - (7) The State has consented to this Court granting the relief sought in the Motion for Postconviction Relief and stipulated that, upon issuance of this Order, it will file a Notice of Nolle Prosequi, dropping pending charges in this matter and effectuating the Defendant's immediate release from custody.

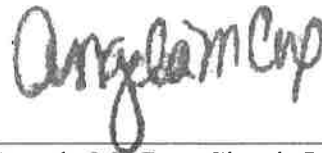
- (8) This Court finds that the contents and findings contained in the CIR report support relief being granted.
- (9) It is well settled that a court may grant a new trial based on newly discovered evidence if (1) the evidence was discovered since the former trial; (2) the party used due diligence at the time of trial to find such evidence; (3) the evidence is material to the issue; (4) the evidence goes to the merits and does not merely impeach the character of a witness; (5) the evidence is not merely cumulative; and (6) the evidence is such as to probably change the outcome of the trial. Smith v. State, 158 So. 91, 93 (Fla. 1934).
- (10) The evidence discovered since the former trial of the sound experiment and the crime reconstruction report, evidence that the person who confessed to the crime was actually at the scene at the time of the shooting, evidence that there was a witness at the time of the shooting who saw a single shooter outside the bedroom window, expert computer modeling which shows the wound path back to the bedroom window, is indeed material and goes directly to the merits of the case. This evidence is not merely cumulative.
- (11) The Court's role is to interpret the law; however, that interpretation is founded on the principles of justice. Justice is the paramount, indeed the exclusive interest, which concerns us. See Jackson v. State, 416 So. 2d 10, 10 (Fla. 3d DCA 1982). In this case, justice requires that a jury, if the State proceeds on this case, should hear the evidence before the Defendant may be convicted and imprisoned for the crimes with which he is charged.

(12) Thus, the newly discovered evidence is of such a nature that would probably produce an acquittal on retrial. See Jones v. State, 591 So. 2d 911, 915-16 (Fla. 1991).

Accordingly, it is hereby

ORDERED that the Judgment and Sentences entered against the Defendant on October 27, 1976 in the above-referenced case number are hereby VACATED.

DONE AND ORDERED, at Jacksonville, Duval County, Florida on this 28th day of March, 2019.



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Angela M. Cox, Circuit Judge

Copies to: Department of Corrections

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