

circuit court recognized, "a negative result for primer residue does not necessarily indicate that a person did not fire a gun." R32.2.R. 222. This finding is not "clearly erroneous."

Moreover, in this particular case, a negative GSR result could further be explained because the clothing Swiney wishes to test (even if it is still in existence) has been sitting in storage for nearly twenty years, making it highly questionable that it would still contain detectable GSR. Although Swiney casually mentions in his brief that "gun shot residue evidence . . . has a high probability of still being available in evidence stored in the possession of the State," Brief at 50, this assertion is unsupported by the record. Swiney never stated in his petition that GSR would still be detectable on clothing after approximately 17 years in storage. See R32.2.R. 10-46. Swiney's primary expert also did not discuss this potential problem in his report or rebuttal affidavit. See R32.2.R. 258-463, 145-50. More importantly, the FBI article stated that GSR on clothing could last for "several weeks," making it highly questionable that it would last for 17 years. SR. 13, 15. Thus, for this reason as well,

a negative GSR result from testing on Swiney's clothes would neither cast doubt on the trial result under Rule 32.1(e)(4) or establish Swiney's innocence under Rule 32.1(e)(5).

Second, as the circuit court aptly noted, "Swiney's allegations must be considered in the context of the overwhelming nature of the evidence that established Swiney guilty of capital murder for brutally murdering his wife, Betty Swiney, and Ronnie Pate, her ex-husband." R32.2.R. 230. The negligible value of a potentially negative GSR finding is further minimized when considering this evidence, including Swiney's own admission, which Swiney has not even tried to explain much less retract.

Some of the more pertinent facts revealed at trial follow.

Shortly after Swiney and Betty Swiney married, he began saying that he was going to divorce Betty and kill Pate. R. 610-11, 652-53, 374, 603-04, 616. He also said that Betty was a "Pate woman." R. 582-83, 653. In November, he stated that if he could not have Betty, no one could. R. 605, 637-38.